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Presidential Documents

Title 3—

The President

Proclamation 5800 of April 21, 1988

National Organ and Tissue Donor Awareness Week, 1988

By the President of the United States of America

A Proclamation

The generosity for which the American people have always been known shines clearly today in the willingness of many people to become organ and tissue donors so that others might live or have an opportunity to enjoy a fuller life. Thousands of Americans will receive an extraordinary gift this year—a kidney, heart, liver, pancreas, a combination of heart and lung, skin, a cornea, bone, or bone marrow. The great majority of these gifts will have been possible only because a caring American agreed to donate an organ or tissue for transplantation.

We can all take pride in this generosity; yet the need for additional transplants remains great. Thousands of Americans will wait this year for a well-matched organ or tissue to become available. For some, no donor may be found. The decision to volunteer as an organ donor is a significant act of personal sacrifice. Fortunately, knowledge about organ donorship has spread in recent years. Groups in our communities stand ready to answer questions about organ and tissue donation. The American Council on Transplantation and school, church, and community groups are involved. Many States give people the chance to sign donor authorization cards when they complete their driver's license forms. Others require hospitals to offer people the opportunity to donate under appropriate circumstances.

Encouragement of organ and tissue donation must always be accompanied, of course, by thorough reflection and complete information. Recent medical and technological developments are posing new moral and ethical questions about transplantation in certain circumstances. Individuals, and society as a whole, must carefully consider these questions so that we never undercut our reverence for the sanctity God vests equally in the life of every person, from the moment of conception until natural death.

The Congress, by Public Law 100-273, has designated the week of April 24 through April 30, 1988, as "National Organ and Tissue Donor Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 24 through April 30, 1988, as National Organ and Tissue Donor Awareness Week. I ask health care professionals, public and private service organizations, and all Americans to join in supporting this humanitarian cause.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is revising the interim regulations establishing a voluntary leave transfer program for fiscal year 1988 to (1) remove the prohibition on the donation of annual leave to employees in a position at a higher grade or pay level than the leave donor, (2) establish a prohibition on the donation of annual leave to a leave donor's immediate supervisor, and (3) clarify the definition of "agency." (The original interim regulations were published in the Federal Register on March 8, 1988 (53 FR 7325).) These changes will broaden the scope of the fiscal year 1988 voluntary leave transfer program.

DATES: This interim rule becomes effective on April 26, 1988, and will expire on September 30, 1988; comments must be received on or before May 26, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Martha Hoehn, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Public Law 100–284, which was signed by the President on April 7, 1988, makes section 7351 of Title 5, United States Code, inapplicable to leave transfers under the fiscal year 1988 voluntary leave transfer program, except as the Office of Personnel Management may otherwise prescribe. Therefore, the Office of Personnel Management is revising the interim regulations governing the temporary leave transfer program mandated by Public Law 100–202 to permit a leave recipient's employing agency to transfer annual leave to an employee in a position at a higher grade or pay level than the leave donor. In addition, under the authority granted OPM by Pub. L. 100–284, we are revising the interim regulations to prohibit the donation of leave to a leave donor's *immediate supervisor*. (See 5 CFR 630.906(c).) The purpose of this prohibition is to minimize the possibility of coercion or the appearance of favoritism.

We considered prohibiting the donation of leave to anyone in the donor's supervisory chain-of-command. However, we decided there was no evidence supporting so broad a prohibition at this time. We will review experience under the FY 88 program to assess whether additional safeguards are needed in any future leave transfer program to avoid favoritism, or the appearance of favoritism, whenever a leave recipient is in a position to have a major say in an employee's performance evaluations and opportunities for promotion.

The Office of Personnel Management also is revising the definition of "agency" in 5 CFR 630.902 to clarify that all Federal entities that employ officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies are responsible for establishing procedures to implement the fiscal year 1988 voluntary leave transfer program—including certain legislative, judicial, and independent agencies, as well as executive agencies.

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the implementation of the temporary leave transfer program by Federal agencies.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

PART 630–ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Public Laws 100–202 and 100–284.

2. In § 630.902, the definition of "representative rate" is removed, and the definition of "agency" is revised to read as follows:

§ 630.902 Definitions.

"Agency" means an "Executive agency," as defined in 5 U.S.C. 105, or any other entity of the Federal Government that employs officers or employees to whom Subchapter I of Chapter 63 of Title 5, United States Code, applies.

* * * * *

3. In § 630.906, paragraph (c) is revised to read as follows:

§ 630.906 Transfer of annual leave.

* * * * *

(c) A leave recipient's employing agency shall not transfer annual leave to a leave donor's immediate supervisor.

* * * * *

[FR Doc. 88–9114 Filed 4–25–88; 8:45 am]
BILLING CODE 6325–01–M

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Marketing Incentive Allotments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders by establishing procedures to be used by handlers when exercising the marketing incentive allotment (MIA) option. Currently, handlers notify the Navel and Valencia Orange Administrative Committees' (Committees) management of their intention to use MIA's by telephone prior to the beginning of the week in which the MIA would be used. However, there is no official documentation submitted by the handler confirming this intention. Hence, the opportunity exists for misunderstandings and later factual disputes regarding these phone conversations. For purposes of compliance, therefore, it is imperative that the election to use MIA's be documented before any shipments are made in a specific prorate week.

EFFECTIVE DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal years of less than $500, 000, and small agricultural service firms are defined as those whose gross annual revenues are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders were amended on January 11, 1985, [50 FR 1429] to provide for MIA's. The Committees have recommended amendments to the respective rules and regulations to supplement the applicable provisions.

Sections 907.54(a) and 908.54(a) of the respective marketing orders authorize general maturity allotments. For each prorate week, the Committees calculate the quantity of oranges (allotment) which may be handled by each handler during such week. Sections 907.54(b) and 908.54(b) of the respective orders authorize the use of MIA's. Under these sections, MIA's may be used by handlers during three separate prorate weeks and are limited to 10 percent of each handler's weekly allotment. The intent of an MIA is to provide handlers additional allotment for market development programs and to allow handlers to take advantage of special marketing opportunities. As stated in the order, MIA's may be used by handlers upon prior notification to the applicable Committee. The orders do not specify how such notification should be made or the time limits or date requirements for such notification. Currently, handlers notify the Committees' management of their intention to use MIA's by telephone prior to the beginning of the week in which the MIA would be used. However, there is no official documentation submitted by the handler confirming this intention. Hence, the opportunity exists for misunderstandings and later factual disputes regarding these telephone conversations. For purposes of compliance, therefore, it is imperative that the election to use MIA's be documented before any shipments are made in a specific prorate week. The amendments establish procedures to aid the Committees in monitoring the use of MIA's by adding new §§ 907.109 and 908.109 to the administrative rules and regulations issued under the respective orders. These sections specify that, in addition to telephonic communication, handlers notify their respective Committee in writing prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used, on a form provided by the Committees. Requiring this notice immediately prior to the beginning of a prorate week in which the MIA would be used allows the Committees to adequately monitor the use of such allotments and prevent possible abuses.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3507], the information collection provisions contained in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control Nos. 0581-0116 and 0581-0121.

This action establishes new §§ 907.109 and 908.109 and is based on unanimous recommendations of the Committees and other information. Notice of a proposal to add new §§ 907.109 and 908.109 was published in the January 7, 1988, issue of the **Federal Register** [53 FR 412]. Comments on the proposed rule were invited from interested persons until February 8, 1988. No comments were received. The Committees met on January 26, 1988, and unanimously voted to request the Secretary to revise the proposed rule in the following way: (1) Provide for notice by telephone prior to the filing of a written confirmation notice and (2) delete the last sentence of §§ 907.109(b) and 908.109(b) as proposed.

The Committees stated that requesting telephone notice in addition to written notice prior to noon on Thursday "immediately before the beginning of the week in which the allotments are to be used" follows current procedures. Notice by telephone confirmed later by a written form would further document the extent to which MIA's are being used and aid the Committees in their evaluation of supply and market conditions for the succeeding week. The comment further stated that, in evaluating shipments for the current week and in the process of developing recommendations to the Secretary for the succeeding week, without telephone notification it is probable that the Committees could be analyzing incomplete data due to the frequent occurrence of mail delays. These recommendations have merit and appropriate language has been included in this final rule requesting telephone as well as written notification.

The Committees also recommended deleting the last sentence in §§ 907.109(b) and 908.109(b) as proposed which stated: "Once this notice is submitted, the week specified therein shall constitute one of the three weeks per season during which the handler may use marketing incentive allotments." The Committees stated that deletion of this sentence would permit the greatest degree of flexibility in the use of MIA's and that the rule as proposed could limit the use of MIA's by handlers. For example, if a handler notifies a Committee of intention to use an MIA for the next week and an "act of God" occurs which prevents the handler from using the MIA, then the handler would lose one of the three MIA's permitted. The Committees feel that handlers should have greater latitude when using MIA's because forces beyond the handler's control should not adversely affect the handler's use of MIA's. These recommendations have merit and have been adopted in this final rule.

After consideration of all relevant matters presented, including the Committees' recommendations and other available information, it is found that the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, and Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended by adding new §§ 907.109 and 908.109 to read as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESINGATED PART OF CALIFORNIA

2. Section 907.109 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 907.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention in writing and by telephone prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. The written notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.109 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 908.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention in writing and by telephone prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. The written notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred.

Dated: April 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-9149 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1940

Highly Erodible Land and Wetland Conservation; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule regarding erodible land and wetland conservation published March 8, 1988, [53 FR 7330]. In this final rule, a portion of Subpart G of 7 CFR Part 1940, Exhibit M, Paragraph 6.c.(2)(c)(i) was omitted. The intent of this action is to insert the missing portion.

FOR FURTHER INFORMATION CONTACT: John E. Hansel, Environmental Protection Specialist, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382-9619.

SUPPLEMENTARY INFORMATION: The final rule that is being corrected by this action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Loans to Indian Tribes and Tribal Corporations

For the reasons set forth in 7 CFR Part 3015, Subpart V, *Intergovernmental Review of Department of Agriculture Programs and Activities* (December 1, 1983), all of the above programs are excluded from the scope of Executive Order 12372. This order requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, National resources, Recreation, Water supply.

Accordingly, the Farmers Home Administration is correcting Subpart G of 7 CFR, Part 1940, Exhibit M, Paragraph 6.c.(2)(c)(i) published March 8, 1988 [53 FR 7330], page 7334 as follows:

PART 1940—[CORRECTED]

1. The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 16 U.S.C. 3844; 7 CFR 2.23; 7 CFR 2.70.

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Subpart G—Environmental Program

2. Exhibit M is amended by correcting paragraph 6.c.(2)(c)(i) to read as follows:

Exhibit M—Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations

* * * * *

6. * * *
c. * * *
(2) * * *
(c) * * *

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See § 12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA 1940-1, "Request For Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

* * * * *

Signed at Washington, DC, on April 19, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-9152 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-052]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to expand the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. In addition to those devices already prohibited by the regulations, we are prohibiting: (1) Beads, bangles, rollers, and similar devices, except for rollers that meet the specifications in this document and that weigh no more than 6 ounces; (2) chains, boots, collars, or other devices that weigh more than 6 ounces; and (3) after a phase-in period, "full" pads more than one-half-inch high, and total pad height, including "rim" pads, of more than 1 inch. We are also prohibiting the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. Additionally, we are amending the regulations to clarify which horses are subject to the scar rule. These amendments are necessary to better protect horses under the Horse Protection Act.

DATE: This interim rule is effective April 25, 1988. Consideration will be given only to comments postmarked or received on or before June 27, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket No. 88-052. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This background material is presented in three sections. The first provides a brief discussion of the Horse Protection Act (15 U.S.C. 1821-1831 (1982)), referred to below as the Act, and of the regulations in 9 CFR Part 11, referred to below as the regulations, that were published under the Act. The second contains a summary of the events leading to the publication of this interim rule. The third details the amendments we are making to the regulations.

Horse Protection Act and Regulations

The practice known as "soring" is the injuring of show horses to improve their performance in the show ring. The pain caused by soring accentuates the gait of show horses. Soring can be accomplished in a variety of ways, including: (1) The application of irritating solutions to the horse's limbs; (2) the fastening of chains or similar equipment (commonly called "action devices") to the horse's limbs and forefeet; (3) the use of pads to elevate the horse's foot and to manipulate the angle of the horse's foot; (4) the trimming of a horse's hoof and the shoeing of its foot so as to cause pressure or irritation on the sole of the foot (commonly called "pressure shoeing"); and (5) the insertion of an object between a pad and the sole of the foot to cause discomfort.

In 1970, Congress passed the Act to eliminate the practice of soring, by forbidding the showing or selling of sored horses. Exercising our rulemaking power under 15 U.S.C. 1824 and 1828, we issued regulations that prohibit soring devices and soring methods.

Section 11.2(a) of the regulations provides that:

> Notwithstanding the provisions of paragraph (b) of this section, no chain, boot, roller, collar, action device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.

Section 11.2(b) then lists specific prohibitions. These prohibitions make it a violation of the Act for someone to show a horse using any of the prohibited devices or practices, whether or not its use causes the horse to be sore.

Based in part on three test clinics to determine the effect of various chains and other devices on horses, we amended the regulations in 1979 (44 FR 25172-25184) to make it a violation of the Act to show a horse wearing chains weighing more than 10 ounces (8 ounces for horses under 3 years old).

Additionally, the regulations in § 11.2(b)(1), until invalidated by the Court as explained below, prohibited the use of beads, bangles, rollers, and similar action devices, except for specifically described rollers weighing no more than 14 ounces. Among other devices and practices, the regulations also prohibit the use of boots and collars that by their construction might irritate a horse's leg. However, before the publication of this interim rule, there was no weight limit on these devices. The regulations also banned the use on yearling horses of weights other than horseshoes, and of horseshoes heavier than 16 ounces. No such restrictions existed for horses other than yearlings.

Before publication of this interim rule, with one exception at 9 CFR 11.2(b)(8), the regulations did not limit the height of pads on horses. These pads are used to elevate a horse's foot to achieve the desired gait, and may be used to conceal practices that produce soring, such as pressure shoeing, or to conceal objects inserted under a horse's foot to cause discomfort. Pads may also be used to protect a horse's feet and limbs during showing and training.

Genesis of Amendments Being Made

On October 26, 1984, the American Horse Protection Association, Inc. (AHPA) filed a complaint in the U.S. District Court for the District of Columbia, asking that we be required to propose regulations banning all action devices and built-up shoes. In its complaint, the AHPA referred to a study conducted by the Auburn University School of Veterinary Medicine,[1] which indicates that the use of 10-ounce action devices will cause a horse to become sore under certain conditions. Additionally, the Auburn University study indicates that built-up shoes can cause pain and inflammation under certain conditions.

On October 30, 1985, the District Court ruled that the fact that we had not amended the regulations as the complainant had requested was not "arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with the law." (*American Horse Protection Association* v. *Block*, No. 84-3298, mem. op. at 14 (D.D.C., October 30, 1985)). The AHPA appealed the Court's decision on November 26, 1985.

[1] Purohit, Ram C. "Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors (Summary of the Research from September, 1978 to December, 1982)." School of Veterinary Medicine, Auburn University.

On February 24, 1987, the U.S. Court of Appeals for the District of Columbia Circuit vacated the judgment of the District Court, remanding the case to that Court with instructions to remand the case to the Secretary of Agriculture for further consideration. (*American Horse Protection Association* v. *Lyng*, 812 F.2d 1, 258 U.S. App. D.C. 397 (D.C. Cir Feb. 24, 1987)).

After reviewing material submitted by the parties, the District Court, in an opinion filed on March 21, 1988, ordered that we intitiate rulemaking to amend and expand the list of devices prohibited by § 11.2(b). In its decision, the Court declared the Provisions of § 11.2(b)(1), (2), and (10) invalid, and ordered the Secretary of Agriculture to initiate proceedings to promulgate replacement regulations. (*American Horse Protection Association Inc.* v. *Lyng*, —— F. Supp. ——, 1988 (D.D.C., March 21, 1988)).

In its decision, the Court relied heavily on the Auburn University study, which the Court stated "clearly found that the use of 10-ounce weights caused soreness to the test horses." The Court also cited the study's finding that both pressure shoeing and the use of padded shoes to manipulate the angle of a horse's foot can cause inflammation and soreness.

As noted above, the Court invalidated the provisions of § 11.2(b)(10), which govern a horse's heel/toe ratio. In view of our decision to proceed with this interim rule, which will restrict the use of pads, the Secretary of Agriculture believes that the provisions in question are necessary under the Act, and that their retention in the regulations is consistent with the Court's opinion. Therefore, the provisions that were contained in § 11.2(b)(10) prior to publication of this interim rule shall remain in effect, and are now contained in § 11.2(b)(12).

Changes to the Regulations

We are amending the Horse Protection Regulations as described below. For purposes of clarity, we will address first the changes to § 11.2(b)(2), then the changes to § 11.2(b)(1) and other provisions of Part 11.

Action Devices

Before being invalidated by the Court, § 11.2(b)(2) of the regulations prohibited chains weighing more than 8 ounces each on 2-year-old horses, and chains weighing more than 10 ounces each on horses 3 years old or older. Based on review of the Auburn University study, we have determined that proper enforcement of the Act requires that a lower weight limit for chains be included in the regulations.

As part of the Auburn University study, three horses were fitted with 10-ounce chains, and were exercised for 10 consecutive workdays, with weekends off. One of the horses had a chain on each pastern; the other two horses had a chain on only one pastern. The study found that altered thermal patterns were detectable as early as the second day of exercise with the chains. Lesions were produced by the 7th day, becoming more visible by the 10th day. Based on the study, it is apparent that 10-ounce chains can sore a horse under certain circumstances.

The study also monitored the effects of using chains and rollers on horses with scarred pasterns, finding that 14-ounce rollers and 8- and 10-ounce chains caused lesions in less than two weeks on scarred horses that were exercised in the devices for 15-30 minutes per day.

We are amending the regulations in § 11.2(b)(2) to prohbit the use—on horses at any horse show, horse exhibition, or horse sale or auction—of chains weighing more than 6 ounces, including the weight of the fastener. While the Auburn University study found that 10-ounce chains can cause soring on unscarred horses under certain conditions, and that 8-ounce chains can sore scarred horses under certain conditions, the study found no harmful effects from the use of 6-ounce chains, except for some loss of hair in the pastern areas.

This interim rule also prohibits, in § 11.2(b)(1), the use of beads, bangles, rollers, and similar devices, with the following exception. Rollers are permitted if they are made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight, and configuration, provided each device does not weigh more than 6 ounces, including the weight of the fastener. The provisions in § 11.2(b)(1) made effective by this interim rule are identical to those invalidated by the Court, except that we are requiring that each roller weigh 6 ounces or less.

Inspections by our personnel and members of the horse industry at horse shows, exhibitions, and sales and auctions have shown that each of the devices we are prohibiting in § 11.2(b)(1) can cause soring. We have determined it is necessary to limit the maximum weight of rollers to 6 ounces, based on the Auburn University study, which detected soring from action devices weighing more than 6 ounces, but no soring following the use of 6-ounce action devices. Similarly, we are

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amending § 11.2(b)(7) to limit boots and collars to 6 ounces each.

Weights

In amended § 11.2(b)(9), we are applying to all horses the provisions of previous § 11.2(b)(9), which prohibited the use of any weight, other than the horseshoe, on yearling horses, and limited the weight of horseshoes used on yearling horses to 16 ounces. During our inspections at horse shows, exhibits, sales and auctions, we have observed the use of weights to accentuate a horse's gait. These weights were usually placed either in pads that were attached to the horse's hooves or below the pads and between the shoe bars, or were used as part of a heavy horseshoe. When these weights were used, our inspectors, using thermographic examination, noted increased inflammation in the tendons, and increased sensitivity in the joints and in other parts of the legs above the fetlocks. Therefore, we have determined it is necessary under the Horse Protection Act to prohibit the use of weights on all horses. Experienced farriers have informed us that a standard horseshoe used solely to protect a horse's hoof need not weigh more than 16 ounces.

The provisions of amended § 11.2(b)(9) make unnecessary the provisions in § 11.2(b)(17), which restrict where on a horse's foot lead or other weights can be placed. We are therefore deleting that section.

Pads

In § 11.2(b)(10), we are prohibiting, after a phase-in period explained below, the use of all "full" pads that are more than one-half-inch high at any point, and that are not placed directly adjacent to the sole of the horse's foot. We define a full pad as one that covers the entire sole of the horse's foot. Additionally, after the phase-in period, we are limiting maximum total pad height, including "rim" pads, to 1 inch. We define a rim pad as one that conforms with the configuration of the horse's shoe and does not protrude beyond the inner rim of the shoe. We are also prohibiting, as of April 25, 1988, the use of pads that are not made of leather or some similar soft, pliant material.

It would be harmful to horses to eliminate the use of all pads, because small pads are often used to prevent problems such as bruises from stones, and to absorb some of the concussive shock of the foot striking the ground. Allowing maximum pad height of 1 inch will permit continued use of pads used solely to protect a horse. Limiting full pads to one-half inch and allowing them to be placed only directly adjacent to the sole of the horse's foot will help our inspectors better detect, through palpation, pressure shoeing and the presence of objects inserted between the pad and a horse's foot to cause irritation.

We are basing our limitation on the total height of pads on a number of factors. Elevating a horse's hooves with high pads changes the normal angulation of a standing horse's body and legs, and thus changes the angulation of the normal weight-bearing surfaces of the horse's legs and the angulation of the horse's weight-bearing muscles. The use of high pads also changes the angle at which the horse's foot hits the ground, and the angle at which the toe "breaks over" when picking up the foot to go forward.

The Auburn University study and other veterinary research indicates that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation, by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Additionally, experts in the horse industry have advised us that elevating the foot can cause an increase in tension in the tendons, which can lead to inflammation. A high pad can also contribute to stresses caused by extra weight on a horse's foot. Additionally, elevating only the front feet, as is typically done, causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.

We have determined that pads 1 inch or less in height offer adequate protection from concussive shock and bruises from stones, without adding excessive weight or altering the natural angle of the horse's body in a way that can cause soring. By requiring that pads be made of leather or some similar soft, pliant material, the regulations will ensure that only pads that offer protection from concussive forces are used. Further, requiring that pads be of a pliant material will facilitate inspection by palpation, as described above.

It would be harmful to some horses currently on high pads to be placed on 1-inch pads without a "phasing-in" period. APHIS veterinarians, and farriers and other members of the horse industry, have indicated that horses can be moved without harm from high pads to pads 1-inch high or less, if the change is done gradually. A gradual reduction in pad size will minimize physiological stress to horses, and will allow horses who have had their feet trimmed in conjunction with the use of high pads to grow a naturally configured foot before being placed on pads 1-inch high or less. Additionally, the phase-in period we are establishing, with a reduction in maximum pad size at 3-month intervals, will allow horses to be reshod as necessary without damage to their hooves. Experienced farriers have indicated to us that a horse can be reshod every 6 to 8 weeks without harm to the horse's hooves.

Accordingly, the provisions in § 11.2(b)(10) will limit the height of pads according to the following schedule. From April 25, 1988 through July 31, 1988, pads more than 3 inches high are prohibited. From August 1, 1988 through October 31, 1988, pads more than 2 inches high will be prohibited. After October 31, 1988, full pads will be limited to one-half-inch in height, and total pad height, including rim pads, will be limited to 1 inch. During and following this phasing-in period, the requirements in the regulations regarding heel/toe ratio must be observed.

Because the provisions regarding a 1-inch-maximum pad height will apply to all horses after October 31, 1988, we are amending the provisions of § 11.2(b)(8), which prohibits the use on yearling horses of pads that elevate or change the angle on the horses' hooves more than 1 inch at the heel, to make them effective only through October 31, 1988.

We emphasize that the regulations continue to prohibit the soring of a horse by any device, regardless of weight or height, and we will take action against any person responsible for soring a horse.

The comment period regarding this interim rule is intended to provide all interested and affected parties adequate opportunity to compile and supply us with as much data as possible regarding the issues raised in this document. In addition, we invite any sound scientific studies that may augment the information currently available regarding the use of action devices, pads and weights on show horses. All information received will be carefully considered in preparing a final rule.

Scar Rule

Section 11.3 of the current regulations provides that a horse will be considered sore if its legs show bilateral scarring or loss of hair that can reasonably be identified with the practice of soring. These provisions are commonly known as the "scar rule." The regulations regarding the scar rule prior to publication of this interim rule were established in 1979. The rule was

intended to apply during the 1979 show season to all horses 3 years old or younger at the time. Our intent was then to apply the scar rule provisions to horses 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. Since 1979, we have been enforcing the scar rule provisions according to that formula. However, until publication of this interim rule, § 11.3 stated that it applied to "all 3-year-old horses during the 1979 season; 4-year-old horses during the 1980 season, 5-year-old horses during the 1981 season, etc." As written, the rule might have been interpreted to apply only to horses of the exact age specified for a given year. We are amending that section to read: "The scar rule applies to all horses born on or after October 1, 1976." With this change, the scar rule is corrected to conform with our intention.

Request for Comments on Additional Subjects

We recognize that some horses may have a faulty way of "going"—*i.e.*, some abnormality in the way they move, such as interfering, or overreaching—or may have a condition such as Navicular Disease or Bone Spavin that causes pain if corrective shoeing is not done. These conditions may require the use of pads or wedges in excess of 1 inch, or weights on the foot to correct the horse's gait and prevent possible harm to the horse. Based on our inspections at horse shows and other events, however, we believe that these defects are limited to a small number of horses presented for showing. By recognizing that a need for correction sometimes exists, we do not intend to allow built-up pads or other devices for the purpose of accentuating a horse's gait, nor do we intend to allow the excessive build-up of the feet of horses with a faulty way of going. At this time, we are requesting comments that address these problems. Specifically, we are inviting comments on the following questions: (1) What conditions should make a show horse eligible for corrective shoeing; (2) what limits should be placed on the pads, wedges, and weights used for corrective shoeing; and (3) how can corrective shoeing, if allowed, be documented or controlled?

In addition to requesting comments on this interim rule and on corrective shoeing, we are requesting comments on methods used to mask the pain caused by soring. In its petition for rulemaking, the AHPA alleged that some horse trainers and exhibitors are concealing soring by using anesthetics or analgesics on the animals. Further, the AHPA expressed concern that the practice of "stewarding," or conditioning horses not to react to pain, can make it difficult to detect soring. We believe that these practices, if and where they exist, should be stopped. At this time, we need more information on the use of these practices, including when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

Emergency Action

The Acting Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On March 21, 1988, the United States District Court for the District of Columbia issued an order invalidating certain provisions of the Horse Protection Regulations that prohibited or restricted the use on horses—at horse shows, exhibits, and sales and auctions—of chains and other action devices that can cause soring. The Court also invalidated provisions governing the heel/toe ratio of horses at the above events. The Court determined that the invalidated regulations did not properly protect horses from soring under the Horse Protection Act, and directed us to initiate rulemaking proceedings immediately to establish replacement regulations.

On March 25, 1988, we issued a letter to members of the horse industry, in light of the Court's decision, setting forth the enforcement position we were adopting for the period between issuance of the letter and publication of replacement regulations. On April 13, 1988, the Court emphasized that its invalidation of the above-specified provisions of the Horse Protection Regulations had taken effect on March 21, 1988.

In the absence of replacement regulations, there has been substantial confusion among members of the horse industry concerning their obligations under the Horse Protection Act. To eliminate this confusion, and to establish as quickly as possible replacement regulations that prohibit practices and devices to prevent soring, we are publishing this interim rule and request for comments. This rule is consistent with the Court's opinion and is based on sound veterinary principles. Making it effective without prior comment will enable the Secretary to better enforce the Act.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective April 25, 1988. We will consider comments postmarked or received within 60 days of the publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule is intended to prevent the soring of horses, and specifically prohibits devices that could reasonably be expected to cause soring. Some of the devices that are being prohibited are currently used on horses to accentuate the natural gait of show horses. Prizes for competition among these show horses are awarded based largely on evaluation of this gait. The new prohibitions of this interim rule will not prohibit equitable competition among these show horses.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR Part 11 is amended as follows:

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PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for Part 11 is revised to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.1 is amended by removing all paragraph designations, by placing all definitions in alphabetical order, and by adding definitions of "full pad" and "rim pad" to read as follows:

§ 11.1 Definitions.

* * * * *

"Full Pad" means a pad that covers the entire sole of a horse's foot.

* * * * *

"Rim Pad" means a pad that conforms with the configuration of a horse's shoe, and does not protrude beyond the inner rim of the shoe.

* * * * *

3. Section 11.2 is amended by removing paragraph (b)(17), by redesignating paragraphs (b)(10) through (b)(16) as (b)(12) through (b)(18) respectively; and by adding new paragraphs (b)(10) and (b)(11) and revising paragraphs (b)(1), (b)(2), (b)(7), (b)(8) and (b)(9) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(1) All beads, bangles, rollers, and similar devices, with the exception of rollers made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight and configuration, provided each such device may not weigh more than 6 ounces, including the weight of the fastener.

(2) Chains weighing more than 6 ounces each, including the weight of the fastener.

* * * * *

(7) Boots, collars, or any other device, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg, or that weigh more than 6 ounces each.

(8) Through October 31, 1988, pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(9) Any weight, except a keg or similar conventional horseshoe, and any horseshoe that weighs more than 16 ounces.

(10) Pads between the bottom of the foot and the horseshoe, according to the following schedule:

(i) From April 25, 1988 through July 31, 1988, pads more than 3 inches high at any point;

(ii) From August 1, 1988 through October 31, 1988, pads more than 2 inches high at any point; and

(iii) After October 31, 1988, full pads more than one-half-inch high at any point and full pads not directly adjacent to the sole of a horse's foot, and total pad height, including rim pads, exceeding 1 inch.

(11) Pads that are not made of leather or a similar soft, pliant material.

* * * * *

4. Section 11.3 is amended by revising the introductory text to read as follows (footnote 3 is removed and reserved):

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1976. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

* * * * *

Done in Washington, DC, this 22nd day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9265 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 048CE, Special Condition 23-ACE-39]

Special Conditions; Dornier 228-200 Airplanes With Electronic Flight Instrument Systems (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Dornier 228-200 Airplanes that incorporate an electronic flight instrument system (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the use of a cathode-ray tube electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1987, AAR Oklahoma, Inc., Oklahoma City, Oklahoma submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a Collins 85B Electronic Flight Instrument System (EFIS) on the Dornier 228-200 Airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flightcrew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Collins 85B EFIS installation in the Dornier 228-200 Airplane contains a number of novel and unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Collins 85B EFIS installation in the Dornier 228-200 Airplane.

AAR Oklahoma, Inc. has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an electronic horizontal situation indicator (EHSI) in the left and right instrument panels and a multifunction display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. A back-up conventional attitude instrument will be near the center of the panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Back-up instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be safely flown following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments and has not required, as a basic IFR rating requirement, that all IFR rated airmen must demonstrate abilities using other back-up instruments.

The special condition would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the special condition.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into 14 CFR Part 23 by amendment 23-14, dated December 20, 1973. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgement have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single-fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the Collins 85B EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems does not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently acceptable substantiation of compliance with the various required levels of system reliability rather than a numerical analysis alone.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of system(s) failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation.

Type Certification Basis

The type certification basis for the Dornier 228-200 Airplanes is as follows: Special Federal Aviation Regulation (SFAR) 41C, effective September 13, 1982; Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965, through amendments 23-23 and special conditions adopted by this rulemaking action.

Discussion of Comments

Notice of Proposed Special Conditions, Notice 23-ACE-39, Docket 048CE, was published in the **Federal Register** on February 1, 1988 (53 FR 20) and comment period closed March 2, 1988. The FAA received no comments in response to Notice 23-ACE-39;

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therefore, these special conditions are adopted as proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these special conditions.

The notice of proposed special conditions for installation of the Collins 85B EFIS installation in the Dornier 228–200 Airplanes was published in the **Federal Register** on February 1, 1988, with a closing date for submitting written comments to the docket of March 2, 1988. No comments were received and the final special conditions are adopted as proposed.

Section 553 of the Administrative Procedures Act provides, at the discretion of the agency, that an effective date of less than a required 30 days from date of publication may be established if good cause has been shown to establish an immediate effective date. It has been shown by the manufacturer that immediate sale of subject model airplane is dependent upon the ability to proceed with the certification of the EFIS installation. Because the delay of 30 days would significantly affect the manufacturer in terms of loss of revenue in the sale of subject airplanes, coupled with the fact that no comments were received concerning the notice, the Administrator finds that delaying the effective date of the special conditions is unnecessary. Thus, the Administrator finds that good cause exists to establish an immediate effective date for these final special conditions. Therefore, the Administrator has determined that these final special conditions shall become effective immediately upon issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special condition is issued as part of the type certification basis for the Dornier 228–200 Airplane that incorporates an electronic flight instrument system (EFIS) into these series airplanes, as follows:

1. In addition to Appendix A of Part 135 and in lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from forseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on March 28, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–9042 Filed 4–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 79–CE–09–AD; Amdt. 39–5901]

Airworthiness Directives; Cessna 140A, 150, A150, 170, 172, R172, 175, P172, 177, 180, 182, 185/A185, 188/A188, 205, 206, U206/TU206, P206/TP206, 207/T207, 210/T210, 336, and 337/T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises and reissues Airworthiness Directive (AD) 79–10–14, Amendment 39–3475, applicable to certain Cessna single and twin engine airplanes to include current design fuel caps that can be installed as an alternate or equivalent means of compliance with the venting requirements of this AD. There have been several instances of fuel tank vent system obstruction by foreign material and/or sticking of the fuel vent valve in the existing fuel tank vent system. This action will reduce the possibility of fuel tank vent obstruction and resulting engine power loss.

EFFECTIVE DATE: May 30, 1988.

ADDRESSES: Cessna Service Letters No. SE77–6 dated March 4, 1977, and ME78–47 (Rev. 1) dated February 12, 1979, and Cessna Single Engine Service Kit SK182–85 dated September 21, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201, or may be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 79–CE–09–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE–140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316–946–4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations AD 79–10–14, Amendment 39–3475 was published on January 27, 1988, in the **Federal Register** (53 FR 2227). AD 79–10–14, Amendment 39–3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), required that certain single and twin engine Cessna airplanes be provided with an alternate (redundant) fuel tank vent. The Light Single Engine (LSE) Cessna airplanes, which were all manufactured with raised fuel tank filler necks, complied with paragraph (A) of AD 79–10–14 by installing vented fuel caps (like those used on later production airplanes) to replace the original non-vented caps, or paragraph (B) by incorporating the provisions of Supplemental Type Certificate (STC) approved designs to add venting in the original non-vented fuel cap.

High performance single engine Cessna airplanes were originally manufactured with recessed fuel filler openings and flush non-vented fuel caps. These airplanes initially complied with AD 79–10–14 by applying methods similar toparagraph (A) or (B) above. At the time of issuance of AD 79–10–14, hardware was not available to adapt the LSE style fuel caps to high performance single engine Cessna airplanes. Cessna currently provides adapters for installation of the LSE style fuel caps on most of the high performance single engine airplanes affected by AD 79–10–14. These caps were originally provided by Cessna in support of a fleet campaign to restrict the diameter of the fuel filler opening on gasoline powered airplanes to prevent misfueling. However, the ability of the LSE style fuel caps to prevent the entrance of rainwater into the fuel tanks has been recognized for some time. Therefore, the FAA proposed to reduce the regulatory burden and permit the installation of the LSE fuel caps on high performance single engine Cessna airplanes by allowing the installation of these fuel caps as an equivalent means of compliance with AD 79–10–14.

Interested persons have been afforded an opportunity to comment on the proposal.

One comment from a user sponsored organization concurred with the proposed amendment. The only other comment was from a person that owned one of the Supplemental Type Certificate (STC) approved designs previously listed on AD 79–10–14. This commenter requested that his current STC be included on the final issuance of the proposal. The proposed change does not affect the cost of compliance with AD 79–10–14 and the new STC is an acceptable means of compliance. Accordingly, the final rule will reflect this change as well as some minor editorial revisions.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending and reissuing AD 79–10–14, Amendment 39–3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), as follows:

Cessna: Applies to the following Models and serial numbered airplanes, certificated in any category.

Models	Serial Numbers
140A	15200 through 15724.
150	617, 628, 649, 17001 through 17999, 59001 through 59018; 15059019 through 15077005.
A150	1506497O, A1500001 through A1500808.
170	606, 18729 through 27169.
172	610, 612, 615, 622, 625, 630, 636, 28000 through 28999, 36000 through 36999, 48001 through 47746, 17247747 through 17285684.
175	619, 28700A, 55001 through 56777, 17556778 through 17557119.
P172	P172257120 through P17257188.
R172	P17257189, R1720001 through R1720617.
177	661, 17700001 through 17701471, 17701473 through 17701597.
180	604, 624, 645, 30000 through 32999, 50001 through 50911, 18050912 through 18052202.
182	613, 631, 634, 33000 through 34999, 51001 through 53007, 18253008 through 18260836.
185/A185	632, 185–0001 through 185–1599, 18501600 through 18501896.
188/A188	With wing tanks; Serials; 653, 188–0446 through 188–0572, 18800573 through 18800782.
205	641, 205–0001 through 205–0577
206	206–0001 through 206–0275.
U206/TU206	U206–0276 through U206–1444, U20601445 through U20601666.
P206/TP206	P206–0001 through P206–0803, P20600804 through P20600847.
207/T207	20700001 through 20700203.
210/T210	618, 618, 57001 through 57575, 21057576 through 21058361, T210–0001 through T210–0454.
336	336–0001 through 336–0195.
337/T337	337–0001 through 337–1193, 33701194 through 33701405.
M337B	337–0001 and up.

Compliance: Required as indicated, unless already accomplished.

To provide an alternate source of fuel tank venting in case of fuel tank vent obstruction by foreign material and/or sticking of the fuel vent valve, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Install applicable vented fuel cap(s) with related adapters and fuel servicing placards in accordance with Cessna Service Letter SE77–6 dated March 4, 1977; or as an alternative for fuel bladder equipped airplanes, Cessna Service Kit SK182–85 dated September 21, 1984, or modify existing fuel tank caps in accordance with STC SA728NW, SA3316NW or SA2967SW and for 336 and 337/T337 Series airplanes, in accordance

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with Cessna Service Letter ME78-47 (Rev. 1) dated February 12, 1979.

Note 1: On those airplanes having two fuel tank caps in each fuel tank, only one vented cap is required in each tank. A vented cap must be installed in the outboard filler opening of each tank.

(B) The modification required by this AD may be accomplished by those owner/operators authorized to perform preventive maintenance under FAR 43 provided only installation of a different fuel tank cap is necessary. The person accomplishing this modification must make an entry in the aircraft maintenance record indicating compliance with this AD; i.e., "AD 79-10-14 complied with by installing replacement fuel filler cap; Cessna P/N ——— this date ——— Signature and Certificate Number."

(C) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 2: Supplemental Type Certificates SA728NW and SA3318NW are held by Mr. Dennis H. Ward, Venting Engineering, 5420 A Street, Tacoma, Washington 98408, Phone (206) 474-6458. Supplemental Type Certificate SA2967SW is held by Mr. Charles M. Seibel, Flight Bonus Inc., P.O. Box 665, Hurst, Texas 76053, Phone (817) 285-1650.

This amendment revises AD 79-10-14, Amendment 39-3475, effective May 29, 1979, which superseded AD 78-26-09, Amendment 39-3379.

This amendment becomes effective on May 30, 1988.

Issued in Kansas City, Missouri, on April 13, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-9051 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-CE-27-AD; Amdt. 39-5898]

Airworthiness Directives; Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 82-19-01, Amendment 39-4474 (47 FR 46252) which requires inspections for cracks in the lower wing spar and upper main spar attachment plate on Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 airplanes. This AD was issued following an inflight wing failure on a Piper PA-24 airplane. Subsequent to its issuance, the FAA has determined that this failure was an isolated occurrence and is not likely to exist or develop in other Piper model airplanes of the same design.

EFFECTIVE DATE: April 27, 1988.

ADDRESSES: Information applicable to this action may be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 82-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Atlanta Aircraft Certification Office, ACE-120A, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: AD-82-19-01, Amendment 39-4474 (47 FR 46252), was issued to require inspection of the lower wing spar and upper main spar attachment plate on Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 airplanes. It was issued following an inflight wing separation of a Piper Model PA-24, Serial Number 24-1113, on July 24, 1982, at Kalamulka, B.C., Canada. Investigation of this accident revealed that both wing spars and the main spar attachment plate showed evidence of fatigue failure. At that time, there was no basis to conclude that this accident was unique and as a result the above AD was issued.

Subsequently, a petition for exemption from AD 82-19-01 was requested on behalf of Piper airplane owners and operators. In support thereof the petitioner suggested that the accident was an isolated occurrence because the airplane was regularly abused with excessive "G" forces and aerobatics. He further stated, that in the four years since the AD has been in effect, about 12,000 spar inspections have been performed with no reports of spar cracks or failure.

The FAA has carefully reviewed all of the available information including a credible fatigue analysis, and determined that the wing failure which led to the issuance of AD 82-19-01 was a singular incident and that this failure is not likely to exist or develop in other Piper Models PA-24, PA-24-250, PA-24-260, or PA-24-400 airplanes. To further substantiate this position, Piper has completed a more sophisticated inspection procedure to inspect for cracks that might emanate from the rivet hole from which it was believed the fatigue crack initiated on the accident airplane. The rivets that attach the skin to the bottom left and right wing main spar were removed to gain access to the spar bottom cap so that a much smaller crack could be detected. The area was visually inspected using 10-power magnification and a fluorescent penetrant inspection. The inspections were completed on 10 high-time airplanes by Piper under the surveillance of the FAA, and the inspection program and its results were recorded in Piper Report No. VB-1345. No cracks were detected during this inspection program.

Based on the foregoing, the FAA concludes that AD 82-19-01 should be rescinded. Since the AD, until withdrawn, imposes an economic burden and is a hardship on affected owners/operators, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

The action set forth in this amendment is promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this amendment is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unnecessary, economic burden on affected owners/operators. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By rescinding AD 82-19-01, Amendment 39-4474 (47 FR 46252).

This amendment becomes effective on April 27, 1988.

Issued in Kansas City, Missouri, on April 12, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-9052 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-33]

Alteration of Jet Routes; Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Jet Routes J-25/HL-482 and J-107/HL-484 located in the vicinity of Gopher, MN. The FAA has proposed to extend these jet routes into Canadian territory. The extension of J-25/HL-482 and J-107/HL-484 has been coordinated and approved by Transport Canada. This action improves traffic flows in the Minneapolis, MN, area, and reduces controller workload.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On October 29, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to extend Jet Route J-25/HL-482 from Gopher, MN, to Winnipeg, Canada, and extend J-107/HL-484 from Pembina, ND, to Sioux Narrows, Canada (52 FR 41588). This action aids flight planning, improves traffic flow and reduces controller workload. In addition, Transport Canada supports this action because of its positive effect on the Winnipeg Area Control Center Flow Management Program for the Winnipeg terminal area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-25/HL-482 and J-107/HL-484 located in the vicinity of Gopher, MN. The FAA is extending these jet routes into Canadian territory. The extension of J-25/HL-482 and J-107/HL-484 has been coordinated and approved by Transport Canada. This action improves traffic flows in the Minneapolis, MN, area, and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-25 [Amended]

By removing the words "to Gopher, MN." and substituting the words "Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded."

J-107 [Amended]

By removing the words "to Kenora, ON, Canada." and substituting the words "to Sioux Narrows, ON, Canada."

Issued in Washington, DC, on March 18, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-9047 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

Rate of Interest on Amounts Held Subject to Refund for Oil Pipelines, and Eliminating the Undertaking Requirements for Gas Pipelines and Producers; Correction

Issued April 19, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction notice to final regulations.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is correcting its regulations published in the **Federal Register** on January 12, 1983 (48 FR 1279). The rules relate to suspended changes in rate schedules. This notice makes technical corrections to § 154.67, paragraphs (c)(1) and (c)(2)(iii)(B) to accurately cross reference paragraphs (d)(2) and (d)(2)(iii)(A).

EFFECTIVE DATE: April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 18 CFR Part 154

Natural gas.

Accordingly, 18 CFR Part 154 is amended as follows:

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PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriation Act, 31 U.S.C. 9701 (1970).

§ 154.67 [Amended]

2. In § 154.67, paragraph (c)(1) is amended by removing the words "paragraph (d)(2)" and inserting in its place, the words "paragraph (c)(2)."

3. In § 154.67, paragraph (c)(2)(iii)(B) is amended by removing the words "paragraph (d)(2)(iii)(A)", and inserting in its place "paragraph (c)(2)(iii)(A)."

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-8979 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. providing for the manufacture of Type A medicated articles containing 4 percent fenbendazole and 20 percent fenbendazole for making Type C medicated feeds for use in cattle as an anthelmintic. Additionally, the listing of drug categories for new animal drugs for use in animal feeds is amended by moving fenbendazole from Category I to Category II.

EFFECTIVE DATE: April 26, 1988.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, filed NADA 137–600 providing for Safe-Guard™ Type A medicated articles containing 4 percent and 20 percent fenbendazole. The Type A medicated articles are for making Type C medicated feed for cattle for removal and control of lungworms (*Dictyocaulus viviparus*); stomach worms: Barberpole worms (*Haemonchus contortus*), brown stomach worms (*Ostertagia ostertagi*), small stomach worms (*Trichostrongylus axei*); and intestinal worms: hookworm (*Bunostonum phlebotomum*), thread-necked intestinal worms (*Nematodirus helvetianus*), small intestinal worms (*Cooperia punctata* and *C. oncophora*), bankrupt worms (*Trichostrongylus colubriformis*), and nodular worms (*Oesophagostomum radiatum*). The Type C medicated feed requires a 13-day withdrawal period.

The application is approved and § 558.258(c) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. Because fenbendazole will now require a withdrawal period at the lowest use level in at least one species it will become a Category II drug. Section 558.4(d) is amended to reflect the change from Category I to Category II for fenbendazole. The manufacture of Type B or Type C feeds from Type A articles must be the subject of an approved medicated feed application (FDA–1900) no later than July 25, 1988.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information is submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 is amended in paragraph (d) by removing the entry for "Fenbendazole" in the table entitled "Category I" and alphabetically inserting the entry "Fenbendazole" in the table entitled "Category II" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] type A	Type B maximum (100x)	Assay limits percent [2] type B/C [2]
*	*	*	*
Fenbendazole.....	95–113	8.87 g/lb (1.96%).	75–125
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

3. Section 558.258 is amended in paragraph (c) by redesignating the introductory paragraph after the italicized heading *Conditions of use.* as (1), and be redesignating paragraphs (c)(1) through (3) as paragraphs (c)(1)(i) through (iii), and by adding a new paragraph (c)(2) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) *Conditions of use.* (1) * * *

(2) It is used in cattle feed as follows:

(i) *Amount.* 5 milligrams fenbendazole per kilogram body weight (2.27 milligrams per pound).

(ii) *Indications for use.* For the removal and control of lungworms (*Dictyocaulus viviparus*); *barberpole worms (Haemonchus contortus)*; brown stomach worms (*Ostertagia ostertagi*); small stomach worms (*Trichostrongylus axei*); hookworms (*Bunostomum phlebotomum*); thread-necked intestinal worms (*Nematodirus helvetianus*); small intestinal worms (*Cooperia punctata* and *C. oncophora*), bankrupt worms (*Trichostrongylus colubriformis*); and nodular worms (*Oesophagostomum radiatum*).

(iii) *Limitations.* Feed as sole ration for one day. Do not use within 13 days of slaughter. Do not use in dairy cattle of breeding age.

Dated: April 15, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–9073 Filed 4–25–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing/Federal Housing Commissioner

24 CFR Part 235

[Docket No. R–88–1393; FR–2512]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing/Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been raised from 9.50 percent to 10.00 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 409(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, future announcements of changes in interest rate ceilings for FHA-insured mortgages will be limited, as this one is, to the section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured on or after April 4, 1988.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured after April 4, 1988.

* * * * *

Date: April 1, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 88–9141 Filed 4–25–88; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

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SUMMARY: This final regulation revises regulations codified at 42 CFR Part 57, which govern various Public Health Service (PHS) health professions training grant programs by: (1) Removing all non-statutory funding preferences, and (2) adding the provision that the Secretary may from time to time announce special factors for funding in the Federal Register. This action is necessary to provide flexibility in program management by enabling these training grant programs to be more responsive to the emerging and changing public health care needs of the nation.

EFFECTIVE DATE: These regulations are effective April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Havill, Program Coordination Branch, Office of Program Support, Bureau of Health Professions, Health Resources and Services Administration, Room 7-74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443-1530.

SUPPLEMENTARY INFORMATION: The PHS regulations codified at 42 CFR Part 57, which govern various PHS health professions training grant programs, contain non-statutory, as well as statutory, funding preferences used in the award of grants. This final regulation removes from these regulations all non-statutory funding preferences (identified in the existing regulations as "special considerations" and "funding priorities"), retaining only those funding preferences which are required by the authorizing legislation. However, the Secretary will announce from time to time in the **Federal Register**, and solicit public comment on, special factors for funding as related to national health care needs.

The Department believes this action is necessary in order to permit PHS health professions training grant programs to respond more quickly to the emerging and changing public health care needs of the nation. The existing non-statutory funding preferences are restrictive and eliminate the flexibility needed by program management to establish funding preferences that would be consistent with ongoing national health care objectives. Accordingly, this final regulation revises the PHS regulations governing the various health professions training grant programs by: (1) Removing all non-statutory funding preferences, and (2) adding the provision that the Secretary may from time to time announce special factors for funding in the **Federal Register**.

Set forth below is a listing of the affected subparts codified at 42 CFR Part 57 and the non-statutory funding preferences being removed from each of these subparts:

Subpart H—Grants for Physician Assistant Training Programs

This final regulation revises the existing regulations governing Grants for Physician Assistant Training Programs by amending § 57.706, entitled *"Evaluation of Applications."*, to remove the following non-statutory funding preferences contained in paragraphs (b) (1) through (3):

(b) In determining the priority for funding of applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based on the factors in paragraph (a) of this section;

(2) The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students; and

(3) The extent to which a proposed project contains any of the following elements:

(i) Conducts a program for training physician assistants to provide primary care patient services under the supervision of a doctor of medicine or osteopathy.

(ii) Conducts substantial portions of the program in a health manpower shortage area(s) or in an area health education center, funded under section 781 of the Act;

(iii) Establishes a program in a State which does not have a program; and

(iv) Conducts a program in conjunction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

This final regulation revises the existing regulations governing Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine by amending § 57.1605, entitled *How will applications be evaluated?*, to remove the following non-statutory funding preferences contained in paragraphs (b) (1) and (2):

(b) In determining the priority for funding, projects approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) The extent to which a aproposed project contains any of the following elements:

(i) For all projects except faculty development projects, substantial training experience in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners.

(ii) For all projects except faculty development projects, substantial portions of the training program are conducted in a health manpower shortage area(s) designated under section 332 of the Act, or in an area health education center funded, at least in part, under section 781 of the Act.

(iii) For faculty development projects, emphasis on increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

This final regulation revises the existing regulations governing Grants for Nurse Practitioner and Nurse Midwifery Programs by amending § 57.2406, entitled *"Evaluation and grant awards."*, to remove the following non-statutory funding preferences contained in paragraph (a)(3):

(3) The Secretary will also give special consideration to:

(i) Projects for nurse practitioner or nurse midwifery programs which will award academic credit to students who successfully complete the education program; and

(ii) Applicants with programs in place to recruit and retain minority students.

Subpart Z—Grants for Advanced Nurse Education Programs

This final regulation revises the existing regulations governing Grants for Advanced Nurse Education Programs by amending § 57.2506, entitled *"Evaluation and grant awards."*, to remove the following non-statutory funding preferences contained in paragraphs (b) (1) and (2):

(b) *Funding preference.* In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) Whether a proposed project contains any of the following elements: (i) An educational program in geriatric and gerontological nursing; (ii) a plan to attract and retain minority and financially needy students (the project will be given special consideration); and (iii) special funding preferences as announced by the Secretary by notice in the **Federal Register**, should specific needs warrant such action.

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

This final regulation revises the existing regulations governing Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs by amending § 57.2604, entitled *"How will applications be evaluated?"*, to remove the following non-statutory funding preferences contained in paragraph (b):

(b) In determining priority for funding applications approved under paragraph (a) of this section, the Secretary will give first preference to applications which provide nurse practitioner training in schools of nursing that award academic credit to students who complete the program. The Secretary will give second preference to applicants other than schools of nursing that award academic credit to students who complete the program.

Subpart EE—Grants for Residency Training in Preventive Medicine

This final regulation revises the existing regulations governing Grants for Residency Training in Preventive Medicine by amending § 57.3005, entitled *"How will applications be evaluated?"*, to remove the following non-statutory funding preferences contained in paragraphs (b) (1) and (2):

(b) In determining the priority for funding of applications approved under paragraph (a) of this section, the Secretary will consider: (1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section, and (2) whether the proposed project will:

(i) Conduct residency training in the areas of general preventive medicine or public health; or

(ii) Train at least [four] residents in the academic year and four residents in the field year and provide evidence that the projected number can be realized from a current or projected applicant pool.

Subpart FF—Grants for Residency Training in General Internal Medicine and General Pediatrics

The final regulation revises the existing regulations governing Grants for Residency Training in General Internal Medicine and General Pediatrics by amending § 57.3106, entitled *"How will applications be evaluated?"*, to remove the following non-statutory funding preferences contained in paragraphs (b) (1) and (2):

(b) In determining the priority for funding of applications approved under paragraph (a) of this section, the Secretary will consider: (1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section, and (2) the extent to which a proposed project contains any of the following elements:

(i) Substantial training experience in settings where physician assistants or nurse practitioners, or both, are used as part of a health care team.

(ii) Coordination of administrative and educational resources to be used by a program of general internal medicine and a program of general pediatrics which are both to be conducted within a single project.

(iii) Substantial portions of the project are conducted in a health manpower shortage area(s), and in particular, in a health manpower shortage area(s) which is located in a Standard Metropolitan Statistical Area, as defined by the Office of Federal Statistical Policy and Standards, Department of Commerce; or in an area health education center funded, at least in part, under section 781 of the Act.

Subpart MM—Area Health Education Center Program

This final regulation revises the existing regulations governing Area Health Education Center Program by amending § 57.3806, entitled "How Will Applications be Evaluated?", to remove the following non-statutory funding preferences contained in paragraphs (b) (1) through (3):

(b) In determining the priority for funding of applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project;

(2) The relative cost-efficiency of the proposed project; and

(3) Any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**, such as the provision of substantial training opportunities in the health professions for disadvantaged persons.

The secretary will give preference to competing continuation applications over new applications.

Justification for Omitting Notice of Proposed Rulemaking

This final rule amends the existing regulations governing the identified PHS health professions training grant programs by deleting all non-statutory funding preferences from those regulations. The public will, however, retain the opportunity to participate in the establishment of funding preferences for those programs in the future. As is currently the practice, at the appropriate time in the funding cycle for each of the programs affected, the Department will publish in the **Federal Register** an announcement of the availability of funds for that program and the planned schedule for receiving applications and awarding grants. As part of that Notice, there will be a description of the funding preferences that are proposed for that grant cycle, and an invitation for interested parties to comment on the proposed preference. Thirty days will normally be allowed for the submission of comments, following which a second Notice will be published, responding to any comments received and announcing the final funding preferences and schedule for submission of applications. This process will afford members of the public a full opportunity to express their views with regard to the appropriateness of the preferences proposed, and to urge the adoption of others (including those that were formerly set out in regulations] that they regard as more suitable. We believe this process fully conforms to the letter as well as the spirit of the public participation in rulemaking provisions of the Administrative Procedure Act (See 5 U.S.C. 553).

For the reasons outlined above, the Secretary finds, in accordance with 5 U.S.C. 553(b), that public participation and delay in effective date are unnecessary in the deletion from existing regulations of non-statutory funding preferences as set out below.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291, and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

These revisions add no information collection requirements to the regulations. The application form and instructions used for the grant programs have been approved by the Office of Management and Budget under control number 0915-0060.

List of Subjects in 42 CFR Part 57

Educational study program, Grant programs—health, Health professions, Institutional support, Public health.

Accordingly, Title 42 of the Code of Federal Regulations, Part 57 is amended as set forth below.

Dated: October 19,1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: February 17, 1988.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

1. Title 42 CFR, Part 57 is amended by amending the following subparts below.

Subpart H—Grants for Physician Assistant Training Programs

The authority for Subpart H continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1) of the Public

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Health Service Act, 90 Stat. 2314, and 99 Stat. 524 (42 U.S.C. 295g-3(a)(1)).

a. Section 57.706 is amended by revising paragraph (b) to read as follows:

§ 57.706 Evaluation of applications.

* * * * *

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

The authority for Subpart Q continues to read:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 786(a) of the Public Health Service Act, 90 Stat. 2316 (42 U.S.C. 295g-6(a)).

b. Section 57.1605 is amended by revising paragraph (b) to read as follows:

§ 57.1605 How will applications be evaluated?

* * * * *

(b) In determining the funding of projects approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs

The authority for Subpart Y continues to read:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 822(a) of the Public Health Service Act, 89 Stat. 361, as amended by 99 Stat. 394–395 and 548 (42 U.S.C. 296m).

c. Section 57.2406 is amended by revising paragraph (a)(3) to read as follows:

§ 57.2406 Evaluation and grant awards.

(a) * * *

(3) In determining the funding of applications approved under paragraph (a)(1) of this section, the Secretary will also consider other special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

* * * * *

Subpart Z—Grants for Advanced Nurse Education Programs

The authority for Subpart Z continues to read:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, and by 99 Stat. 394 and 548 (42 U.S.C. 296l).

d. Section 57.2506 is amended by revising paragraph (b) to read as follows:

§ 57.2506 Evaluation and grant awards.

* * * * *

(b) *Funding preference.* In determining the funding of applications approved under paragraph (a) of this section, the Secretary shall give priority to educational programs in geriatric and gerontological nursing. In addition, the Secretary may from time to time announce in the **Federal Register** other special factors relating to national needs.

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

The authority for Subpart AA continues to read:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 822(b) of the Public Health Service Act, 91 Stat. 393; as amended by 95 Stat. 930 (42 U.S.C. 296m).

e. Section 57.2604 is amended by revising paragraph (b) to read as follows:

§ 57.2604 How will applications be evaluated?

* * * * *

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

* * * * *

Subpart EE—Grants for Residency Training in Preventive Medicine

The authority for Subpart EE continues to read:

Authority: Sec. 793 of the Public Health Service Act, 95 Stat. 928 (42 U.S.C. 295h–1c).

f. Section 57.3005 is amended by revising paragraph (b) to read as follows:

§ 57.3005 How will applications be evaluated?

* * * * *

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Subpart FF—Grants for Residency Training in General Internal Medicine and General Pediatrics

The authority for Subpart FF continues to read:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 784 of the Public Health Service Act, 90 Stat. 2315 (42 U.S.C. 295g–4).

g. Section 57.3106 is amended by revising paragraph (b) to read as follows:

§ 57.3106 How will applications be evaluated?

* * * * *

(b In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Subpart MM—Area Health Education Center Program

The authority for Subpart MM continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 781, Public Health Service Act, 90 Stat. 2312 (42 U.S.C. 295g–1).

h. Section 57.3806 is amended by revising paragraph (b) to read as follows:

§ 57.3806 How will applications be evaluated?

* * * * *

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

[FR Doc. 88–9107 Filed 4–25–88; 8:45 am]
BILLING CODE 4160–15–M

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42 CFR Part 57

Grants for Nursing Special Projects

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: This final regulation revises the existing regulations governing the Nursing Special Project Grant Program authorized by section 820 of the Public Health Service (the Act) to conform the regulations with amendments made by Pub. L. 99–92, the Nurse Education Amendments of 1985, enacted on August 16, 1985, and Pub. L. 99–129, the Health Professions Training Assistance Act, enacted on October 22, 1985. These amendments added four new purposes as eligible grant projects authorized under section 820. In accordance with these amendments, this regulation revises the existing regulations to add project requirements for each of the new purposes along with an additional project requirement for one of the original grant projects. This regulation also revises the existing regulations to conform with amendments made to section 820 by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted January 14, 1986, and other changes which are of a technical nature.

DATE: These regulations are effective April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Eleanor Elliott, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–5786.

SUPPLEMENTARY INFORMATION: On June 5, 1987, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (52 FR 21490), a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the Grants for Nursing Special Projects authorized by section 820 of the Public Health Service Act (the Act), by: (1) Incorporating four new purposes as eligible grant projects; (2) adding new project requirements for each of the four new purposes; (3) adding an additional project requirement for one of the original grant projects; and (4) adding a statutory funding priority for projects that demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities (purpose 8). In addition to the above, a number of technical and clarifying changes were proposed to conform the regulations with amendments made by Pub. L. 99–92 and with Pub. L. 99–129.

The amendments proposed in the NPRM, with the following exceptions, have been adopted as proposed.

The NPRM included a special consideration in funding for projects that demonstrated innovative ways to provide improved and more effective long-term care for the elderly, emphasizing preventive care. The Secretary has omitted this special consideration as part of a newly implemented policy to announce, and solicit public comment on, any special factors related to national needs that will be considered in funding applications in periodic notices in the **Federal Register**, and to retain in regulations only those special considerations that are in the statute. The policy was adopted by the Secretary to provide maximum flexibility for program management, thus enabling the grant program to respond more quickly to new and emerging health care needs. The removal of the special consideration in this instance does not preclude the announcement of all or part of the special consideration in a forthcoming **Federal Register** notice.

The public comment period on the proposed regulations closed on August 4, 1987. The Department received one public comment. The respondent was supportive of the majority of the proposed amendments and suggested two revisions regarding purposes (8) and (9). With respect to purpose (8), to demonstrate improved methods for expanding access to nursing practice arrangements in the community, the respondent requested that the proposed requirement for a project to be operational (providing patient care services) within 6 months of the grant award be extended to 8–12 months or earlier. The respondent believes the proposed time of 6 months does not allow for sufficient planning time.

The Secretary has not accepted this suggestion because the operational date for each purpose (8) project is individually established. Prior to funding, each approved applicant is contacted and a start date is negotiated. This provides adequate lead time to assure personnel will be in place.

With respect to purpose (9), to demonstrate methods to encourage nursing graduates to practice in designated health manpower shortage areas without noting a priority in nursing specialties, the respondent suggested the inclusion of a stipend to recruit nurses who would become psychiatric nurses and serve in State mental hospitals. The respondent also requested funding priority be given to applicants developing plans to recruit professional nurses to care for the institutionalized—mentally, developmentally or emotionally ill patients.

While the need for additional nursing services for psychiatric care is recognized, the recommendation goes beyond the statutory authority in suggesting the award of stipends. In addition, the most recent departmental policy does not provide for non-statutory funding priorities to be included in regulations. However, as noted above, the Secretary may from time to time announce in the **Federal Register** special factors relating to funding. Therefore, the Secretary has not adopted these suggestions.

This final regulation also includes additional technical and ministerial amendments to the existing regulations. These revisions are necessary in order to conform the regulations to an amendment made by Pub. L. 99–239, and to incorporate current departmental grants policy language. Since these amendments are of a ministerial and technical nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below:

1. Revise § 57.1902, entitled "*Definitions.*", to change the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.", in accordance with Pub. L. 99–239; and

2. Revise § 57.1906, entitled "*Evaluation and grant award.*", to reflect current departmental grants policy language.

Regulatory Flexibility Act and Executive Order 12291

This regulation governs financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The recordkeeping and reporting requirements in § 57.1904 and the

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application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB approval numbers are 0915–0060 for the regulations and the competing application form and 0915–0061 for the continuation application form).

List of Subjects in 42 CFR Part 57

Educational study programs, Grant programs—education, Grant programs—health, Health professions, Public health, Student aid.

Accordingly, 42 CFR Part 57, Subpart T is amended as set forth below:

Dated: February 5, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 14, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.358, Nursing Special Project Grants.)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart T—Nursing Special Project Grants

1. The authority citation for Subpart T is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 820, Public Health Service Act, 89 Stat. 359–360, as amended by 95 Stat. 929–930, and 99 Stat. 393 and 547–548 (42 U.S.C. 296k).

2. In § 57.1902, the term "State" is revised to read as follows:

§ 57.1902 Definitions.

* * * * *

"State," except as otherwise provided herein, means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

3. Section 57.1903 is amended by removing the footnote in the heading of paragraph (b), by redesignating paragraphs (b)(4) and (b)(5) as (b)(5) and (b)(6), and adding new paragraphs (b)(4), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 57.1903 Eligibility.

* * * * *

(b) * * *

(4) To demonstrate improved geriatric training in preventive care, acute care, long-term care (including home health care and institutional care);

* * * * *

(7) To demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities, and ambulatory care facilities;

(8) To demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

(9) To demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 332) in order to improve the specialty and geographical distribution of nurses in the United States.

4. Section 57.1904 is amended by adding the parenthetical statement at the end of the section text to read as follows:

§ 57.1904 Application

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060.)

5. Section 57.1905 is amended by redesignating paragraph (e) as paragraph (g), adding new paragraphs (e), (f), (h), (i), and (j), and revising newly redesignated paragraph (g) to read as follows:

§ 57.1905 Project requirements.

* * * * *

(e) If the project is designed to carry out the purpose of § 57.1903 (b)(4), the project shall provide an education program which:

(1) Includes both theory and practice in the offering; and

(2) Will be operational within 1 year after funding.

The project shall also develop a plan for becoming self-sufficient.

(f) If the project is designed to carry out the purpose of § 57.1903 (b)(5), the project shall be operational within 1 year after funding.

(g) If the project is designed to carry out the purpose of § 57.1903 (b)(6), the project shall provide a training program which:

(1) Is designed to have wide applicability for the nursing field; and

(2) Has an enrollment not limited to nurses employed by a single institution.

(h) If the project is designed to carry out the purpose of § 57.1903 (b)(7), the project shall:

(1) Facilitate the transition of students in nursing education programs to nursing practice settings;

(2) Provide for collaboration between the educational institution and the service agency in the administration, implementation and evaluation of the project;

(3) Improve access to nursing services;

(4) Provide for cost sharing and/or in kind contributions between the educational institution and the service agency; and

(5) Demonstrate a commitment to recruit and retain minority students.

(i) If the project is designed to carry out the purpose of § 57.1903 (b)(8), the project shall:

(1) Improve access to nursing services in community noninstitutional settings particularly to the elderly;

(2) Evaluate the cost effectiveness of the nursing services provided;

(3) Be operational (providing patient care services) within 6 months of the grant award and develop a plan for becoming self-sufficient;

(4) Identify payment policy utilized for patient care services; and

(5) Emphasize preventive care.

(j) If the project is designed to carry out the purpose of § 57.1903 (b)(9), the project shall:

(1) Improve the geographic and/or specialty distribution of nurses through innovative methods of recruitment and retention;

(2) Develop a plan for retaining nurses who work in shortage areas; and

(3) Develop a plan for recruiting and retaining minority nurses.

6. Section 57.1906 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d); by revising newly redesignated paragraphs (c)(1) and (c)(2) and by revising the first two sentences in newly redesignated paragraph (d); paragraph (a) is amended by removing the paragraph designation (1), by redesignating (i) through (vii) as (1) through (7) respectively, and by removing the last two sentences of the paragraph; and by adding a new paragraph (b) to read as follows:

§ 57.1906 Evaluation and grant award.

* * * * *

(b) *Funding preferences:* In determining the priority for funding projects under paragraphs (7), (8), and (9), as described in § 57.1903(b), the Secretary will give priority to projects approved under purpose (8). However, should special needs warrant, the Secretary will also consider any other special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register.**

(c) *Grant awards.* (1) The amount of any award will be determined by the Secretary on the basis of his or her estimate of the sum necessary for the cost (including both direct and indirect costs) of the project.

(2) All grant awards shall be in writing and shall set forth the amount of funds granted and the period for which funds will be available for obligation by the grantee. Projects receiving grant support under this subpart may be approved for an initial project period of up to 3 years. Grantees may apply for up to 2 years of additional support by submitting a competing extension application.

* * * * *

(d) *Noncompeting continuation awards.* The Secretary may make a grant award for an additional budget period for any previously approved project on the basis of progress and accounting records which the Secretary may require. If the Secretary finds that the project's activities during the current budget period justify continued support of the project for an additional budget period, and the Secretary decides to continue support, the amount of the grant award will be determined in accordance with paragraph (c)(1) of this section. * * *

7. Section 57.1908 is revised to read as follows:

§ 57.1908 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantees needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

8. Section 57.1909 is revised to read as follows:

§ 57.1909 What additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation of the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

§ 57.1910 [Removed]

9. Section 57.1910 *Grantee accountability.* is removed in its entirety.

§ 57.1911 [Removed]

10. Section 57.1911 *Publications and copyright.* is removed in its entirety.

§ 57.1912 [Removed]

11. Section 57.1912 *Applicability of 45 CFR Part 74.* is removed in its entirety.

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94–484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94–63.

§ 57.1913 [Redesignated as § 57.1910]

12. Section 57.1913 is redesignated as § 57.1910.

[FR Doc. 88–9106 Filed 4–25–88; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6785]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new contruction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in

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the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office of the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V—Minimal Conversions				
Minnesota: Grant County, unincorporated areas.	270549	Feb. 6, 1974, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.	May 1, 1988	May 1, 1988.
Ohio: New London, village, of Huron County.	390284	June 12, 1975, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.	do	Do.
Region VII				
Iowa: Russell, city of, Lucas County	190649	Oct. 26, 1976, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.	May 1, 1988	May 1, 1988.
Nebraska: Red Willow County, unincorporated areas.	310469	June 18, 1984, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.	do	Do.
Nebraska: Orleen, city of, Harlan County	310394	Mar. 20, 1984, Emerg.; May 1, 1988, Reg.; May 1, 1988, Susp.	do	Do.
Region I—Regular Conversions				
Maine: Benton, town of, Kennebec County	230233	Sept. 16, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Maine: Camden, town of, Knox County	230074	May 21, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Maine: Cherryfield, town of, Washington County.	230135	July 23, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Maine: Durham, town of, Androscoggin County.	230002	Apr. 24, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Maine: Masardis, town of, Aroostook County.	230027	Dec. 10, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Maine: Mattawamkeag, town of, Penobscot County.	230174	July 7, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Owasco, town of, Cayuga County.	360120	Apr. 2, 1976, Emerg.; Feb. 6, 1984, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Region III				
Pennsylvania: Gilpin, township of, Armstrong County.	421306	July 25, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Pennsylvania: Lower Nazareth, township of, Northampton County.	422253	Jan. 3, 1977, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Pennsylvania: Perry, township of, Armstrong County.	422301	May 6, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Region IV				
Florida: Bowling Green, city of, Hardee County.	120104	Dec. 2, 1974, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Florida: Hardee County, unincorporated areas.	120103	Apr. 1, 1976, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Florida: Wauchula, city of, Hardee County	120105	July 28, 1975, Emerg.; June 25, 1976, Reg.; May 4, 1988, Susp.	do	Do.
Florida: Zolfo Springs, town of, Hardee County.	120106	July 2, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Kentucky: Johnson County, unincorporated areas.	210339	Oct. 30, 1978, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Mississippi: Long Beach, city of, Harrison County.	285257	June 19, 1970, Emerg.; Sept. 11, 1970, Reg.; May 4, 1988, Susp.	do	Do.
Tennessee: Claiborne County, unincorporated areas.	470212	Apr. 16, 1974, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Region V				
Wisconsin: Manawa, city of, Waupaca County.	550498	Mar. 17, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Wisconsin: Marion, city of, Waupaca County.	550499	Sept. 24, 1974, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Michigan: Memphis, city of, St. Clair and Macomb Counties.	260202	Sept. 26, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Michigan: Sault Ste. Marie, city of, Chippewa County.	260059	Jan. 15, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Region VI				
Arizona: Cherry Valley, city of, Cross County.	050057	June 16, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Louisiana: Washington County, unincorporated areas.	220230	Sept. 23, 1977, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Region X				
Washington: Columbia County, unincorporated areas.	530029	June 11, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	May 4, 1988	May 4, 1988.
Washington: Dayton, city of, Columbia County.	530030	May 30, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Washington: Starbuck, city of, Columbia County.	530031	Dec. 23, 1982, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.	do	Do.
Region I—Regular Conversions				
Maine: Georgetown, town of, Sagadahoc County.	230209	Apr. 11, 1978, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.
Maine: Passadumkeag, town of, Penobscot County.	230114	May 20, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Maine: Rome, town of, Kennebec County	230246	Apr. 16, 1976, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Maine: Southport, town of, Lincoln County	230221	Oct. 23, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Massachusetts: Carlisle, town of, Middlesex County.	250187	Jan. 13, 1976, Emerg.; Oct. 15, 1980, Reg.; May 17, 1988, Susp.	do	Do.
New Hampshire: Alton, town of, Belknap County.	330001	June 12, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
New Hampshire: Canaan, town of, Grafton County.	330049	Aug. 20, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
New Hampshire: Enfield, town of, Grafton County.	330052	June 19, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
New Hampshire: Farmington, town of, Strafford County.	330147	May 14, 1976, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
New Hampshire: Hopkinton, town of, Merrimack County.	330116	June 27, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Vermont: Barnet, town of, Caledonia County.	500024	Aug. 28, 1974, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Vermont: Jamaica, town of, Windham County.	500131	Aug. 7, 1975, Emerg.; May 5, 1981, Reg.; May 17, 1988, Susp.	do	Do.
Region III				
Virginia: St. Paul, town of, Wise and Russell County.	515530	June 19, 1970, Emerg.; Dec. 4, 1970, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.
Region IV				
South Carolina: Hampton, town of, Hampton County.	450100	May 14, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.
Tennessee: Pikeville, city of, Bledsoe County.	470011	Sept. 10, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Region V				
Michigan: Castleton, township of, Barry County.	260841	Sept. 26, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.
Michigan: Vernon, village of, Shiawassee County.	260524	May 28, 1982, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Region VI				
Louisiana: Abita Springs, town of, St. Tammany Parish.	220199	July 16, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.
New Mexico: Silver City, town of, Grant County.	350022	July 22, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
New Mexico: Socorro, city of, Socorro County.	350077	Feb. 27, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	do	Do.
Region X				
Washington: Spokane County, unincorporated areas.	530174	May 30, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.	May 17, 1988	May 17, 1988.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: April 20, 1988.

[FR Doc. 88-9084 Filed 4-25-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6786]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation m the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
North Carolina: Robbinsville, town of, Graham County.	370106	Mar. 7, 1988, emergency	June 14, 1974.
Illinois: South Wilmington, village of, Grundy County.	171013	Mar. 4, 1988, emergency; Mar. 4, 1988, regular	Mar. 4, 1988.
Pennsylvania: Eldred, township of, Monroe County.	421867	July 20, 1977, emergency; Feb. 17, 1988, regular; Feb. 17, 1988, suspension; Mar. 1, 1988, reinstatement.	Feb. 17, 1988.
Kentucky: Stamping Ground, city of, Scott County.	210261	Apr. 28, 1976, emergency; Mar. 2, 1981, regular; Feb. 17, 1988, suspension; Mar. 2, 1988, reinstatement.	Mar. 2, 1981.
Pennsylvania: *Pittsfield, township of, Warren County	422125	Feb. 18, 1976, emergency; Aug. 1, 1987, regular; Aug. 1, 1987, suspension; Mar. 3, 1988, reinstatement.	Aug. 1, 1987.
Standing Stone, township of, Bradford County.	421406	Mar. 9, 1977, emergency; Sept. 18, 1987, regular; Sept. 18, 1987, suspension; Mar. 3, 1988, reinstatement.	Sept. 18, 1987.
Hunker, borough of, Westmoreland County	420880	Aug. 5, 1980, emergency; Nov. 19, 1986, regular; Nov. 19, 1986, suspension; Mar. 7, 1988, reinstatement.	Nov. 19, 1986.
Georgia: Lawrenceville, city of, Gwinnett County	130089	Aug. 28, 1974, emergency; May 15, 1980, regular; Feb. 17, 1988, suspension; Mar. 7, 1988, reinstatement.	May 15, 1980.
Tennessee: Collierville, town of, Shelby County	470263	Sept. 29, 1975, emergency; Sept. 30, 1981, regular; Feb. 4, 1988, suspension; Mar. 4, 1988, reinstatement.	Oct. 1, 1982.
Kentucky: Lawrence County, unincorporated areas	210258	Apr. 18, 1985, emergency; Apr. 18, 1985, regular; Feb. 17, 1988, suspension; Mar. 10, 1988, reinstatement.	Apr. 17, 1984.
Russellville, city of, Logan County	210150	July 24, 1974, emergency; June 1, 1984, regular; Feb. 17, 1988, suspension; Mar. 10, 1988, reinstatement.	June 1, 1984.
Florida: Atlantis, city of, Palm Beach County	120193	Aug. 23, 1974, emergency; Nov. 1, 1978, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Nov. 1, 1978.
Cedar Grove, town of, Bay County	120086	May 16, 1975, emergency; Jan. 25, 1980, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Jan. 25, 1980.
Montana: Whitehall, town of, Jefferson County	300129	May 7, 1975, emergency; Mar. 4, 1988, withdrawn.	May 2, 1975.
Florida: Fort Lauderdale, city of, Broward County	125105	Nov. 20, 1970, emergency; Nov. 3, 1972, regular; Mar. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Dec. 15, 1982.
Kentucky: Jefferson County, unincorporated areas.	210120	Aug. 20, 1971, emergency; Apr. 16, 1979, regular; Feb. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Nov. 12, 1982.
Florida: Lynn Haven, city of, Bay County	120009	Sept. 6, 1974, emergency; June 1, 1977, regular; Mar. 4, 1988, suspension; Mar. 14, 1988, reinstatement.	Feb. 19, 1982.
Fernandina Beach, city of, Nassau County	120172	Aug. 16, 1974, emergency; Jan. 14, 1977, regular; Feb. 17, 1988, suspension; Mar. 15, 1988, reinstatement.	Apr. 4, 1983.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Pennsylvania: Cooper, township of, Montour County.	421920	Aug. 21, 1974, emergency; Sept. 30, 1987, regular; Sept. 30, 1987, suspension; Mar. 15, 1988, reinstatement.	Sept. 30, 1987.
Virginia: Lancaster County, unincorporated areas	510064	Nov. 27, 1973, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension, Mar. 15, 1988, reinstatement.	Mar. 4, 1988.
Texas: Harrison County, unincorporated areas	480849	Mar. 18, 1988, emergency	Sept. 6, 1977.
Mississippi: Smithville, town of, Monroe County	280325	Mar. 16, 1988, emergency; Mar. 16, 1988, regular.	Mar. 16, 1988.
New Hampshire: *Sullivan, town of, Cheshire County.	330233	Dec. 24, 1975, emergency; Apr. 2, 1986, regular; Apr. 2, 1986, suspension; Mar. 17, 1988, reinstatement.	Apr. 2, 1986.
Florida: Gulf Breeze, city of, Santa Rosa County	120275	July 10, 1970, emergency; Sept. 1, 1977, regular; Mar. 4, 1988, suspension; Mar. 18, 1988, reinstatement.	Nov. 1, 1985.
North Carolina: Washington County, unincorporated areas.	370247	Jan. 24, 1975, emergency; Aug. 19, 1985, regular; Feb. 4, 1988, suspension; Mar. 18, 1988, reinstatement.	Aug. 19, 1985.
Pennsylvania: Ulster, township of, Bradford County.	421218	July 29, 1975, emergency; Sept. 18, 1987, regular; Sept. 18, 1987, suspension; Mar. 18, 1988, reinstatement.	Sept. 18, 1987.
North Carolina: Pender County, unincorporated areas.	370344	June 28, 1977, emergency; Feb. 15, 1985, regular; Mar. 4, 1988, suspension; Mar. 21, 1988, reinstatement.	Feb. 15, 1985.
Tennessee:			
Henning, town of, Lauderdale County	470259	July 21, 1986, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
Loudon County, unincorporated areas	470107	May 30, 1973, emergency; Aug. 15, 1978, regular, Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Aug. 15, 1978.
North Carolina: Creswell, town of, Washington County.	370443	Jan. 24, 1975, emergency; Aug. 19, 1985, regular; Feb. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Feb. 4, 1987.
Florida: Flagler County, unincorporated areas	120065	Sept. 17, 1975, emergency; Feb. 5, 1986, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Feb. 5, 1986.
Oklahoma: *Kinta, city of, Haskell County	400071	Oct. 4, 1976, emergency; Aug. 1, 1987, regular; Aug. 1, 1987, suspension; Mar. 24, 1988, reinstatement.	Aug. 1, 1987.
Texas: *Jim Hogg County, unincorporated areas	481081	Nov. 14, 1975, emergency; Nov. 1, 1987, regular; Dec. 17, 1987, suspension; Mar. 24, 1988, reinstatement.	Nov. 1, 1987.
Pennsylvania:			
Limestone, township of, Union County	422105	Feb. 13, 1975, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
Hamilton, township of, Monroe County	421888	Mar. 31, 1978, emergency; Feb. 4, 1988, regular; Feb. 4, 1988, suspension; Mar. 22, 1988, reinstatement.	Feb. 4, 1988.
Montana: Wibaux, town of, Wibaux County	300084	Sept. 26, 1974, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 25, 1988, reinstatement.	Mar. 4, 1988.
Pennsylvania:			
Dawson, borough of, Fayette County	420460	July 23, 1975, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Do.
Madison, township of, Clarion County	422370	Jan. 16, 1976, emergency; Sept. 30, 1987, regular; Sept. 30, 1987, suspension; Mar. 24, 1988, reinstatement.	Sept. 30, 1987.
Lower Tyrone, township of, Fayette County	421630	May 16, 1977, emergency; Mar. 4, 1988, regular; Mar. 4, 1988, suspension; Mar. 24, 1988, reinstatement.	Mar. 4, 1988.
North Carolina: Crossnore, town of, Avery County.	370287	Jan. 14, 1980, emergency; Mar. 16, 1988, suspension; Mar. 17, 1988, reinstatement.	Aug. 5, 1977.
Virginia: Lebanon, town of, Russell County	510222	Jan. 24, 1975, emergency; Jan. 16, 1987, regular; Jan. 16, 1987, suspension; Mar. 28, 1988, reinstatement.	Jan. 16, 1987.
West Virginia: Worthington, town of, Marion County.	540106	May 13, 1975, emergency; Mar. 16, 1988, regular; Mar. 16, 1988, suspension; Mar. 30, 1988, reinstatement.	Mar. 16, 1988.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Kentucky:			
St. Matthews, city of, Jefferson County	210123	Dec. 3, 1971, emergency; Mar. 5, 1976, regular; Feb. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	June 25, 1982.
Jeffersontown, city of, Jefferson County	210121	Dec. 23, 1971, emergency; Mar. 5, 1976, regular; Feb. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	Mar. 5, 1976.
Tennessee: Obion, town of, Obion County	470253	Aug. 11, 1975, emergency; Mar. 16, 1961, regular; Mar. 4, 1988, suspension; Mar. 31, 1988, reinstatement.	Mar. 16, 1961.
Oklahoma: *Ramona, city of, Washington County.	400222	Apr. 16, 1976, emergency; June 2, 1986, regular; Mar. 31, 1988, suspension; Mar. 31, 1988, reinstatement.	Feb. 1, 1988.
Louisiana: Leesville, city of, Vernon Parish	220229	Oct. 17, 1974, emergency; Jan. 17, 1986, regular; Jan. 17, 1986, suspension; Mar. 18, 1988, reinstatement.	Jan. 17, 1986.
Region III—Regular Conversions			
Pennsylvania:			
Bushkill, township of, Northampton County	421929	Mar. 4, 1988, suspension withdrawn	Mar. 4, 1988.
Conewago, township of, Adams County	421248	do.	Do.
Dreher, township of, Wayne County	422164	do.	Do.
Hartley, township of, Union County	422102	do.	Do.
Lehigh, township of, Wayne County	422167	do.	Do.
Mifflinburg, borough of, Union County	420832	do.	Do.
Saville, township of, Perry County	421956	do.	Do.
West Pennsboro, township of, Cumberland County.	421590	do.	Do.
West Virginia:			
Bridgeport, city of, Harrison County	540055	do.	Do.
Fayette County, unincorporated areas	540026	do.	Do.
Lost Creek, town of, Harrison County	540057	do.	Do.
Lumberport, town of, Harrison County	540058	do.	Do.
Region IV			
Georgia: Rockmart, city of, Polk County	130154	do.	Do.
North Carolina:			
Louisburg, town of, Franklin County	370098	do.	Do.
Southern Pines, town of, Moore County	370338	do.	Do.
Tennessee: Clifton, city of, Wayne County	470200	do.	Do.
Region V			
Illinois: Sugar Grove, village of, Kane County	170333	do.	Do.
Ohio: Crooksville, village of, Perry County	390441	do.	Do.
Region III—Regular Conversions			
Pennsylvania:			
Center, township of, Snyder County	422591	Mar. 16, 1988, suspension withdrawn	Mar. 16, 1988.
Lamar, township of, Clinton County	420327	do.	Do.
Lower Frankford, township of, Cumberland County.	421018	do.	Do.
Perry, township of, Snyder County	422038	do.	Do.
Spring, township of, Snyder County	422039	do.	Do.
Virginia:			
Abingdon, town of, Washington County	510169	do.	Do.
Damascus, town of, Washington County	510170	do.	Do.
Glade Spring, town of, Washington County	510320	do.	Do.
Russell County, unincorporated areas	510317	do.	Do.
Washington County, unincorporated areas	510168	do.	Do.
West Virginia:			
Barrackville, town of, Marion County	540098	do.	Do.
Fairview, town of, Marion County	540100	do.	Do.
Farmington, town of, Marion County	540101	do.	Do.
Monongah, town of, Marion County	540105	do.	Do.
Rivesville, town of, Marion County	540105	do.	Do.
Shinnston, city of, Harrison County	540060	do.	Do.
Region IV—Regular Conversions			
Florida: Lake Wales, city of, Polk County	120390	do.	Do.
Mississippi:			
Aberdeen, city of, Monroe County	280115	do.	Do.
Monroe County, unincorporated areas	280275	do.	Do.
Region V			
Michigan: Cheboygan, city of, Cheboygan County.	260058	do.	Do.
Minnesota: Renville County, unincorporated areas.	270634	do.	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region VI			
Louisiana:			
Broussard, town of, Lafayette Parish	220102	....do....	Do.
Breaux Bridge, town of, St. Martin Parish	220180	....do....	Do.
Texas: Jonestown, city of, Travis County	481587	....do....	Do.
Regiuon IX—Regular Conversions			
Arizona: Prescott, city of, Yavapai County	040098	....do....	Do.
California: Napa, city of, Napa County	060207	....do....	Do.

[1] The City of Ramona, Oklahoma is being reinstated into the Regular Program. This is the initial Regular Program entry.
[2] Minimal

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: April 20, 1988.

[FR Doc. 88-9083 Filed 4-25-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-263; RM-5676]

Radio Broadcasting Services; Biddeford, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 232B1 for Channel 232A at Biddeford, Maine, in response to a petition filed by WYJY, Inc. We shall also modify the license of Station WYJY-FM to specify operation on Channel 232B1 in lieu of Channel 232A. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 232B1 are 43-29-30 and 70-27-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-263, adopted March 8, 1988, and released April 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by removing channel 232A and adding Channel 232B1 at Biddeford.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-8073 Filed 4-25-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 86-112; FCC 88-125]

FM Broadcast Translator Stations and FM Broadcast Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Current rules restrict noncommercial educational FM stations to rebroadcast of signals received directly over the air from their primary station or another translator. The Commission is amending these translator rules to permit noncommercial educational FM stations to use satellite, microwave or any technical means deemed suitable by the licensee, to deliver signals to translator stations assigned to reserved channels (200-220) and co-owned by the primary station. The Commission believes this rule change will facilitate the delivery of higher quality FM signals by noncommercial educational FM radio stations to their owned and operated translators, and will improve service to remote and underserved regions. The rule amendment will not alter the secondary nature of translator service, whereby in any conflicts that arise with a primary broadcast station, the translator licensee is obligated to resolve the conflicts or cease operation of the translator.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 86-112, FCC 88-126, adopted March 24, 1988, and released April 15, 1988. The full text of this Commission decision, including the amendments to the rules, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. The FM translator service was instituted in 1970 as a means to supplement the primary service provided by full facility FM stations. While the Commission recognized the benefits which would be derived from the translator service, it was concerned about the use of translators as a means to expand competitively the service area of a primary FM station. Consistent with these objectives and concerns, the Commission authorized FM translators for the specific and limited purpose of providing FM radio service to underserved areas, extending additional FM service to underserved areas, and improving service to areas within the predicted 1 mV/m contours of a primary FM station. As part of these rules, the Commission restricted both commercial and noncommercial FM translators to

rebroadcast of signals received directly over the air from their primary station or another translator.

2. In the *Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 86-112, 51 FR 15026, April 22, 1986, the Commission proposed amendments to its rules to allow noncommercial educational FM stations to deliver signals by satellite, microwave, or any technical means deemed suitable by the licensee, to translator stations that are assigned to reserved channels (channels 200-220) and that are owned and operated by the primary station. This *Notice* was initiated in response to a petition for rule making filed by the Moody Bible Institute of Chicago, Inc. Twenty-two parties filed formal comments in this proceeding.

3. On the basis of the record developed in response to the Notice, the Commission concludes that authorizing use of alternative signal delivery methods by noncommercial educational FM stations to their co-owned translators assigned to reserved channels would serve the public interest by facilitating the rebroadcast of higher quality FM signals by such translators to underserved and remote areas. The existing restriction on the means of signal delivery limits the potential service areas that can be reached by primary noncommercial educational FM stations. In this respect, the range of line-of-sight reception of over-the-air signals with normal equipment is limited in most cases to areas not much beyond the predicted service area of the primary station. Although translators may be used to provide service at greater distances if the primary signal is relayed through other translators, the areas that can be reached through this method of signal delivery are limited to places within the range of other translators, and the signals relayed generally suffer some deterioration in quality. The revised rules will serve the public interest by facilitating the delivery of higher quality noncommercial educational FM programming to areas currently unable to receive satisfactory FM service because of distance or intervening terrain obstructions.

4. The rule changes adopted herein will allow improved service but will not change the fundamental nature of the translator service. In this respect, noncommercial educational FM translators will still be secondary, restricted to the rebroadcast of a primary station. Licensees of noncommercial educational FM stations also are restricted from owning translators beyond their 1mV/m contour and within the 1mV/m contour of another commercial station assigned to a different principle community. Moreover, the new rules will in no way alter the secondary status of noncommercial FM translators and the requirement that in conflicts with full service stations, the translator operator is obligated to resolve the conflict or cease operation of the translator.

5. A general freeze has been imposed on new translator applications in conjunction with our comprehensive review of our FM translator policy. *See Notice of Inquiry* in MM Docket No. 88-140, FCC 88-120, adopted March 24, 1988. However, an exception to the freeze has been provided for applications for new noncommercial educational FM translators assigned to reserved channels in order to allow implementation of the signal delivery rule change made herein.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, it is certified that the adopted rule will not have a significant impact on a substantial number of small entities because the limited nature of the relaxation of the signal delivery rule change is not expected to result in a significant number of new noncommercial educational translators and therefore is not expected to alter the availability of opportunities for local FM noncommercial FM stations.

7. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified forms, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Accordingly, it is ordered, that pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 74 of the Commission's Rules and Regulations IS AMENDED as set forth below. It is further ordered that applications for use of alternative delivery technologies in conjunction with noncommercial educational FM translator stations operating on reserved channels, owned and operated by the licensee of the primary section, will be accepted consistent with the interim procedures set forth herein.

List of Subjects in 47 CFR Part 74

FM Broadcast Translator Stations and FM Broadcast Booster Stations.

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.1231 is amended by revising paragraph (b) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) Except as set forth in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of a primary FM broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator station operating on a reserved channel (Channel 200-220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and microwave facilities.

* * * * *

3. 47 CFR 74.1250 is amended by revising paragraph (a) to read as follows:

§ 74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus used by stations authorized under the provisions of this subpart may only use transmitting apparatus that has been type accepted for such use in accordance with Subpart J of Part 2. Translator stations authorized for transmitter output power of 10 watts also may use FM broadcast transmitters notified or type accepted to operate with an output power not exceeding 10 watts under the provisions of Part 73 of the Rules for broadcast stations.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-9110 Filed 4-25-88; 8:45 am]
BILLING CODE 6712-01-M

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Proposed Rules

Federal Register
Vol. 53, No. 80
Tuesday, April 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts certain changes in the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders based on industry proposals considered at a public hearing held June 30-July 1, 1987. As adopted, a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution.

The decision also adopts another change in the Louisville-Lexington-Evansville order only. This change slightly modifies the method for accounting for excess diversions to nonpool plants. These changes are needed to reflect current marketing conditions and to insure orderly marketing.

In both markets, cooperative associations will be polled to determine whether producers who supplied milk during December 1987 favor issuance of the orders as amended.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action changes the current regulatory status of a pool distributing plant that is located in the Louisville-Lexington-Evansville marketing area but is regulated by the Ohio Valley order because a greater portion of its fluid milk products distribution is in the latter order's marketing area. It would regulate such plant under the Louisville-Lexington-Evansville order. Such action is expected to equate the cost of raw milk supplies to the pool plant so situated with its principal competition. The economic impact of such action will be to increase returns to dairy farmers whose milk will be pooled under the Louisville-Lexington-Evansville order while slightly reducing returns to dairy farmers whose milk will continue to be pooled under the Ohio Valley order. The overall economic impact of the action is expected to be minimal.

Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23306).

Recommended Decision: Issued January 7, 1988; published January 14, 1988 (53 FR 907).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rule of practices (7 CFR Part 900), at Louisville, Kentucky, on June 30-July 1, 1987. Notice of such hearing was issued June 15, 1987 and published June 19, 1987 (52 FR 23306).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on January 7, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, except that three new paragraphs are added at the end of issue 1.

The material issue on the record of the hearing relate to:

1. Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order.

2. Diversion of producer milk under the Louisville order.

3. Pool plant qualification requirements for a balancing plant operated by a cooperative association and regulated by the Ohio Valley order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Regulation of a Distributing Plant Physically Located in the Louisville-Lexington-Evansville Marketing Area but Currently Regulated by the Ohio Valley Milk Order

Louisville-Lexington-Evansville order (Louisville order) should be amended to provide that a distributing plant which meets the pooling standards of the Louisville order and one or more other Federal orders and which is located in the Louisville order's marketing area shall be a pool plant under the Louisville order irrespective of the quantity of fluid milk products distributed in any other Federal order market. However, such pool plant status shall be accorded only as long as the Louisville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Louisville order and another order, it is regulated

in the market in which it has the greater route sales.

The "lock-in" provision adopted herein for the Louisville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Ohio Valley order. Thus, the Ohio Valley order should provide that any plant with route sales in the Ohio Valley marketing area shall be exempt from full regulation under that order, even though it has more sales in the Ohio Valley market than in the other market, if the plant is subject to full regulation under the other order.

Both Dairymen, Inc. (DI), and Milk Marketing Inc. (MMI), proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Louisville order's marketing area (Order 46) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 46 by locking in such a plant under the order and proposal No. 2 is intended to amend the Ohio Valley order (Order 33) by releasing from regulation such a plant even though such plant may have more fluid milk sales in the Order 33 area than in the Order 46 area.

A witness for DI stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky supply area. The witness indicated that the proposal would only affect the Kroger Company's (Kroger) distributing plant located in Clark County, Kentucky (Order 46 marketing area), but currently regulated by Order 33. He said that the milk procurement and sales patterns of the Kroger plant establish a primary association of the plant with the Order 46 market.

The DI witness testified that the traditional method of pooling a distributing plant has always been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for DI said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

The spokesman for DI said that producers supplying the Kroger plant are located within the same geographic area as producers who supply Order 46 plants and to some extent producers who supply plants regulated under the Tennessee Valley, Nashville, and Alabama-West Florida orders. He said that this proposal would minimize any blend price inequities which may occur between producers located within this same geographic supply area because a distributing plant would be regulated within the same area from which it procures its milk supply. Producers, he says, who supply other Federal order plants located in the same general area are receiving significantly different blend prices.

A witness for MMI also testified in support of proposals 1 and 2. He said that MMI cannot service the Kroger plant at competitive prices and that this problem is caused by the difference between the Order 33 blend price and blend prices in markets to the south. He stated that in order for MMI to make their members' pay prices competitive, MMI has found it necessary to charge the Kroger plant at Winchester a surcharge of 15 cents on all the milk that Kroger purchases. The MMI witness stated that the 15-cent surcharge to Kroger has helped MMI maintain a competitive position in the procurement area and that they have used that surcharge to pay for such things as subsidies to milk haulers, over-order premiums to MMI's members, and to pay extra premiums in certain competitive areas.

The spokesman for MMI said that a higher blend price is needed at the Winchester plant because the Order 33 blend price and the normal over-order charge is not sufficient to assure an adequate supply of milk at that location. He said that Federal order prices should be the prime determinant in the assurance of adequate supplies and it should not be the responsibility of suppliers to selectively determine that certain plants should pay higher over-order charges than other plants with the same Federal order Class I price. The blend price must be increased, he said, by either having a higher Class I price at that location or having the plant regulated by another market with a higher percentage of Class I utilization.

A witness for the Kroger Company (Kroger) testified in support of these proposals. The Kroger witness said that for the first 5 months of 1987, the Winchester plant's Class I sales in the Order 46 marketing area averaged more than 33 percent of its total fluid milk sales and that its fluid milk sales in the Order 33 marketing area averaged less than 50 percent of its total fluid milk sales. He said that the total in-area packaged Class I sales for Order 46, its sales represent about 16 percent of the total market and that of the total in-area packaged Class I sales for Order 33, its sales represent about 8 percent of the total. In addition, he said, that when comparing its Class I sales in each of the two order areas for the first 5 months of 1987 with the same period of 1986, sales in the Order 33 area have declined and sales in the Order 46 area have increased.

The spokesman for Kroger said that because of the recent increases in the Class I differentials in the southern markets, Winchester has not been as attractive a market outlet as before. This, he said, has contributed to the need for Kroger to pay, beginning in September 1986, an additional 15-cent per hundredweight surcharge over the regular premium price and that this surcharge amounted to approximately $439,000 for the first five months of 1987.

The Kroger witness said that these proposals would make the Winchester plant more competitive with other plants in the procurement of milk. In addition, he said that the lock-in proposals would equalize producers' pay prices under the order in the Winchester plant's procurement area and should eliminate the need for the 15-cent surcharge.

A representative for Huntington Interstate Milk Producers Association (Huntington) also testified in support of the lock-in proposals. He said that Huntington supplies Order 33 milk plants including the Winchester plant. In recent weeks, he said, Huntington had lost a few members because a supply plant at Maysville, Kentucky, was offering these producers the Order 46 weighted average price, which is higher than the Order 33 blend price.

A representative for the National Farmers Organization (NFO), which has member producers on both the Order 33 and Order 46 markets, testified in opposition to the lock-in proposals. Exhibits that were introduced by NFO showed that if the Kroger plant were to be pooled under Order 46, that order's blend price would have increased at least 11 cents and as much as 18 cents for the first 5 months of 1987. In addition, the exhibits showed that the

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blend price on Order 33 for this same period would have decreased between 6 and 9 cents.

The witness for NFO said that the proposals would have the effect of penalizing producers whose milk is pooled on Order 33 in order to save some money for the Kroger plant at Winchester. The NFO witness said that the difference in blend prices for the two markets could be as much as 49 cents. He said that such disparity in blend prices between these two close-together regulated markets will create inequities among producers within the same milk shed. Furthermore, he said, the base-excess plan of Order 46 will create additional friction with Order 33 producers.

While acknowledging the uniqueness of the Kroger problem, the representative of NFO held that a plant should be regulated under the Federal order for the area in which it has the most sales. It was the position that producers in the market in which the plant has the greater proportion of its sales have a right to share in the Class I sales associated with that plant.

A brief was filed by the Louis Trauth Dairy, Inc. (Trauth) in opposition to proposals 1 and 2. In this Order 33 handler's view, the proposals represent a radical departure from the policies established for regulating plants under marketing orders. Its brief asserts that the proponents have not met their burden of proof and that the record shows that milk is regularly diverted away from the Winchester plant, thereby indicating that plant does not have a supply problem.

The testimony presented at the hearing indicates that under current marketing conditions the lock-in provision for the Louisville order as proposed by DI and MMI would apply only to Kroger's distributing plant at Winchester, Kentucky.

The adoption of the proposal is warranted because of special circumstances surrounding the operation of the Winchester plant. The plant is located in the marketing area of the Louisville order. It began operating in November 1982 and during this month the plant was a pool distributing plant under the Ohio Valley order. From December 1982 through March 1983, it was a pool city plant (pool distributing plant) under the Louisville order. Since then, the plant has continued to be pooled under the Ohio Valley order.[1]

[1] Official notice is taken of the lists of pool handlers under Federal Orders 33 and 46 as published by the respective market administrators for the months of November 1982 through September 1987.

The Winchester plant distributes fluid milk products in five Federal order markets and in unregulated areas of West Virginia and Kentucky. Most of its sales, however, are concentrated in two markets: the Ohio Valley market and the Louisville market. Data introduced into the record show that during the January–May 1987 period the Kroger plant had nearly 50 percent of its Class I distribution in the Ohio Valley market, about 34 percent in the Louisville market and about 16 percent in all other areas, including the Eastern Ohio-Western Pennsylvania, Tennessee Valley and Indiana Federal order markets.

The entire raw milk supply for the Kroger plant is obtained from DI and MMI (which includes milk of Huntington Interstate Milk Producers) and comes from producers principally located in Kentucky. The plans receives milk directly from the farms of producers and incidental or supplemental supplies from supply plants operated by MMI. Most the plant's milk supply is obtained from producers located in the same geographical area as producers supplying handlers regulated by the Louisville order and other orders south and east of the plant's location. The record indicates that in at least 16 Kentucky counties there are producers who supply the Kroger plant as well as other producers in the same counties that supply plants regulated under the following other orders: Alabama-West Florida, Georgia, Louisville, Nashville, and Tennessee Valley (southern markets).

While the Class I prices under the Louisville and Ohio Valley orders at the Kroger plant's location are identical, the uniform weighted average prices to producers under the Louisville order usually have been higher than the comparable Ohio Valley prices. For example, during the 53-month period from January 1983 through May 1987, the uniform weighted average prices to producers under the Louisville order exceeded the comparable Ohio Valley order's prices during 49 months. The amount of these differences ranged from a low of one cent to a high of 35 cents per hundredweight and averaged 14 cents for the 49 months. A similar situation exists for the Winchester plant in competing for milk supplies with handlers regulated in other southeastern order markets where both Class I prices and uniform prices to produces are substantially higher than such prices under the Ohio Valley order.

As indicated by the record evidence, the higher pay prices available to producers under the Louisville and other southeastern orders in the Kentucky supply area have created difficulties for the Kroger plant at Winchester in procuring adequate supplies. The principal difficulty cited in this regard was the impact of the present 15-cent per hundredweight additional charge by both DI and MMI on all milk purchases by Kroger. It is evident from the record evidence that this 15-cent charge, which has been in effect since September 1986, was designed to overcome the diffuculties of maintaining an adequate supply of milk for the Kroger Winchester plant as a result of producer pay price differences between the two markets in question. Although the record clearly establishes that a higher price is required at this location to attract adequate supplies, the present extra 15-cent charge used for this purpose places the Kroger Company at a competitive disadvantage with other handlers that it competes with for sales.

As noted previously, usually a distributing plant that qualifies for pooling under more than one order during the same month is regulated under the order for the area in which such plant's route distribution is the greatest. This tends to insure that all handlers having their principal sales in a market are subject to the same prices and other regulatory requirements. This condition of pooling a distributing plant is the basis for regulating the Kroger plant under the Ohio Valley order, because a greater quantity of its sales is distributed in such order's marketing area than in any other order marketing area.

The pricing problems affecting the procurement of adequate milk supplies for the Winchester plant, however, are severe enough to override the traditional basis for pooling a distributing plant that qualifies as a pool plant under more than one order during the same month. Under such circumstances, consideration must be given to regulating the Winchester plant in the market in which there is reasonable assurance that it will have available an adequate supply of producer milk. It is concluded that the Kroger Winchester plant or any other distributing plant located in the Louisville marketing area can be reasonably assured of an adequate supply if it is regulated under the Louisville order.

It should be noted that under the type of lock-in provision adopted herein, the Kroger plant or another distributing plant so situated would continue to be pooled indefinitely under the Louisville order so long as the plant meets such order's performance requirements for a pool distributing plant. This condition of pooling is intended to assure that the

Winchester plant is primarily engaged in the processing and distribution of fluid milk products to an extent that such plant's route distribution in the marketing area is a major competitive factor.

As noted earlier, under the lock-in provision adopted herein, such pool plant status is accorded a distributing plant so long as the Louisville order's Class I price applicable at such plant's location is not less than the Class I price applicable at the same plant's location under another order for a market where it has its greatest route distribution. This additional condition of pooling is intended to prevent any competitive price advantage accruing to a plant that otherwise would be locked-in under the adopted provision.

Under the lock-in provision adopted herein, the Louisville order would regulate the Winchester plant even though it had a greater proportion of its route distribution in the marketing area of the Ohio Valley order. However, the intent of this pooling arrangement is in conflict with the present pooling requirements of the Ohio Valley order since it does not have a complementary provision which will permit the plant to be locked-in under the Louisville order. As proposed by the lock-in proponents, the Ohio Valley order should be amended to provide for such a complementary provision.

In opposing the proposed lock-in provision at the hearing and in post-hearing briefs, opponents maintained that no departure should be made from the long established policy concerning regulation of a distributing plant that qualifies for pooling under two or more orders. It was the position of opponents that the record evidence did not warrant any departure from such established policy regarding the Winchester operation. Contrary to opponents' position, the pricing problems of Kroger are severe enough to warrant overriding the customary pooling provisions as related to the Kroger operation and support the adoption of the proposed lock-in provision.

NFO contended that the proposed lock-in proposal, if adopted, will widen the difference in producer pay prices between the Louisville and Ohio Valley orders to the extent that it will create inequities among producers within the same supply area. The record evidence, however, does not support this claim. Rather, adoption of the proposals will tend to provide uniformity of prices to producers within the procurement area of the Winchester plant.

In its exceptions, NFO renewed its objection to the adoption of a special pooling provision for a distributing plant located in the Louisville marketing area. Most of the points raised in this regard were a reiteration of the views expressed by the cooperative at the hearing and in its post-hearing brief. Since such were already considered in formulating the tentative decision in this matter, no basis exists for changing the decision.

Additionally, NFO argued that the Department has no statutory authority to pool a distributing plant on the basis of where it is located. In support of this argument, the cooperative cited section 608c(11) of the Act which provides the basis of determining the scope or area of regulation of an order. This section, however, is not specifically pertinent to the issue at hand.

Pooling a distributing plant in the basis of physical location is adopted pursuant to the authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The special pooling arrangement adopted herein is considered essential for the assurance of adequate supplies and the maintenance of orderly marketing. Accordingly, NFO's exception on this matter is denied.

2. Diversion of Producer Milk Under the Louisville Order

Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified to provide a procedure for accounting for over-diversions to nonpool plants. On the basis of this record, however, other diversion proposals should not be adopted. Such proposals would (1) relax the delivery requirement of an individual producer to establish diversion eligibility for the months of March through August; and (2) modify the basis of determining the quantity of producer milk that may be diverted to nonpool plants during the September-February period.

Presently, the order provides that during the months of March through August at least two days' production (one delivery for a producer on every-other-day pickup) of a producer must be physically received at a pool plant each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk. During the September-February period, monthly diversions of a producer's milk to a nonpool plant cannot exceed 22 days' production (11 every-other-day pickups).

NFO proposed that diversion eligibility for a producer be reduced to one day's production received at a pool plant and that diversions to nonpool plants during each of the months of September through February not exceed 60 percent of the producer milk received at a pool plant. At the hearing, however, NFO revised its diversion limitation proposal to increase the 60 percent factor to 70 percent and to permit diversion limits to be based either on 70 percent of total producer deliveries to pool plants or on the number of days of production of an individual producer that is actually delivered to a pool plant. Also, it proposed that under either option, diversion limitations should apply uniformly to both a cooperative association and a proprietary handler.

In support of its proposal to reduce the delivery requirement for an individual producer during the March-August period, a spokesman for NFO testified that the present two-day delivery requirement has occasionally caused problems when one day's production of a large producer has been picked up by two different bulk tank route trucks on succeeding days without both trucks delivering to a pool plant. According to the witness, this method of handling can result in some producer milk being depooled. The spokesman indicated that this is because the diverting handler, having assumed that all producers whose milk was on each truck met the two-day delivery requirement, would not discover the error until after the end of the month, when it was too late to correct the problem. To minimize or avoid the problem, the witness stated, it is necessary for the diverting handler to have the milk on an every-other-day truck route delivered to a pool plant at least twice a month solely to make certain that the two-day delivery requirement is met. He stated that this causes excessive hauling and handling because the additional milk delivered to the pool plant is not needed. Reducing the delivery requirement to one day, according to the witness, would eliminate this unnecessary expense and simplify monitoring producer shipments.

Also, NFO proposed that the limits on the quantity of milk that may be diverted to nonpool plants during the September-February period be based either on a percentage of a handler's total produce milk receipts at pool plants or, as presently provided, on the number of days of production of an individual producer that may be diverted to a nonpool plant. The purpose of the proposal, as stated by NFO's witness, is to provide the diverting handler with a choice in achieving efficient diversion of reserve milk

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supplies to nonpool plants. Proponent's spokesman testified that basing diversion limitations only on the number of delivery days of an individual producer causes a handler unnecessary handling, pumping and hauling milk solely to maintain producer status for some of its dairy farmers. In NFO's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than is permitted now. Rather, NFO claimed that it would provide for increased efficiency in marketing reserve milk.

A spokeman for DI testified in opposition to NFO's proposals concerning diversions to nonpool plants. This witness argued that the present diversion provisions are adequate because there is every indication that the amount of milk being diverted by handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments. To this end, DI offered two counter proposals which would (1) require that eight days' production of a producer be received at a pool plant during each of the months of September through February and (2) that the amount of milk that a handler may divert to nonpool plants not exceed a volume equal to one-third of the handler's producer milk physically received at or diverted from pool plants during such months.

At the hearing and in post-hearing briefs, both MMI an Kroger supported DI's position regarding diversions to nonpool plants.

Neither the delivery requirement for an individual producer or the limits on diversions to nonpool plants during September through February should be modified on the basis of this record.

The testimony presented by NFO in support of its proposal to change to a one-day delivery requirement, to a large extent, was general in nature and lacked "specificity." Its witness, for example, did not provide any evidence regarding the problem that NFO has had in meeting the order's present delivery requirement. Although the NFO witness testified that the two-day delivery requirement occasionally caused qualification problems when one day's production of a large producer was picked up in the same bulk tank truck that was also picking up 2 days' production of other producers, there was no evidence presented which indicated the number of times that this problem occurred or the quantity of milk of its member producers that was depooled. The record evidence does not demonstrate that the two-day delivery requirement is excessive or that it is not needed to demonstrate that a producer is genuinely associated with the fluid market. Accordingly, the proposal is denied.

The basic issue developed on the record with respect to NFO's other diversion proposal concerns whether to provide an alternative option of basing diversion limitations on a percentage of a handler's total producer milk supply and what constitutes reasonable diversion limits in light of the market's present supply-demand conditions so that fluid milk plants are assured of adequate milk supplies.

The record evidence indicates that Class I utilization for Order 46 averaged 59.9 percent for 1986 and ranged from a low of 50.4 percent in June to a high of 72.4 percent in September. For the first five months of 1987, Class I utilization averaged 63.0 percent compared to an average of 56.0 percent for the same period in 1986. This supply-demand situation indicates that allowing a diverting handler to divert to a nonpool plant as much as 70 percent of its total producer receipts, as proposed by NFO, would not be appropriate.

Also, the record evidence suggests that all handlers on the market are able to operate within the diversion limits as now contained in the present order. For instance, data contained in the record shows that for 1986 diverted milk, as a percentage of producer receipts, ranged from a low of 16.5 percent for September to a high of 31.5 percent in May. Also, for the first five months of 1987, diversions to nonpool plants averaged 22.1 percent compared to 26.2 percent for 1986.

Conversely, on the basis of this record there is no apparent need to limit diversions to nonpool plants to the extent proposed by DI. There was no demonstration by DI that the current limit on the amount of milk that may be diverted is causing in any way disruptive marketing conditions.

In view of these considerations, the diversion limits, as now provided in the order, are appropriate for this market, considering current supply-demand conditions. The record evidence does not provide a compelling basis for changing the present diversion limits. Accordingly, all proposals to change diversion limits are denied.

As indicated previously, the order should be revised to specify the procedure for accounting for over-diverted milk. As proposed by both NFO and DI and as herein adopted, the order is revised to provide that milk diverted in excess of the diversion limits as prescribed by the order shall not be producer milk and that the diverting handler shall designate the dairy farmers' deliveries that shall not be producer milk. Also, if the diverting handler fails to make such designation, none of the diverted milk of such handler shall be producer milk. This modification is desirable and appropriate.

Subsequent to the hearing, NFO filed a petition to have the hearing reopened in the event that the Secretary determines that DI's counter proposals that were offered in response to NFO's proposals concerning diversions to nonpool plants would be "worthy of consideration." Since DI's proposals were not adopted, the issue raised in NFO's petition is moot.

DI proposed at the hearing to amend the performance standards for a pool distributing plant. As proposed, diverted milk would be included along with milk physically received at the distributing plant as the base in calculating a plant's Class I utilization percentage. A specified minimum Class I utilization percentage is used as one of the condition's that must be met in determining the pooling status of a distributing plant under the order.

Counsel for NFO objected to the proposal on the basis that it was not included in the hearing notice and thus was outside the scope of the hearing. The Administrative Law Judge (ALJ) presiding at the hearing ruled that the proposal was not properly noticed and thus sustained the objection of NFO's counsel.

DI, in its brief, renewed the request to allow for testimony to be taken on the proposal since it was its position that the proposal was within the scope of the hearing. After a careful review of the matter, it is concluded that the ALJ's ruling in this regard was proper. Therefore, the motion to reverse the ruling of the ALJ is denied.

3. Pooling Provisions for a Plant Operated by a Cooperative Association and Regulated Under the Ohio Valley Order

As noted in the hearing notice, a proposal of NFO would have reduced from 50 percent to 40 percent the quantity of members' milk that must be delivered to pool distributing plants in order to qualify a plant operated by a cooperative association as a pool plant. At the hearing, NFO did not present any testimony in support of the proposal and in its brief NFO stated that it wanted to withdraw the proposal. Witnesses for both MMI and the Kroger Company testified in opposition to the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley and Louisville-Lexington-Evansville orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

December 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas are approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: April 20, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulates the handling of milk in the same manner, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Ohio Valley and Louisville-Lexington-Evansville marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on January 7, 1988 and published in the **Federal Register** on January 14, 1988 (53 FR 907), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein

1. The authority citation for CFR Parts 1033 and 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

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PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section,

* * * * *

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

* * * * *

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c), or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets in the marketing area are regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by sending by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

* * * * *

(c) * * *

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk. The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§____ [1] to ____[1], all inclusive, of the order regulating the handling of milk in the (_____ marketing area (7 CFR Part [2]) which is annexed hereto; and

II. The following provisions:

§__[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of December 1987, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ __[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 88-9150 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-02-M

[1] First and last sections of the respective orders.

[2] Appropriate part number.

[3] Next consecutive section number.

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7 CFR Part 1944

Farmers Home Administration

Section 502 Rural Housing Loan Policies, Procedures and Authorizations; Interest Credit Continuation

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Section 502 Rural Housing loan regulations. This action is taken to implement a provision of law. The intended effect is to remove program restrictions on the provision of interest credit assistance.

DATES: Comments must be received by June 27, 1988.

ADDRESSES: Send comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348-S, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5338-S, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on budget levels, and funding allocations will not be affected because of this action.

Discussion

Section 1944.34 of 7 CFR Part 1944 establishes the procedures for granting interest credit subsidy on section 502 (single family) rural housing loans. A borrower whose household income exceeds the published moderate limit loses the subsidy, regardless of the impact on the family budget. The abrupt cancellation of interest credit often results in a large increase in the monthly payment, severely curtailing loan repayment ability and placing the borrower in danger of losing the home.

Section 309 of the Housing and Community Development Act of 1987 provides that, "with respect to a loan under section 502 [of the Housing Act of 1949], the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan."

FmHA has considered means of ascertaining whether the borrower could reasonably afford the monthly payments. This could be based on the completion of a family budget, requiring a significant amount of time and effort on the parts of both borrower and field personnel, and, due to its subjectivity, would likely result in numerous appeals if used as a basis for adverse decisions. A debt-to-income ratio could be used; however, this would not allow for variations in spending habits among different families. Neither system could take into consideration the disparity between families with different size debt loads, and might even be more favorable to the family with a pattern of excessive spending. The Agency considered changing the formula, establishing a lesser amount of interest credit for above-moderate-income borrowers. This would require developing a new formula, revising a form, and changing or adding new accounting system design requirements. The time required to correctly implement these changes would result in excessive delay in providing the available benefits to FmHA borrowers. We are proposing to continue the assistance to any borrower whose income exceeds the moderate limit, using the formula itself as the test of affordability, until the interest credit to which a borrower is entitled is less than $5.00 per month or less than $60.00 per year. This alternative would meet the intent of the law, with minimal impact on borrowers, field personnel and Agency logistics. It also provides a reasonable, supportable basis for Agency decisions.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V. 48 FR 29115, June 24, 1983, it is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, *Environmental Program*. FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Regulatory Flexibility Act, Pub. L. 96-354, requires the Agency to examine the impact of a proposed rule on small entities. Vance L. Clark, Administrator of the Farmers Home Administration has determined that this proposed action will not have a significant economic impact on a substantial number of small entities because it deals with the extension of subsidy assistance only to individual Farmers Home Administration single family housing borrowers.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate-income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

2. Section 1944.34(g)(2)(i)(C) is amended by removing the last sentence.

3. In § 1944.34 paragraphs (i)(1)(ii), (i)(3)(i) and (l) are revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(i) * * *

(1) * * *

(ii) Interest credit will not be renewed if the amount of interest credit for which the borrower qualifies is less than $5.00 monthly or $60.00 annually.

* * * * *

(3) * * *

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's adjusted income has increased to the level where the interest credit is less than $5.00 monthly or $60.00 annually, the interest credit will be cancelled effective the date the County Supervisor becomes aware of the situation. The borrower will be notified in accordance with paragraph (1) of this section.

* * * * *

(l) Applicant or borrower notice of right to appeal. All applicants or borrowers who request and are denied interest credit or whose interest credits are reduced, cancelled, or not renewed, will be notified of their appeal rights as required by § 1900.56 of Subpart B of Part 1900 of this chapter.

* * * * *

Dated: April 1, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-9153 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Seventh Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of seventh meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the seventh

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meeting of the High-Level Waste Licensing Support System Advisory Committee on May 18–19, 1988. The Committee, established under authority of the Federal Advisory Committee Act (FACA), is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revision related to the submission and management of records and documents for the HLW licensing proceeding.

DATE: The seventh meeting of the HLW Licensing Support System Advisory Committee will be held May 18–19, 1988.

ADDRESSES: The location of the May 18–19, 1988 meeting of the HLW Licensing Support System Advisory Committee is the Conservation Foundation, 1250 Twenty-Fourth St., NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The seventh meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include continued discussion of substantive issues related to a high-level waste licensing support system and draft language for a possible proposed rule.

The following are the remaining meetings of the negotiating committee that are scheduled as of the date of this notice: June 29–30, 1988—Reno, Nevada.

Dated at Bethesda, Maryland, this 21st day of April, 1988.

For the Nuclear Regulatory Commission.

David L. Meyer

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–9118 Filed 4–25–88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R–0633]

Regulation T; Credit by Brokers and Dealers; Foreign Sovereign Debt Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment an amendment to Regulation T that will permit broker-dealers to extend good faith loan value on long-term debt securities issued or guaranteed by a foreign sovereign, its provinces or states, or a supranational entity if there is available an explicit or implicit rating in one of the two highest rating categories by a nationally recognized statistical rating organization.

DATE: Comments should be received on or before May 27, 1988.

ADDRESS: Comments, which should refer to Docket No. R–0633, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or delivered at the C Street Entrance between 8:45 a.m. and 5:15 p.m. weekdays to Room B–2223. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board has received requests from two major broker-dealers to expand the definition of "OTC margin bond" in Regulation T to include long-term nonconvertible debt securities issued or guaranteed by foreign sovereigns, their provinces or states, or supranational entities. While these securities are currently eligible for "good faith loan value" at banks, foreign broker-dealers, and other lenders, U.S. broker-dealers are unable to extend any credit on these instruments unless they are registered with the Securities and Exchange Commission or the customer pledges that the borrowed funds will not be used to purchase or carry securities.

The provisions of the definition of "OTC margin bond" that currently preclude marginability for most foreign sovereign debt securities are the requirements that the securities have been issued in an offering registered under the Securities Act of 1933 and that the issuer file reports under the Securities Exchange Act of 1934. Last year the Board amended the definition of OTC margin bond to include any "mortgage related security" as defined in the Secondary Mortgage Market Enhancement Act of 1984. The amendment had the effect of making privately placed mortgage related securities eligible for good faith loan value at broker-dealers. This was the first time nonexempt securities not registered with the SEC were allowed as collateral for securities-related loans at broker-dealers. Congress' definition of mortgage related security includes a requirement that the security be rated in one of the two highest rating categories by a nationally recognized statistical rating organization. The current proposal contemplates marginability only where a similarly high explicit or implicit rating is available.

A discussion of the terms used in the proposed amendment follows:

Implicit ratings. Issues, not issuers, are rated. Part of the review of a private issue involves the evaluation of the country's creditworthiness, with the sovereign's evaluation providing a ceiling for any issuer resident in that country. Therefore, if any private issuer in a country is rated in the highest rating category, the sovereign must also be rated in the highest rating category. This is known as an "implicit" rating of the sovereign.

Supranational entities. "Supranational entity" is generally understood to mean an institution organized for a specific purpose by two or more sovereign governments. The long-term debt securities of some supranational entities, such as the International Bank for Reconstruction and Development (the World Bank), the Inter-American Development Bank, African Development Bank, and Asian Development Bank are exempted securities for purposes of the Securities Exchange Act of 1934 and therefore already marginable on a good faith basis. Other supranationals would be treated the same as foreign sovereigns under this proposal. The Board has previously published a list of exempt foreign, international, and supranational entities in connection with time deposits under Regulation D (see 12 CFR 204.125; FRRS 2–280). Supranationals named in this list, as well as other supranational entities including the Nordic Investment Bank and Eurofima, will be covered by the proposed amendment. Guidance from the Board or its staff should be sought as to the eligibility of other supranational entities.

Nationally recognized statistical rating organizations. At the present time, the SEC considers the following organizations to be "nationally recognized statistical rating organizations": Duff and Phelps, Inc.; Fitch Investors Services, Inc.; Moody's Investors Services, Inc.; McCarthy, Crisanti & Maffei; and Standard & Poor's Corporation (see Securities Exchange Act Release No. 34–2448 (May 5, 1987) at n. 2). These five organizations, however, are not all involved in rating foreign issues.

Long-term debt. "Long-term debt" is understood to mean having an original maturity date more than 365 days from the date of issuance.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this Notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78c, 78g, 78h, 78q and 78w), the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. A new paragraph (r)(4) is proposed to be added to § 220.2 as follows:

§ 220.2 Definitions.

* * * * *

(r) "OTC margin bond" means: * * *

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces or states, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) the issue,

(ii) the issuer or guarantor (implicitly), or

(iii) other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity.

* * * * *

Board of Governors of the Federal Reserve System, April 20, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–9068 Filed 4–25–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ANE–13]

Airworthiness Directives; Hamilton Standard 14SF–5 and 14SF–7 Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires inspections for cracks, and replacement when needed, of the plastic "Rynite" blade retaining rings on Hamilton Standard 14SF–5 and 14SF–7 propellers. This proposed AD retains the inspections of AD 87–10–05, Amendment 39–5609 (52 FR 17551; May 11, 1987), until required replacement of the plastic "Rynite" rings with metal aluminum rings is accomplished. This amendment will eliminate the need for repetitive inspections of the plastic rings.

DATE: Comments must be received on or before June 15, 1988.

ADDRESSES: Comments on the proposed may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87–ANE–13, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87–ANE–13".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins may be obtained from Hamilton Standard, Division of United Technologies Corporation, Windsor Locks, Connecticut 06096.

A copy of the service bulletins is contained in Rules Docket Number 87–ANE–13, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Systems and Propulsion Branch, ANE–153, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7066.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contract, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87–ANE–13". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to supersede AD 87–10–05, Amendment 39–5609 (52 FR 17551; May 11, 1987), which requires an initial and repetitive visual inspections for cracks, and replacement when needed, of the plastic "Rynite" blade retaining rings on Hamilton Standard 14SF–5 and 14SF–7 propellers.

The FAA has determined that replacement of the plastic "Rynite" blade retaining rings with metal aluminum retaining rings would eliminate the need for repetitive visual inspections of the plastic "Rynite" rings for cracks. Consequently, the FAA proposes to supersede AD 87–01–05 to require replacement of the plastic "Rynite" blade retaining rings.

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Conclusion

The FAA has determined that this proposed regulation involves approximately 80 propellers with negligible cost to operators. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 6, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding to § 39.13 the following new airworthiness directive (AD) which would supersede AD 87-10-05, Amendment 39-5609 (52 FR 17551; May 11, 1987), as follows:

§ 39.13 [amended]

Hamilton Standard: Applies to Hamilton Standard Model 14SF-5 and 14SF-7 propellers equipped with plastic "Rynite" retaining rings, P/N 785540-1, installed on, but not limited to, DeHavilland Dash 8 and Aerospatiale/Aeritalia ATR-42 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent loss of the plastic "Rynite" blade retaining rings, P/N 785540-1, and severe damage to the blade retention system with resultant propeller unbalance, accomplish the following:

(a) Within the next 50 hours time in service after May 21, 1987, and thereafter at intervals not to exceed 200 hours time in service, until accomplishment of paragraph (c), inspect the plastic "Rynite" blade retaining rings, P/N 785540-1, on all four blades in accordance with Hamilton Standard Alert Service Bulletin (ASB) 14SF-61-A21, Revision 2, dated March 27, 1987.

(b) If any evidence of cracks is discovered as a result of an inspection required by paragraph (a), prior to further flight remove from service both halves of blade retaining rings and install new or servicable retaining ring halves in accordance with Hamilton Standard ASB 14SF-61-A21, Revision 2, dated March 27, 1987.

(c) Replace, not later than July 31, 1989, the plastic "Rynite" blade retaining rings, P/N 785540-1, with metal aluminum blade retaining rings, P/N 794351-1, on all four blades in accordance with Hamilton Standard Service Bulletin 14SF-61-17, Revision 1, dated October 1, 1987.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(f) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service documents identified and described in this document.

This proposed AD will supersede AD 87-10-05, Amendment 39-5609, (52 FR 17551; May 11, 1987).

Issued in Burlington, Massachusetts, on April 15, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-9044 Filed 4-25-88; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-10]

Airworthiness Directives; Textron Lycoming O-320-A series, -B series, -C series, -D series, -E series; O-320-H2AD; IO-320-B1A, -B1C, -B1D, -B2A, -D1A, -E2A; LIO-320-B1A; A10-320-A1B, -B1B; AEIO-320- E1B, E2B; O-340-A1A, -A1B, -A2A; O-360-A series, -B series, -C series, -D series; O-360-F1A6; AEIO-360-B1G6, -H1A; HO-360-A1A, -B1A, B1B; HIO-360-B1A; O-360-E1A6D; LO-360-E1A6D; LO-360-A1G6D; IO-360-B series; IO-360-E1A; O-540-A series, -B series, -E series, -F series, -G series, -H series, -J series; O-540-W1A5D; AEIO-540-D4A5, -D4B5; IO-540-C series, -D series, -N series, -T series; and IO-540-W1A5D Model Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to all Textron Lycoming reciprocating model engines of the parallel valve cylinder head design which incorporate Textron Lycoming (hereinafter called "Lycoming") Part Number (P/N) 75068 or P/N 74541 exhaust valves and/or their FAA Parts Manufacturer Approval (PMA) replacements. This proposed AD would require repetitive inspections of the exhaust valve to exhaust guide clearance and the exhaust valve condition with repair and/or replacement as necessary. This proposed AD will also require replacement of the P/N 75068 and P/N 74541 exhaust valves prior to accumulating 2,000 hours time in service since new, with a new or serviceable exhaust valve.

The proposal is prompted by increasing numbers of exhaust valve failures and at least 68 incidents of unscheduled landings. This increase in service difficulties is partially attributed to the extensive use of higher-leaded aviation gasoline especially in the lower compression ratio engines which previously used 80/87 octane aviation fuel. The proposed AD is needed to prevent loss of engine power due to exhaust valve failure which could result in an emergency landing with resultant aircraft damage and personal injury.

DATE: Comments must be received on or before June 15, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Rules Docket No. 88-ANE-10, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-10".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable Textron Lycoming Service Bulletin (SB) No. 388A, dated April 14, 1978, and SB No. 404, dated September 17, 1976, may be obtained from Textron Lycoming, Williamsport Plant, 652 Oliver Street, Williamsport, Pennsylvania 17701.

A copy of the Service Bulletins is contained in Rules Docket No. 88-ANE-10, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Roy Hettenbach, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. Lycoming estimates that it will require 1 manhour to perform the inspection required by Lycoming SB No. 404, 3 manhours (4 cylinder engine) and 5 manhours (6 cylinder engine) to perform the inspections required by Lycoming SB No. 388A. The FAA estimates that up to 128,331 engines will be affected by this proposed AD. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-10". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that P/N's 75068 and 74541 exhaust valves experience an unacceptable number of failures before completing the full engine time between overhaul life. Since this condition is likely to exist or develop on other Lycoming reciprocating engines incorporating exhaust valves of the same design, the proposed AD would require repetitive inspections to determine exhaust valve condition, and if excessive exhaust valve to exhaust guide clearances exist, replacement as necessary in accordance with the Lycoming Service Bulletins previously specified. Also, a service life limit of 2,000 hours total operating time is specified for these exhaust valves and their FAA-PMA approved replacement parts.

Conclusion

The FAA has determined that this proposed regulation could affect 927,746 exhaust valves. Considering that both 4 and 6 cylinder engines are involved, the FAA estimates that up to 128,331 engines must comply with the repetitive inspections at an approximate average cost of $100 per year, per engine. The total average cost of complying with this AD, including inspections and any valve replacements found necessary by the inspections, is not expected to exceed $13.0 million. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding to § 39.13 the following new airworthiness directive (AD):

§ 39.13 [Amended]

Textron Lycoming: Applies to O-320-A series, -B series, -C series, -D series, -E series; O-320-H2AD; IO-320-B1A, -B1C, -B1D, -B2A, -D1A, -E2A; LIO-320-B1A; AIO-320-A1B, -B1B; AEIO-320-E1B, -B2B; O-340-A1A, -A1B, -A2A; O-360-A series, -B series, -C series, -D series; O-360-F1A6; AEIO-360-B1G6, -H1A; HO-360-A1A, -B1A, -B1B; HIO-360-B1A; O-360-E1A6D; LO-360-E1A6D; IO-360-B series; IO-360-E1A; O-540-A series, -B series, -E series, -F series, -G series, -H series, -J series; O-540-W1A5D; AEIO-540-D4A5, -D4B5; IO-540-C series, -D series, -N series, -T series; and IO-540-W1A5D model reciprocating engines which incorporate Textron Lycoming Part Number (P/N) 75068 and P/N 74541 exhaust valves and/or their FAA Parts Manufacturer Approval (PMA) replacement.

Compliance is required as indicated, unless already accomplished.

To prevent loss of engine power due to exhaust valve failure, accomplish the following:

(a) Within the next 50 hours time in service for fixed wing aircraft reciprocating engines, and within 25 hours time in service for helicopter reciprocating engines, after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours time in service or at each annual inspection, whichever occurs first, inspect the exhaust valves in accordance with the inspection procedure, page 2, described in Textron Lycoming Service Bulletin (SB) No. 404, dated September 17, 1976. Any valve that shows indications of being cracked or shows indications of localized heating is to be replaced with a new or serviceable exhaust valve prior to the next flight.

(b) Within the next 50 hours time in service for fixed wing aircraft reciprocating engines, and within 25 hours time in service for helicopter reciprocating engines, after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 300 hours time in service or at every third annual inspection, whichever occurs first: (1) Inspect to determine all exhaust valve to exhaust guide clearances in accordance with the procedure described in Part I or Part II of Textron Lycoming SB No. 388A, dated April 14, 1978; and (2) inspect the exhaust valves in accordance with the requirements of Part I paragraph 18, page 4 of SB No. 388A. If the valve to guide clearance exceeds the maximum gap specified in the table on page 4, and/or the exhaust valve exhibits erosion, cracking, or "necking" of the area of the valve between the guide and the valve seat, replace both the affected exhaust valve and exhaust valve guide with new or serviceable parts prior to the next flight.

Note.—Affected engines manufactured by Textron Lycoming after June 12, 1984, provided the exhaust valves have not been replaced with the subject part number valves or their FAA-PMA replacements, are exempt from the requirements of this AD.

(c) If the part number of the exhaust valves is not known or cannot be determined, then it

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shall be assumed that the P/N 75068 or P/N 74541 exhaust valves are installed in the affected engines and the engine is required to conform to the requirements of this AD.

(d) Replace the P/N 75068 or P/N 74541 exhaust valves and their FAA–PMA replacements where applicable, prior to accumulating 2,000 hours time in service since new, with a new or serviceable exhaust valve. If on the effective date of the AD, the hours in service of the subject exhaust valves exceed the above life limit then an additional 50 hours time in service is authorized for compliance with this paragraph only. If the exhaust valve total time in service is not known or cannot be positively determined, then the exhaust valve must be removed within the next 50 hours time in service and replaced with a new or serviceable exhaust valve.

(e) If the total operating time for replacement P/N's 75068 and 74541 exhaust valves or FAA–PMA replacements is not known or cannot be posttively determined, these valves are to be considered unserviceable and may not be installed in a flight engine.

(f) When corrective action requires the installation of a new exhaust valve, then new lock keys and valve stem caps shall also be installed.

(g) The results of the inspections and corrective actions required by paragraphs (a), (b), (d), and (e), including the part numbers of the replaced parts and the newly installed parts, shall be noted in the aircraft engine logbook.

(h) Replacement of the affected part number exhaust valves with Textron Lycoming P/N LW19001 exhaust valve, or subsequent FAA approved exhaust valve, will constitute terminating action for this AD.

Note.—Textron Lycoming no longer supplies the P/N 75068 and P/N 74541 exhaust valves.

(i) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(j) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE–170, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(k) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, ANE–170, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's Service Bulletins identified and described in this document.

Issued in Burlington, Massachusetts, on April 15, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88–9043 Filed 4–25–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ASW–57]

Proposed Removal of Transition Area; Foraker, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Foraker, OK. The cancellation of the standard instrument approach procedure (SIAP) serving the McKinney Ranch Airport has made this proposed removal necessary. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP to the airport. Coincident with this proposed action, the status of the McKinney Ranch Airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATE: Comments must be received on or before June 2, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–57, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–57." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Foraker, OK. The cancellation of the existing SIAP to the McKinney Ranch Airport, thus negating the need for a 700-foot transition area, has necessitated this proposed removal. The intended effect of this proposal is to release that controlled airspace no longer required for aircraft executing the SIAP to the airport. Coincident with this proposed action the status of the McKinney Ranch Airport will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Foraker, OK [Removed]

Issued in Fort Worth, TX, on April 14, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–9045 Filed 4–25–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ASO–4]

Proposed Revision of Transition Area; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Lawrenceville, Georgia, Transition Area by correcting the geographic position coordinates of the airport, changing the airport name from Gwinnett County to Gwinnett County-Briscoe Field Airport, deleting the extension either side of the Norcross VORTAC 077° radial and adding a new extension to provide controlled airspace for aircraft executing a new VOR/DME standard instrument approach procedure utilizing the Peachtree VOR/DME.

DATE: Comments must be received on or before May 25, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 88–ASO–4, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASO–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the Docket No. 88–ASO–4 notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Lawrenceville, Georgia, Transition Area. This action will correct the airport geographic position coordinates, change the airport name, delete the extension along the Norcross VORTAC 077° radial and add an extension to provide controlled airspace for aircraft executing a new standard instrument approach procedure utilizing the Peachtree VOR/DME. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

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Lawrenceville, Georgia [Revised]

By deleting the existing description and substituting the following: "That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Gwinnett County-Briscoe Field Airport (latitude 33°58'47" N., longitude 83°57'50" W.); within two miles either side of the Peachtree VOR/DME (latitude 33°52'32" N., longitude 84°17'56" W.) 068° radial, extending from the 6-mile radius area to 9 miles west of the airport."

Issued in East Point, Georgia, on April 12, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-9046 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

(FRL-3369-4)

Approval and Promulgation of Implementation Plans, Arizona State Implementation Plan Revision, Pima County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice announces EPA's proposed action to approve State Implementation Plan (SIP) revisions submitted by Arizona on January 6, 1988 to its carbon monoxide (CO) plan for the Tucson Arizona CO Planning Area (Pima County). This proposal is based on EPA's proposed conclusion that the control measures and attainment demonstration submitted with the Plan meet the requirements of Section 110 and Part D of the Clean Air Act and strengthen the existing SIP. EPA believes that the Pima CO Plan includes a persuasive demonstration of attainment of the CO standard by 1990 using all reasonably available control measures as expeditiously as practicable. The 1990 attainment deadline is consistent with the three year attainment timeframe set out in the proposed post-1987 ozone and CO policy (52 FR 45044, November 24, 1987). EPA is also proposing to lift the construction ban on major new stationary sources and major modifications of CO sources imposed on September 23, 1986 (51 FR 33746).

DATE: Comments must be submitted to EPA at the address below by May 26, 1988.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: State Liaison Section (A-2-2), Air Management Division.

Copies of the submitted Plan and EPA's technical evaluation of the Plan are available at the above address for public inspection during normal working hours.

Copies of the submitted Plan are also available at the County and state offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, AZ 85004

Pima Association of Governments, 405 Transamerica Building, Tucson, AZ 95701

Pima County Health Department, Air Quality Control District, 150 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION

Background

The Clean Air Act (CAA) amendments of 1977 required states to revise their SIPs by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Generally, the states containing these designated "nonattainment areas" had to submit revised plans by January 1, 1979. The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987 was available under section 172 if the state could demonstrate as part of its 1979 SIP revision that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas that obtained an attainment date extension from EPA, states were required to submit to EPA by July 1, 1982 an additional SIP revision that provided for attainment no later than December 31, 1987 and that complied with all other requirements of Part D of the CAA.

1. *SIP disapproval.*

A large portion of Pima County was designated as nonattainment for CO on March 3, 1978 [43 FR 8970] and the State submitted Pima County's initial nonattainment area plan for CO in 1978. On May 24, 1982, the State submitted a request to EPA to extend the CO attainment date in Pima County to December 31, 1987.

On July 7, 1982 [47 FR 29532], EPA took final action to approve the 1978 SIP revision on the condition that the State submit revised regulations for Pima County to meet EPA's New Source Review (NSR) requirements. Just before EPA took this action, however, the State indicated to EPA that it needed to submit a supplement to its 1978 CO Plan for the Pima area. EPA reviewed the supplement from the State in 1983 and 1984. On March 1, 1985 [50 FR 8346], EPA proposed to approve and incorporate into the SIP certain CO control measures submitted by the State in 1984 but deferred action on whether the attainment demonstration and new measures met the requirements of Part D.

On July 16, 1985 the Pima County Health Department (PCHD) adopted new NSR rules and on May 9, 1986 [51 FR 17210], EPA proposed to approve the Pima rules if the State and the PCHD submitted additional revisions to their rules to remedy certain deficiencies. The deficiencies in the NSR rules described by EPA in the May 9 proposal include incorrect stack height reference, overly broad exemptions from offsetting and permitting requirements, improper netting procedures, and certain inadequate definitions. For certain subareas of the Tucson CO Air Planning Area not subject to the NSR rules, EPA disapproved the CO SIP and imposed the construction moratorium, 51 FR 3335 [January 27, 1986]. On August 4, 1986 [51 FR 27843], EPA approved the State's request to redesignate those subareas from nonattainment to attainment for CO, thereby removing those subareas from the coverage of Part D and removing the construction ban in those areas.

On January 27, 1986 [51 FR 3346] EPA proposed (1) to find that the Pima County CO Plan, as revised in 1984, did not demonstrate attainment of the CO standard as expeditiously as practicable as required by section 172 of the CAA, and (2) based on that finding, to impose a moratorium under section 110(a)(2)(I) of the Act on major new construction and major modification of stationary sources of CO in the Tucson CO Air Planning Area. EPA's proposed finding was based upon significant deficiencies in the State's modeling demonstration and lack of detailed feasibility analyses of potential transportation control measures (TCMs). In addition, EPA proposed to deny the State's request for an attainment date extension to December 31, 1987.

On September 23, 1986 [51 FR 33746], EPA published a final notice disapproving the CO Plans for both the Maricopa and Pima Counties Nonattainment Areas, and imposing a construction ban on major new sources and major modifications to sources of CO in the two areas. EPA did not take final action on the State's attainment date extension request.

2. *U.S. District Court Order.*

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for CO in the Maricopa and Pima Counties Nonattainment Areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found the State Plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI). The timeframe specified in the Court Order for EPA to promulgate a FIP was 6 months, following either the formal submittal of the Pima CO Plan or September 30, 1987, whichever came first. *McCarthy v. Thomas*, D. Ariz. No. CIV-85344-TUC-1WDB. The Court left open the possibility that EPA could file a motion requesting an extension of this time period if necessary.

EPA outlined its intended approach to comply with the Court Order to promulgate a FIP for Maricopa and Pima Counties in an Advance Notice of Proposed Rulemaking (ANPRM) [52 FR 45466] published on November 30, 1987. In the ANPRM, EPA explained that to promulgate a FIP for these two areas, EPA must select control measures that fill whatever gaps are left by approved portions of the State Plans. The ANPRM also discussed a draft Pima County CO Plan, which had been submitted by the Pima County Association of Governments (PAG) in October 1987.

The draft Pima Plan contained the Arizona inspection and maintenance program (I/M) as expanded through 1987 and a commitment that the local governments in the Pima area would adopt an employer-based trip reduction ordinance and additional ride-sharing, transit and flow improvements. The Plan indicated that the area would attain the CO standard by approximately 1990. In the ANPRM, EPA stated its belief that, if the final Plan supported the attainment and maintenance demonstration of the Draft, a FIP for Pima County would not be necessary.

Section 110(c)(1) of the Act provides that the Administrator shall promulgate a FIP within the statutory schedule unless, prior to such promulgation, the state has adopted and submitted a plan which the Administrator determines to be in accordance with the requirements of section 110. Thus, EPA believes that it would be relieved of its obligation to promulgate a FIP for Pima if the State submitted an adequate SIP before the FIP promulgation. As noted in the ANPRM, since the timeframe for FIP promulgation in the Court Order was dependent on the Pima Plan submittal, EPA believes that the Court wanted EPA to analyze the Pima CO Plan before determining whether promulgation of a Pima FIP was necessary.

On January 6, 1988, the State submitted the final Pima CO Plan, which contains a demonstration of attainment by 1990. On March 14, 1988, EPA moved the Court to extend the period for EPA to promulgate a FIP for the Maricopa and Pima areas until December 30, 1988. EPA stated in its motion its intention to complete action on the State Plan for the Pima area within several months. That motion is still pending.

Findings and Actions

1. *EPA Approach.*

EPA proposes to find that the control measures adopted by the State and PAG and the attainment demonstration meet the requirements of Section 110 and Part D of the Act and, therefore, proposes to approve the final CO Plan for Pima County. As discussed below, EPA believes that the Pima CO Plan provides for the implementation of all reasonably available control measures so as to provide for attainment of the CO standard as expeditiously as practicable, but no later than a fixed near-term date. As explained below, that is the critical test, in EPA's view, for whether a plan is approvable under the Clean Air Act after passage of the December 31, 1987 attainment date.

EPA believes that it is unnecessary to take action on the State's request for an extension of the attainment date to December 31, 1987. Since that date has passed and the final CO Plan contains the vehicle emission control I/M program as well as the other measures needed to meet the Section 172 requirements applicable to attainment date extension area plans, EPA believes that the State's extension request is now moot.

Arizona has not submitted the revisions to its NSR rules necessary to cure the deficiencies that EPA identified in the May 9, 1986 notice. Therefore, technically the Pima CO Plan does not meet all of the applicable statutory requirements. EPA is currently reviewing the deficiencies outlined in the May 9, 1986 notice to determine whether the NSR rules can be approved in their current form. If EPA determines that additional provisions are necessary for a fully approvable NSR program, EPA will propose federal NSR provisions in a subsequent notice. At this time, the State does not anticipate any new major sources of CO in the Tucson area. Consequently, any NSR program will likely serve solely as a component of the maintenance plan for the area.

2. *EPA Criteria.*

In an April 4, 1979 notice [44 FR 20372], EPA published criteria for approval of the Part D SIP revisions that the Act required States to submit in 1979. On January 22, 1981 [46 FR 7182], EPA published criteria for evaluating the supplemental SIP revisions for extension areas due in mid-1982. EPA believes that the Pima CO control measures and attainment demonstration meet in substantial part these criteria for approval under Part D of the Act.

The Act does not specify the timeframe within which a plan approved after December 31, 1987 must provide for attainment of the CO NAAQS. As described fully in proposed policy issued on November 24, 1987 [52 FR 45044], EPA interprets the Act to require that any SIP approved after December 31, 1987 must demonstrate attainment of the standard as expeditiously as practicable but no later than the date derived from analogy to the attainment periods set forth in Sections 110(a)(2)(A) and 110(e) of the CAA. Section 110(a)(2)(A) requires a demonstration of attainment as expeditiously as practicable but (subject to Section 110(e)) in no case later than 3 years from the date of EPA's approval of the SIP. Section 110(e) provides an extension of up to 2 years beyond the 3 year period where, in essence, the State has applied all "reasonably available alternative means" (RAAM) to bring about attainment and has demonstrated that attainment can not be achieved within 3 years. As EPA explained in its November proposal, the history of the CAA planning requirements suggests that in post-87 attainment planning, Congress would have chosen to apply the 3- and 5-year periods in Section 110 rather than requiring a demonstration of immediate attainment.

3. EPA's Proposed Conclusions.

The Pima CO Plan provides for attainment of the CO standard with reasonably available control measures by 1990, well within the 3-year period (which would be 1991 assuming EPA approval in 1988). The trip reduction ordinances, mass transit expansion and other control measures adopted by Pima County jurisdictions, as well as the I/M program adopted today and Federal

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Motor Vehicle Control Program (FMVCP), would result in attainment of the standard by 1990 and maintenance beyond the ten year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning. EPA is not now prepared to find that other technologically available measures, such as an oxygenated fuels program, are both certainly practicable for the Tucson area and would advance the attainment date for the area. Moreover, EPA does not believe that any other measures that might be practicable would in fact advance the attainment date. Thus, the 1990 attainment date satisfies the CAA requirement that attainment occur as expeditiously as practicable. As described above, the maintenance demonstration in the Pima CO Plan meets all EPA and CAA Part D criteria, including the proposed post-1987 policy, which would require a maintenance demonstration of 10 years from the SIP due date.

EPA Evaluation

Inspection and Maintenance Program

EPA approved Arizona's motor vehicle inspection and maintenance (I/M) program on August 4, 1978 (43 FR 34476). On August 11, 1980 (45 FR 53145) changes to the program, which corrected certain deficiencies in the SIP and satisfied certain requirements under Part D of the Clean Air Act concerning I/M in Maricopa and Pima Counties, were approved as Arizona SIP revisions. Further revisions to the program were approved on April 29, 1982 (47 FR 17483).

On October 5, 1987 the Arizona Department of Environmental Quality (ADEQ) submitted, as SIP revisions, I/M program changes which are based on 1985 and 1986 legislation. These new or modified measures have strengthened the program to the extent that the emission reductions being achieved substantially exceed the levels EPA has proposed for I/M programs for post-1987 ozone and CO nonattainment areas. A summary of the Arizona I/M program and the major revisions made to the program can be found in the technical support document (TSD).

EPA is proposing today to approve the following rules which were submitted as SIP revisions on October 5, 1987: R9-3-1001 Definitions; R9-3-1003 Vehicles to be inspected by the mandatory vehicular emissions inspection program; R9-3-1005 Time of inspection; R9-3-1006 Emissions test procedure; R9-3-1008 Procedure for issuing certificates of waiver; R9-3-1009 Tampering repair requirements; R9-3-1010 Low emissions tune-up; R9-3-1011 Vehicle inspection report; R9-3-1013 Reinspections; R9-3-1016 Licensing of inspectors; R9-3-1018 Certificate of inspection; R9-3-1019 Fleet station procedures and permits; R9-3-1025 Inspection of state stations; R9-3-1026 Inspection of fleet stations; R9-3-1027 Registration of emission analyzers and opacity meters; R9-3-1028 Certification of users of registered analyzers and analyzer repair persons; R9-3-1030 Visible emission: mobile sources; R9-3-1031 Standards for evaluating aftermarket catalytic converters.

EPA is also proposing to approve the following portions of 1987 Arizona State legislation (Senate Bill 1360), submitted as a SIP revision on March 23, 1988: Section 6: ARS 15-1444-C (added); Section 7: ORS 15-1827-F (added); Section 21: ARS 49-542—A (amended); Section 21: ARS 49-543-E (added); Section 21: ARS 49-542-J.3.(b) (amended); and Section 23: ARS 49-550-E (added).

Senate Bill 1360 mandates the following enhancements to the I/M program: a) a requirement that vehicles registered outside a nonattainment area but used to commute to the driver's place of employment located within a nonattainment area be subject to the program; b) a requirement that vehicles owned by an out-of-county or out-of-state student attending a college or university located in a nonattainment area be subject to the program; and c) an increase in the repair cost limit for 1975 through 1979 model year vehicles from $100 to $200. These provisions will achieve emission reductions since a greater number of vehicles will be subject to the I/M program and more 1975 through 1979 model year vehicles should be repaired to the standards.

EPA is allowing credit for Senate Bill 1360 emissions reductions based upon the legislation, because the legislation provides specific and enforceable amendments to the State's I/M program. While the provisions of Senate Bill 1360 are already being implemented, the State is expected to submit to EPA as a SIP revision changes to the State's regulations conforming to the legislation. These regulations will be approved in a separate Federal Register action.

Emission Factor Methodology

At the request of EPA, Region IX, EPA's Office of Mobile Sources (OMS) reviewed the MOBILE3 emission factor modeling performed in the SIP submittal. In general, the analysis is technically correct and consistent with established EPA guidelines. Therefore, EPA finds the MOBILE3 emission factor modeling adequate to support the SIP. A March 16, 1988 memorandum from OMS to EPA, Region IX, which is part of the TSD, gives a more detailed explanation of the factors considered in this review.

Attainment Demonstration

The baseline and projected emission inventories are adequate to support the modeling analysis. The attainment demonstration is based on a hybrid model, with a hot spot component to establish the micro-scale impacts and a trajectory component to establish the regional scale impacts at the control site. The modeling analysis is adequate to support the attainment demonstration. Attainment is demonstrated by early 1990 with maintenance shown beyond the ten year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning.

The data from a supplementary monitoring program used to support the modeling analysis indicates that the maximum CO concentrations are not being measured at the permanent monitoring sites. Therefore, two more permanent monitoring sites should be established at the intersections of Broadway and Craycroft and Grant and Campbell, where two of the supplementary monitors were located. This will enable better tracking of the peak CO levels in the area.

Attainment is demonstrated with the Federal Motor Vehicle Control Program, the State's Inspection and Maintenance Program, existing traffic flow improvements, and programmed roadway improvements. For maintenance, the Plan addresses twelve categories of transportation control measures. Major measures in the maintenance strategy include trip reduction ordinances (TRO), rideshare programs, and transit improvement. All five jurisdictions have also recently adopted a TRO and committed to fund and staff its implementation. Other measures are described in the Plan and in the technical support document. The Plan contains further commitments to implement control strategies from the five jurisdictions in the Pima County CO nonattainment area: Tucson, South Tucson, Marana, Oro Valley, and Pima County.

Conformity

EPA's 1981 policy establishing criteria for approval of 1982 Plan revisions (46 FR 7182, January 22, 1981) required inclusion of procedures to comply with requirements under Section 176(c) of the Clean Air Act to assure that federally funded or approved projects conform to the SIP. Although the Pima plan does include procedures that can be used for conformity review, the TSD describes additional criteria that the State should add to its program to fully conform to EPA's 1981 guidance. EPA's proposed policy on post-1987 attainment planning (52 FR 45044, November 24, 1987) established additional conformity requirements that EPA proposed to require for all post-1987 plans. EPA does not propose to require that Arizona meet the additional conformity requirements contained in the post-1987 policy, since the Pima plan was prepared before the post-1987 policy was proposed, and in any event, EPA has not decided whether it should impose those additional requirements generally after 1987. However, EPA will work with Pima County to encourage incorporation of procedures and criteria incorporating EPA's guidance of 1980, 1981, and the post-1987 proposal.

Public Participation

The Clean Air Act Amendments of 1977 clearly emphasize the need for public and elected official input to SIP development. Section 17(9b)(9) requires public involvement and consultation. This section requires nonattainment plans to evidence public, local government, and State legislative involvement and consultation in accordance with section 174 and include (a) an identification and analysis of plan effects and alternatives considered by the State and (b) a summary of the public comment on such analysis. Section 110 and 172(b)(1) of the Act require a "reasonable notice and public hearing" prior to adoption and submittal of the SIP.

Based on PAG's public participation program, EPA has determined that the above criteria have been fulfilled. In addition to two public hearings, two legal notices and three press releases, PAG utilized three established environmental citizen participation committees, totalling over 100 members. Committees included the Environmental Planning Advisory Committee, the Environmental Planning and Air Quality Committee, and the Technical Advisory Committee for Carbon Monoxide Monitoring and Modeling. PAG was also instrumental in forming the Air Quality Executive Committee, composed of elected officials of the jurisdictions of eastern Pima County and the Chairman of the State Transportation Board.

Comments and the Public Docket

EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to Mr. Wallace Woo at the address listed above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. Final approval of this plan would merely approve requirements that the State has already adopted. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, carbon monoxide, hydrocarbons, intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: April 15, 1988.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 88-9069 Filed 4-25-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket No. R-117]

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to amend the procedure by which subsidy for the operation of bulk cargo vessels in the foreign commerce of the United States is determined. The proposed change would permit the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and would adjust the period of exchange rate experience used in wage rate calculations.

DATE: Comments must be received on or before the close of business June 27, 1988.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of ten (10) additional copies of the comments. All comments will be made available for inspection during normal business hours at the address above. Commenters wishing MARAD to acknowledge receipt should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. Tel. (202) 366-2323.

SUPPLEMENTARY INFORMATION: The determination of operating-differential subsidy (ODS) for bulk cargo vessels engaged in world-wide services is governed by the regulations at 46 CFR Part 252. Section 252.31(f) requires that wage subsidy rates be established on the basis of a comparison of U.S. and foreign wage costs as of January 1 of the subsidized fiscal year. The procedures provide that the foreign currencies applicable to the foreign wage cost determinations be converted into U.S. dollars by using, generally, the average end-month exchange rates for July through January of the subsidized fiscal year.

MARAD has recalled permanently its Foreign Maritime Representatives whose responsibilities included, among other duties, the collection of foreign wage cost information used in the calculation of wage subsidy rates. The elimination of MARAD's foreign posts will delay the collection of foreign wage cost data applicable to the annual subsidy rate calculations.

To avoid potential delays in the finalization of wage subsidy rates while continuing to maintain a fair and reasonable determination of the U.S./foreign wage cost differential, MARAD is proposing to amend § 252.31(f) to provide for the comparison of U.S. and foreign wage costs as of January 1 of the fiscal year preceding the subsidized fiscal year. The percentage relationship of foreign to U.S. wage costs resulting from the comparison would be applied to the full U.S. wage costs determined as of January 1 of the subsidized fiscal year to derive the corresponding foreign wage amount used in the subsidy rate calculation. Foreign-flag competition would continue to be identified on the basis of data as of January 1 of the year preceding January 1 of the subsidized year.

MARAD further proposes that the exchange rates used to convert the foreign wage cost estimates into U.S. dollars be the average end-month exchange rates for the period July

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through June that includes the January 1 for which the foreign costs are determined. The regulation presently provides a seven-month period for exchange rates to permit timely ODS rate calculations. However, the regression of the U.S./foreign wage cost comparison be one year would permit the use of exchange rates for a twelve-month period without delaying final rate calculations. MARAD considers the use of twelve months of exchange rates preferable to the shorter seven-month period.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). This proposed rulemaking would merely effect minor changes in the methodology for determining wage subsidy rates for subsidized bulk cargo vessels that would result in no appreciable change in ODS receipts and obligations.

Since this proposed rulemaking effects principally ship operators with substantial annual revenues, the Maritime Administrator certifies that this rulemaking, if finalized, would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements.

List of Subjects in 46 CFR Part 252

Grant programs, Transportation, Maritime carriers, Reporting and recordkeeping requirements.

PART 252—[AMENDED]

1. The authority citation for Part 252 continues to read as follows:

Authority: Secs. 204(b), 603, 606 Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173, 1176) and 49 CFR 1.66.

2. Section 252.31(f) introductory text, (f)(2) and (f)(3) introductory text are revised to read as follows:

§ 252.31 Wages of officers and crews.

* * * * *

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

* * * * *

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics", published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign cost percentage.

By order of the Maritime Subsidy Board/ Maritime Administrator.

Dated: April 14, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-8676 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-81-M

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46 CFR Part 282

[Docket No. R-116]

General Procedures for Determining Operating-Differential Subsidy for Liner Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to amend the procedure by which subsidy for the operation of liner vessels in the foreign commerce of the United States is determined. The proposed change would permit the regression by one year of the U.S./foreign cost relationship used in the determination of wage subsidy rates, and would adjust the adjust the period of exchange rate experience used in wage rate calculations.

DATE: Comments must be received on or before the close of business June 27, 1988.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Adminsitration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of ten (10) additional copies of the comments. All comments will be made available for inspection during normal business hours at the address above. Commenters wishing MARAD to acknowledge receipt should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. Tel. (202) 366-2323.

SUPPLEMENTARY INFORMATION: The determination of operating-differential subsidy (ODS) for liner vessels engaged in essential services of the foreign commerce of the United States is governed by the regulations at 46 CFR Part 282. Section 282.12(f) requires that wage subsidy rates be established on the basis of a comparison of U.S. and foreign wage costs as of January 1 of the subsidized fiscal year. The procedures provides that the foreign currencies applicable to the foreign wage cost determinations be converted into U.S. dollars by using, generally, the average end-month exchange rates for July through January of the subsidized fiscal year.

MARAD has recalled permanently its Foreign Maritime Representatives whose responsibilities included, among other duties, the collection of foreign wage cost information used in the calculation of wage subsidy rates. The elimination of MARAD's foreign posts will delay the collection of foreign wage cost data applicable to the annual subsidy rate calculations.

To avoid potential delays in the finalization of wage subsidy rates while continuing to maintain a fair reasonable determination of the U.S/ foreign wage cost differential, MARAD is proposing to amend § 282.21(f) to provide for the comparison of U.S. and foreign wage costs as of January 1 of the fiscal year preceding the subsidized fiscal year. The percentage relationship of foreign to U.S. wage costs resulting from the comparison would be applied to the full U.S. wage costs determined as of January 1 of the subsidized fiscal year to derive the corresponding foreign wage amount used in the subsidy rate calculation. The foreign flags for which the wage cost determinations are made would continue to be those flags identified on the basis of data from the penultimate calendar year preceding January 1 of the subsidized year.

MARAD further proposes that the exchange rates used to convert the foreign wage cost estimates into U.S. dollars be the average end-month exchange rates for the period July through June that includes the January 1 for which the foreign costs are determined. The regulation presently provides a seven-month period for exchange rates to permit timely ODS rate calculations. However, the regression of the U.S./foreign wage cost comparison by one year would permit the use of exchange rates for a twelve-month period without delaying final rate calculations. MARAD considers the use of twelve months of exchange rates preferable to the shorter seven-month period.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). This proposed rulemaking would merely effect minor changes in the methodology for determining wage subsidy rates for subsidized liner vessels that would result in no appreciable change in ODS receipts and obligations.

Since this proposed rulemaking affects principally ship operators with substantial annual revenues, the Maritime Administrator certifies that this rulemaking, if finalized, would not exert a significant economic impact on a substantial number of small entities under the Regultory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements.

List of Subjects in 46 CFR Part 282

Administrative practice and procedure, Grant programs, transportation, Maritime carriers, Reporting and recordkeeping requirements.

PART 282—[AMENDED]

1. The authority citation for Part 282 continues to read as follows:

Authority: Secs. 204(b), 603, 606 Merchant Marine Act, as amended (46 U.S.C. 1114(b), 1173, 1176) and 49 CFR 1.66.

2. Section 282.21 (f) introductory text, (f)(2) and (f)(3) introductory text are revised to read as follows:

§ 282.21 Wages of officers and crew.

* * * * * * *

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the last fiscal year preceding the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

* * * * * * *

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for the period July through June that includes the January 1 for which FC is calculated. The exchange rates shall be obtained from the publication, "International Financial Statistics", published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage costs.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type, calculated as of January 1 of the January 1 of the subsidized fiscal year, by the ratio of FC to WC, calculated as of January 1 of the last fiscal year preceding the subsidized fiscal year. The following is a sample calculation of the foreign cost percentage.

By order of the Maritime Subsidy Board/ Maritime Administrator.

Dated: April 14, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-8677 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-161; FCC 88-133]

Public Land Mobile Services; Cellular Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to revise Part 22 of the Commission Rules regarding the number and form of copies of Mobile Services Division applications to be filed with the Commission and the filing of FCC Form 430. This proposal recommends that applications and related materials be filed on microfiche and that Form 430 be eliminated. The intent of this proposal is to save space, avoid the need for additional reference areas, reduce the need for additional personnel, and reduce the volume of applications currently stored in the Mobile Services Division.

DATES: Comments must be received on or before June 6, 1988. Reply comments must be received on or before June 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, Mobile Services Division Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* adopted March 30, 1988, and released April 15, 1988. The full test of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. This notice proposes that all Mobile Services Division applications amendments, correspondence, exhibits and attachments be filed on microfiche and that FCC Form 430 be eliminated. Non-cellular applicants and non-initial cellular applicants would be required to submit the original application as well as three microfiche copies. Initial cellular applicants would initially have to submit only two microfiche copies. Since cellular applications are discarded following the lottery, cellular applicants would no longer be initially required to submit the original application. Only the winning cellular applicants would have to file two hard copies and a third microfiche copy. With respect to Form 430, since the staff seldom uses the information requested in the form and since the information is essentially

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duplicated in Schedule A of FCC Form 401, the Commission proposes that Form 430 should be eliminated.

This proposal was initiated to save space, avoid the need for additional reference areas, reduce the necessity to continually add personnel to cope with the volume of work, and reduce the volume of the applications currently stored in the Mobile Services Division.

2. *Ex Parte:* This is a non-restricted notice and comment rule making proceeding. *See* §§ 1.1202, 1203, 1206 of the Commission's Rules, 47 CFR 1.1202, parts 1203 and 1206 for rules governing permissible *ex parte* contacts.

3. *Initial Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603(a), the Commission notes that adoption of this proposal will uniformly effect all entities with a minimal cost associated with the filing of applications, amendments, correspondance, exhibits and attachments in microfiche form. We are considering exempting submissions of two pages or less from this requirement.

4. *Paperwork Reduction.* The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Federal Communications Commission.

5. *Service List.* A copy of this *Notice* shall be sent to the Chief, Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9111 Filed 4-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-116; FCC 88-103]

Radio Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to modify § 73.3573(a)(1) of the Commission's Rules to permit the downgrading in an FM allotment to be effectuated by application. Currently, § 73.3573(a)(1) requires an applicant to file a petition for rule making to either upgrade or downgrade an FM allotment.

DATES: Comments must be filed on or before June 6, 1988, and reply comments on or before June 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-116, adopted March 11, 1988, and released April 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this document may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

This is a nonrestricted notice and comment rule making proceeding. See § 1.231 of the Commission's Rules.

This Notice includes an Initial Regulatory Flexibility Analysis (IRFA) which determined that this proposal will lessen the burden on stations by eliminating the requirement for a petition for rule making. The IRFA is subject to public comment.

This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to increase burden hours imposed upon the public.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9112 Filed 4-25-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 80471-8071]

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 1 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP), adopted by the Western Pacific Fishery Management Council (Council) at its 61st meeting in Honolulu, Hawaii on February 25-26, 1988. Amendment 1 would (1) include the E.E.Z. around the U.S. Pacific island possessions as a combined single exploratory area with a 1,000 kg annual harvest quota for all species of precious corals combined, (2) expand the management unit species to include all precious coral in the genus *Corallium*, and establish an experimental fishing permit (EFP) under the FMP for fishing in exploratory areas. The intent of the amendment is to establish Council management authority over the full range of precious coral resources in the EEZ and encourage domestic exploratory fishing for precious coral under controlled conditions.

DATE: Written comments must be submitted on or before June 6, 1988.

ADDRESS: Send comments to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the amendment may be obtained by contacting the Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1406, Honolulu, Hawaii 96813, 808/523-1368. Comments on the proposed information collections should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole St., Room 106, Honolulu, Hawaii, 96822-2396, 808/955-8831.

SUPPLEMENTARY INFORMATION: The domestic and foreign fisheries for precious coral in the exclusive economic zone (EEZ) adjacent to the State of Hawaii and the territories of Guam and American Samoa are managed under the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). The FMP was developed by the Western Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), approved by the Secretary of Commerce on May 20, 1980, and implemented September 29, 1983 (48 FR 39229; August 30, 1983).

U.S. Possessions

When the FMP was first approved in 1980, the jurisdiction of the Council, as defined by the Magnuson Act, did not extend to the EEZ around the U.S. possessions in the western Pacific. As such, the Precious Coral FMP management area included the EEZ around Hawaii, Guam, and American Samoa, only. With the passage of Public Law 97-453 in 1983, the Magnuson Act was amended to extend Council jurisdiction to the EEZ around the U.S. Pacific possessions.

Amendment 1 would formally incorporate the EEZ around the U.S. possessions into the FMP management area and create a new combined, single exploratory area (X-P-PI) for the U.S. possessions. The new exploratory area would have a 1,000 kg annual harvest quota for all species of precious corals combined. The areas affected by this action include the EEZ around Wake Island, Johnston Atoll, Kingman Reef and Palmyra Island, Jarvis Island, and Howland and Baker Islands. The management measures proposed for the possessions are consistent with the regulations currently in place for the other exploratory areas defined in the FMP.

Redefine the Management Unit Species

Amendment 1 proposes to expand the definition of precious coral covered under the FMP to include all species of the genus *Corallium*. The management unit species, as defined in the regulations, cover twelve species of coral, three of which are pink (or red) coral in the genus *Corallium*. The Council determined that this definition is unnecessarily restrictive in that it fails to recognize present taxonomic uncertainties that surround the recently discovered Midway deepsea coral (*Corallium* sp. nov.), and does not provide automatic FMP management authority in the event new species of *Corallium* precious corals are discovered in the EEZ. In order to circumvent these taxonomic problems, the Council proposes to expand the definition of precious coral to include all species of coral in the genus *Corallium*. Harvest quotas established for the exploratory areas remain unchanged. However, harvests of any new species of *Corallium* will count toward the established quotas.

Experimental Fishing Permit (EFP)

The original goal of the FMP was to obtain optimum yield from the precious coral fishery in the EEZ by striking a balance among several objectives. These objectives included, among others, (1) encouraging development of a domestic fishery for precious coral, (2) generating new information needed for resource management, and (3) preventing overfishing and wastage of the resource. That goal has not been achieved.

The original FMP established a harvest quota of 1,000 kg of precious coral for each of the three exploratory areas defined in the FMP. It was believed that a 1,000 kg quota would provide sufficient incentive to stimulate exploration and discovery of new coral beds.

Rather than stimulate exploratory fishing for precious coral, the 1,000 kg quota has proven to be too low to justify the financial investments required by domestic fishermen to explore for and harvest precious coral. As such, there has been no legal fishing for precious coral by domestic or foreign fishermen since the FMP first went into effect. Furthermore, the absence of domestic or foreign fishing has prevented the Council and NMFS from obtaining any new information on precious coral resources which could be used to refine the current management program. Neither State nor Federal fishery research budgets currently are able to finance a new research initiative focused on precious coral.

In order to address these problems, the Council has proposed the establishment of an experimental fishing permit (EFP). An EFP would allow fishermen to harvest precious coral in exploratory areas above current quota levels under tightly controlled conditions. Harvest quotas would be assigned on a case-by-case basis to each vessel fishing under an EEP at a level that would be more directly related to the cost of undertaking an exploratory fishing venture for precious coral and that would produce the type of scientific information needed to better manage the resource. An EFP application and review process is established which defines the application requirements, review criteria, and operating conditions which may be attached to an EFP in order to protect precious coral beds. An opportunity for public comment on EFP applications is provided. In addition, the Council will develop guidelines for its use in evaluating EFP applications and making recommendations to the Regional Director.

The Council recognizes the need to increase harvest quotas in order to stimulate domestic fishing and generate information needed for accurate resource assessment. However, because of limited information available on the size and reproductive condition of precious coral beds, the Council was reluctant to propose and unable to justify a permanent increase in harvest quotas. Controlled fishing under an EFP was the preferred alternative to accomplish these objectives. Information generated by vessels fishing under an EFP will allow the Council to develop future harvest quotas which are more in line with resource abundance.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of any amendment to an FMP. At this time, the Secretary has not determined that the FMP amendment that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and the other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment as a part of the FMP amendment and initially determined that there will be no significant impact on the environment as a result of this rule.

The Under Secretary of NOAA determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The Council prepared a regulatory impact review which concludes that this rule will have a positive impact on small business entities. Current FMP regulations and harvest quotas have effectively prevented any domestic fishing for precious coral, particularly in the Hawaii exploratory area. The proposed rule is expected to provide new harvesting opportunities for domestic fishermen.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99-659, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed

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rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses. Because there are no domestic vessels currently operating in the fishery, addition of the U.S. Pacific possessions and all species of *Corallium* under the FMP, will not have an impact on small businesses. The provision for an Experimental Fishing Permit system could have minor, but positive effects if small entities begin to participate in the fishery on a limited basis. As a result a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act. Information will be collected from interested persons applying for experimental fishing permits as required by the FMP. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Act.

The Council has initially determined that the measures established in Amendment 1 are consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa, Guam, and Hawaii. Letters requesting concurrence with this finding have been forwarded to the responsible agency within each government.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 680

Fisheries, Reporting and recordkeeping requirements.

Dated: April 20, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR Part 680 is proposed to be amended as follows:

PART 680—[AMENDED]

1. The authority citation for 50 CFR Part 680 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 680.1, paragraph (b) is revised to read as follows:

§ 680.1 Purpose and scope.

* * * * *

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the exclusive economic zone seaward of Hawaii, Guam, American Samoa, and the U.S. Pacific Island possessions in the western Pacific.

* * * * *

3. In § 680.2, the definition for *Fishery conservation zone* (FCZ) is removed and a new definition for *Exclusive economic zone* (EEZ) is added in alphabetical order, and the definitions of *Management area*, the introductory text of *Permit area*, and the introductory text of *Precious coral* are revised and paragraph (d)(4) is added to the definition of *Permit area* to read as follows:

§ 680.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

Management area means the EEZ of the United States seaward of the State of Hawaii, the Territory of Guam, the Territory of American Samoa, and the U.S. possessions in the western Pacific.

* * * * *

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

* * * * *

(d) * * *

(4) Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. possessions in the western Pacific.

* * * * *

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

* * * * *

4. In Subpart A of Part 680, a new § 680.10, *Experimental fishing permits (EFP)*, is added as follows:

§ 680.10 Experimental fishing permits (EFP).

(a) *General.* The Secretary may authorize the direct or incidental harvest of precious coral managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFP's will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage;

(vii) Gross tonnage;

(viii) Radio call sign;

(ix) Engine horsepower; and

(x) Approximate fish hold capacity.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant. The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An application will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State.

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council, the U.S. Coast Guard, and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose information or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The Secretary will publish a notice in the **Federal Register** announcing the decision to grant or deny an EFP. If the permit is granted, the **Federal Register** notice will describe the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to the following:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(d) *Duration.* The effective period of the permit will be specified by the Secretary in the terms of the EFP. An EFP may be renewed by following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Surrender.* Upon issuance of an EFP the applicant must surrender to the Regional Director any permit to fish for precious coral that was issued under § 680.4 of this part.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated under this Act, will be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement reasons will be governed by 15 CFR Part 904 Subpart D.

(j) *Permit modification.* Where circumstances have changed such that a permittee desires to modify any term or condition of an EFP, the permittee must submit, to the Regional Director, a written request which provides full justification and supporting information for the proposed modification. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in paragraph (c) of this section. Modifications to an EFP which are of a technical nature, only, and do not affect the substance of the fishing activity authorized by the EFP may be approved by the Regional Director without the notice and consultation provided for in paragraphs (c) (1) and (2) of this section.

(k) *Appeals of administrative action.* (1) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit or a permit holder may appeal the denial or conditioning of a permit under § 680.10 to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set out in 50 CFR Part 680 and Amendment 1 to the FMP, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place and subject matter of the hearing in the **Federal Register**. A hearing will normally be held no later than 30 days following publication of the notice in the **Federal Register** unless the hearing officer extends the time for reasons deemed equitable. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer will recommend in writing a decision to the Assistant Administrator.

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(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefor.

(1) *Protected species.* Vessels fishing under an EFP are required to report any incidental take or fisheries interaction with protected species in the fishing logbook described in § 680.5. As required by that section, copies of logbook sheets must be submitted to the Regional Director within 3 days of arriving in port.

§ 680.21 [Amended]

5. In § 680.21, Table 1, the coral bed named "Hawaii, American Samoa, Guam" is revised to read as "Hawaii, American Samoa, Guam, U.S. Pacific Island possessions."

§§ 680.2, 680.4, 680.7, 680.21, and 680.25 [Amended]

6. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: §§ 680.2, definition for Permit area, 680.4(k), 680.7(a)(12), 680.21(a) Table 1, footnote(c), and 680.25 (a) and (b).

[FR Doc. 88-0129 Filed 4-21-88; 2:20 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 80
Tuesday, April 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Beef Promotion and Research; Certification and Nomination; Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations and beef importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established nominations will be accepted from eligible organizations and individual importers.

EFFECTIVE DATE: Applications for Certification must be received by close of business on May 27, 1988.

ADDRESS: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; Room 2610–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, (202) 447–2650.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985, approved December 23, 1985, authorizes the implementation of a national Beef Promotion and Research Order. The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The Board consists of 106 cattle producers and 5 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not neet to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and biographical data sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557). Organizations which were certified in 1986 and 1987 to nominate members to the Board *do not* need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of three (3) years, except that members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. Since the initial Board was appointed on August 4, 1986, there will be vacancies in those States or units whose producer or importer representatives were appointed to the initial Board for a 2-year term. The 36 vacancies by State or unit are as follows:

State or unit	Number of vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
New Mexico	1
North Carolina	1
Oklahoma	1
South Carolina	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
West Virginia	1
Wisconsin	2
Wyoming	1
Mid-Atlantic (CT,DE,MD,NJ,RI)	1
Northeast (ME,MA,NH,VT)	1
Importers	2

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or in the Northwest unit.

Uncertified, eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business on May 27, 1988. Uncertified, eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form, but should provide the requested information by letter, as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications received after May 27, 1988, will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at

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7 CFR 1280.530, which were published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations—

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information—

(1) The number and type of members represented (i.e., beef, or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units, having vacant positions on the Board will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and biographical data sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

Done at Washington, DC, on: April 21, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-9131 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

South Dakota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the South Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 p.m. on May 20, 1988, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57102. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Francis Whitebird or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 18, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-9050 Filed 4-26-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Western Pacific Precious Coral Experimental Permit.

Form Number: Agency—N/A; OMB—N/A.

Type of Request: New Collection.

Burden: 3 respondents; 3 reporting hours.

Needs and Uses: An experimental fishing permit system is being proposed for the Precious Corals Fishery of the Western Pacific Region. It is intended to increase the opportunities for domestic fishermen to harvest corals while continuing to protect the resource. Without the experimental permit procedure, the possibility of domestic utilization of this resource is reduced.

Affected Public: Individuals; businesses or other for-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Western Pacific Precious Coral Logbook.

Form Number: Agency—N/A; OMB—0648-0016.

Type of Request: Revision of a currently approved collection.

Burden: 3 respondents; 30 reporting hours.

Needs and Uses: Individuals holding permits to fish for precious corals in the western Pacific region are required to submit logbooks containing catch and effort information. The data will be used by the National Marine Fisheries Service to conduct stock assessments which will be used in making fishery management decisions.

Affected Public: Individuals; businesses or other for-profit institutions; small businesses or organizations.

Frequency: Daily when fishing.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: April 20, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88-9085 Filed 4-25-88; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Felipe Beltran from an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

Felipe Beltran (Appellant) has filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456 (c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). This appeal arises from an objection by the Puerto Rico Planning Board to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. 87IAM-20990 for construction of a bulkhead with backfill and a boat ramp along the Bayamon River in Catano, Puerto Rico.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: April 20, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-9125 Filed 4-25-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Telecinco, Inc. From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

Telecinco, Inc. (Appellant) has filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). This appeal arises from an objection by the Puerto Rico Planning Board to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. 87IPM-20854 for the filling of 0.5 acres of wetlands to develop residential plots near Joyuda Lagoon in Cabo Rojo, Puerto Rico.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: April 20, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-9124 Filed 4-25-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Angel Herrera From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

Angel Herrera (Appellant) has filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). This appeal arises from an objection by the Puerto Rico Planning Board to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. 87IPM-21172 for the deposit of fill material to build new parking facilities in San Juan, Puerto Rico.

If the Appellant perfects the appeal by filing the supporting data and information required by the

Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: April 20, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-9125 Filed 4-25-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Tip Top Associates From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

Tip Top Associates (Appellant) has filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). This appeal arises from an objection by the South Carolina Coastal Council to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. P/87-3B-351 for the filling of 0.74 acres of wetlands for the construction of a roadway over Cowford Creek in Horry County, South Carolina.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: April 20, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 88-9127 Filed 4-25-88; 8:45 am]

BILLING CODE 3510-08-M

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Coastal Zone Management; Federal Consistency Appeal by Claude A. White From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

Claude A. White (Appellant) has filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regualtions, 15 CFR Part 930, Subpart H (1987). This appeal arises from an objection by the South Carolina Coastal Council to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. P/N 87–SAC–28–87–794B for the filling of 0.34 acres of wetlands in order to make his property more marketable.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: April 20, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Mangement Program Assistance)

[FR Doc. 88–9128 Filed 4–25–88; 8:45 am]

BILLING CODE 3510–08–M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will convene a public meeting April 27–28, 1988, at the Council's office (address below).

On April 27 from 2 p.m. to approximately 5 p.m., the Committee will discuss a definition of overfishing, environmental/habitat problems, and issues related to the Committee's regular administrative operations. The public meeting will reconvene April 28 from 10 a.m. to noon, if necessary.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918–2577; (809) 753–4926.

Dated: April 21, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–9136 Filed 4–25–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of DoD 5025.1–I, "DoD Directives System Annual Index"

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of DoD 5025.1–I. The Index may be purchased from the following organizations:

National Technical Information (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Telephone number (703) 487–4600.

OR

U.S. Naval Publications and Forms Center (NPFC), 5801 Tabor Avenue, Attention Code 1052, Philadelphia, Pennsylvania 19120–5099, Telephone number (215) 697–3321.

The NTIS accession number for the "DoD Directives System Annual Index," January 1988 edition, is PB88 189626; NPFC identifies it as DoD 5025.1–I.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bynum, Correspondence and Directives Directorate, Directives Division, Room 2A286, the Pentagon, Washington, D.C. 20301–1155, telephone number (202) 697–4111.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1988.

[FR Doc. 88–9133 Filed 4–25–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/JA(EU)–39, for the retransfer of 441 kilograms of uranium enriched to 18.7 percent in the isotope uranium–235 from the Federal Republic of Germany to Japan for fabrication of fuel for the JOYO experimental breeder reactor.

RTD/JA(EU)–40, for the retransfer of 18.5 kilograms of uranium enriched to 27.02 percent in the isotope uranium–235 from the Federal Republic of Germany to Japan for fabrication of fuel for the JOYO experimental breeder reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: April 21, 1988.

Richard H. Williamson,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–9093 Filed 4–25–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EW(SW)–78, for the transfer from Sweden to Belgonucleaire, Dessel, Belgium, of irradiated fuel segments containing 609 grams of uranium depleted in the isotope uranium-235 and 3 grams of plutonium for post-irradiation examination.

In accordance with Section 313 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: April 21, 1988.

Richard H. Williamson,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–9094 Filed 4–25–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Civilian Radioactive Waste Management

Initial Version of a Study on Dry Cask Storage To Be Released for Public Comment

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of solicitation of comments.

SUMMARY: In accordance with the requirements of section 5064 of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203), the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) is preparing a report on the study and evaluation of the use of dry cask storage (and other technologies currently being considered) at reactor sites to meet the utility industry's spent nuclear fuel storage needs through the start of operation of a permanent geologic repository (year 2003). As part of this study, the OCRWM will solicit the views of State and local governments and the public on an initial version of the report which is intended to be released this summer. Those interested in commenting on the report should submit a request to the DOE contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Hartkopf, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, RW–32, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2839.

SUPPLEMENTARY INFORMATION: Preparation of this study and evaluation has been initiated by the OCRWM. The completed report is intended to be submitted to the Congress by the statutory date of October 1, 1988.

Consistent with the guidance from Congress, the objectives of the study are:

1. To consider the costs of dry cask storage technology, the extent to which dry cask storage at reactor sites will affect human health and the environment, the extent to which storage at reactor sites affects the cost and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors that are considered appropriate.

2. To consider the extent to which amounts in the Nuclear Waste Fund can be used, and should be used, to provide funds to construct, operate, maintain, and safeguard spent nuclear fuel in dry cask storage at reactor sites.

3. To consult with the Nuclear Regulatory Commission and include its views in the report.

4. To solicit the views of State and local governments and the public.

This notice is intended to facilitate the participation of State and local governments and the public by informing them of the study and its objectives, and notifying them that an intitial version of the report will be available for their review and comment. A subsequent notice will be placed in the **Federal Register** to indicate that copies of the report are available and that the public comment period has begun. The initial version of the report is intended to be released during the summer of 1988.

After reviewing the comments received, the Department will make any necessary modiciations to the report before it is submitted to the Congress. Comments received before or during the public comment period will be included in a comment appendix to the report and, it time permits, a summary of comments may be included in the body of the report. Those interested in receiving a copy of the initial version of the report or submitting comments should write to the DOE contact listed above.

Issued in Washington, DC, April 20, 1988

Charles E. Kay,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 88–9157 Filed 4–25–88; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF DEFENSE

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0800, Thursday, 19 May, 1988.

ADDRESS: The meeting will be held at the Naval Post Graduate School, Spanagel Hall, Room 101A, Monterey, California 93943.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II, 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means

OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1988.

[FR Doc. 88–9134 Filed 4–25–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in a closed session on June 16, August 29–30, and September 22, 1988 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Aquisition on scientific and

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technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1988.

[FR Doc. 88–9135 Filed 4–25–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 May 1988.

Time: 0800–1700 hours, 11 May; 0800–1500 hours, 12 May.

Place: Fort Hood: Texas.

Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy for the 1990's will meet for the purpose of observing how simulators/simulations are incorporated into the training of units and to discuss the utility of these devices with the commanders who use them. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–9178 Filed 4–25–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18–19 May 1988.

Time of Meetings: 0800–1500 hours, 18 May 1988; 0730–1600 hours, 19 May 1988.

Place: AVSCOM HQ, St. Louis, MO; and TRAC HQ, Ft. Leavenworth, KS.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings at AVSCOM Hq to discuss the role of the PEO and PM in management of analyses to support the acquisition process. At TRAC Hq, briefings will be held to discuss the status of TRAC and study management in TRADOC. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude openng any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–9105 Filed 4–25–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program; Intent To Compromise Claim

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim.

SUMMARY: Notice is given that under section 452(f) of the General Provisions Act, 20 U.S.C. 1234a(f), the Secretary intends to compromise a claim against Western Kentucky University now pending before the Education Appeal Board, Docket No. 11(247)87.

DATE: Interested persons may comment on the proposed action on or before June 10, 1988.

ADDRESSES: Comments should be addressed to Jo-Ann Frey, General Attorney, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., FOB–6, Room 4122, Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question was based on an April 30, 1987 Final Letter of Determination (FLD) which was issued by the Department of Education, Audit Resolution Section, Grants and Contracts Service. The Audit report on which the FLD was based on October 1, 1986 by an independent certified accounting firm. The audit covered the University's general funds and certain grants it administered for the period July 1, 1984 to June 30, 1985. The grant involved in this case is Grant No. G008303613, Kentucky Schools Technology Project, under the Secretary's Discretionary Program.

The April 30, 1987 FLD disallowed $40,864.00 as constituting program income applied against the grant's cost-sharing requirement in violation of regulatory requirements for grants under 34 CFR 74.42. Western Kentucky University timely appealed the disallowance to the Education Appeal Board by submitting an Application For Review dated May 29, 1987. The Education Appeal Board, by letter dated June 5, 1987, accepted Western Kentucky University's Application For Review and the case was docketed.

The Secretary proposes to compromise the $40,864.00 claim for $20,432.00 in satisfaction of all monetary findings in the audit relating to the Department of Education. The Secretary has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department of Education has been assured that the practices which resulted in the claim have been corrected and will not recur. This proposed compromise will not adversely affect any other audit proceeding pending before the Education Appeal Board.

FOR FURTHER INFORMATION: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Jo-Ann Frey, General Attorney, Office of the General Counsel, at the address at the beginning of this Notice.

(20 U.S.C. 1234a(f))

Dated: April 20, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–9130 Filed 4–25–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Invitation for Individuals Interested in Serving as Field Readers for the Graduate Assistance in Areas of National Need Program

AGENCY: Department of Education.

ACTION: Invitation for Individuals Interested in Serving as Field Readers for the Graduate Assistance in Areas of National Need Program.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers for the Graduate Assistance in Areas of National Need Program. This new program, to be administered by the Office of Postsecondary Education, provides assistance for fellowship programs to assist, through academic departments and programs of institutions of higher education, students of superior ability who demonstrate financial need. Fellowships are awarded in areas of national need. Field readers are sought with expertise in the following areas of national need: Mathematics, biology, physics, chemistry, engineering, geosciences, computer science, and foreign languages and area studies.

The Secretary will select readers who have expertise in these designated areas of national need to evaluate grant applications submitted to the Department by institutions of higher education for funding to provide assistance to graduate students. The selection criteria are found in the Education Department General Administrative Regulations at 34 CFR 75.210 published in the **Federal Register** on July 24, 1987 (52 FR 27801). Selection of qualified individuals is based on the experience and qualifications of prospective field readers in the national need areas. Individuals interested in serving as field readers for the fiscal year 1988 should mail their resumes, including social security number, immediately to the address below.

FOR FURTHER INFORMATION CONTACT: Dr. Allen P. Cissell, National Needs Program, U.S. Department of Education, ROB#3, MS 3327, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–4415.

Program Authority: 20 U.S.C. 11341–11340.

(Catalog of Federal Domestic Assistance Program No. 84.200)

Dated: April 13, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–9131 Filed 4–25–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Agency Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–512
3. 1902–0073
4. Application for Preliminary Permit
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit, Individuals or households, State or local governments, Non-profit institutions, Small businesses or organizations
9. 600 respondents
10. 600 responses
11. 46,200 hours
12. The purpose of the FERC 512 is to carry out the requirements of 4F, 5 and 7 of the Federal Power Act. Those sections direct the Commission to issue preliminary permits to maintain priority application for a license while the permittee makes feasibility studies and preliminary application data collections.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC April 19, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–9095 Filed 4–25–88; 8:45 am]

BILLING CODE 6450–01–M

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) the sponsor of the collection (the DOE component or

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Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-515
3. 1902-0079
4. Hydropower License—Declaration of Intention
5. Extension
6. On Occasion
7. Mandatory
8. Businesses or other for profit, Individuals or households, State or local governments, Non-profit institutions, Small businesses or organizations
9. 3 respondents
10. 3 responses
11. 240 hours
12. To carry out the requirements of Part I, Section 23(b) of the Federal Power Act, the Declaration of Intention is filed by a prospective hydropower developer on a stream other than defined as U.S. jurisdictional waters, thereby causing the Commission to establish whether or not it has jurisdiction over the proposed project.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790(a).

Issued in Washington, DC, April 20, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-9096 Filed 4-25-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10198-000]

Pelican Utility Co.; Availability of Environmental Assessment

April 20, 1988

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license filed by Pelican Utility Company for the Pelican Hydroelectric Project located in Alaska, on Pelican Creek near the city of Pelican, and has prepared an environmental assessment (EA). In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NW., Washington DC 20426 or call (202) 357-8116 for further information.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9068 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C184-17-001 et al.]

Texaco Producing Inc., et al.; Applications for Abandonment of Service and to Amend Certificates[1]

April 21, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 9, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
C184-17-001, D, Apr. 11, 1988	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	El Paso Natural Gas Company, Sprayberry Trend Field, Glasscock County, TX.	(1)
C188-402-000 (G-17563), B, Apr. 7, 1988.	Mobil Exploration & Producing North America Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Transcontinental Gas Pipe Line Corporation, Sorrento Field, Ascension Parish, LA.	(2)

Docket No. and date filed	Applicant	Purchaser and location	Description
C188-403-000 (CI76-139), B, Apr. 11, 1988.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Northern Natural Gas Company, Division of Enron Corp. Certain acreage in Buffalow Wallow Field (Granite Wash), Hemphill County, TX.	(3)
C188-404-000 (CI76-387), B, Apr. 11, 1988.	do	Transwestern Pipeline Company, Red Hills Federal #1 well, Sec. 6-T26S-R33E, N.M.P.M., Wildcat Field, Lea County, NM.	(3)
C188-405-000 (CI76-131), B, Apr. 11, 1988.	do	Panhandle Eastern Pipe Line Company, Buffalow Wallow Field (Granite Wash), Hemphill, County, TX.	(3)
C188-406-000 (CI77-177), B, Apr. 11, 1988.	do	El Paso Natural Gas Company, Mesa Grande #1 well, Sec. 11-T22S-R26E and Mesa Fuerte #1 Well, Sec. 33-T21S-R26E, Morrow Field, Eddy County, NM.	(3)
C188-407-000 (CI62-494), B, Apr. 11, 1988.	do	Northern Natural Gas Company, Division of Enron Corp., Certain acreage in Snake Creek Field, Clark County, KS.	(3)
C188-408-000 (CI62-906)	do	Northern Natural Gas Company, Division of Enron Corp., Folks well, Sec. 16-T33S-R21W, Harper Ranch Field, Harper County, KS.	(3)
C188-409-000 (CI63-159), B, Apr. 11, 1988.	do	Northern Natural Gas Company, Division of Enron Corp., Harden #1 well, Sec. 32-T34S-R25W, McKinney Field, Clark County, KS.	(3)
C188-410-000 (CI62-477), B, Apr. 11, 1988.	do	Northern Natural Gas Company, Division of Enron Corp., Seward & Stevens Counties, KS.	(3)
C188-412-000 (CI75-521), B, Apr. 11, 1988.	do	Williams Natural Gas Company, McDonald #1-18 well, Sec. 18-T35S-R33W & Sec. 17-T35S-R33W, Kan-Oak Field, Seward County, KS.	(3)
C188-413-000 (CI79-436), B, Apr. 11, 1988.	do	Lone Star Gas Company, a Division of ENSERCH Corporation, Katie West Field, Sec. 11-T1N-R2W, Golden Trend Field, Garvin County, Oklahoma.	(3)
C188-414-000 (CI79-436), B, Apr. 11, 1988.	do	Lone Star Gas Company, Division of ENSERCH Corporation, Katie West Field, Sec. 2-T1N-R2W, Golden Trend Field, Garvin County, Oklahoma.	(3)
C188-415-000 (G-7663), B, Apr. 11, 1988.	do	Lone Star Gas Company, Division of ENSERCH Corporation, Katie West Field, Sec. 2-T1N-R2W, Golden Trend Field, Garvin County, Oklahoma.	(3)
C188-416-000 (CI61-1361), B, Apr. 11, 1988.	do	Panhandle Eastern Pipe Line Company Certain acreage in Carthage Field, Texas County, Oklahoma.	(3)
C188-417-000 (CI64-1440), B, Apr. 11, 1988.	do	Horizon Oil & Gas Company, Dodson #1 and #2 wells, SW/4 Sec. 134, Blk. 4T, T&NO, RR Co. Survey, Horizon Field, Ochiltree County, TX.	(3)
C188-418-000 (CI84-315-000), B, Apr. 11, 1988.	do	ANR Pipeline Company, Gerloff #1 well, Sec. 27-T27N-R18W, Freedom NW Field, Woods County, OK.	(3)
C188-419-000 (CI78-66), (CI78-67), (CI78-68), B, Apr. 11, 1988.	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Natural Gas Pipeline Company of America, High Island Blocks A-337, A-342 and A-343, Offshore Texas.	(4)
C188-420-000 (CI72-111), B, Apr. 11, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA, 94120-7309.	Transcontinental Gas Pipe Line Corporation, Lake Decade East Field, Terrebonne Parish, LA.	(5)

[1] Effective 1-1-88, TPI assigned to John L. Cox its rights to the SW/4 of Section 27, Bock 36, T-4-S, T&P RR Co. Survey, Glasscock County, Texas from the surface to 8,632 feet subsurface.
[2] Certain acreage is depleted and other acreage was assigned to Liberty Oil and Gas Corporation by assignment, effective 5-15-79.
[3] Effective 9-1-85, Mesa Operating Limited Partnership assigned certain acreage to Kaiser-Francis Oil Company.
[4] There has been no production from the field since 7-12-87, and Exxon has advised the Minerals Management Service that it has relinquished the applicable leases.
[5] Effective 10-15-86, Chevron assigned certain acreage to Bois D'Arc Resources.
Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-9138 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6761-003 et al.]

Blackfeet Indian Nation et al.; Surrender of Preliminary Permits and Exemptions

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

[Project No. 6761-003]

1. Blackfeet Indian Nation

April 19, 1988.

Take notice that the Blackfeet Indian Nation, Permittee for the proposed Lake Sherburne Project No. 6761, requested by letter filed January 4, 1988 that its preliminary permit be terminated. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

[Project No. 6812-003]

2. Sheep Creek Irrigation Company

April 20, 1988.

Take notice that Sheep Creek Irrigation Company exemptee for the proposed Sheep Creek Hydro Project No. 6812, requested by letter dated March 10, 1988, that its exemption be terminated. The exemption was issued on November 15, 1985. The project would have been located on Sheep Creek in Daggett County, Utah. No construction has been undertaken.

The exemptee filed the request on March 14, 1988.

[Project No. 4734-003]

3. Marin Municipal Water District

April 20, 1988.

Take notice that Marin Municipal District, exemptee for the proposed Alpine Lake Project No. 4734, requested by letter filed February 25, 1988, that its exemption be terminated. The exemption was issued on April 2, 1984. The project would have been located on Lagunitas Creek near Fairfax in Marin County, California. No construction has been undertaken.

[Project No. 10233-001, Oregon]

Klamath Hydroelectric Company

April 20, 1988.

Take notice that Klamath Hydroelectric Company, permittee for the Klamath Pumped Storage Project, has requested that its preliminary permit be terminated. The preliminary permit was issued August 3, 1987, and would have expired on July 31, 1990. The project would have been located on the U.S. Bureau of Reclamation irrigation canal in Klamath County, Oregon, near the town of Malin.

The permittee filed the request on February 17.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9089 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-44-001]

Commercial Pipeline Co., Inc.; PGA Filing

April 21, 1988.

Take notice that on April 15, 1988, Commercial Pipeline Co., Inc., ("Commercial") tendered for filing its Substitute Fifty-third Revised Sheet No. 3A, superseding Fifty-Second Revised Sheet No. 3A reflecting Purchased Gas Adjustment and Total Rate as shown below:

	Current adjustment	Cumulative adjustment	Surcharge adjustment	Total rate
(Base)	.4550	1.0637	1.4704	5.1365
(Excess)	.4797	1.0819	1.4704	5.2661

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's supplier, Williams Natural Gas Company. The filing also reflects surcharge adjustments in accordance with Commercial's PGA. This filing is made as a substitute to the filing of March 31, 1988.

Commercial, to the extent necessary, requests waiver of the Commission's regulations to permit Substitute Fifty-third Revised Sheet No. 3A to be effective May 1, 1988.

Copies of the filings were served on Commercial's FERC jurisdictional customer, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 28, 1988. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9137 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

April 20, 1988.

Take notice that on April 14, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Fifth Substitute Twenty-Fifth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness April 1, 1988.

According to Granite State, the proposed rate changes are applicable to the jurisdictional sales services rendered to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State further states that the rate changes are made to track changes in suppliers' rates that have occurred since it filed its latest purchased gas cost adjustment, effective January 1, 1988. Granite State states that the proposed rates reflect a reduction in its Boundary Gas, Inc. purchases, effective April 1, 1988, a change in Tennessee Gas Pipeline Company's Rate Schedule CD-6 rate previously tracked and a substantial volume of spot market purchases. According to Granite State its revised purchased gas costs and rates result in an annual reduction of $11,542,000 in the rates for sales to Bay State and an annual reduction of $2,231,000 in the rates for sales to Northern Utilities.

Granite State further states that copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9090 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM88-1-6-001]

South Georgia Natural Gas Co.; Filing

April 20, 1988.

Take notice that on April 11, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing Eleventh Revised Sheet No. 76 and Eleventh Revised Sheet No. 106, to its FERC Gas Tariff, First Revised Volume No. 2, to be effective April 1, 1988.

South Georgia states that on April 7, 1988, South Georgia made a tariff filing implementing reduced charges for storage transportation services provided for Water, Gas and Light Commission of the City of Albany, Georgia, and Atlanta Gas Light Company. South Georgia states that the April 7 filing inadvertently omitted a footnote which the Commission had previously authorized with respect to such services. South Georgia requests that these corrected tariff sheets be substituted for the sheets filed on April 7, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before April 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9091 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-27-005 and RP85-209-014]

United Gas Pipe Line Co.; Tariff Filing

April 21, 1988

Take notice that on April 15, 1988 United Gas Pipe Line Company (United) tendered for filing revised tariff sheets, to its FERC Gas Tariff, First Revised Volume No. 1, and workpapers and schedules related thereto, as follows:

Substitute Revised Original Sheet No. 4-G1
Substitute Revised Original Sheet No. 4-H
Substitute Revised Original Sheet No. 4-I
Substitute Revised Original Sheet No. 4-J
Substitute Revised Original Sheet No. 4-K
Alternate Substitute Revised Original Sheet No. 4-G1
Alternate Substitute Revised Original Sheet No. 4-H
Alternate Substitute Revised Original Sheet No. 4-I
Alternate Substitute Revised Original Sheet No. 4-J
Alternate Substitute Revised Original Sheet No. 4-K

United States that this filing is made pursuant to Ordering Paragraph (B) of the Order of the Federal Energy Regulatory Commission (Commission) issued in Docket Nos. RP88-27 & RP85-209 on April 6, 1988.

United States that the filing amends its Feb. 1, 1988 filing to reflect the allocation of take-or-pay costs to its non-jurisdictional customers on the same cumulative deficiency basis which it utilized to allocate costs among its jurisdictional customers in its Nov. 17, 1987 filing. Additionally, United states that the "capping adjustment" utilized in the Nov. 17, 1987 and February 1, 1988 filing has been corrected in this filing to reflect the use of an average Maximum Daily Quantity (MDQ) applicable during the deficiency period. An alternative proposal which reflects use of actual volumes, with no "capping adjustment" for MDQ reductions, is also included for the Commission's consideration.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20046, on or before April 28, 1988, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9139 Filed 4-25-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3369-3]

Cancellation of the Cincinnati Public Hearing on Report to Congress on Wastes From the Combustion of Coal by Electric Utility Power Plants

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of Cancellation of Public Hearing.

SUMMARY: The Environmental Protection Agency (EPA) is cancelling the April 28, 1988, public hearing in Cincinnati, Ohio, on the Report to Congress on Wastes from the Combustion of Coal by Electric Utility Power Plants. The reason for this cancellation is due to lack of interest. This hearing was originally announced in the **Federal Register** (53 FR 9976) on Monday, March 28, 1988. However, EPA will be conducting its scheduled public hearing on the report in Denver, Colorado.

DATE: EPA will conduct one public hearing on this report: April 26, 1988 in Denver, Colorado. Registration for the hearing will begin at 8:00 a.m. The hearing will begin at 9:00 a.m. and will end at approximately 5:00 p.m..

ADDRESSES: The location of the public hearing is: The Regency, 3900 Elati Street, Denver, Colorado 80216.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline (800) 424-0346 or (202) 382-3000. For technical information, contact Mr. Patrick Pesacreta at (202) 382-7915.

Dated: April 20, 1988.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

[FR Doc. 88-9070 Filed 4-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51703; FRL-3370-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of two hundred seventy-three such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-668, 88-669, 88-670, 88-671, 88-675, 88-676, 88-677, 88-678, 88-679, 88-680, 88-682, 88-683, 88-684, 88-685, 88-686, 88-687, 88-688—April 27, 1988.

P 88-690, 88-691, 88-692, 88-693, 88-694, 88-695, 88-696, 88-697, 88-698, 88-699, 88-700, 88-701, 88-702—April 30, 1988.

P 88-703, 88-704, 88-705, 88-706, 88-707, 88-708, 88-709, 88-710, 88-711, 88-712, 88-713, 88-714, 88-715, 88-716, 88-717, 88-718, 88-720, 88-721, 88-722, 88-723, 88-724, and 88-725—May 1, 1988.

P 88-726, 88-727, 88-728, 88-729, 88-730, 88-731, 88-732, 88-733, 88-734, 88-735, 88-736, 88-737, 88-738, 88-739, 88-742, 88-743, 88-744, 88-745, 88-746, 88-747, 88-748, 88-749, and 88-750—May 2, 1988.

P 88-751, 88-752, 88-753, 88-754, 88-755, 88-756, and 88-757—May 3, 1988.

P 88-758, 88-759, 88-760, 88-761, 88-762, 88-763, and 88-764—May 4, 1988.

P 88-765, 88-766, 88-767, 88-768, 88-769, 88-770, 88-771, 88-772, 88-773, 88-

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774, 88–775, 88–776, 88–777, 88–778—May 7, 1988.

P 88–779—May 8, 1988.

P 88–780, 88–781, 88–782—May 7, 1988.

P 88–783, 88–784, 88–785, 88–786—May 8, 1988.

P 88–787—May 7, 1988.

P 88–788, 88–789, 88–790, 88–791—May 8, 1988.

P 88–792, 88–793, 88–794, 88–795, 88–796, 88–797—May 9, 1988.

P 88–798—May 10, 1988.

P 88–800, 88–801, 88–802, 88–803, 88–804, 88–805, 88–806—May 11, 1988.

P 88–807, 88–808—May 15, 1988.

P 88–809, 88–810—May 16, 1988.

P 88–811—May 17, 1988.

P 88–812, 88–813, 88–814, 88–815, 88–816, 88–819, 88–820, 88–821, 88–822, 88–823, 88–824, 88–825, 88–826, 88–828, 88–829, 88–830, 88–831—May 16, 1988.

P 88–833, 88–834, 88–835, 88–836, 88–837, 88–838—May 17, 1988.

P 88–841, 88–842, 88–843, 88–844, 88–845, 88–846, 88–848, 88–849, 88–851—May 18, 1988.

P 88–852, 88–853, 88–854, 88–855, 88–856, 88–857, 88–858, 88–859, 88–860, 88–861, 88–862, 88–863—May 21, 1988.

P 88–864, 88–865, 88–866, 88–867, 88–868, 88–869, 88–870, 88–871, 88–872, 88–873, 88–874, 88–875, 88–876, 88–878, 88–879, 88–880, 88–881, 88–882, 88–883—May 22, 1988.

P 88–884, 88–886, 88–887, 88–888, 88–889, 88–890, 88–891—May 23, 1988.

P 88–892, 88–893, 88–894—May 24, 1988.

P 88–895, 88–896, 88–897—May 25, 1988.

P 88–898, 88–899, 88–900, 88–901, 88–902, 88–903, 88–904—May 28, 1988.

P 88–905, 88–906, 88–907, 88–908, 88–909, and 88–910—May 29, 1988.

P 88–912, 88–913, 88–914, 88–915, 88–916, 88–917—May 30, 1988.

P 88–918—May 25, 1988.

P 88–919, 88–920, 88–921, 88–922, 88–923, 88–924, 88–925, 88–926, 88–927, 88–928, 88–929, 88–930, 88–931, 88–932, 88–933, 88–934—May 31, 1988.

P 88–935, 88–936, 88–937, 88–938, 88–939, 88–940, 88–941, and 88–942—June 1, 1988.

P 88–943, 88–944, 88–945, 88–946, 88–947—June 4, 1988.

P 88–948, 88–949, 88–950, 88–951, 88–952, 88–953, 88–954, 88–955, 88–956, 88–957, 88–958, 88–959, 88–960—June 5, 1988.

Written comments by:

P 88–668, 88–669, 88–670, 88–671, 88–675, 88–676, 88–677, 88–678, 88–679, 88–680, 88–682, 88–683, 88–684, 88–685, 88–686, 88–687, 88–688—March 28, 1988.

P 88–690, 88–691, 88–692, 88–693, 88–694, 88–695, 88–696, 88–697, 88–698, 88–699, 88–700, 88–701, 88–702—March 31, 1988.

P 88–703, 88–704, 88–705, 88–706, 88–707, 88–708, 88–709, 88–710, 88–711, 88–712, 88–713, 88–714, 88–715, 88–716, 88–717, 88–718, 88–720, 88–721, 88–722, 88–723, 88–724, 88–725—April 1, 1988.

P 88–726, 88–727, 88–728, 88–729, 88–730, 88–731, 88–732, 88–733, 88–734, 88–735, 88–736, 88–737, 88–738, 88–739, 88–742, 88–743, 88–744, 88–745, 88–746, 88–747, 88–748, 88–749, 88–750—April 2, 1988.

P 88–751, 88–752, 88–753, 88–754, 88–755, 88–756, 88–757—April 3, 1988.

P 88–758, 88–759, 88–760, 88–761, 88–762, 88–763, 88–764—April 4, 1988.

P 88–765, 88–766, 88–767, 88–768, 88–769, 88–770, 88–771, 88–772, 88–773, 88–774, 88–775, 88–776, 88–777, 88–778—April 7, 1988.

P 88–779—April 8, 1988.

P 88–780, 88–781, 88–782—April 7, 1988.

P 88–783, 88–784, 88–785, 88–786—April 8, 1988.

P 88–787—April 7, 1988.

P 88–788, 88–789, 88–790, 88–791—April 8, 1988.

P 88–792, 88–793, 88–794, 88–795, 88–796, 88–797—April 9, 1988.

P 88–798—April 10, 1988.

P 88–800, 88–801, 88–802, 88–803, 88–804, 88–805, 88–806—April 11, 1988.

P 88–807, 88–808—April 15, 1988.

P 88–809, 88–810—April 16, 1988.

P 88–811—April 17, 1988.

P 88–812, 88–813, 88–814, 88–815, 88–818, 88–819, 88–820, 88–821, 88–822, 88–823, 88–824, 88–825, 88–826, 88–828, 88–829, 88–830, 88–831—April 16, 1988.

P 88–833, 88–834, 88–835, 88–836, 88–837, 88–838—April 17, 1988.

P 88–841, 88–842, 88–843, 88–844, 88–845, 88–846, 88–848, 88–849, 88–851—April 18, 1988.

P 88–852, 88–853, 88–854, 88–855, 88–856, 88–857, 88–858, 88–859, 88–860, 88–861, 88–862, 88–863—April 21, 1988.

P 88–864, 88–865, 88–866, 88–867, 88–868, 88–869, 88–870, 88–871, 88–872, 88–873, 88–874, 88–875, 88–876, 88–878, 88–879, 88–900, 88–881, 88–882, 88–883—April 22, 1988.

P 88–884, 88–886, 88–887, 88–888, 88–889, 88–890, 88–891—April 23, 1988.

P 88–892, 88–893, 88–894—April 24, 1988.

P 88–895, 88–896, 88–897—April 25, 1988.

P 88–898, 88–899, 88–900, 88–901, 88–902, 88–903, 88–904—April 28, 1988.

P 88–905, 88–906, 88–907, 88–908, 88–909, 88–910—April 29, 1988.

P 88–912, 88–913, 88–914, 88–915, 88–916, 88–917—April 30, 1988.

P 88–918—April 25, 1988.

P 88–919, 88–920, 88–921, 88–922, 88–923, 88–924, 88–925, 88–926, 88–927, 88–928, 88–929, 88–930, 88–931, 88–932, 88–933, 88–934—May 1, 1988.

P 88–935, 88–936, 88–937, 88–938, 88–939, 88–940, 88–941, 88–942—May 2, 1988.

P 88–943, 88–944, 88–945, 88–946, 88–947—May 5, 1988.

P 88–948, 88–949, 88–950, 88–951, 88–952, 88–953, 88–954, 88–955, 88–956, 88–957, 88–958, 88–959, 88–960—May 6, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS–51703)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 88–668

Manufacturer. Westinghouse Electric Corporation.

Chemical. (S) Melamine: formaldehyde; methyl glucoside; 2-propanol, l-amino, reaction products with melamine; o, p toluene sulfonamide; n, n diethylethanolamine; magnesium bromide.

Use/Production. (S) Thermosetting resin for laminated plastics. Prod. range: 10,000,000–15,000,000 kg/yr.

P 88–669

Manufacturer. Westinghouse Electric Corporation.

Chemical. (S) Melamine; formaldehyde; methyl glucoside, tris (2-hydroxyethyl) isocyanurate; toluene sulfonamide; n,n diethylethanolamine; magnesium bromide.

Use/Production: (S) Thermosetting resin. Prod. range: 15,000,000 kg/yr.

P 88–670

Manufacturer. Confidential.

Chemical. (G) Polyurethane elastomer.

Use/Production. (G) Nondispersive adhesive. Prod. range: Confidential.

P 88–671

Manufacturer. Confidential.

Chemical. (G) Chlorinated alkyl phosphate ester.

Use/Production. (S) Flame retardant. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >464 mg/kg, species (rat). Acute dermal toxicity: LD50 3160 mg/kg, species (rabbit). Inhalation toxicity: LC50 0.4 mg/L, species (rat).

P 88–675

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosilane.

Use/Import. (S) Additive for rubber component. Import range: 500–899 kg/yr.

P 88–676

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organic salt

Use/Import. (S) Curing catalyst. Import range: 200–300 kg/yr.

P 88–677

Importer. Shin-Etsu silicones of America, Inc.

Chemical. (G) Organoborate.

Use/Import. (S) Curing catalyst. Import range: 25–100 kg/yr.

P 88–678

Manufacturer. Schnee-Morehead, Inc.

Chemical. (G) Trialkoxy silane derivative.

Use/Production. (S) Adhesion promoter. Prod. range: Confidential.

P 88–679

Manufacturer. Schnee-Morehead, Inc.

Chemical. (G) Trialkoxy silane derivative.

Use/Production. (S) Adhesion promotor. Prod. range: Confidential.

P 88–680

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Varnish. Import range: 1,000–1,500 kg/yr.

P 88–682

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Varnish. Import range: 1,000–2,000 kg/yr.

P 88–683

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Textile finishing agent. Import range: 1,000–1,500 kg/yr.

P 88–684

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Additive for plastic compounds. Import range: 600–700 kg/yr.

P 88–685

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Additive for silicone rubber compounds. Import range: 400–800 kg/yr.

P 88–686

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Textile finishing agent. Import range: 2,000–3,000 kg/yr.

P 88–687

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic polyamine.

Use/Production. (G) Polymer for industrial coatings. Prod. range: 750–590,000 kg/yr.

P 88–688

Importer. Confidential.

Chemical. (G) Benzene, ethenyl-, polymer with siloxane and silicones, di-me.

Use/Import. (G) Coating additive. Import range: Confidential.

P 88–690

Manufacturer. Dynamite Nobel Chemicals.

Chemical. (G) Vinylacrylic, vinylheterocycle, vinylalkoxysilane, vinylhaloacrylate copolymer, alkenate modified.

Use/Production. (G) Additive in component polymers. Prod. range: Confidential.

P 88–691

Importer. Confidential.

Chemical. (G) Nonylphenol capped polyurethane prepolymer.

Use/Import. (G) Coatings and adhesives for open, nondispersive use. Import range: Confidential.

P 88–692

Manufacturer. Confidential.

Chemical. (G) Hydroxyphenyl-alkoxyphenylsulfone.

Use/Production. (S) Color developer. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >56 kg/yr, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative, species (guinea pig).

P 88–693

Manufacturer. Confidential.

Chemical. (G) Substitutedamino hydroxy naphalenesulfonic acid, salt.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–694

Manufacturer. Confidential.

Chemical. (G) Copper phthalocyamine, sulfonated salts.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–695

Importer. BASF Structural Materials, Inc.

Chemical. (G) Substituted polysiloxane.

Use/Import. (G) Treatment for fibers. Import range: Confidential.

P 88–696

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Coating. Prod. range: Confidential.

P 88–697

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Coating. Prod. range: Confidential.

P 88–698

Manufacturer. Eastman Kodak Company.

Chemical. (G) Silicone blocked copolymer.

Use/Production. (G) Nondispersive. Prod. range: 1,500–7,450 kg/yr.

P 88–699

Manufacturer. Eastman Kodak Company.

Chemical. (G) Rhodamine ester salt.

Use/Production. (G) Nondispersive. Prod. range: 22–300 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 624–893 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Eye irritation: Strong. Skin irritation: Slight.

P 88–700

Manufacturer. Macrochem Corporation.

Chemical. (G) Alkyl quaternary salt of a alkylaminoethylmeth acrylated.

Use/Production. (G) Intermediate in manufacture of surfactants. Prod. range: Confidential.

P 88–701

Manufacturer. Macrochem Corporation.

Chemical. (G) Reaction product of a monalkyl succinic anhydride with an omega hydroxy methacrylate.

Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88-702

Manufacturer. Macrochem Corporation.
Chemical. (G) Reaction product of an alkenyl anhydride with a phenoxylated hydrogen oligomeric oxyethlene.
Use/Production. (G) Surfactant Prod. range: Confidential.

P 88-703

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Substituted carboxylic acid heterocycle.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong. Mutagenicity: Negative.

P 88-704

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Substituted carboxylic acid heterocycle.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: Moderate, species (rabbit). Mutagenicity: Negative.

P 88-705

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Substituted carboxyl chloride heterocycle.
Use/Production. (S) Site limited intermediate. Prod. range: Confidential.

P 88-706

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Substituted n,n-dimthylcarboxamide heterocycle.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >50,000 mg/kg, species (rat). Mutagenicity: Negative.

P 88-707

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Substituted n,n-dimethylcarboxamide heterocycle.
Use/Production. (S) Site-limited. Prod. range: Confidential.

P 88-708

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Water dispersible epoxy.
Use/Production. (G) Industrial intermediate. Prod. range: Confidential.
Toxicity Data. Eye irritation: Slight, species (rabbit). Mutagenicity: Negative.

P 88-709

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Substituted n,n-dimethylcarboxamide heterocycle.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88-710

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Disubstituted heterocycle phenyl carbonate.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.
Toxicity data. Eye irritation: Moderate. Mutagenicity: Negative.

P 88-711

Manufacturer. Confidential.
Chemical. (S) Butyl methacrylate; butyl acrylate; methacrylic acid.
Use/Production. (S) Paper coating. Prod. range: 120,000-180,000 kg/yr.

P 88-712

Manufacturer. Kenrich Petrochemicals, Inc.
Chemical. (G) n, n-Dimethylaminoethylmethacrylate.
Use/Production. (G) A novolak resin for use in electronic manufacture. Prod. range: Confidential.

P 88-713

Manufacturer. Kenrich Petrochemicals, Inc.
Chemical. (G) n,n-Dimethylaminopropylmethacrylamide.
Use/Production. (S) Coating resin catalyst. Prod. range: Confidential.

P 88-714

Manufacturer. Confidential.
Chemical. (G) Phenol-Formaldehyde Novolak.
Use/Production. (G) Novolak resin used in electronics manufacture. Prod. range: Confidential.

P 88-715

Manufacturer. Confidential.
Chemical. (G) Aliphatic silylated amino ester.
Use/Production. (S) Specialty coating. Prod. range: 10,000-36,400 kg/yr.

P 88-716

Importer. Nuodex, Inc.
Chemical. (S) Isononanol; phosphoric acid.
Use/Import. (S) Additive in cutting oils. Import range: 35,000 kg/yr.

P 88-717

Importer. Nuodex, Inc.
Chemical. (S) Phenol, 2,6-dinonyl-, branched; phenol, 4 isononyl.
Use/Import. (S) Surfactants, waxes, soft resin & lubricating oils. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >10,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Strong, species (rabbit).

P 88-718

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) Product of reaction of methyltrichlorosilane with octylmagnesium bromide: decylmagnesium bromide (1:1).
Use/Production. (G) Synthesis lubricant for extreme pressure temp. Prod. range: Confidential.

P 88-720

Manufacturer. GAF Chemicals Corporation.
Chemical. (G) Alicyclic di(alkenyloxyalkane).
Use/Production. (G) Coating component. Prod. range: Confidential.
Toxicity data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative.

P 88-721

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Coating modifier. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 460 mg/kg, species (rat). Acute dermal toxicity: LD50 570 mg/kg, species (rabbits). Inhalation toxicity: LD50 1,000 ppm/44, species (rat).

P 88-722

Manufacturer. Confidential.
Chemical. (G) Saturated hydroxy acrylic resin.
Use/Production. (G) Coating for automatic wheels. Prod. range: Confidential.

P 88-723

Manufacturer. Confidential.
Chemical. (S) Dicylopentadiene; resin; epoxidizendsoybean oil; acrylic acid.
Use/Production. (S) Printing ink vehicle. Prod. range: 3,700,000 kg/yr.

P 88-724

Importer. Confidential.
Chemical. (G) 3-(Dialkylamino)-6-alkyl-7-phenylaminofluoran.
Use/Import. (S) A color-former heat sensitive recording, paper. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative, species (guinea pig).

P 88-725

Importer. Confidential.
Chemical. (G) 3-(Dialkylamino)-6-alkyl-7-phenylaminofluoran.
Use/Import. (S) Printing ink vehicles. Import range: 3,000,000-3,700,000 kg/yr.

P 88-726

Manufacturer. Confidential.
Chemical. (G) Aliphatic alcyclic polyether modified amide.
Use/Production. (G) Adhesion promoter and paint nonvolatile vehicle. Prod. range: 137,000 kg/yr.

P 88-727

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (G) Reactive textile dye. Import range: Confidential.

P 88-728

Manufacturer. Confidential.
Chemical. (G) Polyurethane and polyglycol ether polymer.
Use/Production. (G) Component of commercial article. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong, species (N.Z. white rabbit). Skin irritation: Slight, species (N.Z. white rabbit).

P 88-729

Manufacturer. Confidential.
Chemical. (G) Substituted epoxy resin.
Use/Production. (G) Coating polymer. Prod. range: 10,200 42,000 kg/yr.

P 88-730

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-731

Manufacturer. The Dow Chemical Company
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-732

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-733

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-734

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-735

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: slight, species (rabbit). Skin irritation: negligible, species (rabbit).

P 88-736

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: slight, species (rabbit). Skin irritation: negligible, species (rabbit).

P 88-737

Manufacturer. The Dow Chemical Company.
Chemical. (G) Nitrated polyglycol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: slight, species (rabbit). Skin irritation: negligible, species (rabbit).

P 88-738

Importer. Confidential.
Chemical. (G) Quarternized amino polyurethane.
Use/Import. (G) Paper additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 ml/kg, species (rat).

P 88-739

Importer. Confidential.
Chemical. (G) Fiber reactive yellow dye.
Use/Import. (S) Reactive textile dyes. Import range: Confidential.

P 88-742

Importer. Confidential.
Chemical. (G) Fiber reactive blue dye.
Use/Import. (S) Reactive textile dye. Import range: Confidential.

P 88-743

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam compound. Prod. range: Confidential.

P 88-744

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam compound. Prod. range: Confidential.

P 88-745

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam compound. Prod. range: Confidential.

P 88-746

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam compound. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (Fischer rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (N.Z. white rabbit). Eye irritation: slight, species (N.Z. white

rabbit). Skin irritation: negligible, species (rabbit).

P 88-747

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam compound. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (Fischer rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (N.Z. white rabbit). Eye irritation: slight, species (N.Z. white rabbit).

P 88-748

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (Fischer rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (N.Z. white rabbit). Eye irritation: slight, species (N.Z. white rabbit).

P 88-749

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated glycol.
Use/Production. (S) Flexible foams. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2000 mg/kg, species (Fischer rats). Acute dermal toxicity: LD50 >2000 mg/kg, species (N.Z. white rabbit). Eye irritation: slight, species (N.Z. white rabbit).

P 88-750

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aminated polyglycol.
Use/Production. (S) Flexible foams. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2000 mg/kg, species (Fisher rats). Acute dermal toxicity: LD50 >2000 mg/kg, species (N.Z. white rabbit). Eye irritation: slight, species (N.Z. white rabbit).

P 88-751

Importer. Confidential.
Chemical. (G) Thermosetting polyester.
Use/Import. (G) Resin for printing ink. Import range: Confidential.

P 88-752

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Printing ink. Prod. range: Confidential.

P 88-753

Importer. Confidential.
Chemical. (G) Aminomethylpolysiloxane
Use/Import. (G) Contained. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5740 ul/kg, species (rat). Eye irritation: slight, species (rabbit). Skin irritation: strong, species (rabbit).

P 88-754

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Acrylic terpolymer resin
Use/Production. (S) Adhesive resin solution. Prod. range: Confidential.

P 88-755

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Acrylic grafted polyurethane resin solution.
Use/Production. (S) Adhesive resin solution. Prod. range: Confidential.

P 88-756

Manufacturer. Confidential.
Chemical. (S) Dicycloopentadiene, resin, dimer fatty acidresin.
Use/Production. (S) Printing ink vehicle. Prod. range: 3,000,000–3,700,000 kg/yr.

P 88-757

Manufacturer. Confidential
Chemical. (G) Vegetable oil polymer with aromatic dicarboxylic acid, aliphatictrietriol, and cycloaliphatic carboxylic acid.
Use/Production. (G) Paper coating additive. Prod. range: Confidential.

P 88-758

Manufacturer. Confidential.
Chemical. (G) Epoxy acrylate.
Use/Production. (S) Printing ink resin. Prod. range: Confidential.

P 88-759

Manufacturer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Production. (S) Reactive dye for textile. Prod. range: Confidential.

P 88-760

Manufacturer. Confidential.
Chemical. (G) Polyfunctional copolymer of styrene with alkyl acrylate and substituted alkyl acrylates.
Use/Production. (G) Paint nonvolatile vehicle for industrial usage. Prod. range: 70,000 kg/yr.

P 88-761

Manufacturer. Confidential.
Chemical. (G) Silicones Resin.
Use/Production. (S) Incredient of a stabilizer for silicone rubber. Prod. range: Confidential.

P 88-762

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Production gravure printing ink. Prod. range: Confidential.

P 88-763

Manufacturer. Quest International Fragrance Intn'l.
Chemical. (G) Mono substituted aromatic aldehyde.
Use/Production. (S) Fragrance ingredient. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1.9 g/kg, body wgt., species (Wister rat). Eye irritation: none, species (rabbit). Skin irritation: moderate, species (rabbit). Mutagenicity: negative Skin sensitization: negative, species (guinea pig).

P 88-764

Manufacturer. Confidential.
Chemical. (G) Trisubstituted dicarbomoncylic methane.
Use/Production. (S) Organaic synthesis intermediate. Prod. range: 15,000 kg/yr.
Manufacturer. Confidential.
Chemical. (G) Waterborne urethane-acrylic copolymer.
Use/Production. (S) Coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4,200 mg/kg, species (rat). Acute dermal toxicity: LD50 8,000 mg/kg, species (rabbit).

P 88-766

Manufacturer. Confidential.
Chemical. (G) Amino modified alkyl silicone.
Use/Production. (G) Additive for sealants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.9 ml/kg, species (rat). Acute dermal toxicity: LD50 4.92 ml/kg, species (rabbit). Eye irritation: moderate, species (rabbit). Skin irritation: strong, species (rabbit).

P 88-767

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (S) Copolymer for coating metal surfaces. Prod. range: 20,000–80,000 kg/yr.

P 88-768

Manufacturer. Texaco Chemical Co.
Chemical. (S) 2-[(2-[(2-2-(2-Hydroxyethoxy)ethyl]methylamine ethanol; 2,2'-oxybis(n,n-dimethylethanamine); 2,2'-(2-(2-(dimethylamino ethoxy)ethyloimino)bisethanol.
Use/Production. (S) Polyurethane catalyst. Prod. range: Confidential.

P 88-769

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer, potassium salt.
Use/Production. (G) For all categories: dispersive use. Prod. range: Confidential.

P 88-770

Manufacturer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Production. (S) Reactive dye for textile. Prod. range: Confidential.

P 88-771

Manufacturer. Confidential.
Chemical. (G) Fiber reactive yellow dye.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-772

Manufacturer. Kalama Chemical, Inc.
Chemical. (S) Benzoic acid, 4-hydroxy, propyl ester, sodium salt.
Use/Production. (G) Paragon substitute. Prod. range: 25,000–50,000 kg/yr.

P 88-773

Manufacturer. Kalama Chemical, Inc.
Chemical. (S) Benzoic acid, 4-hydroxy, potassium salt n-propyl alcohol.
Use/Production. (G) Paragon substitute. Prod. range: 25,000–50,000 kg/yr.

P 88-774

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Blocked urethane polymer.
Use/Production. (G) Industrial coating vehicle. Prod. range: Confidential.

P 88-775

Manufacturer. Lilly Industrial Coatings, Inc.
Chemical. (G) Polymer of benzenedicarboxylic acid, alkanetriol, vegetable oil and fatty acids, and phenolic resin.
Use/Production. (G) Industrial liquid paint. Prod. range: 205,000 kg/yr.

P 88-776

Manufacturer. Confidential.
Chemical. (G) Complex ethoxylated amide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-777

Manufacturer. Confidential.
Chemical. (G) Complex ethoxylated amide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-778

Manufacturer. Confidential.
Chemical. (G) Complex ethoxylated amide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-779

Manufacturer. Confidential.
Chemical. (G) Complex ethoxylated amide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-780

Importer. Hoechst Celanese Corporation.
Chemical. (G) Polymer from substituted isocyanate and lactam.
Use/Import. (S) Cross linking agent for powder coating. Import range: 50,000–125,000 kg/yr.

P 88-781

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (S) Textile dye. Import range: Confidential.

P 88-782

Importer. Confidential.
Chemical. (G) Fiber reactive dye.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88-783

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified short oil alkyd resin.
Use/Import. (S) Varnish or print resin. Import range: 60,000 kg/yr.

P 88-784

Manufacturer. Confidential.
Chemical. (G) Solvent-free baking alkyd.
Use/Production. (S) Baking finishes with urea or melamine resins. Prod. range: Confidential.

P 88-785

Manufacturer. Confidential.
Chemical. (G) Vinyl acrylic terpolymer, sodium salt.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 88-786

Manufacturer. Confidential.
Chemical. (G) Ester of naphthenic acid and a glycol.
Use/Production. (G) Functional fluid. Prod. range: Confidential.

P 88-787

Importer. Confidential.
Chemical. (G) Fiber-reactive red dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-788

Manufacturer. American Gilsonite Company.
Chemical. (S) Gilsonite resins.
Use/Production. (S) Printing ink, adhesives paints & coatings. Prod. range: 4,500,000–10,000,000 kg/yr.

P 88-789

Manufacturer. American Gilsonite Company.
Chemical. (S) Gilsonite oil.
Use/Production. (S) Foundry use. Prod. range: 4,500,000–10,000 kg/yr.

P 88-790

Manufacturer. American Gilsonite Company.
Chemical. (S) Gilsonite oil.
Use/Production. (S) Blended with asphaltenes. Prod. range: 675,000–1,500,000 kg/yr.

P 88-791

Manufacturer. American Gilsonite Company.
Chemical. (S) Gilsonite resin/oil.
Use/Production. (S) Intermediate. Prod. range: 5,000,000–11,000,000 kg/yr.

P 88-792

Importer. Degussa Corporation.
Chemical. (G) Polyolacetal.
Use/Import. Comonomer. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,148 mg/kg, species (rat). Eye irritation: Moderate, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-793

Manufacturer. Interez, Inc.
Chemical. (G) Modified polymeric amine.
Use/Production. (G) Epoxy resin curing agent-crosslinker. Prod. range: Confidential.

P 88-794

Importer. Dynamit Noble Chemicals.
Chemical. (S) 1,2-ethanediol.
Use/Import. (S) Lubricant. Import range: Confidential.

P 88-795

Importer. Degussa Corporation.
Chemical. (S) Bis(3-triethoxysilylpropyl]monosulfane.

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Use/Import. (G) Additive to sealant & polymer compounds for cables. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Slight, species (rabbit).

P 88-796

Manufacturer. Westvaco Corporation Chemical Division.
Chemical. (S) Lignosulfonic acid, triethanolamine salt.
Use/Production. (G) Dispersant for dye stuffs colorants, agr. product. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-797

Manufacturer. Confidential.
Chemical. (G) Methacryl phosphate.
Use/Production. (G) Adhesion promoter in adhesives. Prod. range: Confidential.

P 88-798

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted phenyl substituted tetrazolyl substituted naphthalenecarboxamide.
Use/Production. (G) Contained use in an article. Prod. range: 1,500 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 2,000 mg/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Slight, species (rabbit). Mutagenicity: negative. Skin sensitization: negative, species (guinea pig).

P 88-800

Manufacturer. Confidential.
Chemical. (G) Poly (vinyl ester counsaturated dicarboxylic acidester coolefin.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 88-801

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted acrylicate copolymer.
Use/Production. (S) Anticrater agent. Prod. range: 10,000-20,000 kg/yr.

P 88-802

Manufacturer. Confidential.
Chemical. (G) Boric acid esters.
Use/Production. (G) P/C pipe extender. Prod. range: Confidential.

P 88-803

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Saturated polyester resins.
Use/Production. (S) Powder coatings. Prod. range: 50,000-100,000 kg/yr.

P 88-804

Importer. Hoechst Celanese Corporation.
Chemical. (G) Saturated polyester.
Use/Import. (S) Flow promoter. Import range: 20,000-40,000.

P 88-805

Manufacturer. Confidential.
Chemical. (G) Functional copolymer of styrene with acrylic and methacrylate monomers.
Use/Production. (G) Paint vehicle. Prod. range: 300,000-600,000 kg/yr.

P 88-806

Importer. Confidential.
Chemical. (G) Reaction products of alkylsilicate with an organotin compound.
Use/Import. (S) Silicon rubber catalyst. Import range: Confidential.

P 88-807

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (G) Copolyether ester.
Use/Production. (G) Elastomeric beads & fiber. Prod. range: Confidential.

P 88-808

Manufacturer. Confidential.
Chemical. (G) Tetrasubstituted heteromonocycle sodium salt.
Use/Production. (S) Polymer for molding. Prod. range: Confidential.

P 88-809

Importer. BASF Corporation Engineering Plastics.
Chemical. (G) Polyethersulfone.
Use/Import. (S) Resin. Import range: Confidential.

P 88-810

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Diglycidyl ether bisphenol, a polyoxypropylene polymer containing urethane linkages and terminated with mercaptain groups.
Use/Production. (S) Polymer for adhesives and sealants. Prod. range: 5,000-50,000 kg/yr.

P 88-811

Manufacturer. Confidential.
Chemical. (G) Diamine-polyamine.
Use/Production. (G) Consumer products. Prod. range: 100-1,000 kg/yr.

P 88-812

Importer. Confidential.
Chemical. (G) Alicyclic substituted pentenone.
Use/Import. (G) For consumer products. Import range: 100-1,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2g/kg, species (rabbit).

P 88-813

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer ammonium salt.
Use/Production. (S) Automotive topcoat resin. Prod. range: 100,000-610,000 kg/yr.

P 88-814

Manufacturer. Confidential.
Chemical. (S) Mercaptan terminated polyether polymer.
Use/Production. (S) Adhesive & sealant. Prod. range: 400,000-150,000 kg/yr.

P 88-815

Manufacturer. Products Research & Chemical Corporation.
Chemical. (S) Diglycidyl ether bisphenol A; polyoxypropylene polymer containing urethane linkage terminated with mercaptan group.
Use/Production. (S) Adhesive & sealant. Prod. range: 5,000-50,000 kg/yr.

P 88-818

Manufacturer. Wilmington Chemical Corporation.
Chemical. (G) Aqueous aliphatic polyurethane.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88-819

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) General industrial use. Prod. range: Confidential.

P 88-820

Manufacturer. Finetex, Inc.
Chemical. (G) 1-Alkyl-1-Alkyl' amidoalkyl-2-alkyl' imidazolindinium-alkylsulfate.
Use/Production. (S) Finishing agent. Prod. range: 15,258-30,518 kg/yr.

P 88-821

Manufacturer. NL Industries, Inc.
Chemical. (G) High solids intermediate.
Use/Production. (G) Reactive intermediate. Prod. range: Confidential.

P 88-822

Importer. Confidential.
Chemical. (S) Silica, (dimethylethenylsilyl)oxy)-(trimethysilyl) oxy)-and methoxy modified.

Use/Import. (S) Silicone additive. Import range: 10-100 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 species (rat). Eye irritation: slight, species (rabbit). Skin irritation: negligible, species (rabbit).

P 88-823

Importer. Confidential.
Chemical. (S) Siloxanes and silicones, dimethyl, methyl ethenyl or hydroxy-terminated, reaction products with trimethoxy(3-(oxiranylmethoxy)propysilane.
Use/Import. (S) Silicon adhesive. Import range: 10-100 kg/yr.
Toxicity Data. Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Positive.

P 88-824

Importer. Confidential.
Chemical. (S) Siloxanes and silicones, methyl hydrogen, reaction products with siloxanes and silicones, dimethyl, ethenyl group terminated and benzene, (1-Methyl-ethenyl).
Use/Import. (S) Plastic additive. Import range: 6,000-12,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 kg/yr, species (rat).

P 88-825

Importer. Confidential.
Chemical. (S) Silica, (dimethylethylsily)oxy-, trimethylsilyl)oxy- and methoxy-modified, reaction products with silane, trimethoxy(3-(oxiranyl-methoxy)propyl)-.
Use/Import. (S) Silicone additive. Import range: 10-100 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Mutagenicity: Positive.

P 88-826

Importer. Hitachi Chemical Co. America Ltd.
Chemical. (G) Polyamic acid polymer E.
Use/Import. (G) Circuit sealant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5.5 g/kg, species (rat).

P 88-828

Importer. Confidential.
Chemical. (G) Reacting product of dimethylpolysiloxane and a fatty acid ester.
Use/Import. (G) Open, nondispersive use. Import range: 2,000-6,000 kg/yr.

P 88-829

Manufacturer. Uniroyal Chemical Co., Inc.
Chemical. (G) Modified liquid hydrocarbon polymer.
Use/Production. (G) Electrical encapsulant. Prod. range: Confidential.

P 88-830

Manufacturer. Cook Paint & Varnish Co.
Chemical. (G) Tall oil dibasic acid and polyol alkyd resin.
Use/Production. (S) Coating. Prod. range: 68,000-100,000.

P 88-831

Manufacturer. Shell Oil Company.
Chemical. (S) Phenol, 4,4'- (9H-fluoren-9-ylidene)bis-.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 >2g/kg, species (rat). Skin irritation: Negligible, species (rabbits). Skin sensitization: Negative, species (guinea pig).

P 88-833

Manufacturer. Confidential.
Chemical. (G) Alkyldiamine, polymer with saturated aromatic disulfonic acids derivative.
Use/Production. (G) Open, nondispersive. Prod. range: 100,000 kg/yr.

P 88-834

Manufacturer. Confidential.
Chemical. (G) Alkyl imine.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-835

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted imidazolyl substituted alkylamino substituted benzoic acid derivative.
Use/Production. (G) Contained use. Prod. range: 3,000-6,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Slight, species (guinea pig).

P 88-836

Manufacturer. W.R. Grace & Company.
Chemical. (G) 2-Propanamine, n-hydroxy-.
Use/Production. (G) Water treatment chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,189 mg/kg, species (rat). Static acute toxicity: Time LC50. Skin irritation: Slight, species (rabbit). Mutagenicity: Negative.

P 88-837

Manufacturer. Confidential.
Chemical. (G) Epoxy resin.
Use/Production. (G) Epoxy resin. Prod. range: Confidential.
Toxicity Data. Skin sensitization: Positive, species (guinea pig).

P 88-838

Manufacturer. Fluorasynth, Inc.
Chemical. (S) 1-(3-cyclohen-1-yl 4-(4-methyl 3-penten-yl) ethyl acetate.
Use/Production. (S) Fragrance compound. Prod range: 120 kg/yr.

P 88-841

Importer. Orient Chemical.
Chemical. (G) Metal complex compound.
Use/Production. (S) Charge control agent. Prod. range: 3,000 kg/yr.

P 88-842

Manufacturer. Confidential.
Chemical. (G) VCM copolymer.
Use/Production. (G) Resin packaging. Prod. range: Confidential.

P 88-843

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Oranosiloxane.
Use/Import. (S) Additive for plastic compounds. Import range: 1,000 kg/yr.

P 88-844

Manufacturer. Koppers Co., Inc.
Chemical. (G) Trialkyl naphthalene.
Use/production. (G) Intermediate. Prod. range: Confidential.

P 88-845

Manufacturer. Confidential.
Chemical. (G) Methacrylate ester.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88-846

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Adhesive for plastic compound. Import range: 800 kg/yr.

P 88-848

Importer. Hoechst Celanese Corporation.
Chemical. (G) Hydroxy-carboxyfunctional copolymer.
Use/Import. (S) Binder for paints. Import range: 4,000 kg/yr.

P 88-849

Manufacturer. Confidential.
Chemical. (G) VCM copolymer.
Use/Production. (G) Resin for packing. Prod. range: Confidential.

P 88-851

Importer. Hoechst Celanese Corporation.

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Chemical. (G) Hydroxy-carboxyfunctional copolymer.
Use/Import. (S) Binder for paints. Import range: 194,000 kg/yr.

P 88–852

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Coating resin. Prod. range: Confidential.

P 88–853

Importer. Nuodex, Inc.
Chemical. (G) Self-crosslinking, block polyurethane system.
Use/Import. (S) Industrial coatings. Import range: 100.000 kg/yr.

P 88–854

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer, sodium salt.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 88–855

Manufacturer. Confidential.
Chemical. (G) Cyclodiene.
Use/Production. (G) Polymerization monomer. Prod. range: Confidential.

P 88–856

Manufacturer. Confidential.
Chemical. (G) Cyclodiene.
Use/Production. Polymerization monomer. Prod. range: Confidential.

P 88–857

Manufacturer. Confidential.
Chemical. (G) Cyclodiene.
Use/Production. (G) Polymerization monomer. Prod. range: Confidential.

P 88–858

Manufacturer. Confidential.
Chemical. (G) Organo-epoxysilicone.
Use/Production. (G) Industrial coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000, species (rat). Acute determal toxicity: LD50 2,000, species (rabbit).

P 88–859

Manufacturer. Confidential.
Chemical. (G) Cresol-aldehyde polymer.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–860

Manufacturer. Confidential.
Chemical. (G) Aliphthalic polyurethane.
Use/Production. (G) Coating with an open use. Prod. range: 50,000 kg/yr.

P 88–861

Manufacturer. Confidential.
Chemical. (G) Polyester urethane.
Use/Production. (G) Coating component. Prod. range: 650–25,000 kg/yr.

P 88–862

Manufacturer. Confidential.
Chemical. (G) Asymmetrical aromatic dicyl peroxide.
Use/Production. (G) Initiator for polymerizing vinyl monomers. Prod. range: Confidential.

P 88–863

Manufacturer. Confidential.
Chemical. (G) Phosphine substituted transition metal compound.
Use/Production. (S) Industrial catalyst. Prod. range: Confidential.

P 88–864

Importer. Interez, Inc.
Chemical. (S) 4,4'-methylenebis (2,6-dimethylphenol).
Use/Import. (S) Intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–865

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersible polyamide resin.
Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–866

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersive polyamide resin.
Use/Production. (G) Ink dispersive. Prod. range: Confidential.

P 88–867

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersible polyamide resin.
Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–868

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersible polyamide resin.
Use/Production. (G) Ink additive Prod. range: Confidential.

P 88–869

Manufacturer. NL Chemicals.
Chemical. (G) Water dispersible polyester resin.
Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–870

Importer. Confidential.
Chemical. (G) Benzenediazonium, 2-bromo-6-cyano-4-nitro-, sulfate (2:1), reaction product with substituted anilines.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >3723, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–871

Importer. UNI–NTF, Inc.
Chemical. (S) Diphenyl methane diisocyanate, polypropylene glycol, poly(oxypropylene) glycerol polymer blocked with methyl ethyl ketoxime.
Use/Import. (S) Automotive anti-chipping coating. Import range: 5,000–23,000 kg/yr.

P 88–872

Importer. UNI–NTF, Inc.
Chemical. (S) Toluendiisocyanate, polybutylene glycol, trimethylopropane polymer blocked with & - caprolactum.
Use/Import. (S) Automative anti-chipping. Import range: 17,000–24,000 kg/yr.

P 88–873

Manufacturer. Confidential.
Chemical. (G) Polyester containing neopenty glycol.
Use/Production. (G) Coating. Prod. range: 57,000–220,000.

P 88–874

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane blocked isocyanate.
Use/Production. (G) Coating. Prod. range: 750–4,800 kg/yr.

P 88–875

Importer. Confidential.
Chemical. (G) Acrylate modified with urethane.
Use/Import. (G) Intermediate. Import range: Confidential.

P 88–876

Manufacturer. Aldrich Chemical Corporation.
Chemical. (G) Alkyl substituted ammonium salt.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–878

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (S) Textile dye. Import range: Confidential.

P 88–879

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Hydrocarbon resins dispersion.
Use/Production. (S) Tackier for adhesives. Prod. range: Confidential.

P 88–880

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkylphenoxylated poly(oxylethylene) alkenoyl succinoyl glycerol.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–881

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Ingredient for silicone rubber compounds. Import range: 1,000–2,000 kg/yr.

P 88–882

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (G) 7-(2-Propenoxy)-4-methylcoumarine.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–883

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Polyamide-epichlorohydrin-modified resin.
Use/Production. (S) Retention aid and flocculant. Prod. range: Confidential.

P 88–884

Importer. Confidential.
Chemical. (G) Fiber reactive green dye.
Use/Import. (S) Textile dye. Import range: Confidential.

P 88–886

Importer. Confidential.
Chemical. (G) Fiber reactive orange dye.
Use/Import. (S) Textile dye. Import range: Confidential.

P 88–887

Manufacturer. Sherex Chemical Company.
Chemical. (G) Amine oxide.
Use/Production. (G) Detergent-dispersant. Prod. range: Confidential.

P 88–888

Manufacturer. Macrochem Corporation.
Chemical. (G) Quaternary ammonium salt of an alkylene methacrylamide.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–889

Manufacturer. Macrochem Corporation.
Chemical. (G) N,n-dialkenyl-alkenylsuccinamide.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–890

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkylarylalkylenearmine.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–891

Importer. Confidential.
Chemical. (G) Fiber reactive blue dye.
Use/Import. (S) Textile dye. Import range: Confidential.

P 88–892

Manufacturer. Confidential.
Chemical. (G) Aryl heteroarylalkyl amine.
Use/Production. (G) Petroleum product additive. Prod. range: Confidential.

P 88–893

Manufacturer. Confidential.
Chemical. (G) Reaction product of polytetramethylene ether glycol methylene bis(phenyl isocyanate) and diol.
Use/Production. (G) Reactive elastomer. Prod. range: Confidential.

P 88–894

Import. Kreha Corporation of America.
Chemical. (G) Phenethylcumene.
Use/Import. (S) Insulation oil; solvent. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Slight, species (rabbit). Mutagenicity: Negative.

P 88–895

Importer. Confidential.
Chemical. (G) Direct yellow dye.
Use/Import. (S) Direct dye for textile. Import range: Confidential.

P 88–896

Manufacturer. Essex Specialty Products.
Chemical. (S) Polyisocyanate polymer
Use/Production. (G) Resin solution for coatings. Prod. range: Confidential.

P 88–897

Manufacturer. Confidential.
Chemical. (G) Anionic polysaccharide biopolymer.
Use/Production. (G) Industrial thickener. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >50 g/kg, species (rat). Acute dermal toxicity: LD50 >2 g/kg. Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–898

Importer. Confidential.
Chemical. (G) N-(substituted-substituted-phenyl)acetamide.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88–899

Importer. Confidential.
Chemical. (G) Urethane/acrylic resin.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–900

Importer. Confidential.
Chemical. (G) Melamine polyol.
Use/Import. (G) Industrial resin. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rabbit). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative.

P 88–901

Manufacturer. Confidential.
Chemical. (S) Ethoxylated n-hexylamine, compound with dodecybenzene sulfonic acid.
Use/Production. (G) Surfactant. Prod. range: 56,000 kg/yr.

P 88–902

Manufacturer. Confidential.
Chemical. (S) Ethoxylated n-hexylamine, compound with iso-octadecanioc acid.
Use/Production. (G) Surfactant. Prod. range: 11,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 cl/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–903

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Fluoroelastomer.
Use/Production. (G) Seale & molded parts. Prod. range: Confidential.

P 88–904

Manufacturer. Confidential.
Chemical. (G) A blocked copolymer of a polyolefin and a polyamide.
Use/Production. (G) Compatiblizer for polyamide/pololefin alloys. Prod. range: Confidential.

P 88–905

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Polyamide.

Use/Production. (G) Membranes. Prod. range: Confidential.

P 88-906

Manufacturer. Confidential.
Chemical. (G) Poly acrylate.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

P 88-907

Importer. The Dow Chemical Company.
Chemical. (G) Halogenated amide.
Use/Import. (S) Chemical intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 8.0 kg, species (rat). Acute dermal toxicity: LD50 >0 g/kg, species (rat). Eye irritation: slight, species (rabbit).

P 88-908

Manufacturer. PCR, Inc.
Chemical. (G) 8-Aminopropylsilane.
Use/Production. (G) Organic resin adhesion promoter. Prod. range: 68,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >4,057 mg/kg, species (rat). Acute dermal toxicity: LD50 >5,000 mg/kg, species (rabbit). Static acute toxicity: Time LC50 96 hr/380 mg/L, species (bluegill sunfish). Eye irritation: Moderate, species (rabbit). Skin irritation: Negligible, species (guinea pig). Mutagenicity: Positive.

P 88-909

Manufacturer. Interez, Inc.
Chemical. (G) Cycloaliphatic amine adduct.
Use/Production. (G) Epoxy resin crosslinking agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat). Acute dermal toxicity: LD50 >2 g/kg.

P 88-910

Importer. Marubeni America Corporation.
Chemical. (S) Ammonium salt of partial ester of styrene maleic anhydride copolymer.
Use/Import. (S) Thermal paper coating pigment dispersant. Import range: Confidential.

P 88-912

Importer. Confidential.
Chemical. (G) Fiber reactive black dye.
Use/Import. (S) Reactive textile dye. Import range: Confidential.

P 88-913

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-914

Importer. Confidential.
Chemical. (S) Product resulting from the reaction of a trisubstituted benzenediazonium chloride with substituted-4-hydroxy-2-naphthalene acis, metalized, sodium potassium, ammonium salts.
Use/Import. (G) Compatibilizer for polyamide/polyolefin alloys. Import range: Confidential.

P 88-915

Importer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Coating. Import range: Confidential.

P 88-916

Importer. Confidential.
Chemical. (G) Mixture of alkyl ammonium alkylphenylazonapthalenato chromate salts.
Use/Import. (G) Coating colorant. Import range: Confidential.
Toxicity: Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Mutagenicity: positive. Skin sensitization: negative.

P 88-917

Manufacturer. Sanncor Industries.
Chemical. (G) Water dispersible polyester urethane.
Use/Production. (G) Resin. Prod. range: Confidential.

P 88-918

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyperfluoroalkylacrylate.
Use/Production. (G) Oil/water repelled for upholstery. Prod. range: 24,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g, species (rat). Acute dermal toxicity: LD50 >5 g, species (rabbit). Eye irritation: slight, species (rabbit). Skin irritation: slight, species (rabbit).

P 88-919

Manufacturer. Rohm and Haas Company.
Chemical. (G) Alkyl methacrylate copolymer.
Use/Production. (G) Petroleum products additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g, species (rat). Acute dermal toxicity: LD50 >2 g, species (rabbit). Eye irritation: moderate, species (rabbit). Skin irritation: moderate, species (rabbit).

P 88-920

Manufacturer. Rohm and Haas Company.
Chemical. (G) Alkyl methacrylate copolymer.
Use/Production. (G) Petroleum product additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g, species (rat). Acute dermal toxicity: LD50 >2 g, species (rabbit). Eye irritation: moderate, species (rabbit). Skin irritation: moderate, species (rabbit).

P 88-921

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Epoxy amino adduct.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-922

Importer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Quaternized amino epoxyester acrylate polymer.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88-923

Manufacturer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Heterocyclic amino ester urethane salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-924

Manufacturer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Amino epoxy ester acrylate polymer salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-925

Importer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Amino epoxy ester acrylate polymer.
Use/Import. (G) Open, dispersive use. Import range: Confidential.

P 88-926

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Hydroxycarbomate.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-927

Importer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Epoxy polyetther.

Use/Import. (G) Destructive use. Import range: Confidential.

P 88-928

Importer. Rohm and Haas Company.
Chemical. (G) Alkyl methacrylate copolymer.
Use/Import. (G) Petroleum product additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat). Acute dermal toxicity: LD50 >2 g/kg, species (rabbit). Eye irritation: moderate, species (rabbit). Skin irritation: negligible, species (rabbit). Skin sensitization: negative, species (guinea pig).

P 88-929

Manufacturer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Unsaturated ester urethane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-930

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Epoxy amino adduct.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 88-931

Importer. E.I. du Pont de Nemours Co., Inc.
Chemical. (G) Aminohydroxamide.
Use/Import. (G) Destructive use. Import range: Confidential.

P 88-932

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Unsaturated ester urethane.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 88-933

Manufacturer. Interez, Inc.
Chemical. (G) Cyclo aliphatic amine adduct.
Use/Production. (S) Epoxy resin crosslinking agent in adhesives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 .5 g/kg, species (rat). Acute dermal toxicity: LD50 .2 g/kg, species (rabbit).

P 88-934

Manufacturer. Confidential.
Chemical. (G) Sulfonate of Etoxylated alcohol.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88-935

Manufacturer. Confidential.
Chemical. (G) A phenoxide salt.
Use/Production. (G) Polymerization intermediate. Prod. range: Confidential.

P 88-936

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic hydroxyester acid.
Use/Production. (G) Dispersively used coating. Prod. range: 220,000.

P 88-937

Manufacturer. Confidential.
Chemical. (G) Complex polyester polyurethane.
Use/Production. (G) Dispersively used coating. Prod. range: 1,000,000 kg/yr.

P 88-938

Manufacturer. Confidential.
Chemical. (G) Copolymer of styrene and oxygenerated vinyl alkane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-939

Importer. Confidential.
Chemical. (G) Substituted heteromonocyclicazoyl-substituted carbomonocyclicsulfonic acid, alkali metal salt.
Use/Import. (G) Nylon carpet dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >7,500, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: Positive, species (guinea pig).

P 88-940

Manufacturer. Matrix Medica, Inc.
Chemical. (G) Polyurethane ureas.
Use/Production. (G) Polymer film manufacture. Prod. range: Confidential.

P 88-941

Manufacturer. Matrix Medica, Inc.
Chemical. (G) Polyurethane ureas.
Use/Production. (G) Polymer film manufacture. Prod range: Confidential.

P 88-942

Manufacturer. Matrix Medica, Inc.
Chemical. (G) Polyurethane ureas.
Use/Production. (G) Polymer film manufacture. Prod. range: Confidential.

P 88-943

Manufacturer. Confidential.
Chemical. (G) Alkoxysilane terminated polyether polymer.
Use/Production. (S) Adhesives sealant polymer. Prod. range: 750,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-944

Manufacturer. Confidential.
Chemical. (G) Modified functional styrenated acrylate.
Use/Production. (G) Paint nonvolatile vehicle. Prod. range: 125,000 kg/yr.

P 88-945

Manufacturer. Pilot Chemical Company.
Chemical. (S) Benzene, methyl, mono- and di-C20-24-alkyl derivatives.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88-946

Manufacturer. Pilot Chemical Company.
Chemical. (S) Benzensulfonic acid, methyl, mono- and di-C20-24-alkyl derivatives.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-947

Manufacturer. Pilot Chemical Company.
Chemical. (S) Benzensulfonic acid, methyl, mono- and di-C20-24-alkyl derivatives, sodium salt.
Use/Production. (S) Surfactant corrision inhibitor. Prod. range: Confidential.

P 88-948

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Blocked isocyanated prepolymer.
Use/Production. (S) Hardener for powder coating resin. Prod. range: 40,000 kg/yr.

P 88-949

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Epoxy methacrylate ester copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-950

Importer. Confidential.
Chemical. (G) Benzene polycarboxylic acid alkyl ester.
Use/Import. (G) Plasticizer. Import range: Confidential.

P 88-951

Importer. Hi-Tek Polymers, Inc.
Chemical. (G) Diphenol.
Use/Import. (S) Chemical intermediate. Import range: Confidential.

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P 88-852

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-853

Importer. Confidential.
Chemical. (G) Fiber reactive purple dye.
Use, Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-854

Importer. Confidential.
Chemical. (G) Fiber reactive violet dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-855

Importer. Confidential.
Chemical. (G) Acrylourethane.
Use/Import. (G) Coating adhesive. Import range: Confidential.

P 88-856

Importer. Confidential.
Chemical. (G) Acrylourethane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88-857

Manufacturer. Confidential.
Chemical. (G) Ethylene polymerized halogenated magnesium oxotitanium alkoxide.
Use/Production. (S) Catalyst for production of polyolefins. Prod. range: Confidential.

P 88-858

Manufacturer. Confidential.
Chemical. (G) Ethylene polymerized halogenated magnesium oxotitanium alkoxide.
Use/Production. (S) Catalyst for production of polyolefins. Prod. range: Confidential.

P 88-859

Manufacturer. Confidential.
Chemical. (G) Halogenated magnesium oxotitanium alkoxides; halogenated magnesium oxotitanate; halogenated magnesium titanium alkoxides.
Use/Production. (S) Catalyst for production of polyolefins. Prod. range: Confidential.

P 88-860

Manufacturer. Confidential.
Chemical. (G) Halogenated magnesium oxotitanium alkoxides; halogenated magnesium oxotitance; halogenated magnesium titanium alkoxides.
Use/Production. (S) Catalyst for production of polyolefins. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 28,710 mg/kg, species (rat).

Dated: April 21, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-9100 Filed 4-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. W-38]

Window Notice for the Filing of FM Broadcast Applications

Released: April 19, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning April 13, 1988 and ending May 19, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—292A	
Independence	CA
Kingsburg	CA
Brush	CO
South Bend*	IN
Los Lunas	NM
Tishomingo	OK
Channel—292 C2	
New Iberia	LA
Channel—292A	
Marked Tree	AR
Sebastopol	CA
Tice	FL
Yazoo City	MS
Conrad	MT
Wrightsville Beach	NC
Clyde	NY
Cordell	OK
Bishopville	SC
Georgetown	SC
Jacksboro	TX
Uvalde	TX
Nekoosa	WI

*Due to Commission error in the allotment of this channel the Commission has imposed an additional site restriction on the allotment. The new site restriction is 7.6 km (4.7 miles) NW. The restriction site coordinates are 41-43-54 and 86-18-07.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9113 Filed 4-25-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review 46 CFR Part 580

FMC requests extension of clearance for the Commission's regulation to enforce the tariff filing provisions of section 8 of the Shipping Act of 1984. The rule requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, fares, and charges for transportation between U.S. and foreign ports and between points on any through route which is established.

For approximately 2105 respondents, the Commission estimates 593,899 annual responses and 214,787 annual manhours. Total estimated cost to the Government is $1,030,000; estimated annual cost to the public is $3,650,269.

Joseph C. Polking,

Secretary.

[FR Doc. 88-9156 Filed 4-25-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Supervisory Policy Concerning Selection of Securities Dealers and Unsuitable Investment Practices

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Supervisory Policy Statement.

SUMMARY: The purpose of this supervisory policy is to provide State member banks with recommended procedures to be used in the selection of a securities dealer and to advise them of certain securities practices that are viewed by federal banking regulators as unsuitable for an investment portfolio. In addition, the supervisory policy discusses several types of securities with very volatile price and high risk characteristics and which, therefore, may be unsuitable for an institution's investment portfolio, particularly if held in significant amounts.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director, (202) 452-2782; Edwin Demoney, Manager, (202) 452-2434; or Rhoger Pugh, Manager, (202) 728-5883, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: This supervisory policy was developed by the Federal Financial Institutions Examination Council (FFIEC) because of concerns over the use of investment portfolios by depository institutions as vehicles for speculative activities. Such speculative activity has in a number of cases resulted from the depository institution's investment portfolio manager following the advice of the securities dealers who, in order to generate commission income, encourage speculative practices that are unsuitable for the investment portfolio.

The supervisory policy provides a list of standards that a depository institution should apply when selecting a securities dealer. These standards include: review of the securities firm's financial strength; inquiry into the dealer's reputation for financial stability and honest dealings with customer's; inquiry of regulatory authorities concerning the existence of any formal enforcement actions against the dealer; a review of the sales representative's background.

The supervisory policy states that investment portfolios are traditionally maintained to provide earnings, liquidity and a means of diversifying risks. It states that transactions entered into in anticipation of taking gains on short-term price movements are not prudent investment practices and that such transactions should be conducted in the depository institution's closely supervised securities trading account and then only by institutions that have strong capital and earnings. The policy discusses trading practices—i.e., gains trading, when-issued securities trading, pair-offs, corporate settlement on U.S. government and Federal agency securities purchases, repositioning repurchase agreements, and short sales—that are unsuitable for investment portfolios.

The supervisory policy also describes the risk and price characteristics and appropriate accounting treatment for several extremely volatile instruments such as stripped mortgage-backed securities (interest-only strips, commonly referred to as "IOs", and principal-only strips, commonly referred to as "POs") and asset-backed securities residuals. The accounting treatment specified in the policy statement provides that depository institutions shall account for these instruments in accordance with Generally Accepted Accounting Principles (GAAP) as set forth in Financial Accounting Standards Board Statement 91. This statement requires that the carrying amount of these instruments be adjusted when actual prepayment experience differs from the prepayment estimates used in the initial valuation. Institutions not subject to GAAP are instructed to follow GAAP or, alternatively, to carry these instruments at market value or the lower of cost or market value.

Acting pursuant to its supervisory authority over State member banks contained in Section 9 (12 U.S.C. 321, *et. seq.*) and Section 11 (12 U.S.C. 248) of the Federal Reserve Act and the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b)) and related provisions of law, the Board of Governors has adopted the following supervisory policy:

Supervisory Policy Concerning Selection of Securities Dealers and Unsuitable Investment Practices

Purpose

This supervisory policy is to provide recommended procedures to be employed by State member banks and other depository institutions when selecting securities dealers and to advise of certain securities activities that the depository institution regulators view as unsuitable in an investment portfolio.

Background

The depository institution regulators have become aware of speculative activity which has taken place in a number of depository institutions investment portfolios. Certain of these institutions have failed because of the speculative activities, and other institutions have been weakened significantly as their earnings and capital have been impaired and the liquidity of their securities has been eroded by the depreciation in their market value.

Speculative activity often occurs when a depository institution's investment portfolio manager follows the advice of securities dealers who, in order to generate commission income, encourage speculative practices that are unsuitable for the investment portfolio.

Recommendations Concerning the Selection of a Securities Dealer

It is common for the investment portfolio managers of many depository institutions to rely on the experitise and advice of a securities sales reprsentative for: recommendations of proposed investments; investment strategies; and the timing and pricing of securities transactions. Accordingly, it is important for the management of depository institutions to know the securities firms and the personnel with whom they deal. An investment portfolio manager should not engage in securities transactions with any securities dealer that is unwilling to provide complete and timely disclosure of its financial condition. Management must review the dealer's financial statements and make a judgment about the ability of the dealer to honor its commitments. An inquiry into the general reputation of the dealer also is necessary.

The board of directors and/or an appropriate board committee should review and approve a list of securities firms with whom the depository's management is authorized to do business. The following securities dealer selection standards are recommended, but are not all inclusive. The dealer selection process should include:

—A consideration of the ability of the securities dealer and its subsidiaries or affiliates to fulfill commitments as evidenced by capital strength and operating results disclosed in current financial data, annual reports, credit reports, etc.;
—An inquiry into the dealer's general reputation for financial stability and fair and honest dealings with customers, including an inquiry of past or current financial institution customers of the securities dealer;
—An inquiry of appropriate State or Federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers, concerning any formal enforcement actions against the dealer or its affiliates or associated personnel;
—An inquiry, as appropriate, into the background of the sales representative to determine his or her experience and expertise;

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—A determination whether the depository institution has appropriate procedures to establish possession or control of securities purchased. Purchased securities and repurchase agreement collateral should only be kept in safekeeping with selling dealers when (1) The board is completely satisfied as to the creditworthiness of the securities dealer and (2) the aggregate value of securities held in safekeeping in this manner is within redit limitations that have been approved by the board of directors, or a committee of the board, for unsecured transactions (see FFIEC Policy Statement adopted October 1985).

As part of the process of managing a depository institution's relationships with securities dealers, the board of directors may wish to consider including in the financial institution's code of ethics of conduct a prohibition by those employees, who are directly involved in purchasing and selling securities for the depository institution, from engaging in personal securities transactions with the same securities firm that the depository institution uses for its transactions without specific board approval and periodic review. The board also may wish to adopt a policy applicable to directors, officers or employees concerning the recipt of gifts, gratuities or travel expenses from approved dealer firms and their personnel (also see in this connection the Bank Bribery Act, 18 U.S.C. 215 and interpretive releases).

Objectionable Investment Practices

Depository institution directors are responsible for prudent administration of investments in securities. An investment portfolio traditionally has been maintained by a depository institution to provide earnings, liquidity and a means of diversifying risks. When investment transactions are entered into in anticipation of taking gains on short-term price movements, the transactions are no longer characteristic of prudent investment activities and should be conducted in a securities trading account. Securities trading of the types described in section I of the attached appendix will be viewed as unsuitable activities when they are conducted in a depository institution's investment account. Securities trading should take place only in a closely supervised trading account and be undertaken only by institutions that have strong capital and current earning positions. Acquisitions of the various forms of zero coupon, stripped obligations and asset backed securities residuals discussed in section II of the attached appendix will receive increased regulatory attention and, depending upon the circumstances, may be considered unsuitable for a depository institution.

State chartered financial institutions are cautioned that certain of the investment practices listed in the appendix may violate state law. If any such practices are contemplated, the appropriate state supervisor should be consulted regarding permissibility under state law.

Appendix to Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices.

I. Trading in the Investment Portfolio

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity, which when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In this situation, a failure to follow accounting and reporting standards applicable to trading accounts may result in a misstatement of the depository institution's income and a filing of false regulatory reports and other published financial data. It is an unsafe and unsound practice to record and report holdings of securities that result from trading transactions using accounting standards which are intended for investment portfolio transactions; therefore, the discipline associated with accounting standards applicable to trading accounts is necessary. Securities held in trading accounts should be marked to market, or the lower of cost or market, periodically with unrealized gains or losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the depository.

The following practices are considered to be unsuitable when they occur in a depository institution's investment portfolio.

A. "Gains Trading". "Gains trading" is a securities trading activity conducted in an investment portfolio, often termed "active portfolio management." "Gains trading" is characterized by the purchase of a security as an investment and the subsequent sale of that same security at a profit within several days or weeks. Those securities initially purchased with the intent to resell are retained as investment portfolio assets if they cannot be sold at a profit. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at cost, and losses are not recognized unless the security is sold. "Gains trading" often results in a portfolio of securities with extended maturities, lower credit quality, high market depreciation and limited practical liquidity.

In many cases, "gains trading" has involved the trading of "when issued" securities and "pair offs" or "corporate settlements" because the extended settlement period associated with these practices allows speculators the opportunity for substantial price changes to occur before payment for the securities is due.

B. "When-Issued" Securities Trading. "When-issued" securities trading is the buying and selling of securities in the interim between the announcement of an offering and the issuance and payment date of these securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before taking delivery and paying for it. Frequent purchases and sales of securities during the "when-issued" period generally are indications of trading activity and should not be conducted in a bank's investment portfolio.

C. "Pair-Offs". A "pair-off" is a security purchase transaction which is closed out or sold at, or prior to, settlement date. As an example, an investment portfolio manager will commit to purchase a security; then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transaction are settled by one party to the transaction remitting to the counter party the difference between the purchase and sale price. Like "when issued" trading, "pair-offs" permit speculation on securities price movements without paying for the securities.

D. Corporate Settlement on U.S. Government and Federal Agency Securities Purchases. Regular-way settlement for transactions in U.S. Government and Federal agency securities is one business day after the trade date. Regular-way settlement for corporate securities is five business days after the trade date. The use of a corporate settlement method (5 business days) for U.S. Government securities purchases appears to be offered by dealers in order to facilitate speculation on the part of the purchaser.

E. Repositioning Repurchase Agreements. Dealers who encourage speculation through the use of "pair-off" "when-issued" and "corporate settlement" transactions often provide the financing at settlement of purchased securities which cannot be sold at a profit. The buyer purchasing the security pays the dealer a small "margin" that is equivalent roughly to the security. The dealer then agrees to fund the purchase by buying the security back from the purchaser under a resale agreement. Apart from imprudently funding a longer-term, fixed-rate asset with short-term, variable-rate source funds, the purchaser acquires all the risks of ownership of a large amount of depreciated securities for a very small margin payment. Purchasing securities in these circumstances is inherently speculative and is a wholly unsuitable investment practice for depository institutions.

F. Short Sales. A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are speculative transactions that should be conducted in a trading account, and when conducted in the investment portfolio, they are considered to be unsuitable.

Short sales are not permissible activities for Federal credit unions.

II. Stripped Mortgage Backed Securities. Residuals and Zero Coupon Bonds

There are advantages and disadvantages in owning these products. A depository institution must consider the liquidity, marketability, pledgeability, and price volatility of each of these products prior to investing in them. It may be unsuitable for a depository institution to commit significant amounts of funds to long-term stripped mortgage-backed securities, residuals and zero coupon bonds which fluctuate greatly in price.

A. Stripped Mortgage Backed Securities (SMBS). Stripped Mortgage Backed Securities consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlaying mortgage backed securities. In its purest form, an SMBS is converted into an interest-only (IO) strip, where the investor receives 100% of the interest cash flows, and a principal only (PO) strip, where the investor receives 100% of the principal cash flows.

All IOs and POs have highly volatile price characteristics based, in part, on the prepayment of the underlying mortgages and consequently on the maturity of the stripped security. Generally, POs will increase in value when interest rates decline while IOs increase in value when interest rates rise. Accordingly, the purchase of an IO strip may serve, theoretically, to offset the interest rate risk associated with mortgages and similar instruments held by a depository institution. Similarly, a PO may be useful as an offset to the effect of interest rate movements on the value of mortgage servicing. However, when purchasing an IO or PO the investor is speculating on the movements of future interest rates and how these movements will affect the prepayment of the underlying collateral. Furthermore, those SMBS that do not have the guarantee of a government agency or a government-sponsored agency as to the payment of principal and interest have an added element of credit risk.

As a general rule, SMBS cannot be considered as suitable investments for the vast majority of depository institutions. SMBS, however, may be appropriate holdings for depository institutions that have highly sophisticated and well managed securities portfolios, mortgage portfolios or mortgage banking functions. In such depository institutions, however, the acquisition of SMBS should be undertaken only in conformance with carefully developed and documented plans prescribing specific positioning limits and control arrangements for enforcing these limits. These plans should be approved by the institution's board of directors and vigorously enforced.

In those depository institutions that prepare their published financial statements in accordance with Generally Accepted Accounting Principles, SMBS holdings must be accounted for in accordance with Financial Accounting Standards Board Statement #91 (FAS #91) which requires that the carrying amount be adjusted when actual prepayment experience differs from prepayment estimates. Other institutions may account for their SMBS holdings under FAS #91 or alternatively at market value or the lower of cost or market value.

Several states have adopted, or are considering, regulations that prohibit state chartered banks from purchasing IO strips. Accordingly, state chartered institutions should consult with their state regulator concerning the permissibility of purchasing SMBS.

B. Asset Backed Securities (ABS) Residuals. Residuals are the excess cashflows from an ABS transaction after the payments due to the bondholders and the trust administrative expenses have been satisfied. This cashflow is extremely sensitive to prepayments, and thus has a high degree of interest rate risk.

Generally, the value of residual interests in ABS rises when interest rates rise. Theoretically a residual can be used as a risk management tool to offset declines in the value of fixed rate mortgage or ABS portfolios. However, it should be understood by all residual interest purchasers that the "yield" on these instruments is inversely related to their effectiveness as a risk management vehicle. In other words, the highest yielding ABS residuals have limited risk management value usually due to a complicated ABS structure and/or unusual collateral characteristics that make modeling and understanding the economic cashflows very difficult.

Alternatively, those residuals priced for modest yields generally have positive risk management characteristics.

In conclusion, it is important to understand that a residual cashflow is highly dependent upon the prepayments received. Caution should be exercised when purchasing a residual interest, especially higher "yielding" interest, because the risk associated over the life of the ABS may warrant an even higher return in order to adequately compensate the investor for the interest rate risk assumed. Purchases of these equity interests should be supported by in-house evaluations of possible rate of return ranges in combination with varying prepayment assumptions.

Residual interests in ABS are not permissible acquisitions for Federal credit unions. Holdings of ABS residuals by other institutions should be accounted for in the manner discussed under stripped mortgage-backed securities and should be reported as "Other Assets" on regulatory reports.

C. Other Zero Coupon or Stripped Products. The interest and/or principal portions of U.S. Government obligations are sometimes sold to depository institutions in the form of stripped coupons, stripped bonds (principal), STRIPS, or propriety products, such as CATs or TIGRs. Also, Original Issue Discount Bonds (OIDs) have been issued by a number of municipal entities. Longer maturities of these instruments can exhibit extreme price volatility and, accordingly, disproportionately large long-maturity holdings (in relation to the total portfolio) of zero coupon securities may be unsuitable for investment holdings for depository institutions.

By order of the Board of Governors of the Federal Reserve System, this 20th day of April, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-9067 Filed 4-25-88, 8:45 am]

BILLING CODE 6210-01-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Debarment and Suspension; Dr Claudio Milanese

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of debarment.

SUMMARY: This notice announces the debarment of Dr. Claudio Milanese from eligibility for direct or indirect financial assistance under any discretionary program awarded or administered by the Department of Health and Human Services and the end of Dr. Milanese's previous suspension from such activity.

DATES: The debarment became effective April 20, 1988 and ends three years from that date.

FOR FURTHER INFORMATION CONTACT: Robert B. Lanman, Esq., Chief, National Institutes of Health Branch, Public Health Division, Office of General Counsel, 9000 Rockville Pike, Building 31, Room 2B–50, Bethesda, Maryland 20892. Telephone: (301) 496–4106.

SUPPLEMENTARY INFORMATION: Pursuant to 45 CFR Part 76, Dr. Claudio Milanese, Corso G. Marconi 24, 10125 Torino, Italy, has been debarred from receiving or applying for, directly or indirectly, any form of financial assistance under any discretionary program awarded or administered by the Department of Health and Human Services. The debarment applies to assistance provided through grants, cooperative agreements, fellowships, traineeships, loans, loan guarantees, and subgrants supported by such assistance. It also debars Dr. Milanese from service or participation in the conduct or performance of an assisted project. The debarment became effective on April 20, 1988. After three years from that date, Dr. Milanese may again apply to the Department of Health and Human Services for receipt of financial assistance. This action is being taken pursuant to the HHS Financial Assistance Debarment and Suspension Regulations pertaining to grants and other forms of financial assistance, 45 Code of Federal Regulations, Part 76.

The basis for the debarment action is that there is reasonable evidence Dr. Milanese has committed irregularities of a serious nature which are grounds for debarment under 45 CFR 76.10. The investigative report concluded that Dr. Milanese was responsible for three types of fabrication: (1) Frank invention of data; (2) supplying of fraudulent research materials to collaborators; and (3) tidying of data to improve the published results. The instances of serious deviation from accepted medical research practices set forth in the investigative report reflect his failure to comply with the fundamental duty of research scientists to report accurately the methods and results of their research and otherwise reflects a lack of integrity, care and judgment that is so compelling as to seriously and directly affect his participation in HHS financial assistance.

Dr. Milanese has also been debarred from contracting with the Federal government pursuant to the Federal Acquisition Regulation Subpart 9.4.

Dated: April 20, 1988.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

[FR Doc. 88–9132 Filed 4–25–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 87D–0412]

Chloramphenicol as an Unapproved New Animal Drug-Direct Reference Seizure Authority; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7125.33 (the Guide) entitled "Chloramphenicol as an Unapproved New Animal Drug-Direct Reference Seizure Authority." The Guide provides to FDA district offices specific criteria for recommending direct reference seizure of chloramphenicol-containing products that are unapproved new animal drugs.

ADDRESS: Written requests for single copies of FDA Compliance Policy Guide 7125.33 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: James E. Tessmer, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2830.

SUPPLEMENTARY INFORMATION: FDA has prepared Compliance Policy Guide 7125.33 "Chloramphenicol as an Unapproved New Animal Drug-Direct Reference Seizure Authority" to permit FDA district offices to recommend direct reference seizure of chloramphenicol-containing products that are unapproved new animal drugs provided the specific criteria stated in the Guide are met and documented. Chloramphenicol, for animal use, is a new animal drug and several dosage forms of the drug are approved for use only in nonfood-producing animals, specifically, cats and dogs (see 21 CFR Part 555). Any other animal use or intended use of chloramphenicol causes the drug to be an unapproved new animal drug under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) that is adulterated under section 501(a)(5) (21 U.S.C. 351(a)(5)) and subject to seizure under section 304 (21 U.S.C. 334). Chloramphenicol has been used widely and illegally in food-producing animals. Because of this misuse, which included use of chloramphenicol that had been approved for nonfood animals, FDA withdrew the approvals of new animal drug applications for use of the oral solution dosage form of chloramphenicol in nonfood animals. (See 51 FR 1367 and 51 FR 1441; January 13, 1986).

Compliance Policy Guide 7125.33 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy Guide 7125.33 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: April 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–9072 Filed 4–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88D–0063]

New Chapter in Regulatory Procedures Manual; Automatic Detentions of Imported Products; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Regulatory Procedures Manual Chapter 9–25 "Automatic Detentions." Chapter 9–25 establishes criteria for recommending imported products for automatic detention and for recommending their removal from automatic detention.

ADDRESS: Regulatory Procedures Manual Chapter 9–25 "Automatic Detentions" is available for public examination at, and written requests for single copies may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: James C. Lyda, Office of Regulatory Affairs (HFC–131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION: Automatic detention is the administrative act of detaining an entry of a specified article (product) without any physical examination. A product or class of products may be automatically detained based on its violative history or other information indicating that a product or class of products does not conform to the requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or other laws enforced by FDA. Therefore, in some instances, FDA may invoke automatic detention of a specific product without any violative history on that product, because of the violative history of the class of product. In other cases, FDA may invoke automatic detention of a product after the agency finds one violation resulting in detention of the product. Chapter 9–25 contains information about how and when FDA invokes and removes automatic detentions of a product or class of products.

Dated: March 17, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–9074 Filed 4–25–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are annouced:

Neurological Devices Panel

Date, time, and place. May 12, 1988, 8 a.m., Rm. T–418, Twinbrook Bldg. 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 2 p.m.; Robert Munzner, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

General function of the committee. The committee reviews and evaluated available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 2, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss; (1) Panel recommendations regarding clinical studies to obtain valid scientific evidence of effectiveness for pain-relieving devices, and (2) premarket approval application for a low-powered laser to be used in treating pain.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding a premarket approval application for a low-powered laser to be used in treating pain. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Anti-Infective Drugs Advisory Committee

Date, time, and place. May 12 and 13, 1988, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed presentation of data, May 12, 1988, 8:30 a.m. to 4:30 p.m.; open public hearing, May 13, 1988, 8:30 a.m. to 9:30 a.m.; unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research, Rm 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in infectious diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss postmarketing experience with AZT (azidothymidine: ZIDOVUDINE/Burroughs-Wellcome).

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to investigational new drug Nos. 24,999, 27,782, 26,861, 29,149, 23,111, 31,171, 18,554, 29,147, 27,205, and 31,236. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Subcommittee of Vaccines and Related Biological Products Advisory Committee

Date, time, and place. May 19, 1988, 8:30 a.m., Bldg. 29, Rm. 121, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m., to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 4 p.m.; Jack Gertzog, Center for Drug Evaluation and Research, Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed committee deliberations. The committee will review trade secret and confidential commercial information relevent to a pending license application in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. May 24 and 25, 1988, 9 a.m., Conference Rm. E,

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Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

- Type of meeting and contact person. Open public hearing, May 24, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3:20 p.m.; closed committee discussion, 3:20 p.m. to 5 p.m.; open committee discussion, May 25, 1988, 9 a.m. to 1 p.m.; closed committee discussion, 1:30 p.m. to 3:30 p.m.; Clay Sisk, Center for Biologics Evaluation and Research, Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss; (1) Implementation of regulations on potency testing allergenic extracts (21 CFR 680.3), (2) review of potency procedures for allergenic extracts containing antigen E (*Ambrosia artemisiifolia* 1 (Amb a 1)), (3) in vitro tests in allergy/immunology, (4) results of a collaborative skin test trial, (5) skin testing requirements for references and lots of allergenic extracts submitted in support of a license application, and (6) proposed extracts for the National Health and Nutritional Examination Survey.

Closed committee discussion. The committee will review trade secret or confidential commerical information relevant to pending biological product license applications and investigational new drugs. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separate portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statues.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public;

presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 19, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–9071 Filed 4–21–88; 11:14 am]

BILLING CODE 4160–01–M

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming first meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: June 9, 1988, at 9:00 a.m.; June 10 at 9:00 a.m.; Hubert Humphrey Building Auditorium, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Alan R. Hinman, M.D., Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 9–32, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before May 13, 1988 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion

Discussion at this first meeting will center on the role of the Advisory Committee, the organizational structure of the Advisory Committee, and charges to the Advisory Committee. The primary focus of the meeting will be to identify issues to be addressed in future meetings and the approaches that will be taken by the Advisory Committee to respond to those issues.

SUPPLEMENTARY INFORMATION: The National Vaccine Advisory Committee is established under section 2105 of the Public Health Service Act. The Advisory Committee shall:

(1) Study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States;

(2) Recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines;

(3) Advise the Director of the National Vaccine Program with regard to the following vaccine activities carried out by or through the National Institutes of Health, the Centers for Disease Control, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development:

(a) Vaccine research on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines;

(b) Vaccine development, including the techniques needed to produce safe and effective vaccines;

(c) Safety and efficacy testing of vaccines;

(d) Licensing of vaccine manufacturers and vaccines by providing for the allocation of resources to support the licensing program;

(3) Production and procurement of vaccines to ensure that the governmental and nongovernmental production and procurement of safe and effective vaccines meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries;

(f) Distribution and use of vaccines, by providing direction to the Centers for Disease Control and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines;

(g) Evaluating the need for and the effectiveness and adverse effects of vaccines and immunization activities;

(h) Coordination of governmental and nongovermental activities; and,

(i) Allocation of supplemental resources to Federal agencies involved in the implementation of the plan for activities not otherwise funded.

(4) Identify annually for the Director the most important areas of government and nongovernment cooperation that should be considered in implementing the Program.

Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion.

A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: April 19, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–9097 Filed 4–25–88; 8:45 am]

BILLING CODE 4160–17–M

Bureau of Land Management

[CA–060–08–4212–11; CA–14154]

Classification of Public Lands for Recreation and Public Purposes, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

Amendment: Notice of Realty Action, CA–14154.

In **Federal Register** Vol. 51, No. 231, Page 43476, published on Tuesday, December 2, 1986, amend/correct the following:

In the first column, at the paragraph titled—**SUMMARY:** second sentence, after the words ". . . classified as suitable for

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. . ." insert the following words "lease and/or sale for".

In the second column, at the last paragraph, delete the second sentence and replace with "This segregation and classification of the subject public lands shall continue in full force and effect until an authorized officer revokes or modifies it."

DATE: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Indio Resource Area (SCMPA), Bureau of Land Management at 1900 E. Tahquitz–McCallum Way, Suite B–1, Palm Springs, California 92262. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: April 18, 1988.

Leslie M. Cone,

Area Manager.

[FR Doc. 88–9064 Filed 4–25–88; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Waterfowl Harvest Surveys.

Abstract: Migratory waterfowl hunting is authorized throughout the United States including Alaska. Information on the magnitude and composition of the harvest is needed for sound management and to preclude over-harvest of the species involved. The forms used in these surveys provide the major part of that information.

Service Form Number(s): 3–1823 (Survey Contact Card); 3–2056 and 3–2056G (Original and followup Questionnaire); and 3–165 (Parts Collection Envelope—duck wing/goosetail and goosetail only).

Frequency: On occasion.

Description of Respondents: Individuals or households (migratory bird hunters).

Annual Responses: 195,700 (all forms).

Annual Burden Hours: 20,549.

Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859 Riddel Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: April 4, 1988.

James E. Gillett,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 88–9057 Filed 4–25–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1210, Block 78, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject was deemed submitted on April 15, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 18, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–9056 Filed 4–25–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document, Texaco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 0974, Block 278, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 15, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification area also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Units; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 18, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–9065 Filed 4–25–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–290–292 (Preliminary) and 731–TA–400–404 (Preliminary)]

Thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor from Canada, Hong Kong, Japan, Malaysia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–290–292 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Malaysia, and Taiwan of thermostatically controlled appliance plugs and probe thermostats therefor,[1] provided for in item 711.78 of the Tariff Schedules of the United States, which are alleged to be subsidized by the respective Governments of Canada, Malaysia, and Taiwan.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–400–404 (Preliminary) under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Hong Kong, Japan, Malaysia, and Taiwan of the subject merchandise which is alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by May 31, 1988.

For further information concerning the conduct of these investigations, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–252–1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to petitions filed on April 15, 1988, by Triplex Inter Control (USA) Inc., St. Albans, VT.

Participation in the investigations—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all

[1] For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically, a common wall receptical) with a small cooking appliance of 2,000 watts or less (typically, a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of: (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set. The term probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically, small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

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other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 6, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–252–1185) not later than May 4, 1988, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before May 11, 1988, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: April 20, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–8054 Filed 4–25–88; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging a Complaint and Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; ARCO, Inc.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on April 14, 1988 a proposed Complaint and Consent Decree in *United States v. ARCO, Inc.*, Civil Action No. CV–88–32–VU, was lodged with the United States District Court for the District of Montana.

The Complaint filed by the United States was brought pursuant to Sections 106 and 107 of CERCLA to compel the Atlantic Richfield Company ("ARCO") to conduct a permanent relocation and site stabilization of the community of Mill Creek, Montana, and to reimburse the United States for response costs associated with the site. The consent decree provides that ARCO will conduct the permanent relocation and site stabilization required under the Record of Decision ("ROD"), and postpones cost recovery—other than oversight costs—for the next operable unit, which will include the soil clean-up at the Mill Creek site. Oversight costs of EPA will be reimbursed by ARCO under this consent decree.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. ARCO, Inc.*, DOJ# Ref. 90–11–2–208. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, District of Montana, 5043 Federal Building, 26th Street & 3rd Avenue, N, Billings, Montana. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Copying costs are $.10 per page, and the Consent Decree and attachments comprise 467 pages, so a request for a copy of the Consent Decree must be accompanied with a check or money order made out to the Treasurer of the United States for $46.70.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–8060 Filed 4–25–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Consent Decree Pursuant to the Solid Waste Disposal Act; Hermes Consolidated, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *April 25, 1988* a proposed Consent Decree in *Hermes Consolidated, Inc.* v. *U.S. Environmental Protection Agency*, Civil Action No. C86–0212 was lodged with the United States District Court for the District of Wyoming.

The counterclaims filed by the United States alleged *inter alia*, violations of the Solid Waste Disposal Act, *as amended*, 42, U.S.C. 6901–6991(i) (1982 & Supp. 1985) (also referred to as the Resource Conservation and Recovery Act ("RCRA")). Specifically, the counterclaims alleged that defendant failed to comply with RCRA requirements at its crude oil refinery in Newcastle, Wyoming. The counterclaims also alleged that the defendant's facility has released hazardous wastes into the environment. The counterclaims sought injunctive relief and the imposition of civil penalties. The proposed Consent Decree requires the defendant to pay a $25,000 civil penalty. The Consent Decree also requires defendant to implement an extensive RCRA corrective action program to address alleged releases of hazardous wastes.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Hermes Consolidated, Inc.* v. *U.S. Environmental Protection Agency*, Department of Justice Reference #90–7–1–362A.

Copies of the proposed Consent Decree may be examined at the following locations: Office of the United States Attorney, United States Courthouse, 2120 Capitol Avenue, Room 2141, Cheyenne, Wyoming; the U.S. Environmental Protection Agency, Suite 500, 999 18th Street, Denver, Colorado; and, at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6220, Ninth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please refer to *Hermes Consolidated, Inc.* v. *U.S. EPA*, Department of Justice Reference #90–7–1–362A and enclose a check in the amount of $4.10 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–8061 Filed 4–25–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; Edward Lunn Tull

In accordance with the Department policy, 28 CFR 50.7, notice is hereby given that on April 5, 1988, a proposed consent decree in the four pending actions entitled *United States* v. *Edward Lunn Tull* was lodged with the United States District Court for the Eastern District of Virginia. The proposed consent decree resolves the judicial enforcement actions brought by the United States against Edward Tull for violation of the Clean Water Act and the Rivers and Harbors Act on property owned or controlled by him on Chincoteague Island, Virginia.

The proposed consent decree requires Mr. Tull to restore and create mitigation sites of wetlands and reconnect a tidal gut which has been blocked. It allows for the completion of one of the subdivisions involved in the litigation. In addition, the consent decree requires Mr. Tull to pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC, and should refer to *United States* v. *Edward Lunn Tull*, D.J. Ref. 90–5–1–1–1556.

The proposed consent decree may be examined at the office of the United States Attorney, Hoffman United States Courthouse, 6009 Granby Street, Norfolk, Virginia 23510, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19106. Copies of the consent decree may be examined at the Environmental Defense Section, Land and Natural Resources Division of the Department of Justice, Room 7118, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Defense Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–8060 Filed 4–25–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, Anchor Hocking Industrial et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 6, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 6, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 18th day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Anchor Hocking Industrial (AFGWU)	Monaca, PA	4/18/88	4/1/88	20,605	Glass illuminating ware.
Blue Diamond Co. (Workers)	Stearns, KY	4/18/88	4/6/88	20,606	Steam coal.
Chris Craft Industrial Products-Trenton Div. (Company)	Trenton, NJ	4/18/88	4/6/88	20,607	Latex foam rubber.
General Motors Corp. (BOC Kalamazoo) (UAW)	Kalamazoo, MI	4/18/88	4/8/88	20,608	Metal stampings.
General Motors Corp. (CPC OKLAHOMA) (UAW)	Oklahoma City, OK	4/18/88	4/8/88	20,609	Metal stampings.
General Motors Corp. (AC Spark Plug) (UAW)	Flint, MI	4/18/88	4/8/88	20,610	Metal stampings.
(The) Hoover Co. (IBEW)	North Canton, OH	4/18/88	4/5/88	20,611	Floor care products.
Horizon Transportation Service Corp. (Workers)	Battle Creek, MI	4/18/88	3/30/88	20,612	Provide trucking service for firms.
Interpro Fabricators, Inc. (Texas Pipe Bending) (Workers)	Houston, TX	4/18/88	4/8/88	20,613	Fabricated piping.
Matsil Bros., Inc. (Workers)	Long Island City, NY	4/18/88	3/29/88	20,614	Men's terry bathrobes.
Mexus Energy Corp. (Workers)	Amarillo, TX	4/18/88	4/4/88	20,615	Crude oil and natural gas.
New York Twist Drill, Co. (USWA)	Worcester, MA	4/18/88	4/5/88	20,616	Cutting tools.

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APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Scholze Tannery (OCAW)	Chattanooga, TN	4/18/88	3/18/88	20,617	Leather.
Schampain, Citron, Clark, Inc. (Workers)	Elizabeth, NJ	4/18/88	4/7/88	20,618	Rigid carboard gift boxes.
Sheet Metal Products (SMWIA)	El Paso, TX	4/18/88	4/5/88	20,619	Fabricated metal products.
Winchester Hosiery Mills (Workers)	Winchester, VA	4/18/88	4/1/88	20,620	Ladie's and men's socks.

[FR Doc. 88-9158 Filed 4-25-88; 8:45 am]
BILLING CODE 4510-30-M

Babcock & Wilcox Co.; Negative Determination on Reconsideration

In the matter of TA-W-20,111, Beaver Falls Pennsylvania, TA-W-20,112, Ambridge, Pennsylvania, and TA-W-20,113, Koppel, Pennsylvania.

On January 29, 1988, the Department made an Affirmative Determination Regarding Application for Reconsideration for former workers at the above locations of Babcock & Wilcox Company. This determination was published in the **Federal Register** on February 5, 1988 (53 FR 3471). The union requested a filing extension and was granted until April 4, 1988 to submit supporting documents. During the course of the reconsideration investigation, meetings were held in Beaver Falls, Pennsylvania with company and union officials.

The union claimed that the U.S. aggregate import test was too general and that the Department should have considered imports of mechanical pipe, structural pipe, pressure tubing and stainless steel pipe and tube. The union also cited increased import market penetration of seamless mechanical and seamless pressure tubing. It was also mentioned that imports prior to the period applicable to the petition should have been considered by the Department in determining whether workers were eligible for certification under the Trade Act of 1974. Also mentioned was the fact that the Department had previously certified workers at the Beaver Falls Works.

The Beaver Falls Works was an integrated production operation consisting of three plants located in: Beaver Falls, Ambridge, and Koppel, Pennsylvania.

The Department's denial was based on the fact that there was an increase in production and sales in the first three quarters of 1986 compared to the same period in 1985. Further, the production of seamless alloy mechanical tubing, the major product prior to the work stoppage, ceased at the beginning of the work stoppage in September, 1986. The work stoppage covered the period from September 1986 until February 1987. Further, U.S. imports of mechanical steel decreased during the period the company produced mechanical steel. Production resumed in February 1987 but only for oil country goods at Ambridge and Koppel.

Investigative findings show that the production of stainless steel pipe and structural pipe at the Beaver Falls Works ceased in 1985. Workers separated in 1985 are outside the scope of this investigation. Section 223(b)(1) of the Trade Act states that no certification shall apply to workers separated prior to one year of the date of petition which in this case is September 14, 1987.

U.S. imports of mechanical tubing increased in 1987 after Beaver Falls Works' production of it ceased at the time of the work stoppage in September 1986. After inventories were used up, the company ceased taking orders for seamless mechanical tubing in August 1987. The only product produced in 1987 was oil country goods. U.S. imports of oil country goods declined absolutely and relative to domestic shipments in 1987 compared to 1986.

On reconsideration, the Department conducted a new survey of customers purchasing seamless mechanical tubing. The customer purchases were made from stocks on hand. That survey showed that respondents, who had reduced their purchases from Babcock & Wilcox, would have continued their purchases had McDermott International not announced in June 1987 that they would close the Beaver Falls Works. The respondents to the survey accounted for a preponderant share of Babock & Wilcox's 1987 sales decline. Several of the respondents indicated that they needed a reliable source of supply.

The survey also showed that some of the customers increased their purchases of imports in the period following the cessation of production of mechanical tubing at the Beaver Falls Works. These customers commented that they traditionally maintained a foreign presence to assure adequate supplies in the eventuality of a disruption from their domestic sources.

The dominant cause for production and sales declines and worker separations in 1987 was the work stoppage from September 1986 until February 1987 and the decision by McDermott International Corporation in June 1987 to close the Beaver Falls Works. Findings in the investigative case file reveal that management believed that the continued worldwide overcapacity and depressed market conditions in the seamless tubular line of business have permanently impaired the prospects for this activity at Babcock & Wilcox. Other findings which support the overcapacity problem are the facts that U.S. shipments, imports and apparent U.S. consumption of mechanical tubing declined in 1986 compared to 1985.

It is also claimed that the Department's certifications for workers at the Beaver Falls Works in 1976 and 1983 (TA-W-894 and TA-W-13,654) should govern the subject petition as well. The factual determinations required of the Department under the statute are very fact specific. Accordingly, each worker petition must be judged on its own merits and in the time frame in which it was filed and for the product which the workers produced. The major product produced in 1987 was seamless mechanical pipe and tube. Worker petitions TA-W-894 covering specialty steel tubing and pipes and TA-W-13,654 covering seamless steel tubing met all the group eligibility criteria of the Trade Act.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of the Babcock & Wilcox Company's Beaver Falls Works at Beaver Falls, Pennsylvania; Ambridge, Pennsylvania and Koppel, Pennsylvania.

Signed at Washington, DC, this 20th day of April 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 88-9159 Filed 4-25-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Litton Microwave Cooking Products, et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 11, 1988–April 15, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subsdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,464; Litton Microwave Cooking Products, Sioux Falls, SD

TA-W-20,466; PPG Industries, Inc., Tipton, PA

TA-W-20,532; Hamman Oil and Refining Co., Houston, TX

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,459; Chrysler Corp., Kenosha, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,477; Kennedy Mills, Janesville, WI

U.S. imports of man-made finished fabrics, a category which encompasses the predominance of Kennedy Mills' products, declined absolutely in the first three quarters of 1987 compared to the same period in 1986.

Affirmative Determinations

TA-W-20,466; Copley Square, Inc., Fall River, MA

A certification was issued covering all workers of the firm separated on or after February 11, 1987.

TA-W-20,458; A.O. Smith Water Products Co., Kanakee, IL

A certification was issued covering all workers related to the production of boilers, coil and tanks separated on or after March 1, 1987.

TA-W-20,500; Cooper Industries, Cooper Electrical Distribution Products, Earlysville, VA

A certification was issued covering all workers of the firm separated on or after February 25, 1987.

I hereby certify that the aforementioned determinations were issued during the period April 11, 1988–April 15, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW. Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: April 19, 1988.

[FR Doc. 88-9160 Filed 4-25-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20,481]

Wiser Oil Co.; Leeco, KY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Wiser Oil Company, Leeco, Kentucky. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,481; Wiser Oil Company, Leeco, Kentucky (April 19, 1988.)

Signed at Washington, DC this 20th day of April 1988.

Marvin M. Fooks,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-9161 Filed 4-25-88; 8:45 am]
BILLING CODE 4510-30-M

Participation in Alien Status Verification System

Section 121(a)(1) of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), added sections 1137 (d) and (e) to the Social Security Act providing that aliens applying for certain entitlement programs, including unemployment insurance, shall have their immigration status verified through an automated verification system (AVS) developed by the Immigration and Naturalization Service. The Department of Labor has issued the bases on which the Secretary will grant waivers of certain participation in the AVS to all State Employment Security Agencies. The bases are contained in Unemployment Insurance Program Letter No. 26-88. Unemployment Insurance Program Letter No. 26-88 is published below:

Dated: April 11, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Dated: March 15, 1988.

Expiration date: March 31, 1989.

Directive: Unemployment Insurance Program Letter No. 26-88

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator for Regional Management.

Subject: Bases on Which Secretary Will Grant Waivers of Certain Participation in Alien Status Verification System.

1. *Purpose.* To announce the bases on which the Secretary will make a determination to grant a waiver from participation in the Immigration and Naturalization Service's (INS) automated alien status verification system.

2. *References.* Section 121 of the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603); Sections 302(a) and 1137 (d) and (e) of the Social Security Act (SSA); Section 3304(a)(14) of the Federal Unemployment Tax Act (FUTA); INS's public notice of proposed procedures entitled "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs," published in the **Federal Register** on September 8, 1987 (52 Fed. Reg. 33882); and Unemployment Insurance Program Letter (UIPL) Nos. 12-87, 2-88, and 11-88.

3. *Background.* Section 121(a)(1), IRCA, added SSA Sections 1137 (d) and (e) providing that aliens applying for certain entitlement programs, including unemployment insurance (UI), shall have their immigration status verified through an automated verification system developed by the INS. This system enables States to access the INS data base (operated by a contractor) vis several methods and is currently available, although State Employment Security Agency (SESA) use is voluntary in Fiscal Year (FY) 1988. Further, IRCA amended Section 302(a), SSA, to authorize funding of the reasonable expenditures of the State which are

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attributable to the costs of implementing and operating the INS designated alien status verification system. Section 121(c), IRCA, requires each State to utilize this system by October 1, 1988, unless the Secretary of Labor has granted a waiver of its participation for the UI program. Waiver may be granted by the Secretary on his/her own initiative or upon application.

Section 121(c), IRCA, also provids that the Secretary is required to report to the appropriate Congressional committees by April 1, 1988, on whether (and the extent to which) the requirements of the INS designated system are cost-effective and otherwise appropriate for the UI program and whether a waiver should be applied to participation by one or more States.

Section 121(c)(4)(B), IRCA, provides that the Secretary may waive participation by a State if: (a) the State has in effect an alternative system of alien status verification which is as timely and effective as the INS designated system or (b) the cost of administration of the INS designated system will exceed the estimated savings in the State's UI program. The cost-effectiveness criteria the Secretary must use in making the waiver decision are contained in Section 121(c)(4)(C), IRCA. The criteria includes the Secretary's estimate of:

a. The number of aliens claiming UI benefits in relation to the total number of UI claimants;

b. Any savings in UI benefit expenditures reasonably expected from use of the INS designated system;

c. The labor and nonlabor costs of administration of the INS designated system;

d. The degree to which INS is capable of providing timely and accurate information to the SESAs; and

e. Such other factors as the Secretary deems relevant.

To date the following actions have been taken to implement the Secretary's responsibilities under Section 121, IRCA:

a. In February 1987, all SESA Administrators were offered the opportunity to provide State UI information related to the statutory waiver criteria.

b. In March 1987, UIPL No. 12–87 was issued to explain the new IRCA provisions.

c. In October 1987, the General Accounting Office (GAO) issued a report on the results of the 6 pilot States using an INS developed system commonly known as Systematic Alien Verification for Entitlements (SAVE).

d. UIPL Nos. 2–88 and 11–88 were issued providing additional budgetary and procedural guidance under IRCA to the SESAs.

In the meantime, INS has published for comment in the **Federal Register** (52 Fed. R. 33882) proposed alien status verification procedures for the SAVE program. INS also has developed a hand-out describing the various State access methods and "per query" cost estimates. Copies of both items are attached. (Copies of final SAVE procedures will be forwarded upon receipt in the National Office, as well as any other issuances or revised issuances of the INS.)

4. *Bases on Which Secretary Will Grant Waivers.* The waiver decisions will be made on a State-by-State basis, rather than a blanket inclusion or waiver of all States.

Based on the statutory criteria and on an analysis of available data, State participation will *not* be waived for any State whose alien UI claims workload is 3 percent or more. Participation by other States will be waived if they can demonstrate (or the Secretary on his/her own initiative determines) that:

a. The State's present system for alien status verification (mail, telephone, etc) is at least as effective (in terms of administrative costs, benefit cost avoidance, and accurate and reliable information) and timely as the SAVE program, and the requirement of Section 121(c)(4)(B)(i)(II), IRCA, is met (see UIPL No. 12–87); or

b. The proportion of aliens to UI claims workload is so small and/or so sporadic that the administrative costs (start-up and continuing) of using the SAVE program will exceed the benefit savings, and the criteria of Section 121(c)(4)(B)(ii) and (C) are met (see UIPL No. 12–87).

The Secretary's waiver decisions can be reversed. If circumstances change in a State, or if more definitive data become available in a State, the decision with respect to waiver may be changed after FY 1989. The State may make application for a change in the waiver decision or the Secretary may act on his/her own initiative.

5. *Minimum Requirements.* Regardless of any waiver decision relating to UI participation in the SAVE program, the Secretary will *not* waive the requirements of Section 1137(d)(1)(A), SSA, which provide that all claimants must declare in writing, under penalty of perjury, whether they are a citizen or national of the United States, and, if not, whether they are in satisfactory immigration status. This is a requirement of Section 303(f), SSA, that will be effective October 1, 1988, and may be implemented earlier than that date.

Where waiver from participation is granted, States, at a minimum, are still required to verify alien status with INS in cases where the status remains uncertain in order to satisfy the requirements of Section 3304(a)(14), FUTA.

6. *Timing of Secretary's Waivers Determination.* The States timely applying for a waiver will be informed of the Secretary's waiver decisions by June 30, 1988, although waiver decisions on the Secretary's own initiative may be made after that date. Those States not receiving a waiver will be provided with implementation information by the end of June or, if later, when waiver is denied.

The Department has requested approval from the Office of Management and Budget (OMB) to collect State UI data and information to assist in the implementation of the Secretary's responsibilities under Section 121, IRCA. States will be notified of OMB approval and then may submit UI data and information relative to the statutory criteria contained in Sections 121(c)(4)(B)(i)(I) and (II) and 121(c)(4)(C), IRCA.

7. *Action Required.*

a. SESAs are requested to review the INS attachments to this directive regarding the operational alternatives and costs for the SAVE program.

SESAs are encouraged to fully consider the options offered for access to the INS data base to determine if one of these options can be utilized for less cost than current manual procedures. SESAs may find that the SAVE program offers a low cost method for verifying alien status even in those States with small alien UI workloads.

b. States currently using a mail or telephonic alien verification process, and who anticipate requesting a waiver on that basis, may wish to begin preparation of a report to the National Office containing all data and other information relative to the statutory waiver criteria as set in Item 4.a of this directive.

c. SESAs who anticipate applying for a waiver under 4.b of this directive may wish to begin preparation of a report to the National Office containing the required data and information.

SESAs who do not provide complete data and information with their application for waiver may be requested to furnish additional data or information, or the waiver determination may be based on data and information available to the Department when processing the application.

8. *Inquiries.* Questions should be directed to the appropriate ETA Regional Office.

9. *Attachments.* **Federal Register**, pages 33882–33884, dated September 8, 1987, and SAVE program hand-out.

Editorial note: The Immigration and Naturalization Service document printed in the **Federal Register** issue of September 8, 1987, is not reprinted.

Systematic Alien Verification for Entitlements Program

Service Availability

INS has awarded Martin Marietta Data Systems the contract to store and provide electronic access to SAVE's Alien Status Verification Index (ASVI), a data base of more than 25 million records. This service will allow Federal, state and local entitlement issuing agencies, as well as private sector concerns, to verify the immigration documentation of aliens applying for benefits, licenses, etc.

Through its data center in Orlando, Florida, Martin Marietta will provide immediate ASVI access through a variety of highly flexible, easy-to-use and cost effective methods.

Access Methods

Access to ASVI is accomplished nationwide through the company's telecommunications network, common carrier networks such as TYMNET, and TELENET, and/or toll-free 800 telephone service. The information will be updated regularly by INS thus guaranteeing accurate and current information.

Retrieval will be accomplished via:

- Touch-tone Telephone.
- Asynchronous TTY Terminal.
- 3270 Terminal.
- Tape Match.
- Point-of-Sale Device.
- Batch File Transfer.
- Remote Job Entry.

Available Information

- Last Name.
- First Name.
- Date of Birth.
- Country of Birth.
- Date of Entry.
- Social Security Number (if available).
- Immigration Status.
- Employment Eligibility Statement.
- Transaction Verification Code.

Benefits

Immediate access via online query using touch-tone telephone or IBM compatible terminals.

Easy-to-use system. User is prompted for required input through either voice commands, in the case of touch-tone telephone use, or formatted screens in the case of terminals.

No need for purchase and installation of expensive equipment. The touch-tone telephone capability makes the information available to everyone at minimal cost through a toll-free 800 service. Plus, a 24-hour hot line to assist you, should the need arise.

INS estimates that when fully implemented SAVE could realize approximately $2.4 billion annually in cost avoidance payments to unentitled aliens.

SAVE shall not be used by INS for administrative non-criminal immigration enforcement purposes. It provides for verification without regard to the sex, color, race, religion, or national origin of the individual invovled.

Martin Marietta

Martin Marietta Data Systems is an operating company of the Martin Marietta Corporation, a leader in aerospace and information technology.

As an objective business partner for the past twenty years, Data Systems has been providing integrated systems and services to thousands of customers in the government and commercial industries.

Information

For registration authority, contact your overseeing federal reimbursing agency.

For program information, please contact: Marianne Martz, SAVE Program, (202) 633–SAVE.

ASVI BENCHMARK COST RESULTS

Access method	Prime time cost/query [1]	Non-prime cost/query	Additional cost considerations	Additional planning considerations
3270 terminal	$0.012	$0.009	User is responsible for leased line installation and costs	Moderate volume, especially where ASVI queries are made concurrent with the application process.
Async. terminal	.015	.012	Requires user-supplied modem or acoustic coupler	Same as for 3270 access. Unnecessary connect time will increase average query costs.[2]
Touch-tone (voice resp.).	.026	.024	Requires a touch-tone phone or an attached tone generator	Low volume sites. Should not go through a PBX system. Prolonged connect time will increase average query costs.
File transfer (batch)	.005	.004	Requires a modem and a PC with communications hardware and software. Also requires custom software to create query data and interpret response data	Moderate volume (50–1,000 daily queries) sites. Use of a modem capable of at least 1200–2400 BPS is recommended to reduce connect charges. (Can also be used for high volume sites if line speeds are greater than 9600 BPS. Prior coordination with the ASVI vendor is required.)
Remote job entry (batch).	.002	.001	Requires 2780/3780 equipment and communications	Same as for file transfer. Requires prior coordination with the ASVI vendor.
Tape match (batch)	.	.0005	Media and transportation costs are additional. Also requires custom software to create query data and interpret response data.	High volume sites. Requires prior coordination with the ASVI vendor.
Point-of-sale [3]	.	.	Requires special 'terminal'. ASVI vendor must be consulted to ensure compatibility. Retail cost for a terminal is in the $75 to $300 range	Low to Moderate volume sites. Connect time is minimized (maximum of 10 seconds/query). Terminal is 'live' at all times, but generates no charges. Should not go through a PBX system.

[1] The "per query" costs shown here reflect resource usage and costs resulting from the standard "scenarios" demonstrated during the ASVI benchmark process. Users should remember that costs can vary considerably, depending upon the access method, the number of queries per session, and system connect times incurred. During benchmark demonstrations, the 3270 and Asynchronous access standard scenarios consisted of 9 simulated sessions of a single query each, 2 sessions of 10 queries, and 2 sessions of 25 queries. The touch-tone demonstration consisted of 4 sessions of a single query each and 1 session of 10 queries. Cost associated with each complete scenario were averaged to arrive at the costs shown here.

[2] Connect time for Async. access averaged about 1 minute per query during the benchmark; touch-tone access averaged about 2 minutes.

[3] Although POS usage could not be estimated for life-cycle costing, query costs should be similar to those experienced for 3270 and async. access.

[FR Doc. 88–8593 Filed 4–25–88; 8:45 am]

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Mine Safety and Health Administration

[Docket No. M-88-69-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face is required to be 3,000 cubic feet a minute.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and the coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: April 20, 1988.

[FR Doc. 88-9162 Filed 4-25-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-70-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.301-1 (quantity of air reaching working face) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The Petition concerns the requirement that a minimum of 3,000 cubic feet a minute of air reach each working face from which coal is being cut, mined or loaded and any other working face so designated by the District Manager, in the approved ventilation.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximatley 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied.

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximatley 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: April 20, 1988.

[FR Doc. 88-9163 Filed 4-25-88; 8:45 am]

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[Docket No. M-88-71-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.301-4 (velocity of air; minimum requirements) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum mean entry air velocity be 60 feet a minute in all working places where coal is being cut, mined, or loaded from the working face with mechanical mining equipment, and in any other working place in which excessive amounts of respirable dust are being generated by any type of mechanical mining equipment.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 centum of methane is detected:

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feed, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 26, 1988. Copies of the petition are available for inspection at that address.

Date: April 20, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-9164 Filed 4-25-88; 8:45 am]

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[Docket No. M-88-72-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.302-1 (installation of line brattice and other devices) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that line brattice or any other approved device used to provide ventilation to the working face from which coal is being cut, mined or loaded be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and the coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May

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26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

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[Docket No. M-88-73-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.307-1 (methane examinations at face) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an examination for methane be made at the face of each working place during each shift and immediately prior to the entry of such electrical equipment into any working place.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake and of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: April 20, 1988.

[FR Doc. 88-9166 Filed 4-25-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-74-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.308 (methane accumulations in face areas) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a test for methane be made at a point not less than 12 inches from the roof, face or rib.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and the coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantities of methane and other gases. Further, the air sample analyses history from an adjacent mine in the same coal seam establishes that harmful quantities of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May

26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 20, 1988.

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[Docket No. M-88-75-C]

Bend Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bend Branch Coal Company, General Delivery, Sharples, West Virginia 25183 has filed a petition to modify the application of 30 CFR 75.402 (rock dusting) to its Bend Branch No. 4 Mine (I.D. No. 46-07464) and its Coalburg No. 7 Mine (I.D. No. 46-07476) both located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, is required to be rock dusted to within 40 feet of all working faces. All crosscuts that are less than 40 feet from a working face is also required to be rock dusted.

2. As an alternate method, petitioner proposes to use an underground auger mining machine after traditional room and pillar mining is performed. The auger will drill 36 inch holes in the coal pillars up to a maximum depth of 120 feet. While each hole is being drilled, the entire 36 inch diameter space will be completely occupied with the auger and the coal that is being mined.

3. In support of this request, petitioner states that—

(a) The hole will be fully occupied by the auger steel and the coal that is being produced which will inhibit and/or prevent possible gas accumulation in the non-gassy mine;

(b) 18,000 cubic feet per minute of air will be maintained in the intake end of the pillar line which is the only place persons will be working or traveling;

(c) A monitor will be installed on the auger that will give a warning when .5 per centum of methane is detected and will automatically deenergize the auger when 1.0 per centum of methane is detected;

(d) It will take approximately 45 minutes to drill each hole through the coal pillar. When each hole is drilled through the coal pillar and the auger steel is removed, ventilation will be immediately established through each hole, and rock dust will be mechanically applied;

(e) No person, electrical source, or other ignition source will be positioned on the return side of the auger while it is in operation; and

(f) The maximum exposed area created by the auger will be approximately 848.26 cubic feet, which will be immediately and completely ventilated to carry away any harmful quantitites of methane and other gases are nonexistent in this seam.

4. Petitioner states that the proposed alternate method, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 26, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: April 20, 1988.

[FR Doc. 88-9168 Filed 4-25-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ECONOMIC COMMISSION

Meeting

AGENCY: National Economic Commission.

ACTION: Notice of Commission Meeting.

SUMMARY: The National Economic Commision ("the Commission") will hold its first public meeting on May 10, 1988. The Commission was established by sectoin 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: May 10, 1988, 3 p.m.-6 p.m., Room 210, Cannon House Office Building, Washington, DC.

Agenda: The meeting will be devoted to an overview of the budget process and budget trends in the United States. The Commission members will be briefed by staff and specially invited experts.

Open Meeting: The meeting will be open to the public from 3 p.m. to 5:30 p.m. At 5:30 p.m. the meeting will be closed for a discussion of internal personnel practices of the Commission, in accordance with 5 U.S.C. 552b(C)(2).

FOR ADDITIONAL INFORMATION CONTACT: Alexander Platt, General Counsel 789-1993, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Commission was established by Pub. L. 100-203, December 22, 1987, and has been directed to make specific recommendations regarding:

(1) Methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation, and

(2) A means of ensuring that the burden of achieving the Federal Budget deficit reduction goals of the United States does not undermine the economic growth and is equitably distributed and not borne disproportionately by any one economic group, social group, region or State.

The Commission shall submit to the President and Congress on March 1, 1989, a final report which shall contain a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative and legislative action that the Commission considers advisable. On February 1, 1989, the President may issue an order extending the date for submission of the final report to September 1, 1989.

There are twelve members of the Commission, appointed in accordance with section 2102 of the enabling legislation. They are: Pete V. Domenici, Bill Frenzel, William H. Gray III, Lee A. Iacocca, Lane Kirkland, Dean Kleckner, Drew Lewis, Daniel Patrick Moynihan, Felix Rohatyn, Donald Rumsfeld, Robert S. Straus, and Caspar Weinberger. Drew Lewis and Robert S. Strauss have been elected co-chairpersons from among the Members. Two additional members shall be appointed by the President-Elect after the November 8, 1988 election.

The Commission plans additional public meetings, notices of which will appear in the Federal Register.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-9206 Filed 4-25-88; 8:45 am]

BILLING CODE 6820-45-M

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announces the establishment of the Advisory Committee on Nuclear Waste. The Commission has determined that establishment of this committee is necessary and in the public interest in order to obtain expert advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC's regulatory responsibilities.

The purpose of the Committee is to provide advice and recommendations on topics, issues and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and
- Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

This establishment will be effective upon filing the charter with the Commission and with the standing committees of Congress having legislative jurisdiction of the NRC pursuant to sec. 9.(c) of the Federal Regulatory Committee Act.

Dated: April 20, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–9108 Filed 4–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8911]

Mobil Oil Corp.; Final Finding of No Significant Impact Regarding a Termination of the Source and Byproduct Material License for Operation of Mobil Oil Corporation's Crownpoint, Section 9, In Situ Pilot Test Project, McKinley County, NM

AGENCY: U.S.C. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate the source and byproduct material license authorizing Mobil Oil Corporation to operate the grownpoint, Section 9, In Situ Pilot Test Project facility located in McKinley County, New Mexico, upon successful decontamination and decommissioning of the site.

2. Reasons for Final Finding on No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts onsite and offsite due to radiological releases that may have occurred during the course of the operation. Additionally, an impact assessment was conducted on ground-water restortation efforts at the site. The assessment indicates with the exception of slightly elevated molybdenum concentrations. In addition to a site visit by the NRC staff on May 11–12, 1987, the following documents were used in preparing the assessment:

- Environmental and operation information submitted by the licensee to the NRC during the period of October 1, 1986 through November 15, 1987;
- Discussions and written correspondence with the State of New Mexico;
- Permit information from the New Mexico Environmental Improvement Division that was transferred to NRC at the time of NRC reassertion of authority over New Mexico licensees in 1986;
- Information derived from professional papers, journals and textbooks; U.S. NRC regulations and regulatory guides; Federal, State and local agencies; and independent consultants' and
- Mobil Oil Corporation's Irrigation Evaluation Report in Support of the Withdrawal of Discharge Plan DP–26, January 1988.

Based on the review of these documents, the Commission has determined that no significant impact will result from the proposed action.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The site reclamation and decontamination program proposed by Mobil Oil Corporation is sufficient to meet all requirements as specified in 10 CFR Part 40.

B. The ground-water quality at the site has been restored to required concentrations, with the exception of slightly elevated molybdenum concentrations. The elevated molybdenum concentration are not considered significant due to the very small volume of affected ground water, the natural restoration that will continue to occur over time, and the low probability of use due to the depth to the aquifer and the availability of other, more easily accessible water. Further, it is highly unlikely that additional restoration will provide any more reduction in molybdenum concentration at the Mobil site.

The public was informed of the availability of this document by way of a February 12, 1988 **Federal Register.** publication. The subsequent 60-day comment period expired on April 11, 1988. One comment was received and it referred to consideration of consumptive use of ground water, restoration to drinking water standards in future uranium mine permitting and NRC regulations pertinent to such mining activity. This comment was duly noted and will be taken into consideration in future licensing actions as appropriate. Additionally, it is noted that final ground-water quality restoration at this site is within acceptable limits with regard to drinking water standards.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, the URFO will authorize Mobil Oil Corporation (Source and Byproduct Material License SUA–1479) to decontaminate and reclaim their Crownpoint In Situ Pilot Test Project Operations, located in McKinley County, New Mexico. Upon determination by the NRC staff that the site has been decontamined and reclaimed in accordance with NRC regulations, Source Material License SUA–1479 will be terminated.

The finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Denver, Colorado, this 15 day of April, 1988.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office Region IV.

[FR Doc. 88–9119 Filed 4–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–338]

Virginia Electric and Power Co. et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.55a to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for the North Anna Power Station, Unit No. 1 (NA–1), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.55a(g)(4) requires that licensees update their inservice inspection (ISI) and testing (IST) programs to a newer edition of Section XI of the ASME Code every 10 years. Since the regulations require these updates based on the 10-year anniversary of facility commercial operation, multi-unit sites often find that each unit has an ISI and IST program structured to a slightly different edition of the Code. The exemption would allow a common start date for ISI and IST for NA–1&2. A common start date would be achieved by extending the present Unit 1 program expiration date from June 6, 1988 to December 14, 1990.

The proposed exemption is in response to the licensee's application dated March 3, 1988.

The Need for the Proposed Action

The proposed exemption is needed because ISI and IST at NA–1&2 would be accomplished for some period of time to two different ASME Codes if a common start date were not established. Although administratively possible, this situation could contribute to increased administrative overhead in the performance of inspection and testing requirements to two different versions of the Code. This will create a substantial and additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirements.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of ISI and IST that is equivalent to that required by 10 CFR 50.55a(g)(4) such that there is no increase in the risk of failure for operational readiness of pumps and valves whose funtion is required for safety at these facilities. Consequently, the probability of failure for operational readiness of components has not been increased, the radiological risk would not be greater than previously determined, and the required exemption would not otherwise affect plant radiological effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It would not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Altneratives to the Proposed Action

Since we have concluded that the environmental impacts of the porposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Since the staff has determined that granting this exemption would not result in any environmental impacts, denial of this request would only result in requiring the licensee to perform for some period of time the ISI and IST program at NA–1&2 to two different ASME Codes, which would create an additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirments.

Alternative Use of Resources

The proposed action does not involve the use of environmental resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed acation will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from the requirement of 10 CFR 50.55a(g)(4) dated March 3, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 19th day of April, 1988.

For the Nuclear Regulatory Commission.

Harley Silver,

Acting Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–9120 Filed 4–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 5–7, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on March 22, 1988.

Thursday, May 5, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–12:00 Noon: Fire Risk Scoping Study (Open)—Discuss report by Sandia National Laboratory regarding the fire risk scoping study of nulcear power plants.

1:00 p.m.–4:00 p.m.: Babcock & Wilcox Nuclear Power Plants (Open)—Review B&W Owners' Group safety reassessment of B&W water-cooled nuclear power plants.

4:15 p.m.–5:15 p.m.: Integrated Safety Assessment (Open)—Review NRC Staff proposed requirements for continuation of the ISAP program.

5:15 p.m.–6:30 p.m.: Thermal-Hydraulic Phenomena (Open)—Discuss proposed ACRS comments regarding NRC thermal-hydraulic research program.

Friday, May 6, 1988

8:30 a.m.–10:15 a.m.: Generic Issues (Open)—Discuss proposed prioritization of new generic issues.

10:30 a.m.–11:30 a.m.: World Association of Nuclear Operators (Open)—Briefing regarding the objectives, etc. of the World Association of Nuclear Operators.

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11:30 a.m.–12:30 p.m.: Individual Plant Examination (Open)—Review proposed NRC generic letter regarding IPEs for nuclear power plants.

1:30 p.m.–3:00 p.m.: Revised ECCS Rule (Open)—Review proposed revision of 10 CFR 50.46, Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants.

3:15 p.m.–4:45 p.m.: Human Factors (Open)—Review proposed NRC Policy Statement regarding Professional Conduct of Nuclear Power Plant Operators.

4:45 p.m.–5:30 p.m.: Containment of Nulcear Plants (Open)—Briefing regarding the status of the NRC program to evaluate the integrity of Mark–1 containment systems to withstand severe accidents.

5:30 p.m.–6:00 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

6:00 p.m.–6:30 p.m.: Appointment of New Members (Closed)—Discuss qualifications of candidates proposed for appointment to the Committee.

This session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, May 7, 1988

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding items considered during this meeting and a report on key design features related to advanced reactors considered during the 336th ACRS meeting.

1:30 p.m.–2:30 p.m.: Miscellaneous (Open)—Reports on and discussion of topics related to ACRS subcommittee assignments and ACRS activities including proposed revision of ACRS subcommittee assignments and membership, participation by members in meetings which are not sponsored by ACRS, ACRS subcommittee review of the Westinghouse Advanced PWR, and the proposed revision of an NRC Regulatory Guide on Seismic Qualification of Electrical and Mechanical Components.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 109(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: April 20, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–9100 Filed 4–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The amendments would revise Technical Specifications (TS) Tables 3.3–12, 3.3–13, 4.3–8, 4.3–9, 4.11–1 and 4.11–2, to add TS requirements to cover operation of systems and components associated with the Monitor Tank Building (MTB) which is being constructed at Catawba Nuclear Station. Also, TS Figure 5.1–4 "Unrestricted Area and Site Boundary for Radioactive Gaseous Effluent" will be revised to show the MTB as a potential release point.

At the present time, Catawba does not have the capability to process large volumes of liquid radwaste due to restrictions on releases and release rates. This is particularly true for peak load conditions associated with routine plant operations such as during refueling outages.

The MTB and associated components, including additional tankage, will increase process rates and ensure segregation for the various liquid waste streams. By providing a piping arrangement and process area to accommodate portable temporary equipment, the facility will provide surge capacity and processing flexibility to incorporate such future problems as load cycling, ice condenser ice melt and potential volume reduction requirements.

These revisions to the technical specifications would be made in response to the licensee's application for amendments dated March 23, 1988. Additional submittals may be requested by the Commission during the course of its review of this matter.

The licensee in its March 23, 1988, submittal provided the following evaluations of the MTB and its related accident analysis.

The MTB includes many ALARA design features that will reduce the maintenance and operations dose currently received. Its primary functions are to provide additional processing capacity for high radwaste inventories during normal operation, primary to secondary leaks, and contaminated powdex processing.

The MTB and associated trenches do not house any equipment which is important to safety and being a remote facility, cannot adversely affect any equipment which is important to safety. An accident or malfunction within the facility can, however, result in a radioactive release to the environment. The most severe consequences would be those following a tank failure.

The accident which is already analyzed in the FSAR is the failure of the refueling water storage tank (RWST) which results in the release of 395,000 gallons of contaminated water directly to Lake Wylie. Since the total volume of all MTB tankage is much less than that of the RWST and since the radionuclide concentrations of liquids within the MTB will be less than those assumed in the RWST analysis, the consequences of the MTB accident will be much less severe than the RWST accident. The releases resulting from the postulated RWST failure were determined to be within the limits of 10 CFR 20, Appendix B.

Accidents and malfunctions within the MTB will, therefore, not affect the safe operation or shutdown of the plant and will not adversely affect the health and safety of the public.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II–3; (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 19th day of April 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 88–9121 Filed 4–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 127 to Facility Operating License No. DRP–31 and Amendment No. 121 to Facility Operating License No. DPR–41, issued to the Florida Power and Light Company (the licensee), which revised the Technical Specifications for operation of the Turkey Point Plant, Units 3 and 4 (the facilities), located in Dade County, Florida. The amendment was effective as of the date of its issuance.

The amendments revised the Technical Specifications for D.C. Power Sources to upgrade them towards Standard Technical Specifications. Specifically, the surveillance and test requirements for station batteries and battery chargers were revised.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action

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was published in the Federal Register on March 15, 1988 (53 FR 8527).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the Federal Register on April 13, 1988 (53 FR 12203).

For further details with respect to the action, see: (1) The application for amendments dated December 22, 1987, as supplemented March 17, 1988, (2) Amendment No. 127 to License No. DPR-31, and Amendment No. 121 to License No. DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland this 18th day of April, 1988.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.,

Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9122 Filed 4-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would modify the Technical Specifications by changing the shutdown margin switching temperature from 490°F to 470°F. In addition, a typographical error is corrected. The licensee's application for amendment is dated March 23, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 26, 1988, the licensees may file a request for hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which a petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 19th day of April, 1988.

For the Nuclear Regulatory Commission.

Richard Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-9123 Filed 4-25-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 29, 1988 (53 FR 10177). Individual authorities established or revoked under Schedule A, B, or C between March 1, 1988, and March 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during March.

Schedule B

No Schedule B exceptions were established or revoked during March.

Schedule C

One Staff Assistant to the Secretary. Effective March 8, 1988.

Department of Commerce

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective March 9, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective March 9, 1988.

One Confidential Assistant to the Assistant Secretary for Communications and Information. Effective March 18, 1988.

One Confidential Assistant to the Secretary of Commerce. Effective March 18, 1988.

One Confidential Assistant to the Secretary. Effective March 24, 1988.

One Confidential Assistant to the Special Assistant to the Secretary. Effective March 24, 1988.

Department of Defense

One Chauffeur to the Secretary. Effective March 4, 1988.

One Confidential Assistant to the Secretary of Defense. Effective March 16, 1988.

One Private Secretary to the Deputy Secretary of Defense. Effective March 23, 1988.

One Staff Assistant to the Deputy Assistant Secretary for Family Support, Education and Safety. Effective March 23, 1988.

One Staff Assistant to the Assistant Secretary of Defense for Force Management and Personnel. Effective March 23, 1988.

One Personal and Confidential Assistant to the Under Secretary of Defense for Acquisition. Effective March 30, 1988.

Department of Education

One Special Assistant to the Deputy Under Secretary for Management. Effective March 1, 1988.

One Special Assistant to the Director for Intergovernmental Affairs Staff. Effective March 3, 1988.

One Executive Assistant to the Assistant Secretary for Legislation. Effective March 3, 1988.

One Special Assistant to the Commissioner for Rehabilitation Services Administration. Effective March 10, 1988.

One Confidential Assistant to the Deputy Under Secretary for Policy and Planning, Office of Education Research and Improvement. Effective March 11, 1988.

One Confidential Assistant to the Senior Special Assistant for Scheduling, Briefing and Private Sector Initiative Staff. Effective March 16, 1988.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective March 28, 1988.

Department of Energy

One Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective March 1, 1988.

One Legislative Affairs Specialist to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective March 16, 1988.

One Special Assistant for Legislation to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective March 18, 1988.

Department of Health and Human Services

One Special Advisor to the Commissioner of Social Security. Effective March 1, 1988.

One Confidential Staff Assistant to the Director for Office of Community Services. Effective March 10, 1988.

One Confidential Secretary to the Administrator for Health Care Financing Administration. Effective March 17, 1988.

One Executive Assistant to the Assistant Secretary for Human Development Services. Effective March 18, 1988.

One Special Assistant to the Associate Commissioner for the Office of Disability. Effective March 23, 1988.

Department of Housing and Urban Development

One Special Assistant to the President for Government National Mortgage Association. Effective March 10, 1988.

One Special Assistant to the General Deputy Assistant Secretary for Community Planning and Development. Effective March 11, 1988.

Department of Interior

One Staff Assistant for Intergovernmental Affairs to the Assistant to the Secretary and Director for External Affairs. Effective March 2, 1988.

One Staff Assistant to the Commissioner for Bureau of Reclamation. Effective March 3, 1988.

One Confidential Assistant to the Deputy Under Secretary. Effective March 8, 1988.

One Special Assistant to the Assistant Director for External Affairs. Effective March 28, 1988.

Department of Justice

One Confidential Assistant to the Deputy Director for Office of Liaison Services. Effective March 1, 1988.

One Special Assistant to the Deputy Attorney General. Effective March 4, 1988.

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One Special Assistant to the Assistant Attorney General for Civil Division. Effective March 10, 1988.

One Staff Assistant to the Assistant Attorney General for Office of Legal Policy. Effective March 14, 1988.

One Missing Children's Program Coordinator to the Administrator for Office of Juvenile Justice and Delinquency Prevention. Effective March 14, 1988.

Department of Labor

One Staff Assistant to the Deputy Secretary. Effective March 18, 1988.

One Staff Assistant to the Secretary of Labor. Effective March 23, 1988.

Department of State

One Staff Assistant to the Under Secretary for Management. Effective March 9, 1988.

One Foreign Affairs Officer to the Assistant Secretary. Effective March 16, 1988.

One Special Assistant to the Assistant Secretary for Bureau of Near Eastern Affairs. Effective March 23, 1988.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of International Organization Affairs. Effective March 24, 1988.

Department of Transportation

One Executive Assistant to the Federal Railroad Administrator. Effective March 4, 1988.

One Special Assistant to the Administrator for Federal Aviation Administration. Effective March 8, 1988.

One Special Assistant to the Director for Office of Public and Consumer Affairs. Effective March 14, 1988.

One Special Assistant to the Deputy Administrator for Urban Mass Transportation Administration. Effective March 14, 1988.

One Staff Assistant to the Press Secretary to the Secretary. Effective March 16, 1988.

One Special Assistant to the Deputy Assistant Secretary for Governmental Affairs. Effective March 17, 1988.

One Special Assistant to the External Affairs Officer for Federal Aviation Administration. Effective March 21, 1988.

One Director to the Deputy Assistant Secretary for Intergovernmental and Consumer Affairs. Effective March 23, 1988.

One Director to the Director for Office of Congressional Affairs. Effective March 23, 1988.

One Deputy Director to the Director for Office of Intergovernmental and Consumer Affairs. Effective March 24, 1988.

Arms Control and Disarmament Agency

One Secretary (Typing) to the Chairman for General Advisory Committee. Effective March 4, 1988.

Agency for International Development

One Special Assistant to the Special Assistant for Bureau for External Affairs. Effective March 10, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective March 17, 1988.

Commodity Futures Trading Commission

One Administrative Assistant to the Commissioner. Effective March 19, 1988.

One Administrative Assistant to the Chairman. Effective March 10, 1988.

Environmental Protection Agency

One Staff Assistant to the Associate Administrator for Regional Operations. Effective March 25, 1988.

Equal Employment Opportunity Commission

One Research Specialist to the Chairman. Effective March 10, 1988.

General Services Administration

One Confidential Assistant to the Director for Executive Secretariat. Effective March 18, 1988.

International Trade Commission

One Staff Assistant (Legal) to the Commissioner. Effective March 2, 1988.

One Confidential Assistant to the Commissioner. Effective March 11, 1988.

One Staff Assistant (Legal) to the Chairman. Effective March 21, 1988.

Interstate Commerce Commission

One Attorney Advisor (Transportation) to the Commissioner. Effective March 1, 1988.

Office of Personnel Management

One Special Assistant to the Deputy Director. Effective March 28, 1988.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective March 3, 1988.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–8645 Filed 4–25–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25904; File No. SR–NASD–88–14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Notice to Membership and Press of Suspensions, Expulsions, Revocations and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Resolution of the Board of Governors concerning "Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions," ("Resolution") at Article V, Section 1 of the NASD Rules of Fair Practice, by adding language to the effect that the NASD may release certain information contained in the Central Registration Depository ("CRD") System about the employment and disciplinary history of its members and their associated persons in response to written inquiries from the general public. The information released may include past and present employment history with NASD members, final disciplinary actions taken by federal or state securities agencies or self-regulatory organizations that relate to securities or commodities transactions, and criminal convictions reported on Form BD or Form U–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD stated that the purpose of the amendment to the Resolution is to permit members of the public to have access to information that will help them to determine whether or not to conduct, or continue to conduct, business with an NASD member or any of the members' associated persons.

The statutory basis for the amendment to the Resolution can be found in section 15A(b)(6) of the Act, which provides, *inter alia*, that the rules of a national securities association shall be designed to promote just and equitable principles of trade and to protect investors and the public interest. The NASD believes that the proposed amendment is consistent with this section.

The NASD believes that the amendment to the Resolution will create no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e), Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–14 and should be submitted by May 17, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9143 Filed 4–25–88; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Storage Water Heater Specifications and Work Completion Form.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 217.

Need For and Use of Information: The Storage Water Heater Demonstration Project is designed to encourage installation of storage water heaters to reduce TVA's future peak demand for electricity. This information is required to administer the project, provide for quality assurance, and develop marketing data and strategy.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 88–9062 Filed 4–25–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

[Order 88–4–58]

Fitness Determination of Flight Operations Airline Division, Inc. d/b/a Holiday Airlines

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 88–4–58, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Flight Operations Airline Division Inc., d/b/a Holiday Airways is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2342.

Dated: April 20, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–9147 Filed 4–25–88; 8:45 am]

BILLING CODE 4910–62–M

[Docket 45241]

Order Establishing Bush Mail Rate Adjustment for Peninsula Airways, Inc.

Peninsula Airways, Inc. has petitioned the Department of Transportation for a declaratory ruling on the applicable mail rate to be paid by the United States Postal Service for its bush service provided in certain Aleutian markets.

By Order 88–4–56 the Department has determined the rate shall be the bush rate established by the Department as follows:

$7.0946 per billed mail ton mile; and

$.1536 per mail pound originated;

and shall be retroactively effected as of October 23, 1987, and shall continue in effect at such rate until further order of the Department.

By the Department of Transportation.

Date: April 20, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-9146 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-4-60]

Fitness Determination of Redwing Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 88-4-60, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Redwing Airways, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: April 20, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-9148 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 44346]

Remanded Texas Air-Eastern Acquistion Case; Prehearing Conference

April 20, 1988.

Notice is hereby given that pursuant to Department of Transportation Order 88-4-54 instituting the above-titled proceeding, a prehearing conference will be held on April 28, 1988, at 10 a.m. (local time), in Room B-111, International Trade Commission, 500 E Street, *Southwest,* Washington, DC, before the undersigned Administrative Law Judge.

The parties are directed to submit one copy to each other and two copies to the Judge of: (1) Proposed requests for information, (2) any proposals for changes in the procedural schedule contained in the instituting order, (3) proposed stipulations, and (4) a statement of position.

The above material shall be circulated in time to reach the Judge and Washington counsel for the other parties before 3 p.m. on April 27, 1988.

William A. Kane, Jr.,

Chief Administration Law Judge.

[FR Doc. 88-9144 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44346]

Remanded Texas Air-Eastern Acquisition Case; Assignment of Proceeding

April 20, 1988.

This proceeding has been assigned to Chief Administrative Law Judge William A. Kane, Jr. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-9145 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 20-XX; Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 20-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to airworthiness and operational approval of traffic alert and collision avoidance systems (TCAS II) and Mode S Transponders. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before July 31, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the above address, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 20-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The material provided in AC 20-XX addresses the design aspects, characteristics, mechanization, testing, training, and the criticality of system failure cases for Traffic Alert and Collision Avoidance Systems and Mode S transponders. The guidance material is directed at systems which provide traffic resolution advisories in the vertical axis only (TCAS II) and to systems where the operational performance standards are defined in technical documents that were developed by a joint air transport industry/government group.

Issued in Seattle, Washington on April 12, 1988.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 88-9053 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-14]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 16, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 18, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25344	General Electric Aviation Service Operation Pte. Ltd. of Singapore.	14 CFR 145.73(a)	To amend Exemption No. 4873 that allows petitioner to perform maintenance, preventive maintenance, and alteration of certain GE-manufactured aircraft with no restriction as to their geographic scope of operation. This amendment, if granted, would include additional GE-manufactured parts.
25573	Air Transport Association of America	14 CFR 43.3(a) and Part 43, Appendix A, paragraph (b)(1).	To allow petitioner's Part 121 members to classify structural repairs for transport category airplanes in accordance with a logic system based on identification of principal structural elements.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25025	Continental Airlines, Inc.	14 CFR 121.371(a) and 121.378	To amend Exemption No. 4727 that permits petitioner to utilize original equipment manufacturers and foreign repair stations to perform maintenance, preventive maintenance, and alterations on selected components of the petitioner's A-300B4 aircraft, as listed in Appendix B of the exemption. *GRANT, April 4, 1988, Exemption No. 4727A*
25104	CFI, Inc	14 CFR 43.3(g)	To allow petitioner's pilots to change the seating configuration in its Mitsubishi MU-2 and Cessna 414A aircraft. *GRANT, April 4, 1988, Exemption No. 4920*
25280	American Airlines	14 CFR Special Federal Aviation Regulation No. 36, paragraphs 11(a) and 11(b)(2).	To allow storage of substantiating data for a major repair at an original equipment manufacturer's facility in lieu of the petitioner's maintenance facility as required by SFAR 36. This would apply to certain original equipment manufacturer-generated reports concerning test/stress investigations and when the reports are considered to be proprietary by the original equipment manufacturer. *DENIAL, April 8, 1988, Exemption No. 4921*

[FR Doc. 88-9050 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 163 (5th Mtg.)- Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 163 on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on May 16-18, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the fourth meeting's minutes; (3) Review task assignments; (4) Review the 2nd draft of the MOPS; (5) Assignment of tasks; (6) Other business; and (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 19, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-9048 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

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Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on May 13, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of minutes of the meeting held on March 18, 1988; (3) Executive Director's Report; (4) Special Committee Activities Report for March-April 1988; (5) Report of the Fiscal and Management Subcommittee Report; (6) Approve Report of the Future Planning Group; (7) Consideration of Proposals to Establish New Special Committees; (8) Other business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 15, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-9049 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

International Harmonization of Safety Standards; Calendar of Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings will be conducted by the Working Party on the Construction of Vehicles (WP29) under the Principal Working Party on Road Transport of the United Nations' Economic Commission for Europe (ECE), and by the six Meetings of Experts (formerly called Groups of Rapporteurs) of WP29. The NHTSA currently represents the United States in all of the Meetings of Experts except those on Pollution and on Noise.

DATES: For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

FOR FURTHER INFORMATION CONTACT: Francis J. Turpin, Office of International Harmonization (NOA-05), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-2114).

SUPPLEMENTARY INFORMATION: As a result of the reorganization of the structure of the Inland Transport Committee and its subsidiary bodies, WP29 and its subsidiary groups have been renamed to more accurately reflect their functions. Thus, the Group of Experts on the Construction of Vehicles (WP29) has been changed to the Working Party on the Construction of Vehicles and retained its designation as WP29. Also, the Ad-Hoc Group on the Coordination of WP29 Activities (AC.2) has been renamed the Administrative Committee for the Coordination of Work of WP29 and retained its designation of AC.2. Finally, WP29's six Groups of Rapporteurs have been renamed Meetings of Experts and retained their previous designations.

This calendar consists of those ECE meetings currently scheduled. It is published for information and planning purposes and the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

April 25-27, 1988

Meeting of Experts on Lighting and Light-Signalling (GRE), Nineteenth Session—Geneva, Switzerland

May 24-27, 1988

Meeting of Experts on General Safety Provisions (GRSG), Fifty-Second Session—Geneva, Switzerland

May 30-June 1, 1988

Meeting of Experts on Pollution and Energy (GRPE), Seventeenth Session—Geneva Switzerland

June 7-10, 1988

Meeting of Experts on Passive Safety (GRSP), Third Session—Moscow, USSR

June 20, 1988

Administrative Committee for the Coordination of Work of WP29 (AC. 2), Thirty-Seventh Session—Geneva, Switzerland

June 21-24, 1988

Working Party on the Construction of Vehicles (WP-29), Eighty-Fifth Session—Geneva, Switzerland

July 13-15, 1988

Meeting of Experts on Noise (GRB), Fifteenth Session—Geneva, Switzerland

September 5-7, 1988

Meeting of Experts on Pollution and Energy (GRPE), Eighteenth Session—Geneva, Switzerland

September 19-22, 1988

Meeting of Experts on Brakes and Running Gear (GRRF), Twenty-Second Session—Geneva, Switzerland

October 10, 1988

Administrative Committee for the Coordination of Work of WP29 (AC. 2), Thirty-Eighth Session—Geneva, Switzerland

October 11-14, 1988

Working Party on the Construction of Vehicles (WP-29), Eighty-Sixth Session—Geneva, Switzerland

October 31-November 4, 1988

Meeting of Experts on Passive Safety (GRSP), Fourth Session—Geneva, Switzerland

November 28-December 2, 1988

Meeting of Experts on General Safety Provisions (GRSG), Fifty-Third Session—Geneva, Switzerland

November 29-December 2, 1988

Meeting of Experts on Lighting and Light-Signalling (GRE), Twentieth Session—Geneva, Switzerland

The following meetings took place earlier this year:

March 7, 1988

Administrative Committee for the Coordination of Work of WP29 (AC. 2), Thirty-Sixth Session—Geneva, Switzerland

March 8-11, 1988

Working Party on the Construction of Vehicles (WP-29), Eighty-Fourth Session—Geneva, Switzerland

March 21-24, 1988

Meeting of Experts on Brakes and Running Gear (GRRF), Twenty-First Session—Geneva, Switzerland

Issued on April 20, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-9140 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Educational Exchanges With Eastern Europe; Application Notice for Fiscal Year 1988

USIA invites applications from U.S. educational, cultural and other not-for-profit institutions to conduct exchanges of students and young people with the countries of Eastern Europe: Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania, in conformity with recent legislation (Pub. L. 100-204, section 302) authorizing support of exchanges with Eastern Europe.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries * * * to strengthen the ties wich unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world."

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for educational and cultural exchanges of students and young people between the U.S. and the countries of Eastern Europe through a wide variety of substantive bilateral activities. USIA seeks to encourage participation of a broad range of sectors, institutions, and geographic areas in the U.S. and Eastern Europe. Support will be available for projects of up to two-years' duration. Preference will be given to projects that expand the range of existing U.S.-East European exchanges (by scope, field of focus or institutional base), although support for ongoing activities will not be excluded.

Support is offered for two categories of exchange programs. Category A supports exchanges of young people between the ages of 15 and 25. Category B supports student or student-related exchanges at the undergraduate or graduate level. Both existing and new projects are eligible.

Applications must be received by USIA no later than 5:00 p.m. EDT on May 27, 1988.

Category A: Youth Exchange

Grant funding for projects submitted under this category is intended to encourage exchanges of young people between the ages of 15 and 25. Participants must be citizens either of the U.S. or of the partner country or countries.

Organizations must document one or more of the following qualifications: (1) Three years or more of experience in conducting youth exchanges; (2) three years or more of experience in sponsoring substantitve activities for young people; (3) experience conducting youth or adult exchanges with Eastern Europe; (4) experience arranging programs for foreign students or visitors in the U.S. Additionally, organizations should be able to demonstrate an adequate resource base for conducting programming in more than one location, if the project requires it. Organizations seeking funds for a high-school study program must be designated by USIA under the "Criteria for Teenager Exchange Visitor Programs."

Preference is given for project activities that exhibit the following features:

—Thematic focus—The substantive portion of the program should have a specific focus. Eligible foci may include, but are not limited to: the arts (theater, dance, music, literature, fine arts and film/video); language and culture; conservation and the environment; historic preservation; political, social and economic issues; and agriculture (rural or farm-based exchanges). All projects must demonstrate a balance of views in the presentation of the central theme. The balance of substantive programming and other activities will be carefully reviewed for contribution to project goals. For-credit post-secondary study is not eligible for support, nor are single-country performing arts tours.

—Extensive interaction between American and East European youth—Activities should be carefully programmed to provide substantial interaction between the two societies, *e.g.*, homestays, joint seminars, and summer enrichment or camping programs (*e.g.* language or computer camps) in both countries.

—Orientation programs—All participants should be provided an orientation which introduces the program theme, administrative issues, and substantive issues likely to be raised by their U.S. or East European counterparts.

—Minimum stay of four weeks—USIA has a preference for programs in which the duration of stay in country is longer than four weeks. Consideration will be given to those projects which, for reasons of requirements of the partner country or countries, are shorter, but under no circumstances will a proposal be reviewed if the length of stay in country is less than three weeks.

—Language qualifications—Language capability is desirable, but not required. However, some participants in each incoming delegation should be conversant in English; some participants in each outgoing delegation should be conversant in the relevant East European language(s).

—Adequate lead time to ensure a successful exchange—Projects should include adequate planning time. For those projects involving exchanges to occur after October 1, 1988, the application must demonstrate to the Agency's satisfaction the need to secure commitments or to undertake advance planning before October 1.

Allowable costs for Category A projects: Project awards will be made in a wide range of amounts but will not normally exceed $50,000. The primary objective of grant funding is to expand or enhance exchange programs along the lines described above. Therefore, grant-funded items of expenditure will generally be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Admission fees, camping fees, conference/registration fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing.

Category B: Academic Exchange

Grant funding under this category is intended to enhance and expand the scope of US-East European student and student-related exchanges in ways that complement existing exchange programs between the partner countries. Applications for substantive academic exchange activities will be accepted

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from accredited, degree-granting U.S. universities or colleges and from not-for-profit organizations engaged in international educational exchange at the undergraduate or graduate level. Participants must be citizens either of the U.S. or of the partner country or countries.

Preference will be given to proposals that represent new approaches to exchange with Eastern Europe, introduce contact with government ministries and educational and cultural institutions beyond those typically involved in exchanges to date, including institutions below the ministerial level, or involve placement of American students in geographic areas outside capital cities. Preference will be given to proposals for exchanges primarily in the arts, humanities, and social sciences.

Language qualifications: Students should have sufficient fluency in the language of the country to be visited to pursue university studies in that language and to converse with citizens of the country without the aid of interpreters.

Allowable costs for Category B projects: Project awards will be made in a wide range of amounts but will not normally exceed $50,000. Grant-funded items of expenditure will be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant.)
—Academic program fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing, including tuition waivers where applicable.

Requirements for Application (Both Categories)

1. *Eligibility*: In cases where an application is being submitted on behalf of a U.S. and an Eastern European institution, applications must be submitted by the U.S. partner.

2. *Application procedures*: Applicants must submit one original and eleven (11) complete copies of their proposals to:

For Category A Proposals

U.S.-East European Exchanges Program, Youth Exchange Staff, E/YX, Room 357, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

For Category B Proposals

U.S.-East European Exchanges Program, European Exchanges Branch, Office of Academic Programs, E/AEE, Room 208, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

In order to be eligible for review, the proposal must include:

(1) *Summary document*: A typed, double-spaced abstract of approximately two pages;

(2) *Narrative*: Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions, with a copy of the charter and list of Board of Directors of the U.S. institution; information on the applicant's prior experience with East European exchanges, if any, including details on numbers and length of exchanges in each direction; and a description of the institution's resources that would support the movement of participants from one location to another (if proposed) during the course of the project. Institutions seeking support from USIA for the first time, or those whose experience in the field of exchanges proposed for support is of less than four-years' duration, should state this fact.

N.B. Organizations with less than four years' experience with exchanges are limited by USIA grant guidelines to grants of $60,000.

b. A detailed description of the proposed exchange, including but not limited to: A statement of specific project goals, with reference to ways in which the proposed exchange can contribute to overall understanding between the U.S. and the partner country; name and qualifications, including language skills, of project director and senior project personnel; general description of potential participants and their qualifications, including language skills; a detailed, specific description of program activities, including when and where they will occur, and a justification for each proposed activity in terms of the project's overall goals. Proposals must include a timetable for project activities. Proposals for ongoing activities should identify ways in which the original scope of the exchange will be broadened or enriched as a result of the USIA grant. Each proposal must also include a plan for institutional evaluation of the exchange activity. *N.B.: All projects must document active planning with foreign counterpart institutions before October 1, 1988.*

(3) *A detailed, three-column budget* outlining specific expenditures and sources(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions.

Required format for budget: All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number of round trips by number of participants per year. Each maintenance request should specify number of participants and rate. For per diem, the request should specify rate time number of participants times number of days. Breakdowns for each category should be provided. Direct and administrative costs absorbed by each institution should be specified along with absorbed salary and benefits, under the U.S. and partner institutions columns.

	USIA	US Inst.	Partner Inst.[1]
Year 1:			
International travel			
Domestic travel			
Maintenance and per diem costs [2]			
Salary and benefits [3]			
Academic program costs			
Orientation costs			
Enrichment programs			
Cultural allowances			
Other (specify)			
Year 2:			
(Repeat above categories for year 2)			

[1] Assignment of exact dollar or East European currency costs may not be possible. In such cases, please provide specific descriptions of activities to be supported by the partner institution.
[2] Per diem rates may not exceed the maximum set by the U.S. Department of State for overseas locations and the General Services Administration for U.S. localities.
[3] Participating institutions are expected to continue full salary and benefits for staff responsibilities for organizing and managing the exchange.

No dependents' costs are allowable.

(4) *Appendices* should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the principal project staff, not to exceed two pages in length each, clearly indicating the level of language skills; overseas experience, including experience in Eastern Europe, and particularly with the proposed partner country or countries; experience related to youth or academic exchange, as appropriate; relevant publications and research activities; and citizenship. Bio-sketches for the U.S. project staff must be included; those of non-U.S. staff are desirable but not required.

(b) Documentation of institutional support for the proposed exchange program, *including a signed letter of endorsement from the U.S. institution's president, vice-president, chancellor or provost.* Proposals should also provide evidence (if possible, in the form of signed letters from or agreements with heads of universities or other organizations) that designated East European partner institutions are prepared to participate in and support the exchange described in the proposal. General agreements signed or under negotiation with the intended partner institution would also be evidence of partner-country interest and should be cited.

3. *Review process:* USIA will acknowledge all proposals and will send cover sheets and other forms for completion and return to the Agency to applicants whose proposals have arrived complete and within deadline. Technically eligible proposals will be forwarded to committees of USIA officers for review in conformity with the guidelines and criteria set forth herein. All proposals will be reviewed by the Agency's Office of General Counsel. Category B proposals will also be submitted to the Board of Foreign Scholarships.

Complete applications in both categories consistent with the above guidelines will be reviewed according to the following criteria:

a. Soundness of proposal, *e.g.*, as reflected in focused goals, selection of activities, and consistency with Agency program purposes.

b. Feasibility of the program plan.

c. Applicants' experience relevant to program goals.

d. Language capability of program participants as defined above.

e. Multiplier effect. The effects of the exchanges should extend beyond the immediate participants.

f. Contribution to expanding the range of U.S.-East European exchanges. If the proposal is for support for an established activity, it should provide evidence that USIA support would enhance the exchange relationship.

g. Cost effectiveness. USIA encourages cost-sharing.

4. *Deadline:* Complete proposal packages must be received by USIA on or before May 27, 1988, 5:00 p.m. EDT. Applicants are responsible for the submission of complete applications. All required items must be received in one package by deadline.

5. *Notification:* All applicants will be notified of the results of the review process on or about August 15, 1988. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

Category A: Janet Garvey, Youth Exchange Staff (202) 485–7299.

Category B: William Dickson, Academic Exchanges Division, Europe Branch (202) 485–1509.

Dated: April 20, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 88–9079 Filed 4–25–88; 8:45 am]

BILLING CODE 8230–01–M

Office of the United States Trade Representative

Avisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations to be held April 28, 1988 from 1:30 p.m. to 4:00 p.m., in Washington, DC., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88–9068 Filed 4–25–88; 8:45 am]

BILLING CODE 3190–01–M

VETERANS' ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans' Administration.

ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E) Veterans' Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2282. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: April 13, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

New Collection

1. Department of Medicine and Surgery.
2. Veterans' Health Services Survey (VHSS).
3. VA Form 10–20862 (NR).

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4. This is a pilot demonstration of two VA medical clinics. Respondents will be randomly selected volunteers recruited from all patients visiting the clinic during a six-month period. The findings will be used by VA to make decisions on the feasibility of delivering primary health care to veterans living in remote rural areas.
5. Other (nonrecurring).
6. Individuals or households.
7. 875 responses.
8. 289 hours.
9. Not applicable.

[FR Doc. 88-9075 Filed 4-25-88; 8:45 am]
BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans' Administration.
ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: April 13, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Request for Estate Information.
3. VA Form Letter 27-439.
4. This form letter provides the information necessary to determine whether size of estate is within legal boundaries for discontinuance of benefits to incompetent veterans when specific conditions exist.
5. On occasion.
6. Individuals or households.
7. 24,000.
8. 4,000.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Application for Dependency and Indemnity Compensation or Death Pension.
3. VA Form 21-4182.
4. This is a joint form used by survivors of veterans or service personnel to apply for benefits for social security and Veterans' Administration benefits.
5. On occasion.
6. Individuals or households.
7. 28,200.
8. 4,700.
9. Not applicable.

Reinstatement

1. Department of Veterans Benefits.
2. Quarterly Report of State Approving Agency Activities.
3. VA Form 22-7398.
4. This form will be used by State approving agencies to report work performed pursuant to the provisions of the yearly reimbursement contracts.
5. Quarterly.
6. State or local governments.
7. 70.
8. 280.
9. Not applicable.

[FR Doc. 88-9076 Filed 4-25-88; 8:45 am]
BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held May 24 and 25, 1988. This is a regularly scheduled meeting for the purpose of reviewing Agency and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, on Tuesday, May 24, 1988. The meeting on Wednesday, May 25, 1988, will be held in the Lafayette Building, Room 442, 811 Vermont Avenue, NW., Washington, DC 20420.

The meeting on May 24 will begin at 9:00 a.m. and conclude at 4:00 p.m. The day's agenda will consist of update and review of the National Vietnam Veterans Readjustment Study, Department of Labor veterans employment programs and statistics, VA Vocational Rehabilitation and Education Services, and the VA Advisory Group on Rehabilitation. The meeting on May 25 will begin at 8:45 a.m.and conclude at 4 p.m. The second day's agenda will consist of a status report on Agent Orange research and medical treatment, and Vietnam Veteran media coverage. Both day's meetings will be open to the public to the seating capacity of the room.

Due to the limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202 233-3317/3303).

Dated: April 20, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-9078 Filed 4-25-88; 8:45 am]
BILLING CODE 8320-01-M

Geriatrics and Gerontology Advisory Committee; Availability of Report

Under section 10(d) of Pub. L. 94-463 (Federal Advisory Committee Act) notice is hereby given that the Geriatrics and Gerontology Advisory Committee has issued a report entitled, "Oral Health Concerns of the Aging Veteran."

The report focuses on research, education, treatment and reimbursement for oral health problems in the aging veteran. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Veterans Administration Central Office, Office of Geriatrics and Extended Care (18B), Room 865, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: April 20, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-9077 Filed 4-25-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 80
Tuesday, April 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Tuesday, May 2, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Date: April 21, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-9238 Filed 4-25-88; 8:45 am]
BILLING CODE 6750-06-M

NATIONAL COUNCIL ON THE HANDICAPPED

QUARTERLY MEETING

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

May 2, 1988, 9:00 a.m. to 5:00 p.m.
May 3, 1988, 8:00 a.m. to 3:00 p.m.

LOCATION: Washington Hilton & Tower, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. No. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Reports from Chairperson and Executive Director
Discussion of plans and strategies pertaining to Council initiatives on: personal assistance for severely disabled people, living arrangements for severely disabled children, proposed conference of parents and family members, and due process and Least Restrictive Environment concept.
Discussion of unfinished and new business.

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC on April 19, 1988.

Lex Frieden,

Executive Director.

[FR Doc. 88-9177 Filed 4-22-88; 9:16 am]
BILLING CODE 8820-BB-M

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 53, No. 80
Tuesday, April 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25, 31, and 52

[Federal Acquisition Circular 84-36]

Federal Acquisition Regulation (FAR); Restrictions on Federal Public Works Projects, and Promotion of American Aerospace Exports at Domestic and International Exhibits

Correction

In rule document 88-7992 beginning on page 12128 in the issue of Tuesday, April 12, 1988, make the following correction:

On page 12129, in the second column, in the second line, the date should read "April 12, 1988"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone and Bacitracin Methylene Disalicylate

Correction

In rule document 88-7368 appearing on page 11065 in the issue of Tuesday, April 5, 1988, make the following correction:

In the second column, in the first line, "Part 29" should read "Part 20".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0499]

Advisory List of Critical Devices—1988

Correction

In notice document 88-5884 beginning on page 8854 in the issue of Thursday, March 17, 1988, make the following corrections:

1. On page 8855, in the table, under PART 868—ANESTHESIOLOGY DEVICES, in the fourth column, in the last entry, "audit" should have read "adult".

2. On the same page, in the table, under PART 870—CARDIOVASCULAR DEVICES, in the second column, in the 10th line from the bottom, "polytetrafluoroethylene" should not have been hyphenated.

3. On page 8858, in the table, under PART 876—GASTROENTEROLOGY-UROLOGY DEVICES, in the fourth column, in the last entry, insert "commercial" between "in" and "distribution".

4. On page 8858, in the table, in the second column, in the 22nd line from the bottom, "tibial" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 37978]

Recordable Disclaimer of Interest; Louisiana

Correction

In notice document 88-7600 appearing on page 11565 in the issue of Thursday, April 7, 1988, make the following correction:

In the second column, in the first paragraph, in the ninth line, "E½SE¼" should read "E½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 88-02]

Regatta; Sacramento Water Festival

Correction

In proposed rule document 88-8203 appearing on page 12434 in the issue of Thursday, April 14, 1988, make the following correction:

In the second column, under Economic Assessment and Certification, in the 10th line, "necessary" should read "unnecessary".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25590; Amdt. Nos. 121-196 and 135-25]

Smoking Aboard Aircraft

Correction

In rule document 88-8204 beginning on page 12358 in the issue of Wednesday, April 13, 1988, make the following corrections:

1. On page 12360, in the first column, the second line from the bottom of the page should read "when the no smoking sign is lighted, except during landing and takeoff. An exception is necessary".

2. On page 12361, in the first column, in the second complete paragraph, in the 15th line, "responsible" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3304-8]

Standards of Performance for New Stationary Sources; New Residential Wood Heaters

Correction

In rule document 88-2071 beginning on page 5860 in the issue of Friday,

February 26, 1988, make the following corrections:

§ 60.533 [Corrected]

1. On page 5877, in the first column, in § 60.533(k)(2), in the 13th line, "(E)(1)(ii)" should read "(e)(1)(ii)".

§ 60.538 [Corrected]

2. On page 5883, in the first column, in § 60.538(a), the fifth line should read "(g)(2)".

Appendix A—[Corrected]

Method 5G—[Corrected]

3. On page 5888, in the first column, the first formula should read:

$$m_{sw} = \left(\frac{m_s V_{sw}}{V_s} \right) \qquad \text{Eq. 5G-2}$$

4. On the same page, in the same column, the second formula should read:

$$PR = \left(\frac{\Theta(V_{sw}, T_m, T_{sl})}{10(V_{sw}, V_s, T_s, T_{std})} \right) \times 100 \qquad \text{Eq. 5G-6}$$

Method 28—[Corrected]

5. On page 5904, in the third column, under 8.1, the fifth line should read "k_i = Test run weighting factor = $P_{i+1} - P_{i-1}$,".

6. On page 5905, in the first column, the first formula should read:

$$BR = \frac{60\ W_{std}}{\theta} \frac{100 - \%M_w}{100} \qquad \text{Eq. 28-2}$$

7. On page 5912, in the second column, under 5.5.1.2, in the second and third lines, "FO" should read "F_o".

Method 5H—[Corrected]

8. Also on page 5896, in the second and third columns, the text for 7.10 through 7.13 including equation 5H-10 is repeated for the reader because it did not flow properly, it should have read as follows:

7.10 Carbon Balance for Total Moles of Exhaust Gas (dry)/Kg of Wood Burned in the Exhaust Gas.

$$N_T = \left(\frac{K_3\ N_C}{(Y_{CO_2} + Y_{CO} + Y_{HC})} \right)$$

Eq. 5H-7

K_3=1000 g/kg for metric units.
K_3=1.0 lb/lb for English units.

Note: The NO_x/SO_x portion of the gas is assumed to be negligible.

7.11 Total Stack Gas Flow Rate.

$Q_{std} = K_4\ N_T\ BR$ Eq. 5H-8

where:
K_4=0.02406 for metric units, $dam^3/g\text{-}mole$.
=384.8 for English units, dscf/lb-mole.

7.12 Particulate Emission Rate.

$E = c_s Q_{std}$ Eq. 5H-9

7.13 Proportional Rate Variation.

Calculate PR for each 10-minute interval, i, of the test run.

$$PR = \left(\frac{\theta\ S_i\ V_{mi(std)}}{10 \sum_{i=1}^{n} [S_i\ V_{mi(std)}]} \right) \times 100$$

Eq. 5H-10

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Part II

Environmental Protection Agency

40 CFR Part 148

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions, Phase Two; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148

[FRL-3318-1]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions, Phase Two

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing rules implementing the Congressionally mandated prohibitions on the underground injection of selected hazardous wastes. This proposed action is being taken in response to amendments to the Resource Conservation and Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice proposes effective dates for "California list" wastes (as defined by section 3004(d) of RCRA), as well as certain wastes prohibited under section 3004(g) of RCRA.

The general framework for implementing the land disposal restrictions for injection of hazardous wastes was proposed on August 27, 1987 (52 FR 32446 *et seq.*); that proposal should be consulted for a more thorough explanation of the Agency's rationale concerning the implementation of the no-migration standard and other general requirements.

DATES: Comments must be received on or before May 26, 1988; the public hearing will be held on May 9, 1988, from 10:00 A.M. to 5:00 P.M. EDT; requests to present oral testimony must be received on or before May 2, 1988.

ADDRESSES: Comments (in triplicate), requests to testify, and inquiries concerning the Public Docket should be addressed to Eric Callisto, EPA, Office of Drinking Water (WH-550), 401 M Street SW., Washington, DC 20460. The hearing will be held in the Auditorium of the EPA Training Center, Waterside Mall, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water, EPA, (202) 382-5508.

SUPPLEMENTARY INFORMATION

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I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004(d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the California list, in injection wells.

Wastes meeting the treatment standards set by EPA under section 3004(m) of RCRA may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation of rules banning disposal unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h)(1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable statutory effective date. In addition, two 1-year, case-by-case extensions of the effective date may be granted under certain circumstances (RCRA sections 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The statute also sets forth a series of deadlines for Agency action.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or newly identified waste.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remain hazardous * * *". If EPA does not determine those instances where disposal would be protective, the injection of these wastes is prohibited on August 8, 1988, under section 3004(f)(3).

2. Section 3004(g)

Section 3004(g) of RCRA applies to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in sections 3004(d) and (e). EPA promulgated this schedule on May 28, 1986 (51 FR 19300 *et seq.*)

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous * * *".

Furthermore, the section provides that, except for wastes which have been treated to the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

On August 27, 1987 (52 FR 32446 *et seq.*), the Agency proposed to apply the same standard to injection of hazardous waste, regardless of whether the waste was covered under section 3004(f) or section 3004(g). The comment period closed on October 26, 1987. A brief summary of that proposal follows.

As noted in that proposal, sections 3004 (f) and (g) do not use the same language, but both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of no migration from the injection zone for as long as the wastes remain hazardous. EPA believes that the no-migration standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the no-migration demonstration should be similar for all injection wells regardless of the type of injected waste, and that the no-migration standard should apply to all facilities injecting hazardous waste regardless of which section of the statute they are subject to.

B. Effect on State UIC Primacy

States need not seek authorization to administer the land disposal restrictions program codified in Part 148 to maintain Underground Injection Control (UIC) primacy. These provisions are in effect in all states as a matter of federal law. However, the Agency expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant no-migration exemptions from land disposal restrictions as well as case-by-case extensions under section 3004(h)(3). However, before such authorization can be granted, the State would have to demonstrate that it has the authority to implement sections 3004 (f) and (g) and (h)(3) of RCRA, and receive authorization to do so. A thorough discussion of the conditions under which such authorization can take place can be found in 50 FR 28728 *et seq.*, July 15, 1985, 51 FR 40618 *et seq.*, Nov. 7, 1986, and 52 FR 25783 *et seq.*, July 8, 1987. In addition, where jurisdiction for UIC and RCRA do not reside in the same State agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

C. Summary of the Land Disposal Restrictions Framework

1. Regulatory Framework

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) establishing the regulatory framework for implementing the land disposal restrictions. Corrections to the November 7, 1986, final rule were included in a June 4, 1987, **Federal Register** notice (52 FR 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 FR 25760). Rules which specifically address disposal of hazardous waste through injection wells were proposed on August 27, 1987 (52 FR 32446).

By each deadline, according to a schedule established either in the statute under sections 3004 (d), (e), or (f) (or promulgated on May 28, 1986 (51 FR 19300), for section 3004(g) wastes), the Agency intends to promulgate the applicable treatment standards for each hazardous waste. Restricted wastes may be land disposed in a Subtitle C facility if they meet the applicable treatment standards.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued disposal in injection wells unless a petition has been approved under Subpart C of Part 148 demonstrating that continued management of those hazardous wastes in the injection well is protective of human health and the environment for as long as the waste remains hazardous. Also, § 148.4 provides that EPA may, on a case-by-case basis, grant an extension to the effective date according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew an extension more than once.

2. Applicability

Land disposal is defined as including, but not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, underground mine or cave, and concrete vault or bunker.

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes placed into land disposal units after the effective date of a statutory or regulatory prohibition are subject to the restrictions, but wastes land-disposed prior to the applicable effective date are not required to be removed or exhumed for treatment. Similarly, the restrictions on storage of affected hazardous wastes apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to the land disposal restrictions are removed from either a storage unit or land disposal unit after the effective date, such wastes would be subject to the restrictions and treatment standards.

The provisions of the land disposal restrictions apply to wastes produced by all generators of over 100 kilograms of hazardous waste (or greater than 1 kg of acute hazardous waste) in a calendar month; however, wastes produced by generators of less than 100 kilograms of

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hazardous waste (or less than 1 kg of acute hazardous waste) per calendar month are exempt from the land disposal prohibitions.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions regardless of existing permit conditions. The regulations at 40 CFR 270.4(a) have been amended so that compliance with a RCRA permit (including permits-by-rule under § 270.60(b)) no longer constitutes compliance with Subtitle C as a whole.

3. Development of Section 3004(m) Treatment Standards

In the November 7, 1986, rulemaking, EPA promulgated a technology-based approach to setting treatment standards under section 3004(m). These treatment standards are based on the performance of the best demonstrated available technology (BDAT) identified for the hazardous constituents.

In developing the treatment standards, EPA first characterizes the wastes and establishes treatability groups for wastes having similar physical and chemical properties, and thus, similar treatability characteristics. Once the treatability groups are established, EPA collects and analyzes data on identified technologies used to treat the wastes in each treatability group.

EPA identifies those technologies that are "demonstrated" by full-scale operation. The demonstrated technologies are then evaluated to determine whether they may be considered "available". To be considered "available", the Agency determines whether the demonstrated technologies: (1) Are commercially available, (2) do not present a clear increase in risk to human health and the environment when compared to land disposal of the untreated wastes into a RCRA subtitle C facility, and (3) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

As explained in the November 7, 1986, final rule, the Agency evaluates the risks associated with treatment technologies and land disposal technologies (51 FR 40589). Based on a comparative risk assessment, those technologies that are found to present greater total risk than land disposal of untreated wastes into a RCRA Subtitle C facility are considered "unavailable" as a basis for establishing BDAT levels.

In modeling the risk of underground injection, the Agency intends to follow the same general approach as the one applied to surface land disposal units. However, the Agency does not believe the portion of the modeling done to date for predicting waste fate and transport is appropriate for underground injection. Such models must be capable of simulating flow in deep, pressurized systems at high temperatures through highly mineralized connate waters. Accordingly, the Agency intends to use a model specifically designed to simulate such conditions.

The risk analyses done to date use assumptions which are appropriate for modeling fate and transport in unconfined systems from surface land disposal units. This analysis has not resulted in situations where the risks of alternate treatment technologies are greater than those associated with surface land disposal of untreated hazardous waste. However, preliminary studies suggest that, at least for certain wastes, land disposal by injection poses total risks which may be less than the risks for treatment technologies which have been used to set BDAT levels with respect to surface land disposal facilities.

This result could pose a dilemma for the Agency. Specifically, it could lead to situations in which practices which are manifestly safer might be banned while more risky practices would be allowed to continue. For example, if injection were found to be safer than any of the forms of treatment available for a given waste stream, BDAT would not be established for injected waste; BDAT would be available for surface land disposal, however. Thus, the waste could continue to be land disposed in surface units, provided that the waste were treated—a process which the Agency's own analyses would have shown to pose a greater risk than injection. Injection of this waste stream, on the other hand, would be prohibited (unless the site could make a no-migration demonstration under § 148.20).

In light of this, the Agency is reconsidering the role of risk in determining the availability of BDAT. The Agency intends to publish a Notice of Data Availability which outlines the results of the comparative risk analyses. At that time, or in an earlier notice, EPA may propose an alternative framework for consideration of risk in establishing BDAT.

The performance data on the demonstrated available technologies are evaluated to determine whether the data are representative of well-designed and well-operated treatment systems. Only data from well-designed and operated systems are included in determining BDAT. Such performance data are then statistically analyzed to determine the performance level representative of treatment by the candidate technology. EPA may set the treatment standards as either a specific technology or as a performance level of treatment monitored by measuring the concentration level of the hazardous constituents in the waste or treatment residual, or an extract of the waste or treatment residual. When possible, EPA would prefer to set a treatment standard as a performance level, allowing the regulated community greatest flexibility in meeting the treatment standard. When treatment standards are set as performance levels, the regulated community may use any technology (not otherwise prohibited, e.g., dilution) to treat the waste to meet the treatment standard, and is not limited to only those technologies which have been considered in determining BDAT.

In the final rule prohibiting land disposal of solvents and dioxins by means other than injection (52 FR 40593, November 7, 1986), EPA promulgated regulations requiring the regulated community to use the Toxicity Characteristic Leaching Procedure (TCLP) (Part 268 Appendix I) when developing the extract from the waste or treatment residual. This extract must be analyzed to determine whether the concentrations of hazardous constituents meet the applicable treatment standards (which are expressed in Table CCWE at § 268.41 as constituent levels in the TCLP extract). The TCLP has only been promulgated for monitoring compliance with the treatment standards established for the F001–F005 spent solvent wastes and the F020–F023 and F026–F028 dioxin contaminated wastes treatment standards, and will only be used when the treatment standards are expressed as concentration of hazardous constituents in a waste (or treatment residual) extract.

4. Determination of Alternative Capacity and Ban Effective Dates

a. Establishing Effective Dates. The manner in which effective dates are established differs according to what sections of the statute govern particular wastes. Solvents, dioxins, and California list wastes, which are covered under sections 3004 (d), (e), and (f), are subject to the so-called "hard hammer". Under this statutory scheme, the waste is automatically banned upon the statutory deadline, regardless of whether the Agency acts to set BDAT or fails to prohibit disposal of such wastes

(although the Agency may, under section 3004(h)(2), provide variances for up to 2 years based on lack of alternate capacity). The statutory deadline prohibiting land disposal of these wastes by injection is August 8, 1988.

Scheduled wastes, covered under section 3004(g), are initially subject to a "soft hammer". Under this approach, the Agency must establish a schedule by which any hazardous wastes not covered under sections 3004 (d), (e), or (f), are banned. The statute mandates that these scheduled wastes be addressed in three stages: August 8, 1988; June 8, 1989; and May 8, 1990. It further states that the wastes should be placed in one of these "thirds" based on their intrinsic hazard and volume. High-volume, highly hazardous wastes are placed in the first third; wastes with relatively lower hazards or which are produced in lower volumes are placed in the later thirds. Unlike the wastes subject to the "hard hammer", there is no immediate statutory ban in cases where the Agency fails to take action. If EPA fails to set BDAT or otherwise establish prohibition dates for the first two-thirds by the 6/8/88 or 6/8/89 deadlines, respectively, the wastes in the first two "thirds" are not banned by the statute from land disposal until May 8, 1990, unless EPA issues regulations establishing an earlier effective date for the ban. If these wastes were to be managed in a landfill or surface impoundment, the units would have to comply with the requirements of section 3004(o) during the period the facilities were not subject to a ban.

b. Effective Dates Based on National Capacity Determinations. The Agency has the authority to grant national variances (for up to a two-year maximum) from the statutory effective date based upon a lack of adequate alternative capacity. To make this determination, EPA considers, on a nationwide basis, both the physical capacity of alternative treatment technologies (permitted and interim status facilities that are expected to be on-line by the effective date) and the quantity of restricted wastes generated. If adequate capacity is available, the restriction on land disposal of that waste goes into effect upon the statutory deadline. If there is a significant shortage of national capacity, EPA may set an alternative effective date based on the earliest date on which capacity for treatment that is protective of human health and the environment will be available.

During the period of the national variance, the waste is not subject to the land disposal prohibitions.

c. Case-by-Case Extensions. The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis to an applicant who applies for such an extension. The applicant must demonstrate (among other things stated in § 268.5(a)(1)) that a good faith effort has been made to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his wastes, and that he has entered into a binding contractual commitment to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond his control. During the period of the extension, the waste is not subject to the land disposal prohibitions.

5. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that fail to meet the applicable treatment standard or prohibition level are removed within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4.

As promulgated in the California list final rule (52 FR 25760), evaporation of hazardous constituents as the principal means of treatment is not considered treatment for the purposes of this exemption (§ 268.4(b)).

6. Dilution Prohibition

As established in the November 7, 1986, rule, and modified in the July 8, 1987, rule, dilution is prohibited as a substitute for adequate treatment. This includes dilution to achieve compliance with a treatment standard or compliance level, as well as dilution to circumvent the effective date of a prohibition, to otherwise avoid or circumvent a land disposal prohibition (§ 268.3). However, dilution is permitted as a necessary part of the treatment process.

7. Storage Prohibition

Storage of restricted wastes is prohibited except where storage is solely for the purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal (§ 268.50). RCRA-permitted treatment, storage, and disposal facilities may store restricted wastes for as long as needed, provided such storage is solely for this purpose. However, if the facility stores a restricted waste for more than one year, it bears the burden of proof that such storage was solely for this purpose (no notification of storage exceeding one year is required). For storage of less than one year, EPA bears the burden of proof that such storage was not for the sole purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal. This statutory prohibition on storage does not apply to RCRA wastes which meet the treatment standard, wastes which have been granted a variance or an extension to the effective date, and stored wastes which are the subject of a "no-migration" exemption under § 148.20.

8. Variance from the Treatment Standard

EPA established the variance from the treatment standard to account for those wastes which are unable to be treated to meet the applicable treatment standards, even if well-designed and well-operated systems are used (§ 268.44). Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in setting the treatment standard and that the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could establish a new waste treatability group and corresponding BDAT treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

9. "No-Migration" Exemption

Proposed § 148.20 (52 FR 32451 *et seq.*) outlined in detail the Agency's plan for implementing the no-migration provisions of RCRA with respect to injected wastes. Briefly, a petitioner would be required, through modeling, to demonstrate there would be no migration of hazardous constituents from the injection zone for as long as the waste remained hazardous. This demonstration could be made in one of two ways. The operator could demonstrate, using flow and transport models, that the site conditions are such that injected fluids would not migrate vertically out of the injection zone or migrate within the injection zone to a point of discharge for a period of ten thousand years. Alternatively, an owner

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or operator could show that the waste is transformed, due to geochemical processes, for example, in such a manner that it would become nonhazardous at the edge of the injection zone. In keeping with existing policy, the Agency proposed to use established health-based standards, such as Maximum Contaminant Levels (MCLs), to define hazardous levels. A demonstration based on geochemical modeling could not rely on attenuative mechanisms occurring outside the injection zone.

Also, an owner or operator would have to certify that the well was in compliance with the proposed new area of review, corrective action, and mechanical integrity requirements of Part 146 as proposed on August 27, 1987 (52 FR 32457 *et seq.*).

II. Summary of Today's Proposal—California List Wastes

A. Background

This section of today's proposal outlines the Agency's approach for determining effective dates implementing the ban on injection of California list wastes pursuant to section 3004(f) of RCRA. On December 11, 1986, the Agency proposed to codify the statutory levels for California list wastes as set forth in section 3004(d) of RCRA. The Agency also requested comment on lowering levels for metals based on Extraction Procedure (EP) toxicity characteristics where they exist, and on other factors for metals not covered by the EP toxicity characteristic.

EPA promulgated the land disposal restrictions final rule applicable to land disposal facilities other than injection wells for some California list wastes on July 8, 1987 (52 FR 25760). This rule promulgated treatment standards and corresponding effective dates for the California list hazardous wastes containing polychlorinated biphenyls (PCBs) and most halogenated organic compounds (HOCs), and codified the statutory prohibition levels on certain corrosive wastes.

The California list final rule integrated a number of TSCA requirements into the RCRA framework. This ensures that where inconsistencies exist between TSCA and RCRA standards, the more stringent regulations govern.

The final rule established treatment standards as methodologies for PCBs and HOCs (except dilute HOC wastewaters). All liquid and nonliquid hazardous wastes containing HOCs (listed in Appendix III of Part 268) in total concentration greater than or equal to 1000 mg/1, except dilute HOC wastewaters (i.e., primarily water mixtures containing HOCs in concentrations greater than or equal to 1000 mg/1 but less than 10,000 mg/1), must be incinerated in accordance with the requirements of Part 264 Subpart O or Part 265 Subpart O. However, with respect to surface land disposal, EPA determined that there is a nationwide lack of incineration capacity, and therefore granted a 2-year variance from the treatment standard. Dilute HOC wastewaters need not be incinerated, but they must be treated to below the 1000 mg/1 prohibition level prior to being land disposed by means other than injection. Dilute HOC wastewaters were not granted a variance and were prohibited from land disposal by means other than injection as of July 8, 1987.

Liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm must be treated in accordance with existing TSCA thermal treatment regulations at 40 CFR Part 761. For PCB concentrations greater than or equal to 50 ppm but less than 500 ppm, incineration in accordance with the technical requirements of 40 CFR 761.70 or burning in high efficiency boilers in accordance with the technical requirements of 40 CFR 761.60 is required. For PCB concentrations greater than or equal to 500 ppm, incineration in accordance with the technical requirements of 40 CFR 761.70 is required. Thermal treatment for PCBs must also be in compliance with applicable regulations in Parts 264, 265, and 266. No variance to the effective date (7/8/87) was granted for land disposal of PCBs equal to or greater than 50 ppm by means other than injection.

No prohibition levels, treatment standards, or effective dates were established for the California list liquid hazardous wastes containing metals or free cyanides. A notice of data availability and request for comment which outlines the Agency's findings with respect to establishing more stringent prohibition levels was published August 12, 1987 (52 FR 29992).

B. Determination of Treatability Groups, Establishment of Best Demonstrated Available Technology (BDAT), and Effective Dates

1. Free Cyanides and Metals

In the August 12, 1987, Notice of Data Availability, the Agency presented technologies which are applicable to the treatment of California list metal and cyanide wastes (52 FR 29998 *et seq.*). The Agency also presented data that indicates that the existing technologies can achieve the EP regulatory levels or analogous levels for these wastes. A rulemaking to lower the prohibition levels and/or establish BDAT technology or treatment standards for the California list metal and cyanide wastes, however, has not been finalized.

The Agency believes that it is still possible to make capacity determinations, however, even in the absence of established BDAT standards or statutory ban levels. Moreover, EPA believes that the earlier the Agency signals to the concerned community its intentions regarding capacity variances, the more information it will have when making final determinations.

In order to accomplish this, the Agency will assess whether capacity variances are necessary based on waste quantities resulting from both the statutory ban concentrations, and the lower concentrations suggested on August 12, 1987. This can be accomplished by determining the quantity of waste generated in each treatability group for each proposed ban concentration and comparing it to the national capacity of the various treatment methods appropriate to that group.

As indicated in the August 12, 1987, notice, the data available on both quantities of waste generated and capacity of treatment are limited. The Agency has relied principally on the 1981 RIA mail survey (Ref. 1) and a recent analysis of that survey to refine the information on treatment capacity (Ref. 2). In addition, the Agency just completed an updated survey of both treatment capacity and quantities of waste disposed of in injection wells (Ref. 3). Additional data on treatment capacities and waste volumes generated were available from a survey conducted by Tischler and Kocurek for the Chemical Manufacturers Association (Ref. 4).

The Agency believes the information used in these determinations to be accurate. However, some uncertainty remains. Although these reports are based on recent discussions with state regulatory agencies, EPA Regional Offices, and owners and operators of facilities with injection wells, it was in a few cases difficult to determine whether the data provided referred to volume of waste generated, or volume injected, or if indeed there is a difference. In addition, in some instances, concentration data were not always available, and therefore some wastes which were lower in concentration than either the statutory or suggested ban levels could have been included in the analysis. Nevertheless, the Agency believes the values obtained to be sufficiently accurate to assess capacity.

a. Effective Dates Based on Statutory Ban Levels. The primary treatment methods used for metals other than hexavalent chromium are chemical precipitation and chemical fixation. Other technologies exist, such as ion exchange and high temperature metals recovery, but they are generally better suited to more concentrated waste streams than those which are disposed of by injection (52 FR 29999). Moreover, the availability of these treatments are limited, and would still warrant capacity variances.

There are 243,200,000 gallons of these wastes disposed of by injection each year (excluding chromium-containing wastes). The Agency's best data show a commercial capacity of 4,710,000 gallons for fixation, and 163,440,000 gallons for chemical precipitation (Ref. 2). An additional 8,440,000,000 gallons of metal bearing wastes are disposed of in surface land disposal units (52 FR 30000). The Agency has determined that there is little on-site treatment capacity available to handle injected waste streams (Ref. 3).

Although EPA anticipates that on-site capacity will increase when the minimum technology requirements of section 3005(j)(1) go into effect on November 8, 1988, it will not be sufficient to accommodate the volumes currently injected. Most, if not all, of this capacity will be used to handle waste currently land disposed in surface units. In addition, EPA believes the volume of wastes resulting from cleanup activities required under section 3004(u) of RCRA will be significant. In most cases, these wastes will be handled on-site, further limiting the amount of on-site treatment capacity available.

The most appropriate and generally available treatment method for chromium VI is chemical reduction to the tri-valent state. It is important to note that further treatment is necessary to remove the chromium III from solution. Current information shows a commercial capacity for chromium reduction of 35,000,000 gallons. There are currently 105,115,000 gallons of chromium VI waste injected each year. On-site capacity appears to be very small, and will not be substantially increased, in all likelihood, for several years. Any increased capacity that does become available as a result of surface impoundments complying with section 3005(j)(1) is expected to be used by surface land disposal units.

Accordingly, EPA is proposing to grant a variance and ban the injection of metal bearing wastes at the levels specified in the statute at section 3004(d)(2)(B) on August 8, 1990.

Cyanide oxidation, which chemically destroys free cyanides found in solution, is the most appropriate and generally available treatment for wastes containing free cyanides. In cases where the cyanide is complexed with a metal ion, oxidation will not work and the waste must first be treated using chemical precipitation. The above discussion demonstrated that the available capacity to treat using chemical precipitation is inadequate, so this discussion will focus on cyanide oxidation.

There are currently 169,200,000 gallons of cyanide-bearing waste injected annually. An additional 690,000,000 gallons is disposed of in surface disposal units. The current capacity to treat using cyanide oxidation is 63,720,000 gallons (Ref. 2).

Based on the above analysis, the Agency is proposing to grant a variance from the statutory ban date and instead ban injection of such cyanide-bearing wastes (at any concentration greater than that specified in section 3004(d) of RCRA) on August 8, 1990.

b. Effective Date Based on Suggested Ban Levels. The estimated volume of wastes injected at concentrations above the levels suggested on August 12, 1987 (52 FR 29998), for these constituents is as follows:

Metals (specified in RCRA, section 3004(d)(2)(B), excluding chromium) 300,000,000 GPY
Chromium—342,000,000 GPY
Cyanides—1,357,000,000 GPY

Since the treatment capacities would still be inadequate to handle the volume of wastes at these concentrations in any of the categories, the Agency is proposing to grant 2 year variances from the statutory ban date at the levels suggested on 8/12/87. The ban would go into effect on August 8, 1990.

2. Corrosives

The Agency has not proposed nor assessed a particular treatment technology for neutralizing corrosive wastes. Instead, the Agency suggested that any treatment which raised the pH to above 2 or rendered the waste non-liquid would make the waste eligible for land disposal (52 FR 25768, July 8, 1987).

As indicated in section (II)(C) of this preamble, the Agency believes that the high volumes of corrosives generated and disposed of in injection wells pose significant problems, beyond strict capacity driven concerns.

There are specific technical problems associated with treatment of corrosives that uniquely affect the disposal of the treated waste in injection wells. When the pH of a waste is raised, formations may become plugged with precipitates or suspended solids which form both in the waste stream and as a result of reactions with the highly mineralized formation waters. Thus, in many instances, the treated waste would plug the formation and therefore could not be injected for long. In these instances, the operator would have to find alternative capacity for both the treatment residual and the neutralized waste stream. Such capacity could be in the form of releases to surface water, subtitle D facilities, or other alternatives.

Thus, the Agency believes that given the extremely large volumes of corrosive waste injected, a variance is justified. Current estimates indicate that 1,014,100,000 gallons of corrosive waste are injected annually. The EPA believes that the full two year variance permissible under section 3004(h)(2) of RCRA will be necessary to develop capacity adequate to handle such quantities of waste. Accordingly, the Agency is proposing to ban disposal, by injection, of corrosives having a pH less than 2 on August 8, 1990. The Agency specifically solicits comment on whether capacity exists of which EPA is currently unaware, or on whether other data may exist which is relevant to this determination.

3. Polychlorinated Biphenyls (PCBs)

At this time, information available to the Agency indicates that only 25,000 gallons per year of PCB-containing waste are injected. The Agency found that adequate capacity, in the form of boilers and other methods, existed (see 52 FR 25775, July 8, 1987). Restricting these wastes from injection should not place a significant demand on available treatment capacity and the Agency is proposing that the ban prohibiting injection of PCB-containing wastes at concentrations greater than or equal to 50 ppm apply on August 8, 1988.

4. Halogenated Organic Compounds (HOCs)

On July 8, 1987, the Agency stated that HOC containing-wastes subject to the California list restriction were defined by those HOCs listed in 40 CFR Part 268, Appendix III. Further, with respect to surface land disposal, EPA granted a two-year variance for HOCs at concentrations equal to or above 10,000 mg/l. The Agency specified incineration as BDAT for such wastes, and noted that there was not adequate capacity. Recent information suggests that cement kilns may add substantially to the available incineration capacity. The Agency is not aware of any HOCs being injected at concentrations above 10,000

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ppm, but would review the data to determine whether a variance from the ban on injection would be warranted if any were.

The Agency specified wastewater treatment as BDAT for dilute HOC wastewaters that are at concentrations between 1,000 and 10,000 mg/l (HOCs below 1,000 mg/l are not subject to California List prohibitions). On August 27, 1987, the Agency indicated that 85,000,000 gallons of dilute HOC wastewaters above the statutory concentration levels (1,000 mg/l) are injected annually (52 FR 32451). Since then, the Agency has updated the data base on which these figures were based (Ref. 3). Currently there are 319,096,000 gallons of dilute HOC-containing wastewaters injected each year at concentrations above 1,000 mg/l. The Agency has found previously that appropriate wastewater treatment capacity was inadequate (see 51 FR 40607 *et seq.*, November 7, 1986, and 52 FR 32450, August 27, 1987) and still believes that to be the case. Accordingly, EPA proposes to grant a two year capacity variance and impose the prohibition on injection of dilute HOC wastewaters at concentrations greater than or equal to 1,000 mg/l (and less than 10,000 mg/l) on August 8, 1990.

C. Considerations Relative to High Volume Wastes

In the June 11, 1987, Notice of Data Availability, the Agency noted that tank capacity not regulated under RCRA could be installed relatively easily, and that treatment of corrosive wastes could be accomplished with relative ease (52 FR 22350). The Agency also noted that large volume waste streams could pose significant capacity problems. Several commenters to that proposal pointed out that injection wells posed unique problems, due both to the quantity of waste handled and, in the case of corrosives, operational problems specific to injection wells. The Agency believes the comments have merit.

After further analysis, the Agency is convinced that high volume waste streams do indeed pose significant problems. For example, EPA investigated several factors which might complicate treatment of high-volume waste streams: the availability of tanks of sufficient size and of material capable of withstanding the high temperatures associated with some reactions, the need to handle large volumes of residuals, and the difficulty involved in obtaining needed permits (both State and Federal) were seen to limit availability (Ref. 4). The Agency also investigated the limits that transportation might impose on the availability of treatment (Refs. 3 and 4). This analysis indicated that the availability of transportation could pose a serious impediment to making commercial treatment accessible. The problem is particularly acute in view of the fact that most of the available treatment was located at substantial distances from areas where the majority of hazardous waste is injected (Ref. 4).

To transport the 4.8 billion gallons of injected solvents, California list metals, cyanides, and corrosives that are injected each year would require over 240,000 rail cars per year (approximately 657 per day) or 960,000 tank trucks per year (approximately 109 truck loads every hour for 365 days each year) (Ref. 5). These problems are compounded since only 17% of the currently known available treatment capacity is in the Gulf Coast area, while 65.3% of these hazardous wastes are generated in the Gulf States (Ref. 4). Considering the inevitable logistical difficulties involved in moving this volume of waste, it is highly unlikely that the transportation industry would be able to meet the vastly increased demand that would result from immediately effective prohibitions. Until such time as the transportation industry could meet this demand, adequate alternative treatment capacity would effectively be unavailable. Primary adjustment would be at individual injection facilities, many of which would need to acquire adequate space and facilities to accommodate more than 63 trucks a day (Ref. 4). Treatment facilities would also have to develop the capability to deal with additional traffic. The Agency solicits comments on the impact these transportation problems have on the availability of adequate treatment capacity for injected hazardous waste.

III. Summary of Today's Proposal—First Third of the Scheduled Waste

A. Background

EPA has estimated that approximately 261 million gallons of the generated First Thirds wastes with identified treatment standards and methods are injected every year. The Agency based this estimate on an ongoing survey that is updating the Hazardous Waste Injection Well Database (HWIWDB). As treatment standards and methods are specified for the remaining First Thirds wastes, this volume will get larger. It must be noted that the data were collected at the point of generation. The actual volume of fluid containing First Thirds constituents that is injected annually is much greater than 261 million gallons due to preinjection mixing with other hazardous and nonhazardous wastes. The EPA is using the smaller volume because section 3004(g) requirements are applicable at the point of generation.

RCRA waste code	Volume injected (gallons/year)
K018	98,640,000
K019	91,000
K030	45,000
K049	6,000
K050	55,000
K051	51,000
K052	45,000
K062	148,676,000
K071	45,000
K104	12,924,000
Total	[1] 260,978,000

[1] See reference 3.

A very small amount (less than 1/10 of 1%) of the above total may have been double-counted due to incomplete data on certain facilities which inject waste streams containing more than one waste subject to § 3004(g) restrictions. In some cases where more than one RCRA waste code was contained in a single stream, the total volume of the waste stream was attributed to each waste code.

It is important to note that this proposal would set effective dates for K019 wastes which had been listed with the Second Thirds. The Agency expects to propose BDAT for K019 wastes shortly; when finalized, the effective date of the prohibition for this waste would likely be moved from 6/8/90 to an earlier date. Accordingly, this proposal addresses K019 wastes.

B. Determination of Treatability Groups and Establishment of Best Demonstrated Available Technology

The 261 million gallons of injected First Thirds waste with identified BDAT treatment standards can be delineated as follows:

EPA's framework for the determination of BDAT was promulgated on November 7, 1986 (51 FR 40572 *et seq.*). Following this framework, EPA has identified treatment methods which the Agency intends to propose as BDAT for about half of the 50 First Thirds wastes in the near future. At that time, concentration standards (or methods) of the regulated constituents in each of the wastes will also be proposed. For the purpose of today's capacity determinations, however, such concentration standards are unnecessary. The treatment methods which EPA expects to propose as BDAT which address injected wastes are outlined below:

Treatment train	Affected RCRA wastes	Capacity required to treat injected wastes (gallons per year)
Chromium Reduction→ Chemical Precipitation→ Vacuum Filtration.	K062	148,676,000
Solvent Extraction→ Steam Stripping→ Activated Carbon Adsorption.	K104	12,924,000
Sulfide Precipitation→ Filtration.	K071	45,000
Incineration→ Metals Stabilization.	K016, K019, K030, K049, K050, K051, K052	99,333,000
Total		[1] 260,978,000

[1] See reference 3.

C. Capacity Currently Available and Effective Dates

All of the above methods expected to be proposed as BDAT involve two or more treatment steps. Consequently, the available capacity for each treatment train has been calculated as the lowest available volume for any single treatment step in the treatment train under consideration.

The following effective dates for the ban on land disposal of certain hazardous wastes by deep well injection are being proposed today:

1. K062. EPA has estimated that approximately 230,000,000 gallons of surface disposed K062 waste will require treatment (Ref. 6) and that such capacity will exist by 8/8/88 due to retrofitting of surface facilities. As noted, much of this available capacity will be used either by wastes from surface facilities or wastes resulting from corrective actions. Thus, the Agency believes there will not be adequate capacity for the additional 148 million gallons of injected K062 waste. This determination is supported by the 1981 RIA Mail Survey which indicates an available capacity of only 10,000 gallons for filtration, an integral part of the K062 treatment train. Available treatment is further limited by the lack of sufficient chemical precipitation treatment capacity. The Agency thus proposes to grant a two-year national capacity variance from the statutory ban effective date for injected K062 waste, thereby allowing injection of this waste until August 8, 1990.

2. K104. EPA has estimated that about 30 million gallons of surface disposed K104 waste will require treatment and that such treatment capacity is not available and will not become available in the near future (Ref. 6). An additional 13 million gallons of deep well injected K104 will require treatment. Based on the analysis peformed for surface disposal, such capacity is not available. Consequently we are proposing to grant a two-year national capacity variance from the statutory ban effective date and ban injection of K104 wastes on August 8, 1990.

3. K071. EPA has estimated that about 8 million gallons of surface disposed K071 will require chemical treatment annually and that no commercial treatment facilities currently manage this waste (Ref. 6). As noted above, the 1981 RIA Mail Survey indicates only 10,000 gallons of available capacity for filtration, a step in the treatment train for K071. Consequently we are proposing to grant a two-year national capacity variance from the statutory ban effective date and ban the injection of K071 wastes on August 8, 1990.

4. K016, K019, K030, K049–K052. EPA has estimated that about 170 million gallons of surface disposed K016, K019, K030, and K049–K052 wastes will require fluidized bed or rotary kiln incineration treatment annually (Ref. 6). The Agency determined for the Solvents and Dioxins Rule (51 FR 40572) that there is not enough commercial fluidized bed or rotary kiln incineration capacity for wastes. The latest data available to the Agency suggests that on-site incineration capacity for facilities that generate these wastes is inadequate. The RIA survey indicates that only 22 million gallons of alternative capacity exist for incineration. Again, cement kilns may substantially increase the capacity available, but the Agency does not believe such capacity is available now. The Agency is proposing today, therefore, to grant a two-year national capacity variance and ban these wastes from injection on August 8, 1990. For dilute waste streams with less than 1% organics, wastewater treatment would be more amenable. As noted, the Agency has determined that such capacity is inadequate, and therefore is proposing a capacity variance for such wastes.

IV. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency has performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs for the California list and the First Thirds List wastes (Refs. 7 and 8). Total compliance costs of the proposed regulation are estimated at $41.9 million for both lists of wastes, or $11.8 million annualized. Alternate treatment costs are estimated to total $36 million ($11.44 million annualized) and petition costs are estimated to be $5.9 million ($0.42 million annualized). These costs indicate that the proposal does not constitute a major rule under Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. Section 148.1(c)(3) of the proposed regulatory framework for this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions proposed in that framework. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small businesses. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget

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(OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document for both the California list and First Thirds wastes has been prepared by EPA (ICR No. 0370.05) and a copy may be obtained from Eric Strassler, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2738. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

V. References

(1) National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981; Office of Solid Waste, U.S. EPA, April, 1984.

(2) Tank Treatment Capacity—An Analysis of the RIA Mail Survey, Vol. I, Radian Corporation, November 1986.

(3) Findings on Class I Hazardous Wells Affected by the Land Ban Rules; Temple, Barker and Sloane, December, 1987.

(4) Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous Wastes; Tischler/Kocurek for the Chemical Manufacturers Association, October 1987.

(5) Comments of the Chemical Manufacturers Association on EPA's Proposed Rule Regarding Hazardous Waste Disposal Injection Restrictions; Chemical Manufacturers Association, October 1987.

(6) Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions, Proposed Rule, First Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity; U.S. EPA, OSW, December 1987. (Preliminary Document)

(7) Regulatory Impact Analysis of Proposed Hazardous Waste Disposal Restrictions for Class I Injection of California List Wastes, EPA Report, Contract No. 68–03–3348; Cadmus Group, Inc., October 1987.

(8) Regulatory Impact Analysis of Proposed Hazardous Waste Disposal Restrictions for Class I Injection of First Thirds List Wastes, EPA Report, Contract No. 68–03–3348; Cadmus Group, Inc., October 1987.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: April 18, 1988.

Lee M. Thomas,

Administrator.

Therefore it is proposed that Chapter I of Title 40 be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.12 is added to read as follows:

§ 148.12 Waste specific prohibitions—California list wastes.

(a) Effective August 8, 1988, liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm are prohibited from underground injection.

(b) Effective August 8, 1990, the hazardous wastes listed in section 3004 (d)(2) of RCRA (the California list), other than those listed in paragraph (a) of this section, are prohibited from underground injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

3. Section 148.14 is added to read as follows:

§ 148.14 Waste specific prohibitions—First Third wastes.

(a) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K016, K019, K030, K049, K050, K051, K052, K062, K071, and K104 are prohibited from underground injection.,

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

[FR Doc. 88–9060 Filed 4–25–88; 8:45 am]

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federal register

Tuesday
April 26, 1988

Part III

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 209, 335, 336, 337, and 338

Discharge of Dredged Material Into Waters of the U.S. or Ocean Waters; Operation and Maintenance; Final Rule

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 209, 335, 336, 337, and 338

Final Rule for Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material Into Waters of the U.S. or Ocean Waters

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This rule revises and relocates 33 CFR 209.145 for Army Corps of Engineers (Corps) operations and maintenance activities involving the discharge of dredged or fill material in waters of the United States and ocean waters. These revisions are needed to reflect laws, Executive Orders (EOs), court decisions, and policy changes that have occurred since the current regulations were issued on July 22, 1974. The purpose of this rule is to provide for the environmental compliance aspects of the Corps' national dredging program which balances economics, engineering and environmental requirements. These regulations provide updated procedures for compliance with state water quality certification and coastal zone consistency requirements of Corps maintenance dredging and disposal activities; provide procedures to promote consistent implementation of the environmental protection requirements of Corps operation and maintenance activities; and will better enable the Corps to implement the provisions of the Clean Water Act (CWA) and Ocean Dumping Act (ODA) when undertaking operations and maintenance activities involving dredged material disposal in waters of the U.S. and ocean waters.

EFFECTIVE DATE: April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Mathis or Mr. Joe Wilson, (202) 272-0397.

SUPPLEMENTARY INFORMATION:

On May 30, 1986, we published (51 FR 19694) proposed revisions to 33 CFR 209.145 (39 FR 28636, July 22, 1974). On July 10, 1986, the Corps sent a copy of the proposed rule to the Governors of each of the 50 states. The comment period for the proposed rule closed on July 29, 1986. Fifty-six letters of comment were received in response to the Federal Register notice and letters to the Governors.

Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment (EA) has been prepared discussing the proposed changes to the current regulation, subsequent expected environmental impacts, and overall need for revisions. The EA and Finding of No Significant Impact are available upon request.

Determination Under Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that the revisions to these regulations do not contain a major proposal requiring the preparation of a regulatory analysis under EO 12291. The Department of the Army certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that these regulations will not have a significant economic impact on a substantial number of entities.

These final regulations implement changes in environmental laws, EOs, court decisions, and policy changes that have occurred since the 1974 rule was issued. Generally, this rule will clarify and codify numerous policies regarding Corps maintenance dredging and disposal activities that were established since the 1974 rule was issued. This rule will also specifically address five areas of the Corps dredging program that are contributing to delays and increasing costs of routine maintenance dredging and disposal activities.

1. *Section 335.4 Policy.* This regulation prescribes the policies and procedures that should be followed to establish environmental compliance for Corps operations and maintenance activities. The need and justification for operations and maintenance work are made during the Army Civil Works annual Congressional budget review process. Once the relative priority of a maintenance project is determined and Congress allocates funds, it is the responsibility of the Corps to carry out the work by selecting the dredged material disposal alternative(s) which is the least costly and consistent with sound engineering practices and appropriate environmental quality standards. This regulation focuses on procedures and documentation necessary to establish compliance with certain environmental statutes and regulations. Cost and engineering feasibility considerations, however, play a critical role in the ultimate course of action.

The policy statement in Part 335 indicates that the Corps undertakes operations and maintenance activities in a manner which recognizes cost, engineering requirements, and other factors while ensuring environmentally responsible choices. When evaluating operations and maintenance projects, the Corps fully considers all practicable alternatives on an equal basis.

2. *Section 335.7 Federal Standard.* In recent years, questions have arisen regarding respective roles and decision authorities of the states and the federal government in actions involving the disposal of dredged material. The Federal standard should clarify the respective roles and ensure a greater degree of National consistency in management of dredged material disposal. The procedures of the environmental laws and regulations (primarily the CWA and the ODA) require consideration of all facets of the dredging and disposal operation to include cost, engineering feasibility, environmental concerns, and all practicable alternatives. The alternative selected should be the one which meets required environmental laws and regulations in the least costly manner consistent with sound engineering practices. This is defined as the Federal Standard. When seeking state certifications or evaluating resource agency and public comments, the district engineer will be using the alternative(s) selected on this basis as a point of reference.

3. *Section 336.2 Corps Authority to Select Dredged Material Disposal Sites in the Territorial Sea and Ocean Waters.* Presently, the Environmental Protection Agency (EPA) has authority under section 102 of the ODA for designating ocean disposal sites in the territorial sea and ocean waters. The Secretary of the Army has authority under section 103 of the ODA to authorize the transportation for disposal of dredged material in the territorial sea and ocean waters and also to select ocean disposal sites for dredged material should an EPA designated site not be feasible for use. The Secretary will continue to exercise this site selection authority as necessary. In exercising its authority, the Secretary is required to apply the environmental factors and criteria established by the EPA pursuant to section 102(a), relating to the site selection process. Presently, the EPA has designated 107 ocean dredged material disposal sites serving approximately 100 coastal Federally authorized navigation projects. To the extent feasible, the Corps uses and will continue to use the EPA designated sites; however, the Corps may select an ocean dredged material disposal site or

sites under the authority of section 103 of the ODA, in consultation with EPA, for situations where no EPA designated site exists or can be feasibly used.

4. *Section 336.1(b)(8) and (9) State Requirements.* Since implementation of the 1977 amendments to the CWA, the Corps has sought state water quality certification for dredged material disposal activities that occur in waters of the United States. Additionally, the Coastal Zone Management Act, (CZMA) in general terms, requires the Corps to provide a determination that its activities subject to the CZMA are consistent with an approved state coastal zone management plan to the maximum degree practicable.

Some confusion has existed over respective authorities and responsibilities of the Federal government and the states under the CWA and CZMA. Appropriate sections have been added to the regulation to recognize the role of the states in evaluating water quality and coastal zone impacts of Corps maintenance dredging and disposal projects, while assuring that the states provide timely responses as required by Congress in the relevant Federal statutes.

5. *Section 336.1(b)(8) and (9) Certification Requests.* Since implementation of the CWA and CZMA, the Corps has been providing information to affected states in support of requests for water quality certification and coastal zone consistency determinations. Generally, thorough project description information is adequate to determine compliance with state water quality standards and impacts to approved coastal zone programs. The absence of a Federal regulation to specify what information would be provided to the state in support of the water quality certification request and coastal zone consistency determination has led to inconsistent field implementation. The rule specifies the information that will be provided to the states in support of Corps requests for water quality certification and coastal zone consistency determinations.

Section-by-Section Analysis

Part 335—Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged or Fill Material Into Waters of the U.S. or Ocean Waters

Section 335.3: One commenter inquired as to whether these regulations were intended to apply to Corps activities other than construction and maintenance of navigation projects. As stated in § 335.3, these regulations apply only to operation and maintenance activities at Army Corps Civil Works projects. Another commenter noted that the regulations should provide that the Corps meet the same requirements as the regulations that apply to the general public. The Corps is subject to the same Federal environmental laws and regulations as the general public even though the Corps does not issue a permit document to authorize its activities. This rule reflects the requirement to meet the same standards (see § 336.1(a)). There is, however, a somewhat different perspective between projects undertaken by the general public and Corps operations and maintenance activities. When a private entity proposes to perform work requiring a Corps permit, the Corps must decide whether than work would be contrary to the public interest. In contrast, this rule applies to operation and maintenance of Federal projects which have already been determined by the Congress to be in the public interest. This difference shifts the Corps focus from a question of whether the work should be accomplished to a question of how the work can most reasonably be accomplished. The Corps analysis, therefore, is directed at evaluation of the environmental effects of dredged material disposal alternatives and demonstration of compliance with the applicable environmental laws and regulations rather than a basic decision of whether a particular project should proceed.

Section 335.4: Several commenters expressed concern with language requiring that alternatives be developed in a "least costly" manner and "consistent with engineering requirements established for the project." One commenter stated that the policy statement would limit the scope of alternatives evaluation in a manner inconsistent with applicable law. It is the policy of the Corps to evaluate maintenance dredging and disposal activities to seek maximum public benefits and economy as well as full compliance with environmental laws and regulations. Cost and engineering practicability play vital roles in selecting the ultimate course of action. We do not, however, intend to limit consideration of practicable alternatives nor to minimize or neglect the importance of the environment in the decision-making process. The scope of the alternatives evaluation is as broad as practicable, including the no dredging alternative. We believe the policy statement in § 335.4 reflects that all practicable alternatives will be evaluated on an equal basis and that cost, engineering requirements, and the environment must be fully considered in the ultimate course of action. We have substituted the word "requirement" for "constraints" at the end of the definition to avoid confusion.

Sections 335.5 and 335.6: Two commenters noted that the listing of applicable Federal laws and EOs fails to provide the reader with the relationship of each law and EO to the proposed rule nor the relative importance of each to the proposed rule; and that we should explicitly state which statutory provisions apply. The relevant provisions of each law and EO apply to dredging and disposal activities. We do not believe that a synopsis or specific statutory reference is necessary, since these laws and EO's "speak for themselves" (i.e., the texts are readily available to the public). Evaluation of the applicability of these authorities are made on a case-by-case basis. One commenter noted that the list of laws made no reference to the applicability of the Resource Conservation and Recovery Act (RCRA) to dredged material.

After careful study of RCRA and its legislative history, we do not believe that Congress intended that RCRA regulate dredged material disposal. Dredged material does not clearly fall within the RCRA definitions of solid waste or hazardous waste. Also, the CWA and ODA provide the appropriate legal and regulatory regimes for dredged material disposal, and those regimes are substantially incompatible with regulation under RCRA. Notwithstanding this legal distinction, we are concerned with the substance of the issue of disposal of dredged material that may be considered highly contaminated. Over the past several years, the Corps has been actively developing state-of-the-art procedures for evaluating and managing all types of dredged material including the 1–3 percent of dredged material which is considered highly contaminated. These procedures have been developed because the EPA RCRA testing and disposal guidelines are technically inappropriate for characterizing the environmental impacts of highly contaminated dredged material. The Corps-developed testing protocol and management strategy for the disposal of dredged material considers the degree of contamination and the potential migration pathways of the contaminants to the environment when evaluating disposal alternatives and results in an equivalent level of environmental protection as would occur under RCRA

Section 335.7: Several commenters indicated that the definition of

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emergency was overly broad, particularly with respect to the term economic hardship. The definition of emergency and its use at § 337.7 allows the Corps to respond to certain unexpected dredging and disposal operations on an expedited basis. We do not intend to bypass the requirements of Federal environmental laws but rather to assure that the necessary environmental standards are met in a time period necessary to remedy the emergency situation. We have modified § 337.7 to remove some of the equivocal terminology. One commenter noted that the definition of emergency should include situations which might result in unacceptable environmental degradation. Should the district engineer determine that unacceptable adverse impacts would result from dredging and disposal operations, he has the discretion and obligation to correct the situation. Such corrective actions do not generally fall within the purview of the emergency definition and procedures which focus on the Corps responsibility for maintaining safe, reliable, and economically efficient Federal interstate navigation system in circumstances where emergency conditions jeopardize that national requirement.

The definition and use of the term "Federal standard" received a great deal of comment. Many commenters objected to the Federal standard concept and its use. A number of commenters did not understand how the Corps could develop a Federal standard before factoring in the requirements of the CZMA and CWA. Some commenters noted that the Federal standard must reflect mandatory compliance with the CWA 404(b)(1) guidelines. One commenter recommended use of the term "Corps preferred alternative," instead of "Federal Standard". Regardless of whether we change the term to "preferred alternative" the meaning and use of the term would not change. We believe the term "Federal standard" more accurately describes our intent. In developing dredged material disposal alternatives, the Corps must consider all facets of the dredged and disposal operation to include cost, engineering feasibility, environmental concerns, and the no dredging option. The alternative selected should represent the least costly one consistent with sound engineering practices and meeting required environmental standards. We believe that developing the Federal standard for dredging and disposal projects is essential for assuring consistency in how we manage the Corps national dredging program. Some comments received indicated the major concern was not over whether the Corps develops the Federal standard, but rather when the alternatives are developed, which lead to a determination of the Federal standard i.e., before or after the Corps request for water quality certification or consistency determination. When the Corps issues CWA public notices and seeks state CWA 401 certifications and CZMA determinations for dredging and disposal projects, the Corps must specify proposed disposal site(s). The disposal alternatives are developed using the 404(b)(1) guidelines or ocean disposal criteria. Through the public involvement processes of the CWA or ODA, the Corps solicits public review of the alternatives. The Corps also seeks specific state review of the Corps' alternatives through the certification and consistency determination requirements of the CWA/CZMA. In accordance with long held Corps procedures and consistent with requirements of the CWA and NEPA, all public input is fully considered and the final course of action chosen which appropriately reflects the public interest.

State water quality standards are established in accordance with the provisions of the CWA and are available to the Corps and concerned public. The Corps uses the 404(b)(1) guidelines to determine the appropriate tests to be performed on the dredged material to demonstrate compliance with the guidelines and state water quality standards. Appropriate chemical/biological testing is performed on the material to be dredged and on the disposal site using the 40 CFR Subpart G—Evaluation and Testing procedures or, if appropriate, the ocean disposal criteria at 40 CFR Part 227 Criteria for the Evaluation of Permit Applications for Ocean Dumping of Materials. The 404(b)(1) guidelines in 40 CFR Subpart B § 230.10(b)(1) prohibit the disposal of dredged material that "causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable state water quality standards." The Corps assesses through the 404(b)(1) guidelines, or, if appropriate the ocean disposal criteria, if the proposed disposal activity will violate state water quality standards. The findings concerning compliance with the 404(b)(1) guidelines or ocean disposal criteria and state water quality standards are submitted to the state along with the request for water quality certification. The Corps Federal standard will comply with the 404(b)(1) guidelines, or, if appropriate the ocean disposal criteria.

Similarly, state coastal zone management plans are approved by the Secretary of Commerce and are made available to the Corps and concerned public. The Corps evaluates the proposed dredging and disposal activity against the state coastal zone management plan and provides the state coastal zone management agency with a consistency determination. The Federal standard must be developed before the request for a consistency determination; otherwise, the state would not be able to determine consistency. The state must either concur or object to the Corps consistency determination. The National Oceanic and Atmospheric Administration (NOAA) Office of Coastal Resource Management has determined that the NOAA regulations implementing the CZMA doe not contemplate conditional concurrences by state coastal zone management agencies.

We have deleted that portion of the Federal standard definition after "criteria" to reflect that the Federal standard is developed using the 404(b)(1) guidelines or ocean disposal criteria and should not be construed as an alternative developed through public involvement. We believe that developing a Federal standard before the request for the state water quality certification and coastal zone consistency determinations is procedurally appropriate.

Some commenters noted that the Federal standard would be developed on economic rather than environmental concerns. As stated in the policy in § 335.4, all alternatives are considered on an equal basis. This includes consideration of cost, beneficial uses of dredged material, and the environment. Given this policy statement, development of the Federal standard will provide proper focus to both economic and environmental concerns. Two commenters indicated that beneficial uses of dredged material should be incorporated into the Federal standard. It is the policy of the Corps (§ 337.9) to use dredged material beneficially within existing authority and funding, and consistent with the Federal standard process.

One commenter stated that the term "Navigable Waters of the U.S." should be changed to "Tidal Waters of the U.S." In the draft, we repeated parts of the definition of navigable waters of the U.S. from the Corps regulatory program at 33 CFR Part 329 and added a qualifier at the end of the definition. Our intent was not to change the meaning of navigable waters within the context of the Corps regulatory program, but to include for the purposes of this regulation those situations where dredged material is removed from navigation approach channels seaward of the outer limit of the territorial sea.

Two commenters noted that the term "practicable" focused on cost to the exclusion of environmental protection and another stated that the definition should include consideration of fish and wildlife resources and water quality. The term practicable was taken from the Environmental Protection Agency 404(b)(1) guidelines in 40 CFR 230.3(q). We believe that cost, engineering requirements, and the environment all play appropriate roles in determining the Corps' ultimate course of action. We repeated the EPA definition because of its relevance to the Corps' dredging program. One commenter recommended that the term practicable in places other than those pertaining to the coastal zone consistency process should be clarified since the term "practicable" may have a different meaning within the context of the NOAA regulations for the CZMA. We have attempted to reduce the use of the term practicable in the final regulation except as the term pertains to the coastal zone consistency process.

The states of Texas and Florida requested recognition of the jurisdictional variation of their territorial sea on the Gulf as 10.3 miles. The proposed definition of territorial sea was taken directly from the CWA definition. Based on Federal laws and treaties, the U.S. territorial sea extends three miles seaward from the baseline established by the Convention of the Territorial Sea and Contiguous Zone, 15 U.S.T. 1606. We believe the definition accurately reflects the extent of the U.S. Territorial Sea and have retained the definition in the final rule.

Part 336—Factors to be Considered in the Evaluation of Army Corps of Engineers Navigation Dredging Projects Involving the Discharge of Dredged Material Into Waters of the U.S. and Ocean Waters

Section 336.0: One commenter noted that the Corps treatment of the ODA and CWA in the territorial sea appears contrary to a settled legal case (*Pacific Legal Foundation v. Quarles*). In that case, the court concluded that the CWA controlled discharges into navigable waters, including the territorial sea, and that the ODA covered pollution from vessels beyond the territorial sea. While the court discussed the overlap of CWA and ODA jurisdiction in the territorial sea as it relates to section 402 discharges, the court did not consider the jurisdictional relationship as it relates to section 404 and the disposal of dredged material in the territorial sea. The respective ODA and the CWA jurisdictions overlap in the territorial sea, but do not conflict, as evidenced by the fact that both Acts were under consideration by Congress at the same time in 1972. The legislative history of the ODA indicates Congress intended the ODA to have jurisdiction over disposal of *dredged* material in the territorial sea. Additionally, the EPA 404(b)(1) guidelines in 40 CFR 230.2(b) have required the application of the ODA criteria for discharges of *dredged* material in the territorial sea since 1975. Furthermore, the same EPA regulations require the application of the CWA 404(b)(1) guidelines for discharges of *fill* material into the territorial sea. We believe that in those cases where the intent is to fill, that the 404(b)(1) guidelines provide a more appropriate means of evaluating the environmental consequences of the activity.

One commenter suggested that ocean disposal activities in the territorial sea should meet the requirements of both the CWA and ODA. Another commenter indicated that the CWA should be used to supplement, but not substitute for, the ODA criteria where the CWA applies. The jurisdiction of the CWA extends to all navigable waters of the U.S. including the territorial sea. The jurisdiction of the ODA begins at the baseline (as defined in the Convention on the Territorial Sea and Contiguous Zone, 15 U.S.T. 1606) and extends beyond the seaward limit of the territorial sea. The EPA regulations in 40 CFR 230.2(b) address the jurisdiction of activities involving the discharge of dredged or fill material into regulated waters. We do not believe that Congress intended for the Corps to duplicate or delay its evaluation of a dredged material disposal activity by requiring analysis pursuant to both statutes.

The Congress declared in Title I of the CWA that "It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage . . . the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government" 33 USC 1351(f). The procedures in § 336.0 recognize the overlapping jurisdiction of the CWA and ODA in the territorial sea and provide a means for evaluating the dredged material disposal activity using the most appropriate regulations (i.e., CWA *or* ODA). We believe this approach fulfills Congressional intent, complies with the statutes and regulations and eliminates duplicative evaluations. Additionally, the EPA may veto a Corps discharge activity using its CWA 404(c) procedures or reject the district engineer's ODA 103 determination of acceptability for ocean dredged material disposal using the ODA 103(c) procedures. We believe that this EPA authority provides adequate safeguards should the EPA not agree with a Corps evaluation.

Section 338.1 (a), (b), and (c): We have decided to move those provisions of § 336.1, (a) (b), and (c) that pertain to water quality certification and coastal zone consistency to the new § 336.1(b)(8) and § 336.1(b)(9) respectively. The number of comments received and the apparent confusion over our procedures necessitates this change. Although we have not made substantive changes in the procedures in the new subsections, we have gone into a greater level of detail.

The analysis of the comments to § 336.1 will follow the numerical sequence of the FR version as proposed on May 30, 1986.

Section 336.1(a)(3) moved to 336.1 (b)(9): Many commenters objected, some strongly, to the Corps assertion that dredging and disposal activities must be "within" rather than "directly affecting" the state's coastal zone before the consistency provisions of the CZMA apply. As discussed earlier, it is important to clarify respective authorities and responsibilities of the Federal and state governments relative to the CWA and CZMA. Our intent is to recognize the role of the states in evaluating water quality and coastal zone impacts of Corps maintenance dredging and disposal activities while ensuring that the states provide timely responses as required by Congress and the relevant Federal statutes. We did not intend to misstate existing court interpretations or the scope of the CZMA. However, we believe that the CZMA and case law leave some doubt regarding the authority of a state to control Corps dredging and disposal activities not physically located "within" a state's coastal zone or within a Federal enclave and directly affecting the coastal zone. The Corps will comply with section 307 of the CZMA as interpreted by the decisions of the Federal courts. Accordingly, the wording of this section has been modified.

Section 336.1(b)(3) moved to 338.1(b)(8) and 1(b)(9): A number of commenters questioned whether the information in a public notice was sufficient to constitute a request for water quality certification and coastal zone consistency. Two commenters suggested that the regulation distinguish the consistency review from the request

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for certification. One commenter indicated that applications for certification must be made in accordance with the procedures of the certifying agency. Moving the water quality cetification and coastal zone consistency procedures to § 336.1(b)(8) and § 336.1(b)(9), respectively, should avoid confusion and clarify the Corps procedures. We agree that the water quality certification and coastal zone consistency procedures are distinct and should be treated separately.

The NOAA procedures in 15 CFR Part 930, Subpart C provide a procedural guide for consistency determinations. Consistency determinations will include the information required at 15 CFR 930.39. The final regulation requires the district engineer to supplement the information contained in the public notice if it is not sufficient to meet the requirements of 15 CFR 930.39. The public notice information at § 337.1 has been revised to include the information requirements of 15 CFR 930.39.

In their letter of comment, the NOAA Office of Coastal Resource Management has advised the Corps that the NOAA regulations do not contemplate conditional concurrences. If the state's recommendations for making a project consistent would require the Corps to exceed either authorization or appropriation, then the Corps has complied to the maximum extent practicable without adding such conditions. Thus, we are requiring in the final regulation that district engineers carefully evaluate a state's recommendations and adopt the conditions, controls and requirements necessary to make a project consistent to the maximum extent practicable while assuring that the Corps authority and funding for the project are not exceeded. In cases where state-imposed requirements would exceed Corps authority or available funds dredging will be deferred. Costs associated with requirements that exceed Congressional appropriations will be referred to the non-Federal project sponsor. Any such additional costs will be allocated to project costs. Projects, whether with or without non-Federal project sponsors, will be re-evaluated to determine their continued economic feasibility where a state imposed conditions would serve to increase project costs.

In accordance with the provisions of sections 401 and 404 of the CWA, the Corps will seek state water quality certifications and will comply with state water quality standards. The EPA regulations in 40 CFR 121.3 allow the Corps to determine the appropriate information to be included in the request for state water quality certification. In conjunction with the public notice for the project, the Corps will provide data and the water quality analyses, which may include that information required by the 404(b)(1) guidelines, in support of the request for water quality certification.

Section 336.1(b)(7): A number of comments were received concerning inclusion of local beneficiaries activities in the compliance process for the Corps activity. Most commenters supported this provision. Three commenters believed that the procedures in this section would undermine the Corps section 404 regulatory program. One commenter indicated that this section was contrary to the CZMA. We do not agree that this section is contrary to the CZMA. Furthermore, NOAA, regulations in 15 CFR 930.21 support our efforts to include local sponsor's activities in the Corps compliance process. We believe that inherent in construction and maintenance of Congressionally authorized Federal navigation projects is the local project users ability to receive timely authorization for construction and maintenance activities for which the Federal project was intended. This provision is also contained in the Corps regulations in 33 CFR 322.5(c). We have made some clarifications to provide for consistency with the Corps regulatory program.

Section 336.1(c)(1): A number of comments were received concerning the Corps "Federal standard" concept. See background discussion at Supplementary Information concerning development and rationale of the Federal standard. We have clarified that the formal public involvement processes (primarily NEPA coordination and CWA public notice) follow designation of the Federal standard and that the ultimate decision may depart from the Federal standard in appropriate cases.

Several comments were received concerning Corps economic evaluations. One commenter requested that we clarify how economic evaluations were performed, since states do not always agree on how these evluations are developed. Two commenters asked that we require tradeoff analysis among economic and environmental effects of alternative methods and levels of maintenance dredging and disposal. Another commenter indicated that the regulation should not give full consideration to the impact of the failure to maintain navigation on local and regional economies, since these are more properly the responsibility of state and local governments. This regulation pertains to maintenance of Congressionally authorized navigation projects. The economic justification for such projects is contained in the project authorizing documents. Normally, economic projections extend to the life of a project (50 years). Since both the project conditions and the economic justification for any particular project may change, the Corps periodically evaluates the project conditions to ensure that there is a continuing need for the proposed dredging and it is in the overall public interest.

The Corps has a number of sources for determining commercial traffic through Corps navigation projects including data from the Waterborne Commerce Statistics Center in New Orleans, Louisiana. Frequently, it is difficult to determine if local waterborne commerce benefits local, regional, or national economies. Interstate, recreational boat traffic stopping at a local marina for fuel and supplies would be difficult to factor into economic benefits, but nonetheless would be considered interstate commerce. We agree that the impact of navigation projects on local economies is more appropriately the responsibility of state and local governments. Any reference to local benefits has been deleted. In certain instances regional benefits are also national benefits. Thus, we have retained inclusion of regional benefits in appropriate cases in economic justifications.

Section 336.1(c)(2): We have expanded this section to explain our water quality evaluations under the 404(b)(1) guidelines or ocean disposal criteria. The information pertaining to state water quality certifications has been moved to new § 336.1(b)(8). Many comments were received concerning the time requirements for state's response to Corps requests for water quality certification. Many of the same commenters questioned the Corps authority to impose time limits on the state's response and the type and amount of information that would constitute a valid request for state water quality certification. A number of commenters indicated that the proposed regulation arbitrarily restricts the state to a two-month review period, rather than the one-year authorized by the CWA. The CWA provides that states must act on requests for certification within a *reasonable* period of time, which shall not exceed one year from the date of the request. Additionally, the EPA regulations in 40 CFR 121.16 provide that a waiver can be presumed when the licensing or permitting agency notifies EPA "of the failure of the State or interstate agency concerned to act on such request for certification within a reasonable period of time after receipt of such request, as determined by the licensing or permitting agency (which period shall generally be considered six months, but in any event shall not exceed one year)." Based on our experience since enactment of the 1977 CWA amendments, we believe that two months is a reasonable period of time for states to act on requests for routine maintenance dredged material disposal activities. More complex projects or projects with potential water quality problems may require more time. Thus, we believe that the requirement for the states to act on requests for certification within two months, and within six months as a maximum period of time, is reasonable.

Some commenters indicated that the time frame for processing a water quality certification should begin only after a state has given written notification that an application is complete. We believe that the EPA regulations in 40 CFR 121.3 allow the Corps to determine what information should be provided to the state in support of the request for certification. The final rule at § 336.1(b)8 will require that the public notice and information demonstrating compliance with applicable state water quality standards will be provided to the state in support of the request for certification.

In such cases where the dredged material disposal may violate applicable state water quality standards after considering disposal site dilution and dispersion, the district engineer will follow the procedures outlined in the Corps technical manual for contaminant testing and controls. This report is currently cited as: Francingues, N.R., Jr., et al., 1985. "Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls," Miscellaneous Paper D–85–1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. This manual, which has received extensive peer review from both the scientific and regulatory community, was developed in response to our concern over the continued leaching of contaminants from point and non-point sources into Corps navigation projects. It will be modified and updated as appropriate. The testing protocol and management strategy provide a scientifically valid systematic process for evaluating cost-effective, environmentally responsible alternatives for disposal of contaminated dredged material. The Corps district engineers will refer to and use this manual for cases where dredged material contains contaminants at a level sufficient to cause environmental concern. This technical manual will be updated as the state of knowledge regarding evaluation of highly contaminated sediments advances.

One commenter indicated that dredging activities are not exempt from the water quality certification requirements because dredging activities constitute a discharge into navigable waters. We do not agree. The CWA requires regulation of discharges of dredged or fill material. Incidental soil movement as a result of the dredging operation does not constitute the discharge of dredged or fill material for purposes of regulation under the CWA. As indicated in the preamble of the Corps regulations in 51 Federal Register page 41210, November 13, 1986, regarding de minimis discharges associated with normal dredging operations, the purpose of dredging is to remove material from the water, not to discharge material into the water. Therefore, de minimis releases in a normal dredging operation are incidental to the dredging operation. If there are tests involved, we believe they should relate to the intent and result of the dredging operations. If the intent is to remove material from the water and the results support this intent, then the activity involved must be considered as a normal dredging operation and not subject to section 404 of the CWA.

Section 336.1(c)(3) moved in part to 336.1(b)(9): The procedural parts of this section have been moved to the new § 336.1(b)(9). A number of commenters disagreed with the time requirements for the state to act on Corps consistency determinations. The NOAA regulations in 15 CFR 930.41 allow 45 days for state review with an additional 15 days upon request by the state. We will not depart from the time allowances provided by the NOAA regulations. Some commenters noted that water quality certification may be required as a condition of coastal zone consistency. We believe that the water quality certification and coastal zone consistency processes are separate and one should not be a prerequisite to the other.

Section 336.1(c)(4): One commenter indicated that this section radically amended the treatment of wetlands in existing § 209.145(e)(3). Another commenter recommended referring to wetlands designated on the National Wetlands Inventory as being important. The existing section on wetlands has been in effect since 1974. Since that time, a number of court cases and regulatory changes have occurred, but the essential regulatory treatment of wetlands is similar between the 1974 and the current regulation. As noted on the National Wetlands Inventory maps, the maps may include or exclude wetlands subject to consideration under the CWA. Generally, wetlands jurisdictional determinations are made on a case-by-case basis by the Corps. We have substituted the word "most" for "some" at the beginning of the section for consistency with the Corps regulatory program.

Section 336.1(c)(5): One commenter recommended consideration of state-listed endangered species. State fish and game agencies have an opportunity to comment on proposed maintenance dredging and disposal activities through the public coordination process. The Corps will consider recommendations concerning state-listed endangered species from such state agencies. However, we will rely on the recommendations from the U.S. Fish and Wildlife Service regarding Federally protected threatened or endangered species for purposes of compliance with the Federal Endangered Species Act.

Section 336.1(c)(6): Several comments were received from the Advisory Council on Historic Preservation (ACHP) regarding the procedures for protecting historic resources. We have included reference to section 106 of the National Historic Preservation Act and deleted reference to the term "cultural resources" as the ACHP believes this term to be misleading. The terms "historic properties" and "historic resources" have been substituted instead. We have also modified this section to be more consistent with the ACHP regulations. The first paragraph of this section has been revised to remove some of the restrictive terminology.

Section 336.1(c)(8): One commenter indicated that limiting resource agency review to the public notice comment period is inconsistent with the intent of the Fish and Wildlife Coordination Act. One commenter asked that this section *require* minimization of impacts to fish and wildlife resources. A commenter recommended that the first paragraph be modified to require evaluation of all justifiable and appropriate means or measures to protect and conserve fish and wildlife resources by including modification of or mitigation for proposed operations to eliminate or mitigate any damage to fish and wildlife resources.

It is the policy of the Corps to fully consider all facets of the dredging and disposal operation with a view towards attaining maximum overall public benefits. Over the past 15 years, the Corps has constructed over 19,000 acres

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of wetlands and over 2,000 dredged material disposal islands, some of which are considered the richest bird rookeries in the country. Unfortunately, as with almost any construction operation, some adverse impacts to fish and wildlife resources will occur. The creation of wetlands using dredged material requires alteration of the topography of the water bottom to the detriment of the benthic communities, for example. In such cases, a trade-off of water bottoms and benthic communities for wetlands occurs. It is with these trade-offs in mind that we actively solicit the views and recommendations of the resource agencies through the public involvement processes of the CWA and ODA. In some cases we are able to use the dredged material to benefit fish and wildlife resources without long-term adverse effects. In the final analysis, we believe it is a Corps responsibility to determine the most appropriate course of action, including justifiable means and measures to lessen the damage to fish and wildlife resources. The public notification process is the means by which we solicit input from all concerned agencies and individuals. We believe the notification period, which is normally 30 days, is adequate for resource agency review and comment.

Two commenters indicated that the statement "Corps funding of Fish and Wildlife Service activities is not applicable for Corps operations and maintenance projects" was inconsistent with the conservation mandates of the Fish and Wildlife Coordination Act. The Transfer of Funds Agreement between the Corps and Fish and Wildlife Service implementing the Fish and Wildlife Coordination Act does not apply to Corps maintenance activities.

Section 336.1(c)(10): Several commenters requested clarification of the statement in this section regarding our policy for not seeking permits or licenses that were not reasonably related to the control or abatement of pollution. One commenter indicated that this statement overlooked the fact that the state may own submerged lands. The Federal navigation servitude provides authority for Federal activities in aid of navigation notwithstanding owenership of submerged lands. See *Cherokee Nation of Oklahoma v. United States, —U.S. (1987).* Moreover, established principles of U.S. law make clear that a Federal agency cannot be required to seek a state or local governmental permit absent a clear, explicit, and unambiguous Congressional waiver of Federal soverign immunity. We have revised this section to be consistent with those principles of U.S. law.

Section 336.1(c)(11): The first sentence of paragraph (i) has been moved to the new § 336.1(b) (8) and (9).

Section 336.2: The EPA regulations in 40 CFR Part 227, Subpart C provide guidance on evaluating the need for ocean disposal and alternatives to ocean disposal. The Subpart C guidance does not clearly apply to all categories of dredged material or provide procedures for the Corps when evaluating the full range of disposal alternatives. This section provides supplementary guidance for evaluating the need for and alternatives to ocean disposal for Corps maintenance dredging activities. Supplementary guidance for the Corps 103 permit program is contained in 33 CFR Parts 320–330. Under section 103 of the ODA, evaluation of need for and alternatives to ocean disposal of dredged material is a Corps of Engineers responsibility. This section, in conjunction with 40 CFR Part 227 is intended to be used by the Corps to guide such evaluations for maintenance dredging activities until such time as this separate Corps regulation is promulgated.

One commenter requested the basis for the Corps assertion of authority for selecting ocean disposal sites. Section 103 of the ODA requires the Corps to make an independent determination relative to the need for, alternatives to, and appropriate locations for ocean disposal of dredged material. This section also requires permits from the Corps for the transportation for ocean disposal of all dredged material. In evaluating permits the Corps must use the criteria established by the EPA pursuant to section 102(a) of the ODA relating to the effects of disposal. The Corps must, to the extent feasible, use EPA designated sites when considering appropriate locations for disposal. Over the past ten years, the Corps has been working with the EPA to facilitate EPA site designations for dredged material. Since dredged material amounts to over 90 percent of all material disposed of in ocean waters, the Corps has considered ocean disposal site designations as a high priority. Over the past several years the EPA has been working actively with the Corps to complete final designation for the remaining ocean dredged material disposal sites. Nonetheless, we believe that the Corps has ample authority within section 103 to select (not designate for general use) ocean dredged material disposal sites, if use of an EPA designated site is not feasible. Section 336.2 provides appropriate procedural guidance for this site selection authority, which requires consultation with EPA and use of the same site selection environmental considerations as are required by EPA under its site designation authority. We have used this selection authority in the past and will continue to use it in the future on an as needed basis.

Section 336.2(c): A number of coastal states objected to the proposition that the ODA may preempt the CZMA in the territorial sea. While we have decided to revise the language in the final rule, we still believe that the terms and legislative history of the ODA leave considerable doubt regarding whether a state has the legal authority to exert control over Corps ocean disposal of dredged material in the territorial sea. Nonetheless, voluntarily and as a matter of comity the Corps will apply for state section 401 water quality certification and determine consistency with a Federally approved coastal zone management plan for ocean disposal of dredged material within the three-mile extent of the territorial sea. Moreover, the Corps will attempt to comply with any reasonable request or suggestion made by a state in the course of the water quality certification or the CZMA consistency determination processes. Nonetheless, the Corps reserves its legal rights regarding any case where, within the limits of the territorial sea, a state unreasonably denies or conditions a water quality certification for proposed Corps disposal of dredged material or asserts that such dredging or disposal would not be consistent with an approved state CZMA plan.

Section 336.2(d)(4): One commenter recommended clarification to indicate that the use of an undesignated ocean disposal site does not constitute a formal site designation by EPA. We agree, and paragraph (d)(4) of this section has been changed to reflect this recommendation.

Part 337—Practices and Procedures

Section 337.1: A number of comments were received regarding the proposed public notice format and procedures. Some state agencies objected to the Corps procedure that would allow the public notice to serve as information sufficient to constitute a request for water quality certification or a coastal zone consistency determination. In part we agree. However, much useful information is contained in the public notice, including a description and the location of the proposed project and status of water quality certification and coastal zone consistency. Therefore, we are retaining in § 336.1(b) (8) and (9) the requirement to submit a public notice to the respective state agencies to support the request for water quality certification and coastal zone consistency. Three commenters recommended that public notices be issued for a prescribed rather than an indefinite period of time. We do not agree. The CWA and ODA require that public notices be issued for proposed discharges of dredged material. The CWA and ODA do not prescribe an expiration period for public notices. We believe that as long as the public notice accurately describes the dredging and disposal activity, a new notice need not be issued. If a change in the disposal plan is warranted, however, and the change involves the discharge of dredged material into waters of the U.S., a new revised public notice will be issued. Three commenters recommended that public notices be issued for no less than 30 days. We do not agree. Oftentimes, maintenance activities that are otherwise routine or minor must be performed more quickly than would be possible if a 30 day public notice and comment period had to be undertaken. Such examples might include jetty stabilization to protect the integrity of a jetty or removal of a minor unexpected shoal causing a serious threat to public safety or interstate commerce. We believe that remediable procedures are necessary for such unexpected events in an expedited time period without employing the emergency procedures of § 337.7.

One commenter questioned why public notice information in existing 33 CFR 209.145 had been dropped. Over the past 15 years of issuing public notices, we have learned that certain public notice information does not solicit meaningful input into the Corps decision-making process on the proposed maintenance activity. This information, including the laws under which the activity is to be reviewed, and a description of the existing properties immediately adjacent to the disposal area, generally is included on location maps, or is subject to potentially erroneous interpretation. However, we have established a procedural format for Corps maintenance dredging and disposal public notices to promote Corps-wide consistency, and have added a number of useful items to the notice format to facilitate public involvement. Two commenters recommended adding sediment quality information to the public notice, and another commenter recommended public notices that address multiple Corps projects. We do not believe that the public notice is the proper place to describe evaluation and testing of the dredged material. Such evaluations are more appropriately conducted in the 404(b)(1) analysis or ocean disposal criteria compliance document. We have added a statement to paragraph (a) of this section to reflect that the same public notice may be used for more than one Corps project in appropriate cases.

Section 337.2: A number of commenters objected, some strongly, to the statement that the local project sponsor or the state would be asked to fund state requirements deemed excessive or unnecessary by the Corps. One commenter indicated that this section gives district engineers the authority to dismiss arbitrarily the assessments and recommendations of state and Federal resource agencies regarding fish and wildlife resources and water quality unless the state or local sponsor is willing to bear all additional costs beyond those of the lowest cost alternatives. Another commenter indicated that nowhere in the CZMA, ODA, or CWA is there authority to support the Corps effort to shift to the states the financial burden of Federal compliance with state requirements. Other commenters indicated that the Corps should include state water quality certification and coastal zone consistency determination conditions and requirements as line items in annual funding requests to Congress. Several commenters indicated that state agencies should not be required to bear the cost of reasonable and necessary monitoring or testing.

We agree that neither agencies nor non-Federal project sponsors should be required to bear the cost of reasonable and necessary monitoring or testing. However, in individual cases, it is not always clear how much monitoring and testing is reasonable and necessary. The Corps through its Federal standard process determines technically sufficient monitoring or testing. State 401 requirements which exceed these provisions should not be at Federal expense unless specifically authorized and funded by Congress. The Corps assesses compliance with the applicable state water quality standards using the 404(b)(1) guidelines or ODA criteria. The Corps has spent well over $100 million on pure and applied research during the past 15 years regarding dredging and the environmental impacts of disposal. Much of this research has directly focused on potential water quality problems of open water disposal of dredged material, with special attention to applicable state water quality standards. Thus, when the Corps submits findings of compliance with applicable water quality standards to a state, those findings are based on sufficient data to demonstrate compliance with the state standards. Unfortunately, in some instances state agencies may disagree with Corps findings. The question then becomes one of the relative extent of Federal and state authorities for their respective programs. We do not dispute or disagree with a state's right to protect its water quality. At the same time, the Corps has a responsibility to assure that Federal funds are used to carry out authorized Federal purposes. Should the Corps believe that state requirements for testing, monitoring, or other conditions of state approval exceed reasonable Federal responsibility, three options are available. First, further coordination with the state could produce mutually satisfactory requirements to meet state water quality standards or be consistent with a Federally approved coastal zone management program. Second, the non-Federal project sponsor may wish to assume the responsibility for the additional requirements in order to allow the project to proceed. Finally, the Corps may determine it would be in the public interest to defer dredging and seek re-evaluation of the authorization and funding of the project in light of the unresolved state requirements.

The NOAA Office of Coastal Resource Management has advised us that the states do not have authority to issue conditional CZMA concurrences. Furthermore, if a state attempts to impose conditions, controls, or requirements that cause the Corps to exceed either its authority or funding for a project, then the Corps will have complied to the maximum extent practicable without adding those requirements. Thus, with the exception of minor word changes to remove some equivocal terminology and reorganization to more clearly reflect our intent, § 337.2 has not been substantially changed from the proposed rule.

Section 337.5: Several comments were received regarding the proposed general authorizations. Most commenters agreed with our proposed procedures. Three commenters recommended inclusion of procedures for general consistency determinations for repetitive activities and negative determinations for activities with little effect on the coastal zone. We agree and have added general consistency provisions to this section and negative determinations to § 336.1(b)(9). One commenter noted that related activities should not be included in general authorizations. The CWA and ODA do not require that general authorizations exclude categories of

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users. We believe that general authorizations can allow for beneficiaries of Federal navigation projects to realize the benefits for which the projects are intended. One commenter indicated that general authorizations are contrary to the Corps background statement that "the most appropriate alternative can be selected only on a case-by-case basis." We do not believe that general authorizations are contrary to that background statement. General authorizations are intended for routine minor activities. They are not intended for controversial disposal actions involving large quantities of material or dredged material disposal projects involving potentialy significant environmental impacts. Nonetheless, dredged material disposal activities meeting the criteria for a general authorization will still be evaluated to determine if the requirements of the Federal standard are satisfied. These requirements include full consideration of all practicable alternatives.

Section 337.6: One commenter recommended that the Statement of Findings (SOF) be submitted to the state in draft form since it stands as a final decision once it is signed. We do not agree. The district engineer is the ultimate decision maker for Corps maintenance dredging and disposal activities. The district engineer must consider a multitude of factors primarily relating to whether the project is in the Nation's best interest. Although the state may withhold or deny water quality certification or not concur in a Corps consistency determination, such actions by the state do not replace the district engineer's decision-making authority. The district engineer may elect to override a state's denial of a request for water quality certification using the CWA section 511(a) or 404(t) provisions or proceed in spite of a non-concurrence from the state coastal zone management agency. The Corps has not exercised such options in the past, nor are these options necessarily expected to be used in the future. The SOF represents the final step in the district engineers decision process. All views of interested parties are fully considered and appropriately integrated into the decision process by that time.

Section 337.7: In addition to comments regarding the definition of emergency at § 335.7, one commenter recommended that the states should be notified of emergency actions. Another commenter recommended that the states should be allowed to provide input in the determination of what constitutes an emergency. This section provides that states should be notified of emergency actions to the maximum extent practicable after taking into account the emergency situation. However, we believe that it is a Corps responsibility to determine what constitutes an emergency situation. Thus, we have only edited this section to remove some equivocal terminology.

Section 337.8: One commenter recommended that this section be revised to be consistent with existing reporting procedures in 33 CFR 209.145(k). The reporting procedures and format were revised from the existing rule based on our experience and the need for reporting. Much of the information required in the existing reporting procedure is not needed for higher level decisionmakers. We believe the new procedures and format will facilitate decisionmaking while reducing paperwork and unnecessary information.

Section 337.9: Three comments were received concerning identification and use of disposal areas. One commenter recommended periodic review and reconsideration of long-term water quality certifications and consistency agreements. Another commenter recommended that long-term certifications be conditioned to indicate that the state must be notified of any changes in procedures or practices in the projects as certified. Finally, one commenter recommended that 40 CFR 230.80 should be used as a mechanism for identifying suitable disposal areas. We agree that the EPA regulations in 40 CFR 230.80 (Advanced Identification of Disposal Areas) be referenced as a useful mechanism for planning to shorten processing time. We have included this reference in the final rule. When states process requests for water quality certification and review Corps determinations of consistency for long-term dredging and disposal operations, timeframes for the operations are generally specified in the Corps requests to the state. These timeframes are usually based on past practices and projected dredging and disposal needs. Where changes occur and those changes warrant reevaluation under the CWA or CZMA, the state will be notified regarding the need to revise the water quality certification or coastal zone consistency determination. We do not expect our district offices to contact state agencies whenever changes in operations or procedures do not fall within the purview of the CWA or CZMA. As the state of the art regarding environmental protection advances, changes in dredging or disposal operations may be warranted. State agencies will be advised of such changes if they fall within the purview of the CWA or CZMA.

General Comments

One comment was received regarding the lack of reflection in the regulation for increased participation by non-Federal interests resulting from the Water Resources Development Act of 1986 (Pub. L. 99-662). The recent Water Resources Development Act requires non-Federal cost-sharing for maintenance dredging of depths greater than 45 feet. We do not expect cost sharing and partnership arrangements to alter Federal responsibilities to assure cost-effective projects consistent with sound engineering principles and in compliance with Federal environmental requirements.

Three comments were received regarding our policies for managing highly contaminated dredged material. One commenter requested the basis for the Corps assertion that the substantive requirements of RCRA and the Toxic Substances Control Act are considered when evaluating alternatives for dredging and disposal projects. Another commenter indicated that the regulations presented little in the way of policy or procedure for evaluating the impact of contaminants associated with some dredging activities. Finally, one commenter recommended more reference to dredging and disposal of contaminated sediments.

Over the past several years the Corps has engaged in a concentrated effort to both identify and responsibly deal with the one to three percent of the total sediments dredged from Corps navigation projects which are considered highly contaminated. These state-of-the-art procedures are being refined and demonstrated at a number of EPA Superfund sites around the country where dredging has been identified as a potential remedial action. In response to the serious concern over highly contaminated dredged material, the Corps developed guidance regarding management and disposal of this material. This guidance includes a technical management strategy for disposal with emphasis on appropriate testing and contaminant controls. The basis of the strategy is an extensive data base developed in both Corps and EPA environmental research and development programs and over a decade of operational experience gained in managing and disposing of contaminated dredged material in a variety of disposal environments (e.g., in-water, intertidal, upland). It is Army policy to use the management strategy, where appropriate, to supplement the review procedures and requirements outlined in the 404(b)(1) guidelines (40 CFR Part 230) and the Ocean Dumping Criteria (40 CFR Part 220). The Corps developed management strategy represents the current state of knowledge in testing and interpretation of environmental effects and consequences in disposal of contaminated dredged material. It also provides detailed guidance on the selection of contaminant controls to include technologies being considered and implemented for remedial action under the Superfund Amendments and Reauthorization Act, where dredging and disposal of highly contaminated sediments is the recommended cleanup alternative. As the state of knowledge advances, this guidance document and policy may be revised.

List of Subjects

33 CFR Part 335

Environmental protection, Intergovernmental relations, Navigation, Definitions.

33 CFR Part 336

Environmental protection procedures, Water pollution control, Navigation, Clean Water Act procedures, Marine Protection, Research and Sanctuaries Act procedures.

33 CFR Part 337

Administrative practice and procedure.

33 CFR Part 338

Navigation, Environmental protection, Waterways, Natural resources.

For the reasons set out in the preamble, Title 33 of the Code of Federal Regulations, is amended as set forth below:

Dated: April 5, 1988.

Robert W. Page, Sr.,

Assistant Secretary of the Army (Civil Works).

PART 209—[AMENDED]

§ 209.145 [Removed]

1. 33 CFR 209.145 is removed.

2. Parts 335, 336, 337, and 338 are added as set forth below:

PART 335—OPERATION AND MAINTENANCE OF ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS INVOLVING THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE U.S. OR OCEAN WATERS

Sec.
335.1 Purpose.
335.2 Authority.
335.3 Applicability.
335.4 Policy.
335.5 Applicable laws.
335.6 Related laws and Executive Orders.
335.7 Definitions.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 335.1 Purpose.

This regulation prescribes the practices and procedures to be followed by the Corps of Engineers to ensure compliance with the specific statutes governing Army Civil Works operations and maintenance projects involving the discharge of dredged or fill material into waters of the U.S. or the transportation of dredged material for the purpose of disposal into ocean waters. These practices and procedures should be employed throughout the decision/management process concerning methodologies and alternatives to be used to ensure prudent operation and maintenance activities.

§ 335.2 Authority.

Under authority delegated from the Secretary of the Army and in accordance with section 404 of the Clean Water Act of 1977 (CWA) and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, hereinafter referred to as the Ocean Dumping Act (ODA), the Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States and the transportation of dredged material for the purpose of disposal into ocean waters. Section 404 of the CWA requires public notice with opportunity for public hearing for discharges of dredged or fill material into waters of the U.S. and that discharge sites can be specified through the application of guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. Section 103 of the ODA requires public notice with opportunity for public hearing for the transportation for disposal of dredged material for disposal in ocean waters. Ocean disposal of dredged material must be evaluated using the criteria developed by the Administrator of EPA in consultation with the Secretary of the Army. Section 103(e) of the ODA provides that the Secretary of the Army may, in lieu of permit procedures, issue regulations for Federal projects involving the transportation of dredged material for ocean disposal which require the application of the same criteria, procedures, and requirements which apply to the issuance of permits. Similarly, the Corps does not issue itself a CWA permit to authorize Corps discharges of dredged material or fill material into U.S. waters, but does apply the 404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws.

§ 335.3 Applicability.

This regulation (33 CFR Parts 335 through 338) is applicable to the Corps of Engineers when undertaking operation and maintenance activities at Army Civil Works projects.

§ 335.4 Policy.

The Corps of Engineers undertakes operations and maintenance activities where appropriate and environmentally acceptable. All practicable and reasonable alternatives are fully considered on an equal basis. This includes the discharge of dredged or fill material into waters of the U.S. or ocean waters in the least costly manner, at the least costly and most practicable location, and consistent with engineering and environmental requirements.

§ 335.5 Applicable laws.

(a) The Clean Water Act (33 U.S.C. 1251 et seq.) (also known as the Federal Water Pollution Control Act Amendments of 1972, 1977, and 1987).

(b) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) (commonly referred to as the Ocean Dumping Act (ODA)).

§ 335.6 Related laws and Executive Orders.

(a) The National Historic Preservation Act of 1966 (16 U.S.C. 470a et seq.), as amended.

(b) The Reservoir Salvage Act of 1960 (16 U.S.C. 469), as amended.

(c) The Endangered Species Act (16 U.S.C. 1531 et seq.), as amended.

(d) The Estuary Protection Act (16 U.S.C. 1221).

(e) The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), as amended.

(f) The National Environmental Policy Act (42 U.S.C. 4341 et seq.), as amended.

(g) The Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) as amended.

(h) Section 307(c) of the Coastal Zone Management Act of 1976 (16 U.S.C. 1456 (c)), as amended.

(i) The Water Resources Development Act of 1976 (Pub. L. 94–587).

(j) Executive Order 11593, *Protection and Enhancement of the Cultural Environment*, May 13, 1971, (36 FR 8921, May 15, 1971).

(k) Executive Order 11988, *Floodplain Management*, May 24, 1977, (42 FR 26951, May 25, 1977).

(l) Executive Order 11990, *Protection of Wetlands*, May 24, 1977, (42 FR 26961, May 25, 1977).

(m) Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982, (47 FR 3959, July 16, 1982).

(n) Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979.

§ 336.7 Definitions.

The definitions of 33 CFR Parts 323, 324, 327, and 329 are hereby incorporated. The following terms are defined or interpreted from Parts 320 through 330 for purposes of 33 CFR Parts 335 through 338.

"Beach nourishment" means the discharge of dredged or fill material for the purpose of replenishing an eroded beach or placing sediments in the littoral transport process.

"Emergency" means a situation which would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate and unforeseen significant economic hardship if corrective action is not taken within a time period less than the normal time needed under standard procedures.

"Federal standard" means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound engineering practices and meeting the environmental standards established by the 404(b)(1) evaluation process or ocean dumping criteria.

"Navigable waters of the U.S." means those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, have been used in the past, or may be susceptible to use with or without reasonable improvement to transport interstate or foreign commerce. A more complete definition is provided in 33 CFR Part 329. For the purpose of this regulation, the term also includes the confines of Federal navigation approach channels extending into ocean waters beyond the territorial sea which are used for interstate or foreign commerce.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Statement of Findings" (SOF) means a comprehensive summary compliance document signed by the district engineer after completion of appropriate environmental documentation and public involvement.

"Territorial sea" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, extending seaward a distance of three miles as described in the convention on the territorial sea and contiguous zone, 15 U.S.T. 1606.

PART 336—FACTORS TO BE CONSIDERED IN THE EVALUATION OF ARMY CORPS OF ENGINEERS DREDGING PROJECTS INVOLVING THE DISCHARGE OF DREDGED MATERIAL INTO WATERS OF THE U.S. AND OCEAN WATERS

Sec.

336.0 General.

336.1 Discharges of dredged or fill material into waters of the U.S.

336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 336.0 General.

Since the jurisdiction of the CWA extends to all waters of the U.S., including the territorial sea, and the jurisdiction of the ODA extends over ocean waters including the territorial sea, the following rules are established to assure appropriate regulation of discharges of dredged or fill material into waters of the U.S. and ocean waters.

(a) The disposal into ocean waters, including the territorial sea, of dredged material excavated or dredged from navigable waters of the U.S. will be evaluated by the Corps in accordance with the ODA.

(b) In those cases where the district engineer determines that the discharge of dredged material into the territorial sea would be for the primary purpose of fill, such as the use of dredged material for beach nourishment, island creation, or construction of underwater berms, the discharge will be evaluated under section 404 of the CWA.

(c) For those cases where the district engineer determines that the materials proposed for discharge in the territorial sea would not be adequately evaluated under the section 404(b)(1) guidelines of the CWA, he may evaluate that material under the ODA.

§ 336.1 Discharges of dredged or fill material into waters of the U.S.

(a) *Applicable laws.* Section 404 of the CWA governs the discharge of dredged or fill material into waters of the U.S. Although the Corps does not process and issue permits for its own activities, the Corps authorizes its own discharges of dredged or fill material by applying all applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines.

(1) The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.

(2) Section 307 of the Coastal Zone Management Act (CZMA) requires that certain activities that a Federal agency conducts or supports be consistent with the Federally-approved state management plan to the maximum extent practicable.

(b) *Procedures.* If changes in a previously approved disposal plan for a Corps navigation project warrant re-evaluation under the CWA, the following procedures should be followed by district engineers prior to discharging dredged material into waters of the U.S. except where emergency action as described in § 337.7 of this chapter is required.

(1) A public notice providing opportunity for a public hearing should be issued at the earliest practicable time. The public notification procedures of § 337.1 of this chapter should be followed.

(2) The public hearing procedures of 33 CFR Part 327 should be followed.

(3) As soon as practicable, the district engineer will request from the state a 401 water quality certification and, if applicable, provide a coastal zone consistency determination for the Corps activity using the procedures of § 336.1(b) (8) and (9), respectively, of this part.

(4) Discharges of dredged material will be evaluated using the guidelines authorized under section 404(b)(1) of the CWA, or using the ODA regulations, where appropriate. If the guidelines alone would prohibit the designation of a proposed discharge site, the economic impact on navigation and anchorage of the failure to use the proposed discharge site will also be considered in evaluating whether the proposed discharge is to be authorized under CWA section 404(b)(2).

(5) The EPA Administrator can prohibit or restrict the use of any defined area as a discharge site under 404(c) whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreation areas. Upon notification of the prohibition of a discharge site by the Administrator the district engineer will complete the administrative processing of the proposed project up to the point of signing the Statement of Findings (SOF) or Record of Decision (ROD). The unsigned SOF or ROD along with a report described in § 337.8 of this chapter will be forwarded through the appropriate Division office to the Dredging Division, Office of the Chief of Engineers.

(6) In accordance with the National Environmental Policy Act (NEPA), and the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), an Environmental Impact Statement (EIS) or Environmental Assessment (EA) will be prepared for all Corps of Engineers projects involving the discharge of dredged or fill material, unless such projects are included within a categorical exclusion found at 33 CFR Part 230 or addressed within an existing EA or EIS. If a proposed maintenance activity will result in a deviation in the operation and maintenance plan as described in the EA or EIS, the district engineer will determine the need to prepare a new EA, EIS, or supplement. If a new EA, EIS, or supplement is required, the procedures of 33 CFR Part 230 will be followed.

(7) If it can be anticipated that related work by other Federal or non-Federal interests will occur in the same area as Corps projects, the district engineer should use all reasonable means to include it in the planning, processing, and review of Corps projects. Related work normally includes, but is not necessarily limited to, maintenance dredging of approach channels and berthing areas connected to Federal navigation channels. The district engineer should coordinate the related work with interested Federal, state, regional, and local agencies and the general public at the same time he does so for the Corps project. The district engineer should ensure that related work meets all substantive and procedural requirements of 33 CFR Parts 320 through 330. Documents covering Corps maintenance activities normally should also include an appropriate discussion of ancillary maintenance work. District engineers should assist local interests to obtain from the state any necessary section 401 water quality certification and, if required, the section 307 coastal zone consistency concurrence. The absence of such certification or concurrence by the state or the denial of a Corps permit for related work shall not be cause for delay of the Federal project. Local sponsors will be responsible for funding any related work. If permitting of the related work complies with all legal requirements and is not contrary to the public interest, section 10, 404, and 103 permits normally will be issued by the district engineer in a separate SOF or ROD. Authorization by nationwide or regional general permit may be appropriate. If the related work does not receive a necessary state water quality certification and/or CZMA consistency concurrence, or are determined to be contrary to the public interest the district engineer should re-examine the project viability to ensure that continued maintenance is warranted.

(8) *State water quality certification:* Section 401 of the CWA requires the Corps to seek state water quality certification for dredged material disposal into waters of the U.S. The state certification request must be processed to a conclusion by the state within a reasonable period of time. Otherwise, the certification requirements of section 401 are deemed waived. The district engineer will request water quality certification from the state at the earliest practicable time using the following procedures:

(i) In addition to the Corps section 404 public notice, information and data demonstrating compliance with state water quality standards will be provided to the state water quality certifying agency along with the request for water quality certification. The information and data may be included within the 404(b)(1) evaluation. The district engineer will request water quality certification to be consistent with the maintenance dredging schedule for the project. Submission of the public notice, including information and data demonstrating compliance with the state water quality standards, will constitute a valid water quality certification request pursuant to section 401 of the CWA.

(ii) If the proposed disposal activity may violate state water quality standards, after consideration of disposal site dilution and dispersion, the district engineer will work with the state to acquire data to satisfy compliance with the state water quality standards. The district engineer will use the technical manual "Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls" or its appropriate updated version as a guide for developing the appropriate tests to be conducted on such dredged material.

(iii) If the state does not take final action on a request for water quality certification within two months from the date of the initial request, the district engineer will notify the state of his intention to presume a waiver as provided by section 401 of the CWA. If the state agency, within the two-month period, requests an extension of time, the district engineer may approve one 30-day extension unless, in his opinion, the magnitude and complexity of the information contained in the request warrants a longer or additional extension period. The total period of time in which the state must act should not exceed six months from the date of the initial request. Waiver of water quality certification can be conclusively presumed after six months from the date of the initial request.

(iv) The procedures of § 337.2 will be followed if the district engineer determines that the state data acquisition requirements exceed those necessary in establishment of the Federal standard.

(9) *State coastal zone consistency:* Section 307 of the CZMA requires that activities subject to the CZMA which a Federal agency conducts or supports be consistent with the Federally approved state management program to the maximum extent practicable. The state is provided a reasonable period of time as defined in § 336.1(b)(9)(iv) to take final action on Federal consistency determinations; otherwise state concurrence can be presumed. The district engineer will provide the state a consistency determination at the earliest practicable time using the following procedures:

(i) The Corps section 404 public notice and any additional information that the district engineer determines to be appropriate will be provided the state coastal zone management agency along with the consistency determination. The consistency determination will consider the maintenance dredging schedule for the project. Submission of the public notice and, as appropriate, any additional information as determined by the district engineer will constitute a valid coastal zone consistency determination pursuant to section 307 of the CZMA.

(ii) If the district engineer decides that a consistency determination is not required for a Corps activity, he may provide the state agency a written

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determination that the CZMA does not apply.

(iii) The district engineer may provide the state agency a general consistency determination for routine or repetitive activities.

(iv) If the state fails to provide a response within 45 days from receipt of the initial consistency determination, the district engineer will presume state agency concurrence. If the state agency, within the 45-day period, requests an extension of time, the district engineer will approve one 15-day extension unless, in his opinion, the magnitude and complexity of the information contained in the consistency determination warrants a longer or additional extension period. The longer or additional extension period shall not exceed six months from the date of the initial consistency determination.

(v) If the district engineer determines that the state recommendations to achieve consistency to the maximum degree practicable exceed either his authority or funding for a proposed dredging or disposal activity, he will so notify the state coastal zone management agency indicating that the Corps has complied to the maximum extent practicable with the state's coastal zone management program. If the district engineer determines that state recommendations to achieve consistency to the maximum degree practicable do not exceed his authority or funding but, nonetheless, are excessive, he will follow the procedures of § 337.2.

(c) *Evaluation factors.* The following factors will be used, as appropriate, to evaluate the discharge of dredged material into waters of the U.S. Other relevant factors may also be evaluated, as needed.

(1) *Navigation and Federal standard.* The maintenance of a reliable Federal navigation system is essential to the economic well-being and national defense of the country. The district engineer will give full consideration to the impact of the failure to maintain navigation channels on the national and, as appropriate, regional economy. It is the Corps' policy to regulate the discharge of dredged material from its projects to assure that dredged material disposal occurs in the least costly, environmentally acceptable manner, consistent with engineering requirements established for the project. The environmental assessment or environmental impact statement, in conjunction with the section 404(b)(1) guidelines and public notice coordination process, can be used as a guide in formulating environmentally acceptable alternatives. The least costly alternative, consistent with sound engineering practices and selected through the 404(b)(1) guidelines or ocean disposal criteria, will be designated the Federal standard for the proposed project.

(2) *Water quality.* The 404(b)(1) guidelines at 40 CFR Part 230 and ocean dumping criteria at 40 CFR Part 220 implement the environmental protection provisions of the CWA and ODA, respectively. These guidelines and criteria provide general regulatory guidance and objectives, but not a specific technical framework for evaluating or managing contaminated sediment that must be dredged. Through the section 404(b)(1) evaluation process (or ocean disposal criteria for the territorial sea), the district engineer will evaluate the water quality impacts of the proposed project. The evaluation will include consideration of state water quality standards. If the district engineer determines the dredged material to be contaminated, he will follow the guidance provided in the most current published version of the technical manual for contaminant testing and controls. This manual is currently cited as: Francingues, N.R., Jr., et al. 1985. "Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls," Miscellaneous Paper D–85–1, U.S. Army Waterways Experiment Station, Vicksburg, Mississippi. The procedures of § 336.1(b)(8) will be followed for state water quality certification requests.

(3) *Coastal zone consistency.* As appropriate, the district engineer will determine whether the proposed project is consistent with the state coastal zone management program to the maximum extent practicable. The procedures of § 336.1(b)(9) will be followed for coastal zone consistency determinations.

(4) *Wetlands.* Most wetland areas constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. The district engineer will, therefore, follow the guidance in 33 CFR 320.4(b) and EO 11990, dated May 24, 1977, when evaluating Corps operations and maintenance activities in wetlands.

(5) *Endangered species.* All Corps operations and maintenance activities will be reviewed for the potential impact on threatened or endangered species, pursuant to the Endangered Species Act of 1973. If the district engineer determines that the proposed activity will not affect listed species or their critical habitat, a statement to this effect should be included in the public notice. If the proposed activity may affect listed species or their critical habitat, appropriate discussions will be initiated with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, and a statement to this effect should be included in the public notice. (See 50 CFR Part 402).

(6) *Historic resources.* Archeological, historical, or architectural resource surveys may be required to locate and identify previously unrecorded historic properties in navigation channels and at dredged or fill material disposal sites. If properties that may be historic are known or found to exist within the navigation channel or proposed disposal area, field testing and analysis may sometimes be necessary in order to evaluate the properties against the criteria of the National Register of Historic Places. Such testing should be limited to the amount and kind needed to determine eligibility for the National Register; more detailed and extensive work on a property may be prescribed later, as the outcome of review under section 106 of the National Historic Preservation Act. Historic properties are not normally found in previously constructed navigation channels or previously used disposal areas. Therefore, surveys to identify historic properties should not be conducted for maintenance dredging and disposal activities proposed within the boundaries of previously constructed navigation channels or previously used disposal areas unless there is good reason to believe that historic properties exist there.

(i) The district engineer will establish whether historic properties located in navigation channels or at disposal sites are eligible for inclusion in the National Register of Historic Places in accordance with applicable regulations of the Advisory Council on Historic Preservation and the Department of the Interior.

(ii) The district engineer will take into account the effects of any proposed actions on properties included in or eligible for inclusion in the National Register of Historic Places, and will request the comments of the Advisory Council on Historic Preservation, in accordance with applicable regulations of the Advisory Council on Historic Preservation.

(7) *Scenic and recreational values.* (i) Maintenance dredging and disposal activities may involve areas which possess recognized scenic, recreational, or similar values. Full evaluation requires that due consideration be given to the effect which dredging and disposal of the dredged or fill material may have on the enhancement, preservation, or development of such values. Recognition of these values is often reflected by state, regional, or local land use classification or by similar Federal controls or policies. Operations and maintenance activities should, insofar as possible, be consistent with and avoid adverse effects on the values or purposes for which such resources have been recognized or set aside, and for which those classifications, controls, or policies were established. Special consideration must be given to rivers named in section 3 of the Wild and Scenic Rivers Act and those proposed for inclusion as provided by section 4 and 5 of the Act, or by later legislation.

(ii) Any other areas named in Acts of Congress or Presidential Proclamations, such as National Rivers, National Wilderness Areas, National Seashores, National Parks, and National Monuments, should be given full consideration when evaluating Corps operations and maintenance activities.

(8) *Fish and wildlife.* (i) In those cases where the Fish and Wildlife Coordination Act (FWCA) applies, district engineers will consult, through the public notification process, with the Regional Directors of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of fish and wildlife resources by considering ways to prevent their direct and indirect loss and damage due to the proposed operation and maintenance activity. The district engineer will give full consideration to these views on fish and wildlife conservation in evaluating the activity. The proposed operations may be modified in order to lessen the damage to such resources. The district engineer should include such justifiable means and measures for fish and wildlife resources that are found to be appropriate. Corps funding of Fish and Wildlife Service activities under the Transfer of Funds Agreement between the Fish and Wildlife Service and the Corps is not applicable for Corps operation and maintenance projects.

(ii) District engineers should consider ways of reducing unavoidable adverse environmental impacts of dredging and disposal activities. The determination as to the extent of implementation of such measures will be done by the district engineer after weighing the benefits and detriments of the maintenance work and considering applicable environmental laws, regulations, and other relevant factors.

(9) *Marine sanctuaries.* Operations and maintenance activities involving the discharge of dredged or fill material in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the ODA should be evaluated for the impact on the marine sanctuary. In such a case, certification should be obtained from the Secretary of Commerce that the proposed project is consistent with the purposes of Title III of the ODA and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(10) *Other state requirements.* District engineers will make all reasonable efforts to comply with state water quality standards and Federally approved coastal zone programs using the procedures of §§ 336.1(b) (8), (9), and 337.2. District engineers should not seek state permits or licenses unless authorized to do so by a clear, explicit, and unambiguous Congressional waiver of Federal sovereign immunity, giving the state authority to impose that requirement on Federal activities (e.g., CWA sections 401 and 404(t), and CZMA section 307 (c)(1) and (c)(2)).

(11) *Additional factors.* In addition to the factors described in paragraphs (c)(1)–(9) of this section, the following factors should also be considered.

(i) The evaluation of Corps operations and maintenance activities involving the discharge of dredged or fill material into waters of the U.S. is a continuing process and should proceed concurrently with the processing of state water quality certification and, if required, the provision of a coastal zone consistency determination to the state. If a local agency having jurisdiction over or concern with the particular activity comments on the project through the public notice coordination, due consideration should be given to those official views as a reflection of local factors.

(ii) Where officially adopted state, regional, or local land use classifications, determinations, or policies are applicable, they normally will be presumed to reflect local views and will be considered in addition to other national factors.

§ 336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

(a) *Applicable law.* Section 103(a) of the ODA provides that the Corps of Engineers may issue permits, after notice and opportunity for public hearing, for the transportation of dredged material for disposal into ocean waters.

(b) *Procedures.* The following procedures will be followed by district engineers for dredged material disposal into ocean waters except where emergency action as described in § 337.7 of this chapter is required.

(1) In accordance with the provisions of section 103 of the ODA, the district engineer should issue a public notice giving opportunity for public hearing, following the procedures described in § 337.1 of this chapter for Corps operation and maintenance activities involving disposal of dredged material in ocean waters, as well as dredged material transported through the territorial sea for ocean disposal.

(2) The public hearing procedures of 33 CFR Part 327 should be followed.

(c) *State permits and licenses.* The terms and legislative history of the ODA leave some doubt regarding whether a state has legal authority to exert control over ocean dumping activities of the Corps in the territorial sea covered under the Act (see section 106(d)). Notwithstanding this legal question, the Corps will voluntarily as a matter of comity apply for state section 401 water quality certification and determine consistency with a Federally-approved coastal zone management plan for Corps ocean disposal of dredged material within the three-mile extent of the territorial sea. Moreover, the Corps will attempt to comply with any reasonable requirement imposed by a state in the course of the 401 certification process or the CZMA consistency determination process. Nevertheless, the Corps reserves its legal rights regarding any case where a state unreasonably denies or conditions a 401 water quality certification for proposed Corps ocean disposal of dredged material within the limits of the territorial sea, or asserts that such disposal would not be consistent with an approved state CZMA plan. If such a circumstance arises, the district engineer shall so notify the division engineer who then decides on consultation with CECW–D, CECW–Z, and CECC–E for purposes of determining the Corps of Engineers' appropriate response and course of action.

(d) *Evaluation factors.* (1) In addition to the appropriate evaluation factors of § 336.1(c), activities involving the transportation of dredged material for the purpose of disposal in ocean waters will be evaluated by the Corps to determine whether the proposed disposal will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, the district engineer, in addition to considering the criteria developed by EPA on the effects of the dumping, will

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also consider navigation, economic and industrial development, and foreign and domestic commerce, as well as the availability of alternatives to ocean disposal, in determining the need for ocean disposal of dredged material. Where ocean disposal is determined to be appropriate, the district engineer will, to the extent feasible, specify disposal sites which have been designated by the Administrator pursuant to section 102(c) of the ODA.

(2) As provided by the EPA regulations at 40 CFR 225.2(b–e) for implementing the procedures of section 102 of the ODA, the regional administrator of EPA may make an independent evaluation of dredged material disposal activities regulated under section 103 of the ODA related to the effects of dumping. The EPA regulations provide that the regional administrator make said evaluation within 15 days after receipt of all requested information. The regional administrator may request from the district engineer an additional 15-day period for a total of to 30 days. The EPA regulations provide that the regional administrator notify the district engineer of non-compliance with the environmental impact criteria or with any restriction relating to critical areas on the use of an EPA recommended disposal site designated pursuant to section 102(c) of the ODA. In cases where the regional administrator has notified the district engineer in writing that the proposed disposal will not comply with the criteria related to the effects of dumping or related to critical area restriction, no dredged material disposal may occur unless and until the provisions of 40 CFR 225.3 are followed and the Administrator grants a waiver of the criteria pursuant to section 103(d) of the ODA.

(3) If the regional administrator advises the district engineer that the proposed disposal will comply with the criteria, the district engineer will complete the administrative record and sign the SOF.

(4) In situations where an EPA-designated site is not feasible for use or where no site has been designated by the EPA, the district engineer, in accordance with the ODA and in consultation with EPA, may select a site pursuant to section 103. Appropriate NEPA documentation should be used to support site selections. District engineers should address site selection factors in the NEPA document. District engineers will consider the criteria of 40 CFR Parts 227 and 228 when selecting ocean disposal sites, as well as other technical and economic considerations. Emphasis will be placed on evaluation to determine the need for ocean disposal and other available alternatives. Each alternative should be fully considered on an equal basis, including the no dredging option.

(5) If the regional administrator advises the district engineer that a proposed ocean disposal site or activity will not comply with the criteria, the district engineer should proceed as follows.

(i) The district engineer should determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate the engineering and economic feasibility and environmental acceptability of the alternative sites.

(ii) If the district engineer makes a determination that there is no economically feasible alternative method or site available, he will so advise the regional administrator of his intent to proceed with the proposed action setting forth his reasons for such determination.

(iii) If the regional administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by section 103(c) of the ODA to prohibit use of a proposed disposal site, the case will be forwarded through the respective Division office and CECW–D to the Secretary of the Army or his designee for further coordination with the Administrator of EPA and final resolution. The report forwarding the case should be in the format described in § 337.8 of this chapter.

(iv) The Secretary of the Army or his designee will evaluate the proposed project and make a final determination on the proposed disposal. If the decision of the Secretary of the Army or his designee is that ocean disposal at the proposed site is required because of the unavailability of economically feasible alternatives, he will seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with section 103(d) of the ODA.

PART 337—PRACTICE AND PROCEDURE

Sec.

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Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 337.0 Purpose.

The practices and procedures part of this regulation apply to all Corps operations and maintenance activities involving the discharge of dredged or fill material in waters of the U.S. and ocean waters and related activities of local interests accomplished to ensure continued functions of constructed Corps projects.

§ 337.1 Public notice.

Presently, public notification of proposed discharges of dredged or fill material is required by the provisions of section 103 of the ODA and sections 401 and 404 of the CWA. District engineers are encouraged to develop procedures to avoid unnecessary duplication of state agency procedures. Joint public notification procedures should be a primary factor in the development of Memoranda of Agreement with the states as described in § 337.4.

(a) With the possible exception of emergency actions as discussed in § 337.7, the district engineer should issue a public notice for projects involving the discharge of dredged or fill material into waters of the U.S. or ocean waters unless the project is authorized by a general permit. Public notices for Corps operation and maintenance activities are normally issued for an indefinite period of time and are not reissued unless changes in the disposal plan warrant re-evaluation under section 404 of the CWA or section 103 of the ODA. The public notice is the primary method of advising all interested parties of Federal projects and of soliciting comments and information necessary to evaluate the probable impact of the discharge of dredged or fill material into waters of the U.S. or ocean waters. The notice should, therefore, include sufficient information to provide a clear understanding of the nature of the activity and related activities of local interests in order to generate meaningful comments. A single public notice may be used for more than one project in appropriate cases. The notice normally should include the following items:

(1) The name and location of the project and proposed disposal site.

(2) A general description of the project and a description of the estimated type, composition, and quantity of materials to be discharged, the proposed time schedule for the dredging activity, and the types of equipment and methods of dredging and conveyance proposed to be used.

(3) A sketch showing the location of the project, including depth of water in the area and all proposed discharge sites.

(4) The nature, estimated amount, and frequency of known and anticipated related dredging and discharge to be conducted by others.

(5) A list of Federal, state, and local environmental agencies with whom the activity is being coordinated.

(6) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(7) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any.

(8) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing except in emergency situations where the procedures of § 337.7 will be followed, within which interested parties may express their views concerning the proposed project.

(9) If the proposed Federal project would occur in the territorial seas or ocean waters, a description of the project's relationship to the baseline from which the territorial sea is measured.

(10) A statement on the status of state water quality certification under section 401 of the CWA.

(11) For activities requiring a determination of consistency with an approved state coastal zone management plan, the following information will be included in the notice:

(i) A statement on whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the state management program.

(ii) Sufficient information to support the consistency determination to include associated facilities and their coastal zone effect.

(iii) Data and supporting information commensurate with the expected effects of the activity on the coastal zone.

(12) A statement on historic resources, state of present knowledge, likelihood of damage or other adverse effect on such resources, etc.

(13) A statement on endangered species.

(14) A statement on evaluation factors to be considered, adapted from that presented at 33 CFR 325.3(b).

(15) The name, address, and telephone number of the Corps employee from whom additional information concerning the project may be obtained.

(16) The signature of the district engineer or his designee on all maintenance dredged material disposal public notices.

(17) For activities regulated under section 103 of the ODA, the following additional information should be integrated into the public notice:

(i) A statement on the designation status of the disposal site.

(ii) If the proposed disposal site is not a designated site, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible.

(iii) A brief description of known dredged material discharges at the proposed disposal site.

(iv) Existence and documented effects of other authorized disposals that have been made at the disposal area.

(v) An estimated length of time during which disposal would continue at the proposed site.

(vi) Information on the characteristics and composition of the dredged material, and the following paragraph:

The proposed transportation of this dredged material for disposing of it in ocean waters is being evaluated to determine that the proposed disposal will not unreasonably degrade or endanger human health, welfare, or amenities or the marine environment, ecological systems, or economic potentialities. In making this determination, the criteria established by the Administrator, EPA pursuant to section 102(a) of the ODA, will be applied. In addition, based upon an evaluation of the potential effect which the failure to utilize this ocean disposal site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, an independent determination will be made of the need to dispose of the dredged material in ocean waters, other possible methods of disposal, and othr appropriate locations.

(b) The following statement should be included in the public notices:

Any person who has an interest which may be affected by the disposal of this dredged material may request a public hearing. The request must be submitted in writing to the district engineer within the comment period of this notice and must clearly set forth the interest which may be affected and the manner in which the interest may be affected by this activity.

(c) Public notices should be distributed as described in 33 CFR 325.3(c). In addition, public notices should be sent to CECW–D, Office of the Chief of Engineers, Washington, DC 20314, if the project involves the discharge of dredged material in waters of the U.S. or ocean waters. District engineers should also develop, as appropriate, regional mailing lists for Corps maintenance dredging and disposal activities to the extent that property owners adjacent to the navigation channel and disposal area are notified of the proposed activity. In order to effect compliance with Executive Order 12372, district engineers should provide copies of public notices to concerned state and local elected officials.

(d) The district engineer should consider all comments received in response to the public notice in his subsequent actions. All comments expressing objections to or raising questions about the project should be acknowledged. Comments received as form letters or petitions, however, may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments are received which relate to matters within the special expertise of another agency, the district engineer may seek the advice of that agency. The receipt of comments as a result of the public notice normally should not extend beyond the stated comment period; however, at his discretion, the district engineer may provide an extension.

(e) Notices sent to several agencies within the same state may result in conflicting comments from those agencies. Many states have designated a state agency or individual to provide a single and coordinated state position regarding Federal activities. Where a state has not so designated a single source, the district engineer, as appropriate, may seek from the Governor an expression of his views and desires concerning the proposed and subsequent similar projects.

(f) All comments received from the public notice coordination should be considered in the public interest review process. Comments received from Federal or state agencies which are within the area of expertise of another agency will be communicated with that other agency if the district engineer needs the information to make a final determination on the proposed project.

§ 337.2 State requirements.

The procedures of this section should be followed in implementing state requirements.

(a) District engineers should cooperate to the maximum extent practicable with state agencies to prevent violation of Federally approved state water quality standards and to achieve consistency to the maximum degree practicable with an approved coastal zone management program.

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(b) If the state agency imposes conditions or requirements which exceed those needed to meet the Federal standard, the district engineer should determine and consider the state's rationale and provide to the state information addressing why the alternative which represents the Federal standard is environmentally acceptable. The district engineer will accommodate the state's concerns to the extent practicable. However, if a state agency attempts to impose conditions or controls which, in the district engineers opinion, cannot reasonably be accommodated, the following procedures will be followed.

(1) In situations where an agency requires monitoring or testing, the district engineer will strive to reach an agreement with the agency on a data acquisition program. The district engineer will use the technical manual "Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls" or its appropriate updated version as a guide for developing the appropriate tests to be conducted. If the agency insists on requirements which, in the opinion of the district engineer, exceed those required in establishment of the Federal standard, the agency will be asked to fund the difference in cost. If the agency agrees to fund the difference in cost, the district engineer will comply with the request. If the agency does not fund the additional cost, the district engineer will follow the guidance in paragraph (b) (3) of this section.

(2) When an agency requires special conditions or implementation of an alternative which the Federal standard does not, district engineers will proceed as follows: In those cases where the project authorization requires a local sponsor to provide suitable disposal areas, disposal areas must be made available by a sponsor before dredging proceeds. In other cases where there are no local sponsor requirements to provide disposal areas, the state or the prospective local sponsor will be advised that, unless the state or the sponsor provides suitable disposal areas, the added Federal cost of providing these disposal areas will affect the priority of performing dredging on that project. In either case, states will be made aware that additional costs to meet state standards or the requirements of the coastal zone management program which exceed those necessary in establishment of the Federal standard may cause the project to become economically unjustified.

(3) If the state denies or notifies the district engineer of its intent to deny water quality certification or does not concur regarding coastal zone consistency, the project dredging may be deferred. A report pursuant to § 337.9 of this section will be forwarded to CECW–D, Office of the Chief of Engineers, Washington, DC 20314–1000 for resolution.

§ 337.3 Transfer of the section 404 program to the states.

Section 404(g–1) of the CWA allows the Administrator of the EPA to transfer to qualified states administration of the section 404 permit program for discharges into certain waters of the U.S. Once a state's 404 program is approved, the district engineer will follow state procedures developed in accordance with section 404(g–1) of the CWA for all on-going Corps projects involving the discharge of fill material in transferred waters to the state agency responsible for administering the program. Corps projects involving the discharge of dredged or fill material in waters not transferred to the state will be processed in accordance with this regulation.

§ 337.4 Memoranda of Agreement (MOA).

The establishment of joint notification procedures for Corps projects involving disposal of dredged or fill material should be actively pursued through the development of MOAs with the state. The MOAs may be used to define responsibilities between the state and the Corps district involved. The primary purpose of MOAs will be to avoid or eliminate administrative duplication, when such duplication does not contribute to the overall decision-making process. MOAs for purposes of this regulation will not be used to implement provisions not related to the maintenance or enforcement of Federally-approved state water quality standards or coastal zone management programs. District engineers are authorized and encouraged to develop MOAs with states and other Federal agencies for Corps projects involving the discharge of dredged or fill material. Copies of all MOAs will be forwarded to CECW–D, Office of the Chief of Engineers, Washington, DC 20314–1000 for approval.

§ 337.5 General authorizations.

Under the provisions of sections 404(e) of the CWA and 104(c) of the ODA certain categories of activities may be authorized on a regional, statewide, or nationwide basis. General authorizations can be a useful mechanism for implementation of the procedural provisions of the CWA, CZMA, and ODA while avoiding unnecessary duplication and paperwork. Through the general authorization process, compliance with all environmental laws and regulations including coastal zone consistency, if applicable, and water quality certification can be accomplished in a single process for a category of activities. Since the emphasis of particular environmental issues for most Corps projects is more regional than nationwide, district engineers are encouraged to develop general authorizations for routine Civil Works activities involving the discharge of dredged or fill material to address the specific requirements of a particular geographic region. When evaluating general categories of activities, the district engineer should follow the same procedure as outlined for individual Federal activities including the water quality certification and/or coastal zone consistency requirements of Part 330 of this chapter. General authorizations should include related activities of local interests. Additionally, district engineers should use existing general permits authorized on a statewide or regional basis and the nationwide permits at 33 CFR Part 330 for Federal projects involving the disposal of dredged material. The development of new statewide or regional general authorizations for Federal activities should be in accordance with the requirements of §§ 336.1 and 336.2 of this chapter. General permits for related activities of local interests should be developed using the procedures of 33 CFR Parts 320 through 330.

§ 337.6 Statement of Findings (SOF).

Upon completion of the evaluation process including required coordination, receipt or waiver of required state certifications, and completion of the appropriate environmental documents, an SOF will be prepared. In cases involving an EIS, a ROD will be prepared in accordance with 33 CFR Part 230 and should be used in lieu of the SOF, providing the substantive parts of this section are included in the ROD. The SOF need not duplicate information contained in supporting environmental documents but rather may incorporate it by reference. The SOF should include a comprehensive summary and record of compliance and should be prepared in the following format except that the procedures of 33 CFR 325.2 should be followed for related activities of local interests.

(a) The SOF should identify the name of the preparer, date (which may not necessarily correspond to the date signed), and name of waterway.

(b) The proposed action for which the findings are made should be described.

(c) A coordination section should be provided. The coordination section should reference the public notice number and date. The letters of comment and appropriate responses should be summarized. Any coordination undertaken by local or state agencies should also be discussed.

(d) An environmental effects and impacts section should be used to document compliance with the applicable environmental laws. This section should include the views and/or conditions of the state concerning water quality certification and, if required, the results of the coastal zone consistency process.

(e) A determinations section should reference the results of the EA and/or EIS and any conditions necessary to meet the state's water quality standards or coastal zone management program. Appropriate conditions or modifications should be included in the project specifications. This section should also contain a subsection on consideration of alternatives and cumulative impacts.

(f) A section on the district engineer's findings and conclusions concerning the proposed project should be included.

(g) The SOF should be dated and signed by the district engineer or his designee except in those cases requiring referral to higher authority.

(h) In accordance with the provisions of section 104(g) of the ODA, the district engineer will forward a copy of the SOF to the District Commander, U.S. Coast Guard, if the activity involves the ocean disposal of dredged material.

(i) The Findings of No Significant Impact or ROD, as appropriate, required by 33 CFR Part 230 may be incorporated into the SOF, as appropriate.

§ 337.7 Emergency actions.

After obtaining approval from the division engineer, the district engineer will respond to emergency situations on an expedited basis, complying with the procedures of this regulation to the maximum degree practicable. The district engineer will issue a public notice describing the emergency in accordance with § 337.1, if such a notice is practicable in view of the emergency situation; such a public notice should be forwarded to all appropriate Federal and state agencies. The district engineer should prepare a section 404(b)(1) evaluation report and, as necessary, an environmental assessment, if this is practicable in view of the emergency situation. If comments are received from the public notice which, in the judgment of the district engineer, reveal the necessity of modifying the emergency operation, the district engineer should take appropriate measures to modify the emergency operation to reduce, avoid, or minimize adverse environmental impacts. If the district engineer, after receiving comments from the public notice, determines that the emergency action would constitute a major Federal action significantly affecting the quality of the human environment, he should, after consultation with the division engineer, coordinate with the Council on Environmental Quality about alternative arrangements for compliance with the NEPA in accordance with 40 CFR 1506.11 to the extent that it is practicable in view of the emergency situation. District engineers should consult with the appropriate state officials to seek water quality certification or waiver of certification, and should certify that the Federal action is consistent to the maximum extent practicable with an approved coastal zone management plan for emergency activities, to the extent that is practicable in view of the emergency.

§ 337.8 Reports to higher echelons.

(a) Certain activities involving the discharge of dredged or fill material require action by the division engineer or Chief of Engineers. Such reports should be prepared in the format described in paragraph (b) of this section. Reports may be necessary in the following situations:

(1) When there is substantial doubt as to the authority, law, regulations, or policies applicable to the Federal project;

(2) When higher authority requests the case be forwarded for decision;

(3) When the state does not concur in a coastal zone consistency determination or attempts to concur with conditions or controls;

(4) When the state denies or unreasonably delays a water quality certification or issues the certification with conditions or controls not related to maintenance or enforcement of state water quality standards or significantly exceeding the Federal standard;

(5) When the regional administrator has advised the district engineer, pursuant to section 404(c) of the CWA, of his intent to prohibit or restrict the use of a specified discharge site; or notifies the district engineer that the discharge of dredged material in ocean waters or territorial seas will not comply with the criteria and restrictions on the use of the site established under the ODA; and the district engineer determines that the proposed disposal cannot be reasonably modified to alleviate the regional administrator's objections; and

(6) When the state fails to grant water quality certification or a waiver of certification or concurrence or waiver of coastal zone consistency for emergency actions.

(b) Reports. The report of the district engineer on a project requiring action by higher authority should be in letter form and contain the following information:

(1) Justification showing the economic need for dredging.

(2) The impact on states outside the project area if the project is not dredged.

(3) The estimated cost of agency requirements which exceed those necessary in establishment of the Federal standard.

(4) The relative urgency of dredging based on threat to national security, life or property.

(5) Any other facts which will aid in determining whether to further defer the dredging and seek Congressional appropriations for the added expense or the need to exercise the authority of the Secretary of the Army to maintain navigation as provided by sections 511(a) and 404(t) of the CWA if the disagreement concerns water quality certification or other state permits.

(6) If the disagreement concerns coastal zone consistency, the district engineer will follow the reporting requirement of this section and § 336.1(b)(9) of this chapter.

§ 337.9 Identification and use of disposal areas.

(a) District engineers should identify and develop dredged material disposal management strategies that satisfy the long-term (greater than 10 years) needs for Corps projects. Full consideration should be given to all practicable alternatives including upland, open water, beach nourishment, within banks disposal, ocean disposal, etc. Within existing policy, district engineers should also explore beneficial uses of dredged material, such as marsh establishment and dewatering techniques, in order to extend the useful life of existing disposal areas. Requests for water quality certification and/or coastal zone consistency concurrence for projects with identified long-term disposal sites should include the length of time for which the certification and/or consistency concurrence is sought. The section 404(b)(1) evaluation and environmental assessment or environmental impact statement should also address long-term maintenance dredging and disposal. District engineers should use the guidance at 40 CFR 230.80 to shorten environmental compliance processing time. The Corps of Engineers will be responsible for

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accomplishing or assuring environmental compliance requirements for all disposal areas. This does not preclude the adoption of other agencies NEPA documents in accordance with 40 CFR Parts 1500 through 1508.

(b) The identification of disposal sites should include consideration of dredged material disposal needs by project beneficiaries. District engineers are encouraged to require local interests, where the project has a local sponsor, to designate long-term disposal areas.

§ 337.10 Supervision of Federal projects.

District engineers should assure that dredged or fill material disposal activities are conducted in conformance with current plans and description of the project as expressed in the SOF or ROD. Conditions and/or limitations required by a state (e.g., water quality certification), as identified through the coordination process, should be included in the project specifications. Contracting officers should assure that contractors are aware of their responsibilities for compliance with the terms and conditions of state certifications and other conditions expressed in the SOF or ROD.

PART 338—OTHER CORPS ACTIVITIES INVOLVING THE DISCHARGE OF DREDGED MATERIAL OR FILL INTO WATERS OF THE U.S.

Sec.

338.1 Purpose.
338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

Authority: 33 U.S.C. 1344.

§ 338.1 Purpose.

(a) The procedures of this part, in addition to the provisions of 33 CFR Parts 335 through 337, should be followed when undertaking Corps operations and maintenance activities involving the discharge of fill material into waters of the U.S., except that the procedures of Part 336 of this chapter will be used in those cases where the discharge of fill material is also the discharge of dredged material, i.e., beach nourishment, within banks disposal for erosion control, etc.

(b) After construction of Corps Civil Works water resource projects, certain operations and maintenance activities involving the discharge of fill material require evaluation under the CWA. These activities generally include lakeshore management, installation of boat ramps, erosion protection along the banks of navigation channels, jetty maintenance, remedial erosion control, etc. While these activities are normally addressed in the existing environmental impact statement for the project, new technology or unexpected events such as storms or high waters may require maintenance or remedial work not fully addressed in existing environmental documents or state permits. In determining compliance with the applicable environmental laws and regulations the district engineer should use the CWA exemptions at 404(f) and NEPA categorical exclusions to the maximum extent practicable. If the district engineer decides that the changes have not been adequately addressed in existing environmental documentation, the procedures of this part should be followed.

§ 338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

(a) Generally, fill activities conducted by the Corps for operations and maintenance of existing Civil Works water resource and navigation projects are routine and have little, if any, potential for significant degradation of the environment. District engineers are encouraged to develop general authorizations in accordance with section 404 of the CWA and 104 of the ODA following the procedures of § 337.5 of this chapter for categories of such routine activities. The general authorization should satisfy all compliance requirements including water quality certifications and, if applicable, coastal zone consistency determinations. For activities which are not conducive to the development of general authorizations or are more appropriately evaluated on an individual basis, the following procedures should be followed.

(b) A public notice should be issued using the procedures § 337.1 of this chapter.

(c) Water quality certifications should be requested and, if applicable, coastal zone consistency determinations should be provided using the procedures of § 336.1(b) (8) and (9) of this chapter.

(d) The discharge site should be specified through the application of the section 404(b)(1) guidelines.

(e) The procedures of 40 CFR Part 230 should be used to determine the NEPA compliance requirements.

(f) The factors of § 336.1(c) of this chapter should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with § 337.6.

[FR Doc. 88-8928 Filed 4-25-88; 8:45 am]
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federal register

Tuesday
April 26, 1988

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 284

Outer Continental Shelf Lands Act; Interpretative Rule and Proposed Rulemaking

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM88-14-000]

Interpretative Rule of Section 5 of the Outer Continental Shelf Lands Act (OCSLA)

April 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interpretative rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is interpreting section 5 of the Outer Continental Shelf Lands Act (OCSLA) which governs the transportation of natural gas on or across the Outer Continental Shelf (OCS) by pipelines operating on the OCS. Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS "without discrimination" and in such "proportionate amounts" as the Commission (in consultation with the Secretary of Energy) determines to be reasonable. In addition, section 5(f)(1) of the OCSLA requires interstate pipelines transporting gas on or across the OCS to adhere to certain competitive principles. These competitive principles include a requirement that interstate pipelines operating on the OCS (OCS pipelines) provide "open and nondiscriminatory access to both owner and nonowner shippers."

Recently, the Commission received several complaints from various shippers stating that they have been unable to secure the transportation of gas from the OCS to onshore destinations. Until the present, there has been little need for shippers of OCS gas to invoke the statutory, nondiscriminatory access provisions of the OCSLA. In part, this was due to the fact that, prior to Commission Order Nos. 436 and 500 (and the economic conditions which led to their issuance), pipelines were usually the purchasers of offshore reserves and thus were the primary shippers of OCS gas. Since pipelines could usually secure transportation for their gas supplies, open access was seldom an issue. The Commission believes that the changes in the transportation services offered by interstate pipelines as a result of Order Nos. 436 and 500, as well as the concerns raised by others, make it appropriate at this time to resolve these concerns by issuing an interpretative rule on section 5 of the OCSLA.

The Commission interprets section 5 of the OCSLA to require pipelines operating on the Outer Continental Shelf (OCS) to offer open and nondiscriminatory access for both firm and interruptible transportation service to owner and nonowner shippers of OCS gas. In addition, the Commission is also interpreting section 5 to require pro-rata allocation of capacity for both firm and interruptible transportation on OCS pipelines. OCS pipelines must take the necessary action to comply with the OCSLA. That may require pipelines to seek authorization to transport and to file appropriate tariffs.

OCS pipelines include interstate natural gas pipelines that hold a certificate under section 7 of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the OCS. The concerns raised with respect to access to OCS facilities have, thus far, only involved interstate natural gas pipelines subject to the NGA. Therefore, although the OCSLA may cover facilities outside the scope of the NGA, the Commission believes that, at this time, it is unnecessary to extend its interpretation of section 5 of the OCSLA to govern those facilities. In a separate rulemaking proceeding, the Commission is issuing a notice of proposed rulemaking (NOPR) that proposes regulations to implement its interpretation of section 5 of the OCSLA (RM88-14-000).

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88-14-000 adopted and released April 1, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426. The complete text on diskette in Word-Perfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9092 Filed 4-25-88; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM88-15-000]

Regulations Under Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf

April 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of proposed rulemaking (NOPR) to implement the Commission's interpretation of section 5 of the Outer Continental Shelf Lands Act (OCSLA). This rulemaking would require all jurisdictional interstate natural gas pipelines operating on Outer Continental Shelf (OCS) to have a blanket certificate under Subpart G of Part 284 of the Commission's regulations which authorize the transportation of natural gas on behalf of others on an open and nondiscriminatory basis. The transportation service would include firm and interruptible transportation for both owner and nonowner shippers of OCS gas. OCS pipelines would be required to file for the blanket certificate within 60 days of the effective date of the final rule. The NOPR also proposes transitional regulations that would grant temporary blanket certificates to OCS pipelines, and provide for interim rates.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by May 26, 1988.

ADDRESS: All filings should refer to Docket No. RM88-15-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426..

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88-15-000 adopted and released April 1, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426. The complete text on diskette in Word-Perfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporations, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recording requirements.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982), as amended, Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331-1356 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In Part 284 a new Subpart K consisting of §§ 284.301 through 384.306 is added to read as follows:

Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Pipelines on Behalf of Others

Sec.

284.301 Applicability.
284.302 Definitions.
284.303 Transitional authorizations and transportation rates.
284.304 Capacity allocation.
284.305 OCS blanket certificates.
284.306 Individual NGA section 7(c) certificates.

Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Pipelines on Behalf of Others

§ 284.301 Applicability.

This subpart implements section 5 of the Outer Continental Shelf Lands Act (OCSLA) and applies to any jurisdictional interstate natural gas pipeline that holds a certificate under section 7 of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the Outer Continental Shelf.

§ 284.302 Definitions.

For the purposes of this subpart, the term:

(a) "Outer Continental Shelf" (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) "OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS including facilities from any point on the OCS to the first delivery point onshore where alternate transportation is, or could be, available.

§ 284.303 Transitional authorizations and transportation rates.

(a) Pending the determination of the application for a blanket certificate under § 284.305(a), an OCS pipeline subject to this subpart is granted a temporary blanket certificate of public convenience and necessity that authorizes firm or interruptible transportation of natural gas on behalf of any shipper.

(b) *Transportation rates.* (1) If an OCS pipeline provides transportation of natural gas under this subpart, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service.

(2) *Interim rates.* If an interstate pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, and either § 284.8(d) for firm service or § 284.9(d) for interruptible service, the interstate pipeline must file rate schedules within 15 days after first providing transportation service under this subpart to be effective, subject to refund, on the day such transportation commences. For purposes of this filing, the pipeline may use rates based on the cost of service underlying the pipeline's current rates for other jurisdictional services.

(3)(i) A pipeline filing rate schedules under paragraph (b) of this section must file, within 45 days of such filing, rates supported by an annual cost and revenue study in the form required by § 154.303(e) of this chapter;

(ii) If a pipeline has a pending rate proceeding under §§ 154.63, 154.38 or 154.303(e) of this chapter, it does not have to submit an annual cost and revenue study described in paragraph (c)(1) of this section and may use the base period data from the proceeding so long as the base period ended within 12 months of the filing of the rates required

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in paragraph (b) of this section. These rates will be collected subject to refund and, effective on the date transportation commences, supercede the rates filed in paragraph (b) of this section.

§ 284.304 Capacity allocation.

(a) An OCS pipeline must provide transportation service (both firm and interruptible) to all shippers requesting such a service and must (if necessary) pro-rate capacity among all shippers.

(b) An OCS pipeline must include in any rate filing under § 284.303, or under §§ 284.7, 284.8 and 284.9, the terms and conditions under which it will allocate capacity on a pro-rata basis under paragraph (a) of this section.

(c) An OCS pipeline must file the terms and conditions under paragraph (b) of this section within 15 days after first providing transportation service under this subpart.

§ 284.305 OCS blanket certificates.

(a) *General rule.* (1) An OCS pipeline must apply for the blanket certificate authorizing the transportation of natural gas on behalf of others under Subpart G of this part.

(2) A certificate issued under this section is a certificate of public convenience and necessity under section 7 of the Natural Gas Act.

(b) An OCS pipeline must file an application for a blanket certificate under paragraph (a) of this section on or before June 27, 1988.

(c) *Exceptions.* (1) Section 284.221(e) does not apply to an OCS pipeline.

(2) An OCS pipeline that currently holds a blanket certificate under Subpart G of this part is not required to apply for a blanket certificate under paragraph (a) of this section, but is required to file tariff sheets to comply with § 284.303.

§ 284.306 Individual NGA section 7(c) certificates.

(a) An OCS pipeline operating on the OCS may not apply for a certificate of public convenience and necessity under §§ 157.5 through 157.20 of this chapter for transportation service on the OCS which can be performed under the blanket certificate authorization issued under this subpart.

(b) *Construction on the OCS.* A blanket certificate issued under this subpart does not authorize the construction of new facilities on the OCS.

[FR Doc. 88-8418 Filed 4-25-88; 8:45 am]
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Tuesday
April 26, 1988

Part V

Environmental Protection Agency

40 CFR Parts 50, 51, and 58
Proposed Decision Not To Revise the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide); Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 58

[AD-FRL 3243-8]

Proposed Decision Not To Revise the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In accordance with sections 108 and 109 of the Clean Air Act (Act), EPA has reviewed and revised the criteria upon which the existing primary and secondary national ambient air quality standards (NAAQS) for sulfur oxides are based. The revised criteria document for sulfur oxides (and particulate matter) was issued on March 20, 1984 in conjunction with the proposed revisions to the particulate matter standards. EPA again updated and revised these criteria in an addendum to the revised criteria document, which was issued on July 1, 1987 in conjunction with the promulgation of revised particulate matter standards. The existing primary standards for sulfur oxides [measured as sulfur dioxide (SO_2)] are 0.14 parts per million (ppm) [365 micrograms per cubic meter ($\mu g/m^3$)], averaged over a period of 24 hours and not to be exceeded more than once per year, and 0.03 ppm (80 $\mu g/m^3$) annual arithmetic mean. The secondary standard is 0.5 ppm (1300 $\mu g/m^3$), averaged over a period of 3 hours and not to be exceeded more than once per year.

As a result of its review and revision of the health and welfare criteria, EPA proposes not to revise these standards. The Administrator also solicits comment on an alternative of adding a 1-hour primary standard of 0.4 ppm. The promulgation of a 1-hour standard would also prompt consideration of additional revisions that would affect the remaining standards. If EPA promulgated a 1-hour standard, it would consider replacing the current secondary 3-hour standard (0.5 ppm) with a 1-hour secondary set equal to the primary standard. A second revision that would be considered is the adoption of an expected exceedance form for all of the standards. The Administrator is soliciting comments and analyses from the public on the merits of the proposed decision not to revise the current standards as compared to these alternative revisions. EPA also proposes to revise the significant harm levels, associated episode contingency plan guidance (40 CFR Part 51), and the Pollutant Standards Index for SO_2 (40 CFR Part 58). EPA is also proposing revisions to certain monitoring and reporting requirements (40 CFR Part 58).

DATES: EPA will hold a public hearing on this notice in approximately 45 days. The time and place will be announced in a subsequent **Federal Register** notice. Written comments on this proposal must be received by July 25, 1988.

ADDRESSES: Submit comments on the proposed action on the NAAQS (40 CFR Part 50) (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-84-25, 401 M Street, SW., Washington, DC 20460. Comments on the proposed revisions to the monitoring and reporting requirements and Pollutant Standards Index (40 CFR Part 58) should be separated from those pertaining to the standards and sent to the same address, Attn: Docket No. A-87-06. Comments on the proposed revisions to the Significant Harm Level and episode criteria (40 CFR Part 51) also should be sent separately to the same address, Attn: Docket No. A-87-12. These dockets are located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M St., SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John Haines, Air Quality Management Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5533 (FTS 629-5533).

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA-600/8-82-029af-cf, December 1982; Volume I, NTIS # PB-84-120401, $25.95 paper copy and $6.95 microfiche; Volume II, NTIS # PB-84-120419, $50.95 paper copy and $6.95 microfiche; Volume III, NTIS # PB-84-120427, $50.95 paper copy and $14.50 microfiche); the criteria document addendum, Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information (EPA/600/8-86-020-F, NTIS #PB-87-176574, $25.95 paper copy and $6.95 microfiche); the 1982 staff paper, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information—OAQPS Staff Paper (EPA-450/5-82-007, November 1982; NTIS # PB-84-102920, $25.95 paper copy and $6.95 microfiche); and the staff paper addendum, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information (EPA-450/05-86-013, December 1986; NTIS # PB-87-200259, $14.95 paper copy and $6.95 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. (Add $3.00 handling charge per order.) A limited number of copies of other documents generated in connection with this standard review, such as the control techniques document, can be obtained from: U.S. Environmental Protection Agency Library (MD-35), Research Triangle Park, NC 27711, telephone (919) 541-2777 (FTS 629-2777). These and other related documents are also available in the EPA dockets identified above.

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References

Addendum I CASAC Review and Closure of the 1982 Criteria Document for Particulate Matter/Sulfur Oxides and the 1986 Second Addendum to the Criteria Document

Addendum II CASAC Review and Closure of the 1982 OAQPS Staff Paper on Sulfur Oxides and the 1986 Addendum to the Staff Paper

Addendum III Executive Summary of the 1986 Addendum to the OAQPS Staff Paper on Sulfur Oxides

Part 50 National Primary and Secondary Ambient Air Quality Standards

Part 51 Requirements for Preparation, Adoption, and Submittal of Implementation Plans

Part 58 Ambient Air Quality Surveillance

I. Background

A. Legislative Requirements Affecting This Rule

1. The Standards

Two sections of the Act govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. § 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *."

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, [is] requisite to protect the public health." A secondary standard, as defined in section 109(b)(2), must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on [the] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air." Welfare effects are defined in section 302(h) (42 U.S.C. 7602(h)) to include "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

The U.S. Court of Appeals for the D.C. Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful, but also to prevent lower pollutant levels that he finds pose an unacceptable risk of harm, even if that risk is not precisely identified as to nature or degree.

In selecting a margin of safety, EPA has considered such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of harm exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment (*Lead Industries Association v. EPA, supra*, 647 F.2d at 1161-62).

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. The process by which EPA has reviewed the original criteria and standards for sulfur oxides under section 109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act (42 U.S.C. 7410), States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the Prevention of Significant Deterioration Program (42 U.S.C. 7470-7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under Title II of the Act (42 U.S.C. 7521-7574), which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; the New Source Performance Standards under section 111 (42 U.S.C. 7411); and the National Emission Standards for Hazardous Air Pollutants under section 112 (42 U.S.C. 7412).

B. Sulfur Oxides and Existing Standards for SO_2

The principal focus of this standard review is on the health and welfare effects of SO_2, alone and in combination with other pollutants. Other sulfur oxide vapors (e.g., SO_3) are not commonly found in the atmosphere. Information on the effects of the principal atmospheric transformation products of SO_2 (i.e., sulfuric acid and sulfates) was considered in the review of the particulate matter standards and addressed in the revisions to these standards promulgated on July 1, 1987 (52 FR 24634); acid sulfate aerosols are also being examined in a separate issue paper that is currently under development (Thomas, 1986).

SO_2 is a rapidly diffusing reactive gas that is very soluble in water. It is emitted principally from combustion or processing of sulfur-containing fossil fuels and ores. SO_2 occurs in the atmosphere with a variety of particles and other gases, and undergoes chemical and physical interactions with them forming sulfates and other transformation products. At elevated concentrations, SO_2 can adversely affect human health, vegetation, materials, economic values, and personal comfort and well-being. SO_2, largely through its transformation products, also is a major contributor to pollutants related to acidic deposition and visibility degradation. Annual average SO_2 levels

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range from less than 0.004 ppm in remote rural sites to over 0.03 ppm in the most polluted urban industrial areas. The highest short-term values are found in the vicinity (< 20 km) of major point sources. In the absence of adequate controls, maximum short-term levels at such sites for 24-hour, 3-hour, and 1-hour averages can reach or exceed 0.4 ppm, 1.4 ppm, and 2.3 ppm, respectively. The origins, concentrations and potential effects of SO_x are discussed in more detail in the staff paper (SP) (EPA, 1982a), in the revised criteria document (CD) (EPA, 1982b), in the criteria document addendum (CDA) (EPA, 1986a), and the staff paper addendum (SPA) (EPA, 1986e). The executive summary of the SPA is reprinted in Addendum III to this notice.

On April 30, 1971, EPA promulgated primary and secondary NAAQS for SO_x under section 109 of the Act (36 FR 8186). The existing primary standards for sulfur oxides, measured as SO_2, are 0.14 ppm (365 $\mu g/m^3$), averaged over a period of 24 hours and not to be exceeded more than once per year, and 0.03 ppm (80 $\mu g/m^3$) annual arithmetic mean. The current secondary standard is 0.5 ppm (1300 $\mu g/m^3$), averaged over a period of 3 hours and not to be exceed more than once per year. An annual secondary standard was revoked by EPA in 1973 after court remand. The scientific and technical bases for the current standards are contained in the original criteria document, Air Quality Criteria for Sulfur Oxides (DHEW, 1970) and the revised chapter on vegetation (EPA, 1973).

Implementation of SO_x air quality standards by the States and EPA, together with fuel use shifts and siting decisions motivated by changing economic conditions, has resulted in substantial improvements in ground level air quality and significant reductions in nationwide emissions over the last decade. Where sufficient trends data existed, annual SO_2 concentrations at urban sites decreased by 30 percent from 1970 to 1975 (EPA, 1976). From 1975 to 1984, annual levels dropped an additional 36 percent and maximum 24-hour values declined by an even larger percentage (EPA, 1986d). Over this same time period (1975–1984), national SO_2 emissions declined by an estimated 16 percent (EPA, 1984a). Today, SO_2 air quality is good with respect to the standards, with only a small fraction (2 percent) of the nation's counties designated as nonattainment for SO_2. Moreover, in most cases, the nonattainment designations apply only to limited geographical areas in the immediate vicinity of certain major point sources.

C. Development of Revised Air Quality Criteria for Sulfur Oxides

In 1976, as a result of internal Agency review and the recommendations of a committee on EPA's Science Advisory Board, EPA decided to revise the existing criteria document for sulfur oxides. Because of competing priorities regarding revision of other air quality criteria documents, and the need to complete additional research on sulfur oxides and their transformation products, the process was scheduled to commence in 1979. With the endorsement of the new Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board, EPA decided in 1978 to review and revise the criteria document for sulfur oxides concurrently with that for particulate matter and to produce a combined particulate matter/sulfur oxides (PM/SO_x) criteria document.

On October 2, 1979 (44 FR 56731), EPA announced that it was in the process of revising the original criteria document for sulfur oxides and reviewing the existing air quality standards for possible revisions in accordance with section 109(d)(1) of the Act.

In developing the revised criteria document, EPA has provided a number of opportunities for review and comment by organizations and individuals outside the Agency. Three drafts of the revised PM/SO_x criteria document, prepared by EPA's Environmental Criteria and Assessment Office (ECAO), have been made available for external review (45 FR 24913, April 11, 1980; 46 FR 9746, January 29, 1981; 46 FR 53210, October 28, 1981). EPA has received and considered numerous and often extensive comments on each of these drafts. CASAC has held three public meetings (August 20–22, 1980; July 7–9, 1981; November 16–18, 1981) to review successive drafts of the document. These meetings were open to the public and were attended by many individuals and representatives of organizations who provided critical reviews and new information for consideration. Transcripts of the CASAC meetings have been placed in the docket for the criteria document (ECAO CD 79–1). Based on CASAC recommendations made after the first review meeting, five additional public workshops were held at which EPA, its consulting authors and reviewers, and other scientifically and technically qualified experts selected by EPA discussed the various chapters of the draft document and suggested ways of resolving outstanding issues (45 FR 74047, November 7, 1980; 45 FR 76790, November 20, 1980; 45 FR 78224, November 25, 1980; 45 FR 80350, December 4, 1980; 46 FR 1775, January 17, 1981).

The comments received on the successive drafts of the revised criteria document have been considered in the preparation of the final document, issued March 20, 1984, with the proposed revisions to the ambient air quality standards for particulate matter (49 FR 10408). In accordance with its established procedures, CASAC prepared a "closure" memorandum to the Administrator that indicated the Committee's satisfaction with the final draft (December 1981) of the criteria document and outlined key issues and recommendations. The closure memorandum, dated January 29, 1982, stated that the EPA office that prepared this document was "responsive to Committee advice as well as to comments provided by the general public * * *." The closure memorandum further states that the criteria document "fulfills the requirements set forth in section 108 of the Clean Air Act, which requires that the criteria document 'shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare' from sulfur oxides and particulates in the ambient air." The CASAC closure memorandum on the criteria domument is reprinted in its entirety in Addendum I to this notice.

Following closure, a number of minor technical and editorial refinements were made to prepare the criteria document for final publication. During this process several scientific articles were published, or accepted for publication, that appeared to be of some importance to the development of criteria for the primary standards for SO_x. For this reason, ECAO prepared an addendum to the criteria document that summarized and evaluated the newly available studies and their implications for the review and conclusions in Chapter 13 of the criteria document. Two drafts of the addendum were reviewed by CASAC and the public in association with two public meetings (April 26–27, 1982; August 30–31, 1982). Transcripts of these meetings have been placed in the docket. Oral closure on the addendum was received from CASAC at the August meeting and the final product was included as Appendix A to Volume I of the criteria document (EPA, 1982b) when the document was published on March 20, 1984.

A number of scientific and technical issues were raised during the public review of the scientific criteria. With respect to the sulfur oxides portions of the criteria document, the major issues included: (1) The interpretation of controlled human studies of asthmatics and other subjects using differing means to administer SO_x at various exercise rates, and (2) the development and application of criteria for deciding which epidemiological studies are most appropriate for use in revising air quality standards. A summary of these and other major scientific issues, as well as CASAC's conclusions, is included in the closure memorandum on the criteria document (Addendum I to this notice).

D. Review of the Standards: Development of Staff Paper

In the spring of 1982, EPA's Office of Air Quality Planning and Standards (OAQPS) prepared the first draft of a staff paper, Review of the National Ambient Air Quality Standards for Sulfur Oxides. This draft staff paper evaluated and interpreted the scientific and technical information in the revised criteria document and the then-draft addendum that was most relevant to the review of the air quality standards for sulfur oxides and presented staff recommendations on alternative approaches to deciding whether, and if so how, to revise the standards, based on the revised criteria document and the then-draft addendum. This first draft and a second draft of the staff paper were reviewed at CASAC meetings on April 26–27 (47 FR 16885), and August 30–31, 1982 (47 FR 34855), respectively. Transcripts of these meetings have been placed in the docket. Numerous written and oral comments were received on the drafts from CASAC, representatives of organizations, individual scientists, and other interested members of the public. A summary of major revisions made in response to comments on the first draft is contained in an August 5, 1982 letter to CASAC (Padgett, 1982). Following the second CASAC meeting, the staff made some additional revisions in response to comments. EPA released the final OAQPS staff paper (EPA, 1982a), which reflects the various suggestions made by CASAC and members of the public, upon receipt of the formal closure letter in August 1983. The August 26, 1983 CASAC closure letter states that the staff paper is consistent with the criteria document, and provides the Administrator "with the kind and amount of technical guidance that will be needed to make appropriate decisions about revisions to the standard" (the CASAC letter is reprinted in Addendum II to this notice).

A number of major issues were raised during the public review process. The most important issue involved the question of whether the results of relatively recent controlled human studies indicate the need for a new short-term (1-hour) standard for SO_2 to protect asthmatics. Some groups strongly favored the addition of a 1-hour standard while others felt that the current standards provide adequate protection of sensitive groups. Some attention was also focused on the extent to which the effects of SO_2 can be separated from those of particulate matter in key epidemiological studies, and on whether welfare criteria warrant a secondary annual SO_2 standard in addition to, or in place of, the existing primary annual standard.

These and other major issues are discussed more fully in the executive summary of the staff paper and in later sections of this notice. CASAC's discussion of these issues and its recommendations are contained in the Committee's closure letter on the staff paper (Goldstein, 1983) and in a minority statement from one member (Higgins, 1983). Both letters are reprinted in Addendum II to this proposal.

In 1984, the Administrator reviewed the standards in light of the above information and decided, at that time, not to propose any revision of the standards.

E. Supplemental Criteria Revision and Standards Review

Following CASAC closure on the criteria document and its addendum in 1982, numerous additional studies on the health effects of SO_2 appeared in the scientific literature. Because some of these studies could be of importance in a decision on the SO_2 standards and because of CASAC recommendations regarding new particulate matter studies (Lippmann, 1986a), EPA decided to prepare addenda to the PM/SO_x criteria document and the SO_2 staff paper (51 FR 11058, April 1, 1986). On July 3, 1986, EPA announced (51 FR 24392) the availability of an external review draft document entitled: Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information. On September 16, 1986, EPA announced (51 FR 32878) the availability of a draft staff paper addendum entitled: Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information. CASAC held a public meeting on October 15–16, 1986 to review both the criteria document addendum and the staff paper addendum. At this meeting, CASAC members as well as representatives of several organizations provided critical review of both EPA documents. A transcript of the CASAC meeting has been placed in the public docket (A–82–37).

The CASAC sent a closure letter on the criteria document addendum to the Administrator dated December 15, 1986, which concludes that "this 1986 Addendum along with the 1982 Criteria Document, previously reviewed by CASAC, represent a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants" (Lippmann, 1986b). This letter is reprinted in Addendum I to this Notice. The Committee sent its closure letter, dated February 1987, on the staff paper addendum to the Administrator stating "The Committee believes that this document provides you with the kind and amount of technical guidance that will be needed to make appropriate decisions on the standards" (Lippmann, 1987). The closure letter on the staff paper addendum, which also discusses major issues addressed by the CASAC and the Committee's recommendations concerning these issues, is reprinted in Addendum II to this notice. The final addenda to the criteria document (EPA, 1986a) and the staff paper (EPA, 1986e), which include revisions to reflect comments from CASAC and the public, are available from the address listed above. Where there are differences between the 1982 criteria document and staff paper and the more recent addenda, the addenda supersede the earlier documents. The executive summary of the staff paper addendum is reprinted in Addendum III to this notice.

F. Rulemaking Docket

EPA established a standard review docket for the sulfur oxides revision in July 1979. EPA has established a rulemaking docket (Docket No. A–84–25) for this proposal as required by section 307(d) of the Act. The standard review docket (Docket No. A–79–28) and the separate docket established for criteria document revision (Docket No. ECAO–CD–79–1) have been incorporated in this rulemaking docket.

II. Rationale for the Proposed Decision Not To Review the Standards

Based on the comprehensive examination of all available scientific information on the health and welfare effects of sulfur oxides in the criteria document and on certain analyses of current and alternative standards, the EPA staff and CASAC recommended that the Administrator focus consideration on a discrete range of scientifically supportable policy options for revising or not revising the SO_2 standards. The Administration has relied heavily on these

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recommendations, and on the detailed rationale contained in the SP and SPA and CASAC closure letters (Goldstein, 1983; Lippmann, 1987) in reaching his decision to propose not to revise the current standards. Rather than restating those evaluations and supporting reasons leading to the recommendations at length, the following discussion of the proposed decision focuses primarily on those considerations that were most influential in the Administrator's decision, or that add to or differ in some respect from considerations that influenced the staff and/or CASAC recommendations.

Taken one at a time, the staff and CASAC recommendations could have led to many potential combinations of retaining, modifying, and adding to the current standards. The Administrator focused mainly on determining whether to leave the current standards in their present form or to add a new 1-hour primary standard and, in the process, consider some additional revisions to the remaining standards. In today's notice, the Administrator proposes not to revise the current standards but calls for comment on the alternative of adding a 1-hour standard. The key elements and principal bases for this decision are summarized below.

A. Basis for the Current Standards

Both the staff and CASAC recommended that serious consideration be given to not revising the current standards (SP, pp. 86–87; Goldstein, 1983). The scientific data provide support for retaining each of the present standards. Analyses of the protection afforded by single and multiple SO_2 standards against effects associated with various averaging times suggest that continued implementation of all three current primary and secondary standards provides substantial protection against the direct health and welfare effects identified in the criteria document as being associated with ground level SO_2 air quality (SP, pp. 79–83; Appendix D). The major bases for each of the current standards are presented more fully below. The rationale for retaining the current averaging convention and form for the standards is discussed in subsequent sections (IIC, D).

1. 24-Hour Primary Standard

The basis for a 24-hour health standard stems largely from epidemiological studies conducted in London in the 1950's and 1960's, a time when both SO_2 and particulate matter were present at higher concentrations than in the U.S. under current conditions. The principal effects associated with high 24-hour levels of SO_2, which in these studies usually also involved high levels of particulate matter, include increased daily mortality and aggravation of bronchitis. More recent studies also suggest the possibility of decreased lung function. The staff assessment of these studies is summarized in Table 2 of Addendum III to this notice and discussed more fully in the SP (SP, pp. 71–88) and the SPA (SPA, pp. 22–29). As indicated there, these studies taken together do not suggest any clear threshold for all effects. They do, however, provide evidence for increasing risks to public health as 24-hour SO_2 averages increase. Based on its review, the staff recommended retention of a 24-hour standard in the range of 0.14 to 0.19 ppm (SP, p. 85, and SPA, p. 59–60). The CASAC concluded that the upper end of the range provides little or no margin of safety for sensitive populations, and recommended selection of a value in the lower portion of the range (SP, Appendix E, p. 4). The staff and CASAC identified the following as factors to be considered in selecting a level for a 24-hour standard that provides an adequate margin of safety (SP, pp. 75–78):

a. possible interactive effects with other pollutants;

b. differences among conditions observed in the earlier studies (London in the 1950's and 1960's) and those that occur in the contemporary U.S.;

c. suggestion of risk of other effects (e.g., reduced lung function, effects on clearance) from qualitative studies; and

d. the possibility that the observed effects may be related, in part, to shorter-term peaks.

In view of the above considerations and recommendations, the Administrator finds that the current 24-hour standard provides an adequate margin of safety against the effects observed in the more quantitative 24-hour epidemiological studies. The margin of safety is sufficient even where SO_2 and particulate matter concentrations both occur simultaneously at their respective standard levels, and is greater when particle levels are lower (SP, p. 75). Although qualitative inferences from the available scientific evidence suggest some risk of 24-hour effects not identified in the more quantitative studies, current assessments suggest such risks would be small at concentrations at or below the present standard level (SP, pp. 76–78). Retaining the current standard is consistent with CASAC guidance to select any revised standard from the lower portion of the staff range of interest and to maintain the margin of safety provided by the current standard in the absence of a 1-hour standard (Goldstein, 1983; Lippmann, 1987).

2. Annual Primary Standard

The available scientific data provide some qualitative support for the concern that high annual SO_2 exposures may lead to potential effects not readily observed in short-term human studies, for example reduced capacity to respond to infection or other environmental challenges (SP, 78–79). While no single study may provide clear quantitative conclusions, the staff found that there does appear to be some consistency across the results of more recent epidemiological studies indicating a possibility of respiratory health effects as a result of persistent exposures to sulfur oxides in areas with long-term averages only slightly above the current standards (SPA, p. 50); the data are, however, unclear as to whether repeated short-term peaks of SO_2 or other pollutants (e.g., PM) may be as or more responsible for such effects (SPA, p. 32). Staff analyses conducted at CASAC's request indicated that alternative shorter-term standards (1, 3, and 24-hour) would not necessarily prevent increases in annual SO_2 concentrations to levels above the current standard (0.03 ppm) in several heavily populated urban areas (SP, Appendix D). The long-term standard often serves to limit the emissions and resulting acute and chronic exposures from numerous smaller sources in such areas. Based on concern over the potential effects of a large increase in both chronic and acute population exposures if the annual standard were relaxed or eliminated, the staff recommended that the Administrator retain the annual SO_2 primary standard at its current level (SP, p. 79; SPA, p. xi).

CASAC agreed that there is a need for protection against an increase in chronic exposures (Goldstein, 1983), but found little quantitative support in the scientific literature on chronic effects for retaining the present annual primary standard (Lippmann, 1987). CASAC also recommended that the decision on the annual standard be considered in "light of the total protection that is to be offered by the suite of standards * * *." In a related recommendation, the Committee indicated that the most persuasive scientific basis for an annual standard was found in the potential welfare effects that could result from increased annual SO_2 concentrations. The staff assessment of the welfare effects of ambient SO_2 indicated that the major effects of concern were damage to materials (SP, pp. 123–124) and vegetation (SP, pp. 113–114). CASAC concurred with corresponding staff recommendations regarding protection of welfare and concluded that "there is a scientific basis for a secondary standard at the level of the annual primary standard."

The Administrator finds that retaining an annual primary standard at the current level is a prudent public health policy choice that will limit any increase in acute or chronic health risk in large, populated urban areas that are now attaining the standard. Although the available information suggests that the magnitude of any such health risk to individuals is probably small, the concern that a large number of people might experience increased chronic and acute exposures supports continuation of some level of protection against the aforementioned hazards not yet conclusively established in the scientific literature (SP, p. 78–79; SPA, p. 50). In addition, the Administrator agrees with staff conclusions that without the current annual primary standard, a new annual secondary standard might be necessary to protect public welfare. Given the available welfare effects data with respect to long-term SO_2 concentrations, retaining the level of the current annual standard would appear to be appropriate. From this standpoint, removal or substantial relaxation of the annual primary standard would necessitate its replacement by an annual secondary standard.

With the continued concerns over chronic health effects—whether from long-term low level or repeated peak exposures—and CASAC's recommendation to continue the welfare protection afforded by the current standard, the Administrator proposes to retain the level of health and welfare protection afforded by the current annual primary standard. Because that standard is attained virtually everywhere, the Administrator is not persuaded that there would be any practical benefits to be gained from the administrative disruptions associated with adding an equivalent annual secondary standard and/or revising the form or level of this primary standard.

3. 3-Hour Secondary Standard

The basis for the existing 3-hour secondary standard rests on studies documenting acute effects on sensitive plants (38 FR 25678; September 1973). The effects of concern include reduced growth and yield, and foliar injury. The staff assessment of the greatly expanded scientific data base as summarized in the criteria document (CD, Chapter 7) found even stronger support for the 3-hour standard (SP, pp. 108–112). As a result of this most recent review, both staff and CASAC recommended retaining a 3-hour standard at or slightly bleow the level of the current standard (0.5 ppm) (SP, p. 126). CASAC pointed out that evidence suggesting effects at lower levels is very uncertain (SP, Appendix E, p. 8). Moreover, as pointed out in the SP, the extent of exposure of both cultivated and natural vegetation to levels capable of producing injury or reducing yield is limited (SP, p. 109). Peak short-term exposures of concern occur only in the vicinity of major point sources. The extent of vegetation at risk is further reduced because natural systems in less humid areas appear to be less sensitive to SO_2 than cultivated plants (SP, p. 112). These factors suggest that the current standard level is adequate. Considering the assessment of effects on vegetation and the above conclusions and recommendations, the Administrator finds that the current 3-hour standard appears to be both necessary and adequate to protect against damage to vegetation from short-term SO_2 peaks near major point sources. Retaining the current 3-hour standard is consistent with staff and CASAC recommendations.

B. Consideration of Short-Term (1-Hour) Primary Standard

As discussed above, the assessment of available scientific evidence and recommendations of staff and CASAC have led the Administrator to conclude that the current primary and secondary SO_2 standards are adequate to protect the public health and welfare from the effects associated with 24-hour, annual, and 3-hour average concentrations of SO_2 in the atmosphere. This recent assessment of the scientific literature included a review of the potential effects on asthmatics and other sensitive individuals associated with short-term (1-hour or less) exposures to SO_2. While the Administrator is inclined to conclude that this information does not warrant setting a new short-term primary standard, there has been considerable discussion on whether such a standard is needed to protect against such exposures. For reasons outlined in the staff assessment (SP, p. 56), 1-hour is an appropriate averaging time to consider for such a possible new standard. The discussion below summarizes the basis for such consideration and assesses the protection afforded by the present standards against short-term exposures.

1. Short-Term Health Effects

The basis for considering the possible addition of a new 1-hour standard rests largely on the staff and CASAC assessment of the results of several relatively recent controlled human exposure studies (see Table 1 of Addendum III to this preamble). The major effects observed in these studies are measurable changes in respiratory function in asthmatics and atopics [1] exposed for short periods (as little as 5–10 minutes up to 1-hour) to 0.4 ppm SO_2 or more. For example, in one study designed to examine this issue, a concentration of 0.5 ppm for 10 minutes produced a doubling (or more) in airway resistance in 25 percent of exercising asthmatic subjects (Horstman et al., 1986). The responses occurred predominantly in subjects whose respiratory ventilation was increased by exercise or by hyperventilation, and who were not using preventive medication at the time (SPA, pp. 9–10; CDA, Table 5; Sheppard et al., 1981). In asthmatic subjects exposed to 0.4–0.75 ppm or more of SO_2, the change in respiratory function was often accompanied by perceptible symptomatic responses, including shortness of breath, wheezing and coughing (SPA, Table 4–1). The fraction of asthmatic subjects experiencing changes in lung function and symptoms increased with concentration over the range of 0.4 to 0.75 ppm (SPA, Figure 3–2).

While mindful of the guidance in the criteria document that "caution should be employed in regard to any attempted extrapolation of these observed quantitative exposure-effect relationships to what might be expected under ambient conditions" (CD, p. 13–50), the staff and CASAC concluded that consideration should be given to a new short-term standard to address these effects. Based on practical considerations relating to monitoring, modeling, data manipulation and storage, and implementation, the staff recommended using a 1-hour averaging time for any such standard. As explained below, the relationship between 1-hour average concentrations and shorter-term concentrations would allow the use of a 1-hour standard, set at an appropriate level, to control shorter-term peaks. Staff and CASAC identified a number of factors that should be considered in decisionmaking

[1] "Atopic" is a term used to indicate individuals, not diagnosed as asthmatics, with disorders manifested as hypersensitivity to environmental antigens. Examples include hay fever and other allergies. Approximately 8 percent of the U.S. population is estimated to be atopic. Some additional percentage of the population not diagnosed as atopic or asthmatic may also display hyperreactive airway responses to SO_2 (SP, p. 30).

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concerning a 1-hour standard (SP, pp. 64–69; SPA, pp. 37–44):

a. Significance of Effects. The functional changes and symptoms observed in the controlled studies appear to be transient and reversible, and, at lower concentrations (<0.75 ppm) and exercise levels, they are within the range of day-to-day variations that most asthmatics typically experience from exercise or other stimuli. They are, in general, not equivalent to the more severe responses that accompany an asthma "attack" (SP, p. 66). Finally, because medications already widely used by asthmatics can prevent (Sheppard et al., 1981) or ameliorate reaction to SO_2, an asthmatic who is already medicated due to other stimuli will likely not experience a response to an exposure. The scientific community is divided as to whether and to what extent these effects at lower concentrations should be considered "adverse" or "clinically significant" (e.g., Bousbey, 1981; Higgins, 1983; Cohen, 1984; McFadden, 1986; Lippmann, 1987; see also SPA, pp. 40–41).

b. Relative Effect of SO_2 Compared to Other Stimuli. Exercise alone, without pollutant exposure, is among a number of stimuli that commonly induce bronchoconstriction in asthmatics (SP, pp. 66–67). Cold and/or dry air exacerbates the effects of exercise even in the absence of SO_2. It is likely that the incidence of bronchoconstriction induced by SO_2 is very small compared with that induced by factors unrelated to pollution (Cohen, 1984 and EPA, 1986c).

c. Sensitive Population. Diagnosed asthmatics make up approximately 4 percent of the total U.S. population (about 10 million individuals) while atopics constitute roughly 8 percent (SP, p. 31). Some additional percentage of the population not diagnosed as atopic or asthmatic may also display hyperreactive airway responses to SO_2 (SP, p. 30). Asthmatics appear to be at greater risk than atopics. Studies to date have shown a wide distribution of sensitivity among asthmatics and atopics tested (e.g., Horstman et al., 1986). Although it is speculated that individuals with more severe asthma may be more sensitive to SO_2 than are the relatively mild asthmatics tested, CASAC has pointed out that the available data do not support or refute this point (Lippmann, 1987). The consequences of a functional change are of greater concern in more severe asthmatics, but such individuals may be somewhat protected from SO_2 because they routinely use medication due to their susceptibility to responses from other stimuli and the reduced chance that they would experience sustained levels of moderate to high exercise (SPA, p. 40).

d. Variance About the 1-hour Average. The available studies indicate that SO_2 effects occur within 5 to 10 minutes but do not necessarily worsen with continued exposure over an hour (CDA, pp. 4–29 to 4–32). Concentrations averaged over 5 or 10 minutes vary about the 1-hour mean, reaching peak values that are clearly higher than the 1-hour value. Analyses of recent data indicate that at higher concentrations near large point sources, these peaks are likely to be within a factor of 2 of the mean. Thus, the maximum 5 to 10 minute peak associated with a 1-hour value of 0.5 ppm is probably less than 1 ppm (SPA, p. 43–44).

e. Probability of Exposure. The staff assessment found that, given current air quality levels, peak SO_2 concentrations in the 0.4 to 0.75 ppm range for 5 to 10 minutes are very infrequent and limited in extent to the vicinity of certain large sources. Given low indoor levels and the limited time individuals spend in moderate to high activity, the probability that any individual asthmatic would experience any effects of SO_2 is low (SP, p. D–12; EPA, 1986c). This issue has been examined in the quantitative analyses discussed in the following section.

2. Protection Afforded by Current Standards Against Short-Term Effects

In determining whether to revise the present standards by the addition of a 1-hour primary standard, it is particularly important to evaluate: (1) The extent to which implementation of the current standards protects against potential very short-term effects, and (2) the relative increase in protection that would be afforded by the addition of a possible 1-hour primary standard. The first point is addressed in this section, while the second point is addressed in the following section.

(a) Air Quality and Exposure Analyses. The initial staff examination of the above issues focused on monitoring [3] and modeling analyses of 1-hour SO_2 concentrations (SP, Appendix D). The initial modeling analyses predicted the frequency of 1-hour exceedances of 0.5 ppm that would occur around typical major point sources if the current standards are met. This concentration (0.5 ppm) was the lowest short-term (5-minute to 1-hour) level found to produce changes in respiratory function and symptoms in the controlled studies of exercising "mild" asthmatics included in the 1982 staff paper. Because the then-available dispersion models were limited to 1-hour predictions, estimates of 5- to 10-minute exceedances of 0.5 ppm were not included. The key findings of the preliminary analyses were:

1. Given current U.S. air quality, peak 1-hour SO_2 concentrations greater than or equal to 0.5 ppm occur almost exclusively around large point sources and are rare near the population-oriented monitoring sites studied (SPA, p. 42).

2. Near major point sources in urban and suburban locations, the current 24-hour standard provides substantial control of peak concentrations, limiting estimated 1-hour exceedances of 0.5 ppm at any single site to 9 hours per year or less (Stoeckenius and Burton, 1982, p. 9).

3. Near point sources located in nonurban areas, the current 3-hour secondary standard is estimated to reduce the number of hours exceeding 0.5 ppm at any single site to 3 to 4 hours per year (Burton et al., 1982, p. v.).

4. Based on these air quality findings and qualitative information on human activity patterns, the staff concluded that the probability that an exercising asthmatic would be located in the same time and area with peak levels of concern appeared small (SP, p. 68).

Following completion of the formal CASAC review of the criteria document and staff paper, EPA staff conducted a series of additional analyses that expanded or improved on the work summarized above to better characterize the protection afforded by the current SO_2 standards and to identify any improvements that would be offered by adding alternative standards. These supplemental analyses are described in detail in separate reports (EPA, 1984a; 1986b,c), copies of which have been placed in the docket. These analyses were summarized in the staff paper addendum (pp. 50–58) and were provided to CASAC for review.

These analyses involved: (1) Expansion of the previous analysis of monitoring data and air quality modeling to include more sources and locations as well as shorter averaging periods, and (2) quantitative estimates of exposures of sensitive asthmatics to peak concentration of potential concern.[3] Because studies had shown pulmonary function changes and symptoms in some asthmatics exposed while at exercise to 0.5 ppm for periods as short as 5 to 10 minutes the air quality data and modeling analyses dealt with 5-to 10-minute as well as 1-hour peak concentrations in excess of 0.5 ppm. These analyses provided estimates of the frequency and geographical extent of such exceedances in the vicinity of four power plants judged to be fairly representative of the expected spectrum of exposure scenarios. Exposures were estimated for current emissions, and for emissions that just meet the current standards as well as alternative revised standards. Beginning with the results of modeled peak SO_2 levels, a variant of the National Exposure Model (NEM) was applied to estimate the probability that an asthmatic at "high" exercise [4] would be exposed to 0.5 ppm of SO_2 for 5 minutes or more during the course of a year. The NEM accounts for population movement, activity level, and indoor vs. outdoor exposures (Biller et al., 1981).

As discussed in the reports (EPA, 1984a; EPA, 1986b,c) and supporting documents, the analyses are subject to several important limitations, and a number of major simplifying assumptions were made that may have biased the estimates. Comments received on the initial analyses (EPA, 984a) raised concerns about whether these analyses understated the extent of exposure to peak SO_2 levels (Hawkins, 1985). The major concerns were that: (1) Both limited monitoring data and theoretical calculations indicated that short-term peaks greater than 0.5 ppm could occur around numerous smaller facilities [such peaks are, however, generally of very short duration (30 seconds to 2 minutes) (EAP, 1986b, p. 9)]; and (2) because of limitations in the response of ambient monitors, the monitoring-based analysis may have underestimated the extent of hourly averages greater than 0.5 ppm and almost surely underestimated peak (less than 5 minutes) concentrations. Staff assessments of these concerns (EPA, 1986b,c) indicated that some of the factors raised may have resulted in an underestimate of exposures in the initial assessment (EPA, 1986b, pp. 18–22). However, other factors discussed in the analyses, such as the assumption that the facilities operated at full capacity for an entire year, may have resulted in an overestimate (EPA, 1986c, p. 3–32). Although the analyses are uncertain, the available results permit the following tentative conclusions:

(1) Based on current U.S. monitored air quality data and reasonable estimates of ratios of 5-minute peaks to 1-hour means, 5-minute concentrations and exposures to 0.5 ppm or more are expected primarily in the vicinity (usually less than 20 km) of major point sources such as utilities and smelters. Approximately 10 to 40 percent of the sensitive population (asthmatics) in the U.S. are estimated to live in the vicinity of utilities, with a much smaller percentage living near smelters (Thomas, 1987a).

(2) Based on modeled air quality and exposures for several large utility power plants, the current standards (24-hour and 3-hour) place substantial limits on exceedances of, and exposures to, 1-hour concentrations in excess of 0.5 ppm (Thomas, 1984).

(3) Of those asthmatics living in the vicinity (roughly 10–25 km) of the four power plants studied at their current emissions, the percentage estimated to be exposed once per year to a 5-minute SO_2 concentration of 05. ppm while at exercise varied from 1 percent to 14 percent, depending on the plant (EAP, 1986c, pp. 3–16 to 3–19). A rough extrapolation to all of the power plants in the country suggests that approximately 100,000 individual asthmatics, or about 1 percent of the national asthmatic population, will experience at least one such exposure of concern per year (Thomas, 1987a). [5] The vast majority of these 1 percent would experience only one such exposure per year.

(4) Because not all of the exposures to 0.5 ppm resulted in measurable effects in controlled studies, fewer than 25 percent of the asthmatics exposed are likely to experience even moderate pulmonary function changes and symptoms (Horstman et al., 1986). It is possible that individual asthmatics substantially more sensitive than those studied might experience larger or comparable effects at even lower levels. However, CASAC has pointed out that there is no evidence to refute or support this possibility. Moreover, severe asthmatics may be protected because they less often achieve elevated activity levels and often are already medicated to alleviate the effect of other environmental stimuli commonly encountered. The limited epidemiological data regarding peak SO_2 levels and asthma do not contradict the contention that the frequency of serious responses to SO_2 in major U.S. cities must be low. Goldstein and Weinstein (1986) found no association between emergency room visits for asthma in New York City and peak hourly SO_2 levels.

The Administrator has considered the results of these analyses together with associated uncertainties in developing this proposal. EPA has also recently received an expanded analysis of exposure prepared for the Utility Air Regulatory Group (UARG) (Teague and Minton, 1987). EPA believes that these new analyses of air quality and exposure are relevant to the final decision on the SO_2 standards and should be considered during the public comment period. Because of the preliminary nature of the UARG analysis, and because it represents an unpublished analysis that has not been considered fully by CASAC, the Administrator has not relied on the UARG exposure analysis in reaching the decision announced in today's proposal. EPA invites public comment on the UARG analysis and on the implications of the analysis for the final decision on the existing SO_2 standards as well as the alternatives. Copies of the UARG report documenting the analysis (Burton et al. 1987) have been placed in the rulemaking docket. EPA will submit the analysis to CASAC for its review.

[3] The monitoring-based analysis examined approximately 900 SO_2 monitoring sites representing 11 million hours of data (SP, Appendix D). Those sites were classified in three groups: (1) Population-oriented sites include those established to be representative of concentrations experienced in populated areas; (2) source-oriented sites located to record maximum concentrations near sources such as power plants and refineries; and (3) smelter-oriented sites located near this specific source category.

[3] Because of the complexities involved in a full quantitative assessment of potential responses associated with alternative standards, EPA staff developed a "benchmark" for the exposure analyses termed an "Exposure of Concern" (EOC) (SPA, p. 52). Based on the assessment of effects in the criteria document addendum, the staff defined an EOC as an exposure of an asthmatic while at activities corresponding to a ventilation rate of 35 liters per minute or higher to 0.5 ppm or more of SO_2 for 5 minutes. At this level, approximately 25 percent of mild asthmatics might be anticipated to experience at least a doubling in airway resistance, which is considered to be a "moderate" response (CDA, Figure 7). A smaller percentage asthmatics could be expected to experience noticable symptoms, with some risk that the most sensitive individual asthmatics might experience a more severe response.

[4] In the NEM model, activity levels are grouped as "low," "medium," and "high". Based on the data used to generate those categories, EPA estimates that the "high" category roughly corresponds to exercise required to produce a ventilation rate of about 35 liters per minute or more (EPA 1986c, p. 3–9). This exercise rate, generally characterized by research clinicians as "moderate," is in the range where most people switch from nasal to oronasal breathing, increasing the penetration of SO_2 to sensitive receptors in the lung (SP, p. A–3). Activities producing this ventilation rate include light cycling, climbing three flights of stairs, and snow-shoveling (SP, p. A–4). Responses to 0.5 ppm of SO_2 for 5 to 80 minutes in free-breathing asthmatics have not been reported at exercise rates below this level.

[5] This rough extrapolation addressed asthmatics. If atopics or other sensitive individuals displaying hyperreactive airway response to SO_2 were included, the percent exposed would remain the same, but the absolute number exposed would increase.

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(b) Determinations Concerning Protection Against 1-Hour Effects. In the Administrator's judgment, the available information on potential effects associated with short-term exposure to SO_2 and their relative frequency of occurrence given current conditions does not justify an additional level of protection beyond that already provided by the current 24-hour, 3-hour, and annual standards. As indicated by the exposure analyses described above, the current standards appear to markedly limit the frequency and extent of short-term concentrations of concern, and normal day-to-day activity patterns further reduce the chance that such concentrations will result in exposure conditions approximating those that produced effects in controlled human studies. The occurrence of SO_2-induced response is estimated to be infrequent and the direct effects observed at lower concentrations and exercise levels are transient, rapidly reversible and of uncertain health significance. A majority of the small fraction of asthmatics (~ 1 percent) exposed to 0.5 ppm SO_2 at exercise would experience no more than one such encounter per year. By comparison, a number of natural stimuli (e.g., exercise, cold air) produce comparable responses in asthmatics and many experience a number of episodes each year as a result of such stimuli. For this very reason, medication that prevents or ameliorates these effects is already routinely used by asthmatics. Finally, although there has been speculation on the point, at this time there is no convincing evidence of long-term effects associated with repeated exposures to the lower level peaks found in the ambient air (SPA, p. 32).

Given the above considerations, the Administrator is presently inclined to conclude that the current standards provide adequate protection against potential short-term effects of SO_2 and that a 1-hour primary standard is not needed. Specifically, given the protection of the current NAAQS the Administrator does not judge that the occasional remaining short-term exposures that occur constitute a significant public health problem that requires a new national ambient air quality standard. For the same reasons, the Administrator does not propose to follow the recommendation, made by some CASAC members in 1982, that in retaining the standards, the current 3-hour secondary standard be made a primary standard. Because the present standards are widely implemented, no practical environmental change would result from making the 3-hour standard a primary standard. EPA, however, does solicit public comment on the alternative of making the current 3-hour standard a primary standard.

3. 1-Hour Standard Alternative

In reaching the provisional conclusion that the current standards provide adequate protection against the potential short-term efforts of SO_2, the Administrator is mindful of the uncertainties in the scientific evidence and recent exposure analyses, and the diversity of opinion as to the possible significance of potential short-term exposures and the appropriate degree of protection. As noted above, a number of arguments have been raised in support of a 1-hour standard, and the staff paper and CASAC recommended that the Administrator consider such a standard. Given these arguments and the views of the CASAC (Lippmann, 1987), the Administrator feels it is important to air the key issues and uncertainties fully and specifically requests broad public comment and deliberation on the alternative of revising the current standards and adding a 1-hour SO_2 standard.

EPA staff and CASAC recommended a range of potential 1-hour standards for the Administrator's consideration. This range, based on the updated staff assessment (See Table 1 in Addendum I to this notice), is 0.2 to 0.5 ppm (520 to 1300 $\mu g/m^3$). Considering typical 5-minute peak to 1-hour mean ratios of 2 to 1, the lower bound (0.2 ppm) represents a 1-hour level for which the maximum 5- to 10-minute peak exposures are not likely to exceed 0.4 ppm. This is the lowest level where responses of potential clinical significance in free breathing "mild to moderate" asthamics have been reported in the literature cited in the criteria document addendum. A 1-hour standard at the upper bound of the range (0.5 ppm) would maintain maximum hourly values in the vicinity of the lowest concentrations (0.4 to 0.5 ppm) producing significant responses in the available studies summarized above. It would afford somewhat greater protection against short-term peaks than that now provided by the current standards. Based on the preliminary analysis of exposure near large point sources discussed above (SPA, Figure 4–3), it appears that under such a standard, 1 to 4 percent of the asthmatics residing in the vicinity of the point sources analyzed, or between 200 to 1400 individuals per plant, would be annually exposed while at exercise to 5-minute peaks at or above 0.5 ppm. On a national level, fewer than 1 percent of all asthmatics would experience such exposures. Nevertheless, a 0.5 ppm level would not completely preclude 5- to 10-minute exposures on the order of 1 ppm.

Considering typical 5-minute peak to 1-hour mean ratios of 2 to 1 or lower, 1-hour standard alternatives of 0.3 to 0.4 ppm could result in 5-minute peaks on the order of 0.6 to 0.8 ppm. Several CASAC members supported a 1-hour standard in this portions of the overall range (Lippmann, 1987). If a 1-hour ambient standard of 0.4 ppm were implemented at the four power plants studied in the exposure analysis discussed above, the percentage of the asthmatics living in the vicinity of those plants who would be exposed once per year to a 5-minute SO_2 concentration of 0.5 ppm while at exercise would be less than 1 to 2 percent (EPA, 1986c, p. 3–22).

After considering the views of CASAC, the Administrator is inclined to conclude that a 1-hour primary ambient standard to protect exercising asthmatics and atopics from short-term exposures to SO_2 is not warranted. As explained above, this inclination is based, on among other things, the uncertain significance of the health effects involved and on the infrequence of inducement of such effects by SO_2. However, the Administrator solicits comment on the alternative of a 1-hour standard at the level of 0.4 ppm.

The promulgation of a 1-hour standard would also prompt consideration of additional revisions that would affect the remaining standards. Following recommendations of staff (SP, p. 112) and CASAC, if EPA promulgated a 1-hour standard, it would consider replacing the current secondary 3-hour standard (0.5 ppm) with a 1-hour secondary standard set equal to the primary standard. This standard would provide welfare protection at least as stringent as the current standard. A second revision that would be considered if a 1-hour standard were promulgated is the adoption of an expected exceedance form for all of the standards. This potential revision is discussed in a subsequent section.

C. Averaging Convention for the Standards

The averaging convention specifies the interpretation of standards for a particular averaging time (in this case, 3-hour, 24-hour, annual) with respect to when (time and day) the averaging period(s) begins and ends. The two major alternative averaging conventions are known as "block" and "running". Under the block convention, periods such as 24-hours and 3-hours are measured sequentially and do not overlap; when one averaging period ends, the next begins. For example, one

24-hour measurement would be taken from midnight on day one to midnight on day two; the next would begin at midnight on day two. Under the running convention, measurements are allowed to overlap. Thus, if one 24-hour period were measured from midnight to midnight, the next might be measured from 1 a.m. to 1 a.m. or from 12:01 a.m. to 12:01 a.m. Given a fixed standard level, running averages would produce a somewhat more restrictive standard (Faoro, 1983; Possiel, 1985).

Although the wording of the original 24-hour, 3-hour, and annual SO_2 standards was ambiguous on the matter, the earliest actions of EPA signify that the block averaging convention was intended for these standards (OAQPS, 1986), and block averages have generally been used in implementing the standards.[6] The use of running averages would therefore represent a tightening of the standards. Because the Administrator has determined, for the reasons explained above, that protection of the public health does not require tightening the standards, the Administrator proposes to retain the block averaging convention for the 24-hour, 3-hour, and annual standards. To eliminate any future questions on this aspect of the standards, clarifying language is being proposed in the regulation (40 CFR 50.4 and 50.5). Nevertheless, the Administrator solicits comment on the alternative running-average convention for the 24-hour and 3-hour standards.

D. Form of the Standards

In revising the standards for ozone and particulate matter, EPA concluded that it would be appropriate to make technical improvements to the form in which the standards were expressed (44 FR 8202 and 52 FR 24663). These improvements were embodied in a revised statistical form for the standards, which was intended to maintain desired health protection while improving ease of implementation. The decisions on the statistical form were made in conjunction with decisions on the level of the standard. EPA has also considered the alternative of expressing the SO_2 standards in a similar statistical form, with one expected exceedance per year for the 24-hour and 3-hour standards and expressing the annual standard as an expected annual mean. EPA examined the relative protection afforded by the current standards if they were expressed in statistical form (EPA, 1984a; Frank, 1987). These analyses found that the standards expressed in a statistical form would afford reduced protection against the 24-hour, annual, and 3-hour health and welfare effects identified above and, in addition, would permit an order of magnitude increase in the number of asthmatics exposed to 0.5 ppm SO_2 for 5-minutes at exercise. As noted above, the Administrator has concluded that the level of protection provided by the current standards against the health and welfare effects of SO_2 is necessary and should be retained. Thus, adopting a statistical form would necessitate revisions to the levels of the standards to maintain that level of protection. In the judgment of the Administrator, the limited technical advantages of the statistical form are not sufficient to warrant the administrative burden associated with such a change. Therefore, EPA proposes to maintain the current form of the SO_2 standards.

If EPA promulgated a 1-hour standard, however, it would consider changing the form of the 24-hour and annual standards. As discussed above, EPA does not feel these changes would be appropriate if the current standards are retained at the present levels with no 1-hour standard.

A detailed description of the possible alternative forms for the 1-hour, 24-hour, and annual standards has been developed (Frank, 1987) and placed in the rulemaking docket. As presented there, the standards would be attained when the expected number of exceedances of the 24-hour and 1-hour standards level is no more than one per year. Generally, the determination would be based on three consecutive years of data. Although expressing the 24-hour standard in statistical form results in less protection than provided by the present deterministic form, the protection against the effects associated with 24-hour exposures would remain adequate because of the additional stringency afforded by the 1-hour standard alternative.

The annual SO_2 standard would be expressed as an expected annual arithmetic average determined by averaging the annual arithmetic averages, generally from three successive years of data. Expressing the annual standard in this form would result in a somewhat less restrictive standard than provided by the current form. Any decrease in protection would, in the majority of cases, however, be more than compensated by the general increase in protection provided by the 1-hour standard alternative.

The interpretation of the alternative forms developed for 1-hour, 24-hour, and annual standards (Frank, 1987) is conceptually similar to that promulgated in Appendix K of the Particulate Matter Standard (52 FR 24634). Some differences exist, however, with respect to treatment of incomplete data.

III. Proposed Action on Standards

As stated above, based on the data presented in the criteria document, assessments and analyses in the staff paper, and CASAC recommendations, the Administrator proposes not to revise the current 24-hour, annual, and 3-hour SO_2 standards.

EPA is proposing to make some minor technical changes in the Part 50 regulations concerning the SO_2 standards (Frank, 1988). First, the levels for the primary and secondary NAAQS would be restated in ppm rather than $\mu g/m^3$ (40 CFR 50.4 and 50.5). This would be done to make the SO_2 NAAQS consistent with other pollutants and to improve understanding by the public. Secondly, explicit rounding conventions would be added (40 CFR 50.4 and 50.5). This would aid State and local air pollution control agencies in interpreting the standard. Finally, data completeness and handling conventions would be specified (40 CFR 50.4 and 50.5). These conventions would be consistent with the definitions used with ozone and would ensure that omission or deletion of some hourly data will not negate obvious exceedances of the short-term standards (see 40 CFR Part 50, Appendix H for the equivalent ozone language).

IV. Acid Deposition

Among the major welfare effects associated with sulfur oxides emissions are those related to the acidic deposition phenomenon. The issue of acidic deposition was not, however, assessed directly in the OAQPS staff paper because EPA has followed the guidance given by CASAC on this subject at its August 20–22, 1980 public meeting on the draft document, "Air Quality Criteria for Particulate Matter and Sulfur Oxides." The CASAC concluded that acidic deposition is a topic of extreme scientific complexity because of the difficulty in establishing firm quantitative relationships between emissions of relevant pollutants, formation of acidic wet and dry deposition products, and effects on terrestrial and aquatic ecosystems.

[6] Although EPA generally does not specify use of a running average in evaluating SO_2 SIPs for attainment and maintenance of the NAAQS, running averages have been used in a limited number of instances. In the enforcement context, in cases where supplementary control systems (SCS) were used as an interim measure to protect the NAAQS at primary copper smelters, consent decrees for such facilities specified running average requirements. *See, e.g., U.S.* v. *Phelps Dodge Corp.*, Civil No. 81-086-TUC-MAR (D. Ariz. filed October 20, 1986).

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CASAC also noted that acidic deposition involves, at a minimum, several different criteria pollutants—oxides of sulfur, oxides of nitrogen, and the fine particulate fraction of suspended particles. Finally, the Committee felt that any document on this subject should address both wet and dry deposition, since dry deposition is believed to account for at least one-half of the total acid deposition problem. For these reasons, the Committee felt that a separate comprehensive document on acidic deposition should be prepared prior to any consideration of using NAAQS as a regulatory mechanism for control of acidic deposition. CASAC also suggested that a discussion of acidic depoaition be included in the criteria documents for both nitrogen oxides (NO_x) and particulate matter/sulfur oxides. In response to these recommendations, EPA subsequently prepared the following documents: The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Review Papers, Volume I and II (EPA, 1984b), and The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Document (EPA, 1985). Although these documents are not criteria documents and have not undergone CASAC review, they are the most recent comprehensive summary of relevant scientific information on acidic deposition completed by EPA.

The review of the implications of scientific information on acidic deposition for current and alternative sulfur oxides standards has taken place in the larger context of the examination of the acid deposition issue as a whole. The administrator has thoroughly reviewed this issue and has been kept apprised of the most recent scientific information on a continuing basis. This examination has included a review of options for addressing the issue through mechanisms available under current Act authority including secondary air quality standards as well as alternative emissions reductions mechanisms. Based on this review, the Administrator has reached the following conclusions of relevance for sulfur oxides standards:

1. Based upon the current scientific understanding of the acid deposition problem, it would be premature and unwise to prescribe any regulatory control program at this time.

2. When the fundamental scientific uncertainties have been reduced through ongoing research efforts, EPA will craft and support an appropriate set of control measures.

Based on these conclusions, the Administrator does not, at this time, believe it is appropriate to propose a separate secondary sulfur oxides standard to provide increased protection against the acid deposition-related effects of sulfur oxides.

V. Significant Harm Levels and Episode Criteria

Section 303 of the Act authorizes the Administrator to take certain emergency actions if pollution levels in an area constitute "an imminent and substantial endangerment to the health of persons." The Act and EPA's regulations governing adoption and submittal of SIP's (section 110(a)(2)(F)(v) and 40 CFR 51.16 and subpart H of Part 51) require States to adopt contingency plans to prevent ambient pollutant concentrations from reaching specified Significant Harm Levels and to take additional abatement actions if such levels are reached. The existing Significant Harm Levels (40 CFR 51.16a) for SO_2 were established in 1971 (36 FR 24002, November 21, 1971) at the following levels:

SO_2 Alone—1.00 ppm (2620 $\mu g/m^3$) 24-hour average of SO_2

SO_2 x TSP—490x103 ($\mu g/m^3$)2—24-hour average product of SO_2 and TSP concentrations

On the basis of EPA's reassessment of the data upon which these levels were based and its assessment of more recent scientific evidence on sulfur oxides and particulate matter, EPA proposes to revise the Significant Harm Levels for SO_2.

A. 24-Hour Levels

In actions related to the recent revisions of the particulate matter standards, EPA has already eliminated the combined TSP-SO_2 Significant Harm Level (52 FR 24672, July 1, 1987). In doing so, EPA left open the possibility of reinstating a PM_{10}-SO_2 Significant Harm Level, if necessary for additional protection against SO_2 effects, at the conclusion of the SO_2 review. The scientific data suggest that SO_2 in combination with high levels of particulate matter has been associated with increases in daily mortality. The final 24-hour PM_{10} Significant Harm Level of 600 $\mu g/m^3$ takes this potential interaction into account. Addition of a combined SO_2-PM_{10} Significant Harm Level therefore appears unnecessary.

Removal of the combined Significant Harm Level raises the question as to whether the remaining SO_2 Significant Harm Level is sufficient. The possibility that SO_2 alone or in combination with other pollutant or fog droplets may be in part responsible for the effects associated with 24-hour exposures suggests the need to continue a 24-hour Significant Harm Level for SO_2 along at a substantially lower concentration. EPA's assessment of studies of daily mortality (CDA, Table 1; SPA, Table 4–2) indicates greatest certainty of some increased daily mortality associated with high particle concentrations in combination with SO_2 levels at or above 750 $\mu g/m^3$ (0.29 ppm) for 24-hours. Accordingly, EPA proposes to revise the 24-hour SO_2 Significant Harm Level to 0.29 ppm (750 $\mu g/m^3$).

Appendix L to Part 51 contains example air pollution episode levels and example contingency plans for the purpose of preventing air pollution from reaching the Significant Harm Levels prescribed in Section 51.151. The examples in Appendix L serve as guides to States for the development of their own contingency plans. To conform with the proposed revisions to the Significant Harm Level for SO_2, certain changes to Appendix L are required. EPA proposes the following revisions to the example 24-hour episode levels for SO_2:

(1) That the example Alert Level for SO_2 be changed from 800$\mu g/m^3$ to 0.19 ppm (500 $\mu g/m^3$), 24-hour average;

(2) That the example Warning Level for SO_2 be changed from 1600 $\mu g/m^3$ to 0.23 ppm (600 $\mu g/m^3$), 24-hour average; and

(3) That the example Emergency Level for SO_2 be changed from 2100 $\mu g/m^3$ to 0.26 ppm (675 $\mu g/m^3$), 24-hour average.

The basis for changing the episode levels for SO_2 is the same as discussed above for the revisions to the Significant Harm Level. With respect to example episode levels, the proposed Alert Level reflects the upper bound of the 24-hour range of interest for the NAAQS presented in the staff paper addendum (Table 2). The staff paper concludes that at or above 0.19 ppm (500 $\mu g/m^3$) for 24 hours, health effects are likely to occur in certain sensitive population groups (SP, p. 72). Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of SO_2 occurs. The proposed 24-hour Warning and Emergency Levels are set at increments between the proposed Alert Level and the proposed Significant Harm Level. This approach would provide opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary. This proposal, if adopted, would change the 24-hour Significant Harm Level. Therefore, States would be required to adopt the new numerical level; to evaluate the emergency episode provisions in their current SIP's and any permits containing such provisions; and to make any revisions necessary to assure their adequacy.

B. 1-Hour Levels

As discussed in section II. of this notice, EPA has evaluated substantial new information concerning the effects of short-term (5 to 10 minute) exposures to peak concentrations of sulfur dioxide. In that section, EPA tentatively concluded that the existing ambient standards provide adequate protection against the effects that might be experienced by asthmatics exercising in the vicinity of major point sources, but solicited public comment on the alternative of adding a 1-hour primary ambient standard to provide additional protection against such effects. EPA believes, however, that for reasons discussed below it would be appropriate to set a short-term (one-hour or less) Significant Harm Level.

Although controlled human exposure data at very high SO_2 concentrations are limited by study design, the available data suggest that 5-minute levels on the order of 2 to 5 ppm can cause effects that are intolerable to some exercising asthamatics (SP, Table 5–3 p. 32; CD, Table 13–2 pp. 13–7 to 13–10; SPA, Table 4–1 p. 38), and that exposures at the upper end of this range can cause severe effects in resting asthamatics and atopics as well as pulmonary changes and symptoms in nonasthmatic, nonatopic adults (SP, p. 36).

In most instances, such high peak concentrations would be associated with exceedances of the existing 3-hour (0.5 ppm) and 24-hour (0.14 ppm) ambient standards. Nevertheless, a Significant Harm Level in addition to the existing standards would provide: (1) Protection against very high peak concentrations, (2) emergency responses to transient events that have not been anticipated and prevented by the normal implementation process associated with the ambient standards, (3) action to address the very highest concentrations pending attainment of the standards in areas not currently in attainment of the ambient standards, and (4) remedial action with respect to those very few sources with such highly variable emissions that exceedances of the Significant Harm Level might occur without corresponding exceedances of the 3-hour or 24-hour ambient standards.

On the basis of the data discussed above, EPA proposes to set a Significant Harm Level for SO_2 at a 5-minute average concentration of 5 ppm. Because of the difficulties in modeling and monitoring such short-term concentrations, EPA also proposes to implement the Significant Harm Level through a 1-hour Guide. Given the typical two-to-one ratio between 5-minute and 1-hour average concentrations (SPA, p. 5–6), EPA proposes to use a 1-hour Guide of 2.5 ppm.

EPA's preliminary review of both monitored and modeled air quality data indicates that only a limited number of sources in a few areas have the potential to exceed the proposed 1-hour Significant Harm Guide (Thomas, 1987b). The review found the 1-hour Significant Harm Guide was exceeded around a few large point sources and in particular around primary copper smelters. In addition, modeled air quality data suggest that a small number of power plants may, under some circumstances, exceed the 1-hour Significant Harm Guide.

EPA has traditionally relied upon episode criteria as a way of triggering abatement actions necessary to avoid an exceedance of the Significant Harm Level. As a result, EPA also proposes for public comment the following example episode criteria which, if adopted, would be added to Appendix L of Part 51:

(1) An example Alert Level of 0.75 ppm (1960 $\mu g/m^3$) SO_2, 1-hour average;

(2) An example Warning Level of 1.0 ppm (2620 $\mu g/m^3$) SO_2, 1-hour average; and

(3) An example Emergency Level of 1.5 ppm (3980 $\mu g/m^3$) SO_2, 1-hour average.

One hour, rather than 5 minute, episode criteria are specified because of the aforementioned practical constraints associated with implementing shorter duration criteria. Since this proposal, if adopted, would add a new Significant Harm Level and Guide, States would need to evaluate the emergency episode provisions in their current SIP's, and any permits containing such provisions, making any revisions that may be necessary to assure the adequacy of the contingency plans required by Clean Air Act section 110(a)(2)(F)(v) and by 40 CFR 51.16 and Subpart H of Part 51.

Short-term peaks (5-minute to 1-hour) of SO_2 occur sporadically, on a very localized scale, and usually with little or no build-up of SO_2 levels before the occurrence of the peak. The rapid onset and quick dispersal of SO_2 peaks raise several issues regarding the appropriateness of the proposed example episode criteria and how States should develop and implement contingency plans to assure that the proposed Significant Harm Level and Guide are not exceeded. EPA specifically requests public comments on the following issues:

(1) Traditional Approach

Protection of the Significant Harm Level has traditionally relied upon sources taking abatement measures as pollution levels build. The nature of the SO_2 peaks raises questions as to whether or not monitoring data coupled with the short-term episode criteria and abatement techniques can be relied on to prevent the Significant Harm Level from being exceeded. EPA specifically solicits comment on how the traditional approach might be modified or revised to overcome these concerns. (For example, to reduce the number of monitors required, air quality models could be used to screen for the locations expected to experience the highest short-term SO_2 concentrations.)

(2) Alternative Approaches

Given the potential limitations and costs of the traditional approach, EPA also solicits comment on alternative approaches. One such approach might rely on modeling to predict peak SO_2 concentrations. However, since models cannot determine the occurrence of an actual peak, such an approach may require continuous or seasonal emissions controls. Any alternative to the traditional approach could be federally imposed only to the extent that it is consistent with the requirements and limitations of the Act; specifically sections 303(a), 301(a) and 110(a)(2)(F)(v). There is also a question as to the role of episode criteria under such alternative approaches.

All public comments on the proposed Significant Harm Level and episode criteria, the approaches that EPA is considering in implementing the proposed Significant Harm Level, and any other issues relative to the implementation of the Significant Harm Level and Guide will be considered by the Agency as it makes a decision on the final Significant Harm Level and develops subsequent rulemaking on the Agency's guidance for implementing the final Significant Harm Level. Prior to any final action on the implementation guidance, EPA will propose such guidance in the Federal Register for public comment.

VI. Federal Reference Method and Monitoring Requirements

Concerning the measurement method for sulfur dioxide, no revisions are being proposed to the reference method described in Appendix A to Part 50. No changes have been suggested since EPA recently (December 8, 1982) promulgated modifications to Appendix A [47 FR 54899). The 1982 changes incorporated technical improvements developed

subsequent to the 1971 reference method promulgation.

EPA has also reviewed the current ambient air quality monitoring programs conducted in accordance with the existing regulations (40 CFR Part 58) and has concluded that only minor modifications of the regulation are necessary in conjunction with the proposed decision not to revise the NAAQS and to revise the Significant Harm Level and episode criteria. These modifications are summarized below.

(1) Monitoring Method (Appendix C)

Revisions are proposed to Appendix C that would add a new section 2.4 that would require SO_2 analyzers to be operated on the lowest (narrowest) approved range that will measure expected peak concentrations without exceeding maximum values for the range selected. Previously, some monitors were operated on ranges that occasionally were too low to measure peak concentrations.

(2) Annual SLAMS Report (Appendix F)

A proposed revision to Section 2.1.1 of Appendix F would reword this section to provide greater clarity. Section 2.1.2 would similarly be reworded for clarity and to require that the 24-hour averages reported in the annual report for SO_2 be based on block (midnight to midnight) averaging periods and the 3-hour averages also to be based on block averaging periods.

(3) Air Quality Index Reporting and Daily Reporting (Appendix G)

EPA proposes to revise the SO_2 ambient concentrations contained in Tables 1 and 2 and in Figure 3, to correspond to the proposed new episode criteria and Significant Harm Levels.

VII. Regulatory and Environmental Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is a "major" regulation for which a Regulatory Impact Analysis (RIA) is required. EPA has judged the sulfur oxides NAAQS proposal to be a major action, and has prepared a draft RIA based on information developed by several EPA contractors (inter alia, ICF, 1984; Anderson et al., 1984). The RIA includes estimates of costs, benefits, and net benefits associated with alternative SO_2 standards. The draft analysis, entitled Regulatory Impact Analysis of the National Ambient Air Quality Standards for Sulfur Oxides-Draft (EPA, 1988), is available from the address given above (see Availability of Related Information section). A final RIA will be issued at the time of promulgation of final standards. Neither the draft RIA nor the contractor reports have been considered in issuing this proposal.

The draft RIA has been submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Written comments from OMB and any EPA written responses to those comments are available for public inspection EPA's Central Docket Section (Docket No. A–84–25), South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

B. Impact on Reporting Requirements

The proposed rule does not impact any information collection requirements currently cleared under OMB Control Number 2060–0084.

C. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b) this requirement may be waived if EPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

A decision not to revise the current NAAQS for SO_2 would, of course, impose no new requirements. In addition, the SIP's necessary to implement these NAAQS have been substantially adopted. Additional SIP requirements will be needed only for those areas and sources which are currently designated as nonattainment for SO_2. A preliminary assessment of remaining nonattainment areas indicates that, in general, only major sources such as utilities, primary smelters, and refineries owned by large businesses would be affected by any additional SIP requirements. In addition, the total number of sources is very small. These assessments suggest that any additional SIP requirements will not significantly affect a substantial number of small entities.

Furthermore, the control measures necessary to attain and maintain the NAAQS are developed by the respective States as part of their SIP's. In selecting such measures, the States have considerable discretion so long as the mix of controls selected is adequate to attain and maintain the ambient standards. Whether a particular standard would have a significant effect on a substantial number of small entities therefore depends on how the States would choose to implement it. For these reasons, any assessment performed by EPA on the impacts of additional SIP requirements at this time would necessarily be speculative. On the basis of the above considerations and findings, the administrator certifies that a decision not to revise the sulfur oxides standards will not have a significant impact on a substantial number of small entities.

VIII. Other Reviews

This proposed rule was submitted to the OMB for review. Written comments from OMB and EPA written responses to these comments are available for public inspection at EPA's Central Docket Section (Docket No. A–84–25), South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC.

List of Subjects in 40 CFR Parts 50, 51 and 58

Intergovernmental relations, Air pollution control, Carbon Monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: April 13, 1988.

Lee M. Thomas,

Administrator.

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Addendum I—CASAC Review and Closure of the 1982 Criteria Document for Particulate Matter/Surfur Oxides and the 1986 Second Addendum to the Criteria Document

January 29, 1982.

Subject: CASAC Review and Closure of the Criteria Document for Sulfur Oxides/Particulate Matter

From: Sheldon K. Friedlander, Chairman, Clean Air Scientific Advisory Committee (CASAC)

To: Anne M. Gorsuch, Administrator

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On November 16, 1981, the Clean Air Scientific Advisory Committee of the Science Advisory Board completed its third review of the air quality criteria document for sulfur oxides/particulate matter (SOx/PM). The Committee notes with satisfaction the improvements made in the quality of the document during the course of previous CASAC reviews on August 20–22, 1980 and July 7–9, 1981. The staff of the Environmental Criteria and Assessment Office, directed by Dr. Lester Grant, have proven responsive to Committee advice as well as to comments provided by the general public, and deserve to be commended for the high quality of the document.

The purpose in writing you is to summarize the Committee's major conclusions to assist you in reviewing the scientific data and associated studies relevant to the establishment of revised ambient air quality standards for sulfur dioxide and particulate matter as required by law. This letter further advises you of the Committee's conclusion that the criteria document fulfulls the requirements set forth in Section 108 of the Clean Air Act as amended, which requires that the document "shall accurately reflect the latest scientific knowledge useful in indicating the kind of extent of all identifiable effects on public health or welfare" from sulfur oxides and particulates in the ambient air.

The Committee is preparing a separate letter to you summarizing the conclusions of its reviews of the Draft Staff Paper for Particulate Matter. In addition, CASAC will prepare a similar report on the Draft Staff Paper for Surlfur Oxides once that document becomes available and its review is completed.

Major Scientific Issues and CASAC Conclusions in the SOx/PM Criteria Document Review

Chapter 1: Executive Summary

In general, the revised draft Executive Summary critically synthesizes the key points of information discussed at length in the individual chapters. Its conclusions and interpretations of scientific data, studies, and issues are consistent with those presented in each chapter. Relationships among individual chapters are clearly defined; redundancies that do appear are reasonable given the complexity of the subject.

The quality of the Executive Summary would be further improved if more specific statements and/or tables were added to clarify certain important interrelationships. These include the differences in chemical composition associated with each of the several significant size ranges of particulate matter; and the health effects associated with the respiratory tract deposition patterns of particulate matter in the several size ranges and different chemical compositions. Quantitative health effects information useful in defining specific concentrations or ranges of concentrations of size-specific and/or chemical specific PM associated with the occurrence of health effects should also be highlighted. In view of evidence that total thoracic (tracheobronchial and alveolar) particle deposition is of public health concern, it would also be helpful to include a discussion of the likely equivalency among British Smokeshade (BS), Total Suspended Particles (TSP), and size selective particle aerometric measurements that would sample or index atmospheric concentrations of those sized particles identified with tracheobronchial or alveolar deposition.

Chapter 2: Physical and Chemical Properties of SOx/PM

This chapter is well written and addresses the important issues relevant to a criteria document. It presents a good summary of current knowledge of the factors affecting the physics and chemistry of sulfur dioxide and the pathways and kinetics of its transformation into sulfuric acid. It also provides a good summary of particle characteristics, dynamics, and hygroscopic growth.

Chapter 3: Techniques for the Collection and Analysis of SOx/PM

The revised chapter provides an excellent summary of the measurement of sulfur oxides and particulates. Especially important is the discussion of the capabilities of the various measurement techniques and the profile of pollutants in the ambient air which these measurements yield. The chapter correctly notes that British Smoke (BS), Coefficient of Haze (COHS), and Total Suspended Particulate (TSP) measurements do not adequately reflect key physical or chemical properties of particulate matter in the contemporary ambient air. Precise interconversion among units of BS, COHS, and TSP is not possible. In the context of a particulate standard, British Smoke is applicable only to a "sooty" smoke aerosol. It may not be a valid health effects indicator for the aerosol compositions observed in recent summertime episodes in the United States and Europe. Thus, it is unlikely that BS can provide a sensitive index of hazard for today's air pollution.

Chapter 4: Sources and Emissions

Both natural and man-made sources emit sulfur dioxide and particulate matter into the ambient air. Given the limitations of our ability to derive reliable estimates from both types of sources, the criteria document presents an adequate discussion of current knowledge.

Chapter 5: Environmental Concentrations and Exposure

This chapter is largely acceptable in its present form. Most of the comments and suggestions which were made for previous drafts have been effectively incorporated. The most important omission from the chapter is information related to chemical composition with respect to particle size. Abundant information of this type is available for sulfates and some trace metals. Given the strong dependence of deposition rates and light scattering on particle size, it might have been worthwhile to refer to this literature in Chapter 5 or to direct attention to other document chapters (e.g., Chapter 2) where such relationships are discussed.

Chapter 6: Atmospheric Transport, Transformation and Deposition

This chapter is concise, well-written, and effective in communicating information related to the current status of mathematical models for air pollution. The utility of various models is clearly discussed, and the inadequacy of current models for quantitative extrapolation is pointed out. Topics which had been omitted from the previous draft of this chapter have been added to other chapters with overlapping content. The chapter is now acceptable as written.

Chapter 7: Acidic Deposition

The Committee has recognized the desirability of incorporating existing information on acidic deposition in the present criteria document. Chapter 7 provides an abbreviated but adequate summary of the contribution of sulfur oxides and particulates to the formation, transport, and effects of acidic deposition. The Committee has concluded that Chapter 7 is a scientifically adequate summary with the conditional understanding that EPA is preparing a Critical Assessment Document for Acidic Deposition for its review that recognizes and incorporates information on causes, effects, and data bases for all of the various pollutants relevant to acidic deposition. CASAC has been briefed several times by Agency officials regarding the status of this document. The Committee looks forward to the submission of this integrated assessment for its critical review.

Chapter 8: Effects on Vegetation

In response to CASAC recommendations and public comments, this chapter on vegetation effects has been greatly improved compared to earlier drafts reviewed by the Committee. It now includes a more concise and interpretive critical evaluation of those few key studies yielding quantitative dose-effect or dose-response information of most use for criteria development and standard-setting purposes. It also reasonably includes tables in the appendices which summarize studies of particulates and sulfur dioxide related vegetation effects that are of less utility for criteria development and standard setting.

The Committee concurs with Chapter 8 evaluations which point to the lack of dose-response data to establish quantitative evidence of deleterious effects on vegetation from particulates at presently encountered U.S. ambient air concentrations. In contrast to particulates, much clearer evidence exists by which to define quantitative exposure-effect relationships for sulfur dioxide effects on vegetation. Laboratory experiments in particular have demonstrated the greater relative toxicity to vegetation from high short-term exposures of sulfur dioxide. This is especially important in view of the fact that ambient air concentrations of sulfur dioxide from point sources often fluctuate widely and result in high intermittent short-term exposures of plants to sulfur dioxide concentrations against a background of longer-term but much lower annual average sulfur dioxide levels. Also of much importance are differences in the relative sensitivity of various plant species to sulfur dioxide exposures. The degree of sensitivity depends in part on factors such as phase of growth at time of exposure, ambient temperature and humidity levels, and plant water content. Among studies judged to be most useful for quantitative criteria development and standard setting are those of Dreisinger (1965, 1967) and Dreisinger and McGovern (1970) which demonstrate visible injury to white pine (a commercially important species in some U.S. areas) when natural stands of the tree in southern Canada were exposed for 4 hours to 0.30 ppm or for 8 hours to 0.25 ppm sulfur dioxide emitted from a nearby smelter. Roughly similar exposure-effect relationships were observed in studies reported by Jones et al. (1974) and McLaughlin (1981) on the effects of sulfur dioxide from a southeastern U.S. power plant on a wide variety of natural species in the vicinity of the point source. In these studies some crop and garden species showed visible injury effects with 3 hour exposures to 0.6–0.8 ppm sulfur dioxide, while certain other crop species (potato, cotton, corn, peach) did not show visible injury at levels below 0.8 ppm. In contrast, a chamber study by Hill et al. (1974) suggests that plants common to the southwestern U.S., with markedly lower moisture content and under generally lower ambient air humidity levels, may be able to withstand much higher ambient sulfur dioxide concentrations (up to 11 ppm for two hours) without visible injury.

Chapter 9: Effects on Visibility and Climate

The technical aspects of this difficult problem are well characterized. The chapter does a good job of discussing the physics and public awareness of visibility. The relationship between fine particle mass concentrations and visibility has been well established. The criteria document thus provides an excellent technical basis for Agency decision-making on these issues.

Chapter 10: Effects on Materials

This chapter adequately discusses the currently available scientific information concerning the effect of particulate matter and sulfur oxides on man-made materials. This includes critical assessments of available data concerning pertinent materials damage functions, uncertainties associated with existing characterizations of such functions, and limitations regarding estimation of monetary costs and/or benefits associated with the occurrence or control of such damage.

Chapter 11: Respiratory Deposition and Biological Fate of Inhaled Aerosols and Sulfur Dioxide

This chapter is very much improved compared to earlier drafts reviewed by CASAC and is now a comprehensive and more informative summary of existing knowledge relevant to a criteria document. The existing knowledge in this area is, in many cases, incomplete. For example, a potentially very important factor is the influence of the integrity of lung epithelial barriers (both airway and alveolar) on deposition and clearance. To enhance the chapter's comprehensiveness, this issue should be discussed more sufficiently in the criteria document, despite the paucity of available data.

Chapter 12: Toxicological Studies

This chapter is quite comprehensive as it describes essentially all toxicological studies relevant to a criteria document on sulfur oxides and particulates. Also, it provides commentary on many studies and the significance of their findings to potential human health effects. In addition, the presentation of the information is more polished than the previous draft because of improved editing.

Chapter 13: Controlled Human Studies

This is a chapter which thoroughly discusses the published material on controlled human experiments. The scientific criteria for good studies discussed at the beginning of the chapter cannot be overemphasized. While not all studies meet these criteria, the Committee recognizes that EPA must take account of the available literature and believes the studies cited in the chapter have been appropriately selected and discussed. Overall the chapter is well-written and directed toward addressing those questions to which answers are needed. One of the most important criteria for good human clinical studies is that they be double-blind. Unfortunately, most of the studies in the literature were not so performed. This factor is especially significant when sensitive population groups, such as asthmatics, are under study.

The chapter is also improved by the discussion of exposures administered through the nose and mouth during controlled studies. It appropriately notes that caution should be used in any attempted extrapolation of observed quantitative exposure/effects resulting from such protocols, particularly when compared to results that might be expected under ambient exposure conditions. The chapter identifies additional research results from studies using either face mask or open chamber oronasal breathing that would better resolve this issue, and it discusses existing studies in a balanced and thorough fashion.

Chapter 14: Epidemiological Studies

The current draft of this chapter represents considerable change and improvement over previous drafts reviewed by CASAC. Following discussion with the Committee, EPA has applied a set of guidelines for deciding which epidemiological studies are most appropriate for use in revising ambient air quality standards.

More specific comments on the chapter include the following: (1) The integration of Chapter 14 with Chapter 3 has advanced the "real world"

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understanding concerning the application of epidemiological methods; (2) the epidemiological studies providing the most useful quantitative concentration/response information for revising the 24-hour ambient particulate standard include: Lawther et al., 1958 and 1970; Martin and Bradley 1960; Martin 1964; Ware et al., 1981; and Mazumdar et al., 1981; (3) the epidemiological studies providing the most useful quantitative concentration/response information for revising the annual ambient particulate standard include: Ferris and Anderson 1962; Lunn et al., 1967; Ferris et al., 1971 and 1976; and Bouhuys et al., 1978; and (4) the studies by Lave and Seskin, 1970, and Mendelsohn and Orcutt, 1979 suggest an association between chronic exposure to high concentrations of sulfates and increases in the level of mortality, but they do not indicate any threshold or safe level from such exposures, and they are not refined enough to provide estimates of the quantitative effect of sulfate concentrations on mortality.

Summary

The Committee made numerous comments of an editorial nature. These remarks, as well as a more detailed discussion of the recommendations and review provided above, are included in the transcripts of the three CASAC meetings held to review this document. With the understanding that the advised changes will be incorporated in the final criteria document, the Committee is satisfied that the air quality criteria document for sulfur oxides/particulate matter is scientifically adequate for use in standard setting.

October 6, 1983.

Terry F. Yosie, Science Advisory Board, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dear Terry: Here is my amended statement on the SO_x closure letter, etc. to the Administrator. I apologize for the delay in getting it to you, due to my having been out of town.

I am uncertain of the correct procedure. Should I send the statement to the Administrator or should you or Mort Lippmann or Bernie Goldstein?

Yours sincerely,

Ian T. T. Higgins, M.D.,

Professor of Epidemiology.

cc: Dr. Morton Lippmann, Dr. Bernard Goldstein.

Minority Statement

By Ian Higgins

I do not believe that the letter to the Administrator and the Findings, Recommendation and Comments of the Clean Air Scientific Advisory Committee on the OAQPS Staff Paper for Sulfur Oxides reflect the widely divergent views of committee members adequately. Certainly my own views on the key issues are sufficiently different that I feel I have no alternative but to state them.

I do not think that the third paragraph of the letter states the options correctly. There are, in fact, not two, but four choices. In addition to the two mentioned, the standards could be left unchanged or they could be relaxed. Both of these options were mentioned in the meeting. My own view is that from a health standpoint, they could be relaxed slightly without anyone being one whit the worse. But I am not in favor of pollution and I would settle for maintaining them unchanged, which was, I thought, the majority view of the committee. I do not believe there is sound evidence to support the adoption of a 0.5 ppm three-hour standard. I think there is even less justification at this time for a one hour standard. The suggestion for a one-hour standard comes from studies in which asthmatic subjects have been exposed in the laboratory to different concentrations of sulfur dioxide while exercising. In the course of its deliberations, the Committee heard evidence from some of the leading world experts on air pollution and asthma. The President-Elect of the American Thoracic Society for example, in his statement on these exposure studies, expressed "deep concern, if not dismay, that environmental standards entailing great costs could possibly be based on these data." This reflects my own views admirably. Asthmatic subjects are well known to have bronchial hyper-reactivity. Increases in airways resistance, similar to those produced by sulfur dioxide occur in response to deep breathing, coughing, exposure to cold air and naturally occurring pollens. These increases are transient and pass off rapidly when exposure ceases. Moreover, some studies have shown that they also pass off when exposure is continued. This seems to indicate clearly that they should be regarded as an adaptive response. In any case, they are seldom accompanied by symptoms, do not lead to any short or long-term consequences and therefore should not be considered to be adverse health effects. There is no sound evidence that current levels of sulfur dioxide are responsible for excess asthmatic attacks in the community. Finally, the likelihood of an exercising asthmatic ever encountering a one-hour concentration of 0.5 ppm sulfur dioxide is very small. All in all, the institution of a one-hour standard for sulfur dioxide would be a good example of the proverbial sledgehammer to crack a nut.

Turning to the Findings, Recommendations and Comments, I do not believe that sulfur dioxide continues "to pose a serious health problem to important subgroups of the population." In my view, it is a trivial problem if it exists at all.

The first sentence on page 2, "CASAC concludes that separate SO_2 and particles standards each set with appropriate consideration for potential interactions, does appear to protect public health," is difficult to understand. If it means that the standards do protect public health, I agree. However, the rest of the comments and recommendations seem to imply that they do not. This must be confusing the Administrator.

I do not believe that the epidemiological evidence suggests that there is no threshold and that "risk increases as concentration levels increase." Lawther's studies showed increases in respiratory illness in bronchitic subjects at concentrations of SO_2 of 500–600 ug/m³ and over when these occurred with concentration of particles (British smoke) of 250–300 ug/m³ and over, but not at levels below this concentration. This suggests a practical threshold for the most sensitive subjects that have been studied epidemiologically.

The work of Maxumdar et al. showed little evidence of any role of SO_2 once particulates were adequately allowed for. Any possible effect appeared to occur only at concentrations in excess of 750 ug/m³ with particulates.

The reference to animal toxicology implies that such studies have shown serious effects. In fact, the remarkable findings of the experiments on animals (including primates) has been the lack of serious short or long term consequences of exposures to SO_2 far in excess of any ever encountered by man.

The CASAC spent some time deliberating on the logistical problems of one-hour standard. I do not, however, believe that we reached a clear idea of the problems, difficulty and costs of introduction of such a standard. In summary, I believe the current standards for SO_2 are adequate to protect the public health with a margin of safety. I do not believe the evidence indicates that any additional standards are needed.

December 15, 1986.

The Honorable Lee M. Thomas, Administrator, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of two documents related to the development of National Ambient Air Quality Standards (NAAQS) for Particulate Matter and Sulfur Oxides. These two documents are the 1982 *Air Quality Criteria for Particulate Matter and Sulfur Oxides*, and the 1986 *Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982)*, both prepared by the Agency's Environmental Criteria and Assessment Office (ECAO).

The Committee was impressed with the efforts of the staff of ECAO in preparing a well written, integrated and thorough review of recent relevant scientific studies. The Committee unanimously concluded that this 1986 Addendum, along with the 1982 Criteria Document previously reviewed by CASAC, represent a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants.

Several important issues are discussed in the 1986 Addendum which the Committee believes should be emphasized. These issues were raised during our review of recent studies which relate primarily to guidance at the lower bounds of the ranges for the standards. These studies include the recent reanalyses of the London mortality data, two episodic lung function studies in the United States and the Netherlands, and the comparison of respiratory symptoms and pulmonary function levels of children living in six U.S. cities. Further discussion of these studies and reanalyses, as well as a more detailed discussion of the basis for the Committee's conclusion, are contained in the attached report.

The Committee also reviewed the Staff Papers for particulate matter and for sulfur oxides at the October 15–16, 1986 meeting, and is preparing separate reports reflecting its conclusions and recommendations on each of these two documents.

Thank you for the opportunity to present the Committee's views on these important public health issues.

Sincerely,

Morton Lippmann, Ph.D.,

Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes, Lester Grant, Vaun Newill, Craig Potter, Terry Yosie.

Summary of Major Scientific Issues and CASAC Conclusions on the 1986 Addendum to the 1982 Particulate Matter/Sulfur Oxides (PM/SO_x) Criteria Document

The Committee concentrated its review on newer studies and analyses which relate primarily to guidance on the lower limit of the proposed ranges for the standards. In general, the Committee believes the Criteria Document Addendum has appropriately summarized and interpreted the designs, analyses and conclusions of studies that should be considered in the standard setting process. The following is a brief chapter by chapter summary of issues that the Committee wishes to emphasize, or which require further clarification.

Chapter 1: Introduction

In general, this chapter provides an excellent summary of the physical and chemical properties and ambient measurement methods for PM and SO_x. However, the chapter could be strengthened by inclusion of a discussion of direct reading monitors for particulate mass concentrations including beta attenuation, light scattering, or other techniques which may be the dominant measurement techniques in the States in the future. This was discussed at the December 1985 CASAC meeting, with emphasis on the need to move to automated and continuous monitoring for particles.

Chapter 2: Respiratory Tract Deposition and Fate

The presentation in this chapter could be expanded by clarifying the discussion concerning the concept of impaired lungs and the deposition that would occur there as opposed to that in normal subjects. Further, the discussion of broncho-constriction being protective (Svartengren et al., 1984) and the discussion of other types of altered breathing patterns could be made clearer, perhaps by reorganizing this information by specific points.

Chapter 3: Epidemiology Studies

We wish to emphasize several studies and analyses discussed at the October 1986 CASAC meeting. One of these studies (Dassen et al.) should be integrated into this chapter, as was recognized by Agency staff in their remarks at the October 1986 meeting.

(1) The two episodic lung function studies show a consistency of results in Steubenville, Ohio (Dockery et al.) and Ijmond, Netherlands (Dassen et al.), lending credence to reported effects of a mixture of PM and sulfur oxides (SO_x) on respiratory function in children. This is consistent with the earlier work of Stebbings. These studies provide a relatively sensitive indication of possible short term physiological responses of uncertain health significance to PM. The roles of exposure times and duration of functional decrement need better definition.

(2) The London mortality studies, including recent analysis by Agency staff, provide strong evidence that particulate matter is more closely associated with daily mortality than sulfur dioxide concentrations. The criteria document should recharacterize distinctions made between "likely" and "possible" effects levels for establishing upper bounds.

(3) The Six-Cities study has reported that cough and bronchitis are twice as prevalent in children living in cities with PM_{10} in the range of 40–60 ug/m³, in comparison to cities with a range of 20–30 ug/m³.

Chapter 4: Controlled Human Exposure Studies of SO_2 Health Effects

Although this chapter was well done, the Committee suggests that it be strengthened by modifying its existing discussions and by addition of further discussion and tabular material concerning short term exposure effects presented by Drs. Horstman and Folinsbee at the October 1986 CASAC meeting.

Conclusion

The 1986 Addendum to the 1982 Air Quality Criteria Document on PM/SO_x was prepared by EPA at the request of CASAC for the purpose of updating the knowledge of recent scientific studies and analyses. The Committee commends the agency staff for its efforts in preparing a concise and well written document. The Addendum summarizes key findings from the earlier documents and provides a reasonably complete summary of newly available information concerning particulate matter and sulfur oxides, with major emphasis on evaluation of human health studies published since 1981. The Committee unanimously concludes that this 1986 Addendum, with the incorporation of the changes noted above, represents a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants. These documents fulfill the requirements under section 108 of the Clean Air Act as amended, which requires that the document(s) "* * * shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare * * *" from particulate matter and sulfur oxides in the ambient air.

Addendum II—CASAC Review and Closure of the 1982 OAQPS Staff Paper on Sulfur Oxides and the 1986 Addendum to the Staff Paper

August 26, 1983.

Honorable William D. Ruckelshaus, *Administrator, Environmental Protection Agency, Washington, DC. 20460.*

Dear Mr. Ruckelshaus: The Clean Air Scientific Advisory Committee (CASAC) has completed its second and final review of the revised draft Office of Air Quality Planning and Standards (OAQPS) Staff Paper entitled *Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information.*

The document is consistent in all important aspects with the scientific evidence presented and interpreted in the combined criteria document for sulfur oxides and particulate matter. It has organized the data relevant to the establishment of sulfur dioxide primary and secondary ambient air quality standards in a logical and compelling way, and the Committee believes that it provides you with the kind and amount of technical guidance that will be needed to make appropriate decisions about revisions to the standards.

During the course of the Committee's review of the Staff Paper for Sulfur Oxides a number of significant scientific issues related to the establishment of primary and secondary standards were addressed. A review of the existing data base for this pollutant led the Committee to conclude that there are two scientifically supportable options for revising the existing standards. One option for which there is strong but not unanimous support on CASAC includes the following: establishment of a new 1-hour primary standard in the range between .25–.75 parts per million, retention of a 24-hour primary standard, conversion of the current .03 ppm annual primary standard to an annual secondary standard at or below that level, and selection of a revised 3-hour secondary standard between a range of .40–

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.50 ppm. The other option for which there is some support on the Committee is to retain the existing primary and secondary standards, while providing some additional public health protection by converting the existing 3-hour secondary standard into a primary standard. The choice between these options is a policy decision which is not within the scope of the Committee's mission. CASAC's wishes to inform you that either of these options would be supported by the available scientific evidence.

Other scientific issues and studies of interest to the review and possible revision of the primary and secondary standards are reviewed in the attached report. In addition, I have attached a recent CASAC report on research needs for the gases and particles program within the Agency. It is clear that there are major gaps in our understanding of these pollutants and that the Agency should develop a more balanced and more adequately funded research program.

I hope the CASAC's findings and recommendations prove useful to you as you review and consider revisions to the sulfur dioxide standard. The Committee appreciates the opportunity to advise you on this important issue, and it will provide further review and comment to you during the public comment period that follows the proposal of revised standards in the **Federal Register**.

Sincerely,

Bernard D. Goldstein,

Chairman, Clean Air Scientific Advisory Committee.

Attachment.

cc: Alvin Alm, Charles Elkins, Terry F. Yosie.

Findings, Recommendations and Comments of the Clean Air Scientific Advisory Committee on the OAQPS Revised Draft Staff Paper for Sulfur Oxides

CASAC's evaluation of the scientific basis for a review and possible revision of the ambient air quality standards for sulfur dioxide began with its recommendation in November 1978 that the Agency evaluate the joint interaction of sulfur oxides and particulate matter on human health and the environment by the development of a joint criteria document for these pollutants. Following three public reviews of the criteria document and its subsequent revision by Agency staff, the Committee concluded in a letter to the Administrator dated January 29, 1982 that the Agency's assessment of the existing literature for these pollutants was scientifically adequate. This report addresses the OAQPS staff's interpretation of the criteria document and the scientific rationale that is developed to support their proposals for reviewing and revising the SO_2 standards.

The Scientific Basis for Primary SO_2 Standards

1. A major OAQPS conclusion of the criteria document review process was that sulfur dioxide continued to pose a serious health problem to important subgroups of the population which warranted its continued separate control. Thus, OAQPS does not recommend a joint SO_2/particles primary standard, believing that current information on health effects and U.S. exposures to these two pollutant categories warrants a continuation of separate controls.

CASAC concludes that separate SO_2 and particles standards, each set with appropriate consideration for potential interactions, does appear to protect public health. Furthermore, the complexities of setting and implementing a joint SO_2/particles standards through monitoring and other requirements create numerous uncertainties which the available scientific evidence is ill-equipped to resolve. CASAC concurs with the OAQPS position and its supporting rationale and recommends that you retain the current approach of setting separate primary and secondary standards for sulfur dioxide and particulate matter.

2. The scientific basis for a 24-hour standard stems primarily from epidemiological studies. These studies (Lawther et al. 1970 [analysis of bronchitics]; Martin and Bradley, 1960, Mazumdar et al., 1981, and Ware et al., 1981 [analysis of mortality]) do not show evidence of clear thresholds, but they suggest that risk to public health increases as concentration levels increase. The Air Quality Criteria Document for Sulfur Oxides/Particulate Matter and the SO_2 staff paper interpret these studies as suggesting that increases in excess mortality occurred in the range of 500–1000 $\mu g/m^3$ British Smoke and .19–.38 ppm SO_2, and that such effects are most likely when both pollutants exceeded 750 $\mu g/m^3$ (.29 ppm SO_2). Lawther's study of reported symptoms among bronchitics also suggests that this population group experiences significant responses associated with 24-hour averages of .19 ppm SO_2. Based upon these studies and the need for a margin of safety the staff paper developed a range of interest between .14 to .19 ppm in recommending a revised 24-hour primary SO_2 standard.

The upper end of the recommended range of .14 to .19 ppm represents a level at which effects are identified in the criteria document and for which there is little or no margin of safety for exposed sensitive individuals. You should be aware that the ranges of interest developed in the staff paper for the 24-hour standard were based on epidemiological studies which provided quantitative concentration/response data of the populations studied. A final decision on whether or not to revise the 24-hour standard should also incorporate information generated through controlled human, animal toxicology and the less quantitative epidemiology studies discussed in the criteria document and staff paper. In view of all of the above, CASAC recommends that you consider selecting a value at the lower end of the range for the 24-hour standard, taking into account whether a separate 1-hour primary standard is also established.

3. CASAC's review of the scientific evidence related to the annual primary standard presents a dilemma because the Committee could find no real quantitative basis for retaining this standard. This is a troublesome issue because there is the possibility that repeated SO_2 peaks of 1-hour and 24-hour exposures might lead to effects on human respiratory systems over the long-term. Second, an annual primary standard affords protection against health effects that can't be measured well in short-term controlled human studies. Third, air quality analysis conducted by OAQPS staff suggests that 1-hour and 24-hour primary standards in the range stated in the staff paper would not prevent SO_2 concentrations from exceeding the current annual primary standard in some heavily populated areas of the country. Fourth, as pointed out in the discussion of secondary standards, there is a scientific basis for a secondary standard at the level of the annual current primary standard. Following extended discussion the Committee concluded that some protection against chronic SO_2 exposures is needed, but that the most persuasive scientific basis for an annual standard is found in the effects on welfare.

4. The scientific basis for the development of a 1-hour primary standard rests largely on several major controlled human clinical studies conducted by three separate laboratories that were published in the peer reviewed literature in 1981 and 1982. These studies documented measurable changes in respiratory function of exercising asthmatics exposed for short periods at or below concentration levels of .50 parts per million (ppm). The studies (Kirkpatrick et al. 1982; Koenig et al. 1982; Linn et al. 1982; and Sheppard et al. 1981) raise the issue of how adequately the existing primary standards are protecting public health and provide a scientific basis for a 1-hour primary standard that provides additional protection against such reported short-term effects.

The OAQPS staff, after reviewing this data, proposed consideration of a 1-hour primary standard in the range between .50 to .75 ppm. The staff noted that the lower end of the range represented the lowest level where potentially significant responses in asthmatics have been observed with oronasal breathing, and that the upper bound of the range represented levels at which the risk of significant functional and symptomatic responses in exposed asthmatics and other sensitive groups appeared high.

CASAC has evaluated the OAQPS staff position that resulted in the establishment of the range of interest at .50–.75 ppm. The staff suggests that there may be little or no margin of safety at the upper bound of the range. Air quality analyses conducted by OAQPS also indicate that a 1-hour standard selected from within the range would still permit exposures in excess of one to two ppm during the peak five or ten minute intervals. A related point is that establishment of a 24-hour standard in the range of .14–.19 ppm would not necessarily protect against shorter term peaks above the proposed 1-hour range of .50–.75 ppm. This information suggests that a 1-hour primary standard selected between .50–.75 ppm range might not adequately protect sensitive populations with an adequate margin of safety from the effects acknowledged in the staff paper that would occur as a result of brief peak exposures to concentrations greater than the .50–.75 ppm hourly average that a 1-hour standard would permit. Because five to ten minute peaks can reach levels as much as two or more times the 1-hour average, CASAC recommends that the range be modified to state the lower bound at .25 ppm.

In reviewing the issue of whether to establish a 1-hour primary standard between .25–.75 ppm several additional factors should be considered. These include (1) it is not clear that the reported effects experienced at or below .50 ppm are significant. The functional changes and symptoms reported in the .50–.75 ppm range appear to be reversible. You will need to determine which effects you consider to be adverse; (2) it is probable that some asthmatics are more sensitive than those who took part in the studies; (3) given current air quality conditions there is a low probability of exposure to exercising asthmatics at peak concentration levels; and (4) as the staff paper suggests, other stimuli interacting with SO_2, such as temperature and humidity, may increase the risk of an attack to exercising asthmatics more than either of these factors acting alone.

The Scientific Basis for Secondary SO_2 Standards

The kinds of effects reviewed by CASAC in relation to the establishment of secondary ambient air quality standards include those on vegetation, materials, and acidic deposition.

1. Current scientific information documents effects on vegetation resulting from both short-term and long-term exposures to SO_2 and/or SO_2 in combination with other pollutants. One should keep in mind that there is no single concentration at which all species of plants are injured, just as there is no single point or threshold at which all humans suffer significant effects from SO_2. What is at issue in the development of secondary standards is the need to protect sensitive vegetative species from effects such as physiological and biochemical changes, foliar injury, and reduced growth and yield. The available studies of SO_2 effects on vegetation represent approximately one percent of total plant species, but they include such important species as soybeans, barley, and white pine, to name a few.

An issue of increasing concern in the protection of vegetation is that SO_2 is not present alone in the ambient air except at a few isolated point sources. It almost invariably occurs in the presence of other pollutants, primarily nitrogen oxides and ozone. The scientific evidence is conclusive that the combination of such pollutants is more damaging to vegetation than the presence of SO_2 alone.

The staff paper recommends consideration of a 3-hour standard at or below the current secondary standard level of .50 ppm to protect vegetation. Although there are reports in the literature concerning plant injury at .10 to .20 ppm averaged over several hours, there are great uncertainties associated with the effects of the exposures at these lower levels. The existing data on the acute effects of SO_2 on vegetation suggest to CASAC that a concentration limit selected within a range of .40 to .50 ppm for a 3-hour period would provide adequate protection to sensitive vegetative species.

The review of longer term effects on plants was hampered by a very limited data base, thus making it difficult to distinguish whether such effects resulted from chronic lower-level exposures or a series of shorter-term peak exposures. Available data do suggest, however, that changes in species diversity and reduced growth in vascular plants are effects that may occur over the long term. In addition, non-vascular plants, particularly lichens and mosses, are affected by SO_2 during prolonged periods of exposure. On the basis of scientific work conducted to date, CASAC concurs with the OAQPS staff recommendation that an annual secondary standard at or below .03 ppm (a level equivalent to the existing annual primary SO_2 standard) would afford adequate protection to vascular plant vegetation. The basis for concern over effects in non-vascular plants at lower levels needs to be strengthened. CASAC also agrees with the staff proposal to address this issue in the context of later action on fine particles and acidic deposition.

2. The action of SO_2 alone or in combination with other pollutants has been associated with a number of damages to building materials, corrosion of ferrous and non-ferrous structures, and impairment of other goods and materials.

OAQPS staff have reviewed the evidence documenting materials damage from SO_2. These effects are responsible for economically significant losses which have been adequately summarized in both the criteria document and the staff paper. Analyses of existing air quality data by OAQPS indicate that continued protection against SO_2-induced materials damage is needed, and toward that end, the staff paper recommends consideration of a long-term SO_2 standard at or below the level of the existing annual primary standard (.03 ppm). CASAC concurs with the staff recommendation.

3. Throughout its review of both the Air Quality Criteria Document for Sulfur Oxides/Particulate Matter and the Staff Paper for Sulfur Oxides, CASAC has recognized the complexity of the acidic deposition problem. Since SO_2 is only one of the precursor pollutants that lead to the formation of acidic deposition, CASAC recommended in August 1980 that EPA prepare a separate Critical Assessment Document that recognizes and incorporates information on causes, effects and data bases for all of the various pollutants relevant to acidic deposition. This CASAC recommendation was accepted by two previous Administrators, Douglas Costle and Anne Burford, and the assessment document should be available for CASAC review in the near future. At that time the Committee will be in a position to provide a more comprehensive and critical assessment of the acidic deposition problem.

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Re-affirmation of the Existing Primary and Secondary Standards

Throughout its review of the staff paper, CASAC recognizes that large uncertainties exist in the data that support development of the options for setting the standards discussed in the previous pages. Given these uncertainties CASAC discussed the extent to which the existing standards provide adequate protection to the public health. The Committee recognizes the substantial improvements in air quality that have occurred since the 1971 promulgation of the primary SO_2 standards. In addition, more information on the effects of the short-term SO_2 exposures should become available in the peer reviewed literature in the next few years. Air quality modeling analyses also suggest that attainment of the proposed 24-hour and annual standards would not ensure complete attainment of the proposed 1-hour primary standard at all sites within the ranges of interest stated. The reverse also appears to be true.

CASAC's evaluation of the scientific evidence associated with existing averaging times in the staff paper leads the Committee to conclude that continuation of the existing primary and secondary standards also provides protection against the effects identified in the criteria document and staff paper from SO_2 at ground level. If you choose to follow this option some CASAC members suggest that additional health protection can be obtained by converting the existing 3-hour secondary standard into a primary standard. A principal argument supporting the latter is that since the States are already implementing a 3-hour secondary standard, conversion to a 3-hour primary standard would not be impractical. In summary, in view of the many uncertainties that pertain to the review of the SO_2 standards, retention of the existing set of primary and secondary SO_2 standards is an option that you ought to seriously consider at the present time.

Conclusion

CASAC recognizes that your statutory responsibility to set standards requires public health policy judgments in addition to determinations of a strictly scientific nature. The submission of this closure letter completes the Committee's scientific assessment of this pollutant and we see no need to provide any additional formal comments on the standards prior to their proposal in the **Federal Register**. The public comment period will then provide sufficient opportunity for the Committee to provide any additional comment or review that may be necessary.

February 19, 1987.

The Honorable Lee M. Thomas,
Administrator, U.S. Environmental Protection Agency, Washington, DC 10460

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides (*Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information*) prepared by the Agency's Office of Air Quality Planning and Standards (OAPQS).

The Committee unanimously concludes that this document is consistent in all significant respects with the scientific evidence presented and interpreted in the combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides (1982) and its 1986 Addendum, on which CASAC issued its closure letter on December 15, 1986. The Committee believes that the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides provides you with the kind and amount of technical guidance that will be needed to make appropriate decisions with respect to the standards. The Committee's major findings and conclusions concerning the various scientific issues and studies discussed in the Staff Paper Addendum are contained in the attached report.

Thank you for the opportunity to present the Committee's views on this important public health and welfare issue.

Sincerely,

Morton Lippmann, Ph.D.,
Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes
Gerald Emison
Lester Grant
Vaun Newill
John O'Connor
Craig Potter
Terry Yosie

Summary of Major Scientific Issues and CASAC Conclusions of the 1986 Draft Addendum to the 1982 Sulfur Oxides Staff Paper

The Committee found the technical discussions contained in the Staff Paper Addendum to be scientifically thorough and acceptable, subject to minor editorial revisions. This document is consistent in all significant respects with the scientific evidence presented in the 1982 combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides and its 1986 Addendum, on which the Committee issued its closure letter on December 15, 1986.

Scientific Basis for Primary Standards

The Committee addressed the scientific basis for a 1-hour, 24-hour, and annual primary standards at some length in its August 26, 1983 closure letter on the 1982 Sulfur Oxides Staff Paper. That letter was based on the scientific literature which had been published up to 1982. The present review has examined the more recently published studies.

It is clear that no single study of SO_2 can fully address the range of public health issues that arise during the standard setting process. The Agency has completed a thorough analysis of the strengths and weaknesses of various studies and has derived its recommended ranges of interest by evaluating the weight of the evidence. The Committee endorses this approach.

The Committee wishes to comment on several major issues concerning the scientific data that are available. These issues include:

- Recent studies more clearly implicate particulate matter than SO_2 as a longer-term public health concern at low exposure levels.
- A majority of Committee members believe that the effects reported in the clinical studies of asthmatics represent effects of significant public health concern.
- The exposure uncertainties associated with a 1-hour standard are quite large. The relationship between the frequency of short-term peak exposures and various scenarios of asthmatic responses is not well understood. Both EPA and the electric power industry are conducting further analyses of a series of exposure assessment issues. Such analyses have the potential to increase the collective understanding of the relationship between SO_2 exposures and responses observed in subgroups of the general population.
- The number of asthmatics vulnerable to peak exposures near electric power plants, given the protection afforded by the current standards, represents a small number of people. Although the Clean Air Act requires that sensitive population groups receive protection, the size of such groups has not been defined. CASAC believes that this issue represents a legal/policy matter and has no specific scientific advice to provide on it.

CASAC's advice on primary standards for three averaging times is presented below:

1-Hour Standard—It is our conclusion that a large, consistent data base exists to document the bronchoconstrictive response in mild to moderate asthmatics subjected in clinical chambers to short-term low levels of sulfur dioxide while exercising. There is, however, no scientific basis at present to support or dispute the hypothesis that individuals participating in the SO_2 clinical studies are surrogates for more sensitive asthmatics. Estimates of the size of the asthmatic population that experience exposures to short-term peaks of SO_2 (0.2–0.4 parts per million (ppm) SO_2 for 5–10 minutes) during light to moderate exercise, and that can be expected to exhibit a bronchoconstrictive response, varies from 5,000 to 50,000.

The majority of the Committee believes that the scientific evidence supporting the establishment of a new 1-hour standard is stronger than it was in 1983. As a result, and in view of the significance of the effects reported in these clinical studies, there is strong, but not unanimous support for the recommendation that the Administrator consider establishing a new 1-hour standard for SO_2 exposures. The Committee agrees that the range suggested by EPA staff (0.2–0.5 ppm) is appropriate, with several members of the Committee suggesting a standard from the middle of this range. The Committee concludes that there is not a scientifically demonstrated need for a wide margin of safety for a 1-hour standard.

24-Hour Standard—The more recent studies presented and analyzed in the 1986 Staff Paper Addendum, in particular, the episodic lung function studies in children (Dockery et al., and Dassen et al.) serve to strengthen our previous conclusion that the rationale for reaffirming the 24-hour standard is appropriate.

Annual Standard—The Committee reaffirms its conclusion, voiced in its 1983 closure letter, that there is no quantitative basis for retaining the current annual standard. However, a decision to abolish the annual standard must be considered in the light of the total protection that is to be offered by the suite of standards that will be established.

The above recommendations reflect the consensus position of CASAC. Not all CASAC reviewers agree with each position adopted because of the uncertainties associated with the existing scientific data. However, a strong majority supports each of the specific recommendations presented above, and the entire Committee agrees that this letter represents the consensus position.

Secondary Standards

The 3-hour secondary standard was not addressed at this review.

Addendum III—Executive Summary of the 1986 Addendum to the OAQPS Staff Paper on Sulfur Oxides

Executive Summary

This paper evalutes and interprets the updated scientific and technical information that the EPA staff believes is most relevant to the review of primary (health) national ambient air quality standards (NAAQS) for sulfur oxides [1] and represents an update of the 1982 sulfure oxides staff paper. This paper assesses what the staff believes should be considered in selecting appropriate averaging times and levels for the primary sulfur oxides standards, updating and supplementing previous staff conclusions and recommendations in these areas to incorporate more recent information. The assessment in this staff paper addendum is intended to help bridge the gap between the scientific review contained in the EPA criteria document addendum "Second Addendum Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information" and the judgments required of the Administrator in setting ambient standards for sulfur oxides. The staff paper and this addendum are, therefore, an important element in the standards review process and provide an opportunity for public comment on proposed staff recommendations before they are presented to the Administrator. The focus of this paper is on sulfur dioxide (SO_2), alone and in combination with other pollutants.

SO_2 is a rapidly diffusing reactive gas that is quite soluble in water. It is emitted principally from combustion or processing of sulfur-containing fossil fuels and ores. SO_2 occurs in the atmosphere with a variety of particles and other gases, and undergoes chemical and physical interactions with them forming sulfates and other transformation products.

Because much of the recently available health effects information on SO_2 is related to short-term exposures, the staff paid particular attention to updating information on short-term peak concentrations. The staff found that:

(1) Maximum 5 minute to hourly SO_2 concentrations are found near major point sources. The newer information tends to support earlier conclusions that near such sources, the 5 to 10 minute peak SO_2 concentration is likely to be within a factor of 1.4 to 2.4 times the hourly average. Maximum peak to mean ratios can be higher.

(2) Short duration peaks (less than 30 seconds to 2 minutes) in excess of 0.5 ppm appear likely to occur near numerous smaller sources of SO_2. None of the recently published assessments of the health effects of SO_2 has addressed exposures of such limited duration. Due to limitations of the monitoring instruments, it is not presently possible to assess the extent to which such peaks may be occurring in particular urban locations.

Updated Assessment of the Primary Standards

Conclusions and recommendations based on the updated staff assessment of the information in the criteria document addendum are summarized below.

(1) The present staff assessment of the more recent studies reinforce the earlier conclusion reached in the 1982 staff assessment that the most striking acute response to SO_2 is reflex bronchoconstriction, or airway narrowing, in exercising asthmatics and others with hyperreactive airways.

(2)(a) The updated staff assessment of key controlled human studies of peak (minutes to an hour) SO_2 exposures is summarized in Table 1. Both recently published studies and those assessed in the 1982 staff paper are included. The table focuses on those studies involving free breathing (chamber) or facemask exposures, which provide the closest approximation of natural breathing. After account is made for differences in ventilation rates and oral/nasal breathing patterns, consistent results are derived from the various studies including even those that used mouthpiece exposures. The major effects observed in these studies are increases in airway resistance and decreases in other functional measures indicative of significant bronchoconstriction in sensitive asthmatic or atopic subjects. At 0.4 ppm SO_2, changes in functional measures are accompanied by mild increases in perceptible symptoms such as wheezing, chest tightness, and coughing. At higher concentrations, effects are more pronounced and the fraction of asthmatic subjects who respond increase, with clearer indications of clinically or physiologically significant effects at 0.6–0.75 ppm and above.

[1] The current standards for sulfur dioxide (SO_2) are: primary, 0.03 ppm (80 $\mu g/m^3$) annual arithmetic mean and 0.14 ppm (365 $\mu g/m^3$) 24-hour average not to be exceeded more than once per year; and, secondary, 0.5 ppm (1300 $\mu g/m^3$) 3-hour average not to be exceeded more than once per year.

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TABLE 1.—UPDATED STAFF ASSESSMENT OF KEY CONTROLLED HUMAN STUDIES

SO_2 concentration (5–60 minutes)	Observed effects [1]	Comments/Implications
1–2 ppm	Substantial changes in 8 of 12 subjects (ΔSRaw 100–600%) exposed to 2 ppm. At 1 ppm, functional changes (ΔSRaw 170–200%), symptoms in free breathing asthmatics at moderate exercise [2].	Effects range from moderate to incapacitating for some individuals. At 2 ppm, 88% of mild asthmatics could experience at least a doubling of SRaw. Some might not tolerate exposure at moderate exercise. Approx. 60% at 1 ppm could experience at least a doubling of SRaw.[3] Some asthmatic mouth breathers have significant bronchoconstriction at 2 ppm, even at light activity.
0.6–0.75 ppm	Functional changes (ΔSRaw 120–260%), symptoms in free breathing asthmatics at light-moderate exercise [4].	Effects indicative of clinical significance; on average, changes were mild to moderate although severe for some individuals; 25–50% of mild, free-breathing asthmatics at moderate exercise could experience at least a doubling of airway resistance.[5]
0.5 ppm	Significant functional changes (ΔSRaw 50–100%), symptoms in free breathing asthmatics at moderate, but not at light exercise.[5] At heavy exercise, ΔSRaw, 220–240%.[6].	On average, mild responses at moderate or higher exercise, symptoms possibly of clinical significance; severe responses for some individuals. About 20–25% could experience at least a doubling in airway resistance.
0.4 ppm	Functional changes (ΔSRaw 70%), symptoms in free breathing asthmatics at moderate-heavy exercise [7].	Lowest level of clinically significant response for some free breathers. Approx. 10% of mild, free breathing asthmatics could experience a doubling in airway resistance.[6]
0.1–0.3 ppm	No effects in free breathing asthmatics at light exercise. Slight but not significant functional changes in free-breathing subjects at moderate-heavy exercise (0.25 ppm) [6], but not at lower levels.[7].	Significant effects unlikely at moderate exercise. Effects of SO_2 indistinguishable at heavy exercise. Possibility of more significant responses in small percentage of sensitive asthmatics at 0.26 ppm.[8]

[1] Specific Airway Resistance (SReW) is the lung function measure most often reported in SO_2 studies. Unless otherwise noted, (ΔSRaw____(%) reflects group mean increase over clean air control at rest. Light, moderate, heavy exercise refers to ventilation rates approximating ≤35 L/min, 40–45 L/min, and ≥ 50 L/min, respectively. Effects reflect results from range of moderate temperature/humidity conditions (i.e., 7–26°C, 36–90% RH). Studies at 0.5–0.6 ppm indicate that exercise-induced bronchoconstriction associated with cold and/or dry air exacerbates response to SO_2 while warm, humid air mitigates asthmatic responses relative to moderate conditions.

[2] Schacter et al. (1984); Roger et al. (1985); Horstman et al. (1986).
[3] Horstman et al., (1986).
[4] Hackney et al. (1984); Schacter et al. (1984); Linn et al. (1983a, b, 1984a, b, c, 1985a).
[5] Kirkpatrick et al. (1982); Linn et al. (1984b); Roger et al. (1985); Schacter et al. (1984).
[6] Bethel et al. (1983a, b; 1985).
[7] Linn et al. (1983b, 1984a).

(b) Significant bronchconstriction has been observed in asthmatics after 5–10 minutes of exposure and usually diminishes within one hour once either exposure or exercise alone is discontinued. Responses are mitigated with repeated exposures within one hour but not with continuous exposure, nor with subsequent exposures 5–24 hours later. Recent work indicates that the combined effect of SO_2 and cold, dry air further exacerbates the asthmatic response while warm, humid conditions mitigate SO_2 effects.

(c) Given practical considerations related to monitoring, modeling, data manipulation and storage, and implementation, the staff previously recommended consideration of a 1-hour averaging time to protect against the responses to short-term peak (5–10 minute) SO_2 exposures observed in the controlled human studies. Based on this updated staff assessment, the range of potential 1-hour levels of interest is revised from 0.25 to 0.75 ppm to 0.2 to 0.5 ppm (525 to 1300 μg/m³). The lower bound represents a 1-hour level for which the maximum 5 to 10 minute peak exposures are unlikely to exceed 0.4 ppm, which is the lowest level where potentially significant responses in free (oronasal) breathing asthmatics have been reported in the criteria document addendum.The upper bound of the range represents a 1-hour level for which 5 to 10 minute peak concentration are unlikely to exceed 1 ppm, a concentration at which the risk of significant functional and symptomatic responses in exposed sensitive asthmatics and atopics appears high. In evaluating these laboratory data in the context of decision making on possible 1-hour standards, the following considerations are important: (a) The significance of the observed or anticipated responses to health, (b) the relative effect of SO_2 compared to normal day to day variations in asthmatics from exercise and other stimuli, (c) the low probability of exposures of exercising asthmatics to peak levels, and (d) five to ten minute peak exposures may be a factor of two greater than hourly averages.

(d) Independent of frequency of exposure considerations, the upper bound of the range contains little or no margin of safety for exposed sensitive individuals. The limited geographical areas likely to be affected and low frequency of peak exposures to active asthmatics if the standard is met add to the margin of safety. The widespread use of medication among asthmatics that prevents or rapidly relieves bronchoconstrictive effects due to natural and commonly encountered stimuli (e.g., exercise, cold air) further adds to the margin of safety. The data do not suggest other groups that are more sensitive than asthmatics to single peak exposures, but qualitative data suggest repeated peaks might produce effects of concern in other sensitive individuals. Potential interactions of SO_2 and O_3 have not been investigated in asthmatics. The qualitative data, potential pollution interactions, and other considerations listed above should be considered in determining the need for and evaluating the margin of safety provided by alternative 1–hour standards.

(3) Based on a staff assessment of the recent short-term epidemiological data summarized in Table 2, the original staff range of 24-hour SO_2 levels of interst—0.14 to 0.19 ppm (365 to 500 μg/m³)—still appears appropriate, although some consideration could be given to the findings of physiological changes of uncertain significance at levels as low as 0.1 ppm. Earlier staff conclusions and recommendations concerning retaining the present 24-hour standard remain appropriate.

TABLE 2.—UPDATED STAFF ASSESSMENT OF SHORT-TERM EPIDEMIOLOGICAL STUDIES

Effects/study	Measured SO_2–μg/m³ (ppm)—24 hour mean			
	Daily mortality in London [1]	Aggravation of bronchitis [2]	Small, reversible declines in children's lung function [3]	Combined effects levels
Effects likely	500–1000 (0.19–0.38)	500–600 (0.19–0.23)		500 (0.19)
Effects possible		<500 (0.19)	250–450 (0.10–0.18)	250 (0.10)
No effects observed			100–200 (0.04–0.08)	<200 (.08)

[1] Deviations in daily mortality during London winters (1958–1972). Early winters dominated by high smoke and SO_2, principally from coal combustion emissions, and with frequent fogs (Martin and Bradley, 1960; Ware et al., 1981; Mazumder et al., 1981, 1982; Schwartz and Marcus, 1986).
[2] Examination of symptoms reported by bronchitics in London. Studies conducted from the mid-1950's to early 1970's (Lawther et al., 1970).
[3] Studies of children in Steubenville (1978–80) and in the Netherlands (1985–86) before, during, and after pollution episodes characterized by high particle and SO_2 levels (Dockery et al., 1982; Dassen et al., 1986).

(4) The previous staff assessment concluded that although the possibility of effects from continuous lower level exposures to SO_2 cannot be ruled out, no quantitative rationale could be offered to support a specific range of interest for an annual standard. The more recent epidemiological data, indicating associations between respiratory illnesses and symptoms and persistent exposures to SO_2 in areas with long-term averages exceeding .04 ppm (100 μg/m³), provide additional support for the original recommendation for retaining an annual standard at or near the current level of 0.03 ppm (80 μg/m³). This recommendation was based in part on finding that alternative short-term standards (1, 3, and 24-hour) would not prevent annual levels in excess of the current standard in a limited number of heavily populated urban areas. In addition, recent evidence suggests smaller sources in urban areas may produce short duration (<1 minute) peaks of potential concern. The long-term standard often serves to limit the emissions of numerous smaller sources in such areas. Given the additional information and the possibility of both chronic and acute effects from a large increase in population exposure, the staff recommends maintaining the primary annual standard at its current level.

(5) Analyses of alternative averaging times and population exposures suggest that:

(a) The current standards provide substantial protection against the effects identified as being associated with 24 hour and annual exposures.

(b) The current standards—as reflected by current emissions or emissions when the standards are just met with somewhat less restrictive implementation assumptions—also provide some limit on peak SO_2 exposures of concern for asthmatics. In some cases, however, up to 1 to 14% of the sensitive population in the vicinity of major sources could be exposed once a year to levels at or above 0.5 ppm for 5 minutes, while at elevated ventilation.

(c) The range of 1-hour standards analyzed (0.25 to 0.5 ppm) provides increased protection against such exposures, limiting the fraction of asthmatics exposed living near certain major point sources to less than 4%, although very short-term (<2 minutes) exposures greater than 0.5 ppm around smaller facilities would not be eliminated.

The relative protection afforded by current vs. alternative standards as indicated by current and ongoing exposure analyses is an important consideration in determining what, if any, standard revisions may be necessary.

For reasons set forth in the preamble, EPA proposes to amend Part 50, Chapter I of Title 40 of the *Code of Federal Regulations* as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for Part 50 continues to read as follows:

Authority: Sections 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

2. Section 50.4 is revised to read as follows:

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(a) The level of the annual standard is 0.030 parts per million (ppm) (80 μg/m³). The standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.030 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up).

(b) The level of the 24-hour standard is 0.14 parts per million (ppm) (365 μg/m³). The standard is attained when the second highest 24-hour average in a calendar year is less than or equal to 0.14 ppm, rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm must be rounded up). The 24-hour averages shall be determined from successive nonoverlapping 24-hour blocks starting at midnight each calendar day.

(c) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in Appendix A to this part or by an equivalent method designated in accordance with Part 53 of this chapter.

(d) To demonstrate attainment, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22 or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If less than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (b) of this section, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

3. Section 50.5 is revised to read as follows:

§ 50.5 National secondary ambient air quality standard for sulfur oxides (sulfur dioxide).

(a) The level of the 3-hour standard is 0.5 parts per million (ppm) (1300 μg/m³). The standard is attained when the second-highest 3-hour average in a calendar year is less than or equal to 0.5 ppm, rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm must be rounded up). The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day.

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(b) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in Appendix A to this part or by an equivalent method designated in accordance with Part 53 of this chapter.

(c) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (a) of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

For reasons set out in the preamble, Part 51 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority for Part 51 continues to read as follows:

Authority: Sec. 301(a), Clean Air Act (42 U.S.C. 1857(a)), as amended by section 15(c)(2), Pub. L. 91-604, 84 Stat. 1713, unless otherwise noted.

2. In § 51.151 of Subpart H, the entry for "sulfur dioxide" is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

Sulfur dioxide—5.0 parts per million (13000 micrograms/cubic meter), 5-minute average; 2.5 parts per million (6550 micrograms/cubic meter), 1-hour average, as a guide to be used in assessing contingency plans to prevent exceedances of the 5-minute significant harm level; 0.29 parts per million (750 micrograms/cubic meter), 24-hour average.

* * * * *

3. In Appendix L, paragraphs 1.1 (b), (c), and (d) are amended by revising the entries for "SO_2" to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

1.1 * * *

(b) * * *

SO_2—0.75 ppm (1960 $\mu g/m^3$), 1-hour average; 0.19 ppm (500 $\mu g/m^3$), 24-hour average.

* * * * *

(c) * * *

SO_2—1.0 ppm (2620 $\mu g/m^3$), 1-hour average; 0.23 ppm (600 $\mu g/m^3$), 24-hour average.

* * * * *

(d) * * *

SO_2—1.5 ppm (3930 $\mu g/m^3$), 1-hour average; 0.26 ppm (675 $\mu g/m^3$), 24-hour average.

* * * * *

For the reasons set out in the preamble, Part 58 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority for Part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7619.

2. Appendix C is proposed to be amended by adding Section 2.4 to read as follows:

Appendix C—Ambient Air Quality Monitoring Methodology

* * * * *

2.4 Analyzer Measurement Range. Except as otherwise provided in this Appendix, automated methods (analyzers) used in a SLAMS must be operated with a measurement range approved as part of the analyzer's designation as a reference or equivalent method. The nominal ranges, specified in Table B-1 of Part 53 of this Chapter, are 0-0.5 ppm for SO_2, NO_2, and O_3 analyzers and 0-50 ppm for CO analyzers. Narrower (lower) ranges, or broader (higher) ranges extending to not more than two times the upper range limit specified in Table B-1 of Part 53 of this Chapter (i.e., 0-1 ppm for SO_2, NO_2, and O_3 analyzers and 0-100 ppm for CO analyzers), may be used if approved as part of the analyzer's designation. Generally, a SLAMS analyzer should be operated on the lowest (narrowest) approved range that will include and accurately measure the highest pollutant concentration likely to occur at the monitoring site during a specified monitoring period. If concentrations can be expected to exceed 1 ppm (SO_2, NO_2, O_3) or 100 ppm for CO, application for use of non-conforming ranges must be filed following the provisions of Section 2.6 of this Appendix.

* * * * *

3. Appendix F, sections 2.1.1 and 2.1.2 introductory text are revised to read as follows:

Appendix F—Annual SLAMS Air Quality Information

* * * * *

2.1.1 Site and Monitoring Information. City name (when applicable), county name and street address of site location. SAROAD site code. SAROAD monitoring method code. Number of hourly observations for continuous methods only. Number of daily observations for manual or intermittent methods only.

2.1.2 Annual Summary Statistics. Annual arithmetic mean (ppm). Highest and second highest 24-hour averages (ppm) and dates of occurrence, based on fixed block (midnight to midnight) averages. Highest and second highest 3-hour averages (ppm) and dates and times (ending hour) of occurrence for continuous methods based on eight fixed block (midnight to 3:00 a.m., 3:00 to 6:00 a.m., etc.) averages per day. Number of exceedances of the 24-hour primary NAAQS based on fixed block averages. Number of exceedances of the 3-hour secondary NAAQS based on the eight fixed block averages. Number of 24-hour (midnight to midnight) average concentrations in ranges:

* * * * *

Appendix G [Amended]

4. Appendix G is amended as follows:

a. In 7.2:

i. The heading is revised to read "7.2 Example Computations"

ii. The heading, *Example A.* is added before the word "Suppose" in the first paragraph.

iii. After the second paragraph ending with "exceed 80", a second example, Example B, is added as follows:

Example B. In the of SO_2, there are two subindex functions—one for 24-hour running averages and one for 1-hour averages. At the time a PSI report is to be issued, suppose an SO_2 24-hour running average of .15 ppm is observed, and a 1-hour concentration of 0.80 ppm is also observed. The PSI subindex functions would be computed for both averaging times. Based on the breakpoints in Table 2, the corresponding PSI index value for the 24-hour running averages is 120, while the PSI value for the 1-hour value is 220. In this case, the maximum PSI value of 220 would be used for SO_2. If the other pollutant subindices were $I_2=0$, $I_3=0$, $I_4=20$ and $I_5=30$, then the overall index is reported as the maximum of these values:

$PSI=max\{220, 0, 0, 20, 30\}=220$

In this example, if the 1-hour average concentration were 0.70 ppm instead of 0.80 ppm, there would be no PSI subindex value for the 1-hour value because the PSI subindex function is not used unless the SO_2 1-hour concentration is greater than or equal to 0.75 ppm (1965 ug/m³). As a result, the maximum PSI index value would be the 120 value recorded for the 24-hour average of 0.15 ppm, which in this example would also be the overall index for the day.

b. In Table 1, the second column entitled 24-hour SO_2 ug/m³ is revised and an additional column is inserted next to it entitled, 1-hour SO_2 ug/m³ to read as follows:

TABLE 1.—BREAKPOINT FOR PSI IN METRIC UNITS [1]

24-hr SO_2 ug/m³	1-hour SO_2 ug/m³
80[2]	(4)
365[2]	(4)

TABLE 1.—BREAKPOINT FOR PSI IN METRIC UNITS [1]—Continued

500[2]	1965[3]
600[2]	2620[3]
675[2]	3930[3]
750[2]	6550[3]

[1] At 25°C and 760 mm Hg.

[2] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

[3] No index value reported at these concentrations because there is no 1-hour NAAQS for SO_2.

c. In Table 2, the first column entitled 24-hour SO_2 ppm is revised and an additional column is inserted next to it entitled one 1-hour SO_2 ppm to read as follows:

TABLE 2.—BREAKPOINTS FOR PSI

[Parts per million]

24-hour SO_2	1-hour SO_2
0.03[2]	(1)
0.14[2]	(1)
0.19[2]	0.75[2]
0.23[2]	1.00[2]
0.26[2]	1.50[2]
0.29[2]	2.50[2]

[1] No index value reported at these concentration levels because there is no short-term NAAQS.

[2] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

d. Figure 3 is removed and Figure 3A (24-hour SO_2 running averages) and Figure 3b (1-hour SO_2 averages) are added:

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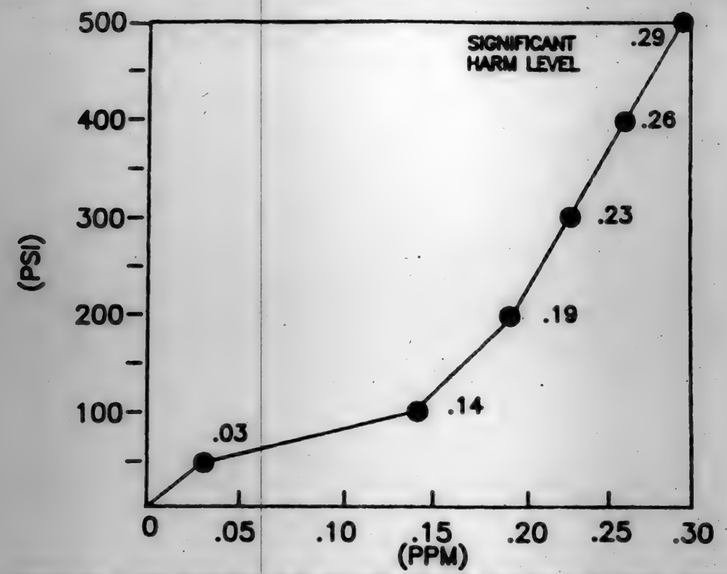


Figure 3a – PSI FUNCTION FOR SULFUR DIOXIDE (24 HOUR RUNNING AVERAGE)

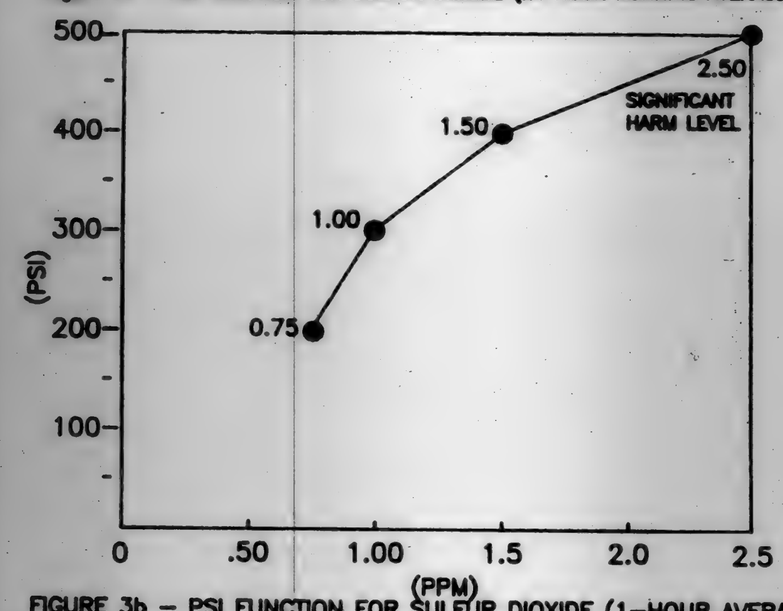


FIGURE 3b – PSI FUNCTION FOR SULFUR DIOXIDE (1–HOUR AVERAGE)

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federal register

Tuesday
April 26, 1988

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program, Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas; Final Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-88-1792; FR-2406]

Section 8 Housing Assistance Payments Program, Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document announces final Fiscal Year 1987 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program. These FMRs are based primarily on the level of rentals paid for recently completed or newly-constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. They also reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Program.

EFFECTIVE DATE: April 26, 1988, retroactive to September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of the Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 426-7624 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. Total housing expense represents the total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the difference between the total housing expense and the total family contribution. Initial contract rents plus any allowances for utilities generally may not exceed area-wide FMRs established by the Department.

Section 8(c)(1) of the Act states that the Secretary shall establish FMRs periodically, but not less frequently than annually. Section 8(c)(1) further provides that the Department shall publish FMRs in the **Federal Register**, with reasonable time for public comment, and that the FMRs will become effective upon their publication in final form in the **Federal Register**. The Department published proposed FMRs in the **Federal Register** on November 12, 1987 (52 FR 43486), with a comment due date of December 14, 1987.

This Notice

Today's document announces the Fiscal Year 1987 FMRs for new construction and substantial rehabilitation that apply to Section 8 New Construction under Part 880, Substantial Rehabilitation under Part 881, Housing Finance and Development Agencies under Part 883, New Construction Set-Aside for Section 515 Rural Rental Housing Projects under Part 884, Housing for the Elderly and Handicapped under Part 885, and Disposition of HUD-owned projects under Part 886, Subpart C.

The FRMs are based primarily on the levels of rent paid for recently completed or newly-constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff, trended ahead to October 1, 1988, to allow time for the period of construction or rehabilitation of the projects involved. They are estimates of rentals that prospective tenants who are not receiving Federal rent subsidies would be willing and able to pay for recently completed or newly-constructed dwelling units of modest design, with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

This Notice includes FMRs for 0, 1, 2, 3 and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, 2-4-story elevator and 5-plus-story elevator buildings). Construction or rehabilitation of elevator projects for families with children is prohibited unless there is no practical alternative. FMRs for family units in elevator structures are proposed for appropriate market areas; however, the determination that there is "no practical alternative" must be made on a project-by-project basis. HUD regulations also provide that high-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

With this publication for effect in the **Federal Register**, they will be made retroactive to September 15, 1987.

Section 202/Section 8 Projects

A. In accordance with the applicability set forth in the preamble to the Fiscal Year 1988 FMRs, which was published for effect in the **Federal Register** on August 7, 1986 at 51 FR 28486, for Section 202/Section 8 proposals, beginning with the Fiscal Year 1988 selections, the FMRs on which the contract rents will be based will be limited to the Fiscal Year 1988 FMRs that were in effect on the date of the Fiscal Year 1988 Notice of Section 202 Fund Reservation. However, these FMRs may be increased by up to 10 percent with the approval of the Field Office Manager or by up to 20 percent with the approval of the Assistant Secretary for Housing-Federal Housing Commissioner.

B. For Fiscal Year 1987 Section 202/Section 8 selections, the applicable FMRs are those set forth in Schedule A that follows this preamble. However, the Fiscal Year 1987 FMRs may be increased by up to 10 percent with the approval of the Field Office Manager or by up to 20 percent with the approval of the Assistant Secretary for Housing-Federal Housing Commissioner.

Public Comments

The Department received 17 comments on the proposed notice. Four were from HUD Field Offices; six were from private nonprofit associations or community development agencies; two were from private consultants; two were from nonprofit housing sponsors; and one comment was received from each of the following: an architect, a mortgage banker, and a real estate developer. Virtually all comments included the general statement that the FMRs were inadequate for their particular jurisdictions. In addition to this general comment, the following substantive issues were raised. The Department's response follows each issue.

1. Three commenters questioned whether the proposed rents met the HUD criteria stated in the proposed notices, that Fair Market Rents are based primarily on the level of rent paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff trended to October 1, 1988, to allow for the period of construction or rehabilitation of the projects involved.

One HUD Field Office commenter indicated that field office staff proposed FMR increases that were much higher than those indicated in the proposed notice, and that the proposed FMRs, as published, do not reflect market reality.

We disagree with the commenters. The FMRs have their foundation in local market data, since their genesis is the annual rent survey conducted by each Field Office in preparation of the annual revisions to the FMR schedules. In addition, the preamble states that they also "reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs." Therefore, while we acknowledge that the published rents may, in some cases, be lower than the rents proposed by our Field Offices, the published rents are nonetheless consistent with the considerations specified in the preamble.

2. Three commenters made the point that the intent of the Section 202 regulations is to provide funding for 100% of the development costs of Section 202 projects. Moreover, FMRs do not reflect typical rents for specialized housing for the elderly or handicapped.

Construction cost data was never intended to be, and still is not, the primary consideration in establishing FMRs and FMR limits. Moreover, our policies and procedures strictly preclude the selection of HUD subsidized projects as rental comparables in developing FMRs for any given market area. As required by the Congress, HUD procedures for establishing FMRs for any market area rely on market rental comparables reflecting local market conditions. In addition, consistent with our regulations, the FMRs for the elderly and handicapped are increased five percent above the published FMRs specifically to take specialized housing factors into consideration.

3. Seven commenters indicated that the proposed FMRs will not support the operating costs and debt service requirements for projects to be developed under the Section 202 program. This is despite the nonprofit status of the developer and the federally subsidized interest rates for construction and long term financing.

The Department makes every effort to work with Section 202 borrowers to assure the development of feasible projects. These efforts include enforcement of our cost containment policies and procedures as well as other suggestions for economies in the management and operation of projects. When all of these efforts fail to produce a financially feasible project, the Department will consider requests for special revision of one or more of the FMR schedules. Such requests may be initiated by a Field Office at any time.

4. One commenter stated that Section 202 sponsors were required to build a project in 1988 with FMRs established in Fiscal Year 1986, despite construction cost increases during that time interval.

To prevent such an inequity, the Notice has been revised to permit the Fiscal Year 1987 Section 202 selections to use the Fiscal Year 1987 FMR schedules published as a Proposed Notice on November 12, 1987 and which this Notice publishes for effect.

5. Four commenters stated that there was a wide disparity between the Fiscal Year 1987 Existing Housing FMRs and the proposed New Construction and Substantial Rehabilitation FMRs applicable to the market areas.

The Department is currently re-examining the Existing and the New Construction and Substantial Rehabilitation FMR schedules for all nine market areas in order to bring the conflicting rent schedules into a harmonious relationship. The results of the re-analysis would permit the Department to make a determination as to what increases in the New Construction and Substantial Rehabilitation FMRs, if any, may be warranted.

Other Information

HUD regulations in 24 CFR Part 50, implementing Section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs proposed in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department revises Schedule A of 24 CFR Part 888 to read as set forth below.

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Date: April 6, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Notes

Special Category Computations

1. FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed two bedrooms for the elderly, multiplied by 1.05.

2. Congregate housing dwelling unit FMRs are the same as for noncongregate units.

3. Single-room occupancy dwelling unit FMRs (applicable only for substantial rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type.

4. FMRs for living units in a group home developed with a direct loan under Section 202 of the Housing Act of 1959 are those for zero-bedroom or a one bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2-4-story elevator structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet.

5. Manufactured home (unit and space) FMRs shall be 95 percent of the rents for detached units of the appropriate bedroom size (except that where a manufactured home FMR is specified in the schedule for an area, the amount in the schedule shall be the FMR).

6. FMRs for manufactured home spaces in newly-constructed or substantially rehabilitated manufactured home parks are determined by multiplying by 1.25 the FMR for the spaces published for the Existing Housing Program. (For currently effective FMRs for the Existing Housing Program, see **Federal Register** documents published on April 22, 1986 (51 FR 15118) and December 21, 1987 (52 FR 48205).

Rent Computations

All rents computed in accordance with this note shall be rounded *down* to the nearest whole dollar.

Similarly, all FMRs increased by up to 10 percent with the approval of the HUD Field Office Manager, or by up to 20 percent with the approval of the HUD Assistant Secretary for Housing should have the result rounded *down* to the nearest whole dollar.

BILLING CODE 4210-27-M,

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

BOSTON REGIONAL OFFICE

MARKET: BOSTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			786	1009	1097
SEMI-DETACHED/ROW	657	662	778	917	1016
WALKUP	571	645	773	853	968
ELEVATOR 2-4 STY	592	719	831	1079	1228
ELEVATOR 5+ STY	597	724	836	1161	1282
MANUFACTURED HOME					
EFFECTIVE DATE					100186
TRENDED DATE					100188

MARKET: WORCESTER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		730	933	1012
581	587	722	842	966
524	558	700	794	912
535	614	736		
561	647	774		
EFFECTIVE DATE				100186
TRENDED DATE				100188

MARKET: FALL RIVER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		753	906	922
578	584	738	895	906
543	563	697	788	837
562	584	712		
567	614	744		
EFFECTIVE DATE				100186
TRENDED DATE				100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

HARTFORD OFFICE

MARKET: HARTFORD
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			696	774	797
SEMI-DETACHED/ROW	561	575	663	751	774
WALKUP	477	554	630	711	734
ELEVATOR 2-4 STY	484	562	635		
ELEVATOR 5+ STY	500	611	704		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NEW HAVEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		676	764	816
535	557	627	738	794
476	533	604	688	711
489	548	642		
507	605	715		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NEW LONDON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		673	751	784
494	499	639	713	760
445	478	629	707	732
450	493	653		
475	545	673		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NEW MILFORD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		628	700	718
526	540	623	695	713
449	521	592	667	690
454	528	597		
469	574	662		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WINDHAM
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			577	639	663
SEMI-DETACHED/ROW	487	492	551	616	642
WALKUP	403	469	526	584	601
ELEVATOR 2-4 STY	427	488	537		
ELEVATOR 5+ STY	444	518	591		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BRIDGEPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		675	721	752
553	558	643	697	729
463	536	608	676	700
469	561	615		
488	593	683		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: RIDGEFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		783	839	869
642	647	746	816	845
536	624	709	794	817
545	633	716		
562	688	792		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NORWICH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		628	700	718
505	550	623	695	713
457	532	604	668	689
464	539	609		
481	577	673		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

MANCHESTER OFFICE

	MARKET: MAINE STATEWIDE NUMBER OF BEDROOMS					MARKET: VERMONT STATE NUMBER OF BEDROOMS					MARKET: NEW HAMPSHIRE ST. NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED		572	645	736	854		592	690	770	868		570	638	735	854
SEMI-DETACHED/ROW	450	528	603	694	804	493	554	653	732	827	484	539	607	696	807
WALKUP	403	490	574	651	735	441	517	614	693	764	427	479	551	627	713
ELEVATOR 2-4 STY	451	539	679			501	572	678			451	546	629		
ELEVATOR 5+ STY	501	602	756			556	634	753			501	606	699		
MANUFACTURED HOME															
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188			

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 1

PROVIDENCE OFFICE

MARKET: PROVIDENCE

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			700	815	912
SEMI-DETACHED/ROW	425	510	594	658	710
WALKUP	382	498	574	646	694
ELEVATOR 2-4 STY	387	513	667		
ELEVATOR 5+ STY	392	519	674		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 092487

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

BUFFALO OFFICE

MARKET: BUFFALO

STRUCTURE TYPE	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			582	659	743
SEMI-DETACHED/ROW	418	438	511	601	695
WALKUP	333	394	474	557	593
ELEVATOR 2-4 STY	437	481	637		
ELEVATOR 5+ STY	475	519	675		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ALBANY

STRUCTURE TYPE	NUMBER OF BEDROOMS				
	-0-	-1-	-2-	-3-	-4+
DETACHED			553	668	740
SEMI-DETACHED/ROW	402	407	488	593	657
WALKUP	347	396	465	547	621
ELEVATOR 2-4 STY	352	427	540		
ELEVATOR 5+ STY	378	467	582		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ELMIRA

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		550	636	705
344	399	501	593	661
298	345	454	562	637
366	447	573		
403	484	610		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PLATTSBURGH

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		562	663	732
469	474	517	597	666
372	408	472	553	630
415	491	597		
453	530	640		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JAMESTOWN

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		575	646	725
423	451	524	601	687
347	408	485	557	643
425	501	615		
463	539	653		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SYRACUSE

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		570	657	751
416	421	500	602	676
328	393	479	547	630
333	437	554		
369	476	595		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ROCHESTER

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		562	629	698
439	442	517	601	679
341	397	477	541	610
440	501	601		
478	539	642		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BINGHAMTON

NUMBER OF BEDROOMS				
-0-	-1-	-2-	-3-	-4+
		550	663	733
399	404	488	584	648
345	394	463	543	614
350	429	545		
383	456	586		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

NEW YORK REGIONAL OFFICE

MARKET: NEW YORK CITY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	660	665	916	1087	1328
WALKUP	597	624	850	1017	1229
ELEVATOR 2-4 STY	638	820	877	1106	1298
ELEVATOR 5+ STY	832	1013	1125	1429	1633
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SUFFOLK

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		808	980	1092
611	647	767	802	955
490	571	688	749	828
630	740	902		
680	759	948		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WESTCHESTER

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		918	1072	1174
651	656	768	947	1030
513	612	732	885	971
634	726	892	1043	
687	816	950		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ORANGE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		779	884	958
544	588	704	839	918
479	550	668	784	868
641	694	877		
689	788	963		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ROCKLAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			907	984	1057
SEMI-DETACHED/ROW	583	649	809	942	1022
WALKUP	482	611	764	887	982
ELEVATOR 2-4 STY	545	657	815		
ELEVATOR 5+ STY	596	710	859		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NASSAU

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		969	1106	1215
681	687	886	1005	1114
531	661	802	921	1020
546	676	841		
553	776	897		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PUTNAM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		845	972	1057
564	569	725	870	949
460	539	622	778	903
646	732	801		
692	796	884		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: POUGHKEEPSIE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		703	821	938
483	513	614	703	772
409	489	609	653	725
623	728	838		
651	756	905		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

NEWARK OFFICE

MARKET: NEWARK

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			1118	1249	1328
SEMI-DETACHED/ROW	632	703	891	1034	1124
WALKUP	556	622	797	925	1013
ELEVATOR 2-4 STY	642	714	910	1060	1145
ELEVATOR 5+ STY	722	809	1033	1210	1303
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NORTH BERGEN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			1111	1243	1321
SEMI-DETACHED/ROW	694	764	886	1027	1117
WALKUP	615	680	790	917	1006
ELEVATOR 2-4 STY	701	773	903	1052	1138
ELEVATOR 5+ STY	781	869	1026	1203	1296
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FREEHOLD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			1028	1157	1239
SEMI-DETACHED/ROW	623	694	806	944	1034
WALKUP	546	609	713	834	924
ELEVATOR 2-4 STY	630	702	819	970	1053
ELEVATOR 5+ STY	710	798	942	1118	1215
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CAMDEN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			980	1105	1181
SEMI-DETACHED/ROW	600	605	739	899	982
WALKUP	447	518	636	787	881
ELEVATOR 2-4 STY	575	645	785	942	1025
ELEVATOR 5+ STY	657	740	922	1092	1184
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ATLANTIC CITY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			944	1069	1131
SEMI-DETACHED/ROW	628	633	721	860	946
WALKUP	503	563	638	764	844
ELEVATOR 2-4 STY	606	675	761	905	986
ELEVATOR 5+ STY	687	771	884	1053	1147
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BURLINGTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			980	1105	1181
SEMI-DETACHED/ROW	597	605	758	899	982
WALKUP	474	534	675	801	881
ELEVATOR 2-4 STY	576	645	798	942	1025
ELEVATOR 5+ STY	657	740	922	1092	1184
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GLOUCESTER

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			980	1105	1181
SEMI-DETACHED/ROW	552	605	747	899	982
WALKUP	457	532	642	798	881
ELEVATOR 2-4 STY	576	645	796	942	1025
ELEVATOR 5+ STY	657	740	922	1092	1184
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TRENTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			1001	1124	1200
SEMI-DETACHED/ROW	658	680	776	917	1002
WALKUP	518	590	695	820	902
ELEVATOR 2-4 STY	646	723	818	962	1044
ELEVATOR 5+ STY	739	825	941	1111	1206
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: VINELAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			860	984	1060
SEMI-DETACHED/ROW	538	558	638	776	862
WALKUP	398	475	554	680	761
ELEVATOR 2-4 STY	532	606	678	821	904
ELEVATOR 5+ STY	620	702	801	971	1065
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ASBURY PARK

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			986	1117	1195
SEMI-DETACHED/ROW	570	640	762	903	994
WALKUP	491	556	665	794	882
ELEVATOR 2-4 STY	577	649	779	929	1012
ELEVATOR 5+ STY	657	751	902	1077	1174
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 2

CARIBBEAN OFFICE

MARKET: SAN JUAN
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			498	554	614
SEMI-DETACHED/ROW	412	422	472	514	573
WALKUP	347	399	445	486	525
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY	397	445	510	587	649
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MAYAGUEZ
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			481	529	588
SEMI-DETACHED/ROW	386	422	446	488	548
WALKUP	330	392	419	459	500
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY	370	420	522	565	633
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PONCE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			446	494	553
SEMI-DETACHED/ROW	351	387	411	453	513
WALKUP	323	359	384	424	465
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY	370	420	497	530	598
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ARECIBO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			476	524	583
SEMI-DETACHED/ROW	381	417	441	483	543
WALKUP	330	389	414	454	495
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY	370	420	522	560	628
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ST. CROIX
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			628	708	816
SEMI-DETACHED/ROW	415	485	569	658	749
WALKUP	353	415	505	568	633
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ST. THOMAS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			687	750	846
SEMI-DETACHED/ROW	469	513	588	677	769
WALKUP	375	434	530	592	664
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: OLD SAN JUAN
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	550	593	622	675	745
WALKUP	517	559	590	639	686
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

BALTIMORE OFFICE

	MARKET: BALTIMORE NUMBER OF BEDROOMS					MARKET: HAGERSTOWN NUMBER OF BEDROOMS					MARKET: SALISBURY NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			726	819	963			628	737	850			616	680	798
SEMI-DETACHED/ROW	435	509	588	697	902	354	471	554	626	813	397	435	501	580	747
WALKUP	393	504	579	692	777	352	466	548	621	650	332	430	495	574	646
ELEVATOR 2-4 STY	425	531	629			378	473	554			344	471	516		
ELEVATOR 5+ STY	469	579	707			411	478	567			380	495	601		
MANUFACTURED HOME															
	EFFECTIVE DATE 100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186				
	TRENDED DATE 100188					TRENDED DATE 100188					TRENDED DATE 100188				

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

CHARLESTON OFFICE

MARKET: CHARLESTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			539	640	728
SEMI-DETACHED/ROW	365	404	517	626	722
WALKUP	313	399	501	512	578
ELEVATOR 2-4 STY	409	503	568		
ELEVATOR 5+ STY	421	510	574		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WHEELING
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			506	561	628
SEMI-DETACHED/ROW	312	366	472	546	603
WALKUP	283	361	461	506	552
ELEVATOR 2-4 STY	380	454	551		
ELEVATOR 5+ STY	385	461	556		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BLUEFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		513	569	633
313	382	474	532	572
299	370	432	483	531
406	483	540		
414	489	548		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MARTINSBURG
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		477	561	628
290	353	441	529	603
272	329	437	506	572
430	473	526		
437	478	533		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HUNTINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		492	594	646
318	388	482	561	620
252	378	478	535	586
384	456	547		
390	463	553		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FAIRMONT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		534	594	665
332	409	504	569	638
327	399	485	535	589
454	499	556		
462	505	562		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PARKERSBURG
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		461	532	585
262	339	433	502	553
257	328	407	476	525
395	476	577		
404	483	585		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: POINT PLEASANT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		460	530	578
262	339	429	499	550
249	328	421	469	522
393	469	526		
398	478	534		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

PHILADELPHIA REGIONAL OFFICE

	MARKET: PHILADELPHIA NUMBER OF BEDROOMS					MARKET: ALLENTOWN NUMBER OF BEDROOMS					MARKET: BELLEFONTE NUMBER OF BEDROOMS					MARKET: HARRISBURG NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW		588	736	852	954	473	491	611	715	790	434	497	600	685	768	496	501	552	703	768
WALKUP	461	519	656	744	823	419	462	575	672	750	395	484	566	659	719	395	462	534	659	717
ELEVATOR 2-4 STY	560	610	727			495	522	612			430	502	624			449	521	575		
ELEVATOR 5+ STY	635	692	816			509	559	685			478	539	666			486	563	624		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188				TRENDED DATE	100188			

	MARKET: LANCASTER NUMBER OF BEDROOMS					MARKET: YORK NUMBER OF BEDROOMS					MARKET: READING NUMBER OF BEDROOMS					MARKET: SCRANTON NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	461	466	573	705	732	461	466	573	705	732	486	491	588	707	786	457	521	605	688	752
WALKUP	385	450	561	676	704	385	450	561	676	704	391	471	564	667	732	391	478	575	660	732
ELEVATOR 2-4 STY	467	540	702			467	540	702			447	527	611			490	569	642		
ELEVATOR 5+ STY	491	564	726			491	564	726			484	578	678			521	606	683		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188				TRENDED DATE	100188			

	MARKET: WELLSBORO NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	402	497	600	688	768
WALKUP	395	484	566	659	719
ELEVATOR 2-4 STY	430	502	624		
ELEVATOR 5+ STY	478	539	666		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

PITTSBURGH OFFICE

	MARKET: PITTSBURGH NUMBER OF BEDROOMS					MARKET: ERIE NUMBER OF BEDROOMS					MARKET: ALTOONA NUMBER OF BEDROOMS					MARKET: JOHNSTOWN NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			659	732	857			616	685	802			536	645	779			552	656	784
SEMI-DETACHED/ROW	468	562	625	711	824	444	534	587	653	764	362	436	526	614	742	379	449	525	618	747
WALKUP	402	478	557	706	819	355	438	520	604	676	344	424	521	599	689	347	428	515	592	675
ELEVATOR 2-4 STY	511	572	659			501	556	646			498	561	594			465	500	599		
ELEVATOR 5+ STY	527	596	701			519	573	694			511	578	632			474	537	631		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					100186					100186					100186				
TRENDED DATE	100188					100188					100188					100188				

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

RICHMOND OFFICE

	MARKET: NORTON NUMBER OF BEDROOMS					MARKET: HARRISONBURG NUMBER OF BEDROOMS					MARKET: NEWPORT NEWS NUMBER OF BEDROOMS					MARKET: NORFOLK NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	350	361	434	526	586	370	403	469	541	613	397	402	463	577	628	425	430	513	582	632
WALKUP	266	330	419	521	574	315	374	464	536	596	316	358	432	517	576	369	416	492	577	625
ELEVATOR 2-4 STY	300	364	453			349	408	499			350	391	465			403	450	526		
ELEVATOR 5+ STY	329	409	541			396	469	546			472	534	613			471	574	665		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					100186					100186					100186				
TRENDED DATE	100188					100188					100188					100188				

	MARKET: CHARLOTTESVILLE NUMBER OF BEDROOMS					MARKET: RICHMOND NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED										
SEMI-DETACHED/ROW	445	451	533	630	669	410	416	483	564	613
WALKUP	370	419	502	558	621	338	396	473	558	608
ELEVATOR 2-4 STY	404	453	536			372	429	506		
ELEVATOR 5+ STY	447	541	671			421	512	632		
MANUFACTURED HOME										
EFFECTIVE DATE	100186					100186				
TRENDED DATE	100188					100188				

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

WASHINGTON D.C. OFFICE

	MARKET: WASHINGTON D.C. NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED	559	628	688	765	863
SEMI-DETACHED/ROW	450	532	605	701	782
WALKUP	486	586	756		
ELEVATOR 2-4 STY	544	627	813		
ELEVATOR 5+ STY					
MANUFACTURED HOME					
EFFECTIVE DATE				100186	
TRENDED DATE				100188	

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE. AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 3

WILMINGTON

	MARKET: WILMINGTON, DEL NUMBER OF BEDROOMS					MARKET: DOVER, DEL NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			633	796	832			606	726	821
SEMI-DETACHED/ROW	457	462	564	678	744	419	424	510	628	684
WALKUP	382	442	522	607	650	369	403	458	546	590
ELEVATOR 2-4 STY	421	492	621			380	466	552		
ELEVATOR 5+ STY	448	571	633			403	515	612		
MANUFACTURED HOME										
EFFECTIVE DATE			100186			EFFECTIVE DATE		100186		
TRENDED DATE			100188			TRENDED DATE		100188		

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

ATLANTA REGIONAL OFFICE

MARKET: ATLANTA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			473	542	576
SEMI-DETACHED/ROW	323	361	422	491	536
WALKUP	312	350	412	481	525
ELEVATOR 2-4 STY	337	375	437		
ELEVATOR 5+ STY	389	427	489		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COLUMBUS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			453	554	597
SEMI-DETACHED/ROW	327	364	407	522	561
WALKUP	313	350	394	509	548
ELEVATOR 2-4 STY	340	379	421		
ELEVATOR 5+ STY	397	437	476		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: VALDOSTA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			434	497	569
SEMI-DETACHED/ROW	302	342	408	489	536
WALKUP	291	324	398	465	524
ELEVATOR 2-4 STY	318	358	427		
ELEVATOR 5+ STY	370	412	478		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ALBANY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		473	542	576
323	361	422	491	536
312	350	412	481	525
337	375	437		
389	427	489		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MACON

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		483	501	557
351	385	431	477	536
347	367	420	462	515
376	397	445		
429	462	497		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: AUGUSTA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		444	522	567
338	374	420	501	538
328	359	405	485	526
357	387	433		
398	431	498		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ROME

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		442	515	555
307	333	384	456	510
295	320	379	443	496
320	345	404		
381	400	460		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BRUNSWICK

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		483	568	604
350	390	443	515	573
338	378	438	503	550
367	405	467		
421	458	523		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SAVANNAH

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		516	598	635
361	398	479	543	589
348	385	466	531	577
375	417	493		
429	471	547		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

BIRMINGHAM OFFICE

MARKET: BIRMINGHAM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			599	727	822
SEMI-DETACHED/ROW	365	371	441	534	572
WALKUP	328	365	428	515	554
ELEVATOR 2-4 STY	339	384	453		
ELEVATOR 5+ STY	352	403	479		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DOTHAN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		503	637	722
324	355	409	487	531
315	348	400	468	512
328	366	425		
340	371	451		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FLORENCE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		534	676	764
328	354	420	511	553
307	348	407	491	538
321	361	430		
334	373	442		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HUNTSVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		560	709	808
384	399	464	548	596
324	383	458	534	588
371	413	498		
383	432	523		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MOBILE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			542	694	778
SEMI-DETACHED/ROW	348	375	448	536	575
WALKUP	321	363	436	516	559
ELEVATOR 2-4 STY	344	382	482		
ELEVATOR 5+ STY	356	400	486		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MONTGOMERY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		523	666	747
353	358	455	539	592
327	352	436	534	585
339	371	461		
351	390	487		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TUSCALOOSA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		556	704	793
376	382	443	552	589
338	376	430	533	573
360	395	455		
373	414	481		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

COLUMBIA OFFICE

MARKET: GREENVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			531	618	668
SEMI-DETACHED/ROW	361	420	495	581	627
WALKUP	352	410	479	566	606
ELEVATOR 2-4 STY	457	525	608		
ELEVATOR 5+ STY	482	550	634		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREENWOOD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		477	533	577
333	381	445	503	543
324	371	432	491	527
426	486	544		
449	511	567		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MYRTLE BEACH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		560	637	680
372	437	540	617	660
363	427	525	602	640
461	535	650		
485	559	675		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ROCKHILL
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		553	632	683
403	475	533	611	662
393	458	519	595	646
456	517	624		
481	542	648		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COLUMBIA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			571	648	698
SEMI-DETACHED/ROW	396	459	551	627	678
WALKUP	386	449	536	610	658
ELEVATOR 2-4 STY	467	536	629		
ELEVATOR 5+ STY	492	561	655		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: AIKEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		536	584	638
386	459	517	563	620
375	449	503	550	599
456	517	620		
481	542	642		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CHARLESTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		560	637	680
393	437	540	617	660
382	427	525	602	640
481	542	650		
505	567	675		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FLORENCE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		502	562	616
347	430	486	545	600
337	422	473	533	584
430	517	578		
452	542	599		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

GREENSBORO OFFICE

MARKET: GREENSBORO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			486	555	658
SEMI-DETACHED/ROW	392	397	474	522	627
WALKUP	336	392	469	517	623
ELEVATOR 2-4 STY	358	427	496		
ELEVATOR 5+ STY	510	548	664		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ASHEVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		464	566	647
374	380	447	543	627
319	374	431	538	622
355	409	466		
464	522	616		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CHARLOTTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		528	613	688
414	420	497	575	664
355	415	492	570	659
380	443	527		
512	550	659		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DURHAM
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		519	596	700
390	395	487	585	668
366	390	482	578	663
400	425	515		
509	554	674		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREENVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			451	519	616
SEMI-DETACHED/ROW	339	363	436	496	573
WALKUP	292	358	430	491	568
ELEVATOR 2-4 STY	324	380	452		
ELEVATOR 5+ STY	437	507	608		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: RALEIGH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		523	623	728
435	440	513	571	657
366	434	507	566	650
395	456	530		
555	624	740		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WINSTON-SALEM
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		473	563	641
370	385	447	523	605
311	380	441	518	599
339	402	471		
488	522	626		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FAYETTEVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		450	526	603
350	359	421	490	563
310	354	417	485	558
340	387	452		
428	481	571		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WILMINGTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			465	550	625
SEMI-DETACHED/ROW	366	371	447	507	575
WALKUP	315	366	441	502	580
ELEVATOR 2-4 STY	347	387	463		
ELEVATOR 5+ STY	459	505	607		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ELIZABETH CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		470	534	598
319	337	427	520	593
285	332	421	515	588
311	380	477		
476	547	633		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

JACKSON OFFICE

MARKET: JACKSON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			511	616	699
SEMI-DETACHED/ROW	373	410	505	597	673
WALKUP	355	405	458	542	606
ELEVATOR 2-4 STY	464	539	632		
ELEVATOR 5+ STY	475	554	649		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CORINTH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		418	530	611
292	341	406	511	589
277	331	401	504	572
375	473	544		
388	488	561		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREENVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		506	536	615
373	414	479	520	605
336	382	457	484	557
434	485	608		
447	499	626		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREENWOOD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		470	509	599
349	395	455	487	589
311	366	431	452	519
447	508	571		
462	525	586		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GULFPORT
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			475	557	638
SEMI-DETACHED/ROW	392	407	469	550	589
WALKUP	324	375	427	522	584
ELEVATOR 2-4 STY	475	557	635		
ELEVATOR 5+ STY	487	571	653		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HATTIESBURG
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		458	543	622
320	370	440	519	592
281	335	422	476	531
398	436	550		
409	450	567		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SOUTHAVEN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		499	577	658
337	417	481	563	647
324	398	475	551	620
441	489	595		
450	502	612		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

JACKSONVILLE OFFICE

MARKET: JACKSONVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			574	635	710
SEMI-DETACHED/ROW	412	473	551	617	667
WALKUP	365	414	511	607	660
ELEVATOR 2-4 STY	429	478	602		
ELEVATOR 5+ STY	482	532	671		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PENSACOLA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			536	596	697
SEMI-DETACHED/ROW	384	430	505	565	622
WALKUP	326	373	456	534	571
ELEVATOR 2-4 STY	381	433	528		
ELEVATOR 5+ STY	430	488	589		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KEY WEST

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			728	804	885
SEMI-DETACHED/ROW	523	587	654	748	833
WALKUP	434	482	586	698	747
ELEVATOR 2-4 STY	504	557	693		
ELEVATOR 5+ STY	572	637	792		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MIAMI

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			728	804	885
SEMI-DETACHED/ROW	523	587	654	748	833
WALKUP	434	482	586	698	747
ELEVATOR 2-4 STY	504	557	693		
ELEVATOR 5+ STY	572	637	792		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TAMPA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			554	630	743
SEMI-DETACHED/ROW	420	480	549	617	691
WALKUP	371	423	511	598	659
ELEVATOR 2-4 STY	464	520	638		
ELEVATOR 5+ STY	547	607	734		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ORLANDO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			629	702	747
SEMI-DETACHED/ROW	407	467	575	642	716
WALKUP	381	441	522	592	666
ELEVATOR 2-4 STY	467	532	648		
ELEVATOR 5+ STY	542	605	716		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

LOUISVILLE OFFICE

MARKET: LOUISVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			562	638	715
SEMI-DETACHED/ROW	442	469	538	605	674
WALKUP	387	422	496	575	627
ELEVATOR 2-4 STY	421	456	528		
ELEVATOR 5+ STY	459	506	573		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PIKEVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			588	670	735
SEMI-DETACHED/ROW	442	461	550	622	683
WALKUP	392	436	502	575	628
ELEVATOR 2-4 STY	439	470	564		
ELEVATOR 5+ STY	498	548	621		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COVINGTON

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		535	640	736
421	437	502	586	674
358	399	454	559	621
409	451	516		
437	486	559		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: OWENSBORO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		520	623	691
359	397	483	577	638
324	364	441	523	577
349	394	476		
376	428	518		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PADUCAH

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		523	627	695
361	399	486	580	642
326	366	444	525	580
351	396	479		
378	431	521		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

KNOXVILLE OFFICE

MARKET: KNOXVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			463	540	576
SEMI-DETACHED/ROW	365	401	448	530	566
WALKUP	350	375	437	520	556
ELEVATOR 2-4 STY	375	396	463		
ELEVATOR 5+ STY	396	422	473		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CHATTANOOGA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		474	561	599
422	425	463	545	584
386	414	447	534	572
414	436	474		
436	463	501		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JOHNSON CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		453	525	561
345	370	442	515	545
334	355	432	494	535
370	391	453		
391	416	478		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KINGSPORT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		453	525	561
345	370	442	515	545
330	346	432	478	515
370	391	453		
391	416	478		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: OAKRIDGE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			463	540	576
SEMI-DETACHED/ROW	365	401	448	530	566
WALKUP	350	375	437	520	556
ELEVATOR 2-4 STY	375	396	463		
ELEVATOR 5+ STY	396	422	473		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 4

NASHVILLE OFFICE

MARKET: NASHVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			492	574	616
SEMI-DETACHED/ROW	376	418	475	561	605
WALKUP	344	398	467	555	599
ELEVATOR 2-4 STY	355	418	475		
ELEVATOR 5+ STY	362	433	492		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CLARKSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		442	531	574
324	359	431	517	561
295	337	426	500	555
319	365	431		
325	387	451		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COLUMBIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		417	515	564
309	332	393	507	542
276	325	382	492	536
283	344	390		
294	368	426		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MEMPHIS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		442	497	581
319	363	422	472	539
285	319	372	449	483
332	398	469		
373	441	512		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JACKSON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			422	492	576
SEMI-DETACHED/ROW	295	337	396	457	532
WALKUP	277	319	385	445	507
ELEVATOR 2-4 STY	324	365	458		
ELEVATOR 5+ STY	345	404	499		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CHICAGO REGIONAL OFFICE

MARKET: CHICAGO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			784	932	1075
SEMI-DETACHED/ROW	567	637	719	845	937
WALKUP	481	555	663	795	834
ELEVATOR 2-4 STY	513	604	712	846	848
ELEVATOR 5+ STY	556	696	828	859	908
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BELLEVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		665	753	839
417	470	563	655	764
381	441	534	603	666
415	469	571		
475	530	624		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MOLINE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		653	839	931
451	490	587	737	827
393	452	531	695	735
417	481	567		
481	547	674		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SPRINGFIELD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		684	782	880
388	441	535	619	708
353	417	498	580	662
381	454	535		
452	504	597		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EAST ST. LOUIS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			555	648	710
SEMI-DETACHED/ROW	402	454	508	586	664
WALKUP	359	415	486	561	624
ELEVATOR 2-4 STY	382	442	520		
ELEVATOR 5+ STY	462	524	596		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CINCINNATI OFFICE

	MARKET: CINCINNATI NUMBER OF BEDROOMS					MARKET: DAYTON NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			699	865	901			613	796	879
SEMI-DETACHED/ROW	430	496	564	677	745	399	427	496	594	669
WALKUP	347	408	515	586	676	333	416	482	557	623
ELEVATOR 2-4 STY	382	510	608			389	516	616		
ELEVATOR 5+ STY	532	626	710			538	632	677		
MANUFACTURED HOME										
EFFECTIVE DATE					100186	EFFECTIVE DATE				100186
TRENDED DATE					100188	TRENDED DATE				100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

CLEVELAND OFFICE

MARKET: CLEVELAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			714	775	835
SEMI-DETACHED/ROW	501	524	589	665	698
WALKUP	375	432	501	581	661
ELEVATOR 2-4 STY	385	457	563		
ELEVATOR 5+ STY	439	466	585		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: AKRON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			683	749	772
SEMI-DETACHED/ROW	477	502	566	640	672
WALKUP	370	422	495	566	630
ELEVATOR 2-4 STY	375	412	500		
ELEVATOR 5+ STY	380	440	505		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FINDLAY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			582	652	701
SEMI-DETACHED/ROW	397	429	477	568	602
WALKUP	330	357	419	510	566
ELEVATOR 2-4 STY	335	362	466		
ELEVATOR 5+ STY	378	433	533		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LORAIN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			584	655	705
SEMI-DETACHED/ROW	386	391	463	538	574
WALKUP	283	311	382	479	520
ELEVATOR 2-4 STY	357	375	447		
ELEVATOR 5+ STY	375	381	465		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MANSFIELD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			605	658	728
SEMI-DETACHED/ROW	448	453	500	575	640
WALKUP	331	356	404	502	540
ELEVATOR 2-4 STY	365	401	479		
ELEVATOR 5+ STY	371	427	490		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TOLEDO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			677	742	790
SEMI-DETACHED/ROW	414	472	540	620	661
WALKUP	350	389	460	561	596
ELEVATOR 2-4 STY	372	404	495		
ELEVATOR 5+ STY	408	414	504		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: YOUNGSTOWN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			599	668	674
SEMI-DETACHED/ROW	407	413	477	557	573
WALKUP	296	334	397	498	543
ELEVATOR 2-4 STY	332	350	436		
ELEVATOR 5+ STY	339	358	444		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

COLUMBUS OFFICE

MARKET: COLUMBUS

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			528	646	657
SEMI-DETACHED/ROW	368	404	466	541	592
WALKUP	320	393	457	500	561
ELEVATOR 2-4 STY	356	434	517		
ELEVATOR 5+ STY	403	488	581		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

DETROIT OFFICE

MARKET: DETROIT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			724	797	928
SEMI-DETACHED/ROW	447	484	593	693	800
WALKUP	373	461	540	639	741
ELEVATOR 2-4 STY	399	487	565		
ELEVATOR 5+ STY	408	501	650		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FLINT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		553	657	748
345	385	481	614	653
330	371	433	568	646
335	390	458		
342	451	538		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ANN ARBOR

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		634	729	768
401	406	525	630	694
327	401	493	540	604
367	432	512		
372	470	534		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: YPSILANTI

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			634	729	768
SEMI-DETACHED/ROW	401	406	525	630	694
WALKUP	327	401	493	540	604
ELEVATOR 2-4 STY	367	432	512		
ELEVATOR 5+ STY	372	470	534		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

GRAND RAPIDS OFFICE

MARKET: MT PLEASANT
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			591	700	746
SEMI-DETACHED/ROW	387	436	502	622	672
WALKUP	265	355	396	492	530
ELEVATOR 2-4 STY	273	371	414		
ELEVATOR 5+ STY	424	507	588		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GRAND RAPIDS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		587	694	728
404	409	505	598	646
297	370	470	516	552
345	390	487		
429	500	555		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BENTON HARBOR
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		563	669	704
385	413	515	619	653
288	334	413	505	537
305	351	430		
416	477	546		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BATTLE CREEK
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		613	701	738
383	407	500	617	664
287	368	451	545	579
305	386	468		
440	510	572		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LANSING
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			589	724	766
SEMI-DETACHED/ROW	406	412	492	608	655
WALKUP	316	371	450	542	575
ELEVATOR 2-4 STY	334	390	467		
ELEVATOR 5+ STY	398	450	528		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MUSKEGON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		595	702	737
422	463	550	645	685
302	382	452	536	547
321	402	470		
437	510	567		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TRAVERSE CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		637	745	780
463	477	559	687	725
305	396	448	550	590
322	413	465		
483	558	619		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MARQUETTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		553	662	697
349	400	504	607	642
227	316	409	509	547
244	333	427		
444	520	535		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JACKSON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			576	702	750
SEMI-DETACHED/ROW	393	398	482	595	641
WALKUP	309	383	438	538	567
ELEVATOR 2-4 STY	315	401	456		
ELEVATOR 5+ STY	457	522	591		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

INDIANAPOLIS OFFICE

MARKET: INDIANAPOLIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			572	639	702
SEMI-DETACHED/ROW	359	405	493	595	613
WALKUP	331	375	455	512	549
ELEVATOR 2-4 STY	359	398	483		
ELEVATOR 5+ STY	462	513	599		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BLOOMINGTON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		566	634	707
373	407	486	552	601
333	378	450	510	561
369	396	479		
458	507	597		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EVANSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		553	619	684
352	401	491	565	620
318	364	450	510	554
351	389	479		
431	483	587		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FORT WAYNE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		558	622	693
375	406	486	539	602
330	372	442	496	545
365	396	471		
457	506	592		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HAMMOND
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			583	652	719
SEMI-DETACHED/ROW	382	431	539	595	674
WALKUP	349	400	489	556	591
ELEVATOR 2-4 STY	392	422	516		
ELEVATOR 5+ STY	458	514	630		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LAFAYETTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		564	633	706
373	413	495	567	620
338	385	454	513	562
371	406	482		
464	516	602		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SOUTH BEND
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		571	639	714
384	427	498	575	655
342	390	457	517	562
383	415	488		
469	525	605		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TERRE HAUTE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		559	631	708
367	409	493	566	629
328	377	461	529	574
363	400	489		
440	494	599		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GARY
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			571	633	700
SEMI-DETACHED/ROW	370	424	513	586	670
WALKUP	349	400	487	557	572
ELEVATOR 2-4 STY	392	422	521		
ELEVATOR 5+ STY	435	492	600		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

MILWAUKEE OFFICE

MARKET: MADISON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			661	748	783
SEMI-DETACHED/ROW	380	484	571	689	726
WALKUP	370	424	511	626	
ELEVATOR 2-4 STY	387	442	533		
ELEVATOR 5+ STY	527	572	693		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: REEDSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		569	653	685
327	417	487	598	634
322	370	441	527	
340	386	454		
457	507	606		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SUPERIOR
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		532	652	688
312	416	479	591	629
306	365	435	544	
324	383	451		
457	503	599		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MILWAUKEE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		724	793	854
414	530	621	747	787
408	466	551	680	
427	483	569		
567	621	756		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EAU CLAIRE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			500	584	618
SEMI-DETACHED/ROW	292	375	420	530	586
WALKUP	284	327	377	478	
ELEVATOR 2-4 STY	303	346	396		
ELEVATOR 5+ STY	415	459	537		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREEN BAY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		564	645	678
311	401	484	589	624
303	350	438	536	
319	366	454		
436	482	597		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WAUSAU
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		540	624	657
314	401	461	569	606
309	354	418	518	
324	370	436		
439	482	574		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

MINNEAPOLIS-ST. PAUL OFFICE

	MARKET: MINNEAPOLIS NUMBER OF BEDROOMS					MARKET: DULUTH NUMBER OF BEDROOMS					MARKET: MANKATO NUMBER OF BEDROOMS					MARKET: ROCHESTER NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	423	428	573	659	736	363	394	542	618	689	418	436	548	624	698	391	424	553	641	716
WALKUP	349	401	478	611	633	347	376	459	561	596	342	383	477	551	582	350	391	482	555	588
ELEVATOR 2-4 STY	387	460	576			368	435	538			379	420	492			382	424	500		
ELEVATOR 5+ STY	395	522	659			384	463	589			393	539	639			413	560	634		
MANUFACTURED HOME																				
	EFFECTIVE DATE 100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186				
	TRENDED DATE 100188					TRENDED DATE 100188					TRENDED DATE 100188					TRENDED DATE 100188				

	MARKET: ST. CLOUD NUMBER OF BEDROOMS					MARKET: WORTHINGTON NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED										
SEMI-DETACHED/ROW	340	369	492	567	624	319	332	461	524	586
WALKUP	310	347	431	519	551	284	312	402	485	515
ELEVATOR 2-4 STY	336	407	468			301	369	440		
ELEVATOR 5+ STY	341	479	566			306	428	522		
MANUFACTURED HOME										
	EFFECTIVE DATE 100186					EFFECTIVE DATE 100186				
	TRENDED DATE 100188					TRENDED DATE 100188				

PREPARED ON 092487

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

FORT WORTH REGIONAL OFFICE

MARKET: DALLAS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			601	701	748
SEMI-DETACHED/ROW	388	429	529	651	708
WALKUP	337	386	502	606	689
ELEVATOR 2-4 STY	352	442	545		
ELEVATOR 5+ STY	494	572	736		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SHERMAN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			448	556	630
SEMI-DETACHED/ROW	286	317	391	496	572
WALKUP	249	285	371	453	537
ELEVATOR 2-4 STY	260	327	403		
ELEVATOR 5+ STY	365	438	570		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TYLER

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			483	623	694
SEMI-DETACHED/ROW	309	342	422	535	624
WALKUP	269	308	400	488	579
ELEVATOR 2-4 STY	281	352	434		
ELEVATOR 5+ STY	393	472	614		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WACO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			464	570	640
SEMI-DETACHED/ROW	296	328	405	513	594
WALKUP	258	295	384	469	556
ELEVATOR 2-4 STY	269	338	417		
ELEVATOR 5+ STY	378	453	590		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WICHITA FALLS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			464	586	660
SEMI-DETACHED/ROW	296	328	405	513	599
WALKUP	258	295	384	469	556
ELEVATOR 2-4 STY	269	338	417		
ELEVATOR 5+ STY	378	453	590		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SAN ANGELO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			452	633	694
SEMI-DETACHED/ROW	289	320	394	500	583
WALKUP	251	288	374	457	452
ELEVATOR 2-4 STY	262	329	406		
ELEVATOR 5+ STY	368	442	574		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ABILENE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			498	696	765
SEMI-DETACHED/ROW	318	352	434	551	642
WALKUP	277	317	412	503	597
ELEVATOR 2-4 STY	289	363	447		
ELEVATOR 5+ STY	405	486	633		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LUBBOCK

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			453	602	675
SEMI-DETACHED/ROW	290	321	395	501	585
WALKUP	252	288	375	458	543
ELEVATOR 2-4 STY	263	330	407		
ELEVATOR 5+ STY	369	443	576		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: AMARILLO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			498	588	661
SEMI-DETACHED/ROW	329	364	449	542	627
WALKUP	284	328	426	504	589
ELEVATOR 2-4 STY	299	375	462		
ELEVATOR 5+ STY	419	497	630		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EL PASO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			451	577	647
SEMI-DETACHED/ROW	288	319	393	499	581
WALKUP	251	287	373	455	540
ELEVATOR 2-4 STY	262	328	405		
ELEVATOR 5+ STY	367	440	573		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MIDLAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			450	630	692
SEMI-DETACHED/ROW	288	319	392	498	580
WALKUP	250	295	372	463	539
ELEVATOR 2-4 STY	261	328	404		
ELEVATOR 5+ STY	366	439	572		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ODESSA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			429	601	659
SEMI-DETACHED/ROW	274	304	374	475	553
WALKUP	238	273	355	433	514
ELEVATOR 2-4 STY	249	312	385		
ELEVATOR 5+ STY	349	419	545		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ALBUQUERQUE NM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			522	609	680
SEMI-DETACHED/ROW	367	372	473	556	644
WALKUP	293	342	445	517	603
ELEVATOR 2-4 STY	307	385	484		
ELEVATOR 5+ STY	431	503	667		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SANTA FE NM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			537	728	799
SEMI-DETACHED/ROW	361	399	468	575	671
WALKUP	313	327	444	510	623
ELEVATOR 2-4 STY	327	410	482		
ELEVATOR 5+ STY	460	552	682		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SILVER CITY NM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			446	591	660
SEMI-DETACHED/ROW	300	334	389	478	558
WALKUP	262	272	369	424	518
ELEVATOR 2-4 STY	274	344	400		
ELEVATOR 5+ STY	384	461	567		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TAOS NM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			532	621	693
SEMI-DETACHED/ROW	361	367	463	548	640
WALKUP	287	327	440	509	594
ELEVATOR 2-4 STY	301	379	477		
ELEVATOR 5+ STY	425	509	678		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

FORT WORTH REGIONAL OFFICE

MARKET: CLOVIS NM

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			416	564	619
SEMI-DETACHED/ROW	279	311	363	446	520
WALKUP	245	253	344	395	483
ELEVATOR 2-4 STY	255	320	373		
ELEVATOR 5+ STY	358	430	528		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

HOUSTON OFFICE

MARKET: HOUSTON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			648	794	920
SEMI-DETACHED/ROW	362	430	554	653	744
WALKUP	337	405	529	624	719
ELEVATOR 2-4 STY	397	470	594		
ELEVATOR 5+ STY	548	640	740		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BEAUMONT
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		606	693	849
340	393	474	563	651
315	368	454	538	621
375	443	549		
537	576	580		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BRYAN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		562	744	863
348	407	515	641	739
328	389	495	614	720
378	444	580		
523	628	785		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LUFKIN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		536	629	729
305	356	470	555	629
285	336	445	530	613
332	391	517		
488	545	669		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EL CAMPO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			553	647	750
SEMI-DETACHED/ROW	346	381	503	585	679
WALKUP	327	371	481	565	654
ELEVATOR 2-4 STY	380	445	566		
ELEVATOR 5+ STY	463	546	675		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TEXAS CITY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		642	732	848
365	439	552	625	721
344	427	547	597	691
421	492	640		
548	640	740		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

LITTLE ROCK OFFICE

MARKET: FAYETTEVILLE
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			503	573	649
SEMI-DETACHED/ROW	335	407	472	548	614
WALKUP	327	391	460	543	601
ELEVATOR 2-4 STY	349	419	493		
ELEVATOR 5+ STY	428	500	577		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LITTLE ROCK
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		520	591	670
350	430	493	570	631
325	409	457	565	626
350	439	486		
431	504	589		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TEXARKANA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		496	590	662
331	385	467	570	625
323	374	455	565	618
347	404	490		
428	500	578		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FORT SMITH
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		477	556	627
320	361	458	530	593
300	349	422	488	546
326	380	461		
434	504	593		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JONESBORO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			482	572	642
SEMI-DETACHED/ROW	329	382	467	566	617
WALKUP	310	367	442	540	590
ELEVATOR 2-4 STY	342	398	473		
ELEVATOR 5+ STY	421	493	576		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION - 6

NEW ORLEANS OFFICE

MARKET: NEW ORLEANS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			438	489	568
SEMI-DETACHED/ROW	311	332	424	473	546
WALKUP	300	323	416	462	524
ELEVATOR 2-4 STY	310	333	426		
ELEVATOR 5+ STY	436	467	600		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: LAKE CHARLES

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			393	498	591
SEMI-DETACHED/ROW	316	318	381	486	573
WALKUP	247	295	356	457	528
ELEVATOR 2-4 STY	258	306	367		
ELEVATOR 5+ STY	410	463	560		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: LAFAYETTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			330	430	521
SEMI-DETACHED/ROW	233	256	315	418	503
WALKUP	198	247	306	407	481
ELEVATOR 2-4 STY	210	258	316		
ELEVATOR 5+ STY	356	402	487		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: BATON ROUGE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			389	488	565
SEMI-DETACHED/ROW	269	306	374	471	543
WALKUP	240	277	341	433	488
ELEVATOR 2-4 STY	250	287	351		
ELEVATOR 5+ STY	380	425	530		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: HOUMA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			404	460	540
SEMI-DETACHED/ROW	251	286	347	444	519
WALKUP	237	276	336	431	495
ELEVATOR 2-4 STY	247	286	346		
ELEVATOR 5+ STY	374	420	521		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: SHREVEPORT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			413	518	595
SEMI-DETACHED/ROW	286	318	393	497	569
WALKUP	261	291	367	465	520
ELEVATOR 2-4 STY	271	301	377		
ELEVATOR 5+ STY	413	456	572		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: ALEXANDRIA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			391	471	540
SEMI-DETACHED/ROW	297	323	373	451	517
WALKUP	275	307	360	434	489
ELEVATOR 2-4 STY	285	317	370		
ELEVATOR 5+ STY	415	467	558		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

MARKET: MONROE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			422	553	624
SEMI-DETACHED/ROW	296	335	405	535	602
WALKUP	272	323	397	524	581
ELEVATOR 2-4 STY	290	333	407		
ELEVATOR 5+ STY	433	484	601		
MANUFACTURED HOME					
EFFECTIVE DATE	100186				
TRENDED DATE	100188				

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

OKLAHOMA CITY OFFICE

MARKET: OKLAHOMA CITY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			500	598	656
SEMI-DETACHED/ROW	354	366	452	499	551
WALKUP	281	315	395	485	534
ELEVATOR 2-4 STY	299	339	431		
ELEVATOR 5+ STY	365	406	501		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ADA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			496	582	647
SEMI-DETACHED/ROW	345	400	475	580	627
WALKUP	288	327	394	472	519
ELEVATOR 2-4 STY	305	350	429		
ELEVATOR 5+ STY	365	403	497		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ARDMORE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			510	598	665
SEMI-DETACHED/ROW	353	396	488	576	644
WALKUP	293	336	405	485	533
ELEVATOR 2-4 STY	311	360	441		
ELEVATOR 5+ STY	365	403	511		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ENID

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			504	575	641
SEMI-DETACHED/ROW	343	398	482	554	621
WALKUP	275	316	389	451	494
ELEVATOR 2-4 STY	293	339	424		
ELEVATOR 5+ STY	334	406	493		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GUYMON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			462	518	590
SEMI-DETACHED/ROW	298	352	440	497	569
WALKUP	235	275	352	403	452
ELEVATOR 2-4 STY	253	299	388		
ELEVATOR 5+ STY	320	367	460		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LAWTON

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			537	607	696
SEMI-DETACHED/ROW	390	417	515	594	681
WALKUP	292	336	428	515	584
ELEVATOR 2-4 STY	310	361	465		
ELEVATOR 5+ STY	380	432	539		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SHAWNEE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			463	509	561
SEMI-DETACHED/ROW	362	378	451	496	545
WALKUP	283	314	381	415	454
ELEVATOR 2-4 STY	294	332	420		
ELEVATOR 5+ STY	341	380	456		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: STILLWATER

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			478	552	622
SEMI-DETACHED/ROW	348	395	464	537	602
WALKUP	280	323	393	456	507
ELEVATOR 2-4 STY	303	347	429		
ELEVATOR 5+ STY	340	401	471		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WOODWARD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			460	514	585
SEMI-DETACHED/ROW	296	349	438	493	564
WALKUP	233	273	352	400	448
ELEVATOR 2-4 STY	251	297	388		
ELEVATOR 5+ STY	317	364	460		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BARTLESVILLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			465	547	607
SEMI-DETACHED/ROW	339	371	452	532	592
WALKUP	270	310	389	463	509
ELEVATOR 2-4 STY	288	334	398		
ELEVATOR 5+ STY	325	359	452		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MC ALESTER

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			462	536	591
SEMI-DETACHED/ROW	332	337	449	522	576
WALKUP	236	267	371	434	481
ELEVATOR 2-4 STY	249	285	391		
ELEVATOR 5+ STY	296	332	441		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MUSKOGEE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			420	485	550
SEMI-DETACHED/ROW	326	372	405	471	534
WALKUP	250	303	337	418	453
ELEVATOR 2-4 STY	268	321	350		
ELEVATOR 5+ STY	332	367	401		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TULSA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			500	649	722
SEMI-DETACHED/ROW	270	310	410	547	595
WALKUP	264	304	405	542	590
ELEVATOR 2-4 STY	282	328	441		
ELEVATOR 5+ STY	348	395	511		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 6

SAN ANTONIO OFFICE

	MARKET: SAN ANTONIO NUMBER OF BEDROOMS					MARKET: AUSTIN NUMBER OF BEDROOMS					MARKET: CORPUS CHRISTY NUMBER OF BEDROOMS					MARKET: EAGLE PASS NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			623	729	803			699	866	948			621	710	778			568	695	775
SEMI-DETACHED/ROW	400	452	562	647	715	448	513	658	794	878	399	491	595	650	717	373	425	524	619	738
WALKUP	376	410	497	559	610	409	464	585	703	780	394	443	525	555	600	334	369	439	507	597
ELEVATOR 2-4 STY	425	479	609			475	539	698			426	514	633			409	445	557		
ELEVATOR 5+ STY	522	600	808			585	675	901			538	643	771			520	588	768		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186				
TRENDED DATE	100188					TRENDED DATE 100188					TRENDED DATE 100188					TRENDED DATE 100188				

	MARKET: HARLINGEN NUMBER OF BEDROOMS					MARKET: LAREDO NUMBER OF BEDROOMS					MARKET: VICTORIA NUMBER OF BEDROOMS					MARKET: DEL RIO NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED			563	688	789			568	695	775			620	710	778			568	695	775
SEMI-DETACHED/ROW	343	401	524	645	736	373	425	524	619	738	397	490	594	650	717	373	425	524	619	738
WALKUP	306	342	437	529	602	334	369	439	507	597	358	443	524	555	600	334	369	439	507	597
ELEVATOR 2-4 STY	364	409	549			409	445	557			426	513	632			409	445	557		
ELEVATOR 5+ STY	473	548	745			520	588	768			538	642	770			520	588	768		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186					EFFECTIVE DATE 100186				
TRENDED DATE	100188					TRENDED DATE 100188					TRENDED DATE 100188					TRENDED DATE 100188				

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

DES MOINES OFFICE

MARKET: DES MOINES

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			610	714	813
SEMI-DETACHED/ROW	421	445	535	602	689
WALKUP	341	392	456	513	569
ELEVATOR 2-4 STY	412	456	539		
ELEVATOR 5+ STY	443	495	587		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BETTENDORF

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		511	598	677
343	392	451	517	597
295	340	399	459	521
362	406	481		
395	444	529		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CEDAR RAPIDS

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		593	690	776
363	423	525	599	690
301	353	452	522	592
391	444	547		
441	491	597		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COUNCIL BLUFF

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		564	655	757
399	426	509	573	651
319	367	432	483	535
404	458	527		
439	497	588		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DUBUQUE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			554	643	727
SEMI-DETACHED/ROW	368	426	489	560	643
WALKUP	311	364	434	509	576
ELEVATOR 2-4 STY	390	439	519		
ELEVATOR 5+ STY	424	478	570		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MASON CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		571	659	740
363	415	508	578	658
312	360	436	502	573
379	427	537		
412	465	587		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SIOUX CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		599	686	766
384	433	535	604	684
323	361	438	503	585
402	448	543		
435	486	593		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DAVENPORT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		512	595	674
342	392	451	517	595
295	340	399	469	532
382	407	483		
395	445	531		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WATERLOO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			489	572	651
SEMI-DETACHED/ROW	337	387	428	494	572
WALKUP	289	335	376	446	509
ELEVATOR 2-4 STY	353	399	456		
ELEVATOR 5+ STY	385	436	504		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

KANSAS CITY REGIONAL OFFICE

MARKET: KANSAS CITY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	417	461	552	621	662
WALKUP	339	400	487	601	641
ELEVATOR 2-4 STY	373	418	551		
ELEVATOR 5+ STY	470	512	652		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JOPLIN

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
311	352	456	542	585
259	309	396	502	540
327	375	468		
426	472	601		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ST. JOSEPH

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
292	330	399	486	522
287	325	372	459	495
336	386	483		
438	487	620		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SEDALIA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
286	329	417	512	553
281	324	412	493	538
341	392	490		
444	494	629		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SPRINGFIELD

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	292	316	425	513	561
WALKUP	244	295	400	503	550
ELEVATOR 2-4 STY	291	334	418		
ELEVATOR 5+ STY	380	422	537		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TOPEKA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
327	386	469	560	596
290	331	419	507	546
356	412	511		
426	479	627		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GARDEN CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
353	384	458	554	590
301	338	411	496	532
347	401	501		
414	466	610		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PITTSBURG

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
289	327	388	491	526
245	282	361	446	482
340	395	493		
406	458	601		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SALINA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED					
SEMI-DETACHED/ROW	291	329	408	495	531
WALKUP	262	300	403	490	525
ELEVATOR 2-4 STY	347	405	501		
ELEVATOR 5+ STY	414	466	610		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: WICHITA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
309	366	464	556	586
274	320	416	506	538
354	408	511		
421	475	622		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

OMAHA OFFICE

	MARKET: OMAHA NUMBER OF BEDROOMS					MARKET: GRAND ISLAND NUMBER OF BEDROOMS					MARKET: LINCOLN NUMBER OF BEDROOMS					MARKET: NORFOLK NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	344	384	490	558	614	284	331	422	494	552	328	375	475	545	601	284	331	422	494	552
WALKUP	297	359	442	547	578	274	323	397	471	533	296	359	442	540	595	274	323	397	471	533
ELEVATOR 2-4 STY	304	403	485			302	387	478			304	405	485			302	387	478		
ELEVATOR 5+ STY	334	417	502			313	397	490			347	417	502			313	397	490		
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188				TRENDED DATE	100188			

	MARKET: NORTH PLATTE NUMBER OF BEDROOMS					MARKET: SCOTTS BLUFF NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED										
SEMI-DETACHED/ROW	286	338	425	497	543	295	344	446	512	569
WALKUP	276	333	400	474	521	284	330	438	489	545
ELEVATOR 2-4 STY	291	368	464			309	392	495		
ELEVATOR 5+ STY	312	394	485			325	412	509		
MANUFACTURED HOME										
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188			

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

ST. LOUIS OFFICE

MARKET: ST. LOUIS
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			613	734	790
SEMI-DETACHED/ROW	411	502	594	703	774
WALKUP	369	467	557	631	696
ELEVATOR 2-4 STY	401	503	602		
ELEVATOR 5+ STY	447	574	784		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CAPE GIRARDEAU
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		429	488	533
298	345	413	483	528
258	314	359	445	463
286	346	401		
315	380	536		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COLUMBIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		406	534	582
280	352	388	529	577
272	346	378	508	560
295	371	453		
329	439	606		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KIRKSVILLE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		424	527	575
288	347	403	518	570
267	338	398	513	565
291	365	461		
324	432	618		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ROLLA
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			454	539	572
SEMI-DETACHED/ROW	295	354	442	521	566
WALKUP	263	333	420	507	556
ELEVATOR 2-4 STY	286	359	453		
ELEVATOR 5+ STY	319	417	584		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 8

DENVER, COLORADO REGIONAL OFFICE

MARKET: DENVER, CO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			716	851	949
SEMI-DETACHED/ROW	457	512	604	703	804
WALKUP	370	432	476	627	717
ELEVATOR 2-4 STY	387	440	560		
ELEVATOR 5+ STY	469	481	624		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GRAND JUNCT,CO

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		548	657	700
319	366	443	555	637
291	302	406	508	583
357	408	493		
381	433	520		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: ASPEN/VAIL

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		568	680	721
350	403	486	602	672
323	366	449	556	631
382	439	511		
390	449	521		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FARGO, ND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		528	646	725
325	363	450	558	637
284	341	416	492	589
331	368	453		
338	377	463		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BISMARK, ND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			500	609	681
SEMI-DETACHED/ROW	314	345	422	521	589
WALKUP	290	314	388	479	541
ELEVATOR 2-4 STY	307	350	425		
ELEVATOR 5+ STY	314	359	435		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DICKINSON, ND

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		443	552	625
257	288	365	464	532
233	282	331	422	484
250	293	368		
257	302	378		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HELENA, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		462	545	586
295	351	435	535	575
265	321	395	507	567
327	395	464		
340	412	477		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BILLINGS, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		552	627	666
348	398	483	599	657
321	366	445	552	633
357	421	533		
370	436	559		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GREAT FALLS,MT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			489	563	605
SEMI-DETACHED/ROW	300	350	437	551	595
WALKUP	272	319	399	507	585
ELEVATOR 2-4 STY	334	390	488		
ELEVATOR 5+ STY	349	405	505		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MISSOULA, MT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		474	558	602
272	326	412	536	592
243	313	371	485	568
314	371	467		
340	399	496		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SALT LAKE CITY

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		547	688	756
358	402	483	621	679
277	377	457	529	631
346	455	513		
382	486	570		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CEDAR CITY, UT

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		487	534	580
343	370	436	488	524
267	362	416	483	504
339	408	471		
357	454	521		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: VERNAL, UT

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			489	618	719
SEMI-DETACHED/ROW	235	313	416	522	618
WALKUP	209	259	342	453	542
ELEVATOR 2-4 STY	281	338	436		
ELEVATOR 5+ STY	299	359	459		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SIOUX FALLS,SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		485	550	595
306	344	409	502	566
283	316	377	463	521
297	332	409		
304	346	419		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PIERRE, SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		491	562	611
256	319	415	516	589
250	302	374	477	545
287	330	415		
294	344	425		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: RAPID CITY, SD

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		543	660	702
337	407	481	582	657
310	375	449	543	612
344	395	481		
349	409	491		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 8

DENVER, COLORADO REGIONAL OFFICE

MARKET: CASPER, WY
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			555	680	770
SEMI-DETACHED/ROW	316	366	449	563	651
WALKUP	289	335	412	518	599
ELEVATOR 2-4 STY	353	406	497		
ELEVATOR 5+ STY	378	433	524		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CHEYENNE, WY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		560	677	762
333	377	455	563	642
308	348	421	519	592
368	417	503		
392	442	530		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CODY, WY
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		555	680	773
316	366	449	563	653
289	335	412	518	599
353	406	497		
378	433	524		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

HONOLULU OFFICE

MARKET: HONOLULU

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			849	1105	1255
SEMI-DETACHED/ROW	575	597	816	976	1101
WALKUP	501	575	665	969	1090
ELEVATOR 2-4 STY	556	646	694		
ELEVATOR 5+ STY	571	766	944		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: GUAM

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		663	760	853
534	537	616	683	805
362	428	510	580	

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KAUAI

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		865	1005	1100
660	765	854	994	1087
510	644	687	970	1062
540	676	717		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: MAUI

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		781	968	1025
645	726	765	956	1015
472	610	737	861	919
503	641	769		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: HILO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			606	760	882
SEMI-DETACHED/ROW	493	512	597	749	872
WALKUP	416	461	568	721	850
ELEVATOR 2-4 STY	449	490	601		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KONA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		745	886	977
593	650	734	874	967
482	550	641	782	859
511	579	672		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

LOS ANGELES OFFICE

MARKET: LOS ANGELES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			814	916	1032
SEMI-DETACHED/ROW	560	651	751	852	962
WALKUP	498	574	693	826	899
ELEVATOR 2-4 STY	538	619	747	856	928
ELEVATOR 5+ STY	677	768	991		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BAKERSFIELD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		582	748	840
414	461	532	692	780
354	434	508	666	730
371	454	532		
531	623	743		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SANTA BARBARA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		814	905	1025
638	643	782	871	985
455	507	656	743	806
473	531	678		
615	687	879		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: VENTURA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		768	872	971
547	567	630	769	838
487	533	597	732	782
509	555	621		
663	721	831		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PASO ROBLES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			744	830	902
SEMI-DETACHED/ROW	495	500	622	747	831
WALKUP	416	469	578	689	745
ELEVATOR 2-4 STY	436	490	602		
ELEVATOR 5+ STY	592	661	818		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: LANCASTER
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		612	705	822
475	479	578	669	782
374	451	554	640	730
400	476	578		
563	644	799		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: OXNARD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		768	873	971
551	567	630	769	838
487	533	597	732	782
509	555	621		
663	721	831		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SANTA ANA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		809	979	1067
679	685	795	962	1044
548	644	740	888	941
551	663	764		
702	828	972		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SAN DIEGO
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			677	804	889
SEMI-DETACHED/ROW	541	546	651	738	866
WALKUP	440	502	608	713	765
ELEVATOR 2-4 STY	476	550	663		
ELEVATOR 5+ STY	570	665	814		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EL CAJON
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		677	804	889
541	546	651	738	866
440	502	608	713	765
476	550	663		
570	665	814		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SANTA MARIA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		691	784	884
517	576	659	739	824
406	460	533	592	651
429	482	555		
576	644	762		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SAN BERNARDINO
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		615	742	835
479	506	604	702	818
430	485	570	575	750
460	505	591		
621	670	803		

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

PHOENIX OFFICE

MARKET: PHOENIX
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			595	716	810
SEMI-DETACHED/ROW	428	491	588	681	747
WALKUP	390	472	560	656	699
ELEVATOR 2-4 STY	412	497	591		
ELEVATOR 5+ STY	507	598	738		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: CASA GRANDE
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		500	599	683
350	396	471	564	640
338	391	464	534	592
367	413	486		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FLAGSTAFF
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		622	685	759
411	451	548	633	718
395	438	539	618	683
417	460	561		
526	573	710		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SAFFORD
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		489	559	642
337	392	466	527	603
316	373	454	520	566
345	402	477		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: TUCSON
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			542	608	691
SEMI-DETACHED/ROW	358	415	505	585	666
WALKUP	337	391	500	569	628
ELEVATOR 2-4 STY	367	421	531		
ELEVATOR 5+ STY	507	579	753		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: YUMA
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		531	593	674
382	436	520	575	650
367	417	513	567	625
396	445	535		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KINGMAN
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		509	587	671
387	420	494	556	614
362	408	488	543	603
384	440	510		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: DOUGLAS
NUMBER OF BEDROOMS

-0-	-1-	-2-	-3-	-4+
		517	571	673
349	389	486	552	636
334	377	476	537	606
356	399	503		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: NOGALES
NUMBER OF BEDROOMS

STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			502	583	682
SEMI-DETACHED/ROW	320	381	465	548	638
WALKUP	298	363	454	533	603
ELEVATOR 2-4 STY	322	390	481		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

SACRAMENTO OFFICE

MARKET: SACRAMENTO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			580	615	707
SEMI-DETACHED/ROW	478	485	554	609	669
WALKUP	369	439	501	602	674
ELEVATOR 2-4 STY	429	477	564		
ELEVATOR 5+ STY	583	644	761		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

NO MARKET CODE MATCH IN PRT 93707

MARKET: REDDING

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		538	563	646
403	457	506	557	625
338	392	454	500	629
368	427	519		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: PLACERVILLE

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		604	646	742
503	508	580	640	703
381	455	519	632	708
468	537	609		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: YREKA

NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
		540	632	679
351	437	520	602	648
303	373	463	571	633
323	393	484		

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: S. LAKE TAHOE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			651	754	821
SEMI-DETACHED/ROW	525	551	630	731	784
WALKUP	418	492	561	672	737
ELEVATOR 2-4 STY	474	537	635		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 9

SAN FRANCISCO REGIONAL OFFICE

	MARKET: SAN FRANCISCO NUMBER OF BEDROOMS					MARKET: FRESNO NUMBER OF BEDROOMS					MARKET: MODESTO NUMBER OF BEDROOMS					MARKET: SAN JOSE NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	801	831	1062	1230	1314	391	403	520	682	747	369	374	449	547	603	556	561	684	830	913
WALKUP	570	659	862	1050	1153	339	397	489	625	714	349	369	443	542	598	463	556	661	788	860
ELEVATOR 2-4 STY	627	757	968			426	506	631			451	506	634			496	576	668		
ELEVATOR 5+ STY	797	925	1172																	
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188				TRENDED DATE	100188			

	MARKET: OAKLAND NUMBER OF BEDROOMS					MARKET: MARIN NUMBER OF BEDROOMS					MARKET: EUREKA NUMBER OF BEDROOMS					MARKET: SANTA ROSA NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED																				
SEMI-DETACHED/ROW	637	642	817	935	1033	637	642	817	935	1033	340	401	545	714	808	526	531	654	808	876
WALKUP	527	613	761	862	955	527	613	761	862	955	335	393	540	707	802	451	526	649	802	862
ELEVATOR 2-4 STY	567	621	837			567	621	837			427	520	669			558	650	820		
ELEVATOR 5+ STY	774	846	1102			774	846	1102												
MANUFACTURED HOME																				
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188				TRENDED DATE	100188			

	MARKET: SANTA CRUZ NUMBER OF BEDROOMS					MARKET: RENO NUMBER OF BEDROOMS					MARKET: LAS VEGAS NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+	-0-	-1-	-2-	-3-	-4+
DETACHED															
SEMI-DETACHED/ROW	477	483	650	830	914	474	479	588	718	791	386	442	551	661	731
WALKUP	402	478	611	788	860	414	474	562	654	725	379	419	529	656	710
ELEVATOR 2-4 STY	496	612	738			533	614	771			470	533	701		
ELEVATOR 5+ STY															
MANUFACTURED HOME															
EFFECTIVE DATE	100186					EFFECTIVE DATE	100186				EFFECTIVE DATE	100186			
TRENDED DATE	100188					TRENDED DATE	100188				TRENDED DATE	100188			

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

ANCHORAGE OFFICE

MARKET: ANCHORAGE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			772	854	882
SEMI-DETACHED/ROW	639	663	739	806	833
WALKUP	422	510	620	745	781
ELEVATOR 2-4 STY	443	535	645		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: FAIRBANKS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			760	829	902
SEMI-DETACHED/ROW	558	650	730	820	885
WALKUP	400	520	701	750	860
ELEVATOR 2-4 STY	486	572	724		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: JUNEAU

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			805	917	954
SEMI-DETACHED/ROW	640	675	780	874	917
WALKUP	425	550	680	761	875
ELEVATOR 2-4 STY	525	615	750		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KETCHIKAN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			707	802	896
SEMI-DETACHED/ROW	469	573	674	767	853
WALKUP	437	519	611	698	774
ELEVATOR 2-4 STY	495	587	711		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: KENAI PENINSULAR

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			781	867	974
SEMI-DETACHED/ROW	455	594	680	766	873
WALKUP	371	440	505	565	664
ELEVATOR 2-4 STY	453	535	680		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SITKA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			610	734	874
SEMI-DETACHED/ROW	310	396	501	632	757
WALKUP	299	383	477	562	646
ELEVATOR 2-4 STY	391	472	618		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

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SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

PORTLAND OFFICE

MARKET: PORTLAND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			479	592	642
SEMI-DETACHED/ROW	306	365	434	528	578
WALKUP	294	362	420	485	564
ELEVATOR 2-4 STY	305	375	437		
ELEVATOR 5+ STY	369	438	592		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BEND

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			366	470	525
SEMI-DETACHED/ROW	273	286	331	406	456
WALKUP	208	268	311	384	425
ELEVATOR 2-4 STY	221	288	329		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COOS BAY

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			366	428	476
SEMI-DETACHED/ROW	250	283	331	407	453
WALKUP	222	269	322	393	440
ELEVATOR 2-4 STY	233	283	337		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BOISE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			451	533	575
SEMI-DETACHED/ROW	307	344	376	489	542
WALKUP	275	326	370	466	508
ELEVATOR 2-4 STY	299	336	384		
ELEVATOR 5+ STY	370	439	503		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: EUGENE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			386	486	541
SEMI-DETACHED/ROW	233	267	361	440	483
WALKUP	214	260	327	423	456
ELEVATOR 2-4 STY	227	277	346		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: IDAHO FALLS

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			342	386	430
SEMI-DETACHED/ROW	251	256	305	357	401
WALKUP	188	237	284	342	386
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: POCATELLO

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			397	501	537
SEMI-DETACHED/ROW	255	276	377	436	492
WALKUP	207	258	342	414	445
ELEVATOR 2-4 STY					
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: COEUR D'ALEN

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			384	475	524
SEMI-DETACHED/ROW	257	267	347	405	447
WALKUP	229	245	306	385	419
ELEVATOR 2-4 STY	251	260	325		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

PREPARED ON 030988

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 10

SEATTLE REGIONAL OFFICE

MARKET: SEATTLE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			604	668	758
SEMI-DETACHED/ROW	338	416	508	603	699
WALKUP	330	410	503	572	588
ELEVATOR 2-4 STY	369	441	545		
ELEVATOR 5+ STY	414	479	582		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: BELLINGHAM

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			460	545	621
SEMI-DETACHED/ROW	295	337	408	503	555
WALKUP	252	322	398	481	540
ELEVATOR 2-4 STY	269	339	416		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: OLYMPIA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			438	525	624
SEMI-DETACHED/ROW	332	351	378	473	562
WALKUP	253	323	372	448	534
ELEVATOR 2-4 STY	270	340	415		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: YAKIMA

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			431	518	607
SEMI-DETACHED/ROW	286	329	406	474	555
WALKUP	236	307	366	451	530
ELEVATOR 2-4 STY	253	330	383		
ELEVATOR 5+ STY					
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

MARKET: SPOKANE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			451	520	602
SEMI-DETACHED/ROW	277	320	399	463	534
WALKUP	243	297	367	441	509
ELEVATOR 2-4 STY	260	332	384		
ELEVATOR 5+ STY	376	426	545		
MANUFACTURED HOME					

EFFECTIVE DATE 100186
TRENDED DATE 100188

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Presidential Documents

Title 3–

The President

Notice of April 25, 1988

Continuation of Nicaraguan Emergency

On May 1, 1985, by Executive Order No. 12513, I declared a national emergency to deal with the threat to the national security and foreign policy of the United States constituted by the situation in Nicaragua. On April 21, 1987, I announced the continuation of that emergency beyond May 1, 1987. Because the actions and policies of the Government of Nicaragua continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 1, 1985, and subsequently extended, must continue in effect beyond May 1, 1988. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Nicaragua. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
April 25, 1988.

[FR Doc. 88-9433
Filed 4-25-88; 3:37 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 81
Wednesday, April 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Deputy Secretary et al.

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect the designee of the Secretary under section 212(e) of the Immigration and Nationality Act.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250 (202) 447–6035.

SUPPLEMENTARY INFORMATION: Certain classes of persons who are admitted to this country as participants in educational exchange programs are required by section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) to have resided in the country of their nationality for two years following departure from the U.S. before they are eligible to apply for an immigrant visa, for permanent residence, or for a nonimmigrant visa. The subsection authorizes an interested agency to request a waiver of the two year residency requirement in certain circumstances. The head of an agency or his designee is required by 22 CFR 514.31(c) to attest that from the agency's point of view (1) the granting of the waiver would be in the public interest and (2) the exchange visitor's compliance with the two year home-country physical presence requirement would be clearly detrimental to a program or activity of official interest to the agency. In those circumstances, and with the favorable recommendation of the Director of the United States Information Agency, the Attorney General may grant such waivers. This document reflects that the Secretary of Agriculture's designee is the Assistant Secretary for Science and Education.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations, is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by adding a new paragraph (f) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(f) *Related to immigration.* Serve as the designee of the Secretary pursuant to section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) and 22 CFR 514.31(c).

Date: April 21, 1988.
Richard E. Lyng,
Secretary of Agriculture.
[FR Doc. 88–9227 Filed 4–26–88, 8:45 am]
BILLING CODE 3410–01–M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 27; Docket No. 5429S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Wednesday, November 25, 1987 at 52 FR 45156. The interim rule amended the General Crop Insurance Regulations (7 CFR Part 401), by adding a new § 401.135, to be known as the Malting Barley Option, which provides the provisions of crop insurance protection on malting barley as an option to the Barley Endorsement to the general crop insurance policy.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or

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the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any signficant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 25, 1987, FCIC published an interim rule, effective upon publication in the **Federal Register** at 52 FR 45156, amending the General Crop Insurance Regulations (7 CFR Part 401), by adding a new section § 401.135, to be known as the Malting Barley Option, which provides the provisions of crop insurance protection on malting barley as an option to the Barley Endorsement (7 CFR 401.103).

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible. Three comments were received, all of which addressed the issue of unit definition under the Malting Barley Option.

The commenters expressed dissatisfaction with the determination by FCIC to include all malting barley as one unit for insurance purposes unless it was agreed in writing by FCIC to allow separate units. This determination was made for the 1987 crop year and was continued for the 1988 crop year in the published interim rule.

The concept of additional unit division beyond the natural unit was implemented in some areas by FCIC on Wheat, Barley, Oats, Flax, Rye, Corn, Grain Sorghum, Sunflowers, Safflowers, and Soybeans. FCIC actuarial studies indicate that unit division results in an increased risk and higher indemnities which mandates a corresponding increase in premium.

Unit division was not allowed in Malting Barley insurance in the 1987 crop year because of administrative problems associated with various determinations.

In 1988, unit division was allowed with an additional premium charge for unit division beyond the natural unit.

The interim rule became effective for the 1988 crop year on December 31, 1987. On further review of the interim rule based upon the comments received, FCIC has determined that it is unable to effect changes in the unit determination for the 1988 crop year because contracts have been signed and malting barley crop insurance guarantees have been determined based upon those contract prices.

FCIC is considering the problem of unit division for the 1989 crop year.

With the considerations outlined above, the interim rule published at 52 FR 54156 is hereby adopted as final.

List of Subjects in 7 CFR Part 401

Crop insurance, General crop insurance regulations.

Final Rule

The **Federal Register** on Wednesday, November 25, 1987, at 52 FR 45156, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on March 31, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–9040 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 401

[Amendment No. 16; Doc. No. 5540S]

General Crop Insurance Regulations; Fig Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.125, to be known as the Fig Endorsement. The intended effect of this rule is to provide the regulations for crop insurance protection on figs in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as January 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.125, the Fig Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring figs.

On Wednesday, March 2, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 6552, to provide the regulations for crop insurance protection on figs in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comment, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 53 FR 6552 is herewith adopted as final.

Inasmuch as this is a new program offering by FCIC and potential producer-insureds need as much time as possible to understand the program, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

General crop insurance Regulations, Fig endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.125 *Fig Endorsement*, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.125 Fig Endorsement.

The provisions of the Fig Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation Fig Endorsement

1. Insured crop.

a. The crop insured will be commercially grown dried figs.

b. In addition to the figs not insurable under section 2 of the general crop insurance policy, we do not insure any figs:

(1) Which are not irrigated;

(2) Which have not reached the seventh growing season after being set out;

(3) Grown for purposes other than for dried figs;

(4) Grown with another crop;

(5) Unless acceptable production records for at least the previous crop year are provided;

(6) With less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such acreage;

(7) Which we inspect and consider not acceptable;

(8) For the crop year the application is filed unless such acreage has been inspected and accepted by us; or

(9) Acquired for the crop year unless such acreage has been inspected and accepted by us.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; and

(6) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

3. Report of acreage, share, type and practice (Acreage Report).

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. You must submit the acreage report described in section 3 of the general crop insurance policy by March 1.

c. By applying for fig crop insurance, you authorize us to determine or verify your production and acreage from records maintained by the California Fig Advisory Board or the fig packer.

4. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

5. Insurance period.

In lieu of the provisions of section 7 of the general crop insurance policy insurance attaches on each unit on March 1 and insurance ends at the earliest of:

(1) Total destruction of the fig crop;

(2) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(3) Harvest of the figs;

(4) Final adjustment of a loss; or

(5) October 31.

6. Unit division.

a. In addition to the provisions in subsection 17.q. of the general crop insurance policy, a unit will be all insurable acreage of an insurable type of fig in the county.

b. Fig acreage that would otherwise be one unit may be divided into more than one unit if you agree to pay additional premium as provided for by the acturial table and if for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year, and production reports based on those records are filed to obtain an insurance guarantee; and

(2) The acreage of insured figs is located on noncontiguous land. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of figs to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production (pounds) to be counted for a unit will include all harvested and appraised marketable figs, as defined by the Marketing Order for Dried Figs, as amended.

(1) All substandard production must be inspected by us and we must give written consent to you prior to delivery to the substandard pool. If the substandard production is not inspected or we do not give written consent prior to the delivery to the substandard pool, all production will be counted as marketable production.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of figs becomes general in the county;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates.

The cancellation and termination dates are February 28.

9. Contract changes.

The date on which contract changes will be available in your service office is October 31 preceding the cancellation date.

10. Meaning of terms.

a. "*Harvest*" means the picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

b. "*Non-contiguous land*" means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "*Substandard production*" means production that does not meet minimum grade standards and is defined as "substandard" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

Done in Washington, DC, on March 30, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–9041 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Parts 401 and 437

[Docket No. 5553S]

Bean, Corn, Grain Sorghum, Soybean, Sweet Corn, and Tomato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing dates.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for acccepting applications for bean, corn, grain sorghum, soybean, sweet corn, and tomato crops insured by FCIC in Delaware having a sales closing date of April 15, effective for the 1988 crop year only. This action is necessary because the State of Delaware has enacted a resolution to match the FCIC subsidy for spring-planted acreage. The intended effect of this action is to: (1) Provide additional time for producers to consider crop insurance in light of this additional premium subsidy by the State of Delaware; (2) extend the sales of crop insurance on such crops with an April 15, 1988, sales closing date to April 30, 1988; (3) advise all interested parties of the extension of the sales closing date; and, (4) comply with the provisions of the bean, corn, grain sorghum, soybean, sweet corn, and tomato crop insurance programs with respect to the Manager's authority to extend sales closing dates.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The sales closing date for accepting applications for crop insurance on bean, corn, grain sorghum, soybean, and tomato crop insurance (under the provisions contained in 7 CFR 401.108(b)), and on sweet corn (under the provisions contained in 7 CFR 437.7(b)) in Delaware is April 15, 1988.

Under the provisions contained in 7 CFR 401 and 437, the sales closing date for accepting applications these crops may be extended by placing the extended date on file in the service office and by publishing a notice in the Federal Register upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

Because of the circumstances outlined above, FCIC is extendig the sales closing dates for such crops in Delaware from April 15, 1988, to through the close of business on April 30, 1988, effective for the 1988 crop year only.

Accordingly, pursuant to the authority contained in 7 CFR Parts 401 and 437, the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for Bean, Corn, Grain Sorghum, Soybean, Sweet Corn, and Tomato Crop Insurance in Delaware is hereby extended through the close of business on April 30, 1988, effective for the 1988 crop year only.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on April 20, 1988

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–9169 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–08–M

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain; General Provisions

AGENCY: Federal Grain Inspection Service.

ACTION: Emergency final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is delaying the implementation of barley protein testing as described in the Federal Register on June 30, 1987, (52 FR 24414). The June 30 publication stated that near-infrared reflectance (NIR) determination of barley protein content (on a moisture-free basis) as an official criterion under the U.S. Grain Standards Act, as amended, would be implemented beginning May 1, 1988. Since the publication, the Service has determined, based on test data, that additional time is needed to verify the NIR calibration equation. FGIS is deleting the provision for barley protein testing in the grain standards and is announcing that official barley protein testing under the U.S. Grain Standards Act will be delayed indefinitely.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., Resources Management Division, USDA, FGIS, P.O. Box 96454, Washington, DC 20090–6465, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This emergency final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this emergency final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, the Administrator has determined that it is in the public interest to publish this action as an emergency final rule effective upon publication because of the need to inform, at the earliest possible date, grain elevator operators and other affected parties that barley protein testing under the U.S. Grain Standards Act, as amended, will not become available May 1, 1988, for reasons set forth in this preamble. The Service will continue to work on development of the necessary NIR calibration equation so barley protein testing under the Act can be made available. Also, for these reasons under the administrative procedure provisions in 5 U.S.C. 553, it is found that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. Accordingly, this action is being issued as an emergency final rule to delete the provision for barley protein testing and the implementation date of that program in § 810.106.

Near-Infrared Reflectance Protein and Moisture Measurement for Barley

The Service published in the Federal Register on June 30, 1987, (52 FR 24414) that NIR determination of barley protein

content (on a moisture-free basis) as an official criterion under the United States Grain Standards Act would be implemented beginning May 1, 1988. Since publication of that final rule, the Service developed a NIR calibration equation for predicting protein levels in Two-rowed and Six-rowed barley. Four collaborative tests involving 10 laboratories were conducted using this equation. The test results were circulated to various industry groups for review and comment. Comments received on the test results recommended against implementing barley protein testing until additional NIR calibration verification could be obtained. The Service did further testing on samples obtained during normal inspection work and determined that the NIR calibration equation needed refining. The FGIS Advisory Committee also considered this topic during a January 22, 1988, meeting in Houston, Texas. The committee unanimously supported delaying implementation until further calibration work is completed. Therefore, the Service is (1) delaying implementation of barley protein testing and (2) continuing development of the calibration equation.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

2. Section 810.106 is amended by revising paragraph (a) as follows:

§ 810.106 Grade designations.

(a) *Grade designations for grain.* The grade designations include in the following order:

(1) The letters "U.S.";

(2) The abbreviation "No." and the number of the grade or the words "Sample grade";

(3) When applicable, the subclass;

(4) The class or kind of grain;

(5) When applicable, the special grade(s) except in the case of bright, extra heavy, and heavy oats or plumb rye, the special grades, "bright", "extra heavy", "heavy" and "plump" will precede the word "oats" or "rye" as applicable; and

(6) When applicable, the word "dockage" together with the percentage thereof.

When applicable, the remarks section of the certificate will include in the order of predominance; in the case of a mixed class, the name and approximate percentage of the classes; in the case of sunflower seed, the percentage of admixture; in the case of mixed grain, the grains present in excess of 10.0 percent of the mixture and when applicable, the words *Other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in a quantity less than 10.0 percent; in the case of barley, if requested, the word "plump" with the percentage range thereof; in the case of wheat, if requested, the percentage of protein content.

* * * * *

Date April 19, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–9228 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 043CE, Special Conditions No. 23–ACE–36]

Special Conditions; British Aerospace Jetstream Series 3200, Model 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued to British Aerospace (BAe) to become part of the type certification basis for new BAe Jetstream Series 3200, Model 3201 Airplanes. The airplane will have novel or unusual design features associated with turbopropeller engine installations incorporating automatic power reserve (APR) systems and alcohol-water injection (AWI) systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent of that established in the regulations applicable to the Jetstream Model 3201 Airplane.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987, the British Civil Aviation Authority (CAA), on behalf of British Aerospace Scottish Division, made application for computer category type certification of its Jetstream Series 3200, Model 3201 Airplanes. BAe plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. The features include turbopropeller engines with automatic power reserve (APR) systems and alcohol-water injection (AWI) systems installed.

Special conditions may be issued, and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features. Special conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2); and become part of the type certification basis in accordance with § 21.17(a)(2).

Type Certification Basis

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. The certification basis for the BAe Jetstream Series 3200, Model 3201 Airplane is as follows: Federal Aviation Regulations § 21.29 and Part 23, effective February 1, 1965, including amendments 23–1 through 23–34; exemptions as appropriate; SFAR No. 27, effective February 1, 1974, including amendments 27–1 through 27–6; Part 36, effective December 1, 1969, including amendments 36–1 through 36–12; and these special conditions.

Discussion of Comments

The FAA received one set of comments in response to Notice 23–ACE–36 published in the Federal Register on January 26, 1988. The closing date for comments was February 25, 1988. The comments were from the applicant, BAe.

The commenter requests that a notation on the APR special condition diagram be altered by replacing the phrase, "Part 135, Appendix A, paragraph 6(b)(2)" with the phrase "FAR

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23.67(e)(1)(ii)." The FAA agrees. The old phrase was a holdover from a previous APR special condition on an SFAR 41 airplane and does not fit current certification bases for commuter category airplanes.

The commenter submitted comments to the AWI special conditions in the format of a BAe report. The report follows the Part 23 numbering system and reproduces the text in full, except where the proposed special conditions and BAe's proposed alterations to those special conditions are incorporated.

The FAA agrees with most of the comments, as discussed below; however, the Federal Register regulatory format used for the proposal will be retained for these final special conditions. The applicant may rewrite/rearrange the special conditions any way he wishes for his own purposes, as long as the requirements are satisfied.

The commenter requests rewording § 23.953(a) to accommodate the AWI system and to delete § 23.953(b). The FAA acknowledges that applicants may restate rules within the applicant's report system as he sees fit; however, the special condition § 23.953(a) is not altered. The FAA agrees with the deletion of § 23.953(b). This deletion was agreed to during coordination between the applicant and the FAA.

The commenter requests adding existing § 23.955(f) (1) and (2) and adding a new (f)(3) to replace proposed § 23.955(c)(1). The FAA agrees and has incorporated the changes.

The commenter requests deleting § 23.961 fuel system hot weather operation. The FAA does not agree. It is important that the AWI system operate as designed, especially during high/hot operations. The FAA Aircraft Certification Office will determine if the system is conducive to vapor formation and requires testing.

The commenter requests reducing the total usable capacity of the AWI tanks, as specified in proposed § 23.963(d). The FAA agrees and has deleted § 23.963(d). The applicant may substitute a lesser minimum quantity, appropriate to planned operations where the flightcrew members always know what quantity is available to them.

The commenter requests adding § 23.963(f), as appropriate to a commuter category airplane. The FAA agrees and added § 23.963(f) to the special condition.

The commenter requests the deletion of the word "individually" in § 23.995(a), because the BAe AWI system controls flow to both engines through one valve which cuts off flow to both engines simultaneously. The FAA agrees that, for this system, individual control is not necessary and deletes the word from the special condition.

The commenter requests the deletion of § 23.995(b) (1) and (2). The FAA agrees. The requirements are not necessary to the AWI system; however, the lead sentence of paragraph (b) will be retained to prevent shutoff valves being installed in the engine compartment.

The commenter requests revising the lead paragraph of § 23.997 and § 23.997 (a), (b) and (d), as follows: "There must be an AWI fluid strainer or filter to prevent the passage of any contamination that could restrict the flow of AWI fluid or damage any AWI system or engine component. This strainer or filter must (a) Be accessible for cleaning and must incorporate a screen or element which is easily removable; (b) Have a sediment trap; * * * (d) Have the capacity (with respect to operating limitations established for the engine and AWI system) to ensure that engine system functioning is not impaired, with the AWI fluid contaminated to a degree (with respect to particular size and density) that is greater than that established for proper operation of the AWI system." The commenter also requests deletion of proposed paragraph (e). The FAA agrees to the requested changes. It is understood that the AWI fluid strainer is located in the filler port of the fluid tank. It removes sediment during filling, it is easily removable for cleaning, and does not need draining capability.

The commenter requests deleting the drain requirement of § 23.999(b)(3)(i). The FAA does not agree. All flammable fluid tanks must have drain valves that are readily accessible and which can be easily opened and closed.

The petitioner requests the deletion of § 23.777 (f) and (g), referenced in § 23.1141(a). The FAA agrees. Sections 23.777 (d), (e), (f), and (g) are not required for AWI systems.

The petitioner requests revising § 23.1141(g)(2) (i) and (ii) to require a means to indicate to the flightcrew when the power-assisted valve is permitting the flow of AWI fluid to the engines and when the valve is preventing the flow of AWI fluid to the engines. The FAA does not agree to the change. The rule is adequate; perhaps the commenter is interpreting the rule.

The petitioner designates the new proposed requirement added to § 23.1143 as paragraph (g). The FAA agrees and has incorporated the change in these final special conditions.

The petitioner requests revising § 23.1189(a) to read: "For each multiengine airplane subject to § 23.67(e), the following apply:" The FAA agrees and has incorporated the change for this commuter category airplane.

The petitioner requests deleting the valve position indication requirement from § 23.1189(c). The FAA had agreed to this change and inadvertently omitted it from the proposal. The change is incorporated in the final special conditions.

For § 23.1137(b), the petitioner requests adding an alternative to the AWI fluid quantity indicator requirement which allows the tank to be marked in fractions of the total usable capacity. The FAA agrees; however the applicant must assure that the crewmembers are informed on what each marking means.

The petitioner requests an alternative to the AWI fluid filler opening marking of proposed special condition 2(c) to allow the opening to be marked with the type of AWI fluid and to relate this special condition to the markings requirements of § 23.1557(c). The FAA agrees and has incorporated the changes.

Federalism Implications

The regulations set forth in these special conditions are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et.seq.), which statute is constituted to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that the regulations proposed in this notice would not have federalism implications warranting the preparation of a federalism assessment.

Conclusion

This action affects only the British Aerospace Series 3200, Model 3201 Airplanes. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as part of the type certification basis for the British Aerospace Jetstream Series 3200, Model 3201 Airplanes and future changes to those airplanes:

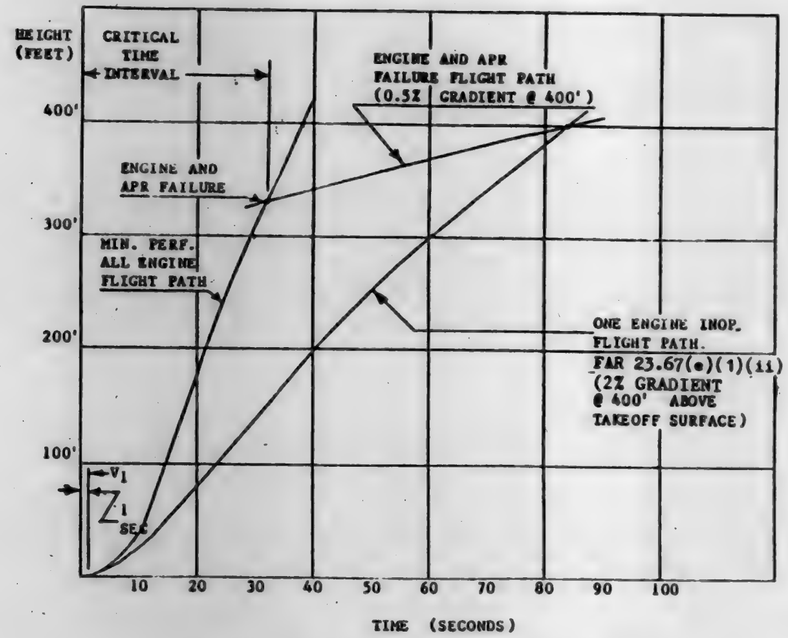
1. Automatic Power Reserve (APR) System

(a) *General.* All references in this special condition to specific sections of Part 23 are to those sections in effect as defined in the certification basis for Jetstream Model 3201 Airplane.

(b) *Definitions*—(1) *Automatic Power Reserve System.* An automatic power reserve (APR) system is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve the scheduled power increase and furnish cockpit information on system operation.

(2) *Selected Takeoff Power.* Notwithstanding the definition of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under this special condition.

(3) *Critical Time Interval.* The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all-engine flight path" line. The "engine and APR failure flight path" line intersects the "one-engine-inoperative flight path" line at 400 feet above the takeoff surface. The "engine and APR failure flight path" is based on the airplane's performance and must have a positive gradient of at least 0.5 percent at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:



(For Illustration only - typical for 120K climb speed)

(c) *Reliability and Performance Requirements.* With the APR system and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in this special condition, must be met without requiring any action by the crew to increase power. In addition:

(1) It must be shown that, during the critical time interval, an APR failure which increases or does not affect power on either engine will not create a hazard to the airplane, or it must be shown that such failures are improbable.

(2) It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine, or it must be shown that such failures are extremely improbable.

(3) It must be shown that, during the critical time interval, there will be no failure of the APR system in combination with an engine failure, or it

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must be shown that such failures are extremely improbable.

(4) All applicable performance requirements must be met with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

(d) *Power Setting.* The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

(1) The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

(2) That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

(3) That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

(e) *Powerplant Controls—General.* (1) In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR, including associated systems, may cause the failure of any powerplant function necessary for safety.

(2) The APR must be designed to:

(i) Provide a means to verify to the flightcrew before takeoff that the APR is in a condition to perform its intended function;

(ii) Apply power on the operating engine, following an engine failure during takeoff, to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(iii) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew shall not deactivate the APR;

(iv) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation; and

(v) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph (e)(3) below.

(3) For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

(f) *Powerplant Instruments.* In addition to the requirements of § 23.1305—

(1) A means must be provided to indicate when the APR system is in the armed or ready condition.

(2) If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

(3) Following an engine failure at V_1, or above, there must be means for the crew to readily and quickly verify that the APR system has operated satisfactorily.

2. Alcohol-Water Injection (AWI) System

(a) Each AWI system must meet the applicable requirements for the design of a fuel system, as specified in § 23.951 (a) and (b), § 23.953(a), § 23.954, § 23.955 (a) and (f), § 23.959, § 23.961, § 23.963 (a), (e), and (f), § 23.965 (a)(1), § 23.967 (a)(1) and (2), (b), (c), (d), and (e), § 23.969, § 23.971, § 23.973 (a), (b), and (c), § 23.975 (a)(1), (2), (3), (5), (6), and (7), § 23.977(a)(2), (b), (c), and (d), § 23.991, § 23.993, § 23.994, § 23.995, § 23.997(a), (b), (c), and (d), § 23.999, § 23.1141, § 23.1143 (a), (e), and (f), § 23.1189 (a) and (c), § 23.1337 (a), (b) (1), (2), (3), and (4), and (c); and § 23.1557(c)(1) of the Federal Aviation Regulations Part 23, dated February 1, 1965, as amended through amendment 23–24, except as set forth in §§ 2(b) of these special conditions.

(b) For AWI systems, replace the word "fuel" with the words "AWI fluid" in all Part 23 sections listed in Special Condition No. 2(a), as appropriate. In addition, certain Part 23 requirements listed in Special Condition No. 2(a) are reworded for AWI systems, as follows:

(1) In § 23.955(a), General, replace "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with "The ability of the AWI system to provide AWI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *"

(2) In § 23.955(f), for AWI systems, add a new paragraph (f)(3), "This flow rate is required for each primary pump and each alternate pump, when the pump is supplied with normal voltage."

(3) In § 23.967(d), the first sentence is not applicable to AWI systems. In the second sentence, the phrase "of a single-engine airplane" is not applicable for AWI systems.

(4) In § 23.971, for AWI systems, replace paragraph (a) with "(a) Each AWI fluid tank must be drainable in the normal ground attitude." Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(5) In § 23.991, replace paragraph (a) with "(a) Primary Pumps. (1) The pump which supplies AWI fluid to the engines during normal (nonfailure) operation of the system is a primary pump. (2) It must be possible to bypass or flow AWI fluid through each primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of AWI fluid to the engines in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate."

(6) In § 23.995(a), for AWI systems, delete the word "individually".

(7) In § 23.995(b), for AWI systems, delete the second sentence and paragraphs (1) and (2).

(8) In § 23.997, for AWI systems, replace the lead-in paragraph and paragraph (a) and (b) with the following: "There must be an AWI fluid strainer or filter to prevent the passage of any contamination that could restrict the flow of AWI fluid or damage any AWI system or engine component. This strainer or filter must—

(a) Be accessible for cleaning and must incorporate a screen or element which is easily removable;

(b) Have a sediment trap; and replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the engine and the AWI system) to ensure that engine system functioning is not impaired, with the AWI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the AWI system."

(9) In § 23.999, paragraph (b)(1) is not applicable to AWI systems.

(10) In § 23.1141(a), paragraphs (d), (e), (f), and (g) of § 23.777, which are incorporated by reference, are not applicable to AWI systems.

(11) In § 23.1143, as applies to the control and shutoff of the AWI system, add (g), "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the AWI system."

(12) In § 23.1189, for AWI systems, replace the first sentence of paragraph (a) with "(a) For each multiengine airplane subject to § 23.67(e), the following apply:" Replace paragraph (c) with "(c) Power operated valves must be designed so that the valve will not move from the selected position under vibration conditions likely to exist at the valve location."

(13) In § 23.1337(b), for AWI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of AWI fluid in each tank. A dipstick, sight gauge, or an indicator may be used, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, or alternatively calibrated in fractions of the total usable capacity of the tank. In addition * * *"

(14) In § 23.1557(c), for AWI systems, replace (1)(i) and (iii) with "(1) AWI fluid filler openings must be conspicuously marked at or near the filler cover with—

(i) Either the type of AWI fluid or the words "AWI fluid", and the capacity of the tank in either pounds or gallons, consistent with other AWI system markings.

(iii) For turbine-engine-powered airplanes, the permissible AWI fluid designations.

Issued in Kansas City, Missouri on April 12, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–9171 Filed 4–26–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 88–AEA–3]

Change Controlling Agency for Restricted Areas R–6608A and R–6608B; Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency for Restricted Areas R–6608A and R–6608B Quantico, VA, to Dulles International Tower. The airspace encompassing R–6608A and R–6608B is wholly contained within the airspace delegated by Washington Air Route Traffic Control Center (ARTCC) to Dulles International Tower.

EFFECTIVE DATE: 0901 u.t.c., June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the controlling agency for R–6608A and R–6608B from Washington ARTCC to Dulles International Tower. Effective March 10, 1988, with the final implementation of the Expanded East Coast Plan, the airspace described as R–6608A and R–6608B is wholly contained within the airspace delegated by Washington ARTCC to Dulles International Tower. Because, this amendment only updates the controlling agency and there is no change to the times of use or dimensions of these areas, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.66 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation Safety, Restricted Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.66 [Amended]

2. Section 73.66 is amended as follows:

R–6608A Quantico, VA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Dulles International Tower.

R–6608B Quantico, VA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Dulles International Tower.

Issued in Washington, DC, on April 15, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–9172 Filed 4–26–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 88–ANM–9]

Change To Controlling Agencies for Restricted Areas; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the controlling agency names for Restricted Areas R–6703A, B, C, and D Fort Lewis, WA; R–6701 Admiralty Inlet, WA; and R–6713 Whidbey Island, WA, to reflect the controlling agency's proper title.

EFFECTIVE DATE: 0901 u.t.c., June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations amends the controlling agency names for Restricted Areas R–6703A, B, C, and D Fort Lewis, WA; R–6701 Admiralty Inlet, WA; and R–6713 Whidbey Island, WA, to reflect the controlling agency's proper title. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.67 of Part 73 of the Federal Aviation Regulations was

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republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.67 [Amended]

2. Section 73.67 is amended as follows:

R-6703A Fort Lewis, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Seattle-Tacoma Approach Control, WA.

R-6703B Fort Lewis, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Seattle-Tacoma Approach Control, WA.

R-6703C Fort Lewis, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Seattle-Tacoma Approach Control, WA.

R-6703D Fort Lewis, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. FAA, Seattle-Tacoma Approach Control, WA.

R-6701 Admiralty Inlet, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. Whidbey Island NAS Approach Control, WA.

R-6713 Whidbey Island, WA [Amended]

By removing the present Controlling agency and substituting the following: Controlling agency. Whidbey Island NAS Approach Control, WA.

Issued in Washington, DC, on April 21, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-9173 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 270 and 274

[Release Nos. 33-6770; IC-16376]

Advertising by Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; delay of effective date of certain provisions.

SUMMARY: On January 28, 1988, the Commission adopted new rules and rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 affecting the advertising of mutual funds and certain insurance company separate accounts effective May 1, 1988. The Commission is now delaying until July 1, 1988, the effectiveness of those portions of the rules and forms that prescribe a uniformly computed yield for use in advertisements and sales literature, and is requiring that certain advertisements and sales literature quoting yield contain additional disclosures from May 1 to June 30, 1988.

EFFECTIVE DATE: The effective date of the following provisions is delayed until July 1, 1988: (17 CFR 230.482(e)(1)(i) and (e)(2)(i); (17 CFR 270.34b-1(b) and (c)); Item 22(b)(ii) of Form N-1A (17 CFR 274.11A); Item 25(b)(ii) of Form N-3 (17 CFR 274.11b); and Item 21(b)(ii) of Form N-4 (17 CFR 274.11c). Consequently, from May 1, 1988 through June 30, 1988 certain advertisements and sales literature must contain specific disclosures described below.

FOR FURTHER INFORMATION CONTACT: Robert E. Plaze, Special Counsel, or Dorothy M. Donohue, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission is delaying the effectivcness of rules 482(e)(1)(i) and (e)(2)(i) (17 CFR 230.482(e)(1)(i) and (e)(2)(i) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("1933 Act"), rules 34b-1(b) and (c) (17 CFR 270.34b-1(b) and (c)) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act"), Item 22(b)(ii) of Form N-1A (17 CFR 274.11A), Item 25(b)(ii) of Form N-3 (17 CFR 274.11b), and Item 21(b)(ii) of Form N-4 (17 CFR 274.11c), all under both the 1933 and 1940 Acts; and is requiring certain disclosures under rules 482 and 34b-1.

Discussion

In Investment Company Act Release No. 16245,[1] the Commission adopted new rules and rule and form amendments requiring those open-end management investment companies ("funds") that advertise performance to include, under certain circumstances, uniformly computed yield and total return in their advertisements [2] and sales literature. The release set May 1, 1988, as the date the rules and amendments would go into effect.

Since adoption of the rules and amendments, the Commission's staff has been contacted by a number of funds and their trade association, the Investment Company Institute ("ICI"), stating that compliance by May 1 would create hardships and result in substantial administrative costs that would be passed on to investors. Some funds have indicated that they would be required to cease advertising yields for a period of time. The ICI also has submitted a survey of sixteen fund groups in support of its request for additional time. Requests to delay the effectiveness of the rules have, in each case, been limited to the yield computation; no request for delay has been made with respect to other provisions of the new rules and amendments.

To provide additional time to allow funds to revise their accounting and computer systems to compute yield and to prepare advertisements containing yield, the Commission has decided to delay effectiveness of those portions of the new rules that prescribe the method of computing yield and tax-equivalent yield. Therefore, Investment Company Act Release No. 16245 is revised to delay until July 1, 1988, the effective date of those provisions of rules 482 and 34b-1 and Forms N-1A, N-3, and N-4 that provide for a uniformly computed yield.[3]

[1] (Feb. 2, 1988) (53 FR 3868 (Feb. 10, 1988)).

[2] The rules also affect insurance company separate accounts issuing variable anuity contracts.

[3] The provisions affected are set out *supra*.

The effect of this delay is to permit funds to continue to quote non-standardized yields [4] in their advertisements [5] if they are accompanied by the required uniformly computed total return information and otherwise meet the requirements of the rules as adopted or amended effective May 1, 1988. Funds are free, of course, to begin using the Commission-prescribed yield formulas on May 1 and are encouraged to do so. Funds that wish to take advantage of the delay may amend their registration statements to reflect the new yield calculation in addition to their current yield disclosure so that no new amendments are necessary on July 1, 1988, or may wait until July 1 to amend again. Funds that have already amended their registration statements to reflect use of the standardized method of calculating yield will have to file a prospectus supplement under Rule 497 of the Securities Act to their prospectus in order to continue to use their previous method of calculating yield.[6]

In Connection with this delay, the Commission is requiring under rules 482 and 34b-1 that any fund advertisements or sales literature containing a quotation of yield between May 1, 1988, and June 30, 1988, that is not computed in accordance with Commission rules disclose that fact and inform investors that the rules will become effective on July 1, 1988.[7]

[4] Rule 482(e)(1) permits quotation of a "current yield" but will not, until July 1, specify that the current yield must be computed in the manner prescribed by Forms N-1A, N-3, or N-4. The reference to "current yield" without any reference to a method of computation will not preclude any fund from advertising any performance quotation relating to the income production of the fund that is not misleading, including quotation of a distribution rate, if it is accompanied by appropriate disclosure. As the Commission stated in Release 16245, a distribution rate should be accompanied, at a minimum, by disclosure explaining (i) the components of the distribution rate that differ from yield, (ii) where components consist of capital gains, they are nonrecurring, and (iii) where a component consists of option premiums, what potential effect on overall performance option writing might have.

[5] In addition, it will permit investment companies to quote non-standardized yields in their sales literature not accompanied by the uniformly computed yield figure, if accompanied by the uniformly computed one, five, and ten year total return information.

[6] An exhibit required by new Item 24(b)(18) is not required to be filed to reinstate use of a fund's yield formula.

[7] Insurance company separate accounts issuing variable annuity contracts must also make this disclosure in advertisements and sales literature quoting yield. Of course, in the case of sales literature, this disclosure would not have to be made if, in compliance with a new rule 34b-1, the sales literature contained a quotation of yield computed in the manner prescribed by Commission rules in addition to a yield computed in a different, non-standardized manner.

Procedural Matters

The Commission believes it is appropriate in light of the impending effective date of the new rules and rule and form amendments to delay their effectiveness immediately conditioned on the additional disclosure. The Commission, pursuant to section 4(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), finds that prior notice and comment on this action is impracticable and therefore contrary to the public interest because the new rules and rule and form amendments are scheduled to go into effect on May 1, 1988. In addition, the Commission, pursuant to section 4(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)) finds that delay of this action is not required because it relieves a restriction.[8]

By the Commission.

April 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9412 Filed 4-26-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System

April 5, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to require that after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63, certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157, blanket certificate applications under Subpart G of Part 284, and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on electronic media. Also, on or after September 30, 1988, the tariff sheets filed pursuant to § 154.301(a) must be filed on electronic media. On or after September 30, 1988, any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e) must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on electronic media. Additionally, after December 30, 1988, FERC Form Nos. 2, 2A, 14 and 15 must be submitted on electronic media. Natural gas companies will be required to continue filing the traditional required number of copies. The Commission will consider reducing the required number of copies to be filed with the electronic data submission in a year. These amended regulations provide a waiver for natural gas companies that do not have any electronic capability to comply with this electronic data submission requirement.

The Commission is also severing FERC Form No. 591 from this rulemaking docket and establishing a separate docket for that form. This will provide the Commission additional time to address concerns raised by the comments to the proposed FERC Form No. 591.

The Commission is issuing separately a notice and schedule for a series of technical conferences on FERC Form No. 591. The Commission is also issuing separately a notice and schedule for implementation conferences to facilitate the transition to electronic data submission.

Finally, the Commission is revising its confidentiality procedures in § 388.112 to provide procedures for protecting confidential data filed on electronic media.

The Commission believes these procedures will reduce the burden on natural gas companies by requiring them to file fewer paper copies of certain rate filings, certificate and abandonment applications and forms. Additionally, the Commission believes submission of this data electronically will expedite the processing of rate filings and certificate applications.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: For further technical information contact: John E. Moriarty, Office of Producer and Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8824.

For further administrative and policy information contact: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8844.

For further legal information contact: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory

[8] The amendments, by their own terms, will expire on June 30, 1988.

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Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Order No. 493

Issued April 5, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to require that after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63, certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157, blanket certificate applications under Subpart G of Part 284, and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on electronic media. Also, on or after September 30, 1988, the tariff sheets filed pursuant to § 154.301(a) must be filed on electronic media. On or after September 30, 1988, any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e) must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on electronic media. Additionally, after December 30, 1988, FERC Form Nos. 2, 2A, 14 and 15 must be submitted on electronic media. Natural gas companies will be required to continue filing the traditional required number of copies. The Commission will consider reducing the required number of copies to be filed with the electronic data submission in a year. These amended regulations provide a waiver for natural gas companies that do not have any electronic capability to comply with this electronic data submission requirement.

The Commission is also severing FERC Form No. 591 from this rulemaking docket and establishing a separate docket for that form. This will provide the Commission additional time to address concerns raised by the comments to the proposed FERC Form No. 591.

The Commission is issuing separately a notice and schedule for a series of technical conferences on FERC Form No. 591. The Commission is also issuing separately a notice and schedule for implementation conferences to facilitate the transition to electronic data submission.

Finally, the Commission is revising its confidentiality procedures in § 388.112 to provide procedures for protecting confidential data filed on electronic media.

II. Background

The Commission regulates the natural gas industry under the authority in the Natural Gas Act [1] and the Natural Gas Policy Act of 1978.[2] In order to regulate this industry, the Commission requires natural gas companies to submit various forms and reports either monthly, semi-annually or annually.[3] In addition, natural gas companies periodically file a variety of information [4] when seeking changes in a tariff rate under Part 154 of the Commission's regulations and certification authority to engage in the sale and transportation of natural gas in interstate commerce under Part 157 of the Commission's regulations. Currently, the Commission does not require that these forms, reports or applications be submitted on electronic media.

On June 25, 1987, the Commission issued a notice of proposed rulemaking (NOPR) [5] proposing that natural gas companies submit various data, as well as rate filings pursuant to § 154.63 and certificate applications under Part 157 of the Commission's regulations, on 9-track magnetic tape. The Commission proposed to require that this tape be accompanied by one paper copy of the information submitted on the magnetic tape.

The Commission also proposed consolidating and updating the data presently reported on various forms into one FERC Form No. 591. FERC Form No. 591 was designed to provide the Commission with a data base of consistent and current information. The Commission believed this data base to be necessary in order to develop the comprehensive reports and studies of the industry needed to develop and monitor current and future policies affecting the natural gas industry.

The Commission received forty-eight comments on the proposed FERC Form No. 591.[6] A number of commenters generally supported the Commission's proposal that jurisdictional natural gas companies make all or a part of rate, certificate and report filings on 9-track magnetic computer tape. All commenters, however, urged the Commission to take more time to consider the proposed FERC Form No. 591. They requested the Commission to reissue the NOPR [7] to reflect changes to FERC Form No. 591 suggested in the comments and at the technical conferences.[8] The commenters also urged the Commission to develop a data dictionary, a data directory and a code book in conjunction with the revised FERC Form No. 591.[9] Finally, the commenters requested the Commission to consider a phased-in timetable for implementation of the schedules proposed in FERC Form No. 591.[10]

Based on a review of the comments, the Commission concludes that proposed FERC Form No. 591 must be revised in a separate rulemaking docket. At the same time, the Commission will begin the transition to electronic data submission by promulgating a final rule in this proceeding. The rule adopted in this docket implements procedures to computerize the receipt, processing and analysis of a portion of the information that the Commission presently uses to regulate the natural gas industry. The

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[1] 15 U.S.C. 717–717w (1982). Specifically, section 10(a) of the Natural Gas Act, 15 U.S.C. 717i (1982), grants authority to the Commission to specify by rule or regulation the annual or periodic reports that natural gas companies must file with the Commission.

[2] 15 U.S.C. 3301–3432 (1982). Specifically, section 501 of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3411 (1982), states that the Commission will administer the NGPA unless the Act expressly provides otherwise. Section 501 adds that in administering the Act, the Commission has the authority to prescribe, issue, amend and restrict such rules and orders as it may find necessary or appropriate to carry out its functions under the Act.

[3] 18 CFR Part 260 (1988) governs the submission of these forms and reports. Part 284 of the Commission's regulations require the filing of various reports by interstate natural gas pipelines transporting gas.

[4] For example, see Statements A through P described in § 154.63 of the Commission's regulations.

[5] 52 FR 25530 (July 7, 1987), FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 32,449 (June 25, 1987).

[6] List of commenters attached as Appendix A.

[7] *See, e.g.*, Algonquin Gas Transmission Company, ANR Pipeline Company and Colorado Interstate Gas Company, Arkla, Inc., Columbia Gas Transmission Corporation, Edison Electric Institute, Great Lakes Transmission Company, INGAA, Natural Gas Pipeline Company of America; Northwest Pipeline Corporation, Panhandle Eastern Pipe Line Company.

[8] Technical conferences were held at the Commission on August 7, 1987, October 1–2, 1987, and October 7–9, 1987.

[9] *See, e.g.*, Arkla, Inc., Great Lakes Transmission Company, INGAA, Natural Gas Pipeline Company of America, Pacific Interstate Companies, Tennessee Gas Pipeline Company, Transcontinental Gas Pipeline Corporation, Williston Basin Interstate Pipeline Company.

[10] *See, e.g.*, Algonquin Gas Transmission Company, ANR Pipeline Company and Colorado Interstate Company, Arkla, Inc., Columbia Gas Transmission Corporation, El Paso Natural Gas Company, Enron Interstate Pipelines, INGAA, Natural Fuel Gas Supply Corporation, Northwest Pipeline Corporation, Pacific Interstate Companies, Panhandle Eastern Pipe Line Company, Scientific Software Intercomp Inc., Southern Natural Gas Co., Tennessee Gas Pipeline Company, Transcontinental Gas Line Corporation, United Gas Pipe Line Company, Williston Natural Gas Company.

Commission will continue to review in the new rulemaking docket the proposal to standardize, consolidate and update the information the Commission requires from natural gas companies and to simplify the format in which data is submitted as proposed in FERC Form No. 591.

The Commission believes these procedures will reduce the burden on natural gas companies by requiring them to file fewer paper copies of certain rate filings, certificate and abandonment applications and forms. Additionally, the Commission believes submission of this data electronically will expedite the processing of rate filings and certificate applications.

III. Electronic Data Submission

On or after September 30, 1988, natural gas companies filing rate changes, including the affected tariff sheets, pursuant to § 154.63, certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157, and blanket certificate applications under Subpart G of Part 284, must make these applications using an electronic media. Also, on or after September 30, 1988, the tariff sheets filed pursuant to § 154.301(a) must be filed on electronic media. Additionally, on or after September 30, 1988, natural gas companies filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff under § 154.303(e) must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on electronic media.

Natural gas companies filing the following forms due on or after September 30, 1988, must use an electronic media: (1) Form No. 8, Underground gas storage report; (2) Form No. 11, Natural gas pipeline company monthly statement; and (3) Form No. 16, Report of gas supply and requirements. Finally, on or after December 30, 1988, natural gas companies must file the following forms on electronic media: (1) Form No. 2, Annual report for major natural gas companies; (2) Form No. 2–A, Annual report for nonmajor natural gas companies; (3) Form No. 14, Annual report for importers and exporters of natural gas; and (4) Form No. 15, Annual report of gas supply for certain natural gas pipelines.

Natural gas companies will be required to continue filing the traditional required number of paper copies. The Commission will consider reducing the required number of copies to be filed with the electronic data submission in a year.

The Commission will ensure the interchangeability of data between information processing systems by specifying in the record formats and instructions for electronic submission of the specified forms and filings the types of electronic media and magnetic recording techniques that a natural gas company may use for electronic data submission under this rule.

The requirement to submit any of these filings and forms on electronic media is voluntary on or after May 2, 1988, for those natural gas companies that want to make these filings using their own software. However, natural gas companies that choose to voluntarily file this data on electronic media must also submit the traditional hard copies of the data. During the voluntary electronic data submission period, there will be no penalty for incorrect submission of data on the electronic media.

Natural gas companies that do not have or are unable to acquire the computer capability to submit these filings and forms on electronic media may seek a waiver under the procedures provided in the new § 385.2011 of the Commission's regulations. The waiver may be granted for up to one year. The natural gas company may request a continuance of the waiver by demonstrating that it continues to lack computer capability. Additionally, the Commission will consider requests for a waiver or extension of time from the requirement that after September 30, 1988, a natural gas company must resubmit the company's entire tariff on electronic media when filing a general rate proceeding pursuant to section 4 of the Natural Gas Act or submitting a restatement of the company's base tariff under § 154.303(e).

The following electronic media are suitable for Commission filing:

(1) In one-half inch (.5") magnetic tape (recorded in EBCDIC or ASCII Only):

(a) 1600 BPI (bytes per inch) (63 bytes/mm), recorded in nine parallel tracks on .5" magnetic tape. (IBM 3420 models 3, 5, 7, or equivalent.)

(b) 6250 BPI (246 bytes/mm), recorded in nine parallel tracks on .5" magnetic tape. (IBM 3420 models 4, 6, 8, or equivalent.)

(c) 38,000 BPI (18 track tape), recorded in eighteen parallel tracks on .5" tape cartridge. (IBM 3480 tape cartridge or equivalent.)

(2) In formatted diskettes (recorded in ASCII only):

(a) 5.25" (360KB) double sided, double density diskette, 48 tracks per inch, 40 tracks per surface, 512 bytes per sector, 9 sectors per track.

(b) 5.25" (1.2MB) double sided, high density diskette, 96 tracks per inch, 80 tracks per surface, 512 bytes per sector, 15 sectors per track.

(c) 3.5" (720KB) double sided, low density diskette, 135 tracks per inch, 80 tracks per surface, 512 bytes per sector, 9 sectors per track, 737,280 bytes formatted capacity.

(d) 3.5" (1.44MB) double sided, high density diskette, 135 tracks per inch, 80 tracks per surface.

As the Commission acquires new electronic data submission capability, this list will be expanded and updated.

Upon request, on April 30, 1988, the Commission will have available and will provide natural gas companies with record formats for each type of filing and form for use in preparing electronic data submissions for the Commission. The record formats will identify the location of specific data in each record on the electronic media. Additionally, on July 30, 1988, the Commission will have software to produce a hard copy for rate filings under §§ 154.63 and 154.303(e) of the Commission's regulations, for certificate and abandonment applications under Subparts A, E and F of Part 157 and Subpart G of Part 284, and for FERC Form Nos. 8, 11 and 16 in Part 260. Finally, on October 30, 1988, the Commission will have available software to produce a hard copy for FERC Form Nos. 2, 2A, 14 and 15.

Natural gas companies may request a copy of the Commission's software programs. However, since software programs are not interchangeable on all computers without adaptation, the Commission does not make any guarantee, expressed or implied, as to the accuracy of the Commission's software in the natural gas company's computer. The Commission's software will be provided as public domain software for the convenience of the natural gas companies. The Commission notes that natural gas companies may be required to make adaptations to the Commission's software in order to provide a copy of the electronic data submission that can be read by the public.

Finally, in response to commenters' requests, the Commission is revising the confidentiality procedures in § 388.112 of its regulations to protect confidential information submitted on electronic media. Under these procedures, a natural gas company will submit a complete filing on one electronic media marked "Contains Privileged Information—Do Not Release" and

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identifying on that electronic media the information for which the privileged treatment is sought, and one electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment. The Commission will recognize the electronic media containing both the confidential and public information as the master record in any Commission proceeding.

The Commission notes that the filings natural gas companies will make electronically under the provisions in this final rule generally do not contain confidential information.

IV. Administrative Findings

A. Implementation Conferences

The Commission is issuing separately a notice and schedule for a series of implementation conferences to facilitate the industry's transition to electronic data submission.

B. Deferral of FERC Form No. 591

A number of commenters requested the Commission to provide additional opportunities for comments and technical conferences to resolve problems associated with the proposed FERC Form No. 591. Because of the policy, legal and administrative concerns expressed by the commenters, the Commission has decided to defer action on proposed FERC Form No. 591. Therefore, the Commission is severing from this rulemaking docket the proposed FERC Form No. 591. The new docket number for this proceeding is RM88–12–000. The record pertaining to proposed FERC Form No. 591 in this proceeding will be transferred to the new proceeding.

The Commission is issuing separately a notice and schedule for a series of technical conferences on FERC Form No. 591.

These technical conferences will address the natural gas industry's concerns with specific technical aspects of the various schedules contained in the proposed FERC Form No. 591.

C. Public Access

The Freedom of Information Act[11] requires the Commission, as a federal agency, to make public records available unless the information contained therein is exempt from disclosure under the nine exemptions provided in the Act.[12] Part 388 of the Commission's regulations governs the Commission's release of information under the Freedom of Information Act. The Commission will make any information submitted under the provisions of this final rule available to the public in conformance with the Commission's regulations.

D. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[13] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. An agency is not required to make an RFA analysis if it certifies that a rule will not have "a significant economic impact in a substantial number of small entities."[14]

In the NOPR, the Commission certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The Commission continues to believe that most natural gas companies required to comply with this final rule do not fall within the RFA's definition of small entity. Additionally, the Commission has considered the potential impact of this rule on small natural gas companies. As a result, the Commission has included a waiver provision from the mandatory electronic data filing requirements in this final rule.

The Commission certifies, therefore, that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The Paperwork Reduction Act[15] and the Office of Management and Budget [OMB] regulations[16] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this final rule have been submitted to OMB for its approval. Interested persons can obtain information on these provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Tim Shaughnessy, (202) 357–5600). Comments on the provisions of this final rule or a notice of intent to comment on the provisions of this final rule can be submitted to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

F. Effective Date

This rule is effective May 2, 1988. However, if OMB has not approved this rule by that date the Commission will issue a notice temporarily suspending the effective date until OMB has approved the reporting requirements.

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Parts 260 and 284

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 388

Freedom of information,

In consideration of the foregoing, the Commission amends Parts 154, 157, 260, 284, 385 and 388, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982).

2. Section 154.1 is revised to read as follows:

§ 154.1 Application; obligation to file.

(a) On or after December 1, 1948, every natural gas company must file with the Commission and post in conformity with the requirements of this part, schedules showing all rates and charges for any transportation or sale of natural gas subject to the jurisdiction of

[11] 5 U.S.C. 552 (1982).

[12] *Id.*

[13] 5 U.S.C. 601–612 (1982).

[14] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[15] 44 U.S.C. 3501–3520 (1982).

[16] 5 CFR Part 1320 (1987).

the Commission and the classifications, practices, rules and regulations affecting such rates, charges and services, together with all contracts in any manner affecting or relating thereto: *Provided, however,* That all such presently effective schedules filed with the Commission before the aforesaid date must be restated as set forth in § 154.82 to conform with the following rules and regulations, and filed and posted on or before the dates specified in § 154.83.

(b) On or after September 30, 1988, any change to a tariff must be submitted in an electronic media in conformance with the requirements of § 385.2011 of this chapter.

(c) On or after September 30, 1988, any natural gas company submitting a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63 or a restatement of the base tariff rate pursuant to § 154.303(e) must incorporate as part of this filing a resubmittal of the company's entire tariff, except executed service agreements, on electronic media pursuant to § 385.2011 of this chapter.

3. Section 154.14 is revised to read as follows:

§ 154.14 Tariff or FERC gas tariff.

The term "tariff" or "FERC gas tariff" means a compilation, either in book form or on electronic media, of all of the effective rate schedules of a particular natural gas company, and a copy of each form of service agreement.

4. Section 154.15 is revised to read as follows:

§ 154.15 Filing date.

The term "filing date" means the day on which a tariff, or part thereof, or a contract is received in the office of the Secretary of the Commission for filing in compliance with the requirements of this part.

5. Section 154.16 is revised to read as follows:

§ 154.16 Posting.

The term "posting" means:

(a) Making a copy of a natural gas company's tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural gas company's offices where business is conducted with affected customers, and

(b) Mailing to each customer affected a hard copy of the tariff, or part thereof, unless another format is agreed to by the parties, at the time it is sent to the Commission for filing.

6. Section 154.26 is revised to read as follows:

§ 154.26 Copies to be supplied.

(a) *General rule.* Except as provided in paragraph (b) of this section, all tariffs, rate schedules, and contracts, or parts thereof, and material related thereto, including any change in rates, notices of cancellation or termination, and certificates of adoption, must be supplied to the Commission in six copies.

(b) *Exceptions.* On or after September 30, 1988, natural gas companies submitting a rate filing pursuant to § 154.63 or § 154.301(a) must submit this filing on electronic media as prescribed in FERC Form 542–PGA and § 385.2011 of this chapter, as applicable.

(c) *Submittals.* All copies and electronic submissions are to be included in one package together with a letter of transmittal and all other materials and information required by these regulations, and addressed to the Federal Energy Regulatory Commission, Washington, DC 20426.

7. Section 154.31 is revised to read as follows:

§ 154.31 Application.

(a) Sections 154.32 through 154.41 after December 1, 1948, are applicable to all rate schedules thereafter filed or restated, except that such sections are only partially applicable to rate schedules filed under § 154.52. (A form, or an electronic record format, of an assembled tariff is available upon request.) On or after September 30, 1988, these filings must be on electronic media as prescribed in § 385.2011 of this chapter.

(b) Tariff sheets filed on or after September 30, 1988, on electronic media must conform to the format required in §§154.32 through 154.36 and §§ 154.38 through 154.41.

8. Section 154.32 is revised to read as follows:

§ 154.32 Form, type, and size.

(a) When the tariff is provided in hard copy before September 30, 1988, and thereafter under the waiver provision prescribed in § 385.2011 of this chapter, the tariff must be printed, typewritten or otherwise reproduced on 8½ by 11 inch sheets of a durable paper so as to result in a clear and permanent record. The sheets of the tariff must be ruled to set off borders of 1¼ inches on top, bottom and left sides and ½ inch on the right side, punched on the left side and assembled in a binder.

(b) When the tariff is provided on electronic media on or after September 30, 1988, the tariff paper copy must be printed or otherwise reproduced on sheets of durable paper so as to result in a clear and permanent record. The electronic media record format and paper copy must duplicate the page size, borders and margins provided in paragraph (a) of this section.

9. In § 154.34, paragraph (a) is revised to read as follows:

§ 154.34 Composition of tariff.

(a)(1) Before September 30, 1988, and thereafter under the waiver provisions prescribed in § 385.2011 of this chapter, the tariff must contain, in the order named, sections setting forth a table of contents, a preliminary statement, a map of the system, the rate schedules, general terms and conditions, form of service agreement and an index of purchasers: *Provided, however,* that rate schedules for which special exception has been obtained under § 154.52 may be filed in a separate volume as permitted by § 154.33.

(2) On or after September 30, 1988, the tariff sheets must be submitted on electronic media as prescribed in § 385.2011 of this chapter in the order stated in paragraph (a)(1) of this section except maps and executed service agreements which must be submitted on paper.

*** * * * ***

10. Section 154.61 is revised to read as follows:

§ 154.61 Application.

Sections 154.62 through 154.65, except as otherwise specifically provided in this part, apply to all tariffs, executed service agreements, or parts of service agreements, which are filed after December 1, 1948. On or after September 30, 1988, the materials filed pursuant to §§ 154.62, 154.63 (except § 154.63(b)) and 154.303(e) must be filed on electronic media as prescribed in § 385.2011 of this chapter.

11. In § 154.62, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) and a new paragraph (a) is added to read as follows:

§ 154.62 Material submitted with initial rate schedules or executed service agreement.

(a) Initial rate schedules or executed service agreements submitted pursuant to this section before September 30, 1988, may be on paper. Initial rate schedules submitted pursuant to this section on or after September 30, 1988, must be on electronic media as prescribed in § 385.2011 of this chapter. On or after September 30, 1988, executed service agreements must be filed on paper.

*** * * * ***

12. In § 154.63, paragraph (b)(1) introductory text is revised, new paragraphs (b)(1)(iv) and (b)(5) are

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added and paragraphs (c)(1), (d)(3), (e)(4) and (f) introductory text are revised to read as follows:

§ 154.63 Changes in a tariff, executed service agreement or part thereof.[1]

* * * * *

(b) *Material to be submitted*—(1) *All filings.* In addition to the requirements in paragraph (b)(5) of this section, with the filing of any tariff, executed service agreement or part thereof which changes or supersedes any tariff, contract or part thereof on file with the Commission, there must be included the following:

* * * * *

(iv) The representation of the chief accounting officer when the filing is submitted on electronic media on or after September 30, 1988 as prescribed in § 385.2011 of this chapter.

* * * * *

(5) On or after September 30, 1988, all filings under § 154.63 must be on electronic media pursuant to § 385.2011 of this chapter, unless a waiver is granted by the Commission.

* * * * *

(c) *Submission and rejection*—(1) *Submission of material by reference.* If all or any portion of the information called for by this section has already been submitted to the Commission or is included among the data filed pursuant to this section, specific reference thereto may be made in lieu of resubmission in response to these requirements.

(i) Before September 30, 1988, copies of material submitted by reference must be made available to the staff and six additional copies thereof must be furnished to the Director, Division of Gas Pipeline Rates (Office of Pipeline and Producer Regulation) to be available to interveners according to their needs, after their intervention has been permitted by the Commission.

(ii) On or after September 30, 1988, copies of material submitted by reference must be on electronic media as prescribed in § 385.2011 of this chapter.

* * * * *

(d) * * *

(3) *Rate changes.* Before September 30, 1988, ten sets of the statements and of the additional information, if any, must be submitted, each set securely bound in a cover. On or after September 30, 1988, the statements and additional information, if any, must be submitted on electronic media as prescribed in § 385.2011 of this chapter.

* * * * *

(e) *Scope and composition of material for major increase.* * * *

(4) *Working papers and supporting data.* (i) In the statements described in paragraph (f) of this section, certain items are designated as being included in working papers. When the tariff is provided in hard copy before September 30, 1988, there is to be furnished to the Director, Division of Gas Pipeline Rates (Office of Pipeline and Producer Regulation) upon filing the rate increase, one set of working papers for use by the staff and six additional copies of the working papers to be available to interveners according to their needs after intervention has been approved by the Commission. On or after September 30, 1988, working papers must be submitted on electronic media as prescribed in § 385.2011 of this chapter.

* * * * *

(f) *Description of statements.* Descriptions of Statements A through P and supporting schedules required to be filed pursuant to the directions set out in paragraphs (b) (3), (4), and (5) of this section.

* * * * *

13. In § 154.303, paragraph (e)(1)(ii) is revised to read as follows:

§ 154.303 Election of a PGA clause.

* * * * *

(e) *Three-year filing requirement to establish new base tariff rate*—(1) *General requirement.* * * *

(ii) With the tariff sheet(s) the pipeline must file a study in the form and with the content prescribed by § 154.63, except Statements O and P, to support the new base tariff rate(s). On or after September 30, 1988, these tariff sheets and statements must be filed on electronic media as prescribed in §§ 154.63 and 385.2011 of this chapter.

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

14. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

15. In § 157.6, the section heading and paragraph (a) are revised to read as follows:

§ 157.6 Applications; general requirements.

(a) *Applicable rules*— (1) *Submission required to be furnished by applicant under this subpart.* Applications, amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted in an original and 7 conformed copies until September 30, 1988, and thereafter, on electronic media in the manner prescribed in § 385.2011 of this chapter. To the extent that data required under this subpart has been provided to the Commission, this data need not be duplicated. The applicant must, however, include a statement identifying the forms and records containing the required information and when that form or record was submitted. Applicants making an electronic data submission must submit one copy of applications and other submissions on electronic media and paper copies as prescribed in § 385.2011 of this chapter. All submissions in electronic media form must conform in all respects to the requirements listed in § 385.2011 of this chapter.

(2) *Maps and diagrams.* An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram.

(3) *Waivers of electronic filing requirement.* (i) An applicant may request a partial or full waiver of the requirement that submissions under this subpart be furnished on electronic media. The request for waiver must be filed in accordance with § 385.2011 of this chapter.

(ii) If a request for waiver is granted, the applicant must furnish a submission in the manner specified by the Commission in the decision granting waiver.

(4) *Other requirements.* Applications under section 7 of the Natural Gas Act must conform to the requirements of §§ 157.5 through 157.14 of this chapter. Amendments to or withdrawals of applications must conform to the requirements of §§ 385.213 and 385.214 of this chapter. If the application involves an acquisition of facilities, it must conform to the additional requirements prescribed in §§ 157.15 and 157.16.

* * * * *

§ 157.7 [Amended]

16. In § 157.7, paragraph (a) is amended by inserting after the words "an abbreviated application may be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

17. In § 157.7, paragraph (b)(3)(i) is amended by inserting after the words "shall file" the words "in the manner prescribed in § 385.2011 of this chapter".

18. In § 157.7, paragraph (b)(3)(ii) is amended by inserting after the words "shall file" the words "in the manner prescribed in § 385.2011 of this chapter".

19. In § 157.7, paragraph (b)(3)(iii) is amended by inserting after the words "shall be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

20. In § 157.7, paragraph (b)(5)(i) is amended by inserting after the words "is filed" the words "in the manner prescribed in § 385.2011 of this chapter".

21. In § 157.7, paragraph (b)(7)(i) is amended by inserting after the words "shall be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

22. In § 157.7, paragraph (c) introductory text is amended by inserting after the words "may be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

23. In § 157.7, paragraph (c)(4) introductory text is amended by inserting after the words "to file" the words "in the manner prescribed in § 385.2011 of this chapter".

24. In § 157.7, paragraph (d) introductory text is amended by inserting after the words "may be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

25. In § 157.7, paragraph (e) introductory text is amended by inserting after the words "may be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

26. In § 157.7, paragraph (e)(2) is amended by inserting after the words "must be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

27. In § 157.7, paragraph (e)(3) introductory text is amended by inserting after the words "to file" the words "in the manner prescribed in § 385.2011 of this chapter".

28. In § 157.7, paragraph (g)(3) introductory text is amended by inserting after the words "may be filed" the words "in the manner prescribed in § 385.2011 of this chapter".

29. In § 157.7, paragraph (g)(3)(iv) introductory text is amended by inserting after the words "to file" the words "in the manner prescribed in § 385.2011 of this chapter".

§ 157.13 [Amended]

30. In § 157.13, paragraph (a) is amended by removing the word "shall" and inserting in its place the words "must be submitted in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter and".

31. In § 157.14, paragraph (a) introductory text is revised to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. On or after September 30, 1988, exhibits, except Exhibits F, F–1, G, G–I, G–II, and H(iv), must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request.

* * * * *

32. In § 157.16, the introductory text is revised to read as follows:

§ 157.16 Exhibits relating to acquisitions.

In addition to the exhibits required by § 157.14, every application involving acquisition of facilities must be accompanied by the exhibits listed below. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all the exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time specified by the Secretary in the notice. Sections 157.6(a) and 385.2011 of this chapter will govern the submissions required to be furnished to the Commission. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request.

* * * * *

33. Section 157.17 is revised to read as follows:

§ 157.17 Applications for temporary certificates in cases of emergency.

In cases of emergency and pending the determination of any application on file with the Commission for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, application may be made for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, or sales of natural gas that may be required to assure maintenance of adequate service, or to service particular customers. This application must be submitted in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter.

(a) Before September 30, 1988, and thereafter whenever the waiver provisions of § 385.2011 of this chapter apply, the application must be submitted in writing, must be subscribed and verified by a responsible officer of applicant having knowledge of the facts, and must state clearly and specifically the exact character of the emergency, the proposed method of meeting it, and the facts claimed to warrant issuance of a temporary certificate.

(b) On or after September 30, 1988, the application must be submitted on electronic media as prescribed in § 385.2011 of this chapter, must be subscribed and verified by a responsible officer of applicant having knowledge of the facts, and must state clearly and specifically the exact character of the emergency, the proposed method of meeting it, and the facts claimed to warrant issuance of a temporary certificate.

34. In § 157.18, the introductory text is revised to read as follows:

§ 157.18 Applications to abandon facilities or service; exhibits.

Applications for an order authorizing abandonment of facilities or service pursuant to section 7(b) of the Natural Gas Act must contain a statement providing in detail the reasons for the abandonment and must contain the exhibits listed below, unless the applicant includes a statement identifying the schedule and rate containing the required information and

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data filed as prescribed in § 385.2011 of this chapter. Sections 157.6(a) and 385.2011 of this chapter will govern the submission of applications and exhibits required to be furnished. Together with each exhibit, applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the data. The Secretary may, in addition, require that the testimony of all witnesses to be presented by the applicant be filed together with all exhibits upon which applicant will base its case-in-chief.

* * * * *

35. In § 157.20, paragraphs (c) introductory text and (d) introductory text are revised to read as follows:

§ 157.20 General conditions applicable to certificatee.

* * * * *

(c) Applicant must file with the Commission, in writing and under oath, until September 30, 1988, an original and four conformed copies, and thereafter as prescribed in § 385.2011 of this chapter and, upon request must furnish an intervener with a single copy, of the following:

* * * * *

(d) With respect to an acquisition authorized by the certificate, applicant must file with the Commission, before September 30, 1988, in writing and under oath, an original and four conformed copies and thereafter as prescribed in § 385.2011 of this chapter the following:

* * * * *

§ 157.21 [Amended]

36. In § 157.21, paragraph (d) is amended by inserting after the words "must file" the words "in the manner prescribed in § 385.2011 of this chapter."

37. In § 157.102, paragraph (a)(1) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

(a) *General contents.* (1) Any application, amendment thereto, exhibits, and other submissions required under this subpart must be submitted in the manner prescribed in §§ 157.6(a) and 157.14(a) of this part and must contain all information necessary to advise the Commission fully concerning the transportation, sales and other services, and facilities, construction, extension, or acquisition and operation for which a certificate and conditional pregranted abandonment authorization is requested. All applications pursuant to this subpart must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

38. In § 157.204, paragraph (a) is revised to read as follows:

§ 157.204 Application procedures.

(a) *Who may apply.* Any interstate pipeline which has been issued a certificate other than a limited-jurisdiction certificate, pursuant to section 7 of the Natural Gas Act and had rates accepted by the Commission may apply for a blanket certificate under this subpart in the manner prescribed in §§ 157.6(a), 157.14(a) and 385.2011 of this chapter.

* * * * *

39. In § 157.205, paragraph (b) is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* (1) In addition to the fee prescribed in paragraph (c) of this section, for any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission before September 30, 1988, an original and fifteen copies, and on or after September 30, 1988, as prescribed in §§ 157.6(a) and 385.2011 of this chapter a request for authorization under the notice procedures of this section that contains:

(i) The exact legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(ii) The docket number in which its blanket certificate was issued;

(iii) Any information required in §§ 157.208 through 157.218 for the particular activity;

(iv) A verified statement that the proposed activity complies with the requirements of this subpart;

(v) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose; and

(vi) Identifies the docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise, the applications on file will be rejected under paragraph (c) of this section without prejudice to refiling when all parties are ready to proceed.

(2) If the request for a waiver of the requirement that submissions be furnished on electronic media as provided in § 385.2011 of this chapter is granted, the applicant must file the request for authorization in the manner specified by the Commission in the decision granting waiver.

* * * * *

§ 157.207 [Amended]

40. Section 157.207 is amended by inserting after the words "on or before May 1, of each year, the certificate holder must file," in the first sentence the words ", in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter,".

§ 157.208 [Amended]

41. In § 157.208, paragraph (e) introductory text is amended by inserting after the words "shall file" the words "in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter".

§ 157.211 [Amended]

42. In § 157.211, paragraph (c) introductory text is amended by inserting after the words "must report" the words "in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter".

§ 157.214 [Amended]

43. In § 157.214, paragraph (c) introductory text is amended by inserting after the words "shall submit" the words "in the manner prescribed in § 385.2011 of this chapter".

§ 157.215 [Amended]

44. In § 157.215, paragraph (b)(1) introductory text is amended by inserting after the words "shall file" the words "in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter".

45. In § 157.215, paragraph (b)(2) introductory text is amended by inserting after the words "shall file," the words "in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter,".

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

46. The authority citation for Part 260 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); E.O. 12009, 3 CFR 1987 Comp., p. 142.

47. In § 260.1, paragraph (b) is revised to read as follows:

§ 260.1 FERC Form No. 2, Annual report for major natural gas companies.

* * * * *

(b) Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, *et seq.*) which is a major company (as defined in Part 201 of Subchapter F of this chapter) must prepare and file with the Commission for the calendar year beginning January 1, 1980, and for each calendar year thereafter, on or before April 30 following the close of such calendar year, FERC Form No. 2.

(1) Before December 30, 1988, an original and such number of conformed copies of the above-designated FERC Form No. 2 as indicated in the general instructions set out in that form all properly filled out and verified. One copy of the report should be retained by the respondent in its files. The conformed copies may be carbon copies, or other reproductions, if legible.

(2) On or after December 30, 1988, the form must be filed as prescribed in § 385.201 of this chapter and as indicated in the general instructions set out in that form, all properly filled out and verified. One copy of this report should be retained by the respondent in its files.

48. In § 260.2, paragraph (b)(1) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual report for nonmajor natural gas companies.

* * * * *

(b) *Filing requirements*—(1) *Who must file.* Each natural gas company, as defined by the Natural Gas Act, which is considered nonmajor as defined in Part 201 of Subchapter F of this chapter, must prepare and file with the Commission FERC Form No. 2–A.

(i) Before December 30, 1988, an original and conformed copies pursuant to the general instructions set out in that form must be filed.

(ii) On or after December 30, 1988, the form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in that form.

* * * * *

49. In § 260.3, paragraph (b)(1) is revised to read as follows:

§ 260.3 FERC Form No. 11, Natural gas pipeline company monthly statement.

* * * * *

(b)(1) *Who must file.* Each natural gas company, as defined in the Natural Gas Act, whose combined gas sold for resale and gas transported or stored for a fee exceeded 50 million Mcf at 14.73 pisa (60° F) in the previous calendar year, must prepare and file with the Commission for the month beginning March 1, 1980 and for each month thereafter FERC Form No. 11.

(i) Before September 30, 1988, an original and two copies of the form must be filed.

(ii) On or after September 30, 1988, the form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions in that form.

* * * * *

50. In § 260.4, paragraph (b) is revised to read as follows:

§ 260.4 Form No. 14, Annual report for importers and exporters of natural gas.

* * * * *

(b) Each person have authorization from the Federal Energy Regulatory Commission pursuant to section 3 of the Natural Gas Act, to import or export natural gas must, beginning with the reporting year 1972, and thereafter annually, file on or before March 31, Form No. 14.

(1) Before December 30, 1988, an original and 3 conformed copies of the form, signed and certified by an officer of the reporting company.

(2) On or after December 30, 1988, the form must be submitted in the manner prescribed in § 385.2011 of this chapter.

51. In § 260.7, paragraphs (b)(1)(i) and (b)(1)(ii) introductory text are revised to read as follows:

§ 260.7 FERC Form No. 15, Interstate pipeline's annual report of gas supply.

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, all interstate pipeline companies, as defined by section 2(15) of the Natural Gas Policy Act (15 U.S.C. 3302(15)), must prepare and file FERC Form No. 15 in accordance with the instructions set out in the form.

(A) Before December 30, 1988, companies must prepare and file an original and four copies of the form, or a magnetic tape and accompanying copy of the form.

(B) On or after December 30, 1988, companies must prepare and file the FERC Form No. 15 as prescribed in § 385.2011 of this chapter and as indicated in the general instructions in that form.

(ii) *Exceptions.* The following types of interstate pipelines must prepare and file, in accordance with the instructions set out in FERC Form No. 15, before March 30, 1989 an original and four copies, and on or after March 30, 1989, as prescribed in § 385.2011 of this chapter, only the Identification Schedule (with Certification), the "Synopsis of Gas Supply," and Schedule II of FERC Form No. 15:

* * * * *

52. In § 260.11, paragraph (b) is revised to read as follows:

§ 260.11 Form No. 8, Underground Gas Storage Report.

* * * * *

(b) Each person found by the Commission to be a natural gas company, as defined by the Natural Gas Act, as amended, including any jurisdictional affiliate, as defined in § 157.40(a)(3) of the Commission's regulations, that operates an underground natural gas storage field located in the United States must prepare and file with the Commission by the tenth day of each month an Underground Gas Storage Report, FERC Form No. 8, before September 30, 1988, an original and four copies and, on or after September 30, 1988, as prescribed in § 385.2011 of this chapter. Parts IV, V, VI and VII (page Nos. 2 and 3) of FERC Form No. 8 are only required to be completed for the initial filing of FERC Form No. 8, and thereafter whenever any changes or additions of information initially reported are made.

53. In § 260.12, paragraph (b)(1) is revised to read as follows:

§ 260.12 FERC Form No. 16, Report of gas supply and requirements.

* * * * *

(b) *Filing requirements*—(1) *Who must file.* Each natural gas pipeline company making sales in interstate commerce of natural gas for resale must prepare and file if due before September 30, 1988, an original and four copies, and if due on or after September 30, 1988, as prescribed in § 385.2011 of this chapter, FERC Form No. 16, Report of Gas Supply and Requirements.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

54. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982) as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 1982; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1979 Comp., p. 142.

55. In § 284.221, paragraph (b)(1) introductory text is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(b) *Application procedure.* (1) An application for a blanket certificate under this section must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter. On or after September 30, 1988, the application must be in the manner prescribed in

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§ 385.2011 of this chapter and must include:

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

56. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

57. A new § 385.2011 is added to read as follows:

§ 385.2011 Procedures for filing on electronic media.

(a) FERC Forms subject to the procedures provided in this section include:

(1) FERC Form No. 2, Annual report for major natural gas companies.

(2) FERC Form No. 2–A, Annual report for nonmajor natural gas companies.

(3) FERC Form No. 8, Underground gas storage report.

(4) FERC Form No. 11, Natural gas pipeline monthly statement.

(5) FERC Form No. 14, Annual report for importers and exporters of natural gas.

(6) FERC Form No. 15, Annual report of gas supply for certain natural gas pipelines.

(7) FERC Form No. 16, Report of gas supply and requirements.

(b) These procedures also apply to:

(1) Rate filings pursuant to §§ 154.63 and 154.303(e) of this chapter,

(2) Tariff sheets filed pursuant to the requirements in Parts 154, 157 and 284 of this chapter,

(3) Certificate and abandonment applications filed under Subparts A, E and F of Part 157 of this chapter,

(4) Blanket certificate applications filed under Subpart G of Part 284 of this chapter.

(c) *What to file.* (1) Except as provided in paragraph (e) of this section, any filing of a schedule or an update described in paragraphs (a) or (b) of this section must be submitted on electronic media.

(2) Electronic media suitable for Commission filings are listed in the instructions for each form and filings. Additionally, lists of suitable electronic media are available upon request from the Commission.

(3) The electronic medium must be accompanied by the traditional prescribed number of paper copies.

(4) The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426.

(5) The subscription required by § 385.2005(a) must state that the paper copies contain the same information as contained on the electronic media, that the signer knows the contents of the paper copies and electronic media, and that the contents as stated in the copies and on the electronic media are true to the best knowledge and belief of the signer.

(d) *Where to file.* The electronic media, the paper copies and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Hand deliveries of the electronic media, the paper copies and accompanying cover letter may be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, NE., Washington, DC 20426.

(e) *Waiver*—(1) *Filing of petition.* If a natural gas company does not have and is unable to acquire the computer capability to file the information required to be filed on electronic media, the company may request waiver from the requirements of this part, by filing an original and two copies of a petition. The natural gas company may renew the waiver if the company can continue to show that it does not have and is unable to acquire the computer capability for electronic filing.

(2) *Standard for waiver.* The petition for waiver must show that the natural gas company does not have the computer capability to file the information required under this section on electronic media and that acquisition of the capability would cause the company severe economic hardship. This waiver may be granted for up to one year.

(3) *Timing.* The petition for waiver must be filed by the date on which the information in the manner affected by the petition is required to be initially filed.

(4) *Decision on petition.* The Commission or its designee will review a petition for waiver and notify the applicant of its grant or denial. Once the petition is decided, the natural gas company will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was required to be filed while the petition was pending.

PART 388—INFORMATION AND REQUESTS

58. The authority citation for Part 388 is revised to read as follows:

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982), as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); 5 U.S.C. 301–305 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

59. In § 388.112, paragraph (b) is revised to read as follows:

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

* * * * *

(b) *Procedures.* A person claiming that information is privileged under (a) of this section must file:

(1) For documents submitted in hard copy,

(i) A written statement requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information;

(ii) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(iii) Fourteen copies of the document without the information for which privileged treatment is sought, and with a statement indicating that information has been removed for privileged treatment;

(iv) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(2) For documents submitted on electronic media,

(i) A written statement requesting privileged treatment for some or all of the information on the electronic media, and the justification for nondisclosure of the information;

(ii) One copy of a complete filing on the electronic media marked "Contains Privileged Information—Do Not Release" and identifying on the electronic media only the information for which the privileged treatment is sought with one paper copy also marked "Contains Privileged Information—Do Not Release";

(iii) One copy of the electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment with fourteen paper copies without the information for which privileged treatment is sought; and

(iv) The name, title, address, telephone number and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

* * * * *

Note: This Appendix will not be published in the *Code of Federal Regulations.*

Appendix A—

List of Commenters

(1) Alabama-Tennessee Natural Gas Company
(2) Algonquin Gas Transmission Company
(3) American Gas Association
(4) ANR Pipeline Company and Colorado Interstate Gas Company
(5) Arkla, Inc.
(6) Associated Gas Distributors
(7) Columbia Gas Transmission Corporation
(8) Columbia Gulf Transmission Company
(9) Connecticut Natural Gas Corporation
(10) Consolidated Gas Transmission
(11) Edison Electric Institute
(12) El Paso Natural Gas Company
(13) Enron Interstate Pipelines
(14) Great Lakes Transmission Company
(15) Hampshire Gas Company
(16) High Island Offshore System
(17) Inter-City Minnesota Pipelines, Ltd.
(18) Intermountain Gas Company
(19) International Paper Company
(20) Interstate Natural Gas Association of America
(21) Iowa-Illinois Gas and Electric Company
(22) Lone Star Gas Company
(23) Minnesota Department of Public Service Energy
(24) National Fuel Gas Supply Corporation
(25) Natural Gas Pipeline Company of America
(26) Natural Gas Supply Association
(27) Northern States Power Company
(28) Northwest Natural Gas Company
(29) Northwest Pipeline Corporation
(30) Ohio River Pipeline Corporation
(31) Pacific Gas Transmission Company
(32) Pacific Interstate Companies
(33) Panhandle Eastern Pipe Line Company and Trunkline Gas Company
(34) Phillips Petroleum Company, Phillips 66 Natural Gas Company, Phillips Gas Pipeline Company
(35) Process Gas Consumers Group and the Georgia Industrial Group
(36) Producer Associations
(37) Public Service Electric and Gas Company
(38) Scientific Software-Intercomp, Inc.
(39) Southern Natural Gas Company
(40) Tennessee Gas Pipeline Company
(41) Texas Eastern Transmission Corporation
(42) Texas Gas Transmission Corporation
(43) Transcontinental Gas Pipe Line Corporation
(44) United Gas Pipe Line Company
(45) Washington Gas Light Company and Shenandoah Gas Company
(46) Washington Natural Gas Company
(47) Williams Natural Gas Company
(48) Williston Basin Interstate Pipeline Company

[FR Doc. 88–8814 Filed 4–26–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

Hazard Communication; Approval of Collection of Information Requirements; Display of Office of Management and Budget Control Numbers Assigned To Collection of Information

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; approval of collection of information requirements; technical amendments.

SUMMARY: On August 24, 1987, the Occupational Safety and Health Administration (OSHA) modified the Hazard Communication Standard (HCS), to expand the coverage of the original rule from the manufacturing sector to all industries (52 FR 31852). The Office of Management and Budget (OMB) has reviewed the collection of information requirements in the expanded HCS in accordance with the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, and 5 CFR Part 1320. On April 13, 1988, OMB approved under the PRA all but three collection of information requirements in the HCS through April 1991. Except for the three disapproved requirements, the HCS will become fully effective May 23, 1988, as scheduled in the rule.

This document reprints the text of the April 13 letter from OMB to the Department of Labor (DOL) explaining the OMB decision. This document also makes technical amendments to the HCS by adding the OMB-assigned control number for the approved collection of information requirements of the HCS after each section of the Code of Federal Regulations in which the rule appears (29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59). The PRA requires display of OMB control numbers with all collection of information provisions.

DATES: The technical amendments adding the OMB control numbers are effective April 27, 1988. The OMB approval expires on April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3637, Washington, DC, 20210; telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: As is described more fully in the text of the April 13, 1988, letter from James B. MacRae, Jr., Acting Administrator and Deputy Administrator of OMB's Office of Information and Regulatory Affairs to Thomas C. Komarek, Assistant Secretary of Labor for Administration and Management, OMB has approved all but three collection of information requirements in the HCS until April 30, 1991. Thus, OMB has approved among others, the requirements for hazard determinations, written hazard communication programs, information and training programs, development and transmittal of material safety data sheets, labels and other appropriate forms of warning, and trade secrets. OMB has disapproved, under the PRA, three applications of the HCS:

(1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product excluded from the definition of "hazardous chemical" under section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the U.S. Food and Drug Administration in the nonmanufacturing sector. Under the PRA, these provisions will not become effective or enforceable on May 23, 1988, the date on which they were scheduled to become effective. Except for the three OMB disapproved requirements, all other requirements of the expanded HCS are approved and enforceable as provided in the rule.

OSHA will initiate new rulemaking which will further consider the requirements disapproved by OMB. For additional background information on OMB's decision, see OMB's October 28, 1987, letter to DOL reprinted at 52 FR 46075 (Dec. 4, 1987).

The assigned control numbers for the approved provisions are indicated in the text of the amendments which follow the reprinted OMB letter. The PRA requires display of OMB control numbers with all information collection provisions.

April 13, 1988.

Honorable Thomas C. Komarek,
Assistant Secretary for Administration and Management,
Department of Labor,
Washington, D.C. 20210.

Dear Tom: Pursuant to the Paperwork Reduction Act (the PRA—44 U.S.C. Chapter 35), we have completed our review of the

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request received from your office on March 7, 1988, to extend our prior approval of portions of the Hazard Communication Standard (HCS) past the current expiration date of May 23, 1988. Attached to your request for extension of approval was the January 14, 1988 letter from Assistant Secretary for Occupational Safety and Health John Pendergrass.

In his letter, Assistant Secretary Pendergrass assured us that, while the Department may not be able to complete a rulemaking by May 23, 1988, to reconsider the issues identified in our October 23, 1987 decision, the Department is "committed to completing the rulemaking in the shortest time possible. . . ." We also met with members of the Department on February 17, 1988, concerning the development of a compliance assistance program. We understand that, despite lengthy delays, both of these efforts are proceeding, and that they will be completed expeditiously.

This letter is to inform you of our decision in light of these continuing efforts by the Department.

Approved Provisions

The HCS, a comprehensive regulatory program first put fully into effect for manufacturers on May 25, 1986, pursuant to the Occupational Safety and Health Act of 1970, is intended to provide employees with information about the potential hazards of chemicals to which they may be exposed on the job. It requires chemical manufacturers and importers to evaluate the hazards of chemicals they produce or import, to develop the technical hazard information for material safety data sheets (MSDS) and labels for hazardous substances, and to transmit the MSDSs and labels downstream to users of these substances. All employers are required to pass this information on to their workers through a comprehensive hazard communication program that includes a written hazard communication program and individual training.

Based on considerations of practicality, duplication, and the utility of coverage, the HCS incorporates several specific exemptions for products that are unlikely to pose risks to workers, such as food in a retail establishment packaged for sale to consumers, or products regulated by other Federal agencies. Section 1910.1200(b)(6)(iv) of the HCS exempts "articles" from the scope of the standard. An article is defined as:

a manufactured item: (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release; or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

In our October 23, 1987 decision, we determined that neither the record nor the Department's statement of justification supported the definition of "article" in part because the definition contained no express "de minimis" exemption regarding trivial risks. Hence, the definition did not clearly exempt from the HCS many items that emitted very small quantities of substances and for which the paperwork burdens of transmitting hazard information would have no practical utility. In response to our concerns, the January 14, 1988 letter from Assistant Secretary Pendergrass attached to your request for extension of approval clarified that "absent evidence that releases of such very small quantities could present a health hazard to employees, the article exception to the rule's requirements would apply." This clarification serves to exclude situations that involve trivial risks. Given these assurances that the rule does not cover releases of small quantities from products in the absence of evidence that the release presents a health hazard to employees, we have extended approval of the existing definition of "article," as clarified by the January 14 letter. In other words, our approval is limited to what you have requested, and therefore does not encompass collection of information requirements involving articles when there is an absence of evidence that small releases constitute a health hazard.

We have also extended our prior approval of all collection of information requirements in the HCS through April 1991, except the three provisions that we disapproved on October 23, 1987. The approved requirements include the information collection requirements for hazard determination, written hazard communication programs, information and training programs, development and transmittal of MSDSs, labels and other appropriate forms of warning, and trade secrets. These paperwork provisions were approved in 1983 for the manufacturing sector (in 1986 for the trade secrets provisions).

This decision to extend our prior approval of portions of the HCS was reached after a careful balancing of several factors, including the importance of implementing on schedule those paperwork requirements that the existing record supports as consistent with the PRA, the clear concerns of the U.S. Court of Appeals for the Third Circuit that the HCS be effective without further delay, the Department's unsatisfactory record of compliance with the conditions of clearance contained in our October 23, 1987 decision, and the Department's and our obligations under the PRA.

Our extension of prior approval of portions of the HCS is made with the understanding that the Department will expeditiously inform the regulated community of this decision, will provide as soon as possible clear guidance to employers of their responsibilities in light of this decision, and will advise employers of the scope of the "article" exemption in light of the January 14, 1988 letter from Assistant Secretary Pendergrass and of this decision.

Disapproved Provisions

In our October 23, 1987 decision under the PRA, we disapproved three provisions:

- the requirement that material safety data sheets be provided on multi-employer worksites;
- coverage of any consumer product excluded from the definition of "hazardous chemical" under Section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986;
- coverage of any drugs regulated by FDA in the non-manufacturing sector.

None of these provisions had been part of the original HCS, but rather first appeared in the August 24, 1987 rule extending coverage of the HCS to the nonmanufacturing sector. Although these provisions by themselves do not represent a substantial portion of the enormous paperwork burden imposed by the entirety of the expanded HCS (54 million hours in the first year alone), they do represent significant burdens for which the record did not demonstrate practical utility (a full discussion of the record is contained in our October 28, 1987 letter). We continue to disapprove these three provisions. Hence, under the PRA, these provisions will not become effective or enforceable on May 23, 1988.

The Department's Response to Our October 23, 1987 Decision

In our October 23, 1987 decision under the PRA, we determined that the record did not support certain provisions and would not allow approval. Hence, we disapproved the three requirements listed above. We also determined that reconsideration of the definition of "article" was needed in order to achieve consistency with the PRA. The reasons for our decision are fully explained in the October 28, 1987 letter.

We conditioned further approval on actions to be undertaken by the Department:

- Pursuant to 5 CFR 1320.14 (f) and (g), we instructed the Department to complete a rulemaking examining alternatives to the definition of "article," including a de minimis exemption and clarification of the concept of "normal use," and conforming the language of the rule in light of our decision. We instructed the Department to publish a proposal by December 1, 1987, and a final rule by March 1, 1988. We explained that it was very important that OSHA promptly conclude its rulemaking to revise the standard, thereby giving OMB time to complete review of the final paperwork provisions and the public sufficient time to understand and implement the revisions prior to the effective date of the standard.
- We also determined that an administrative effort by OSHA to assist the regulated community to understand and comply with the standard could substantially reduce the start-up paperwork burden and costs of the standard, particularly those of small business. We instructed the Department to submit a plan by January 1, 1988, that would provide such assistance as appropriate.

These timetables were not met. In his January 14, 1988 letter, Assistant Secretary Pendergrass advised us that OSHA would not meet the timetable established for the rulemaking, and may not be able to complete a rulemaking until after the May 23rd effective date, but, as previously cited, he assured us that the Department is now "committed to completing the rulemaking in the shortest time possible. . . ." OSHA has also informed us that the major elements of a plan for compliance assistance will probably not be available until early summer, after the effective date of the standard. We understand that the Department is now moving forward on each of these efforts, and that they will be completed as expeditiously as possible.

Discussion of Decision

Despite the Department's failure to meet the conditions of clearance, however, we have determined that extension of approval of the previously-approved provisions is consistent with the PRA. We determined in our October 23, 1987 decision that the existing record supports these provisions as consistent with the Act. These approved paperwork provisions, which include hazard determination, written hazard communication and training programs, MSDS development and transmittal, and labelling, comprise the heart of the HCS. For the vast majority of workplaces, these provisions are largely independent of the specific substances or products for which MSDSs are generated. Indeed, the HCS is designed so that the basic mechanisms for transmitting hazard information will not require substantial revision as the substances in the workplace and consequently the number of MSDSs changes over time. Hence, our disapprovals of coverage for certain products should not substantially affect compliance with the other provisions of the HCS.

Commenters have requested that OMB not extend approval of the previously-approved provisions of the HCS until the Department has completed a compliance assistance program and its rulemaking, in light of the difficulty of implementing a "partial" rule and of OSHA's failure to provide any compliance assistance thus far. The Coalition of Construction Industry Trade Associations, for example, maintains that, "there is no way that construction industry employers can 'develop, implement and maintain at the workplace a written hazard communication program' . . . when the parameters of multi-employer worksite disclosure and training are yet to be determined" (see January 22, 1988 letter from the Coalition of Construction Industry Trade Associations and February 9, 1988 letter from the Associated General Contractors of America in OMB paperwork docket 1218-0072). The National Association of Wholesaler-Distributors also requested that OMB not extend approval of the requirements applicable to the nonmanufacturing sector because such extension would "generate chaos in the nonmanufacturing sector and cannot be justified."

The concerns of these commenters are largely based on the possibility that the standard and OMB's decision under the PRA will change dramatically as a result of the rulemaking. Although change is always possible, any such change would be fully considered during the rulemaking process. Of course, in order for OMB to grant PRA approvals, any changes must offer sufficient practical utility to justify any incremental paperwork burden they impose, including the burden of revising already-developed written programs. Moreover, as stated above, we are continuing to disapprove the previously-disapproved provisions; the rulemaking should of course conform the rule to these disapprovals.

Therefore, the confusion and potential paperwork duplication resulting from the delayed agency rulemaking, while regrettable and avoidable, do not, on balance, outweigh the value of putting into effect the key components of the standard (see also February 2, 1988 letters from the Building and Construction Trades Department of the AFL-CIO, and from the AFL-CIO and the United Steel Workers of America, and the February 2, 1988 letter from the Working Group on Community Right to Know concerning the potential impact of the OMB decision on Title III of the Superfund Amendments and Reauthorization Act of 1986, in OMB paperwork docket 1218-0072).

Our extension of approval is, of course, based on the existing record and may be revised on the basis of new information. Accordingly, if any new information concerning this standard is collected in the course of further rulemaking proceedings, we will review that information to determine if reconsideration of our decisions under the PRA is warranted. Absent evidence that approved provisions are clearly inconsistent with the PRA, or that alternatives to the disapproved provisions would clearly be consistent with the PRA, however, we have no basis for changes in our prior decisions. If the paperwork already implemented is to carry out effectively the goals of the HCS, there should be stability and predictability, not continuing tumult and change.

The Department shall publish a notice in the **Federal Register** on the next practicable publication date to inform the public of OMB's decision under the PRA. The notice shall include the text of this letter. We trust that the Department will continue to make progress in meeting the terms of our decisions under the PRA.

Sincerely,

James B. MacRae Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

cc:

Honorable John A. Pendergrass,
Assistant Secretary for Occupational Safety and Health.
Honorable C. William Verity,
Secretary of the Department of Commerce.
Honorable James Abdnor,
Administrator for Small Business Administration.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918 and 1926

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets, Employee training.

Text of Amendment

§§ 1910.1200, 1915.99, 1917.28, 1918.90 and 1926.59 [Amended]

1. Following the headings of §§ 1910.1200, 1915.99, 1917.28, 1918.90 and 1926.59 of Title 29 of the Code of Federal Regulations add this note:

Note: The Office of Management and Budget has disapproved, under the Paperwork Reduction Act, three applications of the Hazard Communication Standard:

(1) The requirement that material safety data sheets be provided on multi-employer worksites;

(2) Coverage of any consumer product excluded from the definition of "hazardous chemical" under section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and

(3) Coverage of any drugs regulated by the U.S. Food and Drug Administration in the non-manufacturing sector.

2. Following the text of §§ 1910.1200, 1915.99, 1917.28, 1918.90 and 1926.59 of Title 29 of the Code of Federal Regulations revise the OMB control number statement to read:

(Approved by the Office of Management and Budget under Control No. 1218-0072, except for: (1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product excluded from the definition of "hazardous chemical" under Section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the Food and Drug Administration in the non-manufacturing sector.)

Signed at Washington, DC this 21 day of April 1988.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 88-9225 Filed 4-22-88; 11:25 am]

BILLING CODE 4510-26-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Federal Timer Contract Payment Modification Program

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule repromulgates a requirement that a purchaser release any claims arising under a timber sale contract which the purchaser has requested to buy out, rather than perform, under authority of the Federal Timber Contract Payment Modification Act. It also establishes a deadline by which all of the necessary paperwork to buy out and close a contract under the authority of the Federal Timber Contract Payment Modification Act must be submitted. The intended effect is to bring an orderly conclusion to the buy-out program.

EFFECTIVE DATE: This rule is effective April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule may be

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addressed to: David M. Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: Final rules implementing the buy-out provisions of the Federal Timber Contract Payment Modification Act (FTCPMA) (16 U.S.C. 618) were promulgated at 36 CFR Part 223, Subpart E on June 27, 1985 (50 FR 26660). Subsequently, several lawsuits were filed challenging certain portions of the rule. One of the sections challenged was 36 CFR 223.178(b)(4), which requires purchasers to release any claims they may have arising from a contract they have requested to return to the Government under authority of the FTCPMA rather than performing under the contract's terms. If all of the conditions of buy out have been satisfied and if there are no Government claims related to the contract which are preserved pursuant to the Act, the Government releases the purchaser from all obligations under the contract (36 CFR 223.178(b)).

In *Sierra Pacific Industries, et al. v. John Block, et al.*, 643 F. Supp. 1256 (N.D. Cal. 1986), Judge Conti held that the claims release requirement of 36 CFR 223.178(b)(4) was valid in that it was consistent with the purposes of the FTCPMA and within the authority of the Secretary of Agriculture. Judge Frye, in *Big Flat Timber Company et al. v. Richard Lyng et al.*, No. 85–1501–FR (D.Or. March 3, 1987), concurred that the provision was within the Department's authority but ruled that the claims release requirement was unlawful, because, prior to its promulgation in the final rule, adequate notice with an opportunity to comment was not given the public as required by the Administrative Procedures Act (5 U.S.C. 553). In response to Judge Frye's ruling, the Department requested specific comments on this requirement (52 FR 22348) on June 11, 1987 and simultaneously proposed other revisions to 36 CFR 223.178(b) intended to conclude the buy-out process. The period for public comment was extended on July 28, 1987 (52 FR 28167).

It is now more than 2 years since the final buy-out rule was published. Most of the contracts bought out have been closed and, in accordance with Congressional direction, resale of this timber has proceeded on a priority basis. However, some timber sale purchasers have not executed the contract closure agreements. This delay thwarts the intent of Congress and obstructs the orderly management of national forest resources.

In order to expedite the timely reoffering of returned contracts and to conclude the buy-out program established by the FTCPMA, the Department, in addition to requesting comment on the existing § 223.178(b)(4), proposed adding two new provisions to 36 CFR 223.178(b). One would establish a deadline by which all of the necessary paperwork to buy out and close a contract must be submitted to the Forest Service. The other provision would establish that failure to comply with the requirements in paragraph (b) of 36 CFR 223.178 in a timely manner would result in rejection of the applicable contracts from the buy-out program.

The FTCPMA established a one-time opportunity for purchasers to "buy out" of certain Federal timber sale contracts. Many of the timber sales returned to the Government were originally sold in the mid-to-late 1970s. Since the buy-out program began, a third operating season for timber harvesting is approaching. Purchasers have had more than sufficient time to close contracts. The program should be terminated so that limited Agency resources can be expended on resale of the returned timber and other activities. Closure of returned contracts is in the public interest, and the proposed requirements for closure are consistent with the FTCPMA. Requiring closure is not believed to prejudice any purchaser's right to judicial review of the terms of the contract closure.

Analysis of Public Comment

The Department published the proposed rule for buy out contract closure procedures in the same notice (52 FR 22348, June 11, 1987) as the request for public comments on the claims release provision of § 223.178(b)(4). The period for public comment was extended on July 28, 1987, until August 12, 1987 (52 FR 28167).

The Forest Service received comments from eight respondents. Five respondents are attorneys who represent Federal timber purchasers, one is a consulting forester, and two were timber industry associations.

The consulting forester strongly favored the proposed rule. He stated that it seemed "incredible" to him that full implementation had been delayed again.

The other respondents opposed retention of the present claims release provision and the proposed contract closure procedures. Specific comments and the Department's response follows:

Comment: Some respondents assert that the FTCPMA was remedial in nature and should not require purchasers to give up their money claims. They do not believe that the concept of a purchaser waiving claims comported with the intent of the Act. Several others commented that the FTCPMA did not expressly authorize the Forest Service to require a purchaser to waive claims against the Government as a prerequisite to buy-out.

Response: The Act permitted purchasers to return a limited volume of timber under certain qualifying timber sale contracts to the Government, if the purchaser satisfied certain requirements. There is no indication that Congress intended to allow certain purchasers of Federal timber to return unperformed timber sale contracts to the Forest Service upon payment of a buy-out charge substantially less than the contract value or the damage claim by the Government, while at the same time expending Federal dollars to pay or to litigate alleged claims under those same contracts. To the contrary, Congress specifically addressed claims under contracts to be returned. The Act preserved only certain Government claims under these contracts while also surrendering significant damage claims by the Government for nonperformance. For example, upon a purchaser's compliance with the terms of the buy-out program, the Government released large damage claims against purchasers for failure to cut the timber under the contract terms. The statute expressly provides that:

> The Government does not hereby surrender any other claim against a purchaser which arose under a contract prior to effectuation of this release and not in connection with this release from obligation to cut, harvest and pay for timber (16 U.S.C. 618(a)(1)).

There is no mention of preservation of a purchaser's claims under these contracts. Thus, while it is true that there is no direct language in the statute mandating a purchaser to waive claims as a prerequisite to the Government accepting a returned contract, such direction is implicit.

It is also clear from section 2(a)(5)(A) of the Act that the Act contemplates closure of a contract upon completion of buy out, as well as prompt resale of the timber included in the bought-out contract. The only way prompt closure and resale could occur is by release of all claims other than those preserved by statute.

The statute and implementing regulations are replete with the exercise of discretion by the purchaser. A purchaser was entitled to choose which contracts to request for buy out as well as whether or not to participate at all in the program. It is the firm belief of this Department that requiring a purchaser to release its claims against the Government under the very same

contract that a purchaser is requesting to return unperformed to the Government is consistent with the statute and with Congressional intent and that not to do so is contrary to sound policy and common sense. There is no basis for drawing a broader interpretation that purchasers can preserve claims in returning an unperformed contract to the Government.

Comment: Some respondents asserted that it is unnecessary for a purchaser to release its claims under a contract before that same contract is resold.

Response: The Department disagrees. As a matter of sound administration, the Government cannot be litigating a dispute while reselling the subject of that dispute. Undisputed claims submitted to the Government by a purchaser prior to requesting buy out of a particular contract were paid by the Forest Service. To continue to spend limited resources resolving disputes involving contracts returned to the Government is not believed to be good management. The agency is not presuming that all Government claims are valid and that all purchaser claims are invalid. Rather, the Department believes the purchaser must weigh all considerations when selecting which contracts it will request to buy out. If the purchaser believed it had a valid claim, the value of the claim was a factor in determining whether or not to request to buy out of that particular contract. The Department does not believe Congress anticipated the expenditure of appropriated dollars to pay for or to dispute claims under the very same contracts for which Congress provided extraordinary relief in the form of the buy-out program.

Comment: One respondent asserted that the requirement to waive claims is overbroad in that it requires the waiver of all claims rather than those where there is some factual nexus between resale of the timber and the pending claim.

Response: As discussed in the first response, the requirement that a purchaser release its claims under an unperformed contract it has selected to return to the Government is based on a comprehensive interpretation of that statute and Congressional intent as well as administration of such a program. Providing for the reservation of a purchaser's specified claims under a contract being returned to the Government is not consistent with the statutory preservation of only certain Government claims under such contracts and other discussed statutory provisions, Congressional intent or proper management.

Comment: Two respondents believe that the "claim waiver requirement" is discriminatory between a purchaser with a claim and a purchaser without a claim and is, therefore, illegal. The alledged discrimination results in a higher "cost" to buy out for the purchaser with a claim.

Response: In providing the extraordinary relief of returning contracts bid substantially beyond market prices to the Government, Congress and the Department developed a comprehensive program balancing concerned interests. The program was available on a discretionary basis to purchasers of Federal timber holding eligible contracts. The circumstances of each eligible contract and of each purchaser were different. For each participant, it was necessary to weigh the costs of operating the particular contract against the costs of returning the contract unperformed to the Government pursuant to the buy-out program. The Department does not believe the claim waiver requirement discriminates among purchasers any more than any other requirement or term for participation in the limited buy-out program

Comment: Some respondents observed that proposed paragraph (6) which provides for rejection of a contract upon failure to complete any of the requirements for return of contracts is without authority and is unduly harsh. They said that this paragraph would result in forfeiture of a purchaser's right to buy out a particular contract, and loss of the buy-out volume entitlement assigned to the contract.

Response: The FTCPMA establishes a noncontinuous, limited program for returning certain contracts to the Government. It also directs the orderly and prompt resale of timber included in bought-out contracts. Failure to promptly complete the requirements for return of a contract after the buy out is completed is not compatible with the terms of the Act or proper management of the resource. In addition, if a purchaser retains one or more contracts approved for buy out, the purchaser limits the opportunities of other timber operators to purchase the included timber. In light of the adverse impacts of a purchaser's failure to timely return a bought-out contract, rejection of the buy out of an applicable contract does not appear to be unduly harsh. There is no authority to allow substitution with another contract by submission of an amended application. A purchaser does not have an unrestricted right to buy out a contract; purchasers must comply with the requirements and procedures of the buy-out program.

Comment: Some respondents said that the proposed repromulgation of § 223.178(b)(4) is premature, since the validity of requiring waiver by a purchaser of all claims against the Government relating to a buy-out contract is one of the points being appealed to the Ninth Circuit Court in *Sierra Pacific Industries, et al.*

Response: Judge Conti, in *Sierra Pacific*, held that the requirement was valid because it was consistent with the terms of the FTCPMA and within the authority of the Secretary of Agriculture. Judge Frye, in *Big Flat Timber Company, et al.* concurred.

The Department is aware that the requirement is under appeal, and the Department does not seek to impede the appeal process. However, the Department believes that it is necessary to continue with closure of bought-out contracts if the intent of Congress and proper management of the resource is not to be thwarted. Therefore, the Department does not believe that the proposal for the new regulation is premature. The Department believes that the regulation is needed now in order to fully implement the Act.

Comment: One respondent said that the proposed deadline for concluding the buy-out program could foreclose judicial review of put parties challenging the requirement under duress to waive their claims or risk forfeiture of the opportunity to buy out the particular contract under which they refused to release their claims.

Response: Clearly, the Department will comply with the final judicial determination on the validity of the requirement that a purchaser waive its claims under a contract returned to the Government under the buy-out program. However, the Government cannot and does not presume the requirement is invalid, particularly in light of the favorable rulings on the merits by two larger courts.

Few purchasers have pursued a legal challenge to this requirement; most have fully complied with the contract closure procedures. For those few purchasers challenging this requirement or those delaying execution of the contract closure agreement for whatever purpose, it is not believed that this requirement affects the right to judicial review. A purchaser who is appealing the claims release provision can avoid forfeiture of a buy-out request by promptly closing any pending contract in accordance with the deadline established in the final rule. The purchaser has nothing to lose by executing the closure agreement. If the Government prevails on appeal, the purchaser must abide by the claims

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release provision. If the purchaser prevails, the court will order an appropriate remedy notwithstanding the claims release provision in the closure agreement. Requiring a contract submitted for buy out to be either closed or rejected from the buy-out program and operated is necessary since there is no further opportunity under the law to amend buy-out requests to add other contracts.

Comment: Some respondents believe that the proposed rules were untimely. They cited section 2(a)(6)(A) of the Act which specified that final rules for implementing the buy-out program be published within 90 days of enactment of the FTCPMA. These respondents stated that Congress intended that there by a single set of buy-out regulations, and that the time for publishing buy-out rules had elapsed.

Response: Participants in the program are not prejudiced by this rulemaking. All participants were aware of a requirement to release claims before selecting and submitting their buy-out applications. The requirements in paragraphs (5) and (6) are necessary to conclude the buy-out program; they do not involve procedures necessary to initiate participation, and thus relief, under the program. There is no basis for concluding that Congress intended that the Department be deprived of the opportunity to engage in subsequent rulemaking necessary to correct procedural requirements or omissions.

The need for additional procedures was not recognized until it became evident a small group of purchasers, which includes purchasers not challenging the regulations, was delaying closure and thus resales. Therefore, the Agency does not consider the proposal for paragraphs (5) and (6) of 36 CFR 223.178(b) to be untimely, but rather in response to a situation that neither Congress nor the Agency foresaw.

Comment: Some respondents questioned whether publication of the proposal as a final rule would reopen the opportunity for purchasers to file buy-out applications. They based their question upon section 2(a)(6) of the FTCPMA which provides:

> (A) The Secretary of the Interior and the Secretary of Agriculture shall publish final rules for the implementation of this subsection in the **Federal Register** within 90 days after the date of enactment of this Act.
>
> (B) *Such* final rules shall require purchasers to submit buy-out requests to the appropriate Secretary within 90 days after the publication of *such* rules. (Emphasis added.)

Response: The Department interprets the FTCPMA as providing only a one-time opportunity to return qualifying uncompleted timber sale contracts to the Government upon satisfaction of specified requirements, including payment of a charge substantially less than the contract price or damage claims by the Government. The final rules for return of contracts under the FTCPMA were published June 27, 1985 (50 FR 26660) and subsequently codified at 36 CFR Part 223, Subpart E. Pursuant to § 223.171 of that rule, any purchaser wishing to apply for contract buy out was required to submit a completed application for contract buy out "within 90 days of final publication of *these* rules * * *" or until September 25, 1985 (emphasis added). Specific deadlines were also established for completion of other requirements such as payment of the buy-out charge. This final rule is limited to provisions relating to closure of contracts returned under the buy-out program. The other provisions of the rule are not affected, and, thus, this rulemaking does not reopen the opportunity for purchasers to file buy-out applications.

Having considered the comments received, the Department is promulgating a final rule that retains the claims release language of the existing rule and adopts, without change from the proposed rule, the new paragraphs (5) and (6) to be added to § 223.178(b).

Regulatory Impact

This action has been submitted to the Office of Management and Budget for review pursuant to Executive Order 12291. It has been determined that this regulation is not a major rule. It implements elements of the Federal Timber Contract Payment Modification Act that allow a purchaser of Forest Service timber sale contracts to return certain of these contracts to the Secretary of Agriculture upon satisfaction of specified conditions and payments. The intent of the Act is to prevent a large number of insolvencies among purchasers of Federal timber, to preserve the employment generated by the forest products industry, and to avoid financial disruption to communities economically dependent upon the industry.

The discretion available to the Secretary is in establishing administrative procedures to implement the buy-out provisions of the Act. The implementing procedures in these rules are designed to minimize further cost to both the Government and purchasers by:

1. Limiting procedures to those set forth in the Act as much as possible;
2. Following standard Forest Service contracting practices and procedures whenever possible;
3. Providing cost effective methods for administering the buy-out provisions; and,
4. Minimizing delay and disruption to the ongoing timber management program and to purchasers of future timber sales.

In and of themselves, the procedures implemented by this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local Government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based enterprises in domestic or export markets.

This rule also will not have significant economic impact on a substantial number of small entities. The Act applies equally to small and large entities and establishes the requirements for buying out a Federal timber contract.

Based on environmental analysis, this rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). Furthermore, the rule will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) are not applicable.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, Part 223 of Chapter II, Title 36, Code of Federal Regulations is amended as follows:

PART 223—[AMENDED]

Subpart E—[Amended]

1. The authority citation for Part 223, Subpart E continues to read as follows:

> **Authority:** Sec. 14, Pub. L. 94–588, 90 Stat. 2958, 16 U.S.C. 472a, Sec. 2, Pub. L. 98–478, 98 Stat. 2213, 16 U.S.C. 618.

2. Revise § 223.178(b) to read as follows:

§ 223.178 Return of contracts.

* * * * *

(b) *Release from further obligations.* The Forest Service shall, by contract closure, release a purchaser from further obligations to cut, remove, and pay for timber under a returned contract upon:

(1) Timely payment or arrangement for payment (§ 223.181) of the applicable buy-out cost; and,

(2)(i) Timely fulfillment of any Government claim that arose under the contract (other than damages due to a purchaser's failure to cut under contract provisions B9.4, BT9.4 or 16) which has been asserted by the Contracting Officer prior to the Forest Service release from further obligations; or

(ii) Agreement to retain payment and performance guarantees under the contract pending resolution of the Government's claim.

(3) Timely completion of the conditions prescribed by the Regional Forester if the contract is a conditionally returned contract (§ 223.177); and

(4) Release of the Government from all claims arising from the returned contract.

(5) Purchaser's return of the executed closure papers within 30 calendar days of receipt of the closure agreement from the Contracting Officer or by July 26, 1988, whichever date is later.

(6) Failure to fulfill any of the requirements set forth in paragraphs (b)(1) through (5) of this section will result in rejection of the applicable contract(s) from this buy-out program, unless the Regional Forester determines the delay was caused by the purchaser being physically incapable of timely satisfying these requirements. Rejection of contracts for failure to fulfill any of the requirements set forth in paragraph (b)(1) through (5) of this section in a timely manner is not a basis for an amended application for contract buy out.

Dated: April 18, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–9154 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP 300181A; FRL–3370–1]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds an entry for green onions in the commodity definitions and revises the established commodity definition for onions. The Interregional Research Project No. 4 (IR–4) requested this amendment.

EFFECTIVE DATE: April 27, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP 300181A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 9, 1988 (52 FR 7540), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request on behalf of Dr. Robert H. Kupelian, National Director, and the IR–4 Technical Committee that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and cosmetic Act, amend 40 CFR 180.1(h) by adding "green onions" to the general category of commodities listed in column A and defining that commodity as "green onions, leeks, spring onions or scallions, Japanese bunching onions, and green shallots or green eschalots" by inserting these corresponding commodities in the specific commodities listing in Column B.

The IR–4 supported this request by pointing out that the growth habits, cultural and production practices, pest complex, and harvest techniques for these green onion commodities are all similar.

The IR–4 also requested that the specific raw agricultural commodities corresponding to the general commodity "onions" be revised in accordance with the definition for green onions.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amendment will protect the public health. Therefore, the amendment is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

> **Authority:** 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition for onions and by adding a definition for green onions to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Onions	Dry bulb onions, green onions, and garlic.
* * * * *	
Onions, green.	Green onions, leeks, spring onions or scallions, Japanese bunching onions, green shallots, or green eschalots.
* * * * *	
* * * * *	

[FR Doc. 88–9101 Filed 4–26–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 4E3146/R950; FRL-3369-8]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3-PBA in or on the raw agricultural commodities avocados and papayas. The Interregional Research Project No. 4 (IR-4) petitioned for the tolerances.

EFFECTIVE DATE: April 27, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 4E3146/R950], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 9, 1988 (53 FR 7539), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 4E3146 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Florida, and Puerto Rico.

The petition requested that the Administrator, pursuant to section 408 (e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites, 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxybenzyl)-methanol (3-PBA), in or on the agricultural commodities avocados and papayas at 1.0 part per million (ppm). The proposed rule inadvertently added the commodity papayas to paragraph (b) of § 180.378, but the intention was to add the commodity papayas to the listings for regional registration in paragraph (d), and that change is being made in this final rule. The use of permethrin on papayas will be limited to Florida only based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 348a.

2. Section 180.378 is amended in paragraph (b) by adding and alphabetically inserting the commodity avocados, and in paragraph (d) by adding and alphabetically inserting papayas as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Avocados	1.0
* * * * *	

(d) * * *

Commodities	Parts per million
* * * * *	
Papayas	1.0
* * * * *	

[FR Doc. 88-9098 Filed 4-26-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3409/R949; FRL-3369-7]

Pesticide Tolerance for Terbufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) bananas. This regulation to establish a maximum permissible level for residues of the insecticide/nematicide was requested by the American Cyanamid Co.

EFFECTIVE DATE: April 27, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 6E3409/R949], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: William H. Miller, Product Manager (PM) 16, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2600.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 2, 1988 (53 FR 6671), in which it was announced that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 6F3409 proposing pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act the establishment of a tolerance for the combined residues of the insecticide/nematicide terbufos (S-[[(1,1-dimethylethyl) thio]methyl]-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the RAC bananas at 0.025 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.352 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A temporary tolerance to expire April 27, 1990 is established for combined residues of the insecticide/nematicide terbufos (S-[[(1,1-dimethylethyl]thio]methyl]-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Bananas	0.025

[FR Doc. 88-9102 Filed 4-26-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6674

[MT-930-08-4220-10; M-68761]

Withdrawal of Public Land for Protection of the Blacktail Creek Paleontological Site, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 320 acres of public lands from surface entry and mining for 20 years to protect a valuable paleontological resource. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management paleontological site:

Principal Meridian

T. 13 N., R. 22 E.,
Sec. 6, W½SE¼;
Sec. 8, SW¼NW¼.
T. 14 N., R. 22 E.,
Sec. 33, N½SE¼;
Sec. 34, N½SW¼ and SE¼NE¼.
The areas described aggregate 320 acres in Fergus County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

April 14, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-9184 Filed 4-26-88; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States; Notice of Effective Date and Enforcement Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of effective date and enforcement policy.

SUMMARY: The U.S. Fish and Wildlife Service announces the means by which it intends to comply with a preliminary injunction issued by the United States District Court for the District of Columbia regarding the effectiveness of regulations governing the humane and healthful transport of mammals and birds into the United States.

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DATE: 50 CFR 14.101 through 14.204 (Subpart J) became effective on February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329, telephone (202) 343–4968.

SUPPLEMENTARY INFORMATION: The Service published a final rule on November 10, 1987 (52 FR 43274) that set standards for the humane and healthful transport of wild mammals and birds into the United States. After publication of the rule, the Service received additional comments from affected members of the public maintaining that some of its provisions were not clear, were unreasonable, or could actually result in inhumane shipment conditions. The rule was to have taken effect on February 8, 1988, but because of the substantial controversy surrounding it, the Service delayed the effective date until August. (53 FR 3894)

In response to a lawsuit, however, a preliminary injunction order issued on April 18, 1988, by the United States District Court for the District of Columbia, John H. Pratt, United States District Judge, ruled that delay of the effective date was without good cause. Consequently, the rule published in November is now in force and is effective as of February 8, 1988, as required by this Court Order.

The Service is now developing a law enforcement policy that will be published in the **Federal Register** as a notice of information. Such guidance will be made generally available to all interested parties, including shippers and carriers, so they may be advised of the enforcement policies applicable to this rule.

Simultaneously with the actions outlined above to undertake enforcement of the rule, the Service is also continuing to review the provisions for the purpose of making improvements and clarifications. Any significant amendments found necessary will be issued as proposed rules in the near future and will be subject to public review and comment and Service consideration before being adopted.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

Date: February 22, 1988.

[FR Doc. 88–9286 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 53, No. 81
Wednesday, April 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Part 7

Political Activities

AGENCY: General Accounting Office.

ACTION: Proposed rule.

SUMMARY: The general language in § 7.3 is amended to provide specific language which describes permitted and prohibited political activities. The agency has determined that the guidance now offered in § 7.3 is too general to be of use to employees who want to engage in political activities. Publication of specific guidance will clarify prohibitions and permitted activities.

DATES: Comments must be received on or before May 27, 1988.

ADDRESSES: Comments should be sent to the Director, Personnel, U.S. General Accounting Office, 441 G Street NW., Room 4741, Washington, DC 20548; ATTN: Miss McCoy.

FOR FURTHER INFORMATION CONTACT: Steve Schmal or Frances McCoy, (202) 275–3889.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Act (Pub. L. 96–191, Feb. 15, 1980), codified at 31 U.S.C. 731 *et seq.*, authorizes the Comptroller General to establish a personnel system for the General Accounting Office. Section 732(b)(3) requires that the personnel system must prohibit the political activities prohibited under Subchapter III of Chapter 73 of Title 5, United States Code.

Accordingly, the agency issued regulations, codified at 4 CFR 7.3 (1986), which are not as specific as the regulations pertaining to executive branch employees, set forth at 5 CFR Part 733. As a result the regulations may be too vague to provide useful guidance.

In order to provide specific guidance to employees consistent with that applicable to the majority of federal employees, the agency has decided to adopt the language in 5 CFR Part 733 Subpart A. Changes have been made to render the language agency-specific to meet GAO's needs.

List of Subjects in 4 CFR Part 7

Political activities (Government employees).

For the reasons set out in the preamble, Title 4, Chapter I, Subchapter A, Part 7, is amended as follows.

PART 7—PERSONNEL RELATIONS AND SERVICES

1. The authority citation for Part 7 continues to read as follows:

Authority: 31 U.S.C. 732.

2. Section 7.3 is revised to read as follows:

§ 7.3 Political activities.

(a) In this section:

(1) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(2) "Election" includes a primary, special, and general election.

(3) "Employee" means an individual who occupies a position in the General Accounting Office.

(4) "Employer" or "employing authority" means the Comptroller General, his principal, or an employee's supervisor.

(5) "Federal workplace" means any place, site, installation, building, room, or facility in which any department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(6) "Nonpartisan election" means—

(i) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(ii) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

(7) "Partisan" when used as an adjective refers to a political party.

(8) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(9) "Political party" means a national political party, a state political party, and an affiliated organization.

(b) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this section. Each employee retains the right to—

(1) Register and vote in any election;

(2) Express his opinion as an individual privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge, or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund-raising function, or other political gathering;

(7) Sign a political petition as an individual;

(8) Make a financial contribution to a political fund, political party, or organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate in a partisan election covered by paragraphs (h), (i), and (j) of this section;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform

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nonpartisan duties as prescribed by state or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his/her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency.

(c) Paragraph (b) of this section does not authorize an employee to engage in political activity in violation of law, while on duty. The Comptroller General may prohibit or limit the participation of an employee or class of employees in an activity permitted by paragraph (b) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

(d) An employee may not use his/her official authority or influence for the purpose of interfering with or affecting the result of an election.

(e) An employee may not take an active part in political management or in a political campaign, except as permitted by this section.

(f) Activities prohibited by paragraph (e) of this section include but are not limited to—

(1) Serving as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient.

(g) Paragraph (f) of the section does not apply to—

(1) The Comptroller General or the Deputy Comptroller General;

(2) An employee who resides in a municipality or other political subdivision designated under paragraph (i), subject to the conditions of paragraphs (i) and (j) of this section; or

(3) An employee who works on an irregular or occasional basis, on the days that he/she performs no services.

(h) Paragraph (f) of this section does not prohibit activity in political management or in a political campaign by an employee in connection with—

(1) A nonpartisan election, or

(2) Subject to the conditions and limitations established by the Comptroller General, an election held in a municipality or political subdivision designated under paragraph (i) of this section.

(i) For the purpose of paragraph (h)(2) of this section, the Comptroller General may designate a municipality or political subdivision in Maryland or Virginia in the immediate vicinity of the District of Columbia or a municipality in which the majority of voters are employed by the Government of the United States, when the Comptroller General determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections. The following municipalities and political subdivisions have been designated:

In Maryland

Annapolis
Anne Arundel County
Berwyn Heights
Bethesda
Bladensburg
Bowie
Brentwood
Capitol Heights
Cheverly
Chevy Chase, sections 1, 2, 3, and 4
Martin's Additions 1, 2, 3, and 4 to Chevy Chase
Chevy Chase View
College Park
Cottage City
District Heights
Edmonston
Fairmont Heights
Forest Heights
Garrett Park
Glendarden
Glen Echo
Greenbelt
Howard County
Hyattsville
Kensington
Landover Hills
Montgomery County
Morningside
Mount Rainier
New Carrollton
North Beach
North Brentwood
North Chevy Chase
Northwest Park
Prince Georges County
Riverdale
Rockville
Seat Pleasant
Somerset
Takoma Park
University Park
Washington Grove

In Virginia

Alexandria
Arlington County
Clifton
Fairfax County
Town of Fairfax
Falls Church
Herndon
Loudoun County
Manassas
Manassas Park
Portsmouth
Prince William County
Stafford County
Vienna

Other Municipalities

Anchorage, Alaska
Benicia, Calif.
Bremerton, Wash.
Centerville, Ga.
Crane, Ind.
District of Columbia
Elmer City, Wash.
Huachuca City, Ariz.
New Johnsonville, Tenn.
Norris, Tenn.
Port Orchard, Wash.
Sierra Vista, Ariz.
Warner Robbins, Ga.

(j) An employee who resides in a municipality or political subdivision listed in paragraph (i) of this section may take an active part in political management and political campaigns in connection with partisan elections for local offices of the municipality or political subdivision, subject to the following limitations:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

Felix R. Brandon II,
Director of Personnel.

[FR Doc. 88-9201 Filed 4-26-88; 8:45 am]
BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 449

[Amdt. No. 2; Doc. No. 5564S]

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449). FCIC has determined that the effect of the proposed rule; extending the filing date to May 31, 1988, would be nullified because a 30 day comment period provided in the rule would extend beyond the present filing date for contract changes.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Wednesday, April 6, 1988, FCIC published an NPRM in the **Federal Register** at 53 FR 11299, which proposed to amend the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449) to extend the date for filing contract changes specified in the policy for insuring fresh market sweet corn.

Upon review, FCIC has determined that this proposed rule would be nullified because the thirty day comment period provided in the rule would extend beyond the present filing date for contract changes (April 30, 1988).

It is FCIC's intention to publish an Interim Rule to achieve the same purpose in a later publication of the **Federal Register**. Therefore we believe that the proposed rule published at 53 FR 11299 should be, and is hereby, withdrawn.

Done in Washington, DC on April 18, 1988.

Edward D. Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-9170 Filed 4-26-88; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on increasing the base quantity reserve for the 1988-89 crop year from the required minimum of 2.0 percent to 4.57 percent of the total base quantities currently issued to cranberry growers, in order to update and expand base quantities for the benefit of growers. This would help facilitate the appropriate and equitable operation of the cranberry marketing order.

DATE: Comments must be received by May 27, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, UDSA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 states. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years or less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposed rule invites comments on increasing the reserve base quantity from the minimum 2.0 percent required by the order to 4.57 percent, in order to update and adjust growers' base quantities for the 1988-89 crop year. This proposal was unanimously recommended by the Cranberry Marketing Committee (Committee) at its February 24, 1988, meeting. The Committee is the agency responsible for local administration of the marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If the Secretary finds, based on the recommendation of the Committee or

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from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among all eligible growers by applying an allotment percentage to each grower's base quantity pursuant to § 929.48.

Such base quantities are issued to growers: (a) Based on their sales during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used for the issuance of base quantities to new growers and adjustments in base quantities for existing growers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing growers. Any unallocated portion of the 25 percent available to new growers may, at the discretion of the Committee, be prorated among eligible existing growers on an equitable basis.

On February 24, 1988, the Committee held its annual winter meeting to formulate its marketing policy for the 1988–89 crop year. It determined that implementation of § 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, the Committee noted that cranberry production was projected to exceed the total of all allotment bases and recommended that additional base be issued to all qualified new and existing growers to the full amount to which each grower requested, contingent on the growers's demonstrated ability to produce and sell cranberries. The increase will make additional base quantity available to new and existing growers by increasing the 2.0 percent minimum base quantity reserve, currently provided, to 4.57 percent. This increase will also aid in the updating of base quantities which would be necessary for any future establishment of a marketable quantity and annual allotment.

The impact of this regulation would be on growers and would not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to growers. The increase in the amount of base quantity to be issued represents the total amount of base quantity requested by qualified new and existing growers for the 1988–89 crop year. The Committee intends to distribute base quantity reserve to approximately 54 new growers and 283 existing growers. Any potential costs to growers would be significantly offset when compared to the potential benefits of greater and more equitable allocation of allotment bases to growers. This proposed rule would not alter any reporting or recordkeeping requirements currently in effect.

Based on the available information, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority (Secs. 1–19, 48 Stat. 31, as amended; U.S.C. 601–674).

2. Section 929.153 is amended by revising paragraph (a) to read as follows:

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1988–89 crop year, the reserve base quantity shall be 4.57 percent.

* * * * *

Dated: April 22, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-9284 Filed 4-26-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 981

Almonds Grown in California; Administrative Rules and Regulations Concerning Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change administrative rules and regulations concerning quality control requirements established under the Federal marketing order for California almonds to require accepted users of almonds to: (1) Obtain a public weighmaster weight certificate for each lot of almonds received from handlers, (2) submit a business data sheet to the Almond Board of California (Board), and (3) complete an application with the Board for accepted user status. The Board is the agency responsible for local administration of the almond marketing order. These changes are needed to improve compliance under the almond marketing order.

DATE: Comments must be received by May 27, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20250–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 100 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. There are 54 accepted users currently registered with the Board, of which 50 are feeders of almonds to livestock and four are crushers of almonds for the purpose of manufacturing almond oil. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Small livestock producers have been defiend as those having average gross annual revenues for the last three years of less than $100,000, except for small beef cattle feedlots and small egg producers, for which the standard is less than $1,000,000. Small vegetable oil manufacturers have been defined as those employing an average of less than 100 persons during the preceding 12 months. The majority of handlers, producers, and accepted users of California almonds may be classified as small entities.

This action proposes amending the rules and regulations established under the marketing order for California almonds to specify requirements for accepted users. Accepted users are almond crushers, feeders, feed manufacturers, or other dealers in nut wastes who receive low quality almonds from handlers and dispose of those almonds in low value outlets.

This action would require accepted users to complete an application and a business data sheet in order to qualify for accepted user status. It is estimated that the application would take less than two minutes to complete and that the business data sheet would take less than five minutes to complete. This action would also require accepted users to obtain a public weighmaster certificate for each lot of almonds received from handlers and to submit this certificate to the Board along with ABC Form 8. It is expected that it would cost accepted users $3.00 to $5.00 to have each lot weighted and certified and that about 300 lots would require certification each year, divided among about 54 accepted users. It is estimated that it would take accepted users less than two minutes to submit each certificate to the Board.

Based on the above, the Administrator of the Agricultural marketing Service has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1989 [44 U.S.C. 3507], the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

This proposal would revise § 981.442 of "Subpart-Administrative Rules and Regulations." The proposal is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers shall deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Paragraph 981.442(a)(1) of such rules and regulations provides that handlers shall meet their disposition obligations by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or other dealers in nut wastes on record with the Board as accepted users. This action would add a new paragraph (a)(7) to § 981.442 to specify requirements for becoming an accepted user on record with the Board.

One of these requirements would require potential accepted users to file an application with the Board as is current practice. This application would be in the form of an agreement whereby accepted users would agree not to dispose of any almonds in human consumption outlets and to allow Board employees to enter applicants' premises at any reasonable time to observe the storage or disposition of almond material and examine and audit applicants' records of almond transactions. The accepted users would also agree to obtain ABC Form 8 from the handler for each lot of material received and, upon crushing, mixing, or feeding the almonds, to execute Part B of the form and mail it promptly to the Board. Handlers currently complete Part A of ABC Form 8 for each lot, providing information such as the total weight of the lot and the net kernelweight as obtained from the inspection agency pursuant to § 981.442(a)(5) of the regulations. As is current practice, the accepted user certifies on Part B of ABC Form 8 that the material has been crushed into oil, mixed into feed, or fed directly to livestock. By signing the application, accepted users would also agree to submit a business data sheet to the Board and to obtain a public weighmaster certificate for each lot of almonds received. Accepted users would also acknowledge that their status as an accepted user could be revoked at any time if the accepted user violates the terms of the agreement.

This proposed rule would require accepted users to submit a business data sheet to the Board. The sheet would include such information as the accepted user's name, mailing address, telephone numbers, type of business, location of the accepted user's facility, and the names of the principals involved in the business. This information is necessary so that the Board knows where disposition is to take place and how to contact those officials responsible for disposition.

Finally, this proposal would require accepted users to obtain a public weighmaster weight certificate for each lot of almonds received from handlers and attach a copy of the certificate to the corresponding ABC Form 8 submitted to the Board. Public weighmasters are officials of the State of California, who would weigh each almond lot on scales certified as accurate by the State of California to within 0.2 percent. Customarily, lots are inspected and weighed by the inspection agency at the handler's facility on public scales which are also certified as accurate to within 0.2 percent. This requirement would allow the Board to compare the weight of a lot at the handler's facility with the weight of the same lot upon receipt by the accepted user. In cases where the two weights differ by more than 0.4 percent, it would appear that the integrity of the lot is subject to question. Therefore, this action proposes that handlers would not receive credit against their inedible disposition obligations for such lots.

While most lots of inedible quality almonds are inspected by the inspection agency at the handler's facility, the regulations provide that such lots may be inspected instead at the accepted user's facility. In this case, the accepted

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user's submission of the inspection agency's weight and inspection certificate to the Board would serve to meet the public weighmaster weight certificate requirement.

The new requirements proposed by this rule are intended to improve marketing order compliance by helping to ensure that inedible disposition almonds are disposed of properly. The proposed action provides necessary safeguards to prevent handlers from diverting inedible disposition almonds after inspection and shipping those almonds into edible channels. Accepted users may be intentionally or unintentionally disposing of lesser quantities of almonds than determined by the inspection agency as reported by handlers on ABC Form 8. This proposed action would help prevent such practices.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § 981.442 by adding a new paragraph (a)(7) to read as follows:

§ 981.442 Quality control.

(a) * * *

(7) *Accepted Users.* An accepted user's eligibility shall be subject to criteria established by the Board, including: (i) Completion of an application for accepted user status, (ii) submission of a business data sheet, and (iii) the accurate and prompt submission of ABC Form 8, Part B, for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt or, if the lot is inspected by the inspection agency at the accepted user's facility, by the weight certificate issued by the inspection agency. The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the weighmaster weight certificate exceeds 0.4 percent.

Dated: April 22, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–9286 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 985

Expenses and Assessment Rate for Far West Spearmint Oil

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 985 for the 1988–89 marketing year established for the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by May 9, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafer referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 9 handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 producers of Far West spearmint oil in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually action upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Spearmint Oil Administrative Committee (SOAC) met on March 30, 1988, and unanimously recommended 1988–89 marketing order expenditures of $182,500 and recommended, by a 6–1 vote, an assessment rate of $0.09 per pound of Far West spearmint oil. In comparison, 1987–88 marketing year budgeted expenditures were $166,000 and the assessment rate was $0.08 per pound. Expenditure categories in the 1988–89 budget are $77,925 for program administration, $78,575 for salaries, and $26,000 for expenses which includes travel and compensation. Assessment income for 1988–89 is expected to total $145,785.15 based on shipments of 1,619,835 pounds of spearmint oil. Interest and incidental income is estimated at $7,000. The SOAC may expend operational reserve funds of $29,714 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The SOAC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Far West, Spearmint Oil.

For the reasons set forth in the preamble, it is proposed that new § 985.308 be added as follows:

PART 985—[AMENDED]

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 985.308 is added to read as follows:

§ 985.308 Expenses and assessment rate.

Expenses of $182,500 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 985.41 is fixed at $0.09 per pound of salable spearmint oil for the 1988–89 marketing year ending May 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: April 22, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–9285 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Facility Form Nuclear Liability Insurance Policy; Miscellaneous Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to make several minor changes in the Facility Form nuclear liability insurance policy furnished as evidence of financial protection. The two nuclear insurance pools have submitted endorsements to the Facility Form policy that make available a single insurance policy to cover onsite worker claims. This new Master Worker Policy reflects different rating and underwriting treatment than is utilized in the Facility Form policy. The supplementary insurance provided by the new policy enhances protection to the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act. This proposed rule is being published to conform Commission regulations to these new worker endorsements.

DATES: The comment period expires Friday, May 27, 1988. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S.Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1289.

SUPPLEMENTARY INFORMATION: The two nuclear insurance pools, Nuclear Energy Liability Insurance Association (NELIA) and Mutual Atomic Energy Liability Underwriters (MAELU) have submitted to the Commission endorsements to the Facility Form nuclear liability insurance policy and a new Facility Form Policy that was effective as of January 1, 1988. The Facility Form of insurance policy along with endorsements to these policies has been accepted by the Commission as evidence of the financial protection required under Section 170 of the Atomic Energy Act of 1954, as amended. From time to time modifications to the Facility Form have been required to reflect changes in the Price-Anderson Act. Endorsements, for example, have been added to the Facility Forms, among other things, to waive certain legal defenses against claims arising out of an extraordinary nuclear occurrence.

The evidence of financial protection accepted by the Commission assures the availability of funds to compensate the public for the financial consequences of a catastrophic nuclear accident.

To this end, the financial protection for the public comprises two layers: (1) Primary financial protection in the amount of $160 million offered by licensees in the form of insurance provided by the Pools under Facility Forms, and

(2) A second layer of financial protection provided to licensees that is based on the obligations of licensees to pay up to $5 million in retrospective premiums for their prorata share of damages that exceeds the primary layer of financial protection. The total amount of coverage in this second layer based on retrospective premiums to be paid by power rector licensees is $560 million.

The Pools have informed the Commission of a modification in the manner in which coverage was made available to operators of nuclear reactors and others effective as of January 1, 1988. The modification does not diminish the coverage provided with respect to an extraordinary nuclear occurrence or for claims from members of the public under other circumstances. The change is confined to tort claims by onsite nuclear workers that arise from circumstances unrelated to an extraordinary nuclear occurrence. Financial protection must continue to include coverage for such claims by onsite workers and the revised program the Pools are making available does so by means of a new supplementary

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insurance policy for tort claims from onsite nuclear workers. The new Nuclear Energy Liability Policy (Facility Worker Form) was effective as of January 1, 1988, and is a part of the Facility Form policy. The new Facility Worker Form covers only the claims of onsite workers first employed in the nuclear industry on or after January 1, 1988 ("new workers"). Claims of all other workers ("old workers") will continue to be covered under present Facility Forms for ten more years, until December 31, 1997, at which time coverage for claims from old workers could be added to the new Facility Worker Form, or be otherwise insured.

Coverage for old workers will be changed by an endorsement to Facility Forms. One such endorsement (Form NE–64) was attached to all Facility Forms issued before January 1, 1988, and Form NE–66 was attached to all Facility Forms issued on and after that date. Both forms allow coverage under the Facility Forms to which they are attached to continue for claims made by old workers on or before December 31, 1997.

The Facility Worker Form is a Master Policy that provides a single aggregate limit of liability shared by insured entities under all Certificates of Insurance issued to provide insurance under the Master Policy.

The Master Worker Policy that was issued by the Pools provides a single aggregate liability limit and has been designed as a prototype for a longer term, perhaps continuous, replacement program based on experience. Because the new Master Worker Policy was designed as a prototype, a 5-year term was selected on the basis of negotiations between the Pools and their insureds. It is anticipated that before the Master Worker Policy expires, a renewal or replacement policy will be developed taking into account the additional recommendations of insureds and others. A Certificate of Insurance was issued under each policy to every facility operator desiring to purchase the coverage. The Master Worker Policy issued by NELIA has a Policy Aggregate Limit of $124 million; the MAELU Policy Aggregate Limit is $36 million.

To minimize the need for Certificate holders to apply for reinstatement of the Policy Aggregate Limit as is required by the Commission, the Pools will automatically reinstate up to the limit of $160 million. The policies can be further reinstated by agreement of the parties.

The supplementary insurance provided by the Facility Worker Form enahnces protection for the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act. Conversely, payments under primary and secondary policies will not operate to reduce the coverage under the Facility Worker Form for routine claims by onsite workers.

It is important to note that the rating procedure applicable to reactors to reflect the risk of a catastrophic accident that presumably would result in a large number of offsite claims is not appropriate to the lesser, routine claims from onsite workers. The premium for the Facility Worker Form will be regulated by the "Industry Retrospective Rating Plan Premium Endorsement" (Form NE–W–1) which reflects the different kind of risk covered by the new policy.

The change in the insurance available from the Pools effective as of January 1, 1988 keeps intact the coverage that has been available to licensees with respect to claims from the public. By providing separate coverage for routine claims from new workers, and eventually from old workers, as well, the protection provided to the public, to onsite workers, and to persons who may be liable is enhanced. The Facility Form has been accepted by the Commission as evidence of financial protection from licensees. The Facility Form, as modified by Forms NE–64 and NE–66, and the Facility Worker Form, with its accompanying Certificate of Insurance and premium endorsements, are acceptable to the Commission as evidence of financial protection required by the Price-Anderson Act.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150–0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. This proposed rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201,2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.8 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 140.91, Appendix A, is amended by adding the following endorsements immediately after the existing text to read as follows:

Amendment of Coverage Endorsement for Workers Claims (Facility Form); NE–64(1/1/88)

Preamble

1. The insurance and rating plan presently used by Nuclear Energy Liability Insurance Association ("NELIA") and Mutual Atomic Energy Liability Underwriters ("MAELU") do not make a distinction between workers claims arising from catastrophic events and those arising from lesser events;

2. NELIA and MAELU believe that the lack of such a distinction will adversely affect their ability to continue to attract from world markets very large amounts of nuclear energy liability insurance for the nuclear industry;

3. NELIA and MAELU want to avoid this potential loss of capacity and to continue to provide nuclear energy liability insurance for workers claims. Accordingly NELIA and MAELU desire to restructure their present insurance programs, including this policy, effective January 1, 1988.

Now, therefore, the Named Insured and the companies do hereby agree as follows:

1. Definitions

When used in reference to this endorsement:

"this policy" means the policy of which this endorsement forms a part;

"nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"worker" refers to a person who is or was engaged in nuclear related employment;

"workers claim" means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive, or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear rated employment;

"extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy to Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following insuring Agreement IV–A does apply:

IV–A Application of Policy to Workers Claims

This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). This offer is contingent on sufficient support from policy holders, and may be withdrawn or modified by NELIA or MAELU as they deem necessary or appropriate.

The Master Worker Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the New Master Worker Policies is not automatic. A written request must be submitted to NELIA or MAELU through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this Section 5, and without regard to whether or not Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Executed for the companies

Date _____

By _____

(Signature of Authorized Officer)

_____

(Print or Type Name and Title of Officer)

Executed for the Named Insured

_____

(Named Insured—Type or Print)

Date _____

By _____

(Signature of Authorized Officer)

_____

(Print or Type Name and Title of Officer)

Effective Date of this Endorsement

_____

12:01 a.m. standard time

To form a part of

Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies.

By _____

General Manager

Endorsement No. _____.

Countersigned by _____

Amendment of Coverage Endorsement for Workers Claims (Facility Form) NE–66(1/1/88)

It is agreed that:

1. Definitions

When used in reference to this endorsement:

"this policy" means the policy of which this endorsement forms a part;

"nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"worker" refers to a person who is or was engaged in nuclear related employment;

"workers claims" means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

"extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of this Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy to Workers Claims not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following insuring Agreement IV–A does apply:

IV–A Application of Policy to Workers Claims

This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). This offer is contingent on sufficient support from policyholders, and may be withdrawn or modified by NELIA or MAELU as they deem necessary or appropriate.

The Master Worker Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the new Master Worker Policies is not automatic. A written request must be submitted to NELIA or MAELU through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this Section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

BEST COPY AVAILABLE

Explanation of Use of this Endorsement: This endorsement is a mandatory endorsement which is to be attached to new Facility Form Policies issued on or after January 1, 1988.

Effective Date of this Endorsement:

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies

By _____

General Manager

Endorsement No. _____

Countersigned by _____

Nuclear Energy Liability Insurance Association Nuclear Energy Liability Policy (Facility Worker Form) herein called Master Worker Policy NMWP–1(1/1/88)

The undersigned members of Nuclear Energy Liability Insurance Association, hereinafter called the "companies", each itself severally and not jointly, and in the respective proportion hereinafter set forth, agree with the insureds named in Item 1 of the Declarations of each Certificate, hereinafter called the "Named Insureds", in consideration of the payment of the premium, and subject to all of the provisions of the applicable Certificate and of this policy, as follows:

I. Relation Between the Master Worker Policy and Certificates

No insurance is provided by this policy except through a Certificate issued to form a part hereof. The insurance then applies separately to the persons and organizations who are defined in Section IV as insureds under each such Certificate, except with respect to the Amount of Insurance Available.

The Amount of Insurance Available through such a Certificate to any person or organization who is an insured thereunder is limited as provided in Section VIII of this policy.

II. Definitions

When used in reference to this policy:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom;

"byproduct material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Certificate", unless qualified, refers to a Certificate of insurance (including Declarations and endorsements forming a part thereof) issued to form a part of this policy or of a MAELU Policy;

"claims costs" means, with reference to claims or suits the companies have the right and duty to defend under this policy:

(1) Cost taxed against the insured in such suits and interest on any judgments therein;

(2) Premiums on appeal bonds and on bonds to release attachments in such suits (but the companies have no obligation to apply for or furnish such bonds);

(3) Reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request;

(4) Payments for expenses incurred in the investigation, negotiation, settlement and defense of such claims or suits, including, but not limited to, the cost of such allocated claims services by employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, examination, x-ray or autopsy or medical expenses of any kind;

(5) Payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or in minimizing its effects;

"Discovery period" means the period defined in section VI B hereof;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Insured contract" means that part of a contract or agreement made prior to bodily injury to a new worker under which the insured assumes the tort liability of a third person to pay damages because of such bodily injury.

"Tort liability" means a liability that would be imposed by law on the third person in the absence of an express assumption of liability by the third person;

"Insured facility" means a facility with respect to which insurance is provided through a Certificate;

"Insured shipment" means a shipment of source material, special nuclear material, spent fuel or waste (herein called "material"):

(1) To the facility from any location other than an insured facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation: or

(2) From the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation;

"MAELU" means Mutual Atomic Energy Liability Underwriters;

"MAELU Policy" means a Nuclear Energy Liability Policy (Facility Worker Form) written by members of MAELU;

"NELIA" means Nuclear Energy Liability Insurance Association;

"New worker" refers to a person who is or was engaged in nuclear related employment that begins on or after January 1, 1988;

"New worker's claim" means a claim for damages because of bodily injury to a new worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the new worker's nuclear related employment;

"Non-ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material which is:

(1) At the facility as described in the applicable Certificate issued to form a part of this policy or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any other person or organization; or

(2) In an insured shipment that is away from any other insured nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto within:

(a) The territorial limits of the United States of America, its territories or possessions or Puerto Rico; or

(b) International waters or airspace, provided that:

(i) The nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above; and

(ii) There are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except to a port or place of refuge in an emergency;

"Nuclear facility" means any of the following and includes the site on which any of them is located, all operations conducted on such site and all premises used for such operations:

(1) The facility as described in any Certificate;

(2) Any nuclear reactor;

(3) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging waste;

(4) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonim or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(5) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

"Nuclear material" means source material, special nuclear material or byproduct material;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility.

All of a new worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Policy period" means the period defined in Section VI A hereof;

"Ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Source material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof, and also includes tailings or wastes produced by the extraction of uranium or thorium from ore processed primarily for its source material content;

"Special nuclear material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

"The facility" refers to the facility described in the Declarations of a Certificate. It includes the location described in Item 3 thereof and all property and operations at such location;

"Waste" means any waste material that contains byproduct material and results from the operation by any person or organization of:

(1) Any nuclear reactor; or

(2) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging such waste material.

III, Coverage

In the event that a new worker's claim is made against a person or organization who is an insured under a Certificate issued to form a part of this policy:

(1) The companies shall pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury to which this policy applies, sustained by a new worker and caused by the nuclear energy hazard.

The companies shall have the right and duty to defend any suit against the insured alleging such injury and seeking damages payable under the terms of this policy. But the companies may make such investigation and settlement of any claim or suit seeking such damages as they deem appropriate.

(2) The companies shall also pay, as a part of the Amount of Insurance Available under this policy, the claims costs relating to any such claim or suit.

(3) The companies' obligation to pay damages and claims costs, and to defend any claim and suit ends when the Policy Aggregate Limit has been exhausted pursuant to the provisions of Section VIII.

IV. Definition of Insured

When used in reference to a Certificate issued to form a part of this policy, the unqualified word "insured" means:

(1) Each insured named in Item 1 of the Declarations of the Certificate; and

(2) Any other person or organization with respect to legal responsibility for damages because of bodily injury to a new worker caused by the nuclear energy hazard applicable to the Certificate. This subsection (2) does not include as an insured the United States of America or any of its agencies except the Tennessee Valley Authority.

V. Exclusions

This policy does not apply:

(1) To any obligation for which the insured or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law:

(2) To bodily injury to any employee of the insured arising out of or in the course of employment by the insured; but this exclusion (2) does not apply to liability assumed by the insured under an insured contract;

(3) To liability assumed by the insured under contract, other than an insured contract;

(4) To bodily injury to a new worker due to the manufacturing, handling or use at the location designated in Item 3 of the Declarations of any Certificate, in time of peace or war, of any nuclear material or byproduct material;

(5) To bodily injury to a new worker due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(6) To bodily injury to a new worker arising in whole or in part out of an extraordinary nuclear occurrence.

VI. Policy Period; Discovery Period; Application of Policy

A. Policy Period

The policy period of this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1992, Eastern Standard Time, or when all Certificates issued to form a part hereof have been cancelled, whichever first occurs.

B. Discovery Period

The discovery period for claims made under this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1997, Eastern Standard Time.

C. Application of Policy

This policy applies only to bodily injury to a new worker (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against the insured within the discovery period.

VII. Other insurance

A. This insurance is primary insurance under any insurance afforded by a Master Policy-Nuclear Energy Liability Insurance (Secondary Financial Protection) issued by NELIA or MAELU.

B. If an insured has other valid and collectible insurance, except under a MAELU Policy, for loss or expense covered by this policy, this policy shall be excess insurance over such other insurance. If the insured has insurance under a MAELU Policy, whether the insurance is collectible or not, the companies shall then be liable under this policy only for such proportion of loss or expense as the amount stated as the Policy Aggregate Limit in Section VIII of this policy bears to the sum of such amount and the corresponding amount stated in the MAELU Policy.

VIII. Amount of Insurance Available

A. Policy Aggregage Limit

1. The Policy Aggregate Limit is $124 million. This limit is not cumulative from year to year. The limit applies to all new worker's claims that qualify for coverage under this policy (herein called "qualified claims").

2. The Policy Aggregate Limit applies collectively to all new worker's claims. Such claims may be paid by NELIA on behalf of the companies as the claims, in NELIA's discretion, become ready for disposition, and claims costs may be paid as they become due, all without regard to the order in which such claims were made and without any obligation to maintain, reserve or use any portion of the Policy Aggregate Limit for claims reported under any particular Certificate.

B. Limitation of the Companies' Liability

1. Regardless of the number of (a) Certificates issued to form a part of this policy, (b) persons and organizations who are insured under such Certificates, (c) qualified claims, or (d) years this policy or any such Certificates shall continue in force, the Policy Aggregate Limit is the total liability of the companies for all of their obligations under this policy, including the defense of suits and the payment of damages and claims costs.

2. This policy provides for certain automatic reinstatements of the Policy Aggregate Limit. Regardless of such provision, if, during the policy period or thereafter, the total payments of the companies for

(a) Non-ratable incurred losses, and

(b) Those ratable incurred losses for which the companies have not been reimbursed under the Industry Retrospective Rating Plan Premium Endorsement described in Attachment 1 to this policy,

equal $124 million, the Policy Aggregate Limit shall be deemed to be exhausted, and shall not be further reinstated except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

C. Reduction and Reinstatement of the Policy Aggregate Limit

1. Each payment made by the companies in discharge of their obligations under this policy shall reduce the Policy Aggregate Limit by the amount of such payment.

2. The companies shall, however, automatically reinstate the policy aggregate limit until the total amount of such reinstatements equals $124 million, but in no event shall there be any automatic reinstatements after the Policy Aggregate Limit is exhausted pursuant to the provisions of subsection B.2. above. Thereafter, there shall be no further reinstatement of the Policy Aggregate Limit except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

3. It is a condition of this insurance that the companies shall have the right to reimburse themselves, as a matter of first priority, from funds held by NELIA in the Special Reserve Account described in Attachment 1 to this policy or from retrospective premiums received by NELIA for this insurance. The amount of reimbursement shall be equal to 95% of each payment made by the companies with respect to their obligations under this policy.

IX. Insured's Duties in Case of Claims or Suits

a. Notice of Claims or Suits—In the event of any claim or suit involving bodily injury to

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which a Certificate issued to form a part of this policy applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof shall be given by or for the insured to the companies as soon as practicable. The insured shall immediately forward to the companies every demand, notice, summons or other process received relating to claims or suits against the insured.

B. Assistance and Cooperation—The insured shall cooperate with the companies and, upon their request, shall:

(1) Attend hearings and trials; and

(2) Assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance.

The insured shall not, except at the insured's own cost, make any payment, assume any obligation or incur any expense.

X. Subrogation

In the event of any payment through a Certificate issued to form a part of this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers, and do whatever else is necessary to secure such rights. Prior to knowledge of bodily injury caused by the nuclear energy hazard the insured may waive in writing any or all right of recovery against any person or organization, but after such knowledge the insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any right of subrogation against (1) any other insured or (2) the United States of America or any of its agencies acquired by reason of any payment under this policy.

It is a condition of this policy that if an insured makes a recovery on account of any such injury, the insured shall repay to the companies the amount to which the companies would have been entitled had the foregoing provisions, or any of them, not been included in this policy.

XI. Inspection and Suspension

The companies shall be permitted, but not obligated, to inspect at any time the facility as described in any Certificate and all books, records and operation relating thereto, both with respect to this insurance, and any other nuclear energy liability insurance and property insurance also afforded with respect thereto to members of NELIA, American Nuclear Insurers, MAELU or MAERP Reinsurance Association.

If a representative of the companies discovers a condition which he or she believes to be unduly dangerous with respect to the risks insured under the Certificate, a representative of the companies may request such condition to be corrected without delay. In the event of noncompliance with the request, an officer of NELIA may, by written notice mailed or delivered to the first Named Insured, with similar notice to the United States Nuclear Regulatory Commission, suspend the insurance afforded by a Certificate issued by NELIA effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from NELIA to the first Named Insured that such condition has been corrected.

Neither the right to make such inspections or suspensions nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the Named Insureds or others to determine or warrant that the facility or operations relating thereto are safe or healthful, or are in compliance with any law, rule or regulation.

In consideration of the issuance or continuation of a Certificate, the Named Insureds agree that neither the companies nor any persons or organizations making such inspections on their behalf shall be liable for damage to the facility or any consequential damage or cost resulting therefrom, including but not limited to any such damage or cost relating to interruption of business or manufacture, arising out of the making of or failure to make any such inspection of the facility, any report thereon, or any such suspension of insurance, but this provision does not limit the companies' contractual obligations under a Certificate issued by NELIA or any policy issued by NELIA or American Nuclear Insurers affording the insured nuclear energy liability or property insurance.

XII. Cancellation of Certificates

The first Named Insured designated in a Certificate issued to form a part of this policy may cancel such Certificate by mailing to the companies and the United States Nuclear Regulatory Commission written notice stating when, not less than 30 days thereafter, such cancellation shall be effective.

The companies may cancel any such Certificate by mailing to the first Named Insured designated therein at the address shown in such Certificate and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 90 days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium, or if the operator of the facility, as designated in the Declarations of the Certificate, is replaced by another person or organization, such Certificate may be cancelled by the companies by mailing to the first Named Insured at the address shown therein and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 30 days thereafter, such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Certificate period. Delivery of such written notice either by the first Named Insured or the companies shall be equivalent to mailing.

Upon cancellation of a Certificate, other than as of the end of December 31 in any year, the earned standard premium for the period such Certificate has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

(1) If the first Named Insured cancels, the earned standard premium for such period shall be computed in accordance with the customary annual short rate table and procedure; provided, however, that if the first Named Insured cancels after knowledge of bodily injury caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;

(2) If the companies cancel, the earned standard premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time of cancellation or as soon as practicable after cancellation becomes effective, but payment of tender of unearned premium is not a condition of cancellation.

Cancellation of a Certificate shall not affect the rights and obligations of the Named Insureds under the Insureds under the Industry Retrospective Rating Plan Premium Endorsement forming a part of the Certificate.

XIII General Conditions

A. *Premium*—The Named Insureds designated in a Certificate issued by NELIA shall pay the companies the premiums for the Certificate in accordance with the provisions of the INDUSTRY RETROSPECTIVE RATING PLAN PREMIUM ENDORSEMENT described in Attachment 1 to this policy.

B. *Modifications, Waiver*—The provisions of this policy or a Certificate issued to form a part hereof shall not be changed or waived except by an endorsement issued by the companies to form a part of the policy or Certificate.

C. *Assignment*—Assignment of interest under a Certificate issued to form a part of this policy shall not bind the companies until their consent is endorsed thereon. If, however, a Named Insured shall die or be declared bankrupt or insolvent, the Certificate shall cover the Named Insured's legal representative, receiver of trustee as an insured, but only with respect to liability as such, and then only provided written notice of the appointment as legal representative, receiver or trustee is given to the companies within 10 days after such appointment.

D. *Suit*—No suit or action on a Certificate issued to form a part of this policy shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment of written agreement shall thereafter be entitled to recover under the Certificate to the extent of the insurance afforded by this policy through the Certificate. No person or organization shall have any right under the Certificate to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by

the insured or the insured's legal representative.

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the companies of any of their obligations under this policy.

E. *Authorization of the First Named Named Insured*—Except with respect to compliance with the obligations imposed on the insured by the Sections of this policy entitled "INSURED'S DUTIES IN CASE OF CLAIMS OR SUITS", "SUBROGATION" and "SUIT", the first Named Insured designated in the Declarations of a Certificate issued to form a part of this policy is authorized to act for every other insured in all matter's pertaining to this insurance.

F. *Insured Representation*—Any notice, sworn statement of proof of Loss which may be required by the provisions of this policy may be given to any one of the companies specified in the Schedule of Subscribing Companies attached hereto. Such notice, statement or proof of Loss so given shall be valid and binding on all such companies.

In any action or suit against such companies, service of process may be made on any one of them and such service shall be valid and binding service on all such companies.

Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communcations required by this policy may be given to such agent at its office at

Nuclear Energy Liability Insurance Association, The Exchange, Suite 245, 270 Farmington, Connecticut 06032

with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

G. *Changes in Subscribing Companies and Their Proportionate Liability*—By acceptance of this policy the Named Insureds agree that the members of Nuclear Energy Liability Insurance Association liable under this policy, and the proportionate liability of each such member, may change from year to year, and further agree that regardless of such changes:

(1) Each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury to new workers caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and a copy of which will be mailed or delivered to the first Named Insured of each Certificate;

(2) The liability of any subscribing company shall not be cumulative from year to year.

H. *Declarations*—By acceptance of this Master Worker Policy, the Named Insureds designated in a Certificate agree that the statements in such Certificate are their agreements and representations, that this Master Worker Policy and such Certificate are issued in reliance upon the truth of such representations and that this Master Worker Policy and such Certificate embody all agreements between such Named Insureds and the companies or any of their agents relating to this insurance.

In witness whereof, the companies subscribing this policy have caused the policy to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative, but this policy shall be binding on each company only to the extent of its designated proportion of any obligation assumed or expense incurred under this policy.

For the Subscribing Companies:

Date of Issue: _____ 19____.

Countersigned by: (Authorized Representative)

Nuclear Energy Liability Insurance Association

Nuclear Energy Liability Policy

(Facility Worker Form)

herein called the Master Worker Policy

Certificate of Insurance

NMWPC-1(1/1/88)

Certificate No. ____

This is to certify that the insureds named in Item 1 of the Declarations hereof, hereinafter called the "Named Insureds", have obtained insurance under the Master Worker Policy issued by Nuclear Energy Liability Insurance Association on behalf of its members. The insurance is subject to all of the provisions of the "Certificate and the Master Worker Policy."

1. Declarations

Item 1. Named Insureds and Addresses:

Item 2. Certificate Coverage Period:

Beginning at 12:01 a.m. January 1, 1988 and ending at the close of December 31, 1992, Eastern Standard Time, or at the time and date this Certificate is cancelled or terminated, whichever first occurs.

Item 3. Description of the Facility:

Location:

Type:

Operator of the Facility:

Item 4. Amount of Insurance Available:

The amount of insurance afforded by the Master Worker Policy through this Certificate shall be determined by Section VIII of the Master Worker Policy and all of the other provisions of the policy relating thereto.

Item 5. Advance Premium: $

2. Application of Certificate

This Certificate applies only to bodily injury to a new worker (1) which is caused, during the Certificate Coverage Period, by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against an insured under the Certificate within the discovery period of the Master Worker Policy.

3. Industry Retrospective Rating Plan

All insurance under the Master Worker Policy is subject to the Industry Retrospective Rating Plan in use by the companies. No insurance is provided under this Certificate unless and until the first Named Insured has accepted in writing the Industry Retrospective Rating Plan Premium Endorsement and a copy of the signed endorsement has been issued by the companies to form a party of this Certificate.

In Witness whereof, the companies subscribing the Master Worker Policy have caused this Certificate to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative.

For the Subscribing Companies:

Date of Issue: _____ 19____.

Countersigned by:

(Authorized Representative)

Nuclear Energy Liability Insurance

Nuclear Energy Liability Insurance Association

Industry Retrospective Rating Plan Premium Endorsement

(NE-W-1(1/1/88)

It is agreed that:

1. Definitions

With reference to the premium for the Certificate of which this endorsement forms a part:

"Master Worker Policy" means the Master Worker Policy issued by NELIA;

"Certificate Holder" means the first Named Insured in a Certificate issued to form a part of the Master Worker Policy;

"advance premium", for any calender year, is the premium for that calender year;

"standard premium", for any calendar year, is the premium for that calendar year computed in accordance with the companies' rules, rated, rating plans (other than the Industry Retrospective Rating Plan), premiums and minimum premiums applicable to this insurance. Standard premium includes elements for premium taxes, expenses, profit and contingencies, guaranteed cost insurance and estimated reserve premium. The elements of standard premium, other than for premium taxes and estimated reserve premium, are not subject to retrospective adjustment;

"reserve premium" means that portion of the premium for a Certificate (including reserve premium charges paid) that is the sum of the reserve premiums for that period for all Certificates issued to form a part of the Master Worker Policy;

"industry reserve premium", for any period, is the sum of the reserve premiums for that period for all Certificates issued to form a part of the Master Worker Policy;

"retrospective adjustment ratio", for any period, is the ratio of the reserve premium for this Certificate for that period to the industry reserve premium for the same period;

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"incurred losses" means the sum of all:
(1) Losses and expenses paid by NELIA, and
(2) Reserves for losses and expenses as estimated by NELIA, because of obligations assumed and expenses incurred in connection with such obligations by the members of NELIA under the Master Worker Policy;
"ratable incurred losses" means 95% of incurred losses. Ratable incurred losses are the portion of incurred losses which are not covered by the guaranteed cost insurance element of standard premiums;
"non-ratable incurred losses" means 5% of incurred losses. Nonratable incurred losses are the portion of incurred losses which are covered by the guaranteed costs insurance element of standard premiums;
"reserve for refunds", as of any date, is the algebraic difference between:
(1) All industry reserve premium for the period from January 1, 1988 through such date, minus
(2) The total for the same period of (a) all ratable incurred losses and (b) all industry reserve premium refunds made under the Industry Retrospective Rating Plan by members of NELIA;
"industry reserve premium charge", for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for payment by the Named Insureds under Certificates;
"reserve premium charge" means the portion of an industry reserve premium charge payable by the Named Insureds under Certificates;
"reserve premium refund" for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for return to the Named Insureds under Certificates;
"reserve premium refund" means the portion of an industry reserve premium refund returnable to the Named Insureds under this Certificate.

2. Payment of Advance and Standard Premiums

The Named Insureds shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this Certificate through December 31 following. Thereafter, at the beginning of each calendar year while this Certificate is in force, the Named Insureds shall pay the advance premium for such year to the companies.
The advance premium for each calendar year shall be stated in the Advance and Standard Premium Endorsement for the year issued by the companies as soon as practicable prior to or after the beginning of the year.
As soon as practicable after the end of a calendar year or the Certificate Coverage Period, the standard premium for the preceding year shall be finally determined and stated in the Advance and Standard Premium Endorsement for that year. If the Standard Premium exceeds the Advance Premium paid for that year, the Named Insureds shall pay the excess to the companies; if less, the companies shall return to the Named Insureds the excess portion paid.

The Named Insureds shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the Certificate Coverage Period and at such other times as the companies may direct.

3. Special Reserve Account; Use of Reserve Premiums

NELIA shall maintain on behalf of its members a Special Reserve Account for holding collectively all reserve premiums paid for all Certificates issued to form a part of the Master Worker Policy. Such premiums, together with any undistributed net income realized thereon after taxes and investment expenses, shall be used for the following purposes only;
(1) To pay ratable incurred losses or, in the event ratable incurred losses are paid under the Master Worker Policy from funds advanced by the members of NELIA subscribing the policy, to reimburse such members as a matter of first priority for the funds advanced;
(2) To refund any amounts so held to the Named Insureds, as provided in Section 4.
No members of NELIA and no Named Insureds shall have any individual interest in or claim upon amounts held in the special Reserve Account, except to participate proportionally in any refund or reimbursement provided for above.
All reserve premiums paid or payable for this certificate may be used by NELIA to discharge the obligations of its members under the Master Worker Policy with respect to the above purposes and arising out of claims made under any Certificate issued to form a part of the Master Worker Policy.

4. Payment of Reserve Premium Charges and Refunds

As soon as practicable after each December 31 the companies will review the status of the reserve for refunds and report their findings to all Certificate Holders.
If, at any time, the companies find that there is negative balance in the reserve for refunds and that such condition is likely to prevail, they shall determine an appropriate industry reserve premium charge. Similarly, if the companies find that there is a surplus positive balance, they shall determine an appropriate industry reserve premium refund.
The portion of an industry reserve premium charge or an industry reserve premium refund that is:
(1) Payable by the Named Insureds as a reserve premium charge, or
(2) Due such insureds as reserve premium refund, shall be determined by multiplying the industry reserve premium charge or the industry reserve premium refund by the retrospective adjustment ratio applicable to this Certificate.
The amount of any reserve premium charge shall be stated in a Retrospective Reserve Premium Charge Endorsement. The charge shall be paid promptly after receipt of the endorsement.
When all claims covered by the Master Worker Policy are closed the companies shall make a final review and report, and shall determine a final industry reserve premium charge or industry reserve premium refund equal to the amount of the balance.

5. Final Premium

The final premium for this Certificate shall be (a) the sum of the standard premiums for each calendar year, or portion thereof, during which the Certificate remains in force plus (b) the sum of all reserve premiums, including all reserve premium charges, minus (c) the sum of all reserve premium refunds.

6. Reserve Premium Charge Agreement

In consideration of (a) the participation of Named Insureds in other Certificates subject to the Industry Retrospective Rating Plan, (b) the undertaking of such Named Insureds to pay their appropriate share of any industry reserve premium charge and (c) the obligations assumed by the members of NELIA under the Master Worker Policy, the Named Insureds, by acceptance of the Master Worker Policy, agree:
(1) That the insurance provided by the Master Worker Policy applies collectively to all claims covered by the policy through any and all Certificates issued to form a part of the policy.
(2) That the right of each Named Insured under a Certificate to receive reserve premium refunds and the obligation of each such insured to pay reserve premium charges applies to all claims covered by the Master Worker Policy and continues until all such claims are closed, whether or not such claims were before the inception of the Certificate or after its termination.
(3) To pay all reserve premium charges due promptly after receipt of the Retrospective Reserve Premium Charge Endorsement, whether or not the Certificate is terminated. Any reserve premium charge shall be overdue if not paid within 60 days of the date of the invoice for the charge.
Overdue reserve premium charges shall bear interest from the due date until paid at an annual rate equal to the sum of (a) 3% plus (b) a rate of interest equal to Moody's Average Public Utility Bond Survey current on the due date. Any reserve premium refund due to Named Insureds under a Certificate shall be used to pay any overdue reserve premium charges to such Named Insureds.

7. Reserve Premium Refund Agreement

Each member of NELIA subscribing the Master Worker Policy for a calendar year, or portion thereof, with respect to which an industry reserve premium refund is determined to be payable thereby agrees for itself, severally and not jointly, and in the Master Worker Policy for that calendar year, to return promptly to the Named Insureds that portion of such refund due such Insureds, as determined in accordance with the provisions of this endorsement.

Accepted and agreed by the first Named Insured in behalf of itself and every other Named Insured stated in the Declarations of the Certificate of which this endorsement forms a part.

(First Named Insured—Type or Print)
Date
By
(Signature of Authorized Officer)
(Type or Print Name and Title of Officer)
Effective Date of this Endorsement:

12:01 a.m. Standard Time
To form a part of Policy No. _____.
Issued to
Date of Issue
For the subscribing companies.
By
General Manager
Endorsement No. _____.
Countersigned by

Nuclear Energy Liability Insurance

Nuclear Energy Liability Insurance Association

Advance Premium and Standard Premium Endorsement

NE–W–2(1/1/88)

Calendar Year 1988

1. *Advance Premium*: It is agreed that the Advance Premium due the companies for the period designated above is:
$

2. *Standard Premium and Reserve Premium*: In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated reserve Premium element of the Standard Premium is:
$

Explanation of Use of this Endorsement: This endorsement will be used in the first year of the Master Worker Policy. It states the Advance Premium and the Estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.
Effective Date of this Endorsement:

12:01 a.m. Standard Time
To form a part of Policy No. _____.
Issued to
Date of Issue
For the subscribing companies
By
General Manager
Endorsement No. _____.
Countersigned by

Nuclear Energy Liability Insurance

Nuclear Energy Liability Insurance Association

Advance Premium and Standard Premium Endorsement

NE–W–3(1/1/88)

Calendar Year _____

It is agreed that Items 1 and 2 of Endorsement No. _____ are amended to read:
1. *Advance Premium*: It is agreed that the Advance Premium due the companies for the period designated above is:
$
2. *Standard Premium and Reserve Premium*: In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated reserve Premium element of the Standard Premium is:
$

Explanation of Use of this Endorsement: This endorsement will be used for calendar years of the Master Worker Policy after the 1988 calendar year. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.
Effective Date of this Endorsement:

12:01 a.m. Standard Time
To form a part of Policy No. _____.
Issued to
Date of Issue
For the subscribing companies
By
General Manager
Endorsement No. _____.
Countersigned by

Nuclear Energy Liability Insurance

Nuclear Energy Liability Insurance Association

Retrospective Reserve Premium Charge Endorsement

1. *Industry Reserve Premium Charge.* In accordance with Section 4 of the Industry Retrospective Rating Plan Premium Endorsement attached to each Certificate to this policy, the companies have reviewed the status of the reserve for refunds, found that there is a negative balance in the reserve for refunds and have determined that an industry reserve premium charge, as indicated below, is appropriate:
$

2. *Retrospective Adustment Ratio.* The portion of the industry reserve premium charge payable by the Named Insureds under the Certificate is determined by multiplying such charge by this Certificate's retrospective adjustment ratio, which is:
$

3. *Reserve Premium Charge.* The Named Insureds' portion of the industry reserve premium charge, as calculated above, is:
$

Explanation of Use of this Endorsement: This endorsement will be issued by the companies under the Master Worker Policy after an industry reserve premium charge has been determined because there is a negative balance in the reserve for refunds. It states the reserve premium charge applicable to the Certificate to which the endorsement is attached.
Effective Date of this Endorsement:

12:01 a.m. Standard Time
To form a part of Policy No. _____.
Issued to
Date of Issue
For the subscribing companies.
By
General Manager
Endorsement No. _____.
Countersigned by

Dated at Rockville, Maryland, this 21st day of April, 1988.

For the Nuclear Regulatory Commission.
Samuel J. Shilk.
Secretary of the Commission.

[FR Doc. 88–9263 Filed 4–26–88; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–17]

Airworthiness Directives; Textron Lycoming O–320–A series, –B series, –C series, –D series, –E series; O–320–H2AD; IO–320–B1A, –B1C, –B1D, –B2A, –D1A, –E2A; LIO–320–B1A; A10–320–A1B, –B1B; AEIO–320–E1B, –E2B; O–340–A1A, –A1B, –A2A; O–360–A series, –B series, –C series, –D series; O–360–F1A6; AEIO– 360–B1G6, –H1A; HO–360–A1A, –B1A, –B1B; HIO– 360–B1A; O–360–E1A6D; LO–360–E1A6D; LO–360–A1G6D; IO–360–B series; IO–360– E1A; O–540–A series; –B series, –E series, –F series, –G series, –H series, –J series; O–540–W1A5D; AEIO–540–D4A5, –D4B5; IO–540–C series, –D series, –N series, –T series; and IO–540–W1A5D Model Reciprocating Engines**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to all Textron Lycoming (hereinafter called "Lycoming") reciprocating model engines of the "parallel valve" cylinder head design. This proposed AD would require repetitive inspections of the exhaust valve-to-exhaust guide clearance and mandatory oil and filter change/screen cleaning intervals.
The proposal is prompted by an increased frequency of service difficulty reports on exhaust valve sticking and at least 36 incidents of unscheduled landings. This increase in service difficulties is partially attributed to the extensive use of higher-leaded aviation gasoline especially in the lower compression ratio engines which previously used 80/87 octane aviation. fuel. Exhaust valve sticking has been a persistent service problem that is caused by many variables and results in excessive oil coking and combustion deposits that reduce the valve-to-guide

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clearance. Fuel and oil formulations along with engine operation and maintenance are directly related to the deposit accumulation and deposition rate.

The proposed AD is needed to prevent loss of engine power due to exhaust valve sticking and/or push rod bending which could result in an emergency landing with aircraft damage and personnel injury.

DATES: Comments must be received on or before May 31, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rule Docket Number 88–ANE–17, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rule Docket No. 88–ANE–17".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable Lycoming Service Bulletin (SB) No. 388A, dated April 14, 1978, Service Instruction (SI) No. 1425A, dated January 19, 1988, and SB No. 480, dated January 18, 1988, may be obtained from Textron Lycoming, Williamsport Plant, 652 Oliver Street, Williamsport, Pennsylvania 17701.

A copy of these documents is contained in Rules Docket Number 88–ANE–17, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Roy Hettenbach, Propulsion Branch, ANE–174, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects the proposed rule. Lycoming estimates that it will require 3 manhours (4 cylinder engine) and 5 manhours (6 cylinder engine) to perform the inspections required by Lycoming SB No. 388A. The FAA estimates that up to 128,331 engines will be affected by this proposeod AD. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in responses to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88–ANE–17". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that an unacceptable number of occurrences of exhaust valve sticking is being experienced before completing the full engine time between overhaul life. Since this condition is likely to exist or develop on other Lycoming reciprocating engines that incorporate the "parallel valve" cylinder head design, the proposed AD would require repetitive inspections to determine if reduced exhaust valve-to-exhaust guide clearances exist. If reduced clearances exist, cleaning or replacement as necessary is required, in accordance with the Lycoming Service Bulletin and Service Instruction previously specified. Also, a specific oil and filter change/screen cleaning interval is required for the affected engines.

Conclusion

The FAA has determined that this proposed regulation involves up to 128,331 engines that must comply with the repetitive inspections at an approximate, average cost of $100 per year per engine. The average total cost of complying with this proposed AD would be approximately $12.8 million per year. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Textron Lycoming: Applies to O–320–A series, –B series, –C series, –D series, –E series; O–320–H2AD; IO–320–B1A, –B1C, –B1D, –B2A, –D1A, –E2A; LIO–320–B1A; AIO–320–A1B, –B1B; AEIO–320–E1B, –E2B; O–340–A1A, –A1B, –A2A; O–360–A series, –B series, –C series, –D series; O–360–F1A6; AEI–360–B1C6, –H1A; HO–360–A1A, –B1A; –B1B; HIO–360–B1A; O–360–E1A6D; LO–360–E1A6D; LO–360–A1G6D; IO–360–B series; IO–360–E1A; O–540–A series, –B series, –E series, –F series, –G series, –H series, –J series, O–540–W1A5D; AEIO–540–D4A5, –D4B5; IO–540–C series, –D series, –N series, –T series; and IO–540–W1A5D model reciprocating engines that incorporate the "parallel valve" cylinder head design.

Note: See attached Figure 1 for identification of "parallel valve" cylinder head design compared to "angled valve" cylinder head configuration.

Compliance is required as indicated, unless already accomplished.

To prevent loss of engine power due to exhaust valve sticking, and/or push rod bending, accomplish the following:

(a) Prior to 50 hours time in service on the engine oil, or prior to the next flight if time in service on the engine oil is greater than 50 hours, or if 4 months have elapsed since the last oil change, whichever occurs first, after the effective date of this AD, change the engine oil and as applicable, replace the oil filter or clean the pressure screen in accordance with Textron Lycoming Service Bulletin (SB) No. 480, dated January 18, 1988. Thereafter, at intervals not to exceed 50 hours time in service for engines with full flow oil filtration systems or 25 hours time in service for engines with pressure oil screen systems, or 4 months maximum elapsed time, whichever occurs first, the oil and filter shall be changed or the oil changed and pressure screen cleaned, whichever is applicable.

Note: Compliance with paragraph (a) is not mandatory on the affected engines which use FAA approved full synthetic aviation lubricating oils.

(b) Within the next 50 hours time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 300 hours time in service, or at every third annual inspection, whichever occurs first, inspect to determine all exhaust valve-to-exhaust guide clearances in accordance with the procedure described in Part I or Part II of Textron Lycoming SB No. 388A, dated April 14, 1978. If the exhaust valve-to-guide clearance is less than the minimum gap specified in the table on page 4 of the SB, remove the deposits using the method described in Lycoming Service Instruction No. 1425A, or replace the exhaust valve guide with a new or serviceable part prior to the next flight.

(c) The results of the inspection and corrective action required by paragraph (b) shall be noted in the aircraft engine log book.

(d) If excessive deposits are encountered and require removal per paragraph (b), notification in writing must be sent to the Manager of the New York Aircraft Certification Office, Federal Aviation Administration, New England Region, specifying the following information:

(1) Engine model, serial number, and date of inspection.

(2) Engine and cylinder time since overhaul/new.

(3) Cylinder and exhaust guide part number or guide material.

(4) Valve to guide clearances obtained by cylinder position.

(5) Oil grades and manufacturer used since overhaul/new.

(6) Fuel type/grades and manufacturer used (Note if autogas is used).

(7) Oil change frequencies since overhaul/new.

(8) State(s) in which the aircraft is generally flown.

(9) Provide manufacturer's name and product description of any oil and/or fuel additive(s) used, and frequency of use. [Information collection requirements contained in this regulation (§ 39.13) have been approved by the Office of Management and Budget under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056].

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(g) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service documents identified and described in this document.

Issued in Burlington, Massachusetts, on April 15, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

BILLING CODE 4910–13–M

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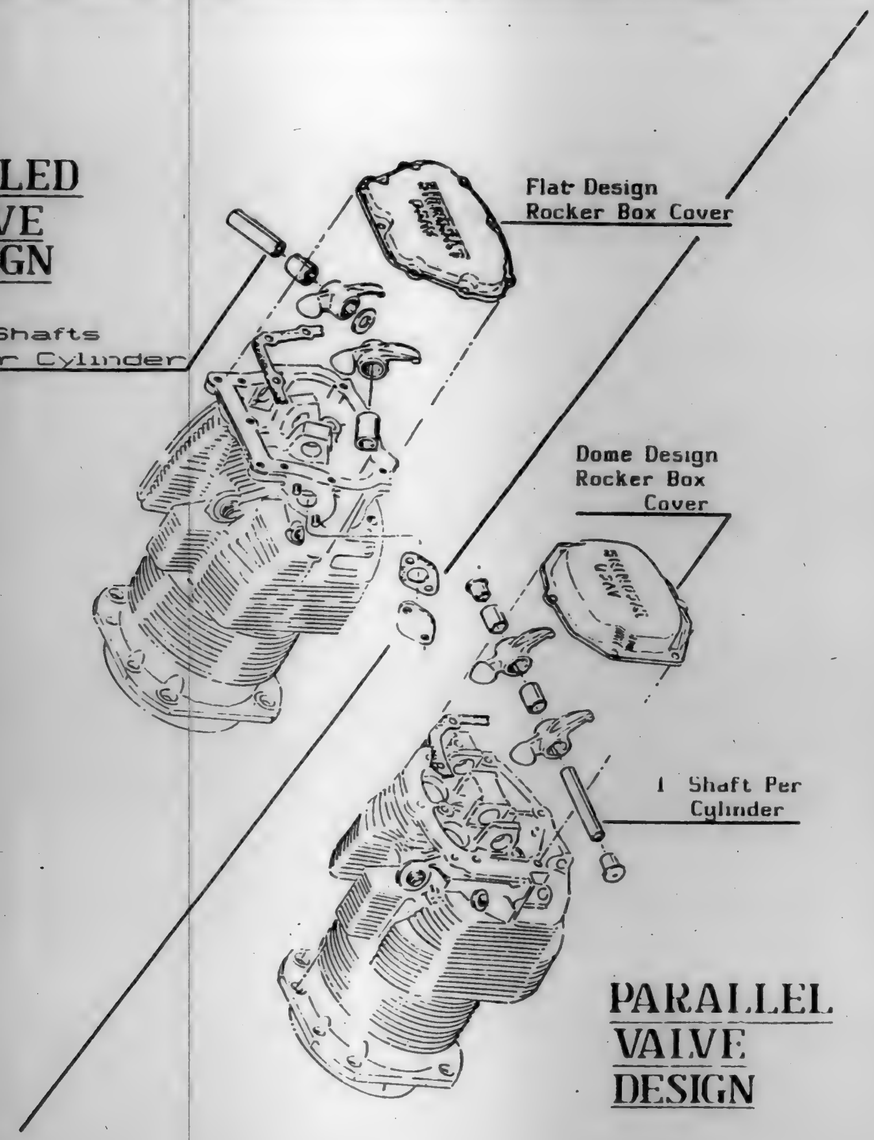


FIGURE 1

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 284 and 385

[Docket No. RM88-13-000]

Brokering of Interstate Natural Gas Pipeline Capacity

April 4, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to allow holders of firm transportation rights on an interstate natural gas pipeline to sell or assign (broker) those rights. Under this notice of proposed rulemaking (NOPR), rights to the pipeline's system storage could also be brokered to the extent that these rights are subject to §§ 284.8 and 284.9 of the Commission's regulations.

Two types of authorization from the Commission would be necessary for brokering to occur. Both authorizations would be in the form of certificates. One certificate, called a system brokering, would be issued to the pipeline on which brokering would occur. To receive this certificate, the applicant pipeline would have to hold a blanket certificate under Subpart G of Part 284 of the Commission's regulations.

The other certificate, called a blanket broker certificate, would be issued to those who wish to broker firm transportation rights. In order to receive this certificate, an interstate pipeline would have to have a blanket certificate under Subpart G of Part 284. An intrastate pipeline wishing to broker would have to be transporter under Subpart C of the Commission's regulations. This authorization would be in the form of a limited jurisdiction certificate, and would only cover the certificate holder's brokering activities. A blanket broker certificate would authorize the holder to broker capacity on any interstate pipeline that has a system brokering certificate.

Under the NOPR, brokered transactions would be subject to price caps in markets that are not workably competitive.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by May 19, 1988.

ADDRESSES: All filings should refer to Docket No. RM88-13-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88-13-000 adopted and released April 4, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426. The complete text on diskette in Word-Perfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

List of Subjects

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure.

In consideration of the foregoing, the Commission proposes to amend Part 284 and Part 385, Chapter I, Title 18, *Code of the Federal Regulations*, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. A new Subpart J consisting of §§ 284.281 through 284.283 is added to read as follows:

Subpart J—Brokering of Interstate Natural Gas Pipeline Capacity

Sec.
284.281 Definitions.
284.282 System brokering certificate.
284.283 Blanket broker certificate.

Subpart J—Brokering of Interstate Natural Gas Pipeline Capacity

§ 284.281 Definitions.

(a) "Brokering" means the sale or assignment of a specific right to firm transportation on an interstate natural gas pipeline.

(b) "Specific right to firm transportation" means a right to firm transportation, including storage subject to §§ 284.8 and 284.9, that is identified by:

(1) Receipt and delivery points of the gas to be transported;

(2) The quantity of the gas to be transported on a daily basis; and

(3) The time period during which the transportation right can be exercised.

(c) "System brokering certificate" means a certificate issued under § 284.282.

(d) "Blanket broker certificate" means a certificate issued under § 284.283.

(e) "Original capacity holder" means the first shipper to broker.

(f) "Ultimate capacity holder" means the last shipper to hold a "specific right to firm transportation."

§ 284.282 System brokering certificate.

(a) *Eligibility.* (1) An interstate pipeline that holds a blanket certificate under Subpart G of this part may apply for a certificate under this section to permit brokering on its system.

(2) A certificate issued under this section is a certificate of public convenience and necessity under section 7 of the Natural Gas Act.

(b) *Adjustment to projected interruptible volumes.* A pipeline that holds a system brokering certificate may file tariff sheets to adjust its projected interruptible gas transportation volumes and to make a corresponding adjustment to its firm transportation rates by submitting an annual cost and revenue study in the form required by § 154.303(e) to support a rate adjustment, unless the pipeline has a pending rate proceeding under §§ 154.63 or 154.38 or 154.303(e) in which the base period ended within 12 months prior to filing the application. The pipeline may use the base period data from that proceeding to satisfy this requirement.

(c) *System brokering certificate application.* An application for a certificate must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must include:

(1) The name of the interstate pipeline;

(2) An original and seven copies of the certificate application;

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(3) The docket number in which the interstate pipeline received its blanket certificate under Subpart G of this part;

(4) Pro forma tariff sheets that reflect any rate changes elected under § 284.282(b) and that set forth the terms and conditions under which brokering will be allowed on the pipeline's system including any price caps that may apply;

(5) A form of notice suitable for publication in the **Federal Register**, as describedd in § 157.9 of this chapter, which will briefly summarize the facts contained in the application in such a way as to acquaint the public with its scope and purpose;

(6) A statement by the interstate pipeline that it will comply with the terms and conditions of its certificate issued under this section; and

(7) Unless the information is contained in the applicant's most recent filing pursuant to § 284.12, a list of all the applicant's customers who have a specific right to firm transportation and the amount of pipeline capacity reserved for their use between every receipt and delivery point. This information may be submitted within 90 days of the filing of the application under this section, is the pipeline seeks authorization to permit brokering under § 284.282(f)(1)(i).

(d) *Pre-grant of abandonment.* Pursuant to section 7(b) of the Natural Gas Act, abandonment of transportation services is authorized upon the expiration of the contractual term of each individual brokered transportation arrangement authorized under a certificate granted under this section.

(e) *Notice requirements.* (1) A pipeline that holds a system brokering certificate may include in its tariff a requirement to be notified by the ultimate capacity holder of the following:

(i) The name, address, and telephone number of any shipper who receives a brokered specific right to firm transportation; and

(ii) The amount of gas to be transported between specified receipt and delivery points.

(2) A pipeline that holds a system brokering certificate must include in its tariff, a statement that reflects the requirement in paragraph (g)(3) of this section.

(f) *Duration of certificate.* (1)(i) Upon receipt of the information required in paragraphs (c) (1) through (6) of this section, the Commission may, if requested by applicant, issue a certificate under this section that authorizes the brokering of capacity on the pipeline for a term not to exceed one year from the date the pipeline accepts the certificate, unless extended by the Commission.

(ii) The rate at which the pipeline's capacity may be brokered, by holders of certificates under § 284.282(f)(1)(i) of this part, is the pipeline's maximum transportation rate established under Part 284 of this chapter.

(2)(i) Upon consideration of the information submitted by the pipeline under paragraph (c)(7) of this section, the Commission may extend the certificate to, or issue a certificate for, a term not to exceed three years.

(ii) The rate at which the pipeline's capacity may be brokered, by holders of certificates under § 284.282(f)(2)(i) of this part, will be determined in the proceeding established to consider the information submitted by the pipeline.

(g) *Certificate conditions.* A certificate holder under this section:

(1) Must comply with any certificate conditions the Commission may impose in the certificate at the time the certificate is issued or modified;

(2) Must meet the requirements of Part 284 and § 157.20(a) of this chapter; and

(3) May not transport for an ultimate capacity holder unless the ultimate capacity holder has reported to the original capacity holder within seven days after the close of each of the pipeline's billing cycles:

(i) The name, address, and telephone number of the ultimate capacity holder;

(ii) A description of the specific rights held, and the price paid for those rights;

(iii) The quantity of gas actually shipped; and

(iv) A certification that the ultimate capacity holder has complied with all the requirements that applied to the original capacity holder.

(h) *Revocation.* The Commission may revoke a certificate under this section if the pipeline fails to comply with any conditions imposed in its certificate.

§ 284.283 Blanket broker certificate.

(a) *General rule.* (1) A certificate holder under this section may broker a specific right to firm transportation on a pipeline that has a system brokering certificate.

(2) A certificate issued under this section is a certificate of public convenience and necessity under section 7 of the Natural Gas Act

(b) *Limited jurisdiction.* Commission jurisdiction pursuant to a certificate under this section is limited to the brokering transactions of the holder of the certificate. The Commission will waive all of its regulations with respect to a certificate under this section except as indicated in this section.

(c) *Eligibility*—(1) *General rule.* Any person may apply for a certificate under this section, subject to the requirements in paragraph (c)(2) of this section.

(2) *Specific requirements.* To apply for a blanket broker certificate:

(i) An interstate pipeline must have a blanket certificate under Subpart G of this part; and

(ii) An intrastate pipeline must transport under Subpart C of this part.

(d) *Blanket broker certificate application.* An application for a certificate under this section must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must include:

(1) The legal name of applicant;

(2) For an applicant other than an interstate pipeline, its principal place of business; whether it is an individual, partnerhsip, or corporation; the State under the laws of which it is organized or authorized; and the name, title, mailing address and telephone number of the person or persons to whom communications concerning the application can be addressed;

(3) An original and seven copies of the certificate application;

(4) If the applicant is an interstate pipeline, the docket number in which it received its blanket certificate under Subpart G of this part;

(5) Pro-forma tariff sheets setting forth the adjustment required by paragraph (g) of this section;

(6) A form of notice suitable for publication in the **Federal Register**, as described in § 157.9 of this chapter, which will briefly summarize the facts contained in the application in such a way as to acquaint the public with its scope and purpose; and

(7) A statement that it will comply with the terms and conditions of its certificate issued under this section.

(e) *Pre-grant of abandonment.* Pursuant to section 7(b) of the Natural Gas Act, abandonment of transportation services is authorized upon the expiration of the contractual term of each individual brokered transportation arrangement authorized under a certificate granted under this section.

(f) *Conditions for all brokers*—(1) *General conditions.* Except as provided in paragraph (g) of this section, a holder of a certificate under this section:

(i) Must broker on a nondiscriminatory basis consistent with §§ 284.8(b) and 284.9(b);

(ii) Must comply with any price caps the Commission may impose;

(iii) Must comply with the terms and conditions in the tariff of the pipeline on which the brokering is to be performed;

(iv) Must comply with the reporting requirements in paragraph (i) of this section;

(v) Must accept the certificate as provided in § 157.20(a) of this chapter; and

(vi) Is limited by all the conditions imposed in the system brokering certificate that is held by the pipeline on which the brokering transaction occurs.

(g) *Conditions for certain brokers*—(1) *Interstate pipelines*—(i) *Tariff sheets.* An interstate pipeline that holds a blanket broker certificate, within 30 days after accepting the certificate, must file:

(A) A rate schedule setting forth the terms and conditions under which it will broker; and

(B) Tariff sheets that reflect the allocation of Account No. 858 costs among sales services, transportation services, and brokering activities, supported by an annual cost and revenue study in the form required by § 154.303(e) of this chapter, unless the pipeline has a pending rate proceeding under §§ 154.63, 154.38 or 154.303(e), it may use the base period data from that proceeding so long as the base period ended within 12 months of the application for the certificate under this section.

(ii) *Rates.* (A) If the rates for sales or transportation services in the tariff sheets submitted under paragraph (g)(1)(i)(B) of this section are lower than the rates currently in effect, the tariff sheets containing these rates will become effective, subject to refund, on the date the pipeline commences brokering activity.

(B) If the rates for sales or transportation service in tariff sheets submitted under paragraph (g)(1)(i)(B) of this section are higher than the currently effective rates, the tariff sheets containing these rates will be subject to the Commission's suspension power under section 4 of the Natural Gas Act.

(iii) *Bundling prohibited.* An interstate pipeline that holds a certificate under this section must make its brokered services available separately from tis other transportation services.

(2) *Intrastate pipelines.* An intrastate pipeline that holds a blanket broker certificate must continue to provide transportation under Subpart C for the duration of the time periods specified within any capacity rights it brokered.

(3) *Local distribution companies.* A local distribution company that holds a certificate to broker under this section must broker in accordance with any applicable state regulations.

(h) *Rights and obligations.*

(1) Except as provided in paragraph (h)(2) of this section, the ultimate capacity holder has all the rights and obligations of the original capacity holder.

(2) Unless the pipeline on which the brokering transaction occurs agrees otherwise, the original capacity holder is obligated to pay:

(i) The commodity charge for any brokered capacity used; and

(ii) Any reservation fee.

(i) *Reporting requirements.* An original capacity holder must report to the Commission on a quarterly basis in the manner prescribed in § 385.2011 of this chapter with respect to each ultimate capacity holder:

(1) The name, address, and telephone number of the ultimate capacity holder;

(2) Any corporate affiliation between the ultimate capacity holder and the original capacity holder;

(3) A description of the specific rights held on each pipeline and the price paid for those rights; and

(4) The quantity of gas actually shipped.

(j) *Revocation.* The Commission may revoke a certificate under this section if the holder fails to comply with any conditions in its certificate or fails to comply with any of the requirements of this section.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982; E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 4 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 7910–825r (1982; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

4. In § 385.2011, a new paragraph (b)(5) is added to read as follows:

§ 385.2011 Procedures for filing an electronic medium.

* * * * *

(b) * * *

(5) Certificate applications and quarterly reports filed under Subpart J of Part 284.

* * * * *

[FR Doc. 88–8428 Filed 4–26–88; 8:45 am]

BILLING CODE 6716–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers; Extension of Comment Period

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: This document extends the period for filing comments on the notice of proposed rulemaking concerning Parts 516 and 530 of Title 29 of the Code of Federal Regulations. The proposed changes would modify the current restrictions on the employment of industrial homeworkers in certain industries.

DATE: Comments must be received on or before May 13, 1988.

ADDRESS: Written comments should be addressed to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC, 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 30, 1988 (53 FR 10342), the Department of Labor published a proposed rule which would amend existing 29 CFR Parts 516 and 530. The current regulations restrict, pursuant to section 11(d) of the Fair Labor Standards Act, the employment of industrial homeworkers in women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. These same regulations currently permit the employment of homeworkers in the knitted outerwear industry, provided the employer first obtains a certificate from the Department of Labor. Under the proposed rule, homework would be permitted in the restricted industries (other than in women's apparel and in hazardous operations in jewelry

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manufacturing) under a certification system somewhat similar to that used in the knitted outerwear industry. The proposal would also establish new enforcement mechanisms and revise recordkeeping requirements for employers of homeworkers.

Comments were requested to be submitted on or before April 29, 1988. The Department has determined that it is appropriate to extend the comment period until May 13, 1988, in order to afford interested parties an opportunity to submit more thoroughly developed comments.

Signed at Washington, DC on this 22nd day of April 1988.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 88-9295 Filed 4-26-88; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750

Federal Program for Indian Lands; Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is reopening the comment period on the proposed rule to clarify and amend certain portions of the regulations governing surface coal mining and reclamation operations on Indian lands. This action will afford additional time for public comment.

DATE: Written Comments: The comment period is reopened until 5:00 p.m. Eastern time on May 12, 1988.

ADDRESSES: Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Ave., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: 202-343-4540 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On February 10, 1988, OSMRE published in the **Federal Register** a proposed rule that would clarify and amend portions of its rules at 30 CFR Part 750 governing the regulation of surface coal mining and reclamation operations on Indian lands (53 FR 3992). The proposed rule would clarify certain jurisdictional issues and would amend the regulations with respect to permit application content requirements and incorporation of terms and conditions in coal leases on Indian lands.

The **Federal Register** notice of the proposed rulemaking stated that comments would be accepted by OSMRE until 5:00 p.m. Eastern time on April 20, 1988. The notice also stated that, upon request, OSMRE would hold public hearings or public meetings on the proposed rule in Washington, DC and Denver, Colorado. OSMRE received several requests for a public hearing in Denver and a hearing was held at that location on April 13, 1988. At that hearing, OSMRE received requests for an extension of the public comment period to allow the commenters additional time to prepare their written comments on the proposed rule.

In response to these requests, OSMRE by this notice is reopening the comment period for 15 days and will accept written comments on the proposed rule until May 12, 1988, at the address specified above under **"ADDRESSES."**

Dated: April 21, 1988.

J.P. Crumrine,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-9241 Filed 4-26-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3370-4; FL-023]

Approval and Promulgation of Implementation Plans; Florida; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on November 19, 1986, and June 12, 1987. EPA is deferring action on the revisions to Rule 17-2.210(2) (Air Operating Permits), since EPA currently does not have regulations for evaluating operating permit programs and consequently does not recognize operating permit programs as being part of a SIP. Also, EPA is taking no action on the revisions to Rules 17-2.660 (Standards of Performance for New Stationary Sources (NSPS) and 17-2.670 (National Emission Standards for Hazardous Air Pollutants (NESHAP)) since NSPS and NESHAP regulations are not required by section 110 of the Clean Air Act to be part of the State's SIP. The submittal amends regulations contained in the Florida Administrative Code (FAC), Chapter 17-2 (Air Pollution), and will incorporate Rule 17-103.150 (Public Notice of Application and Proposed Agency Action) as part of the SIP. These revisions include: the addition of a new definition and revisions to others; the revision of the primary units of the carbon monoxide ambient air quality standard to parts per million instead of milligrams per cubic meter; revision of the method for calculating prevention of significant deterioration (PSD) increment consumption to conform to current EPA policy; relabelling to the tables in Rule 17-2.700; addition of provisions for air curtain incinerators; minor PSD rule revisions; revision of public notice provisions; minor revisions regarding permitting; and addition of new testing provisions for sources on cold standby or temporary shutdown. These regulation changes are minor in nature and serve merely to update the Florida regulations. Several revisions which were submitted in this package will be acted upon in separate notices.

DATES: To be considered, comments must be received on or before May 27, 1988.

ADDRESSES: Written comments should be addressed to Stuart Perry of EPA Region IV (address below). Copies of the material submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On November 19, 1986, and June 12, 1987, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today proposing to approve a number of them. These submittals contained certification that adoption of the revisions had been preceded by adequate notice and public hearing. A discussion of these revisions now follows.

- Rule 17-2.100 (Definitions) was amended by adding the definition of an "Air Curtain Incinerator." With the addition of the new definition, the rule's definitions were renumbered to account for the additional definition. The definition of "Baseline Concentration" was amended to make FDER's method of calculating prevention of significant deterioration (PSD) increment consumption conform to current EPA policy. The definition of "modification" was amended to include the word "source" when describing the extent to which a modification can occur (i.e., a change can occur to an individual emission point or to the entire facility).
- Rule 17-2.210 (Permits Required) was amended to provide that "an appropriate" permit shall be obtained prior to beginning modification, or initial or continued operation of the source. Previously, the rule spoke only about obtaining a permit prior to beginning construction of a source. In Section (1) (Air Construction Permits), the word "proposed" was placed before "new modified source" to show that until a construction permit is issued, the project is still only a proposal. Also, the word "beginning" construction was replaced with "commencement of" construction. The first sentence now reads "An air construction permit shall be obtained by the owner or operator or any proposed new or modified source prior to commencement of construction or modification". There was some confusion regarding the intent or meaning of this change since the definition of "commence construction" means that the owner has already obtained all preconstruction permits and approvals required under federal air pollution control laws and regulations. It seemed as if the State was requiring the source to obtain a permit prior to obtaining a permit. On August 12, 1987, FDER forwarded to EPA an explanation (see technical support document) as to how the phrase "commencement of construction" was to be used. FDER stated that the revision "does not confuse or change the rule's requirement that a construction permit must be obtained before construction start-up; the term 'commence construction' as defined by 17-2.100(45) is not identical or interchangeable with the phrase 'commencement of construction' as used in 17-2.210(1)." In Section (2) (Air Operating Permits), there are numerous revisions. However, EPA is deferring action on these revisions since EPA currently has no regulations or guidance which specify the requirements for an approvable operating permit program and consequently does not recognize such operating permit programs as part of a SIP. EPA is planning on proposing operating permit regulations in the near future as a result of the Chemical Manufacturers Association (CMA) rulemaking pursuant to the out of court settlement. If and when EPA promulgates the operating permit regulations, EPA will take action to approve or disapprove the provisions at that time. For a more detailed discussion on this issue see the technical support document which is available for public inspection at EPA's Regional Office in Atlanta, Georgia. Section (3) (Exemptions) was amended to include an exemption from permitting for a portable air curtain incinerator which will not operate at any one site continuously more than six months or will not operate at any FDER permitted landfill. However, to remain exempt, the air curtain incinerator shall comply with all applicable provisions of FAC Chapter 17-5 (Open Burning and Frost Protection Fires).
- Rule 17-2.220 (Public Notice and Comment) was amended to remove any references to FAC Chapter 17-1 and replace it with FAC Rule 17-103.150, and make the provisions of Rule 17-103.150, as a minimum, applicable to all construction permit applications. Rule 17-103.150 was submitted for approval as part of the Florida SIP. Further amendments to the rule will simplify the notice requirements for minor sources and modifications by limiting the 30-day notice and associated provisions to only those permits issued under PSD or Nonattainment Area New Source Review rules, and for minor sources have a 14-day notice requirement and other provisions as specified in Rule 17-103.150. Also, the amendments eliminate a Florida requirement (previous 17-2.220(2)(a)) to publish newspaper notices in the Florida Administrative Weekly within 14-days of when a complete permit application for sources requiring a Best Available Control Technology (BACT) determination is received. This notice merely serves to notify the public that an application has been received. This requirement was originally established by the State in addition to the public hearing requirements required by EPA pursuant to 40 CFR 51.102. The public hearing requirements required pursuant to 40 CFR 51.102 have been retained and are still required by the State and EPA.
- Rule 17-2.300 (Ambient Air Quality Standards) was amended to express the carbon monoxide ambient air quality standard primary units in parts per million, and as an alternate standard it is expressed in milligrams per cubic meter. Previously, the primary units were milligrams per cubic meter.
- Rule 17-2.310 (Maximum Allowable Increases (Prevention of Significant Deterioration Increments)) was amended to make FDER's method of calculating PSD increment consumption conform to EPA policy. This SIP revision resulted from FDER's agreeing to revise its method of calculating increment consumption to agree with EPA's method in order to satisfy the conditional approval of the Florida PSD regulations published on November 22, 1983 (48 FR 52713).
- Rule 17-2.450 (Designation of Prevention of Significant Deterioration (PSD) Areas) was amended to establish the baseline dates for the sulfur dioxide and particulate matter PSD areas as December 27, 1977. Pursuant to 40 CFR 51.166, the baseline date in any baseline area is considered to be the earliest date after August 7, 1977, that a major stationary source or major modification, subject to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.166, submits a complete application to construct or modify. In Florida, the entire state is one baseline area, so it has one baseline date. The revision to Rule 17-2.450 makes this clear to the public.
- Rule 17-2.500 (Prevention of Significant Deterioration) was amended to recognize that when a baseline date is established, the State will publish such date in the Florida Administrative Weekly within one year of the establishment of such date. In addition, section (2)(e)4.a. (Creditable Emission Changes) is revised by the addition of new language which provides for a more restrictive application of creditable emission reductions. There are also some minor reorganizing/restructuring revisions which are included. The new provision disallows PSD credits for nonattainment-related emission reductions in the redesignated areas. These revisions were originally submitted on August 12, 1983. However, due to an error in the wording of the revisions, which EPA indicated to the State was not approvable, FDER notified EPA on November 30, 1983, that they were withdrawing from consideration

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the revisions to section (2)(e)4.a. The State corrected the wording deficiency and included the correction as part of the November 19, 1986, submittal. Subsequently on June 12, 1987, FDER requested that EPA consider for approval the August 12, 1983, revisions which were withdrawn, including the corrected wording submitted on November 19, 1986.

Further corrective amendments include revisions to Tables 500–1, 500–2, and 500–3. Table 500–1 (Major Facility Categories) was revised by adding the word "acid" to two categories as follows: hydrofluoric "acid" plants, and; sulfuric "acid" plants. Table 500–2 (Regulated Air Pollutants-Significant Emission Rates) was revised by changing the title of one entry from "Nitrogen Dioxide" to "Nitrogen Oxides" which agrees with EPA's title. Table 500–3 (De Minimis Ambient Impacts) was revised to agree with current EPA requirements regarding *de minimis* ambient impacts for the following pollutants: Lead, Beryllium, Total Reduced Sulfur, Reduced Sulfur, and Hydrogen Sulfide. The *"de minimis* ambient impacts" are prescribed ambient concentrations levels which determine if a major modification or major new source will have to conduct pre-construction and post-construction monitoring, all of which is dependent upon whether these predicted concentration levels will be exeeded by the emission increase from the modification or construction of the source.

- Rule 17–2.510 (New Source Review for Nonattainment Areas) was revised as part of this submittal. However, these revisions will be incorporated in a later notice which will discuss the approvability of the entire rule, which up until this time has not been proposed for approval. The entire rule's approval has been on hold pending an EPA policy decision regarding the use of a plantwide definition of a source. EPA has recently outlined procedures for approving regulations which will use the plantwide definition of a source, and is in the process of reviewing Florida's rule for agreement with the new policy.
- Rule 17–2.600 (Specific Source Emission Limiting Standards) was amended to include regulations for the use of an air curtain incinerator and to establish a visible emissions standard for kraft recovery furnaces equipped with dry collectors. The lattter will be discussed in a separate notice after the final approval of the Florida 111(d) plan for kraft pulp mills.
- Rule 17–2.700 (Stationary Point Source Emission Test Procedures) was amended to include a provision that the submittal of an emission compliance test wil not be required for a permit renewal on a source if during the year prior to renewal the source did not operate or in the case of a fuel burning source, burned liquid and/or solid fuel for a total of no more than 400 hours.

In addition, Section (6)(b) (EPA Test Procedures) and 17–2.700 Table I (Applicable Test Procedures for Point Source Compliance Tests) were amended to include EPA Method 16A as a test method for determination of total reduced sulfur emission (TRS) from stationary sources. These revisions will be processed in a separate notice after the final approval of the Florida 111(d) plan for kraft pulp mills.

Further amendments include the renumbering of 17–2.700 Table I and Table II as Table 700–1 and Table 700–2.

- Rule 17–2.710 (Continuous Emission Monitoring Requirements) was amended to include EPA Method 16A as a test method for determination of TRS emissions. This revision will be processed in a separate notice after the final approval of the Florida 111(d) plan for kraft pulp mills.

Further details pertaining to these regulation changes are contained in the Technical Support Document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action

EPA proposes to approve the regulation changes which were submitted to EPA on November 19, 1986 and June 12, 1987, as detailed in this notice. EPA is deferring action on revisions to Rule 17–2.210(2) (Air Operating Permits) since EPA currently has no regulations or guidance which specify the requirements for an approvable operating permit program and consequently does not recognize such operating permit programs as part of a SIP. In addition, EPA is taking no action on the revisions to Rule 17–2.660 and Rule 17–2.670 since NSPS and NESHAP regulations are not required by Section 110 of the Act to be part of the State's SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: November 20, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

[FR Doc. 88–9234 Filed 4–26–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6923]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 4682 on February 17, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Westfall, Pike County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Westfall, previously published at 53 FR 4682 on February 17, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 4682, in the February 17, 1988 issue of **Federal Register**, the entries under Westfall (Township), Pike County, are correctly revised to read as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Delaware River:	
1,160 feet downstream of downstream corporate limits	*408
1.5 miles upstream from downstream corporate limits	*414
2.5 miles upstream from downstream corporate limits	*417
Approximately .5 mile downstream from upstream corporate limits	*431
At upstream corporate limits	*434

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: April 21, 1988.

[FR Doc. 88–9204 Filed 4–26–88; 8:45 am]

BILLING CODE 6718–21–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 56]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: Standard No. 208, *Occupant Crash Protection,* provides for the phase-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars. This phase-in began on September 1, 1986, with full implementation scheduled for September 1, 1989. On October 17, 1986, the agency published a final rule exempting convertibles from the automatic restraint requirements during the phase-in period, based on its conclusions that a requirement for convertibles to comply with the automatic restraint requirements would not be reasonable, practicable, or appropriate for that vehicle type during the phase-in period. In that rule, NHTSA stated that it would re-examine the question of whether the automatic restraint requirement should be retained for convertibles manufactured on or after September 1, 1989, at a later date.

On March 30, 1987, NHTSA published a notice announcing that the automatic restraint requirements would be retained for convertibles manufactured on or after September 1, 1989. One of the primary reasons for the agency's decision was the anticipated widespread availability of driver-side air bag systems for passenger cars. The increased production of driver-side air bag systems will decrease the cost of those systems, thus making it easier for manufacturers to install air bags in cars that are produced in low volumes, such as convertibles. Further, the agency obtained information from a manufacturer that it was possible to install a motorized automatic safety belt system in some types of convertibles without having to make significant structural changes to those vehicles. Accordingly, NHTSA concluded that it was appropriate to require convertibles to comply with the automatic restraint requirements after August 31, 1989.

Petitions for reconsideration of the March 30 notice were filed by C & C, Incorporated and Isis Imports. After evaluating these petitions, NHTSA sees no basis for altering its previous decision to retain the automatic restraint requirements for convertibles manufactured on or after September 1, 1989.

C & C, Incorporated also asked in its petition that the agency change its long-standing interpretation of the term "convertible", so as to classify T-top vehicles as convertibles. The current definition of "convertibles" has been the same since 1976, and is used for the purposes of safety standards in addition to Standard No. 208. It is not clear that reclassifying T-top as convertibles would have any noteworthy effects during the phase-in period, because at least 60 percent of a manufacturer's annual production of passenger cars can be equipped with manual belts during the phase-in period. Since T-tops account for only about one percent of annual production, the manufacturers appears to have ample flexibility to comply with the phase-in requirements for automatic restraints *and* order their normal allotment of T-top cars. After the phase-in period has expired, *all* passenger cars must be equipped with automatic restraints, regardless of whether they are classified as convertibles. Therefore, this request for a change to the agency's definition of a "convertible" is denied.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM–12, NHTSA, Room 5320, 400 Seventh Street SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1984 (49 FR 28962), the Department of Transportation announced its decision on occupant crash protection. The decision provided for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, including convertibles. The phase-in began on September 1, 1986, with full implementation to take place on September 1, 1989. The decision also announced that the Department was considering whether to rescind the automatic restraint requirement for convertibles, and promised to specifically address this issue in a subsequent rulemaking action.

On April 12, 1985 (50 FR 14589), NHTSA published a notice proposing, among other things, alternative occupant crash protection requirements for convertibles. Specifically, this notice proposed to give vehicle manufacturers the option of installing manual lap belts in the front outboard seating positions of convertibles, instead of requiring automatic restraints at those seating positions, as was the case for all other passenger cars. This notice requested comments on several specific topics, including planned production of convertibles, the costs that would be associated with requiring convertibles to be equipped with automatic restraints, and the feasibility of so equipping convertibles.

After analyzing and evaluation the comments on this notices, NHTSA published a final rule on October 17, 1986 (51 FR 37028) exempting convertibles from the automatic restraint requirements during the phase-in period (September 1, 1986–August 31, 1989). NHTSA reached this decision, because it did not believe that applying the automatic restraint requirements to convertibles during the phase-in period would be consistent with its duty under section 103(f)(3) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(f)(3)). That section requires that, when NHTSA is prescribing Federal motor vehicle safety standards, it "shall consider whether any such proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle . . . for which it is prescribed." The agency concluded that applying the automatic restraint requirements to convertibles during the phase-in period would not be reasonable, practicable, or appropriate for that vehicle type. This conclusion was based on the following information.

Use of automatic belts was not reasonable for some models, because

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convertible manufacturers would have to make substantial structural redesigns of the vehicles, so as to incorporate a "pylon" or some other structure to anchor the upper torso portion of an automatic belt. If air bag systems had to be designed exclusively for convertibles, the cost of air bag systems at low production volumes could be substantial enough to severely curtail sales of convertibles. The agency noted, "However , as new types of air bag and other automatic restraint systems are developed, the cost could be reduced. The agency has therefore decided to limit the exemption for convertibles to the phase-in period. NHTSA will re-examine, at a later date, the issue of whether to apply an automatic restraint requirement to convertibles manufactured after September 1, 1989, or to require dynamic testing of the manual safety belts in those vehicles." 51 FR 37029.

In this rule, the agency also reiterated the criteria it has used since 1976 in determining whether a vehicle is a "convertible." A convertible has been defined as a vehicle whose A-pillar or windshield peripheral support is not joined at the top with the B-pillar or another rear roof support rearward of the B-pillar by a fixed rigid structural member. Applying this definition, the agency explained that a vehicle with a "targa" roof (a roof in which an entire section of the structure over the driver and front seat passenger can easily be removed and replace by a vehicle owner) *would* be considered a convertible, because no fixed rigid structural member connects the tops of the A and B-pillars when the targa roof is removed. Vehicles with a T-bar roof (a roof which can be only partially removed by a vehicle owner) *would not* be considered a convertible, because a fixed rigid structural member connects the A and B-pillars when the partial sections of the roof are removed.

The agency reexamined the question of automatic restraint requirements for convertibles, and announced its final decision on March 30, 1987 (52 FR 10122). Based on consideration of events that had occurred since its October, 1986 decision, NHTSA concluded that it would be reasonable and practicable for manufacturers to install driver-only air bag systems or automatic safety belts in convertibles manufactured on or after September 1, 1989. Therefore, Standard No. 208 was not amended, and the automatic restraint requirements will apply to all convertibles manufactured on or after September 1, 1989.

The primary reason for NHTSA's decision with respect to convertibles was the anticipated widespread availability of driver-side air bag systems for use in convertibles and other passenger cars that will result from the agency's decision to extend the "one car credit" until August 31, 1993. The agency published a final rule extending the one car credit on March 30, 1987 (52 FR 10096). The one car credit provides that a passenger car manufactured during the period from September 1, 1989 until August 31, 1993 will be considered to comply with Standard No. 208 if it is equipped with a non-belt automatic restraint system, such as an air bag, at the driver's seating position and a dynamically-tested manual lap/shoulder belt for the front right passenger's seating position. All available information, from both manufacturers and suppliers, indicates that this decision to temporarily extend the one car credit will increase substantially the number of vehicles equipped with air bags by September 1, 1989. With this anticipated increase in production of driver-side air bag systems, the costs of such systems will decrease. Hence, NHTSA believes that manufacturers will be able to comply with the automatic restraint requirements for convertibles by installing driver-side air bag systems, and that the installation of those systems will not substantially raised the price of those vehicles.

The agency also learned of one manufacturer's design of automatic safety belts that can be installed in some types of convertibles without having to make significant structural changes, such as the addition of pylons or other vehicle structures, to allow the safety belt to be anchored to the vehicle. Alfa Romeo presented information to NHTSA about an automatic safety belt system it has developed for its two-seat convertible model. The Alfa Romeo system uses a motorized automatic belt in which the belt is anchored at one end in a motorized track that is located in the vehicle's side door sill. At the other end, the belt is anchored in the center of the floor behind the seats. The belt runs from these anchorage points through a guide located on the inboard, top side of the front seats. While it is possible that this system might not be suitable for some convertible designs with rear seats, it is available for use in others. Moreover, the projected cost of this system is well below the $800 projected by GM for automatic safety belt systems in convertibles.

Given the availability of these alternative methods for complying with automatic restraint requirements in convertibles, NHTSA concluded that it would be reasonable, practicable, and appropriate for the particular vehicle type to require convertibles manufactured after August 31, 1989 to be equipped with automatic restraints.

In response to a request by Toyota, NHTSA reconsidered the definition of the term "convertible" that excludes T-roof vehicles. The agency again determined that there was no basis for changing the long-standing definition of the term, and so repeated that T-top vehicles were subject to the same occupant protection requirements as other passenger cars that are not convertibles.

The Petitions for Reconsideration

C&C Incorporated (C&C) requested that the agency extend the exemption for convertibles from the automatic restraint requirements until September 1, 1993 if:

1. The convertible was derived from a sedan that was not equipped with air bags by the original manufacturer; and

2. The convertible was equipped with 3-point manual belts at both front outboard seating positions.

In support of this request, C&C argued that when the vehicles to be converted into convertibles were equipped with driver side air bags, it is a simple matter for the converter to leave those air bags in place. However, when the vehicle is not so equipped, C&C argued that it would not be cost effective for the converter to install an automatic restraint system in the convertible. C&C argued that installing a driver side air bag would raise the price of convertibles so much that demand for convertibles would be reduced, and sales of convertibles would decline. With respect to the automatic belt system discussed by Alfa Romeo, C&C argued that this system "is highly susceptible to fouling from dirt as it is mounted near the door sill, and it is also likely to bind up in driver's clothing as it actuates." Accordingly, C&C concluded by stating that because of the costs and associated price increases that would be imposed on the manufacture of convertibles not originally equipped with air bags, the practical effect of NHTSA's decision would be to force the use of only air bag-equipped vehicles as convertible candidates. C&C stated that this would significantly narrow the product range available for conversion by companies like itself. C&C stated that because of the small market share for convertibles, the requirement that those cars be equipped with automatic restraints would "suggest little realistic increase in vehicle safety or consumer benefit."

Additionally, C&C asked that T-top vehicles be treated as convertibles solely for the purposes of Standard No. 208 until September 1, 1989, because this company was not aware of an acceptable automatic belt design that could be used in T-top vehicles during the phase-in period for automatic restraints. C&C again stated that the safety impacts of such a decision would be minimal.

Isis Imports (Isis) requested that convertibles be permanently excluded from the automatic restraint requirement for passenger cars. This request was based on Isis' status as a low volume manufacturer that is dependent on the major manufacturers to supply components. Isis stated that it imports about 24 Morgan convertibles each year in component form and assembles these vehicles for sale in the United States. Isis argues that the necessary automatic restraint components will not be available through its normal commercial channels until a considerable period of time after the major manufacturers' vehicles have been equipped with automatic restrains.

The Agency Response to the Petitions

Neither petitioner presented the agency with new data or other evidence to support its position that converters could not install automatic restraint systems in vehicles that were not originally equipped with such restraint systems. With respect to the door-sill mounted automatic belt system mentioned by Alfa Romeo, NHTSA has no basis for concluding that C&C's assertions regarding potential usage problems are correct, and that Alfa's design will ultimately prove unacceptable. After further review of Alfa's design, the agency continues to believe that this automatic belt design represents a viable and practicable method of complying with the automatic restraint requirements in many convertibles.

With respect to air bags, NHTSA prepared a detailed worst-case analysis in the final regulatory evaluation that accompanied its decision to terminate further rulemaking to exempt convertibles from the automatic restraint requirements of Standard No. 208. (NHSTA Docket No. 74–14–N51–001.) The agency concluded that a reduction in convertible sales of 2 to 15 percent might result in the short term as a result of higher prices for those vehicles as a result of installing driver side air bags. These sales losses were almost certain to be at the lower end of this range and were expected to be significantly diminished over the long term. However, the agency acknowledged that there might well be some short term negative sales impacts on conversion companies like C&C.

Those short term negative impacts were balanced against the safety benefits associated with requiring convertibles to be equipped with automatic restraints. The final regulatory evaluation explained that 14 fatalities and roughly 200 moderate to critical injuries would be prevented if convertibles were subject to the automatic restraint requirements as of September 1,1989; as opposed to September 1,1993. In its March 30, 1987 decision, the agency concluded that these safety benefits justified the relatively minor and short term sales losses that might be associated with the automatic restraint requirements for convertibles. Neither C&C nor Isis suggested that the agency had underestimated the short term economic impacts or overestimated the safety impacts of this decision. Accordingly, NHTSA has no basis for changing its previous conclusion that the safety benefits are more than adequate to justify any short term negative economic impacts likely to be associated with the decision to require all convertibles to comply with the automatic restraint requirements at the same time as those requirements become applicable to all other passenger cars.

Similarly, the agency has no basis to change its decision that T-top vehicles not be treated as convertibles for the purposes of Standard No. 208 until September 1, 1989. The agency has interpreted the term "convertible" in the same way since 1976. Using this long-standing interpretation, T-tops are *not* considered convertibles. The agency has already considered a request by Toyota redefine convertibles as as to include T-top vehicles, and decided not to grant that request; *see* 52 FR 10122, at 10124; March 30, 1987.

A change at this time to the definition of a convertible would also have effects under other NHTSA safety standards, most notably Standards No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108) and No. 216, *Roof Crush Resistance—Passenger Cars* (439 CFR 571.216). Standard No.108 requires new passenger cars to be equipped with a high-mounted stop lamp, but permits convertibles to comply with a more lenient version of the high-mounted stop lamp requirements. Standard No. 216 exempts convertibles from the requirements of the roof crush standard. This differing treatment of convertibles in these standards, as well as in Standard No. 208, is intended to take account of the unique design characteristics of vehicles that are convertibles, within the meaning of the agency's long-standing definition. There is no justification for or need to treat T-tops like convertibles for the purposes of these other safety standards. It would be confusing to treat T-tops as convertibles for purposes of Standard No. 208, but not as convertibles for the purposes of Standards No. 108 and No. 216.

If, in spite of this potential complexity and confusion, the agency were to consider classifying T-tops as convertibles solely for Standard No. 208, as requested by the petitioner, the agency would decline to do so. During the phase-in period for automatic restraints, Standard No. 208 allows at least 60 percent of the passenger cars produced each year to be equipped with manual safety belts. On the other hand, according to the 1987 Market Data Book published by *Automotive News*, only 1.18 percent of all 1986 U.S. cars had T-tops, and no manufacturer had more than 1.55 percent of its 1986 cars equipped with T-tops. Given this low percentage of T-top vehicles, the manufacturers that send their cars to companies like C&C for conversion into T-tops appear to have ample flexibility to order their normal allotment of T-top coversions *and* satisfy the phase-in requirements for automatic restraints. Thus, it is not clear to NHTSA that a separte T-top exemption in Standard No. 208 would have *any* noteworthy effects during the phase-in period.

After the phase-in period for automatic restraints expires on August 31, 1989, the agency's decision to retain the automatic restraint requirements for convertibles after the phase-in period has made the petitioner's request to

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treat T-tops like convertibles a moot issue. That is, all passenger cars manufactured on or after September 1, 1989 must be equipped with automatic restraints, regardless of whether the passenger car is called a hardtop, convertible, or T-top. Since all passenger cars will be subject to the same automatic restraint requirements after the expiration of the phase-in period, it makes no difference whether T-tops are treated as convertibles after that date.

NHTSA has concluded that these petitions have not provided any reasonable basis of changing the agency's previous decision to terminate rulemaking in this area. Accordingly, the petitions are denied.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on April 22, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-9262 Filed 4-22-88; 3:56 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 81
Wednesday, April 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration Public Meeting; Availability of Proposed Recommendation

SUBJECT: Use of Settlement Judges in Agency Adjudication.

SUMMARY: The Administrative Conference's Committee on Administration has under consideration a draft recommendation on agency use of settlement judges. Interested persons are invited to comment on the draft recommendation. The Committee is tentatively scheduled to meet on Tuesday, May 10, 1988 to discuss the proposal and comments.

DATE: Please submit comments by May 5, 1988 to the contact person.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Senior Staff Attorney, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254-7020.

SUPPLEMENTARY INFORMATION:

(1) *Committee on Administration Meeting.* The Conference's Committee on Administration is tentatively scheduled to meet on Tuesday, May 10, at 2:30 p.m. in the library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC 20037, should further consideration of the recommendation on settlement judges be required in light of any comments that might be received. The Committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its plenary Session on June 9 and 10, 1988. Comments should be sent to the address of the contact person.

(2) *Draft Recommendation.* The Administrative Conference's Committee on Administration has under consideration a draft recommendation on use of settlement judges in agency adjudicatory proceedings. The proposed recommendation is based in part on a draft report co-authored by Daniel Joseph and Michelle L. Gilbert of the law firm of Akin, Gump, Strauss, Hauer & Feld. Copies of the proposed recommendation and the preliminary draft report are available from the contact person.

The proposed recommendation is based on the view that, in many cases, a separate settlement judge, not the presiding judge, can exercise greater settlement-including authority than the presiding judge. The settlement judge can command a similar degree of defense without the need to observe all of the commands that establish and maintain impartiality. The settlement judge is generally knowledgeable about the kind of case and the parties' interest, and is in a position to lend structure to the negotiations, control their pace, reduce the adversarial nature of the process, and help the parties to assess objectively both the strengths and weaknesses of the case and to find reasoned solutions. Because the settlement judge carries a judge's authority, parties are likely to view this device as a legitimate and potentially valuable means of reaching an enforceable, legally defensible settlement. The draft recommendation urges that the technique receive much wider consideration and application as a means of actually settling matters, or convincing the parties to undertake other consensual dispute resolution methods. It suggests procedures for using the settlement judge technique and guidelines that seek to balance potential gains in efficiency against possible abuses that may result from an increasing reliance on settlement in administrative proceedings.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The Committee Chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request.

April 22, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-9249 Filed 4-26-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 22,1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the list was published. This list is grouped into new proposals, revisions extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required to asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB

BEST COPY AVAILABLE

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Desk Officer of your intent as early as possible.

Revision

- Farmers Home Administration
  7 CFR 1980–A Guaranteed Loan Program (General)
  FmHA 449–14, –30, –35, –36; 1980–19, –41 –43, and –44
  On occassion
  Businesses or other for-profit; 29,356 responses; 45,127 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736
- Farmers Home Administration
  7 CFR 1980–B, Guaranteed Farmer Program Loans
  FmHA 449–11, –12; 1980–15, –24, –25, –38, and –58
  On occassion
  Individuals or households; State or local governments; Farms; Businesses or other for-profit; 52,790 responses; 46,125 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736
- Food and Nutrition Service
  Report of the Child Care Food Program
  FNS–44
  Monthly and Quarterly
  State or local governments; 1,584 responses; 4,752 hours; not applicable under 3504(h)
  Alan Rich (703) 756–3100

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–9287 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stansbury Mining Corp. Western Vermiculite Project, Bitterroot National Forest, Ravalli County, MT; Intention To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, in conjunction with Montana Department of State Lands, will prepare an Environmental Impact Statement for a proposal to permit the development of Stansbury Mining Corporation's Western Vermiculite Project open pit vermiculite mine and concentrator. This EIS will also include analysis of impacts of an associated exfoliation plant independent of the permit area. The mine and concentrator are proposed on the Darby Ranger District, in the Sapphire Mountain range, approximately 8 air miles east of Hamilton, Montana.

The Forest Service has jurisdiction for surface resources on National Forest System Lands and is responsible for approval of the proponent's Plan of Operations. The Montana Department of State Lands is responsible for permitting mining and reclamation operations on all lands within the State of Montana regardless of administrative jurisdiction. Because of this joint responsibility, one environmental analysis will be conducted.

Stansbury Mining Corporation's proposed Plan of Operations was submitted June 17, 1987 pursuant to Forest Service locatable mineral regulations 36 CFR Part 228, Subpart A, and State of Montana Metal Mine Reclamation Act, Title 82, Chapter 4, Part 3, MCA. A joint Forest Service and State of Montana Environmental Assessment was initiated at this time and the analysis continued until a finding of significance indicated that preparation of an Environmental Impact Statement was appropriate.

Public meetings in Hamilton, Montana, and two formal agency interdisciplinary scoping meeting have identified issues and concerns associated with the proposal. No additional public meetings are planned at this time; however, government agencies and publics interested in or affected by the proposal are invited to participate during an additional scoping period. The Forest Service in conjunction with the Montana Department of State Lands will receive written comments for 30 days from the date of this notice. The Stansbury Mining Corporation permit application and a scoping document are available for public review.

The Environmental Impact Statement will consider a range of alternatives based on issues and concerns associated with the project. Two alternatives can be identified at the present time, the No Action alternative and the alternative to approve the project as proposed. Other alternatives may include modifications and/or changes in the various elements of the proposal.

Upon determination that Stansbury's Plan of Operations, inclusive of environmental baseline reports is complete, the analysis is expected to take about 12 months. The draft environmental statement should be available approximately 7 months after the Plan of Operations is declared complete by the agencies. A 45-day public comment period will follow the issuance of the draft Environmental Impact Statement. The final Environmental Impact Statement should be available approximately 12 months after the Plan of Operations completeness determination.

Robert S. Morgan, Forest Supervisor, Bitterroto National Forest, Hamilton, Montana, is the Forest Service responsible official. Dennis Hemmer, Commissioner, Montana Department of State Lands, Helena, Montana, is the State of Montana responsible official.

Written comments and/or questions concerning the analysis should be directed to Mike Oliver, Project Coordinator, Darby Ranger District, P.O. Box 266, Darby, Montana 59829, telephone [406] 821–3913 or Kit Walther, Chief—Hard Rock Bureau, Montana Department of State Lands, Capitol Station, Helena, Montana 59620, telephone [406] 444–2074. Written comments should be received within 30 days of the date of this notice.

Robert S. Morgan,

Forest Supervisor.

Date: April 18, 1988.

[FR Doc. 88–9179 Filed 4–26–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency

Title: Application for Funding to Operate Technical Assistance Projects

Form Number: Agency—NA; OMB—0640–0006

Type of Request: Revision of a currently approved collection

Burden: 738 respondents; 73,800 reporting hours

Needs and Uses: The SF 424 and Program Narrative constitute the MBDA's application for grants/cooperative agreements under its technical assistance programs. The Agency needs this information to evaluate applicant's experience and resources against uniform program standards.

Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, and non-profit institutions

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benfit

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3008 New Executive Office Building, Washington, DC 20503.

Dated: April 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Orgnaization.

[FR Doc. 88–9203 Filed 4–26–88; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–428–801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in FRG and sold in the United States, less U.S. duty, ocean freight, and marine insurance charges, and based on public statistics of West German exports of bearings to the United States.

Petitioner's estimate of foreign market value was based on West Germany home market list prices adjusted for standard discounting, and based on public statistics of West German exports of bearings to Italy and France. No further adjustments were made to foreign market value.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from nine percent to 355 percent.

Petitioner also provided information concerning a West Germany manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the West German manufactuer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition if filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from the FRG and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from the FRG are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference coy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge and hanger units, and parts of the foregoing (TSUSA

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items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from the FRG materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will process according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 20, 1988

[FR Doc. 88-9190 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from France are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in France and sold in the United States, less U.S. duty, ocean freight, and marine insurance charges, and based on public statistics of French exports of bearings to the United States.

Petitioner's estimate of foreign market value was based on French home market list prices adjusted for standard discounting, and based on public statistics of French exports of bearings to the Federal Republic of Germany. No further adjustments were made to foreign market value.

Based on a comparison of Untied States prices and foreign market value, petitioner alleges dumping margins ranging from 11 percent to 155 percent.

Petitioner also provided information concerning a French manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the French manufacturer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from France and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from France are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of antifriction bearings from France materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9191 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Italy are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Steet and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in Italy and sold in the United States, less U.S. duty, ocean freight, and marine insurance charges, and based on public statistics of Italian exports of bearings to the United States.

Petitioner's estimate of foreign market value was based on Italian home market prices, and based on public statistics of Italian exports of bearings to the Federal Republic of Germany. No further adjustments were made to foreign market value.

Based on a comparison of United States prices and foreign maket value, petitioner alleges dumping margins ranging from 15 percent to 304 percent.

Petitioner also provided information concerning an Italian manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the Italian manufacturer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from Italy are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomeclature. Congress is considering legislation to convert the

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United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA items 680.330 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3852 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9192 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-804]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 6, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in Japan and sold in the United States, less U.S. duty, ocean fright, and marine insurance charges.

Petitioner's estimate of foreign market value was based on Japanese home market list prices adjusted for standard discounting. No further adjustments were made to foreign market value.

Based on a comparison of United States and foreign market value, petitioner alleges dumping margins ranging from 1 percent to 130 percent.

Petitioner also provided information concerning Japanese manufacturers' cost of production. The cost informtion was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the Japanese manufacturers' costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the intitiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from Japan are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make our preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to covert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680. 3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9193 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Romania are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Romania are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in Romania and sold in the

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United States. U.S. duty ocean freight, and marine insurance charges were deducted.

Alleging that Romania is a state-controlled-economy country, petitioner's estimate of foreign market value was based on home market prices for corresponding bearings in Italy and Portugal, non-state-controlled-economy countries (surrogate countries), in accordance with the provisions of 19 CFR 353.36(a)(8). Petitioner selected Italy as a surrogate country since the Department has used Italy as a surrogate country in the past for other Eastern European state-controlled-economy countries. Petitioner also selected Portugal as a surrogate country since the Department used Portugal as a surrogate country in the past for Romania.

Petitioner's estimate of Italian and Portuguese home market prices was based on petitioner's foreign market information. Using Italian home market prices, petitioner alleges dumping margins ranging from 96 percent to 132 percent. Using Portuguese home market prices. petitioner alleges dumping margins ranging from 87 percent to 107 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Romania and found that it meets the requirements on section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from Romania are being, or are likely to be, sold in the United States at less than fair value.

In the course of our investigation, we will determine whether the economy of Romania is state-controlled to an extent that sales of such or similar merchandise in the home market or to third countries do not permit determination of foreign market value. If Romania is determined to be a state-controlled economy, we will then choose a non-state-controled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70); ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Romania materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 20, 1988.

[FR Doc. 88-9194 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (other Than Tapered Roller Bearings) and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Signapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings sold in the United States, less ocean freight, marine insurance, and U.S. duty. The United States prices of bearings produced by a single manufacturer with production facilities in both Singapore and Thailand and which exports bearings from both countries to the United States were used because the country of origin (as between Singapore and Thailand) of the imported bearings could not be determined.

Petitioner's estimate of foreign market value was based on home market prices in Singapore. No further adjustments were made to foreign market value.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from four percent to 44 percent.

Petitioner also provided information concerning a Singapore manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the Singapore manufacturer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Singapore and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act we are initiating an antidumping duty investigation to determine whether imports of bearings from Singapore are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Singapore materially injure, or threaten material iniury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

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This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9196 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Sweden are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Sweden are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings sold in the United States, less ocean freight, marine insurance, and U.S. duty. Prices of bearings produced by a single manufacturer with production facilities in many countries were used because the country of origin of the imported bearings could not be determined with certainty.

Petitioner's estimate of foreign market value is based on Swedish home market list prices adjusted for standard discounting. No further adjustments were made to foreign market value.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from three percent to 180 percent.

Petitioner also provided information concerning a Swedish manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the Swedish manufacturer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Sweden and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from Sweden are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40; 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8495.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Sweden materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9197 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury, to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from the United Kingdom (U.K.) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings produced in the U.K. and sold in the United States, less U.S. duty, ocean freight, and marine insurance charges, and based on public statistics of U.K. exports of bearings to the United States.

Petitioner's estimate of foreign market value was based on U.K. home market list prices adjusted for standard discounting, and based on public statistics of U.K. exports of bearings to Italy and the Federal Republic of Germany. No further adjustments were made to foreign market value.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from 13 percent to 254 percent.

Petitioner also provided information concerning a U.K. manufacturer's cost of production. The cost information was based on petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the U.K. manufacturer's costs. This analysis indicates that home market prices are below the cost of production.

Initiation of Investigation

Under section 732(c) of the Act, we must determine within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearing from the U.K. and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from the U.K. are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS

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subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from the U.K. materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9200 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-801]

Initiation of Antidumping Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings) from Thailand are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of bearings materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 7, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition filed in proper form by The Torrington Company on behalf of the domestic antifriction bearing industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of bearings from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for bearings sold in the United States, less ocean freight, marine insurance, and U.S. duty. The United States prices of bearings produced by a single manufacturer with production facilities in both Thailand and Singapore and which exports bearings from both countries to the United States were used because the country of origin (as between Thailand and Singapore) of the imported bearings could not be determined.

Petitioner calculated an estimate of foreign market value by applying the special rule for certain multinational corporations contained in section 773(d) of the Act. Since petitioner alleges that Thai home market sales are inadequate for comparison purposes, foreign market value was based on the sales prices of bearings sold to original equipment manufacturers in Japan by the Thai producer's related affiliate in Japan. The Japanese prices were based on Japanese home market list prices adjusted for standard discounting. No further adjustments were made to foreign market value.

Petitioner also calculated an estimate of foreign market value on the basis of the constructed value of bearings in Thailand. Constructed value was calculated using petitioner's costs for certain bearings, adjusted for known differences between the petitioner's and the Thai manufacturer's costs. The statutory minima of ten percent for general, selling, and administrative expenses, and eight percent for profit were used.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from 59 percent to 80 percent.

Petitioner also alleges that sales by the Thai company in the relevant third country—Japan—are below the company's cost of production. The cost information is based on petitioner's costs for certain bearings, adjusted or known differences between the petitioner's and the Thai manufacturer's costs.

Initiation of Investigation

Under section732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on bearings from Thailand and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of bearings from Thailand are being, or are likely to be, sold in the United States at less than fair value. Because we are investigating

the allegation of sales at less than fair value pursuant to the special rule for multinational corporations as outlined in section 773(d) of the Act, we have determined that it is inappropriate to initiate an investigation of sales at below cost of production at this time. If our investigation proceeds normally, we will make a preliminary determination by September 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item number with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs puposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrial features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8709.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports of bearings from Thailand materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9198 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Reglations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than March 31, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Iron Construction Castings from Canada:	
Bibby Ste. Croix	03/01/87-02/29/88
Standard Carnations from Chile:	
Agricolae Longtoma	11/03/86-02/29/88
Coexflor	
Flores de Chile	
Sociedad Agricola Arizta	
Sodium Nitrate from Chile:	
Sociedad Quimica y Minera	03/01/87-09/29/88
Certain Fresh Cut Flowers from Colombia:	
Las Amalias	11/03/86-02/29/88

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Antidumping duty proceedings and firms	Periods to be reviewed
Pompones	
Flores Colombianas	
Agrosuba	
Jardin de Los Andes	
Flores Altamira	
Flores de Exportacion	
Agricola el Redil	
Grupo Andes	
Cultivos del Caribe	
Floramerica	
Jardines de Colombia	
Flores del Rio	
Flores Generales	
Flores La Pampa	
Inversiones Targa	
Exportaciones Bochica	
Flores del Cauca	
Floral	
Cultivos Medellin	
Agrodex	
Flores de Los Amigos	
Flores de Los Arrayanes	
Flores Colon	
Certain Fresh Cut Flowers from Colombia:	
La Comuna	
Flores de La Conejera	
Flores Dos Hectareas	
Florlinda	
Flores El Gallinero	
Los Gaques	
Inverflores	
Flores Juanambu	
Inverpalmas	
Flores El Lobo	
Flores La Maria	
Flores de Las Mercedes	
Potrero	
Flores El Puente	
Inversiones Santa Rosa	
Tibati	
El Trentino	
El Zorro	
Flores La Esmeralda	
Floralex	
Jardines del Muna	
Velez de Moncheaux e Hijos	
Agromonte	
Claveles Colombianos	
Sun Flowers	
Fantasia Flowers	
Flores Serezuela	
Fresh Cut Flowers From Ecuador:	
Flores Equinocciales	11/03/86–02/29/88
Inverflora	
Terraflora	
Eden Flowers	
Floriasol CIA	
Flores del Ecuador	
Flores del Quinche	
Floresearde	
Flores de Ibarra	
Flores de Puembo	
Flores de Pichincah	
Viscose Rayon Staple Fiber From Finland:	
Kemira Oy Sateri	03/01/87–02/29/88
Brass Sheet and Strip from the Federal Republic of Germany:	
Wieland	06/22/86–02/29/88
William Prym Werke	
Langenberg Kupfer	
Schwermetall Halbzeugwerke	
Brass Sheet and Strip from Italy:	
La Metalli	06/22/86–02/29/88
Ferrite Cores from Japan:	
Taiyo Yuden	03/02/87–02,29/88
Television Receivers, Monochrome and Color, from Japan:	
Fujitsu General	03/01/87–02/29/88
Funai	
Matsushita	
Television Receivers, Monochrome and Color, from Japan:	
Mitsubishi Electric	
NEC	
Sharp	
Toshiba	
Victor	
Brass Sheet and Strip from Sweden:	
Metallverken	06/22/86–02/29/88
Granges	
Certain Circular Welded Carbon Steel Pipe and Tube from Thailand:	
Saha Thai	03/01/87–02/29/88
Thai Union	
Thai Steel	
Thai Hong	
Thai Metal	
Siam Steel Pipe	
First Union	

Countervailing duty proceedings	Periods to be reviewed
Leather Wearing Apparel from Argentina	01/01/87–12/31/87
Certain Apparel from Argentina	01/01/87–12/31/87
Certain Castor Oil Products from Brazil	01/01/87–12/31/87
Cotton Yarn from Brazil	01/01/87–12/31/87
Standard Carnations from Chile	02/03/87–12/31/87
Oil Country Tubular Goods from Israel	06/11/86–12/31/87
Certain Iron-Metal Construction Castings from Mexico	01/01/87–12/31/87
Certain Textile Mill Products from Mexico	01/01/87–12/31/87
Standard Chrysanthemums from The Netherlands	10/27/86–12/31/87
Carbon Steel Wire Rod from New Zealand	01/01/87–09/30/87
Cotton Shop Towels from Pakistan	01/01/87–12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 19, 1988.

[FR Doc. 88-9223 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-802]

Initiation of Countervailing Duty Investigation; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of antifriction bearings (other than tapered roller bearings) and parts thereof, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties are grants within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988, and we will make our preliminary determination on or before June 24, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition in proper form from The Torrington Company of Torrington, Connecticut, filed on behalf of the U.S. industry producing antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of bearings receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of this investigation [*i.e.*, those items classified under items 681.1010, 681.1030, 681.3900, and 692.3295 of the *Tariff Schedules of the United States Annotated* (TSUSA)] are nondutiable. Therefore, in accordance with section 303(a)(2), petitioner is required to allege that, and the ITC is required to determine whether, imports of these products from Singapore materially injure, or threaten material injury to, a U.S. industry.

The remaining TSUSA items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, in accordance with section 303(b) of the Act, petitioner is not required to allege that, and the ITC is not required to determine whether, imports of these products from Singapore materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on bearings from Singapore and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of bearings, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before June 24, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Rom B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: Antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 680.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Singapore which allegedly confer bounties or grants on manufacturers, producers or exporters in Singapore of bearings. We are initiating an investigation on the following programs:

- Economic Expansion of Incentives Act of 1985 (EEIA)
  1. Part II, Pioneer Enterprises
  2. Part IV, Expansion of Established Enterprises
  3. Part VI, Production For Export
  4. Part VII International Trade Incentives
  5. Part VIII, Foreign Loans for Productive Equipment
  6. Part IX, Royalties, Fees and Development Contributions
  7. Part X, Investment Allowances
  8. Part VI, Warehousing and Servicing Incentives
- Income Tax Act (ITA)
  1. Section 14(B) and 14(C), Double deduction for Export Promotion Expenses

  Promotion Expenses
  2. Section 16, Initial and Annual Allowances
- Research and Development (R&D) Incentives
  1. Section 14E of the ITA, Double Deduction for R&D Expenses
  2. Section 19B of the ITA, Writing Down Allowance for Expenditures Relating to Patents and Know-How
- Monetary Authority of Singapore (MAS) Rediscount Facility
- Singapore Economic Development Board (EDB) Programs
  1. Capital Assistance Scheme
  2. Product Development Assistance Scheme
  3. Initiatives in New Technologies

Although not specifically alleged by petitioner, we are also investigating whether the antifriction bearing industry in Singapore receives countervailable benefits under the following programs which are currently under investigation in the countervailing duty investigation of *Certain Carbon Steel Wire Rod from Singapore*.

- Section 19A of the ITA, Accelerated Depreciation
- Research and Development Assistance Scheme Under the Singapore Science Council

Although alleged by petitioner, we are not investigating the following programs:

- *Skills Development Fund Under the EDB*

The Department has previously investigated the Skills Development Fund under the EDB and has found that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries. [*See, Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore*, (50 FR 9840, March 12, 1985)]. Because

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petitioner has presented no new evidence or alleged changed circumstances with respect to the Skills Development Fund, we are not initiating an investigation on this program.

• *Location in Industrial Estates*

Petitioner alleges that the Jurong Town Corporation (JTC) controls most of the land and buildings used by international companies, and the JTC provides prepared sites with infrastructural facilities at lower rents. Petitioner also alleges that the Singapore Science Park provides similar facilities for technology-oriented companies. We previously investigated location in industrial estates and determined that it was not limited to a specific enterprise or industry, or group of enterprises or industries. *See, Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (51 FR 3357, January 27, 1986). In that determination, we stated that "location in industrial estates and rental charges cannot be considered countervailable unless the government limits which industries can locate in the industrial estates * * *." Because petitioner has submitted any new evidence or alleged changed circumstances, we are not initiating an investigation on this program. With respect to the Singapore Science Park, the petitioner provided no supporting documentation that benefits are being provided through location in the Science Park, nor that the Singapore bearings companies are located in the Science Park.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports from Singapore of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, our investigation with respect to the products classified under TSUSA items 681.1010, 681.1030, 681.3900, and 692.3295 will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

April 20, 1988.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9195 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-802]

Initiation of Countervailing Duty Investigations; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of antifriction bearings (other than tapered roller bearings) and parts thereof, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Thailand of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1988, and we will make our preliminary determination on or before June 24, 1988.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 1988, we received a petition in proper form from The Torrington Company of Torrington, Connecticut, filed on behalf of the U.S. industry producing antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as bearings). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Thailand of bearings receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. However, Thailand is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of this investigation [*i.e.*, those classified under items 681.1010, 681.1030, 681.3900, and 692.3295 of the *Tariff Schedules of the United States Annotated* (TSUSA)] are nondutiable. Therefore, in accordance with section 303(a)(2), petitioner is required to allege that, and the ITC is required to determine whether, imports of these products from Thailand materially injure, or threaten material injury to, a U.S. industry.

The remaining TSUSA items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, in accordance with section 303(b) of the Act, petitioner is not required to allege that, and the ITC is not required to determine whether, imports of these products from Thailand materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on bearings from Thailand and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of bearings, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before June 24, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on

the international harmonized system of Customs nomenclature. Congress is considering legislation to covert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with out product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation include the following articles, whether finished or unfinished: antifriction balls and rollers (TSUSA items 680.3025, 680.3030, and 680.3040, and proposed HS subheading 8482.91.00); ball bearings with integral shafts (TSUSA item 680.3300 and HS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728, and HS subheadings 848.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956, and HS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960 and HS subheadings 8482.40.00, 8482.50.00, 8482.80.00, and 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430, and HS subheadings 8483.20.80, 8483.30.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up cartridge, and hanger units, and parts of the foregoing (TSUSA items 681.1010 and 681.1030, and HS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specifically provided for (TSUSA item 681.3900 and HS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUSA item 692.3295 and HS subheading 8708.99.50). Finished but unground or semiground balls are not included in the scope of this investigation.

Allegations of Bounties or Grants

Petitioner lists or number of practices by the Government of Thailand which allegedly confer bounties or grants on manufacturers, producers, or exporters in Thailand or bearings. We are initiating an investigation of the following programs:

- Export Packing Credits
- Rediscount of Industrial Bills
- Electricity Discounts for Exporters
- Tax Certificates for Exports
- Income Tax Exemption under the Investment Promotion Act
- Double Deduction of Foreign Marketing Expenses and Foreign Taxes
- Export Processing Zones
- Reduced Business Tax for Producers of Intermediate Goods for Export Industries

Although not specifically alleged by petitioner, we are also investigating whether the antifriction bearings industry in Thailand receives countervailable benefits under the following programs:

- Tax Exemptions for Goodwill and Royalty Payments
- Tax Deduction for Dividends
- International Trade Promotion Fund

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1988, whether there is a reasonable indication that imports from Thailand of certain of the products included in the scope of this investigation materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, our investigation with respect to the products classified under TSUSA items 681.1010, 681.1030, 681.3900, and 692.3295 will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

April 20,1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9199 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-012]

Carbon Black From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon black from Mexico for the period October 1, 1983 through December 31, 1985. We preliminarily determine the total bounty or grant to be *de minimis* for Negromex and 2.90 percent *ad valorem* for all other firms during the period October 1, 1983 through December 31, 1983; *de minimis* for Negromex and 4.28 percent *ad valorem* for all other firms during the period January 1, 1984 through December 31, 1984; and 4.93 percent *ad valorem* for all firms during the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Craig Johnke, David Layton or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 30385) the final results of its last administrative review of the countervailing duty order on carbon black from Mexico (48 FR 29564, June 27, 1983). On June 25, 1986, the petitioner, Cabot Corporation, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of administrative review on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in

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accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican carbon black, currently classifiable under TSUSA item number 473.0400. This product is currently classifiable under HS item number 2803.00.00. We invite comments from all interested parties on this HS classification.

The review covers the period October 1, 1983 through December 31, 1985 and 13 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We treat benefits to U.S. importers as benefits to their corresponding Mexican exporters. We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 8.00 to 39.60 percent. The annual interest rate for dollar-denominated FOMEX export financing (both to Mexican exporters and U.S. importers) ranged from 4.50 to 8.50 percent during the period of review.

We have sufficient information to measure effective interest rates for peso-denominated loans and for 1985 dollar-denominated loans. (*See, Fabricated Automotive Glass from Mexico; Final Results of Countervailing Duty Administrative Review* (51 FR 44652, December 11, 1986)). To determine the effective interest rate benchmark for 1983 and 1984 peso loans, we calculated an average annual effective rate from data reported by the Banco de Mexico in its monthly publication, *Indicadores Economicos* (I.E.). In 1985, the Banco de Mexico stopped publishing data on nominal and effective interest rates. Therefore, we calculated the average spread between the Costo Porcentual Promedio (CPP), which is the average cost of short-term funds to banks, and the I.E. effective rates for the period 1982 through 1984, the only period for which we have I.E. rates. The effective interest rate benchmark for 1985 is the sum of this average spread and the average CCP rate for 1985.

To determine the effective interest rate benchmark for 1985 dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*. For 1983 and 1984 dollar loans, there was no comparable data on effective rates in the *Federal Reserve Bulletin*. Therefore, we used a nominal interest rate benchmark from the same publication and compared it to the nominal preferential interest rates in those years.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between December 1983 and November 1985. For our benchmarks, we used 91.73 percent for pre-export peso loans obtained in 1983, 73.78 percent for pre-export loans obtained in 1984, and 86.31 percent for pre-export loans obtained in 1985. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the review period. For these dollar-denominated loans, we used as our benchmarks 12.73 percent in 1983, 13.97 in 1984, and 12.85 percent in 1985.

The two known exporters of this merchandise used this program during the review period. In addition, U.S. importers obtained FOMEX loans based on exports from one of the Mexican carbon black exporters. We consider FOMEX importer loans to be loans to the Mexican exporter. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments.

We allocated each company's benefit over the value of its total U.S. shipments during each year of the review period. We then weight-averaged the resulting benefits by each company's proportion of total exports to the United States of this merchandise (excluding, where applicable, the firm with *de minimis* aggregate benefits) during each year of the review period. On this basis, we preliminarily determine the benefit from this program to be zero for Negromex and 0.30 percent *ad valorem* for all other firms in the 1983 period, 0.42 percent *ad valorem* for Negromex and 1.23 percent *ad valorem* for all other firms in 1984, and 2.19 percent *ad valorem* for all firms in 1985.

In October 1987, the Banco de Mexico changed the interest rates on FOMEX peso loans to 91.00 percent and on dollar loans to 8.00 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating the assessment rate. For peso loans we used as our benchmark the sum of the October 1987 CPP rate and the average 1982–1984 spread between the CCP and the I.E. effective rates. For dollar loans we used as our benchmark a weighted-average effective interest rate derived from the Federal Reserve Board quarterly survey of bank lending rates from November 2–6, 1987.

On this basis, we preliminarily determine that for this program the cash deposit of estimated countervailing duties will be 2.06 percent *ad valorem* for all firms.

(2) NDP Discounts

Under the National Development Plan (NDP), PEMEX, the government-owned oil company, and the Comision Federal de Electricidad (CFE), the government-owned electric utility, grant discounts to companies located in specific regions or engaged in certain priority activities. The discount may be as high as 30 percent, but varies from purchase to purchase. During the period of review, one firm received average discounts of 10 percent on certain purchases of electricity, natural gas, and carbon black feedstock. Because such discounts are provided only to specific enterprises or industries, we consider them to be domestic bounties or grants.

We allocated the total value of discounts received by the firm over its total sales to all markets during each year of the review period. We then weight-averaged the resulting benefits by that firm's proportion of exports to the United States of this merchandise (excluding, where applicable, the firm with *de minimis* aggregate benefits) during each year of the review period. On this basis, we preliminarily determine the benefit from this program to be zero for Negromex and 2.60 percent *ad valorem* for all other firms in the 1983 period, zero for Negromex and 3.05 percent *ad valorem* for all other firms in 1984, and 2.63 percent *ad valorem* for all firms in 1985.

A decree published by the Mexican government in the *Diario Oficial* on December 28, 1987 annulled three earlier decrees, published in the *Diario Oficial* on December 29, 1978, June 19, 1979, and August 3, 1981, that introduced these NDP discounts. On this basis, we preliminarily determine that for this program the cash deposit of estimated countervailing duties will be zero.

(3) CEPROFI

Certificates of Fiscal Promotion (CEPROFI) are tax certificates used to promote the goals of the NDP. They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities.

Article 25 of the decree that established the authority for issuing CEPROFIs, published in the *Diario Oficial* on March 6, 1979, requires each recipient to pay a four-percent supervision fee. The four-percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFIs. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Firms can receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty determination on bricks from Mexico (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable because such certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries.

One firm received benefits under Category II during the period of review. Although the firm claims that the CEPROFI benefit was based on merchandise other than carbon black, it provided no documentation to support its claim. Therefore, we allocated the firm's benefit, less the four-percent supervision fee, over the total value of that firm's sales of all products to all markets during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for all firms in the 1983 period, 0.01 percent *ad valorem* for Negromex and zero for all other firms in 1984, and zero for all firms in 1985.

(4) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA.

One firm had one variable-rate peso-denominated FONEI loan and one fixed-rate peso-denominated FONEI loan outstanding during the period of review. This firm claims that the variable-rate FONEI loan was used for purposes unrelated to carbon black production, but it provided no documentation to support its claim. Therefore, we consider both loans to confer a benefit on carbon black.

We treated the variable-rate loan as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the review period. To calculate the benefit for the fixed-rate loan, we used the same long-term loan methodology applied in the previous review. (*See, Carbon Black from Mexico; Preliminary Results of Countervailing Duty Administrative Review* (51 FR 13270, April 18, 1986)). We allocated the benefits from these loans over the firm's total sales of all products to all markets during each year of the review period. Where applicable, we weight-averaged the resulting benefits by each firms's proportion of exports of this basis, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem* for Negromex and zero for all other firms in the 1983 period, 0.03 percent *ad valorem* for Negromex and zero for all other firms in 1984, and 0.11 percent *ad valorem* for all firms in 1985.

(5) Preferential Pricing of CBFS

In our last review, we found that PEMEX provided carbon black feedstock (CBFS) to carbon black producers at preferential prices. Following the methodology used in that review, we compared, for each quarter in the review period, the price difference between U.S. Gulf Coast prices for no. 6 fuel oil and CBFS to the price difference between the PEMEX prices for those two products. On this basis, we preliminarily determine that CBFS was not provided to Mexican carbon black producers at preferential prices during the period of review and, therefore, did not confer a countervailable benefit.

(6) Other Programs

We also examined the following programs and preliminarily determine that exporters of carbon black did not use them during the review period:

(A) State tax incentives;

(B) National Industrial Development Fund (FOMIN);

(C) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations;

(D) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);

(E) Bancomext loans;

(F) Delay of payments on loans;

(G) Delay of payments to PEMEX of fuel charges;

(H) Import duty reductions and exemptions; and

(I) Tax Rebate Certificates (CEDI).

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.06 percent *ad valorem* for Negromex and 2.90 percent *ad valorem* for all other firms during the period October 1, 1983 through December 31, 1983; 0.46 percent *ad valorem* for Negromex and 4.28 percent *ad valorem* for all other firms during the period January 1, 1984 through

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December 31, 1984; and 4.93 percent *ad valorem* for all firms during the period January 1, 1985 through December 31, 1985. We consider any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Negromex and to assess countervailing duties of 2.90 percent of the f.o.b. invoice price on shipments from all other firms exported on or after October 1, 1983 and on or before December 31, 1983. The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from megromex and to assess countervailing duties of 4.28 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1984 and on or before December 31, 1984. The Department intends to instruct the Customs Service to assess countervailing duties of 4.93 percent of the f.o.b. invoice price on shipments from all firms exported on or after January 1, 1985 and on or before December 31, 1985.

Further, because of the changes in FOMEX benefits and the elimination of NDP discounts for energy and basic petroleum products, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.17 percent of the f.o.b. invoice price on shipments from all firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: April 20, 1988.

[FR Doc. 88-9268 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty, administrative review.

SUMMARY: On July 6, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for 42 firms, 24.43 percent *ad valorem* for Culiacan and 3.16 percent *ad valorem* for all other firms during the period July 1, 1984 through December 31, 1984. We determine the total bounty or grant to be zero or *de minimis* for 40 firms, 18.98 percent *ad valorem* for Culiacan and 4.17 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 25285) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013; May 10, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican ceramic tile including non-mosaic, glazed, and unglazed ceramic floor and wall tile, currently classifiable under item numbers 532.2400 and 532.2760 of the Tariff Schedules of the United States Annotated and under item numbers 6908.10.50—2 and 6907.10.00—0 of the Harmonized System.

The review covers the period July 1, 1984 through December 31, 1985 and thirteen programs: (1) FOMEX; (2) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (3) CEPROFI; (4) FONEI; (5) FOGAIN; (6) State tax incentives; (7) National Industrial Development Fund ("FOMIN"); (8) NDP preferential discounts; (9) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN"); (10) Bancomext loans; (11) delay of payments on loans; (12) delay of payments to PEMEX of fuel charges; and (13) import duty reductions and exemptions.

As a result of clerical errors found in our preliminary results and a change in methodology (see Comment 3), we have revised our calculations. The weighted-average country-wide assessment rate increased 0.02 percent for 1984, decreased 0.28 percent for 1985, and decreased 0.01 percent for purposes of cash deposit of estimated countervailing duties. Additionallly, Ceramica y Pisos Industriales de Culiacan ("Culiacan") will be assigned company-specific assessment and cash deposit rates because of significant differentials between its level of benefits and the weighted-average country-wide rates.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioner, the Tile Council of America, and three respondents: Ceramica Regiomontana ("Ceramica"), Culiacan and Industrias Intercontinental.

Comment 1: Ceramica argues that the Department should use a company-specific benchmark rate for short-term loans instead of a national-average benchmark rate in order to calculate more accurately the company's benefit from FOMEX and Article 15 loans. Since the Department verified that Ceramica's commercial loan rates were lower than the national-average benchmark rate, failure to use a company-specific benchmark overstates the benefit to Ceramica.

Furthermore, Ceramica maintains that the Department's statutory obligation is to calculate a bounty or grant that reasonably corresponds to the benefit received.

The petitioner, on the other hand, points out that the Departments's use of a national-average benchmark rate is

consistent with long-standing Department policy and prior determinations made in this proceeding. The petitioner agrees with the Department's position that, because FOMEX is part of a broad national lending program, it is more appropriate to use national-average commercial rates as its benchmark rather than the rates at which individual companies receive loans.

Department's Position: The Department's practice is to use a national-average interest rate as the benchmark for measuring the benefit from preferential short-term loans. This differs from our practice with long-term loans where, because of fewer long-term commercial loans and a greater range of riskiness between companies, we will use company-specific benchmarks if a company has comparable commercial loans. (*See,* the Subsidies Appendix to the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, (49 FR 18006, April 26, 1984).) Where possible we use effective interest rates. In recent administrative reviews of Mexican countervailing duty orders, we have used as our benchmark national-average effective interest rates based on data published by the Banco de Mexico. (*See, Final Results of Administrative Review: Fabricated Automotive Glass from Mexico* (51 FR 44652, December 11, 1986).) The commercial loan rates relied on by Ceramica to argue for a company-specific benchmark are nominal rates.

Nominal rates in Mexico include a risk premium that generally puts those rates a few percentage points above the CPP rate (Costo Porcentual Promedio, which is the average cost of short-term funds to banks). Ceramica's nominal rate loans follow this pattern. Ceramica mistakenly compares the rates on these loans to our effective rate benchmark, which takes into account many additional factors such as finance charges (fees for opening a line of credit, fees for credit renewal, commissions), compensating balances, and the prepayment or compounding of interest. The interest rate and terms of a loan are normally negotiated between the commercial bank and the client, but the rate is also affected by charges and costs not directly associated with any given loan (*e.g.*, compensating balances and minimum cash flow requirements). The types and amounts of charges and costs that commercial banks impose vary widely from company to company and loan to loan; there is no method that can be considered standard practice. The basis for our national-average effective interest rate benchmark is a weighted average of effective rates reported to the Banco de Mexico by a sample of companies representing a cross-section of the Mexican economy.

In this proceeding, Ceramica did not provide the data necessary to calculate the effective rates on its short-term commercial loans. We did not request such data because, even if we had it, we would not use it to establish a company-specific benchmark. The complexity of using numerous short-term loans to calculate a company-specific effective interest rate benchmark increases the probability of error, creates an incentive to underreport costs not directly tied to specific loans, and likely would require verification to establish its reliability. We are not required to conduct a verification in each review and, because of the large number of companies often involved in a review, we do not verify each company response when we verify. Consequently, even if we could establish some company-specific benchmarks, we would still be required to use a national-average benchmark for the remaining respondent companies.

In using a national-average benchmark, we recognize that some companies borrow above and others below that rate. But a policy of using company-specific benchmarks would be arbitrary and one-sided because: (1) We would not undertake the complex task of determining a company-specific benchmark unless a company requested it and provided the necessary data; (2) we could only reasonably contemplate applying company-specific benchmarks to verified companies; (3) only a company that believed it could demonstate an effective interest rate below the national average would make a request and the necessary preparations; and (4) a company that knew it had an effective rate higher than the national average would not request a company-specific benchmark and we, of necessity, would use the national-average benchmark to calculate that company's benefit. Since we weight-average each company's benefit by its share of exports of the subject merchandise to the United States, using company-specific benchmarks would, as a practical matter, lead to an understating of the country-wide benefit from short-term loan programs.

Adopting a policy that could be manipulated by respondents to their advantage and at their choosing would be a misapplication of our statutory obligations. The Tariff Act requires that we assess countervailing duties in the amount of the total bounty or grant found to exist on a class or kind of merchandise. The Department is obligated to adopt methodologies that most accurately measure the total benefit on all merchandise subject to the countervailing duty order. A methodology that incorporates company-specific benchmarks subverts the purpose of the law because it would lead to the underassessment of countervailing duties.

Comment 2: Ceramica argues that due to material differences between individual company benefits, the Department should calculate company-specific assessment rates for purposes of this review. The Department's policy of using a single, weighted-average country-wide rate unless there is a significant difference between the company-specific rate and the weighted-average country-wide rate (*i.e.*, 10 percentage points or 25 percent, whichever is greater) does not comply with section 607 of the Trade and Tariff Act of 1984 ("the 1984 Act"). Ceramica argues further that the 10 percentage point rule is contrary to the Department's current regulations and cites *Phillip Brothers* v. *United States* in support (630 F. Supp. 1317, 1322 (1986)). The petitioner, on the other hand, maintains that the Department's calculation of a single country-wide countervailing duty rate is consistent with prior administrative practice and should not be changed solely to benefit Ceramica.

Department's Position: Section 607 of the 1984 Act, which amended section 706 of the Tariff Act, established a statutory presumption in favor of country-wide countervailing duty rates without requiring any case-specific justification for the use of such rates. Consistent with this statutory provision, the Department calculated a country-wide countervailing duty rate for all firms except Culiacan. The Court of International Trade ("CIT") did not reject the 10 percentage point rule in *Phillip Brothers*. The CIT remanded the final results of the countervailing duty administrative review on pig iron from Brazil (49 FR 9923, March 16, 1984) requesting that the Department explain its reasons for changing from a company-specific deposit rate in the final determination (44 FR 67554, November 26, 1979) to a country-wide assessment rate in the final results of the administrative review. The Department submitted remand results with the requested explanation as well as a new analysis of the assessment rates based on the 10 percentage point rule in the Department's proposed regulations. In its final ruling, the CIT

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upheld the Department's remand results (647 F. Supp. 150 (1988)).

Comment 3: The respondents maintain that the Department used an incorrect average peso-to-dollar exchange rate when converting dollar values into peso equivalents. The Department summed the dollar-to-peso rates published by the Federal Reserve for each quarter, found a quarterly average from that total and then calculated the inverse of that average for the peso-to-dollar exchange rate. Respondents contend that the correct methodology is to use the quarterly dollar-to-peso rates to calculate a peso-to-dollar exchange rate for each quarter, and then average these values to yield the appropriate average exchange rate.

Department's Position: We agree and have revised our methodology accordingly.

Comment 4: Culiacan argues that the Department's methodology for calculating the company's benefit from the CEPROFI and FOGAIN programs grossly overstates the benefit from these programs. Culiacan asserts that the extremely large benefit found makes it obvious that the total benefit cannot be attributable only to the ceramic tile division and, therefore, the Department should either: (1) Allocate a certain percentage of the benefit to ceramic tile; (2) allow Culiacan to supply the Department with the total net sales figure for its agricultural division, thereby calculating the benefit using the overall company-wide sales figures from both the ceramic tile and agricultural products division; or (3) use as best information available the highest net FOGAIN (0.70 percent) and net CEPROFI (4.25 percent) benefits ever used as assessment and deposit rates for these programs.

Department's Position: We disagree. We were unable to establish at verification what percentage of Culiacan's total sales were accounted for by ceramic tile. We were given only a verbal estimate of this percentage at verification, and the only sales figure we were able to verify was that for ceramic tile.

If we had the data, we would have used only the benefits attributable to the ceramic tile division for calculating the benefits from these programs. However, such data was not made available at verification. The company could only document the amount of CEPROFI certificates and FOGAIN financing received; it could not demonstrate that these benefits were used for one division and not the other, nor could it demonstrate the appropriate percentage of benefits allocable to each divison. Furthermore, Culiacan's representative stated that it was possible to use the equipment for which the benefits were received in the manufacture of ceramic tile.

With respect to the rates proposed by Culiacan for use as the best information available in the FOGAIN and CEPROFI programs, Culiacan has misconstrued the Department's policy in this matter. We have applied such rates when we have determined that a response was inadequate and could not be used. In such situations, we have determined rates for all programs reviewed and not selectively for only those programs that the company used. The best information we have for calculating the *ad valorem* bounty or grant for Culiacan is the amounts of the benefits from these programs and the value of sales of ceramic tile. Therefore, we used these verified figures and calculated a company benefit that is significantly different from the weighted-average country-wide rate.

Final Results of Review

After considering all the comments received, we determine the total bounty or grant to be zero or *de minimis* for 42 firms, 24.43 percent *ad valorem* for Culiacan and 3.18 percent *ad valorem* for all other firms during the period July 1, 1984 through December 31, 1984. We determine the total bounty or grant to be zero or *de minimis* for 40 firms, 18.98 percent *ad valorem* for Culiacan and 4.17 percent *ad valorem* for all other firms during 1985.

The following 40 firms received zero or *de minimis* benefits during the review period:

(1) Augustin Cedillo Ruiz
(2) Antonio Villanueva
(3) Azulejos Decorativos Carrillo
(4) Azulejos Orion
(5) Benjamin Chaves Torres
(6) Camerino Chavez Parga
(7) Ceramica Santa Julia
(8) Dionicio Sanchez Cruz
(9) Eduardo S. Garcia de la Pena
(10) Fabrica de Azulejos Tipo Talavera
(11) Francisco Almanza E.
(12) Francisco Gallegos
(13) Francisco Rincon Leija
(14) Gonzalo Escobedo Garza
(15) Guadalupe Rocha Calvillo
(16) J. Garza Arocha, S.A.
(17) Homero Sifuentes Jimenez
(18) Idelfonso Chavez Parga
(19) Internacional de Ceramica
(20) Isabel Cortez Coronel
(21) Jesus Flores Carrillo
(22) Jesus Gallegos Olivares
(23) Jesus Jimenez Lucio
(24) Jose Davilla Torres
(25) Jose S. Vazques G.
(26) Ladrillera Monterrey
(27) Juan Cortez Coronel
(28) Juan Rodrigues Rocha
(29) Julio Jimenez Quiroz
(30) Leopoldo Montiel Rincon
(31) Manual Alvarez Ramon
(32) Matilde Rincon Leija
(33) Pablo Cortez Coronel
(34) Pedro Hernandez Torres
(35) Pedro Lopez Alonso
(36) Pisos Coloniales de Mexico, S.A.
(37) Ramon Lopez Ovalle
(38) Simon Jaime Balandran Zapata
(39) Sotero Jalomo R.
(40) Tranquilino Flores C.

In addition, the rate for Barros Tlaquepaque and Industrias Age is *de minimis* during the period July 1, 1984 through December 31, 1984.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Barros Tlaquepaque, Industrias Age and the 40 firms listed above and to assess countervailing duties of 24.43 percent of the f.o.b. invoice price on shipments from Culiacan and 3.18 percent of the f.o.b. invoice price on shipments from all other firms exported on or after July 1, 1984 and on or before December 31, 1984. The Department will also instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 40 firms and to assess countervailing duties of 18.98 percent of the f.o.b. invoice price on shipments from Culiacan and 4.17 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 40 firms listed above, to collect a cash deposit of estimated countervailing duties of 18.98 percent of the f.o.b. invoice price on shipments from Culiacan and, due to a change in FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 1.92 percent of the f.o.b. invoice price on all shipments of this merchandise from Barros Tlaquepaque, Industrias Age, and all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,
Acting Assistant Secretary, Import Administration.

Date: April 20, 1988.

[FR Doc. 88-9269 Filed 4-26-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-009]

Certain Iron-Metal Castings From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain iron-metal castings from Mexico. We preliminarily determine the total bounty or grant to be *de minimis* during the periods April 1, 1983 through December 31, 1983, January 1, 1984 through December 31, 1984, and January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Terri Ann Benny or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 2698) the final results of its last administrative review of the countervailing duty order on certain iron-metal castings from Mexico (51 FR 9686, March 2, 1983). On March 24, 1986 and March 28, 1986, the Government of Mexico and the petitioners, respectively, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on April 18, 1986 (51 FR 13273). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. Such merchandise is currently classifiable under TSUSA item numbers 657.0950, 657.0990, 657.2540 and 657.2550. These products are currently classifiable under HS item numbers 7328.90.90—2 and 7325.10.00—0. We invite comments from all interested parties on these HS classifications.

The review covers the periods April 1, 1983 through December 31, 1983 ("the 1983 period"), January 1, 1984 through December 31, 1984 ("the 1984 period"), and January 1, 1985 through December 31, 1985 ("the 1985 period") and 14 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export. One exporter of this merchandise used FOMEX export financing during the 1984 and 1985 periods of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX export loans is pre-paid. Accordingly, we calculated benefits from all FOMEX export loans that were received during the period of review. The annual interest rate for these dollar-denominated loans ranged from 6.60 to 8.50 percent during 1984 and 1985. There were no FOMEX export loans for the subject merchandise during 1983.

We have sufficient information to measure effective interest rates for 1985 dollar-denominated loans. (*See, Final Results of Administrative Review on Fabricated Automotive Glass from Mexico* (51 FR 44852, December 11, 1986).) We used the quarterly weighted-average interest rates published in the *Federal Reserve Bulletin* to determine the effective interest rate benchmark for dollar loans, there was no comparable data on effective rates in the *Federal Reserve Bulletin*. Therefore, we used a nominal interest rate benchmark of 13.97 percent in 1984 and compared it to the nominal preferential interest rates.

Because the one exporter that used this program was able to tie the FOMEX export loans to exports to specific countries, we measured the benefit only from FOMEX export loans tied to U.S. shipments. We allocated the company's benefit from export loans over the total value of exports of this merchandise to the United States during each year of the review period. We preliminarily determine the benefit to be zero for the 1983 period, 0.02 percent *ad valorem* for the 1984 period, and 0.16 percent *ad valorem* for the 1985 period.

(2) State Tax Incentives

Article 30 of the tax law ("Prontuario Fiscal del Estado: Comentado y Actualizado Resoluciones en Materia Fiscal") of the state of Baja California del Norte provides that companies in one of three categories are eligible for exemption from the payroll tax. These categories are: (1) companies that sell goods to be exported; (2) maquiladora operations; and (3) companies that sell or render services to individuals/companies in other Mexican states. One company located in the state of Baja California del Norte qualified for benefits during the review period because it was an exporter.

To calculate the benefit, we divided the amount of savings due to the tax

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exemption by the company's total exports. We then weight-averaged the result by that company's proportion of exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit to be 0.01 percent *ad valorem* for the 1983 period, 0.01 percent *ad valorem* for the 1984 period, and 0.002 percent *ad valorem* for the 1985 period.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of certain iron-metal castings to the United States did not use them during the review period:

(A) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations;

(B) Certificates of Fiscal Promotion (CEPROFI);

(C) Delay of payments of loans;

(D) Fund for Industrial Development (FONEI);

(E) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);

(F) Certificado de Devolucion de Impuestos (CEDI);

(G) NDP preferential discounts;

(H) Bancomext loans;

(I) FOMIN;

(J) FIDEIN;

(K) Import duty reductions and exemptions; and

(L) Delay of payments to PEMEX of fuel charges.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.01 percent *ad valorem* during the 1983 period, 0.03 percent *ad valorem* during the 1984 period, and 0.18 percent *ad valorem* during the 1985 period. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1983 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: April 21, 1988.

[FR Doc. 88-9270 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-052]

Non-Rubber Footwear From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on non-rubber footwear from Argentina. We preliminarily determine the total bounty or grant to be zero for 24 firms and 3.98 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 7289) the final results of its last administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). On January 30, 1987, the petitioner, Footwear Industries of America, Inc., requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on February 23, 1987. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Argentine footwear described in Part 1A of Schedule 7 of the TSUSA, excluding items 700.5100 through 700.5400, 700.57000 through 700.7100, and 700.9000. These products are currently classifiable under the HS item numbers listed in the Appendix to this notice. We invite comments from all interested parties on these HS classifications.

The review covers the period January 1, 1986 through December 31, 1986 and three programs.

Analysis of Program

(1) Reembolso

The reembolso is a tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of Part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, we consider the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

In September 1984, the Argentine government revised its export promotion law. The purpose of the successor law, No. 23.101, was to administer all export programs more efficiently. Effective October 16, 1986, Decree 1555/86 modified the reembolso program "to make the tax regime permanent and independent from other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The new decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than different rebate rates for each product or industry sector, there are now only three broad rebate levels. The rate for level I is 10 percent, level II is 12.5 percent, and level III is 15 percent. Based on a 1986 recalculation of the tax incidence of the non-rubber footwear industry, Decree 1555/86 put non-rubber footwear into level II.

In our last review, we calculated the allowable tax incidence based on a 1983 tax incidence study of the non-rubber footwear industry. In this review, we have based our analysis on the 1986 study. We find that indirect taxes on physically-incorporated inputs and final stage indirect taxes on non-rubber footwear amounted to 16.34 percent during the period of review. Because the rebate of indirect taxes did not exceed the total amount of indirect taxes paid, we preliminarily determine that there was no overrebate of indirect taxes for the period of review.

(2) Post-export Financing

The Central Bank of Argentina makes post-export financing available to exporters through Circular OPRAC 1-9. The Central Bank limits these loans to 30 percent of the austral equivalent of the foreign currency used in the export transaction. The maximum term of the loan is 180 days. Interest was paid quarterly until September 1986, after which the interest was paid monthly. The interest rate on these loans was the regulated rate, which the Central Bank sets monthly. Three of the 27 exporters used this program during the period of review.

To calculate the benefit, we compared the rate of interest charged on the OPRAC 1-9 loans with a national-average commercial rate. In our last review (52 FR 7289), we used as our benchmark the weighted-average interest rate on comparable short-term loans available from Argentine banks during the period of review. These were the regulated, unregulated and acceptance rates. In this review we do not have information on acceptance rates. As the best information available, we have averaged the unregulated interest rates reported in the *Economic Memorandum* published quarterly by the Central Bank of Argentina and the regulated rates provided by the Argentine government in its questionnaire response.

We changed both the benchmark and the preferential nominal rates to effective rates by adjusting for the number of interest payments made during the loan period. We compared the two rates on loans with interest payments falling due during the period of review. We allocated the benefits for each company over that company's total non-rubber footwear exports. We then weight-averaged the resulting benefits by each firm's proportion of total exports of this merchandise to the United States, excluding those firms with zero benefits. On this basis, we preliminarily determine the benefit from this program to the 3.28 percent *ad valorem* for the period of review.

(3) Pre-export Financing

This preferential financing program makes pre-export loans available to exporters at an annual interest rate of one percent. The loans are denominated in australes but indexed to U.S. dollars. The funds are provided by the Central Bank of Argentina and disbursed by private commercial banks. The maximum term of the loan is 180 days, and the loan must be repaid no later than 60 days after the date of export. The interest on pre-export loans is payable at the end of each calendar quarter.

In 1986, the Central Bank limited the maximum loan amount for exporters of non-rubber footwear to 65 percent of the contracted f.o.b. price. Three of the 27 exporters of non-rubber footwear received benefits from this program during the period of review.

To calculate the benefit, we compared the amount of interest due in the review period with the amount that would have been paid on comparable short-term commercial loans available in Argentina during the period of review. Using the same benchmark as for post-export financing and adjusting for exchange rate differentials, we allocated the benefits over each company's total exports of non-rubber footwear. We then weight-averaged the results by each company's proportion of total exports of this merchandise to the United States. We preliminarily determine the benefit from this program to be 0.70 percent *ad valorem* for the period of review.

Firms Not Receiving Benefits

We preliminary determine that the following firms received zero benefits during the period of review:

1. Alarsu S.A.
2. Alikon
3. Alpargatas S.A.I.C.
4. Armeny S.A.
5. Balassi E Hijos S.A.
6. Bartolome Blengio y Cia
7. Bonsoir S.R.I.
8. Borcal S.A.
9. Camboriu S.R.I.
10. Casa Corazon Cueros S.R.L.
11. Costa S.A.
12. Creaciones Ketal S.R.L.
13. Dinor S.A.
14. E-Meu S.R.L.
15. Fabrica De Calzado M.B. S.A.
16. Jose Cabrabs E Hijos
17. Jose Gravagna S.A.
18. La Scarpa S.A.
19. Linea Vanguard S.A.
20. Macri Calz S.A.
21. Mocasineria Morganti S.R.L.
22. Orlando Asan
23. Pell-Cuer S.R.L.
24. Vogue Shoes S.R.L.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for the 24 firms listed above and 3.98 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986.

The Department therefore intends to instruct the Customs Service to liquidate, without regard to countervailing duties, entries of this merchandise from the 24 firms listed above and to assess countervailing duties of 3.98 percent of the f.o.b. invoice price on all other shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from the 24 firms listed above and to collect a cash deposit of estimated countervailing

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duties of 3.98 percent of the f.o.b. invoice price on all shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issue raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: April 21, 1988.

Appendix—Non-Rubber Footwear HS Classifications

6115.91.00.00	6115.93.20.00	6209.90.40.00	6401.92.30.00
6401.92.60.00	6401.99.80.00	6402.11.00.00	6402.19.10.00
6402.19.50.00	6402.30.30.00	6402.30.50.00	6402.91.40.00
6402.91.50.00	6402.99.05.00	6402.99.10.00	6402.99.15.00
6402.99.70.00	6402.99.80.00	6403.11.30.00	6403.11.60.00
6403.19.15.00	6403.19.45.00	6403.19.60.00	6403.20.00.00
6403.30.00.00	6403.40.30.00	6403.40.60.00	6403.51.30.00
6403.51.60.00	6403.51.90.00	6403.59.15.00	6403.59.30.00
6403.59.60.00	6403.59.90.00	6403.91.30.00	6403.91.60.00
6403.91.90.00	6403.99.20.00	6403.99.40.00	6403.99.60.00
6403.99.75.00	6403.99.90.00	6404.11.20.00	6404.19.15.00
6404.19.20.00	6404.19.25.00	6404.19.30.00	6404.19.35.00
6404.19.50.00	[1] 6404.19.60.00	[1] 6404.19.70.00	6404.20.20.00
6404.20.40.00	6404.20.60.00	6405.10.00.00	6405.20.30.00
6405.20.60.00	6405.20.90.00	6405.90.90.00	6406.10.05.00
6406.10.10.00	6406.10.20.00	6406.10.45.00	6812.50.10.00
9021.19.80.00			

[1] Except footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics.

[FR Doc. 88-9271 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Machine Tools Special Issue License Review; Request For Comments

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses for imports of certain machine tools under Article 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than May 9, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3881, Washington, DC 20230, (202) 377-3984.

SUPPLEMENTARY INFORMATION: Article 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools provides for issuance of special issue licenses for the importation of machine tools covered by the Arrangement. Such licenses may be issued when it is determined "that the attainment of the objectives of this arrangement requires the importation * * * of arrangement products in excess of the applicable export limit." Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 50 completed numerically controlled vertical machining centers and 72 numerically controlled machining centers minus electronics during 1988.

All of the machines described below meet the following specifications: Program resolutiokn .0001", positioning accuracy +/- .0004", repeatability +/- .0002", feedrates .1-100 IPM, traverse .1-400 IPM. The machines in question are numerically controlled vertical machining centers (items MCV 0 — MCV 2000s) and numerically controlled vertical machining centers minus electronics. For each of these tools the specifications are as follows.

MCV 0: Table size 33.75" x 15.75", work size 30" x 13.75", table load 550 lbs., x-axis 22", y-axis 14", spindle horsepower, 3 hp continuous, spindle v-flange #40, spindle nose to table 4" minimum, 18" maximum, spindle center to column 15", spindle speeds high range 1000-8000 RPM, low range 60-3000 RPM, 16 tool automatic changer.

MCV 610: Table size 41.3" x 19.6", work size 33.5" x 16", table load 1100 lbs., x-axis 24", y-axis 16", z-axis 20", spindle horsepower, 7.5 hp continuous, spindle v-flange #40, spindle nose to table 6" minimum, 26" maximum, spindle center to column 17", spindle speeds 30-4000 RPM, 20 tool automatic changer.

MCV 760: Table size 47.2" x 25.2", work size 39.4" x 19.7", table load 1100 lbs., x-axis 30", y-axis 20", z-axis 20", spindle horsepower, 7.5 hp continuous, spindle v-flange #40, spindle nose to table 5.9" minimum, 26" maximum, spindle center to column 20.5", spindle speeds 30-4000 RPM, 24 tool automatic changer.

MCV 1000s: Table size 56" x 25", work size 48" x 20", table load 1300 lbs., x-axis 40", y-axis 20", z-axis 20", spindle horsepower, 7.5 hp continuous, spindle v-flange #40, spindle nose to table 6" minimum, 26" maximum, spindle center to column 20", spindle speeds 30-4000 RPM, 24 tool automatic changer.

MCV 1300s: Table size 73.4" x 24.3", work size 66.9" x 27.6", table load 3300 lbs., x-axis 52", y-axis 30", z-axis 23.6", spindle horsepower, 10 hp continuous, spindle v-flange #50, spindle nose to table 7.8" minimum, 31.4" maximum, spindle center to column 23.6", spindle speeds 10-3000 RPM, 20 tool automatic changer.

MCV 2000s: Table size 90.5" x 37", work size 84.6" x 34", table load 5500 lbs., x-axis 80", y-axis 36", z-axis 24", spindle horsepower, 15 hp continuous, spindle v-flange #50, spindle nose to table 7.8" minimum, 31.4" maximum, spindle center to column 23.6", spindle speeds 10-3000 RPM, 20 tool automatic changer.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a nonproprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address, (202) 377-1248.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9239 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Automated Manufacturing Equipment Technical Advisory Commitee; Partly Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held May 18, 1988, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of TAC Committee Communications.
6. Discussion of CAD/CAM Software.
7. Discussion of Shop Floor Computers/Controllers.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 5526(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Anne Ferrell at (202) 377-2583.

Date: April 21, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-9202 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DT-M

Short-Supply Review on Certain Continuous-Cast Steel Slabs; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain continuous-cast steel slabs for use in the manufacture of hot-rolled coils and cut-to-length plate.

DATE: Comments must be submitted on or before May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United

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States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain continuous-cast steel slabs, 8 to 10 inches in thickness, 60 to 100 inches in width, and 240 to 384 inches in length, for use in the manufacture of hot-rolled coils and cut-to-length plate.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which casn be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9216 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Hot-Rolled Sheet; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangements Concerning Trade in Certain Steel Products, with respect to hot-rolled sheet for use in the manufacture of certain welded oil country tubular goods.

DATE: Comments must be submitted on or before May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangements Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain hot-rolled carbon steel sheet, fully killed, in coils weighing from 35,000 to 70,000 pounds, in widths ranging from 54.750 to 71.155 inches and in thicknesses ranging from 0.183 to 0.288 inch, for use in the manufacture of certain welded oil well casing and tubing.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9219 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Pipe; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain seamless hot-finished alloy steel pipe.

DATE: Comments must be submitted no later than May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for seamless hot-finished alloy steel pipe meeting ASTM specification A335, grades P11, P22, P5 and P9, in wall thicknesses ranging from 0.203 to 1.312 inches and diameters ranging from 2 to 16 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988. Comments should focus on the econonmic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9240 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Institute of Human Origins, Berkeley Geochronology Center et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5 (a)(3) and (a)(4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-308R. *Applicant:* Institute of Human Origins, Berkeley Geochronology Center, 2453 Ridge Road, Berkeley, CA 94709. *Instrument:* Mass Spectrometer, Model 215. *Manufacturer:* Mass Analyser Products, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of November 10, 1987.

Docket Number: 88-131. *Applicant:* University of New Mexico, Department of Physics and Astronomy, 800 Yale NE, Albuquerque, NM 87131. *Instrument:* Copper Vapor Laser, Model CU40. *Manufacturer:* Oxford Laser, United Kingdom. *Intended Use:* The instrument will be used to amplify sources of ultrashort pulses which are to be used in experiments of range gating, studies of ultrafast processes in dyes, investigation of new methods of detection of electrical fields in ultrafast integrated circuits and the study of nonlinear interfaces. In addition, the instrument will be used in physics courses to teach graduate students in the use of high power laser with unstable resonators, pulse compression by cavity extension and ultrashort laser pulse amplication schemes. *Application Received by Commissioner of Customs:* March 3, 1988.

Docket Number: 88-132. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812 *Instrument:* Laser, Model HD-300. *Manufacturer:* Lumonics, Inc., Canada. *Intended Use:* The instrument will be used for studies of organic chemicals or biological preparations from photosynthetic systems—algae, bacteria, plants in time-resolved magnetic resonance experiments. The objectives of these experiments are to understand the structural properties of photosynthetic systems and how these properties related to function. *Application Received by Commissioner of Customs:* March 3, 1988.

Docket Number: 88-133. *Applicant:* University of Michigan, Department of Geological Sciences, 1006 C. C. Little Bldg., 425 E. University, Ann Arbor, MI 48109-1063. *Instrument:* Mass Spectrometer, Model MAP215. *Manufacturer:* Mass Analyzer Products Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure both the natural and the neutron irradiation induced isotopic compositions of the elements He, Ar and Xe in terrestrial rocks, minerals and natural fluids (e.g., aqueous fluid inclusions). Experiments will consist of extracting and purifying the rare gases in order to determine critical isotopic ratios. The resulting data will be used to determine the ages of a variety of rocks, minerals and geological events and to study the mass transfer of the rare gases in the earth in order to better understand the processes involved in the differentiation of the earth. Educational purposes will consist of (1) training graduate students for the degree of Ph.D. in which a major part of the research involves radiogenic isotope geochemistry and (2) training of graduate and undergraduate students in the principles of isotope geochemistry. *Application Received by Commissioner of Customs:* March 4, 1988.

Docket Number: 88-134. *Applicant:* The Johns Hopkins University, Charles and 34th Streets, Baltimore, MD 21218. *Instrument:* Laser System, Model HY400/HD-300. *Manufacturer:* Lumonics, Inc., Canada. *Intended Use:* The instrument will be used for the study of the nonlinear optical phenomena in the semiconductors GaAs, InSb, HeTe, and their alloys. Experiments will consist of measurements of the changes of spatial and spectral characteristics of the laser light propagating through thin samples of the above materials. In addition, the instrument will be used in the courses Nonlinear Optics and Quantum Electronics to expose graduate students to the most recent advances in nonlinear optics and quantum electronics. *Application Received by Commissioner of Customs:* March 4, 1988.

Docket Number: 88-135. *Applicant:* Research Foundation of the State University of New York, Stony Brook, NY 11794 *Instrument:* Angle-turned Frequency Doubler for Spectra-Physics 380-D Ring Dye Laser. *Manufacturer:* Vrige Universiteit, The Netherlands. *Intended Use:* The instrument will be used for laser-spectroscopy of rare earth and refractory elements. Experiments will consist of studies of resonance fluorescence of the atoms to measure nuclear sizes and moments for unstable nuclei, in order to obtain an understanding of the structure of these nuclei. In addition, the instrument will be used for special projects courses by Ph.D. graduate students and selected advanced undergraduates to teach state of the art methods. *Application Received by Commissioner of Customs:* March 8, 1988.

Docket Number: 88-136. *Applicant:* University of California, Santa Barbara, Purchasing Department, Building 451, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM-4000FX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used for a variety of research including the following:

1. Structure and Chemistry of Metal/Ceramic Interfaces.
2. Kinetics of Internally Oxidized Metal Alloys.
3. Interfaces in Whiskey Reinforced Ceramics.
4. Microcracking in Ceramics.
5. Structure and Composition of Complex Ceramics.
6. Structure and Chemistry of High Temperature Superconductors.

7. Interface Structure Between a Chromium Film and Glass.
8. Decohesion of Metallic Films from Brittle Substrates.
9. Metal-Ceramic Interfaces in Packaging: Their Mechanical and Thermal Properties.
10. Processing of Ceramic Materials.
11. Yttria Distribution in Yttria-Containing Zirconium Ceramics.
12. Grain Growth in Ceramics.
13. Processing of High T_c Superconductors.

Application Received by Commissioner of Customs: March 8, 1988.

Docket Number: 88–137. *Applicant:* Washington University, Department of Pathology, 660 South Euclid, Box 8118, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM–1200 EX/SEG/DP/DP. *Manufacturer:* JOEL, Ltd., Japan. *Intended Use:* The instrument will be used for a broad range of contemporary biological applications in electron microscopy. Virtually every project entails quantitative analysis of large numbers of electron microscopic images. The various research projects will include the following:

1. Pathology-Tissue Culture SCOR—Ischemic Heart Disease.
2. Effects of Ischemia on Myocardial Adrenergic Responsiveness.
3. Maximum-Likelihood Estimation in EM Autoradiography.
4. Automated Segmentation of Biomedical Images.
5. Structural Determinants of Arrhythmogenesis Following Infarction.
6. Experimental Diabetic Autonomic Neuropathy.
7. NGF Deprivation in Sympathetic Neurons.
8. Distribution of DNA Excision Repair in the Human Genome.
9. Ultrastructural and Biochemical Characterization of Receptor-Mediated Endocytosis.
10. Regulation and Function of Glycoprotein Hormone Sulfation.

Application Received by Commissioner of Customs: March 9, 1988.

Docket Number: 88–138. *Applicant:* Cornell University, Section of Genetics and Development, 142 Emerson Hall, Ithaca, NY 14853. *Instrument:* Research Irradiator, Model Gammacell 1000. *Manufacturer:* Atomic Energy of Canada, Ltd., Canada. *Intended Use:* The instrument will be used for studies of tadpole sterility in Xenopus; mutant and chromosome aberrations in *Drosophila melanogaster, Caenorhabditis elegans,* yeast and ciliated protozoa. In addition, the instrument will be used for educational purposes in undergraduate research courses in genetics, biochemistry, molecular and cell biology. *Application Received by Commissioner of Customs:* March 10, 1988.

Docket Number: 88–139. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–650, Livermore, CA 94550. *Instrument:* Flashlamp System, Model 108–400. *Manufacturer:* Vortex Industries, Canada. Intended Use: The instrument will be used to study high average power laser amplifiers utilizing advanced laser crystals. Initial experiments include interferometry and fluorescence and gain measurements of crystalline materials pumped by the arc lamps. *Application received by Commissioner of Customs:* March 14, 1988.

Docket Number: 88–140. *Applicant:* State of Minnesota Department of Health, Public Health Lab, 717 Delaware Ave., SE., Minneapolis, MN 55440. *Instrument:* Electron Microscope, Model H–600. *Manufacturer:* Hitachi, Japan. *Intended Use:* Quantitative and qualitative analysis of asbestoform particles and viral identification to determine the health risks. *Application Received by Commission of Customs:* March 11, 1988.

Docket Number: 88–141. *Applicant:* University of Wisconsin-Madison, Integrated Microscopy Resource, 1525 Linden Drive, Madison, WI 53706. *Instrument:* Laser Scanning Cofocal Microscope System. *Manufacturer:* MRC Lasersharp, United Kingdom. *Intended Use:* The instrument will be used to find the location of fluorescently-labelled markers inside the surrounding living cells in studies which will provide answers to important cell biological questions. The instrument will also be used for educational purposes in the course Zoology 575, Modern Biological Microscopy. *Application Received by Commission of Customs:* March 15, 1988.

Docket Number: 88–142. *Applicant:* National Institutes of Evironmental Health Sciences, P.O. Box 12233, Research Triangle Park NC 27709.

Instrument: Preparative Quencher and Accessories, Model PQ–53. *Manufacturer:* Hi-Tech Scientific, United Kingdom. The instrument will be used for studies of the rates and kinetics of inositol phosphate formation in living cells, under temperature controlled conditions and with msec time resolution. Experiments will involve incubation of living cells with [^{3}H]inositol and measurement of levels of inositol phosphates liberated from the radioactive lipids at various times after introduction of a receptor-active agonist. The objectives of these experiments will be to determine if the latency for inositol phosphate formation are in fact sufficiently short for these compounds to have a role in cellular Ca^{2+} mobilization. *Application Received by Commissioner of Customs:* March 16 1988.

Docket Number: 88–143. *Applicant:* University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. *Instrument:* Reflex Microscope with Software. *Manufacturer:* Reflex, United Kingdom. *Intended Use:* The instrument is intended to be used for studies of dental, cranial, and postcranial specimens of microscopic living and fossil vertebrates. The various investigations conducted have different specific objectives, but all generally address the issues of systematics among groups of living and fossil vertegrates, the degree of variability within groups at various taxonomic levels, the influence of development in the evolution of new character states, and the association of form and function. *Application Received by Commissioner of Customs:* March 17, 1988.

Docket Number: 88–144. *Applicant:* University of Minnesota, Department of Aerospace Engineering and Mechanics, 107 Akerman Hall, 110 Union Street, SE, Minneapolis, MN 55455. *Instrument:* Bridgman Stockbarger Growth System.

Manufacturer: Crystalox Ltd., United Kingdom. *Intended Use:* Study of martensitic phase transformations in shape-memory materials for the purpose of improving the properties of these materials. These materials will include alloys of copper-zinc-aluminum, copper-aluminum-nickel, nickel-titanium and related alloys. The objective of this research is to create alloys with improved shape-memory properties so as to open up new lines of application. *Application Received by Commissioner of Customs:* March 18, 1988.

Docket Number: 88–145. *Applicant:* University of California, San Diego, Division of Engineering, B–010H, La Jolla, CA 92093. *Instrument:* Electron Microscope, Model CM30T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study a variety of materials including defects in the crystal structure of III-V semiconducting materials, such as gallium-arsenide and the newly discovered high-temperature ceramic superconductors, such as yttrium-barium-copper-oxide. Investigations will be conducted to determine how defects in the materials affect the electrical properties. The instrument will also be used to teach graduate level students the theory and practice of transmission electon microscopy. *Application Received by Commissioner of Customs:* March 21, 1988.

Docket Number: 88–146 *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Beam Tester, Strut Buckling Apparatus, Torsion Tester, Model Numbers HST13, HST15, HST22. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the course Properties of Materials Laboratory which trains students in the testing of the mechanical properties and behavior of structural elements under a variety of load conditions. *Application Received by Commissioner of Customs:* March 21, 1988.

Docket Number: 88–147. *Applicant:* Department of Commerce, NOAA, Great Lakes Environmental Research Laboratory, 2205 Commonwealth Blvd., Ann Arbor, MI 48105. *Instrument:* Stable Isotope Ratio Mass Spectrometer with Accessory Model VG PRISM. *Manufacturer:* VG Instruments Inc., United Kingdom. *Intended Use:* The instrument will be used for studies of biogeochemically important elements (hydrogen, carbon, nitrogen, oxygen and sulfur). The experiments to be conducted will include investigations of the following:

1. Pathways of carbon and nitrogen in lake ecosystems.
2. Stress levels of organisms exposed to chemical contamination.
3. Paleolimnology; comparison of the present lake to conditions of hundreds to thousands of years ago.

Application Received by Commissioner of Customs: March 23, 1988.

Docket Number: 88–149. *Applicant:* Washington University, School of Medicine, 660 South Euclid Avenue, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP. *Manufacturer:* JEOL, Inc., Japan. *Intended Use:* The instrument will be used for studies of nerve and muscle cells, cell membranes and purified cellular proteins in various research projects including the following:

1. Motility of nerve growth cones.
2. Extracellular matrix particularly the basal lamina, assembled by Schwann cells.

Analysis of the structure and function of the proteins in the post-synaptic membrane of a nicotinic cholinergic synapse.

4. Description of the electrophysiological, morphological and biochemical correlates of synapse formation between embryonic neurons and muscle fibers.
5. Study of growth cones of elongating neuronal processes.
6. Ultrastructural studies of synaptic maintenance.

Application Received by Commissioner of Customs: March 24, 1988.

Docket Number: 88–150. *Applicant:* Princeton University, Plasma Physics Laboratory, P.O. Box CN–17, Princeton, NJ 08544. *Instrument:* Diagnostic Neutral Beamline. *Manufacturer:* Culham Laboratory, United Kingdom. *Intended Use:* The instrument will be used in the study and development of thermonuclear fusion as a limitless source of clean, efficient energy. Magnetic fields will be used to confine hydrogen plasmas (hot ionized gases) for time sufficient to create energy-relasing fusion reactions. The instrument will be used to obtain certain previously unmeasureable properties of these plasmas. The profile and behavior of the plasma current will be measured over the full range pf PBX-M operating parameters. The results will be published in technical journals and discussed at scientific conferences. *Application Received by Commissioner of Customs:* March 29, 1988.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88–9221 Filed 4–26–88; 8:45 am]
BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; Massachusetts Institute of Technology et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5 (a)(3) and (a)(4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constiution Avenue, NW., Washington, DC.

Docket Number: 88–107. *Applicant:* Massachusetts Institute of Technology, 77 Massachusetts Ave., Cambridge, MA 02139. *Instrument:* Rapid Kinetics Accessory, Model SFA 11. *Manufacturer:* HI-TECH Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used for kinetic studies of the folding process of the membrane protein bacteriorhodopsin by fluorescence and UV/Vis spectroscopy. *Application Received by Commissioner of Customs:* February 19, 1988.

Docket Number: 88–108. *Applicant:* The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78284. *Instrument:* Combined SFN–3, Three Syringe Stopped-Flow Module and QFM–5 Five Syringe Quenched Flow Module. *Manufacturer:* Biologic, France. *Intended Use:* The instruments will be used for studying the rates of folding of normal and mutant proteins using fast reaction techniques. Experiments involve the induction of refolding by rapidly mixing two or more solutions in order to dilute out a protein denaturant. The long term objectives of these studies are to understand the relationship between the one dimensional information contained in the amino acid sequence and the three dimensional structure and function of proteins. *Application Received by Commissioner of Customs:* February 19, 1988.

Docket Number: 88–109. *Applicant:* University of California, San Francisco, School of Pharmacy, S926, San Francisco, CA 94143–0446. *Instrument:* Four Sector Tandem Mass Spectrometer, Model MS50TC. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used to emphasize interdisciplinary studies addressing key unsolved structural issues revolving around delineation of C-terminal peptide sequences, the molecular nature of post-translational modifications of proteins, and related topolotgcal issues involving certain membrane bound glycoprotein receptors, such as acetylcholine receptor. In addition, the instrument will be used as a fundamental part of training of several graduate and post-doctoral students and visiting scientists. The researchers will be working on fundamental problems of analytical methodology for identification and qualitative structure determination of knows and unknowns in complex mixtures isolated for biological, biochemical and biomedical milieux. *Application Received by Commissioner of Customs:* February 19, 1988.

Docket Number: 88–110. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439–4812. *Instrument:* Tribometer. *Manufacturer:* Centre Suisse D'electronique et de Microtechnique, S.A., Switzerland. *Intended Use:* The instrument will be used for studies involving metallic and ceramic materials with a wide range of

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chemical composition and physical shapes tested under dry and lubricated sliding conditions for wear and friction measurements. *Application Received by Commissioner of Customs:* February 22, 1988.

Docket Number: 88–111. *Applicant:* National Aeronautics and Space Administration, Langley Research Center, Building 1195A, Room 103, Hampton, VA 23665–5225. *Instrument:* FT–IR Spectrophotometer. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* The instrument will be used to non-intrusively measure thermal properties associated with high temperature supersonic jet plumes. *Application Received by Commissioner of Customs:* February 22, 1988.

Docket Number: 88–112. *Applicant:* Medical Foundation of Buffalo, Inc., 73 High Street, Buffalo, NY 14203–1196. *Instrument:* Electron Microscope with Accessories, Model JEM–100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used in experiments in which linear polymers and their sorter chain models are investigated under the class of organic materials. These will be examined in the form of microcrystalline preparations of pure and mixed chain samples. The experiments will be conducted in order to explain the behavior of these materials in terms of their molecular and crystal structures. *Application Received by Commissioner of Customs:* February 22, 1988.

Docket Number: 88–113. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Micromass, United Kingdom. *Intended Use:* The instrument will be used for studies of rocks from the ocean floor and from volcanic islands, ocean water and polar ice cores. Experiments conducted involve the characterization of the neon and nitrogen isotopic composition of rocks and mineral in the earth's mantle and geochemical studies of ocean water and polar ice cores by nitrogen isotope measurements. The instrument will also be used for training of graduate students in mass spectrometry and isotope geochemistry. *Application Received by Commissioner of Customs:* February 23, 1988.

Docket Number: 88–114. *Applicant:* University of California, San Diego, 8175 Miramar Road, Bldg. 509, Q–046, La Jolla, CA 92093. *Instrument:* Seismometers. *Manufacturer:* G. Streckeisen, Switzerland. *Intended Use:* The instruments will be used in a network of seismic devices to provide wide-band, high dynamic range (over 120dB) thru axis seismometry. *Application Received by Commissioner of Customs:* February 23, 1988.

Docket Number: 88–115. *Applicant:* University of Colorado, Joint Institute for Laboratory Astrophysics, Box 440, Boulder, CO 80309–0440. *Instrument:* FT–IR Spectrometer System, Model IZM01. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* The instrument will be used to study the evolution of intermediate products in photofragmentation, laser initiated chain reactions and laser initiated combustion. A pulsed laser will be used to initiate each reaction. The instrument using proprietary software will then gather a series of time-resolved spectra of the vibrationally and rotationally excited intermediate and end products of the reaction. This will in turn allow a detailed analysis of the kinetics and dynamics of chain and combustion chemistry, giving a much clearer picture of the reaction mechanisms involved than previously possible using other techniques. In addition, the instrument will be used in the training of one graduate student and one post-doctoral researcher on a continuous basis. *Application Received by Commissioner of Customs:* February 23, 1988.

Docket Number: 88–116. *Applicant:* East Texas Regional Health Facilities, 1000 South Beckham, Tyler, TX 75711. *Instrument:* Lithotripter, Model HM4. *Manufacturer:* Dornier Medizintechnik GmbH, West Germany. *Intended Use:* The instrument will be used in science-related studies including the expansion of knowledge of shockwave technology, particularly in its ability to reduce the morbidity and mortality that is experienced via open surgery to the urinary tract. Another objective of these studies includes developing safer and more effective means of kidney stone treatment, assessing the biological effects of shockwaves on normal and abnormal tissue, and determining if there exists any bad or untoward effects over the longterm. The instrument will also be used in lithotripsy experience courses, the content of which will be hands-on instruction in and application of the lithotripter. *Application Received by Commissioner of Customs:* February 23, 1988.

Docket Number: 88–117. *Applicant:* University of California, San Diego, Psychology Department, C–009, La Jolla, CA 92093. *Intrument:* Primate Chairs and Surgical Implant Components. *Manufacturer:* The Workshop, University of Oxford, United Kingdom. *Intended Use:* The instruments will be used for studies of the physiological basis of selective attention and memory in the primate. *Application Received by Commissioner of Customs:* February 23, 1988.

Docket Number: 88–118. *Applicant:* The Ohio State University, Department of Geology and Mineralogy, 125 South Oval Mall, Columbus, OH 43210. *Instrument:* Electron Microprobe, Model CAMEBAX SX 50. *Manufacturer:* Cameca Instruments, Inc., France. *Intended Use:* The instrument will be used for studies of rock, minerals, synthetic phases, meteorities, ceramic materials and metallurgical alloys. Experiments conducted will consist of measurement of x-ray intensities emitted by samples when bombarded by a focused electron beam. The instrument will be used in geology courses providing students with intensive instruction in the operation of the microprobe and demonstrating to students the importance of acquiring high-precision analyses for testing theoretical models. *Application Received by Commissioner of Customs:* February 24, 1988.

Docket Number: 88–119. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Ultrasonic Flow Meter, Model DS–102 X–Y. *Manufacturer:* Denshi Kogyo Co. Ltd., Japan. *Intended Use:* The instrument will be used in a lake to study wind and wave-induced currents close to the surface. The objectives of the investigation are to better understand wave dissipation through breaking, and the structure of currents very close to the interface (this is important for such things as pollutant transport, e.g., oil spills). *Application Received by Commissioner of Customs:* February 24, 1988.

Docket Number: 88–120. *Applicant:* University of Utah, Purchasing Department, 151 Annex Building, Salt Lake City, UT 84112. *Instrument:* Scanning Electron Microscope, Model CAMSCAN SERIES 2. *Manufacturer:* Cambridge Scanning Co. Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used for the study of implantation of permanent electrical charge in thin films of polymer materials, in particular Teflon. Of primary interest is the study of detailed patterns of charge produced by "writing" with a computer-controlled electron beam. The primary objective of this study is the development of very small sensors and actuators based on the concept of using small movable structures which generate electric fields, combined with small integrated-circuit devices which can sense such fields. *Application Received by Commissioner of Customs:* February 24, 1988.

Docket Number: 88–121. *Applicant:* Marine Science Program, University of North Carolina, CB 3300 12–5 Venable Hall, Chapel Hill, NC 27599. *Instrument:* Five Radon Gas Detectors, Model PMT–TEL. *Manufacturer:* Pylon Electronics, Canada. *Intended Use:* The instrument will be used to measure radon fluxes in a variety of environmental and study fluxes of reduced gases through plants. *Application Received by Commissioner of Customs:* February 25, 1988.

Docket Number: 88–122. *ApplicanT:* The University of Chicago, Department of Molecular Genetics and Cell Biology, 920 E. 58th Street, Chicago, IL 60637. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, the Netherlands. *Intended Use:* Studies of blood cells and proteins, including sickle cell hemoglobin to extend understanding of the structure and function of these materials. In addition, the instrument will be used to teach students modern methods of electron microscopy in the course Molecular Genetics and Cell Biology 309, Electron Microscopy for Biologists. *Application Received by Commissioner of Customs:* February 25, 1988.

Docket Number: 88–123. *Applicant:* Cold Spring Harbor Laboratory, Box 100, Bungtown Road, Cold Spring Harbor, NY 11724. *Instrument:* Mass Spectrometer, Model BIOION 20. *Manufacturer:* Bio-Ion, Sweden. *Intended Use:* The instrument will be used in research to identify and characterize modifications on peptides and proteins of high molecular weight by a combined approach of classical protein chemistry and mass spectrometry. The research projects all involve the analysis of modifications on biologically active peptide and proteins including: (1) Growth and differentiation factors, (2) synthetic peptides, (3) proteins on two dimensional gel electrophoresis, (4) CAMP dependent protein kinases, (5) cellular oncogene products, (6) nuclear oncogene products, (7) phospholipase A_2, (8) heat shock proteins, and (9) yeast protein kinases. Mass spectrometric analysis of proteins will be performed as part of a multidisciplinary approach to understanding the structure and function of proteins with important physiological roles. *Application Received by Commissioner of Customs:* February 26, 1988.

Docket Number: 88–124. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Intrument:* X-Ray (Wavelength) Spectrometer and Accessories, Model FCS–40. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study phenomena associated with the friction and wear of materials, superconducting properties of ceramics, and corrosion properties of materials. The objective of the analyses is to provide quantitative information on the composition of the various materials to aid in determining how composition influences their performance. *Application Received by Commissioner of Customs:* February 26, 1988.

Docket Number: 88–125. Applicant: Veterans Administration Medical Center, 3710 Southwest U.S. Veterans Hospital Road, Portland, OR 97207. Instrument: Electron Microscope, Model JEM–1200EX/DP/DP. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used for the following studies:

(a) Morphological changes in muscle following drug treatment,

(b) Cytoskeletal changes in muscle following calcium channel blocker administration,

(c) Cytochemical localization of calcium in muscle following stimulation and drug administration,

(d) Morphology, of cerebellar explants following transplantation in tissue culture,

(e) Morphological changes in brain slices following initiation of long-term potentiation,

(f) Immunocytochemical localization of muscle mitochondrial enzymes in patients with muscle myopathies,

(g) Morphology of fibroblasts exposed to immunological, agents,

(h) Morphology and cytochemistry of kidney cells following drug exposure,

(i) Morphology of lung tissues in the amniotic fluid of pregnant patients,

(j) Characterization of cell fractions from bovine muscle,

(k) Morphological characterization of transplanted rat brain tissue,

(l) Stereomicroscopy of myopathic tissue, and

(m) Morphology of cryosectioned tissue to be used for immunocytochemistry.

Application received by Commissioner of Customs: February 29, 1988.

Docket Number: 88–126. Applicant: University of Texas Southwestern Medical Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235. Instrument: Electron Microscope, Model JEM–100SX. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used to examine the ultrastructure of biological specimens. The microscope will be used in a graduate laboratory course which intends to familiarize students within the department with the operation and techniques associated with its instrumentation. Application Received by Commissioner of Customs: February 29, 1988.

Docket Number: 88–127. Applicant: University of Nevada Reno, Department of Mining Engineering, Reno, NV 89557–0047. Instrument: Air Motor Test Unit. Manufacturer: G. Cussons Ltd., United Kingdom. Intended Use: The instrument will be used for the training of professional mining engineers in the course Mine Plant Design. Application Received by Commissioner of Customs: February 29, 1988.

Docket Number: 88–128. Applicant: Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Instrument: Electron Microscope with Accessories, Model CM 10/PC. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used to examine biological samples from mammalian and amphibian tissues in experiments to determine the cell biology of the modification of cell membrane structure and involve experimental manipulation of whole animals, and some cell culture work. The objectives are to understand how cells respond to their environment by modulating transport properties of their plasma membranes. Application Received by Commissioner of Customs: February 29, 1988.

Docket Number: 88–129. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. Instrument: Inductively Coupled Plasma-Mass Spectrometer, Model VG PlasmaQuad. Manufacturer: VG Elemental, Ltd., United Kingdom. Intended Use: The instrument will be used for elemental analysis of a large variety of radioactive elements, their compounds, mixtures with other elements and alloys including plutonium and other transuranics. Experiments will be conducted to better understand the physical and chemical characteristics of the materials under study. Application Received by Commissioner of Customs: February 29, 1988.

Docket Number: 88–130. Applicant: Dartmouth College, Department of Earth Sciences, Hanover, NH 03775. Instrument: Thermal Ionisation Mass Spectrometer, Model VG SECTOR. Manufacturer: VG Instruments, United Kingdom. Intended Use: The instrument will be used to measure the isotopic compositions of parent and daughter elements involved in radioactive decay schemes. The samples to be investigated consist of whole rock powders, mineral separates from naturally occurring igneous, metamorphic and sedimentary rock environment and natural aqueous

solutions such as ocean water, ground water and metabolic fluids. Various experiments will be conducted to characterize the geochemical nature of the sources for igneous rocks and ore deposits, and to determine absolute radiometric ages of metamorphic and igneous rocks, in order to constrain their tectonic history and to model heat and mass transfer events in the Earth's mantle and crusts. The results of the experiments will be published in journals and theses. In addition the instrument will be used in courses to introduce students to the current geochemical applications of isotope data. Application Received by Commissioner of Customs: March 5, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-9222 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Nebraska; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-019. *Applicant:* University of Nebraska, Lincoln, NE 68583-0915. *Instrument:* Mass Spectrometer, Tracermass. *Manufacturer:* Europa Scientific, Ltd., United Kingdom. *Intended Use:* See notice at 52 FR 46640, December 9, 1987.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrumenf, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument is capable of analyzing small samples (5-150 milligrams nitrogen content) with high precision (0.001 atom% ^{15}N) at natural abundance. The National Bureau of Standards has advised that this capability is pertinent to the applicant's intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-9220 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 80479-8079]

Information Relating to Terminating the Certification of the Soviet Union

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of information.

SUMMARY: Notice is published that the Secretary of Commerce has found the reasons for the certification of the Soviet Union, under the Pelly and Packwood-Magnuson Amendments, for activities that diminish the effectiveness of an international fisheries conservation program no longer prevail and that the certification has been terminated..

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affiars, NMFS, 202-673-5281.

SUPPLEMENTARY INFORMATION: Under the Pelly Amendment to the Fishermen's Protective Act and the Packwood-Magnuson Amendment to the Magnuson Fishery Conservation and Management Act, the Secretary is responsible for determining if nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program. If the Secretary so determines, such certification is reported to the President. On April 1, 1985, Secretary Malcolm Baldrige certified to President Reagan that the Soviet take of Southern Hemisphere minke whales had diminished the effectiveness of the International Whaling Commission (IWC) conservation program. He based his determination on the following facts: (1) The Soviet harvest of Southern Hemisphere minke whales was greater than the level the United States considered the U.S.S.R.'s traditional share; (2) the 1984-85 IWC quota for Southern Hemisphere minke whales was exceeded due to Soviet harvest; and (3) there had been no indication that the Soviets intended to comply with IWC standards.

The Soviet Union has ended its commercial harvest for Southern Hemisphere minke whales and has indicated its intention to comply with standards substantially equivalent to those of the IWC. Given that the reasons for the certification of the Soviet Union no longer prevail, the Secretary has terminated the certification under both the Pelly and Packwood-Magnuson Amendments and so advised the President on April 14, 1988.

(22 U.S.C. 1978 (d))

William E. Evans,

Under Secretary for Oceans and Atmosphere.

Dated: April 22, 1988.

[FR Doc. 88-9275 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled separate public meetings of its Future of Groundfish Fisheries Committee and the Maritime Support Group at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Building 4, Seattle, WA, as follows:

Groundfish Fisheries Committee—will convene May 3-4, 1988, at 10 a.m., in Room 2079, to continue development of a recommendation for the Council for long-term management of the groundfish fisheries off Alaska. The public meeting may reconvene on May 5.

Maritime Support Group—will convene May 5 at 9 a.m., in Room 2039, to continue development of the U.S. support service industry, including bulk cargo and fuel suppliers. Their recommendations will be presented to the Council in June.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907)-271-2809.

Date: April 21, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-9284 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 28, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port of call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits in Categories 313, 315, 338/339/340, 342 and 347/348, sublevels of Group I, and the Group II limit are being reduced for carryforward used during the 1987 agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 58, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on April 28, 1988, the directive of December 30, 1987 is hereby amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement:

Category	Adjusted limit [1]
Sublevels in Group I:	
313	19,699,911 square yards.
315	7,917,997 square yards.
338/339/340	1,186,966 dozen.
342	380,000 dozen.
347/348	264,781 dozen.
Group II: 200, 201, 219-229, 239, 300, 301, 314, 317, 326, 330-334, 345, 349-359, 360-362, 369-O,[2] 369-S,[3] 600-607, 611-635, 637-659, 665pt.,[4] 666-670 and 831-859, as a group.	140,542,145 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369-O, all TSUSA numbers except 360.2000, 360.7600, 361.5420 and 366.2840.
[3] In Category 369-S, only TSUSA number 366.2840.
[4] In Category 665pt., all TSUSA numbers except 360.7800 and 361.5426.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions.

Sincerely,

James H. Babb,

Chairman, Committee for the Implemtation of Textile Agreements.

[FR Doc. 88-9252 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

April 22, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting an import limit.

EFFECTIVE DATE: April 28, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For further information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 666 is being reduced for carryforward used during the previous restraint period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of he United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49064, published in the **Federal Register** on December 29, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on April 28, 1988, the directive of December 21, 1987 is hereby amended to adjust the limit for man-made fiber textile products in Category 666 to a level of 1,881,000 pounds.[1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-9267 Filed 4-26-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

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DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Closed Meeting

April 25, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 12–13 May 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–9346, Filed 4–26–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

April 25, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 12–13 May 1988, from 8:00 a.m. to 5:00 p.m., at the Westinghouse Electronic Corporation, Defense and Electronics Center, Baltimore, MD 21203.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–9347 Filed 4–26–88; 8:45 am]

BILLING CODE 3910–01–M

Department of The Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (AS).

Dates of Meeting: 16–17 May 1988.

Time: 0900–1700 hours each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board 1988 Summer Study on Technology Insertion in Army Systems will meet for briefings by AMC and TRADOC agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–9250 Filed 4–26–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Texaco Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Texaco Inc. (Texaco). The agreement proposes to resolve matters relating to Texaco's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. In addition to proposing a settlement of the company's possible liability for violations arising out of Texaco's sales of crude oil and refined petroleum products, this Consent Order incorporates an intended resolution of Texaco's deficiency in the Injection Well Litigation Escrow Account (Escrow Account) maintained by the court in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (Stripper Well). If this Consent Order is approved and the settlement of Texaco's liability in the *Stripper Well* case is accepted by the U.S. District Court for the District of Kansas, Texaco will pay a total of $1.25 billion plus interest on unpaid balances over a period of approximately five and one-half years.

Within five business days of the entry of the Agreed Judgment attached to the Consent Order as Exhibit A, Texaco will deposit $52 million into the Escrow Account to be disposed of pursuant to the Final Settlement Agreement in the *Stripper Well* litigation. Texaco will pay the remaining $1.198 billion plus interest to the DOE as follows: Within thirty days of the effective date of the Consent Order, Texaco will pay $348 million; within 18 months of the effective date, Texaco will pay $190 million plus accrued interest from the effective date of the Consent Order; thereafter, beginning one year after the last described payment, Texaco will make four equal annual payments of $165 million, plus accrued interest. As to the $1.198 billion, ERA will petition the Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR. Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from Texaco's alleged overcharges would have the opportunity to submit claims.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. Following this comment period, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order; renegotiate the agreement and issue a modified agreement as a final Order; or reject the settlement. DOE's final decision will be published in the Federal Register, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Paul M. Geier, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6727.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues

A. Crude Oil Overcharge Disputes

B. Cost, Recovery, and May 15, 1973 Price Disputes

1. Cost Issues

2. Recovery and May 15, 1973 Price Issues

3. Determination of Maximum Overcharge Liability for Refined Product Issues

C. Summary

II. Determination of Reasonable Settlement Amount

III. Terms and Conditions of the Consent Order

IV. Resolution of Litigation Matters

V. Resolution of Stripper Well Deficiency Liability

I. Resolution of Regulatory Issues

Texaco is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Texaco engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Texaco's compliance for the period beginning in 1973 to the date when Federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believed that Texaco had failed to comply with the requirements of the Federal price and allocation regulations. The two major regulatory areas of dispute between ERA and Texaco concern alleged errors in the calculation of maximum lawful prices for crude oil produced and sold by Texaco and alleged overstated increased costs and/or understated recoveries of such costs which would affect the calculated maximum legal prices for refined products.

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit and the nature of the alleged regulatory violations. ERA has estimated that Texaco might be liable for as much as $2.174 billion in overcharges and interest for all alleged violations.

The settlement calls for Texaco to pay $1.250 billion, plus interest, to discharge in full the potential liability for its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement Special Refund Procedures for disposition of substantially all of these funds pursuant to 10 CFR Part 205, Subpart V.[1] ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a substantial settlement of numerous issues which would take years of continued litigation to resolve.

A. Crude Oil Overcharge Disputes

The crude oil overcharge allegations resolved by this settlement involve proceedings pending before the DOE's Office of Hearings and Appeals and the Federal Energy Regulatory Commission (FERC) as well as related court actions. The proceedings are described below.

1. Remedial Order Proceedings

On August 7, 1986, the OHA issued a Remedial Order (RO) to Texaco finding the firm liable for $235.5 million in crude oil overcharges for the period from August 1973 through December 1976. *Texaco Inc.*, 14 DOE ¶ 83,037 (1986).[2] OHA found that these overcharges were the result of improper property determinations, misclassification of certain premises as stripper well properties and various base production control level errors and computational errors Texaco made in determining allowable crude oil prices. Texaco has appealed the OHA's decision regarding the $235 million in overcharges to the Federals Energy Regulatory Commission, but no decision has been made by the Commission on Texaco's appeal which is at a preliminary stage. FERC Case No. R086–33–000.

The August 1986 Remedial Order also addressed two other crude oil liability issues alleged in the PRO. Of the approximately $360 million in overcharges alleged during the audit period from August 1973 through December 1976, OHA determined that ERA should recalculate the overcharges for certain properties on which OHA had made specific rulings, thus requiring an adjustment in the overcharge liability. At the time of settlement, approximately $120 million in alleged overcharges were involved in a remand proceeding before the OHA, Case No. KRX–0024.

The Remedial Order also determined that the $382 million in alleged overcharges related to the unaudited properties and unaudited time periods shall be addressed in a further proceeding before the OHA. Accordingly, on October 31, 1986, the ERA issued an amended PRO which sought to have Texaco perform a self-audit of the unaudited properties and time periods and refund any resulting overcharges. At the time of settlement, no decision has been made by OHA on the self/audit issue nor on the question of Texaco's additional liability for these overcharges.[3]

After a review of information made available to ERA by Texaco in the negotiation process and a further review of ERA's audit results, ERA believes that Texaco's maximum liability, including interest through January 31, 1988, for all of these foregoing crude oil issues is approximately $1.578 billion. Of this sum, approximately $626 million represents maximum overcharge liability, including adjudicated and estimated violations on unaudited properties and unaudited time periods, and the remaining portion of the $1.578 billion represents potential interest liability.

2. The Getty Proceeding

In 1986, the OHA determined that the Getty Oil Company (Getty) was liable for more than $24 million in overcharges, plus interest, arising for certain crude oil transactions between Getty and the Standard Oil Company of Ohio. *Getty Oil Company*, 14 DOE ¶ 83,033 (1986).[4]

[1] Under the terms of the Consent Order, $52 million of Texaco's payment would be paid directly into a court escrow in settlement of Texaco's liability in the *Stripper Well* case. All other funds paid by Texaco would be subject to the Subpart V process.

[2] The RO resulted from a Proposed Remedial Order (PRO) issued to Texaco in May 1979 which alleged more than $742 million in overcharges, exclusive of interest, in Texaco's first sales of domestic crude oil for the period from August 1973 through the issuance of the PRO in 1979. DOE's allegations included (1) approximately $360 million in audited overcharges for the period ending December 31, 1976; (2) $103 million in extrapolated overcharges for properties not audited by DOE; and (3) $279 million in estimated continuing overcharges for January 1977 through March 1979 on the properties which had been audited for the 1973–76 period.

[3] Case No. KRX–0025. Texaco filed a Statement of Objections to the amended PRO and both ERA and Texaco were seeking discovery regarding the self-audit issue at the time of settlement.

[4] OHA's decision was the outgrowth of an earlier proceeding which found Getty liable for some $82 million in additional overcharges arising from these same transactions. *Getty Oil Company v. DOE*, 749 F.2d 734 (TECA 1984), *cert. denied* 469 U.S. 1209 (1985). These overcharges, plus interest, were paid by Getty in 1985 and are not part of the Texaco settlement. Currently, approximately $180 million is being held in a court administered escrow pending resolution of certain issues pertaining to the appropriate disposition of the monies.

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During the course of the OHA proceeding, Getty was acquired by Texaco and hence resolution of this matter has been included in the Consent Order.

At the time of settlement, the question of Getty's liability for these additional overcharges was before the Federal Energy Regulatory Commission, Case No. R088–000. ERA estimated the maximum Getty liability, including interest, to be approximately $78 million as of January 31, 1988.

3. Tie-in Transactions

On May 12, 1987, ERA issued a PRO alleging that Texaco received substantial price discounts on certain of its purchases of entitlements-exempt crude oil from four resellers during the period June 1980 through January 1981. ERA alleged that these discounts constituted consideration in excess of Texaco's maximum lawful selling price on tie-in sales of controlled crude oil to the resellers. At the time of the proposed settlement, Texaco had filed a Notice of Objection to the PRO. OHA Case No. KRO–0560. ERA estimated Texaco's liability as of January 31, 1988 to be approximately $77 million, including interest, for the overcharges arising from these tie-in sales.

4. Signal Hill West

The proposed Consent Order also resolves a Notice of Probable Violation (NOPV) issued to Texaco on December 14, 1979. The NOPV alleged that Texaco had improperly treated a property, known as the Signal Hill West Unit in Los Angeles County, as a stripper well property. ERA estimated that as a result of sales of crude oil from the Unit during 1976, Texaco may be liable for approximately $7 million in overcharges and interest through January 31, 1988.

B. Cost, Recovery, and May 15, 1973 Price Disputes

In the areas of refined product sales, ERA had issued enforcement documents to Texaco regarding overstatements of increased costs, understatements of costs recovered, and incorrect May 15, 1973 prices. After analyzing information obtained during its audit and in enforcement proceedings, ERA determined for settlement purposes that the maximum cost, recovery and May 15, 1973 price calculation errors alleged against Texaco resulted in overcharges and interest of approximately $348 million.

1. Cost Issues

ERA issued a PRO to Texaco on May 12, 1987, alleging that the firm had improperly claimed increased product costs (shrinkage) of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) resulting from the use of incremental pricing, the improper inclusion of cycling plant costs, and various other errors in shrinkage cost overreporting. The PRO alleged $119 million in overstated increased product costs for 1973–1976 and an estimated $188 million in overstated product costs for 1977–1980. At the time of this agreement, Texaco had filed a Notice of Objection. OHA Case No. KRO–0550.

2. *Recovery and May 15, 1973 Price Issues*

a. *Recovery Disputes.* In April 1986, the Office of Hearings and Appeals issued a Remedial Order which found that Texaco had failed to pass through equal increased cost increments in its selling prices of gasoline and No. 2 oils and failed to compute deemed recoveries under the equal application/deemed recovery rule for the period subsequent to September 1974. *Texaco Inc.*, 14 DOE ¶ 83,016 (1986). Texaco appealed to the Federal Energy Regulatory Commission which remanded the case of OHA for calculation of a sum certain. *Texaco Inc.*, 35 FERC ¶ 61,379 (1986); *on remand*, OHA case No. KCS–0015. The resulting calculation would require a $2.8 million refund and a $19 million cost adjustment.

In another administrative action, ERA alleged that Texaco failed to report recoveries for sales of natural gas liquid products and to calculate equal application/deemed recoveries for those sales in the amount of $31 million. In October 1986, OHA issued an RO upholding ERA's allegations of violations for the period subsequent to September 1974, ordering Texaco to increase its cost recoveries by $13 million and to pay a refund of $163,000 plus interest. *Texaco Inc.*, 15 DOE ¶ 83,003 (1986). Texaco's appeal was pending at FERC at the time the parties reached this agreement. FERC Case No. RO87–4–000.

b. *May 15, 1973 Price Disputes.* In four enforcement cases, ERA challenged Texaco's pricing practices relating to the company's determination of certain of its May 15, 1973 prices.

The first of these cases concerned Texaco's use of improper May 15, 1973 prices in sales of motor gasoline and middle distillates, kerosene, and other covered products to customers which had purchased these products pursuant to written variable-price contracts. In lieu of the self-audit of non-sample customers that has been sought by ERA in the PRO, OHA issued a Special Report Order. *Texaco Inc.*, 14 DOE ¶ 82,504 (1986).

Thereafter, OHA issued a Remedial Order directing a refund of $810,831.53, plus interest, for 33 customers. *Texaco Inc.*, 14 DOE ¶ 83,034 (1986). Upon appeal by Texaco, FERC determined that the May 15, 1973 prices were incorrect, but vacated the RO and remanded the case to OHA for determination of whether Texaco's actions resulted in the charging of prices beyond those permitted by the regulations, and, in that event, to formulate an appropriate remedy. *Texaco Inc.*, 39 FERC ¶ 61,339 (1987); *on remand*, OHA Case No. KCX–0036. As of the time of settlement, no determination had been reached concerning the remand matter.

The second of these cases concerned Texaco's use of improper May 15, 1973 prices in sales of motor gasoline and middle distillates to customers who had purchased these products pursuant to fixed-price contracts. Again, in lieu of a self-audit sought by ERA, OHA issued a Special Report Order. *Texaco Inc.*, 14 DOE ¶ 83,035 (1986). Subsequently, OHA issued a Remedial Order, ordering a refund of $1,489,715.76, plus interest, for 432 customers. *Texaco Inc.*, 14 DOE ¶ 83,047 (1986). Upon appeal by Texaco, FERC determined that the May 15, 1973 prices were incorrect but vacated the RO and remanded the case back to OHA to determine whether Texaco's actions resulted in the charging of prices beyond those permitted by the regulations, and, in that event, to formulate an appropriate remedy. *Texaco Inc.*, 39 FERC ¶ 61,067 (1987); *on remand*, OHA Case No. KCX–0032. As of the time of agreement, no determination had been reached on this remand matter.

The third of these cases concerned Texaco's use of improper May 15, 1973 prices in sales of propane to customers who had purchased propane pursuant to written variable-price contracts, improper exclusion of prepayment of freight costs in establishing May 15, 1973 prices, and improper inclusion of pre-paid increased transportation costs as additional cost increments in its maximum allowable prices. In lieu of the self-audit requested by ERA, OHA issued a Special Report Order. *Texaco Inc.*, 14 DOE ¶ 83,035 (1986). In 1987, OHA issued a Remedial Order to Texaco, ordering a refund of $1,148,378.55, plus interest, for 15 customers, and a recovery adjustment of $275,821.81. *Texaco Inc.*, 15 DOE ¶ 83,027 (1987). Texaco appealed to FERC, raising many of the same objections as in the first two cases. FERC Case No. RO87–18–000. At the time of settlement, FERC had not ruled on Texaco's appeal.

The fourth May 15, 1973 price case concerned Texaco's use of improper May 15, 1973 prices in sales of propane to Dow Chemical Company and Enterprise Products Company, which had purchased propane pursuant to written fixed-price contracts. OHA issued a Remedial Order, ordering a refund of $101,324.97, plus interest, for these violations. *Texaco Inc.*, 16 DOE ¶ 83,016 (1987). Texaco appealed to FERC raising many of the same objections as in the first three cases. FERC Case No. RO87–26–000. FERC had not yet ruled on the appeal at the time of settlement.

3. Determination of Maximum Overcharge Liability for Refined Product Issues

ERA estimated the maximum amount of refined product overcharges for which Texaco might be liable as a result of the cost, recovery adjustment and May 15, 1973 price issues discussed above. ERA compared Texaco's available costs with costs actually recovered by Texaco in sales of its products during the period of price controls. This comparison yielded the information necessary to estimate Texaco's maximum potential overcharge liability for refined products.

Under the relevant regulations, a refiner was permitted to "bank" any increased costs in a given month that it was permitted to recover in its product prices but did not. Costs could be "banked" and used, subject to certain limitations, in later months in pricing products.

After comparing the various cost and recovery adjustments at issue with Texaco's claimed costs and recoveries during the 88-month period of price controls, ERA determined that success on all of the associated cost, recovery and May 15, 1973 price disputes would result in maximum possible overcharges of approximately $125 million and related interest of approximately $223 million.

C. Summary

In addition to the $348 million of maximum possible liability for refined product sales, ERA determined that Texaco's maximum liability for the crude oil pricing issues resolved by the Consent Order was $1.826 billion. Thus, Texaco's maximum liability, including interest, for the matters resolved by this Consent Order totals approximately $2.174 billion. $1.327 billion of that amount would represent potential interest liability.

II. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount for the allegations of regulatory violations concerning crude oil and refined products discussed above, ERA reviewed its maximum overcharge and interest determination of $2.174 billion. This amount, which includes audit samples and projections, represents the estimated maximum recovery, including interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and a maximum allowable price calculation were done on the basis of those issues. The inherent risks in litigation make recovery of the entire $2.174 billion problematic. The necessity for the government to prevail on all of the issues in order to achieve the maximum overcharge recovery was an important consideration in ERA's preliminary determination that Texaco's agreement to pay $1.250 billion for alleged regulatory violations is in the public interest.[4]

In evaluating the total settlement amount for Texaco's regulatory violations, in addition to the analysis of litigation risks, ERA took into account such factors as the number and complexity of the legal and factual issues and the time and expense required for the government to fully litigate every issue in order to obtain any recovery. Based on all of these considerations, ERA concludes that the resolution of these matters for $1.250 billion plus interest, is an appropriate settlement and in the public interest.[5]

III. Terms and Conditions of the Consent Order

If the settlement is not made final by the one hundred fiftieth day following execution, Texaco may withdraw from the proposed agreement. If the Consent Order is made final, Texaco will pay DOE $1.250 billion plus interest. Within thirty days of the effective date of the Consent Order, Texaco will make its first payment to the DOE in the amount of $348 million. Texaco will also make a payment of $52 million to the Stripper Well Escrow Account, discussed below, within 5 days of the entry of an Agreed Judgment in *Brandenburg and Texaco Inc., v. DOE, C.A. No. 78–1230 (D. Kan.) consolidated in the Stripper Well* litigation. Texaco will make a second payment to DOE of $198 million plus interest, within 18 months after the Consent Order becomes final, and thereafter will make four equal annual payments to DOE of $165 million plus interest.

Following the first payment to DOE, ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations.[6] In these proceedings, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement monies. To ensure the OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Texaco provide customer identification and purchase volume information to OHA upon request.

Unless specifically excluded, Texaco and DOE mutually release each other from claims and actions arising under the subject matters covered by the

[4] Although ERA and Texaco did not come to any specific agreement as to the portions of the $1.25 billion settlement amount attributable to crude oil and refined product violations, in ERA's view approximately $120 million is attributable to the refined product issues and the remainder to crude oil pricing issues.

[5] ERA has also concluded that it is appropriate for Texaco to satisfy its total obligation by means of six payments over a period of five and one-half years. Almost 50% of the total will be paid within eighteen months of the effective date of the Consent Order. Further, Texaco will pay interest on the unpaid balance until all payments are made. A factor in DOE's decision to accept installment payments was Texaco's bankruptcy proceeding which was pending at the time of the settlement negotiations. *In Re: Texaco Inc., et al.*, Jointly Administered Chapter 11 Case Nos. 87 B 20142, *et al.* (Bankr., S.D.N.Y.). Because of a proposed settlement of $3 billion with Pennzoil and other substantial payment obligations in the bankruptcy proceeding, including those to secured creditors, Texaco sought to spread its payments to DOE over several years urging that a single payment of $1.25 billion was not financially feasible and might result in Texaco being unable to obtain approval of a reorganization plan from the bankruptcy court.

In Part VIII of the Consent Order, provision was made for the bankruptcy court to consider the proposed settlement with DOE in the event that an acceptable plan of reorganization was not approved by the court. On March 22–23, 1988, the bankruptcy court held a hearing on the Second Amended Joint Plan of Reorganization (Plan) submitted by Texaco. Among the factors considered by the court was the financial feasibility of the Plan, including the installment payments required by the DOE settlement. The court issued an order on March 23, 1988, confirming the Plan proposed by Texaco. As a result, DOE and Texaco are able to go forward with the proposed Consent Order and the DOE process of approval, without further consideration by the bankruptcy court.

[6] ERA has determined to petition the OHA to initiate Subpart V proceedings to distribute $120 million of the first payment to purchasers of Texaco's refined product who may have been harmed. The remaining $228 million from the first payment, as well as all subsequent payments, is attributable to crude oil violations and will be distributed by OHA in accordance with the provisions of the Final Settlement Agreement in the *Stripper Well* case. Under the terms of that Agreement, 40% of each payment will be distributed to the Federal government, 40% will be distributed to the States for use in energy-related programs and 20% will be retained by OHA for distribution in a Subpart V Special Refund Proceeding under which persons who were not parties to the Agreement can make claims.

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proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Texaco, or of Texaco or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Consent Order does not resolve:

(a) The issues or claims pending or arising out of the subject matter now before the Federal Energy Regulatory Commission in *In Re Three Forty-One (341) Tract Unit of the Citronelle Field,* FERC Case No. RA83–7–000, and before the Office of Hearings and Appeals in *In Re Three Forty One (341) Tract Unit of the Citronelle Field,* OHA Case Nos. BEN–0078, *et al.;*

(b) Texaco's rights and obligations under the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.), except for any payment obligations under Paragraph II.A.3 of such settlement agreement which are resolved and extinguished by this Consent Order;

(c) Texaco's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties; and

(d) The issues or claims pending before the court in the "Getty I" part of *Getty Oil Co. v. DOE,* C.A. No. 77–434 (MMS) (D. Del.), which is limited to the distribution of funds previously escrowed with the court.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Texaco.

IV. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litigated by Texaco and DOE. This involves administrative and judicial litigation and includes the following cases:

Notice of Probable Violation

Case No. CTXUZ002

Administrative Litigation

OHA Case Nos.:
KCX–0015
KCX–0032
KCX–0036
KRO–0550
KRO–0560
KRX–0024
KRX–0025

FERC Case Nos.:
R087–4–000
RO87–18–000
RO87–26–000
RO86–33–000
RO86–31–000

Special Report Orders

Agreement of Feb. 3, 1987 with Respect to Compliance with SRO No. KRX–0016.

Agreement of Feb. 3, 1987 with Respect to Compliance with SRO No. KRX–0019.

Judicial Litigation

Getty Oil Co. v. DOE, C.A. No. 77–434 (D. Del.) [7]

Brandenburg and Texaco Inc. v. DOE, C.A. No. 78–1230 (D. Kan.)

V. Resolution of Stripper Well Deficiency Liability

Finally, the Consent Order references the intended resolution of the claim of the United States against Texaco in *Brandenburg and Texaco Inc. v. DOE,* C.A. No. 78–1230 (D. Kan.), consolidated in the multi-district litigation presently before the United States District Court for the District of Kansas, *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378. Unlike the litigation brought against DOE which will be resolved as a direct result of the Consent Order's disposition of ERA's pre-enforcement claims and administrative enforcement actions against Texaco, the above claim was brought directly in the Federal court, by-passing the administrative process. This dispute between Texaco and DOE regarding the alleged deficiencies in Texaco's payments into the escrow fund in that case will be resolved by submission of an Agreed Judgment and Order to the Court for approval. Texaco's agreement to enter into such an Agreed Judgment is predicated on the resolution of the regulatory issues to be resolved by the finalization of this proposed Consent Order. Accordingly, the Agreed Judgment and Order will not be submitted to the court until final action on this proposed Consent Order occurs.

If the Consent Order is approved and the District Court accepts the Agreed Judgment, within five days of entry of such judgment, Texaco will deposit into the Court's Escrow Account $52 million.[8]

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Texaco Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, and to appear at a public hearing, beginning at 10:00 a.m. on May 31, 1988, at the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data confidential by the person submitting it must be identified as such in accordance with

[7] On March 2, 1988, the district court issued a Memorandum Opinion and Order staying all proceedings in the portion of the *Getty* case which would be resolved by the Consent Order, pending review of the matter by FERC. Subsequently, FERC proceedings were stayed at the request of the parties pursuant to the terms of the proposed Consent Order. Order Staying Proceeding, dated March 18, 1988, *Getty Oil Company,* FERC Case No. RO88–31–000.

[8] Of this amount, $41.4 million is attributable to full recovery of injection well violations from sales of crude oil by Texaco plus interest at the rate the money would have earned if Texaco had made timely deposits into the court's Escrow Account. The remainder of the $52 million represents settlement of a potential issue concerning the pricing of crude oil sold by interest owners in Texaco-operated properties when those interest owners took their oil in-kind. On this issue, DOE has evidence that Texaco took steps to insure that the in-kind takers established their prices independently of Texaco's pricing determinations. Moreover, DOE also has evidence that less than half of the in-kind crude oil was certified as stripper oil by the in-kind takers, and when so certified, the in-kind takers deposited virtually all of the sale price premiums. Another 7% was not certified as stripper oil. Applying the known stripper certification rate to the remaining amount would result in an estimated $4.7 million in potential overcharges for in-kind crude oil, and with escrow rate interest added the total additional liability would approximate the portion of the $52 million attributed to the in-kind issue.

the provisions of 10 CFR 205.9(f). Issued in Washington, DC, on April 22, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

Consent Order With Texaco Inc.

I. Introduction

101. This Consent Order is entered into between Texaco Inc. ("Texaco") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Texaco, as hereinafter defined, relating to Texaco's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order 12009, 42 FR 46267 (1977); Executive Order 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the Federal petroleum price and allocation regulations to the Administrator of the EAR. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Texaco, with the Federal petroleum price and allocation regulations and to take appropriate enforcement action based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Texaco" shall include: (1) Texaco Inc. and all of its subsidiaries and affiliates, including Getty Oil Company, (2) all of Texaco's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra,* (3) Texaco's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Texaco was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Texaco engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Texaco's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed an examinaton of Texaco's policies and procedures pertaining to, and Texaco's compliance with, the federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Texaco's books and records relating to Texaco's compliance with the Federal petroleum price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Texaco prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Texaco's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Texaco, including the issuance of letters, Notices of Probable Violation, Notices of Proposed Disallowance, Proposed Remedial Orders, and Remedial Orders. Texaco maintained, however, that it had calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations. The DOE and Texaco have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Texaco's activities with respect to the matters covered by this Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order were meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Texaco has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and the Agreed Judgment attached hereto as Exhibit A, and in lieu of all other remedies which have been or might be sought by the DOE against Texaco for such matters under 10 CFR 205.199I or otherwise, Texaco shall pay

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a total of one billion, two hundred fifty million dollars ($1,250,000,000) in the manner specified in paragraphs 402 and 403, plus interest computed in accordance with paragraph 404.

402. Within five (5) business days of the entry of the Agreed Judgment attached hereto as Exhibit A, Texaco shall pay fifty-two million dollars ($52,000,000), in the manner provided by that Judgment.

403. Texaco shall pay the remaining sum of one billion, one hundred ninety-eight million dollars ($1,198,000,000) to the DOE for distribution pursuant to the special refund procedures prescribed by 10 CFR, Part 205, Subpart V. Payment shall be made in the following manner:

(a) Within thirty (30) days of the effective date of this Consent Order as provided for in paragraph 1001 (hereinafter "Effective Date"), Texaco shall pay the sum of three hundred forty-eight million dollars ($348,000,000) to the DOE.

(b) Within 18 months of the Effective Date of this Consent Order, Texaco shall pay the sum of one hundred ninety million dollars ($190,000,000), plus accrued interest on the unpaid balance, to be computed in accordance with paragraph 404.

(c) Thereafter, Texaco shall make four equal annual payments of one hundred sixty-five million dollars ($165,000,000), plus accrued interest on the unpaid balance, as computed in accordance with paragraph 404. The annual payments shall commence one year from the date of the payment required by paragraph 403(b) and shall be made on or, at Texaco's option, before that date each year thereafter.

404. Interest on any unpaid balance shall accrue at the rate of 8.85% per annum from the Effective Date of this Consent Order. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at a rate determined by dividing the annual rate by the number of calendar days in the relevant year.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Texaco regarding Texaco's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Texaco by this Consent Order, except that this Consent Order does not cover or affect:

(a) The issues or claims pending or arising out of the subject matter now before the Federal Energy Regulatory Commission ("FERC") in *In Re Three Forty-One (341) Tract Unit of the Citronelle Field,* FERC Case No. RA 83–7–000, and before the Office of Hearings and Appeals (OHA) in *In Re Three Forty-one (341) Tract of the Citronelle Field,* OHA Case Nos. BEN–0078, *et al.;*

(b) Texaco's rights and obligations under the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL 378 (D. Kan.) (herein, "The Stripper Well Litigation") except for any payment obligations under Paragraph II.A.3. of such settlement agreement which are resolved and extinguished by this Consent Order.

(c) Texaco's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties;

(d) The issues or claims pending before the court in the "Getty I" part of *Getty Oil Co. v. DOE,* C.A. No. 77–434 (MMS) (D. Del.), which is limited to the distribution of funds previously escrowed with the court.

(e) Matters resolved and extinguished by prior Consent Orders between DOE and Texaco, which are not in any way superseded or revoked by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Texaco with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocations regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Texaco, except as to those matters excluded by paragraph 501, the DOE hereby releases Texaco completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Texaco before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Texaco or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Texaco or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Texaco has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Texaco in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the Federal petroleum price and allocation regulations.

(b) Except for the matters excluded by paragraph 501, this Consent Order settles and finally resolves all aspects of Texaco's liability to the DOE under the Federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Texaco was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property. Otherwise, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Texaco for noncompliance with the Federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Texaco is a working interest or royalty interest owner in such crude oil production. In that connection, Texaco and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Texaco's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Texaco and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Texaco is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Texaco and the operator or any other working interest or royalty interest owner.

(c) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Texaco in any private action, including an action for contribution by or against Texaco.

(d) With respect to matters not excluded from this Consent Order, Texaco releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Texaco has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Texaco from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Texaco from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

503. Within fifteen (15) days after the Effective Date of this Consent Order, Texaco will execute and deliver to the DOE an Agreed Judgment in *Brandenburg and Texaco Inc. v. DOE,* C.A. No. 78–1230 (D. Kan.), consolidated in *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL 378 (D. Kan.), in the form attached hereto as Exhibit A. Within ten (10) days thereafter, the DOE will execute said Agreed Judgment and file it with the court.

504. Within fifteen (15) days after the Effective Date of this Consent Order, Texaco will execute and deliver to the DOE a stipulation for dismissal with prejudice, in the form attached hereto as Exhibit B, for those claims arising in the "Getty II" part of *Getty Oil Co. v. DOE,* C.A. No. 77–434 (MMS) (D. Del.). Within ten (10) days thereafter, the DOE will execute the stipulation and file it with the court.

505. (a) Within thirty (30) days after the Effective Date of this Consent Order, Texaco and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within fifteen days after the execution of the Consent Order by both parties, DOE agrees to join with Texaco in written notification to DOE's Office of Hearings and Appeals, the Federal Energy Regulatory Commission and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action in the proceedings covered by this Consent Order until such time as DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn pursuant to Article X of this Consent Order.

506. Execution of this Consent Order constitutes neither an admission by Texaco nor a finding by the DOE of any violation by Texaco of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Texaco pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

507. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Texaco, but only if Texaco has knowingly concealed facts relating to such violations. The DOE and Texaco also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any knowing misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentality

601. Texaco shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 403, Texaco shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 403, *supra.* If requested, Texaco shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 403 of this Consent Order, Texaco is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Texaco will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Texaco's compliance with the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Texaco pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Texaco and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Texaco with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Texaco's

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compliance with the Federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Texaco may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Texaco and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Texaco (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Texaco agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Bankruptcy Provisions

801. If, by the Effective Date of this Consent Order, the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court) does not confirm the Second Amended Joint Plan of Reorganization, dated January 27, 1988, and filed by Texaco Inc., *et al.* (the Plan) in *In re Texaco Inc., et al.*, Jointly Administered Chapter 11 Case Nos. 87B20142(HS) (S.D.N.Y.) *et al.*, or an amended or different plan which, in the sole judgment of the DOE, is substantially similar to the Plan insofar as the rights of DOE are concerned, DOE and Texaco agree that:

(a) Within five (5) days after the Effective Date of this Consent Order, Texaco Inc., *et al.* shall promptly move the Bankruptcy Court to approve the settlement by Texaco Inc., *et al.* with the DOE as set forth in this Consent Order. If the court approves the settlement, then the payment(s) due under the Consent Order shall be due on the dates specified in the Consent Order or within five days of the court's order of approval, whichever shall occur later.

(b) Should the Bankruptcy Court refuse, by final non-appealable order, to approve the settlement between DOE and Texaco Inc., *et al.*, as set forth in this Consent Order, Texaco shall promptly move the Bankruptcy Court to approve an allowed general unsecured claim for DOE in an amount equal to the present value of one billion two hundred fifty million dollars ($1,250,000,000) as of the Effective Date of this Consent Order, using for this purpose a discount rate of 8.85% per annum.

(c) Should the Bankruptcy Court refuse to approve a settlement pursuant to subsection (a) above, either DOE or Texaco Inc. (or both) may appeal said decision of the Bankruptcy Court. If such appeal is taken, then the party to this Consent Order which did not appeal (if any) shall fully support the appealing party in prosecuting the appeal and shall not take any action inconsistent with either this Consent Order or said appeal unless ordered to do so by court order. Similarly, should the Bankruptcy Court refuse to approve a settlement pursuant to subsection (b) above, then either DOE or Texaco Inc. (or both) may appeal said decision of the Bankruptcy Court. If such appeal is taken, then the party to this Consent Order which did not appeal (if any) shall fully support the appealing party in prosecuting the appeal and shall not take any action inconsistent with either this Consent Order or said appeal unless ordered to do so by court order.

(d) Should the Bankruptcy Court approve a settlement pursuant to subsection (a) or (b) above, and any appeal is taken from such decision approving such settlement, then Texaco Inc., *et al.* and DOE shall support fully the settlement and oppose any challenges to it in the Bankruptcy Court and in any other forum.

(e) As used in this Article VIII, references to court approval of the settlement shall mean entry of a Bankruptcy Court order either approving the settlement or authorizing Texaco Inc. to enter into and perform the terms of this Consent Order.

IX. Final Order

901. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Texaco hereby waives its right to administrative or judicial review of this Order, but Texaco reserves the right to participate in any such review initiated by a third party.

X. Effective Date

1001. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

1002. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Texaco, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Texaco, Texaco may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written noticerd to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Texaco, hereby agree to and accept on behalf of Texaco the foregoing Consent Order.

Roland M. Routhier
Senior Vice President, Texaco Inc.
Dated: March 10, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Chandler L. van Orman,
Acting Administrator, Economic Regulatory Administration, Department of Energy.

Dated. March 10, 1988.

Exhibit A

Brandenburg and Texaco Inc., Plaintiff, v. Department of Energy, et al., Defendants, C.A. No. 78-1230

Agreed Judgment

On this day came on to be heard *Brandenburg and Texaco Inc. v. Department of Energy, et al.*, C.A. No. 78-1230, which cause is presently a part of the above entitled multi-district litigation; and the Court, after being advised that Texaco Inc. ("Texaco") and the Department of Energy ("DOE") have agreed to resolve the dispute between such parties by entry of this agreed judgment, is of the opinion that the following judgement should be entered. It is therefore

1. Ordered that Teaxco deposit in the "Injection Well Litigation Escrow Account" maintained by this Court the sum of fifty-two million dollars (52,000,000).

In Re: The Department of Energy Stripper Well Exemption Litigation M.D.L. 378, in the United States District Court For the District of Kansas

2. Subject to paragraphs 3 and 4 below, it is further *Ordered* that, upon payment of the amount set forth in paragraph 1 above, Texaco, in all of its various capacities, including, but not limited to its capacities as operator, working interest owner, royalty interest owner, overriding royalty owner, and product payment owner, is hereby released and discharged from any and all civil and administrative claims and disputes against Texaco, whether asserted or not asserted by the DOE or anyone authorized to act on its behalf, arising, either directly or indirectly, from the inclusion of injection wells in the well count to determine "average daily production" for the properties described in Exhibits 1 and 2 attached hereto and incorporated herein;

3. It is further *Ordered* that, notwithstanding the terms of this Judgment, the DOE may initiate and prosecute civil and administrative enforcement actions against any party other than Texaco for non-compliance with the Federal petroleum price and allocation regulations, including suits for overcharges for crude oil against operators of properties of which Texaco was a working or royalty interest owner of such crude oil production, but in no event shall the DOE be permitted to recover amounts from such operators for alleged overcharges paid by Texaco in connection with the properties described in Exhibit 2 attached hereto, nor shall this Judgment prejudice the rights of Texaco or any third party in any private action, including an action for contribution by or against Texaco;

4. It is further *Ordered* that none of the amounts paid by Texaco pursuant to this Judgment shall be deemed for any purpose to be a penalty, fine, or forfeiture or settlement of any potential liability for any penalty, fine or forfeiture; and the DOE agrees, and the Court therefore *Orders*, that the DOE shall neither seek nor request the Department of Justice to initiate or prosecute any action against Texaco for civil penalties for the claims and disputes described in paragraph 2;

5. It is further *Ordered* that the DOE may seek appropriate judicial remedies for any knowing misrepresentation of a material fact made by Texaco during the course of audit, discovery in this litigation or the negotiations that preceded the resolution of this dispute.

Signed this _____ day of _____, 1988.

Frank G. Theis

Approved and Agreed as To Form and Substance:

Milton C. Lorenz,
Floyd I. Robinson,
Office of the Chief Counsel for Enforcement Litigation, Economic Regulatory Admin., Department of Energy, 1000 Independence Avenue SW., Washington, DC. 20585.
Counsel for Department of Energy, Defendant and Counter-Plaintiff

Texaco Inc.
Counsel for Texaco Inc., Plaintiff and Counter-Defendant

Exhibit 1

Pierce Estates
Albert Martin Trustee
Balko South Unit
D. Hanna Fee
Blessing Frio 14UT/F-14
Blessing Frio 14 U/F-14B
J.A. Engle Jr.
Frank H. Reed
Blessing F-3 Unit O/A
J. L. Gates
Walpole Ste. Genevieve Unit
Skull Creek Newcastle Unit
Double Mountain Unit
Spraberry Deep Unit
Montgomery Estate Davies
Brandenburg
Bruce Ridley
Tonti Unit
Breckenridge Fee TR2
Carpenter-Morris Deese Unit
Fence Creek Muddy Sand Unit
Shiells Intermediate Zone Unit
Ismay-Flodine Park Unit
Dugout Creek Shannon Sand Unit
West Lovington Unit
West Vacuum Unit
West Marlow Hoxbar
Fort Stockton South Unit
Salem Unit
Nesterode
Mount Hope Northwest Unit
T. Stanwaite
HMP Unit
Southwest Lone Grove Unit
E. A. Crosby Fee
Blackwell East Red Fork
East Glenn Unit
Atlantic Waterflood
State National Bank of Corpus Christi
First Argo Unit
R.B. Love
Carrizo Sand Unit
Brelum Field Unit
Marrs. McLean
Second Bywaters Lease
East Hewitt Hoxbar

Exhibit 2

N.W. Velma Hoxbar
Salt Creek Light Oil

Exhibit B

In The United States District Court For The District of Delaware; Getty Oil Company, Plaintiff, v. The Department of Energy, et al., Defendants. and United States of America, Counterclaimant; Civil Action No. 77-434 (MMS)

Stipulation and Order of Dismissal

Pursuant to Rule 41(a)(i)(ii) of the Federal Rules of Civil Procedure, the Consent Order resolving the above-captioned matters having been made effective as a final order of the Department of Energy, _____ FR _____ (_____, 1988), in accordance therewith the parties hereby stipulate and agree that the part of this action and counterclaim referred to as "Getty II" should be and hereby is dismissed with prejudice, each party to bear its own costs, provided, however, that this stipulation and dismissal shall not affect that part of this action referred to as "Getty I" relating to the distribution of the funds currently held in this Court's escrow.

Getty Oil Company
By:

Attorney for Plaintiff
United States Department of Energy, et al.
By:

Attorney for Defendants
United States of America
By:

Attorney for Counterclaimant

This _____ day of _____, 1988, the foregoing Stipulation is approved, and It Is So Ordered.

United States District Judge

[FR Doc. 88-0288 Filed 4-26-88; 8:45 am]
BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket Nos. ER88-346-000 et al.]

Kansas Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric Company

[Docket No. ER88-346-000]

Take notice that on April 14, 1988, Kansas Gas and Electric Company (KPL) tendered for filing a proposed change in its FERC Electric Service Tariff Nos. 93 and 151. The proposed KPL Letter of Intent specifies the amount of transmission capacity requirements for four Delivery Points for the period from June 1, 1988, through May 31, 1989. The KEPCo Exhibit A, and Revisions thereto, specifies the delivery points for each cooperative together with the associated voltage pursuant to Para 4.15 and the maximum obligation capacity pursuant to Para. 4.10 of the Transmission Agreement between Kansas Gas and Electric Company and Kansas Electric Power Cooperative, Inc.

The KPL Letter of Intent is necessary because KPL has requested a change in the amount of transmission capacity to be reserved for KPL's use and is required by the terms of the service schedule.

The KEPCo Exhibit A, and Revisions thereto, is necessary because KEPCo has requested changes in the contract maximums and the energizing and discontinuing of certain Delivery Points and is required by the terms of the Transmission Agreement.

Copies of this filing were served upon the Kansas Power and Light Company, Kansas Electric Power Cooperative, Inc., and the Kansas Corporation Commission.

Comment date: May 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER88-347-000]

Take notice that on April 14, 1988, Northern States Power Company (Minnesota), on behalf of both Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) tendered for filing the Non-Energy Firm Sales Agreement among Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) and Wisconsin Public Power Incorporated System (WPPI) (Sales Agreement).

The Sales Agreement is an initial rate schedule filing. The Sales Agreement provides that Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) will sell and transmit energy, on a non-firm basis, to WPPI when transmission capacity is available. The Sales Agreement sets forth the energy transaction procedures, terms and conditions.

Northern States Power Company (Minnesota) requests this Sales Agreement become effective on March 28, 1988, and therefore, requests waiver of the Commission's notice requirements.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota and Wisconsin.

Comment date: May 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9215 Filed 4-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-315-000 et al.]

Union County Utilities Authority et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Union County Utilities Authority

[Docket No. QF88-315-000]

April 21, 1988.

On March 22, 1988, Union County Utilities Authority (Applicant), of 24-52 Rahway Avenue, Elizabeth, New Jersey 07207 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Rahway, New Jersey. The facility will consist of three solid waste-fired steam generators and one steam turbine-generator. The net electric power production capacity will be 39 megawatts. The primary enery source will be biomass in the form of municipal solid waste. Natural gas will be used for start-up and temperature control, however, such fossil fuel usage will not exceed 1% of the total energy input to the facility during any calendar year period. Construction of the facility is scheduled to begin in January 1989.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER88-354-000]

April 22, 1988.

Take notice that on April 19, 1988, Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the Cities of Gainesville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Flordia. The interchange services which are affected by these revisions are Services Schedule B—Short Term Firm, current negotiated commitments under Service Schedule D—Long Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1987 through and including June 30, 1987 for the first period and July 1, 1987 for the second period. Florida Power therefore requests waiver of the sixty day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER88-352-000]

April 22, 1988.

Take notice that on April 18, 1988, Arizona Public Service Company (APS) tendered for filing a Short Term Seasonal Energy Agreement (Interruptible Energy Agreement) between APS and Nevada Power Company (NPC) executed March 29, 1988.

The tendered Interruptible Energy Agreement provides for the sale of 30 MW per hour of energy, on an interruptible basis, by APS to NPC. Sale of energy may be interrupted by APS on two hours' notice, except in the case of an emergency condition on either Parties' system when interruption may occur with no such notice. Additionally, NPC may interrupt purchases from APS, during off-peak periods, when NPC can purchase energy from other sources at a price 3 mills per Kwh below APS' price or when purchases hereunder would result in NPC's curtailment of its ownership share of the output from coal fired generation. The Interruptible Agreement provides for sales to commence on May 16, 1988 and to terminate on May 15, 1989. No new system facilities or modification to existing facilities are required to provide service hereunder.

APS, with the concurrence of NPS, has requested waiver of the Commission's Notice Requirements, 18 CFR 35.11, to allow service to start on May 16, 1988 as agreed between the Parties.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER88-353-000]

April 22, 1988.

Take notice that on April 18, 1988, Puget Sound Power & Light Company (Puget), pursuant to the Commission's Regulations, 18 CFR Part 35, tendered for filing a wholesale for resale contract between Puget Sound Power & Light Company and Kittitas County P.U.D. Puget states that this filing is for the renewal of an existing contract only, and therefore represents no change in rates or revenues to the Company.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER88-350-000]

April 22, 1988.

Take notice that on April 15, 1988, Arkansas Power & Light Company (APL) tendered for filing an Agreement for Hydroelectric Power Transmission and Distribution Service between Arkansas Power & Light Company and City of North Little Rock, Arkansas, dated March 31, 1988.

The Agreement provides for the transmission by AP&L of City's power and energy generated at the Murray Hydroelectric Power Project to points on the City's system where AP&L now serves City with power and energy.

APL requests that the Commission waive any requirements with which APL has not already complied.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Arkansas Power & Light Company

[Docket No. ER88-351-000]

April 22, 1988.

Take notice that on April 15, 1988, Arkansas Power & Light Company (APL) tendered for filing the Thirteenth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between APL and Arkansas Electric Cooperative Corporation (AECC).

The Amendment provides for the addition of four points of delivery, the transfer of capacity at five points of delivery, an increase in capacity at three points of delivery, a reduction in capacity at sixteen points of delivery and the modification of names, effective delivery dates, contract capacity or locations at twenty-one points of delivery.

APL requests that the Commission waiver any requirements with which APL has not already complied.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Connecticut Light & Power Company

[Docket No. ER88-348-000]

April 22, 1988.

Take notice that on April 15, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule and, effective February 12, 1987, a proposed termination in accordance with the terms of said rate schedule, with respect to a Transmission Agreement, dated February 13, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) New England Power Company (NEP).

CL&P states that the Transmission Agreement provides for service to NEP for the transmission of Connecticut Municipal Electric Energy Cooperative (CMEEC) electric capacity and associated energy.

The transmission charge rate is an annual rate based on the annual average cost of transmission service on the NU Companies' system and is determined in accordance with Appendix A and Exhibits I, II, and III therefore of the transmission Agreement. The weekly Transmission Charge is determined by the product of (i) the appropriate annual transmission charge rate (expressed in $/kW-yr) divided by 52, and (ii) the maximum number of kilowatts of capacity and energy purchased by NEP on any day during each such week of the Term.

CL&P requests that the Commission waiver its standard notice periods and permit the Transmission Agreement to become effective as of February 13, 1986, and to terminate, in accordance with its own terms, effective February 12, 1987.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and NEP (Westborough, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Cambridge Electric Light Company

[Docket No. ER88-349-000]

April 22, 1988.

Take notice that on April 15, 1988, Cambridge Electric Light Company (Cambridge), pursuant to Article XIII(A)(3) of its FERC Rate Schedule (Firm Transmission Tariff), tendered for filing its first annual information filing with the Commission to set forth the actual Net Annual Costs of constructing, owning and maintaining its Transmission System for the twelve month period ending December 31, 1987.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. El Paso Electric Company

[Docket No. ER88-355-000]

April 22, 1988.

Take notice that on April 19, 1988, El Paso Electric Company (EPE) tendered

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for filing an agreement for the sale by EPE to San Diego Gas & Electric company (SDG&E) of energy from EPE's entitlements in the Palo Verde Nuclear Generating Station.

Under Section 1 of the agreement the sales are to be of the portion of Palo Verde Nos. 1, 2 and 3 in excess of 405 megawatts per hour during the months of October through May and in excess of 430 megawatts per hour during the months of June through September up to a maximum of 200 megawatts per hour.

Under section 2 the deliveries provided for under section 1 are interruptible by either EPE or SDG&E in certain specified circumstances, including EPE's need for the energy to serve its system customers.

Under section 3 the point of delivery is to the 500 kV high voltage switchyard at the Palo Verde Nuclear Generating Station.

Under section 4 the hourly price paid by SDG&E for deliveries during peak and off-peak is to be 87% of SDG&E's hourly system decremental costs. If the deliveries occur in peak hours (a) the decremental cost is capped at $28 per megawatt hour and (b) EPE may sell the energy elsewhere or utilize the energy for its own use if that cost is $16 per megawatt hour or less. If the deliveries occur in off-peak hours (a) that cost is capped at $18 per megawatt hour and (b) EPE may sell the energy elsewhere or utilize the energy itself if the cost is $13.50 per megawatt hour or less.

Under section 4 the pricing described above is not subject to change under section 205 of the Federal Power Act.

Under section 5 the agreement is to become effective upon execution (March 4, 1988) and is to remain in effect subject to termination by either party on 30 days' notice.

The agreement will provide EPE with an assured buyer for Palo Verde energy in hours when EPE cannot economically use all of that energy to meet the needs of its system customers and will enable SDG&E to purchase energy at a lower cost than it would otherwise have to pay.

EPE requests that the agreement be made effective according to its terms on March 4, 1988 and that the 60 day notice requirements be waived to permit that effective date.

EPE has served copies of the filing on the California, New Mexico and Texas commissions.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9290 Filed 4-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-451-004 et al.]

Northeast U.S. Pipeline Projects; Notice of Technical Conference To Discuss Procedures for Environmental Review

April 22, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of environmental technical conference.

SUMMARY: On March 17, 1988 the Federal Energy Regulatory Commission issued an "Order Consolidating Applications and Prescribing Procedures" (Consolidation Order) for reviewing applications filed under the Northeast U.S. Pipeline Projects open season, Docket No. CP87-451-004, *et al.* That order indicated that, among others, a technical conference on environmental procedures would be convened. This notice identifies the date and time of the Environmental Technical Conference and the general topics of discussion.

DATES: The Environmental Technical Conference will be held on May 12, 1988 at 9:00 a.m. Project proponents and other parties are asked to state their intention to attend by May 6, 1988.

ADDRESS: The conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Each Northeast Project proponent is requested to participate and should file, by May 6, 1988, the name of the person who will make the presentation with: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: John S. Leiss, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9021.

SUPPLEMENTARY INFORMATION: As specified in the Consolidation Order, there will be technical conferences on various topics relating to the Northeast Project filings. This notice deals with the Environmental Technical Conference for these projects. It describes proposed procedures which are designed to minimize the processing time while ensuring a comprehensive independent environmental review by the Commission. It describes an acceptable arrangement for contractor preparation of the environmental analysis. The Notice includes questions which the FERC would like attendees to address, and an agenda.

Contracting Arrangement

The FERC's staff will approve contractual arrangements between the proponent(s) of each Northeast Project and a third party contractor for the preparation of environmental impact statements and other environmental documents if those arrangements meet specified conditions to ensure that the FERC staff may actively participate in the preparation of the documents, independently evaluate and approve the documents, and take responsibility for their scope and content. The process by which this contractor would be chosen and the rules under which the contractor would operate are contained in the attached Generic Memorandum of Understanding and Generic Statement of Work. Briefly, the contractor would be selected by the FERC staff, work under the direction of the FERC staff, and any documents produced by the contractor would not be subject to the review of the proponent(s) of the project. The FERC staff would undertake this direction itself or through a contractor hired directly by the FERC.

The project-specific Memorandum of Understanding (MOU) would be executed as soon as possible following the Environmental Technical Conference. Shortly thereafter, the project proponent(s) would be expected to submit a list and information concerning at least three contractors from which the FERC staff would select the contractor for the project. The FERC would not be a party to the contract.

Questions for Discussion

a. In what project order should the environmental review proceed?

Specifically, how should the projects be grouped for environmental purposes? What is the basis for this opinion?

b. How should scoping of environmental issues proceed?

c. Is more than 7 days from signing of the MOU needed for proponents to file submissions from at least three qualified contractors so that staff can evaluate them?

d. How should the state governments of the affected states be formally included to maximize the efficiency of the environmental review process?

e. Will the project proponent you represent sign the MOU signifying its agreement to proceed under the identified procedures?

Conference Details

The Environmental Technical Conference will be held on May 12, 1988 at 9:00 a.m. in Hearing Room A at the FERC's offices at 825 North Capitol Street NE., Washington, DC 20426. Participants should provide to the FERC Secretary the name of the individual who will speak at the conference. The Secretary's office should be notified no later than May 6, 1988 of who will speak. Each project proponent will be allotted 10 minutes for presentation and should first address the above questions and then provide whatever additional general comments the speaker may have. As shown on the attached draft agenda, there will be an opportunity for further comments as time permits. Written comments may also be submitted.

A transcript will be made of the conference, and it will be available inthe public file for these proceedings and in the FERC's Public Reference Room. The transcript may be ordered from the reporting company.

Lois D. Cashell,

Acting Secretary.

3 Attachments: [1]
Agenda
Generic Memorandum of Understanding
Generic Statement of Work

NE Projects

Environmental Technical Conference

Agenda—May 12, 1988—9:00 a.m.

A. Staff Presentation
1. Proposed EIS/EA overall preparation procedure.
2. The generic MOU and statement of work.
3. Post-MOU procedures.
4. Staff's questions.

B. Comments by NE Project sponsors
1. Response to staff's specific questions.
2. Other comments.

C. Comments by State Governments
1. Response to staff's specific questions.
2. Other comments.

D. Comments by Other Interested Parties
1. Response to staff's specific questions.
2. Other comments.

E. Additional comment opportunity
1. Other comments.

[1] The Generic Memorandum of Understanding and Generic Statement of Work are not printed in the Federal Register due to their length. However, these documents were sent to each party to the Northeast projects proceeding and to all appropriate Federal and state agencies and environmental groups. Copies are also available in the Commission Public Reference Room, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[FR Doc. 88-9289 Filed 4-26-88; 8:45 am]

BILLING CODE 6717-01-M

[EL88-15, et al.]

Hydroelectric Applications Filed With the Commission; Community Texas Development, Inc.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Declaration of Intention.

b. *Project No.:* EL88-15.

c. *Date Filed:* 02/10/88.

d. *Applicant:* Community Texas Development, Inc.

e. *Name of Project:* WCID #19.

f. *Location:* On Barton Creek, Lake Austin, Travis County, Texas.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dennis E. Petras, P.E., Community Texas Development, Inc., P.O. Box 162406, Austin, TX 78716.

i. *FERC Contact:* Diane M. Scire, (202) 376-1758.

j. *Comment Date:* May 27, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed intake; (2) four proposed pumps; (3) a proposed pipeline running from Lake Austin to the treatment plant site; and (4) proposed induction-type generators with a combined capacity of 132 kW.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation

l. *Purpose of Project:* To recover energy created by pumping water over a hill from the intake to the treatment plant.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2 a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 3296-001.

c. *Date Filed:* December 10, 1987.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Del Valle No. 1 Project.

f. *Location:* At the existing California Department of Water Resources Del Valle Dam near the City of Livermore in Almeda County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David N. Kennedy, Director, California Department of Water Resources, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236-0001, (916) 445-9248.

i. *FERC Contact:* Mr. Don Wilt, (202) 376-9807.

j. *Comment Date:* May 26, 1988.

k. *Description of Proposed Action:* On May 6, 1981, an exemption was issued to the California Department of Water Resources to operate, and maintain the Del Valle No. 1 Project No. 3296. The constructed project consist of a penstock, a powerhouse with a total capacity of 5kW, and a discharge pipe. Project energy was not connected to a transmission grid but was utilized on the project site for operation of space heating and ventilation fans.

Exemptee states that it has decided to surrender the exemption since the project is not operating and it is not economically feasible to bring it back into operation.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 6663-004.

c. *Date Filed:* February 9, 1988.

d. *Exemptee:* Jay A. Moyle.

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e. *Name of Project:* KTFI Creek Project.

f. *Location:* On the KTFI Creek near the City of Twin Falls, in Twin Falls County, Idaho.

g. *Filed pursuant to:* Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709 *as amended.*

h. *Exemptee Contact:* Jay and Barbara Moyle, Route 7, Box 1063, Filer, ID 83328, (208) 733–4440.

i. *FERC Contact:* Dean Wight, (202) 376–9287.

j. *Comment Date:* May 26, 1988.

k. *Description of project:* The proposed project would have consisted of: (1) A 8-foot-high diversion structure; (2) a 16-inch-wide, 16-inch-deep, 775-foot-long concrete canal; (3) a settling pond with a gross storage capacity of less than 1 acre-foot; (4) a 20-inch-diameter, 350-foot-long penstock; (5) a powerhouse containing a single generating unit rated at 34 kW; and (6) appurtenant facilities.

Only the diversion structure, concrete canal, and stilling pond have been constructed. These facilities are located entirely on exemptee's property. The exemptee intends to leave the constructed facilities intact for the purpose of providing sediment settling for KTFI Creek.

l. *This notice also consists of the following standard paragraphs:* B and C.

4a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10397–000.

c. *Date Filed:* April 24, 1987.

d. *Applicant:* WV Hydro Inc.

e. *Name of Project:* Meldahl Hydroelectric Development.

f. *Location:* Ohio River in Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James B. Price, Ph. D., President, WV Hydro Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. *FERC Contact:* Peter K. Lyse, (202) 376–1850.

j. *Comment Date:* May 26, 1988.

j. *Competing Application:* Project No. 10395–000

Dated Filed: April 21, 1987 *Due Date:* April 25, 1988.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam, and would consist of: (1) A proposed concrete-lined intake; (2) a proposed powerhouse containing three generating units with a total capacity of 80 MW; (3) a proposed switchyard; (4) a proposed 138-kV transmission line, approximately 1½ miles in length; and (5) appurtenant facilities. The estimated coverage annual generation is 420 GWh. The applicant expects to sell the project power to Virginia Power Company. The approximate cost of the studies under the permit would be $150,000.

m. *This notice also consists of the following standard paragraphs:* A8, B, C, D2.

5a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10401–000.

c. *Date Filed:* April 28, 1987.

d. *Applicant:* Meldahl Hydro Partners.

e. *Name of project:* Meldahl Lock and Dam Power Project.

f. *Location:* Ohio River in Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael G. LaRow, Mitex, Inc., 91 Newbury Street, Boston, MA 02116, (617) 424–1888.

i. *FERC Contact:* Peter K. Lyse, (202) 376–1850.

j. *Comment Date:* May 26, 1988.

k. *Competing Applications:*

Project No.	Date filed	Due date
(1) 10395–000	April 21, 1987	April 25, 1988.
(2) 10397–000	April 24, 1987	N/A.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers Captain Anthony Meldahl Locks and Dam, and would consist of: (1) A proposed powerhouse, located in the existing overflow weir section of the dam, and containing three generating units with a total installed capacity of 75,000 kW; (2) a proposed switchyard; (3) a proposed 69kV transmission line, approximately 4,000 feet in length; and (4) appurtenant facilities. The estimated average annual generation is 415 GWh. The project power would be sold to a utility within reasonable wheeling distance. The estimated cost of the studies under the permit is $300,000.

m. *This notice also consists of the fopllowing standard paragraphs:* A8, B, C, D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10409–000.

c. *Date Filed:* May 11, 1987.

d. *Applicant:* Meldahl Hydropower Development Corporation.

e. *Name of Project:* Meldahl Hydropower Project.

f. *Location:* Ohio River in Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* R. Mason Cargill, 56 Perimeter Center East, Fifth Floor, Atlanta GA 30346–2283, (404) 399–1600.

i. *FERC Contact:* Peter K. Lyse, (202) 376–1850.

j. *Comment Date:* May 26, 1988.

k. *Competing Applications:*

Project No.	Date filed	Due date
(1) 10395–000	April 21, 1987	April 25, 1988.
(2) 10397–000	April 24, 1987	N/A.
(3) 10401–000	April 28, 1987	N/A.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers Captain Anthony Meldahl Locks and Dam, and would consist of : (1) A proposed inlet channel; (2) a proposal powerhouse, containing three generating units with a total installed capacity of 8 8,200 kW; (3) a proposal tailrace channel; (4) a proposed 138 kV transmission line, approximately 3 miles in length; and (5) appurtenant facilities. The estimated average annual generation is 481 GWh. The project power would be sold under a contract to be negotiated with a prospective buyer. The estimated cost of the studies under the permit is $110,000.

m. *This notice also consists of the following standard paragraphs:* A8, B, C, D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10535–000.

c. *Date Filed:* January 28, 1988.

d. *Applicant:* Genoa 8 Hydro Inc.

e. *Name of Project:* Lock and Dam No. 8.

f. *Location:* On the Mississippi River in Houston County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark A Landin, Mitex, Inc., 91 Newbury Street, Boston, MA 02116, (617) 424–1888.

i. *FERC Contact:* Charles T. Raabe—(202) 376–9487.

j. *Comment Date:* June 15, 1988.

k. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (a) A proposed 25-foot-long by 3-foot-diameter penstock; (b) a proposed powerhouse containing one generating unit rated at 10,000 kW; (c) a proposed 400-foot-long, 69-kV transmission line; and (d) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $75,000. Applicant estimated average annual energy output is 53,500 kWh. Energy produced at the project would be sold to Northern States Power Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10542–000.

c. *Date Filed:* February 9, 1988.

d. *Applicant:* Caballo Hydro Associates.

e. *Name of Project:* Caballo Dam.

f. *Location:* At the Bureau of Reclamation Caballo Dam on the Rio Grand River near Truth or Consequences in Sierra County, New Mexico.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* David M. Coombe, 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* June 20, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure located at the immediate left of the existing spillway; (2) two 9-foot-wide, 100-foot-long steel penstocks; (3) a powerhouse containing two generating units each with a rated capacity of 1500 KW; (4) a 50-foot-wide, 75-foot-long concrete tailrace; and (5) a 150-foot-long transmission line. Applicant estimates the average annual energy production to be 15 GWh and the cost of the work to be performed under the preliminary permit to be $100,000.

l. *Purpose of Project:* The power produced would be sold to Plains Electric Coop.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

9a. *Type of Application:* Preliminary permit.

b. *Project No.:* 10545–000.

c. *Date Filed:* February 16, 1988.

d. *Applicant:* Spanish Valley Energy Company.

e. *Name of Project:* Mill Creek.

f. *Location:* On Mill Creek in T27S, R28E, near Moab in San Juan County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Delbert O. Oliver, P.O. Box 906, Moab, Utah 84532, (801) 259–8385.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* June 20, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing diversion dam owned by the Grand County Conservancy District at elevation 5,712 feet MSL on Mill Creek; (2) an inlet structure located on the southwest bank of Mill Creek immediately adjacent to the diversion; (3) a 2,700-foot-long, 19-inch-diameter steel penstock; (4) a powerhouse at elevation 5,278 feet MSL containing one generating unit with a rated capacity of 710 KW; (5) a tailrace to discharge flows directly back into the Grand County Conservancy District's existing canal; and (6) a 2.5-mile-long transmission line. Applicant estimates the average annual energy production to be 2,400 MWh and the cost of the works to be performed under the preliminary permit to be $12,000.

l. *Purpose of Project:* The power produced would be for private use with the surplus sold to Utah Power and Light Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10a. *Type of Filing:* Amendment of License.

b. *Project No.:* 5357–004.

c. *Date Filed:* February 9, 1988.

d. *Applicant:* North Board of Control of the Owyhee Project Irrigation District.

e. *Name of Project:* Mitchell Butte Power Project.

f. *Location:* On the Bureau of Reclamation's Mitchell Butte Lateral near Aldrian in Malheur County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Harry P. Hosey, President, Hosey & Associates Engineering Co., 2820 Northup Way, Suite 190, Bellevue, WA 98004, (206) 827–8661.

i. *Comment Date:* May 23, 1988.

j. *FERC Contact:* Thomas Dean, (202) 376–9562.

k. *Description of Application:* The Mitchell Butte Power Project as licensed would utilize the Bureau of Reclamation's (BOR) Mitchell Butte Lateral, and would consist of: (1) A 10-foot-long concrete inlet structure, located on the Mitchell Butte Lateral, 37 feet upstream of the existing siphon intake; (2) a 525-foot-long, 36-inch-diameter concrete penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 1,500 kW; (40 a 20-foot-long tailrace delivering flows back into the Mitchell Butte Lateral; (5) a switchyard; (6) a 3-mile-long, 69-kV transmission line connecting to an existing BOR transmission line; and (7) appurtenant facilities. The estimated average annual energy generation is 5.4 GWh.

The applicant proposes to amend its license by: (1) Changing the single 1,500-kW generating unit to two generating units with an installed capacity of 1,800-kW; and (2) rerouting the 69-kV transmission line and increase the length from 3-miles-long to 4-miles-long. The estimated average annual energy generation with the increased capacity is 5.26 GWh.

l. *Purpose of Project:* Project power will be purchased by Idaho Power Company.

m. *This notice also consists of the following standard paragraphs:* A4, B, C, and D1

11a. *Type of Application:* Surrender of License.

b. *Project No.:* 7391–005.

c. *Date Filed:* March 24, 1988.

d. *Applicant:* Power House Systems.

e. *Name of Project:* Upper Israel River Dam Project.

f. *Location:* On the Israel River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Gregory Cloutier, Power House Systems, RR 1, Box 2, Jefferson, NH 03583, (603) 636–1154.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* June 13, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 15-foot-high, 222-foot-long concrete capped gabion weir; (2) a reservoir with a water surface area of 3.25 acres, a gross storage capacity of 20 acre-feet, and a water surface elevation of 914.5 feet m.s.l.; (3) a 12-foot-deep, 18-foot-wide, and 390-foot-long power canal; (4) two powerhouses located: (a) At the dam containing one generating unit with an installed capacity of 21 kW; and (b) 390 feet downstream from the dam containing two generating units with an installed capacity of 250 kW each, for a total installed capacity of 521 kW; (5) a 780-foot-long tailrace; (6) the 0.48-kV generator leads; (7) the single phase, 0.48/7.2-kV step-up transformer; (8) the 600-foot-long, 7.2-kV transmission line; and (9) appurtenant facilities. The proposed project would have generated up to 1,925,000 kWh annually and would have been sold to the Public Service Company of New Hampshire.

The licensee states that due to higher-than-expected construction costs and the inability of the licensee to obtain financing, the licensee wishes to surrender its license. No construction has started.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

12a. *Type of Application:* Preliminary Permit

b. *Project No.:* 10552–000.

c. *Date filed:* March 3, 1988.

d. *Applicant:* Contractors Power Group, Inc.

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e. *Name of Project:* Mile-28 Water Power.

f. *Location:* On the Milner-Gooding Canal in Jerome County, Idaho, Township 8 South, Ranges 19 and 20 East, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harold Shetler, Route 4, Buhl, ID 83316 (208) 543–5177.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* June 30, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An 80-foot-long gated concrete check structure across the canal channel; (2) a 40-foot-square forebay/screening area; (3) a 40-foot-square powerhouse built in the channel and partially into the canal bank, containing two 750-kW generating units; (4) excavation of 1,150 linear feet of the downstream canal channel; and (5) a 3.5-mile-long transmission line connecting to existing distribution lines. The estimated cost of permit activities is $16,000.

l. *Purpose of Project:* Project output would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13a. *Type of Application:* Major License.

b. *Project No.:* 3749–007.

c. *Date filed:* April 30, 1987.

d. *Applicant:* Mitex, Inc.

e. *Name of Project:* Yellowtail Afterbay.

f. *Location:* At the Yellowtail Afterbay Dam, which is owned by the U.S. Department of the Interior, Bureau of Reclamation, and is on the Bighorn River in Bighorn County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William S. Fowler, Mitex, Inc., 91 Newbury Street, Boston, MA 02116, (617) 424–1888.

i. *FERC Contact:* Mr. James Hunter, (202) 376–1943.

j. *Comment Date:* June 30, 1988.

k. *Description of Project:* The proposed project would utilize the existing Yellowtail Afterbay Dam and Reservoir and would consist of: (1) An intake structure with trash rack, fish screen, fish release passageway, and bypass works; (2) two 11-foot-diameter, 100-foot-long steel penstocks; (3) a reinforced concrete powerhouse at the downstream toe of the left abutment containing two 4,005-kW generating units with a total average annual energy output of 51.49 GWh; (4) a tailrace including two 70-foot-long box conduits and rectangular open channel to the river; and (5) a 1,600-foot-long transmission line connecting to a Bighorn County Electric Cooperative line.

l. *Purpose of Project:* Project output would be sold to the Montana Power Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, and C.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Edward Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirements in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 21, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9211 Field 4–26–88; 8:45 am]

BILLING CODE 6717–01–M

Docket Nos. CP76–311–003, et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

April 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP76–311–003]

Take notice that on April 1, 1988, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP76–311–003 a petition to further amend the order issued on October 5, 1976, as amended pursuant to section 7(c) of the Natural Gas Act so as to authorize reimbursement of Continental Oil Company (Conoco) for the rental charges for the Gibbstown, Louisiana compressor facilities subsequent to September 1, 1982, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that by the Commission's order issued October 5, 1976, Tennessee was authorized to construct and operate, *inter alia,* two 660 horsepower compressor units and related facilities on its system near Oak Grove, Louisiana in order to compress gas into its system purchased from producers in West Cameron Block 66. Tennessee states that it is obligated to furnish such compression under the terms of its Gas Purchase and Sales Agreement with Conoco dated June 17, 1976. The October 5, 1976 order required such compression to be installed within one year of that date.

Tennessee states that subsequently, by order of May 24, 1977, it was authorized to defer installation of the Oak Grove facilities until October 5, 1978, pending determination by Conoco as to whether they will be needed. In the interim, Tennessee was authorized to assume Conoco's portable compressor rental charges for two 540 horsepower rental units for gas compressed near Gibbstown, Louisiana. By further order of May 1, 1979, Tennessee was authorized to defer installation of the Oak Grove Facilities and continue to assume Conoco's rental charges for the Gibbstown facilities consisting of the two 540 horsepower rental units until October 5, 1980. By order of May 10, 1982, the Commission deleted authorization to construct and operate the Oak Grove, Louisiana compression facilities and authorized the continued reimbursement of Conoco at rates to be effective until September 1, 1982, at which time the charges were again subject to negotiation.

Tennessee requests by authorization to continue to reimburse Conoco for charges for the Gibbstown compression and dehydration facilities from September 1, 1982, forward.

Tennessee states that since the order of May 10, 1982, the configuration of the dehydration and compressor facilities operated by Conoco at Gibbstown for the delivery of gas to Tennessee has changed from time to time. Tennessee states that a Gibbstown compressor lease agreement undated but executed on or before September 13, 1984, provided for the installation and operation by Conoco at a Conoco-owned FE–43 compressor and payment by Tennessee to Conoco or $14,500 per month for a term of twelve months following installation. Further, Tennessee states a letter agreement dated September 13, 1984, recognized that as of September 1, 1982, Conoco was operating certain third party leased facilities which included a 360, a 540, and a 1,000 horsepower compressor and that the associated monthly rental rates to be paid to Conoco effective September 1, 1982, through May 1, 1985, was $27, 430.93.

Tennessee also states that a letter agreement dated December 21, 1987, recognized the two earlier agreements, reconciled certain questions concerning proper billing and payments with a payment of $87,958.87 by Tennessee to Conoco and sets out renegotiated

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monthly rental rates beyond May 1, 1985. From May 1, 1985 to December 31, 1987, the monthly rental rate was set at $18,844.80 which changed after August 31, 1987, to $18,917.60 due to changes in equipment being operated. Further, the letter agreement of December 21, 1987, recognized that the Conoco owned FE–43 compressor was installed January 21, 1985, thereby establishing the one year term of January 21, 1985, to January 21, 1986, for a monthly reimbursement of $14,500, it is stated. Tennessee states that the monthly reimbursement for the period January 21, 1986, through January 20, 1987, is set at $12,500 and after January 21, 1987, at $10,500.

Comment date: May 12, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. West Texas Gathering Company

[Docket No. CP88–238–000]

Take notice that on February 22, 1988, West Texas Gathering Company (West Texas), 550 WestLake Park Boulevard, P.O. Box 4544, Suite 170, Houston, Texas 77210–4544, filed in Docket No. CP88–238–000 an application pursuant to sections 7(b) and 7(c) for permission and approval for a limited term abandonment of a sale of natural gas to El Paso Natural Gas Company (El Paso) and for authorization to sell that gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

West Texas requests blanket abandonment for a three year term for sales services provided to El Paso under its FERC Gas Tariff X–1. West Texas also requests a blanket certificate authorizing West Texas' sales in interstate commerce of gas formerly sold to El Paso, with pregranted abandonment.

West Texas states that the sale with respect to which limited term abandonment is sought involves production from the Emperor and South Kermit Fields in Winkler County, Texas. It is stated El Paso purchases surplus natural gas from these two fields pursuant to a gas purchase agreement with West Texas dated January 8, 1958 (Agreement). It is indicated that since 1983, El Paso's takes of gas under the Agreement have diminished substantially and are currently limited to lease protection volumes, with substantial resumption of takes by El Paso not expected in the foreseeable future.

West Texas states that the Emperor and South Kermit Fields continue to be viable producing fields with great operating potential. West Texas states it is willing and able to continue taking and marketing this gas and believes a market exists for this gas if processing and treating arrangements can be obtained. Further, West Texas indicates that El Paso's diminished takes, both in the past and projected future, have resulted in the generation of substantial take-or-pay claims under the underlying gas purchase agreements between West Texas and its producers. West Texas states that it believes that future take-or-pay claims may be avoided, and past claims may be ameliorated, if gas flow can be reestablished.

Comment date: May 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9216 Filed 4–26–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of January 15 Through January 22, 1988

During the Week of January 15 through January 22, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 15 through January 22, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 21, 1988	Office of Scientific & Technical Information, Oak Ridge, TN.	KFA–0158	Appeal of an Information Request Denial. If granted: The December 18, 1987 Decision and Order issued to the National Security Archive (Case No. KFA–0148) would be modified.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 15 through January 22, 1988]

Date	Name and location of applicant	Case No.	Type of submission
January 22, 1988	South Dakota, Pierre, SD	RM251–105	Request for Modification/Rescission. If granted: The November 24, 1987, Decision and Order issued to South Dakota (Case No. RQ251–406) would be modified regarding the state's application for second stage refund in the Amoco II refund proceeding.

Date received	Name of refund proceeding/Name of refund applicant	Case No.
7/21/86	Johnson Oil Company.	RF225–10951
5/5/86	Ascherman Oil	RF225–10952
1/19/88	Copeland Oil Company.	RF265–2596
1/19/88	Anthony Marino	RF276–298
8/4/86	Shuchart Petroleum	RF225–11004
3/3/88	Chesapeake & Potomac Tel.	RD272–8718
3/3/88	Amax Copper, Inc.	RD272–9615
3/3/88	Kennecott Corporation.	RD272–12164
3/4/88	Cone Mills Corporation.	RF299–80
5/5/86	Templin Oil Company.	RF225–10995
1/19/88	Haney Oil Company.	RF225–10996
1/19/88	Haney Oil Company.	RF225–10997
1/19/88	Haney Oil Company.	RF225–10998
1/19/88	Franklin County Oil Company.	RF225–10999
1/19/88	Franklin County Oil Company.	RF225–11000
1/19/88	Lunde Fuel & Oil Supply.	RF225–11001
1/19/88	Lunde Fuel & Oil Supply.	RF225–11002
1/19/88	Lunde Fuel & Oil Supply.	RF225–11003
1/15/88 thru 1/22/88.	Crude Oil Refund Applications Received.	RF272–42200 thru RF272–42830
1/15/88 thru 1/22/88.	Gulf Oil Refund Applications Received.	RF300–4783 thru RF300–4900

[FR Doc. 88–9257 Filed 4–26–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Period of March 14 Through April 1, 1988

During the period of March 14 through April 1, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of the proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–344, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

April 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Kasigluk, Inc., Kasigluk, AK, KEE–0153

Kasigluk, Inc. filed an Application for Exception from the requirement of filing Form EIA–782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would relieve Kasigluk of the requirement of filing the Form. On March 29, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

FR Doc. 88–9258 Filed 4–26–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Week of April 4 Through April 8, 1988

During the week of April 4 through April 8, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

April 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Doyle Brothers, Inc., Pasco, WA, KEE–0139

Doyle Brothers, Inc. filed an Application for Exception from the provisions of filing Form EIA–782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would relieve Doyle Brothers of the requirement of filing the Form. On April 6, 1988, the Department of Energy issued a Proposed Decision and Order which

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tentatively determined that the exception request be denied.

[FR Doc. 88-9259 Filed 4-26-88; 8:45 am]
BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of March 21 Through April 1, 1988

During the period of March 21 through April 1, 1988, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 19, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Intercontinental Oil Co., Inc., Houston, TX; KRO-0660, Crude Oil

On March 29, 1988, Intercontinental Oil Co., Inc., 6363 Woodway, Suite 1100, Houston, Texas 77057 and the State of California filed Notices of Objection to a Proposed Remedial Order (PRO) which the Houston Office of the Economic Regulatory Administration issued to the firm on October 6, 1987. In the PRO the ERA found that during various periods from November 1975 to September 1978, Intercontinental improperly certified crude oil, charged prices for crude oil in excess of its actual purchase prices without providing any service or other function traditionally and historically associated with the resale or crude oil, and resold crude oil at a monthly average markup in excess of its applicable permissible average markup.

According to the PRO the violation resulted in $1,576,305 of overcharges.

[FR Doc. 88-9260 Filed 4-26-88; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $60,000 obtained as a result of a Consent Order that the DOE entered into with Evett Oil Company (Case No. KEF-0020), a reseller-retailer of petroleum products located in Comanche, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before May 27, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585. All comments should conspicuously display a reference to case number KEF-0020.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a July 1, 1985 consent order between the DOE and Evett Oil Company (Evett). That consent order settled certain disputes between the firm and the DOE concerning Evett's possible violations of DOE regulations in its sales of refined petroleum products. The consent order covers the period March 1, 1979 through March 31, 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $60,000, funded by Evett pursuant to the consent order. The DOE has proposed that the consent order fund be disbursed to purchasers of Evett products that were allegedly overcharged by Evett in its sales of refined products. Under the proposed procedures, purchasers of Evett refined products may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Evett consent order. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered products from Evett. Reseller-retailer claimants will be required to show injury. The specific requirements for proving injury are set forth in the Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: April 20, 1988

George B. Breznay,

Office of Hearings and Appeals.

Proposed Decision and Order

April 20, 1988.

Name of Firm: Evett Oil Company.

Date of Filing: March 25, 1986.

Case Number: KEF-0020.

On March 25, 1986, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Evett Oil Company (Evett). 10 CFR Part 205, Subpart V. This Proposed Decision and Order sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Because the procedures set forth in this Decision and Order are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of Evett refund applications is authorized.

I Background

Evett was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period March 1, 1979 through March 31, 1980 (the consent order period), the ERA alleged in a Proposed Remedial Order (PRO) that Evett committed pricing violations with respect to its sales of motor gasoline.[1] In order to settle all claims and disputes between Evett and the DOE, the two parties entered into a consent order that became final on July 1, 1985. The Consent Order covers Evett's sales of refined petroleum products during the consent order period.

Under the terms of the Consent Order, Evett agreed to deposit $60,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order monies were paid in full on July 16, 1985. This Proposed Decision and Order concerns the distribution of those funds. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

We propose that firms and individuals that purchased Evett refined products during the consent order period may file claims in this proceeding. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, i.e., consumers who used Evett refined products; (2) regulated non-petroleum industry entities that used Evett products in their businesses, or cooperatives that purchased Evett products for their businesses; and (3) resellers, retailers or refiners who resold Evett products.

In establishing the procedures that will govern the Evett Special Refund Proceeding, we propose to adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible.[2] *American Pacific International*, 14 DOE ¶ 85,158 (1986) (API). First, we propose to adopt a presumption that the alleged overcharges were dispersed equally among all sales of refined petroleum products made by Evett during the consent order period and that refunds should therefore be made on volumetric basis. In the absence of better information, a volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *API*, 14 DOE at 88,293.[3]

Under the volumetric refund approach we propose to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount, plus accrued interest. Allocating the alleged violations on a volumetric basis results in a maximum refund amount of $.0133 per gallon (hereinafter referred to as the volumetric refund amount).[4]

We also propose to adopt a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Evett's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in Section II(A) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

We propose to adopt a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Evett's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See; e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). We propose, therefore, that end-users of Evett products need only establish that they were ultimate consumers of a specific volume of Evett products to qualify for a refund of their full allocable share.

(2) Refund Applications of Cooperatives and Regulated Firms

We propose that firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to demonstrate injury as a result of alleged overcharges on Evett refined products. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed any overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we propose to require that such applicants certify that they will pass any refund received through to their customers. We further propose that such applicants provide us with a detailed explanation how they plan to accomplish this restitution and how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Evett products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

We propose to adopt a presumtpion, as we have in many previous cases, that purchasers seeking small refunds were injured by Evett's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224-25 (1982) (*Uban*). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Evett products it purchased during the consent order period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

We propose that if a reseller, retailer or refiner's claim exceeds $5,000, it will be required to provide a detailed demonstration of injury. First, a firm is generally required to provide a monthly

[1] The ERA issued a PRO to Evett on September 20, 1982. *See Evett Oil Company*, No. HRO-0096 (dismissed on November 26, 1985).

[2] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. 10 CFR Part 205, Subpart V.

[3] Nevertheless, we recognize that the impact of Evett's pricing practices on an individual purchaser may have been greater than the apportioned amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharge that it incurred in order to be eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[4] To compute this figure, we first estimated that Evett's sales of refined products during the consent order period totalled approximately 4,500,000 gallons. This figure was obtained from sales data supplied by Evett and verified by Mr. Clarence Evett, president and owner of Evett Oil Company. *See* memorandum of March 21, 1988 telephone conversation between Mr. Clarence Evett of Evett Oil Company and Marisa T. Arico, OHA Staff Analyst. Dividing this total volume into the $60,000 received from Evett yields a volumetric refund amount of $.0133, exclusive of interest. Each successful applicant will also receive a pro rata share of interest, which will increase over time and will be computed for each refund at the time of payment.

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schedule of its "banks" of unrecouped increased product costs for each product that it purchased from Evett during the consent order period. [8] We further propose that a firm must show that market conditions forced it to absorb the alleged overcharges. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Evett. *API*, 14 DOE at 88,295. If a claimant elects not to submit a detailed demonstration of injury, it may still apply for a small claims refund of $5,000, plus accrued interest.

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all Applications for refund must be in writing and must be signed by the applicant. An application must refer to the Evett Oil Company Special Refund Proceeding (Case No. KEF–0020). If an applicant indirectly purchased Evett refined products from a reseller, it must explain why it believes that the products originated with Evett and must identify the reseller from which the product was purchased.

If a claimant made only sporadic purchases of significant volumes of Evett product, we will consider that claimant to be a spot purchaser. We propose to adopt the rebuttable presumption that claimants who made only spot purchases from Evett were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot purchases from Evett unless they were able to pass through the full amount of any price increases to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Therefore, a firm that made only spot purchases from Evett will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

Finally, as in previous cases, we propose to adopt the rebuttable presumption that consignees of Evett's refined products were not injured by Evett's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with its supplier, under which the supplier retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's pricing] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

We propose to establish a minimum amount of $15.00 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than $15.00 are sought outweighs the modest benefits of restitution in those situations. *Uban*, 9 DOE at 85,225.

(C) Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all refund claims from the Evett fund have been analyzed, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session, Cong. Rec. H11319–21, (Daily E. October 17, 1986).

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the office of Hearings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register**.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Evett Oil Company, pursuant to the Consent Order executed on July 1, 1985 will be distributed in accordance with the foregoing decision.

[FR Doc. 88–9281 Filed 4–26–88; 8:45 am]

BILLING CODE 6450–01–M

[8] A "bank" must be equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either that product was decontrolled or the banking regulations expired.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50678; FRL–3389–9]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

275–EUP–47. Extension. Abbott Laboratories, Chemical and Agricultural Products Division, 1400 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 30 grams of the plant growth regulator gibberellin acid on 30,000 pounds of lemons to evaluate the control of the susceptibility of sour rot decay on lemons during storage. The program is authorized only in the States of Arizona and California. The experimental use permit is effective from March 14, 1988 to November 30, 1988. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

1471–EUP–95. Issuance. Elanco Products Company, P.O. Box 708, Greenfield, IN 46140. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

1471–EUP–96. Elanco Products Company, P.O. Box 708, Greenfield, IN 46140. This experimental use permit and the one above both allow the use of 320 pounds of the herbicide fluridone on 80 acres of canals to evaluate the control of aquatic plant management. Both programs are authorized only in the State of Florida. The experimental use permits are effective from March 16, 1988 to March 16, 1990. The permits will use the same active ingredient but different formulations. (Richard Mountfort, PM 23, Rm. 237, CM#32, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: April 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–9099 Filed 4–26–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3370–7]

Proposed Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement to resolve claims under Comprehensive Environmental Response, Compensation, and Liability Act. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the past administrative or civil liabilities of 48 parties for costs incurred by EPA at Bourdeaudhui and Kapinos Superfund Sites.

DATE: Comments must be provided on or before May 27, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts 02203, and should refer to: In Re the Bourdeaudhui and Kapinos Willington, Connecticut, U.S. EPA Docket No. I–88–1046.

FOR FURTHER INFORMATION CONTACT: Jeremy M. Firestone, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC–2203, J.F.K. Federal Building, Room 2203, Boston, MA 02203, (617) 565–3440.

SUPPLEMENTARY INFORMATION:

Notice of Administrative Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Bourdeaudhui and Kapinos Superfund Sites in Willington, Connecticut. Section 122(h) of CERCLA provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the claim has not been referred to the Department of Justice. Because the United States has incurred costs of less than $500,000 dollars at each Site, EPA may settle the claim without prior written approval of the Attorney General. This Notice pertains to the settlement of a claim that has not been referred to the Department of Justice. Below are listed the parties who have executed signature pages committing them to participate in this settlement.

Dental Associates; Ronald J. Bauerle; David J. Bloom. Jr.; William J. Brady; Donald J. Bucalo; Lynn Bucalo; Michael Bulick; Raymond P. Cashman; Albert Charney; Arnold L. Chassanoff; William Corriveau; Richard C. Crepeau; Edward S. Drysgula; William M. Dupont; Raymond Eger; Donald L. Farley; Norman Farr; Ronald Gintowt; Warren Graham; Harold Hutensky; Robert Jakubiec; Robert Jung; Frederick Kapinos; Theodor C. Koerner; Paul LaRochelle; Arthur Lepine; Constantinos Levanos; Hugh D. MacArthur; George Maillard; Edward McFarland; Francis McNulty; George Nieske; Morton Oberstein; Roger A. Preston; Michael A. Quarto; Sedrick Rawlins; James B. Reid; John A. Salius; Robert Schreibman; Philip T. Sehl; Jacob Shapera; Frank W. Sherwood; Earle Tompkins; George C. Valentine; John J. Valigorsky; Robert Van Valkenburg; Mario Varzeas; and Joseph R. Zaientz.

These 48 Settling Parties will pay an estimated $64,099.40 dollars in settlement payments under this agreement. $64,099.40 dollars represents a payment equal to 70% and 80% of the Settling Parties' aggregate volumetric shares at the Bourdeaudhui and Kapinos Sites, respectively, plus $182 dollars for each identified Bourdeaudhui Site Settling Party for whom no volume was assigned. In exchange for this settlement payment, EPA covenants not to sue the Settling Parties for past civil or administrative liabilities in connection with the two Sites.

EPA will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed adminstrative settlement agreement may be obtained in person or by mail from EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88–9292 Filed 4–26–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3370–8]

Proposed Settlement under 122(h) of Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement to resolve claims under Comprehensive Environmental Response, Compensation, and Liability Act. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the past administrative or civil liabilities of 10 parties for costs incurred by EPA at Bourdeaudhui and Kapinos Superfund Sites.

DATE: Comments must be provided on or before May 27, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In Re the Burdeaudhui and Kapinos Sites in Willington, Connecticut, U.S. EPA Docket No. I–88–1047.

FOR FURTHER INFORMATION CONTACT: Jeremy M. Firestone, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC–2203, J.F.K. Federal Building, Room 2203, Boston, 02203, (617) 565–3440.

SUPPLEMENTARY INFORMATION:

Notice of Administrative Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Bourdeaudhui and Kapinos Superfund Sites in Willington, Connecticut. Section 122(h) of CERCLA provides EPA wiht authority to consider, compromise and settle a claim for costs incurred by the United States if the

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claim has not been referred to the Department of Justice. Because the United States has incurred costs of less than $500,000 dollars at each Site, EPA may settle the claim without prior written approval of the Attorney General. This Notice pertains to the settlement of a claim that has not been referred to the Department of Justice. Below are listed the parties who have executed signature pages committing them to participate in this settlement.

Louis A. Rigali; Francis P. Cassidy; Oscar Noroian; Dennis Flanagan; Karl P. Stofko; Steven C. Lakes; Charles F. Bobeck; Charles A. Dean; Jeffrey A. Traft; and David K. Inouye.

These 10 Settling Parties will pay an estimated $5,713.00 dollars in settlement payments under this agreement. $5,713.00 dollars represents a payment equal to 70% and 80% of each Settling Party's volumetric share at the Bourdeaudhui and Kapinos Sites, respectively, plus $182 dollars for one identified Bourdeaudhui Site Settling Party for whom no volume was assigned. In exchange for each settlement payment, EPA convenants not to sue that Settling Party for past civil or administrative liabilities in connection with the two Sites.

EPA believes that the settlement is fair and in the public interest. EPA will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-9293 Filed 4-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51704; FRL-3370-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred fifty-seven such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-961, 88-962, 88-963, 88-964, 88-965, 88-966—June , 1988.

P 88-968, 88-969, 88-970, 88-971, 88-972—June 6, 1988.

P 88-973, 88-974, 88-975, 88-976, 88-977, 88-978, 88-979, 88-980, 88-981, 88-982—June , 1988.

P 88-983, 88-984—June 11, 1988.

P 88-985, 88-986, 88-987, 88-988, 88-989, 88-990, 88-993, 88-994, 88-995, 88-996, 88-997, 88-998, 88-999, 88-1000, 88-1001—June 12, 1988.

P 88-1002, 88-1003, 88-1004, 88-1005, 88-1006, 88-1007, 88-1008—June 13, 1988.

P 88-1010, 88-1011, 88-1012—June 14, 1988.

P 88-1013, 88-1014, 88-1015, 88-1016, 88-1017, 88-1018, 88-1019, 88-1020, 88-1021, 88-1022, 88-1023, 88-1024, 88-1025, 88-1026, 88-1027, 88-1028—June 15, 1988.

P 88-1029—June 18, 1988.

P 88-1030, 88-1031, 88-1032, 88-1033, 88-1034, 88-1035, 88-1036, 88-1037, 88-1038, 88-1039, 88-1040, 88-1041, 88-1042—June 19, 1988.

P 88-1043—June 22, 1988.

P 88-1044—June 19, 1988.

P 88-1045, 88-1046, 88-1047, 88-1048, 88-1049, 88-1050, 88-1051, 88-1052, 88-1053, 88-1054, 88-1055, 88-1056—June 21, 1988.

P 88-1057, 88-1058, 88-1059—June 22, 1988.

P 88-1060, 88-1061, 88-1062, 88-1063, 88-1064, 88-1065, 88-1066, 88-1067, 88-1068, 88-1069, 88-1070, 88-1071, 88-1072, 88-1073, 88-1074, 88-1075, 88-1076, 88-1077, 88-1078, 88-1079, 88-1080, 88-1081, 88-1082, 88-1083, 88-1084, 88-1085, 88-1086, 88-1087, 88-1088, 88-1089, 88-1090, 88-1091, 88-1092, 88-1093, 88-1094, 88-1095, 88-1096, 88-1097, 88-1098, 88-1099, 88-1100, 88-1101—June 25, 1988.

P 88-1102, 88-1103, 88-1104, 88-1105, 88-1106, 88-1107, 88-1108, 88-1109, 88-1110, 88-1112, 88-1113, 88-1114, 88-1115, 88-1116, 88-1117, 88-1118, 88-1119, 88-1120, 88-1121, 88-1122—June 26, 1988.

Written comments by:

P 88-961, 88-962, 88-963, 88-964, 88-965, 88-966—May 6, 1988.

P 88-968, 88-969, 88-970, 88-971, 88-972—May 7, 1988.

P 88-973, 88-974, 88-975, 88-976, 88-977, 88-978, 88-979, 88-980, 88-981, 88-982—May 9, 1988.

P 88-983, 88-984—May 12, 1988.

P 88-985, 88-986, 88-987, 88-988, 88-989, 88-990, 88-993, 88-994, 88-995, 88-996, 88-997, 88-998, 88-999, 88-1000, 88-1001—May 13, 1988.

P 88-1002, 88-1003, 88-1004, 88-1005, 88-1006, 88-1007, 88-1008—May 14, 1988.

P 88-1010, 88-1011, 88-1012—May 15, 1988.

P 88-1013, 88-1014, 88-1015, 88-1016, 88-1017, 88-1018, 88-1019, 88-1020, 88-1021, 88-1022, 88-1023, 88-1024, 88-1025, 88-1026, 88-1027, 88-1028—May 16, 1988.

P 88-1029—May 19, 1988.

P 88-1030, 88-1031, 88-1032, 88-1033, 88-1034, 88-1035, 88-1036, 88-1037, 88-1038, 88-1039, 88-1040, 88-1041, 88-1042—May 20, 1988.

P 88-1043—May 23, 1988.

P 88-1044—May 20, 1988.

P 88-1045, 88-1046, 88-1047, 88-1048, 88-1049, 88-1050, 88-1051, 88-1052, 88-1053, 88-1054, 88-1055, 88-1056—May 22, 1988.

P 88-1057, 88-1058, 88-1059—May 23, 1988.

P 88-1060, 88-1061, 88-1062, 88-1063, 88-1064, 88-1065, 88-1066, 88-1067, 88-1068, 88-1069, 88-1070, 88-1071, 88-1072, 88-1073, 88-1074, 88-1075, 88-1076, 88-1077, 88-1078, 88-1079, 88-1080, 88-1081, 88-1082, 88-1083, 88-1084, 88-1085, 88-1086, 88-1087, 88-1088, 88-1089, 88-1090, 88-1091, 88-1092, 88-1093, 88-1094, 88-1095, 88-1096, 88-1097, 88-1098, 88-1099, 88-1100, 88-1101—May 26, 1988.

P 88-1102, 88-1103, 88-1104, 88-1105, 88-1106, 88-1107, 88-1108, 88-1109, 88-1110, 88-1112, 88-1113, 88-1114, 88-1115, 88-1116, 88-1117, 88-1118, 88-1119, 88-1120, 88-1121, 88-1122—May 27, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51704)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Wasnington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency Rm. E-611, 401 M Street, SW., Wasnington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-961

Importer. Confidential.
Chemical. (G) Reaction product of an anhydride and an alkyl amine.
Use/Import. (S) Gasoline additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,050 MG/KG species(rat). Acute dermal toxicity: LD50 >500 MG/KG species(rabbit). Acute I.V. toxicity: LD50 1,320 MG/M3 species(mouse). Eye irritation: Strong species(rabbit). Skin irritation: Strong species(rabbit).

P 88-962

Importer. Confidential.
Chemical. (G) Condensation product of an organic acid and alkyl amines.
Use/Import. (S) Gasoline additive. Import range: Confidential.

P 88-963

Manufacturer. The Dow Chemical Company.
Chemical. (G) Halogenated aromatic isocyanate.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 MG/KG species(rat).
Acute dermal toxicity: LD50 >2,000 MG/KG species(rat).
Eye irritation: Slight species(rabbit).
Skin irritation: Moderate species(rabbit).

P 88-964

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) Diphenol dicyanate.
Use/Production. (S) Chemical intermed & binber for structural adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 MG/KG species(rat). Eye irritation: Slight species(rabbit). Skin irritation: Slight species(rabbit).

P 88-965

Manufacturer. Milliken & Co.
Chemical. (G) Vinyl-acrylic copolymer.
Use/Production. (G) Fiber processing aid. Prod. range: Confidential.

P 88-966

Importer. Confidential.
Chemical. (G) 2-Naphthalenesulfonic acid, 7-([4,6-bis ((substituted)amino)-1,3,5-triazin-2-yl)amino-4-hydroxy-3-((substituted phenyl)azo))-, organic acid (salt).
Use/Import. (S) Wet-end paper dyeing, liquid dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 MG/KG species(rat). Acute dermal toxicity: LD50 >2,000 MG/KG species(rat). Static acute toxicity: Time LC50 34.6 MG/L species (cyrianus (carp)). Eye irritation: None species(rabbit). Skin irritation: Negligible species(rabbit). Mutagenicity: Negative. Skin sensitization: Negative species(guinea pig).

P 88-968

Importer. Osakagodo America Inc.
Chemical. (G) Di(polyoxyethylene) alkyl ether phosphate.
Use/Import. (S) An additive to be found in paint & ink. Import range: Confidential.

P 88-969

Importer. Confidential.
Chemical. (G) (Substituted phenyl)substituted phenyl ester.
Use/Import. (S) Additive for paints & printing inks. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88-970

Importer. Confidential.
Chemical. (G) Substituted triazine.
Use/Import. (G) Commerical & consumer contained use in an article. Import range: Confidential.

P 88-971

Importer. Confidential.
Chemical. (G) (Substituted phenyl)substituted benzamide.
Use/Import. (G) Commercial & consumer contained use in an article. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50.

P 88-972

Importer. Mitsubishi Yuka America, Inc.
Chemical. (S) 3,3',5,5'-tetramethylbiphenyl-4,4'-diol.
Use/Import. (S) Monomer for: Epoxy, polyester resins eng. plastic. Import range: 500,000-1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 MG/KG species(rat). Skin irritation: Negligible species(rabbit). Mutagenicity: Negative.

P 88-973

Importer. DNP (America), Inc. N.Y. Home Office.
Chemical. (G) Carbamic acid, 1,6-hexandiylbis-, diethyl ester.
Use/Import. (G) Binder of pigments of thermal transfer film. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 7,003 MG/KG species(rat). Mutagenicity: Negative.

P 88-974

Manufacturer. The Upjohn Company.
Chemical. (G) Substituted phenanthrene.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-975

Manufacturer. The Upjohn Company.
Chemical. (G) Substituted naphthalene/phenanthrene adduct.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-976

Manufacturer. The Upjohn Company.
Chemical. (G) Hydrophenanthrone.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-977

Manufacturer. The Upjohn Company.
Chemical. (G) Naphythyl keto acid.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-978

Manufacturer. The Upjohn Company.
Chemical. (G) Naphthalyl substituted acid.
Use/Prodcution. (G) Contained use. Prod. range: Confidential.

P 88-979

Importer. Confidential.
Chemical. (G) Epoxy acrylate.
Use/Import. (G) Photo solder resist for printed circuit board. Import range: Confidential.

P 88-980

Manufacturer. Confidential.
Chemical. (G) Modified polyester.
Use/Production. (G) Industrial primer coating component. Prod. range: Confidential.

P 88-981

Manufacturer. Confidential.
Chemical. (G) Modified alkoxy polyester amide and modified alicyclic amide ester.
Use/Production. (G) Furniture coating component. Prod. range: 12,000 kg/yr.

P 88-982

Importer. Goldschmidt Chemical Company.
Chemical. (G) Polyoxyalkylene polyester.
Use/Import. (G) Open, nondispersive use. Import range: 50,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,310 MG/KG species(rat).

P 88-983

Importer. Mitsubishi Chemical Industries Amer. Inc.
Chemical. (G) Substituted crosslinked copolymer of alkyl methacrylate.

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Use/Import. (G) Anion exchanger. Import range: Confidential.

P 88–984

Importer. Mitsubishi Chemical Industries Amer. Inc.
Chemical. (G) Substituted crosslinked copolymer of alkyl methacrylate.
Use/Import. (G) Purification material. Import range: Confidential.

P 88–985

Manufacturer. Confidential.
Chemical. (G) Halogenated, sulfonated phenolic resin.
Use/Production. (G) Open, nondispersive and dispersine use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 G/MG species (rat). Eye irritation: None species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative species (guinea pig).

P 88–986

Manufacturer. NL Industries, Inc.
Chemical. (G) Oxirane/anhydride polyester resin.
Use/Production. (G) Polyester resin, open, nondispersive use. Prod. range: Confidential.

P 88–987

Manufacture. NL Industries, Inc.
Chemical. (G) Oxirane/anhydride Polyester resin, open nondispersive use. Prod. range: Confidential.

P 88–988

Manufacturer. NL Industries, Inc.
Chemical. (G) Oxirane/anyhydride polyester resin.
Use/Production. (G) Polyester resin open, nondispersive. Prod. range: Confidential.

P 88–989

Manufacturer. NL Industries, Inc.
Chemical. (G) Oxirane/anhydride polyester resin.
Use-Production. (G) Open, nondispersive polyester resin. Prod. range: Confidential.

P 88–990

Manufacturer. Adhesive Research, Inc.
Chemical. (G) Oxirane/anhydride polyester resin.
Use/Production. (S) Pressure sensitive adhesive base. Prod. range: 15,000 kg/yr.

P 88–993

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Polyester polysiloxane copolymer.
Use/Import. (G) Nondispersive use. Import range: 3,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 KG. Eye irritation: Slight species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–994

Manufacturer. Lilly Industrial Coatings Inc.
Chemical. (G) Polymer of benzenedicarboxylic acid and aliphatic diols.
Use/Production. (G) thermoset resin for paint manufacture. Prod. range: 175,000 kg/yr.

P 88–995

Manufacturer. The O'Brien Corporation.
Chemical. (G) Acrylic resin.
Use/Production. (G) Intermediate for coating formulation. Prod. range: Confidential.

P 88–996

Importer. Confidential.
Chemical. (G) Ethyl ester of a substituted aliphatic acid.
Use/Import. (G) Highly dispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Eye irritation: Slight species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–997

Importer. 3M.
Chemical. (G) Fluorene-containing diaromatic diglycidyl ether epoxy resin.
Use/Import. (G) Matrix resin for fiber reinforced composites. Import range: Confidential.

P 88–998

Importer. 3M.
Chemical. (G) Fluorene-containing diaromatic amine.
Use/Import. (S) Matrix resin for fiber reinforced compositions. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Eye irritation: Slight species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–999

Importer. 3M.
Chemical. (G) Fluorene-containing diaromatic amine.
Use/Import. (S) Matrix resins structural adhesive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Eye irritation: Slight species (rabbit). Skin irritation: Negligible species (rabbits).

P 88–1000

Manufacturer. Confidential.
Chemical. (G) Oxirane, 2,2'-((1-methylethylidene)bis(4,1-phenyleneoxymethylene))bis-, polymer with 1,3-diisocyan ato methyl benzene.
Use/Production. (G) Open, nondispersive use. Prod. range: 5,000 kg/yr.

P 88–1001

Importer. Hoechst Celanese Corporation.
Chemical. (S) Ethylene glycol; propylene glycol; ethyl isocyanurate; dimethyl terephthalene; acetic acid, zinc salt; methylene dianiline; trimellitic anhydride.
Use/Import. (S) Binder for wire enamel. Import range: 100,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 100 ML species (human).

P 88–1002

Manufacturer. Resinall Corp.
Chemical. (G) Aromatic, acrylic ester polymers with monocarboxylic acids.
Use/Production. (S) Resin binder for printing inks, adhesives. Prod. range: 1,500,000 kg/yr.

P 88–1003

Manufacturer. Hercules Incorporation.
Chemical. (G) Epoxy resin.
Use/Production. (S) Manufacture of carbon/epoxypregs. Prod. range: Confidential.

P 88–1004

Manufacturer. Quantum Chemical Corp. Emery Division.
Chemical. (G) Hydroxy-substituted polyester.
Use/Production. (S) Base stock lubricant for industrial oils. Prod. range: 500,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat.). Eye irritation: None species (rabbit).

P 88–1005

Importer. Confidential.
Chemical. (G) Substituted acetamide.
Use/Import. (G) Commercial & consumer contained use in an article. Import range: Confidential.

P 88–1006

Importer. Confidential.
Chemical. (G) Substituted alkane anilide.
Use/Import. (G) Commercial & consumer contained use in an article. Import range: Confidential.

P 88–1007

Importer. Confidential.
Chemical. (G) Substituted sulfonanilide.
Use/Import. (G) Commercial & consumer contained use in an article. Import range: Confidential.

P 88–1008

Importer. Confidential.
Chemical. (G) Substituted alkylbenzene.
Use/Import. (G) Commercial & consumer contained use in an article. Import range: Confidential.

P 88–1010

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Polyether-modified organopolysiloxane.
Use/Import. (S) Surfactant for polyurethane foam release agent. Import range: 6,000 kg/yr.

P 88–1011

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Polyester-modified organopolysiloxane.
Use/Import. (S) Adhesive promoter for organic resin. Import range: 1,000 kg/yr.
Toxicity Data. Mutagenicity: Positive.

P 88–1012

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (S) 2,4,6,-Trimethyl-2,4,6-tris(3,3,3-trifluoropropyl)cyclosiloxane; dimethylchlorosilane.
Use/Import. (S) Process oil. Import range: 1,200 kg/yr.

P 88–1013

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted indolium dyestuff.
Use/Import. (S) Dyestuff for acrylate fiber. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4,000–5,000 MG/KG species (rat). Static acute toxicity: Time LC50 96 HR4.76 MG/L species (zebra fish). Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1014

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted triazolium salt.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 1,000–2,000 kg/yr.

P 88–1015

Importer. Hoechst Celanese Corporation.
Chemical. (G) Azo-substituted benzothiazole.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 5,000–1,000 kg/yr.

P 88–1016

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted triphenylmethane dye.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 5,000–10,000 kg/yr.
Toxicity Data. Mutagenicity: negative.

P 88–1017

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted cationic bisazo dye.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 10,000–20,000 kg/yr.
Toxicity Data. Eye irritation: Moderate species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1018

Importer. Hoechst Celanese Corporation.
Chemical. (G) Cationic bisazo dye.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 5,000–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 3,860 MG/KG species (rat). Skin irritation: Slight species (rabbit).

P 88–1019

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted indoleninium salt.
Use/Import. (S) Dyestuff for acrylic fibers. Import range: 5,000–10,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1020

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyperfluoroalkylacrylate.
Use/Production. (G) Oil and water repellent. Prod. range: Confidential.

P 88–1021

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyperfluoroalkylacrylate.
Use/Production. (G) Oil and water repellent. Prod. range: 112,000–24,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >5 G/KG species (rabbit). Eye irritation: None species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1022

Importer. Confidential.
Chemical. (S) Aluminum, oxo(ethyl 3-oxobutanato-O,O).
Use/Import. (G) Assistive for polymer solution. Import range: Confidential.

P 88–1023

Importer. Confidential.
Chemical. (G) Copper phthalocyanine derivative.
Use/Import. (G) Printing ink additive. Import range: Confidential.

P 88–1024

Importer. Hitachi Chemical Co., America Ltd.
Chemical. (G) Methyl methacrylate polymer.
Use/Import. (G) Printing circuit boards. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 881025.

P 88–1025

Manufacturer. Confidential.
Chemical. (G) Alkoxy aluminum ethylacetoacetate.
Use/Production. (G) Additive for polymer solutions. Prod. range: Confidential.

P 88–1026

Manufacturer. Confidential.
Chemical. (G) Alkoxy aluminum ethylacetoacetate complex.
Use/Production. (G) Additive for polymer solutions. Prod. range: Confidential.
Manufacturer. Confidential.
Chemical. (G) Polyester of neopentyl glycol.
Use/Production. (S) Basecoat resin. Prod. range: 221,000–1,000,000 kg/yr.

P 88–1028

Importer. Hitachi Chemical Co., America Ltd.
Chemical. (G) Methyl methacrylate polymer.
Use/Import. (G) Printing circuit boards. Import range: Confidential.

P 88–1029

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Coating additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >5 G/KG species (rabbit). Eye irritation: None species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–1030

Importer. Confidential.
Chemical. (G) Fiber-reactive yellow dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1031

Importer. Confidential.
Chemical. (G) Fiber-reactive violet dye.

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Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1032

Manufacturer. Confidential.
Chemical. (G) (Nitroaromatic alkyl) substituted heterocycle.
Use/Production. (G). Prod. range: 26,600–215,000 kg/yr.

P 88–1033

Manufacturer. Confidential.
Chemical. (G) (Nitroaromatic alkyl (substituted heterocycle.
Use/Production. (G) Chemical information. Prod. range: 1,800–14,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 MG/KG species (rat). Acute dermal toxicity: LD50 >2,000 MG/KG species (rat). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (guinea pig). Skin sensitization: Positive species (guinea pig).

P 88–1034

Manufacturer. Confidential.
Chemical. (G) Chain-extended polyisocyanate.
Use/Production. (G) Adhesive component. Prod. range: Confidential.

P 88–1035

Importer. Hoechst Celanese Corporation.
Chemical. (G) Polyperfluoroalkylacrylate.
Use/Import. (G) Oil and water repellent. Import range: 12,000–24,000 kg/yr.

P 88–1036

Manufacturer. Confidential.
Chemical. (G) Urethane biuret.
Use/Production. (S) Automative printing primer curing agent. Prod. range: 26,000–215,000 kg/yr.

P 88–1037

Manufacturer. Confidential
(G) Alkoxy polyoxyethylene fatty ester.
Use/Production. (S) Surfactant/fiber lubricant. Prod. range: Confidential.

P 88–1038

Importer. Dsm Rim Nylon Inc.
Chemical. (G) Polyoxypropylene polyoxyethylene block copolymer ester acyl caprolactam.
Use/Import. (S) Plastic parts. Import range: Confidential.

P 88–1039

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted p-cresidine sulfonic acid salt.
Use/Import. (S) Dye intermediate. Import range: 23,000–25,000 kg/yr.

P 88–1040

Manufacturer. Confidential.
Chemical. (G) Modified polyisocyanate.
Use/Production. (G) Adhesive Component. Prod. range: Confidential.

P 88–1041

Manufacturer. Confidential.
Chemical. (G) Modified polyisocyanate.
Use/Production. (G) Adhesive component. Prod. range: Confidential.

P 88–1042

Importer. Confidential.
Chemical. (G) Fiber-reactive blue dye.
Use/Import. (S) Dye for textiles. Import range: Confidential.

P 88–1043

Manufacturer. Confidential.
Chemical. (G) Alkoxylate of an organic alcohol.
Use/Production. (S) Gasoline additive. Prod. range: Confidential.

P 88–1044

Manufacturer. Confidential.
Chemical. (G) Alkoxylate of an organic alcohol.
Use/Production. (S) Gasoline Additive. Prod. range: Confidential.

P 88–1045

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted nitrophenylalkyl substituted thioxotetrazole.
Use/Production. (G) Contained use. Prod. range: 500–3600 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 MG/KG species (rat). Acute dermal toxicity: LD50 rat species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit). Skin sensitization: Negative.

P 88–1046

Manufacturer. E. I. Du Pont De Nemours & Company Inc.
Chemical. (S) Copolyester.
Use/Production. (G) Molding resin. Prod. range: Confidential.

P 88–1047

Manufacturer. King Industries, Inc.
Chemical. (G) alkenyl dicarboxylic acid monoester, barium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1048

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, calcium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1049

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, magnesium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1050

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, zinc salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation; Moderate species (rabbit).

P 88–1051

Manufacturer. King Industies. Inc.
Chemical. (G) alkenyl dicarboxylic acid monoester, lithium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (Rabbit).

P 88–1052

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, barium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1053

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, calcium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1054

Manufacturer. King Industries, Inc.
Chemical. (G) alkenyl dicarboxylic acid monoester, magnesium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1055

Manufacturer. King Industries, Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, zinc salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1056

Manufacturer. King Industries Inc.
Chemical. (G) Alkenyl dicarboxylic acid monoester, lithium salt.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.
Toxicity Data. Eye irritation: Strong species (rabbit). Skin irritation: Moderate species (rabbit).

P 88–1057

Importer. Confidential.
Chemical. (S) Fluorinated substituted, substituted, substituted sulfonamide, butyl ester.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–1058

Manufacturer. Confidential.
Chemical. (G) Benzoic acid; adipic acid; isophthalic acid; and phoronediamine polyamide.
Use/Production. (S) Printing ink vehicle. Prod. range: 50,000–75,000 kg/yr.

P 88–1059

Manufacturer. Confidential.
Chemical. (G) Complex-modified polyester.
Use/Production. (G) Industrial coating component. Prod. range: 200,000–600,000 kg.yr.

P 88–1060

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) An aromatic polyol.
Use/Production. (S) Intermediate. Prod. range: 1,000–2,000 kg/yr.

P 88–1061

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) A quinonediazine photosensitizer.
Use/Production. (G) Photosensitizer. Prod. range: Confidential.

P 88–1062

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Aromatic sulfonic acid.
Use/Production. (G) Chemical intermediate. Prod. range: 319,299 kg/yr.

P 88–1063

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted-acetanilide.
Use/Production. (G) Chemical intermediate. Prod. range: 303,000–350,900 kg/yr.

P 88–1064

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Aromatic sulfonic acid chloride.
Use/Production. (G) Chemical Intermediate. Prod. range: 359,000–415,000 kg/yr.

P 88–1065

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Aromatic sulfonic acid salt.
Use/Production. (G) Chemical Intermediate. Prod. range: 380,000–440,116 kg/yr.

P 88–1066

Manufacturer. Chattem Chemicals.
Chemical. (G) Aluminum isopropoxide, reaction products with benzoic acid and stearic acid.
Use/Production. (S) Thickener for grease manufacture. Prod. range: Confidential.

P 88–1067

Manufacturer. Confidential.
Chemical. (G) Polymer of acrylic acid esters, a methacrylic acid ester and other vinyl monomers.
Use/Production. (G) Print binder for textile goods. Prod. range: Confidential.

P 88–1068

Manufacturer. Confidential.
Chemical. (G) Fatty acid copolymer.
Use/Production. (S) Site-limited Intermediate. Prod. range: Confidential.

P 88–1069

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg (rat). Eye irritation: Strong species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–1070

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 MG/KGRAT. Eye irritation: Strong species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–1071

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 MG/KGRAT. Eye irritation: Strong species (rabbit). Skin irritation: Negligible species (rabbit).

P 88–1072

Manufacturer. Texaco Chemical Company.
Chemical. (G) Substituted bis-alkenylsuccinimide alkylphenol and an aldehyde.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1073

Manufacturer. Texaco Chemical Company.
Chemical. (G) Substituted bis-alkenylsuccinimide alkylphenol and an aldehyde.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1074

Manufacturer. Texaco Chemical Company.
Chemical. (G) Substituted bis-alkenylsuccinimide alkylphenol and an aldehyde.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1075

Manufacturer. Texaco Chemical Company.
Chemical. (G) Substituted bis-alkenylsuccinimide alkylphenol and an aldehyde.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1076

Manufacturer. Texaco Chemical Company.
Chemical. (G) Substituted bis-alkenylsuccinimide alkylphenol and an aldehyde.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1077

Importer. Confidential.
Chemical. (G) Epoxy resin.
Use/Import. (G) Epoxy compound for coating materials. Import range: Confidential.

P 88–1078

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted benzenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1079

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted benzenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1080

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted benzenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1081

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted benzenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1082

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Tetrasubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 13,725–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1083

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Tetrasubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 13,725–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1084

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Tetrasubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 13,725–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1085

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Tetrasubstituted benzenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 13,725–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1086

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Anthraquinone-reactive dyestuff.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 6,200–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1087

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Anthraquinone-reactive dyestuff.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 6,200–100,000 kg/yr.
Toxicity Data. Mutagencity: Negative

P 88–1088

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Anthraquinone-reactive dyestuff.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 6,200–100,000 kg/yr.
Toxicity Data. Mutagencity: Negative.

P 88–1089

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Anthraquinone-reactive dyestuff.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 6,200–100,000 kg/yr.
Toxicity Data. Mutagencity: Negative.

P 88–1090

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1091

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted naphthalendisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700–100,000 kg/yr.

P 88–1092

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prob. 7,700-100,000 kg/yr.

P 88–1092

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700-100,000 kg/yr.

P 88–1093

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Trisubstituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 7,700-100,000 kg/yr.

P 88–1094

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 5,510-100,000 kg/yr.

P 88–1095

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenesulfonic acid.

Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 5,510-100,000 kg/yr.
Toxicity Data: Mutagenicity: Negative.

P 88–1096

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 5,510–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1097

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenesulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 5,510–100,000 kg/yr.
Toxicity Data. Mutagenicity: Negative.

P 88–1098

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 3,500–100,000 kg/yr.

P 88–1099

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 3,500–100,000 kg/yr.

P 88–1100

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenedisulfonic acid.
Use/Production. (G) Reactive dyestuff for fibers. Prod. range: 3,500–100,000 kg/yr.

P 88–1101

Importer. Confidential.
Chemical. (G) Reaction product between imidazole and phenoxy resin.
Use/Import. (G) Epoxy hardener. Import range: Confidential.

P 88–1102

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Fluoroalkyl aromatic chloramine.
Use/Production. (G) Productive intermediator. Prod. range: Confidential.

P 88–1103

Manufacturer. Texaco Chemical Company.
Chemical. (G) Phosphorodithioic acid, mixed O, O-bis(mixed C3,C8 aliphatic esters, zinc salts).
Use/Production. (S) Oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.5 G/KG species (rabbit). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Strong species (rabbit). Skin irritation: Strong species (rabbit).

P 88–1104

Manufacturer. Texaco Chemical Company.
Chemical. (G) Phosphorodithioic acid, mixed O,O-bis(mixed C3-c8aliphatic esters, zinc salts).
Use/Production. (S) Oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.5 G/KG species (rabbit). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: Strong species (rabbit). Skin irritation: Strong species (rabbit).

P 88–1105

Manufacturer. Texaco Chemical Company.
Chemical. (G) Amine monomer grafted ethylene-propylene copolymer.
Use/Production. (S) Viscosity index improve. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Acute dermal toxicity: LD50 >3 G/KG species (rabbit). Eye irritation: None species (rabbit).

P 88–1106

Importer. Confidential.
Chemical. (G) Fiber-reactive yellow dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1107

Importer. Confidential.
Chemical. (G) Vinyl polymer.
Use/Import. (S) Binder for resin. Import range: Confidential.

P 88–108

Manufacturer. Confidential.
Chemical. (G) Alcohols, C16–12, ethoxylated, reaction product with maleic anhydride.
Use/Production. (G) Plastic additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,600–2,800 MG/KG species (rat). Eye irritation: Strong species (rabbit). Skin irritation: Slight species (rabbit).

P 88–1109

Importer. Confidential.
Chemical. (G) Acrylated polymer.
Use/Import. (G) Acrylated polymer for inks. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 G/KG species (rat). Eye irritation: Slight species (rabbit). Skin irritation: Slight species (rabbit). Mutagenicity: Negative. Skin sensitization: Positive species (guinea pig).

P 88–1110

Manufacturer. Chattem Chemicals.
Chemical. (G) Cobalt aluminum organometallic compound.
Use/Production. (S) Drier in coatings. Prod. range: Confidential.

P 88–1112

Importer. Confidential.
Chemical. (G) Fiber-reactive yellow dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1113

Importer. Confidential.
Chemical. (S) Carboxylated epoxy novolak acrylic acid.
Use/Import. (S) Curable polymer. Import range: Confidential.

P 88–1114

Importer. Cray Valley Products.
Chemical. (G) Carboxylated epoxy novolak acrylic acid.
Use/Import. (S) Curable polymer. Import range: 6,250–31,250 kg/yr.

P 88–1115

Manufacturer. Biotechnica Agriculture, Inc.
Microorganism: (G) Genetically engineered microorganism, Host strain: *Rhizobium meliloti* strain SU47 from the Rothamsted Experiment Station collection; Introduced genes: Transposon Tn5 encoding kanamycin resistance and others from *Klebsiella pneumoniae.*
Use/Production. (G) A small-scale field trial to test the competitive ability of the engineered strain and evaluate nodule occupancy. Production range: $8X10^{13}$ cells per year (0.016 kg/yr).
Test data: A mutant strain of the host strain was used in greenhouse experiments; no detrimental effects were observed on alfalfa, peas, tendergreen beans, soybeans, clover, corn or ryegrass; No nodules formed on peas, tendergreen beans, soybeans or clover.
Exposure: Human: Production and field application, maximum of 6 people. *Environmental:* Persistence and survival

in soil: Initial greenhouse tests indicate only a small reduction in cell number over a 4 week period.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* air and water.

Small-scale field trial: 8X10^{13} cells will be applied in an aqueous suspension to the soil in a single application immediately after planting the alfalfa seeds. The treated area of the field plot is 0.34 acres over a total test site area of 1.5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1116

Manufacturer. BioTechnica Agriculture, Inc.

Microorgranism: (G) Genetically engineered mirooroganism Host strain: *Rhizobium meliloti* strain SU47 from the Rothamsted Experiment Station collection; Introduced genes: "Omega fragment" encoding streptomycin resistance from *Salmonella flexneri* and sequences containing terminators from *Escherichia coli.*

Use/Production. (G) Two small-scale field trials: (1) To test the competitive ability of the engineered strain and evaluate nodule occupancy; (2) to compare different methods of applying Rhizobia to alfalfa seeds. Production range: 8X10^{13} cells per year (0.016 kg/yr).

Test data: A mutant strain of the host strain was used in greenhouse experiments: no detrimental effects were observed on alfalfa, peas, tendergreen beans, soybeans, clover, corn or ryegrass; No nodules formed on peas, tendergreen beans, soybeans or clover.

Exposure: Human: Production and field application, maximum of 6 people.

Environmental: Persistence and survival in soil: Initial greenhouse tests indicate a 99% reduction in cell number after 4 weeks.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* air and water.

Small-scale field trial: 8X10^{13} cells will be applied by aqueous suspension or direct application to the alfalfa seed. The treated area of the field plot is 0.68 acres over a total test site area of less than 5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1117

Microorganism: (G) Genetically engineered microorganism, Host strain: *Rhizobium meliloti* isolated from Chippewa station in Pepin County Wisconsin; Introduced genes: Transposon Tn5 encoding kanamycin resistance and others from *Klebsiella pneumoniae.*

Use/Production. (G) Two small-scale field trials: (1) to test the competitive ability of the engineered strain and evaluate nodule occupancy; (2) to compare different methods of applying Rhizobia to alfalfa seeds. Production range: 8X10^{13} cells per year (0.016 kg/yr).

Exposure: Human: Production and field application, maximum of 6 people.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* air and water.

Small-scale field trial: 8X10^{133} cells will be applied by aqueous suspension or direct application to the alfalfa seed. The treated area of the field plot is 0.68 acres over a total test site area of less than 5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1118

Manufuacturer. BioTechnica Agriculture, Inc.

Microorganism: (G) Genetically engineered microorganism, Host strain: *Rhizobium meliloti* isolated from Chippewa station in Pepin County Wisconsin; Introduced genes: "Omega fragment" encoding streptomycin resistance from *Salmonella flexneri* and sequence containing terminators from *Escherichia coli.*

Use/Production. (G) A small-scale field trial to test the competitive ability of the engineered strain and evaluate nodule occupancy. Production range: 8X10^{13} cells per year (0.016 kg/yr).

Exposure: Human: Production and field application, maximum of 6 people.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* air and water. *Small-scale field trial:* 8X10^{133} cells will be applied in an aqueous suspension to the soil in a single application immediately after planting the alfalfa seeds. The treated area of the field plot is 0.34 acres over a total test site area of 1.5 acres. The field test experiment will be conducted in a 75 acre field at

BioTechnica's Chippewa Agricutural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1119

Manufacturer. BioTechnica Agriculture, Inc.

Microorganism: (G) Genetically engineered microorganism, Host strain: *Rhizobium meliloti* isolated from Powell Butte, Oregon; Introduced genes: "Omega fragment" encoding streptomycin resistance from *Salmonella flexneri* and sequences containing terminators from *Escherichia coli.*

Use/Production. (G) A small-scale field trial to test the competitive ability of the engineered strain and evaluate nodule occupancy. Production range: 4X10^{13} cells per year (0.008 kg/yr).

Exposure: Human: Production and field application, maximum of 6 people.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* air and water.

Small-scale field trial: 4X10 ^{133} cells will be applied in an aqueous suspension to the soil in a single application immediately after planting the alfalfa seeds. The treated area of the field plot is 0.34 acres over a total test site area of 1.5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1120

Manufacturer. BioTechnica Agriculture, Inc.

Microorganism: (G) Genetrically engineered microorganism, Host strain: *Rhizobium meliloti* (strain 445) isolated from soil and California; Introduced genes: "Omega fragment" encoding streptomycin resistance from *Salmonella flexneri* and sequences containing terminators from *Escherichia coli.*

Use/Production. (G) A small-scale field trial to test the competitive ability of the engineered strain and evaluate nodule occupancy. Production range: 4X10 ^{13} cells per year (0.008 kg/yr).

Exposure: Human: Production and field application, maximum of 6 people.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* Air and water. *Small-scale field trial:* 4X10 ^{133} cells will be applied in an aqueous

suspension to the soil in a single application immediately after planting the alfalfa seeds. The treated area of the field plot is 0.34 acres over a total test site area of 1.5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin. *Method of Disposal:* Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

P 88-1121

Manufacturer. BioTechnica Agriculture, Inc.

Microorganism: (G) Genetically engineered microorganism, Host strain: *Rhizobium meliloti* (Nitragin strain 102F65); Introduced genes: "Omega fragment" encoding streptomycin resistance from *Salmonella flexneri* and sequences containing terminators from *Escherichia coli.*

Use/Production. (G) A small-scale field trial to test the competitive ability of the engineered strain and evaluate nodule occupancy. Production range: 4X10 ^{13} cells per year (0.008 kg/yr).

Exposure: Human: Production and field application, maximum of 6 people.

Environmental Release: Production and processing: Culture sterilized before disposal. *Media release:* Air and water.

Small-scale field trial: 4X10 ^{133} cells will be applied in an aqueous suspension to the soil in a single application immediately afer planting the alfalfa seeds. The treated area of the field plot is 0.34 acres over a total test site area of 1.5 acres. The field test experiment will be conducted in a 75 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw, in Pepin County, Wisconsin.

Method of Disposal: Publicly Owned Treatment Works (POTW), soil and possible groundwater release at the field site.

Date: April 21, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-9233 Filed 4-26-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Steering Committee; Meeting

A meeting of the Steering Committee of the Advisory Committee on Advanced Television Service will be held on May 11, 1988, at 2:00 p.m,. in the Commission Meeting Room (Room 856) at 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Approval of minutes of first meeting
2. Progress reports by Subcommittee chairman
3. Discussion of draft interim report
4. Report on funding guidelines
5. Anticipated schedule for future work
6. Other business
7. Date and location of next Steering Committee meeting
8. Adjourment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will by permitted under the direction of the Committee Chairman.

This meeting has been scheduled on less than 15 days prior notices in the **Federal Register** because of the critical importance of committee consideration of funding guidelines, the need to discuss the draft interim report prior to its submission to the parent Advisory Committee, and the inability to schedule this meeting at an earlier date.

Any questions regarding this meeting should be directed to William Hassinger at (202) 632-6460 or David Siddall at (202) 632-7792.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-9390 Filed 4-26-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-709; FHLBB No. 4725]

Hamilton-Reliance Savings Association, Norristown, PA; Final Action Approval of Conversion Application

Date: April 21, 1988.

Notice is hereby given that on April 21, 1988, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, pursuant to Title IV of the National Housing Act, as amended (12 U.S.C. 1724 *et seq.*) approved the application of Hamilton-Reliance Savings Association, Norristown, Pennsylvania ("Hamilton-Reliance"), for permission to convert from the mutual to the stock form of organization in connection with the acquisition of Hamilton-Reliance by Central Pennsylvania Finance Corporation, Shamokin, Pennsylvania ("CPFC"), by merging Hamilton-Reliance with and into CPFC's wholly-owned subsidiary, Central Pennsylvania Savings Association, Shamokin, Pennsylvania ("Central Savings"). Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88-9291 Filed 4-26-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

The Bank of Montreal, Toronto, Canada; Application To Engage in Various Securities Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-

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8251) published at page 12504 of the issue for Friday, April 15, 1988.

The entry for The Bank of Montreal is revised to read as follows:

1. *The Bank of Montreal*, Toronto, Canada; to serve through Nesbitt Thomson Securities, Inc., New York, New York, as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

Comments on this application must be received by May 11, 1988.

Board of Governors of the Federal Reserve System, April 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9160 Filed 4–26–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Law Enforcement at the National Institutes of Health Federal Enclave; Delegation of Authority

Notice is hereby given that pursuant to the authority vested in me by the Acting Administrator, General Services Administration (GSA), on April 4, 1988, which is vested in the Administrator, GSA, by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and the Act of June 1, 1948, as amended (40 U.S.C. 318–318d), I hereby delegate to the Assistant Secretary of Health, with authority to redelegate to the Director, National Institutes of Health, authority to utilize, with their consent, the facilities and services of any State or local law enforcement agency to enforce laws and preserve the peace on the Department's property in Montgomery County, Maryland, known generally as the National Institutes of Health, over which the United States has acquired exclusive jurisdiction under the Act of March 31, 1953, Chapter 158 (1953 Maryland Laws 311).

This authority is subject to the following conditions:

- This authority shall be exercised in accordance with the limitations and requirements of the above-cited Acts.
- This delegation supplements and is in addition to the Delegation of Authority issued to the Secretary of Health, Education, and Welfare [Federal Property Management Regulations, Temporary Regulation D–8), dated January 9, 1968 (33 FR 604).
- The authority granted herein shall be exercised in accordance with the requirements and limitations of the Federal Property and Administrative Services Act and other applicable statutes and regulations, including the General Services Administration Acquisition Regulation, as amended, as well as the Competition in Contracting Act.

This delegation is effective immediately. In addition, I hereby ratify and affirm any actions taken by you, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Date: April 20, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–9255 Filed 4–26–88; 8:45 am]

BILLING CODE 4140–01–M

Centers for Disease Control

Cooperative Agreement With Massachusetts Department of Public Health/Massachusetts Health Research Institute; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Massachusetts Department of Public Health/Massachusetts Health Research Institute, Inc. (MDPH/MHRI) to study the effects of environmental exposures on reproductive outcomes in Woburn, Massachusetts. Assistance will be provided only to MDPH/MHRI in support of this project. No other applications are solicited or will be accepted.

Authority

This program is authorized under section 301 of the Public Health Service Act. The Catalog of Federal Domestic Assistance number is 13.283.

Background

In 1979 an 800 acre hazardous waste site was discovered in Woburn, Massachusetts. Environmental sampling showed high levels of arsenic lead, and other heavy metals on the site. In addition, high levels of several organic solvents were found in two nearby drinking water wells and the wells were closed.

Because of concern of Woburn residents about childhood leukemia cases in the area, MDPH and the Centers for Disease Control (CDC) investigated the problem. The incidence of childhood leukemia in East Woburn was found to be significantly elevated.

In 1984, Harvard University researchers reported a positive association between the availability of water from the contaminated wells and leukemia and certain adverse reproductive outcomes. They recommended that a health surveillance system to monitor the rates of reproductive and childhood disorders in the Woburn community be implemented.

Further study by MDPH in 1984 revealed that the incidence of childhood leukemia had remained elevated since the closure of the wells and the excess was no longer confined to East Woburn.

Through a cooperative agreement with CDC, MDPH convened a panel of outside experts in February 1985 to review available health and environmental information on Woburn. Following its deliberations, the advisory panel made recommendations that included:

- Surveillance for reproductive outcomes; and
- Further studies of the environment.

In concurrence with these recommendations this cooperative agreement will conduct epidemiologic and environmental studies with the following goals:

- To investigate the rates of selected reproductive outcomes occurring between 1969 and 1987, both within Woburn and in comparison communities;
- To compare rates of selected adverse reproductive outcomes in Woburn with rates in other Massachusetts communities, in births occurring after January 1, 1988; and
- To collect additional environmental data that will be linked to the adverse reproductive outcomes being studied.

These investigations address basic issues of utmost importance to the community. That is, the investigations should determine whether Woburn residents exposed to the contaminated water experienced elevated rates of selected adverse reproductive outcomes and whether Woburn residents currently are experiencing rates of adverse reproductive outcomes that differ from comparable communities.

Reasons for Proposing the State of Massachusetts Department of Public Health/Massachusetts Health Research Institute as the Recipient of This Cooperative Agreement

Recipient activities will be carried out by the Massachusetts Department of Public Health and the Massachusetts Health Research Institute, Inc.

MDPH will be responsible for the overall scientific, programmatic and technical direction of the investigations. MHRI will be responsible for the administrative and fiscal tasks associated with the project.

This cooperative agreement will be awarded to MDPH/MHRI for the following reasons:

A. Massachusetts Department of Public Health has the ultimate responsibility for protecting the public health in the State of Massachusetts. Therefore, it has a vested interest in assessing the impact of the environment on the health of children in Woburn. The MDPH is interested in participating and has approached CDC about assistance and support to undertake this project.

B. The Department of Public Health has unique access to vital records and the population statistics data which are important components of the proposed project.

C. The Department of Public Health has ongoing working relationships with the Woburn community, numerous local health care providers, an extensive medical community, and schools of public health who will most likely be involved with the project.

D. The Department of Public Health has qualified personnel experienced in environmental health and in conducting epidemiologic investigations.

Availability of Funds

Approximately $590,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the agreement will begin on or about August 7, 1988, and depending upon fund availability, will be funded for the second year of a 3-year project period. Funding for the third year is dependent on findings from the first 2 years of the project.

Other Submissions and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Karen Reeves, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road NE., Atlanta, GA 30305, telephone (404) 842–6575. Technical assistance may be obtained from Lowell Sever, Ph.D., Project Officer, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, MS F–37, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 488–4706.

Dated: April 21, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–9237 Filed 4–26–88; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Administrator, Agency for Toxic Substances and Disease Registry; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of April 7, 1988 (53 FR 12992) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Agency for Toxic Substances and Disease Registry, with authority to redelegate, the following authorities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et. seq.)*, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as amended hereafter, insofar as they pertain to the functions assigned to the Agency for Toxic Substances and Disease Registry:

Sections 104(b)(1) [first sentence], 104(c), 104(d), 104(e), [with the exception of 104(e)(7)(C)], 104(f), 104(g), 104(h), 104(i)(11), 104(j), 113(k) [with the exception of 113(k)(2)]. The exercise of authority under section 104(h) shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

In addition, I hereby ratify any actions taken by the Administrator, Agency for Toxic Substances and Disease Registry, and subordinates which involved the exercise of the authorities delegated herein prior to the effective date of delegation.

This delegation to the Administrator, Agency for Toxic Substances and Disease Registry, became effective on April 19, 1988.

Date: April 19, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–9224 Filed 4–26–88; 8:45 am]

BILLING CODE 4160–70–M

National Institutes of Health; Law Enforcement at the National Institutes of Health, Bethesda, MD; Delegation of Authority

Notice is hereby given that pursuant to the delegation of authority from the Acting Administrator, General Services Administration of April 4, 1988 and the delegation of authority from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Office of Management, for redelegation to the Director, National Institutes of Health, the authority to utilize, with their consent, the facilities and services of any State or local law enforcement agency to enforce laws and preserve the peace on the Department's property in Montgomery County, Maryland, known generally as the National Institutes of Health, over which the United States has acquired exclusive jurisdiction under the Act of March 31, 1953, Chapter 158 (1953 Maryland Laws 311).

This authority may be redelegated and shall be exercised in accordance with the limitations and requirements of the above-cited Act, as well as other applicable statutes and regulations, including the Federal Property and Administrative Services Act, as amended, the General Services Administration Acquisition Regulation, as amended, and the Competition in Contracting Act.

This delegation supplements and is in addition to the delegation of authority issued to the Secretary of Health, Education, and Welfare (Federal Property Management Regulations, Temporary Regulation D–8), dated January 9, 1968, (33 FR 604).

The delegation of authority to the Director, National Institutes of Health from the Assistant Secretary for Administration, dated June 13, 1966, to assist in controlling violations of law at the National Institutes of Health, is unaffected by this delegation.

This delegation of authority became effective on April 20, 1988.

April 20, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–9256 Filed 4–26–88; 8:45 am]

BILLING CODE 4140–01–M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Services, HHS.

ACTION: Notification of a New System of Records.

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SUMMARY: In accordance with the requirements of the Pricacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new system of records, 09–30–0050, "Clinical Research: Patient Medical Records, HHS/ADAMHA/NIMH." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposal routine uses on or before May 27, 1988. PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on April 19, 1988. The system of records will be effective June 27, 1988, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Alcohol, Drug Abuse, and Mental Health Administration, Room 6–102, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments received will be available for inspection at this same address from 8:30 a.m., to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clinical Director, William A. White Research Program, Division of Intramural Research Programs, National Institute of Mental Health, Saint Elizabeths Hospital, Room 565, William A. White Building, 2700 Martin Luther King, Jr., Avenue SE., Washington, DC 20032, (202) 373–6200.

The number listed above is not toll free.

SUPPLEMENTARY INFORMATION: The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) proposes to establish a new system of records: 09–30–0051, "Clinical Records: Patient Medical Records, HHS/ADAMHA/NIMH." Records in this system were formerly covered nder a system of records for Saint Elizabeths Hospital, 09–30–0028, Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH. In the transfer of the Hospital to the District of Columbia, the clinical staff who provided support to the William A. White Research Program, Division of Intramural Research Programs, National Institute of Mental Health, were transferred from the Hospital to the Division of Intramural Research Programs, and this system notice transfers the records of that program. These records provide a continuous history of the treatment afforded individual patients in the Wiliam A. White Research Program, and they provide a data base for the clinical research conducted by the program. Records are retrievable by unit number and patient name, and are stored in file folders and/or microfiche, and on computer tapes. Files are stored in locked file cabinets or locked rooms. Access to records is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager. Computerized records will be maintained in accordance with Party 6, "ADP System Security," in the HHS Information Resource Management Manual. The routine uses proposed for this system are compatible with the stated purposes of the system. A routine use permits disclosure to a congressional ofice to allow subject individuals to obtain assistance from their representatives in Congress should they so desire. A second routine use permits social work staff to give pertinent information to community agencies to assist patients or their families. A third permits disclosure to referring physicians to provide for continuing patient care after discharge. A fourth permits disclosure of information regarding diagnostic problems or that having unusual scientific value to appropriate medical research organizations or to consultants in connection with treatment of the patient or in order to accomplish the research purposes of this system. A fifth routine use proposes disclosure to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections. A sixth proposes disclosure to report certain infectious diseases, as required by law. A seventh permits disclosure to tumor registries for maintenance of health statistics. An eighth routine use permits disclosure to contractors to accomplish transcribing, updating, copying, or otherwise refining records. Any contractor receiving such records will be required to comply with the Privacy Act. A ninth routine use proposes disclosing information to the Department of Justice in the event of litigation.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: April 20, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–30–0050

SYSTEM NAME:

Clinical Research: Patient Medical Records, HHS/ADAMHA-NIMH

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Saint Elizabeths Hospital, Building No. 93, William A. White Building, Room 144, 2700 Martin Luther King, Jr., Avenue SE., Washington, D.C. 20032, and at private organizations under contract. A list of specific sites is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered clinical research patients and some individuals not registered as patients but seen for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient and outpatient medical/clinical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act, Section 301 (42 U.S.C. 241), "Research and Investigation," and Section 321 (42 U.S.C. 248), "Hospital."

PURPOSES:

(1) To provide a continuous history of the treatment afforded individual patients in the National Institute of Mental Health Clinical Research Program at the William A. White Building.

(2) To provide a data base for the clinical research conducted at the William A. White Research program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. Social work staff may give pertinent information to community agencies to assist patients or their families.

3. Referring physicians receive medical information for continuing patient care after discharge.

4. Information regarding diagnostic problems, or having unusual scientific value may be disclosed to appropriate medical research organizations or consultants in connection with treatment of patient or in order to accomplish the research purposes of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; x-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to maintain Privacy Act safeguards with respect to these records.

5. Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to ensure that the quality of the William A. White Clinical Research Program medical record-keeping meets established standards.

6. Certain infectious diseases are reported to government jurisdictions as required by law.

7. Medical information may be disclosed to tumor registries for maintenance of health statistics.

8. The Department contemplates that it may contract with a private firm for transcribing, updating, copying, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental of physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and/or on microfiche, and on computer tapes. Files are stored in locked file cabinets or locked rooms.

RETRIEVABILITY:

The records are retrieved by unit number and patient name.

SAFEGUARDS:

1. Authorized Users: Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals officially participating in patient care and to contractors or to NIMH researchers specifically authorized by the system manager.

2. Physical Safeguards: All record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are retained for 5 years after last discharge or upon death of a patient and then transferred to the Washington National Records Center, where they are retained until 30 years after discharge or death.

SYSTEM MANAGER(S) AND ADDRESS:

Clinical Director, William A. White Research Program, Division of Intramural Research Programs, National Institute of Mental Health, Saint Elizabeths Hospital, Room 565, William A. White Building, 2700 Martin Luther King, Jr., Avenue SE., Washington, DC 20032.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager at the address above. An individual or a legally authorized representative may learn if a record exists about that individual upon written request with notarized signature. The request should include: (a) Full name or any alias used, (b) social security number, and (c) approximate time of participation in the hospital/project.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a family physician or health professional (other than a family member) to whom the record will be released. The representative must verify relationship to the individual as well as his/her own identity.

A parent or guardian who requests notification of, or access to, a child's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reasons for correcting the information, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–9226 Filed 4–26–88; 8:45 am]

BILLING CODE 4160–30–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA 680 08 4132 02]

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the

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provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill sites, or Tunnel Sites.

Abstract: Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) requires that all locations of mining claims, mill sites, and tunnel sites under the Mining Law of 1872, as amended, be recorded with the Bureau of Land Management within 90 days of their location. The statute also requires that each calendar year after the mining claims are located the, owner shall file with the Bureau either an affidavit of annual assessment work or a notice of intent to hold by December 30. Failure to record the mining claim or site or failure to submit an annual filing for each mining claim causes the mining claims or site to be declared statutorily abandoned, and therefore void.

Bureau Form Number: None; a copy of the original certificate or notice of location and/or annual proof of assessment work or notice of intent to hold.

Frequency: Respondent records each mining claim or site only once in the proper Bureau office. For each mining claim or site recorded, the respondent must file each year a copy of the affidavit of assessment work or a notice of intent to hold in order to keep the mining claim or site active.

Description of Respondent: Respondents may range from individuals to multi-national corporations.

Annual Responses: 897,638.

Annual Burden Hours: 74,773.

Bureau Clearance Officer: Richard Iovaine, 202–653–8833.

Date: February 3, 1988.

Robert H. Lawton,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 88–9183 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–84–M

[WY–930–08–4220–10; W–93054]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 2,088.52 acres of public land in Carbon County, for protection of the Pathfinder Dam spillway near Casper, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by July 26, 1988.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, 307–772–2072.

On March 30, 1988, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following public land described that lies at or below the elevation of 5,850.1 feet, from settlement, sale, location, or entry under the public land laws, including the general mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 27 N., R. 84 W.,
Sec. 7, lots 2, 3, 4, N½NE¼, SW¼NE¼, NW¼SE¼NE¼, E½W½, W½SE¼;
Sec. 18, lots 1–4, W½NE¼, SE¼NE¼, E½W½, W½E½SE¼, W½SE¼;
Sec. 19, lot 1, E½, E½W½;
Sec. 20, SW¼NW¼, SW¼NE¼SW¼, W½SW¼, SE¼SW¼.
T. 27 N., R. 85 W.,
Sec. 12, E½E½SE¼;
Sec. 13, SW¼NE¼NE¼, W½NE¼, NW¼SE¼NE¼, S½SE¼NE¼, SE¼NE¼SW¼, SE¼SW¼, SE¼.

The area described contains 2,088.52 acres in Carbon County.

The purpose of the proposed withdrawal is to protect the Pathfinder Dam spillway and to protect the capital investment made at the site by the Bureau of Reclamation.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those compatible with project use, as determined by the Bureau of Reclamation, and the development of oil and gas reserves without surface occupancy.

Marlyn V. Jones,

Associate State Director.

April 16, 1988.

[FR Doc. 88–9185 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–22–M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). No changes have been requested on the current approved collection. Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer,

Washington, DC 20503, telephone (202) 395–7340.

Title: Water Resources Research Program and Water Resources Technology Development Program, 30 CFR Part 402.

Abstract: Respondents submit proposals containing plans for water-resources research or technology-development projects. This information will be used as the basis for selection and award of projects meeting the program objectives. Quarterly and final reports are required on each selected project to assess scientific performance.

Bureau Form Number: None.

Frequency: Annual proposals, quarterly and final reports.

Description of Respondents: Educational institutions, private foundations, private firms, individuals, and agencies of local or State governments.

Total Responses: 350.

Total Burden Hours: 7,400.

Bureau Clearance Officer: Geraldine A. Wilson, telephone (703) 648–7309.

Date April 5, 1988.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 88–9182 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Availability of a Finding of No Significant Impact; Big Cypress National Preserve, FL

AGENCY: Big Cypress National Preserve, Florida, National Park Service, Interior.

ACTION: Notice of Availability of a Finding of No Significant Impact (FONSI).

SUMMARY: Notice is hereby given pursuant to § 9.52(b) of Title 36, Part 9, Subpart B of the Code of Federal Regulations of the availability of the Finding of No Significant Impact (FONSI) and Statement of Findings for Protection of Wetlands (E.O. 11990) and Floodplain Management (E.O. 11988) for an environmental assessment of an oil and gas Plan of Operations submitted by Shell Western E & P, Inc., for the purpose of conducting geophysical seismic exploration surveys in the Big Cypress National Preserve.

DATE: Operator may begin operations on April 8, 1988.

ADDRESSES: Copies of the FONSI and statement of findings are available for review at:

Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida 33943, Telephone (813) 695–2000.

Office of Science and Natural Resources, Southwest Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, Telephone (404) 331–4916.

Miami-Dade Public Library, 101 West Flagler, Miami, Florida 33130.

Collier County Public Library, 650 Central Avenue, Naples, Florida 33940.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve.

Robert M. Baker,

Regional Director, Southeast Region.

Date: April 11, 1988.

[FR Doc. 88–9245 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–70–M

Availability of Draft Environmental Impact Statement; General Management Plan, Death Valley National Monument

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Death Valley National Monument, Inyo and San Bernardino Counties, California and Nye County, Nevada.

The draft Plan proposes to expand visitor opportunities to explore and understand the diverse features of the monument and would provide some additional facilities. Major emphasis is placed on improved information/orientation/interpretation services and improved reliability of roads to the monument's diverse natural and cultural features. Alternatives addressed include no action and minimum actions needed to provide a quality visitor experience and bring monument facilities up to National Park Service Standards.

DATES: Written comments on the draft General Management Plan and DEIS will be accepted until July 1, 1988. Also, during the comment period, public meetings will be held in the following locations:

May 7, 1988: Visitor Center, Death Valley National Monument, 7:30 PM

May 9, 1988: Statham Hall, 138 N. Jackson Lane, Lone Pine, California, 7:00 PM

May 10, 1988: Pasadena Convention Center, 300 East Green Street, Pasadena, California, 7:00 PM

May 11, 1988: University of Nevada, Las Vegas, White Hall, Cottage Way, Las Vegas, Nevada, 7:00 PM.

ADDRESSES: Comments on the draft Plan and DEIS or requests for information should be directed to: Superintendent, Death Valley National Monument, Death Valley, California 92328, telephone number (619) 786–2331.

Copies of the draft Plan and DEIS are available for inspection at the monument headquarters in Death Valley and in libraries located in the monument vicinity. Copies are also available at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063, 450 Golden Gate Avenue, Room 14033, San Francisco, California 94102.

Date: April 21, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 88–9246 Filed 4–26–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations, Arkansas et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 16, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 12, 1988.

Amy Schlagel,

Acting Chief of Registration, National Register.

ARKANSAS

Sebastian County

Fort Smith, *Shaw, Tillman, House,* 500 S. Nineteenth St.

CALIFORNIA

Contra Costa County

Port Costa, *Port Costa School,* Plaza El Hambre

San Joaquin County

Stockton, *Cole's Five Cypress Farm,* 11221 E. Eight Mile Rd.

CONNECTICUT

Fairfield County

Greenwich, *Greenwich Municipal Center Historic District,* 101 Field Point Rd., 290, 299, 310 Greewich Ave.

Hartford County

Southington, *Meriden Avenue—Oakland Road Historic District*, Roughly Oakland Rd. between Meriden and Berlin Aves., and Meriden Ave. between Oakland Rd. and Delhunty Dr.

New Haven County

North Haven, *Pines Bridge Historic District*, 3–17 Bishop St., 70–99 Old Broadway, 2–10 Philp Pl., 9–56 State St.

GEORGIA

Richmond County

Augusta, *Engine Company Number One*, 452 Ellis St.

Rockdale County

Conyers, *Conyers Commercial Historic District*, Roughly bounded by N. Main St., Warehouse St., GA RR, and Center St.

MASSACHUSETTS

Middlesex County (also in Worcester County)

Cedar Swamp Archeological District

MICHIGAN

Ingham County

Lansing, *Franklin Avenue Presbyterian Church*, 108 W. Grand River Ave.

MINNESOTA

Beltrami County

Bemidji, *Park, David, House*, 1501 Birchmont Dr.

NEW YORK

Allegany County

Cuba, *South Street Historic District*, 17, 19–89 South St.

SOUTH DAKOTA

Brown County

Brown's Post (19th Century South Dakota Trading Posts MPS)
Campbell, Colin, Post (19th Century South Dakota Trading Posts MPS)
Robar Trading Post (19th Century South Dakota Trading Posts MPS)
Aberdeen, *Aberdeen Commercial Historic District*, 1—523 S. Main St.

Butte County

Belle Fourche, *Harris, Fred S., House*, 826 State St.

Deuel County

Gary, *South Dakota School for the Blind*, Coteau and Third Sts.

Lake County

Madison, *Daly, Matthew W., House*, 102 N.E. Ninth St.

Lawrence County

Spearfish, *Cook, Fayette, House*, 840 Eighth Ave.

Spearfish, *Dickey, Walter, House*, 815 State St.
Spearfish, *Keets, Henry, House*, 344 E. Illinois
Spearfish, *Kroll Meat Market and Slaughterhouse*, Spearfish City Park
Spearfish, *Mail Building, The*, 731 Main St.
Spearfish, *Spearfish Filling Station*, 706 Main St.
Spearfish, *Wolzmuth, John, House*, 814 Eighth Ave.

Minnehaha County

Sioux Falls, *Huseboe, Andrew O., House*, 223 S. Prairie Ave.

[FR Doc. 88–9161 Filed 4–26–88; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

Transfer of the Operation and Maintenance of Colorado-Big Thompson Project Facilities to the Northern Colorado Water Conservancy District

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of completion of transfer of operation and maintenance of East Slope Project Facilities.

SUMMARY: On October 30, 1987, the Bureau of Reclamation (Bureau) published a Notice of Intent in Volume 52, No. 210, page 41783, to negotiate the transfer of the operation and maintenance of all Colorado-Big Thompson (C–BT) East Slope project facilities to the Northern Colorado Water Conservancy District (District). It has been determined that operation and maintenance of certain C–BT project facilities, including the power facilities, will remain with the Bureau and will not be transferred to the District. In addition to the joint-use facilities transferred in 1986 and 1987, the Bureau transferred the Charles Hansen Feeder Canal to the District effective April 1, 1988. This will complete the Bureau's transfer to operation and maintenance of C–BT project facilities to the District.

FOR FURTHER INFORMATION CONTACT: Requests for information concerning this transfer should be addressed to Mr. Raymond Willms, Project Manager, Bureau of Reclamation, Eastern Colorado Projects Office, P.O. Box 449, Loveland, Colorado 80539, telephone (303) 667–4410.

Dated: April 21, 1988.

C. Dale Duvall,

Commissioner.

[FR Doc. 88–9243 Filed 4–26–88; 8:45 am]
BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should by made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC, 20503, telephone (202) 395–7340.

Title: 30 CFR Part 772 Requirements for Coal Exploration.

Abstract: Section 512 of Pub. L. 95–87 requires persons seeking to conduct coal exploration under either a notice of intent or an exploration permit to provide adequate information of the proposed exploration operation. This information is used by the regulatory authority to determine compliance with all applicable requirements, including coal exploration performance standards and reclamation requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Exploration Operators.

Annual Responses: 3,475.

Annual Burden Hours: 40,851.

Bureau Clearance Officer: David Collegemen (202) 343–5447.

Date: April 5, 1988.

Donald Hinderliter,

Assistant Director, Budget and Administration.

[FR Doc. 88–9186 Filed 4–26–88; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories and Processes for Making Such Memories; Commission Decision Not To Review an Initial Determination Amending Complaint and Notice of Investigation To Add a Respondent

AGENCY: International Trade Commission.

ACTION: Amendment of complaint and notice of investigation to add a respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 58) issued by the presiding administrative law judge amending the complaint and notice of investigation in the above-captioned investigation to add Microchip Technology, Inc. as a respondent.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1097.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On March 7, 1988, complainant filed a motion (Motion No. 276–65) to amend the complaint and notice of investigation to add Microchip Technology, Inc. as an additional respondent. The presiding administrative law judge issued an ID granting the motion on March 25, 1988. No petitions for review of the ID nor agency comments were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: April 19, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 9276 Filed 4–26–88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337–TA–280]

Certain High Geometric Surface Area Catalysts and Components Thereof; Commission Determination Not To Review Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of the investigation based on settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an ID terminating the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1108.

SUPPLEMENTARY INFORMATION: On March 31, 1988, the presiding administrative law judge issued an ID (Order No. 10) granting the joint motion of complainant United Catalysts Inc. and respondents Haldor Topsoe, A/S and Haldor Topsoe, Inc. terminating the investigation on the basis of a settlement agreement. The Commission's investigative attorney supported the motion. No petitions for review of the ID, Government agency comments, or public comments regarding the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: April 20, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–9277 Filed 4–26–88; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Notice No. MC–F–18917]

Carolina Trailways; Pooling; Greyhound Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed December 15, 1987, Carolina Trailways (Trailways) and Greyhound Lines, Inc. (Greyhound), jointly request approval of a new pooling arrangement under 49 U.S.C. 11342(a) for pooling their services and revenues in the North Carolina-Virginia area.

Under the proposed pooling arrangement, Trailways and Greyhound will combine a portion of their regularly scheduled passenger bus operations on some intercity routes in Virginia and North Carolina, for example, between Richmond, VA, and Fayetteville, NC, and between Raleigh and Winston-Salem, NC. All regularly scheduled operations conducted by each carrier over the pooled routes will be operated as part of a joint operation, and the revenues from the joint operation will be divided between the carriers according to percentages that will be furnished to the Commission when they have been agreed upon. The locations and descriptions of the pooled routes will also be furnished to the Commission when they have been agreed upon. Both carriers have been able to operate only partially loaded buses on these routes. By combining some of their operations, the carriers seek to increase the number of passengers per bus and spread their schedules more evenly through the day. If other intercity bus carriers operating between the pooled points wish to be included in the pooling agreement, Trailways and Greyhound are prepared to negotiate their participation.

Before the Commission can determine whether the proposed pooling agreement will be in the interest of better service to the public or of economy of operation and whether the pooling agreement will unduly restrain competition, Trailways and Greyhound must submit additional information describing specifically the locations of the pooled routes and the formulas or percentages to be followed in the division of revenues from the proposed joint operation. The additional information should also include:

(1) Maps, schedules, and descriptions of the service provided by both parties in the region served by Trailways; (2) maps, schedules, and descriptions

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showing competing and connecting service provided by other carriers in this service region, including buses, airlines, and Amtrak; (3) the terminals on the pooled routes, origins and destinations of through service of which these routes are a part, and competing and connecting service by other carriers over these route segments and through routes; (4) information concerning the competitive process for intercity passenger travel for the past 5 years within the area defined by the pooled and through routes described in (3) above, including: (a) Regular fare levels, special competitive or promotional fares, the dates between which these fares were in effect, special conditions of these fares, and which carrier(s) instituted these fare changes, between principal points on the pooled and through routes, by Greyhound, Trailways, and competing and connecting bus, air, and rail carriers; and (b) any entrance into or exit from service on these routes (pooled and through) by competing and connecting carriers, and approximate dates thereof (Where possible, the above information should be shown in parallel, chronologically, as in a "time line"); (5) market shares of all carriers and modes, including to the extent possible, private automobile, on the pooled and through routes; (6) similar information as in (4) and (5) above for major corridors in the region not projected to be part of the pooling agreement; (7) for each scheduled run of Greyhound, Trailways, and (to the extent possible) competing and connecting carriers on the routes described in (4) and (6) above, the average load factors (passengers and passenger miles divided by available seats or seat miles) for each of the past 5 years (or, if possible, for each period a given fare level was in effect); (8) standard financial, operating, and employment data for Greyhound and Trailways for the past 5 years.

DATES: The additional information required from Trailways and Greyhound shall be filed with us in the form of verified statements on or before May 27, 1988. Reply verified statements will also be authorized, and are due on or before June 16, 1988. Petitioners' rebuttal statements are due on or before July 1, 1988.

ADDRESSES: Send verified statements to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20403

and

(2) Petitioners' representatives: George W. Hanthorn, Esq., Greyhound Lines, Inc., 901 Main Street, 2500 InterFirst Plaza, Dallas, TX 75202;
Fritz R. Kahn, Esq., 1660 L Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard Johnson (202) 275–7939 or Richard Felder (202) 275–7691. [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Please refer to the pooling application, which may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Interstate Commerce Commission, Room 1221, during usual business hours (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: April 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9229 Filed 4-26-88; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. MC-F-18939]

Southeastern Trailways, Inc., and De Luxe Trailways, Inc.; Pooling; Greyhound Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed December 24, 1987, Southeastern Trailways, Inc., and De Luxe Trailways, Inc. (Trailways), and Greyhound Lines, Inc. (Greyhound), jointly request approval of a new pooling arrangement under 49 U.S.C. 11342(a) for pooling their services and revenues, generally, in the States of Michigan, Ohio, Indiana, Illinois, Missouri, Kentucky, and Tennessee.

Under the proposed pooling arrangement, Trailways and Greyhound will combine a portion of their regularly scheduled passenger bus operations on some intercity routes in the seven above-described States, as, for example, between Chicago, IL, and Knoxville, TN, and between Detroit, MI, and Louisville, KY. All regularly scheduled operations conducted by each carrier over the pooled routes will be operated as part of a joint operation, and the revenues from the joint operation will be divided between the carriers according to percentages that will be furnished to the Commission when they have been agreed upon. The locations and descriptions of the pooled routes will also be furnished to the Commission when they have been agreed upon. Both carriers have been able to operate only partially loaded buses on these routes. By combining some of their operations, the carriers seek to increase the number of passengers per bus and spread their schedules more evenly through the day. If other intercity passenger bus carriers operating between the pooled points wish to be included in the pooling agreement, Trailways and Greyhound are prepared to negotiate their participation.

Before the Commission can determine whether the proposed pooling agreement will be in the interest of better service to the public or of economy of operation and whether the pooling agreement will unduly restrain competition, Trailways and Greyhound must submit additional information describing specifically the locations of the pooled routes and the formulas or percentages to be followed in the division of revenues from the proposed joint operation. The additional information should also include: (1) Maps, schedules, and descriptions of the service provided by both parties in the region served by Trailways; (2) maps, schedules, and descriptions showing competing and connecting service provided by other carriers in this service region, including buses, airlines and Amtrak; (3) terminals on the pooled routes, origins and destinations of through-service of which these routes are a part, and competing and connecting service by other carriers over these route segments and through routes; (4) information concerning the competitive process for intercity passenger travel for the past 5 years within the area defined by the pooled and through routes described in (3) above, including: (a) Regular fare levels, special competitive or promotional fares, the dates between which these fares were in effect, special conditions of these fares, and which carrier(s) instituted these fare changes, between principal points on the pooled and through routes, by Greyhound, Trailways, and competing and connecting bus, air, and rail carriers; and (b) any entrance into or exit from service on these routes (pooled and through) by competing and connecting carriers, and approximate dates thereof (where possible, the above information should be shown in parallel, chronologically, as in a "time line"); (5) market shares of all carriers and modes, including to the extent possible, private automobiles, on the pooled and through

routes; (6) similar information as in (4) and (5) above for major corridors in the region not projected to be part of the pooling agreement; (7) for each scheduled run of Greyhound, Trailways, and (to the extent possible) competing and connecting carriers on the routes described in (4) and (6) above, the average load factors (passengers or passenger miles divided by available seats or seat miles) for each of the past 5 years (or, if possible, for each period a given fare level was in effect); (8) standard financial, operating, and employment data for Greyhound and Trailways for the past 5 years.

DATES: The additional information required for Trailways and Greyhound shall be filed with us in the form of verified statements on or before May 27, 1988. Reply verified statements will also be authorized, and are due on or before June 16, 1988. Petitioners' rebuttal statements are due on or before July 1, 1988.

ADDRESSES: Send verified statements to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representatives: George W. Hanthorn, Esq., Greyhound Lines, Inc., 901 Main Street, 2500 InterFirst Plaza, Dallas, TX 75202;
Fritz R. Kahn, Esq., 1660 L Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:
Richard Johnson (202) 275–7939
Richard Felder (202) 275–7691 [TDD for hearing impaired (202) 275–1721)].

SUPPLEMENTARY INFORMATION: Please refer to the pooling application, which may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Interstate Commerce Commission, Room 1221, during usual business hours (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamics Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9232 Filed 4-26-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 73)]

Missouri Pacific Railroad Co.; Abandonment in LeFlore and Haskell Counties, OK; Notice of Findings

The Commission has issued a Decision and Certificate of Interim Train Use authorizing Missouri Pacific Railroad Company to discontinue (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached), its 29.7-mile rail line between milepost 20.8 (near Panama), to milepost 50.5 (near Kerr McGee) in LeFlore and Haskell Counties, OK. The Decision and Certificate will become effective 30 days after publication in the **Federal Register** unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: April 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9230 Filed 4-26-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-19]

James Beale, M.D., Revocation of Registration

On January 30, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to James Beale, M.D. (Respondent) of 17000 West Eight Mile Road, Suite LL 90, Southfield, Michigan 48075 proposing to revoke his DEA Certificate of Registration AB8737009 and to deny any pending applications for registration as a practitioner under 21 U.S.C 823(f). The Order to Show Cause alleged that the continued registration of Respondent is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a three day hearing was held before Judge Bittner in Washington, DC commencing on September 29, 1987. On January 22, 1988, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on February 22, 1988, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a physician licensed to practice medicine in the State of Michigan. In 1980 or 1981, Respondent became involved with a Mr. Arthur Anderson, who operated medical clinics and whose wife was a physician and medical school professor. Respondent and Mr. Anderson discussed the feasibility of starting an inner city clinic. Mr. Anderson at some point established Central Medical Evaluation Clinic at 8782 Grand River Avenue in Detroit. Later the clinic moved to 8660 Grand River Avenue and Respondent worked at the clinic in the new location. At the time of the events in issue, the clinic was not yet fully operational, but some patients were seen there.

In March 1984, an employee of Great Lakes Wholesale Drugs, Inc. (Great Lakes), a Detroit area drug distributor, contacted DEA concerning a suspicious order for Schedule II controlled substances which Great Lakes had received on a DEA official order form issued to Respondent. The order form was pre-printed with Respondent's name and DEA number and the Central Medical Evaluation Clinic's address. The caller was advised to contact DEA if further orders were received from the Respondent. On or about March 29, 1984, an employee of Great Lakes notified DEA that the distributor had received another suspicious order for Schedule II controlled substances from Respondent at the Central Medical Evaluation Clinic. Pursuant to DEA's

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instructions, Great Lakes filled the order and on March 30, 1984, the drugs were picked up at United Parcel Service by Mr. Andersen. DEA Agents observed Mr. Anderson take the drugs to a non-registered location. DEA Agents and Investigators subsequently executed search warrants at both the non-registered location and Central Medical Evaluation Clinic which was still not fully completed. During the course of the two searches, DEA agents and investigators discovered approximately 61,000 dosage units of various controlled substances.

On April 2, 1984, during an interview with DEA Investigators and also during a criminal trial of two individuals involved with Central Medical Evaluation Clinic, Respondent admitted that he pre-signed blank prescriptions for the clinic's physician's assistant to use and pre-signed blank DEA official order forms at Mr. Anderson's request. Respondent stated that he was told that the pharmacy which was to be installed at the clinic needed to stockpile drugs and that it was necessary for him to sign the order forms. A DEA Investigator later calculated that between June 30, 1983, and April 23, 1984, 127,100 dosage units of controlled substances, plus eight gallons of Ambenyl, a Schedule V controlled substance, were ordered using Respondent's DEA order forms and his DEA registration number.

It is a violation of 21 CFR 1305.06(a) to pre-sign DEA official order forms. By pre-signing DEA official order forms, Respondent enabled the clinic to order large quantities of controlled substances for which the clinic could not ultimately account.

It is a violation of 21 CFR 1306.05(a) to pre-sign prescriptions for controlled substances. Respondent pre-signed prescriptions on a regular basis for his physician's assistant to use. Respondent stated that he pre-signed seven to ten prescriptions at a time and would later check the patients' charts to see what medications were listed on them. It is clear, however, that Respondent had no way of knowing what, in fact, the physician's assistant actually prescribed since he never saw the prescription forms after the medications were filled in. Not only was it inappropriate for Respondent to pre-sign prescriptions because it is a violation of Federal regulations and because he had no control over what was being prescribed using his pre-signed prescriptions, but also because in Michigan there is no conceivable reason for a physician to pre-sign prescriptions for physician's assistants. In Michigan, a physician's assistant may write prescriptions for non-controlled substances over his own signature, but must indicate the name of the supervising physician on the prescription. However, physician's assistants are not permitted to write prescriptions for controlled substances under any circumstances.

Respondent is currently in private practice. The chief of staff at a hospital where Respondent practices testified at the hearing that Respondent is regarded as one of the best orthopedic surgeons and medical practitioners ever to serve on the staff.

This does not, however, negate the fact that Respondent abused his privilege to handle controlled substances in the past and has done nothing since to familiarize himself regarding the proper procedures and safeguards which must be employed when handling controlled substances. Respondent admitted at the hearing, that after he was advised by DEA personnel that presigning prescriptions and order forms might be improper, the only attempt he made to obtain information about acceptable and unacceptable practices in controlled substance handling was to ask other doctors about the matter. In addition, Respondent does not believe that it is his responsibility to learn about the regulations governing controlled substances, but rather it is the responsibility of DEA to teach them to him. The Administrative Law Judge concluded that Respondent has not shown that his earlier attitude toward handling controlled substances, "which can most charitably be described as cavalier," has improved as a result of his experience, or that he should be trusted with the responsibility of a DEA registration in the near future.

Based on Respondent's past misuse of his DEA registration and his current cavalier attitude towards controlled substances, the Administrative Law Judge concluded that Respondent's continued registration is inconsistent with the public interest. Therefore, Judge Bittner recommended that Respondent's DEA Certificate of Registration be revoked.

In his post-hearing filing, Respondent asserted that revoking his registration would violate the Constitution's proscription against *ex post facto* laws. Respondent's presigning of blank prescriptions and order forms occurred prior to October 1984. At the time of the conduct in issue the Controlled Substances Act provided for revocation of a registration only if the registrant: (1) Was not authorized by the state to handle controlled substances; (2) had falsified his application for DEA registration; or (3) had been convicted of a controlled substance-related felony. On October 12, 1984, the Controlled Substances Act was amended to provide for the revocation of a registration if the continued registration of the registrant is inconsistent with the public interest. Respondent contends that his conduct did not fall into any of the categories for revocation in existence prior to October 1984 and that therefore his registration can only be revoked if the amendments are retroactively applied to him. Respondent assets that such retroactive application would be unconstitutional. The Administrative Law Judge concluded that Respondent's contentions are without merit.

It is well settled that "[a] statute intended to protect the public is not *ex post facto* even though disqualifying a person, for past acts or omissions, from continuing his profession or business." Sutherland, *Statutory Construction*, 4th ed., 1973, Vol. 2, p. 319. See, *Ellis v. Department of Motor Vehicles*, 51 Cal. App. 2d 753, 125 P.2d 521 (1942). The Supreme Court has held that where there is "no persuasive showing of a purpose 'to reach the person, not the calling,'" legislative enactments may be retroactively applied, "despite the often-severe effects such regulation has had on the persons subject to it." *Fleming v. Nestor*, 363 U.S. 603, 616 (1960).

The legislative history of the 1984 amendments to the Controlled Substances Act demonstrates that the purpose of the change in grounds for the revocation of registrations was Congress' concern about "the severe problem of diversion of drugs of legitimate origin into the illicit market." Senate Committee on the Judiciary, S. Rep. No. 98–225, 98th Congress, 2d Session, Aug. 4, 1983, on S. 1762, at p. 260. It is thus clear that the thrust of 21 U.S.C. 824(a) is remedial rather than punitive. See, *Norman Bridge Co., Inc.*, Docket No. 74–22, 41 Fed. Reg. 3108, 3109. It is also clear that since there is no purpose to reach the person rather than his profession, and the potential restriction on a registrant is incidental to the regulation of controlled substances, retroactive application of the 1984 amendments to the Controlled Substances Act does not contravene the *ex post facto* clause.

The Administrative Law Judge concluded that retroactive application of the 1984 amendments to the Controlled Substances Act is not so unfair as to deny Respondent due process. Judge Bittner concluded, essentially, that the factors to be considered as the test of the constitutionality of a retroactive law are the public interest the statute serves, the unfairness created by its retroactive operation and reliance which an individual places on pre-existig law. See, Hochman, *The Supreme Court and the Constitutionality of Retoracitve Legislation*, 73 Harv. L. Rev. 692, 696–697 (1960). Retroactive application of a statute creates a problem only if that application operates unfairly against a litigant who justifiably acted in reliance on some provision of prior law. See, *Hunt v. Nevada State Bank*, 285 Minn. 77, 172 N.W. 2d, 292 (1969); *Nelson v. Miller*, 11 Ill. 2d 378, 382, 143 N.E. 2d 673, 675.

The very important public purpose served by the 1984 Diversion Control Amendments to the Controlled Substances Act has already been discussed. Judge Bittner concluded that in the instant case, Respondent can hardly argue that he relied on the requirements of the pre-1984 Controlled Substances Act in undertaking the conduct which gave rise to these proceedings. Indeed, Respondent has asserted that he was not familiar with the Code of Federal Regulations and that he was not aware that his conduct was improper. There is no suggestion in this record that Respondent, at the time he signed the prescriptions and order forms at issue, (1) was aware that this activity was not one of the grounds then specified in the statute for revocation of a DEA registration, and (2) relied upon that omission. It should also be noted that at the time Respondent signed the order forms and prescriptions, that conduct was contrary to the provisions of 21 CFR 1305.06(a) and 21 CFR 1306.05(a). Accordingly, the Administrative Law Judge concluded that, given the significance of the public interest served by the amendments, there is no support for the proposition that application of the public interest standard to Respondent would deny him due process of law.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administative Law Judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 00.100(b), hereby orders that DEA Certificate of Registration AB8737009, previously issued to James Beale, M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective May 27, 1988.

John C. Lawn,
Administrator.

Date: April 20, 1988.

[FR Doc. 88-9207 Filed 4-26-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket Nos. 86-70 and 87-5]

The Boro Pharmacy and Bell Apothecary; Revocation of Registrations

On August 15, 1986, the Deputy Assistant Administrator, Office of Drug Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to The Boro Pharmacy, of 1646 Washington Street, Easton, Pennsylvania, seeking to revoke DEA Certificate of Registration AL9145081, and to deny any pending applications for renewal of that registration, on the ground that the pharmacy's continued registration would be inconsistent with the public interest. At that time, Wakeem Isaac, R.Ph. was the registered pharmacist and owner of The Boro Pharmacy.

The Boro Pharmacy filed a timely request for a hearing on the issues raised in the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Francis L. Young.

On December 10, 1986, the Deputy Assistant Administrator issued an Order to Show Cause to Bell Apothecary, Inc., d/b/a Bell Apothecary, of 2045 Fairview Avenue, Easton Pennsylvania, seeking to revoke DEA Certificate of Registration BB0430734, and to deny any pending applications for renewal of that registration, on the ground that the pharmacy's continued registration would be inconsistent with the public interest. Bell Apothecary is owned by Maryann Marsili-Isaac, R.Ph., the wife of Wakeem Isaac, and both Wakeem Isaac and Maryann Marsili-Isaac operate the pharmacy.

Bell Apothecary also filed a timely request for a hearing on the issues raised in the Order to Show Cause, and that matter was also placed on the docket of Judge Young.

In her prehearing statements in both matters, Government counsel alleged that most of the same evidence and Government withnesses would be introduced against both pharmacies and requested that the matters be joined to avoid unnecessary repetition during the hearing process. Judge Young agreed and the matters were scheduled for one hearing.

Following preliminary prehearing procedures, the hearing in both matters was held before Judge Young, in Washington, DC,on April 29 and 30, 1987. The Boro Pharmacy and Bell Apothecary were both represented by the same counsel during the administrative proceeding.

On December 29, 1987, Judge Young issued his opinion and recommended ruling, recommending that the Administrator revoke the registrations of both The Boro Pharmacy and Bell Apothecary. Subsequent to the issuance of the Administrative Law Judge's opinion and recommended ruling, both counsel for The Boro Pharmacy and Bell Apothecary, and Government counsel filed exceptions to the Administrative Law Judge's opinion and recommended ruling.

After thorough consideration of the entire record in this proceeding, including the exceptions filed by both parties, the Administrator adopts the findings of fact, conclusions of law, and recommendation of the Administrative Law Judge. The Administrator does not accept the exceptions filed by either the Respondents or Government counsel.

The Administrator finds that since 1980, Wakeem Isaac has been the owner and registered pharmacist of The Boro Pharmacy. Maryann Marsili-Isaac, the wife of Wakeem Isaac, has also worked as a registered pharmacist at that pharmacy.

On January 26, 1983, an agent assigned to the Pennsylvania State Attorney's Office conducted an extensive controlled substances audit at The Boro Pharmacy for the period from May 1, 1981, to February 26, 1983. The primary focus of the audit was Schedule III and IV controlled substances. While the audit revealed no shortages, or minimal shortages, for the Schedule II controlled substances audited, it also revealed excessive, unexplained shortages and overages for most of the Schedule III and IV controlled substances audited, including: a 51% shortage of Tussionex tablets; a 40% shortage of Valium 2 mg. tablets; a 17% shortage of Valium 5 mg. tablets; a 47.4% shortage of Valium 10 mg. tablets; and a 337% overage of Hycodan syrup. The audit revealed unexplained shortages of approximately 17,000 dosage units of Schedule III and IV controlled substances. In addition, the audit revealed numerous recordkeeping violations and irregularities in the refilling of prescriptions for controlled substances. These included refilling prescriptions for Schedule III and IV controlled substances more than six months after

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the original issuance date, and refilling the prescriptions more than five times. Both practices are specifically prohibited by DEA regulations. See 21 CFR 1306.22(a). One controlled substance prescription bore a refill notation which was dated ten days prior to the original issuance date. On another controlled substance prescription, the first refill date had been altered.

Based upon the results of the audit at The Boro Pharmacy, Wakeem Isaac was arrested. On February 28, 1986, in Pennsylvania Court of Common Pleas for Northampton County, Wakeem Isaac was convicted, after entering pleas of *nolo contendere*, of five counts of violating Pennsylvania Act 64, Section 13a, clause 21, misdemeanor recordkeeping violations relating to controlled substances. All of the criminal charges stemmed from the controlled substance shortages and improper dispensing practices discovered during the state audit, and were brought against Wakeem Isaac, individually, not against The Boro Pharmacy. As a result of the convictions, Wakeem Isaac was sentenced to one year of probation, and was ordered not to dispense any Schedule II controlled substances for a period of six months from the sentencing date.

The Pennsylvania State agent testified that in her twelve years of experience in investigating controlled substance violations in that region, the controlled substance recordkeeping violations she discovered at The Boro Pharmacy were far more egregious than those found at other pharmacies she had investigated.

On June 5, 1986, approximately four months after Wakeem Isaac was sentenced, Maryann Marsili-Isaac purchased Bell Apothecary. The former owner, Richard Rosenberg, continued to work as a registered pharmacist at the pharmacy for a few months after its sale to Mrs. Isaac. Once Mrs. Isaac acquired the pharmacy, Wakeem Isaac spent several hours each day on the premises cleaning, familiarizing himself with the computer system, and filling prescriptions. He has worked as the registered pharmacist at Bell Apothecary since his wife acquired the pharmacy. Therefore, although Mr. Isaac may not have an actual ownership interest in Bell Apothecary, he has, at the very minimum, a significant proprietary interest in that pharmacy.

On August 11, 1986, a DEA Diversion Investigator began a Schedule II controlled substance audit at Bell Apothecary based upon information that Richard Rosenberg, the former owner, had been ordering and dispensing large quantities of amphetamine drugs. Before beginning the audit, the Investigator was not aware of the change in ownership. Once she learned of Mrs. Isaac's purchase of the pharmacy, she conducted the audit from the date of purchase to August 11, 1986. The audit included information from all invoices, receipts, orders forms, and prescription records of Bell Apothecary produced for the Investigator on August 11, 1986. Based upon the pharmacy records, there was a 45.72% overage of Dexedrine 5 mg. tablets; a 65.63% overage of Dexedrine 10 mg. tablets; a 23.07% overage of Dexedrine 15 mg. tablets; a 6.68% shortage of Percodan tablets; and a 2.23% shortage of Tylox.

Sometime in October 1986, Wakeem Isaac supplied the Investigator with additional records from Bell Apothecary. After recalculating the figures to include the additional information, the results of the audit were as follows: a 1.43% overage of Dexedrine 5 mg. tablets; a 4.67% shortage of Dexedrine 10 mg. tablets; a 1.5 overage of Dexedrine 15 mg. tablets; a 1.96% shortage of Percodan tablets; and a .44% shortage of Tylox.

The audit also revealed that Wakeem Isaac filled at least 56 Schedule II controlled substance prescriptions at Bell Apothecary during the audit period. The filling of these prescriptions by Mr. Isaac constituted a violation of his court-imposed probation which prohibited him from dispensing any Schedule II controlled substances until August 28, 1986.

The audit also revealed that between June 26 and August 25, 1986, Bell Apothecary filled a number of prescriptions for Percocet for an individual know as "Jane Morrow." Eight such prescriptions, each for 100 dosage units of Percocet, were filled on June 26; July 3, 11, 18, 26 and 30; and August 13 and 25, 1986. One prescription for 30 dosage units of Percocet was filled by the pharmacy on August 1, 1986. Each prescription contained instructions stating that one tablet was to be taken every four hours, as needed for pain. Had the medication been taken as prescribed, the 830 dosage units dispensed by Bell Apothecary during this 60-day period should have met a legitimate patient's needs for almost 140 days. In his testimony, Wakeem Isaac alleged that this patient was suffering from cancer, although he admitted that he had never seen this woman, even on those occasions on which he filled her perscriptions. The amount by which the quantity of Percocet actually dispensed exceeded the quantity needed, if the prescriber's instructions were followed, creates a strong inference that the drugs were being used for other than a legitimate medical purpose. Yet, no pharmacist at Bell Apothecary ever refused to fill the prescriptions, nor did they ever raise questions concerning them with the prescribing physician.

The July 30, 1986 prescription referred to above was an oral prescription, telephoned into the pharmacy and filled by Mr. Isaac. The Controlled Substances Act and the regulations thereunder provide that, except in limited emergency situations, prescriptions for Schedule II controlled substances must be in writing. Percocet is a Schedule II controlled substance. When such substances are dispensed pursuant to an emergency oral authorization, the quantity of drug prescribed and dispensed must be limited to the amount adequate to treat the patient during the emergency period. Furthermore, within 72 hours after the oral authorization, a written prescription for the emergency quantity must be forwarded to the pharmacy by the physician. If the pharmacy does not receive the written prescription, it is required to notify DEA. See 21 CFR 1306.11. In this case, no written prescription was found at the pharmacy and the amount dispensed, 100 dosage units, clearly exceeded the amount needed for any legitimate emergency. In the DEA hearing, Mr. Isaac testified that he dispensed the Percocet for Mrs. Morrow pursuant to a telephone prescription because she was going on vacation. This is hardly the kind of medical emergency contemplated by law as an exception to the requirement of written Schedule II prescriptions.

The Administrator finds that the evidence presented in these matters clearly establishes that there were inexcusably large shortages and overages of controlled substances at The Boro Pharmacy, indicating a failure to maintain accurate records of the pharmacy's handling of controlled substances. Wakeem Isaac, the owner and registered pharmacist at that pharmacy, obviously failed in his responsibilities as an owner and operator of a registered pharmacy. In addition, there were repeated instances in which controlled substance prescriptions were refilled at The Boro Pharmacy in violation of Federal regulations. Again, Wakeem Isaac is responsible for these violations. Furthermore, disregarding the criminal court's order prohibiting him from dispensing such substances, Wakeem Isaac dispensed Schedule II controlled substances at Bell Apothecary. At that pharmacy, he also improperly dispensed Schedule II controlled substances pursuant to a telephone prescription in a quantity which far exceeded that needed for an emergency situation, and for what clearly was not an emergency situation.

Bell Apothecary dispensed Schedule II controlled substances to one individual in such large quantities and on such a frequent basis to suggest that the drugs were being used for other than a legitimate medical purpose. The pharmacy had a responsibility to either refuse to fill the prescriptions, or to obtain an adequate explanation from the physician as to why the patient needed such large quantities of the drug, at such frequent intervals and in a manner clearly inconsistent with the physician's instructions. Maryann Marsili-Isaac and Wakeem Isaac were responsible for the pharmacy's failures in these areas. Also, the pharmacy failed to make all of its controlled substance records readily accessible during the audit, as required by Federal law and regulations. See 21 U.S.C. 827(b) and 21 CFR Part 1304. Two months after the pharmacy records were reviewed for the audit, Wakeem Isaac provided the DEA Investigator with additional controlled substance records for Bell Apothecary which should have been made available during the audit. Both Wakeem Isaac and Maryann Marsili-Isaac must be held accountable for failing to properly maintain the pharmacy's controlled substance records.

Based upon all of the evidence presented at the administrative hearing in these matters, the Administrator concludes that Wakeem Isaac and Maryann Marsili-Isaac cannot be entrusted to handle controlled substances responsibly. Both individuals have demonstrated their inability to properly operate registered pharmacies in the manner prescribed by Federal law and regulation. Significant controlled substance violations occurred at both pharmacies operated by these individuals, many of which were committed by Wakeem Isaac, himself. Therefore, the registrations of both The Boro Pharmacy and Bell Apothecary must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AL9145061, previously issued to The Boro Pharmacy, and DEA Certificate of Registration BB0430734, previously issued to Bell Apothecary, be, and they hereby are, revoked. It is further ordered that any pending applications for renewal of said registrations be, and they hereby are, denied

This order is effective May 27, 1988.

John C. Lawn,
Administrator.

Date: April 20, 1988.

[FR Doc. 88-9208 Filed 4-26-88; 8:45 am]
BILLING CODE 4410-09-M

Green's Prescription Center; Denial of Application for Registration

On August 21, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Green's Prescription Center, of 648 W. South Street, Orlando, Florida. The Order to Show Cause proposed to deny an application, executed on September 25, 1986, for registration as a retail pharmacy under 21 U.S.C. 823(f), on the ground that the pharmacy was not authorized to handle controlled substances in the state in which it sought registration.

On September 21, 1987, counsel for Green's Prescription Center submitted a written response to the Order to Show Cause, waiving the pharmacy's opportunity for a hearing, admitting that its state pharmacy permit had been suspended, and denying any wrongdoing which would justify the suspension of its state pharmacy permit. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and the record of the proceeding. See 21 CFR 1301.54(d) and 1301.54(e).

The Administrator that on April 15, 1987, the Florida Department of Professional Regulation ordered the emergency suspension of the Green's Prescription Center's state pharmacy permit. Based upon that action, Green's Prescription Center is not currently authorized to handle controlled substances in the State of Florida.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to issue a DEA Certificate of Registration if the pharmacy is without state authority to handle controlled substances. See 21 U.S.C. 823(f) and 824(a)(3); *LaMoine F. Murray, R.Ph., Murray's Pharmacy*, Docket No. 86-51, 52 FR 7672 (1987); *Emerson Emory, M.D.*, Docket No. 85-46, *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984).

In this matter, since Green's Prescription Center is not currently permitted by the State of Florida to handle controlled substances, the Administrator cannot grant the pharmacy's pending application for registration with the Drug Enforcement Administration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the pending application for registration, executed by Green's Prescription Center on September 25, 1986, be, and it hereby is, denied.

This order is effective May 27, 1988.

Date: April 21, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-9209 Filed 4-26-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 87-28]

Richard T. Robinson, M.D.; Revocation of Registration

On February 5, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an order to Show Cause to Richard T. Robinson, M.D. (Respondent), of 14001 Greenfield, Detroit, Michigan 48221, proposing to revoke his DEA Certificate of Registration AR8810461 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Respondent is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a three day hearing was held before Judge Bittner in Washington, DC commencing on September 29, 1987. On January 22, 1988, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66. Respondent's counsel filed exceptions to the Administrative Law Judge's opinion and recommendations. On February 22, 1988, Judge Bittner transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

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The Administrative Law Judge found that Respondent is a physician licensed to practice medicine in the State of Michigan. While a medical student, Respondent met a Mr. Arthur Anderson, who operated medical clinics and whose wife was a physician and medical school professor. In 1981, Respondent started working for Mr. Anderson at a clinic in Detroit. Beginning about December 1982, Respondent worked for Mr. Anderson at a second clinic, the Central Medical Evaluation Clinic, located at 8660 Grand River Avenue in Detroit. During the period Respondent worked at the Central Medical Evaluation Clinic, the clinic was not yet fully operational, but some patients were seen there, apparently those who had been treated at other clinics operated by Mr. Anderson. Respondent normally worked at the clinic twice a week, for about two hours at a time.

In March 1984, an employee of Great Lakes Wholesale Drugs, Inc. (Great Lakes), a Detroit area drug distributor, contacted DEA concerning a suspicious order for Schedule II controlled substances which Great Lakes had received on a DEA official order form issued to Respondent. The order form was pre-printed with Respondent's name and DEA number and the Central Medical Evaluation Clinic's address. The caller was advised to contact DEA if further orders were received from the Respondent. On or about March 29, 1984, an employee of Great Lakes notified DEA that the distributor had received another suspicious order for Schedule II controlled substances from Respondent at the Central Medical Evaluation Clinic. Pursuant to DEA's instructions, Great Lakes filled the order and on March 30, 1984, the drugs were picked up at United Parcel Service by Mr. Anderson. DEA Agents observed Mr. Anderson take the drugs to a non-registered location. DEA Agents and Investigators subsequently executed search warrants at both the non-registered location and Central Medical Evaluation Clinic which was still not fully completed. During the course of the two searches, DEA Agents and Investigators discovered approximately 61,000 dosage units of various controlled substances as well as a renewal application for Respondent's DEA registration number at the clinic address.

On March 30, 1984, during the interview with DEA Investigators and also during a criminal trial of two individuals involved with Central Medical Evaluation Clinic, Respondent admitted that he pre-signed blank prescriptions for the clinic's physician's assistant to use and pre-signed blank DEA official order forms at Mr. Anderson's request. Respondent stated that he was told that the pharmacy which was to be installed at the clinic needed to stockpile drugs and that it was necessary for him to sign the order forms. A DEA Investigator later calculated that between June 30, 1983, and March 28, 1984; 175,800 dosage units of controlled substances, plus 13 gallons of Ambenyl, a Schedule V controlled substance, were ordered using Respondent's DEA order forms and his DEA registration number.

It is a violation of 21 CFR 1305.06(a) to pre-sign DEA official order forms. By pre-signing DEA official order forms, Respondent enabled the clinic to order large quantities of controlled substances for which the clinic could not ultimately account. Respondent never asked what drugs were to be ordered using his order forms. In addition, Respondent never even asked to see the substances ordered.

It is a violation of 21 CFR 1306.05(a) to pre-sign prescriptions for controlled substances. Respondent pre-signed prescriptions on a regular basis for his physician's assistant to use. Respondent stated that his physician's assistant was not allowed to prescribe anything stronger than codeine, a controlled substance. It is clear however, that Respondent had no way of knowing what in fact the physician's assistant actually prescribed since he never saw the prescription forms after the medications were filled in. Not only was it inappropriate for Respondent to pre-sign prescriptions because it is a violation of Federal regulations and because he had no control over what was being prescribed using his pre-signed prescriptions, but also because in Michigan there is no conceivable reason for a physician to pre-sign prescriptions for physicians' assistants. In Michigan, a physician's assistant may write prescriptions for non-controlled substances over his own signature, but must indicate the name of the supervising physician on the prescription. However, physicians' assistants are not permitted to write prescriptions for controlled substances under any circumstances.

Respondent is currently the Medical Director of the Detoxification Unit and Division Director of the Chemical Dependency Rehabilitation Unit at Samaritan Health Center in Detroit, Michigan. Witnesses who testified at the hearing on Respondent's behalf stated that Respondent is well-respected by his colleagues and that the program in which he currently works is a necessary one to the community.

The foregoing notwithstanding, it does not negate the fact that Respondent abused his privilege to handle controlled substances in the past and has done nothing since to familiarize himself regarding the proper procedures and safeguards which must be employed when handling controlled substances. Respondent admitted at the hearing, that he does not even consider whether a drug is controlled or not prior to prescribing it for a patient. Therefore, Respondent does not take a specific substance's potential for abuse into consideration before prescribing it. In addition, Respondent does not believe that it is his responsibility to learn about the regulations governing controlled substances, but rather it is the responsibility of DEA to teach them to him. The Administrative Law Judge concluded that Respondent has not shown that his earlier attitude toward handling controlled substances, "which can most charitably be described as cavalier," has improved as a result of his experience, or that he should be trusted with the responsibility of a DEA registration in the near future.

Based on Respondent's past misuse of his DEA registration and his current cavalier attitude towards controlled substances, the Administrative Law Judge concluded that Respondent's continued registration is inconsistent with the public interest. Therefore, Judge Bittner recommended that Respondent's DEA Certificate of registration be revoked.

In his post-hearing filing, Respondent asserted that revoking his registration would violate the Constitution's proscription against *ex post facto* laws. Respondent's pre-signing of blank prescriptions and order forms occurred prior to October 1984. At the time of the conduct in issue the Controlled Substances Act provided for revocation of a registration only if the registrant: (1) Was not authorized by the state to handle controlled substances; (2) had falsified his application for DEA registration; or (3) had been convicted of a controlled substance-related felony. On October 12, 1984, the Controlled Substances Act was amended to provide for the revocation of a registration if the continued registration of the registrant is inconsistent with the public interest. Respondent contends that his conduct did not fall into any of the categories for revocation in existence prior to October 1984 and, therefore, his registration can only be revoked if the amendments are retroactively applied to him. Respondent asserts that such retroactive application would be unconstitutional. The Administrative Law Judge concluded that Respondent's contentions are without merit.

It is well settled that "[a] statute intended to protect the public is not *ex post facto* even though disqualifying a person, for past acts or omissions, from continuing his profession or business." Sutherland, *Statutory Construction*, 4th ed., 1973, Vol. 2, p. 319. See, *Ellis v. Department of Motor Vehicles*, 51 Cal. App. 2d 753, 125 P.2d 521 (1942). The Supreme Court has held that where there is "no persuasive showing of a purpose 'to reach the person, not the calling,' " legislative enactments may be retroactively applied, "despite the often-severe effects such regulation has had on the persons subject to it." *Fleming v. Nestor*, 363 U.S. 603, 616 (1960).

The legislative history of the 1984 amendments to the Controlled Substance Act demonstrates that the purpose of the change in grounds for the revocation of registrations was Congress' concern about "the severe problem of diversion of drugs of legitimate origin into the illicit market." Senate Committee on the Judiciary, S. Rep. No. 98-225, 98th Congress, 2d Session, Aug. 4, 1983, on S. 1762, at p. 260. It is thus clear that the thrust of 21 U.S.C. 824(a) is remedial rather than punitive. See, *Norman Bridge Co, Inc.*, Docket No. 74-22, 41 FR 3108, 3109. It is also clear that since there is no purpose to reach the person rather than his profession, and the potential restriction on a registrant is incidental to the regulation of controlled substances, retroactive application of the 1984 amendments to the Controlled Substances Act does not contravene the *ex post facto* clause.

The Administrative Law Judge concluded that retroactive application of the 1984 amendments to the Controlled Substances Act is not so unfair as to deny Respondent due process. Judge Bittner concluded, essentially, that the factors to be considered as the test of the constitutionality of a retroactive law are the public interest the statute serves, the unfairness created by its retroactive operation and the reliance which an individual places on pre-existing law. See, Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 696-697 (1960). Retroactive application of a statute creates a problem only if that application operates unfairly against a litigant who justifiably acted in reliance on some provision of prior law. See, *Hunt, v. Nevada State Bank*, 285 Minn. 77 172 N.W. 2d, 292 (1969); *Nelson v. Miller*, 11 I11. 2d 378, 382, 143 N.E. 2d 673, 675.

The very important public purpose served by the 1984 Diversion Control Amendments to the Controlled Substances Act has already been discussed. Judge Bittner concluded that in the instant case, Respondent can hardly argue that he relied on the requirements of the pre-1984 Controlled Substances Act in undertaking the conduct which gave rise to these proceedings. Indeed, Respondent has asserted that he was not familiar with the Code of Federal Regulations and that he was not aware that his conduct was improper. There is no suggestion in this record that Respondent, at the time he signed the prescriptions and order forms at issue, (1) was aware that this activity was not one of the grounds then specified in the statute for revocation of a DEA registration, and (2) relied upon that omission. It should also be noted that at the time Respondent signed the order forms and prescriptions, that conduct was contrary to the provisions of 21 CFR 1305.06(a) and 21 CFR 1306.05(a). Accordingly, the Administrative Law Judge concluded that, given the significance of the public interest served by the amendments, there is no support for the proposition that application of the public interest standard to Respondent would deny him due process of law.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 00.100(b), hereby orders that DEA Certificate of Registration AR8810461, previously issued to Richard T. Robinson, M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective May 27, 1988.

John C. Lawn,
Administrator.

Date: April 21, 1988.

[FR Doc. 88-9210 Filed 4-26-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 87-65]

Syncon Pharmaceuticals, Inc.; Revocation of Registration

On August 11, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Sycon Pharmaceuticals, Inc. (Respondent), Snellville, Georgia, proposing to revoke its DEA Certificates of Registration PS0168585 and PS0233584 as a manufacturer and distributor of controlled substances. The Order to Show Cause alleged that the firm's continued registration was inconsistent with the public interest. Additionally, citing his preliminary finding that the firm's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificates of Registration PS0168585 and PS0233584 during the pendency of proceedings.

The Order to Show Cause and Immediate Suspension of Registration was served on Mr. John M. Lamb, president of Syncon, at his home on August 17, 1987. By letter dated September 15, 1987, Mr. Lamb requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner, and a hearing scheduled for March 15, 1988, in Atlanta, Georgia. Prior to the scheduled date of the hearing, Government counsel was advised that Mr. Lamb no longer had a share in the business and that the current shareholders were attempting to sell the business. By letter dated March 1, 1988, Respondent's counsel advised that the firm no longer needed DEA Certificates of Registration, and withdrew Respondent's request for a hearing. On March 7, 1988, the Administrative Law Judge terminated the proceedings before her. The Administrator finds that Respondent has waived its opportunity for a hearing and enters this final order based on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that Syncon Pharmaceuticals, Inc. has been registered with DEA as a distributor of controlled substances in Schedules III, IV and V since June 1978. The firm has been registered as a manufacturer of controlled substances in Schedules III, IV and V since March 1984. At that time, Mr. Lamb advised investigators that Syncon intended to manufacture products containing hydrocodone in dosage form for another company and Syncon's DEA manufacturer registration was later amended to include Schedule II.

During an investigation of Respondent firm conducted in February 1988, it was found that the firm had handled no controlled substances since 1981. In February 1986, DEA Diversion Investigators conducted another investigation of Respondent. At that

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time the firm was using the raw materials hydrocodone bitartrate and codeine to manufacture dosage form products. Due to extensive recordkeeping violations, an administrative hearing was held in the DEA Atlanta office. Mr. Lamb appeared on behalf of the firm and entered into a Memorandum of Understanding with DEA.

Respondent firm had been issued procurement quotas by DEA for hydrocodone bitartrate and codeine. These are the only Schedule II controlled substances that the firm was authorized to use in the manufacturing process.

During the summer of 1987, the Federal Bureau of Investigation (FBI) conducted an investigation involving the purchase of phenylacetone (P2P) and monomethylamine to be used in the manufacture of the Schedule II stimulant controlled substance methamphetamine. P2P is a Schedule II controlled substance. An individual negotiated for the purchase of P2P with a confidential informant. The individual asked the informant to travel to Louisville, Kentucky, to purchase monomethylamine. The informant purchased the monomethylamine and arranged to deliver it to the individual who said he was going to take it to the lab where the methamphetamine would be produced. The individual transported the monomethylamine to the registered location of Respondent firm and was observed delivering a five-gallon container of monomethylamine to Mr. John Lamb, Respondent's president.

On July 17, 1987, a search warrant was executed at Respondent firm. During the search, agents found two flasks containing shredded aluminum foil and P2P. Mr. Lamb and the previously mentioned individual were present, and were arrested by the agents.

On December 17, 1987, following a jury trial in the United States District Court for the Northern District of Georgia, Mr. Lamb was found guilty of illegal possession of P2P, attempted illegal manufacture of methamphetamine, and illegal establishment of a manufacturing operation. On February 22, 1988, Mr. Lamb was sentenced to three years in prison, and his one-third interest in Respondent firm was forfeited to the government.

The Drug Enforcement Administration has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, key employee, or an individual who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. See *Yazid M. Mahdi, d/b/a Gresham Road Pharmacy*, Docket No. 86-31, 51 FR 27267 (1986); *Ozie T. Faison, d/b/a Smith Discount Drugs*, Docket No. 85-37, 51 FR 16403 (1986); and *K&B Successors, Inc.*, Docket No. 82-15, 49 FR 34586 (1984). Since Mr. Lamb was one-third owner and president of Respondent corporation at the time of his illegal activity, and since he was the person who signed its applications for DEA registration, there is a lawful basis for the revocation of Respondent's DEA Certificates of Registration based upon Mr. Lamb's conviction of felonies relating to controlled substances. 21 U.S.C. 823(a)(4), 823(b)(3).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration PS0168585 and PS0233584, previously issued to Syncon Pharmaceuticals, Inc., be, and they hereby are, revoked. Any pending applications for renewal of those registrations are hereby denied. This order is effective May 27, 1988.

Date: April 20, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-9212 Filed 4-26-88; 8:45 am]
BILLING CODE 4410-09-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the 1988 U.S. Merit Systems Protection Board Report on Sexual Harassment in the Federal Government

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's report, "Sexual Harassment in the Federal Government: An Update."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the Board's publication "Sexual Harassment in the Federal Government: An Update," will be available on riders to the Government Printing Office. Department and agencies may order this publication by riding the Board's printing requisition #8-00139.

DATE: Agency requisitions must be received on or before June 1, 1988.

ADDRESS: Interested departments and agencies should send requisitions through their Washington, DC, headquarters office authorized to procure printing—to the Government Printing Office, Requisitions Section, Room 836, Washington, DC 20401. Agencies may estimate cost by using the current Government Printing Office price list of printing services. The report will be approximately 60 (8½ × 11 saddle stitched) pages.

FOR FURTHER INFORMATION CALL: Rosemary H. Storey, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, 202-653-7208.

SUPPLEMENTARY INFORMATION: This is one of a series of reports produced by the Board under its statutory mandate to conduct special studies of the civil service systems. These reports are addressed to the President and Congress. This report discusses the results of a major 1987 survey dealing with sexual harassment in the Federal workplace. As an update, it provides some contrasts and comparisons with data gathered in the Board's landmark study of sexual harassment in 1980. It details findings on employee attitudes toward and experiences with uninvited behavior of a sexual nature. It also describes the actions Federal agencies have taken in efforts to reduce sexual harassment.

Date: April 22, 1988.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 88-9242 Filed 4-26-88; 8:45 am]
BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-39)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by May 27, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: NASA FAR Supplement, Part 18-32, Contract Financing.
OMB Number: 2700-0055.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or oganizations.
Annual Responses: 135.
Annual Burden Hours: 675.
Abstract-Need/Uses: The contractor must notify NASA if funds are inadequate for performance through agreed upon contract completion date.

April 20, 1988.

John F. Duggan,
Director, General Management Division.

[FR Doc. 88-9213 Filed 4-26-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-40]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by May 27, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer. (202) 453-1090.

Reports

Title: Report on NASA Subcontracts
OMB Number: 2700-0004.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 6,000.
Annual Burden Hours: 1,500.
Abstract-Need/Uses: This report enables NASA to evaluate the extent to which its subcontracting program is attaining its stated purpose to distribute its procurement as widely as possible, in order to encourage a broad national base of research capability, to assist small business, small disadvantaged business, and to aid labor surplus areas.

April 20, 1988.

John F. Duggan,
Director, General Management Division.

[FR Doc. 88-9214 Filed 4-26-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-41]

Intent To Prepare an Environmental Impact Statement (EIS); Advanced Solid Rocket Motor (ASRM)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Intent to prepare an environmental impact statement and Notice of Scoping for developing, testing, and production of an Advanced Solid Rocket Motor.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing that an ASRM be designed, developed, tested, produced, and placed into service for flight in the 1994 timeframe. This EIS will address the NASA decision to proceed with Phase C/D (development, testing, and production) of the ASRM program. As a necessary and incidental adjunct to the development effort, there is a necessity to develop a new production facility capable of supporting an annual production rate of up to 30 ASRM's (28 for flight and two for testing).

NASA will seek proposals for a government-owned, contractor-operated facility to be located on a government site and a second set of proposals for private financing of this facility. NASA will also accept proposals for a privately financed facility located on a privately-owned site. These commercial proposals are being sought or invited in support of the President's Space Policy encouraging private initiatives in space-related industries.

Current plans are for issuance of a Phase C/D Request for Proposals (RFP) in July 1988 (subject to Congressional approval), completion of the EIS in early 1989, and award of the Phase C/D contract with initial ground breaking for the facility shortly following. Construction of facilities, motor development, and initial production of the early pairs of operational ASRM's will extend over approximately a 5-year period. Following flight certification testing, the ASRM's would be phased into Space Shuttle Operations in the Mid-1990's. It is anticipated that the Phase C/D ASRM program will continue through well into the next century.

Various sites were proposed by the participating contractors during Phase B concept definition studies for locating the new testing and production facility. These sites include the Kennedy Space Center, Florida; the National Space Technology Laboratories, Mississippi; the TVA Yellow Creek Facility at Iuka, Mississippi; the Atlantic Research Corporation Facility at Camden, Arkansas; the Aerojet Dade County Facility in Florida; the Blount Island Facility near Jacksonville, Florida; and the Morton Thiokol Facility in Utah.

The Phase C/D RFP will identify a single government-owned site for the purpose of providing an equal basis of comparison between submissions from the Phase C/D offerers. This site identification will be clearly identified as tentative within the RFP and subject

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to change through amendment or reissuance of the RFP should circumstances so require. Phase C/D offerers will also have the option of proposing a production facility at some site other than the government-owned site preliminarily identified in the Phase C/D RFP as part of an alternative private investment initiative. Offerers electing to exercise this option will be required to declare their intent to do so and to identify the site prior to the time of NASA's issuance of the Phase C/D RFP. In addition, offerers will be required to deliver a complete analysis of the environmental effects of the production plant at the privately-owned site at the time of delivery of their Phase C/D proposal; such that, after verification, NASA may incorporate this information into its EIS. Offerers will be notified that NASA intends to release this information to the public through its incorporation into the EIS.

NASA intends to issue its draft EIS after all Phase C/D proposals have been submitted, but prior to the completion of the Source Evaluation Board's (SEB) evaluation of the Phase C/D proposals. Environmental effects at the government-owned sites and any offerer-proposed sites will be analyzed in this draft EIS, with no designation of a preferred alternative at the draft EIS stage. This course of action is being taken so that the Phase C/D will have the opportunity to review public comments regarding the various sites prior to the issuance of its findings to the NASA source selection official. This procedure recognizes that the SEB's findings regarding the Phase C/D contractor will necessarily include findings regarding siting of the production facility.

Should no offerer-proposed alternative sites be submitted in the Phase C/D proposals, the government-owned site identified in the RFP will be analyzed in the draft EIS as the preferred alternative, with the remaining government-owned sites previously identified during the Phase B studies analyzed as alternatives. In this instance, the SEB's findings will not include findings regarding siting of the production facility.

To ensure maximum visibility into its decision process for selection of the government-owned site which will be proposed in the RFP, NASA has convened a formal ASRM Site Evaluation Board. The Board will, as a minimum, consider the following factors in its assessment:

(a) Transportation for raw materials and finished products

(b) Site specific industrial and public construction costs

(c) Environmental constraints and costs of mitigation

(d) Ability to obtain necessary permits within time constraints

(e) Expansion capability, including buffer zone (land availability and cost)

(f) Support infastructure and costs

(g) Utilities availability and cost

(h) Availability of suitable labor base and cost

(i) Site specific industrial and public safety features

(j) Site specific security features

The sites to be evaluated were proposed by NASA or the contractors during the preparation of the Phase B ASRM concept definition studies, which are now completed. Considerable amounts of information regarding the environmental effects of the ASRM facility at each of the previously-listed sites have been developed as part of those Phase B studies. In addition, each of the government-owned sites have completed full-scope environmental baseline documents or an EIS (these documents do not cover an ASRM program or facility, however). This information will be considered by the Site Evaluation Board.

Alternatives to implementing a Phase C/D ASRM program at the government-owned site tentatively identified in the Phase C/D REF include (1) implementing an ASRM program at an alternate site or (2) the No Action Alternative of continuing with the current Solid Rocket Motor design. These alternatives will be addressed in the EIS.

An initial assessment of environmental effects indicates that there are likely to be impacts on air quality due to static test firing of ASRM motors and disposal of waste propellant. Propellant disposal by combustion would require a permit under the Resource Conservation and Recovery Act for thermal treatment of hazardous waste. Noise from several 2-minute test firings annually would be audible off the test site. Biological resources in the immediate test area would be damaged. Depending on the site selected, the program could impact endangered or threatened species. Both testing and production pose a risk of fire, explosion, and accidental release of hazardous and toxic materials, which will require the imposition of controls which mitigate or eliminate off-site impacts. Mitigation measures must be devised where testing and production would have negative environmental consequences, including impacts on cultural resources, wetlands, or recreation/scenic areas.

The Phase C/D Request for Proposals, including tentative identification of a government-owned site, is expected to be issued by NASA in July 1988, with contractor submissions due back to NASA in September 1988. The formal Site Evaluation Board will meet during May 1988 and deliver its recommendation for the government-owned site to be contained within the RFP in time to support the RFP issuance schedule. To insure that environmental information is available to NASA officials and the public before final decisions are made and before irrevocable actions are taken, it is reemphasized that a government site is being preliminarily identified within the RFP for the purpose of providing a common basis of comparison between Phase C/D offerers. However, environmental data developed during the Phase B process will be used to make this tentative identification the best possible, given current information.

Concurrent with the RFP process, NASA will commence anaylsis of environmental data and preparation of a draft EIS, containing at least the government-owned site and any contractor-identified sites, with no identification of a perferred alternative. The draft EIS will be issued in September or October 1988, after the environmental data for any privately-owned sites contained within the Phase C/D contractor submissions have been verified and integrated into the ongoing analysis of the government-owned site. Public comments on the draft EIS and their analysis by NASA officials will be furnished to the SEB for its use in preparing its findings.

Following issuance of the findings of the SEB to the source selecting official and review by that official of the proposed Final EIS, the source selecting official will make a decision regarding the selection of the Phase C/D contractor and the location of the ASRM production facility. This decision will be incorporated in a Final EIS and this EIS will be released to the public. Following appropriate review, NASA will issue its final record of decision regarding the EIS and its selection of a Phase C/D contractor and site.

NASA will be conducting its scoping process for this EIS through June 15, 1988. Written comments or suggestions from the public or potentially affecting parties are welcomed and solicited during this EIS scoping process. In particular, NASA invites comments on whether the programmatic aspects of the proposed ASRM can be treated by amending the solid rocket booster portion of the current Space Shuttle EIS and reserving the new EIS for issues associated with the new production.

The recommendation of the Site Evaluation Board and the indentification of any privately-owned sites which offerers have declared their intent to propose are expected to be available for release to the public in early June 1988. Persons desiring this information as part of their input to the scoping process should ensure that their request has been received by the below-designated contact prior to May 25, 1988. In addition, copies of the nonproprietary data, including environmental data, generated during the Phase B studies are available for public inspection and copying at the Public Information Centers located at NASA Headquarters, Washington, DC; Marshall Space Flight Center, Huntsville, AL; Kennedy Space Flight Center, Cape Canaveral, FL; and National Space Technology Laboratary, MS.

DATE: Comments in response to this notice must be received in writing within 30 days of publication in the **Federal Register** of June 15, 1988, whichever is later

ADDRESS: Richard H. Truly, RADM USN, Associate Administrator for Space Flight, Code M, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FUTHER INFORMATION CONTACT: Mr. Russell Bardos, Director, Shuttle Propulsion, Code MEP, NASA Headquarters, Washington, DC 20546, (202) 453-2473.

M. Peralta,

Associate Administrator for Management.

[FR Doc. 88-9217 Filed 4-26-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before June 13, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION:

Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1-338-88-6). Microfiche copies of records pertaining to bacteriological and chemical testing of volunteers by the U.S. Army Biomedical Laboratory, 1955-1975.

2. Defense Intelligence Agency (N1-273-88-6). Records relating to contracting functions.

3. Department of Commerce, International Trade Administraion (N1-40-88-1). Fragmentary files of E.E. Lewis of the Office of Technical Services.

4. Department of Commerce, National Oceanic and Atmospheric Administration, National Climatic Data Center (N1-370-88-1). Microfilmed punch card records for FOSDIC system computer input.

5. Federal Communications Commission, Chairman's Office (N1-173-88-2). Chairman's calendars, invitations, and travel records.

6. Federal Communications Commission, Office of Engineering and Technology (N1-173-88-4). Records pertaining to broadcast frequency allocation.

7. Department of the Interior, U.S. Geological Survey (N1-57-88-2). Correspondence relating to the New England, New York Interagency Committee (NENYIAC).

8. U.S. International Trade Commission (N1-81-88-1). Working papers and background materials used to produce annual and quarterly reports of synthetic organic chemicals.

9. National Archives and Records Administration, Office of Records Administration (N1-GRS-88-5). General Records Schedule covering disposable cartographic and architectural records common to several agencies.

10. Department of State, U.S.-Mexican Commission on Border Development and Friendship (N1-43-88-3). Comprehensive schedule of the commission providing for permanent retention of policy documentation and the destruction of reference material and facilitative records.

11. Department of State, Bureau for International Narcotics Matters (N1-59-88-17). Comprehensive schedule of the bureau providing for permanent retention of policy documentation and the destruction of reference material and facilitative records.

12. Department of State, Foreign Service Posts (N1-84-88-4). Consolidated Visa Card Files.

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Dated: April 21, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-9251 Filed 4-26-88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp.; Availability of Draft Supplement to the Programmatic Environmental Impact Statement Related To Decontamination and Disposal of Wastes From March 28, 1979 Accident, Three Mile Island Nuclear Station, Unit 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Programmatic Environmental Impact Statement (NUREG-0683, Supplement 3) related to post-defueling monitored storage and subsequent cleanup of Three Mile Island Nuclear Station, Unit 2 is available for inspection by the public in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and in the local public document room located at the State Liberty of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. This draft supplement, prepared by the Commission's Office of Nuclear Reactor Regulation, addresses the environmental impacts associated with a number of alternative approaches to completing the TMI-2 cleanup. Request for copies of the Draft Supplement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control.

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Draft Supplement to the Programmatic Environmental Impact Statement (PEIS) for the Commission's consideration. Federal, State and local agencies are being provided with copies of the Draft Supplement. Comments are due by June 15, 1988. Comments by Federal, State and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC, and in the local public document room located at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, PA 17126.

Upon consideration of comments, the Commission's staff will prepare a final Supplement to the PEIS, the availability of which will be published in the Federal Register.

Comments on the Draft Supplement to the PEIS should be addressed to Michael T. Masnik, Senior Project Manager, OWFN 13D16, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 21st day of April 1988.

For The Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9247 Filed 4-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co. (Oyster Creek Nuclear Generating Station); Exemption

I

The GPU Nuclear Corporation and Jersey Central Power & Light Company (the licensee) are the holders of Provisional Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station, (the facility) at steady state reactor core power levels not in excess of 1930 megawatts thermal. The license provides, among other things, that Oyster Creek Nuclear Generating Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is boiling water reactor (BWR) located at the licensee's site in Ocean County, New Jersey.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations for Containment Integrated Leakage Rate Tests (CILRTs) be performed using either the point-to-point method or total time method.

A more recent standard, ANSI/ANS 56.8-1981, "Containment System Leakage Testing Requirements," which was intended to replace ANSI N45.4-1972, specifies the use of the mass point method to the exclusion of the two older methods. A proposed revision to Appendix J, which has been published for public comment (53 FR 5985, February 29, 1988) would permit the use of the mass point method provided it is used with a test duration of at least 24 hours. Pending approval of the revision to Appendix J, licensees who wish to use the mass point technique must submit an application for partial exemption from the requirement that Appendix J test calculations for CILRTs will conform with ANSI N45.4-1972.

III

By letter dated February 19, 1988, the licensee requested a partial exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4-1972 requires that leakage calculations be performed using either the total time method or the point-to-point method. The licensee has stated in support of the application for exemption from Appendix J that the mass point method is a more accurate method of calculating containment leakage.

It has been recognized by the professional community that the mass point method is superior to the two other methods, point-to-point and total time, which are referenced in ANSI N45.4-1972 and endorsed by the present regulations. The mass point method calculates the air mass at each point in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is the leakage rate.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with Section 7.6 of ANSI N45.4-1972, a test duration less than 24 hours is only allowed if approved by the NRC, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN-TOP-1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the total time method. Therefore, the staff will condition the exemption to require a minimum test duration of 24 hours when the mass point method is used.

The licensee's letter also submitted information to identify the special circumstances for granting this exemption for Oyster Creek Nuclear Generating Station pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime so as to maintain containment leakage rate within the limit specified in the plant technical specifications. The underlying purpose of the rule specifying particular methods for calculating leakage rates is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. As set forth above, the mass point method has been a widely used method providing accurate results and the staff has determined that this method of calculating leakage rate satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed partial exemption from paragraph III.A.3 of Appendix J, to allow use of the mass point method as requested in the submittal dated February 19, 1988, is acceptable with the condition of 24 hours minimum test duration, until such provision of Appendix J is modified. The exemption applies only to the method of calculating leakage rate by use of the mass point method and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the mass point method may be used for containment leakage rate calculations, provided it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. The exemption applies only to the method of calculating leakage rate by use of the mass point method and not any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 12617 April 15, 1988).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this April 18, 1988.

[FR Doc. 88-9248 Filed 4-26-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC)

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on May 5 and 6, 1988 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on May 5, recess and reconvene at 8:00 a.m. on May 6, 1988. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The May 5 and 6 meetings will be closed to the public.

The briefings on the current activities of OSTP necessarily will involve discussion of material that is formally and properly classified in accordance with the provisions of Executive Order 12356 in the interest of national defense of for foreign policy reasons. This is also true for the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b. (c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

April 19, 1988.

Jonathan F. Thompson,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 88-9205 Filed 4-26-88; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25606; File No. SR-NASD-87-35]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Codification of Procedures Pertaining to Enforcement of Disgorgement Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change and two amendments thereto, one on March 31, 1988 and the second on April 20, 1988, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self/Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Article V, section 1 and 2 of the Rules of Fair Practice ("Rules") of the NASD to conform the language of Article V, section 1 to section 15A(b)(7) of the Act and the Article XIV of the NASD By-Laws to bring all monetary sanctions imposed by the NASD, including disgorgement, within the purview of Article V, Section 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

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sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The amendment to Article V, Section 1 of the rules, which enumerates available sanctions, would revise the language "any other fitting penalty" to read "any other fitting sanction" to achieve consistency with the languge of section 15A(b)(7) of the Act and Article XIV of the NASD By-Laws. The amendment to Article V, section 2 of the Rules would provide that monetary sanctions other than fines, such as disgorgement, must be paid in the same manner as fines and that the failure to do so may be grounds for summary suspension, expulsion, or revocation.[1]

For the reasons stated above, these amendments are consistent with and in furtherance of section 15A(b)(7) of the Act, which requires that the rules of the NASD provide that its members and persons associated with members be appropriately disciplined for violation of any provision of this title, the rules promulgated thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD, as well as section 15A(b)(8) of the Act, which requires that the NASD provide a fair procedure for disciplinary actions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

[1] The NASD's policy with respect to the disgorgement sanction provides for the imposition of orders to disgorge monetary profits where such profits were earned through conduct constituting a violation of the federal securities laws, the regulations thereunder, or the NASD Rules. Where a public customer has suffered a loss due to the violative conduct and such customer is, or reasonably can become, known to the NASD, the respondent will generally be ordered to disgorge "ill-gotten gains" to such customer. In other instances, disgorgement may be ordered to the NASD to deprive the wrongdoer of his ill-gotten gain

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–35 and should be submitted by May 18, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.300–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: April 21, 1988.

[FR Doc. 88–9281 Filed 4–26–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24624]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 21, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 16, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–7509)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Distribution Corporation ("Distribution"), Seneca Resources Corporation ("Seneca") and Empire Exploration, Inc ("Empire"), 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 45 and 50(a)(5) thereunder.

A notice was issued on April 14, 1988 (HCAR No. 24623) giving interested persons until May 9, 1988 to comment on or request a hearing on National's proposal to issue and sell up to 2,000,000 authorized but unissued shares of its common stock, no par value, ("Common Stock"). That notice indicated that National proposed to contribute the proceeds from the issuance and sale of the Common Stock to the capital of Seneca and Empire for the purpose of reducing borrowings under Seneca's and/or Empire's credit lines.

By amendment dated April 14, 1988 to the application-declaration, National informed the Commission that it also proposes to contribute up to 75% of the proceeds to the capital of Distribution for the purpose of reducing borrowings under Distribution's credit lines.

New England Power Company (70–7510)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, an electric-utility subsidiary of New England Electric System, a registered holding company, has filed an application pursuant to sections 6(a) and 7 and of the Act and Rule 50(a)(5) thereunder.

NEP proposes to finance its share of the qualifying costs of constructing pollution control facilities at the Seabrook nuclear project or to refinance pollution control revenue bonds issued or to be issued with respect to these facilities by the Industrial Development Authority of the State of New Hampshire ("NHIDA"), by the issuance and sale, through December 31, 1989, of up to $50 million of general and refunding mortgage bonds ("G&R Bonds"). NEP would issue its G&R Bonds to NHIDA to secure payment of, the principal of, and premium, if any, and interest on the pollution control revenue bonds issued by NHIDA on NEP's behalf. The price, interest rate provisions, maturity and other terms of the G&R Bonds will be fixed so as to conform with the pollution control revenue bonds.

NEP also proposes to pledge and sell one or more new series of its first mortgage bonds ("Pledged Bonds"), the aggregate amount not to exceed $50 million, to the G&R Trustee for the purpose of securing any G&R Bonds that may be issued. The terms and amounts of these Pledged Bonds will reflect those of the G&R Bonds. The Pledged Bonds issued in connection with the G&R Bonds will not pay interest as long as interest payments are made on the G&R Bonds.

NEP has requested an exception from the competitive bidding requirements pursuant to Rule 50(a)(5) with respect to the issue of G&R Bonds and Pledged Bonds in connection with the execution of one or more loan agreements with NHIDA.

NEP also proposes to update the restriction on common stock dividends or other distributions to be contained in the G&R Indenture relating to the G&R Bonds. Under the proposed restriction, approximately $10 million of NEP's retained earnings at December 31, 1987 would be unavailable for dividends on common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9280 Filed 4–26–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0290]

Ameriway Venture Partners I; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1988)) for a transfer of ownership and control of Ameriway Venture Partners I (AVP), 7575 San Felipe, Houston, Texas 77063, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of AVP, which was licensed November 19, 1985, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to a proposed acquisition by Houston Venture Partners, Ltd. (HVP), Capital Center Penthouse, 401 Louisiana, Houston, Texas 77002, of 71.9 percent of the limited partnership interests of AVP, and 95.71 percent of the issued and outstanding capital stock of Ameriway Venture Capital, Inc., the corporate general partner of AVP.

AVP is currently owned and managed as follows:

Name	Position	Percent owned
James L. Hurn	Managing General Partner	0.29
Ameriway Venture Capital, Inc.[1] (James L. Hurn, Pres.)	Corporate General Partner	0.69
Ameriway Savings Association	Limited Partner	71.07
Eleven additional limited partners, none of whom owns as much as 5 percent.		
If approved, the new ownership and management will be:		
Ameriway Venture Capital, Inc.[2]	Corporate General Partner	
All of the voting rights of HVP are owned, indirectly, by:		
Harvard H. Hill, Jr., 11910 Churchill Court Lane, Houston, TX 77024		41.43
Roger A. Ramsey, 380 Blalock, Houston, TX 77024		41.43
Thomas J. Faljo, Jr., 121 North Post Oak Lane, Houston, TX 77024		17.14
Houston Venture Partners, Ltd., Capital Center Penthouse, 401 Louisiana, Houston, TX 77002	Limited Partner	71.1

[1] Ameriway Savings Association and two of its associate banks own 72 percent of the stock of Ameriway Venture Capital, Inc.
[2] 95.71 percent of the voting stock will be owned by HVP.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 21, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–9254 Filed 4–26–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of The Executive Secretary

[Public Notice 1059]

Presidential Determination; Under the Foreign Assistance Act

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that:

(1) On April 13, 1988, the President made a determination pursuant to section 614(a) of that Act;

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(2) The President has concluded that publication of the said determination would be harmful to the national security of the United States.

Melvin Levitsky,

Executive Secretary.

Date: April 15, 1988.

[FR Doc. 88-9187 Filed 4-26-88; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Anchorage International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Anchorage International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the State of Alaska. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Anchorage International Airport were in compliance with applicable requirements effective January 22, 1987. The proposed noise compatibility program will be approved or disapproved on or before October 11, 1988.

DATES: The effective date of the start of FAA's review of the noise compatibility program is April 14, 1988. The public comment period ends June 13, 1988.

FOR FURTHER INFORMATION CONTACT: James S. Perham, Airports Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513, telephone (907) 271-5448. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Anchorage International Airport which will be approved or disapproved on or before October 11, 1988. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Anchorage International Airport, effective on April 14, 1988. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review for the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 11, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports Division, 701 C Street, Box 14, Anchorage, Alaska 99513.

Mr. Doyle Ruff, Manager, Anchorage International Airport, P.O. Box 190204, Anchorage, Alaska 99519-0204.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska, April 14, 1988.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 88-9175 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-13-M

Informal Airspace Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Informal Airspace Meetings.

SUMMARY: This notice announces informal airspace meetings to discuss the following: 1. Modification of the Oakland, CA, Airport Radar Service Area (ARSA); 2. Establishment of an ARSA at San Jose/Moffett NAS, CA; 3. Establishment of a Terminal Control Area (TCA) at Houston Hobby Airport, TX; 4. Establishment of a TCA at Phoenix, AZ; 5. Establishment of a TCA at Charlotte, NC; and 6. Establishment of an ARSA at Santa Ana John Wayne Airport, CA.

The informal airspace meeting dates and places are as follows:

Oakland, CA, and San Jose/Moffett NAS, CA, ARSA's

Date: July 6, 1988.
Time: 7:00 p.m.
Location: California Air National Guard, 1525 Winton Avenue, Hayward, CA

and

Date: July 11, 1988.
Time: 7:00 p.m.
Location: Eastridge Mall Community Room, 1 Eastridge Mall, San Jose, CA

and

Date: July 12, 1988.
Time: 7:00 p.m.
Location: San Jose City Hall, City Council Chambers, 801 North First Street, San Jose, CA

and

Date: July 13, 1988.
Time: 7:00 p.m.
Location: Mitchell Park Community Center, 3800 Middlefield Road, Palo Alto, CA

Phoenix, AZ, TCA
Date: June 30, 1988.
Time: 7:00 p.m.
Location: Arizona Air National Guard Theater, 2001 South 32nd Street, Phoenix, AZ

Charlotte, NC, TCA
Dates: July 12 & 13, 1988.
Time: 7:00 p.m.
Location: North Carolina Air National Guard, 145th Tactical Air Group, Headquarters Building Assembly Room, Morris Field Drive, Charlotte, NC

Houston, TX, TCA
Dates: July 20, 1988.
Time: 7:00 p.m.
Location: North Harris County College, Academic Building, Room 128, 2700 WW Thorne Street, Houston, TX

and

Date: July 21, 1988.
Time: 7:00 p.m.
Location: San Jacinto Junior College, Slocomb Auditorium, 8060 Spencer Highway, Pasadena, TX

Santa Ana, CA, ARSA
Date: July 12, 1988.
Time: 7:00 p.m.
Location: Armed Forces Reserve Center, Building, 6, Katella Avenue and Lexington, Los Alamitos, CA.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

Issued in Washington, DC, on April 20, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-9174 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Lincoln and Boyle Counties, KY.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lincoln and Boyle Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602-0536. Phone (502) 227-7321; FTS 352-5468.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Lincoln and Boyle Counties. The primary purpose of the proposed project is the improvement of traffic operations and safety along the US 127 corridor between Hustonville and Danville. The proposed improvement provides for the construction of a 2 and 4 lane facility between the cities of Hustonville and Danville, Kentucky. A two-lane roadway will be built from Hustonville to Junction City and continuing north, a four lane roadway will be constructed to Danville. The proposed realignment of US 127 is approximately 11.6 miles in length.

Possible alternatives under consideration include the (1) do-nothing, (2) project postponement, and (3) four alignment alternatives, all in a basic north-south corridor.

The build alternatives proposed are:

Alternate A

Alternate A begins just south of Hustonville where a previously reconstructed section of US 127 terminates and goes west of the existing US 127 route through Hustonville. It crosses KY 78 before crossing over to the east side of existing US 127 just north of Hustonville. This alignment remains east of the existing roadway at Moreland and Milledgeville then rejoins the existing roadway just north of Milledgeville. It generally follows the existing roadway from this point to just south of Junction City where it is approximately 1000 feet west of the existing roadway. Just north of Junction City, Alternate A rejoins existing US 127 and continues to its termination at the existing Danville Bypass/US 127 intersection. This alternate is 11.4 miles in length.

Alternate B

Alternate B begins just south of Hustonville and is identical to Alternate A north to Milledgeville. From this point it goes east of Alternate A and existing US 127, passing to the east of Goodall Airfield in Junction City before rejoining existing US 127 just south of the Danville Bypass. This alternate terminates at the Danville Bypass/US 127 intersection as does Alternate A. It is 12.2 miles in length.

Alternate C

Alternate C begins just south of Hustonville and goes west of existing US 127 through Hustonville crossing KY 78 near Baughman Creek. This alignment stays west of existing US 127 and the Southern Railway for its its entire length north to the Danville Bypass. Alternate C terminates at the Danville Bypass just west of the Southern Railway underpass. This alternate is 11.2 miles in length.

Alternate D

Alternate D is the same as Alternate A except in the area between Milledgeville and Junction City where it stays west of existing US 127 in an attempt to reduce relocations. The alternate will be 11.3 miles in length.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of interdisciplinary team meetings will be held as the project planning/environmental process advances. In addition, a public meeting soliciting project input has been held and a formal public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

It is estimated that the draft EIS will be available for public review in June 1988.

Issued on: April 18, 1988.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 88-9188 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Pulaski County, KY

AGENCY: Federal Highway Administation (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pulaski County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602-0536. Phone (502) 227-7321; FTS 352-5468.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Pulaski County. The proposed improvement provides for the construction of a southeast bypass around Somerset, between US 27 and KY 80. The project is necessary to reduce traffic congestion, delays and the number of accidents. The bypass will be 4 lanes and approximately 6.1 miles in length.

Possible alternatives under consideration include the (1) do-nothing, (2) project postponement and (3) four

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alignment alternatives. A brief description of these alternatives follow:

Alternative 1

This alternative begins 0.5 miles east of the KY 192/Mt. Vernon Street Intersection on KY 80 and extends southeast crossing KY 192. The alignment then turns west and southwest, intersecting KY 1247 and bridging over Allen Branch. The alignment then merges with KY 1642, which is followed to its intersection with US 27. This alternate is 6.6 miles in length. The bypass would be 4-lanes from US 27 to KY 1247 and 2-lanes from KY 1247 to the KY 80 Bypass.

Alternative 2

This alternate follows the alignment of Alternate 1 to the point where it merges with KY 1642. Alternate 2 briefly follows KY 1642 to its intersection with Old Beaty Lane where it then proceeds south-southwest to intersect with US 27 approximately .75 miles south of the US 27/KY 1642 intersection. This alternate is approximately 7.12 miles in length.

Alternative 3

This alternate begins 0.5 miles east of the KY 192/Mt. Vernon Street Intersection on KY 80 as the previous alternatives discussed. However, Alternate 3 crosses KY 192 approximately 2,000 feet further east than Alternate 1 and 2 and then continues in a southeasterly direction. It remains east then merges with Alternate 1 to the intersection on US 27. This alternate is approximately 7.0 miles in length.

Alternative 4

This alternate follows the alignment of Alternate 3 to the point where it intersects with KY 1642. From there, Alternate 4 follows the alignment of Alternate 2 to its intersection with US 27. The alternate is 7.16 miles in length.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of interdisciplinary team meetings will be held as the project planning/environmental processes advance. In addition, a public meeting soliciting project input has been held and a formal public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

It is estimated that the draft EIS will be available for public review in September 1988.

Issued On: April 18, 1988.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 88-9189 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-826]

Chestnut Shipping Co. and Margate Shipping Co; Application for a Waiver To Permit the Charter of Foreign-Flag Vessels

Chestnut Shipping Company and Margate (Chestnut and Margate) by application dated March 31, 1988, requested, pursuant to section 804(b) of the Merchant Marine Act, 1936, as amended (Act), waiver of the provisions of section 804(a) of the Act to permit Keystone Shipping Co., an affiliate of Chestnut and Margate, to charter in and charter out foreign-flag liquid bulk vessels ranging from 50,000 to 150,000 deadweight tons (DWT) for a period of six months commencing on the date of final approval of this waiver.

Chestnut and Margate operate five U.S.-flag tankers all of which were built with construction-differential subsidy (CDS) and operated with operating-differential subsidy (ODS). Margate operates the 39,500 DWT product tankers CHELSEA, CHEERY VALLEY and CORONADO which are chartered to Shell International Petroleum for worldwide trading which terminate from the last quarter 1988 to the first quarter 1990. Chestnut operates the crude oil tankers CHESTNUT HILL and KITTANNING, both 91,200 DWT, in the worldwide tramp trades. These two tankers had been on a 10 year charter to Texaco which expired in December 1986. Upon commencement of worldwide tramping, both vessels have experienced substantial per day losses.

Chestnut and Margate believe the grant of the waiver will strengthen the financial condition of the applicants and their affiliated companies, all U.S.-flag operators, and would be consonant with the general purposes and policies of the Act to promote and maintain the American merchant marine. In Chestnut and Margate's view, grant of the requested waivers will not be determinantal to the economic interest of any U.S.-flag tanker operator.

Chestnut and Margate state that while the number of subsidized U.S.-flag tankers in the 50,000 to 150,000 DWT range is reasonably impressive, their absence from the foreign commercial oil trades is even more evident. With significantly higher capital costs than their foreign competitors and no operating subsidy to offset much higher U.S.-flag operating costs, it is economically unfeasible for these vessels to engage in the foreign carriage of commercial oil. These ships are engaged almost exlusively in the Alaska trade, other domestic trades, or SPR, civilian preference or military cargoes reserved to U.S.-flag vessels by law.

Chestnut and Margate claim that with no presence in the foreign oil trades, U.S. operators of tankers in the 50,000 to 150,000 DWT range, obviously will not compete with the foreign-flag tankers of that size Keystone seeks to charter. Consequently, there is no way such operators can be harmed by the grant of the requested waivers in their view.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on May 11, 1988. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By order of the Maritime Administrator.

Dated: April 22, 1988.

James E. Saarl,

Secretary.

[FR Doc. 88-9278 Filed 4-26-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 21, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1021
Form Number: 8594
Type of Review: Resubmission
Title: Special Allocation Rules for Certain Asset Acquisitions
Description: Section 1060 of the Internal Revenue Code of 1986 requires the seller and the purchaser of a group of business assets to allocate the consideration for the assets among the assets pursuant to the residual method of allocation. The seller and the purchaser must report certain information concerning the allocation of the consideration
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 169,973 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-9272 Filed 4-26-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0036
Form Number: CC 7020-44, 7020-45, 7023-06 and 7023-02
Type of Review: Revision
Title: Mergers Applications (Merge, Consolidate, or Purchase and Assume/Corporate Reorganization)
Description: This application is used by the Office to determine whether to grant approval considering the affected market area, legal factors, safety, soundness and stability aspects, and convenience and needs factors, of a national bank's request to acquire another bank by means of a merger or to effect a corporate reorganization
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 20,736 hours
Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-9273 Filed 4-26-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0132
Form Number: Form 1120X
Type of Review: Extension
Title: Amended U.S. Corporation Income Tax Return
Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120. The data is used to determine if the correct tax liability has been reported
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 102,536 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-9274 Filed 4-26-88; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 81
Wednesday, April 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Closed Commission Meeting, Thursday, April 28th Following Oral Argument

April 20, 1988.

The Federal Communications Commission will hold a closed meeting on Thursday April 28, 1988, for discussion of oral argument in Phase I of the KHJ–TV, Los Angeles, California, comparative renewal proceeding (Docket Nos. 16679–80).

Oral Argument, which is open to the public, is scheduled to start at 9:00 a.m., in Room 856, 1919 M Street, NW., Washington, DC (See Order released March 22, 1988, FCC 88–119).

The closed meeting will take place in Room 856 at the same address after the conclusion of the oral argument. This meeting is closed to the public because of the disposition of adjudicatory proceedings (see 47 CFR 0.603 (j)).

The following persons are expected to attend this meeting:

Commissioners and their Assistants
General Counsel and members of her staff
Managing Director and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission April 19, 1988. Commissioners Patrick, Chairman; Quello and Dennis voting to hold a closed meeting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Issued: April 20, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–9349 Filed 4–25–88; 12:50 am]

BILLING CODE 6712–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 21, 1988.

TIME AND DATE: 10:00 a.m., Thursday, April 28, 1988.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Bobby G. Keene v. S & M Coal Company, Prestige Coal Co., and Tolbert Mullins,* Docket No. VA 86–34–D. (Issues include whether the judge erred in finding that the complainant was discriminated against for engaging in rights protected by section 105(c)(1) of the Mine Act. 30 U.S.C. 815(c)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–9313 Filed 4–25–88; 10:46 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, May 2, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9301 Filed 4–25–88; 9:34 am]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 25, May 2, 9, and 16, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 25

Monday, April 25

9:30 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (Postponed from April 21)

Thursday, April 28

10:00 a.m.
Briefing on Status of Program for Performance Indicators (Public Meeting) (Postponed from April 21)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Draft Order in the TMI–2 Leak Rate Proceeding (Postponed from April 21)

Week of May 2—Tentative

Wednesday, May 4

10:00 a.m.
Annual Briefing on the State of the Nuclear Industry (Public Meeting)

2:00 p.m.
Briefing on NRC Point Papers for Consultation Draft of the Site Characterization Plan for Yucca Mountain (Public Meeting)

Thursday, May 5

10:00 a.m.
Briefing on Naturally Occurring and Accelerator-Produced Radioactive Materials (Public Meeting)

2:00 p.m.
Briefing on Status of Operator Requalification Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 9—Tentative

Thursday, May 12

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting)

2:00 p.m.
Briefing on Efforts to License a HLW Repository and Status of Center for Nuclear Waste Repository Analysis (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 16—Tentative

Tuesday, May 17

2:00 p.m.
DOE Briefing on Civilian HLW Program (Public Meeting)

Wednesday, May 18

10:00 a.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting)

2:00 p.m.
Annual Briefing by INPO (Public Meeting)

Thursday, May 19

2:00 p.m.
Briefing on NAS Human Factor Recommendations (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

April 21, 1988.

[FR Doc. 88–9437 Filed 4–21–88; 3:49 pm]

BILLING CODE 7590–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

May 13, 1988
8:30 a.m.—Closed Session
8:55 a.m.—Open Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, D.C. 20550.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MAY 13:

Closed Session (8:30 a.m. to 8:55 a.m.)

1. Election of Officers
2. Minutes–March 1988 Meeting
3. NSB and NSF Staff Nominees
4. Grants, Contracts, and Programs

Open Session (8:55 a.m.–11:00 a.m.)

5. Minutes—March 1988 Meeting
6. NSB Meeting Schedule for Calendar Year 1989
7. Director's Report
8. Annual Report of the Executive Commmittee
9. Proposed Revisions to NSF's Conflict-of-Interest Regulations
10. Engineering Research Centers Oversight
11. Draft Report of the NSB Committee on Economic Competitiveness
12. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 88–9380 Filed 4–25–88; 5:00 pm]

BILLING CODE 7555–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 13215, April 21, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: May 3, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Personnel Matters"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–9432 Filed 4–25–88; 3:23 pm]

BILLING CODE 7710–12–M

VOL 53 ISS 81 AP 27 1988 UMI

Corrections

Federal Register
Vol. 53, No. 81
Wednesday, April 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3340-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

Correction

In rule document 88-5467 beginning on page 7903 in the issue of Friday, March 11, 1988, make the following corrections:

PART 261—[CORRECTED]

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22—[Corrected]

1. On page 7913, in Table 1, in the third column, in the fourth line, "[insert date of final rule publication in the Federal Register]" should read "March 11, 1988".

2. On the same page, in the same column, in paragraph 3, in the 10th line, "0.7 ppm" should read "0.07 ppm".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings; Blood Products Advisory Committee; et al.

Correction

In notice document 88-6060 beginning on page 9146 in the issue of Monday, March 21, 1988, make the following corrections:

1. On page 9146, in the first column, in the 14th line from the bottom of the page, "committed" should read "committee".

2. On the same page, in the same column, in the 11th line from the bottom of the page, the date should read "April 7, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-08-4220-11; GP-08-119; OR-3530(WASH), ORE-016849(WASH)]

Proposed Continuation of Withdrawals; Washington

Correction

In notice document 88-8120 appearing on page 12478 in the issue of Thursday, April 14, 1988, make the following correction:

In the first column, in the second line from the bottom, "R. 43 E." should read "R. 45 E.".

BILLING CODE 1505-01-D

federal register

Wednesday
April 27, 1988

Part II

Department of Justice

Bureau of Justice Assistance

Criminal Justice Discretionary Grants; Notice

BEST COPY AVAILABLE

VOL 53 ISS 81 AP 27 1988 UMI

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Criminal Justice Discretionary Grants

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: Final Notice of program priorities.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this final notice of program priorities for state and local criminal justice discretionary grant funding, as authorized by the Justice Assistance Act of 1984 (Pub. L. 98–473 October 12, 1984, 42 U.S.C. 3711, et seq.).

DATE: Due dates for each program are included in the individual program announcements.

ADDRESS: An original and two copies of formal applications should be mailed to: Bureau of Justice Assistance, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

Concept papers should be mailed to the appropriate Program Managers as noted in the individual program descriptions.

FOR FURTHER INFORMATION CONTACT: For general questions about the priorities and range of discretionary grant programs contact James C. Swain, Director, Discretionary Grant Programs Division, Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC (202) 272–4605. For information on particular programs, the program contact person is indicated in each program description.

SUPPLEMENTARY INFORMATION: On October 12, 1984, President Reagan signed into law the Justice Assistance Act of 1984. Part E of the Act established a program of criminal justice discretionary grants for public agencies and private non-profit organizations. The Act also specifies four purposes for which discretionary grants can be made: (1) Education and training programs for criminal justice personnel; (2) technical assistance to states and local governments; (3) national or multi-state projects; and (4) demonstration programs.

The FY 1988 appropriation for Part E discretionary programs is $8 million. A portion of these funds was earmarked by the Congress for specific construction. The remaining discretionary funds were programmed with an emphasis on continuations of BJA programs initiated in Fiscal Years 1986 and 1987, including national technical assistance and training activities, support for professional standards, and completion of demonstration programs. In terms of substantive areas the emphasis is on crime prevention activities, law enforcement support, improved court management, and support for state prison capacity studies. The Bureau reviewed all comments received, the majority of which generally supported the proposed programs, or suggested expanded funding to related state agencies. Unfortunately, there was little leeway in the FY 1988 programming for new initiatives.

Outline of Final Guideline

- Recommendations to Grant Writers.
- Subpart I—Construction.
- Subpart II—Enforcement.
- Subpart III—Adjudication.
- Subpart IV—Corrections.
- Subpart V—Information Systems and Miscellaneous.
- Subpart VI—Victims.
- Subpart VII—Crime Prevention.

Recommendations to Grant Writers

A complete discretionary grant application consists of Standard Form 424 "Federal Assistance." Copies of the form and a completed sample are available upon request. After completion of this document it must be signed by a duly authorized official (Item 23) and dated.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OBM) Circulars applicable to financial assistance. The Circulars along with additional information and guidance are contained in the "Financial and Administrative Guide for Grants," OJP Guideline Manual, OJP M71001C, available from the Office of Justice Programs.

Non-Discrimination

The Justice Assistance Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; Title XI of the Education Amendments of 1972, the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Subparts C, D, E, and G.

Intergovernmental Review of Federal Programs

On July 14, 1982, the President signed Executive Order 12372, "Intelligence Review of Federal Programs," to provide state and local governments increased and more effective opportunities to influence Federal actions affecting their jurisdictions. Final regulations (28 CFR Part 30) implementing the Order for the Department of Justice were published in the **Federal Register** on June 24, 1983 (48 FR 29238). The Order and the regulations permit states to establish a state process for the review of Federal programs and activities, to select which programs and activities (from a previously published list) they wish to review, the review of proposed Federal programs and activities, and to make their views known to the Department through a State "Single Point of Contact" (SPOC). The Order and the implementing regulations revoke the former A–95 clearance process.

Applicants for this program, except those programs national in scope, must submit a copy of their application to the applicant agency State "Single Point of Contact" if one has been established and if the state has selected this program to be covered at the same time its application is submitted to both the SPOC and BJA for review and comment. Under the regulations, the state process has at least 30 days to comment on non-competing continuation applications and at least 60 days to comment on all other applications.

Program Narrative

The narrative should normally not exceed 20 double spaced pages in length. Applications which include non-competitive contracts for provision of specific services must include a sole source justification for any procurement in excess of $10,000.00.

The plan should also include an annotated organizational chart depicting the roles of, and describing the responsibilities of, key organizational/functional components, including a program evaluation component, and a list of key personnel responsible for managing and implementing the major elements of the program.

Subpart I—Construction

The Congressional appropriation earmarked $2,025,000 for two construction projects: a Judicial Center in Owensboro, Kentucky; and a Water Treatment System in Alderson, West Virginia, which serves the Federal prison in Alderson. Because of restrictions in the Act concerning construction projects and other legal concerns, BJA must wait an opinion from the Controller General before making awards under this section.

Subpart II—Enforcement

Program Title: Deadly Force Training and Technical Assistance.

Goal/Objective: To assist state and local law enforcement agencies in the successful application and implementation of sound policies relating to the use of deadly force.

Background: Since October 1986, the Bureau of Justice Assistance (BJA) has sponsored training and technical assistance for police executives in the development and implementation of deadly force policy. The program, accomplished through a cooperative agreement with the International Association of Chiefs of Police (IACP), is based on the best available research and expert experience. Due emphasis is placed on the implications for police policy and practices of the 1985 U.S. Supreme Court Ruling in *Tennessee v. Garner* and other current/recent legal cases. In the course of this project it has become evident that critical deadly force issues remain widespread in state and local jurisdictions around the nation. BJA believes that the most beneficial course to save both police and civilian lives, to improve the implementation of sound deadly force policies, and to reduce friction and liability for communities lies in the training of supervisors and field training officers.

Program Description: This program will provide training and technical assistance to supervisors and field training officers, in agencies that have sound basic policies, to provide state-of-the-art knowledge and to assist supervisors and field training officers to become responsible experts in the full meaning and ramifications of those policies and procedures for each and every sworn officer. The project will be accomplished through several regional training workshops and by providing site-specific technical assistance in a variety of modes, in response to local/state agency requests.

Application: IACP should submit an application within 30 days of this announcement.

Grant Period, Award Amount and Eligibility Criteria: Approximately $250,000 will be awarded to the International Association of Chiefs of Police to extend the current cooperative agreement until June 1, 1989.

Project Contact: The BJA contact for additional information on this program is Fred W. Becker at 202/272–4605.

Program Title: Law Enforcement Technical Assistance and Training.

Goal/Objective: To provide a broad range of technical assistance to state and local law enforcement agencies.

Background: The Bureau of Justice Assistance (BJA) intends to extend the current cooperative agreement with the Police Foundation that provides technical assistance and training to law enforcement agencies. This project provides a broad range of assistance to state and local programs including those initiated under Justice Assistance Act block grants. Reflecting emphases in the Act, major efforts to date have concentrated on Integrated Criminal Apprehension Programs (ICAP), STING programs, arson, organized crime, and white collar crime. As there is a continuing demand for assistance in these areas and others, the Bureau of Justice Assistance will further utilize the designs, materials, expertise, and procedures developed in this project, by extending the cooperative agreement.

Program Description: Utilizing the training designs and experience of the current project, several regional training workshops will be provided. In addition to telephonic assistance and printed technical assistance packages, there will be increased resources devoted to on-site technical assistance and mini-workshops on topic areas compatible with the Act, as requested by local/state law enforcement agencies.

Application: The Police Foundation should submit an application to extend the current cooperative agreement within 30 days of this announcement.

Grant Period, Award Amount and Eligibility Criteria: An amount not to exceed $450,000 will be awarded to the Police Foundation to extend the current cooperative agreement for an additional 12 months until June 30, 1989.

Project Contact: The BJA contact for additional information on this program is Fred W. Becker at 202/272–4605.

Program Title: Commission on Accreditation For Law Enforcement Agencies

Goal/Objective: To facilitate the development of accreditation standards for important police functions and concerns that have arisen, or have attained priority since the original standards were adopted by the Commission.

Background: The Bureau of Justice Assistance (BJA) and its predecessor agencies in the U.S. Department of Justice have long fostered the concept of voluntary professional accreditation as one means of meeting high standards for state and local law enforcement. BJA has provided financial assistance in support of the concept and its implementation from the planning phase through the present. Today the Commission on Accreditation for Law Enforcement Agencies is a thriving reality, nearing financial independence. There has been a tremendous upsurge in the number of law enforcement agencies that have entered into the accreditation process. Over 500 agencies are currently involved. In addition, thousands of other police officials and officials of state, county and municipal executive and legislative branches have expressed interest. The original standards, over 900 in number, were developed using the personnel resources of the four founding national organizations. Revisions to standards have been accomplished, as needed, by the Commission and staff. However, workload resulting from the aforementioned growth makes it impossible for existing staff to develop new accreditation standards required to keep up with research, legal precedents, crime trends, etc. Failure to remedy this situation will result in the erosion of the standards and ultimately in the value of the accreditation process.

Program Description: The Bureau of Justice Assistance will make an award to the Commission to make possible the assessment and development of priority additions/revisions to the body of standards for accreditation (Standards Manual).

Application: The Bureau of Justice Assistance has requested an application from the Commission within 30 days.

Grant Period, Award Amount and Eligibility Criteria: An amount not to exceed $150,000 will be awarded for a period of 18 months.

Project Contact: The BJA contact for additional information on this program is Fred W. Becker at 202/272–4605.

Subpart III—Adjudication

Program Title: Adjudication Training Program.

Goal/Objective: To promote implementation of court delay reduction and jail capacity management activities through the production of training manuals, guides and other materials.

Background: Substantial investment has been made by the Bureau of Justice Assistance and other Federal sponsors in developing programs and providing training and technical assistance in the areas of court delay reduction and jail capacity management. Supplementation of an ongoing project of the National Center for State Courts (NCSC) will continue that work by producing training materials addressing these issues for use by state and local

jurisdictions, as well as in national workshops.

Program Description: A wealth of information exists on what types of procedures can be implemented in order to reduce delays in case processing and alleviate jail crowding. There is also growing recognition that jail capacity problems are inextricably linked to case management policies and procedures. BJA has recently sponsored a number of workshops for local jurisdictions and has issued Program Briefs which describe how to implement successful projects. There is a need to augment this effort by providing materials which will allow local jurisdictions to train their own personnel for implementation of these programs and which emphasize the link between these two problem areas. Through the participation of NCSC, the American Jail Association and the Pretrial Services Resource Center, this program will develop training materials in tandem, so that each training vehicle suggests those methods which can improve the one function without causing greater problems in the other.

Application: An application will be submitted by the National Center for State Courts by April 22, 1988.

Grant Period and Award Amount: A supplemental award will be given in the amount of $100,000.

Project Contact: The BJA contact for additional information on this program is Linda McKay at 202/272–4801.

Program Title: National Judicial Symposium.

Goal/Objective: To provide a forum for judges and other court professionals to identify training, technical assistance and development project needs for the coming decades.

Background: At regular intervals it is useful for the courts and other components of the judicial branch of government to review their current operations and take a long-term view of their needs. A national symposium was held in 1980 for this purpose and proved to be most beneficial in preparing the Judiciary for the 1980s. Topical issues were selected, and documents were prepared pursuant to the symposium to facilitate an in-depth review of the challenges facing the courts.

Program Description: The Bureau of Justice Assistance will join with a number of professional organizations representing the courts in preparing for a National Judicial Symposium which would be convened in 1990. This symposium will serve as a forum to discuss all aspects of judicial administration operations, including the role of judges in court management, judicial leadership and coordination as critical elements for successful management, improvements in court management techniques and procedures, and ways of assisting large metropolitan and rural courts to achieve the operational improvements. An action agenda would follow from the symposium to focus on the current and future needs of the courts. This award will support the initial planning, including developing the symposium agenda, organizing specific panels, and preparing papers for presentation at the symposium.

Application: An application will be submitted by the National Center for State Courts by May 1, 1988.

Grant Period and Award Amount: A 12-month grant period will be awarded in the amount of $75,000.

Project Contact: The BJA contact for additional information on this program is Jay Marshall at 202/272–4601.

Program Title: Appellate Court Delay Reduction Program.

Goal/Objective: To identify and encourage implementation of model court case management systems for appellate courts resulting in more expeditious handling of cases.

Background: A number of factors, especially the improvements made in many jurisdictions during the past decade in more effective management of cases coming through the trial court system, have resulted in increased congestion and delays in the appellate courts. Several appellate courts have initiated proactive case management systems in response to this increased pace of litigation. In addition, the American Bar Association (ABA) has adopted standards relating to delay reduction in the appellate courts. Modeling based on successful management systems and standards should assist appellate courts in achieving greater performance at a cost savings.

Program Description: The American Bar Association will continue to assist jurisdictions seeking to implement either ABA standards for reducing delay in appellate courts or standards developed by the sites themselves by developing workable models for implementation consistent with program goals. The project will also include preparation and dissemination of information and training documents, both to encourage and to assist other jurisdictions to implement successful appellate court delay reduction programs.

Application: An application will be initiated by the American Bar Association by May 31, 1988.

Grant Period and Award Amount: A supplement to the existing cooperative agreement will be given for a 12-month period in the amount of $150,000.

Project Contact: The BJA contact for additional information on this program is Jay Marshall at 202/272–4601.

Program Title: Structured Sentencing Program.

Goal/Objective: This program assists states in improving consistency and uniformity of criminal sentencing, with an emphasis on sentencing guidelines.

Background: This program evolved from the experience of the Minnesota and Washington State sentencing guidelines and other state experiences with structured sentencing. This program was initiated in 1987 with a grant to the Institute for Rational Public Policy, Washington, DC. Four jurisdictions were selected on a competitive basis for grant funds and intensive technical assistance—Tennessee, Louisiana, Oregon and Washington, DC.

Program Description: Three levels of aid are available to states under this program. First, three or four contracts will be awarded to states. The total amount available for state contracts is $300,000. The national program coordinator will administer the 12-month state contracts under a cooperative agreement with the Bureau of Justice Assistance (BJA).

The second level of aid available is short-term technical assistance. The national program coordinator will both provide and arrange for technical assistance to states. The funds for this program are very limited and will perhaps fund approximately ten short-term technical assistance projects consisting of one to two days on-site by a technical advisor.

The third level of support is providing clearinghouse aid to states. The national program coordinator will be available to discuss structured sentencing issues, materials, and resources with state agencies. Articles, reports and other relevant material on sentencing will be provided.

1988 funding will provide continuation funding for two of the current states, and grant funds for staff and consultant services to one or two new states. Lastly, the technical assistance grant to the Institute for Rational Public Policy will be extended.

Application: The Institute for Rational Public Policy will submit a complete application for extension of its current grant by May 30, 1988.

Grant Period, Award Amounts and Eligibility Criteria: The grant to the Institute for Rational Public Policy will be extended for an additional 12 months.

The current grant will be supplemented in the amount of $400,000. Approximately $300,000 will be distributed by the Institute to state sentencing commissions or task forces under the direction of the Bureau of Justice Assistance. $100,000 will be for technical assistance and administrative costs of the Institute.

One or two additional states will be selected on a competitive basis in May or June 1988, based on concept papers submitted to the Institute for Rational Public Policy.

Project Contact: The BJA contact for additional information on this program is Nicholas Demos at 202/272–4805.

Program Title: Family Violence and the Role of the Juvenile and Family Courts.

Goal Objective: To determine the efficacy of the juvenile/family court system in dealing with spouse abuse as part of a response by the justice system to all family/household members affected by such violence. The primary objective is to provide a system intervention which will lead to cessation of violence between the abuser and victim and among all those residing in the household, especially if children are present. Interventions will include prosecution and criminal sanctioning of abusers as well as appropriate treatments for both victims and batterers.

Background: Family violence has been recognized as a serious national problem which involves criminal activities, not just "family matters." This is one of a number of programs initiated by the Department of Justice within the last decade to enhance prosecution and other appropriate justice system responses to spouse abuse and family violence.

Program Description: This program is being directed by the National Council for Juvenile and Family Court Judges (NCJFCJ) and involves on-site work in three jurisdictions: Portland, Oregon; Quincy, Massachusetts; and Wilmington, Delaware. In each site, the participating family court is authorized to exercise criminal jurisdiction over adults involved in perpetrating violence within the family. The Council is seeking to determine if these courts can effectively deal with spouse abusers as well as provide a more comprehensive program of services and treatment to the immediate victim and other members of the household. The sites' efforts are being documented and evaluated by the National Center for Juvenile Justice.

Application: An application will be submitted by the National Council of Juvenile and Family Court Judges for a supplemental award to their existing grant by April 30, 1988.

Grant Period and Award Amount: $175,000 is available for this award to support a grant extension period of 4 to 6 months.

Project Contact: The BJA contact for additional information on this program is Linda McKay at 202/272–4801.

Program Title: Family Violence Intervention Program.

Goal Objective: To more effectively respond to spouse abuse incidents and, ultimately, stop abuse through more vigorous prosecution of abusers and better coordination of criminal justice system and service provider resources to both aid victims and treat abusers.

Background: Eight jurisdictions are currently participating in this program. Supplemental funding will be provided to some or all of these jurisdictions to allow demonstrations to continue for total grant periods of approximately 24 months.

Program Description: Each site has developed intra-agency coordination mechanisms, instituted procedures which enhanced criminal prosecution of abusers, and taken other steps to identify and increase resources available to the justice system and the participants in these cases. All sites are involved in an independent evaluation which seek to document the implementation of the program and analyze the differences in case management and outcomes which have resulted from the program.

Grant Period, Award Amount and Eligibility Criteria: Supplemental grant periods may vary among those sites selected for awards.

$150,000 is available for total program supplementation. The allocation of these funds among the sites selected for additional awards will vary.

Only jurisdictions already participating in the program will be eligible for funding. Selection criteria will include progress toward implementation of overall program goals, provision of sufficient data to the evaluators to allow project assessment, and potential for program continuation beyond the period of Federal discretionary grant support.

Project Contact: The BJA contact for additional information on this program is John Veen at 202/272–4801.

Program Title: Evaluation of BJA Demonstration Programs.

Goal Objective: To provide an independent assessment of and adequate documentation on three ongoing demonstration programs.

Background: In FY 86, BJA initiated demonstration programs in three areas: child abuse prosecution, family violence intervention, and community crime prevention. In order to provide information by which to judge the success of these demonstrations and upon which to base dissemination of information (Program Briefs) which other jurisdictions might implement, an independent evaluation of these three programs was funded. This evaluation effort will be provided additional funding.

Program Description: For each of the three demonstration program areas (21 jurisdictions in all), the Institute for Social Analysis (ISA) is gathering and analyzing general process/procedural information and case specific data. This will allow them to determine which program elements (e.g., coordinating councils, vertical prosecution, interagency teams) originally suggested by BJA and implemented in whole or in part in the participating jurisdictions were successful in more effectively achieving the demonstration program goals. Supplemental funding will support continued data gathering in the sites participating in two of these programs and completion of reports on all three program implementations.

Application: This award will be made to the Institute for Social Analysis.

Grant Period, Award Amount, Eligibility Criteria: The supplemental grant period will be for 12 months in an amount not to exceed $80,000.

Project Contact: The BJA contact for additional information on this program is John Veen at 202/272–4801.

Subpart IV—Corrections

Program title: Prison Capacity Program.

Goal: This program assists states to review corrections policies and to establish a balanced corrections system, utilizing commissions or task forces representing all three branches of government.

Background: This program is a continuation of a technical assistance and demonstration program initiated in 1987 to assist state corrections commissions and task forces. The Bureau of Justice Assistance initiated a fourteen-state Prison Capacity Program under a special Congressional authorization to assist state policy makers in developing cohesive correction policies.

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Program Description: The program provides seed money and technical assistance to state commissions or task forces made up of representatives of the three branches of government, or to legislative committees revising corrections policy. Each of the commissions or task forces is considering a wide range of corrections alternatives including prison capacity and updated inmate population projections, distribution of populations between state institutions and jails, and a wide range of alternative sanctions such as expanded community corrections options. Technical assistance is provided under a grant to the National Council on Crime and Delinquency (NCCD).

Application: States interested in funding should prepare a concise concept paper and summary budget covering the background, project goal(s) proposed composition of the corrections policy group, the ability to generate prison/parole and/or jail data on inmate composition, and the level of consensus foreseen in developing corrections options. Concept papers should be submitted to BJA by May 31, 1988, with a copy to the National Council on Crime and Delinquency, 77 Maiden Lane, San Francisco, California 94108.

Grant Period, Award Amount and Eligibility Criteria: This funding will extend the work of selected state commissions for an additional six months and continue technical assistance into mid-1989. One additional state commission may be funded on a competitive basis to commence work in 1988.

Selection criteria will include:

- The severity of prison/jail problems and the pressures on the state to deal with prison capacity problems (court orders, prison disturbances, press coverage, legislative action);
- The clarity and comprehensiveness of the justification for the assistance requested;
- The extent of technical or financial support sought, evaluated in terms of the nature and extent of the problem;
- The extent of documented support and interest from all levels and branches of government within the state.

An independent selection panel will screen concept papers and make recommendations on a competitive basis. (Some weight will be given to geographic distribution of projects).

$450,000 is earmarked for this program to be distributed as follows: $340,000 for continuation funding in five or six states and one new state; $110,000 for technical assistance and training activities.

The 1988 funds will be awarded to the National Council on Crime and Delinquency, San Francisco, which will distribute funding to the states under the direction of the Bureau of Justice Assistance.

Contracts will be awarded for periods of 12 to 18 months.

BJA Contact: The BJA contact for additional information on this program is Nicholas Demos at 202/272–4605.

Program title: Prison Industry Information Clearinghouse.

Goal/Objective: This project supports improved operations and expansions of state correctional industries, both as a means to reduce inmate idleness and to develop revenues for a variety of correctional and social purposes.

Background: This project provides publications, technical assistance and special research for state prison industries. It is a continuation of a clearinghouse for state prison industries developed at the American Correctional Association (ACA) in 1986.

Program Description: ACA staff handle technical assistance requests on a wide range of prison industry issues, including legislation, personnel procedures, marketing and sales, and organization and management, as well as joint ventures with the private sector. Requests are handled through document retrieval and reproduction, special research, and operation of PI-Net, the automated information system. Periodic bulletins on topics of special interest are distributed to all state prison industries.

Application: The American Correctional Association will submit a continuation application in April 1988.

Grant Period, Award Amount and Eligibility Criteria: $175,000 will be awarded to the American Correctional Association to extend the current project for an additional 12 months through April 1989.

Project Contact: The BJA contact for additional information on this program is Nicholas Demos at 202/272–4605.

Program Title: Strategic Planning for Prison Industries.

Goal: This project will assist state correctional industries to develop long-range growth plans and marketing plans for the expansion of their operations.

Background: This is a continuation of a 1987 project which provides technical assistance and small grants to state correctional industries to complete long-range business plans.

Program Description: This project will provide technical assistance to state correctional industries to expand their business operations. The emphasis will be on long term strategic planning, defining business objectives, growth markets, and means of financing growth. Small subgrants of $10,000–$25,000 per state may be approved by BJA through the Technical Assistance Coordinator.

The Technical Assistance Coordinator for this project is the Institute for Economic and Policy Studies-Correctional Economics Center, Alexandria, Virginia.

Application: The Institute for Economic and Policy Studies, Alexandria, Virginia, will submit an application for continuation funding in May or June 1988.

Grant Period, Award Amount and Eligibility Criteria: This project is being extended for 6 months to June 1989. This will be a continuation grant to the Institute for Economic and Policy Studies.

$125,000 is earmarked, to be distributed as follows: approximately $45,000 for two new state prison industry planning studies; $40,000 for short-term technical assistance to state prison industries; and $40,000 for administration.

Project Contact: The BJA contact for additional information on this program is Nicholas Demos at 202/272–4605.

Subtitle V—Information Systems and Miscellaneous Projects

Program Title: National Criminal Justice Computer Laboratory and Training Center.

Goal/Objective: This program will provide specific assistance and training to local criminal justice agencies in automating functions, in implementing programs such as Prosecution Management Support Systems, and in comparing technologies and selecting the most cost-effective technology for local application.

Background: This program provides continued support to the joint efforts of the Criminal Justice Statistics Association (CJSA) and SEARCH Group, Inc., for the laboratory and training centers. This program is designed to respond to specific information systems needs of criminal justice agencies. Most criminal justice agencies, and especially small to medium-sized agencies, lack the necessary resources and expertise to: maintain information on available, public domain systems; investigate new technologies; develop criminal justice applications for existing technology, compare available technology and select the most cost-effective hardware and software for local systems; and provide necessary, technical training for their employees.

Modeled after the original laboratory and training center operated by SEARCH Group, Inc., in Sacramento, this Washington, DC facility will receive and maintain equipment donated by private vendors. Under the approved comprehensive plan for the initial grant, the laboratory will house the center's publications library, the library of public domain and private sector software, and the clearinghouse of computer vendors and users. It will provide a site for CJSA and SEARCH to assist users in the evaluation of software and hardware, and in the selection of appropriate products to meet their needs. It will also serve as a site for vendors to demonstrate their projects to potential users and as a site for demonstrations of public domain software. The training center's initial training programs will focus on: decision support; policy analysis; automation needs of criminal justice agencies; and the operation and use of public domain software, specifically, "DA's Assistant" for prosecution management and "Lock-up" for jail management.

Program Description: A cooperative agreement will be negotiated with the Criminal Justice Statistics Association and SEARCH Group, Inc. This continuation award will provide for the implementation of the National Computer Laboratory and Training Center for the eastern United States. This award will focus on one or more of the following: demonstration of specific, operational micro-technology systems; the provision of specific training programs; the provision of specific technical assistance. A revised comprehensive plan will be submitted to BJA for approval. This plan shall recommend priority areas (and schedules) for training, systems demonstration, technology comparisons and technical assistance.

Application: The Criminal Justice Statistics Association will submit a continuation application by May 1, 1988.

Grant Period, Award Amount and Eligibility Criteria: An amount not to exceed $200,000 will be awarded to the Criminal Justice Statistics Association and SEARCH Group, Inc., to extend the current cooperative agreement for an additional 12 months until May 31, 1989.

Project Contact: The BJA contact for additional information on this program is John Gregrich at 202/272–4601.

Project Title: Restitution by Juvenile Offenders—Technical Assistance and Training.

Goal/Objective: This continuation award will provide for information, training and technical assistance to block grant projects for restitution programs that deal with serious juvenile offenders. The overall program objectives are to improve and expand the use of restitution as a juvenile justice disposition, to evaluate programs in order to determine the most effective structures and components, and to upgrade programs based on current knowledge.

Background and Program Description: The number of Justice Assistance Act block grantees addressing restitution has continued to grow, and with that growth has come a rising demand for technical assistance. The Bureau of Justice Assistance will continue to draw upon expertise and programs, developed under grants from the Office of Juvenile Justice and Delinquency Prevention, and make them available to block grantees. This continuation award will provide block grantees access to existing training and to specialized training. In addition, it will provide for refinements in the existing program brief and for limited, on-site assistance in accordance with the revised brief.

Application: The Pacific Institute for Research and Evaluation will submit an application by April 1, 1988.

Grant Period and Award Amount: A supplemental award will be negotiated with the Pacific Institute for Research and Evaluation in an amount up to $100,000 for a 12-month period ending March 31, 1989.

Project Contact: The BJA contact for additional information on this program is Dorothy L. Everett at 202/272–4604.

Program Title: Drug Abuse Resistance Education (DARE) Regional Training Centers.

Goal/Objective: The goal of the DARE program is to eliminate drug use among youth (K–12 grades), focusing on fifth and sixth graders.

The objectives of this program are to establish regional training centers that are geographically located for ease of access and to provide high quality, specialized, cost-effective training for police officers, preparing them in sufficient numbers to teach the established DARE curriculum to schools within their communities.

Background: BJA funded the demonstration of DARE at seven sites in 1987. The purpose of the demonstration phase was to plan and organize DARE projects modeled after the original DARE project administered by the Los Angeles Police Department. Those demonstration sites found DARE to be an effective and well-liked program that can be replicated by persons who have been thoroughly trained. Numerous requests received by the Bureau of Justice Assistance (BJA) have focused on the need for training the growing numbers of agencies wishing to implement DARE programs in their schools. Regional Training Centers are viewed as a means to satisfy that need. Regional Training Centers will make training more accessible to local agencies, adapt training to the unique characteristics of adjoining communities and provide training and technical assistance in a more cost-effective manner than the arrangement being utilized by most agencies at this time.

Program Description: This solicitation calls for applications to establish Regional Training Centers that will provide both inservice and initial Drug Abuse Resistance Education training and technical assistance to police officer/agencies wishing to replicate the DARE program.

The Los Angeles Police Department will establish an advisory/oversight committee, entitled National DARE Training Committee, chaired by Lt. Rodger Coombs that will provide:

- Comments and recommendations to recipients regarding program strategy;
- Guidance and advice regarding needed curriculum changes and training schedule (e.g., timeframe and sequence; trainee workbook contents, including curriculum outline);
- Guidance regarding training roster requirements and preparation including the names of agencies each trainee represents; and
- Guidance regarding selection of contractors/presenters (including organizations they represent and qualifications).

BJA is producing a two-part DARE operations manual. This two-part manual is a required core document that must be used by persons implementing and operating a DARE project and by the DARE Regional Training Centers. The manuals, "An Invitation to DARE" Program Brief (book one) and "An Implementation Manual" (book two), will guide training, implementation and operation of the DARE program.

Application: Applicants must be police departments with training academies or teaching facilities that can offer cost-effective means to house and feed trainees. The applicant should have a successful operating DARE project that has been in existence for at least six months and employs at least three or more certified instructors. All applicants must submit a completed Standard Form 424. Detailed application instructions may be obtained upon request from the BJA Program Manager. All applications are due at BJA by May 16, 1988.

Grant Period, Award Amount and Eligibility Criteria: $500,000 has been allocated for this initiative. At least four cooperative agreements will be awarded

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competitively. The budget period is for 12 months. These awards will provide for the establishment of Drug Abuse Resistance Education Regional Training Centers in different geographical locations within the United States.

An expert panel will be convened to review all eligible applications. Applications will be rated based on the following weighted criteria:

- Organizational capability to carry out the training and account for funds (20%);
- Soundness of proposed strategy to implement the project (20%);
- Clarity and appropriateness of the administrative plan (25%);
- Qualifications of project staff (20%); and
- Reasonableness and cost-effectiveness of budget (15%).

Project Contact: The BJA contact for additional information on this program is Dorothy L. Everett at 202/272–4804.

Subtitle VI—Victims

Program Title: National Victims Resource Center

Goal/Objective: To continue the collection and maintenance of data collected from grantees funded under the Victims of Crime Act of 1984.

Background: The National Victims Resource Center (NVRC) was established to collect and maintain data and information for and about victims of crime. NVRC maintains a data base of victim-related books, articles and audio-visual materials, Federal victimization statistics, Federally sponsored victim research projects, and provides access to reading lists, bibliographies, and publications.

Program Description: The project currently managed by the Aspen Systems Corporation will be continued. The clearinghouse services on victim assistance and victim compensation programs, victim advocacy groups and the provision of printed information for and about victims of crime will be continued. These services and materials will be available to assist both groups and individuals who need information to augment or implement programs which help victims.

Grant Period, Award Amount and Eligibility Criteria: The period for this project is 12 months. BJA will transfer $100,000 to the Office for Victims of Crime (OVC) to support this project. The award which will be made to the current contractor, the Aspen Systems Corporation, by the National Institute of Justice (NIJ) will include the $100,000 transfer amount.

Project Contact: The contact for additional information on this program is Duane Ragan, Office for Victims of Crime (OVC) at 202/724–5947.

Project Title: Family Violence Prevention

Goal/Objective: To provide public education and awareness about family violence to segments of the population not involved in the issue of family violence prevention.

Background: The Task Force on Families in Crisis (TFFC) is a national volunteer organization that has been working on issues affecting the American family. TFFC has received two awards from the Office for Victims of Crime (OVC) to perform work in the area of family violence prevention. TFFC has developed educational and public awareness materials which are addressed to segments of the population not actively involved in family violence spouse abuse issues. Such organizations include the religious community, civic groups and organizations, and men's and women's service clubs.

Program Description: The Task Force on Families in Crisis (TFFC), the current grantee, will continue the efforts initiated during the first two years of this project. The project will continue to develop community plans to strengthen families and to provide public education and awareness about the dynamics of family violence and effective methods of early intervention and prevention. TFFC will focus and intensify their efforts on educating the religious community on the dynamics of family violence, how to recognize it and offer help to the victim, the family, and the abuser, as recommended in the Attorney General's Task Force on Family Violence Final Report.

Grant Period, Award Amount and Eligibility Criteria: The grant period for this project is 12 months. BJA will transfer $150,000 to the Office for Victims of Crime (OVC) to support this project.

Project Contact: The contact for additional information on this program is Susan Dawson, Office for Victims of Crime (OVC) at 202/724–5983.

Program Title: National Victim Assistance Program Development and Technical Assistance Project.

Goal/Objective: To support the development and implementation of criminal justice victim assistance programs and projects.

Background: The National Organization for Victim Assistance (NOVA) has been providing training and technical assistance to BJA grantees under previous grant awards. The training and technical assistance visits have supported both the development and implementation of programs and projects which provide assistance to victims of crime.

Program Description: NOVA will continue to provide targeted training and technical assistance to BJA block grant recipient organizations. These efforts will support the development and implementation of criminal justice programs and projects which provide services to victims of crime. In addition, the project will also identify and examine at least 20 programs which have implemented the majority of the program elements of the model program guidelines. Ten of the programs will be selected to receive technical assistance from NOVA and will be publicized as a resource "model program" or referral source in the field. NOVA will also prepare a model Program Brief during the project period.

Grant Period, Award Amount and Eligibility Criteria: The grant period will be 12 months. The award amount for this project is $275,000. The award will be to the National Organization for Victim Assistance (NOVA).

Project Contact: The BJA contact for additional information on this program is John Veen at 202/272–4601.

Program Title: Sexual Assault Awareness Training.

Goal/Objective: To provide sexual assault prevention training to the General Federation of Women's Clubs (GFWC) membership.

Background: GFWC is an organization with a proven record of working closely with law enforcement in crime prevention and public education awareness efforts. The organization has experience in building coalitions at various levels to attack problems and support programs. GFWC will join forces with the FBI for a two-year program which will: 1. increase awareness of the complexity of sexual assault issues and the behavior of sexual offenders; 2. help to reduce the opportunity for GFWC members, their families and communities to fall victim to a sexual assault; and 3. implement actions to meet the needs and rights of sexual assault victims.

Program Description: As part of the overall GFWC/FBI program, the Office for Victims of Crime (OVC) will fund a training conference at the FBI Academy in Quantico, Virginia, for GFWC state volunteers and leaders concerning the complexity of sexual assault and to forge a partnership at the state and local levels between the GFWC and the FBI. The volunteer chairmen will then implement the "GFWC/FBI Sexual Assault Awareness/Victim Assistance Program" by working with the GFWC

state presidents who provide training opportunities at the state and district levels, promoting new sexual assault information in 50 state publications and in other media, providing technical assistance to clubs as requested, and working with FBI coordinators and other statewide groups to sponsor seminars/training opportunities at the state, district and local levels.

Grant Period, Award Amount and Eligibility Criteria: The grant period for this national awareness training and information dissemination effort will be six months. BJA will transfer $35,000 to the Office for Victims of Crime (OVC) to support this project.

Project Contact: The contact for additional information on this program is Susan Stanley, Office for Victims of Crime (OVC) at 202/272–5600.

Program Title: Law Enforcement Victims Assistance.

Goal Objective: To improve police-based victim assistance activities.

Background: In March 1984, the National Organization of Black Law Enforcement Executives (NOBLE) began a project to assist large municipal police departments in designing and implementing police-based victim assistance activities. The project was an outgrowth of the recommendations of the President's Task Force on Victims of Crime. The President's Task Force identified four recommendations for police agencies and NOBLE incorporated those four recommendations into a list of core objectives for an ideal law enforcement victim assistance program. An additional 13 optional objectives were also recommended for police agencies. The objectives apply to both the patrol and investigative divisions of the police department.

Program Description: NOBLE's goal has been to design and implement police-based victim assistance programs in large municipal police departments. A special emphasis of the project has been to assist inner city minority crime victims. Under this grant NOBLE will provide technical assistance to the 12 host agencies which were developed under previous grants. The technical assistance will include: 1. developing training programs for minority community leaders in six host cities; 2. developing and implementing a uniform evaluation component for the 12 host agencies; 3. training the host agencies on the provisions of the Victims of Crime Act of 1984, as amended; and 4. issues awareness and information exchange.

In addition, NOBLE will continue to: 1. assist the host agencies in developing training material and written guidelines for victims; 2. facilitate information between host agencies; and 3. network with allied organizations that have interest in victim assistance.

Grant Period, Award Amount and Eligibility Criteria: The grant period for this project is 12 months.

BJA will transfer $15,000 to the Office for Victims of Crime (OVC) to support this project.

Project Contact: The contact for additional information on this program is Susan Stanley, Office for Victims of Crime (OVC) at 202/272–6500.

Subtitle VII—Crime Prevention

Program Title: National Citizen's Crime Prevention Campaign.

Goal Objective: To continue promotion of "McGruff," the nationally recognized symbol for crime prevention, and the National Citizen's Crime Prevention Campaign, by developing and disseminating crime prevention materials through public service advertising for T.V., radio, and newsprint; to provide national, state and local technical assistance and training; to provide a clearinghouse for dissemination of crime prevention materials to the public; to conduct national state workshops for the crime prevention practitioner; and to continue the efforts of drug prevention through demand reduction by the training of Drug Enforcement Administration (DEA) Regional Field Coordinators.

Background: Crime prevention is practiced by millions of citizens to reduce crime and the fear of crime in their homes, communities, and businesses throughout this nation: Neighborhood Watch in Urban/Rural communities, Business Watch, Teen Programs, Programs for the Elderly, Arson Prevention, Safe Homes for Kids, or Home Security. Citizens and law enforcement are working together with other local government and community resources.

The National Citizen's Crime Prevention Campaign provides national focus on these diverse efforts. Initiated in 1978 by the Department of Justice and the National Advertising Council, Inc., it continues today with funding provided by the Bureau of Justice Assistance (BJA) and the private sector. The Secretariat for the "McGruff" campaign and its administrator is the National Crime Prevention Council (NCPC), a non-profit organization that provides technical assistance, training, and materials to support state, local, and national programs, and the National Crime Prevention Coalition.

Under a cooperative agreement with BJA, the National Crime Prevention Council develops, distributes and promotes crime prevention public service announcements, drug abuse prevention through demand reduction, and technical assistance/training and materials to support citizens' activities aimed at reducing crime and the fear of crime.

Program Description/Application: Through this BJA/NCPC cooperative agreement, the following objectives will be achieved:

- Continuation of the National "McGruff" Campaign. Current national issues identified by state and local governments and national associations will be translated into media campaigns and supported by quality follow-up materials. Over $55 million worth of free advertising will be secured in FY 89 from this BJA effort. Drug prevention targeting kids 6–12 years of age will also be a major initiative.
- Distribution of crime prevention public awareness and positive action opportunities through "How to Kits," newsletters, monographs, and booklets.
- Technical assistance, limited to six months, directed at states to provide for cost-effective dissemination of information to local governments, communities, and citizens. Block grant recipients will again be targeted, including state crime prevention associations and program members, coalition members, and citizens seeking advice and assistance.

Assistance to citizens, states, etc. will be provided through:

- A National Resource Library which contains over 1,500 volumes and over 100 different crime prevention topics;
- A Computerized Information Center that contains over 5,000 plus crime prevention programs, the largest comprehensive database of crime prevention in the United States;
- A comprehensive package of crime prevention materials designed specifically for BJA block grant recipients and crime prevention practitioners;
- National/state topical workshops and seminars on crime prevention. They will include: Comprehensive Planning Skills, Neighborhood Watch, Crime Prevention for Youth, Resource Development and Data Analysis;
- A partnership with "National Night Out";
- The continuation of a drug prevention effort in demand reduction by BJA, NCPC and DEA to provide training to DEA Regional Field Coordinators, develop and promote Sport-Super Star PSA's, and assist DEA-sponsored drug prevention activities;
- A national research and policy forum for the crime prevention

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practitoner. Efforts would include: one National Roundtable Workshop for state association and state policy makers; development of crime prevention "How to Kits"; a state advisory council for guidance of NCPC and national issues, and various task forces called by BJA/NCPC to focus on specific issues or problems;

• A continuation of the National Association of Stock Car Racers (NASCAR) partnership focusing on Personal Service Agreements (PSA's) with recognized super stars, McGruff at the Races with 90 local tracks, and drug prevention decals displayed on 20,000 race cars; and

• Continue to provide Secretariat service to the Crime Prevention Coalition.

Application: The National Crime Prevention Council will submit a continuing application by July 1, 1988.

Grant Period, Award Amount, and Eligibility Criteria: The cooperative agreement with the National Crime Prevention Council is being continued. This cooperative agreement is for a period of 12 months (October 1, 1988 through September 30, 1989) in the amount of $1,700,000.

Project Contact: The BJA contact for additional information on this program is Ronald M. Steger at 202/724-8374.

Charles P. Smith,

Acting Director.

[FR Doc. 88-9279 Filed 4-26-88; 8:45 am]

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federal register

Wednesday
April 27, 1988

Part III

Environmental Protection Agency

40 CFR Part 27

Program Fraud Civil Remedies; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 27

[FRL-3369-6]

Program Fraud Civil Remedies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule implements the Program Fraud Civil Remedies Act of 1986. This Act authorizes certain federal agencies, including EPA, through administrative procedures, to impose civil penalties and assessments against any person who makes a false claim or statement to EPA.

EFFECTIVE DATE: These regulations are effective on May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Marla Diamond, Esq., Office of General Counsel, Inspector General Division, U.S. Environmental Protection Agency, 401 M Street, SW. (LE-132I), Washington, DC 20460. Telephone: (202) 475-6660.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act (the Act), Pub. L. No. 99-509, was enacted on October 21, 1986, as sections 6103-6104 of the Omnibus Budget Reconciliation Act of 1986, to be codified at 31 U.S.C. 3801-3812. The Act establishes a new administrative remedy against persons who submit false claims or written statements to the Environmental Protection Agency, as well as certain other Federal agencies. This remedy is in addition to any criminal, civil or administrative remedies presently available to EPA by statute, regulation, contract or other procedure. In general, any person who submits a claim, not in excess of $150,000, or a written statement to EPA, knowing or with reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per claim or statement, and for an assessment of up to double the amount falsely claimed.

The Act requires each affected federal agency to promulgate rules and regulations to implement the provisions of the Act. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1986). To promote this uniformity throughout government, the President's Council on Integrity and Efficiency distributed a draft model regulation to its members requesting comments. An inter-agency workgroup, including a representative from EPA, reviewed the comments and revised the draft regulation. On March 6, 1987, the Chairman of the Council distributed the final model regulation. On September 16, 1987, the Vice Chairman of the Council distributed changes to the model regulation in response to public comments on proposed rules published by other agencies. EPA published its proposed rule (the model regulation, as amended, with certain procedural modifications) on November 6, 1987 (52 FR 43030).

EPA received one comment. This comment took issue with the definition of "benefit" as that term is used in connection with the definition of "statement." Specifically, the comment points out that the definition of "statement" requires that the United States Government provide some portion of the money or property for the benefit in order for a false statement to obtain that benefit to be actionable under the statute and its implementing regulations. Thus, the comment states that the definition of "benefit" which means "anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee" is too broad because the government does not necessarily provide any money or property in connection with each of the benefits listed.

After careful consideration, we have concluded that the term "benefit," as defined in the regulation, as it is used in the definition of "statement" is consistent with the intent of the statute. Regardless of how broadly "benefit" is defined, actions for false statements with respect to a benefit from EPA may only be brought if the statement meets the definition of "statement" in the regulation. Thus, an actionable false statement must be made with respect to a benefit from EPA, but only if EPA "provides any portion of the money or property * * * for such * * * benefit * * *." Defining "benefit" broadly does not circumvent this qualification in the definition of "statement." Thus, no changes were made to the definition of "benefit" in the regulation.

Executive Order 12291

EPA has determined that this rule is not a major rule for the purposes of Executive Order 12291. It does not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers or others; and it will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis has not been prepared.

Regulatory Flexibility Analysis

We have determined that the regulation would not have a significant impact on a substantial number of small business entities and, therefore, we have not prepared a regulatory flexibility analysis in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-611. While some of the penalties and assessments imposed by EPA could have an impact on small businesses and other small entities, we do not believe that a substantial number of these small entities will be significantly affected by this regulation.

Paperwork Reduction Act of 1980

We have determined that this regulation does not contain any specific information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 27

Administrative practice and procedure, Assessments, False claims, False statements, Penalties.

Date: April 20, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40, Chapter I, Subchapter A of the Code of Federal Regulations amended as follows:

1. In Title 40 of the Code of Federal Regulations, a new Part 27—Program Fraud Civil Remedies—is added to read as follows:

PART 27—PROGRAM FRAUD CIVIL REMEDIES

Sec.

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Authority: 31 U.S.C. 3809.

§ 27.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Environmental Protection Agency, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 27.2 Definitions

Administrative Law Judge means an administrative law judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the Authority pursuant to 5 U.S.C. 3344.

Administrator means the Administrator of the United States Environmental Protection Agency.

Authority means the United States Environmental Protection Agency.

Authority head means the Administrator of a judicial officer.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 27.7.

Defendant means any person alleged in a complaint under § 27.7 to be liable for a civil penalty or assessment under § 27.3.

Government means the United States Government.

Hearing Clerk means the Hearing Clerk, A-110, United States Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Individual means a natural person.

Initial decision means the written decision of the presiding officer required by § 27.10 or § 27.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the United States Environmental Protection Agency or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Judicial officer means an attorney who is a permanent or temporary employee of the Authority designated by the Administrator to serve as judicial officer and who may perform other duties within the Authority but shall not be employed by any program office directly associated with the type of violation at issue in the proceeding.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of those terms.

Presiding officer means the administrative law judge designated by the Chief administrative law judge to serve as presiding officer.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, or other representative who must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

Reviewing official means the General Counsel of the Authority or his designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the Authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 27.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Authority, recipient, or party when such claim is actually made to an an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section, shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such Authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 27.4 Investigation.

(a) If the investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 27.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 27.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 27.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 27.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 27.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 27.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 27.7 only if—

(1) The Department of Justice approves the issuance of a complaint in written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 27.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 27.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 27.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 27.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statuory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 27.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 27.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 27.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting requirements of paragraph (b) of this section. The reviewing official shall file promptly with the hearing clerk the complaint, the general answer denying liability, and the request for an extension of time as provided in § 27.11. Upon assignment to a presiding officer, the presiding officer may, for good cause shown, grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 27.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 27.9(a), the reviewing official may file the complaint with the hearing clerk as provided in § 27.11.

(b) Upon assignment of the complaint to a presiding officer, the presiding officer shall promptly serve on defendant in the manner prescribed in § 27.8, a notice that an initial decision will be issued under this section.

(c) The presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 27.3, the presiding officer shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failue to file a timely answer, the presiding officer shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section, is not subject to reconsideration under § 27.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the presiding officer shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority

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head shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 27.11 Referral of complaint and answer to the presiding officer.

(a) Upon receipt of an answer, the reviewing official shall file the complaint and answer with the hearing clerk.

(b) The hearing clerk shall forward the complaint and answer to the Chief administrative law judge who shall assign himself or herself or another administrative law judge as presiding officer. The presiding officer shall then obtain the complaint and answer from the Chief administrative law judge and notify the parties of his or her assignment.

§ 27.12 Notice of hearing.

(a) When the presiding officer obtains the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 27.8. At the same time, the presiding officer shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The date, time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the presiding officer deems appropriate.

(c) The presiding officer shall issue the notice of hearing at least twenty (20) days prior to the date set for the hearing.

§ 27.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 27.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case, may not, in such case or a factually related case—

(1) Participate in the hearing as the presiding officer;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) Neither the presiding officer nor judicial officer shall be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 27.15 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine question concerning administrative functions or procedures.

§ 27.16 Disqualification of the reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or presiding officer with the hearing clerk. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed within 15 days of the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that the reviewing official is disqualified because the reviewing official could not have made an impartial determination pursuant to § 27.5(a), the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 27.17 Rights of parties.

Except as otherwise limited by this Part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 27.18 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this Part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 27.19 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

§ 27.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 27.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 27.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the filing of an answer pursuant to § 27.9.

§ 27.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 27.22 and 27.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion which shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 27.24.

(3) The presiding officer may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The presiding officer may grant discovery subject to a protective order under § 27.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 27.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 27.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 27.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the presiding officer finds good cause for the failure or that there is not prejudice to the objecting party.

(c) Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

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§ 27.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 27.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 27.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by a party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the presiding officer;

(8) That a trade secret or other confidential research, development, or commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 27.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Authority, a check for witness fees and mileage need not accompany the subpoena.

§ 27.26 Form, filing and service of papers.

(a) *Form.*—(1) Documents filed with the hearing clerk shall include an original and two copies.

(2) The first page of every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the hearing clerk, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the hearing clerk shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document, other than those required to be served as prescribed in § 27.8, shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 27.27 Computation of time.

(a) In computing any period of time under this Part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) When a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 27.27 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with hearing clerk and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 27.29 Sanctions.

(a) The presiding officer may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The presiding officer may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 27.30 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 27.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

§ 27.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the presiding officer or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 27.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the presiding officer.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the presiding officer.

§ 27.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 27.22(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-

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examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or empoyee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) an individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 27.34 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence when appropriate, *e.g.*, to exclude unreliable evidence.

(c) The presiding officer shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 27.24.

§ 27.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the hearing clerk at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer pursuant to § 27.24.

27.36 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file responsive briefs.

§ 27.37 Initial decision.

(a) The presiding officer shall issue an initial decision based only on the record. The decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 27.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 27.31.

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and responsive briefs (if permitted) has expired. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration or a notice of appeal. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the presiding officer is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

§ 27.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the presiding officer.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised intial decision.

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 27.39.

(g) If the presiding officer issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 27.39.

27.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the hearing clerk in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if another party files a motion for reconsideration under § 27.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal, and the time for filing motions for reconsideration under § 27.38 has expired, the presiding officer shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a civil penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this Part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 27.3 is final and is not subject to judicial review.

§ 27.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 27.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 27.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 27.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 27.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 27.42 or § 27.43, or any amount agreed upon in a compromise or settlement under § 27.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 27.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 27.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the presiding officer issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any review under § 27.42 or during the pendency of any action to collect penalties and assessments under § 27.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 27.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 27.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 27.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 27.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

§ 27.48 Delegated functions.

The Administrator may delegate to a judicial officer, all or part of his authority to act in a given proceeding. This delegation does not prevent the judicial officer from referring any matter to the Administrator when appropriate.

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Rules and Regulations

Federal Register
Vol. 53, No. 82
Thursday, April 28, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines, Fresh Pears, Plums, and Peaches Grown in the State of California; Amendments to the Direct Sales Exemption Regulations for Nectarines, Plums, and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes changes in the direct home use sales exemption regulations established under the nectarine and the pear, plum, and peach marketing orders. The changes will: (1) Bring the quantities of nectarines, plums, and peaches that can be handled free of certain program requirements under that exemption more in line with the quantities that would normally be used for home use; and (2) clarify the language of the exemption to avoid possible misunderstandings within the affected industries as to the quantities that can be handled under the exemption.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 (7 CFR Part 916) and 917 (7 CFR Part 917), regulating the handling of nectarines and fresh pears, plums, and peaches grown in California, respectively. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 649 handlers of nectarines, plums, and peaches subject to regulation under marketing orders, and approximately 2,032 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

Notice of this action was published in the **Federal Register** on February 26, 1988 (53 FR 5777). The comment period ended March 28, 1988. No comments were received.

Section 916.110(b) of the nectarine regulations specifies conditions which must be followed to handle nectarines exempt from certain requirements, including grade, size, inspection, container, marking, and assessment regulations. Section 917.143 of the regulations for pears, plums, and peaches specifies similar conditions and exemptions for these three commodities. Among other things, maximum weight limitations are specified. For all four commodities, the quantity sold for home use and not for resale to any one person during any one day cannot exceed 200 pounds. These purchases also must be for home use and cannot be resold.

Under these exemption requirements, a handler could sell a family of four 800 pounds each of nectarines, plums, pears, and peaches in any one day. The Nectarine Administrative Committee, and the Plum and Peach Commodity Committees assert that that amount of fruit is excessive for home use sales in view of the intent of these exemption provisions. The intent is to help small growers by permitting them to sell such fruit directly to the consumers at the premises where the fruit is grown, at a nearby packing house, retail stand, or at certified farmers' markets.

Under this final rule, the poundage limitation will be determined on a per vehicle rather than on a per person basis. Hence, a family of four using the family car could only purchase 200 pounds of each fruit in a day, rather than 800 pounds each under the current exemption requirements.

For perspective concerning the adequacy of the poundage limitation, it should be noted that the annual per capita consumption in 1985 of fresh nectarines, peaches, and plums and prunes was 1.68 pounds, 3.99 pounds, and 1.53 pounds, respectively. Hence, according to the committees, the regulation will still provide more than enough fruit to meet the home use needs of local consumers and will not have an adverse impact on those growers who find handling fruit for home use under these exemptions attractive. The change to a poundage limitation of 200 pounds based on one vehicle per day is consistent with the intent of the minimum quantity exemption authority.

This final rule also clarifies the roadside sales rule exemption for plums and peaches by specifically stating that the maximum poundage of 200 pounds applies to each fruit separately. This action is not necessary for the nectarine regulation since it covers only one commodity. The change was recommended by the peach and plum committees to avoid misinterpretation of the rule to mean that the 200-pound limit is a combined total for all three fruits covered by the regulation.

A proposed rule to change the poundage limitation to a per vehicle basis for pears was published in the **Federal Register** on March 24, 1988 (53 FR 9634). The comment period ends April 25, 1988.

Therefore, the Department's view is that the quantity limitations for each of the affected commodities are more than adequate for home usage, they will not

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lessen the use of the roadside sales exemption by local consumers and growers, and the rule will have little, if any, impact on industry operations. Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. The harvest and shipment of the affected commodities are anticipated to begin during the mid-April through early May 1988 period, and it is important that the changes hereinafter set forth be in effect at the time of harvest and shipment so that all shipments are regulated similarly.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, Nectarines, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.110 is amended by revising paragraph (b)(3) to read as follows:

§ 916.110 Exemption.

* * * * *

(b) * * *

(3) The net weight of such nectarines to any one vehicle during any one day does not exceed 200 pounds.

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. Section 917.143 is amended by revising paragraph (b)(3) to read as follows:

§ 917.143 Exemption.

* * * * *

(b) * * *

(3) The shipment does not exceed 200 pounds of plums and 200 pounds of peaches to any one vehicle during any one day, and does not exceed 200 pounds of pears to any one person during any one day.

* * * * *

Dated: April 25, 1988.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-9366 Filed 4-27-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS Number: 1112-88]

Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule designates Camden, New Jersey as a class "A" port of entry and further identifies the facility as a port of entry for all aliens. A full range of immigration services will be available at Camden, as the port will be regularly staffed by inspectors of the United States Immigration and Naturalization Service.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Dwight S. Faulkner, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3995.

SUPPLEMENTARY INFORMATION: Under the present Service organization Philadelphia, Pennsylvania is one port of entry which includes, among others, the port facilities at Artificial Island, Billingsport, Deepwater Point, Fisher's Point, Gibbstown, Gloucester City, Paulsboro, and Trenton. These port facilities, excluding Philadelphia, are on the New Jersey side of the Delaware River, north or south of the proposed port at Camden, which is located 84 miles from the Newark District Office. During FY 87, 370 vessels carrying 8300 crewmen and 60 passengers were inspected at the above ports by officers of the Immigration and Naturalization Service. Currently these inspections are conducted by officers whose duty post is Philadelphia. The proposed port at Camden will be open daily from 8:00 a.m. to 4:30 p.m., thus providing a more efficient management of personnel and resources.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates solely to agency management.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. In § 100.4(c)(2) districts No. 4 and No. 21 are revised as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(2) * * *

District No. 4—Philadelphia, PA.

Class A

Erie, Pa.

Philadelphia, Pa. (the port of Philadelphia includes, among others, the port facilities at Delaware City, Lewes, New Castle, and Wilmington, Del.; and at Chester, Essington, Fort Mifflin, Marcus Hook, and Morrisville, Pa.)

* * * * *

District No. 21—Newark, NJ.

Class A

Camden, N.J. (the port of Camden includes among others, the port facilities at Artificial Island, Billingsport, Deepwater Point, Fisher's Point, Gibbstown, Gloucester City, Paulsboro, and Trenton, N.J.)

Newark, N.J. (the port of Newark includes among others, the port facilities at Bayonne, Carteret, Edgewater, Elizabeth, Hoboken, Jersey City, Linden, Perth Amboy, Port Newark, Sewaren, and Weehawken, N.J.)

* * * * *

Dated: April 12, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-9307 Filed 4-27-88; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective February 8, 1988, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective February 8, 1988. (Additions and deletions for that List were published at 53 FR 2998, February 3, 1988). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

American Cruise Lines, Inc.
$.01 par common
Barton Industries, Inc.
$.01 par common
Brentwood Instruments, Inc.
No par common
Burnham Service Corporation
No par common
Burton/Hawks, Inc.
.01 par common
Cel Communications, Inc.
$.01 par common
Chesapeake Industries, Inc.
$1.00 par common
Commonwealth Savings Association
No par common
Community Savings Bank
$.10 par common
Community Shares Ltd.
$.10 par common
Continental Federal Savings & Loan Association (Oklahoma)
$.01 par common
Control Laser International Corporation
$.01 par common
CPL Real Estate Investment Trust
No par shares of beneficial interest
Craft World International, Inc.
$.01 par common
Cushman Electronics, Inc.
No par common
Delta Data Systems Corp.
$.01 par common
Desinghouse International, Inc.
$.10 par common
Diversified Human Resources Group, Inc.
$.10 par common
Eldorado Motor Corporation
No par common
Equipment Company of America Inc.
$.10 par common
First Interstate Corporation of Alaska
$2.00 par common
Florafax International, Inc.
$.08⅓ par common
General Kinetics Incorporated
$.25 par common
IDC Services Inc.
$.25 par common
Magma Energy, Inc.
$.02 par common

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Melridge, Inc.
$.01 par common
Merchant Bank of California, The
No par common
Mid Pacific Air Corporation
No par common
National Royalty Corporation
$.01 par common
Neti Technologies Inc.
No par common
Northview Corporation
$.01 par common
Nova Pharmaceutical Corp.
Class A, warrants (expire 02–05–88)
Occidental/Nebraska Federal Savings Bank
$1.00 par common
Occupational Medical Corporation of America, Inc.
No par common
Paperboard Industries Corporation
No par common
Po Folks, Inc.
$.10 par common
Poe & Associates, Inc.
$.10 par common
Pre–Paid Legal Services, Inc.
Warrants (exp. 11–30–88)
Preway Inc.
$.50 par common
Pullman Company
Warrants (exp. 02–24–88)
Roadrunner Enterprises, Inc.
No par common
Rockwood National Corporation
No par common
Savoy Industries, Inc.
$.01 par common
Shatterproof Glass Corporation
$.50 par common
Shoreline Savings Bank
$.50 par common
Sigmaform Corporation
$.11335 par common
Stewart Sandwiches, Inc.
$1.00 par common
Sunworld International Airways, Inc.
$.20 par common
Telemation, Inc.
$.01 par common
Tots Plus, Inc.
$.01 par common
Triton Energy Corporation
Warrants (expire 11–15–89)
Triton Group Ltd.
Series C, $1.20 par convertible preferred
Video Library, Inc.
No par common
Waste Technology Corp.
$.01 par common
Westwood Group, Inc., The
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Aaron Brothers Art Marts, Inc.
$.01 par common
Addison-Wesley Publishing Company, Inc.
Class B, no par common
Allied Bancshares, Inc. (Texas)
$1.00 par common
Alternacare Corporation
$.05 par common
Apple Bank for Savings (New York)
$1.00 par common
Baltimore Bancorp (Maryland)
$5.00 par common
Barr Laboratories, Inc.
$.01 par common
Birmingham Steel Corporation
$.01 par common
BR Communications
No par common
Buffton Corporation
$.05 par common
Businessland, Inc.
No par common
5½% convertible subordinated debentures
8% convertible subordinated debentures
California Energy Company, Inc.
$.0675 par common
Calny, Inc.
$.01 par common
Careercom Corporation
$.01 par common
CCC Information Services, Inc.
$.01 par common
Central Bancorporation, Inc. (Ohio)
$5.00 par common
Central Wisconsin Bankshares, Inc.
$.50 par common
Chase Medical Group, Inc.
$.01 par common
Collins Industries, Inc.
$.10 par common
Columbia Pictures Entertainment
$.10 par common
Warrants (expire 06–01–92)
Warrants (expire 12–31–93)
Craft House Corporation
$.10 par common
Cycare Systems, Inc.
$.01 par common
Crossland Savings, FSB (New York)
$1.00 par common
Series A, cumulative convertible preferred
Series B, $12.75 cumulative preferred
Dicomed Corporation
$.03 par common
Dime Savings Bank of New York, F.S.B.
$1.00 par common
Dixon Ticonderoga Company
$1.00 par common
EMC Corporation
$.01 par common
Essex Communications Corporation
Class A, $.01 par common
First Empire State Corporation
$5.00 par common
Fidelcor, Inc.
$1.00 par common
Series A, $1.00 par convertible preferred
Series B, $1.00 par convertible preferred
First Fidelity Bancorporation
Series C, $4.00 par cumulative convertible preferred
First Republic Bancorp, Inc.
$.01 par common
First Jersey National Corporation
$5.00 par common
Series B, $1.00 par cumulative convertible preferred
First Valley Corporation
$1.00 par common
Florida Commercial Banks, Inc.
$1.00 par common
Frost & Sullivan, Inc.
$.01 par common
Gainsco, Inc.
$.01 par common
Genentech, Inc.
$.02 par common
Genmar Industries, Inc.
$.01 par common
Gibson, C.R. Company, The
$.10 par common
Great Western Savings Bank
$.01 par common
Horizons Research, Inc.
No par common
Incstar Corporation
$.01 par common
Innovative Software Inc.
$.01 par common
International Telecharge, Inc.
$.01 par common
Iverson Technology Corp.
$.01 par common
Kincaid Furniture Company, Inc.
$1.33⅓ par common
Life Investors Inc.
$1.00 par common
Linear Corporation
$.01 par common
Marine Corp. (Wisconsin)
$2.50 par common
Metrobank N.A. (California)
$1.66 par common
Morgan Products Ltd.
$.10 par common
North American Communications Corporation
$.01 par common
Norwesco, Inc.
$.10 par common
Owens and Minor Inc.
$2.00 par common
Paco Pharmaceutical Services, Inc.
Warrants (expire 12–31–88)
Rowley-Scher Reprographics, Inc.
$.01 par common
Royal Apex Silver, Inc.
$.05 par common
Scientific Systems Services, Inc.
$.01 par common
Seaman Furniture Company, Inc.
$.01 par common
Shawmut Corporation

$5.00 par common
Shoe City Corporation
$.10 par common
Software AG Systems, Inc.
$.01 par common
Spartech Corporation
$.75 par common
Stanadyne, Inc.
$2.50 par common
Sunstates Corporation
$.10 par common
$25.00 par preferred
Sylvan Learning Corp.
$.01 par common
Symbol Technologies, Inc.
$.01 par common
System Integrators, Inc.
No par common
Tenera, L. P.
Units of limited partnership interest
Westcorp
$1.00 par common

Additions to the List

Addington Resources, Inc.
No par common
Advantage Companies, Inc.
$1.00 par common
Warrants (expire 10–13–89)
Alliance Imaging Inc.
$.01 par common
Altera Corporation
No par common
American Consulting Corporation, Inc.
$.01 par common
Atlantic Group, Inc., The
$.05 par common
Avondale Industries, Inc.
$1.00 par common
Belmoral Mines Ltd.
No par common
Biotherapeutics Incorporated
Series A, $1.00 par convertible preferred
Bull Run Gold Mines, Ltd.
$.01 par common
Central Corporation
$.01 par common
Charter One Financial, Inc.
$.01 par common
Comerica Inc.
Series B, $4.32 par cumulative convertible preferred
Compucom Systems, Inc.
No par common
CXR Telcom Corporation
$.0033 par common
CYTRX Corporation
$.001 par common
Warrants (expire 11–09–91)
Datakey, Inc.
$.05 par common
Eastern Environmental Services, Inc.
$.01 par common
Eastmaque Gold Mines Ltd.
No par common
Empire Insurance Company
$1.00 par common
Epitope, Inc.
No par common
Evansville Federal Savings Bank (Indiana)
$1.00 par common
Exploration Company of Louisiana, Inc., The
$.01 par common
Fair, Isaac and Company, Incorporated
$.01 par common
First Franklin Corporation
$.01 par common
First Work Cheese, Inc.
$.01 par common
Warrants (expire 06–05–91)
GBC Bancorp (California)
No par common
Geraghty & Miller, Inc.
$.01 par common
Green, A.P. Industries, Inc.
$1.00 par common
Holiday RV Superstars, Inc.
$.01 par common
Home Federal Savings Bank (Indiana)
$.01 par common
International Consumer Brands, Inc.
$.01 par common
Iowa National Bankshares Corp.
$12.50 par common
Jaco Electronics, Inc.
$.10 par common
Jones Spacelink, Ltd.
Class A, $.01 par common
JRM Holdings, Inc.
$.01 par common
Kimmons Environmental Service Corp.
$.001 par common
Maione-Hirschberg Companies, Inc.
No par common
Mallard Coach Company, Inc.
$.01 par common
Max & Erma's Restaurants, Inc.
$.10 par common
Warrants (expire 10–07–88)
Maxim Integrated Products, Inc.
$.001 par common
Midfed Savings Bank (Ohio)
$.01 par common
Mobile National Corporation
$1.00 par common
Monmouth Real Estate Investment Trust
No par common
Moto Photo, Inc.
$.01 par cumulative convertible preferred
Warrants (expire 11–25–89)
Mutual Federal Savings Bank, A Stock Corp. (Ohio)
$1.00 par common
N–W Group, Inc.
$.01 par common
Nevada Goldfields Corporation
No par common
New York Bancorp, Inc.
$.01 par common
Octel Communications Corporation
No par common
Osborn Communications Corporation
$.01 par common
Peoples Federal Savings Bank of DeKalb County
$1.00 par common
Polifly Financial Corporation
$.10 par common
Portsmouth Bankshares, Inc. (New Hampshire)
$.10 par common
Repap Enterprises Corporation
Subordinated, voting common stock
Republic Bancorp Inc. (Michigan)
$5.00 par common
Royal Bank of Pennsylvania
Class A, $2.00 par common
Sanderson Farms, Inc.
$1.00 par common
Sellersville Savings and Loan Association (Pennsylvania)
$1.00 par common
Southern Mineral Corporation
$.01 par common
Taylor, S. Companies, Inc.
$.001 par common
Timberline Software Corporation
No par common
Trans Financial Bancorp, Inc. (Kentucky)
No par common
Tudor Corporation Ltd.
No par common
US West Newvector Group, Inc.
Class A, no par common
Vanguard Cellular Systems, Inc.
$.01 par common
Varitronic Systems, Inc.
$.01 par common
Vitalink Communications Corporation
$.01 par common
Wisconsin Toy Company, Inc.
$.01 par common
Z–Seven Fund, Inc., The
$1.00 par common

By order of the Board of Governors of the Federal Reserve System acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), Apr. 25, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88–9302 Filed 4–27–88; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 71269–8062]

Direct Investment Surveys: Raising Exemption Levels for the BE–605 and BE–606B Surveys

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

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SUMMARY: This final rule amends 15 CFR Part 806 by raising the exemption levels for two mandatory surveys of foreign direct investment in the United States conducted by the Bureau of Economic Analysis (BEA). The two surveys are quarterly survey BE–605, Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent, and quarterly survey BE–606B, Transactions of U.S. Banking Branch or Agency with Foreign Parent. Under this rule, the exemption level for each survey is raised from $15 million to $20 million.

These changes will reduce the number of survey reports filed, thus significantly reducing the reporting and processing burden.

EFFECTIVE DATE: This rule will be effective May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: In the February 16, 1988, Federal Register, Volume 53, No. 30, 53 FR 4420, the Bureau of Economic Analysis published a notice of proposed rulemaking to raise the exemption levels for two mandatory surveys of foreign direct investment in the United States. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The two surveys—the BE–605 and BE–606B quarterly surveys—for which exemption levels are raised under this final rule are part of BEA's regular data collection program for foreign direct investment in the United States. These surveys are mandatory under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108).

The exemption level for a given survey is the level of a U.S. affiliate's assets, sales, or net income below which reporting is not required. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities if an incorporated business enterprise or an equivalent interest if an unincorporated business enterprise.) Raising the exemption level lowers the number of reports to be filed, and will significantly reduce both the reporting burden on U.S. businesses and the processing burden on BEA.

Under this final rule, the exemption level for the two surveys is raised to $20 million. The previous exemption level for each survey was $15 million.

The $20 million level is the same as that being used in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1987, to determine whether a U.S. affiliate must file a long form (Form BE–12(LF)) or a short form (Form BE–12(SF)). Completed BE–12(LF) or (SF) reports are due May 31, 1988. The BE–12 is BEA's census of foreign direct investment in the United States and is intended to cover the universe of all U.S. affiliates. The BE–605 and –606B, in contrast, are sample surveys covering only the larger U.S. affiliates. The sample data reported in these surveys will be linked to data from the BE–12 benchmark survey in order to derive universe estimates for nonbenchmark years.

The rule will be effective with the BE–605 and –606B reports covering the second quarter of 1988, which are due 30 days after the close of that quarter.

Executive Order 12291

BEA has determined that this rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information requirements in this final rule have been approved by the Office of Management and Budget (OMB Nos. 0608–0009 and 0608–0023).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexbility analysis are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The rule raises exemption levels, thereby reducing reporting requirements of small entities.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting and recordkeeping requirements.

Dated: April 4, 1988.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 806 is amended as follows:

PART 806—[AMENDED]

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. In § 806.15(h)(1), the exemption level of $15,000,000 is changed to read "$20,000,000."

3. In § 806.15(h)(2), the exemption level of $15,000,000 is changed to read "$ 20,000,000."

[FR Doc. 88–9421 Filed 4–27–88; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket Nos. RM87–34–000 et al.; Order No. 500]

Regulation of Natural Gas Pipelines After Partial Decontrol; Availability of Transcript and Questions

April 22, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of transcript and questions.

SUMMARY: The Federal Energy Regulatory Commission (Commission) held a public hearing on April 11–12, 1988, on Order No. 500, Docket No. RM87–34, Regulation of Natural Gas Pipelines after Partial Decontrol (52 FR 8439, March 15, 1988). During the hearing, the Chairman and the Commissioners addressed questions to the participants, who were requested to submit their responses in writing subsequent to the hearing. Additionally, after the public hearing the Commissioners submitted a list of questions for response by the public. A copy of the transcript of the hearing and the list of questions are available in the Commission's Public Reference Room.

DATE: Anyone wishing to respond to the questions must submit responses by May 27, 1988.

ADDRESS: An original and 14 copies of the responses to the questions must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: Copies of the transcript of the hearing and the list of the questions submitted subsequent to the public hearing held on April 11–12, 1988, are available from the Public Reference Room, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9461 Filed 4–27–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 86F–0489]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Boiler Water Additives

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective April 28, 1988; objections by May 31, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 3, 1987 (52 FR 3350), FDA announced that a food additive petition (FAP 7A3975) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive.

FDA has evaluated data in the petition and other relevant material, and has concluded that the proposed use of the food additive is safe, and that the regulations in 21 CFR 173.310 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 31, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 173 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

§ 173.310 [Amended]

2. Section 173.310 *Boiler water additives* is amended in paragraph (c) in the table under "Substances" by adding the phrase "to a 16:1" after "4:1" in the entry for "Poly(acrylic acid-*co*-hypophosphite), sodium salt * * *."

Dated: April 15, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–9340 Filed 4–27–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 86F–0435]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N,N'*-1,3-propanediylbis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant in rubber articles intended for repeated use in contact with food.

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This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective April 28, 1988; objections by May 31, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HHF–335), 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 23, 1986 (51 FR 45955), FDA announced that a petition (FAP 7B3970) had been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of *N,N'*-1,3-propanediylbis(3,5-di-*tert* buty-l4-hydroxyhydrocinnamamide) as an antioxidant in closures with sealing gaskets intended to contact food and in rubber articles intended for repeated use in contact with food. Subsequently, the petitioner withdrew its request for the use of the additive in closures with sealing gaskets and requested amendment of § 178.2010 to provide only for the use of the additive in rubber articles intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under the FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 31, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing or that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by alphabetically inserting a new entry in the table to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
N,N'-1,3-Propanediylbis (3,5-di-tert-butyl-4-hydroxyhydrocinnamamide) (CAS Reg. No. 69851-61-2).	For use only at levels not to exceed 0.6 percent by weight of rubber articles for repeated use complying with § 177.2600 of this chapter.
* * *	* * *

Dated: April 15, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–8339 Filed 4–27–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8197]

Income Taxes; Corporate Alternative Minimum Tax Book Income Adjustment of Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides rules for computing the alternative minimum tax adjustment for the book income of foreign corporations. Changes to the applicable law were made by the Tax Reform Act of 1986. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax liability.

In addition, the text of the temporary regulations set forth in this document also serves as the text to the proposed regulations cross-referenced in a notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: Taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy J. McKenna of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR–54–87), Telephone 202–566–3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the book income adjustment to the corporate alternative minimum taxable income of foreign corporations under section 56(c)(1) and section 56(f) of the Internal Revenue Code of 1986 (Code), as amended by section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2320). The temporary regulations provided by this document remain in effect until superseded by final regulations on these subjects.

These temporary regulations are intended to address only the issues raised by section 56 relating to the book income adjustment of foreign corporations. No inference should be drawn regarding in issues not expressly addressed in the regulations. In addition, unless otherwise stated, no inference should be drawn from the issues addressed in these regulations to the determination of the book income adjustment by United States corporate taxpayers.

Explanation of Provisions

In General

Section 882 of the Code, as amended by the Tax Reform Act of 1986, provides that for taxable years beginning after December 31, 1986, a foreign corporate taxpayer (foreign taxpayer) engaged in a trade or business in the United States during the taxable year shall be taxable as provided in section 55, relating to the alternative minimum tax, on its taxable income that is effectively connected with the conduct of a trade or business in the United States. Under section 56(c)(1) of the Code, a foreign taxpayer, when computing corporate alternative minimum taxable income for purposes of determining its alternative minimum tax for taxable years beginning in 1987, 1988, and 1989, must include an adjustment for the net book income of such taxpayer (the "book income adjustment").

Section 56(f)(1) provides that the book income adjustment is computed by increasing alternative minimum taxable income by 50 percent of the amount (if any) by which the adjusted net book income of the taxpayer exceeds alternative minimum taxable income for the taxable year (determined without regard to the book income adjustment and the alternative minimum tax net operating loss deduction). Adjusted net book income equals the net book income of the taxpayer shown on its applicable financial statement with certain adjustments. In general, a taxpayer's applicable financial statement is its financial statement that has the highest priority, determined in the following order: (a) A financial statement required to be filed with the Securities and Exchange Commission; (b) a certified audited financial statement used for credit purposes, for disclosure to shareholders or for any other substantial non-tax purpose; (c) a financial statement (but not a tax return) that is required to be provided to the Federal government or an agency thereof, a state government or an agency thereof, or a political subdivision of a state or an agency thereof; or (d) any other financial statement used as a statement for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose (an unaudited financial statement). If a taxpayer does not have any financial statement, or only has an unaudited financial statement and makes an election, the book income adjustment is computed using current earnings and profits.

On April 28, 1987, the **Federal Register** (52 FR 15305) published temporary regulations under sections 56 (c)(1) and (f) of the Code (T.D. 8138) that provide guidance for computing the alternative minimum tax book income adjustment. Those temporary regulations did not address all issues relating to the computation of the book income adjustment by a foreign taxpayer. Section 1.56–1T(c)(5)(ii), relating to the applicable financial statement of a foreign taxpayer conducting a trade or business in the United States, was specifically reserved.

Net Book Income of a Foreign Taxpayer

Generally, § 1.56–1T(b) of the temporary regulations, relating to the determination of net book income, is applicable in determining the net book income of a foreign taxpayer. however, § 1.56–1T(b) is amended by these temporary regulations to provide that in the case of a foreign taxpayer net book income is limited to the income or loss reported on the applicable financial statement of the foreign taxpayer that is effectively connected with the conduct of a trade or business in the United States ("effectively connected net book income").

Effectively connected net book income includes book income or loss attributable to an item that would be treated as effectively connected under the principles of section 864(c), or any other applicable provision of the Code and the regulations thereunder. For example, if for tax purposes the disposition of a United States real property interest would be treated as effectively connected with a trade or business in the United States under section 897, then the book gain or loss attributable to such disposition would be treated as effectively connected net book income.

Effectively connected net book income does not include any amount of book income or loss attributable to an item that would qualify as effectively connected with the conduct of a trade or business in the United States under section 864 (c) but for a specific exclusion in any provision of the Code. Consequently, effectively connected net book income does not include any amount attributable to exempt foreign trade income of a foreign sales corporation (FSC) that is treated as foreign source income that is not effectively connected with the conduct of a trade or business in the United States under section 921(a) and the regulations thereunder. However, dividends paid by a FSC may be includible in the net book income of the dividend recipient under the rules of § 1.56–1T(b)(2)(iv) of the temporary regulations.

Effectively connected net book income also excludes any amount that is attributable to income that qualifies as effectively connected with the conduct of a trade or business in the United States but that is exempt from United States taxation under section 894 of the Code, relating to amounts exempt under the provision of a United States income tax treaty. In addition, effectively connected book income excludes amounts that are exempt from United States taxation under sections 883, 892 and 895 of the Code.

Section 1.56–1T(b)(5) provides that if a taxpayer does not have an applicable financial statement, or only has an unaudited financial statement and makes the election described in § 1.56–1T(c)(2), net book income equals current earnings and profits for the taxable year. The temporary regulations are revised to provide that under these circumstances, a foreign taxpayer shall use effectively connected earnings and profits rather than current earnings and profits. Effectively connected earnings and profits are computed using the rules of section 884(d), relating to effectively connected earnings and profits for purposes of the branch profits tax. However, in computing effectively connected earnings and profits for purposes of the book income adjustment, the exceptions set forth under section 884(d)(2) (B) through (D) are not applicable.

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Applicable Financial Statement of a Foreign Taxpayer

The rules set forth in § 1.56–1T(c) of the temporary regulations, relating to the determination of the applicable financial statement for purposes of computing the book income adjustment, generally apply in determining the applicable financial statement of a foreign taxpayer conducting a trade or business in the United States. However, § 1.56–1T(c)(5)(ii) is amended to provide special rules for determining the applicable financial statement of a foreign taxpayer.

Under § 1.56–1T(c)(5)(ii), the applicable financial statement of a foreign taxpayer is the statement prepared by its United States trade or business that has the highest priority under § 1.56–1T(c)(3). Section 1.56–1T(c)(1)(ii) is revised to provide that a statement will be a certified audited statement if it is certified to be fairly presented by either an independent Certified Public Accountant, or a similarly qualified professional in any foreign country. Section 1.56–1T(c)(5)(ii)(B)(*1*) clarifies that an applicable financial statement of a foreign taxpayer may be prepared under the generally accepted accounting principles of a foreign country. However, under § 1.56–1T(c)(5)(ii)(B)(*2*), a financial statement must be prepared in United States dollars to be considered as an applicable financial statement.

Section 1.56–1T(c)(5)(ii)(C) provides special priority rules if a foreign taxpayer has more than one financial statement of equal priority. Under § 1.56–1T(c)(5)(ii)(C)(*1*), the applicable financial statement of a foreign taxpayer that has more than one financial statement of equal priority reporting on the same United States trades or businesses is the financial statement that reports the greatest amount of adjusted net book income. If, however, the financial statements report on different trades or businesses, § 1.56–1T(c)(5)(ii)(C)(*2*) provides that the applicable financial statement is that financial statement reflecting the greatest amount of gross receipts attributable to United States trades or businesses. If after applying § 1.56–1T(c)(5)(ii)(C)(*2*) the taxpayer still has financial statements of equal priority, the applicable financial statement is that financial statement resulting in the greatest amount of adjusted book income.

If a United States trade or business of a foreign taxpayer modifies its financial reporting and the principal purpose of such action is to reduce adjusted net book income, § 1.56–1T(c)(5)(ii)(D) provides that the District Director may, based on all the facts and circumstances, determine the taxpayer's applicable financial statement.

Adjustments to Net Book Income of a Foreign Taxpayer

The rules of § 1.56–1T(d) of the temporary regulations, relating to adjustments to net book income, apply when determining the net book income adjustment of a foreign taxpayer. However, a new § 1.56–1T(d)(7) is added to provide for special adjustments to net book income for foreign taxpayers. These rules require a foreign taxpayer to include any effectively connected net book income of the foreign taxpayer that is not reported on the applicable financial statement, and to exclude any amount reported on the applicable financial statement that is not treated as effectively connected net book income. For example, if the applicable financial statement of a foreign taxpayer only reports on one of its two businesses conducted in the United States, the effectively connected net book income amount reported on the applicable financial statement must be adjusted to include amounts attributable to income effectively connected to the operation of the other business in the United States.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply, and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.01–1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Adoption of Amendments to the Regulation

Accordingly 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * * Section 1.56–1T is also issued under 26 U.S.C. 56(f)(2)(H).

Par. 2. Section 1.56–0T is amended as follows:

1. Paragraph (b)(6) is redesignated as (b)(7).

2. A new (b)(6) is added immediately after paragraph (b)(5)(ii) to read as set forth below.

3. Paragraph (c)(5)(ii) is revised as set forth below.

4. A new paragraph (d)(7) is added immediately after paragraph (d)(6) to read as set forth below.

§ 1.56–0T Table of contents to § 1.56–1T, adjustment for book income of corporations (temporary).

* * * * * *

(b) Adjusted net book income * * *

(6) Additional rules for computation of net book income of a foreign corporate taxpayer.

(i) Adjusted net book income of a foreign taxpayer.

(ii) Effectively connected net book income of a foreign taxpayer.

(A) In general.

(B) Certain exempt amounts.

(iii) Computation of net book income of a foreign taxpayer using current earnings and profits.

* * * * * *

(c) Applicable financial statement.

* * *

(5) Special rules. * * *

(ii) Applicable financial statement of a foreign taxpayer with a United States trade or business.

(A) In general.

(B) Special rules for applicable financial statement of a trade or business of a foreign taxpayer.

(C) Special rule for statements of equal priority.

(D) Anti-abuse rule.

* * * * * *

(d) Adjustments to net book income.

* * *

(7) Adjustments for foreign taxpayers with a United States trade or business.

(i) In general.

(ii) Example.

Par. 3. Section 1.56–1T is amended as follows:

1. In the last sentence of paragraph (b)(2)(iv), the phrase "(3) and (4)" is revised to read "(3), (4), and (9)".

2. Paragraph (b)(6) is redesignated paragraph (b)(7).

3. References to paragraph (b)(6) in the last sentence of paragraph (b)(2)(iii), the last sentence of (b)(2)(iv), the last sentence of paragraph (b)(4)(i), the second sentence of paragraph (b)(4)(iii), and the second sentence of paragraph (b)(iv) are revised to read "paragraph (b)(7)".

4. A new paragraph (b)(6) is added to read as set forth below.

5. In redesignated paragraph (b)(7), Examples (9) through (14) are added to read as set forth below.

6. The second sentence of paragraph (c)(1)(ii) is revised as set forth below (the first sentence is republished for the convenience of the reader).

7. In the last sentence of paragraph (c)(4), the phrase "(4) and (5)" is revised to read "(4), (5), (19), and (20)".

8. The text for paragraph (c)(5)(ii) is added.

9. In paragraph (c)(6), Examples (15) through (21) are added to read as set forth below.

10. A new paragraph (d)(7) is added to read as set forth below.

§ 1.56–1T Adjustment for the book income of corporations (temporary)

* * * * * *

(b) *Adjusted net book income*

* * *

(6) *Additional rules for computation of net book income of a foreign corporate taxpayer*—(i) *Adjusted net book income of a foreign taxpayer.* Adjusted net book income of a foreign corporate taxpayer ("foreign taxpayer") means the effectively connected net book income (as defined in paragraph (b)(6)(ii) of this section) of the foreign taxpayer, after taking into account the adjustments under the rules of paragraph (d) of this section.

(ii) *Effectively connected net book income of a foreign taxpayer*—(A) *In general.* Effectively connected net book income of a foreign taxpayer is the income or loss reported in its applicable financial statement (as defined in paragraph (c)(5)(ii) of this section), but only to the extent that such amount is attributable to items of income or loss that would be treated as effectively connected with the conduct of a trade or business in the United States by the foreign taxpayer as determined under either the principles of section 864(c) and the regulations thereunder, or any other applicable provision of the Internal Revenue Code of 1986. Thus, if for tax purposes an item or income or loss is treated as effectively connected with the conduct of a trade or business in the United States, then the income or loss reported on the foreign taxpayer's applicable financial statement attributable to such item is effectively connected net book income. See paragraph (b)(7), Examples (10), (11), and (12) of this section.

(B) *Certain exempt amounts.* Effectively connected net book income does not include any amount attributable to an item that is exempt from United States taxation under sections 894, 883, 892 or 895 of the Internal Revenue Code of 1986. See paragraph (b)(7), Examples (13) and (14) of this section.

(iii) *Computation of net book income of a foreign taxpayer using current earnings and profits.* If a foreign taxpayer does not have an applicable financial statement or only has a statement described in paragraph (c)(1)(iv) of this section and makes the election described in paragraph (c)(2) of this section, net book income for purposes of this section is equal to the foreign taxpayer's current earnings and profits that are attributable to income or loss that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. Effectively connected current earnings and profits are computed under the rules of section 884(d) and the regulations thereunder, relating to effectively connected earnings and profits for purposes of computing the branch profits tax, but without regard to the exceptions set forth under section 884(d)(2) (B) through (D). For purposes of this section, effectively connected current earnings and profits are not reduced by any remittances or distributions. Effectively connected current earnings and profits take into account Federal income tax expense and any foreign tax expense; however, see paragraph (d)(3) of this section for adjustments to net book income with respect to certain taxes.

(7) *Examples.* * * *

Example (9). Corporation I is a United States corporation with a 100 percent owned subsidiary, J, a foreign sales corporation (FSC). I uses a calendar year for both financial accounting and tax purposes. Income from J is consolidated in I's applicable financial statement. I and J do not file a consolidated tax return. In 1987, J pays a dividend to I of $100 out of J's earnings and profits. For purposes of this example, it is assumed that the distribution is made out of the profits attributable solely to foreign trade income determined through use of the administrative pricing rules of section 925(a)(1) and (2). Accordingly, the distribution is eligible for the 100 percent dividends received deduction under section 245(c). Although I's applicable financial statement is adjusted to eliminate income or loss attributable to J, the entire amount of the dividend distribution must be included in I's adjusted net book income pursuant to paragraph (b)(2)(iv) of this section.

Example (10). Corporation K is a foreign corporation incorporated under the laws of country X. K uses a calendar year for both financial accounting and tax purposes. In 1987, K actively conducts a real estate business, L, in the United States. The financial statement that is used as K's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) discloses total net income of $150. Of this amount, $100 is attributable to L's real estate business. $50 is attributable to dividends paid to L from its investment in certain securities. The securities investment is not connected with L's real estate business. Under the rules of section 864, only $100 is effectively connected to the conduct of a trade or business in the United States. Thus, K's effectively connected net book income for 1987 equals $100.

Example (11). Assume the same facts as in Example (10) except that K's applicable financial statement also discloses $75 attributable to investment real property located in the United States, so that the net income amount reported on the financial statement equals $225. The $75 of income is not effectively connected with the conduct of a trade or business in the United States. K, for regular tax purposes, makes an election under section 882(d) to treat this income as effectively connected with the conduct of a trade or business in the United States. As a result, K's effectively connected net book income for 1987 equals $175 ($100 + $75).

Example (12). Corporation M is a foreign corporation that actively conducts a manufacturing business, N, in the United States. M is a calendar year taxpayer for both financial accounting and tax purposes. In 1987, the financial statement that is used as M's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) reflects an anticipated loss from the sale of a division of N. For Federal income tax purposes the loss is not recognized in 1987, but rather is recognized in 1988 when M sells the division. In determining M's effectively connected net book income for 1987, the anticipated loss reported on M's 1987 applicable financial statement is taken into account because the reported loss is effectively connected to the conduct of a trade or business in the United States under the principles of section 864.

Example (13). Corporation O is a foreign corporation that is engaged in the international shipping business. O is incorporated under the laws of X. O is a calendar year taxpayer for both financial accounting and tax purposes. In 1987, O actively conducts a shipping business, P, within the United States. The statement that is used in 1987 as O's applicable financial statement (as determined under paragraph (c)(5)(ii) of this section) discloses income of $100 that is attributable to P's operation of ships in international traffic. Under section 864, $50 is effectively connected with the conduct of a trade or business in the United States. However, the United States income tax treaty with X exempts from United States income tax any income derived by a resident of X from the operation of ships in international traffic. Thus, pursuant to paragraph (b)(6)(ii)(B) of this section, no amount of P's income is includible in O's effectively connected net book income.

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Example (14). Assume the same facts as in Example (13) except that there is no United States income tax treaty with X. However, X by statute exempts United States citizens and United States corporations from tax imposed by X on gross income derived from the operation of a ship or ships in international traffic. Under section 883(a), P's income of $59 that is effectively connected with the conduct of a trade or business in the United States is exempt from United States taxation. Thus, pursuant to paragraph (b)(6)(ii)(B)(*2*) of this section, no amount of P's income is includible in O's effectively connected net book income.

(c) *Applicable financial statement.* (1) *In general.* * * *

(ii) *Certified audited financial statement.* A certified audited financial statement that is used for credit purposes, for reporting to shareholders or for any other substantial non-tax purpose. Such statement must be certified by a Certified Public Accountant or a similarly qualified professional who is licensed in any foreign country and who is independent, as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Ethics (ET), Section 101, or other similar standard in accordance with the standards of the profession in any foreign country. * * *

* * * * *

(5) *Special rules.* * * *

(ii) *Applicable financial statement of a foreign taxpayer with a United States trade or business*—(A) *In general.* The applicable financial statement of a foreign taxpayer conducting one or more trades or businesses in the United States is the financial statement prepared by any such trade or business (or attributable to more than one such trades or businesses) that has the highest priority as determined under paragraph (c)(3) of this section. See paragraph (c)(6), Example (15) of this section.

(B) *Special rules for applicable financial statement of a trade or business of a foreign taxpayer*—(*1*) *Financial statement prepared under foreign generally accepted accounting principles.* Subject to the rules of this section, a financial statement prepared by a United States trade or business using generally accepted accounting principles of a foreign country may be an applicable financial statement under this paragraph (c). See paragraph (c)(6), Example (16) of this section.

(2) Financial statement prepared in United States dollars. Except as provided in paragraph (c)(5)(ii)(D) of this section, the financial statement of a United States trade or business must be prepared in United States dollars in order to be considered the applicable financial statement of the foreign taxpayer under this paragraph (c). See paragraph (c)(6), Example (17) of this section.

(C) *Special rule for statements of equal priority.* If a foreign taxpayer has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i) and (c)(3)(ii) of this section and this paragraph (c)(5)(ii)), the foreign taxpayer's applicable financial statement is determined under either paragraph (c)(5)(ii)(C) (*1*) or (*2*) of this section, whichever is applicable.

(*1*) *Two or more financial statements reporting on the same trades or businesses.* If two or more financial statements of equal priority report on the same United States trades or businesses, the applicable financial statement of the foreign taxpayer is determined under the rule of paragraph (c)(3)(iii) of this section. In applying this rule, adjusted net book income (as defined under paragraph (b)(6)(ii)(A) of this section) shall be used. Thus, the financial statement that results in the greatest amount of adjusted net book income is the foreign taxpayer's applicable financial statement.

(*2*) *Two or more financial statements reporting on different trades or businesses.* If two or more financial statements of equal priority report on different United States trades or businesses, the foreign taxpayer's applicable financial statement is—

(*i*) The financial statement that reflects the greatest amount of gross receipts attributable to United States trades or businesses, or

(*ii*) If after applying the rules of paragraph (c)(5)(ii)(C)(*2*)(*i*) of this section, the foreign taxpayer still has financial statements of equal priority, the rules of paragraph (c)(3)(iii) of this section apply (using effectively connected adjusted net book income).

See paragraph (c)(6), Example (18) of this section.

(D) *Anti-abuse rule.* The special rules of this paragraph (c)(5)(ii) will not apply if a trade or business conducted in the United States by a foreign taxpayer modifies its financial reporting and the principal purpose of such action is to reduce the amount of the book income adjustment. In such cases, the District Director may, based upon all the facts and circumstances, determine the taxpayer's applicable financial statement. See paragraph (c)(6), Example (21), of this section.

(6) *Examples.* * * *

Example (15). Corporation U is a foreign corporation incorporated in A. U is a calendar year taxpayer for both financial accounting and tax purposes. U actively conducts three real estate businesses, X, Y and Z, in the United States. In 1987, X prepares a certified audited financial statement that it provides to its United States creditor. In additon, in 1987, X, Y and Z each prepares unaudited financial statements that they provide to U for incorporation in U's worldwide financial statement. Under paragraph (c)(5)(ii)(A) of this section, U's applicable financial statement is the certified audited financial statement prepared by X. However, pursuant to paragraph (d)(7) of this section, an adjustment is required to include any of U's effectively connected net book income that is not included in X's certified audited financial statement (*e.g.*, the effectively connected net book income attributable to Y and Z).

Example (16). Corporation A is a foreign corporation incorporated in Z. A is a calendar year taxpayer for both financial accounting and tax purposes. A actively conducts a real estate business, B, in the United States. B prepares a certified audited financial statement for 1987 using the accounting principles of Z that it provides to A for incorporation into A's worldwide financial statement. In addition, B prepares a review statement for 1987 using United States generally accepted accounting principles that it provides to its United States creditors. Under paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B)(*1*) of this section, the financial statement prepared under the accounting principles of Z is the applicable financial statement.

Example (17). Assume the same facts as in Example (16) except that amounts are reported on B's certified audited financial statement in the currency of Z and amounts are reported on B's review statement in United States dollars. Since the review statement is prepared in United States dollars, under paragraph (c)(5)(ii)(B)(*2*) of this section, it is the applicable financial statement.

Example (18). Corporation C is a foreign corporation incorporated in Z. C is a calendar year taxpayer for both financial accounting and tax purposes. C actively conducts two real estate businesses, D and E, in the United States. D and E each separately prepare a certified audited financial statement for 1987 that they provide to their United States creditors. D's financial statement reports gross receipts of $100. E's financial statement reports gross receipts of $200. Under paragraph (c)(5)(ii)(C)(*2*) of this section, E's certified audited financial statement is the applicable financial statement and must be adjusted under the rules of paragraph (d)(7) of this section to include effectively connected book income attributable to D.

Example (19). F is a foreign corporation incorporated in X. F is a calendar year taxpayer for both financial accounting and tax purposes. F actively conducts a banking business, G, in the United States. G has been engaged in business in the United States since 1977. For the years 1977 through 1986, G did not prepare a separate financial statement. However, each year G provided F with its books, records and other raw financial data. F used this data in preparing its worldwide financial statement. G provides F with its 1978 books and records on January 5, 1988, in accordance with its historic practice. On February 15, 1988, G prepares an unaudited financial statement for calendar year 1987 that it provides to F. The principal purpose of creating this financial statement is to reduce net book income. Under these facts, the financial statement provided by G is not intended to be reasonably relied upon by F in preparing its worldwide financial statement. Therefore, for purposes of computing net book income, G's financial statement has not been used for a substantial non-tax purpose.

Example (20). Assume the same facts as in Example (19) except that for purposes of preparing F's 1987 worldwide financial statement, G does not provide F with any raw financial data, and G only provides F with an audited financial statement that is prepared for a substantial non-tax purpose. Under these facts, the financial statement provided by G is intended to be relied upon by F in preparing its worldwide financial statement. Therefore, for purposes of computing net book income, G's financial statement has been used for a substantial non-tax purpose.

Example (21). Corporation H is a foreign corporation incorporated in I. H is a calendar year taxpayer for both financial accounting and tax purposes. H actively conduct a real estate business, J, in the United States. For the years 1976 through 1986, J prepared a certified audited financial statement using United States dollars that it provided to H. In 1987, J prepares a certified audited financial statement using the currency of I. The principal purpose of the modification of J's financial reporting is to reduce the amount of the book income adjustment. Given these facts, the District Director may determine that J's 1987 certified audited financial statement prepared in the currency of I is J's applicable financial statement for 1987, and such statement must be converted into United States dollars based upon the translation used to prepare the certified audited financial statement in the currency of I. Accordingly, the effectively connected net book income of J for 1987 is the effectively connected net book income reported on the financial statement that has been converted into United States dollars.

(d) *Adjustments to net book income.*

* * * * *

(7) *Adjustments for foreign taxpayers with a United States trade or business*—(i) *In general.* Pursuant to paragraph (b)(6) of this section, the book income adjustment with respect to a foreign taxpayer with a United States trade or business is computed based on the effectively connected net book income of the foreign taxpayer (as defined in paragraph (b)(6)(ii) of this section). The net book income amount reported on the applicable financial statement of the foreign taxpayer (as determined under paragraph (c)(5)(ii) of this section) must be adjusted to—

(A) Include effectively connected net book income attributable to a trade or business conducted in the United States by the foreign taxpayer that is not reported on the applicable financial statement. Such amounts shall be determined from a financial statement (determined under paragraph (c) of this section and adjusted under the rules of this paragraph (d)) that would have qualified as an applicable financial statement of such excluded trade or business or upon effectively connected earnings and profits (if the rules of paragraph (b)(6)(iii) of this section apply), and

(B) Exclude any amount reported on such applicable financial statement that does not qualify as effectively connected net book income.

See paragraph (d)(7)(ii), Example (1) of this section.

(ii) *Example.* The provisions of this paragraph may be illustrated by the following example.

Example. Foreign corporation A a calendar year taxpayer for financial accounting and tax purposes, is incorporated in X. A actively conducts two real estate businesses, B and C, in the United States. B prepares a certified audited financial statement that it provides to its United States creditor. C does not prepare a financial statement. The certified audited financial statement prepared by B is treated as A's applicable financial statement under paragraph (c)(5)(ii) of this section. B's certified audited financial statement, in addition to amounts related to the conduct of its real estate business, also reports income received from its investment in United States securities, unrelated to its conduct of business in the United States that does not qualify as effectively connected net book income. In order to determine A's effectively connected net book income from the net book income reported on the applicable financial statement, such statement must be adjusted to exclude amounts attributable to the securities. In addition, book income or loss attributable to C, to the extent effectively connected to its business in the United States, must be included in the effectively connected net book income reported on B's financial statement. Since C does not have a financial statement, C's effectively connected net book income is determined by computing its effectively connected earnings and profits under paragraph (b)(6)(iii) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 14, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-9434 Filed 4-27-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 105

[DoD Directive 1400.33]

Employment and Volunteer Work of Spouses of Military Personnel

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part specifies that no DoD official shall, directly or indirectly, interfere with the right of spouses of military members to choose to pursue and hold a job, attend school, or perform volunteer services on or off a military installation. Nor shall their decisions, or the marital status of military members, affect, favorably or adversely, military members' performance appraisals, assignments, or promotions. The few exceptions permitted are related to assignments: Upon the request of the military member to ameliorate a family's hardship; to facilitate joint geographic assignments of a dual-career military married couple; when otherwise required by law, such as instances of conflict of interest and nepotism; and for reasons of national security as determined on a case-by-case basis by the Assistant Secretary of Defense (Force Management and Personnel).

EFFECTIVE DATE: February 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ms K. O'Beirne, Office of the Assistant Secretary of Defense (Force Management and Personnel), the Pentagon, Room 3A272, telephone (202) 697-7191.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 105

Military personnel.

Accordingly, Title 32, Chapter I, is amended to add Part 105 as follows:

PART 105—EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Sec.

105.1 Purpose.
105.2 Applicability.
105.3 Definitions.
105.4 Policy.
105.5 Responsibilities.
105.6 Effective date and implementation

Authority: 10 U.S.C. 113 note.

§ 105.1 Purpose.

This part implements Pub. L. 100-180 and reissues Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed

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Forces," October 22, 1987 and Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed Forces," December 30, 1987.

§ 105.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components").

§ 105.3 Definitions.

DoD official. Any commander, supervisor, or other military or civilian official of a DoD Component.

Marital status. Married, single, divorced, widowed, or separated.

Military Services. The Army, Navy, Air Force, Marine Corps, and Coast Guard (when operating as a part of the Navy).

Spouse. The husband or wife of a military member, if such spouse is not also a military member.

§ 105.4 Policy.

(a) No DoD official shall, directly or indirectly, impede or otherwise interfere with the right of a spouse of a military member to pursue and hold a job, attend school, or perform volunteer services on or off a military installation. Moreover, no DoD official shall use the preferences or requirements of a DoD Component to influence, or attempt to influence, the employment, educational, or volunteer service decisions of a spouse. Neither such decision of a spouse, nor the marital status of the member, shall affect, favorably or adversely, the performance appraisals or assignment and promotion opportunities of the member, subject to the clarification in paragraph (b)(2) of this section.

(b) *In furtherance of this policy.* (1) In discharging their responsibilities, members of military promotion, continuation, and similar personnel selection boards are prohibited from considering the marital status of a military member, or the employment, educational, or volunteer service activities of a member's spouse.

(2) Personnel decisions, including those related to the assignments of military members, shall not be affected, favorably or adversely, by the employment, educational, or volunteer service activities of a member's spouse, or solely by reason of a member's marital status, subject to the following clarification:

(i) When necessary to ameliorate the personal hardship of a member or spouse upon the request of the member concerned, such as when a family member requires specialized medical treatment, educational provisions under DoD Instruction 1342.12 [1] and Pub. L. 94-142, or similar personal preference accommodations.

(ii) To facilitate the assignment of dual-career military married couples to the same geographic area.

(iii) When otherwise required by law, such as instances in which a prohibited conflict of interest may exist between the official duties of a military member and the employment of the member's spouse.

(iv) When the Assistant Secretary of Defense (Force Management and Personnel), with the concurrence of the General Counsel, determines, on a case-by-case basis, for reasons of national security, that marital status is an essential assignment qualification for particular military billets or positions.

(3) Performance appraisals on members of the Military Services, including officer and enlisted efficiency or fitness reports, shall not contain any information regarding the employment, educational, or volunteer service activities of the member's spouse, or reflect favorably or adversely on the member based solely on the member's martial status.

§ 105.5 Responsibilities.

(a) The Secretaries of the Military Departments and the Heads of other DoD Components shall ensure compliance with this part.

(b) The Secretaries of the Military Departments shall issue regulations, enforceable under the Uniform Code of Military Justice (UCMJ), and appropriate regulations or other guidance applicable to civilian personnel, implementing this part.

(c) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall monitor compliance with this part.

§ 105.6 Effective date and implementation.

This part is effective February 10, 1988. The Secretaries of the Military Departments shall forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 60 days.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1988.

[FR Doc. 88-9244 Filed 4-27-88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8-87-10]

Safety Zone—Vicinity of Old River Control Structure, Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations, 33 CFR 165.802 by extending the safety zone in the vicinity of the Old River Control Structure to include the area around the new Old River Auxiliary Control Structure located at mile 311.5, RDB, AHP, LMR. These structures control the distribution of water between the Mississippi River, Red River, and the Atchafalaya River. Recent completion of the new Auxiliary Control Structure necessitates extending the area of the safety zone. The extension of the lower limit will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: LTJG Richard J. Berard, Waterways Safety Officer, Coast Guard MSO New Orleans, Tidewater Building, 1440 Canal Street, Room 909, New Orleans, LA 70112, Telephone: (504) 589-4219.

SUPPLEMENTARY INFORMATION: On 15 September 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 34816). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LTJG Patrick A. Galvin, project officer, for Coast Guard MSO New Orleans, and LCDR James J. Vallone, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

There were no comments received on this proposal.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The only affect of this regulation is to establish an area of controlled access in the vicinity of the Old River Control Structure and the new Old River Auxiliary Control Structure. Limited access in this area will not impede normal navigation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The Authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.802 is revised to read as follows:

§ 165.802 Lower Mississippi River vicinity of Old River Control Structure—Safety Zone.

(a) The area enclosed by the following boundary is a safety zone—from the Black Hawk Point Light, mile 316.1 AHP LMR to a point opposite Ft. Adams Light, mile 311.5 AHP along the low water reference plane above the right descending bank; thence to the levee on a line perpendicular to the channel centerline; thence along the levee to the upstream end of the Old River Overbank structure; thence along a line to the Black Hawk Point Light.

(b) Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. The operator of the Corps of Engineers' picket boat on scene is delegated the authority to permit entry into this safety zone.

Dated: April 22, 1988.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-9423 Filed 4-27-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3509/R954; FRL-3371-6]

Pesticide Tolerances for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide paraquat in or on various raw agricultural commodities (RACs). ICI Americas, Inc., requested the establishment of these maximum permissible levels for residues of the herbicide.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 7F3509/R954], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 4, 1988 (53 FR 10895), in which it was announced that ICI Americas, Inc., Agricultural Chemical Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted a pesticide petition (PP 7F3509) proposing to amend CFR 180.205 by establishing tolerances to permit residues of the herebicide paraquat (1,1'-dimethyl-4-4'-bipyridinium-ion) in or on the RACs peanuts at 0.05 part per million (ppm), peanut hulls at 0.2 ppm, peanut vines at 0.5 ppm, and peanut hay at 0.5 ppm. The petition had been subsequently amended to establish tolerances for residues of paraquat in or on the RACs peanuts of 0.05 ppm; peanut hulls at 0.2 ppm; peanut vines at 0.5 pm; peanut hay at 0.5 ppm; kidney of cattle, goats hogs, horses, and sheep at 0.3 ppm and to increase the existing tolerances for meat, fat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep from 0.1 to 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by ground legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 20, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.205(a), by adding and alphabetically inserting entries for the raw agricultural commodities peanuts, peanut hay, peanut hulls, and peanut vines and kidney of cattle, goats, hogs,

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horses, and sheep and by revising the entries for meat, fat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep, as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cattle, fat	0.05
Cattle, kidney	.3
Cattle, meat	.05
Cattle, mbyp (except kidney)	.05
* * * * *	
Goats, fat	.05
Goats, kidney	.3
Goats, meat	.05
Goats, mbyp (except kidney)	.05
* * * * *	
Hogs, fat	.05
Hogs, kidney	.3
Hogs, meat	.05
Hogs, mbyp (except kidney)	.05
* * * * *	
Horses, fat	.05
Horses, kidney	.3
Horses, meat	.05
Horses, mbyp (except kidney)	.05
* * * * *	
Peanuts	.05
Peanut, hay	.5
Peanut, hulls	.2
Peanut, vines	.5
* * * * *	
Sheep, fat	.05
Sheep, kidney	.3
Sheep, meat	.05
Sheep, mbyp (except kidney)	.05
* * * * *	

[FR Doc. 88-9403 Filed 4-27-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 62

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This final rule amends the National Flood Insurance Program (NFIP) regulations for the "Write-Your-Own" (WYO) Program under which private sector insurers may issue and service policies of flood insurance backed by the Government. The amendments involve the investing of income and details of cash management; reimbursement of state or municipal tax; damages arising outside the scope of the Arrangement; revision of the commission allowance provisions; responsibility for including mortgagees in claim payments; the right of a WYO Company to reject flood insurance applications which could then be referred to the NFIP Servicing Agent (and the waiting period rule for the effective date of coverage in these cases); and various kinds of audits: audits for cause, triennial financial audits and triennial reviews of claims operations and of underwriting/policy administration operations.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: On January 7, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, Page 419) a proposed rule to amend the National Flood Insurance Program (NFIP) regulations dealing with the underwriting, claims adjustment, and financial control operational procedures established by the Federal Insurance Administrator (the Administrator) in connection with the "Write-Your-Own" (WYO) Program authorized pursuant to Subpart C, Part 62 of the NFIP regulations and section 1310 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001, *et seq.*).

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Administrator) may be issued by insurers signatory to Financial Assistance/Subsidy Arrangements (the Arrangement) in their own names. Insurers then are responsible for all aspects of service, including policy issuance to new policyholders and to policyholders insured by them under other lines of property insurance; endorsement and renewal of policies; and the adjustment of claims brought under the policies. The insurers retain a specified amount of the premium for their expenses, including the commissions of agents. Under the Arrangement (Appendix A to Part 62 of the NFIP regulations), the Government provides such additional funds as may be required, over and above the net premium income, for the payment of claims.

Most of the comments received on the proposed rule were from private insurance agencies and/or independent insurance agents who sell flood insurance policies under the WYO Program. Comments were also received from WYO Companies, a WYO vendor, and from Members of Congress forwarding correspondence from—or making inquiries on behalf of—WYO Companies, insurance agencies, and/or independent insurance agents.

The majority of the comments related to the proposal to revise the commission allowance in the Arrangement from 15% to a base of 13% and also, as an incentive to increase the NFIP policy-in-force base, to provide for a commission allowance for each WYO Company in addition to the proposed 13%, based on the amount of increase of its policies in force. The comments opposing the revision in the commission allowance primarily concern the difficulty and expense of marketing flood insurance. Several of the respondents suggested that a reduction in the commission rate will cause agents to lose interest in the WYO Program which will thwart the efforts to increase the policies-in-force base. Still others, in objecting to the proposed reduction, commented that the proposal to reduce the commission allowance for policies issued by the NFIP through its Servicing Agent (52 FR 18929, dated May 20, 1987) has never been implemented and that it is unfair and discriminatory to have one commission allowance percentage for policies issued through the NFIP's Servicing Agent and another, lower percentage for policies issued under the WYO Program. FEMA recognizes that the flood insurance line is a unique form of insurance with procedures and requirements that are not found with other types of insurance. Bearing this in mind and after giving careful consideration to the substantive concerns expressed by the respondents, FEMA has determined that the base commission allowance in the Arrangement should be set at 14% rather than the 13% originally proposed. Further, FEMA is continually working with representatives of the insurance agents and of the WYO Companies to make flood insurance easier and less expensive to sell. For example, FEMA is currently working with both groups to develop several simplified flood insurance products. Also, the final rule will provide that the WYO Companies may withhold 15% during the Arrangement Year, with adjustments up or down being made at year's end (see below for a more detailed discussion). With respect to the commission allowance provisions related to policies issued by the NFIP through its Servicing Agent, FEMA is proceeding to issue a final rule which will also revise the flood insurance commission rate paid to property insurance agents and brokers writing policies of flood insurance

through the NFIP Servicing Agent. The direct bill system and the WYO Program system are both designed to encourage new business. Under both systems, if not much new business is produced, the amount of commission will be less than it is currently. Conversely, if a lot of new business is produced, the WYO Companies will get more commission allowance, and the desirable goal of a better spreading of the risk by increasing the policy-in-force base will be achieved. This better spreading of the risk will produce savings to the federal government in another way. How much they pass on to their agents and how they choose to do it are matters to be determined by each WYO Company. If the WYO Companies do pass along the bonus to their agents, the average commission paid under the WYO Program versus the direct business should be comparable. FEMA will be monitoring these two systems over the next couple of years to determine how well they are working and to determine if any changes to the systems are needed in the future.

The additional commission allowance (one-tenth of a percent for each 1% increase in the NFIP policies-in-force for the WYO Company during each Arrangement Year, subject to a cap of 3% for the additional commission allowance), also generated a number of comments. One respondent suggested that clarification is needed as to the first Arrangement Year for which the percentage increase for policy growth would apply while another respondent suggested that clarification is needed as to when the distribution of the additional percentage would be made following the end of the Arrangement Year. One respondent expressed the belief that allowing a WYO Company which had no policies in force on September 30 of the prior Arrangement Year a 15% commission allowance will give new companies entering the Program a competitive advantage because they could offer a higher agent commission than a long-term participant might be able to afford. Concern was expressed by one respondent that calculating the additional commission allowance based upon the rate of policy growth "during each Arrangement Year" is not fair to those WYO Companies which encourage their producers to write three-year policies, noting that such policies are in the best interest of the consumer. Also of concern to two respondents is the belief that the method proposed for calculating the additional commission allowance favors the small companies which have a smaller base of policies-in-force on which to build. One respondent, writing as a WYO vendor, expressed concern that the programming changes, accounting procedures and additional quality controls required to implement and monitor the application of a different expense allowance for each WYO Company that a vendor services will be extensive and commented that such additional labor costs will result in price increases to the WYO Companies it supports. This respondent further expressed concern that notification of the new Arrangement rates for individual WYO Companies would occur at least two months after a new Arrangement Year has begun, necessitating the reprocessing of two to three months' data and adjusting of financial reports and commissions. Another respondent likewise expressed the belief that a change of the magnitude proposed will require reprogramming of the WYO Companies' commission system, thereby placing an unjustified burden on the Companies while still another respondent commented that cost incentives to companies who increase policy counts are difficult to track, add to costs and are easy to manipulate. FEMA has carefully considered the concerns expressed by the respondents but is not persuaded that the proposal to provide an additional commission allowance for policy growth should not be implemented. FEMA agrees that the final rule should be clear as to the first Arrangement Year for which the percentage increase for policy growth will apply and as to when the distribution of the additional percentage will be made. Further, FEMA does not wish to penalize WYO Companies by requiring them to wait until the end of the Arrangement Year before receiving any additional commission allowance. Therefore, the final rule is revised to provide that WYO Companies may withhold 15% of written premium during the Arrangement Year with an adjustment up or down being made at year end. The year's experience for policy growth will begin with the Arrangement Year starting October 1, 1988. Thus, for Fiscal Year 1989 which begins October 1, 1988, WYO Companies will be able to withhold 15% during the Arrangement Year beginning October 1, 1988, with an adjustment up or down being made at year end based on the number of policies in force on September 30, 1989, as compared to the number of policies in force on September 30, 1988. It is contemplated that payment of any additional commission allowance will be made within three months of the end of the Arrangement Year as suggested by one respondent. FEMA continues to believe that it is correct policy to allow the 15% commission allowance for WYO Companies that did not have any policies in force at the end of the prior Arrangement Year. It must be emphasized that a major expectation of the WYO Program is an increase in the policies-in-force base. If those WYO Companies which had policies in force at the end of the prior Arrangement Year do, in fact, increase their policy count, they can retain more of the written premium for the commission allowance than they currently do. Regarding the concern expressed by the respondent for the WYO Company which encourages the writing of three-year policies, FEMA does not agree that calculating the additional commission allowance based on the rate of policy growth for each Arrangement Year will adversely affect those Companies which are writing three-year policies. It is true that a three-year policy will produce a smaller commission than three one-year policies; however, the same can be said for the procedure currently in effect. Moreover, writing three-year policies can be an advantage since it will ensure a stable policy count for two additional years whereas one-year policies can go off the books and cause the Company's policy count to go down. While basing the additional commission allowance on the percentage of growth in the policy count over the prior year's policies-in-force count may favor the smaller companies, it must be recognized that, because of economies of scale, the average expense for large companies is not as great as for small companies. Bearing this in mind, FEMA believes that it is correct policy to retain the bonus system as originally proposed. Regarding the concern expressed by the WYO vendor related to the costs associated with implementing and monitoring the application of a different expense allowance for each WYO Company it supports, nothing in this final rule changes the right of WYO Companies to compensate their agents at whatever rate and on whatever basis they determine to be appropriate. Although FEMA would encourage WYO Companies to have some means of rewarding agents that produce a lot of new business, it is the prerogative of each WYO Company to decide the rate of commission it will pay its agents during the Arrangement Year and whether it will give an end of the year bonus to its agents. If a WYO vendor believes it would be able to process business for its client WYO Companies more efficiently if they all pay the same commission allowance, that is a matter

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for negotiation between the vendor and its client WYO Companies. The comment regarding the need for reprocessing two or three months' data and adjusting financial reports and commissions seems to be based on the misunderstanding that the policy-in-force growth in one Arrangement Year will determine the commission allowance for the next Arrangement Year. This is not true, as explained above. Regarding the comment that cost incentives to companies who increase policy counts are difficult to track, add to costs and are easy to manipulate, the NFIP will be undertaking to track that information based on data already being submitted by the WYO Companies and no additional tracking will be required of the Companies. FEMA does not agree with the statement that it will be "easy to manipulate" figures; however, if experience shows this to be a problem, corrective action will be taken.

The proposed revision of Articles II.E, IV.A, and VII.A of the Arrangement to eliminate the provision allowing WYO Companies to invest excess funds did not generate any comments and is in the final rule as originally proposed.

The proposed revision of Article III.B of the Arrangement to eliminate the option for a WYO Company to pay 3% of its written premium on the policies covered by the Arrangement for the right to receive a dollar for dollar reimbursement for actual state or municipal taxes paid on the policies covered by the Arrangement also did not generate any comments and likewise is in the final rule as originally proposed.

Regarding the services of rating organizations, two respondents suggested substitute language for Article III.B of the Arrangement to remove any reference to the Administrator. One respondent commented that "the proposed language portends much government control" and "may deter some potential WYO Companies from participation." It is the position of FEMA that the work to be performed by such a national rating organization would be for the benefit of the entire NFIP, which the Administrator has been charged with the responsibility for overseeing. This provision has been revised in the final rule to address the concerns of the respondents while still ensuring the ability of the Administrator to fulfill his oversight responsibilities.

The proposed revision of Article VII.B of the Arrangement to remove cash management details and replace them with a reference to the WYO Accounting Procedures Manual generated no comments and is incorporated into the final rule as originally proposed.

The proposal to revise Article III.D to clarify reimbursement of a WYO Company for awards or judgments for damages arising outside the scope of the claims processing standards and guides of the Arrangement or other provisions of the Arrangement generated comment from one respondent who questioned the necessity of including language dealing with the internal FIA operations in the Arrangement. FEMA agrees that his comments are valid and section (D)(2) is revised in the final rule to remove the language in question.

The proposal to revise Article IX of the Arrangement to clarify the option of WYO Companies not to list the names of mortgagees on policies they issue, especially in the case of condominium coverage, generated comment from one WYO Company which expressed the opinion that "* * * since each Company is accustomed to this situation in the non-flood insurance property claims settlement procedures, this is both unnecessary and contrary to the spirit and intent of the Arrangement." FEMA's intent was merely to make it clear that WYO Companies can follow this procedure. In clarifying this option for WYO Companies, however, FEMA believes it imperative to also clarify the consequences that might result from not listing the names of mortgagees on such policies. Therefore, this provision is incorporated into the final rule as originally proposed.

Regarding the right of a WYO Company under the WYO Program to reject flood insurance applications, one respondent commented that the language contained in the supplemental information to the proposed rule "implies that rejected new and renewal business *must* be referred to the NFIP" when, in fact, an application may be rejected for "(1) failure to submit needed underwriting data, and (2) the WYO Company's failure to renew an agency contract." FEMA did not mean to suggest that the WYO Company had to refer a rejected application to the NFIP Servicing Agent and the language in the final rule is amended to make it clear that this provision applies where WYO Companies choose the option of referring the business to the NFIP Servicing Agent. The proposed rule did not specify the procedure to be taken prior to referral because FEMA believes it is important for WYO Companies to have flexibility to establish procedures for such referrals. In accordance with the provision in § 61.11(f) of the NFIP regulations that allows the effective date for the policy to be calculated from the date of receipt by the agent acting in the capacity of an agent of a WYO Company, this same procedure will be followed in the case of an application referred by a WYO Company to the NFIP Servicing Agent. Thus, as set forth in the proposed rule, the NFIP Servicing Agent will calculate the effective date of the policy based upon the date of receipt by the agent of the premium payment and the properly completed application.

The proposed revisions in Part 2—Statistical Plan Reconciliation Procedures did not generate any comments and are incorporated into the final rule as originally proposed.

The proposal to revise Part 4—Claims Operation Review Procedures to require a review of 5% of the claim files opened during the period covered by the Review generated comment from one respondent who expressed the belief that this proposed change may result in an "incredibly heavy load" for the FIA examiner in the event of considerable losses over a three-year period in a highly exposed state such as Florida, Louisiana or Texas. This respondent suggested instead that reference be made to 5% of the claim files opened, subject to a 50 files per year limit, although no statistical argument was presented in support of this position. FEMA recognizes that the concern about FEMA staff resources is not without merit. Nevertheless, FEMA believes it is imperative to review more files for those WYO Companies that adjust more claims. FEMA currently reviews 50 files when conducting a Claims Operation Review of a WYO Company and believes that at least this number of files should be reviewed regardless of how few claims may be adjusted by the WYO Company. Therefore, the provision in Part 4—Claims Operation Review Procedures requiring review of up to 5% of the claim files opened during the period covered by the Review is incorporated into the final rule, with a provision requiring that not less than 50 files be reviewed.

The proposal to provide in the WYO Financial Control Plan for triennial financial audits of WYO Companies generated comments from five respondents, all of whom expressed concern about the costs that might be involved. One respondent expressed the belief that requiring WYO Companies to select and fund independent Certified Public Accounting firms to conduct the triennial audits with the resultant additional costs will impose further pressure on Program profits and will be disproportionately expensive to the smaller companies. One respondent thought that the requirement for the independent financial audit is being added to enable FEMA to eliminate its triennial audits, thus reducing the manhours to perform FEMA's responsibilities while two other respondents disagreed with the statement in the proposed rule that the costs associated with the financial audits are part "* * * of the normal administrative costs of operating the WYO Program and as such are included in the WYO expense allowance." These respondents suggested respectively that FEMA (1) bear the expense or increase the expense allowance for WYO Companies to cover the additional expenses, (2) delete the requirement for the independent financial audit from the final rule or (3) provide a special expense allocation to WYO Companies to cover the costs of the independent financial audits. FEMA has carefully considered the comments made by these five respondents but does not agree with their position. As explained in the supplemental information to the proposed rule, the triennial financial audits are in addition to the triennial operation reviews for claims and for underwriting/policy administration. The new requirement for the independent financial audit does not mean that FEMA will eliminate any of its current audit or review activity. FEMA continues to view the costs associated with the triennial audits to be part of the normal administrative costs of operating the WYO Program and as such included in the WYO expense allowance. The triennial financial audits are similar to independent financial audits of insurance companies now being conducted for various reasons. These audits, which are often required by State Insurance Commissioners, are conducted at the insurance company's expense and it is FEMA's intention that the financial audits required by this rule be an addendum to these other financial audits, wherever possible, thereby limiting their cost. In addition, WYO Companies utilizing the services of a vendor to handle the business being audited may jointly contract for such audits, thereby limiting costs. Therefore, for the reasons discussed above, the provision covering the triennial audits is incorporated into the final rule as originally proposed. Also, this final rule makes a few changes to the list of reasons justifying an audit for cause and clarifies how the decision to conduct an audit for cause is to be made.

Several comments were received which were editorial in nature, some of which are incorporated into the final rule and some are not.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This rule will not have significant economic impact on a substantial number of small entities and therefore has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 61 and 62

Flood insurance and claims.

Accordingly, 44 CFR Chapter I, Subchapter B, is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.11 [Amended]

2. Section 61.11 is amended by adding to the end of the first sentence of paragraph (e) the following: "* * *, except where a WYO Company receives an application and premium payment from one of its agents and elects to refer the business to the NFIP Servicing Agent because the WYO Company does not wish to write the business, in which case any applicable waiting period under this section shall be calculated in accordance with the first sentence of paragraph (f) of this section."

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

3. The authority citation for Part 62 is revised to read as set forth below and the authority citations following all the sections in Part 62 are removed.

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 62.23 [Amended]

4. Section 62.23 is amended as follows:

a. By removing in paragraph (c) the word "will" and adding in its place the words "is authorized to".

b. By removing in paragraph (h)(5) the words "a producer, the producer" and adding in their place the words "an agent or a producer, the agent or producer".

c. By revising paragraph (j)(4) to read as follows:

* * * * *

(j) * * *

(4) Participate in WYO Company/FIA Operation Reviews. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company flood insurance activities at least once every three (3) years. A report of the Operation Review will be filed with the Standards Committee.

* * * * *

d. In paragraph (j)(5) by adding after the phrase "WYO Statistical Plan" both times it appears the phrase "and the WYO Accounting Procedures Manual", by removing in the last sentence the word "total" and adding in its place the word "totals", and by adding in the last sentence after the word "Company" and before the word "reports" the word "reconciliation".

e. In paragraph (j) (7) and (8), by removing the word "Cooperation" and adding in its place the word "Cooperate".

Appendix A to Part 62—[Amended]

5. Appendix A of Part 62, *Financial Assistance/Subsidy Arrangement*, is amended as follows:

a. Article II—UNDERTAKINGS OF THE COMPANY is amended by removing in section E all sentences after the first sentence and adding in their place the following sentence: "All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual."

b. Article III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS is amended by adding "marketing," in the first sentence of the first paragraph of Section B after the word "Company's" and before the word "operating".

c. Article III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS is amended by removing the second and third paragraphs of Section

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B and adding in their place the following three paragraphs:

The Company shall be entitled to 14.0% of the Company's written premium on the policies covered by this Arrangement as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses. Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangement for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced by 80% of the number of policies scheduled for transfer to the Company during this Arrangement Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. The Company may withhold 15% of the Company's written premium during this Arrangement Year with an adjustment up or down, depending upon policy growth, being made at the end of this Arrangement Year.

In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance, with no adjustment at the end of this Arrangement Year.

Nothing in Article III, Section B, can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of any additional commission allowance or refund of any excess commission allowance will be in accordance with the WYO Accounting Procedures Manual.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

d. Article III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS is amended in Section D by adding "1." after "D." and by removing the second paragraph and adding in its place the following:

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

e. In Article IV—UNDERTAKINGS OF THE GOVERNMENT, section A is amended by revising the third sentence to read as follows: "Request for funds shall be made only when net premium income has been depleted."

f. In Article V—COMMENCEMENT AND TERMINATION, paragraph "a" of section C is amended by adding after the word "Program" and before the semi-colon the words ", including certain data, as determined by FIA, in a standard format and medium".

g. In Article VII—CASH MANAGEMENT AND ACCOUNTING, section A is amended by removing the words "and interest income".

h. Article VII—CASH MANAGEMENT AND ACCOUNTING is amended by revising section B to read as follows:

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

i. Article IX—ERRORS AND OMISSIONS is amended by adding a second paragraph to read as follows:

* * * * *

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Appendix B of Part 62—[Amended]

6. Appendix B of Part 62, *A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program*, is amended as follows:

a. The introductory section at the beginning of Appendix B is amended by removing in numbered paragraph 4 the words "actual files (up to fifty [50])" and adding in their place the words "specific files".

b. The introductory section at the beginning of Appendix B is amended by adding, following numbered paragraph 4, a new numbered paragraph 5 to read as set forth below and by renumbering

existing numbered paragraphs 5 through 9 as numbered paragraphs 6 through 10, respectively:

5. Have a triennial audit of the flood insurance financial statements conducted by an independent accounting firm at the Company's expense to ensure that the financial data reported to FIA accurately represents the flood insurance activities of the Company.

c. PART 2—STATISTICAL PLAN RECONCILIATION PROCEDURES is amended as follows:

(1) By revising the second and third sentences of the *Statistical Plan Reconciliation Objectives* section to read as follows: "The reliance on computer processing to perform the review of transaction and financial data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by the NFIP Servicing Facility.

(2) By renumbering paragraphs 2 and 3 of the *Financial Control* section to 3 and 4, respectively, and by adding a new paragraph 2 to read as follows:

* * * * *

2. WYO Companies are required to submit, on a form approved by the Administrator, a tape transmittal document with the submission of the statistical tape containing transaction detail. This will be used to validate record counts and dollar amounts.

* * * * *

(3) In renumbered paragraph 4 of the *Financial Control* section, by adding after the word "maintained" the words "whenever possible".

(4) In paragraph 4 of the *Quality Review of Submitted Data* section, by removing the last two sentences and adding in their place the following: "Critical errors include those made in required data elements. Required data elements:

(1) Identify the policyholder, the policy, the loss, and the property location;

(2) Provide information necessary to rate the policy;

(3) Provide information used in financial control;

(4) Provide information used for actuarial review of NFIP experience.

Non-critical errors are those made in data elements reported by the WYO Companies at their option."

(5) In the second paragraph of the *Timeliness of Reporting* section, by removing the words "receipt date" and adding in their place the words "the first processing cycle subsequent to the receipt".

(6) Numbered paragraph 2 of the *Monthly Reports* section is revised to read as follows:

* * * * *

2. Summary statistics will be generated for each monthly submission of transaction data. These will include:

a. Absolute numbers of transactions read and transactions rejected by transaction type.

b. Dollar amounts associated with transactions read and transactions rejected.

(7) Numbered paragraph 4 of the *Monthly Reports* section is revised to read as follows:

* * * * *

4. Control totals will be generated for tapes submitted to and processed by the NFIP. This front-end balancing procedure will include:

a. Numbers of records submitted according to the NFIP compared with numbers of records submitted according to the WYO Company transmittal document.

b. Dollar amounts submitted according to the NFIP compared with dollar amounts submitted according to the WYO Company transmittal document.

If there is any discrepancy between the NFIP reading of dollar amounts from the tape and the WYO Company tape transmittal document, then the monthly statistical tape submission will be rejected and returned to the Company. The rejected tape must be corrected and resubmitted by the next monthly submission due date.

* * * * *

(8) By revising Exhibit "A" to read as follows:

Exhibit "A"—WYO Statistical Tape Transmittal Document

Date Sent: _____ WYO Prefix Code: _____
WYO Company Name: _____
Address: _____
_____
Reel Number (S) of Enclosed Tapes: _____
_____
Density _____ LRECL _____
Blocksize _____
File Name (DSN) _____
Contact Person _____
Contact Number _____
IBU Number _____ (WYO Use Only)

BILLING CODE 6718-01-M

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MONTHLY RECONCILIATION - NET WRITTEN PREMIUMS

COMPANY NAME _____ CO. NAIC NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

PREPARER'S NAME _____ TELEPHONE NO. _____

	MONTHLY FINANCIAL REPORT		MONTHLY STATISTICAL TRANSACTION REPORT		
NET WRITTEN PREMIUMS	$_____	TRANS. CODE	RECORD COUNT	PREMIUM AMOUNT	
(INCOME STATEMENT = LINE 100)		11	_____	$ _____	
		15	_____	_____	
		17	_____	_____	
UNPROCESSED STATISTICAL:		20	_____	_____	
(+) PRIOR MONTH'S	_____				
(-) CURRENT MONTH'S	_____	23	_____	_____	
OTHER-EXPLAIN:					
(+) CURRENT MONTH'S	_____	26	_____	(-) _____	
(-) PRIOR MONTH'S	_____	29	_____	(-) _____	
		14 AND 81	_____	(+)	
TOTAL:	_____	TOTAL:	_____	_____	

(ADD 11 THROUGH 23 LESS 26 AND 29)

COMMENTS:

MONTHLY RECONCILIATION - LOSSES

COMPANY NAME _____ CO. NAIC NUMBER _____

MONTH/YEAR _____ DATE SUBMITTED _____

		TRANS. CODE	RECORD COUNT	LOSS/PAID RECOVERIES
100 NET PAID LOSSES $ _____ (INCOME STATEMENT LINE 115)				
UNPROCESSED STATISTICAL:		31	_____	$_____
140 (+)PRIOR MONTH'S	_____	34	_____	_____
		37	_____	_____
150 (-)CURRENT MONTH	_____	40	_____	_____
160 SALVAGE NOT TO BE REPORTED BY TRANSACTION (EXPLAIN)	_____	43	_____	_____
170 OTHER-EXPLAIN:	_____	46 AND 61	_____	
		49	_____	_____
		64	_____	_____
		84 AND 87	_____	
		52 RECOVERY	_____	_____
		SALVAGE		_____
		SUBROGATION		_____
		67 RECOVERY	_____	_____
		SALVAGE		_____
		SUBROGATION		_____
TOTAL:	_____	TOTAL:		_____

(SUM OF LINES 100, 140, 160, AND 170 LESS 150)

(ADD 31, 34, 40 THROUGH 64 LESS 52 AND 67)

COMMENTS:

BILLING CODE 6718-01-C

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MONTHLY RECONCILIATION - SPECIAL ALLOCATED LAE

COMPANY NAME _____ CO. NAIC NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

	MONTHLY FINANCIAL REPORT		MONTHLY STATISTICAL TRANSACTION REPORT	
SPECIAL ALLOCATED LOSS ADJUSTMENT EXPENSES (OTHER LOSS AND LAE CALC. - LINE 655)	Trans. Code	Record Count	Amounts	
	71	_____	$_____	
	74	_____	_____	
Unprocessed Statistical:				
(+) Prior Month			_____	
(-) Current Month			_____	
Other-Explain:				
(1)			_____	
(2)			_____	
TOTAL:		TOTAL:	_____	_____

COMMENTS:

d. PART 3—UNDERWRITING/ POLICY ADMINISTRATION OPERATION REVIEW PROCEDURES is amended as follows:

(1) By removing in the second sentence of paragraph number 2 of the *Notice* section the words "Up to 50 policy" and adding in their place the word "Policy".

(2) By adding to the end of paragraph number 2 of the *Notice* section the following: "The number of policy files reviewed shall be determined by the following schedule.

Policies in force	Policy files reviewed
Under 25,000	50
25,000–74,999	75
75,000–99,999	100
100,000 and over	125"

(3) By adding in paragraph 1, *WYO Company Summary Report*, of the *Underwriting/Policy Administration Operation Review Outline* section after the word "underwriter" and before the word "prior" the words ", if requested.".

(4) By removing in paragraph 2, *Administrative Review*, of the *Underwriting/Policy Administration Operation Review Outline* section the words "See Exhibit 'B'." and adding in their place the following: "Exhibit B, the use of which is optional, provides a sample format for this review."

(5) by removing in paragraph 4 *File Review*, the words "would be compiled" and adding in their place the words, ", the use of which is optional, provides a sample format".

(6) By removing in the NOTE appearing just before EXHIBIT "A"—WYO COMPANY *Summary Report* the words "of 20% or higher" and adding in their place the words "equal to or greater than, depending on the nature of the files selected for review, 10% to 20%".

(7) By adding in item number (1) of the NOTE appearing just before EXHIBIT "A"—WYO COMPANY *Summary Report* after "zone)" and before the period the words ", or an endorsement."

(8) By adding after item number (2) at the end of the NOTE appearing just before EXHIBIT "A"—WYO COMPANY *Summary Report* items (3) through (6) to read as follows:

(3) The failure to obtain the information necessary to properly identify and underwrite a risk.

(4) The issuance of a policy with an incorrect policy term.

(5) Any error which impacts the correct return premium on a cancellation or nullification.

(6) The processing of a cancellation or nullification for an invalid reason.

(9) By revising EXHIBIT "C"—SPECIFIC RISK REVIEW CHECKLIST to read as follows:

EXHIBIT "C"—SPECIFIC RISK REVIEW

Date: _____
Occupancy:
( ) Single family
( ) 2–4 family
( ) Other residential
( ) Non residential
Policy No. _____
Amount of insurance:
Building _____
Contents _____
Zone _____
Number of floors: _____
Condominium:
( ) Yes ( ) No
Basement:
( ) Yes ( ) No _____
Elevated Building:
( ) Yes ( ) No _____
Complete when appropriate:
Elevation difference _____
Base flood elevation _____
Lowest floor elevation _____
Grade elevation _____
Obstruction below elevated building: _____
( ) Yes ( ) No _____

EXHIBIT "C"—SPECIFIC RISK REVIEW—Continued

	Yes	No	Comment if checked "No"
Application:			
Properly completed?			
Met eligibility—location requirements?			
Policy:			
Properly issued?			
Required premium received? (If coverage was reduced to the amount that could be purchased with the premium submitted, check yes.).			
Are coverage limits within NFIP statutory allowances?			
Waiting period observed?			
Endorsements, renewals, cancellations:			
Properly issued?			
Required premium received or returned?			
Waiting period observed?			
Additional documentation: Is elevation certificate information valid and complete?			
If specifically rated, has company obtained the required information?			
File satisfactory for Service within guidelines?			
Recertification?			

Comments—FIA Examiner

Comments—WYO Company Underwriter

Resolution

e. PART 4—CLAIMS OPERATION REVIEW PROCEDURES is amended as follows:

(1) By removing in the second sentence of numbered paragraph 2 of the *Claims Operation Review Objectives* the words "50 policy files" and adding in their place the words "5%, but not less than 50, of the claim files opened during the period covered by the Review."

(2) By adding in EXHIBIT "B"—ADMINISTRATIVE REVIEW CHECKLIST just before 1. *Investigation and Adjustments* the following:

"Policy #
Insured's name:
State:
Date of loss:
Date paid:
Date reported:
Amt. of loss: $
Bldg. $
Contents $
Adjusting firm:
Examiner's name:
Comments:

(3) By adding at the end of section "f" of EXHIBIT "B"—ADMINISTRATIVE REVIEW CHECKLIST item 9 as follows:

(9) Is the statistical reporting correction file being properly managed? [ ] [ ] [ ].

f. By revising PART 6—FINANCIAL AUDITS AND STATE INSURANCE DEPARTMENT EXAMINATIONS to read as follows:

Part 6—Financial Audits, Audits for Cause, and State Insurance Department Audits

A. Triennial Financial Audits

I. Objectives of WYO Triennial Financial Audit—The triennial financial audit is intended to provide the Federal Emergency Management Agency with independent assessment of the quality of financial controls over activities relating to the Company's participation in the National Flood Insurance Program as well as the integrity of the financial data reported to FEMA. Participating WYO companies are responsible for selecting and funding independent Certified Public Accounting firms to conduct the triennial audits. Such costs are considered part of the normal administrative cost of operating the WYO program and as such are included in the WYO expense allowance.

It is also intended that the triennial audit will reduce if not eliminate the need for FEMA auditors or their designees to conduct on-site visits to WYO companies in their review of financial activity. However, the requirement may still exist for such visits to occur as determined by the auditors. In addition, nothing in this section should be construed as limiting

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the ability of the General Accounting Office to review the activities of the WYO Program.

The objective of the triennial audit is to ensure that Financial data reported to FEMA for the Arrangement Year (Government Fiscal Year) is fairly and accurately presented in order to determine that:

A. Policy and claim related financial data as reported to the NFIP are proper and adequately supported by underlying documentation.

B. Reported cash amounts are properly reconciled to the bank account balance.

C. Reported accounts receivable, premium suspense and accounts payable balances are properly stated.

D. Cash management is in accordance with the requirements of the WYO Accounting Procedures Manual and consistent with the Company's procedures as updated to FEMA.

II. Internal Controls and Suggested Procedures. A. The nature, timing and extent of audit tests to be applied are to be determined by the independent Certified Public Accounting firm based on its study and evaluation of the WYO Company's accounting procedures and system of internal control. Adequate evaluation requires knowledge and understanding of the WYO accounting and financial reporting procedures prescribed by the Arrangement and a reasonable degree of assurance that they are in use and are operating effectively (e.g., annual WYO Company self-audit).

B. The audit tests described below are suggested tests and are to be modified as considered necessary by the independent Certified Public Accounting firm, based on its study and evaluation of WYO Company's accounting procedures, system of internal control and results of company WYO self-audits. Based on such study and evaluation, the independent Certified Public Accounting firm may consider additional steps to be necessary, may consider certain of the audit tests described below to be unnecessary, or may consider additions to or reductions in the extent of such audit tests to be appropriate. Each elimination and/or reduction shall be described in the independent Certified Public Accounting firm's report. See Part IV below.

III. Audit Tests. A. Tie total written premium from policy master file to the monthly financial reports.

1. Trace reconciling items to the subsequent month's financial report; and

2. Obtain evidence that items included with the second monthly financial report dated on or before the date of the reconciliation were included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

B. Select a representative sample of policies which were in-force during all or part of the Arrangement Year under audit for detail testing.

1. Confirm policy detail with policyholder (e.g., policy number, effective date, policy term, premium, insured property address, deductible amounts).

2. Determine that policy detail from policy file agrees with statistical data from the master file submitted to the NFIP.

3. Select a sample of policy cancellations and endorsements from throughout the fiscal year and determine the propriety of the financial reporting associated with such transactions (e.g., return premium, additional premium and appropriate application of the expense allowance).

C. Tie total paid losses and outstanding loss reserves, allocated and special allocated adjustment expenses, including outstanding reserves, from policy master file to monthly financial reports.

1. Trace reconciling items to the subsequent month's financial reports, and;

2. Obtain evidence that items included with the second statement dated on or before the date of the reconciliation are included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

D. Select a representative sample of claims activity during the Arrangement Year for detail testing.

1. Confirm policy number, claim number, loss payment, loss date, and date-of-loss payment with policyholder.

2. Determine whether special allocated LAE payment, as applicable, has been properly approved prior to incurring any expenses.

3. Determine that claim status in claim file agrees with data submitted to the NFIP, and that the policy was in-force on the date of loss.

4. Verify that unallocated loss adjustment expense was appropriately determined and reported.

5. Review IBNR reserve calculation to determine whether it is consistent with the methodology reported to FEMA.

6. Determine whether adjustments to the outstanding case reserves are proper and made on a timely basis.

7. If salvage or subrogation is significant in relation to the company's claims activity, select a sample of recoveries to determine that they were properly recorded (data from claims file agrees with submission to the NFIP).

E. Determine whether cash receipts are being promptly deposited to the Restricted Account and that excess cash is being swept from the account in accordance with the WYO Accounting Procedures Manual.

F. Determine whether reimbursements from the Restricted Account or drawdowns on the Treasury Letter-of-Credit are made in accordance with the WYO Accounting Procedures Manual.

G. Obtain bank reconciliations for the restricted account and any other flood-related account(s) as of the end of the Arrangement Year. Review bank reconciliations for old and/or unusual reconciling items. Reconcile restricted account activity to premium and claim data reported in monthly financial reports on a sample basis.

H. Reconcile accounts receivable, accounts payable, premium suspense and other miscellaneous trial balances to reported amounts. Test the propriety of the detail on a sample basis.

I. Make inquiries of management and review available reports relating to activity subsequent to year-end for items that should have been included in Arrangement Year results.

B. Audits for Cause

In accordance with the terms of the WYO Arrangement, the Administrator, on his own initiative or upon written recommendation of the WYO Standards Committee or the FEMA Inspector General, may conduct for-cause audits of participating companies. The following criteria, in combination or independently, may constitute the basis for initiation of such an audit:

1. Self-Audit

—Adequate reporting was not received from a company, even after follow-up requests.

—Self-audit report did not meet criteria of the Financial Control Plan.

—Review of the reported self-audit results indicates problem areas which require further explanation or follow-up.

—Reports of self-audit results do not adequately respond to problems or deficiencies raised through other aspects of the Financial Control Plan (i.e., errors/rejects from statistical reporting, financial reporting discrepancies, financial/statistical reconciliation problems, etc.)

—Triennial audit results indicate that the self-audits were not adequately performed and that the reported results cannot be relied upon.

2. Underwriting

—Excessively high frequency of errors in underwriting:

a. Issuing policies for ineligible risks.

b. Issuing policies in ineligible communities.

c. Consistent premium rating errors.

d. Missing or insufficient documentation for submit for rate policies.

e. Other patterns of consistent errors.

—Abnormally high rate of policy cancellations or non-renewals.

—Policies not processed in a timely fashion.

—Duplication of policy coverage noted.

—Problems with Rollover from National Flood Insurance Program (NFIP) to WYO (duplication of coverage, timeliness of changeover).

—Relational type edits indicate an unusually high or low premium amount per policy for the geographical area.

—Self-audit or triennial audit results indicate unusual volume of errors in underwriting.

3. Claims

—Reinspections indicate consistent patterns of:

a. Losses being paid when not covered.

b. Statistical information being reported on original loss adjustment found to be incorrect on reinspection.

c. Salvage/subrogation not being adequately addressed.

d. Consistent overpayments of claims.

—Unusually high count of erroneous assignments and/or claims closed without payment (CWP). (WYO Company is paid a flat fee for CWP cases where little or no work is done—risk is fraudulent CWP cases).

—Unusually low count of CWP. (May indicate inadequate follow-up of claims submitted).

—Average claim payments which significantly exceed the average for the Program as a whole.

—Lack of (adequate) documentation for paid claims.

—Claims not processed in a timely fashion.

—Consistent failure of WYO Company to receive authorization for special allocated loss adjustment expenses prior to incurring them.

—High submission of Special Allocated Loss Adjustment Expenses (SALAE).

—Consistently high policyholder complaint level.

—Low/high count of salvage/subrogation.

—Triennial audit indicates significant problems.

4. Financial Reporting/Accounting

—Consistently high reconciliation variations and/or errors in statistical information.

—Financial and/or statistical information not received in a timely fashion.

—Letter of Credit violations are found.

—WYO Company is not depositing funds to the Restricted Account in a timely manner, or funds are not being transferred through the automated clearinghouse on a timely basis.

—Premium suspense is consistently significant, older than 60 days, and/or cannot be detailed sufficiently.

—Large/unusual balance in Cash.

—Other (Receivable and/or Payable).

—Large, unexplained differences in cash reconciliation.

—Large/unusual balances or variations between months noted for key reported financial data.

—Financial statement to statistical data reconciliation sheets improperly completed indicating proper review of information is not being performed prior to signing certification statement.

—Repeated failure to respond fully in a timely manner to questions raised by FIA or its servicing agent concerning monthly financial reporting.

—Triennial audit indicates significant problems.

C. State Insurance—Department Examination

It is expected that audits of WYO Companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and providing a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition, when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided to the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.

The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusion.

Dated: April 22, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-9378 Filed 4-27-88; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 62

National Flood Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the flood insurance commission allowances paid to property insurance agents and brokers ("producers") for the procurement of new flood insurance policies, and renewals thereof, on behalf of policyholders insured by the National Flood Insurance Program (NFIP) through its Servicing Agent. The commissions are being increased in connection with the procurement of new business, as an incentive to increase the NFIP's policies-in-force base, and are being decreased with respect to the renewals of policies to reflect the reduced level of activity required of producers by reason of the NFIP's fully automated renewal billing system whereby payors of renewal premiums are billed directly by—and make premium payments directly to—the NFIP, with the producer being advised of the renewal activity. This final rule is being implemented as part of FEMA's continuing efforts to reduce expenses for the National Flood Insurance Program. While the changes to the commission rates in this final rule differ somewhat from the rates originally proposed, there will still be a cost savings to the Federal government if the rate of new business activity remains constant. If property insurance agents and brokers do increase their new business activity, which the rule is designed to encourage, there may be little or no savings to the Federal government from this commission change, but this would be balanced by the increase in policy sales, which will result in a greater spread of the insurance risk, a major goal of the Program. This would produce savings to the Federal government in another way.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646-3419.

SUPPLEMENTARY INFORMATION: On May 20, 1987, FEMA published for comment in the **Federal Register** (Vol. 52, Page 18929) a proposed rule to revise the flood insurance commission allowances paid to property insurance agents and brokers ("producers") for the procurement of new flood insurance policies, and renewals thereof, on behalf of policyholders insured by the National

Flood Insurance Program (NFIP) through its Servicing Agent.

Of the approximately 100,000 agents listed in the records of the NFIP Servicing Agent, less than one percent (760) sent letters commenting on the proposed rule. The tally of comments included one state agency, a committee of flood insurance consisting of representatives from various agents trade associations, nine agents trade associations, 56 Congressional letters forwarding correspondence from—or making inquiries on behalf of—insurance agencies and/or independent insurance agents. The remainder of the comments were from private insurance companies and/or individual independent insurance agents.

Although many of the comments received were generally supportive of the need to reduce expenses for the National Flood Insurance Program (NFIP), all of the respondents were opposed to the proposed changes in the commission rate. The comments opposing the rule, in summary, contend that the commission rate should not be reduced (some even suggested it should be raised) because the flood insurance program is "too complex * * * has too many forms * * * is difficult to sell * * * requires more work than other lines of insurance * * * involves more office expense * * * requires the expenditure of more of the agent's time for self-education such as program updating, attending agent workshops, etc * * * requires several years of commission payment for renewals—without major changes—to compensate for the 'inadequate' amount of commission on newly written policies."

Several of the respondents contended that the marketing of flood insurance policies would be adversely affected by the proposed revision because all of the issues listed above, in combination with the proposed change, would give agents less of an incentive to continue selling flood insurance. On the contrary, since the issues raised by the respondents relating to program complexity and the degree of effort required in writing and servicing flood insurance are not new but existed at a time when agents' compensation (because of lower premium rates) was actually smaller than today, it is FEMA's belief that agents willing to write flood policies at that time would be even more willing to do so now that the commission rate for new business is being increased. Indeed, because of the recognition (reinforced by the substantive concerns expressed by the respondents) that the flood insurance line is a unique form of insurance with procedures and requirements that are not found with other types of insurance and because of the desire to encourage agents to focus their efforts on new business, it has been decided to increase the new business commission rate higher than originally proposed, and thus this final rule increases the commission rate for new business from the proposed 16 percent to 17 percent for the first $2,000 of premium.

The proposal to reduce to 5 percent the commission rate for new business applications which cannot pass rating edits generated negative comments from a number of respondents. Concern was expressed that properly completed applications could be "kicked out of the system" because of a mistake by the operator when keying-in information, requiring additional efforts by the agent to verify the accuracy of the application as originally submitted in order to obtain the correct commission rate. FEMA believes that the respondents have raised valid concerns and that the proposal should not be implemented at this time. Therefore, the provision for paying a reduced commission rate for new business applications that do not pass rating edits is being deleted in this final rule, and the issue will be further examined for possible publication at a later date after obtaining additional input through subsequent proposed rule.

It is recognized that, whenever any reduction of compensation is proposed under any program (whether government or private), there is going to be resistance because it reduces the income of affected persons. However, as indicated in the supplementary information to the proposed rule, direct bill renewals requiring virtually no effort on the part of the producers currently account for 71 percent of the NFIP's direct business policies. Bearing this in mind, FEMA cannot justify continuing to provide the same commission for renewals that is given for new business. While the automated billing system has, in most cases, greatly diminished the level of effort required of producers as far as policy renewals are concerned, FEMA acknowledges, as pointed out by a large number of the respondents, that producers are often called upon during the policy term to perform servicing functions such as (1) completing and filing change endorsements to add or change the name of a mortgagee if, for example, a policyholder refinances his mortgage; (2) filing a claim for loss if the insured property sustains flood damage; or (3) responding to policyholder inquiries concerning coverage issues. It is the contention of the respondents that the current commission rate for policy renewals has helped to make up for the many servicing functions performed during the policy term that do not result in any additional compensation for the producer. FEMA agrees that this is a valid position and has decided, therefore, not to reduce the commission rate for direct bill renewals as much as originally proposed, and thus this final rule increases the direct bill renewal commission rate from the proposed 12 percent to 14 percent for the first $2,000 of premium. Further, since such a small percentage of policies are renewed by application, it has been decided to eliminate the 15 percent commission rate originally proposed for that category of renewal and in place thereof also establish a 14 percent commission rate. Thus, all policy renewals, whether renewed by application or the direct bill method, will earn 14 percent commission on the first $2,000 of premium.

This final rule also includes a revision of the chart showing the commission rate for mid-term increases in amounts of insurance added by endorsement which, due to an editorial oversight, was not included in the proposed rule. Consistent with the commission rates discussed above, agents will receive (for the first $2,000 of premium) a 17 percent commission for a mid-term endorsement of a first-year policy and a 14 percent commission for a mid-term endorsement of a renewal policy.

Many respondents suggested that FEMA consider-taking other actions to save money in lieu of revising the commission rate. Suggestions included simplifying the NFIP, including the rating system; increasing the premiums for flood insurance; increasing coverage limits; instituting stricter underwriting; improving market penetration; developing other policy forms such as a condominium master policy; etc. FEMA agrees that such actions are needed and is continually reviewing and reappraising the NFIP in an effort to streamline the operation and effectiveness of the NFIP and at the same time achieve greater administrative and fiscal effectiveness. Projects currently under development, for example, include a "flat fee" policy, a condominium master policy and a community rating system whereby the flood insurance rates to be applied in calculating the premiums for properties located in a specific community would be based on community-wide actions that reduce future flood damage to buildings and their contents. As FEMA continues it efforts to satisfy the premium requirements for the historical average loss year and to reduce the general taxpayers' burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds, it may be necessary to make upward adjustments in flood insurance premium rates. Indeed, a rule is currently pending (Vol. 53, page 4673 of the **Federal Register** dated February 17, 1988) to increase the chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program. As these and any future increases in flood insurance premium rates become effective, the amounts of commission income for the producers of NFIP policies will increase. Such increases will help to offset the reduction in compensation to the producers as a result of this final rule.

As pointed out in the supplementary information to the proposed rule, FEMA planned to address the commission arrangements under the WYO Program in Fiscal Year 1988 in connection with the general revisions to the WYO Arrangement with insurers participating in the Program and, in fact, a revision to the commission arrangements under the WYO Program was included in a proposed rule published in the **Federal Register** on January 7, 1988 (53 FR 419). FEMA is now proceeding to issue a final rule which will revise the allowance for commissions paid to property insurance agents and brokers writing policies of flood insurance under the WYO Program. This final rule also will have an effective date of October 1, 1988. The direct business system and the WYO Program system are both designed to encourage new business. Under both systems, if not such new business is produced, the amount of commission will be less than it is currently. Conversely, if a lot of new business is produced, the amount of commission allowance could be higher than it is currently. In that case, the increase in new business would result in a greater spread of the risk, a very desirable insurance goal and a source of another type of savings. It is anticipated that the two commission systems will produce an average commission that is comparable. FEMA will be monitoring these two systems over the next couple of years to determine how well they are working and to determine if any changes to the systems are needed in the future.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, 44 CFR Chapter I, Subchapter B, is amended as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 62.6(a) is revised to read as follows:

§ 62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First $2,000 of Premium:	
Direct bill renewals	14
Renewal applications	14
New business applications	17
Excess of $2,000:	
All Business	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amounts	Commissions (percent)
First $2,000 of Premium:	
Endorsement of first-year policy	17
Endorsement of renewal policy	14
Excess of $2,000:	
All business	5

* * * * *

Dated: April 22, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-9379 Filed 4-27-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-183; RM-5636]

Radio Broadcasting Services; Kotzebue, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 280A to Kotzebue, Alaska, as that community's first local FM service, in response to a petition filed on behalf of Arctic Broadcasting Association. With this action, the proceeding is terminated.

DATES: Effective June 6, 1988. The window period for filing applications on Channel 280A at Kotzebue, Alaska, will open on June 7, 1988, and close on July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-183, adopted March 28, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alaska, by adding Kotzebue, Channel 280A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9353 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-477; RM-5540]

Radio Broadcasting Services; Marathon, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Marathon, Florida, and modifies the license for Station WMUM(FM), to specify the new channel, at the request of the licensee Breeze 94, Inc. With this action, this proceeding is terminated.

DATE: Effective Date: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-477, adopted March 30, 1988, and released April 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended in the entry for Marathon, Florida, by adding Channel 232C2 and deleting Channel 232A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9360 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-412; RM-5914]

Radio Broadcasting Services; Litchfield, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 235C2 for Channel 237A at Litchfield, Minnesota, in response to a petition filed by Litchfield Broadcasting Corporation. In addition, we have authorized the modification of the license for Station KLFD-FM to specify operation on Channel 235C2 in lieu of Channel 237A. There is a site restriction 12.8 kilometers northwest of the community. The coordinates for Channel 235C2 are 45-13-37 and 94-36-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-412, adopted March 30, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 237A and adding Channel 235C2 at Litchfield.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9352 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-380; RM-5732]

Radio Broadcasting Services; Thief River Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 257A to Thief River Falls, Minnesota, as that community's third FM broadcast service, in response to a petition filed by Northern Minnesota Associates. Canadian concurrence has been obtained for the allotment of Channel 257A at Thief River Falls. The coordinates for Channel 257A are 48-07-08 and 96-10-24. With this action, this proceeding is terminated.

DATES: Effective June 6, 1988. The window period for filing applications will open on June 7, 1988, and close on July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-380, adopted March 30, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by adding Channel 257A at Thief River Falls.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9350 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-94; RM-5584]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On April 8, 1988, at 53 FR 11668, the Commission published a Final Rule proceeding concerning an FM allotment to Mesquite, NV. This document corrects the effective and window dates.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

DATES: The effective date of the final rule is now May 16, 1988. The dates on which the period will open and close are now May 17, 1988 and June 15, 1988, respectively.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9303 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-306, RM-5828]

Radio Broadcasting Services; Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Haynes Communications Co., herein substitutes Channel 284C for Channel 224A at Socorro, New Mexico, and modifies its license for Station KHBN-FM to specify the higher powered channel. Haynes Communications Co. originally requested, and the Commission proposed, to substitute adjacent Channel 225C1 for Channel 224A at Socorro and to modify its station's license accordingly. However in comments Haynes amended its proposal to request instead the substitution of non-adjacent Channel 284C. Section 1.420 of the Commission's Rules permits a station's license to be upgraded to a non-adjacent superior class where an additional equivalent channel is available for use by other interested parties. While the Commission's Rules do not permit the acceptance of competing expressions of interest where an adjacent channel upgrade is proposed, the Commission found that the public interest would be served by substituting Channel 284C for Channel 224A at Socorro at this time based on the fact that there is at least one additional equivalent channel (Channel 225C) for use by any such interested party. H&HSB Corporation, assignee of Station KHBN-FM, also filed comments supporting the substitution of channels. Channel 284C can be allocated to Socorro with a site restriction of 28.5 kilometers (17.7 miles northwest. The coordinates for this allotment are North Latitude 34-09-54; West Longitude 107-10-45. Concurrence by the Mexican Government in the allotment of Channel 284C has been received since Socorro is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-306, adopted March 28, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New Mexico is amended by revising the entry for Socorro to delete Channel 224A and add Channel 284C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9355 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-293; RM-5786]

Radio Broadcasting Services; Canaan VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Canaan, Vermont, as that community's first local FM service, as requested by Timothy D. Martz. The channel can be allocated in compliance with § 73.207 of the Commission's Rules. The coordinates used in determining the available site are 44-59-46 and 71-32-20. Concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

DATE: Effective June 6, 1988. The window period for filing applications will open on June 7, 1988, and close on July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-293, adopted March 29, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

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§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments, is amended under Vermont by adding Channel 231A to Canaan.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9354 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-179; RM-5651]

Television Broadcasting Services; Bryan and College Station, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 50- to College Station, Texas, as that community's first commercial television service, at the request of Central Texas Broadcasting Co., Ltd. In addition Channel *15 has been reallotted from Bryan, Texas to reflect its actual use at College Station. The Commission has imposed a freeze in specified metropolitan areas on applications for new television stations pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting. This proposal is affected by the freeze. Applications for Channel 50- at College Station will not be accepted until the freeze has been lifted. With this action this proceeding is terminated.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is summary of the Commission's Report and Order, MM Docket No. 87-179, adopted March 30, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. Section 73.606(b), the Table of Allotments is amended by removing Channel *15 from Bryan, Texas; and adding Channels *15 and 50- to College Station, Texas.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9351 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-499; FCC 88-52]

Issues-Programs List for Public Broadcasting Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action conforms § 73.3527(a)(7), the current Commission public file rule for noncommercial educational broadcasters, to the public file rule for commercial licensees found in § 73.3526(a)(8) of the Commission's rules. Originally, both commercial and noncommercial licensees were required to place in their public files a list of at least five to ten issues which were addressed by their station's programming during the preceding three month period. In 1985, the United States Court of Appeals for the D.C. Circuit rejected this approach as an inadequate public file requirement for commercial broadcasters. Accordingly, in 1986, the Commission revised the public file rule for commercial licensees to require that they maintain a quarterly list of programs that, in the broadcaster's good faith judgment, represent the station's most significant treatment of issues that the licensee believes to be of community concern. In the current proceeding, the Commission found that because noncommercial licensees still maintained the quarterly issues-programs list invalidated by the court, it would be consistent with the court's decision and facilitate public participation in the license renewal process to require that commercial and noncommercial broadcast licensees be subject to the same public file obligations.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission Report and Order in MM Docket No. 86-499 adopted February 16, 1988 and released March 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. After carefully reviewing this issue and the record developed in this proceeding, the Commission concluded that it would be in the public interest to require that noncommercial broadcasters maintain public file records reflecting their most significant treatment of community issues, as commercial broadcasters are now obligated to do. The Commission reached this conclusion for several reasons. First, because the rules in effect for noncommercial licensees are identical to those that caused the court's concern in prior decisions, the former rules may be presumed to be similarly infirm. Second, the Commission found no valid regulatory purpose in imposing different recordkeeping requirements for commercial and noncommercial broadcasters. Even though commercial and noncommercial broadcasters face somewhat different economic realities, the rationale for applying the "significant treatment" requirement to commercial broadcasters pertains equally to noncommercial broadcasters. Third, the Commission indicated that this type of recordkeeping requirement can give the public substantial and sufficient information about a station's issue responsive programming obligation without unduly burdening the licensee. Additionally, such action will promote regulatory consistency and facilitate the public's use and understanding of the public files. Finally, the Commission stated that this action should benefit noncommercial licensees by conferring on them a greater degree of discretion in establishing a record of their past programming performance since they will no longer be constrained by the five-issue minimum and the ten-issue maximum in listing their programming in their public file.

Final Regulatory Flexibility Analysis

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will slightly increase the recordkeeping

burden on some licensees, but is necessary in order to ensure that the requirements imposed on public licensees—that they demonstrate that their responsiveness to the needs of their local communities—are consistent with the Communications Act of 1934, as amended.

Paperwork Reduction Act Statement

3. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection and/or recordkeeping requirement on noncommercial radio and television licensees. Implementation of any modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

4. Authority for the action adopted may be found in sections 4 and 303 of the Communications Act of 1934, as amended.

5. Accordingly, it is ordered, That the Commission's Rules are amended, effective May 31, 1988, as described and set forth herein.

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

6. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

7. 47 CFR 73.3527 is amended by revising paragraph (a)(7) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

(a) * * *

(7) For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g. January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include, but is not limited to, the time, date, duration and title of each program in which the issue was treated.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9392 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket 87-13; FCC 87-244]

Revised FCC Form 346 (Application for Authority to Construct or Make Changes in Low Power TV, TV Translator or TV Booster Station) (February 1988 edition) and new FCC Form 349 (Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) (March 1988 edition)

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of Revised FCC Form 346 and New FCC Form 349.

SUMMARY: This action gives notice of the availability and filing requirements of revised FCC Form 346 and the creation of new FCC Form 349 as a consequence of the Commission's action in *Report and Order*, MM Docket 87-13, FCC 87-244 (52 FR 31398; 8/20/87) establishing rules for television booster stations and modifying the rules for FM booster stations.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson, Low Power Television Branch, Mass Media Bureau, FCC, telephone (202) 632-3894 or Tom English Auxiliary Services Branch, Mass Media Bureau, FCC, telephone (202) 634-6307.

April 20, 1988.

Revised FCC Form 346 and New FCC Form 349

The Commission's *Report and Order* in MM Docket 87-13, 2 FCC Rcd 4625 (1987), established rules for television booster stations (47 CFR Part 74, Subpart G) and modified the rules for FM booster stations (47 CFR Part 74, Subpart L). Therein, the Commission stated that it could not process applications for booster stations under the new rules until relevant forms were revised, approved by the Office of Management and Budget and ready for distribution. These steps have now been accomplished. The revised FCC Form 346 is now entitled "Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station" (February 1988 edition). A new FCC Form 349 has been created and is entitled "Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station" (March 1988 edition).

Effective immediately, the Commission will begin accepting applications for television booster stations, subject to the new rules. Permittees and licensees of full service television broadcast stations only may apply for a permit to construct a new television booster station. These applications must be filed on the February 1988 edition of FCC Form 346.

The current May 1987 edition of FCC Form 346 can continue to be used by applicants seeking to make minor changes in the authorized facilities of television translator or low power television stations. However, use of the revised FCC Form 346 will help reduce application processing time, and minor change applicants are encouraged to use this form. Applications for new television translator or low power television stations or for major changes in the authorized facilities of such stations can be filed only during certain "window" periods that are specified by Commission *Public Notices*. In a subsequent *Public Notice*, the Commission will announce the dates of the next filing window, giving 30 days advance notice. The February 1988 edition of FCC Form 346 will be required to be used in the next window period.

Also effective immediately, the Commission will begin accepting applications for FM booster stations, subject to the new rules. Prior to June 1, 1988, the Commission will continue to accept applications for FM boosters made on FCC Form 349P. Applications for exempt FM translators [1] may be made on the May 1987 edition of FCC Form 346. However, use of the new Form 349 will lessen application processing time and is strongly encouraged.

Effective June 1, 1988, *ALL* low power television, FM and television translator, and FM and television booster station applications must be filed on the Februrary 1988 edition of FCC Form 346 or the March 1988 edition of FCC Form 349, as applicable. All previous editions of FCC Form 346 and FCC Form 349P are cancelled as of that date. All

[1] On March 34, 1988, the Commission announced in *Public Notice*, Memo No. 2240, that it was imposing a general freeze on the acceptance of applications for new FM translator stations pending its final action in the *Notice of Inquiry*, MM Docket 88-140, FCC 88-120. However, there are two exceptions to the FM translator freeze. First, the Commission will accept applications for new noncommercial, educational FM translators seeking assignment to the reserved frequency band (channels 200-220). Secondly, the Commission will also permit the filing of applications for stations that would be mutually exclusive with an application that is exempt from the freeze. In these cases, the competing applications will also be exempt from the freeze.

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applications submitted on or after June 1, 1988 on an obsolete edition of these forms will be subject to the provisions of § 73.3566 of the Commission's Rules governing defective applications.

A separate *Public Notice* will announce an effective date for the use of a revised FCC Form 347 for television translator, low power television and television booster stations. A new FCC Form 350 for making license applications for FM translators and FM boosters will also be announced. This will be issued upon approval and availability of these forms. Until then, license applications may be made on the current editions of FCC Forms 347 and 349L, as applicable.

Revised FCC Form 346 and the new FCC Form 349 are new available and can be obtained from the FCC's Operations Support Division, Service and Supply Branch, Room B–10, 1919 M Street NW., Washington, DC 20554, telephone number (202) 632–7272.

For further information concerning the revised FCC Form 346 and the filing of television booster applications, contact Keith A. Larson, Chief, Low Power Television Branch, Mass Media Bureau at telephone number (202) 632–3894. For questions regarding the new FCC Form 349 and the filing of FM booster applications, contact Tom English, Auxiliary Services Branch, Mass Media Bureau at telephone number (202) 634–6307.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–9397 Filed 4–27–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 82
Thursday, April 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

California Kiwifruit; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 920 for the 1987–88 and 1988–89 fiscal period. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by May 9, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under this marketing order, and approximately 1225 California kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable kiwifruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of kiwifruit. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Kiwifruit Administrative Committee (KAC) is currently authorized expenses of $112,618 and an assessment rate of $0.0125 per tray has been established for the fiscal period ending July 31, 1988. At the April 6, 1988 committee meeting the KAC unanimously recommended increasing this amount to $130,418. The $17,800 increase would be used to purchase two trucks for use by the KAC field agents. Since the committee has approximately $86,000 in its operating reserve to cover this additional expense, it is not necessary to alter the assessment rate at this time.

During the April 6 meeting, the KAC also recommended a budget and assessment rate for the 1988–89 fiscal period which begins August 1, 1988. The recommended amount of $112,618 and assessment rate of $0.0125 is the same as last year. Major expense items include salaries ($58,248) and travel expenses ($15,594). Projected shipments of 8.7 million trays would yield $109,000 in assessment income. This income, when added to approximately $4,000 from the reserve, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

UMI

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For the reasons set forth in the preamble, it is proposed that § 920.203 be revised and § 920.204 be added as follows:

PART 920—[AMENDED]

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

2. Section 920.203 is revised and § 920.204 is added to read as follows:

§ 920.203 Expenses and assessment rate.

Expenses of $130,418 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7–½ pound tray or equivalent is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

§ 920.204 Expenses and assessment rate.

Expenses of $112,618 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7–½ pound tray or equivalent is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: April 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–9365 Filed 4–27–88; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1710

Electric Loan Policies and Application Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Chapter XVII, by adding a new part, Part 1710, Electric Loan Policies and Application Procedures and adding §§ 1710.50—1710.55, Alternate Loan Application Procedures. The new Part develops electric loan policies and application procedures. The Sections establish a simplified alternate loan application procedure for distribution borrowers meeting specified financial, operational and managerial criteria. The basic loan application procedure for borrowers not meeting the simplified criteria will remain unchanged and is set forth in Section IX, Application Procedures, of REA Bulletin 20–2, Electric Loan Policies and Application Procedures, dated June 13, 1977.

DATE: Comments must be received by REA June 27, 1988.

ADDRESS: Comments should be addressed to: Archie W. Cain, Director, Electric Staff Division, U.S. Department of Agriculture, Rural Electrification Administration, Room 1246–S, 14th & Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert W. Ford, Chief, Loans and Management Branch, Electric Staff Division, U.S. Department of Agriculture, Rural Electrification Administration, Room 1237–S, 14th & Independence Avenue SW., Washington, DC 20250; Telephone: (202) 382–1932.

SUPPLEMENTARY INFORMATION: REA proposes to develop policy and procedures to set forth a new procedure for submitting a loan application as an alternate to that prescribed in Section IX, REA Bulletin 20–2, Electric Loan Policies and Application Procedures, dated June 13, 1977 (an Appendix A Bulletin.) This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. This action does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions, (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore, has been determined to be "not major." REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended. (42 U.S.C. 4321 *et seq.*), and therefore, does not require an environmental impact statement or an environmental assessment. This proposed rule is a categorical exclusion under REA's 7 CFR Part 1794, Environmental Policies and Procedures (*i.e.*, 7 CFR 1794.31 (b)(17))

All of the recordkeeping requirements in this proposed regulation have received Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507 *et seq.*]. This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA is the lead lender to approximately 924 active electric distribution utility systems serving rural areas throughout the Nation. REA has determined that a considerable number of the distribution systems that submit loan applications have sufficient financial strength, as well as demonstrated operational and managerial experience, to enable REA to make a determination of adequate loan security and feasibility without submitting all the material routinely required in a loan application. In determining the applicant's financial strength, REA will consider the applicant's current equity position and its earnings and cash flows over the previous three years The minimum equity level of 25 percent, coupled with the limitation on the loan application of 20 percent of Total Utility Plant, will limit the risk to REA of the equity level rapidly falling to a level requiring a more detailed review in the loan consideration process.

The proposed earnings ratio, called a Modified Times Earned Ratio (MTIER), looks at the earnings of the loan applicant before patronage capital and dividends have been added. REA believes that using the MTIER and setting the minimum qualifying level at 1.50 will offer sufficient earnings coverage over and above the level REA has historically required for all distribution borrowers. Similarly, a Modified Debt Service Coverage (MDSC) ratio that excludes patronage capital and dividends which is at least at a level of 1.25 is an indication of a loan applicant that requires less REA review as to the degree of risk associated with a loan application.

In addition to the financial tests, REA will continue to require loan applicants to maintain for their use the necessary engineering planning and financial forecasting documents currently submitted by all loan applicants. The review of these documents will be done by the REA field staff as they are routinely developed by the borrowers for their own use This should reduce the administrative requirements on both the borrower and REA at the time that a loan application is being considered. Borrowers and their advisory organizations have encouraged REA to reduce the loan processing time and the number of documents which must be submitted.

REA will benefit from the alternative loan application procedures since it will allow the headquarters staff to spend more time evaluating loan applications from borrowers with less financial or operational strength which pose greater loan security risk.

List of Subjects in 7 CFR Part 1710

Administrative practice and procedure, Electric utilities, Loan program.

In view of the above, REA proposes to amend 7 CFR Part XVII by adding Part 1710 and §§ 1710.50–1710.55 to read as follows:

PART 1710—ELECTRIC LOAN POLICIES AND APPLICATION PROCEDURES

Subparts A–B—[Reserved]

Subpart C—Alternate Loan Application Procedure

Sec.

1710.50 Purpose.
1710.51 Policy.
1710.52 Definitions.
1710.53 Alternate loan application.
1710.54 Qualification criteria.
1710.55 Procedure.

Authority: 7 U.S.C. 901–950b, Rural Electrification Act of 1936, as amended (RE Act); Pub. L. 98–591, Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subparts A–B [Reserved]

Subpart C—Alternate Loan Application Procedure

§ 1710.50 Purpose.

It is the purpose of this policy to set forth an alternative procedure to that prescribed in Section IX, REA Bulletin 20–2, Electric Loan Policies and Application Procedures, dated June 13, 1977 (an Appendix A Bulletin) for submitting to the Rural Electrification Administration (REA) a loan application.

§ 1710.51 Policy.

It is the policy of the REA to provide an alternative procedure for submitting a loan application for those distribution borrowers meeting certain financial, operational and managerial tests.

§ 1710.52 Definitions.

As used in this part:

(a) "Equity" means Total Margins & Equity divided by Total Assets & Other Debits. The equity percentage is obtained from REA Form 7, Financial and Statistical Report, Part C, by dividing line 32 by line 25 and multiplying by 100.

(b) "MTIER" means Modified Times Interest Earned Ratio calculated as:

$$\frac{A15+A27-A24-A25}{A15}$$

where:

(1) A15=Interest on Long-term Debt as set forth in Part A, Line 15 of REA Form 7 (Financial and Statistical Report) except that Interest on Long-term Debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent of Total Margins and Equities (Part C, Line 32 of Form 7).

(2) A27=Patronage Capital or Margins as set forth in Part A, Line 27 of Form 7.

(3) A24=Generation and Transmission Capital Credits as set forth in Part A, Line 24 of Form 7.

(4) A25=Other Capital Credits and Patronage Dividends as set forth in Part A, Line 25 of Form 7.

(c) "MDSC" means Modified Debt Service Coverage calculated as:

$$\frac{A12+A15+A27-A24-A25}{\text{Debt Service Billed (REA+CFC+Other)}}$$

where:

(1) A12=Depreciation and Amortization Expense as set forth in Part A, Line 12 of REA Form 7 (Financial and Statistical Report).

(2) A15=Interest on Long-term Debt as set forth in Part A, Line 15 of REA Form 7 (Financial and Statistical Report) except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent of Total Margins and Equities (Part C, Line 32 of Form 7)

(3) A27=Part A, Line 27, Patronage Capital or Margins as set forth in Part A, Line 27 of REA Form 7.

(4) A24=Generation and Transmission Capital Credits as set forth in Part A, Line 24 of Form 7.

(5) A25=Other Capital Credits and Patronage Dividends as set forth in Part A, Line 25 of Form 7.

(6) Debt Service Billed (REA+CFC+Other)=All interest and principal billed during the appropriate calendar year plus ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent of Total Margins and Equities (Part C, Line 32 of Form 7).

(d) "Total Utility Plant" means the amount set forth in Part C, Line 3 of REA Form 7 (Financial and Statistical Report).

(Approved by the Office of Management and Budget under control number 0572–0016)

§ 1710.53 Alternate loan application.

(a) For distribution borrowers which meet the qualification criteria in § 1710.54, Qualification Criteria, REA will accept 2-year loan applications consisting of the following:

(1) A certified resolution of the board of directors requesting the loan, affirming that the borrower will continue to meet the requirements of the REA mortgage relative to Times Interest Earning Ratio (TIER) and Debt Service Coverage (DSC), and identifying the supplemental lender.

(2) A properly completed and executed REA Form 740c, "Cost Estimates and Loan Budget for Electric Borrowers," which clearly identifies the facilities to be financed; and

(3) A letter signed by the borrower's manager summarizing any litigation pending against the borrower which could have an adverse financial impact on the borrower.

(b) The three items referred to above will constitute a complete loan application and should be submitted through REA's General Field Representative (GFR) to the REA Area office.

(Reporting and recordkeeping requirements contained in paragraph (a)(2) were approved by the Office of Management and Budget under control number 0572–0032.)

§ 1710.54 Qualification Criteria

(a) In order to submit the alternate loan application procedure specified in § 1710.53 borrowers must meet all of the following criteria:

(1) The borrower's equity must be at least 25 percent in the year-end report for the last calendar year preceding the date of the completed loan application.

(2) The borrower must have achieved a MTIER of at least 1.50 and a MDSC of at least 1.25 for two of the three calendar years last preceding the date of the completed loan application.

(3) The financing request (REA and Supplemental components) must not exceed 20 percent of Total Utility Plant in the year-end report for the last calendar year preceding the date of the completed loan application.

(4) Additionally, the borrower must demonstrate to the satisfaction of the GFR that:

(i) The facilities requested are consistent with its REA approved Construction Work Plan and the associated Borrower's Environmental Report,

(ii) Its plant is being adequately maintained,

(iii) Its long range engineering plan and 5-year financial forecast are adequate,

(iv) It has a current REA Form 268, "Report of Compliance and Participation," on file with REA, and

(v) It is in compliance with 7 CFR 1788.40 and 1788.41 relating to flood hazard insurance.

(b) The above procedure will not be available to distribution members of any power supply borrower which is delinquent in its payments to REA or in bankruptcy proceedings. For these and all other borrowers not meeting the criteria outlined above, the existing loan application procedures set forth in Section IX, Application Procedures, of REA Bulletin 20–2, Electric Loan Policies and Application Procedures, dated June 13, 1977 (an Appendix A Bulletin) must be complied with.

(c) REA reserves the right, when it determines that special circumstances exist, to require additional data from borrowers before acting on these simplified loan applications.

(Reporting and recordkeeping requirements contained in paragraph (a)(4)(i) were approved by the Office of Management and Budget under control number 0572–0060. Reporting and recordkeeping requirements contained in paragraph (a)(4)(iii) were approved by the Office of Management and Budget under control numbers 0572–0060 and 0572–0072 Reporting and recordkeeping requirements contained in paragraph (a)(4)(iv) were approved by the Office of Management and Budget under control number 0572–0047. Reporting and recordkeeping requirements contained in paragraph (a)(4)(v) were approved by the Office of Management and Budget under control number 0571–0016.)

§ 1710.55 Procedure.

(a) Any borrower planning to submit a loan application should contact REA's General Field Representative who will review the matter and advise the borrower on which procedure to follow in submitting the application, i.e. alternate or regular loan application procedure.

(b) Copies of all forms referred to in this subpart are available from the Rural Electrification Administration, Washington, DC 20250.

Dated: April 21, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88–9282 Filed 4–27–88; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88–287]

Transactions with Affiliates of Subsidiary Insured Institutions

Date: April 22, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is proposing to amend its regulations pertaining to transactions between institutions whose accounts are insured by the FSLIC ("insured institution") and affiliates of those insured institutions. The proposed amendments provide, in effect, that the conflict of interest provisions of the Board's regulations will not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than natural persons that are controlling shareholders).

DATE: Comments must be received by June 13, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this adddress.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377–7506; Kevin A. Corcoran, Deputy Director, (202) 377–6962; V. Gerard Comizio, Director, (202) 377–6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6549; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. 552, created a new statutory scheme to govern transactions between subsidiary insured institutions and their affiliates. Among the provisions contained in the CEBA are sections 104(d) and 110, which amend section 408 of the National Housing Act ("NHA"), 12 U.S.C. 1730a, by adding new subsections (p) and (t) respectively.

New subsection (p) provides, in effect, that the limitations and prohibitions on transactions with affiliates applicable to subsidiary insured institutions of savings and loan holding companies prior to the enactment of the CEBA will not apply to transactions between a subsidiary insured institution and its affiliates engaged in activities permissible for a bank holding company under section 4(c) of the Bank Holding Company Act ("BHCA"), 12 U.S.C. 1843(c). Those transactions will, instead, be subject to the limitations and prohibitions of sections 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. 371c and 371c–1. Subsection (p) further provides that the Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the provisions of sections 23a and 23B of the FRA.[1] The Conference Report to the CEBA ("Conference Report") indicates that the intended effect of new subsection (p) is to provide "[p]arity between a bank and a thrift holding company with respect to dealings between the depository institution and affiliates engaged in activities permitted under section 4(c)(8)."[2]

New subsection 408(t) of the NHA exempts transactions between certain insured institutions (and certain of their subsidiaries) from the provisions of subsection 408(d) of the NHA restricting certain transactions between a subsidiary insured institution and its affiliates. Specifically, new subsection 408(t) provides, in pertinent part, that "an insured institution that is a subsidiary of an insured institution or insured institutions the voting stock of which is 80 percent owned by the same company shall not be subject * * * to the provisions of (408(d) of the NHA) as to transactions with such parent insured institution or affiliate insured institutions (and their subsidiaries) * * *" In addition, new subsection (t) prohibits an insured institution (or its subsidiaries) from purchasing a low quality asset (as defined in section 23A of the FRA) from another insured institution (or its subsidiaries) in any transaction exempted by the subsection. Transactions exempted by 408(t) must be on terms and conditions that are consistent with safe and sound financial practices.

Transaction not subject to either 408(p) or 408(t) remain subject to 408(d) of the NHA and regulations adopted thereunder.[3] Section 408(d) contains a

[1] The Board expects to implement that authority by soliciting public comment in the near future on proposed amendments to Part 563 and 584 of its regulations.

[2] Conference Committee Report, H.R. 27, Competitive Equality Banking Act of 1987, H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess., 138.

[3] 12 CFR 584.3.

list of transactions with affiliates that are strictly prohibited and a list of transactions with affiliates that are permitted with prior written approval of the Corporation. In addition, it has been the longstanding position of the Board's Office of General Counsel that the limitations and prohibitions contained in 12 CFR 563.41 and 563.43 (the "Conflicts rules") governing transactions between or involving an insured institution and its affiliated persons are applicable to all insured institutions, including an insured institution that is a subsidiary of a savings and loan holding company.[4] Transactions with affiliates involving holding company subsidiary institutions are also subject to regulation pursuant to the NHA, however, and the two sets of rules conflict in certain respects. For example, despite the language in section 408(d)(6) of the NHA, which provides that certain transactions shall be approved by the FSLIC unless the transaction would be detrimental to the insured institution's depositors or the FSLIC, the Conflicts Rules flatly prohibit some of these transactions.[5] That position has been based on the Board's findings, as expressed in the preamble to the Conflicts Rules "that certain types of transactions should be prohibited altogether based on the need to prevent conflicts of interest for the safety and soundness of the thrift industry."[6]

It appears clear that Congress intended new subsections 408(p) and 408(t), when applicable, exclusively to govern transactions between a subsidiary insured institution and its affiliates.[7] In addition to the new statutory provisions, the Conference Report directs the Board to review its safety and soundness regulations to, among other things, ensure that such regulations do not conflict with statutory provisions, such as section 408(d)(6) of the NHA, 12 U.S.C. 1730a(d)(6), which requires the approval of the FSLIC on a case-by-case basis of certain transactions between an insured institution and its affiliates.[8]

In light of these new statutory provisions and the directive of the Conference Report discussed above, the Board believes it would be inappropriate to continue to apply the Conflicts Rules to transactions between holding company subsidiary insured institutions and their affiliates. Accordingly, the Board is proposing to amend the Conflicts Rules to exclude transactions between holding company subsidiary insured institutions and their affiliates (other than natural persons that are controlling persons, directors or officers of the insured institution) from the coverage of those rules and expressly to provide that those transactions are exclusively subject to the prohibitions and limitations contained in section 408 of the NHA, as amended, and the Board's regulations (as currently existing or as subsequently amended) thereunder. The Board believes it is appropriate that natural person affiliates that are controlling shareholders directors or officers continue to be subject to the Conflict Rules in the same manner as other natural persons that are "affiliated persons" (as defined in 12 CFR 561.29). By so doing, all natural persons, as contrasted with entities, will be subject to equivalent treatment with respect to the Conflicts Rule.

The Board solicits comments on the proposed amendments from all interested parties. Pursuant to the rulemaking policies and procedures of 12 CFR 508.13, as supplemented by Board Res. No. 80–584, 45 FR 73135 (September 23, 1980), the Board is providing for a 45–day rather than a 60–day public comment period because of the need to put in place expeditiously regulations to implement the new statutory scheme in this area.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would allow smaller institutions greater certainty as to which set of transactions with affiliates rules would apply to them.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap, or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investment, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Sec. 1204, 101 Stat. 662 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.41 by revising the heading of the section and paragraph (a) to read as follows:

§ 563.41 Restrictions on real and personal property transactions with affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution

[4] *See*, e.g. Letter from Rosemary Stewart, Associate General Counsel to W. Michael Herrick, Esq. (June 23, 1982); Letter from Thomas Vartanian, General Counsel to Richard J. Perry, Jr., Esq. (April 20, 1983); and Letter from Harry Quillian, Acting General Counsel to William B. O'Connell (June 2, 1988).

[5] This overlapping of regulatory provisions has been particularly troublesome regarding the purchase of mortgages and participation interests in mortgages by a subsidiary institution from one of its affiliates. Those transactions have been prohibited under 12 CFR 563.43(c)(2) even though they would be approvable under 408(d)(6) of the NHA and 12 CFR 584.3(a)(7) thereunder.

[6] 41 FR 35619 (1976).

[7] Such intent is clearly indicated, for example, in the language of subsection 408(p) providing that transactions to which the subsection applies "* * * shall be subject to the limitations and prohibitions specified in section 23A and 23B of the Federal Reserve Act *in the same manner and to the same extent as if such insured institution were a member bank.*" (emphasis added). If transactions subject to 408(p) were subject to regulatory limitations and prohibitions in addition to those in 23A and 23B of the FRA, then insured institutions would not be subject to 23A and 23B of the FRA in the same manner and to the same extent as if such insured institutions were members banks.

[8] Conference Committee Report, H.R. 27, Competitive Equality Banking Act of 1987, H.R. Cong. Rep. No. 261, 100th Cong., 1st Sess., 138, 144.

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subsidiary of a savings and loan holding company and such insured institution's affiliates (other than natural persons that are controlling shareholders) as such term is defined in § 583.15 of this chapter.

* * * * *

3. Amend § 563.43 by revising paragraph (a) to read as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution subsidiary of a savings and loan holding company and such insured institution's affiliates (other than natural persons that are controlling shareholders) as such term is defined in § 583.15 of this chapter.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-9389 Filed 4-27-88; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Revision

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to revise its regulations defining small business for Government procurement as it concerns nonmanufacturers. This rule is proposed to avert the consequences of a recent decision concerning nonmanufacturers issued by SBA's Office of Hearings and Appeals. Under that decision, large businesses could qualify as eligible to submit offers on and receive awards of small business set-aside contracts for supplies as nonmanufacturers, provided that they supply the product of a small business manufacturer or producer. This revision would make explicit the requirement that a nonmanufacturer offeror also be a small business and establishes a size standard of 500 employees for such nonmanufacturers.

DATE: Written comments must be submitted on or before May 13, 1988.

ADDRESS: Submit written comments to Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gene VanArsdale, Director, Office of Procurement Policy and Liaison, (202) 653-8588.

SUPPLEMENTARY INFORMATION: SBA's current size regulations for Government procurement distinguish between manufacturers and "nonmanufacturers." A "nonmanufacturer" is a company that does not manufacture the item being procured under a particular contract. Such a company may be considered small if it proposes to supply "the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States." 13 CFR 121.5(b)(2)(i). This language was narrowly construed by the Office of Hearings and Appeals in a recent decision in which that Office held that the nonmanufacturer need not itself comply with any size standard so long as the actual manufacturer or producer of the product is a small business under the applicable manufacturing size standard. *See Size Appeal of Louisiana Filling, Inc.*, Appeal No. 2796 (December 14, 1987). In that decision, the Office of Hearings and Appeals held that "the regulations as worded in the current Code of Federal Regulations do not impose any restrictions on the number of employees or the annual receipts of nonmanufacturers [provided that they are] supplying end items produced in the United States by small businesses."

The Agency believes that the decision in *Louisiana Filling*, construing its present regulations governing the size of nonmanufacturers, reveals an unintended variance from the letter and spirit of the Small Business Act, its historic interpretation and the overall scheme of the size regulations. For these reasons, outlined in greater detail below, the Agency is proposing to revise its regulations to make explicit the requirement that nonmanufacturer offerors must themselves be small and is proposing to establish an explicit numerical size standard for nonmanufacturers based on number of employees.

It has long been the Agency's official position that it is empowered to assist through its various programs *only* small business concerns. It has taken that position in litigation. The court in *Systems and Applied Sciences Corp. v. Sanders*, 544 F.Supp. 576, 581 (D.C. Dist. 1982) noted: "[i]t is beyond doubt, and SBA admits, that small business status under the Act is *an absolute prerequisite* to participation in any of its programs * * *." (Emphasis supplied.) This position is solidly grounded on the language of the Small Business Act itself.

Section 2(a) of the Small Business Act makes clear that the Agency's mission is to assist *small* business. 15 U.S.C. 631(a). This statutory purpose is accomplished by the small business set-aside program authorized by section 15(a) of the Act. 15 U.S.C. 644(a). Under this authority, contracts may be let only to business concerns that qualify as small under the Act, specifically, under section 3(a)(1) of the Act, 15 U.S.C. 632(a)(1), and the Agency's implementing regulations in Part 121 of title 13, Code of Federal Regulations.

The consequence of the *Louisiana Filling* decision is that large businesses, so long as they proposed to supply the product of a small business manufacturer, may be considered eligible to submit offers on, and receive awards under, small business supply contract set-asides. Section 15(a) of the Small Business Act, however, limits the program to participation by small business concerns. To permit the *Louisiana Filling* decision to stand, then, would cause a fundamental departure from the primary thrust of the Small Business Act by permitting other than small businesses to derive a direct benefit from a program established for the exclusive benefit of small business concerns.

The *Louisiana Filling* decision both creates conflicts within the current regulatory scheme, and conflicts with the Agency's historical regulatory approach to establishing size standards for nonmanufacturers.

The conflicts or inconsistencies caused by this decision include at least the following three. The first inconsistency involves the size regulation for kit assemblers found at 13 CFR 121.5(b)(2)(ii). That regulation requires that an assembler meet "the size qualifications of a small nonmanufacturer for the procurement * * *." The regulation becomes internally inconsistent under the *Louisiana Filling* decision because the kit assembler could never satisfy the requirement that it qualify as a nonmanufacturer small business, and still take advantage of another regulatory provision which allows it to obtain up to 50 percent of the kit components from large manufacturers. Under *Louisiana Filling*, it would be prohibited from doing so by its holding that a nonmanufacturer must supply only products manufactured by small businesses. Secondly, 13 CFR 121.5(b)(2)(iv) presently requires that a nonmanufacturer seeking a Certificate of Competence (COC) on an *unrestricted* procurement must comply with a size standard—that of the applicable Wholesale Trade industry. It is inconsistent to require a nonmanufacturer bidding on a unrestricted procurement to meet a size standard but not require that a nonmanufacturer meet a size standard if it bids on a set-aside procurement. A third inconsistency is that the regulation at 13 CFR 121.5(b)(2)(iii) presently exempts concerns bidding on small purchase actions as nonmanufacturers from the requirement that they supply the product of a small manufacturer. Consequently, given the *Louisiana Filling* interpretation of the nonmanufacturer rule, neither the nonmanufacturer offeror nor the nonmanufacturer's supplier would need to be a small concern in a small purchase procurement, and a program intended for the exclusive benefit of small businesses would be completely open to participation by other than small concerns.

The Agency has long required that nonmanufacturers, as well as their manufacturer suppliers, be small businesses under the Agency's regulations. In fact, the requirement that both the nonmanufacturer and the manufacturer's supplier(s) both be small businesses under an established size standard was first imposed in 1957. *See* 22 FR 2759. For 27 years, from 1957 through the effective date of a 1984 revision to the size regulations, nonmanufacturers were explicitly defined as concerns (i) having not more that 500 employees, and (ii) who proposed to supply the product of a small business manufacturer producer. *See, e.g.*, 13 CFR 121.3-8(c)(1)-(2) (1984).

The regulatory language interpreted in the *Louisiana Filling* case arises out of the 1984 revision to Part 121. Review of the rulemaking record of that revision suggests that the final rule inadvertently omitted language within the proposed rule which would have required nonmanufacturers to satisfy the applicable Wholesale Trade size standard. The problem created by this omission was further exacerbated by the Agency's overall effort at that time to remove from the regulation any size standards not related to particular Standard Industrial Classification (SIC) codes. The catch-all size standard of 500 employees for industries not otherwise classified which had long been in Agency regulations was deleted in this effort. As a result, no size standard was *explicitly* left in force as to nonmanufacturers themselves. Nonetheless, the practice of SBA and the Federal procurement community generally was to require that nonmanufacturer offerors on small business set-aside procurements meet a 500 employee size standard as that of the wholesalers and that of most manufacturers (as well as provide the product of a small manufacturer). The size standard for all wholesale industries remained 50 employees until 1986.

On August 11, 1986, the Agency's revision of the size standard for Wholesale Trade become effective, lowering the size standard to 100 employees. This change was made without an appreciation of its impact on manufacturer offerors. It has now become apparent to the Agency that an impact is being experienced. Federal procuring agencies that had been applying the 500 employee Wholesale Trade size standard to nonmanufacturers before 1986 have begun to apply the new size standard, 100 employees, to nonmanufacturers. This has had the effect of excluding concerns from bidding as nonmanufacturers that had done so for many years under the 500 employee size standard.

The Agency is thus confronted with two problems: (1) To restore a specific size standard to its regulations to apply to nonmanufacturers who submit offers on small business set-aside procurements, thereby obviating the undesirable effects of *Louisiana Filling*, described above, and (2) to determine what that size standard should be. The Agency's solution is to propose the following changes to the nonmanufacturer rule: (1) Explicitly require that nonmanufacturers bidding on small business set-aside procurements themselves be small; (2) reinstitute the 500 employee size standard for nonmanufacturers; and (3) conform the regulation pertaining to COC applicants in unrestricted procurements by deleting the reference to the Wholesale Trade size standard. (There is no need to change the kit assembler or small purchase nonmanufacturer regulations, as they already conform to these changes.)

The Agency proposes to return to the 500 employee size standard in order to recognize and accommodate current procurement and industry practices. It is a relatively common practice for manufacturers to bid on supply contracts where they do not propose to produce the particular product to be supplied with their own labor force, notwithstanding that they are capable of doing so. Such manufacturers must qualify as small businesses under the nonmanufacturer rule. The overwhelming majority of the size standards for manufacturers is 500 employees. Therefore, in an effort to minimize the adverse consequences upon such concerns, the Agency proposes to adopt the predominant size standard for manufacturers as the size standard for nonmanufacturers who desire to bid on Federal supply contracts. This 500 employee size standard would impose no hardship on wholesalers who qualify as regular dealers also desiring to make offers on small business set-asides, since it would be a higher standard than the 100 employee size standard now applicable to wholesalers for other small business program purposes. We invite public comment on the appropriateness of this size standard.

The Agency is proposing no change to the 100 employee size standard for Wholesale Trade concerns for other program purposes because it continues to believe that the rationale expressed in 1986 is valid, and that the 100 employee size standard is generally appropriate for that industry group. That being the case, the Wholesale Trade size standard, being less than 500 employees, cannot be applied to nonmanufacturers bidding on small business set-asides without disruption of current Government procurement and industry practices as discussed above. This departure from the Wholesale Trade size standard also has the advantage of recognizing that wholesalers sometimes do not qualify as regular dealers under the Walsh-Healey Act and in those cases, are ineligible for Government supply contracts. Recognizing this fact, it would be inappropriate to impose the wholesaler size standard upon offering nonmanufacturers which must qualify under Walsh-Healey as regular dealers to be eligible for such awards. Therefore, the proposed rule would re-establish a separate 500 employee size standard for nonmanufacturers for purposes of Government procurement.

Compliance With Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* As a result of the Office of Hearings and Appeals (OHA) decision discussed above, a firm of any size can bid as a nonmanufacturer on a procurement for a manufactured item which is set aside for small business

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when that firm supplies an item it did not manufacture; providing only that the ultimate manufacturer is a small business. However, prior to the OHA decision, Federal agencies have been interpreting SBA's size regulations to require either that the manufacturing size standard be applied to nonmanufacturers or, that the wholesale trade size standard be applied. Consequently, SBA is aware of only one firm of over 500 employees that has received a small business set-aside contract as a nonmanufacturer. Under this rule, if adopted in final form, firms with over 500 employees would be ineligible as nonmanufacturers to bid on small business set asides. This action will maintain the status quo of excluding from participation in the set-aside contract program nonmanufacturing firms with over 500 employees.

SBA has determined that this regulation is not a major rule as defined by Executive Order 12291 because it is not expected to have an annual economic effect of $100 million or more. In Fiscal year 1986, $6.4 billion of Federal procurements were provided by nonmanufacturing. Of this total, only $346.5 million, or about 5.4 percent was provided through small business set-aside procedures. Three hundred and sixty-six nonmanufacturing firms are above 500 employees and account for 24.2 percent of nonmanufacturing sales. If these firms actively participate in the set-aside market, it is estimated that they would likely obtain set-aside contracts equal to their overall market share of 24.2 percent. This would equal $88.9 million of set-aside contracts (24.2 percent of $346.5 million equals $88.9 million).

SBA notes also that this rule does not qualify as a major rule under the other two criteria of Executive Order 12291. The rule is not likely to result in a major increase in costs or prices, nor would it be likely to have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based businesses to compete with foreign-based businesses in domestic or export markets.

The rule would define the maximum size a firm may be to receive SBA's assistance and to bid on contracts set aside by all Federal agencies for small firms. The legal bases for this proposed rule are sections 3(a) and 5(b)(6) of the Small Business Act (15 U.S.C. 632(a) and (634(b)(6). There are no Federal rules which would duplicate, overlap or conflict with this final rule.

SBA certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 121

Small businesses, Size standards.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6), Small Business Act, (15 U.S.C. 632(a) and 634(b)(6)).

2. Section 121.5(b)(2) introductory text (iv) and (b)(2)(iv) are revised to read as follows:

§ 121.5 Small business for Government procurement.

* * * * *

(b)(2) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when *it has no more than 500 employees, and:*

* * * * *

(iv) For the purpose of receiving a Certificate of Competency, on an unrestricted procurement, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

* * * * *

Date: April 20, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-9398 Filed 4-27-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-55-87]

Corporate Alternative Minimum Tax Book Income Adjustment of Foreign Corporations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking; cross reference.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the corporate alternative minimum tax adjustment for the book income of foreign corporations. The text of the temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed June 27, 1988.

ADDRESS: Send comments and request for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-55-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Timothy J. McKenna of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR-55-87). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations which are proposed to be based on the temporary regulations would amend Part 1 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the book income adjustment to the corporate alternative minimum tax under section 56(c)(1) and 56(f) of the Internal Revenue Code of 1986 (Code) as added by section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320).

For the text of the temporary regulations see T.D. 8197 published in the Rules and Regulations portions of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.01-1.58-8

Income taxes, Tax liability, Tax rates, Credits.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-9435 Filed 4-27-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-88-05]

Drawbridge Operation Regulations; Atchafalaya River, LA

AGENCY: Coast guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Kansas City Southern Railway Company, the Coast Guard is considering a change to the regulation governing the operation of the swingspan railroad bridge over the Atachafalaya River, mile 133.1 at Simmesport, Louisiana, to require that at least three hours advance notice be given for opening the draw. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge, and will still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 13, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3398. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 6.0 feet above mean high water and 56 feet above mean low water. Navigation through the bridge consists of tugs with tows and outboard motor-powered pleasure boats.

This proposal is being made because of infrequent requests to open the draw. A review of the bridgetender's log of openings for the past five years shows that the draw has been opened for the passage of vessels an average of 1.85 times per week. There was no pattern to the bridge openings to indicate that vessel traffic was significantly heavier or lighter during any particular month or season of the year, with the exception of low-water period in August and September, when virtually all vessels can pass under the bridge. Outside the low water period, the draw opened for the passage of vessels an average of 2.2 times per week.

Three hours advance notice for opening of the draw would be made by placing a collect call at any time to the Kansas City Southern Railway Company representative in Simmesport, Louisiana. To provide for leeway in the appointed vessel arrival time, the Kansas City Southern Railway Company would have a tender at the bridge at least one-hour hour before the appointed opening time, and the tender would remain at least one-half hour after the appointed time for a late arriving vessel.

Economic Assessment and Certification

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing requiring opening of the bridge averages only 1.85 per week. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entites.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05-1(g).

§ 117.422 [Redesignated from 117.423]

2. Section 117.423 (*Amite River*) is redesignated as § 117.422 and a new § 117.423 is added to read as follows:

§ 117.423 Atchafalaya River

The draw of the Kansas city Southern Railway bridge, mile 133.1 (mile 5.0 on N.O.S. Chart) above the mouth of the waterway, at Simmesport, shall open on signal if at least three hours advance notice is given.

Dated: April 20, 1988.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-9425 Filed 4-27-88; 8:45 am]

BILLING CODE 4910-14-M

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: Existing regulations at 36 CFR Part 228, Subpart C, authorize the disposal of mineral materials. These materials include petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay and other similar materials. This proposed rulemaking specifies which mineral materials are common varieties subject to disposal by the Secretary of Agriculture under the Materials Act of 1947.

DATE: Comments must be received by June 27, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2850), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this proposed rule in the office of the Director, Minerals and Geology Staff, Room 606, 1621 North Kent Street, Arlington, VA, during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steve Marshall, Minerals and Geology Staff, (703) 235–3142.

SUPPLEMENTARY INFORMATION: The Materials Act of July 31, 1947 (61 Stat. 681), as amended by the Act of July 23, 1955 (69 Stat. 367), 30 U.S.C. 601 *et seq.*, authorizes the Secretary of Agriculture, under such rules and regulations as he may prescribe, to dispose of mineral materials which include common varieties of sand, stone, gravel, pumice, pumicite, cinder and clay.

Over a period of years, several hundred cases in litigation have addressed which mineral materials are to be considered common; however, the regulations in 36 CFR Part 228, Subpart C, which cover the disposal of mineral materials, do not reflect these results. This lack of more specific regulation makes it difficult for prospective purchasers of mineral materials to know whether a particular deposit is available for purchase. Lacking the information, prospective purchasers have frequently located mining claims under the Mining Laws of the United States, creating title and economics problems, unnecessary litigation, and delays in completing sales.

Principal objectives of the Act of July 23, 1955, were to increase multiple uses of public lands and National Forests, and to prevent the fraudulent location of mining claims. This proposed rule is designed to provide additional criteria on the sale of mineral materials in view of the judicial interpretations of the Materials Act. Six categories of characteristics or users are established. In contrast to them, the rule also includes six categories of materials considered, on the basis of the Act and judicial construction, to be uncommon varieties which are locatable under the mining laws.

The proposed categories and representatives uses within each category are as follows:

1. *Common Varieties*

A. *Agricultural Supply and Animal Husbandry Materials.* This category includes, but is not limited to, materials used as for: Soil conditioners or amendments, fertilizers or other direct applications to the soil such as carbonate rocks, animal feed supplements, and other animal care products.

B. *Building Materials.* Except for materials identified as *Uncommon Varieties,* this category includes, but is not limited to, materials such as: flagstone, ashlar, rubble, mortar, brick, title, and terrazzo used for nonstructural components in floors, walls, roofs, fireplaces, and similar building construction uses.

C. *Cleaning and Abrasive Materials.* This category includes, but is no limited to, materials used as or for: filters, absorbents, filing scouring, polishing, sanding, and sandblasting.

D. *Construction Materials.* This category includes, but is not limited to, materials used as or for: fill, borrow, rip-rap, ballast, road base or surfacing, crushed rock, concrete aggregate, and clay sealants.

E. *Decorative and Ornamental Arts Materials.* This category includes, but is not limited to, materials used as or for: sculpture, lapidary, furniture, and natural art objects. This category does not include precious gems.

F. *Landscaping Materials.* This category includes, but is not limited to: chips, granules, sand, pebbles, scoria, cinders, cobbles, boulders, or slabs used for retaining walls, walkways, patios, yards, gardens, and the like.

2. *Uncommon Varieties*

The following types of mineral materials are considered to be uncommon and not subject to subject to disposal under this subpart:

A. Limestone suitable and used, without substantial admixtures, for cement manufacture, metallurgy, production of quicklime, sugar refining, whiting, fillers, paper manufacture, and desulfurization of stack gases;

B. Silica suitable and used for glass manufacture, production of metallic silicon, flux, and rock wool;

C. Alumino-silicates or clays suitable and used for production of aluminum, ceramics, drilling mud, taconite binder, foundry castings and other specific uses for which there are no substitutes;

D. Gypsum suitable and used for wallboard, plaster, or cement;

E. Block pumice which occurs in nature in pieces having one dimension of two inches or more; and

F. Stone recognized through marketing factors for its special and distinct properties of strength and durability making it suitable for structural support and used for that purpose.

These categories of common and uncommon varieties would be codified in paragraphs (c) and (d) of 36 CFR 228.41 which addresses the scope of the common variety rules. The definition of common varieties at § 228.42 would be removed.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

This rule has been reviewed under Executive Order 12291 and USDA procedures and it has been determined that this rule is not a major rule. The rule would not have an economic effect of $100 million or more or affect U.S. competion in foreign markets. Additionally, it will not have a significant ecomomic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rulemaking contains no information collection requirements needing the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mines, National forests, Public lands—mineral resources, Rights of way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Subpart C of Part 228 of Title 36 of the Code of Federal Regulations as follows:

PART 228—MINERALS

1. The authority citation for Part 228 is amended to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), 61 Stat. 681, as amended (30 U.S.C. 601), and 94 Stat. 2400.

Subpart C—Disposal of Mineral Materials

2. Amend § 228.41 by adding new paragraphs (c) and (d) to read as follows:

§ 228.41 Scope.

* * * * *

(c) *Materials to which this subpart applies.* This subpart applies to mineral materials which consist of petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Such common variety mineral materials include deposits which, although they have economic value, are used for agriculture, animal husbandry, building, cleaning and abrasion, construction, decorative and ornamental arts, landscaping, similar uses. Representative examples of these materials are:

(1) *Agricultural Supply and Animal Husbandry Materials.* This category includes, but is not limited to, materials used as or for: Soil conditioners or amendments, fertilizers or other direct applications to the soil, such as carbonate rocks, animal feed supplements, and other animal care products.

(2) *Building Materials.* Except for materials identified in § 228.41(d) of this subpart, this category includes, but is not limited to, materials such as: Flagstone, ashlar, rubble, mortar, brick, tile, and terrazzo used for nonstructural components in floors, walls, roofs, fireplaces, and similar building construction uses.

(3) *Cleaning and Abrasive Materials.* This category includes, but is not limited to, materials used as or for: Filters, absorbents, filing, scouring, polishing, sanding, and sandblasting.

(4) *Construction Materials.* This category includes, but is not limited to, materials used as or for: Fill, borrow, rip-rap, ballast, road base or surfacing, crushed rock, concrete aggregate, and clay sealants.

(5) *Decorative and Ornamental Arts Materials.* This category includes, but is not limited to, materials used as or for: Sculpture, lapidary, furniture, and natural art objects. This category does not include precious gems.

(6) *Landscaping Materials.* This category includes, but is not limited to: Chips, granules, scoria, cinders, sand, pebbles, cobbles, boulders or slabs used for retaining walls, walkways, patios, yards, gardens and the like.

(d) *Materials not covered by this subpart.* Common variety mineral materials do not include any material used in manufacturing, industrial processing, or chemical operations for which no other mineral material can be substituted due to properties giving it distinct and special value; nor do they include block pumice which in nature occurs in pieces having one dimension of two inches or more. Disposal of these latter varieties of mineral materials is subject to the terms of the General Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*), on those portions of the National Forest System where these laws apply. They include:

(1) Limestone suitable and used, without substantial admixture, for cement manufacture, metallurgy, production of quicklime, sugar refining, whiting, fillers, paper manufacture, and desulfurization of stack gases.

(2) Silica suitable and used for glass manufacture, production of metallic silicon, flux, and rock wool.

(3) Alumino-silicates or clays suitable and used for production of aluminum, ceramics, drilling mud, taconite binder, foundary castings and other specific uses for which there are no substitutes.

(4) Gypsum suitable and used for wallboard, plaster, or cement.

(5) Block pumice which occurs in nature in pieces having one dimension of two inches or more.

(6) Stone recognized through marketing factors for its special and distinct properties of strength and durability making it suitable for structural support and used for that purpose.

§ 228.42 Definitions.

3. Amend § 228.42 by removing the term and definition of "mineral materials."

Date: April 7, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88–9364 Filed 4–27–88; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3606/P449; FRL–3371–7]

Pesticide Tolerance for 2-(2-Chlorophenyl) Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity succulent peas. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 8E3606/P449], must be received on or before May 13, 1988.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis

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Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 8F3600 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Georgia, Idaho, Illinois, Oklahoma, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-[2-chlorophenyl]methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity succulent peas at 0.1 part per million (ppm). The petition was later amended to propose a tolerance for succulent peas at 0.05 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A rat teratology study with a maternal no-observed-effect level (NOEL) of 100 milligrams (mg)/kilogram (kg)/day, a fetotoxic NOEL of 100 mg/kg/day with no teratogenic effects at the highest dose level tested (600 mg/kg/day).

2. A rabbit teratology study with a teratogenic NOEL of 700 mg/kg/day, a maternal NOEL of 240 mg/kg/day, and a fetoxicity NOEL of 240 mg/kg/day.

3. A 1-year dog feeding study with a NOEL of 12.5 mg/kg/day (500 ppm) tested at dose levels of 0, 100, 500, 2,500, and 5,000 ppm.

4. A 2-year rat feeding study with a NOEL of 4.3 mg/kg/day (100 ppm) for systemic effects and negative for oncogenic effects under the conditions of the study at all dose levels tested (20, 100, 500, 1,000 and 2,000 ppm).

5. A 2-year mouse feeding study with a NOEL of 15 mg/kg/day (100 ppm) for systemic effects and negative for oncogenic effects under the conditions of the study at all dose levels tested (20, 100, 500, 1,000 and 2,000 ppm).

6. Mutagenic studies: including an unscheduled DNA synthesis test, negative for mutagenicity; reverse mutation tests (two studies) (*Salmonella*) both negative with/without activation; a point mutation test (CHO/HGPT), weakly positive without activation; and an *in vivo* cytogenetic (chromosomal aberrations) test, negative for mutagenicity.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 4.30 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.043 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 2.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.000026 mg/kg/day. Published tolerances utilize 0.04 percent of the ADI; the current action will utilize an additional 0.02 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes but has not yet been published in the Pesticide Analytical Manual, Volume II (PAM–II). In the interim, the analytical method is available from: William Grosse, Chief, Information Services Branch (TS–767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington DC 20460. Office location and telephone number: Rm. 223, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2613).

There is no reasonable expectation of finite residues in eggs, milk, meat, fat, or meat byproducts from the proposed use. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.425 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.425 is amended by adding and alphabetically inserting the raw agricultural commodity succulent peas, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodities	Parts per million
Peas (succulent)	0.05

* * * * *

[FR Doc. 88-9404 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300187; FRL-3371-5]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by adding an entry for blackberries in the commodity definitions and by revising the existing commodity definition for caneberries. This proposed amendment, which will define the commodity terms for tolerance purposes, was submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [OPP–300187], must be received on or before May 31, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director, and the IR–4 Technical Committee.

IR–4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "blackberries" to the general category of commodities listed in column A and defining that commodity as "*Rubus eubatus* (including dewberries, lowberries, boysenberries, marionberries, olallieberries, Oregon evergreen berries, coryberries, Himalayaberries, Lucretiaberries, bingleberries, mammoth blackberries, phenomenalberries, rossberries, Lavacaberries, nectarberries, Shawnee blackberries, Cheyenne blackberries, Cherokee blackberries, hullberries, Chesterberries, black satin berries, Dirksen thornless berries, darrowberries, ravenberries, rangerberries, and varieties and/or hybrids of these)" by inserting these corresponding commodities in the specific commodities listing in column B. The IR–4 requested this amendment in order to more specifically define the commodity term "blackberries."

As a result of the definition for blackberries, the specific raw agricultural commodities listing corresponding to the general commodity "caneberries" will be amended to make it consistent with the definition for blackberries. Blackberries, dewberries and boysenberries, which are listed in column B of 40 CFR 180.1(h) (along with loganberries, raspberries and youngberries) as specific raw agricultural commodities of the general commodity "caneberries," will be replaced by the commodity term "*Rubus* spp." (including blackberries). These revisions will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "blackberries" to include the specific raw agricultural commodities as listed. The Agency concludes that tolerances established for the general category commodities "caneberries" and "blackberries" should be adequate to cover pesticide residues on the corresponding specific commodities based on the botanical relationship of the commodities and the similarity of the pest problems and pesticide application methods.

Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP–300187]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the FEDERAL REGISTER of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 20, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition for caneberries and by adding a definition for blackberries, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Blackberries ...	*Rubus eubatus* (including bingleberries, black satin berries, boysenberries, Cherokee blackberries, Chesterberries, Cheyenne blackberries, coryberries, darrowberries, dewberries, Dirksen thornless berries, Himalayaberries, hullberries, Lavacaberries, lowberries, Lucretiaberries, mammoth blackberries, marionberries, nectarberries, olallieberries, Oregon evergreen berries, phenomenalberries, rangerberries, ravenberries, rossberries, Shawnee blackberries, and varieties and/or hybrids of these).
* * * * *	
Caneberries	*Rubus* spp. (including blackberries); *Rubus caesius* (youngberry); *Rubus loganobaccus* (loganberry); *Rubus occidentalis, idaeus,* and *strigosus* (red and black raspberries); and varieties and/or hybrids of these.
* * * * *	

[FR Doc. 88-9405 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-147, RM-5952]

Radio Broadcasting Services, Los Banos, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ethnic Radio, Incorporated, seeking the allotment of

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Channel 295A to Los Banos, California, as that community's second local FM broadcast service.

DATES: Comments must be filed on or before June 9, 1988, and reply comments on or before June 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Michael H. Bader, Esq., Haley, Bader & Potts, 2000 M St. NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–147, adopted March 10 and released April 20. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3900, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–9358 Filed 4–27–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–153, RM–6273]

Radio Broadcasting Services; Cartago and McFarland, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Caballero Spanish Media, Inc., proposing the substitution of FM Channel 275B1 for Channel 275A at McFarland, California, and modification of the permit for Station KXFM(FM) (Channel 275A), accordingly, to provide that community with its first wide coverage area FM service. Additionally, petitioner requests the substitution of Channel 273A for Channel 275A at Cartago, California, to accommodate its proposal.

DATES: Comments must be filed on or before June 10, 1988, and reply comments on or before June 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's consultant, as follows: Don Werlinger, The Broadcast Development Group, Inc., P.O. Box 1223, Lockhart, TX 78644.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–153, adopted March 18, 1988, and released April 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–9356 Filed 4–27–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–154, RM–6200]

Radio Broadcasting Services; Grifton, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by MC Radio Partnership proposing the substitution of Channel 258C2 for Channel 257A at Grifton, North Carolina, and the modification of its permit to specify the higher powered channel. Channel 258C2 can be allocated to Grifton in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.0 kilometers (16.2 miles) southeast to avoid a shortspacing to Station WMAG, Channel 258C, High Point, North Carolina, and to Channel 258A at Emporia, Virginia, which is unoccupied and unapplied for. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 258C2 at Grifton will not be accepted.

DATES: Comments must be filed on or before June 10, 1988, and reply comments on or before June 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Oxenford, Esq., Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–154, adopted March 18, 1988, and released April 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International

Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–9357 Filed 4–27–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–148, RM–6033; RM–6101]

Radio Broadcasting Services; Ariton, AL and Bonifay, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comments on two mutually-exclusive petitions for rule making in the states of Alabama and Florida. The first, filed on behalf of Patsy Nance Marsh and Rickey Earl Nance, seeks the allotment of Channel 249A to Ariton, Alabama, as that community's first local service. The second petition, filed on behalf of Mary Lake Communications, Inc., licensee of Station WTBB(FM) (Channel 249A), Bonifay, Florida, seeks the substitution of Channel 249C1 for Channel 249A and modification of its license accordingly. The Ariton proponent is required to provide additional information in an effort to establish that such place is a *bona fide* "community" for allotment purposes.

DATES: Comments must be filed on or before June 10, 1988, and reply comments on or before June 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' consultants, as follows: *Ariton, AL:* Paul Reynolds, Amerimedia, 415 N. College St., Greenville, AL 36037; *Bonifay, FL:* C.F. Ellis, 1103 La Nouvelle Rd., Lafayette, LA 70508.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–148 adopted March 4, 1988, and released April 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–9361 Filed 4–27–88; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket FE–87–02; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Denial of Petitions for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for rulemaking.

SUMMARY: This notice denies petitions for rulemaking submitted by Mercedes-Benz of North America and the General Motors Corporation. Mercedes asked the agency to retroactively reduce the model year 1984 and 1985 corporate average fuel economy (CAFE) standards for passenger automobiles to 26.0 miles per gallon or below. General Motors asked the agency to retroactively reduce the model year 1985 standard to 26.0 miles per gallon or below. The model year 1984 standard was set by the agency; the model year 1985 standard, by Congress in the CAFE statute. The agency is denying both petitions for the reasons set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street SW., Washington, DC 20590, (202) 366–1810.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), which is codified at 15 U.S.C. 2001–2012, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and of light trucks. Title V was added in 1975 to the Cost Savings Act by the Energy Policy and Conservation Act (EPCA). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Title V provides that NHTSA has full discretion to decide to amend the standards. If NHTSA decides to issue an amendment, however, the agency is required to comply with the Administrative Procedure Act (APA) (5 U.S.C. 501 *et seq.*) and to set the amended standards at the "maximum feasible" level of average fuel economy. Section 502(e) of the Cost Savings Act requires NHTSA to consider four factors in determining maximum feasible average fuel economy: Technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. Section 502(c) expressly provides for establishing standards for separate classes of passenger automobiles produced by low volume manufacturers and exempted under that subsection from the generally applicable standards established under subsection (a).

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Section 502(b) similarly provides for establishing standards for separate classes of light trucks. However, section 502 does not make any provision for creating separate classes of unexempted passenger automobiles and for establishing standards for them.

Section 502 specified CAFE standards for passenger automobiles of 18, 19 and 20 mpg for model years 1978, 1979, and 1980, respectively, and 27 5 mpg for model year 1985 and thereafter. The Secretary of Transportation was required to establish standards for model years 1981–84 by July 1, 1977. Section 502(a)(3) requires that the standards for each of those model years be set at a level which (1) is the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the standard for model year 1985. On June 30, 1977, NHTSA adopted CAFE standards for passenger automobiles for model years 1981–84 (42 FR 33534). These standards were 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984.

Section 502(f)(1) provides that the model year 1981–84 standards may be amended, from time to time, as long as the amended standards are set at the maximum feasible level and at a level representing steady progress toward the model year 1985 standard. In 1979, General Motors and Ford did informally request that rulemaking be initiated to reduce the model year 1981–84 standards. NHTSA denied the request on the ground that there was no showing that the standards were infeasible, but invited petitions in the future if there were any inaccuracies in the agency's analysis of the requests or any new facts significant enough to warrant commencing rulemaking. (See "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981–84 Passenger Automobiles" June 1979, and the accompanying notice of availability, June 25, 1979; 44 FR 37104) General Motors and Ford did suggest in August 1986 in their comments on a supplemental NPRM on the reduction of the model year 1987–88 standards for passenger automobiles that the agency retroactively reduce the model year 1984 85 standards if it did not reduce the model year 1987–88 standards to 26.0 mpg. As noted above, the standards for model year 1987–88 were reduced to 26.0 mpg. No petition for rulemaking to reduce the model year 1984–85 standards was submitted until August 1987.

Section 502(a)(4) authorizes (but does not require) the agency to amend the standard of 27.5 mpg for model year 1985 or any subsequent model year if it finds that the maximum feasible fuel economy level is higher or lower than 27.5 mpg in that year and sets the standard at that level. The agency has not previously amended the statutory standard of 27.5 for model year 1985, and did affirm the feasibility of that standard on several occasions. (For example, see the preamble to the June 1977 final rule adopting the model year 1981–1984 standards, and the June 1979 report on requests by General Motors and Ford to reduce the model year 1981–84 standards.) In response to timely petitions, the agency did reduce the passenger automobile standards for model years 1986–88 from 27.5 mpg to 26.0 mpg (50 FR 40528, October 4, 1985, for model year 1986 and 51 FR 35594, October 6, 1986, for model years 1987–88). Also, in response to a timely petition, the agency did reduce the 1985 light truck CAFE standard. (October 22, 1984; 49 FR 41250) (But see, discussion later regarding the agency's conclusion that a petition to amend the 1984 light truck standards was untimely.)

Title V provides for civil penalties for violating a CAFE standard and credits for exceeding one, in the amount of $5 for each 0.1 mpg that a manufacturer's fleet is below (above, in the case of credits) the standard, multiplied by the number of automobiles in that fleet. The credits may be used to offset a shortfall that occurs when a manufacturer does not achieve in a model year the CAFE required by the standard for that year. Manufacturers may carry credits as far back as three model years before the year in which they are earned or as far forward as three model years after the year in which they are earned. (See sections 502(l), 507 and 508 of the Cost Savings Act.)

If information available to the agency indicates that a manufacturer's CAFE for a model year fell below the standard for that year, and the manufacturer does not have sufficient carry-forward credits to offset the shortfall, the agency is required by section 502(l)(1)(C)(iv) to notify the manufacturer of that fact and provide a reasonable period for the manufacturer to submit a plan for earning sufficient credits in the three following model years to offset that shortfall completely. If a carry-back plan is not submitted and approved, the agency is required by section 508 to commence a proceeding under that section to determine whether the manufacturer has violated section 507(a)(1), which makes it unlawful to fail to comply with a CAFE standard for passenger automobiles. If the agency makes that determination, on the record following opportunity for agency hearing, the agency assesses civil penalties according to the formula described above.

Finally, under section 508, penalties may be compromised, modified or remitted in only three circumstances: If necessary to prevent insolvency or bankruptcy of a manufacturer; if a manufacturer shows that the violation was the result of an act of God, strike, or fire; or if the Federal Trade Commission certifies (in response to a request by a manufacturer for relief) that a modification of the penalty is necessary to prevent a substantial lessening of competition.

The Petitions

Petitions for rulemaking to reduce the model year 1984–85 standards were submitted after the agency notified several manufacturers of apparent noncompliance with one or both of those standards.

Mercedes-Benz

On July 11, 1986, NHTSA notified Mercedes that it had not achieved the level of the model year 1984 standard, and that the agency planned to apply credits earned in model year 1981 toward Mercedes' shortfall. Mercedes was given 30 days in which to comment on this proposed action, and did not submit any comment. Since Mercedes had sufficient credits, it was in compliance and did not pay a civil penalty for 1984.

For model year 1985, Mercedes was furnished notice by NHTSA on May 4, 1987, that it did not achieve the level of the applicable standard, and that there appeared to be insufficient carry-forward credits available to offset the entire shortfall. Mercedes was provided an opportunity to file a carry-back plan demonstrating that it would earn sufficient credits over the following three years to offset the shortfall. Mercedes did not file a carry-back plan. Instead, it sent the agency a letter, dated July 6, 1987, challenging the basis for the preliminary finding of noncompliance.

In August 1987, Mercedes filed with the agency a petition for rulemaking requesting that the agency reduce both the standard of 27.0 mpg for model year 1984 and the standard of 27.5 mpg for model year 1985 to 26.0 mpg or lower. Mercedes indicated two bases for granting its petition.

First, Mercedes argued that, due to events after their establishment, the standards for model years 1984 and 1985 exceed the "maximum feasible average fuel economy level." Mercedes concluded that they are thus "incompatible with the EPCA and must be lowered to the actual maximum feasible level." The petitioner argued that, even under the agency's own current interpretation of "maximum feasible," the standards in those years were too high, because two of the major domestic car manufacturers with substantial market shares, GM and Ford, did not meet those standards. Because NHTSA's rulemaking notices regarding the reduction of the model year 1986 standard stated that these manufacturers had used reasonable efforts to reach that standard, Mercedes contended that their failure to reach the 1984–5 standards must mean that those standards also were too high.

Second, petitioner argued that the agency's current interpretation of "maximum feasible" is invalid. Mercedes stated that the agency's interpretation of "maximum feasible" focuses on the capabilities of GM and Ford to define what is feasible for the industry at large, and disregards the capabilities and limitations of the rest of the industry. The agency's approach, according to Mercedes, excludes significant segments of the automobile market, and is discriminatory. Mercedes argued that NHTSA should take into account the collective capability of manufacturers within each significant market segment. The petitioner suggested that European manufacturers, and limited line manufacturers, should each be treated as a separate class.

General Motors

General Motors was advised of its model year 1985 shortfall by NHTSA in a letter dated May 4, 1987. A plan for earning offsetting credits in subsequent model years was submitted by General Motors on June 26, 1987, and approved by the NHTSA Administrator on October 13, 1987.

General Motors filed its petition on November 10, 1987, seeking amendment of the model year 1985 standard to 26.0 mpg or lower. General Motors provided a somewhat different rationale for its argument, and specifically did not join Mercedes in seeking amendment of the 1984 standard. General Motors' primary argument focused on the analysis conducted by NHTSA in support of its decision to reduce the model year 1986 standard, in which NHTSA concluded that General Motors and Ford had sufficient plans to meet a standard of 27.5 mpg for model year 1986, that they had made significant progress in implementing those plans, but that they were prevented by unforeseen events from fully implementing the plans. General Motors argued that the same analysis applies to model year 1985, and stated that "the only difference between the two years is that manufacturers had even less time to overcome the unforeseeable by MY 1985."

Agency Response To Petitions

NHTSA has decided to deny both petitions. The agency does not disagree that its analysis of the reasonable efforts made by the manufacturers to meet the 1986 standard has relevance to the industry s capabilities for model year 1985. General Motors is essentially correct in observing that the only difference between the two years is that the industry had even less time to achieve the 1985 standard. NHTSA continues to believe that the industry as a whole had sufficient plans to meet the 27.5 mpg standard for model year 1986 and made significant progress toward doing so, but was prevented from fully implementing the plans by unforeseen events, particularly the unanticipated fall in gasoline prices, and attendant consumer demand for larger engines and larger cars.

Notwithstanding the agency's acknowledgement that, in retrospect, events in the early/mid 1980's created compliance difficulties and may even have caused the model year 1985 standard to exceed the industry's capabilities for that year, the agency does not believe that this observation is sufficient to justify a retroactive amendment, particularly in the absence of a timely petition for rulemaking from the regulated industry. The agency bases its decision primarily on a determination that such a retroactive amendment would be inconsistent with the statutory scheme. As to the Mercedes arguments about the agency's interpretation of the statutory term "maximum feasible," the agency reaffirms its interpretation.

I. The Authority To Amend is Discretionary, But Cannot Be Exercised in Such a Way as To Disturb the Statutory Scheme

The agency has stated on several occasions that it interprets section 502 as providing the agency full discretion to decide whether an amendment of an average fuel economy standard is warranted. Thus, the agency disagrees with the petitioners' view that the agency has any *duty* to amend the CAFE standards. Since Title V provides no explicit guidance to the agency for exercising its discretion, the agency is limited only by the APA, which directs that agencies not act arbitrarily or capriciously. (While not providing guidance on the question of whether to amend, the statute does expressly provide that an amendment, *if made*, must be set at the maximum feasible level. This point is discussed more fully below.)

In the absence of explicit guidance in Title V on the exercise of its discretion, NHTSA has looked to the statutory scheme as a whole and the APA to determine whether it should or could amend a CAFE standard for a bygone year. The agency has concluded that such retroactive amendment is inconsistent with several aspects of the statutory scheme. First, the agency believes that the statutory scheme of establishing annual standards, but permitting the attainment of compliance through the earning and applying of credits to handle shortfalls, is not consistent with retroactive amendment of a standard after the end of the applicable model year. Congress included a one year carry-back/carry-forward provision in Title V in 1975 to provide the manufacturers some flexibility in dealing with the problems created by falling short of a standard. When Congress amended Title V in 1980 to extend the availability of credits from one year to three, and provided for the submission of carry-back plans for the use of credits in advance of their actually being earned, the legislative history made it clear that Congress believed it was increasing the manufacturers flexibility regarding the problems associated with shortfalls. The Senate Report stated that the extension "to provide greater flexibility in the application of existing rules covering carry-forward/carry-back of civil penalties (sic; should have read "credits") will relieve some of the burden of present regulation on automobile manufacturers." Sen. Rpt. No 96–642, March 25, 1980, page 4. With respect to the requirement for submittal of a plan, the Report stated that:

> submittal of such a plan offers useful deterrent to a scenario (improbable though it may be) in which a manufacturer might fail over a successive period of as many as 3 years to meet each year's CAFE standard and then appeal for economic relief from a massive civil penalty accrued over that period. *Ibid*, page 7.

The flexibility of carry-forward and carry-back credits would not have been needed if the agency could (or must, as the petitions imply) retroactively amend standards to account for industrywide shortfalls. The fact that Congress did extend the availability of credits suggests that retroactive amendment was not thought to be an available option. It further suggests that Congress recognized that there would be some years in which shortfalls might occur for a variety of reasons. Instead of directing the agency to remedy such shortfalls

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through retroactive rulemaking, Congress chose to expand the availability of credits to offset these potential shortfalls.

Other aspects of the statutory scheme that would be disturbed by retroactive amendments are the precise and narrow provisions for commencing a proceeding to determine the existence of a noncompliance and to assess civil penalties and for mitigation of civil penalties in the event that a shortfall cannot be offset by credits. Congress chose to restrict this authority of the Secretary of Transportation quite specifically. With respect to mitigation of penalties, Congress provided for mitigation in three specific instances only, specifying express limitations on the exercise of discretion in two of the instances and requiring consultation with the Federal Trade Commission in the other instance. If retroactive rulemaking amounted to an indirect attempt by the agency to remit penalties, it would be contrary to the statutory scheme.

Finally, the statutory scheme for making refunds to manufacturers for civil penalties already paid would also be disturbed by retroactive amendment. Sections 507 and 508 together provide that a manufacturer which has violated a standard (i.e., has fallen short of a standard and has not obtained agency approval of a plan projecting its earning of sufficient credits in the three following years to completely offset its shortfall) must pay the civil penalty for the shortfall, and later apply for a partial refund in the amount of any credits actually earned during those subsequent three years. The provision in section 508 regarding the refund of civil penalties is the only provision in Title V dealing with that subject. Yet, the retroactive amendment sought by these two petitioners would cause refunds to be made in excess of $3 million to two manufacturers that paid civil penalties for one or both of model years 1984–85. These refunds would be made, not because those manufacturers earned credits in subsequent years, as the statute contemplates, but because the standards would have been retroactively amended.

Further, reducing a standard for a model year after the year is over would raise questions about equity of such an amendment for manufacturers which absorbed the costs of compliance with the standard for a particular model year. While not directly disturbing the statutory scheme in the same manner as the examples above, these perceived inequities must be considered by the agency in the context of whether the manufacturers that did comply (with or without credits) might decline to make efforts in the future, counting instead on retroactive amendment. If this were to occur, the statutory scheme would indeed be disturbed.

In its October 1984 decision amending the model year 1985 light truck CAFE standards (49 FR 41250, October 22, 1984), NHTSA concluded that "petitions to amend fuel economy standards must be submitted in time to permit necessary rulemaking to be completed prior to the start of the model year." 49 FR at 41255. The agency relied on both the Administrative Procedure Act (APA) and the statutory scheme of Title V, to support its view that courts would be unlikely to imply authority to issue retroactive rules in the context of Title V. *Ibid.*

General Motors now argues that retroactive rulemaking may be permissible under the APA in some circumstances. The agency agrees, and notes that this issue is unsettled and presently under consideration by the Supreme Court of the United States. *Bowen* v. *Georgetown University Hospital*, U.S. S.Ct., No. 87–1079, petition for certiorari granted February 29, 1988. However, the fact that retroactive rulemaking may sometimes be permissible under the APA does not mean that an agency must adopt rules whose effect is largely, if not entirely, retroactive. Under the APA, an agency decision to apply a rule retroactively will be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. 706(2)(A).

General Motors also has argued that an amendment to the model year 1985 standard has "future" (as well as retroactive) effect because it could influence the behavior of regulated parties in model year 1988 (the last year in which "carry-back" credits may be earned to offset MY 1985 shortfalls.) The agency is not persuaded that an amendment to a standard for a bygone model year could be seen as *regulating* the future conduct of those parties. The standard for any given year regulates each manufacturer by requiring it to produce a fleet of passenger automobiles in that year which meets the standard. The manufacturer's opportunity to use credits from other years to offset noncompliance of the given year's fleet with the standard for that year does not alter the fact that the given year is the period of time regulated by that standard. An amendment now of the model year 1985 standard would not and could not regulate the conduct of any manufacturer during that year since the production period for that year is long over. There is no more opportunity for the regulated parties to revise their model mixes or otherwise change their behavior in that model year.

Even if the time period during which credits could be earned were of any theoretical significance in assessing the prospective effect of making retroactive amendments to standards for prior model years, it is not significant in this case. Because these petitions were filed so late, the agency could not issue a final rule soon enough even to affect, much less regulate, any future conduct of the manufacturers. The time period during which carry-back credits could have been earned for application to model year 1984 was virtually over when Mercedes filed its petition. As for the time period in which to earn carry-back credits for application to model year 1985, that period would be virtually over by the summer of 1988, which is when any final rule amending that standard would have been issued.

The agency also believes that the retroactive reduction of standards is inconsistent with the legislative history of Title V. Both petitioners argued that the statute is entirely consistent with the concept of retroactive amendment, citing particularly the absence of express statutory prohibitions or deadlines for such amendments, as compared with the express, straightforward provisions governing the timing of amendments to increase the standards. Petitioners also suggested, erroneously, that the agency addressed the issue of retroactive amendments as early as its issuance of the model year 1981–84 standards in 1977 and that it interpreted Title V as permitting such amendments.

The issue of retroactive amendments and the interpretation of legislative language and history in the context of that issue were not discussed or even considered by the agency in issuing the model year 1981–84 standards or in addressing, during the next six years, the issue of the agency's authority to reduce those standards. Further, the agency finds nothing in the record to support the petitioners expansively reading that 1977 agency statement or any other agency statement prior to 1984 as an agency endorsement of reducing a standard after the beginning of the model year to which it applies. Although the agency's 1977 final rule on the model year 1981–84 standards stated that amendments reducing a standard for a model year could be issued "at any time," there is nothing in the preamble to suggest that the agency had in mind

retroactive rulemaking in making that statement. A more reasonable reading of that statement is that it merely took note of the substantial number of years between 1977 and the 1981–84 period, which would permit extensive opportunities to consider issuing an amendment reducing one of these standards, since such amendments could be made at any time prior to the model year in question. NHTSA noted its flexibility in issuing amendments to reduce a standard in contrast to the requirement in section 502(f)(2) that amendments raising standards be issued 18 months in advance of the model year in question. The statement also served to contrast the flexible amendment authority with the requirement in section 502(a)(3) rigidly scheduling the promulgation of the model year 1981–84 standards in the first place. Finally, NHTSA also sought to contrast the substantial interval between 1977 and model years 1981–1984 with the much shorter interval available to the Environmental Protection Agency in considering whether to suspend the model year 1975 emission standards, as discussed in *International Harvester Company* v. *Ruckelshaus*, 478 F.2d 615 (D.C.Cir. 1973).

The issue of retroactively amending a generally applicable standard first arose before the agency in the context of its consideration of Ford's petition to lower the model year 1984–85 light truck standards. That petition was filed on November 21, 1983. The interpretation which the agency subsequently issued was one of first impression. The agency's conclusion that retroactive amendments were inconsistent with the legislative history of Title V was first set out in its proposal to deny, as untimely, Ford's petition to reduce the model year 1984 light truck standard, but to grant its petition to reduce the model year 1985 light truck standard. That proposal was published May 30, 1984 (49 FR 22516), well in advance of the beginning of model year 1985. The reasoning underlying the interpretation was discussed in the May proposal and was more fully laid out in a publicly-available August 23, 1984, letter from the agency to Ms. Winkler-Doman of Ford, and was reiterated in the agency's October 22, 1984 (49 FR 41250) final rule reducing the model year 1985 light truck standard. That notice set forth the agency's interpretation for the benefit of anyone contemplating petitioning in the future for retroactive amendment of any of the fuel economy standards. The notice also responded to Ford's request for the agency to specify a precise date by which petitions to reduce a standard must be submitted to the agency. The agency did not establish a mandatory submission date, but did suggest that proper agency consideration of a petition to reduce a standard for a given model year would be facilitated if petitions were submitted early in the calendar year in which that model year begins.

The agency here reaffirms its 1984 interpretation regarding retroactive amendments. The D.C. Circuit cited this interpretation in *In Re: Center for Auto Safety*, 793 F.2d 1346, 1348 (1986). NHTSA believes that the petitioners have not stated any compelling reason for changing that original interpretation and that there is insufficient reason to justify a departure from the agency's prior interpretation, as required by courts. See *Motor Vehicle Manufacturers Association* v. *State Farm*, 463 U.S. 29, 41–42, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).

In its 1984 interpretation, the agency noted that while the statute does not contain explicit language concerning an amendment which lowers a CAFE standard, it does contain language that suggests that reductions are to be made prospectively, i.e., before the beginning of the model year in question. The agency cited arguments by Chrysler that amendments reducing the stringency of standards must be made at least 18 months before the beginning of the model year and that, therefore, Ford's petition regarding model year 1984–5 light truck standards was too late with respect to both models years. Chrysler argued that section 502(b) calls for 18 months leadtime for any light truck standards being prescribed and that changes in standards come within that requirement. Chrysler argued also that the 18 month requirement of section 502(f)(2) was applicable since granting Ford's request would in effect make the standards more stringent for Chrysler. Section 502(f)(2) applies to amendments to passenger automobile standards as well as those to light truck standards.

On the other hand, there are other statutory provisions that some past commenters have interpreted to the opposite effect. Section 502(f)(1) provides that amendments to the 1981–84 car standards may be made "from time to time." Some manufacturers have interpreted that language to indicate that there is no temporal limitation on amendments reducing standards. They have also noted the absence of any express limitation in the statute on the time period in which an amendment reducing a standard may be adopted.

To aid in resolving this issue, the agency carefully examined the legislative history of section 502. The relevant legislative history of section 502 is found in the Conference Report on EPCA which contains the following discussion:

> Average fuel economy standards prescribed by the ST (Secretary of Transportation) for passenger automobiles in model years after 1980, for non-passenger automobiles, and for passenger automobiles manufactured by manufacturers of fewer than 10,000 passenger automobiles may be amended from time to time as long as each such amendment satisfies the 18 month rule—i.e., *any amendment which has the effect of making an average fuel economy standard more stringent must be promulgated at least 18 months prior to the beginning of the model year to which such amendment will apply. An amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question.* See Sen. Rep. 94–516, 94th Cong., 1st Sess. (1975) at 157. (Emphasis added.)

The agency reaffirms its belief that the language in the legislative history is clear. Amendments increasing standards may be made at any time up to 18 months before the model year, while amendments reducing a standard may be made at any time up to the beginning of the model year. If no limit on the timing of amendments reducing the standards had been intended, the second-quoted sentence would have ended with the words "promulgated at any time."

As to the petitioners arguments about the absence of any express deadline in Title V for amendments reducing a standard, the agency notes that deadlines are generally specified in Title V, as in the agency's other vehicle regulatory statutes, to ensure that the agency completes its rulemaking establishing new requirements far enough in advance of the effective date to provide adequate leadtime for regulated parties to achieve compliance. Although Title V does not contain an express requirement that an amendment reducing a standard be issued before the beginning of the model year to which it applies, the agency does not interpret the fact of that absence to indicate that Congress permits retroactive amendment of the standards. In light of the legislative history, it is likely that Congress viewed a provision expressly specifying such a deadline as unnecessary.

General Motors made a related argument that the conference committee's choice of the House's 18–month deadline for amendments *increasing* standards over the Senate's 18 month deadline for *all* amendments to standards indicates that Congress

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desired that there be no deadline for amendments reducing standards. The legislative history of Title V provides no indication that Congress wanted to authorize retroactive rulemaking. The agency believes that the choice of the House version indicates only that Congress recognized that no leadtime was necessary to enable manufacturers to conform their conduct to a relaxing amendment and sought to allow the issuance of such amendments right up to the beginning of the model year. Cutting these amendments off 18 months before the beginning of the model year would have been inconsistent with the provision in the APA allowing a rule relieving a restriction to become effective immediately upon issuance.

General Motors stated that the agency has, on several occasions, amended a CAFE standard after the beginning of the model year to which it applies and suggested that those actions indicate that the agency does not, in fact, regard the beginning of the model year as a deadline for issuing an amendment that relaxes a standard. General Motors argued further that even if the beginning of the model year is a deadline contemplated by Congress, the expiration of the deadline does not deprive the agency of its rulemaking authority. The rulemaking actions underlying General Motors' arguments were NHTSA's amendment of the 1982 and 1985 model year standards for light trucks after the beginning of the respective model years and the agency's issuance of exemptions from the generally applicable standards for passenger automobiles after the beginning of the model years to which they applied. As further support for its argument about the alleged insignificance of the expiration of a rulemaking deadline, General Motors noted the agency's issuance of several light truck standards after the statutory deadline of 18 months before the beginning of the model year.

The 1982 amendment to the model year 1982 light truck standard is distinguishable from the amendments sought by the petitioners in that the amendment did not reduce that standard. The amendment, which added an alternative compliance option for model year 1982 light trucks, did not reduce the level of average fuel economy that a manufacturer would be required to achieve. The stringency of the standard therefore remained unchanged. (February 18, 1982; 47 FR 7245, 7247.)

At the time of its issuance, the agency believed that the October 16, 1984 amendment to the model year 1985 light truck standard was timely. This belief was based on the fact that the amendment was issued during the first month of fall, and that a model year was then viewed as starting for the industry as a whole at some undefined point during in the fall (*Center for Auto Safety* v. *NHTSA*, 710 F.2d 842 (D.C. Cir. 1983)). In that case, the court applied the APA definition of "rule" in determining that the withdrawal of an advance notice of proposed rulemaking regarding CAFE standards constituted a rule as that term is used in the Title V provision subjecting rules to judicial review in accordance with the APA. In *In Re Center for Auto Safety*, 793 F.2d 1346, 1349 (D.C.Cir. 1986), the Court of Appeals for the D.C. Circuit subsequently found that the industry model year is traditionally thought to begin on October 1. Even if October 1 is to be regarded as the beginning of the industry model year, the interval between that date and October 16 is de minimis. The resultant adverse effect on the statutory scheme of issuing a standard at the end of that interval is likewise de minimis.

General Motors suggested that *In Re Center for Auto Safety* can be viewed as upholding the 1985 and 1986 standards for light trucks notwithstanding the Court's viewing both actions as untimely. NHTSA believes that the expiration of a statutory deadline does not, in and of itself, deprive an agency of the ability to carry out a mandatory duty to establish light truck CAFE standards. However, NHTSA does not believe that *In Re Center for Auto Safety* stands for the proposition that the agency may freely exercise its discretionary rulemaking authority after the expiration of a deadline for exercising it. That question was not directly at issue in that case. Further, the Court's disapproval of post-deadline rulemaking actions is clear. The Court noted that the amendment to the MY 1985 light truck standards was issued after the beginning of the model year (793 F.2d at 1349) and characterized the agency's missing of the 18-month statutory deadline as both illegal and unreasonable. The Court stated further that:

> As the model year approaches, the agency loses the capacity to do anything more than rubberstamp the fuel economy levels projected by the manufacturers unless it wishes to risk economic dislocation. When the agency's role descends to this level, not only is NHTSA's credibility impaired, but EPCA's system of mandatory standards becomes meaningless. (*Ibid.* at 1354.)

This disapproving view of the agency's missing a statutory deadline for the *mandatory* establishment of light truck CAFE standards does not supply any support for the notion that the agency could freely ignore a deadline for the *discretionary* act of amending standards, particularly in the case of an amendment that would (as in the case of the amendments sought here by petitioners) be issued not *during* the first month of the model year in question (as in the case of the amendment of the 1985 model year standard), but *years later*.

As to the granting of exemptions and setting of alternative standards for low volume manufacturers, the agency believes the difference between providing a low volume manufacturer with an exemption from the generally applicable standards and amending those standards as they apply to the nonexempt manufacturers is significant. Low volume manufacturer exemptions are contemplated by the statute. Granting even retroactive exemptions does not disturb the statutory scheme of Title V. The low volume manufacturers account for only a small fraction of one percent of the total annual production of passenger automobiles and each exemption is applicable only to one specific manufacturer. Granting the low volume exemptions leaves undisturbed the statutory scheme for establishing and enforcing industry-wide CAFE standards for the manufacturers representing the remaining 99 plus percent of total annual production. The conference report language cited above regarding the timing of amendments that reduce standards applies only to amendments reducing the generally applicable standards.

II. Even if the Agency Concluded That Retroactive Amendment Were Consistent With the Statutory Scheme, It Would Have to Establish the "New" Standard at the Maximum Feasible Level

Both petitioners have suggested that the appropriate CAFE standard for 1985 is 26.0 mpg "or lower," notwithstanding the fact that neither General Motors nor Mercedes reached the 26.0 level that year. Mercedes makes the same suggestion for the 1984 standard. In fact, General Motors' CAFE for 1985 was 25.8, while Mercedes' CAFE that year was 23.6 mpg. It is not clear why the petitioners suggested a range of levels, some of which are above the CAFE levels they actually achieved. While reducing the standards, but not as far as the levels actually achieved, would certainly make it easier for petitioners and others to offset the remaining (smaller) shortfall with available credits, this agency has consistently declined to consider the availability of credits (or

conversely, the need for credits) in its annual standard setting. See *Center for Auto Safety* v. *Claybrook*, 627 F.2d 346, at 348 (D.C.Cir. 1980) on the related issued of considering the ability to pay civil penalties. Thus, the agency could not establish a standard of 26.0 mpg merely because petitioners have enough credits to offset the remaining shortfall.

The agency notes that the petitioners might have suggested an amended standard of 26.0 mpg, as opposed to some lower standard, because of uncertainty over whether the agency retains its authority to set passenger automobile standards below 26.0 in the wake of the Supreme Court's decision in *Immigration and Naturalization Service* v. *Chadha*, 462 U.S. 919 (1983), regarding legislative vetoes. Section 502(a)(4) provided that amendments setting a standard for 1985 or any year thereafter outside the 26.0 to 27.5 mpg range were subject to a legislative veto. However, such legislative vetoes were declared unconstitutional in *Chadha*. There is a difference of opinion whether the legislative veto provision in section 502(a)(4) is fully severable from the language in the balance of that section authorizing amendment of the standard for 1985 or any year thereafter to whatever level is found by the agency to be the maximum feasible level. Some commenters in past fuel economy rulemakings have suggested that the veto is not fully severable. However, as Mercedes noted in its petition, the Department of Justice has previously advised this agency that it had reached the opposite conclusion.

In suggesting 26.0 mpg, the same as the level of the amended standards for model years 1986–88, petitioners have not suggested a new analytical approach to the determination of "maximum feasible," nor is there any reason to believe that 26.0 mpg would be the industry-wide "maximum feasible" level for 1984 or 1985. In establishing a new standard for model year 1984 or 1985, the agency would not be able simply to use the result (i.e., the establishment of amended standards of 26.0 mpg) or even the methodology of the rulemaking proceedings it conducted in 1985 and 1986 to reduce the model year 1986–88 standards. Those results and the methodology were peculiarly suited to the particular circumstances of those model years and to the timing of the amendments in relation to those model years.

The agency disagrees with Mercedes' suggestion that the level of CAFE actually achieved by the manufacturers in model year 1984–85 provides, by itself, an appropriate or reliable guide to determining the maximum feasible level of CAFE for those years. The agency could not simply adopt the level of actual achievement as the maximum feasible level. For the agency to take that approach would be to "rubberstamp" the decisions of the manufacturers instead of making an independent determination about the manufacturers' capabilities. The issue that must be resolved by the agency is not only what the manufacturers in fact achieved, but also whether they could have accomplished more.

To the extent that the various manufacturers achieved significantly different levels of CAFE in a given year, the issue whether the level achieved by the manufacturers with lower CAFE represents the maximum they could have achieved becomes even more important. The agency observes that while both petitioners fell below even the 26.0 level for model year 1985, Ford achieved 26.6 mpg that year.

Even if actual industry achievement were an appropriate departure point for an analysis of the proper level, it does not appear that a level of 26.0 mpg would sustain analytic review. General Motors suggested that the agency should apply its own methodology explained in the decisions to reduce the standards for model years 1986–1988. That methodology consisted of:

> first evaluating the maximum feasible average fuel economy level that manufacturers are now capable of achieving * * *, taking into account the four factors of section 502(e) and second, to the extent that level is determined to be below 27.5 mpg, assessing the sufficiency of manufacturers' efforts to meet the 27.5 standard, in light of the information available to manufacturers at the time fuel economy product decisions were being made and the four factors of section 502(e). (October 4, 1985; 50 FR 40528, 40533)

The "reasonable efforts" test regarding the sufficiency of the manufacturers' compliance efforts to date was adopted by the agency in its belief that it would be an abuse of discretion to reduce a CAFE standard if a current inability to meet such standard simply resulted from the regulated industry's previously declining to take sufficient steps to meet the standard. Reducing a standard based on an inability of that origin would be inconsistent with Title V's mandate for a program of *maximum feasible* CAFE standards.

General Motors' petition states that application of this methodology dictates that the model year 1985 standard should be amended to 26.0 mpg or lower. However, the petitioner may have misapprehended the agency's reliance on the "reasonable efforts" test. In other proceedings, the agency's analysis of "reasonable efforts" was a factor in deciding *whether to amend at all*, but was not used by the agency in selecting a particular level at which to set an amended standard. Instead, the agency determined the new "maximum feasible" fuel economy level, as specified in section 502(e), by assessing the manufacturers' capabilities for fuel economy improvement in the remaining time available to the manufacturers.

Obviously, the concept of "improvements in the time remaining" is not relevant in the context of retroactive rulemaking, since there is no "time remaining" in which to make improvements. However, it is not clear what analytical approach would take its place, nor have petitioners suggested any. For example, the agency's consideration of the "economic practicability" criterion has focused on the costs of complying with the standard in a particular year, without regard to available credits. This analysis does not work with a retroactive assessment of "maximum feasible," since the petitioners did not comply, and since it is now impossible to incur any costs (or restrict any products) in order to comply in a model year that has already ended. The agency acknowledges that there could be costs associated with generating credits in later years in order to offset the 1985 shortfall, but, consistent with its longstanding practice, it has not considered the need for, or availability of, credits in assessing the "economic practicability" of a particular standard for model year 1985.

The agency is not, however, declining to amend merely because it would have to determine the "maximum feasible" level for model year 1985 independent of the determination already made for model year 1986 or because it would be hard to make the determination for model year 1985. The agency cites the analytical difficulties only as support for its argument that the statutory framers did not contemplate retroactive rulemaking when they drafted the law. NHTSA notes, however, that any retroactive standard setting that purported to have analytic support (instead of standard setting based on merely accepting actual achievement by the industry as the definition of "maximum feasible.") would necessarily involve the agency in the sort of "second-guessing" after-the-fact that it tried to avoid in the model year 1986-1988 proceedings. As NHTSA noted in those proceedings, it is easy to reflect from today's vantage point on choices that the manufacturers could have made

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in the early 1980's in order to meet the standard by 1984 and 1985. The agency declined to judge manufacturers' choices about product actions with 20-20 hindsight, however, deeming that "inappropriate" (50 FR 40528, 40533; October 4, 1985). NHTSA could not avoid that kind of "inappropriate" second-guessing if it were to grant these petitions, since it would have to determine independently what the correct "maximum feasible" level was.

III. The Agency's Reaffirms Its View of the Meaning of "Maximum Feasible Fuel Economy Level"

Mercedes argued in its petition that NHTSA's interpretation of the statutory concept of "maximum feasible" is invalid under Title V, because it concentrates on those manufacturers with substantial market share and excludes significant segments of the market, i.e., European manufacturers and limited line manufacturers, from consideration. As a result, Mercedes said, these manufacturers are forced to choose between taking drastic product actions in an attempt to comply or paying civil penalties. The petitioner stated that the agency:

> Should take into account the collective ability of manufacturers within each significant market segment, including European manufacturers, as a class, and limited line manufacturers, as a class.

Mercedes argued further that the agency's interpretation discriminates against European and limited line manufacturers and violates the provision in the Trade Agreement Act of 1979 regarding the application of standards in such a way as to create unnecessary obstacles to foreign trade. Finally, the petitioner said that the agency should consider the relationship between safety and vehicle size and weight in determining the maximum feasible level of CAFE for model years 1984–85.

The statute requires that, for each model year, there be a single standard for all passenger automobile manufacturers not exempted under section 502(c). Unlike section 502(b) regarding light trucks, section 502(a) does not authorize the separation of the passenger automobile fleet into different classes or the setting of different standards for those classes.

Section 502 does not expressly state whether the concept of feasibility is to be determined in setting passenger automobile standards on a manufacturer-by-manufacturer basis or on an industrywide basis. The agency has therefore consulted the legislative history of Title V for indications of congressional intent that would aid in resolving this question. The conference report accompanying Title V states, with respect to determining the maximum feasible average fuel economy level:

> Such determination should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the [Administrator] must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist and the possible implications for the national economy and for reduced competition associated with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under section 508(b) in situations where competition will suffer significantly if penalties are imposed. (S. Rep. No. 94-516, 94th Cong., 1st Sess. (1975) p. 154–55)

NHTSA has construed this language many times. For example, as NHTSA stated in the 1977 notice establishing the model year 1981–84 standards for passenger automobiles, Congress did not intend that standards simply be set at the level of the single least capable manufacturer. Setting standards in that fashion would have made achievement of Congress' goals for substantial fuel economy improvement extremely difficult, if not impossible from the start. For example, the entire statutory scheme could have been frustrated by setting the standards at the level of a small (e.g., market share of several tenths of one percent) manufacturer whose capability was 19 mpg. Such standards would have negated the ability of the statute to secure any significant improvements in industry-wide fuel economy. On the other hand, the conference report suggests that the agency must give some consideration to the potential effects on the national economy that would be associated with the particular difficulties of individual manufacturers, especially the domestic manufacturers.

In construing the conference report's discussion of balancing in the rulemaking to establish the model year 1981–84 standards, the agency noted that the average fuel economy levels of most foreign manufacturers were higher than those of the domestic manufacturers at the time of the rulemaking. According to the data used in establishing these standards, most foreign manufacturers needed only to maintain or marginally improve their average fuel economy in order to comply with those standards. Most of the methods available to domestic manufacturers for improving fuel economy were also available to the foreign manufacturers. The agency projected that the standards were clearly feasible in all years for three of the four domestic manufacturers (the exception being American Motors), for seven of ten European manufacturers (the exceptions being Mercedes, BMW, and Volvo) and for 12 of the 15 foreign manufacturers.

NHTSA noted that, in making its projections for 1981–84, Mercedes relied primarily on the single method of increasing the percentage of diesel-powered cars in its fleet. Mercedes placed little reliance on other methods. For example, Mercedes' projections were based on relatively little weight reduction. (See 42 FR 33534; at 33549)

In interpreting the conference report language since then, the agency has adopted the position that the standards should not be set above the capability of the least capable manufacturer with a substantial share of the market. (50 FR 29912, at 29923) In the final rule reducing the model year 1986 standard, and again in the final rule reducing the model year 1987–88 standards, the agency concluded that the particular compliance difficulties of several of the European manufacturers did not justify a standard set far below the capabilities of the other manufacturers.

NHTSA continues to believe that its interpretation is correct. In the mid-1980's, as in the late 1970's when the model year 1981–84 standards were established, those several European manufacturers produced only about two to three percent of the passenger cars sold in the U.S.

At the same time Mercedes suggested that the agency follow its current interpretation of "maximum feasible" and set the model year 1984–85 standards in accordance with the capability of the least capable of the manufacturers with a substantial market share, Mercedes suggested also that following the agency's interpretation would discriminate against European and limited line manufacturers. Those manufacturers are generally smaller and often less capable than the "least capable of the manufacturers with a substantial market share." The agency does not believe that the petitioner's suggestion of discrimination has merit. If the model year 1984–85 standards were changed in the fashion suggested by Mercedes, they would be *below* the CAFE of most European and limited line manufacturers. If the model year 1984 standard were set at the 24.9 mpg level achieved by General Motors for that year, the standard would be above Jaguar's level, but *below* that achieved by Peugeot, Saab, Mercedes, Alfa-Romeo, and Volkswagen. If the model year 1985 standard were set at the 25.8 level achieved by General Motors for that year, the standard would be above the levels of Jaguar, Mercedes, and Peugeot, but *below* those of Porsche, BMW, Saab, Volvo, Alfa-Romeo and Volkswagen.

As to Mercedes' suggestion about considering the relationship of safety to vehicle size and weight in reducing the model year 1984–85 standards, the agency notes that size and weight of the model year 1984–85 passenger automobiles would not be affected by any change now in those standards, because those vehicles were built and sold long ago. Consequently, even if the agency agreed that the safety of those vehicles would be theoretically affected by the CAFE level, safety could not now be enhanced by retroactively reducing those standards. For a further discussion of NHTSA's views regarding the relationship of safety and CAFE standards, see the final rule reducing the model year 1987–88 standards for passenger automobiles (October 6, 1984; 51 FR 35594, at 35612–35613).

NHTSA also notes that Mercedes' arguments regarding the interpretation of "maximum feasible" are directed at methodology and conclusions reached in the agency's rulemakings to reduce the model year 1986–88 standards, and thus, are outside the scope of Mercedes' petition to reduce the model year 1984–85 standards. Although the reduction of the model year 1986–88 standards has been challenged in court, Mercedes did not join that challenge. When the model year 1984 standard was set, the agency acknowledged that the standard was higher than the projected capability of Mercedes (among others). (See the final rule establishing the model year 1981–1984 CAFE standards, June 30, 1977; 42 FR 33534, 33549). Mercedes similarly did not seek judicial review of that rule. Of course, the model year 1985 standard was set by statute, and did not take account of any particular manufacturer's projected capability for that year.

(15 U.S.C. 2002; delegation of authority at 49 CFR 1.50)

Date: April 25, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-9342 Filed 4-25-88; 12:04 pm]

BILLING CODE 4910-59-M

VOL 53 ISS 82 AP 28 1988

Notices

Federal Register
Vol. 53, No. 82
Thursday, April 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Implementation of the Bank Holding Company Act: the Adjudicatory Procedures of the Federal Reserve Board, based upon a study by Professor Alfred C. Aman, Jr., of Cornell University Law School; and the Administrative Adjudication of Claims Against Savings Institution Receiverships, based upon a study by Professor Lawrence G. Baxter of Duke University School of Law. Copies of the Committee's report may be obtained from the contact person named in this notice.

DATE: Friday, May 6, 1988 at 2:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 88-9472 Filed 4-27-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Rapid River Roadless Area; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed development within the Rapid River Roadless area which is within the New Meadows Ranger District and the Council Ranger District. Development is the established direction in the preferred alternative of the Payette Forest Plan. Development alternatives were reviewed by the public earlier in the Payette Draft Forest Plan.

A range of alternatives for this area will be considered. One of these will be nondevelopment of the site. Other alternatives will consider development designs for timber production, wildlife and fishery habitat activities, and recreation opportunities.

Federal, State, and local agencies; potential users of the area; and other individuals or organizations who may be interested in, or affected by, the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area.

Philip Jahn, Council District Ranger, and Pete Walker, New Meadows District Ranger, are the responsible officials.

The analysis is expected to take about eight months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for review by July 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the **Federal Register**. The final environmental impact statement is scheduled to be completed by October 1988.

DATE: Written comments and suggestions concerning the scope of the analysis should be sent to Veto J. LaSalle, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, ID 83638, by June 3.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Phil Gilman, Branch Chief, Planning, Programming, and Information, Payette National Forest, phone 208-634-8151.

Phil Gilman,
Branch Chief, Planning, Programming, and Information.

Date: April 22, 1988.

[FR Doc. 88-9481 Filed 4-27-88; 8:45 am]
BILLING CODE 3410-11-M

Rural Electrification Administration

Midstate Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of 118.4 km (74 miles) of 115 kV transmission line by Midstate Electric Cooperative, Inc. (Midstate), and Bonneville Power Administration (BPA).

The proposed facility would be constructed in Deschutes, Klamath and Lake Counties, Oregon.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and BPA's Environmental Assessment (EA) may be reviewed at the office of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8848; or at the office of Midstate Electric Cooperative, Inc., (Ms. Peggy Spieger, President), P.O. Box 127, La Pine, Oregon 97739, telephone (503) 536-2126, during regular business hours. Copies of the FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: The U.S. Air Force (USAF) has selected the Buffalo Flats site to locate the transmitter component of its West Coast Over-the-Horizon Backscatter radar system. The system requires two independent sources of power. Midstate and BPA's proposed transmission line from the La Pine Substation to Buffalo Flats site would provide the second source of power to the system. The preferred route for the new line would extend south from the LaPine Substation approximately 5.3 km (3.3 miles) and be located adjacent to BPA's existing 230 kV transmission line. The line would then extend southeast within the right-of-way of Midstate's LaPine-Fort Rock 69 kV transmission line. The existing 69 kV line would be removed. In the Fort Rock area, the line would be rerouted to follow existing roads and section lines to avoid crossing irrigated farmlands. Tower structures in this section would include single-pole wood and steel structures. The new line would continue south from the Fort Rock Substation and then east through the town of Christmas Valley to the Buffalo Flat Substation on a 24.9 kV distribution line right-of-way. The existing 24.9 kV line would be underbuilt on the new transmission line structures. Tower structures in this section would be single-pole wood structures.

BPA has prepared an Environmental Assessment for the project and issued a FONSI on September 25, 1987. During the environmental review process REA has served as a cooperating agency. REA has independently reviewed the project and has determined that the EA represents an accurate assessment of the environmental impacts of the project. BPA's EA adequately considers potential impacts of the proposed project to resources including, but not limited to, threatened and endangered species, important farmland, prime rangeland and forest land, floodplains, wetlands and cultural resources. No other matters of environmental concern have been identified. Therefore, REA has adopted BPA's EA for the project. REA has reviewed the alternative routes and determined that the preferred route is an environmentally acceptable route. Possible actions by REA might include approval of interconnection agreements, construction contracts and agreements to serve a large power load. Alternatives considered and evaluated included no action, alternative routes and alternative designs. After reviewing the engineering, economic and environmental aspects of these alternatives, REA determined that the proposed project is an acceptable alternative that meets Midstate's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Midstate advertised the project in the local newspapers. BPA and Midstate also held public meetings at Christmas Valley and Fort Rock to discuss the project and obtain comments and concerns for the preparation of the EA. BPA also distributed copies of the EA to appropriate Federal, State and local agencies and corporate and private landowners in the area.

Based upon BPA's EA and FONSI and other data, REA has prepared a FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of the project would not constitute a major Federal action significantly affecting the quality of the human environment. The preparation of an environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: April 22, 1988.

John H. Arnesen,
Assistant Administrator.

[FR Doc. 88-9369 Filed 4-27-88; 8:45 am]
BILLING CODE 3410-15-M

Soil Conservation Service

Avoyelles-St. Landry Watershed Supplement, Louisiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Avoyelles-St. Landry Watershed Supplement, Avoyelles and St. Landry Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The supplement concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for installation of land treatment on 11,300 acres of critically eroding cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse

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review of Federal and federally assisted programs and projects is applicable.)

Dated: April 18, 1988.

Horace J. Austin,

Acting State Conservationist.

[FR Doc. 88-9309 Filed 4-27-88; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of ATBCB meeeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 9:30 a.m. to 1:00 p.m., on Wednesday, May 11, 1988, in the Crescent Ballroom A, Crescent Hotel, 2820 West Dunlap Avenue, Phoenix, Arizona.

Items on the Agenda: Election of officers; MGRAD provisions on leased facilities; and MGRAD amendments to incorporate ANSI/UFAS provisions.

Public participation is invited to discuss issues relevant to the Architectural Barriers Act and the ATBCB.

DATE: Wednesday, May 11, 1988—9:30 a.m.–1:00 p.m.

ADDRESS: Crescent Ballroom A, Crescent Hotel, 2820 West Dunlap Avenue, Phoenix, Arizona.

The Technical Programs and the Planning and Budget Committees of the ATBCB will meet on Tuesday, May 10, 1988, at the Pioneer Park, Phoenix, Arizona, from 3:00 p.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Communications Manager, (202) 653-7848 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 88-9308 Filed 4-27-88; 8:45 am]

BILLING CODE 8820-BP-M

COMMISSION ON CIVIL RIGHTS

North Dakota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the North Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on May 27, 1988, at the Doublewood Ramada Inn, 1400 East Interchange Avenue, Bismarck, North Dakota. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Bryce Streibel or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-9310 Filed 4-27-88; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on May 21, 1988, at the Casper Hilton Inn, 800 North Poplar, Casper, Wyoming, 82601. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Wyoming.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-9311 Filed 4-27-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: 1990 Decennial Census—Advance Post Office Check Reconciliation

Form Number: Agency—D-109A; OMB—NA

Type of Request: New collection

Burden: 7,692,300 respondents; 100,000 reporting hours

Needs and Uses: This operation will require some of the respondents in selected suburban and rural areas to provide information about their mailing address and the physical location of their housing unit. The purpose of this operation is to verify and update the mailing address list compiled during an earlier prelist operation.

Affected Public: Individuals or households

Frequency: One time

Respondent's Obligation: Mandatory

OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3008 New Executive Office Building, Washington, DC 20503.

Dated: April 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-9420 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will convene on May 18, 1988 at The Sheraton Lakeview Hotel, 505 Marriott Drive, Clarksville, Indiana 47130.

The Committee advises the Director, Bureau of the Census, on the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the May 18 meeting that will begin at 1:30 p.m. and adjourn at 4:15 p.m. is: (1) Introductory remarks by the Deputy Director, Bureau of the Census; (2) review of the Census Bureau's agriculture program; (3) data dissemination plans and promotion; (4) farm classification study; (5) election of chairperson-elect; and (6) Committee recommendations.

The meeting is open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone (301) 763-7731.

Date: April 22, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-9402 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-07-M

Export Administration

[Case No. OEE-1-88]

Order Temporarily Denying Export Privileges; Purchasing Pool Co.

In the matter of Wilfried Lange, individually and doing business as Purchasing Pool Company, Grasslfinger Str. 61 8038 Grobenzell, West Germany, Respondents.

The Office of Export Enforcement, Export Administration,[1] United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1987) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985)) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement, in his capacity as the individual who performs the duties of the Assistant Secretary for Export Enforcement, when, as is presently the case, that position is vacant,[2] to issue an order temporarily denying all United States export privileges to Wilfried Lange, individually and doing business as Purchasing Pool Company (hereinafter collectively referred to as respondents).

The Department states that as a result of an ongoing investigation, it has reason to believe that, on numerous occasions since the end of 1985, respondents have reexported, without the required reexport authorization from the Department, U.S.-origin computers, which are controlled for reasons of national security, from West Germany to Austria, Yugoslavia and Hungary.

The Department's investigation has also given it reason to believe that, in connection with the Department's investigation into respondents' trade-related activities, respondents have provided the Department with false and misleading information. Specifically, the Department believes that respondents have provided it with false invoices in an effort to hide the fact that they have reexported certain controlled U.S.-origin commodities from West Germany without the required reexport authorization.

The Department states that its investigation has given it reason to believe that a contract for, *inter alia*, two U.S.-origin computers, which are controlled for reasons of national security, presently exists between respondents and a Czechoslovakian foreign trading firm. The Department also states that its investigation has given it reason to believe that respondents clearly intend to fulfill the contract in question and that they are likely to do so without complying with the Regulations.

The Department states that, viewed as a whole, the above-described events concerning respondents' past activities demonstrate that respondents are involved in a scheme to obtain controlled U.S.-origin commodities, lawfully or otherwise, take possession of them in West Germany and then reexport them, oftentimes to proscribed destinations, without obtaining the required reexport authorization. Accordingly, the Department believes that respondents' activities show a clear pattern of disregard for the Act and the Regulations.

The Department also believes that respondents' past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States.

Furthermore, the Department believes that in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a temporary denial order naming Wilfried Lange and Purchasing Pool Company is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based

[1] On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration of the United States Department of Commerce to the Export Administration of the United States Department of Commerce.

[2] The reorganization which created the Export Administration also created the Office of the Under Secretary for Export Administration and the Office of the Assistant Secretary for Export Enforcement.

As a result, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders, even though § 388.19 of the Regulations has not yet been updated to reflect this fact. At present, however, this position is vacant.

On November 3, 1987, Paul Freedenberg, the Acting Under Secretary for Export Administration, designated the Deputy Assistant Secretary for Export Enforcement as the Department official who is to perform the duties of the Assistant Secretary when that position is vacant. This order is being issued in accordance with the terms of that designation.

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on the Department's showing that expedited action is required.

Accordingly, it is hereby ordered

I. All outstanding validated export licenses in which either respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Wilfried Lange and Purchasing Pool Company, both with an address at Grassifinger Str. 61, 8038 Grobenzell, West Germany, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which either respondent is now or hereafter may be related by affirmation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, or behalf of or in any association with either respondent or any related party, or whereby either respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for either respondent of any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order and of Parts 387 and 388 of the Regulations shall be served upon each respondent and this order shall be published in the Federal Register.

Date: April 20, 1988.

William Skidmore,

Assistant Secretary for Export Enforcement.

[FR Doc. 88-9312 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-25-M

Foreign-Trade Zones Board

[Order No. 381]

Approval for Reorganization of Foreign-Trade Zone No. 26, Within the Atlanta, GA, Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Georgia Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 26, has applied to the Board for authority to reorganize its general-purpose zone by deleting the Shenandoah, Georgia, site and relocating the general-purpose zone to a 275-acre parcel adjacent to Atlanta's Hartsfield International Airport, within the Atlanta Customs port of entry;

Whereas, the application was accepted for filing on August 27, 1987, and notice inviting public comment was given in the Federal Register on September 10, 1987 (Docket No. 14–87, 52 FR 34266);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the reorganization will improve zone services in the Atlanta area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisifed, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to reorganize its zone in accordance with the application filed August 27, 1987. The Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 18th day of April 1988.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce, for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-9438 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 380]

Authorization to Withdraw Certain "Zone Restricted" Merchandise From Foreign-Trade Subzone 78D, Tennessee Valley Authority, Phipps Bend Site, TN, for Entry Into U.S. Customs Territory

Pursuant to its authority under section 3 of the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), the Foreign-Trade Zones Board (the Board) adopts the following order:

After consideration of the petition of the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone 78, for authority under Section 3 of the Foreign-Trade Zones Act (19 U.S.C. 81c) to withdraw from Subzone 78D, the Tennessee Valley Authority's Phipps Bend site, Tennessee, for domestic entry, waste and scrap resulting from the dismantling of turbine generator equipment presently in "zone restricted" status (Docket 19–85), the Board approves the petition, finding it to be in the public interest. The withdrawal shall be subject to entry procedures, including the payment of applicable Customs duties.

Signed at Washington, DC, this 20th day of April 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Chairman, Committee of Alternates.

Attest.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 88-9439 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 14-88]

Foreign-Trade Zone 68, El Paso, TX Request for Manufacturing for SNA Nut Company for Pecan Shelling

Comment period for the above case, involving a request for manufacturing approval for the pecan shelling operation of SNA Nut Company in El Paso (53 FR 8479, 3–15–88) is extended to June 9, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, Washington, DC 20230.

Dated: April 22, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-9440 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-067]

Carbon Steel Plate From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On January 8, 1988, the Department of Commerce published the preliminary results of administrative review and intent to revoke in part on the antidumping finding on carbon steel plate from Japan. The review covers one manufacturer and one third-country reseller of this merchandise to the United States and various periods from July 1977 through September 15, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from an interested party. Based on our analysis of those comments, the final results of review are unchanged from those presented in the preliminary results for the reviewed firms.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1988, the Department of Commerce ("the Department") published the preliminary results of administrative review and intent to revoke in part (53 FR 547) the antidumping finding on carbon steel plate from Japan (43 FR 22937, May 30, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate, 0.1875 inch or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad and not pressed or stamped to non-rectangular shape. Carbon steel plate is currently classifiable under items 607.6620 and 607.6625 of the Tariff Schedules of the United States Annotated.

This review covers one manufacturer and one third-country Canada)—reseller of Japanese carbon steel plate and various periods from July 1, 1977 through September 15, 1983, the date of our tentative determination to revoke in part.

Analysis of Comment Received

We invited interested parties to comment on the preliminary results as provided by § 353.53a(c) of the Commerce Regulations. We received a comment from Coeur d'Alenes.

Comment: Coeur d'Alenes objected to our determination that it did not have the standing required to request a review.

Department's Position: Coeur d'Alenes is not an "interested party" under 19 CFR 353.12(c) and therefore cannot request a review. The company is a steel service center. It buys coiled carbon steel plate from domestic and foreign sources, and then flattens, cuts, and resells it. It does not qualify as a domestic producer of carbon steel plate, nor as an importer. We stated in our preliminary determination that Coeur d'Alenes did not have the standing to request a review because it is not an importer or manufacturer of the product subject to the antidumping finding. We also had no evidence at that time that it is a wholesaler. This company did not participate in the investigation, in any subsequent reviews or in our determination to revoke the antidumping finding. Upon publication of the preliminary results, Coeur d'Alenes asserted that it is a wholesaler, although it did not provide any evidence to support the assertion. We cannot consider new information after the publication of the preliminary results.

Final Results of the Review

Based on our analysis, the final results are the same as those presented in the preliminary results and are listed below:

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Manufacturer/exporter	Period	Margin (percent)
A.J. Forsyth & Co., Ltd.	7/77-9/15/83	0
Sumitomo Metal Industries	4/81-6/82	0

A.J. Forsyth requested revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, agreed in writing to an immediate suspension of liquidation and reinstatement of the finding, under circumstances as specified in the written agreement. This revocation in part will apply to all entries of this merchandise exported by A.J. Forsyth and entered, or withdrawn from warehouse, for consumption on or after September 15, 1983, the date of our tentative determination to revoke.

The Department revoked the antidumping finding on carbon steel plate from Japan, effective October 1, 1984 (51 FR 13039, April 17, 1986). This administrative review, covering various periods from July 1977 through September 15, 1983, does not affect the revocation of the antidumping finding. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise entered, or withdrawn for consumption on or after October 1, 1984, without regard to antidumping duties.

This administrative review, revocation in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Date: April 21, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9441 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-402]

Certain Dried Heavy Salted Codfish From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from thirteen producers and/or exporters and one importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain dried heavy salted codfish from Canada. The review was to cover fourteen producers and/or exporters of this merchandise and the period July 1, 1986 through June 30, 1987. Six companies withdrew their requests for review and, therefore, eight companies are covered by this review. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties on applicable entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5289/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 42702) the final results of its last administrative review of the antidumping duty order on certain dried heavy salted codfish from Canada (50 FR 27836, July 8, 1985). Thirteen producers and/or exporters and one importer requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we conduct an administrative review. The review was to cover fourteen producers and/or exporters of this merchandise and the period July 1, 1986 through June 30, 1987. Six companies withdrew their requests for review and, therefore, eight companies are covered by this review. We published a notice of initiation on August 19, 1987 (52 FR 31057). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Scheduled of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of certain dried heavy salted codfish, including soft-dried codfish from Canada, and are classifiable under TSUSA item 111.2200 and HS item number 0305.62.00. The term "certain dried heavy salted codfish" covers dried heavy salted codfish, which may be whole, or processed by removal of heads, fins, fiscera, scales, vertebral columns, or any combination thereof but not otherwise processed, and not in airtight containers. The review covers eight producers and/or exporters of this merchandise to the United States and the period from July 1, 1986 through June 30, 1987.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the packed, f.o.b., c.&f., or c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for inland freight, ocean freight, brokerage, customs duty, discounts, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price, or constructed value, all as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price. When insufficient quantities of such or similar merchandise were sold in either the home market or to third countries, we used constructed value.

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers. Third-country price was based on the packed c.i.f. or c. and f. prices to unrelated purchasers in various third-countries. We made adjustments, where appropriate, for inland freight, ocean freight, marine insurance, and differences in commissions, packing, credit expenses, direct selling expenses, and physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Constructed value was calculated as the sum of materials, fabrication, general expenses, profit, and U.S. packing. We used ten percent for general expenses since the actual GS&A expenses were below the statutory minimum. We added eight percent as profit since the actual profit was below the statutory minimum.

Preliminary Results of the Review

Six companies withdrew their requests for review: Canada Packers, Pecheries GPS, Pecheries Sheehan, Pecheries Trudel & C, Pecheries Cloridorme, and Pecheries Sale Gaspesien.

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Bay Harbour	7/01/86-6/30/87	0
Canadian Saltfish	7/01/86-6/30/87	1.11
Groupe Purdel	7/01/86-6/30/87	0
Island Saltfish	7/01/86-6/30/87	0
Lelievre	7/01/86-6/30/87	2.24
R.E. Newell	7/01/86-6/30/87	0
Sable	7/01/86-6/30/87	0
Sans Souci	7/01/86-6/30/87	3.67

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the days of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For the remaining producers/exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to each of those firms (50 FR 20819, July 8, 1985, and 52 FR 42702, November 6, 1987).

For any future entries of this merchandise from a new exporter not covered in this or prior reviews or in the investigation, whose first shipment occurred after June 30, 1987, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 3.67 percent shall be required. These deposit requirements are effective for all shipments of Candian certain dried heavy salted codfish entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: April 21, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9442 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative.

SUMMARY: On February 3, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada. The review covers seven producers and/or exporters of this merchandise to the United States and generally the period December 1, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec pending receipt of additional information. The remaining final results of our review remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION: .

Background

On February 3, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 3062) the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of elemental sulphur currently classifiable under item number 415.4500 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 2503.10.00, 2503.90.00 and 2802.00.00.

The review covers seven producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1985 through November 30, 1986.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results. We received comments from the petitioner concerning InterRedec.

We are deferring our review of InterRedec pending the receipt of additional information; therefore, we have not addressed the petitioner's comments on InterRedec.

Final Results of the Review

Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec, pending the receipt of additional information. The remaining final results of our review remain unchanged from the preliminary results, and we

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determine that the following margins exist:

Producer/exporter	Period of review	Margin (percent)
B.P. Resources Canada	12/85–11/86	[1]5.56
Cities Service Oil & Gas	12/85–11/86	[1]0
Imperial Oil	12/85–11/86	0
Petrogas	12/85–11/86	[1]0
Sulco Chemical	12/85–11/86	3.78
Texaco Canada, Inc.	12/85–11/86	0

[1] No shipments during the period; margin from the last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each producer/exporter directly to the Customs Service.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms.

For any shipment from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at rates published in the final results of the last administrative reviews for each of those firms (50 FR 37888, September 18, 1985, 51 FR 43854, December 5, 1986, 51 FR 45153, December 17, 1986, 52 FR 41601, October 29, 1987, and 53 FR 1948, January 15, 1988). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after November 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 3.78 percent shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: April 19, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 88-9443 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-001]

Sodium Nitrate From Chile; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

On September 28, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers one exporter of this merchandise to the United States and the period March 1, 1986 through February 28, 1987.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1987, the Department of Commerce ("the Department") pubished in the **Federal Register** (52 FR 36296) the preliminary results of its administrative review of the antidumping duty order on sodium nitrate from Chile (48 FR 12560, March 25, 1983). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the Tariff Schedules of the United States Annotated and under item number 3102.50.00 of the Harmonized System.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent, Sociedad Química y Minera de Chile, S.A. ("SQM"), and from the petitioner, the Olin Corporation.

Respondent's Comments

Comment 1: The respondent contends that the only proper way of allocating the common costs of mining, crushing, and leaching to nitrates is on the basis of volume produced. The respondent further contends that the Department's methodology is absolutely incorrect because sodium nitrate is the only product that results from these processes. Only after crystallization and prilling are industrial and agricultural nitrates produced.

Department's Position: We disagree. The argument that sodium nitrate is the only product produced is erroneous. The ore that is mined contains sodium nitrates (agricultural and industrial), iodine, and other minerals. Therefore, we consider these products to be joint products and the costs associated with the mining through leaching and solutions are joint rather than common costs.

Initially, in the section 736(c) review, the Department accepted SQM's allocation based on production value (quantity produced times sales value) between nitrates and iodine. Therefore, for subsequent distribution of the joint costs between agricultural and industrial nitrates, the Department used the sales value method of allocation because it provided consistency and an equitable allocation of the joint costs for all the joint products. If the Department were to use the volume produced basis, as suggested by SQM for this review, the cost of production ("COP") attributed to the industrial nitrates could be understated because industrial nitrate is more expensive than agricultural nitrate. Additionally, SQM provided no compelling reason for changing this allocation methodology in this review.

Comment 2: The respondent contends that depreciation, depletion, and Administrative North Expenses are directly related to the production process and should, therefore, be allocated on the basis of volume produced an not on a sales value basis.

Further, the allocation of the depreciation of office equipment in Antofagasta and Santiago should be made on the basis of volume produced at each mine, rather than on a sales value basis between nitrates and iodine. Consequently, the first allocation should be on total tons produced at each mine. The second allocation should be on production value of nitrates to all products. Finally, the third allocation should be based on the volume produced of both agricultural grade and industrial grade at the one plant (not both plants) to derive the per unit cost of depreciation of office equipment.

Department's Position: We disagree. The allocation method suggested by SQM is inappropriate because: (1) Depreciation and depletion costs are considered to be indirect overhead expenses; and (2) it fails to allocate costs specifically to industrial nitrates, allocating them instead to nitrates in general. Therefore, SQM's method underestimates the cost of depreciation for industrial nitrates. Administrative North Expenses are administrative expenses and as such, the Department also allocated these expenses on a sales value basis.

Comment 3: The respondent contends that the Department should allow the offsets to the Location Expenses because in operating the PV mine, SQM recovers certain costs. For example, the National Health Fund, to which all workers in Chile must contribute, reimburses SQM for its cost of providing medical services to its workrs.

Department's Position: We disagree. At verification, the Department examined the offset to Location Expenses and found them to be payments received for services provided to thied parties (refer to verification Exhibit COP 28). SQM failed to substantiate in COP 28 that it received reimbursements from the National Health Fund. Further, we determined that the payments received for services are not related to COP.

Comment 4: The respondent contends that Location Expenses should be allocated between sodium nitrate and iodine on an "added value" basis (the method SQM used to accrue the total location expense) because these expenses all benefit labor and labor is the major component of the added value. Further, SQM contends that the Department used the added value basis in the first administrative review and verified the amount in the second and current reviews.

Department's Position: Location Expenses were found to be general administrative type expenses and as such, they must be allocated on a "sales value" basis.

The Department never allocated these expenses on the "added value" basis. The Department allocated these expenses between iodine and nitrates on a sales value basis. Further, the Department's verification of a company's method of allocation does not amount to acceptance of that allocation method. The Department reserves the right to agree or disagree with the firm's methodology after verification.

Comment 5: The respondent contends that the Department's allocation of selling expenses on the basis of total company-wide sales of all products is incorrect when allocating selling expenses (in the COP calculation). The Department must allocate SQM's selling expenses on the basis of the total domestic sales only. SQM further contends that only ten percent of the selling expenses relates to the promotion of sales abroad.

Department's Position: We agree that the Department incorrectly allocated selling expenses, therefore, we have reallocated these expenses on the basis of total home market sales of industrial nitrates to total company-wide sales. However, we disagree with the respondent's allocation of these expenses on the basis of total home market sales of industrial nitrates to total home market sales (all products), times the total expense, divided by total tons industrial nitrates sold company-wide. The respondent's calculation understated its selling expenses in the COP calculation.

Comment 6: The respondent contends that the Department erroneously assumed that SQM finances its production of sodium nitrate by borrowing from outside sources. During this period of review, SQM financed its production of sodium nitrate solely from its generated profits and, therefore, the Department should not add an amount for finance expense to the COP calculation.

Department's Position: The Department verified that SQM experiences a financial expense, or period expense, as noted in its financial statement. Consequently, a portion of this financial or period expense must be included in the COP calculation for industrial nitrates.

Comment 7: The respondent contends that its sales to related parties in Chile are made on an arm's-length basis. Therefore, they should be included.

Department's Position: The Department generally does not use sales to related buyers in the producer's home market for comparison with United States price, unless it is clearly established to the Department's satisfaction that the sales are at arm's-length. See 19 CFR 353.22(b). SQM has not demonstrated that all its sales to related parties in Chile are at arm's-length. Therefore, we have not used these related party sales in our calculation of home-market prices.

Comment 8: The respondent contends that the amount of indirect selling expenses the Department imputed to its sales to the United States vastly exceeds any portion of selling expenses and Administrative South Expenses that it incurs on behalf of those sales.

Department's Position: At verification SQM was requested to allocate an amount for indirect selling expenses incurred on its sales to the United States. SQM did not comply with the Department's request. As a result, the Department used best information otherwise available.

Comment 9: The respondent contends that freight equalization costs, incurred on certain U.S. sales should be allocated to all sales because they are warehouse expenses.

Department's Position: We disagree. At verification, the freight equalization expenses included in the indirect selling expenses calculation were found to be additional freight expenses incurred on certain sales as a result of stock-outs at the customer's usual warehouse. Consequently, we determined this expense to be directly related to the sales in question.

Comment 10: The respondent contends that the Department should disregard the freight equalization expense because of the fire that destroyed their Chesapeake warehouse. This fire forced them to supply customers from other warehouses. As a result, SQM incurred extraordinary freight costs that would have been totally unnecessary had the warehouse not been destroyed. In particular, the Department should disregard the figure in column 26.1 of the ESP data base. These costs are recapitulated in Exhibit 35.1 that was submitted to the Department by letter dated July 1, 1987.

Department's Position: SQM argues that freight equalization costs (mentioned in number 9 above) incurred on certain U.S. sales are warehouse expenses. Here, SQM argues that these same expenses are extraordinary freight costs as a result of a warehouse fire.

We disagree. Nowhere in SQM's response or at verification did SQM explain that the freight expense was incurred solely because of the warehouse fire. Additionally, SQM failed to identify and substantiate that certain freight expenses were incurred solely as a result of extraordinary events. It is incumbent on SQM to identify these expenses separately. The Department must rely on the accuracy, completeness, and clarity of the submitted data. For this reason and because SQM has a history of freight equalization expenses, the Department will not change its analysis for the final results.

Comment 11: The respondent contends that for fifteen U.S. sales, the Department should not have deducted

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the freight equalization expense in the calculation of U.S. price.

Department's Position: We disagree. By letter dated August 14, 1987, SQM identified these freight adjustments as freight expenses that were never billed. The Department considers these as incurred expenses, and the fact that they have not been billed to date is irrelevant to these proceedings.

Comment 12: The respondent contends that the Department erroneously included three of sales in our calculation of U.S. price: (1) Agricultural-grade nitrates that were sold as industrial-grade ("product substitution"); (2) certain sales that were made to Canada and Mexico; and (3) product damaged by a fire at the warehouse.

Department's Position: We agree and have eliminated these sales from our calculation because: (1) Agricultural-grade nitrates are not covered by the order; (2) Canadian and Mexico sales are not sales to the United States; and (3) the reported sale of damaged merchandise actually never occurred during the period. We note that the sales to Mexico and Canada were not explained in the narrative response nor brought to our attention until after the preliminary. Further, we are satisfied that the reported sale of damaged merchandise never occurred during the period.

Petitioner's Comment: The petitioner contends that the Department understated the unit value of SQM's COP of sodium nitrate, because it appears that SQM allocated the crystallization expenses by the ratio of the agricultural-grade product to the industrial-grade product. Instead, petitioner contends that these expenses should not be allocated between the two grades on the basis of relative volume or dollar value. This approach to the allocation of these expenses serves to understate the expense allocated to industrial-grade nitrate.

Department's Position: This is a moot point because crystallization is a direct expense. Therefore, there is no allocation between agricultural-grade and industrial-grade nitrates.

Final Results of the Review

Based on our analysis of the comments received, we have revised our preliminary results for Sociedad Quimica y Minera de Chile, S.A., and we determine that a weighted-average margin of 1.32 percent exists for the period March 1, 1986 through February 28, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for SQM.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 28, 1987 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 1.32 percent shall be required. These deposit requirements are effective for all shipments of Chilean sodium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9447 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-02-M

[A-427-044]

Stainless Steel Wire Rods From France; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of amended final results of Antidumping Duty Administrative Review.

SUMMARY: On November 21, 1983, the United States Court of International Trade remanded the second administrative review to the Department of Commerce with instructions to verify the data submitted by the only respondent Ugine Aciers (currently Ugine-Savoie), for the period July 1, 1980 through June 30, 1981. We have completed the verification. We provided interested parties an opportunity to comment on the amended final results. We received no comments.

Based on our verification and analysis, this notice of amended results changes the margin calculated in the final results of review from 0.30 to 0.70 percent.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Knobae C.H. Brooks or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230, Telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 1983, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the administrative review of the antidumping finding on stainless steel wire rods from France for the period July 1, 1980 through June 30, 1981 (48 FR 2808). On January 25, 1983, Al Tech Specialty Steel Corporation, Armco Incorporated, Carpenter Technology Corporation, and Crucible Stainless Steel Division of Colt Industries Incorporated, filed a complaint in the United States Court of International Trade, challenging the Department's final results of administrative review and specifically claiming that the Department should have verified the information submitted in the administrative review by the only respondent, Ugine Aciers (currently Ugine-Savoie). IN a November 21, 1983 opinion, the court held that the Department should have verified this information and remanded the case to the Department to verify the respondent's data. *At Tech Specialty Steel Corporation, et. al. v. United States,* 575 F. Supp. 1277 (CIT, November 1983). On October 3, 1984, the Court of Appeals for the Federal Circuit affirmed the CIT decision.

Amended Final Results of the Review

Based on our verification and analysis, the margin of 0.30 percent calculated in our final results has been changed. The correct rate for Ugine Aciers (currently Ugine-Savoie) for the period July 1, 1980 through June 30, 1981 is 0.70 percent.

There is in effect an injunction against liquidation of entries of stainless steel wire rods from France covered by the January 21, 1983 notice of final results. The CIT's order provides that this injunction will expire automatically 30 days after publication of this notice. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

This amendment to the administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and the November 21, 1983, order of the CIT.

Dated: April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9448 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On March 10, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the U.S. and the period July 1, 1986 through June 30, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7775) the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of synthetic methionine currently classifiable under Tariff Schedules of the United States Annotated item number 425.0430 and Harmonized System item number 2922.42.50.

The review covers one manufacturer/exporter and one third-country reseller of Japanese synthetic methionine to the U.S. and the period July 1, 1986 through June 30, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results of review. We received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exists for the period July 1, 1986 through June 30, 1987:

Manufacturer/Exporter/Third-Country Reseller (Country)	Margin (percent)
Nippon Soda/Mitsui	[1] 3.35
Nippon Soda/Mitsui/Central Soya (Canada)	[2] 79.09

[1] No shipments during the period; margins based on the last period in which there were shipments.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983, 52 FR 10600, April 2, 1987, and 52 FR 38953, October 20, 1987).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments of Japanese synthetic methionine occurred after June 30, 1987 and who is unrelated to any of the reviewed firms or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance with our practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based the most recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: April 20, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-9449 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Stainless Steel; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Brazil, U.S.-Spain, and U.S.-EC Arrangements on Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement on Certain Steel Products, with respect to certain hot-rolled, stainless steel.

DATE: Comments must be submitted on or before May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil, U.S.-Spain, and U.S.-EC Arrangements on Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement on Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various grades of hot-rolled, stainless steel ranging from a 0.07 to 0.25 inch in thickness and from 28.5 to 61.0 inches in thickness.

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Any party interested in commenting on this request should send written comments as soon as possible, and no later that May 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary informatoin should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 22, 1988.

[FR Doc. 88-9452 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-066]

Impression Fabric of Man-Made Fiber From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 24, 1988, the Department of Commerce published the preliminary results of its antidumping duty administrative review on impression fabric of man-made fiber from Japan. The review covers two exporters of this merchandise to the United States and the period May 1, 1986 through April 30, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 5437) the preliminary results of its administrative review of the antidumping finding on impression fabric of man-made fiber from Japan (43 FR 22344, May 25, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of impression fabric of man-made fiber, classifiable under numbers 338.5001, 338.5002, and 347.6030 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 5407.41.00 and 5806.32.10.

The review covers two exporters of Japanese impression fabric of man-made fiber to the United States and the period May 1, 1986 through April 30, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margins exist for the period May 1, 1986 through April 30, 1987:

Exporters	Margin (percent)
Mitsui & Co., Ltd.	[1] 7.5
Nissei Co., Ltd.	[1] 10.12

[1] No shipments during the period; margins from the last review in which there were shipments.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms. For any shipments from the remaining known exporters not covered in this review, a cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (49 FR 19560, May 8, 1984, 52 FR 41601, October 29, 1987).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to any review firm or any previously reviewed firm, a cash deposit of 10.12 percent shall be required. These deposit requirements are effective for all shipments of Japanese impression fabric of man-made fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 21, 1988.

[FR Doc. 88-9444 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-009]

Industrial Nitrocellulose From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 10, 1988, the Department of Commerce ("the Department") published the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on industrial nitrocellulose from France. The review covers the only known manufacturer and/or exporter of this merchandise to the United States, and the periods August 1, 1984 through July 31, 1985 and August 1, 1985 through July 31, 1986. The review indicates no dumping margins for the period August 1, 1984 through July 31, 1985 and *de minimis* dumping margins for the period August 1, 1985 through July 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988, the Department published in the **Federal Register** (53 FR 7773) the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. These imports are currently classifiable under TSUSA item 445.2500 and under HS item numbers 3912.20.00 and 3912.00.

The review covers Societe Nationale des Poudres et Explosifs ("SNPE"), the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1984 through July 31, 1986.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review. We determine that the following margins exist for Societe Nationale des Poudres et Explosifs:

Period	Margin (percent)
8/1/84-7/31/85	0
8/1/85-7/31/86	0.07

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for SNPE is 0.07 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for SNPE. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 10, 1988 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of French 'ndustrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 21, 1988.

[FR Doc. 88-9445 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1986 through April 3, 1987. The review indicates the existence of a *de minimis* dumping margin for the firm during the period.

As a result of the review, the Department intends to revoke the order with respect to Kali-Chemie AG.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 47) the final results of its last administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). Both the petitioner and respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on July 17, 1987 (52 FR 27036). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product description on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCo_3$), currently classifiable under TSUSA item 472.0600 and under HS item 2836.60.00.

The review covers one manufacturer/exporter of West German precipitated barium carbonate to the United States, Kali-Chemie AG, and the period from July 1, 1986 through April 3, 1987.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States.

All sales to the United States were made through a related sales agent in the United States to an unrelated

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purchaser prior to the date of importation. The Department determined that purchase price was the appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, U.S. duty, forwarding fees, U.S. clearance and brokerage charges, U.S. inland freight, and transloading. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on either the delivered or ex-factory, packed price with adjustments, where applicable, for inland freight, rebates, prompt payment discounts, technical services, and differences in packing costs. We denied a claimed adjustment for "other expenses" because it was not properly quantified. No other adjustments were claimed or allowed.

Preliminary Results of Review and Intent to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminary determine that a *de minimis* margin of 0.01 percent exists for Kali-Chemie Ag for the period July 1, 1986 through April 3, 1987.

Therefore, we intend to revoke the antidumping duty order with respect to this merchandise manufactured and exported by Kali-Chemie AG. Kali-Chemie had no margins for the period July 1, 1981 through June 30, 1986 and made all sales at not less than fair value during the period July 1, 1986 through April 3, 1987, the date of our tentative determination to revoke in part with regard to Kali-Chemie.

As provided for in § 353.54(e) of the Commerce Regulations, Kali-Chemie AG has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances as specified in the written agreement. If the order is revoked with respect to Kali-Chemie AG, it shall apply to unliquidated entries of West German precipitation barium carbonate manufactured and exported to the United States by Kali-Chemie AG and entered, or withdrawn from warehouse, for consumption on or after April 3, 1987.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication.

The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing. The Department shall instruct the Custom Service to assess antidumping duties on all appropriate entries.

For any future shipments from the one remaining known manfacturer/exporter not covered in this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after April 3, 1987 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and § 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 20, 1988.

[FR Doc. 88-9440 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-017]

Bricks From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bricks from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 25 firms and 3.76 percent *ad valorem* for all other firms during the period July 1, 1984 through December 31, 1984. For the period January 1, 1985 through December 31, 1985, we preliminarily determine the total bounty or grant to be zero or *de minimis* for 26 firms and 5.11 percent *ad valorem* for all other firms. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Jean Carroll or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43418) the final results of its last administrative review of the countervailing duty order on bricks from Mexico (49 FR 19564, May 8, 1984). On May 29, 1986, the Mexican government requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on June 23, 1986. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican bricks. Such merchandise is currently classifiable under TSUSA item numbers 532.1120 and 532.1140. These products are currently classifiable under HS item number 6904.10.00-0. We invite comments from all interested parties on this HS classification. The review covers the period from July 1, 1984 through December 31, 1985 and 12 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 17.50 to 39.60 percent. The annual interest rate for dollar-denominated FOMEX export financing ranged from 6.38 to 9.29 percent during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between May 1984 and October 1985. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

We have sufficient information to measure effective interest rates for peso-denominated loans and for 1985 dollar-denominated loans. (*See Final Results of Administrative Review on Fabricated Automotive Glass from Mexico* (51 FR 44652, December 11, 1986).) To determine the effective interest rate benchmark for peso loans obtained in 1984, we calculated an average annual effective rate from data reported by the Banco de Mexico in its monthly publication, *Indicadores Economicos* ("I.E.").

In 1985, the Banco de Mexico stopped publishing data on nominal and effective interest rates. Therefore, we calculated the average spread between the Costo Porcentual Promedio (CPP) rates, which is the average cost of short-term funds to banks, and the I.E. effective rates for the period 1982 through 1984, the only period for which we have I.E. rates. The effective interest rate benchmark for 1985 is the sum of this average spread and the average CPP rate for 1985. In this way we calculated a benchmark of 73.76 percent for pre-export peso loans obtained in 1984, and 86.31 percent for pre-export peso loans obtained in 1985.

To determine the effective interest rate benchmark for 1985 dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 12.85 percent in 1985. In 1984, no comparable data on effective interest rates was published in the Federal Reserve Bulletin. Therefore, we used an average nominal interest rate benchmark from the same publication, 13.97 percent, and compared it to the nominal preferential interest rate.

Six exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments. We then weight-averaged the result by each company's proportion of exports of this merchandise to the United States during the period of review, excluding those firms with zero or *de minimis* aggregate benefits. For the period July 1 through December 31, 1984, we preliminarily determine the benefit from FOMEX to be 2.70 percent *ad valorem* for all firms with aggregate benefits above *de minimis*. For the period January 1 through December 31, 1985, we preliminarily determine the benefit from FOMEX to be 3.83 percent *ad valorem* for all firms with aggregate benefits above *de minimis*.

In October 1987, the Banco de Mexico changed the interest rates on FOMEX peso loans to 91.00 percent and on dollar loans to 8.00 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating assessment rates. For peso loans we used as our benchmark the sum of the most recent available CPP rate, *i.e.*, October 1987, and the average 1982-1984 spread between the CPP and the *I.E.* effective rates. For dollar loans we used as our benchmark the October 1987 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 1.10 percent *ad valorem* for all firms with aggregate benefits above *de minimis*.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Firms may receive variable-rate or fixed-rate loans under this program. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Eight firms had FOGAIN loans on which interest payments were due during the period of review. We treated each of the variable-rate loans as a series of short-term loans. For both the variable-rate and fixed-rate loans, we used as our benchmarks the least beneficial interest rates in effect for

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each FOGAIN loan payment made during the period of review. For fixed-rate loans, we applied the long-term loan methodology outlined in the Subsidies Appendix to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

We allocated the benefits from each loan over each company's total sales to all markets. Two of the eight firms with FOGAIN loans had *de minimis* aggregate benefits. For the remaining six, we weight-averaged the resulting benefits by each company's proportion of exports of this merchandise to the United States during the period of review, excluding those firms with zero or *de minimis* aggregate benefits. For the period July 1, 1984 through December 31, 1984, we preliminarily determine the benefit from this program to be 0.78 percent *ad valorem* for all firms with aggregate benefits above *de minimis*. For the period January 1, 1985 through December 31, 1985, we preliminarily determine the benefit from this program to be 0.85 percent *ad valorem* for all firms with aggregate benefits above *de minimis*.

(3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates used to promote the goals of the National Development Plan ("NDP"). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Article 25 of the decree that established the authority for issuing CEPROFI's, published in the *Diario Oficial* on March 6, 1979, requires each recipient to pay a four-percent supervision fee. The four-percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Brick firms in Mexico can receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the *Final Affirmative Countervailing Duty Determination on Bricks from Mexico* (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable since such certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries. Two firms received tax certificates from the Category I and Category II CEPROFI provisions in 1984, and only one firm received such certificates in 1985. We allocated each firm's benefit, less the four-percent supervision fee, over the total value of each firm's sales to all markets during the period of review. We then weight-averaged the results by each firm's proportion of total exports of this merchandise to the United States during each of these years, excluding those firms with zero or *de minimis* aggregate benefits. For the period July 1 through December 31, 1984, we preliminarily determine the benefit from this program to be 0.13 percent *ad valorem* for all firms with aggregate benefits above *de minimis*. For the period January 1, 1985 through December 31, 1985, we preliminarily determine the benefit from this program to be 0.23 percent *ad valorem*.

(4) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. Three firms had variable-rate, peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review. One firm, Productos de Barro, S.A. de C.V., received a FONEI loan for the period of review, but did not report the payment schedule on its loan. Therefore, based on the best information available, we have applied to that firm the highest 1984 and 1985 company-specific FONEI benefit from any Mexican case, which is 0.525 percent *ad valorem* in 1984 and 0.419 percent *ad valorem* in 1985.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each firm's total sales to all markets during the period of review. We then weight-averaged the resulting benefits by each firm's proportion of exports to the United States during the period of review, excluding those firms with zero or *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.15 percent *ad valorem* for the period July 1, 1984 through December 31, 1984, and 0.20 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

(5) Other Programs

We also examined the following programs and preliminarily find that exporters of bricks did not use them during the review period:

(A) Article 15 or 94 loans;
(B) CEDI;
(C) NDP Discounts;
(D) Delay of payments on loans;
(E) Delay of payments to PEMEX of fuel charges;
(F) Import duty reductions and exemptions;
(G) State Tax incentives; and
(H) Bancomext loans.

Firms Not Receiving Benefits

We preliminarily determine that the following firms received zero or *de minimis* benefits during the period July 1, 1984 through December 31, 1984:

1. Arturo Cevazos Jacques
2. Blanca Salvidar Gonzalez
3. Bloquera Rio Bravo
4. Bloques, Ladrillos y Materiales de Piedras Negras
5. Elias Martinez Ledezma
6. Ferretra y Maderera La Popular
7. Fidel Contreras Varela
8. Hipolito Martinez Martinez
9. Jose Adrian Risoul
10. Ladrillera Cantu
11. Ladrillera El Jaboncillo
12. Ladrillera Guadalupana
13. Ladrillera Industrial, S.A. de C.V.
14. Ladrillera La Azteca
15. Ladrillera La Joya, S.A. de C.V.
16. Ladrillera Reynosa
17. Ladrillera San Juan
18. Ladrillera Santa Fe
19. Ladrillos Reynosa
20. Lucio Garza Lucero
21. Luis de Hoyos Villareal
22. Materiales Salinas, S.A.
23. Mosaicos El Aguila, S.A.
24. Productos de Barro La Zacatosa
25. Ricardo Francisco Garza Vela

For the period January 1, 1985 through December 31, 1985, we preliminarily determine that 26 firms (Ladrillera Monterrey and the 25 firms listed above) received zero or *de minimis* benefits.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period July 1, 1984 through December 31, 1984 to be zero or *de minimis* for the 25 firms listed above, and 3.76 percent *ad valorem* for all other firms (including Ladrillera Monterrey). For the period January 1, 1985 through December 31, 1985, we preliminarily determine the total bounty or grant to be zero or *de minimis* for Ladrillera Monterrey and the 25 firms listed above, and 5.11 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 25 firms listed above, and to assess countervailing duties of 3.76 percent of the f.o.b. invoice price on shipments from all other firms (including Ladrillera Monterrey) exported on or after July 1, 1984 and on or before December 31, 1984. We will also instruct Customs to liquidate, without regard to countervailing duties, shipments of this merchandise from Ladrillera Monterrey and the 25 firms listed above, and to assess countervailing duties of 5.11 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Ladrillera Monterry and the 25 firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 2.38 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: April 22, 1988.

[FR Doc. 88-9450 Filed 4-27-88; 8:45 am]

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[C-427-016]

Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 10, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on industrial nitrocellulose from France. We have now completed that review and determine the net subsidy during the period January 1, 1984 through December 31, 1985 to be *de minimis*.

EFFECTIVE DATE: April; 28, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: .

Background

On March 10, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7776) the preliminary results of its administrative review and tentative determination to revoke the countervailing duty order on industrial nitrocellulose from France (48 FR 28521, June 22, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous, synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. Such merchandise is currently classifiable as cellulosic plastic materials, other than cellulose acetate, under item number 445.2500 of the Tariff Schedules of the United States Annotated and item number 3912.20.00 of the Harmonized System.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine the net subsidy to be 0.26 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.10 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1984 and on or before December 31, 1985.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: April 22, 1988.

[FR Doc. 88-9451 Filed 4-27-88; 8:45 am]

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Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held May 17, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda:

General Session:

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Public Rule-Making Issues.
5. Protocol Converters.
6. CAD/CAM Workstations.
7. G–COM/GFW Limits/Clarification.
8. Laser Printers/Optional Disk Drives—1522A or 1565.
9. Modems 1519A or 1565A.

Executive Session:

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Ruth D. Fitts, Technical Support Staff, Office of Technology and Policy Analysis, Room 4086, 14th and Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: April 25, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-9422 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 80341-8041]

Proposed Federal Information Processing Standard (FIPS) for POSIX: Portable Operating System Interface for Computer Environments

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for comments.

SUMMARY: The purpose of this notice is to request comments on a proposed Federal Information Processing Standard for POSIX. Also proposed is a plan to develop an Applications Portability Profile. NBS plans to issue this standard as an interim FIPS after the comment period to enable the Federal government to proceed with procurement actions needed to acquire advanced technology at the least cost to the government. This standard is one component of a series of specifications needed for computer applications portability, and will enable Federal agencies to utilize the POSIX specification in developing systems for applications portability. A final FIPS for POSIX will be proposed when final specifications for POSIX are completed by The Institute of Electrical and Electronics Engineers, Inc. (IEEE). Prior to issuing an interim FIPS, it is essential that proper consideration be given to the needs and views of industry, the public and the State and local governments.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, and an appendix which provides an initial plan for developing an Applications Portability Profile in cooperation with industry and users, and (2) a specifications section (IEEE 1003.1/POSIX, Draft 12) which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Copies of the proposed standard may be obtained from the Standards Processing Coordinator (ADP), Institute for Computer Sciences and Technology, Technology Building, Room B–64, National Bureau of Standards, Gaithersburg, MD 20899, telepone (301) 975–2816.

DATE: Comments on this proposed FIPS and the proposed Applications Portability Profile plan should be submitted before May 31, 1988.

ADDRESS: Written comments concerning the proposed interim FIPS and the Applications Portability Profile plan shold be sent to: Director, Institute for Computer Sciences and Technology, ATTN: PROPOSED FIPS FOR POSIX, Technology Building, Room B–154, National Bureau of Standards, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Martin, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–3295.

SUPPLEMENTARY INFORMATION: An earlier version of this standard was announced in the **Federal Register** (51 FR 30896 dated August 29, 1986) and sent to all Federal agencies and State governments for review. Comments received from the August 29, 1986 notice that dealt with the technical specifications were submitted to the voluntary standards committee for its consideration in preparing Draft 12.

Ernest Ambler,

Director.

Date: April 25, 1988.

Federal Information Processing Standards Publication (date) Announcing the Interim Standard for POSIX Portable Operating System Interface for Computer Environments

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

Name of Standard. POSIX: Portable Operating System Interface for Computer Environments.

Category of Standard. Software Standard, Operating Systems.

Explanation. This publication announces the adoption of Draft 12 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Portable Operating System Interface for Computer Environments (IEEE 1003.1/POSIX) as an Interim Federal Information Processing Standard (FIPS). IEEE 1003.1/Draft 12 defines a C language source interface to an operating system environment. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is the first component of a series of specifications needed for application portability. The Appendix to this standard discusses the elements needed in an Applications Portability Profile and provides a schedule for the additional specifications.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. The Institute of Electrical and Electronic Engineers Standard for Portable Operating System Interface for Computer Environments, IEEE 1003.1/Draft 12 (POSIX).

Related documents:

a. Federal Information Resources Management Regulation 201–6.1. Federal ADP and Telecommunications Standards.

b. Draft Proposed American National Standard X3J11/87–140, "Programming Language C".

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff hours in porting computer programs to different vendor systems and architecture.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS should be used for operating systems that are either developed or acquired for Government use where applications portability is a major requirement. This FIPS is applicable to the entire range of computer hardware, e.g.:

a. Micro-computer systems.
b. Mini-computer systems.
c. Engineering workstations.
d. Mainframes.

Specifications. The POSIX FIPS specifications are the specifications contained in the Institute of Electrical and Electronics Engineer Standard for Portable Operating System Interface for Computer Environments, IEEE 1003.1/Draft 12 (POSIX) as modified below. IEEE 1003.1/Draft 12 defines a C language source code level interface to an operating system environment. IEEE 1003.1/Draft 12 refers to and is a complement to draft ANSI standard X3J11/87–140, C Language, which is under development by Accredited Standards Committee X3. IEEE 1003.1/Draft 12 requires specific areas of ANSI X3J11/87–140, C Language, to complete the environment specification for portable application software.

The following modifications to IEEE 1003.1/Draft 12 Standard for Portable Operating System Interface for Computer Environments are required for implementations of POSIX that are acquired by Federal agencies:

a. A null pathname shall be considered invalid and generate an error (2.10.3, lines 894–896.).

b. The use of the chown( ) function shall be restricted to a process with appropriate privileges (2.10.4, lines 924–926).

c. Only a user with appropriate privileges shall be allowed to link or unlink directories (2.10.4, lines 938–939).

d. The owner of a file may use the utime( ) function to set file timestamps to arbitrary values (2.10.4, lines 943–945).

e. The implementation shall support a value of {NGROUPS_MAX} greater than or equal to eight (8) (2.9.2). An implementation may provide a method for setting {NGROUPS_MAX} to value other than eight (8).

f. The implementation shall support the setting of the group-ID of a file (when it is created) to that of its parent directory (2.10.4, lines 934–937). An implementation may provide a programmable selectable means for setting the group-ID of a file (when it is created) to the effective group-ID of the creating process.

g. The use of chown() shall be restricted to changing the group-ID of a file to the effective group-ID of a process or when {NGROUPS_MAX}>0, to one of its supplementary group-IDs (2.10.4, lines 927–930).

h. The exec() type functions shall save the effective user-ID and group-ID (2.10.3, lines 902–903).

i. The kill() function shall use the saved set user-ID of the receiving process instead of the effective user-ID to determine eligibility to send the signal to a process (2.10.3, lines 891–893).

j. When a session process group leader executes an exit() a SIGHUP signal shall be sent to each member of the session process group (2.10.3 lines 880–883).

k. The terminal special characters defined in Sections 7.1.1.10 and 7.1.2.7 can be individually disabled by using the value specified by _POSIX_V_DISABLE (2.10.4, lines 946–949; 7.1.1.10; 7.1.2.7).

l. The implementation shall support the _POSIX_JOB_CONTROL option (2.10.3, lines 884–886).

m. The implementation shall provide support for both the CPIO and USTAR data interchange formats (10.; Appendix D).

n. Pathname components longer than {NAME_MAX} shall be considered invalid and generate an error (2.10.4, lines 940–942).

o. When the rename(), unlink() or rmdir() function is unsuccessful because the conditions for [EBUSY] occur, the implementation shall report the [EBUSY] errno (5.5.1.4, lines 481–482; 5.5.2.4, lines 523–524; 5.5.3.4, lines 593–594).

p. When the rename() function is unsuccessful because the conditions for [EXDEV] occur, the implementation shall report the [EXDEV] errno (5.5.3.4, lines 593–594).

q. When the fork() or exec type function is unsuccessful because the conditions for [ENOMEM] occur, the implementation shall report the [ENOMEM] errno (3.1.1.4, line 54; 3.1.2.4, lines 175–176).

r. When the getcwd() function is unsuccessful because the conditions for [EACCES] occur, the implementation shall report the [EACCES] errno (5.2.2.4, lines 148–149).

s. When the chown() or wait2() function is unsuccessful because the conditions for [EINVAL] occur, the implementation shall report the [EINVAL] errno (3.2.1.4, line 272; 5.6.5.4, line 857).

t. The tcsetattr() function shall only set the parameters supported by the underlying hardware associated with the terminal (7.2.1.2, line 502).

Note.—If tcsetattr() is called with a parameter within the termios structure set to a new value not supported by the

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terminal device file associated with fildes, tcsetattr() shall return successfully. A subsequent call to tcgetattr() will return the original value of the parameter within the termios structure.

u. If a write() is interrupted by a signal after it successfully writes some data, it shall return the number of bytes written (6.4.2.2, lines 195–196).

v. The write() function shall return −1 and set errno to [EINTR] when the write() operation was terminated due to the receipt of a signal and no data was transferred (6.4.2.4, lines 240–242).

Implementation. This standard may be used immediately on publication (after approval by the Secretary of Commerce). The other elements identified in the Appendix should be considered in planning for future procurements.

a. *Acquisition of a Conforming Portable Operating System Environment.* Operating systems which are to be acquired for Federal use after the publication date of this standard and which have applications portability as a requirement should use this FIPS. Conformance to this FIPS should be considered whether the operating system environments are:

1. developed internally,
2. acquired as part of an ADP system procurement,
3. acquired by separate procurement,
4. used under an ADP leasing arrangement, or
5. specified for use in contracts for programming services.

b. *Interpretation of the FIPS for Portable Operating System Interface for Computer Environments.* NBS provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: POSIX FIPS Interpretations, National Bureau of Standards, Gaithersburg, MD 20899.

C. *Validation of Conforming Operating Systems Environments.* NBS has developed cooperatively with industry a validation suite for measuring conformance to this standard. This suite will be required for testing conformance of POSIX implementations. Requirements for testing will be announced in the near future.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Institute of Electrical and Electronics Engineers, Incorporated.) When ordering, refer to Federal Information Processing Standards Publication ____ (FIPSPUB ____), and title. Payment may be made by check, money order, or deposit account.

Appendix A

POSIX, as currently defined, is the crucial first step in providing a vendor independent interface specification between an application program and an operating system. The current definition, however, must be extended in order to provide interface specifications for full operating system functionality. These additional interface specifications must include:

(1) *Shell and Tools:* These functions provide an interactive interface for users to control processing. Example: listing the files in a directory.

(2) *Advanced Utilities:* Thes utilities provide additional capabilities and specialized functions that make users and programmers more productive. Example: full-screen editing.

(3) *System Administration:* These functions are required to operate the system. Example: mount a file system.

(4) *Terminal Interface Extensions:* These functions are called by application programs. They enable programs to perform interactive terminal operations in a way that is independent of the type of terminal being used. Example: turn on attributes such as blinking characters or reverse video.

POSIX, when fully extended, will provide the functionality required to support source code portability for a wide range of applications across many different machines and operating systems. However, even the extended POSIX will not be sufficient to achieve portability for all applications.

There is increasing recognition of the need for an architectural approach to applications portability. This recognition has come about because earlier attempts to use a language-based approach to applications portability were not successful. Language portability is only one aspect of the problem of porting applications software from one operating system environment to another. Applications software portability depends on additional factors whihc include:

(1) Characteristics of the underlying hardware/software, (e.g. word length, input/output (I/O) architecture, processor, operating system),

(2) Portability of software utilities used by the application, (e.g. data base management, graphics, operating system functions, and communications),

(3) Data form, format and representation that may need to be transported with the software, and

(4) Language implementation (compiler/interpreter/processor) including specific limits or subsets of the language used in programming, (e.g. magnitude of numeric values, number of subscripts and number of labels).

Unless each of these factors is addressed as part of an overall architecture, the benefits of applications portability will not be fully realized.

A planned Applications Portability Profile (APP) has been developed to provide sufficient functionality to accommodate a broad range of application requirements. The functional components of the APP constitute a "tool box" of standard elements that can be used to develop and maintain portable applications. A key aspect of the APP is that it is an open systems architecture based upon non-proprietary standards. The current planned components of the APP are summarized in Figure 1 and described in the following paragraphs. Additional components may be added as technology changes and as Federal government requirements change.

Database Management

Database management is an important aspect of applications portability. A growing number of organizations use a Database Management System (DBMS) to allow application programs, written in a variety of languages, to work on the same basic data. In addition, a DBMS can facilitate language independence in the design, development, and maintenance of data resources.

FIPS 127, Database Language SQL, and the proposed FIPS for Information Resource Dictionary Systems (IRDS) are the initial components to meet the database management requirement.

Data Interchange

In addition to the mechanism for managing data, the data itself is an important aspect of applications portability. In many situations, the problems associated with porting the applications software from one system to another pales in comparison to the problem of porting the data. There are three categories of particular concern regarding data interchange:

- Business Graphics
- Product Data
- Document Processing

FIPS 120, Graphical Kernel System (GKS) and FIPS 128, Computer Graphics Metafile (CGM) are the initial components to meet the business graphics requirements. Initial Graphics Exchange Specification (IGES) is the initial component to meet the requirements to exchange product data. Standard Generalized Markup Language (SGML) and Office Document Architecture/Office Document Interchange Format (ODA/ODIF) are the initial components to meet the requirements for document processing.

Network Services

There are two basic network services that should be provided:

File Management is an integral part of most applications. File management functions have traditionally focused on accessing data within a local file system. That focus has now shifted to functions that permit shared access to files in a heterogeneous environment of computer hardware, software, and networks. A standard approach to managing this shared access to remote files is an important aspect of software portability. Failure to provide shared access to remote files will inevitably lead to local, incompatible approaches that inhibit application portability.

Network File System (NFS) is the initial component to meet file management facility requirements.

Data Communications facilities permit interoperability among applications in a heterogeneous environment of computer hardware, software, and networks. The requirement to manage shared access to remote files is just part of a larger requirement for applications software to perform its functions in a network environment. Here again, failure to provide this function will inevitably lead to local, incompatible approaches that inhibit applications portability.

Government Open Systems Interconnection Profile (GOSIP) is the initial component to satisfy the data communications requirements.

User Interface

The most neglected aspect of applications software portability is the requirement to maintain a consistent user interface across all systems on which the application resides. The fact that the application is likely to be distributed over a heterogeneous environment of computer hardware, software, and networks means that the user interface facility must provide the flexibility to allow the user to interact with programs within such an environment.

The X Window System is the initial component to meet user interface requirements.

Programming Languages

The most emphasized aspect of applications software portability is the requirement for programming language portability from one system to another. The major problem is that programming language portability is often equated with applications software portability. A key requirement for programming languages is that a sufficient variety be included to encompass the full range of application requirements.

The C language binding is the initial component for programming language interfaces. Additional bindings will be developed for FORTRAN, COBOL, Ada, and Pascal.

Figure 1—APPLICATIONS PORTABILITY PROFILE

Function	Element	Specification
Operating System	POSIX	IEEE P1003.1. IEEE P1003.2.
Data Base Management	SQL	FIPS 127.
	IRDS	X3.138 (proposed FIPS).
Data Interchange:		
—Business Graphics	GKS & CGM	FIPS 120, 128.
—Product Data	IGES	NBSIR 88-3359.
—Document Processing	SGML	ISO 8879-1986.
	ODA/ODIF	ISO/DIS 8613.
Network Services:		
—Data Communications	OSI	GOSIP.
—File Management	NFS	IEEE P1003.X.
User Interface	X Window System	X3H3.6.
Languages	C	X3J11 draft X3.159.
	COBOL	FIPS 021-2.
	FORTRAN	FIPS 069-1.
	Ada	FIPS 119.
	Pascal	FIPS 109.

SCHEDULE

While NBS will continue to work with both national and international standards organizations to produce the needed specifications, current federal requirements dictate immediate action. In order to meet this need NBS will adopt a series of specifications based on emerging national and international standards.

These specifications will include interface specifications for (1) Shell and Tools, (2) Advanced utilities, (3) System Administration, and (4) Terminal Interface Extensions, (5) X Window System, and (6) NFS. These specifications will be added to the profile according to the following schedule:

4th Quarter FY88—
Shell and Tools
Advanced Utilities
System Administration
Terminal Interface Extensions

1st Quarter FY89—
X Window System
NFS

The components of the APP represent varying stages of maturity. Some have not been introduced into the formal standards process (i.e. X Window System), others exist only as draft standards (e.g. POSIX), and others have been adopted as national and international standards (e.g. SQL). As these standards mature there will be a need to update the APP to reflect the changes that will occur. NBS will establish a process to ensure that the APP incorporates the evolving (maturing) consensus of the national and international standards activities for each of the functional components of the APP. In addition, specifications for bindings for languages and other APP components may be required. NBS will identify the need for these bindings and augment the APP as required.

Both users and vendors will be included in this process through an ongoing series of user workshops and implementor workshops which will provide forums for feedback and comments on the evolving APP. The user workshops will be designed to (1)

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provide users with information about the progress of defining the APP and (2) provide NBS with input and feedback on the evolving APP and what priorities should be given to the various functional components. The Implementors Workshops will provide a forum in which to discuss the evolving APP with the vendors and to get feedback on the technical merits of the proposals. These implementor workshops will be designed to ensure that there is a general consensus on the part of vendors to commit to building products to the evolving APP specifications.

[FR Doc. 88-9362 Filed 4-27-88; 8:45 am]

BILLING CODE 3510-CN-M

COMMODITY FUTURES TRADING COMMISSION

Amex Commodities Corp.; Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Amex Commodities Corporation ("ACC") for designation as a futures contract market in ten-year Treasury note futures. The Director of the Disision of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before June 1, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the ACC ten-year Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic analysis, or Elizabeth A. Patterson, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227 or (202) 254-8955.

SUPPLEMENTARY INFORMATION: On March 18, 1988, the Commission published in the **Federal Register** a notice of availability of the ACC's proposed terms and conditions for the ten-year Treasury note futures contract (53 FR 8945). As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

In connection with the extended comment period, the Commission wishes to draw particular attention to the ACC's proposal to implement an electronic system for executing trades in this contract during normal trading hours. Under this system, called the electronic Limit Order System ("ELOS"), the ACC board broker would enter bids and offers into the computer, which would store such information, display the highest bid, lowest offer, and aggregate those stored in the system, and furnish reports of executed orders. This system would provide ACC members on and off the floor with equal access to trading in the Treasury note contract.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone (202) 254-6314.

Other materials submitted by the ACC in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the ACC in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on April 22, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-9363 Filed 4-27-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Navy

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[8-00154 I-LM]

Special Nevada Report; Meetings

AGENCY: Department of the Air Force, Defense; Department of the Navy, Defense; and the Bureau of Land Management, Interior.

ACTION: Meetings in the State of Nevada to gain public comment on concerns the public will want addressed in the Special Nevada Report.

SUMMARY: Section 6 of Pub. L. 99-606 (Military Lands Withdrawal Act of 1986) directs the Secretary of the Air Force, the Secretary of the Navy, and the Secretary of the Interior to submit a joint report to Congress, termed the Special Nevada Report, by November 1991. The Department of the Air Force is the lead agency in the preparation of the report. This report is required to evaluate the effect of continued, renewed and proposed military and defense related land withdrawals and airspace uses on the environment and people of the State of Nevada. In addition, the Special Nevada Report will include an analysis and evaluation of possible measures to mitigate the cumulative effects of these withdrawals and airspace uses.

DATES: The meetings will be held at the following locations: .

Ely, Nevada on May 16, 1988 at the Convention Center, 150 6th Street

Winnemucca, Nevada on May 16, 1988 at the Convention Center, 50 Winnemucca Blvd.

Elko, Nevada on May 17, 1988 at the Elko Convention Center, 700 Moren Way

Tonopah, Nevada on May 17, 1988 at the Convention Center, 301 Brougher St.

Fallon , Nevada on May 17, 1988 at the Fallon Community and Convention Center, 100 Campus Way

Caliente, Nevada on May 18, 1988 at the Nevada Girls Training Center, Multi-Purpose Room

Reno, Nevada on May 19, 1988 at the Airport Plaza Hotel, 1981 Terminal Way

Las Vegas, Nevada on May 19, 1988 at the Clark County School District, Education Center, Board Room, 2832 E. Flamingo Road

Sign-in and speaker registration will begin at 6:30 p.m., with the meetings running from 7:00 to 10:00 p.m. at all locations. Written comments will be accepted through 20 June 1988.

ADDRESS: All written comments should be directed to the Director of Engineering and Environmental Planning, HQ TAC/DEE, Langley AFB, VA 23665-5001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Lord, Director of Engineering and Environmental Planning, HQ TAC/DEE, Langley AFB, VA 23665-5001 or (804) 764-4407.

Dated: April 18, 1988.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88-9473 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF ENERGY

Proposed Decision on Inclusion of a Private Property Near Naturita, CO for Remedial Action Under the Uranium Mill Tailings Radiation Control Act of 1978

AGENCY: Department of Energy.

ACTION: Program Information Notice: Notice of a proposed decision on inclusion of a private property near Naturita, Colorado for remedial action under section 101 of Pub. L. 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978," enacted on November 8, 1978.

SUMMARY: The "Uranium Mill Tailings Radiation Control Act of 1978" (UMTRCA or the Act) authorized the Department of Energy (DOE or the Department) to conduct, in cooperation with interested states, Indian Tribes, and persons who own or control certain inactive mill tailings sites, a program of assessment and remedial action to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards at these sites and at nearby vicinity properties.

The DOE has been requested by the Hecla Mining Company (Hecla) to include Hecla's "Durita" property as a designated property for the purposes of remedial action under the Act. The "Durita" property is located approximately nine miles west of Naturita off Colorado Highway 90S.

The DOE proposes not to include the "Durita" property as either a production site or vicinity property for the purposes of remedial action by the DOE under the Act. The purpose of this Notice is to solicit comments on this proposed decision.

DATE: Comments on this Notice of Proposed Decision will be accepted until 5:00 p.m., June 3, 1988. No hearing is scheduled to be held.

ADDRESSES: Comments should be submitted to: Loviece C. Brazley, Attention: Durita Property, U.S. Department of Energy, Mail Stop NE-22, Washington, DC 20545. The Docket is available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, at DOE's public reading room, 1000 Independence Avenue SW., Washington, DC and at the U.S. Attorney's Office, Denver, Colorado. A reasonable fee may be charged for copying.

Background: The "Uranium Mill Tailings Radiation Control Act of 1978," Pub. L. 95-604, 42 U.S.C. 7901, *et seq.*, establishes a program to provide for the stabilization, disposal, and control of uranium mill tailings in a safe and environmentally sound manner. Under Title I of the Act, the DOE is authorized to conduct remedial actions at certain inactive processing sites.

Section 101(6) of the Act defines two types of "processing sites." The first is a "production site" defined as: "(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, * * * unless—(i) Such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or (ii) a license (issued by the [Nuclear Regulatory] Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date." The second type is a "vicinity property" defined as: "(B) any other real property or improvement thereon which—(i) Is in the vicinity of such [production] site, and (ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site."

Section 101(7) of the Act defines the term "residual radioactive material" to mean: "(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials."

Furthermore, section 101(8) of the Act defines "tailings" to mean "the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted."

Before the passage of UMTRCA on November 8, 1978, Ranchers Exploration & Development Corporation (Ranchers), the predecessor-in-interest to the Hecla Mining Company, owned and controlled a quantity of uranium mill tailings at a site known as "Naturita," a reviously active mill site also near Naturita, Colorado. Ranchers possessed the tailings under license Colo. 317-01S, issued on November 12, 1976, by the State of Colorado. On June 9, 1977, a new state license, Colo. 317-02S, was issued superceding the previous license and permitting Ranchers to "transport and process" uranium mill tailings. Amendments 1 (October 26, 1977), 2 (December 12, 1977), and 3 (May 4, 1978) modify the license to authorize the excavation and transportation of uranium mill tailings from the old Naturita mill site to the new "Durita" processing site for the "production of natural uranium concentrate by leaching of uranium mill tailings."

It is the Department's view that the "Durita" site was operating as an active mill site under a valid state production license at the time UMTRCA was enacted, and that the site does not fit within the definition of a "processing site" under section 101(6)(A) of the Act as a site appropriate for remedial action because the uranium produced there was not produced for sale to any Federal agency prior to January 1, 1971. Furthermore, with respect to such "[a]ctive operations" at the time of the Act's passage, Congress in section 115(a) has prohibited expenditures with respect to any site licensed by a state at which production of any uranium product takes place. It was Congress' intent that remedial action at licensed active mill sites be taken by the license holder pursuant to the license requirements under the supervision of the regulating agency, and not be taken under UMTRCA at taxpayer expense.

In addition, because "Durita" was a licensed active mill site, it does not fit within the definition of a vicinity property under section 101(6)(B). Any remaining materials at the "Durita" mill site are "derived" from the active production operation itself rather than from the inactive Naturita mill site. Once the uranium mill tailings were excavated and transported from the Naturita mill site to "Durita" for processing, they lost their characteristic

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as "residual radioactive materials." As set out above, that terms means "waste in the form of tailings." Although the materials taken from the Naturita mill site to the "Durita" mill site were tailings, they were not "waste," since they were transported as a valuable industrial product for use in a profit making venture, i.e., the production of uranium for sale as yellow cake to private industry. Indeed, in 1978 and 1979, Ranchers had revenues of $8,841,737 and $12,491,067, respectively, from the leaching of uranium mill tailings. The inclusion of "Durita" as a vicinity property would thus seem contrary to Congress' intent that such vicinity properties not have been active mill sites themselves at the time of UMTRCA's passage.

Even assuming that the materials at the "Durita" mill site qualify as residual radioactive material derived from the Naturita site which Ranchers was processing under license Colo. 317–02S for sale to a Federal agency, the site would still not be appropriate for designation. Section 101(6)(A)(ii) precludes designation where a license issued by a state for the production of any uranium produce is in effect on January 1, 1978. However, in the stipulation following section 101(6)(B)(ii) and pursuant to the procedures established in section 108(b), an exemption is provided where a license is issued for the reprocessing of mill tailings at a designated site. In this case, the uranium production at the "Durita" mill site using mill tailings from the Naturita site was undertaken prior to the designation of Nuturita as a "processing site." Moreover, since neither Ranchers nor Hecla took any action to meet the requirements of section 108(b) after Naturita's designation, in the Department's view the exception would not apply.

Accordingly, the DOE is now proposing to make a final decision not to include the "Durita" property in the UMTRCA remedial action program as either a production site or vicinity property, and is requesting comments on its proposed decision. Comments are requested by June 3, 1988. It is expected that within 15 days thereafter, the Department will finalize its decision and publish a Federal Register notice to that effect.

FOR FURTHER INFORMATION CONTACT:

Mr. W. John Arthur III, Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue NE, Suite 1720, Albuquerque, New Mexico, 87108, telephone: (505) 844–3941, or Mr. Loviece C. Brazley, Division of Uranium Mill Tailings Projects, Office of Nuclear Energy, U.S. Department of Energy, Mail Stop NE–22, Washington, DC 20545, telephone: (301) 353–2585.

Issued in Washington, DC, April 21, 1988.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 88–9453 Filed 4–27–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 82–20–NG]

Application to Import Natural Gas from Canada and Mexico; Amalgamated Pipeline Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 8, 1988, of an application filed by Amalgamated Pipeline Company (Amalgamated) for blanket authorization to import up to 100 Bcf of natural gas from Canadian or Mexican suppliers for domestic spot sales over a two-year period.

Amalgamated, a Texas Corporation that is an indirect subsidiary of Rainbow Resources, Inc., with its principal offices in Houston, Texas, intends to function as an agent or broker for either U.S. purchasers or Canadian and Mexican producers. Amalgamated will import the gas over existing pipelines only and proposes to file quarterly reports detailing the purchaser, seller, price and volume for each blanket transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 31, 1988.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 31, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an

oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Amalgamated's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 14, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–8388 Filed 4–27–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–356–000, et al.]

Washington Water Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 25, 1988.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Company

[Docket No. ER88–356–000]

Take notice that on April 19, 1988, Washington Water Power Company (Seller) tendered for filing a Firm Capacity and Energy Agreement dated as of January 1, 1988 with Puget Sound Power & Light Company (Purchaser). Seller states that service under this Agreement commenced on January 1, 1988 and shall continue through December 31, 2002 with contractual provisions for its extension through December 31, 2004.

The Agreement provides for the Seller to make available to the Purchaser 100 Mw of capacity and associated energy to be scheduled by the Purchaser under provisions of the Agreement.

Seller requests an effective date of January 1, 1988 for the rate schedule, and therefore requests a waiver of the Commission's notice requirements stating that there will be no effect upon Purchaser's under other rate schedules.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket No. ER88–275–000]

Take notice that on April 14, 1988, Public Service Company of New Mexico (PNM) tendered for filing, in response to a directive from the Director, Division of Power Application Review, an amendment to its previous filing in this case to provide additional cost support data, bulk power market analyses, and narrative explanation of the inventorying treatment utilized by the New Mexico Public Service Commission. PNM continues to request an effective date of May 1, 1988.

Copies of the amendment to filing were served upon all persons receiving the original filing and on all entities which have petitioned to intervene in this docket.

Comment date: May 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER88–301–000]

Take notice that on April 18, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its March 30, 1988 filing. PG&E states that it has filed the following:

(1) Executed copies of the Rate Settlement Agreement Between PG&E and City of Santa Clara (CSC) and the Agreement Between PG&E and CSC for future rate treatment of the Diablo Canyon Nuclear Power Plant.

(2) Revised Exhibit A–1 to the Interconnection Agreement Between PG&E and CSC. Though these revisions do not change the level of any rate, PG&E interprets the Interconnection Agreement and the Commission's regulations as requiring that revisions to A–1 be filed.

The City of Santa Clara has filed a Certificate of Concurrence for this filing. Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket No. ER88–357–000]

Take notice that on April 19, 1988, Carolina Power & Light Company (Company) tendered for filing two Power Coordination Agreements between the Company and the North Carolina Eastern Municipal Power Agency (Power Agency) regarding the diesel generating projects at Edenton and Elizabeth City, North Carolina (Generating Projects), which supplement the Power Coordination Agreement dated July 30, 1981 (1981 PCA), between the Company and the Power Agency. The "Power Coordination Agreement—1988B Between North Carolina Eastern Municipal Power Agency and Carolina Power & Light Company for the Diesel New Resource Generating Project at Edenton, North Carolina" (1988B PCA) dated March 29, 1988 sets forth the terms and conditions related to the use as a New Resource of Power Agency's purchase of capacity and energy from the generating project being undertaken by Edenton. The "Power Coordination Agreement—1988C Between North Carolina Eastern Municipal Power Agency and Carolina Power & Light Company for the Diesel New Resource Generating Project at Elizabeth City, North Carolina" (1988C PCA) dated March 29, 1988 set forth the terms and conditions related to the use as a New Resource of Power Agency's purchase of capacity and energy from the generating project being undertakenm by Elizabeth City, North Carolina. Both agreements are as a result of applicable provisions of the 1981 PCA and the "Agreement Regarding New Resources and Interim Capacity" (NRIC Agreement) dated October 13, 1987. The 1981 PCA is on file with the Commission and has been assigned Rate Schedule FERC No. 121. The NRIC agreement is on file with the Commission and has been assigned Supplement No. 9 to Rate Schedule FERC No. 121.

The 1988B PCA and 1988C PCA set forth provisions whereby Power Agency shall cause its participants, Edenton and Elizabeth City, North Carolina, to install diesel-fueled generating plants for the purpose of supplying electric power and energy for purchase by Power Agency to serve its hourly resource demand. Purchase of such power and energy shall be under separate agreement between Power Agency and each

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producer. Power Agency will be responsible for all aspects of the Generating Projects including interconnecting to electric systems, providing for timely, accurate and reliable metering, operating and maintaining the projects and dispatching the output of the generation. The Generating Projects have been designed to include four units at Elizabeth City each with a maximum electrical rating of one thousand seven hundred and fifty (1,750) kilowatts, and two units at Edenton each with a maximum electrical rating of one thousand two hundred and fifty (1,250) kilowatts. No purchase by Power Agency from Company of Supplemental Capacity or Transmission Use or purchases and sales of energy will occur under either the 1988B PCA or the 1988C PCA. Rather, the amounts of such purchases and sales and the related charges will be determined under the 1981 PCA and other agreements between Power Agency and the Company in accordance with applicable terms as modified by the 1988B PCA and the 1988C PCA. The 1988B PCA and the 1988C PCA became effective upon execution and shall continue in effect until the earlier of the termination of (i) the 1981 PCA, (ii) the 1981 PCA Supplemental Capacity Arrangement or (iii) the temination of the respective sales agreement between Power Agency and Edenton and Power Agency and Elizabeth City. Power Agency has given the Company a notice of a planned commencement date for the diesel generating projects of July 1, 1988.

Comment date: May 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-9463 Filed 4-27-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP88-167-000]

Algonquin Gas Transmission Co., Intent To Prepare an Environmental Assessment on the Proposed Braintree Pipeline Project and Request For Comments on Environmental Issues

April 25, 1988.

Proposed Action

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket. On January 15, 1988, Algonquin Gas Transmission Company (Algonquin) filed an application, pursuant to section 7 of the Natural Gas Act, proposing to: (1) provide firm transportation service for the Town of Braintree, Massachusetts, Electric Light Department (Braintree); and (2) construct 6.4 miles of 16-inch-diameter pipeline and looping and one meter station in Norfolk and Bristol Countries, Massachusetts, and Providence County, Rhode Island. (See figure 1.) [1]

This proposal was filed as a result of the Commission's notice inviting applications to provide new gas service to the Northeastern United States. The Commission's order, issued March 17, 1988, in Docket No. CP87-451-004, identified this proposal as a "discrete project." [2]

The proposed facilities include two 16-inch-diameter pipeline loops (0.6 and 3.6 miles long), a new 2.2-mile-long, 16-inch-diameter piepline, a new meter station, and other miscellaneous modifications to existing meter stations. Figures 2, 3, and 4 provide site-specific locations of the areas affected. The 3.6-mile loop would be constructed in the tows of Randolph and Braintree, Massachusetts; the 0.6-mile loop would be constructed in Seekonk, Massachusetts and East Providence, Rhode Island; and the 2.2 miles of new pipeline and the proposed Potter Meter Station would be constructed in Braintree, Massachusetts.

The proposed 2.2-mile pipeline extension would begin where the 3.6-mile loop terminates. The Potter Meter Station would be construted at the north end of the new pipeline extention on a portion of the power plant owned by Braintree.

Algonquin would use all of the proposed 16-inch-diameter pipline, totaling 6.4 miles, to provide firm transportation service of up to 21,660 MMBtu per day of natural gas for Braintree. This service would be for a primary term of 20 years proposed to commerce on December 1, 1988. The gas would be received from Connecticut Natural Gas Corporation at Glastonbury, Mansfield, Cromwell, and Farmington, Connecticut, for transportation through Algonquin's transmission system and then be delivered to Braintree at the new Potter Meter Station. Braintree would see the natural gas as fuel in its electrical generating plant.

The proposed 0.6 and 3.6 miles of 16-inch-diamter pipeline looping would be aligned generally parallel and adjacent to Algonguin's existing 10-inch-diameter pipelines. Each loop would require a 40-foot-wide construction right-of-way with 20 feet to be maintained as permanent right-of-way. The 3.6 mile loop would begain east of of Pond Street and run northeast to its destination at Algonquin's existing East Braintree Meter Station. Algonquin estimates that 17 acres would be distributed by construction of the 3.6-mile loop, with 8.5 acres retained as permanent right-of-way.

The 0.6-mile loop would start at the end of another 0.8 mile, 16-inch-diameter loop currently proposed in Docket No. CP87-554-000, which was identified by the Commission in its March 17, 1988 order as part of a competitive Northeast Project involving Texas Eastern Tranmission Corporation, PennEast Gas Services Company, and Algonquin. This loop would originate south of Highland Avenue in Massachusetts and proceed southwest across the Runnins River stopping north of the Wampanoag Trail Highway in Rhode Island. About half of the 0.6-mile loop would be located in each state. Algonquin indicates that a total of 2.9 acres would be affected during the construction of the loop, with 1.5 acres permanently retained as right-of-wey.

The 2.2-mile pipeline extension of the 3.6-mile loop would begin at Algonguin's existing East Braintree Meter Station and terminate at the proposed Potter Meter Station. Algonquin states that 2.07 miles of this new line would be constructed utilizing available work space within existing roadways.

Algonquin proposes to construct the pipelines and meter station during May through October 1988. Backhoes would be used to dig a trench about 2.5-feet wide and deep enough to provide at least 2 feet of cover in consolidated rock and 3 feet in soil. Excavated material would be temporarily stored on one side of the right-of-way.

In areas where mechanical rippers and excavators are unable to fracture the rock substrate or are impractical to use, Algonquin indicates that blasting may be required. Algonquin's blasting contractor would be required to exhibit a valid certificate of compentency issued by the state fire marshall and evidence of a valid blasting bond. To minimize the impact, Algonquin would ensure that all blasting would occur during daylight hours with protective measures taken to avert the transmission of vibration and thrown rocks. The contractor would be required to exercise extreme care when blasting to avoid scattering loose rock over the right-of-way or cause damage to any property, on or off the right-of-way. No blasting would be allowed without the prior permission of Algonquin's inspector and notice to the public and owners of adjacent property.

After the trench is dug, individual joints of pipe would be placed along the right-of-way adjacent to the ditch. A mechanical pipe-bending machine would be used to bend pipe joints to conform to the natural ground contours or where the pipeline changes direction. The pipe joints would then be welded and lowered into the trench. The exception would be for street construction required for the 2.2-mile pipeline extension where the pipe sections would be welded in the ditch.

When the pipe welding and installation in the ditch is completed, the trench would be backfilled. Areas disturbed by construction would be: (1) Fine-graded; (2) trash, brush, or debris would be removed; and (3) the properties would be restored to preconstruction conditions compatible with Algonguin's right-of-way maintenance standards. The entire right-of-way would be protected by implementing an erosion control plan which includes contouring and reseeding with grasses. This plan will be evaluated in the EA.

Before being placed into service, the new pipelines would be hydrostatically tested to ensure their integrity in accordance with U.S. Department of Transportation, Minimum Federal Safety Standards, 49 CFR Part 192. Existing municipal water supplies or surface waters would be used to obtain the water for testing. After completion of the hydrostatic testing, the water would be discharged to surface waters using existing vegetation or hay bales as filtering devices.

Algonquin indicates that company inspectors would be assigned to each proposed facility to ensure that the contractors comply and implement all environmental mitigation measures. Algonquin's inspectors would have stop-work authority and would be present at all times during construction.

Environmental Issues

It is presently contemplated that the EA will address the following environmental concerns that have been identified by the staff:

Water Resources—Impact on streams.
Pipeline Safety—
  Safety considerations.
  Blasting.
Cultural Resources—Effect on historic and cultural resources.
Land Use—
  Effect from crossing near hazardous/solid waste sites.
  Impact on homes and future development.
Vegetation—Removal and disposal of trees.
  Impact on wetlands.
Soils—Restoration of the right-of-way.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis.

Comment Procedures

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, local government offices, and to interested members of the public.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental and other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal and state agencies, local government offices, and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before June 1, 1988, reference *Docket No. CP88-167-000,* and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the Project Manager identified below.

Detailed maps showing the location of the proposed facilities have been provided to those on the distribution list. Additional information is available from Mr. James Daniel, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-5364.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-9459 Filed 4-27-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP88-333-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

April 22, 1988.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88-333-000]

Take notice that on April 11, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-333-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing El Paso to provide a limited-term interruptible contract storage service utilizing its Washington Ranch Storage facility, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso proposes to render an interruptible contract storage service utilizing its Washington Ranch Storage facility under new Rate Schedule CSS. It is stated that this contract storage service would be available to any existing or future sales or transportation customer of El Paso for the storage of gas to which that customer holds title. It is stated that a customer may choose to utilize the service to store gas which it has purchased from El Paso's system supply, but it may also choose to have

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[1] Figures 1, 2, 3, and 4 have not been printed in the Federal Register, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

[2] A proposal that can be processed independently and, if authorized, will not adversely impact pending competitive projects.

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gas purchased from any third-party or its own supply stored as well.

El Paso states that it has previously been authorized to utilize the Washington Ranch facility for two purposes; namely, to enable it to maintain deliveries of commodity sales gas to meet the high priority (priority 1 and 2) requirements of its east-of-California (EOC) customers and to provide enhanced flexibility in the operation of its system. El Paso further states the proposed contract storage service would permit the Washington Ranch facility to be used by El Paso on terms which are not inconsistent with the previously authorized uses. El Paso indicates that it is not proposing to modify the facility, but rather to make efficient use of the existing capabilities thereof to enable El Paso to provide a new service option.

El Paso proposes that storage customers pay an injection charge, a storage charge, a withdrawal charge and the appropriate transportation charge for the delivery of gas. As to injections, each customer would have the option to pay a priority charge which would enable such customer to obtain certain higher priority rights to such injection capabilities. Injection capability would first be made available for the protection of Priority 1 and 2 service to El Paso's EOC customers and to maintain safe and efficient operation of El Paso's system. Second, remaining injection capability would be allocated pro rata based on contract quantities for those customers paying a priority injection charge. Third, any remaining injection capability would be allocated on a first come/first served basis for those customers electing nonpriority service. The withdrawal of contract storage quantities would be accomplished utilizing the remaining withdrawal capability of the Washington Ranch facility on a pro rata basis by reference to each customer's inventory level on that day. The proposed initial rates are as follows:

Priority Service:	
Priority Charge	$.85076
Priority Volumetric Injection Charge	.0442
Storage Charge	.0132
Withdrawal Charge	.0235
Non-Priority Service:	
Non-Priority Volumetric Injection Charge	.0656
Storage Charge	.0132
Withdrawal Charge	.0235

El Paso proposes that the limited-term would be keyed in each individual circumstance to the term specified in each customers service agreement for contract storage service.

El Paso states that the addition of interruptible contract storage would provide significant additional flexibility to El Paso's customers in their gas purchase planning. Further, it is stated that the addition of contract storage service would permit El Paso to maximize the utilization of the Washington Ranch facility. Finally, El Paso states that approval would provide El Paso with a means to assist in the overall unbundling and restructuring of pipeline service comprehended by recent Commission rule changes.

Comment date: May 13, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Divison of Enron Corporation

[Docket No. CP88-334-000]

Take notice that on April 11, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-334-000 a request, pursuant to § 284.223 of the Commission's Regulations for authorization to provide a transportation service on behalf of NATGAS U.S. INC. (NATGAS), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 410,000 MMBtu per day of natural gas for NATGAS from two receipt points in North Dakota and Iowa to seven delivery points in Kansas, North Dakota, Wisconsin, Iowa and Texas. The peak day amount is estimated to be 410,000 MMBtu, average daily amount is estimated to be 50,000, and annual amount is estimated to be 149,650,000.

Northern indicates that service respective to the provisions stipulated under § 284.223(a) is reported in Docket No. ST88-2604.

Comment date: June 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation and CSX NGL Corporation

[Docket No. CP84-31-003]

Take notice that on April 12, 1988,[1] Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, and CSX NGL Corporation (CSX), P.O. Box 4326, Houston, Texas 77201, collectively referred to as Applicants filed in Docket No. CP84-31-003 an application requesting that the order issued in the referenced docket, as amended, be further amended to authorize the exchange of natural gas for an additional two years, and to authorize the use of natural gas obtained from the spot market in the exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that by order issued April 23, 1984, in Docket No. CP84-31-000, they are authorized to implement an agreement whereby Texas Gas delivers natural gas to CSX for processing at CSX's Eunice Gas Processing Plant in Acadia, Parish, Louisiana. At the Eunice Plant, CSX processes the gas and extracts liquefiable hydrocarbons, it is explained. Applicants further explain that up to 20,000 Mcf of natural gas per day attributable to the liquefiable hydrocarbons and plant fuel gas is sold on an interruptible basis to CSX. The gas streamed process by CSX, less up to 20,000 Mcf per day purchased by CSX, is returned to Texas Gas at the plant tailgate, it is explained. The Applicants state that the agreement provides for CSX to purchase the gas equivalent of the liquefiables removed from the gas stream at Texas Gas' system average cost, or with the consent of Texas Gas, CSX may replace the volumes removed with other gas owned by CSX.

The order was amended on May 22, 1987, whereby the Commission granted a one yar authorization to the gas exchange option, it is explained. Applicants further explain that the option was implemented and natural gas is presently exchanged on a therm-for-therm basis.

Applicants requests that the order be further amended to authorize the exchange option for a two year term. Applicants state that it is uneconomic for CSX to purchase gas from Texas Gas on a non-exchange basis. Applicants also request that the order be amended to permit the use of natural gas obtained from the spot market in the gas exchange. The May 22, 1987, order limited implementation of the gas exchange option to certain specified sources of natural gas, it is explained. Applicants state that since issuance of that order, circumstances have changed that warrant this flexibility.

Comment date: May 13, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The application was tendered for filing March 23, 1988, as amended April 7, 1988, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until April 12, 1988. Section 381.108 of the Commission's Rules provide that the filing date is the date on which the fee is paid.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designeee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-0377 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-70-009]

East Tennessee Natural Gas Co.; Rate Filing; Interim Purchased Gas Adjustment

April 25, 1988.

Take notice that on April 20, 1988, East Tennessee Natural Gas Company (East Tennessee) tendered for filing ten copies of Thirty-Seventh Revised Sheet No. 4, Fifth Revised Sheet No. 31, Third Revised Sheet Nos. 261 and 262 and Second Revised Sheet No. 278, to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1988, reflecting revised base tariff rates pursuant to the Commission Order of April 6, 1988 approving a Stipulation and Agreement resolving RP87-70 and revisions to the indices of purchasers and annual quantity entitlements.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-0465 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-105-000]

Lawrenceburg Gas Transmission Corp.; Petition for Waiver of Certain Purchased Gas Adjustment Filing Requirements

April 25, 1988.

Take notice that on April 18, 1988, Lawrenceburg Gas Transmission Corporation (Lawrenceburg) filed a petition for waiver of certain purchased gas adjustment filing requirements. Lawrenceburg states that this request for waiver is limited to the interim period until a final order is issued in its soon to be filed joint application with Texas Gas Transmission Corporation (Texas Gas).

In its petition Lawrenceburg requests waiver of the requirements (1) that it file revised gas tariff sheets by May 1, 1988 and effective June 1, 1988, to modify its PGA to conform to the requirements of Section 154.301 and 154.310 of the Commission's Regulations, (2) that it file annual and quarterly PGA filings in lieu of its current February 1 and August 1 semi-annual PGA filings, (3) that it adopt a twelve-month amortization period for deferred purchased gas costs, (4) that annual and quarterly PGA filings be submitted on 9-track magnetic tape, (5) that prior Commission approval be obtained before Lawrenceburg could recover through a surcharge, its actual purchased gas costs that exceeded its computed projected gas costs by more than 3 percent, and (6) that it file a new current adjustment and surcharge rate by May 1, 1988 to be effective June 1, 1988. Lawrenceburg also requests that it be allowed to continue using its present PGA methodology until the Commission issues a final order on its soon to be filed application to abandon jurisdictional operations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interven. Copies of this filing are on file

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with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9466 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-14-001]

Lawrenceburg Gas Transmission Corp., Filing Substitute Tariff Sheet

April 25, 1988.

Take notice that on April 18, 1988, Lawrenceburg Gas Transmission Corporation ("Lawrenceburg") tendered for filing one (1) substitute gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective February 1, 1988, and identified as follows:

Substitute Forty-third Revised Sheet No. 4

Lawrenceburg states that the revised tariff sheet was filed to reflect a downward rate revision from Texas Gas Transmission Corporation, pursuant to Commission Order issued February 3, 1988 in Docket NO. TA88-1-14-000, *et al.*

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9467 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-77-001]

Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

April 25, 1988.

Take notice that on April 19, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute First Revised Sheet No. 27 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective June 1, 1988.

Natural states that the sheet was revised to provide that fuel charges under Rate Schedule FTS shall be based on actual receipt and delivery points rather than primary receipt and delivery points. The revision was made in compliance with FERC order issued April 8, 1988, at Docket No. RP88-77-000.

Natural respectfully requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on June 1, 1988, the effective date designated in the order issued April 8, 1988, at Docket No. RP88-77-000.

A copy of the filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies, and all parties set forth on the official service list at Docket No. RP88-77-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before May 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9468 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-004]

Northern Natural Gas Co., Division of Enron Corp.; Sale of Natural Gas

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

A. (1) Name of Buyer: Enron Gas Marketing, Inc. (EGM)
(2) Location of Buyer: Houston, Texas
(3) Affiliation between Northern and Buyer: EGM is a subsidiary of Enron Corp.; Northern is a Division of Enron Corp.
(4) Term of Sale: Through April 1988 and month to month thereafter.
(5) Estimated Total and Maximum Daily Quantities:
Daily Quantity 300,000 MMBtu
Estimated Total—1 Bcf per month
(6) Rate: $1.3400 to $1.8300/MMBtu dependent upon delivery point (See Appendix)

Appendix

Effective Dates

From: April 11, 1988
To: April 30, 1988

Delivery point	Pressure	Rate-MMBtu (dry)
1. NNG-NI Gas Interconnect, @ E. Dubuque, IA.	Existing operating conditions.	$1.6350
2. NNG/NGPL Interconnect, @ Glenwood, IA.	....do	1.4550
3. NNG/ANR Interconnect, @ Greensburg, KS.	....do	1.8300
4. NNG/ANR Interconnect, @ Janesville, WI.	....do	1.8300
5. NNG/PEPL Interconnect, @ Mullinville, KS.	....do	1.3400
6. NNG/TX Interconnect, @ Ward County, TX.	....do	1.3902
7 NNG/EL PASO Interconnect, @ Keystone, TX.	....do	1.3902
8. NNG/MOPS Interconnect, @ Tivoli, TX.	....do	1.8300

Docket No. CP88-2-005

B. (1) Name of Buyer: Florida Gas Transmission Company (FGT)
(2) Location of Buyer: Houston, Texas
(3) Affiliation between Northern and Buyer: FGT is a division of Citrus Corp., an Enron Corporation Joint Venture; Northern is a division of Enron Corporation
(4) Term of Sale: Through April 1988 and month to month thereafter.
(5) Estimated Total and Maximum Daily Quantities:
Daily Quantity 100,000 MMBtu
Estimated Total—1 Bcf per month
(6) Rate: $1.42 per MMBtu

Docket No. CP88-2-006

C. (1) Name of Buyer: Transwestern Pipeline Company (Transwestern)
(2) Location of Buyer: Houston, Texas
(3) Affiliation between Northern and Buyer: Transwestern is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation;
(4) Term of Sale: Through April 1988 and month to month thereafter.
(5) Estimated Total and Maximum Daily Quantities:
Daily Quantity: 150,000 MMBtu
Estimated Total: 1 Bcf per month
(6) Rate: $1.42 per MMBtu.

Docket No. CP88-2-007

D. (1) Name of Buyer: Enron Industrial Gas Company (Enron Industrial)
(2) Location of Buyer: Houston, Texas
(3) Affiliation between Northern and Buyer: Enron Industrial is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.
(4) Term of Sale: Through April 1988 and month to month thereafter.
(5) Estimated Total and Maximum Daily Quantities:
Daily Quantity: 200,000 MMBtu
Estimated Total: 1 Bcf per month
(6) Rate: $1.35 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9464 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-41-001]

Southwest Gas Corp.; Compliance Filing

April 25, 1988.

Take notice that on April 19, 1988, Southwest Gas Corporation (Southwest) tendered for filing Substitute Thirty-eight Revised Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1, pursuant to the Commission's Letter Order of March 17, 1988. Southwest states that this tariff sheet tracks the amended rates approved for Northwest Pipeline Corporation effective April 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1977)). All such motions or protests should be filed on or before May 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9468 Filed 4-27-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3370-9]

Performance Evaluation Reports for Fiscal Year 1987 Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Control, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, 726 Minnesota Avenue, Kansas City, Kansas 66101, in the Air and Toxics Division.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236-2893 (FTS 757-2893).

Date: April 15, 1988.

William Rice,

Acting Regional Administrator.

[FR Doc. 88-9408 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-495; FRL-3371-3]

E.I. Du Pont de Nemours and Co., Inc.; Amended Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition (PP 5F3254) and an amended food/feed additive petition (FAP 5H5469) by the E.I. Du Pont de Nemours & Co., Inc., for the insecticide *trans*-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidone-3-carboxamide in or on various commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 245 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

George LaRocca, Product Manager (PM) 15, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of August 6, 1985 (50 FR 31773) that announced that E.I. Du Pont de Nemours & Co., Inc., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, had filed pesticide petition (PP) 5F3254 and food/feed additive petition (FAP) 5H5469 to establish tolerances for residues of the insecticide

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trans-5-(4-chlorophenyl-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide in or on various commodities. DuPont has amended its petitions to read as follows:

1. *PP 5F3254.* It is proposed that tolerances for the combined residues of the miticide, hexythiazox, (DPX–Y5893), *trans*-5-(4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (calculated as miticide) be established as follows:

Commodity	Parts per million
Apples	0.5
Milk	(1)
Meat of cattle, goats, hogs, horses, sheep	0.01
Meat byproducts (except for kidney and liver of cattle)	0.01
Fat of cattle, goats, hogs, horses, sheep	0.01
Kidney of cattle, goats, hogs, horses, sheep	0.01
Liver of cattle, goats, hogs, horses, sheep	0.05
Eggs	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry byproducts	0.01

[1] 0.1 ppm in milk fat of which no more than 0.01 ppm is in whole milk.

2. *FAP 5H5469.* It is proposed that tolerances for the combined residues of the miticide, hexythiazox, (DPX–Y5893), *trans*-5-(4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moitey (calculated as the miticide) be established as follows: Apple pomace 5.0 ppm.

Authority: 21 U.S.C. 346a.

Dated: April 15, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–9407 Filed 4–27–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–83002I; FRL–3371–2]

Receipt of Request for Waiver of Testing of Rohm and Haas Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver of testing requirements.

SUMMARY: EPA requires testing of specified chemical substances to see if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs) and reporting of the results. However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA has received such a request for a waiver of these requirements from Rohm & Haas Co. and this document gives notice of its receipt.

DATE: Comments should be received by May 13, 1988.

ADDRESS: Submit comments in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32 (a)(1)(i) and (ii), a person may be granted an exclusion from the testing requirements of Part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are such that HDDs/HDFs would not be produced.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32 (a)(2)(i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to prohibit its production and the chemical substance will be produced in such a manner that there will be no unreasonable risk during its manufacture import, processing, distribution, use, or disposal. Under 40 CFR 766.32 (a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Rohm & Haas' request states that it may produce chemicals which are subject to the rule at levels of 100 kilograms per year or less, and that these chemicals would only be used for research and development purposes. The request asks that the waiver apply to all compounds subject to the rule which it manufactures.

Dated: April 21, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–9408 Filed 4–27–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59843; FRL–3371–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published, in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of thirty such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88–97, February 9, 1988.
Y 88–98, February 1, 1988.
Y 88–99 and 88–100, February 10, 1988.
Y 88–101, February 14, 1988.
Y 88–102, February 16, 1988.
Y 88–103, February 17, 1988.
Y 88–143, March 30, 1988.
Y 88–144 and 88–145, April 4, 1988.
Y 88–146, April 5, 1988.
Y 88–147, 88–148, 88–149, and 88–150, April 7, 1988.
Y 88–151 and 88–152, April 17, 1988.
Y 88–153 and 88–154, April 18, 1988.
Y 88–155, 88–156, and 88–157, April 20, 1988.
Y 88–158, April 18, 1988.
Y 88–159, 88–160, and 88–161, April 25, 1988.
Y 88–162, 88–163, 88–164, and 88–165, April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202 382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88–97

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Coating resin. Prod. range: 15,128 kg/yr.

Y 88–98

Manufacturer. Confidential.
Chemical. (G) Acid-terminated long oil alkyd resin.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Y 88–99

Manufacturer. Confidential.
Chemical. (G) Norbornene copolymer.
Use/Production. (G) Binder/insulator for glass fibers. Prod. range: Confidential.

Y 88–100

Importer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Import. (A) Open, nondispersive. Import range: Confidential.

Y 88–101

Manufacturer. Confidential.
Chemical. (G) 2-oxepanone, polymer with, glycols and 1,1'-methylene bis(isocyanato-benzene).
Use/Production. Confidential. Prod. range: Confidential.

Y 88–102

Manufacturer. Confidential.
Chemical. (G) Rosin-modified phenolic resin.
1,1'-methylene bis(isocyanato-benzene)
Use/Production. (S) Printing ink component. Prod. range: Confidential.

Y 88–103

Manufacturer. Confidential.
Chemical. (G) Waterborne urethane-acrylic copolymer.
1,1'-methylene bis(isocyanato-benzene)
Use/Production. (S) Coating. Prod. range: Confidential. Confidential.
Toxicity Data. Acute oral toxicity: LD50 3,400 mg/kg.
Acute dermal toxicity: LD50 13g/kg species (rat).

Y 88–143

Manufacturer. Confidential.
Chemical. (G) Carboxylated polyamide.
1,1'-methylene bis(isocyanato-benzene)
Use/Production. (G) Coatings and inks. Prod. range: Confidential.

Y 88–144

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Substituted alkylpolysiloxane. 1,1'-methylene bis(isocyanato-benzene).
Use/Import. (G) Open, nondispersive. Import range: 50,000 kg/yr.

Y 88–145

Manufacturer. Reichhold Chemicals Inc.
Chemical. (G) Unsaturated polyester resin. 1,1'-methylene bis(isocyanato-benzene).
Use/Production. (S) Automotive body patch. Prod. range: Confidential.

Y 88–146

Importer. Confidential.
Chemical. (G) Cross-linked polymeric acrylic micro particles.
Use/Import. (S) Coatings. Import range: Confidential. Confidential.

Y 88–147

Importer. Huls America.
Chemical. (G) Polyester resin of alkyl and aryl dicarboxylic acids and alkyl diols.
Use/Import. (S) Adhesive prepolymer. Import range: Confidential.

Y 88–148

Importer. Huls America.
Chemical. (G) Polyester resin of alkyl and aryl dicarboxylic acids and alkyl diols.
Use/Import. (S) Adhesive component. Import range: Confidential.

Y 88–149

Importer. Huls America.
Chemical. (G) Polyester resin of alkyl and aryl dicarboxylic acids and alkyl diols.
Use/Import. (S) Adhesive manufacture prepolymer. Import range: Confidential.

Y 88–150

Importer. Huls America.
Chemical. (G) Polyester resin of alkyl and aryl dicarboxylic acids and alkyl diols.
Use/Import. (S) Adhesive component. Import range: Confidential.

Y 88–151

Manufacturer. Confidential.
Chemical. (G) Polyolefin copolymer. Acids and alkyl diols.
Use/Production. (G) Contained use. Prod. range: Confidential.

Y 88–152

Manufacturer. Confidential.
Chemical. (G) Substituted maleic anhydoride, styrene, acrylate copolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.

Y 88–153

Manufacturer. C.J. Osborn, Div. of Suvar Corporation.
Chemical. (G) Soya modified alkyd. acrylate copolymer.
Use/Production. (S) Pigment & clear finding. Prod. range: Confidential.

Y 88–154

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Terephthalic acid, mixed alkyl acids, alkane polyol polymer.
Use/Production. (S) Adhesive resin. Prod. range: 45,454–227, 272 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Skin irritation: negligible species (rabbit).

Y 88–155

Manufacturer. Confidential.
Chemical. (G) Long oil alkyd. polyol polymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 88–156

Manufacturer. Confidential.
Chemical. (G) PMS copolymer. polyol polymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 88–157

Manufacturer. Confidential.
Chemical. (G) Long oil alkyd. polyol polymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 88–158

Manufacturer. C.J. Osborn.
Chemical. (G) Short oil alkyd. polyol polymer.
Use/Production. (S) Pigmented and clear finishings. Prod. range: Confidential.

Y 88–159

Manufacturer. Confidential.
Chemical. (G) Modified alkyd. polyol polymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

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Y 88-160

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd. polyol polymer.
Use/Production. (G) Resin for coatings. Prod. Range: Confidential.

Y 88-161

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicycle polyester urea trethane. polyol polymer.
Use/Production. (G) Industrial coating component. Prod. range: 10,000-30,000 kg/yr.

Y 88-162

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous solutions of acrylic polymer salts. polyol polymer.
Use/Production. (G) Water-borne polymer for adhesives. Prod. range: Confidential.

Y 88-163

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyol. polyol polymer.
Use/Production. (S) Component. Prod. range: 22,900-45,800 kg/yr.

Y 88-164

Manufacturer. Confidential.
Chemical. (G) Water soluble polyester resin. polyol polymer.
Use/Production. (S) Component for sizing for hybrid fibers. Prod range: 68,100-136,200 kg/yr.

Y 88-165

Manufacturer. Confidential.
Chemical. (G) Chain-stopped alkyd resin. polyol polymer.
Use/Production. (S) Industrial air-dry enamel coating. Prod. range: 178,800-255,400 kg/yr.

Date: April 22, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-9410 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59259; FRL-3371-8]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

Written comments by: T 88-10, May 12, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59259)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3755.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 88-10

Close of Review Period. May 26, 1988.
Manufacturer. Confidential.
Chemical. (G) Modified polyarylamide.
Use/Production. (S) Cement additive. Import range: Confidential.

Date: April 22, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-9409 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3371-1]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Jones Ford—Mercury, Inc., Wickenburg, Arizona; EPA Docket No. IX-FY88-21; filed on April 26, 1988, with Barbara Dimanlig, Acting Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty up to $125,000 for discharging to Waters of the United States without an NPDES permit.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to May 27, 1988.

Dated: April 20, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-9411 Filed 4-27-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

April 20, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0012
Title: Application for Additional Time to Construct a Radio Station (Under Parts 21, 23, and 25)
Form No.: FCC 701

A revised application form FCC 701 has been approved for use through 3/31/91. This revised version will be used by common carrier applicants only. The April 1985 edition with a previous expiration date of 3/31/88 will remain in use for both broadcast and common carrier applicants until the revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation for common carrier applicants. A separate Public Notice will be issued containing information for broadcast applicants.

OMB No.: 3060-0049
Title: Restricted Radiotelephone Operator Permit Application and Temporary Restricted Radiotelephone Operator Permit.
Form No.: FCC 753

The approval on form FCC 753 has been extended through 3/31/91. The June 1985 edition with an expiration date of 5/31/88 will remain in use until updated forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9348 Filed 4-27-88; 8:45 am]

BILLING CODE 6712-01-M

Common Carrier Bureau Opens Filing Period for Multichannel MDS Applications

This is a summary of a Common Carrier Bureau Public Notice, DA 88-562, released April 20, 1988. The full text of this public notice is available for inspection and copy in the FCC Domestic Facilities Division Public Reference Room, Room 6220, 2015 M St. NW., Washington, DC. This Reference Room is open to the public Monday-Thursday between 8:30-12:30 and 1:30-3:00. The complete text of this public notice may also be purchased from the Commission's contractor, ITS, Inc. Suite 140, 2100 M Street NW., Washington, DC 20037, (202) 857-3800. For further information concerning this Public Notice, contact Theodore Waddell of FCC staff at (202) 634-1706.

In accordance with 47 CFR 21.901(d)(4), NOTICE is hereby given that commencing April 20, 1988 applications for the Multichannel Multipoint Distribution Service (MMDS) may be submitted for filing for any location which is father than 50 miles from any proposed location of MMDS applications pending on April 19, 1988 or MMDS licensed facility locations. These locations must be farther than 15 miles from the boundary of a statistical area for which there are MMDS applications pending on April 19, 1988. Applications filed must comply with the location restrictions contained in this *Notice*. We do not anticipate granting any waivers of this location requirement. Applications that fail to comply with this requirement will be dismissed as unacceptable for filing. Applications submitted for filing must comply with the filing requirements of 47 CFR Parts 1 and 21, and two Public Notices released January 15, 1988: "Clarification of Part 21 Application Forms" (DA 87-1698, Report No. 1286) and "Clarification of Part 21 Filing Fee Requirements" (DA 87-1695, Report No. 1285). *See Part 21 Revision Order*, 2 FCC Rcd 5713 (1987); *MDS Status Election Order*, 2 FCC Rcd 4251 (1987).

Prospective MMDS applicants are advised that this public notice specifically addressed the following issues:

1. *Filing Date.* MMDS applications will be accepted for filing on April 20, 1988, and thereafter. This filing period will remain open until further notice by the Commission.

2. *Service Areas.* Applicants must specify the proposed *primary service area* in Item number 5(j) of FCC Form 435. Failure to so designate in accordance with the procedures described in the complete text of the public notice may result in the dismissal of the application as unacceptable for filing. Each application will be entitled to comparative consideration or to be included in a lottery in only one such service area. *See* § 21.901(d)(5). Each applicant will be allowed to file *only* a single application for either E-group or F-group channels in each area. *See* § 21.901(d)(2).

(A) *Statistical Areas. See* 94 FCC 2d 1203, 1283 n.43 (1983). Applicants should consult the list of classifications of the nation's statistical areas compiled by the Office of Management and Budget (OMB), "Metropolitan Statistical Areas", as revised on June 30, 1983. In particular, those applicants proposing to locate transmitters in or within 15 miles of the border of a Metropolitan Statistical Area (MSA), Consolidated Metropolitan Statistical Area (CMSA), or New England County Metropolitan Area (NECMA) should list in Item number 5(j) the *first* named city of the statistical area title as provided in OMB's list. The OMB list of MSAs, CMSAs, and NECMAs is available for review in the Domestic Facilities Division Public Reference Room, or may be purchased from National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, (703) 487-4650. Order #PB 832 18891.

(B) *Non-Statistical Areas.* In addition to those service areas provided in OMB's list of MSAs, CMSAs, and NECMAs, applications may be filed for a service area not identified by OMB as either an MSA, CMSA, or NECMA. Issues of mutual exclusivity for applications not proposing to serve either an MSA, CMSA, or NECMA will be resolved using 47 CFR Part 21 rules other than §21.901(d)(5.

3. *Cut-off Date. See* CFR 21.31.

4. *Permissible Service Operations. See MDS Status Election Order*, 2 FCC Rcd 4251 (1987); *see also* 47 CFR 21.900.

5. *Acceptable for filing. See* 47 CFR 21.13 and 21.20; *see also* 47 CFR 21.31 and 21.33 of the Rules. Applicants are advised that "lead" applications will not be accepted. A separate FCC Form 435 must be filed for each service area along with the required exhibits. Cross reference to "lead" applications will not be considered sufficient, and may result in the dismissal of the associated application as unacceptable for filing.

6. *Interference Studies.* At the time of filing, applicants must submit the required information studies. *See* 47 CFR 21.901(d)(1), 21.902, including 21.902(i).

7. *Site Availability. See* 47 CFR 21.15(a). MMDS applicants should note that, at the time of filing, it shall be sufficient if the application adequately

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demonstrates reasonable assurance of the availability of the site. Subsequently, applicants chosen as tentative selectees in our random selection process must submit concrete evidence of site availability after their lottery selection. At that time, the submission of a lease or lease option agreement will satisfy that requirement. MMDS applicants not subject to our random selection process must submit a lease or lease option agreement as concrete evidence of site availability upon request. *See also* 47 CFR 21.40(b).

8. *Financial Certification.* All applications must include a financial certification. *See* 47 CFR 21.15(a); *see also* 47 CFR 21.40(b).

9. *Preferences.* Applicants who may be eligible to claim lottery preferences are required to submit FCC Form 346 for all applications for which a preference is being claimed. *See* 47 CFR 1.1621, 1.622, 1.1623, 1.624 and 21.900; *see also* 93 FCC 2d 952 (1983); 50 FR 5983 (Feb. 13, 1985). An applicant filing multiple MMDS applications may submit a single FCC Form 346 (an original and a duplicate)(if it is claiming the same preference for all its applications. If an applicant is claiming different preferences for its applications, it should submit a separate FCC Form 346 (original and duplicate) for each set of applications for which it is claiming the same preference.

10 *Amendments. See* 47 CFR 21.23 and 21.29. Applicants are requested not to submit any amendments before their applications have appeared on Public Notice as accepted for filing, unless asked to do so by the Commission's staff. Amendments should include the official FCC file numbers assigned to those applications. File numbers may be obtained from the Public Notices listing applications as accepted for filing.

11. *Filing Fees. See* 47 CFR 1.1105.

12. *Inspection and Copying.* A list of MMDS applications pending on April 19, 1988 is available for inspection in the Domestic Facilities Division Public Reference Room. Applications will not be available for inspection and copying before they appear on Public Notice as accepted for filing. Inspection inquiries may be directed to James Yancey of FCC staff at (202) 634–1858. For public record duplication, copies of applications must be requested from the applicants or from the Commission's contractor, ITS, Inc.

Federal Communications Commission

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–9395 Filed 4–27–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1725]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

April 22, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public notice and published pursuant to 47 CFR 1.429(e). The full text of these document are available for viewing and copying in Room 230, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions and applications must be filed on or before May 16, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Beverly Hills, Chiefland, and Micanopy, Florida)
Number of petitions received: 1

Subject: Amendment to § 64.702 of the Commission's Rules and Regulations (Third computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Service and Facilities Authorizations Thereof. Communications Protocols under § 64.702 of the Commission's Rules and Regulations. (CC Docket No. 85–229, Phase II)
Number of petitions received: 2

SUBJECT: Amendment of § 73.606(b), Table of Allotments, Television Broadcast Stations. (Montrose and Scranton, Pennsylvania) (MM Docket No. 87–309, RM–5807)
Number of petitions received: 1

Application for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Vero Beach, Florida) (MM Docket No. 86–284, RM–5273)
Number of applications received: 1

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–9396 Filed 4–27–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200110
Title: Port of Seattle Month-to-Month Terminal Lease
Parties: Port of Seattle, Jore Corporation
Synopsis: The proposed agreement provides for the lease of Terminal 115 facilities at the Port of Seattle by Jore Corporation on a Month-to-Month basis beginning April 1, 1988.

By Order of the Federal Maritime Commission.

Dated: April 22, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–9250 Filed 4–27–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000088–042
Title: North Europe-United States Pacific Freight Conference
Parties:
Hapag-Lloyd AG
Johnson Scanstar
Compagnie Generale Maritime

Incotrans BV
Sea-Land Service, Inc.

Synopsis: The proposed amendment would restate the agreement and would modify it to conform with the requirements of the Commission's Order concerning Conference Service Contracts.

Agreement No.: 203–011153–002
Title: Hanjin Container Lines, Ltd. Korea Shipping Corporation Facilitation Agreement
Parties:
Hanjan Container Lines, Ltd.
Korea Shipping Corporation
Synopsis: The proposed amendment would clarify that the parties' space chartering authority includes full vessel charters on a bareboat, time or voyage basis.

By Order of the Federal Maritime Commission.

Dated: April 25, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–9300 Filed 4–27–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010689–031.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–010714–007.
Title: Trans-Atlantic American Flag Liner Operators.
Parties:
Farrell Lines Incorporated
Sea-Land Service, Inc.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions. The parties have requested a shortened review period.

Agreement No.: 212–011186–001.
Title: SANTA/EMPREMAR Service Agreement.
Parties:
Empresa Naviera Santa, S.A.
Empresa Maritima del Estado

Synopsis: The proposed amendment would permit the parties to discuss and agree upon rates and other conditions of service. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 25, 1988.

[FR Doc. 88–9430 Filed 4–27–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bayerische Vereinsbank Ag et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bayerische Vereinsbank AG,* Federal Republic of Germany, and Vereins-UND WestBank Ag, Federal Republic of Germany; to engage *de novo* through their subsidiary, Vereinwest Capital Markets, Inc., Miami, Florida, in providing securities brokerage services, related securities credit activities pursuant to Regulation T, and incidental activities such as custodial services, individual retirement accounts, and cash management services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *St. James Bancorporation, Inc.,* Lutcher, Louisiana; to engage *de novo* through its subsidiary, SJB Mortgage Corporation, Lutcher, Louisiana, in making, acquiring, servicing, and warehousing loans or other extensions of credit of Company and for the account of others pursuant to section 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bellevue Capital Company,* Bellevue, Nebraska; to expand the nature of its mortgage banking activities which were previously approved under § 225.25(b)(1) of the Board's Regulation

Y by including in the activities the origination of mortgage loans. Comments on this application must be received by May 16, 1988.

2. *First National of Nebraska, Inc.*, Omaha, Nebraska; to engage *de novo* through its subsidiary, Collection Corporation of America, Omaha, Nebraska, in operating a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Victoria Bankshares, Inc.*, Victoria, Texas; to engage *de novo* through its subsidiary, Bankshares Brokerage, Inc., Victoria, Texas, in discount securities brokerage activities including certain securities credit and incidental activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by May 20, 1988.

Board of Governors of the Federal Reserve System, April 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9303 Filed 4-27-88; 8:45 am]

BILLING CODE 6210-01-M

Harco Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 18, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Harco Bankshares, Inc.*, Harlan, Kentucky; to acquire 100 percent of the voting shares of the Guaranty Deposit Bank, Cumberland, Kentucky.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens State Bancorp, Inc.*, New Baltimore, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Savings Bank, New Baltimore, Michigan.

2. *Grand Bank Financial Corporation*, Grand Rapids, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Bank, Grand Rapids, Michigan.

Board of Governors of the Federal Reserve System, April 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9304 Filed 4-27-88; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation*, Rocky Mount, North Carolina; to acquire Service Loan Company, Inc., d/b/a/ Thomaston Finance Company, Thomaston, Georgia; and thereby engage in originating and servicing small loans to individuals; selling credit life and accident and health insurance; and other activities normally associated with the origination, servicing and collection of small loans pursuant to §§ 225.25 (b)(1) and (b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9305 Filed 4-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a California State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 15, 1988 in San Francisco, California to reconsider our decision to disapprove California State Plan Amendment 87-03.

Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk by May 13, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove California State Plan Amendment 87-03.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

This issues in this matter are wether California SPA 87-03 violates sections 1903(f), 1902(a)(4) and 1902(a)(19) of the Social Security Act and whether the plan amendment qualifies for protection under the provisions of section 2373(c) of the Deficit Reduction Act of 1984 as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100-93).

California SPA 87-03 relates to how the State determines eligibility for the medically needy under Medicaid. The State's plan amendment provides for disregarding as income all income above the medically needy income level which is paid to licensed bed and board facilities for care and supervision.

In general, the Medicaid statute requires States to use the eligibility criteria of the Supplemental Security Income (SSI) program in determining Medicaid eligibility of aged, blind, and disabled individuals and to use the rules of the Aid to Families with Dependent Children (AFDC) program in determining Medicaid eligibility of AFDC-related individuals. (Sections 1902(a)(10(A) and 1902(a)(10)(C)(i)(III) of the Act.)

In SPA 87-03, California proposed, as Supplement 1.5 to Attachment 2.6A, to treat as not available income the amount of income above the medically needy income level paid to licensed board and care facilities for care and supervision. This effectively created a disregard of the income above the specified level, since that income would not be counted in determining eligibility for Medicaid. The SSI program, in regulations at 20 CFR 416.1102, defines income as "anything you receive in cash or in kind that you can use for food, clothing, or shelter". The regulations at 20 CFR Part 416 Subpart K also specify those items and types of income which are excluded or disregarded by the SSI program in determining eligibility. The type of exclusion proposed by California is not included in the list of exclusions used by the SSI program. Thus, HCFA determined that California proposed to use an income disregard which is more liberal than that used by the SSI program. Section 1902(a)(10)(C)(i)(III) requires that States use the methodologies of the most appropriate cash assistance program in determining eligibility for the medically needy under Medicaid.

An additional disregard such as California proposes would normally be protected under the DEFRA moratorium as expanded and clarified by Congress via the Medicare and Medicaid Patient and Program Protection Act of 1987. However, under the new moratorium, more liberal disregards are protected, but only to the extent that a State's medically needy income level does not exceed the Federal Financial Participation (FFP) cap of 133 ⅓ percent of the State's AFDC payment level as mandated by section 1903(f) of the Act. California's proposed disregard could result in an individual's income under the medically needy program exceeding that cap; therefore, HCFA determined that such a disregard is not protected under the new moratorium, and violates the cap provision at section 1903(f) as well as section 1902(a)(4), as use of such a disregard resulting in exceeding the 133 ⅓ percent cap is not consistent with proper and efficient operation of the Medicaid plan, and section 1902(a)(19), as use of such disregard is not consistent with providing such safeguards as may be necessary to assure that eligibility will be determined in a manner consistent with simplicity of administration and the best interest of recipients.

The notice to California announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

April 22, 1988.

Kenneth W. Kizer, M.D., M.P.H.,
Director, California State Department of Health Services, 714 P Street, Room 1253, Sacramento, California 95814

Dear Dr. Kizer: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 87-03 was received on March 24, 1988.

California SPA 87-03 relates to how the State determines eligibility for the medically needy under Medicaid. The State's plan amendment provides for disregarding as income all income above the medically needy income level which is paid to licensed bed and board facilities for care and supervision.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are four issues in this matter. The first issue is whether the States' disregard exceeds the Federal Financial Participation (FFP) cap of 133⅓ percent of the States AFDC payment level as mandated by section 1903(f) of the Social Security Act. The second issue is whether the States proposed disregard resulting in exceeding the 133⅓ percent cap is consistent with the proper and efficient operation of the Medicaid plan as required by section 1902(a)(4). The third issue is whether use of such a disregard is consistent with providing such safeguards as may be necessary to assure that eligibility will be determined in a manner consistent with simplicity of administration and the best interest of recipients as required by section 1902(a)(19). The forth issue is whether is whether the plan amendment is protected by the moratorium provisions of the Deficit Reduction Act of 1984 as amended by the Medicare and Medicaid Patient and Program Protection Act of 1987 (P.L. 100-93).

I am scheduling a hearing on your request to be held on June 15, 1988 at 10:00 a.m. in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4470.

Sincerely,

William L. Roper, M.D.,
Administrator

cc:
Diane E. Shell, Deputy Director and Chief Counsel
Steve Koyasaka, Staff Attorney

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

VOL 53 ISS 82 AP 28 1988 UMI

Dated: April 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-9370 Filed 4-27-88; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Advisory Board Meeting

Notice is hereby given of a change in the meeting of the Fogarty International Center Advisory Board, May 24 and 25, 1988, Stone House (Building 16), National Institutes of Health which was published in the **Federal Register** on April 15 (53 FR 12604).

This meeting was to have been open to the public from 8:30 a.m. to 5 p.m. on May 24, but the time for the open meeting has been changed to 8:30 a.m. to 3 p.m.

The remainder of the meeting will be closed to the public until adjournment on May 25 for the review, discussion, and evaluation of research fellowship applications.

Dated: April 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-9426 Filed 4-27-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute, Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 1-2, 1988, in the Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

This meeting will be open to the public on June 1 from 9 a.m. to recess and from 8:30 a.m. to adjournment on June 2 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: April 20, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-9427 Filed 4-29-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 4458, February 16, 1988) is amended to reflect the following changes in the Office of the Director, NIH: Establish (1) the Office of AIDS Research (HNA5); and (2) the Office of Human Genome Research (HNAB). The establishment of these offices is in response to the health crisis precipitated by the rapid spread of the Acquired Immunodeficiency Syndrome (AIDS); and in recognition of the high priority placed on mapping and sequencing complex genomes.

Section HN-B, Organization and Functions is amended as follows: (1) After the statement for the *Office of Intramural Research (HNA4)*, insert the following:

Office of AIDS Research (HNA5). (1) Advises the Director, NIH, and senior staff on the development of NIH-wide policy related to AIDS research, and coordinates NIH Intramural and extramural AIDS research activities; (2) provides the Chairperson for the NIH AIDS Executive Committee and represents the Director, NIH, on all outside AIDS-related committees requiring NIH participation; (3) provides staff support to the NIH AIDS Executive Committee and the NIH AIDS Advisory Committee; (4) recommends intramural/extramural AIDS research priorities to the Director, NIH; (5) develops an NIH annual plan and budget for AIDS research; (6) develops policy on laboratory safety for AIDS researchers and monitors the AIDS surveillance program; (7) develops and maintains an information data base on intramural/extramural AIDS activities and prepares special or recurring reports as needed: (8) develops information strategies to assure that the public is informed of NIH AIDS research activities; (9) recommends solutions to ethical/legal issues arising from intramural/extramual AIDS research; (10) facilitates cooperation in AIDS research between government, industry, and universities; and (11) fosters and develops plans for NIH involvement in international AIDS research activities.

(2) After the statement for the *Division of Technical Services (HNAA8)*, under the heading *Office of Research Services (HNAA)*, insert the following:

Office of Human Genome Research (HNAB). (1) Advises the Director, NIH, and senior staff on all aspects of genomic analysis; (2) provides coordination, integration, review of progress, and planning in genomic analysis research; (3) formulates research goals and long-range plans with the guidance of the NIH Program Advisory Committee on Complex Genomes and the NIH Working Group on Complex Genomes; (4) serves as a focal point on genomic analysis research within NIH, other components of the Public Health Service, and other Federal agencies (e.g., DOE and NSF) by reviewing policy questions and coordinating plans for future research efforts; (5) provides an internal framework for the review and consideration of issues requiring the viewpoint of the biomedical research community; (6) develops plans for the centralized, systematic, targeted effort to create detailed maps of the genomes of organisms; (7) develops appropriate grant and contract solicitations;(8) establishes research goals and criteria for review of progress in meeting those goals; (9) sponsors scientific meetings and symposia to promote progress through information sharing; and (10) fosters national and international information exchange with industry and academia concerning research on complex genomes.

Date: April 18, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-9376 Filed 4-27-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4410-04]

Arcata Resource Management Plan; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearings.

SUMMARY: In response to requests from the public, the Arcata Resource Area, Ukiah District, California, will hold two public hearings on the Arcata Resource Management Plan. The first hearing will be Monday, May 16, at the VFW building, 483 Conger Street, Garberville, California, from 7:00 p.m., until 10:00 p.m. The second meeting is scheduled for Tuesday, May 17, at the Red Lion Inn, 1929 4th Street, Eureka, California from 7:00 p.m. until 10:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1125 16th Street, P.O. Box 1112, Arcata, California 95521. Telephone: (707) 822-7648.

Dated: April 18, 1988.

Edwin G. Katlas,

Acting District Manager, Ukiah.

[FR Doc. 88-9324 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-08-4333-11; NV5-88-07]

Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the Mint 400 off Highway Vehicle (OHV) Race; Nevada

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the Mint 400 OHV race course, on April 30, 1988. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittees and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada, will be temporarily closed to public access from 00:01 hours, April 30, 1988, to 06:00 hours May 1, 1988, to protect persons, property, and public land resources on and adjacent to the 1988 Mint 400 OHV race course. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364.

The public lands to be closed or limited are those lands adjacent to and including roads, trails, and washes identified as the 1988 Mint 400 OHV race course. The following lands limited or closed are described as: Sheep Mountain Area; T.25S., R.59E., all of sections 35, and 36; T.,26S., R.59E., all of section 1 and 2; T.26S., R.60E., all of sections 1, 3, 4, 5, 6, 12, 13, 21, 22, 23, 24, 25, 26, and 27; T. 26S., R.61E all of sections 6, 7, 18, 19, and 30. McCullough Pass area: T.25S., R.61E., all of sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Pit areas will be established in authorized areas only. Pit No. 1: T.26S., R.60E., all of section 16; Pit No. 2 T.25S., R.60E. sec 26 and 36. Pit No. 3: T.25S., R.62E., all of section 18, 19, and 30. Pit No. 4: T.24S., R.62E., all of sections 24 and 25; T.24S., R.63E., all of sections 18, and 19; Pit No. 5: T.22S., R.63E., all of section 30 and 36. The Union Pacific Rail Road located just east of the Start/Finish; T.25S., R.59E., all of sections 25, 26, W¼ of 34, 35, and 36. T.26S., R.59E., all section 1, 2 and 3.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM offices: The Las Vegas District Office, P.O. Box 26569, 4765 Vegas Dr., Las Vegas Nevada 89126 (702) 388-6403, and the Stateline Resource Area Office, P.O. Box 7384, 301 Stewart Ave., Las Vegas, Nevada 89125, (702) 388-6627.

Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Date: April 21, 1988.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 88-9474 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-08-4111-15; CA 9612]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease CA 9612 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1988, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16-2/3 percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1988, subject to the original terms and conditions of the lease, as amended, and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Fred O' Ferrall

Chief, Leasable Minerals Section.

Date: April 22, 1988.

[FR Doc. 88-9318 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-940-88-4111-15; C-41471

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease C-41471 for lands in Rio Blanco County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from November 1, 1987, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Richard E. Richards,

Supervisor, Oil & Gas/Geothermal Leasing Unit.

[FR Doc. 88-9319 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-JB-M

[WY-920-08-4111-15; W-106460]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-106460 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof,

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per year and 16 2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-106460 effective October 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patrica J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 88-9320 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-08-4111-15; W-101003]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

April 20, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2428-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-101003 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-101003 effective August 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 88-9321 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-22-M

[MT-060-4830-02]

Address Change; Great Falls Resource Area; Montana

AGENCY: Lewistown District, Bureau of Land Management, Interior.

ACTION: Notice of change of address.

SUMMARY: The following is the change of address for the Great Falls Resource Area: Bureau of Land Management, Great Falls Resource Area, P.O. Box 2865, 812 14th Street North, Great Falls, MT 59403.

EFFECTIVE DATE: May 15, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas J. Burger, Area Manager, Great Falls Resource Area, Bureau of Land Management, 215 1st Ave. North, P.O. Drawer 2865, Great Falls, Montana 59403, (406) 727-0503.

Wayne Zinne,

District Manager.

Date: April 21, 1988.

[FR Doc. 88-9419 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-010-07-4212-24]

Realty Action; Lease of Public Lands for Airport Purposes, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; lease of public lands for airport purposes in Mohave county, Arizona.

SUMMARY: The following described public lands have been found suitable for lease to the Grand Canyon Bar Ten Ranch for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213).

Gila & Salt River Meridian

Beginning at a point 1,388.92 feet East of the SW corner of Sec. 14, T. 33 N., R. 9 W., Gila and Salt River Base & Meridian; thence N. 4°00'35" W. 5,590.83 feet; thence N. 85°59'25" E. 400 feet; thence S. 4°00'35" E. 1,500 feet; thence N. 85°59'25" E. 200 feet; thence S. 4°00'35" E. 500 feet; thence S. 85°59'25" W. 200 feet; thence S. 4°00'35" E. 3,618.87 feet; thence West 400.96 feet to point of beginning.

Containing approximately 53.76 acres.

Leasing these lands is consistent with applicable Federal and county land use plans and will help serve public needs for users of Colorado River excursions and the general public for air transportation. Persons wishing to obtain detailed information on the action including the terms and conditions of the lease may write the Shivwits Resource Area Manager, 225 North Bluff, St. George, Utah 84770.

This notice segregates the above described public lands from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of the lease or 1 year from the date of this publication, whichever occurs first.

For a period of 45 days from the date of this publication, interested parties may submit comments to the District Manager, Bureau of Land Management, Arizona Strip District Office, 390 North 3050 East, St. George, UT 84770. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Raymond D. Mapston,

(Acting) Arizona Strip District Manager.

April 21, 1988.

[FR Doc. 88-9322 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-7122-10-1018; CA-21583]

Realty Action; Exchange of Public and Private Lands in Los Angeles and Riverside Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA 21583.

SUMMARY: The following described public lands in Los Angeles County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 5 N., R. 13 W.
Sec. 7: Lots 1, 2, and 5-9 inclusive.
T. 5 N., R 14 W.
Sec. 20: NE¼SE¼
Sec. 21: S½NE¼, SW¼NW¼, NW¼ SW¼.
Sec. 22: SW¼NW¼, NE¼NW¼.
Containing 389.28 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian California

T. 4 S., R. 6 E.
Sec. 13: S½SW¼, S½NW¼SW¼, NW¼ NW¼SW¼.
Sec. 14: NW¼NW¼NE¼, S½NW¼NE¼, N½NW¼, SW¼NW¼.
Containing 260 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remainig portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for an electric transmission line and access road granted by the United States to the City of Los Angeles, Department of Water and Power, its successors or assigns, under the Act of October 21, 1976 (43 U.S.C. 1761); Grant No. CA-4950.

3. Those rights for a television antenna granted by the United States to Cable Vision, Inc., its successors or assigns, under the Act of March 4, 1911 (43 U.S.C. 961); Grant No. LA-0159998. Affects only section 21.

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323-4421.

For a period of 45 days after publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District; 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Date: April 19, 1988.

H.W. Riecken

Acting District Manager.

[FR Doc. 88-9323 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-40-M

[MT-930-08-4212-13; MTM 70647]

Conveyance of Public Land in Powell, Lewis and Clark, and Broadwater Counties; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public and interested state and local government officials of the completion of a land exchange and issuance of the conveyance documents. The land acquired in the exchange has high recreation and historic value, and is located in the Garnet Ghost Town area.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the following described lands were transferred to the parties shown:

Principal Meridian, Montana

Donald R. Beck:
T. 9N., R. 11 W.,
Sec. 14, NW¼NW¼.

Lawrence L. Beck & Marjorie D. Beck as tenants in common:
T. 10 N., R. 9 W.,
Sec. 25, S½NW¼, W½SW¼.

Patricia G. Hansen & James I. Hansen, Husband & Wife, & John T. Lingenfelter:
T. 9 N., R. 11 W.,
Sec. 24, SW¼SW¼.

X-Diamond Bar Ranch, Inc.:
T. 10 N., R. 14 W.,
Sec. 28, SW¼SW¼.

Joseph P. McGillis & Michael G. McGillis:
T. 9 N., R. 10 W.,
Sec. 28, W½W½.

William L. McIntosh & Jill M. McIntosh:
T. 10 N., R. 6 W.,
Sec. 2, SW¼SE¼.

RV Ranch Company:
T. 9 N., R. 6 W.,
Sec. 8, NE¼NE¼.

Martin J. Settle & Adeline M. Settle:
T. 12 N., R. 5 W.,
Sec. 27, SW¼SW¼, S½SE¼SE¼.

Charles G. Baum & Harry C. Baum:
T. 9 N., R. 1 W.,
Sec. 34, SE¼SE¼.

Edna R. Schatz:
T. 11 N., R. 5 W.,
Sec. 28, lot 5.

John J. Lyndes:
T. 11 N., R. 4 W.,
Sec. 22, lot 1.

Robert G. Hawe & Marilyn June Miller:
A ⅙ interest in the following described land:
T. 12 N., R. 14 W.,
Sec. 3, Tract 1 of the Homestake Lode mining claim, M.S. 6970.

Total acreage patented—685.75 acres plus a ⅙ interest in 2.891 acres.

2. In exchange for the above lands, the United States acquired the following described lands:

Principal Meridian, Montana

T. 12 and 13 N., R. 14 W.,
M.S. 6971 (Sierra Lode);
M.S. 6972 (Forest Lode);
M.S. 6973 (Cleveland Lode);
M.S. 6974 (Austin Lode);
M.S. 6975 (Gold King Lode);
M.S. 6970 (Homestake Lode) *Less and Except* A 2.891 acre tract in the southwest corner, described as Tract 1.

Aggregating 77.919 acres, more or less.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

April 20, 1988.

[FR Doc. 88-9317 Filed 4-27-88; 8:45,am]

BILLING CODE 4310-DN-M

[WY-030-08-4212-14; W-81328]

Realty Action; Sale of Public Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice or realty action, rescheduling of competitive sale of public land in Laramie County.

SUMMARY: The Bureau of Land Management has reappraised and is reoffering the following described public land for sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1982). The land was originally offered for sale by Notice of Realty action W-81328 published September 24, 1985, in the Federal Register (50 FR 38717):

Sixth Principal Meridian

Parcel No. 1: W-81328 A
T 14 N., R. 69 W.,
Sec. 4, lot 3.
Acreage: 38.90
Appraised Fair Market Value: $5,386
Parcel No. 2: W-81328 B
T. 14 N., R. 69 W.,
Sec. 4, lot 2.
Acreage: 38.97
Appraised Fair Market Value: $5,260

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Parcel No. 3: W–81328 C
T. 14 N., R. 69 W.,
Sec. 4, lot 1.
Acreage: 38.96
Appraised Fair Market Value: $5,262
Parcel No. 4: W–81328 D
T. 14 N., R. 69W.,
Sec. 4, SE1/4/NE1/4.
Acreage: 40.00
Appraised Fair Market Value: $5,400

FOR FURTHER INFORMATION CONTACT: Mick Kaser, Rawlins District Office, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301, 307–324–7171.

SUPPLEMENTARY INFORMATION: The above described parcels are unimproved rangeland located approximately twenty miles west of Cheyenne, Wyoming, and adjacent to Table Mountain Estates, a rural residential development. The parcels are surrounded by private grazing lands and rural homesites. Disposal of the land is consistent with the Bureau's land use plan for the area.

Publication of this notice in the **Federal Register** shall segregate the above described land from all forms of appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon conveyance of the land, upon publication of a notice of termination of the segregation in the **Federal Register**, or 270 days from the date of publication of this notice.

Conveyance of the above land will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890;
2. Reservation of all minerals to the United States;
3. W–40660, an 80-foot right-of-way for Laramie County Road 109. (Parcel 1 only)
4. W–77432, an oil and gas lease. (All parcels)
5. W–88934, a 40-foot right-of-way reserved for public access and use of the people of the United Sates. (All parcels)
6. W–89121, a 25-foot right-of-way for an access road. (Parcel 1 only)
7. W–886482, a 40-foot right-of-way for an access road. (Parcels 1 and 2)
8. W–079242 and C–063605, a 215-foot right-of-way reserved for the Department of Energy—Western Area Power Administration—2 powerlines. (Parcels 1, 2, and 4)
9. A road dedicated to use by the general public as shown on plat of survey entitled Exhibit A, approved 1/18/85 and recorded in Laramie County. (Parcels 1, 2, 3 and 4)

Qualified Bidders

Bidders must be U.S. citizens, 18 years of age or over, a State or a State instrumentality authorized to hold property, or, in the case of corporations, authorized to own real estate in Wyoming. High bidders will be required to furnish proof of bidder qualifications.

Bidding Procedures

Sealed bids must be mailed or delivered to the Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301, before 10:00 a.m. on June 15, 1988. Each bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management for not less than 20 percent of the amount of the bid. Bids must be enclosed in a sealed envelope marked in the lower left-hand corner as follows: " Public Sale bid, Serial No. W–81328, Parcel No. ". Bids will not be accepted for less than the appraised fair market value listed for each parcel.

If two or more envelopes are received, each containing acceptable bids of the same amount for the same parcel, the highest qualifying bid shall be determined by supplemental sealed bidding.

The highest qualified bidder will be notified in writing and will be required to submit the remainder of the amount bid within 180 days from the date of sale. Failure to submit the full bid price within 180 days shall result in rejection of the bid and forfeiture of the bid deposit. All unsuccessful bids will be returned.

Any *unsold* parcels shall be available for purchase the second Wednesday of each month, beginning July 13, 1988, on a first-come, first-served basis, until sold or withdrawn from sale.

Michael J. Karbs,
Associate District Manager.
April 22, 1988.
[FR Doc. 88–9316 Filed 4–27–88; 8:45 am]
BILLING CODE 4310–22–M

[CO–942–08–4520–12]

Colorado; Filing of Plats of Survey

April 18, 1988.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 18, 1988.

The plat (in 14 sheets) representing the dependent resurvey of portions of the subdivisional lines and certain mineral surveys and the survey of the subdivision on sections 7, 17, and 18, T. 3 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 680, was accepted April 6, 1988.

The plat representing the dependent resurvey of a portion of certain mineral surveys and certain mineral segregation surveys in sections 27 and 34, T. 3 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 695, was accepted April 4, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,
Acting Chief, Cadastral Surveyor for Colorado.
[FR Doc. 88–9325 Filed 4–27–88; 8:45 am]
BILLING CODE 4310–JB–M

[MT–940–08–4520–11]

Montana; Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats survey.

SUMMARY: Plats of survey of the lands described below accepted March 31, 1988, will be officially filed in the Montana State Office effective 10 a.m. on June 2, 1988.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 72 W.

The plat, in four sheets, represents the dependent resurvey of the south boundary and portions of the west boundary and subdivisional lines; and the survey of the subdivision of sections 27, 28, 29, 30, 31, 34, and 35, and the Lake Sharpe Reservoir boundary, Township 107 North, Range 72 West, Fifth Principal Meridian, South Dakota. The areas described are in Lyman and Buffalo counties.

Fifth Principal Meridian, South Dakota
T. 108 N., R. 73 W.

The plat, in six sheets, represents the dependent resurvey of portions of the south boundary and subdivisional lines; and the survey of the subdivision of certain sections and the Lake Sharpe Reservoir boundary, Township 108 North, Range 73 West, Fifth Principal Meridian, South Dakota. The areas described are in Hughes, Buffalo, and Lyman counties.

Fifth Principal Meridian, South Dakota
T. 108 N., Range 74 W.

The plat represents the dependent resurvey of a portion of the east boundary (Tenth Guide Meridian) and a portion of the subdivisional lines; and the survey of the subdivision of sections 1, 2, 11, and 12, and the Lake Sharpe Reservoir boundary, Township 108 North, Range 74 West, Fifth Principal Meridian, South Dakota. The areas described are in Lyman and Hughes counties.

Fifth Principal Meridian, South Dakota
T. 108 N., R. 74 W.

The plat, in two sheets, represents the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 30, 32, and 33; and the survey of the subdivision of sections 30, 32, and 33, and the Lake Sharpe Reservoir boundary, Township 108 North, Range 74 West, Fifth Principal Meridian, South Dakota. The areas described are in Lyman and Hughes counties.

Fifth Principal Meridian, South Dakota
T. 109 N., R. 73 W.

The plat represents the dependent resurvey of a portion of the Second Standard Parallel North through Ranges 73 and 74 West, and a portion of the subdivisional lines; and the survey of the subdivision of sections 32 and 33, and the Lake Sharpe Reservoir boundary, Township 109 North, Range 73 West, Fifth Principal Meridian, South Dakota. The areas described are in Hyde, Buffalo, and Lyman counties.

These surveys were executed at the request of the District Engineer, Omaha District, U.S. Army Corps of Engineers.

Fifth Principal Meridian, South Dakota
T. 106 N., R. 72 W.

The plat represents the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines; and the survey of the subdivision of section 18, Township 106 North, Range 72 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman county.

Fifth Principal Meridian, South Dakota
T. 106 N., R. 73 W.

The plat represents the dependent resurvey of a portion of the south boundary of the Lower Brule Indian Reservation and a portion of the subdivisional lines; and the survey of the subdivision of section 6, Township 106 North, Range 73 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman county.

Fifth Principal Meridian, South Dakota
T. 106 N., R. 74 W.

The plat represents the dependent resurvey of a portion of the east boundary (Tenth Guide Meridian), the north boundary, a portion of the south boundary of the Lower Brule Indian Reservation, and a portion of the subdivisional lines; and the survey of the subdivision of sections 1, 3, 4, and 5, Township 106 North, Range 74 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman county.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 74 W.

The plat, in three sheets, represents the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines; and the survey of the subdivision of certain sections, Township 107 North, Range 74 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman County.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 75 W.

The plat, in two sheets, represents the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines; and the survey of the subdivision of certain sections, Township 107 North, Range 75 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman County.

These surveys were executed at the request of the Area Director, Bureau of Indian Affairs, Aberdeen Area Office.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 73 W.

The plat represents the dependent resurvey of a portion of west boundary (Tenth Guide Meridian), a portion of the south boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 30, 31, and 33, Township 107 North, Range 73 West, Fifth Principal Meridian, South Dakota. The areas described are in Hughes, Lyman, and Buffalo Counties.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 73 W.

The plat, in four sheets, represents the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 15, 22, 23, and 24; and the survey of the subdivision of sections 4, 5, 7, 8, 15, 22, 23, 24, and 25, and the Lake Sharpe Reservoir boundary, Township 107 North, Range 73 West, Fifth Principal Meridian, South Dakota. The areas described are in Hughes, Lyman, and Buffalo Counties.

Fifth Principal Meridian, South Dakota
T. 107 N., R. 74 W.

The plat, in three sheets, represents the dependent resurvey of portions of the east boundary (Tenth Guide Meridian) and subdivisional lines, and the subdivision of sections 5 and 8; and the survey of the subdivision of sections 5, 8, 9, 11, 12, 16, and 17, and the Lake Sharpe Reservoir boundary, Township 107 North, Range 74 West, Fifth Principal Meridian, South Dakota. The area described is in Lyman County.

These plats of survey of T. 107 N., R., 72 W.; T. 108 N., R. 73 W.; T. 108 N., R. 74 W.; T. 108 N., R. 74 W.; T. 109 N., R. 73 W.; T. 106 N., R. 72 W.; T. 106 N., R. 74 W.; T. 107 N., R. 74 W.; T. 107 N., R. 75 W.; T. 107 N., R. 73 W.; T. 107 N., R. 73 W.; T. 107 N., R. 74 W.; Fifth Principal Meridian, South Dakota, will remain in the open file. If protest(s) against any of these surveys, as shown on these plats, are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). These particular plat(s) will not be offically filed until the day after all protests have been dismissed or accepted and become final or appeals from dismissal affirmed.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Ray Brubaker,
Acting State Director.

Dated: April 18, 1988.
[FR Doc. 88–9326 Filed 4–27–88; 8:45 am]
BILLING CODE 4310–DN–M

[MT–930–08–4220–10; SDM 20500]

Partial Termination of Proposed Withdrawal and Opening of Land; Supplemental Notice and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; opening order.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal requested by the Department of Agriculture on 103.26 acres of national forest land which is being opened to mineral location and entry under the mining laws. It also offers an opportunity for comments and a public meeting in connection with 50 acres of land remaining in the proposal. The segregation from mineral location and entry under the mining laws continues for that land, but it remains open to mineral leasing.

DATES: The opening is effective May 31, 1988. Comments and requests for the public meeting must be submitted by June 27, 1988.

ADDRESS: Comments and meeting requests should be sent to the Montana

State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

SUPPLEMENTARY INFORMATION: The notice of proposed withdrawal was published in the **Federal Register** on February 5, 1972 (37 FR 2793–2794). Additional notices involving application termination and an opportunity for a public hearing were published in the **Federal Register** on August 1, 1979 (44 FR 45268) and February 19, 1986 (51 FR 6043). The purpose of the proposed withdrawal is to protect a developed picnic ground and a recreation site. The protection is no longer needed for the recreation site.

1. The segregative effect is hereby terminated as to the following described land:

Black Hills Meridian

Black Hills National Forest

Mt. Roosevelt Recreation Site

T. 5 N., R. 3E.,
Sec. 16, lots 1, 3, 4, SW¼SE¼NE¼, W½NW¼SE¼SE¼, and NE¼SW¼SE¼.

Containing 103.26 acres in Lawrence County.

2. The segregation from mineral location and entry under the mining laws is continued for the following described land:

Black Hills Meridian

Steam Boat Rock Picnic Site

T. 2 N., R. 5 E.,
Sec. 1, S½NW¼SW¼, N½SW¼SW¼, and NW¼SE¼SW¼.

Containing 50 acres in Lawrence County.

3. At 9 a.m. on May 31, 1988, the land described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. For a period of 60-days from April 28, 1988, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Driector, BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director within 60 days from the date of publication of this notice. Upon determination by the State Director that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Subpart 2300.

5. The National Forest system lands described in paragraph 2 will continue to be segregated as specified until October 20, 1991, unless the application is denied or canceled or the withdrawal is approved prior to that date.

James Binando

Acting State Director.

April 18, 1988.

[FR Doc. 88–9327 Filed 4–27–88; 8:45 am]

BILLING CODE 4310-DN-M

[WY–930–08–4220–11; WYW 2796, WYW 2797, WYW 32093, WYW 71385, WYW 71386, WYW 71391, WYW 71414, WYW 71891, WYW 71895]

Proposed Continuation of Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will vacate and replace the notice of proposed continuation that was published in 49 FR 45497–45498, on November 16, 1984.

The Bureau of Reclamation proposes to continue the existing withdrawals on 16,398.94 acres of land at the Pathfinder Reservoir, for an additional 100 years. The remaining acreage in the existing withdrawals will be relinquished. The lands remain closed to mining, with the exception of 120 acres, which were opened to mineral location in 1941. All of the lands, with the exception of those within the National Wildlife Refuge withdrawal, have been and will remain open to mineral leasing.

DATE: Comments should be received by July 27, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–772–2072.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that parts of existing Secretarial Orders of September 21, 1903, January 27, 1904, October 10, 1905, January 20, 1932, June 25, 1940, and Public Land Order No. 5286 dated October 11, 1972, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The majority of the lands proposed for continuation are those lands that lie at or below the elevation of 5,850.1 feet in the following described subdivisions:

Sixth Principal Meridian

T. 26 N., R. 84 W.,
Sec. 4, lots 3, 4, S½NW¼, W½SW¼;
Sec. 5, lots 1, 2, S½NE¼, SE¼NW¼, SE¼;
Sec. 8, NE¼NE¼;
Sec. 9, W½NW¼, SE¼NW¼.
T. 27 N., R. 84 W.,
Sec. 4, E½SW¼;
Sec. 5, lots 2, 4;
Sec. 6, lots 1–3, 5, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, NW¼NW¼;
Sec. 9, NE¼NW¼;
Sec. 28, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼, NE¼NW¼, N½SE¼;
Sec. 32, E½, NE¼NW¼;
Sec. 33, W½.
T. 28 N., R. 84 W.,
Sec. 4, lots 2–4, SW¼NE¼, S½NW¼, S½;
Sec. 5, lots 1–4, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 6, lots 1–3, 5–7, S½NE¼, SE¼NW¼, E½SW¼, W½SE¼, NE¼SE¼;
Sec. 7, lots 1–4, SW¼NE¼, E½W½, W½SE¼;
Sec. 8, NE¼, N½NW¼, SE¼NW¼, SE¼SE¼;
Sec. 9, all;
Sec. 10, SW¼;
Sec. 15, W½NW¼, SW¼;
Sec. 16, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 17, NE¼, SW¼;
Sec. 18, lots 1-2, NW¼NE¼, E½NW¼;
Sec. 19, E½NE¼, E½SW¼, W½SE¼;
Sec. 20, SE¼NE¼, NW¼NW¼, E½SW¼, SE¼;
Sec. 21, N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 28, W½;
Sec. 29, N½, SE¼;
Sec. 30, lots 1–2, NE¼NW¼;
Sec. 31, SE¼SE¼;
Sec. 32, E½, SW¼;
Sec. 33, NW¼, W½SW¼.
T. 29 N., R. 84 W.,
Sec. 5, S½NW¼, S½;
Sec. 6, lots 5–7, S½NE¼, SE¼NW¼, SE¼SW¼, SE¼;
Sec. 7, NE¼, NE¼NW¼, N½SE¼;
Sec. 8, N½, NE¼SE¼;
Sec. 9, W½NE¼, NW¼, S½;
Sec. 16, W½E½, W½;
Sec. 17, SE¼NE¼, E½SE¼;

Sec. 18, SE¼SE¼;
Sec. 20, NE¼NE¼, S½NE¼, SE¼NW¼, S½;
Sec. 21, W½, SW¼SE¼;
Sec. 22, S½NE¼, S½SW¼, SE¼;
Sec. 23, SW¼NE¼, W½W½SE¼NE¼, S½NW¼, SW¼, W½SE¼, W½E½SE¼;
Sec. 26, N½, NW¼SW¼, SW¼SE¼;
Sec. 27, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 28, E½, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 29, W½NE¼, W½, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, E½E½;
Sec. 32, all;
Sec. 33, N½, SW¼, W½SE¼;
Sec. 34, N½, SW¼;
Sec. 35, N½NE¼, NE¼NW¼, S½NW¼;
Sec. 36, W½NW¼, W½SW¼.
T. 28 N., R. 85 W.,
Sec. 1, SE¼NE¼, S½SW¼, SE¼;
Sec. 11, E½NW¼;
Sec. 12, N½, SW¼, NW¼SE¼;
Sec. 13, SE¼NE¼, NW¼NW¼;
Sec. 14, E½NE¼, SW¼NE¼, SE¼;
Sec. 23, NE¼, N½SE¼, SE¼SE¼;
Sec. 25, NE¼, NE¼NW¼.
T. 29 N., R. 85 W.,
Sec. 1, SE¼NE¼, S½;
Sec. 2, N½S½;
Sec. 3, N½S½;
Sec. 4, lots 1–2, S½;
Sec. 5, lot 3, SE¼NW¼, N½S½;
Sec. 12, NW¼NE¼, NW¼, N½SW¼.
T. 30 N., R. 85 W.,
Sec. 26, S½SW¼;
Sec. 27, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 32, E½SE¼;
Sec. 33, S½SW¼, SE¼;
Sec. 34, E½NW¼, NE¼NE¼;
Sec. 35, N½;
Sec. 36, all.
T. 29 N., R. 86 W.,
Sec. 12, E½NE¼.

The area described aggregates 15,368.94 acres in Carbon and Natrona Counties.

The remaining land to be continued at all elevations contains the site administered by the Wyoming Game and Fish Commission, and the Bureau of Reclamation's operations area. The land is described as follows:

Sixth Principal Meridian

T. 26 N., R. 84 W.,
Sec. 9, SE¼, N½SW¼;
Sec. 10, W½SW.
T. 29 N., R. 84 W.,
Sec. 13, SW¼SW¼;
Sec. 14, S½S½;
Sec. 23, N½NE¼, NE¼NW¼, E½E½SE¼, E½SE¼NE¼, E½W½SE¼NE¼;
Sec. 24, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼.

The area described aggregates 1,030 acres in Carbon and Natrona Counties.

The purpose of the withdrawal is to protect the Pathfinder Reservoir, North Platte Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

April 20, 1988.

Marlyn V. Jones,

Associate State Director.

[FR Doc. 88–9328 Filed 4–27–88; 8:45 am]

BILLING CODE 4310-22-M

[WY–930–08–4220–10; W–87431]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 320 acres of public lands in Natrona County, for protection of the Alcova Reservoir near Casper, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by July 27, 1988.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, 307–772–2072.

On March 30, 1988, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following public land described from settlement, sale, location, or entry under the public land laws, including the general mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 30 N., R. 83 W.,
Sec. 36, N½

The area decribed contains 320 acres in Natrona Country.

The purpose of the proposed withdrawal is to bring lands which are largely below the maximum water surface elevation (5500 feet mean sea level) into the area of the Alcova Reservoir.

For a period of 90 days from the date of publication of this notice, all persons who with to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Subpart 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during the segregative period are those compatible with project use, as determined by the Bureau of Reclamation, and the development of oil and gas reserves without surface occupancy.

Marlyn V. Jones,

Associate State Director.

April 20, 1988.

[FR Doc. 88–9329 Filed 4–27–88; 8:45 am]

BILLING CODE 4310-22-M

[WY–930–08–4220–10; WYW 101618]

Proposed Withdrawal and Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

This notice will correct the Notice of Proposed Withdrawal published in Vol.

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53, No. 72, Thursday, April 14, 1988, pages 12478–12479. The Notice is corrected by changing the following legal description:

Sixth Principal Meridian

1. Change the E½SE¼ of section 12 in T. 51 N., R. 89 W., to the W½SE¼.
2. Change the S½SW¼NW¼ of section 24 in T. 52 N., R. 89 W., to the S½SW¼NE¼.

Gilbert J. Lucero,

Acting State Director.

April 22, 1988.

[FR Doc. 88-9330 Filed 4-27-88; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-295X]

The Indiana Railroad Co.; Abandonment Exemption Between Bloomington and Victor, in Monroe County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Indiana Railroad Company of 6.66 miles of rail line between Bloomington and Victor, in Monroe County, IN, subject to standard labor protective conditions and environmental protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 28, 1988. Petitions to stay must be filed May 13, 1988, and petitions for reconsideration must be filed by May 25, 1988. Formal expressions of an intent to file an offer of financial assistance under 49 U.S.C. 1152.27(c)(2) must be filed by May 9, 1988.[1]

Request for a public use condition must be filed by May 9, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-295X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: John H. Doeringer, 20160 Govenors Highway, Olympia Fields, Illinois 60461.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

[1] *See Exemption or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d (1987), and final rules published at 52 FR 48440 (1987).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley

Noreta R. McGee,

Secretary.

[FR Doc. 88-9344 Filed 4-27-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31227]

The Pittsburgh and Lake Erie Railroad Co.; Exemption; Discontinuance of Trackage Rights in Lawrence County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of trackage rights by the Pittsburgh & Lake Erie Railroad Company over 4.1 miles of Conrail's track between milepost 19.2 at Harbor Bridge and milepost 23.3 at New Castle, in Lawrence County, PA, subject to standard labor protective conditions.

DATES: This exemption is effective on May 28, 1988. Petitions to stay must be filed by May 13, 1988, and petitions for reconsideration must be filed by May 23, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31227 to:

(1) Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Deborah J. Somers, 1138 Six Penn Center Plaza, Philadelphia, PA 19103–2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissions Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9345 Filed 4-27-88; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Public Meeting on Mediterranean Fruitfly Eradication Program; Guatemala

The U.S. Agency for International Development (A.I.D.) has been requested to approve the use of Pub. L. 480 Title I generated local currency to support a Mediterranean Fruitfly eradication program in Guatemala, Central America. This program would include aerial spraying with baited malathion, sterile fly release, methyl bromide fumigation commodity treatment and spraying of vehicles passing through quarantine lines with d-phenothrin.

Prior to approving the use of local currency funds for this program, A.I.D. has determined that it will undertake a detailed environmental impact assessment (EIA). This six-month study began January 5, 1988 and will be completed by July 5, 1988. While not a legal requirement, in order to respond to public interest, A.I.D., in conjunction with the Guatemalan Presidential Commission on Environment (CONAMA) announce a public meeting to be held in Guatemala City, Guatemala on May 26, 1988 to present preliminary findings of the assessment team. Total participation in the meeting will be limited to 100 people and it will be in the format of a three hour briefing concluded with a question and answer session. At the time the invitations are sent out, a five page summary of the draft EIA will be distributed to all meeting invitees. Written comments from either those attending or those unable to attend are invited and will be reviewed by the environmental impact assessment contractor (The Consortium for International Crop Protection), A.I.D. and the government of Guatemala. Comment format should include the commentor's name, organization, address, a brief statement of why the commentor is interested in the environmental assessment and/or the eradication program, and then any constructive information or comments which may be of use in the environmental impact assessment process. Those interested in attending should write by May 20, 1988 to James Hester, Chief Environmental Officer, Bureau of Latin America and the Caribbean, Room 2239–NS, U.S. Agency for International Development, Washington, DC 20523. Those interested in commenting should submit their written comments no later than June 1, 1988.

Date: April 21, 1988.

James S. Hester,

Chief Environmental Officer, Bureau for Latin America and the Caribbean, U.S. Agency for International Development.

[FR Doc. 88-9314 Filed 4-27-88; 8:45 am]

BILLING CODE 6116-01-M

Meeting of Micro Enterprise Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Micro Enterprise Advisory Committee meeting on May 16–17, 1988 at the Grand Hotel, 2350 M Street NW., Washington, DC. 20037. The Committee will continue discussion, begun in its first meeting on March 28, of guidelines for the Micro-Enterprise Development Program of the Agency for International Development.

The meeting will begin at 9:00 a.m. on May 16 and continue through 5:00 p.m., then resume at 9:00 a.m. on May 17 and adjourn at 12:00 Noon. The meeting is open to the public. Any interested persons may attend, file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and the extent the time available for the meeting permits.

Dr. Michael Farbman, Chief, Employment and Enterprise Development Division, Office of Rural and Institutional Development, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Dr. Ross E. Bigelow, of the same Division, may be deputized to act for Dr. Farbman during part or all of this meeting. It is suggested that those who wish more specific information concerning this meeting contact Dr. Bigelow, 1601 N. Kent Street, Arlington, Virginia 22209, or call 703–875–4623.

Michael Farbman,

A.I.D. Representative, Micro-Enterprise Advisory Committee.

Date: April 18, 1988.

[FR Doc. 88-9315 Filed 4-27-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. George M. O'Bryan et al.

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(i), notice is hereby given that on April 15, 1988 a proposed Consent Decree in *United States* v. *George M. O'Bryan, et al.*, Civil Action No. C–87–0749–L–J, was lodged with the United States District Court for the Western District of Kentucky. The complaint in this CERCLA section 107, 42 U.S.C. 9607, cost recovery action was filed on December 11, 1987 against the past and present owner/operators of the site, 47 generators and 3 transporters of hazardous substances to recover from these defendants all costs incurred and to be incurred by the United States in responding to the release or threatened release of hazardous substances from an industrial solvent recovery and incineration facility located in Jefferson County, Kentucky known as the George M. O'Bryan/Liquid Waste Disposal of Kentucky Site. The complaint also sought a declaratory judgment, pursuant to 28 U.S.C. 2201, that the named defendants be held strictly, jointly and severally liable for all future response costs which may be incurred by the United States in connection with the site. The proposed Consent Decree ("Decree") provides that the Settling Defendants, CSX Transportation, Inc., Bulk Distribution Centers, Inc. and 56 other generator/transporter defendants reimburse, within 60 days of the entry of the decree, the United States $455,688.88 in past response costs, said sum representing 100% of the total costs and prejudgment interest incurred to date. The decree includes a provision whereby the United States covenants not to sue the Settling Defendants for reimbursement of response costs incurred by the United States at the George M. O'Bryan site up to and including the date of the entry of the decree. The decree does not release Settling Defendants from liability for any future response costs including, but not limited to, the costs of conducting a Remedial Investigation/Feasibility Study at the site or any future remedial action. The United States expressly reserves all claims, demands and causes of action, past or future, judicial or administrative, in law or equity including, but not limited to, cost recovery and injunctive relief and natural resource damages, against any person or entity, including the Settling Defendants, for matters not covered under the decree. Under the terms of the decree the Settling Defendants have resolved their liability to the United States for response costs to the date of entry of the decree and are not liable for claims of contribution regarding matters addressed in the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *George M. O'Bryan, et al.*, D.J. Ref. No. 90–11–3–252.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Kentucky, Bank of Louisville Bldg., 510 West Broadway, 10th Floor, Louisville, Kentucky 40202 and the Office of the Regional Counsel, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th Street & Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $7.50

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payable to the Treasurer of the United States for production cost.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-9331 Filed 4-27-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-48]

Joe F. Schooler, M.D., Denial of Application for Registration

On May 5, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joe F. Schooler, M.D., (Respondent), of 4833 B. Brentwood Stair Road, Fort Worth, Texas, seeking to deny his pending application for registration as practitioner, executed on January 26, 1987, on the ground that his registration would be inconsistent with the public interest.

On May 20, 1987, Respondent requested a three-month extension of time for requesting a hearing on the issues raised in the Order to Show Cause. Administrative Law Judge Francis L. Young granted Respondent's request and allowed him until August 31, 1987 to file a request for a hearing. On August 24, 1987, Respondent requested a hearing on the issues raised in the Order to Show Cause. Based upon Respondent's request for a hearing, the Administrative Law Judge ordered the Government to file a prehearing statement on or before September 25, 1987, and Respondent to file a prehearing statement on or before October 23, 1987. The Government filed its prehearing statement in a timely manner. On October 2, 1987, the Administrative Law Judge scheduled the hearing for November 19, 1987, in Fort Worth, Texas. On October 6, 1987, Respondent withdrew his request for a hearing on the issues raised in the Order to Show Cause in a letter which states "I will continue to do everything I can for my trusted patients in 'accordance with the laws, rules and regulations, and policy decisions applicable to all agencies.' " As a result of Respondent's withdrawal of his request for a hearing, the hearing was subsequently cancelled and the proceedings were terminated before the Administrative Law Judge on October 16, 1987.

In his defense, Respondent submitted a letter from Richard C. Keathley, his probation officer, dated August 26, 1987. That letter outlined Respondent's progress during probation under his supervision until August 5, 1986. The probation officer did not make any recommendations regarding Respondent's fitness for registration with the Drug Enforcement Administration, nor did he mention whether he was aware that Respondent was seeking registration.

Based upon Respondent's withdrawal of his request for a hearing, the Administrator concludes that he has waived his opportunity for a hearing, and enters this final order based upon the information contained in the investigative file and the record as it now appears, including Respondent's letter and the letter from Respondent's probation officer. 21 CFR 1301.54(d) and 1304.54(e).

The Administrator finds that Respondent has been the subject of complaints received in the DEA Dallas Field Division since 1975. All of the complaints received related to Respondent's practice of writing prescriptions for or dispensing various stimulant controlled substances. At that time, Respondent was one of the largest prescribers and dispensers of stimulant controlled substances in Northern Texas. The complaints alleged that Respondent ordered excessive quantities of controlled substances, including Biphetamine, Preludin, and Quaalude, stored the drugs in a safe deposit box in a Fort Worth bank, and on the weekends would travel to small communities south of Fort Worth to dispense controlled substances either out of the trunk of his car or from vacant buildings.

In December 1980, Respondent was contacted by DEA Diversion Investigators from the Dallas Field Division Office, officers from the Fort Worth Police Department, and an investigator from the Texas Board of Medical Examiners. At that meeting, he was informed that several complaints had been received regarding his controlled substance prescribing and dispensing practices. He also was warned that his prescribing and dispensing activities caused large quantities of stimulant controlled substances to enter the illicit drug market. In addition, he was told that, as a physician, he should only prescribe medications to patients when medically necessary, not simply at the request of a patient. In a later meeting, Respondent told DEA Diversion Investigators and Fort Worth police officers that he tried to convince patients that they needed drugs milder than Preludin, Desoxyn or Biphetamine, but they insisted that he give them the stronger stimulants. Again, Respondent was told that he should not prescribe medications to patients unless he was convinced they were medically necessary.

In 1982, DEA Diversion Investigators discovered that Respondent has been denied privileges in all of the Fort Worth area hospitals and had been denied membership in the Tarrant County Medical Society. Based upon his continued controlled substance prescribing and dispensing practices, Respondent became the target of a criminal investigation at that time. Between March 18 and November 9, 1982, investigators from the Texas State Board of Medicine and officers of the Fort Worth Police Department made ten undercover buys of stimulant controlled substances from Respodent. In exchange for cash, Respondent either wrote a prescription or dispensed the controlled substances to the undercover officers or investigators for other than legitimate medical purpose on each occasion. In addition, he falsified medical records for those individuals so that it would appear that he was prescribing and dispensing the controlled substances for weight loss, although none of the individuals was significantly overweight, nor expressed any specific interest in losing weight. On at least one occasion, Respondent did not charge the undercover officer for a visit or for the controlled substance prescription she received from him because he did not want any record of that visit.

On May 12, 1983, based upon the undercover controlled substance purchases discussed above, in the United States District Court for the Northern District of Texas, Fort Worth Division, Respondent was indicted on twelve counts of violating 21 U.S.C. 841(A)(1), a felony offense relating to controlled substances. In lieu of criminal prosecution on the indictment, Respondent and the United States Attorney executed an agreement for pretrial diversion on April 6, 1984. The terms of the agreement included a provision that Respondent surrender his controlled substances registration and never again apply for registration.

On June 27, 1983, the Texas State Board of Medical Examiners ordered that Respondent's medical license in that state be suspended for a period of six months, and that he be placed on probation for a period of ten years following the suspension period. The terms of the probation included the requirements that Respondent surrender his DEA Certificate of Registration and Texas Controlled Substances Registration Certificate, and that he not reapply for registration with either the Drug Enforcement Administration or the Texas Department of Public Safety without first obtaining written permission from the Texas State Board of Medical Examiners. On December 23, 1986, the Texas State Board of Medical Examiners amended its June 27, 1983, order by granting Respondent permission to reapply for registration with the Drug Enforcement Administration and the Texas Department of Public Safety to handle only Schedule III, IV and V controlled substances.

On Janaury 26, 1987, Respondent executed a new application for registration with the Drug Enforcement Administration in Schedules III, IIIN, IV and V. On this application, Respondent indicated that he was then authorized by the state of Texas to handle controlled substances in the schedules for which he was seeking registration. Although the Texas State Board of Medical Examiners earlier granted him permission to seek registration with the Drug Enforcement Administration and the Texas Department of Public Safety, he had yet to receive his state controlled substance registation at the time he applied for his DEA Certificate of Registration. By indicating on his DEA application for registration that he was authorized by the state to handle controlled substances when he had yet to receive such authorization, Respondent falsified his DEA application for registration. In addition, Respondent failed to note on the application that he had previously surrendered his DEA Certificate of Registration pursuant to the agreement for pretrial diversion and order of the Texas State Board of Medical Examiners. This omission also constitutes a material falsification of his application for registration.

On February 11, 1987, the Texas Department of Public Safety issued Respondent a Texas Controlled Substance Registration Certificate allowing him to handle only Schedule III, IV and V controlled substances.

Based upon the foregoing information, the Administrator determines that Respondent's history of controlled substance prescribing and dispensing is reprehensible. By any legitimate standard or measure, his activities were wholly unacceptable. Since he previously was warned on at least two occasions that his prescribing and dispensing practices were unacceptable, Respondent's actions cannot be attributed to ignorance, but rather an international disregard for the law. After receiving the warnings, instead of correcting his past practices, Respondent simply attempted to "cover" his actions by falsifying medical records and having alleged patients sign statements. In addition, the extent of Respondent's avarice is substantiated by the numerous undercover purchases of controlled substances made from him for other than any legitimate medical purpose. Clearly, Respondent's greed more greatly influenced his controlled substance handling practices than the legitimate medical needs of his alleged patients. As a result of these inexcusable activites, Respondent was responsible for placing large quantities of controlled substances into the illicit drug market.

Although the letter submitted by Respondent's former probation officer states that Respondent complies with the terms of his probation, there is no indication that the officer was aware that Respondent had reapplied for registration to handle controlled substances, an action specifically prohibited under the terms of his pretrial diversion. Respondent specifically agreed never again to seek registration to handle controlled substances in exchange for dismissial of the then-pending criminal charges against him. Less than three years after executing that agreement, Respondent violated its terms by reapplying for a state controlled substance registration and DEA Certificate of Registration. Clearly, at the time he entered pretrial diversion, Respondent was willing to agree to any terms in an effort to avoid prosecution, yet once his probation period was completed, he quickly reneged on one of the crucial terms of the agreement. This action raises serious doubts as to Respondent's integrity and trustworthiness.

Furthermore, Respondent falsified his DEA application for registration, as was discussed previously. Since the Drug Enforcement Administration must rely on the trustfulness of information supplied by applicants in registering to handle controlled substances, falsification cannot be tolerated. In fact, any material falsification of an application for registration, even absent any other controlled substance violation, is sufficient to support the denial of the application, or the revocation of a registration approved based upon the submission of false information. See 21 U.S.C. 824(a)(1). In this instance, Respondent materially falsified his pending application for registration by claiming he was authorized to handle controlled substances in the state in which he sought registration with the Drug Enforcement Administration when he was not so authorized. In addition, by failing to indicate that he surrendered his previous DEA Certificate of Registration in accordance with an agreement to avoid criminal prosecution, and pursuant to a state medical board order, Respondent again falsified his application. Nor did Respondent indicate on his application that he had previously agreed never to apply for registration.

The fact that the State of Texas has partially reinstated Respondent's controlled substance handling privileges has little bearing on any action to be taken in this matter. There is no indication as to what information the state board considered in allowing Respondent to reapply for limited controlled substance handling privileges. The Administrator can make his decision on whether to register Respondent based only upon the evidence presented to him in this proceeding. In his submissions, Respondent presents no evidence that his pretrail diversion agreement has been rescinded, and no significant evidence that he now can be entrusted to properly handle controlled substances. To the contrary, Respondent's abhorrent history of handling controlled substances, and recent attempts to renege on his pretrial diversion agreement and to deceive the Administrator by providing false information and omitting material information from his application for registration, strongly support the positions that Respondent's registration would be inconsistent with the public interest and that his pending application for registration should be denied.

Having concluded that Respondent's application for registration should be denied, the Administrator of drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CR 0.100(b), hereby orders that the DEA New Application for Registration, executed on January 26, 1987, by Joe F. Schooler, M.D., and any other pending applications for registration by that individual be, and they hereby are, denied.

This order is effective April 28, 1988.

John C. Lawn,

Administrator.

Date: April 22, 1988.

[FR Doc. 88-9341 Filed 4-27-88; 8:45 am]

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DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committee; Meetings and Agenda

The regular Spring meetings of committees of the Labor Research Advisory Council will be held on May 10, 11, and 12. The meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 10, Room N–3437 A and B

9:30 a.m.—Committee on Prices and Living Conditions

1. International Price Program Monthly Pricing, IPP revision
2. Producer Price Index Computer project
3. Consumer Price Index Status report

1:30 p.m.—Committee on Wages and Industrial Relations, Room N–3437 A and B

1. Review of work in progress
2. The Office of Compensation and Working Conditions FY 1988 congressional budget and the President's FY 1989 budget
3. Results of the Temporary Help Survey
4. Report on the Bureau's first-time Survey of Employee Benefits in State and local governments
5. Other business

Wednesday, May 11, Room S–2217

9:30 a.m—Committee on Employment Structure and Trends

1. Review of budget situation—FY 1988 cuts and FY 1989 Congressional request
2. Need for review of employment and unemployment concepts and measures
3. Progress in developing a revision in local area unemployment statistics methodology
4. Status of the plant closing statistics program
5. Results of special BLS survey of day care practices in industry and plans for survey of substance abuse programs
6. Plans for improvements in the business establishment lists maintained by the Bureau
7. Status of the Standard Industrial Classification revision
8. Other business

1:30 p.m.—Committee on Productivity, Technology and Growth, Room S–2217

1. BLS work on measuring productivity in service industries
2. Current developments in multi-factor productivity
3. International Productivity Symposium III
4. Work on capital analysis
5. Work on productivity of older workers

Thursday, May 12, Room S–2217

1:30 p.m.—Committee on Occupational Safety and Health Statistics

1. Progress reports on implementing National Academy of Sciences recommendations
2. Fatality Project—NCHS/NIOSH
3. Electrical safety data
4. Revised guidelines plan
5. Inhalation Work Injury Report
6. Supplementary Data System
7. Bibliography of research on OSHA
8. Records check project
9. Other business

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1327.

Signed at Washington, DC, this 21st day of April 1988.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 88–0296 Filed 4–27–88; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Job Training Partnership Act; Migrant and Seasonal Farmworker Programs; Proposed Planning Estimates

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed State planning estimates and allocation formula; request for comments.

SUMMARY: The Employment and Training Administration is publishing the proposed State planning estimates for Program Year 1988 (July 1, 1988–June 30, 1989) for the Job Training Partnership Act Section 402 migrant and seasonal farmworker programs, the allocation formula and the rationale used in arriving at the planning estimates.

DATE: Written comments on this notice are invited and must be received on or before May 31, 1988.

ADDRESS: Written comments should be submitted to Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department, of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 535–0500.

SUPPLEMENTARY INFORMATION: As required by section 162 of the Job Training Partnership (JTPA), the Employment and Training Administration publishes for comment the proposed State planning estimates for migrant and seasonal farmworker programs in Program Year (PY) 1988 (July 1, 1988–June 30, 1989). The planning estimates reflect: (1) No hold-harmless provision; and (2) that States and territories which would receive less than $60,000 by application of the formula (Alaska, Rhode Island, and the District of Columbia) will receive no allotment, since the amount they would receive is deemed insufficient to effectively operate a program. Although the Department of Labor (Department) reserves the right not to allocate any funds for use in a State whose allocation is less than $120,000 in accordance with 20 CFR 633.105(b)(2), jurisdictions which would receive more than $60,000 but less than $120,000 (Delaware and New Hampshire) will be given an allocation of $120,000.

Section 402 grantees were selected for a two-year period on July 1, 1987. Since PY 1988 (July 1, 1988 to June 30, 1989), is the second year of the current two-year designation period, current grantees will be funded for PY 1988, unless the actions called for at 20 CFR 633.315 of the JTPA regulations (replacement, corrective action, termination) are appropriate. Applications, therefore, will not be accepted from other organizations.

Allocation Formula:

The Department is allocating the PY 1988 funding increase of $5,951,000 above the PY 1987 level in two increments of 50 percent each, i.e., the current section 402 formula will be used to allocate 50 percent and the other 50 percent of the increase will be allocated based on relevant Social Agricultural Worker data (as of March 3, 1988), provided by the Immigration and Naturalization Service (INS). While recognizing that those data have certain limitations, the Department views these allocation methods as a fair and reasonable approach to accommodating the intent of the Congress as expressed in House Conference Report No. 100–256, page 64, dated July 30, 1987, which states that the increase "* * * will enhance the Department's ability to meet the demand for job training services among *currently eligible* migrants and seasonal farmworkers and to begin to address the needs of *newly eligible* persons." (emphasis ours).

Allotments:

The allotments set forth in the appendix to this notice reflect the allocation methods described above. These allocation methods are applied to a total amount to be distributed of $63,273,000. This figure represents the appropriated Fiscal Year 1988 (Pub. L. 100–202) level of $65,572,000 reduced by $2,299,000 which is being held in the JTPA section 402 national account. The migrant housing program and the Migrant Farm Labor Center in Hope, Arkansas, will be funded from the account.

Signed at Washington, DC, this 7th day of April 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

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Appendix

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1988 MSFW ALLOTMENT TO STATES
03-29-1988

	BASE		1/2 SUPPLEMENTAL		SAW		TOTAL
	DOLLARS	PERCENT	DOLLARS	PERCENT	DOLLARS	PERCENT	DOLLARS
Alabama	820,907	1.432	42,791	1.438	2,462	0.083	866,160
Alaska	0	0.000	0	0.000	0	0.000	0
Arizona	1,062,000	1.853	55,339	1.860	112,403	3.778	1,229,762
Arkansas	1,209,803	2.111	63,063	2.119	3,043	0.102	1,275,909
California	8,283,649	14.451	431,799	14.512	1,350,289	45.380	10,065,737
Colorado	748,430	1.306	39,013	1.311	33,813	1.136	821,256
Connecticut	192,032	0.335	10,010	0.336	1,880	0.063	203,922
Delaware	120,000	0.209	0	0.000	2,633	0.088	122,633
District of Columbia	0	0.000	0	0.000	0	0.000	0
Florida	3,625,815	6.325	189,002	6.352	631,240	21.215	4,446,057
Georgia	1,607,124	2.804	83,774	2.815	21,118	0.710	1,712,016
Hawaii	255,713	0.446	13,329	0.448	1,664	0.056	270,706
Idaho	844,322	1.473	44,012	1.479	45,745	1.537	934,079
Illinois	1,116,636	1.948	58,207	1.956	23,294	0.783	1,198,137
Indiana	807,155	1.408	42,074	1.414	2,530	0.085	851,759
Iowa	1,372,720	2.395	71,556	2.405	855	0.029	1,445,131
Kansas	700,484	1.222	36,514	1.227	4,467	0.150	741,465
Kentucky	1,423,392	2.483	74,197	2.494	718	0.024	1,498,307
Louisiana	828,340	1.445	43,179	1.451	2,211	0.074	873,730
Maine	342,437	0.597	17,850	0.600	399	0.013	360,686
Maryland	291,517	0.509	15,196	0.511	7,841	0.264	314,554
Massachusetts	298,083	0.520	15,539	0.522	2,530	0.085	316,152
Michigan	886,074	1.546	46,188	1.552	10,587	0.356	942,849
Minnesota	1,336,792	2.332	69,682	2.342	969	0.033	1,407,443
Mississippi	1,524,488	2.660	79,466	2.671	593	0.020	1,604,547
Missouri	1,145,998	1.999	59,738	2.008	1,687	0.057	1,207,423
Montana	701,847	1.224	36,585	1.230	251	0.008	738,683
Nebraska	798,111	1.392	41,602	1.398	2,530	0.085	842,243
Nevada	140,741	0.246	7,336	0.247	6,143	0.206	154,220
New Hampshire	120,000	0.209	0	0.000	103	0.003	120,103
New Jersey	271,075	0.473	14,130	0.475	17,471	0.587	302,676
New Mexico	491,974	0.858	25,645	0.862	35,489	1.193	553,108
New York	1,456,843	2.542	75,940	2.552	112,723	3.788	1,645,506
North Carolina	2,996,198	5.227	156,182	5.249	52,971	1.780	3,205,351
North Dakota	493,213	0.860	25,710	0.864	148	0.005	519,071
Ohio	942,320	1.644	49,121	1.651	4,034	0.136	995,475
Oklahoma	595,919	1.040	31,064	1.044	8,274	0.278	635,257
Oregon	881,861	1.538	45,969	1.545	93,861	3.154	1,021,691
Pennsylvania	1,230,245	2.146	64,129	2.155	24,366	0.819	1,318,740
Rhode Island	0	0.000	0	0.000	0	0.000	0
South Carolina	1,112,919	1.942	58,013	1.950	8,855	0.298	1,179,787
South Dakota	730,218	1.274	38,064	1.279	103	0.003	768,385
Tennessee	998,815	1.742	52,065	1.750	2,086	0.070	1,052,966
Texas	4,794,610	8.364	249,927	8.399	172,691	5.804	5,217,228
Utah	228,085	0.398	11,889	0.400	16,434	0.552	256,408
Vermont	224,244	0.391	11,689	0.393	46	0.002	235,979
Virginia	1,004,886	1.753	52,381	1.760	11,032	0.371	1,068,299
Washington	1,500,577	2.618	78,220	2.629	132,017	4.437	1,710,814
West Virginia	228,580	0.399	11,915	0.400	695	0.023	241,190
Wisconsin	1,782,651	2.238	66,860	2.247	1,858	0.062	1,351,369
Wyoming	208,881	0.364	10,889	0.366	1,288	0.043	221,058
Puerto Rico	3,043,276	5.309	158,637	5.331	5,060	0.170	3,206,973
FORMULA TOTAL	57,322,000	100.000	2,975,500	100.000	2,975,500	100.000	63,273,000
TA/HDUS.	2,299,000		0		0		2,299,000
GRAND TOTAL	59,621,000		2,975,500		2,975,500		65,572,000

[FR Doc. 88-9296 Filed 4-27-88; 8:45 am]
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[Training and Employment Guidance Letter No. 6-87]

Job Training Partnership Act; Program Guidance and Planning Schedule for Program Years 1988 and 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has issued Training and Employment Guidance Letter (TEGL) No. 6-87 (March 14, 1988) providing program guidance and a planning schedule for Job Training Partnership Act (JTPA) Titles II and III grants for Program Years (PYs) 1988 and 1989 (July 1, 1988–June 30, 1989; and July 1, 1989–June 30, 1990); respectively. TEGL No. 6-87 provides instructions for the submission of the Governor's Coordination and Special Services Plan and Statewide service delivery area job training plans. TEGL No. 6-87 is reprinted below for public information.

DATES: Training and Employment Guidance Letter No. 6-87 was effective on March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo. Telephone (202) 535-0577.

Signed at Washington, DC, this 13th day of April, 1988.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter No. 6-87

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Program Guidance and Annual Planning Schedule for Program Years 1988 and 1989 (Instructions for the Submission of the Governor's Coordination and Special Services Plans and Statewide Service Delivery Area (SDA) Job Training Plans)

1. *Purpose.* To transmit planning guidance to assist States in preparing for the Job Training Partnership Act (JTPA) 1988 Program Year (PY) which begins July 1, 1988 and PY 1989 which begins July 1, 1989.

2. *Background.* Pursuant to Section 121(a)(1) of the Act and 20 CFR 627.2 of the JTPA regulations, this document provides instructions to the States for the submission of the Governor's Coordination and Special Services Plan (GCSSP), instructions to selected States for the submission of the single statewide SDA job training plans and the Annual Planning Schedule for PYs 1988 and 1989.

This document is divided into six parts:

a. Planning Guidance for submission of GCSSPs;

b. Instructions for the GCSSP;

c. Planning Guidance for submission of Single Statewide SDA Job Training Plans;

d. Instructions for the Statewide Job Training Plan;

e. Procedures for Appeals to the Secretary; and

f. Annual Planning Schedule.

The planning instructions call for the development of new biennial GCSSPs covering PYs 1988 and 1989. Also included is guidance on performance standards information that States should address in the GCSSP.

With regard to single statewide SDA job training plans, the document addresses the period to be covered, the submittal date, petitions for disapproval, and the process for appealing a disapproval by the Secretary of a statewide plan.

The national ratio of economically disadvantaged youth to economically disadvantaged adults, as required by Section 203(b)(2) of JTPA, to enable States and SDAs to calculate Title II–A youth service levels, is provided.

Procedures issued previously for appealing disapprovals by the Governor on local job training plans are attached.

The format and procedures for submission of the GCSSP and single statewide SDA job training plan have not been revised. However, Item I, Enclosure I and Item II and Part B of Enclosure I have been revised to request more specific information, so that *we can obtain a more complete description* of the program being operated by the State.

2. *Department of Labor (DOL)/Employment and Training Administration Goals/ Objectives for PY 1988/1989.*

The Department is encouraging Governors to consider the following goals and objectives in planning their activities for this period and in giving guidance to SDA planning. These goals and objectives are consistent with the objectives contained in the 1986 Amendments to JTPA.

- Increase the levels of service to the youth and adult at-risk populations.
- Encourage the development and inclusion of basic and remedial education components including literacy training, as essential elements in all JTPA programs.
- Improve overall program quality by encouraging the development of enriched, longer term program interventions combining several program activities and services in order to better serve those individuals most at-risk who have multiple needs.
- Strengthen program management through better oversight, increased fiscal responsibility and improved contracting practices.

3. *JTPA Coordination with other Federal Agencies.*

The GCSSP should describe coordination activities among State and local organizations, focusing on the areas of at-risk youth services and adult and youth literacy programs, specifying agencies working in coordination and elements of the program.

Provision for coordination with JTPA is being made in a growing number of related Federal laws. For example, amendments to the Wagner-Peyser Act, which authorized the public employment service, and to Title IV of the Social Security Act which authorizes the Work Incentive (WIN) program call for joint planning between administrators of Employment Service (ES) and JTPA and coordination of services between WIN and JTPA. The Carl D. Perkins Vocational Education Act, also encourages collaboration with JTPA through the offer of financial incentives.

To achieve maximum potential from current social services programs, coordination between the separate local agencies is essential. The local agencies are channeled funds through separate Federal agencies, although the target participants are often the same across programs. Coordination between agencies serves to increase the efficiency of the services they provide as well as maximizing the benefits of the resources allocated. Administrative costs can be reduced by directing one integrated program as opposed to several different programs.

Although actual coordination efforts must be realized at the State and local levels, Federal agencies may be able to demonstrate how such coordination and cooperation may occur. The Department of Labor (DOL) has several agreements with other Federal agencies which focus of demonstration projects. These projects are coordinated with other Federal agencies to provide training and employment services to participants eligible for other services such as welfare and vocational education.

Interagency agreements have been established between DOL and several other agencies at the Federal level with the purpose of providing integrated services to certain target populations. These agreements are designed to provide models of integrated services which may be replicated throughout the Nation. For example, Youth: 2000 is a part of a series of initiatives undertaken by the Department of Health and Human Services (HHS) and the Department of Labor to focus attention on at-risk youth. The two Federal agencies have jointly funded 13 projects to assist States in their efforts to help encourage young people to become economically and socially self-sufficient and prepare them to meet the demands of a changing society in the 21st Century.

In considering the populations served by these Agreements, the focus is on at-risk youth, including the homeless, runaways, and dropouts, youth and adults needing workplace literacy training, and older workers. Coordination at the local level should focus on services provided for these target populations by the local welfare and education agencies, local volunteer organizations, and private industry councils, as well as model programs already established, such as Cities in Schools, interagency agreement with HHS, Education Department (ED), and Department of Defense (DOD). Other examples of coordination are cited in TEIN No. 17-86, Model JTPA Programs for Recruiting and Serving Dropout Youth, which describes model JTPA programs in several States that focus on at-risk youth.

Following is a list of interagency agreements (IAGs) that the Department of Labor has engaged in with other Federal agencies which focus on at-risk youth:

1. IAG with Departments of Justice, ED and HHS and Cities in Schools, Inc.

—Emphasis on employability services for at-risk and dropout prone youth.

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2. IAG with HHS

—17 projects from Coordinated Discretionary Funds grants competition: Youth: 2000

3. IAG with HHS

—Service Integration Pilot Projects.

—Focus on dropout prevention; teen parent centers and persons with developmental disabilities.

—Purpose is to develop models to be replicated in JTPA system.

The following are agreements which focus on literacy:

1. IAG with ED

—To produce booklet on "What Works in Workplace Literacy."

2. IAG with DOD and ED

—Adaptation of Job Skills Education Program, a computer assisted basic skill remediation program used in the military, for use in training JTPA participants.

—Pilot project to be conducted in 3 States initially.

3. IAG with ED

—To provide training to eligible family members of children participating in bilingual programs.

4. *Inquiries.* Direct inquiries to Robert N. Colombo at 202–535–0577.

5. *Attachments.*

PLANNING GUIDANCE

I. Governor's Coordination and Special Services Plan (GCSSP)

A. Background

The format for submitting the GCSSP has not been revised, from past procedures, however, the instructions have been revised (expanded) for PY 1988/1989.

B. Plan Submission

GCSSPs should be submitted using the OMB approved format contained in Enclosure I. Governors should submit three dated copies of the GCSSP, each with an original signature of the Governor or designee, no later than May 16, 1988, to: Dolores Battle, Administrator, Office of Job Training Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW. Room N4459, Washington, DC 20210.

The GCSSP, while not a "rollup" of SDA plans, must describe "the planned use of all resources for the next two years provided to the State and SDAs under this Act and must evaluate the experience over the preceding two years." (Section 121(a)(2)).

C. Performance Standards

Section IV of Enclosure Ia requests a description of the adjustments made in the Secretary's Performance Standards and the methods used in making the adjustments. (Section 121(b)(3))

D. Plan Review

The Department will check the GCSSP for overall compliance with the provisions of the Act and the JTPA regulations and will notify the State of the result of its review. The Department will discuss with the State any inconsistencies with the Act and/or regulations and any action to be taken prior to plan submittal. The Department and the State will also agree on a date for plan resubmittal should this be necessary.

E. Modifications

If major changes in the labor market conditions, funding or other factors occur during the period covered by the plan and it becomes necessary for the State to submit a modification to its GCSSP, the content and procedures contained in Enclosure IIb should be followed. For the purpose of these modifications, "major" is defined as a 20 percent cumulative change in any one of these factors.

F. Signature

Either the Governor or a designee shall affix original signatures to each of the three copies submitted. Where a Governor has delegated the signature authority, the delegation will remain unless rescinded by the sitting Governor.

G. Ratio of Disadvantaged Youth to Adults

Section 203(b) of JTPA provides that not less than 40 percent of available Title II–A funds shall be expended on youth, except where the ratio of economically disadvantaged youth to adults in the SDA differs from the national ratio, as published by the Secretary. Where the ratio differs, the amount to be spent on youth is to be reduced or increased proportionately in accordance with regulations prescribed by the Secretary (see Section 630.1(b)(2) of the JTPA regulations). In a letter transmitted previously to State liaisons, the Department indicated that: "According to the 1980 Census, the total number of economically disadvantaged youth (ages 16 through 21) for the Nation was 5,417,178. The comparable total for adults, ages 22 and over, was 23,625,720. The ratio of youth to adults is 22.93 percent." Since the Census figures have not been updated, the figure of 22.93 will continue to be the national ratio.

H. Planned Services to Dislocated Workers

Meeting the needs of American workers dislocated as the result of foreign competition, economic dislocation and other factors is an important element in improving the competitiveness of the American economy. Accordingly, States are requested to place special emphasis upon plans to serve dislocated workers and, as appropriate, to specifically address the following areas:

1. Plans to establish or enhance already established rapid response capacity such as the development of State dislocated worker units and/or rapid response teams to initiate program services, including emergency assistance centers and cooperative labor management committees, and the development of systems and techniques for the early identification of worker dislocations.

2. Plans to coordinate the delivery of services to dislocated workers under Title III with other training and employment programs such as the public employment service, Unemployment Insurance, and the Trade Adjustment Assistance program and with other programs including economic development. To the extent feasible, States are encouraged to consolidate the administration of the TAA program and the Title III program. Finally, States are requested to include any specific plans or activities which will be undertaken to coordinate services and activities with organized labor.

3. Plans to make effective use of limited Title III resources including, as appropriate, the substate allocation of such resources within the State or to service delivery areas for delivery of dislocated worker services, and the reallocation of Title III funds within the State to provide funds to the areas with greatest need and/or to areas in which funds may be most effectively utilized.

I. Appeals to the Secretary on Job Training Plans

Procedures for appeals to the Secretary on final disapproval by Governors of local job training plans were published in the **Federal Register** on September 12, 1983, and transmitted to States in a letter to State liaisons. For your convenience, attached is a copy of the previously transmitted procedures.

[Enclosure Ia; OMB Control No. 1205–0203; Expiration Date: June 30, 1990]

Planning Instructions—Format and Procedures for Submitting the Governor's Coordination and Special Services Plan (GCSSP)

The GCSSP shall contain:

I. Identifying Information

A. Name and address of the grantee.
B. Date of submission.
C. Time period covered.

II. Program Planning Information

A. Provide an overview of the goals and objectives for all Titles II and III job training and placement programs within the State. (Section 121(a)(1)).

B. Describe the criteria which have been established, for coordinating activities under the Act, including Title III (specifically address coordination under Section 323 of Carl D. Perkins with Title III activities) with: Program and services provided by State and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, post secondary institutions, economic development agencies, agencies which provide services to the homeless, and such other agencies as the Governor determines to have direct interest in employment and training and human resource utilization with the State. (Section 121(b)(1)).

III. Program Activities

A. Review and evaluate the State's program experience in Program Year 1986 and Program Year 1987. The evaluation should include: (1) A summary of the methods used by the State to track and require corrective action for SDAs underexpenditure and other performance problems; and the State's procedures for addressing underexpenditures in each program and title and an explanation of how this experience has contributed to decisions made regarding the activities to be funded in this plan. (Section 121(a)(2)).

B. Describe the projected use of resources, including oversight and support activities, priorities and criteria for State incentive grants and performance goals for State supported programs.

IV. Performance Standards

A. Describe the adjustments made in the Secretary's performance standards and the factors used in making the adjustments. (Section 121(b)(3)).

Including:

(1) The adjustment policy planned to be used to vary the standards;

(2) The data sources to be used; and

(3) The factors to be used in making the adjustments

B. Describe the State's incentive award policy pursuant to Section 202(b)(B) and sanctions policy pursuant to Section 106(h).

V. General Administrative Information

A. Compliance With Section 167 of JTPA

Provide a statement indicating that that State has adequate methods of administration to assure compliance with nondiscrimination provisions of the Act. (Section 167).

B. Signature

The GCSSP should contain the Governor's signature or the signature and title or his/her designee. The name of the signer should be typed below the signature.

C. Mailing Address

States should submit three copies of the GCSSP, each with original signature of the Governor or his/her designee to: Dolores Battle, Administrator, Office of Job Training Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N4459, Washington, DC 20210.

Modification to GCSSP

If major changes occur in labor market conditions, funding or other factors during the period covered by the plan, the State shall submit a modification describing these changes. See Attachment IIb for the procedures to be followed in submitting such modifications. For the purposes of determining if a modification is necessary a major change is defined as a cumulative change of 20 percent of these factors in the plan. (See Attachment Ib for the procedures to be followed in submitting such a modification). (Section 121(b)(4)).

[Enclosure Ib]

Modification to the GCSSP

Section 121(b)(4) of the JTPA requires that a modification to the GCSSP be submitted by the Governor to the Secretary if major changes occur in labor market conditions, funding or other factors during the period covered by the plan. For the purpose of these modifications, a "major change" is defined as a 20 percent cumulative change in any one of these factors. That modification should be prepared as follows:

I. Identifying Information

A. The name and address of the grantee.

B. Date of submission of the modification and the number of the modification (I, II, III, etc.).

C. Time period to be covered by the modification (presumably this will be from the date of submission to the end of the GCSSP's time period).

D. The reason(s) for the modification.

E. The specific changes to be made in the GCSSP as a result of this reason(s). (Describe the specific section of the plan where this information is included).

F. *Signature.* The modification should contain the Governor's signature or the signature and title of his/her designee. The name of the signer should be typed below the signature.

III. Submittal

States should submit three copies of any necessary modifications, each with an original signature of the Governor or that of a designee to: Dolores Battle, Administrator, Office of Job Training Programs, 200 Constitution Avenue, NW., Room N4459, Washington, DC 20210.

IV. DOL Review.

The modification shall be reviewed for compliance with the Act and the State shall be modified within 30 days of the modification's submission of its acceptability or of any problems identified.

PLANNING GUIDANCE—SINGLE STATEWIDE SERVICE DELIVERY AREA JOB TRAINING PLANS

Planning Guidance

II. Statewide Service Delivery Area Job Training Plans

A. Background

The format for submitting statewide job training plans has not been revised, from past procedures, however, Section II–A of Enclosure II has been revised to request that the State provide a description of the required elements found in Section 104(b), and Section II–B requests that the State provide a budget describing the use of resources provided to the State.

B. Plan Submission

Single statewide SDAs job training plans should be submitted using the OMB approved format contained in Enclosure II. Modifications to the plan shall be submitted using the same format.

Governors with Statewide SDAs should submit three dated copies of the job training plan, each with an original signature of the Governor, or a designee, no later than April 29, 1988 to: Dolores Battle, Administrator, Office of Job Training Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N4459, Washington, DC 20210.

C. Plan Review

The Department will check the plan or modification for overall compliance with the provisions of the Act and JTPA regulations and will notify the State of the result of its review.

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D. Petitions for Disapproval

States are reminded of previous guidance provided concerning petitions for modifying or disapproving a statewide job training plan. This guidance provided that the procedures found in Section 105(b)(3) of the Act, which sets forth the conditions under which interested parties can petition the Governor for disapproval of a local job training plan, apply in the case of a statewide SDA. The Department recommends that the interested party first petition the Governor for a revision of the plan. If the Governor's informal resolution of the matter is not satisfactory to the interested party, then that party could submit a petition to the Secretary of Labor at the U.S. Department of Labor, Washington, DC 20210, Attention: ASET.

E. Appeals

In the event the Secretary disapproves a statewide plan, the Governor may appeal the Secretary's decision to an Administrative Law Judge (ALJ) pursuant to section 629.57 of the JTPA regulations. If the Governor is dissatisfied with the ALJ's decision, then under the authority provided in sections 166(b) and 168 of the Act, the Governor may file exceptions to the decision with the Secretary of Labor and/or a petition for review in the United States Court of Appeals having jurisdiction over the State.

INSTRUCTIONS FOR THE STATEWIDE JOB TRAINING PLAN

[Enclosure II; OMB Approval No. 1205–0204; Expiration Date: June 30, 1990]

Statewide Service Delivery Area (SDA) Job Training Plan

Statewide SDA

The Job Training Plan shall contain:

I. Identifying Information

(A) Identification and address of the grant recipient.

(B) Identification and address of the entity or entities which will administer the program (see Section 104(b)(1) of the JTPA), if different from the grant recipient.

(C) Date of submission.

(D) Area Covered by SDA (i.e., Entire State of _____).

(E) Time period covered by plan.

II. Program Information

(A) Specific descriptions of each of the required elements found in section 104(b) of the Act, including paragraphs 104(b)(2) through 104(b)(10).

(B) A statement assuring that the State will publish its plan and make it available for review and comment as specified in section 105(a) of the Act.

(C) A statement assuring that the State will comply with the cost limitations contained in section 108 of the Act.

III. Signature

An original signature should be affixed to each of the three copies of the statewide plan submitted. The name of the signer (and the signer's title if a designee) should be typed below the signature. The signature should be that of the Governor or a designee who is identified by the Governor.

PROCEDURES FOR APPEALS TO THE SECRETARY

[OMB Control Number 1205–0208 Expiration Date:]

SDA Job Training Plan Secretary's Appeal Process

Action	Time frames
● SDA submits job training plan	In accordance with the schedule established by the Governor.
● Governor notifies SDA in writing of preliminary disapproval of SDA job training plan.	In accordance with State schedule.
● SDA revises and resubmits the plan	Within 20 days of written notification of preliminary disapproval.
● Governor notifies SDA in writing of final disapproval of SDA job training plan and provides information on appeals.	Within 15 days after resubmittal.
● PIC and appropriate chief elected official(s) for SDA submit appeal to the Secretary (address: U.S. Department of Labor, Washington, DC 20210, Attention: ASET). Simultaneously, PIC and appropriate chief elected official(s) for SDA provide a copy of the appeal to the Governor. At a minimum, the appeal must include: —Specific demonstration that a provision of section 105(b)(1) of the Act has been violated, with evidence to support that claim —A copy of instructions and scheules provided by the Governor on job training plans —A copy of the Governor's preliminary disapproval —A copy of the documents submitted by the SDA to the Governor in response to the preliminary disapproval —A copy of the Governor's notification of the final disapproval and evidence of the date of receipt of such disapproval	Appeal must be dated no later than 30 days after receipt of Governor's written notification of final disapproval.
● Secretary receives and dates appeal. Sends notice of receipt of appeal to the appropriate Governor.	45-day consideration begins with date stamp of receipt in DOL.
● Appeal is reviewed and analyzed, including Governor's comments. Recommendation provided to the Secretary.	45-day period.
● Secretary makes decision and notifies appealing party and Governor by letter	Letter dated within 45 days of receipt of appeal.

If the operational year begins while the appeal is being reviewed by the Secretary, the Governor's decision shall stand. The Governor may take whatever action is necessary to ensure continuity of services to participants during this interim period.

[Classification JTPA; Correspondence Symbol TDCP; Date: April 12, 1985]

Training and Employment Information Notice No. 33–84

To: All State JTPA Liaisons
From: Frank C. Casillas, Assistant Secretary of Labor
Subject: Job Training Partnership Act (JTPA) Appeals

1. *Purpose.* To summarize for State JTPA Liaisons the various types of appeals that may be directed to the Secretary of Labor under JTPA and to provide applicable references regarding appeal procedures.

2. *References.* Training and Employment Information Notice (TEIN) No. 23–84; TEIN No. 26–84.

3. *Background.* The JTPA specifies five types of appeals that may be addressed to the Secretary. They are:

(a) Service delivery area (SDA) designation appeals;
(b) Local job training plan appeals;
(c) Statewide SDA job training plan appeals;
(d) SDA reorganization plan appeals; and
(e) Plan revocation appeals.

4. *SDA Appeals.* Pursuant to sections 101 (b) and (c) of the Act, Governors may designate or redesignate SDAs subject to certain time limitations. An entity eligible under section 101(a)(4)(A) that is denied SDA designation may appeal the Governor's decision to the Secretary pursuant to section 101(a)(4)(C) of the Act. The procedures for filing such an appeal are outlined under 20 CFR 628.1(c) of the JTPA regulations, and are elaborated upon in a May 17, 1983 **Federal Register** notice. Interested parties should also consult TEIN No. 23–84, entitled "Appeals to the Secretary on Service Delivery Area (SDA) Designations."

5. *Local Job Training Plan Appeals.* Pursuant to section 105(b)(1) of the Act, a Governor shall approve a local job training plan or modification thereof unless one of five conditions set forward in that Section has not been met. An SDA whose plan or modification has been disapproved may appeal the Governor's decision to the Secretary pursuant to section 105(b)(2) of the Act. Procedures for filing this type of appeal are outlined under 20 CFR 628.5(b) of the JTPA regulations, and are elaborated upon in a September 12, 1983 **Federal Register** notice. Interested parties should also consult TEIN No. 26–84, entitled "Appeals to the Secretary on Final Disapproval of Job Training Plans or Modifications."

6. *Statewide SDA Job Training Plan Appeals.* Pursuant to section 105(d) of the Act, the Secretary exercises the same authority with regard to the State as the Governor exercises with regard to SDAs for job training plans (or modifications) for single, statewide SDAs. In the event that a statewide SDA job taining plan or modification is disapproved by the Secretary, Governors may appeal the decision by requesting a hearing with an Administrative Law Judge (ALJ) as outlined in 20 CFR 629.57(c) of the JTPA regulations. Pursuant to sections 166(b) and 168(a) of the Act, a Governor may file exceptions to the ALJ's decision with the Secretary and/or a petition for review in the U.S. Court of Appeals having jurisdiction over the State. This information was previously provided in a letter to all State Liaisons dated February 2, 1984.

7. *SDA Reorganization Plan Appeals.* Pursuant to section 106(h)(1) of the Act, the Governor shall impose a reorganization plan on SDAs where failure to meet performance standards persists for a second year. Section 106(h)(3) stipulates that affected entities must have the opportunity for a hearing by a hearing officer before the Governor imposes any such reorganization plan. The Governor's decision may be appealed to the Secretary, who shall make a decision within 60 days of receipt of the appeal (Section 106(h)(4)).

The Department will issue more detailed procedures for this type of appeal during Program Year 1985. Presently, there is no immediate need for such procedures since section 181(j)(3) provides that no SDA shall suffer a penalty for not meeting performance standards during the initial program period (October 1, 1983 to June 30, 1984—the 9-month transition period). Consequently, the "second year" of failure to meet performance standards referred to in section 106(h)(1) may not occur until the conclusion of Program Year 1985, which ends on June 30, 1986. Procedures for this type of appeal will be issued in a timely manner to permit implementation of this provision of the Act.

8. *Plan Revocation Appeals.* Pursuant to section 164(b)(1) of the Act, a Governor may issue a notice of intent to revoke approval of all or part of a plan if it is determined that a substantial violation of the Act or regulations has occurred and no corrective action has been taken. Such notice may be appealed to the Secretary under the same terms and conditions as the disapproval of a job training plan. Therefore, the terms and conditions set forth in section 105(b)(2) of the Act and 20 CFR 628.5(b) of the regulations for appeals of plan disapprovals apply to appeals of notices of intent to revoke plan approvals.

9. *Administrative Adjudication.* In addition to the appeals listed above, a hearing before an administrative law judge (ALJ) may be requested in certain cases, under the administrative adjudication provisions of section 155 of the Act. Section 166(a) provides that such requests for an ALJ hearing may be filed by an applicant dissatisfied with the Secretary's determination not to award financial assistance in whole or in part, or any recipient upon whom a corrective action or a sanction has been imposed by the Secretary. Procedures for filing such a request for a hearing may be found at 20 CFR 629.57(c).

Pursuant to section 166(b), a party dissatisfied with the ALJ's decision may, within 20 days of receipt of the decision, file exceptions and petition for the Secretary's review of the case. The Secretary has 30 days in which to accept the case for review; if the Secretary does not take such action, the decision of the ALJ becomes the final decision of the Secretary.

10. *Judicial Review.* The judicial review provisions of section 168 apply to any final actions of the Secretary.

11. *Action Required.* All State JTPA Liaisons are requested to provide this information to SDAs and other interested subrecipients.

12. *Inquiries.* Questions concerning this notice should be directed to Robert N. Colombo, Director, Office of Employment and Training Programs, at (202) 535–0577.

[Classification JTPA; Correspondence Symbol TDC; Date: June 13, 1985]

Training and Employment Information Notice No. 44–84

To: All State JTPA Liaisons and State Wagner-Peyser Administering Agencies
From: Frank C. Casillas, Assistant Secretary of Labor
Subject: Appeals of a Governor's Notice of Intent to Revoke Approval of All or Part of a Local Job Training Plan

1. *Purpose.* To transmit procedures for appeals to the Secretary of a Governor's notice of intent to revoke approval of all or part of a local job training plan, pursuant to section 164(b)(1) of the Job Training Partnership Act (JTPA).

2. *Reference.* Training and Employment Information Notice (TEIN) No. 26–84.

3. *Background.* Pursuant to section 164(b)(1) of the Job Training Partnership Act (JTPA), a Governor may issue a notice of intent to revoke approval of all or part of a local job training plan if it is determined that a substantial violation of the Act or regulations has occurred and no corrective action has been taken. Such notice may be appealed to the Secretary under the same terms and conditions as the disapproval of a local job training plan or modification. Pursuant to sections 164(b) (1) and (2) of the Act, the notice of intent shall not become final until the time for appeal has expired or the Secretary has issued a decision, and the Governor shall withdraw the notice if appropriate corrective action has been taken.

4. *Procedures.* The terms and conditions set forth in section 105(b)(2) of the Act and 20 CFR 628.5(b) of the regulations (approved under Office of Management and Budget Control Number 1205–0208, expiring August 31, 1988) for appeals of plan (or modification) disapprovals apply to

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appeals of notices of intent to revoke plan approvals.

Pursuant to section 164(b) of the Act, the following procedures have been adapted from plan (or modification) disapproval appeal procedures, which were transmitted to States by TEIN No. 28–84.

An appeal to the Secretary shall be limited to a review of the Governor's action to determine compliance with the law. Therefore, it is incumbent on the appellant to demonstrate that the Governor's decision does not comply with specific provisions of the Act or regulations. It is not the Department's intent to review the substance of the approach or actions of the Governor or service delivery area (SDA). The Secretary's decision will be based strictly on whether or not the Governor's notice of intent is based on an SDA's substantial violation of a specific provision of the Act or regulations.

The Secretary will accept appeals dated no later than 30 days after receipt of the Governor's notice of intent to revoke approval of all or part of job training plan. The address for an appeal submittal is: Secretary, U.S. Department of Labor, Washington, SC 20210, Attention: ASET.

Simultaneous submittal of a copy of the appeal to the Governor is required. Appeals must be submitted jointly by the private industry council and the appropriate chief elected official(s) for the SDA.

In order for the Secretary to make an informed decision, the SDA should provide all relevant information in the appeal. This must include, at a minimum:

(a) The basis for the SDA's appeal to the Secretary of the Governor's notice of intent to revoke approval.

(b) The Governor's determination that there is or was a substantial violation of a specific provision of the Act or regulations.

(c) Any documents issued by the Governor directing that corrective action to be taken.

(d) Any documents submitted by the SDA to the Governor in response to the determination that there is or was a substantial violation.

(e) A copy of the Governor's notice of intent to revoke approval of all or part of the plan, and evidence of the date of receipt of such notice.

(f) A copy of any documents submitted by the SDA to the Governor in response to the notice, including any planned corrective action.

Governors may comment on appeals by submitting similar or additional information. The Secretary will make a final decision within 45 days of receipt of an appeal. Therefore, Governors will need to submit their comments to the Secretary quickly in order for them to be considered. A letter indicating the Secretary's receipt of an appeal and a cut-off date for comments will be sent to the Governor by the Employment and Training Administration on each appeal.

5. *Inquiries.* Questions concerning this notice should be directed to Robert N. Colombo, Director, Office of Employment and Training Programs, at (202) 535–0577.

Planning Schedule—Planning Activities for Program Year (PY) 1988 and PY 1989 (PY 1988 is From July 1, 1988 Through June 30, 1989 and PY 1988 is From July 1, 1989 Through June 30, 1990)

	PY 1988	PY 1989
B. Data for Operations and Planning		
● ETA issues requests to States to obtain area of substantial unemployment (ASU) designations to be used in Title II allotments. (JTPA) Section 4(3)).	Mar. 14, 1988	
● ETA issues the national ratio of economically disadvantaged youth to economically disadvantaged adults. (JTPA Section 208 (b)(2).		
● ETA transmits revised poverty level income guidelines and updated Lower Living Standards Income Level (LLSIL) guidelines.	Mar.18, 1988	Mar. 17, 1989.
C. JTPA Appeals		
Note: There are five types of appeals under JTPA that may be filed wit the Secretary. The following is a list of those various appeals and where they fall chronologically in the upcoming planning schedule.		
Part I—Planning Dates by Subject Area		
The planning schedule assumes continuation of existing programs.	Should legislation outlined in the Department's initiative be passed by the	Congress, further instructions will be provided.
	PY 1988	PY 1989
A. Allotments; Notices of Obligation (NOO); Substate Allocations		
Note: Allotments for Titles II–A and III cover PY 1988 and 1989. For Title II–B, the Summer Youth Employment and Training Program (SYETP), the allotments are for the Calendar Years 1988 and 1989 summer youth programs.		
● Using the most recent available data, ETA issues final State formula allotments for JTPA Titles II–A, II–B and III. (JTPA Section 201; 20 CFR 625.6).	Dec. 31, 1987	Dec. 30, 1988.
● ETA issues Wagner-Peyser preliminary planning estimates	Jan. 13, 1988	Jan. 13, 1989.
● Governors provide substate planning levels to SDAs	In accordance with State schedules	
● ETA issues final allotments for Wagner-Peyser, using most recent calendar year data.	Mar. 25, 1988	Mar. 10, 1989.
● ETA issues NOOs for Title II–B	Apr. 1, 1988	Apr. 1, 1989.
● ETA issues NOOs for Titles II–A and III	July 1, 1988	July 1, 1989.
● ETA issues first quarter NOOs for Wagner-Peyser activities	July 1, 1988	July 1, 1989.
● Governors provide funds to SDAs	Not later than 30 days after the date funds are made available to the States, or 7 days after the plan is approved, whichever is later. (JTPA Section 162(e)).	
● SDA Appeals—ETA provides to the States a copy of previously issued procedures for appeals to the Secretary on denials of requests for SDA designation. (JTPA Section 101 (a)(4)(c); 20 CFR 628.1(c)).	Mar. 14, 1988	

	PY 1988	PY 1989
● SDA Reorganization Plan Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's decisions pursuant to any reorganization plan imposed for failure to meet performance standards. (JTPA Section 106(h)(3)).	Mar. 14, 1988	
● Local Job Training Plan or Modification Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's final disapproval of local job training plans or modifications. (JTPA Section 105(b)(2); 20 CFR 628.5(b)).	Mar. 14, 1988	
● Plan Revocation Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's notice of intent to revoke all or part of a local job training plan. Such appeals are subject to the same terms and conditions as the disapproval of local job training plan appeals. (JTPA Sections 164(b)(1), 105(b)(2); 20 CFR 628.5(b)).	Mar. 14, 1988	
● Statewide SDA Job Training Plan Appeals—ETA provides to the State a copy of previously issued procedures for filing appeals in the event that a statewide SDA job training or modification is disapproved by the Secretary (JTPA Sections 105(d), 166(b) and 168(a); 20 CFR 629.57(c)).	Mar. 14, 1988	
D. Employment Service Planning Activities		
Note: "Section" reference cites the Wagner-Peyser Act, as amended by JTPA.		
● State plan reviewed by Governor and submitted to Regional Office. (Section 8(b); 20 CFR 652.7).	May 27, 1988	May 26, 1989.
● State plans approved, Wagner-Peyser obligational authority provided to States. (Section 8(b); 20 CFR 652.7).	July 1, 1988	July 1, 1989.
● Program year begins, State Employment Service plans in effect	July 1, 1988	July 1, 1989.
E. Designation of Service Delivery Areas (SDAs) and Appeals to the Secretary on Denials of Requests for SDA Designation		
● ETA provides to the States a copy of previously issued procedures for submittal of appeals to the Governor's denial of SDA designation.	Mar. 14, 1988	
● State Job Training Coordination Council (SJTCC) proposes designation of SDAs for the State. (Section 101 (a)(1) and (2)).	In accordance with State schedule	
● Governor publishes proposed SDA designations. (JTPA Section 101(a)(1))	do	
● Units of general local government, business and other affected persons or organizations given an opportunity to comment on and request revisions of proposed SDA designations. (JTPA Section 101(a)(3)).	do	
● Governor makes final SDA designations within the State after reviewing any comments on the SJTCC's proposal. (JTPA Section 101(b)).	No more frequently than every 2 years and no later than 4 months before the beginning of a program year. (JTPA Section 101(c)(1)).	
● Entities described in Section 101(a)(4)(A) may appeal the Governor's denial of SDA designation to the Secretary. (20 CFR 628.1(c)).	No later than 30 days after receipt of written notification of the denial from the Governor (20 CFR 628.1(c)(2)).	
● Governor submits comments on the appeal to the Secretary. (20 CFR 628.1(c)(4)).	As quickly as possible	
● Secretary makes final decision on the appeal. (JTPA Section 101(a)(4)(C)	Within 30 days after the appeal is received.	
F. Statewide SDA Plan		
● ETA issues guidance for submission and modification of statewide SDA job training plans.	Mar. 14, 1988	
● ETA provides to the State a copy of previously issued procedures for appeals of the Secretary's disapproval of a statewide SDA job training plan or modification.	Mar. 14, 1988	
● Governor publish biennial statewide plan proposal or summary for review and comment not less than 120 days before begining of program year. (JTPA Section 105(a)(1)).	Mar. 14, 1988	
● Governor publishes final plans, summaries or modification of statewide SDA job training plans. (JTPA Section 105(a)(2)).	For final plans or summaries, no later than 60 days before the first of the two program years. For modifications, no later than 60 days before it becomes effective.	
● Governor submits final plan or modification to Secretary not less than 60 days before beginning of program year. (JTPA Section 105(d); 20 CFR 628.6(a)).	Apr. 29, 1988	
● Interested parties may submit petitions for disapproval of statewide SDA job training plans or modifications. (JTPA Section 105(b)(3)).	Within 15 days of the date of receipt by the Grant Office of the plan or modification.	
● The State's plan or modification shall be considered approved unless the Secretary notifies the Governor in writing of discrepancies between the submission and specific provisions of the Act. (20 CFR 628.6(b)).	Within 30 days of the date of submission, which is defined as date of receipt by the Administrator, Office of Job Training Programs.	
● The State may appeal the Secretary's disapproval of the plan or modification by requesting a hearing with an Administrative Law Judge as outlined in 20 CFR 629.57(c).	Within 21 days of receipt of the disapproval	
● SDAs publish any modification to approved local job training (JTPA Sections 104(c) and 105(a)(2)).		Not later than 60 plans days before the modification is to become effective.
● Governors approve or disapprove plans or modifications (JTPA Section 105(b)(2)).	Within 30 days of submission (may be extended another 15 days, if petition for disapproval is filed. (JTPA Section 105(b)(2)).	
● Program operations begin for the two program years	July 1, 1988	
H. Disapproval of Local Job Training Plans or Modifications and Appeals of Disapprovals		
● ETA provides to the States a copy of previously issued procedures for appeals of the Governor's final disapproval of local job training plans or modifications.	Mar. 14, 1988	

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	PY 1988	PY 1989
● Interested parties may submit petitions to the Governor recommending disapproval of SDA job plans or modifications. (JTPA Section 105(b)(2) and (3)(A)).	Within 15 days of the date of plan submission	
● Governor notifies Private Industry Council and appropriate chief elected officials in writing of initial SDA job training plan or modification disapproval. (JTPA Section 105(b)(2); 20 CFR 628.5(a)(1)).	Within 30 days after plan or modification submission (may be extended to 45 days if there is a petition for disapproval).	
● SDAs submit correction of deficiencies in plans or modifications (20 CFR 628.5(a)(2)).	Within 20 days of initial approval	
● Governors approve or notify SDA of final disapproval of plans or modifications that were initially disapproved. (20 CFR 628.5(a)(2)).	Within 15 days of resubmittal (20 CFR 628.5(a)(2))	
● SDA submits appeal of final plan or modification disapproval to the Secretary, with copy to Governor simultaneously. 20 CFR 628.5(b)(1)).	No later than 30 days of final disapproval (20 CFR 628.5(b)(2).	
● Governor submits comments on appeal to the Secretary	As quickly as possible	
● Secretary makes final decision and provides written notice to appellant and the Governor. (JTPA Section 105(b)(3)).	Within 45 days of receipt of appeal. (20 CFR 628.5(b)(3).	
*I. Governor's Coordination and Special Services Plan (GCSSP)**		
● ETA issues instructions on the PY 1988/1989 GCSSP and modifications to the GCSSP. (20 CFR 627.2(a)).	Mar. 14, 1988	
● Governors submit GCSSP or required annual update (modification) describing adjustments made to performance standards to ETA for review. (20 CFR 627.2(a)).	May 16, 1988	
● The GCSSP or annual update shall be considered approved unless the Governor is notified in writing of discrepancies between the submission and specific provisions of the Act so that the Governor may modify the plan (or modification) to bring it into compliance with the Act. (20 CFR 627.2(b).	Within 30 days of submission, which is defined as the date of receipt by the Administrator of Office of Employment and Training Programs.	
J. Performance Standards and Appeals of Governor's Decisions on Reorganization Plan Due to Failure to Meet Performance Standards		
● ETA publishes worksheets for optional DOL adjustment model	Feb. 16, 1988	
● ETA issues procedures for appeals of Governor's decisions pursuant to any reorganization plan imposed due to failure to meet performance standards. (JTPA Section 106(h)(4); 20 CFR 629.46(d)).	Mar. 14, 1988	
● ETA publishes performance standards package for JTPA programs. (JTPA Section 106(d)(1)).	Mar. 7, 1988	
● ETA issues technical assistance guide (TAG) on JTPA performance standards	June 1, 1988	
● ETA issues TAG on PY 1987 Employment Service performance standards		
● Governors submit the GCSSP or required annual update (modification) that describes the adjustments made for JTPA programs (see Section I). (JTPA Section 121(b)(3)).	May 16, 1987	
● Governor reviews performance and provides incentives to SDAs exceeding performance standards or technical assistance to SDAs that do not meet performance standards. (JTPA Section 121(b)(3)).	In accordance with the State schedule	
● Governor imposes reorganization plans on SDAs that failed to meet performance standards for a second program year. (JTPA Sections 106(h)(a) and 181(j)(3).	In accordance with State schedule	
● Governor offers opportunity for a hearing before a hearing officer to SDAs upon which a reorganization plan is imposed. (JTPA Section 106(h)(3).	do	
● SDAs appealing the Governor's decision submit their appeals to the Secretary	Within 30 days of receipt of written notification from the Governor. (JTPA Section 106(h)(4); 20 CFR 629.36(d)(4).	
● Secretary issues final decision on appeals submitted by SDAs of Governor's decisions regarding reorganization plans.	Within 60 days of receipt written notification from the Governor. (JTPA Section 106(h)(4); 20 CFR 629.46(d)(6)).	
K. Title III National Reserve Awards		
● ETA issues application procedures and selection criteria for reviewing proposals. (20 CFR 631.23).		
● Governors submit grant applications to ETA	On a continuing basis through the program year	
● Secretary approves or disapproves applications	Within 60 days of receipt of proposals	

*States with a single statewide SDA may submit both the job training plan and GCSSP, or modifications, simultaneously or may combine the two as one submission.

[FR Doc. 88-9297 Filed 4-27-88; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-42]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of thePaperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by May 31, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: NASA Procurement Regulation.
OMB Number: 2700-0041.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Responses: 41,900.
Annual Burden Hours: 1,017,000.
Abstract-Need/Uses: The contract forms and recordkeeping requirements used in collecting information from contractors are used for providing management information to NASA, to allow contract monitoring, and to meet other Executive and Legislative Branch statutory requirements as implemented by the NASA FAR Supplement. Applies to contracts initiated prior to April 1, 1984.

April 22, 1988.

John F. Duggan,

Director, General Management Division.

[FR Doc. 88-9367 Filed 4-27-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-43]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: May 11, 1988, 8 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.
Agenda: May 11, 1988
8 a.m.—Review of Action Groups Assignments.
1 p.m.—Continued Review of Action Groups Assignments.
2 p.m.—Presentation of Contractor Technology Assessment.
3 p.m.—Summary By Chairman and Task Assignments.
4:40 p.m.—Adjourn.

April 22, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-9368 File 4-27-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Education Advisory Panel, AISBEG Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (AISBEG Section) to the National Council on the Arts will be held on May 18, 1988 from 9:00 a.m.-5:30 p.m., and on May 19, 1988 from 9:00 a.m.-3:00 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 19, 1988, from 11:00 a.m.-3:00 p.m. for a general program overview and guidelines discussion.

The remaining sessions of this meeting on May 18, 1988 from 9:00 a.m.-5:30 p.m., and on May 19, 1988 from 9:00 a.m.-11:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 21, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-9384 Filed 4-27-88; 8:45 am]
BILLING CODE 7537-01-M

Design Arts Advisory Panel, Advancement/Individuals Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Individuals Section) to the National Council on the Arts will be held on May 18-19, 1988 from 9:00 a.m.-5:30 p.m., and on May 20, 1988 from 9:00 a.m.-5:00 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 20, 1988, from 2:30 p.m.-5:00 p.m. for a general program overview and guidelines discussion.

The remaining sessions of this meeting on May 8-19, 1988 from 9:00 a.m.-5:30 p.m., and on May 20, 1988 from 9:00 a.m.-1:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant

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applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

April 21, 1988.

[FR Doc. 88–9385 Filed 4–27–88; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel, Composers Fellowship Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Section) to the National Council on the Arts will be held on May 18–20, 1988 from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 20, 1988, from 1:00 p.m.–3:00 p.m. for a general program overview and guidelines discussion.

The remaining sessions of this meeting on May 18–19, 1988 from 9:00 a.m.–6:00 p.m., and on May 20, 1988 from 9:00 a.m.–12:00 p.m. and from 3:00 p.m.–6:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

April 21, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–9386 Filed 4–27–88; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel, Sculpture Fellowships Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Sculpture Fellowships Section) to the National Council on the Arts, will be held on May 16–19, 1988 from 9:00 a.m.–8:00 p.m. and on May 20, 1988 from 9:00 a.m.–5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

April 21, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–9387 Filed 4–27–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetic Biology; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetic Biology.

Date and Time: Wednesday, Thursday, and Friday, May 18, 19, and 20, 1988, 8:30 to 5:00 p.m.

Place: The National Science Foundation, Room 540.

Type Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357–0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 21, 1988.

[FR Doc. 88–9381 Filed 4–27–88; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Instrumentation and Instrument Development Program; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Instrumentation and Instrument Development Program.

Date and Time: Thursday, May 19, 1988 from 8:30 a.m. to 5:00 p.m.; Friday, May 20, 1988 from 8:30 a.m. to 5:00 p.m.

Place: Pacific Science Center, 200 2nd Avenue, North Seattle, WA 98109 Telephone: 206–443–2001.

Type of Meeting: Closed.

Contact Person: Dr. Sidney Pierce, Program Director, Instrumentation and Instrument Development, Room 325E, Washington, DC Telephone: 202–357–7652

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries;

and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 21, 1988.

[FR Doc. 88–9382 Filed 4–27–88; 8:45 am]

BILLING CODE 7555–01–M

Division Advisory Panel for Networking and Communications Research and Infrastructure; Meeting

The National Science Foundation announces the following meeting:

Name: Division Advisory Panel for Networking and Communications Research and Infrastructure.

Dates and Times: May 23rd—10:00 a.m.–5:00 p.m.; May 24th—9:00 a.m.–3:00 p.m.

Place: May 23rd, Room 540; May 24th, Room 523; National Science Foundation, 1800 G Street NW.

Type of Meeting:

Open

May 23rd—10:00 a.m.–5:00 p.m.
May 24th—12:00 p.m.–3:00 p.m.

Closed

May 24th—9:00 a.m.–12:00 p.m.

Contact Person: Dr. Stephen S. Wolff, National Science Foundation Phone: (202) 357–9717.

Purpose of Meeting: To provide advice and recommendations concerning NSF support of networking and communications research and infrastructure.

Agenda: The sessions will focus on technical, management, research, planning and policy issues. These will include a review of recent actions and budget priorities.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Open—To discuss trends and opportunities in research, and to help provide advice and recommendations concerning support for research in Networking and Communications Research and Infrastructure.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–9383 Filed 4–27–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–604]

Receipt of Application for Construction Permit, Availability of Applicant's Environmental Report, Consideration of Issuance of Construction Permit and Notice of Opportunity for Hearing; All Chemical Isotope Enrichment, Inc., Alchemie Facility-2 Oliver Springs

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received by letter, dated November 17, 1987, an application, Environmental Report, and Safety Analysis Report from All Chemical Isotope Enrichment, Inc., (AlChemIE) for a construction permit to use centrifugal machines to enrich non-radioactive isotopes at AlChemIE Facility-2 located at Oliver Springs, Tennessee. The non-radioactive isotopes would be used in medical, industrial, and environmental and energy conservation purposes.

The centrifuge machines AlChemIE intends to use for enriching stable isotopes will be obtained under an agreement with the United States Department of Energy. The machines were originally designed and constructed, for the Department, to enriching uranium. Although AlChemIE intends only to enrich stable isotopes and will not enrich uranium, the Atomic Energy Act of 1954, as amended, and the Commission's regulations, 10 CFR Part 50, provide that equipment capable of enriching uranium is a production facility requiring a license from the Commission. Such a license would govern possession of the centrifuge machines, but not the enriched stable isotopes produced.

The applicant has filed, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Commission in 10 CFR Part 51, an environmental report. The report, which discusses environmental considerations related to the proposed operation of the facility, is being made available at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register.**

Prior to a decision on the requested construction permit, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations.

Construction Permit

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in title 10, Code of Federal Regulations, Part 50, "Domestic Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice for Domestic Licensing Proceedings," notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board, to consider the application filed under the Act by AlChemIE (the applicant), for a construction permit for AlChemIE Facility-2 Oliver Springs (the facility), which will be located in Oliver Springs, Tennessee.

The hearing will be conducted by an Atomic Safety and Licensing Board (Board), which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

Pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and performed by the Commission. Notice as to the membership of the Appeal Board will be published in the **Federal Register** at a later date.

After the Commission's staff has performed a safety evaluation of the application and an environmental review, the Commission will consider making affirmative findings on Items 1 and 2, a negative finding on Item 3, and an affirmative finding on Item 4, specified below, as a basis for the issuance of a construction permit to the applicant.

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

1. Whether in accordance with the provisions of 10 CFR 50.34, the applicant has described the proposed design of the facility including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein to assure adequate protection of the common defense and security.

2. Whether the applicant is technically and financially qualified to construct the

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proposed facility in such a way as to assure adequate protection of the common defense and security.

3. Whether the issuance of a permit authorizing construction of the facility will be inimical to the common defense and security.

Issue Pursuant to National Environmental Policy Act (NEPA)

4. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permit should be issued as proposed.

If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine the following, without conducting a *de novo* evaluation of the application: (1) Whether the application and the record of the proceeding contain sufficient information and whether the Commission staff's review of the application has been adequate to support the proposed findings to be made by the Director of the Division of Industrial and Medical Nuclear Safety on Items 1–3 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permit proposed by the Director of the Division of Industrial and Medical Nuclear Safety; and (2) whether the NEPA review the Commission's staff conducted has been adequate.

If this proceeding becomes a contested proceeding with respect to issues relating to the construction permit, the Board will consider and initially decide, as issues in this proceeding, Items 1–4 above, as a basis for determining whether a construction permit should be issued to the applicant.

By May 31, 1988, the applicant must file an answer to this notice, pursuant to 10 CFR 2.705, and any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene, and shall specify whether such aspect relates to the construction permit or to the operating license or to both. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board, up to fifteen (15) days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days before the special prehearing conference, if one is held, or, if not, fifteen (15) days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention, set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the issues set forth in this notice. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

The Board will set the time and place for any special prehearing conference, prehearing conferences and evidentiary hearing, and the respective notices will be published in the **Federal Register.**

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement of position on the issues. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission within 60 days of the date of publication of this Notice.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request whould be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

A request for a hearing or a petition for leave to intervene shall be filed by May 31, 1988 with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to 11555 Rockville Pile (One White Flint North) Rockville, MD, or to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. At times when petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Stephen A. Irving, Esq., Rt. 7 Dixon Road, Lenoir City, Tennessee, 37771, attorney for the applicant.

For further details, see the application for a construction permit dated November 17, 1987, and the applicant's

environmental report dated November 1, 1987, which, along with any amendments or supplements thereto, are or will be available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. on weekdays. As they become available, a copy of the safety evaluation report by the Commission's staff, the environmental assessment, the proposed construction permit, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above location. Copies of the proposed construction permit may be obtained, when available, by request to the Director, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the Commission's staff safety evaluation report and environmental assessment, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 22nd day of April 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Divison of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–9373 Filed 4–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–603]

Receipt of Application for Construction Permit, Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report, Consideration of Issuance of Construction Permit and Facility Operating License and Notice of Opportunity for Hearing; All Chemical Isotope Enrichment, Inc., Centrifuge Plant Demonstration Facility

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received by letter, dated November 17, 1987, an application, Environmental Report, and Safety Analysis Report from All Chemical Isotope Enrichment, Inc., (AlChemIE) for a construction permit and facility operating license to use centrifugal machines to enrich non-radioactive isotopes at the existing Centrifugal Plant Demonstration Facility [(AlChemIE) Facility-1 CPDF], located at the Oak Ridge Federal reservation in Oak Ridge, Tennessee. The non-radioactive isotopes would be used in medical, industrial and environmental and energy conservation purposes.

The centrifuge machines AlChemIE intends to use for enriching stable isotopes will be obtained under an agreement with the United States Department of Energy. The machines were originally designed and constructed, for the Department, to enriching uranium. Although AlChemIE intends only to enrich stable isotopes and will not enrich uranium, the Atomic Energy Act of 1954, as amended, and the Commission's regulations, 10 CFR Part 50, provide that equipment capable of enriching uranium is a production facility requiring a license from the Commission. Such a license would govern possession of the centrifuge machines, but not the enriched stable isotopes produced.

The applicant has filed, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Commission in 10 CFR Part 51, an environmental report. The report, which discusses environmental considerations related to the proposed operation of the facility, is being made available at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register.**

Prior to a decision on the requested construction permit, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations.

Construction Permit

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Domestic Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice for Domestic Licensing Proceedings," notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board, to consider the application filed under the Act by AlChemIE (the applicant), for a construction permit for AlChemIE Facility-1 CPDF (the facility), which will operate at the Oak Ridge Federal reservation in Oak Ridge, Tennessee.

The hearing will be conducted by an Atomic Safety and Licensing Board (Board), which will be designated by the Chairman of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

Pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and performed by the Commission. Notice as to the membership of the Appeal Board will be published in the **Federal Register** at a later date.

After the Commission's staff has performed a safety evaluation of the application and an environmental review, the Commission will consider making affirmative findings on Items 1 and 2, a negative finding on Item 3, and an affirmative finding on Item 4, specified below, as a basis for the issuance of a construction permit to the applicant.

Construction Permit Issues Pursuant to the Atomic Energy Act of 1954, as Amended

1. Whether, in accordance with the provisions of 10 CFR 50.34, the applicant has described the proposed design of the facility including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein to assure adequate protection of the common defense and security.

2. Whether the applicant is technically and financially qualified to modify the existing facility in such a way as to assure adequate protection of the common defense and security.

3. Whether the issuance of a construction permit authorizing the modification of the facility will be inimical to the common defense and security.

Issue Pursuant to (NEPA)

4. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permit and operating license should be issued as proposed.

If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine the following, without conducting a *de novo* evaluation of the application: (1) Whether the application and the record of the proceeding contain sufficient information and whether the Commission staff's review of the application has been adequate to support the proposed findings to be

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made by the Director of the Division of Industrial and Medical Nuclear Safety on Items 1–3 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permit proposed by the Director of the Division of Industrial and Medical Nuclear Safety; and (2) whether the NEPA review the Commission's staff conducted has been adequate.

If this proceeding becomes a contested proceeding with respect to issues relating to the construction permit, the Board will consider and initially decide, as issues in this proceeding, Items 1–4 above, as a basis for determining whether a construction permit should be issued to the applicant.

Operating License

This application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner proposed. Therefore, upon completion of the modification of the facility in Oak Ridge, Tennessee, in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant, without additional prior notice, a class 103 facility license authorizing operation of the facility.

Operating License Issue

Whether, in accordance with 10 CFR 50.56, an operating license should be issued.

If this proceeding becomes a contested proceeding with respect to issues relating to the operating license, the Board will make findings of fact and conclusions of law on those matters specified in 10 CFR 2.760a.

By May 31, 1988, the applicant must file an answer to this notice, pursuant to 10 CFR 2.705, and any person whose interest may be affected by this proceeding, and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene, and shall specify whether such aspect relates to the construction permit or to the operating license or to both. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board, up to fifteen (15) days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days before the special prehearing conference, if one is held, or, if not, fifteen (15) days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention, set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the issues set forth in this notice. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

The Board will set the time and place for any special prehearing conference, prehearing conferences and evidentiary hearing, and the respective notices will be published in the **Federal Register.**

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement of position on the issues. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission within 60 days of the data of publication of this notice.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

A request for a hearing or a petition for leave to intervene shall be filed by May 31, 1988 with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to 11555 Rockville Pike (One White Flint North), Rockville, MD, or to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. At times when petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Stephen A. Irving, Esq., Rt. 7 Dixon Road, Lenoir City, Tennessee, 37771, attorney for the applicant.

For further details, see the application for a construction permit dated November 17, 1987, and the applicant's environmental report dated November 1, 1987, which, along with any amendments or supplements thereto, are or will be available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. on weekdays. As they become available, a copy of the safety evaluation report by the Commission's staff, the environmental assessment, the proposed construction permit, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above location. Copies of the proposed construction permit may be obtained, when available, by request to the Director, Division of Industrial and medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the Commission's staff safety evaluation report and environmental assessment, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 22nd day of April 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 88–9374 Filed 4–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Issuance of Amendment To Facility and Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 112 to Facility Operating License No. DPR–39 and Amendment No. 101 to Facility Operating License No. DPR–48, issued to Commonwealth Edison Company (the licensee), which revised the Technical Specifications for operation of the Zion Nuclear Power Station Units 1 and 2 (the facility) located in Zion, Illinois. The amendments were effective as of the date of their issuance.

The amendments clarify and upgrade the Technical Specifications for measuring the leakage through pressure isolation valves.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 16, 1987 (52 FR 47807). No request for a hearing or petition for leave to intervene was filed following this notice.

On April 11, 1988 (53 FR 11922) the Commission published an Environmental Assessment and Finding of No Significant Impact relating to these amendments.

For further details with respect to the action see (1) the application for amendment dated November 13, 1987, modified March 4, 1988, (2) Amendment No. 112 to License No. DPR–39, (3) Amendment No. 101 to License No. DPR–48, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 15th day of April 1988.

For The Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects-III, IV, V, and Special Projects.

[FR Doc. 88–9371 Filed 4–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 106 to Facility Operating License No. DRP–72 to the Florida Power Corporation (the licensee), which revised the Technical Specifications for operation of the Crystal River 3 Nuclear Generating Plant, located in Citrus County, Florida. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to provide specific actions to be taken when one of the batteries supplying DC control power to the 230 kv switchyard breakers is inoperable, and revised the time the plant may operate with one inoperable battery. The amendment also more explicitly defined the surveillances to be performed in Modes 5 and 6.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 22, 1988 (53 FR 9386).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on April 19, 1988 (53 FR 12836).

For further details with respect to the action, see (1) the application for amendment dated January 20, 1988, (2) Amendment No. 106 to License No. DPR–72, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 22nd day of April, 1988.

For The Nuclear Regulatory Commission.

Harley Silver, Sr.,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–9372 Filed 4–27–88; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the

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Office of Management and Budget for review and approval.

Summary of Proposal:

(1) *Collection of Title:* Survivor Questionnaire
(2) *Form(s) Submitted:* RL-94-F
(3) *Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) *Frequency of Use:* On occasion
(5) *Respondents:* Individuals or households
(6) *Annual Responses:* 26,500
(7) *Annual Reporting Hours:* 4,605
(8) *Collection Discription:* Under section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors, if any, payment of burial expenses and administration of estate when unknown to the Board. The information will be used to determine whether and to whom benefits are payable.

Summary of Proposal(s):

(1) *Collection Title:* Statement Regarding Adoption
(2) *Form(s) Submitted:* G-118
(3) *Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) *Frequency of Use:* On occasion
(5) *Respondents:* Individuals or households
(6) *Annual Responses:* 600
(7) *Annual Reporting Hours:* 150
(8) *Collection Discription:* Equitably adopted children of railroad workers may qualify for benefits under the RR Act. The collection obtains the information needed to establish equitable adoption when no legal adoption has occurred.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-9332 Filed 4-27-88; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection Title:* Self-Employment Questionnaire
(2) *Form(s) Submitted:* AA-4
(3) *Type of Request:* Revision of a currently approved collection
(4) *Frequency of Use:* On occasion
(5) *Respondents:* Individuals or households
(6) *Annual Responses:* 600
(7) *Annual Reporting Hours:* 208
(8) *Collection Description:* Section 2 of the RRA provides for payment of annuities to qualified employees and their spouses. In order to receive an annuity, the applicant must stop all railroad work and all work for pay outside the railroad industry that is considered "last person service" (LPS). This collection obtains information about the applicant's self-employment work to be used in making an LPS determination.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-9333 Filed 4-27-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25605; File No. SR-BSE-87-3]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Order Granting Partial Approval to Proposed Rule Change

The Boston Stock Exchange Incorporated ("BSE" or "Exchange") submitted on February 6, 1987,[1] copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rules 19b-4 thereunder that would reorganize the Exchange's Alternate Specialist System.[2] The proposed rule will establish additional requirements for Alternate Specialists concerning their registration and operations on the floor of the Exchange.[3] In addition, the proposed rule would permit Regular Specialists, under certain conditions, to facilitate the execution of orders in stocks registered with other Regular Specialists.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24254, March 24, 1987) and by publication in the **Federal Register** (52 FR 10431, April 1, 1987). No comments were received regarding the proposal.

Under the proposal, the Exchange would permit Regular Specialists to register as Alternate Specialists in the stocks of other Regular Specialists with the approval of the Exchange's Market Performance Committe ("MPC").[4]

[1] The BSE submitted to the Commission Amendments Nos. 1 and 2 to the proposed rule change on August 25, 1987 and September 3, 1987, respectively.

[2] Alternate Specialists generally supplement the market making activites of Exchange primary specialists. When called-in to participate by a floor official, floor broker, or primary specialist, Alternate Specialist assist primary specialists in executing public orders during periods of active trading in a particular issue. In addition, Alternate Specialists provide depth and liquidity to Exchange markets by bringing additional capital to the floor of the Exchange. *See, generally,* Midwest Stock Exchange Rules, Article XIV and Securities Exchange Act Rel. No. 24820 (August 19, 1987). 52 FR 32235 (SR-Phlx-87-4).

[3] The proposed rule establishes a single category of Alternate Specialists as opposed to the existing dual-class Alternate Specialist System. BSE rules currently provide for two categories of Alternate Specialists, Class A and Class B, both of which are appointed by the Business Conduct Committee ("Committee"). Class A Alternative Specialists may only be appointed to a number of issues no greater than the number of issues assigned to their primary account. In addition, the Committe may appoint more than one Class A Alternative Specialist to a particular issue. By contrast, Class B Alternate Specialists are permitted to make markets in BSE listed security without being registered therein. However, Class B Alternative Specialists may only establish positions (long or short) on the Exchange floor to promote greater depth and liquidity. Finally, all Alternate Specialists are required to maintain a minimum equity of $25,000 as well as maintain the minimum equity requirements of their primary specialist account. *See,* BSE Rules of Board of Governors ("BSE Rules"), Chapter XI Section I.

[4] Registration as an Alternate Specialist will apply only to individual members of the Exchange and not to member organizations, although a member organization may designate a member as its agent. Such designation will allow the

Continued

Further, the proposed rule limits the number of stocks in which a Regular Specialist may register as an Alternate Specialist to no more than twice the number of stocks for which he is registered as a Regular Specialist. In addition to this limitation, the proposed rule would impose an additional pre-registration requirement on a Regular Specialist seeking to register as an Alternate Specialist. Under the proposal, each Regular Specialist would be required to establish his ability to meet, at all times, available equity of $25,000 over the minimum equity required for his primary specialist account. In determining whether to approve or disapprove an applicant for registration as an Alternate Specialist, the MPC will consider such factors as the applicant's capital, trading experience, compliance with BSE rules and policies, specialist performance evaluation scores and other relevant information.

After receiving MPC approval to register as an Alternate Specialist in a particular stock, the Alternate Specialist would be prohibited, for a six month period following MPC approval, from withdrawing registration as an Alternate Specialist in the stock.[5] Further, approval of the MPC would be required before an Alternate Specialist could expand the list of stocks, or substitute stocks, in which he is registered as an Alternate.[6]

The proposed rule imposes "negative" and "affirmative" trading obligations on Alternate Specialists as required by section 11(b) of the Act and the rules thereunder.[7] First, the proposed rule requires that Alternate Specialists generally engage in a course of dealings which is consistent with the maintenance of a fair and orderly market. Accordingly, all purchases and sales made by Alternate Specialists must contribute to the maintenance of price continuity with reasonable depth and must minimize the effects of temporary imbalances between supply and demand. In addition, the rule requires that all bids and offers made by an Alternate Specialist either improve the price of a stock or the depth of the existing market.

Second, the proposed rule obligates an Alternate Specialist to execute up to 500 shares in a registered stock when called-in by a floor broker holding an unexecuted public customer's order, provided that the broker has already obtained an execution of that portion of the order subject to the Exchange's Execution Guarantee Rule [8] from the Regular Specialist. Any portion of the order available for execution must be exposed to all Alternates in that stock by the entering broker. The proposed rule also establishes priority for Alternate Specialist participation in the incoming order. BSE members liquidating a position will have priority over other incoming orders. Where two or more members are liquidating a position, the size of the orders will determine precedence. When establishing positions, however, size will have precedence with bids or offers of the same size sharing equally.[9]

According to the BSE, these rules will allow Alternate Specialists to participate in the market in two ways. First, the Alternate Specialist can be called-in by the specialist to aid in the market and will be obligated to take at least 500 shares of a floor broker's order. Second, the Alternate Specialist will be able to initiate trades by making bids and offers that improve the price of the stock or better the depth of the market. In addition, Alternate Specialists will continue to be subject to existing margin requirements, including the requirement that transactions effected by Alternate Specialists be margined at twenty-five percent (25%).[10]

With regard to Regular Specialists, the rule would, under certain conditions, allow Regular Specialists to facilitate the execution of orders in the specialty stock of other Regular Specialists. Finally, the new rule authorizes the Exchange to suspend or cancel an Alternate Specialist's registration in one or more of his assigned securities for continued failure to satisfy his affirmative and negative trading obligations to maintain fair and orderly markets in his dealer accounts.

After careful consideration, the Commission has determined to approve that portion of the filing that establishes additional requirements for registration as an Alternate Specialist.[11] The Commission believes that it is appropriate for the Exchange to establish additional requirements concerning the registration and floor operations of Alternate Specialists. Further, the Commission believes that the proposed rule will provide additional liquidity and depth to BSE equity markets, while at the same time adhering to the provisions of section 11(b) of the Act and Rule 11b-1 thereunder. In particular, by establishing minimum capital requirements as a pre-condition to registration, the proposed rule ensures that Alternate Specialists are adequately capitalized to fulfill their trading obligations. Moreover, the imposition of affirmative and negative trading obligations on Alternate Specialists will ensure that their trades contribute to the maintenance of fair

Alternative Specialist to trade for the account of the member organization. If a member organization desires to transfer its alternate account registration from one member to another, such transfer must be approved by the MPC.

[5] If an Alternate Specialist withdraws his registration in a stock for which there is no other Alternate, the Alternate must either relinquish an Alternate stock for which there exists one or more other Alternates or register as an Alternate Specialist in another stock with no existing Alternate. *See,* Proposed Rule, Chapter XI, Section (1).

[6] In approving an Alternate Specialist's request to expand or substitute his list of stocks, the MPC will consider the factors noted above.

[7] Section 11(b) of the Act establishes the general rights and obligations of exchange specialists, while Rule 11b-1 thereunder regulates their conduct. Specifically, Rule 11b-1(a)(2) requires that the rules of an exchange regulating specialist registration and floor operations contain provisions that: (1) Establish minimum capital requirements; (2) require specialists, when trading for their dealer accounts, to engage in a course of dealings that maintains a fair and orderly market; (3) restrict specialists' principal trades to those reasonably necessary to maintain a fair and orderly market; (4) set forth the responsibilities of specialists when trading as a broker for their registered securities; and (5) establish procedures providing for the effective and systematic surveillance of specialist activities. *See,* 17 CFR 240.11b-1(a)(2).

[8] The Execution Guarantee Rule requires BSE Regular Specialists to accept and guarantee execution of all agency orders from 100 up to and including 1,299 shares for all issues and from 100 up to and including 2,599 shares for issues designated as the most actively traded stocks ("MATS"). Thus, under the proposed rule, a floor broker must first seek execution of a public customer's order (if execution is guaranteed under the Execution Guarantee Rule) from the Regular Specialist prior to calling in an Alternate Specialist to participate in the trade. *See,* BSE Rules, Chapter II, Section 33.

[9] *See,* proposed Rule, Chapter XI, Section 2.

[10] Currently, under BSE rules, all Specialists, including Alternate Specialists, are required to maintain a 25% margin level ("maintenance margin") on each account at all times. The margin for each account is computed daily. In the event that the margin in a specialist's account falls below 15%, BSE officials may immediately issue a margin call which requires the specialist to bring the account up to 25% within one trading hour of such information being brought to the attention of the specialist. In addition, BSE rules permit the BSE's Department of Member Firms to require a specialist unit to bring its books within margin compliance in any period of time. *See.* BSE Rules, Chapter VIII, Supplementary Material. We note that the Commission has approved a proposed rule change submitted by the BSE revising its margin requirements. *See,* Securities Exchange Act Rel. No. 25044 (October 20, 1987) 52 FR 40009. Specifically, the proposed rule change would institute specified penalties for accounts with two or more margin calls within thirty or ninty day periods. For example, in the event an account has five margin calls within a thirty day period, the BSE would fine the specialist $250; a $500 fine would be imposed for any subsequent margin call within the thirty day period.

[11] The Commission is currently reviewing that portion of the filing that would permit Regular Specialists to facilitate orders in any non-specialty stocks in light of section 11(b) requirements and thus is not acting on this portion of the proposal at this time.

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and orderly markets. In this regard, the Commission believes the provisions requiring that: (1) All purchases and sales by an Alternate Specialist must contribute toward the maintenance of price continuity, and (2) that all bids or offers by Alternate Specialists must improve the stock price or the depth of the market, will ensure that Alternate Specialists fulfill their affirmative and negative trading obligations under the Act as specialists. In addition, the provision requiring Alternate Specialists to execute at least 500 shares of an unexecuted public customer's order when called-in by a floor broker should ensure that customers' orders are executed in an efficient and orderly fashion.

The Commission therefore believes that the portions of the proposed rule change establishing additional procedures is consistent with section 6(b) of the Act. The provision governing capitalization should protect investors as well as the market in general. Further, the provisions establishing trading and execution obligations of Alternate Specialists should both facilitate transactions in securities as well as foster a free and open market. In view of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9413 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25607; File No. SR-NYSE-87-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval To Proposed Rule Change

On January 29, 1988, the New York Stock Exchange, Inc. ("NYSE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] Amendment No. 1 to a proposed rule change to extend the market index option escrow receipt pilot program until June 30, 1988.[3]

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[4] The pilot was to end on August 19, 1986 but was initially extended until February 20, 1987 to provide sufficient time for the exchanges to review the data compiled during the original pilot period.[5] On February 6, 1987 the Chicago Board Options Exchange ("CBOE"), on behalf of all the options of self-regulatory organizations, submitted a report to the Commission and requested that the pilot be extended until June 30, 1987 in order to give the Commission sufficient time to review and evaluate the report. The pilot was subsequently extended until December 31, 1987 to allow additional time for Commission review of the CBOE report.[6]

The Commission has determined to extend the pilot until June 30, 1988 in order that the options exchanges and the Options Clearing Corporation may review the format of the receipt. The proposed rule change will extend the operation of the pilot program and thereby continue in operation a workable mechanism through which index call options can be written in a cash account.

The Commission finds that the proposed rule change to extend the operation of the index option escrow receipt program through June 30, 1988, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the exchanges, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The pilot program extension is consistent with the Act because it will enable continuation of a program designed to reduce operational difficulties of banks and trust companies while the Commission evaluates the program's effectiveness. In addition, the Commission will have the opportunity to assess the program's operation during the October 1987 market break.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because the pilot was previously approved by the Commission, no adverse comments have been received regarding its operation, and the extension will allow for uninterrupted continuation of the program. Furthermore, the Commission recently approved identical proposals to extend the pilot submitted by the CBOE, the American Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc.[7]

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the exchange's filing also will be available for inspection and copying at its principal office. All submissions should refer to the file number in the caption above and should be submitted by May 19, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8] that the proposal to extend the operation of the pilot through June 30, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Proposed rule change File No. SR-NYSE-87-40 was originally filed with the Commission on November 6, 1987. The rule change requested that the pilot program be extended through December 31, 1987 and proposed that the program be continued on a permanent basis. Amendment No. 1 to the proposed rule change, as noted above, would continue the pilot until June 30, 1988.

[4] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439 for a description of the pilot.

[5] *See* Securities Exchange Act Release No. 23552 (August 25, 1986), 51 FR 31183.

[6] *See* Securities Exchange Act Release No. 24706 (July 15, 1987), 52 FR 27604.

[7] *See* Securities Exchange Act Release Nos. 25342 (January 5, 1988), 53 FR 648 and 25646 (March 18, 1988), 53 FR 9722. The Commission's instant approval order extends only to that part of the proposed rule change that requests continuation of the pilot until June 30, 1988. With respect to that part of the proposal which requests permanent approval of the index option escrow receipt program, this release serves solely as *notice* of the proposal.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR § 200.30-3(a)(12) (1988).

Dated: April 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9414 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25618; File No. SR-OCC-87-17]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On October 6, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change (SR-OCC-87-17) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal permits for OCC margin and clearing fund purposes deposits of securities issued or guaranteed by the Canadian government ("Canadian government securities"). The Commission published notice of the proposal in the Federal Register on October 20, 1987.[1] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

Currently, OCC members can deposit cash or U.S. government securities to satisfy OCC clearing fund requirements. To satisfy OCC margin requirements, members can deposit cash, letters of credit, common stock, or U.S. government securities. This proposal amends OCC rules and by-laws to permit OCC clearing members to deposit Canadian government securities for margin and clearing fund purposes.

OCC's proposal includes procedures for the acceptance of Canadian government securities. OCC will accept pledges of Canadian government securities in the form of a depository receipt or confirmation from its clearing banks [2] that Canadian government securities have been pledged through an EDP Pledge System.[3] Existing OCC depository receipts will be modified to reflect differences between U.S. and Canadian law with respect to such pledges. In the case of securities deposited at the Canadian Depository for Securities Limited ("CDS"),[4] OCC would accept the CDS standard form of depository receipt, modified as necessary to meet OCC needs.

OCC's proposal includes procedures for the valuation of deposited Canadian government securities. The securities must mature within ten years, with those maturing within one year characterized as "short-term," and those with longer maturities considered "long-term." Short-term securities will be valued at the lesser of their par value or 100% of their current market value, while long-term securities will be valued at the lesser of their par value or 95% of their current market value. The current market value of a deposited security will be its quoted bid price as supplied daily to OCC by the Bank of Canada. The conversion rate for this valuation will be the U.S./Canadian dollar exchange rate provided by OCC's price vendor, Telerate Corporation. The time of valuation will depend on whether Canadian government securities are deposited for clearing fund or margin purposes. Canadian government securities deposited for clearing fund purposes will be valued monthly. Canadian government securities deposited to meet margin requirements will be valued daily.

OCC's proposal also adds procedures for the liquidation of deposited Canadian government securities. Upon suspension of a clearing member, OCC would convert to cash Canadian government securities in that member's clearing fund and margin accounts. In liquidating deposited Canadian government securities of a Canadian clearing member, OCC would direct its Canadian clearing bank to sell the deposited securities and transfer the proceeds to the suspended member's liquidating settlement account at OCC's lead bank in the United States. If the securities are deposited with CDS, OCC would ask CDS to transfer the securities to OCC's Canadian clearing bank for liquidation. If deposited Canadian government securities could not be converted promptly to cash, and, as a result, OCC was required to borrow funds from its lead bank, the deposited securities would be used as collateral for the loan.

II. OCC's Rationale for the Proposed Rule Change

OCC believes that the proposal is consistent with the purposes and requirements of section 17A of the Act. OCC states that the ability of its members to use Canadian government securities for margin and clearing fund purposes would facilitate direct participation in OCC. At the same time, OCC believes the proposal assures the safeguarding of securities and funds in the custody or control of OCC.

III. Discussion

The Commission believes the proposal is consistent with Section 17A of the Act and therefore is approving the proposal. The Commission believes the proposal is designed to facilitate U.S. and Canadian member [5] participation in OCC. Moreover, because the U.S. and Canadian government securities markets are similar, OCC's proposed procedures for the acceptance, valuation, and liquidation of Canadian government securities should assure the safeguarding of securities and funds in OCC's custody or control.

The Canadian government securities market is one of the largest government securities markets in the world with $160 billion in government securities outstanding as of December 31, 1986.[6]

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[1] *See* Securities Exchange Act Release No. 25539 (October 15, 1987), 52 FR 38964.

[2] OCC currently has 16 U.S. clearing banks and one Canadian clearing bank, Bank of Montreal.

[3] The EDP Pledge System is operated by the Depository Trust Company ("DTC") and allows OCC members to electronically pledge to OCC securities on deposit at DTC. To use the system, OCC members must become participants in DTC's Participant Terminal System ("PTS") and have PTS terminals installed on their premises. Pledges are made by entering into the terminal essentially the same data required to complete OCC depository receipts. For a more detailed discussion of DTC's EDP Pledge System, *see* Securities Exchange Act Release No. 22867 (February 19, 1986), 51 FR 6623.

[4] CDS is a depository and clearing corporation organized under Canadian law. CDS is one-third owned by seven Canadian chartered banks, one-third by six Canadian trust companies, and one-third by broker-dealers that are members of the Toronto Stock Exchange, Montreal Stock Exchange, or the Investment Dealers Association of Canada. Although CDS is not registered with the Commission as a clearing agency, it is a member of DTC and the National Securities Clearing Corporation ("NSCC"). Thus, CDS and its participants may use the full range of NSCC and DTC services, including the EDP Pledge System.

[5] Facilitating Canadian member participation in OCC has been a step-by-step process. On June 6, 1985, the Commission approved an OCC proposal allowing Canadian and other foreign firms to become OCC clearing members. *See* Securities Exchange Act Release No. 22125 (June 6, 1985), 50 FR 24853. On August 22, 1986, the Commission approved an OCC proposal permitting Canadian banks and trust companies to qualify as escrow receipt issuers. *See* Securities Exchange Act Release No. 23550 (August 22, 1986), 51 FR 30606. On July 21, 1987, the Commission approved an OCC proposal allowing Canadian firms to participate in OCC under financial reporting and responsibility standards of Canada. *See* Securities Exchange Act Release No. 24725 (July 21, 1987), 52 FR 29691. These proposals were designed, among other reasons, to encourage direct Canadian firm participation in OCC and expand OCC services to more Canadian participants.

[6] In contrast, the U.S. government securities market is the largest government securities market in the world with $2.5 trillion in government securities outstanding as of December 31, 1986. Generally, this market consists of three types of securities: treasury, mortgage-backed, and agency. U.S. Treasury securities comprise approximately 66% of government securities outstanding; mortgage-backed securities make-up 22% of the market, while the remainder of the market consists of agency securities. Treasury bills have maturities of 3, 6, and

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This market consists of treasury bills, government bonds, and National Housing Act ("NHA") bonds. [7]Treasury bills and government bonds are guaranteed as to principal and interest by the Canadian treasury and are auctioned to the public by the Bank of Canada.[8] These securities are purchased primarily by banks and securities firms acting as government securities dealers.[9]NHA mortgage bonds are guaranteed as to principal and interest by the Canadian government under the terms of NHA and are issued by chartered banks and trust companies approved under NHA. They are sold in the form of fixed interest bonds with a term of up to five years.[10]

Like the U.S. government securities market, the Canadian government securities market is stable and liquid.[11]The volume of Canadian government securities issued per quarter has increased substantially in recent years, and new issues have been subscribed fully. This increased volume is primarily due to U.S. investor interest in Canadian government securities. U.S. residents hold about one-fifth of all Canadian government securities, and the dollar value of those holdings is twice that of government securities held by Canadian residents.[12]

12 months; Treasury notes range in maturity from 1 to 10 years; and Treasury bonds generally have a maturity of over 10 years. Treasury securities are guaranteed as to principal and interest by the U.S. Treasury and are auctioned to the public by the Federal Reserve System. Although investors submit bids directly at auctions, the majority of Treasury securities are initially purchased by banks and securities firms operating as government securities dealers.

[7] The Canadian government securities market also consists of non-marketable Canadian government securities, provincial securities, and municipal securities, but OCC's proposal does not include those securities.

[8] Canadian treasury bills have maturities of 3, 6, and 12 months and comprise approximately 40% of Canadian government securities outstanding. Government bonds have maturities ranging from 3 to 25 years and comprise approximately 50% of the market. *See* Kemp, *The Wardley Guide to World Money and Securities Markets*, 70 (Euromoney Publications, 1984).

[9] Canadian treasury bills and government bonds are in bearer form. They are not delivered physically but are transmitted by wire. *See* Kemp, *supra*, at 70.

[10] Like U.S. mortgage-backed securities, NHA mortgage bonds represent an interest in a pool of mortgages. NHA mortgage bonds comprise 10% of the Canadian government securities market. *See* Kemp, *supra*, at 74.

[11] Canadian government securities consistently receive the highest ratings issued by the Canadian Bond Rating Service and Standard & Poors Corporation. *See* Kemp, *supra*, at 74 and Standard & Poors International CreditWeek, April 1986.

[12] Because interest on Canadian government securities is paid free of tax imposed by the government of Canada, including withholding tax to non-residents, these securities are an attractive investment for U.S. residents. *See* Kemp, *supra*, at 74.

The Commission's net capital rule [13] recognizes the stability of the Canadian government securities market. This rule treats Canadian government securities the same as those of the U.S. government for net capital haircut purposes. The net capital rule prescribes minimum liquidity standards for broker-dealers, ensuring that broker-dealers maintain sufficient liquid assets to satisfy promptly the claims of customers. A haircut is a deduction from a broker-dealer's net worth that acts as a safety margin for market fluctuations and delays encountered in liquidating a position in a particular security. In prescribing the same haircuts for U.S. and Canadian government securities, the Commission has indicated that the U.S. and Canadian government securities markets share similar characteristics in terms of stability and risk.

The Commission believes OCC's proposed procedures for the acceptance, valuation, and liquidation of Canadian government securities are designed to ensure the safeguarding of securities and funds in OCC's custody or control. As noted, one form in which OCC would accept pledges of Canadian government securities from OCC clearing banks is via depository receipts. The Commission previously approved OCC requirements to be met by Canadian banks for the issuance of depository and escrow receipts.[14] The Commission believes these requirements should ensure that OCC's Canadian clearing bank meets its obligations pursuant to the terms of the depository receipts. The Commission also believes the proposed form of depository receipt, which reflects differences between Canadian and U.S. law, is designed to avoid conflict of law impediments to clearing banks honoring their depository receipt obligations.

OCC also will accept Canadian government securities in the form of a confirmation from its clearing banks that Canadian government securities have been pledged through an EDP Pledge System. Since February 1986, OCC members have been able to use the EDP Pledge System to pledge securities they have on deposit at DTC to meet OCC margin and clearing fund requirements. During this time, OCC member use of the EDP Pledge System has increased significantly, and it has proved to be an efficient and safe alternative to the physical issuance of depository receipts. The Commission believes this proposal, in allowing pledges of Canadian government securities through the EDP Pledge System, is designed to capitalize on the efficiencies of that system.

OCC will value Canadian government securities in the same manner it values U.S. government securities, except, as noted below, Canadian government securities deposited as margin. The Commission believes such valuation is appropriate considering similarities between U.S. and Canadian government securities markets and the Commission's equal treatment of Canadian and U.S. government securities under its net capital rule. Canadian government securities deposited for margin purposes will be valued daily. The Commission believes such valuation is appropriate to account for daily fluctuations in the U.S./Canadian dollar exchange rate.

OCC would liquidate Canadian government securities much the same way it liquidates U.S. government securities. Because the secondary market for Canadian government securities is highly liquid, OCC should be able to convert those securities to cash promptly and without difficulty. The percentage of Canadian government securities held by U.S. investors indicates a willingness on their part to purchase those securities, thereby facilitating liquidation. If OCC was unable to liquidate Canadian government promptly, it could borrow cash from its lead bank and post the Canadian government securities as collateral for the loan.

[13] *See* 17 CFR 240.15c3-1.

[14] *See* Securities Exchange Act Release No. 23650 (August 22, 1986), 51 FR 30624. To qualify as an escrow or depository receipt issuer, a Canadian financial institution must: (1) Be either a Canadian domestic bank governed by the Canadian Bank Act or a trust company governed by Canadian federal or provincial legislation; (2) have shareholders' equity equivalent to at least $20,000,000 U.S.; and (3) file with the Board of Governors of the Federal Reserve System either Form T-2 or its equivalent conforming to Section 8(a) of the Act in which the Canadian financial institution agrees to comply with U.S. law relating to the use of credit to finance securities transactions. In addition, each Canadian financial institution, upon application to OCC for approval as an escrow receipt issuer, must supply OCC with its latest available audited financial statements. After its approval, the institution must submit quarterly unconsolidated statements to OCC and an annual audited report.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission believes the proposal is designed to facilitate U.S. and Canadian member participation in OCC and assure the safeguarding of securities and funds in OCC's custody or control.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR-OCC-87-17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
April 22, 1988.

[FR Doc. 88-9415 Filed 4-27-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25611; File No. SR-PSE-87-28)]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On October 16, 1987, the Pacific Stock Exchanges, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commissioner"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b-4 thereunder,[2] a proposed rule change to implement a two year options trading crowd performance evaluation pilot program.

The proposed rule change was noticed in Securities Exchange Act Release No. 25127 (November 16, 1987), 52 FR 44662 (November 20, 1987). No comments were received on the proposed rule change.

The Exchange proposes to amend Section B of the Option Floor Procedure Advices to add a new Advice B-13 ("Evaluation of Options Trading Crowd Performance") to provide for a two year pilot program during which the Options Listings Committee ("Committee") periodically will conduct evaluations of options trading crowds to determine whether they have fulfilled performance standards relating to quality of markets, competition among market makers, observance of ethical standards, and administrative factors.[3] The Committee may consider any relevant information, including such factors and data as the results of a trading crowd evaluation questionnaire, trading data, reports filed with the Exchange (*i.e.*, Order Book Official Unusual Activity Reports), and the regulatory history of the members in the crowd.[4]

The Advice provides that a trading crowd evaluation will be conducted every three months. The Committee plans to distribute trading crowd evaluation questionnaires to every member firm on the floor that has at least one broker in a trading crowd and that receives order flow from outside the floor. Floor brokers approved by the Committee will complete the trading crowd evaluation questionnaires. The questionnaires that will be used have a series of questions with numerical ratings.[5] The total of the numerical ratings is the evaluation score for each trading crowd. Trading crowds rated in the bottom 10% of the aggregate results of overall evaluation scores will be presumptively deemed to have failed to meet minimum performance standards. The Committee may also presume a trading crowd's failure to meet minimum performance standards by considering, in conjunction with the trading crowd's evaluation score, such factors and data as reports filed with the Exchange and the regulatory history of the members of the crowd.[6]

The Committee may call an informal meeting with a trading crowd for a failure to meet minimum performance standards, for the purpose of discussing the presumptive failure and exploring possible remedies that will result in improved market-maker performance. To ensure that such informal meetings encourage free and open discussion, and to avoid an adversarial contest, the Advice specifies that such meetings will not be transcribed and that, ordinarily, counsel will not participate.

The Committee may also conduct a formal hearing with a trading crowd that has presumptively failed to meet minimum performance standards. At this formal hearing, rights of confrontation and rights to counsel will apply. When a trading crowd is found to have failed to meet minimum standards of performance, the trading crowd will be provided written notice and an opportunity to present information in rebuttal. A verbatim record of the proceedings will be kept. The trading crowd and the Committee will have the right to present one or more technical consultants at the hearing who can discuss trading techniques and procedures and the proper performance of a trading crowd's responsibilities. Based on the information adduced at the hearing, the Committee will have the authority to take action against a trading crowd or individual market makers in the crowd, such as a restriction on the allocation of new options classes or a reallocation of options classes.[7]

If any remedial measures are taken, the Committee will issue written findings supporting its determination, and affected members may seek review by the PSE Board of Governors ("Board"). The Board's review, however, will be limited to matters presented to the Committee or contained in the written notification.

The Committee believes that the rule change should further the PSE's ability to ensure liquid and continuous markets for options traded on its floor by permitting it to enforce more effectively the affirmative and negative obligations imposed on PSE market-makers.[8] In particular, responses to the trading crowd evaluation questionnarie will enable the PSE to determine whether market-makers are making continuous, two-sided markets in all option series for each option class located at a trading station and whether deep and liquid markets are provided as a result of competition among market-makers.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] This proposal provides a procedure for evaluation of trading crowds as a whole. Trading crowds are located at various trading stations on the Exchange floor at which listed options classes are grouped. A trading station is a physically discrete portion of a trading post, where the display screens for the group of options classes are located and all transactions in such options classes are effected.

In the PSE's competitive market-maker system, market-makers are appointed to make markets in classes of options contracts, and generally become regular participants in particular trading crowds where certain groups of their appointed options classes are located. In the PSE's view, differentiation among individual members of a crowd is usually neither practical nor useful. Therefore, the Exchange believes it is appropriate to evaluate the performance of trading crowds as a whole and to take remedial measures if performance of a particular trading crowd does not meet a minimum standards.

On January 18, 1987, the Commission approved a proposed rule change submitted by the Chicago Board Options Exchange that implemented a similar two year trading crowd evaluation pilot program (Securities Exchange Act Release No. 24008, 52 FR 3072).

[4] The proposed rule change originally contained a factor of periodic floor broker meetings to rank individual crowds, but this factor subsequently was deleted by the Exchange as unnecessary in light of the trading crowd evaluation questionnaire. Letter from Craig Carberry, Director, Options Compliance, PSE, to Mary Revell, Division of Market Regulation, Securities and Exchange Commission, dated March 18, 1988.

[5] The PSE's questionnaire is substantially similar to the questionnaire used by the CBOE in its trading crowd evaluation program.

[6] A discussed below, the trading crowd will have the opportunity to rebut the presumption.

[7] Currently, PSE Rule VI, section 75 permits the Options Appointment Committee to suspend or terminate a market-maker's appointment to a particular options class. The Options Appointment Committee also selects the location where options classes are to be traded. Under the proposed rule change, these powers will be available to the Committee, as appropriate, to remedy deficient trading crowd performance. In this regard, the Commission notes that it previously has stated that it does not believe that programs to evaluate and improve market-maker performance would constitute disciplinary proceedings against a member or limitation on access to services offered by an exchange under section 19(d) of the Act. *See In re* James H. Niehoff & Co., SEC Order Denying Request to Stay Action of the Midwest Stock Exchange, File No. 3-6757 (November 20, 1986). *See also* Securities Exchange Act Release No. 15827 (May 15, 1979), 44 FR 29776 at 29781 nn.21 and 22.

[8] *See* PSE Rule VI, Sec. 79.

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The Commission also believes that the Committee review and board appeal procedures discussed above should ensure that any action taken against a trading crowd will provide adequate due process protection for individual market-makers. The initial meeting provides the Exchange and the trading crowd the benefit of a flexible, informal forum in which to focus the issues and discuss possible solutions. If a further, formal hearing is required, the pilot provides for a hearing with a right to counsel, a record of the proceedings, and a right to review by application to the Board.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [9] and the rules and regulations thereunder. In particular, the proposal is consistent with section 6(b)(5) of the Act in that by improving the PSE's markets, the rule is designed to facilitate transactions in securities and perfect the mechanism of a free and open market. Further, the proposal should ensure protection of investors and serve the public interest by setting minimum standards of market-maker performance. The Commission believes that implementing a program that evaluates trading crowd performance will encourage market makers to improve their performance. The PSE's program is substantially similar to the CBOE program, which has been in operation for over a year. Finally, the Commission believes that more stringent, formalized market maker standards will further enhance the integrity of the options markets and contribute to investor confidence and protection.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved for a two year pilot period.[11]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: April 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9416 Filed 4-27-88; 8:45 am]

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[9] 15 U.S.C. 78f (1982).

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] The Commission expects that at the conclusion of the two year pilot, the PSE should be able to evaluate the pilot and submit a rule change with any appropriate modifications for final approval.

[12] 17CFR 200.30-3(a)(12) (1987).

[Release No. 34-25606; File No. SR-Phlx-88-11]

Self-Regulatory Organizations Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Primary Issues on PACE

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. pursuant to Rule 19b-4 of the Act submits this proposed rule change permitting any orders in securities with primary listings on the Phlx to be received by the specialist over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") on an order delivery system basis for manual execution.

The following constitutes the full text of the proposed rule change (additions are italicized)

Rules of Board of Governors

* * * * *

Rule 229	No Change
* * * Supplementary Material	
.01-.15	No Change

.16 For securities in which the Exchange is the primary market, the specialist in that security may receive orders over the PACE system but such orders will not be subject to the automatic execution parameters set forth in this rule.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PACE currently provides to Phlx member organizations a cost efficient, competitive order delivery and execution system for public customer orders. At the present time, orders in securities which are primary listings on the Phlx are not eligible to be routed over PACE. These orders are now received by the specialist or by a broker via telephone line or private wire. As a service to our members, Phlx proposes to make PACE available as an order delivery system for primary issue orders. For purposes of this rule, Phlx "primary" issues would be deemed to include any securities traded solely on Phlx or any securities traded on Phlx that are listed on another regional exchange or on NASDAQ but that are not listed on the NYSE or Amex, whether these securities are listed on Phlx or traded on Phlx pursuant to unlisted trading privileges.

Participation by specialists and their customers will be voluntary like PACE is for issues in which the New York or American Stock Exchange is the primary market. Under the proposal, a specialist may elect to place the Phlx primary issue on PACE and member firms may elect to route orders in that issue to the Exchange for execution over PACE. This service, however, will only include order delivery. The orders will not be eligible for automatic execution. This new service is simply a convenience to give member firms and specialists an alternative method of delivering and receiving order flow. Executions of primary issue orders will continue to be made manually.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate transactions in securities and remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and it will protect investors and be in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted within May 19, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9417 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Alliance Capital Management, LP
Units (File No. 7-3248)
Plains Petroleum Company
Common Stock, $.01 Par Value (File No. 7-3249)
Standard Commercial Corporation
Common Stock, $.20 Par Value (File No. 7-3250)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9456 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25613; File No. SR-NASD-87-31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 21, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Part II, section 1(c)(7) of Schedule D to the NASD By-Laws to provide for the inclusion of put warrants in the NASDAQ System.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25427, March 9, 1988) and by publication in the Federal Register (53 FR 8534, March 15, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9454 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25612; File No. SR-NASD-88-4]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 8, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends Article III, section 35(d)(2)(D) of the NASD Rules of Fair Practice to limit application of the rule on testimonial advertisements to testimonials concerning the quality of a member's investment advice and to

[1] The Commission's Division of Market Regulation takes the position that under certain circumstances the issuance of put warrants granting holders the right to sell to the issuing company a specified number of shares of the company's common stock at a specified price until a specified period of time may constitute an issuer tender offer. Accordingly, the application of Rule 13e-4 and related Schedule 13E-4 under the Act, 17 CFR 240.13e-4, must be considered at the time that put warrants are issued so that such holders are provided with the information required by, and the protections of, the issuer tender offer rules.

require disclosure of compensation paid to the person making a testimonial only if it is more than a nominal amount.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25474, March 16, 1988) and by publication in the **Federal Register** (53 FR 9389, March 22, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9455 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Wm. Wrigley Jr. Company
Common Stock, No Par Value (File No. 7-3241)

Imperial Corporation of America
Common Stock, $1.00 Par Value (File No. 7-3242)

PHM Corporation
Common Stock, $0.01 Par Value (File No. 7-3243)

Crompton & Knowles Corporation
Common Stock, $1.00 Par Value (File No. 7-3244)

Catalyst Energy Corporation
Common Stock, $0.10 Par Value (File No. 7-3245)

AMREP Corporation (New)
Common Stock, $0.10 Par Value (File No. 7-3246)

Tenneco, Inc. (New Holding Company)
Common Stock, $5.00 Par Value (File No. 7-3247)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 13, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9457 Filed 4-27-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Fresno, California, will hold a public meeting at 9:00 a.m. on Wednesday, May 25, 1988, at the Fresno District Office, 2202 Monterey Street, Suite 108, Fresno, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Peter J. Bergin, District Director, U.S. Small Business Administration, 2202 Monterey Street, Suite 108, Fresno, California 93721, (209) 487-5791.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 20, 1988.

[FR Doc. 88-9399 Filed 4-27-88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m. on Tuesday, May 3, 1988, at the Peppertree Restaurant, 888 North Holes, Idaho Falls, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main, Suite 290, Boise, Idaho—(208) 334-9841.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 20, 1988.

[FR Doc. 88-9400 Filed 4-27-88; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, Utah, will hold a public meeting at 10:00 a.m. on Tuesday, May 3, 1988, at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, (804) 524-5804.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 20, 1988.

[FR Doc. 88-9401 Filed 4-27-88; 8:45 am]

BILLING CODE 8025-01-M

[Public Notice CM-8/87]

U.S Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Integrated Services Digital Network (ISDN) and Study Group C; Meeting

The Department of State announces that the Integrated Service Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 19, 1988, Room 1912, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Approval of Minutes of April 21, 1988, meeting.
2. Consideration of Contributions in Preparation for the Meeting of CCITT Study Group XVIII, June 6-17, 1988, Gevena.
3. Consideration of Nominations for U.S. delegation to CCITT Study Group XVIII meeting.
4. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, enntrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102. All attendees must use the C street entrance to the building.

April 8, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-9334 Filed 4-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1188]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), National Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 25, 1988 in Room 1912, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m. and is scheduled for the entire day.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to:

1. Provide a briefing of the results of final meetings of CCITT Study Groups held to date.
2. Continue preparatory activities for CCITT Plenary Assembly, and in particular receive reports of the Ad-hoc groups assigned to review positions in the proposed texts of questions for the next Plenary Period, and candidates for leadership positions.
3. Continue preparatory activities for World Administrative Telegraph and Telephone Conference, Melbourne November 28-December 9, 1988.
4. Continue preparatory activities for the ITU Plenipotentiary Conference, 23 May-29 June, 1989, Nice France.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of Public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: April 18, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-9335 Filed 4-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1190]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 16, 1988 at 9:30 a.m. in Room 1303 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the eighteenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for May 23-27, 1988.

The agenda for this meeting includes the following items:

—Interpretations of MARPOL 73/78, Annex II
—Evaluation of chemicals shipped in bulk
—Venting requirements for chemical tankers
—Guidelines for the carriage of bulk chemicals on offshore support vessels

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Frits Wybenga, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1217.

Date: April 19, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-9336 Filed 4-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1186]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on 3 May 1988 at 0930 in Room 6319 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is to consider U.S. positions for the 4th Session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages and Related Subjects scheduled to be held in London from 16-20 May 1988.

The JIGE was established by IMO and UNCTAD pursuant to the recommendation contained in Resolution 6 of the 11th Session of the UNCTAD Working Group on International Shipping Legislation. As endorsed by the Council of IMO and the UNCTAD Trade and Development Board, the proposal called for meeting alternately in Geneva and London during scheduled meeting times of the IMO Legal Committee and the UNCTAD Working Group on International Shipping Legislation.

The JIGE is tasked with conducting a broad examination of the subject of maritime liens and mortgages, with consideration to be given to:

1. The revision of the various maritime liens and mortgages Conventions;
2. The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrests; and
3. The feasibility of an international registry of maritime liens and mortgages.

IMO and UNCTAD have identified the following major objectives as deserving of priority consideration in any investigations regarding possible international action on maritime liens and mortgages:

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1. To encourage ship financing by affording appropriate protection to persons providing finance;
2. To afford protection in respect of settled claims;
3. To encourage the provision of services to ships;
4. To protection the ship against multiple actions; and
5. To minimize the potential encumbrances to ship operation.

The JIGE held its 1st Session in Geneva on 1–12 December 1986. The principal outcome of the meeting was the adoption of joint procedural rules; the substantive work undertaken was an exploratory discussion of the major issues and objectives noted above. This discussion revealed strong interest in studying the present international framework and considering substantial revisions that would both promote uniformity and favor the mortgagee. As a preliminary matter, a number of participants questioned the nature and extent of the preceived need to improve the availability of vessel financing.

The 2nd Session of the JIGE was held in London from 11–15 May 1987. The JIGE participants adopted the 1967 Brussels Convention on Maritime Liens and Mortgages as the preliminary discussion text and prepared a new convention draft. The provisions of the tentative draft reflect the consensus view that the number and scope of the maritime liens preferred to the mortgage should be curtailed in order to enhance the ship mortgagee's security.

The JIGE met for its 3rd Session in Geneva during the period from 30 November-11 December 1987. Substantive work focused on the tentative convention draft as revised during the intersessional on the basis of the deliberations at the 2nd Session. Although significant differences emerged concerning specific approaches, there was considerable support for additional revisions intended to improve the mortgagee's position still further. However, there was some limited support for the establishment of a short list (which might include ship supplier liens) of non-preferred maritime liens entitled to international recognition if created by domestic law.

As noted above the 4th Session is scheduled for 16–20 May 1988. It is expected that the key issues will include maritime liens/rights of retention, registration/deregistration, forced sales, and scope of application. The implications of existing bareboat charter registration practice will also receive particular attention. Finally, there will be an exploratory discussion of vessel arrest and related subjects in order to plan for the 5th Session scheduled for December 1988 in Geneva.

Members of the public are invited to attend the Shipping Coordinating Committee meeting, up to the seating capacity of the room.

After a brief report on the 3rd Session of the JIGE, the balance of the agenda for the 3 May 1988 public meeting will involve discussion of the key issues for the 4th Session. For further information pertaining to the issues to be discussed or the progress of JIGE work to date, contact either Captain Frederick F. Burgess, Jr., or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G–LMI), Washington, DC 20593, telephone (202) 267–1527.

Date: April 12, 1988.

Richard C. Sciosera,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–9337 Filed 4–27–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Mason County, KY and Brown County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge project in Mason County, Kentucky/Brown County, Ohio.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602–0536. Phone (502) 227–7321; FTS 352–5468 of Mr. G.F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622. Phone (502) 564–7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Mason County, Kentucky/Brown County, Ohio. The proposed improvement provides for the construction of a bridge over the Ohio River between the cities of Maysville, Kentucky, and Aberdeen, Ohio. The bridge is needed to alleviate heavy traffic from the existing Simon Kenton Suspension Bridge and would supplement the existing bridge by providing an alternative crossing of the river. The bridge will be two lanes with full width emergency lanes. The study area is from Ripley, Ohio, about nine miles downstream from the existing bridge at Maysville to Stuart Power Plant, about four miles upstream from the existing bridge. Within that area, nine different alignment alternatives were studied.

Possible alternatives under consideration include the (1) do-nothing, (2) project postponement and (3) three remaining viable alignment alternatives. A brief description of these alternatives follow:

Alternative 2. Alternative 2 begins at the AA Highway two miles west of the intersection with US 62/68. The alignment proceeds generally northward, crossing KY 435, the South Fork of Lawrence Creek and follows Beasley Creek to the River. It connects in Ohio to US 52 at the eastern city limits of Ripley.

Alternative 3. Alternative 3 begins at the AA Highway two miles west of the intersection with US 62/68, turns northeastward to follow a branch of Lawrence Creek, crosses that creek east of Moranburg, ascends Jersey Ridge to cross Boone Lane, descends the north face to cross over KY 8, the railroad and the river to intersect US 52 in Ohio about 2 miles west of Aberdeen.

Alternative 5. Alternative 5 begins at US 62/68 at the bottom of the hill near the intersection of KY 11. It is elevated over Limestone Creek, two railroads, and a portion of Maysville, then across the river connecting with an interchange to US 52 in Ohio.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two (2) interdisciplinary team meetings have been held. In addition, public meetings soliciting project input and a formal public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the hearing. A formal scoping meeting has been held with representative of both cities and states.

It is estimated that the draft EIS will be available for public review in July 1988.

Issued On: April 21, 1988

Robert E. Johnson,

Division Administration, Frankfort, Kentucky.

[FR Doc. 88–9338 Filed 4–27–88; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Heart of America Fire and Casualty Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 and 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24614 to reflect this addition:

Heart of America Fire and Casualty Company. Business Address: 215 West Pershing Road, Kansas City, MO 64108–2540. Underwriting Limitation *b/: $382,000. Surety Licenses c/*: AK, AZ, IN, IA, KS, MS, MO, NV, UT. INCORPORATED IN: Missouri. Federal Process Agents *d/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as along as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: April 22, 1988.

[FR Doc. 88–9375 Filed 4–27–88; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Income Taxes; 1989 Electronic Filing Program: Forms 1040, 1040A and 1040EZ Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic Filing Program.

SUMMARY: In 1989 the Internal Revenue Service plans to continue the program to file individual income tax returns electronically. Accepted return preparers will be permitted to transmit electronically, their clients' individual income tax returns for 1988. Most commonly used forms and schedules will be accepted.

Electronic returns can be accepted from preparers in 48 districts. Taxpayers in all 48 districts can elect to have their refunds directly deposited in their bank, savings and loan, or credit union account.

Application Dates: Software firms, service bureaus, transmitters and communication networks must file an application (Form 8633) by October 1, 1988. Preparers who intend to only prepare returns for third party transmission must file by November 15, 1988.

Inquiries: Interested parties should contact the Electronic Filing Coordinator (EFC) for information after May 23, 1988. Inquiries can be made by either telephone or mail. The nationwide telephone number is 1–800–424–1040 (ask for the EFC). Correspondence should be sent to the Internal Revenue Service at the appropriate address listed below; Attention EFC:

ADDRESSES:

Alabama: 500 22nd St. South, Stop 316, Birmingham, AL 35233
Alaska: 949 Est 36th Avenue, Anchorage, AK 99508
Arizona: 2120 U. Central Ave, Stop 6620 PX, Phoenix, AZ 85004
California:
Laguna Niguel, 2400 Avila Rd., Laguna Niguel, CA 92677
Los Angeles, 300 N. Los Angeles St., Los Angeles, CA 90012
Sacramento, P.O. Box 2900 S.A. 5601, Sacramento, CA 95812–2900
San Francisco, 450 Golden Gate Ave., San Francisco, CA 94102
San Jose, 55 South Market St., San Jose, CA 95113
Colorado: 1050 Seventeenth St, Stop 1000, Denver, CO 80265
Connecticut: 135 High St. Stop 204, Hartford, CT 06103
Florida:
Ft. Lauderdale, One N. University Dr. Bldg. B, Ft. Lauderdale, FL 33324
Jacksonville, 400 W. Bay St., Jacksonville, FL 32202
Idaho: 550 W. Fort St., Boise, ID 83724
Illinois:
Chicago, 230 S. Dearborn St., Chicago, IL 60604
Springfield, 320 W. Washington St. Room 702, Springfield, IL 62701
Indiana: 575 N. Pennsylvania St., Indianapolis, IN 46204
Kentucky: 601 W. Broadway Stop 130, Louisville, KY 40202
Maine: 68 Sewall St., Augusta, ME 04330
Maryland: 31 Hopkins Plaza, Baltimore, MD 21201
Massachusetts: JFK Federal Bldg., Boston, MA 02203
Michigan: 2463 McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226
Montana: 301 S. Park Ave (Fed. Bldg 2nd floor), Helena, MT 59626–0016
Nebraska: 106 South 15th St., Omaha, NE 68102
Nevada: 300 Las Vegas Blvd., South, Las Vegas, NV 89101
New Hampshire: 80 Daniel St., Portsmouth, NH 03801
New York:
Albany, Les O'Brien Federal Bldg, Clinton Ave. & Nr. Pearl St., Albany, NY 12207
Brooklyn, 35 Tillary St., Brooklyn, NY 11201
Buffalo, 111 W. Huron St., Buffalo, NY 14202
Manhattan, 120 Church St., New York, NY 10007
North Carolina: 320 Federal Place, Greensboro, NC 27401
North Dakota: 653 Second Ave., N, Fargo, ND 58102
Ohio:
Cincinnati, 550 Main St, Room 1023, Cincinnati, OH 45202
Cleveland, 1240 E. Ninth St., Cleveland, OH 44199
Oregon: 1220 S.W. Third Ave., Portland, OR 97204
Rhode Island: 380 Westminster Mall, Providence, RI 02903
South Carolina: 1835 Assembly St., Columbia, SC 29201
South Dakota: 115 Fourth Ave, S.E., Aberdeen, DS 57401
Tennessee: 801 Broadway, Nashville, TN 37203
Texas:
Austin, 300 E. Eighth St., Stop 1000 AUS, Austin, TX 78701
Dallas, 1100 Commerce St., MC6610 DAL, Dallas, TX 75242
Houston, 3223 Briarpark Stop 1000 H–BP, Houston, TX 77042
Utah: 465 South 400 East, Salt Lake City, UT 84111
Vermont: 11 Elmwood Ave., Burlington, VT 05401
Virginia: 400 N. Eighth St., Richmond, VA 23240
Washington: 915 Second Ave., Stop 660, Seattle, WA 98174
West Virginia: 425 Juliana St., Parkersburg, WV 26101
Wisconsin: P.O. Box 493, Milwaukee, WI 53201

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Wyoming: 308 W. Twenty-First St., Cheyenne, WY 82001

The above districts represent the following states:

Alabama	Nevada
Alaska	New Hampshire
Arkansas	New York
Arizona	North Carolina
California	North Dakota
Colorado	Ohio
Connecticut	Oregon
Florida	Rhode Island
Idaho	South Carolina
Illinois	South Dakota
Indiana	Tennessee
Kentucky	Texas
Maine	Utah
Maryland	Vermont
Massachusetts	Washington
Michigan	West Virginia
Montana	Wisconsin
Nebraska	Wyoming

The remaining districts and their respected states will be added in 1990.

SUPPLEMENTARY INFORMATION: In 1989 Forms 1040, 1040A, and 1040EZ can be filed electronically. Forms 1040 can include Schedules A, B, C, D, E, F, R, SE, and Forms W–2, W–2P, W–2G, 2106, 2119, 2441, 3903, 4136, 4255, 4562, 4684, 4797, 6198, 6251, 6252, 6283, 8582, 8598, 8606.

The principal advantages of electronic filing are: (1) Most taxpayers will receive refunds two or three weeks faster than if their returns had been filed in the form of paper documents; (2) returns preparers will be able to serve their clients more efficiently; (3) the cost to IRS of processing, storing and retrieving these returns will be reduced substantially, and (4) taxpayers participating in direct deposit will obtain their refunds quickly and more conveniently.

Applicants must meet the following qualifications to be accepted:

1. Intend to self transmit at least 500 tax year 1988 electronic returns in 1989 or if less than 500 electronic returns, transmit through a commercially accepted system;

2. have substantial communications experience under IBM 3780 bi-synchronous protocol at 4800 BAUD through a dial-up modem or associated with another firm which has such experience;

3. the transmitter has the option of using 9600 BPS dedicated lines provided they supply their own modem. 9600 BPS users can utilize the Packett-Switching Network Interface Standard as defined by the CCITT recommended x.25 (1980);

4. have an office in one or more of the designated IRS district offices included for 1989;

Note: The following do not need to be located within one of the designated districts;

(a) Software firms who plan only to develop software packages for use by participating electronic filers,

(b) Transmitters only providing transmission service to IRS, and

(c) Communications networks providing transmission capability (such as telephone lines) for returns which someone else transmits.

5. Comply with the acceptance procedures; and

6. Observe all requirements of the Revenue Procedure.

While there is no geographic restriction on the taxpayers participating in electronic filing, active solicitation of business outside of the districts is prohibited. Taxpayers who reside outside of the designated districts must appear in person at a preparer's office within the designated districts.

Leonard Holt,

Assistant Project Officer, Marketing and Operations.

[FR Doc. 88-9436 Filed 4-27-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 82
Thursday, April 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 6, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9494 Filed 4-26-88; 10:52 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 13, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9495 Filed 4-26-88; 10:52 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9496 Filed 4-26-88; 10:52 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 27, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9497 Filed 4-26-88; 10:52 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:35 a.m. on Monday, April 25, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Application for Federal deposit insurance and request for exemption pursuant to section 348.4(b)(2) of the Corporation's rules and regulations:

Colonial State Bank, a proposed new bank to be located on the northeast corner of the intersection of Route 33 (Park Avenue) and South Street, Freehold, New Jersey.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,206–NR
Golden Pacific National Bank, New York City (Manhattan), New York

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act.

Recommendations regarding administrative enforcement proceedings involving officers, directors, employees, agents, or other persons participating in the conduct of the affairs of certain insured banks: (Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 25, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feidman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-9508 Filed 4-26-88; 12:12 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:02 a.m. on Friday, April 22, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by the authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 25, 1988

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-9507 Filed 4-26-88; 12:12 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88-8884.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 28, 1988, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

DATE AND TIME: Tuesday, May 3, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 5, 1988, 10:30 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidental Primary Matching Funds.
Draft AO 1988-15—Randall E. Johnson on behalf of General Mills, Inc.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88-9502 Filed 4-26-88; 12:12 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 12864, April 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, April 25, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Legislative recommendations for the Annual Report.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Date: April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9475 Filed 4-25-88; 4:54 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 31, 1988.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC, 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public

(1) Oral Argument in MidCon Corporation, Docket No. 9198

Portions closed to the Public

(2) Executive Session to follow Oral Argument in MidCon Corporation, Docket No. 9198.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 88-9458 Filed 4-25-88; 4:51 pm]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53FR76—dated April 20, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, April 28, 1988.

CHANGES IN THE MEETING: Meeting scheduled for Thursday, April 28, 1988 is cancelled.

In conformity with 19 CFR 201.37(b), Commissioners Liebeler, Brunsdale, Eckes, Lodwick, Rohr, and Cass determined by unanimous vote that Commission business required the cancellation of the meeting scheduled for Thursday, April 28, 1988, and affirmed that no earlier announcement of the cancellation was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 22, 1988.

[FR Doc. 88-9470 Filed 4-25-88; 4:52 pm]

BILLING CODE 7020-02-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 3, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Setting of FTEs and Organizational Alignment
(3) Repayment of the RUIA Loan
(4) Work Stoppage—Springfield Terminal Railway Company—November 12, 1987
(5) Board Order 75-1, Restating the Administrative Organization and Functions of the Board
(6) Proposed Disability Regulations
(7) Appeal of Nonwaiver of Overpayment, Floyd A. Redmond

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: April 22, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-9471 Filed 4-25-88; 4:53 pm]

BILLING CODE 7905-01-M

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federal register

Thursday
April 28, 1988

Part II

Department of Education

34 CFR Part 31

Salary Offset for Federal Employees Who Are Indebted to the United States Under Programs Administered by the Secretary of Education; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 31

Salary Offset for Federal Employees Who Are Indebted to the United States Under Programs Administered by the Secretary of Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (Secretary) proposes to amend regulations governing the use of offset against current pay accounts of Federal employees and payments due from the accounts of former employees under Civil Service Retirement System or the Federal Employees Retirement System to recover amounts owed on debts arising under programs administered by the Secretary. The amendments are proposed in order to simplify the procedure used to provide the employee notice of the proposed offset, as well as the procedures used to permit an employee to inspect records relating to the debt, to secure a hearing on the debt or proposed offset schedule, and to enter into a repayment agreement for the debt in order to avoid collection by offset.

DATES: Comments must be received on or before May 31, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to the U.S. Department of Education, Credit Management Improvement Staff, Room 3017, FOB 6, 400 Maryland Ave. SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jim Nielson (202) 732-4194.

SUPPLEMENTARY INFORMATION:

The Secretary proposes to amend the rules governing the collection of debts arising under programs administered by the Department of Education by offset against payments of salary of a Federal employee. Under the proposed rules, the procedures used by the Department to provide Federal employees notice of the debt and the proposed offset schedule, access to records regarding the debt, an opportunity for a hearing on the debt or the proposed offset schedule, and an opportunity to enter into a repayment arrangement with the Secretary in order to avoid or modify a proposed offset will be revised to follow more closely the procedures used by the Department under Part 30 for collection by offset against Federal income tax refunds. These proposed changes will simplify and expedite the current salary offset process. The revised regulations would still be consistent with the requirements of the Debt Collection Act and government-wide regulations issued by the Office of Personnel Management (OPM). In fact, the proposed rules are more generous in that they give the debtor 65 days to respond to the pre-offset notice; only a 30 day notice is required under the Act and under OPM rules.

In addition, the Secretary proposes to use the procedures under this part to collect by offset against amounts payable to a former Federal employee or the beneficiary of such an employee from an account under the Civil Service Retirement System or Federal Employee Retirement System, referred to generally in the proposed rules as the Federal retirement account of the employee. Offsets against amounts payable from the Federal retirement account of an employee will ordinarily be sought after attempted offsets from current pay prove insufficient to satisfy the debt, or if the debtor is no longer employed by the Federal government.

The proposed rule would, under proposed § 31.3, modify certain aspects of the pre-offset notice given to the employee and the periods in which the employee must exercise the procedural rights available to contest the debt and the offset. Current regulations provide the employee with two notices: an advance notice of proposed offset, to which the employee has 45 days to respond to contest the debt or the offset, § 31.4, and a formal notice of proposed offset under § 31.5, issued at least 30 days before the start of the proposed offset. Based on the experience gained in implementing the tax refund offset program over the past three years, the Secretary concludes that a single pre-offset notice with a single appeal period is sufficient. The proposed rule in § 31.5(a) would therefore provide that the employee must file a request for a hearing on the debt or the offset schedule before the later of 65 days from the date of the pre-offset notice, or 15 days from the date on which the Secretary makes available records requested in a timely manner.

Corresponding changes are proposed to allow a period of 20 days from the date of the pre-offset notice within which the employee must request access to records, § 31.4(a)(1), and specified periods within which the employee can reach an alternative payment agreement with the Secretary and avoid offset, or can by agreement modify a proposed offset schedule. § 31.10(a).

The proposed rule will clarify in § 31.3(a)(10) that it is the policy of the Secretary to grant requests for access to records, a hearing on the debt or the offset schedule, or an opportunity to enter into a repayment agreement for all employees who so request, but that the Secretary delays the start of the offset until completion of the requested relief only if the employee makes the request in a timely manner and otherwise complies with the requirements of this part regarding the exercise of these rights. § 31.11(c)(2). In the event that the offset has been implemented with regard to an employee who belatedly requests relief, and the debt is later determined to be unenforceable in whole or in part, or the offset schedule is determined to cause the employee extreme financial hardship, the Secretary will take steps needed to refund any amount collected by offset in excess of the amount determined to be authorized. § 31.3(a)(13).

The proposed rule would also simplify the hearing process in a number of ways. A hearing requested under this part is conducted by a hearing official who is not under the control or supervision of the Secretary; the Secretary will continue to regard the hearing right accorded the employee under 5 U.S.C. 5514(a)(2)(D) and 31 U.S.C. 3716(b) as a right to a hearing appropriate to the resolution of the issues raised by the employee in objecting to the offset. In accordance with 4 CFR 102.3 and Department policy under Part 30, the Secretary ordinarily provides this hearing as a "paper hearing," or a hearing on written submissions, unless the employee specifically requests an oral hearing and demonstrates that evaluation of testimonial evidence is necessary to adequately resolve issues raised by the employee in contesting the debt or the offset schedule. § 31.5(c)(1). In addition, a request for an oral hearing may be denied as unnecessary if the Secretary fully accepts the employee's statement of the facts for which testimony would be offered. If the Secretary grants an oral hearing, the employee must, under proposed § 31.5(d), confirm within ten days of the notice of oral hearing that he or she intends to proceed with the oral hearing; the employee may also withdraw the request at that time and receive a hearing on written submissions. However, if the employee neither confirms that intention nor requests that the hearing be confined to the written submissions, or if the employee does not appear for a hearing, the employee waives the request for a hearing of any kind, and the offset will be made in the manner proposed in the pre-offset notice. § 31.5(e).

The proposed rule does not change the responsibility or authority of the hearing official. Proposed § 31.7(e) would provide that the burden of proof of facts in the hearing lies on the proponent of the fact: The Secretary bears the burden of proof, by a preponderance of the evidence, regarding the existence, amount, and delinquent status of the debt; the employee bears the burden of proof, by a preponderance of the evidence, regarding any objection raised to the enforceability of the debt by offset, or any claim that the proposed offset schedule would cause the employee extreme financial hardship.

The proposed rule would not change the standards to be applied by the hearing official in determining disputed issues: proposed § 31.8 basically restates those principles for determining enforceability of the debt by offset and establishing extreme financial hardship that are now found in 34 CFR 31.11 and 31.12. The proposed regulations, like current regulations, do not address the conditions for waiver of the debt because virtually all of the debts to be collected by offset under this part are student loan debts arising under programs under Title IV of the Higher Education Act of 1965, as amended, including the Guaranteed Student Loan Program (GSLP) and the Perkins Loan Program. Although the authorizing statutes permit the Secretary to waive rights acquired under the programs, these loan agreements themselves contain no provision for waiver of indebtedness. Both Perkins loans and GSLP loans do contain provisions for canceling the loan debt on account of death or disability of the borrower, and Perkins loans permit cancellation of various fractions of the loan obligation for qualifying teaching or volunteer service. Although such cancellations might fall within the definition of the term "waiver" as used in Office of Personnel Management regulations at 5 CFR 550.1103, the Secretary treats such cancellation provisions, to the extent that applicable program regulations permit a borrower in default to claim their benefit, as grounds for redetermining the amount owed on the debt.

Most of the debts to be collected under this part arise under the GSLP and Perkins Loan Program. The Secretary routinely reports these debts to consumer reporting agencies after following the procedures established in 34 CFR 30.35. That section incorporates the provision in 34 CFR 30.22(d) that the Secretary may report the debt without providing the opportunity to contest the debt, if the debtor has already been notified of the proposed offset or reporting and been provided an opportunity to contest that action. Therefore, if a debt owned by a Federal employee has not previously been reported to a consumer reporting agency, the Secretary may, at the same time that the pre-offset notice is provided under this part, notify the debtor of the intent to report the debt to a consumer reporting agency. In that case, the Secretary will provide a single appeal procedure, under this part, that will satisfy both the requirements of this part and those found in Part 30.

The proposed rules further clarify that the Secretary reserves the right to employ offset in accordance with the provisions of section 124 of Pub. L. 97-276 against salary to collect debts owed on judgments secured by the United States. This authority permits deductions of "reasonable amounts" of up to 25 percent of the pay of the judgment debtor. The Secretary may use the procedures or standards in this part to determine such reasonable amounts.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they would affect only individuals, who are not included within the definition of "small entities" in the Regulatory Flexibility Act.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period in Room 3017, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 31

Claims, Debt collection.

Dated: April 21, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 31 of Title 34 of the Code of Federal Regulations to read as follows:

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

Sec.

31.1 Scope.
31.2 Definitions.
31.3 Pre-offset notice.
31.4 Request to inspect and copy documents relating to a debt.
31.5 Request for hearing on the debt or the proposed offset.
31.6 Location and timing of oral hearing.
31.7 Hearing procedures.
31.8 Rules of decision.
31.9 Decision of the hearing official.
31.10 Request for repayment agreement.
31.11 Offset process.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

§ 31.1 Scope.

(a) *General.* The Secretary establishes the standards and procedures in this part that apply to the offset from disposable pay of a current or former Federal employee or from amounts payable from the Federal retirement account of a former Federal employee to recover a debt owed the United States under a program administered by the Secretary of Education.

(b) *Exclusions.* This part does not apply to—

(1) Offset under 34 CFR Part 32 to recover for overpayments of pay or allowances to an employee of the Department;

(2) Offsets under 34 CFR Part 30; or

(3) Offsets under Sec. 124 of Pub. L. 97-276 to collect debts owed to the United States on judgments.

(c) *Reports to consumer reporting agency.* The Secretary may report a debt to a consumer reporting agency after notifying the employee, in accordance with 34 CFR 30.35, of the intention to report the debt, and after providing the employee an opportunity to inspect records, receive a hearing, and enter into a repayment agreement under this part.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716)

§ 31.2 Definitions.

As used in this part:

"Agency" means—

(1) An Executive department, military department, Government corporation, or independent establishment as defined in

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5 U.S.C. 101, 102, 103, or 104, respectively;

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

"Days" refer to calendar days.

"Department" means the Education Department.

"Disposable pay" means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for basic life insurance and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former—

(1) Civilian employee, as defined in 5 U.S.C. 2105;

(2) Member of the Armed Forces or Reserves of the United States;

(3) Employee of the United States Postal Service; or

(4) Employee of the Postal Rate Commission.

In the case of an offset proposed to collect a debt owed by a deceased employee, the references in this part to the procedural rights of the employee shall be read to include the payee of benefits from the Federal retirement account or other pay of the employee.

"Federal retirement account" means an account of an employee under the Civil Service Retirement System or the Federal Employee Retirement System.

"Offset" means a deduction from the pay of an employee, or a payment due from the Federal retirement account of an employee, to satisfy a debt.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay or lump sum payments for accrued annual leave, and amounts payable from the Federal retirement account of an employee.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.3 Pre-offset notice.

(a) At least 65 days before initiating an offset against the pay of an employee, the Secretary sends a written notice to the employee stating—

(1) The nature and amount of the debt;

(2) A demand for payment of the debt;

(3) The manner in which the Secretary charges interest, administrative costs, and penalties on the debt;

(4) The Secretary's intention to collect the debt by offset against—

(i) 15 percent of the employee's disposable pay; and,

(ii) A specified amount of severance pay, a lump sum annual leave payment, a final salary check, or payments from the Federal retirement account of the employee, if the debt cannot be satisfied by offset against disposable pay;

(5) The amount, frequency, approximate beginning date and duration of the proposed offset;

(6) The employee's opportunity to—

(i) Inspect and copy Department records pertaining to the debt;

(ii) Obtain a pre-offset hearing before a hearing official who is not under the control or supervision of the Secretary regarding the existence or amount of the debt, or the proposed offset schedule; and

(iii) Enter into a written agreement with the Secretary to repay the debt;

(7) The date by which the employee must request an opportunity set forth under paragraph (a)(6) of this section;

(8) The grounds for objecting to collection of the debt by offset;

(9) The applicable hearing procedures and requirements;

(10) That the Secretary grants any request for access to records, for a hearing, or for a satisfactory repayment agreement made by a debtor;

(11) That the Secretary does not delay the start of the proposed offset unless a debtor makes the request for access to records, for a hearing, or for a satisfactory repayment agreement within the time periods described in this part;

(12) That a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay in the proceedings is granted at the request of the debtor;

(13) That submission by the employee of knowingly false statements, representations or evidence may subject the employee to applicable disciplinary procedures, or civil or criminal penalties; and

(14) That any amounts paid or collected by offset on a debt later determined to be unenforceable or canceled will be refunded to the debtor.

(b)(1) In determining whether an employee has requested an opportunity set forth under paragraph (a)(6) of this section in a timely manner, the Secretary relies on—

(i) A legibly dated U.S. Postal Service postmark for the employee's request; or

(ii) A legibly stamped U.S. Postal Service mail receipt for the employee's request.

(2) The Secretary does not rely on either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

(c) The Secretary may initiate an offset before providing the employee a hearing, access to records, or a repayment agreement if the debtor does not request the hearing or access, or does not execute the agreement, in a timely manner and in accordance with other requirements of these regulations.

(d) Payment by offset under this part of all or part of a debt does not constitute an acknowledgment of the debt or a waiver of rights available to the employee under this part or other applicable law if the employee has not agreed in writing to the offset.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.4 Request to inspect and copy documents relating to a debt.

(a) The Secretary makes available for inspection and copying before offset under this part those Department documents that relate to the debt, if the employee—

(1) Files a written request to inspect and copy the documents within 20 days of the date of the pre-offset notice under § 31.3, and

(2) Files the request at the address specified in that notice.

(b) A request filed under paragraph (a)(1) of this section must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections of that identifying information; and

(2) A reasonably specific identification of the documents that the employee wishes to have available for inspection and copying.

(c) The Secretary may decline to provide an opportunity to inspect and copy documents before initiating an offset if the employee fails to request inspection and copying in accordance with this section.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.5 Request for hearing on the debt or the proposed offset.

(a) *Deadlines.* (1) The Secretary provides a hearing before offset on the existence, amount, or enforceability of the debt described in the pre-offset notice provided under § 31.3, or on the amount or frequency of the offsets as proposed in that notice, if the employee—

(i) Files a request for the hearing within the later of—

(A) 65 days after the date of the pre-offset notice provided under § 31.3;

(B) 15 days after the date on which the Secretary makes available to the employee the relevant, requested documents if the employee had requested an opportunity to inspect and copy documents within 20 days of the date of the pre-offset notice provided under § 31.3; and

(ii) Files a request at the address specified in that notice.

(2) The Secretary may initiate an offset before providing a hearing if the employee does not submit, within the time requirements set forth in paragraph (a)(1) of this section, a request that meets the requirement of paragraphs (b) and (c) of this section.

(b) *Contents of request.* A request for a hearing must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the particular debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections needed with regard to that identifying information;

(2) An explanation of the reasons why the employee believes that—

(i) The debt as stated in the pre-offset notice is not owing or is not enforceable by offset; or

(ii) The amount of the proposed offset described in the pre-offset notice will cause extreme financial hardship to the employee;

(3) If the employee contends that the amount of the proposed offset will cause extreme financial hardship under the standards set forth in § 31.8(b)—

(i) An alternative offset proposal;

(ii) An explanation, in writing, showing why the offset proposed in the notice would cause an extreme financial hardship for the employee; and

(iii) Documents that show for the employee and for the spouse and dependents of the employee, for the one-year period preceding the Secretary's notice and for the repayment period proposed by employee in his or her offset schedule—

(A) Income from all sources,

(B) Assets,

(C) Liabilities,

(D) Number of dependents,

(E) Expenses for food, housing, clothing, and transportation,

(F) Medical expenses, and

(G) Exceptional expenses, if any; and

(4) Copies of all documents that the employee wishes to have considered to support the objections raised by the employee regarding the enforceability of the debt or the claim of extreme financial hardship.

(c) *Request for oral hearing.* (1) If the employee wants the hearing to be conducted as an oral hearing, the employee must submit a request that contains the information listed in paragraph (b) and must include with the request—

(i) An explanation of reasons why the employee believes that the issues raised regarding the enforceability of the debt or a claim of extreme financial hardship cannot be resolved adequately by a review of the written statements and documents provided with the request for a hearing;

(ii) An identification of—

(A) The individuals that the employee wishes to have testify at the oral hearing;

(B) The specific issues about which each individual is prepared to testify; and

(C) The reasons why each individual's testimony is necessary to resolve the issue.

(2) The Secretary grants a request for an oral hearing if—

(i) The employee files a request for an oral hearing that meets the requirements of paragraphs (b) and (c) of this section; and

(ii) The Secretary determines that the issues raised by the employee require a determination of the credibility of testimony and cannot be adequately resolved by a review of the written statements and documents submitted by the employee and documents contained in the Department's records relating to the debt.

(3) The Secretary may decline a request for an oral hearing if the Secretary accepts the employee's proffer or testimony made in the request for an oral hearing under paragraph (c)(1) of this section, and considers the facts at issue to be established as stated by the employee in the request.

(4) If the Secretary grants a request for an oral hearing, the Secretary—

(i) Notifies the employee in writing of—

(A) The date, time, and place of the hearing;

(B) The name and address of the hearing official;

(C) The employee's right to be represented at the hearing by counsel or other representatives;

(D) The employee's right to present and cross-examine witnesses; and

(E) The employee's right to waive the requested oral hearing and receive a hearing in the written record; and

(ii) Provides the hearing official with a copy of all written statements submitted by the employee with the request for a hearing, and all documents pertaining to the debt or the amount of the offset contained in the Department's files on the debt or submitted with the request for a hearing.

(d) *Employee choice of oral hearing or hearing on written submissions.* An employee who has been notified under paragraph (c)(4) that an oral hearing will be provided must notify the hearing official and the Secretary in writing within 10 days of the date of the notice of oral hearing—

(1) Whether the employee intends to proceed with the oral hearing, or wishes a decision based on the written record; and

(2) Any changes in the list of the witnesses the employee proposes to produce for the hearing, or the facts about which a witness will testify.

(e) *Dismissal of request for hearing.* The Secretary considers the employee to have waived the request for a hearing of any kind—

(1) If an employee does not confirm to the hearing official his or her intention to proceed with the oral hearing or request a hearing decision on written submissions within the ten days of the date of the notice of oral hearing under paragraph (c)(4) of this section; or

(2) If the employee does not appear for a scheduled oral hearing.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.6 Location and timing of oral hearing.

(a) If the Secretary grants a request for an oral hearing, the Secretary selects the time, date, and location of the hearing. The Secretary selects, to the extent feasible, the location that is most covenient for the employee.

(b) For a civilian employee or a former employee, the hearing will be held in Washington, DC, or in one of the following cities: Boston, Philadelphia, New York, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, or Seattle.

(c) For a current military employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Defense.

(d) For a current Coast Guard employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Transportation.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.7 Hearing procedures.

(a) *Independence of hearing official.* A hearing provided under this part is conducted by a hearing official who is neither an employee of the Department nor otherwise under the supervision or control of the Secretary.

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(b) *Lack of subpoena authority or formal discovery.* Neither the hearing official nor the Secretary has authority to issue subpoenas to compel the production of documents or to compel the attendance of witnesses at an oral hearing under this part. The Secretary will attempt to make available during an oral hearing the testimony of a current official of the Department if—

(i) The employee had identified the official in the request for a hearing under § 33.5(b) and demonstrated that the testimony of the official is necessary to resolve adequately an issue of fact raised by the employee in the request for a hearing; and

(ii) The Secretary determines that the responsibilities of the official permit his or her attendance at the hearing.

(2) If the Secretary determines that the testimony of a Department official is necessary, but that the official cannot attend an roal hearing to testify, the Secretary attempts to make the official available for testimony at the hearing by means of a telephone conference call.

(3) No discovery shall be available in a proceeding under this part except as provided in § 31.4.

(c) *Hearing on written submissions.* If a hearing is to be held on the written submissions, the hearing official reviews the documents and responses submitted by the Secretary and the employee under § 31.5.

(d) *Conduct of oral hearing.*

(1) The hearing official conducts an oral hearing as an informal proceeding. The official—

(i) Administers oaths to witnesses;

(ii) Regulates the course of the hearing;

(iii) Considers the introduction of evidence without regard to the rules of evidence applicable to judicial proceedings; and

(iv) May exclude evidence that is redundant, or that is not relevant to those issues raised by the employee in the request for hearing under § 31.5 that remain in dispute.

(2) An oral hearing is generally open to the public. However, the hearing official may close all of any portion of the hearing if doing so is in the best interest of the employee or the public.

(3) The hearing official may condut an oral hearing by telephone conference call—

(i) If the employee is located in a city outside the Washington, DC Metropolitan area.

(ii) At the request of the employee.

(iii) At the discretion of the hearing official.

(4) No written record is created or maintained of an oral hearing provided under this part.

(e) *Burden of proof.* In any hearing under this part—

(1) The Secretary bears the burden of proving, by a preponderance of the evidence, the existence and amount of the debt, and the failure of the employee to replay the debt, as the debt is described in the pre-offset notice provided under § 31.3; and

(2) The employee bears the burden of proving, by a preponderance of the evidence—

(i) The existence of any fact that would establish that the debt described in the pre-offset notice is not enforceable by offset; and

(ii) The existence of any fact that would establish that the amount of the proposed offset would cause an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.8 Rules of decision.

(a) *Enforceability of debt by offset.* In deciding whether the Secretary has established that the debt described in the pre-offset under § 31.3 is owed by the employee, or whether the employee has established that the debt is not enforceable by offset, the hearing official shall apply the principles in this paragraph.

(1) The statutes and Department regulations authorizing and implementing the program under which the debt arose shall be applied in accordance with official written interpretations by the Department.

(2) The principles of res judicata and collateral estoppel shall apply to resolution of disputed facts in those instances in which the debt or materiall facts in dispute have been the subject of prior judicial decision.

(3) The act or omission of an institution of higher education at which the employee was enrolled shall not constitute a defense to repayment of an obligation with regard to a grant or loan under a program authorized under Title IV of the Higher Education Act of similar authority, except to the extent that—

(i) The act of omission constitutes a defense to the debt under applicable Federal or State law;

(ii) The institution owed the employee a refund under its refund policy and failed to pay that refund to the employee or to a lender holding a loan made to the employee; or

(iii) The institution ceased teaching activity during the academic period for which the grant of loan was made, and failed to refund to the employee a proportionate share of the amount of the grant of loan used to pay tution and other institutional charges for that period.

(4)(i) A debt otherwise established as owed by the employee is enforceable by offset under this part if the Secretary sends the pre-offset notice for the debt within a period of ten years after the later of—

(A) The date on which the Secretary acquired the debt by assignment or referral, or

(B) The date of a partial payment reaffirming the debt.

(ii) Periods during which the statute of limitations has been tolled under 11 U.S.C. 108, 28 U.S.C. 2416, 50 U.S.C. App. 525, or other applicable law, are excluded from the calculation of the ten year period under paragraph (a)(4)(i) of this section.

(b) *Extreme financial hardship.* (1) In deciding whether an employee has established that the amount of the proposed offset would cause extreme financial hardship to the employee, the hearing official shall determine whether the credible, relevant evidence submitted demonstrates that the proposed offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) For purposes of this determination, essential subsistence expenses include costs incurred only for food, housing, clothing, essential transportation and medical care.

(3) In making this determination, the hearing official shall consider—

(i) The income from all sources of the employee, and his or her spouse and dependents;

(ii) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(iii) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(iv) The extent to which the employee and his or her spouse and dependents can borrow to satisfy the debt to be collected by offset or to meet essential expenses; and

(v) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.9 Decision of the hearing official.

(a) The hearing official issues a written opinion within sixty days of the date on which the debtor filed a request for a hearing under § 31.5, unless a delay in the proceedings has been granted at the request of the debtor. In the opinion, the hearing official states his or her decision and the findings of fact and conclusions of law on which the decision is based.

(b) If the hearing official finds that a portion of the debt described in the pre-offset notice under § 31.3 is not enforceable by offset, the official shall state in the opinion that portion which is enforceable by offset.

(c) If the hearing official finds that the amount of the offset proposed in the pre-offset notice will cause an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.10 Request for repayment agreement.

(a) The Secretary does not inititate an offset under this part if the employee agrees in writing to repay the debt under terms acceptable to the Secretary and makes the first payment due under the agreement on or before the latest of—

(1) The seventh day after the date of the decision of the hearing official, if the employee timely requested a hearing under § 31.5 (a) and (d);

(2) The sixty-fifth day after the date of the pre-offset notice under § 31.3 if the employee did not timely request either a hearing under § 31.5 (a) and (d) or an opportunity to inspect and copy records of the Department under § 31.4; or

(3) The fifteenth day after the date on which the Secretary made available relevant documents regarding the debt, if the employee filed a timely request for documents under § 31.4.

(b) In the agreement, the Secretary and the employee may agree to satisfaction of the debt from sources other than an offset under this part, or may modify the offset amounts proposed in the pre-offset notice or established in the decision of the hearing official.

(c) If the debtor does not enter into a satisfactory repayment agreement within the deadlines set in this section, the Secretary may initiate an offset under this part. The Secretary continues to collect by offset until a debtor enters in a satisfactory repayment agreement for the debt.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.11 Offset process.

(a) The Secretary attempts to collect debts under this part within the shortest time authorized under—

(1) The offset schedule proposed in the pre-offset notice, unless modified by agreement or decision of a hearing official;

(2) A written repayment agreement with the employee; or

(3) The offset schedule established in the decision of the hearing official.

(b) In proposing an offset schedule under § 31.3 or establishing a repayment agreement under § 31.10, the Secretary also considers the anticipated period of Federal employment of the employee.

(c) Unless the Secretary determines, in his discretion, to delay collection, the Secretary effects an offset under this part—

(1) According to the terms agreed to by the employee pursuant to a timely request under § 31.10 to enter into a repayment agreement; or,

(2) After the expiration of the periods listed in § 31.10(b) for requesting a repayment agreement with the Secretary.

(d) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the Secretary collects the amount necessary to satisfy the debt by offset from subsequent payments of any kind, including a final salary payment or a lump sum annual leave payment, due the employee on the date of separation. If the debt cannot be satisfied by offset from any such final payment due the employee on the date of separation, the Secretary collects the debt from later payments of any kind due the employee in accordance with the provisions of 4 CFR 102.4.

(e) The Secretary effects an offset under this part against payments owing to an employee of another Federal agency after completion of the requirements of this part, in accordance with the provisions of 5 CFR 550.1108.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

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Part III

Department of Education

Office of Special Education and Rehabilitative Services

Rehabilitation Long-Term Training Program; Notice of Final Funding Priority for Fiscal Year 1988

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Rehabilitation Long-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priority for fiscal year 1988.

SUMMARY: The Secretary announces a funding priority for long-term training grants in the field of Rehabilitation Counseling to ensure effective use of program funds and to direct funds to an area of identified training need during fiscal year 1988. The Secretary reserves funds for applications meeting this priority.

EFFECTIVE DATE: This final funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of the final funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3322–MS 2312), Washington, DC 20202. Telephone: (202) 732–1349.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

Awards are made under this program to State vocational rehabilitation agencies and other public and private or nonprofit agencies or organizations, including institutions of higher education.

On February 9, 1988 the Secretary published a notice of proposed funding priority for this program in the **Federal Register** (53 FR 3828). Except for minor technical revisions, there are no significant differences between this final priority and the proposed priority.

Final Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to long-term training applications submitted in the field of Rehabilitation Counseling in fiscal year 1988 that respond to the priority described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priority.

Applications must be submitted in the long-term training field of Rehabilitation Counseling to provide pre-employment training at the master's degree level, and must be designed to improve and strengthen the capacity of rehabilitation counselors to serve and place severely disabled individuals in employment, especially competitive employment. The training must directly involve students with business and industry in providing rehabilitation services, especially placement services, to severely physically and mentally disabled individuals. The coursework must be designed to provide students with skills and knowledge in: (1) Interpreting diagnostic, psychological, and educational background information to assess the functional capacities of, and do vocational planning for, disabled individuals, including traumatically brain-injured individuals, chronically mentally ill individuals, and learning-disabled individuals; (2) planning effective rehabilitation programs for, and delivering rehabilitation services to, disabled individuals, including traumatically brain-injured individuals, chronically mentally ill individuals, and learning-disabled individuals; (3) job development, job modification, and job restructuring; (4) workers' compensation programs; (5) providing services to disabled individuals to facilitate their transition from school to employment; (6) providing supported employment services to disabled individuals; (7) the applicability of sections 501, 502, 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; (8) utilizing rehabilitation engineering resources; (9) the services available under the Client Assistance Programs; and (10) consulting with employers and potential employers to identify employment opportunities for disabled individuals, to educate and train employers in identifying and removing barriers to the employment of disabled individuals, and to educate or train employers and potential employers about various disabilities and the vocational implications of those disabilities. Practicum training must involve students directly with business and industry in developing jobs for and placing disabled individuals in competitive employment. The practicum training may include actual student experiences in business and industry settings.

(29 U.S.C. 774)

(Catalogue of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: April 8, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–9429 Filed 4–27–88; 8:45 am]

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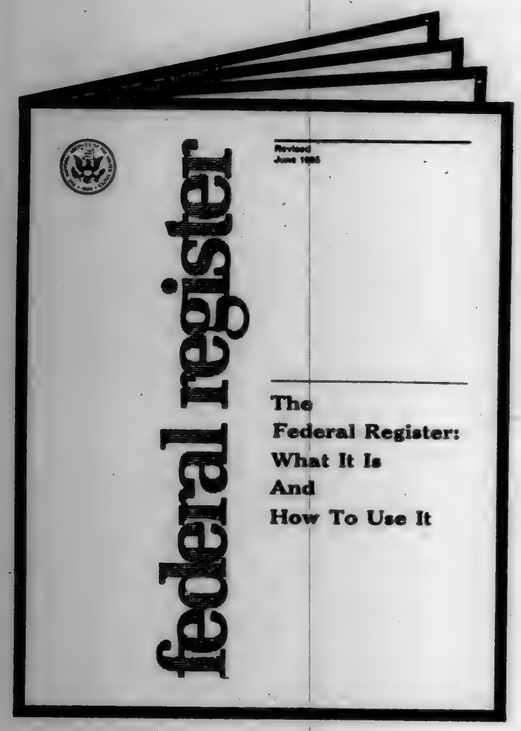
S.R. 1900/Pub. L. 100-294

Child Abuse Prevention, Adoption, and Family Services Act of 1988. (Apr. 25, 1988; 102 Stat. 102; 25 pages) Price: $1.00

H.J. Res. 347/Pub. L. 100-295

Recognizing the identical plaques initiated by Sami Bandak, created by Margareta Hennix and Ginvanni Bizzini, and depicting the Calmare Nyckel, the ship that brought the first Swedish settlers to North America, as significant symbols of the "Year of New Sweden"; and providing for the placement of one of such plaques at Fort Christina in the State of Delaware. (Apr. 25, 1988; 102 Stat. 127; 2 pages) Price: $1.00

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Presidential Documents

Title 3—

The President

Proclamation 5801 of April 26, 1988

Mother's Day, 1988

By the President of the United States of America

A Proclamation

Maternal love is the first tangible bond any human being knows. It is a tie at once physical, emotional, psychological, and mystical. With all of the words that have been written about motherhood, all of the poems of tribute and gratitude that have been penned through the ages, all of the portraits of mother and child that have been painted down the centuries, none has come close to expressing in full the thankfulness and joy owing to mothers.

The mark of motherhood, as the story of Solomon and the disputed infant in the first Book of Kings shows, is a devotion to the well-being of the child so total that it overlooks itself and its own preferences and needs. It is a love that risks all, bears all, braves all. As it heals and strengthens and inspires in its objects an understanding of self-sacrifice and devotion, it is the parent of many another love as well.

The arms of a mother are the newborn's first cradle and the injured child's first refuge. The hands of a mother are the hands of care for the child who is near and of prayer for the one who is far away. The eyes of a mother are the eyes of fond surprise at baby's first step, the eyes of unspoken worry at the young adult's first voyage from home, the eyes of gladness at every call or visit that says she is honored and remembered. The heart of a mother is a heart that is always full.

Generation after generation has measured love by the work and wonder of motherhood. For these gifts, ever ancient and ever new, we cannot pause too often to give thanks to mothers. As inadequate as our homage may be and as short as a single day is to express it—"What possible comparison was there," a great saint wrote of his mother, "between the honor I showed her and the service she had rendered me?"—Mother's Day affords us an opportunity to meet one of life's happiest duties.

In recognition of the contributions of mothers to their families and to our Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as Mother's Day and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby request that Sunday, May 8, 1988, be observed as Mother's Day. I urge all Americans to express their love and respect for their mothers and to reflect on the importance of motherhood to the well-being of our country. I direct government officials to display the flag of the United States on all Federal government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9846
Filed 4-27-88; 2:34 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12637 of April 27, 1988

Productivity Improvement Program for the Federal Government

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Budget and Accounting Act of 1921, as amended, and in order to further improve a comprehensive program for the improvement of productivity throughout all Executive departments and agencies, it is hereby ordered as follows:

Section 1. There is hereby established a government-wide program to improve the quality, timeliness, and efficiency of services provided by the Federal Government. The goal of the program shall be to improve the quality and timeliness of service to the public and to achieve an annual average productivity increase of 3 percent in appropriate functions. Each Executive department and agency will gradually include appropriate functions in the Productivity Improvement Program, so that by 1991 all appropriate functions are covered.

Sec. 2. As used in this Order, the term:

(a) "Productivity" means the efficiency with which resources are used to produce a government service or product at specified levels of quality and timeliness;

(b) "Appropriate functions" means those agency program functions that produce measurable outputs in the form of services to the public;

(c) "Public" means a customer outside the organization, such as citizens, businesses, State and local governments, other countries and/or their citizens, other agencies, the military;

(d) "Outputs" means products or services delivered to the public;

(e) "Measurement system" means both the specific measures used to determine whether standards of quality, timeliness, and efficiency of services are being met, and the procedures for the collection and reporting of data resulting from application of productivity measures;

(f) "Organizational performance standard" means a statement that quantifies and describes the desired level of quality, timeliness, and efficiency of services to be provided by an organization;

(g) "Management review" means the review by the Director of the Office of Management and Budget, as part of the budget process of agency accomplishments and plans for management and productivity improvements.

Sec. 3. The head of each Executive department and agency shall:

(a) Develop a complete inventory of all appropriate functions to be included in the productivity program, use the agency's planning process to review current functions, and develop agency goals and objectives for improvement in services to the public.

(b) Develop and submit annually to the Office of Management and Budget a productivity plan. Each plan shall conform to the policy guidance issued by the Director of the Office of Management and Budget, pursuant to Section 5 of this Order, and shall:

(1) set forth the agency's productivity goals and objectives;

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(2) target priorities for the year and expand coverage each subsequent year to additional appropriate functions, with the objective of complete coverage of all appropriate functions by 1991;

(3) describe the proposed actions designed to make the agency's operations and delivery of services more efficient and responsive;

(4) describe the methods, including efficiency reviews and cost comparisons with the private sector, that the agency will use either to improve its own service, or to make use of commercial services available in the private sector when it is economical to do so; and

(5) describe the measurement systems to be used by the agency to gauge quality, timeliness, and efficiency.

(c) Implement the productivity program after the Management review by the Director of the Office of Management and Budget as provided in Section 6.

(d) Assess annually the agency's progress toward achieving objectives and priorities, including documented gains and cost savings. This assessment will form the basis of the agency's report to the President as required by Section 4.

(e) Designate a senior official responsible for guiding the agency's productivity improvement program.

(f) Inform agency managers and employees that they are expected to be responsible for improvements in the quality, timeliness, and efficiency of services.

(g) Include productivity and quality improvement goals in the performance appraisals of managers and supervisors.

(h) Encourage employee participation in the productivity program through employee training, employee involvement in work-related decisions, incentives, recognition, and rewards and by taking actions to minimize negative impacts on employees that may occur as a result of the productivity program.

Sec. 4. The head of each Executive department and agency shall report annually to the President through the Domestic Policy Council on accomplishments achieved under the plan. The annual report will form the basis of the Management Report to the Congress.

Sec. 5. The Director of the Office of Management and Budget is authorized to:

(a) Develop and promulgate goals, policies, principles, standards, and guidelines for the effective administration of this Order by Executive departments and agencies; and

(b) Identify and propose the elimination of statutory and regulatory barriers that inhibit opportunities to make improvements in productivity.

Sec. 6. The Director shall review, through the management review process, each agency's productivity plan based upon the requirements and guidance issued pursuant to Section 5 of this Order. Nothing in this Section shall be construed as displacing agency responsibilities delegated by law.

Sec. 7. The Director of the Office of Management and Budget shall submit to the Congress, in conjunction with the President's budget, a report on productivity plans and accomplishments of the agencies and the government as a whole.

Sec. 8. The Director of the Office of Personnel Management shall:

(a) Review Federal personnel policies and programs and make or recommend such changes as are appropriate to support productivity improvement;

(b) Review incentive policies and programs for Federal employees and make or recommend such changes as are appropriate to increase the productivity of the Federal Government;

(c) Develop and implement training programs for Federal employees in support of productivity improvements;

(d) Review policies and programs for Federal employees who may be displaced by productivity improvements and make or recommend such changes as are appropriate to ensure that such policies and programs will minimize any adverse impact on Federal employees.

Sec. 9. Executive Order No. 12552 of February 25, 1986, is hereby superseded.

Ronald Reagan

THE WHITE HOUSE,
April 27, 1988.

[FR Doc. 88-9709
Filed 4-28-88; 11:01 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 338

Conversion of Cooperative Education Program Students; Restriction on Sons and Daughters

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations on the use of Schedule B appointing authorities to permit the noncompetitive conversion of qualified Cooperative Education Program (Co-op) students into office and administration support, technician, assistant, helper and preapprentice occupations in the Federal service. These regulations also remove sons and daughters restrictions and use employment of relatives restrictions in their place. These changes will strengthen the Federal service by providing simplified career entry for Co-op students based on their demonstrated performance in study-related work assignments in Federal agencies.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha E. Frost, (202) 632-0496.

SUPPLEMENTARY INFORMATION: The changes effected by this final regulation were published for comment in 53 FR 1789 on January 22, 1988, and distributed for information to Heads of Departments and Independent Establishments by Federal Personnel Manual Bulletin 213-78 dated February 4, 1988. Advance copies were sent to Federal agencies, hundreds of educational institutions and numerous professional associations on January 5, 1988. In the 30-day comment period ending on February 22, 1988, the Office of Personnel Management received 65 comments—43 from Federal agencies; 18 from educational institutions; and 4 from labor unions.

The majority favored and supported the proposed regulatory changes. On the addition of high school and undergraduate certificate appointment authorities under Schedule B 213.3202 (e) and (g), the respondees either had no comment or viewed the regulations as a positive step for the Government toward recruiting eligible Co-op students into civil service jobs. Minor comments were received on editorial changes pertinent to the occupations. These terms are consistent with those used in State vocational education programs and have been added to the final regulations.

Nearly all of the respondees favored or provided no comments on the removal of the "sons and daughters restrictions" for student employment programs covered under Executive Order 12015. Some stated this change was long overdue and added flexibility to the program. Two Federal agencies and one Federal manager requested that "sons and daughters restrictions" be retained. In view of the fact that agencies have the flexibility to apply additional controls they feel are necessary to meet their work situations and the fact that restrictions on the "employment of relatives" under § 310.103 (a), (b), and (c) still apply to student employment programs conducted under E.O. 12015, "sons and daughters restrictions" are removed in the final regulation. Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to provide agencies and educational institutions with maximum flexibility to manage the program and to alleviate administrative and office support shortages.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order (E.O.) 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to appointment procedures for certain employees in Federal agencies.

List of Subjects

5 CFR Part 213

Government employees.

5 CFR Part 338

Government employees, Nepotism, Aged.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Parts 213 and 338, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 reads as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337 (h) and 8457.

2. In § 213.3102(q), the fourth sentence is revised and the fifth sentence is removed to read as follows:

§ 213.3102 Entire executive civil service.

* * * * * *

(q) * * * No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year.

* * *

3. In § 213.3201, paragraph (b) is removed and reserved.

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

* * * * * *

(b) [Reserved]

4. In § 213.3202, paragraph (e) is revised and paragraph (g) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * * *

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high

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school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

* * * * *

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

5. The authority citation for Part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

6. In § 338.202, paragraph (d) is removed and reserved.

§ 338.202 Restriction on sons and daughters.

* * * * *

(d) [Reserved]

* * * * *

[FR Doc. 88–0579 Filed 4–28–88; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

Expanded Enrollment Opportunity Under the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Federal Employees Health Benefits (FEHB) Program regulations to expand the enrollment opportunity that allows Federal employees to enroll or change enrollment when a spouse loses non-Federal health insurance coverage under certain conditions. This revision will (1) permit Federal employees to enroll or change to a family enrollment upon the involuntary loss of non-Federal health insurance coverage by the employee's spouse or by the other parent of the employee's child; and (2) permit annuitants to provide FEHB coverage for family members who lose non-Federal coverage under certain conditions.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632–4634.

SUPPLEMENTARY INFORMATION: Current FEHB regulations permit Federal employees to enroll in the FEHB Program or to change enrollment from self only to self and family coverage if a non-federally employed spouse loses coverage because of a layoff from his or her employment. On June 12, 1987, OPM published proposed regulations in the **Federal Register** (52 FR 22475) that would (1) change the qualifying event from the non-Federal employee's layoff from employment to his or her involuntary loss of health insurance coverage; (2) enable divorced Federal employees to provide FEHB coverage for their children if the children lose non-Federal coverage under the plan of the employee's former spouse, and (3) extend to annuitants the opportunity to change to a self and family enrollment if the regulation's other conditions are met.

We received written comments from two Federal agencies, a retired Federal employees association, and seventeen individuals. All were generally in favor of the proposed regulations.

Our proposed rule would have expanded the current regulation's enrollment opportunity to include Federal employees whose children lost coverage under the non-Federal plan of a former spouse. Two commenters noted that there are also instances where the Federal employee may have never married the parent of his or her child, but is responsible for the child's support including medical care. Our intent is to ensure that the children of Federal employees will have continuous health insurance coverage, regardless of the marital status of their parents. Therefore, the final regulations will permit enrollment or change if the child loses coverage under the *other parent's* non-Federal plan.

One Federal agency suggested that we further clarify what we mean by the word "involuntary." As stated in our proposed regulations, for purposes of this regulation, an involuntary loss of coverage is one that is not initiated by, or the direct result of an action by, the non-Federal employee. For a loss of coverage to qualify as "involuntary", it must be the result of events which were not of the employee's choosing and over which the employee had no control. In addition to situations where the non-federally employed individual was laid off from his or her employment (as stated in current regulations), this would include situations where the employer terminates health insurance for all employees, reduces the number of hours worked by the employee, thereby making the employee ineligible for health insurance in some situations, goes out of business, or eliminates coverage for dependents. It would *not* include situations where the non-Federal employee cancels his or her insurance, drops coverage for his or her dependents, resigns, or is fired for cause. These examples are not all-inclusive; it is not possible to anticipate every individual circumstance that could occur. We therefore remind agencies that they may contact OPM for an advisory opinion if it is unclear whether a particular situation would qualify as an "involuntary" loss of coverage.

Several other commenters have suggested that we eliminate the "involuntary" requirement specified in our proposed regulations and permit enrollment or change if the non-Federal employee loses coverage for any reason. The primary purpose of our revision is to provide relief for the Federal employee whose spouse (or child's other parent) loses non-Federal coverage involuntarily but does not meet the current regulation's requirement of being "laid off" from his or her employment. Our final rule will accomplish this purpose and we do not believe that reaching beyond this "involuntary" limit would be appropriate.

As stated in our proposed regulations, if the non-Federal employee loses health insurance involuntarily, but elects to temporarily continue the employer provided group insurance under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–272), the "loss of coverage" for purposes of our regulation would occur on the date that the temporary continuation of coverage ends. The Federal employee must register to enroll or change enrollment within the period beginning 31 days before and ending 31 days after that date.

An enrollment or change to a self and family enrollment permitted under this regulation will take effect in accordance with the provisions of 5 CFR 890.306(h), i.e. on the first day of the first pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status.

The final regulations include an editorial change to clarify that if the employee's or annuitant's spouse, or the other parent of the employee's or annuitant's children, involuntarily loses dependent coverage while retaining his or her own coverage, the Federal employee or annuitant will have an opportunity to enroll (employees only) or change to a self and family enrollment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; section 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.301, paragraph (y) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(y) *Loss of coverage under spouse's non-Federal plan*—(1) An employee whose spouse involuntarily loses his or her non-Federal health insurance coverage, or coverage for his or her dependents, may register to enroll within the period beginning 31 days before and ending 31 days after the spouse's or dependent's loss of coverage. An employee whose children lose coverage under the other parent's non-Federal health plan because the other parent involuntarily loses coverage for his or her dependents, may register to enroll within the period beginning 31 days before and ending 31 days after the children's loss of coverage.

(2) An employee or annuitant whose spouse involuntarily loses his or her non-Federal health insurance coverage, or coverage for his or her dependents, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the spouse's or dependent's loss of coverage. An employee or annuitant whose children lose coverage under the other parent's non-Federal health plan because the other parent involuntarily loses coverage for his or her dependents, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the children's loss of coverage.

* * * * *

[FR Doc. 88–0580 Filed 4–28–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 251

Temporary Emergency Food Assistance Program (TEFAP); Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Temporary Emergency Food Assistance Program (TEFAP) (7 CFR Part 251). This amendment allows the distribution, subject to certain restrictions, of materials not directly related to participation in or eligibility for TEFAP or other government assistance programs or services. The intent of the rule is to assure that TEFAP participants are not pressured into supporting various political, social or religious points of view in connection with the receipt of TEFAP commodities, and to protect the first amendment right of freedom of speech.

EFFECTIVE DATE: This rule is effective June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center—Room 502, Alexandria, Virginia 22302, Telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION: The information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget (OMB) before becoming effective, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Current reporting and recordkeeping requirements were approved by OMB under control number 0584–0313.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.568 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and the notice published at 49 FR 22675, May 31, 1984).

Background

On June 8, 1987 (52 FR 21545), the Food and Nutrition Service, USDA, published a proposed rule to prohibit the distribution of materials unrelated to TEFAP or other related government programs at the time of TEFAP commodity distributions. In the preamble to that proposed rule, it was noted that since the beginning of the distribution of surplus commodities to households in December 1981, the Department has learned that local agencies (emergency feeding organizations (EFOs) or the distribution sites under the EFOs) that distribute TEFAP commodities occasionally have used the distribution for purposes beyond simply giving food to those in need. For example, there have been instances in which political literature has been handed out with the commodities, giving the appearance that the candidate sponsored the distribution. Despite the specific prohibition against such activities found in § 251.10(f), the Department has

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become aware that some local agencies have continued to distribute various types of fliers, pamphlets, religious messages, and other literature that have no relationship to the distribution of commodities or the availability of other programs targeted to the needy.

The Department is concerned that participants might believe that receipt of the literature is a condition of TEFAP eligibility or that USDA would be seen as endorsing these various causes. The proposed regulations, therefore, were issued to expand the prohibitions against distributing such literature as State referenda and constitutional amendments and materials about political or social causes or religious doctrines.

The Department also proposed a more clearly defined procedure to enforce this prohibition. Previously, whenever a violation was brought to our attention, we asked the State agency in charge of TEFAP distributions to have the violation stopped immediately. However, violations still occurred. To prevent this continued abuse, the Department proposed that local agencies that violate this policy be terminated from further TEFAP distributions unless the State agency can find no other organization in the area to distribute the commodities. If a violating organization is the only one in an area that could administer the program, the State agency would be required to monitor distribution to ensure that no further abuses occurred.

Analysis of Comments

A total of 56 comments were received in response to the proposed rule. Twenty-eight comment letters were from organizations such as the American Civil Liberties Union, the Center for Budget and Policy Priorities, and the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). Twenty-two State agencies commented. Five local agencies and one Congressman also sent in comments.

By far, the single major concern of commenters centered on the question of whether the proposed rule was consistent with the right to free speech in the first amendment to the Constitution. Although some State agencies felt that the rule as proposed would help them to administer the program more efficiently, most commenters were opposed to the proposed rule's ban on all distribution of materials unrelated to TEFAP. Many commenters stated that organizations and individuals had a right to pass out information in public places.

It was not the Department's intent to infringe upon the right of free speech. Instead, the Department sought to avoid harassment of TEFAP participants and to avoid any implication that the Department endorsed the information being distributed. In this rule, the Department seeks to achieve a balance between the right of free speech under the first amendment and the prevention of both the harassment of TEFAP recipients and the appearance of endorsements by USDA. Accordingly, the Department has revised the language in § 251.10(f) to better reflect this balance. The revision is a shift in the focus of the rule, rather than a substantial change in the results of the rule. The final rule permits activities unrelated to TEFAP, subject to restrictions, whereas the proposed rule prohibited activities unrelated to TEFAP, with some exceptions.

The newly worded § 251.10(f)(1) permits activities unrelated to TEFAP food distribution under the following conditions: (1) That the person(s) conducting the activity makes clear that the activity is not part of TEFAP. Impermissible activities include information not related to TEFAP placed in or printed on TEFAP bags or boxes; (2) that the person(s) conducting the activity makes clear that participants need not cooperate with him or her in order to receive TEFAP foods; and (3) that the activity not interfere with TEFAP distribution.

In the proposed rule, paragraph (f)(1) listed certain materials that could be distributed. The final rule has changed this provision, and made it part of subparagraph (f)(1)(i). This provision now states that materials provided by the Federal, State or local government may be distributed without a statement denying USDA endorsement. The Department is not concerned about being viewed as endorsing the activities of another government agency. In addition, many EFOs give information about various government-sponsored programs to help the needy, and it is not the Department's intent to curtail this service.

Paragraph (f)(2) has also been revised, and paragraph (f)(2) of the proposed rule has been redesignated as paragraph (f)(3) in the final rule. The final version of paragraph (f)(2) requires the EFOs and the distribution sites to enforce the conditions for unrelated activities in order to ensure that the recipients are not harassed and that there are no implications of USDA endorsements, except as authorized by the Department.

Although this enforcement requirement was in the proposed rule, its placement has been changed because of the changes in the language of the rule noted above.

Some commenters expressed a concern that the proposed penalty, that is, terminating a distribution site or EFO from future distribution, may be too severe. However, in evaluating this point, the Department has determined that without the threat of termination, EFOs or distribution sites could violate the provision with impunity. In addition, the participants are protected because the State agency may withhold termination if no other site can be found for the area. In such a case, the State agency must monitor future distributions at that site to ensure compliance with § 251.10(f)(1).

There is a minor change in the violation provision contained in § 251.10(f)(3) of the final rule. The Department has added a requirement that State agencies immediately terminate from further participation in TEFAP operations not only any EFO or distribution site that distributes materials in an unauthorized manner, but also those which permit the distribution of materials in an unauthorized manner. The Department believes that the host organization must ensure that no group or individual violates these provisions in order to make the provisions effective. This change is also consistent with the general requirement of the proposed rule which provided that an EFO or distribution site shall not distribute or *permit* distribution of materials unrelated to TEFAP. Aside from this change, the Department has issued the termination section as proposed.

List of Subjects in 7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 251 is amended as follows:

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM FOR FISCAL YEARS 1986 AND 1987

1. The authority citation for Part 251 continues to read as follows:

Authority: Pub. L. 98–8, as amended (7 U.S.C. 612c note).

2. Section 251.10(f) is revised as follows:

§ 251.10 Miscellaneous provisions.

* * * * *

(f) *Limitation on unrelated activities.* (1) Activities unrelated to the distribution of TEFAP foods may be conducted at distribution sites as long as:

(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department (impermissible activities include information not related to TEFAP placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and

(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities.

(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) *Termination for violation.* Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) *Termination exception.* The State agency may withhold termination of an emergency feeding organization's or distribution site's TEFAP participation if the State agency cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

Date: April 24, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–9486 Filed 4–28–88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87–131]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by removing language authorizing states to enforce safeguards other than those contained in federal regulations concerning the entry of fruits and vegetables into the United States for local consumption. This deletion is necessary because states are precluded from imposing requirements on fruits and vegetables while they are in foreign commerce.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8248.

SUPPLEMENTARY INFORMATION:

Background

"Subpart—Fruit and Vegetables," contained in 7 CFR 319.56 *et seq.* (referred to below as the regulations), prohibits or restricts the importation of certain fruits and vegetables as a means of preventing the spread of foreign plant pests to the United States. The regulations provide for the following conditions of importation: certification, movement under permit, inspections, and treatment. These conditions are based on the pest hazard of the fruit and vegetables involved, the pests known to exist in the country or location of origin, and other circumstances appropriate to the specific intended movement.

On July 23, 1987, we published a document in the **Federal Register** (52 FR 27686–27687, Docket No. 86–366) proposing to amend the regulations by removing language stating that the subpart's requirements "shall not be a bar to the enforcement of such additional safeguards as may be deemed necessary by the officials of such states". Our concern is that this language could be interpreted as authorizing states to regulate the importation of foreign fruits and vegetables into the United States. Any such action by a state would be inconsistent with the separation of federal and state powers mandated in the United States Constitution, which precludes the states from regulating foreign commerce.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before September 21, 1987. We received eight comments.

Foreign-to-Intrastate Commerce

Seven commenters argued that "additional [state] safeguards" are enforced after foreign commerce in imported fruit and vegetables ceases and, therefore, are not precluded by the Constitution. The commenters disagree, however, as to exactly when the foreign commerce concerning fruit and vegetables ceases. The differing opinions offered by the commenters included:

1. After inspection and clearance by our inspectors at a U.S. port of entry.

2. When foreign fruits and vegetables are moved into a state for distribution within that state.

3. When title is transferred to the receiver.

Most of the commenters (many of whom were state officials) err in their opinion of when the foreign commerce ceases concerning fruit and vegetables. The foreign commerce does not cease after inspection and clearance by Animal and Plant Health Inspection Service inspectors at a United States port of entry, or when they are moved into a state for distribution within that state. The foreign commerce often does not cease when "title is transferred to the receiver." Fruit and vegetables are generally perishable commodities which are imported for immediate distribution and sale to the consuming public, and the foreign commerce in imported fruit and vegetables would generally not cease until sold to the ultimate consumer. The question of when the foreign commerce ceases must be considered on a case-by-case basis.

Insufficient or Nonexistent Regulations

Five commenters expressed a common belief that states should have the right to protect their citizens and industries from pests of foreign origin when federal regulations are insufficient or do not exist.

We disagree. State officials who believe that their state is not adequately protected by existing federal regulations may petition the Animal and Plant Health Inspection Service to have the regulations changed. In fact, the Animal and Plant Health Inspection Service already cooperates with a variety of organizations—such as the National Association of State Departments of Agriculture and the National Plant

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Board—that routinely evaluate federal plant protection laws and regulations, offering periodic recommendations to improve federal protections against foreign plant pests.

No Past Problems

Three commenters argued that since there is no evidence that the "additional safeguards" language has caused any problems, there is no need to amend the regulations. We disagree. A lack of problems in the past does not guarantee that states will not be misled into an unconstitutional regulation of foreign commerce in the future. It is clear from comments received concerning this rule that there is a problem concerning "additional safeguards" by states. It is not known if the current "additional safeguards" language has caused or contributed to that problem. However, the potential for misinterpreting the current "additional safeguards" language can only be alleviated by removing it from the regulations.

Increase/Decrease Authority

Two commenters felt that our proposed amendment would increase federal authority at the expense of the states, by eliminating the latter's inspection systems and regulatory actions. In fact, this amendment is a completely neutral action in that it neither increases nor decreases federal and state authorities.

We are deleting a statement from the current regulations that could be misinterpreted as authorizing state regulation of foreign commerce. This amendment does not take any existing authorities away from the states, because the Constitution precludes state regulation of foreign commerce.

New Language

Two commenters recommended retention of a clarified "additional [state] safeguards" statement in the regulations. They also suggested that the clarification be accomplished by replacing the current language with the following:

> Provided, that the requirements under the regulations in this subpart with respect to the entry of foreign fruits and vegetables into any state for local consumption shall not be a bar to the enforcement of such additional post-clearance and post-entry safeguards as may be deemed necessary by the officials of such states.

Unfortunately, both comments were based on the erroneous belief that imported fruit and vegetables transfer from foreign commerce to domestic commerce immediately following inspection and clearance at a United States port of entry. As previously explained (see discussion under subtitle, *Foreign-to-Intrastate Commerce*), imported articles remain in foreign commerce after inspection and clearance at a United States port of entry. Thus, the phrase suggested by the commenters, "post-clearance and post-entry," could be interpreted as authorizing state regulation of foreign commerce.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Deletion of the language in § 319.56–6(c) will make it clear that states may not regulate fruits and vegetables in foreign commerce. Deletion of this language will not add, remove, or alter any requirements or provisions under Part 319. Current enforcement practices will remain intact.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

Ths program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR Part 319 is amended to read as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c.)

§ 319.56–6 [Amended]

2. In paragraph (c) of § 319.56–6, the phrase *"Provided,* That the requirements under the regulations in this subpart with respect to the entry of foreign fruits and vegetables into any State for local consumption shall not be a bar to the enforcement of such additional safeguards as may be deemed necessary by the officials of such States." is removed.

Done in Washington, DC, this 26th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–9559 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of April through August 1988 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa milk order. The limits would be revised temporarily from 50 percent to 65 percent. The revision is made in response to a request by a cooperative association representing producers supplying the market, and will prevent uneconomic movements of milk.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of Diversion Limitation Percentages: Issued March 21, 1988; published March 24, 1988 (53 FR 9636).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (53 FR 9636) concerning a proposed relaxation of the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The temporary revision would be effective for the months of April through August 1988. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by March 31, 1988.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the diversion limits on producer milk should be increased by 15 percentage points, from 50 percent to 65 percent.

Pursuant to the provisions of § 1065.13(d), the Director of the Dairy Division may increase or decrease the diversion limitation percentages by up to 20 percentage points in any month. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The diversion limitations of the Nebraska-Western Iowa milk order were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, and from 50 to 60 percent for the months of July and August 1987.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1988, the diversion limit on producer milk be increased by 15 percentage points.

The cooperative stated that producer milk used in Class I sales under the Nebraska-Western Iowa order during January 1988 declined to 35 percent from a January 1987 level of 42 percent. During the same time period, according to NFO, the amount of producer milk pooled under the order increased 13 percent. The cooperative predicted that this pattern of increasing production and the resulting decline in the percentage of producer milk used in Class I is likely to continue in 1988. NFO stated that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III usage is quite appropriate.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk must be unloaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO stated that without the temporary revision such uneconomic milk shipments will be necessary for the months of April through August 1988 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Comments supporting the temporary revision of the diversion limitations were received from Associated Milk Producers, Inc. (AMPI), a cooperative association also representing producers on the Nebraska-Western Iowa market. AMPI supported the temporary revision of the order's diversion limits for the same reasons cited by NFO. The cooperative emphasized that an increase of diversion limits, to allow more milk to be shipped directly to manufacturing plants, is the most economical solution to the problem of decreased Class I utilization and increased supplies of producer milk.

No comments opposing the proposed relaxation of the Nebraska-Western Iowa order's diversion limits were received.

Without the temporary revision, milk would have to be moved unnecessarily and uneconomically from farms to pool plants for the sole purpose of maintaining the pool status of producers historically pooled under the Nebraska-Western Iowa order. In addition to such movements of milk being inefficient and uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded the relaxation of the producer milk diversion limit by 15 points will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of April through August 1988;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1065.13(d) (2) and (3) of the Nebraska-Western Iowa milk order are hereby revised for the months of April through August 1988.

BEST COPY AVAILABLE

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PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 40 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1065.13 [Temporarily revised in part]

2. In § 1065.13(d) (2) and (3), the provision "50 percent" is revised to "65 percent" for the months of April through August 1988.

Signed at Washington, DC, on April 25, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88–9528 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 611]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 611 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period May 1 through May 7, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 611 (§ 910.911) is effective for the period May 1 through May 7, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on April 26, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8–4 vote, a quantity of lemons deemed advisable to be handled during the specified week. The commitee reports that the market for lemons remains good for larger sizes, weaker for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that is it impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.911 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.911 Lemon Regulation 611.

The quantity of lemons grown in California and Arizona which may be handled during the period May 1, 1988, through May 7, 1988, is established at 340,000 cartons.

Dated: April 27, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–9648 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–141–AD; Amdt. 39–5903]

Airworthiness Directives; Lockheed-Georgia Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to Lockheed Model 382 series airplanes, which requires inspection of the control column base for cracks, and replacement, if necessary. This amendment is prompted by reports of operators using an elevator block that has caused cracking to occur in the First Officer's control column. This condition, if not corrected, could result in failure of the control column and loss of control of the airplane.

DATES: Effective June 7, 1988.

ADDRESSES: Applicable service information may be obtained from Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Aerospace Engineer, Airframe Branch (ACE–120A), FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed-Georgia Model 382 series airplanes, which requires inspection of the control column base for cracks, and replacement, if necessary, was published in the **Federal Register** on December 28, 1987 (52 FR 48829).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($400). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-Georgia: Applies to Model 382 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the control column and loss of control of the airplane, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, perform an eddy current (non-destructive) inspection of the left and right control column bases on the forward side of each control column at approximately floor level, as follows:

Note: The control column base is shown in the Lockheed Hercules Component Overhaul Manual, SMP 850, Item 27–26, Figure 1, page 4, as Figure Item No. 235 (see Figure 1, below). The inspection area is around the 1.25-inch diameter hole located on the forward side of the base approximately at the lower end of the control column tube support (Figure Item No. 185).

The control column bases are fabricated from either magnesium or aluminum. Earlier airplanes were delivered with AZ916–T6 magnesium alloy sand castings per MIL–M–4204. The magnesium castings are finished with an anodic treatment, a wash primer per MIL–C–8514, and two coats of epoxy primer per LAC 37–722, Type I, followed by an epoxy enamel per LAC 37–722 of appropriate color. The aluminum bases are A356–T6 aluminum castings per MIL–A–21180, Class 10, with an initial sulfuric acid anodize, and finished with two coats of zinc chromate primer, followed by two coats of Camouflage lacquer per TT–L–190.

Fatigue cracking may initiate at the sharp edge formed by thickness transition approximately mid-way up from the bottom of the 1.25-inch diameter hole on the forward side of the base. Cracks will propagate aft around the perimeter of the base along the thickness transition.

1. Prior to performing the eddy current inspection, assemble the following equipment:

a. Crack Detector, Magnaflux P/N ED–520, or equivalent.

b. Probe, surface, shielded, ⅛-inch diameter, 8 inches long, VM products P/N VM200–8, or equivalent.

c. Probe, surface, shielded, right angle, ⅛-inch diameter, ½-inch drop, 8 inches long, VM Products P/N VH202BA–½–8, or equivalent.

d. Cable, 6 foot, Microdot/BAC, Mastercraft Enterprises P/N NMT 7–41–BM, or equivalent.

e. Standard, aluminum, as furnished with the Magnaflux instrument, or Lockheed-Georgia Company P/N PDL 457A.

2. Prior to performing the eddy current inspection, prepare the airplane in the following manner:

Warning: Ensure that power is isolated from all systems in the inspection area prior to approaching the inspection area. Failure to comply may result in serious injury to personnel.

a. Isolate power from all systems in the inspection area in accordance with applicable maintenance manuals.

b. Remove screws retaining Dust Seal Boot (Figure Item No. 20, Item 27–26 of SMP 850) to the cockpit floor. Loosen clamp retaining the Dust Seal Boot to the Support Tube, and push the Dust Seal Boot up approximately 6–8 inches and secure to Support Tube temporarily. Repeat for opposite control column installation.

3. Gain access for the inspection inside of the airplane in the cockpit, using normal ingress provisions.

4. Prepare the area to be inspected as follows:.

a. Remove oil grease, residual, sealant, and other materials by wiping the control column base around the 1.25-inch diameter hole on the forward side of the base with Federal Specification 0–T–620, Type I, Trichloroethane, or commercial equivalent, and dry with clean cotton cloth.

Warning: Federal Specification 0–T–620, Type I, Trichloroethane is toxic to skin, eyes, and respiratory tract. Skin and eye protection is required. Avoid repeated or prolonged contact. Good general ventilation is normally adequate. Failure to comply could result in injury to personnel.

b. Visually inspect area to be inspected, looking for rough surface conditions which could adversely affect the eddy current inspection. If surface appears rough, smooth surface using 320 grit sandpaper until a reliable eddy current inspection can be achieved.

5. Set up and calibrate the eddy current instrument as specified in Lockheed Service Manual SMP–515–A or SMP–515–C, Work Card SP–76, Appendix A, for surface scanning on aluminum. The eddy current instrument must be recalibrated when probes are changed. Calibrate on aluminum for inspection of the magnesium casting.

6. Perform the eddy current inspection in the following manner:

a. With the control column in the full aft position, surface scan around the entire circumference of the 1.25-inch diameter hole at the front of the control column base casting, using both eddy current probes. Scan in both clockwise and counterclockwise directions.

b. Repeat this inspection on the opposite control column base.

7. If any suspected defects in the control column base casting are found during the eddy current inspection, indicated by a sharp meter deflection noted during calibration, mark the suspected defect.

a. To confirm suspected defects, proceed to paragraph B., below.

b. If no defects are suspected, proceed to paragraph C., below (System Securing).

B. To confirm suspected defects, perform a fluorescent penetrant inspection as follows:

1. Prior to performing the fluorescent penetrant inspection, assemble the following equipment:

Note: All chemicals shall use the "family concept"—they shall all be from the same manufacturer for Type I, Group VI, Method C, per MIL–I–25135.

a. Penetrant, fluorescent, Magnaflux P/N ZL–22A, or equivalent.

b. Remover, penetrant, Magnaflux P/N SKC/NF/ZC–7B, or equivalent.

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c. Developer, penetrant, Magnaflux P/N ZP-9b, or equivalent.

d. Black light, portable, Magnaflux P/N ZB-26, or equivalent.

2. Prior to performing the fluorescent penetrant inspection, prepare the airplane by removing the control column assembly from the airplane in accordance with the applicable maintenance document.

3. Gain access for the inspection inside of the airplane in the cockpit, using normal ingress provisions.

4. Prepare the area to be inspected, in accordance with Lockheed Service Manual SMP 515–A or SMP 515–C, Work Card SP–76, Appendix A, for stripping finish around the 1.25-inch diameter hole in the suspect area.

Warning: Paint strippers are dangerous chemicals to humans and aircraft. Every effort must be made to prevent inadvertent contact with any portion of the person or aircraft. Should accidental contact be made, immediately flood the contacted area with water, and, in the case of personal contact, seek immediate medical attention.

5. Perform the fluorescent penetrant inspection in the following manner:

Note: If the temperature of the part or inspection materials to be used is below 60 °F (16 °C), preheat and maintain the temperature at or above 60 °F (16 °C) during application of penetrant materials. The surface may be heated with a hot air heater.

a. Pre-clean the area to be inspected with the solvent cleaner (Remover, SKC/NF/ZC–7B) and wipe with a clean, dry, lint free cotton cloth.

b. Apply warm air to the inspection area to remove all moisture.

c. Apply penetrant to the control column base with penetrant sprayed onto a cotton swab and brushed onto the part. Do not spray the part from the penetrant spray can. Allow a minimum dwell time of 10 minutes before proceeding to the next step.

d. Wipe inspection area with a clean, dry, lint free cotton cloth. Wipe remaining penetrant from part with a clean, lint free cotton cloth dampened with the penetrant remover. Check the area to be inspected with the black light to ensure that excess penetrant has been removed prior to applying the developer.

e. Spray a light film of developer over the area to be inspected. Allow a minimum dwell time of 5 minutes.

f. Using the black light, inspect the suspect area for defects.

6. If defects are confirmed, prior to further flight replace the control column base with a serviceable unit free of cracks. After replacement of the control column base, or if no defects are found, proceed to paragraph C., below (System Securing).

C. System Securing: Restore finishes and sealants, reinstall removed components, remove equipment and supplies from the inspection area; rig control system in accordance with applicable maintenance manual; and perform operation checkouts as required in accordance with applicable maintenance instructions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment becomes effective June 7, 1988.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9482 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-166-AD; Amdt. 39-5907]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires inspections for cracks of each main landing gear (MLG) wheel, and replacement, if necessary. This amendment is prompted by reports of cracks on inboard wheel halves. This condition, if not corrected, could lead to complete failure of the wheel.

DATES: Effective June 10, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Aerospatiale Model ATR-42 series airplanes, which requires inspections for cracks of each main landing gear (MLG) wheel, and replacement, if necessary, was published in the **Federal Register** on January 28, 1988 (53 FR 2500).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters suggested that inspections should be based on a number of landings rather than a specific number of days, since the utilization of their aircraft can vary from 2 landings to as many as 20 landings per day. The FAA concurs with these comments and has revised the final rule to reflect that the inspections are required at intervals of 7 days or 100 landings, whichever occurs later.

Another commenter took notice that the proposed rule would allow only one landing after the detection of a crack, while Loral System Service Bulletin ATR 42-32-40-1 states that a maximum of 5 landings may be made. The commenter suggested that the final rule be revised to be consistent with this aspect of the service bulletin. The FAA does not concur. The FAA has determined that, in order to maintain an acceptable level of safety, no more than one landing may be made after the detection of a crack.

Since issuance of the Notice of Proposed Rulemaking, Aerospatiale has issued Service Bulletin ATR42-32-0017, dated January 19, 1988, which describes procedures for the installation of new reinforced inboard wheel halves and a modified hub spacer. The FAA has determined that installation of the new wheel and hub spacer terminates the requirement for repetitive inspections required by this AD, and has added a new paragraph C. to the final rule to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously discussed.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 2291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($280). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category. Compliance required within 7 days or 100 landings after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent failure of the wheel, due to cracked spokes, accomplish the following:

A. With the airplane jacked, perform a visual inspection of the inboard wheel halves for cracks, in accordance with Loral Systems Group Service Bulletin ATR 42-32-40-1, Revision 2, dated June 23, 1987. Repeat the inspection at intervals not to exceed 7 days or 100 landings, whichever occurs later. If a crack is detected, only one additional landing may be made after the detection of a crack before the cracked inboard wheel half must be replaced.

B. At each tire change, perform an eddy current inspection or other nondestructive test of the inboard wheel halves, in accordance with Loral Systems Group Service Bulletin ATR 42-32-40-1, Revision 2, dated June 23, 1987. Replace any cracked inboard wheel half before further flight.

C. Replacement of inboard wheel halves with a new reinforced half wheel and replacement of the existing hub spacer with a modified hub spacer, in accordance with Aerospatiale Service Bulletin ATR42-32-0017, dated January 19, 1988 (reference Loral Service Bulletin ATR42-32-40-4, dated July 15, 1987), constitutes terminating action for the repetitive inspections required by paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on April 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9537 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-170-AD; Amdt. 39-5908]

Airworthiness Directives; The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-8-100 series airplanes, which requires clearly marking the location and means of entering the lavatory. This amendment is prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. This condition, if not corrected, could lead to inadvertent opening of the airstair door and consequent depressurization of the airplane.

DATE: Effective June 10, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Systems and Equipment Branch (ANE-173), New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires clearly marking the location and means of entering the lavatory on de Havilland Model DHC-8-100 series airplanes, was published in the **Federal Register** on January 19, 1988 (53 FR 374).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the manufacturer, had no objection to the intent of the AD, but disagreed with the wording of the description of the unsafe condition addressed by this action. The commenter stated that the exit door handle and the lavatory door handle are not in close proximity, as was indicated in the preamble to the Notice. The commenter pointed out that the exit door handle is near the airstair door, while the lavatory door, which does not have a handle, is near the flight compartment entrance. In addition, the commenter believes that the reported incidents of passengers mistaking the airstair door operating handle as the means of gaining access to the lavatory were due to a lack of association of the airstair door handle with the airstair. The FAA considers these comments to have merit. Both the lavatory door and airstair door are located in the forward

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portion of the airplane; the lavatory door (which does not have a handle) is located on the right-hand side, around a corner from the airstair door. The FAA notes that passengers' confusion apparently arises from a label located next to the airstair door handle, which merely reads "OPEN," and does not distinguish between the airstair or lavatory. In consideration of the foregoing, the FAA has revised the text of the final rule to clarify the description of the unsafe condition.

The same commenter stated that a statement in the preamble to the Notice, which read "* * * the exit door was inadvertently opened," was not completely accurate. In two of the reported incidents, the airstair door handle was moved sufficiently to deflate the door seal, but the door was not actually opened. In another incident, a passenger apparently grabbed the airstair door handle in an attempt to gain access to the lavatory, but was stopped by an on-board flight attendant; in this case, the door seal did not deflate and the door was not opened. The FAA notes these comments.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously described.

It is estimated that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately .5 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $720.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of a minimal cost of compliance per airplane ($20). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to Model DHC-8-100 series airplanes, serial numbers 3 and subsequent, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent depressurization caused by passengers mistaking the airstair door operating handle for a means of gaining access to the lavatory, accomplish the following:

A. Within 60 days after the effective date of this AD, replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 6-11-14, Revision A, dated July 20, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England, Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on April 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9536 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25593; Amdt. No. 343]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective:* May 15, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on April 15, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 343 EFFECTIVE DATE, MAY 5, 1988

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
BAHAMA ROUTES		
65V IS AMENDED TO READ IN PART		
*SYDNY, BF FIX *4000 - MRA **1200 - MOCA	LAUTH, BF FIX	**3000
LAUTH, BF FIX *1400 - MOCA	FREEPORT, BF VOR/DME	*2000
§95.6003 VOR FEDERAL AIRWAY 3 **IS AMENDED TO READ IN PART**		
MODENA, PA VORTAC	BIGGY, PA FIX	2500
BIGGY, PA FIX	SOLBERG, NJ VORTAC	2000
§95.6013 VOR FEDERAL AIRWAY 13 **IS AMENDED TO READ IN PART**		
RICH MOUNTAIN, OK VORTAC *4200 - MRA **3900 - MOCA	*HADES, AR FIX	**4600
DES MOINES, IA VORTAC *3500 - MCA ANKEN FIX, N BND	*ANKEN, IA FIX	2700
§95.6015 VOR FEDERAL AIRWAY 15 **IS AMENDED TO READ IN PART**		
ARDMORE, OK VORTAC	PHARA, OK FIX	3000
PHARA, OK FIX *2300 - MOCA	OKMULGEE, OK VOR	*3000
§95.6016 VOR FEDERAL AIRWAY 16 **IS AMENDED TO READ IN PART**		
CALVERTON, NY VORTAC	CREAM, NY FIX	2000
CREAM, NY FIX	NORWICH, CT VORTAC	2500
§95.6020 VOR FEDERAL AIRWAY 20 **IS AMENDED TO READ IN PART**		
LATEX, TX FIX *1700 - MOCA	ASCOT, TX FIX	*4000
SOLON, TX FIX	CORPUS CHRISTI, TX VORTAC	1600
NEW ORLEANS, LA VORTAC *1500 - MOCA	SLIDD, LA FIX	*5000
§95.6034 VOR FEDERAL AIRWAY 34 **IS AMENDED TO READ IN PART**		
RIMBA, NY FIX	WEETS, NY FIX	6000
§95.6039 VOR FEDERAL AIRWAY 39 **IS AMENDED TO READ IN PART**		
GORDONSVILLE, VA VORTAC *5200 - MOCA	MARTINSBURG, WV VORTAC	*6000
§95.6049 VOR FEDERAL AIRWAY 49 **IS AMENDED TO READ IN PART**		
VULCAN, AL VORTAC *4000 - MRA	*BOUNT, AL FIX	3000
§95.6066 VOR FEDERAL AIRWAY 66 **IS AMENDED TO READ IN PART**		
TUCSON, AZ VORTAC	SULLI, AZ FIX	8000
SULLI, AZ FIX	MESCA, AZ FIX SE BND	9500
	NW BND	8000
MESCA, AZ FIX	DOUGLAS, AZ VORTAC	9500
DOUGLAS, AZ VORTAC *8700 - MOCA	ANIMA, NM FIX	*11000
EL PASO, TX VORTAC	HUDSPETH, TX VORTAC	7500
ABILENE, TX VORTAC *3500 - MOCA	BRIDGEPORT, TX VORTAC	*5000
TUSCALOOSA, AL VORTAC *2000 - MOCA	BROOKWOOD, AL VORTAC	*2500
§95.6067 VOR FEDERAL AIRWAY 67 **IS AMENDED TO READ IN PART**		
BURLINGTON, IA VORTAC	IOWA CITY, IA VORTAC	2600
IOWA CITY, IA VORTAC	CEDAR RAPIDS, IA VORTAC	2700
§95.6088 VOR FEDERAL AIRWAY 88 **IS AMENDED TO READ IN PART**		
DELMA, MO FIX *2300 - MOCA	GLASS, MO FIX	*3500
§95.6114 VOR FEDERAL AIRWAY 114 **IS AMENDED TO READ IN PART**		
NEW ORLEANS, LA VORTAC *1500 - MOCA	SLIDD, LA FIX	*5000

FROM	TO	MEA
§95.6126 VOR FEDERAL AIRWAY 126 **IS AMENDED TO READ IN PART**		
PLANT, IN FIX	NOMES, IN FIX	2600
§95.6130 VOR FEDERAL AIRWAY 130 **IS AMENDED TO READ IN PART**		
BRADLEY, CT VORTAC	NORWICH, CT VORTAC	6000
§95.6135 VOR FEDERAL AIRWAY 135 **IS AMENDED TO READ IN PART**		
BARD, AZ VORTAC *3900 - MOCA	BLYTHE, CA VORTAC	*5000
BLYTHE, CA VORTAC	PARKER, CA VORTAC	5400
§95.6137 VOR FEDERAL AIRWAY 137 **IS AMENDED TO READ IN PART**		
IMPERIAL, CA VORTAC *4500 - MRA	*BRAWL, CA FIX	3000
BRAWL, CA FIX *4000 - MCA WISTE FIX, NW BND	*WISTE, CA FIX	3000
WISTE, CA FIX	THERMAL, CA VORTAC	5000
§95.6138 VOR FEDERAL AIRWAY 138 **IS AMENDED TO READ IN PART**		
LINCOLN, NE VORTAC	OMAHA, NE VORTAC	3700
§95.6139 VOR FEDERAL AIRWAY 139 **IS AMENDED TO READ IN PART**		
INNDY, RI FIX	TONNI, MA FIX	2000
§95.6151 VOR FEDERAL AIRWAY 151 **IS AMENDED TO READ IN PART**		
HYANNIS, MA VORTAC *1500 - MOCA	GAILS, MA FIX	*3000
GAILS, MA FIX *1500 - MOCA	PROVIDENCE, RI VORTAC	*2000
§95.6155 VOR FEDERAL AIRWAY 155 **IS AMENDED TO READ IN PART**		
FLAT ROCK, VA VORTAC	COATT, VA FIX	2000
COATT, VA FIX	BROOKE, VA VORTAC	8000
§95.6159 VOR FEDERAL AIRWAY 159 **IS AMENDED TO READ IN PART**		
NAPOLEON, MO VORTAC	PLASH, MO FIX	2900
§95.6161 VOR FEDERAL AIRWAY 161 **IS AMENDED TO READ IN PART**		
PHARA, OK FIX *2300 - MOCA	OKMULGEE, OK VOR	*3000
BUTLER, MO VORTAC *2400 - MOCA	NAPOLEON, MO VORTAC	*2900
DES MOINES, IA VORTAC *3500 - MCA ANKEN FIX, N BND	*ANKEN, IA FIX	2700
§95.6166 VOR FEDERAL AIRWAY 166 **IS AMENDED TO READ IN PART**		
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2000
		MAA- 8000
§95.6172 VOR FEDERAL AIRWAY 172 **IS AMENDED TO READ IN PART**		
NEWTON, IA VOR/DME	CEDAR RAPIDS, IA VORTAC	2800
§95.6175 VOR FEDERAL AIRWAY 175 **IS AMENDED TO READ IN PART**		
LINDE, IA FIX *5500 - MRA **2900 - MOCA	*MADUP, IA FIX	**4000
MADUP, IA FIX *2900 - MOCA	SIOUX CITY, IA VORTAC	*4000
§95.6202 VOR FEDERAL AIRWAY 202 **IS AMENDED TO READ IN PART**		
TUCSON, AZ VORTAC	SULLI, AZ FIX	8000
SULLI, AZ FIX	MESCA, AZ FIX SE BND	9500
	NW BND	8000
§95.6205 VOR FEDERAL AIRWAY 205 **IS AMENDED TO READ IN PART**		
BRADLEY, CT VORTAC	PUTNAM, CT VOR/DME	6000
§95.6216 VOR FEDERAL AIRWAY 216 **IS AMENDED TO READ IN PART**		
PAWNEE CITY, NE VORTAC	LAMONI, IA VORTAC	3400
§95.6219 VOR FEDERAL AIRWAY 219 **IS AMENDED TO READ IN PART**		
SIOUX CITY, IA VORTAC *3200 - MOCA	KILEY, IA FIX	*4500

FROM	TO	MEA
§95.6219 VOR FEDERAL AIRWAY 219—Continued		
EVERT, IA FIX *6800 - MRA **3200 - MOCA	*GRUVE, IA FIX	**4500
§95.6234 VOR FEDERAL AIRWAY 234		
IS AMENDED TO READ IN PART		
DELMA, MO FIX *2300 - MOCA	GLASS, MO FIX	*3500
§95.6245 VOR FEDERAL AIRWAY 245		
IS AMENDED TO READ IN PART		
MINIM, AL FIX	TUSCALOOSA, AL VORTAC	2400
§95.6249 VOR FEDERAL AIRWAY 249		
IS AMENDED TO READ IN PART		
RIMBA, NY FIX	DE LANCEY, NY VOR	5500
§95.6260 VOR FEDERAL AIRWAY 260		
IS AMENDED TO READ IN PART		
FRANKLIN, VA VORTAC	COFIELD, NC VORTAC	1800
§95.6266 VOR FEDERAL AIRWAY 266		
IS AMENDED TO READ IN PART		
FRANKLIN, VA VORTAC *5000 - MCA SUNNS FIX, SE BND **1500 - MOCA	*SUNNS, NC FIX	**2000
§95.6273 VOR FEDERAL AIRWAY 273		
IS AMENDED TO READ IN PART		
HUGUENOT, NY VORTAC	HANCOCK, NY VORTAC	4000
§95.6297 VOR FEDERAL AIRWAY 297		
IS AMENDED TO READ IN PART		
RONDO, MI FIX *4700 - MRA	*WOLIT, MI FIX	3000

FROM	TO	MEA
§95.6340 VOR FEDERAL AIRWAY 340		
IS AMENDED BY ADDING		
PLANT, IN FIX KNOX, IN VORTAC	KNOX, IN VORTAC FORT WAYNE, IN VORTAC	2600 3000
IS AMENDED TO READ		
FORT WAYNE, IN VORTAC	RICHMOND, IN VORTAC	3000
§95.6403 VOR FEDERAL AIRWAY 403		
IS AMENDED TO READ IN PART		
BELAY, MD FIX *2000 - MOCA	BUCKS, PA FIX	*6000
§95.6405 VOR FEDERAL AIRWAY 405		
IS AMENDED TO READ IN PART		
BELAY, MD FIX *2000 - MOCA	BUCKS, PA FIX	*6000
PAWLING, NY VORTAC *3500 - MOCA	VEERS, CT FIX	*4000
VEERS, CT FIX *3500 - MOCA	BRADLEY, CT VORTAC	*7000
BRADLEY, CT VORTAC	PROVIDENCE, RI VORTAC	6000
§95.6433 VOR FEDERAL AIRWAY 433		
IS AMENDED TO READ IN PART		
NOTTINGHAM, MD VORTAC SWANN, MD FIX *1400 - MOCA	SWANN, MD FIX KERNO, MD FIX	2500 *2500
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
RIMBA, NY FIX LYSAN, NY FIX DINES, NY FIX	DE LANCEY, NY VOR DINES, NY FIX ROCHESTER, NY VORTAC	5500 2300 6000
§95.6484 VOR FEDERAL AIRWAY 484		
IS AMENDED TO READ IN PART		
GRAND JUNCTION, CO VORTAC BATTZ, CO FIX	BATTZ, CO FIX BLUE MESA, CO VORTAC	12300 14000
§95.6510 VOR FEDERAL AIRWAY 510		
IS AMENDED TO DELETE		
DELLS, WI VORTAC	OSHKOSH, WI VORTAC	2900

FROM	TO	MEA	MAA
§95.7024 JET ROUTE NO. 24			
IS AMENDED TO READ IN PART			
CHARLESTON, WV VORTAC	MONTEBELLO, VA VOR/DME	18000	41000
§95.7030 JET ROUTE NO. 30			
IS AMENDED TO READ IN PART			
APPLETON, OH VORTAC	BUCKO, WV FIX	18000	45000
BUCKO, WV FIX	KESSEL, WV VOR/DME	18000	29000
§95.7034 JET ROUTE NO. 34			
IS AMENDED TO READ IN PART			
BELLAIRE, OH VORTAC	BUCKO, WV FIX	18000	45000
BUCKO, WV FIX	KESSEL, WV VOR/DME	18000	29000
§95.7037 JET ROUTE NO. 37			
IS AMENDED TO READ IN PART			
GORDONSVILLE, VA VORTAC	BROOKE, VA VORTAC	18000	31000
BROOKE, VA VORTAC	VILLS, NJ FIX	18000	31000
VILLS, NJ FIX	COYLE, NJ VORTAC	18000	45000
§95.7048 JET ROUTE NO. 48			
IS AMENDED TO READ IN PART			
MONTEBELLO, VA VOR/DME	CASANOVA, VA VORTAC	18000	41000
§95.7055 JET ROUTE NO. 55			
IS AMENDED TO READ IN PART			
HOPEWELL, VA VORTAC	HUBBS, MD FIX	18000	20000
§95.7134 JET ROUTE NO. 134			
IS AMENDED TO READ IN PART			
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	18000	45000
§95.7191 JET ROUTE NO. 191			
IS AMENDED TO READ IN PART			
HOPEWELL, VA VORTAC	HUBBS, MD FIX	18000	20000

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FROM	TO	MEA	MAA
§95.7191 JET ROUTE NO. 191—Continued			
HUBBS, MD FIX	PATUXENT, MD VORTAC	18000	45000
KENTON, DE VORTAC	DAVYS, NJ FIX	18000	33000
DAVYS, NJ FIX	ROBBINSVILLE, NJ VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT FROM	AIRWAY SEGMENT TO	CHANGEOVER POINTS DISTANCE	CHANGEOVER POINTS FROM
V-16			
IS AMENDED TO DELETE			
COYLE, NJ VORTAC	KENNEDY, NY VORTAC	35	COYLE
V-44			
IS AMENDED TO DELETE			
MARTINSBURG, WV VORTAC	BALTIMORE, MD VORTAC	31	MARTINSBURG
V-130			
IS AMENDED BY ADDING			
BRADLEY, CT VORTAC	NORWICH, CT VORTAC	10	BRADLEY
V-205			
IS AMENDED BY ADDING			
BRADLEY, CT VORTAC	PUTNAM, CT VOR/DME	10	BRADLEY
V-405			
IS AMENDED BY ADDING			
BRADLEY, CT VORTAC	PROVIDENCE, RI VORTAC	10	BRADLEY

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§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-24		
	IS AMENDED BY ADDING		
CHARLESTON, WV VORTAC	MONTEBELLO, VA VOR/DME	104	CHARLESTON
	J-48		
	IS AMENDED BY ADDING		
MONTEBELLO, VA VOR/DME	CASANOVA, VA VORTAC	16	MONTEBELLO
	J-134		
	IS AMENDED BY ADDING		
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	133	HENDERSON
	J-191		
	IS AMENDED TO DELETE		
HOPEWELL, VA VORTAC	PATUXENT, MD VORTAC	20	HOPEWELL

[FR Doc. 88-9480 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 25592; Amdt. No. 1372]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the data of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 15, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2))

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended].

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

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* * * *Effective June 30, 1988*

Foley, AL—Foley Muni, NDB RWY 18, Orig.
Los Banos, CA—Los Banos Muni, VOR/DME RWY 14, Amdt. 3
Merced, CA—Merced Municipal/Macready Field, VOR RWY 12, Amdt. 6
Merced, CA—Merced Municipal/Macready Field, VOR RWY 30, Amdt. 14
Merced, CA—Merced Municipal/Macready Field, LOC BC RWY 12, Amdt. 8
Merced, CA—Merced Municipal/Macready Field, ILS RWY 30, Amdt. 9
Santa Monica, CA—Santa Monica Muni, VOR–A, Amdt. 7
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 14, Amdt. 1
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 32, Amdt. 1
Lakeland, FL—Lakeland Muni, VOR RWY 13, Amdt. 3, *Cancelled*
Clarinda, IA—Schenck Field, NDB–A, Amdt. 3
Sac City, IA—Sac City Muni, NDB RWY 36, Amdt. 2
Gastonia NC—Gastonia Muni, NDB RWY 3, Amdt. 6
Monroe, NC—Monroe, LOC RWY 5, Orig.
Monroe, NC—Monroe, NDB RWY 5, Orig.
Lancaster, OH—Fairfield County, VOR–A, Amdt. 7
Lancaster, OH—Fairfield County, SDF RWY 28, Amdt. 4
Lancaster, OH—Fairfield County, NDB RWY 28, Amdt. 5
Winnsboro, SC—Fairfield County, NDB RWY 4, Amdt. 3
Dickson, TN—Dickson Muni, NDB RWY 17, Orig.
Lebanon, TN—Lebanon Muni, NDB RWY 18, Orig.

* * * *Effective June 2, 1988*

Carrollton, GA—West Georgia Regional, LOC RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Amdt. 2, *Cancelled*
Macon, GA—Herbert Smart Downtown, RADAR–1, Amdt. 1
Vandalia, IL—Vandalia Muni, VOR RWY 18, Amdt. 11
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 5
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 5
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 4
Ida Grove, Ida—Ida Grove Muni, NDB RWY 29, Amdt. 2, *Cancelled*
Milford, IA—Fuller, VOR/DME–A, Orig.
Rock Rapids, IA—Rock Rapids Muni, NDB RWY 16, Amdt. 1
Waukon, IA—Waukon Muni, VOR RWY 7, Orig., *Cancelled*
Jackson, MS—Hawkins Field, NDB RWY 18, Amdt. 4
Jackson, MS—Hawkins Field, ILS RWY 18, Amdt. 3
Jackson, MS—Hawkins Field, RNAV RWY 18, Amdt. 4
Kenansville, NC—P. B. Raiford, NDB RWY 22, Amdt. 4
Mt. Gilead, OH—Morrow County, VOR–A, Amdt. 3
Oklahoma City, OK—Will Rogers World, VOR RWY 17L, Orig.
Charleston, SC—Charleston AFB/INTL, ILS RWY 15, Amdt. 20
Charleston, SC—Charleston Executive, VOR–A, Amdt. 7, Cancelled
Center, TX—Center Muni, NDB RWY 16, Orig.

* * * *Effective May 5, 1988*

Portland, OR—Portland Intl, NDB RWY 28L, Amdt. 2

* * * *Effective April 13, 1988*

Binghamton, NY—Edwin A. Link Field Broome County, ILS RWY 16, Amdt. 4

* * * *Effective April 12, 1988*

Daggett, CA—Barstow-Daggett, VOR or TACAN RWY 22, Amdt. 8

* * * *Effective April 7, 1988*

St. Paul, MN—Lake Elmo, NDB RWY 3, Amdt. 2
Palestine, TX—Palestine Muni, VOR/DME RWY 17, Amdt. 1.

[FR Doc. 88-9479 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 157, 292, 375, 381 and 388

[Docket No. RM87-26-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952

Issued April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in order to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is assessing these fees to reimburse the Agency for services and benefits provided by it. The new fees are for (1) applications for exemption of a small hydroelectric power project from all or part of Part I of the Federal Power Act and (2) written legal interpretations of the General Counsel. The Commission is also revising several existing filing fees for various reasons.

EFFECTIVE DATE: This order will become effective May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357-8530

SUPPLEMENTARY INFORMATION:

Order No. 494

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is also revising several existing filing Fees.[1]

II. Background

The Commission assesses filing fees and annual charges under several statutes. These provisions either authorize filing fees set at levels calculated to reimburse the government agencies involved for the average cost of rendering a specific service [2] or authorize annual charges for broad classes of entities to reimburse the Commission for the costs or regulating entire industry groups.[3] The Independent Offices Appropriations Act of 1952 (IOAA) [4] authorizes the Commission to establish fees for specific services and benefits it renders to identifiable beneficiaries.

This final rule adds to and revises the Commission's fee schedule and procedures under the IOAA. The statute provides only general guidance on the manner in which agencies are to assess fees. It instructs the agencies to be fair in imposing any fees required and to consider such factors as the costs to the Government, the value of the service to the recipient, the public policy or other interest served, and "other relevant facts." [5] The IOAA states that it is the sense of Congress that each service or thing of value provided by an agency to a person is to be "self-sustaining to the extent possible." [6]

The principal administrative interpretation of the IOAA is OMB Circular A-25,[7] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which that recipient derives a special benefit.[8] The Circular further construes the IOAA as precluding a charge for services rendered "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public." [9]

The IOAA, OMB Circular A-25, and subsequent case law have established certain criteria that must be met in levying a fee under the IOAA. The Commission must:

(1) Identify the service for which the fee is to be assessed; [10]

(2) Explain why the particular service benefits the identifiable recipient more than it benefits others in the industry or the general public; [11]

(3) Base the fee on as small a category of service as possible; [12]

(4) Demonstrate calculation of the cost basis of each fee assessed.[13] The agency may satisfy this criterion by presenting a reasonable, not necessarily exact, relationship between its costs and the fee assessed.[14]

The Commission has established filing fees under its IOAA authority for many of its activities under its jurisdictional statutes, including the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and Parts II and III of the Federal Power Act (FPA). These fees and general procedures for determining them and collecting them are codified at 18 CFR Part 381. The U.S. Court of Appeals for the Tenth Circuit has upheld the fees established by the Commission under the authority of the IOAA in four prior rulemaking proceedings.[15]

The Commission calculated its fees using data on the work time expended on various Commission activities, on the number of completions of each activity, and on its annual costs. The Time Distribution Reporting System (TDRS) collects data on staff time expended on various activities (product categories).[16] The basic measure of work time expended is the work-month (WM), the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.[17] The Commission also compiles data on the number of completions in each product category and calculates an annual figure for its average total costs per employee.

The Commission's fee schedule is designed to account for all types of recoverable costs attributable to a particular Commission service and not merely the salaries of the employees who review the notices, applications, and requests in the particular product category. Pro rata portions of certain indirect costs are properly included in the calculation of fees for various agency services.[18] The Commission's actual yearly costs per employee for fiscal year 1987 were:

Salaries and benefits	$48,989.01
Travel	700.36
Transportation of things	50.51
Rents, communications, and utilities	6,048.83
Printing	1,221.97
Other services—excludes direct program contracts	6,812.19
Supplies	829.46
Equipment	2,346.94
Total	66,999.27

The Commission divides this annual total by twelve to yield an average WM cost of $5,583.27. The formula for determining each fee is the actual WMs dedicated to a given fee category for the previous fiscal year (including direct WMs plus a pro rata share of WMs reported for relevant support activities) divided by the number of actual completions in that product category in the previous fiscal year and then multiplied by the average cost per WM in the previous fiscal year. The Commission multiplies the average WM cost by the average number of WMs required to complete each activity to obtain the average cost for each activity and then sets its fees on the basis of those average costs.

On November 5, 1987, the Commission issued a Notice of Proposed Rulemaking (NOPR), in which it proposed to

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[1] The Commission's fee structure and procedures for collecting fees are codified in 18 CFR Part 381 (1987).

[2] Section 30(e) of the Federal Power Act (FPA), 16 U.S.C. 823a(e) (Supp. 1987), instructs the Commission to establish for applicants for licenses or exemptions for hydroelectric projects fees adequate to reimburse Federal and state fish and wildlife agencies for costs reasonably incurred in connection with studies and reviews carried out for purposes of compliance with section 30 of the FPA. The Commission established the fees authorized by section 30(e) of the FPA in December 1987. Order No. 487, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies, 52 FR 46398 (Dec. 22, 1987), FERC Stats. & Regs. ¶ 30,784. These fees and procedures to be codified at 18 CFR 4.300–4.305.

[3] Section 10(e) of the FPA, 16 U.S.C. 803(e) (1982), provides that licensees of hydroelectric projects under Part I of that statute shall pay reasonable annual charges as reimbursement for the Commission's costs of administering that Part and as compensation for the use, occupancy, and enjoyment of federal lands or other property. The Commission's regulations for annual charges under Part I of the FPA are codified at 18 CFR Part 11 (1987).

Section 3401 of the Omnibus Budget and Reconciliation Act of 1986, 42 U.S.C. 7178 (Supp. 1987), grants more comprehensive authority, providing that the Commission shall "assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." The Commission established these annual charges in May 1987, Order No. 472, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987), FERC States. & Regs. ¶ 30,746. The annual charges, to be codified at 18 CFR 382.201–382.203, are based on volumes of energy transported and sold by the gas pipelines, electric utilities, power marketing administrations, and the electric cooperative, and on the operating revenues received by the oil pipelines.

[4] 31 U.S.C. 9701 (1982).

[5] *Id.* Section 9701(b)(2) (A)–(D).

[6] *Id.* Section 9701(a).

[7] Issued as Bureau of the Budget Circular A–25 (September 23, 1959). The United States Supreme Court expressed general approval for the interpretation of the IOAA embodied in Circular A–25, Federal Power Commission v. New England Power Co., 415 U.S. 345, 349–51 (1974).

[8] A "special benefit" accrues when a Government-rendered service "enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public," provides business stability or assures public confidence in the business activity of the beneficiary, or is performed at the request of the recipient and is above and beyond the services regularly received by the same industry or group or by the general public. OMB Circular A–25, ¶ 3(a)(1).

[9] *Id.* ¶ 3(a)(2).

[10] National Cable Television Ass'n, Inc. v. F.C.C., 554 F.2d 1094, 1100 (D.C. Cir. 1976) (the agency "must identify the activity which justifies each particular fee it assesses"). *See also* Federal Power Commission v. New England Power Co. at 349–351 (invalidating assessments against jurisdictional utilities in proportion to their wholesale sales and interchange of electricity since the "thrust of the Act" reached "only specific charges for specific services to specific individuals or companies" and Commission's formula could result in charges to companies which had no proceedings before the Commission during the year in question).

[11] Electronic Industries Ass'n v. F.C.C., 554 F.2d 1109, 1114 (D.C. Cir. 1976) ("require a certain nexus, a threshold level of private benefit, between the regulatee and the agency before a fee can be assessed against the recipient of the service.").

[12] *Id.* at 1116 ("we interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical.").

[13] *Id.* at 1117 ("This involves (a) an allocation of the specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include particular terms.").

[14] National Cable Television Ass'n, Inc. v. F.C.C. at 1105–06 ("Any computation such as those must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits. It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received.")

[15] Phillips Petroleum Co. v. FERC, 786 F.2d 370, 379 (10th Cir. 1986) (upholding the fees promulgated in Order Nos. 360, 361, 394 and 395).

[16] Twice a month Commission employees prepare TDRS report forms, listing the product categories on which they worked during the prior half-month period and the number of hours spent on each activity. These TDRS forms are forwarded through reviewer/supervisors and office coordinators, undergoing reviews at each stage to ensure the accuracy of the information, and are compiled by the Office of Administration.

[17] 18 CFR 381.102(c) (1987).

[18] Mississippi Power & Light Co. v. NRC, at 801 F.2d 223, 232 (5th Cir. 1979) *cert. denied*, 444 U.S. 1102 (1980).

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establish three new fees and to revise seven existing filing fees or fee procedures.[19] Fourteen persons submitted comments in response to the NOPR.[20]

III. Discussion

A. New Fees

The Commission proposed new fees:

(1) For filing an application for exemption from all or part of Part I of the FPA for small hydroelectric power projects of 5 megawatts or less;

(2) For requesting a written legal interpretation by the General Counsel of a statute or regulation under the jurisdiction of the Commission (except for a request for interpretation of Part I of the FPA, the costs of which are included in charges assessed pursuant to section 10(e) of the FPA); and

(3) For filing by the owner or operator of a cogeneration or small power production facility of a notice under 18 CFR 292.207(a)(2) that the facility meets the requirements of 18 CFR 292.203 (qualifying facility notice).

Middle South Utilities System, the only commenter to address the proposals for new fees, supports imposition of a cost-based filing fee for each of the three services.[21]

1. *5 Megawatt Exemption.* The Commission is establishing a fee of $16,430 [22] for an application for exemption of a small hydroelectric power project from all or part of Part I of the FPA. This exemption is available for projects with a total installed capacity of 5 megawatts or less and is governed by Part 4, Subpart K of the Commission's regulations (5MW exemption).[23]

An application for a 5MW exemption is processed primarily by the Commission's Office of Hydropower Licensing (OHL). OHL first reviews the application to determine whether it meets the requirements of Part 4, Subpart K. If the application meets those requirements, it is accepted for filing and the Commission circulates a notice of application for exemption to interested agencies and publishes that notice in the **Federal Register**. Commission staff reviews any comments of government agencies and the general public, prepares an environmental assessment of the proposed project, and may recommend additional conditions for inclusion in any exemption issued. The Office of the General Counsel provides legal support in the review.

The Commission's costs and the costs of other Federal agencies in processing 5MW exemptions have heretofore been collected from hydroelectric licensees as part of the annual charges authorized by section 10(e) of the FPA. However, in order to implement the IOAA objective of assessing fees for specific services and benefits rendered to identifiable recipients, the Commission is establishing a separate filing fee for applications for 5MW exemptions.

An entity that receives a 5MW exemption obtains authorization to construct and operate a hydroelectric power project without the requirement of obtaining a license under Part I of the FPA. In practice, this exempts that entity from compliance with the broad range of continuing regulatory oversight provisions that are regularly included in such licenses. The streamlined procedure and the lower level of regulatory oversight associated with the 5MW exemption confer special benefits on an entity receiving that exemption.

The TDRS product category of an application for a 5MW exemption is the smallest practical unit of service on which to base a filing fee. The Commission currently collects work time data for this category and it has calculated the fee using that data for fiscal 1987.

2. *Written Legal Interpretation of the General Counsel.* The Commission is also establishing a fee of $2,460 for a request for a written legal interpretation by the General Counsel of any statute or regulation under the jurisdiction of the Commission, except for Part I of the FPA.[24] A request for an interpretation describes a specific fact situation, problem, or issue. It requires the General Counsel's staff to analyze relevant Commission and court precedents and applicable statutes in order to provide an opinion on the question posed.

The Commission had assessed a fee of $35 for a written legal interpretation of the NGPA and had not charged a fee for other written legal interpretations of the General Counsel.

Persons who receive written legal interpretations from the General Counsel benefit because the information and legal analysis provided in the opinion can guide the recipient in decisionmaking and in planning transactions and activities.

The category of requests for written legal interpretations from the General Counsel is the smallest practical unit for compiling work time and completion data. Although this data has been compiled separately for requests for written legal interpretations under the NGPA, the Commission no longer collects data according to the subject of the request. It is administratively more convenient to use a single category of written legal interpretations of the General Counsel, especially since the Commission will assess fees for all such requests.

3. *Qualifying Facility Notice.* The Commission has decided not to establish a fee for the filing of a notice by an owner or operator of a small power production facility or a cogeneration facility stating that the facility meets the criteria set forth in 18 CFR 292.203 to be a qualifying facility (QF).[25]

The Commission's Office of Electric Power Regulation (OEPR) enters receipt of a notice of qualifying status into the Commission's computer system and lists the facility as a qualifying small power production facility or a qualifying cogeneration facility in the Commission publication, "The Qualifying Facilities Report."

An owner or operator of a cogeneration or small power production facility is not required to file a notice of qualifying status. The Commission wishes to encourage the filing of QF notices for informational purposes and now believes that imposition of a fee, even the relatively small fee based on the Commission's minimal processing time, may discourage owners or operators from filing the discretionary QF notice.

B. Revised Fees and Procedures

The Commission also proposed seven revisions in its existing IOAA filing fees and procedures. These are discussed below:

[19] Filing Fees under Independent Offices Appropriations Act of 1952, Docket No. RM87-28-000, 52 FR 43612 (Nov. 13, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987], ¶ 32,454.

[20] Comments were submitted by: Allegheny Power System; Arizona Public Service Company; American Gas Association; Central Illinois Public Service Company; Commonwealth Edison Company *et al.*; Consumers Power Company; Iowa Public Service Company; Lone Star Gas Company; Middle South Utilities System; Oklahoma Gas and Electric Company; Public Citizen's Critical Mass Energy Project; Tampa Electric Company; Union Electric Company; and Wisconsin Power & Light Company.

[21] Comments of Middle South Utilities System at 2.

[22] The NOPR proposed a fee of $11,010, based on fiscal year 1986 TDRS and cost data. In calculating all fees in this final rule, the Commission uses fiscal year 1987 TDRS and cost data, which has become available since the issuance of the NOPR.

[23] 18 CFR 4.101-4.113 (1987).

[24] Costs incurred in completing written legal opinions interpreting Part I of the FPA are collected from hydroelectric licensees as a class under the annual charges provisions of section 10(e) of the FPA, which requires the Commission to recover the costs of administering Part I of the FPA through annual charges.

[25] 18 CFR 292.207(a) (1987).

1. *Revision of Rounding Procedure.* The Commission is adopting its proposal to revise its procedure for rounding costs in the calculation of filing fees when average costs for completion of a service exceed $100. The Commission will round the actual average costs per completion down to the nearest $10, rather than to the nearest $100, as had been the practice since the Commission adopted its first group of IOAA filing fees in 1984.[26] When average costs are $100 or less, the Commission will continue to round down to the nearest $5. None of the commenters opposed this proposal.

The Commission is revising its rounding procedure in order to establish fees that more accurately reflect the full costs of providing the services. Rounding procedures are not mandated by the IOAA and are governed by the dual objectives of full recovery of costs and administrative convenience. The revised rounding procedure adequately balances those two objectives and is effective for fees based on fiscal year 1987 data and for each fiscal year thereafter.

2. *Fee for Written Interpretations of the Natural Gas Policy Act by the General Counsel.* The Commission is including the existing fee category for written legal interpretations of the NGPA by the General Counsel [27] in the new fee category it is establishing in this rule for all written legal interpretations by the General Counsel. This action eliminates written legal interpretations under the NGPA as a separate fee category and raises the fee for such filings to the level set for all requests for written legal interpretations under the new § 381.305, or $2,460.

The Commission established a fee category in 1984 for written interpretations of the NGPA by the General Counsel. Historically, the Commission has categorically reduced the fee by approximately 65 percent from full cost recovery because it believed that recovery of actual costs through fees would substantially discourage requests for such interpretations.[28]

The American Gas Association (AGA) argues that a large increase in the fee for written interpretations of the NGPA could adversely affect small entities which, out of economic necessity, must rely on the Commission's legal opinions relatively more than do larger firms. AGA argues that the Commission recognized this concern when it established and adjusted the fee at a categorically reduced level. AGA also argues that requests for General Counsel interpretations do not confer special benefits on applicants but rather are Commission tools for voluntary compliance and enforcement and are prompted by ambiguity or lack of clarity in the Commission's own regulations.[29]

Any entity, including a small entity, may petition the Commission for a waiver of any filing fee pursuant to § 381.106 of the Commission's regulations upon a showing that recovery of the full cost of providing the service would cause hardship. A general provision for full cost recovery, coupled with the availability of the waiver procedure for specific cases of financial hardship, more closely reflects the intent of the IOAA that recipients of special benefits bear the costs of providing those beneficial services than does a categorical reduction of the fee for all applicants.

A person that receives a written legal interpretation derives a special benefit because it can use the information and legal analysis it receives to guide its planning and decisionmaking. The facts that such an interpretation may also be available to the Commission and to members of the public who did not pay for the service and that it may have a beneficial compliance and enforcement impact do not preclude assessment of a fee under the IOAA. In fact, a fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[30]

The Commission finds that the category of written legal interpretations of the General Counsel is the smallest practical unit on which to base cost data and fee calculations, that it is appropriate to assess a fee for all such interpretations, and that there is no persuasive reason to attempt to differentiate among written legal interpretations regarding the Commission's various jurisdictional statutes.

3. *Fees for Commission Certification of a Qualifying Small Power Production Facility and a Qualifying Cogeneration Facility.* The Commission divides the current fee category for applications for certification of qualifying facility (QF) status [31] into two categories, one for certification of qualifying small power production facilities and the other for certification of qualifying cogeneration facilities. The certification of qualifying status is for benefits under the Public Utility Regulatory Policies Act of 1978.

When the Commission established the single fee in 1985, it did not differentiate between applications for small power production facilities and cogeneration facilities because it did not anticipate a differential in the costs of reviewing the two kinds of applications and because the Commission's management information system did not separate the two types of applications.[32] However, the current TDRS includes separate product categories for the two types of certification applications and analysis of that TDRS data reveals a clear differential in processing times. In order to comply with the IOAA requirement that fees be based on costs to the Government and to reflect fiscal year 1987 costs of completion, the Commission is increasing the fee for certification as a qualifying facility from $1,300 to $6,560 for a small power production facility and from $1,300 to $4,310 for a cogeneration facility.

AGA supports the concept of different fees for the two types of requests based on the varied requirements and time involved in processing the applications, but objects to their level. AGA states that filing fees for applications for qualifying status discourage small industrial and commercial energy users from obtaining the benefits of cogeneration and that the proposed increase in those fees is inconsistent with the stated congressional intent of PURPA to remove "institutional barriers against cogeneration." [33]

Middle South Utilities System notes that the splitting of the QF fee categories is inconsistent with the Commission's proposal to consolidate electric rate filing fee categories discussed below.[34]

Fees for the costs of services actually rendered to QF certification applicants are not "institutional barriers to cogeneration," but are part of a broad structure of agency fees, authorized by the IOAA and based on special benefits

[26] Order No. 360, Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶ 30,542.

[27] 18 CFR 381.405 (1987)

[28] Order No. 394, Fees Applicable to the Natural Gas Policy Act, 49 FR 35357, 35361 (Sept. 7, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶ 30,593. The Commission continued that categorical reduction in the two subsequent annual adjustments of fees. 51 FR at 4311 (Feb. 4, 1986); and 52 FR at 10367 (April 1, 1987).

[29] Comments of AGA at 6-10.

[30] Electronic Industries Association v. F.C.C., 554 F.2d 1109, 1115 (D.C. Cir. 1976); Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 230 (5th Cir. 1979), *cert denied*, 444 U.S. 1102 (1980).

[31] 18 CFR 381.505 (1987)

[32] 52 FR 43615 (Nov. 13, 1987).

[33] Comments of AGA at 3, citing H.R. Rep. No. 543, 95th Cong., 2d Sess. 57 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 7673.

[34] Comments of Middle South Utilities System at 2.

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accruing to identifiable beneficiaries. QF certification exempts such facilities from the burden of complying with certain state and Federal regulations, requires electric utilities to offer to purchase power from the QF at the utilities' avoided cost of alternative power and to sell back-up power to the QF, and facilitates project financing. Inasmuch as applicants clearly receive special benefits from the process, it is appropriate to charge for that service. The legislative interest in promoting cogeneration and small power production facilities does not justify an across-the-board reduction or elimination of these fees for all members of the applicant class, especially given the existence of the waiver procedure for individual applicants whose circumstances may warrant a fee reduction.

AGA also suggests that the higher fees are particularly inappropriate in the case of packaged cogeneration units with modular components and standardized installation.[35] This suggestion does not justify creation of special product and fee categories. Attempts to create subcategories based on patterns or similarities in filings within the existing TDRS product categories and current fee categories are administratively infeasible because they go beyond the smallest practical unit of service.

AGA also notes that, despite the Commission's acknowledgment in the NOPR that there may be a disproportionate burden on small companies, the fee waiver process provides no significant relief for many small companies.[36] AGA's criticism that the waiver procedure cannot provide relief for small but profitable firms reflects a misreading of that provision. The Commission has already addressed this objection in an earlier IOAA fees rulemaking. The Commision stated that it would grant a waiver if an applicant demonstrates that payment of the fee would cause severe economic hardship. The fact that an applicant is solvent does not mean it cannot qualify, if payment of the fee would cause such hardship.[37]

AGA makes the broader argument that a Commission certification of a cogeneration or a small power production facility does not benefit the applicant more than the general public and therefore is not an appropriate subject for fees under the IOAA.[38] AGA's statement that qualifying facility certification does not benefit the applicant more than the general public is incorrect. Certification as a qualifying facility under PURPA permits the facility to sell or purchase power at avoided cost rates and may facilitate financing for the project. Both are special benefits. The fact that the general public may also benefit from the operation of small power production and cogeneration facilities does not invalidate the filing fee. A fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[39]

4. *Fee for Petition for Declaratory Order.* The Commission is raising the fee for a petition for issuance of a declaratory order under § 385.207 of the Commission's Procedural Rules [40] to $11,670; which reflects full recovery of the Commission's costs of processing those petitions.

That provision permits a person to file a petition seeking a declaratory order to terminate a controversy or to remove uncertainty.

In the NOPR, the Commission proposed to raise the fee for a petition for a declaratory order to a level that would fully recover the costs of processing those petitions. The Commission had established this fee in 1984 at a level reflecting an approximately 60 percent reduction from full cost recovery and had continued that categorical reduction through the two subsequent annual adjustments.[41] Three commenters object to this change.

Lone Star Gas Company (Lone Star) urges the Commission to exercise its discretion to limit fees to less than full cost recovery to avoid either undermining Commission activities or adversely affecting applicants. Lone Star suggests that the Commission should be encouraging applications for declaratory orders, which can eliminate controversies and remove uncertainties over the proper interpretation and application of Commission requirements.[42]

Public Citizens' Critical Mass Energy Project (Public Citizen) and AGA comment that requests for declaratory orders are often filed by developers of cogeneration and small power production projects who seek interpretations of Commission requirements prior to making substantial investments. They express concern that higher declaratory order fees would disproportionately impact smaller projects and that these and other fees would discourage innovative new projects, thereby stunting technological development.[43]

Contrary to the arguments by Public Citizen and AGA, the great majority of applications for delcaratory orders have been filed by large or financially substantial entities.[44] Any entity that is economically unable to pay the appropriate fee may petition for a waiver of that fee under 19 CFR 381.106. Full cost recovery with the availability of a fee waiver for economic hardship is preferable, in terms of both equity and fiscal responsibility, to categorical reduction of an entire fee category in which experience has shown that the majority of applicants can easily bear the full costs.

Based on its experience, the Commission no longer believes that concern that a fee representing the full cost of issuing a declaratory order may discourage potential applicants from filing requests justifies a categorical reduction of that fee.

AGA further maintains that requests for declaratory orders do not confer special benefits and, therefore, are not appropriate subjects for fees under the IOAA. It suggests that such petitions are often necessary because Commission regulations are ambiguous or unclear and that the Commission has sometimes used declaratory orders to provide industry-wide guidance on public policy issues extending beyond the case of the individual applicant. Finally, AGA suggests that interveners in declaratory order proceedings drive up costs, derive benefits from the proceedings, and pay nothing, thereby causing applicants to subsidize the interveners.[45]

An applicant for a declaratory order seeks to settle a controversy or to remove uncertainty on an issue, usually in order to advance its own decisionmaking or planning. The applicant is a clearly identifiable recipient of a special benefit, since its gain is more immediate and substantial than any incidental gain for the general public from the resolution of the issue. Although interveners may derive benefits from and increase the costs of declaratory order proceedings, the declaratory order applicants remain the prinicpal beneficiaries and the mere fact that others may benefit does not preclude assessing a fee against those who initiate the proceeding to seek a special benefit.

5. *Fee for Commission Review of Jurisdictional Agency Determinations.* The Commission is revising the means by which it determines the fee for its review of jurisdictional agency determinations under section 503 for the NGPA [46] and is raising that fee from $35 to $75.

Section 503 provides that Federal or state jurisdictional agencies may determine that natural gas from particular wells qualifies for certain NGPA price categories, subject to review by the Commission. Within 15 days of its decision, the jurisdictional agency gives written notice of its determination to the Commission.[47] If the Commission does not reverse the jurisdictional agency's well-category determination on review, the producer may receive the maximum lawful price for the category determined.[48]

In the NOPR, the Commission proposed to include the cost of determination audits in the cost basis for this product category. In determination audits, the Commission reviews certain of the jurisdictional agency determinations processed during the previous year to verify their accuracy.[49]

AGA opposes implementing this proposal. AGA argues that applicants would be required to pay for double-checking the accuracy of the Commission work.[50] In the past, the Commission has excluded the costs of determination audits from the cost of jurisdictional determinations because it believed that the audits were not part of the service of reviewing a jurisdictional agency determination.[51] However, the Commission's experience has demonstrated that, because determination audits are the primary means of ensuring that the initial determinations are accurate, their costs are appropriately included in the total costs of reviews of jurisdictional agency determinations. Review mechanisms to assure the accuracy of a process are a legitimate part of the Commission's provision of the service.

6. *Fee for Electric Utility Rate Filings Under Sections 205 and 206 of the FPA.* The Commission is modifying its fee categories for electric utility rate filings under sections 205 and 206 of the FPA. All electric utility rate filings under those provisions, except those that have no effect on the rate the utility charges or that involve only rate decreases, will be subject to a fee of $5,780. Those excepted filings, formerly defined as "Class 1 rate schedule filings," will not be subject to a fee. All filings formerly classified as "Class 2 rate schedule filings" and "Class 3 rate schedule filings" will be subject to the single filing fee of $5,780.[52]

The Commission proposed to consolidate the three categories of filing fees it established in Order No. 435[53] into one fee category. The Commission stated that it had found that the three-tiered classification scheme was administratively unworkable.[54]

Eleven commenters oppose consolidation of the electric rate filing fees, arguing generally that the three-tiered classification system is both valid and workable, that the proposed changes would be contrary to the express provisions and judicial and regulatory interpretations of the IOAA, and that those changes would create practical problems. Several commenters suggest that, even if some modification of the fee categories is warranted, there are more appropriate alternatives than that proposed by the Commission.

Commenters maintain that the rationale for the creation and use of the three fee categories stated in Order No. 435 remains convincing and that the Commission has failed to provide specific facts to support its assertions that three categories are unworkable.[55] Several commenters contend that a single consolidated fee is an unjustified step away from the IOAA objective that a fee be based on as small a category of service as practical, especially in the face of evidence from two years' experience that the more specific three-tiered fee system is both workable and justified by administrative costs differences.[56] Other commenters suggest that the Commission's apparent justifications of greater simplicity and ease of administration are not primary considerations under the IOAA and do not outweigh the requirements that fee structures be cost-based, equitable, and self-sustaining to the extent possible.[57]

Two commenters argue that if the three classes were consolidated, Class 3-type filings would no longer be selfsustaining, but would be subsidized by Class 1 and Class 2 fees.[58]

One commenter suggests that a blended fee may discourage certain types of small-scale transactions, such as short-term sales of interchange or coordination energy and short-term voluntary wheeling, which the Commission has recently been encouraging.[59]

Commenters offer a range of alternatives in which they seek to reduce administrative problems with the multiple-category system. One commenter suggests that the Commission could resolve problems with the classification process by more carefully defining the various categories of filings.[60] Other commenters suggest an expedited initial review by employees trained to verify electric rate filing classes or a post-processing review to determine whether the initial fee classification was correct, with a surcharge levied if the initial fee was too low or a refund issued if the initial fee was too high.[61]

Commenters suggest two-tiered fee systems based on whether there is an agreement by customers to the proposed rate[62] or whether the filing is supported by Period II data.[63] Another commenter suggests that the Commission use direct billing to eliminate intra-class subsidies.[64]

During the time the three-tiered classification system for rate filings has been in effect, the Commission has found it administratively difficult to make a prompt and accurate determination of the class of a rate filing upon receipt of that filing. Classification is made difficult because the

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[35] Comments of AGA at 4–5.

[36] Comments of AGA at 5–6.

[37] Order 435–A. Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, 51 FR 35347, at 35352 (Oct. 3, 1986), FERC Stats. & Regs. ¶ 30,713.

[38] Comments of AGA at 6–7

[39] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[40] 18 CFR 385.207 (1987). No fee is assessed for declaratory order petitions that solely concern hydroelectric matters under Part I of the FPA under the IOAA because those costs are included in the calculation of the annual charges under section 10(e) of the FPA, which provides for reimbursement of the costs of administering Part I.

[41] Order No. 395, Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984), FERC Stats. Regs. [Regulations Preambles 1982–85] ¶ 30,592. 51 FR 4310 (Feb. 4, 1986); 52 FR 10366 (April 1, 1987).

[42] Comments of Lone Star at 2–3.

[43] Comments of Public Citizen at 1–2; Comments of AGA at 9.

[44] Of 99 applications for declaratory orders filed with the Commission in fiscal years 1985, 1986, and 1987, over four-fifths were filed by large or financially substantial entities.

[45] Comments of AGA at 10.

[46] 15 U.S.C. 3413 (1982).

[47] 18 CFR 274.104 (1987).

[48] 18 CFR 275 (1987).

[49] 52 FR at 43616 (Nov. 13, 1987).

[50] Comments of AGA at 10–11.

[51] 52 FR 43616 (Nov. 13, 1987).

[52] Rate filing classes and fee categories were defined at 18 CFR 381.502–381.504 (1987).

[53] Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, 50 FR 40 347 at 40,348 (Oct. 3, 1985), FERC Stats. and Regs. [Regulation Preambles 1982–1985], ¶ 30,663.

[54] 52 FR 43616–43617 (Nov. 13, 1987).

[55] Comments of Central Illinois Public Service at 3.

[56] Comments of Arizona Public Service at 2; Comments of Consumers Power Company at 2–3.

[57] Comments of Iowa Public Service at 2.

[58] Comments of Central Illinois Public Service at 5; Comments of Consumers Power Company at 3.

[59] Comments of Commonwealth Edison at 13.

[60] Comments of Oklahoma Gas and Electric at 2.

[61] Comments of Middle South Utilities at 2; Comments of Wisconsin Power & Light Company at 2.

[62] Comments of Iowa Public Service at 2–3.

[63] Comments of Consumers Power Company at 4–5; Comments of Tampa Electric Company at 8.

[64] Comments of Central Illinois Public Service at 12.

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Commission frequently receives multiple rate filings under single cover and rate filings which are misclassified and because ambiguous filings require transfer from clerical docketing staff to rate analysts for proper classification. Because of the volume of electric rate filings the Commission receives, the Commission believes that the need for prompt and accurate fee determinations requires a departure from the use of the three-tiered classification system.[65] Therefore, despite the best efforts of the Commission, the three classes established in Order No. 435 have not proven to be the smallest practical units of service, as the Commission had hoped in promulgating those fee categories, and the Commission has decided to abandon that framework.

However, the Commission is persuaded by the comments that to consolidate all three filing fee categories would cause those who file relatively simple class 1 rate filings, that often involve minor schedule modifications, to bear a disproportionate fee burden. The Commission has therefore determined that equity and administrative ease support eliminating fees for filings that would have no effect on rates or would involve only rate decreases (formerly "Class 1 rate schedule filings") and consolidating all other rate schedule filings under sections 205 and 206 of the FPA into a single fee category. A person that submits a filing that would have no effect on rates or would involve only rate decreases should include a statement to that effect on the cover sheet of the filing and it will not be assessed a fee. The former class 2 and class 3 rate schedule filings, which involve a significantly greater amount of processing time, will be assessed a uniform fee of $5,780 per filing.

7. *Elimination of Fee for Certain Applications for Prior Notice Blanket Certificates.* The Commission is eliminating the fee associated with an application for a prior notice blanket certificate under § 284.223(b) of the Commission's regulations when the applicant for that certificate has already paid the fee required under § 284.223(d) to accompany the filing of its initial report of transportation pursuant to a self-implementing blanket certificate under § 284.223(a).

Current fees associated with transportation under the NGA section 7 blanket certificate regulations[66] are greater than those associated with the NGPA section 311 transportation regulations[67] if the transportation is for more than 120 days.

This difference in fees may create a regulatory bias in favor of transportation of gas under NGPA section 311 and the Commission is therefore revising its regulations to eliminate the difference.

AGA and Lone Star commented in support of this change.[68]

IV. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA)[69] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Specifically, if an agency promulgates a final rule under the Administrative Procedure Act,[70] a final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by public comments in response to any initial regulatory flexibility analysis and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected.

The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small entities and to encourage the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on small entities.

In this final rule, the Commission presents its reasons for its action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes several new fees and revises several existing fees paid to the Commission for certain benefits provided. This rule would affect a wide variety of entities under the jurisdiction of the Commission, including electric utilities, natural gas pipelines, developers of 5MW hydroelectric projects, persons seeking certification of QF status as small power producer or cogeneration facilities, and entities seeking declaratory orders, written interpretation by the Office of the General Counsel, or jurisdictional agency determinations.

The Commission recognizes that the new and revised fees adopted in this rule may have a significant impact on a substantial number of small entities. Section 603(c) of the RFA requires that the Commission discuss significant alternatives to the proposal if that proposal may have a significant economic impact on a substantial number of small entities. The Commission had already attempted to minimize any disproportionate burden of this rule on small businesses. The Commission's regulations concerning fees include a provision for the waiver of fees for applicants that demonstrate severe economic hardship.[71]

The Commission believes that it has satisfied the dual statutory mandates of the RFA and the IOAA in this rulemaking by establishing a fee structure which includes equitable, self-sustaining charges for services which provide special benefits to identifiable recipients, but also provides mechanisms for relief for small entities.

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[72] and OMB's regulations.[73] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Timothy Shaughnessy, Division of Organization and Management Analysis, (202) 357-5600). Comments on the information collection provisions in this rule may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VI. Effective Date

This rule is effective May 31, 1988.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 388

Freedom of information.

In consideration of the foregoing, the Commission proposes to amend Parts 4, 157, 292, 375, 381, and 388 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[65] The Commission received 737 electric rate filings in fiscal year 1987.

[66] 18 CFR Part 284, Subpart G (1987). A shipper that chooses the blanket certificate option under NGA section 7 generally first obtains a self-implementing blanket certificate under § 284.223(a). That certificate is valid for one period of up to 120 days and § 284.223(d) requires that an initial report of transportation be accompanied by the fee set in § 381.404. For transportation beyond the initial 120 days, a shipper must apply for a prior notice blanket certificate under § 284.223(b) and § 157.205 requires that an applicant for a prior notice certificate pay the fee set in § 381.208.

[67] 18 CFR Part 284, Subpart B (1987). A shipper that chooses to utilize the NGPA section 311 transportation regulations obtains a permanent certificate and is required by § 284.106(e) to pay the fee set by § 381.404 to accompany an initial report of transportation.

[68] Comments of AGA at 11; Lone Star at 3.

[69] 5 U.S.C. 601-612 (1982).

[70] 5 U.S.C. 553 (1982).

[71] 18 CFR 381.106 (1987).

[72] 44 U.S.C. 3501-20 (1982).

[73] 5 CFR 1320.12 (1987).

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

4. In § 157.205, paragraph (b) is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* In addition to the fee prescribed in paragraph (c) of this section, for any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission an original and fifteen copies of request for authorization under the notice of this section that contains:

(1) The exact legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(2) The docket number in which its blanket certificate was issued;

(3) Any information required in § 157.208 through § 157.218 of this chapter for the particular activity;

(4) A verified statement that the proposed activity complies with the requirements of this subpart;

(5) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose; and

(6) Identities and docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise the applications on file will be rejected under paragraph (d) of this section without prejudice to refiling when all parties are ready to proceed.

* * * * *

5. In § 157.205, paragraphs (c) through (h) are redesignated as paragraphs (d) through (i) and a new paragraph (c) is added to read as follows:

(c) *Fees.* The certificate holder must file the fee prescribed in § 381.208 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, except that no fee will be assessed for abandonment activities under § 157.216(b) of this chapter or for transportation under § 284.223(b) of this chapter, if the fee required under § 284.223(d) for the initial report has previously been paid for existing transportation authorized by § 284.223(a) of this chapter.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

6. The authority citation for Part 292 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Indepenent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a-825r (1982), as amended by the Electric Consumers Protection of 1986; Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982) as amended.

7. In § 292.207, paragraph (b)(2) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(2) *General contents of application.* The application must be accompanied by the fee prescribed in § 381.505 of this chapter and must contain the following information:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) The percentage of ownership by any electric utility or by any electric utility holding company, or by any person owned by either.

* * * * *

PART 375—THE COMMISSION

8. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7532 (1982), E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553 (1982); Federal Power Act, 16 U.S.C. 791-828c (1982), as amended by the Electric Consumers Protection Act of 1986; Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public

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Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

9. In § 375.308, paragraph (m) is revised to read as follows:

§ 375.308 Delegations to the Director to the Office of Electric Power Regulation.

* * * * *

(m) Deny or grant, in whole or in part, a petition for waiver of fees prescribed in §§ 381.502, 381.505, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106 of this chapter.

* * * * *

10. In § 375.309, paragraph (f) is revised to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.305 of this chapter in accordance with § 381.106 of this chapter.

11. In § 375.314, paragraph (gg) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.601 of this chapter, in accordance with § 381.106 of this chapter.

* * * * *

PART 381—FEES

12. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

13. In § 381.104, paragraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula.* The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year. The fee is rounded down to the nearest $5 increment if the fee is $100 or less, and to the nearest $10 increment if the fee is more than $100.

* * * * *

14. Section 381.208 is revised to read as follows:

§ 381.208 Requests under the blanket certificate notice and protest procedures.

(a) Except as provided in paragraph (b) of this section, the fee established for a request for authorization under blanket certificate notice and protest procedures is $2,120. The fee must be submitted in accordance with Subpart A of this part and § 157.205(b) of this chapter.

(b) If the fee for an application under § 284.223(d) of this chapter has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter, then no fee is assessed for the authorization under the blanket certificate notice and protest procedures.

15. In § 381.302, paragraph (a) is revised to read as follows:

§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act.)

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is $11,670. The fee must be submitted in accordance with Subpart A of this part.

* * * * *

16. A new § 381.305 is added to read as follows:

§ 381.305 Interpretations by the Office of the General Counsel.

(a) Except as provided in paragraph (b) of this section, the fee established for a written interpretation by the Office of the General Counsel of any statute or implementing regulation under the jurisdiction of the Commission is $2,460. The fee must be submitted in accordance with Subpart A of this part and § 385.1901 or § 388.104 of this chapter.

(b) No fee is necessary to file a request for a written interpretation by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with the request for a written interpretation. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

17. Section 381.402 is revised to read as follows:

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $75. The fee must be submitted in accordance with Subpart A of this part and § 274.201(e) of this chapter.

§ 381.405 [Removed and Reserved]

18. Section 381.405, Interpretations by the Office of the General Counsel, is removed in its entirety and reserved.

19. Section 381.502 is revised to read as follows:

§ 381.502 Rate schedule filings under sections 205 and 206 of the Federal Power Act.

(a) Except as provided in paragraph (b) of this section, and unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for rate schedule filings under sections 205 and 206 of the Federal Power Act is $5,780. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

(b) There is no fee charged for rate schedule filings under sections 205 and 206 of the Federal Power Act which have no effect on the rate the utility charges or which involve only rate decreases.

§ 381.503 [Removed and Reserved]

20. Section 381.503, Class 2 rate schedule filings, is removed in its entirety and reserved.

§ 381.504 [Removed and Reserved]

21. Section 381.504, Class 3 rate schedule filings, is removed in its entirety and reserved.

22. Section 381.505 is revised to read as follows:

§ 381.505 Certification of qualifying status as a small power production facility or cogeneration facility.

(a) Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act, is $6,560 and the fee established for an application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act, is $4,310.

(b) The fee filed under this section must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

23. Subpart F consisting of § 381.601 is added to read as follows:

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978

§ 381.601 5 Megawatt exemption application.

The fee established for a 5 Megawatt exemption application under section 405 of the Public Utility Regulatory Policies Act of 1978 and Part 4, Subpart K of this chapter is $16,430. The fee must be submitted in accordance with Subpart A of this part.

PART 388—INFORMATION AND REQUESTS

24. The authority citation for Part 388 continues to read as follows:

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

25. Section 388.104 is revised to read as follows:

§ 388.104 Informal advice from Commission staff.

(a) The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates, and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the chief of the appropriate office or division.

(b) Any inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed in § 381.301 of this chapter.

(c) A request directed to the Office of the General Counsel for a legal interpretation of any statute or implementing regulation under the jurisdiction of the Commission must be accompanied by the fee prescribed in § 381.305 of this chapter.

[FR Doc. 88-9462 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 381

[Docket Nos. RM82-25-000 et al.]

Update of Filing Fees Under the Independent Offices Appropriations Act of 1952

April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission, in accordance with § 381.104 of the Commission's regulations, issues an annual adjustment of the filing fees assessed under the authority of the Independent Offices Appropriations Act of 1952. The Commission updates these fees on the basis of data for fiscal year 1987.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

In the Matter of: Fees Applicable to Producer Matters Under the Natural Gas Act, Docket No. RM82-25-000; Fees Applicable to Natural Gas Pipeline Rate Matters, Docket No. RM83-2-000; Fees Applicable to the Natural Gas Policy Act, Docket No. RM82-30-000; Fees Applicable to General Activities, Docket No. RM82-35-000; Fees Applicable to Natural Gas Pipelines, Docket No. RM82-31-000; Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, Docket No. RM82-38-000; Revisions to the Purchased Gas Adjustment Regulations, Docket No. RM86-14-000; and Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,[1] is issuing this final rule to update the filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. The Independent Offices Appropriations Act of 1952 (IOAA) authorizes the Commission to establish and collect these fees [2] and the Commission's regulations require an annual update of the IOAA fees based on data from the previous fiscal year.[3] The Commission is establishing updated fees on the basis of the Commission's cost, completion, and work time data for fiscal year 1987.[4]

The adjusted fees announced in this final rule will become effective 30 days after publication in the **Federal Register**.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act	
1. Blanket certificates for small producers (codified at 18 CFR 381.201)	$540
2. Producer certificates of public convenience and necessity (18 CFR 381.202)	1,920
3. Changes in producer rate schedules (18 CFR 381.203)	510
Fees Applicable to Natural Gas Pipeline Rate Matters	
1. Pipeline tariff filings for general changes in rates and for changes other than in rates (18 CFR 381.204)	4,320
2. Pipeline tariff filings that track certain costs:	
(a) Annual filing under § 154.305 (18 CFR 381.205(a))	4,440
(b) Quarterly filing under § 154.308 (18 CFR 381.205(b))	910
(c) Interim adjustment filing under § 154.309 (18 CFR 381.205(c))	910
(d) Any other tariff filing that tracks costs (18 CFR 381.205(d))	910
Fees Applicable to the Natural Gas Policy Act	
1. Adjustments under section 502(c) of the Natural Gas Policy Act (18 CFR 381.401)	2,430
2. Review of jurisdictional agency determinations (18 CFR 381.402)	75
3. Petitions for rate approval pursuant to § 284.123(b)(2) (18 CFR 381.403)	1,990
4. Initial or extension reports for Title III transactions (18 CFR 381.404)	410
Fees Applicable to General Activities	
1. Request for interpretation by the Office of the Chief Accountant (18 CFR 381.301)	200
2. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302)	11,670
3. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999 (18 CFR 381.303(b))	100
$10,000–29,999 (18 CFR 381.303(b))	600
$30,000 or more (18 CFR 381.303(a))	10,280
4. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999 (18 CFR 381.304(b))	100
$10,000–29,999 (18 CFR 381.304(b))	600

[1] 18 CFR 375.313(a) (1987).

[2] 31 U.S.C. 9701 (1982).

[3] 18 CFR 381.104 (1987).

[4] The final rule in Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000, published April 29, 1988, established three new filing fees and updated several other IOAA fees based on fiscal year 1987 cost, completion, and work time data. That rule established current levels for the fees found in 18 CFR 381.208(a), 381.302(a), 381.305(a), 381.402, 381.502(a), 381.505(a), and 381.601.

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$30,000 or more (18 CFR 381.304(a))	3,680
5. Written legal interpretations by the Office of the General Counsel (18 CFR 381.305)	2,460
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications (18 CFR 381.207(b))	19,450
2. Requests under the blanket certificate notice and protest procedures (18 CFR 381.208)	2,120
3. Curtailment filings (18 CFR 381.209(b))	4,060
Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers	
1. Rate schedule filings under sections 205 and 206 of the Federal Power Act (18 CFR 381.502)	[a] 5,780
2. Certification of qualifying status as a small power production facility (18 CFR 381.505)	6,560
3. Certification of qualifying status as a cogeneration facility (18 CFR 381.505)	4,310
4. Extension of equipment testing periods (18 CFR 381.508)	1,110
5. Applications to assume obligation or liability as guarantor or for the negotiated placement of securities (18 CFR 381.507)	3,430
6. Authorization to issue equity or debt securities (18 CFR 381.508)	2,010
7. Corporate applications involving one or more jurisdictional utilities (18 CFR 381.509)	8,420
8. Applications to hold interlocking positions (18 CFR 381.510)	1,100
Fees Applicable to the Public Utility Regulatory Policies Act of 1978	
1. 5 Megawatt exemption application (18 CFR 381.601)	16,430

[a] No fee is assessed for rate schedule filings that have no effect on the rate a utility charges or that involve only rate decreases.

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 381 in Chapter I, Title 18 *Code of Federal Regulations*, as set forth below.

Vincent E. Mason,

Executive Director.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 381.201 [Amended]

2. Section 381.201 is amended by removing $500.00 and inserting $540 in its place.

§ 381.202 [Amended]

3. Section 381.202 is amended by removing $2,400.00 and inserting $1,920 in its place.

§ 381.203 [Amended]

4. Section 381.203 is amended by removing $400.00 and inserting $510 in its place.

§ 381.204 [Amended]

5. Section 381.204 is amended by removing $4,700 and inserting $4,320 in its place.

§ 381.205 [Amended]

6. In § 381.205, paragraph (a) is amended by removing $1800 and inserting $4,440 in its place.

7. In § 381.205, paragraph (b) is amended by removing $300 and inserting $910 in its place.

8. In § 381.205, paragraph (c) is amended by removing $300 and inserting $910 in its place.

9. In § 381.205, paragraph (d) is amended by removing $300 and inserting $910 in its place.

§ 381.207 [Amended]

10. In § 381.207, paragraph (b) is amended by removing $15,000 and inserting $19,450 in its place.

§ 381.209 [Amended]

11. In § 381.209, paragraph (b) is amended by removing $7,200 and inserting $4,060 in its place.

§ 381.301 [Amended]

12. Section 381.301 is amended by removing $100 and inserting $200 in its place.

§ 381.303 [Amended]

13. In § 381.303, paragraph (a) is amended by removing $7,300 and inserting $10,260 in its place.

§ 381.304 [Amended]

14. In § 381.304, paragraph (a) is amended by removing $5,800 and inserting $3,660 in its place.

§ 381.401 [Amended]

15. Section 381.401 is amended by removing $3,500 and inserting $2,430 in its place.

§ 381.403 [Amended]

16. Section 381.403 is amended by removing $4,900 and inserting $1,990 in its place.

§ 381.404 [Amended]

17. Section 381.404 is amended by removing $800 and inserting $410 in its place.

§ 381.506 [Amended]

18. Section 381.506 is amended by removing $1,900 and inserting $1,110 in its place.

§ 381.507 [Amended]

19. Section 381.507 is amended by removing $2,900 and inserting $3,430 in its place.

§ 381.508 [Amended]

20. Section 381.506 is amended by removing $1,200 and inserting $2,010 in its place.

§ 381.509 [Amended]

21. Section 381.509 is amended by removing $10,300 and inserting $8,420 in its place.

§ 381.510 [Amended]

22. Section 381.510 is amended by removing $2,700 and inserting $1,100 in its place.

[FR Doc. 88–9460 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

PANAMA CANAL COMMISSION

35 CFR Part 103

General Provisions Governing Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today adopting a final rule amending 35 CFR 103.8, concerning preference in transit schedulings and order of transiting vessels. The changes take into account the agency's experience with the Panama Canal Transit Booking System over the last year and the corresponding needs of the shipping community.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634–6441 (TDD), or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On October 13, 1987 an interim rule was published in the **Federal Register** (52 FR 37952) setting forth several changes to the booking system regulations based on numerous requests from Canal users that the Canal Commission revise the tie-breaking procedures, relax the arrival time for restricted vessels and change the cancellation provision in the present rules. Interested parties were given the opportunity to submit written comments by November 12, 1987. During that time period, the agency received no comments.

Following is a summary of how the rules published today modify the rules which have been in effect concerning preference in the transit schedule and order of transiting vessels:

The Commission's present regulations in 35 CFR 103.8(g) require a 2-day notice of cancellation of transit bookings. This section is revised by deleting the 2-day period and requiring only that notice be provided prior to the required arrival time.

It also revises the schedule of cancellation fees by providing a sliding scale depending on the length of the advance notice of cancellation.

The Commission has determined that these rules do not constitute a major change within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local government agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

Lists of Subjects in 35 CFR Part 103

Panama Canal, Vessels, Booking system, Navigation (Water).

PART 103—[AMENDED]

Accordingly, the interim rule amending 35 CFR Part 103 which was published at 52 FR 37952 on October 13, 1987, is adopted as a final rule without change.

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

Dated: April 11, 1988.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 88–9477 Filed 4–28–88; 8:45 am]

BILLING CODE 3640–04–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM86–1 and R87–1; Order No. 783]

Amendment to Domestic Mail Classification Schedule: Postal Rate and Fee Changes, 1987

Issued April 19, 1988.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the March 22, 1988, adoption of the Postal Rate Commission's recommended Docket No. R87–1 decision by the Governors of the Postal Service, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). In addition to the changes in rates and fees made as a result of Docket No. R87–1, a number of changes (both editorial and substantive) were made in the classification provisions for postal services.

EFFECTIVE DATE: April 3, 1988.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H. Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On March 22, 1988, the Governors of the Postal Service approved a decision (Docket No. R87–1) of the Commission recommending general postal rate and fee increases as well as a number of changes in the DMCS. The effective date for the changes is April 3, 1988. On May 7, 1987, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3622–3623, requesting rate increases and changes in some of the provisions in the DMCS. The Commission invited interested parties to comment and participate in the proceeding. 52 FR 18498–18533. Many comments were filed; additionally, 62 intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held three sets of formal hearings, receiving testimony from 116 witnesses. In addition to oral argument, interested parties submitted briefs and reply briefs.

In addition to the changes in rates, Docket No. R87–1 resulted in a number of changes in the classification system governing the provision of postal services. Many of these changes are not substantive, but rather reflect changes in editorial style or make possible the elimination of references to situations described in the DMCS as prospective but which already have occurred. Additionally, changes have been made with regard to the provisions for second class which conforms the classification to statutory amendments (Pub. L. 99–272 section 15104).

A number of the classification changes are substantive. Among the substantive classification changes are: Addition of an Express Mail letter rate, addition of second-day Express Mail service, simplification of the Express Mail rate schedule by eliminating zone-related charges, permitting flexibility with regard to available pickup service and guaranteed delivery time for Express Mail, discount for presorted ZIP + 4 pre-barcoded First-Class letters, additional presort discounts for First Class, nonadvertising incentive added for nonprofit and classroom second-class mail, calculating allowable sample and complimentary copies of second class by pieces rather than weight, ZIP + 4 and pre-barcode discount options for bulk third class, extension of availability of work sharing discounts to nonprofit bulk third class, greater flexibility permitted for mailer preparation requirements for bulk bound printed matter, discount for pre-barcoded business reply with advance deposit, return receipt for merchandise as a stand-alone service, elimination of embossing requirement for stamped envelopes, and elimination of the requirement that annual fees be paid on a calendar year basis.

The amendments to the DMCS which are published in this order reflect the Governors' March 22, 1988, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

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List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURES

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

List of Changes

2. The following changes in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.68) of the Commission's rules of practice and procedure are adopted:

Appendix A to Subpart C—[Amended]

In the Table of Contents for Appendix A:

Remove "Classification Schedule SS–7-Dead Mail Return Service [Section Deleted]"

Revise "LOCKBOX SERVICE" in title of Classification Schedule SS–10 to read "POST OFFICE BOX SERVICE".

Remove current footnotes 1, 2, 3, 4 and 5.

Revise 100.010 to read as follows:

100.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail.

Revise 100.020 to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

Revise 100.0202 to read as follows:

100.0202 Presorted Mail

Presorted First-Class Mail is First-Class Mail other than Priority Mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

Add new 100.0203 to read s follows:

100.0203 Pre-barcoded ZIP+4 Presorted Mail

Pre-barcoded ZIP+4 presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to five-digit ZIP Codes, which meets the machinability, address readability and barcoding specifications of the Postal Service and which meets the preparation requirements in section 100.047.

Revise 100.023 to read as follows:

100.023 Priority Mail

Priority Mail consists of (1) First-Class Mail weighing more than the maximum weight established for regular First-Class Mail and (2) other mail matter (including First Class) which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority Mail may weigh up to and including 70 pounds.

Revise 100.032 to read as follows:

100.032 First-Class Mail which weighs one ounce or less is nonstandard mail if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive, or

b. It exceeds any of the following dimensions:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

Revise 100.041 to read as follows:

100.041 First-Class Mail mailed under section 100.0202 must be presorted in accordance with regulations prescribed by the Postal Service.

Revise 100.042 to read as follows:

100.042 First-Class Mail mailed under section 100.0202 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

Revise 100.047 to read as follows:

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, and 100.0211 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates must be properly prepared and presorted as prescribed by the Postal Service.

Revise 100.050 to read as follows:

100.050 First-Class Mail must be deposited at places designated by the Postal Service.

Revise 100.060 to read as follows:

100.060 First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

Revise 100.070 to read as follows:

100.070 First-Class Mail is forwarded without additional charge.

Revise 100.071 to read as follows:

100.071 First-Class Mail that is undeliverable as addressed is returned to the sender, without additional charge.

Revise 100.080 to read as follows:

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS–1
b. Business reply mail (except ZIP + 4 rate category mail).	SS–2
c. Certificates of mailing	SS–4
d. Certified mail	SS–5
e. C.O.D.	SS–6
f. Insured mail	SS–9
g. Registered mail (except ZIP + 4 rate category mail).	SS–14
h. Special delivery	SS–17
i. Return receipt (Priority only)	SS–16
j. Merchandise return	SS–20

Revise 100.090 to read as follows:

100.090 The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Rate schedule
a. Regular	100
b. Postal and post cards	100
c. Presorted	100
d. Priority Mail	103
e. Fees	1000

Amend 100.091 to read as follows:

100.091 Postage on First-Class Mail is computed separately on each piece of mail.

Amend 100.100 to read as follows:

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP + 4 rate category mail and prebarcoded ZIP + 4 presorted mail.

Revise 200.0107 to read as follows:

200.0107 Second-class matter published by an institution or society identified in sections 200.0106 h through k, may contain advertising of other persons, institutions, or concerns, only under the following conditions:

a. The publication must be originated and published to further the objectives and purposes of the society;

b. Circulation must be limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers;

iii. Exchanges.

c. The circulation of nonsubscriber copies,[1] including sample and complimentary copies, is limited to 10 percent of the total number of copies referred to in b.

Remove the following sentence in 200.0110f and make the ending punctuation of 200.0110f a semi-colon:

Editor's Note: The change in the method of determining the 10 percent sample copy allowance (from weight to number of pieces) becomes effective January 1, 1989.

This subsection will not be effective prior to March 20, 1982;

Revise 200.0201 to read as follows:

200.0201 Regular

Regular second-class mail is all second-class mail except that to which section 200.021 applies.

a. Regular second-class may be mailed only by publishers or registered news agents.

b. Nonsubscriber and nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to 10 percent of the total number of copies [1] mailed to subscribers and requesters during the calendar year are regular second-class mail provided that the nonsubscriber and nonrequester copies would have been regular second-class mail if mailed to subscribers or requesters. See section 200.093 for mailings in excess of the 10 percent limitation.

Renumber current 200.02111 to become 200.02112.

Add a new 200.02111 as follows:

200.02111 To qualify as within-county second class, one of the following conditions must be met:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

Remove current 200.0215, which is titled Limited Circulation.

Renumber current 200.0216 to become 200.0215.

Renumber and amend current 200.0217 as 200.0216 to read as follows:

200.0216 Nonsubscriber copies, including sample and complimentary copies,[1] mailed at any time during the calendar year up to 10 percent of the total number of copies mailed to subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See section 200.093 for mailing in excess of the 10 percent limitation.

For §§ 200.0211, 200.0212, and 200.0213, expedited second-class mail is available without additional charge, but only to publications that issue weekly, or more frequently, and consist of news of general interest.

[1] **Editor's Note:** The change in the method of determining the 10 percent sample copy allowance (from weight to number of pieces) becomes effective January 1, 1989.

Revise 200.044 to read as follows:

200.044 Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

Revise 200.090 to read as follows:

200.090 The rates and fees for second-class mail are set forth as follows:

	Rate schedule
a. Regular	200
b. Within County	201
c. Nonprofit	202
d. Classroom	203
e. Science of Agriculture	200
f. Fees	1000

Revise 200.093 to read as follows:

200.093 Nonsubscriber and nonrequester copies, including sample and complimentary copies,[1] of any second-class mail mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers or requesters during the calendar year which are presorted and commingled with subscriber or requester copies are charged the full rates for regular second-class shown in Rate Schedule 200. The 10 percent limitation for a publication shall be based on the total number of all copies of that publication mailed to subscribers and requesters during the calendar year, subject to section 200.0216.

Revise 200.094 to read as follows:

200.094 Copies of any second-class mail which are destined for delivery within the sectional center area in which they are entered qualify for the applicable SCF discount as set forth in Rate Schedules 200, 202, and 203. The sectional center areas will be prescribed by the Postal Service.

Renumber current 300.0231 and 300.0232 to become 300.0232 and 300.0235.

Add a new 300.0231 to read as follows:

300.0231 Required Sortation, ZIP + 4 Coded Mail

Required sortation, ZIP + 4 coded mail is mail mailed under section 300.0230 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

Add new 300.0233 and 300.0234 to read as follows:

300.0233 Five-Digit Presort Level, ZIP + 4 Coded Mail

Five-digit presort level, ZIP + 4 coded mail is mail mailed under section 300.0232 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

300.0234 Five-Digit Presort Level, ZIP + 4 Pre-barcoded Mail

Five-digit presort level, ZIP + 4 pre-barcoded mail is mail mailed under section 300.0232 which is ZIP + 4 pre-barcoded and which meets the machinability and other preparation requirements prescribed by the Postal Service.

Revise 300.080 to read as follows:

300.080 Third-class single-piece mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address Correction	SS–1
b. Certificates of mailing	SS–4
c. C.O.D.	SS–6
d. Insured mail	SS–9
e. Special delivery	SS–17
f. Special handling	SS–18
g. Return receipt (merchandise only).	SS–16
h. Merchandise return	SS–20

Revise 300. 100 to read as follows:

Revise 300.100 A mailing fee as set forth in Rate Schedule 1000 must be paid once each year by mailers of third-class bulk mail.

Revise 400.0203 to read as follows:

400.0203 Intra-BMC Parcel Post Mail

Parcel post mail is eligible for the intra-BMC rate described in rate schedule 400 if it originates and destinates in the same BMC or ASF service area, Alaska, Hawaii or Puerto Rico.

Revise 400.021h to read as follows:

* * * * * *

h. Printed educational reference charts, including but not limited to (i) mathematical tables, (ii) botanical tables, (iii) zoological tables, and (iv) maps produced primarily for educational reference purposes.

* * * * * *

Revise 400.0232 to read as follows:

400.0232 Bulk

Bulk bound printed matter mail is fourth-class bound printed matter mail consisting of properly prepared and presorted mailings of not less than 300 pieces prepared and presented in accordance with Postal Service regulations.

Revise 400.046 to read as follows:

400.046 Fourth-class pieces which are not identical in size and weight may be mailed in accordance with sections 400.0202, 400.0212 and 400.0232 only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

Revise 400.080 to read as follows:

400.080 Fourth-class mail will receive the following additional services upon payment of the appropriate fees:

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	Classification Schedule
a. Address correction	SS–1
b. Certificates of mailing	SS–4
c. C.O.D.	SS–6
d. Insured mail	SS–9
e. Special delivery	SS–17
f. Special handling	SS–18
g. Return receipts (parcel post only).	SS–16
h. Merchandise return	SS–20

Revise 400.090 to read as follows:

400.090 The rates and fees for fouth-class mail are set forth as follow:

	Rate schedule
a. Single-piece parcel post mail	400
b. Bulk parcel post mail	400
c. Single-piece special fourth-class mail	402
d. Special fourth-class presorted mail	402
e. Library mail	402
f. Single-piece bound printed matter	405
g. Bulk bound printed matter	406
h. Fees	1000

Revise 400.10 to read as follows:

400.10 Authorizations and licenses

400.10 A presort mailing fee as set forth in Rate Schedule 1000 muist be paid once each year at each office of mailing by or for any person who mails presorted special fourth-class mail. Any person who engages a business concern or other individuals to mail presorted special fourth-class mail must pay the fee.

Revise 500.0212 to read as follows:

500.0212 Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as prescribed by the Postal Service.

Revise 500.022 to read as follows:

500.022 Next Day Service and Second Day Service

500.0221 Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times prescribed by the Postal Service.

500.0222 Next Day Service is available for overnight delivery.

500.0223 Second Day Service is available for second day delivery.

500.0224 Pickup service is available for Next Day and Second Day Services under terms and conditions as prescribed by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

Revise 500.047 to read as follows:

500.047 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

Add new 500.048 to read as follows:

500.048 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

Revise 500.080 to read as follows:

500.080 The rates for Express Mail are set forth in the following rate schedules:

	Rate schedule
a. Same Day Airport	500
b. Custom Designed	501
c. Next Day Post Office-to-Post Office	502
d. Second Day Post Office-to-Post Office	502
e. Next Day Post Office-to-Addressee	503
f. Second Day Post Office-to-Addressee	503

Revise 1.020 to read as follows:

1.020 Address correction service is available to mailers of postage prepaid mail of all classes. Second-class mail will receive address correction service.

Revise 1.030 to read as follows:

1.030 Mail, other than second class, sent under this classification schedule must bear a request for address correction service.

Revise 2.042 to read as follows:

2.042 An accounting fee as set forth in Rate Schedule SS–2 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

Revise 3.030 to read as follows:

3.030 Fees for caller service are set forth in Rate Schedule SS–10.

Revise Classification Schedule SS–10 to read as follows:

CLASSIFICATION SCHEDULE SS–10—POST OFFICE BOX SERVICE

10.01 Definition

10.010 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of his mail during the hours when the lobby of a postal facility is open.

10.02 Description of Service

10.020 The Postal Service may limit the number of post office boxes occupied by any one customer.

10.021 A post office box holder may request the Postal Service to deliver all mail properly addressed to him through the post office box. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

10.022 Post office box service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

10.03 Fees

10.030 Fees for post office box service are set forth in Rate Schedule SS–10.

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, periods of rental and fees for post office boxes are:

Period for box rentals	Fee
95 days or less	½ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
271 days to full year	Full annual fee.

10.032 No refunds will be made for boxes rented under section 10.031. For purposes of this classification schedule SS–10, the full annual fee is twice the amount of the semi-annual fee.

Revise 14.060 to read as follows:

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS–6
b. Restricted delivery	SS–15
c. Return receipt	SS–16
d. Special delivery	SS–17
e. Merchandise return (shippers only)	SS–20

Revise 16.020 to read as follows:

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. C.O.D. mail	SS–6
c. Insured mail if insured for more than $50.	SS–9
d. Registered mail	SS–14
e. Express Mail	500
f. First Class (Priority Mail only)	100
g. Third class (merchandise only).	300
h. Fourth class (parcel post only).	400

Revise 18.060 to read as follows:

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. C.O.D. mail	SS–6
b. Insured mail	SS–9
c. Parcel airlift	SS–13
d. Merchandise return (shippers only).	SS–20

Revise 19.010 to read as follows:

19.010 Plain stamped envelopes and printed stamped envelopes are envelopes with postage thereon offered for sale by the Postal Service.

Revise 20.040 to read as follows:

20.040 The following services may be purchased in conjunction with Merchandise Return Service:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured Mail	SS–9
c. Registered mail	SS–14
d. Special handling	SS–18

Revise 1000.010 to read as follows:

1000.010 The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule SS–10.

b. Carrier delivery service.

c. General delivery.

d. Lockbox service. The fees for lockbox service are set forth in Rate Schedule SS–10.

Revise 6000.011 to read as follows:

6000.011 The following minimum size standards apply to all mailable matter: (1) All items must be at least 0.007 inches thick, and (2) all items, other than keys and identification devices, which are 0.25 inch thick or less must be (a) rectangular in shape, (b) at least 3.5 inches in width, and (c) at least 5 inches in length.

Revise rate schedule 100 to read as follows:

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail type	Postage rate unit	Rate: Regular (cents)	Rate: Presorted [1] (cents): 5-digit	Rate: Presorted [1] (cents): Carrier route
Letters	First ounce			
	Each add'l ounce [2]			
Cards	Piece			
ZIP + 4 Mail [3]				
Letters	First ounce			
	Pre-barcoded			
	Each add'l ounce [2]			
Cards	Piece			
	Pre-barcoded			
Nonstandard Surcharge [4]				

[*] For presorted weighing more than 2 ounces, subtract cents per piece.

[1] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $ must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Rate applies through 11 ounces. Heavier pieces are subject to priority mail rates.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Applies to the first ounce only. Not applicable to ZIP + 4 mail.

Revise rate schedule 200 to read as follows:

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rates [1] (cents)
Per Pound:		
Non-advertising portion:	Pound	
Advertising portion:		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Science of Agriculture:		
Zone: 1 and 2	Pound	

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY—Continued

	Postage rate unit	Rates [1] (cents)
Per Piece: Less Editorial Factor of		per each 1% Editorial Content [2]
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit.	Piece	
C—Carrier route Presort.	Piece	

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RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY—Continued

	Postage rate unit	Rates [1] (cents)
SCF Discount [4]		

[1] Charges for second-class regular rate mail are computed by adding the appropriate per-piece charge, including editorial factor, to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.
[3] Presorted to 3-digit (other than 3-digit city), States, Mixed States.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece rate.

Revise rate schedule 202 to read as follows:

RATE SCHEDULE 202—FULL RATES SECOND-CLASS MAIL: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per Pound:		
Non-advertising portion.	Pound	
Advertising portion: [2]		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per Piece: Less Editorial Factor of 1% Editorial Content [3].	per each.	
Category A: Prepared i.e. Presorted to 3-digits (except 3-digit city), States, mixed States.		
Category B: Presorted to 3-digit city/5-digit.		
Category C: Carrier Route Presort.		
SCF Discount. [4]		

[1] Charges for second-class nonprofit mail are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] Not applicable to publications containing 10 percent or less advertising content.
[3] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Revise rate schedule 203 to read as follows:

RATE SCHEDULE 203—FULL RATES, SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per pound:		
Nonadvertising portion.	Pound	
Advertising portion:		
Zone:		
1 & 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less editorial factor of 1 percent editorial content [2].	Per each.	
SCF discount [3]	Piece	

[1] Charges for classroom publications are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.
[3] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Remove rate schedules 204, 205, 206 and 207.

Revise rate schedule 301 to read as follows:

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK

	Full rates (cents)
Regular bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus.	(per piece)
Presorted to five-digits ¢ per pound plus.	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebercoded and presorted to five-digits.	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

Revise rate schedule 302 to read as follows:

RATE SCHEDULE 302—FULL RATES, THIRD-CLASS: NONPROFIT-BULK MAIL

	Full rates (cents)
Nonprofit bulk: [1]	
Miminum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus.	(per piece)
Presorted to five-digits ¢ per pound plus.	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebarcoded and presorted to five-digits.	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

Amend rate schedule 402 by removing "calendar" in footnote one and removing "(§ 400.331a(1) of the Classification Schedule effective July 6, 1976)." in footnote 2.

Amend rate schedule 405 by deleting "(§ 400.41 of the Classification Schedule effective July 6, 1976)" in footnote 1.

Revise rate schedules 500, 501, 502 and 503 to read as follows:

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
½				
1				
2				
3				

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES—Continued

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
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70				
Add:				
$4.00 for each pickup stop.				
$4.00 for each custom designed delivery stop.				

Revise rate schedule SS–2 to read as follows:

SCHEDULE SS–2.—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Per piece	
Pre-barcoded	
Other	
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	
Annual License and Accounting Fees:	
With Advance Deposit Account	
Without Advance Deposit Account	

Revised rate schedule SS–4 to read as follows:

SCHEDULE SS–4.—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual Pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece).	
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece).	
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy).	
Bulk Pieces:	
Identical pieces of First- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:.	
Up to 1,000 pieces (one certificate for total number).	
Each additional 1,000 pieces or fraction.	
Duplicate copy	

Remove Schedule SS–7 which is titled Special Service: Dead Letter Return

Revise rate schedule SS–8 to read as follows:

SCHEDULE SS–8.—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
Domestic:	
$0.01 to $35	
35.01 to 700	
APO–FPO:	
$0.01 to $700	
Inquiry Fee, which includes the issuance of copy of a paid money order.	

Revise rate schedule SS–9 to read as follows:

SCHEDULE SS–9.—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $ 50	
50.01 to 100	
100.01 to 150	
150.01 to 200	
200.01 to 300	
300.01 to 400	
400.01 to 500	

Revise rate schedule SS–10 to read as follows:

SCHEDULE SS–10—SPECIAL SERVICES: POST OFFICE BOXES AND CALLER SERVICE

A. Semi-annual rental rates for post office boxes. Capacity of post office box (in cubic inches)	To 296	296 to 499	500 to 999	1000 to 1,999	Over 2,000
Box size	1	2	3	4	5
Group I					
Group II					
Group III [1]					

[1] Payment on annual basis.

B. Caller Service.

Description	Fee
For caller service (semi-annual)	
For each reserved	
Call number (annual)	

Revise rate schedule SS–11b to read as follows:

SCHEDULE SS–11b.—Special Services: Correction of Mailing Lists

Description	Fee
Per submitted address	
Minimum charge per list corrected	

Revise rate schedule SS–12 to read as follows:

SCHEDULE SS–12.—SPECIAL SERVICES: ON-SITE METER SETTING

Description	Fee
Onsite meter settings:	
First meter:	
By appointment	
Unscheduled request	
Additional meters	
Checking meter in or out of service per meter	

Revise rate schedule SS.–16 to read as follows:

SCHEDULE SS–16—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fee (in addition to postage)
Requested at time of mailing:	
Showing to whom (signature) and date delivered	
Without another special service-merchandise only	
Showing to whom (signature) and date and address where delivered	
Without another special service-merchandise only	
Requested after mailing: Showing to whom and date delivered	

Revise rate schedule SS–19 to read as follows:

SCHEDULE SS–19.—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale	
Bulk (500) #6¾ size:	
Regular	
Window	
Bulk (500) #10 size: [1]	
Regular	
Window	
Multicolor printing (500)	
#6¾ size	
#10 size [1]	
Printing charge per 500 envelopes: [2]	
Minimum order (500 envelopes)	
Order for 1,000 or more envelopes	
Double window (500) #10 size [1]	
Household (50) #6¾ size:	
Regular	
Window	
Household (50) #10 size: [1]	
Regular	
Window	

[1] Includes all sizes greater than #6¾ through #10.
[2] Printing charge for each type of printed envelope.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 88–9055 Filed 4–28–88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 87; FRL–3370–3]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a revision to the New Jersey State Implementation Plan (SIP) for lead. This revision consists of material submitted by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to conduct studies and implement appropriate actions in order to provide for attainment and maintenance of the ambient air quality standard for lead in the vicinity of the United States Metals Refining Company (USMR) plant in the Borough of Carteret. The SIP revision states that all lead-emitting manufacturing operations at the facility have shut down. Among the actions being approved today are those to control fugitive dust emissions that might occur as a result of the demolition of buildings at the USMR plant site and a requirement to continue ambient air monitoring for lead in the vicinity of the facility until at least August of 1989.

DATES: This action will be effective May 31, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1986 (51 FR 42565) the Environmental Protection Agency (EPA) approved, with the exception of the Borough of Carteret, the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for lead. As described in that notice, EPA was unable to take final action with respect to the Borough of Carteret because of the need for a revised control plan for a smelting facility located in the area, the United States Metals Refining Company (USMR). Even though stack and fugitive emission control requirements for the USMR facility were generally being complied with and modeling of these emission levels had shown them sufficient to provide for attainment of the lead standard in its vicinity, violations of the ambient lead standard continued to be monitored.

As a result, the New Jersey Department of Environmental Protection issued an Administrative Order to USMR requiring the development and implementation of a new control plan for the facility. However, while the contents of this plan were being negotiated, USMR announced its decision to shut down operations at all significant lead-emitting manufacturing sources on the site (a laboratory which is permitted to emit 0.015 tons per year of lead remains open) and to develop the property for other uses. As a consequence of this shut-down, which occurred in September of 1986, the facility's air pollution control permits were terminated by the State.

To meet its SIP commitment, on July 23, 1987 the State of New Jersey sent EPA a draft SIP revision for the USMR facility. It was requested that EPA conduct its approval process concurrent with the State's. Following this, New Jersey published a public announcement in the July 20, 1987 issue of the New Jersey Register to request comments on its SIP submittal. Finally, on September 25, 1987, New Jersey was able to submit to EPA its final, adopted SIP revision.

On October 8, 1987 (52 FR 37637), EPA published a **Federal Register** notice proposing approval of New Jersey's submittal. Only one comment was received on EPA's notice. Today's action finalizes that October 8, 1987 proposal concerning the adequacy and approvability of the New Jersey SIP for lead with respect to the USMR facility and the Borough of Carteret.

Public Comments

The one comment received during the public comment period established by EPA's October 8, 1987 proposal is summarized and discussed as follows.

Comment: The proposed SIP revision does not specifically tailor the cleanup efforts at the facility to the results of the ambient air monitoring. The SIP should provide for an aggressive assessment of the air monitoring results, with particular focus on the impact on surrounding communities, before cleanup is complete.

Response: The SIP revision requires USMR to provide notice to and gain approval from the New Jersey Department of Environmental Protection before any demolition activities take place. A representative from the State or from the Middlesex County Health Department will observe that the measures required to minimize wind blown dust are carried out. In addition, monitoring at the site will be continued until attainment of the ambient standards for lead has been demonstrated for two years. EPA found that this combination of on-site enforcement and continued monitoring is sufficient to protect the surrounding communities from the impact of wind blown dust.

Conclusion

Today's action proposes a revision to the New Jersey lead SIP pertaining to the Borough of Carteret. It expressly incorporates the control strategies implemented by USMR and the

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monitoring commitment made by the State into this SIP. This revision has been found to fulfill the commitment made by New Jersey in its lead SIP to study the facility and implement appropriate control measures. The control strategy outlined in today's notice may only be revised by appropriate procedures under the Clean Air Act. With the publication of this notice, the New Jersey SIP for lead is now complete for the entire State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Date: April 18, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart FF—New Jersey

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1570 paragraph (c) is amended by adding new paragraph (c)(42) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(42) A revision to the New Jersey State Implementation Plan (SIP) for lead submitted on July 23, 1987 by the New Jersey Department of Environmental Protection (NJDEP) and finalized on September 25, 1987.

(i) Incorporated by reference:

(A) A March 4, 1986 Administrative Order and Notice of Civil Administrative Penalty Assessment (Log # A860244) from the New Jersey Department of Environmental Protection to the United States Metals Refining Company (USMR).

(B) Letter of March 11, 1987 from Greenberg and Prior, attorneys for USMR, to Anthony J. McMahon, Department of Environmental Protection, Trenton, New Jersey.

(ii) Additional material:

(A) July 1987 Modeling Analysis for the Anchor Abrasives facility.

(B) Summary of public comments and response to comments for the revision of the N.J. SIP for lead in the vicinity of USMR.

(C) USMR's comments on the revised N.J. SIP for lead in the vicinity of USMR.

[FR Doc. 88-9235 Filed 4-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6787]

List of Communities Eligible for the Sale of Flood Insurance; Alabama et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: See table below.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Alabama	Jasper, city of	Walker	010206	Mar. 4, 1986, suspension withdrawn.
Do	Unincorporated areas	Jefferson	010217	Do.
Do	Lincoln, city of	Talladega	010198	Do.
Do	Livingston, city of	Sumter	010195	Do.
Do	Unincorporated areas	Lowndes	010272	Do.
Do	....do	Macon	010148	Do.
Do	....do	Madison	010151	Do.
Do	....do	Mobile	015008	Do.
Florida	Fort Meade, city of	Polk	120264	Do.
Do	Unincorporated areas	Franklin	120088	Do.
Do	....do	Flagler	120085	Do.
Do	Holly Hill, city of	Volusia	125112	Do.
Do	Inglis, city of	Levy	120586	Do.
Do	Interlachen, city of	Putnam	120391	Do.
Do	Jupiter Inlet Colony, city of	Palm Beach	125120	Do.
Do	Juno Beach, city of	Palm Beach	120208	Do.
Do	Unincorporated areas	Monroe	125129	Do.
Do	....do	Palm Beach	120192	Do.
Do	....do	Polk	120261	Do.
Do	....do	Highland	120111	Do.
Do	Sanibel, city of	Lee	120402	Do.
Do	South Daytona, city of	Volusia	120314	Do.
North Carolina	Caswell Beach, town of	Brunswick	370391	Do.
Do	Emerald Isle, town of	Carteret	370047	Do.
Do	Unincorporated areas	New Hanover	370168	Do.
Do	Indian Beach, town of	Carteret	470433	Do.
Do	Tabor City, town of	Columbus	370070	Do.
South Carolina	Pendleton, town of	Anderson	450019	Do.
Do	Unincorporated areas	Pickens	450166	Do.
Do	Pickens, town of	Pickens	450169	Do.
Do	Pine Ridge, town of	Lexington	450136	Do.
Do	York, town of	York	450197	Do.
Tennessee	Lebanon, city of	Wilson	470208	Do.
Do	Unincorporated areas	Madison	470112	Do.
Do	Maryville, city of	Blount	475439	Do.
Do	Memphis, city of	Shelby	470177	Do.
Do	Milan, city of	Gibson	470060	Do.
Do	Millington, city of	Shelby	470178	Do.
Do	Morristown, city of	Gibson	470060	Do.
Do	Unincorporated areas	Nashville-Davidson	470040	Do.
Do	Rossville, town of	Fayette	470050	Do.
Do	Unincorporated areas	Shelby	470214	Do.
Do	South Fulton, city of	Obion	475446	Do.
Do	Trenton, city of	Gibson	470062	Do.
Do	Tullahoma, city of	Coffee and Franklin	470036	Do.
Do	Union City, city of	Obion	470142	Do.
Do	Watertown, city of	Wilson	470380	Do.
North Carolina	Andrews, town of	Cherokee	370060	Mar. 16, 1988 suspension withdrawn.
Do	Asheville, city of	Buncombe	370032	Do.
Do	Unincorporated areas	Avery	370010	Do.
Do	Blowing Rock, town of	Watauga	370252	Do.
Do	Dillsboro, town of	Jackson	370136	Do.
Do	Elk Park, town of	Avery	370382	Do.
Do	Unincorporated areas	Graham	370105	Do.
Do	....do	Madison	370152	Do.
Do	....do	Madison	380152	Do.
Do	Marshall, town of	Madison	370154	Do.
Do	Sylva, town of	Jackson	370137	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: April 25, 1988.

[FR Doc. 88-9493 Filed 4-28-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 88-39]

Emergency Broadcast System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The revised rules change outdated and obsolete terms concerning the Emergency Broadcast System (EBS). Continued use of the outdated nomenclature causes confusion.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

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FOR FURTHER INFORMATION CONTACT: Frank Lucia, (202) 632-3906, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Order

Adopted: January 29, 1988.
Released: February 18, 1988.
By the Commission.

1. The Commission has determined that Part 73, Subpart G contains many outdated and absolete terms concerning the Emergency Broadcast System (EBS). Continued use of the outdated nomenclature causes confusion.

2. Terms such as "National Industry Advisory Committee (NIAC) Orders", "Basic EBS Plan", and "500" Net are obsolete. The NIAC was disestablished by the Commission in 1986 and replaced by two new committees: The National Security and Emergency Preparedness (NSEP) Advisory Committee and the Emergency Broadcast System (EBS) Advisory Committee. Also in 1986, the National level "500" and "300" networks and the Presidential Audio Line through Radio Station WTOP(AM) were replaced by the new Emergency Action Notification (EAN) Network. Moreover, the rules have been updated to recognize that additional entities (e.g., cable systems and program suppliers) are voluntarily participating in EBS.

3. Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules *is amended*, as set forth below, effective May 31, 1988.

4. For further information concerning this action, contact the Management Planning and Program Evaluation Office at (202) 632-3906.

5. The Commission finds for good cause that prior notice and comment procedures are unnecessary. See 5 U.S.C. 553(b)(B). These amendments merely update our rules by eliminating obsolete nomenclature and recognize that additional entities are voluntarily participating in EBS. Thus, no purpose would be served by soliciting the comments of the public.

Federal Communications Commission.
H. Walker Feaster,
Acting Secretary.

Pursuant to the authority contained in sections 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended, Title 47 of the Code of Federal Regulations, Part 73, is amended.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.909 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 73.909 Standard Operating Procedures (SOPs).

The SOPs are issued by the FCC and contain detailed operational instructions which are used for activating, terminating and testing the National level EBS. They are issued to specified control points of the national radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations.

* * * * *

(c) SOP–3, the National Information Center. This SOP contains the detailed operational and authentication procedures for the distribution of United States Government national releases and official information.

3. Section 73.910 is revised to read as follows:

§ 73.910 Authenticator word lists.

The Authenticator word lists are issued by the FCC annually. These include the Red and White envelopes and the National Information Center (NIC) booklet. The lists are used in conjunction with procedures contained in the EBS Checklists and SOPs for tests or actual National emergency situations.

(a) *EBS Authenticator List—Red Envelope.* This document is used for authentication purposes in conjunction with the procedures contained in the EBS Checklists and the Standard Operating Procedures (SOPs) 1 and 2. It is issued to all broadcast stations and specified control points (national radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations).

(b) *EBS Authenticator List—White Envelope.* This document is used for caller identification purposes in conjunction with the Last Resort procedures in SOP–1 and SOP–2, and is issued to the above specified control points.

(c) *NIC Authenticator List—Booklet.* This document is used for authentication purposes in conjunction with the procedures contained in SOP–3. It is issued to participating control points.

§ 73.911 [Removed]

4. Section 73.911 is removed.

5. Section 73.912 is revised to read as follows:

§ 73.912 Emergency Broadcast System participants.

The following non-government industry entities voluntarily participate in the Emergency Broadcast System (EBS):

(a) *Radio and Television Networks.*
(1) ABC Radio and ABC–TV.
(2) Associated Press Radio (APR).
(3) CBS Radio and CBS–TV.
(4) Mutual Broadcasting System (MBS).
(5) MUZAK.
(6) NBC Radio.
(7) NBC–TV.
(8) National Public Radio (NPR).
(9) Public Broadcasting Service (PBS–TV).
(10) Satellite Music Network.
(11) Transtar.
(12) United Press International Audio (UPIA).
(13) United Stations.

(b) *Cable Systems and Program Suppliers.*
(1) Cable News Network (CNN).
(2) Christian Broadcasting Network (CBN).
(3) Disney Channel.
(4) Entertainment and Sports Programming Network (ESPN).
(5) Movie Channel.
(6) MTV.
(7) Nashville Network.
(8) Nickelodean.
(9) Showtime.
(10) VH–1.

(c) *Wire Services.*
(1) Associated Press (AP).
(2) United Press International (UPI).

(d) *Common Carriers.*
(1) American Telephone and Telegraph (AT&T).

6. Section 73.918 is amended by adding the following text at the end of the section:

§ 73.918 Non-participating Station (Non-EBS).

* * * This is a broadcast station which has elected not to participate in the National level EBS and does not hold an EBS Authorization. Upon activation of the EBS at the National level, such stations are required to broadcast the EBS Attention Signal and the appropriate EBS message, then remove their carriers from the air and monitor for the Emergency Action Termination in accordance with the instructions in the EBS Checklist for Non-participating Stations. All broadcast stations (including Non-Participating Stations) are required to comply with § 73.932.

7. Section 73.922 is amended by revising paragraph (c) as follows:

§ 73.922 Emergency Broadcast System programming priorities.

* * * * *

(c) During a national emergency the radio and television (aural) broadcast network program distribution facilities shall be reserved exclusively for distribution of Presidential Messages and National Information. National Information which is not broadcast at the time of original transmission shall be recorded locally by the CPCS stations for broadcast at the earliest opportunity consistent with Operational (Local) Area requirements.

8. Section 73.926 is amended by revising paragraph (c), removing paragraph (d) and redesignating paragraph (e) as paragraph (d) and revising it to read as follows:

§ 73.926 Participation in the Emergency Broadcast System.

* * * * *

(c) Any station may change its EBS status from Participating to Non-participating (see § 73.918) by giving 30 days written notice and by returning its EBS Authorization to the FCC.

(d) Any AM, FM, TV, or Low Power TV broadcast station or cable network or system may, at the discretion of management, voluntarily participate in the State level and Operational (Local) level EBS in accordance with the provisions of the State EBS Operational Plan. An EBS Authorization is not required.

9. Section 73.927 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 73.927 Participation by communications common carriers.

(a) Communications common carriers which have facilities available in place, may, without charge, connect an independent broadcast station to the radio and television (aural) broadcast networks or participating cable systems for the duration of the activation of the National level EBS; provided that the station has in service a local channel from the station's studio or transmitter directly to the broadcast source or a broadcast connection point.

(b) During the activation of the National level EBS, communications common carriers which have facilities in place may, without charge, connect an originating source from the nearest exchange to a selected Test Center and then to the radio and television (aural) broadcast networks and participating cable systems for the duration of the emergency: provided, that:

(1) The originating source has in service a local channel from the originating point to the nearest Exchange.

(2) An Emergency Action Notification is requested by the White House.

* * * * *

(d) During Closed Circuit Tests of the National level EBS, communications common carriers which have facilities in place may, without charge, connect an originating source from the nearest Exchange to a selected Test Center and then to the radio networks and any participating television networks and cable systems. No participating independent station may be connected during the test unless authorized by the FCC. Upon termination of the tests, all participating networks shall be restored to their original configuration.

* * * * *

10. The undesignated center heading preceding §§ 73.931–73.933 is revised; and § 73.931 is amended by revising paragraphs (a) introductory text, (a)(2) and (a)(3), adding paragraph (a)(4), and revising paragraphs (b) and (c) to read as follows:

Activation Actions

§ 73.931 Dissemination of Emergency Action Notification.

(a) *National level.* The Emergency Action Notification (EAN) will be released at this level upon request of the White House. The EAN message is disseminated from the origination point on a dedicated network to control points of the radio and television networks, participating cable systems and communications common carriers, the wire services, and other participating organizations. The EAN is then further disseminated as follows by:

* * * * *

(2) The wire services to all subscribers (AM, FM, TV, and Low Power TV and other stations).

(3) Off-the-air monitoring of AM, FM, TV, and Low Power TV broadcast stations and other licensees and regulated services.

(4) The participating cable systems to all subscribers.

* * * * *

(b) *State level.* The dissemination arrangements for the EAN at this level originate from the State and Federal government authorities in accordance with the State EBS Operational Plan.

(c) *Operational (Local) Area level.* The dissemination arrangements for the EAN at this level originate from local government authorities in accordance with the Local EBS Operation Plan.

* * * * *

11. Section 73.932 is amended by revising paragraphs (a) and (d)(1) to read as follows:

§ 73.932 Radio monitoring and Attention Signal transmission requirements.

(a) *Monitoring Requirements.* To insure effective off-the-air monitoring (§ 73.931(a)(3)), all broadcast station licensees must install and operate, during their hours of operation, equipment capable of receiving the Attention Signal and emergency programming by other radio or television stations. This equipment must be maintained in operative condition, including arrangements for human listening watch or automatic alarm devices. This equipment must be installed in the broadcast station, either at the transmitter control location and/or studio location, in such a way that it enables the broadcast station staff, at normal duty locations, to be alerted instantaneously upon the receipt of the attention signal and to immediately monitor the emergency programming. For situations where broadcast stations are co-owned and co-located (e.g. an AM and FM licensed to the same entity at the same location) with a combined studio facility, only one receiver is required if installed in the combined studio facility. The off-the-air signal monitoring assignment of each broadcast station is specified in the State EBS Operational Plan.

* * * * *

(d) * * *

(1) Appropriate entries must be made in the station log, indicating reasons why the Weekly Test Transmissions were not received. Weekly Transmissions of the Test Script, even without the encoder, must be conducted.

* * * * *

12. Section 73.933 is amended by revising paragraphs (b)(1) and (b)(2), adding paragraph (b)(5)(i)(*d*), and revising paragraph (b)(12) to read as follows:

§ 73.933 Emergency Broadcast System operation during a National Level emergency.

* * * * *

(b) * * *

(1) Monitor the radio and television networks, and/or the participating cable systems, for further instructions from the network control point.

(2) Check the wire services (AP/UPI). Verify the authenticity of the message with the current EBS Authenticator List (Red envelope).

* * * * *

(5) * * *
(i) * * *

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(*d*) Participating cable networks and systems.

* * * * *

(12) Broadcast stations holding an EBS Authorization are specifically exempt from complying with §§ 73.62 and 73.1560 (pertaining to maintenance of operating power) while operating under this subpart of the rules.

* * * * *

13. Section 73.935 is amended by adding paragraph (c) to read as follows:

§ 73.935 Day-to-day emergencies posing a threat to the safety of life and property; State Level and Operational (Local) Area Level Emergency Action Notification.

* * * * *

(c) Cable networks and systems may voluntarily participate in the EBS in accordance with the provisions of the State EBS Operational Plan.

14. Section 73.936 is amended by revising paragraphs (d) introductory text and (d)(3) to read as follows:

§ 73.936 Emergency Broadcast System Operation during a State level emergency.

* * * * *

(d) Immediately upon receipt of a State level Emergency Action Notification, all licensees and cable networks and systems participating may at the discretion of management, proceed as follows:

* * * * *

(3) All licensees and cable networks and systems participating in the State level EBS shall discontinue normal programming and follow the transmission procedures set forth in the appropriate EBS Checklist and State EBS Operational Plan (§ 73.921) under the State and Local Level Instructions. Stations which provide foreign language programming may transmit emergency announcements in the foreign language prior to broadcasting such announcements in English. TV stations shall display an appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

15. Section 73.937 is amended by revising paragraphs (d) introductory text and (d)(3) to read as follows:

§ 73.937 Emergency Broadcast System operation during an Operational (Local) Area Level emergency.

* * * * *

(d) Immediately upon receipt of an Operational (Local) Area Level Emergency Action Notification message, all licensees and cable networks and systems participating may, at the discretion of management, proceed as follows:

* * * * *

(3) All licensees and cable networks and systems participating in the Operational (Local) Area level EBS shall discontinue normal programming and follow the transmission procedures set forth in the State and Local EBS Operational Plan. Stations which provide foreign language programming may transmit emergency announcements in the foreign language prior to broadcasting such announcements in English. TV stations shall display an appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

16. Section 73.942 is amended by revising paragraph (b) to read as follows:

§ 73.942 Acceptability of EBS Attention Signal equipment.

* * * * *

(b) A decoder device used for the detection of the EBS Attention Signal shall be certified following the applicable procedures set forth in Subpart J of Part 2 and Subpart B of Part 15 of the Rules and Regulations. This requirement shall also apply to decoders which are part of a broadcast receiver. The data and information submitted shall show capability of the equipment to meet the requirements of § 73.941.

17. Section 73.961 is amended by revising paragraph (a) and the heading of paragraph (b) to read as follows:

§ 73.961 Tests of the Emergency Broadcast System procedures.

(a) Weekly Emergency Action Notification (EAN) Network Transmissions. Test transmissions of the National level interconnection facilities will be conducted on a random basis once each week. The tests will originate on an alternate basis from one of two origination points over a dedicated government network to the control points of the radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations. These tests will be in accordance with the procedures set forth in EBS SOP–2 which is furnished to the non-government entities concerned.

(b) *Periodic Wire Service Test Transmissions.* * * *

* * * * *

18. Section 73.962 is amended by revising paragraphs (a), (c), (d), (e) introductory text, (e)(2), (e)(3) and (e)(6) to read as follows:

§ 73.962 Closed Circuit Tests of approved National level interconnecting systems and facilities of the Emergency Broadcast System.

(a) Tests of approved National level interconnecting systems and facilities of non-government entities voluntarily participating in the EBS will be conducted on a random or scheduled basis not more than once a month and not less than once every three months only after FCC approval. The time of the test will be selected by both the White House and participating industry personnel in coordination with the FCC. Unless a random Closed Circuit Test has been selected, the FCC will notify the networks, wire services and participating cable systems and common carriers of the selected time window, four working days (holidays excluded) prior to the test.

* * * * *

(c) The control points of the radio and television networks, the wire services and the participating cable systems and common carriers will receive notification of the Closed Circuit Tests by a "Closed Circuit Test Activation Message".

(d) The National level EBS will be tested on a closed circuit basis. These test broadcasts will originate from a point selected by the White House with program feed circuitry connected to the Telephone Company Toll Test Center at points coordinated for each test. Participating common carriers will interconnect, as required, the facilities of the radio networks and any other participants in the test. The telephone companies are not authorized to add any of the independent stations participating in the EBS unless authorized by FCC. Authentication will be provided to the Telephone Company Toll Test Center or other program entry location responsible for the particular test arrangements to be used. Authentication used in the Closed Circuit Test Message will be the test words printed on the outside of the EBS Authenticator List—Red Envelope.

(e) Closed Circuit Test procedures for radio network affiliates, wire service subscribers, and if participating, television network affiliates and cable systems are as follows:

* * * * *

(2) Immediately monitor your radio network (and if participating, your television or cable system) and check your wire service teletype machine for the receipt of the Closed Circuit Test Activation Message. Verify authenticity using the test words printed on the outside cover of the current issue of the EBS Authenticator List—Red Envelope.

(3) Continue to monitor your radio network (and if participating, your television network or cable system) for the audio talkup and the Closed Circuit Test audio program.

* * * * *

(6) Following the closing cue as indicated in paragraph (e)(5) of this section, wire service subscribers only will receive a "Closed Circuit Test Termination Message". Record the time of receipt of this message as indicated in paragraph (e)(4) of this section.

* * * * *

[FR Doc. 88–9391 Filed 4–28–88; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 68)]

Revised Procedures for Obtaining Copies of Motor Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

EFFECTIVE DATE: April 29, 1988.

SUMMARY: The Commission has revised its licensing regulations to adopt new procedures by which interested parties may request copies of applications. The amended rule at 49 CFR 1160.13 transfers responsibility for providing copies of the licensing application package from applicant's representative to a Commission-designated contract agent, Dynamic Concepts, Inc., upon written request and payment of the required fee by interested persons. This action will ensure more expeditious and straightforward processing of licensing applications.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275–7292 or, Richard B. Felder, (202) 275–7691. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Under the revised rule set forth below, a Commission-designated contracting agent—presently, Dynamic Concepts, Inc.—will process all requests for copies of applications in motor carrier, water carrier, property broker, and household goods freight forwarder licensing proceedings. By channeling requests for application materials through a central information service, we have relieved applicants of any administrative inconvenience possibly associated with performing such functions and have provided persons generally interested in the application process with a uniform, simplified mechanism for obtaining the materials necessary to fully evaluate licensing requests. The $10 fee for duplicating, processing, and mailing application copies will remain constant under this new procedure.

Because the new rule represents a technical revision to Commission licensing regulations, formal notice and public comment procedures are not required to implement this change. Under 5 U.S.C. 553(b)(A), interpretive rules, general policy statements, and rules of agency organization, procedure, or practice are specifically exempted from the notice and comment requirements of the Administrative Procedure Act. The revised rule adopted here merely simplifies procedures and establishes a unified system for obtaining application copies without affecting in any regard the ability of interested parties to access such information. Thus, this action falls squarely within 5 U.S.C. 553(b)(A).

The revised rule also falls within the "good cause" exception of 5 U.S.C. 553(b)(B). That exception provides that notice and comment procedures are unnecessary where, as here, a rule change is minor and technical in nature and, ultimately, has no impact on the public.

Environmental and Energy Considerations

The revised rule will not affect significantly the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that this rule revision will not have a significant economic impact on a substantial number of small entities. To the extent that the amended rule relieves small applicants of duplicating and dissemination burdens, we anticipate that this action will have a positive impact on such entities. Similarly, we expect that the application process generally will be enhanced by the creation of a simple information clearinghouse for interested persons seeking information about pending licensing matters.

List of Subjects in 49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

Decided: April 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for 49 CFR Part 1160 continues to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

2. Part 1160 is amended by revising § 1160.13 to read as follows:

§ 1160.13 Furnishing a copy of the application package to interested persons.

After publication, interested persons may request a copy of the application. The request may be made by writing to the Commission-designated contract agent: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and must be accompanied by a check or money order for $10, payable to Dynamic Concepts, Inc., or may be made by contacting the contract agent at (202) 289–4357 [TDD for hearing impaired: (202) 275–1721] and arranging billing as acceptable to the agent.

[FR Doc. 88–9515 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

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Proposed Rules

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations, as recently permitted by an amendment to 5 U.S.C. 3328, to delegate authority previously reserved to OPM to excecutive agencies to determine whether an individual's failure to register with the Selective Service System was knowing and willful. Under section 3328, persons who are required to register but do not, are ineligible for appointment to Federal executive agencies, unless they can prove that failure to register was neither knowing nor willful. As authorized by section 3328, on March 11, 1987, OPM published (at 52 FR 7399) final regulations to carry out the registration requirement.

DATES: Comments will be considered if received no later than May 31, 1988.

ADDRESS: Send or deliver written comments to Curtis J. Smith, Associate Directort, for Career Entry, Office of Personnel Management, Room 6F08, 1900 E. Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas F. O'Connor, (202) 653–8407.

SUPPLEMENTARY INFORMATION: Section 1249 of Pub. L. 100–180, approved December 14, 1987, amended section 3328, "Selective Service registration", of title 5, United States Code, to allow OPM to delegate decision-making authority to agencies. Section 3328 provides that men born in 1960 or later who are required to but did not register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years of age may correct his ineligibility by registering. After a non-registrant becomes 26 years of age or older, he can no longer register to correct his failure. In the latter situation, section 3328 originally authorized OPM alone to determine whether failure to register was knowing and willful. Section 1249 permits OPM to delegate the authority to make those determinations to the hiring agencies.

Section 300.702 is revised to make clear that the positions to which these regulations apply are those in Federal executive agencies.

E.O. 12291, Federal Regulations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal employees and job applicants.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Subpart G is removed, and the authority for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218. Secs. 300.101 through 300.104 also issued under U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803. Subpart G also issued under 5 U.S.C. 3328.

2. In § 300.701, paragraph (b) is revised to read as follows:

§ 300.701 Statutory requirement.

* * * * *

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the executive agency making the appointment for which the eligibility is determined. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was either knowing or willful.

3. Section 300.702 is revised to read as follows:

§ 300.702 Coverage.

These regulations cover appointments to positions in Federal executive agencies.

4. Section 300.704 is amended by revising the fourth item of the statement under paragraph (b) to read as follows:

§ 300.704 Considering applicants for appointment.

* * * * *

(b) * * *

Non-Registrants Age 26 or Over

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove that your failure to register was neither knowing nor willful. You may request a decision by returning this statement to the agency that was considering you for employment with your written request for a determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

* * * * *

5. Section 300.705 is amended by revising paragraphs (d) (1) through (3) and paragraph (e) to read as follows:

§ 300.705 Agency action following statement.

* * * * *

(d) * * *

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful and that the agency will decide whether this failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to the official or employee the agency has designated to make determinations.

(3) An agency is not required to keep a vacancy open for an indidividual who seeks a determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless the agency finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in § 332.406 of this chapter concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a copy of its written notice to the individual.

6. Section 300.706 is revised to read as follows:

§ 300.706 Adjudication.

(a) The official or employee designated by the employing agency will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in § 300.705 of this part. The designated official or employee will make the determination based on the written explanation provided by the individual and any guidance the Office of Personnel Management (OPM) and the Selective Service System may provide. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) An agency may consult with OPM in making determinations, and is encouraged to consult with the Selective Service System. An agency may make a favorable determination without consultation when an individual shows he was honorably discharged following active service in the armed forces or has an obvious physical handicap precluding active service.

(c) The employing agency will notify the individual in writing of the determination. The determination is final unless reconsidered by the Director of OPM or his or her designee. There is no further right to administrative review.

(d) The Director of OPM or his or her designee may reopen and reconsider a determination.

(e) A subsequent employing agency shall accept the determination of the initial employing agency, unless it can demonstrate to OPM that a different determination is clearly appropriate.

7. Section 300.707 is revised to read as follows:

§ 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and who is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, the agency determines in response to his explanation that his failure to register was neither knowing now willful.

[FR Doc. 88-9581 Filed 4-28-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Proposed Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the California Date Administrative Committee established under Marketing Order 987 for the 1987–88 fiscal year. The expenses would be increased from $386,267 to $411,267. The increase is needed to cover the salary and travel expenses of an executive director the committee plans to hire to manage its market promotion program.

DARES: Comments must be received by May 9, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 [7 CFR Part 987] regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are appoximately 26 handlers of California dates under this marketing order, and approximately 135 date producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $386,267 for the California Date Administrative Committee for the fiscal year period ending September 30, 1988, was published in the **Federal Register** on January 7, 1988 [53 FR 402]. That action also fixed the assessment rate to be levied on date handlers during the 1987–88 fiscal period. At a meeting held on April 6, 1988, the California Date Administrative Committee voted unanimously to increase its budget of expenses from $386,267 to $411,267.

The proposed increase is needed to cover the hiring, salary, and travel expenses of an executive director who will manage the California Date Administrative Committee's market promotion program. This person would direct the advertising agency, manage the promotion program, and make calls

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on the trade to stimulate buyer interest in package and product quality dates.

No change in the assessment rate was recommended by the committee. Adequate funds are available to cover any proposed increase in expenses for the California Date Administrative Committee that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. Prompt approval is needed because the committee needs to have authority to cover the additional expenses associated with hiring someone to manage its market promotion program, and it wants to hire this person as soon as possible.

List of Subjects in 7 CFR Part 987

Marketing agreement and order, dates, California.

For the reasons set forth in the preamble, it is proposed that § 987.332 be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not be published in the Code of Federal Regulations.

§ 987.332 [Amended]

2. Section 987.332 is amended by changing "$386,267" to "$411,267".

Dated: April 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-9530 Filed 4-28-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1007

Milk in the Georgia Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rules.

SUMMARY: This action terminates the proceeding that was intitated to consider a proposal to suspend for the months of March-August 1988 the base and excess plan for paying producers for their milk under the Georgia milk order. The suspension was requested by Southern Milk Sales, Inc., a cooperative association that represents producers who deliver milk to handlers regulated by this marketing order.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 18, 1988; published March 24, 1988 (53 FR 9635).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on March 24, 1988 (53 FR 9635) concerning a proposed suspension of certain provisions of the order regulating the handling of milk in the aforesaid marketing area. Interested parties were invited to comment on the proposal in writing by March 31, 1988. The proposal would have suspended for the months of March-August 1988 the base and excess plan for paying producers for their milk.

Statement of Consideration

Suspension of the base-excess plan for paying producers for their milk for the months of March-August under the Georgia milk order was requested by Southern Milk Sales, Inc. The cooperative indicated that continuation of the base-excess plan would impose a severe hardship on its dairy farmer members.

In response to proponent cooperative's request, the Department invited other interested parties to comment on the proposed suspension of the base-excess plan. Views in support of the proposed suspension were received from Piedmont Milk Sales, Inc., and three individual dairy farmers.

Views in opposition to the proposed suspension were received from Dairymen, Inc., a cooperative representing in excess of one-third of the producers supplying the fluid milk needs of handlers regulated by the Georgia order. Other cooperative associations opposed to the suspension were Associated Dairy Farmers, Inc., Coble Dairy Products Cooperative, Inc., and National Farmers Organization. In addition, ten dairy farmers submitted comments in opposition to the proposed base plan suspension. Also, an attorney for an estate opposed the suspension on the basis that the milk base for such estate was sold at a recent farm sale for an amount in excess of $20,000 contingent upon the base-excess plan remaining in effect.

Views in opposition were also received from seven handlers who operate milk processing plants in the southeastern United States. The handlers involved are Pet Dairy, Kinnett Dairies, Kraft, Barber Dairies, Dairy Fresh Corporation, Malone & Hyde and Baker and Sons Dairy.

The comments received by the Department from individual producers and cooperative associations on behalf of their member producers expressed the views of more than 70 percent of the dairy farmers supplying the Georgia market. Dairy farmers opposed to the proposed suspension outnumber those in favor of the proposed suspension by a margin of two to one.

In view of the extensive opposition to the proposed suspension, it is concluded that the suspension order should not be issued. Accordingly, the proceeding to suspend the base and excess plan for paying producers for their milk should be and is hereby terminated.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on April 25, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9527 Filed 4-28-88; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Public Hearings

AGENCY: Farm Credit Administration.

ACTION: Hearings on proposed regulations.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed regulations governing borrower rights and establishing minimum permanent capital standards for Farm Credit System (System) institutions. The regulations will be published as proposed regulations in the **Federal Register** in early May, as will a final announcement of these hearings. The FCA Board has decided to hold public hearings because of the continuing interest expressed to the FCA by those impacted by the regulations.

DATES: The public hearings on borrower rights will be held beginning at 10:00 a.m. on June 8, 1988, at the offices of the Farm Credit Administration in McLean, Virginia. The public hearing on minimum permanent capital standards will be held beginning at 10:00 a.m. on June 9, 1988, at the offices of the Farm Credit Administration in McLean, Virginia.

ADDRESS: Submit requests to appear and present testimony for the public hearing in writing (in triplicate) to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 8, 1988 concerning proposed regulations implementing the provisions of the Agricultural Credit Act of 1987 concerning new borrower rights.

A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 9, 1988 concerning proposed regulations establishing a minimum permanent capital standard for System institutions.

A person who wishes to present testimony at a session of either or both hearings must request that their name be placed on the calendar by June 1, 1988. Requests will be honored in the order received. The request should state the name, address and telephone number of the person wishing to testify and the general nature of the testimony which they will offer.

Formal presentation will be restricted to 5 minutes per person. In order to facilitate discussion on the record, witnesses must submit a detailed or summary statement of the text of their comments prior to the hearing. Submission deadline for statements or detailed summaries is also June 1. Persons will be notified by the FCA of acceptance of their request. All documents and testimony received by the FCA as part of the public hearing process will be made part of the public record and will be available for public inspection at the FCA's offices in McLean, Virginia.

The FCA notes that the hearing is to solicit the views of interested parties concerning the content of the regulations and their application to System Institutions. The FCA will not accept testimony or written statements in connection with the hearing which are not confined to this subject.

Date: April 25, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-9508 Filed 4-28-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-19-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which currently requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the avionics standard communications bus (ASCB). That AD was prompted by reports of dual, simultaneous and unannunciated failures of the ATR-42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. This revision would provide terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS, and reconnecting Number 1 AHRS to the ASCB bus.

DATES: Comments must be received no later than June 21, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communicatons should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications receive on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM—AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 15, 1987, FAA issued Ad 87-11-08, Amendment 39-5628 (52 FR 19305; May 22, 1987), to require isolation of the Number 1 (Captain side) Attitude and Heading Reference System (AHRS) from

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the System Avionics Standard Communications Bus (ASCB). Additionally, the autopilot is required to be disconnected at or above 200 feet above ground level (AGL), and approach operations are limited to Category I or higher weather minima. That amendment was prompted by two reports of dual, simultaneous, and unannunciated failures of the ATR-42's primary and heading displays. This condition, if not corrected, can result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. The display effectively "freezes" (no response, or intermittent and inaccurate response, to airplane maneuvers) to the display present at the time of failure.

Since issuance of that AD, Aerospatiale has issued Service bulletin ATR42-34-0018, Revision 1, dated September 22, 1987, which describes replacement of the existing AHRS with a modified AHRS, which will eliminate limitations imposed on the operation of the AHRS and will allow reconnection of AHRS 1 to the ASCB bus. This service bulletin supersedes ATR42-34A0016, dated March 23, 1987, which was reflected in the existing AD. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and applicable bilateral airworthiness agreement.

This action proposes to revise AD 87-11-08 to provide terminating action for isolating the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Bus (ASCB), by modifying the AHRS and rewiring the AHRS1 to ASCB bus, in accordance with the service bulletin previously mentioned.

In addition, the AD would be revised to clarify the compliance time for the required Airplane Flight Manual (AFM) revision.

Should an operator choose to install the optional modification, it would take approximately 5 manhours per airplane to accomplish, and the average labor cost would be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $200 per airplane.

The regualtions set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.)*, which statue is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessement.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-11-08, Amendment 39-5628 (52 FR 19305; May 22, 1987), as follows:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after June 8, 1987 (the effective date of Amendement 39-5628, AD 87-11-08), accomplish the following:

1. Isolate the pilots' AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR-42-34A-0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544-411, Mod- level U or subsequent, have been installed.

2. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

a. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

b. "Approach operations are limited to Category I or higher weather minima."

B. Replacement of the Attitude and Heading Reference Systems (AHRS) with a modified AHRS, and connection of four (4) wires between terminal blade 67VT1 and connector 1FP1-AA, in accordance with Aerospatiale Service Bulletin AIR 42-340018, Revision 1, dated September 22, 1987, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, AFF, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the AFF, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9483 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-27-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires operational testing of fuel boost pump bypass valves. This action would allow for termination of operational testing of boost pump bypass valves, when a certain fuel system modification is installed.

DATES: Comments must be received no later than June 21, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-27-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-1405; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-27-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On December 23, 1987, the FAA issued AD 88-01-06, Amendment 39-5823 (53 FR 008; January 4, 1988), which requires operational testing of fuel boost pump bypass valves on Boeing Model 737 series airplanes to prevent the accumulation of water in the bypass valves, which could freeze and cause engine fuel starvation if power to the pump is lost.

The FAA has reviewed and approved Boeing Service Bulletin 737-28A1072, Revision 2, dated February 18, 1988, which describes procedures to replace the two existing fuel boost bypass valves with new improved valves, and install a revised tubing system. The FAA has determined that installation of this modification terminates the need to repetitively test the bypass valves, and is proposing to revise AD 88-01-06 to provide operators with the option of installing the modification in order to terminate the required repetitive operational tests.

The FAA also proposes to revise the existing AD (new paragraph C.) to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this proposed change would not increase the economic burden on any operator, nor would it increase the scope of the AD.

It is estimated that it would take approximately 3 manhours per airplane to accomplish the modification, and that the average labor cost would be $40 per manhour. Based on these figures, the cost for U.S. operators, should they choose to incorporate the modification, is estimated to be $120 per airplane.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-01-06, Amendment 39-5823 (53 FR 008; January 4, 1988), by redesignating paragraph B. as C., and adding a new paragraph B., as follows:

Boeing: Applies to Model 737 series airplanes listed in Boeing Alert Service Bulletin 737-28A1072, dated August 27, 1987, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine flame out due to boost pump bypass valve freezing, accomplish the following:

A. Prior to accumulation of 150 flight hours after January 27, 1988 (the effective date of Amendment 39-5823, AD 88-01-06), and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737-28A1072, dated August 27, 1987, or later FAA-approved revisions.

B. The operational tests required by paragraph A., above, may be terminated when the fuel system modifications detailed in Boeing Service Bulletin 737-28A1072, Revision 2, dated February 18, 1988, or later FAA-approved revisions, are installed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons effected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707,

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Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9484 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-01-AD]

Airworthiness Directives; Boeing Model 737-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would have required replacement or modification of the autopilot flight control computers (FCC) and autopilot and mode control panel (MCP). This proposal would revise the replacement parts and modification specified in the earlier proposal. This action is necessary because of reports that airplanes already modified in accordance with the proposed requirements are still subject to occurrences of non-selected changes in Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH), and/or Vertical Speed (V/S) display window values on the autopilot mode control panel. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

DATES: Comments must be received no later than June 8, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Incorporated, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement or modification of the FCC and MCP on Boeing Model 737-200 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 19, 1987 (52 FR 5140).

Subsequent to the issuance of the NPRM, a foreign operator reported to the Boeing Company that it has already incorporated the proposed modification on its airplanes, but discovered that the modification did not prove to resolve the problem. In light of this information, the Boeing Company conducted additional testing to verify the extent of the anomaly and action necessary to correct it.

After a lengthy, in-depth testing program, Boeing has issued Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988, which describes procedures for installation of an improved FCC and MCP. Additionally, Honeywell/Sperry Commercial Flight Systems Group has issued Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163, dated February 10, 1988, which describe procedures for an improved modification of the FCC and MCP.

The FAA has reviewed and approved the previously mentioned service bulletins and has determined that the proposed rule must be revised to modify the units in accordance with these service bulletins.

The manhours required to accomplish the requirements of this proposed AD are unchanged from those stated in the previously published Notice of Proposed Rulemaking.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 or (2) is not a signficant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737-200 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 87-NM-01-AD, published in the **Federal Register** on February 19, 1987 (52 FR 5740), FR Doc. 87-3382, as follows:

Boeing: Applies to Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin, 737-22A1090, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent non-selected changes in the airplane Altitude (ALT), Indicated Airspeed/Mach) (IAS/MACH), and/or Vertical Speed (V/S) display windows on the autopilot mode control panel, accomplish the following:

A. Within one year after the effective date of this AD, accomplish either of the following:

1. Install improved FCC and MCP described in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988; or

2. Modify the FCC and MCP in accordance with Honeywell Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163, dated February 10, 1988.

B. An alternative means of compliance or adjustment of compliance time, which provide an acceptable level of safety, and which has the occurrence of an FAA Principal Avionics Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and the Honeywell Corporation, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9538 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5529/P450; FRL 3373-4]

Pesticide Tolerances for 3-(3, 5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2, 4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish permanent food and feed additive regulations to permit the combined residues of the fungicide 3-(3, 5-dichlorophenyl)-5-ethenyl-5-methyl-2, 4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3, 5-dichloraniline moiety in or on certain food and feed items. This proposal, to establish a maximum permissible level for combined residues of vinclozolin in or on the commodities, was requested in a petition submitted by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [FAP 7H5529/P450], must be received on or before May 16, 1988.

ADDRESS:

Written comments by mail to:
Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact: Lois Rossi (PM 21), RM. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 18, 1987 (52 FR 8528), which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a food/feed additive petition (FAP 7H5529) proposing to establish food/feed additive regulations for the combined residues of the fungicide vinclozolin and its metabolites in or on raisins at 30 parts per million (ppm) and in or on grape pomace (dry) at 42 ppm. A rule was published in the **Federal Register** of May 13, 1987 (52 FR 17940) which established these tolerances until May 13, 1988, unless processing data on raisins were submitted that show that vinclozolin residues do not concentrate to a level above 30 ppm in raisins.

The data submitted in the petition and all other relevant material have been evaluated and discussed in a related document (PP 1E2457/P451), appearing elsewhere in this issue of the **Federal Register**, which proposes the establishment of a tolerance for the combined residues of vinclozolin on grapes.

BASF Wyandotte Corp. submitted a grape-processing study which adequately demonstrates that a raisin tolerance of 30 ppm is appropriate. Based on these data, the published tolerances due to expire on May 13, 1988, for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety will adequately cover vinclozolin resudies in raisins (30 ppm) and dry grape pomace (42 ppm). This document proposes to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 ppm and dry grape pomace at 42 ppm.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) Pesticide Analytical Manual for enforcement purposes. There is no

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reasonable expectation of residues in eggs, milk, meat, or poultry from the use on grapes.

The pesticide is considered useful for the purpose for which the food and feed additive regulations are sought, and it is concluded that the establishment of these regulations would protect the public health. Therefore, the regulations are proposed as set forth below.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [FAP 7H5529/P450]. All written comments filed in response to this document will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations proposing the establishment of new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 1988.

Edwin E. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 193.137 [Amended]

b. In § 193.137 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending paragraph (b) in the first sentence by removing the phrase "until May 13, 1988."

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 561.440 [Amended]

b. In § 561.440 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending the introductory text by removing the phrase "until May 13, 1988."

[FR Doc. 88-0634 Filed 4-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 234

[Docket No. R-88-1372; FR-2333]

Deregulation of Loan Origination Fee and Mortgagor Income Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Currently HUD, by regulation, places specific limits on the amount a mortgagee may collect from a mortgagor to compensate the mortgagee for expenses incurred in originating and closing a loan. Other regulatory limits govern the amount of mortgagor income considered "adequate" to meet the periodic payments required in the mortgage loan. This rule proposes to relax the regulatory limitations with respect to origination fees and to change the method of calculating the percentage of a mortgagor's income which will be used to determine whether a mortgagor qualifies for a HUD-insured mortgage.

DATE: *Comment due date:* June 28, 1988.

ADDRESS: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Coonts, Deputy Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under its current regulations, HUD places specific limits on the amount a mortgagee may collect from a mortgagor to compensate the mortgagee for expenses incurred in originating and closing a loan (see 24 CFR 203.27 and 234.48). Generally, the charge may not exceed one percent of the original principal amount of the mortgage. (For new construction involving construction advances, that charge may be increased to a maximum of two and a half percent of the original principal amount of the mortgage to compensate the mortgagee for necessary inspections and administrative costs connected with making construction advances. For mortgages on properties requiring repair or rehabilitation, mortgagor charges may be assessed at a maximum of two and one half percent of the portion of the mortgage attributable to the repair or rehabilitation, plus 1% on the balance of the mortgage).

This rule proposes, as a general matter, to remove the current specific limitations on the amounts mortgagees may charge for originating and closing a loan. However, the Commissioner would continue to set limits on the amount of such fees that could be included in the insured mortgage.

The Department has every reason to believe that removal of the current fee limitations will result in FHA mortgagees charging the fees that currently prevail in the mortgage market. These fees range between 1% and 3% depending upon market conditions, although the majority of lenders charge about 1%. This has been the experience of several other Federal mortgage credit agencies—*i.e.,* the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation—neither of which places limitations on mortgagee origination fees.

When calculating the maximum mortgage amount for a property, HUD uses the appraised value of the property (which may include a portion of estimated closing costs). These closing costs include the mortgagee's origination fee. After this rule becomes effective, HUD will continue to set a maximum one percent origination fee (two and one half percent on new construction involving construction advances and similarly, on properties involving repair and rehabilitation, two and one half percent for that portion of a mortgage

attributable to the repair or rehabilitation plus one percent on the balance of the mortgage) for the calculation of closing costs that may be included as part of the appraised value. The amount of the origination fee exceeding one percent (2½ percent on new construction and rehabilitation), if any, will not be regulated, but also will not be permitted to be included in the maximum mortgage amount.

In addition to limiting origination fees, current regulations also provide specific guidelines for determining the adequacy of a mortgagor's income to meet the periodic payments required by the mortgage. The mortgagor's income is considered adequate if the total prospective housing expense does not exceed 35 percent of the mortgagor's "net effective income" and if the total prospective housing expense and other recurring charges do not exceed 50 percent of the mortgagor's net effective income (see 24 CFR 203.33). Exceptions to the above guidelines are permitted where certain favorable compensating factors, specified by the FHA Commissioner, are present. (In fact, these 35/50 ratios were increased by administrative directive in April, 1982 to 38/53.)

This rule proposes to remove these specific guidelines from the regulatory text and to provide a more flexible and realistic standard. The new standard (in conformity with general industry practice), would substitute the concept of gross income rather than the artificial concept "net effective income" currently used. This change should not, as a practical matter, have a significant impact on prospective mortgagors.

In reviewing the process of changing to gross income HUD also considered whether it should continue to include anticipated monthly maintenance and repairs and heat and utility costs as part of the housing expense in the analysis. We concluded that monthly estimates for maintenance and repairs often did not reflect the actual amounts expended for these items. And, although heat and utility estimates can be more accurately projected, we opted to use a monthly housing expense which included only the principal, interest, taxes and insurance (PITI) and related costs such as MIP and homeowner or condominium fees where applicable. This is the approach used by conventional lenders. We invite the views of the public on this decision and will give careful consideration to such views in developing a final rule.

Future instructions will continue to emphasize that these ratios form the basis for underwriting a loan application, but that final judgments should be made on the overall qualifications of the applicant, which include consideration of such compensating factors as significant cash reserves after closing, no increase in housing expense, company-provided automobile, etc.

The purpose of moving to this gross income standard is to (1) promote a more accurate analysis of the adequacy of buyers income and (2) make FHA processing more consistent with the general practice within the industry, consequently making it easier for mortgagees to process FHA applications.

In place of the rather intricate definitions and concepts which apply under the existing regulations (see HUD Handbook 4155.1 Rev.), the following concepts, now prevalent in the conventional mortgage market, are proposed to be used in administration instructions to implement this new regulatory approach:

Effective Income would mean allowable gross income from all sources. A Federal tax liability calculation would no longer be required.

Total Housing Expense would mean the sum total of principal, interest, real estate taxes, and hazard insurance (PITI). (Note: Monthly MIPO and homeowner association/condo fees must be added, when applicable). Maintenance and repairs and heat and utilities would no longer be used in this calculation.

Recurring Charges would continue to mean any debt that does not mature in six months or is classed as continuous, *e.g.,* automobile loans, child support, child care, etc. It will no longer include such things as state and local taxes, retirement or social security.

Fixed Payment would mean the sum total of the housing expense plus the recurring charges.

Residual Income would mean effective income minus fixed payment.

Housing Ratio would mean housing expense divided by effective income. The recommended guideline HUD anticipates using is 29 percent.

Fixed Payment Ratio would mean fixed payment divided by effective income. The recommended guideline HUD anticipates using is 38 percent.

In essence, the significant change this rule would make in the existing regulation would be to shift from use of a "net effective income" concept to use of a "gross income" concept in determining adequacy of a mortgagor's income. The impact of such a shift on applicant mortgagors should be negligible but the gain in FHA processing efficiency and accuracy could be significant. HUD would retain authority to adjust the guideline income and fixed payment ratios by administrative instructions to meet the demands of the housing market (see Mortgageee Letter (82-10)).

The 29 and 38 percent ratios cited above were arrived at after reprocessing approximately 200 previously processed and approved HUD cases. The former 38 and 53 percent ratios generally equated to these proposed ratios. Again, we invite public comment regarding these proposed ratios.

The examples below are based on realistic situations and are included to illustrate the point that a typical, aprovable application under the old guidelines could be expected to be found acceptable under the new guidelines.

I. A family of three with a $28,600 annual income. There are recurring charges of $403 ($225 under proposed method) per month. $43,000 purchase price. Base mortgage plus 100 percent MIP financed-$56,450 at 9.5 percent for a 15 year term:

Net income approach:		
Gross monthly income [1]	=	$2,383
Federal tax	=	−309
Net income [1]	=	2,074
Principal and interest	=	590
Taxes and insurance	=	82
Maintenance expense	=	20
Heat and utilities	=	80
Total housing expense [1]	=	772
Recurring charges	=	403
Total fixed payment [1]	=	1,175

[1] Denotes components used in computing ratios.

Housing ratio: $772 (total housing expense) ÷ $2,074 (net income) = 37 percent.

Fixed payment ratio: $1,175 (fixed payment) ÷ $2,074 (net income) = 56 percent.

Gross income approach:		
Principal and interest	=	$590
Taxes and insurance	=	82
Housing expense [1]	=	672
Recurring charges	=	225
Fixed payment [1]	=	897

[1] Denotes components used in computing ratios.

Housing ratio: $672 (housing expense) ÷ $2,383 (net income) = 28 percent.

Fixed payment ratio: $897 (fixed payment) ÷ $2,383 (gross income) = 38 percents.

II. A family of four with a $27,000 annual income. There are recurring charges of $358 ($200 under proposal method) per month. $85,500 purchase price. Base mortgage plus 100 percent MIP financed = $65,480 at 10 percent for a 30 year term.

Net income approach:		
Gross monthly income [1]	=	2,250
Federal tax	=	−211
Net incpm [1]	=	2,039
Principal and interest	=	575
Taxes and insurance	=	86
Maintenance expense	=	25
Heat and utilities	=	101
Total housing expense [1]	=	787
Recurring charges	=	358
Total fixed payment [1]	=	1,145

[1] Denotes components used in computing ratios.

Housing Ratio: $787 (housing expense) ÷ $2,039 (net income) = 38 percent.

Fixed payment ratio: $1,145 (fixed payment) ÷ $2,039 (net income) = 56% percent.

Gross income approach:		
Principal and interest	=	$575
Taxes and insurance	=	86
Housing expense [1]	=	661
Recurring charges	=	200
Fixed payment [1]	=	861

[1] Denotes components used computing ratios.

Housing ratio: $661 (housing expense) ÷ $2,250 (gross income) = 29 percent.

Fixed payment ratio: $861 (fixed payment) ÷ $2,250 (gross income) = 38 percent.

III. A family of four with a $39,600 annual income. There are recurring charges of $539 ($308 under proposed method) per month. $97,000 purchase price. Base mortgage plus 100 percent MIP financed = $93,420 at 10 percent for a 30 year term.

Net income approach:		
Gross monthly income [1]	=	$3,300
Federal tax	=	−390
Net income [1]	=	2,910
Principal and interest	=	820
Taxes and insurance	=	122
Maintenance expense	=	30
Heat and utilities	=	130
Total housing expense [1]	=	1102
Recurring charges	=	539
Total fixed payment [1]	=	$1,641

[1] Denotes components used in computing ratios.

Housing ratio: 1,102 (housing expenses) ÷ $2,910 (net income) = 38 percent.

Fixed payment ratio: $1,641 (fixed payment) ÷ $2,910 (net income) = 56 percent.

Gross income approach:		
Principal and interest	=	$820
Taxes and insurance	=	122
Housing expense [1]	=	942
Recurring charges	=	308
Fixed payment [1]	=	$1,250

[1] Denotes components used in computing ratio.

Housing ratio: $942 (housing expense) ÷ $3,300 (gross income) ÷ 29 percent.

Fixed payment ratio: $1,250 (fixed payment ÷ $3,300 (gross income) ÷ 38 percent.

These three examples are provided as representative illustrations of the largely neutral impact and lack of effect the switch to gross income should have on applications involving FHA mortgage insurance.

The rule text revises the appropriate sections relating to origination fees and determination of mortgagor income in each of the following three parts: Part 203—basic home mortgage insurance, Part 213—cooperative unit mortgage insurance and Part 234—condominium unit mortgage insurance.

Finally, in each of the sections of the CFR the rule would revise, it is proposed to add a paragraph reaffirming the nondiscrimination policies and mission of the Department. Charges, fees or discounts will be collected, and determination of adequacy of mortgagor income will be carried out, in a nondiscriminatory manner.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since in general it would not significantly change mortgagor eligibility or FHA insurance benefits, but instead would increase the efficiency of mortgage insurance application processing.

This rule was listed as item H–18–87 [Sequence Number 905] in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13868) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

The home mortgage insurance programs affected by the rule are listed in the Catalog of Federal Domestic Assistance under program numbers 14.108 Rehabilitation Mortgage Insurance; 14.117 Mortgage Insurance—Homes; 14.119 Mortgage insurance—Homes for Disaster Victims; 14.120 Mortgage Insurance—Homes for Low and Moderate Income Families; 14.121 Mortgage Insurance—Homes in Outlying Areas; 14.122 Mortgage Insurance—Homes in Urban Renewal Areas; 14.123 Mortgage Insurance—Housing in Older, Declining Areas; 14.130 Mortgage Insurance—Purchase by Homeowners of Fee Simple Title from Lessors; 14.133 Mortgage Insurance—Purchase of Units in Condominiums; 14.140 Mortgage Insurance—Special Credit Risks; 14.159 Section 245 Graduated Payment Mortgage Program; 14.161 Single Family Home Mortgage Coinsurance; 14.165 Mortgage Insurance—Homes—Military Impacted Areas; 14.166 Mortgage Insurance—Homes for Members of the Armed Services; 14.172 Mortgage Insurance—Growing Equity Mortgages; 14.175 Adjustable Rate Mortgages.

List of Subjects

24 CFR Part 203

Mortgage insurance, Home improvement, Loan programs, housing and community development, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, 24 CFR Parts 203, 213, and 234 would be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 would continue to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715(u)).

2. In § 203.27, paragraph (a)(2) would be revised, and a new paragraph (b) would be added to read as follows:

§ 203.27 Charges, fees or discounts.

(a) * * *

(1) [Reserved]

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided,* that the Commissioner may establish limitations on the amount of any such charge which can be included in the mortgage loan.

* * * * *

(b) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

3. In § 203.33 paragraph (a) would be revised and a new paragraph (c) would be added, to read as follows:

§ 203.33 Relationship of income to mortgage payments.

(a) *Adequacy of mortgagor's gross income.* A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet

(1) The periodic payments required by the mortgage submitted for insurance and

(2) Other long-term obligations.

* * * * *

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

4. The authority citation for 24 CFR Part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

5. In § 213.518 paragraph (a)(1) would be revised and a new paragraph (b) would be added, to read as follows:

§ 213.518 Charges, fees or discounts.

(a) * * *

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided,* that the Commissioner may establish limitations on the amount of any charge which can be included in the mortgage loan.

* * * * *

(b) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

6. In § 213.521, paragraph (a) would be revised and a new paragraph (c) would be added, to read as follows:

§ 213.521 Relationship of income to mortgage payments.

(a) *Adequacy of mortgagor's gross income.* A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet

(1) The periodic payments required by the mortgage submitted for insurance and

(2) Other long-term obligations.

* * * * *

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

7. The authority citation for 24 CFR Part 234 would continue to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b and 1715y) sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 234.48, paragraph (a)(1) would be revised, paragraph (c) would be redesignated as paragraph (d), and a new paragraph (c) would be added, to read as follows:

§ 234.48 Charges, fees or discounts.

(a) * * *

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided,* that the Commissioner may establish limitations on the amount of any such charge which can be included in the mortgage loan.

* * * * *

(c) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

7. Section 234.56 would be revised to read as follows:

§ 234.56 Relationship of income to mortgage payments.

(a) A mortgagor must establish, to the satisfaction of the Secretary that his or her gross income is and will be adequate to meet:

(1) The Periodic payments required by the mortgage submitted for insurance; and

(2) Other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

Dated: March 10, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88–9550 Filed 4–28–88; 8:45 am]

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Office of the Secretary

24 CFR Parts 813, 882 and 913

[Docket No. R-88-1390; FR-2465]

Income Eligibility for Assisted Housing; Implementation of Percentage Limits on Lower Income Families

AGENCY: Office of the Secretary, HUD.

ACTION: Proposal rule.

SUMMARY: This rule would implement section 103 of the Housing and Community Development Act of 1987, which amends section 16 of the United States Housing Act of 1937. Section 103 provides that: (1) The Secretary may not totally prohibit admission to the public housing and Section 8 programs of Lower Income Families, other than Very Low-Income Families, for leasing of units which became available for occupancy under public housing annual contributions contracts and Section 8 housing assistance payments contracts on or after October 1, 1981, and (2) the Secretary shall establish percentage limitations on the admission of Lower Income Families in the separate assisted housing programs. The provision of section 16(b) which limits the admission of Lower Income Families other than Very Low-Income Families, to five percent of the units made available for Occupancy since October 1, 1981, remains unchanged.

The 1987 Act requires us to issue these regulations.

DATE: Comments due May 31, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

For Section 8 Programs administered under 24 CFR Parts 880, 881, and 883-886:

James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5654.

For Section 8 Programs administered under 24 CFR Part 882 (Existing Housing and Moderate Rehabilitation):

Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755-6887, at the above address.

For Public Housing Programs administered under 24 CFR Part 913:

Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, telephone (202) 426-0744, at the above address. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a) ("the 1937 Act") defines "lower income families" and "very low-income families" as follows:

> The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) amended the 1937 Act to establish national percentage limitations on the admission to the Section 8 and public housing programs of families whose annual incomes are between the "very low" and "lower" income limits to (1) not more than 10% of units that were available for occupancy before October 1, 1981 and are leased thereafter (raised to 25% by section 213 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983)) and (2) not more than 5% of units that first become available after October 1, 1981. Section 103 of the Housing and Community Development Act of 1987 ("1987 Act") (Pub. L. 100-242, approved February 5, 1988) has further amended the 1937 Act to require that HUD not totally prohibit admission to the programs of families in the lower income, but not very low income, category. The 1987 Act also requires HUD to establish national percentage limitations on admissions of families in that income category to separate housing programs so that, when aggregated, the percentages will be no more than 5 percent of dwelling units which become available for leasing under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after the effective date of the 1981 Amendments (October 1, 1981).

This rule proposes to implement the 1987 Act by establishing an apportionment of percentages among the programs involved so that, in the aggregate, the total percentage of families admitted to occupancy with incomes between the very low and lower income limits would not exceed 5 percent of dwelling units that have become available for occupancy since October 1, 1981. This apportionment only applies to dwelling units that became available for occupancy under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after October 1, 1981 (the effective date of the 1981 Amendments) and that are available for leasing by Lower Income Families.

This rule amends 24 CFR 813.105 and 24 CFR 913.105 to require the establishment, by **Federal Register** Notice, of the separate apportionment percentages for each Section 8 program and the public housing program. The rule also provides that apportionments may be redetermined from time to time by **Federal Register** Notice.

A proposed initial Notice of apportionments under the new rule is published in today's **Federal Register**. The Notice sets forth the proposed percentages for implementation of this rule. The Notice provides for the same comment period as this rule. A Final Notice will be issued after consideration of the comments, but not before the Proposed Rule is made final. (Future Notices will be issued first as Proposed Notices, with a 30-day comment period.)

The Proposed Rule does not change the requirement of the current regulation that no Lower Income Family that is not a Very Low-Income Family be admitted to a unit which became available for occupancy on or after October 1, 1981, without an authorization by HUD. The percentage limits established by the accompanying Notice are solely for the purpose of the administration of the statutory limitation by HUD and do not constitute a pre-authorization of exception admissions to PHAs or owners—nor do they establish a limit applicable to any particular project or PHA.

By statute, this rule does not apply to dwelling units made available under section 8 housing assistance contracts

for the purpose of preventing displacement, or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted family income, of Lower Income Families from projects being rehabilitated with assistance from rehabilitation grants under section 17 of the 1937 Act (Rental Rehabilitation). This rule, also by statute, does not apply to dwelling units assisted by Indian Housing Authorities.

Because of the inapplicability to dwelling units made available to prevent displacement from projects being rehabilitated, as discussed above, displacement as a result of Rental Rehabilitation or Development Activities under section 17 of the 1937 Act is no longer listed as a basis for an exception in § 813.105(b). Also, § 813.105(e)(1), which would permit HUD to maintain data as to the number of admissions that are subject to the percentage limitation, cross-references to paragraph (f) of this section to except from the percentage limitation those units which are made available to prevent displacement from projects being rehabilitated under section 17 of the 1937 Act.

Under the Proposed Rule, the restriction on eligibility of a non-Very Low Income Family only applies when a family is first admitted to a covered program. The restriction only applies to initial occupancy of a unit by the family but does not apply to occupancy of another unit while the family is continually assisted in the same program (See §§ 813.105(a) and 913.105(a)). In the Section 8 and public housing programs, eligibility income limits are only applied at the time of initial admission to a program and do not apply for continued occupancy or when a family from one unit to another in the same program. Similarly, the determination whether a non-Very Low Income Family is eligible for assistance under section 16 of the 1937 Act should only apply at the point of initial admission to the individual assisted program.

HUD notes that this approach is a change from the system under the prior rule. Under the old rule, the restriction is applied each time a family is admitted to a new unit, not just at the point of initial entry to the program. Each move to a new unit was counted against the national percentage limit, *e.g.*, the move of a participant in the Section 8 Certificate Program to a new unit, on a move by a public housing family from one project to another.

HUD has reexamined the legislative history of the section 16 restrictions and believes that the restriction need only be applied when family *eligibility* is determined—at the family's initial admission to the program. The Conference Report on the initial enactment of section 16 states that the report:

> * * * includes an amendment [*i.e.*, Section 16 the 1937 Act] which *retains eligibility for assisted housing* for persons whose income is 80 percent of median or below but *restricts that eligibility* to a certain percentage of total available units (H.Rpt. 97-208), July 29, 1981) (Emphasis supplied).

Thus the section 16 restrictions are part-and-parcel of the determination of family eligibility, and apply when eligibility is otherwise determined. HUD now believes that the original rule was more far-reaching than needed to carry out the mandate of section 16.

The 1987 amendments (which do not modify the previously enacted language) confirm the original statutory intention to apply a limitation on family eligibility but without changing the point at which eligibility is determined. The new statutory section (*i.e.*, section 103 of the 1987 Act) is headed "Income Eligibility for Assisted Housing". This is also the title of the conference description of section 103 (Rpt. 100-426, November 6, 1987). The text of the 1987 Act provides that HUD may not prohibit "admission of lower income families" and requires HUD to establish program-by-program percentage limits "on admission of lower income families". Thus the percentage limits apply to admission *families* (rather than "admission" of families to *units*). In established program practice and terminology, a family is only admitted once to the program—no matter how many times the family moves from unit to unit while continuously assisted in the program. Examination of the legislative text history thus confirms that the Congress understands the section 16 restrictions as pertaining to the determination of Family "eligibility", and as a restriction that applies when the family is admitted to the program—not when the family is simply moving from one program unit to another.

The proposed rule removes the provision currently at 24 CFR 813.105(c) which provides an automatic exception to the income limit restrictions for a Family participating in the Section 8 Certificate Program that moves to another unit with continued participation in the program. The execution of a Housing Assistance Payment Contract on behalf of a family already participating in the Section 8 Existing Housing Certificate program does not come under the percentage limitations of the 1987 Act.

The proposed rule also removes 24 CFR 813.105(d) which applies to housing vouchers. The percentage limitations of the 1987 Act do not apply to housing vouchers because issuance of housing vouchers is generally limited to Very Low-Income Families, except for families that have been continuously assisted under the 1937 Act and Lower Income Families who are displaced by Rental Rehabilitation activities. Families who are displaced by Rental Rehabilitation activities are exempt from the percentage limitations, as discussed above, and the Department has determined that "continuously assisted" families are also exempt because under Section 8(o) of the 1937 Act (The Voucher Program), a family is eligible for housing voucher assistance without regard to its income if it is continuously assisted. The statute does not require another determination of income eligibility, and therefore the income of a family that receives a housing voucher does not trigger applicability of the percentage limitations proposed to be implemented by this rule.

The Department considered an alternative means of implementing the statute by the allocation of specific numbers of exceptions directly to public housing agencies and owners. However, the Department determined that this method of implementation would create serious administrative problems and would fail to achieve the goal of the legislation, *i.e.*, to provide exceptions in those program areas where there is the greatest need. In arriving at this decision, the Department recognized that there would be too few exceptions available to have a meaningful impact if pre-allocated.

Other Matters

Because of the statutory deadline for implementing this rule, a 30-day comment period is being afforded this rule so that the Department may have the benefit of public comments. Under section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), no rule promulgated by the Department may become effective until after passage of the first period of 30 calendar days of continuous session of Congress after the day on which the rule is published as final. Because of this section 7(o) constraint of the Congressional calendar for the rest of the year, it is imperative that the comment period be no longer than 30 days to permit time for review of the public comments and development of a final rule at least 30 days before Congress adjourns for the year.

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Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities beause the Department does not expect that the new apportionments would be significantly different, in their impact on small PHAs, from the present spread of exceptions used in the affected programs.

This rule was listed as item 1025 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13891) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.146, 14.149, 14.156, and 14.157.

List of Subjects

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development.

24 CFR Part 913

Public Housing.

Accordingly, 24 CFR 813.105 and 24 CFR 913.105 would be revised to read as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for Part 813 would continue to read as follows:

Authority: Secs. 3, 5(b), 8, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 813.105 would be revised to read as follows:

§ 813.105 Occupancy of units available on or after October 1, 1981.

(a) *General.* Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall be admitted to any of the following programs, for occupancy of a unit for which the effective date of the HAP Contract is October 1, 1981 or later. (This provision only applies to initial occupancy of a unit by the family, but does not apply to occupancy of another unit while the family is continuously assisted in the same program):

(1) Part 880 (Section 8 Housing Assistance Payments Program for New Construction);

(2) Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation Program);

(3) Part 882 (Section 8 Housing Assistance Payments Certificate Program and Moderate Rehabilitation);

(4) Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies);

(5) Part 884 (Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects);

(6) Part 885 (Loans for Housing for the Elderly or Handicapped);

(7) Part 886, Subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside)); or

(8) Part 886, Subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects)).

(b) *Request for exception.* A request by a PHA or Owner for approval of admission of Lower Income Families other than Very Low-Income Families to the covered programs, for occupancy of a unit for which the effective date of the HAP is October 1, 1981, or later, must state the number of admissions for which exception is requested, the basis for requesting the exception, and must provide supporting data. Bases for exceptions that may be considered by HUD include the following:

(1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(2) Need for admission of a broader range of tenants to preserve the financial or management viability of a Section 8 project because there is an insufficient number of potential applicants who are Very Low-Income Families;

(3) Commitment of an Owner to attaining occupancy of a Section 8 project by Families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community; and

(4) Supervision of a Section 8 project by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing under section 11(b) of the 1937 Act or under section 103 of othe Internal Revenue Code.

(c) *Apportionment for exceptions.* (1) Each assisted housing program listed in paragraph (a) of this section shall receive, as set forth in a Notice published in the **Federal Register** and subject to revision from time to time, an apportionment which represents the percentage of admissions to units in that program for which the date of the HAP contract is October 1, 1981, or later, of a Family other than a Very Low-Income Family. The sum of the number of units occupied by a Family other than a Very Low-Income Family at the time of admission to the program shall not exceed five percent of all of the dwelling units to which this section and 24 CFR 913.105 apply and which become available under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act, after October 1, 1981.

(2) These apportionments may be redetermined from time to time by **Federal Register** Notice.

(d) *Action on request for exception.* Whether to grant a request for an exception under paragraph (b) of this section is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limit permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to Owners or PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

(1) The number of dwelling units that are subject to paragraph (a) of this section but not excepted under paragraph (f) of this section; and

(2) The number of units for which the effective date of the HAP contract is October 1, 1981, or later, which are occupied by Families that were not Very Low-Income Families at the time of admission to the program (on or after July 1, 1984).

(f) *Inapplicability.* This section shall not apply to any dwelling units assisted by Indian Housing Authorities, or dwelling units assisted with housing vouchers issued under section 8(o) of the 1937 Act. Also, this section shall not apply to admissions to dwelling units made available under section 8 housing assistance contracts for the purpose of preventing displacement or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted family income, of lower income families from projects being rehabilitated with assistance from rehabilitation grants under section 17 of the 1937 Act.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0315; the requirements contained in paragraph (e) were approved under control number 2502-0204.)

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

3. The authority citation for Part 882 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. Section 882.209(m)(1) would be revised to read as follows:

§ 882.209 Selection and participation.

* * * * *

(m) * * *

(1) If a participant in the PHA's Section 8 Housing Certificate Program notifies the PHA that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family) either—

(i) Issue another Certificate, or

(ii) Deny issuance of a Certificate in accordance with § 882.210.

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

5. The authority citation for Part 913 would continue to read as follows:

Authority: Secs. 3, 6, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437d, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 913.105 would be revised to read as follows:

§ 913.105 Occupancy of units available on or after October 1, 1981.

(a) *General.* Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall be admitted to the Public Housing Program, for occupancy of any unit in a Public Housing project for which initial occupancy began after October 1, 1981. (This provision only applies to initial occupancy of a unit by the Famly, but does not apply to occupancy of another unit while the Family is continuously assisted in the same program.)

(b) *Request for exception.* A request by a PHA for approval of admission of Lower Income Families other than Very Low-Income Families to the Public Housing Program for occupancy of a unit which first became available for occupancy on or after October 1, 1981, must state the number of admissions for which exception is requested, the basis for requesting the exception, and must provide supporting data. Bases for exceptions that may be considered by HUD include the following:

(1) Need for admission of a broader range of tenants to obtain full occupancy;

(2) Local commitment to attaining occupancy by Families with a board range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(3) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(4) Need to avoid desplacing Lower Income Families from a project acquired by the PHA for rehabilitation.

(c) *Apportionment for exceptions.* (1) The Public Housing Program shall receive, as set forth in the Notice published in the **Federal Register** and subject to revision from time to time, an apportionment which represents the percentage of admissions to units in the Public Housing Program that first became available for occupancy on or after October 1, 1981, by a family other than a Very Low-Income Family. The sum of the number of units occupied by a Family other than a Very Low-Income Family at the time of admission to the programs shall not exceed five percent of all of the dwelling units to which this section and 24 CFR 813.105 apply and which become available under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act, after October 1, 1981.

(2) These apportioments may be redetermined from time to time by **Frederal Register** Notice.

(d) *Action on request for exception.* Whether to grant a request for an exception under paragraph (b) of this section is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limit permitted by statute, nor is any presumption of entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to PHAs at regular intervals. HUD may withdraw permission to exercise these exceptions for program applicants at any time exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

(1) The number of dwelling units assisted under the 1937 Act in the Public Housing Progams in projects for which initial occupancy began on or after October 1, 1981, and

(2) The number of units that first became available for occupancy on or after October 1, 1981, that are occupied by Families which were not Very Low-Income Families at the time of

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admission to the program (on or after July 1, 1984).

(Approved by the Office of Management and Budget under control number 2502–0204)

(f) *Inapplicability.* This section shall not apply to dwelling units assisted by Indian Housing Authorities.

Dated: April 5, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–9548 Filed 4–28–88; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Safety Standards for Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75. This extension is in response to requests from the mining community.

DATES: Written comments on the proposed rule for ventilation standards must be received on or before May 27, 1988.

ADDRESSES: Send comments to the Office of Standards, Regulations, an Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) a proposed rule to revise existing ventilation standards for underground coal mines. On March 29, 1988, (50 FR 10104) MSHA extended the comment period to April 28, 1988 in response to requests from the mining community. Due to further requests from the public, MSHA is extending the comment period for the proposed rule to May 27, 1988. All interested parties are encouraged to submit comments prior to that date.

Date: April 27, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–9684 Filed 4–28–88; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2457/P451; FRL 3373–3]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a permanent tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on grapes at 6.0 parts per million (ppm). This regulation, to establish a maximum permissible level for residues of vinclozolin on grapes, was requested by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [PP 1E2457/P451], must be received on or before May 16, 1988.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Program, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 23, 1982 (47 FR 27128), which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted pesticide petition 1E2457 proposing to establish a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity table grapes at 6.0 parts per million (ppm).

A rule was published in the **Federal Register** of May 13, 1987 (52 FR 17940) which established those tolerances for a period of 1 year from the date of publication of the rule in the **Federal Register** unless processing data on raisins were submitted that show that vinclozolin residues do not concentrate to a level above 30 ppm in raisins.

The data submitted in the petition and other relevant material have been evaluated. BASF Wyandotte Corp. submitted a grape-processing study which adequately demonstrates that a raisin tolerance of 30 ppm is appropriate. Based on these data, the published tolerances due to expire on May 13, 1988 for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety would adequately cover vinclozolin residues in raisins and dry grape pomace. This document proposes to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 ppm and dry grape pomace at 42 ppm.

The toxicological data considered in support of the proposed tolerances include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 450 ppm (22.5 mg/kg/day), the highest dose tested.

2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).

3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).

4. A mouse teratology study with a NOEL for maternal toxicity of 6,000 ppm (900 mg/kg/day), the highest dose tested, and a NOEL for developmental toxicity of 600 ppm (90 mg/kg/day).

5. A rabbit teratology study with a NOEL for maternal toxicity of 300 mg/kg/day (9,900 ppm) and a NOEL for developmental toxicity of 80 mg/kg/day) (2,640 ppm). Levels tested: 0, 600, 6,000, and 60,000 ppm.

6. A chronic feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 pm (24 mg/kg), and no compound-related oncogenic effects under the conditions of the study at doses of 4,374 ppm (219 mg/kg bw/day), the highest dose tested.

7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL of 486 ppm (73 mg/kg) and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (503 mg/kg/ bw/day), the highest dose tested.

8. A dominant lethal assay in mice, negative at 2,000 mg/kg (only level tested).

9. Sister chromatid exchange study in bone marrow of the Chinese hamster was negative.

10. Reverse mutation test with and without metabolic activation system which was negative for mutagenic effects.

11. A primary rat hepatocyte unscheduled DNA synthesis assay which showed negative mutagenic activity and a mouse lymphoma forward mutation assay which showed weak positive mutagenic activity only at concentrations exceeding solubility in the test medium. The studies satisfy requirements for DNA damage/repair assay in mammalian cells and gene mutation cells in culture.

Based on the NOEL of 100 ppm in the 6-month dog feeding study, and using a hundred-fold uncertainty factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.025 mg/kg/day. The maximum permitted intake (MIP) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.01199 mg/day. The proposed action would increase the TMRC to 0.130 mg/day, utilize an additional 8.13 percent of the TMRC to bring the total percent of the ADI utilized to 51.84 percent, and result in a 3.9-percent increase of the ADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) Pesticide Analytical Manual for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on table grapes.

Based on the data and information considered by the Agency, it is concluded that the pesticide is useful for the purposes for which the toterance is sought, and it is concluded that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E2457/P451]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 26, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.380 [Amended]

2. In § 180.380 *3-(3-,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues,* by amending paragraph (b) by deleting the phrase "until May 13, 1988," from the first sentence.

[FR Doc. 88–9633 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3371–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by VAW of America, Incorporated, St. Augustine, Florida, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 13, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May 16, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW.,

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Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–VWEP–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of VAW's petitioned waste on human health and the environment. Specifically, the model will be used to predict a compliance-point concentration which will be compared directly to the level of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because VAW utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

VAW of America, Incorporated, St. Augustine, Florida

1. Petition for Exclusion

VAW of America, Incorporated (VAW), located in St. Augustine, Florida, manufactures mill-finished aluminum extrusions. VAW has petitioned the Agency to exclude its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum." The listed constituents of concern for F019 waste are chromium and complexed cyanide. VAW petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. VAW also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. VAW further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments 42 U.S.C. 6921(f), 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of VAW's petition.

2. Background

VAW originally petitioned the Agency to exclude its wastewater treatment sludge filter cake on December 17, 1986. In support of its petition, VAW submitted (1) detailed descriptions of its manufacturing and waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) total constituent and EP toxicity analyses data for all the EP toxic metals, nickel and cyanide from representative samples of the wastewater treatment sludge; and (4) total constituent analyses data for total sulfide, and total oil and grease analyses data on representative waste samples.

VAW manufactures mill-finished aluminum extrusions. The aluminum extrusions, after milling, are cleaned with heated sodium hydroxide and rinsed with water. The cleaned and milled aluminum extrusions then are dipped and sprayed with chromic acid in a chromate conversion process in order to deposit a suitable coating for subsequent painting/finishing operations. The mill-finished aluminum extrusions then are rinsed with water and dried.

The only wastes to enter VAW's treatment system are the rinse waters generated after the cleaning and chromate conversion processes. The rinse waters are combined and acidified with sulfuric acid. Sodium bisulfite is added in order to reduce the hexavalent chromium to trivalent chromium. The resulting wastewater then is neutralized with sodium hydroxide, after which both a polymer and calcium chloride are added to promote flocculation and precipitation of the metal hydroxides. The treated wastewater is pumped to a surge tank and through a clarifier and sand filter. The thickened sludge is removed from the clarifier, and water is removed from the sludge by a filter press. The effluent from the sand filter is either reused or pumped to the ground water as permitted by VAW's industrial waste treatment facility permit. The supernatant from the filter press is returned to the clarifier. The filter-pressed sludge is dropped from the filter press into a 20 cubic-yard hopper, drummed, and is currently disposed of off-site in a hazardous waste landfill.

To collect representative samples from filter presses like VAW's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

VAW collected a total of eleven grab samples of the wastewater treatment sludge filter cake over a period of eleven months. One drum of the waste was randomly selected each month. The contents of the drum were completely mixed with a stainless steel shovel, and the grab sample was collected by pushing a quart jar through the waste. Seven of the eleven samples were analyzed for both the total constituent concentrations (*i.e.*, mg of a particular constituent per kg of waste) and the extraction procedure (EP) leachate concentrations (*i.e.*, mg of a particular constituent per liter of extract), of all the EP toxic metals, nickel, and cyanide. The remaining four samples were analyzed for total constituent concentrations of sulfide and for total oil and grease content. VAW claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over the eleven month period are representative of any variation in the wastewater treatment sludge constituent concentrations.

3. Agency Analysis

VAW used SW–846 method numbers 7040–7951 and 9010 to quantify the total constituent concentrations and SW–846 method number 1310 to quantify the EP leachable concentrations of the EP toxic metals, nickel, and cyanide in their waste. VAW used SW–846 method number 9030 to quantify the total constituent concentration of sulfide. Table 1 presents the maximum total constituent concentration of the EP toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. (Analysis for EP or multiple extraction procedure (MEP) leachable concentrations of sulfide (or reactive sulfide) is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by VAW, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.) Using SW–846 method number 3540, VAW determined that its waste had a maximum oil and grease content of 0.01 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology

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(*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE FILTER CAKE (MG/KG)

Constituents	Total constituent concentration
Arsenic	<0.05
Barium	<10
Cadmium	<1.0
Chromium	18260
Lead	19.2
Mercury	<0.05
Selenium	<0.05
Silver	<1.0
Nickel	<5.0
Cyanide	<1.0
Sulfide	46.0

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE FILTER CAKE (MG/L)

Constituents	EP leachate concentration
Arsenic	<0.015
Barium	<1
Cadmium	[1] <0.05
Chromium	0.18
Lead	0.08
Mercury	<0.002
Selenium	<0.05
Silver	<0.05
Nickel	<0.1
Cyanide	[2] <0.05

[1] Although the detection limit used was <0.5 mg/l, the maximum possible EP leachate concentration of cadmium must be <0.05 mg/l, assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2 liters of water) and a theoretical worst case leaching of 100 percent.

[2] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2 liters of water) and a theoretical worst case leaching of 100 percent.

VAW submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge will be 82.5 tons. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts VAW's certified estimate of 82.5 tons (approximately 81 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant VAW's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may randomly select this facility in the future for spot-sampling.

4. Agency Evaluation

VAW stated in its petition that it plans to dispose of its petitioned wastewater treatment sludge filter cake in an offsite non-hazardous landfill if its petition is granted. The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario. Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the leachability and potential for groundwater contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of VAW's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of chromium and lead from VAW's wastewater treatment sludge filter cake. The Agency's evaluation, using the waste volume of 81 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, barium, cadmium, cyanide, mercury, nickel, selenium, and silver) from VAW's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS OF CONCERN WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituent	Compliance-point concentration (mg/l)	Regulatory standard (mg/l)
Chromium	0.0056	0.05
Lead	0.0024	0.05

The waste exhibited chromium and lead levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). Because the concentration of total cyanide is less than 1 ppm, by inference, the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide is less than 500 ppm, by inference, the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded after reviewing VAW's processes and raw materials list, that no other hazardous constituents of concern are being used by VAW, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of VAW's waste. In addition the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that VAW's wastewater treatment system can render the F019 wastes non-hazardous. VAW's manufacturing and waste treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. Additionally, despite the uniformity of VAW's processes, VAW opted to collect eleven random samples over an eleven month period—which is nearly three times the number of samples required by the Agency to be collected by petitioners having similar manufacturing and waste treatment processes. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes intended to be used thereafter. The Agency, therefore, is proposing that VAW's waste be considered non-hazardous, as it should not present a significant hazard to either human health or the environment.

The Agency, therefore, proposes to grant an exclusion to VAW of America, Incorporated, located in St. Augustine, Florida, for its wastewater treatment sludge filter cake described in its petition as EPA Hazardous Waste No. F019. If the proposed rule becomes effective, the wastewater treatment sludge filter cake should no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 22, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 1 the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
• • •	• • •	• • •
VAW of America Incorporated.	St. Augustine, FL.	Wastewater treatment sludge filter cakes (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date of final rule's publication].
• • •	• • •	• • •

[FR Doc. 88–9524 Filed 4–28–88; 8:45 am]

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40 CFR Part 261

[SW-FRL-3372-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Roanoke Electric Steel Corporation, Roanoke, Virginia, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 13, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May 16, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW, (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-RSEP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Ms. Linda Cessar, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Roanoke's petitioned waste on human health and the environment. Specifically, the model will be used to predict a compliance-point concentration which will be compared directly to the level of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Roanoke is seeking an upfront delisting (*i.e.*, an exclusion for wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and thus, would serve no purpose.

Roanoke petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable level of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of Roanoke's upfront delisting petition, a list of constituents was developed for the verification testing and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating waste, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities could be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

Roanoke Electric Steel Corporation, Roanoke, Virginia.

1. Petition for Exclusion

Roanoke Electric Steel Corporation (Roanoke), located in Roanoke, Virginia, produces reinforcing bars, billets, and merchant steel bars. Roanoke has petitioned the Agency to exclude its chemically stabilized electric arc furnace dust, presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for K061 waste are cadmium, chromium, and lead. Roanoke petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Roanoke also believes that its treatment process will generate a nonhazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Roanoke further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments 42 U.S.C. 6921(f), 40 CFR 260.22(d) (2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Roanoke's petition.

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2. Background

Roanoke originally petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD) on March 16, 1987. In support of its petition, Roanoke submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; [1] (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses data (used to assess stabilized wastes) for all the EP toxic metals, nickel and cyanide from representative samples of the CSEAFD as generated using a laboratory-scale treatment system; and (4) total constituent analyses for total sulfide, and total oil and grease analyses on representative waste samples. Once Roanoke's full-scale treatment system is on-line, EPA proposes that Roanoke be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total constituent concentrations of total reactive sulfide and total reactive cyanide on batches of treated waste (see section 4—*Agency Evaluation*).

Roanoke produces reinforcing bars, billets, and merchant steel bars by processing steel scraps in four electric arc furnaces (EAFs). The scrap steel is melted and refined in the furnace when an electric arc surges between the electrodes and scrap. When the molten steel reaches 3000 degrees Fahrenheit, it is poured into a ladle and cast into ingot molds.

The EAFs produce dust during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. The EAF dust is collected in a fluidized storage silo.

The EAF dust is then mixed with weighed amounts of certain chemicals in a prescribed ratio in accordance with Roanoke's proprietary processing sequence. Roanoke has tested laboratory-scale levels of stabilized waste in an experimental treatment unit. Data from this unit has been submitted as the basis for the petitioned upfront delisting. Roanoke plans to construct a full-scale mixing and stabilization facility once their laboratory-scale system has produced treated wastes that support an upfront delisting decision. Roanoke plans to dispose of the chemically stabilized EAF dust at an off-site non-hazardous waste dedicated landfill, if the exclusion is granted.

To collect representative samples from EAF baghouses like Roanoke's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Roanoke collected a total of five grab samples of the EAF dust from the storage silo on five different days between January 27, 1987 and March 2, 1987. Each sample was collected in a thirty gallon container and sent to Roanoke's laboratory for stabilization. The five samples were analyzed for total constituent concentrations (*i.e.*, mg of a particular constituent per every kg of waste), and extraction procedure (EP) and multiple extraction procedure (MEP) leachate concentrations (*i.e.*, mg of a particular constituent per liter of extract), of all the EP toxic metals, nickel, and cyanide. The five samples were also analyzed for total constituent concentrations of sulfide and for total oil and grease content.

Roanoke claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over a four week period are representative of any variation in CSEAFD constituent concentrations. Additionally, Roanoke claims that utilizing a fluidized (air) transport system to convey the EAF dust from the baghouses to the storage silo (where the EAF dust is continually mixed) minimizes the variability in EAF dust constituent composition/concentration (*i.e.*, mixing several day's generation of FAF dust in the storage silo will tend to average out high total constituent concentrations of the constituents of concern in the EAF dust potentially generated on one day with lower total constituent concentrations of the constituents of concern in the EAF dust potentially generated on another day, thus minimizing the expected range in total constituent concentrations of the constituents of concern in the EAF dust).

3. Agency Analysis

Roanoke used SW–846 method numbers 7040–7951 and 9010 to quantify the total constituent concentrations and SW–846 method numbers 1310 (standard EP) and 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, nickel, cyanide, and cyanide in their waste. Roanoke used SW–846 method number 9030 to quantify the total constituent concentration of sulfide. Table 1 presents the maximum total constituent concentration of the EP toxic metals, nickel, cyanide, and sulfide. Tables 2 and 3 present the maximum EP leachate values and maximum MEP leachate values of the EP toxic metals, nickel, and cyanide, respectively. (Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) are not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by Roanoke, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CSEAFD (MG/KG)

Constituents	Total constituent concentration
Arsenic	4.49
Barium	385
Cadmium	265
Chromium	2190
Lead	18100
Mercury	1.75
Selenium	1.08
Silver	31.9
Nickel	281
Cyanide	0.8
Sulfide	21.3

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS CSEAFD (MG/L)

Constituents	EP leachate concentration
Arsenic	[1] <0.22
Barium	1.48
Cadmium	0.04
Chromium	0.22
Lead	0.27
Mercury	0.001
Selenium	[1] <.054
Silver	<0.04
Nickel	<0.36
Cyanide	[1] <0.04

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2000 mls of water) and a theoretical worst case leaching of 100 percent.

[1] Roanoke claimed that its CSEAFD treatment process is confidential and proprietary; therefore, the Agency is handling information on Roanoke's CSEAFD treatment process as Confidential Business Information (CBI).

TABLE 3.—MAXIMUM MEP LEACHATE CONCENTRATIONS CSEAFD (MG/1)

Constituent	Concentration days								
	1	2	3	4	5	6	7	8	9
Arsenic [1]									
Barium	0.27	0.2	0.19	0.16	0.17	0.15	0.13	0.16	<0.03
Cadmium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	0.01	0.01
Chromium	0.03	0.02	0.02	0.02	0.04	0.02	<0.02	0.02	0.02
Lead	0.11	0.08	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05
Mercury	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Nickel	0.04	0.09	0.02	0.02	<0.02	<0.02	<0.02	<0.02	0.02
Selenium [1]									0
Silver	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	
Cyanide									

[1] Multiple extraction analyses were not completed due to the sufficiently low total constituent concentrations (*i.e.*, assuming the 20:1 liquid to solid ratio of the EP toxicity test and 100 percent leaching, the worst case extract concentration would be below the level of regulatory concern).

Using SW–846 method number 3540, Roanoke determined that its waste had a maximum oil and grease content of 0.0127 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Roanoke submitted a signed certification stating that based on current annual waste generation and laboratory-scale mixing ratio of reagent to EAF dust, its maximum annual generation rate of CSEAFD will be 15,850 tons. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Roanoke's certified esitmate of 15,850 tons (approximately 15,654 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Roanoke's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may randomly select to visit this facility in the future for spot-sampling.

4. Agency Evaluation

Roanoke stated in its petition that it plans to dispose of its petitioned stabilized waste in an off-site non-hazardous dedicated landfill if its petition is granted. The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario. Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizonal spread (VHS) landfill model which predicts the leachability and potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Roanoke's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except arsenic, selenium, and cyanide) from Roanoke's CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 15,654 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, cyanide, and selenium) from Roanoke's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). the Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS CSEAFD

Constituent	Compliance-point concentration (mg/l)	Regulatory standard (mg/l)
Barium	0.23	1.0
Cadmium	.006	0.01
Chromium	.035	.05
Lead	.043	.05
Mercury	.00015	.002
Nickel	.057	.50
Silver	.0063	.05

The CSEAFD exhibited barium, cadmium, chromium, lead, mercury, and silver levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). The concentration of nickel at the compliance point is below the Agency's health-based level of 0.50 mg/1. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO–CIN–475, January 1986.

The Agency used the MEP test to assess the long-term stability of Roanoke's stabilized waste. In this procedure, a sample of Roanoke's stabilized waste was ground and passed through a 100x mesh screen in order to determine whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of

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nine synthetic acid rain extractions were performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 3 indicate that the CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

Because the concentration of total cyanide is 0.8 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent of sulfide is 21.3 mg/kg, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded after reviewing Roanoke's processes and raw materials list, that no other hazardous constituents of concern are being used by Roanoke, and that no other constitutents of concern are likely to be present, or formed as reaction products or by-products of Roanoke's waste. In addition the waste does not exhibit any of the characteristics of ignitability corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that Roanoke's CSEAFD treatment system can render the K061 wastes non-hazardous. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades or scrap used and the particular grades of steel produced during the demonstration period and intended to be used and produced, respectively, thereafter. The Agency, therefore, is proposing that Roanoke's CSEAFD waste, once it meets certain verification testing requirements, be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency, therefore, propose to grant a conditional exclusion to the Roanoke Electric Steel Corporation, located in Roanoke, Virginia, for its fully cured chemically stabilized electric arc furnace dust treatment residue described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, the fully cured treatment residue should no longer be subject to regulation under 40 CFR Parts 262 through 266 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by Roanoke.

This proposed exclusion is conditional upon the following:

(1) *Testing:*

(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exeed 0.063 mg/l; for mescury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 1.26 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA.

(3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Section Chief, Variances Section, notifies Roanoke that the conditions have been lifted.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators, and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. Accordingly, the Agency is proposing an initial testing condition and a subsequent testing condition.

The proposed initial testing condition would require Roanoke to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency has proposed this initial testing condition to both gather data obtained from the full-scale treatment system, and to ensure that the full-scale treatment system is closely monitored during the start-up period.

The proposed subsequent testing condition provides the Agency with final verification data showing that the full-scale treatment system is operating as described in the petition and would be initiated once the initial testing period is completed. As proposed, the subsequent testing condition would require Roanoke to continue the daily testing and reporting requirements of the initial testing condition until EPA received the results from four consecutive daily composites of the petitioned waste showing that the maximum allowable levels (*i.e.*, the delisting levels of condition number 2) were not exceeded and the Section Chief, Variances Section, notified Roanoke that the conditions had been lifted.

The Agency proposed a mechanism to terminate the testing and reporting requirements of the subsequent testing condition for the following reasons: (1) Based on the laboratory-scale data submitted by Roanoke, the Agency believes that consistently non-hazardous wastes can be generated from the CSEAFD treatment process and thus continued testing would be excessive; and (2) termination of this condition after four consecutive daily composites meeting the delisting levels of condition number (2), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986), require continuous batch testing.

(4) *Data submittals:* All data must be submitted to the Section Chief, Variances Section, PSPD/OSW, (WH–563), U.S. EPA, 401 M Street, S.W., Washingotn DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Roanoke's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(Name of Certifying Person)

Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered or if the percentage of each different type of scrap metal (*i.e.*, steel turnings, #1 bundles, #2 bundles, #1 steel, #2 steel, busheling, railroad steel, plate and structural, shredded scrap, and railroad specialties) used to charge the furnace falls outside the percent range of each type of scrap metal historically used to charge the furnaces (as documented in the petition), and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 22, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 2 the following wastestream in alphabetical order:

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Appendix IX.—Wastes Excluded Under §§260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Roanoke Electric Steel Corporation	Roanoke, Virginia	Chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the data obtained from Roanoke's full-scale CSEAFD treatment facility because Roanoke's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Roanoke must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A). (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 1.26 mg/1, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA. (3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Section Chief, Variances Section, notifies Roanoke that the conditions have been lifted. (4) *Data submittals:* All data must be submitted to the Section Chief, Variances Section, PSPD/OSW, (WH–563), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Roanoke's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premises upon the company's reliance on the void exclusion."

[FR Doc. 88–9523 Filed 4–28–88; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 704

[OPTS–82032; FRL–3372–6]

EDTMPA and its Salts; Submission of Notice of Manufacture or Import

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to require reporting by manufacturers and importers of the chemical substances phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]] tetrakis-(EDTMPA) (CAS No. 1429–50–1) and its salts. This proposed reporting rule would allow EPA to monitor the manufacture, import, and end uses of EDTMPA and its salts, and to investigate the health and environmental impacts of those activities. Small businesses that manufacture or import these substances would be exempt from this rule.

DATE: Written comments on this proposed rule should be submitted by May 31, 1988.

ADDRESS: Comments should bear the docket control number OPTS–82032 and should be submitted, in triplicate, to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M Street SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M Street SW., Washington, DC 20460, Telephone: (202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is proposing this rule pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a). Section 8(a) authorizes the Administrator to promulgate rules which require each person (other than a small manufacturer or importer) who manufactures or imports or who proposes to manufacture or import a chemical substance, to submit such reports as the Administrator may reasonably require.

II. Summary of This Rule

This proposed rule applies to the chemical substances identified on the TSCA Chemical Substance Inventory as:

CAS No.	Chemical name
1429–50–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-(EDTMPA)
15142–96–8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-hexasodium salt
34274–30–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-potassium salt
57011–27–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-ammonium salt
67924–23–6	Cobaltate(6-),[[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969–67–9	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)-N,N',O,O'',O''',O''''']-, pentasodium hydrogen, (OC-6-21)-
67969–69–3	Cuprate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025–39–8	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (6-)-N,N',O,O'',O''',O''''']-, pentaammonium hydrogen, (OC-6-21)-
68186–96–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-tetrapotassium salt
68309–98–8	Cadmate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68901–17–7	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-octaammonium salt
68958–86–1	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]tetrakis-[phosphonato]](8-)]-, pentaammonium hydrogen, (OC-6-21)-
68958–87–2	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68958–88–3	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentasodium hydrogen, (OC-6-21)-

(hereinafter referred to as EDTMPA and its salts).

The rule would require each manufacturer and importer initially to report the quantity of each substance manufactured or imported for the person's most recently completed corporate fiscal year, a description of the commercial uses of the substance during the most recently completed corporate fiscal year, the estimated quantity proposed to be manufactured or imported in the current corporate fiscal year, and a description of the intended commercial uses of the substance during the current corporate fiscal year. Follow-up reporting would be required when a person manufactures or imports a substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report, and/or when the person manufactures or imports a substance for a use not previously reported. The Agency solicits comment on the alternative of follow-up reporting when a person manufactures or imports a substance in a quantity 100 or 200 percent greater than the quantity reported in the most recently submitted report, and/or when the person manufactures or imports a substance for a use not previously reported. The Agency also solicits comment on the alternative of requiring annual reporting in lieu of reporting each time the 50 percent production volume increase is met and/or when the substance is manufactured or imported for a use not previously reported.

Because of the potentially large number of substances analogous to the EDTMPA anion, the Agency is announcing its intent that such analogous substances may be added to this proposed rule through notice and comment rulemaking. However, the data received from this proposed rule may allow EPA to make a class judgement as to hazard potential and obviate the need to gather additional data by amending the rule to add substances.

The Agency is aware that duplicative reporting with the Inventory Update rule (40 CFR Part 710 Subpart B) is a possibility. However, if the report for this section 8(a) rule is submitted within the year preceding the start of a reporting period under the Inventory Update Rule (IUR), the submitter will not be required by the IUR to report the same information again for that reporting period. The details of this exemption are set forth in 40 CFR 710.35. For example, the next recurring reporting period under the IUR is from August 25, 1990 to December 23, 1990 for any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance at any site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990. Thus, if a person were required to report for this proposed section 8(a) rule within the year preceding the start of the IUR reporting period just described, such person would be exempt from reporting under the IUR.

There would be separate reports for each listed substance. Initial reports required under this rule would include the following information:

1. Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

2. Company name and headquarters address.

3. Name, address, and telephone number of the principal technical contact.

4. The total quantity (by weight in pounds) of the substance manufactured or imported for the most recently completed corporate fiscal year.

5. A description of the commercial uses of the substance during the most recently completed corporate fiscal year, including the production volume for each use.

6. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.

7. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

Follow-up reports required under this rule would include the following information:

1. Name and Chemical Abstracts Service Registry Number of the

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substance for which the report is submitted.

2. Company name and headquarters address.

3. Name, address, and telephone number of the principal technical contact.

4. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.

5. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

III. Agency Objectives

A. Background

EPA reviewed both the TSCA Chemical Substance Inventory data base and other information sources for EDTMPA and its salts to identify current manufacturers and importers. EDTMPA and its salts appear to be produced and imported in low volumes. They have had a wide variety of uses based on their ability to prevent hydroxyapatite crystal formation. They are used mostly in the industrial treatment of water and in electroplating. They may be used in consumer products.

There are relatively few pathways for significant exposure from current uses of EDTMPA and its salts. These substances are expected to be readily removed in waste water treatment and to be bound to soils and sediments. The wastes from most known uses are expected either to be treated in waste water or disposed of as hazardous waste. There is little exposure during production and the product is marketed as a concentrated solution. EPA is not concerned about exposure during electroplating because this is a small volume end use and the waste generated by this process must be treated as a hazardous waste. However, consumer exposure could occur from potential uses in detergents and other consumer products, from medical diagnostic tests, and from the use of EDTMPA and its salts as scale inhibitors in water systems. These new uses could result in large scale release of EDTMPA into the environment through new pathways. Widespread use of EDTMPA in water treatment could result in exposure through handling concentrated solutions misting from cooling towers, and accidental exposure through improper cooling system installation and maintenance.

B. Reasons for This Proposed Rule

EPA's Office of Toxic Substances (OTS) initiated assessment of the health risks from EDTMPA exposure in response to a TSCA section 8(e) notice reporting osteosarcomas in male rats orally dosed with the substance. A Chemical Hazard Information Profile on EDTMPA was prepared that identified the chemical's use to prevent precipitation of calcium salts as the major potential source of exposure. Subsequent evaluation in the OTS Existing Chemicals Program confirmed the hazard concern.

Overall, the available information on EDTMPA suggests that humans exposed to the substance may be at risk of developing bone cancer, non-neoplastic bone disease, metabolic disturbances, or blood dyscrasias. The salts of EDTMPA can reasonably be expected to have the same health effects as EDTMPA itself. Testing of complex mixtures containing EDTMPA and various salts shows substantially the same health effects as EDTMPA alone. Furthermore, all the salts covered by this proposed rule are highly water soluble and in solution will form the identical anion to that formed by EDTMPA. This anion is the form absorbed into the body and carried through the environment. The accompanying cations are expected to have few physiologic or environmental effects at moderate exposure levels.

EPA requires the information proposed in this rule because EDTMPA has potentially serious hazards to human health. Animal experiments show carcinogenicity and toxicity to bone. The exposure information currently available to the Agency indicates that current potential exposure is quite low. EDTMPA appears to be used in limited quantities in electroplating and in cooling water treatment. The Agency's analysis indicates that these quantities and uses have limited risk associated with them. The Agency is not, however, satisfied that this information on current uses is complete. It is possible that EDTMPA is also used in oil drilling muds and cements, in comfort cooling towers, and in other uses that may present serious and/or widespread exposures. The Agency needs the requested information to confirm the actual current uses of EDTMPA to assess exposures and potential risks. In addition, the Agency needs to know if expanded or new uses with higher exposure replace old uses. This proposed rule would provide the Agency information regarding any major changes in exposure to EDTMPA and its salts so that the Agency can take appropriate action.

IV. Confidentiality

The procedures for submitting a notice with a confidentiality claim are set forth in 40 CFR 704.7 which would apply to this proposed rule. A person submitting a claim of confidentiality attests, among other things, that: My company has taken measures to protect the confidentiality of the information, we intend to continue to take such measures, and the information is not, and has not been, reasonably obtainable by other persons (other than government bodies) without our consent.

V. Economic Impact

EPA estimates that compliance costs will range from $170 to $740 for each notice. The cost estimate for data acquisition and notice preparation includes:

Data acquisition	$90 to $480
Notice preparation (typing)	$14 to $56
Managerial and legal review	$65 to $195
Total	$169 to $731

VI. Rulemaking Record

The following documents constitute the record for this proposed rule (docket control number OPTS–82032). All documents, including the index to this record, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC. The record includes the following information considered by the Agency in developing this proposed rule:

1. A chemical hazard information profile for EDTMPA.

2. The TSCA section 8(e) notice (8EHQ–0683–0483*S*) on EDTMPA (submitted July 15, 1983).

3. Reporting and recordkeeping requirements (40 CFR Part 704).

4. Economic analysis of this proposed rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between the date of this proposal and that designation.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this proposed rule would not be "major" because it would not have an effect of $100 million or more on the economy. EPA also anticipates that this proposed rule would not have a significant effect on competition, costs, or prices.

This proposed rule was submitted to the Ofifce of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities. EPA expects only one company to report under this rule, well within Regulatory Flexibility Act guidelines. In addition, the rule would exempt "small manufacturers" (as defined in 40 CFR 704.3) from reporting on these substances. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has aassigned OMB Control Number 2070–0067. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous materials, Imports, Recordkeeping and reporting requirements.

Dated: April 21, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 704 be amended as follows:

PART 704—[AMENDED]

a. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

b. By adding § 704.95 to read as follows:

§ 704.95 Phosphonic acid, [1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis- (EDTMPA) and its salts.

(a) *Substances for which reporting is required.* The chemical substances for which reporting is required under this section are:

CAS No.	Chemical name
1429–50–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- (EDTMPA)
15142–96–8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- hexasodium salt
34274–30–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- potassium salt
57011–27–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- ammonium salt
67924–23–6	Cobaltate (6-), [[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969–67–9	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)-N,N',O,O'',O''',O''''']-, pentasodium hydrogen, (OC-6-21)-
67989–89–3	Cuprate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025–39–8	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (6-)-N,N',O,O'',O''',O''''']-, pentaammonium hydrogen, (OC-6-21)-
68188–96–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- tetrapotassium salt
68309–98–8	Cadmate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68901–17–7	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- octaammonium salt
68958–86–1	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentaammonium hydrogen, (OC-6-21)-
68958–87–2	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68958–88–3	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentasodium hydrogen, (OC-6-21)-

(b) *Persons who must report.* Unless exempt as provided in § 704.5, reports must be submitted by:

(1) Persons who manufacture or import any of the substances identified in paragraph (a) of this section.

(2) Persons who propose to manufacture or propose to import any of the substances identified in paragraph (a) of this section. For the purposes of importer reporting under this section, an import site is the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction; the import site may in some cases be the organization's headquarters office in the United States.

(c) *What information to report.* Persons identified in paragraph (b) of this section must report to EPA, for each of the substances identified in paragraph (a) of this section, the following information to the extent known to or reasonably ascertainable by them.

(1) *Initial Report:* (i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The total quantity (by weight in pounds) of the substance manufactured or imported for the person's most recently completed corporate fiscal year.

(v) A description of the commercial uses of the substance during the person's most recently completed corporate fiscal year, including the production volume for each use.

(vi) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(vii) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(2) *Follow-up Report:* (i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(v) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(d) *When to report.* (1) Persons specified in paragraph (b)(1) of this

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section who are manufacturing or importing the substance as of [insert effective date of final rule] must submit an inital report described in paragraph (c)(1) of this section by [insert date 30 days after the effective date of the final rule].

(2) Persons specified in paragraph (b)(2) of this section must submit an initial report within 30 days after making the management decision described in § 704.3 or by [insert date 30 days after the effective date of the final rule], whichever is later.

(3) Persons specified in paragraph (b) of this section, who submitted a report described in paragraph (c)(1) of this section, must submit a follow-up report described in paragraph (c)(2) of this section within 30 days of making the management decision, described at § 704.3, to do either of the following events:

(i) Manufacture or import the substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report; or

(ii) Manufacture or import the substance for a use not reported for that substance in any previous report.

(e) *Certification.* Persons subject to this section must attach the following statement to any information submitted to EPA in response to this section: "I hereby certify that, to the best of my knowledge and belief, all of the attached information is complete and accurate." This statement must be signed and dated by the company's principal technical contact.

(f) *Recordkeeping.* Persons subject to the reporting requirements of this section must retain documentation of information contained in their reports for a period of 5 years from the date of the submission of the report.

(Approved by the Office of Management and Budget under Control Number 2070-0067)

[FR Doc. 88-9522 Filed 4-28-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[DA 88-455]

Motions for Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Order granting NECA's request for an extension of time to file proposed revisions to the average schedules for 1988.

SUMMARY: By delegated authority, the Chief of the Common Carrier Bureau adopted an Order on April 4, [Order DA 88-455 (released April 12, 1988)], granting NECA's request that time for filing proposed revisions to the average schedules for 1988 be extended. The Order granted the request and required NECA to file proposed revisions to the average schedules by October 3, 1988, with a proposed effective date of January 1, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (DA 88-455), adopted April 4, 1988 and released April 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Affairs Office (Room 202), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, Suite 140, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. On June 30, 1987, the National Exchange Carrier Association, Inc. (NECA) proposed revisions to the average schedules that, if approved would have had an effective date of January 1, 1988. Subsequently, the Commission released an Order that declined to accept NECA's proposed revisions, provided corrective guidelines and directed NECA to file proposed revisions, consistent with that Order, no later than May 2, 1988, with an effective date of October 1, 1988 (NECA's Proposed Revisions to the Average Schedules for 1988, Memorandum, Opinion and Order, 3 FCC Rcd 172 (1988)).[1] On February 22, 1988, NECA filed a petition requesting that the time for filing proposed revisions be extended. NECA claimed that additional time was needed to complete the statistical data collection program and secure the additional data necessary to comply with the Commission Order. The Commission granted the request to extend the time for filing proposed revisions to the average schedules until October 3, 1988, with a proposed effective date of January 1, 1989.

[1] Not published in the **Federal Register**.

Ordering Clauses

2. Accordingly, *it is hereby ordered*, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that NECA shall file proposed revisions to the average schedules on October 3, 1988, with a proposed effective date of January 1, 1989.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-9359 Filed 4-28-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

48 CFR Parts 1428 and 1452

Acquisition Regulation; Aircraft and General Liability Insurance

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Department of the Interior Acquisition Regulation (DIAR) by prescribing a revised liability insurance clause for use in fixed-price contracts for aircraft services.

DATE: Comments must be received on or before June 28, 1988.

ADDRESS: Comments should be addressed to Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, Room 5526, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, telephone (202) 343-3433.

SUPPLEMENTARY INFORMATION: The clause entitled, "Risk and Indemnities—Department of the Interior (DIAR 1452.228-71)," is currently prescribed for use in fixed-price contracts for aircraft services with contractor-furnished pilot. This clause, which preceded the Federal Acquisition Regulation (FAR), was promulgated because no suitable clause existed within the Federal Procurement Regulations. The Office of Aircraft Services has determined that the clause at FAR 52.228-10, Vehicular and General Public Liability Insurance, with minor revisions, is more appropriate for establishing liability limits under the Department's aircraft services contracts with contractor-furnished pilots than the current clause. Therefore, this rule proposes to adapt the clause at FAR 52.228-10 for this purpose. The liability limits proposed in the clause are the same as those prescribed by the Department of Transportation for air taxi operators providing air transporation to the public.

Primary Author

The primary author of this rule is Mr. Jay Hess, Office of Aircraft Services, Department of the Interior, P.O. Box 15428, Boise, Idaho 83715-9998, telephone (208) 554-9480.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291 since it proposes to revise only existing limits of liability on contractors which provide aircraft services with pilot to the Department by adapting an existing clause prescribed in the FAR.

The Department also certifies that this rule will not have a significant effect on a substantial number of small entities since it will affect only those contractors which enter into fixed-price contracts with the Department for aircraft services with furnished pilot.

No information collection requirement are contained in the proposed rule.

List of Subjects in 48 CFR Parts 1428 and 1452

Government procurements.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

Date: March 23, 1988.

1. The authority citations for 48 CFR Parts 1428 and 1452 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1428—BONDS AND INSURANCE

2. Section 1428.306-70(c)(1) is revised to read as follows:

1428.306-70 Insurance for aircraft services contracts.

* * * * *

(c) * * *

(1) The contracting officer shall insert the clause at 1452.228-71, Aircraft and General Liability Insurance—Department of the Interior, in all fixed-price contracts for operation of aircraft with contractor-furnished pilot.

* * * * *

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1452.228-71 is revised to read as follows:

1452.228-71 Aircraft and general public liability.

As prescribed in 1428.306-70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

AIRCRAFT AND GENERAL PUBLIC LIABILITY INSURANCE—DEPARTMENT OF THE INTERIOR ( )

(a) The contractor, at the contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for (1) bodily injury to or death of aircraft passengers of not less than $75,000 for any one passenger and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying $75,000 by 75 percent of the total number of passenger seats installed in the aircraft, (2) bodily injury or death of persons (excluding passengers) of not less than $75,000 for any one person in any one occurrence and $300,000 for each occurrence, and (3) property damage of not less than $100,000 for each occurrence, or (4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in (1) through (3) above.

(b) The contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the contractor's own employees and agents.

(End of clause)

[FR Doc. 88-9504 Filed 4-28-88; 8:45 am]
BILLING CODE 4310-RF-M

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Notices

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 10, 1988.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Training laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). to hear persons, who have asked to address the committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the pairing or grouping of burley markets and the distribution of the graders among markets for the 1988–89 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee chairperson. Persons, other than members who wish to address the Committee at the meeting should contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2567, prior to the meeting.

Dated: April 25, 1988.

J. Patrick Boyle,

Admininstator, Agricultural Marketing Service.

[FR Doc. 88–9529 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: May 16–17, 1988

Time:
8:30 a.m. to 3:00 p.m., May 16, 1988
8:00 a.m. to 5:30 p.m., May 17, 1988

Place:
Agricenter International, 7777 Walnut Grove Road, Memphis, Tennessee (May 16).
Delta Branch Experiment Station, Stoneville, Mississippi (May 17)

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: Review diversified farming program and operations that have had a positive economic impact on the area.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 21st day of April 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–9532 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–22–M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Establishment of New Record System

AGENCY: Central Intelligence Agency.

ACTION: Notice of new system of records subject to the Privacy Act.

SUMMARY: The Central Intelligence Agency is adding a new system of records to its existing inventory of record systems subject to the Privacy Act as amended (5 U.S.C. 552a).

EFFECTIVE DATES: The proposed action will be effective without further notice on or before May 31, 1988, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, telephone: (703) 351–2083.

SUPPLEMENTARY INFORMATION: The new record system identified as CIA–71 is entitled: National Intelligence Council Records System. A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted pursuant to section 4.b. of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Dated: April 14, 1988.

R. M. Huffstutler,

Deputy Director for Administration.

SYSTEM NAME:

National Intelligence Council (NIC) Records System.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, D.C. 20505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have an employment, detailee, liaison, contractual or operational relationship with the Central Intelligence Agency or with Intelligence Community agencies, and individuals who are of foreign intelligence, counterintelligence or security interest to the CIA or Intelligence Community, including individuals identified as being involved in activities related to intelligence matters such as the possible compromise of classified information or activities otherwise implicating intelligence sources and methods and other information protected by statute or Executive order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; intelligence requirements, analysis, and reporting; National Intelligence Council operational records; bibliographic information about individuals of intelligence or security interest; articles, public-source data, and other published information on individuals and events of interest to the CIA; actual or purported compromises of classified information; countermeasures in connection therewith; investigative data related to compromises of classified information; other policy and operational data based primarily on foreign intelligence, counterintelligence, and security reporting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended—Pub. L. 80–253.

Central Intelligence Agency Act of 1949, as amended—Pub. L. 81–110.

Executive Order 12333.

Executive Order 12356.

Section 506(a), Federal Records Act of 1950 (44 U.S.C. section 3101).

Intelligence Authorization Act for Fiscal Year 1988—Pub. L. 100–178.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide classified and unclassified information within the Central Intelligence Agency and to appropriate Intelligence Community and U.S. Government officials for the conduct of authorized activities.

To inform and provide information to U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure upon intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

A record from this system of records could be disclosed as a "routine use" in order to facilitate any security, employment, detail, liaison, or contractual decision by the CIA or any U.S. Government organization. Records further could be disclosed in response to or by direction of a court order, or where there is an indication of a violation or potential violation of law, whether civil, criminal, or administrative in nature, to the appropriate Federal, state, or local agency charged with the responsibility of prosecuting such violation or charged with implementing or enforcing a statute or law, regulation, or order issued pursuant thereto. Records also could be disclosed to other agencies if necessary for the protection of intelligence sources and methods and in support of intelligence analysis and reporting. Additionally, records from this system could be used to prepare periodic substantive reports for U.S. Government officials related to the control and dissemination of classified information.

The statement of general routine uses applicable to and incorporated by reference into systems of records maintained by the Central Intelligence Agency are incorporated into this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media integral to automated information systems operated by the National Intelligence Council

RETRIEVABILITY:

By category of information contained therein, including by name.

SAFEGUARDS:

Files are maintained in accordance with Executive Order 12356 and Information Security Oversight Office Directive Number 1.

RETENTION AND DISPOSAL:

Files are destroyed in accordance with Chapters 29 and 33 of Title 44 United States Code and Information Security Oversight Office Directive Number 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, National Intelligence Council, Central Intelligence Agency, Washington, D.C. 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Identification requirements are specified in the Central Intelligence Agency rules published in the Code of Federal Regulations (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed as indicated in the Notification Procedure section above.

CONTESTING RECORD PROCEDURES:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by the Central Intelligence Agency concerning access to or correction of the records, are promulgated in the Central Intelligence Agency rules section of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals themselves; other U.S. agencies and organizations; public media, including books, periodicals, newspapers, and broadcast transcripts; unclassified and classified official reporting, intelligence source documents, investigative reports, and correspondence.

[FR Doc. 88–9501 Filed 4–28–88; 8:45 am]

BILLING CODE 6310–02–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee; Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues SE., Washington, DC 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230 Telephone (202) 377–3271.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1987 of 38 committees and their subcommittees, the names of which are listed below:

Automated Manufacturing Equipment Technical Advisory Committee

Biotechnology Technical Advisory Committee

Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee

Computer Systems Technical Advisory Committee
—Hardware Subcommittee

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—Software Subcommittee
—Licensing Procedures and Regulations Subcommittee
Electronic Instrumentation Technical Advisory Committee
ISAC on Capital Goods for TPM
ISAC on Chemicals and Allied Products for TPM
—Subcommittee on Advanced Materials
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
—Subcommittee on Multilateral Trade Negotiations
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
— U.S. Canada Free Trade Agreement Subcommittee
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Intellectual Property Rights for TPM
Industry Functional Advisory Committee on Standards for TPM
—Subcommittee of International Standards
ISAC on Aerospace Equipment for TPM
—Government Supports Subcommittee
—Military Trade Subcommittee
—Purchase/Finance Subcommittee
—Space Equipment Subcommittee
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
Materials Technical Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Medal of Technology Nomination Evaluation Committee
President's Export Council
—International Competitiveness and Productivity Subcommittee
—Foreign Trade Practices and Negotiations Subcommittee
Subcommittee on Export Administration
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Fiber Optics Subcommittee
—Radio Subcommittee
—Switching Subcommittee
Transportation and Related Equipment Technical Advisory Committee
Travel and Tourism Advisory Board.

FOR FURTHER INFORMATION CONTACT: Jan Jivatode, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377–3271.

April 22, 1988.

Jan Jivatode,

Management Support Division, Office of Management and Organization.

[FR Doc. 88–9500 Filed 4–28–88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A–588–706]

Final Determination of Sales at Less Than Fair Value: Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) from Japan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to a United States industry.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Debra Conner or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377–1778 or 377–2613.

Final Determination

We have determined that nitrile rubber from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of an affirmative preliminary determination (53 FR 4193, February 12, 1988) a supplemental response was filed by the respondent on February 11, 1988.

A public hearing was not requested. Final comments were submitted by both the petitioner and respondent.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the United States annotated *(TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is butadiene acrylonitrile copolymer synthetic rubber not containing fillers, pigments, or rubber-processing chemicals, currently provided for under the *TSUSA* item number 446.1511 and currently classifiable under HS item number 4002.59.00.

Period of Investigation

Based on petitioner's claim that sales and imports of nitrile rubber are traditionally strongest in the early months of each year, we extended the period of investigation for Nippon Zeon to January 1, 1987–September 30, 1987, as permitted by 19 CFR 353.38(a).

Such or Similar Comparisons

We determined that Nippon Zeon had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. For all U.S. sales examined, there were sales of identical merchandise in the home market.

Fair Value Comparisons

To determine whether sales of nitrile rubber from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

United States Price

In its original response to our questionnaire, Nippon Zeon claimed that its U.S. sales were made through an unrelated company, Nichimen Japan-Nichimen America (Nichimen), and that Nichimen acted as Nippon Zeon's agent. Nippon Zeon reported the prices charged by Nichimen in the United States and the commission paid by Nippon Zeon to Nichimen. At the Department's request, Nippon Zeon provided a copy of its agreement with Nichimen and a fuller description of the commission paid to Nichimen.

Based on our verification of the agreement, we have determined that Nichimen does not act as Nippon Zeon's agent. The agreement between Nichimen and Nippon Zeon clearly illustrates that a "sale" is made from Nippon Zeon to Nichimen. Nichimen pays for the merchandise and resells the merchandise to an unrelated customer in the United States. While Nichimen provides certain services to Nippon Zeon, Nippon Zeon does not control the activities of Nichimen. In particular, Nippon Zeon controls pricing to the U.S. customer.

Therefore, we have determined that Nichimen is not Nippon Zeon's agent and that the price Nippon Zeon charges Nichimen is the appropriate sales price to be used. This is in accordance with the Department's usual practice in cases where a manufacturer is aware of the destination of its goods when such goods are sold to an unrelated trading company. *See, e.g., Certain Forged Steel Crankshafts from Japan,* 52 FR 36984 (October 2, 1987); *Birch Three-Ply Doorskins from Japan,* 47 FR 50537 (November 8, 1982).

At the Department's request, Nippon Zeon provided a revised U.S. sales listing on February 11, 1988 showing the invoiced price from Nippon Zeon to Nichimen.

We have calculated purchase price by deducting from Nippon Zeon's invoiced price to Nichimen, foreign inland freight and insurance, and export brokerage and handling. We also made an adjustment for post-sale price adjustments.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on Nippon Zeon's packed delivered prices to unrelated customers in the home market. We made deductions from the home market price where appropriate, for inland freight, insurance and rebates. In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs. We also made adjustments to the home market price, where appropriate, for differences in credit expenses pursuant to 19 CFR 353.15.

Nippon Zeon claimed adjustments for warehousing, indirect selling expenses, inventory carrying costs, technical services, and sale promotion expenses in home market. With respect to the adjustments for warehousing, technical services and sale promotion activities, we have denied these claims because respondent has not demonstrated that they are directly related to home market sale, in accordance with 19 CFR 353.15.

Moreover, we have not allowed adjustments for indriect selling expenses because U.S. sales were treated as purchase price transactions and no commission was recognized on those sales. The claim for inventory carrying costs was withdrawn at verification by Nippon Zeon officials.

Currency Conversion

Since all U.S. sales were purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1).

Critical Circumstances

On Septemer 1, 1987, the petitioners alleged that "critical circumstances" exist within the meaning of section 733(e) of the Act with respect to nitrile rubber from Japan. In determining whether critical circumstances exist, that section provides that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject to investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In order to determine whether massive imports have taken place over a short period of time we looked at the volume and value of the imports.

In this proceeding, we examined import statistics provided by the petitioner and the respondent, as well as U.S. government collected data. Based on this information, we believe that massive imports have not occurred. Having so concluded, it is not necessary for us to address the issue of whether there is a history of dumping or whether the importers should have known that the merchandise was being sold at less than fair value.

Based on the above information, we determine that critical circumstances do not exist with respect to imports of nitrile rubber from Japan.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and source documents.

Interested Party Comments

Comment 1. Respondent argues that the Japanese trading company composed of Nichimen Corporation ("Nichimen Japan") and Nichimen America, Inc. ("Nichimen America") (collectively, "Nichimen") acts as an agent on Nippon Zeon's sales of nitrile rubber to the United States.

Petitioner argues that Nichimen is not acting as an agent but rather, is the first unrelated purchaser of nitrile rubber.

DOC Position. The Department agrees with the petitioner. There is no evidence to suggest that Nichimen is related to Nippon Zeon, or that the relationship differs in any significant way from the usual relationship between a manufacturer and a trading company. Furthermore, our review of the agreement submitted by respondent and of supporting documents available at verification did not present facts inconsistent with the application of our usual practice in cases where a manufacturer is aware of the destination of its goods when those goods are sold to an unrelated trading company. (See the "United States Price" section above.)

Comment 2. Petitioner argues that the correct U.S. price is the price from Nippon Zeon to Nichimen Japan.

Respondent argues that the correct U.S. price is the price to Nichimen's unrelated customer in the United States.

DOC Position. The Department agrees with the petitioner. As noted above in the "United States Price" section of this

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notice, in cases where a manufacturer sells to an unrelated trading company with knowledge of the ultimate destination of merchandise under investigation, it is our usual practice to consider that sale as the first sale to an unrelated party. We then use that sale to determine the purchase price with respect to which all adjustments and calculations will be made.

Comment 3. Petitioner submits that the Department should adjust the U.S. price by the amount of a post-sale adjustment.

DOC Position. The Department agrees with the petitioner. Under the agreement between Nippon Zeon and Nichimen a post-sale adjustment is made to the invoiced price. The invoiced price is adjusted to reflect currency adjustments and changes in freight costs. Because this adjustment increases or reduces the return to Nippon Zeon on its U.S. sales, we have included it in the calculation of U.S. price.

Comment 4. Respondent submits that the Department should terminate the investigation because the petitioner lacks standing.

DOC Position. The Department disagrees with the respondent. No domestic producer has stated its opposition to the investigation. *See, e.g., Fabric Expanded Neoprene Laminate from Japan,* 50 FR 23488 (6/4/85); *Offshore Platform Jackets and Piles from Japan,* 51 FR 11788 (4/7/86).

Comment 5. Respondent submits that all home market charges claimed (with the exception of inventory carrying costs) be used in the calculation of foreign market value.

Petitioner argues that direct selling expenses, advertising and sales promotion, technical services, warehousing, indirect selling expenses, and inland freight should be rejected and not used in the calculation of foreign market value.

DOC Position. The Department has allowed inland freight costs as an adjustment to the home market price since they were fully supported at verification.

The Department has not allowed adjustments for the remaining charges as explained in the "Foreign Market Value" section of this notice.

Comment 6. Petitioner submits that the Department should determine that critical circumstances exist based on the import statistics from the Journal of Commerce.

Respondent submits that the Department should determine that critical circumstances do not exist based on the import statistics provided by its sole U.S. importer, Nichiemen.

DOC Position. The Department agrees with the respondent. Information we have obtained indicates that Nippon Zeon's exports of nitrile rubber represent approximately 95% of all imports from Japan. For this reason, the Department has used Nichimen's verified import statistics to form the basis of our analysis in the determination of critical circumstances.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of nitrile rubber from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of nitrile rubber from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Nippon Zeon Co., Ltd	146.50
All others	146.50

This suspension of liquidation covers imports of nitrile rubber as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on nitrile rubber from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 25, 1988.

[FR Doc. 88-9533 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, with respect to certain flat-rolled steel.

DATE: Comments must be submitted on or before May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Korea, and U.S.-Brazil arrangements, and of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet the demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for the following flat-rolled steel products, whether in coils or cut-to-length: (1) Certain AISI grade C1010 mechanically capped or rimmed steel, with widths ranging from 12 to 72 inches and thicknesses ranging from 0.187 to 0.500 inch; and (2) certain AISI grades C1015 and C1020 killed, mechanically capped or rimmed plate, with widths ranging from 18 to 72 inches, and thicknesses ranging from 0.375 to 0.625 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 25, 1988.

[FR Doc. 88-9534 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to: Fees, Permits and Regulations Division (F/TS21), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fisher Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1988 have been received from the Governments shown below.

Dated: April 21, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and Fishery	Regional Fishery Management Councils
ABS: Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA: Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA: Gulf of Alaska	North Pacific.
NWA: Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA: Snails (Bering Sea).	North Pacific.
WOC: Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS: Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code	Fishing Operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
(*)	Vessel(s) in support of U.S. vessels Joint Venture).
(**)	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

JOINT VENTURE—THE WASHINGTON, OREGON AND CALIFORNIA TRAWL FISHERIES (WOC) PACIFIC HAKE REQUEST

Country	Directed	JV venture	American partner
China	5,000	10,000	Alaska World Trade Corp/Anchorage, AK; China Pacific Ventures/Seattle, WA.
Japan	5,000	10,000	Northern Deep Sea Fisheries/Seattle, WA.
Koreaw	5,300	5,300	Dona JV Fisheries/Seattle, WA.
Poland	51,000	51,000	Quest Export Trading Co./Coos Bay, OR; Profish Int'l/Seattle, WA; Alaska Pacific Int'l/Seattle, WA.
USSR	45,000	45,000	Marine Resources Co. Int'l/Seattle, WA.

This notice confirms the amounts requested by the applying nation as of April 18, 1988. Some applicants had indicated changes might be made in the amounts requested earlier.

[FR Doc. 88-9503 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Trademark Affairs Public Advisory Committee; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

BEST COPY AVAILABLE

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 4:00 p.m. on June 7, 1988.

Place: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2 Building, Room 912, Arlington, Virginia.

Status: The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come-first-served basis. If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters to be considered: The agenda for the meeting is as follows:

(1) Implementation of Proposed Intent-to-Use Legislation
(2) Automation Activities
(3) Application Processing and Prosecution

Contact person for more information: For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557-7464.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-9542 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-16-M

CONSUMER PRODUCT SAFETY COMMISSION

Development of Voluntary Standard for All-Terrain Vehicles; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The major members of the all-terrain vehicle ("ATV") industry have scheduled a meeting on May 4, 1988, for planning and further development of a voluntary safety standard for ATVs. One of the primary purposes of the meeting is to identify the areas that should be given first priority in developing a voluntary standard and to develop a schedule for dealing with these areas. Interested members of the public are invited to attend the meeting and observe or participate in the development of the standard. Persons wishing to attend the meeting or to be notified of future meetings of the committee should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K-107, Costa Mesa, California 92626, phone (714) 241-9256.

DATE: The meeting is scheduled for 10:00 a.m. on May 4, 1988.

ADDRESS: The meeting will be held at the Consumer Product Safety Commission, Room 556, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Nicholas Marchica, Voluntary Standards Coordinator, Office of the Executive Director, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492-6550.

SUPPLEMENTARY INFORMATION:

Background

The Commisison for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the oeprator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register**. 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States v. American Honda Motor Co., Inc. et al.*, Civil Action No. 87-3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contain provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the proposed final consent decrees, which have not yet been approved by the Court, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees. Although the final consent decrees have not yet been approved by the Court, the meeting that is announced in this notice is in furtherance of the agreement provided in the proposed final decrees.

Nature of Meeting

Commission policy requires that all voluntary standards meetings attended by the CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, persons wishing to attend the meeting should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K-107, Costa Mesa, California 92626, phone (714) 241-9256, by May 2, 1988. In addition, persons who wish to participate in the development of the standard should notify Mr. Golde of that fact, so they can receive notice of additional meetings, etc., as they are scheduled.

The goal of the four-month period provided in the consent decrees for the development of a standard by the industry is to develop at least a preliminary consensus within that time. Work on some aspects of a standard may continue after that period. The Commission's staff has provided the industry with some proposed provisions for a standard. The Commission believes that the dynamic stability elements of the proposed standard are needed for safety and should not be weakened.

One of the primary purposes of the May 4, 1988, meeting, therefore, is to identify the areas that should be given first priority in developing a standard and to plan a schedule for dealing with these areas within the agreed-upon time. Because of the need for the industry to develop the standard within four months, it may not be practical to announce all subsequent meetings of the voluntary standard development committee in the **Federal Register**. However, all persons who indicate a desire to participate in the development of the standard will be notified of such meetings, and other parties may contact the Commission's Office of the Secretary, at (301) 492-6800, to determine when standards development meetings are placed on the Commission's Public Calendar.

As noted above, the first meeting will be held at the Commission's offices at 5401 Westbard Avenue, Bethesda, Maryland (Room 556). The Commission expects that most of the subsequent

plenary meetings will be in the Washington, DC, metropolitan area. However, some meetings may be in California for the convenience of participants who are located on the west coast or in Japan.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative or irrelevant comments.

Dated: April 27, 1988.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 88-9668 Filed 4-28-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Orders: Meadows Realty Co. et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Consent Order with Meadows Realty Co. (Formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc. and Opportunity for Public Comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Meadows Realty Company (formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc. (collectively San Joaquin). The agreement proposes to resolve matters relating to San Joaquin's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 27, 1981. If this Consent Order is approved, within thirty days of the effective date San Joaquin will pay to the DOE a total of $1.25 million plus interest accruing from January 1, 1988.

ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V, where any person who claims to have suffered injury from San Joaquin's alleged overcharges would have the opportunity to submit a claim.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Ann C. Grover, Assistant Director of Administrative Litigation, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4387.

SUPPLEMENTARY INFORMATION: San Joaquin is a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal petroleum price and allocation regulations. During the period covered by this proposed Order (September 1973 through January 27, 1981), San Joaquin engaged in, among other things, the refining of the crude oil and the sale of residual fuel oil, middle distillates, and other refined petroleum products.

ERA conducted audits to determine San Joaquin's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order. As a result of the audits, disputes arose between San Joaquin and ERA concerning San Joaquin's compliance with applicable Federal petroleum price and allocation regulations. The major regulatory area of dispute concerns San Joaquin's pricing of refined petroleum products subject to price controls. On September 21, 1982, ERA issued a Proposed Remedial Order (PRO) to San Joaquin, alleging that San Joaquin overcharged its customers in sales of refined petroleum products, which San Joaquin contested. Following proceedings before DOE's Office of Hearings and Appeals (OHA), OHA Case No. HRO-0071, the PRO was remanded to ERA for recalculation of the overcharges in accordance with an interlocutory order issued by OHA. On February 27, 1987, ERA issued a Revised PRO to San Joaquin, OHA Case No. KRO-0480.

The Revised PRO, as further amended in the course of the litigation, alleges overcharges of $742,433. With interest that could be assessed on that overcharge amount, San Joaquin's maximum potential liability for refunds is approximately $2.3 million. San Joaquin has raised a number of objections to the manner in which ERA applied the refiner pricing regulations in determining the amount of the overcharges. In addition, San Joaquin has filed an Application for Exception, OHA Case No. HEE-0097, relating to one of the matters which formed the basis for the charges in the PRO and the Revised PRO. If San Joaquin's objections to the Revised PRO or its Application for Exception were to be granted, the overcharges would be substantially reduced.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the aduit and San Joaquin's request for exception relief, and appropriate settlement compromises related to those issues. In evaluating the total settlement amount for San Joaquin's regulatory violations, in addition to the analysis of litigation risks, ERA took into account such factors as the number and complexity of the legal and factual issues, and the time and expense required for the government to fully litigate every issue in order to obtain any recovery. Based on all of these considerations, ERA concludes that the resolution of these matters for $1.25 million is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, within thirty days of the effective date of the Consent Order, San Joaquin will pay the principal amount of $1.25 million, plus interest, to DOE. If the settlement is not made final by August 11, 1988, San Joaquin may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that San Joaquin provide necessary information to OHA. Unless specifically excluded, San Joaquin and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order, including San Joaquin's Application for Exception. The proposed Order does not affect the right of any other party to take action against San Joaquin, or of San Joaquin or the DOE to take action against any other party. This agreement only resovles certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against San Joaquin.

Submission of written comments: The proposed Consent Order cannot be made effective until the conclusion of

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the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to San Joaquin Consent Order Comments, RG–32, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585.

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC on April 22, 1988.

Milton G. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–9557 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–32–NG]

Order Granting Blanket Authorization To Import Natural Gas; Pacific Interstate Transmission Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Pacific Interstate Transmission Company (PIT) authorization to import Canadian natural gas for resale to Southern California Gas Company. The order issued in ERA Docket No. 87–32–NG authorizes PIT to import up to 640,000 Mcf of gas per day over two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 21, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–9489 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–16–NG]

Application to Import and Export Natural Gas to Canada; Reliance Gas Marketing Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 31, 1988, of an application filed by Reliance Gas Marketing Company (Reliance Marketing) to import up to 100 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic U.S. natural gas over a two-year term beginning on the date of first delivery. Reliance Marketing, a Delaware corporation whose principal place of business is in Denver, Colorado, would import or export gas for its own account or act as a broker for both U.S. and Canadian purchasers and suppliers. Reliance Marketing intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported. Reliance Marketing also proposes to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 31, 1988.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Under the blanket import and export authority sought, Reliance Marketing intends to make natural gas sales to either United States or Canadian customers on both a firm and interruptible spot basis. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume. Reliance Marketing asserts that the sale of Canadian natural gas imports will be made pursuant to terms dictated by the prevailing economic conditions in the domestic market and that surplus U.S. natural gas supplies will be exported to Canada on the basis of their competitiveness and need by U.S. purchasers.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest in that the pricing terms for each import or export sale must be competitive in the U.S. and Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., May 31, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Reliance Marketing's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 22, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–9488 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–332–000, et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88–332–000]

April 25, 1988.

Take notice that on April 11, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–332–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a limited-term interruptible sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests a limited-term certificate authorizing the sale for resale of natural gas on an interruptible basis both on-system and off-system and authorizing the delivery of such natural gas on a direct sale basis. El Paso states that the proposed interruptible sales service represents an opportunity to obtain the additional flexibility required to sell natural gas which may otherwise be in excess of its customers requirements. El Paso further states that the interruptible sales service would be available to any purchaser on or off El Paso's system to the extent it has a surplus of system supply gas. The proposed sales service would be interruptible as to supply and pipeline capacity, it is explained. It is further explained that the interruptible sales service would not be subject to El Paso's curtailment plan.

El Paso explains that the interruptible sales service would be rendered under proposed initial Rate Schedule IS–1. The purchaser would be required to execute a service agreement to purchase natural gas under Rate Schedule IS–1, it is explained. El Paso requests blanket type pre-granted authority to abandon the sale on the date specified in the service agreement.

El Paso proposes to charge a negotiated rate for the interruptible sales service which would fall between a stated maximum and minimum rate. El Paso explains that the maximum rate would be a 100 percent load factor rate for the zone in which delivery from El Paso's system occurs. El Paso further explains that the minimum rate would be equal to El Paso's actual weighted average cost of gas purchased for the month in which the gas is delivered, plus all variable costs incurred in rendering the service, the GRI surcharge, and the ACA charge.

Comment date: May 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Gas Transmission Company

[Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001, and CP87–21–002]

April 25, 1988.

Take notice that on April 21, 1988, Pacific Gas Transmission Company (Pacific Gas), 160 Spear Street, San Francisco, California 94105–1570 filed Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001, and CP87–21–002, to amend orders issued October 10, 1986, April 22, 1987, May 8, 1987, May 8, 1987, July 22, 1987, July 22, 1987, and October 16, 1987, respectively, to continue limited-term transportation service for various industrial end-users and marketers, for a term which would expire one year from the effective date of authorization or when Pacific Gas commences open access transportation under Part 284 of the Commission's regulations, whichever occurs first, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pacific Gas requests authority to continue transportation service for 7 industrial end-users and marketers authorized in the dockets cited above. It is stated that Pacific Gas ceased filing new applications for section 7(c) transportation when it filed its application for a blanket certificate under Order No. 436 in Docket No. CP87–159–000, on January 13, 1987. It is further stated that Pacific Gas wishes to stress that this current filing for an amendment to the existing certificates in no way "re-opens" its section 7(c) program but merely seeks to maximize the utilization of its system until such time as it can become an open access transporter under section 311 to which Pacific Gas has agreed as part of the proposed settlement of its general rate case in Docket No. RP87–62–000.

Pacific Gas requests expedited consideration of this application

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because the authorizations are about to expire. It is stated that the authorization in Docket No. CP86–735–000 would expire April 21, 1988, and the authorization in Docket Nos. CP87–10–00 and CP87–66–000 would expire May 7, 1988. It is stated that the instant application to amend the existing certificates seeks only to modify the term of those certificates; no other changes are requested. It is further stated that such modification is desired because Pacific Gas wishes to continue transporting gas for others under section 7(c) on an interim basis. Pacific Gas avers that it plans to implement open access transportation in connection with a satisfactory resolution of its general rate case.

Comment date: May 16, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. SEMCO Energy Services, Inc.

[Docket No. CI87–737–001]

April 26, 1988.

Take notice that on April 14, 1988, SEMCO Energy Services, Inc. (SEMCO), of 405 Water Street, Port Huron Michigan 48061, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for an unlimited term and to include blanket certificate and abandonment authority on behalf of producer-suppliers selling gas to SEMCO or through SEMCO as agent, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 10, 1988, in accordance with Standard Paragraph J at the end of the notice.

4. Development Associates, Inc.

[Docket No. CI88–422–000]

April 26, 1988.

Take notice that on April 14, 1988 Development Associates, Inc. (Applicant), of East 1411 Mission Avenue, Spokane, Washington 92202, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 10, 1988, in accordance with Standard Paragrph J at the end of this notice.

Diamon Shamrock Offshore Partners Limited Partnership

[Docket Nos. CI88–384–000 and CI88–400–000]

April 26, 1988.

Take notice that on March 28, 1988, as supplemented on April 12, 1988, Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), 717 North Harwood Street, Dallas, TX 75201, filed applications pursuant to section 7 of the Natural Gas Act and section 2.77 of the Commission's Regulations requesting authorization to permanently abandon sales of gas to United Gas Pipe Line Company (United) which were previously certificated by the Commisison. Diamond Shamrock also requests that the Commission issue a blanket certificate with pregranted abandonment to make sales for resale of such released gas in interstate commerce. Diamond Shamrock states that if the Commission determines that an unlimited blanket certificate with pregranted abandonment for this gas cannot be granted, Diamond Shamrock requests that at a minimum such authorization be for five years from the date of issuance of the blanket certificate. Diamond Shamrock requests that its applications be considered on an expedited basis under procedures established by Order No. 436.

Diamond Shamrock also requests a waiver of the Commission's regulations to permit changes in purchasers and in price for this gas without requiring filings under Parts 154, 157 and 271 of the Regulations. Diamond Shamrock requests that no reports on the subsequent sale of this gas be required; however, if the Commission determines that reports on this gas are necessary, Diamon Shamrock requests that such reports be only required on an annual basis to be filed 90 days aftter the end of the calendar year for that prior year.

Diamond Shamrock states that the following describes the location, NGPA pricing category and estimated average daily deliverability (in Mcf) covered by the subject applications:

High Island block offshore Texas	NGPA pricing category (section)	Deliverability (Mcf/d)
A–442/443	102(d)	15,500
A–471A	102(d)	700
A–471B	109	17,000
Total		33,200

Diamond Shamrock states that through its predecessors it executed with United a contract dated June 30, 1961, for the sale of gas from High Island Block A–442, and a contract dated October 6, 1961, for the sale of production from High Island Block A–471. These two sales were certificated in Docket Nos. CI61–448–000 and CI64–450–000, respectively. Diamond Shamrock states that through a succession approved by the Commission, these contracts were designated Diamond Shamrock Rate Schedule Nos. 15 and 23, respectively.

Over the past four years, Diamond Shamrock states it has experienced a significant reduction in purchases of gas by United under the subject contracts, among others. Diamond Shamrock states that in order to resolve their differences, on March 15, 1988, Diamond Shamrock and United executed a Compromise and Settlement Agreement (Agreement). Pursuant to the Agreement, Diamond Shamrock states United and Diamond Shamrock agreed to suspend all obligations under the contracts at issue herein pending approval by the Commission of a request for permanent abandonment. Furthermore, under the Agreement Diamond Shamrock states that it is required to file within thirty days an application for permanent abandonment authorization. Upon the date abandonment authorization becomes final and non-appealable for sales under these two contracts, Diamond Shamrock states that the two contracts will terminate.

Diamond Shamrock states that its proposed abandonment and blanket certificate with pregranted abandonment are in the public interest and should be approved. The basis of Diamond Shamrock's proposal is the Agreement between Diamond Shamrock and United providing for the termination of the June 1961 and October 1961 contracts which is part of an overall settlement of numerous issues between Diamond Shamrock and United, including but not limited to take-or-pay issues. Diamond Shamrock states that by letter dated March 25, 1988, attached as Exhibit Z–1 to the applications, United supports the proposed abandonment and confirms that such abandonment will not adversely affect United's ability to meet the anticipated demands of its sales customers.

Comment date: May 10, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9564 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2339–000]

Eileen M. Beck; Notice of Filing

April 26, 1988.

Take notice that on April 18, 1988, Eileen M. Beck tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation
Assistant Secretary and Assistant Treasurer.	Monongahela Power Co.
Assistant Secretary	The Potomac Edison Co.
Assistant Secretary	West Penn Power Co.
Secretary	Allegheny Generating Co.
Secretary and Asst. Treasurer.	Allegheny Power System, Inc.
Secretary and Asst. Treasurer.	Allegheny Power Service Corp.
Assistant Secretary	Allegheny Pittsburgh Coal Co.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9561 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–358–000]

Indiana Michigan Power Co.; Notice of Filing

April 26, 1988

Take notice that on April 21, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Indiana Michigan Power Company (I&M), formerly know as Indiana & Michigan Electric Company, which is an AEP affiliate operating subsidiary, Modification No. 17 dated March 1, 1988 to the Interconnection Agreement dated June 20, 1956 (1956 Agreement) between Commonwealth Edison Company (Edison) and I&M, I&M's Rate Schedule FERC No. 20 and Edison's rate schedule FERC No. 2.

This Modification updates several of the Service Schedules which are presently part of the 1956 Agreement between Edison and I&M. These revisions to the 1956 Agreement are made to reflect the present environment in which interconnection transactions now take place and are also necessary to insure uniform rates by the AEP System Companies for the same service to unaffiliated companies. The Service Schedules affected by this Modification No. 17 are Emergency Service, Interchange Power and Short Term Power.

Copies of the filing were served upon Edison, Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Commonwealth Edison Company has filed a Certificate of Concurrence for this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9562 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER88-273-000]

New England Power Pool; Notice of Filing

April 26, 1988.

Take notice that on April 20, 1988, New England Power Pool (NEPOOL) tendered for filing a supplement to its New Unit Amendment that was filed with the Commission on March 1, 1988. NEPOOL states that the materials were filed to assist the NEPOOL Executive Committee in understanding the New Unit Amendment and to aid the Commission staff in its analysis of the materials.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9563 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-005]

Northern Natural Gas Company, Division of Enron Corp.; Sale of Natural Gas

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Florida Gas Transmission Company (FGT).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* FGT is a division of Citrus Corp., an Enron Corporation Joint Venture; Northern is a division of Enron Corporation.

(4) *Term of Sale:* Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:* Daily Quantity 100,000 MMBtu. Estimated Total—1 Bcf per month.

(6) *Rate:* $1.42 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9565 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-006]

Northern Natural Gas Company, Division of Enron Corp.; Sale of Natural Gas

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Transwestern Pipeline Company (Transwestern).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* Transwestern is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.

(4) *Term of Sale:* Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities: Daily Quantity* 150,000 MMBtu. *Estimated Total:* 1 Bcf per month.

(6) *Rate:* $1.42 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9566 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

Northern Natural Gas Company, Division of Enron Corp.; Sale of Natural Gas

[Docket No. CP88-2-007]

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Enron Industrial Gas Company (Enron Industrial).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* Enron Industrial is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.

(4) *Term of Sale:* Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities: Daily Quantity:* 200,000 MMBtu. *Estimated Total:* 1 Bcf per month.

(6) *Rate:* $1.35 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9567 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Natural Gas Transportation Task Group Coordinating Subcommittee on Petroleum Storage & Transportation National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, May 19, 1988. 9:00 a.m.

Place: National Petroleum Council, 1625 K Street, NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss gas pipeline survey and review progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman

—Discuss the gas pipeline survey

—Review progress on individual assignments

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-9487 Filed 4-28-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Case Filed; Week of January 22 through 29, 1988

During the Week of January 22 through January 29, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 22 through January 29, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 19, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0080	Interlocutory. If granted: The October 2, 1987, Decision and Order issued to Theodore Regedale (Case No. KRH-0002) would be modified regarding the evidentiary hearing.
Jan. 25, 1988	Environmental Policy Institute, Washington, DC.	KFA-0159	Appeal of an information request denial. If granted: The Environmental Policy Institute would receive access to copies of correspondence between the Department of Energy and various institutions from September 1, 1982 to the present.
Jan. 27, 1988	Arizona Trails, Inc., Flagstaff, Arizona	KEE-0159	Exception to the reporting requirements. If granted: Arizona Trails, Inc. would no longer be required to file EIA Form 782-B "Reseller/Retailers' Monthly Petroleum Sales Report."
Do	Cheron, U.S.A., Inc., Washington, DC	KEF-0100	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to Part 205, Subpart V in connection with the Consent Order entered into with Chevron U.S.A., Inc. (Case No. RGFE0006A1).
Jan. 29, 1988	Oregon, Salem, Oregon	KEG-0029	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Date received	Name of refund proceedng/name of refund applicant	Case No.
Mar. 11, 1986	Wolf Brothers Fuel, Inc	RF225-10946
Sept. 22, 1986	Wagner's Mobil	RF225-10947
Do	....do	RF225-10948
July 21, 1986	Kiracofe Oil Company	RF225-10949
Do	....do	RF225-10950
Jan. 25, 1988	Spruce Oil Corporation	RF83-163
Mar. 11, 1986	B.P. Newman Oil Company	RF225-10945
Jan. 25, 1988	Ralph L. Clarke, Inc	RF299-56
Do	Herr's Laundry	RF299-57
Do	Bahrs Die & Stamping Co., Inc	RF299-58
Jan. 28, 1988	Fine Paper & Film Group	RF299-59
Jan. 7, 1987	Schaffer Oil Company	RF225-10953
Aug. 1, 1986	Hebco Oil Company, Inc	RF225-10954
July 22, 1986	Deyound Eat, Inc	RF225-10955
Do	Friend & Friend Oil Co., Inc	RF225-10956
Aug. 1, 1986	McGullicuddy Oil Company	RF225-10957
Do	Harbor Supply Oil Co. Inc	RF225-10958

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Date received	Name of refund proceedng/name of refund applicant	Case No.
Jan. 29, 1988	American Nuclear Corporation	RF272-4152
Jan. 25, 1988	Boncosky & Company, Inc	RF225-10939
Do	Dunmore Oil Company	RF225-10940
Do	R.L. Vallee, Inc	RF225-10941
Do	...do	RF225-10942
Do	Westerfield Mobil	RF225-10943
Do	Blakesburg Oil Company	RF225-10944
Jan. 22, 1988	Richters Garage	RF265-2597
Do	Monarch Service Station	RF299-55
Jan. 28, 1988	Carbonit Houston, Inc. & Richard W. Johnson	KRO-0620
Jan. 25, 1988	Standing Rock Sioux Tribe	RQ21-430
Jan. 22, 1988 thru Jan. 29, 1988.	Crude Oil Refund Applications Received	RF272-42831 thru RF272-43522
Do	Gulf Oil Refund Applications Received	RF300-4901 thru RF300-5098

[FR Doc. 88-9554 Filed 4-28-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of January 29 through February 5, 1988

During the Week of January 29 through February 5, 1988, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Jan. 29 through Feb. 15, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 4, 1988	Texas, Austin, TX	KEG-0030	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Refund Applications Received

[Week of Jan. 29 through Feb. 5, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/29/88	Tilden Mining Co	RD272-7915
01/29/88	Empire Iron Mining Partnership	RD272-5179
02/01/88	Central Steel & Wire Co	RD272-6123
02/01/88	Telecyne Allvac	RF272-7415
02/01/88	LTV Steel Mining Co	RD272-8087
12/16/87	Cardinal Cushing General	RF272-17527
02/02/88	Darby Dan Farm	RF299-61
04/29/86	J.K. Pierce	RF225-10962
01/14/88	Peninsula Fuel Co	RF225-10963
10/20/86	Service Oil Co	RF225-10964
10/20/86	do	RF225-10965
04/29/88	Camburn Oil Co., Inc	RF225-10959
08/18/86	Bertsch Oil Co	RF225-10960
04/25/86	Usher Oil, Inc	RF225-10961
02/03/88	Charlie & Dale Pettyjohn	RF265-2598
02/03/88	do	RF265-2599
02/03/88	JP Oil Co	RF265-2600
02/03/88	do	RF265-2601
02/05/88	Benjamin Pine	RF276-297
09/01/87	Richard F. Checa	RF225-10966
05/13/87	Eugene Rau	RF225-10967
05/13/87	do	RF225-10968
05/13/87	Triboro Coach Corp	RF225-10969
02/04/88	State Escrow Distribution	RF302-2
02/01/88	Carter Bell Manufacturing Co	RF299-60
02/05/88	Quality Grain, Inc	RF299-62
02/05/88	Donegal Springs Foundry, Inc	RF299-63

Refund Applications Received—Continued

[Week of Jan. 29 through Feb. 5, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/05/88	McDonalds	RF299-64
02/04/88	Revere Copper and Brass, Inc	RF299-65
02/04/88	Polertzed Schlabo Neu Co	RF299-66
02/04/88	Gordon Hester	RF299-67
02/01/88	Pennzoil/Louisiana	RQ10-431
02/03/88	Pennzoil/New York	RQ10-432
08/14/87	National Helium/New York	RQ3-433
01/29/88 through 02/05/88	Crude Oil Refund Applications Received	RF272-43523 through RF272-44246
01/29/88 through 02/05/88	Gulf Oil Refund Applications Received	RF300-5099 through RF300-5247

[FR Doc. 88-9555 Filed 4-28-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed During Week of February 5 Through February 12, 1988

During the Week of February 5 through February 12, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

List of Cases Received by the Office of Hearings and Appeals

[Week of Feb. 5 through Feb. 12, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 9, 1988	True/Little America Refining Co., Washington, DC.	RR195-1	Request for modification/rescission. *If Granted:* The Oct. 22, 1987 Decision and Order issued to Little America Refining Company (Case No. RF195-8) would be modified regarding the firm's application for refund in the True Companies refund proceeding.
Feb. 5, 1988	Dairymen, Inc., Washington, DC	RR272-7	Request for modification/rescission. *If Granted:* The January 6, 1988, Decision and Order issued to Dairymen, Inc. (Case No. RF272-160) would be modified regarding the firm's application under the crude oil refund proceeding.
Do	Mobil/K&D Gas Station, Inc., Bronx, NY	RR225-1	Request for modification/rescission. *If Granted:* The Nov. 10, 1987 Decision and Order issued to K&D Gas Station, Inc. (Case No. RF225-5157) would be modified regarding the firm's application for refund in the Mobil Refund proceeding.
Feb. 8, 1988	Amorient Petroleum Co., California, Washington, DC.	KEF-0101	Implementation of special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205. Subpart V, in connection with the Consent Order entered into with Amorient Petroleum Co., California.
Do	National Treasury Employees Union, Washington, DC.	KEF-0160	Appeal of an information, request denial. *If Granted:* The National Treasury Employees Union would receive a copy of information regarding vacancy announcement #87-EO-6735/6736/8741.
Feb. 11, 1988	Mobil/Friendly Service Oil Co., Fredericktown, MT.	RR225-6 RR225-7 RR225-8	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Friendly Service Oil Co. (Case Nos. RF225-10907, RF225-10908 and RF225-10917) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	Mobil/Kirkland Oil Co., Jacksonville, TX	RR225-3 RR225-4 RR225-5	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Kirkland Oil Co. (Case No. RF225-10936) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	Mobil/Larke, Inc., Spokane, WA	RR225-2	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Larke, Inc. (Case No. RF 225-10935) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	U.S. West Information System, Englewood, CA	KFA-0161	Appeal of an information, request denial. *If Granted:* The Jan. 7, 1988, Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded and U.S. West Information Systems would receive access to a complete copy of the regulations and procedures for E.G.&G. Idaho, Inc., a contractor retained by the DOE's Idaho Opertions Office.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 5 through Feb. 12, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 12, 1988	Agway, Inc., Washington, DC	KEF-0102	Implementation for special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Mar. 30, 1987, Consent Order entered into with Agway, Inc. (Case No. RTYA00001).
Do	Indian Wells Oil Co., Washington, DC	KEF-0103	Implementation of special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the consent order entered into with the Indian Wells Oil Co.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 5 through Feb. 12, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/05/88 through 02/12/88	Crude Oil Refund Applications Received	RF272-44247 through RF272-44857
02/05/88 through 02/12/88	Gulf Oil Refund Applications Received	RF300-5248 through RF300-5386
07/21/86	Johnson Oil Company	RF225-10970
07/21/86	Johnson Oil Company	RF225-10971
02/08/88	Col Kan Propane Service	RF253-48
02/10/88	Park Avenue Mobile Park	RF299-68
02/10/88	Saul V. Collins, Inc	RF299-69
02/10/88	Johnson's	RF299-70
02/10/88	Floyd C. Geoding	RF299-71
02/10/88	Fred J. Hayes Co., Inc	RF299-72
02/11/88	McDonalds	RF299-74
02/12/88	Krueger-Maddux Greenhouses	RF299-75
06/18/86	Eagle Oil Company	RF225-10972
06/18/86	Eagle Oil Company	RF225-10973
06/18/86	Eagle Oil Company	RF225-10974
02/16/88	All-Weather Roofing Co	RF299-76
02/10/88	P.C. Rinker	RF300-4551
02/09/88	Rogers Oil Company, Inc	RF265-2602
02/09/88	Rogers Oil Company, Inc	RF265-2603
02/10/88	Hinge Hardware	RF299-73

[FR Doc. 88-9551 Filed 4-28-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed During Week of February 12 Through February 19, 1988

During the Week of February 12 through February 19, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 12 through Feb. 19, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Apr. 29, 1987	Shell Oil Co., Houston, TX	KFX-0048	Supplemental order. *If Granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with a Mar. 26, 1987 Consent Order entered into with Shell Oil Co.
Feb. 12, 1988	Mobil/Kasch Oil Co., Washington, DC	RR225-12	Request for modification/rescission. *If Granted:* The Feb. 5, 1988 Decision and Order issued to Kasch Oil Co. (Case No. RF225-8367) would be modified, and the firm's Mobil Oil refund application would be granted.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 12 through Feb. 19, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Do	Committee to Bridge the Gap, Los Angeles, CA	KFA-0162	Appeal of an information, request denial. *If Granted:* The Feb. 1, 1988 Freedom of Information Request Denial issued by the DOE Office of Nuclear Energy would be rescinded and the Committee to Bridge the Gap would receive access to a complete copy of NUS Report 4083 (Revision 1) "Comparative Risk Analysis of Selected Missions Utilizing Space Nuclear Electric Power Systems."

REFUND APPLICATIONS RECEIVED

[Week of Feb. 12 to Feb. 19, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
6/8/87	Grimm's Tank Wagon Service	RF265-2605
2/17/88	The Kephart Hardware	RF277-89
2/19/88	Premier Roofing Company, Inc	RF299-77
2/12/88 thru 2/19/88	Crude Oil Refund, Applications Received	RF272-44858 thru RF272-45482
2/12/88 thru 2/19/88	Gulf Oil Refund, Applications Received	RF300-5387 thru RF300-5478

[FR Doc. 88-9552 Filed 4-28-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed During Week of February 19 Through February 26, 1988

During the Week of February 19 through February 26, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 19 through Feb. 26, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 22, 1988	Terranova, Seeger & Galezioski, Buffalo, NY	KFA-0163	Appeal of an information, request denial. *If Granted:* The Feb. 8, 1988 Freedom of Information Request Denial issued by the DOE Idaho Operations Office would be rescinded and Terranova, Seeger & Galezioski would receive access to information regarding Seaway Landfill, Tonawanda, NY.
Feb. 23, 1988	Multinational Legal Services, Washington, DC	KFA-0164	Appeal of an information, request denial. *If Granted:* The Feb. 12, 1988 Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and the Multinational Legal Services would receive access to records regarding the Navy Department's use and disposal of trichloroethylene (TCE) during 1940-1946.
Do	Marathon/Savings Oil Co., Washington, DC	RR250-2 of RR250-3	Request for modification/rescission. *If Granted:* The Jan. 29, 1988 Decision and Order issued to Savings Oil Co. (Case Nos. RF250-2365 & RF250-2366) would be modified and the firm would receive additional refunds in the Marathon Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 19 to Feb. 23, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
6/30/87	Denison Oil Company	RF265-2606
2/19/88	Amco/Rosebud Sioux Tribe	RQ21-434
2/22/88	Irby Oil Company	RF265-2607
2/22/88	Irby Oil, Inc	RF265-2613
2/22/88	John W. Galbreath & Company	RF299-78
2/22/88	Wayne Oil Company	RF265-2606

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REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 19 to Feb. 26, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/23/88	Parsons Skelly	RF265-2609
2/23/88	Rash Oil Company	RF253-49
2/24/88	Harmon Smith	RF300-5551
2/24/88	Middletown	RF263-37
2/24/88	Middletown	RF225-10975
2/24/88	Middletown	RF225-10976
2/19/88 thru 2/26/88	Crude Oil Refund, Applications Received	RF272-45483 thru RF272-47520
2/19/88 thru 2/26/88	Gulf Oil Refund, Applications Received	RF300-5479 thru RF300-5572

[FR Doc. 88-9553 Filed 4-28-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 14 Through March 18, 1988

During the week of March 14 through March 18, 1988, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Belcher Oil Co. Inc., 3/18/88, KXE-0158

Belcher Oil Co., Inc. (Belcher) filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Belcher's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Commonwealth of the Northern Mariana Islands, 3/16/88, KEE-0151

The Commonwealth of the Northern Mariana Islands (CNMI) filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. In particular, the CNMI requested that it be excepted from the requirement that to be eligible for grants under the DOE's Institutional Conservation Program (ICP), a building must be heated or cooled by mechanical means. In considering the CNMI's Application, the DOE found that many CNMI school and hospital buildings, which together represent a majority of the State's ICP-related structures, were ineligible to receive ICP grants because they were cooled by the trade winds rather than by mechanical means. The DOE concluded that the exclusion of such a large proportion of the Commonwealth's ICP-related buildings from participation in the ICP program frustrated the goals of the National Energy Conservation Policy Act and therefore imposed a gross inequity upon the CNMI. Accordingly, the Application for Exception was granted.

Implementation of Special Refund Procedures

Shell Oil Company, 3/15/88, KFX-0048

The DOE issued a Decision and Order implementing procedures for the distribution of $163.3 million (plus accrued interest) in crude oil overcharge funds remitted to the DOE by Shell Oil Company pursuant to the terms of a March 26, 1987 consent order. In the Decision, the DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds remitted by Shell attributable to crude oil overcharges was divided equally between the state and federal governments. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. All applications must be filed by June 30, 1988.

Refund Applications

A.J. Cloninger, Jr. et al., 3/18/88, RF272-5005 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of petroleum products, and determined its claim either by consulting actual purchase records or by estimating its consumption based on annual usage or partial records. As end-users, each applicant was presumed injured by the DOE. The sum of the refunds granted in this Decision is $901. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Allen Farms Inc., et al., 3/16/88, RF272-3346 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 42 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $825. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Bender Brothers et al., 3/16/88, RF272-5269 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 40 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. All but one of the applicants used the products for various agricultural activities or in operating small businesses. The remaining applicant is a local school district. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sume of the refunds granted in this Decision is $1,176.

Bernard Bennett, et al., 3/17/88, RF272-5780 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 33 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $713.

Beta Production Company/Caribou Four Corners, Inc., Standard Oil Company (Indiana)/Caribou Four Corners, Inc., 3/15/88, RF132-2, RF21-12628

Caribou Four Corners, Inc., a crude oil refiner, filed an Application for Refund in OHA's Subpart V crude oil refund proceedings. The Caribou Application was based on purchases of crude oil from Beta Production Company and Standard Oil Company (Indiana) (Amoco). Since Caribou did not participate in the refiners escrow fund established in the Stripper Well Settlement Agreement, it was deemed eligible to file this type of refund application. In considering Caribou's application, the OHA found that the firm had sustained overcharges in connection with its Beta purchases. The OHA further found Caribou did not sustain any injury in connection with its purchases of Beta crude oil made after the inception of the DOE's crude oil entitlements program, since the program should have compensated the firm for any overcharges sustained. The OHA did find that the firm was injured as a result of its pre-entitlements program Beta purchases. The OHA pointed out that the fund remitted by Beta to the DOE was $120,000 and determined that Caribou should receive 46 percent of that fund, the proportion of Beta purchases made prior to the inception of the entitlements program. Accordingly, Caribou was granted a refund of $58,660 and $64,486 in interest. Caribou's Application for Refund based on purchases of Amoco crude oil was denied because the firm failed to submit evidence demonstrating overcharge or injury.

Chapman Farms, et al., 3/16/88, FR 272-5491 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on the acres it farmed utilizing the USDA's national average of 23.8 gallons/acre/year of petroleum. Each applicant was an end-user of the products and therefore is presumed to have been injured. The sum of the refunds granted in this determination is $548.

Chicago Transit Authority, 3/18/88, RF272-210

Chicago Transit Authority (CTA) filed an Application for Refund from the crude oil overcharge monies currently available for disbursement under 10 CFR Part 205, Subpart V. In its Application, CTA stated that it provided public transportation in the Chicago area and, in the capacity, was an end-user of 201,801,975 gallons of diesel fuel during the period of crude oil price controls. The DOE determined that as an end-user of petroleum products in a business unrelated to the petroleum industry, CTA was presumptively injured as a result of crude oil overcharges and need not submit additional proof to receive a refund. In addition, the DOE rejected objections raised in the proceeding that: (i) As a governmental authority, CTA was ineligible for a refund, and (ii) the end-user presumption did not apply since CTA passed through all overcharges. Accordingly, DOE approved a refund of $40,360, based upon the amount of CTA's purchases and the volumetric refund amount currently available, $.0002 per gallon.

Cranston Oil Service Company, Inc./Anthony Marino 3/16/88, RF276-298

The DOE issued an Order supplementing a previous Decision which granted refunds to 15 applicants from a fund established pursuant to a 1977 consent order between the Department of Energy and Cranston Oil Service Company, Inc./Galego Oil Company (Cranston). *Cranston Oil Service Co./Joseph L. Pilosa*, 17 DOE ¶ 85,101 (1988) (*Cranston*). In that Decision, we granted refunds to the claimants on the basis of an estimate of the minimum purchase volume of the average home in the Cranston area during the consent order period. Subsequently, we discovered that one of the applicants, Anthony Marino (Case No. RF276-98), had in fact provided sufficient documentation of his purchases. Therefore, Mr. Marino was granted a supplemental refund.

Earl De Moss, et al., 3/18/88, RF272-3920 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 31 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,330.

Edward Neff, et al., 3/18/88, RF272-2810 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 43 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $851.

Getty Oil Company/Richfield Truck Stop, et al., 3/18/88, RF265-503 et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that were indirectly purchased from Getty jobbers/distributors during the consent order period. In 20 claims of this proceeding, the applicants were eligible for a refund below the $5,000 threshold. In the remaining seven claims, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $75,640, representing $37,283 in principal and $38,357 in accrued interest.

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Husky Oil Company/Colorodo Petroleum Products, Co., 3/14/88, RF161–15

The DOE issued a Decision and Order concerning an Application for Refund filed by Colorado Petroleum Products Co. (CPPC) in the Husky Oil Company (Husky) special refund proceeding. CPPC filed a claim for $9,280 based upon 20,350,249 gallons of motor gasoline and diesel fuel purchased from Husky during the firm's consent order period. The firm claimed an additional refund of $8,552 based upon the loss of a "prompt payment" discount Husky discontinued during a portion of the consent order period. With respect to the firm's request for an above-volumetric refund, CPPC demonstrated that during the 15-month period in which the discount was discontinued, the firm continued making prompt payments to Husky. CPPC, however, failed to demonstrate that it did not increase its prices to compensate for the loss of the discount. Without this information, the DOE could not determine that CPPC was injured by the lost discount. With respect to a refund on a volumetric basis, the firm also failed to make an injury showing. The DOE did approve a refund for CPPC at the $5,000 small claims threshold level established in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). Accordingly, the firm was granted a refund of $7,303, representing $5,000 in principal plus $2,303 in accrued interest.

Jack P. Stoner, et al., 3/16/88, RF272–2067 et al.

The DOE issued a Decision and Order granting six Applications for Refund from available crude oil overcharge funds. Each applicant used actual records, such as invoices, tax records, receipts, or fuel supplier records, to arrive at its total gallonage of refined petroleum products during the crude oil price control period. Because each claimant was an end-user, none was required to demonstrate injury. A total of $1,156 was approved in this Decision and Order.

Jimmy H. Fann, et al., 3/16/88, RF272–2610 et al.

The DOE issued a Decision and Order approving forty-nine Applications for Refund from crude oil overcharge funds. The forty-nine claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they purchased during the period August 19, 1973 through January 27, 1981. Because the claimants were end-users, they were not required to demonstrate injury. A total refund of $2,137 was approved in this Decision and Order.

L.E. Johnson, Jr., et al., 3/17/88, RF 272–5393 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 51 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on the acres it farmed utilizing the USDA's national average of 23.8 gallons/acre/year of petroluem. Each applicant was an end-user of the products and therefore is presumed to have been injured. In sum of the refunds granted in this determination is $1,212.

Linden Lumber Company, Inc., et al., 3/15/88, RF272–2970 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the petroleum products for various commercial activities and each determined its claim by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $1,314.

Lowell C. Mather, et al., 3/17/88, RF272–4856 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $2,213. All the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Marathon Petroleum Company/ Powerama Distributing Corp., 3/15/88, RF250–1595

The DOE issued a Decision and Order concerning the Application for Refund filed by Powerama Distributing Corp. (Powerama), an indirect purchaser and retailer of products covered by a consent order that the DOE entered into with Marathon Petroleum Company. All of Powerama's suppliers have been granted refunds under either the small claims presumption of injury or the medium range presumption of injury. Under these circumstances, the DOE determined that it would be most equitable to presume that Powerama, a small claims applicant, was overcharged by its full volumetric amount. Accordingly, Powerama was granted a refund of $4,726, representing $4,110 in principal and $616 in accrued interest.

Mobil Oil Corporation/Farmers Union Central Exchange, Inc., 3/18/88, RF225–5291, RF225–5292, RF225–5293, RF225–10690

The DOE issued a Decision and Order regarding an Application for Refund filed by Farmers Union Central Exchange, Inc. (Cenex) in the Mobil Oil Corporation special refund proceeding. Cenex, a large agricultural cooperative, applied for a refund based on purchases of motor gasoline and propane from Mobil and on purchases of propane from Mobil Canada. The cooperative further sought a refund based on purchases of Mobil middle distillates and motor gasoline by Pacific Supply Cooperative (Pacific). Cenex acquired Pacific in October 1977. In its application, Cenex elected the presumptions applicable to agricultural cooperatives for all of its and Pacific's purchases, except with regard to Cenex's purchases of propane from Mobil, for which cenex claimed it had experienced a specific and measurable injury of $.0405 per gallon. In analyzing Cenex's claim, the DOE determined that the cooperative was not eligible to receive a refund for its purchases from Mobil Canada, nor had it demonstrated that it suffered a disproportionate share of injury in its purchases of Mobil propane. The DOE did, however, grant Cenex a full volumetric refund based on its purchases of Mobil propane and motor gasoline sold to its member cooperatives. With regard to Cenex's refund claim based on Pacific's purchases from Mobil, the DOE determined that the right to a DOE refund was not one of the assets transferred to Cenex under the Purchase and Sale Agreement between Cenex and Pacific. However, since Pacific was dissolved as a corporation in 1982, and since approximately three-quarters of Pacific's member cooperatives are currently members of Cenex, the DOE granted Cenex a refund based on Pacific's purchases from Mobil with the provision that this portion of Cenex's refund be passed through to the 49 members of Cenex that were formerly members of Cenex. In granting this portion of Cenex's claim, the DOE relied on information regarding Pacific's purchases from Mobil provided by Mobil rather than on Cenex's estimates of the volumes of Mobil products purchased by Pacific. The total refund granted to Cenex was $107,587, representing $86,673 in principal and $20,914 in interest.

Mobil Oil Corporation/Larko Inc. et al., 3/15/88, RR225–2 et al.

The DOE issued a Decision and Order regarding Motions for Reconsideration filed by Donald H. Grissom, Esq. on behalf of Larko Inc., Kirkland Oil Company, Friendly Service Oil Company, and Lakewood Oil Co., Ihc. in the Mobil Oil Corporation special refund proceeding. The claims were originally dismissed because they lacked necessary information and because they were filed after the deadline with no cause shown. Given that Mr. Grissom finally supplied OHA with the necessary information and showed that the claims were refilings, we approved the Motions and granted the four applicants refunds according to the procedures set forth in *Mobil Oil Corporation* 13 DOE ¶ 85,339 (1985).

Mobil Oil Corporation/Meredith Oil & Ice Co., et al., 3/14/88, RF225–9659 et al.

The DOE issued a Decision granting 9 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $28,306 ($22,824 principal plus $5,484 interest).

Mobil Oil Corp./Robert A. Kappmeyer, 3/14/88, RF225–4581

The DOE issued a Decision and Order granting an Application for Refund filed by Robert A. Kappmeyer in connection with the Mobil special refund proceeding. According to the presumption set forth for retailers of motor gasoline supplied directly by Mobil, Mr. Kappmeyer's refund was based on the volume of his motor gasoline purchases times 30 percent of the volumetric refund amount. The refund approved in this Decision totalled $31 ($25 in principal and $6 in interest).

Navajo Refining Co./Caribou Four Corners, Inc., 3/14/88, RF203–4

In this Decision, OHA approved a refund application filed by Caribou Four Corners, Inc. in the Navajo Refining Company refund proceeding. Caribou purchased 124,660,860 gallons of refined products from Navajo during the consent order period. OHA found that Caribou paid above market prices for 65 percent of the gallons that it purchased from Navajo. OHA granted Caribou a refund of $15,601 which equals 65 percent of the gallons that Caribou purchased times the per gallon refund rate of $0.000195. Caribou also receives accrued interest of $9,009.

Old Hudson River Coal & Fuel Oil Corp., Dimaios Super Service, 3/14/88, RF272–81 and RF272–4482

The DOE issued a Decision and Order denying Applications for Refund from the agency's Subpart V crude oil proceedings filed by two marketers of petroleum products. The denial was based on the fact that the applicants had not submitted any information indicating that they were injured by crude oil overcharges.

Pacific Gas & Electric Company, 3/18/88, RF272–287

Pacific Gas & Electric Company (PG&E), an investor-owned utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of states filed an objection to PG&E's application, claiming that PG&E should not be eligible to receive a refund because the utility itself was not an injured end-user. The states also claimed that PG&E should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the states' arguments, finding that PG&E was not claiming a refund for itself but rather agreed to pass through to its customers the benefits of any refunds which it would receive. The DOE also found that the Settlement Agreement permitted utilities to receive a refund in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of PG&E's claim. Accordingly, the application was approved and PG&E was granted a refund of $1,445,708.

Pennzoil Co./Louisiana, 3/16/88, RQ10–431

The DOE issued a Decision and Order granting the application filed by the State of Louisiana in the Pennzoil Company second-stage refund proceeding. Louisiana requested permission to use a portion of its Pennzoil monies to fund a Statewide Vanpool Program. The DOE found that the program provided restitution to injured consumers of petroleum products. Accordingly, Louisiana's submission was granted and the state was given a refund of $521,850 (representing $296,506 in principal and $225,344 in interest).

Ralph A. Leathers, Jr., et al., 3/15/88, RF272–832 et al.

The DOE issued a Decision and Order granting 47 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973, through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision is $1,341.

Ramapo Central School District, 3/16/88, RF272–2250

The DOE issued a Decision and Order granting an Application for a crude oil overcharge refund filed by Ramapo Central School District (Ramapo). Ramapo used actual records to arrive at its total gallonage of middle distillates during the crude oil price control period. Ramapo estimated its gasoline and motor oil usage based on its usage during more recent years. Because the claimant was an end-user, it was not required to demonstrate injury. A total of $597 was approved in this Decision and Order.

Ray Dechant, et al., 3/17/88, RF272–8817 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,365. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Raymond F. Charles, et al., 3/16/88, RF272–5900 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27,

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1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $1,054. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Robison & Smith, Inc., 3/18/88, RF272-5544

The DOE issued a Decision and Order granting a refund to Robison & Smith, Inc., a laundry and dry cleaning business that filed an Application for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that naphtha-based dry cleaning solvent is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $392.

Sigmor Corporation/Paul Investments, Inc., 3/15/88, RF242-10

The DOE issued a Decision and Order regarding a refund application filed by Paul Investments, Inc. in the Sigmor Corporation refund proceeding. According to the procedures set forth in *Sigmor Corporation*, 14 DOE ¶ 85,079 (1986), the DOE determined that the applicant was ineligible to receive a refund because it did not submit a volume schedule with its application and because the OHA was unable to contact the applicant. Accordingly, the OHA dismissed Paul Investments, Inc.'s claim.

W.R. Grace & Co., 3/18/88, RF272-5876, RF272-7004

The DOE issued a Decision and Order denying two Applications for Refund filed by W.R. Grace & Company (Grace) in the Subpart V crude oil proceedings. The DOE's denial was based on the fact that Grace's affiliate, Grace Distribution Services, had been approved for a refund from the Surface Transporters Escrow, and had waived Grace's right to a refund im the crude oil refund proceedings. Accordingly, Grace was ineligible for Subpart V crude oil refunds.

Willie C. Benbow, et al., 3/15/88, RF272-5837 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 48 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds grants in this Decision is $1,062.

Dismissals

The following submissions were dismissed:

Name and Case No.
Dean Rominger, RF272-15672
E.M. Lane Oil Co., Inc., RF263-38
Franklin County Oil Co., RF225-10999, RF225-11000
Lunde Fuel & Oil Supply, RF225-11001, RF225-11002, RF225-11003
MacMillan Oil Co., HRO-0122
McIntosh County, RF272-24071
Mid-America Transportation Company, RF225-4176
Rowell & Watson et al., RF265-1287, RF265-2526, RF265-2527, RF265-2528, RF265-2529, RF265-2530, RF265-2531, RF265-2532, RF265-2533, RF265-2534, RF265-2535, RF265-2536, RF265-2537, RF265-2538, RF265-2539
Winston-Salem Transit Authority, RF272-176.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

[FR Doc. 88-9556 Filed 4-28-88; 8:45 am]

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Issuance of Decisions and Orders During Week of March 21 Through March 25, 1988

During the week of March 21 through March 25, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Multinational Legal Services, 3/22/88, KFA-0164

Multinational Legal Services, filed an Appeal from a denial by the Assistant Manager for Administration of the DOE's San Francisco Operations Office of a Request for Information which Multinational had submitted under the Freedom of Information Act. Multinational sought access to any documents which refer to practices of the United States government during the period 1940-1946 for the use or disposal of trichloroethylene. In considering the Appeal, the DOE found that five responsive documents were properly withheld in their entirety under Exemption 5 of the FOIA. The DOE found that those documents, although factual in nature, were actually an expression of the agency's deliberative process and compromise the integrity of that process if released. As for the remaining responsive documents, the DOE determined that they were improperly withheld pursuant to Exemption 5. According to the DOE, those documents were not protected by the deliberative process privilege merely because they were selected from a larger universe of documents and included as appendices to a deliberative document. Accordingly, the DOE ordered that those documents be released promptly.

Implementation of Special Refund Procedures

Clean Machine, Inc., 3/24/88, KEF-0097

The DOE issued a Decision and Order implementing procedures for the distribution of $22,355 received pursuant to a consent order entered into by Harrell A. Musco and the DOE on July 6, 1987. The DOE determined that the consent order funds should be distributed to customers that purchased motor gasoline from Clean Machine during the period August 8, 1979 through January 31, 1980. The specific information to be included in Applications for Refund is set forth in the Decision.

Martinoil Company, 3/25/88, HEF-0124

The DOE issued a Decision and Order implementing a plan to distribute $200,000 received pursuant to a consent order entered into by Martinoil Company and the DOE on August 8, 1983. The DOE determined that the consent order funds should be distributed to customers that purchased covered products from Martinoil during the period August 20, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Supplemental Order

Elk Trading Company, 3/25/88, KRX-0049

Elk Trading Company (Elk) filed a Motion for Supplemental Order relating to the final Remedial Order that was issued to the firm by the Office of Hearings and Appeals (OHA) on February 29, 1988. *Elk Trading Company and Neal Davis*, 17 DOE ¶83,005 (1988). Elk's Motion stated that by apparent oversight, the OHA had failed to dismiss the alleged permissible average markup (PAM) violation along with the other alternative violations alleged in the PRO. Accordingly, the alternative PAM violation alleged in the PRO was dismissed without prejudice.

Refund Applications

Abbey Transportation, et al., 3/22/88, RF272-2148, et al.

The DOE issued a Decision and Order granting four Applications for Refund from available crude oil overcharge funds. Each applicant used actual records, such as invoices or fuel supplier records, to arrive at its total gallonage of refined petroleum products during the crude oil price control period. Because each claimant was an end-user, none was required to demonstrate injury. A total of $1,572 was approved in this Decision and Order.

Aminoil U.S.C., Inc./Enterprise Products Company, 3/25/88, RF139-27

The DOE issued a Decision and Order concerning an Application for Refund filed by Enterprise Products Company (Enterprise) in the Aminoil U.S.A., Inc. special refund proceeding. Enterprise claimed a refund based on the procedures outlined in *Aminoil U.S.A., Inc.*, 12 DOE ¶ 85,217 (1985) (*Aminoil*), governing the disbursement of settlement funds received from Aminoil pursuant to a 1981 Consent Order. Enterprise submitted cost banks and a market price comparison which led the DOE to conclude that the firm was injured by its purchases from Aminoil and should receive a refund based on these purchases. Accordingly, Enterprise was granted a refund of $799,671 ($461,147 in principal and $338,524 in interest).

Board of Education, USD #500, 3/23/88, RF272-3229

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. To determine its fuel purchase volume, the Applicant used a combination of actual and estimated purchase figures. The estimated figures were based on the Applicant's average fuel consumption. The Applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The refund granted in this Decision is $445.

Borst Oil Corp., et al., 3/21/88, RF272-7970 et al.

The DOE issued a Decision and Order denying an Applications for Refund from the agency's Subpart V crude oil proceedings filed by 10 marketers of petroleum products. The denial was based on the fact that the unsupported, general statements submitted by the applicants did not establish that they were injured by crude oil overcharges.

City of Okmulgee, Ok, et al., 3/22/88, RF272-827, et al.

The DOE issued a Decision and Order granting 6 an Applications for Refund based on each applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined the volume of its fuel purchases either by consulting actual purchase records or by estimating its eligible fuel consumption based on average use during a period for which actual records were available. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,302.

Conoco Inc./Grady Stone Aviation, Inc., 3/25/88, RF220-468

Grady Stone Aviation, Inc. (GSA) filed an Application for Refund in which it sought a portion of the consent order fund obtained from Conoco, Inc. In its Application, GSA stated that it purchased 3,869,000 gallons of aviation gasoline from the City of Fort Smith, Arkansas, which purchased the product directly from Conoco. After analyzing the Application, the OHA concluded that because no showing was made that the City of Fort Smith had absorbed any of the alleged overchargers, and GSA had submitted adequate documentation for its refund claim of under $5,000, the firm should recieve a refund of $357 ($255 in principal and $102 in interest).

Conoco Inc./Western Marketing, Inc., 3/21/88, RF220-251

The DOE Issued a Decision and Order granting an Application for Refund filed by Western Marketing, Inc. in the Conoco Inc. special refund proceeding. *Conoco Inc.* 13 DOE ¶85,316 (1985). Western Marketing, a reseller/retailer of refined petroleum products, claimed a refund based on its document purchases of Conoco motor gasoline. To demonstrate that it was injured by Conoco's alleged overcharges, the firm submitted cost banks and a three-part competitive disadvantage test. After examining its application and supporting documentation, the DOE concluded that Western Marketing should receive a refund totalling $12,594, representing $8,746 in principal and $3,848 in accrued interest.

Cranston Oil Service Company, Inc./Frank V. Toti, Cranston Farms, Inc., 3/22/88, RF276-258, RF 276-288

The DOE issued a Decision and Order concerning two Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set form in *Cranston Oil Service Co.*, 14 DOE ¶85,499 (1986). The sum of the refunds approved in this Decision is $460, representing $395 in principal and $65 in interest.

Dane County Highway & Transportation Dept., 3/23/88, RF272-5545

The DOE issued a Decision and Order granting a refund to Dane County Highway & Transportation Department. The county had submitted an Application for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that liquid asphalt when purchased in its unadulterated form from a refiner is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $2,007.

Dugas & LeBlanc, Ltd. et al., 3/24/88, RF 272-4521 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each

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applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each appliant was an end-user of the products it claimed and therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $283.

Dwight L. Jackson, et al., 3/22/88, RF272–8948, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,115. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

E.L. & J.B. Fisher, et al., 3/21/88, RF272–8900, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 37 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $887. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Ferrell Companies, Inc./Fred G. McKenzie Company, Superior Gas and Chemical, 3/21/88, RF273–4 and RF273–6

The DOE issued a Decision and Order granting two Applications for Refund filed in the *Ferrell Companies, Inc.*, 14 DOE ¶ 85,514 (1986). Both applicants were retailers of Ferrell propane that claimed refunds of less than $5,000. Therefore, both were presumed to have been injured under the retailer small claims presumption. Based upon the applicants' submissions, the DOE granted refunds totaling $1,340, representing $949 in principal and $391 in interest.

Getty Oil Company/Kilpatrick Skelly Station, et al., 3/22/88, RF265–1942, et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund filed by resellers, retailers and one end-user of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that was indirectly purchased from Getty jobbers/distributors during the consent order period. In all of these claims, the applicants were eligible for a refund below the $5,000 threshold. The sum of the refunds approved in this Decision is $67,821, representing $33,429 in principal and $34,392 in accrued interest.

Getty Oil Company/Shawley's LP-Gas Co., et al., 3/25/88, RF265–35, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases that was indirectly purchased from Getty jobbers/distributors during the consent order period. All of the applicants elected to limit their claims on the basis of the percentage presumptions of injury methodology and were eligible for a refund below the $50,000 threshold. The sum of the refunds approved in this Decision is $69,743, representing $34,376 in principal and $35,367 in accrued interest.

Growers Chemical Corp. et al., 3/25/88, RF272–5543 et al.

The DOE issued a Decision and Order granting refunds to 23 claimants that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found, as end-users of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was $8,523.

John A. Busch et al., 3/25/88, RF272–9800, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 55 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in the Decision was $1,504.

Leo C. Marker, et al., 3/21/88, RF272–9002, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in the Decision was $1,274. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Metropolitan Atlanta Rapid Transit Authority, et al., 3/22/88, RF272–178 et al.

Metropolitan Atlanta Rapid Transit Authority (MARTA) and four other metropolitan and regional transit authorities filed applicants for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to the transit authorities' applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that as governmental authorities the applicants are ineligible for refunds from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of the objectors' arguments. With respect to the latter, the DOE found that not all of the applicants were governmental entities, and even where they were, the Settlement Agreement does not prohibit a state from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the applications were approved and the transit authorities were granted refunds totalling $89,270.

Mobil Oil Corporation/Congress Gas & Oil Co., Inc. et al., 3/22/88, RF225–5587 et al.

The DOE issued a Decision and Order granting refund applications filed by 39 purchasers of Mobil refined petroleum products. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil Oil Corporation escrow fund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was $116,359, representing $93,732 in principal plus $22,627 in accrued interest.

Mobil Oil Corp./Mednansky Oil Company, Jose A. Montes, Moheb Yousef, 3/24/88, RF225–2395, RF225–2433, RF225–2434, RF225–2848, and RF225–2849

The DOE issued a Decision and Order concerning three Applications for Refund filed by Mednansky Oil Company, Jose A. Montes and Moheb Yousef in connection with the Mobil special refund proceeding. Each of these applicants was a consignee agent for Mobil during the consent order period. According to *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), it is presumed that consignee agents did not experience any injury from Mobil's alleged overcharges; therefore, consignee agents are ineligible to receive refunds unless they rebut the consignee presumption. Each of the three applicants was specifically notified of this presumption and was given 30 days in which to rebut it. None of the three applicants attempted to rebut the presumption. Accordingly, each of the three refund applications was denied.

Mobil Oil Corporation/Winco, Inc., 3/22/88, RF225–9799, RF225–9800 and RF225–9801

A Decision granting the Application for Refund from the Mobil Oil Corporation escrow account filed by Winco, Inc., a reseller of Mobil refined petroleum products. The applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund totalling $1,417 ($1,142 in principal plus $275 in interest).

Oceana Terminal Corporation/Trump Village Section 3, Trump Village Section 4, 3/25/88, RF243–2 and RF243–5

The DOE issued a Decision and Order concerning two purchasers of No. 2 fuel oil from Oceana, both of which are housing cooperatives. The applicants claimed refunds based on the procedures outlined in *Oceana Terminal Corporation* 13 DOE ¶ 85,363 (1986) (*Oceana*), governing the disbursement of settlement funds received from Oceana pursuant to an August 22, 1979 Consent Order. The two cooperatives have submitted their purchase volumes from Oceana and have stated that they will pass the refunds through to its customers on a dollar-for-dollar basis and will notify the state regulatory commission. In *Oceana*, housing cooperatives were presumed to have been injured by the alleged overcharges. Accordingly, the two firms were granted volumetric refunds. The total amount of refunds approved in this Decision is $2,098 ($840 in principal and $1,258 in interest).

Pyrofax Gas Corporation/General Motors Corporation, Kephart Hardware Company, Inc., 3/25/88, RF277–79 and RF277–89

The DOE issued a Decision and Order concerning two purchasers of propane from Pyrofax: General Motors (GM), an end-user, ad Kephart Hardware Company, Inc. (Kephart), a reseller/retailers of propane. The applicants claimed refunds based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) (*Pyrofax*), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. GM provided its purchase volumes from Pyrofax and all end users are presumed to be injured by *Pyrofax*. Kephart received a $5,000 small claims presumption refund and is also presumed to have been injured. The total amount of refunds approved in this Decision is $375,635 ($203,255 in principal and $172,380 in interest).

Pyrofax Gas Corporation/Wise Fuel and Oil et al., 3/25/88, RF277–11 et all.

The DOE issued a Decision and Order concerning six purchasers of propane from Pyrofax: one ERA-identified public utility and five reseller/retailers of propane. The applicants claimed refunds based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) (*Pyrofax*), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. Berkshire Gas Company, the ERA-identified purchaser has agreed to rely on the information in the audit file and has stated that it will pass its refund through to its customers on a dollar-for-dollar basis and will notify the state regulatory commission. H.B. Lauster and Sons, Felix Hardware, Inc., Gibbs Gas Service, Inc. and L.P.G. Supply Company, Inc., were able to demonstrate injury in accordance with *Pyrofax* and received full volumetric refunds. Wise received a $5,000 small claims presumption refund. The total amount of refunds approved in this Decision is $217,032 ($117,752 in principal and $99,280 in interest).

Robert Whittaker, et al., 3/25/88, RF272–9110, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 52 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $973. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Sigmor Corporation/Dalvest Energy Inc., 3/22/88, RF242–9

The DOE issued a Decision and Order regarding a refund application filed by Dalveat Energy Inc. in the Sigmor Corporation refund proceeding. Dalvest claimed purchases of 19,988,500 gallons of motor gasoline from Sigmor during the consent order period and provided the necessary information to substantiate its claim. Accordingly, under the procedure outlined in *Sigmor Corporation*, 14 DOE ¶85,079 (1986), the DOE granted Dalvest a refund equal to the volumetric refund amount. The total refund approved was $3,418 ($2,678 in principal plus $740 in interest).

Southern California Edison Company, 3/22/88, RF272–282

Southern California Edison Company (Edison), a public utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of states filed an objection to Edison's application, claiming that Edison should not be eligible to receive a refund because the utility itself was not an injured end-user. The states also claimed that Edison should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the states' arguments, finding that Edison was not claiming a refund for itself but rather agreed to pass through to its customers the benefits of any refund that it would receive. The DOE also found that the Settlement Agreement permitted utilities to receive a refund in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of Edison's claim. Accordingly, the application was approved and Edison was granted a refund of $2,746,739.

St. Mary's Hospital, et al., 3/23/88; RF272–2229, et al.

The DOE issued a Decision and Order granting four Applications for Refund from available crude oil overcharge

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funds. Each applicant estimated all or a portion of its gallonage during the crude oil price control period based on its gallonage during a period for which actual records were available. Because each claimant was an end-user, none was required to demonstrate injury. A total of $782 was approved in this Decision and Order.

Standard Oil Co. (Indiana)/Utah, 3/21/88, RQ21–418 and RQ251–419

The DOE issued a Decision and Order regarding an Application for Refund in the Standard Oil Co. (Indiana) second-stage refund proceedings filed by the State of Utah. In its application, Utah proposed to spend $531,000 of its Amoco monies on eight distinct energy conservation programs, including four farm energy management programs, a traffic light synchronization program and a furnance replacement and conversion program. In reviewing Utah's proposed plan, the DOE found that each program proposed by the State was restitutionary in that it would either promote energy conservation or reduce energy costs to injured consumers of petroleum products, or both. Accordingly, Utah was granted $531,000 ($488,571 principal plus $42,429 interest) in *Amoco* monies for the programs.

Walter Lambert et al., 3/25/88, RF272–6011 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $988.

Dismissals

The following submissions were dismissed:

Name	Case No.
Goodyear Tire & Rubber Co	RF272–415 R272–17465 R272–21549 R272–26134 R272–32224
J.M. Huber Corp.—Clay Division	RF272–12119
Thiem Oil Corp	RF225–2675
Washington Public Power Supply System.	RF225–6756

Copies of the full text of these decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

[FR Doc. 88–9558 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3372–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared April 11 Through 15, 1988

Availability of EPA comments prepared April 11, 1988 through April 15, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–AFS–J82011–MT, Rating LO, Deerlodge National Forest, Protection of Recreation Sites from Mountain Pine Beetle Attacks, Implementation, Homestake, Delmoe Lake, Elder Creek and Thompson Park Recreational Areas, Jefferson and Silver Bow Counties, MT. SUMMARY: EPA has not identified any potential environmental impacts requiring substantive changes to this proposal. EPA has provided comments on specific clarifying language and additional information which should be addressed in the final EIS.

ERP No. D–AFS–L65118–OR, Rating EC2, Winema National Forest, Land and Resource Management Plan, Implementation, Klamath County, OR. SUMMARY: EPA's main concern with this document is the water quality monitoring and feedback mechanism are not fully developed. EPA's rating is based on how well this document documented the forest plan implementation process. The process should include: A description of the data base for existing conditions; Best Management Practices and prescription development; Selection of BMPs for specific activities; Upgrading of BMPs or prescriptions to correct inaccurate predictions; on-site inspection an administration; Detailed environmental monitoring; And built-in feedback mechanisms.

ERP No. D–BOP–G81002–TX, Rating LO, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX. SUMMARY: EPA expresses no objections to the proposed alternative as described in this document.

ERP No. D–COE–J28017–WY, Rating EU3, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, 404 Permit, Savery Creek, Carbon County, WY. SUMMARY: EPA raised two major concerns with this document: it does not adequately address the direct and indirect impacts of the proposed project and its alternatives. Secondly, this document does not contain an adequate mitigation plan which meets NEPA requirements. EPA recommended this document be supplemented.

ERP No. D–FHW–G40122–LA, Rating LO, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding Jefferson County, LA. SUMMARY: EPA has no objections to the long siding removal with certain other of traffic flow conflicts and noise problems associated with the operation of the New Orleans Terminal Company railroad in the Old Metairie area.

ERP No. DS–IBR–J34007–CO, rating EC2, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Dolores and Montezuma Counties, CO. SUMMARY: EPA is concerned the level of wetland mitigation presented in this document is not adequate to fully mitigate project impacts.

Note. The above summary should have appeared in the 04–22–88 FR Notice.

ERP No. D–USA–L11009–ID, Rating LO, Orchard Training Area Facilities Development Project, Construction and Improvements, Implementation, Ada County, ID. SUMMARY: EPA has no substantive comments to offer based on the review of this document.

Final EISs

ERP No. F–FHW–E40704–TN, Nonconnah Parkway Construction, I–240 to TN–57, Funding, Section 10 and 404 Permit, Shelby County, TN. SUMMARY: EPA has concerns with projected loss of wetlands and noise impacts along the new highway corridor. Although wetland compensation is discussed, detailed plans were not presented. Noise abatement measures were seriously considered for only one of seven deserving locations.

ERP No. F–FHW–E40705–KY, US 127 Improvements, Anderson County Line to I–64, Funding, Franklin County, KY. SUMMARY: EPA has concerns with potential degradation of groundwater by highway (construction and operation) runoff to sinkholes and the lack of noise abatement measures for affected residents along the proposed highway.

ERP No. F–FRC–K03018–00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Projects Construction, Operation and Maintenance, Licenses and 404 Permit, California, Arizona, Wyoming, Nevada, Utah, TX, Colorado, and New Mexico. SUMMARY: EPA expressed support for an intrastate alternatives, rather than an interstate alternatives, because it would have less adverse environmental impact on water quality, protected beneficial uses, wetlands, riparian areas, and endangered species. EPA noted that a number of issues it had raised in the scoping and draft EIS comment periods were not addressed in this document. EPA also noted that it would provide comments on project features that cross rivers and streams under Section 404 of the Clean Water Act.

ERP No. F–IBR–J28012–ND, Dunn-Nokota Methanol Project, Water Supply Contract Approval, Section 10 and 404 Permits, Lake Sakakawea, Dunn County, ND. SUMMARY: EPA feels this document provides additional information which adequately responds to EPA's concerns on the draft EIS.

Dated: April 26, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–9569 Filed 4–28–88; 8:45 am]

BILLING CODE 6460–50–M

[ER–FRL–3372–2]

Environmental Impact Statements; Notice of Availability of Environmental Impact Statements Filed April 18, 1988 Through 22, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382–5075 or (202) 382–5074.

EIS No. 880118, Final, COE, MO, Coldwater Creek Flood Damage Reduction and Related Improvement Plan, Implementation, St. Louis County, MO, Due: May 31, 1988. Contact: James Zerega (314) 263–5800.

EIS No. 880119, Final, FAA, CT, Groton-New London Airport Runway 5 Medium Intensity Approach Lighting System Installation, Funding, City and Town of Groton, CT, Due: May 31, 1988. Contact: Mr. M. Ashraf (617) 273–7060.

EIS No. 880120, Draft, FHW, WA, I–5 Widening, Main Street Interchange to I–205, Funding and 404 Permit, Clark County, WA, Due: June 13, 1988. Contact: P.C. Gregson (206) 753–2120.

EIS No. 880121, DSuppl, COE, WA, Grays Harbor Navigation Improvement Project, Updated Description of Impacts, Implementation, Chehalis and Hoquiam Rivers, Grays Harbor County, WA, Due: June 13, 1988. Contact: Marcia A. Geidel (206) 764–3625.

EIS No. 880122, Final, COE, AK, Chignik Small Boat Harbor Facility Development, Implementation, Anchorage Bay, AK, Due: May 31, 1988. Contact: William Lloyd (907) 753–2640.

EIS No. 880123, Final, COE, NJ, Port of Jersey Channel Navigation Improvement Plan, Implementation, Port of New York and New Jersey, Bayonne and Jersey City, Hudson County, NJ, Due: May 31, 1988. Contact: Peter Doukas (212) 264–1275.

EIS No. 880124, Draft, OSM, WY, Dry Fork Surface Coal Mine, Mining Plan Approval, Campbell County, WY, Due: June 13, 1988. Contact: Floyd McMullen (303) 844–3104.

EIS No. 880125, Draft, NPS, NV, CA, Death Valley National Monument, General Management Plan, Implementation, Inyo and San Bernardino Cos., CA, and Nye and Esmeralda Cos, NV, Due: July 1, 1988. Contact: Ed Rothfuss (619) 786–2331.

EIS No. 880126, Final, COE, KY, Upper Cumberland River Basin Area Flood Damage Reduction Plan, Implementation, Harlan, Baxter, Loyall and Rio Vista Cities, Harlan County, KY, Due: May 31, 1988. Contact: Ray Hedrick (615) 736–7666.

EIS No. 880127, DSuppl, COE, CA, Santa Ana River Mainstem and Santiago Creek Multiple Purpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Cos., CA, Due: June 15, 1988. Contact: Mr. Dee Gonzales (213) 894–7053.

EIS No. 880128, Draft, EPA, REG, Comfort Cooling Towers, Chromium Emission Standards and Elimination of the use of Hexavalent Chromium, Due: May 31, 1988. Contact: Doug Bell (919) 541–5602.

This EIS should have appeared in the April 15, 1988 Federal Register. The 45 day NEPA Review Period is calculated from April 15, 1988.

Dated: April 26, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–9568 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3372–7]

Office of Municipal Pollution Control's Indian Workgroup; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under ongoing activities to implement Pub. L. 100–4, the Water Quality Act of 1987 (WQA), section 518(c), the Office of Municipal Pollution Control (OMPC), in cooperation with the Indian Health Service, is currently developing a process for administering funds reserved under section 518(c) for Federal grants to fund the planning and construction of sewage treatment works to serve Indian Tribes.

A workgroup that includes members of various Indian Tribes, EPA and Indian Health Service staff will convene a workgroup meeting at 8:30 a.m., May 12 and 13, 1988, at the Old Colony Inn Conference Center, 625 First Street, Alexandria, Virginia, 22314. The workgroup will discuss the proposed process for providing grants to construct wastewater treatment systems. EPA encourages interested parties to attend this working session; however, comments from the public will be accepted only at the end of each session.

Final logistics of this meeting are subject to change. Please contact Chris Powers, Planning and Analysis Division, Office of Municipal Pollution Control, Room 1117ET, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or call 202–382–3770 before attending the meeting.

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Dated: April 21, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water (WH556).

[FR Doc. 88-9520 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51705; FRL-3372-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1123, 88-1124—June 26, 1988.

P 88-1125, 88-1126, 88-1127—June 28, 1988.

P 88-1129, 88-1130, 88-1131, 88-1132, 88-1133—June 29, 1988.

P 88-1135, 88-1136, 88-1137, 88-1138, 88-1139, 88-1140, 88-1141, 88-1142, 88-1143, 88-1144, 88-1145, 88-1146, 88-1147, 88-1148, 88-1149, 88-1150, 88-1151, 88-1152—July 3, 1988.

P 88-1153, 88-1154—July 4, 1988.

Written comments by:

P 88-1123, 88-1124—May 27, 1988.

P 88-1125, 88-1126, 88-1127—May 29, 1988.

P 88-1129, 88-1130, 88-1131, 88-1132, 88-1133—May 30, 1988.

P 88-1135, 88-1136, 88-1137, 88-1138, 88-1139, 88-1140, 88-1141, 88-1142, 88-1143, 88-1144, 88-1145, 88-1146, 88-1147, 88-1148, 88-1149, 88-1150, 88-1151, 88-1152—June 3, 1988.

P 88-1153, 88-1154—June 4, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51705)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1123

Manufacturer. Confidential.
Chemical. (G) Isocyanate-terminated polypropylene glycol, blocked.
Use/Production. (G) Open, non-dispersive. Prod. range: 3200-9100 kg/yr.

P 88-1124

Importer. Confidential.
Chemical. (G) Fiber-reactive orange dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1125

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Fiber-reactive red dye.
Use/Import. (S) Vehicle for prints. Import range: 600-1,000 kg/yr.

P 88-1126

Manufacturer. Hercules Corporation.
Chemical. (G) Epoxy resin.
Use/Production. (S) Manufacture of carbon/epoxy prepare. Prod. range: Confidential.

P 88-1127

Manufacturer. Polymer Industries Incorporated.
Chemical. (S) Adipic acid; polyethylene terphthalene; diethylene glycol; tetrabutyl titanate.
Use/Production. (S) Reactive polyol. Prod. range: 909,090.9-1,363,636.4 kg/yr.

P 88-1129

Importer. Hoechst Celanse Corporation.
Chemical. (S) Ethyl 1-(2,4-dichlorophenyl)-5-trichloromethyl-(1H)-1,2,4-triazole-3-carboxylate.
Use/Import. Safening agent in herbicides. Import range: Confidential.

P 88-1130

Importer. Confidential.
Chemical. (G) Urethane/acrylic resin.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88-1131

Importer. Ciba-Geigy Corp.
Chemical. (G) Bisphenol A diglycidyl ether resin, reaction products with an aliphatic amine and an accelerator.
Use/Import. (S) Hardener for coatings. Import range: Confidential.

P 88-1132

Importer. Confidential.
Chemical. (G) Chlorinated alkene.
Use/Import. (S) Chemical intermediate. Import range: Confidential.

P 88-1133

Manufacturer. Reichhold Chemicals.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Can coatings. Prod. range: Confidential.

P 88-1135

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Substituted-alkylpolysiloxane.
Use/Import. (G) Open, non-despersive. Import range: 1000-50,000 kg/yr.

P 88-1136

Manufacturer. Confidential.
Chemical. (G) Alkene-substituted aromatic amine.
Use/Production. (S) Monomer. Prod. range: 1,500-5,000 kg/yr.

P 88-1137

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (G) Auto interior coating component. Prod. range: Confidential.

P 88-1138

Manufacturer. Confidential.
Chemical. (G) Chloride of ethoxylated alcohol.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88-1139

Manufacturer. Confidential.
Chemical. (G) Chloroformate of ethoxylated alcohol.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88-1140

Importer. Confidential.
Chemical. (G) Fiber-reactive purple dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1141

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.

Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1142

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1143

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1144

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1145

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1146

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88-1147

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkenyl trialkyl ammonium salt.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88-1148

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkyl quaternary salt of an alkylaminoethyl acrylate.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88-1149

Manufacturer. Confidential.
Chemical. (G) Carboxylated acrylate bisphenol A epoxy resin.
Use/Production. (S) Solder mask for pc boards. Prod. range: Confidential.

P 88-1150

Importer. Confidential.
Chemical. (G) Fiber-reactive orange dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1151

Importer. Confidential.
Chemical. (G) Fiber-reactive yellow dye.

P 88-1152

Importer. Confidential.
Chemical. (G) Fiber-reactive red dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1153

Manufacturer. Confidential.
Microorganism. (G) *Bacillus alcalophilus*, self-cloned, by rDNA techniques to contain multiple gene copies for a protease enzyme using plasmid vectors from *Staphylococcus aureus.*
Use/Production. (G) This microorganism will be used for the biosynthesis of an enzyme: Subtilisin protease. Production range: Confidential.
Test data. Environmental studies: The number of vegetative cells of the improved production strain declined from 10^6 to 10^2 cells per ml in soil and water samples over 27 days, similar to the parent strain. The improved production strain is asporgenic. Spore production by the improved production strain was below the detection limit of the test method used. Toxicity studies: Mice were dosed by various routes and observed for 21 days. Both the parent strain and the improved production strain showed no clinical or histological abnormalities.
Exposure. Workers in laboratory and production areas.
Environmental release/Disposal. Production and processing: Live cells used for biosynthesis are contained in sealed fermentation vessel system. At the end of the biosynthesis, the cells are inactivated using a validated procedure and separated from the enzyme product. Disposal of cell waste: Landfill and waste water treatment facilities on company property.

P 88-1154

Importer. Hoechst Celanese Corporation.
Chemical. (G) Cationic azo dyestuff.
Use/Import. (S) Dyestuff for acrylic Fibers. Import range: 10,000-20,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 3780 mg-kg species (rat). Eye irritation: Moderate species (rabbit). Skin irritation: slight species (rabbit).

Dated: April 25, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-9521 Filed 4-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Credit Lyonnais, Paris, France; Application To Engage in Bullion, Foreign Exchange and Futures Commission Merchant Activities

Credit Lyonnais, Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to retain 100 percent of the voting shares of Alexanders Rouse (USA) Limited, New York, New York ("ARUSA"), and thereby engage indirectly in the activities of gold and silver bullion trading, providing foreign exchange advisory and transactional services, and acting as a futures commission merchant. Applicant states that ARUSA conducts these activities principally for its affiliate, Alexanders Rouse Limited, London, the United Kingdom ("ARUK"), and that ARUSA functions as the agent of ARUK in the United States.

In the bullion trading activities, according to Applicant, ARUSA acts as the United States agent for its affiliate ARUK in its physical gold and silver transactions. As an agent, ARUSA accepts orders from United States customers on behalf of ARUK. Positions generated by ARUK in making trades are covered by it with forward contracts with other bullion dealers, banks and other institutions or with futures contracts purchased on regulated exchanges. The covering transactions may be effected worldwide with transactions in the United States being effected through ARUSA.

Applicant states that the foreign exchange services provided by ARUSA conform with § 225.25(b)(17) of the Board's Regulation Y (12 CFR 225.25(b)(17)) in that ARUSA does not take positions for its own account (it acts solely for ARUK), it observes the standard of care described in § 225.25(b)(17)(ii) of the Board's Regulation Y (12 CFR 225.25(b)(17)(ii)) and it does not itself execute foreign exchange transactions.

Applicant also states that ARUSA's future commission merchant activities conform with § 225.25(b)(18) of the

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Board's Regulation Y (12 CFR 225.25(b)(18)) in that it acts for nonaffiliated persons as well as its affiliate ARUK in executing and clearing futures contracts of the type described in this subdivision.

The Board has previously determined that buying and selling gold and silver bullion are activities closely related to banking. *Standard and Chartered Banking Group Ltd.*, 38 Federal Register 27552 (1973). The Board has also previously found foreign exchange services and futures commission merchant activities to be generally permissible for bank holding companies. 12 CFR 225.25(b) (17) and (18), respectively.

The application differs from the Board's regulations and prior orders in several respects. ARUSA trades in gold and silver bullion for United States customers on behalf of ARUK. Moreover, the Board has not previously approved the proposed combination of activities in the same subsidiary.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that ARUSA's bullion activities are closely related to banking under previous Board decisions or are permissible as servicing activities under § 225.22(a)(1) of the Board's Regulation Y (12 CFR 225.22(a)(1)). ARUSA's foreign exchange services and futures commission merchant activities are, in Applicant's view, closely related to banking because of the similarity of these activities to activities previously determined by the Board to be closely related to banking. 12 CFR 225.25(b) (17) and (18). Applicant contends that the requirement contained in § 225.25(b) (17) and (18) (12 CFR 225.25(b) (17) and (18)) for conducting its activities through a separately incorporated subsidiary does not require that the activity must be isolated in a corporation that engages in no other activity but rather only that the corporation in which those activities are conducted be separate from the bank holding company. Finally, Applicant believes that futures commission merchant activities may be conducted for affiliated persons because such activities would be otherwise permissible as servicing activities. 12 CFR 225.22(a)(1).

In determining whether Applicant's proposed activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant believes that providing its services will increase competition by permitting it to compete in United States markets and will not result in adverse effects in light of its similarity to the activities of foreign exchange services and futures commission merchant previously incorporated in Regulation Y as permissible nonbanking activities. 12 CFR 225.25(b) (17) and (18), respectively. Applicant further states that there are numerous participants in the futures commission merchant and foreign exchange services market. Finally, Applicant states that there is no risk of unsound banking practices because virtually all of ARUSA's transactions are entered into for the account of ARUK and not for the United States branches or agencies of Applicant.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 31, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9509 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Financial Services, Inc., Louisville, Kentucky, in making, acquiring, or servicing loans and other extensions of credit for Company's account and for the account of others pursuant to § 225.25(b)(1); and operating an industrial loan company under Tennessee State Law pursuant to § 225.25(b)(2) of the Board's Regulation Y. These activities will be performed in the State of Tennessee.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9510 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

Montclair Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Montclair Bancorp, Inc.*, Montclair, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Montclair Savings Bank, Montclair, New Jersey.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corporation*, Wilkes-Barre, Pennsylvania; to acquire 100 percent of the voting shares of Peoples First National Bank and Trust Company, Hazleton, Pennsylvania.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *McCamey Financial Corporation*, McCamey, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of McCamey Bancshares, Inc., McCamey, Texas, and thereby indirectly acquire Security State Bank, McCamey, Texas.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9511 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 22, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Request for Certification as a Hospital Provider of Extended Care Services in the Medicare/Medicaid Programs—NEW—Medicare hospitals will use the form to initiate the process of requesting approval to provide swing bed services. Respondents: Individuals or households, State or local governments, Federal agencies or employees, Small businesses or organizations. Number of Respondents: 1,500; Frequency of Response: One-time; Estimated Annual Burden: 388 hours.

2. Home Health Agency Survey Report Form (Test)—NEW—This is a pilot test of a revised process and test forms for surveying Home Health Agencies for Medicare participation. Respondents: Individuals or households, State or local governments. Number of Respondents: 7; Frequency of Response: One-time; Estimated Annual Burden: 116 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. State Plan for Title IV-E of the Social Security Act—0980-0141—"Foster Care Adoption Assistance, State Plan" is required, by section 471 of the Social Security Act, from any State wishing to claim FFP under Title IV-E for Foster Care and Adoption Assistance. State may use a preprined format or may develop its own format provided it meets the requirements of the Act and includes all applicable statutory, regulatory/policy references and citations for each State plan requirement. Respondents: State or local governments, Federal agencies or employees.

Number of Respondents: 51;
Frequency of Response: 1;
Estimated Annual Burden: 765 hours.
OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. Employee Vital Status Letter—0920-0035—The Vital Status letter is sent to members of retrospective studies to determine if an employee who was exposed to a toxic substance in the workplace that is suspected of causing long term adverse health effects is deceased or alive. This letter is used as a last resort, after all other methods have been exhaused. Respondents: Individuals or households. Number of Respondents: 200; Frequency of Response: Occasionally; Estimated Annual Burden: 33 hours.

Office of Assistant Secretary for Health

1. Grant Application for Minority AIDS Education/Prevention Projects—NEW—Information requested from applicants is needed for the review process to select awardees. The affected public would be organizations within communities wishing to apply for one of these grants. Respondents: Non-profit institutions. Number of Respondents: 150; Frequency of Response: Occasionally; Estimated Annual Burden: 2,400 hours.

Food and Drug Administration

1. National Environmental Policy Act; Policies and Procedures—0910-0190—The National Environmental Policy Act requires each Federal Agency to consider the environmental effects of its actions. Firms wishing to market new products regulated by FDA must submit applications requesting approval.

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Certain applications must contain environmental information for determining whether the proposed action will have a significant environmental impact. Respondents: N/A; Frequency of Response: Occasionally; Estimated Annual Burden: 1 hour.

Health Resources Services Administration

1. Application for National Health Service Corps and Indian Health Service Loan Repayment Programs—NEW—The information collection will be used by PHS to determine an applicant's eligibility for participation in the Loan Repayment Programs. Respondents. Individuals or households, Businesses or other for-profit. Number of Respondents: 2,480; Frequency of Response: 1; Estimated

Annual Burden: 4,080 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Date: April 25, 1988.,

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–9525 Filed 4–28–88; 8:45 am]

BILLING CODE 4160–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–88–1796; FR–2506]

Income Eligibility for Assisted Housing; Implementation of Percentage Limits on Lower Income Families

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed notice.

SUMMARY: Elsewhere in this issue of the Federal Register, a Proposed Rule has been published which would implement Section 103 of the Housing and Community Development Act of 1987. Section 103 deals with the limitations on the admission of Lower Income Families, other than Very Low-Income Families, to dwelling units which have become available under public housing annual contribution contracts and Section 8 housing assistance payments contracts since October 1, 1981. This Notice provides, by program, the different percentage limitations that HUD proposes to use in approving exceptions to permit the admission of Lower Income Families, other than Very Low-Income Families, to post-October 1, 1981 units.

DATE: Comments due May 31, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

For Section 8 Programs administered under 24 CFR Parts 880, 881, and 883–886:

James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–5654.

For Section 8 Programs administered under 24 CFR Part 882 (Existing Housing and Moderate Rehabilitation):

Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755–6887, at the above address.

For Public Housing Programs administered under 24 CFR Part 913:

Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, telephone (202) 426–0744, at the above address. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended the United States Housing Act of 1937 ("1937 Act") to establish national percentage limitations on the number of families participating in housing assistance programs whose annual incomes are between the very low and lower income limits to: (1) Not more than 10% of admissions to units that were available for occupancy before October 1, 1981 and are leased thereafter [raised to 25% by section 213 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983)] and (2) not more than 5% of admissions to units that first become available after October 1, 1981. Section 103 of the Housing and Community Development Act of 1987 ("1987 Act") (Pub. L. 100–242, approved February 5, 1988) has further amended the 1937 Act to require that HUD not totally prohibit admission of families in the lower income, but not very low income, category. The 1987 Act also requires HUD to establish national percentage limitations on admissions of families in that income category for separate housing programs so that, when aggregated, the percentages will be no more than 5 percent of admissions to dwelling units which become available for leasing under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after the effective date of the 1981 Amendments (October 1, 1981).

This Notice is being proposed in conjunction with a Proposed Rule which is being published in today's Federal Register and which proposes to permit the establishment of apportionments by Federal Register Notice, and to provide the mechanism for redistribution of these apportionments from time to time by Federal Register Notice as HUD determines redistribution to be necessary.

The Proposed Rule does not change the requirement of the current regulation that no Lower Income Family that is not a Very Low-Income Family, be admitted to a unit which became available for occupancy on or after October 1, 1981, without authorization by HUD. The percentage limits proposed by this Notice are solely for the purpose of the administration of the statutory limitation by HUD and do not constitute a preauthorization of exception admissions to PHAs or owners, nor do they establish a limit applicable to any particular PHA or project. A Final Notice will be issued after consideration of the comments received on this Proposed Notice and the Proposed Rule, but not before the proposed rule is made final. (Future Notices will be issued first as Proposed Notices, with a 30-day comment period.)

This Notice proposes to establish the following national percentage limitations for HUD's use in approving exceptions:

Program	Percentage
Public Housing Program	6.0
Part 880 (Section 8 Housing Assistance Payments Program for New Construction)	6.0
Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation)	6.0
Part 882 (Section 8 Housing Assistance Program—Existing Housing) (Certificates Only)	1.0
Part 882 (Section 8 Housing Assistance Program—Moderate Rehabilitation)	6.0
Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies)	6.0
Part 884 (Section 8 Housing Assistance Payment Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects)	6.0
Part 885 (Loans for Housing for the Elderly or Handicapped)	6.0
Part 886, Subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside))	6.0
Part 886, Subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects))	6.0

The small percentage allotted to Section 8 Existing Housing is expected to offset the larger percentages allotted to the other listed programs because of the number of admissions expected under each program. Also, the small percentage allocation for Section 8 Existing Housing would permit HUD to continue to target the program to the neediest families while allowing some flexibility for approving PHA requests for exceptions. The following cases are illustrative of those where HUD may decide to permit the issuance of a Section 8 Certificate to a lower income but not very low income family:

(1) A family that resides in a public housing unit which is being disposed of or demolished.

(2) A family that lives in a Section 8 new construction or substantial rehabilitation project where the owner exercises the right to "opt out" of the Section 8 program.

(3) A family with a disabled member and high medical expenses where the family can only locate a unit with the accessibility features it needs if it rents on the private market.

(4) A family that has been admitted to the Section 8 Existing program through PHA error and no fault of the family and where termination of assistance would cause undue hardship.

While reasons for granting exceptions in Section 8 Existing would be primarily to help the particular families involved, exceptions in the other assisted housing programs, like public housing and Section 8 New Construction, would help address project needs as well. The larger percentage allocations, six percent versus one percent, would allow HUD to grant exceptions where, experience shows, PHAs and owners need them most. For example, exceptions could be given to:

(1) Allow projects to achieve and maintain full occupancy.

(2) Attain occupancy by families with a broad range of incomes.

(3) Support homeownership programs.

(4) Allow Lower Income Families, that are not very low-income, to remain in buildings that are acquired for a HUD-assisted housing program.

Other Matters

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Dated: April 5, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–9549 Filed 4–28–88; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, dated December 2, 1980, section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, May 24, 1988, at the Clarion Hotel, Denali Room, 4800 Spenard Road, Anchorage, Alaska.

The tentative agenda for the Council will include consideration of:

—The Alaska Land Use Council's 1987 annual report.
—Recommendations for the Council's 1988–1989 Work Program.
—Recommendations for the proposed Lake Clark National Park and Preserve Land Protection Plan.
—Recommendations for Cooperative Planning Zones-Annual Review.
—Council's work group report on the "Economic Effects of ANILCA Implementation".
—Briefing on the Denali National Park and Preserve Land Exchange proposal between the National Park Service and State of Alaska.
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or other matters of general concern to the Council should contact either Cochairman's office before the close of business Tuesday, May 10, 1988.

The public is invited to attend.

For further information contact:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272–3422, (FTS) 271–5485.

Alaska Land Use Council, Office of the State, Cochairman Designee, P.O. Box AW, Juneau, Alaska 99811, (907) 465–3562,

or

2600 Denali Street, Suite 700, Anchorage, Alaska 99503, (907) 274–3528.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

April 25, 1988.

[FR Doc. 88–9531 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Yukon Delta National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E.

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Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative B, with several changes, for implementation. As described in the Plan, Alternative B is the alternative preferred by the Service. The Service is not recommending any additions on the Refuge to the National Wilderness Preservation System.

Alternative B provides a high degree of resource protection and a good opportunity for achieving the purposes set forth in the Alaska Lands Act, including conservation of fish and wildlife populations and habitats.

Date: April 22, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88–9491 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Convention; Prohibition on Importation of Burundi Ivory

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Effective immediately, the United States bans the importation of ivory from Burundi that was not registered with the CITES Secretariat by December 1, 1986. All ivory importations from any country that allows this Burundi ivory, whether in a raw or worked form, to be imported into or pass through that country will be prohibited.

SUPPLEMENTARY INFORMATION: At the fifth meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1985, The Secretariat was given the authority to form an Ivory Control Unit and to establish the Ivory Quota Control Procedures which control legal trade in African elephant ivory between Parties (and certain non-Parties adhering to these Procedures) and which also allowed a one-time trade of ivory stockpiled in non-producer countries only if it was registered with the CITES Secretariat by December 1, 1986. The Second Republic of Burundi, a non-party and non-elephant producing country, registered 89,464 Kg of raw ivory (18,148 tusks) with the Secretariat by this deadline. Although ivory trade experts believed that much of this ivory was illegally obtained, the Secretariat decided that stockpiles such as those in Burundi needed to be brought under control of the Ivory Quota Control Procedures, so that the new quota system for ivory exports could operate efficiently and effectively. The entire stockpile was thus allowed into international trade, and most of it was later imported legally into Hong Kong. The United States has allowed the importation of ivory derived from the Burundi stocks from countries that are party to CITES.

An informal report from the CITES Secretariat and information from independent sources now confirm that an additional 100 ± metric tons of elephant ivory that have not been registered under the CITES system have been discovered in Burundi. According to the report, the government of Burundi has stated that 16,437 tusks (87,562.5 Kg) were imported prior to the import ban instituted by the government of the Third Republic on November 5, 1987, and are now being held by three private dealers. In addition, the Burundi Customs Service has seized 21,698 Kg of ivory that was imported after the ban, although their irregularity has not been established and the status of these stocks is still in question. Since no ivory-producing country has authorized the export of this ivory to Burundi, and it has not been registered under the CITES system, the United States believes this Burundi ivory was obtained illegally.

The United States is encouraged by the actions of Burundi in imposing an import ban on elephant ivory and in attempting to enforce this ban. Unfortunately, Burundi can take no legal action against the ivory imported into Burundi prior to the November 5 ban, a quantity of illegal ivory nearly equal to that which was registered under CITES prior to December 1, 1986. While Burundi does not want to be entrepot for illegal ivory, the government is reportedly powerless to prohibit export of these new stocks.

Therefore, the United States encourages all countries to join in prohibiting the importation of this illegal ivory. Furthermore, the United States will take extraordinary measures to determine the trading route of this ivory to prevent its importation into this country. We will invoke the emergency regulation provision of the U.S. Endangered Species Act (16 U.S.C. 1533 (b)(7)) to ban all ivory importations from any country that allows this Burundi ivory, whether in a raw or worked form, to be imported into or pass through that country.

DATE: This action is effective April 29, 1988. There is not expiration date.

FOR FURTHER INFORMATION CONTACT: Clark R. Bavin, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202–343–9242.

Dated: April 26, 1988.

Frank Dunkle,

Director.

[FR Doc. 88–9573 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Intent To Prepare an Environmental Impact Statement or Environmental Assessment; Fish Hatchery; Nisqually Indian Reservation, Pierce County, WA

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) for the construction of a salmon hatchery in Pierce County, Washington.

The proposed project is needed to rebuild anadromous fish runs in the Nisqually River Basin. Rebuilding of anadromous fish runs in the basin is essential to meet the demands of the treaty and non-treaty commercial and sport fisheries, while ensuring continuing viability of the resource.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (§ 1501.7), to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS or EA. Comments and participation in this scoping process are solicited. Interested persons are encouraged to attend a public meeting to identify and discuss major issues and alternatives.

DATES: A public meeting regarding this proposal and preparation of the EIS or EA will be held at the Main Conference Room, Northwest Indian Fisheries Commission on June 2, 1988, at 1:00 p.m. at the Nisqually Indian Tribal Center on June 2, 1988, at 7:00 p.m.

ADDRESSES: Northwest Indian Fisheries Commission, 6730 Martin Way East, Olympia, Washington 98506; Nisqually Tribal Center, 4820 She-Nah-Num Dr., SE., Olympia, Washington 98503, and U.S. Fish and Wildlife Service, Assistant Regional Director—Fisheries, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Written comments should be addressed to Mr. David Troutt at the Nisqually Tribal Center and should be received by May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Forner at the Service's Regional Office regarding the construction of the proposed fish hatchery; and Mr. David Troutt of the Nisqually Tribal Center regarding the public meeting. Mr. Forner's telephone number is (503) 230–5972. If specific directions to the Nisqually Tribal Center are needed, Mr. Troutt should be contacted at the above address or 206–456–5221.

SUPPLEMENTARY INFORMATION: In response to a strong need for restoration of anadromous fish runs in the Nisqually River and Puget Sound, the U.S. Fish and Wildlife Service proposes to construct a salmon hatchery at a site six miles above the mouth of the Nisqually River at the confluence with Clear Creek. Annual production goals of the facility are to include 6.8 million fall chinook, 0.63 million coho, and 3.4 million chum salmon smolts. Adult survival for all three species is projected to be a total of about 200,000 fish. The proposed site (S22, T18N, R1E, Willamette Meridian) is located in Pierce County, Washington, on land controlled by the U.S. Army, Fort Lewis Military Reservation but within the boundaries of the Nisqually Indian Reservation.

Funding has been appropriated by Congress for "construction of the Nisqually Fish Hatchery at Clear Creek." The site will be secured under terms of a long term lease. The operation and maintenance of the facility will be under the responsibility of the Nisqually Indian Tribe.

The Clear Creek site has long been acclaimed by fisheries biologists and managers as a prime location for a salmon hatchery, because of its high water quality and availability, location relevant to a Tribal fishery, and potential for contribution to other treaty and non-treaty sport and commercial fisheries in the Puget Sound region. The feasibility of the site for a major fish hatchery was evaluated in a 1982 report entitled *Nisqually Fish Hatchery Feasibility Report*, prepared by the Nisqually Indian Tribe under contract to the Service.

The proposed hatchery facility will utilize water from the two spring fed streams. Facilities to be constructed consist of a gravity feed water supply system, a hatchery building, 10 concrete raceways, 5 large rearing ponds, a fishway, a pollution abatement pond, and a roadway to provide both access to the site and flood protection. Some fill will be required to create the necessary hydraulic head for the gravity flow water supply system. Approximately 15 acres of the 135 acre site will be cleared.

Alternates to the proposed project which have been identified to date include:

1. No action.
2. Alternative location in the Nisqually River Watershed.
3. Alternative design not utilizing gravity-feed system.
4. Construction of a smaller facility.
5. Alternative methods of replacing lost fish runs.
6. Utilizing already existing hatchery facilities.
7. Production of alternative fish species combinations.

The preferred alternative is the proposed project as outlined in this notice.

Potential impacts from the project include effects on water quality, effects on endangered or threatened species populations, alteration of wetlands, impact of hatchery salmon on native salmon stocks in the Nisqually River, possible impacts to archaeological or cultural resources, impacts from construction of the facility upon a floodplain, impacts to wildlife from clearing of the site, and economic impacts from increased fish production.

Issued in Portland, Oregon, April 22, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88–9492 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AA–230–08–6310–02]

Bureau Forms Submitted for Review

The proposal for the collection for information below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7340.

Title: Road Use Fees Paid Report.

Abstract: This form is used to provide information needed to terminate a timber sale contract containing road amortization and road maintenance requirements.

Bureau Form Number: 5400–2 (formerly 5450–8).

Frequency: One for each relevant timber sale contract.

Description of Respondents: Individual, partnership, and corporate timber sale purchasers.

Annual Responses: 100.

Annual Burden Hours: 25.

Bureau Clearance Officer: Rick Iovaine (202) 653–8853.

Date: April 20, 1988.

Dean E. Stepanek,

Assistant Director for Land and Renewable Resources.

[FR Doc. 88–9499 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–84–M

[ID–030–07–4212–13; I–23057]

Amended Notice of Realty Action; Exchange of Public Land; Bingham County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of realty action, exchange of public land in Bingham County, Idaho.

SUMMARY: The Notice of Realty Action published in the March 20, 1987 **Federal Register** (Vol. 52, No. 54, Pg. 8980) is amended as follows:

The parcel listed below will be deleted from the exchange:

T. 7 N., R. 44 E., Boise Meridian,
Sec. 11: NE¼SW¼ (40 Acres).

The following parcel will be added to the exchange:

T. 7 N., R. 44 E., Boise Meridian,
Sec. 15: NW¼NW¼.

All other information listed in the original notice remains unchanged.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the amended environmental assessment, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. For a period of 45 days interested parties may submit comments to the District Manager at the address listed above.

Dated: April 13, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88–9498 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–GG–M

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INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension.
Bureau/Office: Bureau of Accounts
Title of Form: Quarterly Report of Freight Commodity Statistics Class I Railroads
OMB Form No.: 3120–0031
Agency Form No.: QCS
Frequency: Quarterly/Annually
Respondents: Class I Railroads
No. of Respondents: 18
Total Burden Hrs.: 19,530
Brief Description of the need & proposed use: Reports are used to assess industry growth, sudden traffic pattern changes of carriers and effect on its National Transportation System.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Service Life Study
OMB Form No.: 3120–0037
Agency Form No.: ACV–159
Frequency: Annually
Respondents: Class I Railroads
No. of Respondents: 18
Total Burden Hrs.: 720
Brief Description of the need & proposed use: Form is used to collect data for determining service life of property used in computation of depreciation rates.

Noreta R. McGee,
Secretary.

[FR Doc. 88–9343 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A1. Parent corporation and address of principal office: Jeffrey & David Marcus, c/o Clock Fashions, 152 Madison Avenue, New York, NY 10016.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Name	State of Incorporation
(i) Dan-Ellen, Inc	New York
(ii) MIM Industries, Inc	Tennessee
(iii) Damy Industries, Inc	Tennessee
(iv) L G Transport Services, Inc	Tennessee
(v) Clock Fashions, Inc	New York

B1. Parent corporation and address of principal office: CIGNA Corporation, One Logan Square, Philadelphia, PA 19103

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Century Indemnity Company (Connecticut)
(ii) Century Reinsurance Company (Delaware)
(iii) CIGNA Asset Advisers, Inc. (Delaware)
(iv) CIGNA Associates, Inc. (Connecticut)
(v) CIGNA Fire Underwriters Insurance Company (Connecticut)
(vi) CIGNA Healthplan, Inc. (Delaware)
(vii) CIGNA Individual Financial Services Company (Delaware)
(viii) CIGNA Insurance Company (California)
(ix) CIGNA Investment Advisory Company, Inc. (Delaware)
(x) CIGNA Investment Group, Inc. (Delaware)
(xi) CIGNA Investments, Inc. (Delaware)
(xii) CIGNA Life Insurance Company (Connecticut)
(xiii) CIGNA Loss Control Services, Inc. (Delaware)
(xiv) CIGNA Property and Casualty Insurance Company (Connecticut)
(xv) CIGNA RE Corporation (Delaware)
(xvi) CIGNA Road & Travel Club, Inc. (Texas)
(xvii) CIGNA Securities, Inc. (Connecticut)
(xviii) CIGNA Worldwide, Incorporated (Delaware)
(xix) Connecticut General Corporation (Connecticut)
(xx) Connecticut General Fire and Casualty Insurance Company (Connecticut)
(xxi) Connecticut General Life Insurance Company (Connecticut)
(xxii) Connecticut General Pension Services, Inc. (Connecticut)
(xxiii) ESIS, Inc. (California)
(xxiv) INA Corporation (Pennsylvania)
(xxv) INA Life Insurance Company of New York (New York)
(xxvi) CIGNA Reinsurance Company (Delaware)
(xxvii) INA Special Risk Facilities, Inc. (Delaware)
(xxviii) INAPRO, Inc. (Delaware)
(xxix) Indemnity Insurance Company of North America (New York)
(xxx) Insurance Company of North America (Pennsylvania)
(xxxi) International Rehabilitation Associates, Inc. (Delaware)
(xxxii) James P. Toner Company, Inc. (Pennsylvania)
(xxxiii) Life Insurance Company of North America (Pennsylvania)
(xxxiv) Pacific Employers Insurance Company (California)
(xxxv) Recovery Services International, Inc. (Delaware)
(xxxvi) Trilog, Inc. (Pennsylvania)
(xxxvii) CIGNA Direct Marketing Company, Inc. (Delaware)
(xxxviii) Bankers Standard Insurance Company (Florida)
(xxxix) Atlantic Employers Insurance Company (New Jersey)
(xl) Marketdyne International, Inc. (Delaware)

Noreta R. McGee,
Secretary.

[FR Doc. 88–9514 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–30; Sub-No. 10X]

St. Louis Southwestern Railway Co. Exemption; Abandonment in Navarro, Hill, Limestone and McLennan Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 52.87-mile line of railroad between milepost 621.23 near Corsicana and milepost 674.10 near Waco, in Navarro, Hill, Limestone, and McLennan Counties, TX.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 29, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by May 9, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by may 19, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 4, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423 or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88–9231 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, I.C.C. 2d ——, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

Date: April 25, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

The following collections are from the Immigration and Naturalization Service of the Department of Justice.

New Collections

(1) Visa Waiver Pilot Program Information Form
(2) I–791
(3) At the time of each application for admission under the Visa Waiver Pilot Program
(4) Individuals or households. Needed by every alien applicant for admission applying to enter the United states as a temporary visitor under the provisions of the Visa Waiver Pilot Program as authorized by section 313 of the Immigration Reform and Control Act of 1986
(5) 500,000 respondents at .083 hours each
(6) 41,500 estimated public burden hours
(7) Not applicable under 3504(h)

(1) Agreement Between a Transportation Line (Operating Between a Foreign Territory and the United States) and the United States
(2) I–756
(3) Other—as needed
(4) Businesses or other for-profit. This agreement between a transportation company and the United States is needed to assure transportation under section 217 of the Immigration and Nationality Act, as added by section 313 of the Immigration Reform and Control Act of 1986
(5) 50 respondents at 1 hour each
(6) 50 estimated public burden hours
(7) Not applicable under 3504(h)

Extensions of the Expiration Dates of Currently Approved Collections Without any Change in the Substance or in the Method of Collection

(1) Application for Temporary Resident Status as a Special Agricultural Worker
(2) I–700
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for procedures to be used to adjust the status of Special Agricultural Workers to that of temporary residents and subsequently, to permanent resident status
(5) 300,000 respondents at .75 hours each
(6) 225,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Waiver of Exclusion
(2) I–690
(3) One time only
(4) Individuals or households. Pub. L. 99–603 contains specific language regarding grounds of exclusion. Because of these specifics, the existing waiver application cannot be used
(5) 100,000 respondents at .25 hours each
(6) 25,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Application for Temporary Replacement Card
(2) I–695
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for the procedures to be used for the application for replacement of a temporary residence card (Form I–688)
(5) 250,000 respondents at .166 hours each
(6) 41,500 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Notice of Appeal
(2) I–694
(3) One time only
(4) Individuals or households. Information on this form is used in considering appeals of denials of

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temporary resident status by legalization applicants and special agricultural workers
(5) 20,000 respondents at .5 hours each
(6) 10,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Request That Applicant Appear for Interview
(2) N–430
(3) One time only
(4) Individuals or households. This information is needed in order to prepare the Certificate of Naturalization for an eligible petitioner for naturalization as prescribed in section 338 of the Immigration and Nationality Act
(5) 311,625 respondents at .083 hours each
(6) 25,864 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Change of Address Notice
(2) I–697
(3) On occasion
(4) Individuals or households. In compliance with Pub. L. 99–603, the Immigration and Naturalization Service uses this form to keep current the addresses of legalization applicants and special agricultural workers
(5) 50,000 respondents at .063 hours each
(6) 4,150 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Medical Examination of Aliens Seeking Adjustment of Status
(2) I–693
(3) One time only
(4) Individuals or households. Pub. L. 99–603 requires specific language regarding the medical examination required of applicants who apply for temporary and permanent residence status
(5) 1,500,000 respondents at .5 hours each
(6) 750,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Application for Status as a Temporary Resident
(2) I–687
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for certain aliens to apply for temporary resident status in the United States. Section 902 of the Foreign Relations Authorization Act, 12/22/87, provides for adjustment of status to temporary residency for certain aliens from Poland, Uganda, Ethiopia and Afghanistan
(5) 300,000 respondents at 1 hour each
(6) 300,000 estimated burden hours
(7) Not applicable under 3504(h)

(1) Guarantee of Payment
(2) I–510
(3) Other—as needed
(4) Businesses or other for-profit. Section 253 of the Immigration and Nationality Act provides that the master or agent of a vessel or aircraft shall guarantee payment of expenses incurred by an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in section 255 of the Act
(5) 1,000 respondents at .083 hours each
(6) 83 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Departure Information Card
(2) I–438
(3) On occasion
(4) Individuals or households. Used by aliens granted voluntary departure in lieu of deportation to notify the Immigration and Naturalization Service of departure arrangements
(5) 15,000 respondents at .033 hours each
(6) 495 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status
(2) I–591
(3) On Occasion
(4) Individuals or households. Used by U.S. sponsor in behalf of a refugee as acceptable sponsorship agreement and guaranty of transportation in order to be approved for refugee status
(5) 70,000 respondents at .332 hours each
(6) 23,240 estimated annual burden hours
(7) Not applicable under 3505(h)

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 88–9476 Filed 4–28–88; 8:45 am]
BILLING CODE 4410–10–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30918]

KNRECO, Inc., d/b/a Keokuk Junction Railway Acquisition and Operation Exemption; the Atchison, Topeka and Santa Fe Railway Co.

On January 9, 1987, a notice of exemption was published in this proceeding in the **Federal Register** (52 FR 871) with respect to the acquisition by KNRECO, Inc., d/b/a Keokuk Junction Railway (KJ) from the Atchison, Topeka and Santa Fe Railway Company (ATSF) and the operation of approximately 33 miles of railroad between La Harpe, IL, and Keokuk, IA. Subsequently, KJ and ATSF entered into a car haulage agreement under which ATSF agreed to transport KJ cars over the ATSF line between La Harpe and Farmdale, IL. In a decision served October 29, 1987, we denied a petition for revocation and at the same time concluded that the car haulage agreement constituted incidental trackage rights. A supplemental notice reflecting that conclusion was published in the **Federal Register** on October 30, 1987 (52 FR 41785).

On reconsideration, the Commission has by decision served April 28, 1988, reversed its finding that the car haulage agreement constitutes incidental trackage rights. Instead, it concluded that it is a business arrangement between the carriers, and that it does not require Commission approval. Accordingly, the supplemental notice published October 30, 1987, is vacated.

Decided: April 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,
Secretary.

[FR Doc. 88–9513 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 9X)]

Southern Railway Co.; Abandonment Exemption Between Karnak and Mound City, IL, and Between the Sahara Mine and Bluebird Ramp, IL

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.6-mile line of railroad between milepost 234.7 at Karnak, IL, and milepost 245.3 at Olmstead, IL; its 1.6-mile line between milepost 251.6 and milepost 253.2 at Mound City IL; its 2.4-mile line between milepost 8.3 at the Sahara Mine, IL and milepost 10.7 at Bluebird Ramp, IL; and its 5.1-mile line between milepost 0.0 and milepost 5.1 on the Delta Mine Lead Track, IL.[1]

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court,

[1] Concurrently with this filing, Southern Railway Company filed a petition for exemption to abandon an additional 82.6 miles of rail line between Harrisburg and Karnak, IL and between Harrisburg and the Sahara Mine, IL. We have re-docketed this petition as Docket No. AB–290 (Sub-No. 23X).

or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, General Attorney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

This Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 4, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 25, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88–9512 Filed 4–28–88; 8:45 am]
BILLING CODE 7035–01–M

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[3] *See Exemption of Rail Line Abandonments or Discontinuance Offers of Financial Assistance*—I.C.C. 2d——, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application by Sigma Chemical Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 29, 1988, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxy amphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Morphine-3-Glucuronide (9329)	II

A maximum of 25 grams of each of the above listed substances will be imported annually and will be utilized in researcher or analytical studies.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 31, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: April 25, 1988.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88–9541 Filed 4–28–88; 8:45 am]
BILLING CODE 4410–09–M

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Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board Meeting

The Missing Children's Advisory Board will meet in Fort Myers, Florida on May 13–14, 1988. The meeting will take place at the Sonesta Harbour Hotel, 15610 McGregor Boulevard, Fort Myers, Florida, (813) 466–4000. The public is welcome to attend.

The Board will discuss the annual comprehensive plan and other issues related to missing and exploited children.

For further information, please contact Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724–7655.

Dated: April 26, 1988.

Approved.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–9839 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public. List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be direced to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration

Control of Hazardous Energy Sources (Lockout/Tagout) (NPRM)
On occasion
State of local governments; Businesses or other for profit; Small businesses or organizations
523,203 responses; 1 hour
This information is needed by employers to enable them to provide specific control measures and documented procedures for employee protection when working conditions expose employees to the hazards of unexpected energization, start-up, or the release of stored energy of machines, equipment, or processes.

Extension

Occupational Safety and Health Administration and Migrant Housing Inspection/Violations Report

OSHA 120,120A and 124
1218–0004
Quarterly
State or local governments
16 Responses; 480 Hours; 3 Forms
Requires each State having an approved plan to submit reports so that the Secretary may evaluate the manner in which each State is carrying out its responsibilities under the plan.

Extension

Mine Safety and Health Administration

Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 8,675 hours
Requires underground coal mine operators to keep records of the results of examinations of self-rescue devices.

Signed at Washington, DC, this 26th day of April, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–9574 Filed 4–28–88; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I		
New York	NY88–6(Jan. 8, 1988)	P.727.
Do.	NY88–17(Jan. 8, 1988)	P.821.
Do.	NY88–18(Jan. 8, 1988)	Pp.830–835.
Volume II		
Illinois	IL88–12(Jan. 8, 1988)	P.165
Do.	IL88–13(Jan. 8, 1988)	P.176
Missouri	MO88–10(Jan. 8, 1988)	P.655
New Mexico.	NM88–1(Jan. 8, 1988)	Pp.703–710.
Volume III		
Arizona	AZ88–2(Jan. 8, 1988)	Pp.17–18.
California	CA88–2(Jan. 8, 1988)	Pp.44–47. Pp.50–53.
Do.	CA88–4(Jan. 8, 1988)	Pp.70–71,87.
Montana	MT88–3(Jan. 8, 1988)	Pp.208–220.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd day of April 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–9253 Filed 4–28–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–46–C]

S&J Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S&J Coal Company, HC 88, Box 77, Williamsburg, Kentucky 40769, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–12412) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977. A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will

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be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 31, 1988. Copies of the petition are available for inspection at that address.

Date: April 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-9575 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR Parts 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Grantsville, MD; 1-18-88 to 1-17-89; 10 learners for normal labor turnover purposes. (Men's uniform shirts).

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended).

Somerset Manufacturing Co., Inc., Somerset, PA; 3-12-88 to 3-11-89; 5 learners for normal labor turnover purposes. (Ladies lingerie and sportswear).

The learner certificates have been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment and that experienced workers for the learner occupations are not available.

The certificates may be annulled or withdrawn as indicated therein in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of these certificates may seek a review or reconsideration thereof on or before May 16, 1988.

Signed at Washington, DC, this 19th day of April 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-9576 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-317]

Baltimore Gas and Electric Co; Correction to Consideration of Issuance of Amendment to Facility Operating License.

53 FR 12618 published on April 15, 1988, contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" related to the Calvert Cliffs Nuclear Power Plant, Unit No. 1. The abbreviation "RTP" in lines 10 and 12 of column three on page 12618 should be corrected to read "core cycle lifetime." In addition, the value "1.6" in column three item 5, line 3, on page 12618 should be corrected to read "1.15".

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-9517 Filed 4-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consolidated Edison (the licensee) to withdraw its August 7, 1981 application, as superseded August 2, 1985, to amend the Indian Point Nuclear Generating Unit No. 2 Technical Specifications. The proposed amendment would have revised the Technical Specifications for IP-2 to incorporate the requirements for the Alternate Safe Shutdown System. The Commission issued a Notice of Consideration of Issuance of the Amendments in the Federal Register on September 25, 1985 (50 FR 38913). By letter dated October 13, 1987, the licensee requested an amendment application to incorporate fire protection requirements in accordance with Generic Letter 86-10 which completely supersedes the previous two submittals. The Commission is considering this as a request to withdraw the applications pursuant to 10 CFR 2.107.

For futher details with respect to this action, see (1) the applications for amendment dated August 7, 1981 and August 2, 1985; (2) the licensee's letter dated October 13, 1987, requesting the separate amendment application. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Marylee Slosson,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

Dated 21st day of April 1988, Rockville, Maryland.

[FR Doc. 88-9516 Filed 4-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 20, 1988, the amendment would change Technical Specification Table 4.3.1.1-1, "Reactor Protection System Instrumentation Surveillance Requirements," to delete the Daily Channel Check requirements of Note (g) for the Average Power Range Monitor Flow Biased Neutron Flux—High Scram Functional Unit.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have determined, and the Commission agrees, that the proposed change to the Technical Specifications:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change only removes a requirement determined to have no meaningful value from a safety point. With properly maintained reactor protection system (RPS) instrumentation and periodic m-ratio checks, the accuracy/conservatism of the APRM-FBNF trip is assured and the validity of the loss of feedwater heater transient analysis (which takes credit for the APRM-FBNF trip) is not adversely affected by the deletion of Note (g). Gross deviations from the established core-flow and drive-flow conditions (m-ratio) will continue to be indicated by performance of the surveillance required under Technical Specification 3/4.4.1.2.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or changes to plant design are involved.

(3) Does not involve a significant reduction in a margin of safety because the relationships (under Specification 3.2.2) used to establish the APRM Flow-Biased Neutron Flux—High Scram and Flow-Biased Neutron Flux-Upscale control rod block trip setpoints will remain unchanged. The APRM-indicated recirculation loop drive flows will continue to be appropriately checked to ensure that their established relationship to total core flow is preserved. All other operability and surveillance requirements associated with the affected instrumentation remain unchanged.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 31, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazard consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

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If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it si requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 27 day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–9652 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would change Technical Specification (TS) 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels (i.e., vacancies) for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage. Presently, TS 5.3.1 requires that each fuel assembly contain 264 fuel rods clad with Zircaloy-4, except that limited substitutions of fuel rods with filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in peripheral fuel assemblies if justified by cycle-specific reload analyses. The revised TS 5.3.1 would require that each fuel assembly nominally contain 264 fuel rods clad with Zircaloy-4, except that substitutions of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in fuel assemblies if justified by cycle-specific reload analyses using NRC-approved methodology. The proposed revision would also state that should more than 30 rods in the core, or 10 rods in any assembly, be replaced per refueling, a special report describing the number of rods replaced would be submitted to the Commission pursuant to Specification 6.9.2 within 30 days after cycle startup.

The increased flexibility associated with the proposed change results from removal of "limited substitutions" and "peripheral fuel assemblies." Under the proposed change, limitations on fuel rod substitutions or omissions and limitations regarding core locations are those implicit in the justifying analyses required to be performed by the licensee for each fuel cycle using NRC-approved methodology to demonstrate that existing design limits and safety analyses continued to be met. The proposed flexibility is intended to provide for improved fuel performance by permitting timely removal of individual fuel rods which are found during a refueling outage to be leaking. The requirement for special reporting is proposed in response to the NRC's request to be informed in the event a significant deviation from past fuel performances should be observed during a refueling outage.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 31, 1988, the licensee may file a reuest for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresed to David B. Matthews, Director, Project Directorate II–3; (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242. Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.7814(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 1, 1988, which modifies a letter of February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR Doc. 88–9518 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensees), for the operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

The proposed amendment would modify the Technical Specifications to change the maximum nominal enrichment of the fuel allowed to be used in the reactor core for operating Cycle 11 and beyond. Maine Yankee is currently in Cycle 10 operation.

Maine Yankee proposes to change, in Technical Specification 1.3, "Reactor", the fuel enrichment specification from a maximum nominal weight percent of 3.5 U–235 to 3.7 weight percent U–235.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 31, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

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petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I–3: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. A. Ritscher, Ropes & Gray, 225 Franklin St., Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 24, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Wiscasset Library, High St., P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Project Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–9519 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Public Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Monday, May 16, 1988, at 10:00 a.m. to 5:00 p.m.; Tuesday, May 17, 1988, 9:00 a.m. to 4:00 p.m.; and Wednesday, May 18, 1988, at 10:00 a.m. to 4:00 p.m. at the Interstate Commerce Commission Building, Hearing Room B, 12th and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to examine several aspects of the AIDS epidemic and the impact on different population groups. There will be panel presentations on sexual behavior and AIDS in adults and teenagers, and discussions on food distribution systems and homeless people with AIDS or AIDS related conditions. Agenda items are subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection during regular office hours at 655—15th Street, NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88–9601 Filed 4–28–88; 8:45 am]

BILLING CODE 4160–15–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25609; File No. SR–CBOE–88–06]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on April 19, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Rule 24.11(a) No Change

(b)(i) See SR–CBOE–88–06

(c)(ii) Option Contracts on an Industry Index. For each put or call option contract on an industry index carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [15] *20%* of the product of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5] *10%* of the current index value times the index multiplier.

(c)(1) No Change

(c)(2) See SR–CBOE–88–06

(d) No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change raises the margin requirements applicable to options on industry indexes. While the Exchange does not presently trade contracts on such indexes, the Exchange believes it advisable to modify its rule in order to be consistent with the proposed filings of other options exchanges.[1]

The new requirements would be in effect for a period not to exceed six months commencing on the date the margin increases become effective for positions established on or after the effective date. At the end of the six month period, the new percentages would revert to their previous levels unless other percentages proposed by the Exchange are deemed to be appropriate in light of the experienced market volatility. During this period, the Exchange, in conjunction with the other securities regulators, will have an opportunity to determine adequate procedures to routinely monitor and adjust margin levels so that they will provide adequate protection to the carrying broker-dealers based on current market volatilities.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b) thereof, in that the rule change is designed to adjust margins for industry index options to a level which provides a reasonable amount of financial protection to the securities industry and does not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

[1] The CBOE previously filed a proposed rule change to increase the margin requirements applicable to broad market index and equity options. *See* File No. SR–CBOE–88–03. Notice of the proposal was provided in Securities Exchange Act Release No. 25552 (April 7, 1988), 53 FR 12466.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 20, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–0540 Filed 4–28–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 45155; Order 88–4–66]

Application of Blue Bell, Inc., Wrangler Aviation, Inc. and W.A. Services, Inc.; Approval of a Transfer of Certificates

AGENCY: Department of Transportation.

ACTION: Order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue final orders finding Wrangler Aviation, Inc. fit, approving the transfer of certificates previously issued to Blue Bell under sections 401 and 418 of the Act, and reissuing the certificates to Wrangler.

DATES: Persons wishing to file objections should do so no later than May 2, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 45155 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590 and should be served upon all parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: April 25, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–9539 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Environmental Impact Statement (EIS); Denver Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) announces to the public, and local, state, and Federal governmental agencies its intent to prepare an Environmental Impact Statement (EIS) and conduct EIS scoping meetings in conjunction with a proposal by the city and county of Denver to develop a new major airport in the Metropolitan Denver area. The proposal includes not only the development of specific airfield and access facilities described below but also, from the FAA's perspective, the development and implementation of air traffic control and airspace management actions related to an designed to effect the safe and efficient movement of air traffic arriving at and departing from the proposed new airport.

DATES: In order to ensure that all significant issues related to the

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proposed development are identified and considered in the EIS process, a Federal EIS scoping meeting will be held to receive input from interested state, local and Federal governmental agencies regarding the subjects and issues which should be addressed in the EIS process. The meeting will be held at the following time and place: 12 pm to 5 pm, Monday, June 6, 1988, Denver Airport Hilton Hotel, 4411 Peoria St., Denver, CO (I–70 and Peoria St.)

Letters or other written material presenting economic, social, and environmental views, information, data, or concerns must be received by June 17, 1988 by the individual identified under the heading "FOR FURTHER INFORMATION CONTACT." In addition, questions may be directed to the individual identified under the heading "FOR FURTHER INFORMATION CONTACT."

ADDRESSES: The proposed development of a new major airport in the Metropolitan Denver area was the subject of an Environmental Assessment report (EA) dated April 22, 1988. Anyone wishing to review the EA in order to better understand the proposed actions or any specific aspect of them, or to be better able to provide comments regarding any particular environmental concerns may review the EA at any of the following locations during normal business hours.

Aurora North Public Library, 1298 Peoria Street, Aurora, CO
Federal Aviation Administration, Denver Airports Development Office, Stapleton Airport Terminal Building, Concourse E, Forth Floor, Stapleton International Airport, Denver, CO
Denver Public Library, (Montbello), 12955 Albrook Drive, Denver, CO
Denver Collection of Governmental Publications, Denver Public Library, 1357 Broadway, Denver, CO
Denver Public Library, (Park Hill), 4705 Montview Boulevard, Denver, CO
Adams County Public Library, 7185 Monaco Parkway, Commerce City, CO

FOR FURTHER INFORMATION CONTACT: Mr. George Brewer, Federal Aviation Administration, Terminal Building—Denver Stapleton Airport, Concourse E, Fourth Floor, Stapleton International Airport, Denver, Colorado 80207, Telephone: (303) 398–0684.

SUPPLEMENTARY INFORMATION: The proposed action is the development and operation of an entirely new major airport in the metropolitan Denver, Colorado area. The proposed new airport would be owned and operated by the city and county of Denver, which has indicated that this new airport, when completed and ready for operation would serve as a replacement for Stapleton International Airport. In conjunction with this proposed development it would be necessary for the FAA to develop and implement air traffic control and airspace management procedures designed to effect the safe and efficient movement and flow of air traffic to and from this new airport. The proposed development includes the following items of action:

(a) The acquisition of land necessary to construct and operate: (1) The airport complex itself, including the terminal and related groundside facilities and passenger facilities, an well as sufficient area on which to construct as many as twelve potential runways; (2) both on and off airport site areas appropriate and necessary to locate and operate air navigation facilities; (3) ground transportation facilities and related access roads designed to serve the new airport.

(b) The establishment of air traffic control and flight operating procedures designed in conjunction with the necessary on and off site air navigation facilities for use in the management of the navigable airspace and control of air traffic arriving at and departimg from the new airport.

(c) Construction of: (1) The airport complex, including the terminal and related aeronautical groundside facilities such as apron, hangars, passenger facilities, fuel storage and dispensing facilities, maintenance facilities, etc. . . . as well as the initial construction of six runways with future development growing to as many as twelve runways; (2) necessary and appropriate air navigation facilities located both on and off the airport including an air traffic control tower.

(d) Construction of roads, highways, or other ground transportation facilities designed to provide access to and serve the new airport, and the integration of these roads into the existing road system in the area.

(e) Within the limits of available appropriations and subject to other demands for funds Federal grant-in-aid funds would be provided for eligible airport development items under the airport and airway improvement program or its successor.

(f) Approval of an airport layout plan showing the above described development.

(g) The closure of existing Stapleton International Airport upon completion and commencement of operations at the proposed new airport including possible Federal waiver of reverter clauses attached to the existing Stapleton Airport site.

The following alternatives to the proposed action will be evaluated:

(a) The "no-build" alternative—under this alternative a new major airport would not be developed in the metropolitan Denver area and Stapleton International Airport would continue to be the major airport in the Denver area for the foreseeable future.

(b) Build the identified preferred airport configuration at the identified preferred location.

(c) Build the identified preferred airport configuration at an alternative location, one other than the identified preferred location.

(d) Build the airport with an alternative configuration at the identified preferred airport location.

Purpose of the EIS Scoping Meetings

All of the comments presented, whether written or oral, will be fully considered by the FAA in conjunction with the EIS process. The FAA will consider written or oral comments presented as the scoping process since it will provide an early and open process for determining the scope of the issues to be addressed in the EIS, and consequently will serve as a means of identifying the significant issues related to the proposed action. The FAA considers this process as an important means of identifying issues of significant concern to state, local, and other Federal governmental agencies so as to enable the FAA to focus attention on those identified significant issues related to the proposal.

Future Timetable

While it must be recognized that the timing of future events is not predictable with certainty since they are dependent on many different factors, the following information is presented in order to provide the public with a general understanding of that timetable:

—Approximate date on which a draft EIS may be issued is expected to be in September, 1988
—Approximate date on which a final EIS may be issued is expected to be in February, 1989.

Issued in Seattle, Washington, on April 19, 1988.

Edward G. Tatum, Manager,
Airports Division, Federal Aviation Administration, Northwest Mountain Region, Seattle, Washington.

[FR Doc. 88-9535 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-15]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 19, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 22, 1988.

Denise D. Hall,
Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of Relief sought
25532	The French Connection Air Show	14 CFR 45.29	To allow petitioner's management to continue to display 2-inch-high registration marks on their two aircraft (N82BW and N966KB) after they are repainted.
25577	Lake Union Air Service, Inc	14 CFR 135.203(a)(1)	To allow pilots of petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief south, disposition
21168	PHH Executive Air Fleet, Inc.	14 CFR 135.297(a)	To extend Exemption No. 3203C that allows petitioner (formerly Executive Air Fleet Corporation) to use pilots in command who have completed an instrument proficiency check within the preceding 12 calendar months if they have satisfactorily completed in an approved aircraft simulator within the preceding 6 months either an instrument proficiency check or training to proficiency. Grant, April 13, 1988, Exemption No. 3203D.
24899	Aero Mod General, Inc.	14 CFR 21.19(b)(1)	To allow petitioner to remove the existing Continental IO 360 front and rear engines from the Cessna Model 337 Super Sky Master airplane and to replace these with a single front tractor-mounted Pratt and Whitney PT6A–27 turbine engine and obtain approval through the Supplemental Type Certificate procedure. Grant, April 13, 1988, Exemption No. 4924.
25400	Big Sky Transportation Company	14 CFR 135.181(a)(2)	To allow petitioner to operate its Swearingen SA226TC Metro II (SA226) airplanes under Instrument Flight Rules (IFR) or under Visual Flight Rules (VFR) over the top and to permit an alternate means of compliance with the performance requirements and the use of procedures for compliance with the en route limitations specified in § 135.181. Partial Grant, April 12, 1988, Exemption No. 4923.
25539	Northwest Airlines, Inc	14 CFR 121.0411(a)(1), (2), (3), and (6); 121.411(b); and 121.413(b), (c), and (d).	To allow petitioner to use certain qualified pilots from Aeroformation (a joint venture of Airbus Industrie and FlightSafety International) for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A–320 (A320) type airplane without those Aeroformation airmen holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. Grant, April 12, 1988, Exemption No. 4922.

[FR Doc. 88-9495 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-M

Aircraft Turnbuckle Assemblies and/or Turnbuckle Safetying Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO/C21b prescribes the minimum performance standards that aircraft turnbuckle assemblies and/or turnbuckle safetying devices must meet to be identified with the marking "TSO–C21b."

DATE: Comments must identify the TSO file number and be received on or before August 5, 1988.

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ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C21b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written date, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C21b will revise the strength requirements of turnbuckle assemblies, permit the use of aluminum for turnbuckle bodies and provide for the use of locking clips safetying devices in lieu of safety wiring. Furthermore, the proposed TSO references Military Specification, MIL–T–8878C, "Turnbuckle, Positive Safetying," dated October 8, 1985, for the minimum performance standards.

TSO–C21a will remain in force and continue to permit the manufacture of turnbuckle assemblies which employ safety wiring.

How to Obtain Copies

A copy of the proposed TSO–C21b may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" Military Specification, MIL–T–8878C, may be purchased from the Commanding General, Air Materiel Command, Wright-Patterson Air Force Base, Dayton, Ohio; or the Commanding Officer, U.S. Naval Air Station, Johnsville, Pennsylvania.

Issued in Washington, DC, on April 25, 1988.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 88–9478 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. T84–01; Notice 14]

Final Passenger Motor Vehicle Theft Data for 1985

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA previously published 1985 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1985 data. This notice informs the public of those minor changes and of this agency's final calculations of 1985 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4806).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comments the theft rates for 1985 on November 3, 1986 (51 FR 39877). NHTSA received four comments on the 1985 theft data, all of which were submitted by vehicle manufacturers.

BMW commented that its car lines should be shown as 3, 5, 6, and 7, instead of 3 Series, 5 Series, 6 Series, and 7 Series as shown in the previous notice. NHTSA agrees and has made this nomenclature change in this final listing.

Isuzu commented that the theft rate for its I-Mark line approximately doubled in 1985 when compared to that line's theft rate in 1983 and 1984. Isuzu analyzed the 1985 theft data and offered the following observations. During the 1985 model year, Isuzu produced both front-and rear-wheel drive versions of the I-Mark. Production of the rear-wheel drive version was discontinued in the middle of the 1985 model year. Most of the reported thefts of the I-Mark occurred in Puerto Rico, where the 1985 I-Mark theft rate was seven times higher than in the United States. Additionally, the theft rate of the rear-wheel drive I-Mark was as much as 25 times higher than the theft rate for the front-wheel drive I-Mark. Based on its analysis, Isuzu commented that it was unfair to rank a car whose theft rate was disproportionately high in only one area of the country, and very low throughout the rest of the country, as a high theft line across the entire United States. Isuzu asked that the agency exclude thefts in Puerto Rico from calculations of the I-Mark's 1985 theft rate.

NHTSA is statutorily obligated to include vehicle thefts from Puerto Rico in making theft rate calculations. Section 603(b)(5) of the Cost Savings Act specifies: "* * * [T]he term 'new passenger motor vehicle thefts,' when used with respect to any calendar year, refers to those *thefts in the United States* in such year which are of passenger motor vehicles with the same model year designation as that of the calendar year." (Emphasis added). Section 2 of the Cost Savings Act (15 U.S.C. 1901) makes clear that, for the purposes of the Cost Savings Act, the United States consists of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. Therefore, thefts in the Commonwealth of Puerto Rico *must* be included in all calculations of theft rates.

Isuzu also questioned whether all of the I-Marks reported as stolen in Puerto Rico were actually stolen. As explained in previous notices listing theft data, the National Crime Information Center (NCIC), which is a division of the FBI, is the source for the NHTSA theft data. NCIC receives vehicle theft information from nearly 23,000 police agencies througout the United States. The agency has already determined that the NCIC vehicle theft data are the most accurate theft data; 50 FR 46666, at 46667; November 12, 1985. NHTSA has no reason to believe that the NCIC data includes vehicles that were not stolen, and Isuzu did not offer any reasons for its doubts about the accuracy of those data. Accordingly, no change has been made to the previously published theft data for the Isuzu I-Mark.

Toyota commented that the 1985 theft rates for its Camry, Corolla, and Tercel lines were calcualted based on erroneous production totals for those lines. Toyota provided NHTSA with a copy of the 1985 production totals for those three lines that it reported to the Environmental Protection Agency (EPA). Section 603(b)(1) of the Cost Savings Act specifies that NHTSA shall use the production totals as reported to EPA, when calculating theft rates. Therefore, Toyota's comment was persuasive, and this final list calculates the theft rates for those three lines based on the production totals reported to EPA.

Volkswagen essentially repeated the comments it made on the 1983 and 1984 theft data. That is, Volkswagen asserted that the purpose of title VI of the Cost Savings Act is to deal with "chop shop" operations and not with joyrider thefts. Volkswagen asserted that cars that are recovered were not stolen by "chop shops", and should not be counted as a vehicle theft under Title VI. Volkswagan concluded its comment by suggesting that NHTSA should calculate theft rates by subtracting vehicles that are recovered from total vehicle thefts, because this would more accurately reflect "chop shop" thefts.

The agency responded to a similar comments at length in the notice publishing final 1983 and 1984 theft data. *See* 50 FR 46668; November 12, 1985. To briefly repeat that response, agency contacts with police officials indicate that "theft-to-order" rings exist across the country. In these rings, professional thieves takes orders for specific parts of specific models of cars. The thieves then steal that model of car, remove the specified parts, and abandon the cars. These cars are generally recovered. Hence, NHTSA disagrees with Volkswagen's premise that cars that are recovered were not stolen for "chop shops."

Even if NHTSA agreed with Volkswagen's premise, the agency would not be allowed by Title VI to make its theft rate calculations in the manner suggested by Volkswagen. Section 603(b)(1) of the Cost Savings Act directs NHTSA to calculate theft rates by using "the number of new passenger motor vehicle thefts" for each car line. The use of this broadly inclusive language shows a Congressional intent to count *all* thefts to calculate theft rates, not simply those thefts that can be shown to have been made by or for "chop shops." Accordingly, the Volkswagen suggestion has not been adopted.

The following list represents NHTSA's calculation of theft rates for all 1985 car lines. As noted above, this list is only intended to inform the public of 1985 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50.

Issued on April 22, 1988.

Diane K. Steed,

Administrator.

BILLING CODE 4910–59–M

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1985	PRODUCTION (MFGR'S) 1985	THEFT RATE (THEFTS/PRODUCT) (1985) (1,000's)
1	GENERAL MOTORS	PONTIAC FIREBIRD	1,691	86,221	19.6124
2	GENERAL MOTORS	CHEVROLET CAMARO	2,691	167,309	16.0849
3	MAZDA	RX-7	864	58,848	14.6819
4	GENERAL MOTORS	CHEVROLET CORVETTE	543	37,730	14.3917
5	GENERAL MOTORS	BUICK RIVIERA	908	63,225	14.3614
6	GENERAL MOTORS	CHEVROLET MONTE CARLO	1,546	113,847	13.5796
7	GENERAL MOTORS	BUICK REGAL	1,599	120,772	13.2398
8	GENERAL MOTORS	PONTIAC GRAND PRIX	728	59,790	12.1759
9	GENERAL MOTORS	CADILLAC ELDORADO	865	75,215	11.5004
10	TOYOTA	SUPRA	285	27,442	10.3855
11	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	2,412	234,670	10.2870
12	CHRYSLER CORP.	DODGE CONQUEST	25	2,502	9.9920
13	TOYOTA	CELICA	693	74,235	9.3352
14	GENERAL MOTORS	PONTIAC FIERO	609	69,391	8.7764
15	MITSUBISHI	STARION	50	6,067	8.2413
16	GENERAL MOTORS	OLDSMOBILE TORONADO	309	40,415	7.6457
17	FORD MOTOR CO.	LINCOLN TOWN CAR	864	115,763	7.4635
18	GENERAL MOTORS	CADILLAC SEVILLE	287	38,920	7.3741
19	CHRYSLER CORP.	PLYMOUTH CONQUEST	17	2,500	6.8000
20	TOYOTA	MR2	153	23,323	6.5600
21	VOLKSWAGEN	QUANTUM	89	13,787	6.4554
22	GENERAL MOTORS	CADILLAC FLEETWOOD BROUGHAM (RWD)	372	58,364	6.3738
23	NISSAN	300ZX	476	74,832	6.3609
24	FORD MOTOR CO.	FORD MUSTANG	909	143,627	6.3289
25	VOLKSWAGEN	CABRIOLET	72	12,555	5.7348
26	MAZDA	GLC	386	67,960	5.6798
27	FORD MOTOR CO.	FORD THUNDERBIRD	821	144,627	5.6767
28	PORSCHE	911	26	4,590	5.6645
29	GENERAL MOTORS	PONTIAC GRAND AM	427	75,962	5.6212
30	GENERAL MOTORS	CADILLAC DEVILLE/LIMO (FWD)	1,066	190,979	5.5818
31	PORSCHE	944	77	14,230	5.4111
32	AMC/RENAULT	ALLIANCE/ENCORE	707	134,664	5.2501
33	FORD MOTOR CO.	FORD EXP	138	26,351	5.2370
34	FORD MOTOR CO.	MERCURY COUGAR	584	111,667	5.2298
35	MERCEDES-BENZ	500SEL	45	8,695	5.1754
36	CHRYSLER CORP.	DODGE DIPLOMAT	133	25,751	5.1648
37	CHRYSLER CORP.	CHRYSLER FIFTH AVENUE/NEWPORT	572	110,999	5.1532
38	PININFARINA	SPIDER/AZZURA	3	600	5.0000
39	MITSUBISHI	TREDIA	61	12,320	4.9513
40	ISUZU	I-MARK	89	18,244	4.8783
41	GENERAL MOTORS	PONTIAC BONNEVILLE	259	53,395	4.8506
42	MAZDA	626	446	93,709	4.7596
43	FORD MOTOR CO.	MERCURY CAPRI	72	15,198	4.7375
44	NISSAN	SENTRA	821	173,873	4.7218
45	TOYOTA	CRESSIDA	203	43,129	4.7068
46	TOYOTA	CAMRY	538	115,113	4.6737
47	NISSAN	280 SX	156	33,460	4.6623
48	GENERAL MOTORS	PONTIAC 6000	725	156,326	4.6377

49	MITSUBISHI	CORDIA	50	11,131	4.4920
50	TOYOTA	COROLLA/COROLLA SPORT	820	183,666	4.4644
51	CHRYSLER CORP.	LASER	227	50,916	4.4583
52	BMW	6	16	3,681	4.3466
53	GENERAL MOTORS	BUICK LESABRE	640	147,679	4.3337
54	CHRYSLER CORP.	DODGE DAYTONA	205	47,437	4.3215
55	MITSUBISHI	MIRAGE	88	20,366	4.3209
56	MERCEDES-BENZ	380SL	48	11,111	4.3200
57	FORD MOTOR CO.	FORD LTD	784	186,863	4.2410
58	FORD MOTOR CO.	LINCOLN MARK VII	75	17,692	4.2392
59	GENERAL MOTORS	PONTIAC 1000	68	16,143	4.2124
60	CHRYSLER CORP.	DODGE LANCER	192	45,873	4.1855
61	GENERAL MOTORS	CHEVROLET SPRINT	116	27,781	4.1755
62	MERCEDES-BENZ	500SEC	7	1,687	4.1494
63	GENERAL MOTORS	OLDSMOBILE DELTA 88/CUSTOM CRUISER	924	227,481	4.0619
64	VOLKSWAGEN	SCIROCCO	56	13,812	4.0544
65	GENERAL MOTORS	BUICK SKYLARK	328	81,409	4.0290
66	CHRYSLER CORP.	CHRYSLER EXECUTIVE SEDAN/LIMOUSINE	3	757	3.9630
67	CHRYSLER CORP.	DODGE 600	232	58,893	3.9393
68	MITSUBISHI	GALANT	37	9,447	3.9166
69	GENERAL MOTORS	CHEVROLET CHEVETTE	400	105,427	3.7941
70	SUBARU	XT	19	5,019	3.7856
71	ALFA ROMEO	SPIDER VELOCE 2000	8	2,142	3.7348
72	FORD MOTOR CO.	MERCURY TOPAZ	289	77,431	3.7324
73	GENERAL MOTORS	BUICK ELECTRA	485	129,998	3.7308
74	AVANTI	AVANTI II	1	270	3.7037
75	GENERAL MOTORS	OLDSMOBILE 98 REGENCY	577	161,135	3.5808
76	VOLVO	740/760	176	49,272	3.5720
77	CHRYSLER CORP.	DODGE ARIES	422	118,525	3.5604
78	CHRYSLER CORP.	DODGE COLT/COLT VISTA	152	43,641	3.4830
79	GENERAL MOTORS	CHEVROLET IMPALA/CAPRICE	830	239,308	3.4683
80	GENERAL MOTORS	CADILLAC CIMARRON	68	19,770	3.4396
81	ISUZU	IMPULSE	47	13,695	3.4319
82	CHRYSLER CORP.	PLYMOUTH GRAN FURY	43	12,543	3.4282
83	NISSAN	PULSAR	135	40,252	3.3539
84	JAGUAR	XJ-S	14	4,187	3.3437
85	FORD MOTOR CO.	FORD TEMPO	961	291,667	3.2949
86	GENERAL MOTORS	PONTIAC 2000/SUNBIRD	316	96,080	3.2889
87	CHRYSLER CORP.	DODGE CHARGER	186	56,854	3.2715
88	GENERAL MOTORS	BUICK SOMERSET	259	79,492	3.2582
89	GENERAL MOTORS	PONTIAC PARIESIMNE	225	69,526	3.2362
90	TOYOTA	TERCEL	330	104,070	3.1709
91	GENERAL MOTORS	BUICK CENTURY	745	237,862	3.1321
92	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA/CRUISER (FWD)	943	303,943	3.1026
93	GENERAL MOTORS	OLDSMOBILE CALAIS	299	98,574	3.0333
94	CHRYSLER CORP.	CHRYSLER NEW YORKER	181	60,766	2.9786
95	CHRYSLER CORP.	DODGE OMNI	219	74,423	2.9426
96	CHRYSLER CORP.	PLYMOUTH RELIANT	402	137,762	2.9181
97	MERCEDES-BENZ	190	80	27,683	2.8899
98	LOTUS	ESPIRT	1	350	2.8571
99	CHRYSLER CORP.	CHRYSLER LEBARON/TOWN & COUNTRY	261	92,967	2.8074
100	CHRYSLER CORP.	LEBARON GTS	170	60,838	2.7943
101	CHRYSLER CORP.	PLYMOUTH CARAVELLE	111	40,010	2.7743
102	FORD MOTOR CO.	FORD ESCORT	1,128	407,315	2.7694
103	GENERAL MOTORS	CHEVROLET CAVALIER	989	360,353	2.7445
104	GENERAL MOTORS	BUICK SKYHAWK	199	73,821	2.6957

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105	PEUGEOT	505	56	20,824	2.6892
106	GENERAL MOTORS	CHEVROLET SPECTRUM	122	46,341	2.6327
107	BMW	7	24	9,130	2.6287
108	CHRYSLER CORP.	PLYMOUTH HORIZON	228	88,338	2.5818
109	GENERAL MOTORS	CHEVROLET CITATION	135	53,258	2.5348
110	AUDI	5000S	127	50,558	2.5120
111	SAAB	900	100	39,858	2.5089
112	JAGUAR	XJ	43	17,277	2.4889
113	GENERAL MOTORS	CHEVROLET CELEBRITY	873	354,144	2.4651
114	FORD MOTOR CO.	MERCURY LYNX	209	84,805	2.4643
115	NISSAN	STANZA	118	48,006	2.4580
116	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	101	41,368	2.4415
117	FORD MOTOR CO.	LINCOLN CONTINENTAL	67	27,521	2.4345
118	GENERAL MOTORS	OLDSMOBILE FIRENZA	101	41,527	2.4322
119	HONDA	PRELUDE	189	78,432	2.4097
120	FORD MOTOR CO.	MERCURY MARQUIS	226	95,040	2.3779
121	MERCEDES-BENZ	300D/CD/TD	55	23,344	2.3561
122	CHRYSLER CORP	PLYMOUTH TURISMO	123	52,471	2.3442
123	BERTONE	X-1/9	3	1,310	2.2901
124	AMC/RENAULT	FUEGO	8	3,509	2.2799
125	MERCEDES-BENZ	300SD/380SE	44	19,734	2.2297
126	MASERATI	BITURBO	4	1,840	2.1739
127	FORD MOTOR CO.	MERCURY GRAND MARQUIS	323	151,102	2.1376
128	HONDA	ACCORD	539	260,055	2.0726
129	BMW	3	109	53,804	2.0259
130	VOLKSWAGEN	JETTA	149	73,665	2.0227
131	NISSAN	MAXIMA	176	88,097	1.9978
132	BMW	5	38	19,306	1.9683
133	AUDI	4000/COUPE	45	23,025	1.9544
134	HONDA	CIVIC	369	204,148	1.8075
135	PORSCHE	928	4	2,300	1.7391
136	ALFA ROMEO	GTV6	1	626	1.5974
137	SUBARU	SUBARU	161	101,220	1.5906
138	FERRARI	308	1	645	1.5504
139	FORD MOTOR CO.	FORD LTD CROWN VICTORIA	221	166,346	1.3286
140	VOLKSWAGEN	GOLF/GTI	146	112,070	1.3028
141	FORD MOTOR CO.	MERKUR XR4TI	16	12,404	1.2899
142	VOLVO	DL/GL	57	52,770	1.0802
143	AMC/RENAULT	18I/SPORTWAGON	3	2,850	1.0526
144	GENERAL MOTORS	CHEVROLET NOVA	16	27,943	0.5726
145	FERRARI	TESTAROSSA	0	120	0.0000
146	ROLLS-ROYCE/BENTLEY	SILVER SPIRIT/SILVER SPUR/MULSANNE	0	906	0.0000
147	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	29	0.0000
148	MASERATI	QUATTROPORTE	0	143	0.0000
149	AUDI	QUATTRO	0	69	0.0000
150	EXCALIBUR	PHAETON/ROADSTER	0	96	0.0000
151	FERRARI	MONDIAL	0	148	0.0000
152	ASTON MARTIN	LAGONDA	0	23	0.0000
153	ROLLS-ROYCE/BENTLEY	CORNICHE	0	226	0.0000
154	ROLLS-ROYCE/BENTLEY	CONTINENTAL	0	2	0.0000
155	ZIMMER	CLASSIC/ELEGANTE/CABRIOLET	0	170	0.0000
156	ROLLS-ROYCE/BENTLEY	CAMARGUE	0	16	0.0000
157	BITTER GMBH	BITTER SC	0	155	0.0000
158	TVR	280I	0	225	0.0000

[FR Doc. 88-9431 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-59-C

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0367.
Form Number: ATF REC 5220/1.
Type of Review: Extension.
Title: Tobacco Export Warehouse—Record of Operations.
Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. The record is used to maintain accountability over these products. This allows ATF to verify that all products have been exported or tax liabilities satisified, and it protects tax revenues.
Respondents: Businesses or other for-profit.
Estimated Burden: 1 hour.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88-9546 Filed 4-28-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0019.
Form Number: TFS 1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the TFS-1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, signs and returns it to the Adjudication Division. Claims examiners review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Burden: 36,882 hours.
Clearance Officer: Hector Leyva (301) 436-5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 88-9547 Filed 4-28-88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Dept. Circ.—Public Debt Series—No. 10-88]

Treasury Notes of April 30, 1990, Series Z-1990

Washington, April 21, 1988

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of April 30, 1990, Series Z-1990 (CUSIP No. 912827 WC 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price of Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 2, 1988, and will accrue interest from that date, payable on a semiannual basis on October 31, 1988, and each subsequent 6 months on April 30 and October 31 through the date that the principal becomes payable. They will mature April 30, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations govering United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reseve Banks and Branches and at the Bureau of the Public Debt,

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Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday April 27, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 26, 1988, and received no later than Monday, May 2, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting damand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defind above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be proprated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section if final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, May 2, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 28, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 2, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 88-9635 Filed 4-27-88; 2:14 pm]
BILLING CODE 4810-40-M

VOL 53 ISS 83 AP 29 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 14887, Tuesday, April 26, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Tuesday, May 2, 1988.

CHANGES IN THE MEETING:

- The meeting will be held on Monday, May 2, 1988 at 2:00 p.m.
- The following item under the *Closed Session* has been cancelled: "Agency Adjudication and Determination on Federal Agency Discrimination Compliant Appeals"

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634-6748.

Dated: April 26, 1988.

Hilda D. Rodriguez,

Executive Officer, (Acting) Executive Secretariat.

This Notice Issued April 26, 1988.

[FR Doc. 88-9570 Filed 4-26-88; 4:42 pm]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for May 3, 1988.

DATE AND TIME: The meeting is scheduled to be held in the offices of the Farm Credit Administration in McLean, Virginia, on May 3, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. CEO Salary Proposals—
   - Central Bank for Cooperatives
   - Federal Farm Credit Banks Funding Corporation
2. Salary Changes for the Springfield District;
3. Implementation of the Agricultural Credit Act of 1987—
   - Final Rule on Disclosure to Shareholders, 12 CFR Part 620
   - Proposed Regulation on Mergers/Consolidations, 12 CFR Parts 611, 618 and 620
   - Proposed Regulation on Secondary Market, 12 CFR Parts 611, 612, 614, and 617-623
   - Proposed Regulation on Insurance to System Members and Borrowers, 12 CFR Part 618, Subpart B
   - Final Regulation on FCA Organization, 12 CFR Part 600
4. Delegation of Authority Concerning Disapproval of Association Consolidations and Other Proposed Restructurings;

[1]**Closed Session**

5. Examination and Enforcement Matters.

Dated: April 27, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-9647 Filed 4-27-88; 3:29 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, April 26, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Discussion regarding a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Discussion regarding certain bank supervisory matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters should be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 26, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary, (Operations).

[FR Doc. 88-9620 Filed 4-27-88; 12:00 p.m.]

BILLING CODE 6714-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 25, 1988.

TIME AND DATE: 10:00 a.m., Thursday, April 28, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Southern Ohio Coal Company*, Docket No. WEVA 88-190-R, etc. (Issues include whether the judge properly vacated a section 104(d)(2) withdrawal order.)

It was determined by a unanimous vote of Commissioners that this item be included in the meeting and that no earlier announcement of the addition was possible. It was also determined that this portion be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629; (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

FR Doc. 88-9571 Filed 4-26-88; 4:41 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, May 4, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

Date: April 27, 1988.

[FR Doc. 88-9631 Filed 4-27-88; 12:49 pm]

BILLING CODE 62-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday May 4, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendment to Regulation C (Home Mortgage Disclosure) to implement the Home Mortgage Disclosure Act amendments that permanently extend the Act and expand its coverage.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: April 27, 1988.

James McAfee,

Associate Secretary of the Board.

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Friday, April 29, 1988.

PLACE: Room 432, Federal Trade Commission Building 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of Notice of Proposed Rulemaking Initiating Amendment Proceeding for Funeral Rule.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 88-9606 Filed 4-27-88; 11:07 am]

BILLING CODE 6750-01-M

VOL 53 ISS 83 AP 29 1988 UMI

Corrections

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-88-1]

Runaway and Homeless Youth Program; Availability of Financial Assistance

Correction

In notice document 88-4868 beginning on page 7142 in the issue of Friday, March 4, 1988, make the following correction:

On page 7167, the table was incorrect. The table entitled "Attachment 2-HDS Programs and Activities Covered by Executive Order 12372" should end after the entry "13.670". A new table entitled "Attachment 2-HDS Programs and Activities Not Covered by Executive Order 12372" should follow. The first entry should be "13.608".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-04-4212-13; M-75431]

Realty Action; Exchange in Montana

Correction

In notice document 88-7599 appearing on page 11565 in the issue of Thursday, April 7, 1988, make the following correction:

In the third column, under T. 10 N., R. 9 W., Section 4 should read "Section 4, Lots 3, 4, SW¼NW¼, S½S½, NE¼SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-018-08-4212-14; GP8-117]

Realty Action in Lake County, OR

Correction

In notice document 88-8298 appearing on page 12610 in the issue of Friday, April 15, 1988, make the following correction:

In the table, the legal description for serial no. OR 43343 should read "T. 28 S., R. 16 E., W.M., Oregon; Sec. 18: S½S½NE¼SW¼, S½N½S½NE¼SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

[AAG/A Order No. 13-88]

Privacy Act of 1974; System of Records

Correction

In notice document 88-8607 beginning on page 13003 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 13003, in the third column, the 10th line should read "JUSTICE/OPA-002".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8175]

Income Tax; Taxable Years Beginning After December 31, 1953; Limitations on Passive Activity Losses and Credits

Correction

In rule document 88-3791 beginning on page 5686 in the issue of Thursday, February 25, 1988, make the following corrections:

1. On page 5692, in the third column, the third line from the bottom should read "2T(c)(2)(iii).".

§ 1.469-2T [Corrected]

2. On page 5722, in the second column, in § 1.469-2T(f)(4)(viii), *Example* (ii), in the second line from the bottom, "(f)(4)(ii)(*2*)" should read "(f)(4)(ii)(A)(*2*)".

3. On page 5723, in the first column, in § 1.469-2T(f)(4)(viii), *Example* (vii), in the third line, "form" should read "from".

§ 1.469-3T [Corrected]

4. On page 5724, in the third column, in § 1.469-3T(b)(1)(i)(B), in the first line, "described" was misspelled.

5. On page 5725, in the first column, in § 1.469-3T(d)(1)(ii), in the third line, after "taxpayer's" insert "taxable".

6. On the same page, in the same column, in § 1.469-3T(d)(2), in the second line, "regular" was misspelled.

§ 1.469-5T [Corrected]

7. On page 5728, in the first column, in § 1.469-5T(k), *Example* (7)(i), in the second line from the bottom, after "office" insert "receptionist in connection with the activity".

BILLING CODE 1505-01-D

federal register

Friday
April 29, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

The Control of Hazardous Energy Sources (Lockout/Tagout); Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-012A]

The Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to issue safety requirements for the control of hazardous energy sources, as a new § 1910.147. This proposal addresses the lockout/tagout practices and procedures that are commonly used to disable equipment and to control the release of potentially hazardous energy while maintenance and service activities are being performed. The standard would supplement and support the existing lockout and/or tagout related provisions by providing comprehensive and uniform procedures for use with those provisions. The proposal would be applied to general industry employment under 29 CFR Part 1910, but would not cover maritime, agriculture, or construction employment. It would also require training of employees in the use of these procedures and provide employers and employees with a set of mandatory rules and voluntary guidelines on which to base employer lockout and/or tagout procedural efforts. The proposal would not cover oil and gas well drilling; the generation, transmission and distribution of electric power by utilities; and work on electric conductors and equipment. These will be the subjects of separate rulemaking efforts.

The proposed standard would not establish definitive criteria for selecting a specific control measure (locks or tags) to secure an energy isolating device. The proposed standard would require that where no other standard specifies the use of a lock, a tag, or a combination of the two devices for a given situation, the employer must implement the proposed procedures and must select an appropriate and effective control measure based on the workplace hazards that are encountered. Future rulemakings will address as necessary the use of specific control measures (locks and/or tags) for particular operations, equipment and industry sectors.

OSHA expects that this proposal, if adopted, would prevent approximately 122 fatalities, 28,400 lost workday injuries and 31,900 non-lost workday injuries a year.

The proposed rule, § 1910.147, would be placed in Subpart J of Part 1910. Present § 1910.147 would be redesignated as § 1910.150 to allow for the new section.

DATES: Comments on the proposed standard must be postmarked by June 28, 1988. Requests for a hearing must be postmarked by June 28, 1988.

ADDRESS: Comments, information, and hearing requests should be sent to Docket Officer, Docket No. S-012A, Occupational Safety and Health Administration, Room N3670, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148. This Notice of Proposed Rulemaking has been prepared by James L. Scully, Project Office, Officer of Mechanical Engineering Safety Standards. Staff assistance was provided in several areas by Richard Sauger.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA's initial General Industry standards, 29 CFR Part 1910, were originally published in the **Federal Register** (38 FR 10466, May 29, 1971) pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) and became effective on August 27, 1971. Before their adoption as OSHA standards, these occupational safety and health standards were either national consensus standards or established Federal standards. All of the current lockout/tagout provisions in Part 1910 which are affected by this proposal were adopted under the section 6(a) procedure.

At the time of adoption of the original OSHA standards, there was no general, all-encompassing consensus standard or Federal standard for locking out, tagging out, or disabling all types of machines or equipment to protect employees when maintenance or service activities were to be performed. However, OSHA did adopt various lockout-related provisions of consensus standards which had been developed for specific types of equipment. Lockout-related provisions in the General Industry standards (29 CFR Part 1910) which were adopted by OSHA are found in the following sections:

1910.178	Powered industrial trucks.
1910.179	Overhead and gantry cranes.
1910.181	Derricks.
1910.213	Woodworking Machinery.
1910.217	Mechanical Power Presses.
1910.218	Forging Machines.
1910.252	Welding, Cutting, and Brazing.
1910.261	Pulp, Paper and Paperboard Mills.
1910.262	Textiles.
1910.263	Bakery Equipment.
1910.265	Sawmills.

Note: See Ex. 13 for a more detailed list of lockout/tagout provisions in the above standards.

For further details involving the use of these provisions, refer to the discussion found in Section V, Summary and Explanation of the Standard, dealing with proposed paragraph (a)(3)(iii).

The present OSHA regulations for lockout and/or tagout, where they do exist, are not uniform in their coverage. Inconsistencies in these regulations exist between equipment and industries, and between different types of equipment in the same industry. Some provisions in the OSHA standards require equipment to have the *capability* of being "locked out," without *requiring* such control to be accomplished. OSHA feels that the lack of a general standard, and the incompleteness of the existing provisions, have contributed to the alarming number of injuries and fatalities that have occurred.

Since the inception of its enforcement program, OSHA, for the most part, has had to rely upon the use of the "General Duty Clause" (section 5(a)(1) of the Act) citation to ensure that employers provide safeguarding for their employees from the hazards involving the release of hazardous energy (lockout and/or tagout). This approach has met with only limited success based primarily upon the need for OSHA to prove, in the event of the contest of a section 5(a)(1) citation, that the hazard was a "recognized" hazard and that the hazard was causing or could cause death or serious physical harm. Because of these difficulties and the need to fill a significant gap in the current coverage of Part 1910, OSHA has been working since 1977 to gather sufficient information to enable the Agency to write a comprehensive lockout/tagout standard.

In 1977, OSHA published a notice in the **Federal Register** entitled "Machinery and Machine Guarding, Request for Information on Technical Issues and Notice of Public Meetings" (42 FR 1741, January 7, 1977) (Docket S-212). In this notice, OSHA addressed the issue of lockout, including the general question of whether lockout should always be required when machinery is not in its normal operating mode, or whether alternative methods for employee protection, such as tagout, should be permitted (42 FR 1807). The purpose of that notice was to generate information for use in updating existing OSHA standards. Respondents to the notice generally recognized the hazards to employees when maintenance and repair activities are undertaken, and the need to use lockout or tagout devices for control purposes. There was, however, a considerable range of opinion regarding the effectiveness of either a lock, a tag, or a combination of these devices when they are used as safeguards.

The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA on May 17, 1979 (Docket S-012, [Ex. 2-3]), to establish an Emergency Temporary Standard (ETS) for locking out machinery and equipment. The petition indicated a need to recognize the complexities of modern industrial equipment using more than simply electricity as an energy source. It discussed the increasing need for locking out equipment to prevent that equipment from cycling without warning while it was being worked on, and related the importance of applying lockout procedures to systems using hydraulic or pneumatic power, to energy stored in springs and electrical capacitors, and to potential energy from suspended parts. Abstracts of case studies for fatalities involving 22 UAW members which were attributed to lockout-related causes since 1974 were submitted with the petition. OSHA also received other petitions and letters in support of those petitions from other labor organizations, including the AFL-CIO, Allied Industrial Workers, and the United Steelworkers of America.

OSHA responded to the UAW petition on September 11, 1979 [Ex. 2], declining to issue an ETS, but advising that OSHA was proceeding to draft an Advance Notice of Proposed Rulemaking (ANPR) dealing with the subject, in which the public would be invited to comment on the major issues involved in the development of a standard.

OSHA published the ANPR for a standard on lockout/tagout in the **Federal Register** on June 17, 1980 (45 FR 41012) (Docket S-012). In that notice, OSHA raised issues about whether or not a generic standard should be proposed; what should be the scope and application of a lockout standard; what constitutes the necessary and sufficient energy isolation methods and means; and whether there is a need for written procedures and documented employee training. The comments received in response to that Notice were utilized in the development of the present proposal. There did not seem to be overwhelming support in the comments for a generic standard approach to all facets of the lockout/tagout problem. The comments did, however, indicate that a performance-oriented standard, offering enough flexibility to take current work practices into consideration, was desirable and that a requirement for documented procedures, including employee training, would have many advantages. The comments pertaining to securing energy isolating devices (the use of locks, tags, etc.) did not generate an overwhelming response strongly favoring any particular method.

There have been several other inputs into the development of this Proposed Rule: First, the National Institute for Occupational Safety and Health (NIOSH) has provided considerable data to OSHA on this subject. NIOSH published a notice in the **Federal Register** entitled "Lockout and Interlock Systems and Devices: Request for Information" (45 FR 7006, January 31, 1980) (Docket S-012, [Ex. 2-1]) and has provided OSHA with the responses to that notice. As part of that project, NIOSH also published its "Guidelines for Controlling Hazardous Energy During Maintenance and Servicing" [Ex. 4]. Other sources have been a Bureau of Labor Statistics (BLS) survey entitled, "Injuries Related to Servicing Equipment" [Ex. 3] and two OSHA-directed studies—"Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 5], and "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 6]. Two further studies conducted by OSHA involved the compilation and analysis of OSHA Form 36 Preliminary Fatality/Catastrophe Event Reports [Ex. 7] and OSHA (5)(a)(1) citations [Ex. 8].

Of great assistance to OSHA in this undertaking was the fact that on March 8, 1982, the American National Standards Institute (ANSI) published a national consensus standard for lockout, ANSI Z244.1-1982, "American National Standard for Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements" [Ex. 9]. This standard lists the uniform performance requirements for developing and implementing a lockout and/or tagout procedure for the protection of employees from the unexpected energization, start-up, or release of stored energy from machines or equipment during repair, maintenance, and associated activities. The consensus standard was utilized by OSHA as the primary basis for its proposed standard.

In July 1983, OSHA developed a preproposal draft of a standard for lockout/tagout [Ex. 10]. This draft was developed by utilizing all relevant materials available to OSHA at that time. This draft was distributed to interested groups, associations, companies, unions and individuals which OSHA was able to identify as having an interest in this regulation. There were about 80 comments received in response to this preproposal draft. The commenters were generally in support of the effort to develop a safety standard for lockout and/or tagout; however, some commenters objected to the inclusion of a requirement for locking out during activities classified as "normal operations." Comments from some sources favored the use of locks rather than tags to secure energy isolating devices, while others welcomed the more flexible approach of permitting the use of locks and/or tags. Also, there was considerable comment regarding use of the Appendix. Many commenters wanted the information used in the Appendix moved into the body of the standard for enforceability. Others however, wanted the appendix material completely removed on the grounds that reference to it by the courts in contested cases would eventually determine it to be mandatory.

The comments concerning the preproposal draft, as well as all the special studies and other information available to OSHA, were utilized in the development of this proposed standard.

II. Hazards

Whenever machines or equipment are utilized in industry, there are hazards not only to the employees who work with them but many times also to other employees who are in the immediate area. Moreover, when it is necessary to perform maintenance, repair or service, not only are the hazards associated with the normal operation encountered, but additional, unique hazards are present due to the nature of the activity being conducted. These hazards are caused by the continued presence of the energy generated by the machine or equipment for utilization in performing a specific function. This energy can emanate directly from the power source or can be stored in the equipment itself.

OSHA believes that failure to control energy adequately accounts for nearly 10 percent of the serious accidents in many major industrial groups. The following accidents, taken from the NIOSH report entitled "Guidelines for Controlling Hazardous Energy During

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Maintenance and Servicing" [Ex. 4], are typical of these hazards and demonstrate the applicability of the pertinent provisions in the proposed standard.

1. An employee was cleaning the unguarded side of an operating granite saw. The employee was caught in the moving parts of the saw and pulled into a nip point between the saw blade and the idler wheel, resulting in fatal injuries. (Failure to shutdown or turn off the equipment to perform maintenance—proposed § 1910.147(d)(1).)

2. An employee was removing paper from a waste hogger. The hogger had been shut down, but the conveyor feeding the hogger had not been. The employee climbed onto the machine, fell onto the conveyor, was pulled into the hogger opening, and was fatally crushed. There was no lockout procedure at this operation. (Failure to document and implement an effective energy control procedure—proposed § 1910.147(c)(2)(i).)

3. Two employees were repairing a press brake. The power had been shut off for 10 minutes. They positioned a metal bar in a notch on the outer flywheel casing so that the flywheel could be turned manually. The flywheel had not completely stopped. The men lost control of the bar, which flew across the workplace and struck and killed another employee who was observing the operation from a ladder. (Failure to control stored energy—proposed § 1910.147(d)(4).)

4. An employee was partially inside an asphalt mixing machine, changing its paddles. Another employee, while dusting in the control room, accidentally hit a toggle switch which caused the door of the mixer to close, striking the first employee on the head and killing him. Electrical switches to activate the machine were not locked out and air pressure to move the doors was not shut off. (Failure to isolate equipment from energy sources—proposed § 1910.147(d)(2).)

5. An employee was setting up a vacuum forming machine for a run of violin cases. He leaned over the press and accidentally activated the starting switch. His head was crushed between an air cylinder and the frame. (Failure to isolate equipment from energy sources—proposed § 1910.147(d)(2).)

6. An employee trainee was cleaning a flour batch mixer. The employee leaned the top part of his body into the machine when another worker activated the wrong switch, thereby turning the machine on. The employee cleaning the flour batch mixer suffered fatal crushing injuries to his neck. There was an unwritten company procedure for lockout during all maintenance. The procedure was not followed. (Failure to document and implement an effective energy control procedure—proposed § 1910.147(c)(2)(i); failure to train employees adequately in lockout/tagout procedures—proposed § 1910.147(c)(5).)

7. An employee was cleaning scrap from beneath a large shear when a fellow employee hit the control button activating the blade. The blade came down and decapitated the employee cleaning scrap. (Failure to isolate, lockout/tagout or otherwise disable all potential hazardous energy sources before attempting any repair, maintenance or service—proposed § 1910.147(c)(1).)

Servicing activities are necessary adjuncts to the industrial process. They are needed to maintain the ability of all machines, equipment or processes to perform their intended functions. Additionally, erection, installation, construction, set up, changeover, and breakdown usually require equipment de-energization. Although these operations may not always be considered maintenance, repair or service, they present the same hazards and are therefore addressed by this standard. The scope and application provisions of the proposal refer to these activities collectively as "servicing or maintenance" activities.

The above mentioned activities are currently being carried out in general industry with varying degrees of safeguarding or protection for the employee. This safeguarding or protection ranges from allowing the employee to conduct the servicing activity while the machine, equipment or process is energized and operating (virtually no protection), to requiring that the machine or equipment simply be turned off or shut down, or to providing for deenergization and lockout and/or tagout protection on the machine, equipment or process.

OSHA believes that the least desirable situation is to allow employees to perform a maintenance, repair, or service activity while the machine, equipment or process is energized and capable of performing its intended production function. The Agency recognizes that there are certain servicing operations which, by their very nature, must take place without deenergization, such as the testing of energized equipment or processes. Additionally, certain normal production operations, which are not intended for coverage by this standard, such as repetitive minor adjustments, can sometimes safely be done wihtout the machine, equipment or process being de-energized and locked out and/or tagged out, with the use of specific control devices, work practices, employee training and other measures. Nevertheless, the vast majority of servicing activities can safely be done only when the machine, equipment or process is de-energized and is not operating.

Even though there are servicing operations whose safe performance does not require that a machine, equipment or process be de-energized and locked out and/or tagged out, it must be emphasized that these operations do *not* include the practice of using the motion of the components of a machine or equipment as an aid in performing the servicing operation. Practices such as the cleaning of rollers of printing presses or the feed points of screw conveyors while the equipment is operating not only expose the employee to the hazards of the normal operation, but invariably increase the potential for an accident due to the servicing activity.

Performance of servicing activities on a machine or equipment that is in operation has the potential of exposing the employees to contact with moving components at the point of operation or with power transmission components, and also increases the risk of injury due to the position the employee must assume and the need to remove, bypass or disable guards and other safety devices. In many cases, these activities expose the employee to the hazard of being pulled into the operating equipment when the material used for cleaning or servicing becomes entrapped in the equipment mechanism. The use of extension tools or devices to remove the operator's hands from the danger areas, while of some benefit in reducing direct employee exposure to the hazards of entrapment can in themselves result in injuries to employees. This occurs when an employee is struck by the tools or devices that inadvertently come in contact with moving machine components, and are pulled from the employee's grasp.

However, shutting down a machine or equipment usually is not the total solution to the problem. Once the machine or, equipment has been stopped, there remains the potential for employee injury from the unanticipated movement of a component of the machine or equipment, or of the material being handled. This unanticipated movement can be caused either by the release of residual energy within the machine, equipment or process, or as the result of the conversion of potential energy to kinetic energy (motion). For example, residual energy can be manifested by the presence of springs under tension or compression, or by the presence of pressure (either above or below atmospheric) in systems containing gases or liquids.

Potential energy is considered to be a function of the height of an object above some datum plane. This datum plane is usually considered to be where that object would come to rest if the restraint holding the object were released, such as where the upper die in a punch press is positioned above the lower die. If the restraining device holding the upper die in place were to be removed, the potential energy of the upper die would be converted into kinetic energy (downward motion), and the upper die would be propelled downward, coming to rest on the lower die. This motion could cause a crushing, cutting, lacerating, amputating or fracture injury to an employee's arm, hand or some other part of the body which occupied the area between the dies.

OSHA believes that the most effective method to prevent employee injury caused by the unanticipated movement of a component of a machine or equipment, or of the material being handled, is either to dissipate or minimize any residual or potential energy in the system, or to utilize a restraining device or system to prevent movement. This can be accomplished by moving components to a point at which springs are at or near a neutral state; by moving components so that liquids or gases reach or approximate atmospheric pressure; and by blocking material or components or moving them to a point of minimum potential energy (moving components downward to a stable, resting position).

Further, even though the machine or equipment has been shut off, and even if residual energy has been dissipated, an accident can still occur if there is an inadvertent activation of that machine or equipment. Inadvertent activation can occur due to an error on the part of the employee who is conducting the maintenance, repair or service activity, or by any other person. For example, the servicing employee can unintentionally cause the machine or equipment to start by shorting across electrical switches or by accidentally moving controllers (either electrical controls or valves) into the "on" or "open" position.

An accident can also occur when another person not engaged in the servicing operation causes the activation of the system being serviced. This can occur when a person uses the wrong controller and starts a machine or equipment that the employee did not intend to start. It can also occur when a person finds a machine or equipment not operating and starts it, without knowing someone else is performing service on it. This latter type of accident is more apt to occur when the machine or equipment is large and/or complex, and the employee who is conducting the servicing activity is in an area of the equipment which is some distance from or not visible from the controls.

The generally accepted best means to minimize the potential for inadvertent activation is to ensure that all power to the machine or equipment is isolated, locked or blocked and dissipated at points of control, using a method that cannot readily be removed, bypassed, overridden or otherwise defeated. In the case of an electrically run machine, piece of equipment or process, this can be done by going back toward the original source of the power and shutting off a main switch or by disconnecting the electrical lines. OSHA believes that this action must be followed by the placement of some safeguard to prevent the re-energization of the circuit during servicing. To ensure that another employee will not attempt to restart the machine or equipment or to re-energize the circuit, there must be some assurance that all other employees know that the circuit is de-energized and must remain so. This can be accomplished by the utilization of a standardized procedure for de-energizing the system, and training of all employees to familiarize them with that procedure. Additional training is also needed for those employees who must utilize the procedure and for those employees who are or may be exposed to the hazards of the unanticipated re-energization of the machine or equipment.

Even if all other protective measures are taken, accidents can still occur following the completion of the maintenance, repair or servicing activity, if the machine, equipment or process is re-energized and started before all guards and other safety devices have been replaced, or reinstalled. Additionally, all tools and other foreign objects must be removed from the location and a check completed to ensure that no employees are in a place where the re-energization and starting of the machine or equipment will endanger them.

III. Accident Data

The collection of data on accidents resulting from a failure to utilize proper lockout and/or tagout procedures is hampered because many accidents are not reported; are reported only locally; or are reported and categorized under other causal factor categories (such as "caught-in" or "caught-between"). Incorrect categorization is particularly true for lockout/tagout related accidents, since the injuries often occur at a distance from the energy source which was not properly controlled. As a result, OSHA believes that the data available represent only a portion of the total injuries and fatalities that have occurred. However, OSHA believes that the accidents which have been investigated and studied as being "lockout related" provide a graphic illustration of the extent of the problem, the causal factors, the distribution of accidents in industry, and the type and severity of injuries resulting from those accidents.

There have been several studies conducted to determine the magnitude and extent of the problem. These studies were conducted by: (a) The U.S. Department of Labor, Bureau of Labor Statistics; (b) OSHA's Office of Data Analysis (formerly Office of Statistical Studies and Analysis); (c) the National Institute for Occupational Safety and Health (NIOSH); (d) OSHA's Office of Experimental Programs; and (e) OSHA's Office of Mechanical Engineering Safety Standards. The studies are discussed in the following paragraphs.

A. Bureau of Labor Statistics Work Injury Report Study

The first study examined by OSHA was the Work Injury Report Study entitled "Injuries Related to Servicing Equipment" [Ex. 3]. This study is a compilation of reports of accidents and follow up survey questionnaires sent out by the Bureau of Labor Statistics (BLS). The survey, conducted from August to November 1980, covered workers who were injured while cleaning, repairing, unjamming or performing other non-operating tasks on machines, equipment and electrical or piping systems. BLS identified accidents from 25 participating states, and mailed each of the injured employees a follow-up questionnaire containing inquiries about the specific details of their accidents. There were 1,285 questionnaires sent out and 833 (approximately 65 percent) of the employees responded. Not all questions were responded to by all participants, since many of the questions related to situations which may not have been relevant to the circumstances of each injury. In some instances, many of the respondents also gave multiple responses to a single question.

Tables I through V present tabulations of the results of the BLS Work Injury Report Study.

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TABLE I.—INDUSTRY DISTRIBUTION—BY STANDARD INDUSTRIAL CLASSIFICATION (SIC) MAJOR DIVISION AND COMPANY SIZE

	Workers	Percentages[1]
Division—Industry:		
A—Agriculture, forestry, and fishing	12	1
B—Mining	1	
C—Construction	35	4
D—Manufacturing	619	74
E—Transportation and public utilities	19	2
F—Wholesale trades	57	7
G—Retail trades	31	4
H—Finance, insurance, and real estate	8	1
I—Services	43	5
J & K—Others	8	1
Total	833	100
Size of the companies at which accidents occurred:		
1–19 employees	159	20
20–49 employees	123	15
50–99 employees	120	15
100–499 employees	234	29
500 or more employees	158	20
Total	[2]794	100

Notes:
[1] Due to rounding, percentages may not add to 100.
[2] The total of each table represent the number of respondents answering the pertinent question(s) of the survey.

TABLE II.—OCCUPATIONAL DISTRIBUTION

Occupation	Workers	Percent
Operations, excluding transport	373	45
Craft and kindred workers	281	34
Laborers, excluding farm	94	11
Service workers, excluding private household	19	2
Clerical and kindred workers	19	2
Managers and administrators	13	2
Professional, technical, and kindred	12	1
Transport equipment operators	10	1
Farm laborers and supervisors	8	1
Nonclassified	4	(*)
Total	833	100

Note: Due to rounding, percentages may not add to 100.
* Less than 0.5.

TABLE III.—CIRCUMSTANCES OF INJURY

	Workers	Percent [1]
How did injuries occur?		
Injured by moving machine part	735	88
Injured by contact with energized electric parts	45	5
Injured by burners, hot liquids or other hazardous materials	29	3
Injured by falling machine parts	10	1
Other	14	2
Total	833	100

TABLE III.—CIRCUMSTANCES OF INJURY—Continued

	Workers	Percent [1]
Was equipment turned off before doing task?		
No	653	78
Yes	180	22
Total	833	100
If equipment not turned off, reason(s) given:		
Worker felt it would slow down production or take too long	112	19
Not required by company procedure	69	12
Worker did not know how to	8	1
Did not think it necessary	209	35
Task could not be done with power off	209	35
Worker did not realize power was on	62	10
Other reasons	61	10
Total	592 [2]	—[2]
If equipment was turned off:		
a. What happened at the time of injury?		
Injured employee accidentally turned equipment on	20	11
Co-worker accidentally turned equipment on	15	9
Co-worker turned equipment on, not knowing equipment was being worked on	56	32
Equipment or material moved when jam-up cleared	9	5
Parts were still in motion (coasting)	30	17
Other reasons	46	26
Total	176	100
If equipment was turned off:		
b. Were additional steps taken to de-energize equipment?		
No—not necessary	49	31
No—not required by company	23	14
No—would slow down production	8	5
No—worker did not have tools	4	2
No—other reason	20	13
No—reason not given	37	23
Disconnected main power	14	9
Tagged out equipment power controls	6	4
Disconnected electric line	5	3
Drained pressure or hazardous material	9	6
Other	11	6
Total	160 [2]	—[2]

Notes:
[1] Due to rounding, percentages may not add to 100.
[2] Because more than one response is possible, the sum of the responses and percentages may not equal the total number of persons who answered the question.

TABLE IV.—TRAINING

	Workers	Percent
Was lockout instruction provided employees?		
Total	554	100
Yes	214	39
No	340	61
If instruction provided, in what form?		
Total	273	100
Provided printed instructions	25	9
Procedures posted on equipment	37	14
Instruction given as part of on-the-job training	176	64
Formal training given at meeting, etc.	28	10
Other	7	3
When was lockout instruction given?		
Total	[1] 186	[1] 100
After the accident	15	8
One to six months before accident	36	19
Six months to a year before accident	28	15
Upon hiring	84	45
Over a year before accident	60	32

Note:
[1] Because more than one response is possible, the sum of the responses and percentages may not equal the total. Percentages are calculated by dividing each number of responses by the total number of persons who answered the question.

TABLE V.—ESTIMATED LOST WORKDAYS

No. of lost workdays	Workers	Percent
Total	793	100
No time lost	107	13
1–5 workdays lost	132	17
6–10 workdays lost	95	12
11–15 workdays lost	75	9
16–20 workdays lost	47	6
21–25 workdays lost	47	6
26–30 workdays lost	60	8
31–40 workdays lost	49	6
41–60 workdays lost	54	7
More than 60 workdays lost	41	5
No indication of number of lost workdays	86	11

B. Analysis of 83 Fatality Investigations by OSHA's Office of Data Analysis

The second study examined by OSHA was the compilation of data from 83 fatality investigations conducted by OSHA between 1974 and 1980. This report is entitled, "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations"; [Ex. 5]. All of these accidents were identified as having been caused by failure to properly lockout machines, equipment or systems prior to performing maintenance, repairs or servicing.

Tables VI through VIII present tabulations of the results of the OSHA Analysis of 83 fatality investigations.

TABLE VI.—CAUSAL FACTORS

Cause	Number	Percent
Total	83	100
Lack of adherence to safe work practices (no procedure or failure to follow procedure)	21	25
Accidental or inadvertent activation	29	35
Failure to deactivate	21	25
Equipment failure	7	8
Other	5	6

NOTE: Due to rounding, percentages may not add to 100.

TABLE VII.—AGENT OF INJURY

Agent	Number	Percent
Total	83	100
Agitators and mixers	12	14
Rolls and rollers	11	13
Conveyors and augers	11	13
Saws and cutters	11	13
Hoists	8	10
Earth moving	6	7
Crushers and pulverizers	4	5
Forges and presses	4	5
Electrical apparatus	4	5
Vehicles	3	4
Other	9	11

TABLE VIII.—EMPLOYEE ACTIVITY

Activity	Number	Percent
Total	83	100
Conducting normally assigned duties	69	83
Conducting other sites	14	17

In analysing the 83 fatality investigation reports and assigning causes to each accident, no attempt was made to draw conclusion or inferences beyond the information contained in the reports. For example, if the employee was killed in operating machinery, unless the report stated otherwise, the cause of the accident was considered to be failure to shut off the machine, rather than a combination of causal factors such as failure to shut off the machine, failure to lockout and/or tagout, failure to document adequate procedures, and failure to provide sufficient employee training. Additionally, if a machine was found to be running, it was assumed that the employee failed to shut off the machine rather than that another employee restarted the machine.

C. Analysis of 125 Fixed Machinery Fatalities by OSHA's Office of Data Analysis

A separate study by OSHA's Office of Data Analysis is entitled "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 6]. This study contained in analysis of investigative reports of 125 fatilities involving fixed machinery which occurred between 1974 and 1976, and which were investigaed by OSHA. The primary causal factors under which the accidents were classified were operating procedures, accidental activation, lack of machine deactivation, equipment failure, and other causes.

The following is a tabulation of the results of this study.

TABLE IX.—CAUSAL FACTORS OSHA ANALYSIS OF 125 FATAL ACCIDENTS

Causal factor	Number	Percent
Total	125	100
Failure to adhere to safe operating procedures	41	33
Accidental machine activation	31	25
Machine not deactivated	23	18
Equipment failure	21	17
Other	9	7

D. National Institute for Occupational Safety and Health, Guidelines for Controlling Hazardous Energy During Maintenance and Servicing

The next study considerd by OSHA was one done by the National Institute for Occupational Safety and Health [NIOSH] [Ex. 4]. Fifty-nine out of a total of 300 accident reports were analyzed to illustrate situations in which adequate control of energy might have prevented the accidents. These case files were selected because they contained sufficient detail to enable NIOSH to evaluate the accidents and determine what counter measures might have been available to prevent the accidents.

The report indicated that these types of accidents are preventable if effective energy control techniques are available, the workers are trained to use them, and management provides the motivation to ensure their use.

The following is a tabulation of the results of the study.

TABLE X.—CAUSAL FACTORS NIOSH STUDY

Factor	Number	Percent
Total	59	100
Failure to de-energize machine or control energy	27	46
Accidental re-energization	25	42
Ineffective energy isolation	6	10
Disregarding residual energy	1	2

E. Analyses of Fatality/Catastrophe Reports and General Duty Clause Citations by OSHA's Offices of Experimental Programs and Mechanical Engineering Safety Standards

There were two additional OSHA studies which were conducted jointly by the Office of Experimental Programs and the Office of Mechanical Engineering Safety Standards. These studies were compilations and analyses of OSHA Form 36 reports [Ex. 7] and OSHA 5(a)(1) citations [Ex. 8], respectively.

An OSHA Form 36 (Preliminary Fatality/Catastrophe Event Report) is prepared each time an Area Office is notified of a serious accident resulting either in a fatality or in serious injury to five or more employees that necessitates their hospitalization. This report is used to determine whether or not OSHA will conduct an investigation of the circumstances surrounding the accident. Since OSHA did not receive notification of all accidents resulting in a fatality or catastrophe, the total number of workplace fatalities and serious injuries which occurred during this study period. However, OSHA believes that the cause of, and the circumstances leading to, the accidents clearly demonstrate the nature and seriousness of lockout/tagout-related accidents.

The Form 36 study which analyzed data reported during the period 1982–1983 [Ex. 7], utilized a list of 443 fatalities. Of these fatilities, which all occurred in industries subject to the present proposal, it was determined that 36 (8.1 percent) would have been prevented by the use of effective lockout and/or tagout procedures.

The second study [Ex. 8] used information developed by OSHA's Office of Mechanical Engineering Safety Standards which identified, categorized and logged "general duty" clause (section 5(a)(1) of the OSH Act) citations from 1979 to 1984. A general duty clause citation is issued when, during an inspection, a "recognized hazard" is detected which is causing or is likely to cause death or serious physical harm to an employee, but which is not addressed in an OSHA standard applicable to that industry.

The citations in the latter study have been broken down between maritime, construction, and general industry. The general industry citations were further subdivided to reflect the nature of the hazard which the citation addressed, such as hazardous materials or material handling. When there was special Agency interest in an industry or hazard, the citations were further

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broken down by industry sector (such as oil and gas well drilling).

From 1979 through 1984, 3,638 inspections were conducted which resulted in the issuance of general duty clause citations. Of these 3,638 inspections, there were 376 inspections in which the failure to control hazardous energy was cited. Hence, in approximately 10 percent of all inspections which resulted in the issuance of at least one General Duty clause citation, herein referred to as a 5(a)(1) citation, failure to lockout and/or tagout as identified. [Ex. 8]

The following is a tabulation of breakdown of lockout citations by industry division.

TABLE XI.—INDUSTRY PROFILE OSHA 5(a)(1) LOCKOUT CITATIONS

Industry divisions	Number of citations	Percent
Total	376	100
A—Agriculture, forestry and fishing	2	.5
B—Mining	4	1.1
C—Construction	18	4.8
D—Manufacturing	310	82.4
E—Transportation and public utilities	11	2.9
F—Wholesale trades	14	3.7
G—Retail trades	5	1.3
H—Finance, insurance and real estate	0	0
I—Services	12	3.2
J—Public administration	0	0
K—Not otherwise classified	0	0

TABLE XI.—INDUSTRY PROFILE OSHA 5(a)(1) LOCKOUT CITATIONS—Continued

Industry divisions	Number of citations	Percent
Unknown	0	0

NOTE: Due to rounding, percentages may not add to 100.

IV. Basis For Agency Action

OSHA believes that there exists a sufficient body of data and information upon which a reasonable standard can be based to reduce the number of fatalities and injuries resulting from failure to utilize proper and adequate practices and procedures for the control of potentially hazardous energy. This position is based upon an analysis of the accident data available to OSHA, all of which is in the docket of this rulemaking proceeding.

Most accident reports break down the relevant information in accordance with the classifications contained in the American National Standards Institute, ANSI Z16.2, "Method of Recording Basic Facts Relating to the Nature and Occurrence of Work Injuries" [Ex. 11]. These classifications are: The nature of the injury, part of the body, source of the injury, accident type, hazardous condition, agency of injury and unsafe act. Many accident reports are generated primarily to document the occurrence of accidents and concentrate on the information which is neccessary to process workers' compensation claims. For this reason, they tend to emphasize information about the injury rather than the events and conditions which caused the accidents. Therefore, most of the pertinent information identifying the nature and extent of the problem of controlling hazardous energy was gathered by OSHA by conducting the special studies referred to above. Because of the limitation on the available data, no single study in itself can be expected to provide conclusive support for comprehensive regulation of lockout/tagout hazards. However, the studies and other available data, when considered as a whole, clearly indicate not only the scope and extent of the problem, but also the need for a comprehensive standard. The studies are consistent in their demonstration of the causative factors involved in lockout-related accidents, and they provide strong evidence for the potential effectiveness of OSHA's proposed rule in dealing with those factors.

OSHA believes that the hazards associated with the failure to control hazardous energy are widespread. The following table indicates the distribution, by industry, of the accidents reported in the Bureau of Labor Statistics (BLS) Work Injury Report Study (WIR) and in the OSHA 5(a)(1) study citations discussed earlier.

TABLE XII.—INDUSTRY PROFILE BLS WIR AND OSHA 5(a)(1) CITATIONS

Industry (by division)	BLS	Percent	5(a)(1)	Percent
A—Agriculture, forestry and fishing	12	1	2	.5
B—Mining	1	—	4	1.1
C—Construction	35	4	18	4.8
D—Manufacturing	619	74	310	82.4
E—Transportation and public utilities	19	2	11	2.9
F—Wholesale trades	57	7	14	3.7
G—Retail trades	31	4	5	1.3
H—Finance, insurance and real estate	8	1	0	0
I—Services	43	5	12	3.2
Other or unknown	8	1	0	0
Total	833	100	376	100

Although employees in almost every industrial division are exposed to the hazards associated with the unexpected energization or start up of machines or equipment, or by the unanticipated release of stored energy, the preponderance of the accidents and injuries occur in Construction (Division C), Manufacturing (Division D), Wholesale trades (Division F), and Services (Division I). It should be noted that Services includes many employers who perform maintenance on equipment in manufacturing and other sectors covered by Part 1910.

OSHA's evaluation of 5(a)(1) citations that involve failure to control hazardous energy indicates that this area accounts for about 10 percent of the serious hazards not presently covered by a specific OSHA standard. The seriousness of the hazard is highlighted by the fact that 5(a)(1) citations are issued only for recognized hazards which cause or are likely to cause death or serious physical harm, while the OSHA Form 36 is initiated only when OSHA is notified of deaths or multiple hospitalizations. Further analysis of the lost workday data from the BLS WIR indicates that the severity of injuries from failure to control hazardous energy sources (an average of 24 lost workdays per lost time injury) is much higher than the national industry-wide average of 16 lost workdays [Ex. 14].

In developing this proposal, OSHA has estimated the total numbers of fatalities, lost-workday injuries, and minor injuries attributable to lockout-related accidents. These estimates were based on an extrapolation of the available national data sources discussed earlier [Ex. 3, 5, 6, 7]. From these data the number of preventable accidents were determined. It was estimated that adopting the proposed rule would prevent approximately 31,900 minor (non-lost-workday) injuries; 28,400 lost-workday injuries; and 122 fatalities per year (based on 1984 employment levels) [Ex. 17]. These estimates were derived by identifying the percentage of accidents, in various data sources, which were determined to be lockout/tagout-related and applying those percentages to the number of accidents. It was determined that two percent of all nonfatal accidents and 7.1 percent of all fatalities were lockout/tagout-related.

In addition, the data indicate that the risk of accidents and injuries exists in all places of employment. This finding is predicated upon the distribution by size of the companies which employed the injured employees surveyed in the BLS WIR. In the survey, almost as many respondents (392, or 49 percent) reported that they were employed at facilities of 100 or more employees as those who were employed at facilities of less than 100 employees (402, or 51 percent).

Based upon analysis of all of the aforementioned evidence, OSHA believes that the failure to control hazardous energy results in a significant risk to employees. Further, the data clearly demonstrate that the consequences of an accident involving failure to lockout/tagout are more severe in terms of lost workdays than the average industrial accident. OSHA also believes that a significant risk from hazardous energy sources extends across many segments of industry.

OSHA has also analyzed the studies to determine the underlying causes of the conditions which existed when lockout/tagout-related accidents occurred. From this information, OSHA developed a list of measures which would have prevented most of the accidents in the studies, and used this list as the basis of its proposed standard. It should be noted that the studies vary widely in the quantity and quality of the information provided for the reported accidents (different methods of reporting, and incompleteness of the findings of the causes of the accidents, for example). Therefore, professional judgment was used in the interpretation of the results of the studies, in order to provide a comprehensive evaluation of the data and to correlate the information on accident causation. While the numbers and percentages from one study to another do not necessarily agree, the studies all indicate the existence and seriousness of the problems, and provide valuable information as to corrective measures that are necessary. Tables XIII through XVIII below cover what OSHA believes are the major causal factors in lockout-related accidents, and indicate the prevalence of such factors as reflected in the different accident studies.

TABLE XIII.—SERVICING ACCIDENTS OCCURRING WHILE EQUIPMENT IS OPERATING

Study (total considered)	Number	Percent
BLS WIR (833)	653	78
OSHA Analysis of 83 fatalities (83)	54	65
OSHA Report of Fixed Machinery (125)	23	18
NIOSH Study (59)	27	46

The reasons most often given in the BLS WIR for not turning off equipment prior to servicing were that it would take too long or slow down production; it was not required by the employer; it was not necessary; or the task could not be done with the equipment off.

As pointed out in the Hazards section of this Notice, just shutting off a machine, equipment or process may not completely control the hazardous energy. Even after a machine, equipment or process is shut down, residual energy may still be present in the form of moving components, spring or hydraulic pressure, the force of machine parts on items which have become jammed, or the energy which is stored in machine, equipment, or system components due to their position (potential energy).

TABLE XIV.—ACCIDENTS DUE TO FAILURE TO ENSURE POWER OFF

Study (total considered)	Number	Percent
BLS WIR—Failure to check for power on (592)	62	10
OSHA Analysis of 83 Fatalities (83)	5	6
NIOSH Study (59)	6	10

The Hazards portion of this Notice also discussed the fact that even though the machine, equipment or process has been shut down, and the residual energy controlled or dissipated, an employee can still be injured if the machine, equipment or process is restarted by either that employee or another employee. Injury can occur by an employee inadvertently contacting switches, valves or other controllers or by an employee activating the equipment without recognizing the reason it was shut off, and inadvertently exposing other employees to the potential hazard.

TABLE XV.—ACCIDENTS DUE TO INADVERTENT ACTIVATION

Study (total considered)	Number	Percent
BLS WIR (176)	91	52
OSHA Analysis of 83 fatalities (83)	29	35
OSHA Report on Fatalities Related to Fixed Machinery (125)	31	25
NIOSH (59)	25	42

Clearly, it is insufficient simply to shut off machinery to conduct repair, maintenance or servicing. OSHA believes that some means must be utilized to ensure that employees are safeguarded during those operations.

After servicing, there is also the need to ensure that all guards have been replaced, that all tools and other extraneous materials have been removed from the machine, equipment or process, and that re-energizing and starting normal operational usage will not subject an employee to the increased potential for injury. This is especially true when the maintenance, repair or service is conducted at or near an employee's workstation.

OSHA believes that many of the problems of de-energization and re-energization of machines or equipment can be reduced by the employer's development and implementation of a standardized operating procedure for servicing/maintenance operations. Such a procedure should identify the necessary steps to be taken before, during, and after servicing of equipment, and should provide employees with an understanding of the procedure itself and the reasons why it must be followed. A standardized procedure can provide the details to be followed in performing servicing operations safely, together with the training and motivation needed to assure that employees understand and implement those details.

TABLE XVI.—ACCIDENTS ATTRIBUTABLE TO EMPLOYEE NOT HAVING OR KNOWING OF A PROCEDURE

Study (total considered)	Number	Percent
BLS WIR (653)	482	74
OSHA Report on Fatalities Related to Fixed Machinery (125)	41	33

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OSHA believes that employee involvement in and understanding of the procedure and their role in the implementation of the procedures are critical to its success. Without these elements and commitments from management, the effectiveness of the procedure can be seriously compromised. Proper training in the procedure, and explanation of how it works and why, are crucial to its implementation by the employee. Even though there can be no exact quantification of the effects of training employees, the BLS WIR Study gives an indication of the effect of the *lack* of training in the necessary measures to be taken in de-energizing machines, equipment or processes (see Table XVIII below).

TABLE XVII.—LOCKOUT TRAINING OF INJURED EMPLOYEES SOURCE: BLS WIR (FROM 613 RESPONSES)

Type of training	Number	Percent
Printed instruction	25	4
Procedures posted on equipment	37	6
Training at job orientation, at meetings, or otherwise	211	34
No training	340	55

Of those injured employees who had received training, 15 stated that their training had occurred *after* their accident. Additionally, 60 employees stated that they had received their training more than a year prior to the accident. Even though training had been provided at some time during employment, the length of time between the receipt of the training and the accident is a limiting factor on any beneficial effect that has been derived from the training. OSHA has recognized in this proposed standard the need for remedial or refresher training to be conducted at least annually.

Based upon an analysis of the rulemaking record to date, OSHA believes that the safe performance of activities such as repair, maintenance and servicing, requires the de-energization of machines or equipment whenever feasible. Further, in order to ensure that servicing activities are conducted safely, a servicing procedure must be established for their performance. This procedure must call out the steps to be taken to de-energize the machine, equipment or process; to ensure that the de-energization is sufficiently complete; to dissipate or prevent the release of residual energy; to ensure that the machine, equipment or process cannot be re-energized accidentally or unexpectedly; and to ensure that the re-energization is accomplished safely. The establishment and implementation of this procedure must be coupled with sufficient initial and follow up training to ensure the successful utilization of the procedure.

V. Summary and Explanation of the Proposal

This section contains a discussion of the individual requirements of this proposal. The proposal, if adopted, will add provisions that will address the documentation of procedures and use of safe work practices for the control of potentially hazardous energy. It would also require the training of employees in the use of these practices and procedures. An appendix to § 1910.147 would be provided to serve as a nonmandatory guideline in complying with the requirements of this section, as well as to provide other helpful information. OSHA invites public comments on these as well as any other issues raised by this proposal.

In paragraph (a), OSHA defines the scope, application and purpose of the standard for the control of hazardous energy (Lockout/Tagout). Because the need to control hazardous energy is not unique to any one industry, paragraph (a)(1)(i) sets forth OSHA's intent that except as discussed below, the standard will cover servicing and maintenance in general industry where the unexpected energization, start-up or release of stored energy from machines or equipment could cause injury to employees. The proposal does not contain specifications which must be followed in all circumstances, but, rather, provides flexibility for each employer to develop a program and procedure which meets the needs of the particular workplace.

While the proposed lockout/tagout standard is designed to have broad applicability to U.S. industry, certain industry sectors are not covered for one of the following reasons; which are discussed at length below:

(1) The present proposal is limited to general industry employment under 29 CFR Part 1910—construction, maritime and agricultural employment are not covered by the proposal; and (2) certain installations are not covered by this proposal because comprehensive energy control measures for those facilities are contained in forthcoming proposed rules.

In the first category, as proposed in paragraph (a)(1)(ii)(A), OSHA has determined that the present rulemaking effort be limited in scope to general industry. Development of appropriate energy control procedures for construction, maritime, and agricultural employments, respectively, will be considered for future rulemaking proceedings. OSHA believes that incorporation of the unique aspects of these three industry sectors into the present rulemaking would unduly complicate the development of a generic energy control procedure for general industry. At the conclusion of the present rulemaking proceeding, the Agency will be better able to evaluate the applicability of a generic energy control procedure and determine the types of changes that should be made for proposed procedures for construction, maritime and agriculture. However, OSHA welcomes views and comment on this issue and requests answers to the following questions:

1. Is this proposed rule appropriate for application to construction, maritime, and agriculture?

2. What modifications to the proposed rule are needed to make it more responsive to the unique hazards and working conditions in those industry sectors? and

3. What accident and injury data and other information are available to assist the Agency in developing proposals in these areas?

Secondly, OSHA is proposing that certain installations under the exclusive control of electric utilities, as defined in paragraph (a)(1)(ii)(B), not be covered by this rule. These installations are intended to be covered separately by a new section, § 1910.269, "Electric Power Generation, Transmission and Distribution," which OSHA expects to propose in the near future. Because of the unique nature of electrical utility operation, § 1910.269 will tailor the key provisions of this standard on lockout and/or tagout to meet the special safety needs of that industry. However, non-utility employers and workplaces that are engaged in the activities of power generation, transmission and distribution *would* be covered by the present proposal and are not within the intended scope of § 1910.269. Whether or not this suggested demarcation is reasonable will be a subject for discussion in the Electric Power proposal.

Further, OSHA proposes in paragraph (a)(1)(ii)(C) that exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations which is covered by Subpart S of Part 1910 also be excluded from coverage by the proposed standard. OSHA intends coverage for this work to be provided instead in a separate rulemaking on "Safety Related Electrical Work Practices," which was proposed for new §§ 1910.331 through 1910.335 as an amendment to Subpart S on November 30, 1987 (52 FR 45530). Those sections have their own provisions for dealing with lockout/tagout situations, and for controlling employee exposure to hazardous electrical energy with the use of electrical protective equipment. They will be based largely on a national consensus standard, NFPA 70E–Part II, "Safety Related Work Practices."

Similarly, proposed paragraph (a)(1)(ii)(D) would exclude oil and gas well drilling and servicing installations from coverage by this proposed rule. These installations are intended to be covered separately by a new § 1910.290, Oil and Gas Well Drilling and Servicing. A proposed § 1910.290 was published on December 28, 1983 (48 FR 57202). The Agency is currently developing a revised proposal to reflect the new information in the rulemaking record. The hazards involving lockout/tagout that are unique to oil and gas well drilling and servicing will be given a complete evaluation during that rulemaking process and appropriate steps will be taken to control them.

In determining the appropriate scope of the standard, OSHA reviewed available data. While the information indicated that the problem is more concentrated in the manufacturing sector, it nonetheless found evidence of hazards throughout industry sectors. Efforts to delineate the scope of the standard to those Standard Industrial Classification codes (SICs) in which the hazards occurred proved impossible. The mere fact that SICs provide a convenient dividing line for coverage from an economic or administrative standpoint was not, in and of itself, considered sufficient grounds to justify including some employees and excluding others who might be exposed to the same or similar hazards. The facts also proved that the need to control hazardous energy was not unique to any one industry and did, indeed, cut across SIC code lines.

Consequently, OSHA decided to propose a standard addressing only specified hazards of machines or equipment and specified employee activities, but with a scope broad enough to allow application of the standard to any sector of industry. This approach is based on the fact that the costs of the standard are limited to those situations where hazards exist. The costs to employers of determining whether or not they have machinery or equipment covered by the standard are assumed to be minimal. OSHA is specifically requesting information on whether this is an accurate assumption.

Additionally, OSHA is soliciting comments on whether certain industry sectors, types of machines, or activities covered by the proposed standard should be considered for exclusion, and what data are available to substantiate the recommended exclusions. The information requested should include specific accident and injury data or evidence that risks are not significant with regard to the industry sector, type of machine, or activity suggested for exclusion. Based on all the information made available, a determination will be made whether to exclude these industry sectors, types of machines or activities in the final rule or whether modification should be made to the proposal to reflect unique conditions.

In paragraph (a)(2)(i), OSHA is proposing that the standard apply to servicing or maintenance of machines or equipment. These functions are defined in paragraph (b) to include activities such as erecting, installing, constructing, adjusting, setting up, inspecting, and maintaining or repairing, machines or equipment. It is during these activities, at one time or another, that energy must be introduced to a system, removed, isolated and reintroduced in order to accomplish the task. It is also during these activities that employees are exposed to the unexpected energization, start-up or release of stored energy against which the control procedures established in this proposal are designed to provide protection.

There are some situations in which lockout/tagout may not be effective or appropriate, and the proposal would not require the use of locks and or tags in these circumstances. In paragraphs (a)(2) (ii) and (iii), OSHA lists those situations where lockout and/or tagout provisions do not apply. In paragraph (a)(2)(ii)(A), OSHA is proposing that the standard not apply when employees are working on cord and plug type electrical equipment for which exposure to the hazards of unexpected energization, start-up, or release of stored energy of the equipment is effectively controlled by other measures. This exclusion would encompass the many varieties of portable hand tools that are found in the workplace, as well as cord and plug equipment which is intended for use at a fixed location. Examples of equipment these measures apply to would include types such as those used in wood, metal, and food processing operations and could involve circular saws, band saws, grinders, mixers, etc.

For most plug and cord type electrical equipment, the *effective* control measure to be used when performing maintenance and servicing activities would involve unplugging the connecting plug from its receptacle. It would also involve a work practice for the employee doing work that would prevent him or her from being injured as a possible result of another employee replacing the plug and energizing the equipment while it was being worked on. Consequently, OSHA would expect the employee performing work on the equipment to place the disconnecting plug and cord close to his or her side, or at least in a place that is easily seen from the work area. Further, if stored energy is present in the system, it must be relieved or restrained before starting work on the equipment.

The discussion above, while applicable to plug and cord type electrical equipment intended for use in a specific location, is not intended to address the simple situation involving the performance of simple tool changes on portable plug and cord type hand tools. The control methods for such tool changes will usually be very simple. For example, where an employee must change the bit in a hand-held drill, or the belt on a belt sander, there would be no need to remove the plug from the receptacle. On equipment of this type, control of the activating mechanism of the tool is entirely in the hands of the employee who is using it, thereby *effectively* preventing its unexpected activation by another person.

Paragraph (a)(2)(ii)(B) proposes that the use of lockout/tagout procedures would not apply to "hot tap" operations when continuity of service or process operation is essential, and complete shutdown of the system impractical, provided that documented procedures and special equipment are used by the employer which will provide proven effective protection for employees. This provision is intended by OSHA to address the petroleum industry's concern (Ex. 16) for the handling of "hot tap" operations commonly used in their facilities, although it might also address other similar operations.

The "hot tap" procedure is employed in repair, maintenance, and service activities, and involves the cutting and welding of equipment (pipelines, vessels or tanks) under pressure in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam and petrochemical distribution systems. Special metal cutting and welding equipment and specific operating procedures are used to limit explosion hazards. The operation may be performed by in-house

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maintenance personnel or by outside contractors.

The use of "hot tap" procedures appears to avoid several safety risks which would otherwise arise in servicing equipment which is under pressure. First, process shutdowns and start-ups with equipment of this nature pose extreme hazards of explosions and fires due to the complexities and interrelationships among process components. For example, during start-up it is necessary to purge pipelines of air, water and/or inert gases before hydrocarbons are introduced. Malfunctions or operator errors during purging could easily create explosive mixtures in the equipment. In other instances, process shutdowns and start-ups can result in rapid condensation within the process equipment and may cause "water hammers," which are sudden pressure changes that can shake, vibrate and stress equipment to the extent that pipeline breaks or connection leaks develop. Finally, a third class of hazard avoided is one created by the much higher level of worker activity required during a complete process shutdown or start-up. This may result in more extensive worker exposure to the hazards of the shutdown or start-up procedure, and in greater potential for injury then would be involved in performance of "hot tap"-type activities, in which fewer employees would be exposed.

The American Petroleum Institute's (API) publication, "Procedures for Welding or Hot Tapping on Equipment Containing Flammables," Publication 2201, Second Edition, November 1978, (Ex. 16), provides established procedures for "hot tap" operations. The utilization of these or similar procedures would be considered by OSHA as meeting the intent of the proposed paragraph (a)(2)(ii)(B). Concerning this kind of work, OSHA requests comment on the following:

(1) Do the API procedures adequately address "hot tap" operations?

(2) Are there operations similar to "hot tap" to which the exceptions and criteria set forth in paragraph (a)(2)(ii)(B) could also apply?

(3) Should additional information be provided in the Appendix to assist employers who carry out "hot tap" or similar operations?

The proposed standard focuses primarily on employee exposure to the unexpected release of hazardous energy during the servicing of equipment and machinery in the workplace. As is noted in paragraph (a)(2)(iii)(A) of the proposal, the standard would not cover normal production operations, i.e., operations involving production equipment which is energized and is being used for its intended purpose. However, there are certain servicing operations, such as lubricating and minor adjustments of parts, which do take place during normal production operations. These servicing operations are necessary to enable the equipment to serve its production functions, and must sometimes be performed with the equipment energized. Because the equipment must remain energized during these operations, the proposed standard would not require lockout/tagout procedures to be implemented. However, the Agency recognized that employees engaged in these types of activities might be exposed to hazardous energy, and that even though the procedures for deenergization would not be appropriate, the standard should provide alternative coverage for these situations. Accordingly, paragraph (a)(2)(iii)(B) provides that if it is necessary to perform servicing or maintenance during normal production operations with the equipment energized, such servicing or maintenance shall be performed using alternative measures which the employer can demonstrate will provide effective protection.

The measures required by paragraph (a)(2)(iii)(B) would apply to many situations in which repetitive minor adjustments are required, or in the case of production operations when employees are effectively protected by other means such as specially designed control circuits, control equipment or operating procedures, in which employees have been properly trained. Controls such as inch and jog devices, which limit machine movement when activated, can prevent employee exposure to moving machine parts or components and are considered appropriate devices for the purpose of this provision.

There are many practical applications for these control measures currently in use for production operations. For example, inch and jog devices have been included in the design of machines or equipment used by the printing industry to handle set-up and maintenance problems that deal with straightening or feeding paper through their presses. The textile industry uses them on looms to enable loom fixers and operators to repair "end" (thread) breaks. They are also found extensively on machines such as power presses used by the metal stamping industry, when power is needed during set-up activity to make final adjustments before turning the press over to operating personnel. In all of these examples, the use of specially designed control circuits and control equipment has been combined with good operating procedures to limit effectively employee exposure to the hazards caused by the unanticipated movement of machines or equipment components. Many national consensus standards approved by ANSI support the use of these devices for controlled movement.

Proposed paragraph (a)(2)(iii)(B) will also provide flexibility during normal production operations for the performance of work on energized equipment when servicing or operating activities involving simple tool changes or minor adjustments are necessary. A simple tool change on an automatic chucking machine, for example, might require the operator to replace a worn carbide cutting tool insert in a tool holder when inspection of a finished workpiece indicated the need. The minor adjustment then necessary would be for the operator to reset the tool holder to a position that would result in a dimensionally accurate finished workpiece. The machine operator would need to be in control of the "off-on" switch (circuit control device) and the switch so located that the equipment could not be activated without his knowledge during the tool change. On completion of these activities, the machine would then be restored to the fully automatic mode.

OSHA requests comments and supporting data on the types of servicing or maintenance operations that would be covered by paragraph (a)(2)(iii)(B) as well as details on the types of alternative measures currently available to protect employees who perform these operations. The proposed provision is based on paragraph 6.8 of ANSI standard Z244.1–1982, which reads as follows:

> Production Operations. Personnel performing the activities listed in 3.1, other than normal operating activities should do so under deenergized conditions in accordance with the lockout/tagout procedures required in this standard (see 5.2.1). In the case of required repetitive minor adjustments where it is not feasible, or in the case of normal production operations, these activities shall be accomplished under the protection of specially designed control circuits, control equipment, and operating procedures that provide proven effective protection for the affected personnel.

OSHA believes that paragraphs (a)(2)(ii) (A) and (B), and (a)(2)(iii) (A) and (B) effectively establish the practical limitations involved with applying the proposed standard when tasks must be performed on equipment that remains energized. The Agency is also of the opinion that these provisions will avoid the need for employers to depend primarily on interpretations of the performance language in paragraph (a)(1)(i) to determine when the proposed standard should apply, and on the need to seek relief from the standard through the use of variance procedures. In this regard, OSHA solicits answers to the following questions:

(1) Are there major categories of exceptions to the proposed rule other than those found in paragraphs (a)(2)(ii) (A) and (B) that OSHA should consider addressing?

(2) Are proposed paragraphs (a)(2)(ii) (A) and (B) and (a)(2)(iii) (A) and (B) drafted with sufficient clarity and specificity to allow for their application in appropriate situations, taking into consideration feasibility, practicality and risk?

(3) In paragraphs (a)(2)(ii)(B) OSHA is proposing use of the same language adopted by ANSI in Z244.1–1982 to describe alternative procedures for hot tap operations.

Is the proposed language in this provision, requiring these procedures to provide *"proven effective protection"* sufficient to ensure adequate control of hazardous energy?

If not, what additional criteria should be established for alternative procedures?

In paragraph (a)(3)(i), OSHA sets forth the purpose of this regulatory action, which is to protect employees from injuries that are the result of unexpected energization, start up, or release of stored energy from machines or equipment when they are engaged in servicing or maintenance activities. Data on injuries and fatalities involving these activities are discussed in other sections of this preamble dealing with the analysis of hazards, accident data and the basis of Agency action.

OSHA is proposing in paragraph (a)(3)(ii) that the control of hazardous energy be accomplished by affixing the appropriate lockout/tagout devices to energy isolating devices and by otherwise disabling equipment according to an established procedure. The steps to be followed by the employer to accomplish this goal are set forth in paragraphs (d)(1) through (d)(5).

In proposed paragraph (a)(3)(iii), OSHA states that the intention of the proposed standard is *not* to replace existing specific OSHA lockout and/or tagout provisions, but to supplement and support these provisions with the requirements of an established procedure. The following listing indicates a number of OSHA standards which currently impose lockout related requirements:

Powered Industrial Trucks
1910.178(q)(5)(i)

Overhead & Gantry Cranes
1910.179(g)(5)(i)
1910.179(g)(5)(ii)
1910.179(g)(5)(iii)
1910.179(1)(2)(i) (b), (c), (d)

Derricks
1910.181(f)(2)(i)(c)
1910.181(f)(2)(i)(d)

Woodworking Machinery
1910.213(a)(10)
1910.213(b)(5)

Mechanical Power Presses
1910.217(b)(8)(i)
1910.217(d)(9)(iv)

Forging Machines
1910.218(a)(3)(iii)
1910.218(a)(3)(iv)
1910.218(d)(2)
1910.218(e)(1)(ii)
1910.218(e)(1)(iii)
1910.218(f)(1)(i), (ii), (iii)
1910.218(f)(2)(i), (ii)
1910.218(g)(2)
1910.218(h)(2)
1910.218(h)(5)
1910.261(i)(1)
1910.218(i)(2)
1910.218(j)(1)

Welding, Cutting & Brazing
1910.252(c)(1)(i)
1910.252(c)(2)(ii)

Pulp, Paper and Paperboard Mills
1910.261(b)(4)
1910.261(f)(6)(i)
1910.261(g)(21)
1910.261(g)(15)(i)
1910.261(g)(19)(iii)
1910.261(j)(4)(iii)
1910.261(j)(5)(iii)
1910.261(k)(2)(ii)

Textiles
1910.262(c)(1)
1910.262(n)(2)
1910.262(p)(1)
1910.262(q)(2)

Bakery Equipment
1910.263(k)(12)(i)
1910.263(l)(3)(iii)(b)
1910.263(l)(8)(iii)

Sawmills
1910.265(c)(12)(v)
1910.265(c)(13)
1910.265(c)(28)(v)

The standards listed above provide limited coverage of machinery, equipment and industries and do not address lockout/tagout issues or methodology in any detail. For example, none of the existing standards cover the need for a procedure or for more than one or two procedural steps pertaining to the actual application or release of energy control measures. The current provisions also do not address the basic requirements contained in the proposal which are needed to support and coordinate the implementation of control measures such as the selection of hardware, communications, periodic inspections, and assignment of responsibility. Additionally, the need to document a procedure, or to train employees engaged in the relevant activities, is not explicitly required by any of the present regulations. A typical example of this limited coverage is found in the following provisions for mechanical power presses:

Section 1910.217(b)(8)(i). A main power disconnect switch capable of being locked only in the off position shall be provided with every press control.

Section 1910.217(d)(9)(iv). The employer shall provide and enforce the use of safety blocks for use whenever dies are being adjusted or repaired in the press.

A general review of these and other lockout and lockout related provisions in OSHA's section 6(a) standards would seem to indicate that the consensus groups which originally developed these standards had either of two primary concerns in mind. Those concerns involve the need (1) to provide equipment with the physical means or capability to isolate energy sources during maintenance and repair activities; or (2) to make a choice of the control measures (locks and/or tags) which were to be provided and used on the specific machine, equipment or process covered by the standard.

The first category of provisions, while requiring the equipment to have the capability of being locked out, does not necessarily require that such control be accomplished. For example, § 1910.213(b)(5) states, "On each machine operated by electric motors, positive means shall be provided for rendering such controls or devices inoperative while repairs or adjustments are being made to the machines they control." As another example, § 1910.218(e)(1)(ii) states, "Air hammers shall have a shutoff valve as required by paragraph (d)(2) of this section and shall be conveniently located and distinctly marked for ease of identification." These provisions are specific in nature as they apply to the machines and equipment regulated and are primarily design oriented. For the most part, they address the importance assigned to the proper installation of equipment with regard to the arrangement of electrical and mechanical components. They do not, however, address the use of these components directly, nor do they establish a procedure for assuring that

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they are, in fact, used. The proposed standard would supplement these provisions and would not conflict with their requiremets. It is anticipated that the equipment required by this category of current rules would be used as part of the servicing procedures set out in the proposal. For these reasons, OSHA is not proposing any change in provisions in this category as they currrently appear in Part 1910. Provisions of similar content are:

1910.179 (g) (5) (i), (ii), (iii)	1910.213 (a) (10)
1910.217 (b) (8) (i)	1910.218 (a) (3) (iii)
1910.218 (e) (1) (iii)	1910.218 (h) (2)
1910.218 (j) (i)	1910.252 (c) (1) (i)
1910.261 (k) (2) (ii)	1910.262 (c) (1)
1910.263 (1) (8) (iii)	1910.265 (c) (28) (v)

The second category of provisions involves those which mandate the specific use of lockout, tagout or other energy control devices for certain machines, equipment or industries. The category addresses the application of locks, locks or tags, locks and tags, and in some cases the use of blocks, to control potentially hazardous energy.

A typical example of provisions used to specify the use of locks for a control measure is found in § 1910.179(1)(2)(i)(c) which states, "The main or emergency switch shall be open and locked in the open position." Provisions of similar content are:

1910.181 (f)(2) (i) (c)	1910.218 (d)(2)
1910.218 (f) (1) (i)	1910.218 (f) (2) (i)
1910.218 (h) (5)	1910.218 (i) (1)
1910.218 (i) (2)	1910.261 (b) (4)
1910.262 (n) (2)	1910.262 (p) (1)
1910.262 (a) (2)	1910.263 (1) (3) (iii) (b)

A typical example of provisions used to specify the use of locks or tags for the control measure is found in § 1910.261(j)(4)(iii) which states: "When cleaning, inspecting, or other work requires that persons enter the beaters, all control devices shall be locked or tagged out, in accordance with paragraph (b)(4) of this section." Provisions of similar content are:

1910.261(g)(2)	1910.261(g)(19)(iii)
1910.261(j)(5)(iii)	

A typical example of provisions used to specify the use of locks combined with tags is found in § 1910.261(g)(15)(i) which states: "Valves controlling lines leading into a digester shall be locked out and tagged. The keys to the locks shall be in the possession of a person or persons doing the inspecting or making repairs." A provision of similar content is found in § 1910.261(f)(6)(i).

A typical example of provisons used to specify the use of blocks to control hazardous energy is found in § 1910.217(d)(9)(iv) which states: "The employer shall provide and enforce the use of safety locks for use whenever dies are being adjusted or repaired in the press." Provisions of similar content are:

1910.218(a)(3)(iv)	1910.218(f)(1)(iii)
1910.218(f)(2)(ii)	1910.261(b)(4)
1910.265(c)(13)	

The groups of provisions found in this second category, and others similar to them covering potentially hazardous energy, would also not be replaced by the proposed standard. These provisions selectively require the use of the most effective devices for isolating and securing energy sources. The proposal would supplement these provisions in much the same way as with the first category in that it would require the establishment of procedures for energy controls.

In summary, the proposed standard focuses primarily on *procedures*—procedures that are necessary to provide effective control when dealing with potentially hazardous energy sources. It should also be understood that the proposed standard does not establish definitive criteria requiring selection of a specific control measure—locks, tags, or a combination of the two—to secure energy isolating devices for any particular situation. Where current standards do require the installation and/or use of specific devices, those standards would be supplemented and not replaced by this proposal.

The proposed standard is also intended to interact with any new or revised standards which may be promulgated in the future to address the use of specific control measures on an individual basis. Selection of the specific method of control, at that time, will reflect a thorough evaluation of the extent of exposure to the hazard; the type of injury; and the risk of injury involving that particular machine, equipment, or industry. The present proposal would then provide the procedures to be followed to implement the control as part of the total package including training and education.

In paragraph (b), OSHA is proposing a number of definitions to clarify the meaning, intent and purpose of certain terms contained in the proposed standard. All but five of these definitions are consistent with those published by the American National Standards Institute (ANSI) in their consensus standard, ANSI Z244.1–1982. The five definitions that have been added cover the terms "energized," "setting up," "normal production operations," "hot tap," and "servicing or maintenance." However, except for the definition dealing with energy sources, OSHA believes that all of the proposed definitions are self-explanatory.

The identification of "energy sources," as defined in this proposal, is complicated by three very important considerations: (1) Energy is always present in machinery, equipment or processes; (2) energy is not necessarily dangerous; and (3) danger is only present when energy may be released in quantities or at rates that would harm an employee. Generally speaking, however, potentially hazardous energy sources are defined as those that can cause injury to employees working in, on, or around machines or equipment.

The energy sources identified in paragraph (b)(4) require a more detailed discussion. "Energy," as used in this document means mechanical motion; potential energy due to pressure, gravity, or springs; electrical energy; or thermal energy resulting from high or low temperature. Some energy sources can be turned on and off, some can be dissipated, some can be eliminated, and some can only be controlled. These concepts will be addressed throughout the procedures found in this proposal. The following brief discussion of energy sources may be of benefit to the reader in understanding the provisions of this proposal.

1. Mechanical motion can be linear translation or rotation, or it can produce work which, in turn, produces changes in temperature. This type of energy can be turned off or left on.

2. Potential energy can be due to pressure (above or below atmospheric) as in hydraulic, pneumatic, or vacuum systems, or it can be due to springs or gravity. Potential energy manifested as pressures or in springs can be dissipated or controlled; it cannot be turned off or on.

3. Electrical energy refers to generated electrical power or static electricity. In the case of generated electricity, the electrical power can be turned on or turned off. Static electricity cannot be turned off; it can only be dissipated or controlled.

4. Thermal energy is manifested by high or low temperature. This type of energy is the result of mechanical work, radiation, chemical reaction, or electrical resistance. It cannot be turned off or eliminated; however, it can be dissipated or controlled.

The development and documentation of energy control procedures is of little use unless the employer requires all authorized employees to utilize the procedures that have been provided. To meet these requirements as proposed by paragraph (c)(1), the employer must ensure that hazardous energy control procedures have been implemented for all activities covered by the proposed standard, and are being complied with by the employees. Methods for meeting this requirement are provided in two

other sections of the proposal: Paragraph (c)(4), which addresses periodic inspection for observing employee compliance with the procedures; and paragraph (c)(5), which covers initial and periodic follow up training to develop and maintain the knowledge and skill needed by employees for the safe application and removal of energy controls.

In paragraph (c)(2), OSHA is proposing that employers develop, document and implement procedures for the control of potentially hazardous energy, and that the procedures clearly and specifically outline the steps to be followed, techniques to be applied, and measures to be used by the employer to assure that the procedure is used. OSHA is also proposing that the employer ensure that the control measures are used by employees whenever they might be exposed to injury from the unexpected energization, start up, or release of stored energy involved with machines, equipment or systems.

The written energy control procedure required by this standard need not be complicated or detailed, depending on the complexity of the equipment and the control measures to be implemented. For example, if there is a single machine with a single energy source that must be isolated, and the control measure chosen is simple, such as locking out that energy source during servicing, the written procedure need not be complicated. The steps set forth in the standard can be incorporated into the procedure with very little detail, reflecting the lack of complexity of the control measures. In addition, the employer's procedures need not be unique for a single machine or task, but can apply to a group of similar machines and tasks if a single procedure can address the hazards satisfactorily.

One example offered is in a sample guide to the development of a lockout procedure, as presented in the Appendix. This procedure is not considered unique and can be applied to groups of machines or tasks with considerable flexibility. Used as a guide to develop a specific lockout/tagout procedure, the sample would need only minor changes to methods, procedures and/or text to be acceptable for many workplace situations. Other examples in the Appendix are found in two illustrations which depict the procedural steps involved with the lockout and tagout of electrical energy sources and hydraulic/pneumatic sources.

The proposal also addresses situations in which there is a need for unique lockout/tagout procedures. The Appendix discusses the development of acceptable methods for dealing with situations which might require the entire procedure to be unique for its purpose (one of a kind) in dealing with the hazards, or for those which would only need a supplement to the general procedure. For some applications, the supplement would be in the form of a check list used for gaining access to the equipment or process and for returning it to service. The check list might address the number and locations of the energy isolating devices in order to guarantee total deenergization, and might also identify the employees involved with the use of lockout and/or tagout devices, thus providing accountability. In many cases, the check list would need to reflect the necessary order of energy isolation and device application.

In paragraphs (c)(3) (i) and (ii), OSHA is proposing that protective materials and hardware such as locks, tags, chains, adapter pins, etc., be provided by the employer to secure energy isolating devices. It also proposes that the devices be unique to the particular use (the only ones authorized for the purpose); that they be durable, standardized and substantial; and that they identify the user.

The proposed standard utilizes performance language in imposing the above requirements, but it provides additional guidance in the Appendix, which contains examples of acceptable methods for use in compliance. For example, to meet the requirement in paragraph (c)(3)(i) to supply protective equipment and hardware, the employer can either issue devices to each employee responsible for implementing energy control measures, or can exercise the option of simply having a sufficient quantity of the devices on hand at any given time and assign or distribute them to employees as the need arises.

OSHA believes that the obligations imposed by proposed paragraphs (c)(3) (i) and (ii) are not overly restrictive or complicated. However, the Agency is aware that many questions might be raised concerning the background and rationale for the proposed OSHA standard, as well as for similar requirements adopted by ANSI in their Z244.1–1982 document. For this reason, OSHA has given considerable attention in the Appendix to providing useful information regarding the rationale for, and simple explanations of, the performance language requirements. Comments are solicited on the contents of the Appendix, and on ways in which the contents can be made more effective and easier to use by employers and employees.

In paragraph (c)(3)(iii), OSHA is proposing that the legend (major message) on tagout devices, which are alternately identified as "danger" tags in § 1910.145(f), warn against hazardous conditions if the equipment is re-energized. A note is also provided here which calls attention to the fact that specific provisions concerning such accident prevention tags are found in § 1910.145(f). The reference is made because the latter provisions also address the color, size and message requirements which must be observed for accident prevention tags.

Four legends for major message information are provided in paragraph (c)(3)(iii): *Do Not Start, Do Not Open, Do Not Close,* and *Do Not Energize.* OSHA recognizes, however, that these four messages may not be sufficient to cover all conditions involving hazardous energy control. The Agency solicits comments as to whether more legends should be presented in this standard and, if so, what they should be.

Due to the severity of the risks associated with working on energized equipment, OSHA is proposing in paragraph (c)(4), that periodic inspections be performed by the employer at least annually in order to verify and to ensure compliance with the lockout/tagout provisions. Some acceptable methods for meeting the performance requirements in this paragraph are identified in the Appendix. One method includes using random audit and planned visual observation to determine the extent of employee compliance. Another includes modifying and adopting ordinary plant safety tours to suit this purpose.

It is also proposed that the inspections be made by an authorized employee other than the one implementing the energy control procedure; that they be designed to correct any deviations uncovered; and that the employer certify that they have been performed. Here too, the Appendix suggests methods that could be used in meeting these requirements, such as random audits and visual observation of the workplace while shutdown and isolation of the equipment is in process. These inspections are to provide for immediate feedback and action by the employer to correct any inadequacies observed.

OSHA believes that periodic inspections by the employer are necessary to ensure compliance with the procedure. In that regard OSHA solicits answers to the following questions:

1. Some operations may require a more frequent periodic inspection based on problem areas and changes to methods and procedures. Would the proposed schedule provide adequate protection?

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2. What factors should OSHA use in evaluating an employer's inspection program?

3. Are methods other than periodic inspection available to the employer to ensure compliance with the procedures?

In paragraph (c)(5), OSHA is proposing that the employer provide effective initial training, periodic retraining, and certification of such training of employees. OSHA considers these requirements to be of critical importance in helping to ensure that the applicable provisions of the hazardous energy control procedure(s) are known, understood and strictly adhered to by employees. Paragraphs (c)(5)(i) (A), (B), and (C) of the proposed standard establish the amount of training that is required for three groups of employees: "authorized" employees, "affected" employees, and "all other" employees. The relative degree of knowledge required by these three employee groups is in a descending order, with the requirements for authorized employees demanding the most effort in training. Because authorized employees are charged with the responsibility for implementing energy control procedures, it is important that they receive training in recognizing and understanding all potentially hazardous energy sources that they might be exposed to during their work assignments, and that they also be trained in the use of adequate methods and means for the control of such energy sources.

The training requirements OSHA is proposing for "affected employees" are less stringent than those for authorized employees. Affected employees are not required to implement energy control procedures themselves, but they do perform activities such as those identified in the proposed paragraph (a)(2)(i) where energy control procedures are necessary. For these reasons, OSHA is proposing that affected employees be instructed in the use of hazardous energy control (lockout/tagout) procedures, and that the instruction provide a clear understanding of the purpose and use of lockout/tagout procedures. The instructions need to be sufficient to enable the employees to determine if a control measure is needed. They should also make employees aware of those conditions and situations where their actions in disregarding or violating the procedures could endanger their own lives, or the lives of co-workers. Considerable latitude is given to employers to meet the training requirements for both authorized and affected employees. The options include classroom or on-the-job training or a combination of the two.

OSHA is also proposing in paragraph (c)(5)(i)(C) that all other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations. This instruction as to the employer's lockout/tagout procedure can be conveyed during new employee orientation sessions, by the use of employee handbooks, or through regularly scheduled safety meetings.

OSHA seeks public comment on the question of whether this latter requirement covers too broad a range of employees, and whether the same purpose and protection could be afforded by limiting the training and informational requirements to authorized and affected employees. OSHA also solicits comment on whether the subjects in which the various employee groups must be trained are specific enough for safe energy control practices.

In paragraph (c)(5)(ii), OSHA is proposing that periodic retraining be provided for both authorized and affected employees whenever an inspection under paragraph (c)(4) reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure.

OSHA is of the opinion that full and uniform utilization of an energy control procedure is necessary in order for that procedure to maintain its effectiveness. Every effort should be made during the periodic inspection performed under paragraph (c)(4) to determine whether or not the procedure is being used properly. If deviations are observed, retraining in accordance with this paragraph ((c)(5)(ii)) would be required. However, retraining could be triggered by events separate from the findings of a periodic inspection. For example, an employee working with an energy control procedure might be injured in the course of his duties. If a subsequent investigation indicated that the employee failed to operate within the guidelines of his control procedure, retraining would be required.

In addition, the investigation might also reveal that the procedure itself was not adequate. Such inadequacies in the procedure could be the result of using a general procedure that does not handle effectively a specific application, or they may arise because changes have been made to the equipment or process that did not take the existing energy control procedure into consideration. In such cases when changes to the energy control procedure must be made, the employer would be required to retrain employees in the new or revised procedures in accordance with paragraph (c)(5)(ii).

The employer's certification of training that OSHA is proposing to require in paragraph (c)(5)(iii) is intended to provide recognition of two elements: First, that initial training has been given to employees; and second, that retraining has been provided in order to reinforce the employee's original training and to take into consideration any changes in procedures, equipment, or other elements that may have occurred since training was last given.

In paragraph (c)(6), OSHA is proposing that energy isolating devices used for the control of potentially hazardous energy sources, including valves, be marked or labeled to identify the equipment supplied and the energy type and magnitude, unless they are positioned and arranged so that these elements are evident, and that the devices only be operated by authorized employees. Employees working with energy control procedures need adequate information about the hazards of the equipment that they are servicing, and they must be certain that the equipment they are working on is the same equipment that was intended to be disabled. They should feel confident that they have secured the correct energy control devices and are protected from the hazards of inadvertently working on energized equipment.

The identification requirement of paragraph (c)(6)(i) would apply to all energy isolating devices, including devices which control hydraulic, pneumatic, steam, and similar energy sources by the use of valves or similar devices to isolate and block energy flow. It would also apply to the valves used in pipeline network process operations, such as those found in petroleum and chemical operations. As noted above, however, the proposed identification requirement would not apply in any case, if the devices were to be located and arranged so that the equipment supplied and the energy type and magnitude were evident. For example, a wall mounted electrical disconnect switch of a type known to carry 120–440 volt service that is observed to have one lead to a single machine, would not require the disconnect switch to be marked or labeled. Similarly, a valve located so that it obviously can only service a specific machine and can be visually traced to a main line source that identifies the type and magnitude of energy would not require marking or labeling.

To cover the identification process, OSHA is proposing the use of two separate and distinct methods. For machines, equipment or systems, the employer would be required to label or mark the energy isolating devices in a permanent manner. The employer may elect to do so in a plant-wide effort for all machines or equipment that will, at one time or another, need to be identified. As an alternative, the employer could mark or label the devices permanently on an individual basis, for a specific machine or equipment, at the time the lockout/tagout procedures are to be applied and the energy isolating devices are to be secured.

For pipeline network process operations, permanent labeling or marking of the energy isolating devices (valves) would not be required. Among other problems, these pipelines may carry changing product mixes or employ alternate product travel routes, which makes it difficult, if not impossible, to label or mark the control valves in a permanent manner. Therefore, for these operations only, the proposal would allow the employer to identify all energy isolating valves involved with the task on a job-to-job basis prior to performing the necessary work.

Regarding the provision proposed in paragraph (c)(6)(i), OSHA solicits answers to the following:

1. OSHA is considering whether the identification should include information on the magnitude of energy to be controlled by the energy isolating devices. What problems might be encountered with such a requirement?

2. What changes could be made in the proposal to address these problems?

In paragraph (c)(6)(ii), OSHA proposes that the energy isolating devices be operated only by authorized employees or under the direct supervision of authorized employees. Special skills are required to effect the control of potentially hazardous energy using lockout/tagout procedures. These skills, described in paragraph (c)(5)(i) of this proposal, involve such elements as the knowledge of multiple forms of energy, the hazards of high voltages and pressures, and the relationship of energy to complex interconnected components. In light of these facts, OSHA believes that energy isolating devices must only be operated by authorized employees or under the direct supervison of authorized employees.

In paragraph (c)(7), OSHA is proposing that whenever lockout/tagout control might directly affect another employee's work activities, an authorized employee must notify the affected employee before taking any action to apply or to remove lockout and/or tagout controls.

OSHA believes that these measures are important to ensure that employees do not unknowingly attempt to energize machines or equipment that have been taken out of service and de-energized for the performance of activities covered by this standard. The lack of information regarding the status of the equipment could endanger both the servicing employees and the employees attempting to operate the equipment. The notification is also needed after servicing is completed to assure that employees know when the control measures have been removed. Without such information, employees could mistakenly believe that a system is still de-energized and that it is safe to continue working on it.

Some acceptable methods of notification are explained in paragraph seven of the Appendix. They include discussion with the affected employees by an authorized employee to inform and caution them of the impending actions, and may also involve the use of written work permit and authorization systems and/or clearance procedures that document the employer's work practices for gaining access to equipment or processes and for applying and removing controls. The Appendix contains additional information dealing with the application and removal of controls under specific conditions, and provides various methods of meeting the control requirements of the standard. (In particular, see sections of the Appendix with the following headings: *Procedure*; *Testing or positioning of energized equipment*; *Group lockout/tagout*; and *Shift or personnel change*.)

OSHA is proposing in paragraph (d) that five separate and distinct steps be followed in meeting the procedural requirements of paragraph (c)(1) (Procedure) and the application of energy control (lockout/tagout) measures. It is also proposing that the actions be taken in the sequence presented. For example, paragraph (d)(1) proposes, as the first step, that the equipment or process be turned off or shut down by an authorized employee according to established procedures. This is the starting point for all subsequent action that is necessary to put the equipment or process in a state that will permit employees to work on it safely.

In many operations, activation of an electrical push-button control or the movement of a simple throw switch (electrical, hydraulic, or pneumatic) to the "stop" or "off" mode is sufficient to meet this provision. In other cases, however, such as those found typically in a refining or chemical process, there are control devices that do not necessarily address an "off-on" or "start-stop" condition (i.e., level controls, pressure controllers, etc.). In these instances, a series of predetermined steps may be necessary to achieve a shutdown of the process or equipment.

Following shutdown of the equipment or process as outlined in paragraph (d)(1), OSHA is proposing in paragraph (d)(2), as the next step of the procedure, that energy isolation devices be physically located and operated in such a manner as to isolate the equipment or process from the energy source(s). For example, in the simple case of an electrical push-button control which has been activated to stop the movement of machine or equipment parts as the first step of the shutdown procedure, isolation can then be accomplished by ensuring that the push-button circuitry cannot be supplied with additional electrical energy. For such equipment, the isolation requirement can be met by the employer's actions in locating the main power disconnect switch and moving the control lever to the "safe," "off," or "open" position. Performing these actions will prevent the reintroduction of energy to the push-button circuitry and will isolate the operating control from the energy source.

In paragraph nine of the Appendix, OSHA has identified the types of energy needing isolation, and has provided some acceptable measures to be taken for accomplishing such isolation. These measures cover mechanical energy involving rotation, translation, or a combination thereof; thermal energy; potential energy involving pressure, gravity and springs; and electrical energy. The Appendix also discusses the relationship between the five steps set out in paragraph (d) and the specific energy isolation requirements in paragraphs (c)(2) *Procedure*, and (c)(6) *Energy isolating devices*, of the standard, and provides explanations and additional information which can be used for guidance in complying with these paragraphs.

As the third step in the procedure, OSHA is proposing in paragraph (d)(3) that action be taken to secure the energy isolating devices in a "safe" or "off" position. This paragraph would require that appropriate and effective lockout and/or tagout devices be affixed to each energy isolating device by an authorized employee, and that they be attached so

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as to prevent reactivation of the machine or equipment.

This proposed standard for the control of hazardous energy sources is a "generic" standard, and is written largely in terms of the procedures and performance to be achieved. OSHA does not consider it practical to prescribe specific definitive criteria for each possible use of energy control measures in such a wide ranging standard. However, the Agency believes that the proposal will enable the user to make a choice of the most effective control measure involving the use of locks or tags, or a combination of the two devices for securing an energy isolating device. For this reason the term "appropriate and effective lockout/tagout devices" is used in this provision rather than attempting to identify a specific type of device when describing the action that is to take place.

The main thrust of the proposal is to mandate the development, documentation and implementation of control procedures, and this would be accomplished as outlined in paragraph (c)(2) of the proposal. The employer would be given considerable flexibility in developing a control program, and such a program would be evaluated by OSHA compliance officers to determine whether it meets all the criteria in this standard. OSHA intends to address the need for specific lockout/tagout requirement for particular types of equipment or processes on an individual basis, as appropriate, in future rulemakings. This will involve revision of existing standards and promulgation of new ones, as necessary. (Examples of current provisions in the OSHA standards which contain specific lockout/tagout requirements can be found in the previous discussion of proposed paragraph (a)(3)(iii)).

Where no specific standard presently requires the use of a lock versus a tag or a combination of the two for securing an energy isolating device, paragraph (d)(3) of the proposal requires the employer to select an appropriate and effective method. Information is provided in the Appendix to assist the employer in this selection process. Even though options and rationale are presented for consideration in the Appendix, the Appendix does not provide definitive criteria to prescribe any one of the described forms of control. It is meant to show how factors such as the degree of hazard exposure, employee training, conditions in the workplace and the commitment of employees and employees in an industry to a proven effective method and procedure can be used to influence the choice of a control method. Nevertheless, it should be noted that much of the guideline information presented in the Appendix has been developed from national consensus standards and other materials which have been widely recognized and accepted throughout industry. Many of the requirements for using a lock and tag, for example, can be found in the National Fire Protection Association, NFPA 70-E Standard—Part II, "Safety Related Work Practices" (Exhibit 2). As noted earlier, that NFPA standard is also a major source document for the electrical safety work practices proposal which is currently being developed by OSHA. The guideline information is also supported by numerous technical data sheets published by the National Safety Council and by the many references contained in the Council's "Accident Prevention Manual."

OSHA is of the opinion that, as a general rule, where it is feasible, the physical protection offered by the use of a lock, when supported by the information provided on a tag used in conjunction with the lock, provides the greatest assurance of employee protection from the release of hazardous energy.

OSHA proposes in paragraph (d)(4) that the next step taken in the application of energy control (lockout/tagout) procedures would be to determine the presence of, and relieve, disconnect and/or restrain all potentially hazardous, stored or residual energy in the machine or equipment. Up to this point, the purpose of following all the steps of the procedure has been to enable the employee to isolate and block the source of energy feeding the machine or equipment to be worked on, at a point beyond which it can not be bypassed. However, energy can very easily be trapped in a system downstream from an energy isolating device or can be present in the form of potential energy from gravity or from spring action. Stored or residual energy of this sort cannot be turned on or off; it must be dissipated or controlled.

When energy may be present in a system that has been isolated, the proposed paragraph would require those hazards to be controlled before an employee attempts to perform any work covered by the scope of the standard. The provision might require, for example, the use of blocks or other physical restraints to immobilize the machine or equipment where necessary for control of the hazard. In the case of electrical circuits, grounding might be necessary to discharge hazardous energy. Hydraulic or pneumatic systems might necessitate the use of bleed valves to relieve the pressure. Additional information is given in the Appendix which provides a listing of the forms of energy which might be stored in sufficient quantities to represent hazards. It also provides examples of the methods used to control these hazards.

In paragraph (d)(5), OSHA is proposing that as the fifth step in the application of energy control procedures, prior to starting work on equipment or processes, an authorized employee must ensure that the previous steps taken have isolated the energy effectively. The authorized employee would need to verify that the machine or equipment has been turned off or shut down properly as required by paragraph (d)(1) of this proposal; that all energy isolating devices were identified, located and operated as required by paragraph (d)(2); that the lockout and/or tagout devices to energy isolating devices have been attached as required by paragraph (d)(3); and that stored energy has been rendered safe as required by paragraph (d)(4).

The proposed Appendix describes actions which the authorized person can take in order to meet this requirement. These actions, which may need to be taken singly or in combination, involve either an attempt to operate the equipment or process controls, or the use of appropriate test equipment and the performance of a visual inspection to verify energy isolation.

This step of the procedure may involve a deliberate attempt to start up equipment which should not be capable of activation because of the application of control procedures. It is an action intended to assure the employee that energy from the main power source has been effectively isolated and blocked and that injury could not result from inadvertent activation of the operating controls. Another means of testing the equipment or process is by the use of appropriate test instrumentation. This method would be appropriate for use in cases involving electrical circuits and equipment, for example, where verification of isolation could be accomplished by determining the relative energy level readings involved by using a volt meter. Similar test equipment can be applied to other energy types and sources.

OSHA also considers the use of visual inspection procedures to be of critical importance throughout the lockout/tagout control procedures. Visual inspection can confirm that switches, valves, breakers, etc. have been properly moved to and secured in the "off" or "safe" position. Observing the

position of the electrical main power disconnect switch can, for example, confirm that the switch is either in the "off" (open) or "on" (closed) position. Visual inspection can also verify whether or not locks and other protective devices have been applied to the control points in a manner that would impede the unsafe movement of the switches or valves. Finally, a visual inspection can be used to verify that isolation has taken place by determining that all motion has stopped and that all coasting parts such as flywheels, grinding wheels, saw blades, etc., have come to rest.

OSHA is proposing in paragraph (e) that certain actions be taken by authorized employees before lockout/tagout devices are removed from energy isolating devices. These actions would ensure: (1) That the equipment or process has been returned to an effective operating condition; (2) that any employees who might be exposed to injury during the process of restoring energy are made aware that such process is to begin; and (3) that those employees having the responsibility for removal of the devices have been identified together with the specific conditions necessary for the procedures to take place.

In paragraph (e)(1), it is proposed that the workplace area around the equipment or process be inspected to ensure that nonessential items have been removed and that equipment components are operationally intact. OSHA further explains this provision in the Appendix to show how it can involve such things as tools, materials, mechanical restraints, replacing guards and checking for completeness of the work that was performed in returning the system to its operational mode. It also explains the conditions under which a visual inspection alone can accomplish this goal, and discusses those conditions which may involve the need for additional measures such as check lists and other administrative procedures.

In paragraph (e)(2), OSHA is proposing that the work area be checked to be sure that employees are clear of the equipment or process before energy is restored to it. In this case also, OSHA discusses in the Appendix the acceptability of a visual inspection to accomplish the purpose under certain conditions and the use of administrative procedures, such as check lists, under other conditions.

It cannot be overemphasized that employees performing tasks on de-energized equipment may be exposed to hazards involving serious injury or death if the status of lockout/tagout control conditions can be changed without their knowledge. For this reason, OSHA is proposing in paragraph (e)(3) that as a general rule, lockout/tagout devices be removed by the employees who applied them. An exception is provided for two types of situations in which the device may be removed under the direction of an authorized employee using specific procedures. Paragraph (e)(3)(i), as proposed, permits use of the exception when the employee who applied the lockout/tagout device is not available to remove it. This provision is intended to cover situations such as those that might arise from the sudden sickness or injury of an employee, key loss, or other emergy conditions. The proposed paragraph (e)(3)(ii) will permit use of the exception for unique operating activities involving complex systems, where the employer can demonstrate that it is not feasible to have the device removed by the employee applying it. For example, the provision can be used to provide flexibility in operatios similar to that where the removal of a lockout/tagout device at a remote electrial transmission or distribution system location is required and the process is controlled by a written procedure that uses an authorized employee operating from a central control point to communicate instructions to employees working in the field.

OSHA is proposing in paragraph (f)(1) that a procedure be developed and implemented that would establish a sequence of actions to be taken in situations where energy isolating devices are locked and/or tagged and there is a need for testing or positioning of the equipment. This action is required in order to maintain the integrity of any lockout/tagout procedure. It is also necessary in order to provide optimum safety coverage for employees when they have to go from a de-energized condition to an energized one and then return the system to lockout/tagout control. It is during these transitions that employee exposure to hazards is high, and a sequence of steps to accomplish the task safely is needed.

Paragraph (f)(1) prescribes a logical sequence of steps to be followed in situations where energy isolating devices are locked and/or tagged out, and there is a need to test or position the equipment or process. The steps will offer necessary protection to employees when they are involved in this activity. The procedure is clear-cut and should require no explanation other than is found in the standard itself and in the supporting Appendix material.

In paragraphs (f)(2) (i) and (ii), OSHA is proposing that whenever outside servicing organizations are engaged at a plant or facility to perform any of the activities covered by the scope and application of the proposed standard, the employer at that facility must inform the authorized representatives of the servicing organizations (contractors, service representatives etc.) of the lockout/tagout procedures used by the facility. It is also proposed that employers verify that the procedures to be used by outside service representatives are compatible with existing in-plant procedures.

These provisions are necessary when outside personnel work on machines or equipment because their activities have the potential for creating hazards which are not present for the regular plant or facility employees under normal operating conditions. The proposal is intended to ensure that both the employer and the outside service personnel are aware that their interaction can be a possible source of injury to employees and the outside personnel, and that close coordination of their activities is needed in order to reduce the likelihood of such injury. OSHA sees the proper utilization of these provisions, when they are understood and agreed upon, as a way to prevent misunderstandings by either plant employees or service personnel regarding use of the lockout/tagout procedures in general, and with regard to the use of specific lockout or tagout devices that are selected for a particular application.

Paragraph 16 of the Appendix notes that presentation of a copy of the facility lockout/tagout procedures by the facility employer to an authorized representative of a service organization would meet the requirement in paragraph (f)(2)(i) that the service organization be informed of such procedures. Relative to paragraph (f)(2)(ii), the Appendix discusses ways for the employer to verify that the lockout procedures used by the outside service organization will be compatible with the existing in-plant procedures. OSHA requests comments as to whether the Agency should require either a written record or a certification to ensure that such verification has taken place. If so, what details, if any, should be included?

OSHA is proposing in paragraph (f)(3) that when a crew, craft, department or other *group* lockout or tagout device is used, it must provide the affected employees with a degree of protection that is equivalent to the use of *personal* lockout/tagout devices. As is the case with other forms of lockout/tagout protection, the employer who uses a

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group lockout or tagout system must develop a procedure which encompasses the elements set forth in performance language in proposed paragraph (c)(2). Paragraph (f)(3), as proposed, is intended by OSHA to identify specifically and require several key provisions which must be included in all group lockout or tagout procedures, and which would require the involvement of authorized persons. One authorized person would be assigned the primary responsibility for all employees working under the protection of a particular lockout/tagout device. When more than one group is involved, another authorized person might be needed to maintain responsibility for coordination of the various lockout control groups in order to ensure continuity of protection and to coordinate workforces.

In addition to designating and assigning responsibility to authorized employees, the proposed paragraph would require the employer to develop and implement procedures for determining the exposure status of individual crew members and for taking appropriate measures to control or limit that exposure. These provisions are seen by OSHA as requiring at least the following steps:

1. Verification of shutdown and isolation of the equipment or process before allowing a crew member to place a personal lock or tag on a lockout box, board, or cabinet;

2. Ensuring that all employees in the crew have completed their assignments, removed their lockout and/or tagout devices from the box lid or other device used, and are in the clear before turning the equipment or process over to the operating personnel—completing this step might include the use of check lists or other procedures, if necessary, to account for the number of employees, energy isolating devices and lockout or tagout devices that are involved; and

3. Providing the necessary coordinating procedures for ensuring the safe transfer of lockout or tagout control devices between other groups and work shifts.

The special coverage proposed by paragraph (f)(3) recognizes the importance of group lockout and/or tagout devices used under conditions in which the safety of all employees working in the group is dependent on how those devices are used and coordinated by the authorized person. For that reason, it involves a closer examination of the conditions, methods and procedures needed for effective employee protection. Many special procedural considerations for group lockout/tagout application are discussed throughout the Appendix, including the paragraphs on *Procedures* (paragraph 2), *Release from control* (paragraphs 13, 14, & 15) and *Shift or personnel change* (paragraph 18). OSHA solicits comment on whether or not group lockout/tagout requirements are adequately addressed in this or other paragraphs of the proposal. If they are not, what changes should be made in order to assure employee protection?

OSHA is proposing in paragraph (f)(4) that specific procedures be implemented to ensure continuation of lockout/tagout protection for employees during shift or personnel changes in order to provide for an orderly transfer of control measures, and to be certain that the equipment or process is maintained in a safe condition for continued work following this transition. As with group lockout/tagout, this task is accomplished as part of the procedures that are defined in performance language in proposed paragraph (c)(2). Proposed paragraph (f)(4) identifies several key provisions that must be included in procedures whenever transfer of control measures is necessary. The underlying rationale for these provisions, whereby hazardous energy control responsibility is transferred, is for the maintenance of uninterrupted protection for the employees involved. It is therefore considered essential that lockout/tagout devices be maintained on energy isolating devices throughout the transition period.

Basically, the transfer of responsibility will require the on-coming shift employees to accept responsibility for the safety and control of the system involved prior to the release of responsibility by the off-going employees. Also, the procedures, whether they necessitate the use of simple control measures or the more detailed use of logs and check lists to accomplish an orderly transfer, are to be followed by an assurance that the system is indeed safe for employees to continue working. This assurance involves action by the authorized or supervisory employee responsible for the transfer to verify the continued isolation of energy in the system.

Regarding the issue of shift change-over and transfer of responsibility for energy control and isolation of a system, OSHA solicits comment on whether the proposal adequately addresses the criteria necessary for maintaining employee protection. If it is not adequate, what additional provisions are necessary? Should the standard be more specific in establishing responsibility for the transfer of authority for energy isolation?

VI. Regulatory Impact Analysis

Introduction

Executive Order 12291 (46 FR 13193, February 17, 1981) requires OSHA to conduct a regulatory analysis for any rule potentially having major economic consequences on the national economy, geographical regions, individual industries, or levels of government. Consistent with these requirements, the Occupational Safety and Health Administration (OSHA) has prepared a Preliminary Regulatory Impact Analysis (PRIA) [Ex. 17] for the proposed rule. This analysis includes: A profile of the potentially affected firms and employees; a description of regulatory and nonregulatory alternatives; an analysis of the technological feasibility of the proposed rule; and a study of the potential social benefits, economic costs, and environmental impacts that may result from full compliance with the proposed rule.

The complete analysis, as summarized in this section, is based on data and information provided by the Eastern Research Group (ERG) in a study entitled, "Industry Profile Study of a Standard for Control of Hazardous Energy Sources Including Lockout/Tagout Procedures" [Ex. 15]. Additional information was obtained from comments submitted to OSHA in response to the preproposal draft [Ex. 10] and supplemental ERG report [Ex. 21]. The complete OSHA PRIA, the ERG report, and all comments submitted to the Docket are available for inspection and copying at the OSHA Docket Office, Room N-3670, 200 Constitution Avenue NW., Washington, DC 20210.

Covered Industries

The proposed rule will affect most employment covered by OSHA under Part 1910 except: (1) Those activities that are specifically excluded from coverage such as certain work on plug and cord type electrical equipment; and (2) those firms for which OSHA has or is in the process of providing equivalent coverage under a different subpart or part, such as the oil and gas extraction industry. OSHA has estimated that the proposed rule will affect activities in some 1.8 million establishments employing approximately 39 million workers.

To analyze the differing effects of the proposed rule, OSHA has divided the affected industries into a high-impact group, a low-impact group, and a zero or negligible-impact group. The high-impact group consists of all manufacturing industries. In 1984, approximately 20 million workers were employed in 341,000 high-impacted establishments.

Firms classified as low-impact include those in transportation; utilities; wholesale trade; retain food stores; and several service industries, including personal services, business services, automotive repair, miscellaneous repair, and amusement services. OSHA has estimated that approximately 19 million workers were employed in 1.4 million low-impact establishments in 1984.

The negligible-impact group consists of industries that ERG determined had little potential for a lockout/tagout-related accident. Retail trade, finance, insurance, real estate, service, and public administration firms not classified in the high- or low-impact sectors were included in this group.

The Agency's analysis focuses on the potential regulatory efforts to high- and low-impact firms.

Population at Risk

As noted, some 39 million workers are employed in industries that may be affected by the proposed rule. All such workers have the potential for being injured due to inadequate or non-existence use of lockout/tagout. In estimating the number of workers at risk from exposure to hazardous energy, OSHA classified "at-risk" occupations as those being held by individuals who would actually perform lockout/tagout activities under the proposed rule. Although this approach tends to underestimate the number of workers who could benefit from promulgation of a lockout/tagout rule, it does provide a good measure of the number of workers who will have to alter their work patterns to comply with the proposed rule. Thus, it is an appropriate method for estimating the costs of the rule. Based on the ERG study [Ex. 15, p. 3–35], OSHA has estimated that two million workers in high-impact industries, and one million workers in low-impact industries, are employed in occupations where the unexpected energization, start-up or release of stored energy of machines or equipment could cause injury to employees. The risk appears to be the greatest for those workers employed as craft workers, machine operators, and laborers. Certain types of machinery, such as packaging and wrapping equipment, along with printing presses and conveyors, are associated with a high proportion of the accidents.

Significance of Risk

The installation, assembly, service, repair, change over, and disassembly of machines, equipment, and systems are activities integral to most industrial processes. During these activities, however, accidents often result from the inadvertent energization or movement of machinery or equipment.

The ERG study [Ex. 15, p. 6–27, 6–48] estimated that two percent of all workplace injuries, and 7.1 percent of all fatal occupational accidents, occur as a result of inadequate or nonexistent lockout/tagout procedures in industries likely to be regulated under the proposed rule. Based on these percentages, the Agency has estimated that in 1984 there were 144 fatalities, 33,432 lost workday injuries, and 37,561 non-lost workday injuries that occurred due to inadequate lockout/tagout procedures in the affected industries. Assuming that these types of accidents grow proportionately with the average level of employment, approximately 1,530 fatalities, 352,965 lost workday injuries, and 396,580 non-lost workday injuries would occur during the next 10 years in the absence of a lockout/tagout standard.

OSHA seeks comment on the methodologies applied to the various data sources to estimate the percentages of workplace injuries due to inadequate or nonexistent lockout/tagout procedures. OSHA also seeks comment on the reliability of the different estimates.

The accidents commonly resulting from inadequate or nonexistent lockout/tagout activities tend to be significantly more severe than the average occupational injury. Injuries typically include fractures, lacerations, contusions, amputations, and puncture wounds. The ERG study [Ex. 15, p. 6–52] estimated that such injuries cause workers to lose an average of 24 workdays. By way of comparison, the 1981 Bureau of Labor Statistics' Occupational Injuries and Illnesses Study [Ex. 16] reports that the average lost time occupational injury involves 16 lost workdays.

Based upon the aforementioned evidence, OSHA has determined that the failure to control sources of hazardous energy results in a significant risk to employees. Since the private market fails to provide an adequate level of safety for workers servicing and maintaining equipment, the Agency has examined various regulatory and nonregulatory alternatives, including tort litigation, distribution of information, workers' compensation, and industry self-regulation. The Agency has concluded that the proposed standard would reduce risk in an optimal manner.

Technological Feasibility

The proposed rule is written in performance-based language that permits firms to develop lockout/tagout procedures that are most appropriate for their specific equipment and machinery. Based on data gathered during ERG site visits, OSHA has determined that some firms of all sizes and types are already in full compliance with the proposed rule. As the proposed rule would not require the development of new technologies, OSHA has determined that all provisions of the proposed standard are technologically feasible.

Potential Benefits of the Proposed Rule

OSHA has estimated the total number of accidents that the proposed rule would have prevented in 1984, assuming full compliance by all affected firms and workers. As a conservative estimate, the Agency assumed that only 85 percent of those accidents identified as caused by inadequate or nonexistent lockout/tagout procedures would actually be prevented under the proposed rule. It was assumed that 15 percent of the noted accidents may still occur even if both employees and employers are complying fully with the rule (e.g., a block used to hold the weight of a suspended machine component may fail). Based on the above assumptions, OSHA has estimated that the proposed rule would have prevented approximately 122 fatalities, 28,400 lost workday injuries, and 31,900 non-lost workday injuries in 1984.

OSHA does not endorse any particular estimate for the value of an employee's life. For illustrative purposes, however, OSHA has used a willingness-to-pay method to estimate the monetary value of the employee benefits that would result from implementation of the proposed rule. Willingness to pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program, or in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. To the extent that benefits can be monetized using a willingness-to-pay methodology, the Agency's best estimate for the total worker benefit of the proposed rule is $1.5 billion [Ex. 17, p. V–13].

In addition to saving lives and reducing injuries, the proposed rule would also reduce employers' accident costs such as for lost production time, administrative time spent preparing insurance claims and accident reports, and reduced efficiency related to replacing injured workers. To estimate the magnitude of these employer benefits, OSHA examined several academic and industry studies. Based

primarily on studies by the Alcoa Corporation [Ex. 19] and by Levitt and Coworkers [Ex. 20], OSHA has estimated that the reduction in occupational accidents would result in an annual benefit to employers of $125 million. This figure is based on an estimated cost-savings of $350 per nonlost workday injury and $4,000 per fatality and lost workday injury. As this report is a *Preliminary* Regulatory Impact Analysis, OSHA invites public comment on these estimates for incorporation into the final RIA that will accompany the final rule.

Therefore, to the extent that the benefits of an occupational safety rule can be monetized, OSHA has concluded that promulgation of the proposed rule would create a benefit to employers and employees equal to approximately $1.5 billion annually.

Potential Costs of the Proposed Rule

The Agency estimates that promulgation of the proposed rule would cost 1.6 million establishments a total of $212 million during the first year of implementation, and $135 million in subsequent years [Ex. 17, p. VI–41]. If the costs for equipment modifications are annualized over a 10-year period, the first-year costs would be $190 million and the recurring costs would be $140 million [Ex. 17, p. VI–42]. These estimates were calculated using 1984 procedural practices as a baseline and then assuming full compliance with the proposal. All estimates were calculated in 1984 dollars based on the most cost-effective methods of implementing the proposed rule.

The nonannualized costs of the proposal can be briefly summarized by category. For tags, locks, and other hardware, the first-year costs would be $10.8 million and the annual recurring costs would amount to $7.9 million [Ex. 17, p. VI–41]. For equipment modifications, the first-year costs are estimated at $28.9 million, with no annual recurring costs [Ex. 17, p. VI–13]. In terms of work practice modifications, the first-year costs and the annual recurring costs would be $102.7 million each [Ex. 17, p. VI–20, VI–22]. For planning and implementing lockout-tagout procedures, the first-year costs are calculated to be $51.5 million and the annual recurring costs are estimated to be $12.8 million [Ex. 17, p. VI–37]. In terms of employee training, the first-year costs would be $20.1 million and the annual recurring costs would be $11.7 million [Ex. 17, p. VI–40].

It should further be noted that in determining the economic impact of the proposal, OSHA estimated that the average additional time needed to perform lockout/tagout is 2 minutes. This estimate was based on the results of a 1981 BLS study (Ex. 3), which surveyed maintenance workers on lockout/ tagout procedures. As noted in the PRIA, OSHA's contractor, Eastern Research Group (RG), conducted its own mail survey and estimated that the average additional time for performing lockout/tagout would be 4 minutes (Ex. 17, p. VI–15). OSHA does not believe that the ERG survey provided a representative sample on which to make this estimate, and considers the BLS survey of maintenance workers to provide a more accurate figure. OSHA solicits comments and data on the amount of time necessary to perform the full lockout/tagout procedure in the proposal.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), OSHA must assess the potential economic impact of the proposal to determine the rule would impose significant costs upon a substantial number of small entities. "Significance" is determined by the impact upon small firms' profits, market share, and financial viability. In particular, OSHA must determine whether the proposal will have a relatively greater negative effect on small entities than on large entities.

To assess the impact of the proposed rule on small entities, the Agency has estimated the total cost of compliance per establishment for firms not currently practicing lockout/tagout. First-year costs would range from $133 for very small firms (those employing fewer than 20 workers); to $1,778 for small firms (those employing 20 to 99 workers); to $30,227 for large firms (those employing 250 workers or more) [Ex. 17, p. VI–43]. The costs of complying with the proposed rule would depend primarily on the number of workers employed at a firm and the number of maintenance and servicing tasks required annually—factors that typically depend upon the scale of operation of an entity. Thus, based on the above estimates, the costs of the proposal would be proportional to the size of the firm and no significant differential impact is expected.

OSHA also has compared the costs of compliance with small entities' overall total costs of production. The Agency has determined that the cost of full compliance with the proposal would equal no more than 0.05 percent of an average small or very small firm's operating costs, and no more than 2.2 percent of an average small firm's net income [Ex. 17, p. VII–6].

As the costs of compliance for small and very small firms are proportional to the size of the firm, and would represent such a small component of the overall cost of the facilities, OSHA certifies that the proposed rule would not have a significant impact upon a substantial number of small entities.

VIII. International Trade

Increases in the price of domestically manufactured goods in general result in an increase in the demand for imports, and a decrease in the demand for exports. The magnitude of this impact depends on the relevant demand elasticities and the magnitude of the price changes. While the proposed standard may result in slightly higher prices of manufactured goods, the estimated magnitude of this increase is so small that the Agency has concluded that any resultant impact on foreign trade would be negligible.

IX. Environmental Assessment

This proposed rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and Department of Labor NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed rule focuses on the recduction of accidents or injuries by means of the utilization of specific work practices, procedures, and training. This proposal would not have an impact on air, water, or soil quality, plant or animal life, the use of land, or any other aspects of the environment. As such, this proposal can therefore be categorized as an excluded action according to Subpart B, Section 11.10, of the DOL NEPA regulations.

X. Paperwork Reduction Act: Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and the regulations issued pursuant thereto (5 CFR Part 1320), OSHA certifies that it has submitted the information collection requirements contained in this proposed standard to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA rulemaking docket, at the address set forth below.

XI. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by June 28, 1988, and submitted in quadruplicate to the Docket Officer, Docket No. S–012A, Room N3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Written submissions must clearly identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue.

All written comments received will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by June 28, 1988.
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments and OSHA will fuly consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

List of Subjects in 29 CFR Part 1910

Lockout, Tagout, Control of hazardous energy sources, De-energize, Training, Occupational safety and health, Safety.

XII. State Plan Standards

The 23 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States and territories are: Alaska, Arizona, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

XIII. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 22nd day of April 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

It is proposed to amend 29 CFR Part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 would be revised as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754) 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable. Sections 1910.141, 1910.142 and 1910.147 also issued under 29 CFR Part 1911.

§ 1910.150 [Redesignated from § 1910.147]

2. Section 1910.147 would be redesignated as § 1910.150.

3. A new § 1910.147 and Appendix to § 1910.147 would be added to read as follows:

§ 1910.147 The control of hazardous energy sources (lockout/tagout).

(a) *Scope, application and purpose*—(1) *Scope.* (i) This standard covers servicing or maintenance of machines or equipment in which the unexpected energization, start up, or release of stored energy could cause injury to employees, and establishes minimum performance requirements for the control of such hazardous energy.

(ii) This standard does not cover the following:

(A) Construction, agriculture and maritime employment;

(B) Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering; and

(C) Exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations, which is covered by Subpart S of this part.

(D) Oil and gas well drilling and servicing.

(2) *Application.* (i) This standard applies to the control of energy sources during servicing or maintenance of machines or equipment.

(ii) This standard does not apply to the following:

(A) Work on plug and cord type electrical equipment, for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures.

(B) Hot Tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, *Provided that* the employer demonstrates that (*1*) continuity of service is essential; (*2*) shutdown of the system is impractical; and (*3*) documented procedures, and special equipment, are implemented which will provide proven effective protection for employees.

(iii)(A) Normal production operations are not covered by this standard.

(B) Servicing or maintenance which takes place during normal production operations, such as lubricating, cleaning, and making minor adjustments and simple tool changes, are not covered by the standard, if it is necessary to perform such servicing or maintenance with the machine or equipment energized, and if such servicing or

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maintenance is performed using alternative measures which the employer can demonstrate will provide effective protection.

(3) *Purpose.* (i) The purpose of this standard is to prevent injuries to employees from the unexpected energization, start-up or release of stored energy from machines, equipment, or processes when such employees are engaged in the activities listed in paragraph (a)(2)(i) of this section.

(ii) This section requires employers to establish and implement procedures for affixing the appropriate lockout/tagout devices to energy isolating devices, and to otherwise disable machines, equipment or processes to prevent unexpected energization, start-up or the release of stored energy.

(iii) Notwithstanding the provisions of § 1910.5(c)(1) of this part, the requirements set forth in this section shall apply in addition to all other lockout and/or tagout provisions in this part.

(b) *Definitions applicable to this section.*

Affected employee. A person, other than the authorized employee, whose job includes activities covered by this standard as set forth in paragraph (a)(2) of this section.

Authorized employee. A qualified person to whom the authority and responsibility to perform a specific lockout and/or tagout assignment has been given by the employer.

Energized. Connected to an energy source (mechanical, electrical, hydraulic, etc.) which has not been isolated.

Energy isolating device. A device that physically prevents the transmission or release of energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect switch; a manually operated switch; a slide gate; a slip blind; a line valve; blocks; and similar devices used to block or isolate energy. The term does not include push buttons, selector switches, and other control circuit type devices.

Energy source. Any electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy source that is capable of causing injury to employees.

Hot tap. A procedure used in repair, maintenance and service activities which involves welding a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam, and petro-chemical distribution systems.

Lockout device. A device that utilizes a lock and key to hold an energy isolating device in the safe position.

Lockout/tagout. The placement of a lock and/or a tag on the energy isolating device in accordance with an established procedure, indicating that the energy isolating device or the equipment being controlled shall not be operated until removal of the lock and/or tag.

Normal production operations. Operations that include those activities which enable the machine or equipment to perform its intended production functions, and which are carried out by employees as part of the production process, with the machine or equipment energized.

Qualified person. A person who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and has the knowledge to implement adequate methods and means for the control and isolation of such energy.

Servicing or maintenance. Functions that include workplace activities such as installing, constructing, adjusting, setting up, inspecting and maintaining or repairing machines or equipment.

Setting up. Any work that must be performed to place a machine or equipment in an operational mode.

Tagout device. A prominent warning device capable of being securely attached to an energy isolating device that identifies the applier or authority who has control of the energy control procedure, and contains information and/or instructions to prevent the operation of an energy isolating device.

(c) *General*—(1) *Energy Control.* The employer shall ensure that before an employee performs any activities where the unexpected energization, start up or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked/tagged out and otherwise disabled in accordance with paragraph (d) of this section.

(2) *Procedure.* (i) A procedure shall be developed, documented and implemented by the employer for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

(ii) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

(A) A specific statement as to the intended use of the procedure;

(B) Specific procedural steps for the shutting down, isolating, blocking and securing (lock and/or tags) of energy;

(C) Specific procedural steps for the removal and transfer of locks and/or tags and the responsibility for them; and

(D) Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

(3) *Protective materials and hardware.* (i) Locks, tags, chains, adapter pins, or other hardware shall be provided by the employer for securing or blocking energy sources where necessary under the procedure.

(ii) The lockout and/or tagout devices shall be singularly identified; shall be the only authorized device(s) used for locking out and/or tagging energy sources; shall not be used for other purposes; and shall meet the following requirements;

(A) *Durable.* The devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(B) *Standardized.* The devices shall be standardized in at least one of the following criteria: Color; shape; size; type or format.

(C) *Substantial.* Locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized.

(D) *Identifying.* The devices shall include provisions for the identification of the employee(s) applying or authorizing the application of the device.

(iii) Tagout devices/danger tags shall warn against hazardous conditions if the equipment is re-energized and shall include the legends: *Do Not Start, Do Not Open, Do Not Close, Do Not Energize*, or similar language.

Note: For specific provisions covering accident prevention tags, see § 1910.145.

(4) *Periodic inspection.* (i) The employer shall conduct periodic inspections at least annually to ensure that the energy control procedures of this standard are being implemented. The inspections:

(A) Shall be performed by an authorized employee other than the one implementing the energy control procedures; and

(B) Shall be designed to correct any deviations or inadequacies observed.

(ii) The employer shall certify that the inspections have been performed. The certification shall identify the machine or equipment inspected, the date inspected and the name of the person performing the inspection.

(5) *Training and communication.* (i) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed. The training shall include the following:

(A) Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control.

(B) Affected employees shall be instructed in the purpose and use of the energy control procedure.

(C) All other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations.

(ii) Periodic retraining shall be provided by the employer for all authorized and affected employees whenever a periodic inspection under paragraph (c)(4) of this section reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(iii) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain the employee's name and dates of training.

(6) *Energy isolating devices.* (i) Energy isolating devices that are used for the control of potentially hazardous energy sources, including valves, shall be marked or labeled to identify the equipment supplied and the type and magnitude of the energy being controlled, unless they are so positioned and arranged that those elements are evident.

(A) Valves for machines or equipment shall be permanently marked or labeled.

(B) Valves for pipeline network process operations shall be:

(*1*) Permanently marked or labeled; or,

(*2*) Temporarily marked or labeled prior to each instance of initiation of work on the line.

(ii) Energy isolating devices shall be operated only by authorized employees or under the direct supervision of authorized employees.

(7) *Notification of employees.* Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout and/or tagout controls whenever such controls directly affect their work activities. Notification shall be given before such controls are applied, and before they are removed from the equipment or process.

(d) *Application of control.* The established procedure for the application of energy control (lockout/tagout) shall cover the following elements and actions and shall be in the following sequence:

(1) *Machine or Equipment shutdown.* The machine or equipment shall be turned off or shut down by authorized employees using appropriate procedures.

(2) *Machine or Equipment isolation.* All energy isolating devices that are needed to control the energy involved shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s).

(3) *Lockout and/or tagout device application.* (i) Appropriate and effective lockout and/or tagout devices shall be affixed to each energy isolating device by authorized employees.

(ii) Lockout and/or tagout devices shall prevent or inhibit reactivation of energy isolation devices and shall be used as follows:

(A) Lockout devices, where used, shall be affixed in a manner that will hold the energy isolating devices in a "safe" or "off" position;

(B) Tagout devices, where used, shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited; and

(C) Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

(4) *Stored energy.* (i) Following the application of lockout and/or tagout devices to energy isolating devices, all potentially hazardous, stored or residual energy shall be relieved, disconnected, restrained, and/or otherwise rendered safe.

(ii) If there is a possbility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the activity is completed, or until the possibility of such accumulation no longer exists.

(5) *Verification of isolation.* (i) Prior to starting work on equipment or processes that have been locked out and/or tagged out, an authorized employee shall take the steps necessary to verify that isolation and de-energization of the machine or equipment has been accomplished.

(ii) The steps shall ensure that the lockout and/or tagout devices are so positioned or located as to isolate and de-energize the equipment or process effectively in accordance with paragraphs (d)(2) and (d)(3) of this section, and that stored energy has been rendered safe in accordance with paragraph (d)(4) of this section.

(e) *Release from control (lockout/tagout).* Before lockout and/or tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions taken by an authorized employee to ensure the following:

(1) *The machine or equipment.* The work area shall be inspected for removal of nonessential items and to ensure that components are operationally intact.

(2) *Employees.* The work area shall be checked to ensure that all employees have been safely positioned or removed.

(3) *Lockout and/or tagout device(s) removal.* Lockout and/or tagout devices shall be removed from each energy isolating device by the employee who applied the device. *Exception:* Devices may be removed under the direction of an authorized employee only under the following conditions, and only where the authorized employee follows specific procedures which have been developed for those conditions:

(i) When the employee who applied a personal lockout/tagout device is not available to remove the device; and

(ii) Unique operating conditions involving complex systems, where the employer can demonstrate that it is not feasible to do otherwise.

(f) *Additional Requirements*—(1) *Testing or positioning of energized equipment.* In situations where the energy isolating device(s) is locked and/or tagged, and there is a need to test or position the machine or equipment, the following sequence of actions shall be implemented:

(i) Clear the machine or equipment of tools and materials in accordance with paragraph (e)(1) of this section;

(ii) Clear employees from the machine or equipment area in accordance with paragraph (e)(2) of this section;

(iii) Clear the control of locks and/or tags with appropriate procedures in accordance with paragraph (e)(3) of this section;

(iv) Energize and proceed with testing or positioning;

(v) De-energize all systems and re-apply energy control measures in

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accordance with paragraph (d) of this section to continue the work.

(2) *Outside personnel (contractors, etc.).* (i) Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this standard, the plant or facility employer shall inform them of the lockout/tagout procedures used by the facility.

(ii) The plant or facility employer shall assure that the lockout/ tagout procedures used by outside servicing personnel are compatible with existing in-plant procedures.

(3) *Group lockout/tagout.* (i) When lockout and/or tagout devices are used by a crew, craft, department, or other group, they shall afford the affected employees a level of protection equivalent to that provided by personal lockout and/or tagout devices.

(ii) Group lockout and/or tagout devices shall be used in accordance with the procedures required by paragraph (c)(2) of this section, including, but not necessarily limited to, the following specific requirements:

(A) Primary responsibility vested in an authorized employee for a set number of employees working under the protection of a particular group lockout and/or tagout device;

(B) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout and/or tagout of the equipment or process; and

(C) When more than one crew, craft, department, etc. is involved, assignment of overall job-associated lockout/tagout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection.

(4) *Shift or personnel changes.* Specific procedures shall be implemented during shift or personnel changes to ensure the continuity of lockout and/or tagout protection in accordance with paragraph (c)(2) of this section, including, but not necessarily limited to, coverage of the following:

(i) Provision for the orderly transfer of lockout and/or tagout devices between off-going and oncoming employees without exposure to hazards from the unexpected energization, start-up, or the release of stored energy of the equipment or process; and

(ii) Provision for ensuring that the equipment or process is being maintained in a safe condition so as to permit continued work by employees following the transfer of control over lockout and/or tagout devices.

Note: The following appendix to § 1910.147 serves as a non-mandatory guideline to assist employers and employees in complying with the requirements of this section, as well as to provide other helpful information. Nothing in the appendix adds to or detracts from any of the requirements of this section.

Appendix to § 1910.147 Control of Hazardous Energy Sources (Lockout/Tagout)

1. *Scope and Application.* This standard is a performance standard addressing procedures for the control of hazardous energy. However, the standard does not establish definitive criteria for employers to use in making their choices of control measures involving the need to use locks, tags or a combination of the two to secure energy isolating devices. For these reasons, the standard does not replace existing specific provisions relating to lockout/tagout as they currently exist in the General Industry standards, 29 CFR Part 1910.

Accordingly, the provisions of this standard are intended to supplement and support those existing provisions in 29 CFR Part 1910 where necessary. The standard provides comprehensive and uniform procedures to be applied to all industries and operations as required by paragraph (a), *Scope and application.*

The future promulgation of new or revised standards for particular types of equipment and operations will address the need for specific control measures (locks and/or tags) on an individual basis. The selection of a method of control at that time will reflect, among other considerations, a thorough evaluation of the extent of hazard exposure; the type of injury; and the risk of injury from that particular industry or operation. The present standard would then provide the basic procedure for implementation of those controls.

1.1 *Plug and cord type electrical equipment:* As covered by paragraph (a)(2)(ii)(A), this standard does not apply to plug and cord type electrical equipment for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures. This exclusion would encompass the many varieties of portable hand tools that are found in the workplace, as well as cord and plug equipment which is intended for use at a fixed location.

For most plug and cord type electrical equipment, the *effective* control measure to be used when performing maintenance and servicing activities would involve unplugging the connecting plug from its receptacle. It would also involve a work practice for the employee doing the work that would prevent him or her from being injured as a possible result of another employee replacing the plug and energizing the equipment while it was being worked on. Consequently, OSHA would expect the employee performing work on the equipment to place the disconnecting plug and cord close to his or her side, or at least in a place that is easily seen from the work area. Further, if stored energy is present in the system, it must be relieved or restrained before starting work on the equipment. Examples of equipment these measures apply to would include types such as those used in wood, metal and food processing operations and could involve circular saws, hand saws, grinders, mixers, etc.

The discussion above, while applicable to plug and cord type electrical equipment intended for use in a specific location, is not intended to address the situation involving the performance of simple tool changes on portable plug and cord type hand tools. The control methods for such tool changes will correspondingly be very simple. For example, where an employee must change the bit in a hand-held drill or the belt on a belt sander, there would be no need to remove the plug from the receptacle. On equipment of this type, control of the activating mechanism of the tool is entirely in the hands of the employee who is using it, thereby *effectively* preventing its unexpected activation by another person.

1.2 *Hot tap operations.* This standard does not apply to hot tap operations, as covered by paragraph (a)(2)(ii)(C), when the employer can demonstrate that continuity of service is essential, shut down of the equipment is impractical and documented procedures and special equipment have been implemented that will provide proven effective protection for employees.

Not all of the contingencies present in the workplace can be covered initially in a hot tap procedure. As special problems arise, the procedure should be revised accordingly. For this reason, the detailed, written procedure should be prepared or revised prior to any hot tap work, to include the most current information regarding welding, connection design, safety instructions and other appropriate instructions. To further insure that hot tapping will be performed under safe conditions, it is recommended that a checklist be utilized as a reminder to accomplish any critical steps in a desired order. The steps could be itemized under major headings involving the work (1) before starting hot tap; (2) before starting the weld; (3) before starting cutting; and (4) before removing the hot tap machine.

Implementation of the data, guidelines, and procedural steps set forth in the current American Petroleum Institute publication entitled, "Procedures For Welding or Hot Tapping on Equipment Containing Flammables," Second Edition, (November 1978, Publication 2201), will meet the intent of paragraph (a)(2)(ii)(C).

1.3 *Normal production operations.* This standard does not apply to normal production operations as covered in paragraph (a)(2)(iii)(A). Generally, insofar as these hazards are concerned, machines and equipment are designed to safely accommodate the performance of normal production operations. Additional safeguards are mandated by regulatory provisions (e.g., §§ 1910.212, 1910.219) covering the application of machine and equipment guards and devices. However, when these considerations are not sufficient, paragraph (a)(2)(iii)(B) provides that if it is necessary to perform servicing or maintenance during normal production operations with the equipment energized, such servicing or maintenance shall be performed using

alternative measures which the employer can demonstrate will provide effective protection.

The measures required by paragraph (a)(2)(iii)(B) would apply to many situations in which repetitive minor adjustments are required. Controls such as inch and jog devices, which limit machine movement when activated, can prevent employee exposure to moving machine parts or components and are considered appropriate devices for the purpose of this provision.

There are many practical applications for these control measures currently in use for production operations. For example, inch and job devices have been included in the design of machines or equipment used by the printing industry to handle set-up and maintenance problems that deal with straightening or feeding paper through their presses. The textile industry uses them on looms to enable loom fixers and operators to repair "end" (thread) breaks. They are also found extensively on machines such as power presses used by the metal stamping industry, when power is needed during set-up activity to make final adjustments before turning the press over to operating personnel. In all of these examples, the use of specially designed control circuits and control equipment has been combined with good operating procedures to limit effectively employee exposure to the hazards caused by the unanticipated movement of machines or equipment components.

Paragraph (a)(2)(iii)(B) will also provide flexibility during normal production operations for the performance or work on energized equipment when servicing or maintenance activities involving simple tool changes or adjustments are necessary. A simple tool change on an automatic chucking machine, for example, might require the operator to replace a worn carbide cutting tool insert in a tool holder when inspection of a finished workpiece indicated the need. The minor adjustment then necessary would be for the operator to reset the tool holder to a position that would result in a dimensionally accurate finished workpiece. The machine operator would need to be in control of the "off-on" switch (circuit control device), with the switch so located that the equipment could not be activated without his or her knowledge during the tool change. On completion of these activities the machine would then be restored to the fully automatic mode.

2. *Procedure.* When maintenance, repair, servicing and other activities covered by this standard expose employees to potentially hazardous energy, a specific written procedure for the control of that energy is required by paragraph (c)(2). This control procedure shall be in addition to any general safety policy and procedure established by the employer. As required by the standard, the control procedure must clearly and distinctly outline the purpose, responsibility, scope, authorization, rules, techniques to be applied, and measures to enforce compliance.

The written energy control procedure required by this standard need not be complicated or detailed, depending on the complexity of the equipment and the control measures to be implemented. For example, if there is a single machine with a single energy source that must be isolated, and the control measure chosen is simple, such as locking out a single energy source during servicing, the written procedure will not be complicated. The steps set forth in the standard will be incorporated into the procedure with very little detail, reflecting the lack of complexity of the control measures.

The control procedure need not be unique for a single machine or task; in fact, a single procedure may be used to apply to a group of similar machines or tasks. However, if the complexity of the task is such that a generic or facility-wide general procedure will not address the recognized hazards, a specific procedure or a supplement to the general procedure must be provided to cover the use of additional methods and techniques needed to ensure control.

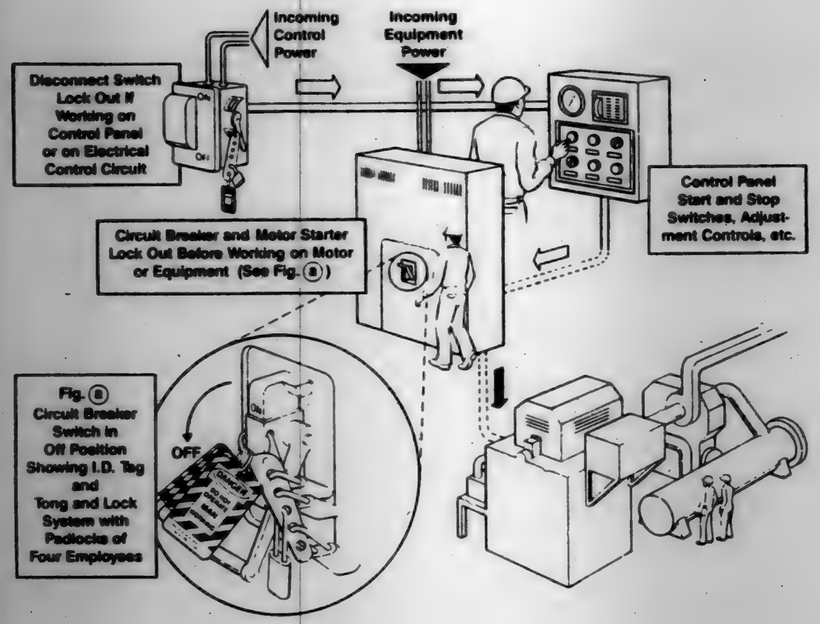
OSHA recognizes that, in the aggregate, the paperwork burden associated with the requirement for a written program for every workplace covered by the standard could be quite large. OSHA solicits comment on alternatives which could reduce the burden. Specifically, OSHA solicits comment on methods by which this burden could be reduced for small business under the Regulatory Flexibility Act and the Paperwork Reduction Act.

The typical lockout/tagout control procedure clearly assigns responsibility for each step of the process and covers topics such as where isolation or blocking of energy is to be accomplished; how deenergization is to be verified; what method is to be used for securing energy isolating devices; how responsibility is to be transferred during shift changes; how control devices are to be removed; and how re-energization is to be accomplished. The documentation of procedures should be as detailed as necessary to provide a clear understanding of these elements so that the controls are uniformly and safely applied, and removed each time it becomes necessary to do so.

This Appendix contains a sample procedure in which locks are assigned to employees for the purpose of securing energy isolating devices. It is a procedure that is not considered unique and that can be applied to a group of machines, equipment or tasks with considerable flexibility. The sample procedure can be used as a guide for developing a specific lockout/tagout procedure, with modification to fit the particular application. *Figure 1* in this appendix provides the basic concept involving lockout/tagout procedures for electrical energy, and *Figure 2* provides a sample procedure covering hydraulic or pneumatic energy sources.

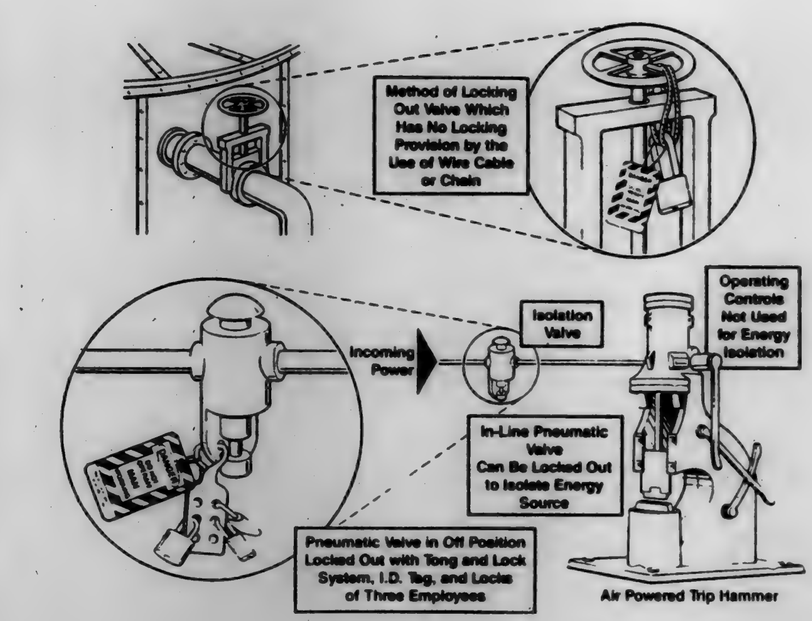
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Figure 1
Lockout/Tagout Procedure for Electrical Energy Source



Reproduced from American National Standard Z244.1-1982

Figure 2
Lockout/Tagout Procedure for Hydraulic-Pneumatic Energy Source



Reproduced from American National Standard Z244.1-1982

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The use of either a unique lockout/tagout procedure or a supplement to the general procedure may be necessary if there is a need to perform a particular job on a one-time or infrequent basis, such as in large scale, turnaround, process-oriented operations. It might also be appropriate with respect to jobs extending beyond the initial work period or established shift schedule involving the participation of multiple personnel or crafts. Another unique application would involve complex situations using multiple types and sources of energy.

The determination to use a supplement to the general lockout/tagout procedure for covering a particular operation should be based on the need to address multiple hazards in a more detailed manner in order to provide effective protection for employees. One acceptable method to cover the complexities involved with procedures for these cases is to include a written sequence, in check list form, for equipment access, lockout and/or tagout, clearance, release of control, and re-energization or start-up. The check list(s) would reflect the required order for energy isolation and device application, and would specify any required visual or audio signals, and related information. Acceptable methods might also include the use of written work permit or authorization systems, clearance procedures and similar methods that are used to document work practices for gaining access to the equipment or process or for the application and removal of energy control measures.

Simple lockout/tagout applications such as those involving one employee and one or two types of energy and sources may not necessarily require a prepared written sequence listing of all equipment and the specific location of their energy isolating devices. However, such a written sequence listing should be available for reference in developing an adequate procedure.

3. *Protective material and hardware.* Paragraph (c)(3)(i) requires that the employer provide locks, tags, adapter pins or other hardware necessary for securing energy sources. The employer has at least two options available to accomplish this purpose. For example, the employer could decide to issue a sufficient quantity of the devices on a one-time basis to all employees responsible for implementing energy control measures. As an alternative, the employer might decide merely to have a sufficient quantity of the devices on hand and then make them readily available to employees for assignment and distribution as the need dictates.

For lockout or tagout devices to be singularly identified, as required by paragraph (c)(3)(ii), emphasis needs to be placed on using unique devices; that is, devices that are distinctive and easily recognized. Locks, for example, can be painted red, and tags can convey a special message such as "Do Not Start—Employees Working on Machinery." This criterion is further enforced by §1910.145(f) which requires the major message of the tag to be understandable to all employees who may be exposed to the identified hazard.

Paragraph (c)(3)(ii) prohibits the use of unique lockout and/or tagout devices for purposes other than the protection of employees from potentially hazardous energy. For example, the use of lockout devices for toolboxes, clothing lockers, etc., and tagout devices for non-related communications is not permitted. Employer determination in maintaining effective control of these conditions in day-to-day operations as well as during employee training can help ensure that the devices provided will be recognized as the only ones authorized for use under the specific conditions set forth in this standard. Limiting the use of these devices will also ensure that the sight of the particular lock or tag will provide a consistent message to the employee concerning the hazard being addressed.

The durability of lockout/tagout devices, as required in paragraph (c)(3)(ii)(A), includes consideration of their capability of withstanding anticipated levels of use and abuse involving exposure to workplace elements (oil, chemicals, steam, etc.) without deterioration that would compromise employee safety. To meet this requirement, tags, for example, might be constructed of laminated vinyl or durable cardboard stock or any other material or combination of materials that will enable the devices to maintain their effective usefulness for the operation. Similar considerations for strength and durability are appropriate for locks and other hardware.

While it is important for lockout/tagout devices to be singularly identified or unique, it is equally important that the devices be standardized facility-wide in one or more criteria involving color, shape, size, types or format as required by paragraph (c)(3)(ii)(B). The use of one type of lock and one type of tag, for example, will greatly reduce the chance that the meaning and purpose of these protective devices will be confused or misunderstood.

To meet the criteria in this paragraph governing size, a tagout device need only be large enough so that it is not easily overlooked or misplaced. Tags that are generally found in use and have been serving satisfactorily are approximately 3" x 6" (76 mm x 152 mm). However, since § 1910.145(f) requires that the signal word be readable at a distance of five feet (1.52 m) as a minimum, the size of the tag and lettering can vary.

Although there is considerable flexibility given to the use of color to satisfy this criteria for tagout devices, Appendix A of § 1910.145(f) recommends that the predominant color for the danger tag be red, and that the lettering shall contrast with the tag's background color for readability.

The intent of the requirements of paragraph (c)(3)(ii)(D) is that the design of lockout or tagout devices provide a means to display identification of the employee or employees applying or authorizing the application of the device. Tags need only provide adequate space for the name or names of the employees who are acknowledging application. Locks can be handled in the same manner, with the use of stenciled name indentification or with the employee's name or clock number stamped on the body of the lock. When it is not possible or practical to etch or stamp a lock with the identification of the employee who applied it, a tag conveying this information can be attached to the lock to serve the same purpose.

4. *Periodic inspections.* Paragraph (c)(4) requires periodic inspections to ensure that the lockout/tagout procedures of this standard are being followed. Acceptable methods for meeting these requirements would include random audit and planned visual observation of the workplace while the equipment is being shut down and deenergized to determine the extent of employee compliance with the procedures. Checking equipment status for position of the switches or valves and the presence of locks and/or tags when maintenance or servicing activities are known to be occurring would also verify proper use of the procedures. Another method could involve modifying and adopting regular plant safety tours to meet this need.

The authorized employee required by paragraph (c)(4)(i)(A) to perform these inspections is one who by experience and/or training can recognize the effect potentially hazardous energy can have in the workplace environment. He or she must be knowledgeable in the use of adequate methods and means for the control and isolation of such energy, and must be given the authority and responsibility for this specific assignment by the employer.

The inspections must be performed by an authorized employee other than the one responsible for shutting down and deenergizing the equipment that is to be worked on. The inspections should be unannounced and carried out on the job site, and should result in immediate feedback and action to correct any discrepancies noted. The inspections must be performed at least on an annual basis, with certification that they have been accomplished. The number of inspections may have to be increased if such procedures are frequently used, if problems are encountered with compliance, or if the equipment and/or process is subject to frequent changes.

5. *Training.* Paragraphs (c)(5) requires an effective training program, including periodic retraining and certification of training of employees. The following employee categories can be used to determine their individual needs:

Authorized employees are those who are designated by the employer to implement or apply the energy control procedures in the workplace. As "qualified persons," they need to be trained to recognize and understand the particular hazards involved with the tasks to be performed in the workplace and with the energy to be controlled. The training must also provide for a thorough understanding of the energy control measures best suited for use under existing conditions and the steps necessary to apply the control measures effectively, and to remove them safely. Classroom instruction is one method that can be used for training purposes. Classroom training can be augmented with the use of films, slides, video tapes, demonstrations using mock-up simulators, etc., to increase its effectiveness. On-the-job training using hands-on application, under the guidance of an authorized employee, is another method of training. The standard requires that certification of the training of authorized employees be maintained by the employer and kept current.

Affected employees, those performing the activities identified in the scope and application of the standard, other than authorized employees, need to be instructed in the purpose and use of hazardous energy control (lockout/tagout) procedures. The instruction should provide a clear understanding of the devices used and the methods for the application and removal of such devices. The instruction should be sufficient to enable the employee to determine if a control measure is needed in a potentially hazardous situation before proceeding with the assigned task. It can also emphasize the importance for all employees to honor the instructions given on tags for their own protection as well as that of their co-workers. The instruction methods chosen for affected employees can be any of those suggested for use by authorized employees; classroom, on-the-job, or a combination of both. The standard also requires that certification of the training of affected employees be maintained by the employer and kept current.

All other employees whose work operations are or may be affected by the energy control procedure need to be instructed about the procedure and how it affects their work operations, as required by paragraph (c)(5)(i)(C). Several methods can be used to reach this objective. For example, the importance of lockout/tagout procedures might be discussed with all new employees during their initial orientation period. Discussions should cover employee hazard exposure, the purpose and intent of the procedures, and recognition of the lockout and/or tagout devices used by the employer. Other methods such as the use of employee handbooks and regularly scheduled safety meetings can also be used to communicate with employees and to reinforce company policy for the use of lockout/tagout procedures.

It is recommended that all levels of supervision involved in the activities covered by the scope and application of this standard be trained, with special emphasis on first-line supervision, in order to ensure that the procedures are followed by all.

6. *Periodic retraining.* Paragraph (c)(5)(ii) requires that periodic retraining be provided for both authorized and affected employees whenever an inspection under paragraph (c)(4) reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. It requires this training to reestablish employee proficiency and introduce new or revised control methods and procedures as necessary.

Full and uniform utilization of an energy control procedure is necessary in order for that procedure to maintain its effectiveness. Therefore, every effort should be made during the periodic inspection performed under paragraph (c)(4) to determine whether or not the procedure is being used properly. If deviations are observed, retraining in accordance with this paragraph ((c)(5)(ii)) would be required. However, retraining could be triggered by events separate from the findings of a periodic inspection. For example, an employee working with an energy control procedure might be injured in the course of his duties. If a subsequent investigation indicated that the employee failed to operate within the guidelines of his control procedure, retraining would be required.

In addition, the investigation might also reveal that the procedure itself was not adequate. Such inadequacies in the procedure could be the result of using a general procedure that does not handle effectively a specific application, or they may arise because changes have been made to the machine or equipment that did not take the existing energy control procedure into consideration. In such cases, when changes to the energy control procedure must be made, the employer would be required to retrain employees in the new or revised procedures in accordance with paragraph (c)(5)(ii).

7. *Energy isolating devices.* Paragraph (c)(6)(i) requires that energy isolating devices be marked or labeled to include the equipment supplied and the energy type and magnitude, unless they are positioned and arranged so that their purpose is evident. This applies to all energy isolating devices, including valves that are used to control the flow of energy—devices such as those found on machines or equipment utilizing hydraulic, pneumatic, or steam pressure as an energy source. The provision also applies to valves used in pipeline network process operations such as those found in petroleum and chemical operations.

When it is necessary to locate and mark or label energy isolating devices, as required by this paragraph, the information needed to accomplish the task can be obtained from engineering or facility design sources such as plant layout drawings, equipment blueprints, engineering specification sheets, schematic drawings, and flow process charts or drawings. Once determined from these data, the number and location of devices involved in the process will need to be physically confirmed in the workplace.

Energy isolating devices do not need to be marked or labeled when it is obvious from their location within a system what equipment they supply and what type and magnitude of energy is being controlled. For example, a wall mounted electrical disconnect switch of a type known to carry 120–440 volt service that is observed to have only one lead to a single machine would not require the disconnect switch to be marked or labeled. Similarly, a valve located so that it obviously can only service a specific machine and can be traced visually to a main line source that identifies the type and magnitude of energy would not require marking or labeling.

Energy isolating devices (valves) for all machines or equipment that are needed for the control of potentially hazardous energy, as required by paragraph (c)(6)(i)(A), can be identified and permanently marked or labeled in a *plant wide* effort *prior* to implementing a lockout/tagout procedure. As an alternative, the energy isolating devices that are to be used to control hazardous energy sources for a *specific* machine or equipment can be permanently marked or labeled *at the time* the procedure is being utilized and energy isolating devices are to be secured.

The identification of energy isolating devices used for pipeline network process operations requires the use of one of the two options offered in paragraph (c)(6)(i)(B). Of the two options, permanently marking or labeling the devices offers the most advantages for emergency shutdown or start-up procedures.

The option for temporarily identifying the energy isolating devices prior to each instance of work initiation on the line offers the most flexibility for dealing with a changing product mix or frequent process design changes. It can be used on a job-to-job basis. In these instances locating, identifying and temporarily tagging, as a part of the lockout/tagout procedure, would be sufficient to comply with this provision.

8. *Notification of employees.* Paragraph (c)(7) requires, for all covered activities in which affected employees are engaged, that an authorized employee must notify the affected employees before taking any action to apply or remove lockout/tagout controls.

This communication is essential to ensure that employees do not unknowingly attempt to energize machines or equipment that have been taken out of operation and de-energized for the performance of activities covered by this standard. A lack of information about this condition could subsequently expose the employee working on the equipment, as well as the employees attempting to re-energize the system, to potential injury. The communication is also necessary to prevent injury to employees from the flow of hazardous energy that could result from a failure to inform them that control measures have been removed. In these cases, the employee might have mistakenly believed that the system was still de-energized and that it was safe to continue work.

There is a wide range of methods available for use to meet these requirements for notification of the application and removal of lockout/tagout controls. Choice of the method selected needs to be based on the seriousness of the hazard, and on the size and complexity of the operation involved.

For relatively uncomplicated situations, acceptable notification can be in the form of discussions with affected employees by an authorized employee simply to inform and caution them of the action to take place.

In other cases, it may be necessary to cover, in more detail, any specific operating problems, unusual equipment modes and other factors associated with the action. Written work permit or authorization systems, clearance procedures and similar methods used to document work practices for gaining access to the machine or equipment and for the application and removal of energy control may also be used when these conditions arise.

9. *Equipment or process isolation.* The requirement for a lockout/tagout procedure to cover the step in paragraph (d)(1) for shutting down or turning off the machine or equipment is a preliminary step. Further action is required by the procedure, as covered by paragraph (d)(2), to ensure that all energy

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isolating devices needed to control the energy involved are physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s). Energy isolating devices that require locating and positioning to block the release of energy include manually operated electrical circuit breakers, disconnect switches, manually operated switches, slide gates, slip blinds, line valves, blocks and similar devices—many of which have a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit type devices are not adequate in themselves to be considered energy isolating devices.)

The following information should be used to identify the types of energy needing isolation and to provide some acceptable methods to accomplish that purpose:

(a) The isolation of potential energy involving gravity is accomplished by placing blocks made of metal, wood or other suitable materials under the mechanism or by pinning the linkages in a position where gravity will not cause the mechanism to fall.

(b) The isolation of potential energy involving springs is accomplished by blocking the spring in a safe position, either by pinning or clamping, or by securing the device in some other manner to eliminate the potential for unrestricted or undesired movement.

(c) The isolation of electrical energy is accomplished by placing manually operated electrical circuit breakers, disconnect switches and manually operated switches in the "off" position.

(d) The isolation of thermal (steam) energy and also of potential energy involving pressure is accomplished by closing valves and maintaining an open bleed condition in the system to prevent energy build-up.

For example, if mechanical motion involving rotation, translation, or a combination thereof, must be isolated, one or more of the following control measures is appropriate to remove energy from the driving mechanism:

(1) Remove segments of mechanical linkages such as by dismantling push rods, removing belts and flywheels, etc.;

(2) Place blocking devices such as wood or metal blocks between components to prevent hazardous movement;

(3) Disconnect the main source of electrical power; and/or

(4) Close hydraulic and/or pneumatic valves and maintain an open bleed condition to prevent energy build-up.

It is recommended that the written check list (sequence) procedure for the order of energy isolation and device application, as detailed in paragraph 2 of this Appendix, be used—even for the most routine operations.

10. *Lockout/tagout device application.* Paragraph (d)(3) requires that means be taken, once energy has been effectively isolated from a machine or equipment upon which work is to be performed, to identify the appropriate control measure(s) (locks/tags) for use, and to provide for their application to the energy isolating device. The paragraph further requires that use of the control measure selected must effectively prevent the accidental or inadvertent energization of the machine or equipment.

The selection of a specific control measure involving the use of a lock only, tag only, or the combination of a lock with a tag must be given careful consideration. Considerations in the selection process must include the degree of exposure to the hazard and the risk and severity of potential injury for the operation that is being evaluated. Other factors for consideration would involve the extent of employee training, the accessibility of energy controls to affected employees while they are performing their assigned tasks, and the accessibility to unqualified employees in the area. The extent of employer commitment to a proven effective method and procedure is also an important factor.

Where there is no specific OSHA standard which requires the use of a particular control measure for securing an energy isolating device on a given type machine or equipment it is recommended that the following guidelines be followed:

A lock and tag should be used in combination whenever it is feasible to apply them as control measures to secure an energy isolating device. For example, a machine provided with energy isolating devices capable of being locked out would use this control method when employees are required to climb into the machine to clean or repair it. This method of control is particularly applicable when the energy isolating devices are not within the servicing employee's reach or view during the servicing operation, but are accessible to unqualified or uninformed personnel.

The use of tags alone should be limited to those instances where complex integrated systems exist; where the use of locks would be unnecessarily restrictive and burdensome; and where proven effective measures have been developed to supplement the use of tags. Some operations adopting this type of control measure commonly refer to the methods as "Safe Work Practice Procedures," "Work Permits," and "Pipe Entry Procedures."

Other circumstances in which tags would be a protective control measure would be those in which access to the energy isolating device is limited to qualified persons and only those necessary for the operation. Qualified persons are those trained to recognize hazardous energy sources, to utilize adequate means for their isolation and to observe the posted warning. Access may be limited by physical location such as elevation, or by procedural means such as color coded badges. Use of tags as a control measure for other than complex, integrated systems should require, in addition, a periodic review to determine its continuing capability of functioning as a reliable and effective control. This review should evaluate changing operating conditions, injury data, near-misses or other pertinent information relative to the need for a decision to retain or change the method of control.

11. *Stored energy.* Stored residual or potential energy is not as obvious a hazard as the incoming energy supply. For this reason special effort is required in paragraph (d)(4) to identify and control any stored energy that could present a hazard. The paragraph also requires that if stored hazardous energy is present in any form, measures need to be taken to ensure that the energy is eliminated or reduced to a non-hazardous level.

Forms of energy which may be stored in sufficient quantities to present hazards include:

(a) Hydraulic or pneumatic pressure;

(b) Pressure below atmospheric, such as in vacuum systems;

(c) Compressed or extended springs;

(d) Potential energy due to gravity;

(e) Stored energy as in fly wheels;

(f) Static electricity;

(g) Stored electrical energy as in batteries or capacitors;

(h) Thermal energy due to residual heat or low temperatures; and

(i) Residual chemicals in pipes which may cause thermal or pressure buildups.

Energy forms such as those listed above are required to be relieved, disconnected and/or restrained, in order to comply with this provision of the standard. For example, methods such as holding a machine member against gravity by blocking or suspension, and preventing the release of a spring force by clamps, brackets or pins specifically designed for that purpose, can be used to prevent hazardous movement of the machine or equipment. For the control of kinetic energy, a determination needs to be made that all moving (coasting) parts that could cause injury are stopped, such as flywheels, grinding wheels, and saw blades. In the case of electrical circuits, capacitors etc., grounds can be used to discharge energy. To release pressure in steam, pneumatic, hydraulic or process piping lines, bleed valves can be installed and operated or the lines can be broken.

The prevention of reaccumulation of hazardous energy levels, as also required by paragraph (d)(4), can be accomplished by using devices such as self-bleeding valves or by instituting special procedures for monitoring the machine or equipment to ensure that the stored energy is maintained at a safe level.

12. *Verification of isolation.* Paragraph (d)(5) requires verification by an authorized employee that de-energization has been effected prior to the start of activities covered by this standard. While the continued awareness of workplace conditions has advantages throughout the use of lockout/tagout procedures, it is particularly effective during this phase. For example, visual observation, as a first step, can confirm that switches, valves, breakers, etc., have been properly moved to, and secured in, the "off" position. However, because visual inspection does not always confirm de-energization, effective methods need to be used to demonstrate that all hazardous energy has been isolated and blocked before affected employees can begin their activities.

An acceptable method, for example, would provide that one or both of the actions noted below be accomplished following the application of lockout/tagout devices and the other steps necessary to control stored energy:

(a) Operate the machine or equipment operating controls (push buttons, switches, etc.) to determine that the energy isolation actions have been effective.

Caution: Return operating controls or devices to the "off" or "safe" position after each test.

(b) Test the machine or equipment by use of appropriate test equipment and visual inspection to determine that the energy isolating has been effective.

13. *Release from control—(equipment or process).* Paragraph (e)(1) requires that, prior to removing lockout/tagout devices from the machine or equipment, the workplace must be inspected for obstructions, incomplete work, etc. Examples of items to be checked should include, but not be limited to, the following:

(1) Tools, materials, mechanical restraints, etc., used to service the equipment should be removed;

(2) All guards that were removed should be replaced;

(3) All electrical wiring left in an exposed condition should be covered; and

(4) All pipes that were opened for repair or draining purposes should be closed and connected properly.

In very simple situations, for example, where one energy source and isolation device exists and the area is easily in view of the authorized employee, a visual inspection of the work area can be made to ensure that all nonessential items have been removed and that all components are operationally intact.

Complex situations, however, such as those involving groups of employees or several crafts, and those involving multiple sources and types of energy, can use a team approach for inspection purposes. These inspections can be performed by qualified personnel using check lists to check for completion of the task being performed to ensure that components are intact and the units in place before the machine or equipment is released from lockout/tagout control and energy is restored.

14. *Release from Control (Employees).* Paragraph (e)(2) requires that an authorized employee ascertain that all employees are physically clear of the equipment before restoring energy to the machine or equipment under control. Acceptable methods to accomplish this provision could include the use of a personnel count or other administrative techniques. For example, the control measures can vary from a simple visual check or observation of the workplace when conditions permit, to more comprehensive measures, such as those discussed in other paragraphs of this appendix dealing with *Procedure, Group lockout/tagout,* and *Shift or personnel changes,* where multiple personnel and energy sources demand more stringent control procedures.

15. *Release from Control (Device Removal).* The responsibility for removal of lockout and/or tagout devices from energy isolating devices must be strictly controlled, as required by paragraph (e)(3)(i) of this standard, and limited to employees who applied the device, or to action taken under the direct supervision of an authorized employee. However, to cover those instances where employees are not available to clear the control of their personal lock or tag protection devices because of sickness, injury, key loss or for other emergency conditions, a specific documented procedure needs to be employed in order to preserve the integrity of the lockout/tagout condition and to meet the requirements of paragraph (e)(3)(ii). Based on the circumstances and complexities involved with an operation, an example of such a procedure might include the following as acceptable control measures:

(a) Determine the availability of the responsible employee through contact with his/her immediate supervisor, the health unit, a time card check, or a telephone call to the employee's home.

(b) Provide for approval by all line supervisors affected by the lockout condition in authorizing emergency removal of locks and/or tags to clear the system of control measures.

16. *Outside personnel (Contractor, etc.).* When outside personnel must work on machines or equipment their activities can create hazards which normally are not present for the regular plant or facility employees. Accordingly, paragraph (f)(2) requires that the employer inform outside contractors or service representatives that everyday contact between employees from both sides can result in injuries when they are working under conditions involving hazardous energy control procedures. Such indoctrination of outside personnel can prevent injuries that could occur due to misunderstandings by either the contractor or plant employees concerning the lockout/tagout procedures to be used in general, as well as by those dealing with the recognition of hazards relating to the use of specific lockout or tagout devices (locks or tags, etc.).

One method to use for compliance with these provisions might involve the following:

(a) The employer provides a copy of the company or facility lockout/tagout procedure to an authorized representative of the contractor or service representative; and

(b) A mutual understanding is reached between the employer and the authorized representative of the contractor or service representative as to what procedures and what devices would be used. It is recommended that verification of the understanding be in written form which can easily be included in a service contract.

17. *Group lockout/tagout.* Situations exist where, due to the scope of the job, the complexity of the machine or equipment the number of involved employees, crafts, etc., a more practical method of lockout/tagout control is required than the type that is dependent on a single individual to locate, isolate, and secure potentially hazardous energy. Under these circumstances, however, the procedures and techniques used to comply with paragraph (f)(3) must afford employees a level of protection equivalent to that provided by personal lockout/tagout devices.

For example, one method to meet this requirement involves using a supervisory lockout procedure in which the supervisor is the authorized employee with responsibility for the safety of employees working under the protection of a lockout device. After the machine or equipment has been released to the supervisor, and has been locked and tried (isolation verified), the supervisor places the keys used to secure the locks on the energy isolating devices in a lock box. The box is then locked by the "lockout supervisor" using his own personal lock. With the adequacy of the lockout condition thus confirmed, the supervisor (authorized employee) can then permit each employee in the group to affix his or her own lock to the box lid.

Working in reverse, each employee would be required to remove his or her own lock from the box lid when he or she finished the work or at the end of the shift. The "lockout supervisor's" lock would be required to remain on the lock box until all work has been completed on the machine or equipment and it is ready to test or turn over to the operating group, or until responsibility is transferred to another "lockout supervisor" who would then be required to place his or her own lock on the box.

Similar procedures would apply to those methods involving the use of multiple tags in which group members apply and/or remove tags on energy isolating devices, lockout boxes, and lockout boards or cabinets. Where machine or equipment complexity dictates the need, a check list can be used as an additional procedural control measure to verify and account for all participating employees and for the number and location of energy control and lockout devices. The check list can be used for the purpose of removing as well as applying energy control devices.

18. *Shift or personnel change.* To ensure lockout/tagout protection for employees during shift or personnel changes, paragraph (f)(4) requires that effective procedures be developed and implemented to provide for an orderly transfer of control measures covering the machine or equipment involved, and to be certain that it is maintained in a safe condition for continued work.

Acceptable procedures to meet these requirements can vary, depending on the complexity of the operation and the number of employees taking part in the activity. For example, in some cases it would be acceptable for the authorized or supervisory employee to require the on-coming shift employees to place their locks and/or tags on the machine or equipment before the off-going employees may remove theirs. The authorized or supervisory employee can then check to verify for isolation and safety of the equipment before continuing the work.

However, when working with the more complex operations involved with lockout and/or tagout activities—those that cover a large number or several groups of employees, as well as those dealing with many and varied locations of energy isolating points and lockout or tagout devices—the procedure would need to include additional provisions for the transfer of control, such as the use of sign-in and sign-out logs, or a lock/tag number system to list and account for the employees, energy isolating points and devices to accomplish a more complete and orderly transfer of control.

It is recommended that the procedures used to transfer control measures during shift or personnel changes include the need for participating authorized or supervisory employees to certify the release and

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acceptance of responsibility for the safety of the groups with which they are involved.

19. *References.* The following references provide information which can be helpful in applying the requirements contained in the standard.

1. "Accident Prevention Manual For Industrial Operations, Eighth Edition, 1980"; National Safety Council, 425 North Michigan Avenue, Chicago.

2. "American National Standard—For Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements, ANSI Z244.1–1982"; American National Standards Institute Inc., 1430 Broadway, New York, N.Y. 10018.

3. "Electrical Safety Requirements For Employee Workplaces, 1981, NFPA 70E Part II, Safety Related Work Practices, 1981"; The National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269.

4. "Guidelines For Controlling Hazardous Energy During Maintenance and Servicing", National Institute for Occupational Safety and Health, Publication No. 83–125, 1983; U.S. Department of Health and Human Services, Public Health Service, Centers For Disease Control, National Institute for Occupational Safety and Health Division of Safety Research, Morgantown, West Virginia 26505.

5. "Procedures for Welding or Hot Tapping on Equipment Containing Flammables", Second Edition (1978), Publication No. 2201; The American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

Sample Lockout Procedure

The following sample lockout procedure is provided to assist employers in developing a procedure which meets the requirements of the standard. A tagout procedure would be similar in format. For more complicated systems, a more comprehensive procedure would need to be developed, documented, and implemented.

Lockout

Lockout procedure for (Name of Company).

Purpose

This procedure establishes the minimum requirements for the lockout of energy sources. It shall be used to ensure that before an employee performs any servicing or maintenance activities where the unexpected energization, start-up or release of stored energy could occur and cause injury, all potentially hazardous energy shall be isolated and locked out.

Responsibility

All employees shall be instructed in the safety significance of the lockout procedure by (designate by job title). Each new or transferred affected employee shall be instructed by (designate by job title) in the purpose and use of the lockout procedure.

Preparation for Lockout

A survey shall be made to locate and identify all energy sources to be certain which switch, valve or other energy isolating devices apply to the equipment to be locked out. More than one energy source (electrical, mechanical, or others) may be involved. Questionable energy source problems shall be resolved before job authorization is obtained and lockout commences.

Sequence of Lockout Procedure

(1) Notify all affected employees that a lockout is required and the reason therefor.

(2) If the equipment is operating, shut it down by the normal stopping procedure (depress stop button, open toggle switch, etc.)

(3) Operate the switch, valve, or other energy isolating device so that each energy source (electrical, mechanical, hydraulic, etc.), is disconnected or isolated from the equipment. Stored energy (such as that in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must also be dissipated or restrained by methods such as grounding, repositioning, blocking, bleeding down, etc.

(4) Lock out the energy isolating devices with an assigned individual lock.

(5) After ensuring that no personnel are exposed, and as a check on having disconnected the energy sources, operate the push button or other normal operating controls to make certain the equipment will not operate.

Caution: Return operating controls to neutral or "off" position after the test.

(6) The equipment is now locked out.

Restoring Equipment to Service

(1) When the job is complete and equipment is ready for testing or normal service, check the equipment area to see that no one is exposed.

(2) When equipment is all clear, remove all locks. The energy isolating devices may be operated to restore energy to equipment.

Procedure Involving More Than One Person

In the preceding steps, if more than one individual is required to lock out equipment, each shall place his or her own personal lock on the energy isolating device(s). One designated person of a work crew, or a supervisor with the knowledge of the crew, may lock out equipment for the whole crew. In such cases, it shall be the responsibility of that individual to carry out all steps of the lockout procedure and inform the crew when it is safe to work on the equipment. Additionally, the designated person shall not remove a crew lock until it has been verified that all individuals are safely removed.

Rules for Using Lockout Procedure

All equipment shall be locked out to protect against accidental or inadvertent operation when such operation could cause injury to personnel. Do not attempt to operate any switch, valve, or other energy isolating device bearing a lock.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Submission of Regular Amendments

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of regular amendments to the sentencing guidelines and commentary to the Congress for review. Notice of additional temporary, emergency amendments to the sentencing guidelines and official commentary. Request for public comment.

SUMMARY: Pursuant to its authority under section 994(p) of Title 28, Chapter 58, U.S.C., the Commission has submitted to the Congress for review two additional sentencing guidelines and an amendment to an existing guideline. Additionally, the Commission has incorporated in its regular amendments report the re-promulgation of the October 1987 revisions to the Commentary and a policy statement and the temporary, emergency amendments previously issued by the Commission effective January 15, 1988. Notice of these proposed guideline amendments was published in the **Federal Register** of February 19, 1988 (53 FR 5103) and a public hearing on the proposed amendments was held in Washington, DC, on March 22, 1988. After review of the hearing testimony and additional public comment, the Commission voted unanimously (6–0) to promulgate these amendments and transmitted them to the Congress on April 18, 1988. As stated in section 994(p), the amendments will take effect "one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress."

In addition, pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987, the Sentencing Commission adopted a series of temporary amendments at its April 19 meeting. By law these amendments are temporary, but the Commission is considering their adoption as regular amendments next year. The Commission may report these and other amendments to the Congress subsequent to the convening of the first session of the 101st Congress, but not later than May 1, 1989. The Commission invites public comment on these amendments and any other aspect of the guidelines.

DATES: The effective date of the regular amendments is 180 days from their submission to the Congress on April 18, 1988, or October 15, 1988. The effective date of the temporary guideline amendments is June 15, 1988.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Guidelines Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements are not applicable to judicial branch agencies. However, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provision of 5 U.S.C. 553 applicable to the routine promulgation of sentencing guidelines by the Sentencing Commission. Pursuant to this directive, proposed amendments to the guidelines were published in the **Federal Register** on February 19, 1988 (53 FR 5103) and a public hearing was held in Washington, DC on March 22, 1988. After review of the public comment received on the amendments, the Commission voted unanimously (6–0) to promulgate the regular amendments. The regular amendments were transmitted to the Congress on April 18, 1988.

Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) authorizes the Commission to adopt temporary guidelines or amendments under certain limited circumstances. The Commission understands the advance notice, comment, and hearing provisions that apply to the promulgation of regular guidelines to be inapplicable under such circumstances. Absent contrary action, temporary guidelines or amendments remain in effect until and during the pendency of the next report to the Congress pursuant to 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were submitted to Congress on April 13, 1987. Technical, clarifying and conforming amendments were submitted on May 1, 1987. As so amended, the sentencing guidelines and policy statements were published in the **Federal Register** on May 13, 1987 (52 FR 18046). In October 1987 the Commission revised the official commentary and amended one policy statement (52 FR 44674). Effective January 15, 1988, the Commission adopted the October 1987 revisions and certain other temporary revisions to the guidelines pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, December 7, 1987). (53 FR 1288.)

Reasons for Additional Temporary Amendments: Based on testimony received at its most recent public hearing, additional public comment, and evaluations from judges, attorneys, and probation officers applying the guidelines, the Commission has learned that users found certain aspects of the guidelines and commentary unclear or otherwise problematic, thereby resulting in inconsistent interpretations. Furthermore, in a number of instances, clerical or technical errors in the guidelines or commentary were likely to lead to application errors. The Commission determined that the prevention of application errors and the alleviation of certain specific problems, such as the use of information from defendants who cooperated with the government in the investigation or prosecution of other crimes, constituted urgent and compelling reasons to make various amendments. Additionally, in order to ease the workload on the court system, the Commission has exempted Class B and C misdemeanors and infractions (petty offenses) from the operation of the guidelines. The Commission determined that for practical reasons, exemption of petty offenses from guideline application constituted urgent and compelling reasons.

Finally, the Commission concluded that certain guidelines and commentary should be revised promptly to conform to recently-enacted legislation pertaining to criminal offenses, as contemplated by section 21(a)(2) of the Sentencing Act of 1987. The specific reasons for each amendment are listed immediately after that amendment in the material that follows.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a), (p), (x)); sec. 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182).

William W. Wilkins,
Chairman.

I. Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of Title 28, United States Code, the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor.

1. Temporary Amendments Effective January 15, 1988

Pursuant to Section 21 of the Sentencing Act of 1987, the Commission exercised its authority to promulgate, effective January 15, 1988, a set of temporary amendments to the guidelines, including revised and reorganized guideline commentary. The temporary amendments were subsequently transmitted to the Congress. The Commission hereby incorporates those amendments by reference [1] and now submits them to the Congress as permanent amendments pursuant to 28 U.S.C. 994(p).

Reason for Amendment: These amendments are promulgated to enhance the clarity of the guidelines and for the purposes stated in the specific amendments.

2. Correction of Typographical Errors

(a) In § 2R1.1, delete the word "substract" and insert in lieu thereof "subtract".

(b) In § 2X1.1(b)(3), delete the words "if the" and insert in lieu thereof "i.e., the".

(c) In § 3D1.2(d), delete the citation "§ 2K3.3" and insert in lieu thereof "§ 2K2.3".

Reason for Amendment: These amendments are promulgated to correct typographical errors.

3. Promulgation of New Guideline § 2A2.4 (Obstructing or Impeding Officers)

(a) In Chapter Two, Part A, immediately following the commentary accompanying § 2A2.3, insert the following new guideline and accompanying commentary:

"§ 2A2.4. Obstructing or Impeding Officers.

(a) Base Offense Level: 6

(b) Specific Offense Characteristic

(1) If the conduct involved striking, beating, or wounding, increase by 3 levels.

(c) Cross Reference

(1) If the defendant is convicted under 18 U.S.C. 111 and the conduct constituted aggravated assault, apply § 2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. 111, 1501, 1502, 3056(d).

Application Notes:

1. Do not apply § 3A1.2 (Official Victim). The base offense level reflects the fact that the victim was a governmental officer performing official duties.

2. "Striking, beating, or wounding" is discussed in the Commentary to § 2A2.3 (Minor Assault).

3. The base offense level does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).

Background: Violations of 18 U.S.C. 1501, 1502, and 3056(d) are misdemeanors; violation of 18 U.S.C. 111 is a felony. The guideline has been drafted to provide offense levels that are identical to those otherwise provided for assaults involving an official victim; when no assault is involved, the offense level is 6.".

(b) In the Commentary to § 2A2.3 captioned "Statutory Provisions", delete "111,".

(c) In Appendix A (Statutory Index), on the line beginning "18 U.S.C. 111" delete:

"2A2.3" and insert in lieu thereof "2A2.4", on the line beginning "18 U.S.C. 1501" delete "2A2.3" and insert in lieu thereof "2A2.4", and insert the following in the appropriate place:

18 U.S.C. 1502 ..... 2A2.4
18 U.S.C. 3056(d) ..... 2A2.4.

Reason for Amendment: The Commission has promulgated this amendment as part of its continuing effort to make the guidelines more comprehensive. As the guidelines system evolves, additional criminal statutes not specifically addressed in the initial set of guidelines will be covered. This new guideline is consistent with related guidelines in Chapter 2, Part A.

4. Promulgation of New Guideline § 2A5.3 (Committing Certain Crimes Aboard Aircraft)

(a) In Chapter One, Part A, immediately following the commentary accompanying § 2A5.2, insert the following new guideline and accompanying commentary:

"§ 2A5.3. Committing Certain Crimes Aboard Aircraft.

(a) Base Offense Level: The offense level applicable to the underlying offense.

Commentary

Statutory Provision: 49 U.S.C. 1472(k)(1).

Application Notes:

1. "Underlying offense" refers to the offense listed in 49 U.S.C. 1472(k)(1) that the defendant is convicted of violating.

2. If the conduct intentionally or recklessly endangered the safety of the aircraft or passengers, an upward departure may be warranted.".

(b) In Appendix A (Statutory Index), insert the following in the appropriate place:

"49 U.S.C. 1472(k)(1) 2A5.3".

Reason for Amendment: The Commission has promulgated this amendment as part of its continuing effort to make the guidelines more comprehensive. As the guidelines system evolves, additional criminal statutes not specifically addressed in the initial set of guidelines will be covered. This new guideline reflects the fact that 49 U.S.C. 1472(k)(1) is a jurisdictional statute.

5. Amendment of Guideline § 2D1.5 (Continuing Criminal Enterprise)

Delete § 2D1.5 and the commentary thereto, and in lieu thereof insert the following:

"§ 2D1.5. Continuing Criminal Enterprise.

(a) Base Offense Level: 36

Commentary

Statutory Provision: 21 U.S.C. 848.

Application Notes:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).

2. If as part of the enterprise the defendant sanctioned the use of violence, if the quantity of drugs substantially exceeds that required for level 36 in the drug quantity table, or if the number of persons managed by the defendant is extremely large, an upward departure may be warranted.

3. Under 21 U.S.C. 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a "continuing series of violations." A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under § 4A1.2(a)(1) and not part of the instant offense.

4. Violations of 21 U.S.C. 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. 848 establishes that a defendant controlled and exercised authority over one of the most serious types of ongoing criminal activity, this guideline provides a base offense level of 36. An adjustment from Chapter Three, Part B is not authorized because the offense level of this guideline already reflects an adjustment for role in the offense.

Title 21 U.S.C. 848 provides a 20-year minimum mandatory penalty for second convictions and a mandatory life sentence for principal administrators of extremely large enterprises. If the application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence. See § 5G1.1(b).".

Reason for Amendment: The Commission has promulgated this amendment to ensure that the guideline adequately reflects the seriousness of the criminal conduct. The previous guideline specified sentences that were lower than sentences typically imposed on defendants convicted of engaging in a continuing criminal enterprise, a result that the Commission did not intend. The

[1] The revised and reorganized commentary is published at 52 FR 44674–44779 (1987). The remaining temporary amendments are published at 53 FR 1286–1293 (1988).

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guideline is also amended to delete, as unnecessary, provisions that referred to statutory minimum sentences.

II. Temporary Amendments to the Sentencing Guidelines

Pursuant to the emergency guidelines promulgation authority provided in section 21 of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987), the Sentencing Commission has promulgated, effective June 15, 1988, additional temporary amendments to previously issued sentencing guidelines, policy statements, and official commentary.

The format under which these temporary amendments are presented is designed to facilitate a comparison between previously existing and amended provisions in the event it becomes necessary to reference the former guideline or commentary language.

Chapter One, Part B, is amended by inserting the following additional guideline and accompanying commentary:

"§ 1B1.8. Use of Certain Information.

(a) Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others, and the government agrees that self-incriminating information so provided will not be used against the defendant, then such information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement.

(b) The provisions of subsection (a) shall not be applied to restrict the use of information:

(1) Known to the government prior to entering into the cooperation agreement;

(2) In a prosecution for perjury or giving a false statement; or

(3) In the event there is a breach of the cooperation agreement.

Commentary

Application Notes:

1. This provision does not authorize the government to withhold information from the court but provides that self-incriminating information obtained under a cooperation agreement is not to be used to determine the defendant's guideline range. Under this provision, for example, if a defendant is arrested in possession of a kilogram of cocaine and, pursuant to an agreement to provide information concerning the unlawful activities of co-conspirators, admits that he assisted in the importation of an additional three kilograms of cocaine, a fact not previously known to the government, this admission would not be used to increase his applicable guideline range, except to the extent provided in the agreement. Although this guideline, consistent with the general structure of these guidelines, affects only the determination of the guideline range, the policy of the Commission is that where a defendant as a result of a cooperation agreement with the government to assist in the investigation or prosecution of other offenders reveals information which implicates him in unlawful conduct not already known to the government, such defendant should not be subject to an increased sentence by virtue of that cooperation where the government agreed that the information revealed would not be used for such purpose.

2. The Commission does not intend this guideline to interfere with determining adjustments under Chapter Four, Part A (Criminal History) or § 4B1.1 (Career Offender) (e.g., information concerning the defendant's prior convictions). The Probation Service generally will secure information relevant to the defendant's criminal history independent of information the defendant provides as part of his cooperation agreement.

3. On occasion the defendant will provide incriminating information to the government during plea negotiation sessions before a cooperation agreement has been reached. In the event no agreement is reached, use of such information is governed by the provisions of Rule 11 of the Federal Rules of Criminal Procedure and Rule 408 of the Rules of Evidence.

4. As with the statutory provisions governing use immunity, 18 U.S.C. 6002, this guideline does not apply to information used against the defendant in a prosecution for perjury, giving a false statement, or in the event the defendant otherwise fails to comply with the cooperation agreement.".

The purpose of this amendment is to facilitate cooperation agreements by ensuring that certain information revealed by a defendant, as part of an agreement to cooperate with the government by providing information concerning unlawful activities of others, will not be used to increase the guideline sentence. The effective date of this amendment is June 15, 1988.

Chapter One, Part B, is amended by inserting the following additional guideline and accompanying commentary:

"§ 1B1.9. Petty Offenses.

The sentencing guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction (petty offense).

Commentary

Application Notes:

1. Notwithstanding any other provision of the guidelines, the court may impose any sentence authorized by statute for each count that is a petty offense. A petty offense is any offense for which the maximum sentence that may be imposed does not exceed six months' imprisonment.

2. The guidelines for sentencing on multiple counts do not apply to counts that are petty offenses. Sentences for petty offenses may be consecutive to or concurrent with sentences imposed on other counts. In imposing sentence, the court should, however, consider the relationship between the petty offense and any other offenses of which the defendant is convicted.

3. All other provisions of the guidelines should be disregarded to the extent that they purport to cover petty offenses.

Background: For the sake of judicial economy, the Commission has voted to adopt a temporary amendment to exempt all petty offenses from the coverage of the guidelines. Consequently, to the extent that some published guidelines may appear to cover petty offenses, they should be disregarded even if they appear in the Statutory Index.".

The purpose of this guideline is to delete coverage of petty offenses. The effective date of this amendment is June 15, 1988.

§ 1B1.1. Larceny, Embezzlement, and Other Forms of Theft.

Section 2B1.1(b)(1) is amended by deleting "value of the property taken" and inserting in lieu thereof "loss".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by deleting:

"Loss is to be based upon replacement cost to the victim or market value of the property, whichever is greater.",

and inserting in lieu thereof:

" 'Loss' means the value of the property taken, damaged, or destroyed. Ordinarily, when property is taken or destroyed the loss is the fair market value of the particular property at issue. Where the market value is difficult to ascertain or inadequate to measure harm to the victim, the court may measure loss in some other way, such as reasonable replacement cost to the victim. When property is damaged the loss is the cost of repairs, not to exceed the loss had the property been destroyed. In cases of partially completed conduct, the loss is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline). E.g., in the case of the theft of a government check or money order, loss refers to the loss that would have occurred if the check or money order had been cashed. Similarly, if a defendant is apprehended in the process of taking a vehicle, the loss refers to the value of the vehicle even if the vehicle is recovered immediately.".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B1.2. Receiving Stolen Property.

Section 2B1.2(b)(1) is amended by deleting "taken", and inserting "stolen" immediately before "property".

The purpose of this amendment is to correct a clerical error. The effective date of this amendment is June 15, 1988.

§ 2B1.3. Property Damage or Destruction (Other than by Arson or Explosives).

Section 2B1.3(b)(1) is amended by deleting "amount of the property damage or destruction, or the cost of restoration," and inserting in lieu thereof "loss".

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 2 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B2.1. Burglary of a Residence.

Section 2B2.1(b)(2) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B2.2. Burglary of Other Structures.

Section 2B2.2(b)(2) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B2.2 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B3.1. Robbery.

Section 2B3.1(b)(1) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by inserting "or attempted robbery" immediately following "robbery".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations.

The Commentary to § 2E1.1 captioned "Application Notes" is amended in Note 1 by deleting:

"For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.",

and inserting in lieu thereof:

"Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise.

The Commentary to § 2E1.2 captioned "Application Notes" is amended in Note 1 by deleting:

"For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.",

and inserting in lieu thereof:

"Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E5.2. Theft or Embezzlement From Employee Pension and Welfare Benefit Plans.

Section 2E5.2(b)(3) is amended by deleting "value of the property stolen" and inserting in lieu thereof "loss".

The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 1 by inserting immediately following the first sentence:

"Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2E5.4. Embezzlement or Theft From Labor Unions in the Private Sector.

Section 2E5.4(b)(3) is amended by deleting "value of the property stolen" and inserting in lieu thereof "loss".

The Commentary to § 2E5.4 captioned "Application Notes" is amended in Note 1 by inserting immediately following the first sentence:

"Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2F1.1. Fraud and Deceit.

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by deleting "291" and inserting in lieu thereof "290".

The purpose of this amendment is to delete an inadvertently included infraction. The effective date of this amendment is June 15, 1988.

§ 2G2.2. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor.

Section 2G2.2(b)(1) is amended by inserting "a prepubescent minor or" immediately following "involved".

The purpose of this amendment is to provide an alternative measure to be used in determining whether the material involved an extremely young minor for cases in which the actual age of the minor is unknown. The effective date of this amendment is June 15, 1988.

§ 2X5.1. Other Offenses.

Section 2X5.1 and the Commentary thereto is amended by deleting the entire text, including the title, as follows:

"Other Offenses (Policy Statement)

For offenses for which no specific guideline has been promulgated:

(a) If the offense is a felony or class A misdemeanor, the most analogous guideline should be applied. If no sufficiently analogous guideline exists, any sentence that is reasonable and consistent with the purposes of sentencing should be imposed. See 18 U.S.C. 3553(b).

(b) If the offense is a Class B or C misdemeanor or an infraction, any sentence that is reasonable and consistent with the purpose of sentencing should be imposed. See 18 U.S.C. 3553(b).

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Commentary

Background: This policy statement addresses cases in which a defendant has been convicted of an offense for which no specific guideline has been written. For a felony or a class A misdemeanor (see 18 U.S.C. 3559(a) and 3581(b)), the court is directed to apply the most analogous guideline. If no sufficiently analogous guideline exists, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b).

For a class B or C misdemeanor or an infraction (see 18 U.S.C. 3559(a) and 3581(b)) that is not covered by a specific guideline, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b). An inquiry as to whether there is a sufficiently analogous guideline that might be applied is not required. The Commission makes this distinction in treatment because for many lesser offenses (e.g., traffic infractions), generally handled under assimilative offense provisions by magistrates, there will be no sufficiently analogous guideline, and a case-by-case determination in respect to this issue for the high volume of cases processed each year would be unduly burdensome and would not significantly reduce disparity.",

and inserting in lieu thereof:

"Other Offenses

If the offense is a felony or Class A misdemeanor for which no guideline expressly has been promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. 3553(b) shall control.

Commentary

Background: Many offenses, especially assimilative crimes, are not listed in the Statutory Index or in any of the lists of Statutory Provisions that follow each offense guideline. Nonetheless, the specific guidelines that have been promulgated cover the type of criminal behavior that most such offenses proscribe. The court is required to determine if there is a sufficiently analogous offense guideline, and, if so, to apply the guideline that is most analogous. Where there is no sufficiently analogous guideline, the provisions of 18 U.S.C. 3553(b) control. That statute provides in relevant part as follows: "In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in [18 U.S.C. 3553] subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission."

The purposes of this amendment are to make the section a binding guideline (as the Commission originally intended with respect to felonies and Class A misdemeanors) rather than a policy statement, to delete language relating to petty offenses, and to conform and clarify the Commentary. The effective date of this amendment is June 15, 1988.

§ 3D1.2. Groups of Closely-Related Counts.

Section 3D1.2(d) is amended by deleting:

"(d) When counts involve the same general type of offense and the guidelines for that type of offense determine the offense level primarily on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. Offenses of this kind are found in Chapter Two, Part B (except §§ 2B2.1–2B3.3), part D (except §§ 2D1.6–2D3.4), Part E (except §§ 2E1.1–2E2.1), Part F, Part G (§§ 2G2.2–2G3.1), Part K (§ 2K2.3), Part N (§§ 2N2.1, 2N3.1), Part Q (§§ 2Q2.1, 2Q2.2), Part R, Part S, and Part T. This rule also applies where the guidelines deal with offenses that are continuing, e.g., §§ 2L1.3 and 2Q1.3(b)(1)(A).",

and inserting in lieu thereof:

"(d) Counts are grouped together if the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Offenses covered by the following guidelines are specifically included under this subsection:

§§ 2B1.1, 2B1.2, 2B1.3, 2B4.1, 2B5.1, 2B5.2, 2B5.3, 2B5.4, 2B6.1;
§§ 2D1.1, 2D1.2, 2D1.3, 2D1.5;
§§ 2E4.1, 2E5.1, 2E5.2, 2E5.4, 2E5.6;
§§ 2F1.1, 2F1.2;
§ 2N3.1;
§ 2R1.1;
§§ 2S1.1, 2S1.2, 2S1.3;
§§ 2T1.1, 2T1.2, 2T1.3, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1, 2T3.2.

Specifically excluded from the operation of this subsection are:

all offenses in Part A;
§§ 2B2.1, 2B2.2, 2B2.3, 2B3.1, 2B3.2, 2B3.3;
§§ 2C1.1, 2C1.5;
§§ 2D2.1, 2D2.2, 2D2.3;
§§ 2E1.3, 2E1.4, 2E1.5, 2E2.1;
§§ 2G1.1, 2G1.2, 2G2.1, 2G3.2;
§§ 2H1.1, 2H1.2, 2H1.3, 2H1.4, 2H2.1, 2H4.1;
§§ 2L1.1, 2L2.1, 2L2.2, 2L2.3, 2L2.4, 2L2.5;
§§ 2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.6, 2M3.7, 2M3.8, 2M3.9;
§§ 2P1.1, 2P1.2, 2P1.3, 2P1.4.

For multiple counts of offenses that are not listed, grouping under this subsection may or may not be appropriate; a case-by-case determination must be made based upon the facts of the case and the applicable guidelines (including specific offense characteristics and other adjustments) used to determine the offense level.

Exclusion of an offense from grouping under this subsection does not necessarily preclude grouping under another subsection.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 4B1.3. Criminal Livelihood.

Section 4B1.3 is amended by deleting:

"In no such case will the defendant be eligible for a sentence of probation."

and inserting in lieu thereof:

", unless § 3E1.1 (Acceptance of Responsibility) applies, in which event his offense level shall be not less than 11.".

The Commentary to § 4B1.3 captioned "Application Note" is amended by deleting "(e.g., an ongoing fraudulent scheme)", "(e.g., a number of burglaries or robberies, or both)", and "or petty".

The Commentary to § 4B1.3 captioned "Background" is amended by deleting "that offense" and inserting in lieu thereof "an offense", and by deleting "Under this provision, the offense level is raised to 13, if it is not already 13 or greater".

The purpose of this amendment is to provide that the adjustment from § 3E1.1 (Acceptance of Responsibility) applies to cases under § 4B1.3 (Criminal Livelihood). The effective date of this amendment is June 15, 1988.

CHAPTER FIVE, PART J—RELIEF FROM DISABILITY PERTAINING TO CERTAIN EMPLOYMENT (RETITLED RELIEF FROM DISABILITY)

Chapter 5, Part J is amended in the title of the Part by deleting "PERTAINING TO CERTAIN EMPLOYMENT".

The purpose of this amendment is to eliminate the possible inference that this part covers only employment for compensation. The effective date of this amendment is June 15, 1988.

§ 5J1.1. Relief From Disability Pertaining to Certain Employment (Policy Statement) (retitled Relief From Disability. Pertaining to Convicted Persons Prohibited From Holding Certain Positions (Policy Statement)

Section 5J1.1 is amended by deleting the entire text, including the title, as follows:

"Relief From Disability Pertaining to Certain Employment (Policy Statement)

"With regard to labor racketeering offenses, a part of the punishment imposed by 29 U.S.C. 504 and 511 is the prohibition of convicted persons from service in labor unions, employer associations, employee benefit plans, and as labor relations consultants. Violations of these provisions are felony offenses. Persons convicted after October 12, 1984, may petition the sentencing court to reduce the statutory disability (thirteen years after sentence or imprisonment, whichever is later) to a lesser period (not less than three years after entry of judgment in the trial court). After November 1, 1987, petitions for exemption from the disability that were formerly administered by the United States Parole Commission will be transferred to the courts. Relief shall not be given in such cases to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he has been rehabilitated since commission of the crime.",

and inserting in lieu thereof the following:

"Relief From Disability Pertaining to Convicted Persons Prohibited From Holding Certain Positions (Policy Statement)

"A collateral consequence of conviction of certain crimes described in 29 U.S.C. 504 and 1111 is the prohibition of convicted persons from service and employment with labor unions, employer associations, employee pension and welfare benefit plans, and as labor relations consultants in the private sector. A convicted person's prohibited service or employment in such capacities without having been granted one of the following three statutory procedures of administrative or judicial relief is subject to criminal prosecution. First, a disqualified person whose citizenship rights have been fully restored to him or her in the jurisdiction of conviction, following the revocation of such rights as a result of the disqualifying conviction, is relieved of the disability. Second, a disqualified person convicted after October 12, 1984, may petition the sentencing court to reduce the statutory length of disability (thirteen years after date of sentencing or release from imprisonment, whichever is later) to a lesser period (not less than three years after date of conviction or release from imprisonment, whichever is later). Third, a disqualified person may petition either the United States Parole Commission or a United States District Court judge to exempt his or her service or employment in a particular prohibited capacity pursuant to the procedures set forth in 29 U.S.C. 504(a)(B) and 1111(a)(B). In the case of a person convicted of a disqualifying crime committed before November 1, 1987, the United States parole Commission will continue to process such exemption applications.

"In the case of a person convicted of a disqualifying crime committed on or after November 1, 1987, however, a petition for exemption from disability must be directed to a United States District Court. If the petitioner was convicted of a disqualifying federal offense, the petition is directed to the sentencing judge. If the petitioner was convicted of a disqualifying state or local offense, the petition is directed to the United States District Court for the district in which the offense was committed. In such cases, relief shall not be given to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he or she has been rehabilitated since commission of the disqualifying crime and can therefore be trusted not to endanger the organization in the position for which he or she seeks relief from disability.".

The purpose of this amendment is to clarify the policy statement and conform it to the pertinent provisions of the Sentencing Act of 1987. The effective date of this amendment is June 15, 1988.

§ 5K2.0. Grounds for Departure (Policy Statement).

Section 5K2.0 is amended by deleting "an aggravating or mitigating circumstance exists that was" and inserting in lieu thereof "there exists an aggravating or mitigating circumstance of a kind, or to a degree".

The purpose of this amendment is to conform the quotation in this section to the wording in the Sentencing Act of 1987. The effective date of this amendment is June 15, 1988.

§ 6A1.1. Presentence Report.

Section 6A1.1 is amended by deleting "(a)" and deleting:

"(b) The presentence report shall be disclosed to the defendant, counsel for the defendant and the attorney for the government, to the maximum extent permitted by Rule 32(c), Fed. R. Crim. P. Disclosure shall be made at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. 18 U.S.C. 3552(d).".

The purpose of this amendment is to delete material more properly covered elsewhere. See § 6A1.2 (Disclosure of Presentence Report; Issues in Dispute (Policy Statement)). The effective date of this amendment is June 15, 1988.

§ 6A1.2. Position of Parties with Respect to Sentencing Factors (Retitled Disclosure of Presentence Report; Issues in Dispute (Policy Statement).)

Section 6A1.2 is amended by deleting:

"Position of Parties with Respect to Sentencing Factors

(a) After receipt of the presentence report and within a reasonable time before sentencing, the attorney for the government and the attorney for the defendant, or the pro se defendant, shall each file with the court a written statement of the sentencing factors to be relied upon at sentencing. The parties are not precluded from asserting additional sentencing factors if notice of the intention to rely upon another factor is filed with the court within a reasonable time before sentencing.

(b) Copies of all sentencing statements filed with the court shall be contemporaneously served upon all other parties and submitted to the probation officer assigned to the case.

(c) In lieu of the written statement required by § 6A1.2(a), any party may file:

(1) A written statement adopting the findings of the presentence report;

(2) A written statement adopting such findings subject to certain exceptions or additions; or

(3) A written stipulation in which the parties agree to adopt the findings of the presentence report or to adopt such findings subject to certain exceptions or additions.

(d) A district court may, by local rule, identify categories of cases for which the parties are authorized to make oral statements at or before sentencing, in lieu of the written statement required by this section.

(e) Except to the extent that a party may be privileged not to disclose certain information, all statements filed with the court or made orally to the court pursuant to this section shall:

(1) Set forth, directly or by reference to the presentence report, the relevant facts and circumstances of the actual offense conduct and offender characteristics; and

(2) Not contain misleading facts.",

and inserting in lieu thereof the following:

"Disclosure of Presentence Report; Issues in Dispute (Policy Statement)

Courts should adopt procedures to provide for the timely disclosure of the presentence report; the narrowing and resolution, where feasible, of issues in

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dispute in advance of the sentencing hearing; and the identification for the court of issues remaining in dispute. See Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference (August 1987).".

This amendment deletes this guideline and inserts in lieu thereof a general policy statement. The Commission has determined that this subject is more appropriately covered by the Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference. The effective date of this amendment is June 15, 1988.

Appendix A—Statutory Index

Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

18 U.S.C. 911	2F1.1, 2L2.2,
18 U.S.C. 922(a)	2K2.1,
18 U.S.C. 2071	2B1.1, 2B1.3,
26 U.S.C. 7212(a)	2A2.2, 2A2.3,
42 U.S.C. 2278(a)(c)	2B2.3,
46 U.S.C. 3718(b)	2K3.1,
47 U.S.C. 553(b)(2)	2B5.3,
49 U.S.C. 1472(h)(2)	2K3.1.

The purpose of this amendment is to make the statutory index more comprehensive. The effective date of this amendment is June 15, 1988.

Appendix A is amended by deleting:

7 U.S.C. 166	2N2.1,
7 U.S.C. 213	2F1.1,
7 U.S.C. 473	2N2.1;

by deleting:

7 U.S.C. 511e	2N2.1,
7 U.S.C. 511k	2N2.1,

and inserting in lieu thereof:

7 U.S.C. 511d	2N2.1,
7 U.S.C. 511i	2N2.1;

by deleting:

7 U.S.C. 586	2N2.1,
7 U.S.C. 596	2N2.1,
7 U.S.C. 608e–1	2N2.1;

by deleting:

16 U.S.C. 117(c)	2B1.1, 2B1.3,

and inserting in lieu thereof:

16 U.S.C. 117c	2B1.1, 2B1.3;

by deleting:

16 U.S.C. 414	2B2.3,
16 U.S.C. 426i	2B1.1, 2B1.3,
16 U.S.C. 428i	2B1.1, 2B1.3,
18 U.S.C. 291	2C1.3, 2F1.1,
26 U.S.C. 7269	2T1.2,
41 U.S.C. 51	2B4.1,
42 U.S.C. 4912	2Q1.3,
50 U.S.C. 2410	2M5.1;

and by deleting the first time it appears:

50 U.S.C. App. 462	2M4.1.

The purposes of this amendment are to correct clerical errors and delete inadvertently included statutes. The effective date of this amendment is June 15, 1988.

[FR Doc. 88-9490 Filed 4-28-88; 8:45 am]
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Friday
April 29, 1988

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 513, 541, and 544
Inmate Control, Custody, Care, Treatment and Instruction; Rules and Proposed Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

Control, Custody, Care, Treatment, and Instruction of Inmates Release of Information to Law Enforcement Agencies

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Release of Information to Law Enforcement Agencies. The rule authorizes the Bureau of Prisons to release to a law enforcement agency information concerning federal inmates transferred to a residential community treatment center located within the jurisdiction of that agency. This information is intended to be used by the requesting agency solely for law enforcement purposes.

EFFECTIVE DATE: June 1, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is publishing its final rule on Release of Information to Law Enforcement Agencies. A proposed rule on this subject was published in the **Federal Register** on March 2, 1987 (at 52 FR 6297). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register.**

The final rule is intended to implement the provisions of 18 U.S.C. 4082(f). Public Law 99–646, Criminal Law and Procedure Technical Amendments Act of 1986, authorizes the Bureau of Prisons to make available to the head of any law enforcement agency of a state or of a unit of local government information with respect to Federal prisoners who have been convicted of felony offenses against the United States and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction. In addition to those provisions published in the proposed rule, the final rule discusses the type of information that may be released (e.g., names, dates of birth, nature of the offense) and includes a provision authorizing the Bureau of Prisons to terminate or suspend further release of information to an agency that disseminates requested information to other outside sources.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

In § 513.20(a), a new sentence is added to describe the type of information the Bureau may provide as set forth in 18 U.S.C. 4082(f). This information includes: names, dates of birth, FBI numbers, nature of the offenses against the United States, fingerprints, photographs, and the designated community treatment centers, with prospective dates of release.

Section 513.20(b) restricts the dissemination of requested information outside of the receiving agency. In light of this, the Bureau is adding a sentence to § 513.20(b) which states, "If an agency disseminates information contrary to this restriction, the Bureau of Prison may terminate or suspend release of information to that agency."

A commenter to § 513.20 suggests there are no "safeguards as to how this information can or will be used," and that providing "segmented information excluding details" may be a "threat against that individual's safety and well being". We do not agree. The intent of this rule is to provide law enforcement agencies *specific* information that may be used by the requesting agency solely for law enforcement purposes. As a safeguard, the Bureau will require agencies to include, in their original request, a statement that the agency is aware of the information they will be receiving and the conditions under which the information is provided. The request also is to include a statement that the agency understands that the information may only be used for law enforcement purposes, that the information may not be disseminated to outside sources, and that if the agency does disseminate the information contrary to this restriction, the Bureau of Prisons may terminate or suspend further release of information to that agency. Given the specificity of the information and the condition under which an agency must agree in order to receive such information, the Bureau of Prisons does not perceive any threat against an individual's safety or well being.

List of Subjects in 28 CFR Part 513

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V, of 28 CFR is amended as set forth below.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

Dated: April 25, 1988.

In consideration of the foregoing, amend Subchapter A of 28 CFR, Chapter V as follows: In Subchapter A, amend Part 513 by adding a new Subpart C to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

I. The authority citation for Part 513 is revised to read as follows:

Authority: 5 U.S.C. 301, 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

II. In Part 513, add a new Subpart C to read as follows:

Subpart C—Release of Information to Law Enforcement Agencies

Sec.

§ 513.20 Release of information to law enforcement agencies.

Subpart C—Release of Information to Law Enforcement Agencies

§ 513.20 Release of information to law enforcement agencies.

(a) The Bureau of Prisons will provide to the head of any law enforcement agency of a state or of a unit of local government in a state information on federal prisoners who have been convicted of felony offenses and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction. Law enforcement personnel interested in obtaining this information must forward a written request to the appropriate Regional Community Programs Administrator (see 28 CFR Part 503 for the mailing address). The type of information that the Bureau of Prisons may provide is set forth in 18 U.S.C. 4082(f). That information includes: names, dates of birth, FBI numbers, nature of the offenses against the United States, fingerprints, photographs, and the designated community treatment centers, with prospective dates of release.

(b) Any law enforcement agency which receives information under this rule may not disseminate such information outside of such agency. If an agency disseminates information contrary to this restriction, the Bureau of Prisons may terminate or suspend release of information to that agency.

[FR Doc. 88–9544 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–05–M

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates Adult Basic Education (ABE) Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on adult basic education (ABE) programs. These amendments are intended to clarify an issue concerning the promotion of an inmate above the fourth grade level of pay when that inmate has been exempted from the rule's mandatory ABE educational requirements.

EFFECTIVE DATE: June 1, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on adult basic education (ABE) programs. Final amendments to this rule were published in the **Federal Register** June 10, 1986 (at 51 FR 21114 *et seq.*). The Bureau published the present amendment in the **Federal Register** November 21, 1986 (at 51 FR 42166) as an interim rule to determine if any further revision or clarification would be necessary. Interested persons were invited to submit comments on the interim rule. No public comment was received and the Bureau has determined there are no further revisions required. Members of the public may submit comments concerning the present amendment by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register.**

The final rule is intended to clarify the Bureau's regulation regarding promotions to pay grades above the fourth grade level for inmates exempted by § 544.71(a) from the mandatory ABE educational requirements. The rule in § 544.71(a)(6) requires that inmates exempted under the provisions of § 544.71(a) (1), (2), or (3), ordinarily meet the 8.0 academic achievement level before they can be considered for compensation above the fourth grade level in a Federal Prisons Industries (UNICOR) or Inmate Performance Pay (IPP) work assignment. Wardens are authorized to exempt inmates from this requirement for good cause.

Based on the implementation of the sentencing provisions of the Comprehensive Crime Control Act of 1984, § 544.71(a)(2) is revised to reference 18 U.S.C. 3552(b). That section became effective November 1, 1987, and provides for studies by the Bureau of Prisons. 18 U.S.C. 4205(c) is repealed as of November 1, 1987.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as set forth below.

Dated: April 25, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

Subchapter C, Part 544, amend Subpart H as follows:

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 544—EDUCATION

A. The authority citation for Part 544, Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4081, 4082, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart H—Adult Basic Education (ABE) Program

B. In Part 544, Subpart H, revise § 544.71 (a)(2) and (a)(6) to read as follows:

§ 544.71 Applicability.

(a) * * *

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

* * * * * *

(6) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule. Inmates exempted under the provisions of paragraphs (a) (1), (2), and (3) of this § 544.71 ordinarily may not be promoted above the fourth grade of compensation unless they meet the 8.0 academic achievement level. The Warden may, for good cause, exempt individuals from this requirement, and shall document the basis for the exemption.

* * * * * *

[FR Doc. 88–9543 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–05–M

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is publishing proposed amendments to its rule on Inmate Discipline and Special Housing Units. The amendments are intended to place into the rules a procedure for the disallowance of good conduct time credit. This revision is necessitated by the fact that inmates committed under the new Sentencing Reform Act provisions of the Comprehensive Crime Control Act are not eligible for statutory good time, but are eligible to receive a maximum of 54 days each year of good conduct time credit.

DATE: Comments must be received on or before May 31, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rule on Inmate Discipline and Special Housing Units. A final rule on this subject was published in the **Federal Register** January 5, 1988 (at 53 FR 196 et seq.).

The present amendments are intended to place into rule language Bureau of Prisons policy pertaining to the disallowance of good conduct time credits. Under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act, inmates sentenced for offenses committed on or after November 1, 1987 are not eligible for statutory good time, but are eligible to receive a maximum of 54 days of good conduct time credit per year (18 U.S.C. 3624(b)). This credit is given at the end of each year of time served and, once given, is vested. The present rule amendments authorize the Bureau's Disciplinary Hearing Officer (DHO) to disallow this credit, based on an inmate being found to have committed a prohibited act. The decision of the DHO will be final, subject only to procedural review by the Warden and by inmate appeal through the Administrative Remedy procedures.

Interested persons may participate in this proposed rulemaking by writing the previously cited address. Comments received during the public comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, amend Part 541 by amending § 541.13 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for Part 541, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Inmate Discipline and Special Housing Units

2. § 541.13(a)(4) is revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(4) *Low moderate category offenses:* The Discipline Hearing Officer shall impose at least one sanction B.1, E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). The Unit Discipline Committee shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed.

* * * * *

3. In § 541.13(a), Table 3, Prohibited Acts and Disciplinary Severity Scale, is amended by adding Sanction B.1 as a new sanction in the Greatest, High, Moderate, and Low Moderate Categories as follows:

Greatest Category—Sanction B.1 will read, "Disallow ordinarily between 50 and 75% (27–41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

High Category—Sanction B.1 will read, "Disallow ordinarily between 25 and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

Moderate Category—Sanction B.1 will read, "Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

Low Moderate Category—Sanction B.1 will read, "Disallow ordinarily up to 12.5% (1–7 days) of good conduct time credit availabe for year (to be used only where inmate found to have committed second offense in this category within 6 months); Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (to be used only where inmate found to have committed third offense in this category within 6 months) (a good conduct time sanction may not be suspended)".

4. In § 541.13, Table 4 is amended by adding a discussion of Sanction B.1 to read as follows:

Table 4.—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

* * * * *

(b.1) *Disallowance of good conduct time.* An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive

violation in one of the severity categories (Greatest, High, Moderate, Low Moderate). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.

The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy procedure. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

* * * * *

Dated: April 25, 1988.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 88–9545 Filed 4–28–88; 8:45 am]

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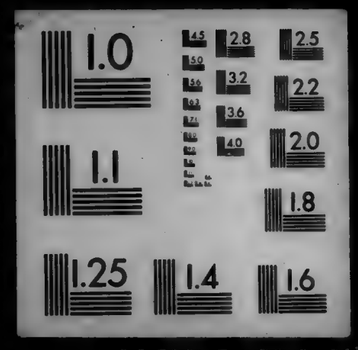
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H.J. Res. 373/Pub. L. 100–296

To designate May 1988 as "National Trauma Awareness Month." (Apr. 26, 1988; 102 Stat. 129; 1 page) Price: $1.00

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the 1986–90 crops of peanuts set forth at 7 CFR Part 729 to: (1) Permit State Agricultural Stabilization and Conservation (ASC) committees to allocate, under certain conditions, excess quota reserves to quota farms in the State; (2) permit "fall transfers" of peanut quotas if a good faith effort was made to plant the quota on the transferring farm; (3) change provisions governing the amount of quota a farm can receive under a "fall transfer"; (4) permit directors of State agencies responsible for the production of breeder and foundation seed to certify such seed for the experimental peanut exemption; and (5) provide specifically for the examination of automated records and electronic reports maintained by peanut handlers and buying point operators.

DATES: This interim rule is effective May 2, 1988. Comments must be received on or before June 1, 1988 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume, Agricultural Program Specialist, Tobacco and Peanuts Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–9003.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1521–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Information collection requirements contained in the regulations (7 CFR Part 729) have been approved by the Office of Mangement and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0006.

As peanut farmers are now making plans to plant their 1988 crop of peanuts and the amendments provided for in this rule may effect those plans, it has been determined that it would be impracticable and contrary to the public interest to delay implementation of this rule. So that revisions to the rule, if needed, may be made promptly, the comment period has been limited to 30 days.

1. *Allocation of quota reserves.* Current regulations governing the establishment of peanut quotas for the 1986–90 crops of peanuts require that each State ASC committee establish a quota reserve, subject to the review and approval of the Deputy Administrator for State and County Operations. The reserve is used to correct quota allocation errors for individual farms. Each State's reserve for the 1986 crop was the State's unused 1985 crop reserve plus, as deemed necessary by the State ASC committee, up to 1 percent of the amount by which the State's 1986 quota was higher than the State's 1985 quota. For 1987, each State's reserve was the unused 1986 reserve plus 10 percent of the sum of (1) the quota reduced on farms in the State because of nonproduction and (2) the quota permanently released from farms in the State.

The regulations require that the State reserve not be less than the State's reserve for the preceding year. However, because reserves are used only to correct quota allocation errors, some States have accumulated large reserves. Since some States have more pounds in their reserves than needed for corrections, this rule authorizes State ASC committees to request permission to release, to quota farms, part of the reserve that the committee would otherwise be required to maintain. This allocation, to the extent permitted by the ASCS Deputy Administrator for State and County Operations (Deputy Administrator), will be made *pro rata* to quota farms in the State in the same manner in which the national poundage quota increase is allocated.

2. *Fall transfers.* "Fall transfer" are transfers of quota made after the end of the planting season. Section 358a(k) of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended by the Food Security Act of 1985 (Pub. L. No. 99–198) provides that such transfers are permitted "if the quota has been planted

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on the farm from which the quota is to be leased" and "under such terms and conditions as the Secretary may by regulation prescribe". Under the current regulations a fall transfer is prohibited unless the acreage of peanuts planted on the transferring farm was equal to, or in excess of, the acreage determined by dividing the farm's effective farm poundage quota by the larger of the farm's current yield or the farm's highest actual yield in any one of the preceding 3 years. Since producers, in some cases, may not be notified of the "effective" quota before the end of the planting season, some producers may, inadvertently, find that they are not considered to have planted enough acreage to produce their effective quota to be eligible for a "fall transfer".

So that the regulations will not be unduly restrictive, this rule amends Part 729 to permit a fall transfer if it is determined by the appropriate ASCS county committee, in accordance with instructions of the Deputy Administrator, that a good faith effort was made to plant the effective quota. If the producer did not receive timely notice of the effective quota, such an effort will be deemed to exist if the producer: (1) Planted an acreage equal to or greater than (i) the farm's basic quota, plus, (ii) the pounds transferred to the farm prior to, or during, the planting season by lease, owner, or operator. However, the producer will be required to have planted sufficient acres to produce the full effective quota if the producer was notified of the effective quota by the county committee before the final planting date for the State, unless, because of the timing of the notice, adequate land preparation to produce the full effective quota was not feasible.

If the planting requirment is met, a transferring farm will be permitted to make a fall transfer up to the amount by which, due to conditions beyond the producer's control, the farm's Segregation 1 production was less than the effective quota.

Also, the current regulations limit the pounds a receiving farm could obtain under the fall transfer provisions to (i) the farm's estimated unmarketed, ungraded pounds minus (ii) the quota pounds remaining on the producer's marketing card. It has been determined that prohibiting a producer from receiving quota by fall transfer to market peanuts already graded as Segregation 1 peanuts may also be unduly restrictive. This rule amends the regulations accordingly. As amended, the regulations permit the receiving farm to receive quota, by a fall transfer, up to the amount by which (i) the sum of farm's unmarketed, ungraded pounds and the unmarketed pounds which have graded as Segregation 1 peanuts, exceeds (ii) the quota pounds remaining on the producer's marketing card. Permitting quota transfers to cover unmarketed peanuts graded as Segregation 2 or 3 was considered but rejected. Otherwise, farm operators could request and receive approval simply to effect a "disaster" transfer of additional loan pool peanuts to a quota loan pool for pricing purposes pursuant to 7 CFR § 1446.103. Such transfers increase program costs as the Commodity Credit Corporation normally suffers a loss on "disaster" transfers.

3. *Experimental peanuts.* Section 359 of the 1938 Act provides generally that only "quota" peanuts may be retained for use as seed or for other uses on a farm. However, section 372 of the 1938 Act provides that no penalty shall be collected with respect to the marketing of any agricultural commodity grown only for experimental purposes by any publicly owned agricultural experiment station. The current regulation provides that, if properly certified, breeder and foundation seed production would not be subject to marketing penalties if the seed were produced under the auspices of an agricultural experiment station and not used for domestic edible use. However, breeder and foundation seed production is often supervised by publicly-owned seed foundations associated with State universities rather than by organizations formally designated as "agricultural experiment stations". Since it has been determined that such seed foundations may qualify as "agricultural experiment stations" for this purpose, § 729.396 has been clarified to provide specifically that the exemption covers foundation and breeder seed which, as determined by ASCS pursuant to instructions of the Deputy Administrator, is grown under the auspices of a publicly-owned, State-operated seed organization. Where applicable, directors of such organizations may make the certifications required by that section of the regulations. Also, that section has been clarified in several places to make it clear that breeder and foundation seed is considered to fall within the exemption in § 729.396 as an experimental, non-commerical use of peanuts.

4. *Automated and electronic records and reports.* Presently the regulations provide that the records and reports of any peanut handler or buying point can be examined as deemed necessary to enforce the peanut poundage quota program. Effective with the 1987 marketing year, all peanut buying points were automated, and automated and electronic records of producers' farmers stock peanut sales were transmitted to county ASCS offices. Because automated and electronic records and reports must be reviewed for accuracy and program compliance, the regulations as amended to provide specifically for inspection of those records and reports.

5. *Other revisions*—Grammatical and other technical corrections have been made in the sections amended by this rule.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts.

Interim Rule

PART 729—PEANUTS

Accordingly, 7 CFR Part 729, Subpart—Poundage Quota and Marketing Regulations for the 1986 through 1990 crops of Peanuts, is amended as follows:

1. The authority citation for Subpart —Poundage Quota and Marketing Regulations—for the 1986 through 1990 crops of Peanuts of Part 729 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375; 7 U.S.C. 1445c–2.

2. Section 729.322 is amended to add a new paragraph (c), to read as follows:

§ 729.322 Reserves for corrections.

* * * * *

(c) If the State committee determines that the amount of the State reserve otherwise required to be maintained by this section is higher than necessary to accomplish the purposes of this section, the Deputy Administrator, at the request of the State committee may authorize the release of part of that reserve to be allocated *pro rata* to quota farms in the State in the same manner in which the national poundage quota is allocated to farms. When making its request, the State committee shall provide evidence to the Deputy Administrator that the pounds to remain in the reserve will be sufficient for correcting allocation errors.

3. Section 729.353 is amended by revising paragraphs (a) and (b) to read as follows:

§ 729.353 Fall transfers.

* * * * *

(a) *Receiving farm.* The operator of the receiving farm must certify, and the county committee must determine, that the poundage quota being transferred is not more than will be required to market the entire production of peanuts from the receiving farm as quota peanuts in the current year. The amount so determined shall be limited to the quantity equal to the amount by which (1) the total pounds of the farm's unmarketed peanuts which are either ungraded or have been inspected by the Federal State Inspection Service and graded Segregation 1 exceeds (2) the quota pounds remaining on the marketing card for the receiving farm.

(b) *Transferring farm.* The operator of the transferring farm must certify, and the county committee determine, that a good faith effort was made to plant the effective poundage quota on the transferring farm. Such determinations shall be made in accordance with instructions issued by the Deputy Administrator and in accordance with this paragraph. A good faith effort will be deemed to exist if the producer on the transferring farm planted sufficient acreage to produce a quantity of peanuts equal to the sum of the farm's basic quota and the pounds for the crop year which were transferred to the farm during, or prior to, the end of the planting season. Such calculations shall be made using as the farm's yield the larger of the farm's current yield as established by the county ASC committee or the farm's highest actual yield for one of the preceding 3 crop years. However, unless the producer shall also certify, and the county committee determine, that the producer was not notified of the effective quota prior to the end of the planting season or within such time to make feasible adequate land preparation by the end of the planting season to produce the full effective quota, the producer must certify, and the county committee determine, that the acreage planted, as determined using the same yield formula, was sufficient to produce the full effective quota. The producer must also certify, and the county committee determine, that the farm's actual production of Segregation 1 peanuts was less than the amount of pounds effectively required to be planted by this paragraph, and that such lack of production from the planted peanuts was due to conditions beyond the producer's control. Provided that all other conditions are met, transfers of quota under this section shall be permitted from the transferring farm only to the extent that the production of Segregation 1 peanuts on the farm was less than the transferring farm's effective quota.

4. Section 729.396(c) is revised to read as follows:

§ 729.396 Peanuts on which penalties are not to be assessed.

* * * * *

(c) *Peanuts grown for experimental purposes.* No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes, which shall include breeder or foundation seed, on land owned or leased by a publicly-owned agricultural experiment station, which shall include a State-operated seed organization, and produced at public expense by employees of such entities, or peanuts, including those determined by the County Executive Director in accordance with instructions of the Deputy Administrator to be breeder or foundation seed peanuts, which are produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned agricultural experiment station, which shall include such State-operated seed organizations. However, in all cases, the exemption shall apply only if the peanuts do not enter the domestic market for food, for seed to produce food peanuts, or for any other use. Further, for the exemption to apply, directors of such publicly-owned agricultural experiment stations, including State-operated seed organizations, must furnish to the State ASCS Executive Director a list, by county, showing the following information for farms on which peanuts are grown for experimental purposes only:

(1) Name and address of the entity supplying the information;

(2) Name of the owner, and name of the operator, if different from the owner of the farm on which the peanuts are grown;

(3) The acreage of peanuts grown; and

(4) A signed statement that: (i) Such acreage of peanuts was grown on each such farm for experimental purposes [which purposes shall include breeder and foundation seed]; (ii) that such production was necessary for the State-operated program conducted for that purpose by the entity; and, (iii) that the peanuts were produced under the direction of representatives of the entity.

5. Section 729.428 is revised to read as follows:

§ 729.428 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the ASCS State Executive Director, or their designees, and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed necessary to enforce the peanut poundage quota program. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, automated records, electronic records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter which relates to the provisions of this subpart.

Signed at Washington, DC, on April 26, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–9641 Filed 4–29–88; 8:45 am]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1762

Standard Forms of Telecommunications Contracts

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding (1) Part 1762, Standard Forms of Telecommunications Contracts and (2) § 1762.01, List of Standard Forms of Telecommunications Contracts. The purpose of § 1762.01 is to provide a list of the current REA standard forms of contracts that REA prepared for use by telephone borrowers when obtaining engineering and architectural services, purchasing telephone materials and equipment, and constructing telephone facilities with REA loan funds. The listing also provides: (1) Purpose of each form, (2) the date of the current issue, and (3) the source where copies may be

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obtained. This action does not change any of REA's current requirements and procedures for the procurement of engineering and architectural services, the purchase of materials and equipment, and the construction of telephone facilities by REA telephone borrowers.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–8663.

The Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.) REA hereby amends 7 CFR Chapter XVII by adding: (1) Part 1762, Standard Forms of Telecommunications Contracts and (2) Section 1762.01, List of Standard Forms of Telecommunications Contracts. Copies of the contract forms are available from the sources indicated in the listing. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets; and therefore, has been determined to be "not major." These actions do not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 54317, December 1, 1983), this program is excluded from the scope of Executive Order, 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. REA has issued in this series a number of bulletins that set forth REA's requirements and procedures for the procurement of engineering and architectural services, the purchase and installation of such items as central office, carrier, lightwave, and radio equipment, and the construction of outside plant facilities by REA telephone borrowers. To assist the REA borrowers and promote efficiency, a listing of all the telecommunications contracts involved in these activities has been established showing the purpose of each contract, its current issue date, and the source where copies may be obtained.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding Part 1762 to read as follows:

PART 1762—STANDARD FORMS OF TELECOMMUNICATIONS CONTRACTS

§ 1762.01 List of standard forms of telecommunications contracts.

Following is a list of the current standard forms of contracts that REA prepared for use by telephone borrowers when procuring engineering and architectural services, purchasing telephone materials and equipment, and constructing telephone facilities with REA loan funds. Copies of the contract forms are available from the sources indicated in the listing. A notice of any change in these contract forms will be published in the **Federal Register.**

REA Form No.	Issue date	Title	Purpose	Source of copies
165	9–69	Architectural Services Contract—Telephone	Used to engage the services of an architect	REA[1]
168b	3–62	Contractor's Bond	Used in REA Form 515 when the contract exceeds $100,000.	Copy in the Form 515 Contract.
168c	4–79	Contractor's Bond	Used when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.	REA[1]
217	7–81	Postloan Engineering Service Contract, Telephone System and Construction.	Used to engage the services of a consulting engineer to perform the postloan engineering services.	REA[1]
238	4–72	Construction or Equipment Contract Amendment	Amending the Building Contract REA Form 257; Special Equipment Contracts, REA Forms 397 and 398; Telephone Equipment Contract (Installation Only), REA Form 400; Central Office Equipment Contracts, REA Forms 525 and 545.	REA[1]
242	11–58	Assignment of Engineering Service Contract	Used to transfer the responsibilities of completing the performance of the engineering service contract to another company.	REA[1]
245	11–75	Engineering Service Contract, Special Services—Telephone.	Used to engage a consulting engineer to perform special services.	REA[1]
257	3–73	Contract to Construct Buildings	Building construction	Supt. of Doc., GPO, Wash., DC 20402.[2]
257a	10–69	Contractor's Bond	Used in REA Form 257	Copy in the Form 257 Contract.
270	7–70	Equal Opportunity Addendum	Addendum to Construction and Equipment Contracts not having current equal opportunity provisions.	REA[1]
282	11–53	Subcontract	Subcontracting a portion of construction under a construction contract requires approval of the borrower, surety and REA prior to subcontracting.	REA[1]

REA Form No.	Issue date	Title	Purpose	Source of copies
307	4–80	Bid Bond	Bid proposals on REA Forms 257, 515, and 525 require either a bid bond or a certified check in an amount equal to ten percent of the maximum bid price.	Copies in each of the contracts.
397	12–67	Special Equipment Contract (Including Installation)	Purchase and installation of voice frequency repeaters, trunk carrier, subscriber carrier, microwave, mobile radio, line concentrators, and other items of electronic equipment associated with transmission.	REA[1]
397f	2–83	Contractor's Bond (Special Telephone Equipment)	Used in REA Form 397 when the contract exceeds $100,000.	Copy in the Form 397 Contract.
No form number	7–76	Addendum No. 1 to REA Form 397, Special Equipment Contract (Including Installation).	Incorporates the liquidated damages provision into the 397 contract.	REA[1]
398	11–62	Special Equipment Contract (Not Incl. Installation)	Purchase and deliver voice frequency repeaters, trunk carrier, subscriber carrier, microwave, mobile radio, line concentrators, and other items of electronic equipment associated with transmission.	REA[1]
399	8–82	Supplemental Agreement to Equipment Contract for Field Trial.	Used in any contract that contains material or equipment that requires a field trial and has primary status.	REA[1]
399a	8–82	Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operation).	Used in any contract that contains material or equipment that requires a field trial and is the secondary field trial category.	REA[1]
400	10–65	Telephone Equipment Contract (Installation Only)	Used where the contract will cover only the installation of equipment.	REA[1]
400a	10–65	Contractor's Bond (Telephone Equipment Contract—Installation Only).	Used in REA Form 400 when the contract exceeds $100,000.	Copy in the Form 400 Contract.
515	9–79	Telephone System Construction Contract (Labor and Material).	Telephone outside plant construction, including direct buried plant, conduit and manholes, underground cable, pole lines, aerial cable, service entrances and station protector.	Supt. of Doc., GPO, Wash., DC 20402.[2]
525	9–66	Central Office Equipment Contract (Incl. Installation)	Purchase and installation of central office switching equipment.	Supt. of Doc., GPO, Wash., DC 20402.[2]
525a	10–62	Contractor's Bond (Central Office Equipment)	Used in REA Form 525 when the contracts exceed $100,000.	Copy in the Form 525 Contract.
No form number	9–79	Addendum No. 1 to REA Form 525, Central Office Equipment Contract (Including Installation).	Incorporates the liquidated damages provision into the 525 contract.	REA[1]
526	9–66	Construction Contract Amendment	Amending the Telephone System Construction Contract (Labor and Material), REA Form 515.	REA[1]
545	9–66	Central Office Equipment Contract (Not Including Installation).	Purchase and deliver central office equipment	REA[1]
756	3–63	Telephone Line Extension Construction Contract (Labor and Materials).	Construction of system improvements and line extensions where scope of the project is not known.	REA[1]
787	8–83	Supplement A to Construction Contract REA Form 515.	Used in REA Form 515 when borrower furnishes any material for construction of the project.	REA[1]

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publications Office is (202) 382–8674.

[2] This contract form is for sale by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. REA Form 33, Order Blank for REA Contract Forms from the Government Printing Office should be used to order the publication. Follow the procedure under (1) to obtain copies of Form 33 from REA.

(7 U.S.C. 901 et seq.; 7 U.S.C. 1921 et seq.)

Dated: March 7, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-9860 Filed 4-29-88; 8:45 am]

BILLING CODE 3410-15-M

Economic Analysis Staff

7 CFR Part 3901

Amendment of Freedom of Information Act Implementing Regulations

AGENCY: Economic Analysis Staff, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Economic Analysis Staff's regulations implementing the Freedom of Information Act (FOIA) to conform to the Department of Agriculture's recently revised FOIA regulations (7 CFR Part 1, Subpart A) and to correct typographical errors. The Department's regulations were published in the **Federal Register** on December 31, 1987, at 52 FR 49393.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 447–7590.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 3901

Freedom of information.

Accordingly, Part 3901, Chapter XXXIX, of Title 7, Code of Federal Regulations, is amended as set forth below.

PART 3901—[AMENDED]

1. The authority citation for Part 3901 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

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§ 3901.1 [Amended]

2. Section 3901.1 is amended by removing the citation "§§ 1.1 through 1.19" and adding in lieu thereof the citation "§§ 1.1 through 1.23".

§ 3901.2 [Amended]

3. Section 3901.2 is amended by changing the citation "5 U.S.C. 52(a)(2)" to "5 U.S.C. 552(a)(2)".

§ 3901.3 [Amended]

4. Section 3901.3 is amended by removing the citation "§ 1.3(b)" and adding in lieu thereof the citation "§ 1.3(a)(3)"; and by removing the word "in" in its first appearance in the second sentence and adding in lieu thereof the word "is".

§ 3901.4 [Amended]

5. Section 3901.4 is amended by removing the citation "§ 1.7(a)" and adding in lieu thereof the citation "§ 1.8(a)".

Done at Washington, DC, this 19th day of April, 1988.

Keith J. Collins,

Director, Economic Analysis Staff.

[FR Doc. 88-9882 Filed 4-29-88; 8:45 am]

BILLING CODE 3410-18-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 15b

[Docket No. 30210-8053]

Involuntary Child and Spousal Support Allotments of NOAA Corps Officers

AGENCY: Office of the Secretary, Commerce (DOC).

ACTION: Final rule.

SUMMARY: This rule implements section 172 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). It provides specific guidance on processing involuntary child or child and spousal support allotments to states, courts, and other interested parties. The issuance (a) establishes Department of Commerce policy; (b) provides instructions on the service of notice; (c) defines the limitations or the amount of a support allotment; (d) prescribes procedures for officer notification and consultation; and (e) lists the designated official who will process involuntary support allotments. The final rule is substantially the same as the proposed rule published in the Federal Register March 21, 1983 (48 FR 11720). Changes are primarily administrative.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Moll, 202-377-5391.

SUPPLEMENTARY INFORMATION: Written comments were requested by May 20, 1983. One comment was received on October 24, 1986, and was considered in the final rule. The comment recommended an additional section describing procedures to follow in the event of an erroneous notice from an authorized person. Since circumstances, such as spouse remarriage, may alter support obligations, providing a mechanism for formal notification of change or error is reasonable and was added at § 15b.5(d)(1)(iii).

Executive Order 12291

DOC has determined that this rule is not a major rule for the purpose of E.O. 12291, because it is not likely to have an annual effect on the economy of $100 million or more, and therefore does not require a regulatory impact analysis.

Executive Order 12612

This rule does not contain policies with Federalism implications to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

The rule contains information collection requirements subject to the Paperwork Reduction Act. These requirements have been submitted to the Office of Management and Budget for approval. Comments may be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

Regulatory Flexibility Act of 1980

I certify that this rule will not have a significant economic impact on a substantial number of small entities because this rule affects individuals and individuals are not defined as small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601).

List of Subjects in 15 CFR Part 15b

Child support, Alimony, Wages, Government employee, NOAA Corps allotments.

Date: April 26, 1988.

Robert Brumley,

General Counsel.

Accordingly Subtitle A, 15 CFR is amended by adding a new Part 15b, reading as follows:

PART 15b—INVOLUNTARY CHILD AND SPOUSAL SUPPORT ALLOTMENTS OF NOAA CORPS OFFICERS

Sec.

15b.1 Purpose.
15b.2 Applicability and scope.
15b.3 Definitions.
15b.4 Policy.
15b.5 Procedures.

Authority: 37 U.S.C. 101, 706; 15 U.S.C. 1673; 42 U.S.C. 665.

§ 15b.1 Purpose.

This part provides implementing policies governing involuntary child or child and spousal support allotments for officers of the uniformed service of the National Oceanic and Atmospheric Administration (NOAA), and prescribes applicable procedures.

§ 15b.2 Applicability and scope.

This part applies to Commissioned Officers of the NOAA Corps on active duty.

§ 15b.3 Definitions.

(a) *Active duty.* Full-time duty in the NOAA Corps.

(b) *Authorized person.* Any agent or attorney of any state having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651-664), who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under the state plan, any official of a political subdivision); and the court that has authority to issue an order against a member for the support and maintenance of a child or any agent of such court.

(c) *Child support.* Periodic payments for the support and maintenance of a child or children, subject to and in accordance with state or local law. This includes but is not limited to, payments to provide for health, education, recreation, and clothing or to meet other specific needs of such a child or children.

(d) *Designated official.* The official who is designated to receive notices of failure to make payments from an authorized person (as defined in paragraph (b) of this section). For the Department of Commerce this official is the Assistant General Counsel for Administration.

(e) *Notice.* A court order, letter, or similar documentation issued by an authorized person providing notification that a member has failed to make periodic support payments under a support order.

(f) *Spousal support.* Periodic payments for the support and maintenance of a spouse or former spouse, in accordance with state and local law. It includes, but is not limited to, separate maintenance, alimony while litigation continues, and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(g) *Support order.* Any order for the support of any person issued by a court of competent jurisdiction or by administrative procedures established under state law that affords substantial due process and is subject to judicial review. A court of competent jurisdiction includes: (1) Indian tribal courts within any state, territory, or possession of the United States and the District of Columbia; and (2) a court in any foreign country with which the United States has entered into an agreement that requires the United States to honor the notice.

§ 15b.4 Policy.

(a) It is the policy of the Department of Commerce to require Commissioned Officers of the NOAA Corps on active duty to make involuntary allotments from pay and allowances as payment of child, or child and spousal, support payments when the officer has failed to make periodic payments under a support order in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person to the designated official. Such notice shall specify the name and address of the person to whom the allotment is payable. The amount of the allotment shall be the amount necessary to comply with the support order. If requested, the allotment may include arrearages as well as amounts for current support, except that the amount of the allotment, together with any other amounts withheld for support from the officer as a percentage of pay, shall not exceed the limits prescribed in section 303 (b) and (c) of the Consumer Credit Protection Act (15 U.S.C. 1673). An allotment under this Part shall be adjusted or discontinued upon notice from an authorized person.

(b) Notwithstanding the above, no action shall be taken to require an allotment from the pay and allowances of any officer until such officer has had a consultation with an attorney from the Office of the Assistant General Counsel for Administration, in person, to discuss the legal and other factors involved with respect to the officer's support obligation and his/her failure to make payments. Where it has not been possible, despite continuing good faith efforts to arrange such a consultation, the allotment shall start the first pay period beginning after 30 days have elapsed since the notice required in paragraph (d)(1) of § 15b. is given to the affected officer.

§ 15b.5 Procedures.

(a) *Service of notice* (1) An authorized person shall send to the designated official a signed notice that includes:

(i) A statement that delinquent support payments equal or exceed the amount of support payable for 2 months under a support order, and a request that an allotment be initiated pursuant to 42 U.S.C. 665.

(ii) A certified copy of the support order.

(iii) The amount of the monthly support payment. Such amount may include arrearages, if a support order specifies the payment of such arrearages. The notice shall indicate how much of the amount payable shall be applied toward liquidation of the arrearages.

(iv) Sufficient information identifying the officer to enable processing by the designated official. The following information is requested:

(A) Full name;

(B) Social Security Number;

(C) Date of birth; and

(D) Duty station location.

(v) The full name and address of the allottee. The allottee shall be an authorized person, the authorized person's designee, or the recipient named in the support order.

(vi) Any limitations on the duration of the support allotment.

(vii) A certificate that the official sending the notice is an authorized person.

(viii) A statement that delinquent support payments are more than 12 weeks in arrears, if appropriate.

(2) The notice shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate designated official, who shall note the date and time of receipt on the notice.

(3) The notice is effective when it is received in the office of the designated official.

(4) When the information submitted is not sufficient to identify the officer, the notice shall be returned directly to the authorized person with an explanation of the deficiency. However, prior to returning the notice if there is sufficient time, an attempt should be made to inform the authorized person who caused the notice to be served, that it will not be honored unless adequate information is supplied.

(5) Upon receipt of effective notice of delinquent support payments, together with all required supplementary documents and information, the designated official shall identify the officer from whom moneys are due and payable. The allotment shall be established in the amount necessary to comply with the support order and to liquidate arrearages if provided by a support order when the maximum amount to be allotted under this provision, together with any other moneys withheld for support from the officer, does not exceed:

(i) 50 percent of the officer's disposable earnings for any month where the officer asserts by affidavit or other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than a party in the support order. When the officer submits evidence, copies shall be sent to the authorized person, together with notification that the officer's support claim will be honored.

If the support claim is contested by the authorized person, that authorized person may refer this matter to the appropriate court or other authority for resolution.

(ii) 60 percent of the officer's disposable earnings for any month where the officer fails to assert by affidavit or other acceptable evidence that he/she is supporting a spouse and/or dependent child.

(iii) Regardless of the limitations above, an additional 5 percent of the officer's disposable earnings shall be withheld when it is stated in the notice that the officer is in arrears in an amount equivalent to 12 or more weeks' support.

(b) *Disposable earnings.*

The following moneys are subject to inclusion in computation of the officer's disposable earnings:

(1) Basic pay.

(2) Special pay (including enlistment and reenlistment bonuses).

(3) Accrued leave payments (basic pay portions only).

(4) Aviation career incentive pay.

(5) Incentive pay for Hazardous Duty.

(6) Readjustment pay.

(7) Diving pay.

(8) Sea pay.

(9) Severance pay (including disability severance pay).

(10) Retired pay (including disability retired pay).

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(c) *Exclusions.* In determining the amount of any moneys due from or payable by the United States to any individual, there shall be excluded amounts which are:

(1) Owed by the officer to the United States.

(2) Required by law to be deducted from the remuneration or other payment involved, including, but not limited to:

(i) Amounts withheld from benefits payable under Title II of the Social Security Act where the withholding is required by law.

(ii) Federal employment taxes.

(3) Properly withheld for federal and state income tax purposes if the withholding of the amounts is authorized by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of Title 26 of the United States Code may be permitted only when the officer presents evidence of a tax obligation which supports the additional withholding.

(4) Deducted for servicemen's Group Life Insurance coverage.

(5) Advances of pay that may be due and payable by the officer at some future date.

(d) *Officer notification.* (1) As soon as possible, but not later than 15 calendar days after the date of receipt of notice, the designated official shall send to the officer, at his/her duty station or last known address, written notice:

(i) That notice has been received from an authorized person, including a copy of the documents submitted;

(ii) Of the maximum limitations set forth, with a request that the officer submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(iii) That the officer may submit supporting affidavits or other documentation as evidence that the information contained in the notice is in error;

(iv) That by submitting supporting affidavits or other necessary documentation, the officer consents to the disclosure of such information to the party requesting the support allotment;

(v) Of the amount or percentage that will be deducted if the officer fails to submit the documentation necessary to enable the designated official to respond to the notice within the prescribed time limits;

(vi) That legal counsel will be provided by the Office of the Assistant General Counsel for Administration; and

(vii) Of the date that the allotment is scheduled to begin.

(2) The officer shall be provided with the following:

(i) A consultation in person with an attorney from the Office of the Assistant General Counsel for Administration, to discuss the legal and other factors involved with the officer's support obligation and his/her failures to make payment.

(ii) Copies of any other documents submitted with the notice.

(3) The Office of the Assistant General Counsel for Administration will make every effort to see that the officer receives a consultation concerning the support obligation and the consequences of failure to make payments within 30 days of the notice required in paragraph (d)(1). In the event such consultation is not possible, despite continuing good faith efforts to arrange a consultation, no action shall be taken to require an allotment from the pay and allowances of any NOAA Corps Officer until 30 days have elapsed after the notice described in paragraph (d)(1) is given to the affected officer.

(4) If, within 30 days of the date of the notice, the officer has furnished the designated official affidavits or other documentation showing the information in the notice to be in error, the designated official shall consider the officer's response. The designated official may return to the authorized person, without action, the notice for a statutorily required support allotment together with the member's affidavit and other documentation, if the member submits substantial proof of error, such as:

(i) The support payments are not delinquent.

(ii) The underlying support order in the notice has been amended, superseded, or set aside.

(e) *Absence of funds.* (1) When notice is served and the identified officer is found not to be entitled to moneys due from or payable by NOAA, the designated official shall return the notice to the authorized person, and advise that no moneys are due from or payable by NOAA to the named individual.

(2) Where it appears that moneys are only temporarily exhausted or otherwise unavailable, the authorized person shall be fully advised as to why, and for how long, the money will be unavailable.

(3) In instances where the officer separates from active duty service, the authorized person shall be informed by the Office of Commissioned Personnel, NOAA Corps that the allotment is discontinued.

(4) Payment of statutorily required allotments shall be enforced over other voluntary deductions and allotments when the gross amount of pay and allowances is not sufficient to permit all authorized deductions and collections.

(f) *Allotment of funds.* (1) The authorized person or allottee shall notify the designated official promptly if the operative court order upon which the allotment is based is vacated, modified, or set aside. The designated official shall also be notified of any events affecting the allottee's eligibility to receive the allotment, such as the former spouse's remarriage, if a part of the payment is for spousal support, and notice of a change in eligibility for child support payments under circumstances of death, emancipation, adoption, or attainment of majority of a child whose support is provided through the allotment.

(2) An allotment established under this Directive shall be adjusted or discontinued upon notice from the authorized person.

(3) Neither the Department of Commerce nor any officer or employee thereof, shall be liable for any payment made from moneys due from, or payable by, the Department of Commerce to any individuals pursuant to notice regular on its face, if such payment is made in accordance with this Part. If a designated official receives notice based on support which, on its face, appears to conform to the law of the jurisdiction from which it was issued, the designated official shall not be required to ascertain whether the authority that issued the orde had obtained personal jurisdiction over the member.

(4) *Effective date of allotment.* The allotment shall start with the first pay period beginning after the officer has had a consultation with an attorney from the Office of the Assistant General Counsel for Administration but not later than the first pay period beginning after 30 days have elapsed since the notice required in paragraph (d)(1) of this section is given to the affected officer. The Department of Commerce shall not be required to vary its normal NOAA Corps allotment payment cycle to comply with the notice.

(g) *Designated official.* Notice should be sent to: The Assistant General Counsel for Administration, Office of the General Counsel, U.S. Department of Commerce, Washington, DC 20230, (202) 377-5367.

[FR Doc. 88-9591 Filed 4-29-88; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3, D&C Red No. 33, and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listings of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs, the lakes of FD&C Red No. 3 for use in coloring food and ingested drugs, and D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date for the provisional listing of these color additives will be July 1, 1988. This postponement will provide additional time for FDA to complete its evaluation of the information on FD&C Red No. 3, and to prepare appropriate Federal Register documents for FD&C Red No. 3, D&C Red No. 33, and D&C Red No. 36.

EFFECTIVE DATE: Effective May 2, 1988, the new closing date for FD&C Red No. 3 and its lakes, D&C Red No. 33, and D&C Red No. 36 will be July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

FD&C Red No. 3

FDA established the current closing date of May 2, 1988, by a rule published in the Federal Register of November 3, 1987 (52 FR 42096). At that time, FDA postponed the closing date to provide time for the agency to (1) complete its review of the report of the scientific review panel, (2) consider the impact, if any, of the recent decision in *Public Citizen* v. *Young*, 831 F.2d 1108 (D.C. 1987), and (3) develop and issue an appropriate Federal Register document.

Because of the complexity of the issues involved in the evaluation of the data for FD&C Red No. 3, the agency previously concluded that the closing date for the provisional listing of FD&C Red No. 3 should be extended until May 2, 1988. (For further discussion of the issues concerning FD&C Red No. 3 see 50 FR 26377 at 26379; June 26, 1985, and 50 FR 35783 at 35786; September 4, 1985.) Additional time is now needed for the agency to complete its evaluation of the safety of FD&C Red No. 3. In addition, the extension of time will be used to complete the evaluation of the data submitted in response to the request for usage information on FD&C Red No. 3 which published in the Federal Register of November 19, 1987 (52 FR 44485) and December 21, 1987 (52 FR 48328). For these reasons, the agency believes it is reasonable to postpone the closing date for FD&C Red No. 3 until July 1, 1988. The extension will also permit time for the development and issuance of an appropriate Federal Register document.

D&C Red No. 33 and D&C Red No. 36

FDA established the current closing date of May 3, 1988, for D&C Red No. 33 and D&C Red No. 36, by a rule published in the Federal Register of March 4, 1988 (53 FR 6983). At that time, FDA postponed the closing date to (1) consider the impact, if any, of the recent decision in *Public Citizen* v. *Young*, 831 F.2d 1108 (D.C. 1987), and (2) provide time for the agency to prepare Federal Register documents that would explain the basis for the agency's decisions concerning the conditions under which these color additives could be safely used.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until July 1, 1988, to provide time for the preparation and publication of appropriate Federal Register documents. The agency intends to publish these documents as soon as possible.

Conclusions

The agency has considered what, if any, effect this extension would have on the public health. FDA has concluded that there is no basis to believe that a 2-month extension would present a hazard to public health. This extension is thus consistent with *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982). Because of the shortness of time until the May 2, 1988, and May 3, 1988, closing dates, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of May 2, 1988. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective May 2, 1988.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the tables of paragraph (a) for the entry "FD&C Red No. 3," and of paragraph (b) for the entries "D&C Red No. 33" and "D&C Red No. 36" by revising the closing date to read "July 1, 1988."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text in paragraph (d), by revising the closing date for the entries "FD&C Red No. 3," "D&C Red No. 33" and "D&C Red No. 36" to read July 1, 1988.

Dated: April 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-9614 Filed 4-29-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-88-1377; FR-2415]

Comprehensive Improvement Assistance Program; Multi-Stage Funding

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

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SUMMARY: This rule amends Part 968, governing the Comprehensive Improvement Assistance Program (CIAP), usually funded in one stage, to permit multi-stage funding of projects on an exception basis. The rule currently provides that funding may exceed one stage on an exception basis, but funding is limited to two stages.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW. 20410–5000, telephone (202) 755–1800. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background

The statutory provision authorizing the Comprehensive Improvement Assistance Program, section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437*l*), contains various requirements concerning the process of assessing the improvements needed and developing a plan for making the necessary improvements and replacements, but it does not contain any requirements concerning the number of stages in which improvements are to be funded. Therefore, the Secretary is authorized under section 14(j) to handle such an issue by regulation.

The plans required under the statute are five-year plans, which are revised each year to cover the next five-year period. The maximum length of time for completion of the comprehensive modernization for a project under the current rule is five years, regardless of whether it is funded in one stage, or on an exception basis, in two stages. At the time initial funding is approved, the total amount required for the entire project is estimated and the first increment is approved. The additional increment of funding is approved in a subsequent year if the PHA complies with all HUD requirements and funding is available.

Changes to the Rule

The current rule, in § 968.5(g), authorizes one-stage comprehensive modernization funding as the general rule. It requires two-stage funding for Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), that lack modernization capability, i.e., that have received approval for the use of funds which have not been committed for modernization work in more than three years, where HUD has determined that the failure to commit funds is due to reasons within the PHA's control. The current rule also permits two-stage funding for projects of such magnitude that the HUD office lacks sufficient funding in a particular year for the entire project and for projects of PHAs that lack management capability.

However, the Department has determined that some comprehensive modernization programs for large projects are so complex and costly that more than two stages are needed because a particular HUD office lacks sufficient funding over a two-stage period or the PHA is unable to administer the program in just two stages. In addition, in the case of comprehensive modernization being undertaken by PHAs that lack modernization or management capability, the first stage must be devoted to addressing the capability problems, and at least two stages may be needed thereafter. Therefore, this rule revises the provisions permitting "two-stage funding" (§ 968.5(g)(2)) to allow "multi-stage funding." Under this revised rule, a maximum of five stages will be permitted.

The general rule (in § 968.5(g)(1)) that funding be done in one stage will remain. Modernization is generally to be funded in one stage. In the revised rule, however, multi-stage funding will be permitted on an exception basis for any project for which the PHA and HUD decide it is appropriate. These changes to the rule make paragraph § 968.5(g)(3) of the current rule (that permits either one-stage funding or two-stage funding for lead-based paint testing and abatement activities) unnecessary, so that paragraph is omitted in this revision.

Because of the complex nature of comprehensive modernization, the regulatory provision requiring a project funded in one stage be to completed within three years has been found to be unrealistic. Similarly, the requirement that a project funded in two stages be completed over a period not to exceed five years has been found to be unworkable. Therefore, the provision concerning the implementation period, § 968.5(g)(3) of this revised rule, limits the length of the implementation period for the original funding stage, or each additional stage permitted as an exception, to not more than five years from the date on which that stage is funded. In the case of multi-stage funding, it is expected that the first stage and each additional stage permitted under an exception will be completed in less than five years, so that the total period of multi-stage comprehensive modernization will be minimized.

This rule also updates the OMB approval number contained in the section under revision.

Justification for Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, despite the exemption contained in 5 U.S.C. 553 from the requirement to solicit public comment for these rules. However, in accordance with 24 CFR Part 10, the Department may omit solicitation of public comment before publishing a final rule, in a particular case, if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, public comment is not required by statute. The change deals with a matter of technical procedure and permits greater flexibility in the operation of the program. In effect, it relieves a burden currently imposed by the rule that PHAs complete their modernization programs in a very short period. The change will be beneficial to PHAs and to HUD offices and will have no appreciable effect on members of the public. Consequently, the Department has determined that solicitation of public comment prior to making these changes effective is unnecessary.

Findings and Certifications

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as sequence number 1020 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13880), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities since its effect is merely to permit more flexibility in the way funding of the program is accomplished.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321–4347), since the determination of the number of funding stages for this program is an administrative matter.

List of Subjects in 24 CFR Part 968

Loan programs: housing and community development, Public housing, Grant programs: housing and community development, Indians, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 968 is amended as follows:

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

1. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 968.5 is amended by adding a new paragraph (c)(3) and by revising paragraph (g) to read as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

(c) *Preliminary application.* * * *

(3) An updated assessment of needs during the next five year period, when funds are requested in a subsequent year.

* * * * *

(g) *Comprehensive Modernization approach.* HUD will fund proposed Comprehensive Modernization in one stage, or, on an exception basis, in more than one stage—not to exceed a total of five stages. Bases for exception include a PHA's lack of modernization or management capability, as defined in § 968.3 (which necessitates multi-stage funding), or a total funding requirement for the Comprehensive Modernization of a large magnitude relative to the funding available to the HUD office.

(1) *One-stage funding.* Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, from funds for a single FFY, under one Final Application.

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved in the fewest number of stages that are feasible, over several different FFYs, with the total number of stages not to exceed five. The first stage will include funds for architectural/engineering work and/or a portion of the physical improvements. Management improvements may be included in the first stage to the extent they are eligible costs under § 968.4(b).

(i) *First stage.* At the first stage of funding, the Final Application shall include a comprehensive assessment of the project's physical and management improvement needs and a plan under paragraph (i)(2) of this section addressing only the work items to be completed during this stage. When approving the first stage, the HUD office will indicate the approximate balance of the funds required to complete the Comprehensive Modernization, but also will indicate that future funding will be subject to all of the following conditions: the availability of funds, satisfactory progress by the PHA in obligating first stage and subsequent stage funds, PHA submission of additional documents, and PHA compliance with HUD regulatory and statutory requirements.

(ii) *Subsequent stages.* Where the PHA is requesting funds for a subsequent stage of a multi-stage Comprehensive Modernization, the HUD office will determine whether the PHA has made satisfactory progress in obligating prior stage funds, whether it has submitted necessary additional documents, and whether it has complied with HUD regulatory and statutory requirements. If the PHA has not satisfied these conditions, the HUD office will not approve that subsequent stage of funding at this time. The PHA submission for any subsequent stage should not duplicate items previously submitted.

(3) *Implementation.* After the Final Application for each stage is approved, the PHA and the HUD office shall agree on an implementation period that is appropriate for that funding stage, not to exceed five years for any stage from the date on which that stage is first funded.

* * * * *

§ 968.5 [Amended]

3. The first parenthetical OMB number statement following paragraph (j) of § 968.5 is amended by removing the numbers "2502–0218" and "2502–0208", and adding in their places the numbers "2577–0048" and "2577–0044", respectively.

Dated: March 24, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–9642 Filed 4–29–88; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 306

[Department of the Treasury Circular No. 300, Fourth Rev.]

General Regulations Governing U.S. Securities

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Department of the Treasury's general regulations governing U.S. securities, i.e., 31 CFR Part 306, as they apply to Treasury bonds and notes issued prior to August 1986 and currently held in bearer or registered forms, to permit the holders or owners thereof, from time to time, and under such terms and conditions as the Secretary deems appropriate, to request the conversion of their securities to book-entry form to be held in the TREASURY DIRECT Book-entry Securities System. It also allows book-entry notes and bonds issued prior to August 1986 and held under the provisions of Subpart O of 31 CFR Part 306, sometimes referred to as the commercial book-entry system, to be transferred to and held under the TREASURY DIRECT system. Securities that are held in TREASURY DIRECT will be governed by Subpart C and other applicable portions of 31 CFR Part 357.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Logue, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt (202) 447–0859.

SUPPLEMENTARY INFORMATION: In August 1986, the Department of the Treasury ceased issuing new Treasury bonds and notes in definitive (certificated) form, offering them thereafter only in book-entry form. For bonds and notes issued after August 1, 1986, investors desiring a direct relationship with the Treasury Department may elect to have their book-entry securities held in the TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT). Treasury bonds and notes held in TREASURY DIRECT are

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governed by the applicable provisions of the Department of the Treasury Circular, Public Debt Series No. 2–86 (31 CFR Part 357). Following the establishment of TREASURY DIRECT, the Department, as well as Federal Reserve Banks, acting as fiscal agent of the Department, have been asked from time to time whether TREASURY DIRECT would be made available for bonds and notes issued prior to August 1, 1986, held either in definitive form or in the commercial book-entry system, now referred to as Treasury/Reserve Automated Debt Entry System ("TRADES"). The TREASURY DIRECT system offers investors a number of beneficial terms and conditions, including the convenience and safety of a direct deposit system for interest and redemption payments.

In response to these inquiries, the Department has decided to amend Part 306 to allow investors the opportunity to convert their definitive bonds and notes to book-entry holdings in TREASURY DIRECT, as well as to allow holders of like securities held in book-entry form under Subpart O of Part 306 to transfer them to TREASURY DIRECT. In order to accomplish the conversions and transfers in an orderly manner, and to avoid taxing TREASURY DIRECT's capacity, eligible issues will be identified in notices published in the **Federal Register**. Certain issues with a limited period of time remaining to maturity may not be made eligible.

Section 306.23, which will be newly added to Part 306, provides for notice by publication in the **Federal Register** of those issues eligible to be held in TREASURY DIRECT, and the period of time during which requests for conversion or transfer will be accepted. It also provides that an account in TREASURY DIRECT must have been established before, or coincidental with, the conversion. The rule also provides that securities held in TREASURY DIRECT will be governed by the TREASURY DIRECT regulations, i.e., Part 357, and that the provisions of Part 306 would have no further application to such securities so long as they are held in TREASURY DIRECT. A security in TREASURY DIRECT may be subsequently transferred to the commercial book-entry system, and upon such transfer, the regulations in Part 306 will re-apply.

The Department cautions investors to take special note of the fact that certain terms and conditions of securities held under the regulations set out in Part 306 differ from those that apply to book-entry securities held under Part 357. Particular note should be taken of the differences between the forms of registration available to individual investors, and the effect of such registration, under the two sets of regulations. Copies of Department of the Treasury Circular, Public Debt Series No. 2–86 (31 CFR Part 357) are available through the Federal Reserve Banks.

Special Analysis

Because this Final Rule relates to Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

It has been determined that the rule does not constitute a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to this rule.

List of Subjects in 31 CFR Part 306

Federal Reserve System, Government securities, TREASURY DIRECT Book-entry Securities System.

Accordingly, for the reasons set forth in the preamble, Part 306 is amended as follows:

PART 306—[AMENDED]

The authority citation for Part 306 is revised to read:

Authority: 31 U.S.C. Chapter 31, 5 U.S.C. 301.

2. Part 306 is amended by adding § 306.23 to read as follows:

§ 306.23 Securities eligible to be held in the TREASURY DIRECT Book-entry Securities System.

(a) *Eligible issues.* The Secretary will, from time to time, cause to be published in the **Federal Register** a notice describing those series of Treasury issues of bonds and notes issued before August 1, 1986, that will be eligible for conversion to the TREASURY DIRECT Book-entry Securities System. The notice shall specify the period during which requests for conversion will be accepted.

(b) *Establishment of TREASURY DIRECT account.* To convert a bearer or registered security to book-entry form to be held in TREASURY DIRECT, the owner(s) must establish at the time of conversion, or prior thereto, an account in TREASURY DIRECT in accordance with § 357.20 of Part 357. Similarly, to transfer to TREASURY DIRECT a security held in book-entry form under Subpart O of this Part, the owner(s) must establish at the time of transfer, or prior thereto, an account in TREASURY DIRECT in accordance with § 357.20 of Part 357.

(c) *Procedure for conversion of bearer security.* To convert a bearer security to TREASURY DIRECT, the owner(s) thereof must present it to a Federal Reserve Bank or the Department of the Treasury, accompanied by a request for conversion, which must include the information needed for establishing a TREASURY DIRECT account, unless such account has been previously established, and is identified by its number in the request.

(d) *Procedures for conversion of registered security.* To convert a registered security to TREASURY DIRECT, the owner(s) thereof must execute an assignment in accordance with Subpart F of this part. The assignment must be in substantially the following form: "To the Secretary of the Treasury for conversion to book-entry and deposit in TREASURY DIRECT,". The security should be accompanied by the information needed for establishing the TREASURY DIRECT account, or where an account has been previously established, the above assignment should be reworded to include the account number.

(e) *Procedure for transfer of book-entry security held under Subpart O.* To transfer a book-entry security held under Subpart O of this part, the owner(s) must arrange with the bank or other entity where the security is being held to transfer the same to TREASURY DIRECT. No such transfer will be accepted unless a TREASURY DIRECT account has previously been established and the number thereof is shown in the transfer request.

(f) *Terms and conditions of securities held in TREASURY DIRECT.* An eligible security held in TREASURY DIRECT shall be subject to Subpart C and other applicable portions of Part 357, and the provisions of Part 306 shall not apply thereto.

(g) *Re-conversion from TREASURY DIRECT to definitive form or to book-entry under Subpart O.* The owner(s) of a security converted or transferred to TREASURY DIRECT in the manner herein provided may, by executing an appropriate transaction request, transfer the book-entry security to a book-entry account held under the provisions of Subpart O of this part. Thereafter, to the extent that the security was originally eligible for such conversion the book-entry security held under Subpart O may be converted to one in registered or bearer form. Securities transferred from TREASURY DIRECT under this subsection shall be thereupon subject to the provisions of Part 306, and Part 357 shall no longer apply thereto.

Date: April 21, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–8613 Filed 4–29–88; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD8–87–09]

Inland Waterways Navigation Regulation—Lower Mississippi River Between Mile 311.5 AHP and Mile 340.0 AHP

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations in Title 33 Part 162.80(a) by extending the lower limit of the regulated area to mile 311.5 AHP. Completion of the new Auxiliary Control Structure necessitates extending the area where vessel mooring is prohibited. This regulation will assist in protecting the structure which is critical to flood control, navigation and water supplies.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: LTJG Richard J. Berard, Waterways Safety Officer, Coast Guard MSO New Orleans, Tidewater Building, 1440 Canal Street, Room 909, New Orleans, LA 70112, Telephone: (504) 589–4219.

SUPPLEMENTARY INFORMATION: On 16 September 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 34933). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LTJG Patrick A. Galvin, project officer, for Coast Guard MSO New Orleans, and LCDR James J. Vallone, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

There were no comments received on this proposal.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The only affect of the regulation will be to restrict vessels from mooring in an area upriver from the control structures. Normal navigation will not be impeded.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 162 of Title 33, Code of Federal Regulations, is amended as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 162.80(a) is revised to read as follows:

§ 162.80 Mississippi River below mouth of Ohio River, including South and Southwest passes.

(a) *Mooring on the Mississippi River between miles 311.5 AHP and 340.0 AHP.* (1) No vessel or craft shall moor along either bank of the Mississippi River between miles 311.5 AHP and mile 340.0 AHP except in case of an emergency, pursuant to an approved navigation permit, or as authorized by the District Commander. Vessels may be moored any place outside the navigation channel in this reach in case of an emergency and then for only the minimum time required to terminate the emergency. When so moored, all vessels shall be securely tied with bow and stern lines of sufficient strength and fastenings to withstand currents, winds, wave action, suction from passing vessels or any other forces which might cause the vessels to break their moorings. When vessels are so moored, a guard shall be on board at all times to ensure that proper signals are displayed and that the vessels are securely and adequately moored.

(2) Vessels may be moored any time at facilities constructed in accordance with an approved navigation permit or as authorized by the District Commander. When so moored, each vessel shall have sufficient fastenings to prevent the vessels from breaking loose by wind, current, wave action, suction from passing vessels or any other forces which might cause the vessel to break its mooring. The number of vessels in one fleet and the width of the fleet of vessels tied abreast shall not extend into the fairway or be greater than allowed under the permit.

(3) Mariners should report immediately by radio or fastest available means to the lockmaster at Old River Lock or to any government patrol or survey boat in the vicinity any emergency mooring or vessels drifting uncontrolled within the area described in paragraph (a)(1) of this section. It is the responsibility and duty of the master of a towing vessel releasing or mooring a vessel in this reach of the Mississippi River to report such action immediately.

* * * * *

Dated: April 22, 1988.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88–9424 Filed 4–29–88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

Suspension of Community Eligibility; New York

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to

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purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
New York	Addison, village of	Steuben	360762	May 17, 1988
Do.	Albion, village of	Orleans	360641	Do.
Do.	Amenia, town of	Dutchess	361332	Do.
Do.	Arkwright, town of	Chautauqua	361105	Do.
Do.	Ashford, town of	Cattaraugus	360062	Do.
Do.	Ashland, town of	Chemung	360284	Do.
Do.	Augusta, town of	Oneida	360517	Do.
Do.	Aurelius, town of	Cayuga	360103	Do.
Do.	Bath, village of	Steuben	360767	Do.
Do.	Baxter Estates, village of	Nassau	360498	Do.
Do.	Bayville, village of	....do	360988	Do.
Do.	Benton, town of	Yates	360955	Do.
Do.	Bethany, town of	Genesee	361138	Do.
Do.	Brighton, town of	Monroe	360410	Do.
Do.	Brockport, village of	....do	360411	Do.
Do.	Buchanan, village of	Westchester	361534	Do.
Do.	Cairo, town of	Greene	360286	Do.
Do.	Canajoharie, town of	Montgomery	360442	Do.
Do.	Canajoharie, village of	....do	360443	Do.
Do.	Carlisle, town of	Schoharie	361193	Do.
Do.	Catskill, town of	Greene	361116	Do.
Do.	Catskill, village of	....do	360287	Do.
Do.	Cayuga, village of	Cayuga	360107	Do.
Do.	Cicero, town of	Onandaga	360572	Do.
Do.	Clermont, town of	Columbia	361315	Do.
Do.	Clifton Springs, village of	Ontario	361450	Do.
Do.	Cold Springs, village of	Putnam	360670	Do.
Do.	Cuba, town of	Allegany	361099	Do.
Do.	Cuyler, town of	Cortland	361366	Do.
Do.	Danesville, village of	Livingston	360383	Do.
Do.	Danby, town of	Tompkins	360845	Do.
Do.	Davenport, town of	Delaware	360192	Do.
Do.	Dayton, town of	Cattaraugus	360066	Do.
Do.	Delanson, village of	Schenectady	360737	Do.
Do.	De Ruyter, town of	Madison	361291	Do.
Do.	Dix, town of	Schuyler	360746	Do.
Do.	Dunkirk, city of	Chautauqua	360137	Do.

State	Community name	County	Community No.	Effective date
Do.	Durham, town of	Greene	360289	Do.
Do.	Earlville, village of	Chenango	360397	Do.
Do.	East Greenbush, town of	Rensselaer	361133	Do.
Do.	East Randolph, village of	Cattaraugus	360068	Do.
Do.	East Rochester, village of	Monroe	360414	Do.
Do.	Edmeston, town of	Otsego	361270	Do.
Do.	Elbridge, village of	Onandaga	360576	Do.
Do.	Ellery, town of	Chautauqua	361072	Do.
Do.	Esperance, village of	Schoharie	361542	Do.
Do.	Fenner, town of	Madison	360399	Do.
Do.	Forestville, village of	Chautauqua	361501	Do.
Do.	Fort Ann, town of	Washington	361231	Do.
Do.	Freetown, town of	Cortland	361325	Do.
Do.	Fremont, town of	Steuben	360821	Do.
Do.	Geddes, town of	Onandaga	360579	Do.
Do.	Genesee Falls, town of	Wyoming	361003	Do.
Do.	Genesee, town of	Livingston	360884	Do.
Do.	Genesee, village of	do	361452	Do.
Do.	Geneva, town of	Ontario	360600	Do.
Do.	Gloversville, city of	Fulton	360275	Do.
Do.	Greenburgh, town of	Westchester	360911	Do.
Do.	Harrison, town of	....do	360912	Do.
Do.	Hartsville, town of	Steuben	361602	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: April 26, 1988.

[FR Doc. 88-9619 Filed 4-29-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[FCC 88-160]

Commission Policy Regarding Terrain Shielding in the Evaluation of Television Translator, Television Booster and Low Power Television Applications

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This action establishes a limited Commission waiver policy regarding consideration of terrain shielding in the low power television service. This action is taken to permit the authorization of additional low power television, television translator, and television booster stations in areas of the country where terrain shielding is a significant factor.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson, Low Power Television Branch, FCC, Telephone (202) 632-3894.

SUPPLEMENTARY INFORMATION:

Policy Statement

Adopted: April 21, 1988.
Released: April 25, 1988.

By the Commission.

Introduction

1. The Commission herein revisits its policy regarding its treatment of the effects of terrain on propagation in the Low Power Television Service (LPTV). This action responds to our concern that some consideration of terrain shielding in the evaluation of television translator, television booster and LPTV applications is essential to the further authorization of service in many communities. Circumstances previously prohibiting any such consideration have changed. Accordingly, although we do not find that the public interest would be best served by incorporating considerations of terrain shielding into regular processing procedures at this time, the Commission will now grant waivers of its LPTV application acceptance standards concerning interference protection, when such requests are supported by either terrain studies or, alternatively, the assent to such grants by stations predicted to receive interference from proposed facilities, together with a less rigorous terrain showing. This *Policy Statement* sets forth general guidelines, on when we will consider terrain shielding requests, and provides general guidance for the submission of such requests.

Background

2. The Commission's experience and concerns with accounting for the effects of terrain on signal propagation in the assignment of television translator stations provide an understanding of both how it could impede the efficiency of application processing and why we must limit the applicability of its consideration at this time. During the years before the Low Power Television Service was created, interference protection studies on television translator applications depended largely on engineering judgment, where terrain shielding played a major role. In evaluating the likelihood of interference from proposed facilities to nearby stations, the Commission staff reviewed topographic maps and terrain profiles submitted by applicants. Decisions were sometimes made on the Basis of an assent by stations potentially affected by the grant of the application, with the understanding that the applicant would resolve any interference problems. These processing procedures were then feasible and worked effectively because the Commission dealt with relatively small backlogs of applications, the applications rarely were mutually exclusive, and most proposals were for service in areas of rugged terrain familiar to the applicants. Thousands of television translator stations were authorized in this manner and, generally, have operated without causing interference.

3. By the time the LPTV rules were adopted in 1982, the processing situation had changed drastically. The Commission then faced a backlog of more than 5,000 applications proposing translator and LPTV service throughout the country, and it was apparent that many of these applications were mutually exclusive. These circumstances prompted the Commission to conclude in the LPTV proceeding that it could no longer consider terrain shielding in the authorization process, where it stated in pertinent part:

> We believe that the overwhelming argument is presented by our experience with interim applications. It is far beyond our staff capacity to evaluate individually thousands

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of terrain shielding claims * * *. [*Low Power Television Report and Order*, 51 RR 2d 476, 495 (1982).]

There is no universally accepted method of predicting the effects of terrain shielding. It would be beyond the scope of this proceeding to adopt a general terrain correction factor, even if we had sufficient information to enable us to do so. Under these circumstances, any attempt to allow for terrain shielding would embroil us in disputes that may not be susceptible to resolution by accepted standards and would therefore frustrate our efforts to expedite grant of low power licenses. [*Reconsideration of LPTV Report and Order*, 53 RR 2d 1267, 1274 (1983).]

Since then, and for the same reasons, the Commission has repeatedly declined to consider terrain shielding in the evaluation of television translator and low power television applications. *See Tel Radio Communications Properties, Inc.* FCC 85–327, released June 27, 1985; *Kennebec Valley Television (Channel 3, Augusta, Maine)*, 60 RR 2d 104, 105 (1986) (and authorities cited therein); *Kennebec Valley Television (Channel 12, Rutland, Vermont)*, 60 RR 2d 107 (1986).

4. Efficient and systematic processing of the more than 30,000 applications filed in the service has necessitated strict adherence to our LPTV interference protection standards (47 CFR 74.705, 74.707 and 74.709). These standards, in effect, prohibit the overlap of particular field strength contours, where contour locations are predicted from station engineering parameters and the Commission's signal propagation curves (47 CFR 73.699). The standards in § 74.707 of the rules also define mutual exclusivity among pending applications. In order to verify compliance with the standards and to determine which applications are mutually exclusive, the Commission staff generally relies on computer routines that make thousands of calculations for each application studied. These routines compute antenna height above average terrain (HAAT) in pertinent directions and utilize HAAT in predictions of contour locations. The HAAT is the antenna height above the average terrain elevation between 3.2 to 16.1 kilometers (2–10 miles) from the antenna site. Except for HAAT, the effects of terrain cannot be incorporated into these routines until we adopt standard prediction methods, and we are not yet prepared to do so. Therefore, the evaluation of terrain shielding claims in LPTV application studies would involve the use of nonroutine, and possibly lengthy, engineering analysis.

5. Deviation from normal processing procedures delays the final disposition of an application. The adverse impact on expeditious processing is magnified when groups of mutually exclusive applications are involved, since delays in the processing of one application in the group, delay action on the others. Until recently, the majority of the applications filed in the service have been mutually exclusive with other applications proposing operation in the same or nearby communities. In many cases, those applications, in turn, have been mutually exclusive with yet other applications, and so on. In this manner, hundreds of applications have been linked in "daisy chains" involving many channels and communities spread over distances of hundreds of miles. Even under normal procedures, the processing of such groups of applications is very time consuming. For instance, whenever one or more defective applications in the group is dismissed, a lottery involving the group cannot take place until the time has passed for appeals of the staff action and all appeals have been resolved. Had terrain shielding been involved in determinations of mutual exclusivity, processing would have been brought to a near halt.

Discussion and Revised Policy

6. Despite the positive effect it has had on our ability to process applications expeditiously, we are mindful that our policy on terrain shielding has frustrated well-intentioned efforts to obtain additional or improved television reception, particularly in western mountainous areas where service is provided primarily by translators. We are aware that without consideration of terrain, it has been difficult to file acceptable applications in some areas. Many applications have been rejected because of predicted interference to a nearby station where, in reality, terrain obstructions may have prevented interference. Because of these concerns and our wish to authorize desired service wherever possible, we have looked toward the time when changing circumstances would permit us to pursue a more flexible terrain policy.

7. Circumstances have changed considerably since we received 25,000 LPTV and translator applications in March of 1984. First, the application backlog, which reached a peak of 37,000, has been reduced to fewer than 4,000 applications. Second, we have recently observed favorable changes in application filing patterns. Last summer, following a three-year filing freeze, we opened the first nationwide application "filing window," in which only 1,350 applications were filed. *Report and Order in the Low Power Television/ Television Translator Service (Filing Window II)*, 2 FCC Rcd 1278 (1987). Significantly, nearly 500 of these applications were not mutually exclusive with other applications, and more than 400 of these have already been granted. Moreover, a relatively low percentage of the window applications are mutually exclusive, and these are not configured in long and complicated daisy chains. These factors are enabling much quicker authorization of service and are permitting actions to be taken on many applications without delaying the processing of others. While we wish to be cautious, it appears that our recently revised LPTV window procedures and the institution of filing fees have resulted in a reduction in incoming applications. Finally, the implementation of the LPTV service is now well underway. More than 3,000 construction permits have been granted since the service began, and the number of operating LPTV stations has been increasing steadily.

8. As a result of these changes, the Commission can give limited consideration to terrain shielding in the LPTV service. We cannot, at this time, propose standards for incorporating shielding into regular processing procedures. However, we will consider, on a case-by-case basis, requests for waiver of §§ 74.705 and 74.707 of our application acceptance standards, on the grounds of terrain shielding. Waivers must be secured in cases where proposed new or changed facilities would be predicted to cause prohibited interference. In order to be considered, waiver requests must be supported by a demonstration that the proposed facility would not be expected to interfere at the protected contour of all potentially affected stations, existing and proposed, because of the intervening terrain. An applicant may also submit the written assent to the grant of the waiver by all licensees, permittees and applicants of potentially affected stations. If the necessary assent is obtained, the demonstration may be less rigorous than otherwise expected. Potentially affected stations will include authorized full-service television, low power television and television translator stations, and those proposed in earlier filed LPTV or translator applications that are cut-off from further competing applications. As further discussed in paras. 10 and 11, *infra*, the supporting documentation generally should include a graphic description of the terrain obstructions (terrain profiles). However, in cases where the assent of affected stations has been demonstrated, our determination to grant the waiver may rely less on terrain analysis.

9. At this time, we must limit the scope of terrain waivers because we are uncertain about the administrative resource impact of specialized manual studies, and because we want to avoid situations where lengthy analysis of certain applications delays the processing of other related applications significantly. We do not know how many terrain shielding claims will be submitted, nor how much time, on average, will be involved in evaluating each case. Accordingly, we will consider terrain shielding waivers only in connection with the acceptance of applications, i.e., whether television translator, booster or LPTV applications should be returned because of predicted interference to facilities previously proposed or authorized. We will not consider terrain shielding in determining mutual exclusivity among applications. We will further limit its consideration to those applications which, under normal processing standards and methods, are not found to be mutually exclusive with one or more applications. Requests for waivers and supporting documentation must be submitted with applications when filed. Because this is an acceptability criterion, we will not consider terrain-related issues raised for the first time in petitions for reconsideration or applications for review of staff actions. Our revised policy on terrain shielding will apply only to applications filed on or after the date on which it takes effect. Finally, our computer data base is not able to reflect any approved waivers of the acceptance standards based on terrain shielding. Therefore, applicants seeking waivers based on terrain shielding must make the required showing in each case and cannot incorporate by reference any earlier waiver.

10. We next discuss our general disposition on terrain-waiver submissions, including the information the Commission will need from applicants to evaluate claims of noninterference. The expressed assent to the grant of the waiver by all potentially affected stations would weigh heavily in our determinations and would obviate total reliance on terrain studies and permit more expeditious handling. In that event, we will not expect applicants to provide detailed terrain profiles, although we will need some graphic depiction of the terrain in all cases. In assenting to a waiver, a potentially affected station licensee would merely concur that interference from a proposed facility would be unlikely, and it would not object to the operation of that facility, *provided* interference did not occur. We emphasize that we would never construe an "assent" as a surrender of a station's rights to protection from any actual interference which may subsequently arise. (Stations in the LPTV Service, including those for which terrain-related waivers are granted, will continue to be secondary to and must not interfere with the regular off-air reception of full-service television stations.) Upon grant of the construction permit, and provided that the engineering parameters of the facility have not changed and provided that it is not causing interference, assent, once given, cannot be withdrawn. We do not believe the public interest would be served by requiring a noninterfering LPTV station, for example, to discontinue operation simply because its new owner could not obtain the same assent afforded to the original owner.

11. Where the assent of a potentially affected station has not been obtained, a waiver request must be supported by a terrain study, from which it can be concluded that the proposed facility would not be likely to interfere at the authorized station's protected contour. We will not prescribe specific requirements for such showings. However, in order to conduct any meaningful evaluation, we will need from applicants accurate profiles of terrain elevations in the directions in which interference is predicted under our standards. Normally, interference is predicted along some arc of a station's protected contour. Applicants should submit a sufficient number of profiles depicting the terrain along signal propagation paths between the site of the proposed facility and the arc of predicted interference. Profiles may be drawn on rectangular coordinate paper, where the horizontal axis represents distance in kilometers and the vertical axis represents elevations above sea level in meters. Each profile should include the following information: (1) Identification of the topographic map(s), including its source, from which elevations are taken, (2) an elevation point showing the proposed height of the antenna radiation center above sea level, (3) the azimuth of the terrain path, measured clockwise from True North, (4) identification, including the call sign, of the protected station, and (5) a sufficient number of elevation points to give an accurate representation of the terrain between the proposed site and the protected contour. Generally, points should be spaced at regular distances or terrain contour intervals. However, shorter intervals may be used to reflect abrupt changes in elevation. In addition to terrain profiles, applicants may provide quantitative engineering analysis, such as calculations of obstruction losses, to support claims of noninterference.

12. In evaluating terrain showings, the Commission will consider all information provided by applicants, and may find it necessary to request additional information, including the topographic maps from which terrain elevations were taken. Failure to provide the requested information in a timely manner may result in the dismissal of an application. The nature of our case-by-case evaluations will depend on the conditions surrounding each case, and may involve use of a variety of applicable engineering methods. Applicants, rather than the Commission staff, will bear the burden of supporting waiver requests. In no instance will we grant such a waiver where it would be apparent to us that interference would occur within the protected contour of an authorized station. Although LPTV, translator and booster stations generally are authorized on a noninterference basis, station authorizations granted with a terrain-related waiver will be explicitly conditioned on noninterference to all stations predicted to receive interference, without consideration of terrain shielding. This condition also will appear on any subsequent authorization resulting from the assignment or transfer of the facility to another party. This will provide clear notice that LPTV, translator and booster operators bear responsibility for eliminating such interference.

13. We have elected to proceed in this matter by policy statement, rather than by rule making, in order to expedite consideration of terrain shielding factors in our application process and to thereby accelerate the provision of additional service to the public. This procedural approach is both appropriate and permissible under the express provision of the Administrative Procedure Act (APA) exempting general statements of policy from rule making requirements. 5 U.S.C. 553(b)(3)(A). In this regard, we note that our action here simply describes the class of cases in which we will consider terrain shielding showings. It does not purport to establish the standards by which such showings will be evaluated or to determine the disposition of such cases in advance. On the contrary, it is clear from the policy statement that these decisional concerns will be addressed in the context of the particular facts presented in individual applications at the time the applications are processed.

These characteristics are consistent with those that the courts have considered significant in classifying an

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agency action as a general statement of policy for APA purposes. *See, e.g., Telecommunications Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986); *Pacific Gas and Electric Co. v. FPC*, 506 F.2d 33 (D.C. Cir. 1974).

Conclusion

14. In this *Policy Statement*, the Commission has relaxed its policy regarding consideration of terrain shielding in the LPTV service. Subject to certain limitations, we will waive our LPTV application acceptance standards whenever it can be made apparent to us that terrain shielding would provide adequate interference protection. Accordingly, we will grant waiver requests supported either by well-documented terrain showings or by the written assent of all potentially affected stations, together with less rigorous terrain showings. We are confident that our revised policy, resulting from changed processing circumstances, will provide opportunities for additional LPTV, translator and booster service in areas of the country where terrain shielding is a significant factor. We will observe the effect of this policy on application processing efficiency and the extent to which it permits the authorization of additional stations. If future circumstances should warrant, we will again revisit this policy and make appropriate adjustments.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-9858 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-331; RM-5867]

Radio Broadcasting Services; L'Anse, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 291C2 to L'Anse, Michigan, as that community's first broadcast service, in response to a petition filed by Aaron J. Coffee. Supporting comments were filed by the petitioner. Concurrence of the Canadian government has been obtained for the allotment of Channel 291C2 at L'Anse. The coordinates for this proposal are 46-45-18 and 88-27-12. With this action, this proceeding is terminated.

DATES: Effective June 9, 1988; the window period for filing applications will open on June 10, 1988, and close on July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-311, adopted March 28, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan is amended by adding Channel 291C2 at L'Anse.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9590 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-277; RM-5773]

Radio Broadcasting Services; St. Joseph, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 268A to St. Joseph, Tennessee, as that community's first local FM service. A site restriction of 9.2 kilometers (5.7 miles) northwest of the community is required. The coordinates are 35-06-36 and 87-33-13. With this action, this proceeding is terminated.

DATES: Effective June 6, 1988; The window period for filing applications will open on June 7, 1988, and close on July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-277, adopted March 25, 1988, and released April 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee, by adding Channel 268A to St. Joseph.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9588 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-290; RM-5787]

Radio Broadcasting Services; Rhinelander, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C1 for Channel 282C2 at Rhinelander, Wisconsin, and modifies the license of Station WRHN(FM) to reflect the higher class co-channel, at the request of Oneida Broadcasting Company. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-280, adopted March 29, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin, by removing Channel 282C2 and adding Channel 282C1 for Rhinelander.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9594 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 304, 306, 307, 313, 315, 330, 332, 333, and 352

Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48 CFR Chapter 3, to make various administrative and procedural changes. The major changes being made involve the revision of a subpart to address the appointment of contracting officers, the deletion of a subpart on cost accounting standards, the addition of a subpart on processing disputes and appeals, and the removal of ten contract clauses and provisions.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Procurement Analyst, Office of Procurement and Logistics Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to revise Subpart 301.6 to add coverage describing a uniform departmental process for appointing contracting officers.

The Department's contracting operations are conducted by its Operating Divisions (OPDIV's), and the Public Health Service's agencies and bureaus under a decentralized structure. Under this arrangement, authority to appoint contracting officers is currently delegated by the Secretary through the Assistant Secretary for Management and Budget to the heads of Operating Divisions and redelegated to various lower-tier officials. In the Social Security Administration, Health Care Financing Administration, the Office of the Secretary and some agencies of the Public Health Service (PHS), authority to appoint contracting officers is delegated to the principal official responsible for acquisition (PORA). In some agencies of the PHS, this authority is delegated to a bureau or institute head, although subject to the concurrence of the PORA.

The PORA has been established as a means of providing uniformity to the acquisition function while allowing the degree of organizational flexibility perceived to be necessary by those responsible for the conduct of program activities. The PORA is subordinate to the head of the contracting activity and is the professional acquisition official responsible for assuring that Federal and Departmental acquisition rules are adhered to. The PORA, for example, is the approval official for major acquisition actions of his/her agency and is the appointing official in several OPDIVs/agencies. Both the levels of expertise and the responsibility required of those filling the PORA positions makes them especially qualified to judge the qualification of those seeking or nominated to be contracting officers. This regulation confirms the PORA as the appointing official in those OPDIVs/agencies where they are currently delegated that responsibility and makes the PORA the appointing official in those agencies/bureaus where that authority currently lies elsewhere. It is consistent with the objectives of EO 12352 and its purpose of insuring a professional acquisition workforce.

This change should have no adverse impact on the operations of any agency and should be able to be implemented without difficulty. Nevertheless, should the change cause a serious problem in a specific instance, the Department will entertain a request for a waiver. Requests for such a waiver should be addressed to the Deputy Assistant Secretary for Procurement, Assistance, and Logistics and should stipulate the anticipated problem, its tangible effect on the conduct of a program, and the period for which a waiver is requested.

Subpart 330.70, Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction, is being removed from the HHSAR because the new Federal Acquisition Regulation (FAR) issuance of Federal Acquisition Circular 84-30 contains cost accounting standards coverage deemed sufficient to meet the needs of the Department.

Subpart 333.2, Disputes and Appeals, is being added to the HHSAR because it was determined that internal procedural guidance was needed so that contracting officers would know how to process claims and appeals arising from disputes under a contract.

Subpart 352.2, Texts of Provisions and Clauses, is being amended to remove a total of ten contract clauses and provisions which have been determined to be unnecessary. This action represents the continuing effort initiated by the Department to simplify the acquisition process.

Subpart 352.3, Provision and Clause Matrices, which contains seven sets of contract general provisions, is being amended to delete reference to those clauses being removed.

The remaining amendments concern raising dollar thresholds for certain internal administrative reviews and making internal procedural revisions.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 304, 306, 307, 313, 315, 330, 332, 333, and 352

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Dated: March 29, 1988.

Henry G. Kirchenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Parts 301, 304, 306, 307, 313, 315, 330, 332, 333, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

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PART 301—[AMENDED]

301.105 [Amended]

2. Section 301.105 is amended by removing the following references and control numbers:

HHSAR segment	OMB Control No.
• • • • •	
323.70	0990-0137
• • • • •	
352.237-71	0990-0132
352.242-70	0990-0131
• • • • •	
352.270-6	0990-0130
• • • • •	

3. Subpart 301.6 is revised to read as follows:

Subpart 301.6—Contracting Authority and Responsibility

Sec.
301.603 Selection, appointment, and termination of appointment.
301.603-1 General.
301.603-2 Selection.
301.603-3 Appointment.
301.603-4 Termination.
301.603-70 Delegation of contracting officer responsibilities.
301.670 Head of the contracting activity.
301.670-1 Responsibility.
301.670-2 Designation.
301.670-3 Redelegation.

Subpart 301.6—Contracting Authority and Responsibility

301.603 Selection, appointment, and termination of appointment.

301.603-1 General.

(a) The appointment and termination of appointment of contracting officers shall be made by the principal official responsible for acquisition (PORA). This authority is not delegable. The head of the contracting activity shall ensure that only the PORA is redelegated, and exercises, this authority.

(b) Only GS–1105 and 1106 and GS/GM–1101 and 1102 personnel shall be appointed as contracting officers (see 301.603–3(b)).

(c) The appointment of contracting officers shall be made at one of the four levels specified under the HHS Acquisition Certification Program (see 301.603–3(b)).

(d) An individual shall be appointed only in instances where a valid organizational need for a contracting officer can be demonstrated or a replacement position is to be filled. Factors to be considered in assessing the need for a contracting officer appointment include volume of actions, complexity of work, and structure of the organization.

301.603-2 Selection.

(a) When an organizational need for a contracting officer is determined or a replacement is required, an official (usually the prospective contracting officer's immediate supervisor) will nominate a contracting officer candidate. The nomination shall be accompanied by the candidate's current Standard Form (SF) 171, Personal Qualifications Statement, that contains all relevant information, to include that stated in FAR 1.603–2, a copy of the nominee's most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the current level of certification.

(b) The PORA shall review the submitted material to determine the candidate's ability to perform the contracting functions required to meet the organizational need. If the PORA requires additional information to make the decision, it shall be provided expeditiously by the nominating official.

301.603-3 Appointment.

(a) Contracting officer appointments shall become effective when the PORA signs the Standard Form 1402, Certificate of Appointment. SF 1402's shall be prepared and maintained in accordance with FAR 1.603–3.

(b) Appointments shall be made at one of the four levels established by the HHS Acquisition Certification Program. Therefore, the contracting officer candidate must meet the minimum eligibility requirements of certification for one of the four stated levels. The level will be determined by the organizational need or position being refilled (replacement). The four levels are as follows:

(1) *Level I—Purchasing Agent.* Mandatory for all personnel who have signature authority for small purchases (GS–1102, 1105, and 1106), including orders from GSA sources.

(2) *Level II—Acquisition Official.* Mandatory for those in the GS–1102 series. Sufficient for delegation of contracting officer authority to a maximum of $100,000.

(3) *Level III—Senior Acquisition Official.* Mandatory for those in the GS–1102 series for delegation of contracting officer authority above $100,000.

(4) *Level IV—Acquisition Manager.* Mandatory for preaward review and approval authority as specified in HHSAR Subpart 304.71.

(c) Changes to contracting officer appointments, either increasing or decreasing the warrant limitations, shall be made by the PORA. Changes must be made from one of the four certification levels to another, or within one of the certification levels, and must be implemented by the PORA's issuance of a new SF 1402 to replace the existing SF 1402.

(d) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the qualifications prescribed for one of the four certification levels. However, if it is essential to appoint a contracting officer who does not fully meet the certification qualifications, an interim appointment may be granted by the PORA. The PORA shall require as a condition of the interim appointment that all training or experience requirements be met within a six month time period. Usually, interim appointments shall not exceed six months. Failure to successfully complete the necessary training requirements or gain the experience within this time frame will result in termination of the appointment, unless the PORA determines that unusual circumstances prevented the attainment of either. In this instance, one additional six month interim appointment may be issued, but no more shall be allowed. The PORA shall fully document all interim appointment actions.

(e) The original SF 1402 shall be provided to the contracting officer, and a copy shall be retained by the PORA. Another copy of the SF 1402 along with the SF 171 material shall be forwarded to the servicing personnel office for inclusion in the individual's personnel file folder. Files on individuals should not be established by the PORA.

301.603-4 Termination.

Termination of contracting officer appointments shall be executed by the PORA in accordance with FAR 1.603–4.

301.603-70 Delegation of contracting officer responsibilities.

(a) Non-GS/GM–1101 or 1102 or GS–1105 or 1106 personnel shall only be delegated contracting officer responsibilities when determined necessary by a warranted contracting officer (holder of a valid SF 1402), and in accordance with this subsection. Personnel, such as a contracting officer's representative or an ordering officer, shall be delegated only the needed responsibilities by the warranted contracting officer in a written memorandum of delegation which clearly states any limitations on the delegation. Personnel who are not in the GS/GM–1101 or 1102 or GS–1105 or 1106 job series shall not be issued a SF 1402, Certificate of Appointment.

(b) Non-acquisition personnel who are delegated acquisition responsibilities shall be required to have the training, experience, and education requirements necessary for the responsibilities assigned. If, for example, responsibility is to be delegated for making small purchases, the training, education, and experience for Level I—Purchasing Agent, or its equivalent as determined by the PORA, shall be required.

301.670 Head of the contracting activity.

301.670-1 Responsibility.

The head of the contracting activity (HCA) is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

301.670-2 Designation.

Each OPDIV head and PHS agency head has been designated as HCA along with the following officials:

(a) Deputy Assistant Secretary for Procurement, Assistance and Logistics;

(b) Deputy Assistant Secretary for Administrative and Management Services, OS; and

(c) Each Regional Director.

301.670-3 Redelegation.

(a) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

PART 304—[AMENDED]

304.7005 [Amended]

4. Section 304.7005 is amended by removing the second sentence.

PART 306—[AMENDED]

5. Section 306.501 is amended by revising the entry for "SSA" to read as follows:

306.501 Requirement.

• • • • • •

SSA—Deputy Commissioner for Management.

• • • • • •

PART 307—[AMENDED]

307.105-2 [Amended]

6. Section 307.105–2(a)(3) is amended by removing "$100,000" and adding "$250,000".

PART 313—[AMENDED]

313.104 [Amended]

7. Section 313.104 is amended by redesignating paragraphs (h), (i), and (j) as paragraphs (i), (j), and (k), respectively.

PART 315—[AMENDED]

315.608-71 [Amended]

8. Section 315.608–71(a)(1) is amended by removing "$250,000" and adding "$300,000".

315.905-71 [Amended]

9. Section 315.905–71 is amended by removing the last sentence in paragraph (b).

315.905-73 [Amended]

10. Section 315.905–73 is amended by removing the phrase "(see Subpart 330.70)" in the last sentence of paragraph (b)(1).

315.905-74 [Amended]

11. Section 315.905–74 is amended by removing the phrase "(see Subpart 330.70)" from the last sentence.

315.7002 [Amended]

12. Section 315.7002(a) is amended by removing "$100,000" and adding "$25,000".

PART 330—[AMENDED]

330.70 [Removed]

13. Subpart 330.70 is removed.

PART 332—[AMENDED]

332.770 [Removed]

14. Section 332.770 is removed.

PART 333—[AMENDED]

15. Subpart 333.2 is added to read as follows:

Subpart 333.2—Disputes and Appeals

Sec.
333.203 Applicability.
333.209 Suspected fraudulent claims.
333.210 Contracting officer's authority.
333.211 Contracting officer's decision.
333.212 Contracting officer's duties upon appeal.
333.212-70 Formats.
333.213 Obligation to continue performance.
333.214 Contract clause.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.

(c) The Armed Services Board of Contract Appeals (ASBCA) has been designated by the Secretary as the authorized "Board" to hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The contracting officer shall submit any instance of a contractor's suspected fraudulent claim to the Office of the Inspector General for investigation.

333.210 Contracting officer's authority.

The contracting officer shall refer a proposed final decision to the Office of General Counsel, Business and Administrative Law Division (OGC–BAL), or the Regional Attorney in the HHS regional office servicing the region in which the contracting officer is located, for advice as to the legal sufficiency and format before sending the final decision to the contractor. The contracting officer shall provide OGC–BAL or the Regional Attorney with the pertinent documents with the submission of each proposed final decision.

333.211 Contracting officer's decision.

(a)(2) See 333.210.

(a)(4)(v) When using the paragraph in FAR 33.211(a)(4)(v), the contracting officer shall insert the words "Armed Services" before each mention of the term "Board of Contract Appeals".

(c)(2) The contracting officer does not have jurisdiction to consider a claim from the contractor over $50,000, unless that claim has been certified.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC–BAL or the cognizant Regional Attorney with the supplement to the contract file

which supports the recommended correction or amendment.

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the "Rules of the Armed Services Board of Contract Appeals", or by the rules established by the U.S. Claims Court, as appropriate.

(b) OGC–BAL or the cognizant Regional Attorney is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer, acting under the guidance of the Government Trial Attorney, shall be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and the hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Claims Court, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC–BAL.

333.212–70 Formats.

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference:

(Docket No.)

(Name)

Recorder, Armed Services Board of Contracts Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, Virginia 22041.

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No._____ with the (name of contractor), in accordance with the procedures under Rule 4.

The Government Trial Attorney for this case is (Insert Division of Business and Administrative Law, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201, or Regional Attorney and office address, as appropriate).

The request for payment of charges resulting from the processing of this appeal should be addressed to: (Insert name and address of cognizant finance office.)

Sincerely yours,

Contracting Officer

Enclosures

(b) The following format is suggested for use in notifying the appellant that the appeal file was submitted to ASBCA:

(Contractor Address)

Dear _____:

An appeal file has been compiled relative to the appeal under Contract No. _____, and has been submitted to the Armed Services Board of Contract Appeals (ASBCA). The enclosed duplicate of the appeal file is identical to that submitted to the Board, except that contract documents which you already have may have been excluded.

You may furnish or suggest any additional information deemed pertinent to the appeal to the Armed Services Board of Contract Appeals according to their rules.

The ASBCA will provide you with further information concerning this appeal.

Sincerely yours,

Contracting Officer

Enclosure

333.213 Obligation to continue performance.

(a) The Disputes clause at FAR 52.233–1 shall be used without the use of Alternate I. However, if the contracting officer determines that the Government's interest would be better served by use of paragraph (h) in Alternate I, he/she must request approval for its use from the Director, Office of Procurement and Logistics Policy (through normal acquisition channels).

333.214 Contract clause.

The clause at FAR 52.233–1 shall be used in all circumstances except as indicated in 333.213.

PART 352—[AMENDED]

352.202–1 [Amended]

16. In § 352.202–1 the introductory text is amended by adding the word "all" between the words "in" and "solicitations" and by removing the term "fixed-price" between the words "resultant" and "contracts".

352.208–70 [Removed]

17. Section 352.208–70 is removed.

352.215–70 [Removed]

18. Section 352.215–70 is removed.

352.225–12 [Removed]

19. Section 352.225–12 is removed.

352.232–72 [Removed]

20. Section 352.232–72 is removed.

352.237–71 [Removed]

21. Section 352.237–71 is removed.

352.242–70 [Removed]

22. Section 352.242–70 is removed.

352.243–70 [Removed]

23. Section 352.243–70 is removed.

352.247–70 [Removed]

24. Section 352.247–70 is removed.

352.270–6 [Removed]

25. Section 352.270–6 is removed.

352.270–8 [Removed]

26. Section 352.270–8 is removed.

352.370 [Amended]

27. Section 352.370 is amended to remove, in each set of contract general provisions, reference to foregoing contract clauses which are being removed. The clause references being removed are located in Item II, Department of Health and Human Service Acquisition Regulation (HHSAR) (48 CFR Chapter 3), of each set of contract general provisions, as follows:

a. In the General Provisions for a Cost-Plus-A-Fixed-Fee Contract, in Item II, entire entry for numbers 2, 3, 7, 8, 10, 12, and 14 are removed, and the remaining clauses are renumbered in numerical sequence.

b. In the General Provisions for a Negotiated Cost-Reimbursement Contract with Nonprofit Institutions Other Than Educational Institutions, in Item II, the entire entry for numbers 2, 5, 9, 10, 12, 15, and 17 are removed, and the remaining clauses are renumbered in numerical sequence.

c. In the General Provisions for a Negotiated Fixed-Price Research and Development Contract, in Item II, the entire entry for numbers 2, 3, 5, 8, and 10 are removed, and the remaining numbers are renumbered in numerical sequence.

d. In the General Provisions for a Negotiated Fixed-Price Supply Contract, in Item II, the entire entry for numbers 2, 3, 5, 7, and 9 are removed, and the remaining clauses are renumbered in numerical sequence.

e. In the General Provisions for a Negotiated Cost-Reimbursement Contract with Educational Institutions, in Item II, the entire entry for 2, 4, 8, 9, 11, 14, and 16 are removed, and the remaining clauses are renumbered in numerical sequence.

f. In the General Provisions for a Cost-Reimbursement Supply Contract, in Item II, the entire entry for numbers 2, 3, 7, 8, 10, 12, and 14 are removed, and the remaining clauses are renumbered in numerical sequence.

g. In the General Provisions for a Sealed Bid Contract, in Item II, the entire entry for numbers 2, 3, 5, 6, and 8 are removed, and the remaining numbers are renumbered in numerical sequence.

[FR Doc. 88–9418 Filed 4–29–88; 8:45 am]
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VOL 53 ISS 84 MY 2 1988 UMI

VOL 53 ISS 84 MY 2 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 84
Monday, May 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 652

Surface Mining Specifications; Specifications for Soil Removal, Stockpiling, Replacement, and Reconstruction for Surface Coal Mining and Reclamation Operations on Prime Farmland

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA) is extending the public comment period on the proposed rule as published in the February 19, 1988 **Federal Register**, which establishes the specifications for soil handling in relation to mining activities on prime farmland, as provided for in section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87, 30 U.S.C. 1265(b)(7).

This extension is in response to the mining industry's request for adequate time to comment.

DATES: Comments must be submitted on or before May 19, 1988. Public Hearings: Upon request, SCS will hold public hearings on the proposed rule in Washington, DC; Champaign, Illinois; Lexington, Kentucky; Bismarck, North Dakota; and Columbus, Ohio. SCS will accept requests for public hearings until 5:00 p.m., e.t. on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Walter F. Rittall, Acting Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013. Phone: 202–382–1870. For copies of the proposed rule as it applies to one of the identified states contact: Ernest V. Todd, state conservationist, 665 Opelika Road, Auburn, Alabama 36830; Albert E. Sullivan, state conservationist, Federal Office Building, Suite 2405, 700 West Capitol Avenue, Little Rock, Arkansas 72201; John J. Eckes, state conservationist, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820; Robert L. Eddleman, state conservationist, Corporate Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224; J. Michael Nethery, state conservationist, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309; James N. Habiger, state conservationist, 760 South Broadway, Salina, Kansas 67401; Randall W. Giessler, state conservationist, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504; Pearlie S. Reed, state conservationist, Hartwick Building, Room 522, 4321 Hartwick Road, College Park, Maryland 20740; Russell Mills, acting state conservationist, 555 Vandiver Drive, Columbia, Missouri 65202; Charles Mumma, acting state conservationist, Federal Building, Rosser Avenue and Third Avenue, P.O. Box 1458, Bismarck, North Dakota 58502–1458; Roger A. Hansen, acting state conservationist, 200 North High Street, Room 522, Columbus, Ohio 43215; C. Budd Fountain, state conservationist, USDA-Agricultural Center Building, Stillwater, Oklahoma 74074; James H. Olson, state conservationist, 228 Walnut Street, Room 820, Harrisburg, Pennsylvania 17108–0985; Lawrence Nieman, acting state conservationist, Federal Building, 200 4th Street SW., Huron, South Dakota 57350–2475; Harry W. Oneth, state conservationist, W.R. Poage Federal Building, 101 South Main Street, Temple, Texas 76501–7682; or Rollin N. Swank, state conservationist, 75 High Street, Room 301, Morgantown, West Virginia 26505.

Galen S. Bridge,

Deputy Chief for Programs.

[FR Doc. 88–9807 Filed 4–29–88; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No; R–88–1383–FR 2449]

Urban Development Action Grant (UDAG)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement the amendments under the Housing and Community Development Act of 1987 and the HUD—Independent Agencies Appropriations Act, 1988 to section 119(h) of the Housing and Community Development Act of 1974—Urban Development Action Grant (UDAG) statute, 42 U.S.C. 5318, by modifying the UDAG project selection criteria and by modifying the definitions of eligible cities. This proposed selection system would spread UDAG Funds to more areas of the country.

DATE: *Comments Due:* June 1, 1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755–6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), (1987 Act), and the HUD-Independent Agencies

Appropriation Act, 1988 (Pub. L. 100–202, approved December 22, 1987) amended section 119(h) of the Urban Development Action Grants (UDAG) statute, 42 U.S.C. 5318. While many of the modifications will not take effect until final regulations are published, several changes will take effect immediately, as mandated by the law. The following provisions will take effect immediately:

1. The two phase 65%–35% selection system.
2. New statutorily assigned weights for measuring impaction, distress and project merit;
3. Bonus points for cities that have not recently received a preliminary UDAG approval;
4. A $10 million cap on individual grants for FY 1988 and FY 1989;
5. Eligibility of certain Indian tribes in Oklahoma, as well as certain specified Hawaiian counties, American Samoa, Guam and the Northern Mariana Islands.

Since December 1983, projects meeting UDAG requirements for funding have exceeded the budget resources available. Therefore, the Department placed into effect a selection system which scored and ranked all projects meeting program requirements. The projects were rated according to the following formula: up to 40 points for the area's "impaction" (poverty, pre-1940 housing, population growth); up to 30 points for the area's "distress" (unemployment rate, per capita income change, and job lag, where available); and up to 30 points for specific project merits (leveraging ratio, jobs, taxes and other benefits). These criteria were specified in the UDAG statute, with impaction being given the primary weight. This formula generally resulted in more projects being funded in the Northeast and Midwest sections of the country. The Congress perceived that the distribution of funds was not equitable and changed the selection system to allow a meritorious project to compete regardless of its geographic location.

The new statutory two-phase selection system (with revised weights and bonus points) was adopted in order to spread UDAG funds to more areas of the country. Because of reduced budget levels, a cap of $10 million on any UDAG grant was made effective for fiscal years 1988 and 1989.

The revised selection system will operate in the following way: The funds to be awarded during each UDAG round will be divided into two phases. The first phase, comprising 65% of the monies available, will be awarded based on a 105-point ranking system. Up to 70 of the 105 points will be awarded based on the applicant city's impaction and distress ranking. Impaction and distress will have equal weight, and each will be valued at 35 points. An additional 33 points will be awarded based on project merits, including such factors as leveraging ratio, jobs, and taxes.

A project also will receive one bonus point if the city has not received a UDAG preliminary grant approval for one year, and two points if the city has not received a preliminary grant approval for two years. If there are two or more fundable projects from the same city in the same funding round, the bonus point or points will go to the project from that city with the highest number of project points before the bonus points are assigned.

The second funding phase, comprising 35% of the monies available in a given round, will be awarded based only on the characteristics of the project application, with no points given for impaction or distress. The bonus points for cities that have not received a UDAG in the recent past will also apply to the 35% phase.

If the Secretary decides to fund pocket-of-poverty projects, they will be funded separately from the two-phase system.

The HUD-Independent Agencies Appropriation Act, 1988 makes certain Indian tribes in Oklahoma eligible for the program. Earlier appropriation changes included American Samoa, Guam and the Northern Mariana Islands as potentially eligible areas. The 1987 Act directs that the counties of Kauai, Maui and Hawaii in the State of Hawaii be treated as cities for purposes of determining UDAG eligibility.

Additional provisions proposed in these regulations will take effect only upon effectiveness of final rules. They are summarized below:

- Definitions of project "transaction" and "economic development components" are included for clarification of the leveraging ratio requirement.
- The methodology for determining eligibility of distressed cities is amended for communities with high per capita income to assure that eligibility is targeted.
- The section on criteria for selection has been reorganized to clarify which requirements must be met before an application can be considered for selection, and which competitive selection factors apply to large and small cities. The maximum points awarded for each criterion and factor are now specified in the regulations. Several selection factors have been deleted, since the Act now contains a prescriptive list. These are temporary jobs, extent of relocation, extent of minority business participation and impact on energy efficiency. (The latter two factors have been moved to the section on eligible activities, and will continue to be encouraged in UDAG projects.) Two new factors called for in the Act have been added—"pressing employment need" and "pressing residential need." The assigning of points for these two factors will be based in part upon certifications by the applicant since data documenting the extent of these needs is not readily available. Applicants should be aware that the certification relating to pressing residential need could affect compliance with the new provisions under section 104(d) of the Housing and Community Development Act of 1974.
- Several definitions have been revised, either to clarify policies or to conform to the new Act. The nondiscrimination provision has been modified to change the category "neighborhood" to "housing" and to include the type of applicant (city or urban county).
- The applicant review schedule set out in the proposed rule will remain in effect unless revised by the Secretary within 30 days of the start of a fiscal year.
- Guidelines are provided for determining the amount of funds available for each round.
- The eligible use of repaid grant funds by recipients is modified and reporting requirements on the uses of such funds are specified.

The Housing and Community Development Act of 1987 references "eligible activities * * * under section 104". It is assumed that this reference is an error and should have read "105". Section 104 does not list eligible activities. The proposed rule refers to section 105.

- Certifications relating to relocation assistance are revised. Applicants are also alerted to the new provisions at section 104(d) of the Housing and Community Development Act of 1974, which will apply to UDAG projects that result in the demolition of low/moderate income housing units or the conversion of such units to another use. As a condition for a grant made on or after October 1, 1988, the applicant will be required to certify that it is following a residential antidisplacement and relocation assistance plan under which (1) such units will be replaced with housing designed to be affordable to low/moderate-income households for a period of at least 10 years and (2) each low/moderate-income household displaced from such a unit will be provided relocation assistance, including payment of reasonable moving expenses and housing assistance that will ensure that shelter costs at a replacement unit will not exceed 30

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percent of the households income for a five-year period. The displaced household could elect, as an altenative to rental assistance, to receive and apply the capitalized value of such rental assistance as a down payment on a cooperative or mutual housing unit. On April 2, 1987, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) was amended to, among other things, extend URA coverage to persons displaced as a direct result of rehabilitation, demolition or private developer acquisition carried out for a federally assisted project or program, including an Urban Development Action Grant Program. The amendments also substantially increase the levels of relocation assistance to be provided to displaced businesses. For UDAG and other HUD-assisted projects, the URA changes will apply to all displacements occurring on or after April 2, 1989. The public will have the opportunity to comment on the proposed rule implementing the new provisions under section 104(d) of the HCD Act of 1974 and the URA amendments. Given the effective dates of these changes, however, potential applicants should review planned activities in the light of the budgetary implications and potential impact on program design of these amendments.

• A modification is made to the submission and review schedule to indicate the deadline dates for receipt of firm financial commitments.

Other Matters

The Department is providing an abbreviated (30-day) public comment period for this proposed rule. Under section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), no rule promulgated by the Department may become effective until after passage of the first period of 30 calendar days of continuous session of Congress after the day on which the rule is published as final. Because of this section 7(o) constraint of the Congressional calendar for the rest of the year, it is imperative that the public comment period be no longer than 30 days to permit time for review of the public comments and development of a final rule at least 30 days before Congress adjourns for the year.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of affected small entities would not be substantial. The funding for the UDAG program has been reduced in recent years and the effect of the changes will be neutral on the competitive position of small entities.

This rule is listed as sequence number 988 in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854, 13883) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, grant programs: housing and community development, loan programs: housing and community development, Low and moderate income housing, New Communities, Pockets of poverty, Small cities.

Accordingly, the Department proposes to amend 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR Part 570 would continue to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 570.541 would be amended by adding new paragraphs (m), (n), (o) and (p), to read as follows:

§ 570.451 Definitions.

* * * * *

(m) The term "city" includes large cities and small cities, as defined in this section, and the counties of Kauai, Maui and Hawaii in the State of Hawaii and American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands and Indian tribes.

(n) A "transaction" is a major project element which can be undertaken separately and can be evaluated on its own merits.

(o) An "economic development component" is a major project element which cannot be undertaken separately but which generates its own cash flow separate from other components of the project, exclusive of publicly-owned infrastructure and parking.

(p) An "Indian tribe" means one that is defined in § 570.3(m), is located on a reservation or an Alaskan Native Village and was eligible for the General Revenue Sharing Program before that program's September 30, 1986 repeal (31 U.S.C. 6701 et. seq.). For the purposes of UDAG, an Indian reservation includes former Indian reservations in Oklahoma, as determined by the Secretary of Interior.

3. In § 570.452, paragraphs (c)(2), (d)(1)(ii) introductory text, (d)(2)(ii) and (e) would be revised, and (d)(1)(ii)(E) would be added to read as follows:

§ 570.452 Distressed communities.

* * * * *

(c) * * *

(2) If the city or urban county's percentage of poverty is less than one-half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then it must meet four of the following seven minimum standards: percentage of housing constructed before 1940; percentage of poverty; per capita income change; population growth lag/decline; job lag/decline; unemployment; unemployment criteria used to establish the Labor Surplus Area designation.

(d) * * *

(1) * * *

(ii) If the percentage of poverty is less than one half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then the city must meet four of the following five standards.

* * * * *

(E) Percentage of poverty.

* * * * *

(2) * * *

(ii) If the percentage of poverty is less than one-half of the HUD-established standard, or if the change in per capita income is more than twice the HUD-established standard, then the city must meet four of the following six minimum standards: percentage of housing constructed before 1940; percentage of poverty; per capita income change; population growth lag/decline; job lag/decline; unemployment criteria used to establish the Labor Surplus Area designation.

* * * * *

(e) *Indian Tribes.* An Indian tribe that meets the definition in § 570.451(p) shall be presumed to meet the minimum standards of distress. However, the Secretary may deny eligibility to a tribe if available data establishes that the tribe's distress is not comparable to that of potentially eligible jurisdictions.

4. Section 570.455 would be amended by adding new paragraphs (c) and (d), to read as follows:

§ 570.455 Eligible activities.

* * * * *

(c) Projects whose increased energy efficiency facilitates broader economic development, preserves scarce fuels or promotes development and use of renewable energy resources are encouraged.

(d) Projects in which minorities are participants as contractors, major suppliers, equity investors, lessors, owners or private participating parties are encouraged.

5. In § 570.456, paragraph (a) would be revised to read as follows:

§ 570.456 Ineligible activities and limitations on eligible activities.

(a) Large cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose, provided that the UDAG project meets the eligibility test of this Part. Any small city which submits a project application which is selected for preliminary approval and for which legally binding commitments have been approved consistent with the terms of the grant agreement and for which a release of funds pursuant to 24 CFR Part 58 has been issued may devote up to three (3) percent of the approved amount of its action grant to defray its actual costs in planning the project and preparing its application.

* * * * *

6. Section 570.458(c)(14) would be amended to revise paragraph (ix)(I) and to add new paragraphs (xvi) and (xvii) as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations in Part 42 of this title, and the relocation requirements in section 570.457 governing displacement subject to section 104(k) of the Housing and Community Development Act of 1974. (For grants approved on or after October 1, 1988 the applicant shall comply with the requirement for follow a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations (when published for effect).)

* * * * *

(xvi) For an appropriate project, the project will relieve the most pressing employment needs of the applicant by:

(A) Reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(B) Retraining recently unemployed residents in new skills; or

(C) Providing training to increase the local labor pool of skilled labor.

(xvii) For an appropriate project, the area has a severe shortage of housing for low and moderate income persons. (The applicant should be aware that this certification could affect its compliance with the new provisions under section 104(d) of the Housing and Community Development Act of 1974).

7. Section 570.459 would be revised to read as follows:

§570.459 Criteria for selection.

(a) *General.* Each funding round, HUD will review all new applications received and all applications pending consideration and will determine which meet the basic program requirements. The specific nature and purpose of the proposed project will determine the extent to which each of the selection criteria in paragraphs (e) and (f) of this section will apply. In utilizing the discretion of the Secretary when providing assistance and applying selection criteria under this section, the Secretary will not discriminate against applications on the basis of: (1) The type of activity involved, i.e., whether the activity is primarily housing, industrial or commerical; or (2) the type of applicant, i.e., whether the applicant is a city or an urban county.

(b) Requirements which must be met to be considered in project selection:

(1) *A firm private commitment.* No project will be funded under this subpart unless there is firm private commitment to finance and carry out the proposed project. The private commitment must have a clear, direct relationship to the activities for which funding is requested.

(2) *Leveraging Ratio.* Each project, each transaction within a project, and each economic development component within a project must have a leveraging ratio of at least $2.50 of private funds to every $1.00 of action grant funds.

(3) *A firm commitment of public resources.* If a project requires a commitment of other public resources, then there must be a firm public commitment.

(4) *Funds required*—The Secretary must determine that the project requires action grant funds by finding that:

(i) the private development would not occur unless public funding becomes available (see §570.458(c)(14)(ii));

(ii) the action grant funds will not substitute for local funds (see §570.458(c)(14)(iii));

(iii) but for the receipt of the action grant funds, the project would not be undertaken; and

(iv) the grant amount provided is the least amount necessary to make the project feasible. For Fiscal Years 1988 and 1989 the maximum grant amount for any project is $10,000,000.

(5) *Impact on physical and economic conditions.* The proposal must demonstrate to HUD the extent to which the project will have a substantial impact on the physical and economic development of the city or urban county;

(6) *Timeliness.* The proposal must demonstrate to HUD that the proposed activities are likely to be accomplished in a timely fashion with the grant amount available. (HUD expects projects to be completed within four years from the date of the announcement of preliminary funding approval); and

(7) *Demonstrated Performance.* The applicant has demonstrated performance in carrying out housing and community development programs. Performance shall be evaluated using such considerations as past compliance with HUD regulations and statutory requirements and progress in carrying out programs as planned.

(c) *Selection of projects for preliminary approval: Large cities and urban counties.* Projects shall be selected on the basis of the following point system:

(1) *Impaction (maximum value of 35 points).* The comparative degree of economic distress among applicants, as measured by combining the points from three factors: (i) The percentage of the total housing stock that was built prior to 1940—up to 17 points; (ii) the extent

of poverty—up to 11 points; and (iii) the population growth rate—up to 7 points;

(2) *Distress (maximum value of 35 points).* The comparative degree of economic deterioration in cities and urban counties, as measured by combining the points from three factors:

(i) Per capita income change—up to 15 points;

(ii) Unemployment rate—up to 15 points; and

(iii) Job lag/decline—up to 5 points;

(3) *Other criteria (maximum value of 33 Points) and bonus points (maximum value of 2 points).* The factors contained in paragraphs (e) through (f) of this section.

(d) *Selection of projects for preliminary approval: Small cities.* Projects shall be selected on the following basis:

(1) *Impaction (maximum value of 35 points).* The comparative degree of economic distress among applicants, as measured by combining the points from three factors:

(i) The percentage of the total housing stock that was built prior to 1940—up to 17 points;

(ii) The extent of poverty—up to 11 points; and

(iii) The population growth rate—up to 7 points;

(2) *Distress (maximum value of 35 points).* The comparative degree of economic deterioration, as measured by combining the points from the following factors:

(i) Per capita income change—up to 18 points; and

(ii) Labor Surplus Area (LSA) unemployment rate—up to to 17 points;

(3) *Other criteria (maximum value of 33 points) and bonus points (maximum value of 2 points).* The factors contained in paragraphs (e) through (f) of this section.

(e) *Other criteria (maximum value of 33 points).* In evaluating a proposed project, HUD will consider the following factors. The maximum point value for each factor is identified below:

(1) *Leveraging ratio* (10 points). The extent to which the grant will stimulate economic recovery by leveraging private investment;

(2) *New permanent jobs* (3 points). The number of new permanent jobs to be created;

(3) *UDAG funds per new permanent job* (7 points). The amount of action grant funds requested in relationship to the number of new permanent jobs;

(4) *Percent new low/moderate income jobs* (1 point). The percentage of new permanent jobs accessible to low/moderate income persons, including low/moderate income persons who are unemployed.

(5) *Percent new minority jobs* (1 point). The percentage of new permanent jobs accessible to minorities, including minorities who are unemployed.

(6) *Retained jobs* (2 points). The number of jobs that will be lost without the provision of a UDAG award. Retained jobs shall be measured by the number of jobs that were in existence before the start of the project and that are dependent upon the project for their continued existence as substantiated by firm evidence that if the project does not proceed, the jobs will be lost;

(7) *Pressing employment need* (1 point). Based upon the applicant's certification, HUD will assess whether the project will relieve the most pressing employment needs of the applicant by:

(i) Reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(ii) Retraining recently unemployed residents in new skills; or

(iii) Providing training to increase the local labor pool of skilled labor;

(8) *Pressing residential need* (1 point). HUD will assess whether the project will relieve a pressing housing need for low and moderate income persons in the jurisdiction by using the factors described in this paragraph (e)(9):

(i) The applicant certifies that the area has a severe shortage of housing for low and moderate income persons (this certification may affect the applicant's compliance with the new provisions under section 104(d) of the Housing and Community Development Act of 1974); and

(ii) The application proposes that:

(A) Not less than 51% of all funds available for the project will be used for dwelling units and related facilities; and

(B) Not less than 30% of all funds used for dwelling units and related facilities will be used for dwelling units to be occupied by persons of low and moderate income, or not less than 20% of all dwelling units made available to occupancy using such funds will be occupied by persons of low and moderate income, whichever results in the occupancy of more dwelling units by persons of low and moderate income;

(9) *Tax benefits per UDAG dollar.* (5 points) The impact of the proposed project on the fiscal base of the community and the relationship to the amount of grant funds;

(10) *State/local funds per UDAG dollar.* (2 points) The extent of assistance to be made available by State/local funds or special economic incentives in relation to the amount of UDAG funds;

(f) *Bonus Points.* An applicant will be provided with bonus points as provided for below:

(1) An applicant that did not receive preliminary grant approval during the 12-month period preceding the date on which applications are required to be submitted for the grant competition involved shall be awarded 1 bonus point.

(2) An applicant that did not receive a preliminary grant approval during the 24-month period preceding the date on which applications are required to be submitted for the grant competition involved shall be awarded two bonus points.

(3) If an applicant has submitted and has pending more than one application, bonus points shall only be provided to the pending application which receives the highest number of points awarded under paragraph (e) of this section.

The following table summarizes the point system to be used by HUD in accordance with § 570.460(c)(1) in selecting projects for preliminary funding approval:

UDAG PROJECT SELECTION SYSTEM

Selection criteria for large cities, urban counties and small cities	Factors	Maximum points
A. Impaction	Pre-1940 Housing (17)	35
	Extent of Poverty (11)	
	Population Growth Rate (7)	
B. Distress		35
Large Cities and Urban Counties	Per Capita Income Change (15)	
	Unemployment rate (15)	
Small Cities	Job lag (5)	
	Per Capita Income Change (18)	

UDAG PROJECT SELECTION SYSTEM—Continued

Selection criteria for large cities, urban counties and small cities	Factors	Maximum points
C. Other Criteria	LSA Unemployment Rate (17)	
	1. Leveraging ratio (10)	33
	2. New Permanent Jobs (3)	
	3. UDAG funds per New Permanent Job (7)	
	4. Percent New Low/Moderate Income Jobs (1)	
	5. Percent New Minority Jobs (1)	
	6. Retained Jobs (2)	
	7. Pressing Employment Need (1)	
	8. Pressing Residential Need (1)	
	9. Tax Benefits per UDAG $ (5)	
	10. State/Local funds per UDAG $ (2)	
D. Bonus Points	1. Applicant has not received a preliminary UDAG approval for one year (1)	2
	or	
	2. Applicant has not received a preliminary UDAG approval for two years (2)	
Total Possible Points		106

8. In § 570.460, paragraph (a) introductory text would be revised, paragraphs (c)(1) through (c)(5) would be redesignated as paragraphs (c)(4) through (c)(8), respectively, new paragraphs (c)(1) through (c)(3) would be added, and paragraph (d) would be removed, to read as follows:

§ 570.460 HUD review and action on applications.

(a) *Submission and review schedule.* The following chart indicates dates for submission of pre-application requests for determination of eligibility, the full application, HUD review and consultation with the applicant, the deadline for receipt of firm financial commitments, and the date by which the decision for preliminary approval will be made. This schedule will remain in effect unless, within 30 days of the start of a fiscal year, the Secretary announces by Federal Register Notice a revised schedule applicable to the upcoming fiscal year. Public announcements of preliminary funding approvals will be made shortly after the decision date.

Determination of eligibility (pre-application SF-424) to be submitted by	Application submission period	Review period	Deadline for firm financial commitments[1]	Decision date
Large cities/Urban counties:				
Sept. 30	Nov. 1–30	Dec. 1–Jan. 31	Jan. 15	Jan. 31.
Jan. 31	Mar. 1–31	Apr. 1–May 31	May 15	May 31.
May 31	July 1–31	Aug. 1–Sept. 30	Sept 15	Sept. 30.
Small cities:				
Nov. 30	Jan. 1–31	Feb. 1–Mar. 31	Mar. 15	Mar. 31.
Mar. 31	May 1–31	June 1–July 31	July 15	July 31.
July 31	Sept. 1–30	Oct. 1–Nov. 30	Nov. 15	Nov. 30.

[1] If, in a particular month a deadline falls on a weekend, the deadline is carried over to the following Monday. If the deadline falls on a Federal holiday, it is carried over to the next business day.

* * * * *

(c) *Central office action on applications.* (1) Preliminary approval decisions will be made by HUD Central Office utilizing the point system described in section 570.459. Central Office funding decisions for distressed cities and urban counties will be based upon a funding formula for grants which, to the extent practicable, will make 65% of funds available for projects based upon points received for all the criteria and 35% of funds available for projects based only on other criteria and bonus points, as described in sections 570.459(e) and (f). Applications for Pockets of Poverty are selected separately from distressed cities and urban counties. Applicable criteria for Pockets of Poverty are found in section 570.466.

(2) The funds for the competition are to be an amount approximately equal to the amount of appropriated funds available, divided by the number of scheduled competitions, plus available carry-overs and recaptures.

(3) For Fiscal Years 1988 and 1989, the maximum grant amount for any project is $10,000,000.

9. In § 570.461, paragraph (e) would be revised to read as follows:

§ 570.461 Post preliminary approval requirements.

* * * * *

(e) *Program Income.* Notwithstanding any other provisions of this part and unless otherwise provided in the grant agreement, program income received by the Recipient under this Subpart before the completion of construction of all action grant funded activities shall be used to reimburse costs incurred for the Recipient activities. Such income shall be used instead of any draw under the letter of credit to the extent adequate to reimburse costs so incurred. Program income shall be spent for activities eligible under Title I of the Housing and Community Development Act of 1974 and shall be spent in accordance with 24 CFR Part 570. Upon completion of the activities, program income shall be received and retained by the Recipient and made available by the Recipient for economic development activities that are eligible for funding under the Urban Development Action Grant program or section 105 of the Housing and Community Development Act of 1974. These funds are to be considered miscellaneous revenues and shall not be governed by 24 CFR Part 570. The Recipient shall provide the Secretary

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with a statement of the use of repaid grant funds during the most recent full fiscal year and projected receipt and use of repaid grant funds for the following fiscal year of the applicant.

* * * * *

Date: April 5, 1988.

Nancy C. Silver,

Acting General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88-9577 Filed 4-29-88; 8:45 am]

BILLING CODE 4210-29-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[Gen. Docket No. 88-37]

Ship Radio Officer Qualifying Service Endorsements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment.

SUMMARY: This Order extends the time within which to file reply comments in this proceeding concerning Amendment of Parts 13 and 80 of the Rules concerning ship radio officer qualifying service endorsements. This Action is taken in response to motions.

DATES: Reply comments are now due by May 6, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert P. DeYoung, Federal Communications Commission, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: The Proposed rule in this proceeding was published on February 25, 1988, 53 FR 5596.

Order Extending Reply Comment Period

In the matter of amendment of Parts 13 and 80 of the Rules concerning ship radio officer qualifying service endorsements; Gen Docket No. 88-37.

Adopted: April 19, 1988.
Released: April 27, 1988.

By: Chief, Private Radio Bureau.

1. The American Radio Association, MM&P, AFL-CIO (ARA) and the Radio Officers Union, District 3 of the National Marine Engineers Beneficial Association, AFL-CIO (ROU), have requested that the Commission extend the time within which to file Reply Comments in the General Docket captioned above from April 25, 1988, to May 6, 1988.

2. The ARA/ROU have shown good cause in support of their request. ARA/ROU state that they are participating in the 55th Session of the Maritime Safety Committee of the International Maritime Organization from April 11-22, 1988, in London, England. They argue that the current reply period does not allow sufficient time after their return from England for review of the record and preparation of reply comments.

3. It is therefore ordered that the time within which to file comments in the proceeding captioned above is extended through May 6, 1988. Authority for this action is contained in §§ 1.46 and 0.331 of the Commission's Rules, 47 C.F.R. 1.46 and 0.331.

Federal Communications Commission.

Richard J. Shiben,

Acting Chief, Private Radio Bureau.

[FR Doc. 88-9580 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-163; RM-6025]

Radio Broadcasting Services; Osage City, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Osage Radio, Inc., proposing the substitution of FM Channel 225C2 for Channel 224A at Osage City, Kansas and modification of its license for Station KZOC(FM) to specify operation on Channel 225C2. The coordinates used for Channel 225C2 are 38-33-42, 95-52-31.

DATES: Comments must be filed on or before June 16, 1988, and reply comments on or before July 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: William D. Silva, Esq., Blair, Joyce and Silva, 1825 K Street, NW., Suite 510, Washington, DC 20006 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-163, adopted March 25, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures or comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9593 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-168, RM-6217]

Radio Broadcasting Services; Pine Bluff, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert Jason, proposing the allocation of Channel 287C2 to Pine Bluff, Wyoming, as that community's first local FM service. A site restriction of 7.8 kilometers (4.9 miles) northwest of the community is required. The coordinates for the proposed site are 41-13-41 and 104-07-47.

DATES: Comments must be filed on or before June 16, 1988, and reply comments on or before July 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant' as follows: Daniel F. Van Horn, Esquire, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036-5339 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summmary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-168, adopted March 30, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9587 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-166; RM-6216]

Radio Broadcasting Services; Burns, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gary Albarez proposing the allocation of Channel 270C2 to Burns, Wyoming, as that community's first local FM service. A site restriction of 12.5 kilometers (7.8 miles) southwest of the community is required. The coordinates for the proposed site are 41-07-05 and 104-28-06

Avenue, NW., Washington, DC 20036-5339 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summmary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-168, adopted March 30, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9589 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-146, RM-6048]

Radio Broadcasting Services; Osceola, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Pollack Broadcasting Company, proposing the substitution of FM Channel 251C for Channel 251C2 at Osceola, Arkansas, and modification of its license accordingly, to provide that community with its first wide coverage area FM service. The site coordinates for the proposal are 35-28-00 and 90-11-20.

DATES: Comments must be filed on or before June 6, 1988, and reply comments on or before June 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood and Willard W. Pardue, Jr., Esqs., Wiley, Rein and Fielding, 1776 K St., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.88-146 adopted March 23, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9590 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-240; RM-5788]

Radio Broadcasting Services; Morton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by James S. Bumpous, published in the **Federal Register** at 52 FR 27437, July 21, 1987 requesting the allocation of Channel 249C1 to Morton, Texas, as that community's first local FM service, due to lack of continuing interest in the allotment. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-240, adopted March 25, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9502 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-165, RM-5978; RM-6198]

Radio Broadcasting Services; Sioux Center, IA, and Sioux Falls, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutual exclusive petitions for rule making. Tri-State Broadcasters, Inc. requests the substitution of Channel 230C2 for Channel 232A at Sioux Center, Iowa, and the modification of its license for Station KVDB-FM to specify the higher powered channel. The Vaughn Broadcasting Group requests the substitution of Channel 230C2 for Channel 228A at Sioux Falls, South Dakota, and the modification of its license for Station KKRC(FM) to specify the higher powered channel. Co-channel Class C2 stations are required to be separated by at least 190 kilometers but the two communities here are separated by only approximately 57 kilometers. Parties are requested to further demonstrate who its community should receive the higher class allotment. Channel 230C2 can be allocated to Sioux Center, IA, in compliance with the Commission's minimum distance separation requirements and can be used at Station KVDB-FM's current transmitter site. Channel 230C2 can be allocated to Sioux Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) east to accommodate Vaughn's desired transmitter site. In accordance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in the use of Channel 230C2 at either community will not be accepted.

DATES: Comments must be filed on or before June 13, 1988, and reply comments on or before June 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, Esq., 10 E. Fourth Street, P.O. Box 113, Frederick, MD 21701 (Counsel to Tri-State); Clifford M. Harrington, Esq., John Joseph McVeigh, Esq., Fisher, Wayland, Cooper & Leader, 1255-23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to Vaughn).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-165, adopted March 25, 1988, and released April 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9501 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-166, RM-6251]

Radio Broadcasting Services; Conklin, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Programmed Communications, Inc. proposing the allocation of Channel 227A to Conklin, New York, as the community's first local FM service. Channel 227A can be allocated to Conklin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest to avoid a short-spacing to Station WNTQ, Syracuse, New York, and to Station WKXZ, Norwich, New York. The coordinates for this proposal are North Latitude 42-00-31; West Longitude 75-51-58. Canadian concurrence is required since Conklin is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before June 13, 1988, and reply comments on or before June 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy Kuhl, P.O. Box 736, Syracuse, New York 13214 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-166, adopted March 25, 1988, and released April 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9502 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-164, RM-6245]

Radio Broadcasting Services; Woodbury, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bart Walker proposing the allotment of Channel 285A to Woodbury, Tennessee, as that community's first FM service. A site restriction of 5.4 kilometers (3.4 miles) northwest of the city is required. The site coordinates are 35-51-09 and 86-07-19.

DATES: Comments must be filed on or before June 13, 1988, and reply comments on or before June 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bart Walker, 2519 Cabot Court, Murfreesboro, TN 37130 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-164, adopted March 25, 1988, and released April 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9503 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-167, RM-6125]

Radio Broadcasting Services; Staunton, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ogden Broadcasting of Virginia, Inc., permittee of Channel 232A at Staunton, Virginia, proposing the substitution of Channel 232B1 for Channel 232A and modification of its construction permit to specify operation on the higher class co-channel. A site restriction of 13.4 kilometers (8.3 miles) southwest of the city is required.

DATES: Comments must be filed on or before June 13, 1988, and reply comments on or before June 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Philip L. Malet, Esquire, Steptoe & Johnson, 1330 Connecticut Avenue NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-167, adopted March 30, 1988, and released April 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-9504 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 57]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments on a petition for rulemaking.

SUMMARY: The Motor Vehicle Manufacturer Association (MVMA) has submitted a petition asking NHTSA to amend the test conditions specified in Standard No. 208 *Occupant Crash Protection.* The test conditions presently require seats that are separately adjustable in a vertical direction to be tested at the lowest vertical adjustment position. MVMA's petition asks that vertically adjustable seats and other adjustable seat features (such as adjustable lumbar support) be set at the "nominal design riding position." This position would be defined by the vehicle manufacturer and furnished to NHTSA prior to any compliance testing. MVMA argued that such a requirement would be similar to the existing provisions for adjustable seat backs, and would eliminate the potential burden of duplicative testing. The assertion of duplicative testing was based on the possibility of a vehicle being offered in some models with vertically adjustable seats and in other models with standard fixed height seats. According to the petitioner, both of these models would have to be tested to ensure that the vehicle complied with the standard.

The agency has not made a tentative decision to either grant or deny the petition. While the MVMA petition does raise some seemingly valid points, it does not present sufficient evidence, information, or supporting data to warrant the requested amendment. In the same vein, the petition does not demonstrate that the proposed amendment would not reduce the level of safety protection afforded by the existing provision. However, the agency believes it is premature to make a final assessment of the petition, because the vehicle manufacturers are just beginning to acquire testing experience under Standard No. 208. It is possible that, during this testing, the manufacturers have acquired specific data or information that demonstrates that the problem alleged by MVMA is substantial enough to justify changing the provisions of standard No. 208. Therefore, this notice seeks *specific* data or other information demonstrating that the current specifications for verically adjustable seats cause testing problems for Standard No. 208.

DATE: Comments on this notice must be recieved by the agency not later than June 16, 1988.

ADDRESS: Comments on this notice should refer to the docket and notice numbers set forth in the heading above and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, Room 5320, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 208, *Occupant Crash Protection* (49 CFR § 571.208) specifies the test conditions for the frontal, lateral, and rollover tests that are conducted to determine whether a vehicle complies with the injury criteria set forth in the standard. Currently, section S8.1.2 of Standard No. 208 specifies that seats that are separately adjustable in a vertical direction shall be tested at the lowest vertically adjustable position. The purpose of this provision is to ensure uniformity in positioning vertically adjustable seats for Standard No. 208 compliance testing.

This provision had its genesis in a November 3, 1970 final rule (35 FR 16927) that established the first automatic restraint requirements in Standard No. 208. Ever since the July 1, 1973 effective date of that rule, Standard No. 208 has included a provision that vertically adjustable seats shall be at the lowest position for the compliance testing. This provision reflects the agency's belief that seat adjustment position may affect test results, thereby introducing test variability if a single adjustment position were not specified.

Ford Motor Company (Ford) has consistently challenged this agency belief with respect to the test conditions. For example, in response to the notice proposing to incorporate the Hybrid III test dummy into 49 CFR Part 572, *Anthropomorphic Test Dummies* (50 FR 14602; April 12, 1985), Ford commented that it does not believe that the 50th percentile male dummy represents a 50th percentile vehicle occupant. Based on these views of representativeness, Fort alleged that a 50th percentile male occupant would probably sit further away from the steering wheel than is currently specified in Standard No. 208. The standard requires that the seat be placed at the midpoint of its fore-aft adjustment positions. In the same vein, Ford claimed that it conducts its dynamic testing for certification purposes with the test dummy in the same position relative to the vehicle's interior surfaces, regardless of whether a vertically-adjustable power seat or a manual seat is in the vehicle being tested.

According to its comment, many Ford models are offered with power seats that adjust vertically to positions that are lower than the vertical position for the comparable manual seat. However, for its certification testing, Ford stated that its seating reference points are based *only* on the vertical position of the manually adjustable seat, not on the lowest vertical adjustment position of the power seat. Ford stated its belief that a requirement that vehicles with power and manual seats be tested twice, once with the manual seat at its standard vertical height and once with the power seat it its lowest vertically adjustable position, implies that there is a safety difference between the manual and power seats. Ford stated that it is unaware of any evidence showing this to be true.

NHTSA responded to these comments as follows, in the preamble to the final rule adopting the Hybrid III test dummy:

> Ford noted that the test procedure calls for testing vertically adjustable seats in their lowest position. It said that such a requirement was reasonable for vertically adjustable seats that could not be adjusted higher [sic] than seats that are not vertically adjustable. However, Ford said that new power seats can be adjusted to positions above and below the manually adjustable seat position. It said that testing power seats at a different position would increase test variability. Ford recommended adjusting vertically adjustable seats so that the dummy's hip point is as close as possible to the manufacturer's design H-point with the seat at the design mid-point of its travel.
>
> The agency recognizes that the seat adjustment issue raised by Ford may lead to test variability. However, the agency does not have any data on the effect of Ford's suggested solution on the design of other manufacturers' power seats. The agency will solicit comments on Ford's proposal in the NPRM addressing additional Hybrid III injury criteria. 51 FR 28688, at 28698; July 25, 1986.

The Petition

MVMA has filed a petition for rulemaking with this agency, asking tha. section S8.1.2 of Standard No. 208 be amended. More specifically, MVMA's petition asks that seats with any adjustable features, such as vertically adjustable power seats or seats with adjustable lumbar supports, be set at the "nominal design riding position" before the car is subjected to a crash test. The "nominal design riding position" would be specified by the vehicle manufacturer and provided to the agency prior to compliance testing of the vehicle.

According to MVMA's petition, this requested change would be consistent with the requirement already in section S8.1.3 of Standard No. 208. That section specifies that reclining seat backs shall be placed at "the manufacturer's nominal design riding position." A description of this position is provided to the agency by the manufacturer prior to any compliance testing. Additionally, MVMA's petition claims that positioning the seats according to the manufacturer's specifications would eliminate the potential for duplicative testing of the same vehicle. The petition asserted that if a vehicle were offered with some models equipped with fixed seats, while others were equipped with adjustable seats, that vehicle would have to be tested twice by the agency. The test of the model with fixed seats would be conducted with those seats in their fixed position, while the rest of the model with adjustable seats would be conducted with those seats at their lowest position, which would be lower than the fixed seat position. Additionally, MVMA argued that testing vertically adjustable seats at their "nominal design riding position" would be more representative of the vertical seat adjustment positions that will typically be selected by drivers while using their cars on the public roads.

Issues on Which Comments are Requested

There are several issues on which this notice requests public comments. One is whether the requested change would result in different test conditions for comparable vehicles. If the requested change were made, the power seats in the Lincoln Continental, Cadillac, Eldorado, and the Chrysler New Yorker, for instance, might all be adjusted to different vertical positions. These differing adjustments would *not* necessarily result from differences in the vehicles or be more representative of actual positions to which the seats are adjusted in "real world" use. Instead, the differences could simply reflect the individual vehicle manufacturer's preferences for test conditions. On the other hand, use of the nominal design riding position may make test results *more* comparable between vehicles, if the nominal design riding positions were appropriately selected. Under the current test procedure, NHTSA has no reason to believe that the lowest vertical seat position for one vehicle manufacturer corresponds to the lowest vertical seat position for other vehicle manufacturers. One manufacturer may, for example, have a very low "lowest seat position" to accommodate very tall people, while other manufacturers might not make the same design choice. If this were true, using the nominal design riding position may make crash test results between different vehicles more, instead of less, comparable. Further, the nominal design riding position may be more representative of the vertical seat adjustment while in actual use.

Second, the agency does not believe that any change to the currently specified seat location placements should be undertaken before carefully evaluating the probable effects of the positioning change on the kinematic or biomechanical behavior of the test dummy. For example, raising or lowering the seating position of the test dummy could affect both the chest deflection and the femur loading of the dummy during the test. MVMA's petition gives no indications that it has analyzed these effects and determined that they were negligible. Comments and data are requested on the effects of seat height adjustment on dummy responses during crash tests.

Third, there may be some technical difficulties associated with the requested change. There is currently no recommended dimension specified by the Society of Automotive Engineers or any other private group to measure power seat elevation. Comments are requested on the specific procedure for determining seat elevation, including an identification of an appropriate hard surface fiducial mark to serve as a point of reference for such vertical adjustments.

Ordinarily, the agency would perform its own analysis of these issues and publish a grant or denial of this petition. However, there are exceptional circumstances in this case that make it appropriate to allow the public an opportunity to comment on this petition *before* the agency makes its decision. The exceptional circumstances arise in this case because of the agency's response to Ford's comments on vertically-adjustable seats during the Hybrid III test dummy rulemaking. Those comments raised the same issues raised by this petition. In response to Ford's comments on vertically-adjustable seats raised in the Hybrid III test dummy rulemaking, the agency announced that it would solicit comments on Ford's suggestion about changing the test conditions for vertically-adjustable seats in a subsequent proposed rulemaking on the Hybrid III test dummy. *See* 51 FR 28699; July 25, 1986. At the time the agency made this commitment, it believed that such a proposal would be published very soon. However, it now appears that the anticipated rulemaking action will not be undertaken in the near future. To honor its previous commitment, NHTSA has decided to seek comments on the issue of vertical seat placement before making its final decision on MVMA's petition.

The agency will review these comments carefully before making a final decision on the MVMA petition. The agency recognizes that vehicle manufacturers have only recently begun to acquire the necessary testing experience to identify potential problem areas in the Standard No. 208 test procedures. Thus, it is possible that some commenters can present data or other evidence indicating that:

1. The existing vertical seat adjustment requirements present difficulties for compliance testing or are otherwise incompatible with current seating system designs; *and*
2. The alternative vertical seat adjustment provisions proposed by MVMA would *not* present substantial practical problems and would *not* lessen the safety protection afforded to vehicle occupants.

The agency will make a decision to grant or deny the MVMA petition after analyzing the comments received on this notice. A separate notice announcing the agency's final decision will be published after analyzing the comments on this notice.

Interested persons are invited to submit comments on the MVMA petition and the agency's tentative response thereto. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be

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accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final decision on this petition will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on April 26, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-9584 Filed 4-29-88; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Grant of Petition for Rulemaking Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: The agency grants a petition for rulemaking from the California Highway Patrol requesting that NHTSA amend Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, to set specialized requirements that would reduce the frequency and magnitude of fuel spills caused when objects on the roadway impact the fuel tank or fuel lines on heavy trucks and truck tractors. The agency is granting the petition pending the results of its forthcoming investigation of fuel tank fires in over-the-road trucks. NHTSA anticipates that its research will yield information on a number of the issues raised by the petitioner including the relationship, if any, between incidents of post-crash fires and debris-caused fuel spillage. The granting of this petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4914.

SUPPLEMENTARY INFORMATION: This notice grants a petition for rulemaking from the Department of California Highway Patrol (CHP) requesting NHTSA to amend Safety Standard No. 301, *Fuel System Integrity*, by adding specialized requirements that would reduce the frequency and magnitude of fuel spills caused when objects on the roadway impact and puncture or break the fuel tank or fuel lines on heavy trucks and truck tractors. The standard presently applies to passenger cars and school buses, and to multipurpose passenger vehicles, trucks and buses that have a gross vehicle weight rating of 10,000 pounds or less.

The CHP submitted data on 142 diesel truck fuel spills reported by its Border Division during calendar years 1984 and 1985. The reported fuel spills averaged 71 per year with an annual loss of 3,180 gallons. According to the CHP, one-third of the 142 spills were caused by an object on the road being struck by a vehicle's front wheels and thrown against the tank or fuel lines. The CHP believes that such objects—i.e., highway "debris"—constitute a "not uncommon hazard" and have included the following: automobile bumpers and driveshafts, tire casings, tire treads, bicycles, ladders, mattress springs, pieces of wood, trash cans, and lead pipes. While the petitioner was concerned also with spills caused when the fuel tank is ruptured by a jackknifed semitrailer, CHP suggested that NHTSA research and issue standards for "the minimum positioning, size, and strength of guards to protect fuel lines, crossover lines and bottom fittings against breakage when struck by the objects commonly thrown by the front wheels."

The petitioner states that the major negative impact of these diesel fuel spills is the expenditure of state resources to stop traffic, investigate the leak and clean up the spill. CHP states, "These spills use up investigative and cleanup time far out of proportion to the cost of repairing the minor fuel system damage that caused the incident." CHP also states that its survey includes seven accidents that were caused by spilled fuel when unsuspecting motorists skidded in a spillage or struck a dropped fuel tank. The CHP describes an incident (occurring outside of the Border Division) where a motorcycle driver lost control of the vehicle and suffered permanent injuries when the motorcycle skidded in oil that had spilled from the debris-damaged fuel system of a truck.

The petitioner points out that Subpart E of the Federal Motor Carrier Safety Regulations (FMCSR) of the Federal Highway Administration sets forth the type of requirements for fuel systems that CHP petitions NHTSA to apply to all new heavy trucks. Title 49 of the Code of Federal Regulations (CFR) § 393.65(f) states: "A fuel line which is not completely enclosed in a protective housing must not extend more than 2 inches below the fuel tank or its sump. Diesel fuel crossover, return, and withdrawal lines which extend below the bottom of the tank or sump must be protected against damage from impact * * *." Section 393.67(c)(4) requires that drains or other bottom fittings must not extend more than three-fourths of an inch below the lowest part of the fuel tank or sump, and must be protected against damage from impact. The petitioner stated that NHTSA should issue its own requirements for heavy trucks because "some of the original and second stage diesel truck manufacturers may not have paid close enough attention to these [FMCSR] requirements." Petitioner also states that 49 CFR 393.65(f) is "much too open to loose interpretation," because it does not precisely specify the force of the impact the fuel crossover, return and withdrawal lines must be capable of withstanding without incurring the proscribed damage.

The agency believes the issues raised by the petitioner warrant further consideration. NHTSA plans to conduct research into the issue of heavy vehicle post-crash fires to determine whether rulemaking is appropriate on this issue. The agency grants CHP's petition pending the results of its investigation and anticipates that NHTSA's research will yield information on a number of the issues raised by the petitioner, including the relationship, if any, between incidents of post-crash fires and debris-caused fuel spillage. The granting of this petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on: April 27, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-9651 Filed 4-29-88; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 468]

Review of Railroad Depreciation Studies by Independent Public Accountants

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a reporting revision that would alter the manner in which the review of a railroad depreciation study is conducted. This proposal was initiated by an Advanced Notice of Proposed Rulemaking published at 52 FR 5791 (2-26-87). The proposal would require each Class I railroad to have an independent public accountant review each road and equipment depreciation study that it prepares. The reviewer would then prepare and submit to the Commission a report on the study's conformity with the Commission's regulations an instructions. We believe that this revision will assure that depreciation rates are approved on a timely basis. Additional options upon which we are seeking comment would be the use of independent contractors, expert in the field of depreciation to: (1) Review the depreciation study prepared by the railroad, or (2) actually prepare the depreciation study. In either case, the contractors would be under the direct control of the Commission. The Commission is statutorily required to prescribed a rate of depreciation for each account, or account subgroup, of road and equipment property of Class I railroads. Presently, the railroads perform the depreciation studies, develop proposed rates and the Commission reviews and approves the rates. This proposal would help expedite this process. A more rapid completion of the depreciation study process would provide both railroads and the Commission with better and more timely information.

DATES: Comments must be filed on or before June 16, 1988. This proposed revision would be applicable for depreciation studies submitted for approval 30 days after adoption of these proposed rules.

ADDRESS: An original and 10 copies of any comments should be sent to: Ex Parte No. 468, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William F. Moss, III, (202) 275-7510. [TDD for Hearing Impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to The Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428. (Assistance for the hearing impaired is available through TDD services on (202) 275-1721).

Regulatory Flexibility Act

This proposed rule will not have a significant impact on a substantial number of small entities. This decision directly affects only Class I railroads which have annual revenues of $50 million or more.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

This proposed revision will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20423.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

These rules are proposed under the authority of 49 U.S.C. 10321, 11143, 11145 and 5 U.S.C. 553.

Decided: April 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners, Sterrett, Simmons, and Lamboley. Commissioner Simmons, joined by Commissioner Lamboley, dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9636 Filed 4-29-88; 8:45 am]

BILLING CODE 7035-01-M

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Notices

Federal Register
Vol. 53, No. 84
Monday, May 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes and Committee on Judicial Review; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Governmental Processes and the Committee on Judicial Review of the Administrative Conference of the United States.

Committee on Governmental Processes

Dates: Monday, May 9, 1988.
Time: 3:00 p.m.
Location: Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (Room 1205).
Agenda: The committee will meet to discuss a draft recommendation on contractual indemnification of government contractors. The draft recommendation was published in the Federal Register for comments on April 12, 1988 (53 FR 12048). The Administrative Conference's consultant for this project is Professor Frank P. Grad of Columbia University School of Law.
Contact: David M. Pritzker 202-254-7065.

Committee on Judicial Review

Date: Wednesday, May 11, 1988.
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.
Agenda: The committee will continue its discussion of a draft recommendation on nonacquiescence by federal agencies in the decisions of appellate courts. The draft recommendation, based on a study by Professors Samuel Estreicher and Richard Revesz, was published for comment in the Federal Register on April 14, 1988 (53 FR 12444).
Contact: Mary Candace Fowler 202-254-7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Jeffrey S. Lubbers,
Research Director.
April 27, 1988.
[FR Doc. 88-9985 Filed 4-29-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 88-004N]

Exemption for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.
ACTION: Notice.

SUMMARY: This notice announces that the dollar limitations currently in effect on the annual sales of meat and poultry products that can be sold by retail stores exempt from Federal inspection requirements to consumers other than household consumers, such as hotels, restaurants and similar institutions, have been adjusted to conform with price changes for meat and poultry products as indicated by the Consumer Price Index. The dollar limitation for meat products increases from $30,500 to $31,600 for calendar year 1988 and the dollar limitation for poultry products decreases from $31,000 to $28,100 for calendar year 1988.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8168.

Background

Federal inspection of meat and poultry products prepared for sale or distribution in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection "* * * shall not apply to operations of types traditionally and usually conducted at retail stores * * * when conducted at any retail store * * * for sale in normal retail quantities * * * to consumers * * *."

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under the FMIA or PPIA. Whether FSIS deems an establishment to be an exempt retail establishment depends, in part, upon the percentage and volume of its trade with consumers other than household consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. During calendar year 1987, the maximum amount for meat products was $30,500; for poultry products, the amount was $31,000.

The Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) further provide that the dollar limitation on product sales by retail stores to consumers other than household consumers will be automatically adjusted during the first quarter of each calendar year whenever the Consumer Price Index, published by the Bureau of Labor Statistics (BLS), Department of Labor, indicates a change during the previous year in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation be published in the Federal Register.

The BLS Consumer Price Index for 1987 indicates a price increase in meat products of 3.5 percent and a price decrease in poultry products of 9.2 percent. As a percentage of the existing dollar limitation, a change in excess of $500 is indicated for both meat and poultry products. When rounded off to the nearest $100, the price increase for meat products amounts to $1,100 and the price decrease for poultry products amounts to $2,900.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, has automatically raised the dollar limitation or permitted sales of meat products and lowered the dollar limitation of permitted sales of poultry products to consumers other than household consumers by establishments operating as retail establishments exempt from Federal inspection requirements. Therefore, the dollar limitations for 1987 have increased from $30,500 to $31,600 for meat products and decreased from $31,000 to $28,100 for poultry products.

Done at Washington, DC on April 22, 1988.

Lester M. Crawford,
Administrator, Food Safety and Inspection Service.
[FR Doc. 88-9617 Filed 4-29-88; 8:45 am]
BILLING CODE 3410-DM-M

COMMISSION ON CIVIL RIGHTS

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 6:30 a.m. and adjourn at 11:30 a.m., on May 20, 1988, at the University of Nevada, Las Vegas, Wright Hall, Gold Room #112, 4505 Maryland Parkway, Las Vegas, Nevada 89154. The purpose of the meeting is to discuss findings and conclusions of the Committee's casino employment study.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth C. Nozero or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1988.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-9608 Filed 4-29-88; 8:45 am]
BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on May 26, 1988, at the Lincoln Plaza Hotel Conference Center, Seminole Room, 4445 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The purpose of the meeting is to plan program activities and to receive an orientation on the Commission, Advisory Committee operations, and regional programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1988.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-9609 Filed 4-29-88; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Construction Progress Reporting (State and Local Government)
Form Number: Agency—C-777 (SL); OMB-NA
Type of Request: New collection
Burden: 3,400 respondents; 3,400 reporting hours
Needs and Uses: Census collects monthly data on the value of new construction work owned by State and local government, and fiscal year expenditure data on this same construction. These estimates should be comparable on a fiscal year basis, but have differed significantly during the past decade. The difference is growing. A possible source of the difference is the undercoverage of the desired universe used in the monthly survey. This proposed survey will be used to evaluate this undercoverage and to improve the survey by correcting the value of new State and local construction estimates. The Bureau of Economic Analysis uses the data from the monthly survey to develop construction components of the Gross National Product accounts. Other government agencies use the data in making policy decisions
Affected Public: State or local governments
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of the Census
Title: 1990 Decennial Census—Special Place Prelist Operation
Form Number: Agency—D-351, D-351(GQ), D-351(HU); OMB-NA
Type of Request: New collection
Burden: 265,000 respondents; 198,750 reporting hours
Needs and Uses: Census proposes to conduct this one-time survey 3 months before the 1990 Decennial Census. The collected information will be used to update address information for Special Places (e.g., colleges or universities, dormitories, missions, shelters, prisons, boarding and rooming houses, hospitals, hotels and motels, and nursing homes). This survey is necessary to ensure complete coverage of Special Places in the 1990 Decennial Census
Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, and small businesses or organization
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of the Census
Title: 1990 Decennial Census—Precanvass Operation
Form Number: Agency—D-102A, D-102B, and D-328; OMB-NA
Type of Request: New collection
Burden: 20,100,000 respondents; 980,880 reporting hours
Needs and Uses: This unit-by-unit precanvass operation will be used to verify and update the commercial mailing list that will be used to conduct the 1990 Decennial Census. This precanvass is necessary to account for newly constructed housing units or housing units that do

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not appear on the commercial list; to correct inaccurate unit designations; and to add any other units that are part of the ever-changing inventory of residential housing and special places

Affected Public: Individual or households

Frequency: One time

Respondent's Obligation: Mandatory

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3009, New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–9869 Filed 4–29–88; 8:45 am]

BILLING CODE 3510–07–M

Export Administration

[Docket No. 7102–01]

Actions Affecting Export Privileges; Joseph P.M. d'Haens

Summary

Pursuant to the March 25, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Joseph P.M. d'Haens, with an address at Amerikalei 96, 2000 Antwerp, Belgium, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368–399).

Procedural Background

On March 25, 1988, the Administrative Law Judge entered his Decision and Order, which has been referred to me for final action pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420 (1982 and Supp. III 1985)). The parties have made certain filings with me following the March 25, 1988 date, in particular, the filing of new counsel for the Respondent requesting a remand of the matter to the Administrative Law Judge (or an extended period of consideration by this office) for the purposes of: (1) Providing documentary evidence concerning matters already considered at the previous hearing and (2) providing "additional evidence which counsel is not presently prepared to detail." I find no compelling reason to grant the requested relief. Respondent had ample opportunity to present evidence on issues raised in the hearing before the Administrative Law Judge, yet failed to do so. With respect to any additional evidence, it may well be that Respondent is entitled to a reopening of these proceedings in accordance with section 388.18 of the Regulations; however, such a request must be made in accordance with the provisions of that section.

Order

Having examined the record, and based on the facts of this case, I affirm the findings, conclusions and penalties made and imposed by the Administrative Law Judge in his Decision and Order of March 25, 1988, which Decision and Order is attached hereto and made a part hereof by express reference.

This constitutes final agency action in this matter.

Dated: April 25, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

In the Matter of Joseph P.M. d'Haens, Respondent, Docket No. 7102–01.

Appearance for Respondent: Joseph P.M. d'Haens, Amerikalei 96, 2000 Antwerp, Belgium.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, Washington, DC 20230.

Preliminary Statement

On April 15, 1987, the Office of Export Enforcement (OEE), issued a charging letter to Respondent Joseph P.M. d'Haens, (hereinafter referred to as "Respondent"). The charging letter alleges that Respondent violated §§ 387.2, 387.3 and 387.5 of the Export Administration Regulations (25 CFR Parts 368–399), (the Regulations). The charging letter, dated April 15, 1987, was served on Respondent on or about May 5, 1987.

Respondent's answer to the charging letter was received in the Office of the Administrative Law Judge on May 11, 1987. Neither party has requested a hearing in this matter. However, both parties have made written submissions over the past 10 months in support of their respective positions. This decision is rendered pursuant to § 388.14 of the Regulations, which provides for adjudication on the record without a hearing.

The April 15, 1987 charging letter alleges that Respondent committed three violations of the Regualtions.

First, Respondent is alleged to have unlawfully conspired with Franz Traxler, doing business as Airfo GmbH, Munich, West Germany, and Michael Kolleczek, doing business as Airfo International, New York, New York. The alleged purpose of the conspiracy was to obtain a U.S.-orgin semiconductor manufacturing system (the GCA Mann 4800) on the representation that an academic institution in Belgium was the intended ultimate destination. The conspirators are alleged to have intended to, and did in fact, cause the system to be shipped to Hungary without the required reexport authorization, in violation of section 387.3 of the Regulations.

Second, Respondent allegedly violated § 387.5 of the Regulations by representing to GCA, the domestic manufacturer of the equipment, and indirectly to the Office of Export Administration (OEA), that he was purchasing the GCA Mann 4800 System on behalf of Stedelijke Industriele Hogeschool Antwerpen (I.H.A.M.), including his obtaining a Belgium Import Certificate reflecting I.H.A.M. as the ultimate consignee, when he knew that the representation was materially false and misleading, in violation of § 387.5 of the Regulations.

Third, Respondent is alleged to have caused, aided and abetted a violation of the Regulations by participating in the conspiracy with Traxler and Kolleczek to effect the reexport of the GCA Mann 4800 System from Switzerland to Hungary without the required reexport authorization, in volation of § 387.2 of the Regulations.

Respondents Contention

Respondent argues that he did not violate the Regulations, and that he did not illegally conspire with others with respect to the acquisition and disposition of the equipment. He claims that his representations in obtaining the export license and Belgium export certificate were not false and that he did not participate in a conspiracy with others to reexport the semiconductor manufacturing system from Switzerland to Hungary without the required reexport authorization.

The Participants

1. Joseph P.M. d'Haens is a Belgian citizen and a parttime instructor at Stedelijk Instituut voor Hogere Technische Studien (SIHTS) Municipal Institute for Higher Technological Studies. This is the evening division of the Stedelijke Industriele Hogeschool Antwerpen (Municipal College for Technology of Antwerp). The acronym I.H.A.M. is used to describe either or both the College and the Institute in Antwerp, Belgium.

2. Airfo International, Inc. is a freight forwarding company with offices at 161 15 Rockaway Blvd., Jamaica, New York and 200 Park Avenue, Suite 4401, New York, New York.

3. Michael A. Kolleczek was the manager of Airfo International, Inc. and was associated with ASL International Freight Forwarding Corp., J.F.K. International Airport, in Jamaica, New York.

4. Airfo GmbH was a West German Company engaged in the freight forwarding business, with offices at Flughafen Riem, Munich, West Germany. It was associated with Airfo International, Inc.

5. Franz Traxler was an employee of Airfo GmbH in Munich, West Germany.

6. GCA Corporation was an American corporation engaged in the business of manufacturing and selling semiconductor manufacturing equipment. Its Burlington Division was located at 209 Burlington Road, Bedford, Massachusetts.

7. GCA International was a corporation and affiliate of GCA Corporation, marketing GCA products in foreign countries. Its Swiss offices were located in Kreuzlingen, Switzerland.

8. Emri J. Diosy was the Manager-Contracts at GCA Corporation, Burlington Division.

9. Ed Baumann was an employee of GCA International in Kreuzlingen, Switzerland.

Facts

The essential facts recited hereafter are not materially contraverted. On February 9, 1982, utilizing stationery with the letterhead "Stedelijke Industriele Hogeschool Antwerpen" (I.H.A.M.), Respondent placed an order with GCA/Burlington Division in Bedford, Massachusetts for a GCA Mann 4800 DSW Step on Wafer system, including various parts and accessories. This order was a follow up to respondent's earlier discussions concerning the purchase of a GCA Mann 4800 with the Swiss subsidiary of the American manufacturer. The GCA Mann 4800 is a semiconductor manufacturing equipment system which is on the controlled commodity list because of the high technology it utilizes. On or about February 17, 1982, GCA/Burlington Division filed an export license application with OEA seeking authorization to export a GCA Mann 4800 DSW Direct Step on Wafer System, including parts and accessories, to I.H.A.M. The applicant sought exemption from the requirement that an import certificate be filed on the grounds that the ultimate consignee was an institute of higher learning.

Shipment of the system from Boston was arranged through Airfo International, a freight forwarding firm in New York, New York, and its West German parent, Airfo GmbH. While shipping arrangements were being made, OEA advised GCA/Burlington on March 12, 1982, that I.H.A.M. was not considered an institute of higher learning and, thus, an import certificate was required from the ultimate consignee. On March 17, 1982, the Swiss subsidiary of GCA forwarded to its U.S. parent a cable it received from the Respondent explaining I.H.A.M.'s academic program. In addition, in that telex, Respondent also stressed the need for delivery before the end of March because of the budgetary cycle of the academic institution.

By letter dated March 19, 1982, after receiving a facsimile copy of an Import Certificate from Belgium identifying "Joseph d'Heans/I.H.A.M., Paardenmarket 94, 2000 Antwerpen" as the intended importer of a GCA Mann 4800 DSW System, GCA/Burlington resubmitted its export license application to OEA. Following receipt of the Belgian Import Certificate, export license A603641 was issued, authorizing the export of a GCA Mann 4800 DSW System, with parts and accessories, to I.H.A.M.

On March 23, 1982, Michael A. Kolleczek, of Airfo International in New York, forwarded to GCA/Burlington Division a letter which included the necessary documents for the shipment of the GCA Mann 4800 System. In accordance with the instructions contained in that letter, GCA transported the system to the Boston airport, from which it was shipped to the intermediate consignee, Pro Air AG, in Zurich, Switzerland, on March 29, 1982. The documents accompanying the shipment identified GCA/Burlington Division as the exporter, Airfo International as the agent of the exporter, Pro Air, Zurich, Switzerland as the intermediate consignee and I.H.A.M. as the ultimate consignee. Three pieces of equipment that missed the March 29 flight were shipped on March 30. The system was never shipped from Zurich to I.H.A.M. in Belgium. It was transshipped to Hungary, an unauthorized destination.

The record reflects that on March 1, 1982, a request for a quote for insuring the shipment of the system from Boston to Zurich by air and then on to "BUD" (Budapest) by truck, was made by the Airfo office in Munich, to the Airfo office in New York. Prior to shipping the system, Airfo International had obtained insurance covering the shipment of the GCA Mann 4800 System by air from Boston to Pro Air in Zurich, and then from Zurich, via truck, to Budapest, Hungary.

Discussion

The record establishes that Respondent ordered the GCA Mann 4800 System on I.H.A.M. stationery. The original order and subsequent representations reflect that the equipment was to go to I.H.A.M., an academic institution in Belgium. It is now clear that, contrary to the respresentations made, the system was never intended to be shipped to Belgium. Instead, as alleged in the charging letter, the true ultimate consignee was in Budapest, Hungary. Despite his protestations to the contrary, the evidence, including statements in Respondent's answer, establish that the Respondent was an active participant in the diversion scheme from the outset.

Conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States* v. *Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

> For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of other remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence. the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

United States v. *Donsky*, 825 F.2d 746, 753 (3rd Cir. 1987), citing *Blumenthal* v. *United States*, 332 U.S. 539, 556–7 (1947). It is also well settled that each conspirator does not have to know all of

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the details of the conspiracy or participate in every phase of the scheme. *See, e.g., United States* v. *Carter*, 760 F.2d 1568 (11th Cir. 1985).

As counsel for the Office of Export Administration urges, the sum total of the evidence and the inferences to be drawn, clearly demonstrate an illegal conspiracy. For example, the March 1, 1982, telex from Airfo GmbH to Airfo International requesting a quote for insurance for a shipment of a GCA Mann 4800 System from Boston to Budapest via Zurich demonstrates that the intent to ship the system to Hungary existed at the time Respondent told the U.S. exporter that the system was being purchased for end-use by I.H.A.M. in Belgium. While Respondent has sought to distance himself from the illegal diversion which took place with respect to the GCA Mann 4800 System, upon close examination, Respondent's answer show that it was his representation and action that gave an appearance of legitimacy to this transaction. In that answer Respondent admits that he was purchasing the GCA equipment for a Mr. H. Range, the Managing Director of Racommerz AF, a Swiss company. Respondent claims that Range asked him to set up and manage a semiconductor plant in Belgium. He also asserts that Range requested him to order the equipment for immediate delivery, even though the projected plant would not be ready for some time. Respondent also attempts to distance himself somewhat from I.H.A.M., stating that since I.H.A.M. "accepted that the equipment, after installation in Belgium, would be accessible for educational purposes intimates that I.H.A.M. was the purchaser of the GCA Mann 4800 System." He also asserts that the import certificate which he obtained from the Belgian government correctly shows that he, rather than I.H.A.M., is to receive the U.S.-origin goods in Belgium. Affidavits from officials of I.H.A.M. were submitted in an effort to establish that he was authorized to utilize I.H.A.M. letterhead in ordering the equipment. Respondent's actions at the time reflect the intent to show I.H.A.M. as the purchaser and user. Now it is clear that neither he nor I.H.A.M. was the purchaser or the end user, and he well knew that. The evidence, when considered in total, shows Respondent's "defense" is a sham. He consistently sought to convince the U.S. manufacturer that I.H.A.M. was the purchaser of the GCA Mann 4800 system. His communications to GCA were on I.H.A.M. letterhead and purportedly on behalf of I.H.A.M. In his March 17, 1982 cable to GCA's Swiss subsidiary, Respondent sought to provide a basis for why an institute such as I.H.A.M. would order a GCA Mann 4800 System. That cable clearly reflects that it was the school, and not the Respondent, which purportedly was purchasing the equipment. His recent statement (attached as document 3 to Respondent's answer) clearly establishes that I.H.A.M. was *not* purchasing the equipment ("I want to add that it occurred frequently that school stationery was used by professors for the purchase of equipment, *as far as this transactions* [sic] *did not have any influence whatsoever on the budget of the school* * * *." (Emphasis added.))

That I.H.A.M. did not order the GCA Mann 4800 System, and could not have placed an order for that system because of its cost, is also established by the statement of Mr. Broeckhove, another official of the school. Respondent simply used the letterhead stationary he obtained from I.H.A.M. in an attempt to give an appearance of legitimacy to the purchase of the GCA Mann 4800 System. His representations of urgency respecting the annual budget cycle and present fund availability were also totally false and made with the deliberate intent to mislead, since, in fact, the institution had no money's available nor proposed for the acquisition of such manufacturing equipment.

By admitting that he was purchasing the equipment at the request of Mr. H. Range of Racommerz AG, not at the request of I.H.A.M. Respondents own evidence shows that he caused OEA to be provided with materially false and misleading information of the intended end-user of the GCA Mann 4800 System. His false representations prevented the Export control mechanisms from determining the eligibility of the purchaser and/or end-user to acquire such equipment.

Despite his implicit admission to providing false information concerning the intended end-use of the GCA Mann 4800 System, Respondent claims that he was not involved in any conspiracy. The evidence leads to a different conclusion. A crucial aim of the conspiracy was to provide the appearance of an apparently legitimate end-user for the GCA Mann 4800 System. As shown above, Respondent went to great lengths during the time that the system was being ordered to make it appear that I.H.A.M. was its intended end-user. It was only long after the diversion took place that respondent acknowledged that, I.H.A.M. was not the true purchaser of the system. Simply put, Respondent's misleading representations and subsequent lack of candor materially assisted his associates in the diversion of the subject equipment. That his hands-on participation in the actual diversion from Zurich is not shown, does not release him from responsibility from all acts taken in fulfillment of the conspiracy, up to and including the transhipment to Budapest, Hungary.

The intent to have the system shipped to Budapest, Hungary, not Antwerp, Belgium, was clearly evidenced by the conspirators Kolleczek and Traxler on March 1, 1982. This date is important for, as the chronology reflects, on several occasions thereafter Respondent sought to convince both the U.S. exporter and OEA that the GCA Mann 4800 System was intended for end-use at I.H.A.M. Indeed, at no time during the ordering or shipping of the system did Respondent reveal that he was working on behalf of anyone other than I.H.A.M. Yet he had to know how the equipment was to be shipped, paid for, etc. Documents created contemporaneously with the ongoing conspiracy are entitled to much greater weight than the after-the-fact rationalizations attempted by Respondent. It was only after the scheme was uncovered that Respondent sought to distance himself from the various representations he made regarding the involvement of I.H.A.M. in this transaction. Contrary to his statements, Respondent was a knowing participant in the conspiracy.

Indeed, Respondent's answer includes several incomplete and otherwise misleading statements which cast question on his credibility. For example, one submission states that Respondent never provided any transportation instructions to Airfo's *New York* office. However, while Respondent may not have discussed the shipment with Airfo in New York, an exhibit shows that he discussed the shipment with Airfo's West German office.

Respondent's suggestion that he did not know what Range was advising Airfo also appears to be misleading. On March 19, 1982. Respondent provided the Belgian Import Certificate he had obtained to the Swiss subsidiary of GCA, which in turn telexed that document to its U.S. parent. On that same date, Range told Airfo that the Belgian Import Certificate had been sent to the United States. Simply put, the "coincidence" involving these two nearly simultaneous documents, containing information which was central to the overall purposes of the conspiracy, cannot be overlooked. Only one set of inferences can be drawn from the pattern of conduct. It is that Respondent was working with Range and the others in the diversion scheme.

Respondent's final defense is that he believed the GCA Mann 4800 System was exported from the U.S. to GCA International in Switzerland and that in March 1982 Range told him the system was to be stored in Switzerland.

By letter dated June 18, 1982, reference was made to "recent telephone conversations and also to several telexes sent to your office * * *". What GCA International sought there was a written commitment from the Respondent for the installation of the GCA Mann 4800 System that had been shipped in April. On November 11, 1982 and January 26, 1983, GCA International again sought a response from the Respondent to its request for installation instructions. It was not until February 18, 1983, that Respondent even agreed to meet with GCA International to discuss installation of the system. Respondent's failure to respond to these numerous requests from GCA International is in marked contrast to his "latter day" assertions that he believed the system was under the control of the manufacturer and that he was waiting for installation in Belgium. Once again, Respondent's after-the-fact attempts to provide a justification for his actions, in connection with this illegal diversion scheme, simply do not comport with the evidence.

Findings

1. On or about February 5, 1982, the Respondent misrepresented to GCA International that he was a Professor of Digital Electronics at Stedelijke Industriele Hogeschool, Paardenmarkt 94, 2000 Antwerpen, Belgium and that he was requesting on the said school's behalf a price quotation from GCA for a Mann 4800 DSW (Direct Step on Wafer) System.

2. On or about February 9, 1982, the Respondent signed and caused to be sent a letter, dated February 9, 1982, to GCA Corporation, Bedford, Massachusetts, on the stationery of Stedelijke Industriele Hogeschool Antwerp ("I.H.A.M."), ordering one Mann 4800 DSW (Direct Step on Wafer) System and accessory equipment for the said school at a price of U.S. $608.100.

3. On or about February 12, 1982, the Respondent caused Emri J. Diosy, GCA Corporation to file an application for export license (No. A603641) with the OEA stating that the commodity to be exported, the Mann 4800 DSW, would be sold and shipped to Stedelijke Industriele Hogeschool, Antwerp, Belgium.

4. On or about March 1, 1982, Franz Traxler, Airfo GmbH, sent a telex dated March 1, 1982 to Respondents co-conspirators Michael A. Kolleczek and Airfo International, Inc., instructing them to make out the House Air Waybill ("HAWB") to Stedelijke Industriele Hochshul, Attn: Dr. D'Haens, Antwerp, Belgium, but to make out the Master Air Waybill ("MAWB") to Pro Air AG in Zurich, Switzerland and in the same telex Traxler requested that the co-conspirators Michael A. Kolleczek and Airfo International, Inc., obtain a quote for insuring the shipment from Boston to Zurich, then to Budapest, Hungary by truck.

5. On or about March 17, 1982, the respondent made and caused to be made and sent to Emri J. Diosy, GCA Corporation in Bedford, Massachusetts, and from Diosy to OEA, a telex, dated March 17, 1982, explaining the academic nature of Stedelijke Industriele Hogeschool and its relationship to "I.H.A.M.".

6. On or about March 18, 1982, the Respondent caused the Ministry of Economic Affairs of Belgium to prepare International Import Certificate No. USA–681, and caused the certificate to be sent to Emri J. Diosy, GCA Corporation in Bedford, Massachusetts, by misrepresenting to the Belgian authorities that the Mann 4800 DSW System would be imported into Belgium and that the total value of the import was 608.100 Belgian Francs.

7. On or about March 19, 1982, Franz Traxler, Airfo GmbH, Respondent Michael A. Kolleczek and Airfo International, Inc., caused Emri J. Diosy, GCA Corporation to resubmit the application for export license, A603641, to OEA, together with International Import Certificate No. USA–681 from the Belgian Ministry of Economic Affairs and the telex dated March 17, 1982, from the Respondent.

8. On or about March 23, 1982, the co-conspirators Michael A. Kolleczek and Airfo International, Inc., prepared, signed and caused to be sent to Emri Diosy, GCA Corporation in Bedford, Massachusetts a letter dated March 23, 1982, together with the Shipper's Export Declaration, and other Export documents advising that he (Kolleczek) had booked the shipment to the Mann 4800 DSW System on Swissair Flight SR 129 on March 29, 1982, from Boston to Zurich.

9. On or about March 26, 1982, the co-conspirators Michael A. Kolleczek and Airfo International, Inc., applied for and caused an insurance company, in New York, to issue cargo insurance for the Mann 4800 DSW System covering its transportation from Boston to Pro Air A.G., Zurich, Switzerland, and from Zurich, by truck, to Elektromodul, Abt. in Budapest, Hungary.

10. On or about March 30, 1982, the Respondent, Michael A. Kolleczek and Airfo International, Inc., caused the OEA, to issue Export License A603641 (expiration date—April 30, 1982) to GCA/Burlington Division in Bedford, Massachusetts for the export of a Mann 4800 DSW System and other items from the United States to Stedelijke Industriele Hogeschool in Antwerp, Belgium.

11. On or about March 29 and 30, 1982, ASL International Freight Forwarding Corp., Respondent Michael A. Kolleczek, and Airfo International, Inc., caused Swissair Airlines to transport the Mann 4800 DSW from Boston, Massachusetts to consignee Pro Air A.G., Zuerich Airport, Switzerland under Air Waybill No. 085–5976–3130.

12. On or about March 29, 1982, the Respondent, Michael A. Kolleczek, and Airfo International, Inc., caused GCA Corporation to prepare and send an invoice with the shipment of the Mann 4800 DSW System, noting on it Import Certificate No. USA 681 and the name Stedelijke Industriele Hogeschool as the buyer.

13. On or about March 29, 1982, the Respondent, Michael A. Kolleczek, and Airfo International, Inc., caused Emri J. Diosy, GCA Corporation to file with U.S. Customs Service in Boston, Massachusetts a Shipper's Export Declaration falsely representing that the ultimate destination of the Mann 4800 DSW System was the country of Belgium and that the ultimate consignee for the export was Stedelijke Industriele Hogeschool in Antwerp, Belgium.

14. On or about March 30, 1982, Respodent, Michael A. Kolleczek, and Airfo International, Inc., agreed to arrange for and cause the shipment from Basel to Zurich, Switzerland of accessory equipment including an environmental chamber for use with the same GCA Mann 4800 DSW System.

15. On or about Aprill 9, 1982, the co-conspirators, Michaiel A. Kolleczek and Airfo Internaitonal, Inc., sent invoice nos. 087 and 087–a to Airfo GmbH in Munich, West Germany, billing Airfo GmbH for the shipment of the Mann 4800 DSW System from Boston, Massachusetts to Pro Air A.G. in Zurich, Switzerland and for the cost of insuring the same cargo from Boston, Massachusetts to Elektromodul in Budapest, Hungary.

16. As a part and in furtherance of the conspiracy, the Respondent ordered the semiconductor manufacturing equipment from GCA Corporation, allegedly for export to and use in Antwerp, Belgium.

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17. It was part of the conspiracy that the Respodent made and caused to be made false statements and representations on documents and forms which were sent and submitted by GCA Corporation from Bedford, Massachusetts to the Office of Export Administration, U.S. Department of Commerce, to influence action by OEA and to obtain a validated export license from OEA.

18. It was a further part of the conspiracy that the Respondent and the other co-conspirators made and caused to be made false statements and representations in documents and forms which were sent and submitted by GCA Corporation to U.S. Customs Service in Boston, to influence action by the U.S. Customs Service and to effect the export of the semiconductor manufacturing equipment.

19. Respondent made and caused to be made, false statements to the Ministry of Economic Affairs, Belgium, in order to influence action by such Ministry of Economic Affairs and by the Office of Export Administration, U.S. Department of Commerce.

20. As part of the conspiracy the Respondent caused to be exported semiconductor manufacturing equipment to an intermediate consignee Pro Air A.G., a freight forwarder, in Zurich, Switzerland, for further transport by truck to Budapest, Hungary.

21. In 1962, the President of the United States was authorized by Congress to further United States foreign policy and to maintain national security by restricting and controlling the commercial export of goods which would make a significant contribution to the military potential of any other country or combination of countries, such goods being designated in the Commodity Control List, Title 15, Code of Federal Regulations ("CFR"), § 399.1, and by delegating the responsibility for administering the commercial export of the goods on the Commodity Control List to the Office of Export Administration in the Department of Commerce.

22. In 1962, the Office of Export Administration ("OEA"), International Trade Administration, U.S. Department of Commerce was an agency of the United States charged with the authority to issue validated export licenses for the export of certain commodities to controlled countries under the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et seq.*), as extended by Act of Congress, Pub. L. 96-108 (October 1, 1963).

23. At that time a person desiring to export commodities contained on the Commodities Control List was required to obtain a validated license issued by OEA before exporting the commodity from the United States, except where the export was authorized under a general license.

24. The Mann 4800 DSW (Direct Step on Wafer) system was a high technology system, with application to military uses, and was included on the Commodity Control List; the export of this commodity from the United States to a country other than Canada was not authorized under general license, and before any such export could be made, a validated license to the ultimate destination, (Budapest, Hungary) was required but was not obtained.

Based on the foregoing:

I find that the Respondent acting in conspiracy with others obtained U.S. semiconductor manufacturing system (a GCA Mann 4800) and a license to export same by falsely representing its destination and end users and did thereafter effect its diversion to Hungary without the required validated license to that country in violation of § 387.3 of the Regulations.

I further find that Respondent falsely represented he was purchasing a semiconductor manufacturing system on behalf of Stedelijke Industriele Hogeschool (I.H.A.M.) Antwerp, Belgium and falsely obtained and filed an import certificate from the Belgium government, representing that I.H.A.M. was the ultimate consignee, what he knew to be materially false, all in violation of § 387.5 of the Regulations.

I also find that Respondent in furtherance of the conspiracy, aided and abetted the violation whereby the semiconductor manufacturer system was reexported from Zurich, Switzerland to Budapest, Hungary, contrary to the terms' of the export license and in violation of § 387.2 of the regulations.

Conclusion

Though this Respondent asserts that he was not a party to the alleged diversion of the identified controlled equipment, to Hungary. The evidence demonstrates otherwise. His after the fact disclaimers are at odds with reality. The purchase of sophisticated semiconductor equipment of a value in excess of one-half million dollars was not a casual hardware store type purchase. The school had no such resources available and its pre-approval processes had not been utilized. Clearly the school never contemplated the purchase that was represented by Respondent. The use and verification of the school as the purchaser was a fraud perpetrated by Respondent. It was also the principal and first step in the diversion. His failure, or more properly, his refusal, to communicate with the manufacturer for almost a year after delivery in Europe indicates continuing guilty knowledge and participation by him. The criminal conviction after a trial by jury of the co-conspirators Michael A. Kolleczek and Airfo International, Inc., is also appropriately for consideration here, for the Respondent here was an indicated co-defendant and is a fugitive in that criminal conspiracy proceeding (USDC, District of Massachusetts Criminal #83-002249MC).

The bare representation that Respondent was acquitted by a Belgium court of charges based upon the same acts is of interest but is not relied upon because it is an unsupported representation. Like the conviction of the co-conspirators it would be appropriate to consider if there were some supporting records. In any event the result here is based on this record which compels the findings of misconduct as charged, by more than a preponderance of the evidence.

It is unfortunate that there has been extensive unexplained delay here, particularly from the May, 1984 criminal conviction to the April 1987 charging letter. In other cases I have railed against such unnecessary delay which I will not reiterate here. The Respondent has shown no prejudice from such continuations.

Respondents submissions showing of his background as a researcher, scientist academician and military officer serve for naught in the face of what has been shown and admitted here. He is neither the first nor the last to sell himself and his reputation of a handful of silver. He must suffer the consequences of his own deception. In light of the fact that the GCA Mann 4800 System is controlled for reasons of national security and would not be licensed for export to Hungary, it is appropriate to impose a long term denial of Respondent's export privileges as a sanction for these violations.[1]

Order

I. For a period of 20 years from the date of the final Agency action, Respondent: Joseph P.M. d'Heens, Amerikalei 96, 2000 Antwerp, Belgium and all successors, assignees, officers, partners, representatives, agents, and

[1] Historically, the term "indefinite" which agency counsel requests meant until questions were answered on some conditions corrected. "Permanent" was the term used for these to be barred for all time. That latter term has caused problems in managing the list of denied parties. Twenty years should serve the interest of justice here.

employees hereby are denied all privileges of participating, directly or indirectly, in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction either in the United States or aboard, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such a denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly, or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill or lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act [50 U.S.C.A. App 2412(c)(1)].

Dated: March 25, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-9572 Filed 4-29-88; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. OEE-2-88]

Export Privileges; Samata S.A. et al.

In the matter of Mario Brero, individually with an address at: La Chenalettaz, CH-1096 Treytorrens, Switzerland, and doing business as Samata S.A., 36 Rue de Montchoisy, CH-1207 Geneva, Switzerland, Marli S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland, Graphic Data Products S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland, Fincosid S.A., Galleria Benedettini, CH-6500 Bellinzona, Switzerland, Tourimex S.A., Via Bordemo, CH-6596 Gordola, Switzerland and Lilly Merchandising Co., Taborstrasse, Vienna, Austria, Respondents.

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration,[1] United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1987) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement, in his capacity as the individual who performs the duties of the Assistant Secretary for Export Enforcement, when, as is presently the case, that position is vacant,[2] to issue an order temporarily denying all United States export privileges to Mario Brero, individually and doing business as Samata S.A., and to Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tourimex S.A. and Lilly Merchandising Co. (hereinafter collectively referred to as respondents).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents are involved in a scheme to obtain controlled U.S.-origin commodities from the United States, take possession of them in Switzerland and then reexport them, oftentimes to proscribed destinations. The Department has reason to believe that, in carrying out their scheme, respondents have provided false and misleading statements of material fact concerning the intended end-users of U.S.-origin equipment respondents ordered from the United States. In fact, it appears that the Western European companies identified by respondents as being the intended end-users had no involvement in the transactions. Once the U.S.-origin goods were received by respondents in Switzerland, the Department has reason to believe that respondents reexported the goods to end-users in the Soviet bloc.

The U.S.-origin goods which respondents obtained from the United States are controlled for reasons of national security. The Department also states that its investigation has given it

[1] On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, then-Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration of the United States Department of Commerce to the Bureau of Export Administration of the United States Department of Commerce. The functions and scope of authority of the Bureau of Export Administration are set forth in Department Organization Order (DOO) 50-1, issued on March 23, 1988.

[2] The reorganization which created the Bureau of Export Administration also created the positions of Under Secretary for Export Administration and Assistant Secretary for Export Enforcement. *See also* DOO 10-16 (issued on March 10, 1988).

As a result, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders. *See* DOO 50-1. At present, however, this position is vacant. Pursuant to DOO 50-1, the Deputy Assistant Secretary for Export Enforcement is the Department official who is to perform the duties of the Assistant Secretary when that position is vacant.

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reason to believe that respondents Brero and Samata currently have in their possession and control U.S.-origin commodities which are controlled for reasons of national security.

The Department believes that respondents' past activities, coupled with its belief that respondents Brero and Samata currently possess and control U.S.-origin goods, establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States. The Department believes that respondents' activities show a clear pattern of disregard for the Act and the Regulations.

Furthermore, the Department believes that in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a temporary denial order naming Mario Brero, Samata S.A., Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tourimex S.A. and Lilly Merchandising Co. is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby Ordered

I. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Mario Brero, individually with an address at La Chenalettaz, CH–1096 Treytorrens, Switzerland, and doing business as Samata S.A., 36 Rue de Montchoisy, CH–1207 Geneva, Switzerland; Marli S.A. and Graphic Data Products S.A., both with an address at 3 Chemin Taverney, CH–1218 Geneva, Switzerland; Fincosid S.A., Galleria Benedetini, CH–6500 Bellinzona, Switzerland; Tourimex S.A., Via Bordemo, CH–6596 Gordola, Switzerland; and Lilly Merchandising Co., Taborstrasse, Vienna, Austria, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.10(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order. By written submission, any respondent may also request that a hearing be held on the renewal request.

A copy of this Order and of Parts 387 and 388 of the Regulations shall be served on each respondent and this order shall be published in the Federal Register.

Dated: April 22, 1988.

William V. Skidmore,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 88–9610 Filed 4–29–88; 8:45 am]

BILLING CODE 3510–DT–M

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Article 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than May 12, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Adminstration, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3878, Washington, DC, 20230, (202) 377–3984.

SUPPLEMENTARY INFORMATION: Paragraph 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses for the importation of machine tools covered by the Arrangement. Such licenses may be issued when it is determined "that the attainment of the objectives of this Arrangement requires the importation * * * of arrangement products in excess of the applicable export limit." Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 72 milling machines with facing for numerical controls from Taiwan over the next twelve months. The milling machines meet the following specifications: spindle speeds of 0–1200 rmps, 0–2667 rpms and 0–7200 rmps on low, medium and high speeds, respectively; feed rates of 0.1–70" /min cutting and 100"/min rapid; x-axis table travel of 14", y-axis of 10" and z-axis of 14"; accuracies of +/–0–00015" repeatability, +/– 0.0005 position, +/– 0.0002" roundness and +/– 0.0002" cylindricity; table size of 28.7" × 10"; and throat distance of 10.63". Other relevant characteristics are: (1) Stepping motor, (2) tooling CV–30 (BT–30), (3) 2HP DC spindle motor, and (4) capacity of maximum ¾" end mill.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than May 12, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–009 at the above address, (202) 377–1248.

Joseph A. Spetrini,

Acting Assistant Secretary, for Import Administration.

April 27, 1988.

[FR Doc. 88–9670 Filed 4–29–88; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Carbon Steel Billets; Request For Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain carbon steel billets suitable for rolling into wire rod.

DATE: Comments must be submitted no later than May 12, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377 0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for the following types of carbon steel billets, made in basic oxygen furnaces and suitable for rolling into wire rod, with a square cross section of 5½ inches on each side and a length of 50 feet:

(1) AISI grade 12L14;

(2) AISI grades 1006, 1022, 1060, and 1541 aluminum killed, fine grain; and

(3) AISI grades 1008 and 1010 modified, fully rimmed.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 12, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–9671 Filed 4–29–88; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Safe Water, Inc.

The National Technical Information Service (NTIS), United States Department of Commerce, intends to grant to Safe Water, Inc., having a place of business at Williamsburg, Virginia, an exclusive license in the United States to use the invention entitled "Gas Content Determination of Evaporite Formations Using Acoustic Emissions During Dissolution," United States Patent No. 4,679,435 (Application Serial Number 6–

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838,490). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of the Interior.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

[FR Doc. 88-9681 Filed 4-29-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Assistant Secretary

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23-24 May 1988.

Time:

0830-1700 hours, 23 May 1988, Fort Hunter-Liggett, CA.

0830-1700 hours, 24 May 1988, Fort Ord, CA.

Place: Fort Hunter-Ligget, CA and Fort Ord, CA.

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet for the purpose of gathering facts in phase IV of the study. The opening session will be devoted to a visit to the Combat Development Evaluation Command, Fort Hunter-Liggett, CA to obtain an overview of the mission and role of a test organization, assess the T&E planning and execution processes used to estimate operational effectiveness and suitability of Army materiel, and tour environment as operationally realistic as possible. The session at Fort Ord, CA will be devoted to the summarizing of notes and report writing efforts. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-9611 Filed 4-29-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: May 26, 1988.

Time of Meeting: 0930-1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to gather facts for the study. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-9626 Filed 4-29-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Intent To Repay to the Iowa Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234e), the Secretary of Education (Secretary) intends to repay to the Iowa Department of Education (SEA) under a grantback arrangement an amount equal to 75 percent of funds recovered by the Department of Education as a result of a final audit determination. This notice describes the SEA's plans for the use of funds which the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments should be received on or before June 1, 1988.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202-5609.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, (202) 732-2237.

SUPPLEMENTARY INFORMATION:

A. Background

In September, 1986, the Department of Education recovered $78,018 from the SEA in satisfaction of an audit, covering the period from July 1, 1980 to June 30, 1981. The auditors examined the accounting procedures, and system of internal controls of the SEA in expending funds under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.*

The auditors issued the following finding:

The SEA did not maintain adequate time distribution records to substantial payroll costs charged to the Vocational Amendment Act Fund (Account Number 733) in fiscal year 1981. Several employees with varying percentages of duties and responsibilities were 100 percent funded from the 733 account.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA that resulted in the audit determination have been corrected, and that the SEA in all other respects, is in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $58,513 and has submitted a plan to use the proposed grantback funds consistently with sections 113 and 251 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (Supp. II 1984). The audit findings against the States Board resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Board's proposal reflects the requirements of the Perkins Act.

The SEA proposes to use grantback funds for improvement of curriculum by paying the costs of State participation in two curriculum development consortia:

(1) The development of applied mathematics curriculum materials by the Center for Occupational Research and Development, Waco, Texas; and

(2) The development of applied communications curriculum materials by the Agency for Industrial Technology, Bloomington, Indiana.

D. The Secretary's Determination

The Secretary has carefully reviewed the request for repayment of funds, the plan, and other information submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Iowa Department of Education under a grantback arrangement. The grantback award would be in the amount of $58,513 which is 75 percent of the $78,018 recovered by the Department as a result of the finding described above.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements; and

(b) The plan that was submitted in conjunction with the grantback request dated May 8, 1987, as amended on September 22, 1987, and any other amendments to that plan that are approved in advanced by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA must, not later than December 30, 1989, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: April 26, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-9660 Filed 4-29-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-21-NG]

Application to Import Gas From Canada and Mexico; Amagas Resources, Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 8, 1988, of an application filed by AMAGAS Resources, Inc. (AMAGAS), to import up to 100 Bcf of Canadian and/or Mexican natural gas for short-term or spot sales in the U.S. domestic market.

AMAGAS, a Delaware corporation with its principal place of business in Houston, Texas, requests authority to import the gas over a two-year term and intends to use only existing pipeline facilities. AMAGAS purposes to file quarterly reports with the ERA giving the name of the purchaser and seller for each transaction including prices and volumes.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than June 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person

may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., June 1, 1988.

The administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to the decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AMAGAS' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 25, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-9599 Filed 4-29-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-2823-000 et al.]

Notice of Applications for Abandonment of Service and To Amend Certificates [1]; Phillips 66 Natural Gas Co. et al.

April 27, 1988

Take notice that each of he Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 12, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2823-000, D, Apr. 18, 1988	Phillips 66 Natural Gas Company, 990-G Plaza Office Building, Bartlesville, OK 74004.	Panhandle Eastern Pipe Line Company, South Guymon & Hugoton Fields, Sherman and Hansford Counties, Texas, and Texas County, Oklahoma.	(1)
G-2845-000, D, Apr. 18, 1988	do	do	(1)
CI61-1429-015, D, Apr. 13, 1988	Sun Exploration & Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Langlie Mattix Field, Lea County, New Mexico.	(2)
CI61-1429-016, D, Apr. 13, 1988	do	Jalmat *et al.* Fields, Lea County, New Mexico	(2)
CI61-1429-017, D, Apr. 13, 1988	do	S. Leonard *et al.* Fields, Lea County, New Mexico	(2)
CI61-1429-018, D, Apr. 18, 1988	do	Langlie Mattix *et al.* Fields, Lea County, New Mexico	(2)
CI61-443-001, D, Apr. 18, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Panhandle Eastern Pipe Line Company, Spooney (Lower Morrow) Field, Hansford County, Texas.	(3)
CI66-411-000, (CI67-269) B, Apr. 11, 1988.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Colorado Interstate Gas Company, O.M. Hemphill #1, Sec. 29-T34S-R42W, Greenwood Field, Morton County, Kansas.	(4)
CI66-423-000 (CI66-1129), B, Apr. 15, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Williams Natural Gas Company, South Bishop Field, Roger Mills County, Oklahoma.	(4)
CI66-427-000 (G-13632), B, Apr. 19, 1988.	Mobil Producing Texas & New Mexico Inc.	West Texas Gathering Company, S. Kermit Field, Winkler County, Texas.	(4)

[1] The Lawler No. 2 well located in Sec. 25-2N-15ECM, Texas County, Oklahoma, has been plugged and abandoned. Production has ceased and no further development is expected from the acreage involved.

[2] Effective 1-2-86, Sun assigned its interest in Property No. 437468, Cooper Jal Unit (partial interest), to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[3] Effective 1-2-86, Sun assigned certain properties to Doyle Hartman, James A. Davidson, Michael L. Klein and John H. Hendrix Corporation.
[4] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[5] Effective 9-1-85, Mesa Operating Limited Partnership assigned certain acreage to Kaiser-Francis Oil Company.
[6] Reserves depleted, well plugged, and lease expired.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-9602 Filed 4-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS71-82-000 et al.]

Applications for Small Producer Certificates [1]; Temex Energy, Inc. (Amarex, Inc.) et al.

April 27, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and section 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS71-82-000	4-14-88 [1]	Temex Energy, Inc. (Amarex, Inc.), 400 Templeton Energy Center, 333 North Bell, Houston TX 77060
CS71-446	11-23-87 [2]	Mary Patricia Dougherty, *et al.* (Mrs. James R. Dougherty, *et al.*) c/o Graves, Dougherty, Hearon & Moody, P.O. Box 98, Austin, TX 78767
CS72-675	4-14-88 [3]	Barron Ulmer Kidd, Trustee; Helen Ulmer Van Atta; BeeKay Company and BeeKay Company, Inc. (Barron Kidd, BeeKay Company and BeeKay Company, Inc.), Suite 500, Two Turtle Creek Village, Dallas TX 75219
CS88-54-000	4-12-88 [4]	C & H Production, Inc., 829 Ashbourne Drive, Shreveport, LA 71106
CS88-55-000	3-28-88	American Comstra, Inc., 500 Throckmorton Street, Suite 2500, Fort Worth, TX 76102
CS88-56-000	3-28-88	William J. Green, P.O. Box 1495, Midland, TX 79701
CS88-57-000	3-28-88	Laguna Petroleum Corporation, P.O. Drawer 2758, Midland, TX 79702

[1] By letter dated April 11, 1988, Applicant states it has acquired all of the properties of Amarex, Inc. (Amarex) and that Amarex has ceased to exist. Applicant requests that the small producer certificate issued to Amarex in Docket No. CS71-82 be redesignated under the name of Temex Energy, Inc.
[2] By letter dated November 18, 1987, as supplemented by letter dated March 30, 1988, received April 5, 1988, Applicant requests redesignation of the small producer certificate in Docket No. CS71-446 in the names of Mary Patricia Dougherty, Stephen Tarlton Dougherty, James R. Dougherty III, Patricia Calhoun Uhr, Ben F. Vaughan, III, individually and as Independent Executor of the Estate of Ben F. Vaughan, Jr., Mey Dougherty King, Genevieve Vaughan, Bruce Beverly Baxter III 1960 Trust, Carolyn Baxter Pauley, Frances Rachael Carr 1960 Trust, and F. William Carr, Jr. 1960 Trust.
[3] Letter dated April 14, 1988, requesting that the small producer certificate in Docket No. CS72-675 be amended to remove the name of Barron Kidd and instead add the names of his successors-in-interest, Barron Ulmer Kidd, Trustee, and Helen Ulmer Van Atta. Applicant states that Barron Ulmer Kidd is the son of Barron Kidd; that Helen Ulmer Van Atta is the mother of Barron Ulmer Kidd; and that Barron Ulmer Kidd is Trustee for his children Jane de Dolete Kidd, Barron du Pont Kidd, Elizabeth Le Dee Kidd and Eliot de Lacy Kidd under a Qualified Terminable Interest Properties Trust.
[4] Application received March 21, 1988. Filing date is date of receipt of filing fee.

[FR Doc. 88-9603 Filed 4-29-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $2,700 obtained as a result of a Consent Order which the DOE entered into with Alemany Chevron Service Center (Alemany), a retailer of motor gasoline located in San Francisco, California and $6,199.19 obtained through a settlement agreement with Lee Garrett Chevron (Garrett), a motor gasoline retailer located in Whittier, CA. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for Refund from the Alemany and Garrett escrow funds must be filed in duplicate and must be received on or before August 1, 1988. All Applications for Refund from these escrow funds should refer to Case Number KEF-0023 for Alemany or KEF-0040 for Garrett and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Matthew E. Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to settlement

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agreements entered into by the DOE and Alemany Chevron Service Center (Alemany) and Lee Garrett Chevron (Garrett) that settled all claims and disputes between the firms and the DOE regarding the firms' compliance with federal price regulations in their sales of motor gasoline during the periods August 1, 1979, through January 31, 1979 for Alemany and August 2, 1979, through August 26, 1980 for Garrett (the audit periods). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the firms' escrow funds was issued on Februry 23, 1988. 53 FR 7017 (March 4, 1988).

The Decision set forth procedures and standards which the Office of Hearings and Appeals (OHA) of the DOE has formulated to distribute the contents of the escrow accounts pursuant to the settlement agreements. OHA has determined that a portion of the escrow funds should be distributed to firms and individuals that purchased motor gasoline from Alemany and Garrett during the audit periods. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from either Alemany of Garrett and to demonstrate that it was injured by that firms's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Residual funds in the escrow accounts will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, Title III.

Dated: April 26, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

April 26, 1988.

Names of Firm: Alemany Chevron Service Center, Lee Garrett Chevron

Dates of Filing: March 28, 1986, June 3, 1986

Case Numbers: KEF–0023, KEF–0040

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On March 28, 1986, and June 3, 1986, ERA filed Petitions for the Implementation of Special Refund Procedures in connection with funds received from Alemany Chevron Service Center (Alemany) and Lee Garrett Chevron (Garrett).

I. Background

Both firms were "retailers" of motor gasoline as that term was defined in 10 CFR 212.31. Alemany was located in San Francisco, California and Garrett in Whittier, California. DOE audits of the firms' records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. On the basis of an audit of Alemany's operations, the ERA alleged that between August 1, 1979, and January 30, 1980, the firm committed violations of the DOE's pricing regulations with respect to its sales of motor gasoline. As a result of its audit of Garrett, the ERA alleged similar violations for the period August 2, 1979, to August 26, 1980. The period of time covered by these audits is referred to as the "audit periods". In order to settle all claims and disputes between the firms and the DOE regarding the firms' compliance with the Mandatory Petroleum Price and Allocation Regulations during the audit periods, the firms and the DOE entered into two settlement agreements, one on January 11, 1985 and the other on October 1, 1985. Alemany and the DOE entered into a Consent Order which refers to ERA's allegations of regulatory violations, but states that Alemany does not admit committing any such infractions. Under the terms of the Consent Order, Alemany was required to deposit $2,700 into an interest-bearing escrow account for ultimate distribution by the DOE. These consent order monies have been paid in full.

With regard to Garrett, ERA issued a Proposed Remedial Order (PRO) on January 23, 1981. The OHA issued the PRO as a final Remedial Order (RO) on June 15, 1983. The RO required Garrett to remit $8,550.35, plus interest, to the DOE. Garrett did not remit the funds, and subsequently was offered participation in the ERA Administrator's September 1981 Gasoline Retailer Settlement Program. In order to participate in the program, Garrett would be required to remit $4,275.17, plus interest, and a civil penalty of $128.26. Garrett originally refused this offer. The offer, however, was extended again on September 26, 1985, and Garrett accepted at that time. Final payment of these monies has been received.[1] This Decision concerns the distribution of the funds received from Alemany and Garrett.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged or actual regulatory violations, or to ascertain readily the level of injury sustained by such persons. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

As in other Subpart V cases, we will use the funds currently in escrow to provide refunds to claimants who demonstrate that they were injured by the firms' alleged or actual regulatory violations during the audit periods. Residual funds in the escrow accounts will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99–509, Title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

In order to determine the potential refund amounts for applicants in this proceeding, we have adopted a volumetric refund presumption. The volumetric refund presumption assumes that alleged or actual overcharges were spread equally over all gallons of motor gasoline that Alemany and Garrett, respectively, sold during the audit periods.[2]

Under the volumetric method, a claimant that adequately demonstrates injury will be eligible to receive a refund equal to the number of gallons of motor gasoline that it purchased from the firms during the audit periods times a specific volumetric factor for each firm. The volumetric factor is the per gallon refund amount and in this case equals $.00540 per gallon for purchases from Alemany and $0.01237 per gallon for purchases from Garrett.[3] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the escrow accounts.

[1] Garrett remitted a total of $6,199.19. As of January 31, 1988, the Garrett settlement funds had accrued $912.26 in interest.

[2] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co./Army and Air Force Exchange Service, 12 DOE ¶ 85,013 (1984).

B. End-User Presumption of Injury

The assignment of potential refund amounts to claimants is only the first step in the distribution process. We must also determine whether these claimants were forced to absorb the alleged overcharges. As we have done in many prior refund cases, we have adopted a presumption that end users were injured by the firms' alleged or actual pricing violations. This presumption is used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible. Because both firms were retailers of motor gasoline, it is not necessary for us to adopt other injury presumptions, such as reseller and retailer small claims presumptions, which we have used in past proceedings.

As noted above, we presume that end users of Alemany and Garretts' motor gasoline were injured by the alleged or actual overcharges. It is likely that many purchasers of motor gasoline from these firms were individual motorists who were forced to absorb the alleged or actual overcharges involved. Moreover, the firms' other customers, unlike regulated firms in the petroleum industry, generally were not subject to price controls during the audit periods. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. Consequently, end users of the firms' motor gasoline will only have to document their purchase volumes from the firms to demonstrate injury.

III. Applications for Refund

We will now accept Applications for Refund from purchasers of motor gasoline sold by Alemany or Garrett during the audit periods. The information each applicant must provide is summarized below.

(1) An applicant must make a conspicuous reference to the firm from whose escrow funds it is seeking a refund—either "Alemany: Case No KEE–0023" or "Garrett: Case No. KEE–0040". An applicant must also provide its present firm name and address, and its firm name and address during the refund period. Individuals applying for refunds should provide their own name and address.

(2) An applicant must provide the name, title, and telephone number of a person who may be contacted for additional information concerning the application.

(3) An applicant must submit a monthly schedule of the number of gallons of motor gasoline that it purchased from the firm from whose escrow funds it is seeking a refund (Alemany or Garrett) during the audit periods.[4]

(4) An applicant must indicate if it was or is in any way affiliated with the firm from whose escrow funds it is seeking a refund (Alemany or Garrett). If so, the applicant must provide an explanation of the nature of its affiliation.

(5) If the applicant's firm has changed ownership since the audit period, the applicant must provide a detailed explanation of the change in ownership as well as the names and addresses of all previous and subsequent owners.

(6) An applicant must indicate whether it or a related firm had filed any other Application for Refund in the proceeding involving the firm from whose escrow funds (Alemany or Garrett) it is seeking a refund. The applicant must also indicate whether it has authorized any other individual(s) to file an Application for a Refund on the applicant's behalf in that proceeding (Alemany or Garrett).

(7) Each applicant must indicate whether it is or has been involved in any DOE enforcement proceedings or private actions filed under § 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

(8) An applicant must include the following statement signed by the applicant, a responsible official of the firm or authorized person claiming a refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

All Applications for Refund should be sent to: Alemany/Garrett Proceedings, Case Nos. KEE–0023, KEE–0040, Office of Hearings and Appeals, Department of Energy, HG–1, 1000 Independence Avenue SW., Washington DC 20585.

Each claimant must file *two copies* of its Application for Refund within 90 days of the date this Decision and Order is published in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Alemany Chevron Service Center and by Lee Garrett Chevron pursuant to settlement agreements on March 28, 1986 and June 3, 1986 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: April 26, 1988.

[FR Doc. 88–9883 Filed 4–29–88; 8:45 am]

BILLING CODE 6450–01–M

[3] These figures are computed by dividing the monies received from the firms by the gallons of motor gasoline sold by the firms during the audit periods. Alemany remitted $2,700 and sold an estimated volume of 500,094 gallons. Garrett remitted $6,199.19 and sold an estimated volume of 501,238 gallons.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g.*, Uban Oil Co., 9 DOE at 85,225. *See also* 10 CFR 205.286(b).

[4] Because we will not process claims for less than $15 in principal, *see supra* note 2, an applicant must have purchased at least 2,888 gallons of motor gasoline from Alemany or 1,173 gallons of motor gasoline from Garrett during the audit period in order to receive a refund.

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140094; FRL-33731]

Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, InterAmerica Research Associates (IRA) of McLean, VA for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA. Certain existing chemical substances intended to be exported into foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under contract no. 68-01-7176, EPA's contractor IRA, 7926 Jones Branch Drive, Suite 1100, McLean, VA, will assist the Office of Compliance Monitoring (OCM) by providing support in the control of TSCA CBI documents within OCM, including the disposition of the CBI materials and associated administrative functions.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-01-7176, IRA will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. IRA personnel will be given access to all information submitted under sections 4, 5, 6, 8, 12, and 13 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide IRA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

IRA personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures and must pass a test on those security procedures before they are permitted access to TSCA CBI.

Dated: April 21, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-9628 Filed 4-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

April 25, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW, Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0061
Title: Annual Report of Cable Television Systems:
Schedule 1—Community Unit Data;
Schedule 2—Physical System Data
Form No.: FCC 325
Action: Extension
Respondents: Business (including small business)
Frequency of Response: Annually
Estimated Annual Burden: 38,000 Responses; 49,000 Hours
Needs and Uses: The schedules are preprinted by the Commission containing the most current data on file, and sent to the operators of every operational cable television system who are requested to verify, correct and/or furnish current data regarding their systems. The data is used to maintain computer databases on cable systems for use by FCC and the public.

OMB No.: 3060-0127
Title: Assignment of Authorization
Form No.: FCC 1046
Action: Extension
Respondents: Individuals, State or local governments, business (including small business), and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 6,000 Responses; 498 Hours
Needs and Uses: Filing is required by applicants in the Private Land Mobile, Microwave, Coast and Ground Radio Services for assignment of an existing authorization. The data is used to determine eligibility and to issue a radio station license.

OMB No.: 3060-0141
Title: Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402-R
Action: Extension
Respondents: Individuals, State or local governments, business (including small business), and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 2,200 Responses; 367 Hours
Needs and Uses: Filing is required by applicants for renewal of an existing authorization. The data is used to determine eligibility and to issue a radio station license, and for enforcement purposes.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9685 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-39]

Window Notice for the Filing of FM Broadcast Applications

Release: April 22, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning April 22, 1988 and ending June 2, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—287 A

Soledad.....CA
Chattahoochee.....FL
Jackson.....MN
East Prairie.....MO
Fairbluff [1].....NC
Wilmington [1].....NC
Roanoke.....VA
Walterboro.....SC
Loudon.....TN
Bixby [2].....OK

Channel—287 C2

Selma.....AL
Lake Charles.....LA
Monroe.....LA

Channel—248 A

Talladega.....AL
Hogansville.....GA
Jeffersonville.....GA
Madison.....ME
Hoosick Falls.....NY
Greenfield.....OH
Union City.....OH

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9666 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; La Crescent Community Broadcasters et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City/ State	File No.	MM Docket No.
A. Roger Lonnquist and Scott Neader d/b/a La Crescent Community Broadcasters, La Crescent, MN.	BPH-870306KC.....	88-161
B. Gwendolyn M. Gutzel, La Crescent, MN.	BPH-870312MC.....	
C. Kendall Durfey d/b/a Stateline Broadcasting, La Crescent, MN.	BPH-870313MU.....	
D. White Eagle Broadcasting, Inc., La Crescent, MN.	BPH-870313OC.....	
E. Steven B. Courts, La Crescent, MN.	BPH-870313MT [1].....	

[1] Previously dismissed.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headinga are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Cross-interest, D
2. Comparative, A-D
3. Ultimate, A-D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-9595 Filed 4-29-88; 8:45 am]

BILLING CODE 6712-01-M

[1] The channels at Fairbluff, NC and Wilmington, NC were shortspaced to a proposal to substitute channel 287C2 for channel 286A at Jacksonville, NC. A petition for reconsideration of the staff action dismissing that proposal is currently pending.

[2] A counter proposal in MM docket 87-475 request substitution of channel 221A at Bixby for this allotment.

Applications for Consolidated Hearing; Woods Communications Group, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City/ State	File No.	MM Docket No.
A. Woods Communications Group, Inc., Columbia, LA.	BPCT-870904KJ.....	88-183
B. William L. Cook, II, Columbia, LA.	BPCT-871021KE.....	
C. Love Television Partnership, Columbia, LA.	BPCT-871106KF.....	
D. Columbia TV and Radio, Inc., Columbia, LA.	BPCT-871109KE.....	
E. Pears Broadcasting, Inc., Columbia, LA.	BPCT-871109KF.....	
F. Jimmie V. Giles, Columbia, LA.	BPCT-871110KE.....	
G. Caldwell Broadcasting Limited Partnership, Columbia, LA.	BPCT-871110KH.....	
H. Richard William Wainwright, Columbia, LA.	BPCT-8711110KK.....	
I. KTVE, Inc, Columbia, LA.	BPCT-871110KL.....	
J. Lanford Telecasting Co., Inc, Columbia, LA.	BPCT-871110KM.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B,D,E,F,H,I.
2. Satellite, J
3. Minimum Separations, A,H
4. Comparative, A,B,C,D,E,F,G,H,I,J
5. Ultimate, A,B,C,D,E,F,G,H,I,J

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW.,

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Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88–9667 Filed 4–29–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200112

Title: Port of Houston Authority Terminal Agreement

Parties: Port of Houston Authority (Port Authority) Shippers Stevedoring Company (Assignee)

Synopsis: The proposed agreement establishes authority whereby Assignee will perform freight handling services at the Port Authority's Barbours Cut Terminal and Transit Shed Number Two.

By order of the Federal Maritime Commission.

Dated: April 27, 1988.

Joseph C. Polking,

Secretary

[FR Doc. 88–9644 Filed 4–29–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Family Bancorp et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 23, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Family Bancorp*, Haverhill, Massachusetts; to become a bank holding company by acquire 100 percent of the voting shares of The Family Mutual Savings Bank, Haverhill, Massachusetts. Bank engages in Massachusetts Bank Life Insurance.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Hasten Bancorp*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of Sullivan State Bank, Sullivan, Indiana; First Bank and Trust Company of Caly County, Brazil, Indiana; and Peoples State Bank, Farmersburg, Indiana, and Farmers Banc, Inc., Tipton, Indiana, and thereby indirectly acquire Farmers Loan and Trust Company, Tipton, Indiana.

2. *NBA Holding Company*, Davenport, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Aledo, Aledo, Illinois. Comments on this application must be received by May 25, 1988.

Board of Governors of the Federal Reserve System, April 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9585 Filed 4–24–88; 8:45 am]

BILLING CODE 6210–01–M

Johnson Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Johnson Bancshares, Inc.*, Chatfield, Minnesota; to acquire Northwest Security Agency, Inc., Chatfield, Minnesota, and thereby engage in general insurance activities in a place with a population not exceeding 5,000 and to retain a loan through the acquisition of Agency pursuant to §§ 225.25(8)(iii) and 225.25(b)(1)(iv) of the Board's Regulation Y. These activities will be conducted in Chatfield, Minnesota.

Board of Governors of the Federal Reserve System, April 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9586 Filed 4–29–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research Grants on Factors Contributing to the Sequencing of Alcohol and Other Drug Use

AGENCY: National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse, HHS.

ACTION: Notice of a special program announcement for research grants on factors contributing to the sequencing of alcohol and other drug use.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Institute on Drug Abuse (NIDA) announce the availability of a special program announcement to make Grant Awards for basic and applied research projects concerning factors contributing to the sequencing of alcohol and other drug use. This announcement specifically seeks grant applications supporting research aimed at understanding the factors that contribute to the progression from initial drug and alcohol use to drug and alcohol dependence. This announcement is intended to encourage research proposals which will identify drug sequencing patterns among differing subpopulations of adolescents and to identify the biological, psychological, and social markers of the timing of progression from one class of substances to another. Other areas of research interest include variations by gender, economic and social class, geographic region, urbanization, ethnic groups, and birth cohorts. NIAAA and NIDA urge grant applicants to give added attention to the inclusion of women and minorities in study populations. If minorities and women are not included in a given study, a clear rationale for their exclusion should be provided. Applicants may be funded jointly by both Institutes, or by one Institute, depending on the emphasis of the research project.

Receipt Dates for Applications: February 1, June 1, October 1 of each year as provided by the regular Research Grant Application schedule.

For a Copy of the Announcement Contac: The National Clearinghouse for Alcohol and Drug Information (NCADI), Reference Department, P.O. Box 2345 Rockville, Maryland, 20852. Telephone: (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–9605 Filed 4–29–88; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88N–0157]

Drug Export; Genetic Systems HIV Antigen EIA and Genetic Systems HIV Antigen Neutralization Test Kits

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genetic Systems has filed an application requesting approval for the export of the biological products Genetics Systems HIV Antigen EIA and Genetic Systems HIV Antigen Neutralization Test kits to Australia.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquires concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN–322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genetic Systems, 3005 First Ave., Seattle, WA 98121, has filed an application requesting approval for the export to Australia of the biological products Genetic Systems HIV Antigen EIA and Genetic Systems HIV Antigen Neutralization Test kits. The Genetic Systems HIV Antigen EIA is an enzyme immunoassay for the detection of HIV core antigen in cell culture specimens, serum, plasma, and cerebrospinal fluid. The Genetic Systems HIV Antigen Neutralization Test is a test for the verification of HIV antigen-reactive samples detected in the Genetic Systems HIV Antigen EIA. The application was received and filed in the Center for Biologics Evaluation and Research on April 19, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 12, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: April 21, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88–9645 Filed 4–29–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Availability of Funds for Demonstration Grants for Health Care Services in the Home

AGENCY: Health Resources and Services Administration HHS.

ACTION: Notice of fund availability.

SUMMARY: The Health Resources and Services Administration (HRSA)

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announces that applications are being accepted for a program of grants to States to expand health care services in the home to low-income persons who might otherwise require lengthy hospital stays or institutionalization. These grants will be awarded under the provisions of sections 395–397 of the Public Health Service Act, as added by Pub. L. 100–175, the "Older Americans Act Amendments of 1987." Persons eligible for health services in the home are low-income individuals who lack adequate access to these services and are at risk of institutionalization or prolonged hospitalization. Applicants should show that the need for health services in the home to avoid institutionalization or prolonged hospital stays is not being met by existing public or private entities or programs due to the extent of the need, reimbursement policies, or health service delivery patterns.

DATE: All applications must be delivered to the contact designated in this announcement or be postmarked by July 1, 1988, to be considered timely. Any application which does not meet the deadline date will be returned to the State.

ADDRESS: Application kits (Form PHS 5161–1 with revised facesheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0348–0006) may be obtained from, and completed applications should be mailed to, Chief, Special Projects Section, Office of Program Support, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1050.

SUPPLEMENTARY INFORMATION: Public Law 100–175 adds a Part K to Title III of the Public Health Service Act, which authorizes the Secretary, acting through the Administrator of HRSA, to award not less than 3, and not more than 5, grants to States, which may not exceed 3 years in duration, for the purpose of assisting grantees in carrying out demonstration projects: (1) To identify low-income individuals who can avoid institutionalization or prolonged hospitalization if skilled medical services or related health services (or both) are provided in the homes of the individuals; (2) to pay the costs of the provision of such services in the homes of such individuals; and (3) to coordinate the provision by public and private entities of such services, and other long-term care services, in the homes of the individuals. Public Law 100–202, the Fiscal Year 1988 Continuing Resolution, provides approximately $4.7 million for such grants. Each grant will be awarded to an agency of State government designated by the Governor of the State to undertake this program and will average $900,000 for a 3–year period. The State governmental agency may award grants or contracts to other entities for the provision of services or other necessary supportive activities. The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

Grant Requirements

- A grant may not be made to a State unless the State agrees to ensure that at least 25 percent of individuals receiving services are 65 years of age or older.
- A State may not make payments from a grant for any item or service to the extent that payment has been made, or can reasonably be expected to be made, under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis. Grant funds may not be used to pay for currently financed public or private health care services.
- Under section 396 of the Public Health Service Act, the amount of Federal grant funds may not exceed 75 percent of the cost of services to be provided by the State for the first year; 65 percent for the second year; and 55 percent for the third year.
- The State must make available non-Federal contributions equal to the remaining costs of providing services. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services.
- Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be counted toward the non-Federal contribution requirement.
- No more than 10 percent of the approved grant may be for administrative expenses.

Criteria for Evaluating Applications

A grant may not be made to a State unless the State has submitted an application for the grant. Each application must contain a description of the purposes for which the State expects to expend the grant funds. The description of purposes must include information relating to the programs and activities to be supported and the services to be provided, the number of individuals who will receive services under the grant, a description of intended expenditures, including the average costs of providing services to each individual, and a description of the manner in which the programs and activities will be coordinated with any similar programs and activities of public and private entities.

In its review of applications for grants for the provision of the services and activities under section 395(a) of the Act, HRSA will consider the extent to which an application addresses:

(a) The categories of need identified, including the number of low-income individuals in need of services by each category;

(b) The extent of need not being met within each category;

(c) Adequacy and feasibility of the applicant's proposed program of activities, services, and plans for the coordination and utilization of other resources, including:

- Methodology for identifying low-income individuals who could avoid institutionalization or prolonged hospitalization through the proposed program,
- Extent to which the proposed program identifies the problems of access to health care services in the home.
- Design of the home health delivery system, including:

—Internal coordination among its several components,
—External coordination with similar and complementary programs and activities of public and private entities at both the State and local level,
—Development of an individual patient case management strategy that utilizes existing hospital and community-based health and support systems,
—Strategy for quality assurance,
—Measures and controls for efficiency and cost effectiveness;

(d) Design and adequacy of the plan and methodology for evaluating the results of the demonstration project.

Administration

To receive an award, the applicant must submit an application which demonstrates an ability to follow all administrative requirements contained in the authorizing statute and must submit a Statement of Agreement in which the applicant agrees to comply with the requirements of the statute concerning the provision of matching funds, the provision of specified health services, restrictions on the use of funds administration of grants, and limitation on administrative expenses.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100.

Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to Bureau of Health Care Delivery and Assistance.

Catalog of Federal Domestic Assistance: In the OMB Catalog of Federal Domestic Assistance, the Health Care Services in the Home Demonstration Grant Program is listed as Number 13.159.

Dated: April 27, 1988.

David N. Sundwall,
Administrator.

[FR Doc. 88–9604 Filed 4–29–88; 8:45 am]
BILLING CODE 4160–15–M

National Organ Transplant Act; Grants for Organ Procurement Organizations

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1988 funds are available for grants for assistance for Organ Procurement Organizations (OPOs). The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act. While the authorization of appropriations in section 371 has not been extended explicitly, funds for these grants were appropriated under Pub. L. 100–202.

DATE: In order to receive consideration, grant applications must be received by the close of business July 13, 1988, by Mr. Waddell Avery at the address below. Applications not received by the due date will be returned to the applicant. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mr. Remy Aronoff, Chief, Analysis and Operations Branch, Division of Organ Transplantation, Parklawn Building, Room 9–31, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–7577. Requests for grant application materials and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice should be made in writing to Mr. Waddell Avery, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development, Parklawn Building, Room 6–29, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for grants for OPOs will use Form PHS 5161 with revised face sheet HHS Form 424, approved under OMB Control Number 0348–0006.

SUPPLEMENTARY INFORMATION:

Background

The National Organ Transplant Act, Pub. L. 98–507, amended the PHS Act to authorize the establishment of a program of grants for the planning, establishment, initial operation and expansion of OPOs.

Section 371 and 374 of the PHS Act state that in awarding grants for OPOs the Secretary shall:

1. Take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act.

2. Give special consideration to applications which cover geographical areas which are not adequately served by existing OPOs.

3. Give priority to any applicant which has a formal agreement of cooperation with all the transplant centers in its proposed service area.

4. Give special consideration to organizations which met the requirements of a qualified OPO as defined in section 371(b) of the PHS Act before the enactment of Pub. L. 98–507.

5. Not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

Section 1138 of the Social Security Act provides that for organ procurement costs attributable to an OPO to be reimbursable under Medicare and Medicaid, the OPO must either: (1) Be a qualified OPO under section 371(b) of the PHS Act that is operating under a grant under section 371(a), or (2) have been certified or recertified within the past two years as meeting the standards of section 371(b). The OPO must also meet the other standards of section 1138 and implementing regulations of the Health Care Financing Administration (42 CFR 435.301–308). Section 1138 also states that only one OPO may be designated within the same service area.

Program Objectives

The principal purpose of the grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system. The Task Force on Organ Transplantation recommended that the program emphasize the need to increase substantially the number of organ donors and to encourage innovations which could be readily duplicated for national application. The Task Force recommended the following three priorities for the program:

1. Proposals to consolidate and coordinate organ procurement efforts where multiple programs currently exist.

2. Proposals which would enable the applicant to develop new approaches to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors within a service area, e.g., community education regarding the process for, and the importance of organ donation.

3. Proposals to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs and expanding services to serve dispersed rural areas.

Types of Grants

To accomplish the above objectives, the Secretary will award planning, initial operation and expansion grants to eligible applicants consistent with the statute and Task Force recommendations as specified in this Notice. Applications for planning and initial operation grants will be considered for funding only for the purpose of consolidation of multiple programs where such programs currently exist.

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Availability of Funds

A total of $1,400,000 is available in FY 1988 for grants for OPOs. Because of the limited funds available and the priorities determined by the Secretary, grant awards will be less than the maximum amount permitted in section 374 of the PHS Act. Limiting the award level will permit the Department to provide assistance to a larger number of organizations.

Planning grants will be for a project period of one year and will not exceed $50,000.

Initial operation grants may be for a project period of up to two years and will not exceed $150,000.

Expansion grants may be for a project period of up to two years and will not exceed $150,000.

Eligible Applicants

Nonprofit entities that are OPOs and have been designated by the Health Care Financing Administration as an OPO under section 1138(b) of the Social Security Act may apply for these grants.

Review and Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to established Bureau procedures. The following criteria will be considered:

—The consistency with the program's objectives and priorities;
—The adequacy of the methods proposed to carry out the project;
—The appropriateness of the work plan and schedule for organizing and completing the project;
—The capability of the organization to complete the project as proposed;
—The adequacy of supporting documentation justifying the proposal;
—The reasonableness of the budget;
—The qualifications of the project director and staff; and
—The plan to continue beyond the grant period the activity or activities intitiated under this grant including plans to secure other funding sources.

Proposed projects also will be evaluated according to the statutory guidelines as described in the Background section of this Notice and the recommendations of the Task Force on Organ Transplantation as described in the Program Objectives section of this Notice. The Secretary will give highest priority to expansion grants demonstrating new or innovative approaches to increasing organ donation and procurement. New or innovative approaches may include, for example, programs for:

—Professional training for physicians and other health professionals designed to promote the concept of organ donation including discussion of criteria for organ and tissue procurement, required request laws and other operative State statutes. Such training should take into consideration the emotional and other needs of potential donors and next of kin, and
—Promoting public awareness of organ donation, including efforts to identify appropriate population groups or geographic areas in need of specially-targeted programs, and to develop such educational programs.

Examples of priority expansion projects are programs for:

—Development of satellite programs which expand services to dispersed rural populations, and
—Formation of groups to coordinate activities of organ and tissue procurement organizations, e.g., establishment of consortia.

Surveys of attitudes toward organ donation should not be proposed unless it is demonstrated that results from similar surveys conducted in other areas are not applicable. Likewise, proposals for development of written and audio-visual materials will not receive funding if similar materials produced elsewhere are usable.

Computerization projects will be given low priority by reviewers unless they demonstrate a new or unique methodology which is of national significance (i.e., the methodology would be of demonstrable assistance to all OPOs and would signify an important advance beyond existing methods).

Technical Assistance Meetings

Two technical assistance meetings will be held for prospective OPO grant applicants. The first meeting will be held on June 8, 1988, from 10:00 a.m. to 5:00 p.m., in Room 9–31 of the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland. The second meeting will be held on June 15, 1988 from 1:00 p.m. to 5:00 p.m., in the East Room of the Stouffer-Madison Hotel, 515 Madison Street, Seattle, Washington.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, Subpart Q. The four separate sets of cost principles prescribed for recipients of grants for OPOs are: Office of Management and Budget (OMB) Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Executive Order 12372

Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages made available under this Notice will contain a listing of States which have chosen to set up such a review sysem and will provide a point of contact in the States for the review. Applicants should promptly contact their States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow its instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalogue of Federal Domestic Assistance Number for this program is 13.134.

Dated: March 12, 1988.

David N. Sundwall,

Administrator, HRSA.

[FR Doc. 88–9815 Filed 4–29–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

General Clinical Research Centers Committee;

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), June 15–16, 1988, National Institutes of Health, Conference Room 6, Building 31, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public on June 16 from 1:00 p.m. to 2:30 p.m., during which time there will be comments by the Director, DRR; and an update on the GCRC Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 15, from 9:00 a.m. to 5:00 p.m. and from 8:30 a.m. June 16 to approximately 12:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Stanley L. Slater, Executive Secretary of the General Clinical Research Centers Review Committee, Building 31, Room 5B–51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institute of Health)

Dated: April 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9672 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, June 27–28, 1988, at the Historic Inns of Annapolis, 16 Church Circle, Annapolis, MD 21401.

This meeting will be open to the public on June 27 from 8:30 a.m. to 9 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigation Review Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 27, from 9 a.m. to recess; and on June 28 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications and cooperative agreements. These grant applications and cooperative agreements and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7481) will provide substantive program information upon request.

Dated: April 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9673 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Center for Nursing Research Advisory Council, National Center for Nursing Research, June 16–17, 1988, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 16, from 9 a.m. to 2:30 p.m. and on June 17 from 8:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, Conference on Nursing Resources and Patient Care Delivery, Functions of the Division of Nursing, Update on the Commission on Nursing, AIDS Expedited Review, Update on President's Commission on AIDS, NCNR Advisory Council Biennial Report to Congress, NCNR Director's Biennial Report, Research Training Trajectory, and NCNR Information Resources.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 16 from 2:30 p.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open on June 16 immediately following the review of applications, if any policy issues are raised which need further discussion.

Mrs. Ruth K. Aladj, Executive Secretary, National Center for Nursing Research Advisory Council, National Institutes of Health, Building 31A, Room 1E10, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: April 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9674 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Allergy and Infectious Diseases Council; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on May 23–24, 1988 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on May 23 from approximately 9 a.m. to 9:15 a.m. for opening remarks of the Institute Director and again from 1:30 p.m. to approximately 4 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussions will include a report by the Director, Division of Research Grants on the percentile system; a report by the Director, NIAID on research dollars; and, the presentation of the NIAID Biennial Council Report by the Director, Extramural Activities Program, NIAID.

In accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:15 a.m. until approximately 12:30 p.m. on May 23. The meeting of the full Council will be closed from approximately 8:30 a.m. until adjournment on May 24 for the review, discussion, and evaluation of individual grant applications. These

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applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Mircobiology and Infectious Diseases Research, National Institutes of Health.

Dated: April 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9675 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Basic Virology, Immunology and Pathogenesis Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on June 1, 1988, at the Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on June 1 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C and section 10(d) of Pub. L. 92–463, the meeting of the Basic Virology, Immunology and Pathogenesis Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. on June 1, until adjournment. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Olivia T. Preble, Executive Secretary, Basic Virology, Immunology and Pathogenesis Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 753, Bethesda, Maryland 20892, telephone (301–496–8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: April 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9676 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Child Health and Human Development Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, June 6–7, 1988, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 6 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on June 6 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Endocrinology, Nutrition and Growth Branch, Center for Research for Mothers and Children. The meeting will be open on June 7 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on June 6 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 7 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: April 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–9677 Filed 4–29–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–940–08–4520–13; ES–038780, Group 176]

Florida; Filing of Plats

April 26, 1988.

1. The plat, in ten sheets, of the survey of the subdivisions of sections 1, 2, 3, 5, 9, 10, 11, 12, 14 and 15 and the metes-and-bounds survey of certain parcels in sections 2, 3, and 10, Township 18 South, Range 24 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 10, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the survey of subdivisions must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 10, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–9627 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–940–08–4520–13; ES–038779, Group 177]

Florida; Filing of Plats

April 26, 1988.

1. The plat, in six sheets, of the survey of the subdivisions of sections 8, 15, 16, 22, 26 and 27 and the metes-and-bounds survey of certain parcels in sections 8 and 22, Township 17 South, Range 25 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 10, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the survey of subdivisions must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 10, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–9630 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

[DES–88–16]

Gates of the Arctic National Park and Preserve, Alaska; Environmental Statement; Public Hearings and Meetings

ACTION: Notice of the holding of public hearings and public meetings; Draft Environmental Impact Statement Wilderness Recommendation Gates of the Arctic National Park and Preserve.

For Gates of the Arctic National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all lands within the study area as wilderness. Alternative 2, the proposed action excludes a majority, about 69 percent of the study area, from wilderness designation.

In the **Federal Register** of Monday April 11, 1988, Vol. 53, No. 69, page 11916, a notice of tentative dates for public hearings and public meetings was published. Those dates are now finalized as follows:

Two public hearings will be held. One hearing will be held in Anchorage, Alaska, on Monday June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Thursday June 9, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Wrangell-St. Elias National Park and Preserve and Lake Clark National Park and Preserve draft environmental impact statements, which are also on public review.

In addition, 5 public meetings will be held.

Fairbanks: June 7—7:00 p.m., Alaska Public Lands, Information Center, 3rd and Cushman

Allakaket: June 8—2: p.m., City Offices

Coldfoot: June 8—7:00 p.m., Coldfoot Services

Bettles: June 9—2:00 p.m., NPS Ranger Station

Anaktuvuk: June 9—7:00 p.m., Community Center

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; phone (907) 257–2654 or the park headquarters at Fairbanks, Alaska, phone (907) 456–0281.

Dated: April 26, 1988.

Approved.

James N. Stewart,

Associate Director, Planning and Development.

[FR Doc. 88–9621 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–70–M

[DES–88–17]

Lake Clark National Park and Preserve, Alaska; Environmental Statement, Public Hearings and Meetings

ACTION: Notice of the holding of public hearings and public meetings; Draft Environmental Impact Statement Wilderness Recommendation Lake Clark National Park and Preserve.

For Lake Clark National Park and Preserve, three alternatives were examined ranging from no action, which means no additional wilderness designation, to designating most lands within the study area as wilderness. Alternative 1, the proposed action and no-action alternative, recommends no study area lands for wilderness designation.

In the **Federal Register** of Friday April 1, 1988, Vol. 53, No. 63, page 10571 and Wednesday, April 20, 1988, Vol. 53, No. 76, page 12906, notices of tentative dates for public hearings and public meetings were published. Those dates are now finalized as follows. Two public hearings will be held. One hearing will be held in Anchorage, Alaska, on Monday, June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Thursday, June 9, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Wrangell-St. Elias National Park and Preserve and Gates of the Arctic National Park and Preserve draft environmental impact statements, which are also on public review.

In addition, 2 public meetings will be held.

Port Alsworth: June 8—7:00 p.m., NPS Resources Mgt. Office

Kenai; June 14—4:00 p.m. & 7:00 p.m., NPS Office, 405 Overland Avenue

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654 or the park headquarters at 701 C Street, Box 61, Anchorage, Alaska 99513, phone (907) 271–3751.

Dated: April 26, 1988.

Approved.

James N. Stewart,

Associate Director, Planning and Development.

[FR Doc. 88–9622 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–70–M

[DES–88–20]

Wrangell-St. Elias National Park and Preserve, Alaska; Environmental Statement; Public Hearings and Meetings

ACTION: Notice of the holding of public hearings and public meetings; Draft Environmental Impact Statement Wilderness Recommendation Wrangell-St. Elias National Park and Preserve.

For Wrangell-St. Elias National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study as wilderness. Alternative 2, the proposed action,

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recommends about 273,000 acres, or just under 9 percent of the study area lands, for wilderness designation. In addition, about 109,000 acres of existing wilderness would be deleted from wilderness.

In the **Federal Register** of Wednesday, April 20, 1988, Vol. 53, No. 76, pages 12986–12987, a notice of tentative dates for public hearings and public meetings was published. Those dates are now finalized as follows:

Two public hearings will be held. One hearing will be held in Anchorage, Alaska, on Monday, June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Thursday June 9, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for the Lake Clark National Park and Preserve and Gates of the Arctic Natioanal Park and Preserve draft environmental impact statements, which are also on public review.

In addition, 6 public meetings will be held.

Fairbanks: June 7—7:00 p.m., Alaska Public Lands, Information Center, 3rd and Cushman
Juneau: June 8—7:00 p.m., Centennial Hall, "Hickel Room"
Yakutat: June 9—6:00 p.m., City Hall
Glennallen: June 13—7:00 p.m., Glennallen High School (Old Building)
Tok: June 14—7:00 p.m., Community Center
McCarthy: June 15—1:00 p.m., McCarthy Lodge
Slana: June 16—7:00 p.m., Slana School
Chitina: June 17—1:00 p.m., Village Hall

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654 or the park headquarters at Glennallen, Alaska, phone (907) 822–5235.

Date: April 26, 1988.

Approved.

James N. Stewart,

Associate Director, Planning and Development.

[FR Doc. 88–9623 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C., app. 1s10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, May 20, 1988.

The Commission was reestablished pursuant to Pub. L. 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Relocation of the Three Sisters
Water Resources Policy
Commercial Use Certificates
Bicycle Trail Study

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons make oral/written presentations to be Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: April 28, 1988.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 88–9624 Filed 4–29–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31280]

Tuscola and Saginaw Bay Railway Co.; Acquisition and Operation Exemption; Line of CSX Transportation, Inc. Near Clare, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition and operation by Tuscola and Saginaw Bay Railway Company (TSBY) of 2.6 miles of railroad between milepost 49.4 and milepost 52.0 near Clare, MI, subject to standard labor protective conditions and a historic preservation condition.

DATES: This exemption is effective on May 17, 1988. Petitions for reconsideration must be filed by May 23, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31280 to:

(1) Office of the Secretary; Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Lawrence R. Judd, Tuscola and Saginaw Railway Company, 600 Oakwood Avenue, Owosso, MI 48867

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of a full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289–4357/4359 (DC Metropolitan area), assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 26, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9637 Filed 4–29–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 235X)]

CSX Transportation, Inc.; Abandonment Exemption in Putnam County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, the abandonment by CSX Transportation, Inc., of 1.2 miles of rail line in Palatka, Putnam County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 1, 1988. Petitions to stay must be filed by May 17, 1988. Petitions for reconsideration must be filed by May 27, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 12, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 235X) to:

(1) Office of the Secretary: Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9638 Filed 4–29–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exemption or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d (1987), and final rules published at 52 FR 46440 (1987).

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

Date: April 27, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or questions regardijng the item(s) contained in this notice should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

New Collection

(1) Telephone interviews concerning H–1 and L–1 nonimmigrant workers
(2) No form number
(3) One time collection
(4) Businesses or other for-profit. Interviews of employers of selected nonimmigrant workers are necessary to obtain wage information on H–1 and L–1 nonimmigrant workers to be used in support of efforts to determine the impact of such workers on the U.S. labor market.
(5) 120 respondents at .5 hours each.
(6) 60 estimated annual public burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–9640 Filed 4–29–88; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

[Docket No. 87–81]

Chematox Laboratory, Inc., Boulder, CO; Hearing

Notice is hereby given that on November 13, 1987, the Drug Enforcement Administration, Department of Justice, issued to Chematox Laboratory, Inc. an Order to Show Cause as to why the Drug Enforcement Administration should not deny the application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, May 4, 1988, commencing at 9:00 a.m., at the Federal Mine Safety and Health Review Commission, 333 West Colfax Avenue, Room 400, Denver, Colorado.

Dated: April 26, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–9649 Filed 4–29–88; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Art Agencies/National Assembly of Local Art Agencies Sub-Committee of the National Council on the Arts will be held on May 5, 1988 from 2:30 p.m. to 5:00 p.m., in room 116 of the Wainwright Building, Seventh and Chestnut, St, Louis, MO 63101.

This meeting will be open to the public on a space available basis. The topics for discussion will include Dance/Inter-Arts/State Programs Initiative Seminar, State of the Arts Report, Advocacy Day, Arts in Rural Areas Information Exchange, *Towards Civilization: A Report on Arts Education*, Endowment Panel Process and Cultural Facilities.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

April 26, 1988.

[FR Doc. 88–9582 Filed 4–29–88; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

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L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts/Theater Section) to the National Council on the Arts will be held on May 17–19, 1988 from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 17, 1988, from 9:00 a.m.–10:30 a.m., and on May 19, 1988 from 2:00 p.m.–5:30 p.m. for a general program overview and policy discussion.

The remaining sessions of this meeting on May 17, 1988 from 10:30 a.m.–5:30 p.m., and on May 18, 1988 from 9:00 a.m.–5:30 p.m., and on May 19, 1988 from 9:00 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register on February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

April 22, 1988.

[FR Doc. 88–9812 Filed 4–29–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24, Criticality accident requirements relative to Facility Operating License No. DPR–73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station Unit 2 (TMI–2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is exemption from 70.24 Criticality accident requirements relating to requirements for a monitoring system capable of detecting a criticality. Specifically, 10 CFR 70.24 requires licenses authorized to possess special nuclear material above a minimum quantity to maintain a redundant monitoring system that is capable of detecting a criticality in each area in which such licensed special nuclear material is handled, used or stored. The redundant monitoring systems, using gamma- or neutron sensitive radiation detectors, are required to energize clearly audible alarm signals if accidential criticality occurs. The regulations applicable to TMI–2 further define the sensitivity of the monitoring system and require the licensee to have emergency procedures for the protection of personnel.

The Need for the Proposed Action

TMI–2 is currently in a post-accident, cold shutdown, long-term recovery mode. Exemption from 10 CFR 70.24 is requested after the conclusion of the licensee's current defueling program which will remove greater than 99% of the original core material and preclude the possibility of an inadvertent criticality. Once defueling is completed the reactor building will be entered infrequently by personnel readying the building for long-term storage and for periodic monitoring. Remaining fuel in areas accessible to personnel will be contained in the primary system, with the majority of the material in the reactor vessel. Personnel entering the building will be required to possess radiation survey instruments. Althouga the amount of special nuclear material will exceed limits of 10 CFR 70.24, the material will be distributed in a number of locations in a configuration that would preclude a criticality.

Furthermore, the building will be unoccupied and personnel entries will occur on an infrequent basis. Personnel that do enter will possess appropriate monitoring equipment that would detect a criticality. Principal quantities of fuel are located in areas that are inaccessible to personnel and well shielded. Maintenance of the current intermediate and source range neutron flux monitors would prove an unnecessary burden and expense on the licensee with no concomitant benefit in terms of achieving the purpose of the requirement.

Environmental Impact of the Proposal Action

The staff have evaluated the proposed exemption and concludes that in light of the curent and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The proposed exemption removes the specific feature of the Commission's requirement to maintain criticality monitors in areas where special nuclear material above certain amounts is handled, used or stored.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternatives to this action will have either no significant environmental impact or greater environmental impact.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI–2, dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see the letter from GPUN, Technical Specification Change Request No. 53, dated April 23, 1987 and revised October 26, November 9 and December 4, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 26th day of April 1988.

For the Nuclear Regulatory Commission.

Robert L. Ferguson,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–9853 Filed 4–29–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation off the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change the Technical Specifications (TS) by changing Table 4.8.1.1.2–1, "Diesel Generator Test Schedule" to:

(1) Delete the criterion for using the diesel generator test interval of 14 days.

(2) Change the criterion for using the 7 days test interval from greater than 2 diesel generator test failures in the last 100 valid tests to greater than 4 diesel generator test failures in the last 100 valid tests or greater than 1 diesel generator test failure in the last 20 valid tests.

(3) Change the criterion for using the 31 day test interval from less than or equal to 1 diesel generator test failure in the last 100 valid tests to less than or equal to 4 diesel generator test failures in the last 100 valid tests or less than or equal to 1 diesel generator test failure in the last 20 valid tests.

(4) Add a footnote to state that if increased frequency testing is required due to exceeding 1 diesel generator test failure in the last 20 valid tests, then the increased test frequency shall be maintained until seven consecutive failure free tests have been performed and the number of failures in the last 20 valid tests have been reduced to less than or equal to one.

(5) Delete the portion of the present footnote that states only valid tests conducted after the Operating License issuance date of June 16, 1982 shall be used in the computation of the last 100 valid tests.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 1, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to invervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements decribed above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petiitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permtted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Ofice of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 8, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II.

[FR Doc. 88–9654 Filed 4–29–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

Advisory Committee on International Intellectual Property; Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Wednesday, May 11, 1988, in Conference Room 1107 of the Department of State. The meeting will begin at 10:00 a.m. and will conclude at 1:00 p.m.

The following topics will be discussed:

1. Summary of UNESCO/WIPO meetings concerning principles of protection for various categories of copyrighted works; Committee of Governmental Experts for the Synthesis of Principles Concerning the Copyright Protection of Various Categories of Works, June 27–July 1
2. Report on the Meeting of the WIPO "Committee of Experts on Measures Against Counterfeiting and Piracy", (Geneva), April 25–28
3. Status Report on implementing legislation for the Berne Convention
4. Miscellaneous Copyright Matters
- Report on status of the proposed Treaty for the protection of integrated circuits
- Report on the meeting of the "Committee of Experts on the Establishment of an International Register of Audiovisual Works", March 7–11

The meeting will be open to the general public. The public attending may, as time permits and subject to the instructions of the chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to, or at the meeting, for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation, address and phone number to Ms. Bobbi Tinsley, Office of Business Practices, Department of State, telephone (202) 647–1825, prior to May 11, 1988. All attendees to the meeting should use the *Main Entrance* (2201 C Street, NW.) of the Department of State Building.

Dated: April 15, 1988.

Harvey J. Winter,

Executive Secretary.

[FR Doc. 88–9655 Filed 4–29–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 22, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45594

Date Filed: April 21, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 19, 1988.

Description: Application of Aerial Transit Company, pursuant to section 401 of the Act and Subpart Q of the Regulations requests an amendment of its certificate of public convenience and necessity authorizing foreign all-cargo air transportation, permitting service between Miami, Florida on the one hand, and Guatemala City, Guatemala, on the other hand, to be combined with Aerial Transit's Miami-Belize/Honduras/El Salvador-Miami routes.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–9650 Filed 4–29–88; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. T84–01; Notice 15]

Passenger Motor Vehicle Theft Data for 1986; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem.

This notice sets forth data on passenger motor vehicle thefts in 1986 for public review and comment. These data were calculated based on information provided to this agency by the National Crime Information Center (NCIC). These 1986 theft data indicate that vehicle thefts in 1986 increased above the levels recorded in previous years. For example, the median theft rate calculated for 1983/84 was 3.2712 thefts per 1000 vehicles produced. This median theft rate is used in all determinations of whether a car line is a likely high theft line, and subject to the vehicle theft prevention standard. The median theft rate in 1986 was 3.6023 thefts per 1000 vehicles produced, an increase of 10 percent in the median theft rate compared to 1983/84.

DATE: All comments on this notice must be received by NHTSA not later than June 16, 1988.

ADDRESS: Comments should refer to the docket and notice numbers set forth in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4808).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its deterination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for 1983 and 1984 car lines, and calculated a median theft rate of 3.2712 per 1000 vehicles produced in those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, this notice sets forth the theft rates for the 157 lines of passenger motor vehicles sold in the United States during the 1986 model year. NHTSA calculated these theft rates based on information provided by the National Crime Information Center (NCIC), a division of the FBI.

These 1986 theft data show an increase in vehicle thefts above the level experienced in 1983/84. For 1983/84, the median theft rate was 3.2712 thefts per 1000 vehicles produced. Exactly 50 percent of the 1983/84 lines had theft rates that exceeded this median theft rate. For 1986, the median theft rate was 3.6023, a 10 percent increase in the median compared to 1983/84. For 1986, 92 of the 157 car lines, or 58.6 percent, exceeded the median theft rate for 1983/84.

In calculating these 1986 theft data, the agency followed the same approach it has used in all previous theft data calculations. Multiple countings of a single vehicle theft could occur if a law enforcement agency computer operator followed incorrect data entry procedures after getting further information about a vehicle already reported as stolen. In these circumstances, operators are supposed to revise an existing theft data entry to reflect new or additional data about the theft, but they sometimes cancel the original theft entry and enter a new theft report. The result of such an action would be that one actual vehicle theft reported to NCIC would be entered into the system more than once. To address this possibility, NHTSA has excluded all duplicate vehicle identification numbers reported as stolen within seven days of each other. This limitation assumes that it is possible that a vehicle might actually be stolen more than once in a calendar year, but that it is highly unlikley a vehicle would be stolen more than once in any particular week.

Interested persons are invited to submit comments on these data. The agency is particularly interested in comments about the accuracy of the data and the methodology used to calculate theft rates. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1986 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on April 26, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

BILLING CODE 4910–59–M

TABLE 1

MODEL YEAR 1986 THEFT RATES FOR
CARLINES PRODUCED IN CALENDAR YEAR 1986

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
1	GENERAL MOTORS	CHEVROLET CAMARO	5,275	178,870	29.4907
2	GENERAL MOTORS	PONTIAC FIREBIRD	2,789	100,210	27.8316
3	GENERAL MOTORS	CHEVROLET MONTE CARLO	2,139	113,394	18.8634
4	GENERAL MOTORS	BUICK REGAL	1,257	87,064	14.4377
5	TOYOTA	MR2	485	34,084	14.2296
6	GENERAL MOTORS	PONTIAC GRAND PRIX	552	40,386	13.6681
7	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	2,788	208,367	13.3802
8	CHRYSLER CORP.	DODGE CONQUEST	33	2,791	11.8237
9	GENERAL MOTORS	PONTIAC FIERO	863	78,255	11.0280
10	GENERAL MOTORS	CHEVROLET CORVETTE	365	33,355	10.9429
11	MITSUBISHI	TREDIA	106	10,086	10.5096
12	HONDA	PRELUDE	301	30,200	9.9669
13	CHRYSLER CORP.	PLYMOUTH CONQUEST	25	2,653	9.4233
14	VOLKSWAGEN	CABRIOLET	116	12,400	9.3548
15	TOYOTA	COROLLA/COROLLA SPORT	1,616	179,269	9.0144
16	FERRARI	MONDIAL	2	250	8.0000
17	MITSUBISHI	STARION	44	5,532	7.9537
18	GENERAL MOTORS	PONTIAC GRAND AM	1,623	208,098	7.7992
19	NISSAN	300ZX	473	61,354	7.7094
20	GENERAL MOTORS	OLDSMOBILE 98 REGENCY	868	117,110	7.4118
21	MITSUBISHI	GALANT	125	16,949	7.3751
22	CHRYSLER CORP.	CHRYSLER EXECUTIVE SEDAN/LIMOUSINE	1	138	7.2464
23	GENERAL MOTORS	CADILLAC FLEETWOOD BROUGHAM (RWD)	342	47,464	7.2055
24	ROLLS-ROYCE/BENTLEY	CORNICHE/CONTINENTAL	1	140	7.1429
25	GENERAL MOTORS	CADILLAC DEVILLE/LIMO (FWD)	1,148	161,478	7.1093
26	MITSUBISHI	MIRAGE	190	27,204	6.9843
27	FORD MOTOR CO.	LINCOLN TOWN CAR	759	112,964	6.7190
28	PORSCHE	911	50	7,456	6.7060
29	CHRYSLER CORP.	CHRYSLER FIFTH AVENUE/NEWPORT	508	78,417	6.4782
30	MAZDA	626	608	94,126	6.4594
31	CHRYSLER CORP.	DODGE 600	369	59,633	6.1878
32	FORD MOTOR CO.	FORD LTD	414	67,121	6.1680
33	MAZDA	323	487	79,565	6.1208
34	VOLKSWAGEN	SCIROCCO	61	10,122	6.0265
35	TOYOTA	CAMRY	938	157,469	5.9567
36	TOYOTA	CELICA	630	107,223	5.8756
37	CHRYSLER CORP.	DODGE LANCER	303	51,595	5.8727
38	FORD MOTOR CO.	FORD MUSTANG	1,136	198,925	5.7107
39	MITSUBISHI	CORDIA	46	8,146	5.6469
40	GENERAL MOTORS	CHEVROLET IMPALA/CAPRICE	1,159	210,758	5.4992
41	GENERAL MOTORS	BUICK SKYLARK/SOMERSET	711	130,316	5.4560
42	GENERAL MOTORS	PONTIAC SUNBIRD	609	111,702	5.4520
43	FORD MOTOR CO.	MERCURY CAPRI	79	14,969	5.4225
44	GENERAL MOTORS	BUICK ELECTRA	608	112,808	5.3897
45	FORD MOTOR CO.	FORD THUNDERBIRD	817	156,581	5.2177
46	MERCEDES-BENZ	500SEL	45	8,695	5.1754
47	CHRYSLER CORP.	DODGE DAYTONA	227	44,062	5.1518
48	NISSAN	SENTRA	703	138,838	5.0635

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
49	FORD MOTOR CO.	MERCURY COUGAR	651	130,019	5.0070
50	FORD MOTOR CO.	MERKUR XR4TI	67	13,553	4.9436
51	GENERAL MOTORS	CHEVROLET CHEVETTE	358	73,237	4.8882
52	MAZDA	GLC	16	3,326	4.8106
53	MAZDA	RX-7	235	50,924	4.6147
54	GENERAL MOTORS	PONTIAC 6000	946	207,661	4.5555
55	CHRYSLER CORP.	LEBARON GTS	329	73,143	4.4980
56	CHRYSLER CORP.	DODGE ARIES	432	97,429	4.4340
57	CHRYSLER CORP.	LASER	161	36,372	4.4265
58	CHRYSLER CORP.	PLYMOUTH HORIZON	219	49,578	4.4173
59	GENERAL MOTORS	PONTIAC BONNEVILLE	177	40,925	4.3250
60	MERCEDES-BENZ	380SL	48	11,111	4.3200
61	GENERAL MOTORS	PONTIAC PARISIENNE	313	72,520	4.3161
62	GENERAL MOTORS	CHEVROLET SPECTRUM	422	98,476	4.2853
63	TOYOTA	CRESSIDA	199	46,688	4.2623
64	GENERAL MOTORS	PONTIAC 1000	91	21,687	4.1961
65	PORSCHE	928	11	2,627	4.1873
66	PORSCHE	944	68	16,300	4.1718
67	MERCEDES-BENZ	560SEC	7	1,687	4.1494
68	CHRYSLER CORP.	DODGE COLT/COLT VISTA	280	67,502	4.1480
69	NISSAN	200 SX	212	51,580	4.1101
70	CHRYSLER CORP.	DODGE OMNI	182	44,526	4.0875
71	GENERAL MOTORS	BUICK RIVIERA	85	21,294	3.9917
72	CHRYSLER CORP.	PLYMOUTH RELIANT	482	122,675	3.9291
73	CHRYSLER CORP.	PLYMOUTH TURISMO	125	32,150	3.8880
74	AUDI	4000/COUPE	73	19,445	3.7542
75	GENERAL MOTORS	CHEVROLET CAVALIER	1,471	396,823	3.7069
76	NISSAN	MAXIMA	257	69,681	3.6882
77	HONDA	ACCORD	540	147,000	3.6735
78	CHRYSLER CORP.	DODGE CHARGER	125	34,095	3.6662
79	FORD MOTOR CO.	MERCURY MARQUIS	93	25,817	3.6023
80	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA/CRUISER (FWD)	1,245	348,571	3.5717
81	GENERAL MOTORS	CADILLAC CIMARRON	86	24,354	3.5312
82	ALFA ROMEO	SPIDER VELOCE 2000	18	5,106	3.5253
83	CHRYSLER CORP.	CHRYSLER LEBARON/TOWN & COUNTRY	321	91,111	3.5232
84	GENERAL MOTORS	CHEVROLET NOVA	577	167,763	3.4394
85	HYUNDAI	EXCEL	429	127,183	3.3731
86	GENERAL MOTORS	CHEVROLET CELEBRITY	1,360	404,520	3.3620
87	BERTONE	X-1/9	7	2,096	3.3397
88	BMW	3.	185	55,570	3.3291
89	FORD MOTOR CO.	FORD ESCORT	1,342	404,123	3.3208
90	FORD MOTOR CO.	FORD TEMPO	779	235,417	3.3090
91	FORD MOTOR CO.	MERCURY TOPAZ	187	56,620	3.3027
92	NISSAN	PULSAR	213	64,560	3.2993
93	FORD MOTOR CO.	MERCURY LYNX	240	74,589	3.2176
94	AMC/RENAULT	ALLIANCE/ENCORE	252	78,470	3.2114
95	GENERAL MOTORS	BUICK CENTURY	823	257,022	3.2021
96	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	200	62,505	3.1997
97	GENERAL MOTORS	CHEVROLET SPRINT	211	66,290	3.1830

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	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
98	HONDA/ACURA	LEGEND	27	8,500	3.1765
99	CHRYSLER CORP.	PLYMOUTH GRAN FURY	28	8,864	3.1588
100	VOLKSWAGEN	JETTA	290	93,779	3.0924
101	ALFA ROMEO	GTV6	2	660	3.0303
102	CHRYSLER CORP.	PLYMOUTH CARAVELLE	104	34,545	3.0106
103	FORD MOTOR CO.	LINCOLN MARK VII	58	19,329	3.0007
104	VOLKSWAGEN	GOLF/GTI	197	66,039	2.9831
105	JAGUAR	XJ-S	15	5,070	2.9586
106	FORD MOTOR CO.	MERCURY GRAND MARQUIS	297	101,822	2.9169
107	FORD MOTOR CO.	FORD EXP	86	29,573	2.9081
108	GENERAL MOTORS	BUICK SKYHAWK	237	82,155	2.8848
109	CHRYSLER CORP.	CHRYSLER NEW YORKER	147	50,957	2.8848
110	LOTUS	ESPIRT	1	350	2.8571
111	TOYOTA	CELICA SUPRA	73	26,202	2.7860
112	SUBARU	SUBARU	160	59,940	2.6693
113	VOLKSWAGEN	QUANTUM	29	11,074	2.6187
114	MERCEDES-BENZ	190D/E	53	20,459	2.5905
115	BMW	6.	6	2,323	2.5829
116	JAGUAR	XJ	46	17,898	2.5701
117	MERCEDES-BENZ	420SEL	37	14,840	2.4933
118	ISUZU	IMPULSE	36	14,457	2.4901
119	GENERAL MOTORS	OLDSMOBILE DELTA 88/CUSTOM CRUISER	590	238,905	2.4696
120	HONDA	CIVIC	522	212,000	2.4623
121	VOLVO	740/760	136	55,574	2.4472
122	GENERAL MOTORS	BUICK LESABRE	213	89,174	2.3886
123	PEUGEOT	505	31	13,211	2.3465
124	GENERAL MOTORS	OLDSMOBILE FIRENZA	87	37,672	2.3094
125	BMW	7.	14	6,080	2.3026
126	FORD MOTOR CO.	LINCOLN CONTINENTAL	42	18,271	2.2987
127	GENERAL MOTORS	CADILLAC ELDORADO	50	22,059	2.2666
128	GENERAL MOTORS	OLDSMOBILE TORONADO	34	15,102	2.2514
129	AUDI	5000S	103	46,388	2.2204
130	SAAB	900	85	39,085	2.1747
131	GENERAL MOTORS	CADILLAC SEVILLE	36	17,419	2.0667
132	MASERATI	BITURBO	2	973	2.0555
133	CHRYSLER CORP.	DODGE DIPLOMAT	34	16,585	2.0500
134	BMW	5.	41	21,080	1.9450
135	NISSAN	STANZA	99	52,398	1.8894
136	MERCEDES-BENZ	300D/E	43	23,186	1.8546
137	SAAB	9000	15	9,215	1.6278
138	FORD MOTOR CO.	FORD LTD CROWN VICTORIA	135	94,780	1.4244
139	VOLVO	DL/GL	82	59,790	1.3715
140	AUDI	QUATTRO	10	7,716	1.2960
141	HONDA/ACURA	INTEGRA	30	24,000	1.2500
142	SUBARU	XT	51	44,280	1.1518
143	GENERAL MOTORS	OLDSMOBILE CALAIS	128	135,587	0.9440
144	TOYOTA	TERCEL	74	83,749	0.8836
145	FERRARI	TESTAROSSA	0	250	0.0000
146	ROLLS-ROYCE/BENTLEY	SILVER SPIRIT/SILVER SPUR/MULSANNE	0	410	0.0000

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
147	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	31	0.0000
148	MASERATI	QUATTROPORTE	0	73	0.0000
149	EXCALIBUR	PHAETON/ROADSTER	0	70	0.0000
150	ASTON MARTIN	LAGONDA	0	16	0.0000
151	ISUZU	I-MARK	0	31,201	0.0000
152	SUZUKI	FORSA	0	10,971	0.0000
153	ZIMMER	CLASSIC/ELEGANTE/CABRIOLET	0	170	0.0000
154	ROLLS-ROYCE/BENTLEY	CAMARGUE	0	40	0.0000
155	BITTER GMBH	BITTER SC	0	81	0.0000
156	FERRARI	328	0	600	0.0000
157	TVR	280I	0	225	0.0000

[FR Doc. 88-9583 Filed 4-29-88; 8:45 am]
BILLING CODE 4910-59-C

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DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 27, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0143
Form Number: IRS Form 2290
Type of Review: Resubmission
Title: Heavy Vehicle Use Tax Return
Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of motor vehicles which have a taxable gross weight of at least 55,000 pounds. The information is used to determine whether the taxpayer has paid the correct amount.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 660,864 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 88–9678 Filed 4–29–88; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Advisory Committee on Native American Veterans; Availability of Final Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Final Report of the Veterans Administration Advisory Committee on Native American Veterans has been issued.

The Report summarizes the findings and recommendations developed through four national meetings of the Committee. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Veterans Administration, Social Work Service (122), Room 938, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: April 21, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,
Committee Management Officer.

[FR Doc. 88–9600 Filed 4–29–88; 8:45 am]
BILLING CODE 8320-01-M

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Administration.

ACTION: Notice of Matching Program—Veterans Administration Compensation and Pension Records/State and Local Wage, Tax, and Employment Security Records.

SUMMARY: The Veterans Administration (VA) is providing notice that the Department of Veterans Benefits (DVB) is initiating a series of computer matches of VA Compensation and Pension records with state and local wage, tax, and employment security records.

The goals of these matches are to: (1) Detect benefit payments under Title 38, United States Code, to persons who may be ineligible for, or not fully entitled to, veterans benefits; and (2) identify those instances in which it appears that recipients may not have reported all employment and/or income received. These matches will include checks on the eligibility of beneficiaries drawing nonservice-connected pension, and those drawing service-connected compensation with disabilities based on "industrial inadaptability" or "inability to obtain or retain gainful employment."

DATES: It is anticipated that the matches will begin during the third quarter of Fiscal Year 1988 and continue, one state at a time.

ADDRESS: Interested persons may comment on the proposed matches by writing to: Mr. J. Gary Hickman, Assistant Director for Policy and Planning (211), Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Mr. J. Gary Hickman, (202) 233–2010.

SUPPLEMENTARY INFORMATION: The full text of the computer matching program report is provided below as required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). Copies of this report have been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 25, 1988.

Thomas K. Turnage,
Administrator.

Report of Matching Program: Veterans Administration Compensation and Pension Records/State and Local Wage, Tax, and Employment Security Records

A. Authority: Title 38, United States Code, Sections 355, 502(a), 503, 506, 521 and 541.

b. Program Description:

(1) *Purpose:* These matches are designed to identify individuals who may be ineligible for, or not fully entitled to, veterans benefits and identify those instances in which it appears that recipients may not have reported all employment and/or income received.

(2) *Procedures:* The computer matching will be performed by state or local agencies by comparing a magnetic tape file of beneficiary social security numbers from VA compensation and pension files with their wage, tax, or employment security files. The social security numbers of veterans' spouses, if available from individual VA compensation and pension files, also will be supplied for matching. In those pension programs known as Improved Pension and section 306 Pension, the income of a veteran's spouse must be considered in determining entitlement to benefits, and in Improved Pension the spouse's income also is a factor in determining the rate payable. The state or local agencies will send the VA a magnetic tape file containing names, social security numbers, wage and employment histories, and identification of employers for all match hits. In this computer matching program, a "hit" is defined as the identification of an individual in the records that are being matched or compared with each other and results when any VA-provided social security number matches a social security number recorded in the state or local file being matched. When it is necessary to verify the identity of beneficiaries who appear in State or local files, the VA may furnish additional identifying data such as dated of birth, place of birth, sex, etc. In accordance with Title 38, United States Code, the names available to state or local agencies except in connection with a proceeding for the collection of a debt owed to the United States and resulting from the receipt of VA benefits.

Hits resulting from these matches will be treated as follows: The DVB, through a series of computer edits, first will verify against VA records the identity of the persons listed as hits and then review the information obtained through the match. If the review indicates that information provided to the VA in applying for a benefit may not have been accurate, or that a change in a beneficiary's eligibility may have occurred that has not been reported to the VA, the information and the identity of the person involved will be referred to the VA regional office of jurisdication for adjudicative review and determination of a need for follow-up action. Employers or other knowledgeable sources may be contacted in the verification process. A reduction, suspension, or termination of benefit payments may ensue when the circumstances warrant and after due process has been afforded to the beneficiary. Action to recover overpayments also may be taken. When there are reasonable grounds to believe that there has been a violation of criminal law, the matter will be referred to the VA Office of Inspector General (OIG) for investigation and prosecutive consideration.

For the purposes of these matches, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

C. *Records to be Matched:* Social security numbers extracted from the following system of records will be matched with state and local wage, tax, and employment security records:

Compensation, Pension, and Education Records-VA (58VA21/22) as set forth on page 789 of the **Federal Register** publication Privacy Act Issuances, 1985 Compilation, Vol. V, and amended at 51 FR 24782 (July 8, 1986); 51 FR 25141 (July 10, 1986); 51 FR 28289 (August 6, 1986); and 52 FR 4078 (February 9, 1987). The disclosure of information from this system of records, for the purpose of the matching program, is permitted by a published routine use.

d. *Period of Match:* It is anticipated that the matches will begin during the third quarter of Fiscal Year 1988 and continue, one state at a time. The schedule and order of the remaining matches will depend on current workload, available resources, and other factors and, therefore, cannot be projected. These matches may be repeated on a cyclical or intermittent basis.

e. *Safeguards:* Records used in the matches and data generated as a result will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or followup actions. All of the material will be stored in locked containers when not in use. Prior to releasing any information from the VA system of records to a state or local agency, DVB will obtain a written agreement from the agency specifying that the social security number file will remain the property of, and will be returned to, the VA upon completion of the match; that it will be used and accessed only to match the files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by DVB.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding, or electronic erasing within three months of the completion of the individual match. Records resulting in "hits" will be retained by either the Office of Information Systems and Telecommunications or DVB until the completion of any necessary administrative or legal actions and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

g. *States and Other Geographical Entities to be Included in the Match:* The following states and other geographical entities have indicated willingness to participate in the matches and will be included as scheduling permits:

Alabama	Missouri
Delaware	New Jersey
Idaho	Pennsylvania
Kansas	Virginia
Maine	Connecticut
Mississippi	Colorado
New Hamsphire	Hawaii
Oklahoma	Iowa
Texas	Louisiana
Wisconsin	Minnesota
Arizona	Montana
Florida	North Carolina
Indiana	South Dakota
Kentucky	Washington
Maryland	

Additional states and geographical entities may be added when DVB receives their agreement to participate. At the present time it is contemplated that Arizona, New Jersey, North Carolina, and Oklahoma will be the first states to participate in a match conducted by the Department of Veterans Benefits.

[FR Doc. 88–9643 Filed 4–29–88; 8:45 am]
BILLING CODE 8320-01-M

VOL 53 ISS 84 MY 2 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 84
Monday, May 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 2, 1988:

A closed meeting will be held on Tuesday, May 3, 1988, at 10:00 a.m. An open meeting will be held on Thursday, May 5, 1988, at 10:00 a.m. An open meeting will be held on Thursday, May 5, 1988, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10) permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 3, 1988, at 10:00 a.m., will be:

Institution of administrative proceeding of an enforcement nature.

Formal orders of investigation.

The subject matter of the open meeting scheduled for Thursday, May 5, 1988, at 10:00 a.m., will be:

1. Consideration of whether to delegate authority to the Office of General Counsel to grant or deny requests for non-expert factual staff testimony and the production of documents pursuant to subpoenas issued in private litigation, unless the information is privileged. For further information, please contact Jeri Cohen at (202) 272-2453.

2. Consideration of a proposed rule change submitted by the National Association of Securities Dealers ("NASD") that would provide procedures for the NASD to halt its members' trading in NASDAQ securities pending dissemination of material information from the issuer and to halt over-the-counter ("OTC") trading in exchange-listed securities, so-called "third-market trading," when the primary market for the security halts trading pending material news dissemination. For further information, please contact Christine A. Sakach at (202) 272-2416.

3. Consideration of whether to grant Government Securities Clearing Corporation's application for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934 and Rule 17Ab2-1(c) thereunder. For further information, please contact Jonathan Kallman at (202) 272-2402 or Ester Saverson, Jr. at (202) 272-2826.

4. Consideration of whether to request Congress to consider a legislative proposal designed to increase international cooperation in securities law enforcement. The proposal would amend the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The amendments would: (1) Authorize the Commission to compel testimony and production of evidence in investigations of violations of foreign securities laws when requested to do so by foreign securities authorities; (2) authorize the Commission to withhold from disclosure under the Freedom of Information Act confidential documents furnished to the Commission by foreign securities officials; (3) grant the Commission explicit rulemaking authority to permit access to its files by persons, both domestic and foreign, engaged in securities law enforcement and oversight; and (4) authorize the Commission to impose sanctions or restrictions on the activities of securities professionals on the basis of a finding of misconduct in a foreign country. For further information, please contact Michael Mann at (202) 272-2309 or Thomas Riesenberg at (202) 272-3088.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272-2149.

Jonathan G. Katz,
Secretary.
April 27, 1988.

[FR Doc. 88-9711 Filed 4-28-88; 12:32 pm]
BILLING CODE 8010-01-M

federal register

Monday
May 2, 1988

Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1645
Allocation of Earnings; Interim Rule

VOL 53 ISS 84 MY 2 1988 UMI

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1645

Allocation of Earnings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing in Part 1645 of 5 CFR interim regulations concerning allocation of earnings of the three funds in which assets of the Thrift Savings Fund may be invested. These are the Government Securities Investment Fund (G Fund), the Common Stock Index Investment Fund (C Fund), and the Fixed Income Investment Fund (F Fund). These regulations are required by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335). They describe the way in which earnings are allocated to participants of the Thrift Savings Plan.

DATES: Interim rules are effective February 1, 1988; comments must be received on or before June 1, 1988.

ADDRESS: Comments may be sent to: James B. Petrick, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: James B. Petrick (202) 523–6367.

SUPPLEMENTARY INFORMATION: Part 1645 describes the process for determining and allocating earnings for each of the three Investment Funds—the G Fund, the C Fund, and the F Fund—to individual accounts of participants in the Thrift Savings Plan.

G Fund earnings have been allocated to individual accounts since May 1, 1987, but two events caused changes in the allocation process as of February 1, 1988. First, legislation was enacted (Pub. L. 100–238, January 8, 1988) that required administrative expenses to be charged against earnings on all types of contributions, rather than only against employer contributions. Second, the C and F Funds first became available on January 1, 1988. As a result, the allocation of earnings, beginning as of February 1, 1988, was required to encompass these funds as well as the G Fund.

Section 1645.1 contains the definitions used in this part.

Section 1645.2 states that contributions will be posted to individual accounts on the day those contributions are processed by the Board's recordkeeper. Contributions are placed in participants' accounts according to Investment Fund and source; that is, they are designated as G Fund employee contributions, C Fund employee contributions, F Fund employee contributions, G Fund employer basic contributions, or G Fund employer matching contributions. Until 1993, no employer contributions can be invested in the C or F Funds.

Section 1645.3 describes the method for calculating net earnings for the three Investment Funds. It sets forth the various components of earnings: (1) Interest on investment of G Fund money, including C and F Fund money which is invested in the G Fund on a short-term basis; (2) interest on other short-term investments, primarily C and F Fund money invested in a short-term investment fund by the Funds' investment managers; (3) other income, such as dividends or interest; and (4) capital gain or loss, which is the change in market value of the investment, net of transaction costs, during the valuation period. The total of these components is then reduced by the portion of administrative expenses charged against the particular Investment Fund for that valuation period, as calculated under the rules set forth in section 1645.4. Not all of the elements in this calculation are relevant to each of the Investment Funds. For example, there are no transaction costs resulting from investment of the G Fund.

Section 1645.4 describes the method for assessing a portion of the monthly accrued administrative expenses against the earnings of each Investment Fund. First, accrued expenses that are attributable only to the C or F Funds (such as the investment managers' fees) are charged solely to that Fund. Second, the remaining monthly accrued administrative expenses are reduced by forfeitures processed during that month. The remaining amount is then assessed on a *pro rata* basis against each Investment Fund, based on the respective balances of each fund on the last day of the prior valuation period.

Section 1645.5 describes the calculation of the bases used for determining each account's proper share of earnings. For each individual account, the basis is: (1) The amount attributable to that source of contribution within each Investment Fund which was in the account at the end of the last valuation period; plus (2) earnings on that source of contribution in that Investment Fund which were allocated to the account for the last valuation period (these earnings are posted as of the first day of the current valuation period); plus (3) all amounts in the account that were transferred into that Fund as of the first day of the current valuation period; plus (4) one-half of all contributions and participant loan repayments to the account relating to that source in that Investment Fund which were made during the current valuation period; minus (5) one-half of error adjustments to the account (error adjustments are always negative, since positive error adjustments are treated as contributions); minus (6) amounts transferred out of that Investment Fund in the account as of the first day of the current valuation period; minus (7) loans made from the account under the participant loan program; and minus (8) other withdrawals from the account during the current valuation period. Using one-half of an element such as contributions permits that element to be a factor in allocating earnings, no matter when it occurred during the valuation period.

Contributions and related interest for the retroactive one percent contribution for FERS employees for the 1984–1986 period are counted in full when determining the basis for allocating earnings on employer basic contributions.

The total of each of the different bases for all individual accounts is then computed to yield the fund basis for each source of contributions in each Investment Fund.

Section 1645.6 sets forth the allocation process with respect to each individual account. The amount allocated to each account is the total net earnings for each source of contributions in each Investment Fund, divided by the fund basis for that source of contributions in that Investment Fund, times the individual account basis for that source of contributions in that Investment Fund. Residual amounts which result from eliminating fractions of a cent from this calculation will be posted to undistributed earnings accounts for that source and that Investment Fund. These remain invested (if positive) and will be allocated the next month.

Section 1645.7 states that earnings will be posted to individual accounts as of the first calendar day of each month.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures for allocating earnings.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these interim regulations effective in less than 30 days. As a result of the implementation of the C and F Funds and the passage of Pub. L. 100–238 (January 8, 1988), earnings are being allocated to participant accounts under these rules as of February 1, 1988.

List of Subjects in 5 CFR Part 1645

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1645 to Chapter VI to read as follows:

PART 1645—ALLOCATION OF EARNINGS

Sec.

1645.1 Definitions.
1645.2 Posting of receipts.
1645.3 Calculation of net earnings for each Investment Fund.
1645.4 Administrative expenses attributable to each Investment Fund.
1645.5 Basis for allocation of earnings.
1645.6 Earnings allocation for individual accounts.
1645.7 Posting of earnings to individual accounts.

Authority: 5 U.S.C. 8439(a)(3) and 5 U.S.C. 8474.

§ 1645.1 Definitions.

As used in this part, the following terms have the following meanings:

"Accrued" means accounted for during a valuation period, whether or not actually paid or received during that period.

"Administrative expenses" means the expenses authorized by 5 U.S.C. 8437(c)(3).

"Allocation" means any *pro rata* distribution of amounts.

"Allocation date" means the first day of each calendar month.

"Basis" means the portion of an account or Investment Fund upon which the allocation of earnings is based.

"Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

"C Fund" means the Common Stock Index Investment Fund established pursuant to 5 U.S.C. 8438(b)(1)(C).

"Employee contributions" means any contributions made pursuant to 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a).

"Employer basic contributions" means any contributions made pursuant to 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3).

"Employer contributions" means employer basic contributions and employer matching contributions.

"Employer matching contributions" means any contributions made pursuant to 5 U.S.C. 8432(c)(2).

"F Fund" means the Fixed Income Investment Fund established pursuant to 5 U.S.C. 8438(b)(1)(B).

"Forfeitures" means any amounts forfeited pursuant to 5 U.S.C. 8432(g)(2).

"G Fund" means the Government Securities Investment Fund established pursuant to 5 U.S.C. 8438(b)(1)(A).

"Individual account" means the account established for a participant in the Thrift Savings Fund pursuant to 5 U.S.C. 8439(a)(2).

"Investment Fund" means the G Fund, the F Fund, or the C Fund.

"Posting" means the process of crediting or debiting amounts to an individual account.

"Recordkeeper" means the organization designated by the Board as the Thrift Savings Plan's recordkeeper.

"Source" means the origin of any one of the three types of contributions that are made to the Fund on behalf of participants—employee contributions, employer basic contributions, or employer matching contributions.

"Thrift Savings Fund" or "Fund" means the Fund described in 5 U.S.C. 8437.

"Valuation period" means the calendar month during which earnings accrue prior to allocation.

§ 1645.2 Posting of receipts.

Employer and employee contributions and loan repayments will be posted by source and by Investment Fund to the appropriate individual account on the day they are processed by the recordkeeper.

§ 1645.3 Calculation of net earnings for each investment Fund.

(a) For each valuation period, net earnings will be calculated separately for each Investment Fund.

(b) Net earnings for each Investment Fund will equal:

(1) The sum of the following items, if any, accrued during the current valuation period:

(i) Interest on money of that Investment Fund which is invested with the G Fund;

(ii) Interest on other short-term investments of the Investment Fund;

(iii) Income (such as dividends and interest) on other investments of the Investment Fund; and

(iv) Capital gain or loss on investments of the Investment Fund, net of transaction costs.

(2) Minus the accrued administrative expenses of the Investment Fund, determined in accordance with § 1645.4.

(c) The net earnings for each Investment Fund resulting from paragraph (b) of this section will be adjusted by residual net earnings from the previous valuation period for that Investment Fund, as described in § 1645.6(b), to produce the earnings available for allocation to the participant accounts in the respective Investment Fund for the current valuation period.

§ 1645.4 Administrative expenses attributable to each Investment Fund.

A portion of administrative expenses accrued during each valuation period will be charged to each Investment Fund. The Investment Funds' respective portions will be determined as follows:

(a) Investment managers' fees and other accrued administrative expenses attributable only to the C or F Fund will be charged to the C or F Fund, respectively;

(b) All other accrued administrative expenses will be reduced by forfeitures that the recordkeeper has processed during the valuation period;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (b) of this section will be charged on a *pro rata* basis to the Investment Funds, based on the respective Investment Fund balances on the last day of the prior valuation period.

§ 1645.5 Basis for allocation of earnings.

(a) *Individual account basis.* Except for the amounts described in paragraph (b) of this section, on the earnings allocation date, the individual account basis for each source of contributions in each Investment Fund equals:

(1) The portion of the individual account that is attributable to the respective source of contributions in that Investment Fund as of the close of business on the last day of the previous valuation period; plus

(2) All earnings allocated to the respective source of contributions in the individual account and in that Investment Fund as of the previous allocation date; plus

(3) All amounts in the individual account transferred into that Investment Fund from another Investment Fund as of the previous allocation date; plus

(4) One-half of contributions posted to the individual account during the current valuation period (except for

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contributions referred to in paragraph (b) of this section); plus

(5) One-half of all loan repayments posted to the individual account during the current valuation period; minus

(6) All amounts in the individual account transferred out of an Investment Fund to another Investment Fund as of the previous allocation date; minus

(7) One-half of all error correction adjustments made to the respective source of contributions in the individual account and in the respective Investment Fund during the current valuation period; minus

(8) Any loans or withdrawals paid from the individual account in the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for employer basic contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the recordkeeper during the current valuation period.

(c) *Computation of Fund Basis.* For each valuation period, the Fund Basis of each source of contributions in each Investment Fund will be the total of all individual account bases for that source of contributions in each Investment Fund, calculated as described in paragraphs (a) and (b) of this section.

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each Investment Fund will be allocated to each individual account separately. The total net earnings for each source of contributions in each Investment Fund (as computed under § 1645.3) will be divided by the Fund Basis for that source of contributions in that Investment Fund (as computed under § 1645.5(c)). The resulting number (the "allocation factor" for that source) will be multiplied by the individual account basis for the respective source of contributions in that Investment Fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that Investment Fund. The earnings of the individual account for each source of contributions in each Investment Fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in subsection (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each Investment Fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the first day of the next valuation period.

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Part III

Environmental Protection Agency

40 CFR Part 253
Guideline for Federal Procurement of Retread Tires; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 253

[SWH-FRL 3295-3]

Guideline For Federal Procurement of Retread Tires

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of retread tires. The guideline would implement section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated a procurement item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

This guideline designates tires as a product for which the procurement requirements of section 6002 apply. The guideline also contains recommendations for implementing the section 6002 procurement requirements as well as the requirements for revising specifications.

DATE: EPA will accept public comments on this proposed guideline until June 1, 1988.

ADDRESS: Comments on this proposed guideline should be addressed to the EPA RCRA Docket Clerk, Office of Solid Waste, WH-562, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should identify the docket number, which is F-88-PRTP-FFFFF.

The public docket is available for viewing in Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC, from 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

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I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) is proposing today one in a series of guidelines designed to encourage the use of products containing materials recovered from the solid waste stream. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to procure certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). EPA issued a second guideline, for paper and paper products containing recovered materials, on October 6, 1987 (52 FR 37290; 40 CFR Part 250). EPA concurrently proposed minimum recovered materials content standards for paper and paper products; these standards are being finalized. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). A fourth guideline, for engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils, was proposed on October 19, 1987 (52 FR 38838); this guideline is being finalized. Today's proposed guideline applies to procurement of tires.

This preamble describes the requirements of section 6002, explains the basis for designating tires as a procurement item subject to section 6002, and discusses the provisions of the proposed guideline. It also provides information regarding the price, availability, and performance of retread tires.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies using appropriated Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate the items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from suppliers an estimate of and certification regarding the percentage of recovered materials contained in their products.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise the specifications by May 8, 1986, in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year after the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without jeopardizing the intended end use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to establish an affirmative procurement program for purchasing items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. Because state and local governments and private purchasers often follow the Federal lead, Federal procurement of products containing reclaimed materials is expected to result in increased procurement of them by these other groups as well.

C. Rationale for Selecting Tires for a Procurement Guideline

In the preamble to the fly ash guideline, EPA established criteria for the selection of procurement items for which guidelines will be prepared. however, section 6002(e) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, specifically directs the EPA Administrator to issue procurement guidelines for tires. The portion of the Conference Committee report describing the amendments to section 6002 explains that the term "tires" includes "the use of retreaded tires." [H.R. 2867 Conference Report, p. 1, Cong. Rec. H11138 (October 3, 1984)]. Since Congress already has selected tires as an appropriate subject for a procurement guideline, it is not necessary for EPA to determine that tires are an appropriate subject for a guideline or to demonstrate that tires satisfy the EPA criteria.

D. Background Information on Tire Retreading

The retreading industry was started in the 1910s. Today there are approximately 2,600 retreading plants in the United States. They retread tires for aircraft (commercial and military), agricultural equipment, automobiles, light- and heavy-duty trucks, buses (school and mass transportation), off-road vehicles (i.e., earthmovers, graders, loaders, and dozers) and racing cars.

Tire retreading is the application of a new tread to a worn tire. The tire retreading process involves the following steps:

- Inspection and selection of tires suitable for retreading
- Removal of the old tire tread through a buffing process
- Repair of the tire casing, if necessary
- Application of rubber cement
- Application of a new tread
- Curing
- Inspection of the retreaded tire.

There are two methods for applying a new tread: the mold-cured process, in which an uncured rubber tread is applied, and the pre-cured process, in which a pre-cured, pre-molded rubber tread is applied.

During the mold-cured process, uncured (i.e., nonvulcanized) rubber is applied to the tire. The tire then is placed in a mold to form the tread pattern, the tire is internally pressurized, and the mold is heated. The combination of heat and air pressure applied for an appropriate period of time vulcanizes the rubber and bonds it to the tire body.

During the pre-cure process, a thin layer of uncured rubber (the bonding layer) is applied to the tire body. The pre-cured, pre-molded rubber tread is applied over the bonding layer. The tire is then placed in an autoclave to bond the tread to the tire body. Again, the combination of heat and air pressure applied over time vulcanizes the bonding layer and bonds it and the tread to the tire body.

A properly retreaded tire can provide the same mileage as a new tire, thus substantially extending a tire's useful life. Tires also can be retreaded multiple times. Truck tires, for example, are often retreaded two or three times.

E. Current Retread Tire Procurement Procedures

Procuring agencies can procure either a service—tire retreading—or a product—retread tires. Agencies currently use different methods for procuring retreading services than for procuring retreads as a product. These approaches are described below.

1. Procurement of Services

The General Services Administration (GSA) awards contracts for tire retreading services. Retreading contracts are awarded by the GSA regional offices. The regional offices then issue a supply schedule, Federal Supply Schedule No. 753II, Tire Retreading and Repairing, identifying the vendors of tire retreading services within the GSA region. The individual Federal agencies[1] can bring their tires to these vendors for retreading. The vendor retreads the tire and returns it to the procuring agency. If the tire is not retreadable (e.g., the casing is damaged), the vendor returns it to the agency for disposal.

Vendors retread tires in accordance with GSA Specification ZZ-T-441, which details the retreading procedures to be followed, including inspection of the worn tire casing for suitability for retreading, and inspection of the finished product. It applies to both the mold-cured and pre-cured retreading processes and to tire repairs. It covers four groups of tires: (1) Passenger car and cycles, (2) light truck and high speed industrial, (3) truck, bus and trailer, and (4) special service (including military, agricultural, off-highway, and slow speed industrial).

The specification also requires that the retreader receive a mandatory pre-award facility certification of approval. According to the specification, there are two acceptable approaches that a retreader may use to have his facility certified. First, a GSA inspector can perform the retreading facility inspection. Second, the retreader can provide evidence that within the previous 12 months the facility has received an approved certification from a nationally recognized retread tire trade association, such as the National Tire Dealers and Retreaders Association or the American Retreaders Association.

[1] The Department of Defense uses Schedule No. 753II for retreading of tactical equipment and heavy-duty truck tires, as well as for administrative and light-duty vehicle tires.

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With the exception of the Department of Defense, very few Federal government agencies have central motor pools to maintain and repair vehicles. Nor are tires stockpiled in Federal government warehouses or depots. Instead, replacement tires are obtained from the commerical marketplace. Individual vehicle operators, in conjunction with GSA's Fleet Management, thus decide whether to procure a new tire or a tire retreading service for the worn tires on the operator's vehicle. There are no criteria for the vehicle operators to use in making the decision to procure a new tire or a tire retreading service, nor does GSA monitor procuring agencies' use of the retreading contracts. Note that if the retreading service is used, the vehicle operator is provided with his original casing with a new tread, unless the casing cannot be retreaded, in which case it is returned.

The State of Vermont also procures retreading services (for truck and aircraft tires). The state's specification identifies the retreading process to be used (mold-cured), retread size, and tread design. It requires that the retreader use the state's casings. The state invites bids to supply retreading services in accordance with the specification and awards one-year contracts with two options to renew.

Vermont has a central motor pool which warehouses replacement parts, including a mix of new and retreaded tires. The motor pool staff are trained in tire inspection procedures. Each tire casing is inspected to determine whether it can be retreaded; if it is suitable for retreading, it is sent to the contract retreader. Vehicle operators receive replacement tires, although not necessarily their old tire casings.

2. Procurement of Products

GSA is the lead agency for purposes of Federal tire procurement. GSA's tire specification, ZZ–T–381, is specific to new tires containing virgin or recovered rubber. GSA prepares a schedule (the Federal Supply Schedule) identifying the types and sizes of tires required by Federal agencies and awards national contracts to vendors of these tires.These vendors are then identified on the supply schedule (Federal Supply Schedule No. 28II, Pneumatic Tires and Inner Tubes). The Individual Federal agencies procure tires directly from these vendors using purchase orders. All Federal agencies, including the Defense Department, use the GSA supply schedule for automobile and truck tires. (DOD awards its own contracts for procurement of tires for tactical equipment, heavy-duty trucks, and airplanes.)

When retread tires are purchased as products by procuring agencies other than Federal agencies, they generally are purchased through open competition. The procuring agency invites bids from both vendors of new tires and vendors of retread tires. The contract is awarded to the lowest-priced responsible bidder.

For example, the Virginia Highways and Transportation Department (VHTD) purchases truck tires in this manner. VHTD has developed a performance specification for truck tires which specifies tire size and performance standards. It is neutral in that it applies to both new and retread tires. It requires the contractor to guarantee an average mileage and to submit a performance bond. The price of each tire is divided by the guaranteed mileage to obtain a guaranteed cost per mile. If the tire does not perform for the guaranteed mileage, the cost per mile is used to adjust the price of the tire. The difference between the actual tire price and the adjusted price is the amount the contractor must reimburse the VHTD. Both vendors of new tires and vendors of retreads can and have submitted bids to VHTD, and retreaders have received contract awards.

III. Proposed Guideline

This portion of the preamble explains each section of the proposed guideline.

A. Purpose and Scope

The purpose of this guideline is (1) to designate tires as an item subject to the procurement requirements of section 6002 of RCRA and (2) to recommend procedures for complying with section 6002.

This guideline applies to purchases of the following types of tires: passenger care tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial). It does not apply to airplane tires. Because Federal agencies that procure airplane tires already use retreads extensively, EPA believes that designating airplane tires will not result in increased use of retreaded airplane tires. (Information on airplane tire retreading is available in the docket.) In addition, EPA believes that when Congress directed EPA to issue a procurement guideline for tires, it intended EPA to focus on automobile, truck, and other vehicle tires because they are a significant solid waste problem; the bulk of the tires in the solid waste stream are automobile tires and, to a lesser extent, truck and other vehicle tires. Because airplane tires are not a significant solid waste problem, EPA believes that Congress did not intend for EPA to address them in this guideline. EPA requests comments on its decision not to include airplane tires in this guideline.

B. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined by RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year. Both direct and indirect purchases are covered.

1. Direct Purchases

This guideline applies to tire purchases made directly by a procuring agency or by a government contractor for use in government vehicles and equipment. Direct purchases by a contractor would include purchases for maintaining a government fleet.[2]

The guideline does *not* apply, however, to direct purchases for use in new equipment to be supplied by a contractor (e.g., new automobiles). Under the Federal Acquisition Regulation (FAR), Federal procuring agencies are required to purchase commercial products and use commercial distribution systems whenever such products or systems adequately meet the government's needs. (See FAR § 11.002). New vehicles are purchased in accordance with this requirement. Since new vehicle manufacturers are required by National Highway Traffic and Safety Administration (NHTSA) regulations (49 CFR 571.110 and 571.120) to use new tires, the vehicles purchased by Federal procuring agencies will have new tires installed on them. Requiring retread tires would be contrary both to the NHTSA regulations and the FAR, and thus contrary to the requirement of RCRA section 6002(i)(1) that procuring agencies must comply with applicable Federal laws.

[2] The term "government fleet" does not refer to vehicles owned by the contractor but rather to vehicles owned by a government agency and operated or maintained on behalf of the agency by the contractor.

2. Indirect Purchases

The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency or its contractors using appropriated Federal funds. Thus, the guideline applies to tire purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies. However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. An example of a tire purchase unrelated or incidental to Federal funding is where a contractor purchases tires for equipment under a grant for construction of a public works project. The tire purchases would not be subject to the requirements in section 6002 or this guideline, even though some of the grant funds supporting the contract might be used to finance the purchases.

EPA solicits comments on whether this guideline should be revised to exempt block grants from the section 6002 procurement requirements because it generally may not be possible to account separately for block grant funds from non-Federal funds. EPA also solicits comments on whether this guideline should be revised to exempt block grants only when it is not possible to account separately for such funds.

3. The $10,000 Threshold

The procurement requirements of section 6002(a) apply when the purchase price of an item exceeds $10,000 or when the quantity of such items or of "functionally equivalent" items purchased during the preceding fiscal year was $10,000 or more. In calculating whether the $10,000 threshold has been reached, EPA intends that procuring agencies consider all types of tires to be functionally equivalent items. When determining if the $10,000 threshold has been reached, procuring agencies should tally the cost of all tires purchased, rather than each size or category of tire (e.g., truck tires, automobile tires) purchased. EPA believes that restricting the applicability of section 6002 to purchases based upon a narrow definition of functional equivalency would limit the effectiveness of the proposed guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each size or category of tire. EPA recommended a similar approach in the proposed guideline for re-refined oil, 52 FR 38843 (October 19, 1987).

EPA notes that the FAR contains a $25,000 small procurement provision, 48 CFR Part 13. This provision should not be confused with the $10,000 threshold because their purposes are different. The $10,000 threshold determines when the affirmative procurement provisions of RCRA section 6002 apply, whereas the $25,000 threshold triggers small procurement procedures. Procuring agencies must use the $10,000 threshold when determining the applicability of RCRA section 6002 and today's proposed guideline.

C. Definitions

Most of the definitions used in this procurement guideline are the same as used in RCRA itself.

For purposes of this guideline, the term "retread tires" means a worn automobile, truck, or other vehicle tire whose tread has been replaced.

Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable*, and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). EPA has defined "practicable" in the final paper guideline, 52 FR 37297 (October 6, 1987), and is including the definition in today's guideline as well.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications, (2) availability at a reasonable price, (3) availability within a reasonable period of time, and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

D. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the guidelines for the benefit of procuring agencies. As a result, the guidelines contain two types of provisions: requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies are required to comply with the requirements of section 6002, whereas EPA's recommendations for meeting those statutory requirements are advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

E. Specifications

1. Federal Agencies

RCRA section 6002(d) contains two requirements for revising specifications for procurement items. As discussed above, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials [section 6002(d)(1)]. Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials (in this case, recovered rubber and retread tires) to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all of the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

In meeting the first specification revision requirement in the context of tires, the specification must provide that reclaimed rubber may be used in the basic compounds used in tire

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construction. In addition, if a procuring agency chooses to implement the case-by-case approach as described below, the specification should apply both to new tires and to retread tires. Thus, GSA would be required to revise its specification for new tires, ZZ–T–381, so that it applies both to new tires and to retreads.

2. Procuring Agencies

EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure tires with appropriated Federal funds. Unless their specifications are revised to require the use of retread tires, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002(c)(1) and (i). For this reason, § 253.10(b) of the proposed guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended use of the item.

Under section 6002(d)(2), specifications need not be revised if the agency determines that, for technical reasons, a product containing recovered materials will jeopardize the end use of the product.[3] Such determinations should be documented and made within one year of the promulgation of a final guideline. (See § 253.11 of the proposed guideline.) If the agency subsequently issues a restrictive specification, the basis for the restriction must be documented when the specification is issued.

F. Affirmative Procurement Program

RCRA section 6602(i) requires procuring agencies to adopt an affirmative procurement program to ensure that retread tires are purchased to the maximum extend practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification of recovered materials content; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

[3] For example, Draft Army Regulation (AR) 750–36, which contains the Army's policy and procedures for use of retread tires, excludes use of retreads on the front wheels of buses and on emergency vehicles and heavy-lift vehicles. The regulation conforms to RCRA section 6002(d)(2) because it maximizes the use of retreads without jeopardizing the intended end use of the item.

The following sections explain EPA's recommendations for each element of the affirmative procurement program.

1. Recovered Materials Preference Program

Under section 6002(i)(3), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is substantially equivalent to the preceding approaches. In general, the minimum content standard approach is appropriate when the quantity of recovered material used can vary. For example, the quantity of recycled paper used in manufacturing paper and paper products can be varied. In the case of retread tires, where the recovered material is the used tire casing, the quantity of recovered material used does not vary. For this reason, minimum content standards are inapplicable to retread tire procurement, and EPA only considered the other two approaches.

As discussed in section II.E. of this preamble, procuring agencies currently procure either a product—retreads—or a service—tire retreading. Procurement of tire retreading services falls within the "substantially equivalent alternative" category of procurement options provided by RCRA section 6002(i). Procurement of retread tires as a product falls within the case-by-case procurement option and may be used only by a non-Federal procuring agency until such time as GSA issues a specification for retread tires or revises ZZ–T–381 to include retreads. EPA believes that both approaches can be used, with certain procedural modifications, to satisfy the requirements of section 6002. These modified approaches are discussed below.

As discussed in the final paper guideline, 52 FR 37296–37299 (October 6, 1987), section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congres has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-aside are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. Four states are currently using price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs for paper and paper products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preference or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

EPA noted in the final paper guideline that it believed that a case-by-case program might not satisfy the section 6002(i) requirement for an affirmative procurement program because it would only award contracts to the product containing a higher percentage of recovered materials in the event of a tie. [See 52 FR 37299, 27302 (October 6, 1987).] EPA made similar statements in the preamble to the proposed re-refined lubricating oils guideline, 52 FR 38844 (October 19, 1987).

EPA believes that a case-by-case approach will satisfy the section 6002(i) requirements for retread tires because retread tires will likely be less expensive to procure than new tires for comparable performance levels. (Information on the relative price of retread and new tires will be available in the docket.)

a. *Procurement of Services.* While GSA prepares tire specifications and awards contracts to tire vendors, the individual Federal operator, in conjunction with GSA's Fleet Management, decides whether to purchase retreading services or to buy a new tire.[4]

[4] Draft Army Regulation 750–36 establishes a policy for maximizing the use of retread tires on

Continued

Except for Department of Defense activities, the agencies do not maintain records on procurement of new tires or tire retreading services. EPA believes that recordkeeping is necessary to obtain information on cost savings, performance of retreads, and use of tire retreading contracts. Therefore, EPA recommends that agencies procuring retreading services institute a practice of monitoring the procurement of retreading services by agency subgroups or individuals by requiring them to record their decisions to procure new tires and tire retreading services. The record should identify the type and quantity of tires procured, the purchase price per tire, whether retreading services were procured, the cost of the retreading services, and, if new tires are procured, the reasons for not retreading. Section 253.21(b)(1) contains this requirement.

b. *Procurement of Products.* As explained in Section II.E.2 of this preamble, procuring agencies purchasing retreads as products can solicit bids from both vendors of new tires and vendors of retreads. The decision to purchase retreads is made on a case-by-case basis, and the contract is awarded to the lowest-priced responsible bidder. EPA believes that this approach should include a preference for retread tires in the event that tie bids are received from a vendor of retreads and a vendor of new tires, all other factors (e.g., availability) being equal. Section 253.21(b)(2) of the guideline recommends that procuring agencies adopt such a preference.

As discussed in the proposed paper guideline, 50 FR 14080–14081 (April 9, 1985), and the final paper guideline, 52 FR 37301–37302 (October 6, 1987), the legislative history of Section 6002 indicates that bids for items containing recovered materials should be given preference only if they are equal to, or less than, bids for the comparable virgin materials product.

2. Promotion Program

The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, and informing industry trade associations about the program.

3. Estimates, Certification, and Verification

The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. Many questions have been raised about the certification and estimation of recovered material content, such as when they should be provided, who is to provide them, how the information is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the law.

RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that after the effective date of an EPA guideline, contracting officers must require vendors who supply Federal procuring agencies with items covered by the guideline to provide an *estimate* of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, recovered materials content, and availability, and applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used.

In the case of tires, procuring agencies purchase a product containing recovered tire casings, or contract for a retreading service for government casings, rather than purchasing a product containing a certain percentage of recovered materials. The statistical information that procuring agencies need to obtain, therefore, is the number of retread tires to be supplied by the vendor. The vendor must supply this data. EPA is recommending that procuring agencies retain these data for three years.

RCRA section 6002(i)(2)(C) provides that contracting officers must require vendors to supply certifications of recovered materials content, where appropriate. EPA believes that *written* certifications are inappropriate for retread tire procurement because retreaders already use another certification procedure which is required by Department of Transportation regulations. Newly retreaded tires are inspected to determine that they are free of defects and that they comply with Federal Motor Vehicle Safety Standards. Tires passing the retreaders' inspection are certified by stamping the retreading plant's identification number and the symbol DOT on the sidewall. The identification number indicates that the plant is a retreading operation. This is in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act of 1966, 49 CFR 571.117 and 574.5. Imposition of a separate, additional certification for each tire or batch of tires would be duplicative and would only prove to be an unnecessary burden on the retreaders and the procuring agency.

Section 6002(i) also requires procuring agencies to establish reasonable procedures to verify the estimates and certification. For retread tires, verification will be relatively easy because the certification number stamped on the sidewall of the tire identifies the tire as a retread. Procuring agencies need only to spot check these numbers to verify that a retread tire has been supplied.

4. Annual Review and Monitoring

The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. EPA recommends that the review include an estimate of the number of retread tires purchased during the year, assessment of the effectiveness of the agency preference program, and an assessment of remaining barriers to procurement of retread tires.

IV. Price, Competition, Availability, and Performance

Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that (1) the item is available only at an unreasonable price, (2) a satisfactory level of competition cannot be maintained, (3) the item is not reasonably available within a reasonable period of time, or (4) the item fails to meet the applicable specifications. EPA has considered the effect of these limitations on retread tire procurement and made the following determinations.

A. Price

Section 6002 provides that a procuring agency may not purchase a designated item if the price is "unreasonable." Commenters on several of the procurement guidelines stated that a "reasonable price" includes price preferences. However, as EPA stated in the paper guideline, 52 FR 37298–37299 (October 6, 1987), RCRA section 6002 does not provide explicit authority to EPA to authorize or recommend payment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA proposes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

vehicles and aircraft. AR 750–36 sets goals for tire retreading and requires that automotive, commercial, tactical, and off-the road tires be retreaded to the extent that it is economical and practical.

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B. Competition and Availability

EPA believes that there will be a satisfactory level of competition and availability of retread tires. Currently, there is an abundant supply of worn tires in the waste stream that are candidates for retreading, and there are approximately 2,600 retreading plants located across the country. Therefore, there should be a satisfactory level of competition and availability.

C. Performance

As discussed elsewhere in this preamble, GSA's retread tire specification requires that retreaders have their production facilities certified either by GSA or by a nationally recognized retreader association. Once the plant is certified, it is periodically recertified to ensure that it is maintaining satisfactory operating procedures. In addition, newly retreaded tires are inspected by the retreader to determine that they are free of defects and that they comply with Federal Motor Vehicle Safety Standards. Therefore, performance is assured, so it should not be a reason for procuring agencies to decline purchasing retread tires.

V. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1988 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these deadlines.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1988.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, retread tires [section 6002(i)(1)]. Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable [section 6002(c)(1)]. In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content [section 6002(c)(3)]. Both of these activities must begin after the date specified by EPA in the applicable guideline.

EPA believes that procuring agencies should begin to procure retread tires as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 253.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VI. Regulatory Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Increased usage of retread tires and tire retreading services addressed by this guideline is not expected to produce recurring annual effects of $100 million or more on the economy. The Federal Procurement Data Center reported Federal tire purchases of $39,400,000 for 1985, which represented less than ⅓ of 1 percent of the estimated tire production for the year. The majority of DOD tire procurements are for specialty, heavy-truck, and military equipment vehicles. DOD actively procures retreading services for this equipment already. The impact of this guideline would, therefore, involve the GSA schedule purchases of other agencies. The 1986 GSA tire procurements were approximately $4,600,000. If *all* of these new replacement tires were replaced by using retreading services, the economic effect would be less than 10 percent of the $100 million criteria of Executive Order No. 12291.

An expanded potential market for retread tires by increased government procurement is not expected to increase costs of retreading services or prices of retread tires. The retread tire industry is currently characterized by intense cost competitiveness and excess production capacity. Therefore, an increase in prices for retreading services will be expected to result in market share losses and decreased profits. Increased prices to government agencies may similarly mean loss of that market share.

The current goal of the declining retreading industry is to increase net profits through the reduction of operating expenses. Simply increasing sales will not increase net profits in this industry.

In conclusion, the proposed guideline by itself will have neither adverse effects nor be significantly advantageous in terms of competitiveness, employment levels, capitalization, productivity or innovation in this industry.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the background document prepared for this guideline, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some cases, negligible and in other instances, beneficial, because there will be no net change in the number of small businesses supplying tires to procuring agencies and most small government jurisdictions use non-Federal funds to procure tires. An extremely limited number of business and governmental entities are affected at all by the guideline. Therefore, the proposed guideline is not expected to have significant economic impact on a substantial number of small entities. As a result, the guideline does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 253

Government procurement, Recycling, Resource recovery, Retreading, Tires.

Dated: April 25, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 253 reading as follows:

PART 253—GUIDELINE FOR FEDERAL PROCUREMENT OF RETREAD TIRES

Subpart A—General

Sec.
253.1 Purpose.
253.2 Designation.
253.3 Applicability.
253.4 Definitions.

Subpart B—Specifications

253.10 Revisions.
253.11 Exclusions.

Subpart C—Affirmative Procurement Program

253.20 General.
253.21 Preference program.
253.22 Promotion program.
253.23 Estimates and verification.
253.24 Annual review and monitoring.
253.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 253.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of tires.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications and development of an affirmative procurement program.

(c) The Agency believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 253.2 Designation.

EPA designated tires as items which are or can be produced with recovered materials (i.e., used tire casings) and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 253.3 Applicability.

(a) This guideline applies to all procuring agencies and to all procurement actions involving tires, when the purchase price exceeds $10,000, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

(d) This guideline does not apply to:

(1) Purchases of tires for use in new equipment to be supplied to a procuring agency, such as new vehicles, or

(2) Purchases of tires which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

(3) Purchases of tires for use on airplanes.

(e) For purposes of determining when the $10,000 threshold has been reached, EPA recommends that procuring agencies consider all sizes and types (e.g., truck, automobile) of tires to be functionally equivalent items.

§ 253.4 Definitions.

As used in this guideline:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

"Federal agency" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

"Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

"Retread tire" means a worn automobile, truck, or other vehicle tire whose tread has been replaced.

"Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

"Tire" means the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial).

Subpart B—Specifications

§ 253.10 Revisions.

(a) By May 8, 1988, Federal agencies were required to eliminate from their specifications any exclusion of retread tires and any requirement that tires be manufactured from virgin materials unless there is a technical basis for such exclusion or requirement.

(b) Within one year after the date of publication of this guideline, each procuring agency must assure that its specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended end use of these items.

§ 253.11 Exclusions.

Notwithstanding the requirements of § 253.10, agencies need not revise

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sepcifications to require the use of retread tires if it can be determined that for a particular end use, for technical reasons, retread tires will not meet reasonable performance standards. Any such determinations should be documented by the agency and be based on technical performance information.

Subpart C—Affirmative Procurement Program

§ 253.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures tires using appropriate Federal funds must establish an affirmative procurement program for procuring retread tires. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for estimation and verification; and procedures for conducting an annual review of the affirmative procurement program. This subpart provides recommendations for implementing section 6002(i).

§ 253.21 Preference program.'

(a) RCRA section 6002(i)(3) requires procuring agencies to establish a preference program for procurement of retread tires consisting of one of the following:

(1) A policy of awarding contracts, on a case-by-case basis, to vendors offering retread tires or tire retreading services, subject to the limitations based on competition, availability, performance, and price described in section 6002(c)(1)(A)-(C) of RCRA and paragraph (c) of this section, or

(2) A substantially equivalent alternative to paragraph (a)(1) of this section.

(b) EPA recommends that procuring agencies implement one of the following procurement approaches in order to satisfy the requirements of RCRA section 6002(i):

(1) *Procurement of Tire Retreadng Services (Substantially Equivalent Alternative).* Under this approach, procuring agencies procure tire retreading services, such as from persons identified on the U.S. General Services Administration's Federal Supply Schedules. Procuring agencies must record the following information for each procurement of new tires and tire retreading services:

(i) type and quantity of tires,

(ii) whether new tires or retreading services were procured,

(iii) cost per tire, and

(iv) if new tires are procured, the reason for not procuring retreadng services.

(2) *Procurement of Retreads as a Product (Case-by-Case Approach).* Under this approach, procuring agencies procure retread tires through open competition between vendors of new tires and vendors of retreads. Procuring agencies must provide a preference for retread tires in the event that identical low bids are submitted by a vendor of new tires and a vendor of retreads, all other factors (i.e., availability, technical performance) being equal.

(c) The requirements in paragraph (a) of this section and the recommendations in paragraph (b) of this section, are subject to the following limitations provided in section 6002(c)(1) of the RCRA:

(1) Maintenance of a satisfactorily level of competition.

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(d) Procuring agencies should make determinations regarding competition, availability, and price in accordance with applicable provisions of the Federal Aviation (FAR) and other applicable Federal law.

§ 253.22 Promotion program.

Procuring agencies must develop a promotion program to promote the preference program. EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* describing the preference program.

(b) Describe the preference programs in tire procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidder's conferences.

(d) Inform industry trade associations about the preference program.

§ 253.23 Estimates and verification

(a) Contracting officers must require vendors who supply tires to procuring agencies to estimate the number of retread tires to be supplied. EPA recommends that procuring agencies retain these estimates for three years.

(b) Procuring agencies must establish reasonable procedures to verify the estimates. EPA recommends that procuring agencies randomly check the numbers stamped on tire sidewalls to verify that retread tires have been supplied.

§ 253.24 Annual review and monitoring.

Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program. EPA recommends that the annual review include the following items:

(a) An estimate of the number of retread tires purchased.

(b) An assessment of the effectiveness of the preference program.

(c) An assessment of remaining barriers to procurement of retread tires to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability) barriers.

§ 253.25 Implementation.

(a) Federal agencies were required to review and revise their specifications, as set forth in § 253.10(a), by May 8, 1988.

(b) Procuring agencies are required to revise their specifications as set forth in § 253.10(b), and to establish affirmative procurement programs, as set forth in Subpart C, within one year of the date of publication of this guideline as a final rule.

(c) Procuring agencies must begin procurement of retread tires, in compliance with this guideline, one year from the date of publication of this guideline as a final rule.

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Monday
May 2, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-28]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Currently, the FAA has designated 104 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On November 25, 1987, the FAA proposed to designate ARSA's at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL (52 FR 45292). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA received 17 comments on the proposed ARSA's. Two of the commenters were in favor of all locations and the remaining commenters offered objections or recommendations to one or all of the sites.

The Soaring Society of America (SSA) submitted a number of objections to the basic ARSA program. Comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252).

In addition, the SSA and a few other commenters objected on the basis that a related rulemaking, specifically Notice 88-2, Docket 25531, had invalidated the Regulatory Evaluation and Regulatory Flexibility Determination and therefore the FAA should suspend all rulemaking action on candidate ARSA sites not adopted by December 31, 1987. The FAA does not agree. Any impact Notice 88-2 may have on ARSA locations will not take place until after the effective date of that rule. The cost of implementing the proposed Notice 88-2, therefore, is a cost of that rule and not a cost of this action or any prior rulemaking effort. Hence, the FAA finds that the Regulatory Evaluation and Regulatory Flexibility Determination continue to be valid.

Evansville, IN

The FAA received one written comment offering recommendations for the Evansville ARSA. The commenter first suggested that there appeared to be an error in the cutout for Skylane Airport. The FAA agrees and has made a modification to the Skylane cutout to allow pilots to arrive/depart Skylane without entering the ARSA if they so desire. This rule reflects those changes.

The same commenter suggested that the floor in half of the 5-10-mile area should be raised to 2,000 feet mean sea level (MSL) or about 1,600 feet above ground level (AGL) to allow pilots enough room to fly over the tops of antennas. The FAA does not agree. The FAA has found that pilots do not routinely overfly antennas at low altitudes, but will instead choose to fly around the antennas. The pilots could choose to overfly by simply establishing two-way radio with Air Traffic and flying through the ARSA. The FAA finds a need to know of all aircraft operating at these critical altitudes in this near proximity to the airport.

This same commenter submitted two suggestions which are outside the purview of this rulemaking action.

Laughlin Air Force Base (AFB), TX

The only comment received was at the Informal Airspace Meeting where the U.S. Border Patrol stated that they supported establishment of the ARSA but were concerned about the 5-10-mile area overlying the Rio Grande River where they routinely fly. They felt the shelf over the river was going to cause aircraft to fly low avoiding the ARSA over the river. The FAA does not find that compression will be a problem. Pilots may overfly the ARSA at a relatively low altitude or circumnavigate the ARSA. Experience has shown that most pilots will choose to avoid flying under the ARSA unless they wish to operate at an airport in that area. The FAA is sensitive to the concerns of the U.S. Border Patrol and intends to closely monitor the traffic situation. If traffic compression develops to a degree significant enough to cause an adverse impact on the Border Patrol mission, the FAA will work with the appropriate parties to find a solution.

Midland, TX

The FAA received 12 comments addressing the Midland proposal. Three commenters supported the proposal, and the remainder wrote in objection while offering some recommended alterations. All but two of the objections concerned sailplane activity in the area and stated that their favorite airports would be

under the 5-10-mile area. These commenters offered recommended alterations to the ARSA cutting one or all of these airports out. The airports included are Odessa/Schlemeyer, Bates Field, Midland Airpark and Sky Ranch.

The FAA carefully considered these comments and decided that although we were unable to comply with their desires for a cutout at each of these airports, we would raise the altitude of the floor in these areas to make access easier. The FAA decided to subdivide the 5-10-mile area and establish floors at an altitude that will allow pilots to operate to at least 500 feet above normal traffic pattern altitude at each of these airports and still remain clear of the ARSA. Providing the requested cutouts would preclude the FAA form having knowledge of aircraft operating at critical altitudes in close proximity to Midland International Airport. The local facility manager is prepared to negotiate with the users to establish local agreements, which will provide further relief. This rule reflects the floor alterations stated above.

Some of the commenters expressed concerns about antennas underlying the 5-10-mile area, specifically addressing two towers that were over 1,000 feet AGL. Raising the floor in the 5-10-mile area may alleviate these concerns. The FAA maintains that pilots do not routinely overfly obstacles at low altitudes but instead choose to circumnavigate.

One commenter suggested that the altitudes of two approaches were not wholly contained in the ARSA. The same commenter suggested that the floor of the 5-10-mile area should be lowered or the instrument procedure changed to wholly contain them within the ARSA.

The FAA finds that the instrument approach procedures fall outside the purview of this rulemaking action. The ARSA program does not provide for containment of instrument approach procedures. The FAA finds no need to lower the floor of the 5-10-mile area for this purpose.

Another commenter referred to existing TRSA's and the ARSA's as "Areas of Fear." Young pilots soon learn to avoid these areas to avoid embarrassment, so stated the commenter. The FAA disagrees. The ARSA program only requires the establishment of two-way radio communication prior to entering the ARSA. This is no more than is currently required to enter an Airport Traffic Area (ATA). The major objective of the ARSA program is to eliminate the unknown from the ARSA airspace. The high percentage of TRSA participation cited by this commenter, 95 to 98 percent, is an excellent indication of user satisfaction with the services provided and should ensure a smooth transition from TRSA to ARSA.

A few commenters suggested that the Midland ARSA would have an adverse effect on the soaring activities at Eagle Nest Airport. The FAA finds that this airport is located about eight miles south of the ARSA boundary and that normal towing and soaring operations should not be impacted by the ARSA. The FAA, however, is prepared to negotiate a local agreement if it is determined to be necessary.

The operator of Sky West Airport wrote in objection stating that the ARSA would have a negative impact on their use of an aerobatic training area. The FAA learned that this "aerobatic box" expired on March 31, 1988, and that the users are now negotiating with FAA for renewal. A local agreement is being developed to allow this operation to continue.

Portland, ME

Three commenters wrote in objection to the proposed ARSA for Portland, ME. One of the commenters had several statements/questions. This commenter had two concerns that will be addressed here. The remainder of this commenter's concerns were questions of clarification about ARSA procedures, which are outside the scope of this rulemaking action and will not be addressed here. The first concern about this proposal was that the ARSA effective date should be the same as the sectional charting date for that area. The FAA concurs and in fact the sectional charting date is coincidental with the planned effective date of this ARSA.

In addition, this commenter was concerned about safety in the ARSA due to a perceived reduction in separation standards. The commenter stated he did not understand how reducing separation from 1½ miles in the TRSA to target resolution in the ARSA improved safety. The FAA finds that the ARSA has several improved safety features over existing TRSA's. First, the FAA has knowledge of all aircraft operating in the ARSA, because communication is mandatory, whereas in the TRSA, participation was voluntary. Second, target separation is only one of the methods of providing separation, the rest are unchanged. Target separation does not reduce separation as much as it may seem. The original 1½ miles nearly exist when you consider how wide a target is and how much room must be between targets to ensure separation. Therefore, the FAA finds that safety has been greatly enhanced and, in addition, standardization of types of airspace has enhanced the safety issue by providing predictability.

Another commenter wrote in objection stating that he did not see any reason to change anything that was already working well. Specifically, the commenter was concerned that pilots would be intimidated from entering the ARSA, that the ARSA would encourage low level flight beneath the shelf and that the ARSA includes too rigid procedures. The FAA finds that the only requirement on the part of the pilot is to establish two-way radio prior to entering the ARSA. This is no more than is now required of pilots to enter an ATA. Additionally, pilots will not routinely choose to operate beneath the shelf. They will instead overfly the top of the ARSA, which is only 4,000 feet AGL, or circumnavigate. The only additional requirement is that pilots now must establish two-way radio communication prior to entering the ARSA. The FAA will continue to use the same methods for separating and sequencing traffic. The FAA, therefore believes that knowledge of all aircraft in this close proximity to the airport and at these critical altitudes is imperative when traffic reaches certain levels. The ARSA will provide this knowledge and a degree of safety that we believe to be mandatory.

The last commenter objected to the ARSA because there wasn't enough traffic to warrant one, and, secondly, because of Portland's strategic location, a large number of pilots traverse the area enroute or are sightseeing. He stated that a large portion of these use the coast for navigation and would be adversely affected by the ARSA. The FAA disagrees. First, Portland qualifies for an ARSA not only based on the National Airspace Review criteria but also on the follow-on criteria. The follow-on criteria established a level of activity or passenger emplanements at which the FAA finds it imperative for the sake of safety to know of all aircraft operating within this area.

Second, the FAA has not found that pilots must alter their operating practice simply to avoid the ARSA. As stated above, pilots may overfly the ARSA or simply establish two-way radio with the appropriate air traffic facility and fly through the ARSA. The ARSA program is not designed to prohibit any type of operation but simply to provide the air traffic facility with knowledge of all aircraft operating in this area.

Springfield, IL

Two commenters wrote objecting to the proposed ARSA for Springfield. One

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of the commenters submitted a petition with 69 signatures. This petition, among other things, stated that the ARSA would reduce safety by providing no lateral separation. The FAA does not agree. The separation standards used, for the most part, in a TRSA are retained and used in the ARSA. The only change, is that the 1½ mile standard currently used in a TRSA is deleted in favor of target separation. Target separation does not reduce separation as much as it may seem. The original 1½ miles nearly exist when you consider how wide a target is and how much room must be between targets to ensure separation. The FAA, therefore, finds that safety is enhanced by having knowledge of all aircraft operating in this area, not reduced.

This same commenter stated that the ARSA would increase controller workload by expanding the radius of service ten (10) additional miles in all directions. The FAA is frankly puzzled by this statement. First, the ARSA is only a slight lateral increase over the existing TRSA and a reduction in altitude. If the commenter is referring to the ATA, the ARSA would be an increase of five miles in all directions, and the ATA is not a radar service area. We assume that the commenter is including the ARSA outer area which is not regulatory airspace. The size of the ARSA regulatory airspace has been kept at a very modest size to provide for the greatest degree of safety while providing the pilots with the greatest possible amount of operating flexibility. The FAA finds that the ARSA size has been optimum in most situations, and the increased requirement of communication has not resulted in an unmanageable workload for the controllers but has increased safety.

Both commenters stated that the ARSA would increase the high cost of flight training by forcing students further from the airport before beginning any exercises. The FAA finds that the ARSA rule made provisions for these types of situations. The local facility manager is prepared to negotiate local agreements with operators where it is believed that the ARSA will have an adverse impact. The FAA has found that these agreements work very well, not only for the operator, but for the FAA in maintaining the degree of safety it desires.

One commenter also stated that the ARSA was going to force transiting pilots and pilots inbound/outbound to airports underlying the 5–10-mile shelf into flying below the tops of two antennas located to the east under the 5–10-mile shelf. The FAA finds that pilots routinely choose to circumnavigate around obstacles at low altitudes; however, they may choose to overfly at a higher altitude simply by establishing two-way radio with the air traffic facility. Transiting pilots do not routinely choose to operate beneath the shelf of the 5–10-mile area. The FAA has found that these pilots will either circumnavigate or fly over the top of the ARSA which is only 4,000 feet AGL.

The last commenter suggested that the TRSA works reasonably well because of cooperation between pilots and controllers and enjoys high participation. He expected this would be impacted negatively by the imposition of the ARSA. The FAA does not agree. The FAA has found that a high degree of participation is generally indicative of an easy transition to an ARSA.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation discussed in the NPRM, as clarified by the "Discussion of Comments" cotained in the preamble to the final rule, contitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvement resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and the efficiency gains will be realized from the start. Other sites anticipate that delay problems will occur in the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an ARSA at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL. Each location designated is an airport at which a nonregulatory TSA is currently in effect. Establishment of these ARSA's will require the pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation Safety, Airport Radar Service Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Evansville Dress Regional Airport, IN [New]

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Evansville Dress Regional Airport (lat. 38°02'17"N., long. 87°31'50"W.) excluding that airspace beginning where the Pocket City 057° radial crosses the 5-mile ring, thence northeast via the 57° radial to intercept a 1¼-mile radius of the Skylane Airport (lat. 38°01'00"N., long. 87°35'50"W.), thence counterclockwise via the 1¼-mile radius to the 360° bearing from the Skylane Airport, thence due west to the 5-mile ring extending upward from the surface to 1,600 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,600 feet MSL to and including 4,500 feet MSL. This airport radar service area is effective during the specific days and hours of operation of the Evansville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Laughlin AFB, TX [New]

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of Laughlin AFB (lat. 29°21'35"N., long. 100°46'35"W.), and that airspace extending upward from 2,500 feet MSL to and including 5,100 feet MSL within a 10-mile radius of Laughlin AFB. This airport radar service area (ARSA) excludes that airspace in Mexico. This ARSA is effective during the specific days and hours of operation of the Laughlin Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Midland International Airport, TX [New]

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Midland International Airport (lat. 31°56'33"N., long. 102°12'06"W.), and that airspace within a 10-mile radius of the airport from the 029° bearing from the airport, clockwise to the 209° bearing from the airport, extending upward from 4,400 feet MSL to and including 6,900 feet MSL; and that airspace within a 10-mile radius of the airport from the 209° bearing from the airport, clockwise to the 270° bearing from the airport, extending upward from 4,800 feet MSL to and including 6,900 feet MSL; and that airspace within a 10-mile radius of the airport from the 270° bearing from the airport, clockwise to the 029° bearing from the airport, extending upward from 4,200 feet MSL to and including 6,900 feet MSL. This airport radar service area is effective during the specific days and hours of operation of the Midland Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Portland International Jetport, ME [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Portland International Jetport (lat. 43°38'46"N., long. 70°18'33"W.), and that airspace extending upward from 1,500 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Portland Tower and Approach Control Facility as established in advanced by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Springfield Capital Airport, IL [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Capital Airport (lat. 39°50'37"N., long. 89°40'36"W.), and that airspace exending upward from 1,600 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Springfield Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on April 27, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–9656 Filed 4–29–88; 8:45 am]

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Monday
May 2, 1988

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 11

Horse Protection; Interim Rule

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-079]

Horse Protection; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to remove a 16-ounce limit on horseshoes used on horses other than yearlings, and the prohibition of certain weights used on horses other than yearlings. Additionally, we are reinstating certain restrictions on the placement of lead and other weights on horses. We are requesting comments concerning how to restrict the use of weights, including horseshoes. This action is necessary to enable us to develop adequate information on how the weight on horses' feet should be limited. We are also removing a 6-ounce weight limit on boots used to protect horses. This action is warranted to allow the use of certain boots weighing more than 6 ounces that are used to protect horses.

DATE: This interim rule is effective April 28, 1988. Consideration will be given only to comments postmarked or received on or before June 27, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket No. 88-079. Comments received may be inspected at room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background Information

On April 28, 1988, we published an interim rule in the Federal Register (FR 53 14778-14782) that amended the Horse Protection regulations in 9 CFR Part 11 (referred to below as the regulations) to prohibit and restrict certain devices and practices to prevent the soring of horses. Among other things, we established a 16-ounce weight limit on horseshoes used on all horses, prohibited the use of weights on all horses, and established a 6-ounce weight limit on boots used on horses. In this interim rule, we are removing those weight limits, and are requesting comments on the most appropriate limits on the use of weights, including horseshoes.

Horseshoes and Other Weights

The restrictions and prohibitions we established regarding horseshoes and other weights in our April 28 interim rule were based on findings, discussed in that interim rule, that indicated that weights added to a horse's foot may cause inflammation. In promulgating the interim rule, we prohibited the use of weights and established a 16-ounce weight limit for horseshoes, applicable to all horses. However, since the publication of that interim rule, considerable information has been generated regarding the appropriateness of the prohibition and of the 16-ounce weight limit. Although the comments and information received to date are not exhaustive, and although they contain certain conflicting opinions, it is clear to us that additional information needs to be compiled concerning appropriate limits on the use of weights on horses' feet and on the weight of horseshoes.

We have received a comment in the form of a recommendation that was approved by representatives of a significant number of horse industry organizations, and by representatives of the American Horse Protection Association (AHPA), that suggests that we remove the prohibition on the use of certain weights and the 16-ounce limit on the weight of horseshoes—except with regard to yearling horses, reinstate prior restrictions on the placement of weights, and request comments regarding these issues. In addition to the AHPA, the recommendation was approved by, among others, representatives of the American Saddlebred Horse Association, the United Professional Horsemen's Association, the National Show Horse Registry, the American Horse Council, the American Farriers Association, the California State Horsemen's Association, the Walking Horse Trainers Association, the Kentucky Walking Horse Association, the Racking Horse Breeders Association, the Friends of the Show Horse Association, the American Morgan Horse Association, the International Arabian Horse Association, the Wild Horse Sanctuary—California, Equines Ltd., and the Wild Horse Alliance.

Additional information we have received suggests that a 16-ounce limit may not be appropriate, and indeed may be inappropriate, for some horses. It appears, for example, that the 16-ounce limit may be inappropriate for large horses, such as draft horses, and for other breeds of horses.

We are therfore removing the prohibition of certain weights and the 16-ounce weight limit on horseshoes used on horses other than yearling horses.

We are requesting comments concerning necessary limits on the use of weights, including horseshoes, both to prevent soring and to accommodate the needs of different breeds and sizes of horses.

For yearling horses, a prohibition on the use of any weights and a 16-ounce limit on horseshoes was in effect prior to the publication of the April 28 interim rule. These restrictions were removed only because we established a rule applicable to all horses. Because we are removing the across-the-board restrictions, it is necessary to again establish the 16-ounce limit and the prohibition of weights for yearlings to protect them from soring. Additionally, we are reinstating certain restrictions on the placement of weights on horses' feet.

Weight Limits on Boots

In our April 28 interim rule, we limited the weight of all boots used on horses to 6 ounces. Based on information we have received, however—including the recommendation discussed above—we believe that certain protective boots that weigh more than 6 ounces will not lead to soring. Therefore, we are removing the 6-ounce weight limit on soft rubber or soft leather bell boots and on quarter boots used as protective devices.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On April 28, 1988, we published an interim rule in the Federal Register. Information we have received since that date has indicated to us that the restrictions established in that rule may not be appropriate to all breeds and sizes of horses. Because it is possible that limiting some horses to a 16-ounce shoe may be inappropriate, and may possibly affect large horses, such as draft horses, adversely, it is necessary that we remove this weight limit as soon as possible, until more information regarding this subject can be gathered. We also need further information concerning necessary limitations on the use of other weights on horses' feet. Additionally, the April 28 interim rule limited the weight of all boots, including protective boots, to 6 ounces. However, information we have received since that date has indicated that some protective boots weigh more than 6 ounces. To allow use of these protective boots, it is necessary that we remove the weight restriction on these boots as soon as possible.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received on or before June 27, 1988. Any amendments we make to this interim rule as a result of these comments will be published in the Federal Register as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations made by this interim rule will affect all horses equally, and will allow continued equitable competition among show horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.2 is amended by revising paragraphs (b)(7) and (b)(9) and by adding new paragraph (b)(19) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(7)(i) Boots, collars, or any other devices, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg; and

(ii) Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and quarter boots that are used as protective devices.

* * * * *

(9) Any weight on yearling horses, except a keg or similar conventional horseshoe, and any horseshoe on yearling horses that weighs more than 16 ounces.

* * * * *

(19) Lead or other weights attached to the outside of the hoof wall, the pad, or on the outside surface of the horseshoe.

* * * * *

Done in Washington, DC this 28th day of April 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9805 Filed 4-29-88; 9:47 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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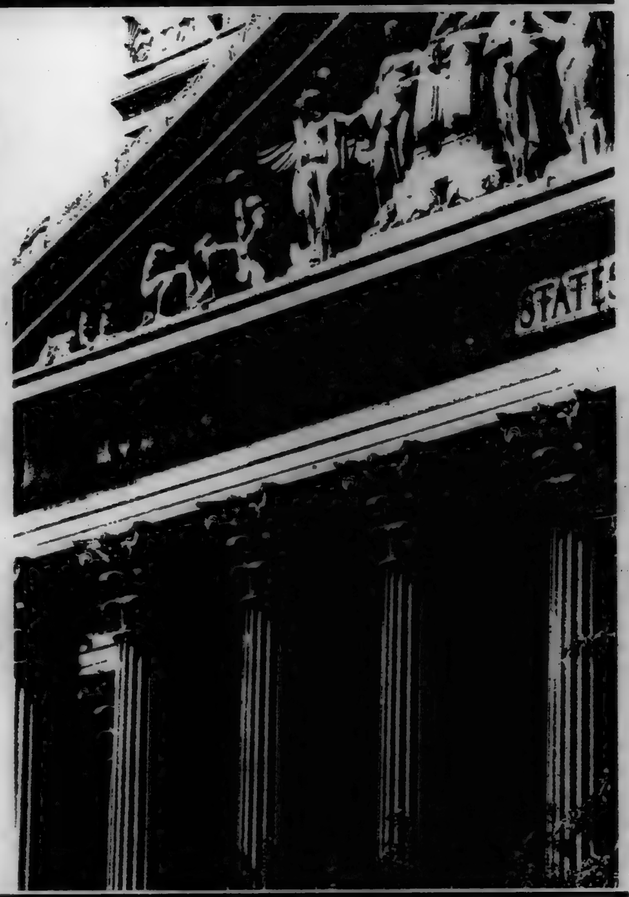
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Federal Register
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Tuesday, May 3, 1988

Presidential Documents

Title 3—

The President

Proclamation 5802 of April 28, 1988

National Child Abuse Prevention Month, 1988

By the President of the United States of America

A Proclamation

All Americans have great reason to regret and to seek to repair the alarming incidence and prevalence of child abuse and neglect that continue throughout our country. Each year many American children suffer child abuse, and every year many perish in these attacks. The incidence of child abuse and neglect cuts across every income level and geographic area in our land.

This tragic situation is unacceptable—and preventable. Dedicated individuals, private and civic groups, and government bodies are doing much to protect children, but, unfortunately, much remains to be achieved. Caring for children is, of course, the responsibility of parents; but neighbors, relatives, and friends must help protect children when parents or others attack or neglect them. We will truly prevent child abuse and protect our youngsters only to the extent that we cherish children as gifts from our Creator; foster deep and abiding reverence for the innocence and the God-given individual dignity and worth of every child; and treasure the sanctity of every human life.

It is in this spirit that we must assure America's children a loving, safe, and healthful environment. The members of professions, such as law enforcement, social work, church, medicine, mental health, and education, must continue to do their part, as must concerned individuals. Let all Americans reflect on our obligation to children and to families, and then let us put our compassion into action.

The Congress, by Senate Joint Resolution 246, has designated April 1988 as "National Child Abuse Prevention Month" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 1988 as National Child Abuse Prevention Month. As we observe this time, let us all consider our responsibility for the wholesome and secure development of our children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9832
Filed 4-29-88; 12:19 pm]
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Presidential Documents

Proclamation 5803 of April 28, 1988

Loyalty Day, 1988

By the President of the United States of America

A Proclamation

Loyalty Day, May 1, is a day we set aside to promise allegiance to our country; to revere our heritage of individual freedom, limited government, and respect for every man's divinely bestowed dignity; and to reaffirm our sacred trust to preserve, for our children and for all generations to come, this blessed land of liberty we call America.

We Americans have both pledged and practiced loyalty from the moment the first patriots conceived the idea of a new and independent Nation where only freedom would reign—where people would live as free as God made them and where tyranny alone would never find welcome. We have given our loyalty generously, in times of peace and times of peril. That we will always do, God willing.

Loyalty Day says much about the meaning of our country. In other parts of the world, as we know, totalitarian states proclaim May 1 a day of fealty and require a show of loyalty from the people. No such demand is needed here, of course, because in America we are blessed to be able to govern ourselves; "We the People" are in charge, and we need give our loyalty not to self-appointed rulers but to liberty.

The self-government that protects our rights and liberties has been won and defended in each generation by loyal Americans. That remains true, of course, of our gallant service men and women at home and in a hundred foreign climes. It is true as well of every American in home or office, in factory or farm, in hall of government or place of worship, who calls upon the Author of Liberty to guide and bless our land; of every citizen who cherishes brotherhood and patriotism; of every boy and girl who begins the day with the Pledge of Allegiance to the Flag.

The allegiance we Americans owe, and give gladly, on Loyalty Day and throughout our lives, is to a land and an ideal that beckon human hearts today just as always, here and around the globe—the land of the free, where the only command and the only loyalty are freedom's way and freedom's sway.

To foster loyalty and love of country, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369; 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1, 1988, as Loyalty Day, and I call upon all Americans and patriotic, civic, fraternal, and educational organizations to observe that day with appropriate ceremonies. I also call upon all government officials to display the flag of the United States on all government buildings and grounds on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9833
Filed 4-29-88; 12:17 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5804 of April 29, 1988

National Arbor Day, 1988

By the President of the United States of America

A Proclamation

"He who plants a tree / Plants a hope," wrote Lucy Larcom years ago in her poem, "Plant a Tree"; that thought has surely motivated every American who has ever celebrated Arbor Day, given his neighborhood and Nation the lovely and lasting gift of trees, or sought to conserve our natural forest heritage. In this spirit we can all join in observing an Arbor Day in which we resolve to renew and expand our knowledge of and appreciation for trees and our understanding of the importance of trees and forests to our country and to the entire world.

In the last century, Americans began to realize the wisdom and the necessity of replenishing our supply of trees for their many natural benefits and so that our use of wood for fuel, lumber, and other products would not impoverish future generations. The idea of Arbor Day caught the imagination of many people; for example, on the first Arbor Day, in Nebraska in 1872, citizens of that State planted a million trees, and they added about 350 million more in the next 16 years.

This tradition continues, on Arbor Day and every day; we Americans have planted more trees each year for the last 6 years, and last year's total acreage of trees planted was a record. Arbor Day remains a time for planting and caring for trees in our cities, towns, and countryside, and it should also remind us to learn more about trees and forests and how to protect them at home and guard against desertification and destruction abroad.

Our celebration of Arbor Day should always be tinged with the spirit that the 19th-century poet Henry Cuyler Bunner captured so well in "The Heart of the Tree":

> What does he plant who plants a tree?
> He plants, in sap and leaf and wood,
> In love of home and loyalty
> And far-cast thought of civic good—
> His blessings on the neighborhood
> Who in the hollow of His hand
> Holds all the growth of all our land—
> A nation's growth from sea to sea
> Stirs in his heart who plants a tree.

The Congress, by Senate Joint Resolution 247, has recognized the last Friday of April 1988 as "National Arbor Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, April 29, 1988, as National Arbor Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9918
Filed 4-29-88; 4:44 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12638 of April 28, 1988

Delegation of Functions Relating to the Implementation of the Inter-American Convention on Letters Rogatory and Additional Protocol

On October 9, 1986, the Senate gave its advice and consent to ratification of the Inter-American Convention on Letters Rogatory and Additional Protocol. The instrument of ratification was signed by the President on November 10, 1986. The Convention and Additional Protocol require that contracting states designate central authorities to give effect to the Convention's provisions.

In order that the Government of the United States of America may give full and complete effect to the Convention and Additional Protocol, it is expedient and necessary that the Department of Justice perform certain functions.

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code and as President of the United States of America, it is ordered as follows:

Section 1. *Designation of United States Central Authority.* The Department of Justice is designated as the Central Authority to transmit and process letters rogatory and to otherwise proceed in conformity with applicable provisions of the Convention and Additional Protocol.

Sec. 2. *Additional Designations.* The Department of Justice is authorized to make additional designations provided for in the Convention and Additional Protocol.

Ronald Reagan

THE WHITE HOUSE,
April 28, 1988.

[FR Doc. 88-9834
Filed 4-29-88; 12:20 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 85
Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Reporting Participation and Priority Data

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Special Supplemental Food Program for Women, Infants and Children (WIC) regulations by revising the requirement that State agencies report the category and nutritional risk priority of persons to whom they have made program benefits available. State agencies will be required to submit this information: (1) With respect to persons *participating* in the Program rather than to pesons *enrolled* in the Program, as required under current regulations; and (2) *quarterly* rather than *semiannually*, as required under current regulations. All State agencies will be required to complete their transitions to this revised reporting requirement by September 30, 1988. The intent of this revison is to improve the quality of reported WIC participation and priority data. This will contribute to more effective program management and improve the operation of the new funds allocation formulas, promulgated at 52 FR 25182 (July 2, 1987) and 53 FR 2213 (January 27, 1988).

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1017, Alexandria, Virginia 22302. (703) 756–3746.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and has been classified to be not major. The Department does not anticipate that this rule would have an annual impact on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Nor would this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has determined that this rule will not have a significant economic impact on a substantial number of small entities. The reporting and recordkeeping requirements contained in this rule have been reviewed and approved by the Office of Management and Budget (OMB No. 0584–0347) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Current Reporting Requirements

Paragraph 246.25(b)(2) of the current Program Regulations, 52 FR 21232, 21238 (June 4, 1987), instructs State agencies to report semiannually the number of persons enrolled in the Program by category within each priority level. (As indicated in the regulation, categories are pregnant, breastfeeding, and postpartum women, infants and children; priority levels are those established at 7 CFR 246.7(d)(4).) This reporting requirement was first promulgated through a regulatory amendment published February 13, 1985, at 50 FR 6108, 6145, and the first reports submitted by State agencies presented the composition of their WIC enrollments as of October 1985. At that time, the Department envisioned using the priority/category data to monitor State agencies' caseload management efforts. Caseload management has assumed greater importance in recent years. State agencies' use of available resources to accomplish the WIC Program mission requires that they use their WIC food grants as efficiently and effectively as possible. The Department considers the targeting of Program benefits to persons at greatest nutritional risk (and thus at the highest priority levels) to be the indicator most reflective of the efficiency and effectiveness with which a State agency manages its grant.

The semiannual reporting frequency was deemed appropriate for gathering priority data for caseload management purposes. Since most categories of persons enrolled in the WIC Program are certified for periods of approximately 6 months, State agencies could not be expected to show substantial progress in targeting at more frequent intervals.

In addition to the reporting frequency, another decision made in 1985 involved the type of data to be gathered. State agencies generally maintain two types of data on persons to whom they have made Program benefits available: The number of persons participating and the number of persons enrolled. The Program regulations currently define participation (by all categories of persons other than breastfed infants) as the receipt of supplemental foods or food instruments. 7 CFR 246.2, 52 FR 25182, 25189–90 (July 2, 1987); enrollment refers to the number of persons on the Program and thus authorized to receive supplemental food or food instruments. State agencies generally obtain participation data by counting food instruments issued each month. Enrollment, on the other hand, is generally drawn from the State agency's caseload data masterfile. The Department has long required State agencies to report participation by women, infants and children and all State agencies have systems in place to do so. Nevertheless, feedback obtained from State agencies indicated that data on participants' priority assignment was generally available only in caseload

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data masterfiles (enrollment data), not in food delivery data files (participation data). Systems changes to generate enrollment data by priority were therefore perceived as less burdensome than reprogramming food delivery data systems to generate the priority classification of persons to whom supplemental food or food instruments had been issued. Accordingly, the Department elected to require that State agencies report enrollment rather than participation by category and priority.

Need for Improved Reporting

Since the inception of this semiannual priority reporting requirement, the Department has worked with State agencies to increase the proportion of their caseloads in the highest priority groups. Both Department and State agencies have relied upon the priority enrollment data in making a wide range of caseload management decisions. State agencies consider the priority/category composition of local agencies' existing caseloads in determining the allocation of available caseload slots. The Department performs analyses of State agencies' caseloads, including caseload priority composition in order to identify those most likely to benefit from technical assistance in caseload management. In addition, the Department used the priority enrollment data to track each State agency's targeting progress over time.

More recently, the Department's concern for the most effective use of available resources fueled an initiative to further promote targeting through the funding process. Targeting is now considered in the allocation of funds to State agencies for WIC food and administrative and program services costs.

Description of Proposed Rule

Concerns were raised over the data to be used in the funds allocation process. The Department agreed with the concern expressed that data used in funds allocation must meet higher standards of accuracy, timeliness and comparability than has hitherto been acceptable. In response, the Department proposed to revise the reporting requirement that State agencies report the category and nutritional risk priority of persons to whom they have made program benefits available. 52 FR 45457 (November 30, 1987). It was proposed that State agencies be required to submit this information: (1) With respect to persons participating in the Program rather than to persons enrolled in the Program as required under current regulations; and (2) quarterly rather than semiannually, as required under current regulations. It was also proposed that State agencies be required to complete their transitions to this revised reporting requirement by September 30, 1988.

Comments Received on the Proposed Reporting Revisions

A total of 195 letters were received which provided comments on the proposed reporting revision. The commentors represented 1 regional office, 20 State agencies, 59 local agencies (representing 2 states) and 115 interested parties. Following is a discussion of the comments received in response to the proposed rule for WIC program reporting revisions.

General Issues

Of the 195 comment letters received, 21 generally supported the proposal. The vast majority (169) of the letters opposing the proposal were provided by commentors representing one State; these were local agencies and interested parties. The basic reason given by these commentors was that implementation would require costly ADP system modifications before the revised reporting requirements could be satisfied.

Second, the State agency believed that implementation of reporting revisions would also place an increased administrative burden on local agencies. It was suggested by one commentor that the proposed reporting revisions are not the best means to target reporting and recommended the status quo be maintained until a better solution is discovered.

Basic approval or disapproval could not be determined for one comment letter received. Instead, that letter requested clarification regarding procedures on how the revised report data will be submitted. The writer asked whether initial and closed-out reports will be required. It is the Department's intent to require initial and closed-out reports.

The commentors expressed supportive or opposing views on three broad requirements that the Department proposed to adopt. State agencies would be required to: (1) Report the category and nutritional risk priority of persons participating in the Program; (2) submit report data quarterly; and (3) complete their transitions to this revised reporting requirement by September 30, 1988.

Reporting Participation by Category and Priority versus Enrollment

Seventy-one percent of the commentors who supported the proposal expressly supported the change from reporting enrollment data to reporting participation data. The overall consensus was that participation data is more accurate than enrollment data. One reason given for this belief is that enrollment data is not consistently gathered using the same method and is therefore less comparable from State to State. Thus, commentors strongly supported the Department's efforts to standardize report data. They emphasized the importance of having a uniformed and valid data base in light of the new funding formulas.

Three of the commentors discussed a related issue which concerns State agencies reporting participation by priority at certification without having the flexibility to update this status, if necessary, at the time the data is collected and submitted to FNS. For example, it was explained that for reporting purposes, State agencies will need to establish procedures for maintaining participants' "original" priority status even though the category and priority may have changed.

Consequently, this may become difficult for State agencies to manage.

The issue of collecting and reporting participation by category and priority at the time of certification was researched extensively prior to being proposed. It was recognized that priority is determined at certification. Priority does not change automatically when category changes. Rather, priority should be changed only when medical data is updated and results in a new priority determination. For example, a participant who was under age 1 at the time of certification and who reaches his first birthday during the certification period will change categories during the certification period, but his priority status will remain that assigned at the time of certification. Thus, although children over the age of 1 may not normally be considered Priority I, the child's Priority I infant status, assigned at the time of certification, will carry over until the end of the certification period. Changes in priority status during certification periods do not occur automatically, then, but only under special circumstances. Therefore, maintenance by State agencies of participants' status at the time of certification should not be unduly burdensome. Furthermore, requiring State agencies to report priority assigned at the certification date yields data that is most representative of the State's efforts to serve the highest priority individuals. State agencies have more control over the priority levels of their caseload as determined at the time of certification and less control over changes in priority status occurring during the certification period. The number of persons certified at high priority levels is to some extent responsive to efforts by State agencies to attract eligible high-priority persons to the Program, while changes in status during certification periods are less relevant.

The Department has decided to retain the provision requiring the reporting of participation data as proposed. The Department agrees with the commentors who stated that data used in funds allocation must meet higher standards of accuracy, timeliness and comparability than has hitherto been acceptable. The funds allocations generated by a formula using currently available data may reflect not only the operation of the formula itself, but also the unique characteristics of individual State agency reporting systems. Feedback obtained through comments and consultations indicated that some State agencies believed the new formula's results would not be fully equitable without improvements in the quality of the data used in generating those results.

Change from Semiannual to Quarterly Reporting

Thirteen (62 percent) of the commentors who supported the proposal also expressly favored collecting and reporting the data quarterly versus semiannually. These commentors strongly believed that reporting participation data on a quarterly basis would greatly improve the accuracy of the data being submitted. One comment received from a State agency specifically stated that the current averaging of semiannual reports has reduced the impact of the improvements to its caseload composition which the State agency has achieved. In general, the commentors stated that quarterly reporting would be a better and more accurate reflection of State agencies' caseload size and composition. Quarterly reporting will allow State agencies to capture conditions such as seasonal fluctuations which can affect caseload size and/or composition.

Based on the comments received and concern expressed by State officials regarding the Department's making program management and funds allocation decisions on the basis of priority enrollment data collected semiannually, the provision to collect priority data on a quarterly basis is retained. The Department believes this will capture any seasonal variations in birthrates and the presence of migrants within a State.

September 30, 1988 Implementation Date

Only a small portion (6 percent) of the comments received addressed the proposed September 30, 1988 implementation date for the reporting revisions. Eleven commentors discussed the issue; five supported and six opposed. Cost and complexity were major factors cited by the opposing commentors. They expressed concern that when the implementation timetable for the reporting revision was developed, the current ADP data systems of the majority of State agencies were not considered. As such, implementation of the reporting revisions for some State agencies may prove to be far more complex and costly than FNS envisioned. As a result, these State agencies may have difficulty in completing necessary ADP systems modifications in time to meet the September 30, 1988 deadline. In fact, one State suggested another implementation date of March 1989 at which time it anticipates having its systems capability in place.

Three of the six opposing commenters requested that the Department provide State agencies more flexibility on the implementation date in the event that State agency systems for collecting the data are not fully operational at that time.

The five commenters supporting the September 30, 1988 implementation date believed the Department provided State agencies adequate time to complete their transitions to the revised reporting requirement. Indeed, State agencies were advised of plans regarding the need for improved reporting in December 1986. Final recommendations for improving program reporting were presented to State agencies in March 1987. The point was made that any further delay in the implementation of the reporting revision would only prolong the use of data in the funds allocation process which does not meet the standard of accuracy, timeliness and comparability most desirable for funds allocation purposes.

The September 30, 1988 implementation date has been retained. The Department believes it is imperative that we have a uniform and valid data base for WIC Program reporting. This is particularly significant in light of the new funding formulas, the results of which will reflect the quality of program reporting data. Consequently, those results will not be fully equitable without improving the quality of this data. The perception that currently available data is not sufficiently accurate or uniform to use in a funding formula imparts an element of urgency to this effort.

Completing these reporting revisions by September 30, 1988 will enhance overall program management and accountability without further delay. The Department has considered the short-term inconvenience to some State agencies but finds it outweighed by the long-term benefit to all State agencies.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 98–499, 94 Stat. 2599; Sec. 615, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.25, paragraph (b)(2) is revised to read as follows:

§ 246.25 Record and reports.

* * * * *

(b) * * *

(2) *Quarterly reports.* Quarterly, on dates specified by FNS, State agencies shall report the number of persons participating in the Program by category (i.e., pregnant, breastfeeding, and postpartum women, infants and children) within each priority level as established in § 246.7(d)(4).

* * * * *

§ 246.28 [Amended]

3. In § 246.28, the table is amended by adding to the last entry, second column, the OMB Control No. "0584–0347".

Dated: April 26, 1988.

Thomas W. Mitchell,

Acting Administrator.

[FR Doc. 88–9816 Filed 5–2–88; 8:45 am]

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Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-060]

Varroa Mite; Change to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the quarantined areas established in the "Varroa Mite" interim rule by reducing the quarantined areas to include only specified parts of two states, Mississippi and Washington, rather than the entire states. We are taking this action to ensure that the quarantined areas include only the portion of each of these states that must be quarantined to contain the interstate spread of Varroa mite infestation. We also are making several changes to clarify and correct provisions of the "Varroa mite" interim rule.

DATES: Interim rule effective April 27, 1988. Consideration will be given only to comments postmarked or received on or before July 5, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-060. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th Street at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees in the colonies they infest and reducing their ability to pollinate plants and produce honey. Varroa mites can multiply quickly without attracting a beekeeper's attention until serious damage has been done.

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been confirmed in 12 additional states: Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, and Washington.

The current Varroa mite infestations will, if not controlled, cause serious economic losses throughout the agricultural sector. If the honeybee population were devastated by Varroa mites, every U.S. crop dependent upon honeybees for pollination would be affected. Honey production, too, would drop substantially.

Therefore, in an interim rule effective on April 6 and published in the **Federal Register** on April 11, 1988 (53 FR 11825-11830, Docket No. 87-140), we established "Subpart—Varroa Mite" (§§ 301.92 through 301.92-10, referred to below as the regulations) in 7 CFR Part 301. These regulations quarantine the 13 states in which Varroa mite infestations have been found and restrict the interstate movement of regulated articles from quarantined areas.

We are reducing the quarantined areas in § 301.92-3(c) to include less than the entire state of Mississippi and less than the entire state of Washington. Specifically, parts of Adams, Franklin, and Wilkinson Counties, Mississippi, and part of Klickitat County, Washington, are included in the quarantined areas. Section 301.92-3(a) of the regulations provides that the Administrator of the Animal and Plant Health Inspection Service will list as a quarantined area each Varroa mite-infested apiary and a specified area surrounding it, rather than the entire state in which an infestation exists, upon determining that: (1) The state has adopted and is enforcing restrictions on intrastate movement of regulated articles that are equivalent to the restrictions, in the regulations, on interstate movement of regulated articles, and (2) the quarantining of less than an entire state will prevent the interstate spread of the Varroa mite.

The Administrator has determined that Mississippi and Washington have adopted and are enforcing restrictions on intrastate movement of regulated articles that are equivalent to the restrictions, in the regulations, on interstate movement of regulated articles. He also has determined that maintaining the quarantine in the portion of each of these two states that includes all the apiaries in which Varroa mite infestations are known to exist and approximately 100 square miles surrounding each of these apiaries will contain the interstate spread of Varroa mite infestation from Mississippi or Washington. These determinations are based on results of federal and state Varroa mite surveys in Mississippi and Washington and communications with these states. Therefore, in § 301.92-3(c) we are substituting certain parts of Adams, Franklin, and Wilkinson Counties for the entire state of Mississippi, and are substituting certain parts of Klickitat County for the entire state of Washington.

We are also making several changes to clarify and correct the regulations. These include the addition of a definition of "interstate" and the deletion of an incorrect reference to "a complier" in the definition of "limited permit" in § 301.92-1 and minor editorial changes.

Interim Rule

The Administrator of the Animal and Plant Health Inspection Service determined that an emergency situation existed and, therefore, quarantined the states of Mississippi and Washington, without prior notice and opportunity for public comment, based on the presence of Varroa mites in some beehives (i.e., infestations) in those states, in order to prevent the interstate spread of Varroa mite to states of the United States which were not infested. Recent surveys and communications have established that (1) in Mississippi, all Varroa mite-infested apiaries along with the surrounding approximately 100 square miles are in a portion of Mississippi which includes parts of three counties and (2) in Washington, all Varroa mite-infested apiaries along with the surrounding approximately 100 square miles are in a portion of one county. The Administrator has determined that Mississippi and Washington are imposing restrictions on intrastate movement, so that the Varroa mite will not spread to other parts of these states. Maintaining a quarantine in other parts of Mississippi and Washington results in an unnecessary burden on APHIS's limited resources. As indicated below, the quarantined status of the portions of these states in which Varroa mites are not present also imposes unnecessary costs on commercial beekeepers. Moreover, issuing a proposal to remove those portions of Mississippi and Washington from the quarantined areas would delay final action until well past spring, the period of maximum interstate movement of honeybees and other regulated articles from and to Mississippi and Washington.

For these reasons and because this rule relieves a regulatory restriction, we find that giving advance notice and public procedure is impracticable, contrary to the public interest, and unnecessary. Therefore, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature.

We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment affects the interstate movement of regulated articles from all portions of Mississippi and Washington other than certain parts of Adams, Franklin, and Wilkinson Counties, Mississippi, and Klickitat County, Washington. There are 68 commercial beekeepers in Mississippi, all of which are small entities. Three beekeepers with a total of 1,680 beehives are located in the portion of Mississippi that continues to be subject to the restrictions established on April 6, 1988. The estimated cost of compliance with the regulations to move hives interstates from a quarantined area is $4.00 per hive or, potentially $6,720 for the hives which remain in the quarantined area. This rule makes the regulations inapplicable to interstate movements of regulated articles by 65 beekeepers maintaining an estimated 111,530 hives in other parts of Mississippi, for a potential savings of approximately $446,120. There are approximately 600 commercial beekeepers in Washington, all of which are small entities. Two beekeepers with a total of 2,000 beehives are located in the portion of Washington that continues to be subject to the restrictions established on April 6, 1988. The estimated cost of compliance with the regulations to move hives interstate from a quarantined area is $4.00 per hive or, potentially, $8,000. This rule makes the regulations inapplicable to interstate movements of regulated articles by approximately 598 beekeepers maintaining an estimated 148,000 hives in other parts of Washington, for a potential savings of approximately $592,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Varroa mite.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164-167, and 2260; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.92-1 is amended by removing "or complier" after "in which an inspector" in the definition of "limited permit" and by adding, in alphabetical order, a definition of "interstate" to read as follows:

§ 301.92-1 Definitions.

* * * * *

Interstate. From any state into or through any other state.

* * * * *

§§ 301.92-7 and 301.92-10 [Amended]

3. The third and fourth sentences of § 301.92-7(a) and § 301.92-10(b) are corrected by changing "honey bees" to "honeybees" each time "honey bees" appears and § 301.92-10(a) is corrected by changing "honey bee" to "honeybee".

§ 301.92-5 [Amended]

4. In § 301.92-5, footnote 2 to paragraphs (a) and (b) is amended by adding "of this subpart" at the end before the period and paragraphs (c)(1) and (d)(1) are amended by replacing "his/her" with "the complier's".

5. Paragraph (c) of § 301.92-3 is revised to read as follows:

§ 301.92-3 Quarantined areas.

* * * * *

(c) The following are quarantined areas:

Florida

The entire state.

Illinois

The entire state.

Maine

The entire state.

Michigan

The entire state.

Mississippi

Adams County. Sections 1, 2, 11, 12, 15, 23, 24, 25, and 27 within T.5 N., R.2 W., and all Sections within T.5 N., R.1 W..

Franklin County. Sections 8, 9, 10, 11, 12, 13, 14, 15, 27, 29, 30, 41, 42, 43, and 45 within T.5 N., R.1 E., and Sections 7, 8, and 44 within T.4 N., R.1 E..

Wilkinson County. Sections 1, 2, 15, 16, 17, 18, 30, 31, 32, 33, 45, 46, 48, and 49 within T.4 N., R.2 W., all Sections within T.4 N., R.1 W., Sections 26, 36, and 37 within T.5 N., R.2 W., all Sections within T.5 N., R.1 W., and Sections 9, 10, 11, 23, 24, 25, 26, 35, 36, 37, 38, and 43 within T.4 N., R.1 E..

The entire state.

Nebraska

The entire state.

New York

The entire state.

Ohio

The entire state.

Pennsylvania

The entire state.

South Carolina

The entire state.

South Dakota

The entire state.

Washington

Klickitat County. That portion of the county bounded by State Highway 97 on the west, by Goldendale-Goodnoe Road on the north, by Goodnoe Station Road on the east, and by the Columbia River on the south.

Wisconsin

The entire state.

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Done in Washington, DC, this 27th day of April, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9721 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 354

[Docket No. 88-059]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances in Maryland and New Jersey. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, National Administrative and Planning Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances between certain locations in Maryland and New Jersey. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 40 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Add:			
MARYLAND			
Andrews AFB.	Baltimore		3½
Baltimore	Andrews AFB.		3½
Piney Point.	Baltimore		5
Piney Point.	Beltsville		4
NEW JERSEY			
Atlantic City.	McGuire AFB.		3

Done in Washington, DC, this 27th day of April, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9723 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR Part 701, to change the definition of an eligible "State" to allow producers in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) to participate in the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). This change would allow certain producers in Guam and the CNMI to be eligible for cost-share assistance under the ACP and ECP.

EFFECTIVE DATE: May 3, 1988.

ADDRESS: Interested persons are invited to submit written comments to: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 701) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0112.

This final rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number—10.063; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The ACP is authorized generally by sections 7-17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590g *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share assistance for emergency work to meet only the critical needs of agricultural producers due to drought or other natural disaster.

Requests have been received from representatives of producers in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) for the implementation of the ACP and the ECP in such areas. The Soil Conservation Service has a staff of 7 employees available in Guam to provide technical assistance to producers in the area. Guam and the CNMI have formed Soil and Water Conservation Districts to service the producers in the area.

The Secretary of Agriculture is authorized to extend, in his discretion, programs administered by the Department of Agriculture to Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, and American Samoa (hereinafter called the "territories"). (48 U.S.C. 1469d(c).) Under existing regulations the authority for producers to participate in ACP and ECP has not been extended to Guam or the CNMI.

Guam and the CNMI are small islands with limited natural resources. In addition, the financial resources of the people living there are very limited. The availability of the ACP to these people will help to control and prevent the erosion of valuable natural resources. The availability of the ECP will assist them in times of natural disaster to rehabilitate the land back to a productive state. These two programs will help the people put valuable conservation measures on the land.

The Secretary has determined that the ACP and the ECP should be extended to Guam and the CNMI and has notified the appropriate committees of Congress of his decision. In order that these programs may be made available to producers in Guam and the CNMI as soon as possible, it has been determined that the provisions of this regulation shall become effective upon date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs, Natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR Part 701 is amended as follows:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 16 U.S.C. 590d, 590g-590o, 590p(a), 590q; 16 U.S.C. 1501-1510; 16 U.S.C. 1606, 2101-2111; 16 U.S.C. 2201-2205; 48 U.S.C. 1469d(c).

2. Section 701.2(e) is revised to read as follows:

§ 701.2 Definitions.

* * * * *

(e) "State" means any one of the United States, Puerto Rico, the Virgin Islands, and (1) In the case of the Agricultural Conservation Program and the Emergency Conservation Program,

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Guam and the Commonwealth of the Northern Mariana Islands; and (2) In the case of the Forestry Incentives Program, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

* * * * *

Signed at Washington, DC on April 27, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-9718 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 900

Changes in Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders and Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Rules of Practice and Procedure conerning the execution of marketing agreements so that the notice of issuance and effective date provisions conform to those which are currently in effect for marketing orders. The amendments are necessary so that marketing agreements may be published in the Code of Federal Regulations (CFR). This rule also makes minor changes in information collection regulations which will be necessary when the peanut agreement is codified.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone, (202) 475-5697.

SUPPLEMENTARY INFORMATION: This action amends § 900.14(a) of Subpart—Rules of Practice and Procedure Governing Procedures To Formulate Marketing Agreements and Marketing Orders (7 CFR 900.1-900.18), and § 900.601 of Subpart—Information Collection (7 CFR 900.600-900.601).

This action is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because it involves only Department of Agriculture procedures and would not measureably affect costs for the directly regulated persons.

A marketing agreement is issued in conjunction with a marketing order or independently when handlers of a required percent of the commodity covered have signed an agreement with the Secretary of Agriculture. However, the Secretary can issue a marketing order independently if the order has received the required grower approval (generally, two-thirds of the growers who voted either by number or volume), and the Secretary finds that it is the only practical way of advancing growers' interests.

A marketing order, with or without handler approval, is binding on all handlers in the industry. A marketing agreement without a companion marketing order is binding only on those handlers who sign it.

The commodities which may be regulated through marketing orders and the ways in which they may be regulated are prescribed in the Act. No statutory limitations of these types are prescribed for marketing agreements.

Marketing agreement and order programs are based on evidence presented at a public hearing. At the hearing, the proponents present evidence in support of the program, and opponents submit evidence in support of their positions. Any order or agreement issued must be supported by substantial and reliable evidence contained in the record. The record must contain an explanation of how the program will fit the particular conditions of the industry and how it will solve the industry's marketing problems.

Section 900.14(a) concerning marketing agreements provides that if the Secretary determines that the required number of handlers execute a marketing agreement, the Secretary shall execute the marketing agreement, and notice of its effective date shall be mailed by the hearing clerk to each person who is a signatory to that agreement. That paragraph further provides that a marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in paragraph (a), or the hearing clerk may have failed to mail such notice.

The rules concerning marketing orders (with or without agreements) provide for publication in the **Federal Register** and contain different provisions with respect to notice and effective dates.

In order to codify and publish agreements in the CFR, the procedures in § 900.14(a) need to be brought into conformity with those contained in §§ 900.14 (d) and (e). The changes hereinafter set forth in § 900.14(a) bring the procedural requirements for marketing agreements without orders into conformity with those for orders with or without agreements.

This rule also makes conforming changes in § 900.601 of Subpart—Information Collection (7 CFR 900.600 and 900.601) which will be needed when the Marketing Agreement Regulating the Quality of Domestically Produced Peanuts (peanut agreement) is codified. Section 900.601 lists the Office of Management and Budget (OMB) control numbers assigned by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and the 7 CFR part numbers for various fruit, vegetable, and specialty crop commodities for which there are codified marketing orders with or without agreements. The control numbers provide a simple and effective way for the public to determine if an information collection burden has been approved by OMB. The information collection requirements of the peanut agreement have been approved by OMB. The OMB control number assigned to the peanut agreements is 0581-0067 and is added to § 900.601(b) by this action. Also, the part number "7 CFR Part 998," to be assigned to the peanut agreement, is added to § 900.601(a) by this action.

Pursuant to 5 U.S.C. 553, it is found that this action is exempt from the requirement to give preliminary notice and to engage in public rulemaking procedure in that: (1) This action is administrative only and prescribes agency practices and procedures for implementing executed marketing agreements without marketing orders and (2) this action merely displays the information collection control number assigned by the OMB for the peanut agreement in anticipation of its codification as 7 CFR Part 998. Good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the reasons stated above.

List of Subjects in 7 CFR Part 900

Marketing agreements and orders, Almonds, Apricots, Avocados, Celery, Cherries, Cranberries, Dates, Filberts, Grapefruit, Grapes, Hazelnuts, Kiwifruit, Lemons, Lettuce, Limes, Melons, Nectarines, Olives, Onions, Oranges, Papayas, Peaches, Pears, Plums, Potatoes, Prunes, Raisins, Spearmint oil, Tangelos, Tangerines, Tomatoes, Walnuts, Peanuts.

For the reasons set forth in the preamble, §§ 900.14 and 900.601 are amended as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Orders (7 CFR 900.1-900.18) continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

2. Section 900.14 is amended by revising the section heading and paragraph (a) to read as follows:

§ 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the **Federal Register**. The marketing agreement shall not become effective less than 30 days after its publication in the **Federal Register**, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the **Federal Register**, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

* * * * *

3. The authority citation for Subpart—Information Collection (7 CFR 900.600-900.601) continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

4. Section 900.601 is amended by changing "993" to "998" in paragraph (a), and adding an OMB Control Number for domestically produced peanuts to read as follows:

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

998, Domestic Peanuts.....0581-0067

Dated: April 25, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9526 Filed 5-2-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[A.G. Order 1270-88]

Executive Office for Immigration Review; Board of Immigration Appeals; Designation of Judges

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule provides for the designation of immigration judges as temporary, additional members to supplement the regular Board of Immigration Appeals.

This provision is necessary because it has become apparent that periodic substantial increases in the Board case load have created a need for additional members to assist in the efficient review of cases. This rule will effectively increase the Board's capacity to review cases since it will be possible to create two panels of three members, each one capable of reviewing cases. Also, in the event of Board vacancies, this provision will permit the temporary utilization of immigration judges to assist in the review of cases.

This rule is also promulgated as a contingency for national emergencies. If ever there is a situation where for national security considerations or other critical reasons, large numbers of cases must be reviewed quickly, this rule will assist in the speedy review of such matters.

Finally, this rule will provide a cost-effective method of increasing Board productivity. Since immigration judges may be designated as temporary, additional Board members during peak periods on an as needed basis, substantial cost savings will be realized when compared to the creation of additional, permanent Board members.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Further, this rule is not a major rule within the definition of section 1(b) of Executive Order 12291.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for Part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301, Section 2 Reorg. Plan No. 2 of 1950.

2. Section 3.1, paragraph (a)(1) is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall exercise so much of the immigration and nationality laws as he may delegate to it. The Board shall consist of a Chairman and four

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other members. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board, and three members of the Board shall constitute a quorum of the Board. The Director may in his discretion designate immigration judges to act as temporary, additional Board members for whatever time the Director deems necessary. In the event that immigration judges are so designated, two panels of three members each may be designated by the Chairman. Each panel shall be empowered to review cases by majority vote. Each panel may exercise the appropriate authority of the Board as set out in Part 3 which is necessary to review cases before it. The permanent Board may, by majority vote on its own motion, reconsider en banc any case decided by a panel. The total number of Board members and temporary, additional Board members may not exceed seven individuals at any time. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Date: April 21, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-9740 Filed 5-2-88; 8:45 am]

BILLING CODE 4531-26-M

DEPARTMENT OF ENERGY

10 CFR Part 1004

Freedom of Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This final rule revises the DOE regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552. Revisions include a new schedule of fees associated with processing of FOIA requests, guidelines that implement the fee schedule, and current addresses of Department organizational entities.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT:

John H. Carter, Chief of Freedom of Information and Privacy Acts, MA-232.1, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955

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SUPPLEMENTARY INFORMATION: This final rule conforms to the guidelines issued by the Office of Management and Budget (OMB), as required by the Freedom of Information Reform Act of 1986 (FOIRA), Pub. L. No. 99-570, 100 Stat. 3207-49. In addition, there are many editorial revisions and changes to the existing DOE rule on FOIA which are incorporated in this final rule.

General Information

The Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-49, requires that each agency (1) promulgate regulations which establish a fee schedule to process requests for information and (2) establish procedures and guidelines to determine when such fees should be waived or reduced. The DOE fee schedule and procedures conform to the guidelines issued by the OMB for agencies to follow in implementing these regulations. This final rule revises existing DOE fee schedules and procedures in accordance with the FOIA, as amended, and makes other technical and editorial changes to the DOE regulations that implement the FOIA. The DOE published its proposed rule for comment on June 17, 1987 (52 FR 23155).

Executive Order No. 12291

It has been determined that these regulations are not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981), because they are not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions, or cause significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations were submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

Analysis of Comments Received

Comments postmarked or received within the comment period were considered in the development of this final rule. In response to a suggestion by thee commenters, the DOE will again include the language of the FOIA exemptions in the rule. Additional comments are addressed below according to the subsections of the regulation to which they apply.

1. *Definitions (Section 1004.2).* Three commenters objected to certain definitions contained in this section, especially that of "representative of the news media." However, these definitions were drawn from the OMB Fee Guidelines, that became final after a period of public notice and comment in which concerns similar to those raised by these commenters were considered. *See* OMB Fee Guidelines, sec. 6g-6j, 52 FR 10011, 10017-18 (March 27, 1987); *see also* 52 FR 10013-15 (OMB analysis of comments on definitions). The DOE is required by the FOIA to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the DOE firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory intent of the amended Act.

2. *Fees to be charged (Section 1004.9(a)).* One commenter objected to the use of private sector firms to locate, reproduce and disseminate records in response to FOIA requests, because these private firms might have access to trade secrets and confidential commercial information. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7, 52 FR 10011, 10018 (March 27, 1987). The DOE believes that this correctly implements the statutory provision concerning making records promptly available.

3. *Review of records (Section 1004.9(a)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. The DOE believes that such review qualifies under the statute as an "initial examination" because the record is being reviewed for the first time to determine whether other exemptions which had not been previously considered now apply. If these review costs were precluded, the DOE would be compelled at the time of initial processing to review these records to determine the applicability of all possible exemptions, even though at the time of processing one exemption may clearly apply to the entire record or portions thereof. Such an approach would unnecessarily increase review costs to requesters.

4. *Notification of charges (Section 1004.9(a)(7)).* One commenter stated that it is unclear whether a requester must agree to pay all fees for charges over $25.00 before the time deadlines for a response to his request will begin to run. A sentence has been added to this section of the final rule to address this concern and to clarify that under these circumstances, a request is deemed to have been received when the requester has provided an assurance to pay the total anticipated fee. Such an assurance ensures that government expenses are not inappropriately incurred and a recovery of cost can be made.

5. *Waiving or reducing fees (Section 1004.9(a)(8)).* Three commenters expressed concern that the factors to be considered for fee waivers and fee reductions require the DOE to make speculative and subjective value judgments regarding the subject of a request and its value to the public. These factors set forth by the DOE, are taken directly from the statute. The six criteria enumerated in the regulation are provided as specific elements to be considered that shall be known to all requesters. The DOE will make every effort to apply the criteria in an objective manner.

Contrary to the suggestion of two of the commenters, the requirement that information be submitted in support of a fee waiver request is not affected by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the OMB, which has responsibility for the implementation of the Paperwork Reduction Act, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act. *See also* 5 CFR 1320.7(c) (1987).

One commenter also urged that the DOE establish certain categories of requesters or types of requests which would be presumptively entitled to a fee waiver. The DOE believes that each request for a fee waiver must be evaluated on its own merit and that the provisions of § 1004.9(a)(8) accurately reflect the appropriate considerations guiding agency fee waiver determinations. The fee waiver provision of the FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), does not provide for any such presumptions for categories of requesters, although the limitations on duplication, search, and review fees under subsection (a)(4)(A)(ii) of the Act do distinguish among categories of requesters. The fee waiver provision in subsection (a)(4)(A)(iii), therefore, must be applied on a case-by-case basis for all requesters.

6. *Charges for unsuccessful search (Section 1004.9(b)(8)).* One commenter objected to the provision for charging requesters for unsuccessful searches, asserting that this might intimidate potential requesters. The statute, however, does not restrict recovery of search costs to those instances where documents are located. *See* 5 U.S.C. 552(a)(4)(A)(ii). Since costs will be incurred by the DOE regardless of whether a search results in the discovery of responsive records, the DOE believes that the requester should incur this expense and not the general public.

7. *Aggregating requests (Section 1004.9(b)(7)).* One commenter questioned the language of this section stating that it is unclear that the DOE will apply a reasonable standard to determine whether a request is being broken down to evade fees. The word "reasonably" has been added to the language for clarification.

The commenter also suggested that DOE include in the final rule the statement that in no case will DOE aggregate multiple requests on unrelated subjects from one requester. This comment has been adopted and the rule has been revised accordingly.

8. *Advance payments (Section 1004.9(b)(8)).* Two commenters objected to the suspension of the statutory time limits for responding to a request while an advance payment is being sought. However, this provision ensures that the agency recoup appropriate costs incurred to provide a requester the documents sought. Moreover, this provision is consistent with the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9d, 52 FR 10011, 10020 (March 27, 1987).

The DOE believes that this provision correctly implements the statutory provision concerning advance payments.

9. *Handling information of a private business, foreign government, or an international organization (Section 1004.11).* One commenter stated that "the regulations should make clear that the provisions for consulting with businesses and others may not be exercised in a manner that will interfere with the agency's obligation to grant or deny information within 10 days." As written, the DOE regulations have no adverse impact on the Department's responsibility to determine within 10 days after the receipt of a request whether to comply with the request. This determination may precede and is independent of any consultation with submitters of information covered by this section.

Additionally, one commenter suggested the addition of some safeguards for handling information covered by this section. As written, this section is no different than that which existed previously in the FOIA regulations of the Department, and the DOE has determined that adequate safeguards were contained therein.

List of Subjects in 10 CFR Part 1004

Freedom of information.

Harry L. Peebles,

Director of Administration.

For the reasons set forth in the preamble, 10 CFR Part 1004 is revised as follows:

PART 1004—FREEDOM OF INFORMATION

Sec.

1004.1 Purpose and scope.
1004.2 Definitions.
1004.3 Public reading facilities.
1004.4 Elements of a request.
1004.5 Processing requests for records.
1004.6 Requests for classified records.
1004.7 Responses by authorizing officials: Form and content.
1004.8 Appeals of initial denials.
1004.9 Fees for providing records.
1004.10 Exemptions.
1004.11 Handling information of a private business, foreign government, or an international organization.
1004.12 Computation of time.

Authority: 5 U.S.C. 552.

§ 1004.1 Purpose and scope.

This part contains the regulations of the Department of Energy (DOE) that implement 5 U.S.C. 552, Pub. L. 89-487, as amended by Pub. L. 93-502, 88 Stat. 1561, by Pub. L. 94-409, 90 Stat. 1241, and by Pub. L. 99-570, 100 Stat. 3207-49. The regulations of this part provide information concerning the procedures by which records may be requested from all DOE offices, excluding the Federal Energy Regulatory Commission (FERC). Records of the DOE made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this part. Persons seeking information or records of the DOE may find it helpful to consult with a DOE Freedom of Information Officer before invoking the formal procedures set out below. To the extent permitted by other laws, the DOE will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

§ 1004.2 Definitions.

As used in this part:

(a) "Appeal Authority" means the Office of Hearings and Appeals.

(b) "Authorizing or Denying Official" means that DOE officer as identified by the Directorate of Administration by separate directive, having custody of or

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responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, the term refers to The Freedom of Information Officer as defined below and officials who report directly to either the Office of the Secretary or a Secretarial Officer as also defined below. In the Field Offices, the term refers to the head of a field location identified in § 1004.2(h) and the heads of field offices to which they provide administrative support and have delegated this authority.

(c) "'Commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine how the requester will use the documents requested. Moreover, where DOE has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not evident from the request itself, the DOE will seek additional clarification before assigning the request to a specific category.

(d) "Department" or "Department of Energy (DOE)" means all organizational entities which are a part of the executive department created by Title II of the DOE Organization Act, Pub L. 95–91. This specifically excludes the FERC.

(e) "Direct costs" means those expenditures which the DOE actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(f) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of, but are not limited to, paper copy, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk). The copy provided must be in a form that can be reasonably used by requesters.

(g) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) "Freedom of Information Officer" means the person designated to administer the Freedom of Information Act at the following DOE offices:

(1) Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802–0050.

(2) Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115.

(3) Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005.

(4) Bonneville Power Administration, P.O. Box 3621–AL, Portland, OR 97208–3621.

(5) Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.

(6) Headquarters, Department of Energy, Washington, DC 20585.

(7) Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.

(8) Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507.

(9) Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

(10) Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37831.

(11) Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236–0940.

(12) Richland Operations Office, P.O. Box 550, Richland, WA 99352.

(13) San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

(14) Savannah River Operations Office, P.O. Box A, Aiken, SC 29802.

(15) Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635.

(16) Southwestern Power Administration, ATTN: SWPA–120, P.O. Box 1619, Tulsa, OK 74101.

(17) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

(18) Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

(i) "General Counsel" means the General Counsel provided for in section 202(b) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on Freedom of Information Act matters.

(j) "Headquarters" means all DOE facilities functioning within the Washington metropolitan area.

(k) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in § 1004.2(c), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(l) "Office" means any administrative or operating unit of the DOE, including those in field offices.

(m) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

(n) "Review" refers to the process of examining documents located in response to a commercial use request (see § 1004.2(c)) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise pepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(o) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The DOE will search for material in the most efficient and least expensive manner in order to minimize cost for both DOE and the requester. For example, DOE will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(p) "Secretarial Officer" means the General Counsel; Assistant Secretary, Management and Administration; Assistant Secretary for Congressional, Intergovernmental, and Public Affairs; Assistant Secretary for International Affairs and Energy Emergencies; Assistant Secretary for Nuclear Energy; Assistant Secretary for Fossil Energy; Assistant Secretary, Conservation and Renewable Energy; Assistant Secretary for Defense Programs; Assistant Secretary for Environment, Safety, and Health; Administrator, Economic Regulatory Administration; Administrator, Energy Information Administration; Director of Energy Research; Director of Civilian Radioactive Waste Management; Director of Minority Economic Impact, and the Inspector General.

(q) "Statute specifically providing for setting the level of fees for particular types of records," at 5 U.S.C. 552(a)(4)(A)(vi), means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

§ 1004.3 Public reading facilities.

(a) The DOE Headquarters will maintain, in the public reading facilities, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. The principal public reading facility will be located at the Freedom of Information Office, 1000 Independence Avenue, SW, Washington, DC. A complete listing of other facilities is available from the Freedom of Information Officer at DOE Headquarters.

(b) Each of the designated field offices will maintain in public reading facilities certain materials maintained in the Headquarters facility and other materials associated with the particular field offices.

(c) Each of these public reading facilities will maintain and make available for public inspection and copying current indices of the materials at that facility which are required to be indexed by 5 U.S.C. 552(a)(2) or other applicable statutes.

§ 1004.4 Elements of a request.

(a) *Addressed to the Freedom of Information Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in § 1004.3, shall be addressed to the appropriate Headquarters or field Freedom of Information Officer, Department of Energy, at a location listed in § 1004.2(h) of this part, and both the envelope and the letter shall be clearly marked "Freedom of Information Request." Except as provided in § 1004.4(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) upon actual receipt by the Freedom of Information Officer. Requests delivered after regular business hours of the Freedom of Information Office are considered received on the next regular business day.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a particular office of the DOE, the request should identify that office.

(c) *Categorial requests.* (1) Must meet reasonably described records requirement. A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described if DOE personnel can reasonably determine which particular records are sought in the request. The request must enable the DOE to identify an locate the records sought by a process that is not unreasonably burdensome or disruptive of DOE operations. The Freedom of Information Officer may take into consideration problems of search which are associated with the files of an individual office within the Department and determine that a request is not one for reasonably described documents as it pertains to that office.

(2) Assistance in reformulating a non-conforming request. If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requiremnts of paragraph (c)(1) of this section and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to managable proportions by reformulation or by agreeing on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

(d) *Nonexistent records.* (1) 5 U.S.C. 552 does not require the compilation or creation of a record for the purpose of satisfying a request for records.

(2) 5 U.S.C. 552 does not require the DOE to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time.

(3) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester will be so notified.

(e) *Assurance of willingness to pay fees.* A request shall include (1) an assurance to pay whatever fees will be assessed in accordance with § 1004.9, (2) an assurance to pay those fees not exceeding some specified dollar amount, or (3) a request for a waiver or reduction of fees. No request will be deemed to have been received until the DOE has received some valid assurance of willingness to bear fees anticipated to be associated with the processing of the request or a specific request of a waiver or reduction of fees.

(f) *Requests for records or information of other agencies.* Some of the records in the files of the DOE have been obtained from other Federal agencies or contain information obtained from other Federal agencies.

(1) Where a document originated in another Federal agency, the Authorizing Official will refer the request to the

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originating agency and so inform the requester, unless the originator agrees to direct release by DOE.

(2) Requests for DOE records containing information received from another agency, or records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that the Authorizing Official will coordinate with the appropriate official of the other agency. The notice of determinaton to the requester, in the event part or all of the record is recommended for denial by the other agency, will cite the other agency Denying Official as well as the appropriate DOE Denying Official if a denial by DOE is also involved.

§ 1004.5 Processing requests for records.

(a) Freedom of Information Officers will be responsible for processing requests for records submitted pursuant to this part. Upon receiving such a request, the Freedom of Information Officer will, except as provided in paragraph (c) of this section, ascertain which Authorizing Official has responsibility for, custody of, or concern with the records requested. The Freedom of Information Officer will review the request, consulting with the Authorizing Official where appropriate, to determine its compliance with § 1004.4. Where a request complies with § 1004.4, the Freedom of Information Officer will acknowledge receipt of the request to the requester and forward the request to the Authorizing Official for action.

(b) The Authorizing Official will promptly identify and review the records encompassed by the request. The Authorizing Official will prepare a written response (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) replying with a response stating that the request has been referred to another agency under § 1004.4(f) or § 1004.6(e), (5) informing the requester that responsive records cannot be located or do not exist.

(c) Where a request involves records which are in the custody of or are the concern of more than one Authorizing Official, the Freedom of Information Officer will identify all concerned Authorizing Officials, send copies of the request to them and forward the request for action to the Authorizing Official that can reasonably be expected to have custody of most of the requested records. This Authorizing Official will prepare a DOE response to the requester consistent with paragraph (b) of this section, which will identify any other Authorizing Official, having responsibility for the denial of records.

(d) Time for processing requests. (1) Action pursuant to paragraph (b) of this section will be taken within 10 working days of receipt of a request for DOE records ("receipt" is defined in § 1004.4(a)), except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Authorizing Official of the reasons for such extension and the date on which a determination is expected to be dispatched, then the Authorizing Official may take an extension not to exceed 10 working days.

(2) For purposes of this section and § 1004.8(d), the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the offices processing the request;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are responsive to a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Department having substantial subject matter interest therein.

(3) The requester must be promptly notified in writing of the extension, the reasons for the extension, and the date on which a determination is expected to be made.

(4) If no determination has been made at the end of the 10-day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the responsible Authorizing Official will nevertheless continue to process the request. If the DOE is unable to provide a response within the statutory period, the Authorizing Official will inform the requester of the reason for the delay; the date on which a determination may be expected to be made; that the requester can seek remedy through the courts, but ask the requester to forego such action until a determination is made.

(5) Nothing in this part shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement will be confirmed in writing and will clearly specify the total time agreed upon.

§ 1004.6 Requests for classified records.

(a) All requests for classified records and Unclassified Controlled Nuclear Information will be subject to the provisions of this part with the special qualifications noted below.

(b) All requests for records made in accordance with this part, except those requests for access to classified records which are made specifically pursuant to the mandatory review provisions of Executive Order 12356 or any successor thereto, may be automatically considered a Freedom of Information Act request.

(c) Concurrence of the Director of Classification is required on all responses involving requests for classified records. The Director of Classification will be informed of the request by either the Freedom of Information Officer or the Authorizing Official to whom the action is assigned, and will advise the office originating the records, or having responsibility for the records, and consult with such office or offices prior to making a determination under this section.

(d) The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material, will be concurred in by the Director of Classification who will be the Denying Official for the classified portion of such records in accordance with §§ 1004.5(c) and 1004.7(b)(2). If other DOE officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions will be listed in the notice of denial in accordance with §§ 1004.5(c) and 1004.7(b)(2) and it will be clearly indicated what portion or portions they were responsible for denying.

(e) Requests for DOE records containing classified information received from another agency, and requests for classified documents originating in another agency, will be coordinated with or referred to the other agency consistent with the provisions of § 1004.4(f). Coordination or referral of information or documents subject to this section will be effected by the Director of Classification (in consultation with the Authorizing Official) with the appropriate official of the other agency.

§ 1004.7 Responses by authorizing officials: Form and content.

(a) *Form of grant.* Records requested pursuant to § 1004.4 will be made

available promptly, when they are identified and determined to be nonexempt under this Regulation, the Freedom of Information Act, and where the applicable fees are $15 or less or where it has been determined that the payment of applicable fees should be waived. Where the applicable fees exceed $15, the records may be made available before all charges are paid.

(b) *Form of denial.* A reply denying a request for a record will be in writing. It will be signed by the Denying Official pursuant to § 1004.5 (b) or (c) and will include:

(1) *Reason for denial.* A statement of the reason for denial, containing a reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, and a statement of why a discretionary release is not appropriate.

(2) *Persons responsible for denial.* A statement setting forth the name and the title or position of each Denying Official and identifying the portion of the denial for which each Denying Official is responsible.

(3) *Segregation of nonexempt material.* A statement or notation addressing the issue of whether there is any segregable nonexempt material in the documents or portions thereof identified as being denied.

(4) *Adequacy of search.* Although a determination that no such record is known to exist is not a denial, the requester will be informed that a challenge may be made to the adequacy of the search by appealing within 30 calendar days to the Office of Hearings and Appeals.

(5) *Administrative appeal.* A statement that the determination to deny documents made within the statutory time period, may be appealed within 30 calendar days to the Office of Hearings and Appeals.

§ 1004.8 Appeal of initial denials.

(a) *Appeal to Office of Hearings and Appeals.* When the Authorizing Official has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with § 1004.4(d), or when the Freedom of Information Officer has denied a request for waiver of fees consistent with § 1004.9, the requester may, within 30 calendar days of its receipt, appeal the determination to the Office of Hearings and Appeals.

(b) *Elements of appeal.* The appeal must be in writing, addressed to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 and both the envelope and letter must be clearly marked "Freedom of Information Appeal." The appeal must contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations and decisions on appeals and any judicial determinations being relied upon to support the appeal. A copy of the letter containing the determination which is being appealed, must be submitted with the appeal.

(c) *Receipt of appeal.* An appeal will be considered to be received for purposes of 5 U.S.C. 552(a)(6) upon receipt by the appeal authority. Documents delivered after regular business hours of the Office of Hearings and Appeals are considerd received on the next regular business day.

(d) *Action within 20 working days.* (1) The appeal authority will act upon the appeal within 20 working days of its receipt, except that if unusual circumstances (as defined in § 1004.5(d)(2)) require an extension of time before a decision on a request can be reached, the appeal authority may extend the time for final action for an additional 10 working days less the number of days of any statutory extension which may have been taken by the Authorizing Official during the period of initial determination.

(2) The requester must be promptly notified in writing of the extension, setting forth the reasons for the extension, and the date on which a determination is expected to be issued.

(3) If no determination on the appeal has been issued at the end of the 20-day period or the last extension thereof, the requester may consider his administrative remedies to be exhausted and seek a review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be issued within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be issued, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(4) Nothing in this part will preclude the appeal authority and a requester from agreeing to an extension of time for the decision on an appeal. Any such agreement will be confirmed in writing by the appeal authority and will clearly specify the total time agreed upon for the appeal decision.

(e) *Form of action on appeal.* The appeal authority's action on an appeal will be in writing and will set forth the reason for the decision. It will also contain a statement that it constitutes final agency action on the request and that judicial review will be available either in the district in which the requester resides or has a principal place of business, the district in which the records are situated, or in the District of Columbia. Documents determined by the appeal authority to be documents subject to release will be made promptly available to the requester upon payment of any applicable fees.

(f) *Classified records and records covered by section 148 of the Atomic Energy Act.* The Secretary of Energy or his designee will make the final determination concerning appeals involving the denial of requests for classified information or the denial of requests for information falling within the scope of section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

§ 1004.9 Fees for providing records.

(a) *Fees to be charged.* The DOE will charge fees that recoup the full allowable direct costs incurred. The DOE will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The DOE may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the DOE will ensure that the ultimate cost to the requester is no greater than it would be if the DOE itself had performed these tasks. In no case will the DOE contract out responsibilities which the FOIA provides that only the agency may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. Where the DOE can identify documents that are responsive to a request and are maintained for public distribution by other agencies such as the National Technical Information Service and the Government Printing Office, the Freedom of Information Officer will inform requesters of the procedures to obtain records from those sources.

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(1) *Manual searches for records.* Whenever feasible, the DOE will charge for manual searches for records at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search.

(2) *Computer searches for records.* The DOE will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary.

(3) *Review of records.* The DOE will charge requesters who are seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review (i.e., the review undertaken the first time the DOE analyzes the applicability of a specific exemption to a particular record or portion of a record. The DOE will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(4) *Duplication of records.* The DOE will make a per-page charge for paper copy reproduction of documents. At present, the charge for paper to paper copies will be five cents per page and the charge for microform to paper copies will be ten cents per page. For computer generated copies, such as tapes or printouts, the DOE will charge the actual cost, including operator time, for production of the tape or printout. For other methods of reproduction or duplication, we will charge the actual direct costs of producing the document(s).

(5) *Other charges.* It shall be noted that complying with requests for special services such as those listed below is entirely at the discretion of this agency. Neither the FOIA nor its fee structure cover these kinds of services. The DOE will recover the full direct costs of providing services such as those enumerated below to the extent that we elect to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, DOE will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, DOE will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, DOE will not begin to assess fees until after the Department has provided the free search and reproduction. For example, if a request involves two hours and ten minutes of search time and results in 105 pages of documents, DOE will charge for only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than $15.00, the amount DOE incurs to process a fee collection, no charges would be assessed. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will be normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" is based on a *manual search.* To apply this term to searches made by computer, the DOE will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the computer operator conducting the search, DOE will begin assessing charges for computer search.

(7) *Notification of charges.* If the DOE determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the requester will be informed of the estimated amount of fees, unless the requester has previously indicated a willingness to pay the amount estimated by the agency. In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph will offer him the opportunity to confer with DOE personnel in order to reformulate his request to meet his needs at a lower cost.

(8) *Waiving or reducing fees.* The DOE will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester. This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to the DOE, the waiver or reduction of a FOIA fee will be granted. In determining when fees should be waived or reduced the Freedom of Information Officer should address the following two criteria:

(i) That disclosure of the Information "is in the Public Interest Because it is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government." Factors to be considered in applying this criteria include but are not limited to:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding by the general public of the subject likely to result from disclosure; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(ii) If Disclosure of the Information "is Not Primarily in the Commercial Interest of the Requester." Factors to be considered in applying this criteria include but are not limited to:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Freedom of Information Officer will make determinations regarding categories of requesters as defined at § 1004.2. The Headquarters Freedom of Information Officer will assist field Freedom of Information Officers in categorizing requesters, and will resolve conflicting categorizations. The FOIA prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* When the DOE receives a request for documents which appears to be for commercial use, charges will be assessed to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commerical use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The DOE will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* The DOE will provide documents to requesters in this category for the cost of reproduction only, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1004.2(m), and his or her request must not be made for a commercial use. With respect to this class of requesters, a request for records supporting the news dissemination function of the requester will not be considered to be a request for a commercial use.

(4) *All other requesters.* The DOE will charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Moreover, requests from individuals for records about themselves filed in DOE systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974.

(5) *Charging interest—notice and rate.* Interest will be charged those requesters who fail to pay fees. The DOE will begin to assess interest charges on the amount billed on the 31st day following the day on which the billing was sent to the requester. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(6) *Charges for unsuccessful search.* The DOE will assess charges for time spent searching even if the search fails to identify responsive records or if records located are determined to be exempt from disclosure. If the DOE estimates that search charges are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice will offer the requester the opportunity to confer with agency personnel in order to reformulate the request to reduce the cost of the request.

(7) *Aggregating requests.* A requester may not file multiple requests each seeking portions of a document or documents, solely to avoid payment of fees. When the DOE reasonably believes that a requester or, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the DOE will aggregate any such requests and charge the appropriate fees. The DOE may consider the time period in which the requests have been made in its determination to aggregate the related requests. In no case will DOE aggregate multiple requests on unrelated subjects from one requester.

(8) *Advance payments.* Requesters are not required to make an advance payment (i.e., payment before action is commenced or continued on a request) unless:

(i) The DOE estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00. In such cases, the DOE will notify the requester of the likely cost and obtain a satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) A requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). The DOE will require the requester to pay the full amount delinquent plus any applicable interest as provided in paragraph (b)(5) of this section, or demonstrate that he has, in fact, paid the delinquent fee; and to make an advance payment of the full amount of the estimated current fee before we begin to process a new request or a pending request from that requester.

When the DOE acts under paragraphs (b)(8) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the DOE has received fee payments described above.

(c) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* The DOE will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, where appropriate, to encourage payment of fees.

§ 1004.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in paragraph (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.

(b) Specifically, the exemptions in 5 U.S.C. 552(b) will be applied consistent with § 1004.1 of these regulations to matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5

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U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; for example Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) are covered by this exemption;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Any reasonably segregated non-exempt portion of a record will be provided to a requester. The DOE will delete portions which are withholdable under the exemptions listed above.

§ 1004.11 Handling information of a private business, foreign government, or an international organization.

(a) Whenever a document submitted to the DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in this section. While the DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, the DOE will consider the submitter's views (as that term is defined in this section) in making its determination. Nothing in this section will preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.

(b) When the DOE may determine, in the course of responding to a Freedom of Information request, not to release information submitted to the DOE (as described in paragraph (a) of this section, and contained in a requested document) without seeking any or further submitter's views, no notice will be given the submitter.

(c) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section without having for consideration the submitter's views, the submitter shall be promptly notified and provided an opportunity to submit his views on whether information contained in the requested document (1) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, (2) contains information referred to in 18 U.S.C. 1905, or (3) is otherwise exempt by law from public disclosure. The DOE will make its own determinations as to whether any information is exempt from disclosure. Notice of a determination by the DOE that a claim of exemption made pursuant to this paragraph is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(d) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section and, without recourse to paragraph (c) of this section, previously has received the submitter's views, the DOE will consider such submitter's views and will not be required to obtain additional submitter's views under the procedure described in paragraph (c) of this section. The DOE will make its own determination with regard to any claim that information be exempted from disclosure. Notice of the DOE's determination to deny a claim of exemption made pursuant to this paragraph will be given to a person making such a claim no less than seven (7) calendar days prior to its intended public disclosure.

(e) Notwithstanding any other provision of this section, DOE offices may require a person submitting documents containing information that may be exempt by law from mandatory disclosure to (1) submit copies of each document from which information claimed to be confidential has been deleted or (2) require that the submitter's views be otherwise made known at the time of the submission. Notice of a determination by the DOE that a claim of exemption is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is deemed to be given when mailed to the submitter at the submitter's last known address.

(f) *Criteria for determining the applicability of 5 U.S.C. 552(b)(4).* Subject to subsequent decisions of the Appeal Authority, criteria to be applied in determining whether information is exempt from mandatory disclosure pursuant to Exemption 4 of the Freedom of Information Act include:

(1) Whether the information has been held in confidence by the person to whom it pertains;

(2) Whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefore;

(3) Whether the information was transmitted to and received by the Department in confidence;

(4) Whether the information is available in public sources;

(5) Whether disclosure of the information is likely to impair the Government's ability to obtain similar information in the future; and

(6) Whether disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

(g) When the DOE, in the course of responding to a Freedom of Information request, determines that information exempt from the mandatory public disclosure requirements of the Freedom of Information Act is to be released in accordance with § 1004.1, the DOE will notify the submitter of the intended discretionary release no less than seven (7) days prior to intended public disclosure of the information in question.

(h) As used in this section, the term "submitter's views" means, with regard to a document submitted to the DOE, an item-by-item indication, with accompanying explanation, addressing whether the submitter considers the information contained in the document to be exempt from the mandatory public disclosure requirements of the Freedom of Information Act, to be information referred to in 18 U.S.C. 1905, or to be otherwise exempt by law from mandatory public disclosure. The accompanying explanation shall specify the justification for nondisclosure of any information under consideration. If the submitter states that the information comes within the exemption in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, the submitter shall include a statement specifying why such information is privileged or confidential and, where appropriate, shall address the criteria in paragraph (f) of this section. In all cases, the submitter shall address the question of whether or not discretionary disclosure would be in the public interest.

§ 1004.12 Computation of time.

Except as otherwise noted, in computing any period of time prescribed or allowed by this part, the day of the event from which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included; and Saturdays, Sundays, and legal holidays are excepted.

[FR Doc. 88-9728 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

Design Standards for Highways; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is updating the list of citations to publications which are incorporated in 23 CFR Part 625 for application on Federal-aid projects. The list includes citations to publications containing standards, specifications, policies, guides, and references which have been approved for application in the geometric and structural design of federally funded highways. The revision amends the regulation by adding a publication that contains guidance and informational material.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Chief, Geometric and Roadside Design Branch, Office of Engineering (202) 366-1327 or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The standards, specifications policies, guides and references (publications) approved by the FHWA for application on all Federal-aid highway projects have been incorporated by reference or listed in 23 CFR Part 625. Periodically, the publications that are included in Part 625 are reviewed by the FHWA and initiating organizations. As a result of these reviews, certain publications are added, updated or replaced with new editions.

In order for Part 625 to reflect a complete and accurate list of guides and references pertinent to highway design, the publication entitled "Special Report 214, Designing Safer Roads, Practices for Resurfacing, Restoration, and Rehabilitation, Transportation Research Board (TRB), 1987", is being added to § 625.5. Special Report 214 is the product of a provision in the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097.

To meet the objectives of the cited legislation, the Secretary of Transportation, acting through FHWA, requested the National Academy of Sciences to study the safety cost effectiveness of highway geometric design standards and recommend minimum standards for resurfacing, restoration and rehabilitation (RRR) projects on existing Federal-aid highways, except freeways. The Transportation Research Board, a unit of the National Research Council under the auspices of the National Academy of Sciences conducted the study.

The board assembled a committee of experts in the various disciplines needed to develop and apply geometric design standards and assess their impact on safety, highway serviceability, cost, environment and system administration. Committee members included individuals with experience in highway design, traffic engineering, highway safety, accident analysis, highway construction, statistics, economics, highway administration and law.

Special Report 214 consists of seven chapters which discuss the deliberations of the committee. In addition to a chapter relating to background and issues (Chapter 1) and one containing recommendations (Chapter 7), five other chapters discuss six key areas of inquiry, which taken together, provide the technical foundation necessary for specific recommendations.

It was necessary to understand the relationship between standards and other parts of the RRR process to analyze design standards. In order to obtain a balanced picture, reviews of prior studies and analyses of nationwide data bases were supplemented with in-depth case studies of highway practices in 15 States and interviews with local public works officials throughout the country. The information learned and the conclusions drawn from these reviews, case studies and interviews are presented in Chapter 2 of the report.

The trade-off between the cost of geometric improvements and their safety pay off is fundamental to the issue of minimum RRR design standards. To make this trade-off requires quantitative knowledge of the relationships between safety and different roadway features. To help provide a basis for the necessary judgments, the committee sponsored critical reviews of prior research and two special studies that addressed major gaps in existing knowledge. The study committee made judgments about the most probable relationships between safety and key highway features using the most credible data available. These judgments are presented in Chapter 3.

Like the relationship between safety and geometric design, the relationships between cost and geometric design are critical in determining how safety and road repair needs can most effectively be balanced. To develop cost relationships, the committee examined published cost data, records and estimating procedures for a sample of State highway agencies throughout the country. This work supplemented reviews of existing nationwide cost records and data sets. The results of the analysis of the relationship between cost and geometric design are contained in Chapter 4.

Two principal questions that underlie the debate over RRR standards are:

—What are the cost and safety trade-offs of making incremental geometric

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improvements to existing highways?, and
—How do minimum RRR standards affect the balance between preserving highways and improving safety on a system wide basis, when available funds are limited?

These questions are addressed from project-level and system-level perspectives in Chapter 5 using the safety and cost relationships developed in the previous chapters.

Tort liability has become an increasing concern for highway agencies because of the number of claims filed against them. These claims allege negligence in the design and operation of public highways. A discussion of tort liability and its characteristics is incorporated into the report in Chapter 6.

Supplementing the discussions in the five chapters outlined above are 12 appendices. These appendices contain summaries of standards, information concerning RRR programs in the case study States and local agencies, a summary of detailed safety relationships, the relationship between accidents and various geometric features, accident statistics, costs, effects on travel time and alternate width standards in system analysis. The appendices contain the detailed information and relationships that support the discussions and conclusions in the five chapters which comprise the core of the report. They provide analytical models that can be used to perform the analyses illustrated in the text discussion.

The Special Report concludes that design standards is alone cannot address those factors that collectively limit the safety gains of federally funded RRR projects. Within the overall process of planning, selecting and designing RRR projects, the influence of standard is small. The RRR standards, which can affect only a few key design features, cannot be tailored to fit all possible, or even most, circumstances and constraints encountered in a given State or a specific site. Therefore, the TRB report does not recommend the adoption of a specific nationwide standard. It does, however, recommend a variety of practices that encompass the entire RRR process with a special focus on design practice. In selected instances, Federal, State and local highway agencies can use the recommendations, along with design aids, published manuals and local experience to develop or modify minimum design standards for RRR projects.

Although the study provides guidance in many areas, more detailed guidelines, further research and increased safety education for designers will be needed to address many of the questions that remain about how to best enhance safety through highway design and operations. Nevertheless, the study committee concluded that a design process that emphasizes safety, even with some parts that will be handled differently by different agencies and designers, will ultimately produce better RRR projects.

A total of 23 recommendations are included in the report. These recommendations are organized into five categories:

1. Safety Conscious Design Process—Recommended general practices that comprise a systematic process for considering safety during RRR project design.

2. Design Practices for Key Highway Features—Recommendations that specify the existing highway conditions that warrant a geometric improvement outright or a serious evaluation of a geometric improvement, as well as design practices that should be followed routinely for key elements.

3. Other Design Procedures and Assumptions—Recommendations that cover design factors such as speed and traffic volume, as well as guides for selecting design values for geometric improvements and seeking design exceptions.

4. Planning and Programming RRR Projects—Recommendations for including safety considerations in the planning and programming of RRR Projects.

5. Safety Research and Training—Recommendations for increased attention to highway safety research, training and education.

The overall policy and guidance for designing RRR projects contained in the existing 23 CFR Part 625 are consistent with the current statutory requirements and the scope of the TRB recommendations. Therefore, the FHWA concurs in the findings and recommendations for developing and designing RRR projects in the TRB Special Report 214. The addition of this document to the list of Guides and References will formally establish the report as a primary source document for revising existing or developing new RRR standards by the States.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revision contained in this amendment is primarily editorial in nature. The publication being added contains material which is not in fact a standard or requirement. This new nonregulatory publication simply provides guidance and information for use at the discretion of the designer. Since the revision included in this document is technical in nature and makes no substantive changes to the regulations, the FHWA finds good cause to make the amendment final without the opportunity for comment and without a 30-day delay in effective date required by the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information due to the technical nature of the document. Accordingly, the amendment is effective upon publication.

Since this amendment does not alter the basic design criteria and the burden imposed on the States is not affected, the impact on the overall highway program is negligible. Therefore, a fully regulatory evaluation has not been prepared. For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This nonregulatory document being added to 23 CFR Part 625 provides only guidance and information for use at the discretion of the designer.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

In consideration of the foregoing, the Federal Highway Administration is amending Chapter I of Title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on April 25, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. Section 625.5 is amended by adding a new paragraph (a)(11) to read as follows.

§ 625.5 Guides and references.

* * * * *

(a) * * *

(11) Special Report 214, Designing Safer Roads, Practices for Resurfacing, Restoration, and Rehabilitation, TRB 1987.[5]

* * * * *

[FR Doc. 88-9768 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 232

[Docket No. R-88-1389; FR-2490]

FHA Insurance of Mortgages Covering Nursing Homes and Similar Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 232 to (1) make public nursing homes eligible for mortgage insurance and (2) establish an alternative procedure for satisfying the "certification of need" requirement governing mortgage insurance of nursing homes and intermediate care facilities. The rule implements section 410 of the Housing and Community Development Act of 1987.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 410(a) of the Housing and Community Development Act of 1987 authorizes FHA insurance of mortgages covering public nursing homes. The Senate Committee report (Senate Report 100-21, March 29, 1987), in explaining this provision states:

Currently, FHA insurance is limited to proprietary and private nonprofit institutions. However, public health care facilities require similar insurance, which in the absence of FHA has become prohibitively expensive and has driven up the health care costs primarily of low and moderate income people.

In compliance with section 410(a) of the 1987 Act, this rule revises the definition of "nursing home" contained in 24 CFR 232.1 to include public nursing homes.

Section 410(b) of the Housing and Community Development Act of 1987 establishes an alternative procedure for satisfying the "certification of need" requirement governing mortgage insurance for nursing homes and intermediate care facilities.

Under existing regulations there is a requirement that individual States certify the need for such facilities. The Congress has found, however, that an increasing number of States no longer have the capacity to carry out the certification of need process, and that alternative procedures for establishing the need for a facility are required.

The procedure established in section 410(b) authorizes the use of private financial consultants but otherwise mirrors the procedure used by States to conduct the assessment necessary to grant a certification of need. The alternative assessment provided for in this rule is designed to establish the facts related to need as fully as a State certification.

Under section 410(b), if no State certification agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the home or facility or combined home and facility, the Secretary of HUD may not insure a mortgage unless (i) the State in which the home or facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that (1) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (2) assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the home, facility, or combined home and facility; (3) is addressed to and is acceptable to the Secretary in form and substance; and (4) in the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State or the applicant for mortgage insurance and is approved by the Secretary. The State must also comply with the other requirements which must be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study.

In addition to this general alternative procedure, the new law also provides for a special procedure in the case of a small intermediate care facility for the mentally retarded or developmentally disabled, or a board and care home housing less than 10 individuals. The State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the above-described alternative certification procedures, provide the Secretary with "written support identifying the need for the facility or home".

Section 410(c) requires the Secretary of HUD to issue such regulations as may be necessary to carry out section 410 by not later than the expiration of the 90-day period following the date of the enactment of the 1987 Act.

This rule revises 24 CFR 232.6 to adopt the 1987 Act certification provisions virtually without elaboration. One exception is that, in addition to requiring that the independent study of market need and feasibility be addressed to and acceptable to the Secretary, the rule provides that it must also be certified as acceptable to the appropriate State agency or official as to form and substance. The rule also provides that private financial consultants will be selected by the appropriate State agency—not directly by the lender. The Department believes that it is the intent of section 410(b) to continue to the maximum extent practicable, State participation in, and responsibility for, certification of nursing homes and intermediate care facilities. The exceptions noted above are consistent with that basic statutory purpose and are within the regulatory discretion of the Department.

Finally, with respect to the special procedure for small intermediate care facilities for the mentally retarded or developmentally disabled (§ 232.6(b) of the rule), a statutory reference to small board and care homes is omitted. Such

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homes are not currently subject to a certification of need procedure. Applying this new special procedure to small homes would only subject them to an additional administrative burden. It would not relieve them of any existing burden. The Department does believe that this is what the Congress intended. The rule defines "small intermediate care facilities" as those housing less than *50* individuals.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under HUD section 232 full insurance has not demonstrated any substantial impact on small entities. This alternative certification procedure would supplement and enhance the current insurance program—especially for small entities.

This rule was listed as sequence number 946 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13877) under Executive Order 12291 and the Regulatory Flexibility Act.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paper Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned, will be announced by separate publication in the **Federal Register**.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

Section 410(c) of the Housing and Community Development Act of 1987 requires the Secretary of HUD to issue such regulations as may be necessary to carry out section 410 by not later than 90 days following enactment. The rule implements the statutory instruction regarding alternative means of securing certifications of need with a minimum of regulatory gloss and without extraneous procedural requirements. Accordingly, the Department believes that final rulemaking is appropriate and that delaying implementation to await public comment would be contrary to the public interest. Nevertheless, HUD invites comments on the manner in which section 410 of the Act has been implemented and will be considering adjustments in the procedures set out in the rule. Any comments received within a 30-day period will be carefully considered in carrying out this assessment.

The catalog of Federal Domestic Assistance program number is 14.129.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

Accordingly, 24 CFR Part 232 is amended as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 is revised to read as follows:

Authority: Secs. 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 232.1, paragraph (i) is revised to read as follows:

§ 232.1 Definitions.

* * * * *

(i) "Nursing Home" means a public facility, proprietary facility or a facility of a private nonprofit corporation or association, licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. In all such facilities, the nursing care and medical services must be prescribed by, or performed under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

* * * * *

3. Section 232.6 is revised to read as follows:

§ 232.6 Required certificates.

(a)(1) Except as provided in paragraph (a)(2) of this section, every application for insurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) If an appropriate State agency does not exist, or if the State agency exists but is not empowered to provide a certification that there is a need for the nursing home or intermediate care facility or combined home and facility as required by paragraph (a)(1)(i) of this section, the Secretary shall not insure any mortgage under this section unless the State in which the home or facility or combined home and facility is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that—

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed home or facility or combined home and facility on, and its relationship to, other health care facilities and services, the percentages of excess beds, demographic projections, alternative health care delivery systems and the reimbursement structure of the home, facility, or combined home and facility;

(iii) Is certified as acceptable by an appropriate State agency or official, and is addressed to and acceptable to the Secretary in form and substance; and

(iv) In the event the State does not prepare the study, is prepared by a financial consultant who is selected by the State and is approved by the Secretary.

The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required by this paragraph.

(b) In the case of a small intermediate care facility for the mentally retarded or developmentally disabled, housing less than 50 individuals, the State program agency or agencies responsible for licensing, certifying, financing, or monitoring the facility or home may, in lieu of the certification of need requirement of paragraph (a)(1)(i) of this section, provide the Secretary with written support identifying the need for the facility or home.

(c) Every application for insurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(d) No mortgage shall be insured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

Dated: April 18, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9797 Filed 5-2-88; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Removal of Regulatory Language Made Obsolete by Amendments to the ADEA and Reenactment of the Exemption for Tenured Faculty; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulations; correction.

SUMMARY: This document amends the Commission's ADEA regulations to correct an oversight by the Office of the Federal Register in the printing of a regulation appearing in the February 29, 1988 issue of the **Federal Register** at 53 FR 5971. The revised regulation appearing in this document reflects changes made in 1986 to the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq. See generally* Age Discrimination in Employment Amendments of 1986, Pub. L. No. 99-592, 100 Stat. 3342 (1986). Specifically, these amendments/revisions remove language made obsolete by the lifting of the Act's age 70 cap. These changes in the law generally became effective on January 1, 1987 (exceptions may apply in situations involving collective bargaining agreements).

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James E. Cooke, Attorney Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507, (202) 634-6423.

In FR Doc. 88-4219 appearing in the **Federal Register** of February 19, 1988 at 53 FR 5971, item number 4, is corrected to read as follows:

4. Section 1625.8 is revised to read as follows:

§ 1625.8 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that * * * It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act except that no such seniority system * * * shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual. * * *

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers.

(b) Adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act.

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will not be considered a bona fide seniority system within the meaning of the Act.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. The "bona fides" of such a system will be closely scrutinized to ensure that such a system is, in fact, bona fide under the ADEA.

Signed this 18th day of April, 1988 at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-9731 Filed 5-2-88; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF EDUCATION

34 CFR Part 33

Program Fraud Civil Remedies Act Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adopts new regulations implementing the Program Fraud Civil Remedies Act of 1986 (PFCRA). The PFCRA requires the Secretary to issue implementing regulations. These final regulations provide in detail what types of fraud and false statement are covered by the PFCRA and the procedures the Department of Education will use to enforce the PFCRA.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Sarah L. Kemble, Office of the General Counsel, U.S. Department of Education, Room 4121, 400 Maryland Avenue SW., Washington, DC, 20202; (202) 732-2730.

SUPPLEMENTARY INFORMATION: (a) The PFCRA reflects congressional concern about the large number of unchecked false and fraudulent claims and statements that collectively are causing a substantial loss of Federal funds and threatening the integrity of Federal programs. To prosecute smaller cases in the courts costs the Federal Government more than it can recover in criminal and civil penalties. Thus, it has not been practical for the Government to prosecute all these cases through the Federal court system under the

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applicable pre-existing civil and criminal statutes. The PFCRA is meant to remedy this situation. It does not create new types of violations but, instead, provides for administrative rather than judicial enforcement of the smaller cases, which is not as costly or time consuming.

(b) On July 22, 1987 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the Federal Register, (52 FR 27650).

(c) These final regulations make several substantive changes, including those made because of public comments on the NPRM. In addition, the regulations make a number of clarifying and editorial changes to the NPRM.

Analysis of Comments and Substantive Changes

In response to the Secretary's invitation in the NPRM, three parties—one of which represented a number of States—submitted comments on the proposed regulations. An analysis of the comments and of the substantive changes in the regulations since publication of the NPRM follows.

Definitions. (Section 33.2)

Comment: All three parties commented on the definitions section. Two of the parties—including the one representing a number of States—argued that the proposed definition of "person" went beyond the Act by including States, other public political entities, and Indian tribes.The commenters recommended that the Secretary delete reference to these entities.

The other party felt that the proposed definition of "representative," limiting that term to attorneys, was too restrictive and unfair to persons who could not afford an attorney. The commenter recommended that administrative law judges (ALJs) have the discretion to determine on a case-by-case basis whether a non-attorney was qualified to be a representative.

Discussion: With regard to the definition of "person", the Secretary has decided that the commenter has provided the better legal interpretation. As the commenter noted, the governing statute (31 U.S.C. 3801(a)(6)) contains a definition of "person" which does not mention States or other public entities; and the legislative history does not reflect any Congressional intent to include them. Under these circumstances, the executive branch should not imply that Congress meant to cover States and other public entities.

As to who might be qualified to serve as a representative, the governing statute (31 U.S.C. 3808(g)(2)(F)) specifies that the Secretary shall by regulation promulgate procedures to permit any person alleged to be liable for fraud under the Act to be "represented by counsel or such other qualified representative as the authority head may specify in such regulations." The Secretary interprets this provision to require some regulatory standards for representatives other than attorneys. On further reflection, the Secretary also agrees with the commenter that the definition should permit a defendant who might not be able to afford counsel to choose a non-attorney representative, provided that the defendant in making that choice appreciates the nature and serious consequences of a PFCRA proceeding.

Changes: The Secretary has revised the definition of "person" to delete States, other public political entities, and Indian tribes.

The Secretary has revised the definition of "representative" to include a non-attorney designated in writing by a party, if the party certifies that he or she understands the nature of a PFCRA proceeding and its consequences, and understands the right to self-representation. See discussion below of a corresponding change to § 33.18, authorizing an ALJ to disqualify an ineffective non-attorney representative.

Default on Failure to File an Answer. (Section 33.10)

Comment: One party had two comments regarding this section. The first comment concerned the automatic imposition of the maximum penalty and assessment allowed under the statute (that is, $5000, and, for a false claim, twice the amount of a claim on which the Government has made payment). The commenter asserted that the automatic penalty is not in keeping with the statute and is too harsh because it could result in liability out of proportion to the degree of wrongdoing. In this connection the commenter recommended that the ALJ should be given the discretion to impose a penalty in an amount that is related to the magnitude of the wrongdoing. The commenter also criticized—as too vague and too harsh—the proposed requirement that default judgment must be entered unless "extraordinary circumstances" excuses the default (paragraphs (e), (f), and (j)). The commenter suggested that the regulations state a non-exclusive list of circumstances excusing default.

Discussion: The regulations contain ample safeguards to protect a responsible person from default judgment and unfair penalties and assessments. The defendant is formally notified twice before a default judgment can be imposed (§§ 33.7; 33.10(b)). An additional safeguard results from a change to the NPRM (§ 33.9), described elsewhere in this preamble. The defendant also has an opportunity to demonstrate that extraordinary circumstances excuse a failure to file a timely answer; and the defendant may appeal to the Secretary an ALJ's decision denying his or her motion to reopen for extraordinary circumstances (§ 33.10(f), (h)). There is also opportunity for settlement or compromise in appropriate cases at any stage of the enforcement process (§ 33.46).

The Congress has determined that $5,000, plus twice the amount of a paid claim, is not in itself an excessive consequence for a willful false claim. The commenter's recommendation could put ALJs in the untenable position of having to exercise discretion if a defendant has failed to produce the relevant information. The recommendation could also defeat the intent of the Congress by enabling a defendant to gain an advantage by willful default.

With regard to circumstances that would excuse default, the regulations contemplate excusing default only in unusual situations in which the defendant's failure to respond is unavoidable. All relevant surrounding factors would have to be considered in determining this question. To attempt to enumerate a list of situations excusing default could be misleading.

In addition to studying all public comments, and making appropriate changes, the Secretary has on review made other changes to the NPRM as follows:

Definitions. (Section 33.2)

Discussion: As it was written in the NPRM, the definition of the term "Reviewing official" failed to include the condition stated in section 3801(a)(8)(B) of the governing statute, that the "Reviewing official" must be serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Change: The Secretary has added this condition to the regulatory definition.

Answer. (Section 33.9)

Discussion: The Secretary is concerned that, on occasion, a party might lack sufficient time to file a detailed answer within the established period. If the party's inability to meet this deadline is based on a valid reason, the Secretary feels that an extension may be warranted.

Change: The Secretary has added to § 33.9 a new paragraph (c) giving a party that can demonstrate good cause an opportunity to file a general answer within the prescribed 30-day time limit and to file the more detailed answer within an additional 30 days.

Authority of the ALJ. (Section 33.18)

Comment: In connection with the definition of "representative" (§ 33.2), a commenter recommended that the definition should be expanded to permit non-attorney representation and that ALJs have the discretion to determine on a case-by-case basis whether a non-attorney was qualified to be a representative.

Discussion: The Secretary has expanded the definition of "representative" (see *"Definitions—§ 33.2"*, above). The PFCRA does not permit the Secretary to permit the general standard as to who qualifies as a representative to be decided by ALJs on a case-by-case basis. To do this would also impose an unwarranted affirmative burden on ALJs. The Secretary, however, believes that it would be legally sound as well as practical and ethical to authorize an ALJ to disqualify a non-attorney representative who in the ALJ's judgment is incapable of rendering reasonably effective assistance. The Supreme Court defined the standard of reasonably effective assistance in the case of *Strickland* v. *Washington*, 466 U.S. 668 (1984).

Change: The Secretary has added a new paragraph (b)(2) to § 33.18, giving ALJs the authority to determine that a non-attorney representative is incapable of rendering reasonably effective assistance, and to disqualify such a representative.

Reconsideration of initial decisions. (Section 33.38)

Discussion: As written in the NPRM, paragraph (f), read together with § 33.39(b)(1), could have been read to preclude appeal by the defendant to the Secretary during the pendency of a reconsideration motion.

Change: The Secretary has revised paragraph (f) and added a new paragraph (g) to make it clear that the defendant may appeal an ALJ decision to the Secretary at any time within during the prescribed time limit for appeal, regardless of whether or not a motion for reconsideration is made (see statement below with respect to "Appeal to Department head" (§ 33.39)).

Appeal to Department head. (Section § 33.39)

Discussion: As it was previously written, paragraph (b)(1) could have been read to preclude appeal by the defendant of an ALJ decision during the pendency of a reconsideration motion.

Change: The Secretary has revised paragraph (b)(1) to make it clear that a motion by the Department for reconsideration of an ALJ decision does not preclude the defendant from appealing that decision to the Secretary at any time during the prescribed time limit for appeal. However, a motion for reconsideration automatically stays consideration of the appeal pending resolution of the motion.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established by that order.

Paperwork Reduction Act of 1980

The regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Educational Impact

Based on a review of the rule-making record the Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 33

Administrative practice and procedure, Fraud, Investigations, Law enforcement, Lawyers, Penalties.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: April 7, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 33 to read as follows:

PART 33—PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

33.1 Basis and purpose.
33.2 Definitions.
33.3 Basis for civil penalties and assessments.
33.4 Investigation.
33.5 Review by the reviewing official.
33.6 Prerequisites for issuing a complaint.
33.7 Complaint.
33.8 Service of complaint.
33.9 Answer.
33.10 Default upon failure to file an answer.
33.11 Referral of complaint and answer to the ALJ.
33.12 Notice of hearing.
33.13 Parties to the hearing.
33.14 Seperation of functions.
33.15 Ex parte contacts.
33.16 Disqualification of reviewing official or ALJ.
33.17 Rights of parties.
33.18 Authority of the ALJ.
33.19 Prehearing conferences.
33.20 Disclosure of documents.
33.21 Discovery.
33.22 Exchange of witness lists, statements and exhibits.
33.23 Subpoenas for attendance at hearing.
33.24 Protective order.
33.25 Fees.
33.26 Form, filing and service of papers.
33.27 Computation of time.
33.28 Motions.
33.29 Sanctions.
33.30 The hearing and burden of proof.
33.31 Determining the amount of penalties and assessments.
33.32 Location of hearing.
33.33 Witnesses.
33.34 Evidence.
33.35 The record.
33.36 Post-hearing briefs.
33.37 Initial decision.
33.38 Reconsideration of initial decision.
33.39 Appeal to Department head.
33.40 Stays ordered by the Department of Justice.
33.41 Stay pending appeal.
33.42 Judicial review.
33.43 Collection of civil penalties and assessments.
33.44 Right to administrative offset.
33.45 Deposit in Treasury of United States.
33.46 Compromise or settlement.
33.47 Limitations.

Authority: 31 U.S.C. 3801–3812, unless otherwise noted.

§ 33.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, 6101 through 6104, 100 Stat. 16674 (October 21, 1986), to be codified at 31 U.S.C. 3801 through 3812. This law (31 U.S.C. 3809) requires each Federal department head to promulgate regulations necessary to implement the provisions of the statute.

(Authority: 31 U.S.C. 3809)

(b) *Purpose.* This part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Department or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for those penalties and assessments.

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(Authority: 31 U.S.C. 3809)

§ 33.2 Definitions.

As used in this part:

"ALJ" means an Administrative Law Judge in the Department appointed pursuant to 5 U.S.C. 3105 or detailed to the Department pursuant to 5 U.S.C. 3344.

(Authority: 31 U.S.C. 3801(a)(7)(A))

"Benefits", as used in the definition of "statement," means anything of value, including but no limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(Authority: 31 U.S.C. 3809)

"Claim" means any request, demand, or submission—

(a) Made to the Department for property, services, or money (including money representing grants, cooperative agreements, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Department or to a party to a contract or agreement with the Department—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, cooperative agreements, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded;

(ii) Will reimburse the recipient or party for any portion of the money paid on that request or demand; or

(iii) Will guarantee or reinsure any portion of a loan made by the party; or

(c) Made to the Department which has the effect of decreasing an obligation to pay or account for property, services, or money.

(Authority: 31 U.S.C. 3801(a)(3))

"Complaint" means the administrative complaint served by the reviewing official on the defendant under § 33.7.

(Authority: 31 U.S.C. 3809)

"Defendant" means any person alleged in a complaint under § 33.7 to be liable for a civil penalty or assessment under § 33.3.

(Authority: 31 U.S.C. 3809)

"Department" means the United States Department of Education.

(Authority: 31 U.S.C. 3809)

"Department head" means the Secretary or Under Secretary of the United States Department of Education.

(Authority: 31 U.S.C. 3801(a)(2))

"Government" means the United States Government.

(Authority: 31 U.S.C. 3809)

"Individual" means a natural person.

(Authority: 31 U.S.C. 3809)

"Initial decision" means the written decision of the ALJ required by § 33.10 or § 33.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(Authority: 31 U.S.C. 3803(h))

"Investigating official" means the Inspector General of the Department or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(Authority: 31 U.S.C. 3801(4)(A)(i))

"Knows or has reason to know," means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

(Authority: 31 U.S.C. 3801(5))

"Makes" includes the terms presents, submits, and causes to be made, presented, or submitted.

(Authority: 31 U.S.C. 3802(a))

"Person" means any individual, partnership, corporation, association, or private organization.

(Authority: 31 U.S.C. 3801(a)(6))

"Representative" means,—

(a) an attorney who is a member in good standing of the bar of any State, territory, possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) any other person designated by a party in writing, provided that the designation includes a certification that the party understands the nature and consequences of an administrative enforcement action under this part, and that he or she has the right to representation by counsel or to self-representation.

(Authority: 31 U.S.C. 3803(g)(2)(F))

"Reviewing official" means the General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official; and

(b) Not employed in the organizational unit of the Department in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(Authority: 31 U.S.C. 3801(6))

"Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, cooperative agreement, loan, or benefit from;

the Department, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, cooperative agreement, or benefit, or if the Government will reimburse or reinsure the State, political subdivision, or party for any portion of the money or property under the contract or for the grant, cooperative agreement, loan, or benefit.

(Authority: 31 U.S.C. 3801(9))

§ 33.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed;

shall be subject, in addition to any other remedy that may be prescribed by law,

to a civil penalty of not more than $5,000 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim is considered made to the Department, a recipient, or party when that claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department, a recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section is also subject to an assessment of not more than twice the amount of that claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. The assessment is in lieu of damages sustained by the Government because of that claim.

(Authority: 31 U.S.C. 3802(a)(1))

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement;

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement is considered made to the Department when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department.

(Authority: 31 U.S.C. 3802(a)(2))

(c) No proof of specific intent to defraud is required to establish liability under this section.

(Authority: 31 U.S.C. 3801(5))

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each of those persons may be held liable for a civil penalty under this section.

(Authority: 31 U.S.C. 3802(a))

(e) In any case in which it is determined that more than one person is liable for making a claim under this section of which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any of those persons or jointly and severally against any combination of those persons.

(Authority: 31 U.S.C. 3802(a)(1); 3809)

§ 33.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3604(a) is warranted—

(1) The subpoena so issued must notify the person to whom it is addressed of the authority under which the subpoena is issued and must identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena is required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons therefore, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(Authority: 31 U.S.C. 3804(a))

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(Authority: 31 U.S.C. 3803(a)(1))

(c) Nothing in this section precludes or limits an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(Authority: 31 U.S.C. 3809)

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(Authority: 31 U.S.C. 3803(a)(1))

§ 33.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 33.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 33.3 of this part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 33.7.

(b) The notice must include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 33.3;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

(Authority: 31 U.S.C. 3803(a)(2); 3809(2))

§ 33.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 33.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 33.3(a) with respect to a claim, the reviewing official determines that, with respect to that claim or a group of related claims submitted at the same time the claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 33.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time includes only those claims arising from the same transaction (*e.g.*, grant, cooperative agreement, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section may be construed to limit the reviewing official's authority to join in a single

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complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

(Authority: 31 U.S.C. 3803(b), (c))

§ 33.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 33.8.

(b) The complaint must state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from those claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 33.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of the regulations in this part.

(Authority: 31 U.S.C. 3803(a))

§ 33.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of receipt by the defendant or his representative.

(Authority: 31 U.S.C. 3802(d))

§ 33.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer is deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 33.11 for good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

(Authority: 31 U.S.C. 3803(d)(2), 3809)

§ 33.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 33.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 33.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if those facts establish liability under § 33.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision becomes final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision must be stayed pending the ALJ's decision on the motion.

(f) If, on such a motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision under paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 33.38.

(h) The defendant may appeal to the Department head the decision denying a motion to reopen by filing a notice of appeal with the Department head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal stays the initial decision until the Department head decides the issue.

(i) If the defendant files a timely notice of appeal with the Department head, the ALJ shall forward the record of the proceeding to the Department head.

(j) The Department head decides expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Department head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Department head remands the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Department head decides that the defendant's failure to file a timely answer is not excused, the Department head reinstates the initial decision of the ALJ, which becomes final and binding upon the parties 30 days after the Department head issues that decision.

(Authority: 31 U.S.C. 3809)

§ 33.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

(Authority: 31 U.S.C. 3803(d)(2); 3809)

§ 33.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 33.8. At the same time, the ALJ shall send a copy of the notice to the representative for the Government.

(b) The notice must include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

(Authority: 31 U.S.C. 3803(g)(2)(A))

§ 33.13 Parties to the hearing.

(a) The parties to the hearing are the defendant and the Department.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Department who takes part in investigating, preparing, or presenting a particular case may not, in that case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Department head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ may not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department, including in the offices of either the investigating official or the reviewing official.

(Authority: 31 U.S.C. 3809(i)(2))

§ 33.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(Authority: 31 U.S.C. 3803(g)(1)(A))

§ 33.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. That motion must be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or the objections are deemed waived.

(d) The affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of those facts. It must be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall not proceed further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case must be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Department head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

(Authority: 31 U.S.C. 3803(g)(2)(G))

§ 33.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative (as defined in § 33.2);

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery under § 33.21;

(d) Agree to stipulations of fact or law, which must be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(Authority: 31 U.S.C. 3803(g) (2) (E), (F), (3)(B)(ii))

§ 33.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Disqualify a non-attorney representative (designated as described in the § 33.2 definitions of "representative") if the ALJ determines that the representative is incapable of rendering reasonably effective assistance;

(3) Continue or recess the hearing in whole or in part for a reasonable period of time;

(4) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(5) Administer oaths and affirmations;

(6) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(7) Rule on motions and other procedural matters;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary judgment if there is no disputed issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(15) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

(Authority: 31 U.S.C. 3803(g))

§ 33.19 Prehearing conferences.

(a) The ALJ may schedule perhearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one perhearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues.

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(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement.

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents.

(4) Whether the parties can agree to submission of the case on a stipulated record.

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument.

(6) Limitation of the number of witnesses.

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits.

(8) Discovery.

(9) The time and place for the hearing.

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

(Authority: 31 U.S.C. 3803(g))

§ 33.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 33.4(b) are based, unless those documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 33.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 33.9.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii), 3803(e))

§ 33.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying.

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact.

(3) Written interrogatories.

(4) Depositions.

(b) For the purpose of this section and §§ 33.22 and 33.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained in this part may be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion or a motion for protective order, or both, as provided in § 33.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable determination of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 33.24.

(Authority: 31 U.S.C. 3803(a)(3)(B)(ii))

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena must specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 33.6.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking a verbatim transcript of the deposition, which the party shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

Authority: 31 U.S.C. 3803(g)(3)(B)(ii))

§ 33.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 33.33(b). At the time these documents are exchanged, any party that is permitted by the ALJ to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, shall provide each other party with a copy of the specific pages of the transcript it intends to introduce.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided in paragraph (a) of this Section unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section are deemed to be authentic for the purpose of admissibility at the hearing.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request must specify any documents to be produced and must designate the witnesses and describe their address and location with sufficient particularity to permit the witnesses to be found.

(d) The subpoena must specify the time and place at which a witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 33.6. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if is is less then ten days after service.

(Authority: 31 U.S.C. 3804(b))

§ 33.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may take any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had.

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place.

(3) That the discovery may be had only through a method of discovery other than that requested.

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters.

(5) That the discovery be conducted with no one present except persons designated by the ALJ.

(6) That the contents of discovery or evidence be sealed.

(7) That a deposition after being sealed be opened only by order of the ALJ.

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way.

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii))

§ 33.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage must accompany the subpoena when served, except that if a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

(Authority: 31 U.S.C. 3804(b))

§ 33.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ must include an original and two copies.

(2) Every pleading and paper filed in the proceeding must contain a caption setting for the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper must be signed by, and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of the document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 33.8 shall be made by delivering a copy, or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. If a party is represented by a representative, service must be made upon the representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, is proof of service.

(Authority: 31 U.S.C. 3803(b)(3)(A))

§ 33.27 Computation of time.

(a) In computing any period of time under this part or in an order issued under this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) If the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government are excluded from the computation.

(c) If a document has been served or issued by placing it in the mail, an additional five days is added to the time permitted for any response.

(Authority: 31 U.S.C. 3809)

§ 33.28 Motions.

(a) Any application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged, and must be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to the motion.

(d) The ALJ may not grant a written motion before the time for filing responses to the motion has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(Authority: 31 U.S.C. 3803(g)(3)(A))

§ 33.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section must reasonably relate to the severity and nature of the failure or misconduct.

(c) If a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the request.

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(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

(Authority: 31 U.S.C. 3803(g)(2))

§ 33.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 33.3 and, if so, the appropriate amount of the civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Department shall prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing must be open to the public unless otherwise ordered by the ALJ for good cause shown.

(Authority: 31 U.S.C. 3803 (f), (g)(2))

§ 33.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Department head, upon appeal, evaluate any circumstances that mitigate or aggravate the violation and articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty is imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Department head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements.

(2) The time period over which such claims or statements were made.

(3) The degree of the defendant's culpability with respect to the misconduct.

(4) The amount of money or the value of the property, services, or benefit falsely claimed.

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation.

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss.

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs.

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct.

(9) Whether the defendant attempted to conceal the misconduct.

(10) The degree to which the defendant has involved others in the misconduct or in concealing it.

(11) If the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude the misconduct.

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct.

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers.

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions.

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly.

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section may be construed to limit the ALJ or the Department head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(Authority: 31 U.S.C. 3803(a)(2) (e), (f))

§ 33.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party must have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing must be held at the place and at the time ordered by the ALJ.

(Authority: 31 U.S.C. 3803(g)(4))

§ 33.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts must be exchanged as provided in § 33.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination must be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the party *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

(Authority: 31 U.S.C. 3803(g)(2)(E); 3809))

§ 33.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence if appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighted by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(3) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement are inadmissible to the extend provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All Documents and other evidence offered or taken for the record must be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 33.24.

(Authority: 31 U.S.C. 3803(f)(g)(2)(E))

§ 33.35 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(Authority: 31 U.S.C. 3803 (f))

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Department head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 33.24.

(Authority: 5 U.S.C. App. 2, section 11)

§ 33.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing these briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

(Authority: 31 U.S.C. 3803 (g)(1)(2)(E))

§ 33.37 Initial decision.

(a) The ALJ shall issue an initial decision, based only on the record, that contains findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact must include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions of the complaint, violate § 33.3.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that the ALJ finds in the case, such as those described in § 33.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Department head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reasons for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Department head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

(Authority: 31 U.S.C. 3803(h)(i))

§ 33.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt is presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every motion under paragraph (a) of this section must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motion are allowed only upon request to the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Department head in accordance with § 33.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Department head in accordance with § 33.39.

(Authority: 31 U.S.C. 3809)

§ 33.39 Appeal to Department head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the decision to the Department head by filing a notice of appeal with the Department head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues a final decision. However, if another party files a motion for reconsideration under § 33.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Department head may extend the initial 30-day period for an additional 30 days if the defendant files with the Department head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Department head, and the time for filing motions for reconsideration under § 33.38 has expired, the ALJ shall forward the record of the proceeding to the Department head.

(d) A notice of appeal must be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

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(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Department head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Department head does not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Department head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present that evidence at the hearing, the Department head shall remand the matter to the ALJ for consideration of the additional evidence.

(j) The Department head affirms, reduces, reverses, compromises, remands, or settles any penalty or assessment, determined by the ALJ in any initial decision.

(Authority: 31 U.S.C. 3803(i))

(k) The Department head promptly serves each party to the appeal with a copy of the decision of the Department head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(Authority: 31 U.S.C. 3803(i)(2))

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Department head serves the defendant with a copy of the Department head's decision, a determination that a defendant is liable under § 33.3 is final and is not subject to judicial review.

(Authority: 31 U.S.C. 3805(a)(2))

§ 33.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Department head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Department head stays the process immediately. The Department head orders the process resumed only upon receipt of the written authorization of the Attorney General.

(Authority: 31 U.S.C. 3803(b)(3))

§ 33.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Department head.

(b) No administrative stay is available following a final decision of the Department head.

(Authority: 31 U.S.C. 3809)

§ 33.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Department head imposing penalties or assessments under this part and specifies the procedures for the review.

(Authority: 31 U.S.C. 3805)

§ 33.43 Collection of civil penalties and assessments.

Section 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for those actions.

(Authority: 31 U.S.C. 3806(b))

§ 33.44 Right to administrative offset.

The amount of any penalty or assessment that has become final, or for which a judgment has been entered under § 33.42 or § 33.43, or any amount agreed upon in a compromise or settlement under § 33.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

(Authority: 31 U.S.C. 3806)

§ 33.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part are deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

(Authority: 31 U.S.C. 3807(b))

§ 33.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(Authority: 31 U.S.C. 3809)

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(Authority: 31 U.S.C. 3803(j))

(c) The Department head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 33.42 or during the pendency of any action to collect penalties and assessments under § 33.43.

(Authority: 31 U.S.C. 3803(i)(2)(C))

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 33.42 or of any action to recover penalties and assessments under 31 U.S.C. § 3806.

(Authority: 31 U.S.C. 3806(f))

(e) The investigating official may recommend settlement terms to the reviewing official, the Department head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Department head, or the Attorney General, as appropriate.

(Authority: 31 U.S.C. 3809)

(f) Any compromise or settlement must be in writing.

(Authority: 31 U.S.C. 3809)

§ 33.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 33.8 within six years after the date on which the claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 33.10(b) is deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

(Authority: 31 U.S.C. 3808)

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Proposed Rules

Federal Register
Vol. 53, No. 85
Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations of the United States Department of Agriculture (Department) which implement the Equal Access To Justice Act (Act) (Pub. L. No. 96-481, as amended by Pub. L. No. 99-80, and Pub. L. No. 99-509). The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative and court proceedings. These proposed revised rules, which reflect the changes in the law made by Pub. L. No. 99-80, and Pub. L. No. 99-509, establish procedures for the submission and consideration of applications for such awards.

DATE: Comments must be received on or before June 2, 1988.

ADDRESS: Interested persons may submit written comments to: Kenneth E. Cohen, Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-5565.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, USDA (202) 447-6035.

SUPPLEMENTARY INFORMATION: These proposed revised rules are based upon the revised model rules issued by the Administrative Conference of the United States on May 6, 1988, and except for modifications necessary to adapt them to the use of this Department and conform them to the provisions of the Department Uniform Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR 1.130 *et seq.*), the revised model rules have been proposed for adoption with only a few significant changes. In some provisions, the language of the revised model rules remained the same as that in the original model rules. However, the Department had not adopted the original model rules language when it promulgated its original rules. The Department now proposes to use the language of the revised model rules in most instances because it conveys more clearly the purpose of, and better implements, the Act. A synopsis of significant proposed changes follows. Unless otherwise indicated, all proposed amendments conform to the language of the revised model rules.

Section 1.180, "Definitions," would be amended to add definitions of "Adjudicative Officer," "Agency," "Days," and "Department."

Section 1.181, "Purpose of these rules," would be amended to delete the words "in the proceeding" where that phrase modifies the Department position.

Section 1.182, "When the Act applies," would be amended to reflect the new dates of application. It is proposed to include a provision making proceedings subject to Chapter 38 of title 31, United States Code, relating to administrative remedies for false claims and statements, effective October 21, 1986, the date of enactment of Pub. L. No. 99-509.

Section 1.183, "Proceedings covered," paragraph (a), would be amended by adding proceedings under the Contract Disputes Act of 1978 (41 U.S.C. 605) as adversary adjudications covered by the Act. Language excepting such proceedings would be deleted. It would also be amended to include the Animal Quarantine Act and the Plant Quarantine Act to the list of proceedings covered as adversary adjudications. The two acts were inadvertently omitted when the regulations were originally published. In addition, pursuant to Pub. L. No. 99-509, hearings conducted pursuant to Chapter 38 of title 31, United States Code would be added as an adversary adjudication covered by the Act. A new paragraph (b) is proposed to be added regarding the failure of the Department to list a particular type of adjudication. The proposed provision would allow a party to file an application, where the proceeding is not listed in the section, and thereby raising the issue of whether the proceeding is covered. Paragraph (b) appeared in the original model rules, but was omitted from the original Department rules. Former paragraph (b) would be redesignated paragraph (c).

Section 1.184, "Eligibility of applicants," would be amended to reflect the new net worth figures for individuals, $2 million, and corporations, $7 million, and to add "unit of local government" as a potential eligible applicant.

Section 1.185, "Standards for awards," would be amended to clarify the meaning of the "position of the agency." In accordance with the model rules, language permitting avoidance of an award by showing reasonableness has been proposed for deletion.

Section 1.186, "Allowable fees and expenses," would be amended to conform to the revised model rules to provide more detail on the basis of awards.

A new § 1.187, "Rulemaking on maximum rates for attorney fees," is proposed to be added. The new section would provide that, if warranted by increased cost of living or special circumstances, the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour. Any such rulemaking would be pursuant to informal rulemaking procedures under the Administrative Procedure Act. It also provides that any person may petition for such rulemaking in accordance with the regulations at 7 CFR 1.28. This provision appeared in the original model rules and is proposed to be added to conform to the revised model rules.

Current § 1.187, "Delegations of authority," is proposed to be redesignated as § 1.189. It is proposed to amend the section to note specifically that the Board of Contract Appeals is authorized by statute to take final action in proceedings covered by § 1.183(a)(1)(ii).

A new § 1.188, "Award against other agencies", is proposed to be added. The new provision would allow a prevailing party to receive an award or portion of the award where it prevails over another agency of the United States participating in a proceeding before the Department. This provision appeared in the original model rules and is proposed

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to be added to conform to the revised model rules.

Current § 1.188, "Contents of application," would be redesignated § 1.190, and would be amended to delete the words "in the proceeding" where that phrase modifies the Department position. Paragraph (b) is proposed to be amended to substitute the new net worth figures of $2 million for individuals, and $7 million for corporations.

Current § 1.189, "Net worth exhibit," would be redesignated as § 1.191, and paragraph (b), regarding an applicant's objection to disclosures of the net worth exhibit, would be amended. Provisions requiring an applicant to demonstrate why public disclosure would adversely affect the applicant and why disclosure is not in the public interest have been proposed for deletion. The Department does not believe it is necessary to put an additional burden on the applicant over and above that provided for under the provisions of the Freedom of Information Act (5 U.S.C. 552).

Current § 1.190, "Documentation of fees and expenses," is proposed for redesignation as § 1.192, and as in the original rules, the requirements for documentation are set out in greater detail than in the revised model rules. We believe this detail will expedite disposition of applications. Paragraph (d) would be amended to clarify that the adjudicative officer may require provision of information substantiating any fees, as well as expenses. A further amendment would make the procedures of § 1.199 applicable to the provision of this information.

Current § 1.191, "Time for filing application," is proposed for redesignation as § 1.193. Paragraph (a) would be amended to allow filing of an application whenever an applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. This broadening of filing times conforms to both the original and revised model rules. Paragraph (c) would be redesignated paragraph (b) and amended to simplify the meaning of "final disposition." Paragraph (b) would be redesignated paragraph (c) and amended to specify that no decision on a fee application can be made where the United States has appealed the underlying merits to a court.

Current § 1.192, "Filing and service of documents," is proposed to be redesignated as § 1.194.

Current § 1.193, "Answer to application," would be redesignated as § 1.195 and amended to provide that failure of agency counsel to file an answer in the absence of an extension of time for filing or a statement of intent to negotiate, may be treated as consent to the award requested. A further amendment would require a statement of intent to negotiate to be filed jointly by the applicant and agency counsel. These amendments would conform the Department rules to the revised model rules.

Current §§ 1.194 through 1.196 would be redesignated as §§ 1.196 through 1.198, respectively.

Current § 1.197, "Further proceedings," would be redesignated as § 1.199 and amended to clarify the circumstances under which "pertinent discovery or an evidentiary hearing" is appropriate. Amendments to the Act provide that substantial justification determinations can be made only on the basis of the administrative record made in the adversary adjudication for which the fees are sought.

Current § 1.198, "Decision," would be redesignated as § 1.200 and amended to include a provision that would require the adjudicative officer to allocate fee awards among the agencies involved where an award is sought against more than one agency. Another amendment would clarify the requirement that the adjudicative officer must make "findings on" whether the Department position was substantially justified, whether there was undue protraction of the proceedings by the applicant, or whether special circumstances make an award unjust. This proposed amendment conforms to provisions in the original and revised model rules which were not included in the original Department rules.

Current §§ 1.199 through 1.201, would be redesignated as §§ 1.201 through 1.203, respectively.

References to "Judge" in §§ 1.184, 1.186, 1.191, 1.192, 1.195, 1.197, 1.198, and 1.200, would be replaced by references to "adjudicative officer." This proposed change was necessitated in part by the amendment of the Act to provide specifically for proceedings under the Contract Disputes Act of 1978. The definition of "judge" in 7 CFR 1.132, incorporated by reference by § 1.180(a), was too restrictive.

This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that these proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

PART 1—[AMENDED]

Accordingly, it is proposed to revise 7 CFR, Subtitle A, Part 1, Subpart J to read as follows:

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

Sec.

1.180 Definitions.
1.181 Purpose of these rules.
1.182 When the Act applies.
1.183 Proceedings covered.
1.184 Eligibility of applicants.
1.185 Standards for awards.
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Authority: 5 U.S.C. 504(c)(1).

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

General Provisions

§ 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 1.132 of this part) are incorporated into and made applicable to this subpart.

(b) "Adjudicative Officer" means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by the Act.

(c) "Agency" means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) "Agency counsel" means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) "Days" means calendar days.

(f) "Department" means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Department will use to make awards.

§ 1.182 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which shall be effective on or after October 21, 1986. It also applies to any adversary adjudication commenced on or after October 1, 1984, and disposed of finally before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1.183 Proceedings covered.

(a)(1) These rules apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of this Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which this Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The proceedings covered are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Act (21 U.S.C. 104)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Quarantine Act (7 U.S.C. 163)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of this Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in §§ 1.181 through 1.186 and in §§ 1.190 through 1.193 of this subpart.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant

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directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), this Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with this Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of this Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation. Unless the applicant is an individual, the application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes this Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of this Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1,193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate

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further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145 (b) through (i) and 1.146(b) of this part.

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Date: April 4, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-9618 Filed 5-2-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would make reserve supply plants subject to minimum shipping standards during the months of August through December in order to be pool plants under the Upper Midwest Federal milk order. The plants would be required to ship to pool distributing plants 5 percent of the total milk production received from dairy farmers or diverted by the plant operator during each month of August and December, and 8 percent of such receipts during each of the months of September, October and November in order to maintain their pool status. Two or more reserve supply plants would be allowed to have their receipts and shipments to pool plants considered on a combined, or unit, basis to meet the minimum shipping requirements or a "call" by the market administrator for milk supplies needed for Class I, or fluid, use. However, each handler in such a unit would have to ship at least 5 percent of its receipts on an individual basis during one month of any August through December period in order to qualify for pool status during the month of December.

A proposal to reduce the current requirement that a daily average of at least 25,000 pounds of Grade A milk from dairy farmers be received at a pool reserve supply plant is denied.

The decision is based on the record of a public hearing held July 7–8, 1987, in Bloomington, Minnesota. The proposed changes were submitted and supported by six cooperative associations that represent a substantial proportion of producers who supply milk to the market. The changes are necessary to assure an adequate supply of milk in an orderly manner for Class I (fluid) use in the Upper Midwest marketing area. Cooperative associations will be polled to determine whether producers favor the issuance of the amended order.

Other issues considered at the hearing were whether the operator of one or more distributing plants and one or more soft-products [cream items, cottage cheese and yogurt but excluding ice cream) plants located within the marketing area should be allowed to have such plants considered as one plant or unit, for pooling purposes, and whether the proposals considered at the hearing should be handled in an expedited manner. A separate decision on those issues was issued September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Partial Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Order amending the Order: Issued September 28, 1987; published October 2, 1987 (52 FR 36909).

Recommended Decision: Issued January 12, 1988; published January 19, 1988 (53 FR 1360).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Bloomington, Minnesota, on July 7–8, 1987. Notice of such hearing was issued on June 19, 1987, and published June 25, 1987 (52 FR 23843).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service, on January 12, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Three paragraphs are added following paragraph 38.

2. Four paragraphs are added following paragraph 40.

3. Four paragraphs are added following paragraph 48.

4. Two paragraphs are added following paragraph 49.

The material issue on the record of the hearing that is dealt with in this decision is whether reserve supply plants should be required to ship minimum percentages of their producer milk receipts to pool distributing plants in order to qualify for pool plant status under the order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof: *Reserve supply plant shipping standards.*

The Upper Midwest order should be changed to require pool reserve supply plants to ship a minimum percentage of their receipts to pool distributing plants during the months of August through December. Handlers would be allowed to have their receipts and shipments considered as a unit for purposes of determining whether pooling standards have been met. However, each plant in a unit would have to deliver at least 5 percent of its producer receipts to pool distributing plants during one month of the August through December period in order to qualify for pooling during the month of December. At the present time, reserve supply plants are subject to no minimum shipping requirements to qualify for pooling unless the market administrator finds that milk supplies for Class I use are needed at pool distributing plants and issues a "call" for such supplies.

The change was proposed by six cooperative associations that represent a majority of the producers supplying milk to the Upper Midwest market. The cooperative association are Land O'Lakes, Inc. (LOL), Mid-America Dairymen, Inc. (Mid-Am), Cass-Clay Creamery, Inc., Wisconsin Dairies Cooperative, First District Association and Associated Milk Producers, Inc. (AMPI). Representatives of five of the proponents and a witness for Marigold Foods, the operator of three fluid milk plants under the order, testified in favor of the proposal. The proposed changes would require reserve supply plants to ship a minimum of 5 percent of their total supply of Grade A producer milk to pool distributing plants during the months of August and December, and 8 percent during September through November, in order to be pool plants. Under the proposal, reserve supply plants that meet the shipping standards during the months of August through December would continue to be pooled for the following months of January through July. The proposal would allow two or more reserve supply plants operated by the same handler to be pooled as a unit by having their receipts and shipments to distributing plants considered on a combined basis. Under the proposal, the minimum shipping standards could be reduced on a temporary basis by the Director of the Dairy Division. The present provision allowing the market administrator to issue a "call" for additional needed supplies of milk for Class I use would remain in the order. Proponents' proposal would reduce the current requirement that a reserve supply plant assemble at least a daily average milk supply of 25,000 pounds to a 25,000-pound requirement on at least 2 consecutive days of each month. Adoption of the proposal was opposed by witnesses testifying on behalf of two cooperative associations: Farmers Union Milk Marketing Cooperative (Farmers Union) and National Farmers Organization (NFO); and on behalf of Kraft, Inc., Universal Foods, and the Trade Association of Proprietary Plants (TAPP).

The LOL witness testified that LOL operates eight reserve supply plants and a distributing plant under the order, and supplies a significant part of the milk needed for Class I use at two other pool distributing plants. The witness stated that distributing plants in the Upper Midwest marketing area have experienced continuing difficulty in securing dependable supplies of milk in the absence of a "call" from the market administrator requiring reserve supply plants to ship milk for fluid needs. He attributed the reluctance of reserve

supply plant operators to ship milk to distributing plants to the substantial costs incurred in supplying milk for Class I use. The witness stated that when a "call" is issued, plant operators can be assured that most of their competitors are sharing equitably in the cost of supplying Class I milk to the market, but described the issuance of a "call" for milk as a procedure too cumbersome and defective to be used to secure milk supplies for tha fluid needs of the market on a regular basis.

The witness explained that, in shipping milk to distributing plants for Class I use, reserve supply plant operators incur additional costs of running duplicate Grade A and Grade B farm bulk pickup routes instead of operating one commingled route, and hauling milk from supply plants to distributing plants. He estimated that such costs would be about 50 cents per hundredweight for milk hauled 75 miles. In addition, the witness cited the cost of releasing Grade A milk for Class I use from a supply plant that is also a manufacturing plant. He stated that under-utilization of a manufacturing plant's capacity because of the necessity of shipping milk for Class I use may cost $10,000 per day, or range from $1.25–$1.43 per hundredweight of Class I milk shipped. The witness pointed out that, in view of the unreimbursed costs of shipping Class I milk to distributing plants, plant operators that do not ship enjoy a competitive advantage over those that do. He stated that it is more expensive for supply plant operators to remove milk from their manufacturing operations during the fall, when manufacturing plants are operating at below-capacity levels because of lower levels of milk production, than at any other time of the year.

The LOL witness testified that the only factors that serve to offset the costs of releasing milk for Class I use are location adjustments provided under the order and over-order premiums. He said that the location adjustment on most reserve supply plants is only 6 cents, or a small fraction of the cost of supplying milk for Class I use, and that the premium customarily charged in addition to the order price for milk delivered for Class I use during the fall months is 60 cents per hundredweight. The witness stated that the economic incentives available to reimburse reserve supply plant operators for shipping Class I milk will cover the costs of such shipments only for those reserve supply plants located relatively near the market, and are, for the most part, inadequate to assure a large enough supply of milk for Class I use.

The witness testified that the threat of a "call" for Class I milk shipments by the market administrator under the present order has served as a shipping requirement for many years, but that its effectiveness has diminished recently in view of declining milk supplies. He stated that the "call" provision had to be used for three consecutive months in the fall of 1986 in order to obtain an adequate supply of Class I milk for distributing plants. The witness characterized use of the "call" as assuring that most competitors are sharing equitably in the cost of supplying Class I milk.

According to the LOL witness, all reserve supply plants that share in the market's Class I returns by sharing in the order's blend price also should share in the burden of supplying Class I milk to fluid milk plants. The witness asserted that mandatory shipping standards are the only reasonable mechanism to insure that all reserve supply plants ship Class I milk at a minimal level. He described minimum shipping requirements as eliminating doubt about whether it will be necessary for reserve supply plants to ship Class I milk to distributing plants. Under the present order provisions, he explained, there is uncertainty on the part of reserve supply plant operators as to whether they will be required to ship milk for Class I use until a call is actually announced, usually about the first day of the month for which deliveries are to be required. The witness further stated that mandatory shipping percentages will encourage reserve supply plant operators to make advance arrangements to supply Class I customers on a regular basis rather than having to find a Class I outlet after a call is announced. He indicated that minimum shipping requirements would encourage reserve supply plant operators to more closely monitor quality discipline at producers' farms and to assure that their plants are capable of delivering high-quality milk to distributing plants. The witness stated that planning and orderly operation of both manufacturing plants and distributing plants, and more orderly movement of milk from production areas to the marketplace, would be enhanced by requiring the timing and volume of milk movements to be established well in advance for the purpose of meeting the order's minimum shipping standards.

The LOL witness supported the cooperatives' proposed 5 percent and 8 percent shipping requirements on the basis that these percentages would not compel reserve supply plants to ship more milk than would be needed at distributing plants, but would be near the actual volume of milk needed from reserve supply plants. The witness stated that approximately half of the milk supplies received at pool distributing plants during August through December 1986 originated at supply and reserve supply plants, and that the total milk supplies from pool sources represented about 17 percent of the producer milk pooled under the order. The witness supplied data indicating that the actual shipments to distributing plants from supply and reserve supply plants during 1986 exceeded the mandatory shipping percentages proposed by proponents. He noted that if the proposed percentage shipping requirements prove to be inadequate or excessive in the future, the market administrator would retain the authority to issue a "call" for increased shipments, and the Director of the Dairy Division would be authorized to reduce the level of shipments required. The LOL witness testified that the months of August through December are the time of year when Class I requirements are greatest, while the opportunity cost to manufacturing operations of supplying milk for Class I use is also greatest. He stated that adoption of minimum performance standards for all pool participants would ease the market supply problems currently experienced during the fall months.

The witness testified in favor of proponents' proposal to require that a reserve supply plant receive at least 25,000 pounds of milk on only two consecutive days during the month instead of the present requirement that such a plant receive a daily average of at least 25,000 pounds of milk. He stated that the original intent of the present provision was to assure that a reserve supply plant operator would have the capability of putting together a tankerload of milk in two days for shipment to distributing plants. According to the witness, the proposed change would continue the original intent, but would allow some savings in the costs of operating reserve supply plants.

A witness representing Wisconsin Dairies stated that the cooperative operates five reserve supply plants under the order. He testified that the Upper Midwest order was designed to further orderly marketing, and had done so quite well for ten years with the "call" provision used only once. However, he stated, use of the "call" provision for three consecutive months during the fall of 1986 was not conducive to orderly marketing. The witness testified that Wisconsin Dairies was already shipping above any anticipated "call" percentage in the fall of 1986 and felt that volunteering to ship additional volumes of milk was not a sound business practice when some reserve supply plant operators were unwilling to serve the fluid milk market. He emphasized that since all reserve supply plants share in the market's Class I returns it is only fair that all should share in serving the fluid milk needs of the market.

A witness testifying on behalf of AMPI stated that AMPI operates eight reserve supply plants under the Upper Midwest order, and supplies milk to eight distributing plants. The witness testified that prior to September 1986 the threat that the "call" provision would be implemented worked well to assure an adequate supply of milk for Class I use. He stated that some suppliers shipped additional milk voluntarily while others gave up milk reluctantly in response to the market administrator's indication that a "call" would be issued if needed Class I milk supplies were not supplied to bottlers. The witness said that suppliers seem reluctant to ship Class I milk under the current marketing conditions of declining production because of the value of additional milk to manufacturing plants, especially during the fall months of the year. He attributed the necessity of using the "call" provision for three consecutive months in 1986 to the common understanding that some suppliers, who are also competitors for producer milk, were shipping little or no milk to distributing plants. He described three months of operating under the "call" provision as having three months of shipping requirements but not knowing what the required percentage would be until each month started .

The AMPI witness compared the percentages required by operation of the "call" provision in September-November 1986 with the proposed percentage requirements and determined that if the proposed requirements had been in effect in the fall of 1986, the small amount of milk in excess of the proposed percentages that would have been required for Class I use could have been obtained easily by negotiations between distributing plant operators and the operators of reserve supply plants. The witness described marketing conditions in the presence of "calls" for three consecutive months as characterized by uncertainty and lack of planning between suppliers and customers, leading to disorderly marketing conditions. He testified that he understood the proposal would allow the Director to increase, as well as decrease, the shipping percentage required of reserve supply plants, or, in a situation that would not allow time for such action by the Director, to allow the market administrator to issue a "call" for additional shipments.

A witness for Mid-Am testified that the association operates five reserve supply plants under the Upper Midwest order. The witness stated that one of the primary purposes of the Federal order is to assure an adequate supply of milk for distributing plants and consumers. He explained that as the amount of milk pooled under the Federal order increases, a smaller percentage of the total volume is needed to supply the market's fluid needs. As a result, he said, an increasing percentage of producer milk is used in manufactured products and handlers become accustomed to using producer milk in their manufacturing plants. The witness stated that the economic benefits to handlers of not shipping milk to distributing plants interfere with the orderly flow of milk for Class I use. However, he asserted, any organization participating in the blend price generated by Class I sales should accept the burden of supplying those sales, even if that burden includes shipping milk two or three hundred miles for Class I use. He observed that the economic incentives provided both under the order and outside the order, such as over-order prices, are insufficient to pull milk away from use in manufacturing plants. At the same time, he said, the order's shipping provisions do not push the milk out of the reserve supply plants unless a "call" is issued. The witness concluded that the "call" provision was not intended to be used on a frequent basis, and that mandatory shipping requirements are the appropriate means of supplying the fluid needs of the market.

The Mid-Am witness suggested that the proposed mandatory shipping standards be allowed to be met by units formed by two or more cooperative associations in addition to the units to be permitted of multiple plants operated by one handler. He opposed allowing proprietary handlers to form units with cooperative associations or with other proprietary handlers. He stated that the benefits of efficiencies resulting from the activities of a unit of cooperative associations would accrue to their dairy farmer members, but that efficiencies achieved by a unit of proprietary handlers may not be passed back to dairy farmers. Mid-Am's proposed modification of the proposed shipping requirements was supported by the witness for LOL who stated that a unit pooling provision for cooperative associations would accustom the associations to working together to increase their efficiency and effectiveness in supplying milk to the market.

A witness for Cass-Clay Creamery, Inc., testified that Cass-Clay operates three distributing plants, one reserve supply plant and three supply plants, all pooled under the Upper Midwest order, and four nonpool manufacturing plants. The witness stated that milk supplies in the vicinity of its Fargo, North Dakota, fluid milk plant have been hard to obtain during the fall months of the last several years. He explained that Fargo was not within the designated area delineated by the market administrator for the "calls" issued for Class I milk shipments in September through November 1986, and that procurement of milk supplies for the Fargo plant was not, therefore, assisted by announcement of a "call." In fact, the witness testified, the two or three reserve supply plants located near the Fargo area from which milk might be available do not, to his knowledge, have Interstate Milk Shippers' (IMS) approval. He stated that without IMS approval such milk supplies would be of no use to the Cass-Clay distributing plant. The witness argued that if the supply of milk continues to decrease, not enough will be available for Class I use. He stated that milk must move to fluid outlets as a result of either price incentives or performance requirements, and concluded that the proposed shipping standards would alleviate the problem of inadequate price incentives and make the marketing of Class I milk more equitable for all market participants.

A witness representing Marigold Foods, a proprietary handler that is a large purchaser of Grade A milk in the Upper Midwest market, testified that adoption of a minimum shipping requirement for reserve supply plants would assure all milk suppliers that producer groups sharing in the order's blend price have performed some of the responsibility of delivering milk to the Class I market. He explained that reserve supply plants are able to pay producers the Federal order blend price for all of their milk, whether any of it is used in Class I or not, and therefore are able to compete with other handlers for a supply of milk that will enable them to operate their manufacturing plants at an optimal level. He stated that required shipping percentages would establish supply patterns by all suppliers

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participating in the pool and may create a climate that would eliminate the need for any future "calls."

The Marigold witness testified that in July 1986 Marigold began to try to secure an adequate supply of milk for the fall period beginning with September 1, 1986. He stated that it quickly became apparent that those suppliers who already supplied Marigold were not going to increase their shipments, and that suppliers who did not already supply Marigold were not going to start doing so. The witness testified that he had notified the market administrator of his difficulty in obtaining milk supplies about August 1, and the market administrator started the procedure required to issue a "call" at that time. After the "call" for September 1986 was issued, he continued, the procurement situation did not improve greatly because suppliers would ship milk to Marigold's plants only until they had fulfilled the "call" requirements. He stated that much of his time in the last half of 1986 was spent in trying to keep Marigold's plants operating, even though "calls" were also issued for October and November.

The witness for Marigold testified that Marigold would like to be able to offer a high enough price for its milk supply so that its plants could be assured of an adequate supply of milk on a year-round basis. However, he pointed out, Marigold cannot pay more than the prevailing price in the market for its milk supply and still be able to compete for sales with handlers paying less. The witness attributed suppliers' reluctance to ship milk for Class I use to their desire to keep their milk supplies for their own manufacturing plants.

A witness representing Kraft, Inc., testified in opposition to the proposed mandatory shipping standards. He explained that Kraft operates a reserve supply plant under the Upper Midwest order, is a regular supplier of milk to the Class I market, and ships to distributing plants a percentage of its total supply approximately equal to the market's percentage of Class I use. The witness asserted that the current provisions of the order are flexible enough to adjust to the changing needs of the market while minimizing regulatory intervention. He stated that use of the call provision during the fall of 1986 accomplished the purpose for which it was intended, of supplying needed milk to pool distributing plants for Class I use. Although he acknowledged the inequity between reserve supply plants that ship milk to the fluid market and those that do not, the witness asserted Kraft's opposition to mandatory percentage requirements. He described mandatory shipping standards as inflexible and stated that their adoption may result in requiring handlers to ship milk to the fluid market in excess of Class I needs.

In the event mandatory shipping requirements are adopted in spite of Kraft's opposition, the Kraft witness suggested modifications to the proposed amendments. First, he stated, the Director of the Dairy Division should have the discretion to reduce the required shipping percentages to zero instead of by 5 percent, as proposed by proponents. He argued that the reason for allowing the Director to adjust shipping percentages is to save the time and expense of a Federal order hearing proceeding, and that there is no point in limiting the Director's discretion for the three months during which 8 percent of a reserve supply plant's receipts are required to be shipped to distributing plants. In addition to allowing a multi-plant handler to qualify more than one reserve supply plant as a unit, as proposed by proponents, the Kraft witness advocated that any group of handlers be allowed to consider their reserve supply plants as a unit for the purpose of meeting the minimum shipping requirements. He stated that allowing all handlers to form such units would maximize the transportation efficiencies available to meet the Class I needs of the market, and would help defray the cost of complying with mandatory shipping percentages for small or poorly-located handlers. Finally, the Kraft witness proposed a modification to the proposed provision that would protect a multiple-plant handler from losing pool status entirely if the percentage shipping requirements are not met. He suggested that when such a handler files a request with the market administrator for pool status for its reserve supply plants, the request should describe the sequence in which plants would be excluded from the unit in the event minimum performance standards are not met.

A witness representing Farmers Union Milk Marketing Cooperative (FUMMC) also opposed the adoption of mandatory shipping requirements. He described such requirements as unnecessary and undesirable in that the percentage of producer milk needed for Class I use in the Upper Midwest marketing area is the lowest in the U.S., averaging only about 13 percent. According to the FUMMC witness, the cause of the problem in getting milk to distributing plants is the unreasonably low handling charges established by the principal cooperatives in the market. He charged that proponent cooperatives own interests in eight distributing plants that distribute milk in the Upper Midwest order area, and that, having kept the cost of obtaining milk supplies low to themselves, they now want the government to require other handlers to give up profitable sales in order to supply milk for Class I use at a loss. The witness also noted that some of proponent cooperatives sell large volumes of manufactured dairy products to the government on a year-round basis. He stated that any mandatory shipping standards should require that milk be used for sales to distributing plants rather than to the Commodity Credit Corporation.

The FUMMC witness testified that proponents favor mandatory shipping percentages in order to assure that handling charges on milk supplied to the fluid market remain at their present level of 50 or 60 cents per hundredweight. He attributed proponents' motive for keeping handling charges low to their desire for making it impossible for other organizations marketing producers' milk to compete for producer milk supplies. The witness stated that four proprietary handlers, three of them small family-owned businesses, had lost their pool status as a result of their failure to meet the shipping percentages required by the "calls" issued during the fall months of 1986. He pointed out that mandatory shipping requirements could be expected to have the same effect on other handlers in similar positions. The FUMMC witness testified that if mandatory shipping requirements are adopted, he would support a provision that would allow proprietary handlers, as well as cooperative associations, to form units for the purpose of meeting the required shipping percentages.

A witness testifying on behalf of National Farmers Organization (NFO) opposed the proposal to require a minimum level of shipments from reserve supply plants to distributing plants. He stated that the present pooling provisions of the Upper Midwest order were designed to accommodate the pooling of an already abundant supply of Grade A milk and the milk of any Grade B producers who wish to upgrade to Grade A, and should continue to do so. The witness described the threat of implementation of the call provisions as the single most effective tool in aligning buyers and sellers, and stated that operating without using the call provision is in the best interests of the market. He explained that without either a "call" for Class I milk supplies or mandatory shipping percentages only milk that is needed for fluid use moves to distributing plants. He observed that milk that is moved for fluid use comes from the closest and most economical sources. The witness said that the entire marketing area has never been included under a "call", but that the area from which shipments are required under a "call" has been large enough so that the burden of supplying the required milk for Class I use has never been borne too heavily by one organization. At the same time, he stated, the "call" area has never been large enough to require very distant milk to be moved or excess shipping costs to be incurred. The witness observed that 34 percent of the milk pooled under the order during December 1986 was produced within the area from which milk was "called" for Class I use during the fall months of 1986.

The NFO representative testified that if mandatory shipping standards were adopted, milk supplies very distant from the metropolitan area would be required to move uneconomically to distributing plants or lose pool status. He used as an example a supply of NFO milk located near Benoit, Wisconsin, that would have to be shipped over 200 miles to the nearest distributing plant at a cost of 72 cents per hundredweight for transportation. Another example cited by the witness was a proprietary reserve supply plant located in eastern North Dakota. According to the witness, the three distributing plants located closest to this proprietary handler are all cooperative-owned, and depend on their own members' milk supplies. As a result, he said, Minneapolis/St. Paul, at a distance of 368 miles from the handler, would be the likeliest market for any milk the handler would be required to ship. The witness stated that the transportation cost of such shipments would be $1.29 per hundredweight. He said that requiring such shipments when more than ample supplies of milk are produced much closer to the market is not in the best interests of the market.

The NFO witness explained that as milk supplies have declined, handlers that have manufacturing operations are not willing to release greater supplies of milk to distributing plants without being adequately compensated for the costs they would incur as a result. The witness introduced data showing that the service charges received for milk supplied to distributing plants in Federal milk order areas surrounding the Upper Midwest are generally somewhat higher (by $.28 to $1.11) than service charges paid by distributing plants in the Upper Midwest order area. He noted that some NFO milk produced within the Upper Midwest milkshed is delivered to pool distributing plants in other Federal order areas and pooled under those orders because the service charges paid by the receiving handlers in those areas return much more money to the cooperative than do sales to Upper Midwest distributing plants.

The witness for NFO stated that the cooperative historically has supplied to distributing plants a higher percentage of its milk supply than the marketwide percentage of producer milk used in Class I, but will no longer ship milk from reserve supply plants without being able to recover direct transportation costs. The witness further warned that if mandatory shipping standards are adopted, NFO would seriously consider reducing its shipments of milk for Class I use to just above the required percentage instead of its current 27-percent level of performance. He predicted that the result of adoption of minimum shipping requirements would be to reduce service charges below their current inadequate level and to generate excessive costs of moving milk unnecessarily from reserve supply plants to distributing plants.

The witness expressed NFO's opposition to reducing the 25,000 pound per day average receipt requirement at reserve supply plants. He described the current standard as minimal, and stated that reducing it would serve no constructive purpose even though one NFO reserve supply plant had failed to be pooled as a result of falling below the required volume of receipts.

A witness testified in opposition to the proposal on behalf of Universal Foods, a proprietary manufacturing plant operator whose producers are pooled through Twin Town Cheese Factory, Inc. Twin Town Cheese Factory is a cheese manufacturing company that operates a reserve supply plant. The witness stated that milk for Class I use is supplied to Upper Midwest distributing plants from the Twin Town plant on a year-round basis at a level that exceeds the "call" percentages announced during the fall of 1986. He stated that in order to obtain an adequate supply of producer milk, Twin Town must pay producer premiums and hauling subsidies that result in milk costs that range from 80 cents to $1.00 over the Federal order blend price. He noted that, given the cost of acquiring milk, supplying it to distributing plants at 50 cents over the Class I price is not economical. The witness also stated that one of the results of adopting mandatory shipping standards would be the reduction of the service charges currently collected for deliveries of milk to distributing plants.

A witness representing the Trade Association of Proprietary Plants (TAPP) testified in opposition to the proposed minimum shipping requirements. The witness said that the order's "call" provision has operated to assure an adequate supply of milk to handlers and consumers, making a minimum shipping percentage unnecessary. He explained that a required shipping percentage of 5 to 8 percent coupled with a provision allowing the percentage to be increased or decreased at the discretion of the Dairy Division Director is little different from the present "call" provision. He stated that the "calls" announced in the fall of 1986 involved most of the market area, and that the "call" provision could be applied on a marketwide basis to assure that it would affect all reserve supply plant operators equally.

The TAPP witness attributed the difficulty distributing plants experience in securing an adequate supply of milk to proponent cooperatives' failure to develop an organization and pricing policy outside of the Federal order to solve supply problems and develop equity between handlers and producers on an economically sound basis. He stated that the shipment of milk and organization of the market is the primary responsibility of cooperatives. The witness testified that cooperative associations should organize to establish over-order charges at a level that would be high enough to cover the full cost of supplying milk to the Class I market and thereby encourage milk shipments. Instead, he claimed, proponent cooperative associations have competed with each other to set over-order service charges low enough to maintain year-round sales of their members' milk to fluid handlers. He charged that cooperatives then use the "call" provision or minimum shipping requirement to force proprietary handlers to give up milk for fluid use at the time of year it is most profitable for handlers to keep milk supplies in their own manufacturing plants.

The TAPP representative characterized the proposal as contrary to the Regulatory Flexibility Act which, he said, protects small businesses from the adverse effects of government regulations. He stated that a minimum shipping percentage would have a greater impact on a small proprietary plant's operations. Such a plant, he said, may not be equipped to get involved in selling milk for fluid use. The witness described the operations of proponent cooperative associations as being more advantageous than those of small proprietary handlers in supplying the

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market for Class I use. He said that proponents' milk supplies are located close to the market; are largely direct-delivered to distributing plants, resulting in lower handling costs; and are often pooled in multiple-plant operations, allowing more flexibility in handling. He cited the example of a small cheese plant operator who had decided to drop out of the pool during the fall months of 1986 when a "call" for milk supplies was announced, rather than ship the percentage required by the "call." In order to participate in the pool and be able to pay his producers the blend price during subsequent months, the witness said, the handler had to incur the expense of shipping a percentage of his receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year, and thereby qualify as a supply plant.

The witness for TAPP argued that distributing plants should pay whatever price is needed to obtain an adequate supply of milk for Class I use without any minimum shipping standards or "call" provisions to require handlers to ship milk for fluid use. Without such regulatory forcing of shipments, he said, over-order service charges will rise to cover the cost of shipping milk to distributing plants.

The Upper Midwest milk order should require that all reserve supply plants ship at least a minimum percentage of their receipts of producer milk to pool distributing plants. At the present time it is apparent that without a "call" requiring shipments to fluid milk plants many handlers avoid such shipments altogether.

A situation in which some reserve supply plant operators ship milk at levels well above the marketwide percentage of producer milk used in Class I, and other reserve supply plant operators do not ship milk at all is equitable to none of the market participants. According to the record testimony, handlers who supply milk for fluid use incur significantly greater costs than those who retain their milk supplies for manufacturing use. As a result, shipping handlers are disadvantaged with respect to their competitors, both in the cost of producing manufactured products and in their ability to attract an adequate supply of producer milk. Because handlers that carry the burden of supplying the fluid milk market have higher operating costs than other handlers, their ability to pay producers as much as non-shipping handlers pay is impaired, resulting in inequitable returns to producers. In addition, a distributing plant operator who must pay more than the customary over-order service charges for some of the milk required to operate his plant is placed at a competitive disadvantage relative to other distributing plant operators who may be able to obtain adequate supplies at the customary price.

In order to participate in the marketwide pool, and thus subsidize their payments to producers with the Federal order blend price, reserve supply plant operators should demonstrate their willingness and ability to help supply milk for the higher-valued uses that generate the blend price. Testimony that some reserve supply plants are not approved or equipped to ship milk to distributing plants indicates that some handlers participating in the marketwide pool may not be capable of supplying milk for fluid use, even if they were willing. Although the cost of shipping Class I milk apparently exceeds the returns for such shipments, it would not be reasonable to allow handlers and producers that have neither the ability nor any intention to supply milk for Class I use to enjoy the benefits of participating in the marketwide pool, since a basic purpose of the order is to assure an adequate supply of milk for fluid use.

In addition to fostering equitable treatment under regulation, mandatory shipping standards would dispel any doubts handlers may have about whether they will be required to ship milk to distributing plants or not. Also, minimum shipping requirements will encourage establishment of regular supply relationships between reserve supply plant operators and distributing plants.

Opponents' arguments against adoption of minimum shipping percentages centered on the idea of efficiency. It is inefficient to move milk long distances for fluid use when there are closer-in supplies of milk available. However, one of the more significant costs of supplying the fluid market, according to both proponents and opponents, is the opportunity cost of milk removed from a manufacturing plant operating at less than full capacity to be delivered to a distributing plant. The "give-up" cost associated with shipping such milk falls as heavily on a handler located near Minneapolis/St. Paul as it does on a handler located in central North Dakota. The transportation cost of moving such milk, of course, would be greater for the North Dakota handler.

An additional argument by opponents was that minimum shipping requirements would serve to reduce the already inadequate handling charges on shipments of Class I milk. However, opponents' data showed that handling charges effective in surrounding marketing areas, most of which are subject to required shipping percentages, are generally higher than in the Upper Midwest area. This data would seem to indicate that the presence of shipping requirements in an order does not necessarily have the effect of discouraging over-order handling charges.

Exceptions were filed on behalf of several of the interested persons who testified in opposition to the adoption of mandatory shipping standards, and by Frigo Cheese. The objections to mandatory shipping percentages were reiterative of the arguments made at the hearing and considered in the recommended decision. The arguments for and against the adoption of such requirements illustrate the difficulty of balancing equity and efficiency under the order. Although marketing efficiency has been, and still is, a principal goal of Federal order pooling standards it should not be pursued to the point of completely abandoning any concern over the question of equity between milk handlers and between producers. Those opposed to the minimal shipping requirements adopted in this decision appear to advocate a situation in which nearby supplies of cooperative members' milk are expectad to satisfy all of the market's demand for fluid milk while any dairy farmers within several hundred miles are entitled to share in the returns from the fluid market without ever having to ship milk to it.

As explained above, a cooperative association's opportunity cost of supplying milk to distributing plants is just as great as a proprietary handler's. The record of this proceeding clearly shows that it is the "give-up" cost of such shipments that represent the greatest part of the loss handlers incur in supplying the fluid market, regardless of their distance from distributing plants. To a great extent, any uneconomic handling and hauling caused by shipments of the small percentages of milk receipts required by this decision will be offset by the ability of handlers to form units for the purpose of meeting pooling qualifications.

National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC) took exception to the inclusion of the month of August in the qualifying period. In their exceptions, NFO and FUMMC stated that the market useage statistics do not suggest that August should be included

in the qualifying period. The record of the proceeding includes testimony by proponents that the proposed five-percent shipping level for August is less than the amount of milk that was actually shipped from supply and reserve supply plants in August 1986. Also, proponents testified that distributing plants need more milk in August because of school openings at the end of the month, with resulting higher Class I sales. There was no information at the hearing or in post-hearing briefs that would refute proponents' statements with regard to the desirability of including August in the months for which shipping requirements for reserve supply plants should be adopted. In fact, the market administrator's statistics clearly show a decrease in milk production during August compared with July production levels in both 1985 and 1986 and, at the same time, increases in Class I sales. In both years there is a corresponding increase in the percentage of producer milk used in Class I from July to August.

The problem of handling and hauling milk in an efficient and economical manner while complying with minimum shipping requirements can best be solved by allowing handlers to have the operations of their reserve supply plants considered on a combined, or unit, basis for the purpose of meeting pooling standards. Proponents initially proposed that a handler operating more than one reserve supply plant be allowed to have the plants' pool qualifications determined on a combined basis. Two of the proponents then testified that they would favor a provision allowing two or more cooperative associations to have their reserve supply plant operations considered on a combined basis for determining pool qualifications. Two opponents of the proposal advocated that if minimum shipping requirements are adopted, any group of handlers should be allowed to have their reserve supply plants pooled on a "unit" basis in order to enhance their efficiency of handling and hauling milk.

Allowing handlers to pool their reserve supply plants on a unit basis would counteract most of the inefficiencies involved in requiring minimum shipping percentages, and would decrease the cost of pooling for handlers that have only one plant or are distant from the center of the marketing area. Handlers within such a group may decide between themselves which plants should ship the qualifying milk to distributing plants and which plants would not need to ship. The unit would qualify for pooling, then, on the basis of the percentage of producer milk receipts at all of the plants in the unit that is shipped to distributing plants. Although it is true, as one witness claimed, that savings in the operating costs of proprietary handlers are not necessarily passed on to producers, it is clear from the hearing record that the procurement of producer milk supplies in the Upper Midwest marketing area is extremely competitive. Under these circumstances, handlers that wish to procure supplies of producer milk must be willing to pay their producers a price competitive with prices paid to cooperative member producers. It is most likely that the very competitive procurement situation in the market will ensure that proprietary handlers pass savings in operations on to their producers.

Several parties that filed comments protesting the adoption of minimum shipping percentages expressed support for the concept of allowing all handlers in the market to participate in units for the purpose of meeting the shipping requirements, if such requirements are unavoidable. Those persons supported such a provision on the basis of the efficiencies in handling and hauling that would become available to all handlers if reserve supply plant operators are allowed to meet the required shipping percentages as members of units.

Mid-Am and AMPI, however, objected to the inclusion of proprietary handlers in units formed for qualifying purposes. The two cooperatives asserted that only cooperative associations should be allowed to form units for the purpose of meeting shipping requirements. In exceptions filed by Mid-Am, the cooperative stated that the record does not support the contention that procurement of milk supplies in the Upper Midwest market is competitive, that there is no evidence that proprietary handlers' cost savings are passed on to producers, and that no evidence of actual payments to producers was received. AMPI's exceptions claimed that a provision allowing proprietary handlers to participate in units formed for the purpose of meeting shipping percentages would allow proprietary handlers to allocate market shares between them, would necessitate agreement on terms of sales between proprietary handlers, and would allow reblending of producer payments by proprietary handlers.

The record contains direct, uncontroverted testimony by the Kraft witness that competition for milk supplies in the Upper Midwest market causes handlers to pay over-order premiums to producers. The witness stated that if a cooperative association is able to realize an operating efficiency and pass the savings on to its members, proprietary handlers competing with the cooperative for supplies of producer milk would be forced to pass through any operational savings they might realize, as well. The AMPI representative testified that "calls" for milk for the fluid market were necessary because "some suppliers who are also competitors for producer milk were shipping very little, if any, milk to the Class I market." He explained that the competitors of these suppliers who normally would have shipped the extra milk had let a "call" be issued to assure equity among shippers. In addition to this testimony, the record as a whole describes a market in which handlers are most concerned with obtaining an adequate supply of milk to run manufacturing operations, and with keeping enough of their milk supply out of the fluid market to maintain an efficient level of operation in their manufacturing plants. There was no evidence presented about actual payments made to producers or about handlers' cost savings passed on to producers. However, in consideration of the market's competitive procurement situation and the fact that proprietary handlers and cooperatives operate manufacturing plants in competition with each other, it would be inequitable to incorporate in the order a provision that would enhance the efficiency of cooperatives and not proprietary handlers. While it is customary for cooperative associations to assume the primary burden of supplying milk to fluid milk handlers, the minimum shipping standards adopted in this decision will require the same level of performance of proprietary handlers as of cooperatives. All handlers should meet those standards under the same conditions.

AMPI's objections to allowing proprietary handlers to participate in units for the purpose of pool qualifications are groundless. Including proprietary handlers in the provision allowing handlers to form units would not necessitate the allocation of market shares between them, agreements on terms of sale, or the reblending of producer payments. The first two activities are prohibited by laws outside the Federal order program, and the reblending of producer returns by handlers other than cooperative associations is not authorized by the Agricultural Marketing Agreement Act of 1937, the legislation authorizing Federal milk orders. Allowing proprietary handlers to qualify their producers' milk for pooling as part of a unit merely allows such handlers to

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have their receipts and deliveries to distributing plants to be considered on a combined basis for meeting shipping percentages. Proprietary handlers in the Upper Midwest milk market should have the same opportunities to attain efficiencies in the hauling and handling of their producer milk supplies as do cooperative associations. Accordingly, the provision allowing handlers to form units for qualifying purposes should not be changed to include only cooperatives.

A request for unit status should be filed with the market administrator by July 15, when requests for pool status for individual reserve supply plants are also due. These requests will assure that units formed for meeting shipping percentages are firmly established before each August through December shipping period. The requests filed by the handlers who wish to form units should specify the order in which plants would be eliminated from a unit if the unit fails to meet the minimum shipping percentages required by the order. Because of the provisions allowing plants that have been pool plants during an August through December period to retain automatic pool status through the following months of January through July, it is important that the composition of a unit change as little as possible during the qualifying period, with the exception of a plant eliminated because the unit does not meet the pooling standard. Administration of a provision that would allow handlers to add plants to a unit, as well as subtract them, would prove to be cumbersome. Therefore, no plant should be able to rejoin a unit after being eliminated for the unit's failure to qualify, and no plant should be permitted to join a unit after its initial formation. However, a plant which fails to meet the minimum shipping requirements, either singly or as part of a unit, may qualify for pooling as a reserve supply plant in any month thereafter during the August-December qualifying period. Reserve supply plants that refuse to meet "call" requirements, on the other hand, should not be able to regain pool reserve supply plant status by any means until the following August. In either case, a plant losing reserve supply plant status during any month of the qualifying period may qualify for pooling as a regular supply plant during the months of January through July by delivering to distributing plants a percentage of its receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year. Multi-plant handlers wishing to have their plants considered as a unit would be subject to the same provisions as a group of handlers forming a unit.

The requirement that a request be filed with the market administrator to form a unit for the purpose of qualifying reserve supply plants for pooling is adapted from the present order provisions and proponents' proposal. The Upper Midwest order currently requires that a handler file a request for the pool status of a reserve supply plant at least 15 days prior to the first day of the month for which pool status is to begin. Proponents' proposal specifies that a reserve supply plant operator file such a request by each July 15 in order to obtain pool status for the plant for the following year. Timely notification to the market administrator of a handler's intention to qualify one or several reserve supply plants for pooling, or of the intention of a group of handlers to qualify a unit of reserve supply plants for pooling, will facilitate the effective administration of the order.

The 5- and 8-percent levels of required shipping percentages proposed by proponents will assure that all reserve supply plant operators will bear a significant and equitable share of the responsibility of supplying milk for Class I use. At the same time, the proposed percentages are not high enough to generate excess shipments of milk to distributing plants. According to the hearing record, shipments at the proposed percentages would not have supplied adequate supplies of milk to the fluid market during the fall months of 1986. It is expected that negotiations between reserve supply plant operators and distributing plant operators will be able to fill any gap between required and needed shipments. In any case, retention of the "call" provision and incorporation of a provision allowing the Director of the Dairy Division to temporarily reduce the required shipping percentages will give the order flexibility in dealing with any fluctuations in supply and demand.

In addition to establishing minimum shipping percentages to assure that reserve supply plants supply the fluid market on a more equitable basis than in the past, and incorporating unit pooling for groups of reserve supply plant operators to facilitate efficiency in handling and hauling, it is also important to assure that each plant included in the marketwide pool is at least capable of delivering milk to distributing plants. For this reason, the order should include a requirement that each reserve supply plant operator deliver at least 5 percent of its receipts to pool distributing plants during one month of the August–December qualifying period.

Opponents argued that requiring any deliveries from small, poorly-located handlers violates the Regulatory Flexibility Act by placing an unfair burden on such handlers, and promotes inefficient and uneconomic handling. They cited the example of several handlers who had opted not to meet the shipping percentages required by the "call" for fluid milk supplies for the months of September, October and November 1986. As a result, opponents stated, the reserve supply plants operated by those handlers had been penalized by their ineligibility to be pooled for the next full year after losing pool status.

The level of shipping requirements adopted in this decision is neither unfair nor a violation of the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that the impact of government regulation on small businesses be considered and analyzed. The impact of requiring shipments from small handlers has been considered and found to be proportionate with the regulatory burden on all other handlers. Requiring no performance at all from small handlers is unfair to all of the other handlers who do deliver milk to distributing plants. Participation in the pool is not compulsory. Handlers must make business decisions about such matters as the cost of delivering a minor percentage of their milk supplies to the fluid market during one month versus the benefit of participating in the pool for a number of months without having to ship any milk for Class I use. If the cost of meeting the shipping requirements outweighs the benefit of sharing in the market's Class I use, then a handler is clearly better off not to give up that fraction of his milk supply. If, on the other hand, participation in the pool for a number of months is a greater benefit than the cost of releasing some milk to the fluid market for one month, meeting shipping requirements will be in the handler's best interests. Allowing handlers to form units to meet the order's minimum shipping standards will help to offset most of the inefficient or uneconomic handling practices promoted by the adoption of such standards.

Exceptions to the requirement that each reserve supply plant ship at least 5 percent of its receipts to pool distributing plants during one month of the qualifying period were filed by proponents as a group and by AMPI, Wisconsin Dairies Cooperative, and Mid-Am individually. Exceptions filed by Frigo Cheese, the Trade Association of Proprietary Plants (TAPP) and on behalf of National Farmers Organization, Inc. (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC), also protested the inclusion of any shipping requirements in the order. Those filing exceptions stated that such a requirement would add nothing to the overall performance of the unit, but would increase transportation costs when shipments are required from remote or inconveniently located plants. In addition, AMPI objected to the adoption of such a provision on the basis that it was not included in the hearing notice and would remove some of the economies of operation currently enjoyed by multi-plant handlers who are able to unit pool their plants. Wisconsin Dairies' comments included a request for clarification as to whether milk shipments direct from producers' farms to distributing plants would be considered in determining whether the 5-percent requirement had been met. Several parties' comments included the suggestion that if shipments by each member of a unit are to be required, such a requirement should be limited to only one load of milk during the fall qualifying months.

The 5-percent shipping requirement for one month of the qualifying period should be included in the amended order, with some clarification and a small modification. The paragraph of the order allowing handlers to have their reserve supply plants considered as parts of units for pool qualification purposes states that such units may qualify by meeting the percentage requirements "in the same manner as a single plant." The paragraphs describing the shipping standard to be met by a single plant contain language that includes as qualifying shipments deliveries of milk from producers' farms directly to pool distributing plants. Therefore, such milk movements should be included in determining the level of performance of a plant, or handler, that is pooled as part of a unit. The requirement that each reserve supply plant that is pooled as part of a unit ship at least 5 percent of its milk to distributing plants during one month of the qualifying period should be modified to apply to each handler operating reserve supply plants that are pooled as part of a unit. This modification will allow handlers to market their producers' milk in the most efficient and economical manner possible, while assuring that each handler is able, as well as willing, to supply milk to the fluid market.

The requirement that each handler participating in a unit ship 5 percent of its milk receipts to distributing plants is more equitable than a requirement of one load per handler during the qualifying period. One load would represent a much greater share of a small handler's milk supply than it would of a large handler's. As discussed above, the 5-percent requirement is a minimal standard. Handlers are, after all, not required to qualify for pooling and certainly may avoid meeting the standard of 5 percent during one month of the qualifying period if pool status is not of great enough benefit to justify incurring that cost. The ability to participate in units will allow participating handlers to attain operating efficiencies that otherwise would not be available during the August through December mandatory shipping period.

Although the hearing notice in this proceeding contained no proposal requiring all reserve supply plant operators to meet a minimum shipping standard during one month of the qualifying period in order to qualify for pooling as part of a unit, proponents' proposal would have required each handler operating reserve supply plants to ship minimum percentages of its milk to distributing plants during each month of the five-month qualifying period. Therefore, the five-percent shipping requirement for one month of the qualifying period falls well within the scope of the hearing notice.

As proposed by proponents, the provision authorizing the market administrator to issue a "call" for supplies of milk for Class I use from reserve supply plants should remain in the order. Although it is anticipated that the percentage shipping standards adopted herein will result in an adequate supply of milk for fluid use, with occasional need for negotiation, it is possible that additional milk may be required at some time during the year. The "call" provisions proposed by proponents are identical to those currently contained in the Upper Midwest order. Aside from an objection to the existence of any requirements that milk be moved from reserve supply plants to distributing plants, no modifications of the present "call" provisions were proposed. Even so, one change should be made. The provision that precludes a plant from being pooled as a reserve supply plant for a full year after failing to comply with announced shipping requirements should be changed to prohibit such a plant from being pooled through the following July. Under the present order provision, if failure to comply with a "call" occurred, for instance, during the month of October, the plant would not be eligible for pooling as a reserve supply plant until the following October. As a result, under the present order provision the plant not only could not be a pool reserve supply plant from the months of January through July immediately following its failure to comply, but would also be ineligible for an additional January through July period because of its failure to be pooled for the months of August and September of the following year.

In order to assure that excessive movements of Class I milk to distributing plants are not required of reserve supply plant operators, the Director of the Dairy Division should have the discretion of reducing the minimum shipping percentages. This aspect of proponents' proposal would add needed flexibility to the requirement that reserve supply plants ship at least a certain percentage of their receipts to distributing plants. If less than the required percentages of milk are needed to fulfill the market's fluid needs, the objective of efficient marketing would be better served by allowing the excess milk to remain in manufacturing plants. There is no need to include authorization for the Director to increase the required percentages. If additional milk supplies are needed for Class I use, the ability of the market administrator to issue a "call" for the needed milk will expedite the shipment of such supplies.

Proponents' proposal to reduce the requirement that a reserve supply plant receive a daily average of 25,000 pounds of milk per day to 25,000 pounds on two consecutive days should be denied. As stated earlier, only those plants that actually are capable of supplying milk to the fluid market should be eligible for pooling as reserve supply plants. A plant that receives only 25,000 pounds of milk on two consecutive days of a month represents no real potential supply of milk to the fluid market. As stated by the NFO witness, the current requirement is minimal, and should be maintained.

AMPI's exceptions to the recommended decision urged that the proposal to reduce the required quantity of receipts at reserve supply plants from a daily average of 25,000 pounds of milk to 25,000 pounds on only two consecutive days of each month be reconsidered and adopted. The cooperative pointed out that the total amount of required receipts currently does not have to be spread throughout the month, but can be received in two

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days. Therefore, AMPI stated, requiring more milk to move through a reserve supply plant does not increase the plant's capability of supplying milk to the fluid market. The cooperative argued that a plant that can put together a tankerload of milk in two days can continue to do so every other day, and concluded that milk can be moved more economically directly to manufacturing plants rather than be required to be received at a reserve supply plant. Comments filed by NFO supported retention of the 25,000-pound per-day requirement for the reason that reserve supply plants would have minimum supplies available to ship.

A plant that receives a half-load of milk on only two days of a month is clearly not being operated as a supply plant, and cannot realistically be regarded as a potential source of milk supplies for the fluid market. This provision of the order should not be amended.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

January 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on April 27, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-9716 Filed 5-2-88; 8:45 am]

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7 CFR Part 1230

Pork Promotion, Research and Consumer Information

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this proposed rule would increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1987 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

DATE: Comments must be received by June 2, 1988.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S; P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would

increase the assessments per pound on 2 of the 13 imported pork and pork products subject to assessment by an amount of one-hundredth of a cent per pound. Adjusting the rate of assessments on imported pork and pork products would result in an estimated $30,000 more in assessments over a 12-month period. While the proposed rule would result in an increase in assessments, any additional costs would be outweighed by the benefits derived from the operations of the pork promotion, research, and consumer information program. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported live porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products.

This proposed rule would increase the per-pound assessments on specified imported pork and pork products. This increase would be consistent with increases in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1987 as reported by the USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in cents-per-pound assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equvalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment amount due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product.

The formula in the preamble to the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1987, the average annual seven market price rose to $51.04, an increase of about 1 percent over the 1986 per hundredweight price, which results in an increase in assessments for two TSUS categories 107.3515 and 107.3525, in an amount equal to one-hundredth of a cent per pound. These two TSUS categories are for cooked, canned, boneless hams and shoulders. Based upon the conversion formula described above and the average seven market price of $51.04, the remaining 11 TSUS categories would not require an increase in assessments. Based on Department of Commerce, Bureau of Census data on the volume of imported pork and pork products for 1987, the proposed increase in the per-pound assessment would result in an estimated $30,000 in additional assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following imported pork and pork products are subject to assessment in the amount per pound as follows:

	Assessment (dollars per pound)
Pork and Pork Products (U.S. Tariff Schedule No.):	
106.4020	0.0016
106.4040	.0016
106.6000	.0016
106.8500	.0016
107.1000	.0025
107.1500	.0025
107.3020	.0016
107.3040	.0019
107.3060	.0021
107.3515	.0028
107.3525	.0028
107.3540	.0019
107.3560	.0025

Done at Washington, DC, on April 28, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–9717 Filed 5–2–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Missouri to amend its permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed regulation changes are in the areas of fish and wildlife, revegetation, penalty assessment, protection of cultural or historic places, and alternative bonding system. The State is proposing these changes to bring its regulations into compliance with the Federal regulations.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Missouri's proposed modification of its program not received on or before 4:00 p.m. c.d.t. on June 2, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on May 31, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of business on or before May 18, 1988. If no one has contacted Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "**ADDRESSES**."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106. Copies of the Missouri program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. c.d.t., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343–5492.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102; Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 925.10, 925.15, 925.16 and 925.20.

II. Submission of Amendments

On March 18, 1988 (Administrative Record No. MO–371) the State of Missouri submitted to OSMRE amendments to its approved regulatory program. The proposed changes are summarized briefly below:

Fish and Wildlife

1. Missouri proposes to amend its regulations for protection of fish and wildlife at 10 CSR 40–3.100(2), 10 CSR 40–3.250(1)(B), 10 CSR 40–6.040(11), 10 CSR 40–6.050(7), 10 CSR 40–6.110(11) and 10 CSR 40–6.120(12) to respond to a regulatory reform letter dated June 11, 1986 (Administrative Record No. MO–295), issued by OSMRE under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 779.20, 780.16, 783.20, 784.21, 816.97(b), 817.97(b), 816.97(c), and 817.97(c).

Revegetation

2. Missouri proposes to amend its regulations for determination of revegetation success at 10 CSR 40–3.120(1), (6) (A) and (B) and (7)(C), 10 CSR 40–3.270(1), (6) (A) and (B) and (7)(C) in response to a letter dated June 11, 1986, on regulatory reform (Administrative Record No. MO–295) issued by OSMRE under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 816.111(a)(3), 817.111(a)(3), 816.111(b)(3), 817.111(b)(3), 816.116(a)(2), 817.116(a)(2), 816.116(b)(3)(i), 817.116(b)(3)(i), 816.116(b)(3)(iii) and 817.116(b)(3)(iii).

Protection of Cultural and Historical Resources

3. Missouri proposes to amend its coal regulations for the protection of cultural and historical resources at 10 CSR 40–6.040(3)(B), 10 CSR 40–6.050(14), 10 CSR 40–6.110(3)(B), 10 CSR 40–6.070(8)(E) and 10 CSR 40–6.120(8) to respond to a letter from OSMRE dated June 9, 1987 (Administrative Record No. MO–364), under 30 CFR Part 732. The amendments are proposed to bring the State regulations into compliance with the Federal regulations at 30 CFR 779.12(b), 783.12(b), 780.31 (a) and (b), 784.17 (a) and (b), and 773.15(c)(11).

Bonding

4. Missouri proposes to amend its regulations concerning Missouri's alternative bonding system at 10 CSR 40–7.011(2) (D), (E) and (F) as a partial response to a letter from OSMRE dated January 30, 1986 (Administrative Record No. MO–351) under 30 CFR Part 732. The proposed amendment concerns the required bond amounts per permitted acre and the minimum bond for a single mine.

Penalty Assessment

5. Missouri proposes to amend its regulations for informal assessment conferences at 10 CSR 40–6.040(8) in response to a required program amendment placed on the Missouri program on January 7, 1987 (52 FR 534) at 30 CFR 925.16(k) stating the time period for the informal conference and establishing terms for dismissal and payment of the penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Missouri satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. c.d.t. May 18, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons present in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Date: April 22, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–9702 Filed 5–2–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3374–1]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. The requested revision consists of a permanent relaxation of the volatile organic compound (VOC) emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio.

USEPA is proposing to disapprove this revision because the source is located in Medina County which is part of the Cleveland ozone demonstration area; and the State has not demonstrated that the requested revision would limit VOC emissions to levels reflecting the application of reasonably available control technology, or that the revision would not interfere with timely attainment of the ozone standard, or with progress towards attainment in the interim. The source remains subject to the control requirements of the Ohio Administrative Code (OAC), Rule 3745–21–09(F).

DATE: Comments on the requested SIP revision and on the proposed USEPA action must be received by June 2, 1988.

ADDRESSES: Copies of the requested SIP revision are available at the following addresses for review: (It is recommended that interested parties telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Division of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Copies of the Technical Support Document for this proposed rulemaking are also available from the Region V Office. Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch, (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On May 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific ozone SIP revision request for Ameri-Cal Corporation of Medina County, Ohio. USEPA has completed its review of this request and is today proposing to disapprove the request.

Summary of SIP Revision

The Ameri-Cal Corp. operates a custom-designed knife-over-roll adhesive coating line (Source K001) which coats and cures the adhesive laminate to the paper substrate materials. This is defined as a paper coating line and is subject to OAC Rule 3745–21–09 (F) which limits the emission of volatile organic compounds (VOC) to 2.9 pounds per gallon of coating, less water. Alternatively, the source may comply with this rule via the installation of add-on control equipment. Ameri-Cal Corp. is subject to the April 1, 1982, complaince date contained in OAC Rule 3745–21–04(C)(5).

OEPA has submitted to USEPA a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line. This request was submitted in the form of a variance issued by Ohio EPA to Ameri-Cal. The variance contains the following terms and conditions:

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1. Source K001 is required to utilize coatings with VOC contents, not to exceed 4.8 lbs/gallon of coating less water.

2. Source K001 shall not emit VOC in excess of 22.7 tons per year.

3. The company is required to maintain detailed records on coatings used and submit a semi-annual report indicating that the variance requirements are met.

To support the SIP revision request, OEPA has submitted information that purports to demonstrate that it is not economically reasonable for Ameri-Cal to install add-on control equipment, and that coatings which comply with OAC Rule 3745-21-09(F) are not currently available and are not expected to be available in the near future.

USEPA Evaluation

Section 110(a)(2)(B) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(B), requires that SIPS for an air pollutant include such control measures as are necessary to ensure attainment and maintenance of the NAAQS for that pollutant. Section 110(a)(3)(A) of the Act, 42 U.S.C. 7410(a)(3)(A), applies this same requirement to revisions of the plans. USEPA's regulations implementing section 110 assign to the States the burden of demonstrating that their plans satisfy this requirement (40 CFR 51.13(e), 51.14(c)).

Ameri-Cal is located in Medina County which is an attainment area for ozone. Although Medina County has been designated an attainment area for ozone, Ohio has made it a part of the demonstration area for Cleveland which is nonattainment for ozone. Because the State takes credit for VOC reductions in Medina County in the attainment demonstration for the Cleveland area, USEPA maintains that Medina County should be considered part of the Cleveland nonattainment area for the purposes of the Sheldon Meyers' policy memorandum dated July 29, 1983 (entitled: "Source-Specific SIP Revisions"; Sheldon Meyers was the former Director of USEPA's Office of Air Quality Planning and Standards). This memo states:

> For a State to secure USEPA approval of a relaxation (in a nonattainment area) and continue overall approval status (of its SIP), however, the State would need to show that the SIP as a whole, despite the relaxation, would continue to "provide for" attainment by the end of 1982 in the case of nonextension areas or as expeditiously as practicable, but no later than 1987 in extension areas. For VOC this generally will require a data base and modeling demonstration consistent with that applied in extension areas.

For this reason, the State must demonstrate that any SIP relaxation in Medina County, along with the ozone precursor emissions from the other counties comprising the Cleveland demonstration area, does not contribute to the downwind ozone standard violation in the Cleveland area.

The State did not submit such a demonstration. Although Ohio submitted an ozone attainment demonstration for Cleveland on May 16, 1986, this demonstration is still under review by USEPA. For this relaxation to be approved, Ohio may remove Medina County, which is an attainment area, from the Cleveland demonstration area and show that the relaxation would not interfere with attainment or maintenance in either Medina County or the Cleveland demonstration area. Alternatively, Ohio may wish to provide further technical support that this relaxation is already considered in the Cleveland demonstration of attainment (i.e., the emissions increase from this relaxation is explicitly considered in Cleveland's demonstration of attainment). If already included, USEPA could only approve the revision if and when the Cleveland SIP is approved.

USEPA is soliciting comments as to whether USEPA should require sources in areas designated to attainment for ozone that are nearby nonattainment areas to maintain a reasonable available control technology (RACT) level of control to demonstrate attainment and maintenance of the ozone standard.

Conclusion

Based on the deficiencies detailed above, USEPA is proposing to disapprove the SIP revision request for Ameri-Cal Corp. in Medina, Ohio.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities, because it affects only one source.

In addition, this action imposes no new requirements on the source. Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget for review.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–9752 Filed 5–2–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3373–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion and Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing a one-time exclusion of certain retreated solid wastes, generated by U.S. Nameplate Company, Incorporated, located in Mount Vernon, Iowa, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. In addition, EPA is proposing to deny exclusion for those wastes located in the waste management unit specified in the petition and that are derived from the petitioned wastes prior to their retreatment. The effect of the proposed exclusion would be to retain regulation of the unit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 40 CFR Part 265. These actions respond to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decisions are based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decisions and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 17, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May 18, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–USEP–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and also to determine the potential impact of the unregulated disposal of Nameplate's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the

waste at the on-site landfill. In fact, it is likely that the generator will either chose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological, and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Nameplate is seeking a delisting for waste contained in an inactive surface impoundment, ground-water monitoring data collected from the area where Nameplate stores the waste are necessary to determine whether hazardous constituents have migrated from the unit to the underlying ground water. Because the petitioned waste is stored (and disposed, if the petition is granted) on-site, ground-water data collected from Nameplate's monitoring wells are compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water and will help to characterize the potential impact (if any) of the unregulated disposal of Nameplate's petitioned waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, final decisions will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

U.S. Nameplate Company, Incorporated, Mount Vernon, Iowa.

1. Petition for Exclusion

U.S. Nameplate Company Incorporated (Nameplate), located in Mount Vernon, Iowa, manufactures etched nameplates. Nameplate petitioned the Agency to exclude the sludge contained in its on-site, unlined, surface impoundment. This sludge is presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Nameplate petitioned to exclude its waste, claiming that the waste does not meet the criteria for which it was listed. Nameplate also claims that its treatment process generated a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Nameplate further claims that its surface impoundment sludge is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f); 40 CFR 260.22(d)(2)–(4). Today's proposal to grant the petition in part is the result of the Agency's evaluation of Nameplate's petition in light of Nameplate's subsequent retreatment of its sludge.

2. Background

On December 18, 1984, Nameplate petitioned the Agency to exclude its wastewater treatment sludge. On July 23, 1986, the Agency proposed to deny Nameplate's petition based on the fact that the surface impoundment sludge contained excessive total concentrations of trichloroethylene (TCE). See 51 FR 26428 for a complete description of Nameplate's manufacturing and waste treatment processes, for a discussion of the Agency's previously proposed decision to deny Nameplate's petition, and for a discussion of ground-water contamination, primarily TCE contamination, indicated at Nameplate's facility. As a result of the proposed decision to deny this petition, Nameplate attempted to reduce the waste's total concentration of TCE through mechanical aeration of the impounded waste. During the public comment period, Nameplate requested that the Agency re-evaluate the retreated waste.

In order to verify the representative nature of the data submitted by petitioners, the Agency randomly selects some percentage of petitioning facilities to visit as part of its spot-check sampling and analysis program. In the spot-check program, EPA performs limited analyses to assess waste samples for the presence of EP toxic metals, nickel, cyanide, and the priority pollutants (a subset of the constituents of concern, which includes the volatile, semi-volatile acid extractable and base/neutral extractable compounds, and the organochlorine pesticides/polychlorinated biphenyls (PCBs) listed in Appendix VIII). The Agency has limited its spot-check search to these compounds because this is solely a quality assurance verification, rather than a data submission analysis, because of the expense of conducting complete scans for all constituents of concern, and because a complete scan would usually not be necessary to detect those constituents most likely to be present in common industrial wastestreams. EPA Headquarters routinely reviews all of the spot-check data in order both to verify the quality of the analytical data presented by the petitioner and to determine whether the petitioner has submitted (or omitted) analytical data quantifying the concentrations of the listed and non-listed constituents of concern present in the petitioned wastestream.

On August 12, 1986, as part of the Agency's spot-check sampling and verification program, EPA Headquarters conducted a spot-check sampling visit at Nameplate's facility. For surface impoundments like Nameplate's, petitioners are normally required to divide the unit into four quadrants and to collect five full-depth core samples from each quadrant. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–85–003), April 1985. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples.

The Agency divided Nameplate's 85 foot by 56 foot surface impoundment into four quadrants and randomly collected 11 full-depth core samples from each quadrant. An additional full-depth core sample was randomly collected from quadrant A of the surface impoundment, raising to 45 the total number of full-depth core samples collected. Each core sample was collected by driving a coring device through the waste until the bottom of the surface impoundment was reached (the depth of the sludge ranged from one to three feet), thus collecting a representative core sample of all the layers of retreated sludge in the surface impoundment. Table 1 illustrates how the Agency composited the full-depth core samples for the various analyses performed.

TABLE 1.—COMPOSITING OF SAMPLES FOR ANALYSIS

Sample identification	Volatile organics (sample number)	EP toxic metals, nickel, cyanide, and priority pollutants (sample number)
Quad A1+A2	1	1
Quad A3+A4	2	1
Quad A5+A6	3	1
Quad A7+A8	4	1
Quad A9+A10	5	1
Quad A11+A12	6	1
Quad B1+B2	7	2
Quad B3+B4	8	2
Quad B5+B6	9	2
Quad B7+B8	10	2
Quad B9+B10+B11	11	2
Quad C1+C2	12	3
Quad C3+C4	13	3
Quad C5+C6	14	3
Quad C7+C8	15	3
Quad C9+C10+C11	16	3
Quad D1+D2	17	4
Quad D3+D4	18	4
Quad D5+D6	19	4
Quad D7+D8	20	4
Quad D9+D10+D11	21	4

As illustrated in Table 1, twenty-one composite samples were analyzed for volatile organic compounds and four composite samples were analyzed for the remaining priority pollutants, EP toxic metals, nickel, and cyanide.

The Agency also collected one sample of ground water from Nameplate's upgradient monitoring well and another from its single downgradient monitoring well to determine if Nameplate's impounded waste was contaminating the underlying ground water. As recommended by the Technical Enforcement Guidance Document, the ground-water samples were not filtered in the field. See "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD)," EPA, September 1986. Both samples of ground water were analyzed for the priority pollutants, EP toxic metals, nickel, and cyanide. On February 23, 1987, the Agency announced the availability of the spot-check and verification data and requested public comment on the data in the Federal Register. See 52 FR 5472. No public comments were received on this notice.

Since the Agency's spot-check visit, Nameplate has submitted three rounds of monitoring data. Nameplate's ground-water monitoring data only consisted of analysis and results for TCE, which were submitted in an attempt to challenge the EPA Headquarters spot-check data and the EPA Region VII data demonstrating the presence of TCE. See 51 FR 26428, July 23, 1986 for a discussion of the EPA Region VII ground-water monitoring data.

3. Agency Analysis

The Agency used SW–846 method numbers 8240, 8270, and 8080 to quantify the total constituent concentrations (*i.e.*, mg of a particular constituent per kg of waste) of the priority pollutants in Nameplate's waste. Detection limits for the volatile compounds ranged between 0.049 mg/kg and 0.25 mg/kg, except for acetone, which was 1.3 mg/kg. The detection limit for the semi-volatile acid and base/neutral extractable compounds was 1.1 mg/kg and the detection limit for the pesticides was 0.002 mg/kg. These detection limits represent the lowest concentrations quantifiable by the Agency, when using the appropriate SW–846 analytical methods to analyze Nameplate's waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

The Agency did not detect any priority pollutants except TCE. The maximum total constituent concentration of TCE was 1.5 mg/kg.

The Agency used SW–846 method numbers 6010, 7040–7951, and 9010 to quantify the total constituent concentrations and SW–846 Method Number 1310 to quantify the leachable concentrations (*i.e.*, mg of a particular constituent per liter of extract) of the EP toxic metals, nickel, and cyanide in Nameplate's waste. Table 2 presents the maximum total constituent concentrations and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

Using SW–846 method number 3540, the Agency determined that Nameplate's waste had a maximum oil and grease content of 0.26 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (i.e., wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

TABLE 2.—MAXIMUM CONCENTRATIONS RETREATED SURFACE IMPOUNDMENT SLUDGE (PPM)

Constituents	Total constituent concentration	EP leachate concentration
Arsenic	8.0	<0.01
Barium	170	<0.5
Cadmium	<2.9	<0.01
Chromium	390	<0.05
Lead	<29	<0.2
Mercury	0.07	<0.0002
Selenium	<1.4	<0.01
Silver	<1.4	<0.01
Nickel	56	0.28
Cyanide	0.37	[1] 0.02

[1] Calculated by assuming a dilution factor of 20 times (based on 100 grams of sample and dilution of 2,000 mls of water) and a theoretical worst case leaching of 100 percent.

Nameplate submitted a signed certification stating that its surface impoundment contains approximately 422 cubic yards of retreated sludge (based on both the size of the surface impoundment and depth of the retreated sludge). The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Nameplate's certified estimate of 422 cubic yards.

Analyses for the priority pollutants and the EP toxic metals, nickel, and cyanide were performed on the two groundwater samples (one upgradient sample and one downgradient sample) collected by EPA Headquarters from Nameplate's site. Using detection limits of 0.002 mg/l, 0.05 mg/l, and 0.0001 mg/l, no volatile or semi-volatile (acid extractable and base/neutral extractable) compounds, or priority pollutant pesticides, respectively, were detected in either sample, except for TCE. (Due to the "cleanliness" of the ground-water sample matrices, it was possible to achieve detection limits lower than those achieved in the analysis of the sludge samples.) TCE was not detected (*i.e.*, the concentration was <0.002 mg/l) at Nameplate's upgradient well. TCE, however, was detected at a concentration of 0.012 mg/l at Nameplate's downgradient monitoring well. Neither sample contained concentrations of any of the EP toxic metals, nickel, or cyanide in excess of their respective levels of regulatory concern (*i.e.*, the concentration of each of the EP toxic metals, nickel, and cyanide was below its respective regulatory standard).

As mentioned earlier, Nameplate submitted three rounds of ground-water monitoring data (collected in 1986/1987) for TCE. Nameplate has not submitted analyses for any other constituents, nor

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has Nameplate installed a monitoring system that complies with the requirements stated in 40 CFR Part 265, Subpart F. See 51 FR 26428 for a discussion of the inadequacies of Nameplate's monitoring system. The results of the first round of Nameplate's monitoring data did not reveal TCE in either the upgradient or the downgradient monitoring well; however, Nameplate's laboratory used a detection limit of 0.004 mg/l (which was greater than the regulatory standard for TCE at that time of 0.0032 mg/l). The Agency informed Nameplate that its initial detection limit was too high and that the detection limit used in subsequent analyses must be lower (at least <0.003 mg/l). Nameplate's second round of ground-water monitoring samples was analyzed using a lower detection limit (<0.002 mg/l) and revealed that TCE was not present in either the upgradient or downgradient monitoring well (*i.e.*, the concentration of TCE in the ground water was <0.002 mg/l). Nameplate's third round of ground-water monitoring samples was analyzed using an even lower detection limit (<0.0005 mg/l) and revealed that TCE was now present at the downgradient monitoring well at a concentration of 0.0056 mg/l. TCE was not detected at the upgradient monitoring well.

In Nameplate's case, TCE has been detected on three occasions, by EPA Headquarters (spot-check data), by EPA's Region VII office (see 51 FR 26428), and by Nameplate (once each), while on two other occasions TCE was not detected by Nameplate. Both the detected values and non-detected values of TCE came from the same inadequate downgradient monitoring well. Because Nameplate's monitoring system is inadequate, it is not possible to characterize the extent of dispersion of the traveling plume of TCE contamination and, therefore, it is not possible to determine which ground-water samples are statistically valid (*i.e.*, without any data characterizing the geology and hydrogeology of Nameplate's site, it is not possible to determine the statistical validity of either the detected values or the non-detected values). In Nameplate's case, EPA, therefore, believes that it cannot use the non-detected values to refute the detected values.

4. Agency Evaluation

Nameplate stated in its petition that, if its petition is granted, the surface impoundment will be closed and the petitioned waste will remain in the closed surface impoundment. The Agency considered the appropriateness of alternative disposal scenarios for wastes disposed in closed surface impoundments and decided that a landfill scenario is the most reasonable, worst-case scenario because Subpart K of Part 265 specifies that a closed surface impoundment, still containing wastes, is subject to the post-closure care requirements for landfills under Subpart G of Part 265 and also § 265.310 (*i.e.*, to remove free liquids, to cap the surface impoundment, etc.). Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the leachability and potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Nameplate's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of cyanide and nickel from Nameplate's waste. The Agency's evaluation, using the waste volume of 422 cubic yards and the maximum EP leachate concentrations of cyanide and nickel in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (e.g., arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver) from Nameplate's waste because they were not detected in the EP extract (see Table 2) using the appropriate SW–846 analytical test methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment. In this case, even the use of the detection limits (presented in Table 2) in the VHS model does not yield compliance-point concentrations above health-based levels.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS RETREATED SURFACE IMPOUNDMENT SLUDGE (MG/L)

Constituent	Compliance-point concentration	Regulatory standard
Nickel	0.0066	0.50
Cyanide	<0.0006	0.2

The retreated sludge exhibited nickel levels at the compliance point below the Agency's standard of 0.50 mg/l. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO–CIN–475, January 1986. The concentration of cyanide at the compliance point is below the Agency's standard of 0.2 ppm. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO–CIN–475, January 1986. Additionally, because the concentration of total cyanide is less than 0.37 ppm, the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency also calculated the mobile portion of the total constituent concentrations of TCE using the organic leachate model (OLM). See 51 FR 41082, November 13, 1986. The compliance-point concentration of leachable TCE was then evaluated using the VHS model, which predicted a concentration of 0.0013 mg/1 for TCE. Thus, TCE is present in concentrations below the 0.005 mg/1 level of regulatory concern. See Internal Agency Memorandum dated October 24, 1986, entitled "Derivation of Health-based Criteria for the Delisting Effort," in the RCRA public docket, for an explanation of the derivation of this regulatory standard. Retreatment has substantially reduced these levels from the levels described in the Agency's previous proposal to deny Nameplate's petition. See 51 FR 26428, July 23, 1986. At that time, TCE was found to be present in 19 of 21 samples at concentrations of regulatory concern sufficient to warrant denying the petition. The Agency has concluded that the reduced concentrations of TCE no longer warrant denying delisting of Nameplate's retreated waste because of the presence of TCE. Additionally, the Agency does not believe that there are any other hazardous constituents present at concentrations of regulatory concern nor other factors that might cause Nameplate's retreated waste to be hazardous.

Nevertheless, the ground-water contamination with TCE supports the Agency's contention that the unit at one time held a hazardous waste. By mechanically aerating the impounded sludge, Nameplate volatilized a large portion of the TCE, thus leaving only a maximum of 1.5 mg/kg of TCE in the sludge. The Agency does not believe that this low level of TCE is sufficient to cause the levels of ground-water contamination found by both EPA Headquarters and EPA Region VII. The Agency is unable to conclude that the impounded sludge, prior to retreatment, did not cause and is not continuing to cause the ground-water contamination.

5. Conclusion

Because the Agency collected more than two times the required minimum number of samples from Nameplate's surface impoundment, the Agency believes that the results of the August 1986 spot-check sampling and verification accurately characterize the physical and chemical nature of Nameplate's retreated surface impoundment sludge. Past analyses of Nameplate's waste (performed by Nameplate and by EPA Region VII, and discussed in the July 23, 1986 notice, 51 FR 26428) provide historical information concerning the physical and chemical nature of the impounded sludge prior to retreatment in July 1986. The Agency is basing its present evaluation of Nameplate's retreated waste on the data collected during the August 1986 spot-check and verification sampling trip, on the ground-water monitoring data submitted by EPA Region VII and Nameplate, and on the petitioned data for the waste prior to retreatment.

A. Retreated Waste

The Agency believes that Nameplate has successfully demonstrated that Nameplate's retreated wastewater treatment sludge is not hazardous. The Agency, therefore, is proposing that Nameplate's retreated waste be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency, therefore, proposes to grant a one-time exclusion to U.S. Nameplate Company, Incorporated, located in Mount Vernon, Iowa, for its retreated wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the retreated wastewater treatment sludge should no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the retreated wastewater treatment sludges covered by Nameplate's demonstration.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

B. Residual Waste at Nameplate's Surface Impoundment

EPA's decisions to exclude a waste from Subtitle C control are typically retrospective and typically deregulate, from Subtitle C control, those waste management units holding the petitioned waste, because such units would not be considered to have received a hazardous waste. See 40 CFR 260.10(a) for the definition of a hazardous waste unit. However, in cases where the original petitioned wastestream has been retreated (through aeration, chemical stabilization, reprocessing, etc.), the Agency may distinguish between the original petitioned waste and the newly retreated waste. That is, the delisting decision on the retreated waste may be prospective (effective from the date of retreatment forward) and may apply only to the retreated waste.

When treated wastes are hazardous, remaining residues (*e.g.*, sludge and soil/sludge mixtures) containing or derived from the treated waste prior to retreatment are hazardous by definition, continue to be hazardous until excluded, and continue to constitute part of the waste management unit. See 40 CFR 261.3 (c)(2)(i) and (d)(2). A delisting decision for the retreated waste, therefore, does not affect the regulatory status of the unit which held the treated hazardous waste, if there is reason to believe that the treated waste was hazardous, and if waste residues containing or derived from the treated waste may still be present or if the waste already contaminated or is likely to contaminate the ground water in the future. Such units, therefore, continue to be classified as hazardous waste units subject to all Subtitle C requirements, including closure requirements.

Nameplate's originally petitioned waste (prior to retreatment) contained TCE. As discussed in the July 23, 1986, proposal, EPA's Region VII Office had determined that TCE was present in the ground water beneath Nameplate's facility. The Agency's spot-check visit confirmed the presence of TCE in ground water, identifying a concentration of 0.012 mg/l in the downgradient monitoring well. The concentration of TCE detected in the downgradient well exceeds the current regulatory limit of 0.005 mg/l for TCE in drinking water. Since Nameplate's original waste contained TCE at sufficient levels to contaminate ground water, and ground-water contamination with TCE is present, the Agency is concerned that Nameplate's original waste may be responsible.

The Agency, therefore, proposes to limit the scope of today's decision to grant an exclusion only to Nameplate's regulated as such under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In addition, the denial of exclusion for the residual waste from the treated hazardous waste, if promulgated, does not change the existing requirements for this surface impoundment to operate as a hazardous waste management unit. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-

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month deadline is not necessary to achieve the purpose of section 3010, EPA believes that the exclusion and denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion for a petitioned waste and to deny exclusion of residual wastes at the unit handling these wastes is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 26, 1988.

J.W. McGraw,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922.)

2. In Appendix IX, add to table 1 the following wastestream in alphabetical order:

Appendix IX.—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • • • • • •
U.S. Nameplate Co., Inc.	Mount Vernon, IA	Retreated wastewater treatment sludges (EPA Hazardous Waste No. F006) previously generated from electroplating operations and currently contained in an on-site surface impoundment after, [insert date of final rule's publication]. This is a one-time exclusion for the retreated wastes only. This exclusion does not relieve the waste unit from regulatory compliance under Subtitle C.
•	•	• • • • • • •

• • • • •

[FR Doc. 88–9753 Filed 5–2–88; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in General Internal Medicine and General Pediatrics

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice would revise the regulations governing the Grants for Residency Training in General Internal Medicine or General Pediatrics, authorized by section 784 of the Public Health Service Act (the Act), to conform the regulations with amendments made by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. These amendments added a provision for grants for projects to plan, develop, and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and to provide traineeships or fellowships to participants in such programs. In addition, this notice also proposes changes to conform the existing regulations with amendments made by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, and Pub. L. 99–239, the Compact of Free Association Act of 1985, as well as changes which are clarifying and ministerial in nature.

DATE: Comments must be received no later than July 5, 1988.

ADDRESS: Written comments may be addressed to Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donald L. Weaver, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–6190.

SUPPLEMENTARY INFORMATION: Section 784 of the Act authorizes the award of grants to schools of medicine and osteopathy, public or private nonprofit hospitals, or any other public or private nonprofit hospitals, or any other public or private nonprofit entity to meet the

costs of projects to plan, develop, and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics. This authority also authorizes financial assistance in the form of traineeships and fellowships to residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics. Regulations for Grants for Residency Training in General Internal Medicine or General Pediatrics are codified at 42 CFR Part 57, Subpart FF.

Public Law 97–35 extended support under section 784 to include projects to plan, develop, and operate a program for the training of physicians who plan to teach in a general internal medicine or general pediatrics trraining program. Authority is also provided for financial assistance in the form of traineeships and fellowships to physicians who are participants in any such program and who plan to teach in a general internal medicine or general pediatrics training program.

Accordingly, the Department is proposing to revise the regulations to implement this new authority. The proposed revisions are described below according to the section of the regulations they affect.

The Department is proposing to add the following terms to § 57.3102, entitled, *"Definitions."*:

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

This proposed definition was selected since it is consistent with the Title VII definition established through rulemaking procedures for the regulations governing the Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine codified at 42 CFR Part 57, Subpart Q.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support from such grant.

This proposed definition is intended to clarify that financial assistance will be provided only to general internists and general pediatricians who are or who will become the full-time faculty involved in the general internal medicine or general pediatrics training programs. The definition is not meant to exclude others from participating in the faculty development program or its activities, but to identify which types of physicians are eligible for stipend support.

The Department proposes to add the following project requirements for faculty development programs to § 57.3105 entitled. *"Project Requirements"*:

1. Applicants would be required to have a curriculum which emphasizes improvement of teaching skills and techniques, uses both didactic and experiential teaching strategies, and directly applies to general internal medicine and/or general pediatrics. General internal medicine and general pediatrics are emerging specialties that are currently lacking appropriate numbers of educational models as well as an adequate number of sufficiently trained faculty to teach in the specialties.These requirements would assure that physicians would be trained in pedagogical skills to enhance their teaching capabilities in both classroom didactic settings and in clinical teaching settings.

2. Training programs of 9 or more months duration would be required to include both a research and administrative component. This requirement would assure that long-term training programs address the broad spectrum of faculty roles and responsibilties required in academic settings. For long-term primary care fellowship training, it is recognized and accepted, among medical educators, that faculty members should have a balance of training and experience in education, research and administration. Also, for long-term training, a limited amount of time is necessary in clinical practice in order for the trainees to integrate their pedagogical and clinical skills. The requirement is not meant to limit the development of activities to research and administration, but rather to assure the inclusion of these components in the curriculum for long-term fellowship training. The Department also recognizes the need for training activities of a shorter duration, such as short-term fellowships of 3- or 6-months duration as well as one-time or short-term workshop or seminar activities. Short-term programs are beneficial to those institutions that: (1) May need to train current faculty, and (2) may need to focus on one area, e.g., improving the faculty members' teaching skills. Further, it is recognized that programs of a shorter than 9-month duration do not provide sufficient time to cover adequately the teaching, research and adminstrative skills. Therefore, the requirement for including research and administrative components does not apply to the short-term programs.

3. Financial assistance to trainees would be required to be limited to a minimum of 3 months (full time) and a maximum of 24 months. This requirement is intended to provide a minimum training period that is expected to have the greatest impact in providing for behavioral changes in the trainees as well as maximize the use of Federal funds. Permitting a maximum of 24 months of stipend support will allow for the development of long-term fellowship training programs that will cover a broader range of training experiences required of new faculty, including, but not limited to, developing teaching, research and administrative skills.

The Department also proposes to revise § 57.3106, entitled *"How will applications be evaluated?"* by: (1) Including an additional review criterion for the evaluation of the faculty development program to assure that potential applicants have a training program which is consistent with the definition of a practice of general internal medicine or general pediatrics as defined under § 57.3102; and (2) removing all non-statutory funding priorities as listed in paragraphs (b)(1) and (b)(2). The Secretary has decided to remove these funding priorities as part of a newly implemented policy to announce, and solicit public comment on, any special factors related to national needs that will be considered in funding applications in periodic notices in the **Federal Register** and to retain in regulations only those funding priorities that are in the statute. The policy was adopted by the Secretary to provide maximum flexibility for program management, thus enabling the grant program to respond more quickly to new and emerging health care needs. The removal of the funding priorities currently codified does not necessarily preclude the announcement of all or part of these funding priorities in a forthcoming **Federal Register** notice.

Interested persons are invited to submit written comments to this notice to the Director of the Bureau of Health Professions at the address given above. All relevant materials received not later than July 5, 1988, will be considered in the development of final regulations.

In addition to the changes proposed above, it is necessary that certain technical and clarifying changes be made to conform the existing regulations with Pub. L. 97–35, Pub. L. 99–129, and Pub. L. 99–239 as follows:

1. Add "and Faculty Development" in the title and change "and" to "and/or" in

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the title and in the text of the regulations, where appropriate, in accordance with Pub. L. 97–35.

2. Revise § 57.3101, entitled "*To what projects do these regulations apply?*", to organize the section and add the authorizing language for making faculty development programs applicable under this regulation, in accordance with Pub. L. 97–35.

3. Revise § 57.3102, entitled "*Definitions.*", by revising:

(a) The definition of "school of medicine or osteopathy" by removing the reference to section 701(4) and retaining section 701(5) regarding accreditation of the school; and

(b) The definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia," in accordance with Pub. L. 99–239.

4. Revise § 57.3103, entitled "*Who is eligible to apply for a grant?*", to add current departmental grants policy language to reflect that eligible institutions may submit an application as the Secretary may prescribe along with a footnote which provides the address for obtaining application forms and instructions.

5. Revise § 57.3104, entitled "*What activities must be addressed in an application?*", to:

(a) Add identifying and clarifying language for faculty development programs, where appropriate, throughout the section text;

(b) Add clarifying language to indicate that stipend support requested for trainees must be paid in accordance with established Public Health Service postdoctoral stipend levels; and

(c) Reflect the current OMB approval number at the end of the section text.

6. Revise § 57.3106, entitled "*How will applications be evaluated?*", to add a funding priority for residence training and faculty development programs which demonstrate a commitment to general internal medicine and/or general pediatrics in the institution's medical education training programs, in accordance with Pub. L. 99–129.

7. Revise § 57.3107, entitled "*How long does grant support last?*", to:

(a) Reflect current departmental grants policy language in paragraph (c) by adding a sentence regarding continuation support; and

(b) Remove paragraph (d), concerning federally obligated grant funds, and relocate it in § 57.3109, entitled "*For what purposes may grant funds be spent?*"

8. Revise § 57.3109, entitled "*For what purposes may grant funds be spent?*", by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds in order to reflect current departmental grants policy language.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the thereshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act

The recordkeeping and reporting requirements in § 57.3104 and § 57.3111 and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB Approval Numbers are 0915–0060 for the regulations and the competing application form and 0915–0061 for the continuation application form). Section 57.3105 does not require clearance and therefore, the approval number shown at the end of this section text is removed.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subpart FF is proposed to be amended as follows:

Dated: February 26, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 14, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance, No. 13.900*, Grants for Faculty Development in General Internal Medicine and/or General Pediatrics)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The title of 42 CFR Part 57, Subpart FF is revised to read as follows:

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics

2. The authority citation for Subpart FF is revised to read as follows:

Authority: Section 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923 and 99 Stat. 540 (42 U.S.C. 295g-4).

3. Section 57.3101 is revised to read as follows:

§ 57.3101 To what projects do these regulations apply?

The regulations of this subpart apply to grants to schools of medicine and osteopathy and public or private nonprofit hospitals and other public or private nonprofit entities under section 784 of the Public Health Service Act (42 U.S.C. 295g-4) to assist in meeting the costs of projects—

(a) To plan, develop and operate approved residency training programs in internal medicine and/or pediatrics which emphasize the training of residents for the practice of general internal medicine and/or general pediatrics;

(b) To provide financial assistance (in the form of traineeships and fellowships) to residents who are participants in this type of program, and who plan to practice general internal medicine and/or general pediatrics;

(c) To plan, develop and operate a program for the training of physicians who plan to teach in a general internal medicine and/or general pediatrics training program; and

(d) To provide financial assistance (in the form of traineeships or fellowships) to physicians who are participants in any such program and who plan to teach in a general internal medicine and/or general pediatrics training program.

4. Section 57.3102 is amended by adding the definitions for "faculty development program" and "trainee" in alphabetical order and by revising the definition for "school of medicine and osteopathy" and "State" to read as follows:

§ 57.3102 Definitions.

* * * * *

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibility.

* * * * *

"School of medicine and osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 701(5) of the Act.

* * * * *

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Trainee" means an allopathic or osteopathic general internist or general pediatrician participating in a faculty development training program supported by a grant under section 784 and receiving stipend support from such grant.

5. Section 57.3103 is revised to read as follows:

§ 57.3103 Who is eligible to apply for a grant?

Any school of medicine or osteopathy, public or private nonprofit hospital or any other public or private nonprofit entity, located in a State, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

6. Section 57.3104 is amended by revising paragraphs (a), (d), (e), and (h) and the parenthetical statement at the end of the section text. Paragraph (c) of this section is amended by removing "(j) and (l)" in the parenthetical statement and inserting "(10) and (12)" in its place.

§ 57.3104 What activities must be addressed in an application?

* * * * *

(a) A proposal for a project to plan, develop, and operate an approved residency training or faculty development program in internal medicine and/or pediatrics—

(1) Which emphasizes the training of residents for the practice of general internal medicine and/or general pediatrics and faculty for teaching in such programs, and

(2) Which may provide financial assistance to residents and trainees who are participants in the programs and who plan to practice or teach in general internal medicine and/or general pediatrics.

* * * * *

(d) In programs other than faculty development, a description of the type and amount of training to be offered to residents in each year of each residency program in accordance with the requirements of § 57.3105(a)(11).

(e) In programs other than faculty development, the number of residents to be enrolled in each program, at each level of training, for each year of the project period.

* * * * *

(h) If stipend support is requested by an applicant to provide a portion of the salary of residents enrolled in the program, documentation showing that income available from alternative sources, including income derived from the services of the residents in the program, will be insufficient to pay their salaries and that grant funds will not be used to supplant other available funds. Stipend support requested for trainees in the faculty development program must be paid in accordance with established Public Health Service postdoctoral stipend levels.

(Approved by the Office of Management and Budget under control number 0915–0060.)

7. Section 57.3105 is amended by designating the introductory paragraph as paragraph (a); by redesignating paragraphs (a)–(n) as paragraphs (1)–(14); by amending in newly redesignated paragraph (10), paragraphs (1)–(5) as paragraphs (i)–(v); by amending in newly redesignated paragraph (10)(v), paragraphs (i)–(iii) as paragraphs (A)–(C); by amending in newly redesignated paragraph (11), paragraphs (1)–(3) as paragraphs (i)–(iii); by amending in newly redesignated paragraph (13), paragraphs (1)–(3) as paragraphs (i)–(iii), and in newly redesignated paragraph (13)(ii), paragraphs (i)–(iii) as paragraphs (A)–(C); by adding a new paragraph (b); and by removing the parenthetical statement at the end of the section text. In § 57.3105, newly redesignated paragraph (a)(11) is amended by removing "(j)" and inserting "(a)(10)." Additionally, in § 57.3105, the phrase "general internal medicine or" is revised to read "general internal medicine and/or" in newly redesignated paragraphs (a)(3), (a)(5), (a)(6), (a)(10), (a)(10)(iii), (a)(10)(iv), (a)(10)(v)(A), (a)(12), and (a)(13)(ii)(C).

§ 57.3105 Project requirements.

* * * * *

(b) For each faculty development program, a project must:

(1) Have a project director who is employed by the grantee or training institution, has relevant training and experience, and has been approved by the Secretary to direct the project;

(2) Have an appropriate administrative and organizational plan and appropriate faculty, staff and facility resources to achieve the stated objectives;

(3) Have a curriculum which:

(i) Directly applies to general internal medicine and/or general pediatrics,

(ii) Emphasizes improvement of pedagogical skills and techniques for clinical teaching in classroom and ambulatory health care settings, and

(iii) Uses structured didactic and experiential teaching strategies.

(iv) With respect to training programs of 9 or more months duration, the curriculum must also include:

(A) A research component, with a research project to be completed by each trainee, and

(B) An administrative component which addresses the non-teaching roles and functions of faculty;

(4) Systematically evaluate the educational program, including trainees and faculty, the administration of the program, and the degree to which the program and educational objectives are met;

(5) Have a trainees only physicians who teach or plan teaching careers in general internal medicine and/or general pediatrics;

(6) To be eligible for stipend support from grant funds, a trainee must:

(i) Be a general internist or a general pediatrician.

(ii) Intend to teach in a general internal medicine and/or general pediatrics program on a full-time basis.

(iii) Be a full-time participant in the training project for at least 3 months, and

(iv) Receive less than full institutional salary during the period of Federal support of stipends; and

(7) Stipend support from grant funds may be no longer than 24 cumulative months for any trainee.

8. Section 57.3106 is amended by removing the period at the end of the sentence in paragraph (a)(4) and inserting a semicolon and the word "and"; by adding a new paragraph (a)(5); and by revising paragraph (b) to read as follows:

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

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§ 57.3106 How will applications be evaluated?

(a) * * *

(5) For faculty development programs, the applicant must demonstrate the institution's commitment to general internal medicine and/or general pediatrics as defined under § 57.3102.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary shall give priority to applicants that demonstrate a commitment to general internal medicine and general pediatrics in their medical education training programs. However, should specific needs warrant, the Secretary will consider any other special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

9. Section 57.3107 is amended by removing paragraph (d), and by revising paragraph (c) to read as follows:

§ 57.3107 How long does grant support last?

* * * * *

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

10. Section 57.3109 is amended by adding a new paragraph (c) to read as follows:

§ 57.3109 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds provided and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts provided by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

11. Section 57.3111 is amended by adding the following parenthetical statement at the end of the section text to read as follows:

§ 57.3111 What other audit and inspection requirements apply to grantees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060.)

[FR Doc. 88–9779 Filed 5–2–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) intends to begin the review of the natural resource damage assessment regulations promulgated as a final rule on August 1, 1986, and codified at 43 CFR Part 11. The natural resource damage assessment regulations were developed pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c)(3) of CERCLA reqires that the regulations be reviewed by the Department every two years and revised as appropriate.

The Department has promulgated two types of assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and procedures for complex assessments (type B procedures). The August 1, 1986, final rule contains the general administrative process and the type B assessment procedures. To meet the two-year review requirement of CERCLA, the Department is now requesting public comments on experience gained with the type B procedures and the overall administrative process contained in the regulations. At a later date, the Department will issue a separate advance notice of proposed rulemaking for comments on experience with the type A procedures.

If it is determined, after review of comments received in response to this Advance Notice of Proposed Rulemaking, that the August 1, 1986, final rule should be revised, a Notice of Proposed Rulemaking will be published in the **Federal Register**.

DATE: Comments will be accepted through July 5, 1988.

ADDRESS: Office of Environmental Project Review, ATTN: NRDA Regulations, Room 4239, Department of the Interior, 1801 C Street NW., Washington, DC 20240 (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act).

Section 107 of CERCLA provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 111(b) of CERCLA. Indian tribes may commence an action as natural resource trustees under section 126(d). Federal natural resource trustees are designated by Executive Order 12580 and the National Contingency Plan (NCP). They are, in general, those departments and agencies that have natural resources or land management responsibilities. State natural resource trustees are State officials designated by the Governors. These State designations are reported to the Administrator of the U.S. Environmental Protection Agency (EPA). Natural resources are defined by CERCLA to be: Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established under the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The damage that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance.

Section 301(c), revised by the Superfund Amendments and Reauthorization Act of 1986 (SARA), calls for the natural resource damage assessment regulations in the following terms:

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987, delegated the responsibilities contained in section 301(c) to the Secretary of the Interior. On August 1, 1986 (51 FR 27674), the Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases, otherwise known as the "type B" procedures. A notice was issued on November 16, 1987 (52 FR 43763), announcing the availability of five final type B technical information documents that were prepared in conjunction with the development of the type B assessment procedures. On March 20, 1987 (52 FR 9042), the Department published a final rule that contains the standard procedures for simplified assessments, known as the "type A" procedures. The type A procedure in that final rule is for use in coastal and marine environments and includes the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). On February 22, 1988 (53 FR 5166), the Department published a final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by SARA. Finally, on March 25, 1988, the Department published technical corrections to the NRDAM/CME (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR Part 11. Section 107(f)(2)(C) of CERCLA provides that natural resource damage assessments performed by Federal or State trustees in accordance with the regulations promulgated under section 301(c) of CERCLA are provided the legal evidentiary status of a rebuttable presumption in an administrative or judicial proceeding.

II. Discussion

In order to carry out the statutory requirement that the natural resource damage assessment regulations be reviewed and revised as appropriate every two years, the Department is seeking public comment reflecting experience with the general assessment process and the type B procedures. Because the type A procedures were developed later and there is less experience with these procedures, the Department will begin the review of the type A procedures at a later date.

Over the course of developing the general assessment process and the type B procedures, beginning with the Advance Notice of Proposed Rulemaking published in January of 1983 (see 48 FR 1084), the Department already has received many comments on the natural resource damage assessment regulations. Comments specific to the general assessment process and the type B procedures were received on the proposed type B rule published in December 1985 (see 51 FR 27674). These comments were helpful in developing the assessment process and the type B procedures. The Department's response to these comments can be found in the preamble to the final type B rule published in August 1986 (see 51 FR 27674). The Department is now asking for information based specifically on experience with application of the general administrative process, the type B assessment procedures, and the type B technical informaton documents. As well, the Department is requesting information drawn from any new technology not available when the regulations were developed. Comments should focus on all Subparts of 43 CFR Part 11 except Subpart D and §§ 11.31 and 11.33 of Subpart C, which pertain to the type A procedures.

For reference in preparing comments, the Department is providing a brief summary of the rule. It should be noted that the natural resource trustee has the option of using the rules or of performing an assessment based on some other procedure. However, assessments performed by Federal or State natural resource trustees following the rules are granted the legal evidentiary status of a rebuttable presumption in an administrative or judicial proceeding. The rules, as codified at 43 CFR Part 11, use a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment, performed pursuant to the rule, are appropriate, necessary, and sufficient to assess damages for injuries to natural resources. The major phases in the assessment process are: (1) The Preassessment phase; (2) the Assessment Plan phase; (3) the Assessment phase, which in turn consists of the Injury Determination, Quantification, and Damage Determination phases; and (4) the Post-assessment phase. The discussion that follows describes the progression of these phases through a type B assessment.

The Preassessment phase usually begins with the notification to the natural resource trustee of a discharge or release, although it may begin with the detection by the natural resource trustee of a discharge or release. During the Preassessment phase, the trustee must perform a preassessment screen to establish that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. A Preassessment Screen Determination is required to determine whether to proceed with further assessment actions. Provisions are made for temporary actions to prevent or reduce injury to the natural resources, that is, emergency restoration actions as authorized by section 111(i) of CERCLA.

If the Preassessment Screen Determination indicates that further actions are warranted, the trustee may proceed to the Assessment Plan phase. The trustee must develop an Assessment Plan before initiating an assessment. The trustee is also required to coordinate with other co-trustees, to make reasonable effort to identify and

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involve the potentially responsible party, and to offer the public an opportunity to review, prior to implementation, the Assessment Plan. A trustee must make a confirmation of exposure documenting that at least one natural resource has been exposed to the substance discharged or released. The trustee must also make an Economic Methodology Determination to estimate whether to base the assessment on the lesser of restoration costs or diminution of use values. The Assessment Plan must document all decisions on the methodologies selected, including, but not limited to, parameter values, sampling sites, and assumptions used to implement the methodologies. The Plan must include such documentation because one of the purposes of this Plan is to ensure that the assessment cost will be "reasonable."

After the trustee develops the Assessment Plan, he may proceed with the assessment phase consisting of: The Injury Determination phase; the Quantification phase; and the Damage Determination phase. For injury determination the trustee focuses on whether an injury to a resource has occurred and that any injury so determined did result from the discharge or release. The rule provides both a general definition of injury and resource-specific definition. In order to proceed, at least one resource must be found to have been injured based on these resource-specific injury definitions, and a pathway of contamination must be established that links the injury to the discharge or release. After the injury determination, the rule calls for a mandatory review of the Assessment Plan, including consideration of both the initial Plan and the initial decision on the lesser of restoration costs or diminution of use values.

If the trustee has established that a resource has been injured, the next part of the assessment is to quantify the effects of the injury in terms of the change in the services that the resource had provided. Services that resources provide include, for example, fish or wildlife habitat, recreation, or erosion control. The assessment establishes a baseline condition of the resource service that existed prior to the injury attributable to the discharge or release and determines the reduction in services that resulted from the discharge or release. The ability of the injured resources to recover is also determined in terms of the amount of time necessary for the resource services to recover to baseline conditions. This quantification is closely related to the following steps in the type B assessment, the damage determination.

Damage determination focuses on the economic valuation of the change in services provided by the injured resource, taking into account cleanup actions taken or planned. In damage determination, the trustee calculates the monetary compensation for injury, based on the lesser of the restoration or replacement costs, or the diminution in use value of the resource.

When the natural resource damage assessment is complete, several post-assessment actions are required. A Report of Assessment is compiled that includes the documentation of all determinations made during the assessment, data collected, and test results. The Report of Assessment becomes the administrative record of the natural resource damage assessment. The trustee then presents a demand for damages to the potentially responsible party (PRP), and the PRP has the opportunity to respond to the demand. Any damage awards are to be placed in a separate account for use by the trustee to restore or replace the natural resources injured by the discharge or release. The trustee must develop a Restoration Plan to document the actions that are planned to restore or replace the injured resource. The Plan must be developed based on the amount of the damage award, whether the award was based on restoration costs or diminution of use values.

III. Conclusion

The Department is seeking comments based on experiences in applying the general administrative process and the type B procedures outlined in the rule, which are described above. Comments should address the following, although not necessarily be limited to these questions: (1) Where and how have the assessment process and the type B procedures been applied, for example, geographical location, environmental setting, etc.?; (2) How effective was the assessment process in these applications?; (3) In what type of situation has the assessment process been used, for example, in settlement negotiations, court actions, etc.?; (4) What are recommendations for modification of the assessment process and the type B procedures based on the applications mentioned above?; and (5) How effective has the process been pertaining to restorations and the ability to apply funds recovered towards planned restoration activities?

Also, the Department is asking for any relevant information not available at the time the type B procedures were developed. Section 301(c) of CERCLA states that such regulations shall identify the "best available" procedures to determine damages to natural resources. In order to ensure that the type B procedures are the "best available" procedures, the Department wants to know of any new methodologies or protocols that might be incorporated into the type B procedures. For example, new methodologies or technical information may exist in such areas as defining injuries to the resources and determining the extent of and compensation for the injury.

Dated: April 28, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-9758 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-RG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 84-467; FCC 88-82]

Radio Broadcasting Services; Expanded Band (1605–1705 kHz)

AGENCY: Federal Communications Commission.

ACTION: Third report; availability of proposed recommendations.

SUMMARY: In response to the *Third Notice of Inquiry*, and through other preparatory activities for the Second Session of the Regional Administrative Radio Conference (RARC-86) on the expansion of the AM band from 1605 kHz to 1705 kHz, the Commission adopted the *Third Report* containing its recommendations for U.S. proposals to the Conference. The FCC recommendations contain proposed text for the Final Acts of the Conference, including the Regional agreement and technical annexes. The draft text will be submitted to the State Department and upon adoption as a U.S. proposal will be forwarded to Geneva for distribution to the various administrations in Region 2 (the Western Hemisphere). The intended effect of this action is to expedite the implementation of broadcasting in the expanded band.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Policy and Rules Division, Mass Media Bureau (202) 254-3394; and John Boursy, Audio Services Division, Mass Media Bureau (202) 634-6315.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report*, in Gen. Docket No. 84-467, FCC 88-82, adopted February 26, 1988, and released April 22, 1988.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this *Third Report* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report

1. In order to prepare for the Second Session of the Regional Administrative Radio Conference on the expansion of the AM band from 1605 kHz to 1705 kHz, the Commission adopts this *Third Report*. It is based on comments filed in response to a *Third Notice of Inquiry* (52 FR 27570, July 22, 1987), and other information garnered through conference preparatory activities taking place during the period between the first and second sessions of the conference.

2. One of the principal tasks of the Conference, which is scheduled to take place in Rio de Janeiro from May 23 to June 9, 1988, is to develop a plan for the broadcast use of the band. At the First Session, it was decided to use an allotment planning method which makes designated frequencies available for use anywhere within a specified area; whereas, under an assignment plan, an assignment for each station is entered into the plan with a specific location, power and other pertinent characteristics. Allotment planning offers flexibility while helping to ensure an efficient and equitable distribution of channels. It avoids the need to identify specific requirements and because it deals with allotments rather than specific assignments, an allotment plan protects future rights without the need to identify them in advance.

3. Because of the enlargement of the scope of the Second Session to include non-broadcast as well as broadcast uses of the expanded band, there is a need to make several changes to the draft text of the final agreement adopted at the First Session. The issue of the text was discussed internationally at the Lima meeting of CITEL PTC II, and a revised draft text was considered. Although no decision was made regarding this text, it met with general support by the countries attending the CITEL meeting. The Commission believes that this text with minor revisions is appropriate for adoption at the Second Session of the Conference. Accordingly, it will be included in the draft text for the Final Acts of the Conference that the FCC is recommending as a United States proposal to the Second Session.

4. The Report discussed two technical issues not resolved by the First Session: The relationship between physical and electrical antenna heights and the sharing of the band between broadcast and non-broadcast uses. As to the former, considerable study has been given to this topic by the Radio Advisory Committee and by the CCIR. The purpose of these studies was to determine whether it would be possible to develop a more accurate assessment of an AM tower's electrical height than that currently in use in Region 2. Based on these studies, we believe that the asserted correlation between physical heights and electrical heights does not exist. After discussion of this issue at a CITEL PTC II meeting, there was agreement that this subject was not a practical one for resolution by the Conference and that electrical height in the band 1605-1705 kHz should be based upon "free space" calculations as is the case in the band 535-1605 kHz.

5. Another technical matter left for resolution at the Second Session of the Conference is the subject of "sharing criteria." At the present time, in Region 2, the band 1605-1705 kHz is allocated to the fixed, mobile and aeronautical radionavigation services on a primary basis and to the radiolocation service on a secondary basis. However, effective on a date to be decided by the Expanded Band Conference, the band 1605-1625 kHz has been allocated to the broadcasting service on an exclusive basis and the band 1625-1705 kHz has been allocated to the broadcasting service on a primary basis, to the fixed and mobile services on a permitted basis and to the radiolocation service on a secondary basis. Although most countries in the Region intend to use the band for broadcasting, some intend to continue (or even add) non-broadcast uses. As a consequence, it is necessary to develop sharing criteria so that these non-broadcast uses do not cause a derogation in the broadcasting Plan to be adopted. The CCIR has investigated this matter and its report to the Second Session of the Conference will be considered when the Conference makes its decisions in this area. It is the FCC's tentative conclusion that non-broadcast uses should be protected to a quality of service equivalent to "marginal commercial quality". This would ensure the continued utility of such non-broadcast uses without imposing excessive constraints upon the broadcast service.

6. The treatment of Travelers Information Stations (TIS) was also of concern throughout the various stages of this proceeding. Under current regulation, TIS stations operate on 1610 kHz (also on 530 kHz) which is outside the 535-1605 kHz AM broadcast band, a situation which will change with expansion of the AM band. Not only is it not feasible to maintain TIS on 1610 kHz once the AM band is expanded, but without international interference protection from new broadcast stations, TIS operations would not be able to provide effective service on 1610 kHz. Therefore, the Commission found the most feasible approach appears to involve the use of 1700 kHz for TIS. Any interference protection for TIS will be derived from the allotment Plan adopted by the Conference. Nonetheless, effective coordination with Canada and Mexico is essential and can help maximize the opportunity for these stations to offer effective service.

7. Finally, we note that the bulk of the work at the Second Session of the Conference will be devoted to the development of a regional plan for broadcast use of the expanded band. Current planning will be framed in terms of the effect of one allotment on other allotments. For these purposes, we have adopted standardized separations between co-channel allotment areas. To make the best use of this approach, it is necessary to apply a "pairing" concept, that is the idea that a frequency can be reused at a closer geographic distance than otherwise would be possible in the absence of "pairing".

8. At the Second Session it also will be necessary to take adjacent channel considerations (especially first adjacent) into account as frequencies are alloted. Since a fully automated approach to taking adjacent channels into account (analogous to the co-channel situation) has not been found, it will not be possible to eliminate all first adjacent channel relationships between all geographically adjacent countries. However, we anticipate that the development of the Plan at the Second Session can avoid the potential for many first adjacent channel incompatibilities between countries by judicious assignment of frequencies. Nevertheless, where incompatibilities remain, it will be necessary to handle them via bilateral and/or multilateral agreements between and/or among the affected countries.

9. In the event that agreements resolving some or all incompatibilities do not exist, the Commission believes the most appropriate and effective manner of resolving these situations

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would be a provision to the effect that when coordination has not been successfully affected with respect to the probability of harmful interference, on examination of notices of frequency assignments, the IFRB will take into account the frequency assignments for transmission or reception already recorded in the Master International Frequency Register.

Authority Citation

10. Authority for the action taken is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and 303.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9598 Filed 5-2-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Atlantic Billfishes; Withdrawal of Availability of a Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of withdrawal of a notice of availability of a fishery management plan.

SUMMARY: NOAA issues this notice to inform the public that the South Atlantic Fishery Management Council withdraws from review by the Secretary of Commerce the Fishery Management Plan for Atlantic Billfishes (FMP) and a proposed rule to implement it. A notice of availability of the FMP with request for comments, appeared in the **Federal Register** on April 6, 1988 (53 FR 11321). The FMP was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, and was submitted for Secretarial review.

Technical changes being made to the economic analysis in the regulatory impact review section of the FMP warrant withdrawing the FMP from Secretarial review and withholding publication of a proposed rule at this time. When the revised FMP is resubmitted by the Councils for Secretarial review, another notice of availability will be published.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (Plan Coordinator), 813-893-3722.

(16 U.S.C. 1801 *et seq.*)

Dated: April 26, 1988.

Richard H. Schaefer,

Director, Office of Fishery Conservation and Management.

[FR Doc. 88-9759 Filed 5-2-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 85

Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-044]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease-Tolerant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing of genetically engineered tomato plants, designed to be tolerant to tobacco mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7769, or write her at this same address. The environmental assessment should be requested under accession number 87-329-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published in a final rule in the **Federal Register** (52 FR 228992-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to tobacco mosaic virus. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the tobacco mosaic virus cost (capsid) protein has been inserted into a tomato chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field trial, the inserted gene cannot spread to any other plants by cross-pollination, because the field test plot is located at a sufficient distance from any sexually compatible plants with which the genetically engineered tomato plants could cross-pollinate.

2. While the tobacco mosaic virus is a plant pest, neither the tobacco mosaic virus coat (capsid) protein gene itself, nor its derived gene product, confer on tomato any plant pathogenic characteristic.

3. The vector used to transfer the tobacco mosaic virus coat (capsid) protein gene into a tomato chromosome has been evaluted for its use in this experiment. The vector has been derived from a DNA sequence with known plant pathogenic potential, but has been disarmed. Phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to susceptible plants.

4. The vector agent, the bacterium that was used to deliver the vector DNA, has been shown to be eliminated and no longer associated with the transformed tomato plants.

5. Horizontal movement of the introduced genes to another organism is not possible. The vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The

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vector does not survive alone in the transformed plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot is approximately 0.2 acre and will be located in the center of a large research farm. The field test plot is surrounded by irrigation canals approximately 20 feet wide on 3 sides and a chain-linked fence on the 4th side. The level of physical containment to prevent any unintentional release into the environment has been found to be adequate.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508; (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 27 day of April, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–9724 Filed 5–2—88; 8:45 am]

BILLING CODE 3410–34–M

Federal Grain Inspection Service

Designation Renewal of the State of Alaska (AK) and the Memphis Agency (TN)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Alaska Department of Natural Resources, Division of Agriculture (Alaska), and Memphis Grain and Hay Association (Memphis), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: June 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Alaska's and Memphis' designations terminate on May 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the December 7, 1987, **Federal Register** (52 FR 46384). Applications were to be postmarked by January 4, 1987. Alaska and Memphis were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the February 2, 1987, **Federal Register** (53 FR 2861) and requested comments on the applicants' designation. Comments were to be postmarked by March 18, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Alaska and Memphis are able to provide official services in the geographic area for which the Service is renewing their designation. Effective June 1, 1988, and terminating May 31, 1991, Alaska and Memphis will provide official inspection services in their entire specified geographic area, previously described in the December 7 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following addresses: Alaska, at P.O. Box 949, Palmer, AK 99645; and Memphis, located at 1390 Channel Avenue, Memphis, TN 38113.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–9712 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Denver (CO) and East Indiana (IN) Agencies, and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and Kansas State Grain Inspection Department (Kansas).

DATE: Comments to be postmarked on or before June 20, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail. *Telex* users may respond as follows: To: Lewis Lebakken. TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the March 1, 1988, **Federal Register** (53 FR 6168). Applications were to be postmarked by March 31, 1988. Denver and Kansas were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applications for the East Indiana designation; East Indiana applied for designation renewal in the entire area currently assigned to that agency, except for Williams County, Ohio, and a neighboring official agency, Lima Grain Inspection Service Inc., applied for designation only in that County.

This notice provides interested persons the opportunity to present their comments concerning the applicant's designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–9715 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Los Angeles (CA) and Peoria (IL) Agencies

AGENCY: Federal Grain Inspection Services (Service), UDSA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designation shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applicatons from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Los Angeles Grain Inspection Services, Inc. (Los Angeles), and Peoria Grain Inspection Service, Inc. (Peoria).

DATE: Applications to be postmarked on or before June 6, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this section.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Los Angeles, located at 1625 Bluff Road, Montebello, CA 90640; and Peoria, located at 330 SW Washington Street, 2nd Floor, Peoria, IL 61602; were such designated under the Act as an official agency to provide inspection functions on November 1, 1985.

Each official agency's designation terminates on October 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Los Angeles, in the State of California, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Peoria, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Stark County line to Marshall County; the northern Marshall County line to Putnam County; the western Putnam County line north to State Route 29; State Route 29 north to Interstate 180; Interstate 180 east to State Route 26;

Bounded on the East by State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 southeast to State Route 121; State Route 121 south to State Route 10;

Bounded on the South by State Route 10 west to Mason County; the eastern and southern Mason County lines west to the Illinois River; the Illinois River northeast to Fulton County; the southern Fulton County line; and

Bounded on the West by the western and northern Fulton County lines to Peoria County; the western Peoria and Stark County lines.

Interested parties, including Los Angeles and Peoria, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning November 1, 1988, and ending October 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–9714 Filed 4–2–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Little Rock, AR, Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Service has determined that the designation of Little Rock Grain Exchange Trust (Little Rock) will not be renewed. The Service is again requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (Act) in the area serviced by Little Rock.

DATE: Applications to be postmarked on or before June 6, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

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SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Little Rock's designation terminates on May 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the December 7, 1987, Federal Register (52 FR 46384). Applications were to be postmarked by January 4, 1987. Little Rock was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the February 2, 1987, Federal Register (53 FR 2861) and requested comments on the applicant's designation. Comments were to be postmarked by March 16, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that, pursuant to section 7(g)(1) of the Act, Little Rock's designation will not be renewed. In accordance with the Act and regulations, the designation of Little Rock will terminate on May 31, 1988.

The Service is again requesting applications for designation to provide official services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in the States of Arkansas and Texas, which may be assigned to the applicant selected for designation is as follows:

In Arkansas:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line,

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller Couty line; and

Bounded on the West by the western Arkansas State line from the southern Miller Couty line north to the northern Benton County line.

In Texas: Bowie and Cass Counties.

An exception to the described geographic area is the following location inside the area which has been and will continue to be serviced by the following official agency:

Memphis Grain and Hay Association: Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, designation in the specified geographic area is for a period not to exceed 3 years. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Stuttgart Field Office at (501) 673–2508 to obtain such service beginning June 1, 1988, until such time as an applicant is designated to perform official services.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: April 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–9713 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–EN–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for farm products produced in that State (51 FR 34236, September 26, 1986 and 51 FR 36257, October 9, 1986).

The same system is hereby certified on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for additional farm products produced in that State as follows: Onion seed, Garlic, Radishes.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: April 27, 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88–9719 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–KD–M

Amendment to Certification of Central Filing System; Louisiana

The Statewide central filing system of Louisiana has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for farm products produced in that State (51 FR 47036, December 30, 1986).

The same system is hereby certified on the basis of information submitted by the Louisiana Department of Agriculture & Forestry for an additional farm product produced in that State as follows:

Broccoli.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: April 27, 1988.

B.H. (BILL) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88–9720 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–KO–M

Soil Conservation Service

Upper Contentnea Creek Watershed, Franklin, Johnston, Nash, Wake and Wilson Counties, NC

AGENCIES: North Carolina Department of Natural Resources and Community Development and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Upper Contentnea Creek Watershed, Franklin, Johnstron, Nash, Wake and Wilson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone (919) 733–2302 or Bobbye J. Jones, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Fifth Floor, Federal Building, Raleigh, North Carolina 27601, Telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The Environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 14,400 acres of cropland.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Date: April 22, 1988.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 88–9689 Filed 5–2–88; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Procurement and Administrative Services.

Title: Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs.

Form Number: Agency—NA; OMB—0605–0020.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 0 respondents; 1 reporting hours

Needs and Uses: Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, each Federal agency is required to establish regulations to ensure that persons displaced by the Federal Acquisition of their real property are compensated for the acquisition. Commerce has had no acquisition or relocation activities for the past several years, but is clearing at least 1 hour in the event of future activity.

Affected Public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3008 New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–9780 Filed 5–2–88; 8:45 am]

BILLING CODE 3510–CW–M

Patent and Trademark Office

Advisory Committee for Patents and Trademarks; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

SUMMARY: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

TIME AND PLACE: May 20, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Conference Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

AGENDA: (1) Public Access to Automated Search File. (2) Education Outreach—Project XL.

PUBLIC OBSERVATION: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: Donald G. Kelly, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557–3071.

Date: April 26, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–9744 Filed 5–2–88; 8:45 am]

BILLING CODE 3510–16–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts next scheduled meeting is Thursday, May 19, 1988 at 10 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC

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including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, April 25, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–9787 Filed 5–2–88; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile and Textile Products Produced or Manufactured in Peru

April 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits for the new agreement year.

EFFECTIVE DATE: May 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreement between the Governments of the United States and Peru is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 27, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Peru and exported during the twelve-month period beginning on May 1, 1988 and extending through April 30, 1989, in excess of the following restraint limits:

Category	12–mo. restraint limit
219	26,312,017 square yds.
220	12,975,789 square yds.
226/313	24,996,370 square yds of which not more than 3,556,118 square yds shall be in Category 226.
300	3,000,000 pds.
301	2,250,000 pds.
315	4,718,866 square yds.
317/326	19,845,739 square yds. of which not more than 6,014,574 square yds. shall be in Category 326.
Cotton Apparel Group: 330–359, as a group. Sublevel within the Group: 338/339	10,000,000 square yds. equivalent. 515,205 doz. of which not more than 343,470 doz. shall be in Categories 338–S/339–S[1].
Wool Group: 400–469, as a group. Sublevel within the Group: 410	4,000,000 square yds. equivalent. 1,500,000 square yds.

[1] Categories 338–S/339–S, only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9624, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970 and 384.3437 in Category 338; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339.

Trade falling into the category limit for the periods May 1, 1987 through December 31, 1987 and January 1, 1988 through April 30, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment in the future under the provisions of the bilateral agreement between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–9697 Filed 5–2–88; 8:45 am]

BILLING CODE 3510–DR–M

Requirements for Participation in the Special Regime Under U.S.-Mexico Textile Agreement

April 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice of requirements for participation in the Special Regime under the U.S.-Mexico textile agreement.

Authority: Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended; Executive Order 11651 (March 3, 1975).

Background

On February 17, 1988, the Government of the United States and the Government of Mexico entered into a new textile agreement, effective January 1, 1988. Under the terms of that agreement, a Special Regime was established under which a number of categories were placed under quotas which distinguish between Mexican products produced from foreign fabric and Mexican products assembled from U.S. formed and cut fabrics. In essence, each category has a sublimit for products that are not assembled from U.S. formed and cut fabrics. A copy of the bilateral agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, 202–647–1998.

To implement the Special Regime, the Committee for the Implementation of Textile Agreements (CITA) has determined that it is necessary to require that (1) the same firm act as both exporter of the cut fabric parts to Mexico and importer into the United States of the assembled products made from those parts, (2) participating firms complete a Form ITA–370P (described below), and (3) all exportations and importations under the Special Regime be completed at a Customs port on the U.S.-Mexico border. The U.S. Customs Service is directed to determine whether the requirements set forth in this notice are met and to charge all products subject to the Special Regime to the applicable quota.

Completion of Form ITA–370P

Form ITA–370P was originally designed for use in connection with the Special Access Program for Caribbean Basin countries. It is expected that the form will be revised to delete all references to the Caribbean. Pending such revisions, the form's references to Caribbean countries should be disregarded. Copies of Form ITA–370P are available from the Government Printing Office, Washington, DC, telephone 202–783–3238, stock number 003–009–00505–1, at a cost of $29 per 100 copies.

Form ITA–370P is a three-part document with two pre-carboned copies. Each part of the document, the Shipper's Declaration, Assembler's Declaration, and the Importer's Declaration, is in the form of a certification which must be completed and signed. Falsification of a certification will subject the certifying officer and the participating firm to criminal and civil penalties. Such penalties are authorized under 18 U.S.C. 1001 and 19 U.S.C. 1592, See also § 162.70, et seq., Customs Regulations (19 CFR 162.70 et seq.).

Participation in the Special Regime and treatment of merchandise under the Special Regime are strictly subject to fulfillment of the requirements of the Special Regime. The form therefore states that firms found to have falsified certifications may be precluded from future participation in the Special Regime.

The Shipper's Declaration

At the time of exportation to Mexico of fabric parts from the United States, firms intending these goods to be treated under the Special Regime must present to the U.S. Customs Service a Form ITA–370P with a completed Shipper's Declaration. Form ITA–370P instructs the shipper to retain invoices establishing that the fabric components are U.S. formed and cut and to describe the parts being exported, "including the weight and quantity of parts, the fabric, including fabric weight, yarn size, thread count, fiber content, pattern, and color and the U.S. manufacturer(s) of the fabric and the U.S. firm cutting the fabric."

It is the understanding of CITA and of the Customs Service that it may not be possible for all firms to supply all of the detail listed above. Some information may not be available or necessary in all instances. The purpose of the description requirement is to permit Customs inspectors to conduct a visual inspection of the fabric parts and compare it with the written description to determine whether the exported parts are what they purport to be. Thus, firms should include as much detail as possible, either on the form itself, if there is sufficient space, or by attached invoices, other documentation, or a continuation sheet. Firms need not attach invoices if they sufficiently describe the merchandise on the form, although documentation of U.S. origin, such as invoices, cutting documents, or signed affidavits by suppliers, must be retained in a firm's files. Signed affidavits by suppliers should be retained if invoices or cutting tickets are not available.

Vertically integrated firms, i.e., firms which both form and cut fabric, should retain an internal transfer document or other documentary proof that they formed the fabric in the United States. These invoices or internal transfer documents must comply with the requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* and the Federal Trade Commission Rules and Regulations thereunder, 16 CFR Part 303, and identify the fabric as entirely formed in the United States. See Rule 33 of the Federal Trade Commission regulations (16 CFR 303.31).

If documents are attached to Form ITA–370P, either to provide additional proof of U.S. origin or because of insufficient space on the form, information should be included on the form identifying and explaining the attachments. These documents should be stapled to the form and include some identification tying them to that particular form.

Firms may provide total weight for all fabric parts for each style, rather than listing the weight for each of the components being exported. It is recommended that firms provide explanatory information in instances where terminology is not generally recognized. For example, instead of listing a color as "bermuda," a firm should include a definition of that color, such as "purple."

At the time of exportation, the Custom port will verify the form by assigning it a four-digit control number and signing it. The Customs port will retain the original (top) copy of the form and forward that copy to the appropriate district office. A second copy of the form will be retained by the port of export and the third copy is to accompany the cut parts to Mexico. Any number of copies of the form may be made once the Shippper's Declaration portion of the form has been completed and Customs has signed the form and assigned a control number.

The Assembler's Declaration

For each shipment of parts that has been assembled in Mexico and is ready to be exported to the United States, the assembler will complete the Assembler's Declaration portion of form ITA–370P.

The Importer's Declaration

At the time of entry into the United States of the assembled goods, the U.S. importer must have completed the Importer's Declaration portion of form ITA–370P, certifying the quantity and products assembled from the U.S. formed and cut fabric, and must present it to the Customs port of entry as part of the entry package. The entry package also must contain a valid visa, as required under the terms of the agreement with Mexico, and a country of origin textile declaration, in accordance with § 12.130, Customs Regulations (19 CFR 12.130).

The port of importation will contact the district office to determine whether entry may be permitted against the particular form. Merchandise will be eligible for entry under the following conditions: (1) If the shipper of the cut parts and the importer of the assembled products are the same firm; (2) the port determines that an original verified form is on file with the district office; (3) the port determines from the district office that entries may be made against the quantity indicated on the form; and (4) the port determines that all other entry requirements are met.

Signatures on Form ITA–370P

The Shipper's Declaration portion of the form must be signed by a "responsible manager" of the exporting firm. The Importer's Declaration may be signed by either a "responsible manager" of the firm or by the "responsible agent" for the firm. In each instance, the person signing must be

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knowledgeable about the shipment and acting on behalf of the firm participating in the Special Regime. Facsimile signatures are acceptable in both instances under the following conditions: A firm wishing to use facsimile signatures for the Shipper's Declaration must submit a letter of intent to the Customs Service ports of export and to any anticipated ports of import. A firm wishing to use facsimile signatures for the Importer's Declaration must submit a letter of intent to any anticipated ports of importation. The letters should contain both an original and a facsimile signature. Customs will keep the letters on file for reference on Special Regime shipments by these firms. In no case will a copy of a signature be accepted. A facsimile signature will not be accepted for the Assembler's Declaration.

Multiple Styles or Categories

A single form ITA–370P may be used for multiple styles, multiple categories, and multiple fabrics, patterns or colors of assembled products. For example, a single form ITA–370P may accompany a shipment that includes two or more styles of blouses in two or more colors, or a shipment that includes two or more products or categories, such as a shirt and trousers. It is necessary, however, that the expected total quantity of assembled products for each category be provided. Further, the Shipper's Declaration should indicate the quantity of each style, product, or different fabrication so that an accurate audit may be conducted if necessary.

Definition of U.S. Formed and Cut Fabric

To qualify for the Special Regime, products must be eligible for entry under TSUS item number 807.0010, a subset of TSUS item number 807. (Under the Harmonized System, such items will be entered under USTS item number 9802.00.8010.) Under TSUS 807.0010 (and USTS 9802.00.8010), all fabric components (with the exception of findings, trimmings and elastic strips of less than one inch in width, not exceeding 25 percent of the cost of the components of the assembled product) must be U.S. formed and cut. Greige goods imported into the United States and then finished in the United States do not qualify under the Special Regime because such fabric is foreign-formed.

Fabric that, under rule 33 of the Federal Trade Commission regulations (16 CFR 303.33), would have to be labeled "imported cloth, finished in the USA" or "Made in [foreign country], finished in USA" does not qualify as U.S. formed fabric and does not qualify for treatment under the Special Regime.

Fabric that is woven or knitted in the United States from foreign yarn is considered U.S. formed for the purposes of the Special Regime. Except as described below, the U.S. formed and cut fabric requirement applies to all textile components of the assembled product, including linings and pocketings.

Findings, Trimmings and Elastic Strips of Less than 1" in Width

Findings, trimmings and elastic strips of less than one inch in width incorporated into the assembled products may be of foreign origin provided they do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, zippers, including zipper tapes, and labels. The exception for foreign origin elastic strips is limited to those elastic strips of less than one inch in width used in the manufacturer of brassieres.

To establish that foreign origin findings, trimmings and elastic strips do not exceed 25 percent of the cost of the components of the assembled product, firms may file with the port of verification (the port of export) a list of the unit cost of each of the components and then certify on the form ITA–370P that the foreign origin findings, trimmings and elastic strips do not exceed 25 percent of the cost of the components of the assembled product. It is not necessary to include all unit cost information on each form ITA–370P if that information has been filed with the port of export. On the form ITA–370P, however, it should be stated that the unit cost data is on file with the port of verification.

Border Ports and District Offices

Participation in the Special Regime is limited to the 26 ports located on the United States-Mexico border. Further, because each of the four district offices located on the border will act as the "central office" for all Special Regime shipments within its district, the port of importation must be within the same district as the port of exportation. The four Customs district offices on the border are: Laredo, Texas; El Paso, Texas; San Diego, California; and Nogales, Arizona. Thus, a Special Regime shipment exported to Mexico from a port within the El Paso district may be imported through the same port from which it exited or through any other port within the El Paso district, but it may not be entered through a port outside the El Paso district.

The visa requirements under the terms of the agreement between the United States and Mexico will be published in the **Federal Register** by separate notice. That notice also will identify the effective date for the use of form ITA–370P.

Requests for additional information or clarification of the requirements and procedures for participation in the Special Regime should be made in writing to the Chairman of CITA, Department of Commerce, Room H3100, Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–9821 Filed 4–29–88; 12:50 pm]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23–24 May 1988.

Time of Meetings: 0800–1700 hours, each day.

Place: San Diego, California.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of drafting an interim report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Office, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–9746 Filed 5–2–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Chapter 2, Education Consolidation and Improvement Act of 1981; Intent to Repay to the Oakland (California) Unified School District Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234e), the U.S. Secretary of Education (Secretary) intends to repay to the Oakland Unified School District (OUSD) under a grantback arrangement an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the OUSD's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: Comments must be recieved on or before June 2, 1988.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Ramon Ruiz, Deputy Director, Division of Educational Support, U.S. Department of Education, 400 Maryland Avenue SW., Mail Stop 6264, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Ramon Ruiz, Telephone: (202) 732–4059.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1986, the Department recovered $2,093 in settlement of a claim arising from an audit of the Oakland Unified School District (OUSD) for the period January 1, 1980, through November 30, 1980. The claim involved the OUSD's administration of its Cities in Schools (CIS) project under Title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2943 (Supp. V 1981)). In particular, the auditors concluded that the OUSD had improperly transferred $4,000 of grant funds under its CIS program to a CIS program in the Bronx, New York, without receiving any services in return. Costs charged to a grant program must be "necessary and reasonable for proper and efficient administration of the grant program," 45 CFR Part 74, Appendix C, Part I.C.1.a (1979) and may "not be allocable to or included as a cost of any other federally financed program in either the current or a prior period," 45 CFR Part 74, Appendix C, Part I.C.1.f (1979). Accordingly, the Department upheld the auditors' finding and required the OUSD to refund $4,186 for the improper transfer of funds and related indirect costs.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the school district affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that——

(1) The practices and procedures of the school district that resulted in the audit determination have been corrected and the school district is, in all other respects, in compliance with the requirements of the applicable program;

(2) The school district has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the school district's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the OUSD has applied for a grantback of $1,570 and has submitted a plan for use of the grantback funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3811–3876). Although the final audit determination against the OUSD resulted from the improper transfer of CIS funds under Title III, Title III has been repealed and its purposes consolidated into Chapter 2. Therefore, the grantback funds would be used under Chapter 2, although only for purposes authorized under the CIS program.

Under its plan, the OUSD proposes to use the grantback funds to help reduce the physical and cultural isolation of students in Marcus Foster Middle School and to provide educational and cultural enrichment activities to increase those students' academic achievement. The student population is 93% black, 5% Asian, and 1% Hispanic. Ninety-seven percent of the students are from families receiving Aid to Families with Dependent Children. Specifically, the OUSD plans to conduct field trips to the State Capitol, the Oakland Museum, and the Exploratorium. The grantback funds would be used to assist with transporation to and from activities and admission fees.

D. The Secretary's Determination

The Secretary has carefully reviewed that OUSD's grantback request, the OUSD's plan, and other information submitted by the OUSD. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the OUSD under a grantback arrangement. The grantback award would be in the amount of $1,570, which is 75 percent of the funds recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payment Under a Grantback Arrangement Would Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions that the Secretary deems necessary to accomplish the proposes of the affected program, including the submission of periodic reports on the use of the repaid funds and evidence that the school district has consulted with students or representatives of the population that would benefit from the grantback award.

The OUSD agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

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(1) The OUSD will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the OUSD submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) Pursuant to section 456(c) of GEPA, the OUSD will obligate all funds received under this grantback not later than September 30, 1989.

(3) The OUSD will, not later than January 1, 1990, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) The OUSD will maintain separate accounting records documenting the expenditure of the grantback funds.

(Catalog of Federal Domestic Assistance (CFDA) Number 84.151; Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: April 28, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-9786 Filed 5-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Grant), Restriction of Eligibility (Grant); University of Arkansas

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant to the University of Arkansas in the amount of $400,000.

DOE has determined that the eligibility for this grant award shall be limited to the University of Arkansas based upon the following information.

This research program is for the purpose of advancing the technologies of the solvent extraction of southern U.S. tar sands. The project will develop data to allow the evaluation of the solvent, bitumen extraction process, and to determine the feasibility of a pilot plant for the process. The University of Arkansas has put together a project team consisting of their own researchers, those of Minerals Resources Institute (MRI) and those of Diversified Petroleum Recovery, Inc. (DPR). With these resources, the University of Arkansas is able to focus many years of related expertise, considerable equipment, and required patents into a very cohensive team which can provide the full spectrum of skills needed to conduct a comprehensive tar sand research project. The DOE is interested in sponsoring this research and has determined that it is appropriate to make this award to the University of Arkansas on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: G. Richard Marron, U.S. Department of Energy, Morgantown Energy Technology Center, Laramie Project Office, P.O. Box 1189, Laramie, WY 82070. Telephone: (307) 721-2437. Procurement Request No. 21-88MC25043.000.

Date: April 2, 1988.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-9772 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award (Grant), Restriction of Eligibility (Grant); University of Utah

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant to the University of Utah in the amount of $400,000.

DOE has determined that the eligibility for this grant award shall be limited to the University of Utah based upon the following information.

This research program is for the purpose of advancing the technologies of the water-assisted and modified water-assisted, fluidized bed, fluidized-bed heat pipe coupled and rotary kiln processes for extracting bitumen from western tar sands in order that valid evaluations of their commercial potentials are possible. The research is a continuation of research which has been conducted for many years at the University by the same research team. This team has several patents on related recovery processes, upgrading techniques, and catalyst uses. Additionally, the University already has a place several millions of dollars worth of operating equipment which is directly useful for this research. The DOE is interested in sponsoring this research and has determined that it is appropriate to make this award to the University of Utah on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: G. Richard Marron, U.S. Department of Energy, Morgantown Energy Technology Center, Laramie Project Office, P.O. Box 1189, Laramie, WY 82070. Telephone: (307) 721-2437. Procurement Request No. 21-88MC25046.000.

Date: April 22, 1988.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-9773 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Committee on Establishing a Petroleum Research Institute; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Establishing a Petrolem Research Institute of National Petroleum Council.

Date and Time: Monday, May 23, 1988, 2:00 PM.

Place: Hyatt Regency Hotel-East Tower, Universe Room, Dallas-Forth Worth International Airport, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585. Telephone: 202/586-6565.

Purpose of the Parent Council: To provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review and discuss final aggregations of R&D survey, the results, and report to NPC.

Tentative Agenda

—Review and discuss final aggregations of the Committee's survey of R&D activities.

—Review and discuss aggregated results of the Activity Survey Addendum.

Discuss the Committee's report to the National Petroleum Council.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Committee on Establishing a Petroleum Research Institute is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 88-9774 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-07-NG]

Amoco Energy Trading Corp.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Notice of order extending blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Amoco Energy Trading Corporation's (Amoco Energy) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-07-NG authorizes Amoco Energy to increase the gas volumes presently authorized under DOE/ERA Opinion and Order No. 106 from 70 Bcf to 300 Bcf through September 23, 1990.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 27, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-9775 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-23-NG]

Mobil Gas Co., Inc.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 15, 1988, of an application filed by Mobil Gas Company Inc. (MOGASCO) requesting blanket authorization to export natural gas to Canada on a short-term and spot basis not to exceed 100 Bcf in the aggregate over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than June 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-6667.

SUPPLEMENTARY INFORMATION: MOGASCO, a Delaware corporation with its principal office in Houston, Texas, is a wholly owned subsidiary of Mobil Natural Gas Inc., which is a wholly owned subsidiary of Mobil Fairfax Inc. The applicant proposes to act as a broker or as an agent, acting on its own behalf or on behalf of others. The gas would be supplied from a variety of domestic sources and sold to a range of Canadian purchasers, including, but not limited to, industrial and commercial end users, pipelines and distribution companies.

The terms of each arrangement would be negotiated in response to market conditions. MOGASCO intends to use existing transmission systems and will not require the construction of new or separate facilities in order to export the natural gas. MOGASCO also intends to comply with ERA's reporting requirements.

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. Parties opposing the arrangement should comment in any response on these matters.

MOGASCO requests that an authorization be granted on an expedited basis. An ERA decision on MOGASCO's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make

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the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., June 2, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MOGASCO's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 26, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-9778 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration; Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Enery Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before June 2, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy infomation collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-254, 851, and 858
3. 1905-0160
4. Nuclear and Uranium Data Program Package
5. Extension
6. Monthly, Quarterly, Semi-annually, and Annually
7. Mandatory
8. Individuals or households, State or local governments, Businesses or other for profit, and Small businesses or organizations
9. 183 respondents
10. 526 responses
11. 6,482 hours
12. Forms EIA-254, 851, and 858 collect information on the costs of nuclear powerplants under construction, domestic uranium production data, and certain aspects of uranium marketing, exploration, and financial data. Data are used in determining the viability of the domestic uranium industry. Respondents are firms in the uranium business and electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790a).

Issued in Washington, DC, April 26, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-9777 Filed 5-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed With the Commission

April 7, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10537-000.

c. *Date Filed:* February 2, 1988.

d. *Applicant:* Crooked Creek Hydro Associates.

e. *Name of Project:* Crooked Creek Hydro Project.

f. *Location:* On Crooked Creek in Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268-8820.

i. *FERC Contact:* Charles T. Raabe, (202) 376-9487.

j. *Comment Date:* June 10, 1988.

k. *Description of Project:* The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (a) A 16-foot-diameter and 1,320-foot-long penstock within the Corps' existing tunnel; (b) a proposed powerhouse containing two generating units rated at 1,250 kW each; (c) a proposed 300-foot-long, 13.2-kV transmission line; and (d) appurtenant facilities. Applicant estimated average annual energy output is 10 GWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. *Purpose of Project:* Energy produced at the project would be sold to the Pennsylvania Electric Company.

m. *The notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9780 Filed 5-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3373-5]

Agency Paperwork Reduction Act Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces Office of Management and Budget (OMB) actions on the Information Collection Requests (ICRs) submitted by EPA.

Approved

EPA ICR #1191; National Survey of Pesticides in Drinking Water Wells; OMB action date: 3/24/88; OMB #2040-0107; expires 4/30/90. Approval of full national survey.

EPA ICR #0002; Pretreatment Program Information Requirements; OMB action date: 3/25/88; OMB #2040-0009; expires 4/30/90. Reinstatement of an existing collection.

Discontinued

EPA ICR #0220; Information Requirements for 404 State Permit Applications: OMB action date: 3/29/88; OMB #2090-0015.

Extensions of Expiration Date

EPA ICR #1296; Radon Information Effectiveness Survey: OMB action date: 3/28/88; expiration date extended to: 11/30/88.

EPA ICR #0168; NPDES Requirements for Approved State Programs; OMB

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action date: 3/28/88; expiration date extended to: 7/31/88.

EPA ICR #0614; Storage and Treatment Permitting Standards Amendments Based on Hazardous and Solid Waste; OMB action date: 3/28/88; expiration date extended to: 6/30/88.

FOR FURTHER INFORMATION CONTACT:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460, Telephone No. (202) 382–2740

or

Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, Telephone No. (202) 395–3084.

Date: April 13, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–9756 Filed 5–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3373–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: PCB Use in Electric Equipment and Transformers. EPA ICR #1000).

Abstract: This collection request combines several reporting and recordkeeping requirements related to PCB transformers that were formerly contained in separate ICRs. EPA continues to require PCB transformer owners to keep records on unit use, inspection and corrective action for leaks, as well as to notify the Agency regarding the installation of new units. However, the combined effects to transformer phase-out and attrition and completion of one-time registration and labeling requirements have significantly lowered the reporting and recordkeeping burdens of this collection. This is a revision of a Final Rule.

Respondents: Owners of PCB transformers.

Estimated Burden: 5,413 hours.

Frequency of Collection: On occasion.

Office of Solid Waste and Emergency Response

Title: Information Collection Request for the Accidental Release Information Program. (EPA ICR #1331).

Abstract: The ICR requests a six month extension for the Accidental Release Information Program. Facilities receive a questionnaire if they have a release of a CERCLA chemical above the RQ that meets one of four criteria. EPA uses the data to develop prevention policy and to determine whether regulation is necessary. Five hundred total questionnaires are planned. Expedited review has been requested.

Respondents: Manufacturing facilities primarily in SIC Codes 282, 281, 286, and 291.

Estimated Burden: 6,125 hours.

Frequency of Collection: On occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Timothy Hunt (ICR #1000), Marcus Peacock (ICR #1331), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: April 12, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–9757 Filed 5–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010982–006.

Title: Bahamas Shipowners and Operators Association.

Parties:

Tropical Shipping & Construction Co., Ltd.
Universal Alco Ltd.
Pioneer Shipping, Ltd.
Seaxpress, Inc.

Synopsis: The proposed amendment would permit the parties to agree on charges for transshipment of cargoes, including those transshipments taking place within the agreement trade as part of a foreign-to-foreign movement.

Agreement No.: 203–011191.

Title: Agreement Relating to the Pacific Australia Direct Line Sale Agreement.

Parties:

Rederiaktiebolaget Transatlantic ("Trans")
PAD Shipping Australia Proprietary Limited ("PADA")
PAD Line Overseas, S.A. ("PADLO")

Synopsis: Trans and PADA together owned the Pacific Australia Direct Line ("PAD"). The assets of PAD have been sold to PADLO. The proposed agreement would authorize Trans and PADA to agree not to compete with PADLO's PAD service for a period of two years following the sale.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 28, 1988.

[FR Doc. 88–9795 Filed 5–2–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Central Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Central Bank Shares, Inc.*, Orlando, Florida; to acquire 100 percent of the voting shares of Bank of Central Florida/Seminole County, Sanford, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Eastern Wisconsin Bancshares, Inc., Howards Grove, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Howards Grove, Howards Grove, Wisconsin.

2. *Salin Bancshares of North Central Indiana,* Camden, Indiana; to acquire 100 percent of the voting shares of Carroll Financial Corporation, Burlington, Indiana, and thereby indirectly acquire First Bank of Carroll County, Burlington, Indiana. Comments opn this application must be received by May 23, 1988.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9694 Filed 5–2–88; 8:45 am]

BILLING CODE 6210–01–M

Grenada Sunburst System Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 12, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation,* Grenada, Mississippi; to acquire 100 percent of the voting shares of Sunburst Bank, Baton Rouge, Louisiana, a *de novo* bank.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9808 Filed 5–2–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Ralph J. Huiras

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank Indicated. Once the notices have been accepted for processing, they wil also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ralph J. Huiras,* Cedarburg, Wisconsin; to acquire 5.57 percent of the voting shares of Colonial Bancorporation, Inc., Thiensville, Wisconsin, and thereby indirectly acquire Colonial Bank Richfield, Richfield Township, Wisconsin; Colonial Bank Port Washington, Port Washington, Wisconsin; and Colonial Bank Thiensville, Thiensville, Wisconsin.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Michael C. Stinson,* Fort Worth, Texas; to acquire 89.49 percent of the voting shares of Statewide Bancshares Corporation, Cedar Hill, Texas, and thereby indirectly acquire First Bank & Trust Company, Cedar Hill, Texas.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9695 Filed 5–2–88; 8:45 am]

BILLING CODE 6210–01–M

Signet Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

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hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation,* Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Investment Banking Company, Richmond, Virginia, in "mezzanine" financing for management buyouts, "going private" transactions, options or warrants to acquire preferred stock or common equity, other securities convertible or exchangeable for preferred stock or common equity recapitalizations, and other merger and acquisition transactions. This financing will primarily take the form of subordinated loans, although in connection therewith, preferred stock, common equity or a combination may be acquired as the law and banking regulations allow pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9606 Filed 5-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for National Acquired Immunodeficiency Syndrome; Minority Information and Education Program; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC), announces the availability of Fiscal Year 1988 funds for grants for national and regional ethnic minority organizations or national and regional ethnic minority consortia related to providing Acquired Immunodeficiency Syndrome (AIDS) information and education programs for ethnic minority populations.

Authorizing Legislation

This program is authorized under the Public Health Service Act: Section 301 (a) (42 U.S.C. 241(a)), and section 318, as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Background

Ethnic minority communities throughout the U.S. have been disproportionately affected by the AIDs epidemic. Of the 50,000 cases of AIDs thus far reported in the U.S., 40% occur among two particular minority groups—Blacks and Hispanics. Blacks currently represent 26% of total U.S. AIDS cases, while representing 12% of the total U.S. population; Hispanic groups contain 14% of all AIDS cases, yet constitute 6% of the population.

Program Purpose

The purpose of the proposed program is: (1) To broaden the base of minority community organizations involved in AIDS prevention efforts at the local and regional level by funding HIV prevention activities of national minority organizations and national or regional minority consortia; (2) to support activities on a national or regional basis which will complement and supplement state and local efforts to inform and educate minorities at risk of HIV infection; (3) to encourage alternative regional and national approaches to health education and risk-reduction which are sensitive and appropriate to the cultural needs of minority populations; (4) to educate and involve greater numbers of minority community leaders, representatives, institutions, and agencies in minority AIDS information/education activities, and to assure coordination of these activities with education and prevention efforts of State and local health departments; and (5) to identify existing national and regional AIDS information/education needs, and address these needs through community resources not currently involved in AIDS prevention.

Eligibility Requirements

Applications may be submitted by a single organization or a group of two or more organizations. If two or more organizations combine to submit an application, one must be designated as the primary recipient of the award.

That organization shall have primary responsibility for submission of the application, and any subsequent award, with appropriate subcontract arrangements with participating organizations. The Project Director must be an employee of the applicant organization. The application must describe in full detail all such planned arrangements.

An eligible applicant organization will be of one the following two types: 1. An established national minority non-profit organization which may be health, education, social service, professional, or voluntary, and which has the capacity and organizational experience to implement and manage programs of national or regional scope and which demonstrates the capacity to operate and centrally administer a coordinated AIDS information/education/risk reduction program or networking on a national basis; or

2. A national or regional minority non-profit organization or consortia or group of organizations which bring together a range of capabilities of either national, regional, or local scope, and which demonstrate a capacity to operate and centrally administer a regionally or nationally coordinated minority AIDS information/education program.

Availability of Funds

Approximately $5,000,000 will be available in Fiscal Year 1988 to fund approximately 30 grants under this announcement. It is expected that the range of grant awards will be between $100,000 and $300,000.

It is expected that the initial grant awards will be made on or about August 1, 1988, and will be initially funded for a 9-month budget period, with a project period of up to 5 years.

Organizations and consortia may submit more than one application under this program, but no specific organization or consortium member will receive more than one grant each through this program.

use of funds

Grant Funds may be expended for reasonable program purposes, such as personnel, their training, travel, equipment, supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the national/regional AIDS minority Information/Education Program described in the announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction education efforts, if approved in accordance with the CDC guidance document titled Content aids-Related Written Materials Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988), as published in the **Federal Register** (53 FR 6034, February 29, 1988).

Grant Program Activities

Consideration will be given to national and regional projects directed toward one or more U.S. ethnic minority populations. Proposed projects should include one or more of the following activities:

A. Developing programs which provide training and technical assistance to community organizations in the mobilization of local resources, networking at the community level, development and planning of programs, and utilization of existing and/or alternative channels for reaching and educating minorities at risk.

B. Developing programs which involve and train minority community professionals, outreach workers, and persons with HIV infections in the provision of AIDS-related information and education, or which integrate AIDS health education/risk-reduction within existing frameworks for minority community health professionals and outreach workers.

C. Promoting the creation and broadening of national regional, and local minority networks, and enhancing the functioning of existing minority networks, in order to increase the dissemination of effective AIDS-related information and education within targeted minority populations, and to ensure adequate information-sharing and program coordination among AIDS-related minority educational providers and organizations.

D. Assisting in the creation and implementation of innovative and coordinated strategies for the dissemination of AIDS information and education, and for assuring that these strategies are coordinated with efforts of State and local health departments and community-based organizations, such as through AIDS-specific coalitions, youth outreach programs, or programs designed to reach IV drug abuser populations.

E. Designing and performing a needs assessment and planning project on a national or regional basis which: (1) profiles demographic characteristics of a selected minority population in terms of AIDS risk factor and levels of knowledge, attitudes, and behavior regarding AIDS transmission; (2) describes current service provision levels in terms of ongoing education, training, and risk-reduction information dissemination; (3) describes barriers to the dissemination of effective AIDS education to target groups; and (4) proposes strategies for the innovative utilization of community resources for the increased provision of AIDS education within the population.

F. Developing programs to provide ongoing AIDS-related information on local or regional bases, such as through development of technical materials, the provision of technical assistance and program development services, the utilization of available technologies, such as computer technology, to enhance services, or the establishment of information-sharing consortiums or forums.

G. Developing programs which increase the number of effectiveness of community-level volunteers for the dissemination of AIDS information and education through innovative community volunteer and public programs.

Review and Evaluation Criteria

1. Knowledge of Target Population: (15%)
2. Proposed Program: (30%)
3. Applicant Capability and Coordination Efforts: (35%)
4. Evaluation Design: (10%)
5. Program Personnel: (10%)
6. Program Budget: Not Scored

Continued Funding

An application for continued funding of these activities within an approved project period should contain the following information.

1. Description of activities performed and results achieved during the prior budget period.
2. Short-term objectives for the new budget period.
3. A description of the method of operation that will be used to accomplish any new objectives or improve program operations.
4. An evaluation plan which will help determine if new methods are effective and the objectives are being achieved.
5. A budget and accompanying justification consistent with the purpose and objectives of the project.

Special Guidelines for Application Preparation

There is a scheduled series of pre-application meetings. Pre-registration is not required but is requested, therefore potential applicants should provide to Pace Enterprises, Inc., 5203 Leesburg Pike, Suite 710, Falls Church, VA 22041, (703) 845-5700 or 100 Colony Square, Suite 200, Atlanta, GA 30361, (404) 875-6157, verbally or in writing the full names, titles, agency, street address, city, state, zip code, and the telephone numbers of the persons who are planning to attend one of these meetings. Each potential applicant may send no more than 2 representatives to no more than one of the meetings. The purpose of these meetings will be to help potential applicants to:

1. Understand the scope and intent of the CDC National AIDS Minority Information/Education Grants Program;
2. Understand the requirements and guidelines established for applicants under this Request for Applications;
3. Understand the structure and method of the application format, including gaining a working familiarity with the intent of the application sections; and
4. Gain awareness of some of the other national and regional organizations applying for funds under the program, and potentially coordinate some program planning efforts or activities with other organizations in attendance at meetings.

While the information conveyed in the meetings is intended to assist all potential applicants in preparing their applications, attendance at any meeting is NOT mandatory for the submission of an application, NOR will such attendance or non-attendance be used in any way in the evaluation of applicants and in the selection of potential awardees.

Please see "Availability of Complete Program Description and Application Assistance" Section for further information regarding technical assistance in application preparation.

Application and Submission Deadline

The original and two (2) copies of the application (PHS 5161-1, revised 3/86) must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, GA 30305, on or before June 15, 1988.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date.

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1 A. or B. are considered late applications. Late applications will not be considered in

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the current competition, and will be returned to the applicant.

Other Requirements

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Availability of Complete Program Description and Application Assistance

A full description of the program, including criteria for review of applications, application format, application procedures, copies of application forms PHS 5161–1, and other materials may be obtained from Nealean Austin, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 842–6575. Technical Information may be obtained from Wayne Duncan, National AIDS Information and Education Program, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639–2384.

Dated: April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–9703 Filed 5–2–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N–0100]

Cooperative Agreement To Establish a National Center for Food Safety; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), proposes to enter into a cooperative agreement to establish a national center for food safety. FDA is inviting applications from the Illinois Institute of Technology (IIT) and, through IIT, with the IIT Research Institute (IITRI) as well as other interested parties. The center proposed by IIT will be located near Chicago, IL, on property owned by IIT, which includes office and laboratory space as well as an industrial-size pilot plant. This would be the first American effort to join the resources of government, academia, and a research organization in a consortium to study questions of food safety.

DATES: Applications must be received by 5 p.m. e.s.t. June 2, 1988; the earliest beginning date for award is July 5, 1988.

ADDRESSES: Applications should be submitted to and applications are available from: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., Rm. 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170. Applications hand carried or commercially delivered should be addressed to the Park Bldg., Rm. 3–20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For further information regarding the administrative and financial management aspects of this notice contact: Robert L. Robins (address above).

For further information regarding the programmatic aspects of this notice contact: Karen Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA's authority to enter into cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95–224. FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will have to the public. As discussed below the agency believes that a cooperative agreement to establish a national center for food safety will benefit the public by providing an opportunity for improving existing scientific knowledge in the food safety area.

II. Background

In the United States there is no single center for research and development of expertise and analytical methodology in food safety. A recent comprehensive review by FDA of its food science research program concluded that a more diversified program is necessary to provide the indepth knowledge needed to review effectively the products of new technology and protect the public health (Food Science Research Program Report, CFSAN, Office of Physical Sciences, December 1987). FDA believes that current agency support in the area of food science should:

Encourage development of expertise to understand emerging technologies in general and biotechnology in particular and to evaluate the effects of new technologies on food components and on the adequacy of processing variables;

Encourage scientific interchange between industry, academia, and government concerning the impact of recent technological developments on the composition of foods, particularly on constituents of public health significance; and

Encourage the development of expertise throughout the food safety science community.

Expertise in evaluating food processing must be developed consistent with industry advances in modernizing food processing methods. There is a clear need for collaborative work and research on processing systems to determine critical control points that require monitoring to enhance quality assurance efforts and promote efficient and effective regulation.

III. National Center for Food Safety

A. Concept

The agency believes that a collaborative effort between FDA and the private sector (i.e., academia and a nonprofit research organization) could be designed to:

Develop scientific expertise necessary to address ongoing key public health issues and to provide early warning of emerging problems, and also to provide support during periodic emergencies and crisis situations (e.g., *Listeria*, PCB's, aldicarb, vomitoxin); and

Establish mechanisms for exchange of technical information and scientific concepts between FDA and other sectors of the food science community (e.g., industry and academia).

This collaboration would result in a national center for food safety. The center would concentrate on developing the scientific expertise necessary to deal with current and emerging public health issues and on establishing mechanisms for the exchange of information with industry and the public.

The center could improve existing expertise concerning the physical and chemical analysis of foods and food products. The center could increase understanding about deviations in the "normal" composition of foods, such as the presence of contaminants, filth, or process-induced chemical changes. Moreover, existing scientific expertise in food engineering could also be increased concerning how fluid mechanics, transfer and rate processes, and process control instrumentation may affect food processing, packaging, and storage. Similarly, existing expertise could be improved concerning the relationship between processing, packaging, and storage factors and the chemical composition and microbial characteristics of foods.

Such a center would focus on recent developments in the science of food formulation, processing, and packaging, including the study of macrocomponents of foods (carbohydrates, proteins, and lipids); new food processes (e.g., dehydration, fermentation, thermal) and packaging systems, with a particular emphasis on plastics. The science of microcomponents of foods—those naturally occurring, added, or altered during formulation, processing or storage—that are of public health significance would also be an important aspect of such study.

Such a collaborative center should be designed to provide the environment and expertise necessary to conduct advanced research in key areas, including extrusion processing, aseptic processing, packaging integrity, irradiation processing, and biotechnology.

In summary, expertise in food science is basic to progress and the continued safety of the U.S. food supply. Keeping pace with expanding knowledge is essential to the timely development and evaluation of processing techniques, product-specific processes, new packaging materials and new uses for these materials, and use of biotechnology.

B. Research Facilities

To pursue the type of collaborative research discussed, certain specialized facilities are needed. A pilot plant, built to modern specifications and equipped with the many physical requirements necessary to conduct routine food processing research in a commercial atmosphere would be essential. The physical layout of the plant would have to provide maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there would have to be facilities suitable for more complex research. Also, a clean room, equipped with laminar air flow and HEPA filters and easily sterilized, would be needed for work involving opportunistic pathogens.

The availability of containment facilities, in which experimental work could be housed in its entirety, would also be required to provide the opportunity to conduct essential research that is potentially hazardous. For example, research to determine the adequacy of processing parameters used in commercial food production requires the use of pathogenic bacteria as well as large quantities of the food being processed. If this type of research is not conducted in a controlled manner in a containment facility, a risk exists that the pathogen could contaminate the environment. Similarly, containment facilities would be essential for research in some critical areas of biotechnology. Such facilities would be used for example to understand the production of flavors and food additives in scaled up fermentation processes which rely on genes cloned into microorganisms.

Another critical attribute of a research facility would be the ability to conduct proprietary research. Through this proprietary research collaborators will have access to state-of-the-art food processing and packaging equipment. Examples of the types of sophisticated equipment are: Aseptic processing and packaging equipment for both homogeneous foods and foods containing particulate matter; extrusion equipment for fiber fraction and processing parameter studies; and reverse osmosis and ultrafiltration equipment for concentration studies. In addition, the traditional types of processing equipment, for example, plate heat exchangers and retorts, would be needed.

Through the collaboration offered by a national center, each contributor would have access to the equipment described above, and would have the opportunity to gain valuable insight and practical knowledge about modern developments within the food industry. It is envisioned that these goals would be accomplished in a nonprofit, research-oriented atmosphere condusive to the transfer of science and technology. It is also envisioned that agreements under the Federal Technology Transfer Act of 1986 (FTTA) may ensue from this collaboration.

C. Summary

The public and FDA would both benefit from the type of collaboration possible through a national center for food safety. Scientists from each sector would bring a special perspective to advancing the knowledge of food safety science. Interaction among such scientists would stimulate creativity and innovation. FDA's presence in such a venture will promote a greater awareness and understanding of regulatory procedures among academic and industry scientists, thereby providing economic and program benefits to all sectors.

In summary, collaboration between the public and the private sector would be an efficient means of remaining current with scientific and technical accomplishments from a food safety perspective. FDA believes that a national center for food safety would be a sound investment in the future public health of American consumers. It would provide an opportunity for extensive cooperation with university scientists; and it would stimulate the idea of technology transfer, which might ultimately contribute significantly to implementation of the goals of the FTTA.

IV. Proposal

FDA is considering entering into a cooperative agreement with IIT and, through IIT, with its nonprofit research affiliate, IITRI. The agency believes that this institution has the research capability, the required research facilities, and the academic interest to develop a comprehensive program in food safety. For these reasons, FDA proposes to enter into this cooperative agreement with less than maximum competition. However, the agency invites applications from other interested parties who can provide all the elements described in item III. above. The amount of funding to be provided by FDA is $700,000 with possible additional increments.

FDA has discussed this program with IIT and will be available to discuss the program concepts with any other qualified applicants. However, because it is important to keep this project research oriented and beyond any appearance of conflict of interest, FDA will not consider applications from any FDA-regulated industry.

In conjunction with, but not part of, this cooperative agreement, FDA may also occupy laboratory and office space at the facility of the recipient. This space may eventually accommodate approximately 40 scientific and administrative personnel. In addition, FDA anticipates entering into separate contractual agreements to perform adjunct segments of work important to the development of a well-rounded national food safety program concept.

V. Reporting Requirements

Program progess reports and financial status reports will be required quarterly, based on date of award. These reports will be due within 30 days after the last day of each quarter. A final program progress report and financial status report will be due 90 days after expiration of the budget period of the cooperative agreement.

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VI. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a cooperative agreement. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR Part 52, 45 CFR Part 74, and the PHS grants policy statement.

B. Eligibility

The cooperative agreement is available to any public or private nonprofit organization, State and local units of government, and for profit organizations (excluding fees or profit). Any FDA-regulated industry will not be eligible for consideration.

C. Length of Support

The length of support is anticipated to be 1 year, with the possibility of an additional 2 years. Noncompetitive continuation of support, beyond the first year, will be based upon review of performance during the preceding year and the availability of Federal fiscal year appropriations.

VII. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial inolvement in the program activities of the project funded under any request for applications (RFA). Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or coproject officers who will actively monitor the FDA-supported program under this award.

2. FDA will retain the right to have prior approval on the appointment of the program director (principal investigator) and all key scientific personnel proposed by the applicant.

3. FDA will be directly involved in the guidance and development of the program and of the collaborative structure for the program.

4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

5. FDA will initially have approximately eight professional/scientific and two administrative/clerical personnel working in collaboration with the grantee.

VIII. Review Procedure and Criteria

A. Review Procedure

Applications must be responsive to the RFA. Those applications judged not to be responsive will not be considered by FDA for funding under this RFA and will be returned to the applicant.

Applications will undergo dual peer review. An external review committee of experts in food science research will review and evaluate each application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

B. Review Criteria

1. *Responsiveness to RFA.* The application shall demonstrate that the objectives of the RFA are understood and the applicant shall offer a logical program to meet the objectives of the RFA.

2. *Adequacy of plan.* The applicant shall provide FDA with a detailed plan to establish, collaboratively, a center for food safety as a multidisciplined public/private effort (i.e., FDA, academia, and industry). The application will be evaluated by FDA on the thoroughness of the plan, the reasonableness of the approach, and adherence to the concept and its objectives, as stated in the RFA. The detailed plan shall form the basis of a balanced food science program directed toward development of skills and expertise in aspects of food quality and food safety, as stated in the RFA. Included will be development of: Expertise in the physical and chemical analysis of food and food products; understanding of the composition of foods, including deviations from the norm; expertise in food engineering; understanding of the biotechnological principles involved in the production of new food additives using genetically-engineered microorganisms and in new methods of producing traditional ingredients; and understanding of the effect of food formulation and processing techniques on the composition of foods. The plan shall also include a schedule for future research in the areas of extrusion processing, aseptic processing, packaging integrity, irradiation processing, and biotechnology as it impacts on food safety research.

3. *Timeliness of program implementation.* FDA will evaluate the application for the applicant's ability to establish the center in an expeditious manner.

4. *Adequacy and availability of research facilities.* The application shall demonstrate that the applicant has adequate research facilities, including pilot plant facilities for food processing and chemical engineering studies and containment facilities for biotechnology work, as stated in the RFA.

5. *Ability to conduct proprietary research.* The application shall demonstrate the applicant's ability to conduct proprietary research and to protect confidentiality of data, procedures, etc.

6. *Staff experience and capabilities.* The application must demonstrate the availability of core staff with the experience and capability to conduct research as described in the detailed plan presented in item 2. The staff must have the capabilty to deal with contemporary food safety issues as well as plan long-range research to assess future needs. The availability of sufficient administrative and support personnel to meet the RFA objectives must also be demonstrated.

7. *Reasonableness of proposed budget.* Those applications considered to be technically responsive shall then be further evaluated on the basis of reasonableness of costs.

IX. Method of Application

A. Format for Application

Application must be submitted on Form PHS-398, Application for Public Health Service Grant. The face page of the application must reflect the RFA number. RFA-FDA-CFSAN 88-1. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of applicable statutes including the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the FDA regulations implementing that Act (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

B. Legend

Unless disclosure is required by the Freedom of Information Act, as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

C. Application Submission

The original and six copies of the completed application should be sent or delivered to Robert Robins (address above).

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to FRA-FDA-CFSAN 88-1."

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or by a legible dated receipt from a commercial carrier. Private metered postmarks will not be acceptable proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note.—Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

This program is not subject to the requirements of Executive Order 12373.

Applications must be received by 5 p.m. e.s.t. on June 2, 1988. Applications received not meeting these criteria will be returned to the applicant.

Dated: April 26, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-9699 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0092]

C.R. Bard, Inc.; Premarket Approval of Dupen™ Long Term Epidural Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by C.R. Bard, Inc., Murray Hill, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Dupen™ Long Term Epidural Catheter (formerly Davol Externalized Epidural Catheter). After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 2, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea A. Wargo, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On December 12, 1986, C.R. Bard, Inc., 731 Central Ave., Murray Hill, NJ 07974, submitted to CDRH an application for premarket approval of the Dupen™ Long Term Epidural Catheter. At FDA's request, the applicant submitted more data, and FDA filed the application on June 17, 1987. The device is indicated for Long-term access to the epidural space for the delivery of preservation-free morphine sulfate to relieve intractable pain in cancer patients. The device is to be used only with morphine sulfate which has been approved for epidural administration.

On October 5, 1987, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Andrea A. Wargo (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 2, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 25, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-9700 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0094]

Serono Laboratories, Inc.; Premarket Approval of Fibrel® (Gelatin Matrix Implant)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Serono Laboratories, Inc., Randolph, MA, for premarket approval, under the Medical Device Amendments of 1976, of Fibrel® (gelatin matrix implant). After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological

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Health (CDRH) notified the applicant by letter of February 26, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 2, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On April 15, 1988, Serono Laboratories, Inc., Randolph, MA 02368, submitted to CDRH an application for premarket approval for Fibrel® (gelatin matrix implant). The device is composed of absorbable gelatin powder (denatured collagen types I and III) and epsilon aminocaproic acid in a lyophilized form. The device is indicated for use in the correction of depressed cutaneous scars which are distendable by manual stretching of the scar borders. The device is reconstituted with equal amounts of the patient's plasma and 0.9 percent Sodium Chloride for Injection, USP.

On May 29, 1987, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 26, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nirmal K. Mishra (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decison in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 2, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 25, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-9767 Filed 5-2-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 52, No. 105, pg 20643, dated Tuesday, June 2, 1987) is amended to indicate a revised title and functional statement for the Division of Public Information.

The specific amendment to Part F. is described below:

- Section FG.20.A.3., Division of Public Information (FGC3) is deleted in its entirety and replaced by the following new Section FG.20.A.3.

3. Division of Project Development (FGC3)

Designs and conducts public information campaigns and strategies to promote HCFA priorities. Obtains Department of Health and Human Services' (HHS) clearances for HCFA publications intended for public distribution. Ensures that expenditures for public affairs materials are in accord with HHS ceilings and guidelines. Working through an Agency publications advisory group, prepares an annual publications agenda for HCFA. Writes and edits informational material such as *Your Medicare Handbook*. Arranges for the use of HCFA exhibits at meetings and conventions of major organizations. Manages the second surgical opinion program.

Date: April 15, 1988.

Robert A. Streimer,

Acting Associate Administrator for Management and Support Services.

[FR Doc. 88-9726 Filed 5-2-88; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for the Medicare Bill File (Statistics), System No. 09-70-0005.

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice June 2, 1988, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Ellen Connerton, Office of Statistics and Data Management, Bureau of Data Management and Strategy, HCFA, 1-F-2 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-8069.

SUPPLEMENTARY INFORMATION: The Medicare Bill File (Statistics), System No. 09-70-0005, contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. The systems notice for this system was most recently published at 49 FR 49943 (1984). Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. A principal subfile in the system is the Medicare Provider Analysis and Review (MEDPAR) file. The MEDPAR file contains data from hospital bills of Medicare beneficiaries discharged from Medicare certified hospitals, including data on beneficiary demographics, medical diagnosis and surgery, and utilization of hospital resources. We are proposing to establish a new routine use to permit HCFA to disclose on an annual basis much of the information in the MEDPAR file for research into the quality and effectiveness of health care furnished to Medicare beneficiaries.

The Medicare program has an important stake in the development of improved methodologies for measuring and comparing health care quality and effectiveness. The introduction of prospectively determined hospital payments, plus the increased numbers of alternative delivery systems such as health maintenance organizations and preferred provider organizations, have raised the interest of many in the monitoring and assurance of the quality of health care provided under these revised financial incentives. Progress in the assessment of quality and effectiveness, however, has been impeded in part by the lack of data bases describing the care given to patients.

HCFA convened a symposium in June 1987 to identify research needs relating to the measurement and monitoring of quality and effectiveness of care. Strong support was expressed at the symposium for analysis and monitoring at several levels including: (1) Epidemiologic monitoring of patient outcomes such as mortality, morbidity, and disability; (2) local area analyses to identify problems in both patient outcomes and health care processes; and (3) analysis and monitoring of both outcomes and processes of care at the institution or medical care plan level.

In response to the needs highlighted at the symposium, HCFA has developed the Quality of Care MEDPAR file (QC/MEDPAR) to increase the amount of data available for quality and effectiveness of care research. Our purpose is to assist researchers in developing and applying improved measures for determining the quality and effectiveness of care furnished in hospitals participating in the Medicare program. The development and release of the QC/MEDPAR file is in keeping with HCFA's commitment to the improvement of the qulaity of health care practiced in the United States and, foremost, that given to Medicare and Medicaid beneficiaries. This purpose is also compatible with a purpose for which the data in the Medicare Bill File are collected, namely, to promote study of the operation and effectiveness of the Medicare program. We would note that similar use of Medicare data is made for patient outcome assessment research authorized under section 1875(c) of the Social Security Act, as enacted in 1986 by section 9316 of Pub. L. 99-509.

We are proposing to include in the QC/MEDPAR file the data elements listed in Appendix A of the system notice. Research on the quality and the effectiveness of care provided in the hospital inpatient setting requires detailed information on a patient-specific basis. Accurate assessment of the outcomes of care (such as mortality, morbidity, and disability) requires that it be possible to track individual patients over time. Therefore, linkage of multipe episodes of care is necessary in order to evaluate an entire episode of care, or the entire course of a disease or the treatment of disease. This is especially true for chronic diseases, such as cancer, heart disease, or diabetes, where the course of the disease may run over months or years. In order to meet this need, the QC/MEDPAR file will include encrypted health insurance claim numbers with the same encrypted number used for all records pertaining to a particular individual. These encrypted numbers will enable an individual's entire history of inpatient care to be linked and studied as a single entity, while concealing that individual's identity.

Similarly, it is necessary to include geographical information in the file to enable small area variations analyses. Many studies have documented wide variations across geographic areas in hospitalization rates and use of surgical procedures that cannot be accounted for by the health status of the resident population. Assessment of the reasons for these variations requires that the records contain a geographic variable. County codes are insufficient for this purpose because medical service areas (those areas from which individual hospitals get their patients) cross county boundaries and there may be multiple service areas within single counties. The inclusion of ZIP Codes will enable researchers to develop service area analyses which can more closely approximate the real medical service areas at the local level.

In order to protect the privacy of Medicare beneficiaries, we have where possible removed, coded, or encrypted data elements in the QC/MEDPAR file to reduce the likelihood that specific individuals will be identified with information in the file. The file does not contain beneficiary name or race; each beneficiary's health insurance claim number has been encrypted; the exact age of beneficiaries is obscured by use of age intervals; and all dates have been modified by adding or subtracting 1 to 20 days from the actual dates. The file will be national in scope; no subsets of the file will be provided.

As a further precaution, we are requiring recipients of the data file to agree in writing not to link the data to any other beneficiary-specific records to use the data to identify individuals. We will release the data only upon receipt and approval of a research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed. Recipients will also be required to agree not to use the data for purposes other than quality and effectiveness of care research. The file may not be used for purposes such as marketing (e.g., identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (e.g., targeting marketing areas, or redlining areas deemed to offer bad health insurance risks), or adverse selection (e.g., identifying patients with high-risk diagnoses). In addition, recipients will have to establish appropriate safeguards to protect the confidentiality of the data and prevent unauthorized access to it.

We are proposing that the following routine use for release of the QC/MEDPAR file be added to the current system notice for system number 09-70-0005.

(7) With respect to the QC/MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research on the quality and effectiveness of care provided in hospitals. Research using data released

under this routine use must focus on the improvement of measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR file may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. The entity must submit and HCFA must approve:

(1) A research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed; and

(2) A copy of any report by a panel of recognized experts reviewing the research plan (where such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to research on the quality and effectiveness of hospital inpatient care, including but not limited to: marketing (identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (redlining areas deemed to offer bad health insurance risks), and adverse selection (identifying patients with high-risk diagnoses);

(3) Not to disclose the data to any persons unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA;

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research plan.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because the addition of this new routine use will not change the purposes for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(o). The entire systems notice is published below. Please note that since this notice was last published in its entirety, it has been updated several times for both specificity and for changes required by the Department of Health and Human Services. These additions, previously published in the **Federal Register**, are being included at this time to furnish readers a notice that is correct and complete.

Dated: April 27, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0005

SYSTEM NAME:

Medicare Bill File (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Systems Operations, OS, SSA, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplemental medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data; demographic data on the beneficiary; diagnosis and surgery codes provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 1395ll).

PURPOSE(S):

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Social Security programs.

(3) *To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when*

(a) *HHS or any component thereof; or*

(b) *Any HHS employee in his or her official capacity; or*

(c) *Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or*

(d) *The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,*

is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider, the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission.

Each of the Medicare Provider Analysis and Review (MEDPAR) files—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release. The entity must agree:

(a) Not to try to identify individual beneficiaries.

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract).

(c) Not to link this information to other beneficiary-specific records.

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified, and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the QC/MEDPAR file, to entities with a legitimate need for data for the purpose of conducting research on the quality and effectiveness of care provided in hospitals. Research using data released under this routine use must focus on the improvement of measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR file may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. The entity must submit and HCFA must approve:

(1) A research plan specifying the objectives of the research, the manner in which the data will be used, the financial support for the plan, and the date the research will be completed; and

(2) A copy of any report by a panel of recognized experts reviewing the research plan (which such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to research on the quality and effectiveness of hospital inpatient care, including but not limited to: marketing (identification and targeting of under- or over-served health service markets primarily for the purposes of commercial benefit), insurance (redlining areas deemed to offer bad health insurance risks), and adverse selection (identifying patients with high risk diagnoses);

(3) Not to disclose the data to any persons unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor; and

(b) The contractor has signed a confidentiality statement with HCFA;

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could not be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a

level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of any aggregation of the data intended for pubication to HCFR for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at completion of the research plan.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Data Management and Strategy, Room 2424, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary	To determine the number of stays for a beneficiary.
2. Age	Age intervals to protect the identity of the beneficiary	To measure age-based differences.
	under 25	
	25–44	
	45–64	
	65–69	
	70–74	
	75–79	
	80–84	
	85+	
3. Sex	—male	To measure sex-based differences.
	—female	
	—unknown	
4. Medicare Status Code	Code to show reason for beneficiary's entitlement	To examine effectiveness of care for different categories of Medicare beneficiaries.
	—aged without ESRD	
	—aged with ESRD	
	—disabled without ESRD	
	—disabled with ESRD	
	—ESRD only	
5. Discharge Destination	—To home, self care	To group stays into Diagnosis Related Groups (DRGs).
	—To short-term hospital	
	—To SNF	
	—To other type facility	
	—To home health service	
	—Left against medical advice	
	—Died	
	—Still a patient	
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Number of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges	All charge fields (fields 11–21) are in whole dollars	Charge fields 11–21 are included to measure relative resource use across cases.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
12. Routine Accommodation Charges		
13. Intensive Care and Coronary Care Charges		
14. Total Departmental (Ancillary) Charges		
15. Operating Room Charges		
16. Pharmacy Charges		
17. Laboratory Charges		
18. Radiology Charges		
19. Supplies Charges		
20. Anesthesia Charges		
21. Inhalation Therapy Charges		
22. Principal Diagnosis	ICD–9–CM Code	Fields 22–25 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Additional Diagnoses	Up to 4 ICD–9–CM codes	
24. Principal Surgical Procedure Code	ICD–9–CM Volume 3	
25. Additional Surgery	Up to 2 ICD–9–CM Volume 3 codes	
26. Date of Surgery	Date plus/minus 1 to 20 days*	To measure intervals between admission/discharge and surgery.
27. Blood Furnished	Number of pints	To measure outcomes.
28. Diagnosis Related Group	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
29. Date of death	Date, plus/minus 1 to 20 days*	To determine mortality rates.
30. Urban/rural residence	1=urban	To examine variations in care in urban and rural areas.
	2=rural	
31. Zip-Code	5 digit zip	To examine variations in care in small areas.

*The *same* random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ± 1 through 20.

[FR Doc. 88–9700 Filed 5–2–88; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Advisory Committee to the Director; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 27–28, 1988, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5:00 p.m. on June 27, and from 8:30 to approximately 11:45 a.m. on June 28, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Health of Biomedical Research Institutions—Report of the Regional Meetings."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9763 Filed 5–2–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory Board meeting which was published in the **Federal Register** (53 FR 13450) on April 25, 1988.

The Subcommittee on Cancer Centers, scheduled for May 8, 6 p.m., Building 31C, Conference Room 7 is being changed to May 10, 8 a.m., Building 31C, Conference Room 7. This Subcommittee is being rescheduled due to conflicting schedules of members. Therefore, the Subcommittee on Special Actions for Grants, scheduled for 8:30 a.m. will commence at approximately 9 a.m.

The Subcommitee on Cancer Control for the Year 2000, scheduled for May 9, 6:15 p.m., Building 31C, Conference Room 8, is being cancelled due to conflicting schedules of members.

The full meeting of the AIDS Subcommittee, originally scheduled to be opened from 7:30 p.m. to adjournment, will now be open from 7:30 p.m. to approximately 8:30 p.m. followed by a closed session to discuss the pre-publication scientific results of an AIDS paper to be published in June. This meeting will be closed under section 552(b)(c)(4) of Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463 as these discussions could reveal confidential trade secrets or commercial property.

Dated: April 28, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9764 Filed 5–2–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Disorders Program Project Review B Committee, National Institute of Neurological and Communicative Disorders and Stroke, June 8–10, 1988, Holiday Inn, 555 C Street SW., Washington, DC, which was published in the **Federal Register** on April 4, 1988 (52 FR 10950).

This committee was to have convened at 8:30 a.m. on June 8, but has been changed to 7:00 p.m. on June 8, 1988.

The meeting will be open to the public from 7:00 p.m. to 7:30 p.m. and will be closed from 7:30 p.m. to adjournment for the review of grant applications.

Dated: April 21, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9765 Filed 5–2–88; 8:45 am]

BILLING CODE 4140–01–M

VOL 53 ISS 85 MY 3 1988 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

April 21, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 27, 1988.

The plat (in 2 sheets) representing the dependent resurvey of portions of the Second Standard Parallel South (south boundary), subdivisional lines, certain homestead entry surveys, and certain mineral surveys, the extension survey of portions of the Second Standard Parallel South (south boundary) and subdivisional lines, and the subdivision of certain sections, T. 10 S., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 783, was accepted April 13, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-9686 Filed 5-2-88; 8:45am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-725840

Applicant: Scott Little, Atlanta, GA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, South Africa, for the purpose of enhancement of the survival of the species.

PRT-726976

Applicant: Wildlife Reserve of Western Canada, Cochrane, Canada

The applicant requests a permit to import and reexport one male northern swift fox (*Vulpes velox hebes*) to educate the public about the ecological role and conservation needs of the species and for display at an endangered species conventional in Boston, Massachusetts.

PRT-726761

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one male and two female captive born yellow-footed rock wallabies (*Petrogale xanthopus*) from the Royal Zoological Society of South Australia, Adelaide, South Australia for the purpose of establishing a second captive breeding group in the United States.

PRT-727175

Applicant: Lonnie Woosley Florence, OR

The applicant requests a permit to import two female Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) born in 1986 and 1987 from Dave Rempel, Maple Ridge, B.C., Canada for enhancement of propagation.

PRT-727025

Applicant: Ringling Bros.—Barnum and Bailey Circus, Washington, DC

The applicant requests a permit to reexport to Japan and reimport a female Asian Elephant (*Elephas maximus*) originally imported in 1973, country of origin unknown, now owned by Scott Riddle, Washington, MI, for enhancing the propagation or survival of the species through educating the public about the ecological role and conservation needs of the species.

PRT-714174

Applicant: Ohio State University, Colombus, OH

The applicant requests a permit to import up to 150 intestional biopsies and 50 blood samples taken from wild cotton-top marmosets (*Saguinus oedipus*) at Sambrano, Sucre Province, Colombia. Applicant wishes to import these blood and tissue samples for purposes of scientific research and enhancement of the propagation of the species.

PRT-704301

Applicant: Jan Giacinto & Dirk Arthur, Exotic Animals, Tarzana, CA

The applicant requests a permit to export and reimport one pair of captive born tigers (*Panthera tigris*), along with the previously permitted male tiger, male jaguar (*Panthera onca*) and pair of leopards (*Pathera pardus*), for performance in an illusionist show, during which the applicant intends to educate the public with regard to each of the above species' ecological role and conservation needs.

PRT-727165

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to improve one captive born female Bawean deer (*Axis* (=*Cervus*) *porcinus kuhli*) from L. Ruhe KG, West Germany to be included as a part of their reproductive group.

PRT-727201

Applicant: Toledo Zoological Society, Toledo, OH

The applicant requests a permit to import two male and two female captive born cheetahs (*Acinonyx jubatus*) from the Cheetah Research and Breeding Center, Pretoria, South Africa for the purpose of enhancement of propagation.

PRT-729622

Applicant: Dallas Zoo, Dallas, TX

The applicant requests an amendment to their application for the import of tuataras (*Sphenodon punctatus*) from New Zealand. Rather than one pair of wild tuataras, the applicant would like to import 6-8 captive-hatched juveniles, currently being held at Victoria University, Wellington, New Zealand. The tuataras will be utilized in a captive breeding program at the Dallas Zoo.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: April 28, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-9784 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Agency Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, 20503, telephone 202-395-7340.

Title: Payor Information Form (PIF) Oil and Gas.

Abstract: Data collected on the PIF are used to establish payor accounts for all mineral leases on Federal and Indian lands using accounting identification numbers assigned by the Minerals Management Service (MMS). The MMS is then able to maintain, reconcile and audit lease accounts through the use of its computerized Auditing and Financial System. This information will enable MMS to determine payors responsible for paying rentals and royalties to MMS and the percentage of sales or production on which royalties are to be paid.

Bureau Form Number: MMS-4025.

Frequency: On occasion.

Description of Respondents: Oil and gas lessees, onshore and offshore.

Annual Responses: 32,800.

Annual Burden Hours: 16,400.

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Date: March 28, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 88-9688 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7780, Block 276, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Fouchon and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 25, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-9687 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Land and Water Conservation Fund; State Plan Preparation, Procedures and Eligibility

AGENCY: National Park Service, Interior.

ACTION: Notice; Land and Water Conservation Fund.

SUMMARY: Notice is hereby given that the National Park Service is considering a revision to its policy regarding State plan preparation, procedures, and eligibility under the Land and Water Conservation Fund (L&WCF) Act of 1965, as amended (Pub. L. 88-578). The revision will be issued as a new manual release covering chapter 630.1 of the L&WCF Grants-In-Aid Manual (NPS-34).

DATE: Comments submitted within 60 days of this announcement will be considered.

ADDRESS: Copies of the proposed policy revision are available on request from the following location: National Park Service, Recreation Resources Assistance Division (765), P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Einar S. Olsen or Paul Solomon of NPS—Recreation Resources Assistance Division at the address given above; telephone 202/343-3780 or (FTS) 343-3780.

SUPPLEMENTARY INFORMATION: Section 6d, L&WCF Act of 1965 as amended: Pub. L. 88-578; 78 Stat. 897; 16 U.S.C. 4601-4, et seq.

Robert Stanton,

Acting Director.

[FR Doc. 88-9690 Filed 5-2-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 18, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Pulaski County

Little Rock, *Governor's Mansion Historic District (Boundary Increase), Roughly bounded by Louisiana St., Twenty-Third St. and Roosevelt Rd., Chester and State Sts., and Thirteenth and Twelfth Sts.*

GEORGIA

Carroll County

Bowden, *Lovvorn, Dr. James L., House*, 113 E. College St.

Echols County

Statenville, *Statenville Consolidated School*, GA 94

Rabun County

Tallulah Falls, *Tallulah Falls Depot*, US 441

Thomas County

Thomasville, *Thomasville Depot*, 420 W. Jackson St./US 319

GUAM

Talofofo, *Aratama Maru*, Talofofo Bay

MICHIGAN

Mason County

Ludington, *Mason County Courthouse*, 300 E. Ludington Ave.

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MINNESOTA

Clearwater County

Bagley vicinity, *Gran Evangelical Lutheran Church*, CR 92 and CH 20

Hennepin County

Minneapolis, *Holmes, Henry E., House*, 1413 Park Ave., S.

Martin County

Fairmont, *First Church of Christ Scientist*, 222 Blue Earth Ave., E.

MISSOURI

St. Louis County (also in St. Louis (Independent City))

Clayton and St. Louis, *Wydown—Forsyth District*, Roughly bounded by Forsyth, Skinker Blvd., Fauquier and Wydown Terrace Dr., and University Ln.

Washington County

Potosi vicinity, *Crosswell, George, Furnace*, MO F

NEW JERSEY

Hunterdon County

Mt. Salem vicinity, *Mount Salem Methodist Episcopal Church*, CR 579

Somerset County

Blawenburg, *Blawenburg Historic District*, Georgetown—Franklin Tpk./CR 568, Great Rd./CR 601, and Mountain View Rd.

NEW YORK

Jefferson County

Alexandria, *Densmore Methodist Church of the Thousand Islands*, Rt. 100 at Densmore Bay

Nassau County

East Island vicinity, *Shell House, The*, 26 Westland Dr.

Oswego County

Oswego, *Oswego Armory*, 265 W. First St.

Rensselaer County

Troy, *Northern River Street Historic District*, 403–429 and 420–430 River St.

Rockland County

Ramapo, *Torne Brook Farm*, Torne Brook Rd.

Suffolk County

Lloyd Harbor, *Fort Hill Estate*, Fort Hill Dr.

VIRGINIA

Norfolk (Independent City)

Kenmure, 420 W. Bute St.

WASHINGTON

Clallam County

Dungeness, *Dungeness School (Rural Public Schools in Washington From Early Settlement to 1945 MRA)*, 657 Towne Rd.

Douglas County

Waterville, *Downtown Waterville Historic District*, Locust and Chelan Sts.

King County

Seattle, *Adams School*, 2637 NW. Sixty-Second St

Lewis County

Centralia, *Centralia Union Depot*, 210 Railroad St.

Pacific County

Seaview, *Schulderman, Peter, House*, Thirty-Seventh and K Sts.

South Bend, *Lumber Exchange Building*, Robert Bush Dr./US 101 and Willapa Ave.

Spokane County

Spokane, *Coolidge—Rising House*, W. 1465 Ninth Ave.

Yakima County

Toppenish, *Yakima Indian Agency Building*, 1 S. Elm

WISCONSIN

St. Croix County

New Richmond, *Bell, Marcus Sears, Farm (New Richmond MRA)* 1100 Heritage Dr.

New Richmond, *Bernd, William J., House (New Richmond MRA)* 210 Second St., E.

New Richmond, *Bernd, William J., House (New Richmond MRA)* 143 Arch Ave., N.

New Richmond, *Epley, Dr. Frank W., Office (New Richmond MRA)* 137 Third St., E.

New Richmond, *First English Lutheran Church (New Richmond MRA)* 354 Third St., N.

New Richmond, *Glover, Ezra, Jr., House (New Richmond MRA)* 415 Second St., E.

New Richmond, *Kell, William H., House (New Richmond MRA)* 215 Green Ave., S.

New Richmond, *Mielke, Joseph, House (New Richmond MRA)* 326 Second St., W.

New Richmond, *New Richmond News Building (New Richmond MRA)* 145 Second St., W.

New Richmond, *New Richmond Roller Mills Co. (New Richmond MRA)* 201 Knowles Ave., N.

New Richmond, *New Richmond West Side Historic District (New Richmond MRA)* Roughly bounded by Willow River, Minnesota Ave., W. Second St., S. Washington Ave.

New Richmond, *Soo Line Depot (New Richmond MRA)* 120 High St.

New Richmond, *Thompson, Erick J., House (New Richmond MRA)* 350 Second St., W.

[FR Doc. 88–9691 Filed 5–2–88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data to Union Pacific Railroad Co. for Use in a Formal ICC Proceeding

The Commission has received a request from the Union Pacific Railroad Company (UP) for permission to use certain waybill data from the Commission's 1981 through 1988 Waybill Sample. The data sought is for use only by UP's in-house counsel and costing personnel for purposes of evaluating the Commission's selection of a group of comparable traffic and its application of the Revenue to Variable Cost test to that comparison group in ICC Docket No. 40073, *South-West Railroad Car Parts v. Missouri Pacific Railroad Company*. The data requested are as follows: For each year 1981 through 1988, the following individual movement data for shipments with line hauls between 1–500 miles in the West, having STCC numbers 37–411, 37–422, 37–424 and 40–211: tons, miles, revenue and variable costs. UP is seeking this information through the Federal Register Notice process because under the Commission's waybill release procedures [Ex Parte 385 Sub-No. 2]], confidential waybill data may be released without notice only to the independent consultants, attorneys, and transportation practitioners who represent shippers and railroads in formal ICC and State Commission proceedings. (49 FR 1244.8(b)(4)]

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use File that has satisfied the majority of all waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's rules for release of waybill data [Ex Parte 385 (Sub-No. 2), 52 FR 12415, April 16, 1987], we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party.

If any parties object to this request, they should file their objections (an original and 3 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. Objections should identify the parties seeking the waybill data, state the purpose for which the data are sought, and include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275–7691.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9781 Filed 5–2–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–296 (Sub-No. 1X)]

Robeson County Railroad Corp.; Discontinuance of Operations Exemption in Robeson County, NC

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts the Robeson County Railroad Corporation from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to discontinue the operations of its operating division, the Fairmont and Western Railroad Company, over 12.78 miles of line extending from Elrod to Fairmont in Robeson County, North Carolina, subject to standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective on June 2, 1988. Formal expressions of intent to file and offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 13, 1988.

Petitions to stay must be filed by May 18, 1988, and petitions for reconsideration must be filed by May 31, 1988. Requests for a public use condition must be filed by May 13, 1988. Send pleadings referring to Docket No. AB–296.

ADDRESSES: (Sub–No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative:, Fritz R. Kahn, Suite 1000, 1660 L Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245., [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9745 Filed 5–2–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48,440–48,446).

DEPARTMENT OF JUSTICE

Grant Agreements To Provide Community—Based Special Placement Programs for Mariel Cuban Detainees Paroled; Availability of Funding

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of Funding for Grant Agreements to provide community-based Special Placement Programs for Mariel Cuban detainees paroled or reparoled by the Immigration and Naturalization Service from various Federal detention facilities.

SUMMARY: This announcement extends the closing date of the Community Relations Service Notice published in the April 12, 1988, edition of the Federal Register. The Notice begins on page 12081 of the above referenced edition.

DATE: The closing date is hereby extended to 5:00 p.m., Monday, June 20, 1988.

Date: April 27, 1988.

Robert L. Martinez,

Acting Director, Community Relations Service.

[FR Doc. 88–9732 Filed 5–2–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Order Pursuant to the Clean Water Act; Metropolitan District Commission et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Order as to the Commonwealth of Massachusetts ("Commonwealth") and its agency, the Metropolitan District Commission ("MDC"), in *United States v. Metropolitan District Commission, et al.* (Boston Harbor), has been lodged with the United States District Court for the District of Massachusetts. The Stipulation and Order settles the United States' claims against the Commonwealth and MDC for civil penalties for violations of the Clean Water Act in connection with the Boston metropolitan area sewage treatment system prior to July 1, 1985.

The proposed Stipulation and Order requires the Commonwealth and MDC to pay a cash penalty of $425,000 and to pay $2,000,000 for specified Boston Harbor remedial projects, which include marsh restoration investigations, beach cleanup activities, and a study of contamination of the Boston Harbor—Massachusetts Bay—Cape Cod Bay estuarine system. The United States Environmental Protection Agency believes that the bulk of the point source discharges to this estuarine system have been from the Boston metropolitan area sewage treatment system and that the study will be an important first step to assist in determining and evaluating potential remedial actions to improve the water and sediment quality of Boston Harbor and its estuary.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan District Commission, et al.* (Boston Harbor), D.J. Reference #90–5–1–1–2310.

The proposed Stipulation and Order may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack P.O. & Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Stipulation and Order may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave. NW., Washington, DC 20530. A copy of the proposed Stipulation and Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to *United States v. Metropolitan District Commission, et al.* (Boston Harbor), D.J. Reference #90–5–1–1–2310 and enclose a check in the amount of $1.80 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–9714 Filed 5–2–88; 8:45 am]

BILLING CODE 4410–01–M

BEST COPY AVAILABLE

Antitrust Division

National Cooperative Research Act of 1984; NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on April 5, 1988 disclosing (1) the identities of one additional party and nine additional advisors to the Smart House Project,

Party

Canada Wire & Cable

Advisors

American Electric Power Service Corp.
Arkla, Inc.
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Power Company
Edison Electric Institute
Houston Electric Institute
Houston Lighting & Power Company
Kansas Gas & Electric Company
Minnesota Blue Flame Gas Asso.;

(2) the identities of two parties and three advisors that no longer are involved in the Smart House Project,

Parties

National Semiconductor Corporation
NOMA Incorporated

Advisors

Bell Communications Research, Inc.,
The Bell Telephone Company of Pennsylvania,
The Dayton Power and Light Company; and

(3) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Canada Wire & Cable
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E.I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
North American Phillips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corpation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Electric Power Service Corp.
American Gas Association
Arkla, Inc.
Baltimore Gas & Electric Company
Bell Canada
Bell South Services
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Columbia Gas Distribution Companies
Consolidated Natural Gas Company
Consumers Power Company
Cooper Development Association Inc.
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Houston Lighting & Power Company
Hydro Quebec
Illinois Consolidated Telephone Co.
International Conference of Building Officials
Kansas Gas & Electric Company
Minnesota Blue Flame Gas Asso.
National Association of Home Builders
National Cable Television Association
Northern Illinois Gas
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, and February 22, 1988, NAHB filed additional written notifications. The Department of Justice published notices in the Federal Register in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), On May 16, 1986 (51 FR 18049), On August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), and on March 21, 1988 (53 FR 9154), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–9742 Filed 5–2–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Amended Due Date Procedures for Preapplication for Funds; Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of amended due date.

SUMMARY: On April 12, 1988 in 53 FR 12088 a notice was published in the **Federal Register** setting forth the procedures for obtaining a preapplication for funds for the operation of a Homeless Veterans' Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738. This notice amends the due date for submittal of a completed preapplication package.

DATE: A preapplication package and instructions for completion was available for issuance as of April 15, 1988. The amended closing date for receipt of a completed preapplication package in response to this notice is May 13, 1988.

ADDRESS: A copy of the preapplication package and instructions for completion may be obtained by written request only, including two self-addressed mailing labels, to: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Ave. NW., Washington, DC 20210, Attention: Melvin Goldberg, Reference: PAG–01.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave. NW., Rm. S1313, Washington, DC 20210, Telephone (202) 523–2752.

SUPPLEMENTARY INFORMATION: Supplementary information published in the April 12, 1988 **Federal Register** notice on procedures for preapplication for funds under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1988 is unchanged by this notice.

Signed at Washington, DC, this 28th day of April, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88–9804 Filed 5–2–88; 8:45 am]

BILLING CODE 4510–79–M

Employment Standards Administration, Wage and Hour Division

Child Labor Advisory Committee; Subcommittee Meeting on Hazardous Occupations Order No. 10

The Child Labor Advisory Subcommittee members who will consider topics concerning Hazardous Occupations Order No. 10 will meet on May 18, 1988, from 8:00 a.m.–5:00 p.m. to conduct on-site visits at two meat processing and packing plants, and a retail establishment that uses power-driven meat slicers.

On May 19, 1988, this Subcommittee will convene at the Department of Labor, Frances Perkins Building, Room N3437 A, 200 Constitution Avenue NW., Washington, DC, from 9:00 a.m.–5:00 p.m. The discussion will focus on whether a recommendation is necessary with respect to the scope of this Hazardous Order; whether current definitions under this Order need to be refined; and whether specific machinery should or should not be covered by this Order.

Members of the public are invited to attend the meeting. Individuals wishing to submit written data, reviews, or arguments pertaining to the business before the Subcommittee should submit them to the Child Labor Advisory Committee Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila J. Stovall, Coordinator for the Child Labor Advisory Committee, (202) 523–7640.

Signed at Washington, DC, this 27th day of April, 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88–9799 Filed 5–2–88; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–20,484]

Bethlehem Rebar Industries, Inc., Corporate Headquarters, Lehigh Valley, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 29, 1988 in response to a worker petition which was filed on behalf of workers at Bethlehem Rebar Industries, Incorporated.

The petition was filed by former workers of the Houston, Texas plant of Bethlehem Rebar Industries, Incorporated. An investigation on behalf of workers of the Houston location was initiated on February 29, 1988 in response to the petition, TA–W–20,483. Subsequent to the initiation of that investigation, another investigation was erroneously initiated on behalf of the Corporation's headquarters in Lehigh Valley, Pennsylvania.

The petitioning workers did not intend to file on behalf of the headquarters. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 9802 Filed 5–2–88; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, Budget Dress Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Budget Dress Co. (Workers)	Secaucus, NJ	4/25/88	4/5/88	20,621	Ladies' dresses.
Complete Auto Transit (TDCH)	Cincinnati, OH	4/25/88	4/8/88	20,622	Auto transport.
Huron Forge & Machine Co. (UAW)	Detroit, MI	4/25/88	4/8/88	20,623	Forgings.
Island Creek Coal Co., Gauley Div. (Workers)	Craigsville, WV	4/25/88	4/12/88	20,624	Coal.
Iwaki Corp. (Workers)	Fairfield, NJ	4/25/88	4/6/88	20,625	Chemical pumps.
Kitt Energy Corp. (Workers)	Fredericktown, PA	4/25/88	4/14/88	20,626	Coal.
Rio Algom mining Corp./La Sal Mine (Workers).	Moab, UT	4/25/88	4/14/88	20,627	Uranium.
Scotts Branch Mine (UMWA)	Pikeville, KY	4/25/88	4/12/88	20,628	Coal.
Seco Tools, Inc. (Workers)	Fairfield, NJ	4/25/88	4/14/88	20,629	Metal cutting tools.
Tanoma Mining Co. (UMWA)	Marion Center, PA	4/25/88	12/29/88	20,630	Coal (steam and metallurgical).
W.C.I., Belding Products Co., Home Company Div. (UAW).	Belding, MI	4/25/88	4/15/88	20,631	Air conditioners and refrigerators.
W.C.I., Greenville Products Co., Refrigerators Div. (UAW).	Greenville, MI	4/25/88	4/15/88	20,632	Do.
Westinghouse Electric (Workers)	Pittsburgh, PA	4/25/88	4/18/88	20,633	Rapid transit equipment.

[FR Doc. 88-9801 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Pressure Cast, Ltd., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 18, 1988–April 22, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,493; Pressure Cast, Ltd, Grafton WI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,478; Martino Mfg. Co., Mt. Bethel, PA

U.S. imports of infants, toddler and childrens woven blouses declined absolutely in 1987 compared to 1986.

TA–W–20,521; Bethlehem Mines Corp., Hanover Quarry, Hanover, PA

U.S. imports of crushed limestone are negligible.

TA–W–20,482; 3M Company, Rochester, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–20,489; Lectromelt Corp., Pittsburgh, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,475; Charles of the Ritz Group Limited, Holmdel, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,501; Control Data Corp., Magnetic Peripherals, Inc., Minnetonka, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,471; Bell Helicopter Textron, Inc., Amarillo, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,492; Paccar Defense Systems, Renton, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,483; Bethlehem Rebar, Industries, Inc., Houston, TX

U.S. imports of concrete reinforcing bar, which includes fabricated concrete reinforcing bar declined absolutely and relative to domestic shipment in 1987 compared to 1986.

TA–W–20,473; Bristol Steel & Iron Work, Inc., Plants Number Two and Number Three, Bristol, VA

U.S. imports of fabricated structural steel declined absolutely in the first three quarters of 1987 compared to the same period in 1986.

Affirmative Determintions

TA–W–20,476; General Electric Co., Carroll, IA

A certification was issued covering all workers of the firm separated on or after February 8, 1987.

TA–W–20,479; Taylor Lock Co., Philadelphia, PA

A certification was issued covering all workers of the firm separated on or after February 8, 1987.

TA–W–20,497; Vermont Marble Co., Proctor, VT

A certification was issued covering all workers of the firm separated on or after September 1, 1987.

TA–W–20,469; A.E. Staley Manufacturing, Caribou, ME

A certification was issued covering all workers of the firm separated on or after February 5, 1987.

TA–W–20,480; Universal Match Corp., Hudson, NY

A certification was issued covering all workers related to the production of paper bookmatches separated on or after April 1, 1988.

I hereby certify that the aforementioned determinations were issued during the period April 18, 1988–April 22, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 28, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-9800 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–20,494]

Southwestern Sunbelt Cement Co., El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on April 5, 1988 to all workers of the Sacking Division of Southwestern Sunbelt Cement Company, El Paso, Texas. The Notice of Certification was published in the Federal Register on April 19, 1988 (53 FR 12833).

The company informed the Department that a few workers were laid off a few days before the January 4, 1988 impact date. It is the Department's intent to include all workers as eligible to apply for adjustment assistance who were laid off from the Southwestern Sunbelt Cement Company, El Paso, Texas.

The amended certification for TA–W–20,494 is hereby issued as follows:

All workers of the Sacking Division of Southwestern Sunbelt Cement Company, El Paso, Texas who became totally or partially separated from employment on or after December 15, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of April 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-9803 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the fifth meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on May 24 and 25 at the Salt Lake Hilton, 150 West 500 South, Salt Lake City, Utah 84101, phone (801) 532–3344.

This nine-member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesel equipment in underground coal mines.

The agenda for this meeting will include discussions on the subcommittee report on health recommendations, and recommendations on the safety and approval issues. The United Mine Workers of America will present several speakers to address the Advisory Committee about the experiences of rank-and-file union members who work in underground coal mines where diesel equipment is used.

Official records of the meeting will be available for public inspection at the Office of Technical Support, Mine Safety and Health Administration, Room 913A, 4015 Wilson Boulevard, Arlington, Virginia; phone (703) 235–1570.

Signed at Arlington, Virginia, this 27th day of April 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-9729 Filed 5-2-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Monday, May 16, 1988, in Room N–4437B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee welfare plans coverd by ERISA.

The purpose of the May 16 meeting is to review the proceedings of the April 18 work group meeting; and to examine options available for recommendation to the Advisory Council with respect to reporting and disclosure forms under review. The work group will also take testimony and or submissions from employee representatives, employer

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representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before May 12, 1988 to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 12, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration.

Signed at Washington, DC, this 28th day of April, 1988.

[FR Doc. 88–9882 Filed 5–2–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88–44]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: May 25, 1988, 9 a.m. to 5:30 p.m., and May 26, 1988, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Room 213, Building 200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code F, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 24 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, space station, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:00 a.m. on May 26 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 45 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda

May 25, 1988

9 a.m.—Introductory Remarks.
9:15 a.m.—Report to Life Science Strategic Planning Study Committee.
11 a.m.—Life Science Program Overview.
1 p.m.—Advanced Launch System Briefing.
2 p.m.—Radioisotope Thermoelectric Generator Briefing.
4 p.m.—NAC Committee Reports.
5:30 p.m.—Adjourn.

May 26, 1988

8:30 a.m.—Closed Session.
9 a.m.—Aeronautics Policy, Strategy, and Program Overview.
1 p.m.—Tour of Facilities.
3 p.m.—Adjourn.

April 28, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–9701 Filed 5–2–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities, and the Handicapped in Science and Technology; Change of Date and Location of Meeting

The meeting of the Task Force on Women, Minorities, and the Handicapped in Science and Technology, previously scheduled for May 5, 1988 at the Community College of Baltimore, Baltimore, Maryland, has been changed to May 24, 1988, from 9:00 a.m. to 5:00 p.m., at the Department of Health and Human Services, First Floor Auditorium, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. The meeting is open to the public. For further information contact Sue Kemnitzer, Executive Director, at (202) 245–7477.

Sue Kemnitzer,

Executive Director.

April 27, 1988.

[FR Doc. 88–9761 Filed 5–2–88; 8:45 am]

BILLING CODE 7555–01–M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation.

ACTION: Notice of Amendment to Statement of Organization, Functions, and Delegations of Authority.

SUMMARY: In accordance with the Administrative Procedures Act (5 U.S.C. 551 et seq.), this notice amends the Statement of Organization published at 52 FR 1540–1549 of January 14, 1987, as amended by 52 FR 49216 of December 30, 1987.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: M. Rebecca Winkler, National Science Foundation, Division of Personnel and Management, Room 206, Washington, DC 20550, telephone 202–357–9520.

A. Staff Offices

The Division of Audit and Oversight in the Office of Budget, Audit and Control became a staff office and was renamed the Office of Audit and Oversight (OAO). The Office of Budget, Audit and Control (OBAC) was redesignated the Office of Budget and Control (OBAC).

B. Directorates

Directorate for Biological, Behavioral, and Social Sciences (BBS)

The Directorate was reorganized and now consists of the Office of the Assistant Director and six divisions. The changes are as follows:

The Office of Interdirectorate Research Coordination was abolished and the responsibilities assumed by the new Division of Instrumentation and Resources (DIR). Functions of the preexisting divisions changed slightly with the shift of programs to DIR.

The new division was established in response to the need for a coordinated activity of infrastructure and research resource programs. The division is responsible for both internal and external infrastructure activities, including support for instrumentation and instrument development, biological facilities centers, and other biology facility programs, and also includes the coordination of all cross-directorate programs, maintenance and improvement of all BBS ADP systems and information management, as well as training for automated systems.

There was also a realignment of some programs between the Divisions of Molecular Biosciences and Cellular Biosciences to establish closer scientific connections with the communities they represent and to foster scientific coordination of relevant research results.

Directorate for Science and Engineering Education

The Office of Undergraduate Science, Engineering, and Mathematics Education (USEME) was established, subsuming the Office of College Science Instrumentation (OCSI). USEME is responsible for managing and coordinating the NSF-wide undergraduate education support activities and promoting understanding and support for undergraduate education throughout the scientific communities. The Office supports and/or coordinates projects whose purpose is to improve the quality of undergraduate education in science, mathematics, and engineering through programs for faculty, students, curriculum development, laboratory development, course development, instrumentation, and equipment.

Jeff Fenstermacher,

Assistant Director for Administration.

Date: April 27, 1988.

[FR Doc. 88–9762 Filed 5–2–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–249]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 25, issued to Commonwealth Edison Company (the licensee), for operation of the Dresden Nuclear Power Station Unit 3 located in Grundy County, Illinois.

The amendment would amend the Technical Specifications to correct the discrepancy between the Table 3.2.2 value for the 4KV emergency bus undervoltage trip (3092V) and the current trip value (2930V). It has been determined that the value in Table 3.2.2 is not consistent with the engineering and design basis upon which the actual trip value is based.

This amendment request is consistent with the NRC letter dated March 25, 1988 granting a temporary waiver of compliance.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commissioin or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to D. R. Muller: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this Federal Register notice).

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the NRC letter to Commonwealth Edison Company dated March 25, 1988 confirming a temporary waiver of compliance and the application for amendment dated March 28, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Project.

[FR Doc. 88–9735 Filed 5–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–16, issued to GPU Nulcear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would change the Technical Specifications to delete Safety Limit 2.1.E which requires at least two recirculation loops to be fully open except when the reactor vessel head is off and vessel water level is above the main steam nozzle. This amendment will also incorporate this limitation in Technical Specification 3.3.F and that limitation be revised to require that at least one recirculation loop instead of two be fully open during applicable plant conditions.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2000 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–9734 Filed 5–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the number of manual initiation functional units (push button switches) of Steam and Feedwater Rupture Control System Instrumentation (SFRCS) required, required for producing a trip, and required to be operable.

The proposed amendment, specifically, would revise Table 3.3–11, Steam and Feedwater Rupture Control System Instrumentation, TS Section 3/4.3.2, Safety System Instrumentation, Steam and Feedwater Rupture Control System Instrumentation, to reflect a reduction to four push button switches from ten.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

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Dated at Rockville, Maryland, this 28th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–9736 Filed 5–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to:

(1) The Reactor Coolant System (RCS) pressure-temperature operating limits,

(2) The reactor coolant high pressure trip setpoint and allowable setpoint for the Reactor Protection System instrumentation,

(3) The rated thermal power below which the anticipatory Reactor Trip System (ARTS) turbine trip may be bypassed automatically,

The rated thermal power above which the ARTS turbine trip must be operable and is subject to surveillance requirements, and

(5) The trip and allowable setpoints for the pressurizer electromatic relief valve.

The proposed amendment, specifically, would revise Figure 2.1–1 of TS section 2.1.3, Table 2.2–1 of section 2.2.1, Tables 3.3–15 and 4.3–15 of TS section 3/4.3.2.3, TS section 3/4.4.3

The proposed amendment also would revise Bases sections 3/4.3.1, 3/4.3.2, 3/4.4.2 and 3/4.4.3 for the above setpoints and operating limits.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 1, 1988 as supplemented February 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 28th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Project Directorate III–3, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–9737 Filed 5–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the Steam and Feedwater Rupture Control System Instrumentation (SFRCS) Steam Generator Level Functional Unit-low trip and allowable setpoints.

The proposed amendment, specifically, would revise Table 3.3–12, Steam and Feedwater Rupture Control System Instrumentation Trip Setpoints, TS section 3/4.3.2, Safety System Instrumentation, Steam and Feedwater Rupture Control System Instrumentation, to reflect a reduction of the steam generator low level SFRCS trip setpoint from no less than 20 inches to no less than 16.4 inches, and a reduction of the allowable setpoint from no less than 15.6 and 12.9 inches for channel functional test and channel calibration respectively.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 2, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26th day of April 1988.

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For the Nuclear Regulatory Commission.
Kenneth E. Perkins,
Director, Project Directorate III–3, Division of Reactor Projects–III, IV, V and Special Projects.
[FR Doc. 88–9738 Filed 5–2–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–338]

Virginia Electric and Power Co. (North Anna Power Station, Unit No. 1); Exemption

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. NPF–4, which authorizes operation of the North Anna Power Station, Unit 1 (NA–1), at a steady-state reactor power level not in excess of 2905 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Louisa County, Virginia.

II

10 CFR 50.55a requires that pumps and valves in light water reactor plants be tested to the requirements of Section XI of the ASME Code and that tests be performed in accordance with the inservice testing program submitted for each 10-year interval. These 10-year intervals are calculated from the start date of commercial operation of the facility.

10 CFR 50.55a(g)(4)(ii) requires that licensees update their pump and valve Inservice Testing (IST) programs to the latest approved edition of Section XI of the ASME Code (the code) every 10 years. Since the regulations define the start of the initial 10-year interval as the date of the facility's commercial operation, licensees with multi-unit sites often have the IST program for each unit structured to a different edition of the code. This can create administrative difficulties for the licensee in keeping track of two sets of requirements for only nominal technical differences in testing requirements.

By letter dated March 3, 1988, the licensee requested an exemption to the requirements of 10 CFR 50.55a(g)(4)(ii) which would allow a common IST start date for both NA–1&2. That common start date would be achieved by extending the termination date of the NA–1 IST program to coincide with the termination date of the NA–2 IST program. The NA–1 IST program would be extended to terminate on December 14, 1990, rather than on June 6, 1988.

III

The Commission's staff has reviewed this request and has determined that a common IST date for NA–1&2 has inherent administrative, technical, and cost-saving disadvantages, for both the licensee and the NRC. The staff has also determined that:

1. Since the units are basically the same, only one IST program would have to be written and submitted by the licensee;

2. The proposed exemption would provide a degree of IST that is equivalent to that required by 10 CFR 50.55a(g)(4)(ii) such that there would be no increase in the risk of failure for operational readiness of pumps and valves whose function is required for safety at these facilities. Accordingly, the underlying purpose of 10 CFR 50.55a(g)(4) will continue to be achieved.

If a common start date were not established, the IST program would be accomplished utilizing two different ASME Code editions. Performing IST at both plants using only one program results in uniform procedures for both plants and can reduce the chance of personnel errors in the performance of the testing requirements.

Although the revision of the NA–1 IST program will be delayed approximately 2 years, the staff believes that the use of a single IST program for both NA–1&2 has distinct advantages in term of manpower requirements and should result in increased plant safety through simplification and standardization of plant testing procedures.

The purpose of the rule is to assure periodic updating of IST practices to conform to advances in industry in order to assure continued operability of pumps and valves required for safe operation. The 10-year cycles were selected as reasonable periods for periodic updating. In the present case, extension of the period for approximately two years would not affect NA–1&2 safety. Changes from updating on June of 1988 are not expected to affect operational capability of pumps and valves whose function is required for safety at NA–1&2. Thus, extension of the updating of the 10-year period until December 1990 is not necessary to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of March 3, 1988 is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii). The Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.55a(g)(4) as it relates to the NA–1 120-month inspection interval for inservice examination of components, inservice tests to verify operational readiness of pumps and valves, and system pressure tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (April 28, 1988, 53 FR 14873).

A copy of the licensee's request for exemption and supporting documentation dated March 3, 1988, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 28th day of April 1988.

For the Nuclear Regulatory Commission.
Gus C. Lainas,
Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 88–9739 Filed 5–2–88; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

April 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Maize Products Co.
Class A Common Stock, $.60 Par Value (File No. 7–3257)
Chemical Bank
Adjustable Rate Preferred B, No Par Value (File No. 7–3258)

CRI Mortgage Investments II, Inc.
Common Stock, $.01 Par Value (File No. 7–3259)
Cablevision Systems Corporation
Class A Common Stock, $.01 Par Value (File No. 7–3260)
Templeton Emerging Markets Fund, Inc.
Common Stock, No Par Value (File No. 7–3261)
First Australia Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3262)
Lee Enterprises, Inc.
Common Stock, $2.00 Par Value (File No. 7–3263)
MacGregor Sporting Goods, Inc.
Common Stock, $.10 Par Value (File No. 7–3264)
Manufactured Homes, Inc.
Common Stock, $.50 Par Value (File No. 7–3265)
NVRYAN, LP
Shares of Beneficial Interest, No Par Value (File No. 7–3266)
Regal Beloit Corp.
Common Stock, No Par Value (File No. 7–3267)
Worldwide Value Fund, Inc.
Common Stock, $.0001 Par Value (File No. 7–3268)
British Petroleum
Warrants Expiring 1/31/93 (File No. 7–3269)
Global Growth & Income Fund
Capital Shares, $1.00 Par Value (File No. 7–3270)
Mesa Limited Partnership
Preferance A, No Par Value (File No. 7–3271)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88–9704 Filed 5–2–88; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

April 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Southwest Mortage Investments Corporation
Common Stock, $.01 Par Value (File No. 7–3251)
Americus Trust for IBM Shares
Scores, No Par Value (File No. 7–3152)
Dime Savings Bank NY (The)
Common Stock, $1.00 Par Value (File No. 7–3153)
ACM Government Securities Fund
Common Stock, $.01 Par Value (File No. 7–3154)
Bank of New England
Common Stock, $5.00 Par Value (File No. 7–3155)
Symbol Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–3156)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88–9705 Filed 5–2–88; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

April 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Placer Dome, Inc.
Common Stock, No Par Value (File No. 7–3279)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88–9706 Filed 5–2–88; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–25617; File No. SR–PSE–88–6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to an Interim Monthly Assessment on the Membership to Meet Operating, Technology, and Facilities Needs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 12, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II,

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and III below, which items have been prepared, in most part, by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to meet its operational, technology, and facilities needs in accordance with the following determinations made by its Board of Governors on March 24, 1988.

The Board of Governors proposes to impose an interim monthly assessment on each of the 551 regular memberships. The assessment consists of two components: A flat assessment and a supplemental activity assessment. The first component is a flat fee of $800 per month to owners of each of the 551 memberships. The second component is a supplemental activity charge that will be applied differently for Equities and Options members, although the average supplemental charge for each member is $600 per month.

Members with no floor presence will be charged an activity fee of $800 per month, since the average monthly activity charge for Equities and Options members is $600. There will be no assessment on owners of outstanding special memberships.

Membership transfers occurring during the month will be subject to a pro rata charge based on the flat assessment and the supplemental activity charge. For Options members, the supplemental activity charge will be based on the quartile activity ranking for the prior month.

In the event of the sale of a membership both the seller and purchaser shall be liable pro rata for the interim assessment.

The Board of Governors may appoint a special committee to review any questions or disputes arising from the special fee or related matters. Decisions of that committee may be appealed in writing to the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Governors has concluded that the Exchange will need additional revenues to provide funding for improvements in technological services in order to remain competitive in the industry and at the same time be able to cover its costs of operations. The Board also recognizes that renovation and modernization of the San Francisco Equities trading floor is essential to permit future growth and expansion of services to members. Both the Los Angeles Equities floor and the Options floor in San Francisco have already been upgraded and modernized.

The Board has determined that it needs time to assess the cost and revenue structure of the Exchange, and accordingly has established various committees to examine cost reduction and revenue enhancement measures. Separate committees for Equities, Options, and Technology Services are looking at the efficiency of their respective operations, and the nature of revenue and fee increases to cover the services provided by the Exchange.

Recommendations and decisions of these committees will be reviewed by the Board of Governors. Appeals from a decision of these committees may be made in writing to the Board of Governors.

Other Committees have been established to assess the needs to update the San Francisco Equities floor, and to assess administrative efficiency and cost savings internally throughout PSE departments.

Pending completion of the reviews and recommendations of the Committees, an interim assessment is proposed beginning in April 1988.

The assessment will include a flat fee of $800 per month for each membership. In addition, Equities members will pay a flat supplemental activity charge of $800 per month per member. Options members will pay a supplemental monthly fee based on the volume of contracts traded. Options members will be separated by Broker or Market Maker status. Each of the Broker and Market Maker categories will be divided into four groupings based on contract volume. Options Brokers and Market Makers in the group with the highest contract activity will pay a supplemental charge of $1,200; those in the next highest group will pay $800; the third most active group will pay $400; and Options members in the lowest activity group will not pay any additional charge beyond the flat assessment per member. The average charge for Equities and Options members is $1,200 per month.[1]

The assessment will be reviewed in three months and adjusted in light of volumes on the respective floors and the revenue enhancements and cost-cutting measures implemented. The Committees will report on their progress on cost reduction and revenue enhancing measures at the April meeting of the Board, and will make recommendations on an ongoing basis.[2]

To ensure implementation of the most equitable assessment among the members, several Governors and PSE staff met with members on various occasions to discuss alternative financing plans and alternative proposals for meeting the Exchange's financial needs.

The Board of Governors held a special membership meeting for all PSE members on March 24, 1988, to provide them with a detailed analysis of the state of the Exchange and its financial needs, and to answer members' questions concerning the proposed interim assessment.

The Board's ultimate decision was based on a careful consideration of comments received from members, Floor Governors, and the Committees.

The proposed special fee is consistent with section 6(b)(4) of the Securities Exchange Act of 1934, which permits the Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

[1] The assessed fee is calculated by ranking market makers and brokers according to their options contract volume for the prior month. The appropriate fee is assessed base don the quartile ranking of the specialist unit with those in the top 25% paying the highest fee of $1,200 and those in the lowest 25% paying no fee.

[2] In a letter from John C. Katovich, Vice President and General Counsel, PSE, to Robert J. Sevigny, Attorney-Advisor, dated April 19, 1988, ("April 19 Letter") the PSE stated that any changes or revisions made to the assessment charges will be submitted to the Commission as an additional rule filing pursuant to paragraph (A) of section 19(b)(3) of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were solicited from all members of the PSE.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraphs (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.[4] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-06 and should be submitted by May 24, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 26, 1988.

[FR Doc. 88-9794 Filed 5-2-88; 8:45 am]

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[3] In the PSE's April 19 Letter, it described member comments on the proposed fee at the March 24, 1988 special membership meeting. The PSE indicated that there was initial concern by the members regarding the proposed fee. Specifically, some members were concerned that the interim assessment would place a larger burden on their respective floor business. The Exchange stated, however, that most members recognized that until a complete analysis could be made, no type of interim assessment would satisfy all members. The Exchange also stated that most members agreed that the structure of the interim activity charge was best for the entire Exchange, even if it placed a temporary burden on some members. The PSE also indicated that the members recognized that funds were needed to cover operating expenses.

[4] The Commission is particularly interested in receiving comments from PSE member firms on the competitive impact for Options members of the PSE's supplemental activity fee. *See* note 1, *supra.*

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 27, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(a)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereafter, for unlisted trading privileges in the following securities:

Dannaher Corporation
Common Stock, $0.01 Par Value (File No. 7-3272)
Federal Signal Corporation
Common Stock, $1.00 Par Value (File No. 7-3273)
KDI Corporation
Common Stock, $0.35 Par Value (File No. 7-3274)
News Corporation Limited
American Depositary Shares (File No. 7-3275)
RTE Corporation
Common Stock, $1.00 Par Value (File No. 7-3277)
Russell Corporation
Common Stock, $0.01 Par Value (File No. 7-3277)
Scudder New Asia Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3278)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 18, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9707 Filed 5-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16383; 812-6843]

Application; Transohio Funding, Inc.

April 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Transohio Funding, Inc.

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c).

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it and certain trusts to be created by it from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed bonds and Equity Certificates (as hereinafter defined).

FILING DATE: The application was filed on August 21, 1987, and amended on February 19, and April 5, 1988.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on May 20, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicant with the request, either personally, or by mail, and also sent it to the Secretary, SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1100 Superior Avenue, Suite 1300, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney (202) 272-3032 or Brion Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

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SUPPLEMENTARY INFORMATION:

Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300)

Applicant's Statement and Representations

1. Applicant, an Ohio corporation, is a wholly-owned, limited purpose finance subsidiary of Transohio Savings Bank, an Ohio-chartered savings and loan association. Applicant was organized to facilitate the establishment of one or more trusts ("Trust") for the purpose of issuing one or more series of collateralized mortgage obligations (the "Bonds") secured by mortgage related collateral, as described below. Except as incidental to the activities decribed below and more fully set forth in the application, Applicant will not trade or deal in securities or engage in any other activity.

2. Each Trust will be a common law business trust created under an agreement (the "Trust Agreement") between Applicant, as depositor, and an independent bank, trust company or other fiduciary acting as owner trustee (the "Owner Trustee"). Each Trust Agreement will contemplate that the Owner Trustee will enter into a management agreement with respect to each Trust with Transohio Saving Bank, or another financial institution, for the provision of certain management services in connection with the issuance of the Bonds.

3. The Bonds will be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 between the Trust and an independent trustee for the Bondholders (the "Indenture Trustee"). Each series of Bonds will be secured by (i) "fully modified pass-through" mortgage-backed certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Corporation ("GNMA Certificates"), (ii) mortgage pass-through securities guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA Certificates"), (iii) mortgage participation certificates guaranteed as to timely payment of interest and timely or ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (iv) stripped mortgage-backed securities issued by GNMA, FHLMC or FNMA,[1] or (v) a combination of such certificates (collectively, "Mortgage Certificates").

4. Applicant also will sell certificates (the "Equity Certificates") representing some or all of the ownership interest in a Trust to one or more mortgage lenders, thrift associations, commercial and investment banks, savings and loans, pension funds, employee benefit plans, insurance companies, real estate investment trust or other institutions that customarily engage in the purchase of mortgages and mortgage-backed assets ("Eligible Institutions"). Each sale will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933 ("1933 Act"). The Equity Certificates also will be sold to certain non-institutional "accredited investors" as defined in Rule 501(a) of the 1933 Act ("Accredited Investors").

5. A Trust may elect to be treated as a "real estate mortgage conduit" ("REMIC") for federal income tax purposes. An election by a Trust to be treated as REMIC or not be a REMIC will have no effect on the level of expenses that would be incurred by such Trust. Administrative fees and expenses will be provided for by one of the methods or a combination of one or more of the methods outlined in the application.

Applicant's Legal Analysis

1. The relief requested is necessary and appropriate in the public interest because: The Applicant will promote the public interest by expanding the market for mortgage securities, thereby increasing the capacity of mortgage lenders to meet housing needs; Applicant is not the type of entity to which the provisions of the 1940 Act were intended to be applied; the safeguards afforded to Bondholders fully protect investors; and prospective purchasers of Equity Certificates will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

(1) Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The Mortage Collateral directly securing the Bonds will be limited to Mortgage Certificates guaranteed by GNMA, FNMA, and FHLMC.

(3) If new Mortgage Certificates are substituted, the substitute certificates must: (1) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in conditions A (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral"), will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of Applicant. The Indenture Trustee will be provided a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with Applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires and no less often that annually, an independent public accountant will audit the books and records of each Trust and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates, together with reinvestment income at the assumed reinvestment rate, will be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion copies of the auditor's reports(s) will be provided to the Indenture Trustee.

[1] Stripped mortgage-backed securities are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions (adjusted to the series pass-through rate) on the underlying pool or mortgage loans. The guarantee of payment in full in accordance with the terms of any stripped mortgage securities that secure the Bonds will be substantively identical to the guarantee by GNMA, FHLMC and FNMA Certificates (as the case may be).

B. Conditions Relating to Floating Rate Bonds

(1) No Bond Collateral will be added to, and no Bond Collateral (other than periodic distributions of cash from, the collection account) will be withdrawn from, the collateral initially pledged to secure a series of Bonds (except pursuant to the limited right of substitution described in condition A(3) above. Specifically, reduction of interest payments due on a series of Bonds that contains a class or classes of Floating Rate Bonds will not result in the removal of any the Bond Collateral (except as foresaid) supporting the lien on the Indenture before the Bonds are paid.

(2) The Bond Collateral initially pledged to secure a series of Bonds, including a series of Bonds that contains a class or classes of Floating Rate Bonds, will be sufficient to pay the maximum amount of interest and principal due on such Bonds for the life of such Bonds. To ensure this, any series of Bonds that contains a class or classes of Floating Rate Bonds will be structured with reference to the interest rate cap for that particular series.[2]

C. Conditions Relating to the Sale of Equity Certificates

(1) The owners of the Equity Certificates will agree to be bound by the terms of the applicable Trust Agreement.

(2) Equity Certificates will be offered and sold only to (i) one or more Eligible Institutions (ii) or Accredited Investors (both, as defined above). Eligible Institutions will have such knowledge and experience on financial and business matters as to be capable of evaluating risks volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Accredited Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing Equity Certificates and will have direct, personal and significant experience in making investments in mortgage related securities and because of such volatility of interest rate fluctuations as they affect the value of mortgage related securities and residual interests therein.

(3) Each sale of Equity Certificates to an Eligible Institution and/or Accredited Investor will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

(4) Initially, Applicant intends to sell the Equity Certificates of each Trust to no more than a total of twenty-five Eligible Institutions and/or Accredited Investors. The Trust Agreement relating to each Trust will prohibit the transfer of Equity Certificates if there would be more than 100 beneficial owners of such Equity Certificates.

(5) The Trust Agreement will require that each purchaser of an Equity Certificate represent that it is purchasing the Equity Certificate for investment purposes only and that it will hold the Equity Certificate in its own name and not as nominee for undisclosed investors.

(6) The documents evidencing each sale of an Equity Certificate will provide that no owner of such Equity Certificate may be affiliated with the Indenture Trustee and no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either the custodian of the Bond Collateral or the nationally recognized statistical rating agency rating the Bonds. The Owner Trustee will not purchase any Equity Certificates but will function as a legal stockholder for the assets of the Trust.

D. Condition Relating to REMICs

The election by any Trust to be treated as a REMIC will have no effect on the level of expenses that will be incurred by such Trust. Any Trust, that elects to be treated as a REMIC will provide that all fees and expenses incurred in connection with the administration of the Trust will be paid or provide for in a manner satisfactory to the agencies that rate the Bonds as set forth in the application. Each Trust will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9710 Filed 5–3–88; 8:45 am]

BILLING CODE 8010–01–M

[2] In addition to those mechanisms referred to in the application, Applicant may utilize additional mechanisms to ensure the adequacy of the Bond Collateral notwithstanding the issuance of Floating Rate Bonds. Applicant will give the Staff of the Division of Investment Management ("Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of condition B(2) and will be adequate to meet the standards required for a rating of the Floating Rate Bonds in one of the two highest bond rating categories, and no Floating Rate Bonds will be issued for which this is not the case.

SMALL BUSINESS ADMINISTRATION

National Advisory Council; Open Meeting; District of Columbia

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC, will hold its semiannual National Advisory Council meeting beginning at 8:30 a.m. Monday, May 9, 1988, through 2:30 p.m., Tuesday, May 10, 1988, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., Washington, DC 20005, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, 1441 L Street NW., Room 503–E, Washington, DC 20416, (202) 653–6892.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 27, 1988.

[FR Doc. 88–9788 Filed 5–2–88; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting; Michigan

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Detroit, Michigan, will hold a public meeting at 3:00 p.m. on Tuesday, May 17, 1988 at the Radisson Hotel, in Lansing, Michigan, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Richard Temkin, Deputy District Director, U.S. Small Business Administration, 515 Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Mighican 48226–2573, telephone 313–226–7240.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 27, 1988.

[FR Doc. 88–9789 Filed 5–2–88; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting at 10:30 a.m. on Tuesday, May 24, 1988, at the Charlotte Chamber

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of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300, Charlotte, North Carolina 28202, telephone (704) 371-6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1988.

[FR Doc. 88-9790 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Rhode Island

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting on Monday, May 16, 1988 at 11:00 a.m., at Metacomet Country Club, Veterans Memorial Parkway, East Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call James Hague, District Director, U.S. Small Business Administration, 380 Westminister Mall, Providence, Rhode Island 02903, (401) 528-4580.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 28, 1988.

[FR Doc. 88-9791 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Vermont

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 4:30 p.m. on Wednesday, May 18, 1988 at the Radisson Hotel, Burlington, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont, 05602 (802) 828-4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 25, 1988.

[FR Doc. 88-9792 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting; Washington

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Thursday, May 19, 1988, in Room 485, U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. Wiebe, Acting District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, P.O. Box 2167, Spokane, Washington 99210, telephone (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 26, 1988.

[FR Doc. 88-9793 Filed 5-2-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

New York Metropolitan Transportation Authority Bridge Tolls; Order of the Administrator on Petition To Remove Toll Restrictions on Brooklyn/Staten Island Bridges

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of bridge toll order.

SUMMARY: This notice sets forth the determination of the Federal Highway Administrator that the limitation imposed by section 324 of Pub. L. 99-190 upon tolls collected for motor vehicles on any bridge connecting the borough of Brooklyn, New York, and Staten Island, New York, shall cease to be in effect.

FOR FURTHER INFORMATION CONTACT: Steiner Silence, Special Procedures Branch, (202) 366-0334, or Julie White, Office of the Chief Counsel, (202) 366-0780. The address is the Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION: Section 324(a) of the Department of Transportation and Related Agencies Appropriations Act of 1986 (Act) (Pub. L. 99-190, 99 Stat. 1288) (1985) provides that tolls collected for motor vehicles on any bridge connecting the borough of Brooklyn, New York, and Staten Island, New York, shall only be collected for those vehicles exiting from such bridge in Staten Island. Section 324(b) provides for enforcement of this limitation by withholding certain Federal-aid highway funds if tolls are collected for vehicles exiting from such bridge in the borough of Brooklyn. Section 324(d) of the Act provides that the limitation on tolls shall cease to be in effect if, upon petition by the Governor of New York, the Secretary determines that:

(A) A substantial loss of revenues has resulted from the limitation imposed by subsection (a), or

(B) Such limitation has resulted in significant traffic problems.

On December 7, 1987, the Secretary's authority under section 324 of the Act was delegated to the Federal Highway Administrator. (52 FR 46364, Dec. 7, 1987)

On March 3, 1988, the Governor of New York petitioned the Secretary to determine that the one-way toll limitation has resulted in a substantial loss of revenues and in significant traffic problems. In his petition, the Governor states that the Metropolitan Transportation Authority (MTA) spent over 20 months studying the effects of the one-way toll. The Governor states that on the basis of that review, the MTA determined that the revenue loss for 1986 was $7 million and that there will be a similar revenue loss for 1987. In addition, the Governor states, the MTA determined that the one-way toll for all vehicles produced increased travel times on westbound movements on major routes in lower Manhattan and increased waiting times for eastbound traffic on the Gowanus Expressway in Brooklyn. In support of his petition, the Governor submitted a letter and resolution from the MTA recommending removal of the one-way toll and an environmental impact statement supporting that recommendation.

Upon consideration of the petition of the Governor of New York with the supporting documents, it is hereby determined that a substantial loss of revenues has resulted from the limitation imposed by section 324(a) of the Act. The petition demonstrates that the revenue loss for 1986 is estimated at $7 million and that a continued loss at that level is anticipated. Such a revenue loss is sufficiently substantial to justify cessation of the toll limitation imposed by section 324(a).

It is further determined that the limitation imposed by section 324 has resulted in significant traffic problems. The Environmental Impact Statement submitted in support of the petition demonstrates that travel times on westbound movements on major routes in the lower Manhattan Canal Street corridor have increased. Waiting times for eastbound traffic on the roadway from the Verrazano-Narrows Bridge to the Gowanus Expressway in Brooklyn have also increased.

Therefore, pursuant to the authority vested in the Federal Highway Administrator as delegated by the Secretary of Transportation by section 324(d) of the Act: It is ordered, That the limitation on tolls provided in section 324 of Pub. L. 99-190 shall cease to be in effect.

Issued on April 28, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-9770 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: the FHWA announces that the National Motor Carrier Advisory will hold a meeting on May 17 and 18, 1988, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street SW., Washington, DC. The meeting will begin at 9:00 a.m. on both days. The meeting will be in room 4200 and it is open to the public.

The agenda will include: A complete review of various motor carrier regulations, the Commercial Drivers' Licensing program, the status of the "reasonable access" issue, progress being made in the review of the future of the highway program, and the status of various legislative proposals affecting the motor carrier industry.

In conjunction with the full Committee meeting, the Subcommittee on Operations will meet on May 16, 1988, to discuss the problems associated with transporting overweight containers. Particular attention will be given to the defining the extent of the problem, initiatives which are currently being taken to correct the problem, and additional efforts which need to take place. The Subcommittee meeting will begin at 9:30 a.m. in room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street SW., Washington, DC. This Subcommittee meeting is also open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street SW., Washington, DC 20590, (202) 366-2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on April 26, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-9771 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant number	Grant amount	Date obligated
Section 3 grants:			
Peninsula Transportation District Commission (PTDC), Newport News—Hampton, VA	VA-03-0034	$1,373,625	Mar. 11, 1988.
Commuter Rail Division—Regional Transportation Authority (Metra), Chicago, IL	IL-03-0133	7,140,000	Mar. 21, 1988.
Southeastern Pennsylvania Transportation Authority (Septa), Philadelphia, PA	PA-03-0193	7,500,000	Mar. 25, 1988.
Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, PA	PA-03-0130-01	6,375,000	Mar. 31, 1988.
Section 9 grants:			
Alabama Highway Department, Dothan, AL	AL-90-X030	143,850	Mar. 29, 1988.
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X027-01	12,300	Do.
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X031	2,788,320	Mar. 31, 1988
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X032	593,292	Mar. 29, 1988
Metroplan, Little Rock, AR	AR-90-X013	300,000	Mar. 31, 1988
City of Pine Bluff, Pine Bluff, AR	AR-90-X011-01	2,479	Do.
City of Tucson, Tucson, AZ	AZ-90-X018	788,888	Do.
City of Tucson, Tucson, AZ	AZ-90-X017	6,183,150	Do.
Sacramento Regional Transit District, Sacramento, CA	CA-90-X275	3,492,281	April 5, 1988
Central Contra Costa Transit Agency, San Francisco, CA	CA-90-X276	3,306,194	Do.
San Mateo County Transit District, San Francisco, CA	CA-90-X280	16,816,828	Mar. 31, 1988
Golden Gate Bridge, Highway and Transportation District, San Francisco, CA	CA-90-X281	6,781,736	April 5, 1988

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Transit property	Grant number	Grant amount	Date obligated
San Francisco PUC Municipal Railway, San Francisco, CA	CA-90-X262	25,268,100	Mar. 31, 1988
Long Beach Public Transportation Co., Long Beach, CA	CA-90-X276	4,912,000	Do.
City of Santa Rosa, Santa Rosa, CA	CA-90-X272	852,909	Do.
Corona Transit, Corona, CA	CA-90-X274	98,000	Do.
Riverside Transit Agency, Riverside, CA	CA-90-X277	1,434,757	April 5, 1988
Sonoma County Transit, Santa Rosa, CA	CA-90-X266	581,224	Mar. 31, 1988
Monterey-Salinas Transit, Seaside-Monterey, CA	CA-90-X267	3,067,423	Do.
Metropolitan Transit Development Board, San Diego, CA	CA-90-X268	19,847,129	Do.
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA-90-X260	1,094,849	Do.
Metropolitan Transit Development Board, San Diego, CA	CA-90-X119-02	2,283,200	Do.
Fresno Transit, Fresno, CA	CA-90-X273	3,876,520	Do.
City of Torrance, Torrance, CA	CA-90-X271	690,000	Do.
Omnitrans, San Bernardino, CA	CA-90-X259	4,776,837	Do.
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA-90-X157-01	153,075	Do.
City of Commerce, Commerce, CA	CA-90-X279	544,090	Do.
Orange County Transit District, Orange, CA	CA-90-X269	17,195,942	Do.
Santa Clara County Transit District, San Jose, CA	CA-90-X264	9,291,766	Do.
Southern California Rapid Transit District, Los Angeles, CA	CA-90-X263	49,639,442	Do.
City of Visalia, Visalia, CA	CA-90-X267	356,600	Do.
California Department of Transportation, San Francisco, CA	CA-90-X265	8,960,841	Do.
Golden Empire Transit District, Bakersfield, CA	CA-90-X268	1,119,620	Do.
City of Vallejo, Vallejo, CA	CA-90-X266	3,463,948	April 5, 1988
Riverside Transit Agency, Hemet, CA	CA-90-X299	399,018	Mar. 31, 1988
City of Fort Collins, Fort Collins, CO	CO-90-X039	837,532	Do.
City of Greeley, Greeley, CO	CO-90-X041	626,286	Do.
Housatonic Area Regional Transit, Housatonic, CT	CT-90-X110	1,352,000	Do.
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X109	542,424	Do.
City of Bridgeport, Bridgeport, CT	CT-90-X016-01	182,000	Do.
Greater New Haven Transit District, New Haven, CT	CT-90-X111	904,400	Do.
Washington Metropolitan Area Transit Authority, Washington, DC	DC-90-X010	16,318,124	Do.
Jacksonville Transit Authority, Jacksonville, FL	FL-90-X041	161,392	Do.
Broward County Transit, Ft. Lauderdale, FL	FL-90-X104	6,933,216	Mar. 29, 1988.
Metropolitan Dade County, Miami, FL	FL-90-X101-91	909,600	Mar. 30, 1988
City of Tallahassee, Tallahassee, FL	FL-90-X105	1,121,089	Mar. 29, 1988
Hillsborough Area Regional Transit, Tampa, FL	FL-90-X106	1,970,219	Do.
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-90-X040	29,788,167	Do.
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-90-X035-02	1,200,000	Do.
City of Coralville, Iowa City, IA	IA-90-X094	53,544	Mar. 31, 1988
Metropolitan Transit Authority of Black Hawk County, Waterloo, IA	IA-90-X080-01	72,430	Do.
Keyline Transit System, Dubuque, IA	IA-90-X086	40,000	Do.
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X075-02	2,061,943	Do.
University of Iowa Campus, Iowa City, IA	IA-90-X089	72,973	Do.
Iowa City Transit, Iowa City, IA	IA-90-X095	187,376	Do.
City of Boise—Boise Urban Stages, Boise, ID	ID-90-X013-03	304,389	Do.
Regional Transportation Authority, Chicago, IL	IL-90-X115	48,848,493	Do.
City of Kankakee, Kankakee, IL	IL-90-X106	16,075	Do.
Rockford Mass Transit District, Rockford, IL	IL-90-X107	956,140	Do.
Goshen Transit, Goshen, IN	IN-90-X103	18,900	Do.
Terre Haute Transit Utility, Terre Haute, IN	IN-90-X104	408,903	Do.
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X026	1,666,607	Do.
Transit Authority of Lexington-Fayette Urban County Govt, Lexington, KY	KY-90-X027-02	189,000	Do.
City of Lafayette, Lafayette, LA	LA-90-X062-01	8,330	Do.
City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge, LA	LA-90-X075	61,808	Do.
City of Shreveport, Shreveport, LA	LA-90-X078	1,265,136	Do.
City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge, LA	LA-90-X076	1,238,000	Do.
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X073-01	32,199,808	Do.
Merrimack Valley Regional Transit Authority, Lawrence-Haverville, MA	MA-90-X040-04	323,168	Do.
Pioneer Valley Regional Transit Authority, Springfield, MA	MA-90-X079	2,068,611	April 13, 1988.
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X078	2,765,253	Mar. 31, 1988.
Maine Department of Transportation, Bangor, ME	ME-90-X026-01	157,500	Do.
Maine Department of Transportation, Portland, ME	ME-90-X034	10,000	Do.
Lewiston-Auburn Transit Committee, Lewiston-Auburn, ME	ME-90-X035	11,467	Do.
Capital Area Transportation Authority, Lansing, MI	MI-90-X094	1,500,455	Do.
Battle Creek Transit, Battle Creek, MI	MI-90-X093	717,137	Do.
Jackson Transportation Authority, Jackson, MI	MI-90-X096	183,040	Do.
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X092	57,898	Do.
Metro Transit System, Kalamazoo, MI	MI-90-X095	1,074,386	Do.
Twin Cities Area Transportation Authority, Benton Harbor, MI	MI-90-X091	551,349	Do.
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X088	22,444,010	Do.
City of East Grand Forks, East Grand Forks, MN	MN-90-X029	60,840	Do.
Duluth Transit Authority, Duluth, MN	MN-90-X032	496,200	Do.
Metropolitan Transit Commission, Minneapolis-St. Paul, MN	MN-90-X031	15,318,427	Do.
St. Cloud Metropolitan Transit Commission, St. Cloud, MN	MN-90-X033	400,069	Do.
Gulf Regional Planning Commission, Gulfport, MS	MS-90-X020	98,000	Mar. 29, 1988.
Central Mississippi Planning and Development District, Jackson, MS	MS-90-X021	66,080	Do.
Fayetteville Area Transit System, Fayetteville, NC	NC-90-X073	63,988	Mar. 31, 1988.
Town of Chapel Hill Chapel Hill Transit, Chapel Hill, NC	NC-90-X072	542,400	Do.
City of Grand Forks, Grand Forks, ND	ND-90-X017	444,233	Do.
Lincoln Transit System, Lincoln, NE	NE-90-X017	1,194,431	Do.
Metro Area Transit, Omaha, NE	NE-90-X016	4,905,797	Do.
City of Nashua, Nashua, NH	NH-90-X014-01	20,000	Do.

Transit property	Grant number	Grant amount	Date obligated
City of Nashua, Nashua, NH	NH-90-X008-03	9,130	Do.
Delaware River Port Authority/Port Authority Transit Corp., Camden, NJ	NJ-90-X025	2,674,016	Mar. 16, 1988.
City of Las Cruces, Las Cruces, NM	NM-90-X015-01	212,980	Mar. 31, 1988
Rochester Genesee Regional Transportation Authority, Rochester, NY	NY-90-X131	3,938,042	Do.
County of Chemung, Chemung, NY	NY-90-X132	787,632	Do.
Utica Transit Authority, Utica, NY	NY-90-X133	525,000	Do.
Metropolitan Transportation Authority, New York, NY	NY-90-X135	280,469,857	Do.
City of Glens Falls, Glens Falls, NY	NY-90-X134	200,320	Do.
Toledo Area Transit Authority, Toledo, OH	OH-90-X093	2,470,952	Do.
Western Reserve Transit Authority, Youngstown, OH	OH-90-X100	2,381,441	Do.
Central Ohio Transit Authority, Columbus, OH	OH-90-X098	5,397,600	Do.
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-90-X097	9,450,629	Do.
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X075-01	640,000	Do.
Canton Regional Transit Authority, Canton, OH	OH-90-X101	1,162,425	Do.
Portage Area Regional Transit Authority, Kent, OH	OH-90-X085	1,600,000	Do.
Rogue Valley Transportation District, Medford, OR	OR-90-X025	500,174	Do.
Westmoreland County Transit Authority, Greensburg, PA	PA-90-X139	188,883	Mar. 29, 1988.
Cambria County Transit Authority, Johnstown, PA	PA-90-X140	628,734	Apr. 6, 1988.
Cambria County Transit Authority, Johnstown, PA	PA-90-X117-01	66,845	Mar. 31, 1988.
Muncipality of Arecibo, Arecibo, PR	PR-90-X036	3,610,992	Mar. 29, 1988.
Municipality of Toa Baja, Toa Baja, PR	PR-90-X035	10,000	Do.
Metropolitan Bus Authority, San Juan, PR	PR-90-X034	8,594,477	Do.
Pee Dee Regional Transportation Authority, Florence, SC	SC-90-X018-01	50,000	Do.
City of Rapid City, Rapid City, SD	SD-90-X011	208,412	Mar. 31, 1988.
Bristol Tennessee Transit, Bristol, TN	TN-90-X061	76,700	Mar. 29, 1988.
Dallas Area Rapid Transit, Dallas, TX	TX-90-X103	13,367,000	Mar. 31, 1988.
City of El Paso, El Paso, TX	TX-90-X118	2,848,977	Do.
City of Mesquite, Mesquite, TX	TX-90-X110	10,000	Do.
City of Sherman, Sherman, TX	TX-90-X120	56,270	Do.
City of Arlington, Arlington, TX	TX-90-X114	85,500	Do.
Utah Transit Authority, Salt Lake City, UT	UT-90-X010	6,285,860	Do.
Tidewater Transportation District Commission, Norfolk, VA	VA-90-X007-04	792,000	Do.
Green Bay Transit, Green Bay, WI	WI-90-X065	1,364,847	Do.
Duluth Transit Authority, Superior, WI	WI-90-X087	133,182	Do.
Jamesville Transit System, Jamesville, WI	WI-90-X066	336,604	Do.
Milwaukee County Transit System, Milwaukee WI	WI-90-X081-01	408,000	Do.
Oshkosh Transit System, Oshkosh, WI	WI-90-X068	1,186,638	Do.
Valley Transit, Appleton, WI	WI-90-X084	1,302,565	Do.

Transit property	Grant number	Grant amount
Section 9 grants ready for obligation waiting for 13(c) certification:		
City of Modesto, Modesto, CA	CA-90-X265	$1,615,186
Alameda Contra Costa Transit, Oakland, CA	CA-90-X279	13,924,773
Regional Transportation District, Denver, CO	CO-90-X040	10,663,200
City of Boise, Boise, ID	ID-90-X105	685,377
Rock Island Co. Metropolitan Mass Transit District, Rock Island, IL	IL-90-X114	624,565
Bloomington Transit, Bloomington, IN	IN-90-X105	690,000
Pioneer Valley Regional Transit Authority, Springfield, MA	MA-90-X079-01	2,126,410
Merrimack Valley Regional Transit Authority, Bradford, MA	MA-90-X080	1,643,137
Brockton Area Transit Authority, Brockton, MA	MA-90-X081	1,310,987
Mid-America Regional Council, Kansas City, MO	MO-90-X046	160,000
Bi-State Development Agency, St Louis, MO	MO-90-X047	25,995,700
City of Fargo, Fargo, ND	ND-90-X016	596,174
New Jersey Transit Corporation, Statewide, NJ	NJ-90-X023-01	60,512,908
Metro Regional Transit Authority, Akron, OH	OH-90-X099	2,432,000
Clark County Public Transportation Benefit Area, Vancouver, WA	WA-90-X081	1,952,837

Issued on April 25, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-9798 Filed 5-2-88; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Korean Economic and Business Writes Program

The Office of Private Sector Programs, Initiative Grants and Bilateral Accords Division of the United States Information Agency (USIA) will assist in supporting a 20-to-21 day issues-oriented program for 10 economic and business affairs writers (and/or journalists) from the Republic of Korea. This program is scheduled for July or

August, 1988 and will focus on U.S.-Korean trade relations and Korean perceptions of the United States. USIA would prefer that the project take place in the Mid-west, one other location, and in Washington, DC. Participants will be selected by USIA representatives in Seoul. Program topics through meetings and short seminars may include: A comparison of journalism in both countries; and overview of U.S.-Korean economic relations; corporate communication with the media; the impact of new technologies on economic development; financial news coverage on television and in the business press; and reporting on economic and business issues directly affecting U.S.-Korean relations. Senior level meetings with corporate leaders, Members of Congress, and U.S. Government officials are also envisioned. A U.S. not-for-profit institution with knowledge of U.S.-Korean journalistic practices and economic issues will design and execute this project.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest:

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiatives—Korean Writers), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Robert Francis Smith,

Director, Officer of Private Sector Programs.

Dated: April 21, 1961.

[FR Doc. 88-9743 Filed 5-2-88; 8:45 am]

BILLING CODE 8230-01-M

Advisory Board for Radio Broadcasting to Cuba; Meeting

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on May 17, 1988, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.

Tuesday, May 17, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti
11:00 a.m. 2. Status of selection of executive director
11:30 a.m. 3. Marti TV
1:30 p.m. 4. Ethics briefing by USIA attorney

Part Two—Open to the Public

2:00 p.m. 5. Radio Marti evaluation report
2:30 p.m. 6. Contracting out of annual report
3:00 p.m. 7. Public testimony period.

Items one through four, which will be discussed from 10:00 a.m. to 2:00 p.m., will be closed to the public. Items 1 and 3 involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Items 2 and 4 relate solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 485-7011 to make prior arrangements, as access to the building is controlled.

Dated: April 27, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88-9733 Filed 5-2-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 85
Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, May 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Enforcement Objectives
2. Enforcement Matters
3. Financial rule enforcement review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9828 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Fourth Quarter FY 1988 Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9829 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, May 11, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc 88-9830 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 11, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Application of the Chicago Board of Trade for designation as a contract market in CBOE 50 Stock Index futures
2. Application of the Chicago Board of Trade for designation as a contract market in CBOE 250 Stock Index futures
3. Application of the Chicago Board of Trade for designation as a contract market in Medium-Term U.S. Treasury Note Options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-9831 Filed 4-29-88; 12:15 pm]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 am (Eastern Time) Tuesday, May 10, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Dated: April 28, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-9815 Filed 4-29-88; 11:23 am]

BILLING CODE 6750-06-M

FEDERAL RESERVE SYSTEM: BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, May 9, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9880 Filed 4-29-88; 3:31 pm]

BILLING CODE 6210-01-M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE:

May 9, 1988
8:00-9:00 p.m.
May 10, 1988
9:00 a.m.-12:00 noon.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

May 9, 1988
1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of February 1-2, 1988

May 10, 1988
4. Report of the Committees of the Board
5. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk,

Secretary to the Board of Directors. (703) 841–3812.

Dated: April 29, 1988.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 88–9862 Filed 4–29–88; 1:34 am]

BILLING CODE 7025-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, May 10, 1988.

PLACE: Conference Rooms 6A, B&C, Eighth Floor, 800 Independence Avenue SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Northwest Airlines, Inc., McDonnell Douglas DC–9–82, Detroit Metropolitan Wayne County International Airport, Romulus, Michigan, August 16, 1987.
2. Recommendation to FAA re Fuel System Malfunctions Causing Engine Flameouts on Bell 206L Helicopters.

FOR MORE INFORMATION CONTACT: Bea Hardesty. (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

April 29, 1988.

[FR Doc. 88–9881 Filed 4–29–88; 3:32 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 2, 9, 16, and 23, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 2

Wednesday, May 4

10:00 a.m.
Annual Briefing on the State of the Nuclear Industry (Public Meeting).
2:00 p.m.
Briefing on NRC Point Papers for Consultation Draft of the Site Characterization Plan for Yucca Mountain (Public Meeting).

Thursday, May 5

10:00 a.m.
Briefing on Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM), (Public Meeting).
2:00 p.m.
Briefing on Status of Operator Requalification Program (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 9—Tentative

Thursday, May 12

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting).
2:00 p.m.
Briefing on Efforts to License a HLW Repository and Status of Center for Nuclear Waste Repository Analysis (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 16—Tentative

Tuesday, May 17

2:00 p.m.
Briefing by DOE on High Level Waste Program, (Public Meeting).

Wednesday, May 18

10:00 a.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting).
2:00 p.m.
Annual Briefing by INPO (Public Meeting).

Thursday, May 19

2:00 p.m.
Briefing on NAS Human Factor Recommendations (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 23—Tentative

Thursday, May 26

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

Dated: April 28, 1988.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 88–9841 Filed 4–29–88; 1:33 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 13378 April 22, 1988).

STATUS: Open/close meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, April 19, 1988.

CHANGES IN THE MEETING: Additional item/meeting.

The following additional item was considered an open meeting on Wednesday, April 27, 1988, at 10:30 a.m.

Consideration of recommendations of the National Commission on Fraudulent Financial Reporting ("Treadway Commission"). For further information, please contact Anne Chafer at (202) 272–2422.

The following items were considered at a closed meeting on Wednesday, April 27, 1988, following the 10:30 a.m. open meeting:

Regulatory matter regarding financial institutions.

Formal orders of investigation.

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2014.

Jonathan G. Katz,

Secretary.

April 23, 1988.

[FR Doc. 88–9827 Filed 4–29–88; 12:14 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 85
Tuesday, May 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Phillips Petroleum Co.

Correction

In notice document 88-7244 beginning on page 10928 in the issue of Monday, April 4, 1988, make the following corrections:

1. On page 10929, in the first column, in the second complete paragraph, in the eighth line, "property" should read "propriety".

2. On the same page, in the second column, in the first complete paragraph, in the 13th line, "$15 million" should read "$51 million".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-08-4212-12; CA-21579]

California Desert District and Ukiah District, Realty Action; Exchange of Public and State Lands in Imperial, Inyo, Mendocino, Riverside, San Bernardino and Trinity Counties, CA

Correction

In notice document 88-8119 beginning on page 12474 in the issue of Thursday, April 14, 1988, make the following corrections:

1. On page 12474, in the second column, under **San Bernardino Meridian, California**, in the second line from the bottom "N¼" should read "NE¼".

2. On the same page, in the third column, the 15th line should read "Sec. 26: NW¼NE¼NE¼, N½SW¼N E¼NE¼".

3. On the same page, in the same column, in the 23rd line, "45,362.60" should read "4,362.60".

4. On page 12475, in the first column, the 21st line should read "T.15½N., R.14E.,".

5. On the same page, in the same column, the 27th line should read "T.17N., R12½E.,".

6. On the same page, in the same column, in the 44th line, "Sec. 26" should read "Sec. 36".

7. On the same page, in the same column, in paragraph number 1, in the last line "formerly" was misspelled.

8. On page 12476, in the first column, the signature should read "H.W. **Riecken**."

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Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 373 and 380

Programs of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps, and Supported Employment Services to Individuals With Severe Handicaps and Technical Assistance Projects; Notice of Proposed Rulemaking

VOL 53 ISS 85 MY 3 1988 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 373 and 380

Programs of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps, and Supported Employment Services to Individuals With Severe Handicaps and Technical Assistance Projects

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in Part 373 governing the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps and to add regulations in a new Part 380 to implement the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects. These proposed regulations would (1) revise the regulations in Part 373 to authorize projects to meet the special needs of isolated populations of individuals who are handicapped, particularly American Indians residing either on or off reservations; (2) relocate existing regulations for Statewide supported employment demonstration projects from Part 373 to Part 380; (3) implement in Part 380 two newly authorized types of supported employment projects—community-based projects and technical assistance projects; and (4) make other technical amendments.

These proposed regulations would implement amendments to section 311 of the Rehabilitation Act made by Pub. L. 99–506, the Rehabilitation Act Amendments of 1986.

DATES: Comments must be received on or before July 5, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3322, 330 C Street SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, (202) 732–1349.

SUPPLEMENTARY INFORMATION: These proposed regulations would establish a new Part 380 that would contain regulations for three kinds of supported employment discretionary grant programs authorized under section 311 of the Rehabilitation Act: Statewide supported employment demonstration projects; community-based supported employment projects; and technical assistance projects.

The purpose of Statewide supported employment demonstration projects is to convert existing Statewide programs of rehabilitation for individuals with severe handicaps to programs that offer supported employment services. Grant funds are to be spent for the costs of program development and reorganization, staff training, and evaluation. While grant recipients must also provide, or ensure the provision of, direct services to individuals, grant funds cannot be used for this purpose.

By contrast, community-based supported employment projects serve a more localized geographical area and must develop innovative approaches to improve and expand the delivery of supported employment services. These projects are designed to enhance local service delivery capacity. Grant funds pay for direct services to individuals but only for a maximum period of 18 months.

Technical assistance projects provide assistance to State vocational rehabilitation agencies in implementing the State Supported Employment Services Program authorized under Title VI, C of the Rehabilitation Act.

Because the purposes of these three supported employment programs vary, the proposed regulations contain three different sets of selection criteria at §§ 380.11, 380.12, and 380.13. The proposed regulations also include information collection and reporting requirements that are mandated by statute.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are nonprofit organizations providing services to or conducting activities for individuals with handicaps. However, the regulations would not have a significant economic impact on the organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 380.11, 380.12, 380.13, 380.20 and 380.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3322, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects

34 CFR Part 373

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 380

Education, Grants programs—education, Grants programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number: 84.128 Program of Special Projects and Demonstrations for Providing vocational Rehabilitation Services to Individuals with Severe Handicaps and Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects)

Dated: March 16, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 373 and adding a new Part 380 as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

1. The authority citation for Part 373 is revised to read as follows:

Authority: Sections 12(c), 311(a)(1), and 311(a)(4) of the Act, as amended; 29 U.S.C. 711(c), 777a(a)(1) and 777a(a)(4), unless otherwise noted.

2. The title of Part 373 is revised to read as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS

3. The heading for § 373.1 is revised to read as follows:

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps?

* * * * *

§§ 373.1, 373.10, 373.30 [Amended]

4. Remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 373.1;

(b) Section 373.10(b); and

(c) Section 373.30(f)(2)(i), g(2)(i), and (h)(2).

5. Section 373.10 is amended by redesignating paragraph (b) as paragraph (c), removing the words "Handicapped individuals" in redesignated paragraph (c) and adding, in their place, the words "Individuals with handicaps", adding a new paragraph (b), and revising the authority citation to read as follows:

§ 373.10 What types of projects are authorized under this program?

* * * * *

(b) Projects also may be conducted to meet the special needs of isolated populations of individuals with handicaps, particularly among American Indians residing on or outside of reservations.

* * * * *

(Authority: Sections 311(a)(1) and 311(a)(4) of the Act; 29 U.S.C. 777a(a)(1) and 777a(a)(4))

§ 373.10, 373.42 [Amended]

6. Remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 373.10(a); and

(b) Section 373.42(b).

§ 373.14 [Removed]

7. Section 373.14 is removed.

8. The first sentence of the introductory text in § 373.30 is revised to read as follows:

§ 373.30 What selection criteria does the Secretary use under this program?

The Secretary uses the criteria in this section to evaluate applications for all projects under this part. * * *

* * * * *

§ 373.31 [Removed]

9. Section 373.31 is removed.

10. A new Part 380 is added to read as follows:

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS AND TECHNICAL ASSISTANCE PROJECTS

Subpart A—General

Sec.

380.1 What is the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects?
380.2 Who is eligible for an award?
380.3 What types of projects are authorized?
380.4 What activities may the Secretary fund under Statewide Supported Employment demonstration projects?
380.5 What activities may the Secretary fund under Community-Based Supported Employment projects?
380.6 What activities may the Secretary fund under Technical Assistance Supported Employment projects?
380.7 What priorities may the Secretary establish?
380.8 What regulations apply?
380.9 What definitions apply?

Subpart B—How Does the Secretary Make an Award?

380.10 How does the Secretary evaluate an application?
380.11 What selection criteria does the Secretary use for Statewide Supported Employment demonstration projects?
380.12 What selection criteria does the Secretary use for Community-Based Supported Employment projects?
380.13 What selection criteria does the Secretary use for Technical Assistance Supported Employment projects?
380.14 What other factors does the Secretary consider in reviewing an application?

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

380.20 What are the information collection and reporting requirements for Statewide Supported Employment demonstration and Community-Based Supported Employment grantees?
380.21 What are the information collection and reporting requirements for Technical Assistance Supported Employment grantees?

Authority: 29 U.S.C. 711(c) and 777a(d), unless otherwise noted.

Subpart A—General

§ 380.1 What is the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects?

This program is designed to provide grants for special projects and demonstrations to expand or otherwise improve the provision of supported employment services to individuals with severe handicaps and for technical assistance projects.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

§ 380.2 Who is eligible for an award?

(a) Applications for Statewide demonstration projects under § 380.4 may be submitted by public and nonprofit rehabilitation facilities, designated State units, and other public and private agencies and organizations.

(b) Applications for community-based projects under § 380.5 may be submitted by public and nonprofit rehabilitation facilities, designated State units, and other public and private agencies and organizations.

(c) Applications for technical assistance projects under § 380.6 may be submitted by public agencies and nonprofit private organizations that have experience in training and provision of supported employment services.

(Authority: 29 U.S.C. 777a(d))

§ 380.3 What types of projects are authorized?

The following types of projects may be funded under this program:

(a) *Statewide demonstration projects* as described in § 380.4. The purpose of Statewide demonstration projects is to stimulate the development and provision of supported employment services on a statewide basis for individuals with severe handicaps.

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(b) *Community-based projects* as described in § 380.5. The purposes of Community-based projects are to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps, and to enhance local capacity to provide supported employment services.

(c) *Technical assistance projects* as described in § 380.6. The purpose of technical assistance projects is to provide technical assistance to States in implementing the State Supported Employment Services Program under 34 CFR Part 363.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d)).

§ 380.4 What activities may the Secretary fund under Statewide Supported Employment demonstration projects?

(a) *Authorized activities.* The following activities are authorized under Statewide Supported Employment demonstration projects:

(1) Program development, including program start-up costs, for new or existing community organizations and employers.

(2) Staff training.

(3) Program evaluation.

(4) Program reorganization to convert existing programs to programs that offer supported employment services.

(b) *Restrictions on the use of funds.* (1) Statewide Supported Employment demonstration project grants may not be used to provide supported employment services to individuals with severe handicaps.

(2) A grantee must provide, or ensure the provision of, those direct services needed by individuals with severe handicaps in order for them to obtain and maintain employment from funds other than those made available under this part. These supported employment services include—

(i) Job site training to prepare and enable individuals with severe handicaps to perform work and maintain the job;

(ii) On-going supervision of individuals with severe handicaps on the job;

(iii) On-going behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

§ 380.5 What activities may the Secretary fund under Community-Based Supported Employment projects?

(a) *Authorized activities.* The following activities are authorized under community-based projects:

(1) Job search assistance.

(2) Job development, including work site modification and use of advanced learning technology for skills training.

(3) On-the-job training.

(4) Job placement.

(5) Application of rehabilitation engineering in providing supported employment services.

(6) Provision of traditionally time-limited post-employment services for individuals placed in employment.

(7) Development of cooperative agreements with service providers for the provision of extended services.

(b) *Restrictions on the use of funds.* The Secretary does not provide financial assistance under Community-Based Supported Employment projects for the provision of extended supported employment services.

(Authority: 29 U.S.C. 777a(d))

§ 380.6 What activities may the Secretary fund under Technical Assistance Supported Employment projects?

The following activities are authorized under technical assistance projects:

(a) Staff training.

(b) Development of and placement in jobs for individuals with severe handicaps.

(c) Development of cooperative agreements with service providers for extended services.

(d) Conversion of existing programs to programs that offer supported employment services.

(Authority: 29 U.S.C. 777a(d)(2))

§ 380.7 What priorities may the Secretary establish?

In any fiscal year, the Secretary may establish priorities for one or more of the types of projects described in § 380.3 by publishing a notice in the Federal Register.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 380.8 What regulations apply?

The following regulations apply to the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps and Technical Assistance Projects:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 380.

(c) The regulations in 34 CFR 369.47.

(Authority: 29 U.S.C 711(c) and 777a(d)).

§ 380.9 What definitions apply?

(a) The following term used in this part is defined in 34 CFR Part 363: Supported employment

(b) The following terms used in this part are defined in 34 CFR Part 369: Designated State unit
Rehabilitation facility
Severely handicapped individual

(c) *Other definition.* The following definition also applies to this part: "Traditionally time-limited post-employment services" means services that are needed to support and maintain an individual with severe handicaps in employment and are provided for a period not to exceed 18 months before transition is made to extended services.

(Authority: 29 U.S.C. 777a(d))

Subpart B—How Does the Secretary Make an Award?

§ 380.10 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of selection criteria described in §§ 380.11, 380.12, or 380.13 of this part. The maximum possible score for each criterion is stated in parentheses following the criterion. The number of points awarded each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Authority: 29 U.S.C. 777a(d))

§ 380.11 What selection criteria does the Secretary use for Statewide Supported Employment demonstration projects.

(a) *Plan of operation.* (5 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; and

(2) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (b)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Capacity to achieve lasting statewide change.* (15 points)

(1) The Secretary reviews each application to determine whether the applicant has the capacity to achieve lasting statewide change by converting existing programs that do not provide supported employment services to individuals with severe handicaps to programs that do provide these services.

(2) The Secretary determines the extent to which—

(i) The applicant has responsibility for programs to be changed or is able to assure that program change will occur;

(ii) The project resources will be used to change how existing service funds are spent, not to supplant those funds; and

(iii) A sufficient number of service programs and work opportunities can be developed within the project period to achieve statewide change.

(g) *Project design.* (20 points)

(1) The Secretary reviews each application to assess the quality of the project design and approach.

(2) The Secretary determines the extent to which—

(i) The applicant has clearly defined the services and service delivery system that will result from the project and has analyzed in detail how these differ from current services and the current service delivery systems;

(ii) All relevant barriers to implementing the proposed statewide change are identified and appropriate strategies are proposed for eliminating those barriers;

(iii) The project will employ a multi-faceted and systematic approach to achieving project objectives through such means as dissemination of information, training and technical assistance, start-up of new programs, and development of incentives for employer participation; and

(iv) The project is designed to develop a range of service approaches that are appropriate for the variety of employment opportunities in the State.

(h) *Participation and coordination.* (15 points)

(1) The Secretary reviews each application to determine whether the proposed project provides for coordination with and participation of all affected groups and agencies.

(2) The Secretary determines the extent to which—

(i) Individuals with severe handicaps, their parents or other representatives, and potential employers are involved in project planning and decision-making; and

(ii) All State agencies whose cooperation and participation are necessary for statewide implementation of supported employment projects are actively collaborating in project management. These agencies may include those responsible for secondary special education, vocational rehabilitation, and day services for individuals with developmental disabilities, as well as private agencies and rehabilitation facilities.

(i) *Impact on other States.* (5 points)

(1) The Secretary reviews each application to assess the impact the proposed project will have on other States.

(2) The Secretary determines the extent to which—

(i) The proposed project design can be used by other States; and

(ii) The applicant will disseminate its project results to other States.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d))

§ 380.12 What selection criteria does the Secretary use for Community-Based Supported Employment projects?

(a) *Plan of operation.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(a).

(b) *Quality of key personnel.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(b).

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(c).

(d) *Evaluation plan.* (5 points) The Secretary reviews each application in accordance with the criterion in § 380.11(d).

(e) *Adequacy of resources.* (10 points) The Secretary reviews each application in accordance with the criterion in § 380.11(e).

(f) *Impact.* (25 points) The Secretary reviews each application to determine the extent to which the proposed project will enhance the capacity of local, community-based programs to provide supported employment services to individuals with severe handicaps, including—

(1) The contribution that the project findings or results will make to current knowledge or practice; and

(2) The extent to which findings and results will be disseminated to service providers in order to expand and improve the provision of supported employment services.

(g) *Innovativeness.* (30 points) (1) The Secretary reviews each application to assess whether the proposed project is likely to contribute to the development and use of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps.

(2) The Secretary determines the extent to which the proposed project—

(i) Builds upon current model practices and research findings;

(ii) Uses unique strategies and approaches that can be incorporated into effective service delivery models; and

(iii) Demonstrates how the innovative strategies and approaches address important service delivery problems.

(Authority: 29 U.S.C 777a(d))

§ 380.13 What selection criteria does the Secretary use for Technical Assistance Supported Employment projects?

(a) *Plan of operation.* (10 points) The Secretary reviews each application on the basis of the criterion in § 380.11(a).

(b) *Quality of key personnel.* (20 points) The Secretary reviews each application on the basis of the criterion in § 380.11(b).

(c) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each

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application on the basis of the criterion in § 380.11(c).

(d) *Evaluation plan.* (10 points) The Secretary reviews each application on the basis of the criterion in § 380.11(d).

(e) *Adequacy of resources.* (5 points) The Secretary reviews each application on the basis of the criterion in § 380.11(e).

(f) *Evidence of need.* (20 points).

(1) The Secretary reviews each application to assess whether the need for the proposed technical assistance has been adequately justified.

(2) The Secretary determines the extent to which the application—

(i) Describes the technical assistance needs to be addressed by the project;

(ii) Describes how the applicant identified those needs;

(iii) Describes how those needs will be met by the project; and

(iv) Describes the benefits to be gained by meeting those needs.

(g) *Project design.* (20 points).

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the identified needs and are clearly defined, measurable, and achievable;

(ii) The content of the proposed technical assistance and instructional approach are appropriate for the project participants.

(3) The Secretary determines the extent to which each application provides for—

(i) A method for gaining the participation of prospective target populations in need of technical assistance;

(ii) Innovative procedures for disseminating information and imparting skills to project participants; and

(iii) Use of current research findings and information on model practices in providing the technical assistance.

(h) *Participation.* (5 points).

(1) The Secretary reviews each application to determine whether the proposed project provides for participation by individuals with severe handicaps, parents or other representatives of individuals with severe handicaps, recipients of technical assistance, and other individuals and agencies affected by the project.

(2) The Secretary determines the extent to which—

(i) The project objectives and proposed activities to attain project objectives are related to the employment needs of individuals with severe handicaps; and

(ii) The applicant proposes to involve individuals with severe handicaps, potential employers, and other concerned individuals in project planning, implementation, and evaluation.

(Authority: 29 U.S.C. 777a(d)(2))

§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in §§ 380.11, 380.12, and 380.13, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(d)

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

§ 380.20 What are the information collection and reporting requirements for Statewide Supported Employment demonstration and Community-Based Supported Employment grantees?

Recipients of Statewide Supported Employment demonstration grants and Community-Based Supported Employment grants shall collect and report to the Secretary annually the following information—

(a) The number of individuals with severe handicaps receiving services from the grantee;

(b) The average cost of providing services to those individuals; and

(c) The average wage paid to those individuals.

(Authority: 29 U.S.C. 777a(d)(3)(A))

§ 380.21 What are the information collection and reporting requirements for Technical Assistance Supported Employment grantees?

Recipients of Technical Assistance Supported Employment grants shall collect and report to the Secretary annually the following information—

(a) The nature of technical assistance activities undertaken; and

(b) A description of areas where additional technical assistance is needed.

(Authority: 29 U.S.C. 777a(d)(3)(B))

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 511

Adjudicative Procedures; Automotive Fuel Economy Enforcement; Final Rule; Technical Amendment

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 511

Adjudicative Procedures; Automotive Fuel Economy Enforcement

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: Since the National Highway Traffic Safety Administration promulgated 49 CFR Part 511, its regulation governing adjudicative proceedings pursuant to section 508(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)), there has been established within the Department of Transportation an Office of Hearings which has the authority to conduct proceedings under section 508. The purpose of this rule is to amend Part 511 solely to reflect the fact that the Office of Hearings in the Department of Transportation will now be responsible for the appointment of the Presiding Officer at such proceedings, and that the Docket Section of the Office of the Secretary of Transportation shall be responsible for performing the duties which Part 511 formerly assigned to the Executive Secretary of the National Highway Traffic Safety Administration, and for maintaining the docket of proceedings brought pursuant to section 508.

EFFECTIVE DATE: May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Leahy, Office of Chief Counsel, NHTSA, Room 5219, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION: Section 508(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)) provides that there is a right to an agency hearing on the record prior to a determination that a manufacturer has violated a fuel economy standard, or that any person has violated section 507(a)(3) of the Act. 15 U.S.C. 2007(a)(3). The procedures governing the conduct of an adjudicative hearing under section 508(a) are set forth at Part 511 of the regulations of the National Highway Traffic Safety Administration. 49 CFR Part 511.

When NHTSA adopted Part 511, there was no office within the Department of Transportation with responsibility for appointment of hearing officers to conduct adjudicative proceedings, and for carrying out administrative functions associated with such hearings. Accordingly, Part 511 provided that the presiding officer at adjudicative proceedings would be appointed by the Director of the Office of Administrative Law Judges, Office of Personnel Management. 49 CFR 511.3(9). The rule assigned the various administrative functions, such as the filing of pleadings and other documents, to the Executive Secretary of the National Highway Traffic Safety Administration, and provided that the docket for such proceedings would be maintained in NHTSA's docket section.

There is now within the Department of Transportation an Office of Hearings, which is authorized to conduct formal proceedings under the Motor Vehicle Information and Cost Savings Act. Therefore, it is no longer necessary to request appointment of a presiding officer for such a proceeding through the Office of Administrative Law Judges of the Office of Personnel Management. In addition, because the Office of Hearings will be responsible for appointing the presiding officer, that office should also be responsible for the other administrative functions formerly vested in the Executive Secretary of NHTSA, and for maintaining the docket of the proceedings. Centralizing these functions in one office will best ensure the efficient conduct of these proceedings.

This technical amendment merely conforms NHTSA's regulation governing adjudicative proceedings to a change in the organization of the Department of Transportation which now permits the administration of such proceedings to be centralized in one office within the Department. It affects only the agency's internal procedures, and imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this technical amendment is effective on the date this notice is published.

The amendments to Part 511, set forth below, relate solely to procedures for the conduct of proceedings that are governed by Sections 556 and 557 of Title 5, United States Code, and thus are not covered by Executive Order 12291 and the Department of Transportation's regulatory procedures. For the same reasons, NHTSA has determined that this technical amendment will not significantly affect the human environment, after consideration in accordance with the National Environmental Policy Act. Likewise, I hereby certify that this technical amendment will not have a significant impact on a substantial number of small entities, after making the evaluations required by the Regulatory flexibility Act. Finally, NHTSA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 511

Administrative practice and procedure, Investigations, Penalties.

In consideration of the foregoing, 49 CFR Part 511 is amended as set forth below:

PART 511—[AMENDED]

1. The authority citation for Part 511 is revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 511.3(a)(9) and (11) are revised, and (a)(13) and (14) are added to read as follows:

§ 511.3 Definitions.

* * * * *

(a) * * *

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, U.S.C., section 3105 and assigned by the Chief Administrative Law Judge, Office of Hearings, United States Department of Transportation.

* * * * *

(11) The term "Office of Hearings" means the Officer of Hearings, Department of Transportation.

* * * * *

(13) The term Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Office of Hearings, Department of Transportation.

(14) The term Docket sections means the Docket Section, Office of the Secretary of Transportation.

3. Section 511.14(a) is revised to read as follows:

§ 511.14 Form and filing of documents.

(a) *Filing.* Except as otherwise provided, all documents submitted to the Administrator or a Presiding Officer shall be filed with the Docket Section, Office of the Secretary, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC 20590. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

* * * * *

4. Section 511.16(a) is revised to read as follows:

§ 511.16(a) Service.

(a) *Mandatory service.* Every document filed with the Office of Hearings shall be served upon all parties and participants to a proceeding, i.e., Complaint Counsel, respondent(s), and participants, and upon the Presiding Officer.

* * * * *

5. Section 511.17 is revised to read as follows:

§ 511.17 Public participation.

Participant Status. Any person interested in a proceeding commenced pursuant to § 511.11 who desires to participate in the proceeding, shall file with the Docket Section a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding. A notice of intention to participate shall be filed not later than the commencement of the hearing. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a "participant" and shall have the rights specified in § 511.41(d).

6. Section 511.26(h) is revised to read as follows:

§ 511.26 Settlement.

* * * * *

(h) *Rejection.* If the Administrator rejects an offer of settlement, the Administrator shall give written notice of that decision and the reasons therefor to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

* * * * *

7. Section 511.31(h) is revised to read as follows:

§ 511.31 General provisions regarding discovery.

* * * * *

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony, shall be filed with the Docket Section and served on all parties and the Presiding Officer.

* * * * *

8. Section 511.35(e)(2) is revised to read as follows:

§ 511.35 Testimony upon oral examination.

* * * * *

(e) Transcription and filing of testimony—

* * * * *

(2) *Certification and filing.* The official reporter shall certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given and corrections made by the witness. The official reporter shall then seal the transcript in an envelope endorsed with the title and docket number of the action and marked "Testimony of [name of witness]" and shall promptly file the transcript with the Docket Section. The Presiding Officer shall notify all parties of the filing of the transcript and the Docket Section shall furnish a copy of the transcript to any party or to the witness upon payment of reasonable charges therefor.

* * * * *

9. Section 511.38(b) is revised to read as follows:

§ 511.38 Subpenas.

* * * * *

(b) *Form.* A subpena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Administrative Law Judge or by the Presiding Officer. A subpena *duces tecum* shall specify the books, papers, documents or other materials or data-compilations to be produced.

* * * * *

10. Section 511.42(e) is revised to read as follows:

§ 511.42 Powers and duties of Presiding Officer

* * * * *

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Chief Administrative Law Judge a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Chief Administrative Law Judge on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting assignment of another Administrative Law Judge through the Office of Hearings.

11. Section 511.48 is revised to read as follows:

§ 511.48 Official docket.

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Office of the Secretary, Room 4107, 400 Seventh Street SW., Washington, DC 20590, and will be available for inspection during normal working hours (9:00 a.m.–5:00 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the Department of Transportation's regulations on Public Availability of Information (49 CFR Part 7).

12. Section 511.67 is revised to read as follows:

§ 511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of the Administrator's discretion in allowing the settlement, including a discussion of comments received under § 511.65. If the Administrator rejects a petition for settlement, the Administrator shall give written notice of the rejection and the reasons for the rejection to the parties and the Presiding Officer.

13. Section 511.73(b) is revised to read as follows:

§ 511.73 Written appearances.

* * * * *

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the Docket Section. The notice of withdrawal shall state the name,

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address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

14. Section 511.75(a) is revised to read as follows:

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law to appear in a proceeding shall be submitted in writing to the Docket Section, not later than thirty (30) days prior to the hearing in the proceedings. The application shall set forth the applicant's qualifications to appear in the proceedings.

* * * * *

15. Section 511.78 (e)(1), (2)(ii), (3), (4) and (5) are revised to read as follows:

§ 511.78 Prohibited communications.

* * * * *

(e) Procedures for handling prohibited *ex parte* communication. (1) Prohibited written *ex parte* communication. To the extent possible, a prohibited written *ex parte* communication received by any NHTSA employee shall be forwarded to the Docket Section rather then to a decisionmaker. A prohibited written *ex parte* communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Docket Section. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral *ex parte* communication.* * *

(ii) In the event of a prohibited oral *ex parte* communication, the decisionmaker shall forward to the Docket Section a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) All communications and statements forwarded to the Docket Section under this section shall be placed in the public file which shall be associated with, but not made a part of, the record of the proceedings, to which the communication or statement pertains.

(4) Service on parties. The Administrator shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Administrator that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) Service on maker. The Administrator shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

* * * * *

Issued on April 29, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-9917 Filed 5-2-88; 8:45 am]

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H.R. 5/Pub. L. 100-297

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. (Apr. 28, 1988; 102 Stat. 130; 302 pages) Price: $9.00

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To designate the month of April 1988, as "National Child Abuse Prevention Month." (Apr. 28, 1988; 102 Stat. 435; 2 pages) Price: $1.00

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Wednesday, May 4, 1988

Presidential Documents

Title 3 —

The President

Proclamation 5805 of April 29, 1988

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to subsections 501(1) and (4), 502(c)(2), and sections 504 and 604 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461(1) and (4), 2462(c)(2), 2464, and 2483), I have determined that it is appropriate to terminate the preferential tariff treatment under the Generalized System of Preferences (GSP) for articles that are currently eligible for such treatment and that are imported from Hong Kong, the Republic of Korea, Singapore, and Taiwan. I have determined that these countries are sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP is not warranted.

2. Subsections 501(1) and (4) of the Trade Act provide that, in affording duty-free treatment under the GSP, the President shall have due regard for the effect such action will have on furthering the economic development of developing countries and the extent of the beneficiary developing country's competitiveness with respect to eligible articles. Subsection 502(c)(2) provides that, in determining whether to designate any country a beneficiary developing country under this section, the President shall take into account the level of economic development of such country. Section 504 authorizes the President to withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or to any country upon consideration of the factors set forth in sections 501 and 502(c) of the Trade Act.

3. Pursuant to subsection 504(f) of the Trade Act (19 U.S.C. 2464(f)), I have determined that it is appropriate to terminate the preferential tariff treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Bahrain, Bermuda, Brunei Darussalam, and Nauru. Such termination is the result of my determination that the per capita gross national product for each such country for calendar year 1985 (calculated on the basis of the best available information, including that of the World Bank) exceeds the applicable limit provided in subsection 504(f).

4. Subsection 504(f) provides that if the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) for any beneficiary country for a calendar year subsequent to 1984 exceeds the applicable limit for the determination year in question, such country shall not be treated as a beneficiary developing country under this Act after the close of a 2-year period.

5. Previously, two of these countries, Brunei Darussalam and Singapore, were designated as members of an association of countries treated as one country for purposes of section 503(b)(2) of the Trade Act, as amended (19 U.S.C. 2463(b)(2)). In order to take into account the termination of benefits under the GSP for articles imported from these two countries, I have determined that it is appropriate to terminate the designations of Brunei Darussalam and Singapore as members of ASEAN and to modify general headnote 3(e)(v)(A) to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) to reflect such termination. Further, in order to reflect the termination of benefits under the GSP for articles imported from Hong Kong, the Republic of Korea, Singapore, and Taiwan, I have determined that it is appropriate to delete from general

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headnote 3(e)(v)(D) to the TSUS and from the pertinent TSUS items all references to particular products of these countries which are currrently excluded from preferential tariff treatment under the GSP.

6. Section 604 of the Trade Act authorizes the President to embody in the TSUS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States of America, including but not limited to Title V and section 604 of the Trade Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS, setting forth those countries whose products are eligible for duty-free treatment under the GSP, is modified—

(a) by deleting "Bahrain", "Brunei Darussalam", and "Nauru" from the enumeration of independent countries, by deleting "Bermuda" from the enumeration of non-independent countries and territories, and by deleting "Brunei" from the enumeration of members of the Association of South East Asian Nations (ASEAN) and by inserting "except Brunei Darussalam" after "Association of South East Asian Nations (ASEAN)"; and

(b) by deleting "Korea, Republic of", "Singapore", and "Taiwan" from the enumeration of independent countries and by deleting "Hong Kong" from the enumeration of non-independent countries and territories, by deleting "Singapore" from the enumeration of members of the Association of South East Asian Nations (ASEAN) except Brunei Darussalam, and by modifying "Association of South East Asian Nations (ASEAN) except Brunei Darussalam" to read "Association of South East Asian Nations (ASEAN) except Brunei Darussalam and Singapore".

(2) No article the product of any such country and imported into the United States after the effective dates of this Proclamation shall be eligible for preferential tariff treatment under the GSP.

(3) General headnote 3(e)(v)(D) to the TSUS, listing those articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite the enumerated TSUS items for those articles, is modified as provided in Annex I to this Proclamation.

(4) The Rates of Duty Special column for each of the TSUS items enumerated in Annex II to this Proclamation is modified: (a) by deleting from such column for such TSUS items the symbol "A*" in parentheses, and (b) by inserting in such column the symbol "A" in lieu thereof.

(5) (a) Paragraph (1)(a) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1988.

(b) Paragraphs (1)(b), (3), and (4) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

Billing code 3195-01-M

ANNEX I

Modifications to General Headnote 3(e)(v)(D) of the TSUS

General headnote 3(e)(v)(D) is modified--

(a) by deleting the following TSUS item numbers and the countries set opposite these numbers:

202.66	Taiwan	648.80	Hong Kong Taiwan
204.40	Taiwan	648.85	Taiwan
206.30	Taiwan	648.95	Taiwan
206.98	Taiwan	648.97	Taiwan
207.09	Taiwan	649.37	Taiwan
222.50	Taiwan	650.21	Taiwan
240.14	Taiwan	650.87	Hong Kong
256.60	Republic of Korea	650.89	Hong Kong Taiwan
337.40	Hong Kong Republic of Korea	651.21	Taiwan
355.81	Taiwan	651.31	Taiwan
386.14	Taiwan	651.37	Taiwan
389.61	Hong Kong Taiwan	651.46	Republic of Korea Taiwan
408.72	Republic of Korea Taiwan	651.48	Taiwan
413.24	Republic of Korea	651.49	Taiwan
416.45	Taiwan	651.55	Taiwan
421.06	Taiwan	652.03	Republic of Korea
439.50	Singapore	652.24	Taiwan
445.42	Taiwan	652.60	Taiwan
532.22	Republic of Korea Taiwan	652.72	Republic of Korea
534.11	Taiwan	653.00	Republic of Korea Singapore Taiwan
534.84	Taiwan		
534.91	Taiwan	653.35	Taiwan
544.51	Taiwan	653.37	Taiwan
545.67	Taiwan	653.38	Taiwan
545.87	Taiwan	653.39	Taiwan
547.37	Taiwan	653.45	Taiwan
610.65	Republic of Korea	653.48	Taiwan
610.70	Taiwan	653.52	Taiwan
610.82	Republic of Korea Taiwan	653.90	Hong Kong
		653.93	Taiwan
610.86	Republic of Korea Taiwan	653.94	Republic of Korea
		653.96	Taiwan
610.88	Taiwan	653.99	Taiwan
613.18	Taiwan	654.00	Taiwan
642.14	Republic of Korea	654.25	Taiwan
642.16	Republic of Korea	654.30	Republic of Korea Taiwan
642.17	Republic of Korea		
642.19	Republic of Korea	654.35	Taiwan
646.30	Republic of Korea	654.40	Taiwan
646.32	Republic of Korea	654.45	Taiwan
646.65	Taiwan	654.50	Taiwan
646.72	Taiwan	654.60	Hong Kong Taiwan
646.92	Taiwan		
646.95	Taiwan	654.65	Taiwan
646.97	Taiwan	654.75	Taiwan
647.03	Taiwan	657.24	Taiwan
647.05	Taiwan	657.25	Taiwan

ANNEX I (con.)

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(a)(con.)

657.35	Taiwan	685.31	Republic of Korea, Taiwan
657.40	Taiwan	685.39	Hong Kong, Republic of Korea
657.80	Taiwan	685.40	Hong Kong, Republic of Korea, Taiwan
660.97	Singapore	685.65	Singapore
661.09	Singapore	685.73	Hong Kong
661.35	Republic of Korea	686.18	Taiwan
661.94	Hong Kong, Taiwan	686.30	Taiwan
672.16	Taiwan	686.90	Republic of Korea
674.31	Taiwan	688.10	Taiwan
674.34	Taiwan	688.32	Republic of Korea
674.35	Taiwan	688.34	Hong Kong
674.42	Taiwan	688.41	Hong Kong, Taiwan
676.20	Taiwan	692.60	Taiwan
676.30	Hong Kong, Republic of Korea, Taiwan	696.10	Taiwan
680.14	Taiwan	696.35	Taiwan
680.19	Taiwan	696.40	Taiwan
680.25	Taiwan	696.50	Republic of Korea
680.62	Singapore	703.72	Taiwan
682.37	Taiwan	705.82	Taiwan
682.55	Singapore	705.83	Taiwan
683.01	Republic of Korea, Taiwan	706.45	Hong Kong
683.32	Hong Kong	706.61	Hong Kong, Taiwan
683.70	Hong Kong, Taiwan	708.45	Taiwan
683.80	Hong Kong	708.47	Hong Kong
684.10	Taiwan	709.40	Hong Kong
684.25	Republic of Korea, Singapore	710.72	Taiwan
684.35	Hong Kong	722.08	Hong Kong, Republic of Korea, Taiwan
684.48	Hong Kong, Taiwan	722.11	Hong Kong, Republic of Korea, Taiwan
684.53	Taiwan	725.01	Republic of Korea
684.58	Republic of Korea, Taiwan	725.03	Republic of Korea
684.59	Hong Kong, Taiwan	725.32	Taiwan
684.70	Republic of Korea, Taiwan	725.46	Republic of Korea, Taiwan
685.06	Taiwan	725.50	Taiwan
685.14	Hong Kong, Republic of Korea, Taiwan	726.25	Taiwan
685.16	Hong Kong, Republic of Korea, Taiwan	727.11	Taiwan
685.18	Republic of Korea	727.23	Taiwan
685.22	Hong Kong, Republic of Korea	727.25	Taiwan
685.25	Republic of Korea, Taiwan	727.35	Taiwan
685.28	Hong Kong, Republic of Korea, Taiwan	727.41	Taiwan
		727.47	Taiwan
		727.59	Taiwan
		727.65	Taiwan
		727.70	Taiwan
		727.86	Taiwan
		728.22	Taiwan
		730.94	Republic of Korea

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(a)(con.)

731.70	Taiwan	745.45	Taiwan
732.52	Taiwan	745.70	Taiwan
732.60	Taiwan	750.20	Taiwan
732.62	Taiwan	750.22	Taiwan
734.10	Taiwan	750.40	Hong Kong
734.15	Taiwan	750.45	Republic of Korea, Taiwan
734.20	Taiwan	750.47	Taiwan
734.25	Hong Kong	750.65	Taiwan
734.77	Republic of Korea, Taiwan	750.70	Taiwan
734.86	Taiwan	751.05	Taiwan
734.87	Taiwan	751.22	Taiwan
734.88	Taiwan	755.25	Hong Kong
734.91	Taiwan	771.41	Taiwan
735.07	Republic of Korea	771.43	Taiwan
735.09	Republic of Korea, Taiwan	771.45	Taiwan
735.10	Taiwan	772.06	Taiwan
735.11	Taiwan	772.16	Hong Kong, Taiwan
735.12	Taiwan	772.20	Taiwan
735.20	Republic of Korea, Taiwan	772.35	Taiwan
737.14	Hong Kong	772.60	Republic of Korea
737.16	Hong Kong	772.80	Taiwan
737.23	Hong Kong	772.95	Taiwan
737.30	Republic of Korea	772.97	Taiwan
737.42	Republic of Korea	773.05	Taiwan
737.60	Taiwan	773.10	Taiwan
737.65	Taiwan	774.45	Hong Kong
737.80	Hong Kong	774.50	Taiwan
737.93	Taiwan	774.51	Taiwan
737.96	Hong Kong	774.53	Taiwan
737.98	Hong Kong, Taiwan	774.56	Taiwan
740.12	Hong Kong	774.58	Republic of Korea, Taiwan
740.13	Hong Kong	790.03	Taiwan
740.39	Taiwan	790.10	Taiwan
740.41	Hong Kong, Republic of Korea, Taiwan	790.39	Taiwan
741.25	Hong Kong	790.55	Taiwan
741.50	Hong Kong	790.60	Taiwan
745.32	Taiwan	790.70	Republic of Korea
		791.15	Hong Kong, Republic of Korea
		791.60	Taiwan

(b) by deleting the following countries opposite the following TSUS items:

533.30	Republic of Korea, Taiwan	676.56	Hong kong, Republic of Korea, Taiwan
545.53	Taiwan	678.50	Hong Kong, Republic of Korea, Singapore, Taiwan
610.84	Republic of Korea, Taiwan		
654.08	Taiwan		
661.06	Hong Kong, Taiwan	682.60	Hong kong, Taiwan
664.10	Taiwan	685.33	Republic of Korea, Singapore, Taiwan
676.15	Republic of Korea, Taiwan		

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(b)(con.)

685.90	Taiwan
688.12	Taiwan
688.17	Taiwan
688.18	Taiwan
688.42	Hong Kong Republic of Korea Taiwan
692.32	Republic of Korea Taiwan
724.45	Republic of Korea
727.29	Taiwan
727.39	Taiwan
740.11	Hong Kong
740.14	Hong Kong
740.15	Hong Kong
772.51	Republic of Korea Taiwan

ANNEX II

Modifications in the TSUS of an Article's Preferential Tariff Treatment Designation under the GSP

For the following TSUS items in the Rates of Duty Special column delete the symbol "A*" and insert an "A" in lieu thereof:

202.66	651.31	682.55	727.11
204.40	651.37	683.01	727.23
206.30	651.46	683.32	727.25
206.98	651.48	683.70	727.35
207.09	651.49	683.80	727.41
222.50	651.55	684.10	727.47
240.14	652.03	684.25	727.59
256.60	652.24	684.35	727.65
337.40	652.60	684.48	727.70
355.81	652.72	684.53	727.86
386.14	653.00	684.58	726.22
389.61	653.35	684.59	730.94
408.72	653.37	684.70	731.70
413.24	653.38	685.06	732.52
416.45	653.39	685.14	732.60
421.06	653.45	685.16	732.62
439.50	653.48	685.18	734.10
445.42	653.52	685.22	734.15
532.22	653.90	685.25	734.20
534.11	653.93	685.28	734.25
534.84	653.94	685.31	734.77
534.91	653.96	685.39	734.86
544.51	653.99	685.40	734.87
545.67	654.00	685.65	734.88
545.87	654.25	685.73	734.91
547.37	654.30	686.18	735.07
610.65	654.35	686.30	735.09
610.70	654.40	686.90	735.10
610.82	654.45	688.10	735.11
610.86	654.50	688.32	735.12
610.88	654.60	688.34	735.20
613.18	654.65	688.41	737.14
642.14	654.75	692.60	737.16
642.16	657.24	696.10	737.23
642.17	657.25	696.35	737.30
642.19	657.35	696.40	737.42
646.30	657.40	696.50	737.60
646.32	657.80	703.72	737.65
646.65	660.97	705.82	737.80
646.72	661.09	705.83	737.93
646.92	661.35	706.45	737.96
646.95	661.94	706.61	737.98
646.97	672.16	708.45	740.12
647.03	674.31	708.47	740.13
647.05	674.34	709.40	740.39
648.80	674.35	710.72	740.41
648.85	674.42	722.08	741.25
648.95	676.20	722.11	741.50
648.97	676.30	725.01	745.32
649.37	680.14	725.03	745.45
650.21	680.19	725.32	745.70
650.87	680.25	725.46	750.20
650.89	680.62	725.50	750.22
651.21	682.37	726.25	750.40

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750.45
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772.06
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[FR Doc. 88-10001
Filed 5-3-88; 2:14 pm]
Billing code 3195-01-C

Presidential Documents

Proclamation 5806 of April 29, 1988

National Trauma Awareness Month, 1988

By the President of the United States of America

A Proclamation

We can do a great deal of good for ourselves and our fellow Americans the more we realize the toll traumatic injury takes each year in our country—and the more we understand that the extent of this toll is unnecessary, unacceptable, and preventable. National Trauma Awareness Month is an excellent chance for all of us to learn and to do more about the prevention and treatment of traumatic injury.

Traumatic injury is a major public health problem that mainly affects young people; it kills more Americans before age 34 than do all diseases combined. Each year, some 140,000 citizens lose their lives to traumatic injury, and 400,000 suffer severe and often permanently disabling brain or spinal cord injury. Some of the many causes include motor vehicle-related injuries, murder, suicide, and falls.

It is up to all of us to learn how to reduce the risk of traumatic injury to ourselves and our children. Citizens can initiate behavior changes and sustain them, and volunteer groups, civic organizations, private businesses, health care providers, researchers, academia, and government can all help discover and implement new and more effective ways of preventing and treating traumatic injury and of assisting victims and their families. Let us always remember that our efforts in this regard will be a blessing to ourselves, our families, and our neighbors.

The Congress, by House Joint Resolution 373, has designated May 1988 as "National Trauma Awareness Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1988 as National Trauma Awareness Month. I urge the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Filed 5-2-88; 2:15 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[Docket No. AO-210-A47]

Milk in the Southwest Plains Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Southwest Plains order by revising the pool plant provisions to provide that a distributing plant, which is located in the marketing area and packages and distributes primarily aseptically processed (UHT) fluid milk products, be a fully regulated plant under such order regardless of where the plant sells its fluid milk products. The changes are based on a proprietary handler's proposal that was considered at a public hearing held in Tulsa, Oklahoma, on February 17, 1988. The amendments are necessary to reflect current marketing conditions and to stabilize the regulatory and pricing situation for a UHT plant and thereby insure orderly marketing under the order. Cooperative associations representing more than the required two-thirds of the market's dairy farmers have indicated their support for the amended order.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued January 13, 1988; published January 19, 1988 (53 FR 1370).

Emergency Final Decision: Issued March 29, 1988; published April 5, 1988 (53 FR 11092).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southwest Plains order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwest Plains marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than May 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The emergency final decision of the Assistant Secretary containing all amendment provisions of this order was issued on March 29, 1988 (53 FR 11092). The changes effected by this order will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southwest Plains marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 1106.5, paragraph (c) is revised to read as follows:

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§ 1106.5 Distributing plant.

* * * * *

(c) From which there is route disposition in the marketing area during the month, except that this requirement shall not apply to a distributing plant described in § 1106.7(e).

3. Section 1106.7 is revised to read as follows:

§ 1106.7 Pool plant.

Except as provided in paragraph (f) of this section, "pool plant" means:

(a) A distributing plant (other than one described in paragraph (e) of this section), from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1106.13, but excluding milk diverted to such plant) and handlers described in § 1106.9(c) is transferred or diverted pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and deversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified.

(2) The operator of a supply plant that is located in the marketing area or in a county adjacent to the marketing area may include milk diverted pursuant to § 1106.13(c) from such plant to plants described in paragraph (a) or (e) of this section as qualifying shipments in meeting the supply plant's monthly shipping percentages. The diverted milk used in meeting such qualifying shipments shall be limited to the milk of dairy farmers from whom at least one day's production is physically received during the month at such supply plant. Diversions in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and during the month, or the 12-month period ending with the immediately preceding month, 45 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (e) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (e) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1106.30.

(e) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition (except filled milk) during the month in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from such plant; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part;

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order; or

(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.

Signed at Washington, DC, on April 29, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-9912 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Account Servicing Policies

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to eliminate the necessity for borrowers to attempt voluntary debt adjustement prior to being considered for deferral. The action is consistent with loan making and other loan servicing regulations, and is necessary to comply with the Court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987). The intended effect is to provide a more rapid response to applicant's requests, assist in the establishment of a positive working relationship with other lenders and achieve greater consistency with other FmHA regulations.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Bonnet, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5444, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475–4020.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans and Farm Ownership Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Opeating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On November 20, 1987, FmHA published a proposed rule in the **Federal Register** (52 FR 44607–44608) with a comment period ending December 21, 1987. No comments were received. The purpose of this final rule is to eliminate regulation inconsistencies concerning voluntary debt adjustment in deferral processing. The current FmHA procedure contained in Subpart A of Part 1951, § 1951.44(b)(5), requires that the borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 in order to be considered for a deferral. This is in conflict with loan making and other servicing regulations where negotiation with other lenders occurs after considering other available servicing techniques.

Farmer Programs regulations allow unequal, balloon or partially set-aside installments without first attempting voluntary debt adjustment. FmHA special debt set-aside regulations found in Subpart A of Part 1951, 1951.41, allow for a partial interest-free set-aside with debt adjustment of the other creditors pursued only if FmHA authorities are insufficient to produce a positive cash flow.

The FmHA voluntary debt adjustment regulation found in Subpart A of Part 1903 states that it is not the policy of FmHA to assist borrowers or entities in avoiding the payment of any obligation, which is within their reasonable ability to pay and it is the debtors' responsibility to negotiate with their creditors after considering all available resources and income.

The option of voluntary debt adjustment is best used after all servicing options are tried and the borrower still needs additional help to allow the farm plan to cash flow.

The final rule will also assist in developing positive working relationships with the other lenders and will increase the incentive for them to cooperate in debt adjustments after the FmHA has attempted to assist the borrower to the full extent of its authority. Under the old regulation, the lenders would often initially refuse to adjust their debts, knowing that the FmHA must then proceed to consider deferral and negotiate for adjustment only when the plan still required it.

This policy will not directly injure the FmHA, due to loan interest continuing to accrue during the deferral; however, it will place more of the burden and associated loan risk of debt restructure on the Government and less on the other lenders. Nevertheless, this result is necessary to comply with the court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987), which states, it would be arbitrary and capricious for FmHA to have a regulation which attempts to have private lenders share in adjusting borrowers' debts before borrowers can qualify for an FmHA loan deferral.

List of Subjects in 7 CFR Part 1951

Accounting servicing, Credit, Loan programs-Agriculture, Loan programs-Housing and community development, Mortgages.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

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PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 270.

Subpart A—Account Servicing Policies

§ 1951.44 [Amended]

2. Section 1951.44 is amended by removing paragraph (b)(5).

Dated: March 21, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9910 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities loan and grant servicing regulations to implement part of section 615 of The Agricultural Credit Act of 1987, (Pub. L. 100-233). This action is being taken to comply with section 615 of Pub. L. 100-233, which gives certain FmHA Water and Waste Disposal (WWD) and Community Facility (CF) borrowers a choice of the interest rate on their loans. Public Law 100-233 applies to WWD and CF loans closed or approved after October 1, 1981. This action is to establish the procedures for FmHA to service those loans closed after October 1, 1981, when a borrower requests a change of the loan interest rate as authorized by Pub. L. 100-233.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers, Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382-9589 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, Jnue 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

This action implements FmHA's servicing of loans closed since October 1, 1981. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with Pub. L. 100-233 and any delay would be contrary to the public interest.

Public Law 100-233 requires that effective october 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to WWD and CF borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Until Pub. L. 100-233, only WWD and CF borrowers whose loans were closed after November 12, 1983, had the choice of interest rate on their loans.

FmHA amends Subpart E of Part 1951 to service loans closed after October 1, 1981, to allow borrowers to request that their interest rate be changed and to administratively accomplish the resulting change in interest rate for WWD and CF loans. This action will bring existing FmHA Community Facility regulations into compliance with Pub. L. 100-233.

FmHA amends Subpart E of Part 1951 by revising § 1951.221 to authorize that, upon request of the borrower, FmHA will change the interest rate on a closed WWD or CF loan.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

2. In § 1951.221, paragraphs (a) and (b)(1) are revised read as follows:

§ 1951.221 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99-88 provides that any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrowers's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the

interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon interest rate requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of the interest rate requirements for specific time periods.

Exhibit C of Subpart O of this Part (available in any FmHA office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) * * *

(1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification utilizing Exhibit G of this subpart (available in any FmHA office) will be made in writing at the earliest possible date and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

* * * * *

Date: March 9, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9908 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration. (FmHA) amends its regulation regarding deferral of existing OL, FO, SW, RL, EM, SL, RHR, and EE loans. This action is taken to establish Form FmHA 1951-56, Loan Deferral, as an official FmHA form. The intended effect is to provide for general distribution of the form to FmHA field offices.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Williams, System Accountant, Fiscal and Accounting on Division, FmHA, USDA, Finance Office, 1520 Market Steet, St. Louis, MO 63103, telephone (FTS) 8-279-8024.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only Internal Agency management. This action establishes Form FmHA 1951-56, "Loan Deferral," as an internal agency form to be used by field offices to notify the Finance Office that a borrower's loan is being deferred.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only matters involving internal agency management, making publication for comment unnecessary and impractical.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of clarification, does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials.

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.428 Economic Emergency

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

2. Section 1951.44 is amended by revising paragraph (j)(1) to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.

* * * * *

(j) * * *

(1) If the deferral is approved, all loans being deferred will be rescheduled or reamortized or consolidated as applicable. Interest that has accrued will be added to the principal as of the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. All FmHA loans must be current on or before the date the note is signed except for vouchered recoverable cost items that cannot be rescheduled. All delinquent loans will be rescheduled, reamortized, or consolidated to bring the account current. The promissory note rescheduled, reamortized, or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940-17 has examples (IV, V, and X) which explain this. The Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by borrower and attached to the promissory note:

Addendum For Deferred Interest

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular

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payment on the note will be applied to the interest which accrued during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

Borrower

Borrower

The Finance Office will be notified of the deferral by the County Office sending Forms FmHA 1965–22, 1965–23, 1951–6, and 1951–56, "Loan Deferral," to the Finance Office. The borrower will be notified by letter. The Finance Office will remove the borrower's name from the delinquency report and will set up a subaccount for interest that accrues during the deferral period.

* * * * *

Date: April 11, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–9909 Filed 5–3–88; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Parts 1951 and 1965

Security Servicing for Multiple Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding security servicing for Multiple Housing loans. This action is necessary in order to implement administrative changes regarding the completion of transfer documents, and to implement a new form for use with the Automated Multi-Housing Accounting System (AMAS). The intended effects of this action are to reduce errors in preparing the transfer docket and increase efficiency in processing the transfer under AMAS.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Carl Grate, Senior Loan Officer, Multiple Family Housing Servicing and Property Management (MHSPM) Division, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, DC 20250, telephone: (202) 382–1617.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

This action, however, is not published for proposed rulemaking since it only involves matters concerning internal Agency management, making publication for comment unnecessary and impractical.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.405, Farm Labor Housing Loans and Grants, and 10.415, Rural Rental Housing Loans. For reasons set forth in the Final Rule related Notice(s) to 7 CFR 3015, Subpart V, this program/activity is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

General Information

1. The implementation of Form FmHA 1965–10 and the revision of Form FmHA 1965–9 will permit the transfer and loan assumption process to be more compatible with AMAS, which is already in use by the Agency.

2. The revision of Form FmHA 1965–9 is due to program and policy changes and removes obsolete data fields from the form. Also, this revision deletes the requirement for the District Office personnel (preparer) to send Form FmHA 1965–9 to the Finance Office. The Form becomes a legal document only.

3. The implementation of a new Form FmHA 1965–10 will provide input information. The new Form is to be used as an input document only and will be sent to the Finance Office in place of Form FmHA 1965–9.

List of Subjects

7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Loan programs—Housing and Community Development, Low- and moderate-income housing loans—Servicing, Mortgages.

7 CFR Part 1965

Administrative practice and procedure, low- and moderate-income housing—Rental, Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.517 [Amended]

2. In § 1951.517, paragraph (b) (4) is amended in the last sentence after the phrase "Forms FmHA 1965–9" by adding the words "Form FmHA 1965–10."

3. In § 1951.517, paragraph (b) (4) (i) is amended in the last sentence after the phrase "Forms 1965–9" by adding the words "and 1965–10."

4. In § 1951.517, paragraph (b) (4) (ii) is amended by adding at the end of the last sentence the words "and Form FmHA 1965–10."

PART 1965—REAL PROPERTY

5. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing For Multiple Housing Loans

§ 1965.65 [Amended]

6. In § 1965.65, paragraph (b) (8) is amended in the first sentence by adding after the title "Multiple Family Housing Assumption Agreement" the following: "and Form FmHA 1965–10, 'Information on Assumption of Multiple Family Housing Loans,'".

7. In § 1965.65, paragraph (c) (11) is amended in the first sentence by removing the phrase "or 444–7" and in the next to last sentence by changing the phrase "Form FmHA 1965–9, Multiple Family Housing Assumption Agreement," to read "Form FmHA 1965–10 'Information on Assumption of Multiple Family Housing Loans.' "

8. In § 1965.65, paragraph (c) (12) is amended in the fourth sentence by changing the reference from "Form FmHA 1965–9" to "Form FmHA 1965–10."

9. In § 1965.65, paragraph (f) (2) is amended in the second sentence by changing the phrase "Form FmHA 1965–9" to read "Forms FmHA 1965–9 and 1965–10."

10. In § 1965.65, paragraph (f) (12) is amended by adding the following phrase to the list of forms after Form FmHA 1965–9 and before Form FmHA 1965–18:

* * * * *

FmHA 1965–10 Information on Assumption of Multiple Family Housing Loans 2–1–0.

* * * * *

Dated: March 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–9907 Filed 5–3–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF ENERGY

10 CFR Parts 420, 465, and 600

Class Deviation; Subawards Under the State Energy Conservation Program and Energy Extension Service Grant Program

AGENCY: Department of Energy.

ACTION: Notice of class deviation.

SUMMARY: The Department of Energy (DOE) announces that a class deviation has been approved which exempts subawards under the State Energy Conservation Program and Energy Extension Service grant program from the requirement that subawards must be "specifically authorized by statute or program rule" (10 CFR 600.3).

DATE: The class deviation is effective April 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Howard K. Mitchell, Office of Policy, Procurement and Assistance Management Directorate, Department of Energy, Washington, DC 20585, (202) 586–8190

Ernestine Gibson, Energy Management and Extension Programs, Conservation and Renewable Energy, Washington, DC 20585, (202) 586–8294.

SUPPLEMENTARY INFORMATION: As part of the Department's energy conservation mission, DOE fosters and promotes comprehensive state energy conservation plans by providing technical and financial assistance for specific state initiatives to conserve and improve efficiency in the use of renewable resources through the State Energy Conservation Program (SECP), 10 CFR Part 420. DOE also provides financial and technical assistance to the States through the Energy Extension Service (EES) program, 10 CFR Part 465, to stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical assistance and energy conservation efforts, including energy outreach activities of States.

Each year the Department receives applications from the States for these grant programs, and, because of the diversity of conditions among the various States, some contain requests to make subawards for purposes of planning and implementing a variety of local energy projects to local community organizations.

Subawards are not currently authorized either by statute or program rules under the SECP and EES programs in accordance with the 10 CFR 600.3 definitions of subaward; however, such subawards are necessary to achieve program objectives.

Therefore, the Director, Procurement and Assistant Management Directorate, has approved a class deviation in accordance with 10 CFR Part 600 to allow subawards under the SECP and EES grant programs.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 88–9820 Filed 5–3–88; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0634]

Delegation of Authority to General Counsel

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adding a new paragraph (13) to § 265.2(b), to delegate to the General Counsel, after consultation with supervisory staff, the authority to grant requests for temporary director interlocks under the Board's Regulation L for newly-chartered banking organizations, organizations in low-income areas or minority or women's banks.

It is expected that this delegation of authority will relieve the Board from having to act on matters that are more efficiently and effectively handled by Board staff.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202) 452–3420, or Thomas M. Corsi, Attorney, Legal Division (202) 452–3275. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does not have particular effect on small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. A new paragraph (b)(13) is added to § 265.2 to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(b) * * *

(13) Under the provisions of § 212.4(b)(1) and (2) of this chapter, after consultation with the Staff Director of the Division of Banking Supervision and Regulation, to grant requests for temporary director interlocks under Regulation L for newly-chartered banking organizations, organizations in low-income areas or minority or women's banks.

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By order of the Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9993 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-36-001, et al.; Order No. 481-A]

Interpretation of Comprehensive Plans Under Section 3 of the Electric Consumers Protection Act; Order on Rehearing

Issued: April 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act, as amended by the Electric Consumers Protection Act of 1986. The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kristina Nygaard, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule [1] setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act (FPA),[2] as amended by the Electric Consumers Protection Act of 1986 (ECPA).[3] The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

II. Background and Discussion

Section 10(a)(2)(A) of the FPA requires the Commission, in its hydropower licensing decisions, to consider, among other things:

> (A) The extent to which the [proposed] project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—
>
> (i) An agency established pursuant to Federal law that has the authority to prepare such a plan; or
>
> (ii) The State in which the facility is or will be located.

The Commission issued a final rule stating its interpretation of such a comprehensive plan on October 20, 1987. The Commission received ten requests for rehearing of the rule.[4]

1. The interpretative rule exception to the APA

The final rule was issued without prior notice and comment under the interpretative rule exception to the Administrative Procedure Act (APA).[5] The APA generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register** and give interested persons an opportunity to comment on the proposed action before issuing a final rule.[6] These requirements, however, do not apply to "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice * * *."[7] Most of the petitioners for rehearing argue that the final rule does not fall within the interpretative rule exception to the APA. They argue that the rule imposed requirements for these plans that were not contained in ECPA and that the rule was therefore not interpretative in nature.

The Commission disagrees. Since the final rule merely stated the Commission's interpretation of a comprehensive plan under ECPA, the Commission believes the rule was properly issued under the interpretative rule exception to the APA.

2. Comprehensive plan criteria

In the final rule, the Commission stated that Congress intended that a state plan would fall within the scope of section 10(a)(2)(A) of the FPA only if the plan were prepared and adopted pursuant to a specific act of the state legislature and were developed, implemented, and managed by the appropriate state agency. The final rule also codified the Commission's conclusion in *Fieldcrest Mills, Inc.*[8] that plans within the scope of section 10(a)(2)(A) should "reflect the preparers' own balancing of the competing uses of a waterway." The rule pointed out that the weight to be accorded any plan, whether or not it qualifies as a state comprehensive plan, depends on its supporting documentation, since Commission findings must be based on substantial evidence.[9] The rule then set forth general guidelines with respect to what type of plan would carry the most weight in the Commission's licensing decisions.

The petitioners assert that the final rule interprets section 10(a)(2)(A) incorrectly by drawing overly restrictive requirements for qualifying comprehensive plans. Their arguments are based on the statutory language of section 10(a)(2) and on its legislative history.

Five petitioners [10] point out that section 10(a)(2)(A) refers to comprehensive plans "for improving, developing, *or* conserving" waterways (emphasis added), and that therefore these plans should not be required to balance all relevant public uses of the waterways. Rather, they reason that a plan, for example, that is concerned only with identifying reaches of rivers that should be protected from all forms of development should also qualify under section 10(a)(2)(A). These petitioners refer by way of contrast to the language of section 10(a)(1), which requires that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for a variety of beneficial public uses that are linked with the conjunctive "and," not the disjunctive "or."[11]

Two petitioners [12] also argue that requiring section 10(a)(2)(A) comprehensive plans to consider and balance all beneficial uses of a waterway renders "conflicting or redundant" the requirement of section 10(a)(2)(B) of the FPA that the Commission consider the "recommendations of * * * State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located * * *." California asserts that state comprehensive plans would always be subsumed within the state recommendations obtained pursuant to section 10(a)(2)(B).

Finally, American Rivers, *et al.* takes issue with the Commission's conclusion, as expressed in its order in *Fieldcrest Mills, Inc.* and in Order No. 481, that a comprehensive plan must be prepared and adopted pursuant to a specific act of the state legislature. American Rivers, *et al.* reasons that a comprehensive plan should qualify so long as a state agency is legally competent as a matter of state law to prepare such a plan.

The issue before the Commission is whether Congress, in enacting section 10(a)(2)(A) of ECPA, intended state and Federal comprehensive plans to consider and balance all relevant beneficial uses of a waterway, or whether Congress intended that such plans could deal with some, or only one, beneficial use.

The Commission recognizes that there is an ambiguity of intent reflected in the statutory language and the legislative history. However, it is not necessary to resolve this ambiguity, because, as a matter of policy, the Commission will accord section 10(a)(2)(A) treatment to state and Federal plans that consider one, or more, or all beneficial public uses of a waterway. In so doing, it will ensure that all state and Federal river programs and policies will be fully considered in the Commission's licensing decision.

With respect to the argument of American Rivers, *et al.* opposing the requirement of a specific act of the state legislature, the Commission's position was guided by the pre-passage remarks of Committee Chairman McClure, who stated that the provision would require the Commission to consider the extent to which a proposed plan was consistent with a state comprehensive plan "as established by an act of the State legislature and developed, implemented and managed by an appropriate State agency."[13] No state petitioner objected to the Commission's interpretation on this point. However, we are satisfied that, as the Senate Report states, the plan must merely be "prepared by appropriate agencies as authorized to conduct such planning pursuant to * * * State law."[14]

In sum, the Commission will treat as a comprehensive plan under section 10(a)(2)(A) of the FPA a plan that (1) is prepared by an agency established by Federal law that has the authority to prepare such a plan, or by a state agency authorized to conduct such planning pursuant to state law; (2) is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; (3) articulates the standards applied, the data relied upon, and the methodology used; and (4) is filed with the Secretary of the Commission.

It also bears repeating that, as we stated in Order No. 481, even if a state or Federal plan does not qualify as a comprehensive plan under section 10(a)(2)(A), the Commission will consider the plan, as it considers all relevant studies and recommendations, in its public interest analysis pursuant to section 10(a)(1).

The Commission notes the Conference Report, which states: [15]

> [The bill] incorporates a new section 10(a)(2), expressly requiring FERC to consider comprehensive plans developed by other entities pursuant to State or Federal law, as well as recommendations of Federal and State agencies and Indian tribes with expertise on aspects of the public interest. It is not an exclusive list of values FERC must evaluate and address in order to satisfy its comprehensive planning responsibilities. However, it highlights the steps the Commission must take to inform itself regarding the needs and uses of the river in question. Other steps the Commission would have to take, depending on particular circumstances, include addressing fish and wildlife management and restoration plans for the river drainage and accom[m]odating the views of other interested parties.

Congress, in enacting ECPA, thus affirmed the Commission's "responsibility to resolve competing demands in the public interest."[16] This means that, whereas the Commission has the clear duty to give full consideration to the recommendations submitted in a licensing proceeding, no one recommendation—or comprehensive plan under section 10(a)(2)(A)—can veto a proposed project.[17] Moreover, the fewer the beneficial uses of a waterway that a state or Federal plan has considered and balanced, the less weight will be attached to a proposed project's inconsistency with the plan, since the Commission is required to consider and balance all beneficial uses of a waterway. The Commission therefore encourages states and Federal agencies to develop plans that study and balance as many uses as possible and provide as much data as possible. However, all plans, based on articulated standards and data, will assuredly enhance the Commission's decisionmaking process by giving it the benefit of the planners' analyses and policy judgments.

Because this order constitutes a new policy with respect to comprehensive plans under section 10(a)(2)(A) of the FPA, we will instruct the Director, Office of Hydropower Licensing, to mail a copy of this order to all state governors and appropriate Federal agencies. The Director will request the states and Federal agencies to file with the Commission the plans they believe meet the policy criteria set forth in this

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[1] Order No. 481, 52 FR 30905 (Oct. 20, 1987), III FERC Stats. & Regs. ¶ 30,773 (1987).

[2] 16 U.S.C. 803(a)(2)(A).

[3] Pub. L. No. 99-495, 100 Stat. 1234 (1986).

[4] The State of California *ex rel.* Resources Agency and the State Water Resources Control Board, the Commonwealth of Kentucky Department for Environmental Protection, the Vermont Agency of Natural Resources, the New York State Department of Environmental Conservation, the State of Minnesota Department of Natural Resources, and American Rivers *et al.* filed timely rehearing requests. The State of Montana, the State of Washington Department of Ecology, the Northwest Power Planning Council, and the State of Oregon filed requests for rehearing out of time. The Commission is considering these as requests for reconsideration.

[5] 5 U.S.C. 551 *et seq.* (1982).

[6] 5 U.S.C. 553(b)(A) (1982).

[7] *Id.*

[8] 37 FERC ¶ 62,204 (1986).

[9] *See* section 313(b) of the FPA, 16 U.S.C. 825*l*(b).

[10] State of California, Kentucky Department for Environmental Protection, Vermont Agency of Natural Resources, Minnesota Department of Natural Resources, and American Rivers, *et al.*

[11] Section 10(a)(1) provides that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving *or* developing a waterway or waterways for the use *or* benefit of interstate or foreign commerce, for the improvement *and* utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) * * *. [Emphasis added.]

[12] State of Oregon and State of California.

[13] 99 CONG. REC. S4140 (April 11, 1988).

[14] S. REP. NO. 99-161, 99th Cong., 1st Sess. 8-9 (1985). The Conference Report refers to comprehensive plans "developed by other entities pursuant to State or Federal law * * * ." H.R. REP. NO. 99-934 at 22.

[15] H.R. REP. NO. 99-934 at 22.

[16] *Id.* at 25.

[17] *Cf. id.* at 23 ("Section 10(j) does not give [fish and wildlife] agencies a veto * * * "); Escondido Mutual Water Co. v. La Jolla Band, 466 U.S. 765, 777 (1984) (under Section 4(e), a Secretary administering a federal reservation "has no power to veto the Commission's decision to issue a license * * * ").

Continued

order. The Director will, within a reasonable period of time, advise the filer whether a plan meets the policy criteria, and if not, why not. If necessary in order to make a determination, the Director may ask the filer to submit additional information with respect to a plan. The Commission staff will also be available, on request, to discuss comprehensive planning with state and Federal personnel.

As a final matter, the Commission notes the request of the Northwest Power Planning Council that the Commission clarify whether the Council's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan are comprehensive plans within the final rule. The Commission found that these two plans were comprehensive plans within the meaning of ECPA in *Utah Power & Light Company*.[18] The Commission is clarifying that, as a policy matter, it will treat the Council's Program and Plan as comprehensive plans under section 10(a)(2)(A).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Electric Consumers Protection Act of 1986, Pub. L. No. 99-495; and National Environmental Policy Act, 42 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. Section 2.19 is revised to read as follows:

§ 2.19 State and Federal comprehensive plans.

(a) In determining whether the proposed hydroelectric project is best adapted to a comprehensive plan under section (10)(a)(1) of the Federal Power Act for improving or developing a waterway, the Commission will consider the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

(1) An agency established pursuant to Federal law that has the authority to prepare such a plan, or

(2) A state agency, of the state in which the facility is or will be located, authorized to conduct such planning pursuant to state law.

(b) The Commission will treat as a state or Federal comprehensive plan a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission.

[FR Doc. 88-9848 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[18] 40 FERC ¶ 61,139 (1987).

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18 CFR Part 16

[Docket No. RM87-7-000; Order No. 496]

Information To Be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986

Issued April 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act. The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information that a licensee must make reasonably available to the public upon notifying the Commission of its intention. The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426 (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Final Order

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act (FPA).[1] The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information a licensee must make reasonably available to the public upon notifying the Commission of its intention.[2] The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986 (ECPA).[3]

II. Background

In ECPA, Congress amended the FPA to establish new procedures, timetables, and standards for the relicensing of projects subject to sections 14 and 15 of the FPA in order to promote greater competition in the relicensing process. Section 15(b)(1) of the FPA[4] requires an existing licensee to notify the Commission at least five years before the expiration of its license whether or not it intends to file an application for a new license. Section 15(c)(2) authorizes the Commission to adjust, by rule or order, the time period specified for the filing of a notice of intent when the expiration date of an existing license does not allow sufficient time for filing that notice five years before the expiration of the license. Section 15(b)(3) requires the Commission to provide public notice of an existing licensee's intention to file or not to file an application for a new license and to notify Federal and state fish and wildlife agencies of that intention.

Section 15(b)(2) of the FPA provides that at the time an existing licensee

[1] 16 U.S.C. 807–808 (1982 and Supp. 1987).

[2] Information to be Made Available by Hydroelectric Licensees Under section 4(a) of the Electric Consumers Protection Act of 1986, Docket No. RM87-7-000, Order No. 467, 52 FR 11,035 (Apr. 7, 1987), III FERC Stats. & Regs. ¶ 30,736 (Mar. 30, 1987), *as amended by* 52 FR 18,227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742 (May 7, 1987).

[3] Pub. L. 99-495, 100 Stat. 1243 (Oct. 16, 1986).

[4] 16 U.S.C. 808(b)(1).

notifies the Commission of its intention under section 15(b)(1), it must make reasonably available to the public for inspection at its offices current maps, drawings, data, and any other information as the Commission will, by rule, require regarding the construction and operation of the licensed project. That section further provides that the information must include, to the greatest extent practicable, pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Section 15(b)(2) also provides that copies of the required information must be made available by the existing licensee at reasonable reproduction costs.[5]

Section 15(c)(1) of the FPA requires an existing licensee or a competitor to file an application for a new license with the Commission at least 24 months before the expiration of the existing license.

The Commission issued an interim rule on March 30, 1987, implementing some of the relicensing provisions enacted in ECPA.[6] The interim rule specifies the date by which a licensee must notify the Commission that it does or does not intend to file an application for a new license and the information a licensee must make reasonably available to the public for inspection and reproduction upon filing its notice of intent.

The interim rule became effective on May 7, 1987, without prior notice and comment, because a statutory deadline made prior notice and comment impracticable.[7] The Commission invited interested persons to submit their views on the interim rule for consideration before the Commission issued a final rule in this proceeding. The Commission modified the interim rule on its effective date to comply with recommendations of the Office of Management and Budget (OMB).[8]

[5] The legislative history of ECPA indicates that the requirement for reimbursement of reproduction costs was not intended to apply to Federal and state fish and wildlife agencies. H.R. Rep. No. 507, 99th Cong., 2nd Sess. at 35 (March 25, 1986).

[6] 52 FR 11035 (Apr. 7, 1987).

[7] ECPA required the Commission to promulgate regulations regarding the information to be provided under the newly enacted section 15(b)(2) within 180 days of the date on which ECPA became law.

[8] OMB did not approve the requirements of the interim rule that a licensee compile information prior to the receipt of a request and that a licensee file with the Commission a statement of unavailability listing those items of required information that it could not make available, together with a statement of the reasons for their unavailability. The Commission revised the interim rule to require that a licensee make information available in a form that is readily accessible, reviewable, and reproducible, rather than that the licensee "compile" it in such a form (§ 16.16(c)(1)). The Commission also suspended the provision of the interim rule which required an existing licensee to file a statement of unavailability regarding required information (§ 16.16(d)(1)). *See* Interim Rule: Stay of Effective Date, 52 FR 18227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742.

[9] Final rule, § 16.15(c).

[10] Final rule, § 16.16(d)(5).

[11] Final rule § 16.16(d)(8).

[12] Interim rule, § 16.1.

[13] Interim rule, § 16.14.

[14] Comments addressing these provisions in the interim rule will be incorporated into Docket No. RM87-33-000.

[15] Licensee commenters were Alabama Power Company, Eugene Water & Electric Board, Georgia Power Company, Pacific Gas and Electric Company, Nebraska Public Power District, Public Service Company of Colorado, and Southern California Edison Company. Associations representing licensees were Edison Electric Institute, California Public Agencies, and Wisconsin Utilities Association, Inc. Long Lake Energy Corporation commented as a competitor. Other commenters were the Native American Rights Fund, the National Congress of American Indians, and the Advisory Council on Historic Preservation.

III. Discussion

The Commission is issuing this rule to modify and make final the provisions of the interim rule concerning notice and information requirements. Changes to the requirements of the interim rule include specifying a commencement date for the period within which an existing licensee must file a notice of intent,[9] restricting the cultural resources information a licensee must make available to the public at the time it provides that notice of intent,[10] and expanding the types of conservation information that a licensee must make available.[11] The final rule retains the deadline for a licensee to file a notice of intent of five years before the expiration of an existing license.

The interim rule also included an introductory provision that defined terms and described the general applicability and purposes of the Commission regulations on the takeover and relicensing of licensed projects [12] and a provision specifying the deadline for an applicant to file an application for a new license.[13] The Commission is not making those provisions final in this rule because it will address these provisions in a separate rulemaking proceeding in Docket No. RM87-33-000.[14]

The Commission received 14 comments on the interim rule. Commenters included individual licensees, associations representing licensees, organizations representing Native Americans, and an association concerned with historic preservation.[15]

A. Time Period for Filing Notice of Intent

In general, the interim rule requires a licensee to file, at least five years before the expiration of the existing license, a notice stating whether or not it intends to file an application for a new license.[16] ECPA amended the FPA to establish this five-year deadline.[17] The final rule specifies a commencement date for the period within which a licensee must file a notice of intent, thereby limiting the filing to the six-month period before the statutory deadline. Specifically, the final rule provides that a licensee must file a notice of intent at least five, but not more than five and one-half, years before the expiration of its license.[18] The interim rule included certain transitional provisions for projects with existing licenses that expire before October 17, 1992.[19] These provisions are not retained in the final rule because the periods within which affected licensees were required to file notices of intent have passed.

Several licensees suggest that the Commission require a person other than an existing licensee to notify the Commission of its intention to file an application for a new license. Some of these commenters suggest that a nonlicensee applicant give this notification within six months after the Commission's public notice of the existing licensee's notification of intent to file or not to file an application for a new license.[20]

Section 15(b)(1) of the FPA, as amended by ECPA, contains explicit provisions regarding advance notification by a licensee of intent to file or not to file an application for a new license. There are no comparable provisions requiring notification by a nonlicensee applicant. The first requirement that the FPA imposes on a nonlicensee is that it file an application for a new license at least 24 months before the expiration of the term of the existing license, as required of all applicants by section 15(c)(1). The Commission believes that a notification requirement for a nonlicensee applicant, as suggested by the commenters, could be anticompetitive, as it would require the nonlicensee applicant to be

[16] Interim rule, § 16.15.

[17] FPA, § 15(b)(1), 16 U.S.C. 808(b)(1) (Supp. 1987).

[18] Final rule, § 16.15(c)(1).

[19] The interim rule required an existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, to file a notice of intent with the Commission by October 16, 1987, and required an existing licensee with a license that expires on or before October 15, 1991, to file a notice of intent with the Commission by August 5, 1987, if the licensee had not filed an application or a statement under § 16.3 before October 16, 1986. Interim rule, § 16.15(b) (2) and (3).

[20] Comments of Alabama Power Company (Alabama Power) at 2, Edison Electric Institute (EEI) at 10, Southern California Edison Company at 3, and Wisconsin Utilities Association at 1.

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sufficiently prepared to proceed with a license application and to make a public statement as to its intentions at least four and one-half years prior to the expiration of a license. The statutory requirements that a licensee provide notice of its intent and make certain information available to the public are intended to promote competition in relicensing by allowing potential competitors to review and evaluate information concerning a project in order to determine whether to file an application for a license and to prepare an application if it decides to file one. A notice requirement for a nonlicensee applicant, for which there is no requirement in the FPA, would undermine the statutory intent of promoting competition. The Commission declines to adopt this suggestion.

B. Information To Be Made Available at the Time of Notification

A licensee must make available the required information whether or not it intends to file an application for a new license. In the final rule, the Commission generally retains the information requirements of the interim rule. Changes from the interim rule are discussed below.

1. *General requirements for information to be made available.*—a. *Period during which required information must be made available to the public.* The interim rule requires that a licensee make certain information reasonably available to the public upon filing its notice of intent with the Commission, but does not provide a termination date for the availability of the required information.[21] Two commenters suggest that the required information remain available until the deadline for filing an application for a new license; another commenter suggests that it remain available until six months after the deadline for filing competing applications, that is, until 18 months before the expiration of the existing license.[22]

The Commission agrees that a time limit should be placed on the availability of required information. The Commission believes, however, that any period of availability should be longer than those suggested by commenters. This information may be useful to competing applicants, interveners in relicensing proceedings, and the public. In addition to facilitating competition, the availability of the required information promotes informed public scrutiny of the hydroelectric relicensing process. Therefore, the Commission is requiring that the specified information must remain available until the termination of any relicensing proceeding.[23]

b. *Time period to be covered by required information.* The interim rule required that information relating to project generation and outflows and annual operation and maintenance costs "for the previous five years" be made available,[24] as well as reports on operation or maintenance problems "occurring within the last five years."[25] The Commission recognizes that the precise period intended to be covered by this information is ambiguous and clarifies in the final rule that information should cover the period beginning five years before the filing of a notice of intent.

Some licensees suggest that the coverage period for other required information, such as historical records, cultural data, and environmental, conservation, and recreation reports, should also be limited to the same five-year time interval preceding notification of intent.[26] However, these commenters recommend that this five-year limitation not be applied when the most recent data is more than five years old at the time a notice of intent is filed.

Long Lake Energy Corporation (Long Lake) claims that the five-year coverage period for information relating to generation data and operation and maintenance costs and problems is too short because it does not adequately show the manner in which a licensee has operated a project. Long Lake suggests that information concerning project costs, generation, and maintenance over the life of the project is relevant to an examination of a licensee's "track record" and states that nothing in section 15(b)(2) of the FPA or in the legislative history of ECPA supports limiting the period covered by the information to be made available. Long Lake recommends that the Commission remove the five-year limit and require that a licensee make available such information covering the entire life of the project.[27]

Section 15(b)(2) of the Federal Power Act states that an existing licensee must make current maps, drawings, data, and other information available at the time it gives notice of its intention to apply for a new license. The Commission interprets the word "current" to mean that the data provided will accurately describe the project and allow a meaningful assessment of it. The most meaningful generation, operations, and maintenance data are the most recent. The intended requirement of the interim rule that a licensee make available specified information in these categories covering the five-year period preceding the filing of its notice of intent is reasonable and the Commission is retaining it in the final rule. However, in order to ensure that available information remains current, the Commission is requiring a licensee to supplement the information covering that five-year period with any additional data developed after the filing of a notice of intent.[28]

The Commission also adopts in part commenters' suggestion that a licensee provide earlier data when there is no existing data covering the specified five-year period preceding the notice of intent. The final rule provides that a licensee must make available any report on operations or maintenance problems, other than routine maintenance, beginning with the five-year period preceding the notice of intent or the most recent five-year period for which data exists.[29]

With regard to certain other categories of data, the Commission believes that it is appropriate to require the provision of all existing records, with some non-temporal limitations.[30] All events and studies related to a project and involving cultural resources, fish and wildlife, recreation, or conservation may be relevant in the relicensing process and a record more than five years old may constitute the only documentation on these subjects. Accordingly, the Commission has placed no limit on the time period covered by these categories of documents.[31]

c. *Reports to be made available.* Several sections of the interim rule require a licensee to make "all existing reports" available for public inspection.[32] Licensee commenters express concern that the interim rule might be interpreted to require a licensee to search for and obtain reports by third parties that are not in the possession of the licensee.[33] They suggest that the rule be amended to require the provision of reports of which a licensee has knowledge, reports prepared or filed with the Commission by the licensee, or reports in the licensee's possession.

The Commission believes that reports prepared by third parties may contain information that is required to be made available under section 15(b)(2) of the Federal Power Act. However, the Commission did not intend that the interim rule impose on licensees the burden of searching the records of unrelated entities. Similarly, the intent of the final rule is to require a licensee to make available all required reports in its possession or control, whether those reports were prepared by the licensee or by third parties.

The Wisconsin Utilities Association asks the Commission to clarify the rule to specify whether reports that must be made available are those that exist when a licensee notifies the Commission of its intention to file or not to file an application for a new license or those that exist when information is requested by a member of the public.[34]

A licensee satisfies the public access requirement by providing information when a request is made. At that time, a licensee determines the existence and availability of a document and provides it to the requester within a reasonable period of time. Thus, a licensee is required to make available a report that exists when a request is made, even if that report were generated after the licensee filed its notice of intent.

d. *Unavailable information.* The Commission suspended the requirement of the interim rule that a licensee file a statement of unavailability regarding items of required information that it could not, for reasons beyond its control, make available to the public.[35] OMB had not approved this section, stating that the statutory intent of providing public access is satisfied by requiring a licensee to provide information when a request is made and by allowing the licensee to determine the existence and availability of the required information at that time. OMB noted the provision in the interim rule allowing a member of the public who believes that required information is being withheld to petition the Commission for assistance.[36]

The Eugene Water and Electric Board and Long Lake state that a licensee should be required to provide a statement of unavailability of information.[37] Several licensees disagree and cite the OMB failure to approve this requirement. The intent of section 15(b)(2) of the FPA is that a licensee make required information available within a reasonable time. The Commission expects that an existing licensee will make a good faith effort to provide required information in its possession or control and that if information is unavailable, a licensee will inform a requester of that fact within a reasonable period of time. The Commission believes that the requirement to file a statement of unavailability is unnecessary and has not included that requirement in the final rule. However, it is retaining a procedure similar to that established in the interim rule, allowing anyone who believes that a licensee is not making existing required information reasonably available to petition the Commission for assistance.[38]

e. *Proprietary information.* Georgia Power argues that a licensee should not be required to make available certain proprietary information such as future plans, studies of demand and need, particularized cost information, and the relation of particularized costs to the information, and the relation of particularized costs to the licensee's electric system as a whole.[39] No provision of the interim or final rule requires production of the types of information enumerated by the commenter.[40] The Commission expressly stated in the preamble to the interim rule that it does not believe that information concerning a licensee's future plans should be disclosed to the public before an application for a new license is filed. It further stated that release of this information may unfairly disadvantage the existing licensee and limited disclosure to public information pertaining to the existing project as licensed.[41] The Commission reaffirms these statements in this final rule.

2. *Specific categories of information.*—a. *Correspondence.* The interim rule requires a licensee to make available all public correspondence on the licensed project and on certain specific topics.[42] Some licensee commenters state that these requirements are overly broad and unduly burdensome and that much of the required correspondence would be irrelevant to an evaluation of the current operation of a project.[43] The Edison Electric Institute (EEI) suggests that the Commission limit the required information to correspondence to which the licensee is a party and which relates to one of the subject areas in § 16.16(d).[44]

The Commission believes that all correspondence relating to a project should be made available. These documents demonstrate in part how a licensee has used a public resource. This information is valuable not only to competitors, but also to the public, for whom relicensing constitutes an important opportunity to evaluate use of the nation's water resources. Thus, the Commission has not adopted the suggestion that a licensee be required to make available only correspondence to which it is a party.

Some licensees also suggest that licensees be permitted to make available correspondence on all subjects in a single correspondence file.[45] Correspondence is more likely than other categories of documents to be filed chronologically or by some method other than by subject matter. The Commission believes that making correspondence related to the project available satisfies the purposes of section 15(b)(2) of the FPA. Accordingly, in this final rule, the Commission is clarifying that a licensee may provide all required public correspondence in one file.[46]

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[21] Interim rule, § 16.16(e).

[22] Comments of Alabama Power at 3, EEI at 13–14, and Southern California Edison at 1.

[23] Final rule, § 16.16(b)(2).

[24] Interim rule, § 16.16(b)(1) (iii) and (v).

[25] Interim rule, § 16.16(b)(2)(iii).

[26] Comments of Alabama Power at 3, EEI at 12–14, Southern California Edison at 2, and Wisconsin Utilities Association at 1–2.

[27] Comments of Long Lake at 5–7.

[28] Final rule, § 16.16(c).

[29] Final rule, § 16.16(d)(2)(iii).

[30] Records concerning archaeological resources and records concerning use of the project area by Native Americans are discussed further below.

[31] Final rule, § 16.16(d) (3), (4), (5), and (6).

[32] The following sections of the interim rule refer to "all existing reports": § 16.16 (b)(1)(v), (b)(2)(iii), (b)(3)(i), (b)(3)(ii), (b)(5)(i), (b)(6)(i), and (b)(6)(ii).

[33] Comments of EEI at 12, Nebraska Public Power District at 1, Public Service Company of Colorado at 1–2, and Southern California Edison at 2.

[34] Comments of Wisconsin Utilities Association at 1.

[35] 52 FR 18,227 (May 14, 1987), suspending interim rule, § 16.16(d)(1).

[36] Interim rule, § 16.16(d)(2).

[37] Comments of Eugene Water & Electric Board at 1 and Long Lake at 9–11.

[38] Final rule, § 16.16(f).

[39] Comments of Georgia Power at 3.

[40] The interim rule sets out specific items of required information in § 16.16(b), 52 FR at 11038–11040. The cost information required consists of annual operation and maintenance costs and original project costs (§ 16.16(b)(1)(v). The comparable provision in the final rule is § 16.16(d)(1)(v).

[41] 52 FR at 11038.

[42] Under the interim rule, a licensee is required to provide all public correspondence relating to the existing project (§ 16.16(b)(1)(iv)); the safety and structural adequacy of the existing project (§ 16.16(b)(2)(v)); fish and wildlife resources within the project area (§ 16.16(b)(3)(iv)); energy conservation measures relating to the existing project (§ 16.16(b)(4)(ii)); recreation and land use resources within the project area (§ 16.16(b)(5)(iv)); and cultural resources within the project area (§ 16.16(b)(6)(iii)).

[43] Comments of EEI at 21, Public Service Company of Colorado at 2, and Southern California Edison at 3.

[44] Comments of EEI at 20–21.

[45] Comments of EEI at 21 and Southern California Edison at 3.

[46] Final rule, § 16.16(g).

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b. *License applications, orders, issuing licenses, and appurtenant documents.* The interim rule requires a licensee to make available the original license application; the order issuing the license for the existing project, including approved Exhibit drawings; all orders issuing amendments to the license for the existing project; and all orders issuing annual licenses for the existing project.[47]

EEI states that some licensees may be coming to the end of a second license term and suggests that the Commission require such licensees to make available only their licenses and appurtenant documents.[48] The Commission is not adopting this suggestion because it believes that pertinent information may be contained in a prior license and related documents. The Commission is requiring that a licensee make available the original and all subsequent licenses and appurtenant documents.[49]

c. *Data to verify operation of the project in accordance with license terms.* The interim rule requires licensees to make available all data necessary to enable the public to verify that the project has been and is being operated in accordance with the requirements of each license article, including minimum flow requirements, maximum ramping rates, reservoir elevation limitations, and environmental monitoring procedures.[50] The licensees state that it is the Commission, not the public, that must determine whether or not a licensee has complied with the terms and conditions of its license and that, regardless of the amount of data made available, the public may not be able to verify compliance.[51]

The Commission believes that information relevant to verifying compliance with license terms and conditions may be useful to competitors, interveners, and the general public. A competitor may seek such information to demonstrate that it should receive the new license. An intervener may use it to support one applicant over another or to seek revisions in the terms and conditions of a license. The general public may use this information to evaluate a licensee's stewardship of a waterway. Because information relevant to verifying compliance with license terms and conditions is useful to reviewers other than the Commission, the Commission retains the requirement that such information be made reasonably available to the public.[52]

Other licensees suggest that this section could be interpreted to require a licensee to conduct new studies to establish compliance with license articles. The Commission restates its position that a licensee will not be required to conduct an additional study to fulfill the information requirements of the final rule.

Long Lake requests that licensees be required to make available several additional categories of information. First, Long Lake suggests that all records pertaining to inspections, investigations, and enforcement actions undertaken by the Commission in connection with a project should be made available to the public because this information is relevant to a licensee's performance with respect to any project.

The Commission believes that the information provision requirements of the interim and final rules cover the types of records cited by Long Lake. For example, the interim and final rules require that licensees make available all public correspondence relating to the existing project and all existing reports on any operation or maintenance problems other than routine maintenance.[53] The Commission therefore declines to adopt an additional requirement.

Long Lake also suggests that a licensee be required to provide information concerning all of its hydroelectric projects when it files an application for a new license for any project. Long Lake believes that a licensee's level of performance at other hydroelectric facilities is an important indicator of its ability to operate and maintain the project for which the application is filed.[54] The Commission is not adopting this suggestion because performance at other hydroelectric projects is not a factor the Commission must consider in making its licensing decisions under either section 10 or section 15 of the FPA.[55]

d. *Conservation plans.* The interim rule requires a licensee that is an electric utility, or a state or a municipality that uses any of the power generated by the existing project to make available its plan to conserve electricity or encourage conservation by its customers.[56] EEI claims this requirement is too onerous because conservation plans are often lengthy documents which are frequently revised. EEI suggests that the Commission require that a licensee make available only current information concerning its energy conservation programs and that a licensee be allowed the discretion to provide either a current conservation plan or a detailed summary of the conservation initiatives it has undertaken. EEI also points out that a licensee may not have a single comprehensive plan covering all its activities in the energy conservation field.[57]

Section 4(e) of the FPA requires the Commission to give significant consideration to energy conservation issues in granting a hydroelectric project license.[58] The activities of a licensee with regard to conservation are of major importance in a relicensing proceeding. The Commission is thus retaining the requirement that a licensee's conservation plan be made available to the public and is broadening the requirement to include any other information pertinent to a licensee's efforts to conserve electricity or to encourage conservation by its customers. The Commission is expanding this information requirement because it recognizes that not all conservation information may be contained in a formal conservation plan.

e. *Project generation and outflow data.* The interim rule requires a licensee to make available a compilation of project generation and respective outflow data for the five years preceding a request, in time increments not to exceed one hour.[59] Several licensees state that some hydroelectric powerhouses are not metered for hourly readings and suggest that generation and outflow data be provided in the smallest increment recorded.[60] In the final rule, the Commission is requiring that project generation and outflow data be made available in increments not to exceed one hour, unless use of another time increment can be justified.[61]

f. *Recreational use reports.* The interim rule requires a licensee to make available all existing reports on past and current recreational uses of the project area.[62] Licensee commenters ask the Commission to require instead that a licensee make available its FERC Form No. 80 and any FERC-approved recreation plan.[63] The Commission believes, however, that documents other than FERC Form No. 80 and a FERC-approved recreation plan may contain useful information regarding recreational uses. The Commission also notes that not every project has an approved recreation plan and that the filing of FERC Form No. 80 is no longer required on an annual basis. The Commission therefore declines to revise the requirement that a licensee make available any report on past or current recreational uses of the project area.[64]

Several licensees claim that the appropriate term of art to describe the area within a project boundary is "project" or "project boundary" rather than "project area".[65] The Commission used the term project area in the sections of the interim rule requiring the provision of information concerning fish and wildlife resources, recreation and land use resources, and cultural resources. The Commission believes that project area is properly used to denote the area within a project boundary and it has retained that term in the final rule.[66]

g. *Reports on archaeological resources and use by Native Americans.* Several commenters object to the requirements of the interim rule that all existing reports documenting archaeological resources identified in the project area and historical and present use of the project and surrounding areas by Native Americans, as well as all public correspondence relating to cultural resources within the project area, be made available to the public.[67] The National Congress of American Indians and the Native American Rights Fund argue that compliance with the provisions of the interim rule would violate the privacy rights of Native Americans with regard to sacred sites and ceremonies and would increase the vulnerability of Indian burial sites to looting. The Edison Electric Institute suggests that disclosure of certain information would violate the spirit of the American Indian Religious Freedom Act of 1978.[68] Other commenters cite the Archaeological Resources Protection Act of 1979[69] and the National Historic Preservation Act of 1966,[70] which protect from disclosure information concerning the nature and location of certain archaeological and historic resources.

The Commission recognizes the desirability of protecting historic and Native American sites from undue damage. The Commission is modifying the provision of the interim rule to require that a licensee make available specified cultural resources information from which the licensee has deleted specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located.[71]

3. *Manner in which information is to be made available.*—a. *Copying charges.* The interim rule provided that an existing licensee must make requested copies of the required information available at reasonable costs of reproduction, not to exceed ten cents per page of photocopy, microform, or computer printout.[72] Several licensees commented generally that a charge of ten cents per page is unreasonable. Other commenters state that certain documents require to be made available for reproduction are of large or irregular size and require special duplicating techniques that may cost more than ten cents per page. They suggest that the Commission provide that a requester be charged the actual cost of duplication or "reasonable costs" of reproduction.[73]

The Commission agrees that a uniform fee of ten cents per page may not be reasonable in all circumstances and that a more equitable approach is to require a requester to reimburse a licensee for the actual costs of duplication. In this final rule, the Commission is requiring that a licensee charge a requester reasonable costs of duplication for reproducing documents that it is required to make available.[74]

b. *Location at which information must be made available.* The interim rule provides that required information must be made available at a licensee's principal place of business during regular business hours.[75] Some licensees suggest that the Commission allow a licensee the option of providing some or all of the information at other locations. Alternate locations suggested by commenters include the project site, other offices of the licensee, a public building such as a school or library, or some other facility near the project.[76] The Commission believes that making required information available at more than one site may be advantageous to both the licensee and the public. The Commission also believes that to permit a licensee to make portions of the required information available at several potentially widely scattered locations would place an undue burden on those seeking to review that information. The Commission concludes that there must be one location at which all the required information is available, although that location need not be the licensee's principal place of business. The final rule offers the alternative of making all the required information available at any other location or locations which may be more accessible to the public.[77]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[78] requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the FRA, the Commission hereby certifies that the final rule regarding notification and information to be provided by a licensee, if promulgated, would not have a significant economic impact on a substantial number of small entities. or that, even if the rule were to have a significant economic impact on a substantial number of small entities, it would be to their benefit. The Commission believes that the entities affected by the rule do not fall within the class of "small entity." Even if the rule were to have a significant effect on a substantial number of small entities, however, the relicensing requirements in this final rule are necessary for the Commission to grant a new or nonpower license to an applicant at the expiration

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[47] Interim rule, § 16.16(b)(1)(i).

[48] Comments of Alabama Power at 3–4 and EEI at 14–15.

[49] Final rule, § 16.16(d)(1)(i).

[50] Interim rule, § 16.16(b)(1)(ii).

[51] Comments of Alabama Power at 4, EEI at 15, and Georgia Power at 3.

[52] Final rule, § 16.16(d)(1)(ii).

[53] Interim rule, § 16.16 (b)(1)(iv) and (b)(2)(iii); Final rule, § 16.16 (d)(1)(iv) and (d)(2)(iii).

[54] Comments of Long Lake at 7–8.

[55] 16 U.S.C. 803 and 808 (1982 and Supp. 1987).

[56] Interim rule, § 16.16(b)(4)(i).

[57] Comments of EEI at 21–22.

[58] 16 U.S.C. 797(e) (Supp. 1987).

[59] Interim rule, § 16.16(b)(1)(iii).

[60] Comments of Alabama Power at 4, EEI at 15–16, and Southern California Edison at 2.

[61] Final rule, § 16.16(d)(1)(iii).

[62] Interim rule, § 16.16(b)(5)(i).

[63] Comments of EEI at 16–17 and Southern California Edison at 2.

[64] Final rule, § 16.16(d)(4)(i).

[65] Comments of Alabama Power at 4 and EEI at 16–17.

[66] Final rule, § 16.16(d) (3)–(4) and (5).

[67] Interim rule § 16.16(b)(6).

[68] 42 U.S.C. 1996 (1982). This section states that it is the policy of the United States to preserve rights of Native Americans to the exercise of their traditional religions, including the right of access to religious sites. It has been interpreted to require Federal agencies to consider Indian religious values, to obtain and consider Indian views, and to avoid unnecessary interference with Indian religious practices. *Wilson v. Block*, 708 F.2d 735 (D.C. Cir. 1983, *cert. denied* 464 U.S. 1056 (1984).

[69] 16 U.S.C. 470hh (1982).

[70] 16 U.S.C. 470w–3 (1982).

[71] Final rule, § 16.16(d)(5).

[72] Interim rule, § 16.16(c)(3).

[73] Comments of California Public Agencies at 3–4, EEI at 24–25, Georgia Power at 5, and Southern California Edison at 7.

[74] Final rule, § 16.16(e)(2). The Commission has exempted fish and wildlife agencies from payment of the costs of reproduction of required information. Final rule § 16.16(e) (3).

[75] Interim rule, § 16.16(c)(2).

[76] Comments of Alabama Power at 5 and EEI at 23.

[77] Final rule, § 16.16(e)(1)(i).

[78] 5 U.S.C. 601–612 (1982).

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of an existing license term. An applicant may benefit substantially by obtaining a license.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[79] and the Office of Management and Budget's (OMB) regulations[80] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this final rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, Office of Management Systems and Analysis (202) 357–5800). Comments on the information collection provisions of this final rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have an effect on the human environment.[81] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[82] No environmental consideration is necessary for a proposal for the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.[83] The final rule is procedural in nature. It defines requirements for a licensee to provide notice of its intent to file or not to file an application for a new license and to make available to the public information concerning a project. Moreover, the final rule does not substantially change the effect of legislation and regulations being amended. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VII. Effective Date

This rule is effective June 3, 1988.

[79] 44 U.S.C. 3501–3520 (1982).
[80] 5 CFR 1320.13 (1988).
[81] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), to be codified at 18 CFR Part 380.
[82] *Id.*, to be codified at § 380.4.
[83] *Id.*, to be codified at § 380.4(a)(2)(ii).

List of Subjects in 18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission amends Part 16 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.
Lois D. Cashell,
Acting Secretary.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

1. The authority citation for Part 16 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 16.15 is revised to read as follows:

§ 16.15 Notification procedures under section 15 of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to notify.* In order to notify the Commission under section 15 of the Federal Power Act whether a licensee intends to file or not to file an application for new license, the licensee must file with the Commission an original and fourteen copies of a letter, that contains the following information:

(1) The licensee's name and address.
(2) The project number.
(3) The license expiration date.
(4) An unequivocal statement of the licensee's intention to file or not to file an application for a new license.
(5) The type of principal project works licensed, such as dam and reservoir, powerhouse, or transmission lines.
(6) Whether the application is for a power or nonpower license.
(7) The location of the project by state, county and stream, and, when appropriate, by city or nearby city.
(8) The installed plant capacity.
(9) The location or locations of all the sites where the information required under § 16.16 is available to the public.
(10) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used by the project is located;

(ii) Every city, town, Indian tribe, or similar local political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam,

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is used by the project; and

(iv) Every other political subdivision in the general area of the project that there is reason to believe would be likely to be interested in, or affected by, the notification.

(c) *When to notify.* (1) Except as provided in paragraph (c)(2) of this section, if a license expires on or after October 17, 1992, the licensee must notify the Commission as required in paragraph (b) of this section at least five years, but no more than five and one-half years, before the existing license expires.

(2) The requirement in paragraph (c)(1) of this section does not apply if a licensee filed notice more than five and one-half years before its existing license expired and before the effective date of this rule.

(d) *Commission notice.* Upon receipt of the notification required under paragraph (b) of this section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) Publishing notice in the **Federal Register;**

(2) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(3) Notifying appropriate Federal and state resource agencies and Indian tribes by mail.

3. Section 16.16 is revised to read as follows:

§ 16.16 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to make information available.* A licensee must make the information specified in paragraph (d) of this section reasonably available to the public for inspection and reproduction, from the date on which the licensee notifies the Commission pursuant to § 16.15(b) of this part until the date any relicensing proceeding for the project is terminated.

(c) *Requirement to supplement information.* A licensee must supplement the information it is required to make available under the provisions of paragraph (d) with any additional information developed after the filing of a notice of intent.

(d) *Information to be made available.* A licensee must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(1) The following construction and operation information:

(i) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(A) Approved Exhibit drawings, including as-built exhibits,

(B) Any order issuing amendments or approving exhibits, and

(C) Any order issuing annual licenses for the existing project;

(ii) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(iii) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(iv) Any public correspondence relating to the existing project;

(v) Any report on the total actual annual generation and annual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(vi) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(vii) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

(viii) Any bill issued to the existing licensee for annual charges under section 10(e) of the Federal Power Act.

(2) The following safety and structural adequacy information:

(i) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(ii) Any independent consultant's reports required by Part 12 of the Commission's regulations and filed on or after January 1, 1981;

(iii) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(iv) Any construction report for the existing project; and

(v) Any public correspondence relating to the safety and structural adequacy of the existing project.

(3) The following fish and wildlife resources information:

(i) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(ii) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(iii) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(iv) Any public correspondence relating to the fish and wildlife resources within the project area.

(4) The following recreation and land use resources information:

(i) Any report on past and current recreational uses of the project area;

(ii) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area, Land and Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area;

(iii) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

(iv) Any public correspondence relating to recreation and land use resources within the project area.

(5) The following cultural resources information:

(i) Except as provided in paragraph (d)(5)(ii) of this section, a licensee must make available:

(A) Any report concerning documented archaeological resources identified in the project area;

(B) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(C) Any public correspondence relating to cultural resources within the project area.

(ii) A licensee must delete from any information made available under paragraph (d)(5)(i) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act, related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(i) Any plan of the licensee;
(ii) Any public correspondence; and
(iii) Any other pertinent information relating to a conservation plan.

(e) *Form, place, and hours of availability, and cost of reproduction.* (1) A licensee must make the information specified in paragraph (d) of this section available to the public for inspection:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, provided that all of the information is available in at least one location;

(ii) During regular business hours; and

(iii) In a form that is readily accessible, reviewable, and reproducible.

(2) Except as provided in paragraph (d)(3) of this section, a licensee must make requested copies of the information specified in paragraph (c) of this section available either:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(ii) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(3) A licensee must make requested copies of the information specified in paragraph (d) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources without charge for the costs of reproduction or postage.

(f) *Unavailability of required information.* Anyone may file a petition with the Commission requesting access to the information specified in paragraph (d) of this section if it believes that a licensee is not making the information reasonably available for public inspection or reproduction. The

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petition must describe in detail the basis for the petitioner's belief.

(g) *Public correspondence.* A licensee may compile and make available in one file all the public correspondence required to be made available for inspection and reproduction by § 16.16(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(iv), and (d)(6)(ii).

[FR Doc. 88-9847 Filed 5-3-88; 8:45 am]
BILLING CODE 4717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. 78N-0434]

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Esmopal

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is amending the animal drug regulations by removing the regulation that reflects approval of the new animal drug application (NADA) for Esmopal. Esmopal is a new animal drug approved for injection into roasting chickens to produce more uniform fat distribution and to improve finish. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA is being withdrawn.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 1988 (53 FR 4214), CVM published an amended notice of opportunity for hearing on a proposal to withdraw approval of NADA 13-187, submitted by Mattox & Moore, Inc. (Mattox & Moore), for Esmopal (21 CFR 522.844).

CVM based the proposed action on section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) on the grounds that (1) Esmopal is not shown to be safe for use because (a) new evidence provides a reasonable basis from which serious questions about the ultimate safety of Esmopal and the residues that may result from its use may be inferred, and (b) new evidence shows that Esmopal is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (2) section 512(d)(1)(H) of the act applies to the drug because (a) new evidence shows that estradiol has been shown to induce cancer in animals, (b) it is impossible to determine whether the total residue of Esmopal is below the level of no carcinogenic concern, (c) there is no method approved by FDA by regulation that can measure the total residue of Esmopal at a concentration low enough to be of no carcinogenic concern, and (d) the residue concentration under conditions of use reasonably certain to be followed in practice cannot be shown to be at or below the concentration of no carcinogenic concern.

Mattox & Moore did not file a written appearance requesting a hearing and therefore waived the opportunity for a hearing.

In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Mattox & Moore's NADA 13-187. Upon withdrawal of approval of a new animal drug application, the agency is required by section 512(i) of the act to remove the regulation that reflects the approval.

This final rule removes 21 CFR 522.844, which reflects approval of NADA 13-187, effective May 16, 1988.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C.) 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.844 [Removed]

2. Section 522.844 *Estradiol monopalmitate* is removed.

Dated: April 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-9869 Filed 5-3-88; 8:45 am]
BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 6H5481/R955; FRL-3374-6]

Pesticide Tolerances for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit combined residues of the fungicide triflumizole and its metabolites in or on certain feed items. Uniroyal Chemical Co., Inc., requested this rule to establish temporary maximum permissible levels for combined residues of triflumizole to permit marketing of certain feed commodities in connection with an experimental use of the fungicide on apples and grapes.

EFFECTIVE DATE: April 25, 1988.

ADDRESS: Written objections, identified by the document control number, [FAP 6H5481/R955], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 6, 1988 (53 FR 11314), in which it was announced that Uniroyal Chemical Co., Inc., had submitted a feed additive petition (FAP 6H5481) proposing the establishment of a feed additive regulation for the combined residues of the fungicide triflumizole (1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on apples, dried at 3.0 parts per million (ppm), apple pomace, wet at 1.0 ppm, apple pomace, dry at 3.0 ppm, grape juice at 1.0 ppm, grape pomace, wet at 4.0 ppm, grape pomace, dry at 1.0 ppm, raisins at 1.0 ppm, and raisin waste at 2.0 ppm. The petitioner had subsequently amended its petition to establish tolerances for the fungicide in or on the following commodities as follows: apple pomace at 2.0 ppm, grape pomace at 25.0 ppm, and raisin waste at

8.0 ppm. A feed additive regulation was proposed to permit the processing of apples and grapes which have been treated in connection with proposed EPA Experimental Use Permit No. 400-EUP-AU.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. By adding new § 561.444, to read as follows:

§ 561.444 Triflumizole.

A feed additive regulation is established to permit residues of the fungicide triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on the following processed feeds when present therein as a result of application to grapes and apples in connection with an experimental use program, as follows:

Feeds	Parts per million
Apple pomace	2.0
Grape pomace	25.0
Raisin waste	8.0

[FR Doc. 88-9751 Filed 5-3-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 220, and 221

[Docket No. R-88-1338; FR-2446]

Multifamily Housing Mortgage Insurance—Regulation of Rents

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 425 of the of the Housing and Community Development Act of 1987. Section 425 requires HUD to regulate charges for accommodations (rents), facilities, and services for certain multifamily projects with HUD-insured project mortgages. Regulation must occur where (1) the mortgagor did not take steps, by December 1, 1987, to amend its regualtory agreement to incorporate rules changes published on April 19, 1983 and June 4, 1986, permitting mortgagors to set rental and other charges for their projects or to use alternative formulae for setting maximum project rents; and (2) the project was receiving Section 8 assistance (other than Housing Certificates) as of December 1, 1987, or not less than one-half of the project units are occupied by lower income families. HUD must control the rental and other charges for projects subject to section 425 as they were controlled immediately before the effective date of the April 19, 1983 rule—June 4, 1983. The effect of this rule will be to reinstitute controls on rents and charges for projects subject to section 425.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rule implements section 425 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act). This provision requires HUD to regulate charges for accommodations (rents), facilities, and services for certain multifamily projects with HUD-insured mortgages. Regulation must occur where (1) the mortgagor did not take steps, by December 1, 1987, to amend its regulatory agreement to incorporate regulatory changes published on April 19, 1983 and June 4, 1986, permitting mortgagors to determine the rental and other charges for their projects or to use alternative formulae for setting maximum project rents; and (2)(A) the project was receiving Section 8 assistance (other than Housing Certificates) as of December 1, 1987, or (B) not less than half of the project units are occupied by lower income families.

1. The April 19, 1983 Rulemaking

On April 19, 1983, the Department published a rule changing the requirements for HUD control of rents and other charges for projects with mortgages insured under sections 207, 220, and 221 of the National Housing Act (NHA). (See 48 FR 16670, effective June 1, 1983.) Under section 207 of the NHA (before its later amendment by the Housing and Urban-Rural Recovery Act of 1983), HUD was required to regulate rents and other charges. Under sections 220 and 221 of the NHA, regulation of rents and other charges was discretionary with HUD, but the Department had elected to control charges for these programs as well. 24 CFR 207.19(e), 220.511, and 221.530 all required HUD's advance written approval for the establishment of any rental or other project charge. With respect to rental charges, HUD controlled these projects by a strict formula based on historical costs and a rate of return that was a fixed

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percentage of the project's initial replacement cost.

The April 19 final rule made two principal changes in this regulatory scheme. First, the Department used its deiscretion under sections 220 and 221 of the NHA to deregulate rents and other charges in unassisted projects: mortgagors could set their project rents and other charges in accordance with the rental market in the area. Regulation of rents continued only for units receiving certain types of Section 8 assistance, projects receiving Section 8 Loan Management Assistance, and projects insured under section 221(d)(3) of the NHA. The regulation of certain charges for facilities and services continued for each of these units and projects, as well as for section 221(d)(4) elderly or handicapped projects.

Second, the Department implemented an alterantive rental formula for 24 CFR Part 207. The first part of the formula instituted a forward-budgeted (12-month) system of setting rents. This replaced the historical costs approach used under the old rule. The second part of the formula—the "deregulatory component—permitted mortgagors to obtain a realistic return on their investment in the project, based on the overall appreciation in the property's value. Under the second component, mortgagors could choose to determine rentals based on the lesser of (1) a current fair market value approach or (2) rents for comparable units in the area. HUD would approve rental adjustments determined under either the forward-budgeting or the "deregulatory" element of the formula, at the mortgagor's option.

The forward-budgeted element of the formula was also made applicable to projects that were insured under section 207, 220, or 221 of the NHA and that had Section 8 Loan Management Contracts under 24 CFR Part 886, Subpart A, and to assisted projects under sections 221(d)(3) and 236 of the NHA.

2. The June 4, 1986 Rule Making

On June 4, 1986, the Department published a second rule dealing with rents and other charges under sections 207, 220, and 221 of the NHA. (See 51 FR 20264, effective July 21, 1986.) The rule was primarily designed to implement section 431 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act). Section 431 gave HUD discretion to deregulate rents and other charges for mortgages insured under section 207 of the NHA on or after November 30, 1983. The June 4 rule generally ended HUD's regulation of rents for section 207 projects with mortgages insured on or after that date. HUD regulation of these projects continued for rents and other charges for units occupied by Section 8 tenants and for subsidized projects' refinanced pursuant to section 223(f) of the NHA.

Regulation also continued for project rents where the mortgagor opts for regulation in order to maintain the project's tax-exempt status or where the effect of HUD deregulation would be the imposition of State or local rent controls that State or local law previously held inapplicable because of HUD's rent regulation. In both of these situations, the maximum permissible rental charges are determined by the alternative section 207 formula established by the April 19, 1983 rule.

The rule gave mortgagors of projects that were insured under section 207, 220, or 221 of the NHA and that contained Section 8 Loan Management Assistance the option of having rent charges determined under the alternative section 207 formula, discussed earlier. It also added provisions (analogous to the section 207 provisions) for HUD rent regulation to maintain a project's tax-exempt status or to avoid applicability of State or local rent controls.

Section 425 of the 1987 Act

Section 425 applies where a mortgagor has not, as of December 1, 1987, executed (and filed a written request with HUD to enter into) an amendment to the project's regulatory agreement pursuant to the April 19, 1983 and June 4, 1986 rules, electing to deregulate rents or to use an alternative formula for determining the maximum allowable rents under those rules.

1. Section 207 of the NHA

In the case of section 207 of the NHA, section 425 of the 1987 Act covers the following situations:

a. The Alternative Rent Formula Under the April 19, 1983 Rule

Since only projects that were insured pursuant to a firm commitment issued before the effective date of the rule (June 1, 1983) would need a change in the regulatory agreement to use the alternative formula, section 425 applies only to these projects.

b. The Alternative Rent Formula for Projects With Section 8 Loan Management Units Established By the June 4, 1986 Rule

Since section 431 of the 1983 Act and the June 4 rule deregulated rents for mortgages insured on or after November 30, 1983 (including the rents for unassisted units in a project receiving Loan Management assistance), only mortgages insured before that date would need a regulatory agreement to use the alternative rent formulation. Thus, section 425 of the 1987 Act would only apply to projects with Section 8 Loan Management units where the project mortgage was insured before November 30, 1983.

2. Sections 220 and 221 of the NHA

Section 425 of the 1987 Act covers the following situations involving property with mortgages insured under section 220 or 221 of the NHA:

a. Deregulation of Rents and Other Charges Under the April 19, 1983 Rule

Since only projects that are insured pursuant to a firm commitment to insure issued before the effective date of the April 19 rule would require a change in the regulatory agreement to obtain deregulation, section 425 only covers those mortgages.

b. The Alternative Rent Formula For Projects With Section 8 Loan Management Units Estabished By the June 4, 1986 Rule

Again, section 425 of the 1987 Act applies only to mortgages insured pursuant to a firm commitment to insure issued before the effective date of the rule—July 21, 1986.

3. Summary of Coverage

Based on the foregoing, section 425 applies to the following situations:

a. Mortgages that are insured under section 207 of the NHA pursuant to a firm commitment to insure issued before June 1, 1983, where the mortgagor could have elected to use the alternative rent formula established by the April 19, 1983 rule.

b. Mortgages that are insured under section 220 or 221 of the NHA pursuant to a firm commitment to insure issued before June 1, 1983, where the mortgagor could have elected to deregulate charges for rents, facilities, or services under the April 19, 1983 rule.

c. Mortgages (1) that were insured (i) under section 207 of the NHA before November 30, 1983 or (ii) under section 220 or 221 of the NHA pursuant to a firm commitment to insure issued before July 21, 1986, and (2) that contained units receiving Section 8 Loan Management assistance, where the mortgagor could have elected to use the alternative rent formula established under the June 4, 1986 rule.

4. Changes That the 1983 and 1986 Rules Made to the Determination of Rents and Other Charges That Are Not Subject to Section 425

The 1983 and 1986 rules made the following changes in the way rents and other charges are determined that are not subject to section 425:

a. *Forward-budgeted rent formula for Loan Management projects.* The April 19, 1983 rule established a forward-budgeted method for determining rent adjustments for projects with Section 8 Loan Management assistance under sections 207, 220, 221, and 236 of the NHA. Although this change liberalized the way rents were computed, it did not amount to a deregulation, and therefore, does not fall within section 425's coverage.

b. *Continued HUD rent regulation where necessary to maintain tax-exemption or to avoid rent control.* The June 4, 1986 rule established provisions for continued HUD control of rents to maintain the tax-exempt status of the project or to avoid State or local rent control laws by means of the alternative section 207 formula. Although these provisions use an alternative method for making rent determinations, they involve the continued regulation of projects that would not otherwise have been regulated. Section 425 runs the other way—it is concerned with imposing regulation on those projects that were formerly regulated and qualified for some measure of deregulation. Thus, section 425 does not apply to these provisions.

5. Coverage of Section 425

One point should be noted about the coverage of section 425(l). This criterion applies if:

> . The project owner and the Secretary have not executed, *and* the project owner has not filed a written request with the Secretary to enter into an amendment to the regulatory agreement . . . (emphasis supplied)

The Department does not believe that the underscored "and" should be interpreted as requiring that project owners must meet *both* of the statutory elements—execution of an amendment *and* request for an amendment—to determine whether they fall within section 425's coverage. Such a reading seems inappropriate in the context of section 425(l) and makes little sense in the context of how changes in regulatory agreements are made.

It is true that in a simple declaratory sentence, use of the word "and" connecting two criteria should ordinarily be read conjunctively: *both* criteria must be met. Section 425(l), however, is framed as an "if * * * then" sentence: *if* project owners have not executed a change in their regulatory agreements, *and if* they have not filed a written request to HUD for a change, *then* HUD will control their project rents and other charges. The Department believes that this sentence structure is best interpreted as providing a *series* of criteria, *either* of which may be met for purposes of determining section 425's applicability. Under this reading, the "and" should not be viewed as a true conjunctive, but rather as a connector of two independent concepts: If the owner fails to execute an amendment to the regulatory agreement, then the inquiry moves to whether the owner asked HUD for the amendment. If the owner has done *neither*, then controls will be imposed under section 425.

This conclusion is supported by the fact that requiring the presence of *both* elements moots *one* of them. A request to HUD is the first step toward executing a change in the regulatory agreement: Viewed from the other end of the process, if a change has been executed in the agreement, then the owner must have made a request for the change to HUD. If the owner must *both* ask for a regulatory amendment *and* execute one, the request criterion is rendered meaningless, since the request is an included element in the more rigorous criterion of amendment execution. The Department does not believe that Congress intended such an unlikely result.

Therefore, the Department will determine section 425(l)'s applicability, based on whether a project owner (as of the requisite date) either has filed a written request with HUD to amend its regulatory agreement *or* has in fact executed such a change.

Other Criteria under Section 425

In addition to meeting the project mortgage criteria described above, projects subject to section 425 must meet the following conditions:

a. As of December 1, 1987, the project was receiving housing assistance payments under a Section 8 contract (other than under the Certificate Program), or

b. Not less than half of the project's units are occupied by lower income families (defined at 24 CFR 813.102).

With respect to the first element, projects covered are those with Section 8 contracts under 24 CFR Parts 880 (New Construction), 881 (Substantial Rehabilitation), 882, Subparts D and E (Moderate Rehabilitation), 883 (State Agency—New Construction and Substantial Rehabilitation), and 886, Subparts A and C (Loan Management and Property Disposition). Although not specifically excluded by section 425, the Department has opted to exclude the Housing Voucher program under section 8(o) of the U.S. Housing Act of 1937 from the coverage of the statute. The Department believes that failure to mention the Voucher Program was an oversight and that the program should be excluded along with its non-project-based cousin—the Certificate Program—that was explicitly excluded from section 425.

With respect to the second element, the Department will determine the lower income family occupancy rate of a project, on the basis of tenant income data submitted to HUD by the project owner as part of its submission to amend the regulatory agreement to use an alternative formula to determine project rents or to decontrol project rents. The Department believes that this approach, coupled with the notice of section 425's requirements that HUD will send to project owners and HUD's annual review of project operations, including a comparison of project income and gross potential rent, will ensure that project owners subject to section 425 meet the provision's requirements.

Regulation under Section 425

Section 425 requires HUD to control the rents and other charges on covered projects as they were controlled before April 19, 1983. The Department does not believe that the term "control" should be interpreted as requiring HUD to resurrect and implement every aspect of the rules for establishing project rents and other charges that existed before June 1, 1983—the effective date of the April 19 rule. As noted earlier, these rules determined project rents on the basis of historical project costs and a static rate of return. This approach imposed severe financial hardships on many projects, and prompted the Department to reform the rules for setting rents and other charges, begininng with the April 19 rule. The Department does not believe that in enacting section 425, Congress wished to jeopardize the financial stability of covered projects by requiring simple adoption of all pre-1983 rules for projects covered by section 425.

The Department believes, instead, that the term "control" must be construed in the context of section 425's propose. As noted earlier, Section 425 is designed to prevent project owners that failed to take steps to formalize the option of decontrolling their rents and other changes or determining their project rents by alternative means (as permitted by the 1983 and 1986 rules) from doing so after December 1, 1987. We believe that section 425's injunction that HUD "control" rents and other project charges as they were "controlled" before June 1983 means that owners subject to section 425 may

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not now obtain HUD approval of these deregulatory options. It does not mean, however, that other changes in the 1983 and 1986 rules were not deregulatory in nature are unavailable to project owners covered by section 425.

One such provision is the forward-based budgeting system for unassisted section 207 projects (contained as an element of Part 207's alternative rent formula) and for assisted projects under sections 207, 220, 221(d)(3) and 236 of the NHA. As noted above, this system changed the way in which rents were determined for covered projects, by replacing the historical method of costs setting rents. This change in method, however, did not alter the fact that HUD continued to control the project rents, and thus, does not fall within section 425's ambit.

Therefore, the Department will permit project owners that are subject to section 425 to determine rental charges for their projects on the basis of the forward-based system originally established in the April 19, 1983 rule. This will help ensure the financial feasibility of the projects involved, and will ensure that all projects that have this feature—both subsidized and unsubsidized—are treated alike.

Consistent with these principles, the Department will "control" rents and other charges on covered projects, as follows. The establishment of rents and other charges for projects that are insured under section 207, 220, or 221 of the NHA and that section 425 subjects to the imposition of pre-June 1983 regulation may not exceed those that HUD approves in advance and in writing.

In approving these charges and later rent adjustments, HUD will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rentals to tenants. HUD will permit project owners to use the forward-based budgeting concept contained in § 207.19(e)(2)(ii)(A) to establish rentals. This provision provides that rental adjustments may not exceed:

(1) the sum of the most recent year's audited operating costs or, as appropriate, updated certified operating costs (taking into consideration reasonably anticipated increases in operating costs that will occur with 12 months of the anticipated effective date or the rent increase), and (2) the amount derived by applying the project's debt service factor to its original cost.

It should be noted that the forward-based budgeting option was installed as part of the alternative section 207 rent formula established by the April 19, 1983 rule. However, it was never included for unassisted Part 220 or 221 peojects. These authorities went directly from full-scale regulation to deregulation, without an interim step (such as for Part 207 and assisted projects) for forward-based budgeting. The Department will, however, make the forward-based budgeting provision available to unassisted Part 220 or 221 mortgagors who are subject to section 425's control.

Refunds of Excess Charges

The rule requires that any project owner that is subject to section 425 and that decontrolled its project's rents and other charges, or determined project rentals on the basis of an alternative rent formula, without executing an appropriate amendment to its regulatory agreement, must refund the difference (if any) between (1) the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and (2) the charges that project tenants would have paid for such items for the same period under the pre-June 1983 rules. The Department believes that provision for refunds is mandated by section 425's requirement that HUD control the charges for covered projects "after December 1, 1987."

Notice and Comment Rule Making

The Department believes that subjecting this rule making to notice and public comment before making it effective is unnecessary and contrary to the public interest. Implementation of section 425 of the 1987 Act does not involve a significant exercise of HUD discretion. The rule involves a limited class of multifamily projects that are readily identifiable on the face of section 425. It also specifies the precise rules for regulating rentals and other charges for covered projects—rules that were uniformly used for multifamily projects with mortgages insured under sections 207, 220, and 221 of the National Housing Act in prior years. In these circumstances, the public would have little upon which to comment, and any delay that notice and comment rule making would entail would unnecessarily prevent the Department from putting section 425's policies into place at the earliest possible time.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, production, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule deals with a relatively small number of mortgagors that meet section 425's requirements, some of whom will be small entities. It is not expected to affect a substantial number of small entities.

This rule was listed as sequence number 941 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13876) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.149.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single Family Housing, Projects, Cooperatives.

Accordingly, 24 CFR Parts 207, 220, and 221 are revised to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

2. In § 207.19, paragraph (e)(1) is revised and a new paragraph (e)(9) is added, to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(e)(1) *Rents and Charges—Applicability.* Paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to mortgages insured before November 30, 1983. Paragraphs (e)(3) and (e)(4) also apply to projects described in paragraphs (e)(5) (iii) and (iv) of this section. Paragraphs (e)(5) and (e)(6) of this section apply to mortgages insured on or after November 30, 1983. Paragraphs (e)(7) and (e)(8) of this section apply to mortgages insured both before and on or after November 30, 1983. Paragraph (e)(9) of this section applies to certain mortgages for which the Commissioner will regulate the charges for accommodations (rents), facilities, and services because of the mortgagor's failure, as of December 1, 1987, to request the Commissioner's aproval to use the alternative formulae in paragraphs (e)(2)(ii) and (iii) of this section for setting project rentals.

* * * * *

(9) *Regulation of charges for certain projects.* (i) The Commissioner will regulate, as provided in paragraph (e)(9)(ii) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(A) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine the maximum project rents on the basis of the following formulae:

(*1*) The alternative formula contained in paragraph (e)(2)(ii) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*2*) The alternative formula contained in paragraph (e)(2)(iii) of this section for mortgages insured before November 30, 1983, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations).

(B)(*1*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title; or

(*2*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based on tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to use the alternative formulae for determining project rentals under paragraph (e)(2) (ii) or (iii) of this section.

(ii) For projects that meet the criteria in paragraph (e)(9)(i) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approves in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner they were approved immediately before June 1, 1983, except that mortgagors may use the forward-based budgeting provision in paragraph (e)(2)(ii)(A) of this section for purposes of determining project rentals.

(iii) Any mortgagor that is subject to this paragraph (e)(9) and that determined project rentals on the basis of the alternative formulae contained in paragraph (e)(2) (ii) or (iii) of this section must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (e)(9)(ii) of this section.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENTS AREAS

3. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 220.511, paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 220.511 Supervision of mortgagors.

* * * * *

(b) Except as otherwise provided in paragraphs (c), (d), and (e) of this section, the mortgagor shall determine the charges for accommodations (rents), facilities, and services offered by the project.

* * * * *

(d) (1) The Commissioner will regulate, as provided in paragraph (d)(2) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(i) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(A) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (b) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(B) The maximum project rents on the basis of the alternative formula contained in paragraph (c)(3) of this section for mortgages insured before July 21, 1986, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(ii) (A) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments

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Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(B) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (b) of the section or to use the alternative formula for determining project rentals under paragraph (c)(3) of this section.

(2) For projects that meet the criteria in paragraph (d)(1) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approve in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approved these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19(e)(ii)(A) for purposes of determining project rentals.

(3) Any mortgagor that is subject to this paragraph (d), that determined—

(i) The charges for accommodations (rents), facilities, and services offered by the project without the Commissioner's regulation (as provided by paragraph (b) of this section), or

(ii) Project rentals on the basis of the alternative formula contained in paragraph (c)(3) of this section, must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (d)(2) of this section.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 221.530, paragraph (a)(3)(vii) is redesignated as paragraph (a)(3)(viii) and a new paragraph (a)(3)(vii) is added, to read as follows:

§ 221.530 Supervision applicable to all mortgagors.

* * * * *

(a) * * *

(3) * * *

(vii)(A) The Commissioner will regulate, as provided in paragraph (a)(3)(vii)(B) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(*1*) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(*i*) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (a)(3) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*ii*) The maximum project rents on the basis of the alternative formula contained in paragraph (a)(3)(iv) of this section for mortgages insured before July 21, 1966, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(*2*)(*i*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(*ii*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (c)(3) of this section or to use the alternative formula for determining project rentals under paragraph (c)(3)(iv) of this section.

(B) For projects that meet the criteria in paragraph (a)(3)(vii)(A) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approved in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19 (e)(ii)(A) of this chapter for purposes of determining project rentals.

(C) Any mortgagor that is subject to this paragraph (d), and that determined

(*1*) the charges for accommodations (rents), facilities, or services offered by the project without the Commissioner's regulation (as provided by paragraph (c)(3) of the section, or

(*2*) project rentals on the basis of the alternative formula contained in paragraph (c)(3)(iv) of this section, must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (a)(3)(vii)(B) of this section.

* * * * *

Dated: April 6, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9796 Filed 5-3-88; 8:45 am]

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24 CFR Parts 215 and 885

[Docket No. R-88-1376; FR-2452]

Rent Supplements; Federal Tenant Selection Preferences

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the part of section 168 of the Housing and Community Development Act of 1987 that repealed the requirement in the Rent Supplement program that HUD issue, at a project owner's request, a certification as to whether an applicant for Rent Supplement assistance qualifies for a Federal tenant selection preference. This change makes the Rent Supplement program consistent with HUD's Public and Indian Housing and Section 8 assistance programs, in which determinations regarding an applicant's qualification for Federal preference are made by the PHA or the project owner, not by HUD. This rule also amends 24 CFR Part 885 to clarify that Federal preferences are applicable to section 202/8 projects. Finally, this rule corrects an error in 24 CFR 215.22(c)(6).

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 Telephone number (202) 426-3944. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This rule implements the part of section 168 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) that repealed the requirement in the Rent Supplement program that HUD issue a certificate, at the project owner's request, as to whether an applicant for assistance qualifies for a Federal tenant selection preference, by reason of the applicant's being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. This change makes the Rent Supplement program consistent with HUD's Public and Indian Housing and Section 8 housing assistance programs, in which the PHA or project owner (not HUD) makes the determination whether an applicant for assistance qualifies for a Federal selection preference.

The other part of section 168 repealed the requirement that HUD issue a certificate as to an individual's or family's income for purposes of the Rent Supplement program. This income provision was never implemented in the Rent Supplement regulations, and, therefore, no rule change is needed to effect its repeal.

On January 15, 1988 (53 FR 1122), the Department published a final rule implementing the three Federal tenant selection preferences described above for a number of programs, including the Rent Supplement program. Section 215.22(m) of that rule implemented the part of section 168 of the 1987 Act that dealt with the Federal tenant selection preferences in the Rent Supplement program. This rule removes paragraph (m) of § 215.22.

The January 15, 1988 final rule omitted making the Federal preferences applicable to projects covered by 24 CFR Part 885, relating to projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937.

The Department advised in a proposed rule published on December 9, 1987 (52 FR 46614) that it would "incorporate appropriate preference rule provisions in the final rule adding HAP contract and management provisions to Part 885". *Id.* at 46620. That final rule will be published later, but in the interim, HUD believes that the omission can be timely cured by this rule. (The final rule of January 15, 1988 will be effective no later than July 13, 1988. See 53 FR 1122.) Accordingly, this rule now makes the Federal preferences applicable to projects covered by Part 885, by adding a new § 885.7 cross-referencing to 24 CFR 860.613 "Federal selection preferences". When the final rule to follow the proposed rule of December 9, 1987 becomes effective (thus incorporating the full text of the preference rule provisions into Part 885), § 885.7 will be rendered redundant and will be removed in that rulemaking.

This rule also corrects an error in 24 CFR 215.22(c)(6)—a provision added by the preference rule published on January 15, 1988 (53 FR 1122, at 1143). The word "not" was inadvertently omitted in that rule from the paragraph's opening clause.

Notice and Comment Rulemaking

The Department believes that prior notice and comment is unnecessary to implement this rule. Section 168 of the 1987 Act is a simple repealer, and involves no exercise of discretion on the part of the Department. Similarly, the appropriateness of applying the Federal tenant preference requirements to Section 202/8 tenant selection cannot be questioned, and the content of the tenant preference policy expressed in HUD's January 15, 1988 final rule has already been the subject of public comment.

Findings and Certification

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. As noted in detail in the January 15, 1988 rule's discussion of "Administrative Burdens", the Department has taken great care to minimize the Preference Rule's burdens on all PHAs and project owners (including small entities), and does not believes that administering the preferences will involve significant costs over the long term.

The Catalog of Federal Domestic Assistance program numbers are 14.138, 14.149, and 14.157.

This rule was listed as sequence number 943 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13876) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 215

Grant programs—Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 885

Aged, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing.

Accordingly, 24 CFR Parts 215 and 885 are amended as follows.

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

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sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 215.22 [Amended]

2. Section 215.22 is amended by removing, in paragraph (c)(6), the phrase "An applicant may qualify" and substituting in its place the phrase "An applicant may not qualify", and by removing paragraph (m) and redesignating paragraph (n) as a new paragraph (m).

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

3. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In part 885, a new § 885.7 is added, to read as follows:

§ 885.7 Federal preferences.

The provisions of § 880.613 of this chapter are applicable to projects assisted under this part.

Date: March 24, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9865 Filed 5-3-88; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL-3374-7]

State and Local Assistance; Grants for Construction of Wastewater Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Deviation to rule.

SUMMARY: Under 40 CFR 30.1001 and 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from several provisions of the construction grant regulations. The deviation implements three provisions of the Water Quality Act of 1987 enacted February 4, 1987. EPA issued this class deviation to implement these provisions prior to making the necessary regulatory changes.

DATE: This deviation was effective April 25, 1988. Also, EPA is developing a regulation to implement the provisions covered by this deviation, and, therefore, requests comments on the deviation. Comments should be submitted to the address noted below.

ADDRESS: Please submit comments to: Mr. William H. Kramer, Program Analysis Division (WH-546), 401 M Street SW., Washington, DC 20460, (202) 382-7256.

FOR FURTHER INFORMATION CONTACT: Mr. W. Scott McMoran, Grants Administration Division (PM-216F), 401 M Street SW., Washington, DC 20460, (202) 382-5268.

SUPPLEMENTARY INFORMATION: Under 40 CFR 30.1001 and 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from several provisions of its construction grant regulation (40 CFR Part 35, Subpart I). The deviation implements three provisions of the Water Quality Act (WQA) of 1987 enacted February 4, 1987, which amended Title II of the Clean Water Act (CWA), 33 U.S.C. 1281-1299. The three provisions covered under the class deviation are:

- Section 205(c) of the WQA which amends section 204(b)(1) to the CWA to allow grantees under EPA's wastewater treatment construction grant program to reduce the user charge rates for low income residential users.
- Section 204 of the WQA which adds a new section 203(f) to the CWA to allow EPA to award grants to fund certain design/build projects. Under a design/build project, grantees will award a single contract for the design and building of a treatment works. EPA approval of detailed specifications for the project is not required. To receive a design/build grant a project must have an estimated cost of less than $8,000,000 and be an aerated lagoon, trickling filter, stabilization pond, a sludge or wastewater land application system, slow rate (intermittent) sand filter, or subsurface disposal system. EPA will award only one grant for each design/build project, which must result in an operable facility. EPA will initially award a grant for the cost of supplementing the facilities plan to prepare a pre-bid package and then amend the design/build grant (only one time) after the grantee takes bids for the project. EPA will base the amount of the grant as amended on those bids and will not later increase the grant to provide for additional costs.
- Section 202(d) of the WQA which amends section 202(a)(3) of the CWA to authorize EPA to award grants for 100% of the cost of replacing or modifying failed rotating biological contractors (RBCs). The cost of replacing failed facilities is generally unallowable under EPA's regulation. This deviation permits Regional Administrators to award replacement grants for failed RBCs, as authorized by the Act. The RBC failure must not be the result of any person's negligence, and must have significantly increased the project's capital or operation and maintenance costs. In addition, the State must determine in accordance with its priority system that the project is entitled to funding, and each project must meet other conditions stated in the class deviation.

EPA will revise its construction grant regulation to reflect these provisions. For this reason, we are requesting comments on this class deviation by July 1, 1988.

The class deviation is published following this notice.

Date: April 21, 1988.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

Date: March 22, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

April 25, 1988.

Memorandum

Subject: Class Deviation from 40 CFR 35.2140(a) and (b), 35.2025(a), 35.2202(b), 35.2300, and Part 35, Subpart I, Appendix A, H.2.e.

From: Harvey G. Pippen, Jr., Director Grants Administration Division (PM-216F)

To: Regional Administrators, Regions I-X

The Water Quality Act of 1987 was enacted on February 4, 1987. The 1987 Act includes three technical provisions which we think should be implemented by class deviation prior to the necessary regulatory changes. These provisions—

- Change EPA's user charge requirements to allow grantees to include in their user charge systems lower rates for low income residential users;
- Authorize certain grantees to award single design/build contracts for design and building of specified, uncomplicated waste treatment systems; and
- Authorize EPA to award grants for the modification or replacement of rotating biological contactors (RBCs) that have failed to meet design performance specifications.

To implement the three provisions above, I am approving the following class deviation. Where the term "Regional Administrator" is used it may be read "State agency" where the function is delegated.

User Charge System—40 CFR 35.2140 (a) and (b)

Section 205(c) of the 1987 Act allows wastewater treatment construction grantees to include in their user charge systems lower rates for low income residential users after providing for public notice and hearing. I am approving a deviation from Section 35.2140(a) and (b) to allow grantees' user charge systems to include an optional class of low income residential users with incomes below a pre-established level if approved by the delegated State official or the EPA Regional Administrator.

The EPA definition of low income residential user is any residence with a household income below the Federal poverty level as defined in 45 CFR 1060.2 or any residence designated as low income under State law or regulation. Delegated States or the EPA Regional Administrator, as appropriate, will evaluate grantees' requests to establish their own definition of a low income residential user class.

Any user charge system establishing a lower rate for low income residential users must meet all other existing user charge system requirements including proportionality, public notice, and hearing. Any lower user charge rate for low income residential users must be defined as a uniform percentage of the user charge rate charged other residential users. The amount of any cost reductions afforded the low income residential class must be proportionately absorbed by all other user classes. The total revenues for the proper operation and maintenance (including replacement) of the facilities must not be reduced as a result of establishing a low income residential class. EPA has determined that grantees receiving construction grants after March 1, 1973, may implement this provision after providing for public notice and hearing and receiving the delegated State official's or EPA Regional Administrator's approval.

Design/Build—40 CFR 35.2025(a), 35.2202(b), and 35.2300

Section 204 of the 1987 Act authorizes EPA to award a grant for projects under which the grantee will award a single contract for design and building certain treatment works. I am approving deviations from §§ 35.2025(a), 35.2202(b) and 35.2300 to allow grantees to award such single contracts. States cannot use more than 20 percent of their allotments for such projects. *Also, EPA has determined it cannot award design/build grants from funds appropriated before February 4, 1987.*

Section 35.2025(a) requires that grants include an allowance for planning and design. This deviation allows Regional Administrators to award design/build grants which include an allowance only for facilities planning.

Section 35.2202(b) requires grantees to submit plans and specifications for EPA approval before initiating procurement action for building the project. This deviation waives the requirement for submittal and EPA approval of plans and specifications. (Some States may require State approval before issuing building permits or permitting other actions and this deviation does not change such State requirements.)

Section 35.2300 provides that EPA will pay the Federal share of allowable project costs incurred up to the date of the grantee's most recent payment request. Under this class deviation, to assure contract compliance, EPA will not pay more than 95 percent of the grant amount until after completion of building *and* final project approval by the Regional Administrator.

Design/build grants will be awarded under approved facilities plans and must meet the following requirements—

- The proposed treatment works must have an estimated total cost of $8,000,000 or less; and
- The proposed treatment works must be an aerated lagoon, trickling filter, waste stabilization pond, land application system (wastewater or sludge), slow rate (intermittent) sand filter or subsurface disposal system; and
- The grantee must procure the contract for a design/build project in accordance with 40 CFR Part 33. The grantee must use only the formal advertising method of procurement for design/build projects and award fixed price contracts. *(Costs of changes to the contract which increase the project cost will not be allowable.)*

Each design/build grant will include an allowance for facilties planning if the grantee did not receive a Step 1 grant. The amount of the facilities planning allowance is established as a percentage of the building cost as shown in Attachment 1.

In addition to the allowance for facilities planning (if applicable), each grant for design/build projects will include funds for the necessary and reasonable costs of supplementing the facilities plan to prepare a pre-bid package that is sufficiently detailed to insure that the bids received for the design/build work are complete, accurate, comparable, and will result in a cost effective operable facility. These supplemental costs may include, but are not limited to, the cost of preliminary borings and site plan, concept and layout drawing, schematic, general material, and major equipment lists and specifications, instruction to builders, general and special conditions, project performance standards and permit limits, applicable State or other design standards, any requirements for information to go into bid tabulation and analysis, and other contract documents, schedules, forms and certificates.

The grant will subsequently be amended once, before the design/build work is begun, to establish an amount agreed to as the maximum Federal contribution to the project based on a competitively bid document of basic design data and applicable standard construction specifications as well as *actual* reasonable and necessary costs for preparing the pre-bid package. *Applicants must take bids and select the lowest responsive, responsible bidder before the final grant amendment.* The amended grant will then include the guaranteed maximum lump sum price of the lowest responsive, responsible bidder and may also include lump sum costs for necessary and reasonable construction management, contract and/or project administration services, and contingencies. EPA will deobligate funds remaining after completion of the project and payment of the Federal share and return them to the State's allotment.

Construction management services may include, but are not limited to, detailed plan and specification review and approval, change order review and approval, resident inspection, shop drawing approval, preparation of an O&M manual and post construction activities required by the project performance certification requirements (40 CFR 35.2018). Contract and/or project administration activities may include, but are not limited to, review of contractor vouchers and payment requests preparation of monitoring reports, grant administration and accounting services, routine legal costs and cost of eligible real property.

Any procurement of services for supplementing the facilities plan to prepare the pre-bid package, as well as services for design/build, construction management, and contract or project administration must be in accordance with EPA procurement requirements (40 CFR, Part 33). The same architect or engineer that prepares the facilities plan may be retained to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (40 CFR 33.715). The grantee may also provide any or all of

these services in accordance with 40 CFR 30.520. The design/build engineer or contractor, however, shall not provide any of the facilies planning or pre-bid services.

When awarding a grant for a design/build facility, the Regional Administrator shall assure that the grant agreement—

- Sets forth the building start and completion dates and includes a Federal payment schedule;
- Requires that the proposed treatment works will be an operable unit and will meet all requirements of Title II of the Clean Water Act and that the treatment works will be operated so as to meet the requirements of any applicable permit;
- Requires the grantee to obtain a bond from the contractor in an amount the Regional Administrator determines adequate the protect the Federal interest in the treatment works (see 40 CFR 33.265); and
- Includes other terms and conditions determined necessary by the Regional Administrator.

Rotating Biological Contactor Replacement—40 CFR Part 35, Subpart I, Appendix A, H.2.e.

Section 202(d) of the 1987 Act authorizes EPA to award 100% grants for the modification or replacement (M/R) of rotating biological contactors (RBCs), or portions of RBCs, which have failed to meet design performance specifications. To permit award of grants to replace or modify failed RBCs, I am approving a deviation from 40 CFR Part 35, Subpart I, Appendix A, H.2.e. *Costs incurred before award of an RBC grant for M/R are not allowable, except as allowed under 40 CFR 35.2118.*

This deviation allows the Regional Administrator to award a grant for 100 percent of the cost, including planning and design costs, of modification or replacement of RBCs which have failed to meet design performance specifications, provided:

- The applicant for an M/R grant demonstrates to the Regional Administrator's satisfaction, by a preponderance of the evidence, that the RBC failure is not due to the negligence of any person, including the owner of the POTW, the applicant, its engineers, contractors, equipment manufacturers, or suppliers. A judicial finding that failure is not attributable to a particular persons's negligence is one way to satisfy this requirement as to that person.
- For projects built using plans and specifications completed after September 1984, the Regional Administrator determines that the design considered the results of information published by EPA in May and September 1984 related to RBC failures. If the applicant failed to consider that information, it should be required to justify why. This is one consideration in determining whether the applicant was negligent.
- The RBC failure has significantly increased the project's capital or operation and maintenance costs.
- The M/R project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR Parts 30, 32, 33 and 35;
- The M/R project is included within the fundable range of the State's annual project priority list; and
- The State certifies the project for funding from its regular (i.e., non-reserve) allotments and from *funds appropriated after February 4, 1987.*

Concur:

Lawrence J. Jensen,

Assistant Administrator for Water.

Date: March 22, 1988.

Concur:

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

Date: April 22, 1988.

Attachment.

Allowance for Facilities Planning Attachment 1

This table is for calculation of the facilities planning allowance under *design/build* grants only.

Building costs *	Allowance as a percentage of building cost
$100,000 or less	5.9262
120,000	5.7337
150,000	5.5061
175,000	5.3538
200,000	5.2250
250,000	5.0163
300,000	4.8516
350,000	4.7162
400,000	4.6019
500,000	4.4164
600,000	4.2701
700,000	4.1499
800,000	4.0483
900,000	3.9606
1,000,000	3.8837
1,200,000	3.7538
1,500,000	3.6003
1,750,000	3.4976
2,000,000	3.4109
2,500,000	3.2703
3,000,000	3.1585
3,500,000	3.0684
4,000,000	2.9915
5,000,000	2.8669
6,000,000	2.7686
7,000,000	2.6880
8,000,000	2.6198

Interpolate for other values.

* Building cost is the sum of the allowable cost of (1) the initial award amount of the prime subagreement for building and designing the project; and (2) the purchase price of eligible real property.

[FR Doc. 88-9842 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300153A; FRL-3370-6]

Revocation of Tolerances for Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances established for residues of 20 pesticide chemicals in or on certain raw agricultural commodities (RACs). This regulatory action is being taken by EPA to revoke tolerances for those pesticides which have no registered food uses. These pesticides either were never registered for food uses or if they were registered, the registrations were subsequently cancelled.

EFFECTIVE DATE: Effective on May 4, 1988.

ADDRESS: Written objections identified by the document control number [OPP-300153A] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Rosalind L. Gross, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 10, 1986 (51 FR 44487), which proposed the revocation of tolerances for residues of 20 pesticide chemicals which have no current food use registrations. These 20 chemicals are as follows: Aramite (2-(*p-tert*-butylphenoxy)-isopropyl 2-chloroethyl sulfite); sulphenone (*p*-chlorophenyl phenyl sulfone); ovex (*p*-chlorophenyl *p*-chlorobenzenesulfonate); chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide); copper arsenate; magnesium arsenate; sodium arsenate; chloropropylate (isopropyl 4,4'-dichlorobenzilate); neodecanoic acid; *p*-chlorophenyl 2,4,5-trichlorophenyl sulfide; *O,O*-diethyl *O*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate); benzadox (benzamidooxyacetic acid); chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea); 1-chloro-2-nitropropane; fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenyl ether); secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine); potassium arsenite; ethiolate (*S*-ethyl diethyl-thiocarbamate); glyphosine (*N,N*-bis(phosphonomethyl)glycine); and 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb).

No requests for referral to an advisory committee were received. Comments were received from authorities of the countries of Australia, Egypt, Portugal, and Thailand. The only chemicals which were subject to comment were fluorodifen and pirimicarb.

Australia acknowledged that the only current U.S. tolerance for pirimicarb is for potatoes. It was noted that in Australia, pirimicarb is approved for use on apples, citrus, hops, selected vegetables, alfalfa, medic pastures, and ornamental plants. Australia was concerned that the proposed tolerance revocation could adversely affect its export of fruits and hops to the United States. Accordingly, Australia requested that the United States establish action levels for residues of pirimicarb on fruit and hops in accordance with the maximum residue limits (MRLs) established by the Australian authorities or recommended by the Codex Alimentarius Commission.

Egyptian authorities stated that fluorodifen and pirimicarb were used in their country on raw agricultural commodities and the MRLs were recommended by the Codex Alimentarius Commission. They did not appear to object to the U.S. tolerance revocation for either pirimicarb or fluorodifen.

Comments from Portugese authorities indicated that pirimicarb is approved for use in Portugal in accordance with the MRLs established by the Food Agricultural Organization/World Health Organization (FAO/WHO). Portugese authorities requested that the U.S. establish tolerances for pirimicarb and other pesticides consistent with the MRLs established by the FAO/WHO.

Although noting that pirimicarb is imported into that country, authorities from Thailand did not have any specific comment on the proposed revocation.

The comments do not indicate that the revocation of the tolerances proposed by the December 10, 1986 (51 FR 44487) proposed rule would adversely impact any commodity currently imported into the United States. There does not appear to be any basis for the establishment of action levels for any of the tolerances subject to this revocation action.

The issue of a permissible level of pirimicarb on fruit and hops requires a tolerance petition because there are currently no U.S. tolerances for primicarb residues on fruit and hops.

Petitions to establish U.S. tolerances for pirimicarb and other pesticides may be submitted in accordance with the procedures specified in 40 CFR 180.7 and accompanied by the fees described in 40 CFR 180.33. Such a petition should be accompanied by the product chemistry, residue chemistry, and toxicology data for a food use chemical specified in 40 CFR Part 158. The requirements for a food additive petition, which are similar to those for a tolerance petition, are specified in 21 CFR 171.1 and 21 CFR 571.1.

EPA is committed to conforming U.S. tolerances for pesticide residues with Codex MRLs where reasonable and practicable. This commitment also applies to the establishment of action levels for persistent pesticides when U.S. tolerances are revoked. Differences may occur between U.S. tolerances (or action levels) and Codex MRLs because of a variety of factors such as differing use patterns, climatic conditions, data bases, differences in the limit of detection of the enforcement method, etc. Since an action level is not required for any of the 20 chemicals subject to this revocation action, consistency with the Codex MRLs is not at issue.

Based on the fact that there are no current food use registrations for any of the subject 20 chemicals, and no evidence which indicates that imported commodities will be adversely affected by this action, the Agency has determined that this revocation action is appropriate. As noted herein, the Agency is not recommending the establishment of action levels in place of these tolerances.

EPA is hereby revoking the existing tolerances for residues in or on all RACs for 20 pesticide chemicals as listed in 40 CFR Part 180. The pesticide chemical tolerances listed in 40 CFR Part 180 which are being revoked are as follows:

Section 180.107—Aramite (2-(*p-tert*-butylphenoxy)-isopropyl 2-chloroethyl sulfite).
Section 180.112—Sulphenone (*p*-chlorophenyl phenyl sulfone).
Section 180.134—Ovex (*p*-chlorophenyl *p*-chlorobenzenesulfonate).
Section 180.168—Chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide).
Section 180.193—Copper arsenate (see also § 180.319 below).
Section 180.195—Magnesium arsenate.
Section 180.196—Sodium arsenate.
Section 180.218—Chloropropylate (isopropyl 4,4'-dichlorobenzilate).
Section 180.248—Neodecanoic acid.
Section 180.256—*p*-Chlorophenyl 2,4,5-trichlorophenyl sulfide.
Section 180.264—*o,o*-Diethyl *o*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate).
Section 180.270—Benzadox (benzamidooxyacetic acid).
Section 180.279—Chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea).
Section 180.286—1-Chloro-2-nitropropane.
Section 180.290—Fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenyl ether).
Section 180.319—Interim tolerances (copper arsenate).
Section 180.323—Secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine).
Section 180.334—Potassium arsenite.
Section 180.343—Ethiolate (*S*-ethyl diethylthiocarbamate).
Section 180.354—Glyphosine (*N,N*-bis(phosphonomethyl) glycine).
Section 180.365—2-(Dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb).

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

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In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for these 20 chemicals. This analysis is available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

As explained in the proposal published December 10, 1986, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the December 10, 1986 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 1988.

John A. Moore,

Assistant Administrotor for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.107 [Removed]

2. Section 180.107 is removed.

§ 180.112 [Removed]

3. Section 180.112 is removed.

§ 180.134 [Removed]

4. Section 180.134 is removed.

§ 180.168 [Removed]

5. Section 180.168 is removed.

§ 180.193 [Removed]

6. Section 180.193 is removed.

§ 180.195 [Removed]

7. Section 180.195 is removed.

§ 180.196 [Removed]

8. Section 180.196 is removed.

§ 180.218 [Removed]

9. Section 180.218 is removed.

§ 180.248 [Removed]

10. Section 180.248 is removed.

§ 180.256 [Removed]

11. Section 180.256 is removed.

§ 180.264 [Removed]

12. Section 180.264 is removed.

§ 180.270 [Removed]

13. Section 180.270 is removed.

§ 180.279 [Removed]

14. Section 180.279 is removed.

§ 180.286 [Removed]

15. Section 180.286 is removed.

§ 180.290 [Removed]

16. Section 180.290 is removed.

§ 180.319 [Removed]

17. By amending §180.319 to remove the entry for copper arsenate from the alphabetical listing therein.

§ 180.323 [Removed]

18. Section 180.323 is removed.

§ 180.334 [Removed]

19. Section 180.334 is removed.

§ 180.343 [Removed]

20. Section 180,343 is removed.

§ 180.354 [Removed]

21. Section 180.354 is removed.

§ 180.365 [Removed]

22. Section 180.365 is removed.

[FR Doc. 88–9294 Filed 5–3–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3565, 7E3567, 7E3568/R951; FRL–3374–5]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodities asparagus, spinach, and endive. The Interregional Research Project No. 4 (IR–4) petitioned for these tolerances.

EFFECTIVE DATE: May 4, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7E3565, 7E3567, 7E3568/R951], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street, Washington, DC 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 9, 1988 (53 FR 7543), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 7E3565, 7E3567, and 7E3568 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, requesting that the Administrator, pursuant to the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide (R)-2-[4-[[5-trifluoromethyl)-2-pyridinyl]oxy] phenoxy]-propanoic acid (resolved isomer of fluazifop-P-butyl), all expressed as fluazifop, in or on certain raw agricultural commodities as follows:

1. *PP 7E3565* on behalf of the Agricultural Experiment Stations of New Jersey and Washington in or on asparagus at 3.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Maryland, New Jersey, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

2. *PP 7E3567* on behalf of the Agricultural Experiment Stations of Arkansas, California, Connecticut, Maryland, North Carolina, Oklahoma, and Texas in or on spinach at 6.0 ppm.

3. *PP 7E3568* on behalf of the Agricultural Experiment Station of Florida in or on endive at 6.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee

received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411 is amended in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity spinach and in paragraph (d) by adding and alphabetically inserting the raw agricultural commodities asparagus and endive, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
Spinach	6.0
(d) * * *	
Asparagus	3.0
Endive	6.0

[FR Doc. 88–9749 Filed 5–3–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7F3472/R956; FRL–3374–2]

Lactic Acid; Exemption From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant growth regulator latic acid (2-hydroxypropanoic acid) when used in or on all raw agricultural commodities. This regulation was requested by Brea Agricultural Service, Inc.

EFFECTIVE DATE: May 4, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 3, 1986 (51 FR 43664), which announced that Brea Agricultural Service, Inc., Drawer 1, 1330 West Fremont, Stockton, CA 95201, had submitted a pesticide petition, PP 7F3472, proposing an exemption from the requirement of a tolerance for the plant growth regulator lactic acid (2-hydroxypropanoic acid) in or on all raw agricultural commodities.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from the requirement of a tolerance include an acute oral LD_{50} (median lethal dose) study (rat) with an LD_{50} of 4,936 milligrams (mg)/kilogram (kg) for males and 3,543 mg/kg for females. Subchronic/chronic toxicity and mutagenicity studies were waived. These waivers were based upon the following: (1) Lactic acid is a normal constituent of plants and animals; (2) it has been approved as an inert ingredient by EPA for application to plants (40 CFR 180.1001(c)); (3) the Food and Drug Administration (FDA) approved the use of lactic acid as generally recognized as safe (GRAS) ingredient in human foods with no limitation on amounts used other than good manufacturing practice (21 CFR 184.1061); and (4) residues of lactic acid resulting from the proposed uses will not be higher than is now allowed in food production, will not exceed normal physiological lactic acid levels in raw agricultural commodities, and will not exceed levels allowed from inert ingredient applications.

There are no desirable data lacking; therefore, there are no actions being taken to obtain additional data. No previous exemptions have been established for this chemical.

The calculation of an acceptable daily intake (ADI) is not relevant since an exemption from tolerances is being made. There are no known pending regulatory actions against registration of this active ingredient. None of the risk criteria listed in 40 CFR 154.7 for initiating a Special Review have been exceeded. The metabolism of lactic acid is adequately delineated. No analytical method for residues was submitted. Enforcement action is not expected for the exemption. Various well established clinical chemistry or Association of Official Analytical Chemists (AOAC) procedures are available in case of gross misuses. There are no expected lactic acid residue problems with meat, milk, poultry, eggs, drinking and irrigation water, and fish and shellfish.

Lactic acid is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is

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requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1090 is added, to read as follows:

§ 180.1090 Lactic acid; exemption from the requirement of a tolerance.

Lactic acid (2-hydroxypropanoic acid) is exempted from the requirement of a tolerance when used as a plant growth regulator in or on all raw agricultural commodities.

[FR Doc. 88-0750 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-00260; FRL-3374-9]

Pesticide Tolerance for Iprodione on Lettuce; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment clarifies an amendment that established a tolerance for residues of the fungicide iprodione in or on lettuce by deleting a superseded tolerance. No new regulatory requirements are being imposed, and advance notice and public comment are unnecessary.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT:
Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a regulation, published in the Federal Register of February 3, 1988 (53 FR 3021), which amended 40 CFR 180.399(a) by establishing a tolerance of 25.0 parts per million (ppm) for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-diclorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on lettuce at 25 parts per million. The amendment was intended to specify the sole tolerance for the commodity lettuce and to supersede the listing for lettuce (head) at 15 ppm. But the amendment inadvertently omitted specific amendatory language deleting "lettuce (head)" from § 180.399(a). This document addresses that omission by deleting the entry "lettuce (head)." And it further clarifies the current listing "lettuce (leaf)" to read as intended, i.e., "lettuce."

As this technical amendment merely clarifies a previous amendment and imposes no new regulatory requirements, advance notice and public comment are unnecessary. (21 U.S.C. 346a)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.399 [Amended]

2. In § 180.399 *Iprodione; tolerances for residues*, paragraph (a) is amended in the list of commodities therein by removing the entry "Lettuce (head)" and its tolerance of 15 parts per million and specifying the current listing "Lettuce (leaf)" to read "Lettuce."

[FR Doc. 88-0843 Filed 5-3-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 150 and 153

[CGD 84-025]

Incinerator Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMMARY: This document finalizes safety rules for incinerator vessels carrying liquid hazardous wastes in bulk for the purpose of incineration at sea. Existing regulations do not specifically address safety hazards unique to the operation of incinerator vessels. The rules in this document adopt standards for incinerator vessels in Chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (International Bulk Chemical Code) of the International Maritime Organization (IMO) as well as standards in existing safety regulations that apply to chemical tank vessels. These rules apply to vessels required to obtain an ocean incineration permit from the Environmental Protection Agency (EPA). EPA has proposed rules for obtaining a permit in EPA rulemaking docket FRL-2698-5.

DATES: This regulation is effective June 3, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1988.

ADDRESSES: A final regulatory evaluation has been prepared for this rulemaking and may be inspected and copied at the Marine Safety Council (G-CMC/21) at Room, 2110, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001 between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: CDR Ronald W. Tanner, Office of Marine Safety, Security, and Environmental Protection, telephone (202) 267-1217 from 7:30 a.m. until 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on August 25, 1986. Interested persons were given until October 25, 1986 to comment on the proposal. Sixteen comments were received. A Draft Evaluation of economic and environmental impact associated with the NPRM was prepared along with a statement announcing a finding of no significant environmental impact (FONSI). These documents were placed in the rulemaking docket and made available for public comment during the 60 day comment period provided for the NPRM. A specific statement giving public notice of the availability of the FONSI was also provided on December 29, 1986, and interested persons were given until February 12, 1987 to comment. Ten additional comments were received.

Drafting Information

The principal drafters of these regulations were LCDR David B. Crawford, Project Manager, and Mr. William R. Register, Project Counsel, Office of the Chief Counsel.

Background Information

Ocean incineration is a process for disposing of hazardous waste by high temperature destruction at sea. In a typical disposal operation, a tank vessel which has one or more specially designed incinerators receives hazardous waste at a port, transits to a designated burn site, burns the waste at the site, and then returns.

The Coast Guard, under 46 U.S.C. 3703, has responsibility for prescribing regulations of incinerator vessels as may be necessary for navigation, vessel safety, and safety of vessel personnel as well as for enhanced protection of the marine environment. These regulations may include, among other things, requirements for the design, construction, equipment, and operation of incinerator vessels. The Environmental Protection Agency (EPA) has general responsibilities relating to ocean incineration activities. These responsibilities include setting standards for incinerator emissions, issuance of ocean incineration permits, and the designation and management of ocean incineration sites. As referenced in this document, these regulations include certain provisions which have been developed taking into account corresponding provisions in EPA's notice of proposed rulemaking of February 28, 1985, (50 FR 8222) pertaining to ocean incineration permits. To the extent that EPA's proposal is modified in further rulemaking proceedings, the Coast Guard will evaluate these regulations to determine the need for updating revisions.

Technology concerning ocean incineration of hazardous waste originated in Europe in the late 1960's. As it developed, a need for specific requirements for incinerator vessels became increasingly apparent. Existing vessel safety requirements for tank vessels did not specifically address hazards associated with incinerators and incinerator spaces, the sources of ignition in these spaces, and the potential for release of hazardous wastes in these spaces during transfer from vessel cargo tanks to an incinerator. The International Maritime Organization (IMO) in recognizing and responding to this need, developed a set of comprehensive incinerator vessel requirements which have been included in Chapter 19 of the International Bulk Chemical Code (IBC). The Coast Guard actively participated in the development of Chapter 19. Input was also obtained from the U.S. Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea of the Shipping Coordinating Committee. The standards in Chapter 19 are widely accepted as being the best, most practicable safety standards available for incinerator vessels.

The IBC, including Chapter 19, became mandatory for states signatory to the 1974 International Convention for the Safety of Life at Sea, including the United States, on July 1, 1986. Chapter 19 contains detailed requirements relating to incinerator vessels and also incorporates applicable requirements of Chapter 1-16 of the IBC that apply generally to all chemical tank vessels. The requirements of Chapters 1-16 in turn incorporate provisions of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (Bulk Chemical Code), which was originally adopted in 1971 as a recommended international standard for all chemical tank vessels. The Coast Guard incorporated the Bulk Chemical Code into United States regulations in 1977. These requirements are currently published in 46 CFR Part 153.

The final rules in this document incorporate the provisions of Chapter 19 of the IBC into U.S. regulations. They are being adopted as measures to provide for the safety of incinerator vessels and their crews and for the protection of the marine environment, when transporting hazardous wastes and while operating at an incineration site.

At present, there is one potential United States flag incinerator vessel, APOLLO I. Another, APOLLO II, is currently under construction. The plans for both of these vessels have been approved by the Coast Guard and they will meet the level of safety provided by Chapter 19 of the IBC and these final regulations. Also, several inquiries have been received from prospective builders of other incinerator vessels.

Two foreign flag incinerator vessels, VULCANUS I and VULCANUS II, have requested EPA authorization to burn U.S. generated hazardous wastes. Both of these vessels are required by Pub. L. 97-389 (96 Stat. 1954, 46 U.S.C. 883) to undergo full inspection, including drydock inspections and internal examinations of the tanks and void spaces, and meet the same standards as U.S. vessels. The VULCANUS II was recently certified by the Coast Guard in accordance with Pub. L. 97-389 and was found to comply with the principal requirements in this notice, and the second vessel has applied for a certification. Pub. L. 97-389 also prohibits other foreign vessels (*i.e.*, foreign vessels not owned or under construction on May 1, 1982, by a corporation wholly owned by a citizen of the U.S.) from loading bulk hazardous wastes from U.S. ports for the purpose of incineration at sea.

Description of the Final Rules

(1) *Activities to be Regulated.* Incinerator vessels conduct two primary activities both of which are addressed in these final regulations. The first activity is to transport hazardous waste to an ocean incineration site. In this respect an incinerator vessel's operation is similar to any other tank vessel. The second activity involves the actual process of incineration. Incinerators pose hazards similar to other fired units on board ship such as boilers. In addition, the operation of transferring hazardous waste from the incinerator vessel's cargo tanks to an incinerator is an operation unique to incinerator vessels.

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(2) *Regulatory Approach*—(a) *Transportation of Waste Material.* The regulatory approach for shipboard transportation of hazardous waste to an incineration site will be to apply, where appropriate, the existing requirements for chemical tank vessels that carry hazardous materials in bulk. The standards necessary to safely transport hazardous waste materials are essentially the same as those applied to the carriage of hazardous materials as cargo in bulk.

The principal safety regulations for all tank vessels are in Subchapter D of Title 46, Code of Federal Regulations, and § 150.220 of the final rules requires certification of compliance with those regulations. Examples of Subchapter D requirements include: firefighting systems, structural fire protection, lifesaving equipment, cargo venting systems, and ventilation systems.

For chemical tank vessels, the Subchapter D requirements are supplemented by requirements in Part 153 of Subchapter O of Title 46, Code of Federal Regulations. As stated above, these supplemental requirements incorporate provisions of the Bulk Chemical Code which are carried forward into Chapters 1–16 of the IBC and are also included in these final rules. Examples of these requirements are: vessel arrangements, cargo containment systems, cargo tank gauging, cargo pumps and pumprooms, monitors, alarms, and control systems, toxic vapor protection, emergency shutdown, and various cargo transfer and other operational procedures and controls.

In addition to the existing requirements in Subchapters D and O, specific requirements are also necessary to address construction and arrangement features concerning incinerators and incinerator spaces. These additional requirements are found in Chapter 19 of the IBC and have been included in the final rules.

(b) *Incineration of Wastes.* The regulatory approach for incineration of hazardous waste will be to apply requirements from 46 CFR Part 63 which relate to large water heating equipment and other large fired units on board ship. The hazards involved in using this equipment are essentially the same as those associated with shipboard incinerators. The principal purposes of the Part 63 requirements are to preclude the introduction of fuel or hazardous waste into an incinerator in the absence of an ignition source and to preclude the ignition of flammable vapor in amounts that would damage an incinerator or cause an explosion.

The final rules also include requirements from Chapter 19 of the IBC as measures to minimize hazards resulting from an accidental release of hazardous wastes from cargo piping during transfer to an incinerator. These additional requirements include automatic shutdown systems, electrical equipment requirements for equipment located in compartments containing cargo piping, ventilation requirements for spaces surrounding the incinerators, and special pumproom requirements.

Discussion of Comments and Changes Made in the Final Rules

Many of the commenters addressed both technical considerations as well as environmental concerns. Comments which are primarily technical are addressed below. The environmental concerns have been fully discussed in the Final Regulatory Evaluation, which is available for public inspection and copying in the docket, and are also summarized in this document.

a. Application of These Rules to Ships Carrying Hazardous Waste in Containers (Portable Tanks)

Three commenters expressed concern that the rules do not address carriage of wastes in containers, *i.e.*, portable tanks. Section 150.220 requires that each incinerator vessel be certificated as a tank vessel under Subchapter D of Title 46, CFR. Subchapter D in turn requires tank vessels to comply with the Coast Guard's regulations concerning carriage of hazardous materials in portable tanks (see 46 CFR 30.01–5 and 31.30.1). The portable tank regulations are extensive and are currently in 46 CFR Part 64 and 46 CFR Subpart 98.30. Subpart 64.95 of Part 64 also requires the cargo piping and hoses for portable tanks to meet applicable requirements in 46 CFR Part 56.

Proposed revisions to the portable tank regulations are being prepared for **Federal Register** publication in separate rulemaking (CGD 84–043) and will address principally a proposal to require use of DOT IM 101 and 102 portable tanks. This proposal would also apply to portable tanks carried on board incinerator vessels.

One of the commenters also suggested that § 150.400 be revised to allow alternative fire protection systems, such as water spray systems in lieu of a fixed foam system, on incinerator ships carrying hazardous wastes in containers. This comment has not been adopted. Using water to extinguish a fire in the cargo area of a tank vessel is not considered an adequate safety measure. Foam is more effective than water in cutting off oxygen supply to the fire.

One commenter also recommended that specific requirements be added to address handling and storage of portable tanks carrying dangerous cargoes at transfer facilities. Specific regulations which address this topic are in 33 CFR Part 126 (see, *e.g.*, 33 CFR 126.27 and 126.29) and the Coast Guard is currently preparing proposed rules in docket CGD 86–034 to apply present oil pollution prevention regulations in 33 CFR Parts 154–156 to both vessels and facilities involved in the transfer of hazardous substances.

b. Designation of Ship Type

Four comments questioned the requirement of assigning ship type II to incinerator ships. The comments recommended that the Coast Guard apply the maximum standard, type I, to these vessels because of the hazards of the wastes to be carried. One commenter also suggested in the alternative that, if type I construction is not to be required, the Coast Guard should require an adequate chemical analysis to be performed on the wastes to be carried to ensure no mixing of type I wastes with type II wastes.

The commenters' concerns with respect to type I versus type II construction were extensively analyzed and the determination was made to retain the requirement of assigning ship type II in the final rules. As explained in more detail below and in the Final Evaluation, requiring type I construction for all incinerator ships could not be justified because of the expectation that few types of wastes equivalent to type I cargoes will be carried on incinerator ships. With respect to the recommendation that a chemical analysis of wastes be conducted, the Coast Guard will be reviewing a waste analysis of each cargo to determine the degree of hazard involved. This review will supplement the EPA waste analysis requirements in proposed 40 CFR 234.16 and 234.58.

One of the commenters pointed out that Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) applies to incinerator vessels. The commenter noted that the 23rd session of the IMO Marine Environmental Protection Committee approved an interpretation of Annex II of MARPOL 73/78 which classifies an incinerator vessel's cargo as a Category A Noxious Liquid Substance (NLS). The commenter said that Category A is the most stringent classification and that the Coast Guard should therefore require the highest standards.

Tanker type, *i.e.*, type I, II, or III, is assigned based on the combined safety and environmental threat posed by the cargo to be carried, with particular emphasis being upon the immediate safety hazard posed to a vessel's crew and surrounding port area by a sudden release of the cargo. The pollution categories A, B, C, and D, as designated in Annex II of MARPOL, refer to the toxicity of a substance, *i.e.*, they refer to the extent that a substance, without regard to the extent of immediate threat to the crew or port area, will cause harm to marine life if released. Thus, a cargo can be rated as Category A (the most stringent category) for pollution prevention purposes, yet be carried as type II or III cargo on a type II or III vessel. There are very few Category A substances that would require carriage in a type I vessel. The assignment of Category A to a hazardous waste mixture will result primarily from the impracticability of establishing, in advance, a profile of the environmental hazard for each possible waste in the mixture.

A cargo containment system type is assigned for each chemical shipped in a chemical tanker. Regulations for chemical tankers in 46 CFR Part 153 include three levels of cargo containment systems: type I, II, and III (see 46 CFR 153.230–153.232). Applying a cargo containment type requirement to a chemical specifies the extent to which a ship carrying the chemical must survive damage conditions given in Table 172.135 of 46 CFR Part 172 and specifies the location of the tank carrying the chemical with respect to the ship's shell plating.

The ship type requirement for incinerator vessels (see 46 CFR 150.255) is based on IMO regulations which mandate type II double hulled construction for chemical tankers. As of April 6, 1987, when the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships became effective, incinerator vessels must have at least a type II hull (double hull construction) to reduce the potential for discharges caused by collisions and groundings and also meet a two compartment damage stability standard.

It cannot be accurately anticipated at this time how many wastes requiring a type II containment system will be carried. Based on experience to date, the majority of wastes proposed for carriage have been type II or III. Because a substantial number of cargoes will require a type II system, the higher standard, *i.e.*, type II construction, rather than type III construction, is being required as the preferred option. Although some wastes may be made up of chemicals which, when shipped commercially, may be carried in a type III cargo containment system, IMO requirements and these regulations do not include provisions allowing carriage of hazardous wastes on incinerator vessels that have type III hulls. Specific provisions are not included for type III vessels since they cannot safely carry many of the type II hazardous wastes that the Coast Guard anticipates will be routinely transported. As explained in Appendix I to the Final Evaluation, vessels that have a type III hull are not required to meet certain standards required for type II construction.

In addition to the protection afforded by type II hulls, IMO standards and these rules preclude carriage of cargo in an incinerator vessel's wing tanks; whereas, on a type II chemical tanker the wing tanks could contain flammable chemicals. This feature improves survivability in collision situations by lowering the risk of fire. Therefore, a type II incinerator vessel will provide better protection than a type II chemical tanker.

It is unlikely that many types of wastes presenting hazards equivalent to those cargoes requiring a type I system will be proposed for incineration at sea. Consequently, requiring all wastes to be carried in type I hulls is not considered justified. Incinerator vessels typically carry mixtures containing many wastes components, some of which are highly hazardous from a health standpoint, but which are present only in low concentrations. The overall hazards of the mixtures are generally comparable to those of commercial products which are routinely transported on type II vessels. In addition, the type II standard is consistent with IMO requirements already set forth in Chapter 19 of the IBC.

As part of the EPA permitting process, the Coast Guard will be reviewing chemical waste mixtures to determine the degree of the cargo hazard. Peculiar hazards associated with the wastes may require imposition of specific controls and safeguards. The particulars of these controls and safeguards will be fully developed and analyzed as a part of the permitting process which will include an opportunity for public input pursuant to EPA's processing procedures set out in proposed 40 CFR Subpart C.

c. Environmental Impact

Several commenters on the NPRM and FONSI suggested that the environmental assessment prepared for this rulemaking did not contain a sufficient analysis of the environmental issues involved, and they urged instead that an environmental impact statement (EIS) be prepared.

Coast Guard internal procedures call for preparation of an environmental assessment as a first step in each proposed action having potential environmental consequences. Based upon that assessment, a finding is made as to whether the action will or will not have a significant impact on the environment and, if a significant environmental impact is expected, an EIS is then prepared. In this rulemaking the Coast Guard originally concluded that there would not be a significant environmental impact involved and, in accordance with our procedures, a finding of no significant impact (FONSI) was issued in lieu of preparing and EIS.

In response to the commenters' concerns, the environmental issues in this rulemaking were critically reexamined. These issues relate primarily to the need for operational limitations and controls during vessel transit, Type I vs Type II vessel construction, additional facility requirements, worker safety considerations, as well as specific concerns relating to individual safety requirements proposed in the rulemaking. Discussion of these various concerns appears throughout this document as well as in the Final Regulatory Evaluation.

Based upon the Coast Guard's reexamination, the environmental assessment for this rulemaking was extensively revised and the prior determination that there would be no significant environmental impact was reaffirmed. A copy of the revised environmental assessment and FONSI are included in the Final Regulatory Evaluation and may be obtained from the address listed above under **ADDRESSES.**

d. Operational Limitations and Controls

Six comments recommended that the rules should include specific operational limitations and controls concerning port transit and that these operational requirements should be made applicable to all ports. The NPRM proposed adoption of specific controls and limitations on a case by case basis as needed for specific ports.

Examples of port transit limitations and controls include: establishment of a moving safety zone, requirements for Coast Guard escort vessels, restriction of operations to daylight hours, weather and visibility restrictions, requirements for tug assistance, and a requirement to provide adequate advance notice before transferring hazardous waste to an

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incinerator vessel. As explained in the revised environmental assessment, the Coast Guard has already developed a planned set of operational limitations and controls for possible incineration vessel operations from the ports of Mobile and Philadelphia. These planned controls and limitations are outlined in the assessment and, as evident from their description, they are somewhat different for each port because of differing port configurations and navigating conditions. By way of example, a requirement for tug assistance is contemplated for Philadelphia between the loading facility and the Delaware Memorial Bridge; whereas, in Mobile, a requirement for tug assistance is contemplated for operations inbound between the entrance to the Mobile river and the facility and outbound between the Facilty and the Theodore Ship Channel entrance. These examples illustrate the importance of considering local port conditions in establishing specific operational limitations and controls.

In response to the comments, the Coast Guard reconsidered the feasibility of establishing uniform nationwide controls, rather than port specific controls as originally proposed, and again concluded the case by case selection of appropriate controls is still the more effective approach. As illustrated above for the ports of Mobile and Philadelphia, individual port configurations and navigating conditions differ and require individual appraisal and tailored controls and limitations. Adoption of nationwide controls is simply not practicable and, as emphasized in the environmental assessment, imposition of port specific controls and limitations has a greater potential for decreasing transit risks than would a general set of nationwide controls.

e. Port Selection

One commenter suggested that not every port will be suited to accommodate incinerator vessels and recommended that the Coast Guard, in cooperation with EPA, take necessary steps to develop criteria for port selection. The selection of ports for transfer of hazardous materials currently being transported in bulk involves determinations made at the state and local levels in cooperation with affected business interests. The selection of ports for transfer of wastes to be incinerated at sea will be considered as a part of the EPA permitting process (see proposed 40 CFR 234.18 (February 28, 1985, 50 FR 8281)) and the Coast Guard will have an extensive input into that process as explained more fully in the EPA notice of proposed rulemaking.

f. Independent vs. Integral Tanks

Three commenters suggested that the Coast Guard prohibit the carriage of incinerator vessel cargo in integral tanks since these tanks would be subjected to the same stresses to which the hull is subjected. These comments have not been adopted. As part of the vessel's hull structure, integral tanks are designed to withstand the stresses transmitted by the hull. The integrity of integral tanks is not impaired by the presence of these stresses. In contrast, independent tanks are typically used for refrigerated and/or elevated temperature cargoes because of the thermal stresses imparted by these cargoes. Incinerator vessel cargoes, however, are not carried at temperature extremes and, therefore, can be carried safely in integral tanks.

g. Worker Safety

One commenter recommended that as part of the certification process for an incinerator vessel, the applicant should be required to submit a worker safety plan addressing the particular hazards encountered by workers involved in incineration at sea. The commenter noted that the Coast Guard is the dominant federal agency for occupational safety and health of seaman onboard inspected vessels under a Memorandum of Understanding between OSHA and the Coast Guard (see 48 FR 11365, dated March 17, 1983).

In analyzing this comment, the various worker safety considerations included in the proposed rules were reconsidered to assess their adequacy in providing effectively for shipboard worker safety both during shore to ship transfer, as well as during transit to the burn site and during the process of burning waste at the site. The worker safety considerations provided for in these rules include provisions concerning personal emergency and safety equipment (§ 150.385), eye protection (§ 150.450), protective clothing (§ 150.455), entry into spaces containing cargo vapor (§ 150.460), a comprehensive respiratory program (§ 150.460), screens around incinerator stacks (§ 150.330), as well as rules which take into account worker safety in transfer and burning of wastes e.g., operations instructions and test procedures to be utilized in burning (§ 150.365), prohibitions against entry on deck during burning (§ 150.457), and requirements for holding cargo transfer conferences (§ 150.500). Based on experience to date, these various provisions have been determined to provide adequately for workers safety on board incinerator vessels.

One commenter recommended that the final rules include a requirement to have a comprehensive program concerning labeling and warnings concerning the personnel hazards of the wastes to be carried. This comment has been adopted and § 150.430 has been revised to require cargo information similar to the information required for chemical tankers in 46 CFR 153.907.

One commenter recommended that the Coast Guard include a specific medical monitoring program for crew protection. Action on this comment has been deferred. The requirements in § 150.460 concerning entry into spaces containing cargo vapors and for a comprehensive respiratory program were based in part on the interim recommendations of a Coast Guard-sponsored study of workers in the chemical marine transportation industry. (The interim recommendations are included in the public docket.) The final report, which has not yet been issued, is expected to include specific recommendations on medical monitoring requirements. In addition, OSHA published in the Federal Register an interim final rule (see 51 FR 45654, dated December 19, 1986) to amend the OSHA standards for hazardous materials in Subpart H of 29 CFR Part 1910 by adding a new § 1910.120 containing employee protection requirements for workers engaged in hazardous waste operations. Paragraphs (e) and (f) of § 1910.120 provide standards for training and medical surveillance for workers engaged in hazardous waste operations. The Coast Guard intends to evaluate these OSHA standards in conjunction with the final results of the Coast Guard-sponsored study referenced above. The results of this evaluation will be the basis for determining whether additional rulemaking is needed concerning crew medical monitoring programs on incinerator vessels.

One commenter suggested that a requirement be added to provide decontamination stations at various locations on the ship to provide personnel protection against waste contamination resulting during routine transfer operations. The possibility for contamination during routine transfer operations is considered remote, except possibly under occasional circumstances set out in §§ 150.450 and 150.455. During these specified circumstances, the protective clothing and eye protection required by those sections must be worn. In the event that contamination might otherwise occur during an emergency, emergency showers, as required in § 150.395, would be available for personnel use.

h. Compliance With IBC Requirements

Several comments noted that certain IBC requirements were not included in the proposed rules. It was not the Coast Guard's intent to exclude these requirements and they have been added to the final rules. The additions are contained in the following sections:

Section 150.205 Definitions.
Section 150.225 Required endorsement.
Section 150.255 (o), (p), and (q) Cargo containment system.
Section 150.340(h) Incinerator monitoring and alarms.
Section 150.385 Incinerator blower space.
Section 150.395(a)(3) Personnel emergency and safety equipment.
Section 150.402 Flammable vapor detectors.
Section 150.403 Toxic vapor detectors.
Section 150.432 Cargo Antidotes.
Section 150.520 Preparation for cargo transfer.

These additional rules are not expected to impose any additional appreciable costs over those incurred to comply with the remaining requirements in this rulemaking.

i. Section-by-Section Discussion of Other Changes Made

Other specific changes made to the NPRM are discussed section by section below along with a discussion of related comments. Minor corrections and clarifications are not discussed except where the rationale for a change is not otherwise self-evident.

Section 150.220 Inspection for Certificate of Inspection.

One commenter noted that the requirement in IBC Section 19.1.4 for taking corrosion into account during vessel surveys and determining the remaining wall thicknesses after required surveys could not be found in the proposed rules. Subchapter D of Title 46, CFR, addresses corrosiveness but does not include an inspection requirement for determining remaining wall thickness. A requirement for annual inspections has been added and incorporates the inspection requirements for boilers in 46 CFR Part 61.

Section 150.230 Carriage of bulk solid hazardous waste.

Six commenters recommended that carriage and burning of solids be prohibited and/or that specific requirements for solid hazardous waste cargoes be added. In accordance with these comments, § 150.230 and the applicability statement in § 150.200 has been revised in the final rules to emphasize that the requirements in this rulemaking apply only to carriage of liquid wastes in bulk and that only liquid wastes may be carried for the purpose of incineration at sea. If and when requests to carry solids are received or anticipated, consideration will be given to imposing specific requirements as needed to address particular hazards associated with carriage and burning of solids.

Section 150.255 Cargo containment system.

Paragraph (d)—Two commenters recommended that the requirement for a three-way valve be deleted or revised to accommodate incinerator designs in which separate fuel and cargo lines lead to each burner. The intent of the proposed rule was to require use of a three way valve in piping systems in which both fuel and cargo enter an incinerator burner through the same pipe. The requirement does not apply to systems in which cargo and fuel enter a burner through separate pipes. The final rules have been modified accordingly.

Section 150.270 Vessel Arrangements and § 150.457 Entry on deck in vicinity of Incinerators.

One commenter recommended that a provision equivalent to IBC § 19.3.7 requiring that the incinerator be located outside the external perimeter of the cargo area be included in the rules. This provision was proposed in § 150.270 of the proposed rules and has been retained in final rules.

One comment recommended adding a requirement to provide access to machinery spaces in the aft part of the incinerator vessel without having to walk on deck. The comment addresses a valid safety concern, but an alternative, less expensive solution has been adopted.

Operational prohibitions concerning access to the vicinity of the incinerator have been added in the final rules (see § 150.147) and these prohibitions should resolve the safety concerns evident in the commenter's recommendation.

Section 150.295 Cargo venting system.

One commenter recommended that the provisions on cargo venting systems in IBC Chapter 8 and § 15.12 be included in the final rules. These IBC provisions were incorporated into the chemical tanker rules (46 CFR Part 153) in 1977 and have been included in both the proposed and final rules in this rulemaking at § 150.295.

Paragraph (e)—One commenter questioned the need to have a Pressure-Vacuum (PV) valve between each tank and the connection to another tank's vent line on an incinerator vessel that only carries compatible wastes. The requirement for having a PV valve has been retained in the final rules. In addition to providing a safeguard against hazards associated with incompatible cargoes, the PV valve serves to isolate cargo tanks, one from the other, in the event of fire or explosion.

Paragraph (m)—One comment stated that high velocity vents should not be fitted with flame arrestors since flame arrestors would slow the speed of the vented gas thus preventing effective high velocity venting. This comment has been adopted.

Section 150.325 Pumproom respiratory requirements.

One commenter requested that a low pressure air supply system be required only for pumprooms not open to the atmosphere. This comment has not been adopted. Pumprooms are by definition closed spaces (see *e.g.*, 46 CFR 153.2, and the definition of "cargo handling space" in § 150.205 of these rules) and access to a low pressure air supply is essential to allow sustained work in those spaces. The same commenter also questioned the need for requiring enclosed spaces for cargo pumps. The requirement for having enclosed pumprooms applies to all tank vessels (see 46 CFR 32.60–20) and is necessary to isolate the pumps from sources of vapor ignition.

Sections 150.330–150.382 Incinerators and Controls

One commenter urged that the proposed rules relating to incinerator and system design should be made more stringent and comprehensive because of anticipated full flow rates being in the 1600–5500 gallon per hour range in lieu of the 3 gallons per hour range contemplated by the regulations for boilers and other vital systems in proposed 46 CFR Part 62 (upon which many of the requirements in proposed §§ 150.330–150.385 were based). The regulations in proposed Part 62 are derived from requirements applicable to propulsion boiler systems also having fuel rates in the range of 1600–5500 gallons per hour. These requirements are considered to be adequate to address safety concerns associated with fuel flow rates in anticipated incinerator designs.

Section 150.330 Incinerator construction.

One commenter recommended that the rules also should include specific

requirements for incinerators relating to design features which may affect the safety of shipboard personnel resulting from accidental spills, explosions, and emissions including, e.g., requirements concerning furnace design, operating conditions, combustion chamber geometry, etc. This recommendation has not been adopted. Imposing design restrictions for incinerators would inhibit innovation in this developing field. Further, all known incinerators that can be adopted for shipboard use are considered to be adequate for such use.

Two commenters questioned the reason for the outside surface temperature limit of 180°C(366°F). These comments noted that § 19.4.4 of the IMO IBC provides that the temperature rise should not adversely affect personnel safety and that the 180°C temperature was too high to prevent personnel injury.

This 180°C temperature requirement is provided as a structural fire protection measure. As provided in Subchapter D, 180°C is the temperature used to test the structural integrity of Class "A" bulkheads. However, the Coast Guard agrees that this requirement alone is not sufficient to prevent personnel injury. Accordingly, a requirement for a guard railing or protective screen to protect the crew from the external surface of the incinerator has been added to § 150.330. Additionally, an operating requirement has been added as § 150.457 which prescribes limitations on when personnel are allowed on deck in the aft part of the vessel during burning.

Section 150.335 Incinerator control and monitoring: general.

Paragraph (f)—One commenter noted that the proposal did not include the proposed requirements as set out in the Federal Register of September 23, 1985, at proposed § 62.25–30(a) for controls, alarms, and monitoring equipment to be used on all types of inspected vessels. This omission was inadvertent and the proposed § 62.25–30(a) has been included in this paragraph of the final rules.

Paragraph (i)—One commenter questioned the need to have back-up valves, i.e. master valves. This requirement has been retained as the back-up capability is considered to be a critical safeguard to allow for the immediate shutdown of whole systems during an emergency.

Section 150.350 Programming control.

Paragraph (b)—One commenter noted that the 25% maximum air flow during light off requirement would extinguish the flame during light off. The intent of this requirement was to provide an air-rich combustion chamber atmosphere. This comment has been adopted and paragraph (b) has been revised accordingly.

Section 150.370 Ventilation of cargo handling spaces, incinerator spaces and incinerator blower spaces.

Paragraph (c)—One commenter recommended that design or operating requirements be added to address hazards involved in the event of ventilation system failure. This comment has not been adopted. Section 150.365 requires that operating instructions include emergency instructions which would cover precautions involved in the event of such failures. Further required precautions are not considered necessary and are not required for other types of tank vessels.

Section 150.390 Emergency shutdown stations.

Paragraph (b)—Two commenters recommended that the first of the two emergency shutdown stations required by this section not be on the weatherdeck in the cargo area since personnel are seldom there during incinerator operation. One of the commenters also recommended that the location be changed to the bridge. Section 150.390 (b) has been revised in the final rules in accordance with these recommendations to require one of the emergency shutdown stations to be on the bridge. This requirement is also in IMO IBC § 19.5.4.

Section 150.395 Personnel emergency and safety equipment.

Paragraph (a)(2)—One commenter recommended that only 2 self-contained breathing apparatus (SCBA's) be required rather than 3, and that the 30 minute capacity for SCBA's be reduced. In support, the commenter suggested that the third apparatus is unnecessary since they are typically used in pairs with one person entering the dangerous situation while the other remains on standby. These comments have not been adopted. The regulations for chemical tankers (see 46 CFR 153.214(a) and (b)) require three SCBA's with 30 minute capacity and the IMO IBC, at §§ 14.2 and 19.3.1, for incinerator vessels, likewise require 3 SCBA's with sufficient breathing capacity to deal with an emergency situation for at least 20 minutes, which necessarily presupposes the additional time needed, *i.e.*, 10 minutes, to activate and deactivate the apparatus before entering and after departing the emergency situation.

Paragraph (g)(1)—Three commenters questioned the provision for the emergency escape breathing apparatus (EEBA). Two of the comments urged adoption of the IMO IBC requirement to require at least a 15 minute air supply and the third comment suggested that the requirement to provide one EEBA per crew member was excessive. One commenter also suggested that the air supply be of sufficient duration for use in an abandon ship situation. The IMO requirement for a 15 minute air supply has been adopted in the final rules. A requirement to have a longer air supply would entail use of bulky equipment which would substantially impair the wearer's ability to move in exiting the vessel or survive in the water in an abandon ship/survival situation. The intent of the rule is to provide an emergency supply in the event of a momentary blow-back or similar air-starvation situation. The requirement to have one EEBA per person is an IMO requirement and has been retained in the final rules. The EEBA is an important safety device which has also been required for several years on chemical tankers that carry hazardous substances which emit toxic vapors.

Section 150.442 Incinerator Stack Emissions and § 150.457 Entry on deck in vicinity of incinerators.

One commenter recommended that the rules include requirements on stack positioning and other design requirements that take into account the effect of combustion gases on air intakes, personnel work areas, and openings to these spaces, as provided in § 19.3.6 of the IMO IBC. These IMO IBC requirements have been incorporated into various provisions of the proposed and final rules. Section 150.270(b) contains specific requirements on placement of air intakes, as well as openings to accommodation spaces and service and machinery spaces, which take into account the effects of combustion gases on vessel personnel. Additional safeguards are also addressed in § 150.270(j), which requires stack positioning to be specifically approved by the Commandant, and in § 150.457, as added in the final rules, which contains operational prohibitions against entry on deck during incinerator operations.

Section 150.450 Eye Protection.

Paragraph (a)(2)—One commenter recommended that the requirement in § 150.450(a)(2) to wear tight-fitting goggles for eye protection while transferring cargo be deleted. This comment has not been adopted. The

requirement to wear goggles while transferring cargo, as well as while sampling cargo, opening a cargo tank, and making or breaking a cargo hose connection, has been in effect since 1977 and applied to transfers of all types of hazardous cargoes regulated under 46 CFR Subchapters D and O. This requirement is considered a basic, essential safety measure and is being retained in the final rules.

Section 157.507 Discharges.

Subsequent to the publication of the NPRM in this rulemaking, the IMO Marine Environmental Protection Committee (MEPC) issued an "Interpretation of Annex II of MAPROL 73/78 in respect of Incinerator Ships, MEPC 23/22." MEPC 23/22 classifies all incinerator cargo as Category A Noxious Liquid Substances (NLS's) and prohibits disposal of these cargoes from an incinerator vessel other than by means of incineration at sea or to an adequate reception facility. These MEPC provisions in effect impose an absolute prohibition against overboard discharges from incinerator vessels.

The Coast Guard recently published final regulations in 46 CFR Part 153 to implement the provisions of ANNEX II. See the Federal Register of March 12, 1987 beginning at page 7744 (52 FR 7444–7801). These regulations were generally made applicable to incinerator vessels but did not include specific implementation of the MEPC 23/22 interpretations and did not add specific provisions to the regulations for incinerator vessels in this rulemaking. One commenter to the Part 153 NPRM recommended that the Coast Guard incorporate the provisions of the MEPC 23/22 interpretations. This comment has been adopted in these final rules.

To implement Annex II and MEPC 23/22 for incinerator vessels, § 150.255, in both proposed and final rules, prohibits piping connecting any cargo piping to sea valves, *i.e.*, to discharge points to the sea, and § 150.507, as added to the final rules, imposes an obligation on the master to ensure against operational discharges of cargoes and cargo residues overboard to the sea. These provisions taken together adopt and clearly reinforce the international mandate to prohibit all overboard discharges from incinerator vessels.

Annex II and the implementing regulations in Part 153 include numerous requirements for vessels carrying Category A NLS cargoes. Specific provisions include requiring prewashing of cargo tanks before allowing overboard discharges, as well as requirements for a Cargo Record Book, a Procedures and Arrangements Manual, and use of a surveyor.

Because of the provisions of MEPC 23/22, however, none of those provisions apply or are needed for incinerator vessels. Accordingly, Part 153 has been revised to exclude incinerator vessels from its application and to make specific reference to the incinerator vessel regulations in this rulemaking (46 CFR Part 150). More specifically, the prewashing provisions in Annex II do not apply since incinerator vessels can not discharge wastes overboard. The remaining provisions in Annex II are not needed since they are already included in the proposed rules of the EPA or the Coast Guard. EPA's proposed § 234.60 (Monitoring and record requirements) and § 234.62 (Shiprider requirement) (50 FR 8288–8270) and § 150.430 (Shipping documents and Cargo Information) in these rules are equivalent to the surveyor, Cargo Record Book and Procedures and Arrangements Manual provisions in Annex II. Also, MEPC 23/22 expressly authorizes adoption of modified provisions in lieu of specific Annex II requirements to reflect specialized operations of incinerator vessels.

Final Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The evaluation provides a detailed explanation of the estimated costs of these regulations. The estimated costs for new construction are approximately $3 million per vessel with an expectation of a maximum of 3 incinerator vessels being built per year for the next 10–11 years. These costs take into account a potential savings to prospective shipowners of as great as $1 million per vessel over the $4 million cost per vessel required to meet current Coast Guard conditions for certification as an incinerator vessel. The savings will result from reducing the time needed for Coast Guard concept plan review in the certification process. The savings would be considerably reduced if several vessels were built to the same plans; however, this is not the usual practice.

Due to a lack of operational experience for incinerator vessels, it was not possible to quantify the extent to which these regulations affect the risk of explosion and fire aboard ships during the incineration process and the potential for exposure of the crew to toxic wastes. However, all known hazards are addressed by these regulations and the risks should be minimal.

These regulations, in conjunction with the EPA permit requirements as proposed in EPA docket FRL–2698–5, should result in an essentially negligible potential for harmful releases affecting coastal areas as a consequence of a vessel casualty. Based upon the information in the Final evaluation, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking includes information collection requirements that have already been approved for all chemical tank vessels. These requirements are in § 150.225(b) and (e), § 150.235(b), § 150.240(b), § 150.365(a), § 150.415, § 150.430, § 150.435, and § 150.480 and are approved under OMB Approval No. 2115–0069. Other information collection requirements are in § 150.460 approved under OMB Approval No. 2115–0071, § 150.550 under OMB Approval No. 2115–0518, 150.365(b) under OMB Approval No. 2115–0548, and §§ 150.490 and 150.505 are approved under OMB Approval No. 2115–0078.

The information collection requirements in this rulemaking and their corresponding control numbers will be listed in 46 CFR § 150.105 concurrently with the publication of final rules.

List of Subjects in 46 CFR Parts 150 and 153

Hazardous materials transportation, Marine safety, Incinerator vessels, Incorporation by reference.

In accordance with the foregoing, Title 46 of the Code of Federal Regulations, Chapter I, Parts 150 and 153 are amended as follows:

PART 150—[AMENDED]

1. The authority citation for Part 150 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

2. By adding a new Subpart B to Part 150 to read as follows:

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Subpart B—Requirements for Vessels Engaged in Bulk Hazardous Waste Incineration at Sea

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§ 150.550 Reporting discharges of cargo.

General

§ 150.200 Applicability

This subpart prescribes rules that apply to vessels engaged in the incineration of liquid hazardous waste in bulk at sea.

Note: Regulations in 40 CFR Part 234 require these vessels to obtain an ocean incineration permit from the Environmental Protection Agency.

§ 150.205 Definitions.

In this subpart:

"Accommodation spaces" means halls, dining rooms, lounges, lavatories, cabins, staterooms, office, hospitals, cinemas, game and hobby rooms, pantries containing no cooking appliances, and similar permanently enclosed spaces.

"Approved" means approved by Commandant (G–MTH), U.S. Coast Guard.

"B" means the breadth of the vessel and is defined in § 42.13–15(d) of this chapter.

"Cargo" means liquid hazardous waste that is carried in bulk for the purpose of incineration at sea and that is a hazardous material, as determined in § 153.40 of this chapter, with a vapor pressure of less than 172 kPa (25 psig) at 37.8°C (100°F).

"Cargo area" means that part of a vessel that includes the cargo tanks, spaces adjacent to the cargo tanks, and the part of the deck over the cargo tanks and adjacent spaces.

"Cargo containment system" means a cargo tank, its cargo piping system, its venting system, and its gauging system.

"Cargo handling space" means an enclosed space that must be entered during a routine loading, carriage, or burning of cargo and that contains an element of the cargo containment system having a seal or packing to prevent the escape of cargo, such as a valve or cargo pump.

"Cargo piping system" means an incinerator vessel's permanently installed piping arrangement, including any valves and pumps, that carries cargo to or from a cargo tank.

"Closed gauging system" means an arrangement for gauging the amount of cargo in a tank that does not have any opening through which cargo vapor or liquid can escape, and includes a float and tape, a magnetically coupled float and indicator, or a radar system.

"Commandant" means Commandant of the U.S. Coast Guard. The term is often followed by a mailing code in parentheses. The mailing address should include any mailing code and should be written as follows: Commandant (mailing code), U.S. Coast Guard Washington, DC 20593–0001.

"Control space" is defined in § 30.10–19a of this chapter.

"Gas-tight" means all openings into the space must have metal closures that do not leak when tested with a fire hose stream at a pitot pressure of 207 kPa gauge (30 psig).

"IMO" means the International Maritime Organization.

"IMO Certificate" means a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, Resolution MEPC 20(22), 1985, as amended, or an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk [International Bulk Chemical Code), Resolution MEPC 19(22), 1985, as amended.

"Incinerator" means a device, consisting of a burner assembly, combustion chamber, and stack, used to thermally break down hazardous waste.

"Incinerator blower space" means an enclosed space containing a blower that supplies combustion air to an incinerator.

"Incinerator control room" means a gas-tight space where controls, alarms, and monitoring systems for the incinerator operation are located.

"Incinerator space" means a cargo handling space surrounding the burner assembly portion of an incinerator, where waste is introduced into it.

"Incinerator vessel" means a tank vessel constructed or converted to carry and burn hazardous waste at sea.

"Independent," as applied to a cargo piping, venting, or heating system means that the system is connected to no other system, and has no means available for connection to another system.

"Independent tank" means a cargo tank that is permanently affixed to the vessel, that is self-supporting, that incorporates no part of the vessel's hull, and that is not essential to the integrity of the hull.

"Integral tank" means a cargo tank that also is part of or is formed in part by the vessel's hull structure so that the tank and the hull may be stressed by the same loads.

"L" means the length of the vessel and is defined in § 42.13–15(a) of this chapter.

"Liquid" means each substance having a vapor pressure of 172 kPa or less at 37.8°C.

"Master" means the person-in-charge of a self-propelled or non-self-propelled incinerator vessel.

"OCMI" means "Officer in Charge, Marine Inspection," as defined in § 1.05(b) of this chapter.

"Pressure-vacuum (PV) valve" means a valve that is normally closed and which opens under a preset positive pressure or a vacuum.

"Separate" and "separated," as applied to a cargo piping, venting, heating or cooling system, means either an independent system or one that may be disconnected from all other systems by—

(1) Removing spool pieces or valves and blanking the open pipes ends; or

(2) Blocking each system interconnection with two blind flanges in series and providing a means of detecting leakage into the pipe section between the flanges.

"Service space" means a space outside the cargo area used for galleys, pantries containing cooking appliances, lockers, store room, workshops other than those forming part of the machinery spaces, and trunks to such spaces.

"Venting System" means a permanent piping arrangement leading from a cargo tank and used to control the flow of vapor to and from the tank.

§ 150.210 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American National Standards Institute, 1430 Broadway, N.Y, N.Y. 10018

ANSI B16.5–81, Pipe Flanges and Flange Fittings. This standard referenced in: § 150.480(a)(2).

ANSI B16.31–71, Non-Ferrous Pipe Flanges. This standard reference in: § 150.480(a)(2).

ANSI 287.1–79, Practice for Occupational and Educational Eye and Face Protection. This standard referenced in: §§ 150.395(g)(2) and 150.457(b)(2).

ANSI Z88.2–80, Practices for Respiratory Protection. This standard referenced in: §§ 150.395(h), 150.457(b)(3), and 150.460(b)(1).

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

NFPA 306–1984, Control of Gas Hazards on Vessels. This standard referenced in: § 150.460(b)(1).

§ 150.215 Non self-propelled vessels.

Each non-self-propelled incinerator vessel must meet the requirements of this subpart and any additional requirements that the Commandant (G–MTH) may prescribe.

§ 150.220 Inspection for Certificate of Inspection.

(a) Each incinerator vessel must be certificated under Subchapter D of this chapter.

(b) During inspection for certification and reinspections held as provided in Subchapter D of this chapter, cargo containment systems must be inspected for corrosion and the remaining wall thicknesses determined in accordance with the method prescribed for boiler in § 61.05–10(f) of this chapter.

§ 150.225 Required endorsement.

(a) Each incinerator vessel must have its Subchapter D Certificate of Inspection endorsed as follows:

(1) "Inspected and approved for the carriage of Grade A and lower flammable or combustible liquids and hazardous waste for incineration"

(2) "Maximum specific gravity allowable: _____".

Note: Specific gravity is calculated in accordance with § 150.255(g).

(b) Each request for the endorsements required by this section must be submitted to one of the Coast Guard offices described in § 91.55–15 of this chapter.

(c) No incinerator vessel may load or carry cargo unless it has the endorsement required by this section.

(d) No endorsement will be issued unless the vessel meets the requirements of this subpart.

(e) The persons requesting an endorsement under paragraph (a) of this section must also transmit to the Coast Guard, when requested—

(1) Hull type calculations;

(2) The test procedure prescribed in § 150.370(b);

(3) The plans and information listed in § 150.295(g) and in § 54.01–18, § 56.01–10, § 91–55–5(a), (b), (d), (g), and (h), and § 110.25–1 of this chapter; and

(4) Any other vessel information, such as plans, design calculations, test results, certificates, and manufacturer's data needed to determine whether the vessel meets the requirements of this subpart.

§ 150.230 Carriage of bulk solid hazardous waste.

Bulk solid hazardous waste may not be carried on board an incinerator vessel.

§ 150.235 IMO Certificates for U.S. flag vessels.

(a) Subject to any amendments to the International Bulk Chemical Code, vessels that meet the requirements of this subpart are considered to meet the International Bulk Chemical Code requirements for obtaining an IMO Certificate of Fitness.

(b) Upon request made to the OCMI, the owner of an incinerator vessel may obtain an IMO Certificate of Fitness if the vessel has a valid Certificate of Inspection endorsed under § 150.225.

(c) The IMO Certificate of Fitness expires on the same date that the incinerator vessel's Certificate of Inspection expires.

Note: The IMO Certificate of Fitness is required for loading and transporting

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hazardous waste from most foreign ports for incineration at sea.

§ 150.240 Equivalent standards.

Procedures for requesting alternatives and waivers are provided in § 153.10 of this subchapter.

Construction and Arrangements

§ 150.245 Hull type and damage stability.

(a) Each incinerator vessel must have either a type I or type II hull as required for vessels which must comply with Part 153 of this Chapter.

(b) Each incinerator vessel must meet the applicable stability requirements in Subpart F of Part 172 of this chapter for a type I or type II hull.

§ 150.250 Electrical equipment.

(a) Each incinerator vessel must meet Subchapter J of this chapter.

(b) Electrical equipment in an incinerator space or incinerator blower space that is not suitable for use in a Class I, Division 1 location or that does not meet the requirements of § 111.105 of this chapter must have interlocks sufficient to automatically de-energize the equipment upon ventilation system failure or loss of the pressure required by § 150.370.

§ 150.255 Cargo containment system.

(a) Each cargo containment system on a vessel must be no closer to the incinerator vessel's shell than 76 cm (approx. 29.9 in) and it may not be located in any part of the incinerator vessel subject to the damage described in Table 172.135 of this chapter for GROUNDING PENETRATION, Vertical extent from the baseline upward.

(b) Cargo piping must be located in those areas from which a containment system is excluded by paragraph (a) of this section unless the cargo piping:

(1) Drains back to its cargo tank under any condition of heel or trim resulting from the damage specified in § 172.135 of this chapter; and

(2) Enters the cargo tank above the liquid level for a full tank in any condition of heel or trim resulting from the damage specified in § 172.135 of this chapter.

(c) The cargo piping system must not be connnected to any sea valve.

(d) Fuel piping and cargo piping may be connected to one common pipe leading into an incinerator burner only if the point of connection has a three-way valve having at least "fuel", "cargo", and "off" positions. The fuel piping must include two automatic non-return valves with positive means of closure, or an equivalent arrangement. These valves must be located in the incinerator space.

(e) A cargo tank's relief valve setting must be not less than 21 kPa gauge (approx. 3 psig).

(f) All cargo pumps and valves located below the weatherdeck must be operable from on or above the weatherdeck.

(g) The cargo must be separated from any bunkers by at least two bulkheads, except that an oil fuel tank containing oil fuel used exclusively if the incineration process may be adjacent to a cargo tank.

(h) A tank containing liquid used for washing cargo tanks and cargo piping may be adjacent to a cargo tank.

(i) Each cargo containment system must be designed to withstand the maximum pressure that develops during an overfill of cargo having the maximum specific gravity endorsed on the vessel's Certificate of Inspection.

(j) Each independent tank must meet the following requirements:

(1) § 38.05–10(a)(1), (b), (d), and (e)(1) of this chapter.

(2) Its piping must penetrate the tank only through that part of the tank or dome extending above the weatherdeck.

(k) A cargo tank may be an integral tank.

(l) A cargo tank must have at least one covered manhole opening into the vapor space described in § 150.295

(m) An access trunk must be no less than 76 cm (approx. 29.9 in.) in diameter.

(n) The hatch of a cargo tank must:

(1) Be at the highest point of the tank; and

(2) Open on or above the weatherdeck.

(o) Aluminum, copper, alloys, zinc, galvanized steel, mercury and materials of construction having a melting point below 925° C (Approx. 1697° F) may not be used in the construction of a cargo containment system.

(p) Each cargo piping system must meet the the standards of Part 56 and 38.10–1(b), 38.10–1(e), and 38.1–10(a) of this chapter.

(q) Piping carrying cargo or cargo residue may not enter any machinery space except a cargo pumproom.

(r) Unless corrosion resistant materials are used, the corrosiveness of the cargo must be used to evaluate the corrosion allowance to be added to the calculated thickness when determining the scantlings of cargo containment systems.

§ 150.260 Separation of tanks from machinery, service and other spaces.

(a) To prevent leakage through a single weld failure, the following spaces must be separated from a cargo by two walls, two bulkheads, or a bulkhead and a deck not meeting in a cruciform joint:

(1) Machinery spaces.

(2) Service spaces.

(3) Accommodation spaces.

(4) Spaces for storing potable domestic or feed water.

(5) Spaces for storing edibles.

(b) Some examples of arrangements that may separate cargo from the spaces listed in paragraph (a) of this section are the following:

(1) Dedicated ballast tanks.

(2) Cargo pumprooms.

(3) Ballast pumprooms.

(4) Double walled piping or a piping tunnel.

§ 150.265 Fore and aft location.

Each cargo containment system must be located at least 0.05L aft of the forward perpendicular, but in no case forward of a collision bulkhead.

§ 150.270 Vessel arrangements.

(a) The following must be outside the cargo area:

(1) Accommodation spaces.

(2) Service spaces.

(3) Incinerator spaces.

(4) Control spaces.

(5) Incinerators.

(6) Machinery spaces.

(7) Incinerator control rooms.

(b) Except as allowed in paragraph (c) of this section, entrances, ventilation intakes and exhausts, and other openings to accommodation, service, or control spaces, must be located at a distance from the athwartship bulkhead facing the cargo area that is at least equal to the following:

(1) 3 m (approx. 10 ft) if the vessel is less than 75 m (approx. 246 ft) in length.

(2) L/25 if the vessel is between 75 and 125 meters (approx. 246 ft and 410 ft) in length.

(3) 5 m (approx 16.5 ft) if the vessel length is more than 125 m (approx. 410 ft) in length.

(c) Fixed port lights, wheelhouse doors, and windows need not meet the location requirements specified in paragraph (b) of this section if they are gastight.

(d) Portlights in the hull plating below the uppermost continuous deck and in the first tier of the superstructure must be a fixed type.

(e) Air intakes and openings into accommodation and service spaces must have metal closures that are gastight.

(f) The closures required by paragraph (e) of this section must be capable of being closed from inside the space.

(g) Each oil fuel containment system must be located inside the cargo area unless the fuel has a closed cup flashpoint above 60° C (140° F).

(h) The containment system for liquids used for washing cargo tanks or cargo piping must be located inside the cargo area.

(i) Pumproom bilge discharges and cargo tank and piping washings must be stored in a slop tank in the cargo area until incinerated or discharged to a reception facility. A cargo tank may be used as a slop tank.

(j) Each incinerator must be positioned in a manner approved by Commandant (G–MTH) for that vessel.

§ 150.275 Ballast equipment.

(a) Except for the arrangement described in paragraph (b) of this section, no piping that serves a dedicated ballast tank that is adjacent to a cargo tank may enter an engine room or accommodation space.

(b) Piping used only to fill a dedicated ballast tank adjacent to a cargo tank may enter an engine room or accommodation space if the piping has a valve or valving arrangement—

(1) Within the part of the incinerator vessel where a containment system may be located under § 150.265;

(2) That allows liquid to flow only towards that ballast tank (such as a check valve); and

(3) That enables a person to shut off the fill line from the weatherdeck (such as a stop valve).

(c) Except as prescribed in paragraph (d) of this section, pumps piping, vent lines, overflow tubes, and sounding tubes serving dedicated ballast tanks must not be located within a cargo containment system.

(d) Each vent line, overflow tube, and sounding tube that serves a dedicated ballast tank and that is located within a cargo containment system must meet § 32.60–10(e)(2) of this chapter.

§ 150.280 Bilge pumping system.

Bilge pumping systems for cargo pumprooms, slop tanks, and void spaces separated from cargo tanks by only a single bulkhead must be entirely within the locations where containment systems are permitted under § 150.265.

§ 150.285 Access to enclosed spaces and dedicated ballast tanks.

An access opening to an enclosed space or a dedicated ballast tank must meet the requirements for a cargo tank access in § 150.225(i), (j), and (k) if:

(a) The enclosed space or dedicated ballast tank is located within the cargo area of the vessel; or

(b) A part of a cargo containment system lies within the enclosed space or dedicated ballast tank.

§ 150.290 Access to double bottom tanks serving as dedicated ballast tanks.

(a) Except as prescribed in paragraph (b) of this section, access openings to double bottom tanks serving as dedicated ballast tanks must not be located within a cargo containment system.

(b) Each access opening to a double bottom tank that is a dedicated ballast tank and that is located within a cargo containment system must be:

(1) Enclosed in an access trunk extending to the weatherdeck;

(2) Separated from the cargo containment system by two manhole coverings; or

(3) Approved by the Commandant (G–MTH).

§ 150.295 Cargo venting system.

(a) Except as permitted paragraph (c) of this section, each cargo venting system must discharge—

(1) At the highest of the following points:

(i) 6 m (approx. 19.7 ft) above the weatherdeck.

(ii) B/3 above the weatherdeck.

(iii) 6 m (approx. 19.7 ft) above a walkway, if the walkway is within 6m (19.7 ft) horizontal radius from the vent discharge.

(2) At least 15 m (approx. 49.2 ft) from air intakes for, or openings into, accommodation and service spaces.

(b) Each venting system outlet must—

(1) Discharge vertically upwards; and

(2) Prevent precipitation from entering the vent system.

(c) The discharge point of the venting system must be located at least 3 m (10ft) above the weatherdeck or walkway if—

(1) The discharge is a vertical unimpeded jet;

(2) The jet has a minimum exit velocity of 30 m/sec. (approx. 98.4 ft/sec); and

(3) The high velocity vent has been approved by Commandant (G–MTH).

(d) Each venting system must terminate in the vapor space above the cargo when the cargo tank is filled to a 2 percent ullage and the incinerator vessel has no heel or trim.

(e) Each cargo tank must have a PV valve in its vent line. The PV valve must be located between the tank and any connection to another tank's vent line (such as a vent riser common to two or more tanks).

(f) The cross sectional flow area of any vent system segment, including any PV valve, must at no point be less than that of a pipe whose inside diameter is 6.4 cm (approx. 2.5 in.).

(g) Calculations must show that under conditions in which a saturated cargo vapor is discharged through a venting system at the maximum anticipated loading rate, the pressure differential between the cargo tank vapor space and the atmosphere does not exceed 28 kPa gauge (approx. 4 psig), or, for independent tanks, the maximum working pressure of the tank.

(h) A venting system must have no assembly that could reduce its cross-sectional flow area or flow capacity to less than that required in paragraph (f) of this section.

(i) Unless a cargo venting system at every point is level or slopes back to the cargo tank under all conditions or heel and trim allowed under § 150.505 of this chapter, the cargo vent system must have a drain valve at each low point (trap) in the vent line.

(j) Supports for a vent system must be adequate to take the weight of the vents off valves and fittings and to prevent excessive vibration and stresses on tank connections.

(k) Each pressure-vacuum relief valve must meet the requirements of Subpart 162.017 of this chapter.

(l) A cargo vent header, except a high velocity vent described in paragraph (c) of this section, must have a flame arrestor.

§ 150.300 Cargo tank gauging, Tank Overflow Control, High Level Alarms.

In this section, "Independent", as applied to two systems, means that one system will operate with a failure of any part of the other system.

(a) Each cargo containment system must have—

(1) A permanently installed closed gauging system that is independent of the high level alarm and the cargo overflow alarm or automatic shutdown systems, which are required by this section;

(2) A vapor return connection;

(3) A closed cargo sampling system; and

(4) A high level alarm—

(i) That gives an audible and visible alarm before the tank fills to 97 percent of its capacity;

(ii) That can be seen and heard at the location where cargo transfer is controlled and on the open deck;

(iii) Whose operation can be checked prior to each loading; and

(iv) That must be marked "HIGH LEVEL ALARM" in lettering as specified for the warning sign in § 150.490, so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

(b) In addition to the cargo high level alarm meeting paragraph (a)(4)(i)–(iv),

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each cargo containment system must have:

(1) A second high level (cargo overflow) alarm, or

(2) A system that automatically stops cargo flow to the tank (automatic shutdown system).

(c) The high level alarm and the cargo overflow alarm or automatic shutdown system must—

(1) Be independent of one another; and,

(2) Operate on loss of power.

(d) The cargo overflow alarm or the automatic shutdown system must operate early enough to—

(1) Stop the loading operation before the cargo tank overflows; and

(2) Avoid surge pressures that exceed the working pressure of the cargo piping system as prescribed in § 38.10–10(a) of this chapter.

(e) A tank overflow must be identified with the legend "TANK OVERFLOW ALARM" in lettering as specified for the warning sign in § 150.490.

(f) A tank overflow alarm must be audible and visible in that part of the deck where the containment systems are located and at the point where cargo loading is controlled.

(g) The automatic shutdown system or tank overflow alarm must be able to be checked at the tank for proper operation (for example, by electrically simulating an overfill at the tank gauge connections).

§ 150.305 Access to a cargo pumproom.

(a) The access door to a cargo pumproom must open onto the weatherdeck.

(b) The access way to a cargo pumproom and its valving must allow passage of a man wearing the breathing apparatus required by § 150.395(a)(2)(i).

(c) Each ladderway in a cargo pumproom must be free from obstructions by piping, framework, or other equipment.

(d) Cargo pumproom ladders and platforms must have guard railings.

(e) Each ladder to a cargo pumproom must have an incline from the horizontal of less than 60°.

§ 150.310 Hoisting arrangement.

(a) A cargo pumproom located below the weatherdeck must have a permanent hoisting arrangement with a lifting capacity of 2500 N (approx. 562 lbs) operable from a weatherdeck, for the removal of an unconscious person.

(b) A cargo pumproom located below the weatherdeck must have a 60 cm by 60 cm (approx. 2 ft by 2 ft) cross-sectional clearance through the hoistway.

§ 150.315 Cargo pump discharge pressure gauge.

Each cargo pump within a pumproom must have a discharge pressure gauge outside the pumproom.

§ 150.320 Bilge pumping systems.

(a) A cargo pumproom must have a bilge pumping system.

(b) The bilge pumping system must have—

(1) Complete remote operating controls outside the cargo pumproom; and

(2) An alarm that operates when the depth of liquid in the bilges exceeds 50 cm (approx. 20 in.).

(c) The discharge piping of the bilge pumping system must not be connected to any sea valve.

§ 150.325 Pumproom respiratory requirements.

(a) Each cargo pumproom must have a low pressure air supply system that provides breathing quality air for use with the breathing apparatus in the pumproom.

(b) The low pressure air supply system described in paragraph (a)(1) of this section must—

(1) Run from fixed air bottles to the pumproom;

(2) Have an air compressor to recharge the fixed air bottles;

(3) Have connections in the pumproom suitable for use with the breathing apparatus required in § 150.395(a)(2)(i); and

(4) Have the air capacity to enable two men to work in the pumproom for at least one hour each without using the cartridges for the breathing apparatus required in § 150.395(a)(2)(i).

Incinerator and Controls

§ 150.330 Incinerator construction.

(a) Each incinerator stack must be constructed of steel with enough bricklining and insulation so that the temperature on its outside surface does not exceed 180°C (356°F) during burning.

(b) Calculations must show that the incinerator, including its structural supports, is designed to withstand a static angle of heel of 30° and the dynamic loading prescribed in § 38.05–2(d) of this chapter.

(c) A guard rail or screen must be installed on deck around the exterior of each incinerator stack at a sufficient distance from the stack and with enough protective covering or insulation to prevent personnel injury during burning. In determining the distance and insulation, the outside surface temperature of the incinerator stack must be taken as 180°C (356°F).

§ 150.335 Incinerator control and monitoring: general.

(a) Each incinerator must have—

(1) Monitoring and alarms that meet § 150.340;

(2) Combustion control that meets § 150.345;

(3) Programming control that meets § 150.350;

(4) Safety trip control that meets §§ 150.335 and 150.360.

(b) Systems that perform the functions listed in paragraphs (a)(1) through (a)(4) of this section must perform all assigned tasks continuously, *i.e.*, the detection of unsafe conditions must not prevent continued control of monitoring of other conditions.

(c) Inadvertent grounding of an electrical or electronic control or alarm system must not cause false signals or safety trip control bypassing.

(d) Programmable control or alarm system logic must not be altered after initial testing without the approval of the cognizant OCMI. Control and automatic alarm systems must be provided with means, acceptable to the cognizant OCMI, of ensuring that setpoints remain within the safe operating range of the equipment.

(e) Operating programs for microprocessor-based or computer-based control, alarm and monitoring systems must—

(1) Be stored in non-volatile memory;

(2) Automatically operate on supply power resumption; and

(3) Not rely on mechanical devices.

(f) All incinerator controls and all alarm and monitoring equipment must be of a type suitable for the marine environment and its intended application, and be designed and constructed to operate indefinitely under the following conditions:

(1) Inclinations from the vertical—

(i) Static 15° list; and

(ii) Dynamic 22.5° roll and simultaneous 7.5° pitch.

(2) Temperatures of—

(i) 0°C to 60°C in enclosures;

(ii) 0°C to 50°C in machinery spaces and spaces with forced cooling;

(iii) −40°C to +55°C on weather decks; and

(iv) 0°C to 40°C otherwise.

(3) System supply variations of—

(i) ±10% voltage;

(ii) ±5% frequency; and ±20% fluid pressure.

Note: Considerations should include normal dynamic conditions that might exceed these values, such as switching, valve closure, power supply transfer, starting, and shutdown.

(4) Relative humidity of 0 to 100%.

(5) Vibrations and accelerations of—

(i) ±1.6mm from 2Hz to 25Hz and ±4g from 25 Hz to 100 Hz for equipment mounted on or adjacent to rotating or reciprocating machinery; and

(ii) ±1mm from 2 Hz to 13.2 Hz and ±0.7g from 13.2 Hz to 80 Hz for all other equipment.

(g) All control systems must be so designed that, as far as practicable, failure of equipment causes safe and immediate incinerator shutdown.

(h) Safety trip controls must require manual reset before renewed operation of the incinerator.

(i) Each pipe leading to an incinerator burner, if that pipe carries fuel or cargo or both, must be provided with a burner valve that is operated by the programming controls and automatically closed by the burner safety trip control and the incinerator safety trip control. Each incinerator burner must also be provided with one or more back-up valves to stop flow of fuel and cargo to the incinerator upon actuation by the incinerator safety trip control. Burner back-up valve shutoff must occur within 4 seconds of the detection of an unsafe condition or operation of an emergency shutdown station control. These valves must also be manually operable at the incinerator.

(j) Low voltage electronics must be designed with due consideration for static discharge, electromagnetic interference, fungal growth, and contact corrosion.

§ 150.340 Incinerator monitoring and alarms.

(a) Operation of a safety trip control described in §§ 150.355 and 150.360 must be alarmed at the incinerator space and the incinerator control room, if any; otherwise, in the vessel's control space.

(b) Manual incinerator control locations, including remote manual control and local manual control, must be provided with the instrumentation necessary for safe operation from that location.

(c) Visual alarm displays must initially indicate the malfunction without operator intervention.

(d) If the remote instrumentation installed does not provide a continuous display, readings must be obtainable with minimal effort by the operator.

(e) Failure of an incinerator automatic control, remote control, or alarm system must be immediately alarmed in the incinerator space, the incinerator control room, and in the vessel's control space.

(f) Alarms must be provided in each incinerator space to indicate failure to maintain the pressure differential required by § 150.370(c) of this chapter.

(g) Alarms must also be provided to indicate when temperature on the surface of the incinerator exceeds 180 °C (356 °F) during burning. The alarms must be in each incinerator control room and in the vessel's control space.

(h) If a cargo tank is required to be inerted under § 150.410, alarms must be provided to indicate when the pressure in the vapor space of an inerted cargo tank is less than 0.07 bar gauge (7 kPa, approx. 1 psig). An alarm must be in each incinerator control room and in the vessel's control space.

(i) All alarm systems must—

(1) Have no means to reduce or eliminate the annunciated signal other than the manual acknowledgement device;

(2) Be continuously powered;

(3) Be provided with a means to test audible and visual annunciators;

(4) Be able to simultaneously indicate more than one alarm condition if multiple inputs are provided:

(5) Visually annunciate until the alarm is manually acknowledged and the alarm condition is cleared;

(6) Audibly annunciate until manually acknowledged;

(7) Not prevent annunciation of subsequent alarms because of previous alarm acknowledgement;

(8) Automatically reset to the normal operating condition only after the alarm has been manually acknowledged and the alarm condition is cleared; and

(9) Clearly distinguish between normal, alarm, and acknowledged alarm conditions.

§ 150.345 Combustion control.

(a) Automatic combustion control must provide the air-fuel-cargo relationships necessary for complete and safe combustion under all normal light off and operating conditions, but in no case less than 3% excess air.

(b) If combustion control is not automatic, the programming controls and safety trip control must provide a level of safety equivalent to automatic combustion control.

§ 150.350 Programming control.

Programming control must provide a specific sequence of interlocks for the safe ignition and normal shutdown of the incinerator burners. The programming control must prevent ignition if unsafe conditions exist and must include the following minimum sequence of events and interlocks:

(a) *Prepurge.* Incinerators must undergo a continuous purge of the combustion chamber to make sure of a minimum of 5 changes of air. The purge must occur immediately prior to the trial for ignition of fuel oil in the initial burner of an incinerator. All registers and dampers must be open. The prepurge must be complete before fuel oil trial for ignition of the initial burner.

(b) *Trial for ignition and ignition of fuel oil.* Total incinerator air flow during light off must provide an air-rich combustion chamber atmosphere. The burner igniter must be in position and proven energized before admission of fuel to the incinerator. The igniter must remain energized until the burner flame is established and stable, or until the trial for ignition period ends. The trial for ignition period must not exceed 5 seconds. Failure of the burner to ignite during a trial for ignition must automatically actuate the burner safety trip controls.

(c) *Post-purge.* Immediately after normal shutdown of the incinerator, an automatic purge of the incinerator equal to the volume and duration of the prepurge must occur. Following shutdown caused by the conditions listed in § 150.380, the air flow to the incinerator must not automatically increase. Post-purge in such cases must be under manual control.

§ 150.355 Incinerator burner safety trip control.

(a) Each burner must be provided with at least one flame detector.

(b) The burner fuel oil and cargo valves must automatically close when—

(1) Loss of burner flame occurs;

(2) Actuated by the incinerator safety trip control;

(3) The burner is not properly seated or in place;

(4) Trial for ignition fails; or

(5) The burner flame detector fails.

§ 150.360 Incinerator safety trip control.

Each incinerator must be provided with a safety trip control that automatically closes its burner fuel and cargo valves upon—

(a) Inadequate air flow to support complete combustion;

(b) Loss of control power;

(c) Manual trip operation in the incinerator space or the emergency shutdown station of § 150.390(c);

(d) Loss of flame at all burners; or

(e) Control system failure.

§ 150.365 Operating instructions and test procedures.

(a) Normal and emergency operating instructions must be provided for all remote and automatic control systems, and must include safety precautions, as applicable. Specific emergency operating instructions must be posted at incinerator control locations.

(b) A written Coast Guard approved test procedure for periodically verifying

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the operational conditions required by § 150.335–§ 150.360 must be retained aboard the vessel.

§ 150.370 Ventilation of cargo handling spaces, incinerator spaces and incinerator blower spaces.

(a) Except as provided in paragraphs (c) and (d) of this section, each cargo handling space must have a permanent forced exhaust ventilation system.

(b) Except as provided in paragraph (d) of this section, each cargo handling space ventilation system must meet the following:

(1) Each ventilation system exhaust duct must discharge no less than 10 m (approx. 32.8 ft) from openings into, or ventilation intakes for, accommodation or service spaces.

(2) Each ventilation system must not recycle vapors from ventilation discharges.

(3) Except for the space served by the ventilation duct, each ventilation duct must not pass through a machinery room, an accommodation space, or working space.

(4) Each ventilation system must be operable from outside the space it ventilates.

(5) Each ventilation system must be sized to change the air in the ventilated space at least 45 times per hour.

(6) Each ventilation system must not allow air to stagnate in any part of a ventilated space.

(7) Each ventilation system must be able to exhaust air from both above and below the deck plates of a ventilated space.

(c) The ventilation system for an incinerator space must be permanent, be of a positive pressure type, and keep the pressure in the space greater than the pressure in the incinerator.

(d) The ventilation system for an incinerator blower space must be permanent, be of a positive pressure type, and be independent of other air supply systems and the ventilation system—

(1) Must provide a pressure greater than the pressure within the incinerator; and

(2) Must change the air in the space at least 20 times per hour based on the total volume of the incinerator blower space.

§ 150.375 Ventilation of spaces not usually occupied.

(a) Each incinerator vessel must have portable ventilation equipment that fits the mount required in paragraph (b)(1) of this section.

(b) Each enclosed space within the cargo area that does not have a permanent ventilation system meeting § 150.370(b) must have—

(1) A mount for the portable mechanical ventilation equipment required by this section; and

(2) Either permanent ventilation ductwork connected to the mount and arranged to supply air to the extremities of the space; or

(3) An attachment for temporary ductwork at the mount with enough ductway in the ventilated space and temporary ductwork stowed aboard the vessel to supply air to the extremities of the space.

§ 150.380 Incinerator space access.

(a) Two accesses must be provided to each incinerator space. One of these must be from the weather deck. If an incinerator control room is provided adjacent to the incinerator space, it must have at least one access to the weatherdeck and at least one access that is not to the incinerator space.

(b) Each access opening to an incinerator space must be fitted with a self-closing gas tight door.

§ 150.385 Incinerator blower space.

If an incinerator blower space has access to an incinerator space, it must also have access to the weatherdeck.

Equipment and Operations

§ 150.390 Emergency shutdown stations.

(a) Each incinerator vessel must have at least two emergency shutdown stations.

(b) One emergency shutdown station must be located in the vessel's navigating bridge.

(c) The second emergency shutdown must be located in the incinerator control room.

(d) Each emergency shutdown station must have the controls necessary to stop—

(1) All pumps supplying cargo and oil fuel to the incinerator; and

(2) The flow of cargo from the cargo area.

(e) Each emergency shutdown station must be marked as described in § 150.490 (c), (d), and (e) with the legend "EMERGENCY SHUTDOWN STATION".

§ 150.395 Personnel emergency and safety equipment.

(a) Each incinerator vessel must have the following:

(1) Two stretchers or wire baskets complete with equipment for lifting an injured person from a pumproom or a cargo tank.

(2) In addition to any similar equipment required by Subchapter D of this chapter, three each of the following:

(i) A 30 minute self-contained breathing apparatus of the pressure demand type, approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health, with five refill tanks or cartridges of 30 minutes capacity each.

(ii) A set of coveralls or large apron, boots, long sleeved gloves, and goggles, each made of materials resistant to the cargo endorsed on the Certificate of Inspection.

(iii) A steel-cored lifeline with harness.

(iv) An explosion-proof lamp.

(3) First aid equipment including oxygen resuscitators.

(b) Each incinerator vessel must have at least two safety equipment lockers.

(c) One safety equipment locker must be adjacent to the emergency shutdown station required by § 150.390(b). This locker must contain one set of the equipment required by paragraph (a)(1) of this section and two of the sets required by paragraph (a)(2) of this section.

(d) The second safety equipment locker must be adjacent to the second emergency shutdown station required by § 150.390. This locker must contain the remaining equipment required by paragraph (a) (1) and (2) of this section.

(e) Each safety equipment locker must be marked as described in § 150.490 (c), and (d) with the legend "SAFETY EQUIPMENT."

(f) Each incinerator vessel must have a shower and an eyewash fountain that:

(1) Operate in any ambient temperature;

(2) Maintain the water at a temperature between 0 °C and 40 °C (approx 32 °F and 104 °F);

(3) Are located on the weatherdeck; and

(4) Are marked "EMERGENCY SHOWER" so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

(g) Each incinerator vessel must have on board for each crew member:

(1) A fifteen minute or greater self-contained compressed air breathing apparatus for emergency escape approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health.

(2) If the emergency escape breathing apparatus does not protect the eyes from vapor, a set of goggles that meets the specifications of ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1979).

(h) Each incinerator vessel must have a comprehensive respiratory program meeting ANSI Practices for Respiratory Protection, Z88.2(1980) including approval, use, and maintenance of all respiratory equipment.

§ 150.400 Special requirements for fire protection.

(a) With the exception of the vent riser, each part of a cargo containment system exposed on the weatherdeck must be covered by a fixed foam system.

(b) The incinerator space must be fitted with a fixed foam system. The area protected must meet the requirements of § 34.17–5(a)(1) of this chapter.

(c) Each fire protection system required by this section must meet Part 34 of this chapter or be specifically approved by the Commandant (G–MTH).

§ 150.402 Flammable vapor detectors.

(a) Each incinerator vessel must have two vapor detectors that meet 35.30–15(b) of this chapter.

(b) At least one of the vapor detectors in paragraph (a) of this section must be portable.

§ 150.403 Toxic vapor detectors.

If available for the cargo carried, each incinerator vessel must have two toxic vapor detectors able to measure vapor concentrations in the range of the time weighted average (TWA) for the cargo. One of the vapor detectors must be portable and may be a direct reading detector tube instrument. These vapor detectors may be combined with those required by § 150.402 of this subpart.

§ 150.405 Inert gas system: General.

A permanent inert gas system must be provided for—

(a) Each cargo tank having a fill or circulation line that terminates higher than 10cm or the radius of the line above the bottom of the tank, whichever is greatest; and

(b) Each cargo tank washed with flammable or combustible solutions.

§ 150.410 Inert gas system: Specific requirements.

When required by § 150.405, an inerting system must—

(a) Maintain the vapor space of the containment system in an inert state;

(b) Have a pressure control system that—

(1) Prevents the inert gas system from raising the cargo tank pressure to more than the relief valve settings; and

(2) Maintains at least a 3.5 kPa gauge (approx. 0.5 psig) pressure within the containment system.

(c) Has storage or generating capacity for enough inerting gas to replace that normally lost through tank breathing and relief valve leakage, but in no case an amount less than five percent of the tank's capacity when measured with the gas at −18 °C (approx. 0 °F) and a pressure equal to the cargo tank's relief valve setting; and

(d) Has connections for any supplemental gas supply necessary to maintain the inert gas pressure described in paragraph (b) of this section while supplying cargo to the incinerator for burning.

§ 150.415 Certificates required to be on bridge.

Each incinerator vessel must have its endorsed Certificate of Inspection posted on the bridge.

§ 150.420 Limitation in the endorsement.

No person may operate an incinerator vessel unless the vessel is operated in compliance with all limitations in the endorsement on the incinerator vessel's Certificate of Inspection.

§ 150.425 Regulations required to be on board.

No person may operate an incinerator vessel unless the most recent editions of this subpart and Subchapter D of this chapter are on board.

§ 150.430 Shipping documents and Cargo information.

(a) No person may operate an incinerator vessel without copies of the EPA Uniform Hazardous Waste Manifest (EPA Form 8700–22 and 8700–22a) required in 40 CFR 262 and the waste analysis required in 40 CFR 234.58 both being on the bridge of the vessel.

(b) The master shall ensure that the following information for each cargo listed on the EPA Uniform Hazardous Waste Manifest required in paragraph (a) of this section is readily available to those persons on the incinerator vessel engaged in cargo operations:

(1) Name of the cargo as listed on the EPA Uniform Hazardous Waste Manifest.

(2) A description of the cargo's appearance and color.

(3) Hazards in handling the cargo.

(4) Any special handling procedures for the cargo.

(5) Procedures to follow if the cargo spills or leaks.

(6) Procedures for treating a person exposed to the cargo.

(7) A list of fire fighting procedures and extinguishing agents effective with cargo fires.

(8) Loading point.

(9) Approximate quantity of cargo.

(10) Tank in which the cargo is located.

§ 150.432 Cargo Antidotes.

No person may operate an incinerator vessel unless the vessel has on board the most recent edition of the *Medical First Aid Guide for Use in Accidents Involving Dangerous Goods* published by IMO/WHO/ILO.

§ 150.435 Cargo piping plan.

No person may operate an incinerator vessel unless the vessel has an approved cargo piping plan that—

(a) Shows all cargo piping on the vessel;

(b) Shows all cargo valving, pumps, and other equipment that is used during cargo transfer;

(c) Shows the cargo tanks;

(d) Shows any modification necessary to any cargo containment system that is to be separated from other cargo containment systems to handle cargo that is incompatible with cargo handled in the other systems; and

(e) Emphasizes the piping and equipment described in paragraphs (a), (b) and (d) of this section by using contrasting colors, line widths or similar methods.

§ 150.440 Cargo quantity limitations.

No person may load a cargo tank or operate an incinerator vessel that carries a cargo tank containing in excess of 3000 m^3 (approx. 105,932 ft^3) of cargo.

§ 150.445 Inerting system operation.

The master shall ensure that the inert gas system required by § 150.405(a) is in use and operating correctly.

§ 150.450 Eye Protection.

(a) The master shall ensure that each person wears a face mask or tight fitting goggles for eye protection against splashing or spraying cargo if that person is—

(1) Sampling cargo;

(2) Transferring cargo;

(3) Making or breaking a cargo hose connection; or

(4) Opening a cargo tank for purposes of tank cleaning by opening a Butterworth hatch, ullage hatch, cargo tank hatch, or similar opening.

(b) The master shall ensure that each person wears a face mask or tight-fitting goggles for eye protection against splashing or spraying cargo if the person is—

(1) In the area of the deck where the cargo tanks, cargo piping, and cargo handling spaces are located while a cargo transfer is taking place; or

(2) In a cargo handling space, an enclosed space adjacent to a cargo tank,

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or a space containing part of a cargo containment system while cargo transfer is taking place.

§ 150.455 Protective clothing.

(a) The master shall ensure that every person in the cargo area who is involved in cargo sampling, opening a cargo tank, transferring cargo, or making or breaking cargo connections wears coveralls or a large apron, boots, and gloves.

(b) The master shall ensure that each person described in § 150.450(b), in addition to the clothing required by paragraph (a) of this section, wears any other protective clothing the master believes necessary to protect the person from the cargo's hazards.

§ 150.457 Entry on deck in vicinity of incinerators.

(a) No person may be on deck in the aft part of the vessel during burning without the permission of the master.

(b) Before permitting a person on deck in the vicinity of the incinerators during burning, the master shall make sure that the person—

(1) Carries a fifteen minute or greater self-contained compressed air breathing apparatus for emergency escape approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health;

(2) If the emergency escape breathing apparatus does not protect the eyes from vapor, carries a set of goggles that meets the specifications of ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1979);

(3) Is trained in the matters set forth in section 7 of ANSI Z88.2 concerning proper use of the equipment to be used;

(4) Is made aware of, in understandable terminology, of the dangers of heat from the stack and the effects of exposure to the incinerator stack emissions; and

(5) While on deck in the aft part of the vessel in the vicinity of the incinerators, is closely monitored by an officer assigned for that purpose.

§ 150.460 Entry into spaces containing cargo vapor.

(a) No person may enter a cargo tank, cargo handling space, or enclosed space in the cargo area without the permission of the master.

(b) Before permitting anyone to enter a cargo tank, cargo handling space, or other enclosed space in the cargo area, the master shall make sure that—

(1) The atmosphere of the space is tested in accordance with procedures in NFPA 306, "Control of Gas Hazards on Vessels" to ensure that it contains at least 19.5 percent oxygen by volume, flammable concentration in air less than 10% of the Lower Explosive Limit (LEL), and toxic contaminant concentrations less than the Threshold Limit Value (TLV) as recommended by the American Conference of Governmental Industrial Hygienists (ACGIH), or, in the alternative, that those entering the space

(i) Wear the type of respiratory equipment required for the atmosphere as specified in ANSI Z88.2;

(ii) Follow the procedures in section 6 of ANSI Z88.2 concerning proper selection of a respirator and individual fit testing;

(iii) Are trained in the matters set forth in section 7 of ANSI Z88.2 concerning proper use of the equipment to be used; and

(iv) Are made aware of, in terminology understandable to the personnel entering the atmosphere, of the generally recognized short and long term harmful effects of exposure to the atmosphere involved.

(2) A deck safety watch is in attendance when any person is in the tank or space and that an officer closely supervises the entire operation; and

(3) The results of the test required in paragraph (b)(1) of this section are logged in the vessel's Official Log Book.

§ 150.465 Opening of tanks and cargo sampling.

(a) Except as provided by paragraph (b) of this section, the master shall ensure that all cargo tank hatches, ullage openings, and tank cleaning openings are tightly closed at all times.

(b) The master may authorize the opening of a cargo tank to clean it.

(c) The master shall make sure that cargoes are sampled only through the controlled sampling arrangement required by § 150.300 of this chapter.

§ 150.470 Storage of cargo samples.

(a) The master shall make sure that any cargo samples are stored in—

(1) A designated and ventilated space in the cargo area of the vessel; or

(2) An area approved by the Commandant (G–MTH) for the stowage of cargo samples.

(b) The master shall make sure that cargo sample bottles are stored—

(1) In a way that prevents shifting of the sample bottles when the vessel is at sea;

(2) In bins or containers constructed of materials that are resistant to the cargo samples; and

(3) Apart from other sample bottles containing incompatible cargo.

§ 150.475 Illness, alcohol, drugs.

The master shall ensure that no person participates in cargo related operations who appears to be intoxicated by alcohol or drugs or to be so ill as to be unfit for the particular operation.

§ 150.480 Standards for marking of cargo hose carried on board.

No person may mark a hose assembly used to transfer cargo to or from a vessel as meeting the standards of this section unless the hose assembly meets the following requirements:

(a) Each hose assembly must have—

(1) Fully threaded connections;

(2) Flanges that meet standard B16.5, Steel Pipe Flanges and Flange Fittings, or standard B16.31, Nonferrous Pipe Flanges, of the American National Standards Institute; or

(3) Quick-connect couplings that are acceptable to the Commandant (G–MTH).

(b) Each hose assembly must be marked with the—

(1) Date of manufacture;

(2) Working pressure described in paragraph (d) of this section;

(3) Date of the last test made as prescribed in paragraph (e) of this section; and

(4) Manufacturer's recommended maximum and minimum temperatures.

(c) A cargo hose assembly must have a minimum bursting pressure as stated by the manufacturer of at least 5152 kPa gauge (approx. 750 psig).

(d) The working pressure marked on a hose must meet the following:

(1) Be at least 1030 kPa gauge (approx. 150 psig).

(2) Not exceed 20 percent (one fifth) of the manufacturer's stated bursting pressure.

(3) Not exceed the manufacturer's recommended working pressure.

(4) Not exceed the test pressure used in the latest test under paragraph (e)(3) of this section.

(e) A cargo hose assembly must be inspected and tested by placing it in a straight, horizontal position so that its entire external surface is accessible. It must be ascertained that the hose assembly—

(1) Has no loose covers, kinks, bulges, soft spots, and no gouges, cuts, or slashes that penetrate any hose reinforcement;

(2) Has no external and, to the extent internal inspection is possible with both ends of the hose open, no internal deterioration; and

(3) Does not burst, bulge, leak, or abnormally distort under static liquid

pressure at least 1½ times the recommended working pressure.

§ 150.485 Signals during cargo transfer.

The master shall ensure that the incinerator vessel displays a red flag in the day and a red light at night when transferring cargo while fast to a dock.

§ 150.490 Warning signs during cargo transfer.

(a) When transferring cargo to the vessel, the master shall ensure that the incinerator vessel displays a warning sign at the gangway facing the shore so that it may be seen from the shore and another warning sign facing outboard toward the water so that it may be seen from the water.

(b) Each warning sign must have the following legends.

(See figure 150.490):

(1) Warning.

(2) Dangerous Cargo.

(3) No Visitors.

(4) No Smoking.

(5) No Open Lights.

(c) Each letter must be block style, black on a white background.

(d) Each letter must—

(1) Be 7.5 cm (approx. 3 in.) high;

(2) Be 5 cm (approx. 2 in.) wide except for "M" and "W" which must be 7.5 cm (Approx. 3. in.) wide and the letter "I" which may be 1.3 cm (approx. ½ in.) wide; and

(3) Have 1.3 cm (approx. ½ in.) stroke width.

(e) The spacing must be—

(1) 1.3 cm (approx. ½ in.) between letters of the same word;

(2) 5 cm (approx. 2 in.) between words;

(3) 5 cm (approx. 2 in.) between lines; and

(4) 5 cm (approx. 2 in.) at the borders of the sign.



Figure 1 - Minimum Dimensions for Warning Sign

Figure 150.490—Minimum Dimensions for Warning Sign

§ 150.495 Person in charge of cargo transfer.

(a) The master shall ensure that cargo transfer operations are supervised by a person designated as a person in charge of cargo transfer under 33 CFR 155.710.

(b) No person may make connections for cargo transfer or transfer cargo unless he has authorization from the person in charge of cargo transfer.

§ 150.500 Cargo transfer conference.

(a) Before making connections for cargo transfer, the person in charge of cargo transfer shall confer with the person supervising the cargo transfer at the facility.

(b) The person in charge of cargo transfer shall discuss the important aspects of the transfer operation, such as the following, with the supervisor at the facility:

(1) The cargo to be transferred.

(2) The cargo loading rates marked on the cargo piping plan or the maximum safe transfer rates.

(3) The critical or hazardous stages of the transfer operation.

(4) The emergency procedures in case of a spill.

(5) A procedure for shutdown of shore pumps, shore valves, and vessel's valves that prevents piping system pressures from exceeding those for which the piping system is designed.

§ 150.505 Loading information.

Each incinerator vessel must have a manual containing information that enables the master to load and ballast the vessel while keeping structural stresses within design limits.

§ 150.507 Discharges.

(a) The master of an incinerator vessel shall ensure that there are no operational discharges of cargo (including without limitation cargo residues from tank washings, pumproom bilges, ballast tanks, and slop tanks) from the vessel to the sea.

(b) Cargo and cargo residues on an incinerator vessel may be disposed of only by incineration at sea or by discharge to an adequate reception facility as defined in 33 CFR 153.2.

§ 150.510 Cargo transfer piping.

The person in charge of cargo transfer shall ensure that—

(a) Cargo is transferred to or from a cargo tank only through the vessel's cargo piping system;

(b) Vapor not returned to shore through the incinerator vessel's vapor return system is discharged at the height required for the vessel's cargo vent riser in § 150.295 of this chapter.

(c) All cargo vapor is returned to shore through the valved connection on the venting system if:

(1) The transfer terminal has vapor return equipment; and

(2) The vapor return equipment is adequate to handle the vapor expected from the tank.

§ 150.515 Connecting a cargo hose.

The person in charge of cargo transfer may not authorize the connection of a hose to a cargo containment system unless—

(a) That person ensures that the cargo will not weaken or damage the hose;

(b) The hose is marked as meeting the standards of § 150.480;

(c) The date of the hose's last pressure test is within one year of the date on which the hose is used to transfer cargo;

(d) The recommended working pressure marked on a hose used for discharge meets or exceeds the working pressure marked on the cargo piping at the hose connection; and

(e) The cargo's temperature is within the manufacturer's recommended maximum and minimum hose temperatures.

§ 150.520 Preparation for cargo transfer.

The person in charge of cargo transfer may not begin or continue cargo transfer unless the following conditions are met:

(a) No fires or open flames are on deck or in compartments near the hose connections.

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(b) Any electrical bonding of the vessel incinerator vessel to the transfer facility is made before the cargo transfer piping is joined.

(c) The transfer connections have enough slack to allow for vessel movement.

(d) The transfer connections are supported by tackles.

(e) The cargo high level alarms, tank overflow alarms and overflow control systems are functioning correctly when the cargo is loaded.

(f) Joints and couplings are gasketed and mated tightly.

(g) Flanges are bolted tightly.

(h) No repair work is underway in areas where cargo vapors may collect.

(i) Cargo valves are properly set.

(j) Venting system bypass valves are set for cargo transfer and are operating properly.

(k) All scuppers are plugged.

(l) Smoking is limited to safe places.

(m) Fire fighting and safety equipment is ready.

(n) Discharge containment as required by 33 CFR 155.310 is in place and periodically drained to a cargo tank. Spray shields on the flanges of the manifold connections must also be provided.

(o) The person in charge of cargo transfer is in effective communication with the transfer terminal.

(p) The person in charge of the transfer terminal has acknowledged that the transfer terminal is ready to transfer.

(q) Pressures within the cargo transfer and containment systems do not exceed the pressure ranges for which the transfer hose and containment systems are designed.

(r) No vessels that would hazard cargo transfer are alongside the incinerator vessel.

§ 150.525 Transfer of ship stores.

The person in charge of cargo transfer may neither begin nor continue the transfer of a cargo while ship's stores are transferred unless transfer of ship's stores does not hazard transfer of the cargo.

§ 150.530 Supervision of cargo transfer.

The person in charge of cargo transfer shall—

(a) Supervise the operation of cargo system valves;

(b) Monitor the cargo loading rate to ensure it does not exceed that stated on the cargo piping plan; and

(c) Monitor the cargo level in the tanks to make sure they do not overflow.

(d) Ensure that the amount of cargo in a tank does not exceed the tank's capacity at any ambient temperature between −18°C (approx. 0°F) and 46°C (approx. 115°F).

§ 150.535 Isolation of automatic closing valves.

The person in charge of cargo transfer may not isolate automatic closing valves described in § 150.300 of this chapter from a cargo containment system.

§ 150.540 Terminal procedures.

Upon completion of the transfer operation, the person in charge of cargo transfer shall ensure that—

(a) The cargo transfer connections are closed off;

(b) The transfer lines and hoses are drained of cargo, either into the tank or back to the transfer terminal;

(c) Any electrical bonding between the vessel and the shore facility is broken only after the cargo hose is disconnected; and

(d) Each vent system is returned to its nonloading configuration.

§ 150.545 Inspection of personnel emergency and safety equipment.

The master shall ensure that the personnel emergency and safety equipment required by § 150.395 of this chapter is inspected every 30 days and found to be in good condition and operating properly.

§ 150.550 Reporting discharges of cargo.

The master shall ensure that any overboard discharges of cargo are reported in the manner prescribed for oil and hazardous substances in 33 CFR 151.45 (c), (d), (g), and (h).

PART 153—[AMENDED]

3. Section 153.1 is amended by revising paragraph (a)(3) and adding a new paragraph (a)(4), to read as follows:

§ 153.1 Applicability.

* * * * *

(a) * * *

(3) The ship is an offshore supply vessel carrying the cargo under Subpart 98.31 of the chapter; or

(4) The ship is an incinerator vessel regulated under Part 150 of this subchapter.

* * * * *

Date: March 16, 1988.

P.A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 88-6125 Filed 5-3-88; 8:45 am]

BILLING CODE 4910-14-M

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-225]

Organization and Delegation of Powers and Duties; Federal Highway Administrator et al.

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document delegates to the Federal Highway Administrator the authorities vested in the Secretary of Transportation by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170, relating to commercial drivers' licenses, commercial drivers' license information system, and Federal disqualifications, and the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, 101 Stat. 132, concerning the construction and financing of highways, administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and other matters.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Since these amendments relate to Departmental management, procedures, and practice, notice and comment on them are unnecessary and they may be made effective in fewer than thirty days after publication in the Federal Register.

The Secretary has determined that certain authority vested in him by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-750, 100 Stat. 3207-170, relating to limitation on number of commercial drivers' licenses, establishment of a commercial driver's license information system, Federal disqualifications, commercial motor vehicle safety grants, and other matters should be delegated to the Federal Highway Administrator.

Also, certain authority vested in the Secretary by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, 101 Stat. 132, relating to the construction and financing of highways, administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and other matters should be delegated to the Federal Highway Administrator as set forth below.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies) organization and functions (Government agencies).

In consideration of the foregoing, Chapter I, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.45 is amended by revising paragraph (e)(2) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(e) * * *

(2) Any such additional guidance is approved prior to issuance by the Federal government's designated lead agency, the Federal Highway Administration (see § 148(cc)), in coordination with the Assistant Secretary for Policy and International Affairs.

3. Section 1.48 is amended by revising paragraphs (b)(29) and (b)(34), (c)(1) and (c)(2); adding paragraph (c)(20); removing and reserving paragraph (i); adding paragraph (v); revising paragraphs (q), (s), and (cc) as set forth below. The introductory text of the section and the introductory text of paragraphs (b) and (c) are reprinted for the convenience of the reader.

§ 1.48 Delegations to the Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(b) Administer the following sections of Title 23, U.S.C.:

* * * * *

(29) 201 through 205, 210, 212, 214 through 218, (Chapter 2);

* * * * *

(34) 316 through 321, inclusive; and

* * * * *

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 140, 142 through 145, 147 through 154, 167, and 171, and Title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; and sections 502-504, Title V, of the Highway Revenue Act of 1978.

(2) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93-87, 87 Stat. 250; Pub. L. 93-643, 88 Stat. 2281).

* * * * *

(20) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, 101 Stat. 132).

* * * * *

(i) [Reserved]

* * * * *

(q) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 6(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731).

* * * * *

(s) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, January 4, 1975, 88 Stat. 2281).

* * * * *

(v) Carry out the functions vested in the Secretary by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170.

* * * * *

(cc) Prescribe regulations, as necessary, at Parts 24 and 25 of this title, to implement Pub. L. 91-646, 84 Stat. 1894, and any amendments thereto, as appropriate, in coordination with the Assistant Secretary for Policy and International Affairs, and carry out all other functions vested in the Secretary by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894, and any amendments thereto.

(dd) [Reserved]

(ee) [Reserved]

Issued on April 20, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-9873 Filed 5-3-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

49 CFR Part 350

Commercial Motor Carrier Safety Assistance Program; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending the regulations contained in 49 CFR Part 350 that implement the Motor Carrier Safety Assistance Program (MCSAP). The technical amendments included in this document update the current regulations to reflect current statutory authority, funding authorizations, and removal of inapplicable years and any mention of future fiscal years.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Nalley, Office of Motor Carrier Safety Field Operations, (202) 366-2946, or Ms. Julie A. White, Office of Chief Counsel, (202) 366-1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097, codified in relevant part at 49 U.S.C. App. 2301-2304 (1982 and Supp. III 1985), was signed by the President on January 6, 1983. This Act authorized the Secretary of Transportation to provide grants to all eligible States for the development of programs for the enforcement of Federal or compatible State motor carrier safety regulations. The Motor Carrier Safety Assistance Program (MCSAP), which was established under section 402 of the STAA, is an ongoing cooperative endeavor between the Federal Government and the States to enforce uniform Federal and State safety and hazardous materials transportation regulations applicable to commercial motor vehicles and their operators.

On August 31, 1983, a Notice of Program Implementation, interim final rule, was published in the Federal Register with Docket No. MC-106 (48 FR 39455). Its purpose was to establish interim procedures for the MCSAP until the final rule set forth the rationale for the program, selected a formula distribution as a method of distributing funds, established requirement dates for the fiscal year 1984 program and

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solicited public comments to the interim procedure.

On January 27, 1984, an amendment to the interim final rule was published in the **Federal Register** (49 FR 3476). Its purpose was to provide for discretionary redistribution, by the Federal Highway Administrator, of appropriated funds unallocated in the first year of the MCSAP for State enforcement plans that demonstrated a particular need and to request public comment. The FHWA published a second amendment providing for a waiver, upon request, of the State matching share which would otherwise be required to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas as a condition of their participation in the MCSAP and requested public comments.

On September 27, 1984, the final rule was published in the **Federal Register** (49 FR 38134). The rule established the requirements for a grant program whereby States could apply for funding to develop or implement a motor carrier safety program. It specified the type of information applications must contain and the procedures that must be followed in submitting the application and carrying out the program. The rule provided a breakdown of the funding distribution and examples of the types of costs incurred which would be eligible for proportionate reimbursement.

The present statutory reference is the Surface Transportation Assistance Act of 1982 which authorized the grant program through fiscal year 1987. The Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99–570, 100 Stat. 3207–170, codified in relevant part at 49 U.S.C. App. 2304 authorized continuation of spending through 1991. The regulations contained in 49 CFR Part 350 are being amended to reflect accurately the current statutory authority for funding authorizations.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is primarily technical in nature and is needed solely to update the regulations to reflect current statutory authority. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information due to the technical nature of the document. Accordingly, this final rule is effective upon publication in the **Federal Register.**

Since this amendment makes no substantive change to the regulation, a full regulatory evaluation is not required. For the same reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 350

Highways and roads, Motor Carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 20.217, motor carrier safety.)

Issued on April 27, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends 49 CFR Part 350 as set forth below.

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for Part 350 is revised to read as follows:

Authority: Secs. 401–404, Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2097, 2154 (49 U.S.C. App. 2301–2304); Sec. 12014, Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. App. 2304) 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 350.21(e)(2) is revised to read as follows:

§ 350.21 Distribution of funds.

* * * * *

(e) * * *

(2) Less than $225,000, provided the SEP supports that level of funding.

* * * * *

[FR Doc. 88–9769 Filed 5–3–88; 8:45 am]

BILLING CODE 4910-22-M

National Transportation Safety Board

49 CFR Part 831

Accident/Incident Investigation Procedures

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this revision, the Board is adopting investigation procedures for accidents in the surface modes of transportation. The revision consists mainly of an extension of the published procedures for the field phase of the investigation of aircraft accidents to highway, marine, pipeline, and railroad accidents. The revisions will also incorporate into the published rules more of the Board's statutory authority concerning investigations.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, 202–382–6540, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594.

SUPPLEMENTARY INFORMATION: In 1950, the Civil Aeronautics Board (CAB), the Safety Board's predecessor in the exercise of aircraft accident investigation functions, first published its procedural rules for aircraft accident hearings (15 FR 6440, September 23, 1950). When the Safety Board was formed in 1967, it adopted the CAB's Rules of Procedure in Aircraft Accident Investigation Hearings (32 FR 7139, May 11, 1967). In 1970, the Safety Board issued rules for surface transportation accident hearings (35 FR 13574, August 26, 1970). In 1971, the Safety Board published regulations for the field investigation of aircraft accidents. (36 FR 7139, March 13, 1971). This revision will complete the development and implementation of rules for both hearings and field investigations of accidents in all modes of transportation.

In the foregoing rulemakings, the CAB and Safety Board stressed that the new regulatory provisions did not prescribe new procedures but merely codified procedures which the agencies had followed for some time. Likewise, these amendments do not constitute a change in the Safety Board's process of accident investigation. The Safety Board in surface investigations has followed informally the published procedures for aircraft accident investigations, and this revision will advise the public of the procedures the Safety Board has employed for years in surface investigations.

The references to aircraft are deleted from section 831.1 which will now make Part 831 applicable to all modes of transportation. Section 831.2 covering the responsibility of the Safety Board is divided into three paragraphs. Former paragraphs (a) and (b) of § 831.2 apply to aviation and will remain intact but have been consolidated into a single paragraph, paragraph (b) is new and

spells out the Safety Board's accident investigation responsibility for marine, pipeline, rail and highway, and paragraph (c) sets forth the Board's authority to investigate any other transportation accident, which, in judgment of the Safety Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. The references to civil aircraft in § 831.4 are deleted in order to extend these sections to all modes of transportation. In addition, a statement often used by the Board to describe accident investigations has been added to § 831.4, namely, such investigations are fact finding proceedings which are not conducted for the purpose of determining the rights or liabilities of any person, and the investigations are not subject to the Administrative Procedure Act. A new section designated 831.5 has been added to reflect the statutory provision (49 U.S.C. 1903(A)(1)) respecting the priority of Safety Board investigations vis-a-vis other Federal agencies.

Former §§ 831.5, 831.6, 831.7, and 831.8 have been renumbered 831.6, 831.7, 831.8, and 831.9, respectively. Section 831.9 which spells out the authority of Safety Board representatives has been rewritten and divided into three paragraphs. The Safety Board's statutory inspection authority (49 U.S.C. 1903(b)(2)) which applies to all modes of transportation is spelled out in paragraph (a). An explicit reference to medical and hospital records has been added to that paragraph to reflect the Safety Board's longstanding treatment of such information as coming within the ambit of the power to inspect files and records relevant to the investigation. Paragraphs (b) and (c) of § 831.9 are new and they set forth the Safety Board's authority to examine and test physical evidence. The testing authority is separated into aviation and surface accidents because of the differences in that authority. *Compare* 39 U.S.C. 1441(e) with § 1903(B)(2). In paragraph (c), the word "vessel" has been added to the statutory list of the type of items the Safety Board can examine and test in connection with surface investigations. When the Safety Board sought and Congress granted the authority to test physical evidence in nonaviation investigations, there was no indication of an intent to exclude marine accidents. In addition, the Safety Board considers the word "vehicle" in the statute to embrace vessel. The Safety Board believes that the inclusion of the word "vessel" in the regulation is an interpretative rule, and therefore, does not require notice and comment.

A new provision designated as § 831.10 has been added to incorporate in the regulations the Safety Board's existing authority (49 U.S.C. 1441(c) and 1903(b)(5)) to order an autopsy or seek other tests of any person who dies as a result of having been involved in a transportation accident.

Section 831.11 (formerly § 831.9) has been amended to add in paragraph (d) the substance of section 304(a) of the Independent Safety Board Act of 1974, as amended, which provides for the participation of other Federal agencies in Safety Board investigations. All references to aircraft have been deleted from § 831.12 (formerly § 831.10) to make it applicable to all modes of transportation. Finally, former §§ 831.11 and 831.12 have been renumbered as §§ 831.13 and 831.14, respectively. The Safety Board wishes to take this opportunity to encourage persons to make use of the provision in § 831.14 for submitting proposed findings before the Safety Board considers the probable cause. The Safety Board welcomes and carefully considers proposed findings that are filed. Any person who is interested in submitting proposed findings in a given accident can obtain the deadlines for the Safety Board's receipt of such findings from the investigator-in-charge.

Since the amendments to Part 831 are procedural in nature and an interpretative rule, notice and public procedure hereon are not required.

Under the criteria of the Regulatory Flexibility Act, the Safety Board has determined that these amendments will not have a significant economic impact on a substantial number of small entities because the amendments will not impose a regulatory burden on any entity.

List of Subjects in 49 CFR Part 831

Administrative practice and procedure, Aircraft, Aviation safety, Investigations.

Accordingly, 49 CFR Part 831 of the Safety Board's rules is revised to read as follows:

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

Sec.

831.1 Applicability of part.
831.2 Responsibility of Board.
831.3 Authority of Directors.
831.4 Nature of investigation.
831.5 Priority of Board investigations.
831.6 Request to withhold information.
831.7 Right of representation.
831.8 Investigator-in-charge.
831.9 Authority of Board representatives.
831.10 Autopsies.
831.11 Parties to the field investigation.
831.12 Access to and release of wreckage, records, mail, and cargo.
831.13 Flow and dissemination of accident information.
831.14 Proposed findings.

Authority. Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq.); and the Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 et seq., as amended by 95 Stat. 1065 (49 U.S.C. 1901 et seq.).

§ 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all accident or incident investigations, conducted under the authority of title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to accident hearings and reports are set forth in Part 845.

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct and control of all accident investigations involving civil aircraft, or civil and military aircraft, within the United States, its territories and possessions. It is also responsible for investigation of accidents which occur outside the United States, and which involve U.S. civil aircraft or civil and military aircraft, at locations determined to be not in the territory of another state (i.e., in international waters).

(2) Certain aviation field investigations are conducted by the Federal Aviation Administration (FAA), pursuant to a request to the Secretary of the Department of Transportation, effective February 10, 1977 (see appendix to Part 800 of this chapter),[1] but the Board determines the probable cause of such accidents. Under no circumstances shall investigations conducted by the Board be considered joint investigations in the sense of sharing responsibility. However, in the case of an accident or incident involving civil aircraft of U.S. registry or manufacture in a foreign state which is a signator to Annex 13 to the Chicago Convention of the International Civil

[1] The authority of a representative of the Federal Aviation Administration during such field investigations shall be the same as that of a Board investigator under this part.

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Aviation Organization, the state of occurrence is responsible for the investigation. If it occurs in a foreign state which is not bound by the provisions of Annex 13 to the Chicago Convention, the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

(b) *Surface.* The Board is responsible for the investigation of railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see Part 840 of this Chapter); major marine casualties and marine accidents involving a public and nonpublic vessel or involving Coast Guard functions (See Part 850 of this Chapter); highway accidents, including railroad grade-crossing accidents, which it selects in cooperation with the States; and pipeline accidents in which there is a fatality or substantial property damage.

(c) *Other accident.* The Board is also responsible for the investigation of an accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974.

§ 831.3 Authority of Directors.

The Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations, subject to the provisions of § 831.2, may order an investigation into any accident or incident.

§ 831.4 Nature of investigation.

Accident or incident investigations are conducted by the Board in order to determine the facts, conditions, and circumstances relating to each accident or incident and the probable cause thereof and to ascertain measures which will best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation, report preparation, and, where ordered, the public hearing. Accident investigations are factfinding proceedings with no formal issues and no adverse parties and are not subject to the provisions of the Administrative Procedure Act (Pub. L. 89–554, 80 Stat. 384 (5 U.S.C. 554 *et seq.*)). Such investigations are not conducted for the purpose of determining the rights or liabilities of any person.

§ 831.5 Priority of Board investigations.

Any investigation of an accident (except marine) [2] conducted by the Safety Board shall have priority over all other investigations of such accident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident under applicable proviaions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

§ 831.6 Request to withhold information.

Any person may make written objection to the public disclosure of information contained in any report or document filed, or of information obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information can be withheld under the provisions of an exemption to the Freedom of Information Act (Pub. L. 93–502, amending 5 U.S.C. 552) and its release is not found to be in the public interest (see Part 801).

§ 831.7 Right of representation.

Any person interrogated by an authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 831.8 Investigator-in-charge.

The designated investigator-in-charge organizes, conducts, and controls the field phase of investigation. He shall assume responsibility for the supervision and coordination of all resources and of the activities of all personnel, both Board and non-Board, involved in the onsite investigation.

[2] The joint regulations of the Board and Coast Guard for the investigation of marine casualties are set forth in Part 850 of this Chapter.

§ 831.9 Authority of Board representatives.

(a) *General.* Any employee of the Board, upon presenting appropriate credentials is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things necessary for proper investigation. Upon demand of an authorized representative of the Board and presentation of credentials issued to such representative, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls, relevant to the investigation, or any pertinent records and memoranda, including all documents, papers, medical files, hospital records, and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an aircraft accident/incident, other accident, overdue aircraft, study, or investigation pertaining to safety or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident/incident, other accident overdue aircraft, study, or special investigation.

(b) *Aviation.* Any employee of the Board upon presenting appropriate credentials is authorized to examine and test to the extent necessary any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce.

(c) *Surface.* (1) Any employee of the Board, upon presenting appropriate credentials, is authorized to test or examine any vehicle, vessel, rolling stock, track, pipeline component, or any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(2) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, vessel, rolling stock, track, or pipeline component, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator.

§ 831.10 Autopsies.

The Board is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board. The investigator-in-charge, on behalf of the Board, may order an autopsy or seek other tests of such persons as may be necessary to the investigation, provided that to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

§ 831.11 Parties to the field investigation.

(a) The investigator-in-charge may, on behalf of the Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations, designate parties to participate in the field investigation. Parties to the field investigation shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel to actively assist in the field investigation.

(b) Participants in the field investigation shall be responsive to the direction of the appropriate Board representative and may be relieved from participation if they do not comply with their assigned duties or if they conduct themselves in a manner prejudicial to the investigation.

(c) No party to the field investigation designated under § 831.9(a) shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

(d) Section 701(g) of the Federal Aviation Act of 1985, as amended, provides for the appropriate participation of the Administrator in Board investigations, and section 304(a) of the Independent Safety Board Act of 1974, as amended, provides for the appropriate participation of other Federal agencies in Board investigations. Thus, components of the Department of Transportation, and, when appropriate, other Federal agencies, will normally be a party to field investigations and will have the same rights and privileges and be subject to the same limitations as other parties.

§ 831.12 Access to and release of wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel and persons authorized by the investigator-in-charge, the Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations to participate in any particular investigation, examination or testing shall be permitted access to wreckage, records, mail, or cargo which is in the Board's custody.

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records.

§ 831.13 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any personnel participating in the field investigation shall be passed to the investigator-in-charge, through appropriate channels. Upon approval of the investigator-in-charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances shall accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

§ 831.14 Proposed findings.

Any person, Government agency, company, or association whose employees, functions, activities, or products were involved in an accident under investigation may submit to the Board, prior to its consideration of probable cause, proposed findings to be drawn from the evidence produced during the course of the accident investigation, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents.

Signed at Washington, DC on this 12th day of April, 1988.

Jim Burnett,

Chairman.

[FR Doc. 88–9670 Filed 5–3–88; 8:45 am]

BILLING CODE 7533-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1143 and 1150

[Ex Parte No. 471]

Commission Proceedings; Filings of Pleadings, Applications, etc.; Copy Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules: Correction.

SUMMARY: The Commission adopts rules to specify a uniform number of copies of pleadings and other documents to be filed in Commission proceedings. The number of required copies now ranges from 1 to 24. The Commission has determined that in most proceedings it requires an original and 10 copies of each pleading, application or other document to ensure that sufficient copies are available for its use. The Commission's final rule was published in the **Federal Register** on March 29, 1988 at 53 FR 10095. This notice corrects the authority citations that were listed for 49 CFR Parts 1143 and 1150.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley: (202) 275–7292; (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

PART 1143—[CORRECTED]

1. The authority citation for 49 CFR Part 1143 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11501(e) and 5 U.S.C. 553.

PART 1150—[CORRECTED]

2. The authority citation for 49 CFR Part 1150 correctly continues to read as follows:

Authority: 49 U.S.C. 10321, 10901 and 10505; 5 U.S.C. 553 and 559.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9838 Filed 5–3–88; 8:45 am]

BILLING CODE 7035-01-M

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Proposed Rules

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 953 and 958

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 953 and 958 for the 1988–89 fiscal period established for each order. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by May 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 953 [7 CFR Part 953] and 958 [7 CFR Part 958], regulating the handling of potatoes grown in Southeastern States and onions grown in Idaho-Eastern Oregon. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant ot the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of Southeastern potatoes and 30 handlers of Idaho-Eastern Oregon onions, under these marketing orders and approximately 160 potato producers and 340 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Southeastern Potato Committee met on April 14, 1988, and unanimously recommended a 1988–89 budget of $11,000. The proposed budget is $1,000 more than last year due to an office salary increase. The recommended assessment rate is one cent per hundredweight, twice last year's rate to allow adequate reserves in times of shortfalls in production. Based on anticipated fresh shipments of an estimated 1.4 million hundredweight the recommended rate of assessment, along with reserve and interest income, should provide adequate funds for program operations.

The Idaho-Eastern Oregon Onion Committee met on April 13, 1988 and unanimously recommended a 1988–89 budget of $1,038,500 and an assessment rate of nine cents per hundredweight. About 80 percent of the budget or $829,267 is to fund production research, domestic promotion and advertising, and export development activities. Funds for all three areas have been increased over last year, for a total increase of $191,967. The administrative portion of the budget, $132,724 is up $27,129 from last year. A new item, that was not listed in the 1987–88 budget is $25,000 for capital improvements. This is to purchase a new computer system, carpeting and furniture for the office. The recommended assessment rate of nine cents per hundredweight is unchanged from that established in recent years. The combined expected assessment income of $848,000 added to approximately $27,500 in interest and $363,000 from the reserve, would be adequate to cover budgeted expenses. At the end of the 1988–89 fiscal period, estimated reserves will be $125,000, well within the marketing order limitations of one year's budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for both programs need to be expedited. The committee needs to have sufficient funds to pay their expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 953 and 958

Marketing agreements and orders, potatoes (Virginia, North Carolina), onions (Idaho, Oregon).

For the reasons set forth in the preamble, it is proposed that §§ 953.245 and §§ 958.232 be added as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for both 7 CFR Parts 953 and 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 953.245 and §§ 958.232 are added to read as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.245 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized and an assessment rate of $0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1989. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OR

§ 958.232 Expenses and assessment rate.

Expenses of $1,038,500 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: April 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–9913 Filed 5–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1040

[Docket No. AO–225–A39]

Milk in the Southern Michigan Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Southern Michigan order proposed by four dairy farmer cooperatives.

The cooperatives' proposals would change the location adjustment provisions to replace the current seven pricing zones with three zones, and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

Under another proposal, handlers would pay to producers or their cooperatives a 10-cent per hundredweight direct delivery differential for producers milk direct-shipped from farms to pool plants located in Macomb, Oakland and Wayne Counties. Currently, two direct delivery differentials (four cents and ten cents) apply in portions of Wayne and Oakland Counties. Another proposal would change from 0.113 to 0.115 times the butter price as the factor used for computing the butterfat differential.

The cooperatives claim the proposed changes are needed to reflect current marketing conditions.

DATE: The hearing will convene at 9:00 a.m. on May 24, 1988.

ADDRESS: The hearing will be held at the Ramada Inn-Airport, 8270 Wickham Road, Romulus, Michigan 48174 (313) 729–6300.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn-Airport, 8270 Wickham Road, Romulus, Michigan 48174 (313) 729–6300, beginning at 9:00 a.m., on May 24, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

PART 1040—[AMENDED]

The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association, Independent Cooperative Milk Producers Association, National

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Farmers Organization, Inc., and Southern Milk Sales, Inc.:

Proposal No. 1

§ 1040.52 [Amended]

In § 1040.52, revise paragraph (a)(1) to read as follows:

(a) * * *

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 Cents

Allegen, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 Cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

* * * * *

Proposal No. 2

§ 1040.52 [Amended]

Amend § 1040.52(a)(2) by changing "one cent" to "2.25 cents."

Proposal No. 3

§ 1040.75 [Amended]

Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

* * * * *

Proposal No. 4

§ 1040.74 [Amended]

Amend § 1040.74 by changing "0.113" to "0.115".

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Marvin Baumer, 2684 W. Eleven Mile Road, Berkley, Michigan 48072, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Southern Michigan Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on April 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9916 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations governing eligible and ineligible loan purposes relating to Business and Industrial (B&I) loans. Existing B&I regulations prohibit assistance for agricultural production, subject to certain exceptions. FmHA proposes to reduce the list of exceptions to avoid duplication of effort.

DATES: Written comments must be received on or before June 3, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this request will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321-S, Farmers Home Administration, USDA, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 475-3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor". This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisons of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Proposed Rule

Under existing B&I program regulations, FmHA may not guarantee loans for agricultural production activities. Such activities are assisted through other programs of FmHA (Farmer Programs) which utilize human and other resources especially suited for assistance to the agricultural production sector. There are several exceptions to the exclusion of agricultural production from B&I assistance. One of these exceptions is for commercial custom feedlots.

Commercial custom feedlot activities are clearly a part of agricultural production. There is no legislative authority supporting the exception permitting B&I assistance.

Additionally, FmHA experience with loans in this area has not been satisfactory. Since 1976, there have been 19 feedlot loan applications or preapplications submitted. Of the 19, 13 were either withdrawn or rejected, often after considerable expenditure of scarce FmHA resources. Six loans have been guaranteed since 1976. Of those, only one remains active. All five others have been closed out, one having failed.

For these reasons, FmHA proposes to delete the exception for commercial custom feedlots, 7 CFR 1980.411(a)(9), and make necessary technical and conforming amendments to subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

. Loan programs—business and industry, Rural development assistance, Rural areas.

Therefore, Title 7, Chapter XVIII of the Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

§ 1980.411 [Amended]

2. Section 1980.411 is amended by removing paragraph (a)(9) and redesignating paragraph (a)(10) through (a)(16) as (a)(9) through (a)(5).

3. Section 1980.412 is amended by removing paragraph (e)(15) and redesignating paragraph (e)(6) as (e)(5) and by revising the introductory text of paragraph (e) to read as follows:

§ 1980.412 Ineligible loan purposes.

* * * * *

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial, custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

* * * * *

§ 1980.414 [Amended]

4. Section 1980.414(b) is amended by changing the reference "§ 1980.411(a)(13) and (14)" to read "§ 1980.411(a)(12) and (13)."

§ 1980.451 [Amended]

5. Section 1980.451(i)(19) is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

§ 1980.452 [Amended]

6. Section 1980.452, Administrative, paragraph C is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)".

Dated: April 15, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9911 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N-0038]

Appropriate Testing Procedures for Over-the-Counter Sunscreen Drug Products; Reopening of Administrative Record; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Reopening of the administrative record; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 26, 1988, the period for submission of comments on the testing procedures for determination of the sun protection factor (SPF) value and related claims of over-the-counter (OTC) sunscreen drug products. This action responds to a request to extend the comment period.

DATE: Comments by May 26, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1987 (52 FR 33598), FDA issued a notice of a public meeting and reopening of the administrative record to discuss final product testing of sunscreen drug products. This notice of a public meeting and reopening of the administrative record is part of the ongoing review of OTC drug products conducted by the agency. The public meeting was held on January 26, 1988, and interested persons were given until April 26, 1988, to submit comments in response to the meeting.

Because of the complexity of the various issues, especially questions relating to statistical analysis, and the need to reconcile the views of a number of interested parties, a manufacturers' association informed the agency that it would not be able to adequately respond before the comment period closes on April 26, 1988. The association, therefore, requested a 30-day extension of the comment period until May 26, 1988, to allow adequate time to assemble the necessary data and other information and to prepare comments in response to the public meeting.

FDA has carefully considered the request and believes an extension of the time period to allow full opportunity for informed comments on the testing procedures is in the public interest. Accordingly, the period for submission of comments is extended to May 26, 1988. Comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 27, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-9810 Filed 5-2-88; 9:23 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300188; FRL-3374-3]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add a commodity definition for marjoram that would define majoram for tolerance purposes and to clarify and update the relationship between the general commodity term "majoram" and the specific raw agricultural commodities classified as "*Origanum* ssp." This proposal was requested by the Interregional Reserach Project No. 44 (IR-4).

DATE: Comments, identified by the document control number, [OPP-300188], must be received on or before June 3, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 2060

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20660.

Offices location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director and the IR-4 Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "marjoram" to the general category of commodities listed in column A and defining the genreal commodity term for tolerance purposes by inserting the corresponding raw agricultural commodites "*Origanum* spp. (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)" in the specific commodities listing in column B. Additionally, it is proposed that 40 CFR 180.34(f)(9)(xix) (A) and (B), a listing of the herbs and spices crop group and its representative commodities, be revised to make it consistent with the general commotidy definition for marjoram.

The IR-4 requested these amendments in order to clarify and update the relationship between the general commodity term "marjoram" and the specific raw agricultural commodities classified as "*Origanum* spp."

The EPA agrees that these raw agricultural commodities are botanically and culturally similar and should be combined in a common commodity definition for pesticide tolerance purposes. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) and 40 CFR 180.34(f)(9)(xix) (A) and (B) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number [OPP-300188]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by adding a definition for marjoram, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Marjoram.....	*Origanum* spp. (includes sweet or annual marjoram; wild marjoram or oregano, and pot marjoram).
* * * * *	

3. Section 180.34 is amended by revising paragraph (f)(9)(xix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f) * * *

(9) * * *

(xix) *Herbs and spices group*—(A) *Commodities.* Anise (aniseed) (*Pimpinella anisum*); balm (*Melissa officinalis*); basil (*Ocimum basilicum*); borage (*Borago officinalis*); burnet (*Sanguisorba minor*); camomile (*Anthemis nobilis*); caraway (*Carum carvi*); catnip (*Nepeta cataria*); chives (*Allium schoenoprasum*); clary (*Salvia sclarea*); coriander (*Coriandrum sativum*); costmary (*Chrysanthemum balsamita*); cumin (*Cuminum cyminum*); curry leaf (*Murraya koenigii*); dill (*Anethum graveolens*); fennel (Italian and sweet) (*Foeniculum vulgare*); fenugreek (*Trigonella foenumgraecum*); horehound (*Marrubium vulgare*); hyssop (*Hyssopus officinalis*); marigold (*Calendula officinalis*); marjoram (*Origanum* spp.) (including sweet or annual marjoram, wild marjoram or oregano, and pot marjoram); nasturtium (*Tropaeolum majus*); pennyroyal (*Mentha pulegium*); rosemary (*Rosmarinus officinalis*); rue (*Ruta graveolens); sage (Salvia officinalis*); savory, summer and winter (*Satureja* spp.); sweet bay (bay leaf) (*Laurus nobilis*); tansy (*Tanacetum vulgare*); tarragon (*Artemesia* draculunculus); thyme (*Thymus* spp.); wintergreen (*Gaultheria procumbens*); woodruff (*Galium odorata*); wormwood (*Artemesia absinthium*).

(B) *Representative commodities.* Basil, chives, dill, marjoram or other *Origanum* spp., and sage.

* * * * *

[FR Doc. 88-9754 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300186; FRL-3374-4]

Methidathion; Proposed Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the tolerance for residues of the insecticide methidathion by removing the existing tolerances for residues in or on the raw agricultural commodities grapefruit, lemons, and oranges, and by establishing a tolerance for the crop grouping citrus fruits (except mandarins) and a tolerance for mandarins, thereby consolidating and expanding the existing tolerances and making the proposed citrus tolerance consistent with that set by the Codex Alimentarius Commission.

DATE: Written comments, identified by the document control number [OPP-300186], must be received on or before June 3, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may by disclosed publicly be EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Dennis H. Edwards, Jr., Product Manager (12), Registration Division [TS-767C], Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION:

Tolerances have been established for residues of methidathion in or on various raw agricultural commodities, including grapefruit, lemons, and oranges. These are representative commodities for the crop grouping citrus, and U.S. tolerances are being revised to the grouping citrus (except mandarins) at 2.0 parts per million (ppm) and for mandarins at 6.0 ppm. Ragarding the residue situation, the Agency has concluded that risks associated with citrus crop grouping uses will not be any greater than the risk associated with the uses for grapefruit, lemons, and oranges. The proposed citrus crop group tolerance will be consistent with the tolerance set by Codex Alimentarius Commission (CAC) for this crop grouping. Codex Alimentarius Commission is concerned with the development of international food standards including tolerances for pesticide residues in food. The purpose of this organization is, in general, to protect consumer health and ensure fair practices in the food trade while fostering the movement of agricultural products across international boundaries. In this Codex process, countries are asked to set tolerances in accordance with the Codex limits. To the extent possible, EPA tries to ensure that the tolerances promulgated under the Federal Food Drug and Cosmetic Act are consistent with those set by Codex. Conformity with Codex can, of course, only be achieved where the tolerance level complies with the criteria of the Federal Food Drug and Cosmetic Act.

On January 13, 1983, the Agency issued a document, "Guidance for the Reregistration of Pesticide Products Containing Methidathion" in which the Agency set forth its comprehensive position on the conditions and requirements for registration of all existing and future products containing this pesticide. All data required by that document have been submitted and are currently being evaluated. The Agency will issue a Final Registration Standard and Tolerance Reassessment (FRSTR) document for methidathion this year.

The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding study with a NOEL of 4 ppm (0.2 mg/kg/day); a 2-year dog feeding study with a NOEL of 4 ppm (0.1 mg/kg/day); a 2-generation rat reproduction study with a reproductive NOEL of 5 ppm (0.25 mg/kg/day); a rabbit teratology study with a maternal NOEL of 6 mg/kg/day and a developmental NOEL > or = 12 mg/kg/day; and a rat teratology study with a maternal NOEL of 1 mg/kg/day and a developmental NOEL > or = 2.25 mg/kg/day; and a 2-year mouse feeding/oncogenicity study with a NOEL for systemic effects at 1.6 mg/kg/day and liver tumors observed in male animals at 7.5 mg/kg/day dose level. Gene mutation, chromosomal aberrations and direct DNA damage tests were negative for mutagenic effects.

The Agency had previously reviewed another oncogenicity study in mice, which was conducted by Industrial Bio-Test Laboratories. This study indicated statistically significant increases in the frequency of hepatocellular adenomas in male mice at the high-dose level of 100 ppm (15 mg/kg/day). However, the study was determined to be invalid because of unacceptable methodologies, including partial degradation of methidathion in the diets, low survival of the animals, and deficiencies in animal husbandry. The Methidathion Registration Standard issued in 1983 required two replacement oncogenicity studies. The replacement 2-year rat oncogenicity study indicated no increase in neoplastic lesions in either sex at any dose, but the results of the replacement 2-year mouse oncogenicity

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study did show an increase in the incidence of combined benign and malignant hepatocellular tumors in male mice at the high dose level of 16.1 mg/kg/day (100 ppm). Based on the mouse study, the Agency has classified methidathion as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the-evidence classification, which in this case shows methidathion to be a "possible human carcinogen." This classification is based on the Agency's Guidelines for Carcinogenic Risk Assessment, published in the Federal Register of September 24, 1986 (51 FR 33992). Additional evidence from short-term tests or structure-activity relationships were not supportive of a higher classification.

In reaching this conclusion, the Toxicology Branch Peer Review Committee considered the following information:

1. The positive carcinogenic effects were found in only one species, the mouse; and one sex, the male.

2. Tumors were discovered in animals exposed to very high doses. Adenomas (benign epithelial tumors) were only considered to be biologically significant at 16.1 mg/kg/day (HDT); carcinomas were increased at 7.5 mg/kg/day but were significant only at 16.1 mg/kg/day; combined adenoma/carcinoma were significantly increased at 50 ppm (7.5 mg/kg/day) and 100 ppm (16.1 mg/kg/day).

3. The rat was negative for oncogenic effects at all dose levels, i.e., 0,4,40 or 100 ppm (equivalent to 0,0.2, 2 or 5 mg/kg/day respectively).

4. There are no close structural analogs with oncogenic concerns identified.

5. Methidathion is not mutagenic in several acceptable studies (in vitro point mutation assays, both mammalian and bacterial; nuclear anomaly test; SCE; dominant lethal test).

The evidence as a whole (i.e. 1 species 1 sex, common tumor; no increase in proportion of malignant tumors, or apparent shortening of time to tumor; lack of mutagenicity or structure activity relationship) is not considered strong enough to warrant a quantitative estimation of human risk. In addition, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) agreed that the weight of evidence for oncogenicity supports a Category C designation for methidathion.

The acceptable daily intake (ADI), based on a 2-year dog feeding study (NOEL = 1 mg/kg/day and using a 100-fold safety factor) is calculated to be .001 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for existing tolerances is calculated to be 0.005571 mg/kg of body weight/day. The current action will increase the TMRC by 0.000083 mg/kg of body weight/day (1.49 percent increase). The increase in dietary exposure to residues of methidathion resulting from the proposed use on citrus crop grouping and mandarins is considered to pose a negligible incremental risk in dietary exposure (1.49 percent increase in the TMRC)

Although the TMRC based on all established tolerances for methidathion exceeds the ADI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all of the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level.

3. Residues are frequently reduced when foods are processed or prepared for human consumption.

In conjunction with the upcoming Final Registration Standard and Tolerance Reassessment (FRSTR) for methidathion, data regarding the nature of the residue in plants and animals and the magnitude of the residue in raw agricultural commodities, including citrus fruits, are being reevaluated to determine their compliance with current Agency guidelines and policies. Therefore, in the FRSTR, additional data may be required to ascertain the adequacy of the proposed tolerances for residues in or on citrus fruits (except mandarins) and mardarins. Currently, the residue of concern for the proposed tolerances is considered to be the parent compound, methidathion per se. An adequate analytical method, gas liquid chromatography using a flame photometric detector, is available for enforcement purposes. The enforcement methodology is available in the Food and Drug Administration (FDA) Pesticides Analytical Manual, Volume II.

Based on the above considerations, the Agency has concluded that the tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300186]. All written comments filed in response to this petition will be available in the Information Services Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-621), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 24, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.298(a), by deleting the entries for grapefruit, lemons, and oranges and by adding new entries for citrus fruits (except mandarins) and mandarins, to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Citrus fruits (except mandarins)	2.0
* * * * *	
Mandarins	6.0
* * * * *	

[FR Doc. 88-9755 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 763

[OPTS-62036E; FRL-3374-8]

Asbestos; Release of Information for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments on documents placed into public docket.

SUMMARY: EPA is providing an opportunity for public comment on four major documents concerning substitutes for asbestos. These documents are: The Health Hazard Assessment of Non-Asbestos Fibers, the Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers, the Durable Fiber Exposure Assessment, and the Durable Fiber Industry Profile and Market Outlook.

DATES: Comments on the four documents must be received on or before June 14, 1988.

ADDRESS: Submit written comments, identified by the docket control number (OPTS-62036E), in triplicate to: TSCA Public Docket Office (TS-793), Attention: TSCA Docket Officer, Rm. NE-G004, Office of Toxic Substances, Environmental Protection Agency 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202 554-1404).

SUPPLEMENTARY INFORMATION: In the Federal Register of January 29, 1986 (51 FR 3738), EPA proposed a rule under section 6 of TSCA which would ban immediately the manufacture, import, and processing of certain asbestos products, and would phase out the remaining products over a 10-year period. This proposal outlined several options for implementing the ban and phase out and allowed 5 months for public comment. EPA received approximately 200 written comments. EPA received further public comment on the proposal in legislative and cross-examination hearings held in July and October of 1986.

On April 1, 1988, EPA requested comment on four major documents to be used to support its rulemaking for the ban and phase out of certain uses of asbestos (53 FR 10548). The deadline for comments on these documents is May 31, 1988. The four asbestos support documents were: The Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis.

Today, EPA is placing four additional documents concerning substitutes for asbestos in the public rulemaking docket for comment: The Health Hazard Assessment of Non-Asbestos Fibers, the Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers, the Durable Fiber Exposure Assessment, and the Durable Fiber Industry Profile and Market Outlook. The Health Hazard Assessment of Non-Asbestos Fibers evaluates the potential hazard of major non-asbestos fibers. The Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers was used to develop the Health Hazard Assessment Document. The Durable Fiber Exposure Assessment summarizes information concerning exposure during primary and secondary manufacturing, and consumer use of major non-asbestos fibers. The Durable Fiber Industry Profile and Market Outlook assesses the important physical and chemical properties, production characteristics, commercial uses, and market outlooks of major non-asbestos fibers.

After reviewing these four documents, interested persons may submit comments on them EPA's consideration. The deadline for comments on these documents is June 14, 1988. The four documents added today set forth well documented analyses based on factual information obtained from public and private sources. In particular, persons are encouraged to take this opportunity to point out any factual inaccuracies and omissions in the data set forth in these documents. Any such comments should reference the appropriate document and state with specificity any factual problems with data that led to EPA's conclusions and provide specific information or references to support the comments. The Agency will consider any such comments and supplement or modify the analysis if appropriate.

This notice is intended to advise the public of the availability of these four documents. Comments should be limited to the information in the documents which are the subject of this notice and the notice published on April 1, 1988. It is unnecessary to duplicate previous comments on the proposed rule except to the extent they are affected by these four documents.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 28, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-9845 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC-444-P]

Medicaid Program; Eligibility of Qualified Severely Impaired Individuals Who Work

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to specify, for Medicaid coverage, a permanent eligibility group of qualified individuals who, although severely impaired, work and demonstrate ability to perform substantial gainful activity and who are considered to be Supplemental Security Income (SSI) beneficiaries. It also would specify how SSI payments made to certain institutionalized individuals are to be disregarded as income under Medicaid for a limited period. The amendments would conform the regulations to provisions of the Omnibus Budget Reconcilation Act of 1986 and the Employment Opportunities for Disabled Americans Act.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on July 5, 1988.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-444-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD

In commenting, please refer to file code BERC–444–P. Comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (301) 966–4464.

SUPPLEMENTARY INFORMATION:

Background

Under section 1902(a)(10)(A)(i)(II) of the Social Security Act (the Act), Supplemental Security Income (SSI) beneficiaries under title XVI of the Act are automatically entitled to Medicaid coverage as cash assistance recipients in States with Medicaid programs unless a State chooses to apply more restrictive eligibility requirements than SSI under the provisions of section 1902(f) of the Act. Under section 1902(f) of the Act, States may apply more restrictive eligibility requirements than SSI to aged, blind, or disabled individuals, provided these more restrictive requirements are no more restrictive than those applied under their approved State Medicaid plan in effect on January 1, 1972. In States that elect to use more restrictive criteria, individuals receiving SSI are not automatically entitled to Medicaid coverage by virtue of their eligibility for SSI benefits. These individuals must apply for and be determined eligible for Medicaid under the State's more restrictive requirements as discussed in detail later in this preamble.

Under section 1619 of the Act, certain blind and severely impaired disabled individuals who work and who otherwise would be ineligible under SSI because of their earnings are given special title XVI benefits and retain SSI beneficiary status for purposes of Medicaid eligibility. Specifically, under section 1619(a) of the Act, disabled individuals who would otherwise have lost SSI because they work and demonstrate the ability to perform substantial gainful activity in spite of severe medical impairments may continue to receive special SSI benefits if they continue to be financially eligible for SSI benefits based on their income. Under section 1619(b), disabled individuals whose income is too high to retain financial eligibility for the special SSI benefit under section 1619(a) (or Federally administered State supplementary payments where applicable) and blind individuals who lose regular SSI payments (and/or Federal administered State supplementary payments) are allowed to continue to receive Medicaid benefits under certain specified conditions. We refer to these individuals as being "in section 1619(b) status." Section 1619 was originally intended as a work incentive demonstration program, effective from January 1, 1981 through December 31, 1983. In 198[illegible] the provisions of section 1619 were e[illegible]ded without modification through June 30, 1987 by Pub. L. 98–460.

For purposes of Medicaid, disabled individuals receiving cash benefits under section 1619(a) of the Act and blind and disabled individuals determined to be in section 1619(b) status are considered to be SSI beneficiaries. If a State covers individuals receiving SSI payments (non-section 1902(f) State) and has an agreement under section 1634 of the Act to have the Social Security Administration (SSA) determine Medicaid eligibility, these individuals are not required to file a separate application with the Medicaid agency—their SSI eligibility automatically confers Medicaid eligibility. If a State covers SSI beneficiaries but does not have a section 1634 agreement with SSA, these individuals must file an application with the Medicaid agency and be found eligible by the agency in order to receive Medicaid benefits. In States that cover individuals under more restrictive Medicaid eligibility requirements than those under SSI under the authority of section 1902(f), an individual's eligibility status under section 1619 does not automatically confer Medicaid eligibility. These individuals must file a separate application for Medicaid with the Medicaid agency and be determined eligible under the State's eligibility criteria, some, if not all, of which are more restrictive than those under SSI.

Provisions of the Omnibus Budget Reconciliation Act of 1986

In anticipation of the sunset of provisions of section 1619 of the Act on June 30, 1987, Congress, in the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, enacted on October 21, 1986, established a mandatory categorically needy Medicaid eligibility group of qualified severely impaired individuals who meet the section 1619 eligibility criteria to ensure continued Medicaid for these individuals. Section 9404 of OBRA '86 amended section 1902(a)(10)(A)(i)(II) of the Act to provide that, in addition to individuals receiving SSI already provided for under that section, States must provide Medicaid eligibility for individuals who are qualified severely impaired individuals as defined in a new section 1905(q) of the Act. The new section 1905(q) defined a qualified severely impaired individual as an individual under age 65—

(1) Who, for the month preceding the first month in which section 1905(q) applies to the individual—

- Received an SSI payment under section 1611(b) on the basis of blindness or disability; a supplementary payment under section 1616 of the Act or under section 212 of Pub. L. 93–66 on the basis of blindness or disability; a payment of monthly benefits under section 1619(a); or a supplementary payment under section 1616(c)(3); and
- Was eligible for medical assistance under the State's approved Medicaid plan; and

(2) With respect to whom the Secretary determines that—

- The individual continues to be blind or continues to have a disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all nondisability-related requirements for eligility for SSI benefits;
- The income of the individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);
- The lack of eligibility for Medicaid benefits would seriously inhibit his ability to continue or obtain employment; and
- The individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any federally administered State supplementary payments), Medicaid, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

The statutory language of OBRA '86 used to describe qualified severely impaired individuals in section 1905(q) of the Act is virutally identical to the language describing individuals under the provisions of section 1619(b) of the Act. The latter authority would have expired on June 30, 1987. The new section 1905(q) also provides that an individual who is eligible for medical assistance under section 1619(b) in June 1987 is also considered a qualified severely impaired individual for as long as the individual meets the requirements of section 1905(q)(2) of the Act. Shortly after OBRA '86 was enacted, Congress passed the Employment Opportunities for Disabled Americans Act (EODAA), Pub. L. 99–643, on November 10, 1986. Section 2 of EODAA made section 1619 permanent. Thus, individuals who are eligible or who become eligible under section 1619 for SSI benefits and thus are entitled to Medicaid will continue to be eligible for these benefits after June 30, 1987. EODAA also made some conforming and technical amendments to sections 1619 (a) and (b) of the Act to reflect the permanent nature of this special benefits program.

The enactment of section 2 of EODAA made superfluous the OBRA '86 amendment establishing section 1905(q) of the Act. In addition, section 7 of EODAA revised section 1619(b) and section 1902(f) of the Act. Under these revisions, States using more restrictive Medicaid eligibility requirements than SSI under the authority of section 1902(f) of the Act must provide mandatory categorically needy Medicaid coverage to certain disabled and blind individuals covered under section 1619 of the Act. These are individuals who either (1) qualify for cash benefits under section 1619(a) of the Act, or (2) are determined by SSA to be in section 1619(b)(1) status and were eligible for Medicaid under the State's approved Medicaid plan in the month immediately preceding the first month in which they qualified for benefits under section 1619(a) or went into section 1619(b)(1) status.

Sections 2 and 7 of EODAA and section 9404 of OBRA '86 are effective on July 1, 1987, without regard to whether or not final regulations have been issued, except in two instances. If the Secretary determines that State legislation (other than legislation appropriating funds) is required in order for the State's Medicaid plan to meet these legislative requirements, the State Medicaid plan will not be considered as failing to comply with the requirements of title XIX solely on the basis of its failure to meet the legislative requirements until 60 days after the close of the first regular session of the State legislature that begins after November 10, 1986 with respect to seciton 7 of EODAA, and until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after October 21, 1986, with respect to section 9404 of OBRA '86.

A State that believes it will need to enact State legislation in order to implement the provisions of section 9404 of OBRA '86 and section 7 of EODAA will also need to demonstrate this to HCFA. The State must submit documentation that substantiates the claim, such as a State's attorney general's opinion, to the HCFA Regional Office. This documentation should identify and describe the relevant current State statutes and provide the State's justification and basis for the need for additional legislation in order to implement the provisions.

Implementation of Legislative Changes

In States covering SSI beneficiaries, Medicaid eligibility is granted on the basis of an individual's SSI beneficiary status. The group of "qualified severely impaired individuals" created by section 9404 of OBRA '86 is considered to be equivalent to the group of individuals who are in section 1619(b) status and, as such, are considered to be SSI beneficiaries. Thus, in States covering SSI beneficiaries, we propose to continue to apply the policy in existence before OBRA '86 and EODAA that provided automatic Medicaid coverage to individuals in section 1619 status who are considered to be SSI beneficiaries

In States that use more restrictive eligibility criteria than SSI under section 1902(f) of the Act, an individual's SSI beneficiary status does not confer Medicaid eligibility. Prior to OBRA '86 and EODAA, section 1902(f) States were not required to provide automatic Medicaid eligibility to SSI recipients or individuals considered to be SSI beneficiaries, such as under section 1619 of the Act. This provision has now changed. Section 7 of EODAA amended section 1619(b) and section 1902(f) of the Act to provide that, in section 1902(f) States, an individual who qualifies for benefis under section 1619(a) of the Act or meets the requirements of section 1619(b)(1) of the Act, as determined by SSA, and who was eligible for Medicaid under the State's more restrictive Medicaid eligibility criteria in the State approved Medicaid plan in the month immediately preceding the first month in which the individual meets the conditions for section 1619 (a) or (b)(1) status, and continues in section 1619 (a) or (b)(1) status, must be covered as mandatory categorically needy under Medicaid. In this context, we propose to interpret the provision in section 1619(B)(3)(B) that the individual was eligible for medical assistance under the State plan approved under title XIX (in the reference month for purposes of Medicaid eligibility) to mean that the State must verify that the individual actually had been determined eligible for Medicaid as either categorically or medically needy in the (reference) month immediately preceding the first month of section 1619 (a) or (b)(1) status without having to satisfy any additional conditions. We do not interpret this to mean that the individual must have actually used Medicaid services during the reference month. Generally, an individual would be considered eligible during the reference month is a Medicaid card was issued to him for that month.

In order for an individual to remain eligible for Medicaid in section 1902(f) States under the amendments made by section 7 of EODAA, the individual must continue to be eligible under section 1619 (a) or (b)(1). Thus, if the individual loses section 1619 (a) or (b)(1) status, or if there is a break in this status, Mdicaid eligibility would not be afforded under section 1619(b)(3) of the Act for the months when he was not eligible under section 1619 (a) or (b)(1). (Although the individual would not be protected by section 1619(b)(3), he might become eligible for Medicaid on some other basis, such as under a State's medically needy program. If the individual is considered for eligibility on some other basis, he would need to satisfy the State's more restrictive eligibility requirements imposed under section 1902(f).) If the individual returns to section 1619 (a) or (b)(1) status, continued Medicaid coverage would be determined by the eligibility test for the initial month of section 1619 eligibility. For example—

An individual is in a section 1902(f) State and first enters section 1619 (a) or (b)(1) status in September 1987. The individual was eligible for medical assistance in August 1987 and remained in section 1619 (a) or (b)(1) status until November 1987 when his resources exceeded the SSI resource eligibility standard.

Since the individual was eligible for Medicaid in August 1987 (the month immediately preceding the month in which the individual first went into section 1619 status) and is in section 1619 status from September through October 1987, the individual must be provided Medicaid by the section 1902(f) State for the months of September and October 1987 under the requirements of section 7 of EODAA. Since the individual was not in section 1619 status in November 1987 (due to excess resources), he is not eligible for Medicaid in November on the basis of section 7 of EODAA.

It is not clear from the statute or the legislative history of EODAA whether, in the phrase "month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such

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requirements" in section 1619(b)(3), the term "first month" means the first month in an individual's life in which he qualified for section 1619 (a) or (b)(1) benefits or status or the first month of the individual's current continuous section 1619 (a) or (b)(1) entitlement. Therefore, we propose to allow States maximum flexibility in providing Medicaid coverage to these severely impaired individuals. We propose to provide States with two options in determining the first month of section 1619 (a) or (b)(1) eligibility (the reference month) in cases where an individual has more than one period of eligibility under section 1619 (a) or (b)(1)—that is, situations where ther are breaks in section 1619 (a) or (b)(1) status, such as when an individual returns to regular SSI status under section 1611 after a period of ineligibility, becomes ineligible under section 1611 of the Act, or becomes ineligible for section 1619(a) benefits or loses section 1619(b)(1) status altogether. The option that the Senate chooses must be applied to all individuals. Under the first option, the first month of section 1619 (a) or (b)(1) status would be the first month of the first period the individual went into this status—that is, there are no periods of section 1619 (a) or (b)(1) status occurring prior to this period. Under the second options the first month of section 1619 (a) or (b)(1) status would be the first month the individual went into this status in the most recent period of eligibility under section 1619. The following example illustrates the application of these options.

Example:

Situation: An individual is in a section 1902(f) State and first went into section 1619(a) or (b)(1) status in March 1984. In May 1986, the individual stopped working and returned to regular SSI status under section 1611 of the Act. In November 1987, he began working again and returned to and continued in section 1619(a) or (b)(1) status. He was eligible for medical assistance in February 1984. He was *not* eligible for medical assistance in October 1987. The individual applies for medical assistance under section 1619 as made permanent by section 7 of EODAA for months beginning November 1987.

Option 1: If the State chooses the first option—Since the individual was eligible for Medicaid in February 1984 (the month preceding the first month of section 1619 status of the first period of eligibility under section 1619) and went into and continued in section 1619 status in November 1987, the State must provide Medicaid to the individual for November 1987 and continuing months (so long as the individual remains in section 1619 status). This applies, regardless of the fact that the individual was not eligible for medical assistance in October 1987 (the month preceding the most recent period of section 1619 status).

Option 2: If the State chooses to apply the second option—Since the individual was not eligible for medical assistance in October 1987 (the month preceding the most recent period of section 1619 status), he is not eligible for Medicaid under the amendments made by section 7 of EODAA. (If, in this case, the individual had been eligible for medical assistance in October 1987, he would be eligible for Medicaid under section 7 of EODAA.

Under section 1616 of the Act, States may make supplementary payments to individuals in addition to the basic Federal SSI payment. Section 1616(c)(3) of the Act also provides States the option of making supplementary payments to individuals eligible under section 1619 of the Act. These optional State supplementary payments are administered either by SSA or the State making the payment. Under the changes made by EODAA to section 1619 of the Act, only federally administered payments (that is, basic Federal SSI benefits and federally administered State supplementary payments) are considered by SSA in determining eligibility under section 1619(a) and (b)(1). SSA does not consider State administered optional State supplementary payments in determining whether an individual is eligible under section 1619(a) and (b)(1). Specific regulations governing eligibility requirements as determined by SSA under section 1619(a) and (b)(1) are located in 20 CFR Part 416, Subpart B.

In States that have agreements with the SSA under section 1634 of the Act to determine Medicaid eligibility of SSI beneficiaries, individuals determined to be in section 1619(a) or (b)(1) status will be automatically determined eligible for Medicaid without the need to apply to the Medicaid State agency for Medicaid benefits. In States that cover individuals receiving SSI but do not have section 1634 agreements with SSA, individuals in section 1619(a) or (b)(1) status will need to file a separate application with the State Medicaid agency in order to obtain Medicaid benefits. In these cases, the State Medicaid agency will need to notify individuals of their potential eligibility for Medicaid under the section 1619(a) or (b)(1) provisions and their need to file an application in order to receive Medicaid.

In States that apply more restrictive criteria than SSI requirements under section 1902(f), individuals who have been determined by SSA to be eligible under section 1619(a) or in section 1619(b)(1) status also must apply to the State Medicaid agency for Medicaid benefits. If SSA determines that an individual is in section 1619(a) or (b)(1) status, the State agency in 1902(f) States then would determine if these individuals are eligible for Medicaid as mandatory categorically needy under the more restrictive requirements of the State's approved Medicaid plan in accordance with the provisions of section 1619(b)(3) as added by section 7 of EODAA.

With respect to individuals in section 1619(a) or (b)(1) status who do not meet the Medicaid eligibility requirements as mandatory categorically needy under the provisions of section 1619(b)(3), section 1902(f) States also have the option of treating these individuals under the State's more restrictive criteria in the same manner in which they treat other SSI beneficiaries. These States may, at their option, disregard some or all of the income that individuals in section 1619(a) or (b)(1) status have which is in excess of the SSI income eligibility level. Depending on whether the State applies an income level that is the same as or lower than the SSI categorically needy income level, this could result in these individuals obtaining eligibility for Medicaid without the need for any spenddown or after meeting a reduced spenddown. (If a section 1902(f) State uses a more restrictive definition of disability than SSI's, neither this optional treatment of income nor the mandated eligibility under section 1619(b)(3) (which requires that the individual must have been Medicaid eligible in the month before he assumed section 1619(a) or (b)(1) status) would result in providing Medicaid for an individual who does not meet the more restrictive definition of disability.) The State agency is required to notify those individuals in section 1619(a) or (b)(1) status who are not determined eligible for Medicaid as categorically needy under the State's more restrictive criteria of the potential for Medicaid eligibility under the provisions of section 1619(b)(3) and the need to apply to the Medicaid agency in order for the State to determine their Medicaid eligibility as categorically needy.

States will need to ascertain only an individual's section 1619(a) or (b)(1) status as determined by the SSA through, for example, the use of the SSI State Data Exchange (SDX) System. For section 1902(f) States and those States that do not have section 1634 agreements, we have issued instructions that specify how to determine an individual's status under section 1619 through use of the SDX system and how to determine the first month that an individual went into such status, since the system does not indicate the first month of section 1619 status.

Additional Related Legislative Change

Prior to EODAA, under section 1611(e)(1)(A) of the Act, when an SSI beneficiary entered a hospital, extended care facility, skilled nursing facility, or intermediate care facility in which a substantial portion of the cost of care (that is, over 50 percent) was paid by Medicaid, the individual's monthly Federal SSI benefit was limited to a maximum of $25 beginning with the first full calendar month the individual was in the institution. Individuals whose countable income exceeded $25 were not eligible for a Federal SSI payment.

Section 3 of EODAA amended section 1611(e)(1) of the Act by adding a new section 1611(e)(l)(E) to provide that individuals eligible under section 1619(a) or (b) in the month preceding the first full month of institutionalization in a hospital, extended care facility, skilled nursing facility, intermediate care facility, or public medical or psychiatric facility remain eligible for SSI based on the full Federal SSI benefit rate under section 1611(b) of the Act for the first full month of institutionalization and, if they remain institutionalized, for the subsequent month. This additional receipt of SSI payments is intended for the individual's use in meeting expenses outside the institution (e.g., maintaining his place of residence). Section 1611(e)(l)(E)(iii) of the Act, as amendment by EODAA, indicates that any individual who "under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain" the increased SSI benefit for one month (or two months, as appropriate) will be considered an eligible individual or spouse for purposes of SSI. We will consider that an institution that has a Medicaid provider agreement with the State will have satisfied the requirement under section 1611(e)(l)(E)(iii) of the Act for the "agreement" and no further agreement is necessary to meet this condition. This is because under 42 CFR 435.733(c)(5) the State's payment to the institution would not be reduced by the amounts paid under section 1611(e)(l)(E) and under 42 CFR 447.15 the State plan must already require the provider to accept the State's Medicaid payment rate (including the recipient's share) as payment in full for Medicaid services it provides. By agreeing to participate in the Medicaid program, the insitution cannot collect the higher SSI benefit payment amount from the individual when the State has increased its payment to the institution by this amount.

Section 3 of EODAA also amended section 1902 of the Act to add a Medicaid State plan requirement to provide that any SSI benefits paid under the new section 1611(e)(l)(E) of the Act to an individual who is eligible for Medicaid and who is in a hospital, skilled nursing facility, or intermediate care facility must be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility. This provision is effective on July 1, 1987.

Provisions of the Proposed Regulations

We propose to amend § 435.120 of the Medicaid regulations to incorporate as a permanent eligibility group the new qualified severely impaired group of individuals for mandatory Medicaid coverage as individuals who are considered to be receiving SSI under section 1619 of the Act by removing the June 30, 1987 expiration date. We also would amend § 435.121 relating to coverage of individuals in States using more restrictive eligibility criteria than SSI to provide for the mandatory coverage of individuals who are eligible under section 1619(a) or (b)(1) and who met the State's more restrictive Medicaid eligibility requirements in the month before the month they became eligible under section 1619(a) or (b)(l). The proposed revised § 435.121 also would specify the option of the section 1902(f) State to consider individuals who are beneficiaries under section 1619(a) or who have section 1619(b)(l) status to have income equal to, but not less than, the SSI Federal benefit rate.

We propose to amend §§ 435.725 and 435.733 to provide for the disregard of the SSI benefit paid under section 1611(e)(1)(E) in determining the amount of any post-eligibility contribution by the individual to the cost of services provided by the hosptial, skilled nursing facility, or intermediate care facility.

In addition, we propose to make a technical change to §435.120. Section 2 of Pub. L. 97–123 repealed section 1622 of the Act. Section 1622 of the Act — provided entitlement to minimum benefits under SSI for certain individuals who lost eligibility for minimum social security benefits but excluded these individuals from being considered as SSI recipients for purposes of other provisions of the Act, including eligibility for Medicaid. This exclusion from being eligible on the basis of receipt of SSI is reflected in the existing regulations under §435.120(b). We propose to delete this paragraph (b) to conform the regulations to repeal of section 1622 of the Act.

Response of Public Comments

Because of the large number of public comments that we usually receive on notices of proposed rulemaking, we cannot respond to the correspondence individually. However, we will respond to all public comments received on this NPRM in the preamable to the final regulations when the final regulations are issued.

Impact Statement

Executive Order 12291 and Regulatory Flexibility Act of 1980 (Pub. L. 96–354)

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that meet one of the E.O. criteria for a major rule; that is, that would be liekly to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant impact on a substantial number of small entities. For purposes of the RFA, State Medicaid agencies and individuals who will be affected by this proposed rule are not considered as small entities.

This proposed rule codifies in regulations statutory provisions that are already in effect. The Statutory changes, which expand Medicaid eligibility groups, will increase Medicaid program expenditures independently of the promulgation of this rule. The rule, in itself, would not affect Medicaid program expenditures.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, we have not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a

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substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act of 1980 (Pub. L. 96–511)

These proposed regulations do not impose information collection or reporting requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 435 would be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.120 is revised to read as follows:

§ 435.120 Individuals receiving SSI.

Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who are receiving or are deemed to be receiving SSI. This includes individuals who are—

(a) Receiving SSI pending a final determination of blindness or disability;

(b) Receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; or

(c) Receiving benefits under section 1619(a) of the Act or in section 1619(b) status (blind individuals or those with disabling impairments whose income equals or exceeds a specific Supplemental Security Income limit). (Regulations at 20 CFR 416.260 through 416.269 contain requirements governing determinations of eligibility under this provision.) For purposes of this paragraph (c), this mandatory categorically needy group of individuals includes those qualified severely impaired individuals defined in section 1905(q) of the Act.

3. Section 435.121 is revised to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

(a) *Option for use of more restrictive eligibility criteria.* The agency may use Medicaid eligibility requirements for the aged, blind, or disabled that are more restrictive than the eligibility requirements for SSI. The agency may be more restrictive in defining blindness or disability, more restrictive in setting financial requirements for income or resources, or both. The requirements may apply to the aged or the blind or the disabled, or to any combination. For example, the agency may use a more restrictive definition of disability for those applying for Medicaid as disabled and a more restrictive income requirement for those who apply as aged, but provide Medicaid to all individuals receiving SSI on the basis of blindness.

(b) *Mandatory coverage of severely impaired individuals who work.* If the agency uses more restrictive eligibility requirements for aged, blind, and disabled individuals than SSI, it must provide Medicaid to individuals who—

(1) Qualify for benefits under section 1619(a) or are in eligibility status under section 1619(b)(1) of the Act as determined by SSA; and

(2) Were eligible for Medicaid under the more restrictive criteria in the State's approved Medicaid plan in the reference month—the month immediately preceding the first month in which they became eligible under section 1619 (a) or (b)(1). Under this provision, the State may elect to use as the reference month for determining Medicaid eligibility for all individuals under section 1619 of the Act, the month immediately preceding either the first month of the most recent period of eligibility under section 1619 or the first month of the first period of section 1619 eligibility.

(c) *Special requirements.* If an agency uses more restrictive requirements under this section—

(1) Each requirement may be no more restrictive than that in effect under the State's Medicaid plan on January 1, 1972, and no more liberal than that applied under SSI or an optional State supplement program that meets the conditions of § 435.230;

(2) In determining financial eligibility of an individual in the category to which the more restrictive requirements apply, the agency must deduct, from the individual's income, his SSI payment, any optional State supplement, and incurred medical expenses as specified in § 435.732; and

(3) For purposes of counting income, with respect to individuals who are receiving benefits under section 1619(a) of the Act or are in section 1619(b)(1) status but who do not meet the requirements of paragraph (b)(2) of this section, the agency may disregard some or all of the amount of the individual's income that is in excess of the SSI Federal benefit rate under section 1611(b) of the Act.

(d) The following sections of this part apply to the agency's use of more restrictive eligibility requirements:

(1) Section 435.135, treatment of individuals who receive OASDI cost-of-living increases.

(2) Section 435.330, medically needy coverage.

(3) Section 435.530, more restrictive definitions of blindness.

(4) Section 435.540, more restrictive definitions of disability.

(5) Sections 435.731 through 435.733, more restrictive income and resource requirements.

(6) Sections 435.812, 435.823, 435.831, and 435.841, medically needy financial eligibility requirements.

4. In § 435.725, paragraph (c) is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(5) SSI benefits paid under section 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

5. In § 435.733, paragraph (c) is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(5) SSI benefits paid under section 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714–Medical Assistance Programs)

Dated: December 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–9875 Filed 5–3–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88–7]

Service Contracts; "Most-Favored-Shipper" Provisions

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–7 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due May 16, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–7 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88–7 the Commission proposes to amend its service contract regulations to prohibit the use of contract clauses that affect the rate charged under a service contract by referencing rates offered or published by other carriers or conferences, whether in their service contracts or their tariffs. However, contract clauses that adjust a service contract rate by referencing a rate in the contract carrier's or conference's own tariffs or service contracts would continue to be permitted (see proposed rule at 53 FR 8775).

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–9836 Filed 5–3–88; 8:45 am]

BILLING CODE 6730–01–M

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Notices

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 26, 1988.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1988 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: April 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9915 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Gulf World, Inc. (P160D)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Gulf World, Inc., 15412 West Alternate Highway 98, Panama City Beach, Florida 32407.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* Atlantic bottlenose dolphin (*Tursiops truncatus*), 6.

4. *Type of Take:* Capture/maintain.

5. *Location of Activity:* Gulf of Mexico from Panama City to Cape San Blas.

6. *Period of Activity:* 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33720.

Date: April 28, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 88-9884 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Marine World Foundation (P172B)

On March 4, 1988, notice was published in the **Federal Register** (53 FR 7002) that an application had been filed by the Marine World Foundation, Marine World Parkway, Vallejo, California 94589 for a permit to take ten (10) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on April 29, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices;

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: April 27, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 88-9885 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; National Zoological Park, Smithsonian Institution (P6K)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. John Francis, National Zoological Park, Smithsonian Institution, Washington, D.C. 20008.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Juan Fernandez fur seals (*Arctocephalus philippii*) 40; southen sea lions (*Otaria byronia*) 20.

4. *Type of Take:* The applicant proposes to import milk samples collected from the above listed species for analysis at the National Zoo. Of the 60 specimens taken, no more than 10 of each species will involve recapture of a previously taken animal. Analysis of the milk samples will address the question of whether or not milk fat content follows a clinal variation correlating with the duration of maternal care and latitude.

5. *Location and Duration of Activity:* Argentina and Chile over a 4-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

Date: April 28, 1988.

[FR Doc. 88-9886 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, May 23, 1988: Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria Virginia.

Type of meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive and consider statements on the subject of "Improving the Competitiveness of the U.S. Flag Merchant Marine," to include consideration of ODS and other subsidies, issues of merchant marine cost and efficiency, foreign competition and subsidy, unfair foreign practices, measures to promote and support the U.S. Flag merchant marine, and maritime-related research and development, and related issues. Individuals or organization desiring to present oral testimony must notify the Executive Director in writing by May 13, 1988, and must provide 40 copies of written testimony no later than May 18. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Arthur D. Baker, III, of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on May 18, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-9894 Filed 5-3-88; 8:45 am]

BILLING CODE 3820-01-M

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Tuesday, May 24, 1988; Beginning 2:00 p.m.

PLACE: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

TYPE OF MEETING: Open.

CONTACT PERSON: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 756-0411.

PURPOSE OF MEETING: To receive and consider statements on the subject of "Obtaining, Sustaining, and Modernizing Ships for Strategic Sealift," to include consideration of "Procure and Charter" and "Build and Charter" programs, construction in foreign shipyards, Title XI and CCF programs, offshore or

foreign registries, needs for and uses of active and reserve fleets, and related issues. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by May 13, 1988, and must provide 40 copies of written testimony no later than May 18. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on May 18, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-9695 Filed 5-3-88; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Requirements for Certain Wool Textile Products Produced or Manufactured in Uruguay

April 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: May 5, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Bilateral Textile Agreement and export visa arrangement between the Governments of the United States and Uruguay, the two governments agreed that shipments of wool apparel products in Category 444 are no longer subject to visa requirements.

Copies of the bilateral agreement and the visa arrangement are available from the Textile Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 50 FR 6232, published in the **Federal Register** on February 14, 1985 and 51 FR 19244, published on May 28, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1988.

Commissioner of Customs, *Department of Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of February 8, 1985, as amended, which directed you to prohibit entry of certain specified categories of cotton and wool textile products, produced or manufactured in Uruguay for which the Government of the Republic of Uruguay has not issued an appropriate export visa or exempt certification.

Effective on May 5, 1988, shipments of wool apparel in Category 444 which are exported from Uruguay on or after May 5, 1988, need not be accompanied by an export visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-9822 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange; Proposed Amendments Relating to the Oats Futures Contract and a Proposal to Recommence Trading in That Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Minneapolis Grain Exchange ("MGE" or "Exchange") has submitted for the oats futures contract a number of proposed changes in the standards and procedures relating to the delivery of oats, including amendments to the delivery points and quality standards. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. In addition, the MGE has submitted a proposal to recommence trading in the oats futures contract, which now is dormant within the meaning of Commission Regulation 5.2. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before June 3, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the MGE oats futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the oats futures contract that would:

(1) Increase the number of grades of oats deliverable on the futures contract (the currently deliverable grades are No. 1 and No. 2 heavy oats), change the existing par specification for the No. 1 heavy oats grade to a 3 cent per bushel premium, and specify that oats with more than 14% moisture are not deliverable. The existing and proposed deliverable grades of oats and their corresponding price differentials are shown below:

Grade	Differentials [1]	
	Current	Proposed
	(cents per bushel)	
No. 2 Heavy Oats	par	par
No. 1 Oats	—	par
No. 1 Extra Heavy Oats	—	+7
No. 2 Extra Heavy Oats	—	+4
No. 1 Heavy Oats	par	+3
No. 2 Oats [2]	—	−3

Grade	Differentials [1]	
	Current	Proposed
No. 2 Oats [3]	—	−6

[1] Under the proposal, bright oats shall carry no additional premium or discount.
[2] 36 lb. minimum test weight.
[3] 34 lb. minimum test weight.

(2) Specify that delivery in satisfaction of futures contracts must be at regular warehouses located in the Minneapolis/St. Paul switching district. Current provisions allow delivery in regular warehouses located in Duluth, Minnesota and Superior, Wisconsin, as well as Minneapolis/St. Paul.

(3) Limit trading and delivery to lots of 5,000 bushels, or multiples thereof, rather than permitting delivery in units of 5,000 or 1,000 bushels, or multiples thereof, as currently specified in the contract.

(4) Increase the maximum daily price fluctuation limit for the contract to 10 cents from 6 cents per bushel with provision for expansion of the base limit to 15 cents per bushel rather than the current 9 cents per bushel.

(5) Establish a minimum price fluctuation limit for trading in the contract of one-fourth (¼) cent per bushel.

(6) Specify trading for delivery in the calendar months of March, May, July, September, and December.

(7) Establish trading hours for the contract of 9:30 a.m. to 1:15 p.m. (Minneapolis time).

With regard to these proposals to amend the contract, the MGE noted that:

> Over the past two decades the production of Oats has tended to concentrate in the agricultural regions of North Dakota, South Dakota, Minnesota, Iowa and Wisconsin. The crop has become more specialized as an ingredient in feed over the years and has contracted in size from about a 40 million acre harvest in the 1950s to a 10 to 12 million acre harvest crop in recent years. The cash market has reflected this most noticeably. Whereas two decades ago the cash market movement from a wider area of Oats producing regions in the United States found active markets in Chicago, Duluth and Minneapolis/St. Paul, the market has shifted rather dramatically in favor of Minneapolis/St. Paul. The Minneapolis/St. Paul market now accounts for the greatest share of cash Oats trading in the United States * * *.
>
> Due to the decided predominance of Minneapolis and St. Paul in the cash market for Oats in the United States relative to Chicago and Duluth and other less important markets, the Minneapolis Grain Exchange believes that this proposal to relist its presently dormant Oats futures contract and to amend it as noted above would provide a benefit to the Oats industry participants as well as to the general public. The Minneapolis Grain Exchange attests that the terms and conditions noted above will provide for a smooth market which will better enable participants to hedge their cash and anticipated cash positions and to provide a more effective pricing tool for the industry to improve economic efficiency in the Oats industry. Further, the Exchange believes that the terms and conditions of its Oats futures contract are in conformity with cash market practices and will provide for a deliverable supply that will not be conducive to price manipulation or distortion and that this supply can reasonably be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels.

The oats futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity exchange Act (Act) and Commission Regulation 1.41(b), an appropriate bylaw, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

The Commission is seeking comment on the proposed amendments and with respect to the MGE's proposal to recommence trading in the oats contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on April 29, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 9863 Filed 5-3-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DIA Defense Intelligence College Board of Visitors; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College.

ACTION: Closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday-Thursday, May 3-5, 1988; 9:00 a.m. to 4:00 p.m. on May 3-4; 9:00 to 11:00 a.m. on May 5.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485. (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

[FR Doc. 88-9825 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: June 15, 1988; 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

[FR Doc. 88–9828 Filed 5–3–88; 8:45 am]

BILLING CODE 3810–01–M

Inspector General

Membership of the DoD Inspector General (IG) Performance Review Board

AGENCY: Department of Defense Inspector General.

ACTION: Notice of Membership of the DoD IG Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Inspector General. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald R. Sandaker, Chief, Management-Employee Relations and Development Branch, Personnel & Security Division, Inspector General, 400 Army Navy Drive, Arlington, VA. (202) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the enclosed are names of executives who have been appointed to serve as members of the Performance Review Board. They will serve a one year renewable term effective on July 1, 1988.

April 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Terry L. Brendlinger

Katherine A. Brittin
Jackie R. Crawford
James H. Curry
Daniel R. Foley
William K. Keesee
Robert J. Lieberman
Jack L. Montgomery
Robert A. Pennisi
Donald E. Reed
William F. Thomas
Richard W. Townley
Stephen A. Trodden
Derek J. Vander Schaaf

[FR Doc. 88–9824 Filed 5–3–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective June 3, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the record system manager identified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22286) May 29, 1985 (DoD Compilation)
FR Doc. 85–27008 (50 FR 47067) November 14, 1985
FR Doc. 86–7574 (51 FR 11803) April 7, 1986
FR Doc. 86–10687 (51 FR 17508) May 13, 1987
FR Doc. 86–27868 (51 FR 44665) December 11, 1986
FR Doc. 86–27813 (51 FR 44668) December 11, 1986
FR Doc. 86–27814 (51 FR 44670) December 11, 1986
FR Doc. 86–27815 (51 FR 44672) December 11, 1986
FR Doc. 87–13686 (52 FR 22837) June 16, 1987

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on April 25, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

DUSDP 06

SYSTEM NAME:

Defense Personnel Security Research & Educational Center Research Files.

SYSTEM LOCATION:

Records in the system are located at three sites: Defense Personnel Security Research & Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481; Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940–3231; and Data Center, Naval Postgraduate School, Monterey, CA 93943.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Department of Defense (DoD) civilian employees, military members, and DoD contractor employees who have or had security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of cleared individuals, DD Forms 398 and 398–2, background investigations, responses from interviews and questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 781–887, Internal Security Act of 1950; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons; Executive Order 10450, Security Requirements for Government Employment; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 12333, United States Intelligence Activities; Executive Order 12356, National Security Information; and 5 U.S.C. 301, Departmental Regulations, which authorizes DoD Directive 5210.79, "Defense Personnel Security Research and Education Center (PERSEREC)," and DoD Regulation 5200.2–R, "DoD Personnel Security Program Regulation."

PURPOSES:

To perform research and analyses for (1) evaluating and improving DoD personnel security procedures, programs, and policies; (2) assisting in providing training, instruction, and advice on personnel security subjects for DoD Components; (3) encouraging cooperative research within and among DoD Components on projects having DoD-wide implications in order to avoid duplication; (4) addressing items of special interest to personnel security officials within DoD Components; and (5) identifying areas in the personnel security field that warrant more intense scrutiny.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to the following users for the stated purposes: Federal, State, and local government agencies if necessary to obtain information from them; a Congressional office in response to an inquiry made at the request of the record subject; General Services Administration and National Archives and Records Administration for records management inspections authorized by 44 U.S.C. 2904 and 2906. See also the blanket routine uses set forth at the beginning of this agency's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVAL:

Records may be retrieved by name, Social Security number, or military service number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards. Research results are not identifiable to any specific individual.

RETENTION AND DISPOSAL:

Information is retained for the life of the research project. When no longer needed for the project, paper records are shredded and computer media are erased or degaussed.

SYSTEM MANAGER AND ADDRESS:

Director, Defense Personnel Security Research & Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481

NOTIFICATION PROCEDURE:

An individual may determine if the record system contains information retrieved by his or her personal identifier by contacting the system manager at the address listed above and providing sufficient proof of identity such as full name, Social Security number, date and place of birth, military service number (if service was before 1968), military or civilian status while associated with the Department of Defense, place and data of DoD or contractor employment, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager listed above and must contain sufficient information to identify the individual, such as the identifying information listed under "Notification Procedure," above.

CONTESTING RECORDS PROCEDURES:

Rules for contesting the contents of records pertaining to an individual are contained in Office of the Secretary of Defense Administrative Instruction Number 81 (32 C.F.R. Part 286b) and may be obtained from the system manager identified above.

RECORD SOURCE CATEGORIES:

Information is obtained from the Defense Central Investigations Index, military records, DoD civilian employment and military personnel records, Defense Investigative Service records, a records of the Departments of Justice and Treasury, and interviews with and questionnaries completed by record subjects.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–9823 Filed 5–3–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy; DoD

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Requests for copies of patent applications cited should be directed to the Office of the Chief of Naval Research, Code OOCCIP, 800 North Quincy Street, Arlington, Virginia 22217–5000 and must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent Application 054,977: Bloch-Line Memory Element and RAM Memory; filed 27 May 1987.

Patent Application 386,367: Crosstie Random Access Memory System; filed 8 June 1982.

Patent Application 386,388: Crosstie Random Access Memory Element Having Associated Read/Write Circuitry; filed 8 June 1982.

Patent Application 386,389: Crosstie Random Access Memory Element and a Process for the Fabrication Thereof; filed 8 June 1982.

Patent Application 505,617: Enhanced Crosstie Random Access Memory Element and a Process for the Fabrication Thereof; filed 20 June 1983.

Date: April 29, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–9813 Filed 5–3–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–05–LNG]

Distrigas Corp.; Application To Import Liquefied Natural Gas From Algeria

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for amended authorization to import liquefied natural gas from Algeria.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 15, 1988, Distrigas Corporation (Distrigas) filed an application to amend its current authorization to allow it to import the remaining authorized cargoes of liquefied natural gas (LNG) from Algeria at market responsive prices not to exceed $2.50 from MMBtu, and to extend its authorization beyond May 15, 1988.

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DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: On March 4, 1988, in DOE/ERA Opinion and Order No. 228 (Order No. 228), the ERA authorized Distrigas to import up to five cargoes of LNG pursuant to the terms of a contract amendment between Distrigas and Sonatrach, the Algerian national energy corporation. The amended authorization allowed Distrigas to import the LNG at a sales price of up to $2.50 per MMBtu for the first three cargoes and up to $2.00 per MMBtu for the next two cargoes, plus, in each case, bunkers and port charges. The authorization further stipulated that the LNG cargoes should be imported by May 15, 1988, and that Distrigas would have to receive prior written approval from the ERA before any LNG could be imported after that date.

On April 15, 1988, Distrigas informed the ERA that, in response to changing market conditions, it had renegotiated the purchase price of the first cargo of LNG from Sonatrach to a lower price of $2.20 per MMBtu and intended to further renegotiate the purchase price of subsequent cargoes to be market responsive, but not to exceed $2.50 per MMBtu, plus bunkers and port charges. Distrigas also requested an extension of the May 15, 1988, deadline in which to import the remainder of the five authorized cargoes. Distrigas asked for expedited processing of its request.

In response to Distrigas' request for a modification of its authorization, the ERA issued a letter to Distrigas on April 28, 1988, informing it that the importation of the first three cargoes of LNG at negotiated prices not to exceed $2.50 per MMBtu was consistent with Distrigas' current authorization and no further ERA action was necessary. Therefore, this proceeding only involves Distrigas' request to extend the term of its authorization beyond May 15, 1988, and to import the last two cargoes of LNG at negotiated prices not to exceed $2.50 per MMBtu, but which may exceed the $2.00 per MMBtu currently authorized.

In order that the ERA be able to make a decision on Distrigas' application as soon as possible after May 15, 1988, and because all of the current parties in this docket were served with copies of Distrigas' amended application as well as copies of this notice and of the April 28, 1988, letter, the ERA has decided to shorten the normal comment period in this proceeding. Comments shall be filed with the ERA by May 11, 1988, and responses to comments shall be filed on May 18, 1988.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person not already a party to this proceeding who wishes to become a party to the proceeding and to have written or oral comments considered as the basis for any decision on the applications must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 11, 1988. Response to any written comments filed pursuant to notice must be filed no later than 4:30 p.m., e.d.t., May 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Distrigas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays

Issued in Washington, DC, April 28, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–9937 Filed 5–3–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[CP87–451–004, et al.]

Change in Date for Technical Conference to Discuss Procedures for Environmental Review; Northeast U.S. Pipeline Projects.

April 29, 1988

AGENCY: Federal Energy Regulatory Commission; Energy.

ACTION: Notice of Environmental Technical Conference.

SUMMARY: On April 22, 1988, the Federal Energy Regulatory Commission issued a Notice of Technical Conference to discuss procedures for environmental review (53 FR 15118). The Notice indicated that the technical conference would be held on May 12, 1988 at 9:00 a.m. The Notice should have indicated that the technical conference will be held on May 16, 1988 at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: John S. Leiss, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (202) 357–9021.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9849 Filed 5–3–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER88–361–000 et al.]

Florida Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 29, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER88–361–000]

Take notice that on April 22, 1988, Florida Power & Light Company (FPL) tendered for filing revised rates and the following: (1) Support Schedules C and F, which have been updated to reflect current costs of providing service under Schedules A and B of the referenced contract filing in Docket No. ER80–58; and (2) Attachment No. 2, Support Information as described in Article III of the Offer of Settlement in Docket No. ER80–58.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER88–362–000]

Take notice that on April 22, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing as a rate schedule the Capacity Sale Agreement (Agreement) between PSE&G and Potomac Electric Power Company (PEPCO). The Agreement, dated as of April 11, 1988, provides for PSE&G to sell capacity from certain of its generating units to PEPCO.

The term of the Agreement begins on June 1, 1988 and continues until December 31, 1988. The parties request that the commission waive its standard notice period and allow the Agreement to become effective on June 1, 1988.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Company

[Docket No. ER88–360–000]

Take notice that on April 22, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing as a rate schedule the Capacity Sale Agreement (Agreement) between PSE&G and Atlantic City Electric Company (AE). The Agreement, dated as of March 28, 1988, provides for PSE&G to sell capacity from certain of its generating units to AE.

The term of the Agreement begins on June 1, 1988 and continues until May 31, 1990. The parties request that the Commission waive its standard notice period and allow the Agreement to become effective on June 1, 1988.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER88–359–000]

Take notice that on April 21, 1988, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 2 to the Interconnection and Interchange Agreement between Northern States Power Company (NSP) and the City of New Ulm.

The Supplement No. 2 to the Interconnection and Interchange Agreement (Supplement) provides for a firm power sale to the City of New Ulm concurrent with the inservice of additional interconnection facilities between NSP and the City, and terminating with the April 1995 billing period. The Interconnection and the Interchange Agreement is on file with the Commission; it is designated as FERC Rate Schedule No. 398.

NSP requests this Supplement become effective on April 20, 1988 and therefore, requests waiver of the Commission's notice requirements.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER82–769–011]

Take notice that on March 11, 1988, Minnesota Power & Light Company tendered for filing, pursuant to Commission letter dated February 3, 1988, a refund report.

Copies of this filing have been served upon the Cooperative Power Assocation and to the Minnesota Public Utilities Commsion.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Encogen Two Partners, Ltd.

[Docket No. QF88–344–000]

On April 14, 1988, Encogen Two Partners, Ltd. (Applicant), c/o Enserch Development Corporation, Two World Trade Center, New York, New York 10048–0752, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Nestle Food Corporation Plant in Freehold, New Jersey. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, and an automatic extraction steam turbine generator. Thermal energy recovered from the facility will be used for food processing in the plant. The net electric power production capacity of the facility will be 99,562 KW. The primary source of energy will be natural gas. Construction of the facility will begin in the first quarter of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–9892 Filed 5–3–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP–343–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–343–000]

April 28, 1988.

Take notice that on April 20, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–343–000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) to reassign the

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maximum daily quantities of gas that Tennessee may deliver to The Berkshire Gas Company (Berkshire) at the existing North Adams Sales Delivery Point, under Applicant's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that Berkshire has requested that the daily Quantity Limit at the North Adams Sales Delivery Point in Berkshire County, Massachusetts be reassigned from 10,260 to 11,317 Dth. Applicant claims that the reassignment is necessary to provide Berkshire with increased operational flexibility. Applicant states that no additional facilities authorization will be required to effectuate the reassignment.

Applicant does not proposed to increase or decrease the total daily and/or annual quantities that it is authorized to deliver to Berkshire. Applicant asserts that the reassignment is not prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries specified in the request without detriment or disadvantage to any of Applicant's other customers.

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-342-000]

April 28, 1988.

Take notice that on April 19, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed on Docket No. CP88-342-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of Intercon Gas, Inc. (Intercon), a marketer of natural gas, under is blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated April 8, 1988, Northern would transport up to 184,089 MMBtu of natural gas per day for Intercon from fourteen (14) points of receipt in offshore Texas and offshore Louisiana to eight (8) points of delivery in offshore Texas, Texas and offshore Louisiana. Northern further states that construction of facilities would not be required to provide the proposed service.

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Alabama-Tennessee Natural Gas Company

[Docket No. CP88-346-000]

April 28, 1988.

Take notice that on April 20, 1988, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed a certificate application in Docket No. CP 88-346-000 pursuant to section 7(c) of the Natural Gas Act requesting a limited-term certificate of public convenience and necessity to perform a transportation service for Champion International Corporation (Champion), all as more set forth in the application which is on file with the Commission and open to public inspection.

A-T proposes to implement the service pursuant to the terms and conditions of a transportation contract between A-T and Champion dated December 1, 1987. It is indicated that A-T has agreed to transport up to twelve billion Btu of natural gas per day on an interruptible basis for a term of one year from the date of initial deliveries. A-T states that the transportation contract provides that shipper will cause gas to be delivered to the facilities of Tennessee Gas Pipeline Company (Tennessee), Columbia Gulf Transmission Company (Columbia), or Tennessee River Intrastate Gas Company, Inc. (TRIGAS), for redelivery to A-T. A-T indicates that it would receive such gas at the existing points of interconnection between the facilities of A-T and Tennessee located in Alcorn County, Mississippi and/or Colbert County, Alabama, and/or an existing point of interconnection between the facilities of A-T and Columbia located in Alcorn County, Mississippi, and/or the existing point of interconnection of the facilities of A-T and TRIGAS located in Colbert County, Alabama. It is indicated that TRIGAS would receive gas from Texas Eastern Transmission Corporation for redelivery to A-T. A-T states that it would redeliver to Champion a thermally equivalent quantity of gas at an existing point of interconnection between the facilities of A-T and Champion.

A-T proposes to charge rates provided by its Rate Schedule IT ranging from a maximum of 10.41 cents per Mcf to a minimum of 0.53 cents per Mcf.

Comment date: May 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP88-341-000]

April 29, 1988.

Take notice that on April 19, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-341-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 1, 1988, it proposes to transport up to 60,000 dekatherms per day equivalent of natural gas on an interruptible basis for Chevron from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Bridgeline Gas Distribution Company and Monterey Pipeline Company in various Louisiana parishes for their system supplies.

Trunkline further states that the maximum daily and annual quantities would be equivalent to 60,000 dekatherms and 3,650,000 dekatherms, respectively. Trunkline advises that service under § 284.223(a) commenced March 1, 1988, as reported in Docket No. ST88-3033 (filed March 31, 1988).

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-351-000]

April 29, 1988.

Take notice that on April 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP88-351-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, seeking authorization for partial abandonment of sales service to Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern seeks authority to abandon 30,000 Mcf of sales service to Alagasco, effective March 3, 1988.

It is stated that Southern, as seller, and Alagasco, as buyer, are parties to a Sales Service Agreement dated September 19, 1969, for the sale and purchase of natural gas. Southern states that it is currently authorized to sell and deliver to Alagasco an aggregate contract demand of 424,441 Mcf of natural gas. Southern was initially authorized to sell natural gas to Alagasco by Order dated October 8, 1942, issued in Docket Number G-296, it is asserted. Southern states that it commenced providing self-implementing transportation service pursuant to Section 311 of the Natural Gas Policy Act of 1978 on December 1, 1987, and by letter dated December 22, 1987, Alagasco requested to convert 30,000 Mcf of its firm sales entitlements to firm transportation service. Accordingly, it is stated that Southern and Alagasco have entered into a Service Agreement dated March 3, 1988, providing for a transportation demand of 30,000 Mcf under Southern FT Rate Schedule. Southern therefore requests that it be authorized to abandon 30,000 of its certified sales service to Alagasco effective March 3, 1988. Southern states that it does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this portion of sales service to Alagasco.

To reflect this conversion of sales service to firm transportation, it is stated that Southern and Alagasco have executed a revised Exhibit A to the Sales Service Agreement between Alagasco and Southern reducing Alagasco's total contract demand to 394,441 Mcf. Southern states that the revised Exhibit A will be filed by Southern promptly upon the receipt of the authorization requested herein.

Comment date: May 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP88-350-000]

April 29, 1988.

Take notice that on April 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP88-350-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, seeking authorization for partial abandonment of sales service to Mississippi Valley Gas Company (Mississippi Valley), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern seeks authority to abandon 14,000 Mcf of sales service to Mississippi Valley, effective February 24, 1988.

It is stated that Southern, as seller, and Mississippi Valley, as buyer, are parties to a Sales Service Agreement dated September 12, 1988, for the sale and purchase of natural gas. Southern states that it is currently authorized to sell and deliver to Mississippi Valley an aggregate contract demand of 97,064 Mcf of natural gas. Southern was initially authorized to sell natural gas to Mississippi Valley by Order dated October 6, 1942, issued in Docket Number G-296, it is asserted. Southern states that it commenced providing self-implementing transportation service pursuant to Section 311 of the Natural Gas Policy Act of 1978 on December 1, 1987, and by letter dated January 22, 1988, Mississippi Valley requested to convert 14,000 Mcf of its firm sales entitlements to firm transportation service. Accordingly, it is stated that Southern and Mississippi Valley have entered into a Service Agreement dated February 24, 1988, providing for a transportation demand of 14,000 Mcf under Southern's FT Rate Schedule. Southern therefore requests that it be authorized to abandon 14,000 Mcf of its certified sales service to Mississippi Valley effective February 24, 1988. Southern states that it does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this portion of sales service to Mississippi Valley.

To reflect this conversion of sales service to firm transportation, it is stated that Southern and Mississippi Valley have executed a revised Exhibit A to the Sales Service Agreement between Mississippi Valley and Southern reducing Mississippi Valley's total contract demand to 83,064 Mcf. Southern states that the revised Exhibit A will be filed by Southern promptly upon the receipt of the authorization requested herein.

Comment date: May 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-9993 Filed 5-3-88; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. RP85-169-035]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that CNG Transmission Corporation, formerly Consolidated Gas Transmission Corporation (Consolidated), on April 25, 1988, filed the following revisions to First Revised Volume No. 1 of its FERC Gas Tariff: Second Substitute Original Sheet Nos. 85 and 121.

Consolidated states that the proposed effective date is Dec. 1, 1987. The tariff sheets are being filed to comply with the Letter Order issued March 24, 1988, by the Director of the Office of Pipeline and Producer Regulation in this docket.

Copies of the filing were served upon parties to Docket No. RP85-169 and Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9850 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 25, 1988 certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1988.

ESNG states that the proposed revised tariff sheets reflect an overall rate increase of $2.4615 per dt in the Demand Charge 1 under the CD-1, CD-E and G-1 Rate Schedules and an overall rate increase of $ .5042 per dt in the Commodity Charge under the CD-1, CD-E and G-1 Rate Schedules.

ESNG states that the proposed alternate revised tariff sheets reflect an overall rate increase of $.0044 per dt in the Demand Charge 1 under the CD-1, CD-E and G-1 Rate Schedules and an overall rate increase of $.3801 per dt in the Commodity Charge under the CD-1, CD-E and G-1 Rate Schedules.

ESNG also tendered certain other revised tariff sheets included in Appendix G and Appendix H, attached to the filing. Such sheets are also proposed to be effective May 1, 1988. ESNG states that the purpose of these revised sheets is to (1) eliminate from ESNG's tariff language relating to Incremental Pricing and (2) make minor revisions to ESNG's CD-1, CD-E and G-1 Rate Schedules as they relate to ESNG's LSS and CWS Rate Schedules.

ESNG states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at ESNG's main office at 350 South Queen Street in Dover, Delaware.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9851 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-001]

Natural Gas Pipeline Co. of America; Correction to Filing

April 28, 1988.

Take notice that on April 18, 1988, Natural Gas Pipeline Company of America (Natural) filed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 2, correcting the tariff sheets filed on March 31, 1988, which inadvertently designated the proposed tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 2, in Docket No. RP88-94-000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets as submitted herein to become effective May 1, 1988, the effective date requested in Natural's original filing submitted on March 31, 1988.

Natural states that a copy of this filing is being mailed to its jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88-94-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9852 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-41-002 RP85-13-019, RP87-27-003 and RP81-47-015]

Northwest Pipeline Corp.; Tariff Filing and Refund Report

April 29, 1988.

Take notice that on April 20, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Volume No. 1

Revised Second Amended Thirty-Ninth Revised Sheet No. 10, Substitute Third Amended Thirty-Ninth Revised Sheet No. 10, First Amended Twenty-First Revised Sheet No. 10-A, Second Amended Twenty-First Revised Sheet No. 10-A, Third Revised Sheet No. 71, First Revised Sheet No. 72.

Northwest states that it is filing Revised Second Amended Thirty-Ninth Revised Sheet No. 10 in response to the Commission's January 29, 1988 Order in Docket Nos. RP88-41-000, RP85-13-000 and RP87-27-000 to reflect a reduction in Northwest's sales rates caused by the reallocation of costs between Northwest's Rate Schedule T-1 and its sales rate schedules. Northwest also states that it is filing First Amended Twenty-First Revised Sheet No. 10-A in response to the Commission's March 21, 1988 Order in Docket Nos. RP88-41-001, RP85-13-017 and RP87-27-002 to allow Northwest to recover the additional costs that were reallocated to Rate Schedule T-1. Northwest requests that the two tariff sheets be made effective April 1, 1988 and February 1, 1988, respectively.

Northwest also states that it is filing substitute Third Amended Thirty-Ninth Revised Sheet No. 10 that would supersede Revised Second Amended Thirty-Ninth Revised Sheet No. 10 referenced above. Substitute Third Amended Thirty-Ninth Revised Sheet No. 10 also would reflect the reduction in Northwest's sales rates and is needed because on March 31, 1988 Northwest filed a restatement of its Base Tariff Rates in Docket No. RP88-47-002, to be effective May 1, 1988. Northwest also is filing Second Amended Twenty-First Revised Sheet No. 10-A to reflect the new fuel reimbursement percentage on Northwest's system, to be effective April 1, 1988.

Northwest further states that it is filing Third Revised Sheet No. 71 to include general and overhead expense items, as allocated to Rate Schedule T-1, pursuant to the Commission's Order issued August 4, 1987 in Docket No. RP81-47-005. Northwest states that it is filing First Revised Sheet No. 72 simply because the addition to Third Revised Sheet No. 71 caused existing language to be shifted from Third Revised Sheet No. 71 to First Revised Sheet No. 72. Both sheets are proposed to be effective February 1, 1988.

Northwest finally states that it is filing a refund report, also in response to the Commission's March 21 Order, that reflects refunds with interest to its jurisdictional sales customers for the period from May 1, 1985 to March 31, 1988.

Northwest states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9853 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-007]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that on April 25, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff Sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective May 25, 1988:

First Revised Sheet No. 30Z.1
Second Revised Sheet No. 45R.9
Original Sheet No. 45R.9a
Frist Revised Sheet No. 53I.35
Original Sheet No. 53I.35a
First Revised Sheet No. 53I.36
First Revised Sheet No. 53I.39
First Revised Sheet No. 53I.51
First Revised Sheet No. 53I.55

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. Southern filed subsequent revisions to said tariff sheets through filings submitted on December 14, 1987, February 29, 1988, March 16, 1988 and March 31, 1988. Southern herewith files the above-reference revised tariff sheets to allow shippers to add or delete delivery points or change the maximum daily delivery quantity for a point on a more flexible basis. Southern has requested that the revised sheets be made effective May 25, 1988.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9854 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1651-001]

Swift Creek Power Co., Inc.; Existing Licensee's Intent To File an Application for New License

April 29, 1988.

Take notice that on September 8, 1987, licensee for the Swift Creek Project No. 1651 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Swift Creek Project No. 1651 will expire on November 30, 1992. The project is located on the Swift Creek in Lincoln County, Wyoming, has a total capacity of 1,550 kw, and occupies federal lands within the Bridger-Teton National Forest.

The principal project works currently licensed for Project No. 1651 are comprised of two separate developments consisting of the following:

(1) The upper development consists of a concrete dam about 22 feet high and 100 feet long; a reservoir with negligible storage capacity; a 48-inch diameter penstock about 7,000 feet long; a surge tank; a powerhouse with two turbine-generators, each rated at 400 kw capacity; electrical facilities to include the 2.4 kv generator leads, the 2.4/12.5 kv step-up transformer bank, and the 12.5 kv transmission line about 1.1 miles long connecting the two developments; and appurtenant facilities; and

(2) The Lower development (formerly Project No. 910) consists of an earth-rockfill dam about 30 feet high and 360 feet long; a reservoir with negligible storage capacity; a powerhouse with two turbine-generators, one-rated at 250 kW and the other rated at 500 kW; electrical facilities to include the 0.480 kV generator leads, the 0.480/12.5 kV step-up transformer bank, and a 12.5 kV

transmission line about 300 feet long; and appurtenant facilities;

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 1990.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois Cashell,

Acting Secretary.

[FR Doc. 88–9855 Filed 5–3–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–81–001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 26, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 310
Substitute First Revised Sheet No. 311
Substitute First Revised Sheet No. 330
Substitute First Revised Sheet No. 331
Substitute First Revised Sheet No. 333
Substitute First Revised Sheet No. 334
Substitute First Revised Sheet No. 337
Substitute First Revised Sheet No. 404
Substitute First Revised Sheet No. 677
Substitute First Revised Sheet No. 736

Texas Eastern states that the purpose of this filing is to make the revisions to its March 24, 1988 tariff filing in Docket No. RP88–81–000 as required by the Commission's April 22, 1988 "Order Accepting For Filing and Suspending Tariff Sheets Subject to Refund and Conditions, Establishing Hearing, and Consolidating Proceedings" (April 22 Order). Texas Eastern states that its March 24, 1988 filing was accepted subject to refund and conditions imposed by the Commission's April 22 Order. Ordering Paragraph (B) requires Texas Eastern to modify and refile certain of its tariff sheets submitted on March 24, 1988 within 15 days of the issuance of the April 22 Order. In compliance with the April 22 Order, but without prejudice to Texas Eastern's right to seek rehearing of the April 22 Order, Texas Eastern states that it has made the following tariff changes:

(1) Sheet Nos. 330 and 331 have been revised to incorporate into Section 3.2 of Rate Schedule IT–1 the interruptible transportation tender requirement established in *Tennessee Gas Pipeline Company,* 38 FERC Par. 61,233 at 61,740–41 (1987).

(2) Sheet No. 337 has been revised so that Section 12 of Rate Schedule IT–1 clearly grants Buyer the right to nominate the new MDRO and MDDO in the event the MDTQ of a service agreement is to be reduced.

(3) Sheet No. 404 has been revised to delete the requirement that the sum of all MDRO's must not exceed the MDTQ.

(4) Sheet Nos. 310, 311, 333 and 334 have been revised to modify the penalty sections of Rate Schedules FT–1 and IT–1.

(5) Sheet Nos. 677 and 736 have been revised to modify the termination provisions of the FT–1 and IT–1 service agreements to eliminate language which would have required the Buyer to agree not to protest or otherwise oppose Texas Eastern's termination of the agreement.

The proposed effective date of the above listed tariff sheets is April 22, 1988, the effective date of the initial tariff sheets filed in this proceeding.

Texas Eastern also advises the Commission that effective April 26, 1988 Texas Eastern is accepting self-implementing transportation requests pursuant to Rate Schedule FT–1 and IT–1. Texas Eastern further advises the Commission that Texas Eastern will comment self-implementing transportation for requesting shipper, who have submitted a valid transportation request, as soon as appropriate service agreements under Rate Schedules FT–1 or IT–1 are executed by Shippers. The text of the telegram sent to the parties of record in Docket No. RP88–81–000 is included in the filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 88–9850 Filed 5–3–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3369–5]

Buried Valley Aquifer System, Ohio, Sole Source Aquifer Petition; Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, under section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the petitioned portion of the Buried Valley Aquifer System of the Great Miami/Little Miami River Basins of Southwestern Ohio, hereafter called the Buried Valley Aquifer System (BVAS), is the sole or principal source of drinking water in the petitioned area, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the BVAS area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: Because the economic and regulatory impact of this action will be minimal, this determination will be effective as of the date it is signed by the Regional Administrator.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG–TUB8, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312–353–1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C, 300f, 300h–3(e), Pub. L. 93–523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On November 25, 1987, EPA received a complete petition from the Miami Valley Regional Planning Commission of Dayton, Ohio, which petitioned EPA to designate the BVAS as a Sole Source Aquifer.

On December 22, 1987, EPA published notice to announce a public comment period regarding the petition. The public was permitted to submit comments and information on the petition until February 22, 1988. A public meeting, scheduled during this period, was cancelled due to lack of written response challenging the aquifer's eligibility for designation. Cancellation was coordinated through the petitioner with concurrence by Regional Counsel.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the BVAS is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The BVAS currently serves as the "sole source" of drinking water for approximately 920,800 residents, of Preble, Dark, Champaign, Miami, Montgomery, Logan, Clark, Greene and Shelby Counties.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost-effective potential source capable of replacing the drinking water needs of the communities and individuals that presently rely on the aquifer.

3. The Buried Valley Aquifer System is an unconfined to semi-confined aquifer that transmits water through unconsolidated glacial deposits. Its high porosity and permeability, coupled with thin overlying soils and shallow depth of water, make the BVAS very vulnerable to contamination. Contamination has already occurred, especially in the Dayton Metropolitan area and other highly industrialized areas. Sources for contamination include, but are not limited to: (A) Leaking underground storage tanks, (B) stormwater drains that discharge to ground water, (C) accidental release of hazardous materials, (D) use and improper storage of agricultural chemicals, and (E) salting of roads for ice control. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality, with a consequent adverse effect on public health.

III. Description of the Buried Valley Aquifer System: Hydrogeology; Use, Recharge; Boundaries

The BVAS was formed when successive glacial events discharged sediment-choked meltwaters through pre-existing bedrock valleys. These meltwaters left behind heterogeneous deposits of gravel, sand, silt, and clay. The gravel and sand deposits form the principal aquifers of the BVAS, and range from 20 to 400 feet in thickness, and from 1/10th to 3 miles in width. The Ohio Department of Natural Resources subdivides the BVAS into Class I and Class II aquifers, based on hydrogeologic characteristics.

Ground water withdrawal from public and private water supply wells averages approximately 140 million gallons per day (mg/d) within the proposed area, with another 45 mg/d going to industrial use. This resource is so readily available and prolific that few communities and individuals within reach of it have developed alternative sources. In fact, 97 percent of the public water and 100 percent of the private water in the proposed designated area is drawn from the BVAS.

The BVAS is recharged primarily by precipitation, with a minor amount contributed as inflow from the upland areas. Many of the large wellfields produce sufficient drawdown to cause induced recharge from surface water bodies to be the primary recharge to the wellfield. However, according to a USGS report on the aquifers, "The flow [in the rivers] that is equaled or exceeded 90 percent of the time * * * is generally considered to come primarily from ground water." In other words, ground water contributes the bulk of water to rivers in the area. So the primary recharge mechanism ultimately remains the infiltration of precipitation over the aquifer.

The project review area consists of the area over the Class I and II aquifers from a hydrodynamic boundary which occurs just south of the City of Franklin in Warren County, to the northern boundary of the Great Miami Basin and including that portion of the BVAS in the Little Miami Basin north of Warren County. Excluded are two small "fingers" of aquifer in western Preble County that do not connect with the main aquifer in the proposed area. Also excluded is a portion of Class II aquifer in Logan and Shelby Counties in which ground water flows north and west, indicating a hydrologic boundary across the aquifer in the northwest corner of Harrison Township, Champaign County. Maps of the boundaries are available from the U.S. EPA Region V Office of Ground Water.

IV. Alternative Sources

The Petitioner considered several alternatives to the BVAS to supply drinking water: Existing surface water systems; bedrock aquifers; and construction of surface impoundments.

Existing surface water systems could supply water to a limited area, but current costs from these systems already exceed quantitative guidance thresholds, and the installation of additional water lines would raise these costs substantially. Also, existing surface water systems could not replace the 140 mg/d currently drawn from the BVAS.

Bedrock aquifers do not have the hydrogeologic characteristics to enable them to transmit sufficient water to replace the amount currently supplied by the aquifer. In addition, the water is highly mineralized, requiring additional treatment to bring it up to the quality of the current supply. New wells would have to be drilled, and additional piping installed for public water supplies.

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Private users would have the expense either of hooking up to public water, deepening their existing wells, or redrilling.

The Petitioner conducted a cost analysis for construction, operation, and maintenance of surface impoundments on the major rivers as a potential alternative source. Current O&M costs, construction costs indexed to 1987, as well as the cost of additional piping, interconnections, and land acquisition, show that construction of impoundments is far too costly. In fact, the cost of O&M alone turned out to be greater than the guidance thresholds of 0.4–0.6 of average annual income.

V. Information Utilized in Determination

The information utilized in this determination includes the petition, published State and Federal reports on the area, and various technical publications. The petition file is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 111 W. Jackson, 10th Floor, Chicago, Illinois 60604.

VI. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by Federal agencies for projects which could contaminate the designated area of the Buried Valley Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the BVAS. Included in the review of any Federal financially assisted project will be coordination with State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VII. Summary of Public Comments

Only one comment was received during the public comment period, and that was in support of designation.

VIII. Economic and Regulatory Impact

Under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the designated area of the Buried Valley Aquifer System. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required under other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only provides for an in-depth review of ground water protection measures, incorporating State and local measures whenever possible, for only these projects which request Federal financial assistance.

Dated: April 14, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–9103 Filed 5–3–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200052–001

Title: Tampa Port Authority Terminal Agreement
Parties: Tampa Port Authority Bay Terminal & Stevedoring Co., Inc.
Synopsis: The agreement amendment extends the term of the basic agreement through 31 July 1988.

Agreement No.: 224–200054–001

Title: Port of Tampa Lease Agreement
Parties: Tampa Port Authority G & C Stevedoring Co. (Tenant)
Synopsis: The proposed agreement would (1) extend the term of the lease for an additional three months through July 31, 1988; and (2) provide that the Tenant will pay a lump sum of $75.00 rental, payable after the effective date of Amendment One but not later than May 15, 1988.

Agreement No.: 224–011062–002

Title: Maryland Port Administration Terminal Agreement
Parties: Maryland Port Administration
Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)
Synopsis: The proposed Agreement amends the basic agreement to reflect MPA discounts of billings for port charges by $50.00 per container for loaded containers moved by Evergreen into and out of the Port of Baltimore (the Port) and drayed to either the CSX or CONRAIL railheads in Baltimore. The discount is restricted to containers moving in either direction by rail between the Port and Louisville, Kentucky, Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224–200114

Title: City of Los Angeles Settlement Agreement
Parties: City of Los Angeles (City)
Stevedoring Services of America (SSA)
Synopsis: The proposed Settlement Agreement provides that the City has agreed to waive $20,373 accrued interest on the full payment of $300,946.13 received from SSA for utility charges owed through July 14, 1987.

Agreement No.: 224–200113

Title: Duluth Terminal Agreement
Parties: Seaway Port Authority of Duluth Meehan Seaway Service, Ltd (Meehan)
Synopsis: The proposed agreement provides for Meehan to manage and operate the Arthur M. Clure Public Marine Terminal in Duluth, Minnesota. Meehan will pay the Port Authority a percentage of its gross revenues derived from the handling and storage of waterborne cargoes.

By Order of the Federal Maritime Commission.

Dated: April 29, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–9835 Filed 5–3–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, Chase Manhattan National Corporation, New York, New York; and Chase Manhattan National Holding Corporation, Newark, Delaware; to engage *de novo* in acting as investment or financial adviser to the extent of (i) serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940) to an investment company registered under that Act, including sponsoring, organizing, and managing a closed-end investment company providing portfolio investment advice to any person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities according to the terms, conditions, and restrictions contained in § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–9875 Filed 5–3–88; 8:45 am]

BILLING CODE 6210–01–M

First Chicago Corp. and First Chicago Acquisition II Corp.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's aproval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and First Chicago Acquisition II Corp., Chicago, Illinois; to acquire 100 percent or, in the alternative, in the event of exercise of the option described herein, not more than 25 percent of the voting shares of Gary-Wheaton Corporation, Wheaton, Illinois, and thereby indirectly acquire Gary-Wheaton Bank of Fox Valley, Aurora, Illinois; Gary-Wheaton Bank of Batavia, Batavia, Illinois; Gary-Wheaton Bank of Downers Grove, Downers Grove, Illinois; and Gary-Wheaton Bank, Wheaton, Illinois. In connection with this application, First Chicago Acquisition II Corp., Chicago, Illinois, has also applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Gary-Wheaton Stock Brokerage; Inc., Wheaton, Illinois, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y; and G-W Life Insurance Company, Wheaton, Illinois, and thereby engage in underwriting, as reinsurer, of credit life, accident and health insurance coverage pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in DuPage County, Illinois.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9876 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

Pro Group, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pro Group, Inc.*, Bradford, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Producers Bank and Trust Co., Bradford, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Terre Du Lac Bancshares, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Ozarks National Bank, Lake Ozark, Missouri, a *de novo* bank.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Monycor Bancshares, Inc.*, Superior, Wisconsin; to become a bank holding company by acquiring 97.86 percent of the voting shares of Monycor Bank of Superior, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9877 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Funds for Fiscal Year 1988 Cooperative Agreements to Support State and Local Education Agency Programs for School Health Education To Prevent the Spread of Aids

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 (FY88) for cooperative agreements to support the development and implementation of effective health education about AIDS for school-age populations (elementary through high school-age youth, college-age populations, parents, and relevant school, health, and education personnel). Funds will be available to State education agencies (SEAs) that have not previously been awarded cooperative agreement funding, for continuation and expansion of State Education Agency and Local Education Agency (LEA) cooperative agreements awarded in Fiscal Year 87 (FY87), and for funding LEA applications submitted and approved for funding in FY87. No new LEA applications will be accepted in FY88. These agencies must be able to carry out and promote appropriate actions to help increase the number of schools, and agencies that serve youth who do not attend school, that provide effective education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with community values, and appropriate to community needs.

(See "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S-2, 1-13).)

Authorizing Legislation

These programs are authorized under section 301 (a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311 (b and c) of the Public Health Service Act (42 U.S.C. 343(b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118*.

Program Background and Objectives

AIDS constitutes a significant and growing threat to the health of people in the United States. As of 12/30/87, approximately 50,000 cases of AIDS had been reported, as defined by the CDC surveillance case definition. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intravenous drug abusers, the AIDS virus is transmitted among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

Approximately 1-1.5 million Americans already are infected and cases resulting from heterosexual transmission of the virus are expected to increase. By the end of 1991, the cumulative total of AIDS cases in the United States is estimated to reach 270,000 with over 179,000 deaths due to AIDS. Because infected persons are capable of transmitting the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended the initiation of major public education efforts to inform the public, especially youth, school, and college populations, about AIDS and how to prevent becoming infected with the AIDS virus.

The objective of these cooperative agreements is to help increase the number of schools, and other agencies that serve youth who do not attend school, that provide effective AIDS education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with parental values, and appropriate to community needs.

These cooperative agreements thus will stress both the importance of providing immediate education for junior high and high school-age youths about behaviors that increase the risk of AIDS, and the importance of providing such education within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health.

The complete program description, the form the application must take, and the criteria for review will be set forth in the Request for Application package.

A. Eligible Applicants

Eligible *new* applicants are the official State education agencies (SEA) in States and Territories of the United States (other than the SEAs and LEAs *funded* in FY87). For the purpose of this agreement, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa.

New SEA applicants must give priority to assisting local education agencies in cities with a high reported incidence of AIDS cases and must show evidence of collaboration with the State and local health agencies in determining priority areas for the programmatic activities.

Currently funded SEAs and LEAs are eligible for continued funding and expansion of their activities above the level projected in the FY87 application.

B. Availability of Funds

A total of approximately $8,700,000 will be available in FY88 to fund approximately 40 *new* cooperative agreements with SEAs. *No new applications will be accepted from LEAs in FY88.* It is expected that the new cooperative agreements will begin on or about August 1, 1988, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

Priority funding will be given to approved *new* applications from SEAs in states from which a cumulative total of 1,500 or more AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/28/87. Awards to approved *new* SEA applicants will average approximately $215,000.

A total of approximately $3,700,000 will be available to continue and expand LEA cooperative agreements funded in FY87, and to fund LEA applications that were approved in FY87, but not funded. *Continuation awards* to LEAs will begin on September 28, 1988. Awards for LEA applications that are currently approved, but not funded, will begin on or about August 1, 1988. A total of approximately $4,700,000 will be available to continue and expand SEA cooperative agreements funded in FY87. *Continuation awards* to SEAs will begin on September 28, 1988.

FY88 awards to continue and expand 12 LEA cooperative agreements with the average award of approximately $50,000 above the amount awarded in FY87.

FY88 awards to continue and expand 15 SEA cooperative agreements with the average award of approximately $90,000 above the amount awarded in FY87.

C. Application Submission and Deadline Date

New Applications: The original and two copies of *new* SEA applications must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, *on or before May 25, 1988.*

Continuation Applications: The original and two copies of *continuation applications* for SEAs and LEAs must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, *on or before July 15, 1988.*

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in l.a. or b. above are considered late applications. Lake applications will not be considered in the current competition and will be returned to the applicant.

D. Other Submission and Review Requirements

1. All applications will be subjected to an objective review by an Ad Hoc review committee of federal and nonfederal persons.

2. Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon or Marsha Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305; or by calling (404) 842-6575 or FTS 236-6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Office of School Health and Special Projects, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-3824 or FTS 236-3824.

Dated: April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88-9811 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-18-M

Availability of Funds for Fiscal Year 1988 Cooperative Agreements To Support National Programs for School Health Education to Prevent the Spread of AIDS

Introduction

The Centers for Disease Control (DDC) announces the availability of

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funds for Fiscal Year 1988 for cooperative agreements to support the development and implementation of effective health education about AIDS for school-age populations (elementary through college-age youth, parents, and relevant school, health, and education personnel). Funds will be available for new cooperative agreements with national private-sector education and health organizations and other national agencies that serve youth, and to continue and expand cooperative agreements with the national organizations awarded funding in FY87. These organizations must be able to work as part of a national coalition to help increase the number of schools, colleges, or agencies that serve youth who do *not* attend school, to provide effective AIDS education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with community values, and appropriate to community needs. (See "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S–2, 1–13).)

Authorizing Legislation

These programs are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311 (b and c) of the Public Health Service Act (42 U.S.C. 243(b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118*.

Program Background and Objectives

As of December 30, 1987, approximately 50,000 cases of AIDS, as defined by the CDC surveillance case definition, had been reported. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intervenous drug abusers, infection with the AIDS virus is also transmitted among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

Approximately 1–1.5 million Americans already are infected and cases resulting from heterosexual transmission of the virus are expected to increase. By the end of 1991, the cumulative total of AIDS cases in the United States is estimated to reach 270,000 with over 179,000 deaths due to AIDS. Because infected persons are capable of transmitting the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended major public health education efforts to inform the public, especially youth, school, and college populations, about AIDS and how to prevent becoming infected with the AIDS virus.

Every school day, more than 47 million students attend 90,000 elementary and secondary schools in 15,500 school districts across the Nation. A significant proportion of these students (and youth who do *not* attend school) may make behavior choices that unknowingly place them at increased risk for contracting and spreading the AIDS virus. These young persons need to be informed about AIDS.

The Nation's schools could inform 90–95% of our young people about the increasing number of infected individuals, the fatal nature of the disease, the lack of a preventive vaccine or cure for the disease, and specific means by which individuals can protect themselves now and in the future from becoming infected.

The objective of these cooperative agreements is to help increase the number of schools, colleges, and other organizations that serve youth in providing effective education to prevent the spread of AIDS. The content of AIDS education should be locally determined, consistent with parental values, and appropriate to community needs. Assistance provided by national organizations will result in a wide range of educational options from which local educators and others can choose in determining the most effective and appropriate strategies to teach young people about AIDS.

The effectiveness of AIDS education in schools may be influenced by the extent to which it is integrated within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health. For example, education about AIDS may be more effective if students at appropriate ages were knowledgeable about community health, communicable diseases, including sexually transmitted diseases, and drug abuse; and have opportunities to learn peer resistance skills, communication skills, self-efficacy, self-esteem, etc.

These cooperative agreements thus will stress the importance of providing immediate education about behaviors that increase the risk of AIDS for junior high, high school, and college-age youths, and the importance of providing school health education within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health.

National Programs for School Health Education To Prevent the Spread of AIDS

A. Purpose

The purpose of these programs is to assist national education, health, and social service organizations that serve youth to increase the number of schools and other organizations providing effective AIDS education for youth, school, and college populations in communities throughout the United States; and to facilitate collaboration between public and private sector agencies to implement a coordinated national program to help schools and other organizations nationwide provide effective education about AIDS.

There is a strong need to provide effective education about AIDS for school-age youth. Cooperative agreements with national organizations are intended to utilize and integrate each organization's unique and complementary organizational capabilities and constituencies to help with the implementation and dissemination of effective education to prevent the spread of AIDS.

B. Cooperative Activities

1. Recipient Activities

a. Use organizational capacities and constituents to help with the implementation and diffusion of effective AIDS education for school or college populations, minority school or college populations, or for youths who do not attend school; and to promote educational programs that are locally determined, consistent with parental values, and appropriate to community needs.

b. Establish specific, measurable, and realistic program objectives at national, State, and local levels to increase the number of schools, colleges, or other institutions providing effective AIDS education; and develop a plan of operation to meet the objectives.

c. Develop a plan of operation, including but not limited to: Influencing changes in policies, actions, knowledge/attitudes/beliefs, skills, or availability/accessibility of resources and services that will help to increase the number of schools, colleges, or institutions providing effective AIDS education.

d. Develop and disseminate educational strategies, materials, and resources that will help schools, colleges, or other institutions in providing effective AIDS education.

e. Assess progress in achieving objectives and in carrying out activities.

f. Involve official education and health agencies and other relevant organizations in the planning, implementation, and evaluation of the program.

g. Provide copies of AIDS education curricula, program descriptions, progress reports, and educational materials to be included in CDC's AIDS School Health Subfile on the Combined Health Information Database, and use the Database to avoid duplication of efforts in developing needed resources.

h. Participate with CDC and other national organizations in an annual conference and one workshop about AIDS education for youth, school, and college populations.

2. CDC Activities

a. Provide information about AIDS and the prevention of infection with the AIDS virus, guidance on the development or selection of curricula and materials, and other guidance, recommendations, and standards that may be used as a basis for planning, implementing, and assessing effective AIDS education for youth, school, and college populations.

b. Identify and develop prototype educational materials and assessment instruments that can be adopted for use by students, parents, and school personnel.

c. Provide information about resources relevant to AIDS education in schools, including program descriptions, educational materials, policies, and curricula; and assure the availability of such information through CDC's AIDS School Health Subfile on the Combined Health Information Database (CHID).

d. Provide technical assistance related to attainment and assessment of program objectives, development of educational material and strategies, and dissemination of successful strategies, experiences, and evaluations.

e. Plan meetings of national, State, and local education agencies to address issues and program activities related to improving AIDS education for youth, school, and college populations.

C. Eligible Applicants

Eligible applicants are *national* organizations which may be private, nonprofit, health, education, social service, professional, or voluntary organizations with organizational capacities and experience to help schools and other organizations that serve school-age youth to provide effective education about AIDS.

D. Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1988 to fund approximately seven new cooperative agreements.

Approximately two cooperative agreements may be awarded to *national organizations that represent a broad cross-section of the Nation's teachers (public and private, elementary, middle/junior high, and/or high school)* to increase their constituent's capacity to teach students about avoiding HIV infection and AIDS. These cooperative agreements will be funded at a level of approximately $150,000 each.

Approximately one cooperative agreement may be awarded to *a national organization that represents colleges of teacher education* to increase the number of colleges providing preservice and inservice training to help teachers provide effective education about AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents a variety of private primary and secondary schools nationwide* to increase their constituent's capacity to teach youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000

Approximately one cooperative agreement may be awarded to *a national organization that represents the needs and interests of schools in the Nation's largest cities* to help increase the capacity of schools to teach youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents physicians* to help in establishing school and college programs of AIDS education for youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents health care providers serving the needs and interest of youth who are in correctional institutions.* This cooperative agreement will be funded at a level of approximately $150,000.

It is expected that the new cooperative agreements will begin on or about August 1, 1988, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

A total of approximately $2,600,000 will be available to continue and expand cooperative agreements with national organizations funded in FY87. It is expected that awards for *continuation applications* will begin on September 28, 1988. Continuation applications for national organization cooperative agreements may be funded at a level of approximately $150,000, with the exception of awards to organizations representing state level education organizations. These may be funded at a level of approximately $350,000.

E. Use of Funds

Funds may be used to support personnel, their training and travel, and to purchase supplies and services directly related to planning, organizing, and conducting the activities described in this announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS education for youth, school, and college populations if approved in accordance with paragraph G. below, entitled *Review of Materials.*

F. Reporting Requirements

Semi-annual progress reports which include data and activities related to the achievement of measurable objectives will be required. They will be due within 30 days of the end of the first and third quarters of the budget period. Annual financial status and performance reports are required 90 days after the end of a budget period.

G. Review of Materials

The applicant is required to establish and use a panel to review the appropriateness of educational materials (written materials, pictorials, audiovisuals, questionnaires, etc.) as described in the document: "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S–2, 1–13).)

H. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

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a. The magnitude of and likelihood of the applicant achieving during this budget period: (1) Proposed increases in the number of schools, colleges and universities, and/or other agencies that serve school-age youth who do *not* attend school, providing effective AIDS education as a result of the applicant's proposed activities; (2) and/or estimated increases, in the numbers of youth, school, or college populations receiving effective AIDS education as a result of the applicant's proposed activities;

b. The applicant's demonstrated ability to help schools, colleges and universities, and/or agencies that serve school-age youth who do not attend school, in communities across the Nation provide effective education about health; the scope and efficiency of its national network and constituencies for rapidly disseminating information and activities; current and previous activities (if any) that have successfully contributed to the implementation and diffusion of effective health education in schools, colleges, or agencies that serve the needs of youths who do not attend school and/or minority youth; and its unique sensitivity, experience, awareness, or skills that will help the applicant to achieve proposed program objectives;

c. The applicant's demonstrated ability to coordinate efforts with other national organizations; and to plan and carry out complementary, collaborative, and organized national education efforts;

d. The quality of proposed objectives for this budget period in terms of importance, specificity, measurability, and feasibility; and the specificity and feasibility of the applicant's timetable for implementation of program activities;

e. The extent to which the applicant's activities reflect: (1) The immediate and urgent need for educating youths of junior high school-age and above, and/or youths who do *not* attend school, about how to protect themselves from infection with the AIDS virus; and/or (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health;

f. The usefulness of assessment data that will be obtained to measure program objectives and monitor program activities during the first program year, and the feasibility of obtaining and using those data to improve programs;

g. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds; and

h. The number and qualifications of proposed staff, and time allotted for them to accomplish program activities. Specifically, the establishment of a full time school health coordinator and staff positions within the applicant's organization to manage and coordinate the proposed program activities. The coordinator ideally should have training and experience in school health education or health education for youth.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives and carrying out activities as planned, including incorporating effective AIDS education within comprehensive school health education programs;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds;

d. Program activities are modified to resolve problems and improve effectiveness and efficiency; and

e. All competitive portions (any requests for funding *above* that projected in the FY87 application as needed to continue the approved activities in FY88) of the continuation application will be evaluated and rated based on their consistency with previously approved program objectives and activities.

Applications

A. Application Content

1. The initial application for a new project period must include a narrative for the part of this announcement under which funds are requested that describes the following:

a. *Need:* The applicant should briefly describe the need to increase the number of schools, colleges, and/or other agencies providing effective AIDS education for school-age populations.

The applicant also should identify specific modifiable barriers that its organization can resolve to help with the implementation and diffusion of AIDS education programs for youth, school, and/or college populations.

This section should be no longer than three typed, single-spaced pages.

b. *Capacities:* The applicant should describe its organization's capacity to achieve the proposed increase in the number of schools, colleges, or other organizations providing effective AIDS education.

The description should address the organization's structure, the interests and constituencies it represents (e.g., teachers, health organizations, private schools, etc.), its demonstrated ability to help schools, colleges, or other organizations provide education about health for school-age populations; the scope and efficiency of its national network for rapidly disseminating information and other communications; and current and previous activities (if any) that have successfully reduced barriers that hinder the provision of effective AIDS education in schools, colleges, or organizations that serve the needs of youths who do not attend school.

This section should be no longer than three typed, single-spaced pages.

c. *Coordination:* The applicant should describe its organization's demonstrated ability to coordinate efforts with other national organizations; and its capacity to plan and carry out collaborative, complementary, and organized national efforts for effective AIDS education. The applicant's description should demonstrate a recongition of relevant activities (current or planned) of local and State education agencies and/or of other national organizations.

This section should be no longer than two typed, single-spaced pages.

d. *Objectives:* The applicant should identify objectives that are specific, measurable, and feasible to be accomplished during the first program year. The objectives should clearly identify outcomes intended (e.g. increases in the number of schools, colleges, or other organizations providing effective AIDS education; specific changes in policy, actions, knowledge/attitudes/beliefs, skills, and availability of resources or services; increases in the number of youth, school, or college populations receiving effective AIDS education as a result of the applicant's proposed activites; etc.). *For each objective, the applicant should identify factors that influence the achievement of the objective.*

This section should be no longer than three typed, single-spaced pages.

e. *Activities:* The applicant should identify the specific activities that will be undertaken to achieve each of the program's objectives during the first program year. *Activities should relate directly to the factors that influence the achievement of the objectives.* For each activity, the applicant should describe who will do what, when, and where to implement the activities.

Activities related to helping schools should clearly reflect: (1) The immediate and urgent need for educating junior high and high school students about how to protect themselves from infection with the AIDS virus; and/or (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding the relationships between personal behaviors and health.

This section should be no longer than ten typed, single-spaced pages.

f. *Assessment:* The applicant should identify the specific data that it will obtain to assess progress in meeting its objectives and conducting its activities during the first program year. The applicant also should describe how that information will be obtained, and how it will be used to improve the program.

This section should be no longer than five typed, single-spaced pages.

g. *Evidence of Support:* The applicant should identify the extent to which relevant organizations (e.g., education and health agencies) support the proposal. If the program requires the participation or collaboration of other education or health organizations, evidence of support and agreement to participate must be provided by appropriate officials of those organizations.

This section should be no longer than one typed, single-spaced page with copies of letters of support attached.

h. *Transfer of Technology:* The applicant should plan to share a description of the program and evidence of effectiveness with other agencies interested in AIDS education for youth, school, or college populations. The applicant should submit a description of the program and all educational materials developed by the program to be included in CDC's AIDS School Health Subfile on the Combined Health Information Database.

The applicant should include plans to use the database in avoiding duplication of efforts and incorporating available programs/materials as the database grows.

This section should be no longer than one typed, single-spaced page.

2. *Continued Funding:* An application for continued funding of these activities within an approved project period should contain the following information. Requests for funding *above* that projected in the FY87 application as needed to continue the approved activities in FY88 are considered requests for "expansion" and must be evaluated on a competitive basis. If funds for "expansion" are requested, they must be identified in a separate budget section.

a. Description of activities performed and results achieved during the prior budget period;

b. Short-term objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new objectives;

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

e. A budget and accompanying justification consistent with the purpose and objectives of the project, and consistent with the needed FY88 amount projected in the FY87 application.

f. A separate "expansion" budget is needed for funding above the needed FY88 amount projected in the FY87 application.

3. *Index:* Each application must contain an index specifically directing the reviewers to each section of the application that corresponds with Recipient Activities.

B. Application Submission and Deadline Date

New Applications: The original and two copies of new applications must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321; Atlanta, Georgia 30305, *on or before May 25, 1988.*

Continuation Applications: The origional and two copies of *continuation applcations* must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurements and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta Georgia 30305, *on or before July 15, 1988.*

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the critiera in l.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. Other Submission and Review Requirements

1. All application will be subjected to an objective review by an Ad Hoc review committee of federal and nonfederal persons.

2. Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon or Marsha Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305; or by calling (404) 842-6575 or FTS 236-6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Office of School Health and Special Projects, Division of Health Education, Center for Health and Special Projects, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-3824 or FTS 236-3824.

Dated April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-9812 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 78N-0434]

Mattox & Moore, Inc., Esmopal; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is withdrawing approval of the new animal drug application (NADA) for Esmopal, submitted by Mattox & Moore, Inc. The NADA was the subject of an amended notice of opportunity for hearing proposing that the application be withdrawn. The sponsor did not request a hearing, nor did it submit any data, information, or analysis. For each of these reasons, the sponsor waived the opportunity for a hearing. In a final rule published elsewhere in this issue of the

Federal Register, CVM is removing the regulation reflecting approval of the NADA.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 12, 1988 (53 FR 4214), CVM published an amended notice of opportunity for hearing on a proposal to withdraw approval of NADA 13-187, submitted by Mattox & Moore, Inc. (Mattox & Moore), for Esmopal. Esmopal (21 CFR 522.844) contains 10 milligrams of estradiol monopalmitate and is approved for injection into roasting chickens to produce more uniform fat distribution and to improve finish. The drug is not to be used within 6 weeks of slaughter (21 CFR 522.844).

CVM based the proposed action on section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) on the grounds that (1) Esmopal is not shown to be safe for use because (a) new evidence provides a reasonable basis from which serious questions about the ultimate safety of Esmopal and the residues that may result from its use may be inferred, and (b) new evidence shows that Esmopal is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (2) section 512(d)(1)(H) of the act applies to the drug because (a) new evidence shows that estradiol has been shown to induce cancer in animals, (b) it is impossible to determine whether the total residue of Esmopal is below the level of no carcinogenic concern, (c) there is no method approved by FDA by regulation that can measure the total residue of Esmopal at a concentration low enough to be of no carcinogenic concern, and (d) the residue concentration under conditions of use reasonably certain to be followed in practice cannot be shown to be at or below the concentration of no carcinogenic concern. The amended notice of opportunity for hearing required a written appearance by March 14, 1988, and data, information, and analysis by April 12, 1988.

Mattox & Moore did not file a written appearance requesting a hearing, nor did the firm submit any data, information, or analysis. For each of these reasons, Mattox & Moore waived the opportunity for a hearing. Accordingly, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13-187 and all supplements thereto are hereby withdrawn, effective May 16, 1988.

In a final rule published elsewhere in this issue of the Federal Register, CVM is removing 21 CFR 522.844, which reflects this approval.

Dated: April 26, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-9868 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0040]

Sulfamethazine in Food-Producing Animals; Public Hearing Before the Commissioner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administratiuon (FDA) is announcing a public hearing before the Commissioner of Food and Drugs (the Commissioner) to provide an opportunity for interested persons to present relevant scientific data and pertinent information on the safety of the new animal drug sulfamethazine and on whether sulfamethazine can be used in food-producing animals without illegal drug residues in tissue (drug residues) resulting from such use. Sulfamethazine is commonly administered to swine to promote weight gain and to control the incidence and severity of such disease conditions as dysentery, pneumonia, abscesses, and atrophic rhinitis. The drug is also used in other food-producing animals. Despite various educational and compliance efforts by FDA and the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service, the rate of violative drug residues remains unacceptably high.

Residues of sulfamethazine in tissue are of particular concern at this time because FDA's National Center for Toxicological Research has recently completed a chronic toxicity and carcinogenesis feeding study of sulfamethazine in mice, the results of which indicate that sulfamethazine may be a carcinogen. FDA will use information presented at and after the public hearing, together with other data and information, to determine whether the use of sulfamethazine in food-producing animals presents an unacceptable risk to human health and, if so, an appropriate course of action to minimize that risk.

DATES: Written or oral notices of participation by the close of business May 11, 1988. The hearing will be held on May 25 and 26, 1988, beginning at 8:30 a.m. on May 25. Further comments, whether on matters discussed in this notice or at the hearing, are to be submitted by June 27, 1988.

ADDRESSES: The public hearing will be held at the Jack Masur Auditorium, Bldg. 10, Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Transcripts of the hearing, copies of data and information submitted during the hearing, and any comments will be available for review at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT:

Judith A. Gushee, Center for Veterinary Medicine (HFV-236), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2830

or

David F. Tishler, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6244.

SUPPLEMENTARY INFORMATION:

I. Background

Sulfamethazine is an antibacterial sulfonamide drug widely used in the swine industry. The drug is administered to swine to promote weight gain and feed efficiency and to control the incidence and severity of diseases such as dysentery, pneumonia, abscesses, and atrophic rhinitis (21 CFR 520.2261, 558.145, and 558.630). FDA estimates that some 70 to 80 percent of all swine marketed in the United States receive some form of sulfonamide medication, with sulfamethazine being the drug most often used. Sulfamethazine is also administered to other food animals including cattle, sheep, chickens, and turkeys (21 CFR 510.450, 520.2260, 520.2261, 522.2260, and 558.128). Sulfamethazine is available for use in animal feed and drinking water, as oblets, as boluses, and as an injectable solution. For each of its uses in animals, sulfamethazine is a new animal drug as defined in section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). Accordingly, the drug cannot be legally introduced or delivered for introduction into interstate commerce in the absence of an approved new animal drug application (NADA) (sections 301, 501, and 512 of the act (21 U.S.C. 331, 351, and 360b)) or as permitted under the interim marketing provisions of 21 CFR 510.450. Section 510.450 is discussed in a notice published in the Federal Register of July 5, 1984 (49 FR 27543).

The requirements for approval of an NADA are found in section 512 of the act. That section, in addition to requiring that a new animal drug be shown to be safe and effective and properly labeled, provides for the establishment of tolerances as a condition of approval. Tolerances define the level of the animal drug residue that is demonstrated to be safe in the human diet. Tolerances are generally established by reliance on the safety data submitted in an NADA and on the use of safety factors. The present tolerance of 0.1 part per million (ppm) for negligible residues of sulfamethazine in edible uncooked tissues was published in the Federal Register of September 20, 1968 (33 FR 14233) (see 21 CFR 556.670). The tolerance was (and is) based on no-effect levels demonstrated in 90-day feeding studies. FDA first approved the use of sulfamethazine in feed on July 6, 1963, in an application for a combination product containing sulfamethazine, chlortetracycline, and penicillin. As first approved, FDA required the drug to be withdrawn 7 days before slaughter. In the Federal Register of December 9, 1977 (42 FR 62211), the withdrawal period for sulfamethazine for use in feed or water for swine was extended to 15 days based on new data and a reevaluation of previously available data indicating that drug residues might occur within the shorter withdrawal periods then in use. The extension of the withdrawal period was intended to provide additional assurance against unsafe residues.

II. Residue Problem

USDA's Food Safety and Inspection Service (FSIS) monitoring data gathered prior to 1978 indicated that up to 13 percent of slaughtered hogs had sulfonamide residues above the tolerance (Ref. 1). Most of the residues were for sulfamethazine (id). In May 1978, FDA and USDA initiated an intensive educational and research program designed to reduce the rate of violative sulfamethazine residues. The agencies stressed the importance to feed manufacturers of maintaining good manufacturing practices, including adequate flushing of mixers. Producers were given information about the physical properties of sulfamethazine, its tendency to persist in edible tissues, and the importance of improved husbandry practices in raising swine. The drug manufacturing industry also contributed to the efforts to lower the violation rate. The industry developed a granular form of sulfamethazine that has electrostatic properties better suited to feed manufacturing than the powdered form of the drug, which is more likely to adhere to feed mixing equipment. The net result of these intensive efforts was a noticeable reduction in the rate of illegal drug residues. Nevertheless, since 1983 the violation rate has fluctuated between 4.1 and 6.2 percent (Ref. 2) which is above the 1 percent violation rate that FDA and USDA regard as acceptable. Accordingly, FDA believes that the rate of illegal residues of sulfamethazine in swine is a serious problem that cannot be ignored.

Although no particular route of administration or dosage form can be ruled out as a possible source of contamination, FDA believes that the most likely source is sulfamethazine in feed. In 1982, the USDA's FSIS and its Extension Service signed a cooperative agreement to jointly design and collect the data necessary for developing a management program for the prevention of residues. The purpose of the Residue Avoidance Program (RAP) was threefold:

1. To examine livestock and poultry systems to determine the critical points of control for residue avoidance.

2. To develop management recommendations to eliminate factors contributing to residue violations.

3. To educate producers and others in the livestock and poultry industries to avoid residues and improve the safety of the meat supply.

The USDA RAP projects, FDA investigations, and other studies have contributed to the information available about the possible causes of residues of sulfamethazine in swine. The data are insufficient to reach any conclusions, but they raise some doubts as to whether sulfamethazine is being used in accordance with its labeled directions. If it is used as labeled, those data raise questions as to whether illegal drug residues can be significantly reduced.

Such residues have been attributed to the following:

1. Poor husbandry and on-farm feed-mixing practices;

2. Poor medicated feed mill manufacturing practices;

3. Contamination of withdrawal feeds;

4. Recycling of feces and urine by coprophagic (excrement-eating) swine; and,

5. Mistakes by producers (e.g., failure to follow labeled withdrawal times), feed mill operators (e.g., failure to adequately flush mixing equipment after the use of medicated feeds), or delivery truck operators (e.g., failure to deliver the proper feed).

There is concern that scrupulous adherence to label directions, current good manufacturing practices, and sound husbandry practices cannot ensure that residues in edible tissues are within the tolerance. Although the use of granulated sulfamethazine premixes seems to have reduced the problem of sulfamethazine premixes adhering to feed mixing equipment—a problem originally associated with the powdered form of the drug—granulation does not appear to have eliminated the problem. It is possible that the properties of the drug and the feed mill equipment now in use are contributing factors in causing illegal drug residues, and that these factors cannot be overcome sufficiently to allow the continued use of sulfamethazine in animal feed.

Additionally, for the past several months FDA has been investigating allegations that sulfamethazine residues might be contaminating the nation's milk supply. Marketers and users of new screening methods of analysis, particularly for antimicrobial drugs, have published papers in scientific journals (Ref. 3) and have given presentations (Ref. 4), suggesting that sulfamethazine is widely used in the dairy industry. Sulfamethazine is reportedly used illegally to treat lactating dairy animals for mastitis, bacterial pneumonia, bronchitis, coccidiosis, colibacillosis, metritis, and shipping fever. Although sulfamethazine is not approved for use in lactating dairy cattle, it is available to farmers as an over-the-counter drug. If a farmer or veterinarian uses sulfamethazine in lactating dairy cattle, illegal drug residues in milk can result.

As a result of the allegations, FDA formed a Milk Committee (the committee) with scientists from its Center for Veterinary Medicine (CVM) and its Center for Food Safety and Applied Nutrition (CFSAN) to examine the possibility that milk might contain drug residues, including residues of sulfamethazine. The committee requested that CVM's Division of Veterinary Medical Research (DVMR) develop an analytical method for detecting residues of sulfamethazine in milk because there is no official method currently available. DVMR recently developed an analytical method, and that method is being validated. The committee also conducted a survey to

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determine whether residues of sulfamethazine are present in milk. In accordance with the survey, FDA collected 49 retail samples of whole milk from 10 large cities across the United States. Preliminary analysis shows that 36 samples were positive for sulfamethazine with levels ranging from 0.8 parts per billion (ppb) to 40.3 ppb. The results are now undergoing confirmation.

FDA is working with the National Conference on Interstate Milk Shipments (NCIMS) in an effort to prevent residues of sulfamethazine in milk. The agency will provide to the States, as an enforcement tool, the method it is developing for detecting sulfamethazine residues in milk. In addition, FDA, NCIMS, and the National Milk Producers Federation are preparing an educational program to warn dairy farmers against using sulfamethazine in lactating dairy animals.

FDA requests that persons with relevant scientific data and any other pertinent information regarding whether sulfamethazine can be used without illegal drug residues resulting in the edible products of food-producing animals present such data and information at the hearing.

III. FDA's National Center for Toxicological Research (NCTR) Findings

In early feeding studies conducted with the sulfonamides, including sulfamethazine, thyrotoxicity was observed. Because of questions concerning the safety of sulfamethazine, FDA conducted chronic toxicity and carcinogenesis studies at NCTR, Pine Bluff, AR.

In the **Federal Register** of March 23, 1988 (53 FR 9492), FDA announced the availability of the results of a chronic toxicity and carcinogenesis study in mice (NCTR Technical Report 418: "Chronic Toxicity and Carcinogenesis Study in B6C3F$_1$ Mice").

Groups of male and female mice were fed a diet containing 0, 300, 600, 1,200, 2,400, or 4,800 ppm sulfamethazine. The feeding portion of the study was conducted from July 1982 to August 1984. There was no drug-related increase in mortality. There was a slight dose-related decrease in mean body weight in both male and female mice relative to control mice. In the animals scheduled for sacrifice at 24 months, NCTR reported the following incidences of thyroid follicular cell adenomas:

Dose (ppm)	Female		Male	
	Incidence	Percent	Incidence	Percent
0	7/180	4	3/184	2
300	2/91	2	0/94	0
600	0/93	0	1/92	1
1,200	0/94	0	6/86	7
2,400	2/94	2	4/94	4
4,800	33/89	37	44/93	47

The increased incidence of adenomas is statistically significant for trend (=0) in both male and female mice.

NCTR also reported an increased incidence of hepatocellular adenomas or carcinomas in female, but not in male, mice. The incidences in female mice were:

Dose (ppm)	Incidence	Percent
0	10/184	5
300	6/94	6
600	12/94	13
1,200	5/96	5
2,400	7/96	7
4,800	11/92	12

NCTR did not report any other significant neoplastic lesions in mice.

NCTR conducted a risk assessment using the data on the increased incidence of thyroid follicular tumors and the agency's published risk assessment procedures (52 FR 49572–49590; December 31, 1987). The lifetime risk in mice, based on thyroid follicular cell adenomas, is less than 1 in 1 million at 0.09 ppm (90 ppb), and 0.04 ppm (40 ppb) for females and males, respectively.

The histological slides from the mouse study will be reviewed by a pathology working group under the aegis of the National Toxicological Program. FDA's decisions on the presence or absence of tumors in the test animals will not become final until this review is completed. The review is expected to be completed during September 1988.

Based on concerns raised by the NCTR mouse study, FDA has initiated a causal review of all NADA's providing for the use of sulfamethazine-containing products in food-producing animals. The sponsors of all such NADA's have been requested to submit to FDA for its review any additional data not previously submitted.

The NCTR data raise significant questions about the safety of the residues of sulfamethazine. FDA requests that interested persons present relevant scientific data and pertinent information at the hearing concerning whether:

1. Sulfamethazine is an animal carcinogen:

2. Any carcinogenic activity from sulfamethazine is due solely to a perturbation in thyroid function;

3. A new tolerance or a safe concentration needs to be established for sulfamethazine and, if so, what that tolerance or concentration should be; and,

4. The increased incidence of hepatocellular adenomas or carcinomas in female mice (as reported by NCTR) is of any biological significance relative to the perturbation in thyroid function.

IV. References

The following references have been placed on display in the Docket Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cordle, M. K., "USDA Regulation of Residues in Meat and Poultry Products," *Journal of Animal Science*, 66:413–433, 1988.

2. FSIS Science Program, "Domestic Residues Data Book National Residue Program," USDA , 300 12th St. SW., Washington, DC 20250, 1983, 1984, 1985, and 1986.

3. Brady, M. S., and S. E. Katz, "Antibiotic/Antimicrobial Residues in Milk," *Journal of Food Protection*, 51:8–11, 1988.

4. Charm, S. E. , "Sulfonamide Contamination in U.S. Milk." Presented at the Colorado Dairy Technology Society, October 20, 1987.

V. Hearing Procedures Under 21 CFR Part 15

To help the agency determine an appropriate course of action in this matter, the Commissioner has decided to conduct a legislative type hearing as provided in 21 CFR Part 15.

Interested persons will have an opportunity to provide comments on the residue and toxicology issues so that the agency can determine whether sulfamethazine presents an unacceptable risk to human health and, if so, an appropriate course of action for the agency to follow to minimize that risk.

1. Issuing a notice of opportunity for hearing proposing to withdraw approval of the NADA's for sulfamethazine for use in food animals (section 512(e) of the act and 21 CFR 514.115).

2. Issuing a proposed rule to revoke 21 CFR 510.450 insofar as it provides for interim marketing of sulfamethazine-containing drugs.

3. Issuing a notice of opportunity for hearing proposing to refuse approval of the NADA's fpr sulfamethazine-containing drugs.

4. Recommending that the Secretary of the Department of Health and Human Services (the Secretary) find that sulfamethazine presents an imminent hazard to the public health and suspend approval of the NADA's for sulfamathazine-containing products (section 512(e) of the act and 21 CFR 2.5).

5. Relying on voluntary action to reduce the incidence of illegal residues.

The Commissioner emphasizes that he made no decision as to whether to take any of the actions listed above or other actions. The purpose of the hearing announced in this notice is to develop evidence and hear views on an appropriate course of action.

Under section 512(e) of the act, FDA is required to withdraw approval of an NADA for new animal drug when the agency finds, among other things, that:

1. Experience of scientific data show that the drug is unsafe for use under the conditions of use upon the basis of which the application was approved; or

2. New evidence not contained in such application or not available until after the application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available when the application was aproved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved or that section 512(d)(1)(H) of the act (the Delaney clause) applies to the drug.

In the case of a new animal drug, safety includes safety to man or other animals consuming edible products of treated animals. In determining whether an animal drug is safe, section 512(d)(2) of the act requires that the agency consider:

1. The probable consumption of the drug and of any substance formed in or on food because of the drug's use;

2. The cumulative effect of the drug;

3. Appropriate safety factors; and,

4. Whether the conditions of use prescribed, recommended, or suggested in the labeling are reasonably certain to be followed in practice.

Under seciton 512(d)(1) of the act, FDA is required to refuse approval of an NADA for reasons similar to those applicable to agency decisions to withdraw approval of an NADA. Therefore, the agency may also decide to refuse to approve NADA's for sulfamethazine products currently subject to the interim marketing provisions of 21 CFR 510.450.

The usual administrative procedures for withdrawing approval of or refusing to approve an NADA including notice to the applicant of an opportunity for hearing an administrative determination of whether a hearing is justified, the preparation of an order denying a hearing or, alternatively, the conduct of a formal evidentiary public hearing before an administrative law judge, and a decision by the Commissioner to withdraw or refuse approval, based on the administrative record.

The act also provides in section 512(e) that approval of a new animal drug may be suspended, and the product immediately removed from the market, if it presents an "imminent hazard to the public health." The authority to suspend aproval is placed by law in the Secretary (or in the absence of the Secretary, in the officer acting as the Secretary) and may not be delegated. If new evidence or further analysis of existing evidence indicates that a life-threatening or other serious risk is present, the summary suspension procedures allows the Secretary to put a prompt end to that risk. If approval is suspended, the Secretary must provide the holder of the NADA with an opportunity for an expedited hearing on whether the application should be withdrawen and the product permanently removed form the market.

The following criteria will be used by FDA in determining whether to recommend that the Secretary find that there is an imminent hazard to health and suspend approval of the NADA for sulfamethazine-containing products. The validity of using these five criteria in imminent hazard proceedings under the act was reviewed and upheld in *Forsham v. Califano*, 442 F. Supp. 203 (D.D.C. 1977) The criteria are:

1. The likelihood that, after the customary administrative process is completed, the products will be withdrawn from the market.

2. The severity of the harm that could be caused by the drug during the completion of customary administrative proceedings to withdraw the products from the market.

3. The likelihood that the products will cause such harm while the administrative process is being completed.

4. The risk to the health of animals currently being given the products that might be occasioned by the immediate removal of the products from the market, taking into account the availability of other alternatives to the products and the steps necessary for affected animals to adjust to these other alternatives.

5. The availability of other approaches (for example, labeling changes) to protect the public health.

The hearing will be held on May 25 and 26, 1988, in Jack Masur Auditorium Bldg. 10 Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. The hearing will begin at 8:30 a.m. on May 25. The presiding officer will be Frank E. Young, Commissioner of Food and Drugs, with panelists, Gerald B. Guest (May 25), Director of the Center for Veterinary Medicine, Richard H. Teske (May 26), Deputy Director of the Center for Veterinary Medicine, and Thomas Scarlett, Chief Counsel, FDA (May 25 and 26).

The procedures governing the hearing are found at 21 CFR Part 15.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before May 11, 1988. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 88N–0040 and the statement "Sulfamethazine for Animal Use—Hearing." The notice of participation should contain the interested person's name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow interested persons attending the hearing who did not submit a notice of participation in advance of the hearing to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling David F. Tishler, 301–443–6244, or Judith A. Gushee, 301–443–2830, not later than May 11, 1988. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Dockets Management Branch by the close of business on May 19, 1988. Any outer envelope should be clearly marked with Docket No. 88N–0040 and the statement "Sulfamethazine for Animal Use—Hearing."

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled

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to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 88N–0040.

To provide time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 30 days following the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch by June 27, 1988. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 88N–0040 and the statement "Sulfamethazine for Animal Use—Hearing."

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings under Part 15. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

This notice is issued under 21 CFR Part 15.

Dated: April 29, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–10012 Filed 5–2–88; 3:59 pm]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Frederick Cancer Research Facility Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Frederick Cancer Research Facility (FCRF) Advisory Committee, National Cancer Institute, June 13–14, 1988, Building 549, Executive Board Room, at the NCI Frederick Cancer Research Facility, Frederick, Maryland 21701–1013.

The meeting will be open to the public on June 13 from 8:30 a.m. to approximately 11 a.m. to discuss administrative matters, future meetings, and to hear from the Acting Associate Director for FCRF his report on items of interest to NCI and the Committee, including budget and any pertinent management items. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 13 from approximately 11 a.m. to recess and on June 14 from 8:30 a.m. to adjournment for site visit of research being conducted by the Basic Research Program's Laboratory of Eukaryotic Gene Expression. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701–1013 (301, 698–1108) will provide substantive program information upon request.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9904 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 3, 1988, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on June 3 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 3 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9900 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1988.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee.

Exectuve Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: June 16–17, 1988.

Place of Meeting: Hyatt Regency, 1 Metro Center, Bethesda, Maryland.

Open: June 16, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 16, 1988, 10:00 a.m.–5:00 p.m.
June 17, 1988, 9:00 a.m.–adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496–1485.

Date of Meeting: June 21–22, 1988.

Place of Meeting: Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

Open: June 21, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 21, 1988, 10:00 a.m.–5:00 p.m.
June 22, 1988, 9:00 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: June 23–24, 1988.

Place of Meeting: Bethesda, Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Open: June 23, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 23, 1988, 10:00 a.m.–5:00 p.m.
June 24, 1988, 9:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9901 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, June 6–7, 1988, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 6 from 9 a.m. to approximately 3 p.m. and June 7 from 8:30 a.m. to approximately 9:30 a.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public June 6 from approximately 3 p.m. to recess and from approximately 9:30 a.m. to adjournment on June 7, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, MD 20892 (301) 496–3411, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sasseman, Associate Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9905 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These hearings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcomittee A

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: June 15–17, 1988.

Place of Meeting: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814

Open: June 15, 8:30 a.m.—9:00 a.m.

Closed: June 15, 9:00 a.m. to recess; June 16–17, 8:30 a.m. to adjournment

Name of Committee: Gerontology and Geriatrics Review Committee, Subcomittee C

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: June 22, 1988.

Place of Meeting: Sheraton Inn, 8727 Colesville Road, Silver Spring, Maryland 20910

Open: June 22, 8:30—9:00 a.m.

Closed: June 22, 9:00 a.m. to adjournment

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9902 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

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National Library of Medicine; Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 15-16, 1988, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 14 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 15 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 15 from 11:30 a.m. to 5 p.m., and on June 16, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 14 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9903 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants Study Sections; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for June through July 1988, and the individuals from whom summaries of meetings and rostes of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	June–July 1988 Meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380	June 16-18	8:30	Crowne Plaza, Rockville, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 304, Tel. 301-496-7340	June 8-10	8:30	Holiday Inn, Georgetown, DC.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7682	June 8-10	8:30	Crowne Plaza, Rockville, MD.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 436, Tel. 301-496-7109	June 8-10	9:00	Omni Georgetown Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Abubakar Shaikh, Rm. 226, Tel. 301-496-7430	June 11-13	8:30	Fairmont Hotel, New Orleans, LA.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 3188, Tel. 301-496-7516	June 15-18	8:30	Westpark Hotel, Arlington, VA.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7517	June 16-18	8:30	Crowne Plaza, Rockville, MD.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301-496-7107	June 23-25	9:00	Crowne Plaza, Rockville, MD.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070	June 16-18	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7056	June 6-9	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular & Pulmonary, Dr. Anthony C. Chang, Rm. 2A-04, Tel. 301-496-7316	June 8-10	8:30	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901	June 13-15	8:30	Crowne Plaza, Rockville, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396	June 8-10	7:00	Basement Room, Federal Building, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 304, Tel. 301-496-7681	June 20-22	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078	June 13-15	8:30	Crowne Plaza, Rockville, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301-496-7650	June 8-10	8:30	Miyako Hotel, San Francisco, CA.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346	June 5-7	8:30	Hotel Meridien, New Orleans, LA.
Epidemiology & Disease Control-1, Dr. Sooja Kim, Rm. 203C, Tel. 301-496-7246	June 12-14	8:00	Westin Bayshore Hotel, Vancouver, BC, Canada.
Epidemiology & Disease Control-2, Dr. Horace Stiles, Rm. 340, Tel. 301-496-7248	June 12-14	8:00	Westin Bayshore Hotel, Vancouver, BC, Canada.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940	June 14-16	8:00	American Inn, Bethesda, MD.
Experimental Immunology, Dr. Calbert Laing, Rm. 222B, Tel. 301-496-7238	June 8-10	8:00	Holiday Inn, Georgetown, DC.
Experimental Therapeutics-1, Dr. Morris Kelsey, Rm. 221, Tel. 301-496-7839	June 20-22	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301-496-8846	June 30-July 1	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	June 6-8	8:30	Room 7, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	June 15-17	8:30	Room 7, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Donna J. Dean, Rm.354B, Tel. 301-496-7140	June 22-24	8:30	Room 6, Bldg. 31C, Bethesda, MD.

Study section	June–July 1988 Meetings	Time	Location
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301-496-7730	June 15-17	8:00	Marbury House, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271	June 9-11	9:00	Room 9, Bldg. 31C, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494	June 6-8	8:30	Omni Georgetown Hotel, Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508	June 9-11	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Joel Solomon, Rm. 355B, Tel. 301-496-7508	June 15-17	8:00	Hyatt Regency Hotel, Bethesda, MD.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	June 20-22	9:00	Omni Shoreham Hotel, Washington, DC.
Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301-496-7640	June 8-10	8:30	Holiday Inn, Bethesda, MD.
Human Development & Aging-3, Dr. Anita Sostek, Rm. 203A, Tel. 301-496-9403	June 13-15	8:30	Canterbury Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7597	June 21-22	8:30	Holiday Inn, Georgetown, DC.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301-496-7780	June 15-17	8:30	Holiday Inn, Bethesda, MD.
Immunological Sciences, Dr. Anita Weinblatt, Rm. 233A, Tel. 301-496-7179	June 22-24	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	June 9-11	8:30	Embassy Suites, Crystal City, VA.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	June 13-15	9:00	Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251	June 28-30	8:30	Linden Hill Hotel, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	June 16-18	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733	June 16-18	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	June 16-18	8:30	Congressional Park, Days Inn, Rockville, MD.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	June 7-9	8:30	Holiday Inn, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7060	June 17-19	8:30	One Washington Circle Hotel, Washington, DC.
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	June 9-11	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	June 2-4	8:30	One Washington Circle Hotel, Washington, DC.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7279	June 15-17	8:00	St. James Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808	June 14-16	8:30	Holiday Inn, Georgetown, DC.
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	June 15-17	9:00	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	June 14-17	8:00	The River Inn, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	June 14-17	8:00	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	June 22-24	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. A18, Tel. 301-496-0556	June 6-8	8:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	June 27-29	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 13-16	8:30	Key Bridge Marriott, Arlington, VA.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 20-23	8:30	Key Bridge Marriott, Arlington, VA.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	June 22-24	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	June 15-17	8:30	Holiday Inn, Georgetown, DC.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	June 14-17	8:30	Hyatt Regency Hotel, Bethesda, MD.
Pathology B, Dr. Gerrald Fried, Rm. 340, Tel. 301-496-7248	June 22-24	8:30	Holiday Inn, Georgetown, DC.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	June 21-23	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	June 20-22	8:30	Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	June 23-25	8:00	Holiday Inn, Georgetown, DC.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	June 7-9	8:00	Marbury House, Georgetown, DC.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	June 13-15	8:30	Holiday Inn, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	June 5-7	8:30	Hotel Inter-Continental, New Orleans, LA.
Reproductive Endocrinology, Dr. Bela Gulyas, Rm. 325B, Tel. 301-496-6857	June 13-15	8:30	Bethesa Marriott, Bethesa, MD.
Respiratory & Applied Physiology, Dr. Clyde Watkins, Rm. 218A, Tel. 301-496-7320	June 20-22	8:00	Crowne Plaza, Rockville, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	June 15-17	8:00	Congressional Park, Days Inn, Rockville, MD.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	June 15-17	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	June 2-3	9:00	Marbury Hotel, Washington, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	June 20-21	8:00	Holiday Inn, Georgetown, DC.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	June 25-26	8:30	Holiday Inn, Bethesda, MD.
Toxicology, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	June 22-24	8:00	Marbury Hotel, Washington, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	June 13-15	8:00	One Washgington Circle, Washington, DC.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7606	June 16-18	8:00	Crowne Plaza, Rockville, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	June 15-17	9:00	Linden Hill Hotel, Bethesda, MD.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7795	June 22-24	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	June 8-10	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR. Doc. 88-9906 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committe A, National Heart, Lung, and

Blood Institute, National Institutes of Health, on June 23–24, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 23 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from approximately 10 a.m. until adjournment on June 24 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institute of Health, Bethesda, Maryland 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9686 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institutes, National Institute of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on June 23, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on June 23, 1988 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from approximately 10 a.m. until adjournment on June 24 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary , NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9697 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 19–21, 1988, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on June 19, from 7 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 20 from approximately 8 a.m. until adjournment on June 21, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9698 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 23 and 24, 1988, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. June 23 and from 9:30 a.m. to 12 noon on June 24 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from

12 noon to adjournment June 24 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Health, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9899 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: General notice.

SUMMARY: The propose of this general notice is to change the assessment rates for operating and maintaining the Salt River Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water including pumped water and maintaining the facilities. Due to the delivery of irrigation water from several sources (normal flow water, spill water, storage water and pumped water), it is necessary to structure the assessment rates to reflect cost of water delivered. The assessment rates for the Salt River Indian Irrigation Project consist of a per acre rate for delivery of the first two (2) acre feet of water, a rate for delivery of the third (3rd) acre foot, delivery rate for additional water above 3 acre feet and a spill water rate. The per acre rate will provide funds to cover a portion of the personnel and maintenance costs while the per acre-foot delivery rate will provide funds to cover remaining costs.

EFFECTIVE DATE: This public notice will become effective upon date of publication and to remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Ray Albert, Acting Superintendent, Salt River Agency, Route 1, Box 117, Scottsdale, Arizona 85256, telephone FTS 261–2842, COM (602) 241–2842.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This general notice is issued by authority delegated to the Assisatnt Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1 (e) of Part 171, Subchapter H, Chapter 1, Title 25 of the Code of Federal Regulations.

Determination Under E.O. 12291

Pursuant to E.O. 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. The Bureau of Indian Affairs has determined that for the purpose of E.O. 12291, the proposed rate change is not a major rule and does not require preparation of Regulatory Impact Analysis because;

1. It will not have annual effect on the economy of $100 million or more; or

2. It will not result in major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. It will not have significant adverse effects on competition, investment, productivity, innovation, or on the ability of the United States—based enterprises to complete with foreign markets—based enterprises in domestic or export markets.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 and 43 CFR Part 14, each agency is required to prepare and made available for public comment a regulatory flexibility analysis if a proposed rule will have a significant economic effect on a substantial number of small entities. The Bureau of Indian Affairs has determined that,

(1) A substantial number of small entities will not be affected as the proposed rate change will have effect upon one entity, the Salt River Pima-Maricopa Indian Community; and

(2) The impacts of the proposed rate change will not cause an adverse economic impact upon a substantial number of small entities.

SUPPLEMENTARY INFORMATION: The current basic operation and maintenance charges were established in 1975 at $13.20 per acre for the delivery of three (3) acre feet. In 1983 the excess water (pumped water) rate was set at $29.08 per acre-feet and has increased to $30.53 per acre foot. Spill water rate was established in 1983 as $6.75 per acre foot. The costs of labor, materials, equipment, power and energy have continued to increase each year until costs now exceed revenue.

The Agency staff and the Phoenix Area Office met with the waterusers and the Salt River Pima-Maricopa Indian Community on November 16, 1987, November 25, 1987 and January 6, 1988, respectively, and through several additional analysis of available surface water the assessment rates were finalized.

Comments were received by the Bureau from various lease holders and water users of the Reservation including the Indian Community. Concerns were expressed with the proposed assessment increases for the 1988 irrigation season. The Community further urged that the Bureau take a hard look at the productivity of the project and requested if the cost of providing O&M services could be performed at mimimum cost in order to keep the rate increases to a mimimum. Comments received at these public meetings were carefully considered in arriving at the proposed rates. To avoid adverse financial hardships for the irrigation project in the 1988 irrigation season the proposed rates must be implemented without delay.

The public notice shall read as follows:

Salt River Indian Irrigation Project

Annual Operation and Maintenance Assessment Rates

Basic Assessment—The basic operation and maintenance assessment rate against the assessable lands under the Salt River Indian Irrigation Project in Arizona, to which water can be delivered through the irrigation project works, is hereby fixed at the rate of $18.00 per acre for delivery of two (2) acre feet of water. Irrigation water will not be delivered until the basic operation and assessments are paid.

Assessment Rate for the Third (3rd) Acre-Foot—Water delivered above two (2) acre-feet and up to third (3rd) acre-foot is hereby fixed at the rate of $21.65

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per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment.

Assessment Rate for Delivery of Additional Water—Delivery of water above three (3) acre-feet, when available, is hereby fixed at the rate of $36.00 per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment. The cost per acre-foot of water will be adjusted as the electrical energy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project. Adjustment, up or down, shall be made on the first day of the month following notification of the change in electrical rates.

Municipal and Industrial—Assessment rate for delivery of water for M&I purposes is hereby fixed at $50.00 per acre foot.

Spill Water—Spill water is not charged against the apportionment, and may be delivered, when available, at the rate of $6.75 per acre foot. Payment shall be made in advance of delivery except where arrangements have been made for payment.

Payment—The annual basic assessment charge shall be due and payable on or before February 1st of each year.

Non-Project Lands—Non-Project Indian lands capable of receiving storage water from project facilities shall be eligible to receive water at the designated assessment rates. However, delivery of water will not be considered until the Officer-in-Charge has determined that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project assessed lands for which the project was designed and constructed. Water will not be delivered to these restricted lands until the lessee and/or landowner(s) has paid the annual basic assessed operation and maintenance charges.

Interest and Penalty Fees—Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water—Delivery of water shall be made to all tracts of land for which the basic assessment is paid and water delivery assessments are paid.

Period Covered—Assessment rates are set for the year 1988 and subsequent years until further notice.

James H. Stevens,
Phoenix Area Director.

[FR Doc. 88-9809 Filed 5-3-88; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

Proposed Castle Mountain Project, San Bernardino County, CA; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management will have an Environmental Impact Statement prepared under contract for the proposed Castle Mountain Project open-pit, heap-leach gold mine and will conduct public scoping meetings in connection with the preparation of that document.

Viceroy Gold corporation has proposed development of an open-pit, heap-leach gold mine in the Castle Mountains of northeastern San Bernardino County, California. The proposed Castle Mountain Project is located near the California-Nevada border approximately 16 miles southwest of Searchlight, Nevada in the East Mojave National Scenic Area. The proposed mine and related processing facilities will ultimately affect approximately 670 acres of Public lands in the California Desert Conservation Area, five acres of Public lands in Nevada, and 28 acres of patented claims in San Bernardino County, California.

The Bureau of Land Management, together with San Bernardino County as State of California co-lead, will have a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared under contract to assess the impacts of mining, construction and operation of the heap-leach processing facility, construction and maintenance of access roads, development of a water well field ad pipelines, and reclamation of disturbed lands. In addition, the EIS/EIR will consider alternative technologies, alternative siting of components, including access roads, heap-leach pads, processing facilities, waste dumps, water wells and pipelines, and alternative sources of water and power.

The EIS/EIR will be prepared by an independent environmental consulting firm which will consider the following general issues: Water resources (specifically the relationship between groundwater flows in Lanfair Valley and surface flow in Piute Creek), special areas, wildlife resources including species of concern), botanical resources (including species of concern), cultural resources, existing and potential land uses, recreation, visual resources, air quality, grazing, and transportation, storage, and disposal of hazardous wastes.

Two public scoping meetings will be conducted prior to actual preparation of the EIS/EIR in order to receive public comments, concerns, and interests which should be addressed in the document. Issues raised during these meetings will be considered in the EIS/EIR in addition to those issues which have already been described.

Date, Time, and Location

May 23, 1988—7:00 PM:
Las Vegas, Nevada, Board Room, Clark County Education Center, 2832 East Flamingo Road

May 26, 1988—6:30 PM:
Barstow, California, Conference Room, Barstow Station Super 8, 1511 East Main Street

FOR FURTHER INFORMATION CONTACT: Roger Alexander, Project Leader, Bureau of Land Management, Needles Resource Area, P.O. Box 888, Needles, California 92363, (619) 326-3896.

Date: April 28, 1988.

Hugo W. Riecken,
Associate District Manager.

[FR Doc. 88-9837 Filed 5-3-88; 8:45 am]
BILLING CODE 4310-40-M

[WY-040-08-4212-14; W-89588]

Wyoming; Realty Action; Direct Sale of Public Lands/Termination of Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Sublette County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the following described public lands are suitable for sale to Sublette County, Wyoming under the authority of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719. A 60 day waiting period from the date of this notice will occur prior to offering these lands for sale.

Sixth Principal Meridian
T. 30 N., R. 111 W.,

Sec. 22, E½NW¼
These lands contain 80 acres.

FOR FURTHER INFORMATION CONTACT: David Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941 or call (307) 367-4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the surface and minerals estates except oil and gas to Sublette County, Wyoming under the above cited authority. Sublette County wishes to acquire these lands in order to continue operations of the Big Piney-Marbleton Sanitary Landfill which presently occupies 40 acres of these lands under a Recreation and Public Purposes Act Lease. The lease will expire on September 24, 1988.

The price of these lands will be determined at market value. A purchase bid will constitute an application for conveyance of the unreserved mineral estate to the above described lands. Additionally Sublette County will be required to submit a nonreturnable application fee of $50 in accordance with 43 CFR 2720, for conveyance of all unreserved mineral interest in the lands.

The BLM has adopted a nationwide policy of transferring the title of lands leased for sanitary landfills to the entity that manages the landfills. The proposed sale to Sublette County, Wyoming, is consistent with this policy. Additionally, the proposed sale is consistent with the Pinedale Resource Management Plan/Final EIS and will serve important public objectives which cannot be otherwise accomplished. The land does not possess any known public values. The Planning Document/Environmental Assessment for the proposed sale is available for review at the BLM Pinedale Resource Area Office, Pinedale, Wyoming.

The sales patent will be subject to all valid existing rights, and will contain certain reservations to the United States. The exact wording of the reservations as well as specific conditions of the sale are available for review in the Pinedale Resource Area Office.

The Recreation and Public Purpose Initial Classification Decision W-87765 which became effective on July 2, 1986 will terminate when this proposed Realty Action becomes final.

Upon the date of this publication, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws. The segregation will end 270 days from the date of this publication.

Interested parties may submit comments to the Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901. Comments must be received within 45 days from the issuance date of this notice. Adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: April 19, 1988.

Tom Curry,
Acting Area Manager.

[FR Doc. 88-9806 Filed 5-3-88; 8:45 am]
BILLING CODE 4310-22-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractural Actions Pending through June 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to section 426.20 of the rules and regulations published In the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amandatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to providie local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractural actions in each of the six reclamation regions. Each proposed action listed is or is expected to be in some stage of the contract negotiaiton process during April, May, or June of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water, rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractural actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definition Used Herein:
(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenenace
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Project Act
(BCP) Boulder Canyon Project

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, Telephone (208) 554-1160.

1. Casade Reservior water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 59,721 acre-feet of stored water in Cascade Reservior.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land

reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs. and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,982 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

11. Baker Valley ID, Baker Project, Oregon: Irrigation water service contracts on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Repayment of water service contracts with serveral individuals for a total of approximately 1,100 acre-feet of project water; contract terms up to 40 years for the purpose of supplying water under the project water right held by the United States.

13. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users Inc., Minidoka-Palisades Project: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. Willow Creek Project, Oregon: Repayment of water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

Mid-Pacific Region: Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Colusa Drain Mutual Water Company, CVP, California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California: Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually,

Note.—Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

5. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

9. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

10. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

11. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

12. Panoche Water District, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

13. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

14. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

15. City of Redding, CVP, California: Amendatory M&I water supply contract.

16. Washoe County Water Conservation District, Truckee Storage Project, Nevada: Repayment contract for the replacement of two needle valves at Boca Dam.

17. Placer County Water Agency, CVP, California: Amend existing water right and water service contract to include current water rates, standard contract language and diversion of Project water at other than the Auburn Dam site.

18. Glide Water District, CVP, California: Amendatory Pub. L. 84–130 repayment contract.

19. Kanawha Water District—Improvement District Nos. 2 and 3, CVP, California: Amendatory Pub. L. 84–130 repayment contracts.

20. Union Public Utility District, CVP, California: Water service contract, up to 1,000 acre-feet annually for M&I water from New Melones Reservoir for up to 15 years.

21. Grasslands Water District, CVP, California: Temporary water service contract, up to 50,000 acre-feet of Project water for 1 year in lieu of agricultural drainage water for waterfowl habitat.

22. Mid-Valley Water Authority, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

23. Kern County Water Agency, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

24. California Department of Fish and Game, CVP, California: Temporary wildlife habitat water supplies of up to 20,000 acre-feet for 1 year.

25. U.S. Fish and Wildlife Service, CVP, California: Temporary wildlife habitat water supplies of up to 30,000 acre-feet for 1 year.

26. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal pursuant to the Warren Act. The contract will allow the exchange of water with Central California Irrigation District and transporation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) Sunterra Gas Processing Company (formerly Southern Union Gas Company): Navajo Reservoir water service contract; 50 acre-feet per year for industrial use; contract term for 40 years from execution.

2. Revised Hydrological Determination: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1988.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1988.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

7. Navajo Indian Tribes, Animas-La Plata Project, New Mexico: Repayment contract; 7,800 acre-feet per year for M&I use.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Moon Lake Water Users Association, Moon Lake Project, Utah: Repayment contract for R&B of facilities including replacement of needle valve.

11. Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah: D&MC contract; Advancement of $65.7 million for construction of laterals and drains of the irrigation and drainage system.

12. Three separate contracts with (1) Tri-County Water Conservancy District, (2) Menoken Water Company, and (3) Chipeta Water Company, Lower Gunnison Basin Unit, Colorado: Provides for funding, construction, modification, and O&M of each entity's domestic water system.

13. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

14. Florida Water Conservancy District, Florida Project, Colorado: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. Water delivery contracts, BCP, Arizona: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: For a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. Ak-Chin Farm, Maricopa, Arizona: Repayment contract for $6.1 million SRPA escalation loan.

12. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: Contract

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to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* vs. *California* and BCP.

19. Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* vs. *California* and BCP.

20. County of San Bernardino, San Bernardino, California: Repayment contract for $28.1 million SRPA loan.

21. Yuma County and Yuma County Water Users' Association, Yuma Project, Arizona: Contract for O&M of 16 drainage wells in Yuma County, Colorado River Front Work and Levee System, Arizona.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, Texas 79101, telephone (806) 735–5430.

1. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

2. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 98–550.

3. Hidalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

6. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

7. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

8. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

9. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Interim water service contract; Interim measure to provide a water supply of approximately 20,000 acre-feet.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 585–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Green Mountain Reservoir, Colorado-Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

10. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract: Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

14. Pacific Power and Light Company, Glendo Unit, P–SMBP, Wyoming: Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

15. Farwell ID, Farwell Unit, P–SMBP, Nebraska: Contract amendment for relief of repayemnt obligation under Contract No. 9–07–20–WO363, as amended, as authorized by section 205 of the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100–202.

16. City of Minot, North Dakota: Amendment to Contract No. 14–06–600–455A to provide repayment relief for the amount of $1,026,489.29 to the city of Minot as authorized in section 209 of the Act entitled "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100–202. This relief is sought as a result of the deauthorization in the Garrison Diversion Unit Reformulation Act of 1986 of the Velva Canal.

17. City of Dickinson, North Dakota: Cancellation of Contract No. 9–07–60–WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100–202. The contract will be replaced with a new contract for the repayment of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenace, and replacement costs.

18. West Bench ID, SRPA: Amendatory contract to extend the repayment period by 12 years by giving the district the maximum repayment term of 40 years allowed under the contract.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impacts(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: April 26, 1988.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 88–9727 Filed 5–3–88; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Availability of Plan of Operations and Environmental Assessment Mesquite Pipeline Project; Chevron Pipe Line Co.; Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Chevron Pipe Line Company a Plan of Operations for the Mesquite Pipeline Project. The proposal involves the installation of a new 12-inch gasoline/diesel pipeline within an existing right-of-way across the Little Pine Island Bayou Corridor and Lance Rosier Units of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: April 22, 1988.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 88–9922 Filed 5–3–88; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., CST, on May 10, 1988, at the University of New Orleans, University Center, Room 125, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 92–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historic Park, and in the implementation and development of a general management plan and a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Update Environmental Education Center/Barataria Unit
—Update Chalmette Interpretive Programs/three operational units
—Land Acquisition/Barataria Unit
—Update German Culture Center
—New business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historic Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

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Dated: April 29, 1988.
John E. Cook,
Regional Director, Southwest Region.
[FR Doc. 88-9919 Filed 5-3-88; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the revision of questionnaires to the Office of Management and Budget for review.

Purpose of Information Collection: The revised forms are for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposals:

(1) Number of forms submitted: Two
(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize-Questionnaires for U.S. Producers and Imports
(3) Type of request: Revision
(4) Frequency of use: Annual, through 1989
(5) Description of respondents: Firms which produce or import carbon and alloy steel products
(6) Estimated annual number of respondents: 350
(7) Estimated total number of hours to complete the forms: 7,250
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the revised form and supporting documents may be obtained from Mark Paulson (USITC, tel. no. 202 252-1432). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.
Issued: April 29, 1988.
Kenneth R. Mason,
Secretary.
[FR Doc. 88-9923 Filed 5-3-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-385 and 386 (Final)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-385 and 386 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Japan of granular polytetrafluoroethylene resin (hereafter granular PTFE),[1] whether filed or unfilled, provided for in item 445.54 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before June 20, 1988, and the Commission will make its final injury determinations by August 16, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of granular PTFE from Italy and Japan are being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigations were requested in a petition filed on November 6, 1987, by E.I. DuPont de Nemours & Company, Inc., Wilmington, Delaware.

In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 49209, December 30, 1987).

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

[1] Imports of PTFE fine powders and PTFE aqueous dispersions are not covered by these investigations.

Staff report. A public version of the prehearing staff report in these investigations will be placed in the public record on June 27, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 13, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 1, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 6, 1988, in the Main Hearing Room of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 7, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 20, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 20, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.
Issued: April 26, 1988.
[FR Doc. 88-9920 Filed 5-3-88; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined to issue a general exclusion order in the above-captioned investigation.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in §§ 210.53-210.58 of the Commission's Rules of Practice and Procedure (19 CFR § 210.53-.58).

SUMMARY: Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having examined the written submissions filed on remedy, the public interest, and bonding, as well as those portions of the record relating to those issues, the Commission has determined to issue a general exclusion order prohibiting entry into the United States, except under license, of: (1) Reclosable plastic bags and tubing manufactured according to a process which, it practiced in the United States, would infringe claims 1, 3, 4, or 5 of U.S. Letters Patent 3,945,872, and (2) reclosable plastic bags and tubing which infringe U.S. Trademark Registration No. 946,120.

The Commission has further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the aforementioned general exclusion order and that the bond during the Presidential review period should be in the amount of 460 percent of the entered value of the articles concerned.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: On March 25, 1987, Minigrip, Inc. filed a complaint and a motion for temporary relief under section 337, alleging a violation of section 337 in the unlawful importation and sale of certain reclosable plastic bags and tubing manufactured abroad according to a process which, if practiced in the United States, would infringe claims 1-5 of U.S. Letters Patent 3,945,872 and bearing a color line mark infringing U.S. Trademark Registration No. 946,120, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The Commission instituted an investigation and named 20 firms as respondents. Two firms were later added as respondents. On November 30, 1987, the Commission issued a temporary exclusion order. Subsequently, eight respondents were terminated from the investigation on the basis of a settlement agreement, and 12 respondents were held in default. On January 29, 1988, the presiding administrative law judge issued an initial determination (ID) finding a violation of section 337. On March 16, 1988, the Commission issued a notice of nonreview of the ID. The parties and interested members of the public were requested to file briefs on remedy, the public interest, and bonding. Notice of the Commission's decision not to review the ID was published in the **Federal Register**, 53 FR 9495 (March 23, 1988). Complainant, the Commission investigative attorney, and two nonparties submitted briefs. No other submissions were received.

Copies of the Commission's Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official buiness hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting

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the Commission's TDD terminal on 202–252–1805.

By order of the Commission.

Issued: April 28, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-9921 Filed 5-3-88; 8:45 am]

BILLING CODE 7020-02-M

JUSTICE DEPARTMENT

Organization, Functions and Authority Delegations; Special Counsel for Immigration-Related Unfair Employment Practices

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given of the interim agreement between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices appointing each agency as the agent of the other to receive discrimination charges under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) and section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b). The purpose of this agreement is to prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (800) 255–7688 (toll free) or (202) 653–8121 (Voice) or (202) 653–5710 (TDD number for the hearing impaired); or Daniel Echavarren, Attorney, Office of Special Counsel, (800) 255–7688 (toll free) or (202) 653–8260 (Voice) or (202) 653–5710 (TDD). At the Equal Employment Opportunity Commission (EEOC), contact Irene L. Hill, Assistant Legal Counsel for Coordination, Office of Legal Counsel, EEOC, 2401 E St., NW., Washington, DC, 20507; (202) 634–7561 (Voice) or (202) 634–7057 (TDD).

SUPPLEMENTARY INFORMATION:

Interim Agreement Between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Equal Employment Opportunity Commission (EEOC), under Title VII of the Civil Rights Act of 1964, as amended, has jurisdiction to process certain charges of employment discrimination on the basis of national origin. The Office of Special Counsel for Immigration Related Unfair Employment Practices (hereinafter, "Special Counsel") of the Department of Justice, under § 102 of the Immigration Reform and Control Act of 1986, has jurisdiction to process certain other charges of employment discrimination on the bases of national origin or citizenship status. The purpose of this Interim Agreement between the EEOC and the Special Counsel is to prevent any loss of rights arising from the operation of a filing deadline against a party who has mistakenly filed a charge with the wrong agency.

The EEOC and the Special Counsel hereby appoint each other as their respective agents for the purposes of the receipt of charges and satisfaction of the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

This Interim Agreement will remain in force pending completion of the negotiations on a final Memorandum of Understanding between the EEOC and the Special Counsel.

The Equal Employment Opportunity Commission.

By:

Clarence Thomas,

Chairman.

Dated: April 1, 1988.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

By:

Lawrence J. Siskind,

Special Counsel.

Dated: April 6, 1988.

Lawrence J. Siskind,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 88-9967 Filed 5-3-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* May 20, 1988.
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 315.
   Program: This meeting will review applications in Literature, Philosophy and Arts in the Regrants Programs, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.
2. *Date:* May 20, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430.
   Program: The panel will convene to consult and advise the NEH on issues concerning interpretive exhibitions in art museums and the academy, submitted to the Division of General Programs, for projects beginning after October 1988.
3. *Date:* May 23, 1988.
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 315.
   Program: This panel will review applications in History, Political Theory, and Archaeology, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.
4. *Date:* May 27, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430.
   Program: This meeting will review Texts/Publication Subvention applications in the field of history, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-9861 Filed 5-3-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 11, 1988 through April 22, 1988. The last biweekly notice was published on April 20, 1988 (53 FR 13010).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 3, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all

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public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al, Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of Amendment Request: April 7, 1988

Description of Amendment: The proposed amendment would modify the Technical Specifications (Appendix A to Facility Operating License No. NPF-74, for PVNGS, Unit 3), to revise Figure 3.1-1 limits on the Moderator Temperature Coefficient (MTC). The proposed amendment would increase the negative MTC limit from -30 pcm/° F to -35 pcm/° F.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed change as it relates to these standards; the discussion is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change will not increase the probability or consequences of an accident previously evaluated. The TS limit is set by the steam line break design basis accident. Since the proposed value of -35 pcm/° F is the same value assumed in the analysis, the probability or consequences of an accident previously evaluated will not be increased.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The MTC only affects core response, therefore, the possibility of a new or different kind of accident from any previously evaluated will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The proposed change will not reduce a margin of safety as defined in the TS. The basis for the MTC limit is to ensure that the assumptions used in the safety analyses remain valid through each fuel cycle. The current MTC limit of -30 pcm/° F in the Unit 3 TS was required to compensate for the as-built safety injection drain line configuration. Subsequently, the drain lines were reconfigured so that the MTC limit of -35 pcm/° F that was assumed in the safety analyses would be valid. Therefore, increasing the MTC limit from -30 pcm/° F to -35 pcm/° F does not reduce the margin of safety defined in the Technical Specifications.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Dates of amendment request: November 26, 1986 and October 21, 1987

Brief description of amendments: In accordance with the requirements of 10 CFR 73.55, the licensee has submitted a proposed amendment to the Physical Security Plan for the H. B. Robinson Steam Electric Plant, Unit 2, to reflect recent changes to that regulation. The proposed amendment would change paragraph 3.F of Facility Operating License No. DPR-23 to add a new license condition to Facility Operating License No. DPR-23 to require compliance with the revised plans.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear reactor power licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and September 23, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the supplementary materials accompanying the amended regulations the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is [sic] appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7750). One of the examples of actions not likely to involve significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551 Raleigh, North Carolina 27602 Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: November 26, 1986, January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Dresden Nuclear Power Station to reflect recent changes to this regulation. The proposed amendment would modify paragraph 3.I of Provisional Operating License No. DPR-19 for Unit No. 2 and paragraph 3.H of Facility Operating License No. DPR-25 for Unit No. 3 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 16, 1986, September 11, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.' The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael I. Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 28, 1988

Description of amendment request: Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECo, the licensee) proposed an amendment of Facility Operating License DPR-30 in order to provide for Cycle 10 operation of Quad Cities Nuclear Power Station (QCNPS), Unit 2. The Unit 2 Reload 9/Cycle 10 replacement reactor fuel is of the GE8X8EB extended burnup fuel design, which has several different mechanical and nuclear features than existing Cycle 9 fuel. The GE8X8EB fuel design, as described in Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel", has been reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8X8EB fuel was previously approved for QCNPS, Unit 1, and other non-CECo plants (e.g., Fitzpatrick, Peach Bottom, Limerick, and Millstone).

This reload was performed by General Electric (GE) using their new advanced computer modeling methods. These new methods are known as the GEMINI methods and replace the old GENESIS methods. Furthermore, the impact of the new fuel type upon Emergency Core Cooling Systems (ECCS) analysis was evaluated with GE's SAFER/GESTR-LOCA methods rather than the SAFE/REFLOOD LOCA methods. The GEMINI and SAFER/GESTR-LOCA methods were also used for the Unit 1 Cycle 10 reload.

In general, the proposed license amendment would delete a certain license condition and revise the Technical Specifications (TS) to incorporate new Cycle 10 reload fuel operating limits, expand operating domains (including operation with equipment out of service), and make editorial corrections. Similar license and TS changes have already been issued for Unit 1 (i.e. Amendment No. 103, dated December 15, 1987). These TS changes specifically related to the Unit 2 Cycle 10 reload fuel operating limits and analyses, as derived from the improved analytical methodologies mentioned above, are as follows:

1. Incorporation of the Cycle 10 Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time
2. Addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the reload fuel.
3. Addition of an Linear Heat Generation Rate (LHGR) limit specific to the GE8X8EB fuel.
4. Increasing the rod block monitor (RBM) setpoint.
5. Reduction of the MCPR fuel cladding safety limit from 1.07 to 1.04 as generically approved by the NRC for this type of fuel.

The TS changes resulting from analysis performed to expand the operating region and allow operation with certain equipment out-of-service include:

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6. Changes to the analyzed operating region to include increased core flow (ICF) and feedwater temperature reduction (FTR).

7. Revision of the Automatic Pressure Relief Subsystem Technical Specification to require action only after two or more relief valves are found to be inoperable.

8. Deletion of the license operating restriction for coastdown to 40% power and coastdown with off-normal FW heating.

And TS changes which are administrative or editorial in nature include:

9. Updating references to reflect new analytical methods and models (e.g., GEMINI, SAFER/GESTR-LOCA, etc.)

10. Clarifying the Bases for the Automatic Pressure Relief function.

11. Incorporating Regulatory Guide 1.49 into Bases for analyzing rated thermal power conditions.

Basis for proposed no significant hazards consideration determination: The licensee's reload analysis was performed by GE, who used the advanced GEMINI licensing methodology to technically justify Cycle 10 operation. This generic methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of the reload submittal were all associated transient and accident analyses for the following Equipment Out-of-Service and Extended Operating Domain operating modes (EOOS/EOD): increased core flow, feedwater heater(s) out-of-service, feedwater temperature reduction, relief valve out-of-service, and single loop operation. All core wide transients and ECCS analyses were performed with the most restrictive relief valve out-of-service (RVOOS), i.e., the Target Rock S/RV. Therefore, the reload package has incorporated additional changes to allow unrestricted operation with only one relief valve out-of-service.

GE has also reanalyzed the design basis Loss of Coolant Accident (LOCA) event at QCNPS with an improved ECCS computer code package called SAFER/GESTR-LOCA Application Methodology. Results from this analysis of postulated plant LOCAs was provided by CECo in accordance with NRC requirements to demonstrate that QCNPS conforms with the ECCS and Peak Cladding Temperature (PCT) acceptance criteria of 10 CFR 50.46 and Appendix K. As such, SAFER/GESTR-LOCA Loss of Coolant Analysis (NEDC-31345P dated July 1987) is now considered the primary ECCS licensing basis reference for QCNPS.

The Commission has provided standards for determining whether a significant hazards consideration exists. As stated in 10 CFR 50.92(c), a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Pursuant with 10 CFR 50.91(a), the licensee has provided the following evaluation of their amendment application addressing these three standards.

CECo has evaluated the proposed Technical Specifications and License Conditions changes, and determined that they do not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of QCNPS Unit 2 Cycle 10 in accordance with the proposed changes will not:

1. Involve a significant increase in the consequences of an accident previously evaluated because MCPR, LHGR, and MAPLHGR core operating limits are provided to establish bounds on normal reactor operations which ensure core conditions are maintained within the assumptions and scope of accident analyses. New MAPLHGR curves and, LHGR and MCPR limits are provided for each and every reload to accurately reflect changes in the reactor fuel configuration. Operation within these limits will assure the consequences of affected transients and accidents remain within the results and bounds of safety analyses. MAPLHGR and MCPR curves/limits were generated using aforementioned analytical methods previously approved by the NRC. The LHGR limit for GE8X8EB fuel was calculated using the GESTR-MECHANICAL code (a fuel rod thermal-mechanical performance model considered acceptable by the NRC). Results from GESTR-MECHANICAL demonstrate that compliance with the new LHGR limit (in concert with appropriate MAPLHGR curves) will further ensure fuel design basis criteria are satisfied for GE8X8EB fuel. Cycle specific rod withdrawal error analysis conducted by GE, demonstrates the consequences of an accident are not affected by an increased rod block reading of 108%. This is because the resultant event MCPR, as bound by the proposed MCPR TS limit, and LHGRs remain within the design basis. Furthermore, Core Operating Limits and RBM setpoint changes do not affect any physical system or equipment which could increase the probability of an accident.

Proposed changes to increase the allowable operating region (i.e. EOOS/EOD), including coastdown to 20% and coastdown with off-normal FW heating, have been analyzed by GE (using NRC approved methods) to determine applicable operating restrictions (MCPR, MAPLHGR). GE demonstrated that the consequences of changes to the allowable operating region are bound by the proposed values for MCPR and MAPLHGR. Furthermore, the probability of an accident is not increased because operation in the expanded region does not significantly alter the normal operation of the equipment, for which failures have been previously analyzed. All cycle transient and LOCA analyses were performed assuming the most limiting RVOOS.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because proposed MCPR, MAPLHGR, and LHGR limits, and RBM setpoint represent limitations on core power distribution which do not directly affect the operation or function of any system or component. Expanded operating regions (including EOOS) represent changes to the core power and flow distribution, but do not significantly affect the operation or function of any system or component. Operating limits were established by analyses to bound all combinations of specified EOOS/EOD within acceptable analyzed conditions to ensure fuel integrity and ECCS criteria. Consequently, there is no significant impact on or addition to any system or equipment whose failure could initiate an accident. The major component affected (i.e., by ICF and FTR) is the recirculation pumps whose failure has been previously analyzed. Also, GE assumed operation with the most limiting relief valve out-of-service in the transient and LOCA analyses. Therefore, this condition has been analyzed and no new or different accidents are created.

3. Involve a significant reduction in the margin of safety because all of the proposed changes have been analyzed to demonstrate that the consequences of transients or accidents are not increased beyond those already evaluated and accepted by the NRC for QCNPS. Furthermore, the fuel used in Cycle 10 is very similar to that used in previous Unit 2 cycles and the core will be operated in essentially the same manner.

The NRC staff has reviewed the licensee's evaluation related to the Cycle 10 changes and concurs with their conclusions. In addition, the Commission has provided guidance concerning application of 10 CFR 50.92 standards for determining whether a no significant hazards consideration exists by providing certain examples (51 FR 7751). The amendment proposed herein relating to Cycle 10 operation is representative of example (iii). The specific license changes are associated with a reload, where no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at QCNPS are used, no significant changes have been made to the acceptance criteria for the TS, and the methods used (although changed from the previous cycle) have been found previously acceptable by the NRC staff. Additonally, the administrative and editorial TS changes identified above are considered representative of example (i), which is defined as "a purely administrative change to TS; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore, the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the reload submittal, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 2, 1986, and February 1, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Big Rock Point Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.C.(5) of Facility Operating License No. DPR-6 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and February 1, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 2, 1986, and December 14, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Palisades Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.F of Provisional Operating License No. DPR-20 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and December 14, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

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Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 26, 1988 (NRC-87-0248)

Description of amendment request: The proposed license amendment would change the Technical Specifications to allow closure mechanisms for primary and secondary containment penetrations which are located in locked high radiation areas to be verified closed each Cold Shutdown (if not performed within the previous 31 days) rather than every 31 days. Additionally, the proposed amendment clarifies that the primary containment penetrations located in locked areas which remain high radiation areas during Cold Shutdown may be verified by review of high radiation area access controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed changes to the Technical Specifications:

(1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes provide an alternative frequency and means of verification of primary and secondary containment penetration isolation which still provide assurance that required conditions are maintained.

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not add any new equipment, do not affect the operation of any system, or alter any of the design assumptions previously evaluated.

(3) Do not involve a significant reduction in a margin of safety. The proposed changes only contain an alternative frequency and method of verifying a primary and secondary containment penetration isolation and thus result in an identical plant configuration with an unchanged margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 5, 1987

Description of amendment request: The requested amendments would revise Technical Specifications (TS) 3/4.7.8 and its associated Bases to exclude the snubber listings in accordance with NRC Generic Letter (GL) 84-13, and to add a statement to Surveillance Specification 4.7.8.c to require periodic functional testing of large bore steam generator hydraulic snubbers. Specifically, the TS would be revised to:

(1) Delete TS Table 3.7-4a "Safety-Related Hydraulic Snubbers - ITT Grinnell" and TS Table 3.7-4b "Safety-Related Mechanical Snubbers - Pacific Scientific."

(2) Modify TS 3.7.8 which currently reads, "All snubbers listed in Tables 3.7-4a and 3.7-4b shall be operable." to read "All snubbers shall be operable. The only snubbers excluded from the requirements are those installed on non-safety related systems and then only if the failure of the system on which they are installed would not have an adverse effect on any safety related system."

(3) Delete the references to TS Tables 3.7-4a and 3.7-4b in TS 4.7.8.b and TS 6.10.2.k.

(4) Revise the Bases of TS 3/4.7.8 "Snubbers" to delete the requirement to list exempted snubbers in Tables 3.7-4a and 3.7-4b.

(5) Add the following statement to Surveillance Specification 4.7.8.e "Functional Testing": "The large bore steam generator hydraulic snubbers shall be tested as a separate population for functional test purposes. A 10% random sample from previously untested snubbers shall be tested at least once per refueling outage with continued testing based on failure evaluation. Once the whole population has been subjected to functional testing, the testing sequence shall begin anew by random selection based on the total population."

Basis for proposed no significant hazards consideration determination: In GL 84-13 the Commission concluded that snubbers need not be listed within the TS provided the TS is modified to specify which snubbers are required to be operable. GL 84-13 provided model specifications for use by licensees requesting such changes. The model retains the recordkeeping requirements of current specifications. The Commission also noted that since any changes in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR Part 50.59 and would be reflected in the licensee's records (as required by McGuire TS 6.10.2k).

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the TS. The proposed change (item 5 above) to supplement surveillance specification 4.7.8e to add a requirement for functional testing of large bore steam generator hydraulic snubbers matches this example and the McGuire TS does not currently require these hydraulic snubbers to be tested.

The remaining proposed changes (items 1 through 4 above) do not match the examples in 51 FR 7750. However, the staff has reviewed the licensee's request for amendments and has determined that it follows the Commission's guidance in GL 84-13. The amendments would not result in a change to the actual systems or design of the systems as installed with respect to snubbers. Limitations, restrictions and surveillances presently in the TS would not be adversely affected. The same snubbers presently required to be operable would continue to be required operable (i.e. although the specific listing of snubbers would be deleted from the TS, the revised TS would, nevertheless, specify that all snubbers are to be operable except those installed on non-safety related systems whose failure would not adversely affect any safety-related system). Therefore, the changes, if implemented, would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed

change would not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Lawrence Crocker, Acting

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: January 21, 1986, as revised March 3, 1987

Description of amendment request: By application dated January 21, 1986, Duke Power Company requested amendments to the Technical Specifications (TSs) on the transfer of radioactive effluents to the chemical treatment pond and on correcting administrative-type items. By a March 3, 1987 letter, the licensee revised the original application. The revisions affect only Part C of TS 3.9.4 Chemical Treatment Ponds (CTP 1 and 2).

The Bases of the Oconee TS state that the inventory limits (of TS 3.9.4) for the Chemical Treatment Ponds are based on minimizing the consequences of an uncontrolled release of the pond inventory. The current Part C of TS 3.9.4 provides that the quantity of radioactive material per transferred batch of used powdex resin averaged over the transfers of the previous 13 weeks shall not exceed 0.01% of the pond radionuclide inventory limit.

The proposed amendments would delete this requirement and substitute a requirement that the total quantity of radioactive material of all batches of used powdex resin transferred to CTPs over the previous 13 weeks shall not exceed 0.4% of the pond radionuclide limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR Part 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The intent of Part C of Oconee TS 3.9.4 is to limit the quantities of radioactive materials transferred to the Chemical Treatment Ponds in order to ensure that the total inventory limit in the ponds is not exceeded over the life of the nuclear station. The current Part C limits only the average quantities of radioactive materials per batch of powdex resin transferred over the specified 13 week period. There is no limit on the total quantities transferred to the ponds during these time periods. The March 3, 1987 revised submittal would limit the total quantity of radioactive materials transferred to the ponds during these time periods, but would not limit the average quantity per batch, as in the current Part C. Conservatively assuming a uniform input level at 0.4% of the pond inventory limit each 13 week period and no radioactive decay, no more than 48% of the pond total inventory limit will be accumulated in the ponds over the remaining 30 year life of Oconee Nuclear Station under the proposed revision.

Therefore, the proposed action would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety. On this basis the Commission proposes to determine that the March 3, 1987 application involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lawrence P. Crocker, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: February 9, 1988

Description of amendment request: This amendment would modify the Technical Specifications (TS) for Hatch Unit 2 by adding a footnote to TS Table 3.3.2.3 explaining that the instrumentation for the Reactor Water Cleanup (RWCU) system high differential flow isolation includes a 45 second delay time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its February 9, 1988 submittal, provided the following evaluation of the proposed change with regard to these three standards:

The proposed change will result in a description identical to that provided in NRC approved BWR Standard Technical Specifications (NUREG 0123 Revision 3) for this common BWR design feature. This change is clarifying in nature and does not represent a change to the design or operation of the plant as described in the FSAR.

The proposed change does not involve a significant increase in the probability or consequences of an accident because no changes to plant operation or design are involved. This change clarifies a design feature of a plant leak detection system for which no credit is taken in the accident analysis. Containment isolation for accident analysis RWCU pipe breaks is provided by one of the following Class 1E circuits meeting all applicable criteria for redundancy, separation, etc.: Reactor Vessel Water Level Low Low, RWCU Area Temperature High, or RWCU Area Ventilation Differential Temperature High. The RWCU high differential flow isolation is a single channel system provided for leak before break protection. The 45 second time delay is commensurate with this function and is a standard BWR design feature.

The possibility of a different kind of accident from those analyzed previously is not created by this change, since the design function of systems, as described in the FSAR, is not affected.

Margins of safety are not significantly reduced by this change. No change to plant design or operation is involved. This change is clarifying in nature and has no impact on margins of safety.

The staff has considered the proposed amendment and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has concluded that the requested change meets the three standards and, therefore, has made a proposed determination that the amendment

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application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Lawrence P. Crocker, Acting

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 30, 1988 as supplemented April 12, 1988.

Description of amendment request: The proposed amendment would modify Section 3.10 of the Technical Specifications to accommodate the Cycle 12 Core Reload. Specifically, the Minimum Critical Power Ratio (MCPR) and the maximum average planar linear heat generation rate (MAPLHGR) limts will be changed. It would also permit the use of GE8X8EB fuel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated. The probability of an accident is not dependent upon the core loading and there are no other changes to the plant configuration, availability of safety systems, the manner in which the safety systems are initiated or the way the plant is operated that will increase the probability of an accident. Cycle 12 introduces a new fuel design, GE8X8EB, which has been reviewed and approved by the NRC; letter from H. Berkow (NRC) to J. S. Charnley (GE) dated December 3, 1985, "Acceptance for Approval of Fuel Designs Described in Licensing Topical Report NEDE-24011-P-A-6, Amendment 10 for Extended Burnup Operation." The fuel design has been incorporated into the reload applications of other BWR plants. The neutronic and mechanical design is not significantly different from designs currently in use at Oyster Creek and the fuel will not be operated in a manner that would cause the consequences of an accident to be increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The Cycle 12 core loading does not involve any other change to the plant configuration, nor does it change the availability of safety systems or the manner in which they respond to initiating events. Also, the design does not change the manner in which the core will be operated from previous cycles. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The proposed Technical Specifications are based on analysis results which were performed in accordance with methods and procedures developed by GPUN and GE. The GPUN methods have been submitted to the NRC for their review and approval. NRC approval requires GPUN to demonstrate the adequacy of the methods for the analyses to be performed, that the methods account for the uncertainties in the analyses, and that GPUN can adequately employ the methods for their application. All of the methods used by GPUN have been submitted to the NRC and have been approved except for TR-045 which is under review and addresses system transients using the RETRAN-02 computer code. NRC approval of TR-045 is expected since the methods employed have been used by other utilities in similar applications, the methods account for uncertainties and the methods provide results which are consistent with previous reload analyses. Currently, the RETRAN-02 code itself is being reviewed by the NRC for use in reload analyses.

The GE LOCA analyses, NEDE-31462P, "Oyster Creek Nuclear Generating Station SAFER/CORECOOL/GESTR-LOCA LOSS-OF-COOLANT ACCIDENT ANALYSIS," submitted with this reload application is based on a methodology previously approved by the NRC via a May 11, 1987 safety evaluation addressing NEDE-30996-P, Volume II. This methodology has been used by other utilities in reload applications, and, as in the case of TR-045, NRC approval of the Oyster Creek application is expected.

Therefore, the results of the analyses presented in TR-049 and NEDE-31462P and the technical specification changes based on these results will ensure that there is no significant reduction in the margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 4, 1988

Description of amendment request: This amendment would remove details of the TMI-1 fire protection program from the Technical Specifications in accordance with guidance provided by the Commission in Generic Letter No. 86-10 dated April 24, 1986. The detailed fire protection requirements have been added to the TMI-1 Updated Final Safety Analysis Report (FSAR) and the requirement to maintain a fire protection program would be added as a license condition rather than as a Technical Specification.

Basis for proposed no significant hazards consideration determination: The Commission provided specific guidance to all reactor licensees regarding implementation of fire protection requirements in Generic Letter No. 86-10. This guidance encouraged inclusion of the fire protection program into the UFSAR, amendment of licensing conditions pertaining to the fire protection program and deletion of fire protection details from the Technical Specifications. The GPU Nuclear amendment request has been found consistent with the guidance provided in Generic Letter No. 86-10. The licensee provided the following significant hazards determination as required by 10 CFR 50.92. The proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The probability of occurrence or the consequences of previously evaluated accidents are not affected by this change, since the change is administrative in nature.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated. As stated above, the requirements of existing Fire Protection Technical Specifications are incorporated into the Updated FSAR. This change is administrative in nature and is consistent with the guidance provided by Generic Letter 86-10.

3. Operation of the facility in accordance with the proposed

amendments would not involve a significant reduction in the margin of safety. These changes do not reduce the margin of safety as the existing requirements of Fire Protection Technical Specifications are maintained as a part of the Fire Protection Program and incorporated into the Updated FSAR by reference. As stated above, the change is administrative in nature.

The NRC staff agrees with the licensee's assessment that this amendment would involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 2, 1986, and December 17, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Duane Arnold Energy Center to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.c(5) of Facility Operating License No. DPR-49 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and December 17, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided gtidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Kenneth E. Perkins.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988

Description of amendment request: The amendment would modify the Technical Specifications (TS) applicable to 125 VDC batteries. The changes would reflect replacement of aged lead-acid batteries with new lead-calcium batteries of higher ampere-hour capacity, higher individual cell voltage, and different specific gravity and charging current requirements. Test methods would be upgraded to conform to current industry practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations. These examples include (1) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement, and (2) a repair or replacement of a major component or system important to safety, if the following conditions are met: (a) the repair or replacement process involves practices which have been successfully implemented...., and (b) the repaired or replacement component or system does not result in a significant change in its safety function...

The proposed amendment is within the scope of the above examples in that it would upgrade surveillance testing requirements to reflect the use of higher capacity batteries of improved design, and improved chargers suitable for the new batteries. Since the 125 VDC electrical system served by the batteries is not changed there would be no change in safety function.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988

Description of amendment request: The amendment would modify the Technical Specifications to add new Limiting Conditions of Operation (LCO) and Surveillance Requirements (SR) for the Alternate Shutdown (ASD) system instruments and controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example a more stringent surveillance requirement. The ASD system provides the capability to shut down the reactor from a remote location

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in the event of a fire which disables control and instrumentation equipment necessary for shutdown from the control room.

The system was installed during the facility's Cycle 10 refueling outage in response to 10 CFR 50.48 (Appendix R) requirements. Prior to the outage, the proposed modifications were reviewed and found acceptable by the staff. Following the modifications, the staff requested the licensee to submit proposed Technical Specifications to ensure operability of the new equipment. This amendment would invoke such technical specifications to ensure ASD system operability and is therefore within the scope of the above example.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: March 24, 1988

Description of amendment request: The proposed amendment to the Technical Specifications will add a license condition requiring the licensee to implement and maintain its Integrated Implementation Schedule Program Plan. This program plan will provide a methodology to be followed for scheduling plant modifications and engineering evaluations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change would require the implementation of the IIS methodology described in the Program Plan. As such, it requires that NNECO establish an administrative means for tracking, prioritizing, and scheduling NRC required plant modifications and engineering evaluations, and licensee identified plant improvement projects. This methodology is intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plant receive priority and are complete in a timely manner.

Because the license condition addresses only an administrative scheduling mechanism, it does not affect directly the design or operation of the plant. Therefore, no accident analyses are affected and the proposed change does not increase the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed license condition establishes a new requirement relating to scheduling of modifications and engineering evaluations. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in any margin of safety.

As discussed above, the proposed license condition establishes a new administrative requirement intended to enhance public safety and reliable plant operation. It does not affect any accident analysis or involve any modification to the plant configuration or operation. Therefore, the proposed change does not involve a reduction in any margin of safety.

Accordingly, the staff has made a proposed determined that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 1, 1988

Description of amendment request: The proposed amendment would change Technical Specification Sections 6.2.3.1 to state that Independent Safety Engineering Group (ISEG) recommendations, records and reports are provided to appropriate station and corporate management instead of to the Vice President-Nuclear and Environmental Engineering.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, NNECO has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration because the change does not:

1. Involve a significant increase in the probability or consequence of an accident previously analyzed.

The proposed change is administrative. It does not affect systems or components. There is clearly no significant increase in the probability of any accident. The proposed changes will have no affect on the consequence of any design basis accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect safety systems or components and, therefore does not create the probability of an accident or malfunction of a new or different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Since the proposed change is administrative, it has no impact on the basis of any Technical Specification.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District (OPPD), Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 15, 1988

Description of amendment request: The proposed amendment would delete Figure 5-1, "OPPD Support Staff" and Figure 5-2, "Fort Calhoun Station Organization Chart" from the Technical Specifications. Section 5.5.1.2 and 5.5.2.2 would be revised to refer to Chapter 12 of the Fort Calhoun Station Updated Safety Analysis Report (USAR) for the composition of the Plant Review Committee and the Safety Audit and Review Committee. Also, position titles have been revised to reflect organization changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested changes do not involve a significant hazards consideration because the proposed changes would not:

(1) involve a physical modification of equipment or a change in operational methods. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for Fort Calhoun Station. Organization information will continue to be maintained in the USAR and the NRC will be informed of changes through the annual USAR update.

(2) involve a physical modification of equipment or a change in operational methods. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for Fort Calhoun Station. Organization information will continue to be maintained in the Fort Calhoun Station USAR.

(3) in any way alter OPPD's commitment to maintain a management structure that contributes to the safe operation and maintenance of Fort Calhoun Station. This information will be maintained in the USAR, clearly communicating the lines of authority and responsibility for station operations.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Dates of amendment requests: December 1, 1986 and December 14, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted revisions to the Indian Point 3 Nuclear Power Plant Physical Security Plan to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.G of Facility Operating License No. DPR-64 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, and September 14, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 24, 1988

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

This application seeks to amend Specification 3.1.A of Appendix A to the Operating License to revise the Technical Specifications to conform with the supporting FSAR transient analyses concerning the number of reactor coolant pumps assumed to be operating when the reactor coolant system average temperature is above 350° but below the no-load reactor coolant average temperature (hot-zero power).

Existing Technical Specification 3.1.A.b. requires at least one reactor coolant pump be in operation when reactor coolant system average temperature is greater than 350° F. FSAR Safety Analyses for steamline break, rod ejection and bank withdrawal from subcritical (the limiting zero power transients) assume all four reactor coolant pumps are operating as an initial condition. A review of the steamline break and rod ejection analyses under the reduced flow conditions of only one reactor coolant pump in operation has demonstrated that the conclusions presented in the FSAR will not be impacted. For the uncontrolled control rod withdrawal from subcritical event, however, the DNB design basis may not be met when only one pump is in operation.

There is no mechanism by which the control rods can be automatically withdrawn when RCS Tavg is between 350° F and hot zero power due to control system error, thus an uncontrolled rod withdrawal event can only be initiated as a result of human error during rod manipulation. This proposed Technical Specification change would prohibit control bank withdrawal with less than four reactor coolant pumps in operation, thereby providing assurance that the plant is operated within the accident analysis assumptions and that the margin of safety as defined in the FSAR analysis is not reduced.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a

facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated? The proposed amendment would resolve an inconsistency between the Technical Specifications and the FSAR analysis of the uncontrolled control rod withdrawal from a subcritical event and the number of reactor coolant pumps assumed to be in operation. By revising the Technical Specification to the more conservative assumption used in the FSAR analyses (four reactor coolant pumps operating) or prohibiting control bank withdrawal with less than four RCPs operating such that an uncontrolled rod withdrawal event is precluded assures that consequences of this event are not increased and are maintained consistent with previous analysis. The revised requirement for operating reactor coolant pumps will not change the probability of a rod withdrawal event.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? Insofar as the proposed change revises the Technical Specifications to conform with the more conservative assumptions employed in the FSAR Safety Analysis for the uncontrolled control rod withdrawal from subcritical, the proposed change constitutes an additional restriction not presently included in Technical Specifications. Prohibiting control bank withdrawal when less than four reactor coolant pumps are in operation between Tavg = 350° F and hot zero power will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety? As noted previously, the proposed amendment constitutes an additional restriction not presently included in Technical Specifications. As such, the amendment does not involve a significant reduction in a margin of safety but rather an enhancement to assure the margin of safety assumed in the uncontrolled control rod withdrawal analysis is maintained.

Based on the above, the staff purposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Robert A. Capra, Director

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station Unit 1, Fairfield County, South Carolina

Date of amendment request: January 6, 1988

Description of amendment request: On January 6, 1988, an amendment was proposed to revise Section 6.0 of the Technical Specifications (TS). The purpose of the proposed revision is to reflect changes to the V. C. Summer Nuclear Station Functional Organization. Specifically, Section 6.2, "Organization," is proposed to be modified to indicate that as result of the planned reorganization neither the Offsite Organization nor the Unit Organization will continue to exist. With the movement onsite of all of the nuclear staff for South Carolina Electric & Gas, these former organizations are now incorporated as the V. C. Summer Nuclear Station Functional Organization. Figure 6.2-1 is proposed to be modified to reflect this new organization. With the deletion of these two organizations some renumbering of Section 6.2 of the TS is necessary. The present Section 6.2.3, "Independent Safety Engineering Group (ISEG)," is proposed to be modified under "Authority," (TS 6.2.3.4) to indicate that the ISEG shall make recommendations to the General Manager, Nuclear Safety versus the Group Manager, Technical Specifications in the previous organization. The "Composition," (TS 6.5.1.2), of the Plant Safety Review Committee is proposed to be changed to be consistent with the new organization. The Chairman will be either the Director, Nuclear Plant Operations or the General Manager, Station Operations. The other members will consist of the managers of Operations, Maintenance Services, Chemistry and Health Physics, Core Engineering and Nuclear Computer Services, and Design Engineering and the General Manager, Station Support. Section 6.5.3, "Technical Review and Control," is proposed to be modified in TS 6.5.3.1.b to indicate that each modification to plant nuclear safety-related structures, systems, and components shall now be designed under authorization from the Engineering Services versus Technical Services in the old organization.

The licensee indicated that this January 6, 1988 request is not intended to supercede their July 8, 1987 request to delete the organizational charts from the TS but is intended to ensure consistency between the TS and the Station Organization until the NRC acts upon the licensee's July 8 request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the reorganization does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Through SCE&G's Quality Assurance programs and efforts to maintain only the most qualified personnel in positions of responsibility, it is assured that safety functions performed by personnel with the Nuclear Operations Division will continue to be performed at a high level of competence.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: September 15 and November 23, 1987

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Tennessee Valley Authority (TVA) submitted an amendment to the Physical Security Plan for the Sequoyah Nuclear Plant, Units 1 and 2, to reflect changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating Licenses Nos. DPR-77 and DPR-79 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. TVA submitted its revised plan on September 15 and November 23, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: February 8, 1988

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.3.2 Table 3.3.2-2. Numerous Trip Setpoints and Allowable Values are footnoted with a statement that these were initial values, and that the final values would be determined during the startup test program. The footnote also states that any required setpoint change would be submitted to the Commission within 90 days of startup test completion. The purpose of the proposed change is to provide the final values for the residual heat removal/reactor core isolation cooling (RHR/RCIC) Steam Line Flow-High Trip Setpoint and Allowable Value based on the results of the Startup Test Program, and to delete the footnote from all Trip Setpoints and Allowable Values since the startup test program has been completed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a request for amendment involves no significant hazards consideration. As described in the Commission's regulations, 10 CFR 50.92, a proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following determination as to whether the proposed amendment involves a significant hazards consideration:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident basis for establishing the Trip Setpoint and Allowable Value has not changed (125% total maximum RCIC and RHR Steam Condensing Steam Flow). The Trip Setpoint and Allowable Values are being changed based on Startup Test Program results of normal RCIC and RHR steam condensing steam flow rather than being based solely on calculations. As such, there is no change to the probability of previously evaluated accidents. Furthermore, the consequences of an accident would not change. Thus, there is no increase in the probability or consequences of any accident previously evaluated. Deletion of the footnote is strictly administrative in nature and does not increase the probability or consequences of an accident.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: February 10, 1988 as supplemented March 3, 1988

Description of amendment request: The proposed amendment requests revision of Technical Specification Section 4.3.8.2.c to allow a one time extension for the disassembly and inspection of the turbine control valves, turbine stop valves, low pressure turbine intercept valves, and low pressure turbine intermediate stop valves until the first refueling outage, currently scheduled to begin during the first quarter of 1989. These tests will become overdue beginning December 8, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a request for amendment involves no significant hazards consideration as contained in the Commission's Regulations, 10 CFR 50.92. A proposed amendment would not involve a

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significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following determination as to whether the proposed amendment involves a significant hazard consideration:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The valves were all inspected successfully in early to mid 1984, and were subsequently cleaned and installed between September 10 and November 15, 1984. The turbine was first brought to rated speed using nuclear steam in December 1986. The valves will have only experienced operating conditions for approximately 25 months by the beginning of the first refueling outage. Therefore, in actuality, the valves will be inspected prior to accumulating the amount of wear presently permitted by the Technical Specification. This does not represent any increase in the probability of an accident. Since extending the first interval does nothing to the consequence of an accident, this change will not change the consequences of an accident. Thus, there is no increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Turbine overspeed protection testing of the main turbine was performed as part of the Startup Test Program. Tests including the Turbine Generator load reject test (conducted on October 25, 1987) actually verified that the valves are functioning properly to prevent an unacceptable overspeed condition in the main turbine. Since the purpose of the disassembly and inspections of the valves is to ensure that they will operate to protect the turbine from excessive overspeed, the startup testing preformed has verified that this is in fact the case. Therefore, no new or different kind of accident from any accident previously evaluated has been created.

The proposed change does not involve a significant reduction in the margin of safety.

As stated above, the valves will actually experience less operating time between inspection than what is presently permitted by the Technical Specifications. Therefore, the margin of safety will not be reduced by approval of this change request.

The staff has reviewed the licensee's determination as to whether the proposed amendment involves no significant hazards considerations. The staff notes that the requested extension interval for inspection of the turbine valves until the first refueling outage is small and is not likely to have significant effect on the probability of an accident previously evaluated. The staff also notes that extending the interval by a small amount cannot by itself introduce a new or different kind of accident from any previously evaluated. In these and other respects, the staff concurs with the licensees that the proposed amendment would not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

The Commonwealth Edison Company, Docket Nos. STN-454 and STN-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: November 26, 1986 and January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Byron Nuclear Power Station Security Plan to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-37 and paragraph 2.F of Facility Operating License No. NPF-66 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

The Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 26, 1986 and January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, Commonwealth Edison Company (CECo, the licensee) submitted an amendment to the Physical Security Plan for Quad Cities Nuclear Power Station (QCNPS) to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.E of Facility Operating Licenses No. DPR-29 and DPR-30 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

The Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: December 1, 1986, October 1, 1987, and November 30, 1987

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Clinton Power Station to reflect recent changes to this regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-62 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, October 1, 1987, and November 30, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 26, 1986; February 12, 1987; October 16, 1987; and January 5, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for Vermont Yankee Nuclear Power Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.G. of Facility Operating License No. DPR-28 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822) the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on January 5, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very

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minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard Wessman

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: March 7, 1988 as supplemented April 12, 1988.

Description of amendment request: The proposed amendment would revise WNP-2 Technical Specification Table 3.2.3-1 in Section 3/4.2.3, "Minimum Critical Power Ratio," and Figure 3.3.10-1, "Thermal Power Limits of Specification 3.3.10-1," to support the operation of WNP-2 at full rated power during the upcoming Cycle 4. The third reload of the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) will utilize Advanced Nuclear Fuels Corporation (ANF), 8x8 current fuel. The fuel design of this reload batch is virtually identical to the fuel design of the previous reload batch.

The amendment application submittal of March 7, 1988, is composed of the WNP-2 Cycle 4 Reload Summary Report (WPPSS-EANF-119), the WNP-2 Cycle 4 Reload Analysis Report (XN-NF-88-02), the WNP-2 Cycle 4 Plant Transient Analysis Report (XN-NF-88-01), and the proposed changes to the WNP-2 Technical Specifications. The Reload Summary Report summarizes the reload analyses performed by ANF in support of WNP-2 operation for Cycle 4. In addition, a description of the ANF reload is given along with a comparison of the characteristics of the Cycle 4 and Cycle 3 cores.

The WNP-2 Cycle 4 Reload Analysis Report is intended to be used in conjunction with ANF Topical Report XN-NF-80-19(P)(A), Volume 4, Revision 1, Application of the ANF Methodology to BWR Reloads which gives a detailed description of the methods and analyses utilized.

The supplement of April 12, 1988, provides the pages of the Technical Specifications showing the revisions requested to be made by this amendment. This letter also provided a figure which had been omitted from the WNP-2 Cycle 4 Reload Summary Report.

WNP-2 will be entering its fourth cycle of operation and is approaching an equilibrium cycle. The results of the licensees analysis show little change from Cycle 3 to 4. As a result, the licensee has chosen to add some small Critical Power Ratio (CPR) penalties for margin to envelope future anticipated analysis results. The intent is to be able to make future fuel reloads without Technical Specification changes using instead the provisions of 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: The proposed amendment to the WNP-2 Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendments not likely to involve significant hazards considerations. Example (iii) is an amendment to reflect a core reload where:

(1) No fuel assemblies are significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

For the third refueling outage for WNP-2, the Supply System will replace 152 of the General Electric (GE) initial core fuel assemblies with ANF 8x8 fuel. Twenty-four (24) of the Cycle 4 reload fuel assemblies will have a bundle average enrichment of 2.72 weight percent U^{235}; 128 of the Cycle 4 reload fuel assemblies are enriched to a bundle average value of 2.64 weight percent U^{235}. The 152 ANF 8x8C fuel bundles to be loaded for Cycle 4 are similar in design to the initial core fuel and previous reload assemblies.

The change in WNP-2 core loading required a partial re-analysis by ANF. The Loss of Coolant Accident (LOCA) and the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) analyses relevant to Cycle 4 operations were performed for all ANF fueled cores as a part of the Cycle 2 (initial reload) analysis. Relevant transient analyses and Minimum Critical Power Ratio (MCPR) analyses for the Cycle 4 loading were reported. Analyses of normal reactor operation consisted of evaluation of the mechanical, thermal hydraulic, and nuclear design characteristics.

Operation at extended core flow, single loop operation and final feedwater temperature reduction were also evaluated.

The use of the ANF type fuel assemblies and the associated analytical methods used for the Cycle 4 reload analyses have been previously approved by the NRC staff for use in other boiling water reactors (BWR's). Based on these prior reviews, the NRC staff has determined that there are only small differences between the use of ANF and GE analytical methods.

This core reload involves the use of fuel assemblies that are not significantly different from those found acceptable to the Commission for a previous core at this facility. The proposed amendment would change the Technical Specifications to reflect new operating limits associated with the fuel to be inserted into the core based on the new core physics. In the licensee's analyses supporting this reload there have been no significant changes in acceptance criteria for the Technical Specifications. The licensee contends that their analytical methods have been found acceptable by the NRC.

The only difference between this reload and Example (iii) provided by the NRC is related to the use of the ANF analytical methods which are slightly different from the GE methods used for Cycle 1 and the Exxon (now ANF) methods used for Cycle 2. The licensee argues that the ANF analytical results are not significantly different from those found acceptable to the NRC for the previous cores at WNP-2 and that the methods have been approved previously by the staff for use in other BWR's.

In addition to providing examples of amendments not likely to involve a significant hazards consideration, the Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the evaluation performed in accordance with 10 CFR 50.92, and the fact that the analytical methods used have been approved previously by the NRC staff and do not provide results significantly different,

the Supply System has concluded, and the staff agrees, that operation of WNP-2 in accordance with the proposed reload amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the transient analyses have been reanalyzed for the reload core. The proposed changes to the Technical Specifications reflect new operating limits associated with the reload core, are based on approved analysis methods and are within the current acceptance criteria;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the operational limitations applied to Cycle 4 are identical to previous cycles. The values were derived from NRC qualified codes and by applying the most limiting transients throughout the cycle. These limitations are sufficient to ensure the plant is operated within previously accepted conditions. In addition, no changes sufficient to create a new type of malfunction are contemplated; or

(3) Involve a significant reduction in the margin of safety because the margin to safety for all accidents or operational occurrences analyzed for Cycle 4 operation is either identical to or more conservative than that used for previous cycles.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005-3502.

NRC Project Director: George W. Knighton

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 2, 1986, and March 22, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted amendments to the Physical Security Plan for the Kewaunee Nuclear Power Plant to reflect recent changes to 10 CFR 73.55. The proposed amendment would modify paragraph 2.C.4 of Facility Operating License No. DPR-43 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55 The licensee submitted its revised plan on December 2, 1986, and March 22, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193, Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 11, 1986 and January 6 and March 23, 1988

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Point Beach Nuclear Plant, Units 1 and 2 to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.F of Facility Operating License Nos. DPR-24 and DPR-27 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 11, 1986 and January 6 and March 23, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations

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clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 25, 1988

Description of amendment request: The proposed amendment would reduce surveillance requirements on blank flanges and expansion joints, that are located in high radiation areas, in order to reduce radiation exposure to plant personnel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses pertaining to these proposals, contained in the March 25, 1988 letter, stated the following:

This change is requested in order to enhance implementation of the ALARA concept and to provide operational flexibility to the Technical Specifications governing containment isolation systems. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Two parts of this change involve brief openings under administrative control of drain taps in piping connected to certain closed systems inside containment. The remaining parts of this change have no effect on potential leakage paths. Brief, administratively controlled openings on closed systems inside containment have negligible effects on the risk of any accident previously evaluated. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed. All parts of this change are consistent with Standard Technical Specifications. None of them introduces a new operating configuration or analytical assumption. Therefore, there is no possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. This change does not affect the ability of the containment systems to perform their intended functions. Therefore, there is no significant reduction in the margins of safety associated with containment integrity.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analyses and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 12, 1988, as supplemented on March 21, 1988 and March 25, 1988 (2 letters)

Brief description of amendment request: The amendment would make the following changes:

1. Modify Technical Specification (TS) Limiting Condition for Operation (LCO) 3.1.1.4 by adding a figure that provides the upper limits for moderator temperature coefficient (MTC) and increases this MTC limit for thermal power levels above 70% rated thermal power (RTP) from less positive than 0.2 E-4 delta k/k/° F to the linear equation where the MTC limit is less positive than +[(.9 + 4 (1-P))/3] E-4 delta k/k/° F where P is the fraction of RTP. Thus, at 70% RTP, MTC must be less positive than 0.7 E-4 delta k/k/° F and at 100% RTP MTC must be less positive than +0.3 E-4 delta k/k/° F.

2. Increase the minimum required shutdown margin of TS LCO 3.1.1.1 above the currently required +3.5 delta k/k in accordance with the linear progression where the shutdown margin limit shall be greater than or equal to +[3.5 + 1.5(P)] delta k/k where P is the fraction of RTP. Thus, at 0% RTP the shutdown margin limit is +3.5 delta k/k but at 100% RTP the limits is +5.0 delta k/k.

3. Change the TS Figure 3.1-2, "CEA Group Insertion Limits vs. Fraction of Allowable Thermal Power for Existing RCP Combination," Bank 5 Transient Insertion Limit from the linear progression with values of 25% insertion at 90% RTP and 35% insertion at 100% RTP to a constant insertion limit of 35% between 90% and 100% RTP.

4. Reduce unnecessary Axial Shape Index (ASI) trips below 70% RTP and provide additional operating flexibility by:

a. modifying TS Figure 2.2-1, "Peripheal Axial Shape Index vs. Fraction of Rated Thermal Power," by increasing the acceptable operation region below 70% RTP to the area bounded by the linear equations for the ASI limits, where

(1) ASI limit = ± [.6 + ⅗ (.4-P)] [P is the fraction of RTP) between 40% and 100% RTP, and

(2) ASI limit = ± 0.6 at powers below 40% RTP.

The current ASI limits are ± 0.4 at powers below 70% RTP;

b. expanding the acceptable operation region of TS Figure 3.2-2, "Linear Heat Rate Axial Flux Offset Control Limits," and TS Figure 3.2-4, "DNB Axial Flux Offset Control Limits," by increasing the negative ASI limit below 50% RTP from the current value of -0.3 to

(1) the linear equation limit, between 15% and 50% RTP, of the negative ASI limit = -[0.3 + 3/7 (.5-P)], where P is the fraction of RTP;

(2) below 15% RTP, the negative ASI limit = -0.45.

5. Reflect the lowering of the departure from nucleate boiling ratio (DNBR) limit to 1.16 due to the incorporation of an extended statistical combination of uncertainties methodology through modifying Figures 2.2-2, "Thermal Margin/Low Pressure Trip Setpoint Part 1 (ASI v. A_1)," and 2.2-3, "Thermal Margin/Low Pressure Trip Setpoint Part 2 (Fraction of Rated Thermal Power v. QR_1)." by

a. changing the equation for the pressure variable trip from P (TRIP VAR) = 2061 (Q_{DNB}) + 15.85 (T_{IN}) - 8915 to P (TRIP VAR) = 2892 Q_{DNB} + 17.16 (T_{IN}) - 10682;

b. changing Q_{DNB}, which equals QR_1 X A_1, by increasing QR_1 from the values of

QR_1 = .235 + (628/7810) P between 0% and 78.1% RTP

QR_1 = .863 + (109/191)x(P-.781) between 78.1% and 97.2% RTP

QR_1 = P above 97.2% RTP

to

QR_1 = .3 + (11/12)P between 0% and 60% RTP

QR_1 = .85 + (3/8)x(P-.6) between 60% and 100% RTP

QR_1 = P above 100% RTP where P is the fraction of RTP.

Date of publication of individual notice in **Federal Register:** April 15, 1988 (53 FR 12618).

Expiration date of individual notice: May 16, 1988

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 29, 1987

Brief description of amendment: The proposed changes would incorporate revised instrument numbers in Technical Specification (TS) Tables 3.3.6.1-1, 3.3.6.1-2 and 4.3.6.1-1 and revise TS Section 3/4.3.6 to reflect the new instruments that have been installed for the alternate rod injection and the recirculation pump trip system.

Date of issuance: April 8, 1988

Effective date: April 8, 1988

Amendment No.: 150

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1987 (52 FR 42048) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Dates of application for amendment: February 3, 1988, supplemented March 30, 1988.

Brief description of amendment: Revises Minimum Critical Power Ratio (MCPR) safety limit value from 1.07 to 1.04.

Date of issuance: April 12, 1988

Effective date: April 12, 1988

Amendment No.: 151

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7585). Supplemental submittal on March 30, 1988 corrected a MCPR value, which was inadvertently omitted in the original submittal. The supplemental letter provided additional information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 16, 1987

Brief description of amendment: The amendment makes minor editorial changes to the TS to: (1) delete unnecessary references to the number of flux thimbles available for movable incore instrumentation, (2) increase the number of monitors on the steam generator blowdown line, (3) replace remark (2) to Item 10 of Table 4.1-1 inadvertently omitted when Amendment No. 97 was issued on March 7, 1986.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No. 116

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35789) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988

Brief description of amendments: These amendments revise the Technical Specifications to separate the Gaseous Waste Management System Oxygen Analyzer into its two major components.

Date of issuance: April 15, 1988

Effective Date: April 15, 1988

Amendment Nos.: 17 for Byron, 8 for Braidwood

Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-75. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7588). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin

Date of application for amendment: November 12, 1987 as revised January 29, 1988.

Brief description of amendment: This amendment revises the Technical Specifications (TS) to reduce the required shift crew size since the reactor is permanently shutdown and the fuel has been removed to the Fuel Element Storage Well.

Date of issuance: April 11, 1988

Effective Date: April 11, 1988

Amendment No.: 60

Provisional License No. DPR-45. This Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1988 (53 FR 2662) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 2, 1986 and October 6, 1987

Brief description of amendments: The amendments modified paragraphs 2.E. of the licenses to require compliance with the amended Physical Security Plan. The Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment Nos. 43 and 46

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the operating licenses.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7590) The Commission's related evaluation of the amendments is contained in a letter to Duke Power Company dated April 11, 1988 and a Safeguards Evaluation Report dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 5, 1988

Brief description of amendments: The amendments corrected Technical Specifications 3.1.2.5 and 3.1.2.6 by increasing the minimum volume of borated water to be maintained in the Boric Acid Storage System.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment Nos.: 80 and 61

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7590) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 13, 1987, and supplemented by letters dated December 2, 1987 and January 25, 1988.

Brief description of amendment: The amendment revises certain Technical Specifications pertaining to the waste gas decay tank, specifically, removal of requirements associated with a radiation monitor.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No. 123

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24549) The supplements dated December 2, 1987 and January 25, 1988 provided supporting information requested by the staff and made no change to the original amendment request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 17, 1987, as revised March 9, 1988.

Brief description of amendment: The amendment updated the containment air lock surveillance requirements to conform with 10 CFR 50, Appendix J and an earlier exemption granted by the NRC.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 105

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13336). By letter dated March 9, 1988, the licensee submitted a revision to the application in response to the staff's request. This revision did not change the staff's initial no significant hazards consideration determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: March 23, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow pre-operational positive pressure testing of the Unit 2 Emergency Heating, Ventilation, and Air Conditioning System.

Date of issuance: April 16, 1988

Effective date: April 16, 1988

Amendment No.: 4

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 10450 dated March 31, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 2, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation is contained in a Safety Evaluation dated April 16, 1988.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: January 29, 1988 as supplemented March 16, 1988

Brief description of amendment: The amendment revised Section 5.3 and corresponding bases of the Technical Specification to allow fuel with higher enrichments to be stored in the fuel storage facilities on site.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 121

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7593). The March 16, 1988 submittal provided additional clarifying information and did not change the initial finding of no significant hazards consideration. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 11, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Gulf States Utilities Company, Docket No. 50-498, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 13, 1987

Description of amendment request: This amendment revised the surveillance requirements of section 4.7.1.2 of the Technical Specifications to reflect the upgraded ultimate heat sink water temperature monitoring system that was installed during the first refueling outage.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No. 20

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2317). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State Univerity, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendments: August 21, September 14, December 17, and December 18, 1987; and as supplemented March 9, 1988.

Brief description of amendment: This amendment revises the Technical Specifications 2.1.1, *Fuel Cladding Integrity*, and 3.1.7 and 4.1.7, *Fuel Rods*, and the associated Bases. The changes were necessary to provide appropriate limits for fuel Cycle 10.

By letter (NMP1L 0232) dated March 9, 1988, the licensee provided clarifying information concerning the new fuel and indicated a minor change in the fuel mix for Cycle 10. The effect of this change has been considered in the staff's evaluation.

Date of issuance: April 19, 1988

Effective date: April 19, 1988

Amendment No.: 97

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** February 10, 1988 (53 FR 3956 and 53 FR 3957). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: August 3, 1987, supplemented August 16, September 3, November 24, 1987 and February 19, 1988

Brief description of amendment: This amendment revises the service water supply header discharge temperature limit in Technical Specification 3/4.7.1 to 61° F.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 3

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1987 (52 FR 30473). *The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration

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Determination and Opportunity for Hearing that appeared in 52 FR 30473 contained a typographical error in the current Technical Specification limit. That number is 76° F not 71° F as stated. The NRC has not found it necessary to revoke its Consideration of Issuance as the error, while misstating the current Technical Specification, correctly states the proposed change. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 3, 1988

Brief description of amendment: This amendment revises the allowable value and the isolation trip setpoint for the residual heat removal (RHR)/reactor core isolation cooling (RCIC) steam line flow-high in Table 3.3.2-2 of the Technical Specifications.

Date of issuance: April 11, 1988

Effective date: April 11, 1988, to be implemented within 30 days

Amendment No.: 4

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7598) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 3, 1988

Brief description of amendment: This amendment revises Technical Specification 3/4.4.8.2.1.b.2, "D.C. Sources - Operating," to allow an alternate method of determining battery operability when visible corrosion appears at either terminals or connectors.

Date of issuance: April 19, 1988

Effective date: April 19, 1988. To be implemented within 30 days

Amendment No.: 5

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7595). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 1987

Brief description of amendment: This amendment would revise the sample plans used for the surveillance of snubbers as described in Technical Specification Section 4.7.10.e.2) to remove the threshold criteria that requires testing of all snubbers if the number of failures in the sample exceed about 10 percent of the sample size.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No.: 16

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 5, 1988

Brief description of amendment: This amendment would revise Technical Specification 3/4.4.6 Reactor Coolant System Leakage to allow continued plant operation for up to 30 days with the Containment Atmospheric Gaseous and Particulate Radioactivity Monitoring Systems inoperable as long as certain conditions are met.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment No.: 17

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7596). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: August 14, 1987, as supplemented August 27, 1987, January 4 and February 10, 1988.

Brief description of amendments: The amendments change Figure TS.6.1-2 and sections 6.1.D and 6.5.G of administrative requirements appearing in Section 6 of the TS.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment Nos.: 82, 75

Facility Operating Licenses Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39303) Since the date of the initial notice, the licensee provided supplemental information. This information clarified the original submittal and had no impact on the original no significant hazards consideration determination, and therefore did not warrant renoticing. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: Martin J. Virgilio.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 9, 1988

Brief description of amendment: This amendment revises the Technical Specifications to permit an extension in the next due date from April 30, 1988 to the refueling outage scheduled for September 1988 for performing the inspection of Diesel Generator No. 1 required by Surveillance Requirements.

Date of issuance: April 19, 1988.

Effective date: April 19, 1988.

Amendment No.: 112

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1988 (53 FR 9015) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 22, 1988, as supplemented March 25, 1988.

Brief description of amendments: The amendments allow the minimum residual heat removal system flow rate to be reduced from 3000 gpm to 1300 gpm while the plant is in Mode 6 (Refueling), provided that the reactor has been subcritical for more than 57 hours.

Date of issuance: April 21, 1988

Effective date: April 21, 1988

Amendment Nos.: 28 and 27

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7597). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Opispo, California 93407.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 30, 1986 as supplemented on April 27, 1987

Brief description of amendments: The amendments added surveillance requirements for the time delay feature of the undervoltage protective device for the reactor protection system alternate power supply.

Date of issuance: April 6, 1988

Effective date: April 6, 1988

Amendments Nos.: 130 and 133

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30579) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 15, 1988 as revised February 15, 1988.

Brief description of amendment: The amendment revises the Offsite and Facility Organization Charts for the Trojan Technical Specifications.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 140

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7596). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of application for amendment: January 20, 1987, as supplemented February 24, 1987

Brief description of amendment: This amendment addresses the upgrading of the reactor building cooling unit (RBCU) service water outlet valves to environmentally qualified Class IE motor operated valves, with automatic controls to open the valves on the selected post-accident RBCU and close the valves on the non-selected RBCU and the change to the surveillance requirements of TS 4.6.2.5.6.2 to reflect the flow to the operating RBCU rather than the flow from the service water booster pump flow.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 69

Facility Operating License No. NPF-12: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1987 (52 FR 5869) The February 24, 1987, letter provided additional information which did not change the initial determination published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: March 10, 1987

Brief description of amendment: This amendment revises Section 3.3.7.1, "Radiation Monitoring Instrumentation," and the basis for Section 3/4.7.1, by changing the setpoint value for the new fuel vault criticality monitor alarm from less than or equal to 10 R/h to less than or equal to 5 R/h.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 51

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34021). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: March 21, April 10, and June 5, 1986 and March 13, 1987.

Brief description of amendment: The amendment revises Section 3.7.1.3 (Ultimate Heat Sink) of the Technical Specifications to permit the two spray ponds that comprise the Ultimate Heat Sink to be used individually for dissipation of heat during the refueling operational mode.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 52

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24266). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Date of initial notice in **Federal Register:** July 2, 1986 (52 FR 24266). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: February 9, 1987

Brief description of amendment: This amendment revises Specification 4.1.3.5 pertaining to surveillance requirements for the control rod scram accumulators.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 53

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47797). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: June 1 1987

Brief description of amendment: This amendment revises Table 4.2.2.1-2 "Isolation Actuation Instrumentation Surveillance Requirements." The channel check requirements (once per shift) are deleted for the reactor water level 2 instruments that provide the containment isolation function.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 55

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34022). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 13, 1987

Brief description of amendments: The amendments clarified the requirements for testing of the steam generator pressure channels during refueling shutdowns.

Date of issuance: April 14, 1988

Effective date: April 14, 1988

Amendment Nos.: 113 and 116

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7583 at 7605) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 19, 1988

Brief description of amendments: The amendments made numerous administrative changes to the Technical Specifications (TS), clarifying or correcting several items in the TS.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment Nos.: 114 and 117

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5498) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media

to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 11, 1988

Description of amendment request: This amendment revises Fermi-2 Technical Specification 4.6.1.2.b to make it consistent with a one-time exemption to Appendix J of 10 CFR Part 50 dated April 15, 1988.

Date of issuance: April 15, 1988

Effective date: April 15, 1988

Amendment No.: 18

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 18, 1988.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

NRC Project Director: Martin J. Virgilio.

Dated at Rockville, Maryland, this 28th day of April, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Assistant Director for Regions II and V Reactors, Division of Reactor Projects - III, IV, V and Special Projects, Office of Nuclear Reactor Regulation

[Doc. 88-9730 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-424]

Georgia Power Co. et al.; Exemption

I.

In the matter of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Vogtle Electric Generating Plant, Unit 1.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), are the holders of Facility Operating License No. NPF-68 issued March 16, 1987, which authorizes full power operation of the Vogtle Electric Generating Plant, Unit 1 (the facility). A superseded license, NPF-61, issued January 16, 1987, authorized licensees to operate the facility at steady-state reactor power levels not in excess of 170 megawatts thermal. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission.

II.

Section 50.71(e)(3)(i) of 10 CFR 50 requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. The above regulation would have required submittal of the UFSAR for Vogtle Unit 1 by January 16, 1989.

By letter dated January 15, 1988, licensees requested an exemption to 10 CFR 50.71(e) which would defer submittal of the UFSAR until one year following issuance of a full power operating license for Vogtle Unit 2 on the basis that the present Final Safety Analysis Report (FSAR) applies to both units. The FSAR has been updated on May 6, 1987, August 31, 1987, and March 30, 1988, and will continue to be updated to support the licensing of Vogtle Unit 2 and to provide updated information on Vogtle Unit 1. These FSAR revisions essentially satisfy the intent of the regulation, but achieve it in a different format from the one recommended by the staff in a letter to all operating reactor licensees dated December 15, 1980. Because the necessary safety information is provided in each revision, no undue risk would result from the proposed exemption.

III.

The NRC staff has reviewed the licensees' request for an extension of the Vogtle Unit 1 UFSAR submittal until one year following issuance of a full power operating license for Vogtle Unit 2. The extension is needed to eliminate the hardship of maintaining two versions of essentially the same document. The Vogtle Unit 2 full power operating license issuance is estimated to be April 1989. This would result in an extension of approximately 15 months.

On June 22, 1983, the licensees submitted the FSAR for both Vogtle units. From that time until the present, the NRC staff has reviewed the FSAR on the basis that it was for both units; however, since Units 1 and 2 are not receiving operating licenses at the same time, there are two regulations which are not consistent with each other. 10 CFR 50.34 requires the licensees to amend the FSAR in order to keep the information contained therein current, whereas 10 CFR 50.71(e) requires the licensees to submit an entirely new document, an UFSAR, which replaces the existing FSAR. Therefore, in order to comply with these two regulations concurrently, the licensees would have to maintain both the FSAR with amendments with the UFSAR. Maintaining two versions of the same licensing document for each unit would be difficult, could lead to ambiguities and confusion and would serve no useful purpose if the existing FSAR is maintained up-to-date through the licensing of Unit 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(i) and (ii) apply to this situation. The requirement of 10 CFR 50.34 to keep the submitted FSAR current is not consistent with the requirement of 10 CFR 50.71(e) to submit an UFSAR, because the FSAR is a combined document for both units. This consitutes the special circumstance described in 10 CFR 50.12(a)(2)(i).

Application of 10 CFR 50.71(e) requirement in this situation for updating the FSAR for Vogtle Unit 1 within two years, in accordance with the format recommended by the staff, is not necessary to achieve the underlying purpose of the rule, which is to ensure that updated information be available in the FSAR. Since the FSAR for both Vogtle Units 1 and 2 has been updated in a different format, on May 6, 1987, August 31, 1987 and March 30, 1988, the extension of time granted herein does not conflict with the intent of the rule. This complies with the intent of the regulation and comports with the special circumstance described in 10 CFR 50.12(a)(2)(ii).

Accordingly, the Commission hereby grants an exemption as described in Section III above from § 50.71(e)(3)(i) of 10 CFR Part 50 to extend the date for submittal of the updated FSAR for Vogtle Unit 1 until one year following issuance of a full power operating license for Vogtle Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 9829).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 28th day of April 1988.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9857 Filed 5-3-88, 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co. et al.; Issuance of Amendment to Facility Operating License

In the matter of Iowa Electric Light and Power Company, Central Iowa Power Cooperative, Corn Belt Power Cooperative. Notice of Consideration of issuance of amendment to facility operating license and opportunity for hearing.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49, issued to the Iowa Electric Light and Power Company, et al. (the licensees), for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The amendment would revise the DAEC Technical Specifications relating to logic system functional testing. Specifically, the proposed changes would: (1) Extend the surveillance frequency of Engineered Safety Feature logic system testing from annually to 18 months, to coincide with the 18-month operating cycle: (2) clarify the definition of Logic System Functional Test to more closely conform to the BWR Standard Technical Specifications and to reflect revised testing practices; (3) delete the requirement to perform a logic system functional test on the logic controlling the Head Spray Mode of the Residual Heat Removal System, as this equipment is no longer in service; (4) correct editorial errors in Tables 4.2-A and 4.2-B by deleting calibration frequencies associated with each Logic System Functional Test that are appropriately specified elsewhere in the tables; and (5) delete Note 4 for Tables 4.2-A through 4.2-F, which describes the use of test jacks which will not be used in the revised DAEC testing practices.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator would be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esq., and Kathleen H. Shea, Esq., Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after the completes its technical review and prior to the completion of any required hearing if it published a further notice for public comment of its proposed finding of no

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significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For farther details with respect to this action, see the application for amendment dated December 11, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 28th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-9858 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operation License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operation License No. NPF-3 issued to Toledo Edision Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to:

(1) The Reactor Cooling System (RCS) pressure-temperature operating limits during heatup, cooldown, and inservice leak and hydrostatic tests to reflect reactor vessel neutron exposure,

(2) The allowable heatup and cooldown rates permitted to reflect the rates assumed when determining the pressure-temperature limitation curves,

(3) The evaluation required by the TS's when the pressure-temperature limits are exceeded,

(4) The action required to change plant operation when the temperature-pressure limits are exceeded,

(5) The surveillance requirement for reactor vessel material irradiation surveillance specimens, and

(6) The allowable RCS pressure versus pressurizer level when in Modes 4 or 5 with an inoperable Decay Heat Removal System safety valve.

The proposed amendment also would revise the license condition relating to the required analysis and modifications to prevent low temperature over-pressurization of the RCS.

These changes are required to incorporate new RCS pressure-temperature limits, heatup-cooldown rates, and pressurizer level-RCS pressure limits to reflect reactor vessel material properties to 10 effective full power years (EFPY). The removal of the surveillance requirements and specimen withdrawal schedule is reguired because the program is governed by the results of Babcock and Wilcox analyses of vessel material specimens.

The proposed amendment, specifically, would revise License Condition 2.C.(3)(d), TS Sections 3/4.4.2, 3/4.4.9.1, Figures 3.4-2, 3.4-2a, 3.4-2b, 3.4-3, 3.4-4, and Table 4.4-5. The amendment would also revise Bases Section 3/4.4.9, Bases Table 4-1, and Bases Figures 4-1 and 4-2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-600 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26, day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-9859 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would modify the Technical Specifications to accommodate changes in the incore detection system from moveable detectors to fixed detectors. The licensee's application for amendment is dated April 4, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for

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amendment dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 28th day of April, 1988.

For the Nuclear Regulatory Commission.

Richard Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-9860 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request to extend the use of OPM Form 805 that collects information from the public. OPM Form 805, "Application To Be Listed Under the Voting Rights Act of 1965," is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. There are 250 individuals who respond annually for a total public burden of 83 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before May 18, 1988.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ellice Halpern, (202) 632-4632.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-9866 Filed 5-3-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25620; File No. SR-CBOE-87-47, Amdt. No. 1]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Maker Eligibility for RAES in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

The following describes eligibility criteria for members to participate as contra-brokers on RAES in equity options for a six-month pilot program:

RAES eligibility in Equity Options

1. Any Exchange member who has registered as a market-maker is eligible to log on RAES in an equity option class, so long as the following requirements are met.

2. The market-maker must log on the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. [Consistent with Exchange rules and interpretations thereof] *Unless exempted by the Market Performance Committee,* only one participant in a joint account may use the joint account for trading in a particular option class at one time on RAES in regular trading.

4. *Unless exempted by the Market Performance Committee,* a market-maker may log on RAES in a particular equity option only in person and may continue on the system only so long as he is present in that trading crowd. *Accordingly, absent exemption from the foregoing limitation,* [A] *a* member may not remain on the RAES system and must log off the system when he has left the trading crowd, unless the departure is for a brief interval.

5. *In option classes designated by the Market Performance Committee, any market-maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration.*

6. *Notwithstanding the limitations in paragraph 4 above, if there is inadequate RAES participation in a particular options class, the Exchange's Market Performance Committee may require market makers who are members of the trading crowd, as defined in Interpretation .01 to Rule 8.12, to log on to RAES absent reasonable justification or excuse for non-participation.*

[6. In unusual market conditions, the Exchange may grant exemptive relief from these provisions.]

[6] *7.* Failure of a member to abide by the [these eligibility] *the foregoing* requirements [; including but not limited to logging off RAES upon leaving the trading crowd] may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES *and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This is an amendment to the proposed rule change to amend the standards of market-maker eligibility to participate in RAES in equity options.[1] The standards

[1] SR-CBOE-87-47 was originally filed with the Commission on October 19, 1987, and noticed in Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470.

were originally set forth in SR-CBOE-86-22, approved in Exchange Act Release No. 23591 (September 4, 1986), 51 FR 32710 (September 15, 1986).

The amendments are as follows. Paragraphs 3, 4 and 5 have been amended to give authority to the Market Performance Committee to grant the contemplated exemptions. The original proposed rule change gave this authority to the Floor Procedure Committee. The Exchange believes that the Market Performance Committee, which is responsible for market-maker performance, should have this authority. In addition, it should be noted that the currently effective eligibility rules are administered, in part, by the Market Performance Committee.

Paragraph 6 is new in this amendment, providing the Market Performance Committee with the ability to require members of a trading crowd to sign onto RAES if there is inadequate participation in a class at the start of trading or during the trading day. This will ensure the system's availability throughout the trading day for eligible public customer orders. While one or a small number of market-maker participants may be sufficient in many equity option classes, more participants may be necessary in more active classes. The Market Performance Committee, therefore, will be able to determine the level of necessary participation.

The Market Performance Committee will prepare periodic lists of the market-makers who are deemed to be members of the trading crowd in each option class. The members of the trading crowd will be notified that they are on the list, and of the possibility of being required to log onto the system under this Rule. The members on the list, if called upon to log onto the system, will be expected to do so, absent reasonable justification or excuse. If a member fails to log on, the member may be subject to remedial measures taken by the Market Performance Committee under Chapter VIII of the Exchange Rules or disciplinary action under Chapter XVII of the Exchange Rules.

Finally, Paragraph 7 has been amended to clarify that the Market Performance Committee possesses the authority to take remedial measures under Chapter VIII of the Exchange Rules for violations of this rule.

The Exchange believes that this amendment to the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change will allow for the continuing availability of RAES for public investors with reasonable and fair market-maker participation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 25, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

April 27, 1988.

[FR Doc. 88-9868 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25621; File No. SR-CBOE-88-02]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amended Eligibility Criteria for Members To Participate as Contra-Brokers on RAES in Standard and Poor's 500 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1988, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

The following describes amended eligibility criteria for members to participate as contra-brokers on RAES in the Standard & Poor's 500 Index ("SPX") for a six-month pilot program.

RAES Eligibility In SPX

1. Any Exchange member who has registered as a market-maker is eligible to log on RAES in SPX, so long as the following requirements are met.

2. The market-maker must log on the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. [Consistent with Exchange rules and interpretations thereof] *Unless exempted by the Market Performance Committee,* only one participant in a joint account may use the joint account for trading in a particular option class at one time on RAES in regular trading.

4. *Unless exempted by the Market Performance Committee,* a market-maker may log on RAES in SPX only in person and may continue on the system only so long as he is present in that

participate in the RAES pilot in SPX set forth in SR-CBOE-86-28. The amended criteria are substantially the same as those previously submitted for RAES in equity options. (See SR-CBOE-87-47,

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose

Dated: April 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9869 Filed 5-3-88; 8:45 am]

securities industry as well as changes in their employment histories.

After careful review, the Commission finds that the proposal to permit the CSE to use and continue to use both the

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

4. *Unless exempted by the Market Performance Committee,* a market-maker may log on RAES in SPX only in person and may continue on the system only so long as he is present in that trading crowd. *Accordingly, absent exemption from the foregoing limitation,* [A] *a* member may not remain on the RAES system and must log off the system when he has left the trading crowd, unless the departure is for a brief interval.

5. *Unless exempted by the Market Performance Committee, any market-maker who has logged on RAES at any time during an expiration month must log on the RAES system ins SPX whenever he is present in that trading crowd until the next expiration.*

6. *Notwithstanding the limitations in paragraph 4 above, if there is inadequate RAES participation in SPX, the Exchange's Market Performance Committee may require marketmakers who are members of the trading crowd, as defined in Interpretation .01 to Rule 8.12, to log on the RAES absent reasonable justification or excuse for non-participation.*

[6. In unusual market conditions, the Exchange may grant exemptive relief from these provisions.]

[6] 7. Failure of a member to abide by [these eligibility] *the foregoing* requirements [; including but not limited to logging off RAES upon leaving the trading crowd] may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES *and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This proposed rule change amends the standards of market-maker eligibility to participate in the RAES pilot in SPX set forth in SR–CBOE–86–28. The amended criteria are substantially the same as those previously submitted for RAES in equity options. (See SR–CBOE–87–47, Amendment No. 1, amending SR–CBOE–86–22.)

The amendments are as follows. Paragraphs 3, 4 and 5 have been amended to give authority to the Market Performance Committee to grant the contemplated exemptions. The Exchange believes that the Market Performance Committee, which is responsible for market-maker performance, should have this authority. In addition, it should be noted that the currently effective eligibility rules are administered, in part, by the Market Performance Committee.

Paragraph 6 is new in this amendment, providing the Market Performance Committee with the ability to require members of the trading crowd to sign onto RAES if there is inadequate participation in SPX at the start of trading or during the trading day. This will ensure the system's availability throughout the trading day for eligible public customer orders. The Market Performance Committee, will determine the level of necessary participation.

The Market Performance Committee will prepare periodic lists of the market-makers who are deemed to be members of the trading crowd in SPX. The members of the trading crowd will be notified that they are on the list, and of the possibility of being required to log onto the system under this Rule. The member on the list, if called upon to log onto the system, will be expected to do so, absent reasonable justification or excuse. If a member fails to log on, the member may be subject to remedial measures taken by the Market Performance Committee under Chapter VIII of the Exchange Rules or disciplinary action under Chapter XVII of the Exchange Rules.

Finally, Paragraph 7 has been amended to clarify that the Market Performance Committee possesses the authority to take remedial measures under Chapter VIII of the Exchange Rules for violations of this rule.

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change will allow for the continuing availability of RAES in SPX for public investors with reasonable and fair market-maker participation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All Submissions should refer to the file number in the caption above and should be submitted by May 25, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9889 Filed 5–3–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25618; File No. SR–CSE–87–1]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Use of the General Securities Representative (Series 7) Examination of the Uniform Application for Securities Industry Registration or Transfer (Form U–4)

On November 18, 1987, the Cincinnati Stock Exchange ("Exchange" or "CSE") filed with the Commission copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder to permit use of the General Securities Representative ("Series 7") examination and the Uniform Application for Securities Industry Registration or Transfer ("Form U–4"). The CSE is also proposing to amend the Form U–4 to provide for consent to service of process by associated persons.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 25361, February 18, 1988) and by publication in the **Federal Register** (53 FR 6722). No comments were received regarding the proposal.

In its filing, the Exchange indicates that the Series 7 examination and its study outline will be utilized to qualify those persons seeking registration as general securities representatives. In addition, the Exchange believes that use of the examination and its study outline will ensure that persons associated with member organizations as general securities representatives successfully complete a training course and examination to demonstrate an adequate knowledge of the securities business.

The CSE is also requesting to use the Form U–4 and to amend it to provide for consent of service, as part of its procedures for the registration and oversight of member firm personnel. In this regard, the Exchange indicates that the Form U–4 provides an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories.

After careful review, the Commission finds that the proposal to permit the CSE to use and continue to use both the Series 7 examination and Form U–4 is reasonable. In this regard, we note that the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc., the New York Stock Exchange, Inc., the Boston Stock Exchange Incorporated and the Pacific Stock Exchange Incorporated exchanges to use, and continue to use a revised and updated Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] Indeed, the Series 7 exam has been used for many years by the stock exchanges as a uniform exam for general securities representative qualification. The use of the exam and its study outline should help ensure that those persons acting as security representative are adequately trained and qualified. In addition, with regard to the Uniform Application for Securities Industry Registration or Transfer (Form U–4), the Commission believes that the Exchange's continued use of the Form U–4 will ensure that the Exchange continuously monitors the movement within the securities industry of those individuals associated with CSE member firms. With respect to the adoption of the consent to service clause, the Commission believes that this provision is designed to ensure that the procedural due process requirements incorporated in the Act are satisfied in cases in which the CSE takes disciplinary action against an associated person who fails to receive service of process because he is absent from his last known addresses. It is anticipated that the proposed consent will validate mailed or telegrammed (but unreceived) service of process in these cases.

Based on the above, the Commission finds that the CSE's proposal is consistent with section 6 of the Act and the rules thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby is, approved.

[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22674, 23685 (October 6, 1986) 51 FR 36821, 23954 (January 5, 1987) 52 FR 1270, 24108 (February 17, 1987) and 24167 (March 3, 1987) 52 FR 7736.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

Dated: April 27, 1988.

[FR Doc. 88–9890 Filed 5–3–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25619; File No. SR–MSE–87–14]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 9, 1987, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Commission copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. section 78s(b)(1), and Rule 19b–4 thereunder to rescind its Mandatory Posting Rule.[1]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25241, January 5, 1988) and by publication in the **Federal Register** (53 FR 649). No comments were received concerning the proposal.

The Mandatory Posting Rule ("Rule") originally was adopted by the MSE in 1985[2] to govern the posting and reassignment of securities amony MSE specialists and co-specialists due to substandard performance. In adopting the Rule, the Exchange indicated that it was designed to improve the quality of MSE markets—either through the dissemination of more competitive markets or through the automatic posting and reassignment of issues in which the current co-specialist has not successfully attracted significant order flow.[3]

[2] 17 CFR 200.30–3.

[1] *See* Article XXX, Rule 1.01(I)(6)(C) of the MSE Rules.

[2] *See* Securities Exchange Act Release No. 22577 (October 28, 1985) 50 FR 45695.

[3] *See* Securities Exchange Act Release Nos. 22077 (May 28, 1985), 50 FR 23370, and 22577 (October 28, 1985), 50 FR 45695. We note that the Commission approved two proposals submitted by the MSE that suspended the application of the Mandatory Posting Rule for the six month periods ending June 30, 1986 and December 31, 1986, *see* Securities Exchange Act Rel. No. 24444 (May 12, 1987) 52 FR 9002 and for the six month period ending June 30, 1987. *See* Securities Exchange Act Rel. No. 24892 52 FR 35018. Accordingly, the MSE only posted and reassigned securities under the Rule for one six month period of activity occurring between july 1, and December 31, 1985.

Under the Rule, an issue is posted for reassignment,[4] if, during the preceding six month period, the MSE's market share in the issue[5] falls below three or more other exchanges and also ranks

The Exchange further indicates that its determination to rescind the Rule stems, in part, from structural changes occurring within the securities industry, particularly, the growth of retail firms

Committee to reassign a stock to the MSE's Executive Committee.[1,1]

Although the Commission believes

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 27, 1988.

beneficial ownership interests in less than 100% of the distributions of principal or interest or both made on the mortgage loans underlying such securities ("Agency Stripped Mortgage-

1. Applicant is a direct, wholly-owned, finance subsidiary of The Bear Stearns Companies Inc., which in turn is the parent of Bear, Stearns & Co. Inc. Under the Existing Order, Applicant, a

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Under the Rule, an issue is posted for reassignment,[4] if, during the preceding six month period, the MSE's market share in the issue[5] falls below three or more other exchanges and also ranks below the Exchange's average market share for all issues for which there is a registered specialist.[6] When a security is posted for reassignment, all qualified co-specialists, including the current co-specialist, can submit an application to have the posted stock assigned to them.[7] The Rule, however, provides that, if several co-specialists with comparable ability and experience apply for a new allocation, the Committee on Specialist Assignment and Evaluation ("Committee") is generally required to give preference to the co-specialist who has not had posted for reassignment that issue or any other security in the current posting period.

In this filing, the Exchange proposes to rescind the Mandatory Posting Rule. As a result, a co-specialist's performance in an assigned issue will no longer be measured by the number of trades executed in the issue during the preceding six month period. The Exchange indicates that it intends to submit to the Commission for approval a set of newly developed alternate co-specialist evaluation criteria that will replace the Mandatory Posting Rule.[8]

The Exchange further indicates that its determination to rescind the Rule stems, in part, from structural changes occurring within the securities industry, particularly, the growth of retail firms functioning as specialists on other exchanges.

As a general matter, the Commission supports the concept of the Mandatory posting Rule and believes that it provides a meaningful incentive to co-specialists to improve their market making performance in their assigned issues.[9] Moreover, the Commission notes that the Rule contains several provisions designed to ensure that co-specialists receive proper procedural protection throughout the entire posting process. As discussed above, a key provision provides for the distribution of a monthly market share status report to each specialist unit. This report provides each unit with an indication of the quality of its performance for the preceding month affording the specialist the opportunity to improve his position and avoid mandatory posting. Accordingly, if the market share figures indicate that the unit's performance in a particular issue is inadequate, the specialist unit has an ability to take appropriate steps to improve its performance. In addition, in the event an issue is posted for reassignment, the current co-specialist is permitted to apply, along with other co-specialists, for the allocation of the issue. Further, co-specialists whose stocks are up for reassignment are allowed to defend their performance before the Committee in a formal hearing.[10] In this hearing, the co-specialist is permitted to explain any mitigating circumstances that have contributed to his substandard performance. A co-specialist is also entitled to appeal any decision by Committee to reassign a stock to the MSE's Executive Committee.[11]

Although the Commission believes that the Rule provides, among other things, an incentive for improved co-specialist performance, the Commission nevertheless recognizes that the MSE is in the process of revising its specialist evaluation program. As part of this process, the MSE believes it is necessary to replace the Mandatory posting Rule with a new program. Additionally, no other exchange has a rule comparable to the Mandatory Posting Rule. Accordingly, the Commission has concluded that it should not require the MSE to maintain a mandatory posting system and approves the MSE's request to rescind the Rule.[12]

At the same time, however, the Commission notes that the MSE will continue to utilize its Co-Specialist Evaluation Survey [13] to monitor co-specialist performance in accordance with its oversight responsibilities set forth in Rule 11b–1 of the Act.[14] In addition, the MSE will still retain the right to reallocate stocks due to inadequate performance as indicated by the survey. This should ensure that there is no interruption in the Exchange's co-specialist performance evaluation program. Based upon the above, and the MSE's ongoing efforts to strengthen its specialist evaluation program, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is approved.

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[4] An issue only may be posted if it has been assigned to the current specialist unit for six months or more.

[5] For purposes of the Rule, market share is calculated as a percentage of the number of trades reported to the consolidated tape. After determining the MSE's market share in an issue, the Exchange compares its market share with the market shares of other market centers trading the stock.

[6] Thus, to avoid the automatic posting of a security under the Rule, a co-specialist must attract sufficient order flow in an issue to maintain its market share ranking above the fourth highest level. To this end, each specialist unit is provided with a monthly summary of its market share activity in its assigned issues. This information is designed to apprise the unit of its market share performance for the preceding month and to provide each unit ample opportunity to either improve its performance in an issue prior to the semi-annual posting or request a transfer of such issue to a stronger co-specialist within the unit.

[7] In this regard, we note that under the Rule, the posting of an issue due to substandard performance does not necessarily result in reassignment to another co-specialist. The Committee on Specialist Assignment and Evaluation ("Committee") makes the final determination as to whether a posted issue will be reassigned to another co-specialist or allowed to remain with the current co-specialist. As noted above, the Exchange only has posted and reassigned issues under the Mandatory Posting Rule for trading activity occuring between the July 1, and December 31, 1985 six month period.

[8] The Exchange has indicated that it's Co-Specialist Evaluation Survey ("Survey" or "Questionnaire") will be a component of the new evaluation criteria. The survey is a questionnaire completed semi-annually by MSE floor brokers who are asked to rate co-specialist performance in a variety of areas. A specialist's registration in an assigned security may be suspended or revoked due to unsatisfactory performance ass indicated by the broker survey results. *See* MSE Rules, Article XXX, Rule 1, Interpretsions and Policies 01, I, 6. We note that the Exchange has submitted to the Commission a proposed rule change that would revise its Co-Specialist Evaluation Survey. The proposal is currently pending before the Commission. *See* Securities Exchange Act Rel. No. 25387 (February 23, 1988) 53 FR 6723 (SR–MSE–87–13). The MSE also has indicated that it is currently developing additional evaluation criteria that will be submitted to the Commission for its review.

[9] We note that the Division of Market Regulation, in its report on the October 1987 Market Break, discussed the need for the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. to develop and incorporate into their specialist evaluation programs objective standards of performance. *See* Division of Market Regulation, United States Securities and Exchange Commission, The October 1987 Market Break (1988) pg. XVII.

[10] *See* MSE Rules, Article VXII, Rule 2.

[11] *See* MSE Rules, Article VXII, Rule 4.

[12] As noted above, in addition to developing a new questionnaire the MSE is also currently in the process of developing additional evaluation criteria that will include objective standards. we support these efforts and believe the development of a comprehensive specialist evaluation program that measures performance using both floor surveys and objective criteria is extremely important and will assist the MSE in fulfilling its obligations under the Act. *See* n. 8, *supra.* Of course, the Commission will review the MSE's proposed specialist evaluation program, including the reviewed survey and any new objective criteria, to ensure it meets the requirements of the Act.

[13] *See,* n. 8, *supra.*

[14] 17 CFR 240.11b–1(a)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: April 27, 1988.

[FR Doc. 88–9891 Filed 5–3–88; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–16385; (812–6554)]

Bear Stearns Secured Investors Inc.; Notice of Application

April 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bear Stearns Secured Investors Inc. (the "Applicant"), on behalf of itself and all owner trusts (each, a "Trust") it may establish in the future. (Applicant and the Trusts are referred to collectively as the "Issuers".)

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant filed an application on December 8, 1986, and amendments on February 6, March 2 and March 18, 1987 ("Original Application"), for an order conditionally exempting the Issuers from all provisions of the 1940 Act to permit them to issue and sell one or more series of fixed rate bonds collateralized by Mortgage Collateral (as defined below). On April 13, 1987, the SEC issued an order granting the requested relief (Investment Co. Act Release No. 15678). On April 30 1987, Applicant filed Amendment No. 4 to the Original Application, and on June 2, 1987 submitted a letter relating thereto, to permit the Issuers to issue series of Bonds containing one or more classes of variable or floating interest rate bonds ("Floating Rate Bonds") (such Amendment No. 4, as modified by said letter, together with the Original Application, shall hereinafter be referred to as the "Amended Application"). On July 2, 1987, the SEC issued an order granting the requested relief (Investment Co. Act Release No. 15858, which, together with Release No. 15678, shall hereinafter be referred to as the "Existing Order"). On January 29, 1988, the Staff of the Division of Investment Management issued an interpretive letter permitting the Issuers to secure series of bonds with securities issued and guaranteed by GNMA, FNMA of FHLMC representing beneficial ownership interests in less than 100% of the distributions of principal or interest or both made on the mortgage loans underlying such securities ("Agency Stripped Mortgage-Backed Certificates"). On February 11, 1988, Applicant further amended the Amended Application ("Amendment No. 5") to permit the Issuers to secure series of bonds, in whole or in part, with Stripped Mortgage-Backed Securities, whole and partial pool Non-Agency Certificates and Funding Agreements secured by Mortgage Collateral (each as described below). The Amended Application, as further amended by Amendment No. 5 is referred to herein as the "Application"). Applicant then filed Amendment No. 6 to the Applicantion to permit the Issuers (1) to sell (a) Residual Interests to sophisticated non-institutional investors and (b) Bonds to foreign investors, in each case subject to certain additional conditions, and (2) to amend and restate all the conditions applicable to the issuance of Bonds by the Issuers.

Filing date: The Application was filed on December 8, 1986 and amended on February 6, March 2, March 18 and April 30, 1987 and February 11, 1988. Amendment No. 6 was filed on April 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Bear Stearns Secured Investors Inc., 1601 Elm Street, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Paul Heaney, Financial Analyst (202) 727–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant is a direct, wholly-owned, finance subsidiary of The Bear Stearns Companies Inc., which in turn is the parent of Bear, Stearns & Co. Inc. Under the Existing Order, Applicant, a Delaware corporation, engages in asset-backed financing, including issuing and selling, or establishing separate Trusts to issue and sell, series of fixed and Floating Rate Bonds, and purchasing owning and selling to the Trusts Mortgage Certificates and other collateral (collectively, "Mortgage Collateral") and pledging such Mortgage Collateral to a Trustee as security for each series of Bonds. Applicant will not engage in any business or investment activities unrelated to such purpose. Applicant now proposes, subject to the conditions contained in the Existing Order, as amended herein, and to certain additional terms and conditions as described below: (i) To use Stripped Morgage-Backed Securities issued by limited purpose trusts or other entities established by the Applicant or others as collateral for the Bonds, (ii) to use whole and partial popl Non-Agency Certificates as collateral for the Bonds, (iii) to enter into Funding Agreements as a means of securing additional collateral for the Bonds, and (iv) to sell (a) Residual Interests to sophisticated non-institutional investors and (b) Bonds to foreign investors.

2. Stripped Mortgage-Backed Securities will be similar to stripped mortgage-backed certificates issued by FNMA in that they are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on a specified underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. In additon, the Stripped Mortgage-Backed Securities to be included in Mortgage Collateral: (a) Will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of FNMA Certificates, GNMA Certificates, FHLMC Certificates or Agency Stripped Mortgage-Backed Certificates and (c) will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. Use of such Stripped Mortgage-Backed Securities as collateral for Bonds will not reduce the security afforded to Bondholders nor expose them to a level of risk significantly different from that present

in a series of Bonds directly secured by FNMA Certificates, GNMA Certificates, FHLMC Certificates or Agency Stripped Mortgage-Backed Certificates in which such Stripped Mortgage-Backed Securities represent an interest.

3. Non-Agency Certificates are mortgage pass-through certificates issued by non-governmental or non-government sponsored entities. They will be rated in one of the two highest rating categories by a least one nationally recognized statistical rating agency. All or a portion of the Non-Agency Certificates securing the Bonds may be "partial pool" Non-Agency Certificates representing less than 100% of Non-Agency Certificates issued with respect to a pool of mortgage loans and some or all of any remainder could be "whole pool" Non-Agency Certificates.

4. Each Funding Agreement will be entered into by an Issuer with a limited purpose entity (each, a "Participant") affiliated with a concern engaged in the home-building or mortgage lending business or otherwise engaged in a mortgage-related business or providing services to builders or lenders. The Participants may be in corporate, trust or general or limited partnership form and may include affiliates of the Applicant. Each of the Funding Agreements securing a series of Bonds will provide that (i) the Issuer make a loan to each Participant out of the proceeds of the sale of such series, such loan to be evidenced by one or more promissory notes (the "Notes"); (ii) each such Participant pledge Mortgage Collateral to the Issuer as security for its Notes; and (iii) each such Participant be obligated to repay its loan by causing payments on the Mortgage Collateral securing its Notes to be made directly to the Trustee for the Bondholders in amounts sufficient to pay such Participant's share of principal and interest on the Bonds, together with certain administrative expenses of the Issuer. The Issuer will in turn assign its entire right, title and interest in such Funding Agreements (other than the Issure's rights to receive fees, to indemnification and to reimbursement as provided for in the related Indenture), and in the related Notes and Mortgage Collateral to the Trustee as security for such series of Bonds.

Applicant's Legal Conclusion: The requested order is necessary and appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisions of the Act were intended to be applied; (b) the Issuers may be unable to proceed with the proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the Issuers' activities are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933, as amended, and thereafter by the Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors through private placements.

Applicant's Amended and Restated Conditions:

A. Conditions Relating to the Bonds

(1) Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act or because such series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the collateral directly securing the Bonds will be GNMA Certificates, FNMA Certificates, FHLMC Certificates, Agency Stripped Mortgage-Backed Certificates, Stripped Mortgage-Backed Securities, Non-Agency Certificates and/or Funding Agreements.

(3) If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in Conditions A.(2) and A.(4). New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments or defect in such Non-Agency Certificates being replaced. New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under the foregoing specified conditions. In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregated face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian will be an "affiliate" (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of any Issuer. The Trustee will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) The master servicer of the mortgage loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Trustee. If there is no master servicer for the mortgage loans underlying Non-Agency Certificates securing a series of Bonds, no service of those mortgage loans may be an affiliate of the Trustee. In additon, any master servicer and any servicer of a mortgage loan underlying Non-Agency Certificates will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Non-Agency Certificates shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(6) Each series of Bonds will be rated in one of the two highest bond rating categories by at least on nationally recognized statistical rating agency that is not affiliated with any Issuer. The Bonds will not be considered "redeemable securities" within the meaning of section (2)(a)(32) of the Act.

(7) So long as applicable law requires, at least annually, an independent public accountant will audit the books and records of each Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) Each class of Floating Rate Bonds will have set maximum interest rates (interest rate caps), which may vary from period to period as specified in the related prospectus or other offering document, and will be secured by Mortgage Collateral to the same extent as any other class of Bonds.

(2) At the time of the acquisition of the Mortgage Collateral by the Applicant or the deposit of the Mortgage Collateral with the issuing Trust, as the case may be, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Collateral pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of Floating Rate Bonds. Such Mortgage Collateral will be paid down as the mortgages comprising or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

(3) In addition to those mechanisms referred to in the application, a number of mechanisms exist to ensure the adequancy of the Mortgage Collateral notwithstanding subsequent potential increases in the interest rate applicable to the Floating Rate Bonds. Applicant will give the Staff of the Division of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of paragraph B. (2) and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(1) The election by an Issuer to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred by any such Issuer. If such an election is made, the Issuer that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Each Issuer that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the trust estate by one or more of the methods described in the Application.

(2) Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Issuer to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests will be sold only where the related Bonds are collaterilized by one or more of the following: GNMA Certificates, FNMA Certificates, FHLMC Certificates, Stripped Mortgage-Backed Securities, Agency Stripped Mortgage-Backed Certificates or Funding Agreements secured by one or more of the foregoing Certificates or Securities. Residual Interests will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and other types of mortgage related securities.

(2) Residual Interests will be sold only in transactions not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

(3) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest Holders of any series of Bonds at any time.

(4) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interests in its own name or for accounts as to which it exercises sole investment discretion.

(5) No Residual Interest Holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral or the agency rating the Bonds of the relevant series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any statistical rating agency rating the Bonds.

(7) If any shares of the common stock of the Applicant were to be sold and such sale results in the transfer of control (as the term "control" is defined in rule 405 under the 1933 Act) of the Applicant other than to an affiliate of The Bear Stearns Companies Inc., the relief afforded by an order granted on the Application would not apply to subsequent Bond offerings by the Applicant or any of the Trusts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9819 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

VOL 53 ISS 86 MY 4 1988 UMI

[Release No. IC-16381; 812-6992]

The Rodney Square Benchmark U.S. Treasury Fund, Inc., et al.; Application

April 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Rodney Square Benchmark U.S. Treasury Fund, The Rodney Square Fund, The Rodney Square International Securities Fund, Inc., The Rodney Square Multi-Manager Fund, The Rodney Square Tax-Exempt Fund ("Applicant" or "Funds"), and such other investment companies as may be established in the future for which Wilmington Trust Company or Rodney Square Management Corporation serves as investment adviser.

Relevent 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an order to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors or trustees meeting held within 90 days before or after the beginning of each Applicant's fiscal year.

Filing Date: The application was filed on February 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notifed if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on May 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Rodney Square North, Wilmington, Delaware 19890.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants are registered under the 1940 Act as open-end investment companies organized either as a corporation under the laws of the State of Maryland, or as business trusts under the laws of the Commonwealth of Massachusetts. Either Wilmington Trust Company or Rodney Square Management Corporation serves as investment adviser to all of the Applicants. Scudder Fund Distributors, Inc. ("SFD") serves as principal underwriter of each Fund.

2. Each Fund is governed by a board of directors or trustees ("Board"), each of which consists of five persons, two of whom are not "interested persons" as defined in the 1940 Act. The membership of each Board is identical.

3. Neither the laws of Massachusetts applicable to business trusts nor the laws of Maryland pertaining to corporations require the holding of an annual shareholders' meeting. Regularly scheduled Board meetings are currently jointly held for all Applicants in February, May, August and November each year. It is the usual practice to consider an issue affecting more than one of the Applicants at the same meeting.

4. The Funds' fiscal year commencement dates are staggered as follows: October 1 (The Rodney Square Fund and The Rodney Square Tax-Exempt Fund); November 1 (The Rodney Square Benchmark U.S. Treasury Fund and The Rodney Square International Securities Fund, Inc.); January 1 (The Rodney Square Multi-Manager Fund). Accordingly, under the provisions of section 32(a)(1) the Funds now will have to select their independent public accountant within thirty days before or after the beginning of each Funds' fiscal year.

5. The selection of independent public accountants for the Funds is based on the recommendation of the audit committee of each Board ("Audit Committee"). Each Fund's Audit Committee is composed of three Board members, Messrs. Brucker, duPont and Quindlen. The Audit Committee meets at least once a year, immediately preceding the Board meeting at which selection is to be considered, to review the performance of the independent accountants and to decide on its recommendation to the Board for the coming year. Each Applicant currently employs one of two firms as independent public accountants.

6. The application of section 32(a)(1) in light of the present fiscal years and meeting dates of the Funds would require one or two additional Board meetings for the sole purpose of selecting independent public accountants for the Funds, because often the regularly scheduled meetings would not fall within 30 days of the various Funds' fiscal year commencement dates. If meeting dates change or new funds with different fiscal years are added to the complex in the future, the requirement of section 32(a)(1) could become more onerous. Therefore, Applicants are seeking an order to permit them to select independent public accountants at a meeting of the board of directors or trustees of each Fund held within 90 days before or after the beginning of such Fund's fiscal year.

7. Each Applicant submits that it is desirable to consider the selection of its independent public accountant at the same time as the other Applicants during a regularly scheduled board meeting. Expanding the 30-day window to 90 days would permit the Applicant to select accountants once during the year at a regularly scheduled Board meeting. The Applicants submit that it is preferable to avoid the extra expense and inconvenience of holding additional Board meetings solely for the purpose of selecting independent public accountants, as would be required if the 30-day window were not expanded.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 88-9617 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24631]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 28, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 23, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice oir order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Edison Company et al. (70-7439)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, and EUA Service Corporation ("EUA Service"), P.O. Box 2333, Boston, Massachuetts (collectively, "Companies"), subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a post-effective amendment to their declaration pursuant to Sections 6 and 7 of the Act.

By prior Commission order, the Companies were authorized to issue and sell short-term notes to banks, from time to time during the period from December 28, 1987, to December 27, 1988, in aggregate amounts outstanding at any one time not to exceed $50 million for Eastern Edison, $32 million for Montaup, $12 million for Blackstone and $3 million for EUA Service (HCAR No. 24539, December 23, 1987). Montaup now proposes to increase the aggregate amount of short-term notes to banks which Montaup can have outstanding at any one time from $32 million to $40 million, under the same terms and conditions as previously approved by the Commission.

Savannah Electric and Power Company (70-7497)

Savannah Electric and Power Company (SEPCO), 600 Bay Street, East Savannah, Georgia, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration subject to sections 6(a), 6(b) and 7 of the Act.

SEPCO proposes to issue and sell from time to time, prior to April 1, 1990, short-term notes to banks up to an aggregate principal amount of $25.5 million at any one time outstanding. SEPCO may use short-term borrowings effected hereunder in connection with the financing of certain pollution control facilities.

The Southern Company (70-7515)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Southern proposes, from time to time through June 30, 1990, to issue and sell, pursuant to an exception from competitive bidding, up to 50,000 shares of its common stock, par value $5.00 per share, pursuant to the Profit Sharing Plan for Electric City Merchandise Company, Inc. ("Plan"). Electric City Merchandise Company, Inc. ("Plan"). Electric City Merchandise Company, Inc. ("Employer") is a subsidiary of Mississippi Power Company, an electric utility subsidiary of Southern. Pursuant to the Plan employees voluntarily may contribute or have contributed on their behalf up to 12% of their compensation. The Employer, in its sole and absolute discretion, also may make certain contributions to the Plan. Each Plan member must direct that his contributions be invested in one or more of three funds, including one consisting of Southern common stock. All Employer contributions will be invested in Southern common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9618 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: Pursuant to 49 CFR 1.43(a), the Secretary of Transportation has assumed direct responsibility for review of all complaints that have been or may be filed challenging the changes in the landing fee structure at Logan International Airport in Boston, Massachusetts that were adopted by the Massachusetts Port Authority on March 16, 1988.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, United States Department of Transportation, 400 Seventh Street SW. Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On March 16, 1988, the Massachusetts Port Authority ("Massport") adopted a resolution that would substantially revise the structure of landing fees at Logan International Airport in Boston, Massachusetts. Complaints have been filed with the FAA regarding Massport's revised landing fee schedule by the National Business Aircraft Association and the Aircraft Owners and Pilots Association. The complaints, among other things, argue that the fee schedule is discriminatory, in violation of the Airport and Airway Improvement Act of 1982. These complaints have been filed pursuant to Part 13 of the Federal Aviation Regulations, 14 CFR Part 13. Although the formal processing of these complaints is still in its early stages, the issues raised in the complaints have been presented previously in informal submissions to the Office of the Secretary.

The Secretary has concluded that these complaints raise important issues whose resolution may affect the national air transportation system and which involve matters of national transportation policy. Thererfore, the Secretary has assumed direct responsibility for review of all complaints challenging Massport's adoption of a revised landing fee structure at Logan Airport. Any additional complaints that may be filed in connection with this issue will also be addressed by the Secretary. This assumption of authority is consistent with the express reservation of authority set forth in 49 CFR 1.43(a).

Subject to further notice, the applicable procedures of Part 13 will be followed in these cases, except that the Secretary will remain responsible in lieu of the FAA Administrator. All documents shall continue to be filed at the locations provided in Part 13, and the official docket will continue to be maintained at the FAA.

Issued on April 29, 1988.

Jim Burnley,

Secretary, U.S. Department of Transportation.

[FR Doc. 88-9874 Filed 4-29-88; 3:58 pm]

BILLING CODE 4910-62-M

VOL 53 ISS 86 MY 4 1988 UMI

Commercial Space Transportation Advisory Committee; Advisory Committee Renewal

AGENCY: Office of the Secretary of Transporation (OST); DOT.

ACTION: Publication of advisory committee renewal.

SUMMARY: DOT announces the renewal of Commercial Space Transportation Advisory Committee (COMSTAC), an advisory committee created under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C., App. 1) to provide information, advice, and recommendations to the Secretary of Transportation on matters relating to all aspects of the commercialization of expendable launch vehicles. This renewal is effective May 1, 1988 to May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Courtney A. Stadd, Office of Commercial Space Transportation, Office of the Secretary of Transportation, Department of Transportation, Washington, DC 20590 at (202) 366–2937.

Authority: Title 49, Code of Federal Regulations, Sub. A, Part 95.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 88–9871 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–62–M

Commercial Space Transportation Advisory Committee, Announcement of Meeting

AGENCY: Office of the Secretary of Transportation (OST); DOT.

ACTION: Commercial Space Transportation Advisory Committee; open meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, May 12, 1988, from 9:00 a.m. to 5:00 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW., in Washington, DC. This will be the seventh meeting of the Committee. The meeting will address issues associated with liability and insurance, technology transfer policy, government procurement of launch services, trade issues, and the White House Space Policy. The members of the Committee are:

Lionel Alford, Corporate Senior Vice President for Aerospace, The Boeing Company;
Joel Alper, President, Space Communications Division, Communications Satellite Corporation;
James W. Barrett, President, International Technology Underwriters, Inc.;
Richard E. Brackeen, President, Commercial Titan Systems, Martin Marietta Corporation;
Leonard Cormier, President, Third Millennium, Inc. (MMI);
Donald A Derman, Management Consultant;
Jerry Grey, Publisher, *Aerospace America*, American Institute of Aeronautics and Astronautics;
David Grimes, Chairman, Transpace Carriers, Inc.;
George A. Koopman, President and Chief Executive Officer, American Rocket Company;
John Krimsky, Jr., Deputy Secretary General, United States Olympic Committee;
Linda A. Long, President, Long Consultants, Inc.;
Adolph Medica, President, Space Transportation Systems;
George Nesterczuk, President, Nesterczuk & Associates;
Thomas Pauken, Vice President and Corporate Counsel, GARVON, Inc.;
Daniel Ruskin, Vice President, Government Requirements, Lockheed Missiles;
Jerome Simonoff, Vice President, Citicorp Industrial Credit, Inc;
Donald (Deke) Slayton, President, Space Services, Inc. and former astronaut.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from DOT's Office of Commercial Space Transportation, Room 10401, 400 Seventh Street, SW., Washington, DC 20590. Contact: Ann M. Linnertz, telephone 202–366–5770.

Issued in Washington, DC, on April 28, 1988.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 88–9872 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Lewis/Greenup Counties, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lewis/Greenup Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602–0536. Phone (502) 227–7321; FTS 352–5468 or Mr. G. F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622. Phone (502) 564–7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Lewis/Greenup Counties. The proposed improvement provides for the construction of a two-lane facility on new location from Quincy in Lewis County to Greenup Dam in Greenup County, a distance of approximately 16 miles. The proposed project is needed to improve traffic service to a remote area of Kentucky, reduce travel time and distance, improve highway safety and faster economic and industrial development. The facility will be two lanes initially with sufficient right-of-way for four lanes, at a later date.

Possible alternatives under consideration include the (1) do-nothing, (2) project postponement and (3) the build alternative.

The build alignment begins near KY 1021, South of Quincy, Lewis County and proceeds in a southeasterly direction, paralleling KY 1021 for more than a mile. The alignment turns to the northeast and crosses into Greenup County. At this point, the alignment parallels existing KY 734 to a point near Letitia. The alignment turns to the east, crosses Beauty Ridge to Beechy Creek and continues to Tygarts Valley. The alignment crosses Tygarts Creek before ending at US 23 and the Greenup Dam Bridge, a distance of approximately 16 miles.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held as needed to receive project input and inform the public of project development. A formal public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

It is estimated that the draft EIS will be available for public review in August 1988.

Issued on April 22, 1988.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 88–9907 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–22–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by June 3, 1988.

Dated: April 27, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Request for Information to Make Direct Payment to Child Reaching Majority.
3. VA Form Letter 21–863.
4. This form letter is issued to gather the necessary information to enable the Veterans Administration to determine a child's continued eligibility to benefits and eligibility to receive direct payment at age of majority.
5. On occasion.
6. Individuals or households.
7. 22,600.
8. 3,767.
9. Not applicable.

[FR Doc. 88–9887 Filed 5–3–88; 8:45 am]

BILLING CODE 8320–01–M

VOL 53 ISS 86 MY 4 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Cancellation of Closed Commission Meeting, Thursday, April 28th Following Oral Argument

The Federal Communications Commission has cancelled the close meeting for discussion of oral argument in Phase I of the KHJ-TV, Los Angeles, California comparative renewal proceeding (Docket Nos. 16679-80), previously scheduled to be held on April 28, 1988 at 1919 M Street NW., Washington, DC.

Issued: April 29, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9995 Filed 5-2-88; 2:02 pm]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR, April 29, 1988, Page No. 15493.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 am., Friday, April 29, 1988.

CHANGES IN THE AGENDA: The Federal Trade Commission has cancelled its previously announced open meeting at which it was to discuss Consideration of Notice of Proposed Rulemaking Initiating Amendment Proceeding for Funeral Rule.

Emily H. Rock,

Secretary.

[FR Doc. 88-9965 Filed 5-2-88; 12:54 pm]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, May 5, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-383 (Final) (Certain Bimetallic Cylinders (from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-9927 Filed 5-2-88; 10:12 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, May 6, 1988 at 4:00 p.m.

PLACE: Room 101, 500 E Street, SW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 731-TA-390 (P) (Digital Readout Systems and Subassemblies from Japan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-9928 Filed 5-2-88; 10:12 am]

BILLING CODE 7020-02-M

federal register

Wednesday
May 4, 1988

Part II

Environmental Protection Agency

40 CFR Parts 152, 153, 156, 158, and 162
Pesticide Registration Procedures; Pesticide Data Requirements; Final Rule

40 CFR Parts 153, 156, 158, 162, and 163
Cross References; Technical Amendments; Final Rule

VOL 53 ISS 86 MY 4 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 156, 158, and 162

[OPP-30071C; FRL-3266-9b]

Pesticide Registration Procedures; Pesticide Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises procedures for the registration of pesticide products under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule sets out in Part 152 which products are considered to be pesticides, lists exemptions, and describes the procedures for registration, classification, cancellation, and suspension. This document also reorganizes and recodifies existing regulations for comprehension, readability and easy reference. In addition, this rule modifies pesticide data requirements in Part 158 to revise product chemistry requirements, to prescribe the format of data submissions and to establish criteria under which data submitters must that their submission contains information of particular interest to the Agency. This rule finalizes regulations contained in two separate proposals in the **Federal Registers** of September 28, 1984 (49 FR 37916) and October 3, 1985 (50 FR 40408).

EFFECTIVE DATE: This rule will become effective after 60 days of continuous congressional session from the date of promulgation as provided in FIFRA sec. 25(a)(4). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:
By mail:
Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and room number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION:

I. Organization of this preamble.
II. Background.
III. Definitions.
A. Acute LD-50.
B. Distribute and sell.
IV. Products required to be registered.
V. Exemptions.
A. Exemptions under FIFRA sec. 25(b).
B. Contract manufacturing.
VI. Registration Procedures.
A. Amended applications not requiring full review.
B. Separate applications.
C. Content of applications.
VII. Reregistration procedures.
VIII. Agency response to applications.
A. Procedural issues.
B. Conditional registration.
C. Denial of applications.
IX. Undeliverable mail.
X. Timeframes for use of labeling.
XI. Agency actions affecting registration.
XII. Restricted use classification.
A. Scope of classification.
B. Criteria for classification.
XIII. Label Improvement Program.
XIV. Intrastate products.
XV. Devices
XVI. Determination of active and inert ingredients.
XVII. Coloration and discoloration.
XVIII. Format of data submissions.
A. Format requirements.
B. Confidential business information.
XIX. Flagging criteria.
A. Need for flagging.
B. Scope of the flagging requirement.
C. Toxicology criteria.
D. Environmental fate and ecological effects criteria.
E. Procedural and miscellaneous.
XX. Product chemistry data requirements.
A. Reorganization of Part 158.
B. Scope and applicability.
C. Definitions.
D. Product composition information.
E. Materials used in producing the product.
F. Production of formulation process.
G. Discussion of formation of impurities.
H. Certification of limits.
I. Enforcement analytical method.
J. Conforming changes.
XXI. Consolidated Table of Contents to Part 152.
XXII. Statutory requirements.
XXIII. Regulatory requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.

I. Organization of this Preamble

This rule finalizes a number of different proposals or portions of proposals and covers a number of disparate topics. Not all portions of the final rule are addressed in the preamble, only those for which the Agency received significant comment. Except as modified by this preamble, the preambles of EPA's prior proposals are incorporated in this document by reference. This preamble is organized as follows:

I. Organization of this preamble.
II. Background.
III. Definitions.
A. Acute LD-50.
B. Distribute and sell.
IV. Products required to be registered.
V. Exemptions.
A. Exemptions under FIFRA sec. 25(b).
B. Contract manufacturing.
VI. Registration Procedures.
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A. Procedural issues.
B. Conditional registration.
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XI. Agency actions affecting registration.
XII. Restricted use classification.
A. Scope of classification.
B. Criteria for classification.
XIII. Label Improvement Program.
XIV. Intrastate products.
XV. Devices
XVI. Determination of active and inert ingredients.
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F. Production of formulation process.
G. Discussion of formation of impurities.
H. Certification of limits.
I. Enforcement analytical method.
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XXI. Consolidated Table of Contents to Part 152.
XXII. Statutory requirements.
XXIII. Regulatory requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.

II. Background

In the **Federal Register** of September 28, 1984 (49 FR 37916), the EPA issued a proposal to modify its registration procedures contained in 40 CFR Part 162. These procedures were originally promulgated in 1975 in response to amendments to FIFRA in 1972, and applied to a broad range of pesticide regulatory actions authorized or affected by that legislation, including pesticide registration and classification. In succeeding years, as additional material was added to Part 162, it grew in volume and complexity.

The 1984 proposal was the first comprehensive revision of the 1975 regulations. One main purpose of the revision was to reorganize the material to eliminate overlapping, redundant, or obsolete requirements, and to make them clearer and more useful to applicants and registrants. A second objective was to update the requirements to conform to legislative changes since 1975, and to include policy and procedural changes that had evolved in that period. The Agency believes that the final rule responds to these needs, and will benefit the Agency, pesticide producers, and the public by clearly setting out policies and procedures.

In the **Federal Register** of October 3, 1985 (50 FR 40406), the Agency issued a proposal to establish criteria for the "flagging" by registrants or applicants of pesticide data they submit to the Agency, to indicate that the data contain significant information concerning potential adverse effects. The proposal would modify existing Part 158, and also parts of Part 152 as proposed in 1984. Comments on that proposal have been considered and are addressed in this document. Parts 158 and 152 as promulgated today contain the revisions proposed on October 3, 1985.

The regulations adopted here are an integral part of a larger set of regulations addressing pesticide regulatory activities, all of which have been organized to be comprehensive and complementary. Individual elements of the pesticide regulatory scheme have been segregated and are presented in separate Parts for easy understanding:

1. Part 152 sets out Federal pesticide registration procedures in their entirety. Procedures for State registration of pesticides under FIFRA sec. 24(c) have been retained as Part 162, Subpart D.

2. Part 153 contains general policies pertaining to registration or registered products, but distinct from the registration process itself. Today's final rule promulgates Subparts G, H and M of Part 153, concerning (a) declaration of certain ingredients as inert; (b) coloration/discoloration of pesticide products; and (c) devices. Additional Subparts A and D, concerning, respectively, pesticide advertising and reporting of adverse effects data have been proposed, but have not been made final.

3. Part 154, promulgated on November 27, 1985 (50 FR 48015), describes the Agency's Special Review process in its entirety.

4. Part 155, promulgated the same day (50 FR 49001), discusses the public participation procedures associated with the development and issuance of Registration Standards.

5. Part 156, which was proposed on September 28, 1984, revises labeling requirements for pesticides and devices, currently located in § 162.10. Today's rule document redesignates § 162.10 as § 156.10, retaining current requirements until the revised rules are promulgated.

6. Part 157, promulgated on June 11, 1986 (51 FR 21288), contains requirements for the packaging of pesticide products, currently limited to child-resistant packaging.

7. Part 158, promulgated on October 24, 1984 (49 FR 42881), contains data requirements applicable to pesticide products.

Each of these addresses a single regulatory topic, process or function, and can be used independently of the others.

In response to its 1984 proposal, the Agency received 30 comments. Commenters included individual pesticide producers, trade associations, user groups, an environmental group, and a Federal agency. The significant comments are addressed in Units III through XVIII and XX of this preamble. In response to its 1985 proposal, the Agency received 10 comments. These are addressed in Unit XIX of this preamble.

As part of its 1984 document, the Agency proposed to establish Part 157, containing regulations governing child-resistant packaging requirements for pesticides. Readers should note that the Agency has separately promulgated these regulations in final form, in the **Federal Register** of June 11, 1986 (51 FR 21270). Comments pertaining to child-resistant packaging of pesticides have been addressed in that final rule, and are not repeated here.

III. Definitions

A. Acute LD-50

The Agency proposed definitions for "acute oral LD_{50}," "acute dermal LD_{50}," and "acute inhalation LC_{50}," which defined these values as "statistically derived estimates" of the single dose (or concentration) that would cause mortality to 50 percent of the test species. Several commenters stated that the definitions are inconsistent with the Pesticide Assessment Guidelines, in that a statistically derived estimate requires a study using three dosage levels, while the Pesticide Assessment Guidelines permit the use of a single dosage "limit test" if it shows no mortality. They believe that the proposed definition precludes the use of the limits test.

EPA disagrees. The definitions are exactly the same as those contained in the Pesticide Assessment Guidelines themselves and are correct definitions for the terms. The use of these definitions in the Guidelines has not raised similar concerns among data developers, and the definitions have co-existed with the limits tests since the Guidelines were issued. Thus the definitions are not incompatible with the Pesticide Guidelines or the limits test.

EPA strongly supports the use of the limits test in defining acute toxicity limits, because its single dosage regimen can significantly reduce the number of test animals used. EPA also attempts to evaluate pesticides using data from structurally similar chemicals when appropriate. If classic acute toxicity studies are nonetheless required, the Agency encourages maximum utilization of the testing to evaluate multiple toxic endpoints rather than just simple lethality. The LD_{50}s and LC_{50}s derived from standard acute toxicity testing are used not only as indicators of acute toxicity (for purposes of labeling the product), but also serve as rangefinding levels for use in subchronic studies and chronic studies that follow.

B. Distribute and Sell

Seven commenters expressed concern at the definition of "distribute and sell" in § 152.3(j). In addition to the statutory language concerning distribution and sale, the definition deemed distribution to have occurred either when a finished product was both packaged and labeled in the manner in which it would be shipped or when it was stored in an area where such finished products are stored. The Agency's intent was to incorporate the current definition of "released for shipment" as part of the definition of "distribute and sell." The term "released for shipment" is used in FIFRA sec. 9 to define when a product may be inspected for compliance purposes.

According to industry commenters, the Agency's proposed inclusion of the criteria for "released for shipment" would create problems for the industry if it were used to determine whether a product has been introduced into commerce and thus can be found in violation of FIFRA. All commenters expressed concern that products which a registrant has not decided to "release for shipment" may meet the definition of "distribute or sell" According to commenters, the term "release for shipment" does not describe an identifiable and uniformly enforceable point in the distribution chain of a product. The commenters said that whether an individual product has been released for shipment depends on the policies of the producer involved, i.e., that a product has been released for shipment when the producer intends that it be shipped. Unless the producer admits that the product has been released for shipment, they suggest, the product cannot be inspected for compliance purposes, and therefore cannot be found in violation of FIFRA.

Moreover, commenters claim, the proposed definition runs counter to production and storage practices commonly used in the industry. Finished products that have been released for shipment are commonly stored with other products which are "on hold" for one reason or another. They state that a finished product may be in both "released for shipment" and not "released for shipment" status, and claim that the proposed definition does not recognize this distinction. Commenters feared that, if the definition were adopted, products that are on hold might frequently be deemed to have been distributed and sold.

EPA disagrees with the statements of commenters that there can be, or should be, a distinction made between products that have been released for shipment and those that have been deemed to be distributed or sold. A product that has been released for shipment by its producer is considered to have been distributed or sold as defined in the Act (which includes holding for sale). A producer cannot reasonably assert that two batches of registered product, identical in packaging and labeling and located in the same area of a warehouse or producing establishment, are different merely because one allegedly has been released for shipment and another has not. The Agency, in inspecting for compliance, will assume that a product that is packaged, labeled, and stored in an area where finished products are normally stored has been released for shipment.

The Agency would be severely hampered in its ability to enforce compliance if products released for shipment were not considered to have been distributed and sold, since violations of the Act depend on "distribution and sale" and not upon "release for shipment." Carried to its practical conclusion, if a product that had been released for shipment, and therefore could be inspected under FIFRA sec. 9, were to be found in violation, the Agency could not take enforcement action until the product had

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actually been distributed and sold. If inspection of products released for shipment could not lead directly to enforcement action, but must await some further point at which it had been "distributed and sold," the Agency's enforcement efforts would be thwarted.

Consequently, in the final rule, the Agency has included the term "released for shipment" in the definition of "distribute and sell."

The Agency also considered defining the term "channels of trade," which has been used in past Agency documents (without definition) as an informal synonym for the litany of terms in FIFRA sec. 12 comprising "distribute and sell." EPA considers the two terms synonymous: a product that is being distributed and sold by any person is in channels of trade, and vice versa. It is therefore unnecessary to define "channels of trade" separately. Moreover, the Agency does not expect to use the term in future regulatory documents, but will rather specify the categories of persons who are prohibited from distributing or selling a product. Thus, the registrant may be prohibited from distributing or selling after a certain date, while other persons (e.g., retailers) may be prohibited from distributing or selling after a second date.

IV. Products Required To Be Registered

The Agency proposed to clarify its interpretation of what constitutes a pesticide, for purposes of compliance with the registration requirement of FIFRA sec. 3. Section 152.15 proposed to add new language stating that a substance may be intended for a pesticidal purpose (and therefore required to be registered) if any of a number of tests are met. The first of these is whether advertising or product labeling claims, implicitly or explicitly, that the product is a pesticide. This is the principal test contained in current regulations. No comments were received on this test, and it has been adopted as proposed.

EPA also proposed to treat as a pesticide any substance which has no significant commercially valuable use other than a pesticidal one. One commenter objected that the term "significant commercially valuable use" is judgmental. EPA acknowledges that a certain degree of judgment must be exercised in deciding whether a substance meets this definition. On the other hand, the Agency believes that a large percentage, if not the majority, of pesticide active ingredients are clearly identifiable either as pesticides or as multi-purpose substances, and that the Agency will rarely be compelled to use this criterion alone to judge whether a substance is a pesticide. The Agency has in the past focused its enforcement efforts on individual product claims, and EPA intends to continue this focus.

The Agency further proposed, as a third criterion, that if a person knows, or should reasonably know, that he is selling a product for a pesticidal purpose (even though the product itself bears no pesticidal claims), the product should be a pesticide subject to the registration requirement. This criterion would apply primarily to products which are currently not registered as pesticides (for example, multi-purpose substances having pesticide uses, but for which a particular product bears no pesticidal claims.)

Nine persons commented upon this provision. Several expressed concern that the language was imputing knowledge of pesticidal use and responsibility to manufacturers who have no control over their distributors and customers. This burden, they state, is unreasonable. Other commenters, while not objecting to the criterion per se, requested that the Agency clarify its intent, and sought reassurance that the criterion would be used for enforcement against the person making the claim and not against the producer. Some suggested that simply deleting the word "reasonably" from the criterion would resolve the problem satisfactorily. In general, commenters believed that definition was too broad and inclusive.

In response, the Agency has clarified the definition by replacing the "reasonable" knowledge terminology with language concerning "actual or constructive" knowledge of pesticidal use. Actual or constructive knowledge will be gauged as objectively as possible. The Agency issued in the **Federal Register** of March 25, 1987 (52 FR 9504) a proposal concerning establishment registration, which uses the same terminology to describe when a pesticide producer must register his producing establishment. In that document, the Agency described the criteria that it would consider in determining actual or constructive knowledge. These included promotional claims and advertising, common knowledge of the general business of the person to whom the substance is sold, and the commercial distance from a producer to a formulator. The same principles will guide the Agency in applying the "actual or constructive knowledge" test of pesticide for purposes of registration.

The Agency believes the fears of the commenters concerning "upstream penalties" are unfounded. The Agency does not intend to impose penalties upon the producer of a non-pesticide product, if, without his knowledge, a pesticidal claim is made for the product by someone else. EPA agrees that it would be unreasonable to require registration of a product whose primary uses are non-pesticidal merely because a retailer sold the product as a pesticide. On the other hand, EPA believes that a producer who sells a product with full knowledge of its intended pesticidal use should be held responsible for its registration. This situation might apply, for example, when a producer sells what would ordinarily be considered a basic chemical to a user whose only purpose in acquiring such a chemical would be to use it as a pesticide. If the seller of the product is aware of the nature of his customer's business, EPA may consider him to be selling a product for a pesticidal purpose. EPA acknowledges that application of this criterion for enforcement purposes will require subjective judgment.

The second and third criteria both are intended to address longstanding enforcement problems in which neither labeling nor advertising clearly states or implies that the product is a pesticide, but the product is sold under circumstances in which it is clear that the product is intended for a pesticidal purpose. For example, if the ingredients of a well-known wood preservative mixture are offered for sale (without pesticidal claims) in a trade magazine aimed primarily at wood processors and there is no other apparent reason for wood processors to be interested in the ingredients, it would not be unreasonable to regard the products as pesticides.

V. Exemptions

A. Exemptions under FIFRA Sec. 25(b)

Sections 152.20 and 152.25 describe exemptions based on FIFRA sec. 25(b) for, respectively, products adequately regulated by another Federal agency and products of a character not requiring FIFRA regulation.

One commenter suggested that the exemption for pheromones in § 152.25(a) be expanded to include pheromones other than those produced by an arthropod. Paragraph (a)(1) of that section defines a pheromone as a compound produced by arthropods. The Agency declines to adopt the commenter's suggestion. The Agency is not aware that pheromones produced by other animals are registered with the Agency. EPA was able to exempt arthropod pheromones based on information it possessed in its files on such products. Although the Agency may choose to exempt such pheromones in the future (and would probably adopt the commenter's suggestion concerning revision of the definition if it does so), it does not choose to do so prospectively in the absence of information concerning their characteristics and effects.

Two commenters requested that an additional exemption be added to § 152.25 for preservatives used in "non-FDA regulated products," when used at levels consistent with Food and Drug clearances for drugs and cosmetics. The commenters stated that exemption would make available a greater variety of preservatives for use in household products.

It is not clear to the Agency what exemption is being proposed or for what preservatives. It appears that the commenters' concern is that the availability of preservatives for use in consumer products is limited because such preservatives are required to be registered as pesticides. The implication is that producers of some preservatives suitable for use in these products are unwilling to undertake the registration process for what is presumably a limited market. The commenter further suggests that if FDA-regulated preservatives were not required to be regulated under FIFRA, producers of preservative products would make more of them available.

Although the commenters' suggestion may have merit in certain situations, it is not specific enough for the Agency to act on in this final rule. The commenters provided proposed language for an exemption, but it was worded so broadly and ambiguously that EPA cannot properly evaluate it. No specific preservatives were mentioned, only those "used by the cosmetic and drug industry." Moreover, no levels or limits were indicated or even referred to; the proposed language simply stated "in amounts consistent with those 'used in FDA regulated products.' " EPA would be willing to entertain proposals for exemption of specific preservatives at specific levels, but is not willing to grant the blanket exemption suggested by the commenters.

In § 152.20(a)(3) of the final rule, the Agency has made a minor technical change. That section provides an exemption from FIFRA requirements for certain types of living organisms, except as provided. The list of exceptions (organisms that are not exempt) has been modified to use current terminology. The Agency is currently reviewing this exemption and its implications in light of recent advances in biotechnology. If changes in the exemption or new policies evolve from the Agency's review, this section may be modified after notice and comment.

B. Contract Manufacturing

The Agency proposed two changes affecting current contract manufacturing provisions. First, the Agency proposed to revise the definition of "operated by the same producer" in § 152.3(q). This definition is the key to an exemption from registration provided by the statute in FIFRA sec. 3(b). The Agency proposed to limit this definition to its clear statutory meaning, which would exclude from the definition contractual arrangements between different companies. The modified definition would include only facilities owned or leased by a single company.

At the same time, the Agency proposed to continue an exemption for certain contract manufacturing by specifically including contractual agreements in § 152.30, which exempts certain types of transfers from registration. EPA proposed to exempt from registration certain transfers of pesticide for the purpose of processing, packaging, or labeling, provided, among other things, that the transferor was the owner of the transferred pesticide and the registrant of the final product distributed or sold.

Thirteen commenters commented upon the two proposed sections. Although some addressed the definitional change and others the exemption, all expressed similar concerns. Commenters stated that, when considered together, the definitional change and the revised exemption provision would preclude the contract manufacturing operations that are extensively relied upon by producers. Commenters stated that many registrants contract out their entire production operation, including production, packaging and labeling; they may also contract out certain distribution by means of a supplemental registration (see § 152.132). The reasons cited for such extensive contracting operations are varied. For small companies not having a production facility, contracting may be the only way to distribute and sell a pesticide; for large companies, temporary contractual arrangements afford flexibility in producing a product while the registrant determines whether the marketing of a product warrants construction of a dedicated production facility.

These practices have been possible in the past, despite the language of the statute and regulations, because of an exercise of prosecutorial discretion by EPA. The Agency announced that it would not regard as an actionable violation of FIFRA the transfer of an unregistered pesticide pursuant to a contract, providing that the transferor would supply the pesticide in question to no one in the United States except the transferee contracting party. However, for reasons described in this unit of the preamble, EPA has determined that it will not continue this enforcement policy.

A common arrangement has been for a contractor who is formulating the product for the registrant to obtain quantities of an unregistered technical grade active ingredient from a producer other than the registrant. The registrant of the formulated product is not the owner of the transferred technical material, as required by proposed § 152.30, nor is the formulating process carried out in a facility "operated by the same producer" within the meaning of the proposed definition. Consequently, under the proposed rule, the transfer of that technical chemical to the contract formulator would be in violation of the Act unless the technical chemical is a registered pesticide product.

In general, commenters asserted that the proposed changes would have the effect of eliminating the current contract manufacturing system, and would be burdensome to formulators, who rely on contract manufacturing. They believed EPA should reinstate the definition to provide that contractual relationships be deemed to be "operated by the same producer" and that § 152.30 should be modified to accommodate industry contracting practices. In short, they objected to the proposed revision and urged that the current provisions be restored. The Agency has considered the comments, but has decided to retain the definition change and the exemption provided by § 152.30 (the language of that section has been modified, however, as explained in this preamble unit).

The commenters are correct in their analysis of the effect of the proposed change; as stated in the preamble to the proposal, "[t]he practical effect would be that a product would have to be registered prior to any transfer representing a sale or change in ownership." It was the Agency's intention to require that pesticides be registered before they are sold or transferred from one person to another, even for further formulation under contract. The final rule will not preclude contract manufacturing, but will limit the use of unregistered pesticides in contract manufacturing.

The Agency has cogent reasons for its decision to require the registration of all technical products. First, the Agency

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does not believe that Congress intended the exemption from registration in FIFRA sec. 3(b) to be so broadly defined. A straightforward reading of FIFRA sec. 3(b) suggests that the exemption it provides should be limited as the Agency is doing.

Second, EPA is concerned about the lack of regulation of the large volume of unregistered pesticides that it believes are being transferred. The previous exemption permitted an unquantified volume of unregulated distribution and sale of pesticides. Pesticide production reports submitted under FIFRA sec. 7 include numerous pesticides having a large production of end use products with no corresponding reported production of a technical grade active ingredient. EPA believes that the policy which allowed producers of technical grade active ingredient to distribute and sell product under the umbrella of a "sole transferee" contract accounts for much of this discrepancy.

The sale and distribution of unregistered products is contrary to the Agency's mandate to protect human health and the environment, leaves large gaps in the Agency's knowledge about and control of such pesticides, creates competitive inequities among similar products in the marketplace, and undermines the efforts of producers of registered products to comply with FIFRA.

FIFRA provides a comprehensive regulatory scheme covering all pesticide products. Registration is the principal means of ensuring that a product is brought under the FIFRA regulatory scheme. The registrant must demonstrate to the Agency's satisfaction that the product meets the statutory criteria for registration with respect to composition, labeling, and lack of unreasonable adverse effects. The registrant must take responsibility for quality control of the product's composition and for adequate labeling describing the product, its hazards and uses. He must submit or cite data concerning the pesticide's impact on man and the environment, and must assume obligations required by section 3(c)(1)(D) with respect to data compensation. Once registered, a registrant is required under FIFRA sec. 6(a)(2) to report to EPA any factual information concerning the unreasonable adverse effects of the pesticide on the environment. A person selling an unregistered product has not complied, and is under no obligation to comply, with any of these requirements.

The producer of a pesticidal active ingredient is more likely to become aware of certain types of sec. 6(a)(2) information than a formulator who buys the active ingredient. EPA is increasingly concerned about the presence of potentially toxic impurities in pesticides, and is taking steps to reduce the levels of such impurities. For instance, EPA has recently required the reduction of DDT impurity levels in products containing technical dicofol. EPA can more effectively require and monitor compliance with such a directive if the active ingredient is registered before being distributed and sold; it would have great difficulty in ascertaining compliance for similar products that are not registered by the ingredient's producer. In a situation such as this, where the Agency has concerns about the composition of a technical grade active ingredient, the Agency cannot address its concerns by dealing only with formulators, who may not be aware of the impurities of the technical they purchase. Distribution and sale of unregistered products thus seriously impairs the Agency's ability to promote the development of safer pesticides.

By requiring registration of all products, EPA also gains the efficiency of dealing with fewer companies in matters concerning safety of active ingredients or their impurities. Rather than having to concern itself with a large number of formulators who buy and use unregistered technical pesticides, the Agency can focus on the producers of the technicals, who are both more knowledgeable about the chemicals and significantly fewer in number. Registration of these products also will reduce the potential for a registrant to abuse the data compensation scheme under FIFRA sec. 3(c)(1)(D) and 3(c)(2)(D) by stating in its registration application that it will purchase a registered product, and then instead using an unregistered product as the source of the active ingredient.

Commenters who feared that limitation of the contract manufacturing exemption from registration would increase costs or be burdensome apparently base their conclusion on the data compensation implications of requiring registration of technical products. Ideally, of course, data costs to the registrant either would be included in the purchase of a registered product or would arise under FIFRA sec. 3(c)(1)(D) because of the use of an unregistered product. However, until all products are required to be registered or reregistered, the real world situation may be that use of an unregistered product is less costly.

If all products must first be registered, the burden of data generation and compensation will tend to shift from formulators to technical producers. In turn, this will foster a more competitive market in which FIFRA regulatory requirements are not a significant influence on or determinant of cost differential.

Accordingly, in the final rule, § 152.15 requires the registration of all pesticides, including products intended for formulating use. Section 152.30(a) contains the statutory exemption provided by FIFRA sec. 3(b) for products moving between establishments operated by the same producer.

In addition, a specific exemption is needed to address contract manufacturing practices (using registered products) between facilities operated by different producers. The Agency does not intend to interfere with or curtail in any way such contract manufacturing practices relied upon by registrants. Many products are produced by a series of contract operations, involving various steps in formulation, packaging, and labeling. Since intermediate products (varying in composition, packaging, or labeling from the technical or final product that is registered) must be shipped between facilities not operated by the same producer to accomplish this, a specific exemption from the registration requirement is needed. Section 152.30(b) therefore contains an exemption allowing transfer of what technically are unregistered pesticides for contract manufacture and packaging by establishments operated by different producers. As long as the products used are registered, the final product is registered, and the transferred intermediate products are properly labeled, the Agency is confident that adequate environmental and regulatory safeguards are in place.

The Agency has already taken steps to begin the process of regulating more closely pesticides used in contract manufacturing. EPA issued a notice [PR Notice 87–7, June 3, 1987] revoking the previously-mentioned enforcement policy statement and requiring that applications for currently unregistered technical pesticides be submitted by September 30, 1987. As of the effective date of this rule, the transfer of unregistered pesticides (except as provided by § 152.30) will be a violation of FIFRA sec. 12(a)(1)(A).

VI. Registration Procedures

A. Amended Applications Not Requiring Full Review

The Agency proposed in § 152.42 to define categories of amendments to registration that did not require review or approval prior to implementation. Section 152.42(b)(1) listed amendments

to registration that could be accomplished simply by notification to the Agency, and implemented immediately after notice was given. Section 152.42(b)(2) listed amendments that could be made without notice to the Agency.

The Agency proposed that certain relatively routine amendments to registration be subject only to a notification requirement, and that others of even lesser significance be permitted without notification to the Agency. Of the 10 commenters on this proposal, 7 supported the concept that not all amendments require the same level of scrutiny by the Agency, and that some can be discretionary with the registrant.

Several commenters proposed that additional types of labeling amendments would be suitable for inclusion in the "no approval" category in § 152.42(b)(1)(ii) or the "no notification" category in § 152.42(b)(2).

Two commenters suggested that changes in label format consistent with Part 156 should require no notification, noting that the language is already approved by EPA. EPA agrees that the Agency need not review each format change that is consistent with Part 156, provided that the language of the label does not change. Accordingly, paragraph (b)(2) has been revised to specify that changes in label format for consistency may be made at the discretion of the registrant.

One of those commenters stated that advertising claims are often placed on labels. Although EPA does not prohibit advertising on pesticide labels, it cautions that advertising must not differ or detract from the approved label, and that it may not obliterate or obscure the required label language.

Two other commenters suggested that paragraph (b)(2) be revised to require only notification when a company wishes to market an already-registered product as two products, each bearing a subset of approved use. Moreover, the commenters suggested that label claims be permitted to be transferred between registrations of the same formulation. Although the commenters appear to view these two situations as identical, EPA does not and wishes to clarify its policy.

The first situation is already permitted, in EPA's opinion, and will continue to be acceptable under § 152.130(b). A company having a registered product is permitted (both by current policy and by this final rule) to market the product in a variety of ways. The product may be marketed under different brand names, each product bearing the full set of uses approved by the Agency. Or it may be marketed under the same brand name, but bearing different subsets of approved uses (for example, to distinguish primary uses for different regions of the country). Or each product may bear both a different brand name and a different subset of approved uses. In each case, the product is a single formulation having a single registration number, and no other changes in labeling are permitted (in fact, if "splitting" the uses would result in changes in precautionary labeling, the "split" is not permitted).

The second situation is somewhat different. It appears that the commenters espouse the transfer of uses (without notification to the Agency) between two separately registered products having the same formulation. This is not acceptable to the Agency. Agency records are compiled and organized based upon individual registrations. A single registration covers a specified approved set of uses, regardless of whether there are other registered products with the same composition but different approved uses. If the Agency were to permit approved uses from one registered product to be transferred to another registered product without approval, accurate recordkeeping and effective enforcement would be virtually impossible.

Three commenters noted an inconsistency between the language in § 152.46(b)(1)(v) that required notification of a change in the source of "beginning materials" (defined to include inert ingredients) and the language in § 152.46(b)(2)(i) that permitted change in the source of inert ingredients without notification to the Agency. In response, the former paragraph has been revised to exclude inert ingredients.

Two commenters noted that Agency's proposed deletion of the supplemental distributor regulations as superfluous, and, while agreeing with the Agency, suggested that the requirements be retained for completeness. The Agency agrees, and in the final rule has included supplemental distributor requirements in Subpart G (Rights and Obligations of Registrants). This location has been chosen because, strictly speaking, a distributor arrangement is not an amendment to registration, but the exercise of a right accorded to a registrant to facilitate distribution and marketing of a pesticide product.

B. Separate Applications

In the final rule, EPA has revised § 152.45 (now § 152.43) to describe more explicitly what variations in product composition require registration of a new product. This has been necessitated by comments received on the proposal, as well as the Agency's ongoing project to revise and call in the statements of formula for all products.

In the final rule, the Agency has stated that a composition variation would trigger a requirement for separate registration if:

1. The variation would result in the active ingredient's nominal concentration falling outside the certified limits for the basic product; or

2. The variation would require different dosage rates, use directions or precautionary statements on the labeling. Whenever the labeling of alternative formulations would differ because of the change in composition of the product, a separate product must be registered. This is an overriding consideration that outweighs any other permitted variations, and precludes excessive variation in the composition of any product.

For practical purposes, this means that registrants may substitute inert ingredients in a product to the extent that the total percentage of inert ingredients does not change. EPA believes that variation of inert ingredients will rarely result in a change in the formulation type of the product, but in § 152.43 EPA has reserved the right to reject an alternate formulation that is significantly different from those already registered under a single registration number. If the alternate formulation would result in a change in product type, the Agency is likely to require separate registration. The Agency anticipates that a requirement for separate registration (in lieu of an alternate formulation) will rarely be necessary.

Substitution, addition, or deletion of an active ingredient would affect the label ingredients statement and would require a separate registration. Under this policy, the registrant could vary the source of his active ingredient(s); however, changing the source of an active ingredient normally will require the submission of information concerning the new source, particularly if the new source is an unregistered product.

In all cases, a registrant seeking an alternate formulation must amend his registration by submitting an application for amendment, and an additional statement of formula for approval. EPA thus will be able to monitor alternate formulations.

C. Content of Applications

Eight commenters addressed the Agency's proposed requirements for applications for registration. Since few of the requirements were new, the

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comments were limited to three particular items that were required for the first time:

1. The releasable summary of data required by § 152.50(c). Five commenters questioned the requirement for a releasable summary of the application. Two commenters remarked that the § 152.119 referenced in the proposal does not exist. This section was promulgated as part of the data compensation regulations (Subpart E of Part 152) on August 1, 1984 (49 FR 30903), and has been incorporated into Subpart F in this final rule. Two commenters stated that the Agency's rationale for this requirement was not clear, and requested additional justification for the requirement; one asserted that the requirement was significant enough to warrant reproposal. Neither commenter, however, expressed any specific objection to the requirement. Two other commenters objected to the proposed requirement that an application set forth "reasonable grounds" for approval, stating that submission of the application constituted reasonable grounds, and that an additional statement was therefore unnecessary.

The Agency agrees with this last comment, and has revised § 152.50(c) to delete the language. Section 152.50(c) now requires the submission of a list of studies submitted, with a brief summary of the results. The list required by this section will suffice as the transmittal document required by § 158.32. Moreover, because it will be a releasable summary, the Agency will be able to respond rapidly to requests for information after registration. A summary of data may obviate the need for more extensive and time-consuming clearance of an entire study and, EPA believes, may better serve the needs of the non-technical public. The Agency believes that additional justification is not necessary, that additional comment would not be useful or significant, and that reproposal would be burdensome. Accordingly, the provision, as modified, is adopted in this final rule.

2. The Good Laboratory Practices certification. Several commenters noted that the Good Laboratory Practices (GLP) requirements mentioned in § 152.50(g)(2) currently apply only to toxicological studies. The commenters are correct, and the provision has been revised to insert the words "if applicable." EPA notes that it is considering the adoption of GLP requirements for other types of studies (such as ecological effects studies), and this language will be satisfactory even if Part 160 is revised to expand the coverage of GLPs.

3. The requirement that applicants submit adverse effects data in the same manner that registrants are required by FIFRA sec. 6(a)(2) to submit such information. The Agency has considered comments in response to both the September 26, 1984, proposal, and the October 3, 1985, proposal concerning "flagging" of data.

The Agency received seven comments on its September 26 proposal. Several pointed out that FIFRA sec. 6(a)(2) applies only to registered products, and suggested that the section be deleted. Others suggested that the policy would be more appropriately dealt with in the Agency's policy statement on FIFRA sec. 6(a)(2), published in the **Federal Register** of September 20, 1985 (50 FR 38115). Two commenters suggested that the requirement be made consistent with the FIFRA 6(a)(2) policy, which requires the submission only of new information and only if not available in published literature sources.

In response to the comments suggesting that the requirement be deleted because FIFRA sec. 6(a)(2) applies only to registered products, EPA notes that the authority for this requirement is not section 6(a)(2), but section 3(c)(1), which authorizes the Agency to prescribe the data that must be submitted in support of applications for registration. The Agency has chosen to apply the same requirement to applicants that is imposed on registrants. Consequently, the final rule retains the requirement, now located as § 152.50(g)(3), addressing registration data requirements. Moreover, that paragraph now references Part 153, Subpart D, as the basis for identifying which information must be submitted. This will eliminate concerns expressed by commenters about inconsistency.

VII. Registration Procedures

In Subpart D of the proposal, the Agency prescribed the procedures it would use in processing applications for reregistration in response to issuance of a registration standard. No comments were received on these procedures; however, one commenter addressed two legal aspects of the registration standards process (that precedes the procedures proposed in Subpart D). Although not pertinent to the proposed procedures, the Agency would like to make clear its position on these points.

The commenter, an environmental group, asserted that registration standards, which the Agency develops as position documents supporting its regulatory actions under FIFRA sec. 3(g) and 6, should be considered regulations, subject to the notice and comment procedures of the Administrative Procedure Act. The commenter noted that many registration standards are given procedural treatment similar to that of regulations, and therefore should be afforded legal status as regulations. EPA disagrees.

Registration standards are support documents underlying the regulatory decisions taken by the Agency. As a licensing statute, FIFRA requires that the Agency take regulatory action on an individual product basis. Although the Agency may issue regulations governing all or a group of pesticide products, regulatory decisions generally are made legally binding on individual products through cancellation actions. EPA thus far has chose not to use the rulemaking process in carrying out the reregistration of individual products.

Second, the commenter asserted that Registration Standards are subject to the Environment Impact Statement (EIS) requirements of the National Environmental Policy Act (NEPA), since they are "major Federal actions."

Regulatory actions taken by EPA have been held by the courts not to be subject to the requirements of an EIS under NEPA. Consideration of environmental concerns is intrinsic to the decisionmaking process at EPA. FIFRA's substantive and procedural provisions for the registration of pesticides, including their reregistration, are the functional equivalent of an EIS. Under the functional equivalency doctrine, EPA is not required to prepare a specific document addressing environmental issues. The process used by the Agency in developing registration standards itself provides for the analyses which would be required in an EIS. Moreover, the courts have found that in establishing the licensing process under FIFRA, Congress recognized that compliance with NEPA's procedural requirements would not be appropriate. The Agency therefore declines to accept the comment.

VIII. Agency Response to Application

Proposed Subpart F described the procedures and criteria that the Agency would use in reviewing and approving applications for registration and amended registration. This subpart largely described the Agency's current procedures and practices and did not propose a significant departure from those procedures. Comments were received primarily from industry sources and generally reflected their knowledge of these procedures and criteria. Few commenters expressed serious concerns with the Agency proposal or suggested

that significant modifications were necessary. The majority of comments suggested clarifications.

A. Procedural Issues

One commenter noted that the Agency proposed in § 152.102 to issue for publication in the **Federal Register** a notice of receipt of an application for registration of a new chemical or significant new use pattern, but questioned why no notice of approval was provided for. In response, EPA has revised the section to provide for publication of a notice of final action. The commenter also suggested that the notice of receipt should include the Agency's assessment of the application. EPA does not agree with this comment. The notice of receipt is required by FIFRA sec. 3(c)(4) to be published promptly after the application is received, and cannot await the Agency's evaluation of the application. Moreover, the purpose of the notice is to obtain comment from the public and other Federal agencies, rather than to provide the Agency's conclusions regarding the application.

Two clarifications were requested with respect to the Agency's proposed treatment of incomplete applications. The Agency stated that it would not begin or continue review of incomplete applications, defined generally by § 152.104. A number of commenters argued that minor deficiencies should not hold up review of applications.

With respect to applications for so-called "me-too" products, which are substantially similar to existing products, The Agency intends to follow its current practices. The Product Manager will screen incoming applications for completeness; he may choose to telephone or write applicants to correct minor deficiencies, while continuing the review of the application, or he may choose to reject the application because it cannot be processed without correction. With such applications, the Agency normally will retain the application awaiting response from the applicant. After 75 days, however, if no response is forthcoming from the applicant, the Agency will treat the application as if it had been withdrawn. The Agency cannot afford to store pending applications indefinitely awaiting response by applicants. Administrative withdrawal and a requirement for a new application permit the Agency to clear its files of applications after a reasonable period of time for response.

On the other hand, when an application is submitted for a new chemical or the first food use of a pesticide, involving substantial amounts of data and the expenditure of greater resources and time for review, the Agency will more rigorously screen the application. The Agency has issued a notice to registrants (PR Notice 86-4, April 15, 1986), describing its screening procedures for such applications. These procedures provide for the rejection of incomplete applications without extensive review, and for the return of applications to the applicant. The Agency will not begin substantive review of such applications until they are complete and correct. In these cases, the 75-day response time will not apply, since the application will be returned to the applicant, who may reapply at his convenience.

Several commenters asked for clarification of the 75-day response time. Two suggested that it not start until receipt by the applicant of a certified letter; another believed that only "working days" should be counted.

The Agency cannot adopt the first commenter's suggestion, since Agency letters are not routinely sent by certified mail. (The Agency, as a rule of thumb, does allow a 15-day mail lag time.) Because the 75-day timeframe is not calculated by the Agency by means of certified mail receipts, the Agency declines to commit itself to the more rigorously defined "working days" suggested by the second commenter. To do so would lengthen the response time by one-third (75 working days is approximately 105 calendar days). EPA believes that 75 days is sufficient time for a registrant either to correct deficiencies or to tell EPA when they will be corrected.

Two commenters expressed concern with the Agency's policy of reviewing and approving only draft labeling rather than final printed labeling (§ 152.108). Both were concerned about the ability of the States, which enforce FIFRA requirements under cooperative agreements, to discern compliance with the Act. These same concerns were raised and have been thoroughly discussed in previous documents, including the proposed and final regulations establishing the policy, issued in the **Federal Register** of September 15, 1982 (47 FR 40659) and that of January 4, 1984 (49 FR 380), respectively. The Agency is not aware of serious problems that have arisen with the policy in the 3 years it has been in effect.

One of the commenters also questioned whether, given the labeling changes that are permitted by the Agency without notification by § 152.42, the States might not encounter labels in channels of trade that are significantly different from those approved by the Agency. The changes permitted by § 152.42 are those that the Agency considers minor, unlikely either to involve compliance questions by States or to be of serious consequence even if not correctly accomplished. Furthermore, the permitted changes are insignificant when compared with the changes in format that are permitted to be made between the Agency's review of draft labeling and the final printed label that actually is found in channels of trade. EPA believes that States have adapted well to the current Agency practice of approving draft labeling, and that changes permitted by § 152.42 will pose no additional problems.

In § 152.110, the Agency stated that it would review applications for registration as expeditiously as possible, but the Agency did not propose to establish binding review times. Six commenters urged the Agency to obligate itself to specific review times for applications. Suggestions ranged from 75 to 180 days, with one commenter suggesting that the Agency publish a review timetable for various types of applications.

EPA has not adopted these suggestions. FIFRA does not mandate statutory timeframes for review of applications: the language of FIFRA sec. 3(c)(3) requires that Agency's determination of registrability be made "as expeditiously as possible." The Agency agrees with the commenters that, from a policy perspective, the Agency would prefer to be able to set achievable timeframes in which to review applications and determine acceptability. However, the nature of the registration process, and the associated regulatory evaluations and decisions that accompany it, preclude the Agency from doing so. EPA cannot predict the number of applications for registration that it will receive each year, because submission of an application is largely at the discretion of persons seeking registration. Nor can the Agency determine the level of review that will be needed to evaluate the application; some applications are of greater complexity than others. The Agency does not believe it prudent to establish regulatory timeframes that it may not be able to meet consistently because of circumstances beyond its control. Therefore, the final rule does not establish Agency review times.

B. Conditional Registration

Sections 152.113 through 152.115 described the criteria for issuance of conditional registration under FIFRA sec. 3(c)(7) and the conditions attached to such registrations. One commenter

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focused on these criteria and procedures, in particular those in §§ 152.114 and 152.115 relating to conditional registration of new chemicals.

The commenter objected to the Agency's issuance of conditional registration for new chemicals. Acknowledging that the statute permits such registrations, and that amendment to FIFRA itself would be necessary to remove the authority for issuance, the commenter urged that the Agency adopt a policy (which would be expressed in the final rule), of severely limiting the issuance of new chemical conditional registrations.

First, the commenter expressed the opinion that conditional registration should not be granted for any new chemical that meets or exceeds risk criteria for special review found in 40 CFR Part 154. Second, the commenter urged that the final rule provide criteria for the public interest finding that must be made before a new chemical conditional registration is granted. FIFRA sec. 3(c)(7) requires that the Agency determine that issuance is "in the public interest" before granting conditional registration for a new chemical. The commenter stated that without definitive criteria on which to base a determination of public interest, the Agency could grant conditional registrations for new chemicals very broadly and, it is feared, without adequate justification. Finally, the commenter urged that conditional registration of new chemicals should be limited to the specific period required for generation of required data, and that conditional registrations should expire automatically at the end of that time if required data are not submitted.

In response to all of these comments, the Agency notes that it has issued a policy statement in the **Federal Register** of March 5, 1986 (51 FR 7628), describing its policies for issuance of conditional registration of new chemicals. That policy statement addresses each of the commenters' concerns in an affirmative manner. It states that the Agency will not grant conditional registration for new chemicals if the available data demonstrate that special review criteria are exceeded. It further sets out in greater detail the types of information that may be necessary for the Agency to make a public interest finding in accordance with FIFRA sec. 3(c)(7)(C). Lastly, the policy statement provides that conditional registrations will expire automatically if data (or interim progress reports) are not submitted in a timely manner or if the data, when submitted, show that the pesticide would meet or exceed risk criteria for special review.

In response to these comments, § 152.114 listing the criteria for approval of conditional registration of new chemicals has been revised to clarify that the public interest determination applies only during the expected period of the conditional registration. Section 152.115(b), specifying the conditions of registration for new chemicals, has been revised more substantively. The conditions attached to registration under FIFRA sec. 3(c)(7)(C) now include an automatic expiration (in addition to Agency-initiated cancellation as provided in the proposal) if data or progress reports are not submitted. Moreover, § 152.115 now also includes the condition that the conditional registrant submit information on production of the conditionally registered product. This information is required by the Agency for its annual report to Congress under FIFRA sec. 29.

C. Denial of Applications

Proposed § 152.118 contained proposed procedures for denial of applications for registration. Three commenters noted the provision in § 152.118(e) that, upon notice of denial (by certified mail, as suggested by two commenters), an applicant would have 30 days to respond and correct the deficiencies. The commenters asserted that 30 days is insufficient time to respond properly with corrective action, and urged lengthening the time to 60 or 90 days. They believed that it is unfair to expect 30-day response from the applicant when the Agency has taken several months to review the application.

Although the Agency is sympathetic to the perceived plight of the commenters, EPA notes that FIFRA sec. 3(c)(6) requires a 30-day response to a notice of intent to deny. If the applicant fails to respond within the 30 days, that section states that the Administrator may refuse to register the pesticide. This discretionary authority permits EPA to provide additional time for correction if warranted. EPA does not expect that all corrections can be accomplished within the 30 days. EPA is seeking, at a minimum, an indication from the applicant that he intends to make the corrections within a given time period. Thus, although 30 days would seem to bind the applicant to a short time for both response and correction, EPA may permit longer for actual correction, provided that the applicant notifies the Agency within the allotted 30 days.

A second commenter noted that paragraph (d) apparently makes discretionary the Agency's publication of a notice of denial in the **Federal Register**. He cited the language stating that the Agency "may issue in the **Federal Register** a notice of denial * * *," and interpreted this to mean that publication is discretionary. The language in the final rule has been revised to clarify that it is the decision to deny that is discretionary. All notices of denial will be published in the **Federal Register**, as required by FIFRA sec. 3(c)(6).

IX. Undeliverable Mail

The Agency proposed in § 152.122 that if applicants do not keep the Agency apprised of their current name and address of record, the Agency would suspend the registrations of all products of that applicant. Two comments were received on this provision, neither objecting, but offering suggested clarifications. Since this proposal, the Agency has issued in the **Federal Register** of March 5, 1986 (51 FR 7634) a notice announcing that it will cancel such registrations, and has begun the process of purging its records of registrations whose owners cannot be located. In the final rule, the Agency has modified § 152.122 to conform to its new policy. The Agency believes that this modification in the final rule does not warrant reproposal.

X. Timeframes for Use of Labeling

Section 152.128 of proposed Subpart G established timeframes for the use of existing label stocks after the label has been amended (either on the registrant's initiative or in response to an action by the Agency). Similarly, § 152.135, (concerning voluntary cancellation) proposed a time period for disposal of existing stocks of the pesticide. Although disposal of label stocks upon amendment, and disposal of pesticide stocks after voluntary cancellation are not strictly comparable, comments addressed the two together in some cases. Consequently, this unit responds to comments on both §§ 152.128 and 152.135.

The Agency proposed a period of 1 year after amendment for the replacement of product labeling if initiated by the registrant. Eleven comments were received on this proposal, all of which took exception to the Agency's proposal; all claimed that 1 year is insufficient time to dispose of existing label stocks. The commenters offered various reasons for their objection: sales of seasonal products often extend into subsequent years; the life of returnable or reusable containers (which may be embossed or silk-screened with permanent labeling) is up

to 5 years; health or safety questions that warrant such a short time period are not generally at issue in registrant-initiated amendments; States are unable to keep pace with label transactions each year; and some States (unidentified by the commenter) provide a minimum time of 2 years for exhausting old label stocks. In short, all commenters stated that the Agency should defer to the needs of industry when no questions of health and safety are involved. On the other hand, no commenter objected to (and one supported) the idea that where health or safety concerns were raised, the Agency would specify a timeframe for replacement of labeling, which might be shorter than 1 year.

Based on these comments, the Agency has decided that it will permit 18 months instead of 12 months for disposition of existing label stocks when the amendments proposed by the registrant do not involve health or safety considerations. EPA believes that persons who are seeking label amendment can and should plan in advance for use of their label stocks, so that large number of label stocks will not remain after 18 months.

One commenter urged the Agency to delete the language referring to "physical possession" as the determinant of which products must be relabeled. He suggested that the Agency instead use the more standard term "released for shipment."

EPA agrees with the commenter and has deleted the term from the final rule. "Physical possession" is not the term used in FIFRA to define when enforcement actions may be taken. The Act uses the term "released for shipment" (FIFRA sec. 9) to define when inspections may be carried out for purposes of compliance, and the Act defines violations (FIFRA sec. 12) in terms of the "distribution and sale" of the product. The Agency's current practice in defining dates when revised labeling must appear on products has been to specify two dates: a date beyond which the registrant may not distribute or sell the product (a "released for shipment" date) and a second, later, date beyond which distributors, dealers and retailers may not distribute or sell the product (a so-called "channels of trade" date). The Agency intends to continue this method of specifying timeframes for compliance.

One commenter suggested that the voluntary cancellation procedures in proposed § 152.135 (codified as § 152.138 in the final rule) be modified to include a petition process whereby a registrant could petition for a period longer than 1 year in which to dispose of a voluntarily cancelled product. Rather than specify a specific date by which pesticide stocks must be disposed with a concomitant petition process to justify a longer period, the Agency has deleted from the final rule any specific date by which existing stocks must be disposed of. The Agency prefers the flexibility of dealing with existing stocks questions individually, and hesitates to impose a formal petition process unnecessarily. Moreover, the Agency believes that a timeframe for disposal of pesticide stocks should depend on the risks associated with that pesticide that formed the basis for the cancellation. A product that is voluntarily cancelled in the face of impending suspension or special review decisions may pose risks such that no disposition of existing stocks should be permitted. By contrast, a product that is voluntarily cancelled because a changing market no longer supports continued distribution and sale may pose no risks that justify limiting existing stocks distribution. In this latter case, the registrant probably will have only a small stock of product because he has already phased down his production and distribution volume.

Consequently, § 152.138 requires that a registrant requesting cancellation of his product propose a timeframe for disposal of existing stocks of the pesticide, taking into account the amount of material and the historical time for moving the product through channels of trade. In the notice of cancellation, the Agency will specify a timeframe for disposal of existing stocks.

XI. Agency Actions Affecting Registration

Subpart H of the proposal described in summary form various Agency actions that may affect registration—classification for restricted use, data call-in, reregistration, special review, cancellation and suspension, and required use of child-resistant packaging.

Two commenters addressed this subpart. One commenter urged that when the Agency changes the requirements for data under FIFRA sec. 3(c)(2)(B) (§ 152.142), the Agency state the reason for the new data and the status of data under the old guidelines. The Agency is not certain what the commenter is referring to when he mentions "changing" data requirements.

The overwhelming majority of data required of registrants under section 3(c)(2)(B) are not new or changed requirements, but simply the application of current data requirements contained in 40 CFR Part 158 to existing pesticides. If, however, a data requirement being imposed under section 3(c)(2)(B) is not contained in Part 158, or is required only for certain products, the Agency will state the reason for the data requirement.

The Agency's policy with respect to previously submitted data is stated in 40 CFR 158.80. That section states that EPA will evaluate a study to determine whether it was conducted in conformance with accepted scientific protocols and study designs and whether the results were reproducible. The Agency will not reject a study that is conducted in accordance with Agency recommendations, or another acceptable protocol, provided that the study fulfills the purposes for which the requirement was established, and permits sound scientific judgments.

One commenter objected to the provision in § 152.148 that the Agency may initiate cancellation proceedings if the composition, packaging or labeling of the product do not comply with the Act. The commenter was particularly concerned with labeling, stating that labeling requirements are subjective. The commenter asserted that no provision is made in the rule for negotiation, arbitration or other registrant-initiated actions.

Section 152.148 states the provisions of FIFRA sec. 6(b), which permits the Agency to initiate cancellation proceedings if a product, its packaging, or its labeling is not in compliance with the Act. Once a notice of intent to cancel is issued, however, the registrant has the right to request an administrative hearing, in which he may contest the basis for the cancellation, including the reasonableness of any labeling requirement that has not been specifically established by regulation, or its applicability to his product. During the pendency of such a hearing, the product remains registered.

XII. Restricted Use Classification

Subpart I of the proposed rule reorganized and revised the criteria and procedures for restricted use classification. The Agency proposed few changes in the procedures for classification, and only minor changes in the criteria for classification. The provisions of proposed Subpart I largely reflected the criteria in § 162.11(c) and the procedures in § 162.30. A total of 13 comments were received on Subpart I, the majority directed to the changes in criteria in § 152.170.

A. Scope of Classification

Section 152.160 of the proposal described the scope of the Agency's authority to classify products, and the overall framework of the program. The

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Agency noted that it may classify products for restricted use either by regulation or on a case-by-case basis in conjunction with other regulatory actions.

Several commenters stated that the Act does not provide for an "unclassified" product, as stated in § 152.160(a), and suggested that it be deleted. The commenters are correct that FIFRA sec. 3(d) provides that a product shall be classified for either restricted use or general use. However, as a policy matter, the Agency does not now, and does not intend to, classify products for general use.

As stated in the preamble to the proposal, the thrust of the classification process is the identification of products that should be restricted—not those which do not need to be restricted. A product for which no concerns warranting restriction have been raised does not need confirmation of that fact by classifying it for general use. The Agency does not intend to devote its scarce resources to reviewing a product for the purpose of general classification—a determination which would carry with it no obligations or consequences for the registrant. Therefore, a product which has not been classified for restricted use remains unclassified in EPA's opinion. Section 152.160 of the final rule acknowledges this fact.

A second commenter to § 152.160 objected to the case-by-case determinations of classification. The commenter argued that case-by-case determinations did not permit sufficient phase-in time, provided no notice or comment opportunity under the Administrative Procedure Act, no consideration of small business impacts under the Regulatory Flexibility Act, and no judicial review.

The Act specifically provides for case-by-case classification as part of its registration process. FIFRA sec. 3(c)(1)(F) requires an applicant for registration to propose a classification at the time of application and section 3(d)(1)(A) states that classification shall occur as part of the registration. In addition, the Act provides for a discretionary process of classification by regulation, which is subject to all the administrative and judicial protections provided by the Administrative Procedure Act for other regulations. In both cases (case-by-case or by regulation), the Agency's decision is a final determination subject to judicial review. Thus the commenter is in error in assuming that there are no administrative, procedural, or judicial protections for Agency classification decisions.

B. Criteria for Classification

EPA proposed in § 152.170 criteria under which the Agency would classify products for restricted use. The criteria include determinations by the Agency that the product exceeds certain hazard criteria, that restriction would reduce the risk of adverse effects to a greater extent than it would decrease benefits from use of the product, and that labeling would not be sufficient to mitigate the identified risks.

The majority of commenters on this subpart expressed concern with the criteria for restriction for residential and institutional products contained in § 152.170(b). In general, commenters were in favor of the Agency's not restricting various types of products—e.g., residential, institutional, industrial, or antimicrobial products—or, alternatively, of considering restriction only if the products were highly toxic (Toxicity Category I). Some expressed the opinion that the requirements for child-resistant packaging (40 CFR Part 157), together with labeling, are sufficient to protect users in residential use situations.

EPA has not revised the criteria to eliminate the possibility of restricted use classification for residential/institutional/industrial products. The criteria are identical to those in existing regulations (§ 162.11(c)) for new "domestic" products). EPA has not applied those criteria to date to restrict such products. Child-resistant packaging has been the mechanism thus far used to reduce the risks of products intended for residential use. Nonetheless, the Agency does not believe it should limit its regulatory choices in the manner proposed by the commenters, such that residential, institutional, industrial, or antimicrobial products could not be classified for restricted use if circumstances warrant.

A commenter questioned the practicality of a unique and independent fish and wildlife trigger for restricted use (§ 152.170(c)). The commenter's main concern appeared to be the practicality of the fish and wildlife trigger based on dietary intake, which he stated was difficult to determine. EPA agrees that there is scientific uncertainty in calculations such as those proposed. Nonetheless, EPA has developed considerable experience in estimating dietary intake of pesticides by wildlife, and believes that the estimations are reliable indicators of hazard. EPA therefore has retained the fish and wildlife triggers based on dietary intake.

The same commenter urged that the Agency retain the human risk trigger as prerequisite to a wildlife trigger (i.e., the Agency should not consider restricted use for wildlife effects unless a human risk trigger has first been exceeded). EPA believes that a scheme in which restriction for ecological and environmental effects is only secondary to potential human effects would provide inadequate protection of the environment, and limits the Agency's regulatory options. Human, ecological, and environmental risk reduction can be equally well served by restricted use classification, which requires application by or under the supervision of a trained certified applicator.

Moreover, restricted use classification is intended to function as an alternative to cancellation of a pesticide that poses unreasonable adverse effects on man or the environment; such effects are not limited to human exposures. If confronted with a pesticide that poses strictly environmental or ecological risks, the Agency might be compelled to cancel products if restriction were not available for consideration. Additionally, the criteria for initiating a special review of a pesticide, a process that may lead to cancellation, include specific and independent criteria for ecological effects. The Agency has initiated special reviews of some pesticides based solely on ecological effects. Consequently, EPA will also retain the fish and wildlife restricted use criteria independent of human effects criteria.

Three commenters asserted that use history and accident data, proposed as criteria for potential restriction in § 152.170(d), are not appropriate as triggers for restricted use. They state that these are not indicative of the inherent hazard of the product, but are the result of misuse only, and should be deleted as considerations in restricting a product. EPA disagrees. Use history and accident data are important sources of information on hazards, particularly in the ecological effects area. Moreover, EPA can usually distinguish between accidents and misuse incidents, and information from accidents can be considered apart from obvious misuse situations. The Agency believes that the training and certification of applicators that is required for restricted use classification can significantly reduce the potential for adverse effects, whether from normal use or misuse. Thus information on misuse is an important consideration in evaluating the need for restriction.

The Agency does not contemplate restricting a product based solely on misuse or accident history, but will consider such information as supporting data on the pesticide's potential to cause adverse human and ecological effects.

XIII. Label Improvement Program

The Agency proposed to add as Subpart J regulations implementing its Label Improvement Program (LIP) initiated in 1980. The proposal described the procedures the Agency would use in conducting an LIP, the expected responses of registrants, the timeframes for submission of responses, and the compliance times for the label changes. Twelve commenters objected to the inclusion of this program in the Agency's regulations. Their objections were varied, but commonly expressed the notions that the program was not sufficiently well defined in scope and applicability, that it has not "matured" to the point of regulation as yet, and that it could develop into a quasi-registration function not offering opportunity for input by affected or interested parties. Several commenters urged greater participation in the existing non-regulatory LIP program by industry.

Based on these comments, the Agency has decided not to promulgate regulations for the LIP program at this time. EPA believes that the LIP serves a useful function, with goals of consistency, uniformity, and clarification of labeling. However, EPA agrees with commenters that the current LIP program is still evolving and that regulations for its implementation are premature. The Agency will continue to use the LIP as it has in the past, allowing considerable flexibility in procedures and requirements as individual situations warrant. The Agency will, as requested by commenters, provide more opportunity for participation by registrants and the public before issuing LIP notices. At a future time, the Agency may propose regulations for the LIP program.

XIV. Intrastate Products

EPA proposed to update its requirements for intrastate products. Subpart L of the proposed rule required that intrastate producers submit applications for full Federal registration no later than July 31, 1988. Products shipped after December 31, 1988, would be in violation of the Act unless federally registered. In addition, the Agency could require earlier submission of applications for consistency with regulatory actions concerning federally registered products.

One commenter pointed out that no provision was made for continued sale and distribution of products if an application had been submitted by July 31, 1988, but was still pending as of December 31, 1988. The Agency agrees that a pending application should suffice to permit continued sale and distribution of the product while the Agency considers the application. Accordingly, § 152.230 has been revised to state this. The December 31, 1988, date for obtaining Federal registration is therefore irrelevant (as would be any specific date for receiving Federal registration). Instead, legal sale and distribution of the intrastate product will be governed by the application submission date of July 31, 1988.

Accordingly, by July 31, 1988, each producer of an intrastate product must submit an application for full Federal registration. If no application is filed, sale or distribution of the product will be deemed to be in violation of FIFRA sec. 12(a)(1)(A) after July 31, 1988. The Agency will deny applications for registration of intrastate products that are not complete or sufficient for review.

XV. Devices

Subpart M of the proposed rule set out, by reference to the Act and regulations, the requirements pertaining to devices, which are not required to be registered but are subject to other provisions of FIFRA. No comments were received on this subpart, and it is adopted without change. However, since devices are not subject to registration requirements, Subpart M has been moved from Part 152 to Part 153, containing policies and interpretive rules concerning registration.

XVI. Determination of Active and Inert Ingredients

For organizational purposes, the Agency proposed that the information contained in § 162.60 be relocated in Part 158. Current § 162.60 describes the general criteria applied to determine whether an ingredient is active in a pesticide product, and lists a number of substances which are deemed to be inert when used in antimicrobial products. Since this material appeared to relate primarily to the data requirements that might be imposed on such substances (depending on whether they were active or inert), the Agency proposed to include the criteria and listing in Part 158, which addresses data requirements.

Although no comments were received that specifically addressed this organizational change or raised issues requiring consideration by the Agency, it was clear from comments received on other topics (product chemistry requirements in particular) that the listing was being misconstrued. At least two commenters assumed that listing a substance in § 158.1001 as an inert ingredient was equivalent to a clearance process which relieved them of the responsibility of submitting any data on those substances. The Agency's decision to locate the material in Part 158 may have contributed to this misperception.

The purpose of the listing is to identify substances that are pesticidally inert; the listing in proposed § 158.1001 applies to substances used in antimicrobial products. The criteria of proposed § 158.27 clearly were related to pesticidal effects of the substances, not toxicological or other characteristics for which data may be required. Although the Agency has discretion to limit the types and amounts of information it will require on ingredients in pesticide products, and may discriminate between pesticidally active and inert ingredients, it should not be inferred that designation as an inert ingredient automatically has that consequence. The original need for making a determination on the listed substances arose because registrants of antimicrobial products tended to include those substances as active ingredients on their labels. The only regulatory consequence that can correctly be inferred is that a listed substance may not be designated on the label as an active ingredient, but must be included in the total of inerts.

To clarify this misperception, the Agency has revised the information and is locating it separately in Part 153, which contains policies pertaining to registration. Section 153.125 clearly describes the criteria as those for determining "pesticidal" activity. Section 153.125(b) sets out the Agency's authority to determine whether a substance is pesticidally active or inert (within the meaning of FIFRA sec. 2(m)). Paragraph (c) of that section states that designation as inert affects the labeling of the product. A new paragraph (d) has been added to ensure that registrants are aware that other requirements (including data requirements) may be imposed, even though the substances are listed as inert.

XVII. Coloration and Discoloration

In accordance with FIFRA sec. 25(c)(6), the Agency proposed to require that additional types of products be colored (or discolored). Specifically, the Agency proposed that products intended for seed treatment (with certain exceptions) contain a dye, unless instructions were included on the label to color the seeds separately at the time of seed treatment.

No comments were received on this proposal, which reflects current policy and is in conformity with similar regulations under the Food and Drug

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Administration and U.S. Department of Agriculture. Accordingly, this requirement is adopted as proposed.

The Agency also proposed to require that granular products for soil application be brightly colored to contrast with soil components. EPA stated that colored granules would deter wildlife (particularly birds) from ingesting the granules, and would make application easier. Eight commenters addressed this proposal, seven objecting to the requirement for various reasons. Commenters argued that coloration will not deter birds or wildlife; that the Agency has no scientific evidence to support its proposal; that the dyed granules will be an "attractive nuisance" for children; that the addition of dyes will be costly and not always technically feasible; and that the requirement is arbitrary, being imposed without regard to potential hazard or application practices that might mitigate the hazard.

EPA has considered these comments and concludes that they raise issues needing fuller evaluation before requirements are imposed. Accordingly, the Agency has deleted the requirement for coloration of granular products from the final rule.

Finally, because the requirements for coloration and discoloration are general policy, and do not pertain distinctly to the registration process, they have been redesignated in the final rule as Subpart H of Part 153.

XVIII. Format of Data Submissions

A. Format Requirements

EPA proposed to establish, as §§ 158.32 and 158.33, format requirements for the submission of data in support of applications for registration, experimental use permits, petitions for tolerance, and other regulatory activities under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Submission of data in the formats required will assist the Agency in indexing, cataloging, and reviewing the data, and will facilitate retrieval of data for review and reference purposes. Additionally, the requirements pertaining to segregation of confidential business information (CBI) will permit the Agency to respond more readily to requests under the Freedom of Information Act (FOIA) without jeopardizing the confidentiality of information protected by FIFRA sec. 10(d)(1), and without undue delay.

In proposed § 158.32, EPA described a number of general format requirements for submission of data. Studies must be submitted separately; must contain a title page with specific identifying information; and, when submitted with a number of studies, must be transmitted with a cover document describing the entire transmittal. Two commenters addressed the requirements of this section, requesting clarification of the language on several points.

Both commented that at this time the Good Laboratory Practices requirements referenced in § 158.32(b)(2) pertain only to toxicological studies. The commenters are correct. Section 160.3(m) of this chapter defines a "study" in a manner that limits its applicability to toxicology studies. However, EPA has not revised the rule to specify this policy, since this final rule is intended only to cross-reference the requirements of Part 160. If Part 160 is revised to add to or change the GLP requirements, a specific cross-reference in § 158.32 would also have to be revised. The Agency is, in fact, considering revising Part 160 to specify the types of good laboratory practices that would be appropriate for other types of studies.

Both commenters also requested that the Agency clarify whether the date of "completion" of a study is synonymous with the date of "issuance" of the study. The Agency wants to know when the study itself was completed by the performing laboratory, not the date it was sent to the submitter. Section 158.32(c) has been revised to clarify this point.

B. Confidential Business Information

Section 158.33 of the proposal described the procedures that data submitters must use in asserting a claim of CBI. First, the Agency proposed that all information claimed to be CBI within the meaning of FIFRA sec. 10(d)(1) (A), (B), and (C) be isolated in a separate attachment to the study and cross-referenced in the study itself. Second, the Agency proposed that other information for which a claim of confidentiality is asserted under FIFRA sec. 10(b) be clearly marked in the text of the study, but not physically separated.

Four commenters took exception to the Agency's establishing a system that required segregation of some information from the context of the study. They asserted that the system was cumbersome and complicated for data submitters and that it is heavily weighted toward the Freedom of Information Act (FOIA) needs of the Agency. Moreover, they believed that Agency reviewers would find a system that located FIFRA sec. 10(d) information in a separate study attachment inefficient and difficult to use. All preferred the simpler marking system required for CBI claimed under section 10(b).

EPA acknowledges that the procedures required by § 158.33 may at first be inconvenient and may initially involve slightly increased costs for data submitters who have not in the past submitted information in this manner. However, as they gain experience in compiling studies in the required format, data submitters' costs should diminish. Moreover, the costs to the Government will significantly decrease if these procedures are put in place.

The Agency has had experience with the simple marking system advocated by commenters; the difficulties encountered with this system provided the impetus for the changes proposed. As to arguments that segregation of claimed CBI will be inefficient for Agency reviewers, EPA disagrees. Agency reviewers recognize the need to protect CBI, and in drafting Agency documents are required to adhere to the same requirements. They are accustomed to the procedures and have not found the segregation of claimed CBI to be overly burdensome.

The Agency's reasons for requiring separation of claimed CBI under section 10(d)(1) were clearly stated in the preamble to the proposal. Comments from data submitters have not convinced the Agency that segregation of claimed CBI is unnecessary, nor that a marking system could accomplish the objectives equally well. EPA continues to believe that the benefits and efficiencies of the requirements to EPA more than offset the cost and inconveniences cited by commenters in objecting to the requirements.

Two commenters questioned the need for the Statement of Non-Confidentiality required by § 158.33(c). They pointed out that the Agency has stated in § 158.33(b) its policy that failure to segregate CBI properly is deemed to be a waiver of claims by the submitter. Since waiver of claims is assumed in the absence of an affirmative declaration by the data submitter, the Statement of Non-Confidentiality is redundant.

EPA views the policy and the Statement of Non-Confidentiality as complementary rather than redundant. Although Agency policy is that unmarked and unsegregated information is freely releasable under the FOIA, the Agency believes that maximum protection to data submitters (and incidentally to the Agency) is afforded by the affirmative statement required by § 158.33(c). If a study is clearly marked as non-CBI, the Agency is assured that the data submitter has given careful thought to its status, and has not inadvertently overlooked the requirements.

Finally, two commenters asked that the final rule clarify where the Statement of Confidentiality Claims should be located, suggesting that the title page of the study is an appropriate location. The proposal did not specify a location for the required statement, nor does the final rule. The title page of a study may be prepared by the performing laboratory, while the determinations of confidentiality would ordinarily be done by the submitter of the data. The Agency prefers that the statement be included on a separate page immediately following the title page. However, there in no objection to its being located on the title page if desired by the submitter.

XIX. Flagging Criteria

EPA issued a proposal in the Federal Register of October 3, 1985 (50 FR 40408), that would require pesticide applicants and registrants to mark or "flag" certain studies at the time of submission to the Agency. The Agency cited the increased volume of data expected to be submitted in the near future and its limited resources for review of those data as reasons for its proposal. Flagging the studies would serve to alert the Agency to pesticides having potentially serious adverse effects. Earlier, the Agency had issued in the Federal Register of September 20, 1985 (50 FR 38115), an interpretive rule concerning the submission of adverse effects data under FIFRA sec. 6(a)(2). That regulation, although not requiring the flagging of studies, had requested that submitters voluntarily do so. Together, these two documents attempted to address all data submissions made by registrants or applicants.

In its October proposal, the Agency proposed a set of study types subject to the flagging requirement. The proposal covered studies of three general types: toxicological studies (subchronic and chronic); ecological effects; and environmental fate studies. For each study, the proposal contained one or more criteria which, if met, would trigger a requirement for affirmative flagging of the study. The toxicology criteria were qualitative and descriptive in nature. The environmental fate and ecological effects criteria were quantitative and objective. A study was to be flagged by signing a certification statement that the study either did or did not meet the criteria.

In response to its proposal, the Agency received comments from nine pesticide companies or trade associations and one environmental organization. In response to these comments, the Agency is at this time promulgating only the toxicology criteria and has better defined those criteria for positive flagging. The Agency is reassessing the criteria for ecological effects and environmental fate to determine their feasibility and usefulness and may in the future promulgate the proposed criteria, or propose different ones. Comments on the proposal are addressed in the following preamble subunits.

A. Need for Flagging

The Agency stated in its proposal that it would be receiving large volumes of data in response to its Data Call-In (DCI) and Registration Standards programs, and that its limited scientific resources would not permit all such data to be reviewed upon receipt. For that reason, EPA viewed flagging as a means of setting review priorities so that pesticides demonstrating potentially serious adverse effects could be given early review.

Most commenters questioned whether the Agency would accomplish its stated purpose by its proposal, and several commenters objected to the proposal. Commenters generally stated that the proposal would result in overflagging of data. Flagging, it was asserted, would not isolate pesticides having potential adverse effects; rather, the Agency would be inundated with studies that were flagged, which would defeat the purpose of flagging. Commenters attributed this to the combination of several factors: the vagueness, ambiguity, or subjective nature of the criteria, particularly in the area of oncogenicity and chronic feeding studies; the Agency's recommendation for inclusion flagging where scientific uncertainty exists; and the concern that EPA would seek penalties of an unstated nature, although the proposal did not describe such a plan. These three factors, commenters stated, would lead data submitters to be extremely conservative, with the result that most studies would be flagged. One commenter also stated that a company desiring early review of its studies might be inclined to flag them simply for that purpose (and could do so with impunity, since the criteria and penalties were not sufficiently clear that they could be held accountable for erroneous flagging). The Agency believes this latter occurrence will be infrequent.

In response to concerns about ambiguity and lack of clarity in the toxicological studies and the specific comments received, the Agency has revised the criteria (see Unit XVIII.C.) to delineate more carefully the factors that should be applied.

With respect to the penalties for failure to flag, under FIFRA sec. 3(c)(2)(B) the Agency may suspend the registration if the data submitter fails to flag the data properly. Moreover, failure to flag may be deemed to be a falsification of a required report under FIFRA sec 12(a)(2)(M).

B. Scope of the Flagging Requirement

Other commenters who objected to the proposal questioned its utility in the application review process (as opposed to the Data Call-In process, about which similar comments were not made). Their comments were directed primarily at new chemicals. Commenters stated that flagging data submitted with a new chemical application was unnecessary, i.e., that early review of the studies would achieve no environmental protection because the chemical was not being marketed. These commenters also argued that early review would have little effect upon review resources, since the entire application would still have to be reviewed (including all unflagged studies) before the registration could be granted. On the other hand, they pointed out that flagging of one study could stigmatize the chemical for a single effect which might not be significant when considered with the data as a whole.

Finally, commenters pointed out that the Agency's stated policy is to give priority review to safer new chemicals, and that giving early review to studies demonstrating potential adverse effects runs counter to this policy. A new chemical application having no flagged studies could, presumably, be relegated to a lower review priority while the Agency focused its attention on a new chemical with a flagged study. Commenters viewed this as an unintended effect of the flagging requirement and recommended that new chemical applications should not be subject to flagging.

The Agency has decided to retain the flagging requirement for applications for registration. EPA believes that flagging of data for new chemical applications, although not a means of prioritizing the review of the application, will be useful in other ways. For example, if the Agency has under review other regulatory actions on a chemical, such as a section 18 exemption request, EPA will be able to use flagged data in evaluating the request.

In the case of an application for registration of a me-too product or for a new use of an old chemical, flagging will serve the purpose of identifying the

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study for early review. An application for a new use of an old chemical or for a me-too product is generally reviewed in an order determined by factors other than the type of amount of data submitted. In the case of me-too products, data that would require flagging are rarely submitted. Similarly, unless an applicant seeks a significantly expanded use requiring submission of a full battery of studies, the Agency does not expect the routine submission of the types of studies requiring flagging. In both of these cases, EPA views the flagging of data that are submitted as especially important, since the Agency normally will not alter its current review priorities for such applications unless prompted to do so by having the studies flagged.

Finally, EPA notes that the task of flagging the data is not overly time-consuming or difficult, and that the number of studies requiring flagging is relatively small. EPA believes that the burden upon registrants will be insignificant compared to the time and expense of producing the study in the first place.

C. Toxicology Criteria

The Agency proposed flagging criteria for six types of toxicological studies commonly required by the Agency. These included oncogenicity, chronic and subchronic feeding studies, reproduction, teratology, and neurotoxicity studies.

1. *Oncogenicity studies* (Criteria 1 through 4 in the final rule). A number of commenters raised similar concerns about unclear terms used in describing the criteria, particularly for oncogenicity and chronic feeding studies. They singled out terms such as "marginal," "substantial," and "decreased time," as needing better definition. They noted that unless the terms are better defined, industry compliance and enforcement would be difficult, and excessive flagging would result. Commenters suggested additional language that they believed would help clarify the criteria, including "statistically and biologically" significant increases, "concurrent and historical" controls, and "treatment-related" effects.

In response to these comments, the Agency has substantially revised the criteria for oncogenicity studies to eliminate many of the imprecise terms. Specifically, EPA has eliminated the terms "marginal" and "substantial increase." and has included language concerning "concurrent controls" and "statistically significant" increases in tumor development.

EPA, however, has not adopted language concerning "historical" controls, or "treatment-related" or "biologically significant" tumor development. The Agency recognizes the importance of the concepts such as "historical controls," "biological significance," and "treatment-related effects" in the ultimate determination concerning oncogenicity of a pesticide. However, the Agency believes that, since the purpose of the criteria is to provide a rough screen to alert the Agency of potential problems, such detailed analyses are not warranted at this level of review. The "decreased time to tumor development" language has been retained because it is a commonly recognized criterion for judging oncogenicity.

Although these revisions significantly reduce the ambiguity of the criteria, scientific judgment still must be applied to determine whether the toxicology criteria have been met, but EPA believes that this scientific interpretation is no more uncertain or ambiguous than that which normally arises in interpreting the results of any scientific study.

2. *Teratology studies* (Criterion 5). Of the six commenters on the teratology criterion, three suggested the inclusion of the same language as for the oncogenicity studies. EPA has not included language on biologically significant increases, historical controls, and treatment-related effects for the reasons explained before. EPA has included language concerning a "dose-related response." The Agency is conforming this rule to its position on teratology as expressed in previous Agency documents (Final Guidelines for the Health Assessment of Suspect Development Toxicants, September 26, 1986 (51 FR 34028); Standard Evaluation Procedure: Teratology Studies, OPP, June 1985). The concept of adverse developmental toxicity in the absence or presence of significant maternal toxicity at the same dose level will be evaluated on a case-by-case basis.

Another commenter noted that teratogencity cannot be compared on a fetus basis, only on a litter basis. The Agency agrees, and has deleted the fetus-based comparisons. A third commenter noted that the presence of teratogenicity is sufficient evidence of adverse effects; language requiring an "increase" in fetal malformations is not appropriate. EPA disagrees, and has retained the original language. In most teratology studies, the controls show a certain low background rate of teratogenic effects; therefore an "increase" when compared with controls is appropriate.

3. *Neurotoxicity studies* (Criterion 6). Commenters on the neurotoxicity criterion generally stated that the end point of concern—a "positive effect"—is too vague and undefined to be meaningful in evaluating whether a study meets the criterion. Two suggested alternative language that they believed expressed the criterion more accurately. EPA rejected language requiring "histologic evidence of adverse effect on nerves" as being too narrow. In the final rule, the Agency has accepted the suggested language of the other commenter, who proposed to base the criterion on a response "indicative of acute delayed neurotoxicity," but not requiring that a positive response be dependent upon histologic findings of nerve effects.

The Agency has not adopted language suggested by commenters concerning "historical" controls, for the reasons cited earlier. Nor has EPA based the criterion on "positive and negative controls" as suggested by another commenter. EPA's concern in evaluating neurotoxic effects focuses on whether such effects are greater than negative controls, not on whether they are as potent as positive controls.

4. *Chronic feeding studies* (Criteria 7 and 8). Commenters on these criteria focused on the Agency's use of the acceptable daily intake (ADI) which is often derived from the results of chronic feeding studies. Commenters generally requested that the Agency clarify what ADI was to be used, whether a provisional ADI (PADI) should be used, and the applicability of the criteria when there is no ADI. There was no disagreement with the 10X or 100X factors used in the translation of the NOEL to the ADI.

In applying the chronic feeding criterion, data submitters should use the latest ADI upon which a tolerance (either temporary or permanent) has been based. This may be a PADI if not based on a full complement of toxicological studies sufficient to define an ADI. If no ADI has ever been determined (no tolerances have previously been established), the data submitter should flag the first study which permits the establishment of a PADI or ADI, and thereafter apply the criterion as written.

5. *Reproduction studies* (Criterion 9). Two comments were received on this criterion. One suggested the inclusion of historical controls, which the Agency has not adopted. The other suggested that the use of the "no observed effect level" (NOEL) should be replaced with the "no observed adverse effect level" (NOAEL). The Agency views these terms as interchangeable, but in the pesticide regulation program has consistently used the term "NOEL" rather than "NOAEL" in previous documents. Language concerning "adverse" effects would introduce greater ambiguity into the criterion. Therefore, the Agency has not changed the reproduction criterion.

6. *Subchronic feeding studies* (Criteria 11 and 12). Commenters on the subchronic criteria generally were concerned about the Agency's 200X and 2000X factors used in translating the NOEL to the ADI. They argued that the Agency should not double the factors used (in addition to the tenfold difference factor normally applied based on the use of subchronic instead of chronic studies). They urged the Agency to use a 100X factor for the cholinesterase inhibition criterion and a 1000X factor for the general (systemic) toxicity criterion. EPA agrees with these comments, and has revised the criteria for subchronic studies to reflect only a tenfold uncertainty factor.

Commenters also suggested language concerning "treatment-related" effects and the NOEL; the Agency has not adopted these suggestions for reasons given earlier.

D. Environmental Fate and Ecological Effects Criteria

Commenters on both the environmental fate and ecological effects criteria questioned whether the criteria would be effective in identifying pesticides having potential adverse effects. A typical comment was that in both the environmental fate and ecological effects areas, the flagging criteria could not be applied independently as indicators of potential adverse effects, but must be considered with other studies. Particularly, commenters noted that the environmental fate criteria are actually characteristics of the pesticide that are meaningless when considered independently.

The Agency agrees with commenters that flagging of environmental fate and ecological effects studies under the criteria as proposed would result in a large number of studies being flagged for early review. The Agency has tested the flagging criteria by applying them to a random sampling of 23 Registration Standards. Of the available studies (for a number of Standards, there were no studies which could be judged against the flagging criteria), over 80 percent of the hydrolysis and aerobic soil metabolism studies and 66 percent of the solubility studies would have been flagged. When considered together, it is clear that a large proportion, if not all, pesticides would meet one or more of the environmental fate criteria. Similarly, in the area of ecological effects, 35 to 54 percent of the studies would be flagged, depending upon study type.

By contrast, a similar comparison of toxicology studies in the Registration Standards surveyed revealed that 30 percent or less of the studies would be flagged (in the Agency's estimation), ranging from a low of 10 percent for teratology studies to 31 percent of chronic feeding studies. Based on this limited survey, and the comments received, EPA has decided not to establish flagging criteria for environmental fate studies or ecological effect studies at this time. EPA will be evaluating whether criteria can be developed that will identify or isolate effects of concern more clearly. At a future time, EPA may promulgate or propose flagging criteria for environmental fate and ecological effects studies.

E. Procedural and Miscellaneous

In addition to comments on the criteria, the Agency received a number of comments on the procedural aspects of the proposal, as well as some miscellaneous comments.

1. Does flagging apply to interim reports as well as final studies? No, the requirement applies to the study when complete. However, if the study is being conducted on a registered pesticide, under FIFRA sec. 6(a)(2) there may be an obligation to submit interim reports identified as 6(a)(2) data.

2. The Agency should issue in the Federal Register semi-annually a list of all flagged studies. EPA does not intend to do so. The purpose of flagging is to identify studies that should be given early review. Industry commenters were particularly concerned that the effect of flagging might be to stigmatize the chemical in the public perception based on less than complete information. EPA believes it would be premature and inappropriate for the Agency to publicize the submission of studies merely because they had been flagged. Until the Agency has reviewed studies to determine their significance, publication would serve only to raise public concerns and fears that might prove entirely unfounded. If, based on its review of the study, the Agency determines to take regulatory action, such as initiating a special review of the pesticide, the agency would then make public its findings and reasons for so doing.

3. EPA should use the criteria as indicators that a risk trigger for special review has been exceeded. EPA rejects this idea for the same reasons as stated above. The criteria for special review are clearly set out in 40 CFR 154.7, and entail consideration of exposure factors not encompassed in the flagging criteria. A pesticide will be placed in special review only upon Agency determination that a special review criterion has been met.

In this regard, one commenter also suggested that EPA should include flagging criteria for exposure factors. The commenter's point was that the Agency should give higher priority to a pesticide having high exposure potential, even if there are flagged studies on a low exposure chemical. EPA intends that the flagging criteria be used for a relatively rapid screening process for internal review purposes. If the criteria were encumbered with exposure factors, which would be considerably more subjective in nature, they would lose their usefulness to the Agency, and would be significantly more difficult for data submitters to interpret correctly. The effectiveness of the flagging criteria depends on mutual understanding between the Agency and data submitters of the types of scientific findings that are of concern to the Agency as indicative of potential adverse effects. EPA's objective has been to introduce greater objectivity and clarity into the flagging criteria, not greater uncertainties. As noted earlier, commenters indicated that the criteria as written (without exposure considerations) were too vague and ambiguous. However, the Agency may take exposure factors into account when determining the priority of review among similarly flagged studies. For example, it is likely that higher priority would be given to a flagged study for a chemical having high or widespread exposure than to one having limited exposure.

Moreover, another commenter questioned whether the flagging criteria would not put the data submitter in the position of having to make a judgment call that the Agency is mandated to make. This commenter raised the question whether EPA's independent assessment of the study might be compromised by the submitter's flagging of the study. Although EPA does not believe that this would happen, inclusion of exposure criteria would certainly give more credence to the commenter's concern about registrant versus Agency judgments.

4. Finally, several commenters remarked on the Agency's recently issued interpretive rule on FIFRA sec. 6(a)(2) data. This final interpretive rule included the flagging criteria, with a request that data submitters use the criteria in submitting section 6(a)(2) data. Although not directly pertinent to

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this rule, which specifically excludes 6(a)(2) data from the flagging requirement, the comments indicated some confusion as to the role of the flagging criteria in identifying potential adverse effects data under FIFRA sec. 6(a)(2).

The Agency has not yet made effective its final 6(a)(2) interpretive rule, published in the **Federal Register** of September 20, 1985 (50 FR 38115). Before it does so, EPA intends to revise the rule in response to concerns raised by commenters and to republish the final rule. The recommended use of flagging criteria will be deleted from the final rule. The Agency agrees with commenters that flagging of 6(a)(2) data would be a redundant requirement, since 6(a)(2) adverse effects data are inherently relevent to the Agency's risk/benefit decisionmaking. The purpose of the 6(a)(2) interpretive rule is to delineate the subset of adverse effects data the Agency is most interested in reviewing. Data identified as 6(a)(2) data are already given priority review in the same manner as is intended by flagging. Therefore, flagging of only some of those data would create a "subset within a subset" situation, which could prove confusing to registrants, with no corresponding benefit to the Agency in early review priorities.

XX. Product Chemistry Data Requirements

The Agency proposed establishing a new Subpart R of Part 152, which would contain product chemistry data requirements. The proposed data requirements repeated the existing product chemistry data requirements currently contained in Part 158. In addition, Subpart R was to codify certain types of product chemistry information contained in the Pesticide Assessment Guidelines, which are referenced in Part 158 in the table of product chemistry requirements (§ 158.190), but without guidance on the types and quantity of information required to be submitted. This latter information consists of information concerning identity and composition of ingredients and impurities, descriptions of starting materials and manufacturing processes, discussions of potential impurity formation, and requirements for certified limit information and analytical methods.

Eight commenters addressed the product chemistry requirements proposed as Subpart R. All but one of these were pesticide producers or groups who expressed concern about the stringency of the requirements. The other commenter was an environmental group which strongly supported the clarified requirements.

A. Reogranization of Part 158

From an organizational standpoint, most commenters noted the redundancy of repeating the product chemistry requirements in two different codified locations (Part 152 and Part 158). The Agency's proposal of Subpart R was primarily one of convenience. In order to present the existing product chemistry requirements and integrate the new requirements into a comprehensive whole, EPA extracted the requirements from Part 158 (which was then ready for promulgation) and proposed Subpart R. Ultimately, EPA intended to consolidate all the requirements in a single location in Title 40.

The Agency agrees with commenters that the requirements should be located in Part 158, and has reorganized Part 158 to do so. Product chemistry requirements are contained in Subpart C, and the remaining data requirements (presented in tables) comprise Subpart D. Other organizational changes have been made to accommodate these revisions, but the only substantive changes involve the revision of the product chemistry requirements.

Because of the reorganization of the material, this preamble unit discusses section-by-section the requirements beging adopted by the Agency, and responds to comments on the proposal. The new organization is used in this preamble. The following table correlates the new Part 158 sections, the old Part 158 sections, and the proposed sections.

TABLE—DERIVATION AND DISTRIBUTION OF PART 158 PRODUCT CHEMISTRY DATA REQUIREMENTS

New section	Old 158 section	Proposed 152 section
158.108	158.115	None.
158.150	158.105	152.340.
158.153	158.108(c)	152.342.
158.155	158.108(b)	152.344.
158.160	None	152.346.
158.162	None	152.348.
158.165	None	152.348.
158.167	None	152.350.
158.170	158.120	152.352, 152.354.
158.175	158.110	152.352, 152.353.
158.180	158.112	152.354.
158.190	158.120	None.
158.202	158.105	None.
158.240–158.740.	158.125–158.170	None.

B. Scope and Applicability

Section 158.150 has largely been repeated from current Part 158. This section outlines the applicability of the product chemistry requirements, and discusses their purpose and use in the Agency's review scheme and regulatory decisions. A new paragraph has been added discussing the nominal concentration.

C. Definitions

Section 158.153 contains definitions pertinent to the product chemistry evaluation. The Agency received specific comments on two definitions, and has revised others for clarity and simplicity.

The current (and proposed) definition of "technical grade of active ingredient" (TGAI) defines the TGAI to include added substances necessary for synthesis or purification. Thus the intended components of the TGAI are the pesticide chemical itself, any starting materials remaining from the reaction process, or added during that process, and any substances remaining from the final purification steps.

Two commenters suggested that the definition of "technical grade of active ingredient" be revised to permit the inclusion of a preservative in the TGAI. The Agency has not adopted this suggestion. The TGAI is the last substance normally required for a number of Part 158 studies in toxicology, ecological effects, and environmental fate, and the Agency believes its integrity should be preserved as carefully as possible for test purposes.

From a strictly scientific standpoint, testing to determine the characteristics of an active ingredient should be conducted with a version of the ingredient that is as pure as possible, such as the pure active ingredient. Contaminants or impurities in the test substance are scientifically undesirable for such testing, since they complicate the test procedure and may introduce uncertainties into the evaluation of results. It would be impractical and costly, however, to require that applicants take extraordinary steps beyond normal quality assurance measures to purify the TGAI simply for the purpose of most testing. The product of such purification would not be representative of the actual TGAI that will be incorporated into other products. Therefore, the Agency ordinarily allows use of the TGAI itself, at the point at which it emerges from the reaction and purification processes, as the most practical substitute, recognizing its limitations.

Since unavoidable substances are undesirable in the TGAI, the intentional addition of substances (such as a preservative used for stabilization during shipment to formulators), is less

tolerable. Therefore, the final definition of TGAI has not been modified.

Another commenter requested clarification of the definition of "impurity associated with an active ingredient." This comment, however, was directed to the question of who was required to submit information on the impurities associated with the active ingredient. The commenter's concern was that formulators should not be required to submit such information, since it would be available from producers of the TGAI. The final rule specifies that formulators would not be required to provide information on the impurities in the TGAI, but it does not affect the definition. Consequently, the definition has not been revised.

With respect to who must submit information on the impurities associated with an active ingredient, the burden falls primarily on producers using integrated systems, that is, persons who produce the TGAI or end use product in a continuous process. A formulator who purchases a registered product is not expected to provide information on impurities in that product. Both §§ 158.155 (product composition) and 158.167 (discussion of formation of impurities) clearly state that the producer of a product by a non-integrated system is not required to provide information on the identity or amount of impurities contained in the TGAI.

The Agency has revised several definitions in other ways, in response to comments that they were unclear. Further, the Agency has also revised some definitions because of modifications in the data requirements (see later sections of this preamble unit). The following changes have been made in § 158.153:

1. Definitions for "end use product" and "manufacturing use product" has been included. These were inadvertently omitted from the proposed rule.

2. A definition of "formulation" has been added for the purpose of distinguishing the operation of blending and dilution from that of chemical reaction ordinarily involved in an integrated system. Commenters uniformly noted that data requirements pertaining to the chemical reaction process were not applicable to the formulation process.

3. The definition of "beginning material" has been clarified. First, the term has been changed to "starting material." Second, the definition has been modified to clarify that the term applies only to materials used in a reaction process resulting in a TGAI or its equivalent. Only a producer who uses an integrated system is required to provide information on starting materials.

4. The definitions of "active ingredient," "inert ingredient," and "impurity" have been modified to include groups of structurally similar substances as well as single substances. This permits the Agency to specify that certain closely related impurities, such as nitrosamines, be considered together for testing or regulatory purposes.

5. The term "inert ingredient" has been changed to delete the words "intentionally added." The term is now defined to include only substances intentionally added to the pesticide product. Any other constituent that is neither an active ingredient nor an intentionally added ingredient, such as a degradation product, reaction byproduct, or contaminant, is considered to be an "impurity" within the definition of § 158.153(c) for the purposes of product chemistry evaluation.

The Agency is aware that, under FIFRA sec. 2(m), impurities are encompassed within the definition of inert ingredient. In the final rule, EPA is modifying the definition of inert ingredient to exclude impurities. EPA believes that, for clarity and usefulness of the data requirements contained in Subpart C, the term "inert ingredient" should be defined to include only those inert ingredients that are intentionally added, and the term "impurity" should be defined to include all other substances that are not "ingredients" of the product. This does not modify the legal standing of impurities under the Act as inert ingredients. However, it significantly improves the ability of the Agency to describe its data requirements for inert ingredients and impurities, and makes the terms consistent with their historical connotation and actual usage.

6. The term "integrated formulation system" is now referred to simply as an "integrated system." The reason for this is that the term "formulation" has been defined in § 158.153(b) to include only blending and dilution operations. An integrated system may or may not include a formulation step.

D. Product Composition Information

The Agency had proposed a set of product composition information that essentially repeated that contained in Part 158. A number of commenters noted that much of the information on active ingredients could be supplied simply by citing the registration number of the source product (on the assumption that the source product is EPA-registered and that EPA will already possess the information). Another commenter noted that certain identifying information required on inert ingredients is not available to a formulator because it is proprietary or trade secret. In general, the comments suggested a need for clarification of the requirements.

EPA agrees with these comments. In order to clarify the product composition information requirements, § 158.155 has been reorganized to specify separately the information required on active ingredients, inert ingredients, toxic impurities, other impurities associated with the active ingredient, and ingredients that cannot be characterized as discrete substances. Requirements concerning impurities associated with inert ingredients have been reserved in this final rule.

Section § 158.155(a) distinguishes between an active ingredient which is derived from an EPA-registered source and one derived from an unregistered source. A formulator who uses a registered product as the source of an active ingredient in his product is required to provide simply the pertinent information on the source product, and to provide the nominal concentration and certified limits of the active ingredient in his product. If the source of active ingredient is not EPA-registered, complete chemical identification of the active ingredient is required, including chemical names, formulae, and molecular weight. For all active ingredients, the nominal concentration and upper and lower certified limits are required.

With respect to inert ingredients, § 158.155(b) specifies that the chemical identity of inert ingredients is to be provided by the applicant only to the extent that it is known to him. A formulator who uses a basic chemical in the formulation of his product, or who simply dilutes the manufacturing use product with a solvent or water, is expected to provide complete information on identity. If he uses a proprietary mixture of inert ingredient, such as a combination of emulsifiers of unknown composition, he is responsible for ensuring that the producer of that proprietary ingredient furnishes the Agency with identity information directly. Producers of proprietary inert ingredients may wish to establish with the Agency master files of the composition of their products for reference by applicants. The Agency may require an applicant or registrant to know or ascertain the identity of individual inert ingredients of toxicological concern in their products, regardless of their origin in proprietary mixtures, either for data generation or labeling purposes.

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Moreover, a registrant will be held responsible for the certified limits of inert ingredients included in his product only as part of a proprietary mixture (refer to Unit XX.H. for further discussion of certified limits).

Section 158.155(c) now describes the required identification information for impurities of toxicological significance associated with the active ingredient. Section 158.155(d) describes the information required for other impurities associated with the active ingredient and present at levels greater than 0.1 percent of the TGAI. These requirements for identification and certification of impurities apply only to technical grade active ingredients and products produced by an integrated system. Finally, § 158.155(f) addresses ingredients that cannot be characterized chemically because of their complexity, or because they are substances for which extensive chemical analysis is not practicable.

Section 158.155 specifies that a person who formulates a pesticide product is required to provide only information on the active and inert ingredients. A producer of a product by an integrated system (whether it is a manufacuring use product or end use product) also is required to provide information on the impurities that may be present in the product.

E. Materials Used in Producing the Product

The Agency proposed that applicants provide certain identifying information on the materials used in producing the final product. Section 158.160 sets out requirements regarding source materials which, although they are very similar to those in § 158.155, are not the same. Section 158.112 focuses strictly on the identity and quantity of the separate chemical constituents of the final product—the active ingredient, inert ingredients, and impurities—that is offered for sale and distribution. Section 158.160, by contrast, addresses information on the actual materials used to make the product, which may be distinctly different. These are often referred to as the "recipe" ingredients of the product.

Under § 158.160, the applicant is intended to provide information on the "recipe" ingredients of his production or formulation process, including their sources and properties. The "recipe" ingredients for a technical grade active ingredient or integrated system product are the starting materials for the various chemical reactions by which a product containing the active ingredient is ultimately produced. The "recipe" ingredients for a non-integrated system product, however, are those ingredients (whose identity and composition may be proprietary) which are blended to make the final product. Section 158.160 does not address impurities, since impurities are never intentionally used in the process, but are a result of the process.

Several commenters pointed out that, with respect to inert ingredients, the Agency would receive large amounts of duplicative information, since the same inert ingredients are used in a number of products. The Agency recognizes that, if producers use the same inert ingredients, EPA will receive some information that is duplicative. On the other hand, information can be incorporated by reference if it has been previously submitted by the applicant. EPA encourages producers of inert ingredients to establish master files which will eliminate much repetitious information.

The majority of information required by §§ 158.155 and 158.160 is supplied by completing the Statement of Formula. (current EPA Form 8570–4). EPA is in the process of revising its Statement of Formula form to conform to the requirements of this subpart and other needs of the Agency. The information required by §§ 158.162 through 158.180 is not amenable to standardized forms, and must be submitted in narrative form.

A commenter noted an inconsistency in requiring such extensive information on an inert ingredient, when elsewhere in the rule (proposed § 152.42), the Agency proposed to permit a change in the source of the inert ingredient without even notifying the Agency. The Agency has now revised § 152.42 such that changing the source of an inert ingredient is an action requiring notification to the Agency (but not approval) only if the Agency originally required such information. Changing the identity of an inert ingredient (including variations in proprietary mixtures of inert ingredients) requires Agency approval.

Another commenter suggested that the Agency undertake to identify inert ingredients which are sufficiently well known that no information need be provided. The commenter sugested that ingredients listed in proposed § 158.1001 (recodified as § 153.139) be considered for this purpose. That section defined substances deemed to be inert when used in antimicrobial products. Although the suggestion of the commenter is worthwhile, the substances on the list in § 153.139 are not chemicals that could necessarily form the basis of such a listing. The commenter assumed that identification as an inert ingredient in § 153.130 establishes a presumption of knowledge about, and automatic "clearance" of, such ingredients; this is not so. The substances listed in § 153.139 should not be assumed to be "cleared" in any regulatory sense of the word; they have not been reviewed by the Agency for that purpose. Listing in § 153.130 merely identifies them as pesticidally inert for purposes of labeling.

However, the Agency has developed and published in the Federal Register of April 22, 1987 (52 FR 13305) an inert ingredient strategy, under which the Agency categorized pesticide inert ingredients into four "lists" based upon their potential toxicological concern. List 4, which is available from the Agency, contained inert ingredients deemed to be relatively innocuous. The Agency is currently taking no regulatory action with respect to ingredients on List 4.

F. Production or Formulation Process

The Agency proposed to required that applicants provide information on their production and formulating processes, including the substances and amounts used, the equipment and conditions of production, and quality control measures. These requirements were based on the information stated in the Pesticide Assessment Guidelines, Subdivision D.

A number of industry commenters and trade groups objected to the proposed requirements as being burdensome, needlessly detailed, and of little use to the Agency. Comments from formulators expressed concern that the requirements were appropriate only for integrated processes involving chemical reactions, not for formulating processes which are essentially blending and dilution processes. They suggested that a different process be put in place for end use products (formulated from registered products) to avoid repetitious paperwork.

Producers of manufacturing use products and TGAIs also objected. Their objections stemmed less from the burden of providing the information than from the possibility that the information will not be available at the time of application. They stated that the manufacturing process for a pesticide often is not finalized until after registration. Even large producers often contract out the initial manufacture of a new manufacturing use product, until marketing and distribution factors and level of demand justify capital expenditure for a full-scale production facility. Thus, they assert, the information the Agency is seeking may not be available at the time of application. The Agency is willing to accept initial manufacturing process information from pilot-scale production, with full-scale process information submitted later. However, the Agency will not accept laboratory bench-scale process information.

In the final rule, the Agency has defined separately the requirements applicable to the production process (§ 158.162) and the formulation process (§ 158.165). EPA agrees that some of the requirements set out in the proposed rule pertain only to production processes involving chemical reactions and not to formulation operations that are essentially blending of ingredients not expected to react. Thus a description of the "production" process needs to be more detailed and to include more information than a description of the "formulation" process.

All applicants (whether they use an integrated system, a formulation process, or both) must describe the materials used to produce the product, the type of process being used, the equipment and physical parameters of the process, and the quality control measures (both operational and analytical) for the final product.

In addition, for an integrated system where a chemical reaction is intended to occur to produce a TGAI, the reaction process must be described fully with flow charts and chemical equations, and a description of purification procedures. If the reaction process occurs in several distinct steps, with isolated chemical substances produced at each step, § 158.162 requires that each step be treated as a separate process and documented accordingly.

G. Discussion of Formation of Impurities

The Agency proposed that each applicant provide a discussion of the potential for formation of impurities in his product, based on information available to him about the materials he uses and manufacturing process. The Agency stated that it would use the discussion to determine what impurities the applicant expects to be in his product, to evaluate the possibility of other impurities and to evaluate the reliability of other data presented by the applicant. Under the Agency's proposal, an applicant would be expected to discuss the impurities that, based on chemical theory, might be formed at levels of 0.1 percent or greater in the TGAI.

Commenters from industry uniformly objected to the requirement for a discussion. Objections focused primarily on the theoretical nature of the discussion; several commenters suggested that it be limited to "expected" reactions rather than "possible" reactions, or that it deal only with known byproducts and impurities. Producers of TGAIs and manufacturing use products asserted that, because of the complexity of the chemical reactions, it would be time-consuming to construct the discussion across the entire production process and that it would not serve the purposes intended.

The Agency disagrees with the argument that the information will not be useful. Some of the risks posed by an pesticide result from the presence of impurities or contaminants rather than (or in addition to) the active ingredients or inert ingredients. In some cases, impurities pose the more significant risks, particularly when chronic health effects are considered. For example, dibenzo-p-dioxins and dibenzofurans, which are common impurities in the manufacture of some pesticides, are known to be potent carcinogens.

The Agency cannot conduct a comprehensive risk assessment of a pesticide without considering the possibility that toxic impurities may be formed. One common outcome of current Agency reviews is the requirement that registrants analyze their products to determine the presence and levels of toxic impurities. EPA believes that an early discussion of the possibility of impurities might preclude a requirement for more inclusive analysis of products. The discussion may alleviate Agency concerns or demonstrate that, although theoretically possible, impurities are not likely to be produced in an applicant's particular production process. Thus EPA has not modified the final rule.

The final rule provides that a producer using an integrated system must address impurities that are found actually found by analysis in his product, and also those that theoretically might be present based on established chemical theory. The magnitude and depth of the theoretical discussion are not prescribed in the rule, merely the topics that should be addressed. In all cases, the discussion is limited to the applicant's knowledge; he is not expected to seek out information he could not reasonably know or have access to. A registrant is not expected to provide a sophisticated or exhaustive treatment of theoretical impurities that are not toxicologically significant. However, if an impurity has actually been found by analysis, or if an impurity of toxicological concern is postulated to be formed, the Agency will expect a significantly more comprehensive discussion.

Comments from formulators also expressed concern at the Agency's proposal. The commenters questioned the need for any discussion of impurity formation for formulated products. They stated that the formulation process is intended to produce a stable product, and asserted that chemical reactions among the components are virtually unknown. Moreover, they noted that information on the identity of impurities in they active and inert ingredients they purchase is rarely, if ever, available to them, so that the would be unable to provide the information in any case.

As stated earlier, § 158.175 of the final rule is clear on this point: the discussion is to be based on information available to the formulator. Thus, the formulator is not required to seek information on the identity or level of impurities in his source products. If provided with such information by his supplier, a formulator should consider it in his discussion. Since information on the impurities in a registered source TGAI will be available to the Agency from the registrant of that source product, duplication of the information serves no purpose.

Other elements of a discussion for a formulated product, however, are concerned with reactions that could occur in the formulation process—reactions between active and inert ingredients, reactions between the product and its packaging, and migration of contaminants into the pesticide. These are topics which only the formulator can address. If the applicant does not believe it likely that any possible sources of impurity or contamination will materialize in his formulation process, his discussion need only explain why this is so. EPA agrees with commenters that the formulation process is less likely to involve chemical reactions that result in impurities; nonetheless, the possibility cannot be dismissed or ignored. In any case, EPA does not believe that the required discussion will be a protracted, time-consuming or burdensome process for formulators, since the majority of impurities in formulated products are present as a result of carryover from the active ingredient source, of which the formulator's knowledge may be limited.

One commenter misinterpreted the discussion requirement for non-intergrated system products as requiring analysis of each product at the 0.1 percent level and stated that formulators do not have laboratory capability at that level. Formulators not using an integrated system are not required to analyze their products to determine impurities qualitatively or quantitatively.

By contrast, producers who use an integrated system are required by § 158.170 to provide the Agency with a

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preliminary analysis of the TGAI to the 0.1 percent level. The producer of a TGAI or integrated system product is required to address each impurity found in that analysis at a level of 0.1 percent or greater of the TGAI. Moreover, if a producer has reason to believe that the TGAI may contain nitrosamine, dibenzodioxin or dibenzofuran impurities, he is expected to analyze below the 0.1 percent level, in accordance with the Agency's policy statement on nitrosamines (42 FR 51640, September 29, 1977) and its final rule (under the Toxic Substances Control Act) on dibenzodioxins and dibenzofurans (52 FR 21412, June 5, 1987).

H. Certification of Limits

The Agency proposed essentially the same certification of limits requirements as are contained in current § 158.110. In brief, the Agency proposed to require the certification of:

1. Upper and lower limits for active ingredients.
2. Upper limits for inert ingredients (the omission of lower limits was unintentional and has been corrected in the final rule).
3. Upper limits for impurities at any level that are determined to be toxicologically significant.
4. Upper limits for other impurities associated with the active ingredient at levels of 0.1 percent or greater. Impurities were to be certified if they were postulated to be present or if they were found by analysis of the product.

Comments on the certification requirements were received from five industry sources and one environmental group. Most commenters noted that the requirements were redundant to those in Part 158. EPA acknowledges this, but chose to repropose the requirements for completeness and organization purposes. In the final rule, all product chemistry requirements have been consolidated into Part 158, eliminating the redundancy.

Industry commenters were unanimous in objecting to the reproposed certification requirements, even though they were unchanged from those in current Part 158. A number of commenters repeated comments made at the time of initial proposal of these requirements (in 1982). In particular, several commenters addressed the requirement for certified limits for inert ingredients, and the possibility that applicants would have to develop costly analytical methods and capability to support those limits. The Agency has not changed its position on the requirement for upper and lower certified limits for active and inert ingredients, and does not believe it necessary to reiterate its responses to these comments. Readers are referred to the preamble to the final Part 158 rule, published in the Federal Register of October 24, 1984 (49 FR 42862), for a discussion of comments concerning certified limits for inert ingredients, and the level of analysis required in support of those limits.

The Agency has adopted the suggestion of a commenter that standardized certified limits for active and inert ingredients be established, taking into account acceptable deviations in analytical techniques and concentration factors. An applicant would have the choice of using the Agency's standard certified limits or of proposing his own certified limits, as was required by the proposal. The commenter suggested that the guidelines established by the American Association of Pesticide Control Officials be considered as the basis for the standard limits. The Agency considered those guidelines, but has adopted different limits. Section 158.175 now provides that, for active and inert ingredients, the applicant may propose certified limits or may use the standard certified limits set out in § 158.175(b)(2).

Standard certified limits are not appropriate for impurities for which a certified upper limit is required; the applicant must propose such limits. Since impurities are not intentionally added to a product, their levels cannot be predicted to fall within standardized limits. Moreover, impurities are intended to be minimized, and the Agency does not believe it should sanction their presence at predetermined levels.

An applicant is not required to use the standard limits. They are provided as an alternative to applicant-proposed certified limits, as a convenience to applicants. If an applicant chooses not to use the standard certified limits, he may propose wider (or narrower) limits. If wider, the applicant is strongly urged to include in his application a discussion of those limits and why he has selected them. A thorough discussion of the basis for different limits may avoid the Agency's questioning the applicant's proposed limits.

With respect to impurities, current § 158.190 and the proposed rule require that upper certified limits be established for impurities that are potentially present in the TGAI (as indicated in the discussion required by § 158.167). As a result of the comments received, the Agency has reexamined its requirements for certified limits for impurities, and has made significant changes in the final rule.

First, the Agency has eliminated the requirement for an upper certified limit for impurities that are not toxicologically significant. The requirement for a statement of the nominal concentration for such impurities when associated with the active ingredient has been retained in § 158.155(d). Second, the Agency has eliminated the requirement for certified limits on theoretical impurities in the formulation. An upper certified limit for toxic impurities will routinely be required only if shown by analysis of the product to be present.

The applicant is required to sign a certification statement agreeing that he will maintain his product's composition within the certified limits approved by the Agency. The certified limits approved by the Agency will be used for enforcement purposes. Moreover, although the Agency has established standard certified limits which should be acceptable for most products, the Agency reserves the right to reject those limits for an individual product, and to require the applicant to propose new limits.

A formulator should be aware that in formulating a product and certifying its active and inert ingredient ranges, he may have to adjust his formulation process to account for the permitted variability of the active ingredient in the source products he purchases. For example, a formulator may produce a product nominally containing 45 percent active ingredient by diluting a 90 percent nominal concentration technical product on a 1:1 basis. The standard certified limits would permit the technical grade active ingredient to vary from 87.3 to 92.7 percent. The formulated product may therefore contain only 43.7 percent active ingredient if the formulator is using source product at the lower certified limit, assuming optimal formulation conditions and manufacturing practices. If the formulator assumes the standard certified limit of 3 percent, his product (nominally at 45 percent) will just barely meet the lower certified limit, and is at risk of being in violation of FIFRA if his formulation process is less than optimal.

EPA urges formulators to be aware of the percentage of active ingredient actually contained in the source products they purchase. Each registrant will be held accountable for the certified limits of his product.

The responsibility of the registrant to adhere to the certified limits extends to individual inert ingredients. The fact that the applicant uses a proprietary mixture of substances whose composition is not known to him does not remove his responsibility for maintaining the composition of each of those inert ingredients within its certified limits.

Although EPA encourages the free and open exchange of information between producers of inert ingredients and their customers, it recognizes that producers' concerns about trade secrecy may prevent their customers from obtaining this information. Therefore, the Agency normally will not require that an applicant know the composition of a proprietary mixture of inert ingredients in order to obtain registration; he is, however, required to ensure that the Agency is informed of the mixture's composition by its producer. If a component of the proprietary mixture is an inert ingredient of toxicological concern, the agency may require that the applicant obtain information about purchased inert ingredients, so that the product may be labeled properly. Otherwise, the Agency may have to deny or cancel registration of the product.

In addition, the Agency holds the applicant responsible for the certified limits of each inert ingredient in his product, including those that are present as part of a proprietary mixture. An applicant who does not know the composition of an inert ingredient, and cannot persuade his supplier or producer to disclose it, may certify to an upper and lower limit of the ingredient as introduced into his product as a whole. In this case, the Agency will apply the certified limits of the ingredient as a whole to the individual substances comprising the ingredient, as disclosed by the supplier directly to the Agency. The applicant is responsible for maintaining his product within those Agency-derived limits.

A formulator who is uncomfortable with the extent of responsibility implicit in this policy should take steps to decrease the uncertainties, either by gaining knowledge of the composition of inert mixtures or by assuring that the composition of the mixture he uses will not change over time. EPA believes that a contractual arrangement between formulator and supplier is the best way to ensure that the formulator can rely on the composition of the material received, short of having direct knowledge of its composition.

Two commenters questioned the lack of criteria for determining "toxicological significance" of impurities. One suggested that the Agency issue a list of toxicologically significant impurities. The consequence of identification as an impurity of toxicological significance is that, under § 158.175 of the final rule, an applicant must supply an upper certified limit for each such impurity in a TGAI or integrated system product, and, under § 158.180, an analytical method suitable for enforcement of the certified limit. Impurities not identified as being of toxicological significance must be identified at levels greater than 0.1 percent of the TGAI, and a nominal concentration must be provided, but a certified upper limit is not required.

In response to the comment, the Agency has identified in two ways impurities for which it believes that certified limits are necessary. The first is a list of specific substances or classes of substances of known toxicological concern. In some cases, the listed substances are currently or have been the subject of regulatory action against pesticide products because of the risks posed by their presence as impurities in the product. In other cases, they are identified because historically they are known to contribute significantly to the toxic profile of an active ingredient. For example, the oxygen analogs of organophosphate pesticides may be more toxic than the parent compound and must be considered in setting tolerances for the toxicologically active components of the pesticide.

The second is a set of criteria for substances which are potentially of toxicological significance; in this latter list, no specific substances are named. While substances meeting the criteria of this second list are not necessarily hazardous, nor have risks associated with their presence been quantified in any specific instance, they are typical of the types of impurities that the Agency has found to be of significance in the past.

Impurities and classes of impurities of toxicological concern

Hexachlorobenzene (HCB)
Ethylene thiourea (ETU)
Dichloro diphenyl trichloroethane (DDT) and other chlorinated diphenyl ethanes and ethylenes, such as analogs and isomers of DDT, DDD, DDE and Cl-DDT ("extrachloro DDT")
Sulfotepp
Halogenated dibenzodioxins
Halogenated dibenzofurans
Nitrosamines
Biphenyl ethers
Anilines and substituted anilines
Hydrazines
Oxygen analogs of organophosphates
Sulfoxides and sulfones of organophosphates and carbamates

Impurities having characteristics of potential toxicological significance

Any impurity that is structurally related to the parent compound and is not known to be toxicologically insignificant
Any impurity that is also an active ingredient
Any impurity that is identified in standard toxicology data bases such as Toxline as being teratogenic, oncogenic or neurotoxic

This list is not exhaustive, and EPA does not intend it to be. The list may be expanded as new information on impurities becomes available. For that reason, the list is not included in the final rule. EPA will update the list periodically, and make it available to registrants and the public, or may publish it in the Federal Register. EPA has reserved the right to require certified limits for other impurities on a case-by-case basis. Registrants should contact the Agency if there is a question about the status of any individual impurity not listed.

It should be emphasized that the certification of limits for impurities of toxicological significance as part of the registration or reregistration process does not imply that the Agency seeks to take regulatory action based upon the presence of the impurity or its level in a product. The certified limits will permit EPA to monitor the continued stability of the manufacturing process, and will foster improved processes to further limit the presence of toxic impurities.

On the other hand, if the Agency has not quantified the risks associated with a particular impurity, it will not take regulatory action merely because the applicant certifies the limits of that impurity in his product. In a particular active ingredient and use context, the certified limits will be used to determine the risk posed by the impurity. The Agency would then undertake its risk/benefit balancing process to determine whether that risk is unreasonable.

If any of these substances is found to be present at any level in any TGAI used in or produced by an integrated system product, the applicant must provide an upper certified limit. Certified limits are not required for impurities other than those listed or meeting the criteria; however, a nominal concentration is required for each other impurity found to be present at a level greater than 0.1 percent of the TGAI if the impurity is associated with an active ingredient. Routine requirements for certification of limits for impurities of inert ingredients are not described in this final rule, but under § 158.175(a)(4), the Agency has reserved the right to require that certified limits be set for

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other ingredients in a pesticide product, including if warranted, impurities derived from inert ingredients. Such requirements are imposed on a case-by-case basis, in accordance with the inerts policy notice of April 22, 1987 (52 FR 13305).

The need to certify limits of impurities does not require that a producer analyze a product to any greater extent than he is otherwise required to do. A producer of a TGAI or an integrated system product is required by § 158.170 to analyze the TGAI in his product to the 0.1 percent level and provide the results of those analyses to the Agency. Certification of limits of identified impurities found in those analyses, and identification of the nominal concentration of other impurities found at greater than 0.1 percent are analogous reporting requirements derived from the same analyses.

I. Enforcement Analytical Method

No comments were received on the proposed requirements for an enforcement analytical method for active ingredients and other toxicologically significant ingredients. Accordingly, § 158.180 has been adopted as proposed.

J. Conforming Changes

The Agency has made two conforming changes in the final rule. First, a specific certification statement has been provided in § 158.175(d). Since certified limits are legally enforceable, the Agency believes it essential not only that product composition and certified limits be established, but also that the registrant promise that his product will conform to those limits at all times during sale and distribution.

Second, the table in § 158.190(a) has been revised to delete the requirements that are now contained in §§ 158.150 through 158.180 in narrative form. The table now includes only a listing of the physical/chemical characteristic data requirements.

XXI. Consolidated Table of Contents to Part 152

The Agency is today adding a number of new subparts to existing Part 152. Part 152 was originally promulgated on August 4, 1984 (49 FR 30903), containing only Subpart E, pertaining to data compensation procedures. As a convenience to readers, this unit provides a consolidated Table of Contents to Part 152, including the subparts being promulgated today and Subpart E. This Table of Contents will appear in the Code of Federal Regulations when next published.

Subpart A—General Provisions

Sec.
152.1 Scope.
152.3 Definitions.
152.5 Pests.
152.8 Products that are not pesticides because they are not for use against pests.
152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.
152.15 Pesticide products required to be registered.

Subpart B—Exemptions

152.20 Exemptions for pesticides regulated by another Federal agency.
152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.
152.30 Pesticides that may be transferred, sold, or distributed without registration.

Subpart C—Registration Procedures

152.40 Who may apply.
152.42 Application for new registration.
152.43 Alternate formulations.
152.44 Application for amended registration.
152.46 Modifications to registration not requiring amended applications.
152.50 Contents of application.
152.55 Where to send applications and correspondence.

Subpart D—Reregistration Procedures

152.60 General.
152.65 Application for reregistration.
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Subpart E—Procedures to Ensure Protection of Data Submitters' Rights

152.80 General.
152.81 Applicability.
152.83 Definitions.
152.84 When materials must be submitted to the Agency.
152.85 Formulators' exemption.
152.86 The cite-all method.
152.90 The selective method.
152.91 Waiver of a data requirement.
152.92 Submission of a new valid study.
152.93 Citation of a previously submitted valid study.
152.94 Citation of a public literature study or study generated at government expense.
152.95 Citation of all studies in the Agency's files pertinent to a specific data requirement.
152.96 Documentation of a data gap.
152.97 Rights and obligations of data submitters.
152.98 Procedures for transfer of exclusive use or compensation rights to another person.
152.99 Petitions to cancel registration.

Subpart F—Agency Review of Applications

152.100 Scope.
152.102 Publication.
152.104 Completeness of applications.
152.105 Incomplete applications.
152.107 Review of data.
152.108 Review of labeling.
152.110 Time for Agency review.
152.111 Choice of standards for review of applications.
152.112 Approval of registration under FIFRA sec. 3(c)(5).
152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.
152.114 Approval of registration under FIFRA sec. 3(c)(7)—Products that contain a new active ingredient.
152.115 Conditions of registration.
152.116 Notice of intent to register to original submitters of exclusive use data.
152.117 Notification to applicant.
152.118 Denial of application.
152.119 Availability of material submitted in support of registration.

Subpart G—Obligations and Rights of Registrants

152.122 Currency of address of record and authorized agent.
152.125 Submission of information pertaining to adverse effects.
152.130 Distribution under approved labeling.
152.132 Supplemental distribution.
152.135 Transfer of registration.
152.136 Voluntary cancellation.

Subpart H—Agency Actions Affecting Registrations

152.140 Classification of pesticide products.
152.142 Submission of information to maintain registration in effect.
152.144 Reregistration.
152.146 Special review of pesticides.
152.148 Cancellation of registration.
152.150 Suspension of registration.
152.152 Child-resistant packaging.
152.159 Policies applicable to registration and registered products.

Subpart I—Classification of Pesticides

152.160 Scope.
152.161 Definitions.
152.164 Classification procedures.
152.166 Labeling of restricted use products.
152.167 Distribution and sale of restricted use products.
152.168 Advertising of restricted use products.
152.170 Criteria for restriction to use by certified applicators.
152.171 Restrictions other than those relating to use by certified applicators.
152.175 Pesticides classified for restricted use.

Subparts J and K—[Reserved]

Subpart L—Intrastate Pesticide Products

152.220 Scope.
152.225 Application for Federal registration.
152.230 Sale and distribution of unregistered intrastate pesticide products.

XXII. Statutory Requirements

In accordance with FIFRA sec. 25(a), a draft of this final rule was submitted to the Secretary of Agriculture (USDA), the Scientific Advisory Panel (SAP), and the House Committee on Agriculture and Senate Committee on Agriculture, Nutrition and Forestry for comment. The SAP waived its formal review of the final rule. The Congressional Committees did not comment on the rule.

The Department of Agriculture, although not objecting to the use of the term "unclassified" for a pesticide that has not been restricted, believed that such pesticides are essentially classified for general use, and that a determination by the Agency to restrict the pesticide's use should be considered a change in classification for the purposes of FIFRA sec. 6. EPA disagrees. EPA does not regard the initial classification of a product or use that was previously unclassified as a change in classification.

The Agency's decision to restrict a product's use can be made and announced in a number of regulatory and non-regulatory contexts, including Special Review, issuance of a Registration Standard, or case-by-case reviews of individual products. EPA may use the procedures of FIFRA sec. 3(d)(2), under which the registrant and the public are given notice of a change in classification, or EPA may initiate a hearing or cancellation process under FIFRA sec. 6(b).

If a registrant agrees with, or does not contest, the Agency's decision to restrict the product's use(s), the restriction is implemented. However, if a registrant disagrees with the Agency's decision, EPA can compel compliance with its decision only by using the cancellation procedures of FIFRA sec. 6(b), which provides for 60-day notice to and comment by the Department of Agriculture before taking action, and hearing rights for registrants.

XXIII. Regulatory Requirements

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency determined at the time of proposal that this final rule revising and reorganizing Part 162 is not a major regulation as defined by E.O. 12291. This final rule was submitted to the Office of Management and Budget for review as required by E.O. 12291.

Regulatory Flexibility Act

This final rule was reviewed against the provisions of section 3(a) of the Regulatory Flexibility Act and it was determined that it does not contain provisions which would have a significant adverse impact on a substantial number of small entities, and I hereby certify that a separate Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has assigned OMB Control Numbers 2070-0057 and 2070-0060.

List of Subjects in 40 CFR Parts 152, 153, 156, 158, and 162

Administrative practice and procedure, Data requirements, Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: April 18, 1988.

Lee M. Thomas,

Administrator.

Therefore, Chapter I of Title 40 is amended as follows:

PART 152—PESTICIDE REGISTRATION AND CLASSIFICATION PROCEDURES

I. In Part 152:

1. The authority citation for Part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. By adding new Subpart A to read as follows:

Subpart A—General Provisions

Sec.
152.1 Scope.
152.3 Definitions.
152.5 Pests.
152.8 Products that are not pesticides because they are not for use against pests.
152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.
152.15 Pesticide products required to be registered.

Subpart A—General Provisions

§ 152.1 Scope.

Part 152 sets forth procedures, requirements and criteria concerning the registration and reregistration of pesticide products under FIFRA sec. 3, and for associated regulatory activities affecting registration. These latter regulatory activities include data compensation and exclusive use (Subpart E), and the classification of pesticide uses (Subpart I). This Part also describes the requirements applicable to intrastate products that are not federally registered (Subpart L).

§ 152.3 Definitions.

Terms used in this part have the same meaning as in the Act. In addition, the following terms have the meanings set forth in this section.

(a) "Act" or "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136–136y).

(b) "Active ingredient" means any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a).

(c) "Acute dermal LD_{50}" means a statistically derived estimate of the single dermal dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(d) "Acute inhalation LC_{50}" means a statistically derived estimate of the concentration of a substance that would cause 50 percent mortality to the test population under specified conditions.

(e) "Acute oral LD_{50}" means a statistically derived estimate of the single oral dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(f) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(g) "Agency" means the United States Environmental Protection Agency (EPA), unless otherwise specified.

(h) "Applicant" means a person who applies for a registration, amended registration, or reregistration, under FIFRA sec. 3.

(i) "Biological control agent" means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism declared to be a pest by the Administrator.

(j) "Distribute or sell" and other grammatical variations of the term such as "distributed or sold" and "distribution or sale," means the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.

(k) "End use product" means a pesticide product whose labeling

(l) Includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or

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defoliating, desiccating, or regulating the growth of plants, and

(2) Does not state that the product may be used to manufacture or formulate other pesticide products.

(l) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product, unless the labeling is an integral part of the package.

(m) "Inert ingredient" means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product.

(n) "Institutional use" means any application of a pesticide in or around any property or facility that functions to provide a service to the general public or to public or private organizations, including but not limited to:

(1) Hospitals and nursing homes.

(2) Schools other than preschools and day care facilities.

(3) Museums and libraries.

(4) Sports facilities.

(5) Office buildings.

(o) "Manufacturing use product" means any pesticide product that is not an end-use product.

(p) "New use," when used with respect to a product containing a particular active ingredient, means:

(1) Any proposed use pattern that would require the establishment of, the increase in, or the exemption from the requirement of, a tolerance or food additive regulation under section 408 or 409 of the Federal Food, Drug and Cosmetic Act;

(2) Any aquatic, terrestrial, outdoor, or forestry use pattern, if no product containing the active ingredient is currently registered for that use pattern; or

(3) Any additional use pattern that would result in a significant increase in the level of exposure, or a change in the route of exposure, to the active ingredient of man or other organisms.

(q) "Operated by the same producer," when used with respect to two establishments, means that each such establishment is either owned by, or leased for operation by and under the control of, the same person. The term does not include establishments owned or operated by different persons, regardless of contractural agreement between such persons.

(r) "Package" or "packaging" means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage. The term does not include any shipping or bulk container used for transporting or delivering the pesticide unless it is the only such package.

(s) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA sec. 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA sec. 201(x) that bears or contains any substances described by paragraph (s)(1) or (2) of this section.

(t) "Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

(u) "Residential use" means use of a pesticide directly:

(1) On humans or pets,

(2) In, on, or around any structure, vehicle, article, surface, or area associated with the household, including but not limited to areas such as non-agricultural outbuildings, non-commercial greenhouses, pleasure boats and recreational vehicles, or

(3) In any preschool or day care facility.

§ 152.5 Pests

An organism is declared to be a pest under circumstances that make it deleterious to man or the environment, if it is:

(a) Any vertebrate animal other than man;

(b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;

(c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or

(d) Any fungus, bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1) and cosmetics (as defined in FFDCA sec. 201(i).

§ 152.8 Products that are not pesticides because they are not for use against pests.

A substance or article is not a pesticide, because it is not intended for use against "pests" as defined in § 152.5, if it is:

(a) A product intended for use only for the control of fungi, bacteria, viruses, or other microorganisms in or on living man or animals, and labeled accordingly.

(b) A product intended for use only for control of internal invertebrate parasites or nematodes in living man or animals, and labeled accordingly.

(c) A product of any of the following types, intended only to aid the growth of desirable plants:

(1) A fertilizer product not containing a pesticide.

(2) A plant nutrient product, consisting of one or more macronutrients or macronutrient trace elements necessary to normal growth of plants and in a form readily usable by plants.

(3) A plant inoculant product consisting of microorganisms applied to the plant or soil for the purpose of enhancing the availiability or uptake of plant nutrients through the root system.

(4) A soil amendment product containing a substance or substances added to the soil for the purpose of improving soil characteristics favorable for plant growth.

(d) A product intended to force bees from hives for the collection of honey crops.

§ 152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.

A product that is not intended to prevent, destroy, repel, or mitigate a pest, or to defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide. The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution:

(a) Deodorizers, bleaches, and cleaning agents;

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly;

(c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints to trees.

§ 152.15 Pesticide products required to be registered.

No person may distribute or sell any pesticide product that is not registered

under the Act, except as provided in §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

3. By adding Subpart B to read as follows:

Subpart B—Exemptions

Sec.

152.20 Exemptions for pesticides regulated by another Federal agency.
152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.
152.30 Pesticides that may be transferred, sold, or distributed without registration.

Subpart B—Exemptions

§ 152.20 Exemptions for pesticides regulated by another Federal agency.

The pesticides or classes of pesticide listed in this section are exempt from all requirements of FIFRA. The Agency has determined, in accordance with FIFRA sec. 25(b)(1), that they are adequately regulated by another Federal agency.

(a) *Certain biological control agents.* (1) Except as provided by paragraph (a)(3) of this section, all biological control agents are exempt from FIFRA requirements.

(2) If the Agency determines that an individual biological control agent or class of biological control agents is no longer adequately regulated by another Federal agency, and that it should not otherwise be exempted from the requirements of FIFRA, the Agency will revoke this exemption by amending paragraph (a)(3) of this section.

(3) The following biological control agents are not exempt from FIFRA requirements:

(i) Eucaryotic microorganisms, including protozoa, algae and fungi;

(ii) Procaryotic microorganisms, including bacteria; and

(iii) Viruses.

(b) *Certain human drugs.* A pesticide product that is offered solely for human use and also is a new drug within the meaning of FFDCA sec. 201(p) or is an article that has been determined by the Secretary of Health and Human Services not to be a new drug by a regulation establishing conditions of use for the article, is exempt from the requirements of FIFRA. Such products are subject to regulation in accordance with the Federal Food, Drug, and Cosmetic Act and implementing regulations.

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) *Treated articles or substances.* An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.

(b) *Pheromones and pheromone traps.* Pheromones and identical or substantially similar compounds labeled for use only in pheromone traps (or labeled for use in a manner which the Administrator determines poses no greater risk of adverse effects on the environment than use in pheromone traps), and pheromone traps in which those compounds are the sole active ingredient(s).

(1) For the purposes of this paragraph, a pheromone is a compound produced by an arthropod which, alone or in combination with other such compounds, modifies the behavior of other individuals of the same species.

(2) For the purposes of this paragraph, a synthetically produced compound is identical to a pheromone only when their molecular structures are identical, or when the only differences between the molecular structures are between the stereochemical isomer ratios of the two compounds, except that a synthetic compound found to have toxicological properties significantly different from a pheromone is not identical.

(3) When a compound possesses many characteristics of a pheromone but does not meet the criteria in paragraph (a)(2) of this section, it may, after review by the Agency, be deemed a substantially similar compound.

(4) For the purposes of this paragraph, a pheromone trap is a device containing a pheromone or an identical or substantially similar compound used for the sole purpose of attracting, and trapping or killing, target arthropods. Pheromone traps are intended to achieve pest control by removal of target organisms from their natural environment and do not result in increased levels of pheromones or identical or substantially similar compounds over a significant fraction of the treated area.

(c) *Preservatives for biological specimens.* (1) Embalming fluids.

(2) Products used to preserve animal or animal organ specimens, in mortuaries, laboratories, hospitals, museums and institutions of learning.

(3) Products used to preserve the integrity of milk, urine, blood, or other body fluids for laboratory analysis.

(d) *Vitamin hormone products.* Vitamin hormone horticultural products consisting of mixtures of plant hormones, plant nutrients, inoculants, or soil amendments, which meet the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria of § 156.10(h)(1) of this chapter for Toxicity Category III or IV; and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

(e) *Foods.* Products consisting of foods and containing no active ingredients, which are used to attract pests.

§ 152.30 Pesticides that may be transferred, sold, or distributed without registration.

An unregistered pesticide, or a pesticide whose registration has been cancelled or suspended, may be distributed or sold, or otherwise transferred, to the extent described by this section.

(a) *A pesticide transferred between registered establishments operated by the same producer.* An unregistered pesticide may be transferred between registered establishments operated by the same producer. The pesticide as transferred must be labeled in accordance with Part 156 of this chapter.

(b) *A pesticide transferred between registered establishments not operated*

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by the same producer. An unregistered pesticide may be transferred between registered establishments not operated by the same producer if:

(1) The transfer is solely for the purpose of further formulation, packaging, or labeling into a product that is registered;

(2) Each active ingredient in the pesticide, at the time of transfer, is present as a result of incorporation into the pesticide of either:

(i) A registered product; or

(ii) A pesticide that is produced by the registrant of the final product; and

(3) The product as transferred is labeled in accordance with Part 156 of this chapter.

(c) *A pesticide distributed or sold under an experimental use permit.* (1) An unregistered pesticide may be distributed or sold in accordance with the terms of an experimental use permit issued under FIFRA sec. 5, if the product is labeled in accordance with § 172.6 of this chapter.

(2) An unregistered pesticide may be distributed or sold in accordance with the provisions of § 172.3 of this chapter, pertaining to use of a pesticide for which an experimental use permit is not required, provided the product is labeled in accordance with Part 156 of this chapter.

(d) *A pesticide transferred solely for export.* An unregistered pesticide may be transferred within the United States solely for export if it meets the following conditions:

(1) The product is prepared and packaged according to the specifications of the foreign purchaser; and

(2) The product is labeled in accordance with Part 156 of this chapter.

(e) *A pesticide distributed or sold under an emergency exemption.* An unregistered pesticide may be distrubuted or sold in accordance with the terms of an emergency exemption under FIFRA sec. 18, if the product is labeled in accordance with Part 156 of this chapter.

(f) *A pesticide transferred for purposes of disposal.* An unregistered, suspended, or cancelled pesticide may be transferred solely for disposal in accordance with FIFRA sec. 19 or an applicable Administrator's order. The product must be labeled in accordance with Part 156 of this chapter.

(g) *Existing stocks of a formerly registered product.* A cancelled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the Administrator concerning existing stocks of the pecticide.

4. By adding Subpart C to read as follows:

Subpart C—Registration Procedures

Sec.

152.40 Who may apply.
152.42 Application for new registration.
152.43 Alternate formulations.
152.44 Application for amended registration.
152.46 Modifications to registration not requiring amended applications.
152.50 Contents of application.
152.55 Where to send applications and correspondence.

Subpart C—Registration Procedures

§ 154.40 Who may apply.

Any person may apply for new registration of a pesticide product. Any registrant may apply for amendment of the registration of his product.

§ 152.42 Application for new registration.

Any person seeking to obtain a registration for a new peaticide product must submit an application for registration, containing the information specified in § 152.50. An application for new registration must be approved by the Agency before the product may legally be distributed or sold, except as provided by § 152.30.

§ 152.43 Alternate formulations.

(a) A product proposed for registration must have a single, defined composition, except that EPA may approve a basic formulation and one or more alternate formulations for a single product.

(b) An alternate formulation must meet the criteria listed in paragraph (b)(1) through (4) of this section. The Agency may require the submission of data to determined whether the criteria have been met.

(1) The alternate formulation must have the same certified limits for each active ingredient as the basic formulation.

(2) If the alternate formulation contains an inert ingredient or impurity of toxicological signficance, the formulation must have the same upper certified limit for that substance as the basic formulation;

(3) The label text of the alternate formulation product must be identical to that of the basic formulation.

(4) The analytical method required under § 158.180 must be suitable for use on both the basic formulation and the alternate formulation.

(c) Notwithstanding the criteria in this section, the Agency may determine that an alternate formulation must be separately registered. If EPA makes this determination, the Agency will notify the applicant of its determination and its reasons. Thereafter the application for an alternate formulation will be treated as an application for new registration, and the alternate formulation will be assigned a new registration number.

§ 152.44 Application for amended registration.

(a) Except as provided by § 152.46, any modification in the composition, labeling, or packaging of a registered product must be submitted with an application for amended registration. The applicant must submit the information required by § 152.50, as applicable to the change requested. If an application for amended registration is required, the application must be approved by the Agency before the product, as modified, may legally be distributed or sold.

(b) In its discretion, the Agency may:

(1) Waive the requirement for submission of an application for amended registration;

(2) Require that the applicant certify to the Agency that he has complied with an Agency directive rather than submit an application for amended registration; or

(3) Permit an applicant to consolidate an amendment affecting a number of products into a single application.

§ 152.46 Modifications to registration not requiring amended applications.

(a) *Changes needing Agency notification, but not approval.* A registrant may modify his registration as provided in paragraph (a)(1) through (7) of this section if he notifies the Agency before the modified product is distributed or sold. The registrant need not obtain Agency approval of any such amendment, but may distribute or sell the product, as changed, as soon as he has notified the Agency of the change. Based upon a notification, the Agency may require that the registrant submit an application for amended registration. If it does so, the Agency will notify the registrant and state its reasons for requiring an application for amended registration in lieu of a notification. Thereafter, if the registrant fails to submit an application without good cause, the Agency may determine that the product is no longer in compliance with the requirements of the Act and initiate cancellation proceedings under FIFRA sec. 6. Notification under this paragraph is considered a report filed under the Act for the purposes of FIFRA sec. 12(a)(2)(M).

(1) A revision of the label language consistent with Part 156 of this chapter and involving no change in the statement of ingredients, precautionary statements of directions for use.

(2) Addition or substitution of brand names.

(3) A change in the source of any starting material used in the manufacturing process for a product produced by an integrated process, unless the applicant has reason to believe that such source change would result in:

(i) An increase in the level of any impurity of toxicological significance (but not to exceed the upper certified limit); or

(ii) The formulation of any new impurity at a level greater than 0.1% by weight of the technical grade active ingredient.

(4) A change in the source of an active ingredient if, after the change the registrant continues to be eligible for a formulator's or generic data exemption.

(5) If the Agency has previously required that the source(s) of an inert ingredient be specified, a change in the source(s) of that ingredient.

(6) A change in the nominal concentration, but not the identity or certified limits, of any inert ingredient whose chemical identity or composition is known to the registrant. Substitution of a proprietary or trade name inert ingredient whose identity or composition is unknown to the registrant does not qualify.

(7) Change in the formulation process of a product produced by a non-integrated system (as defined in § 158.153), provided that the certified limits of the active and inert ingredients would not change as a result.

(b) *Changes not needing Agency approval or notification.* The following changes may be made in a product's composition, labeling or packaging without notification to or approval by the Ageny:

(1) Correction of typographical or printing errors on the labeling.

(2) Change in the package size and label net contents, provided no change in use directions or requirement for child-resistant packaging would ensue.

(3) Revision of non-mandatory label statements, consistent with Part 156 of this chapter, including additions or changes required by other Federal statutes or regulations.

(4) Change on the label of the name or address of the registrant, except for a change resulting from transfer of ownership, which requires Agency approval in accordance with § 152.135. Section 152.122 requires, however, that a registrant keep his name and address current with the Agency.

(5) Revision of the label format, provided that the format is consistent with Agency labeling requirements and the label text is not modified.

(Approved by the Office of Management and Budget under Control Number 2070-0060.)

§ 152.50 Contents of application.

Each application for registration or amended registration must include the following information, as applicable:

(a) *Application form.* An application form must be completed and submitted to the Agency. Application forms are provided by the Agency, with instructions as to the number of copies required and proper completion.

(b) *Identity of the applicant*—(1) *Name.* The applicant must identify himself. An applicant not residing in the United States must also designate an agent in accordance with paragraph (b)(3) of this section to act on behalf of the applicant on all registration matters.

(2) *Address of record.* The applicant must provide an address in the United States for correspondence purposes. The U.S. address provided will be considered the applicant's address of record, and EPA will send all correspondence concerning the application and any subsequent registration to that address. It is the responsibility of the applicant and any registrant under § 152.122 to ensure that the Agency has a current and accurate address.

(3) *Authorized agent.* An applicant may designate a person residing in the United States to act as his agent. If an applicant wishes to designate an agent, he must send the Agency a letter stating the name and United States address of his agent. The applicant must notify the Agency if he changes his designated agent. This relationship may be terminated at any time by the applicant by notifying the Agency in writing.

(4) *Company number.* If an applicant has been assigned a company number by the Agency, the application must reference that number.

(c) *Summary of the application.* Each application must include a list of the data submitted with the application, together with a brief description of the results of the studies. The list of data submitted may be the same as the list required by § 158.32 of this chapter. The summary must state that is is releasable to the public after registration in accordance with § 152.119.

(d) *Identity of the product.* The product for which application is being submitted must be identified. The following information is required:

(1) The product name;

(2) The trade name(s) (if different); and

(3) The EPA Registration Number, if currently registered.

(e) *Draft labeling.* Each application for new registration must be accompanied by five legible copies of draft labeling (typescript or mock-up). Each application for amended registration that proposes to make any changes in the product labeling must be accompanied by five legible copies of draft labeling incorporating the proposed labeling changes. If the proposed labeling change affects only a portion of the labeling, such as the use directions, the applicant may submit five copies of that portion of the label which is the subject of the amendment. Upon request, an applicant for amended registration must submit a complete label to consolidate amendments.

(f) *Registration data requirements.* (1) An applicant must submit materials to demonstrate that he has complied with the FIFRA sec. 3(c)(1)(D) and Subpart E of this part with respect to satisfaction of data requirements, to enable the Agency to make the determination required by FIFRA sec. 3(c)(5)(B). Required items are described in Subpart E of this part.

(2) An applicant must furnish any data specified in Part 158 of this chapter which are required by the Agency to determine that the product meets the registration standards of FIFRA sec. 3(c)(5) or (7). Each study must comply with:

(i) Section 158.30 of this chapter, with respect to times for submission;

(ii) Section 158.32 of this chapter, with respect to format of submission;

(iii) Section 158.33 of this chapter, with respect to studies for which a claim of trade secret or confidential business information is made;

(iv) Section 158.34 of this chapter, with respect to flagging for potential adverse effects; and

(v) Section 160.12 of this chapter, if applicable, with respect to a statement of whether studies were conducted in accordance with the Good Laboratory Practices of Part 160.

(3) An applicant shall furnish with his application any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA sec. 6(a)(2) if the product were registered. The types of information and submission requirements are described in Part 153, Subpart D of this chapter.

(g) *Certification relating to child-resistant packaging.* If the product meets the criteria for child-resistant packaging, the applicant must submit a certification that the product will be distributed or sold only in child-resistant packaging. Refer to Part 157 of this chapter for the criteria and certification requirements.

(h) *Request for classification.* If an applicant wishes to request a classification different from that established by the Agency, he must

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submit a request for such classification and information supporting the request.

(i) *Statement concerning tolerances.* If the proposed labeling bears instructions for use of the pesticide on food or feed crops, or if the intended use of the pesticide results or may be expected to result, directly or indirectly, in pesticide residues in or on food or feed (including residues of any active ingredient, inert ingredient, metabolite, or degradation product), the applicant must submit a statement indicating whether such residues are authorized by a tolerance, exemption from the requirement of a tolerance, or food additive regulation issued under section 408 or 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). If such residues have not been authorized, the application must be accompanied by a petition for establishment of appropriate tolerances, exemptions from the requirement of a tolerance, or food additive regulations, in accordance with Part 180 of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070-0024.)

§ 152.55 Where to send applications and correspondence.

Applications and correspondence relating to registration should be mailed to the Registration Division (TS-767C), U.S. Environmental Protection Agency, Washington, DC 20460. Persons who wish to hand-deliver applications should contact the Registration Division to determine the location for delivery.

5. By adding Subpart D to read as follows:

Subpart D—Reregistration Procedures

152.60 General.
152.65 Application for reregistration.
152.70 Agency response to application.

Subpart D—Reregistration Procedures

§ 152.60 General.

FIFRA sec. 3(g) requires that all currently registered pesticide products be reregistered. To facilitate the reregistration of products, EPA has instituted a program for the review of a pesticide active ingredient, the data supporting registration of products containing that active ingredient, and its uses. This review normally culminates in the issuance of a Registration Standard. The Standard explains the Agency's position on the registrability of products containing the active ingredient(s), assesses the acceptability of existing tolerances, lists additional data or information, if any, that must be submitted to complete the reregistration review, and identifies labeling changes or use restrictions needed for the product to remain in compliance with FIFRA.

§ 152.65 Application for reregistration.

(a) When the Agency is prepared to reregister products containing a specified active ingredient or combination of ingredients, it will notify the registrant by certified mail and will inform him of the specific requirements and the timeframes for submission of an application for reregistration.

(b) After receiving notice, the registrant is required to submit an application for reregistration within the timeframes specified in the notice.

(c) The application must contain the information required by § 152.50, unless such information is already on file with the Agency and is current and accurate.

§ 152.70 Agency response to application.

(a) *Approval of application.* The Agency will approve an application for reregistration when it determines that the registrant has complied with the instructions in the Agency's notice, and that the product meets the criteria for registration stated in § 152.112.

(b) *Time for compliance after approval.* If the Agency approves the application, it will notify the registrant of such approval. The notice of approval will specify the time permitted for modification of product composition, labeling and packaging of products shipped or distributed in commerce.

(c) *Notice of intent to cancel.* If a registrant fails to submit an application within the time allowed, or submits an application that does not conform to Agency requirements, the Agency may issue a notice of intent to cancel the registration. The registration will be cancelled after 30 days, unless within the 30 days the registrant takes one of the following actions:

(1) Submits a complete and correct application.

(2) Corrects the deficiencies in his previously submitted application.

(3) Requests a hearing, in accordance with § 152.148.

6. By adding Subpart F consisting of §§ 152.100 through 152.115 and 152.117 and 152.118, and §§ 152.116 and 152.119 which are revised and transferred from Subpart E to new Subpart F. As added, Subpart F reads as follows:

Subpart F—Agency Review of Applications

Sec.
152.100 Scope.
152.102 Publication.
152.104 Completeness of applications.
152.105 Incomplete applications.
152.107 Review of data.
152.108 Review of labeling.
152.110 Time for Agency review.
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152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.
152.114 Approval of registration under FIFRA sec 3(c)(7)—Products that contain a new active ingredient.
152.115 Conditions of registration.
152.116 Notice of intent to register to original submitters of exclusive use data.
152.117 Notification to applicant.
152.118 Denial of application.
152.119 Availability of material submitted in support of registration

Subpart F—Agency Review of Applications

§ 152.100 Scope.

(a) The Agency will follow the procedures in this subpart for all applications for registration, except an application for registration of a pesticide that has been the subject of a previous Agency cancellation or suspension notice under FIFRA sec. 6.

(b) The Agency will follow the procedures of Subpart D of Part 164 of this chapter in evaluating any application for registration of a pesticide involving use of the pesticide in a manner that is prohibited by a suspension or cancellation order, to the extent required by Subpart D of Part 164.

§ 152.102 Publication.

The Agency will issue in the **Federal Register** a notice of receipt of each application for registration of a product that contains a new active ingredient or that proposes a new use. After registration of the product, the Agency will issue in the **Federal Register** a notice of issuance. The notice of issuance will describe the new chemical or new use, summarize the Agency's regulatory conclusions, list missing data and the conditions for their submission, and respond to comments received on the notice of application.

§ 152.104 Completeness of applications.

The applicant is responsible for the accuracy and completeness of all information submitted in connection with the application. The Agency will review each application to determine whether it is complete. An application is incomplete if any pertinent item specified in § 152.50 has not been submitted, or has been incorrectly submitted (for example, data required by Part 158 of this chapter not submitted in accordance with the requirements for format, claims of confidential business information, or flagging).

§ 152.105 Incomplete applications.

The Agency will not begin or continue the review of an application that is incomplete. If the Agency determines that an application is incomplete or that further information is needed in order to complete the Agency's review, the Agency will notify the applicant of the deficiencies and allow the applicant 75 days to make corrections or additions to complete the application. If the applicant believes that the deficiencies cannot be corrected within 75 days, he must notify the Agency within those 75 days of the date on which he expects to complete the application. If, after 75 days, the applicant has not responded, or if the applicant subsequently fails to complete the application within the time scheduled for completion, the Agency will terminate any action on such application, and will treat the application as if it had been withdrawn by the applicant. Any subsequent submission relating to the same product must be submitted as a new application.

§ 152.107 Review of data.

(a) The Agency normally will review data submitted with an application that have not previously been submitted to the Agency.

(b) The Agency normally will review other data submitted or cited by an applicant only:

(1) As part of the process of reregistering currently registered products;

(2) When acting on an application for registration of a product containing a new active ingredient;

(3) If such data have been flagged in accordance with § 158.34 of this chapter; or

(4) When the Agency determines that it would otherwise serve the public interest.

(c) If the Agency finds that it needs additional data in order to determine whether the product may be registered, it will notify the applicant as early as possible in the review process.

§ 152.108 Review of labeling.

The Agency will review all draft labeling submitted with the application. If an applicant for amended registration submits only that portion of the labeling proposed for amendment, the Agency may review the entire label, as revised by the proposed changes, in deciding whether to approve the amendment. The Agency will not approve final printed labeling, but will selectively review it for compliance.

§ 152.110 Time for Agency review.

The Agency will complete its review of applications as expeditiously as possible. Applications involving new active ingredients, new uses, petitions for tolerance or exemptions, or consultation with other Federal agencies normally will take longer than applications for substantially similar products and uses.

§ 152.111 Choice of standards for review of applications.

The Agency has discretion to review applications under either the unconditional registration criteria of FIFRA sec. 3(c)(5) or the conditional registration criteria of FIFRA sec. 3(c)(7). The type of review chosen depends primarily on the extent to which the relevant data base has been reviewed for completeness and scientific validity. EPA conducts data reviews needed to support unconditional registrations on a chemical-by-chemical basis, according to an established priority list. Except for applications for registration of a new active ingredient or in special cases where it finds immediate review to be warranted, the Agency will not commence a complete review of the existing data base on a given chemical in response to receipt of an application for registration. Instead the Agency will review the application using the criteria for conditional registration in FIFRA sec. 3(c)(7) (A) and (B).

§ 152.112 Approval of registration under FIFRA sec. 3(c)(5).

EPA will approve an application under the criteria of FIFRA sec. 3(c)(5) only if:

(a) The Agency has determined that the application is complete and is accompanied by all materials required by the Act and this part, including, but not limited to, evidence of compliance with Subpart E of this part;

(b) The Agency has reviewed all relevant data in the possession of the Agency (see §§ 152.107 and 152.111);

(c) The Agency has determined that no additional data are necessary to make the determinations required by FIFRA sec. 3(c)(5) with respect to the pesticide product which is the subject of the application;

(d) The Agency has determined that the composition of the product is such as to warrant the proposed efficacy claims for it, if efficacy data are required to be submitted by Part 158 of this chapter for the product;

(e) The Agency has determined that the product will perform its intended function without unreasonable adverse effects on the environment, and that, when used in accordance with widespread and commonly recognized practice, the product will not generally cause unreasonable adverse effects on the environment;

(f) The Agency has determined that the product is not misbranded as that term is defined in FIFRA sec. 2(q) and Part 156 of this chapter, and its labeling and packaging comply with the applicable requirements of the Act, this Part, and Parts 156 and 157 of this chapter;

(g) If the proposed labeling bears directions for use on food, animal feed, or food or feed crops, or if the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues (including residues of any active or inert ingredient of the product, or of any metabolite or degradation product thereof) in or on food or animal feed, all necessary tolerances, exemptions from the requirement of a tolerance, and food additive regulations have been issued under FFDCA sec. 408, sec. 409 or both; and

(h) If the product, in addition to being a pesticide, is a drug within the meaning of FFDCA sec. 201(q), the Agency has been notified by the Food and Drug Administration (FDA) that the product complies with any requirements imposed by FDA.

§ 152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.

(a) Except as provided in paragraph (b) of this section, the Agency may approve an application for registration or amended registration of a pesticide product, each of whose active ingredients is contained in one or more other registered peticide products, only if the Agency has determined that:

(1) It possesses all data necessary to make the determinations required by FIFRA sec. 3(c)(7)(A) or (B) with respect to the pesticide product which is the subject of the application (including, at a minimum, data needed to characterize any incremental risk that would result from approval of the application);

(2) Approval of the application would not significantly increase the risk of any unreasonable adverse effect on the environment; and

(3) The criteria of § 152.112(a), (d), and (f) through (h) have been satisfied.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide under FIFRA sec. 3(c)(7)(A) unless the Agency has determined that the applicant's product and its proposed use are identical or substantially similar to a currently registered pesticide and use, or that the pesticide and its proposed use

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differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment.

(c) Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide product for a new use under FIFRA sec. 3(c)(7)(B) if:

(1) The pesticide is the subject of a special review, based on a use of the product that results in human dietary exposure; and

(2) The proposed new use involves use on a major food or feed crop, or involves use on a minor food or feed crop for which there is available an effective alternative registered pesticide which does not meet the risk criteria associated with human dietary exposure. The determination of available and effective alternatives shall be made with the concurrence of the Secretary of Agriculture.

§ 152.114 Approval of registration under FIFRA sec. 3(c)(7)—Products that contain a new active ingredient.

An application for registration of a pesticide containing an active ingredient not in any currently registered product may be conditionally approved for a period of time sufficient for the generation and submission of certain of the data necessary for a finding of registrability under FIFRA sec. 3(c)(5) if the Agency determines that:

(a) Insufficient time has elapsed since the imposition of the data requirement for those data to have been developed;

(b) All other required test data and materials have been submitted to the Agency;

(c) The criteria in § 152.112(a), (b), (d), and (f) through (h) have been satisfied;

(d) The use of the pesticide product during the period of the conditional registration will not cause any unreasonable adverse effect on the environment; and

(e) The registration of the pesticide product and its subsequent use during the period of the conditional registration are in the public interest.

§ 152.115 Conditions of registration.

(a) *Substantially similar products and new uses.* Each registration issued under § 152.113 shall be conditioned upon the submission or citation by the registrant of all data which are required for unconditional registration of his product under FIFRA sec. 3(c)(5), but which have not yet been submitted, no later than the time such data are required to be submitted for similar pesticide products already registered. If a notice requiring submission of such data has been issued under FIFRA sec. 3(c)(2)(B) prior to the date of approval of the application, the applicant must submit or cite the data described by that notice at the time specified by that notice. The applicant must agree to these conditions before the application may be approved.

(b) *New active ingredients.* Each registration issued under § 152.114 shall be conditioned upon the applicant's agreement to each of the following conditions:

(1) The applicant will submit remaining required data (and interim reports if required) in accordance with a schedule approved by the Agency.

(2) The registration will expire upon a date established by the Agency, if the registrant fails to submit data as required by the Agency. The expiration date will be established based upon the length of time necessary to generate and submit the required data. If the studies are submitted in a timely manner, the registration will be cancelled if the Agency determines, based on the data (alone, or in conjuction with other data), that the product or one or more of its uses meets or exceeds any of the risk criteria established by the Agency to initiate a special review. If the Agency so determines, it will issue to the registrant a Notice of Intent to Cancel under FIFRA sec. 6(e), and will specify any provisions for sale and distribution of existing stocks of the pesticide product.

(3) The applicant will submit an annual report of the production of the product.

(c) *Other conditions.* The Agency may establish, on a case-by-case basis, other conditions applicable to registrations to be issued under FIFRA sec. 3(c)(7).

(d) *Cancellation if condition is not satisfied.* If any condition of the registration of the product is not satisfied, or if the Agency determines that the registrant has failed to initiate or pursue appropriate action towards fulfillment of any condition, the Agency will issue a notice of intent to cancel under FIFRA sec. 6(e) and § 152.148.

§ 152.116 Notice of intent to register to original submitters of exclusive use data.

(a) Except as provided in paragraph (c) of this section, at least 30 days before registration of a product containing an active ingredient for which a previously submitted study is eligible for exclusive use under FIFRA sec. 3(c)(1)(D)(i), the Agency will notify the original submitter of the exclusive use study of the intended registration of the product. If requested by the exclusive use data submitter within 30 days, the Agency will also provide the applicant's list of data requirements and method of demonstrating compliance with each data requirement.

(b) Within 30 days after receipt of the Agency's notice, or of the applicant's list of data requirements, whichever is later, the exclusive use data submitter may challenge the issuance of the registration in accordance with the procedures in § 152.99 (b) and (c). If the Agency finds that the challenge has merit, it will issue a notice of denial of the application. The applicant may then avail himself of the hearing procedures provided by FIFRA sec. 3(c)(6). If the Agency finds that the challenge is without merit, it will deny the petition and register the applicant's product. Denial of the petition is a final Agency action.

(c) If an applicant has submitted to the Agency a certification from an exclusive use data submitter that he is aware of the applicant's application for registration, and does not object to the issuance of the registration, the Agency will not provide the 30-day notification described in paragraph (a) of this section to that exclusive use data submitter.

§ 152.117 Notification to applicant.

The Agency will notify the applicant of the approval of his application by a Notice of Registration for new registration, or by a letter in the case of an amended registration.

§ 152.118 Denial of application.

(a) *Basis for denial.* The Agency may deny an application for registration if the Agency determines that the pesticide product does not meet the criteria for registration under either FIFRA sec. 3(c)(5) or (7), as specified in §§ 152.112 through 152.114.

(b) *Notification of applicant.* If the Agency determines that an application should be denied, it will notify the applicant by certified letter. The letter will set forth the reasons and factual basis for the determination with conditions, if any, which must be fulfilled in order for the registration to be approved.

(c) *Opportunity for remedy by the applicant.* The applicant will have 30 days from the date of receipt of the certified letter to take the specified corrective action. During this time the applicant may request that his application be withdrawn.

(d) *Notice of denial.* If the applicant fails to correct the deficiencies within the 30-day period, the Agency may issue a notice of denial, which will be published in the **Federal Register**, and which will set forth the reasons and the factual basis for the denial.

(e) *Hearing rights.* Within 30 days following the publication of the notice of denial, an applicant, or any interested person with written authorization of the applicant, may request a hearing in accordance with FIFRA sec. 6(b). Hearings will be conducted in accordance with Part 164 of this chapter.

§ 152.119 Availability of material in support of registration.

(a) The information submitted to support a registration application shall be part of the official Agency file for that registration.

(b) Within 30 days after registration, the Agency will make available for public inspection, upon request, the materials required by Subpart E to be submitted with an application. Materials that will be publicly available include an applicant's list of data requirements, the method used by the applicant to demonstrate compliance for each data requirement, and the applicant's citations of specific studies in the Agency's possession if applicable.

(c) Except as provided by FIFRA sec. 10, within 30 days after registration, the data on which the Agency based its decision to register the product will be made available for public inspection, upon request, in accordance with the procedures in 40 CFR Part 2.

7. By adding Subpart G to read as follows:

Subpart G—Obligations and Rights of Registrants

Sec.

152.122 Currency of address of record and authorized agent.
152.125 Submission of information pertaining to adverse effects.
152.130 Distribution under approved labeling.
152.132 Supplemental distribution.
152.135 Transfer of registration.
152.138 Voluntary cancellation.

Subpart G—Obligations and Rights of Registrants

§ 152.122 Currency of address of record and authorized agent.

(a) The registrant must keep the Agency informed of his current name and address of record. If the Agency's good faith attempts to contact the registrant are not successful, the Agency will issue in the **Federal Register** a notice of intent to cancel all products of the registrant under FIFRA sec. 6(b). The registrant must respond within 30 days requesting that the registrations be maintained in effect, and providing his name and address of record. If no response is received, the cancellations will become effective at the end of 30 days without further notice to the registrant. The Agency may make provision for the sale and distribution of existing stocks of such products after the effective date of cancellation.

(b) The registrant must also notify the Agency if he changes his authorized agent.

§ 152.125 Submission of information pertaining to adverse effects.

If at any time the registrant receives or becomes aware of any factual information regarding unreasonable adverse effects of the pesticide on the environment that has not previously been submitted to the Agency, he shall, in accordance with FIFRA sec. 6(a)(2) and Subpart D of Part 153 of this chapter, provide such information to the Agency, clearly identified as FIFRA 6(a)(2) data.

§ 152.130 Distribution under approved labeling.

(a) A registrant may distribute or sell a registered product with the composition, packaging and labeling currently approved by the Agency.

(b) A registrant may distribute or sell a product under labeling bearing any subset of the approved directions for use, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.

(c) Normally, if the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of 18 months after approval of the revision, unless an order subsequently issued by the Agency under FIFRA sec. 6 or 13 provides otherwise. However, if paragraph (d) of this section applies to the registrant's product, the time frames established by the Agency in accordance with that paragraph shall take precedence.

(d) If a product's labeling is required to be revised as a result of the issuance of a Registration Standard, a Label Improvement Program notice, or a notice concluding a special review process, the Agency will specify in the notice to the registrant the period of time that previously approved labeling may be used. In all cases, supplemental or sticker labeling may be used as an interim compliance measure for a reasonable period of time. The Agency may establish dates as follows governing when label changes must appear on labels:

(1) The Agency may establish a date after which all product distributed or sold by the registrant must bear revised labeling.

(2) The Agency may also establish a date after which no product may be distributed or sold by any person unless it bears revised labeling. This date will provide sufficient time for product in channels of trade to be distributed or sold to users or otherwise disposed of.

§ 152.132 Supplemental distribution.

The registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted upon notification to the Agency if all the following conditions are met:

(a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product.

(b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer (or under contract in accordance with § 152.30) who produces, packages, and labels the registered product.

(c) The distributor product is not repackaged (remains in the producer's unopened container).

(d) The label of the distributor product is the same as that of the registered product, except that:

(1) The product name of the distributor product may be different (but may not be misleading);

(2) The name and address of the distributor may appear instead of that of the registrant;

(3) The registration number of the registered product must be followed by a dash, followed by the distributor's company number (obtainable from the Agency upon request);

(4) The establishment number must be that of the final establishment at which the product was produced; and

(5) Specific claims may be deleted, provided that no other changes are necessary.

§152.135 Transfer of registration.

(a) A registrant may transfer the registration of a product to another

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person, and the registered product may be distributed and sold without the requirement of a new application for registration by that other person, if the parties submit to the Agency the documents listed in paragraphs (b) and (c) of this section, and receive Agency approval as described in paragraph (d) of this section.

(d) Persons seeking approval of a transfer of registration must provide a document signed by the authorized representative of the registrant (the transferor) and of the person to whom the registration is transferred (the transferee) that contains the following information:

(1) The name, address and State of incorporation (if any) of the transferor;

(2) The name, address and State of incorporation of the transferee;

(3) The name(s) and EPA registration number(s) of the product(s) being transferred;

(4) A statement that the transferor transfers irrevocably to the transferee all right, title, and interest in the EPA registration(s) listed in the document;

(5) A statement that the transferred registration(s) shall not serve as collateral or otherwise secure any loan or other payment arrangement or executory promise, and that the registration(s) shall not revert to the transferor unless a new transfer agreement is submitted to and approved by the Agency;

(6) A description of the general nature of the underlying transaction, e.g., merger, spinoff, bankruptcy transfer (no financial information need be disclosed);

(7) A statement that the transferor and transferee understand that any false statement may be punishable under 18 U.S.C. 1001; and

(8) An acknowledgment by the transferee that his rights and duties concerning the registration under FIFRA and this chapter will be deemed by EPA to be the same as those of the transferor at the time the transfer is approved.

(c) In addition, the transferor must submit to the Agency a notarized statement affirming that:

(1) The person signing the transfer agreement is authorized by the registrant to bind the transferor;

(2) No court order prohibits the transfer, and that any required court approvals have been obtained; and

(3) The transfer is authorized under all relevant Federal, State and local laws and all relevant corporate charters, bylaws, partnerships, or other agreements.

(d) If the required documents are submitted, and no information available to the Agency indicates that the information is incorrect, the Agency will approve the transfer without requiring that the transferee obtain a new registration. The Agency will notify the transferor and transferee of its approval.

(e) The transfer will be effective on the date of Agency approval. Thereafter the transferee will be regarded as the registrant for all purposes under FIFRA.

(f) Rights to exclusive use of data or compensation under FIFRA sec. 3(c)(1)(D) are separate from the registration itself and may be retained by the transferor, or may be transferred independently in accordance with the provisions of § 152.98. If the registrant as the original data submitter wishes to transfer data rights at the same time as he transfers the registration, he may submit a single transfer document containing the information required by this section for both the registration and the data.

(Approved by the Office of Management and Budget under Control Number 2070–0060.)

§ 152.138 Voluntary cancellation.

(a) A registrant may request at any time that his registration be cancelled. A request for voluntary cancellation must include the registrant's name and address, the product name(s), the EPA registration number(s) involved, and the signature of the registrant or his authorized representative. In addition, if the registrant wishes to continue to distribute and sell existing stocks of the product, the request must include a proposed timeframe for disposition of such stocks.

(b) EPA will send a notice of cancellation by certified mail to the registrant. The notice will specify the effective date of cancellation, and the timeframe for disposal of existing stocks of the product.

(c) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number. The registrant is responsible for ensuring that distributors under his cancelled registration are notified and comply with the terms of the cancellation.

8. By adding Subpart H to read as follows:

Subpart H—Agency Actions Affecting Registrations

Sec.

152.140 Classification of pesticide products.
152.142 Submission of information to maintain registration in effect.
152.144 Reregistration.
152.146 Special review of pesticides.
152.148 Cancellation of registration.
152.150 Suspension of registration.
152.152 Child-resistant packaging.
152.159 Policies applicable to registration and registered products.

Subpart H—Agency Actions Affecting Registrations

§ 152.140 Classification of pesticide products.

FIFRA sec. 3(d) authorizes the Agency, as part of the registration or reregistration of a pesticide, or by issuing a regulation, or by an order under FIFRA sec. 6, to classify a product, its uses, or a class of products or uses for restricted use, in accordance with the criteria and procedures in Subpart I of this part.

§ 152.142 Submission of information to maintain registration in effect.

(a) FIFRA sec. 3(c)(2)(B) authorizes the Agency to require that a registrant submit information necessary to maintain his registration in effect. Such information may consist of data on the chemistry, efficacy, toxicity, environmental fate, environmental effects or other characteristics of the product or its ingredients, or on the exposure of humans or other organisms to the product or its components, or any other information necessary to support the continued registration of the product.

(b) If the Agency determines that additional information is necessary in order to maintain a registration in effect, the procedures set out in FIFRA sec. 3(c)(2)(B) will be used. The Agency will notify each affected registrant, and list the information needed and the required submission date. The information, when submitted to the Agency, is subject to the requirements of §§ 158.32, 158.33, and 158.34 of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070–0057.)

§ 152.144 Reregistration.

Under FIFRA sec. 3(g), the Agency must evaluate all currently registered pesticides against the standards of FIFRA sec. 3(c)(5) and reregister the products that meet those standards. The Agency has an ongoing program for the systematic review of pesticides. In that program, the Agency develops and maintains a Registration Standard for products containing a specified ingredient. The Registration Standard sets out the Agency's position with respect to regulation of products containing the ingredient, and is updated periodically as the Agency receives additional information. Based on the Registration Standard, the Agency may require a registrant to change a product's composition, labeling, packaging, or uses in order to

be reregistered and to maintain his registration in compliance with FIFRA. The procedures for reregistration are found in Subpart D of this Part.

§ 152.146 Special review of pesticides.

The Agency has established a special review process that, in its discretion, may be used to assist in identifying and evaluating pesticides that may cause unreasonable adverse effects on the environment. If the Agency determines through the special review process that the product or its uses may cause unreasonable adverse effects, or that the risks posed by the pesticide outweigh its benefits, the Agency may initiate cancellation proceedings under § 152.148. Criteria and procedures for the special review process are contained in Part 154 of this chapter.

§ 152.148 Cancellation of registration.

(a) *Grounds for cancellation.* The Agency may issue a notice of intent to cancel the registration of a product or to cancel the registration unless it is amended as specified in the notice, if the Agency determines that any of the following criteria has been met:

(1) Under FIFRA sec. 6(b), the pesticide, its labeling, or other material required to be submitted, does not comply with the Act. For example, the Agency may propose cancellation if a registrant fails to comply with a requirement that a product bear restricted use labeling, or if a registrant submits to the Agency a false statement concerning compliance of a study with the Good Laboratory Practices requirements of Part 160 of this chapter.

(2) Under FIFRA sec. 6(b), the pesticide, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment;

(3) Under FIFRA sec. 6(e), a registrant fails to initiate or pursue appropriate action toward meeting any conditions imposed on the registration;

(4) Under FIFRA sec. 6(c), a registrant fails to meet any conditions imposed on the registration;

(5) Under FIFRA sec. 3(c)(1)(D)(ii), the Agency determines, based upon a petition by an original data submitter, that a registrant has failed to comply with the requirements of Subpart E of this Part concerning compensation for use of data. Such cancellations are governed by the procedures of § 152.99, and are not subject to the procedures of this section.

(b) *Notice of intent to cancel.* The Agency will notify the registrant by certified mail at the address of record of the Agency's intent to cancel, and will state the reasons for the proposed cancellation. The Agency will also issue in the **Federal Register** a notice of its intent to cancel a registration.

(c) *Opportunity for corrections.* The registrant may, within 30 days of his receipt of the notice or publication in the **Federal Register**, whichever is later, make any corrections identified in the notice. If he does so, the cancellation action will not become final.

(d) *Hearing*—(1) *Requested by a registrant.* A registrant may, within 30 days of his receipt of a notice of intent to cancel, or publication in the **Federal Register**, whichever is later, request that a hearing be held. The registrant may request a hearing on any or all of the Agency's requirements, as stated in the Agency's notice of intent to cancel. The registrant must state in his request the specific requirements he objects to, and the reasons for his objection. He need not comply with the requirements in dispute until a final hearing decision has been issued. The registrant must, however, within the timeframes specified, comply with all other Agency requirements that are not at issue.

(2) *Requested by another person.* Any other person adversely affected by a proposed cancellation may, within 30 days of publication in the **Federal Register**, request that a hearing be held. The request must identify in what manner the person is adversely affected by the Agency's proposed cancellation.

(3) *Initiated by the Agency.* Under FIFRA sec. 6(b)(2), in lieu of issuing a notice of intent to cancel, the Agency may hold a hearing to determine whether a registration should be cancelled.

(4) *Hearing procedures.* A hearing will be conducted according to FIFRA sec. 6(d) or 6(e) and Part 164 of this chapter.

(e) *Effective date of cancellation.* (1) If a hearing request is not received in a timely manner and the registrant fails to make required corrections in a timely manner, the cancellation shall be effective at the end of 30 days from the date of publication in the **Federal Register** or receipt by the registrant, whichever is later.

(2) If a hearing is held to challenge the cancellation, and thereafter the cancellation is sustained, or if the Agency holds a hearing in which it is concluded that a registration should be cancelled, the cancellation shall be effective immediately upon issuance of the final Agency order in the proceeding.

(f) *Effect of cancellation.* After the effective date of cancellation, distribution or sale of a cancelled product, except in accordance with the terms of the notice of cancellation, will be considered a violation of FIFRA sec. 12(a)(1)(A) or 12(a)(2)(K). The Agency will specify in the order of final cancellation whether existing stocks of the product may be distributed or sold, what conditions of distribution, sale, and use (if any) have been established, and the date after which such distribution or sale will no longer be permitted.

(g) *Reinstatement of registration.* The Agency will reinstate a cancelled registration if the registrant can show that the cancellation was the result of Agency clerical or administative error.

§ 152.150 Suspension of registration.

(a) *Grounds for suspension.* The Agency may issue a notice of intent to suspend the registration of a product if:

(1) Under FIFRA sec. 6(c)(1), the Agency determines that suspension is necessary in order to prevent an imminent hazard during the time necessary for cancellation or change in classification proceedings.

(2) Under FIFRA sec. 3(c)(2)(B), a registrant has failed, within the time required by the Agency:

(i) To take appropriate steps to provide information necessary for continued registration;

(ii) To participate in a procedure for reaching agreement concerning joint development of data or in an arbitration proceeding; or

(iii) To comply with the terms of any agreement or arbitration decision.

(b) *Suspension order.* The Agency may issue a suspension order if:

(1) The registrant who has received a notice of intent to suspend fails to request a hearing in a timely manner;

(2) A hearing is held, and the suspension is sustained; or

(3) Under FIFRA sec. 6(c)(3), the Agency determines that an emergency exists which warrants immediate suspension.

(c) *Procedures of suspension.* The Agency will conduct proceedings to suspend products in accordance with the provisions of Subpart C of Part 164 of this chapter, or FIFRA sec. 3(c)(2)(B), as applicable.

(d) *Effect of suspension.* After the effective date of suspension, the distribution, sale, or use of a suspended product, except in accordance with the terms of the suspension notice, will be considered a violation of FIFRA sec. 12(a)(2)(J).

§ 152.152 Child-resistant packaging.

The Agency has established criteria, standards and recordkeeping requirements for child-resistant packaging of products that are highly toxic and are intended for residential use. Refer to Part 157 of this chapter.

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§ 152.159 Policies applicable to registration and registered products.

Codified policies and interpretations pertaining to registration and registered products may be found in Part 153 of this chapter. Additional policies and interpretations may be published in the Federal Register, mailed directly to registrants, or both.

9. By adding Subpart I to read as follows:

Subpart I—Classification of Pesticides

152.160 Scope.
152.161 Definitions.
152.164 Classification procedures.
152.166 Labeling of restricted use products.
152.167 Distribution and sale of restricted use products.
152.168 Advertising of restricted use products.
152.170 Criteria for restriction to use by certified applicators.
152.171 Restrictions other than those relating to use by certified applicators.

Subpart I—Classification of Pesticides

§ 152.160 Scope.

(a) *Types of classification.* A pesticide product may be unclassified, or it may be classified for restricted use or for general use. The Agency does not normally classify products for general use; products that are not restricted remain unclassified.

(b) *Kinds of restrictions.* The Agency may restrict a product or its uses to use by a certified applicator, or by or under the direct supervision of a certified applicator, as described in FIFRA sec. 3(d)(1)(C). The Agency may also, by regulation, prescribe restrictions relating to the product's composition, labeling, packaging, uses, or distribution and sale, or to the status or qualifications of the user.

§ 152.161 Definitions.

In addition to the definitions in § 152.3, the following terms are defined for the purposes of this subpart:

(a) "Dietary LC_{50}" means a statistically derived estimate of the concentration of a test substance in the diet that would cause 50 percent mortality to the test population under specified conditions.

(b) "Outdoor use" means any pesticide application that occurs outside enclosed manmade structures or the consequences of which extend beyond enclosed manmade structures, including, but not limited to, pulp and paper mill water treatments and industrial cooling water treatments.

§ 152.164 Classification procedures.

(a) *Grouping of products for classification purposes.* In its discretion, the Agency may identify a group of products having common characteristics or uses and may classify for restricted use same or all of the products or uses included in that group. Such a group may be comprised of, but is not limited to, products that:

(1) Contain the same active ingredients.

(2) Contain the same active ingredients in a particular concentration range, formulation type, or combination of concentration range and formulation type.

(3) Have uses in common.

(4) Have other characteristics, such as toxicity, flammability, or physical properties, in common.

(b) *Classification reviews.* The Agency may conduct classification reviews and classify products at any time, if it determines that a restriction on the use of a pesticide product is necessary to avoid unreasonable adverse effects on the environment. However, classification reviews normally will be conducted and products classified only in the following circumstances:

(1) As part of the review of an application for new registration of a product containing an active ingredient not contained in any currently registered product.

(2) As part of the review of an application for a new use of a product, if existing uses of that product previously have been classified for restricted use. Review of a restricted use product at this time is for the purpose of determining whether the new use should also be classified for restricted use. Normally the Agency will not conduct initial classification reviews for existing uses of individual products in conjunction with an application for amended registration.

(3) As part of the process of developing or amending a registration standard for a pesticide. The Agency normally will conduct classification reviews of all uses of a currently registered pesticide at this time.

(4) As part of any special review of a pesticide, in accordance with the procedures of 40 CFR Part 154.

(c) *Classification procedures.* (1) If the Agency determines that a product or one or more of its uses should be classified for restricted use, the Agency initially may classify the product by regulation. In this case, within 60 days after the effective date of a final rule, each registrant of a product subject to the rule must submit to the Agency one of the following, as directed in the final rule:

(i) A copy of the amended label and any supplemental labeling to be used as an interim compliance measure.

(ii) A statement, which the Agency considers a report under the Act, that the registrant will comply with the labeling requirements prescribed by the Agency within the timeframes prescribed by the regulation.

(iii) An application for amended registration to delete the uses which have been restricted, or to "split" the registration into two registrations, one including only restricted or all uses, and the other including only uses that have not been classified.

(2) Alternatively, EPA may notify the applicant or registrant of the classification decision and require that he submit the information required by paragraph (c)(1) of this section. The Agency may deny registration or initiate cancellation proceedings if the registrant fails to comply within the timeframes established by the Agency in its notification.

§ 152.166 Labeling of restricted use products.

(a) *Products intended for end use.* A product whose labeling bears directions for end use and that has been classified for restricted use must be labeled in accordance with the requirements of § 156.10 of this chapter or other Agency instructions. The Agency will permit the use of stickers or supplemental labeling as an interim alternative to the use of an approved amended label, in accordance with § 152.167.

(b) *Products intended only for formulation.* A product whose labeling does not bear directions for end use (a product that is intended and labeled solely for further formulation into other pesticide products) is not subject to the labeling requirements of this subpart.

§ 152.167 Distribution and sale of restricted use products.

Unless modified by the Agency, the compliance dates in this section shall apply to restricted use products.

(a) *Sale by registrant or producer.* (1) No product with a use classified for restricted use may be distributed or sold by the registrant or producer after the 120th day after the effective date of such classification unless the product:

(i) Bears an approved amended label which contains the terms of restricted use imposed by the Agency and otherwise complies with Part 156 of this chapter;

(ii) Bears a sticker containing the product name, EPA registration number, and any terms of restricted use imposed by the Agency; or

(iii) Is accompanied by supplemental labeling bearing the information listed in paragraph (a)(1)(ii) of this section.

(2) If the registrant chooses to delete the restricted uses from his product label, that product may not be distributed or sold after the 180th day after the effective date of classification unless the product bears amended labeling with the restricted uses deleted.

(3) Notwithstanding paragraphs (a)(1) and (2) of this section, after the 270th day after the effective date of classification, no registrant or producer may distribute or sell a product that does not bear the approved amended label. After that date, stickers and supplemental labeling described in paragraph (a)(1)(ii) and (iii) are not longer acceptable.

(b) *Sale by retailer.* No product with a use classified for restricted use by a regulation may be distributed or sold by a retailer or other person after the 270th day after the effective date of the final rule unless the product bears a label or labeling which complies with paragraph (a)(1) of this section.

§ 152.168 Advertising of restricted use products.

(a) Any product classified for restricted use shall not be advertised unless the advertisement contains a statement of its restricted use classification.

(b) The requirement in paragraph (a) of this section applies to all advertisements of the product, including, but not limited, to:

(1) Brochures, pamphlets, circulars and similar material offered to purchasers at the point of sale or by direct mail.

(2) Newspapers, magazines, newsletters and other material in circulation or available to the public.

(3) Broadcast media such as radio and television.

(4) Telephone advertising.

(5) Billboards and posters.

(c) The requirement may be satisfied for printed material by inclusion of the statement "Restricted Use Pesticide," or the terms of restriction, prominently in the advertisement. The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the broadcast of the spoken words "Restricted use pesticide," or a statement of the terms of restriction.

(d) The requirements of this section shall be effective:

(1) After 270 days after the effective date of restriction of a product that is currently registered, unless the Agency specifies a shorter time period;

(2) Upon the effective date of registration of a product not currently registered.

§ 152.170 Criteria for restriction to use by certified applicators.

(a) *General criteria.* An end-use product will be restricted to use by certified applicators (or persons under their direct supervision) if the Agency determines that:

(1) Its toxicity exceeds one or more of the specific hazard criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use;

(2) Its labeling, when considered according to the factors in paragraph (e)(2) of this section, is not adequate to mitigate these hazard(s);

(3) Restriction of the product would decrease the risk of adverse effects; and

(4) The decrease in risks of the pesticide as a result of restriction would exceed the decrease in benefits.

(b) *Criteria for human hazard*—(1) *Residential and institutional uses.* A pesticide product intended for residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as diluted for use, has an acute oral LD_{50} of 1.5 g/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 2000 mg/kg or less;

(iii) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.5 mg/liter or less, based upon a 4-hour exposure period;

(iv) The pesticide, as formulated, is corrosive to the eye (causes irreversible destruction of ocular tissue) or results in corneal involvement or irritation persisting for more than 7 days;

(v) The pesticide, as formulated, is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe irritation (severe erythema or edema) at 72 hours; or

(vi) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic, chronic or delayed toxic effects on man as a result of single or multiple exposures to the product ingredients or residues.

(2) *All other uses.* A pesticide product intended for uses other than residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as formulated, has an acute oral LD_{50} of 50 mg/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 200 mg/kg or less;

(iii) The pesticide, as diluted for use, has an acute dermal LD_{50} of 10 g/kg or less;

(iv) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.05 mg/liter or less, based upon a 4-hour exposure period;

(v) The pesticide, as formulated, is corrosive to the eye or causes corneal involvement or irritation persisting for more than 21 days;

(vi) The pesticide, as formulated, is corrosive to the skin (causes tissue destruction into the dermis and/or scarring); or

(vii) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic toxicity, chronic toxicity, or delayed toxic effects on man, as a result of single or multiple exposures to the product ingredients or residues.

(c) *Criteria for hazard to non-target species*—(1) *All products.* A pesticide product intended for outdoor use will be considered for restricted use classification if:

(i) When used according to label directions, application results in residues of the pesticide, its metabolites, or its degradation products, in the diet of exposed mammalian wildlife, immediately after application, such that:

(A) The level of such residues equals or exceeds one-fifth of the acute dietary LC_{50}; or

(B) The amount of pesticide consumed in one feeding day (mg/kg/day) equals or exceeds one-fifth of the mammalian acute oral LD_{50};

(ii) When used according to label directions, application results, immediately after application, in residues of the pesticide, its metabolites or its degradation products, in the diet of exposed birds at levels that equal or exceed one-fifth of the avian subacute dietary LC_{50};

(iii) When used according to label directions, application results in residues of the pesticide, its metabolites or its degradation products, in water that equal or exceed one-tenth of the acute LC_{50} for non-target aquatic organisms likely to be exposed; or

(iv) Under conditions of label use or widespread and commonly recognized practice, the pesticide may cause discernible adverse effects on non-target organisms, such as significant mortality or effects on the physiology, growth, population levels or reproduction rates of such organisms, resulting from direct or indirect exposure to the pesticide, its metabolites or its degradation products.

(2) *Granular products.* In addition to the criteria of paragraph (c)(1) of this

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section, a pesticide intended for outdoor use and formulated as a granular product will be considered for restricted use classification if:

(i) The formulated product has an acute avian or mammalian oral LD_{50} of 50 mg/kg or less as determined by extrapolation from tests conducted with technical material or directly with the formulated product; and

(ii) It is intended to be applied in such a manner that significant exposure to birds or mammals may occur.

(d) *Other evidence.* The Agency may also consider evidence such as field studies, use history, accident data; monitoring data, or other pertinent evidence in deciding whether the product or use may pose a serious hazard to man or the environment that can reasonably be mitigated by restricted use classification.

(e) *Alternative labeling language.* (1) If the Agency determines that a product meets one or more of the criteria of paragraphs (b) or (c) of this section, or if other evidence identified in paragraph (d) of this section leads the Agency to conclude that the product should be considered for restricted use classification, the Agency will then determine if additional labeling language would be adequate to mitigate the identified hazard(s) without restricted use classification. If the labeling language meets all the criteria specified in paragraph(e)(2) of this section, the product will not be classified for restricted use.

(2) The labeling will be judged adequate if it meets all the following criteria:

(i) The user, in order to follow label directions, would not be required to perform complex operations or procedures requiring specialized training and/or experience.

(ii) The label directions do not call for specialized apparatus, protective equipment, or materials that reasonably would not be available to the general public.

(iii) Failure to follow label directions in a minor way would result in few or no significant adverse effects.

(iv) Following directions for use would result in few or no significant adverse effects of a delayed or indirect nature through bioaccumulation, persistence, or pesticide movement from the original application site.

(v) Widespread and commonly recognized practices of use would not nullify or detract from label directions such that unreasonable adverse effects on the environment might occur.

§ 152.171 Restrictions other than those relating to use by certified applicators.

The Agency may by regulation impose restrictions on a product or class of products if it determines that:

(a) Without such restrictions, the product when used in accordance with warnings, cautions and directions for use or in accordance with widespread and commonly recognized practices of use may cause unreasonable adverse effects on the environment; and

(b) The decrease in risks as a result of restricted use would exceed the decrease in benefits as a result of restricted use.

§ 162.31 [Redesignated as 152.175]

10. Section 152.175 is redesignated from § 162.31, the section heading is revised to read as set forth below, and the section is added to Subpart I.

§ 152.175 Pesticides classified for restricted use.

* * * * *

11. Part 152 is amended by adding and reserving Subparts J and K.

Subparts J and K—[Reserved]

12. By adding Subpart L, to read as follows:

Subpart L—Intrastate Pesticide Products

Sec.

152.220 Scope.
152.225 Application for Federal registration.
152.230 Sale and distribution of unregistered intrastate pesticide products.

Subpart L—Intrastate Pesticide Products

§ 152.220 Scope.

This subpart applies to any intrastate pesticide product defined as a product:

(a) Which is distributed and sold solely within a single State, in accordance with a registration issued to the producer by that State; and

(b) For which a proper Notice of Application for Federal Registration (EPA Form 8570–8) was filed (in accordance with regulations codified in 40 CFR 162.17(d) on July 3, 1975) by October 4, 1975 (or by a later date as allowed by the Agency).

§ 152.225 Application for Federal registration.

(a) Each current intrastate producer who has submitted a "Notice of Application for Federal Registration" must, no later than July 31, 1988, submit a full application for Federal registration complying with the requirements of this Part 152.

(b) The Agency may, at any time before that date, require the producer of an intrastate product to submit an application for Federal registration of the product. If the Agency requires the submission of an application for registration of an intrastate product prior to July 31, 1988, the Agency will notify the producer of the intrastate product in writing, and will specify a date by which the application must be submitted.

(c) The Agency will require the producer of an intrastate product to submit an application for Federal registration if the intrastate product contains the same active ingredient as, and is intended for the same or a substantially similar end use as, a federally registered product that is subject to:

(1) A notice of special review in accordance with § 154.25 of this chapter;

(2) A notice under FIFRA sec. 3(c)(2)(B) requiring the submission of data in support of Federal registration;

(3) A regulation or notice classifying the product for restricted use under FIFRA sec. 3(d)(1)(C); or

(4) A notice requiring the Federal registrant to submit an application for reregistration of his product.

§ 152.230 Sale and distribution of unregistered intrastate pesticide products.

(a) An intrastate product which is not federally registered may continue to be sold or distributed solely within a single State, provided that:

(1) Such product complies with FIFRA sec. 12(a)(1)(D) and (E), in accordance with definitions contained in:

(i) FIFRA sec. 2(q)(1)(A) through (G); and

(ii) FIFRA sec. 2(q)(2)(A), (C)(i) through (iii), and (D).

(2) The producer of such product has submitted a timely application for Federal registration of the pesticide (by July 31, 1988, or earlier if notified by the Agency to do so);

(3) The Agency has not issued in the Federal Register a notice of denial of an application for registration of such product under FIFRA sec. 3(c)(6);

(4) The Agency has not issued a notice of intent to cancel or suspend any federally registered pesticide products containing the same active ingredient as, and intended for the same (or substantially similar) end uses as, such intrastate product; and

(5) The pesticide product is registered under the applicable State pesticide registration law.

(b) No person may distribute or sell an intrastate product after the date specified in a notice furnished in accordance with § 152.225(b) that requires submission of a full application for Federal registration by such date.

(c) No person may distribute or sell an intrastate product after July 31, 1988, unless he has submitted an application for full Federal registration in accordance with § 152.225. Distribution or sale of any such product will be considered a violation of FIFRA sec. 12(a)(1)(A).

PART 153—REGISTRATION POLICIES AND INTERPRETATIONS

II. In Part 153:

1. The authority citation for Part 153 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

2. The Part heading is revised to read as set forth above.

3. By adding Subparts G, H, and M, to read as follows; and by adding and reserving Subparts E and F, I and J, and K and L.

Subparts E and F [Reserved]

Subpart G—Determination of Active and Inert Ingredients

Sec.

153.125 Criteria for determination of pesticidal activity.
153.139 Substances determined to be pesticidally inert.

Subpart H—Coloration and Discoloration of Pesticides

153.140 General.
153.142 Coloring agent.
153.145 Arsenicals and barium fluosilicate.
153.150 Sodium fluoride and sodium fluosilicate.
153.155 Seed treatment products.
153.158 Exceptions.

Subparts I, J, K, and L [Reserved]

Subpart M—Devices

153.240 Requirements for devices.

Subparts E and F [Reserved]

Subpart G—Determination of Active and Inert Ingredients

§ 153.125 Criteria for determination of pesticidal activity.

(a) An ingredient will be considered an active ingredient if it is contained in a pesticide product and:

(1) The ingredient has the capability by itself, and when used as directed at the proposed use dilution, to function as a pesticide; or

(2) The ingredient has the ability to elicit or enhance a pesticidal effect in another compound whose pesticidal activity is substantially increased due to the interaction of the compounds. Compounds which function simply to enhance or prolong the activity of an active ingredient by physical action, such as stickers and other adjuvants, are not generally considered to be active ingredients.

(b) Normally the applicant will determine and state in his application whether an ingredient is active or inert with respect to pesticidal activity. The Agency, as part of its review of an application for registration, or in conjunction with the Registration Standard or Special Review process, may require any ingredient (including those listed in § 153.139), to be designated as an active ingredient if the Agency finds that it meets the criteria in paragraph (a) of this section. Conversely, the Agency may determine that any ingredient designated as active by an applicant is an inert ingredient if it fails to meet those criteria.

(c) If an applicant or registrant submits data to the Agency which demonstrates to the Agency's satisfaction that an ingredient listed in § 153.139 is pesticidally active according to the criteria of this section, the ingredient may be deemed to be an active ingredient in that registrant's product.

(d) If an ingredient is designated as an active ingredient, it must be identified in the label ingredients statement. If an ingredient is designated as an inert ingredient, it must be included as part of the total inert ingredients in the label ingredients statement.

(e) Designation of a substance as a pesticidally inert ingredient does not relieve the applicant or registrant of other requirements of FIFRA with respect to labeling of inert ingredients or submission of data, or from the requirements of the Federal Food, Drug, and Cosmetic Act with respect to tolerances or other clearance of ingredients.

§ 153.139 Substances determined to be pesticidally inert.

(a) *Antimicrobial products.* The Agency has concluded that the following ingredients normally have no independent pesticidal activity when included in antimicrobial products for the designated uses, and thus normally are properly classified as inert ingredients of such products, within the meaning of FIFRA sec. 2(m):

Substance	Uses
Acetone	Solvent.
Alkyl* amino betaine (*46 percent C_{18}, 24 percent C_{16}, 10 percent C_{14}, 6 percent C_{12}, 7 percent C_8, 5 percent C_{10}).	Corrosion inhibitor, surfactant.
Alkyl monoethanolamide	Emulsifier.
Aluminum chloride	Detergent.
Aluminum hyroxybenzenesulfate sulfonate.	Emulsifier.
Aluminum powder	Filler.
Aluminum carbonate	Detergent.
Ammonium citrate	Sequestrant.
Ammonium lauryl sulfonate	Emulsifier.
Ammonium oleate	Detergent, emulsifier.
Ammonium oxalate	Detergent.
Amyl acetate	Diluent.
Borax	Detergent.
Butyl alcohol, tertiary	Solvent, odorant.
Carbon	Carrier, absorbent.
Castor oil	Emulsifier.
Citric acid	Sequestrant.
Diethanolamine dodecylbenzene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Dimethyl phthalate	Perfume.
Disodium monoethanolamine phosphate.	Emulsifier.
Dodecyl benzene sulfonic acid	Detergent.
Essential oils	Perfume.
Ethanol (ethyl alcohol)	Solvent, except in tinctures or where sole or major ingredient.
Ethanolamine	Emulsifier.
Ethanolamine dodecylbenzene sulfonate.	Detergent.
Ethoxylated lanolin	Ointment base.
Ethylenediamine	Emulsifier.
Ethylenediaminetetraacetic acid (including all salts and derivatives).	Sequestrant.
Fumaric acid	Sequestrant.
Gluconic acid	Buffer.
Isooctyl phenoxy polyethoxy ethanol	Surfactant.
Isopropanol (isopropyl alcohol)	Solvent, except in tinctures, or where sole or major ingredient.
Isopropyl myristate	Solvent.
Juniper tar	Odorant.
Lauryl alcohol	Detergent, odorant.
Lauryl methacrylate	Emulsifier.
Limonene	Odorant, perfume.
Magnesium chloride	Builder.
Magnesium lauryl sulfate	Detergent.
Magnesium silicate	Odor absorbent.
Menthol	Perfume.
Methanol (methyl alcohol)	Solvent, except in tinctures, or where sole or major ingredient.
Methyl ethyl ketone	Solvent.
Methyl salicylate	Perfume, odorant.
Mineral oil, mineral seal oil, or white mineral oil.	Lubricant.
Monoethanolamides of the fatty acids of coconut oil.	Emulsifier.
Monosodium phosphate	Emulsifier, buffer.
Morpholine	Corrosion inhibitor.
Nonylphenoxypolyethoxyethanol	Surfactant.
Octylphenol	Nonionic surfactant.
Oil of citronella	Perfume, odorant.
Oil of eucalyptus	Perfume.
Oil of lemongrass	Perfume.
Oleic acid	Solvent.

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Substance	Uses
Petroleum distillate, oils, hydrocarbons, also paraffinic hydrocarbons, aliphatic hydrocarbons, paraffinic oil.	Lubricant, solvent.
Polyoxyethylene sorbitol, mixed ethyl ester of.	Emulsifier.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Potassium carbonate	Detergent.
Potassium dodecylbenzenesulfonate	Anionic detergent.
Potassium laurate	Emulsifier.
Potassium myristate	Emulsifier.
Potassium *N*-(*p*-(nitrosethyl)benzyl) ethylenediamine.	Emulsifier.
Potassium phosphate, tribasic	Sequestrant.
Potassium ricinoleate	Emulsifier.
Potassium toluene sulfonate	Detergent.
Potassium xylene sulfonate	Detergent.
Propanol (propyl alcohol)	Solvent, except in tinctures or where sole or major ingredient.
Soap	Detergent.
Sodium acetate	Buffer.
Sodium alkyl (100 percent C_8): benzene sulfonate.	Detergent.
Sodium bicarbonate	Detergent.
Sodium carbonate	Detergent.
Sodium chloride	Builder.
Sodium decylbenzene sulfonate	Detergent.
Sodium diacetate	Sequestrant.
Sodium dihydroxyethylglycine	Chelate, buffer.
Sodium diisopropylnaphthalene sulfonate.	Detergent.
Sodium di(monoethanolamine) phosphate.	Emulsifier.
Sodium dodecylbenzene sulfonate (may be active as a sanitizer in dishwashing formulations).	Detergent.
Sodium dodecyl diphenyl oxide sulfonate.	Perfume.
Sodium glycolate	Sequestrant.
Sodium laurate	Detergent.
Sodium *N*-lauroylsarcosinate	Detergent.
Sodium lauryl sulfate	Detergent.
Sodium metasilicate	Detergent.
Sodium *N*-methyl-*N* oleyltaurate	Emulsifier.
Sodium mono and dimethyl naphthalene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Sodium phosphate	Emulsifier, buffer.
Sodium salt of turkey red oil	Emulsifier.
Sodium sesquicarbonate	Detergent.
Sodium silicate	Detergent.
Sodium sulfate	Detergent.
Sodium sulfonated oleic acid	Emulsifier.
Sodium thiosulfate	Builder.
Sodium toluene sulfonate	Detergent.
Sodium tripolyphosphate	Sequestrant.
Sodium xylene sulfonate	Detergent.
Tetrapotassium pyrophosphate	Sequestrant.
Tetrasodium pyrophosphate	Sequestrant.
Toluene sulfonic acid	Emulsifier.
1,1,1-Trichloroethane	Diluent.
Triethanolamine	Emulsifier.
Triethanolamine dodecylbenzene sulfonate.	Detergent.
Triethanolamine laurate	Emulsifier.
Triethanolamine lauryl sulfate	Emulsifier.
Triisopropanolamine	Emulsifier.
Triisopropylamine	Emulsifier.
Trisodium phosphate	Detergent.
Turkey red oil	Emulsifier
Undecylenic acid	Perfume.
Xylene	Solvent.
Zirconium oxide	Dye.

(b) [Reserved]

(c) *Limitation.* This statement of policy does not bind decision makers in a formal adjudicatory proceeding under FIFRA sec. 3, 6, or 14. If this section becomes an issue in any such proceeding, the decision makers in that proceeding will make an independent judgment whether to adhere to it or not.

Subpart H—Coloration and Discoloration of Pesticides

§ 153.140 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribe regulations requiring coloration or discoloration of any pesticide if he determines that such requirement is feasible and necessary for the protection of health and the environment. The Munsell Manual of Color, or its equivalent, shall be used as a color standard. References in §§ 153.145 and 153.150 to hues, values, chromas and neutral lightness refer to the Munsell Manual of Color.

§ 153.142 Coloring agent.

The coloring agent must produce a uniformly colored product not subject to change beyond the minimum requirements specified in this subpart during ordinary conditions of distribution and storage and must not cause the product to be ineffective or result in adverse effects on non-target organisms when used as directed.

§ 153.145 Arsenicals and barium fluosilicate.

Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 8 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

§ 153.150 Sodium fluoride and sodium fluosilicate.

(a) Products containing sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than 2 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(b) A product containing sodium fluoride shall be exempt from the requirements of this section if:

(1) It is intended and labeled for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods.

(2) Coloration of the pesticide in accordance with these requirements will be likely to impart objectionable color characteristics to the finished goods;

(3) The pesticide will not be present in such finished goods in sufficient quantities to cause injury to any person; and

(4) The pesticide will not come into the hands of the public except after incorporation into such finished goods.

§ 153.155 Seed treatment products.

(a) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have been established under the Federal Food, Drug and Cosmetic Act for residues of the pesticide.

(b) The following products are exempt from the requirement of paragraph (a) of this section:

(1) Products intended and labeled for use solely by commercial seed treaters, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.

(2) Products intended and labeled for use solely as at-planting or hopper box treatments.

(3) Products which are gaseous in form or are used as fumigants.

(c) EPA-approved dyes are those listed in § 180.1001 (c) and (d) of this chapter. Upon written request additional dyes will be considered for inclusion in this listing.

§ 153.158 Exceptions.

(a) Notwithstanding other provisions of this subpart, the Agency may exempt a product from the requirements of this subpart, or may permit other colors to be used for any particular purpose, if it determines that use of the prescribed color is not feasible for such purpose and is not necessary for the protection of health and the environment.

(b) Any pesticide product specified in this subpart which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dryer as a mothproofing agent, and which would not be suitable for such use if colored, and which will not come into the hands of the public except when incorporated into a fabric, is exempt from the requirements of this subpart.

Subparts I, J, K, and L—[Reserved]

Subpart M—Devices

§ 153.240 Requirements for devices.

(a) A device is defined as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(b) A device is not required to be registered under FIFRA sec. 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published in the Federal Register of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

(1) FIFRA sec. 2(q)(1) and Part 156 of this chapter, with respect to labeling;

(2) FIFRA sec. 7 and Part 167 of this chapter, with respect to establishment registration and reporting;

(3) FIFRA sec. 8 and Part 169 of this chapter, with respect to books and records;

(4) FIFRA sec. 9, with respect to inspection of establishments;

(5) FIFRA sec. 12, 13, and 14, with respect to violations, enforcement activities, and penalties;

(6) FIFRA sec. 17, with respect to import and export of devices;

(7) FIFRA sec. 25(c)(3), with respect to child-resistant packaging; and

(8) FIFRA sec. 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

§ 162.10 [Redesignated as §156.10]

III. 1. Part 156, entitled Labeling Requirements for Pesticides and Devices, is added, consisting of § 156.10, which is redesignated from §162.10.

2. The authority citation for Part 156 reads as follows:

Authority: 7 U.S.C. 136–136y.

PART 158—DATA REQUIREMENTS FOR REGISTRATION

IV. In Part 158:

1. The authority citation for Part 158 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

2. By adding §§ 158.32, 158.33, and 158.34 to Subpart A to read as follows:

§ 158.32 Format of data submission.

(a) *Transmittal document.* All data submitted at the same time and for review in support of a single administrative action (e.g., an application for registration, reregistration, experimental use permit, or in response to a requirement for data under the authority of FIFRA sec. 3(c)(2)(B), must be accompanied by a single transmittal document including the following information:

(1) The identity of the submitter, or the identity of each joint submitter and of the agent for joint submitters;

(2) The date of the submission;

(3) The identification of the Agency action in support of which the data are being submitted, such as the registration number or file symbol, petition number, experimental use permit number, or registration standard review; and

(4) A bibliography of all specific documents included in the submission and covered by the transmittal.

(b) *Individual studies.* (1) All data must be submitted in the form of individual studies. Unless otherwise specified by the Agency, each study should address a single data requirement, and be listed separately in the bibliography.

(2) Each study must include the following elements in addition to the study itself:

(i) A title page, as described in paragraph (c) of this section;

(ii) A Statement of Data Confidentiality Claims and, if desired, a Supplemental Statement of Data Confidentiality Claims, in accordance with § 158.33;•

(iii) A certification with respect to Good Laboratory Practice standards, if required by § 160.12 of this chapter;

(iv) If the original study is not in the English language, a complete and accurate English translation under the same cover; and

(v) If the study is of a type listed in § 158.34(b), the statement prescribed by paragraph (c) of that section.

(3) Three identical copies of each study must be submitted. If the study is submitted in conjunction with a pending Special Review or Registration Standard under development, four copies must be submitted. Three copies must be identical and must conform to the requirements of § 158.33 with respect to claims of confidentiality. The fourth copy will be placed in the public docket and must conform to the requirements of § 154.15(c) of this chapter or 155.30(c) of this chapter with respect to claimed confidential business information.

(4) All copies must be in black ink on uniform pages of white, 8½ × 11 inch paper. Copies must have high contrast and good resolution for microfilming. Frayed or oversize pages and glued bindings are not acceptable.

(c) *Contents of title page.* Each individual study must have a title page bearing the following identifying information:

(1) The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed;

(2) The author(s) of the study;

(3) The date the study was completed;

(4) If the study was performed in a laboratory, the name and address of the laboratory and any laboratory project numbers or other identifying codes;

(5) If the study is a commentary on or supplement to another previously submitted study, full identification of the other study with which it should be associated in review; and

(6) If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

(d) *EPA identification number.* EPA will assign each study an EPA Master Record Identification (MRID) number, and will promptly notify the submitter of the number assigned. This number should be used in all further communications with the Agency about the study.

(e) *Reference to previously submitted data.* Data which previously have been submitted need not be resubmitted unless resubmission is specifically requested by the Agency. If an applicant or registrant wishes the Agency to consider such data in the review of an Agency action, he should cite the data by providing:

(1) The title or adequate description of the study;

(2) The transmittal information required by paragraph (a) (1), (2), and (3) of this section; and

(3) The MRID number assigned in accordance with paragraph (d) of this section.

§ 158.33 Procedures for claims of confidentiality of data.

(a) *General.* A data submitter must clearly identify any information which he claims is entitled to confidential treatment under FIFRA sec. 10. The procedures in this section must be followed to assert a claim of confidentiality.

(b) *Claims of confidentiality for information described by FIFRA sec. 10(d)(1) (A), (B), and (C).* Any information claimed to be confidential under FIFRA sec. 10(d)(1) (A) through (C) must be submitted in accordance with the following procedures:

(1) The information must be contained in a separate attachment to the study. If any information is included in the body of the study rather than in the confidential attachment, the submitter waives a claim of confidentiality for

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such information under FIFRA sec. 10(d)(1) (A), (B), or (C).

(2) The attachment must have a cover page which is clearly marked to indicate that the material contained in the attachment falls within the scope of FIFRA sec. 10(d)(1) (A), (B), or (C).

(3) Each item in the attachment must be numbered. For each item, the submitter must cite the applicable portion of FIFRA sec. 10(d)(1) (A), (B), or (C) on which the claim of confidentiality is based. In addition, for each item, the submitter must provide a list of page numbers in the study where the item is cited (i.e., identified by number).

(4) Each item in the attachment must be referenced in the body of the study by its number in the attachment.

(5) The following statement must appear on the Statement of Data Confidentiality Claims:

Information claimed confidential on the basis of its falling within the scope of FIFRA sec. 10(d)(1)(A), (B), or (C) has been removed to a confidential appendix, and is cited by cross-reference number in the body of the study.

The statement must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

(c) *No claim of confidentiality under FIFRA sec. 10(d)(1)(A), (B), or (C).* If no claim of confidentiality is being made for information described by FIFRA sec. 10(d)(1)(A), (B), or (C), or if such information is not contained in the body of the study, the Statement of Data Confidentiality Claims must include the following statement:

No claim of confidentiality is made for any information contained in this study on the basis of its falling within the scope of FIFRA sec. 10(d)(1)(A), (B), or (C).

This statement must bear the name, title and signature of the submitter or his properly designated agent, and the date of signature.

(d) *Claim of confidentiality for information not described by FIFRA sec. 10(d)(1) (A), (B), or (C).* Any information not described by FIFRA sec. 10(d)(1) (A), (B), or (C) for which a claim of confidentiality is made must be submitted in accordance with the following procedures:

(1) The information must be clearly marked in the body of the study as being claimed confidential.

(2) A separate Supplemental Statement of Data Confidentiality Claims must be submitted identifying by page and line number the location within the study of each item claimed confidential, and stating the basis for the claim.

(3) The Supplemental Statement of Data Confidentiality Claims must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

§ 158.34 Flagging of studies for potential adverse effects.

(a) Any person who submits a study of a type listed in paragraph (b) of this section to support an application for new or amended registration, or to satisfy a requirement imposed under FIFRA sec. 3(c)(2)(B), must submit with the study a statement in accordance with paragraph (c) of this section.

(b) The following table indicates that study types and the criteria to be applied to each. Column 1 lists the study types by name. Column 2 lists the associated Pesticide Assessment Guideline number. Column 3 lists the criteria applicable to each type of study. Column 4 lists the reporting code to be included in the statement specified in § 158.34(c) when any criterion is met or exceeded.

TABLE.—FLAGGING CRITERIA

Toxicity studies	Pesticide assessment guidelines No.	Criteria	Reporting code
Oncogenicity [or combined oncogenicity/chronic feeding study]	83-2	Treated animals show any of the following:	
or			
Subchronic feeding study	82-1	An incidence of neoplasms in male or female animals which increases with dose;	1
		or	
		A statistically significant ($p < 0.05$) incidence of any type of neoplasm in any test group (male or female animals at any dose level) compared to concurrent control animals of the same sex;	2
		or	
		An increase in any type of uncommon or rare neoplasms in any test group (male or female animals at any dose level) compared to concurrent control animals	3
		or	
		A decrease in the time to development of any type of neoplasms in any test group (male or female animals at any dose level) compared to concurrent control animals	4
Teratogenicity	83-3	When compared with concurrent controls, treated animals show a dose-related increase in malformations (or deaths) on a litter basis in the absence of significant maternal toxicity at the same dose levels	5
Neurotoxicity	81-7	When compared with controls, treated animals show a response indicative of acute delayed neurotoxicity	6
Chronic feeding study or combined chronic feeding/oncogenicity study	83-1	Cholinesterase inhibition NOEL less than 10 times the current existing ADI	7
		or	
		General (systemic) toxicity NOEL less than 100 times the current existing ADI	8
Reproduction study	83-4	Reproductive effects NOEL less than 100 times the current ADI	9
Subchronic feeding study	82-1	Cholinesterase inhibition NOEL less than 100 times the current existing ADI	10
		or	
		General (systemic) toxicity NOEL less than 1000 times the current existing ADI	11

(c) *Identification of studies.* For each study of a type identified in paragraph (b) of this section, the applicant (or registrant in the case of information submitted under FIFRA sec. 3(c)(2)(B)) shall include the appropriate one of the following two statements, together with the signature of the authorized representative of the company, and the date of signature:

(1) "I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study neither meets nor exceeds any of the applicable criteria."

(2) "I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study meets or exceeds the criteria numbered [insert all applicable reporting codes.]"

(Approved by the Office of Management and Budget under Control Numbers 2070-0057 and 2070-0060)

Subpart B—How to Use Data Tables

3. By revising the title of Subpart B to read as set forth above.

4. By revising paragraph (a) of § 158.100 to read as follows:

§ 158.100 How to determine registration data requirements.

* * * * *

(a) Refer to Subparts C and D (§§ 158.150 through 158.740). These subparts describe the data requirements, including data tables for each subject area. The corresponding subdivisions in the Pesticide Assessment Guidelines are listed in § 158.106.

* * * * *

§ 158.105 [Amended]

5. a. By removing and reserving paragraph (b) of § 158.105.

§ 158.105 [Redesignated as § 158.202]

b. By redesignating § 158.105 under Subpart B as § 158.202 under new Subpart D.

§§ 158.108, 158.110, 158.112, and 158.120 [Removed]

6. By removing §§ 158.108, 158.110, 158.112, and 158.120.

§ 158.115 [Redesignated as § 158.108]

7. By revising and redesignating § 158.115 as § 158.108, to read as follows:

§ 158.108 Relationship of Pesticide Assessment Guidelines to data requirements.

The Pesticide Assessment Guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, definition of terms, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703-487-4650). The following Subdivisions of the Pesticide Assessment Guidelines, referenced to the appropriate sections of this part, are currently available:

Subdivision	Title	NTIS order no.	Corresponding section(s) in this part
D	Product Chemistry	PB83-153890	§§ 158.150-158.190
E	Hazard Evaluation: Wildlife and Aquatic Organisms	PB83-153908	§ 158.490
F	Hazard Evaluation: Humans and Domestic Animals	PB83-153916	§ 158.340
G	Product Performance	PB83-153924	§ 158.640
I	Experimental Use Permits	PB83-153932	§§ 158.20-158.740
J	Hazard Evaluation: Nontarget Plants	PB83-153940	§ 158.540
K	Reentry Protection	PB85-120982	§ 158.390
L	Hazard Evaluation: Nontarget Insect	PB83-153957	§ 158.590
M	Biorational Pesticides	PB83-153965	§§ 158.690-158.740
N	Environmental Fate	PB83-153973	§ 158.290
O	Residue Chemistry	PB83-153981	§ 158.240
R	Spray Drift Evaluation	PB84-189216	§ 158.440

8. By redesignating §§ 158.125, 158.130, 158.135, 158.140, 158.142, 158.145, 158.150, 158.155, 158.160, 158.165, and 158.170 under Subpart B as §§ 158.240, 158.290, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740, respectively, under new Subpart D.

9. By adding new Subpart C, to read as follows:

Subpart C—Product Chemistry Data Requirements

Sec.

158.150 General.
158.153 Definitions.
158.155 Product composition.
158.160 Description of materials used to produce the product.
158.162 Description of production process.
158.165 Description of formulation process.
158.167 Discussion of formation of impurities.
158.170 Preliminary analysis.
158.175 Certified limits.
158.180 Enforcement analytical method.
158.190 Physical and chemical characteristics.

Subpart C—Product Chemistry Data Requirements

§ 158.150 General.

(a) *Applicability.* This subpart describes the product chemistry data that are required to support the registration of each pesticide product. The information specified in this subpart must be submitted with each application for new or amended registration or for reregistration, if it has not been submitted previously or if the previously submitted information is not complete and accurate. References in this subpart to the "applicant" include the registrant if the information is required for a registered product.

(b) *Purpose*—(1) *Product composition.* (i) Data on product composition are needed to support the conclusions expressed in the statement of formula. These data include information on the starting materials, production or formulating process, possible formation of impurities, results of preliminary analysis of product samples, a description of analytical methods to identify and quantify ingredients and validation data for such methods. In addition, an applicant is required to certify the limits for ingredients of his product.

(ii) Product composition data are compared to the composition of materials used in required testing under Subpart D of this part. This comparison indicates which components of a pesticide product have been evaluated by a particular study, and might lead to a conclusion that another study is needed. Based on conclusions concerning the product's composition and its toxic properties, appropriate use restrictions, labeling requirements, or special packaging requirements may be imposed.

(iii) Product composition data, including certified limits of components, are used to determine whether a product is "identical or substantially similar" to

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another product or "differs only in ways that do not significantly increase the risk of unreasonable adverse effects on the environment" (FIFRA sec. 3(c)(7)(A)). In nearly every case, this determination involves a comparison of the composition of an applicant's product with that of currently registered products.

(2) *Certified limits.* Certified limits required by § 158.175 are used in two ways. First, the Agency considers the certified limits in making the registration determination required by sections 3(c)(5), 3(c)(7) and 3(d) of the Act and making other regulatory decisions required by the Act. Second, the Agency may collect commercial samples of the registered products and analyze them for the active ingredient(s), inert ingredients, or impurities determined by the Agency to be toxicologically significant. If, upon analysis the composition of such a sample is found to differ from that certified, the results may be used by the Agency in regulatory actions under FIFRA sec. 12(a)(1)(C) and other pertinent sections.

(3) *Nominal concentration.* The nominal concentration required by § 158.155 is the amount of active ingredient that is most likely to be present in the product when produced. Unlike the certified limits, which are the outer limits of the range of the product's ingredients and thus are present only in a small proportion of the products, the nominal concentration is the amount that typically is expected to result from the applicant's production or formulating process. The nominal concentration together with production process information is used to gauge the acceptability of the certified limits presented by the applicant. The nominal concentration is used by the Agency as the basis for enforceable certified limits if the applicant has chosen not to specify certified limits of his own (thereby agreeing to abide by the standard limits in § 158.175).

(4) *Physical and chemical characteristics.* (i) Data on the physical and chemical characteristics of pesticide active ingredients and products are used to confirm or provide supportive information on their identity. Such data are also used in reviewing the production or formulating process used to produce the pesticide or product. For example, data that indicate significant changes in production or formulation might indicate the need for additional information on product composition.

(ii) Certain information (e.g., color, odor, physical state) is needed for the Agency to respond to emergency requests for identification of unlabeled pesticides involved in accidents or spills. Physicians, hospitals, and poison control centers also request this information to aid in their identification of materials implicated in poisoning episodes.

(iii) Certain physical and chemical data are used directly in the hazard assessment. These include stability, oxidizing and reducing action, flammability, explodability, storage stability, corrosion, and dielectric breakdown voltage. For example, a study of the corrosion characteristics of a pesticide is needed to evaluate effects of the product formulation on its container. If the pesticide is highly corrosive, measures can be taken to ensure that lids, liners, seams or container sides will not be damaged and cause the contents to leak during storage, transport, handling, or use. The storage stability study provides data on change (or lack of change) in product composition over time. If certain ingredients decompose, other new chemicals are formed whose toxicity and other characteristics must be considered.

(iv) Certain data are needed as basic or supportive evidence in initiating or evaluating other studies. For example, the octanol/water partition coefficient is used as one of the criteria to determine whether certain fish and wildlife toxicity or accumulation studies must be conducted. Vapor pressure data are needed, among other things, to determine suitable reentry intervals and other label cautions pertaining to worker protection. Data on viscosity and miscibility provide necessary information to support acceptable labeling for tank mix and spray applications.

§ 158.153 Definitions.

The following terms are defined for the purposes of this subpart:

(a) "Active ingredient" means any substance (or group of structurally similar substances, if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a).

(b) "End use product" means a pesticide product whose labeling

(1) Includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or defoliating, desiccating or regulating growth of plants, and

(2) Does not state that the product may be used to manufacture or formulate other pesticide products.

(c) "Formulation" means

(1) The process of mixing, blending, or dilution of one or more active ingredients with one or more other active or inert ingredients, without an intended chemical reaction, to obtain a manufacturing use product or an end use product, or

(2) The repackaging of any registered product.

(d) "Impurity" means any substance (or group of structurally similar substances if specified by the Agency) in a pesticide product other than an active ingredient or an inert ingredient, including unreacted starting materials, side reaction products, contaminants, and degradation products.

(e) "Impurity associated with an active ingredient" means:

(1) Any impurity present in the technical grade of active ingredient; and

(2) Any impurity which forms in the pesticide product through reactions between the active ingredient and any other component of the product or packaging of the product.

(f) "Inert ingredient" means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product.

(g) "Integrated system" means a process for producing a pesticide product that:

(1) Contains any active ingredient derived from a source that is not an EPA-registered product; or

(2) Contains any active ingredient that was produced or acquired in a manner that does not permit its inspection by the Agency under FIFRA sec. 9(a) prior to its use in the process.

(h) "Manufacturing use product" means any pesticide product other than an end use product. A product may consist of the technical grade of active ingredient only, or may contain inert ingredients, such as stabilizers or solvents.

(i) "Nominal concentration" means the amount of an ingredient which is expected to be present in a typical sample of a pesticide product at the time the product is produced, expressed as a percentage by weight.

(j) "Starting material" means a substance used to synthesize or purify a technical grade of active ingredient (or the practical equivalent of the technical grade ingredient if the technical grade cannot be isolated) by chemical reaction.

(k) "Technical grade of active ingredient" means a material containing an active ingredient:

(1) Which contains no inert ingredient, other than one used for purification of the active ingredient; and

(2) Which is produced on a commercial or pilot-plant production scale (whether or not it is ever held for sale).

§ 158.155 Product composition.

Information on the composition of the pesticide product must be furnished. The information required by paragraphs (a), (b) and (f) of this section must be provided for each product. In addition, if the product is produced by an integrated system, the information on impurities required by paragraphs (c) and (d) must be provided.

(a) *Active ingredient.* The following information is required for each active ingredient in the product:

(1) If the source of any active ingredient in the product is an EPA-registered product:

(i) The chemical and common name (if any) of the active ingredient, as listed on the source product.

(ii) The nominal concentration of the active ingredient in the product, based upon the nominal concentration of active ingredient in the source product.

(iii) Upper and lower certified limits of the active ingredient in the product, in accordance with § 158.175.

(2) If the source of any active ingredient in the product is not an EPA-registered product:

(i) The chemical name according to Chemical Abstracts Society nomenclature, the CAS Registry Number, and any common names.

(ii) The molecular, structural, and empirical formulae, and the molecular weight or weight range.

(iii) The nominal concentration.

(iv) Upper and lower certified limits in accordance with § 158.175.

(v) The purpose of the ingredient in the formulation.

(b) *Inert ingredients.* The following information is required for each inert ingredient (if any) in the product:

(1) The chemical name of the ingredient according to Chemical Abstracts Society nomenclature, the CAS Registry Number, and any common names (if known). If the chemical identity or chemical composition of an ingredient is not known to the applicant because it is proprietary or trade secret information, the applicant must ensure that the supplier or producer of the ingredient submits to the Agency (or has on file with the Agency) information on the identity or chemical composition of the ingredient. Generally, it is not required that an applicant know the identity of each ingredient in a mixture that he uses in his product. However, in certain circumstances, the Agency may require that the applicant know the identity of a specific ingredient in such a mixture. If the Agency requires specific knowledge of an ingredient, it will notify the applicant in writing.

(2) The nominal concentration in the product.

(3) Upper and lower certified limits in accordance with § 158.175.

(4) The purpose of the ingredient in the formulation.

(c) *Impurities of toxicological significance associated with the active ingredient.* For each impurity associated with the active ingredient that is determined to be toxicologically significant, the following information is required:

(1) Identification of the ingredient as an impurity.

(2) The chemical name of the impurity.

(3) The nominal concentration of the impurity in the product.

(4) A certified upper limit, in accordance with § 158.175.

(d) *Other impurities associated with the active ingredient.* For each other impurity associated with an active ingredient that was found to be present in any sample at a level equal to or greater than 0.1 percent by weight of the technical grade active ingredient, the following information is required:

(1) Identification of the ingredient as an impurity.

(2) Chemical name of the impurity.

(3) The nominal concentration of the impurity in the final product.

(e) *Impurities associated with an inert ingredient* [Reserved].

(f) *Ingredients that cannot be characterized.* If the identity of any ingredient or impurity cannot be specified as a discrete chemical substance (such as mixtures that cannot be characterized or isomer mixtures), the applicant must provide sufficient information to enable EPA to identify its source and qualitative composition.

§ 158.160 Description of materials used to produce the product.

The following information must be submitted on the materials used to produce the product:

(a) *Products not produced by an integrated system.*

(1) For each active ingredient that is derived from an EPA-registered product:

(i) The name of the EPA-registered product.

(ii) The EPA registration number of that product.

(2) For each inert ingredient:

(i) Each brand name, trade name, or other commercial designation of the ingredient.

(ii) All information that the applicant knows (or that is reasonably available to him) concerning the composition (and, if requested by the Agency, chemical and physical properties) of the ingredient, including a copy of technical specifications, data sheets, or other documents describing the ingredient.

(iii) If requested by the Agency, the name and address of the producer of the ingredient or, if that information is not known to the applicant, the name and address of the supplier of the ingredient.

(b) *Products produced by an integrated system.* (1) The information required by paragraph (a)(1) of this section concerning each active ingredient that is derived from an EPA-registered product (if any).

(2) The following information concerning each active ingredient that is not derived from an EPA-registered product:

(i) The name and address of the producer of the ingredient (if different from the applicant).

(ii) Information on each starting material used to produce the active ingredient, as follows:

(A) Each brand name, trade name, or other commercial designation of the starting material.

(B) The name and address of the person who produces the starting material or, if that information is not known to the applicant, the name and address of each person who supplies the starting material.

(C) All information that the applicant knows (or that is reasonably available to him) concerning the composition (and if requested by the Agency, chemical or physical properties) of the starting material, including a copy of all technical specifications, data sheets, or other documents describing it.

(3) The information required by paragraph (a)(2) of this section concerning each inert ingredient.

(c) *Additional information.* On a case-by-case basis, the Agency may require additional information on substances used in the production of the product.

§ 158.162 Description of production process.

If the product is produced by an integrated system, the applicant must submit information on the production (reaction) processes used to produce the active ingredients in the product. The applicant must also submit information on the formulation process, in accordance with § 158.165.

(a) Information must be submitted for the current production process for each active ingredient that is not derived from an EPA-registered product. If the production process is not continuous (a single reaction process from starting materials to active ingredient), but is accomplished in stages or by different

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producers, the information must be provided for each such production process.

(b) The following information must be provided for each process resulting in a separately isolated substance:

(1) the name and address of the producer who uses the process, if not the same as the applicant.

(2) A general characterization of the process (e.g., whether it is a batch or continuous process).

(3) A flow chart of the chemical equations of each intended reaction occurring at each step of the process, the necessary reaction conditions, and the duration of each step and of the entire process.

(4) The identity of the materials used to produce the product, their relative amounts, and the order in which they are added.

(5) A description of the equipment used that may influence the composition of the substance produced.

(6) A description of the conditions (e.g., temperature, pressure, pH, humidity) that are controlled during each step of the process to affect the composition of the substance produced, and the limits that are maintained.

(7) A description of any purification procedures (including procedures to recover or recycle starting materials, intermediates or the substance produced).

(8) A description of the procedures used to assure consistent composition of the substance produced, e.g., calibration of equipment, sampling regimens, analytical methods, and other quality control methods.

§ 158.165 Description of formulation process.

The applicant must provide information on the formulation process of the product (unless the product consists solely of a technical grade of active ingredient), as required by the following sections:

(a) Section 158.162(b)(2), pertaining to characterization of the process.

(b) Section 158.162(b)(4), pertaining to ingredients used in the process.

(c) Section 158.162(b)(5), pertaining to process equipment.

(d) Section 158.162(b)(6), pertaining to the conditions of the process.

(e) Section 158.162(b)(8), pertaining to quality control measures.

§ 158.167 Discussion of formation of impurities.

The applicant must provide a discussion of the impurities that may be present in the product, and why they may be present. The discussion should be based on established chemical theory and on what the applicant knows about the starting materials, technical grade of active ingredient, inert ingredients, and production or formulation process. If the applicant has reason to believe that an impurity that EPA would consider toxicologically significant may be present, the discussion must include an expanded discussion of the possible formation of the impurity and the amounts at which it might be present. The impurities which must be discussed are the following, as applicable:

(a) *Technical grade active ingredients and products produced by an integrated system.* (1) Each impurity associated with the active ingredient which was found to be present in any analysis of the product conducted by or for the applicant.

(2) Each other impurity which the applicant has reason to believe may be present in his product at any time before use at a level equal to or greater than 0.1 percent (1000 ppm) by weight of the technical grade of the active ingredient, based on what he knows about the following:

(i) The composition (or composition range) of each starting material used to produce his product.

(ii) The impurities which he knows are present (or believes are likely to be present) in the starting materials, and the known or presumed level (or range of levels) of those impurities.

(iii) The intended reactions and side reactions which may occur in the production of the product, and the relative amounts of byproduct impurities produced by such reactions.

(iv) The possible degradation of the ingredients in the product after its production but prior to its use.

(v) Post-production reactions between the ingredients in the product.

(vi) The possible migration of components of packaging materials into the pesticide.

(vii) The possible carryover of contaminants from use of production equipment previously used to produce other products or substances.

(viii) The process control, purification and quality control measures used to produce the product.

(b) *Products not produced by an integrated system.* Each impurity associated with the active ingredient which the applicant has reason to believe may be present in the product at any time before use at a level equal to or greater than 0.1 percent (1000 ppm) by weight of the product based on what he knows about the following:

(1) The possible carryover of impurities present in any registered product which serves as the source of any of the product's active ingredients. The identity and level of impurities in the registered source need not be discussed or quantified unless known to the formulator.

(2) The possible carryover of impurities present in the inert ingredients in the product.

(3) Possible reactions occurring during the formulation of the product between any of its active ingredients, between the active ingredients and inert ingredients, or between the active ingredients and the production equipment.

(4) Post-production reactions between any of the product's active ingredients and any other component of the product or its packaging.

(5) Possible migration of packaging materials into the product.

(6) Possible contaminants resulting from earlier use of equipment to produce other products.

(c) *Expanded discussion.* On a case-by-case basis, the Agency may require an expanded discussion of information of impurities:

(1) From other possible chemical reactions;

(2) Involving other ingredients; or

(3) At additional points in the production or formulation process.

§ 158.170 Preliminary analysis.

(a) If the product is produced by an integrated system, the applicant must provide a preliminary analysis of each technical grade of active ingredient contained in the product to identify all impurities present at 0.1 percent or greater of the TGAI. The preliminary analysis should be conducted at the point in the production process after which no further chemical reactions designed to produce or purify the substance are intended.

(b) Based on the preliminary analysis, a statement of the composition of the technical grade of active ingredient must be provided. If the technical grade of active ingredient cannot be isolated, a statement of the composition of the practical equivalent of the technical grade of active ingredient must be submitted.

§ 158.175 Certified limits.

The applicant must propose certified limits for the ingredients in the product. Certified limits become legally binding limits upon approval of the application. Certified limits will apply to the product from the date of production to date of use, unless the product label bears a statement prohibiting use after a certain date, in which case the certified limits will apply only until that date.

(a) *Ingredients for which certified limits are required.* Certified limits are required on the following ingredients of a pesticide product:

(1) An upper and lower limit for each active ingredient.

(2) An upper and lower limit for each inert ingredient.

(3) If the product is a technical grade of active ingredient or is produced by an integrated system, an upper limit for each impurity of toxicological significance associated with the active ingredient and found to be present in any sample of the product.

(4) On a case-by-case basis, certified limits for other ingredients or impurities as specified by EPA.

(b) *EPA determination of certified limits for active and inert ingredients.* (1) Unless the applicant proposes different limits as provided in paragraph (c) of this section, the upper and lower certified limits for active and inert ingredients will be determined by EPA. EPA will calculate the certified limits on the basis of the nominal concentration of the ingredient in the product, according to the table in paragraph (b)(2) of this section.

(2) Table of standard certified limits.

If the nominal concentration (N) for the ingredient is:	The certified limits for that ingredient will be as follows:	
	Upper limit	Lower limit
N < 1.0%	N + 10%N	N − 10%N
1.0% < N < 20.0%	N + 5%N	N − 5%N
20.0% < N < 100.0%	N + 3%N	N − 3%N

(c) *Applicant proposed limits.* (1) The applicant may propose a certified limit for an active or inert ingredient that differs from the standard certified limit calculated according to paragraph (b)(2) of this section.

(2) If certified limits are required for impurities, the applicant must propose a certified limit. The standard certified limits may not be used for such substances.

(3) Certified limits should:

(i) Be based on a consideration of the variability of the concentration of the ingredient in the product when good manufacturing practices and normal quality control procedures are used.

(ii) Allow for all sources of variability likely to be encountered in the production process.

(iii) Take into account the stability of the ingredient in the product and the possible formation of impurities between production and sale of distribution.

(4) The applicant may include an explanation of the basis of his proposed certified limits, including how the certified limits were arrived at (e.g., sample analysis, quantitative estimate based on production process), and its accuracy and precision. This will be particularly useful if the range of the certified limit for an active or inert ingredient is greater than the standard certified limits.

(d) *Special cases.* If the Agency finds unacceptable any certified limit (either standard or applicant-proposed), the Agency will inform the applicant of its determination and will provide supporting reasons. EPA may also recommend alternative limits to the applicant. The Agency may require, on a case-by-case basis, any or all of the following:

(1) More precise limits.

(2) More thorough explanation of how the certified limits were determined.

(3) A narrower range between the upper and lower certified limits than that proposed.

(e) *Certification statement.* The applicant must certify the accuracy of the information presented, and that the certified limits of the ingredients will be maintained. The following statement, signed by the authorized representative of the company, is acceptable:

I hereby certify that, for purposes of FIFRA sec. 12(a)(1)(C), the description of the composition of [*product name*], EPA Reg. No. [*insert registration number*], refers to the composition set forth on the Statement of Formula and supporting materials. This description includes the representations that: (1) no ingredient will be present in the product in an amount greater than the upper certified limit or in an amount less than the lower certified limit (if required) specified for that ingredient in a currently approved Statement of Formula (or as calculated by the Agency); and (2) if the Agency requires that the source of supply of an ingredient be specified, that all quantities of such ingredient will be obtained from the source specified in the Statement of Formula.

§ 158.180 Enforcement analytical method.

An analytical method suitable for enforcement purposes must be provided for each active ingredient in the product and for each other ingredient or impurity that is determined to be toxicologically significant.

§ 158.190 Physical and chemical characteristics.

(a) *Table.* Sections 158.50 and 158.100 through 158.102 describe how to use this table to determine the physical and chemical characteristics data requirements and the substance to be tested.

Kind of data required	(b) Notes	All general use patterns (requirements are the same for every use pattern)	Test substance		Guidelines reference No.
			Data to support MP	Data to support EP	
Color		[R]	MP and TGAI	EP* and TGAI	63–2
Physical state		[R]	MP and TGAI	EP* and TGAI	63–3
Odor		[R]	MP and TGAI	EP* and TGAI	63–4
Melting point	(1)	[R]	TGAI	TGAI	63–5
Boiling point	(2)	[R]	TGAI	TGAI	63–6
Density, bulk density, or specific gravity		[R]	MP and TGAI	EP* and TGAI	63–7
Solubility		[R]	TGAI or PAI	TGAI or PAI	63–8
Vapor pressure		[R]	TGAI or PAI	TGAI or PAI	63–9
Dissociation constant		[R]	TGAI or PAI	TGAI or PAI	63–10
Octanol/water partition coefficient	(3)	[CR]	PAI	PAI	63–11
pH	(4)	[CR]	MP and TGAI	EP* and TGAI	63–12
Stability		[R]	TGAI	TGAI	63–13
Oxidizing or reducing action	(5)	[CR]			
Flammability	(6)	[CR]	MP	EP*	63–15
Explodability	(7)	[R]	MP	EP*	63–16
Storage stability		[R]	MP	EP*	63–17
Viscosity	(8)	[CR]	MP	EP*	63–18
Miscibility	(9)	[CR]	MP	EP*	63–19
Corrosion characteristics		[R]	MP	EP*	63–20

Kind of data required	(b) Notes	All general use patterns (requirements are the same for every use pattern)	Test substance		Guidelines reference No.
			Data to support MP	Data to support EP	
Dielectric breakdown voltage	(10)	[CR]		EP*	63-21
Other requirements: Submittal of samples	(11)	[CR]	MP, TGAI, PAI	EP*, TGAI, PAI	64-1

Key: R = Required; CR = Conditionally Required; [ ] = Brackets (i.e. [R],[CR]) indicate data requirements that apply when an experimental use permit is being sought; MP = Manufacturing Use Product; EP* = End Use Product; asterisk indicates those registrants that end-use applicants (i.e. formulators) need not satisfy, if their active ingredient(s) is (are) purchased from a registered source; TGAI = Technical Grade of the Active Ingredient; PAI = Pure Active Ingredient.

(b) Notes.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) Required if technical chemical is a solid at room temperature.
(2) Required if technical chemical is a liquid at room temperature.
(3) Required if technical chemical is organic and non-polar.
(4) Required if test substance is dispersible with water.
(5) Required if product contains an oxidizing or reducing agent.
(6) Required if product contains combustible liquids.
(7) Required if product is potentially explosive.
(8) Required if product is a liquid.
(9) Required if product is a emulsifiable liquid and is to be diluted with petroleum solvents.
(10) Required if end-use product is a liquid and is to be used around electrical equipment.
(11) Basic manufacturers are required to provide the Agency with a sample of each TGAI used to formulate a product produced by an integrated system when the new TGAI is first used as a formulating ingredient in products registered under FIFRA. A sample of the active ingredient (PAI) suitable for use as an analytical standard is also required at this time. Samples of end use products produced by an integrated system must be submitted on a case-by-case basis.

(Approved by the Office of Management and Budget under control numbers 2070-0057 and 2070-0060.)

10. By adding Subpart D, Data Requirement Tables, consisting of §§ 158.105, 158.125, 158.130, 158.135, 158.140, 158.142, 158.145, 158.150, 158.155, 158.160, 158.165, and 158.170, which are transferred from Subpart B and redesignated as §§ 158.202, 158.240, 158.290, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740, respectively, under new Subpart D. The Table of Contents for Subpart D reads as follows:

Subpart D—Data Requirement Tables

Sec.
158.202 Purposes of the registration data requirements.
158.240 Residue chemistry date requirements.
158.290 Environmental fate data requirements.
158.340 Toxicology data requirements.
158.390 Reentry protection data requirements.
158.440 Spray drift data requirements.
158.490 Wildlife and aquatic organisms data requirements.
158.540 Plant protection data requirements.
158.590 Nontarget insect data requirements.
158.640 Product performance data requirements.
158.690 Biochemical pesticides data requirements.
158.740 Microbial pesticides—Product analysis data requirements.

PART 162—STATE REGISTRATION OF PESTICIDE PRODUCTS

V. In Part 162:

1. The Part heading is revised to read as set forth above.

2. The authority citation for Part 162 is revised to read as follows:

Authority: 7 U.S.C. 136v, 136w.

Subparts A and E [Removed and Reserved]

3. By removing and reserving Subparts A and E, consisting of §§ 162.1 through 162.60 and 162.160 through 162.177.

[FR Doc. 88-9747 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 153, 156, 158, 162 and 163

[OPP-36132; FRL-3266-9a]

Cross References; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical Amendments.

SUMMARY: This document revises cross references in 40 CFR Parts 153, 156, 158, 162, and 163 to reflect changes made by the promulgation of final rules revising Parts 152, 153, 156, and 162, as published elsewhere in today's **Federal Register**. This regulation is a technical amendment which requires no opportunity for comment or public participation.

EFFECTIVE DATE: This rule will become effective after 60 days of continuous congressional session from the date of promulgation as provided in section 25(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 1114B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Parts 153, 156, 158, 162, and 163

Administrative practice and procedure, Data requirements, Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: April 12, 1988.

Lee M. Thomas,

Administrator.

Therefore, Title 40, Chapter I, Subchapter E, is amended as follows:

PART 153—[AMENDED]

I. In Part 153:

1. The authority citation for Part 153 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

§ 153.62 [Amended]

2. In § 153.62(a), the reference to "Part 162" is revised to read "Part 152."

§ 153.69 [Amended]

3. In § 153.69(c)(2), the reference to "§ 162.11 of this chapter" is revised to read "Part 154 of this chapter."

§ 153.72 [Amended]

4. In § 153.72(a)(1), the reference to "§ 162.163(b)(2)" is revised to read "§ 158.640."

§ 153.76 [Amended]

5. In § 153.76(a)(2)(iii), the reference to "§ 162.163(a)(2)" is revised to read "§ 158.640."

PART 156—[AMENDED]

II. In Part 156:

1. The authority citation for Part 156 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

§ 156.10 [Amended]

2. In § 156.10:

a. In the introductory text of paragraph (a)(5), the reference to "§ 162.15" is revised to read "§ 153.240."

b. In paragraph (b)(2)(ii), the reference to "§ 162.6(b)(4)" is revised to read "§ 152.132."

c. In paragraph (i)(2)(i), the reference to "§ 162.10(j)" is revised to read "paragraph (j) of this section."

d. In the introductory text of paragraph (j), the reference to "§ 162.10(j)(2)" is revised to read "paragraph (j)(2) of this section."

e. In paragraph (j)(2)(i), the reference to "§ 162.10(h)(1)(iv) is revised to read "paragraph (h)(1)(iv) of this section."

PART 158—[AMENDED]

III. In Part 158:

1. The authority citation for Part 158 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

§ 158.25 [Amended]

2. In § 158.25(a), the reference to "§§ 158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.30 [Amended]

3. In § 158.30(b):

a. In the introductory text, the reference to "40 CFR 162.7 (d) and (e)" is revised to read "§ 152.111 of this chapter."

b. In paragraph (b)(3)(i), the reference to "§ 158.120" is revised to read "Subpart C of this part."

c. In paragraph (b)(4)(i), the reference to "§ 158.120" is revised to read "Subpart C of this part."

§ 158.35 [Amended]

4. In § 158.35(c), the reference to "§§ 158.108, 158.110, 159.112 and 158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.50 [Amended]

5. In § 158.50:

a. In paragraph (c), the reference to "158.120 through 158.170" is revised to read "Subparts C and D of this part."

b. In paragraph (d), the reference to "§158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.55 [Amended]

6. In § 158.55, the parenthetic phrase "(§§ 158.120 through 157.170)" is removed.

§ 158.65 [Amended]

7. In § 158.65(b)(3), the reference to "40 CFR 162.5(c)" is revised to read "§ 152.20(a) of this chapter."

§ 158.75 [Amended]

8. In § 158.75(b), the reference to "§§ 158.120 through 158.165" is revised to read "Subparts C and D of this part."

§ 158.102 [Amended]

9. In § 158.102(a), the words "under §§ 158.120 through 158.170)" are removed.

§ 158.240 [Amended]

10. In § 158.240(b)(1), the reference to "§ 158.120" is revised to read "Subpart C of this part."

§ 158.340 [Amended]

11. In § 158.340, in the introductory text of paragraph (b)(22)(i), the reference to "§ 158.105" is revised to read "§ 158.202."

PART 162—[AMENDED]

IV. In Part 162:

1. The authority citation for Part 162 continues to read as follows:

Authority: 7 U.S.C. 136v, 136w.

§ 162.150 [Amended]

2. In § 162.150(b), the reference to "§ 162.17" is revised to read "§ 152.230 of this chapter."

§ 162.151 [Amended]

3. In § 162.151(h), the reference to "§ 162.10(h)" is revised to read "§ 156.10(h) of this chapter."

§ 162.153 [Amended]

4. In § 162.153:

a. In paragraph (e)(2), the reference to "§ 162.10" is revised to read "§ 156.10 of this chapter."

b. In § 162.153(e)(3)(ii), the reference to "§ 162.10(i)" is revised to read "§ 156.10(i) of this chapter."

c. In § 162.153(f), the reference to "§ 162.13" is revised to read "Subpart H of Part 153 of this chapter."

d. In § 162.153(g)(1)(ii), the reference to "§ 162.11(c) (1) through (4)" is revised to read "§ 152.170 of this chapter."

PART 163—[AMENDED]

V. In Part 163:

1. The authority citation for Part 163 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 163.2 [Amended]

2. In § 163.2(e), the reference to "(Part 162 of this chapter)" is removed.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Emergency Interim Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule to establish fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1988. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-Indian commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for Indian and non-Indian inside fisheries and spawning. Most of the management measures comport with the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coast of Washington, Oregon, and California. Several deviations from the framework regulations also are included, necessitating implementation by an emergency interim rule.

EFFECTIVE DATES: These 1988 management measures are effective from 0001 hours Pacific Daylight Time (PDT), May 1, 1988, until 2400 hours PDT, July 29, 1988. Comments will be accepted until May 15, 1988.

ADDRESSES: Comments on the 1988 management measures, including those being implemented under 50 CFR Part 661 and those being implemented under emergency authority of section 305(e) of the Magnuson Fishery Conservation and Management Act, may be submitted to Rolland A. Schmitten, Director, Northwest Region (Northwest Director), National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731-7415.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; E. Charles Fullerton, 213-514-6196; or the Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) (49 FR 43679; October 31, 1984). The FMP was prepared by the Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce as provided by the Magnuson Act. Regulations at 50 CFR Part 661 provide the mechanism for making preseason and in-season adjustments to management measures, within limits set by the FMP, by notice in the **Federal Register**.

The majority of 1987 management measures (52 FR 17264, May 6, 1987), which were implemented under the framework FMP, remain in effect until modified, superseded, or rescinded by the 1988 management measures.

This emergency interim rule implements management measures for 1988 ocean salmon fisheries which were recommended and adopted by the Council at its April 4-8 meeting. Most management measures in this rule comport with the framework regulations implementing the FMP. Deviations from the framework and implementing regulations, recommended by the Council and requiring implementation through use of the emergency rulemaking authority of section 305(e) of the Magnuson Act, are also included. This emergency interim rule will remain in effect for 90 days and may be extended for a second 90-day period.

Schedule Used to Establish 1988 Management Measures

The annual regulatory process concerning the Council's formulation and adoption of season management measures and their promulgation as Federal rules is established by framework regulations implementing the FMP. In accordance with the season setting procedures of the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1987 Ocean Salmon Fisheries," summarizes the 1987 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1987. The second report, "Preseason Report I: Stock Abundance Analysis for 1988 Ocean Salmon Fisheries," provides the 1988 salmon stock status projections and analyzes the impacts on the stocks and Council management goals under 1987 regulations or regulatory procedures.

The Council met on March 8-11, 1988, in Seattle, Washington, to develop proposed management options for 1988. Four commercial and recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures designed to protect weak stocks and provide for ocean harvests of more abundant stocks of coho and chinook salmon. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries," which analyzes the effects of the proposed 1988 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held from March 29 to April 4, 1988, in Seattle, Washington, Coos Bay and Astoria, Oregon, and Millbrae and Eureka, California.

The Council met on April 5-8, 1988, in Millbrae, to adopt its final 1988 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III: 1988 Ocean Salmon Fisheries, Analysis of Impacts of Council Adopted 1988 Regulations," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report includes an environmental assessment and a coastal zone consistency determination, and was distributed to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1988 are expected to be larger than in recent years. They include a predicted return of 450,700 upper Columbia River bright fall chinook adults destined for areas above Bonneville Dam, the largest run in recent history, and the predicted abundance of Oregon Production Index (OPI) coho salmon destined for coastal and Columbia River public hatcheries south of Leadbetter Point, Washington, which at 1,590,600 fish is 281 percent of the 1987 prediction of 565,400 fish.

Primary resource concerns are for Klamath River fall, and Columbia River spring and summer chinook salmon, and some Washington coastal and Puget Sound natural coho salamon. Management of all these stocks is impacted by interjurisdictional agreements among Tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

Abundance of California Central Valley chinook stocks is expected to be less than that of recent years (1988: 707,100 chinook; 1987: 812,800 chinook). However, Sacramento River fall-run chinook, which comprise the majority of Central Valley salmon, are healthy. Spawning escapement for Sacramento fall chinook is predicted to be above the 122,000-180,000 goal range in 1988.

Escapements of upper Sacramento winter-run chinook have dwindled from over 100,000 fish in the late 1960s to above 2,000 adult fish in recent years. This depressed run is only slightly impacted by ocean fisheries as they currently are configured, and that impact is primarily on two-year-old fish in the recreational fishery. This run was considered by NMFS for listing as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, in 1987. At that time, NMFS determined that its proposed listing as endangered or threatened was not warranted because State and Federal fishery management agencies were addressing the habitat problems that contributed to its decline (52 FR 6041, February 27, 1987).

Klamath River fall chinook salmon is the primary management concern in the area from Oxford Reef Red Buoy off southern Oregon to Horse Mountain off northern California, the so-called "Klamath River management zone." The estimated total ocean population of Klamath River fall chinook in 1988 is 334,500 fish, considerably lower than the 1987 postseason abundance estimate of 615,600 fish. Ocean escapement to the Klamath River in 1987 totaled 199,000 adult fish, over twice the framework FMP ocean escapement goal of 82,700 adult fall chinook. The projected ocean escapement to the Klamath River in 1988 is about 132,000 fish.

Oregon coastal chinook stocks are expected to be above average in abundance in 1988. The south-migrating and localized components of these stocks are important contributors to ocean fisheries off Oregon and northern California, while the north-migrating component primarily contributes to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook escapement goal of 150,000 to 200,000 naturally spawning adults will continue to be met or exceeded.

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) Numbers of upriver spring chinook predicted to return to the river in 1988 (75,200 fish) are below the 1987 return (99,600 fish), but nearly 33 percent greater than the 1979-84 average (56,600 fish). The 1988 stock status is extremely depressed, and ocean escapement will be substantially below the goal of 100,000 to 120,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests off Washington and Oregon.

(2) The expectation for ocean escapement of upper Columbia River summer chinook salmon in 1988 is about 33,000 fish, the same as in 1987. In-river abundance of upper Columbia River summer chinook, which are primarily of natural spawning origin, steadily declined over the period 1979-1983. Although the 1987 in-river run size was the largest since 1978, the stock's status remains extremely depressed, with ocean escapement levels being about 59 percent below the goal of 80,000 to 90,000 adults counted at Bonneville Dam.

(3) Lower river spring chinook (Willamette) returns are expected to be better than in 1987 (1988: 97,000 fish; 1987: 93,800 fish).

(4) The upriver bright fall chinook run is in excellent condition, with about 446,500 fish forecasted to return to the river. The in-river return of this stock in 1987, 421,000 fish, also was excellent, the largest since 1971. The escapement goal for upriver bright chinook is 40,000 fish above McNary Dam.

(5) Spring Creek hatchery fall chinook abundance continues to be a concern. The projection for a return to the Columbia River of only 5,900 Spring Creek hatchery fall chinook in 1988 is a record low.

(6) Lower river hatchery fall chinook stocks are healthy, with ocean escapement forecasted at 246,500 adults, more than twice the average level for the 1981-1985 period (107,700 fish). Over 42,000 lower river wild fall chinook are predicted to return to the river in 1988, compared with 37,000 fish in 1987.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly be ocean harvests south of the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter, Point, Washington, south through California. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. In 1988, the Council approved methodologies for predicting OPI area coho salmon stock abundance which partitioned coho stocks into three groups: private hatchery, public hatchery, and Oregon coastal natural. Prediction methodologies for each group are described below:

Private Hatchery. Private hatchery coho adults were predicted by multiplying the number of smolts released in 1987 by the estimated survival rate of these smolts. Smolts were grouped by stock type based on expected differences in ocean catch distribution and contribution to the fishery. Survival estimates were scaled from the previous year survival rate based on (1) the ratio of change in OPI public hatchery jack returns adjusted for smolt releases, and (2) the ratio of change in ocean upwelling during the period smolts were released.

Public Hatchery. The OPI area public hatchery stocks include fish from all public hatcheries on the Columbia River, the Oregon coast, and the Klamath River. Data years used were adult years 1971 to 1987, except for 1983. Adult abundance was predicted in a multiple linear regression with three independent variables: (1) Previous year jack counts in th Columbia River, corrected for overestimates due to small adults in recent years, (2) previous year jack counts from the Oregon coast and the Klamath River, again corrected for small adults, and (3) previous year Columbia River jack counts times the proportion of smolts released in the Columbia River, which were released after May 19.

This adjusts for the reduced maturation rate and increased survival rate observed for these smolt releases.

Oregon Coastal Natural (OCN) Coho Salmon. Predicted OCN stocks comprise lake and river stocks. Lake stocks (less than five percent of the total OCN) were predicted as the average of the preceding three years. River stocks are predicted based on a Ricker spawner-recruit relationship plus a survival factor. The survival factor is the ratio of public hatchery jacks to smolts in the previous year.

The methodologies to estimate OPI abundance, including the abundance of OCN coho, were reviewed by the Council's Scientific and Statistical Committee, and were determined by the Council to be based on the best scientific information and methodology available in accordance with the seventh amendment to the FMP (52 FR 4146, February 10, 1987).

The preseason estimate of OPI abundance in 1988 is 2,373,800 coho salmon, nearly 188 percent of the postseason estimate of OPI abundance in 1987 (1,260,000 coho salmon).

The 1988 estimate includes 480,300 OCN coho salmon, a slight increase over the 1987 predicted abundance level (476,000). In 1987, the FMP was amended

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to, among other things, provide a formula for annual alteration of the escapement goal for ONC coho salmon based on stock abundance (52 FR 4146). Based on the new formula, the annual escapment goal in 1987 and 1988 is 200,000 OCN coho salmon. The goal was not achieved in 1987, but it is anticipated that it will be achieved in 1988.

Ocean escapement is expected to be below framework FMP escapement ranges or goals for several Washington coastal and Puget Sound natural coho stocks in 1988. These include natural coho stocks from the Queets River, Grays Harbor, and Hood Canal. Several other Washington coastal and Puget Sound natural coho stocks, such as those returning to the Hoh River, will not meet spawning escapement goals after inside fisheries take place. These stocks have been severely impacted by Canadian coho catches off the west coast of Vancouver Island, which have increased greatly in recent years. Federal, State, and tribal managers negotiated revised 1988 escapement goals for these stocks based on the predicted very low stock abundance and socio-economic concerns of treaty-Indian and non-Indian fishermen.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. Consequently, pink salmon runs are not of management concern in 1988.

Emergency Actions

Facing critical resource conservation and socioeconomic problems in coastal salmon fisheries and communities, the Council recommended, at its April meeting, 1988 annual management measures, some of which require deviation from the framework FMP and its implementing regulations. The Council determined these deviations to be necessary to address these identified problems this season and therefore requested that the Secretary implement the 1988 management measures through the emergency authority of section 305(e) of the Magnuson Act. The Council's request for emergency changes to the FMP is based upon the following:

(1) The 1988 annual management measures, including the emergency changes, represent several complicated and negotiated compromises among numerous user groups. The compromises are intended to protect, to the extent possible, the weakest salmon runs, to provide the greatest opportunity for users to harvest the more abundant stocks, and to alleviate depressed economic conditions in the salmon fishing industry and its dependent communities;

(2) There was insufficient time to amend the FMP through the formal Magnuson Act procedure between February, when biological data on the abundance of coastal salmon runs became available to the Council, and the first of May, when the major commercial fishing seasons begin;

(3) Given the very low levels of allowable coho harvest in 1988 north of Cape Falcon and the depressed economic conditions of coastal communities, it is imperative that the 1988 management measures allow managers to make preseason and inseason adjustments to ensure that all available coho and chinook quotas are harvested and that the season not end with unused quotas as has occurred in recent years;

(4) Unless amended by this emergency rule, the current provisions of the framework FMP would deny southern Oregon commercial fishermen an equitable opportunity to harvest coho salmon; and

(5) The emergency action to change the Klamath River fall chinook escapement goal will accommodate, as much as possible, the recent agreement among users of Klamath River fall run chinook, which was signed by members of the Klamath Fishery Management Council. The agreement provides for a sharing of harvests between ocean and inside fisheries, and adequate escapement of chinook for spawning.

The specific changes in the framework FMP and regulations requiring implementation through use of the emergency authority of the Magnuson Act are described below:

1. Allocation of Coho and Chinook Salmon North of Cape Falcon, Oregon

Based upon a request by the Council, NOAA issued a proposed rule (53 FR 8234, March 14, 1988) to alter the schedule in the FMP in 1988 for allocating coho and chinook salmon between non-Indian ocean fisheries north of Cape Falcon, Oregon. The Council's request was denied by the Secretary of Commerce on March 29, 1988. Notification of withdrawal of that proposed rule will be issued by NOAA. Among the reasons stated by NOAA for denying the rule was that, based upon the Council's economic analysis, it appeared that economic losses would have occurred during 1988. The negative economic returns would have resulted from the proposed allocation schedule and the predicted extremely low abundance of coho and chinook salmon in the area.

When the total allowable ocean harvest of coho salmon (100,000 fish) North of Cape Falcon was adopted by the Council at its April 5–8 meeting, it became evident that the quantity of coho (34,000 fish) allocated to the commercial fishery under the framework FMP was too small to be fully harvested without leaving some of the coho quota uncaught. Thus, the Council adopted an agreement reached between commercial and recreational representatives to trade the 34,000 commercial coho on a 4:1 basis for 8,500 recreational chinook. In addition, the Council adopted a provision to reallocate any unharvested commercial chinook to the recreational fishery at the end of the season. Both groups perceived benefits from the swap that would maximize the value of both fisheries for 1988. However, the proposed species substitution represents 34 percent of the total coho allocations whereas the framework FMP limits such swaps only to 25 percent of the allocation.

The deviations from the framework regulations north of Cape Falcon will allow commercial fishermen a larger share of chinook salmon, which is the more commercially valuable species. In exchange, the increased share of coho salmon and any reallocated chinook not harvested during the commercial season will extend the recreational season. The net economic benefit of these deviations from the framework regulations is estimated to be from $223,600 to $428,000.

2. Commercial Coho Fishery North of Oregon-California Border in June

Current framework regulations prohibit commercial fishing for coho salmon north of the California-Oregon border prior to July 1. However, the Council adopted an all-species commercial season beginning June 5 in the Klamath River management zone (KMZ) which includes the Southern Oregon Coast south of Humbug Mountain. This season was designed to harvest the allowable ocean catch of Klamath River fall chinook and other chinook stocks in the KMZ. Because it is expected that the chinook quota in the zone will be taken by the end of June, the fishery is scheduled to be closed for the first two weeks of July to limit any further impacts on Klamath River Fall chinook. After mid-July most coho have left the southern Oregon area and are no longer available. Thus, the only opportunity for southern Oregon fishermen to harvest coho salmon is during the June all-species fishery.

A deviation from the framework regulations to implement a June all-species fishery in the Zone, both north and south of the state boundary, will provide an opportunity for southern Oregon fishermen to harvest a fair share of the available coho salmon. The consistent all-species opening throughout the Zone also will help to prevent an effort shift to California in June.

3. Klamath River Fall Chinook Escapement

The framework escapement goal for Klamath River fall chinook is to achieve an average annual ocean escapement of 82,700 chinook to the mouth of the Klamath River during the 1987–1990 stock rebuilding period established under the framework FMP. In 1987, the first year of the 1987–1990 four-year period, 199,000 adult fall chinook entered the river. An average of only 43,900 adult fish would be needed in the next three years of this period to average 82,700 fish ocean escapement and thus meet the framework goal. Nevertheless, the 1988 preseason package includes ocean management measures that are anticipated to result in 132,000 fall chinook returning to the mouth of the River.

This deviation from the framework FMP's escapement goal is justified because the FMP anticipated that the escapement goal would have to be changed as in-river harvest allocations were agreed upon, and noted in the FMP that when such an agreement was reached, the escapement goal would be modified by FMP amendment.

In late 1987, the Klamath Fishery Management Council (Klamath Council), consisting of harvesters and managers of Klamath River chinook, agreed upon allocations of the fall chinook run for ocean and in-river fisheries and for spawning escapement. The Klamath Council was established under 16 U.S.C. 460 to, among other things, provide recommendations on ocean harvesting regulations to the Pacific Fishery Management Council [section 3(b)(1)(B)(iii)]. The 1987 agreement was signed by representatives of Federal, State, and Tribal entities and commercial and recreational representatives. That same year, the Indian people of the Klamath River were allowed to conduct a commercial gillnet harvest under Bureau of Indian Affairs supervision in the lower river (52 FR 27329, July 21, 1987) for the first year since California banned commercial gillnetting in 1933. The Indian net catch on the river was estimated to be 53,100 chinook salmon. The in-river sport fishery was estimated to take an additional 16,500 chinook in 1987, for a total in-river harvest of 69,600 chinook salmon. An estimated 129,300 chinook escaped ocean and in-river fisheries to spawn in 1987.

If applied in 1988, the 1987 agreement, the so-called "Harvest Sharing Agreement," would result in an in-river harvest of 67,300 chinook (down from 1987) and a spawning escapement of 85,300 adult fall chinook, including both hatchery and natural spawners. Together these would require an escapement from the ocean to the river of approximately 153,000 chinook in 1988, nearly 21,000 more chinook than are expected to escape the ocean fisheries under these Pacific Council's recommended regulations for 1988.

On the other hand, if the in-river run size were limited to either the average goal in the Council's framework FMP for this period (82,700 chinook) or the average required for the next three years of the period (43,900 chinook), there would be insufficient chinook left for in-river fisheries and spawning escapement. The likely result would be an extremely low spawning escapement and the failure to meet even the hatchery goals.

When developing the framework FMP escapement goal for Klamath chinook, the Council realized that the escapement averages contained in its framework FMP might have to be modified upward to reflect agreements on in-river harvest sharing and spawning. However, at its April meeting, the Pacific Council considered that ocean troll fishing off California and Oregon would have to suffer too great an economic loss to achieve the 153,000 chinook escapement figure of the Klamath Council for 1988. Consequently, to ease the 1988 economic impacts on the ocean fisheries and coastal communities, the Pacific Council adopted a fishing regime that will result in an ocean escapement of 132,000 Klamath River fall run chinook, some 21,000 fewer fish than the 153,000 recommended by the Klamath Council. Ocean quotas for 1988 are based on this compromise. These recommendations will provide increased economic return to the ocean fishery above what it would have experienced had the Klamath Council's escapement recommendation been followed. At the same time, the recommendations of the Klamath Council for in-river harvests and threshold spawning escapements can come close to being realized.

The Council has begun the process of amending its framework FMP to address the Klamath River Council's fall chinook escapement goal. Other aspects of that FMP amendment have delayed its implementation until at least 1989.

For these reasons, the Council adopted 1988 ocean management measures, which are expected to provide 132,000 Klamath River fall chinook to the mouth of the river.

4. Definition of "Land or Landing"

The definition of "land or landing" in the framework regulations is as follows:

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

The Council was told by its enforcement consultants that the current definition is confusing, and it is difficult to determine when a fishermen intends to offload. The revised definition which follows is intended to eliminate this confusion, and to bring the salmon regulations into conformity with the definition of "landing" regulations implementing other Council management plans.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are considered part of the landing.

Management Measures for 1988

The following tables and text are the management measures recommended by the Council for 1988. Specific measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic conditions affected by ocean fisheries. The recommendations are consistent with the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law including United States obligations to Indian tribes with treaty-secured fishing rights.

The Northwest Regional Director will monitor salmon catches in the territorial sea (0–3 miles) seaward of Washington, Oregon, and California. If the Regional Director determines that salmon catches have occurred in the territorial sea or a portion thereof, which were not accounted for when the Federal quotas and seasons were established and which may cause the Federal quotas or the anticipated catch during the Federal seasons to be exceeded, he may reduce the Federal quotas or shorten the Federal seasons accordingly by publishing a **Federal Register** notice

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pursuant to 661.21(b) and Appendix III.B. of the framework regulations.

The following management measures are adopted for 1988 under Part 661.

Table 1. Commercial management measures for the 1988 ocean salmon fishery:

U.S.-Canada Border to Cape Falcon

1. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-Off
Chinook	28.0 inches	21.5 inches.
Coho	16.0 inches	12.0 inches.

Chinook salmon less than 28 inches (21.5 inches head-off) may not be landed north of Cape Falcon, except that chinook salmon not less than 26 inches (19.5 inches head-off) taken south of Cape Falcon may be landed north of Cape Falcon at times when the season is closed north of Cape Falcon and open south of Cape Falcon.

2. Single point, single shank barbless hooks are required.

3. The non-Indian ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (a) an overall 103,500 chinook quota, or (b) impact on critical Washington, coastal and Puget Sound natural coho stocks equivalent to the overall preseason coho quota of 100,000 fish.

4. Conservation Zone 1, which is the ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed.

5. Two commercial all-except-coho seasons have been set for the area north of Cape Falcon. The first season, which begins May 1, has a 55,300 chinook quota. The second season, which begins June 1, has an 18,400 chinook quota. Any over- or under-harvest during the May season will be deducted from or added to the June quota as necessary to achieve the overall 73,700 chinook quota. If, following the closure of the June season, it is discovered that the actual catch was overestimated and the season was closed prematurely, the fishery will be reopened if the shortfall is sufficient to allow at least one full day's fishing (24 hours) in the entire area north of Cape Falcon, based on the best information available concerning expected catch and effort, and if the unused portion of the quota can be taken before June 15. Any chinook remaining unharvested at the end of the commercial season will be reallocated to the recreational chinook quota north of Cape Falcon.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
U.S.-CANADA BORDER to CAPE FALCON:				
May 1 thru earlier of May 31 or chinook quota	All except coho	55.3		Conservation Zone 1 (Columbia River mouth) is closed.
June 1 thru earlier of June 15 or chinook quota	All except coho	18.4		Conservation Zone 1 (Columbia River mouth) is closed.

Cape Falcon to Orford Reef Red Buoy

1. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	16.0 inches	12.0 inches.

Chinook salmon less than 28 inches (21.5 inches head-off) may not be landed north of Cape Falcon, except that chinook salmon not less than 26 inches (19.5 inches head-off) and taken south of Cape Falcon may be landed north of Cape Falcon at times when the season is closed north of Cape Falcon and open south of Cape Falcon.

3. Single point, single shank barbless hooks are required.

4. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to an acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel, which has been issued an ocean salmon permit by any State, to have troll gear in the water.

5. The commercial fishery from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 153,900 coho salmon from Florence South Jetty to Orford Reef Red Buoy.

6. On or about August 1, the Council's Salmon Technical Team (STT) will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery, which are not needed to complete the recreational seasons, will be reallocated to the commercial fishery.

7. When the STT estimates that 85 percent of the coho quota for the area south of Cape Falcon has been reached, the area fom Cape Falcon to Horse Mountain will close to all ocean commercial salmon fishing for three days to assess landings and project the remaining all-species fishing period. During this closure, all vessels must arrive in port with intent to land their fish within 12 hours of the closure. If the STT determines that additional coho may be harvested the season will be reopened in accordance with framework inseason management procedures.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE FALCON to ORFORD REEF RED BUOY:				
May 1 thru June 30	All except coho	None		None.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE FALCON to CASCADE HEAD:				
July 1 thru earlier of August 31 or coho quota.	All	None	See #5 above	Mixed loads of chinook and coho, or coho only, between July 1–13 cannot be landed between Cascade Head and Cape Arago unless the load meets the possession and landing ratios required in that area.
Earlier of coho quota or September 1 thru October 31.	All except coho	None		None.
CASCADE HEAD to CAPE ARAGO:				
July 1 thru earlier of July 13 or coho quota.	All	None	See #5 above	From July 1 thru July 15, at least 1 chinook must be possessed or landed for each 2 coho possessed or landed, except there may be a single daily possession and landing per vessel of 2 coho without the ratio requirement. Mixed loads of chinook and coho or coho-only loads must be delivered in the sub-area. Chinook must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessels except vessels licensed to buy salmon. Fish taken during the season beginning July 1 may be landed after the season closes provided that possession, landing, and delivery requirements stated above are met. There is no ratio requirement in the fishery beginning July 16.
July 14 thru July July 15		Closed	Closed	
July 16 thru earlier of August 31 or coho quota.	All	None	See #5 above	
Earlier of coho quota or September 1 thru October 31.	All except coho	None		
CAPE ARAGO to ORFORD REEF RED BUOY:				
July 1 thru July 15	Closed	Closed	Closed	
July 16 thru earlier of August 31 or coho quota.	All	None	See #5 above	None.
Coho quota thru August 31	All except coho	None		None.
September 1 thru September 15	Closed	Closed	Closed	
September 16 thru October 31	All except coho	None		None.

Orford Reef Red Buoy to Horse Mountain

1. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches
Coho	22.0 inches	16.5 inches

3. Single point, single shank barbless hooks are required.

4. Off California, no more than 6 lines per boat are allowed.

5. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to and acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel which has been issued an ocean salmon permit by any state to have troll gear in the water.

6. The commercial fishery in the area from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 100,000 coho salmon in the commercial fishery from Humbug Mountain south to the U.S.-Mexico border. If the coho impact is projectd to be less than 100,000 fish for the area south of Humbug Mountain, the remainder may be transferred to the commercial fishery north of Orford Reef Red Buoy on or about August 1.

7. On or about August 1, the STT will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery, which are not needed to complete the recreational seasons, will be reallocated to the commercial fishery.

8. When the STT estimates that 85 percent of the coho quota for the area south of Cape Falcon has been reached, the area from the Cape Falcon to Horse Mountain will close to all ocean commercial salmon fishing for three days to assess landings and project the remaining all-species fishing period. During this closure, all vessels must arrive in port with intent to land their fish within 12 hours of closure. If the STT determines that additional coho remain in the quota to be caught, the season will be reopened in accordance with framework inseason management procedures.

9. The commercial fishery in this area will be managed not to exceed a 63,000 chinook quota through August 31, 1988, except as provided below. On or about July 27, the STT will estimate the number of chinook salmon needed to complete the recreational season in this area. Any remainder in the recreational catch of Klamath River fall chinook and other stocks will be reallocated to the commercial quota for the area between Humbug Mountain and Punta Gorda.

The number of chinook available for reallocation will be based on the contribution rate percentage in the STT's Klamath River ocean harvest model as presented to the Council on April 7, 1988, and will not exceed a total landing of ages 3 and 4 Klamath River fall chinook in the area and in both fisheries through August 31 of 27,250 fish.

10. Conservation Zone 2 is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth).

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
ORFORD REEF RED BUOY to HUMBUG MTN.	Closed	Closed	Closed	
HUMBUG MTN to PUNTA GORDA:				
June 5 thru earliest of June 26 or chinook or coho quota Sunday thru Wednesday only.	All	See #9 above	See #6 above	Conservation Zone 2 (Klamath River mouth) is closed.
Coho quota through earlier of June 26 or chinook quota.	All except coho	See #9 above		Conservation Zone 2 (Klamath River mouth) is closed.
Earliest of chinook quota or June 29 thru July 16.	Closed	Closed	Closed	Conservation Zone 2 (Klamath River mouth) is closed.
July 17 thru earliest of August 31 or chinook or coho quota Sunday thru Wednesday only.	All	See #9 above	See #6 above	Conservation Zone 2 (Klamath River mouth) is closed.
Coho quota to earlier of chinook quota or August 31, Sunday thru Wednesday only.	All except coho	See #9 above		
SISTERS ROCKS to CHETCO POINT:				
May 1 thru earlier of May 31 or subarea chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
SISTERS ROCKS to MACK ARCH:				
Later of August 15 or end of troll fishery from Humbug Mtn. to Punta Gorda thru earlier of August 31 or subarea chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
September 1 thru earlier September 14 or chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
TRINIDAD HEAD to PUNTA GORDA:				
September 1 thru earlier October 31 or chinook quota.	All	15.0	None	Closed from 6 to 200 nautical miles of shore. The Klamath River fall chinook portion of the catch during this season, as determined by the STT, may be subtracted from the 1989 allocation.
PUNTA GORDA to HORSE MOUNTAIN	Closed	Closed	Closed	

Horse Mountain to U.S.-Mexico Border

1. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	22.0 inches	16.5 inches.

2. Single point, single shank barbless hooks are required.

3. Off California, no more than 6 lines per boat are allowed.

4. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to and acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel, which has been issued an ocean salmon permit by any State, to have troll gear in the water.

5. The commercial fishery in the area from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 100,000 coho salmon from Humbug Mountain to the U.S.-Mexico border. If the coho impact is projected to be less than 100,000 fish for the area south of Humbug Mountain, the remainder may be transferred to the commercial fishery north of Orford Reef Red Buoy on or about August 1. If the impact limitation from Cape Falcon to the U.S.-Mexico border is reached before September 30, the commercial fishery from Horse Mountain to the U.S.-Mexico border will continue for all-except-coho salmon. If the impact limitation south of Humbug Mountain is reached before the impact limitation from Cape Falcon to the U.S.-Mexico border or before September 30, the commercial fishery south of the Horse Mountain will continue for all-except-coho salmon.

6. On or about August 1, the STT will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery which are not needed to complete the recreational seasons will be reallocated to the commercial fishery.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
HORSE MTN. to CAPE VIZCAINO:				
May 1 thru June 4	Closed	Closed	Closed	

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE VIZCAINO to POINT ARENA:				
June 1 thru June 4	Closed	Closed	Closed.	
CAPE VIZCAINO to U.S.-MEXICO BORDER:				
May 1 thru May 31	All except coho	None		None.
HORSE MTN. to POINT ARENA:				
June 5 thru July 13 Sunday thru Wednesday only.	All	None	See #5 above	None.
July 14 thru July 16	Closed	Closed	Closed.	
July 17 thru earlier of September 30 or coho quota.	All	None	See #5 above	None.
Coho quota thru September 30	All	None	See #5 above	None.
POINT ARENA to U.S.-MEXICO BORDER:				
June 1 thru earlier of September 30 or Coho quota.	All	None	See #5 above	None.
Coho quota thru September 30	All except coho	None	See #5 above	None.

Table 2. Recreational management measures for the 1988 ocean salmon fishery:

U.S.-Canada Border to Cape Falcon

1. Minimum length restrictions for salmon in this area are as follows:

	Total length
Chinook	24.0 inches.
Coho	16.0 inches.

2. Single point, single shank barbless hooks are required.

3. The non-Indian ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (a) an overall 103,500 chinook quota, or (b) impact on critical Washington coastal and Puget Sound natural coho stocks equivalent to the overall preseason coho quota of 100,000 fish.

4. The recreational fishery will be managed not to exceed an overall chinook quota of 29,800 fish. Three subareas will be managed during the season to achieve separate subarea harvest guidelines (not quotas). In-season management actions may be taken to extend the fishery in each subarea to the end of its scheduled season. Such actions might include: closure from 0–3 nautical miles of shore; closure from 3–200 nautical miles of shore; closure from 5 to 200 nautical miles of shore; close from a point extending due west from Tatoosh Island for 5 miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; close from the Red Buoy Line at the Columbia River mouth north to Klipsan Beach; change species which may be landed to all except coho salmon. (For information concerning inseason actions, contact the National Marine Fisheries Service, Northwest Area Law Enforcement Office, 7600 Sand Point Way N.E., Seattle, WA 98115, telephone: 206–526–6133.)

5. These management measures are based on a Buoy 10 fishery (Columbia River mouth to the Astoria-Megler Bridge) with harvest guidelines of 200,000 coho and 50,000 chinook salmon.

6. Conservation Zone 3 is the ocean area surrounding the Columbia River mouth bounded on the north by a line extending for 200 nautical miles due west from North Head along 46°18'00" N. latitude, then southerly to 46°11'06" N. latitude, then east to 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the South Jetty.

7. Any chinook remaining unharvested at the end of the commercial all-except-coho fishery north of Cape Falcon will be reallocated to the recreational chinook quota north of Cape Falcon.

Subarea and season	Salmon species	Guideline (*) or quota (thousands)		Subarea bag limits and restrictions
		Chinook	Coho	
U.S.-CANADA BORDER to QUEETS RIVER:				
July 3 thru earliest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*2.8 See # 4 above	20.0	2 fish, only 1 of which may be a chinook. Closed from 6 to 200 nautical miles of shore.
QUEETS RIVER to KLIPSAN BEACH:				
July 3 thru earliest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*17.8 See # 4 above	50.0	2 fish, only 1 of which may be a chinook. Closed from 6 to 200 nautical miles of shore.
KLIPSAN BEACH to CAPE FALCON:				
July 11 thru earliest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*9.2 See # 4 above	30.0	2 fish, only 1 of which may be a chinook. Conservation Zone 3 (Columbia River mouth) is closed. Closed from 5 to 200 nautical miles off shore between North Head and Klipsan Beach, and, south of the Red Buoy Line. Closed from 3 to 200 nautical miles of a shore between the Columbia River south jetty and Cape Falcon.

Cape Falcon to Orford Reef Red Buoy

1. Consistent with management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length
Chinook	20.0. inches.
Coho	16.0 inches.

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3. Single point, single shank barbless hooks are required.

4. Overall recreational impact (hooking mortality and landings) is limited to 298,400 coho salmon from Cape Falcon to the U.S.-Mexico border. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery about August 1.

5. The 27 fathom curve is defined as follows: Within an area bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical miles west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 miles west of the mouth of Floras Creek) to 42°50'20" N., 124°36'30" W. (approximately 3.4 nautical miles west of Cape Blanco) to Cape Blanco.

Subarea and season	Salmon species	Quota (thousands)		Subarea bag limits and restrictions
		Chinook	Coho	
CAPE FALCON to ORFORD REEF RED BUOY:				
May 1 thru May 27 within the 27 fathom curve.	All	None	See # 4 above	2 salmon of any species no more than 6 fish may be retained in 7 consecutive days. Closed outside the 27 fathom curve (see # 5 above).
May 28 thru earlier September 11 or coho coho.	All	None	See # 4 above	2 salmon of any species no more than 6 fish may be retained in 7 consecutive days.

Orford Reef Red Buoy to U.S.-Mexico Border

1. Minimum length restrictions for salmon in this area are as

	Total length
Chinook	20.0 inches.
Coho	20.0 inches.

2. Single point, single shank barbless hooks are required north of Point Conception.

3. Between Orford Reef Red Buoy and Horse Mountain, there is a preseason reservation of 55,000 chinook salmon for the recreational fishery to complete its season through September 11. On or about July 27, the STT will estimate the number of chinook salmon needed to complete the recreational season in this area. Any remainder in the recreational catch of Klamath River fall chinook and other stocks will be reallocated to the commercial quota for the area between Humbug Mountain and Punta Gorda. The number of chinook available for reallocation will be based on the contribution rate percentage in the STT's Klamath River ocean harvest model as presented to the Council on April 7, 1988, and will not exceed a total landing of ages 3 and 4 Klamath River fall chinook in the area and in both fisheries through August 31 of 27,250 fish.

4. Overall recreational impact (hooking mortality and landings) is limited to 298,400 coho salmon from Cape Falcon to the U.S.-Mexico border, but the recreational fishery south of the Orford Reef Red Buoy will not close when the quota is reached. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery on or about August 1.

5. Conservation Zone 2 is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles from shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Kamath River mouth).

Subarea and season	Salmon species	Quota (thousands)		Subarea bag limits restrictions
		Chinook	Coho	
ORFORD REEF RED BUOY to HORSE MTN.:				
May 28 thru September 11	All	See #3 above	See #4 above	2 fish of any species; no more than 6 fish may be retained in 7 consecutive days. Conservation Zone 2 (Klamath River mouth) is closed August 1 thru August 31 (see #5 above).
TRINIDAD HEAD to PUNTA GORDA:				
September 12 thru September 30	All	None	None	2 fish of any species; no more than 6 fish may be retained in 7 consecutive days. Closed from 6 to 200 nautical miles of shore.
HORSE MTN. to U.S.-MEXICO BORDER:				
Nearest Saturday to February 15 thru nearest Sunday to November 15.	All	None	None	2 fish of any species.

Table 3. Treaty-Indian management measures for the 1988 ocean salmon fishery.

1. Minimum length restrictions for salmon are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	16.0 inches	12.0 inches.

2. Single point, single shank barbless hooks are required except that hooks used with bait and plugs may be barbed.

3. No more than 6 fixed lines per boat are allowed in the Hoh, Quileute, and Quinault areas. In the Makah area, no more than 8 fixed lines per boat or no more than 4 hand-held lines per person are allowed.

4. All boundaries may be changed to include such areas as may hereafter be authorized for the tribe's treaty fishery by a federal court.

5. There are no minimum length restrictions for salmon taken for ceremonial and subsistence purposes by the Makah tribe. For the Quileute, Hoh, and Quinault tribes, not more than 2 chinook salmon between the lengths of 24 and 28 inches per day may be retained.

6. The overall ocean quotas for the Washington coastal tribes are: 60,000 chinook and 68,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in State of Washington Area 4B.

7. The areas within 6 nautical mile radii of the mouths of the Queens River (47°31'42" N. latitude) and the Hoh River (47°15'12" N. latitude) are closed to commercial fishing. A closure within 2 nautical miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

Tribe	Boundaries	Open seasons	Salmon species
Makah	That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Quileute	That portion of the FMA between 48=07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Hoh	That portion of the FMA between 47=54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Quinault	That portion of the FMA between 47=40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle, consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this rule are at the following locations:

Umatilla-Tatoosh Line. A straight line drawn southerly from the Cape Flattery light (48°23'50" N. latitude) to Umatilla Buoy (48°11'20" N. latitude)
Queets River, 47°31'42" N. lat.
Klipsan Beach, 46°28'12" N. lat.
Red Buoy Line. Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2S], then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon, 45°46'00" N. lat.
Cascade Head, 45°03'50" N. lat.
Florence South Jetty, 44°01'00" N. lat.
Cape Arago Light, 43°20'50" N. lat.
Oxford Reef Red Buoy, 42°45'11" N. lat.
Humbug Mountain, 42°40'30" N. lat.
Sisters Rocks, 42°35'45" N. lat.
Mack Arch, 42°13'40" N. lat.
Chetco Point, 42°02'35" N. lat.
Trinidad Head, 41°03'30" N. lat.
Punta Gorda, 40°15'30" N. lat.
Horse Mountain, 40°05'00" N. lat.
Cape Vizcaino, 39°43'05" N. lat.
Point Arena, 38°57'30" N. lat.
Point Conception, 34°27'00" N. lat.

Classification

The 1988 management measures described above are based on the most recent data available. The aggregate

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data, upon which the measures are based, are available for public inspection at the offices of the Regional Directors (see ADDRESSES) during business hours until the end of the comment period.

Preseason Notice of 1988 Management Measures

Most of the actions in this rule are taken under 50 CFR Part 661 which implements the framework FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that they are consistent with the Magnuson Act and other applicable law, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA), and Final Supplemental Environment Impact Statement (SEIS), prepared for the framework FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the framework regulations states that the Secretary will publish a notice establishing management measures each year and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas or to establish different opening dates than those in the 1987 regulations for some fisheries, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comment will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, SST, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meeting.

Emergency Actions

The Assistant Administrator also determined that the measures described in the preamble which deviate from the framework FMP and its implementing regulations are necessary to respond to emergency situations and are consistent with the Magnuson Act and other applicable law. The measures falling under emergency authority of section 305(e) of the Magnuson Act involve the following as listed in the preamble: (1) Allocation of coho and chinok salmon north of Cape Falcon, Oregon, (2) commercial coho fishery north of Oregon-California border in June, (3) Klamath River Fall chinook escapement, and (4) definition of landing. He has determined that continuation of the regulations which the emergency measures are intended to replace would not prevent overfishing and would not apportion the ocean harvest equitably among non-Indian commercial and recreational and treaty Indian fisheries, and that it is therefore necessary to amend those portions of the framework FMP and its implementing regulations by emergency rule pursuant to 16 U.S.C. 1855(e).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had opportunities to comment on the substance of this emergency rule during meetings of the Council and its advisory committees in March and April, 1988, as above. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this rule.

The Assistant Administrator had determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Council prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see ADDRESSES).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

This emergency rule does not contain policy with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement State regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 1988.

Rolland Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 and its Appendix are amended, to be effective from May 1, 1988, through July 29, 1988, as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.3, the current definition for "Land" or "landing", is revised to read as follows:

§ 661.3 Definitions.

* * * * *

Land or *landing*, means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are considered part of the landing.

* * * * *

Appendix [Amended]

3. In the Appendix, section II.B.2., in paragraph (a)(iii) in the last sentence, the value "25 percent" is suspended, and the value "34 percent" is added to be effective from May 1 through July 29, 1988.

4. In the Appendix, section II.B.2. is amended by adding paragraph (a)(v), to read as follows:

II. Annual Changes to Management Specifications

* * * * *

B. * * *

2. * * *

(a) * * *

(v) On or about July 1, 1988, the Salmon Technical Team will estimate the number of chinook salmon caught in the all-except-coho commercial season. Any chinook salmon remaining in the commercial quota will be reallocated to the reactional fishery.

* * * * *

5. In the Appendix, in section II.B.7. paragraph (c)(ii) is suspended from May 1 through July 29, 1988.

6. In the Appendix, in section IV.A., in the table, Summary of Specific Management Goals for Stocks in the Salmon Management Unit, the line pertaining to Klamath Fall Chinook is amended in the third column by adding a Note following the list of years to read as follows:

IV. Escapement Goals

A. * * *

System	Spawning escapement goal	Rebuilding schedule
* * *		
Klamath Fall Chinook.	Note: 1988	132,000
* * *		

[FR Doc. 88-9883 Filed 4-29-88; 4:46 pm]

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations to allow OSMRE to use money collected from the payment of Federal civil penalties levied under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to reclaim lands that have been mined, abandoned, or left inadequately reclaimed, since the passage of the Act and therefore are ineligible for Title IV (Abandoned Mine land Reclamation) funding. This rule is necessary to implement a provison of the Omnibus Continuing Resolution for Fiscal Year 1988.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, PG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1514 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Procedural Matters

I. Background

Congress, in the continuing resolution appropriating funds for fiscal year 1988 (Pub. L. 100–202), authorized the Secretary of the Interior to utilize any money collected pursuant to the payment of civil penalties under section 518 of the Act to reclaim lands adversely affected by coal mining practices after August 3, 1977. The continuing resolution provides: "Provided, that notwithstanding any other provision of law, the Secretary of the Interior, pursuant to regulations may utilize directly or through grants to the States in fiscal year 1988, moneys collected pursuant to the assessment of civil penalties under section 518 of the Office of Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268) (SMCRA) to reclaim lands adversely affected by coal mining practices after August 3, 1977." This rule implements these provisions.

Under this direction, the Secretary is working with the Office of Management and Budget and the Department of the Treasury to set up an appropriate tracking system for funds used to finance reclamation of lands adversely affected by coal mining practices after August 3, 1977. These lands are ineligible for funding under the abandoned mine land program established in Title IV of SMCRA.

SMCRA requires reclamation bonds for all permitted surface coal mining operations. These bonds are intended to cover the cost of reclamation should the permitted entity not be able to complete the required reclamation. However, bonding was not required under the interim regulatory program. In addition, there are instances where "Post-Act" sites have not been fully reclaimed or were inadequately reclaimed. Under this rule, Federal civil penalties collected because of violations of the Act, may be used for reclamation of "Post-Act" sites.

This rule will afford the Secretary the option of accomplishing reclamation of Post-Act sites directly through OSMRE or through grants to the States where appropriate. The allocation of Federal civil penalty money for reclamation parallels a similar practice followed in several States that assign State-collected penalties for reclamation. In fiscal 1987 the total civil penalties collected were $1,017,847.

Under this rule the selection and mechanism of funding will be at the discretion of the Director, OSMRE. Approved projects will be conducted either directly by OSMRE or through grants to the States. Projects will be selected for funding on a priority basis and will employ in part the priorities from the Abandoned Mine Reclamation Fund. The highest priority will be emergency projects as that term is defined in 30 CFR 870.5. The next priority will be given to projects which would qualify as priority 1 and then priority 2 as these priorities are described in section 403 of the Act. If there are residual funds, they will be available for Federal bond forfeiture sites. The prioritization of sites using Congressionally described criteria from the Abandoned Mine Reclamation Program is a proven methodology for such disbursement and ensures that the limited funds are allocated to the sites which are most in need of reclamation.

II. Discussion of Final Rule

Taking into consideration the language of the continuing resolution for fiscal year 1988, it is clearly the intent of Congress to allow OSMRE to utilize civil penalty money for the purpose of reclamation of lands adversely affected by coal mining practices after August 3, 1977. Therefore, OSMRE has amended its regulations dealing with civil penalties at 30 CFR Part 845 by adding a new section, 30 CFR 845.21, to address "Use of the civil penalties for reclamation."

Paragraph 845.21(a) authorizes the Director to use money collected pursuant to civil penalties levied under Section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b) identifies the priorities which will be used to allocate the funds collected. Under § 845.21(b)(1) top priority will be given to emergency projects as that term is defined in 30 CFR 870.5. This will be followed under § 845.21(b)(2) by projects which would qualify as priority 1 and then under § 845.21(b)(3), as priority 2, as these terms are defined in Section 403 of the Act. Although terminology used in the rule is derived from the Abandoned Mine Land Program, the moneys disbursed under § 845.21 will be used only to reclaim lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b)(4) provides that after addressing the priorities set forth in § 845.21(b)(1) through (b)(3), funds may be made available for reclamation of Federal bond forfeiture sites.

Paragraph 845.21(c) provides the Director some flexibility in the selection process to account for unforeseen circumstances and provides authority to the Director to allocate funds for any other project which constitutes a danger to the environment or to the public health and safety.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3407.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA), and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A finding of No Significant Impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record.

Administrative Procedure Act

This regulation is exempt from the public notice rulemaking requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) and 553(b)(3). The regulation deals primarily with contracts and grants to benefit the public. Additionally, the legislation deals solely with monies collected during fiscal year 1988 and therefore it is essential that OSMRE move as rapidly as possible to ensure that reclamation projects are selected and bid before the end of the fiscal year. Similarly, good cause exists to make this rule effective immediately under the authority of 5 U.S.C. 553(d). OSMRE must move rapidly to select and design projects to ensure that the fiscal year 1988 penalty monies are obligated within the fiscal year.

Author

The principal author of this rule is Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–1514 (Commercial or FTS).

List of Subjects in 30 CFR Part 845

Administrative practice procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: March 4, 1988.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

Accordingly 30 CFR Part 845 is amended as set forth below.

PART 845—CIVIL PENALTIES

1. The authority citation for Part 845 is revised to read:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, and Pub. L. 100–202

2. Part 845 is amended by adding § 845.21 as follows:

§ 845.21 Use of civil penalties for reclamation.

(a) The Director of OSMRE may utilize money collected by the United States during fiscal year 1988 pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within any State or on Federal lands or Indian lands based on the following priorities:

(1) Emergency projects as defined in § 870.5 of this chapter;

(2) Reclamation projects which qualify as priority 1 under section 403 of the Act;

(3) Reclamation Projects which qualify as priority 2 under section 403 of the Act; and

(4) Reclamation of Federal bond forfeiture sites.

(c) Notwithstanding paragraph (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

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Part V

Department of Health and Human Services

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year 1988 Research Demonstration Program, Availability of Funds and Request for Applications

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year (FY) 1988 Research Demonstration Program (RDP); Availability of Grant Funds and Request for Applications

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of FY 1988 funds and request for applications under SSA's RDP.

SUMMARY: In FY 1987, SSA announced the beginning of its RDP. The current announcement pertains to SSA's RDP for FY 1988 and consists of four sections:

- Section I provides background information, discusses the purpose of the RDP, lists funding authorities and briefly describes the application process.
- Section II describes the programmatic priorities and subpriorities under which SSA is requesting applications for funding.
- Section III describes in detail the application process.
- Section IV provides guidance on how to prepare and submit an application.

ALL OF THE FORMS AND INSTRUCTIONS NECESSARY TO SUBMIT AN APPLICATION ARE PUBLISHED AS PART OF THIS ANNOUNCEMENT FOLLOWING SECTION IV. THEREFORE, NO SEPARATE APPLICATION KIT IS NEEDED FOR SUBMITTING AN APPLICATION. THE CLOSING DATE FOR SUBMISSION OF APPLICATIONS IS *JUNE 30, 1988.* (SEE SECTION III, PART L)

Note: For purposes of this announcement, we are using the Social Security Disability Insurance (DI) program terms "beneficiary" and "benefit" to also represent the Supplemental Security Income (SSI) Program terms "recipient" and "payment."

FOR FURTHER INFORMATION CONTACT: Social Security Administration, Division of Disability Program Information and Studies, 6401 Security Boulevard, Room 2223 Annex Building, Baltimore, Maryland 21235, Telephone: (301) 965–0105.

SUPPLEMENTARY INFORMATION:

Section I—Preamble

A. Goals of the Social Security Administration (SSA)

A major goal of SSA is to assist Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disabled and blind beneficiaries who have the potential to return to work. SSA is seeking to test new approaches to achieve this goal. These include more effective and efficient use of available vocational rehabilitation (VR) and to the employment services, and new work incentives (WI).

SSA's focus is on significantly improved integration and use of VR and other employment program resources for our beneficiaries. This reflects a national concern with assisting disabled persons to become more productive contributors to the economy, while enhancing their self-esteem. This concern was recently expressed in the report of the Disability Advisory Council (DAC) which was commissioned by the Congress to study and make recommendations related to SSA's disability and VR programs. In its report, the DAC emphasized that the Social Security Administration should strongly emphasize employment and attainment of self-sufficiency for disability beneficiaries and conduct demonstrations to test effective methods to achieve this goal. SSA wishes to directly achieve this goal and is seeking to test new approaches which, if successful, can lead to the introduction of effective policies and programs of employment services for our beneficiary populations throughout the country.

One of SSA's highest priorities for achieving these goals is to help and assure that as many beneficiaries as possible return to work at a level of earnings that will end or reduce dependency on SSA's disability programs. Currently, there are about 4 million disabled (and blind) beneficiaries on the DI rolls, and 2.9 million disabled and blind on the SSI rolls. Total costs in payments to DI and SSI blind and disabled in 1987 (the latest year such figures are available) were 28.4 billion dollars. Over the years, most persons coming onto the rolls have remained there, but we know from survey information on and group interviews of our DI beneficiaries (who generally have extensive and recent work experience when they apply for disability) and from surveys of SSI beneficiaries as well as the growth in the use of WI features of the SSI program, that many would prefer to do some form of work, if the conditions were favorable. This might include conditions such as: An accommodating employer; assistance in finding a new position; encouragement and support; skills enhancement; transportation; alternative coverage of customary medical costs; various economic incentives; a longer trial work period (TWP) (e.g., for transitional employment); or some degree of medical improvement/rehabilitation leading to employment.

We are seeking projects designed to make the most effective and efficient use of existing rehabilitation and employment service programs and systems, and for the creative application of available resources and technologies to assist beneficiaries to return to work. These projects should clearly contribute to SSA's employment priorities including:

- information that will lead to programmatic changes to systematically increase the number of beneficiaries who return to work;
- methods of linking beneficiaries with employment assistance that feature cost-effective, state-of-the-art techniques;
- more efficient and effective mechanisms for identifying and referring candidates for rehabilitation and employment services;
- increased access by beneficiaries to employment service systems and networks;
- more effective and efficient employment intervention for beneficiaries; and
- more effective incentives for rehabilitation and employment.

B. Research Demonstration Program (RDP) of SSA

The RDP is designed to coordinate several funding authorities and to serve as SSA's major demonstration effort on behalf of both the DI and SSI disabled and blind populations in a single **Federal Register** announcement. This nationwide competition to select demonstration projects designed to stimulate, test and coordinate effective approaches toward employment assistance is part of an innovative and systematic SSA-wide initiative for assisting beneficiaries to enter the workforce or return to work.

SSA expects to use grant funds to begin a series of employment demonstrations of national significance in FY 1988. We anticipate funding up to 50 demonstration grants totaling about 6 million dollars. In general, demonstration activities are intended to add to existing knowledge and to improve methods and techniques.

Additionally, priority will be placed on selection of approaches that are cost-effective, can be replicated, and show promise for improvement of systems for the coordination of effective employment opportunities for SSA's disability populations.

Priority area in this announcement request innovative demonstrations which extend and enhance employment outcomes for DI and SSI beneficiaries, including approaches which fill gaps in existing programs, link programs with public and private sector employment services, or create and test entirely new mechanisms to assist beneficiaries to secure employment. APPLICATIONS WHICH REPLICATE EXISTING EMPLOYMENT STRATEGIES ARE NOT BEING SOUGHT, UNLESS THESE IDEAS INCLUDE A MAJOR NEW COMPONENT WHICH WILL LEAD TO SIGNIFICANT IMPROVEMENT IN EMPLOYMENT OUTCOMES FOR DI AND SSI BENEFICIARIES.

In addition to these concerns, SSA wishes to pursue demonstrations suggested in the recent report of the Disability Advisory Council (DAC). The DAC was mandated by section 12101 of Pub. L. 99–272 to study and make recommendations related to the effectiveness of VR services for DI and SSI beneficiaries, the use of specialists for medical/vocational evaluations, alternative approaches to medical evaluations, and possible criteria for assessing the probability that an applicant or recipient of disability benefits might benefits from rehabilitation services. The DAC was chartered by the Commissioner of Social Security on July 3, 1986, and its final report was transmitted by the Secretary of Health and Human Services (HHS) to the Congress and the Board of Trustees of the Disability Insurance Trust Fund on March 11, 1988.

The DAC heard testimony from many experts in VR, medical/work evaluations, Social Security policy, and the economic implications of SSA's disability programs. After more than a year of study, the DAC concluded that SSA should further emphasize return to work as the appropriate goal of SSA's VR efforts and that SSA needs to develop additional ways to get many more of its disability beneficiaries into VR and programs leading to permanent employment. In developing new VR/employment strategies, the DAC recommended that SSA conduct demonstrations, using all available sources of VR services (both public and private) and emphasizing case management and client/counselor cooperation to achieve maximum efficiency and effectiveness in returning disability beneficiaries to employment. Many of these recommendations are reflected in the specific demonstration topics requested under the priority areas in this announcement.

SSA is particularly interested in approaches that: (a) Link the resources of Federal and State agencies serving DI or SSI beneficiaries; (b) link the resources of Federal, State, and private agencies; (c) link SSA programs with private employers or employer associations possibly including Private Industry Councils (PICs); (d) link Federal and/or State resources with private sector organizations serving the disabled; and/or (e) promote additional private sector involvement with DI and SSI beneficiaries, e.g., direct job development and placement of beneficiaries or innovative uses of rehabilitation engineering techniques to return beneficiaries to the workforce.

C. Legislative Authorities

Authority for this activity is contained in sections 702 and 1110(a) of the Social Security Act (the Act), for projects to promote economic security and reduced dependency; section 1110(b) of the Act, for projects that assist in promoting the objectives or facilitate the administration of the SSI program; and section 505(a) of Public Law (Pub. L.) 96–265, for projects to improve employment outcomes for DI beneficiaries. In addition, section 505(a) of Pub. L. 96–265, as extended by Pub. L. 99–272, section 12101, requires the Secretary of HHS to test new forms of rehabilitation and other employment-related initiatives that will help DI beneficiaries return to work.

It should be noted that certain of these authorities contain the flexibility to waive provisions of the Act to test new employment service arrangements and WI on a demonstration basis. Specifically, section 505(a)(3) authorizes the Secretary to waive titles II (DI) and XVIII (Medicare) benefit restrictions. Additionally, section 1110(b) authorizes the Secretary to waive requirements, conditions or limitations of title XVI (SSI), subject to certain safeguards such as voluntary participation by SSI recipients. The waiver authority under both titles has been redelegated by the Secretary to the Commissioner of SSA.

Under sections 702 and 1110 (a) and (b), SSA anticipates funding projects in the last quarter of FY 1988, or first quarter of FY 1989. However, section 505(a) requires that "no experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only, and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate." Additional processing time will be required to fulfill this requirement.

D. Competitive Review of Applications

Applications received under this announcement will be reviewed competitively against the evaluation criteria of this announcement (see Section III) by qualified independent reviewers. SSA will use these evaluations as an element in the selection process. The results of this review will assist SSA in deciding which applications should receive funding.

E. Background

1. Definition of Disability

SSA administers two programs (DI and SSI) for the disabled, as well as a separate SSI program for the blind. (The DI program for the disabled covers disabled blind.) The DI and SSI programs use the same definition of disability and overlap to some extent, but they differ in significant ways.

The statutory definition of disability for both programs is: *inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which has lasted or would be expected to last for a continuous period of 12 months or result in death.* There is a separate statutory definition of blindness for the SSI blind program.

To qualify for DI benefits on this or her own earnings record, a disabled person must meet the definition of disability, and also meet an "insured status" requirement (sufficient past work in Social Security covered employment). To qualify for SSI benefits a disabled or blind person must meet the definition of disability or blindness and also meet certain other eligibility requirements, including an income and resources (financial need) test.

New DI beneficiaries must wait 5 months from the onset of disability to receive cash benefits, and another 24 months to qualify for Medicare benefits. A waiting period is not required for new SSI beneficiaries to qualify for cash benefits and Medicaid benefits (in those States that provide Medicaid based on SSI eligibility).

With certain exceptions, DI benefits generally continue until death or age 65 unless the beneficiary medically improves or performs SGA. Ordinarily SSA considers a person to be performing SGA when his or her earnings (excluding subsidies and certain impairment-related work expenses) average more than $300 per month ($700 for blind DI beneficiaries who are subject to different rules).

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SSI benefits generally continue until death with no age cut-off unless the beneficiary medically improves or ceases to meet other eligibility requirements, such as the income and resources test. SGA is not a factor for SSI beneficiaries who perform work after entitlement (see No. 3 below, Work Incentives).

2. Determination of Disability

While SSA's disability programs are Federally administered and funded, SSA uses State agencies, generically known as disability determination services (DDSs) to determine disability and blindness. Thirty-seven of these DDSs operate under a State vocational rehabilitation agency (VRA). The remainder operate under a State umbrella agency, under a welfare agency or as an independent State agency.

Social Security regulations provide a five-step sequential evaluation process which is used in determining whether a claimant meets the legal definition of disability. When a decision that an individual is or is not disabled can be made at any step, evaluation under subsequent steps is not necessary. In this way, an eligibility decision for a claim is made as quickly and efficiently as possible.

The first consideration, except for the SSI blind who are not subject to an SGA standard, is whether the applicant is performing SGA. If a DI or SSI applicant is performing SGA, his/her claim will be denied.

Second, the individual's medical condition is considered to determine whether his/her impairment(s) has more than a minimal effect on the individual's ability(ies) to perform basic work-related functions such as walking, lifting, and following simple instructions. If the impairment(s) does not impose such a restriction on physical or mental capacities, the claim is denied for lack of necessary severity.

Next, if the individual is not performing SGA and has an impairment which has more than a minimal effect on the individual's ability(ies) to perform work-related functions, the individual's medical condition is compared with the criteria set forth in SSA's Listing of Impairments in the Social Security regulations. If the impairment(s) meets the listed criteria, or is medically equivalent to those criteria, the claim is allowed without further evaluation.

If a claim has not been decided at any of the earlier steps in the sequential evaluation process, the individual's ability to perform work-related physical and mental activities is determined based on all of the relevant medical evidence. This determination of residual functional capacity (RFC) is then compared with the demands of his/her past work. If the individual retains the capacity to perform work done in the past, the claim is denied.

A claim that cannot be decided at this step in the process is further evaluated to determine whether the individual can return to work other than past work. In making this determination, the individual's age, education, and work experience are considered, as well as RFC.

This is only a general description of the sequential evaluation process for determining disability. The sequential evaluation process does not apply in full to DI claims for widows, widowers, or surviving divorced spouses, or to SSI claims for children under age 18. To be eligible under the criteria in the law, these claimants must have an impairment(s) which is so severe that it meets (or is equivalent to) the medical criteria in the Listing of Impairments. Also, blindness determinations for SSI claimants are based on medical criteria prescribed by statute and do not follow the disability evaluation process.

3. Work Incentives

Prior to 1980, there were few WI for DI or SSI beneficiaries. The Social Security Disability Amendments of 1980 (P.L. 96-265) added some new incentives. The Employment Opportunities for Disabled Americans Act, P.L. 99-643, liberalized some of these incentives for SSI beneficiaries effective July 1, 1987, and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, added still additional DI incentives effective January 1, 1988.

Major DI WI for beneficiaries who do not medically improve include:

• A 9-month TWP and a 3-month grace period for individuals who work:

This offers a disabled beneficiary an opportunity to test his/her ability to work without losing benefits. Under this provision, the beneficiary is credited with a month of work for each month that earnings exceed 75 dollars (or 15 hours of work for the self-employed). When the beneficiary has accumulated 9 such months (not necessarily consecutive), the TWP is completed. After the TWP, SSA will determine whether the work the individual performed during the TWP was SGA. If SSA determines that the individual is no longer disabled, the beneficiary will receive benefits for the month disability ceases and at least the next 2 months (the 3-month "grace period").

• A 36-month reentitlement period:

This provision provides a reentitlement period for disabled persons who complete a TWP and continue to have a disabling impairment. It is not an extension of the TWP, but rather a period during which benefits can be reinstated without need for a new application, disability determination or waiting period if the person's work falls below the SGA level.

• An extension of Medicare coverage:

Medicare coverage for DI beneficiaries who have not medically recovered will continue for 39 months following the end of the TWP or until the last month of payment of disability benefits, whichever is later. For individuals whose disability benefit entitlement ends for reasons other than SGA, Medicare coverage ends at the same time disability benefits end.

• Elimination of second waiting period for Medicare for people who become reentitled to disability benefits based on the same medical condition:

Prior to 1988, a beneficiary who became entitled to DI benefits more than 5 years after his/her previous entitlement to DI benefits terminated had to serve another 24-month waiting period before Medicare coverage could begin. Now, a person who becomes reentitled to DI benefits on the basis of an impairment that is the same or directly related to the impairment that was the basis for the previous entitlement does not have to serve another 24-month waiting period for Medicare benefits; months in the previous period of disability would count towards the 24-month waiting period.

• Deduction of impairment-related work expenses

The cost of impairment-related items and services *that a person needs in order to work* can be deducted from earnings in determinations of SGA, even if these items and services are also needed for non-work activities. The person must not have been nor expect to be reimbursed for the expenses.

Major SSI WI for beneficiaries who do not medically improve now include:

• Section 1619(a)—Special SSI Payments:

This incentive allows special SSI cash payments to *disabled* persons on the rolls, in place of their regular SSI payments when their earnings are at the amount ordinarily designated as the SGA level. (*It does not apply to blind SSI recipients.*) To qualify for this incentive, the person must continue to have the original disabling impairment under which eligibility for SSI was initially determined and currently meet all other eligibility rules including the income and resources tests.

People who receive special SSI cash benefits keep their disability status until they are determined to have medically improved or are terminated for a nondisability-related reason(s). If the earnings of a person receiving special SSI cash benefits drops below the SGA level, the individual will be paid regular SSI benefits if all other eligibility requirements are met. Individuals who receive special SSI cash benefits are SSI recipients for all purposes, including Medicaid eligibility determinations. Under the special rules, the individual's payment amount is still calculated in the same way as regular SSI cash benefits (e.g., as earnings rise, the SSI benefit is reduced according to a formula).

• Section 1619(b)—Recipient Status for Medicaid

This incentive is important because it protects Medicaid benefits (if the State provides Medicaid coverage to SSI eligibles) when income is too high for cash payments but not high enough to replace the loss of Medicaid.

This incentive continues Medicaid coverage for *working disabled or blind* people under age 65 when their income becomes high enough to cause SSI cash benefits or Federally-administered State supplementary payments to stop. To qualify for extended Medicaid coverage under section 1619(b), a person must:

—continue to have a disabling condition or continue to be blind;
—need Medicaid in order to continue to work;
—be unable to afford benefits equivalent to the SSI Federally-administered State supplementary payments, Medicaid coverage and publicly funded attendant care services (including personal care assistance) the person would be eligible for if he/she were not working; and
—meet all nondisability requirements for SSI payment other than earnings.

• Plan for Achieving Self-Support (PASS)

PASS can help an individual establish or maintain SSI eligibility and can also increase the individual's SSI payment amount. It allows a disabled or blind person to set aside income and/or resources for a specified period of time for a work goal such as education, vocational training, starting a business, or the purchase of work-related equipment. A plan is for SSI benefits only and does *not* affect an SGA determination. Income and resources that are set aside are excluded only under the SSI income and resources test.

The individual must have a feasible work goal, a specific savings/spending plan, and must provide for a clearly identifiable accounting for the funds which are set aside. The plan must be in writing and have a specific timeframe.

• Impairment-Related Work Expenses (IRWE)

The cost of certain impairment-related services and items that a person needs in order to work can be deducted from earnings in determinations of SGA, even if these items and services are also needed for nonwork activities. IRWE are also excluded from earned income in determining an SSI recipient's monthly payment amount. However, individuals must first establish Federal SSI eligibility without the IRWE expenses exclusion.

• Blind Work Expenses (BWE)

Any earned income of a blind person which is used to meet any expenses reasonably attributable to earning the income is not counted in determining SSI eligibility and payment amount if the blind person is under age 65; or age 65 or older and received SSI payments due to blindness (or received payments under a former State plan for aid to the blind) for the month before he/she attained age 65. A BWE need not relate directly to an individual's blindness; it need only be a work-related expense of the individual.

4. Current SSA VR program:

SSA's VR program generally operates as follows:

• SSA's field offices (FOs) alert new disability or blindness applicants that they might be referred to a State VRA. SSA now uses only State VRAs to provide reimbursable VR services.

• The State DDSs, the agencies that collect the medical information and make SSA's disability and blindness determinations, screen claims for possible VR referrals in conjunction with determining whether the applicants are disabled or blind. The DDS screening for VR is a manual process, generally carried out by disability examiners, using gross screening criteria and relying on medical and vocational information collected for purposes of determining disability or blindness. Generally, no special information is gathered for VR assessment.

• DDSs refer selected disability or blindness applicants (both beneficiaries and non-beneficiaries) to State VRAs. DDSs provide copies of the disability or blindness determination and relevant medical and vocational information to the State VRAs.

• The State VRAs decide which of the DDS referrals appear to be good candidates for VR and should be contacted. Disability beneficiaries who apply to these agencies for VR are subject to the same standards of eligibility as others served by the agencies. Those who are determined eligible for VR are substantively and consensually involved in the development of an "individualized written rehabilitation program [plan]." State VR eligibility and service decisions are based on the Rehabilitation Act of 1973.

• SSA reimburses the State VRAs for the costs of certain VR services provided to DI and SSI beneficiaries. With certain exceptions, reimbursement may be made only for those VR services that result in beneficiaries performing SGA for a continuous period of 9 months.

Section II—Priority Areas

In developing the priority areas for the FY 1988 RDP, SSA has reviewed and updated the critical needs of its disability programs based on:

• suggestions by rehabilitation and employment professionals;
• recommendations from SSA's central and regional offices;
• results of prior research and demonstration activities;
• grant awards made under the FY 1987 RDP; and
• recommendations from the DAC.

The current critical needs of SSA's program to help beneficiaries who have ability to work include:

• early intervention;
• rapid assessment;
• improved coordinated referral; and
• management of service provision that is cost-effective in achieving sustained employment outcome.

The priorities that follow focus primarily on employment assistance. In reviewing proposals, SSA will also consider proposed WI features (e.g., extension of TWP) that are potentially cost-effective and administratively feasible on a demonstration basis and that are proposed using methods that will effectively measure their impact.

Note.—Because new WI affect the structure of SSA's disability programs and have major policy and cost implications, testing of new WI generally must be carried out on a sufficient scale and using appropriate experimental designs, to assure that findings are representative, can be generalized, and provide definitive information on impact. Additionally, WI involving benefit adjustments cannot be tested without manipulation of SSA's benefit records, thus such tests require SSA management. This includes testing of a benefit offset (reduction of benefits based on earnings).

SSA RECOGNIZES THAT THE SCOPE OF WORK OF ANY SINGLE APPLICATION MAY ADDRESS ASPECTS OF SEVERAL OF THE PRIORITY OR SUBPRIORITY AREAS LISTED. IN SELECTING THE *ONE*

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PRIORITY AND SUBPRIORITY AREA UNDER WHICH YOUR PROPOSAL WILL BE REVIEWED, PLEASE SELECT THE SINGLE PRIORITY OR SUBPRIORITY AREA WHICH MOST CLEARLY MATCHES THE OVERALL PURPOSE OF THE PROJECT BEING PROPOSED. SSA WILL NOT ASSIST APPLICANTS IN MAKING THIS SELECTION. SUBPRIORITY AREAS (E.G., 4.1, 4.6, ETC.) ENDING WITH THE WORD "RESEARCH" ARE INTENDED TO BE RESEARCH PROJECTS AS CONTRASTED WITH DEMONSTRATION PROJECTS. GRANTEE MATCHING OR COST-SHARING REQUIREMENTS DIFFER FOR RESEARCH AND DEMONSTRATION PROJECTS. (SEE SECTION III, PART C).

The programmatic priority areas of SSA's RDP are as follows:

Priority Area 1.0:
Comprehensive and Systematic Employment Assistance.
Priority Area 2.0:
Better Coordination Between Public and Private Sector Programs to Increase Beneficiary Interest in and Access to Employment.
Priority Area 3.0:
Strategies for Assisting Members of the Disability Population with Limited Access to Employment Services.
Priority Area 4.0:
Mechanisms for Matching Beneficiaries with Employment and Employment Assistance.
Priority Area 5.0:
State Vocational Rehabilitation Systems Improvement.
Priority Area 6.0:
Application of New Technologies to Assist Return to Employment.
Priority Area 7.0:
Communication and Marketing of Work Incentives, Vocational Rehabilitation and Employment Information to Directly Assist Beneficiaries in Returning to Work.
Priority Area 8.0:
Development of State-of-the-Art Information on the Functional Capacity and Compatible Occupations for Persons With Various Impairments.
Priority Area 9.0:
Improved Interagency Record Matching.
Priority Area 10.0:
Special Studies.
Priority Area 11.0:
Nonpriority Area Projects.

Descriptions of Priority and Subpriority Areas

Priority Area 1.0:
Comprehensive and Systematic Employment Assistance

Under the RDP, SSA has identified and tested different approaches to assist disabled beneficiaries to return to work. Preliminary findings suggest many of our beneficiaries would return if they were provided with comprehensive and systematic VR and employment services which were appropriately targeted and responsive to their actual employment needs. Identification and testing of the most promising forms of employment assistance is underway. The following key elements are needed for a comprehensive approach to employment assistance:

- early and cost-effective client assessment;
- rapid referral to needed employment services;
- managed service provision to assure appropriate, timely and cost-effective service delivery;
- methods to assure employment outcome; and
- cost management and cost containment measures for the entire rehabilitation and employment process.

1.1 Comprehensive Employment Services Using Case Management. SSA is seeking a medium-to-large-scale demonstration project to provide beneficiaries with consistent and comprehensive employment services using a case management approach. Proposals should include cost-containment mechanisms to assure effective and cost-beneficial service provision. Projects can include tests of direct beneficiary involvement in the development of plans to return to work and in the selection of VR/employment service providers. Such a project must be of sufficient size and scope to permit a scientific evaluation of outcome and must involve use of multiple rehabilitation and employment service providers through a case management system. The demonstration should involve the use of case managers who operate outside of the SSA field structure and are able to establish effective, replicable linkages with and between SSA FOs, beneficiaries, and multiple employment service providers. The project should clearly focus on SSA's critical needs: early intervention; rapid assessment; coordinated referral; and management of service provision to achieve sustained employment outcome. And, the project should test a comprehensive employment approach for SSA beneficiaries. Also, the project must include a carefully and thoroughly designed evaluation component using objective evaluative expertise which will provide appropriate scientific evidence on outcomes and include evaluation of costs and benefits using accepted cost-benefit analysis techniques. The project may focus on a regional area of the nation, but should produce results which could be used on a national basis.

Priority Area 2.0:
Better Coordination Between Public and Private Sector Programs to Increase Beneficiary Interests in and Access to Employment

A commonly observed problem for beneficiaries considering employment is the lack of coordination between public and private sector programs designed to assist people with disabilities. Beneficiaries may encounter conflicting goals and eligibility requirements, misinformation about the interaction of programs, and lack of cooperation between program representatives. This results in severely limiting the effectiveness of such programs.

2.1 Public and Private Sector Program Collaborations. SSA is interested in demonstrating collaboration and cooperation to increase employment opportunities for disabled beneficiaries. This collaboration and cooperation could involve SSA and employers, private insurers, PICs, labor unions, hospitals, State VRAs, State offices for mental retardation and mental health, private VR organizations, employment agencies, disability organizations, self-help organizations, residential programs, etc. Potential areas of collaboration and cooperation include informing beneficiaries about program interactions and available assistance, developing job opportunities, training and accommodation, shared funding of employment assistance, access to private medical benefits and services, and State VRA cooperation with other public sector, nonprofit or private sector employment service organizations in providing services to beneficiaries. Where possible, such cooperation could also involve use of the Targeted Jobs Tax Credit and/or available on-the-job training funds provided through the Job Training Partnership Act.

SSA is seeking coordinated *programs* based on the collaborative efforts of two or more agencies or organizations. These programs should target DI/SSI beneficiaries and be programs should target DI SSI beneficiaries and be structured so that assessment, referral, intervention, and employment components are used. Efforts should be made to use existing employment networks. Projects must include specific and measurable employment outcomes, be cost beneficial and have potential for national replication.

2.2 Worker's Compensation and Costs Risl Reduction. Some study findings have indicated that one barrier which prevents rehabilitated clients from obtaining jobs is employers' concerns about worker's compensation liability. Although most states have established "second injury funds," this apparently has not entirely alleviated the problem.

Therefore, SSA is seeking small-scale employment demonstrations involving placement of beneficiaries in competitive employment. These demonstrations should involve collaboration and cooperation between employers, insurers, other organizations, and/or SSA to reduce the risk which employers face for worker's compensation payments for beneficiaries who become employed. The risk reduction period should be for a limited time, not to exceed 2 years and cost-sharing of the worker's compensation payment risk is anticipated.

Additionally, these demonstrations must include the following fundamental elements:

(1) Identification of beneficiaries for employment;

(2) Identification of employers and specific placement opportunities;

(3) A specific approach which defines how employer worker's compensation risk will be reduced; and

(4) An evaluation plan that clearly indicates the differential enhancement of employability for these beneficiaries.

2.3 Referral to Part-time and Full-time Trial Work Opportunities. In addition to coordinated public and private sector employment programs, SSA is also seeking innovative proposals for demonstrations to aid disabled beneficiaries in trying out their capacity to perform competitive employment through temporary short-term employment (e.g., 6 months or less) in real work settings. SSA believes that in general, more use of trial work can assist many more beneficiaries to secure permanent, competitive employment and ultimately reduce dependency on/or leave the disability benefit rolls. This might involve planned phases from part-time to full-time work, the use of major employers who would implement temporary trial work programs for the disabled, or testing trial work opportunities in communities representative of typical employment centers, including employment with large corporations or small employers.

One particular area of interest would be a test using both private and public referral sources in the development of such trial work opportunities. Another possible approach would involve opportunities for temporary trial work in the home that would be linked to competitive work opportunities outside the home once full-time work capacity was established. Waiver of elements of the existing TWP is available and will be considered is requested.

Priority Area 3.0:
Strategies for assisting members of the disability population with limited access to employment services

While a significant portion of disability beneficiaries have indicated that they want to work, not all segments of the disability population have had the same opportunities for employment or employment assistance. There have been dramatic and innovative advances in the treatment and rehabilitation of various severe impairments, such as cardiovascular and musculoskeletal problems. And, these treatments have led to restoration of functional capacity and return to employment. However, too few disability beneficiaries have had the opportunity to benefit from these advances and obtain assistance in locating employment.

SSA is interested in exploring new methods and techniques for particular groups of beneficiaries, but such efforts must reflect a service model that relates to the SSA program and demonstrate generic VR/employment methods which could be replicated and accessed systematically by SSA for use with beneficiary groups.

SSA is interested in supporting demonstrations that will increase rehabilitation and employment opportunities for these specialized beneficiary populations. These projects must be designed to enable disability beneficiaries to achieve SGA, must be innovative and must test comprehensive VR/employment interventions which include the following key components: early intervention, rapid assessment, improved coordinated referral, and management of service provision to achieve employment outcome. We are interested in the replication potential of these strategies. In addition, an objective evaluation design must be proposed which specifically addresses the issue of replicability with particular attention to measuring the efficiency, effectiveness and cost-benefit ratio of the techniques used when integrated with SSA disability program operations.

Populations of particular interest are:

3.1 beneficiaries over age 50;

3.2 SSI beneficiaries with little or no employment history in need of employment services;

3.3 beneficiaries disabled based on cardiovascular disease;

3.4 beneficiaries disabled based on respiratory disease;

3.5 beneficiaries disabled based on traumatic brain injury;

3.6 beneficiaries disabled based on chronic mental illness;

3.7 beneficiaries disabled based on drug addiction or alcoholism; and

3.8 beneficiaries disabled based on orthopedic injuries.

Priority Area 4.0:
Mechanisms for Matching Beneficiaries With Employment and Employment Assistance

One of the greatest difficulties for organizations attempting to help disability beneficiaries return to work has been the lack of a reliable mechanism(s) for matching beneficiaries with available and appropriate employment and employment assistance. Survey information has indicated that many beneficiaries want to work. Numerous employers have volunteered to hire beneficiaries and many organizations have offered to assist beneficiaries in preparing for and obtaining employment. However, there has been only limited success in actually making the necessary linkages between beneficiaries and employers or employment assistance. SSA is interested in supporting the development of effective and efficient screening and referral models that will link disability beneficiaries to employment assistance and direct job opportunities. These demonstrations must be designed to rapidly and efficiently link beneficiaries with appropriate employment opportunities and job assistance services. And, the techniques used must be replicable within SSA's disability programs.

4.1 Screening for Vocational Rehabilitation. Currently, the State DDSs use model screening criteria to identify disability applicants who will benefit from State VR services. Originally developed by a Federal/State workgroup, these criteria are unvalidated and of questionable effectiveness. (A copy of these criteria may be obtained from any local DDS or from SSA.) SSA would support promising proposals for developing and validating new and effective screening criteria to identify good candidates for VR and employment services who will return to SGA. (Note: Proposals to develop new screening systems *must* also include validation.) SSA is particularly interested in testing systems involving criteria which can be rapidly applied using computer automation, or

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other technical advances which are cost-effective and which can be validated through appropriate evaluative techniques (research).

4.2 Mechanisms for Matching Beneficiaries with Available and Appropriate Employment Assistance. Since prior SSA demonstrations have shown that private sector employment assistance is available and can be effective in helping beneficiaries return to work, it is necessary to develop methods for matching beneficiaries with these services.

SSA is not aware of any available and validated mechanism(s) that could be used to match disability beneficiaries with the most suitable public or private sector employment assistance.

SSA is interested in supporting development and validation of mechanism(s) that could be used to screen and match beneficiaries with the most effective and efficient employment assistance. This could include mechanisms that feature:

- information on employment trends, available jobs (e.g., job banks) and job requirements;
- employment-related rehabilitation services;
- a practical and cost-effective method of determining beneficiaries' motivation to return to work; and
- information on job accommodation needs.

SSA is interested not only in matching models that have general applicability but also those that are appropriate for specific physical and mental impairments. Proposals in this subpriority area should not be designed to develop job matching systems alone but should focus on systems which screen beneficiaries, identify appropriate and cost-effective employment services and/or job opportunities, and create methods of linking beneficiaries with services/jobs.

4.3 Referral to Providers. Following the matching of beneficiaries with potential employers or employment services, SSA is seeking rapid referral systems which could be implemented to move clients to providers efficiently, track the services provided, and also provide continuous data on costs of services and outcomes. Such projects should involve automated capability to refer, track, and monitor the progress of beneficiaries being provided employment services and/or jobs. And, such systems should be highly cost-effective and capable of being used with locally available SSA computer capacity.

4.4 Screening of Mentally Retarded Clients. Demonstrations of on-the-job (transitional employment) training for the retarded have indicated that the trainee's motivation to succeed, or at least to cooperate, is a major factor in successful work attempts. There is also indication that clients whose level of functioning is low in some areas can still succeed, as long as they have some compensating strengths. SSA is interested in supporting projects to develop measures of motivation and indices for evaluating the strengths and weaknesses of retarded trainees in terms of functional capacities to perform employment. The role of family support and encouragement or similar support from elsewhere in the community, as a factor in motivation and job success, should be a particular focus of interest. The measures should be applicable to persons with low levels of ability and multiple severe impairments, and avoid use of implicit screening methods which could weaken the validity and usefulness of results on explicit screening methods. Rigorous techniques should be used in studying complex issues like motivation and indices of abilities. Tests of the applicability of measures to SSA beneficiaries are essential (research).

4.5 Types of Jobs Suitable for Mentally Retarded Beneficiaries. At present, employment programs serving the retarded place a large percentage of clients in food service and custodial occupations. This appears due to the greater accessibility of such jobs for job development and placement. In fact, jobs in light industry, such as benchwork jobs, are frequently simpler and more routine, and might be more suitable for certain mentally retarded persons. SSA is interested in information on the characteristics of types of jobs that are suitable for persons with particular intellectual deficiencies. Demonstrations of employment in which production takes place at smaller scale might produce the opportunity to develop information on light industry jobs suitable for the mentally retarded. These demonstrations must target the SSA beneficiary population and must provide detailed information on employment outcomes.

4.6 VR Referral and Tracking Systems. SSA is interested in improving the current referral of disability applicants to State VRAs through more effective follow-up activity. Currently, DDSs refer a small percentage of recently allowed claims to the State VRAs.

Some beneficiaries who might benefit from such VRA evaluations and services do not actively seek VRA aid, nor respond to VRA invitations to assist them to return to work. This may be due to a lack of understanding of what is being proposed and/or a fear of losing their benefits. Thus, when administrative follow-up efforts are made (after the VR referrals) to determine later beneficiary rehabilitation status, these efforts may be time consuming and non-productive.

Demonstrations should focus on a more efficient and productive type of referral and tracking system which would help SSA and DDS administrative staffs improve referral of beneficiaries to VRA, carry out more productive administrative follow-up activities to encourage beneficiaries to apply for VR services, and track the referred beneficiaries through referral, acceptance of VR services, receipt of services, and return to work.

An additional referral issue is when would be the best times for SSA to refer beneficiaries to the State VRAs (or other employment services), and how many times referrals should be made of the same beneficiaries. One conventional wisdom about VR referral is that the earlier the intervention the better, and that it is critical to intervene before an individual develops a disability mindset, becomes dependent on disability status (e.g., secondary gain) and/or ceases to have marketable skills. However, VRAs have noted that disability applicants are often not receptive to VR while they are awaiting a disability determination and that, for some impairments, there are medical reasons to delay VR. Most SSA referrals are currently made by the State DDSs at the time of the disability decision to allow or deny benefits to applicants. Sometimes the applicants are still too disabled by a recent medical condition to believe VR services could be useful. Demonstrations are needed of referral systems including early referral at time of application and referral at later points in time that would result in more beneficiary response and return to work. However, such demonstrations must be cost-effective and not increase administrative workloads of State DDSs (research).

4.7 Potential for Direct Involvement of Beneficiaries in the Selection of Rehabilitation Providers (e.g., use of vouchers) and in the Design of Their VR Programs. The Act requires that disability applicants be referred to State VRAs. Moreover, while State VRAs develop an individualized written rehabilitation program for each client accepted for VR services, these programs must meet Rehabilitation Services Administration (RSA) guidelines, and the availability of services offered is sometimes restricted by budgetary constraints. Therefore,

SSA is interested in demonstrations to measure, within a reasonable range of options, the degree to which client participation in the selection of VR services and VR providers may enhance participation in the VR programs, reduce the duration of the VR program, enhance the effectiveness of the program, and improve employment placement outcomes. SSA anticipates that projects in this area will include some form of case management involving client participation in planning rehabilitation and employment program services, selecting appropriate providers of services, and monitoring their own progress. In addition, SSA is particularly interested in projects using vouchers which include cost-sharing options supported by SSA, beneficiary co-payments or other funding sources. (Note: Monies for cost-sharing must be budgeted. See Part III, Section B, 6h.) The objective is to demonstrate ways in which client-directed rehabilitation/employment programs can be developed and implemented on a cost-effective basis with replication potential.

Priority Area 5.0:

State Vocational Rehabilitation Systems Improvement

SSA's principal and long-standing employment service resource has been the network of State VRAs and agencies for the blind that are responsible for administering State plans for VR under the Rehabilitation Act of 1973 (Pub. L. 93–112, as amended). (See Section I, subsection E, "Background," 2, for description of SSA's program with States). Over the years, these agencies have helped many beneficiaries return to work, but in recent years, fewer beneficiaries have received State VR services. Additionally the most recent report on State agency rehabilitations (RSA–300, 1985) shows that less than half of all DI/SSI disabled and blind beneficiaries reported as rehabilitated were in the competitive labor market. SSA is interested in *innovative* State VA/employment agency demonstrations leading to successful job placement which specialize in the following areas:

5.1 linkages with employers and private sector employment resources;

5.2 creative cost-containment approaches that will reduce average costs of rehabilitation/job placement;

5.3 new measures of successful rehabilitation that are predictive of sustained competitive employment to replace the current standard (9 months of SGA);

5.4 new structural approaches to assign State VRA staff to specialize in beneficiary rehabilitation and employment which result in more beneficiaries being served and returned to SGA at reasonable costs. Such approaches must lead to measurable and significant increases in employment placement of SSA beneficiaries, be replicable on a national basis, and be highly cost-effective. Approaches which merely assign staff to work with SSA beneficiaries are not being sought. The demonstrations of interest to SSA involve changes in the structural approach within the VRA related to serving SSA beneficiaries. These changes must result in significantly more beneficiaries returning to work and must be capable of continuing without support from SSA; and

5.5 innovative use of technology which permits impaired persons to work and/or directly ameliorate and/or improve their impairment(s) to improve functional capacity to work.

Priority Area 6.0:

Application of New Technologies To Assist Return to Employment

Advances in technology offer opportunities for disability beneficiaries both as consumers and producers. Significant advances are continuing to be made in the development and refinement of new technologies for reducing impairments and overcoming the handicapping effects of impairments. These developments and refinements, which are not always known and accessible to beneficiaries, make it possible for more disabled persons to return to work. Additionally, some companies that market new technology to and for disabled persons have found that it can be very cost-effective to employ disabled persons in the delivery of services to other disabled persons. And, in many areas of high technology production in general, companies have found that persons with certain disabilities are particularly suitable for employment.

6.1 Rehabilitation Engineering and Other Forms of Technological Assistance. The Rehabilitation Amendments of 1986 (P.L. 99–506) raised the national priority of rehabilitation engineering, which the amendments define as "systematic application of technologies, engineering methodologies or scientific principles to meet the needs of individuals with handicaps in areas including education, rehabilitation, employment, transportation, independent living and recreation." Rehabilitation engineering itself usually only extends the functional capabilities of the handicapped. It offers its greatest potential when it is combined with other support services, such as VR and employment services, in a concerted effort to help the disabled return to work. SSA is interested in projects which use rehabilitation engineering technologies in conjunction with employment services to assist persons to return to work, and projects which link beneficiaries needing technological intervention in order to return to work to sources of these services. SSA is particularly interested in projects which can link beneficiaries to both rehabilitation engineering technology *and* employment services resulting in return to work. Such projects should be cost-effective, permit the use of multiple resources combined with SSA payment for services, and be replicable. In designing such projects, attention should be given to mechanisms that would permit SSA to rapidly refer beneficiaries to appropriate engineering technology *and* employment services.

6.2 Enhanced Access to Providers of Rehabilitation Engineering. There is a need to expand the opportunities for disability beneficiaries to access new technologies, particularly technologies that are marketed to disabled persons. We are particularly interested in projects that provide improved methods for beneficiaries to gain access to new technologies, or projects which provide beneficiaries with access to networks which use technology to develop employment. SSA is seeking to link these networks and/or programs with beneficiaries.

Priority Area 7.0:

Communication and Marketing of Work Incentives, Vocational Rehabilitation, and Employment Information to Directly Assist Beneficiaries in Returning to work

The Social Security Disability Amendments of 1980 liberalized existing WI with the introduction of multiple new provisions (see I–E–3). However, to a large degree, these WI have not been used by beneficiaries, raising the question of how effectively they have been communicated. Recent amendments added new incentives (see I–E–3). The problem of lack of awareness and/or understanding of WI exists despite legislative initiatives, SSA information initiatives, recent changes in attitudes toward the disabled, advances in medical care, and wider availability of rehabilitation and employment services.

We know that the success of program WI in large part depends on:

- the beneficiary population's awareness of their rights, obligations and opportunities under the law;
- the knowledge of SSA's field staff about WI to respond to claimant inquiries accurately and timely; and

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• the knowledge and relationships between SSA and disability organizations, public and private VR/employment agencies, job placement programs, physicians, employers, insurers and others.

There is a need to develop new, more effective marketing strategies and materials which would encourage greater use of the incentives by SSA's disabled populations.

Since treating physicians, insurers, State VRAs, private VRs, and employers share in SSA's goal of returning disabled beneficiaries to economic self-sufficiency, we seek their involvement in program promotion and delivery. SSA believes that these organizations can interrelate much more closely by sharing information and expediting return-to-work efforts for beneficiaries. But for this to occur, systematic and ongoing linkage procedures must be developed.

The need is to accommodate, encourage and support increased beneficiary interest in using the WI, expedite linking beneficiaries with appropriate service providers, and provide follow-up services for beneficiaries who become involved in work activity. Through increased awareness of the WI, and direct linkages to VR/employment service providers, we seek to develop improved attitudes towards SSA as a helping and nonadversarial agency, increase inquiries at FOs about the use of WI, and increase referrals to employment service providers.

A comprehensive, integrated communications and service approach is necessary to encourage larger numbers of DI and SSI beneficiaries to return to work and, ultimately, achieve independent status through productive employment. This approach will require clear communication, timely referral to service providers, and effective, efficient placement methods. The WI must be clearly presented to beneficiaries, advocates, physicians, insurers, employers and others as an important part of the DI and SSI programs.

Through the establishment of systematic SSA–VR/employment agency linkages, many more beneficiaries will be assisted in returning to employment and regaining their economic independence and self-esteem.

SSA is particularly interested in projects which:

7.1 examine comprehensive integrated communications approaches that will change knowledge and behaviors of disabled beneficiaries in order to increase their understanding and use of the WI;

7.2 improve the knowledge and awareness of WI by VR and employment service providers, physicians, insurers, and employers;

7.3 create information exchange relationships between SSA, beneficiaries and service providers to encourge return-to-work;

7.4 increase the knowledge of the SSI program, particularly the basic rules for treating income and resources and how these are modified by the WI provisions (1619 (a) and (b), PASS, IRWE and BWE) among VR/employment agencies, insurers, rehabilitation organizations, social workers, counselors, and other professionals in the rehabilitation field; and

7.5 create and test direct linkages between SSA FOs and VR/employment providers which are effective in assisting beneficiaries to receive services and return to work.

Projects in these subpriority areas must be highly cost-effective, replicable and involve appropriate evaluation and measurement techniques to assure that the tests effectively increase knowledge, affect beneficiary behavior and *measurably* improve linkages between SSA, beneficiaries and VR/employment service providers.

Priority Area 8.0:

Development of State-of-the-Art Information on the Functional Capacity and Compatible Occupations for Persons With Various Impairments

While many beneficiaries have impairments which make them unable to perform any work-related activities, others have impairments which leave them with the physical and/or mental capacity to perform some forms of work. For example, an individual suffering from epilepsy is often precluded from performing work around dangerous machinery or at heights but may not be prevented from performing a job in an office setting. Accurate assessment of remaining functional capacity despite impairment is a distinct challenge to providers of health care, DI, and VR.

8.1 Measurement of Functional Capacity for Work Performance. SSA is interested in projects which provide state-of-the-art information on the functional capacity of persons with various impairments. Measures and variables need to be defined which can, in a valid and reliable manner, provide accurate estimation of capacity for performance of work-related functions. A project which develops indices of functional capacity for specific health conditions, such as musculoskeletal and neurological impairments, would be of particular interest to SSA. In such projects, specific measures and variables must be defined, tested, and validated with disability beneficiaries and the measures must specifically focus on functional capacity for work. Empirical validation of measures is therefore necessary. New prototypes for measuring functional capacity of persons with specific impairments will be considered so long as the measurements involve assessing capacity for performing work. In developing measurement instruments, SSA will provide support only for instruments which could be used on an industry-wide basis (research).

8.2 Functional Capacity for Particular Occupations. Currently, the *Dictionary of Occupational Titles* and the *Selected Characteristics of Occupations* are the primary sources of information which assist in the determination of which occupations are compatible with the remaining functional capacity of individuals with disabilities. However, no compendium of regular and modified jobs that have been successfully performed by persons with specific types and degrees of losses of function has been compiled. Having such information available when first encountering an impaired individual, employment and VR counselors could begin early efforts on appropriate educational programs or vocational skill training that may be needed in assisting beneficiaries to return to work.

SSA is interested in projects which develop a compendium of information identifying various body systems and impairments, including common functional limitations imposed by such impairments, and specific jobs or occupations which might be performed within those limitations. Such a compendium should be based on empirical information as to the functional limitations associated with certain impairments and the specific types of occupations and jobs being performed by persons with such impairments. SSA is particularly interested in focusing on such impairment categories as cardiovascular, musculoskeletal, and mental, although other categories will be considered as well. The development and testing of prototype systems is feasible in this subpriority area (research).

Priority Area 9.0:

Improved Interagency Record Matching

For many years, SSA has provided beneficiary information via computer files to State agencies to assist in accurately administering various State programs. These data files permit States to employ computer matching and thus are cost-effective in permitting efficient administration of State programs. Also, SSA has sponsored tests of automated matching of beneficiary data to facilitate VR service provision. However, not all data files that the State/local governments maintain are compatible with other State and Federal data files. These differences in systems often preclude effective inter/intra-State/Federal matching.

There are a variety of voluntary organizations that have excellent knowledge of the working of Federal, State and local programs which SSA believes could assist in coordination and development of interagency data linkages.

9.1 Computerized Data Matching Systems. SAA is interested in supporting projects with States and voluntary agencies that involve the development of computerized record systems (for such records as marriage, divorce, etc.) using established standardized formats which can match Federal, State, and voluntary agency records to assist in providing accurate benefits, and increase efficiency in providing rehabilitation services. Such projects must clearly identify the specific data systems to be used, their potential for matching State/Federal records, the specific outcomes to be achieved and the methods for providing an empirical test of the system(s).

Priority Area 10.0:

Special Studies

SSA has identified a number of special study priorities related to increasing employment opportunities for beneficiaries. SSA is interested in supporting studies in the following areas:

10.1 Health Insurance Coverage of Disability Beneficiaries. Organizations attempting to help beneficiaries return to work have expressed concern about health insurance coverage gaps (actual or anticipated) that may cause beneficiaries to delay or avoid rehabilitation and employment. SSA is interested in studies using available microdata which examine health insurance coverage of disability beneficiaries (and families) and health insurance available in connection with employment of beneficiaries, the timing and availability of such coverage, limitations on coverage, and exclusions preventing coverage. In general, SSA is seeking to learn what medical benefit coverage is available for DI/SSI beneficiaries (especially coverage available for beneficiaries who return to work), the extent of such coverage, gaps in coverage, and when these gaps occur. It is not expected that projects will propose new data collection but rather that existing data will be used to provide information about the medical benefit coverage of DI/SSI beneficiaries. Applicants should clearly identify the data sources to be used in such analyses, the specific data items to be analyzed, the extent and limitations of the proposed analyses, and the specific questions that will be answered by the analyses proposed (research).

10.2 Profile Data and Information on Employment Placement Success With Disability Beneficiaries. SAA is interested in developing profile data on factors which are associated with successful employment placements for various categories of disability beneficiaries. The grantee must provide SSA with specific profiles of disability beneficiaries who return to work, based on analysis of data on the demographic, economic, social, health and psychological characteristics of beneficiaries. Use of secondary data sources is anticipated. Profiles should be validated based on actual data and returned to work by beneficiaries. Profiles should clearly identify the key variables associated with employment outcomes. Profile development cannot be based on case histories but case histories can be used to further explain or emphasize profile data. The objective is to develop profile information on key beneficiary characteristics associated with employment success. Projects must demonstrate the use of this information in referring individuals for employment services.

10.3 Employment Services and Rehabilitation Needs of Persons no Longer Sufficiently Disabled to Qualify for Disability Benefits. SAA is interested in supporting demonstrations that will increase rehabilitation and employment opportunities for persons leaving the disability rolls due to medical improvement. Demonstrations must target on beneficiaries who are leaving the SSA disability program because of medical improvement, must specifically provide employment placement services which are highly cost-effective and which can be replicated on a national basis. Proposals must clearly present a systematic method of identifying appropriate beneficiaries, assure their actual need for placement services, present a rapid approach for planning and delivering such services, assuring a job placement outcome and closely monitoring costs. Proposals must include an objective evaluation design which will measure the efficiency, effectiveness, and cost-benefit ratio of the techniques used when integrated with disability program operations.

10.4 Traumatic Brain Injury (TBI) Studies. Head trauma, primarily (but not exclusively) due to accidents, has become an important public health problem. There are many individuals who, because of TBI, apply for disability benefits. Some of them qualify because of the neurological components of the injury and others because of mental components of the injury. It is estimated that 75 percent of head injuries are of mild to moderate severity. Many of these injuries involve a great deal of brain injury, but to distinguish them from the category of "severe" head injury is not an easy task even after all of the information is known. We still do not have full understanding of the components of post-traumatic sequelae of brain injury. SSA believes that the following issues should be recognized when considering projects in this area:

• mental impairments tend to be most incapacitating in individuals with mild to moderate head injury, thus, the course of recovery needs to be assessed in these claimants to determine when their impairments are stable.

• since mental impairments tend to be a frequent cause of disability in head injury cases, an assessment should be made of what types of rehabilitation services, specifically designed for mental impairments, are the most likely to restore the capacity and motivation to return to work; and

• since a significant number of individuals with TBI do return to work, prognostic factors such as the type of injury, nature of early impairments, etc., should be examined to determine which claimants are the most likely to respond to rehabilitative intervention.

Because the continuum of severity in head injury and its sequelae are not well understood, this renders medical evaluation of these claimants difficult and makes estimation of functional capacity for purposes of establishing any employable skills particularly hard to accomplish.

Therefore, SSA is interested in projects in which TBI data are analyzed to answer such questions as:

1. What percent of mild to moderate head injured individuals return to work?

2. Can return to work be predicted by the nature of the injury? (What are the medical/diagnostic symptoms of injuries over time and how do these change in the first year after injury? Does the severity of acute mental or neurological symptoms correlate with long-term functional capacity?)

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3. What is the most effective medical intervention for these mild to moderate injuries? (Does treatment aimed specifically at the mental symptoms (e.g., cognitive therapy or psychiatric treatment) provide a better rate of return to work than standard treatment or no treatment?)

4. How does work evaluation performance relate to actual return to work? (When some claimants with competitive level skills do not return to work, what is the difference in symptoms, nature of injury or demographic features, etc., between those claimants and the ones who do return to work?)

SSA would anticipate use of primary and secondary diagnoses in developing information on these questions. Also, SSA will require appropriate scientific designs for such projects to assure that data and analyses produced are valid and reliable (research).

10.5 Support Needed to Continue Employment. SSA recognizes that many beneficiaries who return to work after extended periods of absence from the workforce due to disability, need help and encouragement to enable them to remain at work. SSA is interested in proposals for effective follow-up services for disabled beneficiaries who return to work and need support to assist them to retain their employment, or, if they fail on an initial return to work, services designed to help them to succeed at another work opportunity.

SSA is seeking innovative projects designed to assist disabled beneficiaries who are placed in employment to remain employed for significant periods or, if employment ends, to secure another job without delay. Such projects might involve specialized follow-up services (only where required) to assure continuation of employment, provide information on available WI, and resolve employment-related problems. Such services would have to be targeted on employed beneficiaries and be highly efficient and cost-effective. SSA is not interested in projects which simply follow-up beneficiaries who are placed in employment. The demonstrations we are seeking must focus on providing services which are essential so that beneficiaries continue employment or rapidly locate new employment.

SSA anticipates that projects in this subpriority area will be targeted on special populations of beneficiaries who require follow-up services in order to retain employment or locate new employment. Through such demonstrations, SSA is seeking to learn about the types of beneficiaries who require job retention services, the essential services needed, and their costs. These projects must be based on tests with employed disabled beneficiaries and involve empirical data collection and appropriate data analysis to ascertain the effects of the demonstrated interventions.

10.6 Measurements of Fatigue in Individuals with Multiple Sclerosis (MS).

Fatigue is among the most common and debilitating symptoms of MS. Many people with MS have significant disabilities resulting at least in part from fatigue-related dysfunction, yet it is a symptom that has proven difficult to measure.

SSA would support an effort to develop a set of objective tests for measuring fatigue in beneficiaries impaired by MS. The effort might include development of some psychological test instruments, functional tests, tests of performance decline in the fatigued state and development of criteria correlated with fatigue. The latter might be based on preliminary evidence suggesting a correlation between the extent of lesions on magnetic resonance imaging and fatigue or on evidence of increased energy expenditure in certain tasks. A modest effort to document functional failure using simple clinical tests before and after exercise might also prove useful. Exploration of changes in delay (evoked potentials) or in the amplitude of cortically-evoked responses with fatigue could lead to the development of more objective criteria for functional failure with fatigue.

Some MS-impaired individuals may also have difficulty with mental tasks when fatigued even though they may function very well when rested. Documentation in this area may be difficult but testing mental functioning in the fatigued state might prove useful. A thoughtful selection of those mental subtests where the performance of MS-impaired beneficiaries is reduced with fatique might lead to development of criteria for mental performance at various levels of fatigue. A comparison of tests of mental performance in the rested and fatigued state, adjusted for practice effects, might provide useful new information (research).

Priority Area 11.0:

Nonpriority Area Projects

Applicants may also submit applications for funding in areas not specifically identified in this announcement but which are relevant to the goals and objectives of the disability program. These applications will be designated as "nonpriority" but also will be competitively evaluated by independent reviewers with other "nonpriority" applications. A limited number of projects may be funded depending upon available funds.

Section III—Application Process

A. Eligible Applicants

Any State or local government and public or private organization or agency may apply for a grant under this announcement. (Individuals are not eligible to apply.) For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient.

B. Availability and Duration of Funding

Federal grant funds may be requested for reimbursement of allowable costs incurred by applicants in conducting the demonstration. These funds, however, are not intended to cover costs that are reimbursable under an existing public or private program. We generally expect, under this announcement, to fund the initial 12-month budget period of demonstrations designed to be completed in 12 to 24 months. Awards for the continuation of selected projects will be based on acceptable performance, availability of funds, and assessment of the continuing relevance of the demonstration or research effort. In general, we anticipate funding projects that cost a total of between $100,000 and $200,000 per year. Actual awards may vary and eligible applicants may request smaller or larger awards.

C. Grantee Share of the Project Costs

Grant recipients are expected to contribute towards the cost of each project. SSA does not make grant awards for the total cost of the projects. Successful applicants for *demonstration grants* are eligible to receive 3 dollars in Federal funding for each 1 dollar secured from non-Federal sources, up to the limits specified in the priority area descriptions in this announcement.

Therefore, at least 25 percent of the total costs for demonstration projects must come from a source other than the Federal Government (1 DOLLAR MATCH FOR EVERY 3 DOLLARS REQUESTED FROM SSA). HOWEVER, FOR APPLICANTS SUBMITTING *RESEARCH* PROPOSALS, A 5-PERCENT (MINIMUM) MATCH IS REQUIRED.

D. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning the Grants Management Staff, Division of Contract and Grant Operations OAG, DCM, Social Security Administration: 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21241, Attention: SSA RDP–2, Telephone: (301) 965–9500.

E. Application Submission

An original and a minimum of two signed copies of the application must be submitted to the above address. Submittal of *six additional copies is optional and will expedite processing. However, there is no penalty for not submitting the additional copies.*

F. Application Consideration

All applications requesting Federal grant funds must be submitted on the standard forms provided in this announcement. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of a grant award.

Applications that conform to the requirements of this program announcement will be reviewed and scored by independent reviewers against the evaluation criteria specified in Section III, H.2 of this announcement. Although the results of this review are a primary factor considered in making the decision about an application, review scores are not the only factor.

SSA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal government or the applicant.

G. Special Considerations for Funding

Within the limits of available Federal funds, SSA will make financial assistance awards consistent with the statutory authorities governing the SSP RDP and this announcement. In making these decisions, preference may be given to applications which feature: a substantial innovation that has the potential to improve practice in the VR/employment of persons on SSA's disability rolls; a model practice or set of procedures that hold the potential for dissemination to, and utilization by organizations involved in the administration or delivery of rehabilitation services; and, substantial involvement (either financial or programmatic) of the private sector and the possibility of a large degree of benefit for a small Federal investment. SSA will also take into account the need to avoid duplication of effort in making funding decisions.

H. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, comforming applications will then be reviewed and evaluated.

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

(a) Number of copies: An original and two signed copies of the application *must* be submitted. Six *additional* copies are optional but will expedite processing.

(b) Length: The program narrative portion of the application MUST NOT EXCEED 25 DOUBLE-SPACED PAGES (or 13 single-spaced pages) typewritten on one side of the paper only.

(c) Selection of priority area: In item 7 of the Face Sheet (SF–424), indicate one subpriority area only for which the application is being submitted, (e.g., 4.3, 7.1, 7.2, etc.). If not submitted in response to any of the subpriority areas specified by this announcement, indicate "nonpriority."

2. Evaluation Criteria

Applications which pass the screening will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the following criteria:

(a) *Project Objectives: 5 points.* The application details the specific objectives of the project. How closely do the project's objectives fit the objectives of the subpriority area under which the application is submitted? For nonpriority projects, how well do the objectives of the project fit the goals and objectives of the announcement?

(b) *Background/Importance of Project: 10 points.* The application clearly describes the problem, issue or situation that prompts the applicant's proposal. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also summarizes the state-of-the-art in resolving these problems, including how this project builds upon previous work, how it advances the state of knowledge from a national perspective, and how it addresses a priority need identified in this announcement (or in the case of a "nonpriority" project, how it addresses the goals and objectives of this announcement). Where appropriate, attention is paid to the larger significance (regional, national) of the project, beyond its actual implementation site(s).

(c) *Project Methodology: 35 points.* 1. List the concepts to be tested. Make them clearly relate to the objectives of the priority area(s) chosen. For example, in priority area 3, it is stated that the project must be designed to return disability beneficiaries to SGA. Therefore, the basic concept should be that the procedure you are demonstrating will return more beneficiaries to SGA.

2. Describe how you plan to conduct your test(s). Provide a detailed description of the methods and procedures you plan to use and indicate *how you plan to measure* the effects of your test(s) relative to some benchmark, e.g., how many more of your test subjects achieve SGA as compared with your estimate of the number you would expect under the current SSA disability programs.

3. Indicate the size of your sample and describe how you arrived at your sample size in light of the test(s) you intend to conduct and the design considerations of your demonstration. For example, a demonstration with chronic brain damaged beneficiaries in a medium-size metropolitan area may be difficult, given the small numbers of such beneficiaries who may reside within that area. Your proposal should give assurances that you have determined that a sufficient number of subjects reside in the geographic area of the demonstration site to permit an adequate sample size.

4. Explain how you propose to select your sample. Describe the process of acquiring eligible subjects. Describe any incentives used to encourage subjects to participate.

5. It is probable that an observation period which is longer than the treatment period will be required for your tests. Discuss the length of the treatment and observation periods and describe how the length of your observation period will be sufficient to gather the necessary data. Describe how contact will be made for gathering data during the observation period, e.g., mail contact, phone contact, personal contact, employer follow-up, etc.

Note: In some instances, primarily with the larger demonstrations, it may be possible to construct a *statistically valid experimental design.* In those instances, a full project protocol should be provided, including a statement of hypotheses to be tested, a detailed explanation of the methodology to be used (nature of statistical tests and methods, etc.), a description of the sample design and explanation of how the sample design is suited to the statistical methodology and hypotheses to be tested, rationale for specification of sample size, and an estimate with explanation of the statistical power of

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the tests resulting from all of the above. In such designs, the use of an appropriate, randomly-selected control group is highly desirable.

6. List the data to be collected. Discuss how the data will be used in the analysis. Discuss the data that will be supplied for further evaluation by SSA. Describe the evaluation approach to be used indicating the types of outcome information expected.

7. Discuss potential problems that may arise and how they will be resolved, e.g., describe how dropouts, inadequate number of referrals, etc., will be handled.

8. Greater consideration will be given to proposals which meet the following criteria:

- where the size and scope of the proposed demonstration dictate a statistically valid experimental design, and provision is made for the establishment of a control group of individuals with similar characteristics to the participants receiving the treatment (SSA prefers that the project participants be identified prior to the start of the treatment so that the participants may be randomly assigned between the treatment and control groups);
- plans to provide SSA with project data on both the treatment (and control group where appropriate), on an ongoing basis, so that SSA may continue an evaluation after that performed by the grantee. It is recommended that the data for each participant include, but need not be limited to, the following:

a. Education
b. Date of birth
c. Prior occupation
d. Sex
e. Type of disability
f. The following dates
- start of treatment
- start of each job and type of job
- end of each job
- date of completion of TWP
- date of termination
- death
- withdrawal from study
- medical termination

g. Income from all sources (e.g., other disability income, monthly earnings on jobs, spousal earnings)

- plans to provide SSA with information to enable it to follow project participants for a period sufficient to observe whether work attempts are sustained and terminations from the DI and/or SSI program result; and
- for projects designed to provide SSA with data, information, or involving a test of a particular system, methodology or measurement scale, the evaluation plan specifies how the particular products being developed in the project will be reviewed and provides SSA with sufficient details to assure that the products will be thoroughly evaluated.

(d) *Work Plan: 20 points.* The application provides specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: (1) The tasks to be completed in the project, (2) a chart with tasks laid out over time (Gantt chart), (3) a clear description of how much time and how many staff will be needed to complete each task, (4) the products to be developed over the course of the project, and (5) if an independent contractor is to be used for any part of the project, include the scope of work to be performed by such contractor, the tasks to be completed, a time chart for such tasks and the products to be provided by the sub-contractor.

(e) *Organizational Capability: 10 points.* The resources that will be needed to conduct the project are specified including personnel, time, funds and facilities (including computer capability and specialized technical equipment, where relevant). These resources should be adequate to accomplish the work plan described in the application. The staff (or other personnel resources) should be qualified and possess the variety of skills and abilities required to produce final results that are readily comprehensible and usable. The qualifications of top staff who would have little or no direct impact on the project would not be relevant. The staffing pattern clearly links responsibilities to project tasks. The total cost of the project is reasonable in view of the anticipated results. Any collaborative effort with other agencies or organizations is clearly identified, and written assurances referenced. A description by category (personnel, travel, etc.) of total funds required and of the sources of outside support that will be used to meet the matching requirement is included. The funds (total of Federal funds and non-Federal funds) are specified. The location and adequacy of the facilities are provided.

(f) *Implementation Potential: 15 points.* The application addresses the costs and benefits that might accrue from replication of the project results. Discussion is included of special features of the target group(s) for which this proposal is designed, how final products will facilitate utilization of project findings, and plans to continue the project or implement its findings after completion.

(g) *Dissemination of Results: 5 points.* The proposed project specifies the means to be used to disseminate results and promote utilization of these results by others in the field. If applicable, specific training methods, training materials and target audiences to which methods and materials would be addressed should be identified.

THESE EVALUATION CRITERIA CORRESPOND TO THE OUTLINE FOR THE NARRATIVE SECTION OF THE APPLICATION. THE DESCRIPTIONS OF THE SEVEN CRITERIA ABOVE SHOULD BE USED IN DEVELOPING THE PROGRAM NARRATIVE. ALSO REFER TO THE OUTLINE IN SECTION IV.

I. Closing Date for Receipt of Applications

The closing date for submittal of applications under this announcement is *June 30, 1988.* Applications must be mailed or hand-delivered to: Grants Management Staff, Division of Contract and Grant Operations, OAG, DCM, Social Security Administration, 1–E–4, Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21241, Attention: SSA RDP–2, Subpriority Area:

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. received on or before the deadline date at the above address; or
2. mailed through the United States Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely filing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered in the current competition.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using Form SSA–96, Federal Assistance, which has OMB clearance number 0960–0184.

Executive Order 12372—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

Catalog of Federal Domestic Assistance Program (CFDA) No. 13.812—Assistance Payments—Research and Demonstrations.

David A. Rust,
Associate Commissioner for Disability.
Rhoda Davis,
Associate Commissioner for Supplemental Security Income.
Louis D. Enoff,
Deputy Commissioner for Programs.

Approved: April 29, 1988.

Dorcas R. Hardy,
Commissioner of Social Security.

Section IV—Instructions for Completing Applications

A. Application Package

In order to expedite the processing of applications, we request that you *adhere to the following instructions explicitly.* An application may be considered incomplete and returned if it fails to follow the instructions or if the material presented is insufficient to permit an adequate review.

- Type the application using standard-size type.
- Type on one side only.
- Reproduced copies should be single-sided.
- Do not bind or staple the applications. Secure them with rubber bands or paper clips.
- If continuation pages are required, please use standard-size (8½" × 11") white bond paper.
- All items on the forms must be completed. Enter "NONE" or "NA" (not applicable) whenever appropriate.
- Do not use covers, binders or tabs.
- Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.
- All applicants will be immediately notified of receipt and the identification number assigned to their application. This number and the subpriority area must be referred to in *ALL* subsequent communication with SSA concerning the application. If acknowledgement is not received within 30 days after the deadline date, please notify SSA by telephone (301) *965–0500.*
- Applicants should be advised that SSA STAFF CANNOT RELEASE PREDECISIONAL INFORMATION relative to an application other than that it has been received and that it is going through the review process. Unnecessary inquiries delay the award process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.
- ALL APPLICANTS MUST SUBMIT AN ORIGINAL AND 2 COPIES OF THE COMPLETED APPLICATION FORM SSA–96.

B. Content of the Application

Each copy of the application must contain a FACE SHEET (SF–424), and be completed and assembled in accordance with the following instructions:

1. PART I, FACE SHEET of the application including a project summary description;
2. PART II, PROJECT APPROVAL INFORMATION;
3. PART III, BUDGET INFORMATION;
4. PART IV, PROGRAM NARRATIVE;
5. PART V, ASSURANCES; and,
6. Projects which require collaboration or substantive commitment by Federal, State, or local governments or organizations other than the applicant's organization should (if possible) include letters of cooperation. These letters are not part of the narrative and, therefore, are not counted against the 25-page limit for the narrative.

C. Preparing the Application

Part I—Face Sheet (SF–424)

The following instructions are provided for completing Sections I and II:

Item 1. Not applicable.

Item 2a. Applicant's own control number, if desired.

Item 2b. Date SECTION I is prepared (at applicant's option).

Item 3a. Not applicable.

Item 3b. Not applicable.

Items 4a. Legal name of applicant, name of primary

Thru 4h. organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number (including area code) of the person who can provide further information about this request.

If the payee will be other than the applicant, enter under SECTION IV—REMARKS, the payee's name, department or division, complete address, and employer identification or HHS entity number.

If the contact person is other than the Project Director, furnish (if known) the Project Director's name, title, and telephone number under SECTION IV—REMARKS.

Item 5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service (IRS).

If the applicant has been assigned a Department of Health and Human Services (DHHS) entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit code, enter the full DHHS entity number. Otherwise, enter the IRS EIN.

Item 6a. Use CFDA number 13.812.

Item 6b. Not applicable.

Item 7. Select a title that is both short (60 characters or less) and descriptive. Include the subpriority area under which this application is submitted. If the application is not submitted in response to any of the subpriority areas specified in this announcement, indicate "nonpriority."

Project Summary Description. Item 7 also asks for a summary description of the project using Section IV of SF–424. In place of Section IV, attach a separate sheet of 8½ x 11" plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4a. and the subpriority areas as shown in item 7. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

The description should be specific and concise. It should describe the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos) and any restrictions or limitations on its use by SSA. Remember this summary description is limited to 1,200 characters. This information, in conjunction with the information on the Face Sheet (SF–424), becomes the project's "abstract", and will be the major source of information about the project.

Item 8. "City" includes town, township and other municipality.

Item 9. List only largest unit or units affected, such as State, county, or city.

Item 10. Estimated number of persons directly benefiting from project.

Item 11. Not applicable.

Item 12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included.

Item 12a. Amount requested from the Federal government.

Item 12b. Amount applicant will contribute.

Item 12c. Amount from State, if applicant is not a State.

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Item 12d. Amount from local government, if applicant is not a local government.

Item 12e. Amount from any other sources. Explain in SECTION IV.

Item 12f. Total of lines 12a through 12e.

Item 13a. Congressional district of the applicant.

Item 13b. The district(s) where most of the action work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide."

Item 14. Not applicable.

Item 15. Approximate date project expected to begin.

Item 16. Estimated number of months to complete project after Federal funds are available.

Item 17 thru 20. Not applicable.

Item 21. Check appropriate box as to whether SECTION IV of form contains remarks and/or additional remarks are attached.

Item 22a. Not applicable.

Item 22b. Not applicable.

Item 23a. Name and title of authorized representative of legal applicant.

Item 23b. To be valid and acceptable for review, an application must be properly executed by an individual authorized to act for the applicant organization and to assume the obligations imposed by the requirements and conditions for any grant award including the applicable Federal regulations. If the authorized official is not available, an individual authorized to act on his/her behalf may sign as "acting for" the designated official.

Part II—Project Approval Information

Negative answers will not require an explanation. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1. Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2. Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3. Attach the clearinghouse comments for the application. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4. Furnish the name of the approving agency and the approval date.

Item 5. Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6. Show the population residing or working on the Federal installation who will benefit from this project.

Item 7. Show the percentage of the project work that will be conducted on Federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8. Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact.

Item 9. State the number of individuals, families, businesses or farms this project will displace.

Item 10. Show the FDAC number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed

Part III—Budget Information.

SECTIONS A, B, C, and D should include budget estimates for the first budget period (usually 12 months) and SECTION E should present the need for Federal assistance in the subsequent budget period(s).

Section A—Budget Summary. Grant applicants requesting assistance to conduct activities under grant programs administered by SSA are expected to contribute towards the total cost of the activity. These costs must be reflected in the grant application. The budget for the activity must include funds requested from SSA and the applicant's share of allowance costs.

Line 1, Columns a and b—In column a, enter "SSA" and in column b, enter the CFDA number.

Leave columns c and d blank. Enter in column e the amount of Federal funds needed to support the project for the first funding period (usually 12 months). Enter in column f the amount of the cost of the project to be borne by the applicant. Enter in column g the total of columns e and f.

Lines 2 through 5, columns a through g of this section are not to be completed.

Section B—Budget Categories. Use column 1 only. Leave columns 2, 3, 4, and 5 blank.

Lines 6a–h—Show the estimated Federal costs for each object class category in column 1.

Line 6a—Personnel. Show salaries and wages only. Fees and expenses for consultants should be included on line h—Other. In computing estimated salary changes, an individual's base salary represents the total authorized annual compensation that an applicant organization would be prepared to pay for a specified work period. The base salary excludes income that an individual may be permitted to earn outside of full-time duties to the applicant organization.

Line 6b—Fringe Benefits. Fringe benefits may be requested as a direct cost to the extent that they are treated consistently by the applicant organization as a direct cost to all sponsors. As an alternative, fringe benefits may be included in the calculation of the applicant organization's indirect costs. If a fringe benefit rate has been negotiated with DHHS or another Federal agency, indicate the agency and the applicable rate under SECTION F. Otherwise, indicate the method used in computing the amount of fringe benefits claimed.

Line 6c—Travel. Include the cost of travel for employees only. Travel for consultants should be included on line 6h—Other. Under SECTION F describe the purpose of any travel, number of trips involved, destinations, individuals who will be traveling and the projected cost per trip, i.e., local transportation, air travel, per diem, etc. Include the computations used in determining the cost.

Line 6d—Equipment. Include only nonexpendable personal property which has a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Under SECTION F, list and explain the need for each item of equipment.

Line 6e—Supplies. Include all tangible personal property except that listed on line 6d. If the total exceeds $500, list and explain the need for the items under SECTION F.

Line 6f—Contractual. Include all procurement contracts (except those which belong on other lines such as equipment, supplies, consultant services, etc.). List each contract, the amount and purpose under SECTION F.

Line 6g—Construction. SSA programs do not have construction authority but may support limited alteration and renovation costs. Amounts included under this category must be fully explained under SECTION F.

Line 6h—Other. Use for all direct costs not clearly covered by lines a through g. Examples are computer use charges, consultant costs, equipment rentals, and voucher cost-sharing monies for proposals submitted under subpriority area 4.7. Amounts entered under this category must be itemized and fully explained under SECTION F including the method used in computing the cost.

Line 6i—Total Direct Costs. Enter the total of lines 6a through 6h.

Line 6j—Indirect Costs. Applicants which are State and local governments, enter the amount of indirect costs. List and explain these costs under SECTION F. Indicate if the costs are claimed in accordance with an approved State cost allocation plan.

Applicants other than State and local governments, enter the amount of indirect costs. If the costs are claimed in accordance with an approved indirect cost rate negotiated with DHHS or another Federal agency, include the name of the agency and the rate under SECTION F. If a rate has not been negotiated, list and explain the costs including the method of computation.

Link 6k—Totals. Enter the total of lines 6i and 6j.

Line 7—Program Income. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Explain the nature and source of income under SECTION F.

Section C—Nonfederal Resources. On line 8, column a, enter SSA. In column b enter the amount of funds or the value of in-kind contributions to be provided by the applicant. In column c, enter the amount of State funds. In column d, enter the amount of funds or the value of in-kind contributions from other sources. Enter the totals in column e. Line 12 need not be completed.

Section D—Forecasted Cash Needs. Line 13—Enter the amount of Federal funds needed by quarter during the first year.

Line 14—Enter the amount of funds from all other non-Federal sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project. Enter in the proper columns the amounts of Federal funds which will be needed to complete the project over the succeeding funding periods (in years). Enter the total for each of the future years on line 16k.

Section F—Other Budget Information. Attach additional sheets if necessary in explaining and justifying the items contained in the project budget (SECTION B). The information provided should include sufficient detail (including the method of computation) to facilitate a determination as to the allowability, relevance to the project, and cost/benefit.

Section G—Personnel. 1. Personnel. List all personnel chargeable as a direct cost to the project by title, salary and percentage of effort. Include names for key positions only.

Enter in column 1 the annual (12 months) salary rate for each position which will be filled for all or any part of the year by an incumbent working on the project. This rate may not be more than that paid by the grantee to other employees in comparable positions or, if the grantee has no comparable positions, the rate may not be more than that paid for such services elsewhere in the community.

Enter in column 2 the number of months the position will be filled by an incumbent working on the project.

Enter in column 3 the percent of time or effort the incumbent will devote to the project during the number of months shown in column 2.

Enter in column 4 the total amount required, as computed from the information shown in columns 1 through 3. Use the following formula:

Annual Salary (col. 1) times No. of Months (col. 2) divided by 12 times Percent of Effort (col. 3) equals Total Amount Required (col. 4)

2. Fringe Benefits. Enter in the parentheses the applicable fringe benefit rate(s). In column 4, enter the amount determined by applying the rate to the total of the salaries in column 4 to which the rate(s) applies.

3. Option for Salary Detail Submission. Applicants may request that the salary rates and amounts requested for individuals not be made available to DHHS reviewing consultants. To do so, an additional copy of this page must be submitted, complete in all respects, except that columns 1 and 4 may be left blank.

4. Function/Task Description. Attach a description of the function or task to be performed for all personnel listed.

Part IV—Program Narrative

The review of grant applications is aided materially when project descriptions are presented in a reasonably uniform pattern. For this reason, the following guidelines should be used in completing the program narrative. The program narrative is not to exceed 25 pages typed double-spaced, or 13 pages typed single-spaced and should provide information on how the application meets the evaluation criteria in Section III. Pages should be typed on one side only of standard-sized white bond paper. Each page should be numbered consecutively at the bottom beginning with page IV–1.

The program narrative should describe the major issues of concern, the research and demonstration methodology to be used in addressing these issues, and the potential for implementation of the results. Review of the narrative will concentrate on the above and on the manageability of the design as reflected in the work plan. Should the proposed project be funded, the information provided in the narrative will form the basis for monitoring the project and evaluating progress for future funding decisions, as well as aid SSA in planning for required technical assistance and for the implementation and dissemination of project findings.

Note.—A consultant in research design may be useful in preparing a proposal under this announcement. Such a person is knowledgeable about the issues to be addressed in the research and demonstration methodology section, and may be helpful in developing a work plan as well as disseminating the results. Persons trained in research project planning and design may work in many different occupations and for a wide variety of employers, most notably in the social science department (e.g., Sociology, Economics, Political Science, etc.) of colleges or universities.

The narrative should be organized under the following major headings as appropriate:

A. Project Title and Objectives

B. Background and Importance of Project

C. Research and Demonstration Methodology

D. Work Plan

E. Organizational Capacity

F. Implementation Potential

G. Dissemination of Results

The program narrative should be completed as follows:

A. Project Title and Objectives.

1. Select a title that is both short (60 characters or less) and descriptive.

2. Specify the objectives of the project.

B. Background and Importance of Project. 1. Discuss the major areas the project will address and the national significance of these problem areas. Include factual comments on the number of individuals (recipients) affected and the magnitude of the human, physical and fiscal resources involved.

2. Discuss the state-of-the-art in resolving these problems. Include approaches that have been or are being taken in resolving the problems and the outcomes of these approaches. Also include: (1) The organizational structures which currently deal with the problems, (2) the services provided, and (3) the administrative methods currently used.

3. Discuss the approaches proposed for resolving the problems included with this project and the rationale supporting the proposed resolution.

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4. If the performance of any of the project activities is to be transferred to a third party (e.g., evaluation of the project—see Section IV., D) include the following information:

(a) a description of the activities in question; (b) a justification for the performance by a third party; (c) estimated costs and time schedule; and (d) a description of the kinds of organizations or other parties to be selected and the method of selection.

5. Summarize important results obtained by others which bear on this project, citing publications where applicable. It should be apparent from the summary that existing literature has been critically reviewed and that related programs being carried on elsewhere are known to the applicant.

6. Cite the most important publications of the project staff on this or closely related work. If none, list the most important publications in other related fields over the last 5 years.

C. Research and Demonstration Methodology. 1. List the hypotheses to be tested. Make them clearly relate to the objectives of the priority area(s) chosen. For example, in priority area 3, it is stated that the project must be designed to return disability beneficiaries to SGA. Therefore, the basic hypothesis should be that the treatment will return more beneficiaries to SGA.

2. Describe how you propose to test your hypotheses. If a comparison of the new treatment with the present program is indicated, a treatment and control group structure needs to be established.

Note.—In some instances, a hypothesis testing methodology may not be appropriate or feasible for projects. In such cases, the research and demonstration methodology must be explicitly described including a detailed explanation of the methodology to be used for conducting the project emphasizing the procedures and methods to be used in determining project impact.

3. Indicate the size of your sample and describe how you arrived at your sample size in light of the hypotheses to be tested. Explain how the sample size will be sufficient to detect differences between the treatment and control group in which you are interested, e.g., indicate the statistical power of test.

4. It is probable that an observation period which is longer than the treatment period will be required to test the hypotheses. Discuss the length of the treatment and observation periods and describe how the length of your observation period will be sufficient to gather the necessary data for your hypotheses to be tested. Describe how contact will be made for gathering data during the pre- and post-treatment observation period, e.g., mail contact, phone contact, personal contact, employer follow-up, etc.

5. Explain how you propose to select your sample. Describe the process of acquiring eligible subjects. Describe the process of selecting a control group of subjects identical to the treatment group. Describe any incentives used to encourage subjects to participate.

6. List the data to be collected. Explain how these data will be used to test the hypotheses. Discuss how the data will be used in the analysis. Discuss the data that will be supplied for further evaluation by SSA. For project findings that are not suitable for hypothesis testing, describe in detail the evaluation approach to be used indicating the type of outcome information expected.

7. Discuss potential problems that may arise and how they will be resolved, e.g., describe how dropouts, inadequate number of referrals, etc., will be handled (see especially Section III, H., 2, (c)).

D. Work Plan. 1. List and describe each task (at lease one paragraph per task) that must be completed to carry out the project. (Most projects should have between 10 and 20 tasks.)

2. Specify the project(s) for each task that can be provided to SSA on request as proof that the task has been completed.

3. Prepare a Gantt chart showing the start and end dates for each task. Including milestones such as:

- onsite acquisition of staff;
- physical acquisition of facilities and equipment;
- pretest of measurement devices;
- establishment of linkages with ongoing programs;
- acquisition of subjects for testing;
- signing of agreements and contracts;
- arrangements with public and private agencies to provide services, data or other support;
- steps to involve potential users; and
- completion and dissemination of final report.

4. Show the level of effort in work-months (by project personnel, if possible) required to complete each task.

5. Indicate the formats for the interim and final progress reports to be submitted to SSA.

6. If an independent sub-contractor is to be used for any part of the project, include the scope of work to be performed by such contractor, the tasks to be completed, a time chart for such tasks, and the products to be provided by the sub-contractor.

E. Organizational Capacity. Project staff and Facilities

1. Include a project staff organization chart and, if applicable, show the linkages with State/county organization charts. Note that the Project Director should be full-time, if possible or devote a substantial portion of his/her time to the project.

2. Staff Qualifications—Include a biographical sketch of the proposed Project Director and other key project staff, highlighting special qualifications that relate to the accomplishment of project objectives, such as education and experience. For each of the key staff not identified at the time of application, provide (in lieu of a biographical sketch) a job description, qualifications sought and a projection of how long after notification of grant award the recruitment of these staff will take.

3. Discuss other qualifications of staff or of organizations affiliated with the project that enhance its potential success.

4. Describe the facilities where the activity will be conducted and the location (including computer capability and specialized technical equipment where relevant).

Organizational Capability Statement. Provide a brief (maximum 2 pages double-spaced or one page single-spaced) background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under project staff and responsibilities. It may include description of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable.

F. Implementation Potential. 1. Estimate the costs and the benefits that might accrue from replication or installation on a State-wide (or nationwide) basis, specifying the assumptions and logic used in making the estimate. Provide a description of the specific uses of the project results which are directly relevant to the needs of SSA disabled beneficiaries and suggest how the results could be applied to assist beneficiaries.

2. Specify any special features of the target group(s) and the operational environment in which the project will operate that would vary in other locations, thus influencing utilization potential, e.g., rural population, minority composition, political climate, governmental centralization or decentralization, etc.

3. Specify how final products will be oriented toward facilitating implementation in other locations.

4. Discuss commitments made by Federal, State or local governments and other organizations to continue the project or implement its findings after completion.

G. Dissemination of Results. 1. Specify the means to disseminate the results and promote utilization of these results by others in the field.

2. Describe (where appropriate) the training methods and content to be packaged for dissemination and use for others. Note any restrictions or limitations (patent, copyright, proprietary interest, etc.) on its use by SSA.

Part V—Assurances

Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 (Form HHS–441). Copies of these assurances are reprinted at the end of this announcement.

A. Check List of Application Requirements. Before submitting the application for grant support, check to assure that the following items are included:

Formal application prepared on Form SSA–96, assembled in the following order:

———— PART I, Face Sheet (SF–424) has been completed according to the instructions, includes subpriority area in item 7, is signed by an authorized official, and has a project summary description attached;

———— PART II, Project Approval Information;

———— PART III, Budget Information, sections A, B, C, D, and E are completed;

———— PART IV, Program Narrative, does not exceed 25 pages and includes an organizational capability statement not exceeding 2 pages; and

———— PART V, Assurances.

Other Forms: CIVIL RIGHTS:

———— Assurance Filed with HHS

or

———— Completed Form HHS–441 enclosed

APPLICATION CERTIFICATIONS (to be completed by for-profit organizations applying for grant support):

———— Certifications Included

———— Certifications Not Applicable

MAILING:

———— An Original and 2 copies of the Application

B. Points to Remember.

- At least 25 percent of the TOTAL cost for the proposed demonstration projects must come from a source other than the Federal government (1 dollar match for every 3 dollars requested by SSA). Research projects require cost-sharing of 5 percent. An application may be unduly penalized in the review process by careless errors relating to the computation of the non-Federal share or match.
- Submit an original and two copies of the application. Six *additional* copies are optional, but will expedite processing.
- Designate in item 7 of the Face Sheet (SF–424) the subpriority area under which the application is being submitted. If not submitted in response to any of the subpriority areas specified in this announcement, indicate "nonpriority."
- APPLICATIONS ARE NOT TO CONTAIN NARRATIVES IN EXCESS OF *25* TYPEWRITTEN DOUBLE-SPACED PAGES (OR *13* SINGLESPACED PAGES).
- The project summary description of 1,200 characters or less is an essential element of the application. It is important that the summary description accurately reflect the nature and scope of the proposed project.
- Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.
- Do not include letters endorsing or supporting the project.
- The qualifications of key staff should be described in a few paragraphs rather than in formal vitae. Vitae or resumes are not to be provided and will not be included in the applications provided to reviewers.
- Although multiple applications (of different concepts) from the same applicant are not prohibited, they are not encouraged.
- THE ACTIVITIES BELOW GENERALLY WILL NOT MEET THE PURPOSES OF THIS ANNOUNCEMENT

—projects whose main activity is a conference or meeting;
—projects whose major product is a manual;
—proposals which request expansion or continuation of existing services or programs;
—proposals which would establish clearinghouses; or,
—projects which are not within the goals and objectives of this announcement.

BILLING CODE 4190–11–M

PART I

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box) ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER — a. NUMBER; b. DATE (Year month day) 19

3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE) — a. NUMBER; b. DATE ASSIGNED (Year month day) 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City — e. County — g. ZIP Code
f. State
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) — a. NUMBER ☐☐.☐☐☐ MULTIPLE ☐ — b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

Subpriority Area

8. TYPE OF APPLICANT/RECIPIENT (A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Education Institution; J—Indian Tribe; K—Other (Specify:) — Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE (A—New Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other) — Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

14. TYPE OF APPLICATION (A—New; B—Revision; C—Revision; D—Continuation; E—Augmentation) — Enter appropriate letter ☐

15. PROJECT START DATE (Year month day) 19

16. PROJECT DURATION — Months

17. TYPE OF CHANGE (For 14c or 14e) (A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):) — Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► (Year month day) 19

19. FEDERAL AGENCY TO RECEIVE REQUEST

a. ORGANIZATIONAL UNIT (IF APPROPRIATE) — b. ADMINISTRATIVE CONTACT (IF KNOWN)

c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION I—APPLICANT/RECIPIENT DATA

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED (Year month day) 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► (Year month day) 19

30. STARTING DATE (Year month day) 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month day) 19

33. REMARKS ADDED ☐ Yes ☐ No

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424-109

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

PART I (Continued) DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS (Please reference the proper item number from Section I, II or III, if applicable.)

STANDARD FORM 424 PAGE 2 (Rev 4-84)

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FORM APPROVED
OMB NO. 0960-0184

PART II

PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local, regional, or other priority rating?

Name of Governing Body _____
Priority Rating _____

_____ Yes _____ No

Item 2.
Does this assistance request require State or local advisory, educational or health clearance?

Name of Agency or Board _____

_____ Yes _____ No (Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with Executive Order 12372?

(Attach Comments)

_____ Yes _____ No

Item 4.
Does this assistance request require State, local, regional or other planning approval?

Name of Approving Agency _____
Date _____

_____ Yes _____ No

Item 5.
Is the proposed project covered by an approved comprehensive plan?

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

_____ Yes _____ No

Item 6.
Will the assistance requested serve a Federal installation?

Name of Federal Installation _____
Federal Population benefiting from Project

_____ Yes _____ No

Item 7.
Will the assistance requested be on Federal land or installation:

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

_____ Yes _____ No

Item 8.
Will the assistance requested have an impact or effect on the environment?

See instructions for additional information to be provided.

_____ Yes _____ No

Item 9.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticiated?

See instructions for additional information to be provided.

_____ Yes _____ No

Form SSA-96-BK (6-87)
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PART III – BUDGET INFORMATION

SECTION A – BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	Grant Program, Function or Activity				Total
	(1) Federal Funds	(2)	(3)	(4)	(5)
a. Personnel	$	$ N/A	$ N/A	$ N/A	$ N/A
b. Fringe Benefits		N/A	N/A	N/A	N/A
c. Travel		N/A	N/A	N/A	N/A
d. Equipment		N/A	N/A	N/A	N/A
e. Supplies		N/A	N/A	N/A	N/A
f. Contractual		N/A	N/A	N/A	N/A
g. Construction		N/A	N/A	N/A	N/A
h. Other		N/A	N/A	N/A	N/A
i. Total Direct Costs		N/A	N/A	N/A	N/A
j. Indirect Costs		N/A	N/A	N/A	N/A
k. TOTALS	$	$ N/A	$ N/A	$ N/A	$ N/A
7. Program Income	$	$ N/A	$ N/A	$ N/A	$ N/A

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PART III (continued)

SECTION C—NON-FEDERAL RESOURCES				
(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D—FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E—BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT						
	FUTURE FUNDING PERIODS (YEARS)					
16. Objective Class Categories	Second	Third	Fourth	Fifth		
a. Personnel	$	$	$	$	$	$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Others						
i. Total Direct Costs						
j. Indirect Costs						
k. TOTALS	$	$	$	$	$	$

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PART III (continued)

SECTION F—OTHER BUDGET INFORMATION
(Attach additional sheets if necessary)

17. Direct Costs

18. Indirect Costs

19. Remarks:

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Part III (Continued)

SECTION G — PERSONNEL

Name and Position Title	Annual Salary Rate	No. Mos. Budg.	% Time	Total Amount Required
	(1)	(2)	(3)	(4)

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PART V
ASSURANCES (Continued)

15. It will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 231 et seq.) and regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R., Subchapter H) pertaining to the care, handling, and treatment of warm blooded animals held or used for research, teaching or other activities supported by Federal awards.

16. It will comply, to the extent applicable, with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et. seq., which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

PRIVACY ACT

The Privacy Act of 1974 (5 U.S.C. 552a) gives individuals the right of access to information concerning themselves and provides a mechanism for correction or amendment of the records. The Privacy Act also provides for protection of information pertaining to an individual, but it does not prevent disclosure of such information if required to be released under the Freedom of Information Act. The Privacy Act requires that a Federal agency, advise each individual whom it asks to supply information of the authority which authorizes the solicitation, whether disclosure is voluntary or mandatory, the principal purpose or purposes for which the information is intended to be used, the use outside the agency which may be made of the information, and the effects on the individual, if any, of not providing all or any part of the requested information.

SSA is requesting the information called for in this application pursuant to its statutory authority for awarding grants. Provision of the information requested is entirely voluntary. The collection of this information is for the purpose of aiding in the review of applications prior to grant award decisions and for management of SSA programs. A lack of sufficient information may hinder SSA's ability to review applications, monitor grantee performance, or perform overall management of grant programs.

This information will be used within the Department of Health and Human Services, and may also be disclosed outside the Department as permitted by the Privacy Act, including disclosures to the public as required by the Freedom of Information Act, to the Congress, the National Archives, the Bureau of the Census, law enforcement agencies upon their request, the General Accounting Office, and pursuant to court order. It may also be disclosed outside the Department, if necessary, for the following purposes:

1. To the cognizant audit agency for auditing.
2. To the Department of Justice as required for litigation.
3. To a congressional office from the record of an individual in the response to an inquiry from the congressional office made at the request of that individual.
4. To qualified experts not within the definition of Department employees as prescribed in the Department regulations (45 CFR, Part 5b.2) for opinions as a part of the application review process.
5. To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.
6. To individuals and organizations deemed qualified by SSA to carry out specific research related to the review and award processes of SSA.
7. To organizations in the private sector with whom SSA has contracted for the purpose of collating, analyzing, aggregating, or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.
8. To the grantee institution relative to performance or administration under the terms and conditions of the award.

FREEDOM OF INFORMATION ACT

The Freedom of Information Act and the associated Public Information Regulations (45 CFR Part 5) of the Department of Health and Human Services require the release of certain information regarding grants requested by any member of the public. The intended use of the information will not be a criterion for release. Grant applications and grant related reports are generally available for inspection and copying except that information considered to be an unwarranted invasion of personal privacy will not be disclosed. For specific guidance on the availability of information, refer to 45 CFR Part 5.

Form SSA-96-BK (6-87)
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ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____

_____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

HHS-441 (Rev. 12/82)

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APPLICATION CERTIFICATIONS

To be completed by for-profit organizations only

1. SMALL BUSINESS CERTIFICATION

The applicant ( ) is, ( ) is not, a small business concern. A small business concern is defined as a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

2. MINORITY BUSINESS ENTERPRISE CERTIFICATION

The applicant ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a business, at least 51 percent of which is owned, controlled, and managed by minority group members who are citizens of the U.S. In case of a corporation, 51 percent of all classes of voting stock of such corporations must be owned by an individual(s) determined to be minority. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia, or Taiwan) and members of other groups designated from time to time by the Small Business Administration according to the procedures set forth at 13 CFR Part 124.1.

3. WOMAN-OWNED BUSINESS CERTIFICATION

The applicant ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

Signature of Authorized Official_____ _____

Title: _____

Date: _____

BILLING CODE 4160-11-C

Notice

GRANT FUNDS MAY NOT BE USED TO ATTEMPT TO INFLUENCE LEGISLATION PENDING BEFORE CONGRESS.

We direct the attention of potential HHS grantees to the fact that the following statutory provision (part of Sec. 407 of Pub. L. 95-480, 92 Stat. 1589) has applied to the Department's appropriations beginning with those for fiscal year 1979 and that such a provision is likely to continue to apply to its appropriations:

"No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

This means that the costs of attempting to influence legislation pending before Congress may not be charged either as direct or indirect costs to any HHS grant awarded from funds subject to the provision. Attempting to influence legislation is commonly called lobbying.

This notice concerns only the charging to HHS grants of certain costs. Nothing in this notice is intended in any way to inhibit or discourage any party from exercising its lawful rights to attempt to influence legislation pending before Congress as long as the costs are not charged to an HSS grant.

Department of Health and Human Services.

[FR Doc. 88-9924 Filed 5-3-88; 8:45 am]

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Federal Register
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Wednesday, May 4, 1988

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LIST OF PUBLIC LAWS

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This is is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 3971/Pub. L. 100–300

International Child Abduction Remedies Act. (Apr. 29, 1988; 102 Stat. 437; 6 pages) Price: $1.00

S. 90/Pub. L. 100–301

Big Cypress National Preserve Addition Act. (Apr. 29, 1988; 102 Stat. 443; 6 pages) Price: $1.00

S.J. Res. 227/Pub. L. 100–302

To express gratitude for law enforcement personnel. (Apr. 29, 1988; 102 Stat. 449; 1 page) Price: $1.00

S.J. Res. 247/Pub. L. 100–303

To authorize the President to proclaim the last Friday of April 1988 as "National Arbor Day." (Apr. 29, 1988; 102 Stat. 450; 1 page) Price: $1.00

H.J. Res. 552/Pub. L. 100–304

Making emergency mandatory veterans supplemental appropriations for the fiscal year ending September 30, 1988. (Apr. 29, 1988; 102 Stat. 451; 1 page) Price: $1.00

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federal register

Thursday
May 5, 1988

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federal register

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May 5, 1988

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RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to incorporate by reference the Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the Winter 1983 Addenda, Summer 1984 Addenda, Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition of Section XI, Division 1, of the ASME Code. A limitation is placed on the use of paragraph IWB–3640 as contained in the Winter 1983 Addenda and Winter 1984 Addenda of Section XI, Division 1. This limitation requires that for certain types of welds, IWB–3640 when implemented shall be used as modified by the Winter 1985 Addenda. In addition, the existing modification pertaining to the inservice inspection of pressure retaining welds in ASME Code Class 2 piping has been revised to limit its applicability up to the 1983 Edition with addenda up through the Summer 1983 Addenda. The sections of the ASME Code being incorporated by reference provide rules for the construction of light-water-cooled nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

EFFECTIVE DATE: May 5, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Office of the Federal Register as of May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3872.

SUPPLEMENTARY INFORMATION: On June 26, 1987, the Nuclear Regulatory Commission published in the **Federal Register** (52 FR 24015) a proposed amendment to its regulation, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," to update the reference to editions and addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). This amendment revises § 50.55a to incorporate by reference all editions through the 1986 Edition and all addenda through the Winter 1985 Addenda that modify Division 1 rules of Section III, "Rules for the Construction of Nuclear Plant Components," and, subject to certain limitations and modifications, addenda through the Winter 1985 Addenda that modify Division 1 rules of Section XI, "Rules for the Inservice Inspection of Nuclear Power Plant Components," of the ASME Code. Specifically, this amendment to § 50.55a incorporates by reference the Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition for Division 1 rules of Section III, and the Winter 1983 Addenda, Summer 1984 Addenda, Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition for Division 1 rules of Section XI of the ASME Code. The 1986 Edition is equivalent to the 1983 Edition, as modified by the Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda, Winter 1984 Addenda, Summer 1985 Addenda, and Winter 1985 Addenda. The Summer 1984 Addenda and Summer 1985 Addenda for Section XI do not include technical requirements, but are included in the reference to prevent the confusion that might occur with a lack of continuity in the addenda references.

Interested persons were invited to submit written comments for consideration in connection with the proposed amendment by August 25, 1987. Comments were received from three individuals in response to the notice of proposed rulemaking. Two of the commenters were in favor of the proposed rule, and submitted suggestions for editorial clarifications. One of these commenters was concerned that the manner proposed for specifying the endorsed editions and addenda in §§ 50.55a (b)(1) and (b)(2) was potentially confusing for this specific amendment because the latest addenda that is specified does not modify the latest edition that is specified (i.e., the Winter 1985 Addenda modifies the 1983 Edition). The staff agrees with the commenter and has modified paragraphs (b)(1) and (b)(2) to make it clear that the Winter 1985 Addenda applies to the 1983 Edition, and that the 1986 Edition is the latest ASME Code update being incorporated by reference into the regulation.

The other commenter in favor of the proposed rule believes that the proposed additional sentence in § 50.55a(b)(2)(i) which specifies a limitation on the use of IWB–3640 for certain addenda should be provided for clarity in a separate paragraph. The staff has considered and adopted this suggestion. In this final rule, the specified limitation is contained in a new paragraph (b)(2)(v). This commenter also recommended a revision to Footnote 6 to clarify details regarding implementation of the code cases specified in the identified regulatory guides. It is the opinion of the staff that the rule should not be cluttered with such information. Therefore, that proposed revision has not been incorporated into the final rule. However, the staff is considering incorporating additional information directly into the regulatory guides to clarify their use.

Additionally, this commenter noted that the Winter 1983 Addenda to Section XI included significant improvements to the inservice inspection of Class 2 piping. This comment is correct. In particular, the rules specified in that addenda satisfy NRC staff concerns associated with the rules specified in earlier addenda for the examination of pressure retaining welds in ASME Code Class 2 piping, including residual heat removal systems, emergency core cooling systems, and containment heat removal systems. The staff previously addressed these concerns by specifying a modification in § 50.55a(b)(2)(iv),

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which required that the extent of examinations for pressure retaining welds in ASME Code Class 2 piping be determined based upon specific rules in the 1974 Edition and Addenda through the Summer 1975 Addenda. Although the commenter did not make the point specifically, the proposed rule should have recognized the improvements in the Winter 1983 Addenda by incorporating a revision to limit the applicability of the required existing modification specified in paragraph (b)(2)(iv) to ASME Code editions and addenda up to the 1983 Edition with addenda up through the Summer 1983 Addenda. This final rule incorporates this limitation to the use of the modification specified in paragraph (b)(2)(iv).

The third commenter opposed the proposed amendment. That commenter believes that the NRC should not rely on industry standards, but rather should develop its own standards based upon NRC experience and data. NRC practice is to utilize national standards, such as the ASME Code, whenever possible to define acceptable ways of implementing the NRC's basic safety regulations. This is consistent with OMB Circular No. A–119 (Revised),[1] which provides policy and administrative guidance to federal agencies regarding participation in the development and use of voluntary standards. Consistent with this policy, the NRC staff participates actively in the development of many national standards, including the ASME Code, to ensure that NRC experience and data is part of the information base used to support development of the standard. Although the NRC staff is heavily involved in the development of the ASME Code, endorsement of the ASME Code by the NRC without exception is not an automatic action as evidenced by the existing limitations and modifications specified in § 50.55a(b)(2) and the new limitation specified in paragraph (b)(2)(v) by this final rule.

Paragraph IWB–3640 was incorporated into the Winter 1983 Addenda of Section XI, Division 1, to provide procedures and acceptance criteria for determining the acceptability for continued service of austenitic stainless steel piping with flaws in excess of the allowable indications specified in IWB–3514.3. Concern was expressed by the NRC staff and others that IWB–3640, as presented initially in the Winter 1983 Addenda, did not provide an acceptable level of margin against failure for materials with low toughness, such as might occur in fluxed welds (i.e., submerged arc welds (SAW) or shielded metal arc welds (SMAW)). One concern with low toughness materials was that such materials might fail at load levels below limit load. Additionally, there was concern that secondary stresses, which were not included in the stress analysis procedures required by IWB–3640, might contribute to the failure of low toughness materials.

The ASME established a special task group to address the concerns associated with paragraph IWB–3640 as contained in the Winter 1983 Addenda. In the interim, the NRC staff required that licensees utilizing the procedures and acceptance criteria of IWB–3640, as contained in the Winter 1983 Addenda, apply additional safety factors in their analyses to be submitted to the staff to account for the above concerns. NRC staff acceptance criteria were provided in Generic Letter 84–11, "Inspections of BWR Stainless Steel Piping." [2]

In the opinion of the NRC staff, the concerns associated with material toughness have been adequately addressed by the ASME Code with the modification to paragraph IWB–3640 in the Winter 1985 Addenda. This addenda provides specific acceptance criteria for SAW and SMAW type welds, and these criteria address the concerns associated with limit load and the need to incorporate secondary stresses in the evaluation.

This amendment to § 50.55a incorporates a limitation in paragraph (b)(2)(v) that allows for the use of paragraph IWB–3640, as contained in the Winter 1983 Addenda and Winter 1984 Addenda, for all applications permitted in that paragraph except those associated with SAW and SMAW type welds. For these welds, this amendment specifies that paragraph IWB–3640, as modified by the Winter 1985 Addenda, must be used.

Footnote 6 of § 50.55a provides reference to the NRC Regulatory Guides that denote which ASME Code Cases have been determined to be acceptable to the NRC staff for implementation. Previously, this footnote provided reference to only Regulatory Guides 1.84 and 1.85, which denote acceptability of Section III, Division 1, Code Cases on design and fabrication, and on materials, respectively. This amendment revises Footnote 6 to incorporate a reference to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability—ASME Section XI Division 1," which identifies the Code Cases acceptable to the NRC staff for implementation in the inservice inspection (ISI) program of light-water-cooled nuclear power plants. At present, the Implementation section of Regulatory Guide 1.147 specifies that applicants should make a specific request to the NRC to use Code Cases endorsed in the regulatory guide. The next revision of Regulatory Guide 1.147 (i.e., Revision 6) will reflect the proposed change in Footnote 6 of the regulation. It will permit the use of Code Cases endorsed in the regulatory guide without a specific request to the NRC for approval. In the interim, it is the intent of the NRC that Code Cases listed in Regulatory Guide 1.147 be used without specific application to the NRC. This amendment further revises Footnote 6 to correct the referenced titles for Regulatory Guides 1.84 and 1.85.

Section 50.55a(g) provides requirements for selecting the edition and addenda of Section XI to be complied with during the preservice inspection (§ 50.55a(g)(3), for plants whose construction permit was issued on or after July 1, 1974); the initial 10-year inspection interval (§ 50.55a(g)(4)(i)); and successive 10-year inspection intervals (§ 50.55a(9)(4)(ii)). Paragraph IWA–2400 of Section XI, as revised by the Winter 1983 Addenda, incorporates rules for selecting the applicable edition and addenda of Section XI during the preservice inspection (IWA–2411); the initial 10-year inspection interval (IWA–2412); and successive 10-year inspection intervals (IWA–2413).

The criteria provided in the regulations and Section XI are effectively the same for the preservice inspection, and the successive 10-year inspection intervals, but differ for the initial 10-year inspection interval. For the initial 10-year inspection interval, the regulations specify that inservice examinations of components and inservice tests shall comply with the requirements in the latest edition and addenda of the Code incorporated by reference on the date 12 months prior to the date of issuance of the operating license while Section XI provides that the inspection plan shall comply with the Edition and Addenda of Section XI that has been adopted by the regulatory authority 36 months after the date of issuance of the construction permit, or subsequent Editions and Addenda that have been adopted by the regulatory authority. In general, use of the Commission requirements will result in the selection of a more recent edition and addenda than will use of the Section XI rules. Satisfying the requirements of § 50.55a(g)(4)(i) for the initial 10-year inspection interval will, in general, also satisfy the rules of Section XI.

It is the Commission's intent that in all cases the existing requirements in § 50.55a(g) be the basis for selecting the edition and addenda of Section XI to be complied with during the preservice inspection, the 10-year inspection interval, and successive 10-year inspection intervals.

Subsection IWE, "Requirements for Class MC Components of Light-Water Cooled Power Plants," was added to Section XI, Division 1, in the Winter 1981 Addenda. However, 10 CFR 50.55a presently incorporates only those portions of Section XI that address the ISI requirements for Class 1, 2, and 3 components and their supports. The regulation does not currently address the ISI of containments. Since this amendment is only intended to update current regulatory requirements to include the latest ASME Code edition and addenda, the requirements of Subsection IWE would not be imposed upon Commission licensees by this amendment. The applicability of Subsection IWE is being considered separately.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this amendment to the regulations. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H St. NW., Washington, DC. Single copies of the analysis may be obtained from Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3872.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 reads as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. For § 50.55a, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (b)(2)(iv), and Footnote 6 are revised and paragraph (b)(2)(v) is added to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1983 Edition and Addenda through the Winter 1985 Addenda, and the 1986 Edition.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1983 Edition and Addenda through the Winter 1985 Addenda, and the 1986 Edition, subject to the following limitations and modifications:

* * * * *

(iv) Pressure-retaining welds in ASME Code Class 2 piping (applies to Tables IWC–2520 or IWC–2520–1, Category C–F). (A) Appropriate Code Class 2 pipe welds in Residual Heat Removal Systems, Emergency Core Cooling Systems and Containment Heat Removal Systems, shall be examined. When applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for these systems shall be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G, and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda.

(B) For a nuclear powar plant whose application for a construction permit was docketed prior to July 1, 1978, when applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for Code Class 2 pipe welds may be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda of Section XI of the ASME

[1] Single copies of OMB Circular No. A–119 may be obtained from the OMB Publications Office, 726 Jackson Place NW., Washington, DC 20503, Telephone (202) 395–7332.

[2] A copy of Generic Letter 84–11 is available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Code or other requirements the Commission may adopt.

(v) Evaluation procedures and acceptance criteria for austenitic piping (applies to IWB-3640). When applying the Winter 1983 Addenda and Winter 1984 Addenda, the rules of paragraph IWB-3640 may be used for all applications permitted in that paragraph, except those associated with submerged arc welds (SAW) or shielded metal arc welds (SMAW). For SAW or SMAW, use paragraph IWB-3640, as modified by the Winter 1985 Addenda.

* * * * *

Footnotes to § 50.55a:

* * * * *

[4] ASME Code cases that have been determined suitable for use by the Commission staff are listed in NRC Regulatory Guide 1.84, "Design and Code Case Acceptability—ASME Section III Division 1," NRC Regulatory Guide 1.85, "Materials Code Case Acceptability—ASME Section III Division 1," and NRC Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability—ASME Section XI Division 1." The use of other Code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

* * * * *

Dated at Rockville, MD this 13th day of April 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-9988 Filed 5-4-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 505

[No. 88-302]

Availability and Character of Records

Date: April 28, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its public access to information regulations concerning fees and fee waivers in order to comply with the Freedom of Information Reform Act of 1986 ("FOI Reform Act"). The Board's final regulations are issued in compliance with the Office of Management and Budget ("OMB") guidelines and schedule of fees.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: William Van Lenten, Assistant General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, (202) 377-6773.

SUPPLEMENTARY INFORMATION:

A. Description of the Proposed Rule

As stated in the preamble to the proposed rule (52 FR 45346, November 27, 1987), these changes to the Board's freedom of information regulations follow the guidelines published by OMB on March 27, 1987 (52 FR 10011). The changes provide for fees based upon the category of the requester and the use of the requester would make of released records. Reduction or waiver of fees may apply when the release is in the public interest.

B. Today's Board Action

The Board has determined to adopt its proposed rule published on November 27, 1987, with the following changes: In paragraph 505.4(e)(8)(v), the provision describing waiver of fees, the phrase "personal interest" is amended to read "commercial interest"; and paragraph 505.4(e)(1)(iii) is amended to simplify the definition of representatives of the news media. The Board has also inserted a sentence defining "All other requesters" in paragraph 505.4(e)(1)(iv). In all other particulars the final rule follows the proposed rule.

C. Discussion of Comments

The Board received three written comments and one oral comment. One written comment was submitted by a trade association of news reporters, the second by a law firm, and the third by an insured institution. The oral comment was made by a representative of the Department of Justice.

One commenter stated the view that the news media should not be accorded special favor in being assessed fees lower than those applicable to other commercial requesters. The FOI Reform Act recognizes that the news media provide a public service in disclosure of information. The FOI Reform Act requires special lower disclosure fees for the news media, as well as for educational or noncommercial scientific institutions engaged in scholarly or scientific research. This rule complies with that provision of the FOI Reform Act.

A second comment, although it stated it was in response to the proposal, failed to address any items in the proposal. It requested clarification of other provisions of Part 505. The views in that comment letter will be considered in future revisions to the relevant portions of Part 505.

The third comment addressed the definition of representatives of the news media, the fee waiver provisions, the requirement for advance payment, and the copy charge of $.30 per page.

The definition of representatives of the news media in paragraph 505.4(e)(1)(iii) of the proposal followed the OMB guidelines. The commenter was concerned that the definition would require the agency to determine what information was or was not "news" and suggested several alternatives. The Board has adopted one of the commenter's alternatives.

The same commenter asserts that the fee waiver provisions in paragraph 505.4(e)(8) of the proposal are excessively burdensome, violate the Paperwork Reduction Act, and fail to take the public interest into account. The Freedom of Information Act and the FOI Reform Act both envision the recoupment of costs by an agency. In addition, the FOI Reform Act provides for limited disclosure at no cost to all but commercial requesters. Fee waiver was and remains an exception to the usual rules. Accordingly, the Board considers the waiver provisions reasonable. The Board also rejects the conclusion of the commenter that the submission of evidence to support a request for waiver constitutes a violation of the Paperwork Reduction Act. Requests for such evidence under this rule would not fall within the coverage of the Paperwork Reduction Act. Finally, contrary to the assertion of the commenter, the Board has considered the public's interest in disclosure and has specifically made it a factor in paragraphs 505.4(e)(8) (iii) and (iv) of the rule. It is the belief of the Board that the waiver provision as proposed provides an adequate and equitable basis for the Board to evaluate requests for waivers.

This same commenter also objects to the requirement in paragraph 505.4(e)(5) that fees be paid in advance when they are likely to exceed $250.00 or when the requester has a history of nonpayment. The requirement for advance payment was not intended to hamper legitimate media representatives. It will be applicable primarily to the commercial requesters who constitute 90% or more of the Freedom of Information Act requesters for whom fee waiver would generally be inapplicable. The past experience of the Board fails to disclose any media dissatisfaction with the Board's present advance payment policy.

Finally, this commenter objected to the duplication charge of $.30 per page found in paragraph 505.4(e)(9). The FOI Reform Act, like the original Freedom of Information Act, envisions that the agency will recover its costs. The Board is not primarily in the business of reproducing documents; accordingly, fees charged by commercial duplicating companies do not offer a comparable standard. The $.30 per page duplication fee represents the "reasonable direct cost" of duplication under the FOI Reform Act and the OMB standards.

A representative of the Department of Justice, in an oral comment, suggested changing "personal interest" to "commercial interest" in the fee waiver provisions at paragraph 505.4(e)(8)(v). As stated, this change has been adopted.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. Need for and objectives of the rule. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. Issues raised by commenters and agency assessment and response. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. Significant alternatives minimizing small-entity impact and agency response. The rule would not have a significant or disproportionate economic impact on small entities. The requirement of consideration of significant alternatives is therefore inapplicable.

List of Subjects in 12 CFR Part 505

Freedom of information.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 505, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—GENERAL

PART 505—AVAILABILITY AND CHARACTER OF RECORDS

1. The authority citation for Part 505 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (12 U.S.C. 552); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943-48 Comp., p. 1071.

2. Amend § 505.4 by revising paragraphs (d) and (e) to read as follows:

§ 505.4 Access to records.

* * * * *

(d) *Requests for records and other information.* (1) Address all requests for:

(i) Individual institution quarterly financial reports;

(ii) Annual branch office reports; or

(iii) Unpublished statistical information to: Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

Requests must be in writing and include the name, address, and telephone number of the requester, in addition to the specific description of the records requested. A request for data concerning one or more individual institutions should include each institution's accurate and complete name, home office address, and dates for specific data requested. Geographical requests should specify the county and/or state in which the institutions or offices are located, as well as the dates for specific data requested.

(2) Requests for access to, or copies of, other records and information of the Board must be submitted in writing to the Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. A request should clearly state that it is made pursuant to the Freedom of Information Act. A request should state the full name and address of the person making the request and a description of the records or other information sought that is reasonably sufficient to permit identification of responsive records without undue difficulty. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of agency actions. If it is determined that a request does not reasonably describe the records sought, the Director of the Secretariat or his or her designee shall advise the requester that additional information is needed.

(3) The Board may provide records and information to the National Technical Information Service ("NTIS") of the U.S. Department of Commerce for dissemination to requesters seeking such records or information. All requests for computer tapes containing quarterly financial and branch office data by commercial use requesters should be made directly to NTIS. When other records have been provided to NTIS, requesters shall be informed of the steps necessary to obtain such records.

(e) *Fees for providing copies of records.* Fees shall be assessed pursuant to 5 U.S.C. 552 in order to recover the full allowable direct costs of providing copies of records. For purposes of this section, the term "direct costs" means those expenditures that the Board actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a Freedom of Information Act ("FOIA") request. Direct costs include, for example, the salaries of the employees performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. A schedule based on these principles is set forth in paragraph (e)(9) of this section. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. The term "Board" refers to the Federal Home Loan Bank Board or any of its members, officers, employees, or agents responsible for the implementation of § 505.4.

(1) *Categories of requesters.* Fees will be assessed according to the category of the requester. There are four categories:

(i) *Commercial use requesters.* For purposes of this section, the term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Board will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the Board shall seek additional clarification before assigning the request to a specific category.

(ii) *Educational and noncommercial scientific institution requesters.* For purposes of this section, the term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. The term "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis, as

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that term is used in paragraph (e)(1)(i) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institufion) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) *Requesters who are representatives of the news media.* For purposes of this section, the term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester must meet the criteria above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(iv) *All other requesters.* This category consists of requesters who do not fit into any of the categories above.

(2) *Limitations on fees to be charged.*—(i) *Commercial use requesters.* Commercial use requesters shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at paragraph (e)(9) of this section. Commercial use requesters are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational and noncommercial scientific institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review.

(iii) *Requesters who are representatives of the news media.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review.

(iv) *All other requesters.* Requesters who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(v) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions of records are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(vi) *Additional copies.* The Board will normally furnish only one copy of any record. The allowance of 100 free pages of duplication under paragraph (e)(2) (ii), (iii), and (iv) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each such additional copy.

(vii) *Requests under the Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a) ("Privacy Act") and § 505a.10 of this subchapter. Under the Privacy Act, fees may be assessed only for duplication. Fees may not be assessed for search or review.

(viii) *Requests under the Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Board meetings or portions of Board meetings closed to the public, will be treated under the fee provisions of the Government in the Sunshine Act (5 U.S.C. 552b) ("Sunshine Act") and Part 505b of this subchapter. Under the Sunshine Act, fees may be assessed to recover the actual cost of duplication or transcription. Fees may not be assessed for searching for and reviewing transcripts, minutes, or recordings. Unless otherwise provided, fees for duplication or transcription of records pursuant to a Sunshine Act request shall be assessed in accordance with the fee schedule at paragraph (e)(9) of this section.

(ix) *Collection and processing costs.* A fee may not be assessed if the routine costs of collection and processing of the fee are likely to equal or exceed the amount of the fee.

(3) *Charges for unsuccessful search.* Where applicable under paragraph (e)(2) of this section, search fees may be assessed for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure.

(4) *Notice of anticipated fees in excess of $25.00.* When it is estimated that the fees to be assessed under paragraph (e)(9) of this section may amount to more than $25.00, the requester shall be notified as soon as practicable of the estimated amount of the fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Board personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Advance payments.* (i) When it is estimated or determined that the fees to be assessed are likely to exceed $250.00, the requester shall be notified. When the requester has a history of prompt payment of FOIA fees, the Board shall obtain a satisfactory assurance of full payment of fees from the requester. When the requester has no history of payment, the requester shall be required to make an advance payment of the full estimated charges.

(ii) When a requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 days of the date of the billing), unless the requester can sufficiently demonstrate that the fee has been paid, the requester must pay the Board the full amount owed plus any applicable interest, as provided in paragraph (e)(6) of this section, and make an advance payment of the full amount of the estimated fee before the Board begins to process a new request or a pending request from that requester.

(iii) When the Board acts under paragraph (e)(5)(i) or (ii) of this section, the administrative time limits prescribed in paragraph (a)(6) of the FOIA will commence only after the Board has received the fee payments described above.

(6) *Charging interest.* The Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Board, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments requested under paragraph (e)(5) of this section.

(7) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly.

(8) *Waiver or reduction of fees.* The Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the information is in the public interest because it is likely to contribute signficantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relationship of the records to the operations or activities of the Baord:

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's commercial interest, if any, in disclosure; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

In making a request for a waiver or reduction of fees, a requester should include a clear statement of his or her interest in the requested documents; the proposed use for the documents and whether the requester will derive income or other benefit from such use; a statement of how the public will benefit from such use and from the Board's release of the requested documents; and if specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use. The burden shall be on the requester to present evidence or information in support of a request for waiver or reduction of fees.

Determinations concerning waiver or reduction of fees shall be made as follows: By the Director, Office of Policy and Economic Research, or his or her designee for requests involving the types of records and information listed in paragraph (d)(1) of this section; by the Director of the Secretariat or his or her designee for all other types of records or information. Appeals from such determinations shall be decided by the General Counsel.

(9) *Schedule of fees.* Fees for searching for, reviewing, duplicating, and providing records and information of the Board under this section will be assessed in accordance with the following schedule:

(i) *Manual search.* For each quarter hour or fraction thereof: $4.00.

(ii) *Computer search.* For each quarter hour or fraction thereof: $4.00.

(iii) *Review.* For each quarter hour or fraction thereof: $6.00.

(iv) *Duplication.* (A) For a paper photocopy of an existing paper record, $.30 per page.

(B) For duplication of records other than existing paper records (such as computer-stored information, audio or video tapes, microfiche, or microfilm), the fee shall equal the actual direct cost of production and duplication of the records or information in a form that is reasonably usable by the requester, except that agency-wide average charges are established for the following:

(*1*) For a paper copy of a microfiche record, $.30 per page;

(*2*) For a computer printout on paper of financial reports of individual institutions (including unpublished aggregates of those reports), $3.00 per report; and

(*3*) For transcription of audio tape, $4.50 per page.

(v) *Other charges.* Complying with requests for special services associated with providing records (e.g., certifying that records are true copies, supplying special computer tabulations, or sending copies by special methods such as express mail or messenger) is entirely at the discretion of the Board, and fees will be assessed to recover the full costs of providing such services.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10024 Filed 5-4-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 70473-7274]

Public Information; Freedom of Information Act

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule; correction

SUMMARY: Commerce is correcting errors in the rulemaking concerning Public Information under the Freedom of Information Act, which appeared in the **Federal Register** on March 4, 1988 (53 FR 6972-83).

FOR FURTHER INFORMATION CONTACT: Ms. Gerri LeBoo at (202) 377-3630.

SUPPLEMENTARY INFORMATION: Commerce promulgated regulations to incorporate the provisions of Executive Order 12600 of June 23, 1987, "Predisclosure Notification Procedures for Confidential Commercial Information", and to reflect other current policies and procedures. The rulemaking contained errors which are corrected by this notice.

Date: May 2, 1988.

J. Randall Blumenschein,

Chief, Management Support Division.

In FR Doc. 88-3797 appearing in the **Federal Register** of Friday, March 4, 1988, on page 6972, the following corrections are made:

PART 4—[CORRECTED]

§ 4.6 [Corrected]

1. Section 4.6. Initial Determinations of availability of records. On page 6974, in the third column, in § 4.6(a)(4), in the third line, after "identity of" insert "the".

§ 4.7 [Corrected]

2. Section 4.7. Predisclosure notification procedures for confidential commercial information. On page 6975, in the second column, in Section 4.7(b)(1), in the second line, insert quotation marks before the word "confidential" and after the word "information". Remove the word "business" in (d), introductory text, (d)(2), (d)(2)(i), (d)(3), and (e).

On page 6975, in Section 4.7(d)(2)(i), the third column, remove the words "commercially or financially sensitive" and substitute the words "confidential commercial or financial". In Section 4.7(e), in the 13th line, add the words "whose disclosure", between the words "information" and "is".

§ 4.8 [Corrected]

3. Section 4.8. Appeals from initial determinations or untimely delays. On page 6976, in the second column, in paragraph (d), in the fifth line, Section "4.4" should read Section "4.6".

In the third column, in paragraph (e), in the third line, "5 U.S.C.(e)(4)" should read "5 U.S.C. 552(a)(6)(C)".

§ 4.9 [Corrected]

4. On page 6977, in the first column, in § 4.9(a)(2), in the fifth line, the word "paragarph" should read "paragraph". In the third column, in § 4.9(c)(1), in the 12th line, "reply" should read "rely".

Note.—An additional correction to this document is published elsewhere in the Corrections Section of this issue of the Federal Register.

[FR Doc. 88-10022 Filed 5-4-88; 8:45 am]
BILLING CODE 6560-CU-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-001; Order No. 493]

Natural Gas Data Collection System

Issued: May 2, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for the purpose of further consideration and suspending effective date.

SUMMARY: On April 5, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 493, 54 FR 15023 (Apr. 27, 1988), requiring natural gas companies to use an electronic data medium when filing certain rate filings, certificate and abandonment applications and FERC Forms. The Commission provided in Order No. 493 that the record formats for these electronic data submissions would be available on April 30, 1988. The effective date for Order No. 493 is May 2, 1988, subject to OMB approval of the information collection provisions in the order. Petitions for rehearing must be filed on or before May 5, 1988.

The Commission is granting rehearing of Order No. 493 generally for the purpose of further consideration. Applicants filing timely petitions for rehearing on or before May 5, 1988, in this rulemaking docket will have an opportunity to supplement their petitions for 45 days from the date all the record formats are available to the public. The Commission will issue a notice of availability to trigger that date. This will provide applicants additional time to review the record formats and supplement their petitions for rehearing.

The Commission is also suspending the effective date of May 2, 1988, until the record formats are available to the public. The Commission will issue a notice of the new effective date for Order No. 493 at that time.

DATES: This order is effective May 2, 1988.

Petitions for rehearing of Order No. 493 must be filed on or before May 5, 1988. Applicants filing timely petitions for rehearing may supplement these petitions for 45 days after all the record formats are available to the public.

The effective date of Order No. 493 is suspended until further notice.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

On April 5, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 493, requiring natural gas companies to use an electronic data medium when filing certain rate filings, certificate and abandonment applications and FERC Forms.[1] The Commission provided in Order No. 493 that the record formats for these electronic data submissions would be available on April 30, 1988. The effective date for Order No. 493 is May 2, 1988, subject to OMB approval of the information collection provisions in the order. Petitions for rehearing must be filed on or before May 5, 1988.

On April 27, 1988, the Interstate Natural Gas Association of America (INGAA) filed a letter with the Commission. INGAA argues that it will not have an adequate amount of time to incorporate arguments on the record formats in its petition for rehearing.

In response to INGAA's letter, the Commission is granting rehearing of Order No. 493 generally for the purpose of further consideration. Interested persons filing for rehearing of Order No. 493, including INGAA, must file timely petitions for rehearing on or before May 5, 1988, in order to preserve their judicial right to appeal the Commission's final rule in this docket.[2]

The Commission will provide petitioners who file timely petitions an additional 45 days to supplement their petitions when all the record formats are available to the public. The Commission will issue a notice of availability to trigger that date. This additional time will enable petitioners to review the record formats in Order No. 493 and to supplement their petitions for rehearing. The Commission will then issue an order on rehearing in this docket and make any necessary changes to the implementation dates in the final rule.

The Commission is also suspending the effective date of May 2, 1988. The Commission will issue a notice that the record formats are available and establish a new effective date for Order No. 493.

This order granting rehearing is effective on the date of issuance. This action does not constitute a grant or denial of petitions for rehearing on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,[3] no answers to petitions for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

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18 CFR Parts 375 and 385

[Docket No. RM87-25-000, Order No. 492]

Regulations Delegating Authority

Issued April 5, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the authority it has delegated to its staff. This rule reorganizes the existing regulations and adopts new regulations that delegate additional authority to office directors. The rule grants designated officials the authority to decide actions that are routine and warrant initial staff decision subject to appeal to the Commission.

EFFECTIVE DATE: April 5, 1988.

[1] 53 FR 15023 (Apr. 27, 1988).

[2] *See* 15 U.S.C. 3416(a)(2) (1982) and 18 CFR 385.713 (1987).

[3] *See* 18 CFR 385.713 (1987).

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Final Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the authority it has delegated to its staff. This rule reorganizes the existing regulations and adopts new regulations that delegates additional authority to office directors.

II. Background

The Commission has previously made several delegations to office directors and members of its staff.[1] This final rule grants designated officials the authority to decide actions that are routine and warrant initial staff decision subject to appeal to the Commission.

The Commission has broad statutory authority to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory functions.[2] Courts have held that agencies may delegate these powers to their employees.[3] Delegations which result in final decisions may be reviewed by the Commission. Such review acts as a safeguard in the exercise of delegated authority.[4]

A party may appeal a staff action made pursuant to delegated authority under 18 CFR 385.1902 (1987).[5] However, this section does not confer an automatic appeal right from every action taken by staff pursuant to the delegation provisions. An appeal is appropriate "only if the identical action would have been final, and therefore subject to an application for rehearing, had the Commission initially acted on it."[6] A matter must deal with the merits of a case to the subject of appeal.[7]

III. Discussion

Generally, the Commission is granting authority to rule on matters that are routine and do not raise new policy issues. The delegation regulations contained in Subpart C of Part 375 are amended by this rule as described below.[8]

A. Delegations to the Secretary

The Secretary currently has authority to waive requirements of the Commission's rules that govern matters of form and to reject late-filed documents. In this rule, the Commission is granting the Secretary additional authority to reject any documents which do not meet the requirements of the Commission's rules governing matters of form.[9] The Secretary is also delegated the authority to waive this requirement for good cause shown. This delegation rounds out the Secretary's authority to act expeditiously on filings that do not comply with the Commission's requirements and thus cannot be acted on.

The Commission is also delegating authority to the Secretary to institute procedures under Parts 41 and 158 of the Commission's regulations for considering contested audit issues.[10] There are approximately 15 cases per year involving contested audit issues. The Commission makes this delegation concurrently with its delegation in this rule to the Chief Accountant to sign audit reports that contain contested issues, as is explained more fully below. Thus, if a person subject to the Commission's accounting regulations does not agree to a shortened procedure (the submission of memoranda) or if any party in interest requests a hearing for a contested audit issue, the proceeding will be assigned for hearing by the Secretary in accordance with the Commission's procedural rules.[11] The Commission believes that this delegation will reduce the processing time for contested audits by 30 to 45 days and will assist the prompt resolution of these audits.

B. Delegations to the Chief Accountant

The Commission is delegating new authority to the Chief Accountant in three areas. First, the Chief Accountant may sign audit reports in cases in which companies do not agree with the report, provided that notice is given of the opportunity for a hearing.[12] Currently, if the staff and a company disagree, the Commission issues a letter order summarizing the results of the audit, noting the company's disagreement, and requesting the company to advise the Commission whether it consents to disposition of the matters on which there is disagreement under the shortened procedures provided in Part 41 or 158 of the Commission's regulations. There are about fifteen financial audits that are contested each year. This delegation allows the Chief Accountant to issue the letter order summarizing the results of audits which contain staff recommendations with which the company disagrees. It would reduce the processing times for each contested audit by about 30 to 45 days, and, along with the delegation to the Secretary to institute procedures, expedite resolution of these matters.

Second, the Chief Accountant may approve requests by state and federal agencies to review audit working papers, subject to certain conditions, if the company being audited has no objection.[13] Commission authorization

[1] The Commission has made several delegations through general rulemakings. These were "Delegations to Various Office Directors of Certain Commission Authority," 43 FR 36,433 (Aug. 17, 1978); "Chief Authority, *et al.*, Delegation of Authority, Final Regulation," 44 FR 46,449 (Aug. 8 1979); "Delegation of the Commission's Authority to the Directors of Office of Electric Power Regulation, Office of the Chief Accountant, and Office of Pipeline and Producer Regulation," 46 FR 29,700 (June 3, 1981); and "Delegation of Authority," 47 FR 17,809 (Apr. 26, 1982). In addition, the Commission has made numerous delegations in conjunction with specific rulemakings and orders.

[2] *See, e.g.*, Section 309 of the Federal Power Act, 16 U.S.C. 825h; section 16 of the Natural Gas Act, 15 U.S.C. 717o; and section 501(a) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3411.

[3] Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 121, 67 S. Ct. 1129, 1134 (1947); O'Neal v. U.S., 140 F.2d 908 (6th Cir.), *cert. denied*, 322 U.S. 729, 64 S. Ct. 945 (1944); and *see* Davis, *Administrative Law Treatise*, 2d Ed., Vol. 1, sections 3.16 and 3.17 (1978).

[4] Davis, *op. cit.*, section 315.

[5] Section 385.1902(a) provides: "Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under Subpart E of this part) taken pursuant to authority delegated to the staff by the Commission that would be final, but for the provisions of this section, may be appealed to the Commission by a party. A *Commission decision* on a petition for appeal is a prerequisite to *a request* for rehearing under Rule 713."

[6] J.R. Ferguson and Associates, 20 FERC ¶ 61,132, at 61,291 (Aug. 2, 1982).

[7] Niagara Mohawk Power Corp., 29 FERC ¶ 61,005 (Oct. 2, 1984) at 61,009 (dismissal of appeal without prejudice of claim that Office Director should have rejected preliminary permit applications where no decision had been made on the merits regarding the applications) and 61,012 n.8 (the acceptance of (and the issuance of public notice for) an application is not a final staff action subject to appeal). *See also* Tuolumne Regional Water District, 21 FERC ¶ 61,125 (Nov. 23, 1982) at 61,353 (staff's decision to accept an application for processing is not subject to appeal unless appellant can demonstrate a jurisdictional bar or irreparable injury.)

[8] Conforming changes and changes made to update the regulations are noted in the accompanying Appendix A. Office directors may generally delegate their authority to designees as noted in past and current 18 CFR 375.301(b).

[9] New § 375.302(h).

[10] New § 375.302(m). The proceedings are under Part 41, "Accounts, Records, and Memoranda" under the Commission's regulations implementing the Federal Power Act, 18 CFR Part 41, and Part 158, "Accounts, Records, and Memoranda" under the Commission's regulations implementing the Natural Gas Act, 18 CFR Part 158.

[11] 18 CFR 41.7 and 158.7 (1987). Sections 385.501 and 385.502 of the Commission's rules which provide for setting matters for hearing are amended in this rule.

[12] New § 375.303(f).

[13] New § 375.303(h).

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is required to make this information available.[14] The primary reason to delegate such authority is to be more responsive to the needs of those requesting access to the papers. There are about ten requests per year from the General Accounting Office and state public utility commissions. This delegation allows approval to be given in a more timely manner.

Lastly, the Chief Accountant is authorized, in the absence of objections from the affected company, to require the company to take measures to correct billings that are in violation of Commission approved automatic adjustment tariffs or related regulations.[15] The Office of the Chief Accountant examines billings made by gas and electric companies under automatic adjustment tariffs approved by the Commission to insure compliance with the terms and conditions of the tariffs and related Commission regulations. On occasion, technical violations of these regulations occur. In most cases, they do not have a significant dollar impact on tariff billings. The Commission is delegating authority to the Chief Accountant to resolve these violations, if the company agrees, through approving corrective measures, including recomputation and refunds. This delegation will allow these issues to be resolved quickly.

C. Delegations to the Chief Administrative Law Judge

The Chief Administrative Law Judge is given the authority to designate and substitute presiding officers.[16] Previously his explicit authority to designate or substitute a presiding officer applied where the judge who presided over the receipt of evidence became unavailable.[17] This delegation gives the Chief Administrative Law Judge flexibility in assigning and substituting presiding officers. The Commission believes this delegation will enable the Chief Administrative Law Judge to manage the Commission's docket of cases set for hearing more effectively since he may now distribute or redistribute the caseload as the need arises.

D. Delegations to the Director of the Office of Pipeline and Producer Regulation

The Commission is delegating authority to the Director of the Office of Pipeline and Producer Regulation to grant or deny requests for waivers of the requirements for statements and reports under Part 280 (statements and Reports (Schedules)) of the Commission's regulations.[18] The Director has previously been able to extend the time for filing of reports and waive requirements for filing.

E. Delegations to the Director of the Office of Electric Power Regulation

Formerly, the Director of the Office of Electric Power Regulation was authorized to reject rate filings and other filings that failed to comply with the requirements of Section 405 of the Public Utility Regulatory Policies Act (PURPA) relating to exemptions from Part I of the Federal Power Act. In this rule, the Commission is granting the Director authority to reject rate filings that patently fail to comply with applicable statutory requirements or Commission rules, regulations, or orders.[19] The authority pertaining to other Section 405 PURPA filings has been transferred to the Director of the Office of Hydropower Licensing.[20] This delegation makes the authority of the Director of the Office of Electric Power Regulation comparable to that of the Director of the Office of Producer and Pipeline Regulation.[21] It also permits prompt disposition of electric rate filings.

F. Delegations to the Director of the Office of Economic Policy

The Commission is delegating authority to the Director of the Office of Economic Policy to issue quarterly updates of the benchmark rate of return for public utilities[22] under the Federal Power Act.[23] The updates are prepared by a mechanical application of the formula established in a proceeding which is conducted through informal rulemakings.[24] Calculation of the updates is thus wholly ministerial and does not require formal action by the Commission itself.[25]

G. Delegations to the Executive Director

The Commission is delegating authority to the Executive Director to grant municipal exemptions from annual charges [26] under the Commission's regulatoins.[27]

H. Delegations to the Director of the Office of Hydropower Licensing

The Commission is delegating authority to the Director of the Office of Hydropower Licensing to take additional action in two areas—enforcement and exemptions.

The Commission is delegating to the Director the authority to require a licensee or an applicant to take actions necessary to comply with the Commission's dam safety regulations [28] or actions that are otherwise necessary to protect human life, health, property, or the environment.[29] This delegation will make enforcement action by the Commission more rapid and effective.

The Commission is particularly concerned with the safety of projects that may be within its jurisdiction and are unlicensed. The Office of Hydropower Licensing is currently undertaking an inspection program to ensure that the owner of any unlicensed project within the Commission's jurisdiction obtains a license and takes any safety measures that may be necessary for the safe operation of the project and the prevention of injury.

The delegation to the Director relating to an unlicensed project confirms the Director's authority to take action on an unlicensed project. It expressly states that the Director may ascertain the Commission's jurisdiction over an unlicensed project, require filing of a license application, and require that actions necessary to comply with the Commission's dam safety regulations or otherwise protect human life, health, property, or the environment are undertaken.[30]

The Commission is also granting the Director authority to deny as well as grant applications for exemption [31] and the authority to reject or dismiss an application if an applicant does not correct deficiencies in the application or if an applicant fails to provide timely additional information [32] as required under Commission regulations.[33]

H. Other Amendments.

The Commission also amends its Rules of Practice and Procedure to conform to the delegations regarding the institution of procedures for contested audit issues.[34]

IV. Effective Date

The Administrative Procedure Act (APA) [35] requires that a notice of proposed rulemaking be published in the **Federal Register** and that an opportunity for comment be provided when an agency promulgates regulations. The APA sets forth exemptions to the notice and comment requirements if the rule is, *inter alia*, a rule of agency organization, procedure, or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary, or contrary to the public interest.

These regulations delegating authority set forth internal procedures to be followed by the Commission's staff. They relate to the performance of duties by the Commission staff and the way in which Commission business is conducted. The Commission finds that the rule is one of agency organization, procedure, or practice and that notice and public procedure thereon are not required.

In addition, under the APA, a substantive rule does not become effective until 30 days after publication or service.[36] This rule is procedural, rather than substantive, and therefore may become effective immediately.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 375 and 385, Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective April 15, 1988.

By the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commission Charles A. Trabandt, Dissenting in Part

I dissent in part as to three new specific delegations to the Director to the Office of Hydro Power Licensing (OHL).

First, I dissent from the new delegation on environmental matters in new section 375.314(g). This allows the Director to require operators of projects to undertake actions to protect the environment under the following conditions: (i) where the Commission has not acted yet to establish environmental protection requirements in the license or permit articles and conditions applicable to a project; or (ii) where required actions would not be consistent fully with any such license articles or conditions already established by the Commission.

I object to the provision for several reasons. First of all, the majority has failed to demonstrate any need for such new delegated authority. I see no reason for us to authorize the Director to impose on a project environmental protection measures before the Commission acts or outside any articles or conditions the Commission has already established. Additionally, such delegated authority would grant the Director a virtual "blank check" to order applicants, licensees and permittees to take almost any form of action the name of environmental protection, irrespective of pending or completed Commission action in the licensing process. We must not forget that current law requires that the licensing process reflect "equal consideration" of all relevant values, not only environmental concerns.

My opposition to this delegation goes beyond that. Clearly, the Director's new authority could also encompass issuing an order to an operating project to modify or cease operations without any prior notice to or participation by the Full Commission. Such unlimited delegation also offends the general notion that delegations be accompanied by specific guidelines for action and reflect already settled policy previously established by the Commission.

Second, I dissent from the new delegation in new section 375.314(h). Here, the Commission empowers the Director to independently initiate an investigation of the jurisdictional status of an unlicensed existing project, make the jurisdictional determination, require the filing of a license, and require actions equivalent to those of section 375.314(g). This new jurisdictional determination authority will codify an existing *unauthorized* practice of the Director over the past year, discussed in my opinion dissenting in part in the order issued by the Commission in Docket Nos. UL87-3-001 and UL87-9-001 in cases affecting two existing projects of the Fairfax County Water Authority.

The threshold issue for me, as it should be for the Commission, in hydro licensing regulation is the jurisdictional status of a project and whether it must be licensed under the Federal Power Act. The mandatory licensing of existing projects under such jurisdictional determinations the Director makes can impose on operators significant financial, operational and construction requirements. I am not persuaded that there is, in the first instance, any justification for the year-old nation wide investigatory program, whether as a matter of law of policy as discussed in my opinion in the *Fairfax County* cases.

But, even if there was such a persuasive justification, the actual jurisdictional determination should be vested in the Full Commission and *not* by delegation to the Director. The fact that the Director has already made 38 or more such wholly unauthorized determinations does not constitute persuasive justification. This delegation, in my judgment, is a plain and simple abdication of the Full Commission's jurisdictional determination responsibilities with absolutely no redeeming public policy purpose.

Finally, I dissent from the new delegation, in new sections 375.314(k)(2) and (k)(3), to the Director to reject or dismiss an application if an applicant does not correct deficiencies in the application or if an applicant fails to provide timely additional information. The Director of OHL in September and October 1985, used similar actions to dismiss over a 150 then pending applications as deficient. All but a few of those projects were lost as a result of that dismissal effort. Eventually, when the occasional appeals of the Director's actions reached the Full Commission, we granted further consideration to the projects and adopted a new "reasonable man" review standard for reversal of Director actions in place of the prior "arbitrary and capricious" standard. This new delegation effectively ratifies the general approach which lead to the 1985 Director actions and codifies it for the future.

Permitting project owners to appeal the Director's determinations to the Full Commission offers scant comfort. The appeal process, taking many months and

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[14] *See* section 8(b) of the Natural Gas Act, 15 U.S.C. 717g, section 301(b) of the Federal Power Act 16 U.S.C. 825, and section 20(f) of the Interstate Commerce Act, 49 U.S.C. 11301(c) (1987).

[15] New § 375.303(i).

[16] New § 375.304(b)(iii).

[17] 18 CFR 385.709(c)(2) (1987).

[18] New § 375.307(f)(2).

[19] New § 375.308(a)(3).

[20] New § 375.314(r).

[21] New § 375.307(b)(2), formerly 18 CFR 375.307(b)(2).

[22] 18 CFR 37.3(a) (1987).

[23] New § 375.310(b).

[24] 18 CFR 37.4 (1987).

[25] In a recent final rule updating the benchmark rate of return on common equity for the jurisdictional operations of electric public utilities, the Commission stated it will hold another annual generic rate of return proceeding and in that proceeding will decide whether to hold subsequent annual proceedings or to convert to periodic proceedings. *See* "Generic Determination of Rate of Return on Common Equity for Public Utilities," Docket No. RM87-35-000, Order No. 499 (Jan. 28 1988), 53 Fed. Reg. 3942, 3960 (Feb. 5, 1988).

[26] New § 375.313(b).

[27] 18 CFR 11.6 (1987).

[28] 18 CFR Part 12 (1987).

[29] New § 375.314(g). Authority to require actions to comply with Part 12 of the Commission's regulations, 18 CFR Part 12 (1987) is already delegated in § 12.4 of Title 18 CFR.

[30] New § 375.314(h).

[31] New § 375.314(a)(2).

[32] New §§ 375.314 (k)(2) and (k)(3).

[33] 18 CFR 4.32 (a), (b), (d)(1), and (f) and 4.38 (1987).

[34] 18 CFR 385.501 and 385.502 (1987).

[35] 5 U.S.C. 553(b) (1982).

[36] 5 U.S.C. 553(d) (1982).

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much effort, especially on the part of the large number of smaller and less financially capable project sponsors, does not provide a reasonable and practical procedural opportunity for them to challenge the Director's actions. That was the result in 1985 and, unfortunately, could be the result again under this new delegation if projects are dismissed by the Director and then, as it were, financially drowned by the delays and expenses in the appeal process to a clearly unsympathetic, if not completely uninterested, Full Commission. I am concerned seriously that this delegation will, at a minimum, create the delegated authority and procedural dynamics to bring about that irresponsible result time and time again.

In conclusion, I am reminded of a recent letter of March 17, 1988, from Cong. John D. Dingell, in his capacity as Chairman of the Subcommittee on Oversight and Investigations, of the House Committee on Energy and Commerce. In that letter, which was critical of the Commission's handling of cumulative impact assessments, Chairman Dingell commented that, "the subcommittee is interested in the FERC staff view * * * they are undoubtedly very capable, but under the law they are not the policy makers and they are not the people accountable to Congress * * * That is the role of the Commissioners." I could not agree more completely with the distinguished Chairman of the Subcommittee.

The Commissioners are the policy makers and hydro licensing authorities under the Federal Power Act and the Full Commission, not the staff, is accountable by law to Congress. The three areas of this delegation order discussed above, in the aggregate, constitute a significant delegation of our authority in hydro licensing to the staff and therefore to that extent an abdication of our statutory responsibilities. I cannot and will not support that clear and unambiguous result in this order.

Charles A. Trabandt,
Commissioner.

PART 375—THE COMMISSION

1. The authority citation of Part 375 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101–7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

§ 375.301 [Amended]

2. Section 375.301 is amended in paragraph (c) by removing "in contested cases" and inserting in its place "in uncontested cases."

3. Section 375.302 is amended by revising paragraphs (b) and (e), redesignating paragraph (g) as paragraph (f) and revising newly redesignated (f), redesignating and revising paragraph (h) as paragraph (g), adding a new paragraph (h), adding paragraph (m), and redesignating paragraphs (q) through (t) as (p) through (s), all to read as follows:

Subpart C—Delegations

§ 375.302 Delegations to the Secretary.

* * * * *

(b) Except as provided in § 385.213 of this chapter, prescribe, for good cause, a different time than that required by the Commission's Rules of Practice and Procedure for filing by public utilities, licensees, natural gas companies, and other persons of answers to complaints, petitions, motions, and other documents. Absent a waiver, no answers will be required to be filed by a party within less than ten days after the date of service of the document.

* * * * *

(e) Pass upon motions to intervene before a presiding administrative law judge is designated. If a presiding administrative law judge has been designated, the provisions of § 385.504(b)(12) of this chapter are controlling.

(f) Deny motions for extensions of time (other than motions made while a proceeding is pending before a presiding officer as defined in § 385.102(e)), except that such motions may be granted in accordance with § 385.2006 of this chapter.

(g) Reject any documents filed later than the time prescribed by an order or rule of the Commission, except that such documents may be accepted in accordance with § 385.2008 of this chapter.

(h) Reject any documents filed that do not meet the requirements of the Commission's rules which govern matters of form, except that such documents may be accepted in accordance with § 385.2001 of this chapter for good cause shown.

* * * * *

(m) Issue notices or orders instituting procedures to be followed concerning contested audit issues under Parts 41 or 158 of this chapter either when the utility:

(1) Initially notifies the Commission that it requests disposition of a contested issue pursuant to §§ 41.7 or 158.7 of this chapter; or

(2) Requests disposition of a contested issue pursuant to the shortened procedures provided in §§ 41.3 or 158.3 of this chapter.

* * * * *

4. Section 375.303 is amended by revising paragraphs (f) and (g) and adding new paragraphs (h) and (i), to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(f) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(g) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.301, 381.506, 381.507, and 381.508 of this chapter in accordance with § 381.106(b) of this chapter.

(h) Pass upon and approve requests by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Chief Accountant.

(i) With regard to billing errors noted as a result of Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and refunds, to the extent the company agrees.

5. Section 375.304 is revised to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge.

(a) The Commission authorizes the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to exercise the power granted to a Presiding Officer by Part 385, particularly § 385.504 of this chapter.

(b) The Commission authorizes the Chief Administrative Law Judge to

(1) For those proceedings pending under Subpart E of Part 385 of this chapter:

(i) Consolidate for hearing two or more proceedings on any or all issues,

(ii) Sever two or more proceedings or issues in a proceeding,

(iii) Designate and substitute presiding officers, and

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause.

(2) For proceedings under Subparts I and J of Part 385 of this chapter, designate presiding officers who will have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to sections 503(c) and 504(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7193(c) and 7194(b)(1) (1982).

(3) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106 of this chapter.

6. Section 375.307 is revised to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipelines and Producer Regulation.

The Commission authorizes the Director of the Office of Pipeline and Producer Regulation or the Director's designee to:

(a) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost of less than $5,000,000;

(2) Abbreviated applications and amendments thereto, pursuant to § 157.7 (b), (c), (d), (e), and (g) of this chapter, including requests for waiver of single project and annual cost limits as prescribed in § 157.7(b)(1), (c) (d), and (g) of this chapter;

(3) Applications by a pipeline for the abandonment of pipeline gas purchase facilities with a construction cost of less than $1,000,000 or for the deletion of delivery points. This authority shall be exercised only if the producer servicing the jurisdictional pipeline has received Commission approval to abandon service to the pipeline or if the producer servicing the jurisdictional pipeline has demonstrated that the gas involved is not subject to section 7(b) of the Natural Gas Act by operation of section 601(a)(1) (A) or (B) of the Natural Gas Policy Act of 1978;

(4) Applications to abandon pipeline or producer facilities or services (other than budget applications) involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(5) Applications for temporary and permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the estimated cost of construction of the certificate applicant's related facility is less than $5,000,000 as provided in § 375.307(a)(3) of this chapter;

(6) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§ 284.221 and 284.224 of this chapter;

(7) Applications for temporary certificates pursuant to § 157.17 of this chapter;

(8) Applications for temporary and permanent certificates of public convenience and necessity by independent producers pursuant to §§ 157.23, 157.28, and 157.40 of this chapter;

(9) Applications to take the following actions pursuant to section 7(c) of the Natural Gas Act, if such applications provide that the sales volumes remain within total existing contract demand and certificate levels:

(i) Change delivery points for existing sales customers,

(ii) Add new delivery points for existing sales customers, and

(iii) Change volumes of gas to be delivered from one to another of an existing sales customer's delivery points;

(10) Petitions to amend certificates to conform to actual construction;

(11) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act;

(12) Applications for blanket certificates of public convenience and necessity pursuant to Subpart F of Part 157 of this chapter, including waiver of project cost limitations on §§ 157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f) of this chapter;

(13) Applications for certificates of public convenience and necessity for off-system sales, pursuant to the Statement of Policy issued April 25, 1983 in Docket No. PL83–2–000;

(14) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate or other incident of service;

(15) Applications for approval of customers rate schedule shifts;

(16) Applications filed under section 1(c) of the Natural Gas Act and Part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant;

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(17) Certificates and related rate schedules of an independent producer, to the extent the service is no longer subject to Commission jurisdiction under the Natural Gas Act including:

(i) Vacating the order previously issued granting a certificate of public convenience and necessity; and

(ii) Cancelling the prior acceptance of, and permitting withdrawal of, the related rate schedule upon request of the filing party or if the certificate or application is currently being or has been previously withdrawn; and

(18) Offers of settlement in the Independent Oil and Gas Association of West Virginia proceedings in Docket Nos. RI74–188 and RI75–21, that are substantially similar to settlements previously approved by the Commissions therein.

(b) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose such appropriate conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under § 154.303(e) and § 154.63(a)(2) of this chapter, and under section 4(e) of the Natural Gas Act, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of such waiver.

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Advise the filing party of any actions taken under paragraphs (b)(1) or (b)(2) of this section and designate rate schedules, rate schedules changes, and notices of changes in rates, and the effective date thereof;

(4) Accept rate filings of jurisdictional natural gas companies which involve replacement and rollover contracts; and

(5) Accept statements of eligibility filed under § 2.56(p) of this chapter by producers of natural gas, as defined in §§ 154.91 and 157.40 of this chapter.

(c) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Compute, for each month, pursuant to section 101(b)(6) of the Natural Gas Policy Act of 1978, the maximum lawful prices prescribed under Title I of the act and the monthly equivalent of the annual inflation adjustment factor for each such month, and publish as soon as possible thereafter such prices and such factor for such month in the **Federal Register**;

(2) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice pursuant to § 274.104 of this chapter of a well category determination by a jurisdictional agency that the notice is incomplete, in accordance with § 275.202(b)(2) of this chapter; and

(3) Pass upon an uncontested request for extension of time to file a report for an extension of authorization to sell natural gas under section 311(b) of the Natural Gas Policy Act of 1978 when such report must be filed pursuant to § 284.148(c) of this chapter. If such report for which an extension of time has been granted by the Director under this paragraph is filed late, the Director will notify the one making such filing that there will be 90 days for Commission consideration of extension of authorization requested by the report, after which time an extension of authorization is deemed granted if the Commission has not acted.

(d) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(e) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in Table I of § 157.208 and Table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the **Federal Register**;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(3) Initiate an annual survey of the impact of winter gas supply (Omnibus Report);

(4) Issue and sign deficiency letters regarding natural gas applications;

(5) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(6) Reject requests which patently fail to comply with the provisions of § 157.205(b) of this chapter; and

(7) Grant any producer's uncontested application for abandonment, in accordance with § 2.77 of this chapter.

(f) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter;

(2) Filing requirements for statements and reports under Part 260 of this chapter;

(3) Fees prescribed in §§ 381.201. 381.202, 381.203, 381.204, 381.205, 381.206, 381.207, 381.208, 381.209, 381.401, 381.402, 381.403, and 381.404 of this chapter in accordance with § 381.106(d) of this chapter; and

(4) Annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.106 of this chapter.

7. Section 375.308 is revised to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

The Commission authorizes the Director of the Office of Electric Power Regulation or the Director's designee to:

(a) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy, or his designee, for power developed at projects owned and operated by the Federal government and

for services provided by Federal power marketing agencies;

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

(b) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Exemptions pursuant to § 290.601 of this chapter, extensions pursuant to § 290.602 of this chapter, and withdrawals of exemptions and extensions pursuant to § 290.603 of this chapter;

(4) Certification of the qualifying status for small power production and cogeneration facilities under § 292.207 of this chapter; and

(5) The extension of time for public utilities to file required reports, data, and information and to do other acts required to be done within a specific time period by any rule, regulation, or order of the commission.

(c) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings relating to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with *Massachusetts Refusetech, Inc.*, 31 FERC ¶ 61, 048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(d) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease or disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and reports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for Federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(e) Take appropriate action on requests or petitions for waivers of:

(1) Filing requirements for matters which are the subject of delegated authority, provided the request conforms to the requirement of § 385.2001 of this chapter;

(2) Fees prescribed in §§ 381.502, 381.503, 381.504, 381.505, 381.509, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106(b) of this chapter;

(3) The requirements of Subpart C of Part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.403 of this chapter; and

(4) Annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

8. Section 375.310 is added to read as follows:

§ 375.310 Delegations to the Director of the Office of Economic Policy.

The Commission authorizes the Director of the Office of Economic Policy, or the Director's designee, to issue quarterly updates of the benchmark rate of return on common equity for the jurisdictional operations of public utilities under Part 37 of this chapter.

9. Section 375.313 is amended by adding new paragraphs (e) through (h).

§ 375.313 Delegations to the Executive Director.

* * * * *

(e) Determine the annual charges for administrative costs, for use of United States lands, and for use of Government dams or other structures.

(f) Grant or deny waiver of penalty charges for late payment of annual charges.

(g) Give credit for overpayment of annual charges.

(h) Deny or grant, in whole or in part, petitions for exemption from annual charges under § 11.6 of this chapter for state and municipal licensees.

10. Section 375.314 is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

The Commission authorizes the Director of the Office of Hydropower Licensing or the Director's designee to:

(a) Take appropriate action on uncontested applications and on applications for which the only motion or notice of intervention is filed by a competing preliminary permit or exemption applicant that does not propose and substantiate materially different plans to develop, conserve, and utilize the water resources of the region for the following:

(1) Licenses (including original, new, and transmission line licenses) under Part I of the Federal Power Act;

(2) Exemptions from all or part of the licensing requirements of Part I of the Federal Power Act; and

(3) Preliminary permits for proposed projects.

(b) Take appropriate action on uncontested applications for:

(1) Amendments (including changes in the use or disposal of water power project lands or waters or in the boundaries of water power projects) to licenses (including original, new, and transmission line licenses) under Part I of the Federal Power Act, exemptions from all or part of the requirements of Part I of the Federal Power Act, and preliminary permits; and

(2) Surrenders of licenses (including original and new), exemptions, and preliminary permits.

(c) Take appropriate action on the following:

(1) Determinations or vacations with respect to lands of the United States reserved from entry, location, or other disposal under section 24 of the Federal Power Act;

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(2) Transfer of a license under section 8 of the Federal Power Act;

(3) Applications for the surrender of transmission line licenses pursuant to Part 6 of this chapter;

(4) Motions filed by licensees, permittees, exemptees, applicants, and others requesting an extension of time to file required submittals, reports, data, and information and to do other acts required to be done at or within a specific time period by any rule, regulation, license, exemption, permit, notice, letter, or order of the Commission in accordance with § 385.2008 of this chapter;

(5) Declarations of intent and petitions for declaratory orders concerning the Commission's jurisdiction over a hydropower project under the Federal Power Act;

(6) New or revised exhibits, studies, plans, reports, maps, drawings, or specifications, or other such filings made voluntarily or in response to a term or condition in a preliminary permit, license, or exemption issued for a hydropower project, or in response to the requirements of an order of the Commission or presiding officer's initial decision concerning a hydropower project;

(7) Requests by applicants to withdraw, pursuant to § 385.216 of this chapter, any pleadings under Part I of the Federal Power Act and any pleadings related to exemptions from all or part of Part I of the Federal Power Act;

(8) Requests by licensees for exemption from:

(i) The requirement of filing FERC Form No. 80, Licensed Projects Recreation, under § 8.11 of this chapter; and

(ii) The fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chaper and the fees in § 381.305 of this chapter, in accordance with § 381.106 of this chapter;

(9) Requests for waivers incidental to the exercise of delegated authority provided the request conforms to the requirements of § 385.2001 of this chapter;

(10) Proposals for the development of water resources projects submitted by other agencies of the Federal government for Commission review or comment. The Director shall direct comments, when necessary, to the sponsoring agency on matters including, but not limited to, the need for, and appropriate size of, any hydroelectric power installation proposed by any other agency of the Federal government;

(11) The reasonableness of disputed agency cost statements pursuant to § 4.303(d) of this chapter.

(d) Issue an order pursuant to section 5 of the Federal Power Act to cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit; provided:

(1) The Director gives notice to the permittee of probable cancellation no less than 30 days prior to the issuance of the cancellation order, and

(2) The permittee does not oppose the issuance of the cancellation order.

(e) Issue an order to revoke an exemption of a small conduit hydroelectric facility from the licensing provisions of Part I of the Federal Power Act granted pursuant to § 4.93 of this chapter, or an exemption of a small hydroelectric power project from the licensing provisions of Part I of the Federal Power Act granted pursuant to § 4.105 of this chapter if the exemption holder fails to begin or complete actual construction of the exempted facility or project within the time specified in the order granting the exemption or in Commission regulations at § 4.94(c) or § 4.106(c) of this chapter, provided:

(1) The Director gives notice to the exemption holder by certified mail of probable revocation no less than 30 days prior to the issuance of the revocation order, and

(2) The holder of the exemption does not oppose the issuance of the revocation order.

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under Part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 90 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

(g) Require licensees and applicants for water power projects to make repairs to project works, take any related actions for the purpose of maintaining the safety and adequacy of such works, make or modify emergency action plans, have inspections by independent consultants, and perform other actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment.

(h) For any unlicensed or unexempted hydropower project, take the following actions:

(1) Conduct investigations to ascertain the Commission's jurisdiction,

(2) Make preliminary jurisdictional determinations, and

(3) If a project has been preliminarily determined to require a license, issue notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

(i) Take appropriate action on uncontested settlements among non-Federal parties involving headwater benefits.

(j) Dismiss applications for licenses and approve the withdrawal of applications for hydropower project licenses, in instances where no petition for or notice of intervention contending that licensing is required under Part I of the Federal Power Act has been filed and the Director determines that licensing is not required by such Part I.

(k) Reject or dismiss an application filed under Part I of the Federal Power Act or an application for an exemption from some or all of the requirements of Part I of the Federal Power Act if:

(1) An application is patently deficient under § 4.32(d)(2)(i);

(2) A revised application

(i) Does not conform to the requirements of §§ 4.32(a), 4.32(b), or 4.38, under § 4.32(d)(1) or

(ii) If revisions to an application are not timely submitted under § 4.32(d)(1); or

(3) The applicant fails to provide timely additional information, documents, or copies of submitted materials under § 4.32(f).

(l) Redesignate proceedings, licenses, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to or invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(m) Determine payments for headwater benefits from the operation of Federal reservoir projects.

(n) Determine whether to allow a credit against annual charges for the use of government dams or other structures billed to licensees each year for contractual payments for the construction, operation, and maintenance of a Federal dam.

(o) Prepare and issue comments on general water policy and planning issues for the use of the Director of the Water Resources Council or the Assistant Secretaries of the Department of Energy.

(p) Prepare and transmit letters concerning power site lands to the Bureau of Land Management and the U.S. Geological Survey; respond to routine requests for information and any non-docketed correspondence; prepare and transmit letters requesting comments or additional information on applications for hydropower project licenses, preliminary permits, exemptions, amendments of licenses, permits, or exemptions, and other similar matters from Federal, state, and local agencies, from applicants, and from other appropriate persons; and prepare and transmit letters regarding whether transmission lines are works of a hydropower project and are required to be licensed.

(q) Reject an application or other filing under Section 405 of the Public Utility Regulatory Policies Act of 1978, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

PART 385—RULES OF PRACTICE AND PROCEDURE

11. The authority citation of Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

12. Section 385.501 is revised to read as follows:

§ 385.501 Applicability (Rule 501).

This subpart applies to any proceeding, or part of a proceeding, that the Commission or the Secretary under delegated authority sets for a hearing to be conducted in accordance with this subpart.

13. In § 385.502, paragraph (a)(2) is revised to read as follows:

§ 385.502 Initiation of hearing (Rule 502).

(a) *Notice or order initiating hearing.*

* * *

(2) Notice by the Secretary at the direction of the Commission or under delegated authority; or

* * * * *

[FR Doc. 88-9846 Filed 5-4-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85P-0119]

Food Labeling; Exemption of Required Label Statements on Food Containers With Separate Lids

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is broadening an exemption from the food labeling rule that requires certain label statements to appear on the same label panel. Presently the exemption applies to containers of certain dairy foods and frozen confections that have separate lids and that meet other qualifications. The amendment will make the exemption applicable to all foods meeting the container and labeling specifications.

DATE: Effective May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 1985 (50 FR 52937), FDA published a proposal to exempt all foods in qualifying containers from the food labeling rule that requires placement of certain label statements on a single label panel (21 CFR 101.2(d)(1)). For a food to qualify for this exemption (21 CFR 101.2(d)(2)), its container must meet all of the following conditions: (1) The container has a separate lid and body; (2) the lid qualifies for and is used as a principal display panel; and (3) the container bears nutrition labeling in accordance with 21 CFR 101.9. The proposal was based in part on a petition from the National Association of Margarine Manufacturers (NAMM). Prior to this rulemaking, this labeling exemption was limited to certain dairy foods and frozen confections.

Without the § 101.2(d)(2) exemption, the label statements that are generally required by §§ 101.2 (b) and (d)(1) to be placed on a single panel are as follows: The ingredient statement (§ 101.4); the name and place of business of the manufacturer, packer, or distributor (§ 101.5); the number of servings (§ 101.8); nutrition labeling (§ 101.9); label warnings (§ 101.17); cholesterol, fat, and fatty acid labeling (§ 101.25); and labeling for foods for special dietary use (21 CFR Part 105). Some of these label statements, such as nutrition labeling, are required only under certain conditions. These conditions are given in specific labeling regulations.

The purpose for establishing the § 101.2(d)(2) exemption was to permit separation of certain of the above required label information so that the same container body, i.e., a generic body, can be used to package several products. For example, the name and address of the reponsible firm is permitted to appear on the lid, separate from the nutrition labeling and the ingredient statement that appear on the body of the container. Thus, the exemption makes it possible for several distributors of the same food to use the same container body that is lithographed with the same nutrition and ingredient information (generic container body). This reduces labeling costs because one rather than several differently printed container bodies is required and cost per container is minimized by printing larger quantities of containers in a production run. Thus, the limited exemption from the single panel grouping requirement to permit use of generic container bodies would benefit manufacturers and consumers by lowering labeling costs without decreasing the label information provided to consumers.

Four comments were received, including comments from NAMM, two other food industry trade associations, and an attorney. These comments generally supported the proposal. One comment, however, pointed out an error in the preamble of the proposal regarding what label statements must appear on the same label panel. Another comment requested an expansion of the exemption. A discussion of the two issues raised in the comments and the agency's responses follows.

1. One comment concerned an error in the preamble to the proposal. The comment pointed out that § 101.2(d)(1) does not require all label statements to be placed on a single panel of the label.

FDA agrees with the comment. The requirement in § 101.2(d)(1) to place certain label information on a single panel of the label pertains only to the label information specified in § 101.2(b) (this information is outlined in the introduction to this document) to be listed on either the principal display panel or the information panel. The requirement to place these label statements on a single panel does not apply to other required label statements, such as the statement of identity and the quantity of contents statement, which

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are required to be placed on the principal display panel.

2. One comment requested that the agency consider expanding the exemption to include all food containers where the lid is designed to serve as the principal display panel.

The comment did not submit any information to support expanding the exemption. As discussed above, occasionally manufacturers find that when nutrition labeling is required, there is not always adequate room for other required information to appear on the principal display panel. The agency has, under these circumstances, entertained requests from manufacturers for exemptions from the strictures of the principal display panel regulation. For example, in support of the petition that has led to this final rule, NAMM was able to demonstrate that the lid of a margarine top is an appropriate place for name and place of business of a manufacturer, packer, or distributor when considerations of availability of label space and visibility are at issue and that duplicating such labeling information on the lid and body is costly. The agency is more than willing to entertain other specific requests for exemption from the regulations. However, to consider such a request for exemption in the absence of a clear rationale and specific information supporting the request would be contrary to the agency's general labeling policy of encouraging manufacturers to make important food-related information easily locatable on product labeling.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (50 FR 52937). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the order. The agency has not received any new information or comments that would alter its previous determination.

List of Subjects in 21 CFR Part 101

Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 continues to read as follows:

Authority: Secs. 4, 6, Pub. L. 89–755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 403, 701, Pub. L. 717, 52 Stat. 1047–1048 as amended, 1055–1056 as amended (21 U.S.C. 343, 371); 21 CFR 5.10 and 5.11; § 101.11 is issued only under secs. 201(s), 403(p), 409, 701(a), Pub. L. 717, 52 Stat. 1055, 72 Stat. 1784–1788 as amended, 91 Stat. 1453 (21 U.S.C. 321(s), 343(p), 348, 371(a)) and Pub. L. 95–203, 91 Stat. 1451 1454 (21 U.S.C. 301 note); § 101.100(a)(4) is issued only under secs. 201 (n) and (s), 403, 409, 701, 52 Stat. 1041 as amended, 1047–1048 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321 (n) and (s), 343, 348, 371).

2. Section 101.2 is amended by revising the introductory text of paragraph (d)(2) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d) * * *

(2) Any food, not otherwise exempted in this section, if packaged in a container consisting of a separate lid and body, and bearing nutrition labeling pursuant to § 101.9, and if the lid qualifies for and is designed to serve as a principal display panel, shall be exempt from the placement requirements of this section in the following respects:

* * * * *

Dated: April 28, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-9973 Filed 5-4-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 232, 241, and 242

[Docket No. R-87-1313; FR-2227]

Mortgage Insurance for Hospitals; Miscellaneous Revisions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Housing and Community Development Act of 1987 ("The 1987 Act") and the Housing and Urban-Rural Recovery Act of 1983 relating to the Department's hospital mortgage insurance program. Specifically, this rule: (1) Provides for the eligibility of public hospitals to obtain federal mortgage insurance for rehabilitation or new construction on the same basis as nonprofit mortgagors; and (2) provides for an alternative State certification procedure to satisfy the "certificate of need" requirement governing mortgage insurance for hospitals. Furthermore, as a result of the 1987 Act, the Department will not implement certain provisions in this final rule that were proposed in earlier rulemakings, including: (1) The additional security requirements for certain publicly supported hospitals; (2) the sliding scale provision for determining the maximum insurable mortgage amount under the 242 program; (3) the increased cash equity requirements under the adjusted and reduced mortgage amounts provision; and (4) the revision that would have restricted the ability of nonprofit organizations to fund certain equity requirements through the posting of a letter of credit. This rule also makes a number of technical revisions to the hospital insurance program, the supplemental loan insurance program, and the nursing homes, intermediate care facilities and board and care homes insurance program. This rule will update the Department's hospital insurance regulations to conform them to all significant elements of the 1987 Act.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 755–6500. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

I. Background

On October 12, 1984, the Department published two proposed rules to revise the regulations governing the Department's mortgage insurance program for hospitals (49 FR 40044 and 40047). The first rule (the "sliding scale" proposed rule) proposed a progressively declining maximum loan-to-replacement cost ratio as replacement costs increase above $100 million. The second rule (the "public hospital" proposed rule) provided for the eligibility of public hospitals for mortgage insurance. It also proposed certain additional security requirements for a hospital seeking

mortgage insurance where the hospital had a history of receiving public support.

Following the publication of these proposed rules, the Department proposed additional revisions to the hospital mortgage insurance program on January 12, 1987 (52 FR 1201). Because several of these changes related to the subject matter of the sliding scale and public hospital rules, the Department sought public comment on these additional changes before publishing a final rule.

Then, on February 5, 1988, President Reagan signed the Housing and Community Development Act of 1987 (Pub. L. 100–242) which contained several provisions amending the Department's hospital insurance program under section 242 of the National Housing Act. Several of these provisions effectively contravened the Department's previously proposed regulatory initiatives, while others (such as the alternative state certification procedure) imposed an affirmative obligation upon HUD to develop new regulatory procedures. Discussed below are the legislative provisions contained in the 1987 Act as they pertain to the Department's hospital mortgage insurance program.

II. Impact of the 1987 Housing Act Amendments on the Section 242 Hospital Mortgage Insurance Program

A. Alternative State Certification Requirements

Before the recent statutory amendment, the Department was statutorily barred from insuring a hospital mortgage under the Section 242 program unless the State agency designated under the Public Health Service Act provided a certificate of need that: (i) Confirmed that a need existed for the hospital; and (ii) ensured that the State (or the appropriate political subdivision within the State) had minimum standards of licensure and methods of operation for hospitals which would be applied to the hospital for which mortgage insurance was being sought.

Section 411 of the 1987 Housing Act amends the National Housing Act's statutory requirement for a certificate of need and provides for an alternative State certification procedure for those States that either do not have a State agency designated under the Public Health Service Act, or where the agency exists but is not empowered to provide a certificate of need. (Since the Department does not currently refinance existing hospitals under section 223(f) of the National Housing Act, the analogous certification procedure under section 409(a) is not being implemented in this final rule). Under the alternative certification mechanism, the Department is empowered to insure a mortgage under Part 242 if the State in which the hospital is located conducts, or commissions and pays for the preparation of, an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital; and

(iii) Is forwarded to the Secretary of HHS, for approval by HHS and the Secretary of HUD.

In the event the State does not prepare the market need and feasibility study, a financial consultant selected by the State and approved by the Secretary may be substituted in its place. Furthermore, the proposed mortgagor may reimburse the State for the cost of preparing the independent feasibility study.

The Department has chosen to implement this alternative State certification requirement in this final rule, rather than in a separate proposed rulemaking, for a number of reasons. Both sections 409 and 411 contain statutory deadlines that require the Secretary to issue regulations implementing the certification procedure within 90 days of the date of enactment of the 1987 Act. This limited timeframe for producing a final rule, combined with the fact that the Department has exercised little or no regulatory discretion in implementing the certification procedure, weighed strongly in favor of incorporating the provision into this final hospital rule.

Buttressing this view is the fact that the alternative certification procedure included in this rule *expands*, rather than narrows, the class of eligible participants under the Department's 242 hospital insurance program by providing alternative means of satisfying the certificate of need requirement. The Department nevertheless invites public comment on the certification procedure established in this final rule, and will consider modifications as appropriate.

B. Eligibility of Public Hospitals Under Section 242

On October 12, 1984, the Department published a proposed rule (49 FR 40047) to amend its regulations in Part 242 to include public hospitals in the insurance program, as authorized by the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181 [amending Section 242 of the National Housing Act]. Because of additional proposed modifications to the Part 242 program, this provision was never implemented by final rule.

Section 412(d) of the 1987 Act requires the Department immediately (i.e., as of the date of enactment of the Act—February 5, 1988) to begin processing applications for mortgage insurance from public facility mortgagors. Such applications are to be processed under the requirements currently applicable to private nonprofit mortgagors. The Department is notifying its field offices to accept applications for mortgage insurance from public facility mortgagors in accordance with the statutory directive.

In addition, this final rule amends Part 242, as proposed, to extend eligibility to public hospital mortgagors and to provide that applications from public hospital mortgagors will be processed in accordance with existing requirements applicable to nonprofit mortgagors.

C. Additional Security Requirements

The Department's October 12, 1984 proposed rule sought to require hospitals that are heavily dependent on local tax or other appropriations to comply with added security requirements in order to be eligible for mortgage insurance under Part 242. Under the proposed rule, a hospital would be subject to added security requirements if, during any one of the five years preceding the filing of its application, it received 10 percent or more of its operating revenues from local tax or other appropriations. The Department had determined that such a scenario was a cause for concern, and offered two alternatives for a hospital mortgagor to mitigate the increased risk and to qualify for 242 mortgage insurance.

First, local jurisdictions providing financial support to the hospital would be required to execute a legally binding commitment to provide the hospital with specified financial support over the mortgage term, based upon projections of need made by the Department of Health and Human Services (HHS).

Alternatively, if the local jurisdiction was legally unable to make such a commitment, it would be required to provide the mortgagee with an escrow or letter of credit in an amount calculated by HHS based on HHS' projection of the amount of operating support the hospital would require from the jurisdiction each year, but in no event would the projected operating

support percentage be less than 5 percent. If a default occurred under the mortgage, the insurance benefit paid by HUD under a claim would be reduced by the amount of the escrow or letter of credit, except that where the jurisdiction had paid its required operating support during each of the five years preceding the default, HUD would pay the claim in full.

In January 1987, this rule was reproposed, but with one significant modification. The Department proposed making a mortgage *ineligible* for insurance if it covered a hospital with a projected annual operating support percentage greater than 10 percent. This provision was included in the 1987 proposed rule because of the Department's concern that hospitals requiring such substantial levels of support would present an undue risk to the Insurance Fund, particularly since such hospitals would be unlikely to be able to obtain legally binding commitments from public entities.

However, the 1987 Act amends section 242(a) of the National Housing Act to read:

> The purpose of this section is to assist the provision of urgently needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals. *Such assistance shall be provided regardless of the amount of public financial or other support a hospital may receive, and the Secretary shall neither require additional security or collateral to guarantee such support, nor impose more stringent eligibility or other requirements on publicly owned or supported hospitals.* [Emphasis added.]

Accordingly, the Department has withdrawn its earlier proposed additional security requirements and will not seek to impose any additional collateral requirements on pubicly owned or supported hospitals. The Department intends to process applications from publicly supported hospitals on the same basis as applications from nonprofit mortgagors under the section 242 program.

Nevertheless, it should be noted that the Department fully intends to have the financial feasibility of *every* hospital evaluated under the 242 program—whether publicly or privately owned—before extending an insurance commitment. This position is supported by the legialative history of the 1987 Act, which states:

> A third provision is intended to assure that an institution is not disqualified from the program merely because of the amount of public support received by the institution. Burdensome and inappropriate financial restrictions should not prohibit otherwise qualified institutions from receiving the benefits of the Section 242 program * * * *By making these changes the Committee does not intend to require the Department to insure mortgage loans for public (or publicly supported) institutions which are economically infeasible and which may not be paid on time.* [Emphasis added.] (*See* H.R. Rep. No. 100–122, 100th Cong., 1st Sess. 63 (1987)).

D. Maximum Insurable Mortgage Amounts (Sliding Scale Provision) and Adjusted and Reduced Mortgage Amounts

On October 12, 1984, the Department published a notice of proposed rulemaking to revise its regulations governing the maximum mortgage principal amount that it would insure for a new or rehabilitated hospital (*see* 49 FR 40044). HUD's proposal was designed to reduce the future risk of large scale insurance claims under the Part 242 program.

Under the Department's existing rule at 24 CFR 242.27, one of the maximum insurable mortgage criteria is that HUD can insure a hospital mortgage in an amount not in excess of 90 percent of HUD's estimate of the replacement cost of the hospital (including major moveable equipment). Under the proposed rule, the 90 percent limitation would apply only to a hospital project having a replacement value of no more than $100 million (subsequently, the Department amended the sliding scale to apply declining percentages of insurable replacement costs on an incremental basis, beginning with replacement costs exceeding *$75 million*.)

Then, on January 12, 1987, the Department proposed amending § 242.29, Adjusted and reduced mortgate amounts, by requiring all mortgagors under the 242 program to have a cash investment in the hospital equal to at least 10 percent of the estimated cost of construction or rehabilitation (or five percent, with HHS approval, if the mortgage insurance premium was revised to three-quarters of one percent of the original mortgage amounts).

With the passage of the 1987 Housing Act, section 242 of the National Housing Act was amended to read:

> The mortgage shall involve a principal obligation *in the amount requested by the mortgagor if such* amount does not exceed 90 percent of the estimated replacement cost of the property or project including— (Emphasis added to highlight 1987 Act amendment.)

The Department has construed this legislative provision as precluding the proposed amendments to §§ 242.27 and 242.29. A literal reading of the amendment could appear to eliminate even existing regulatory limitations on maximum mortgage amounts, since the statutory provision states that the amount to be insured would be "the amount requested by the mortgagor". However, such a reading is clearly inconsistent with the Department's fiduciary responsibilities as a mortgage insurer (and with the role of the Department of Health and Human Services in processing hospital mortgage insurance applications). It is fundamental to the Federal government's role as an insurer that it continue to assess whether the mortgaged property is capable of supporting the mortgage debt service. The legislative history accompanying section 412(b) of the 1987 Act substantiates this conclusion.

Congress has indicated that the amendments to Part 242 of the National Housing Act are intended to assure that hospitals, including public hospitals, receive benefits in a "fair and equitable manner." Specifically, on the issue of maximum mortgage amounts, Congress stated the following:

> In that regard, one of the provisions is intended to assure that regulatory practices currently set forth in 24 Code of Federal Regulations 242.27 and 242.29, which determine the maximum insurable mortgage amount for Section 242 hospitals, are continued without modification. This provision is not intended to expand or modify current privileges of eligible institutions, nor to eliminate the Department's statutory obligation to determine that mortgage loans insured under this Section are feasible and will be repaid on time. Further, it is not intended that an institution is entitled to a 90 percent loan without demonstrating its ability to repay such debt, nor is it intended that an institution is precluded from requesting a smaller loan. Because this provision is intended to solely confirm existing regulatory practices, no further Department regulation will be necessary to implement this amendment. (*See* H.R. Rep. No. 100–122, 100th Cong., 1st Sess. 63 (1987)).

In accordance with this statutory directive, the Department will not implement its previously proposed sliding scale for determining maximum insurable mortgage amounts under § 242.27. Furthermore, the Department will retain existing § 242.29, Adjusted and reduced mortgage amounts, which currently provides for a case-by-case evaluation by HHS of the financial feasibility of individual hospital projects. Such an evaluation enables the Department to determine whether a hospital's cash resources are sufficient to provide cash equity, while retaining adequate reserves to avert future operating difficulties.

E. Letters of Credit

In its January 12, 1987 proposed rule, the Department proposed amending § 242.57 to eliminate the ability of a nonprofit mortgagor to use a letter of credit to meet its equity requirements under the 242 hospital insurance program. This proposed revision has been effectively contravened by section 412 of the 1987 Act which specifically provides for the continued use of letters of credit by nonprofit, and the extension of this privilege to public mortgagors as well:

> To the extent that a private nonprofit or public facility mortgagor is required by the Secretary to provide cash equity in excess of the amount of the mortgage to complete the project, the mortgagor shall be entitled, at the option of the mortgagee, to fund the excess with a letter of credit. In such event, mortgage proceeds may be advanced to the mortgagor prior to any demand being made on the letter of credit.

The legislative history of this amendment reflects the fact that Congress intended the Department to continue implementing its existing letter of credit provisions, rather than to undertake any new regulatory initiative. H.R. Rep. No. 100–122, 100th Cong., 1st Sess. 63 (1987) states that:

> Another provision in the Committee bill is intended to codify the Department's existing regulatory practices regarding the right of qualified institutions to represent any required cash equity at loan closing by the presentation of a letter of credit to be drawn upon subsequent to the disbursement of mortgage proceeds and prior to final endorsement. This amendment recognizes that nonprofit and public institutions in many cases raise cash equity through charitable contributions which are frequently collected during the construction period for application to project costs in lieu of draws upon the letter of credit. *As Department regulations now exist to accomplish this result, no further regulations will be required to implement this amendment.* (Emphasis added.)

Accordingly, the Department has withdrawn its proposed revision to § 242.57 and will continue its existing practice of permitting nonprofit mortgagors to fund their excess equity requirements by a letter of credit. In addition, § 242.57 is revised to extend this privilege to public facility mortgagors. In both instances, the mortgage proceeds may be advanced before any demand is made on the letter of credit.

III. Revisions to the Part 242 Hospital Mortgage Insurance Program

The following two sections of this preamble describe the Department's revisions in this final rule to the hospital mortgage insurance regulations based upon legislative provisions contained in the 1987 Act, and public comments received on the three earlier proposed rules:

1. Section 242.1, Definitions, has been revised as proposed by removing the paragraph designations (a) through (g), defining the term "hospital" to include public facilities owned by a State or unit of local government, and adding a new defined term, "Secretary of HHS", in appropriate alphabetical order.

2. Section 242.2, Encouragement of certain programs, has been added to establish the policy governing Part 242—that the activities and functions under this part are to be carried out in a manner that will encourage the provision of comprehensive health care and, in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of their ability to pay.

3. Section 242.3 has been revised as proposed to provide greater details in paragraph (a) on the factors that the Department of Health and Human Services (HHS) considers in determining the feasibility of a hospital proposal. This revision does not effect any substantive change in HHS' current procedures for reviewing hospital proposals submitted under HUD's hospital mortgage insurance program. Section 242.3(a), as revised by this rule, includes the provision in the current regulations that applications for mortgage insurance under Part 242 will only be considered in connection with hospital proposals that are substantially in accord with the provisions of Title VI of the Public Health Service Act and its implementing standards. However, in the absence of such standards, the hospital proposal must conform to other comparable standards determined to be appropriate by the Secretary of HHS. Finally, while the Department has adopted the proposed revision making the mortgage insurance application fee payable at the time the application is submitted to HHS, the paragraph designation for this provision is changed [from (c) to (b)] for the sake of chronological clarity.

4. Section 242.5, Certification by State agency, has been revised to reflect the alternative State certification procedure mandated by section 411 of the 1987 Housing Act (see discussion in Part II above). This new provision enables the Department to insure a mortgage even where the statutorily required certificate of need is unavailable, either because the hospital is located in a State that does not have an agency designated under the Public Health Service Act, or where the agency exists but is not empowered to provide the certificate of need. (It should be noted that since the Department does not currently refinance existing hospitals under the statutory authority of section 223(f) of the National Housing Act, the alternative certification mechanism provided in section 409(a) of the 1987 Housing Act is not being implemented in this final rule. Of course, if at some later date the Department chooses to exercise its authority under this statutory provision, necessary regulatory amendments will be undertaken.)

5. Section 242.12, Transfer fee, has been added to provide for the payment of a fee calculated at 50 cents per thousand dollars of the original face amount of the mortgage. This revision corrects an inadvertent omission of an express reference to transfer fees in Part 242. The provision parallels regulations for other mortgage insurance programs which require payment of a transfer fee when there is a request for HUD approval of a change in ownership of the project or of a substitution of mortgagor. (See §§ 207.1(h) and 232.13a.) Payment of the transfer fee under § 242.12 is due upon application to HHS for review. This section also specifies that no transfer fee is required if all parties to the transfer transaction are nonprofit or public hospital organizations.

6. Section 242.23, Eligible mortgagors, has been revised to indicate that a mortgagor can also be a public hospital mortgagor.

7. Section 242.27, Maximum mortgage amounts, has been retained as provided under existing Part 242 because of a 1987 Act amendment, as discussed in Part II above. The Department had previously proposed to modify the equity requirements for hospital mortgages by adopting a sliding scale for determining the maximum insurable mortgage amount for projects with replacement costs *exceeding $100 million*. [This figure was later changed to $75 million]. Instead, the Department will continue to implement existing § 242.27 which permits the insurance of hospital mortgages in an amount not in excess of 90 percent of HUD's estimate of the replacement cost of the hospital.

8. Section 242.29, Adjusted and reduced mortgage amounts, has been retained as provided in existing Part 242 because of the statutory directive of section 412 of the 1987 Housing Act, as discussed in Part II above. In the January 12, 1987 rule, the Department proposed requiring all mortgagors under the hospital mortgage insurance program to have a cash investment in the hospital equal to at least 10 percent

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of the estimated cost of construction or rehabilitation (5 percent, with HHS approval if the mortgage insurance premium is based on three-quarters of 1 percent of the original mortgage amount rather than on one-half of 1 percent). Instead, the Department has modified existing § 242.29 to expressly state that the Secretary of HHS has discretion to evaluate cash equity requirements on a case-by-case basis depending upon the financial circumstances of each facility. (As a result of the Department's decision to retain, essentially, the requirements of existing §242.29, the conforming revisions to §§ 242.251 and 242.255 relating to the payment of mortgage insurance premiums, as proposed in the January 1987 rule, have not been adopted).

9. Section 242.47, Insurance of bonds secured by trust indentures, has been revised to correct an apparent printing error by replacing the current paragraph (b) with the correct text. The revised paragraph (b) is the same as comparable paragraphs in the related sections for other mortgage insurance programs (See, e.g. § 207.15(b)).

10. Section 242.51, Prepayment privilege and prepayment charges, currently includes prepayment provisions for "profit mortgagors" in paragraph (a), and for "nonprofit mortgagors" in paragraph (b). In this final rule, the provisions of § 242.51(a) apply to all hospital mortgagors. In addition, paragraphs (b)(3) and (b)(4) provide that no prepayment charges may be imposed where the prepayment is made from the proceeds of a Federal grant, or from the proceeds of a loan guaranteed by the Secretary of HHS. The Department had proposed in its earlier rules to include a new paragraph (c) entitled "prepayment of bond-financed mortgages" which would have provided that a prepayment prohibition and prepayment penalty charge could be included in a mortgage that was given to secure a loan made by a mortgagee that had obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes. However, this provision was subsequently added to § 242.51 in a separate rulemaking published on January 16, 1986 (*see* 51 FR 2358) so that an amendment in this final rule is unnecessary.

11. Section 242.55, Funds and finances—deposits and letters of credit, was originally proposed to be revised to require a jurisdiction subject to the additional security requirements of § 242.92 to make a deposit of cash or securities with the mortgagee or a depository acceptable to the mortgagee. However, since the Department is not implementing the additional security requirements contained in its earlier proposed rules, this corresponding revision to § 242.55 is unnecessary and has been withdrawn.

12. Section 242.57, Funds and finances—insured advances, has been adopted as proposed in the October 12, 1984 rule. This provision retains the current practice of allowing mortgage proceeds to be advanced to private nonprofit mortgagors before any demand is made on the letter of credit. Moreover, this final rule extends the privilege to public hospital mortgagors.

13. Section 242.67, Labor standards, requires that any contract executed for the performance of construction or rehabilitation of a hospital must contain certain express provisions (designed to ensure that wages paid for services rendered by laborers or mechanics are appropriate, and conform with Federal wage-related regulations). Paragraph (b), however, allows an exception to the labor standards provisions—applicable only to nonprofit mortgagors—where labor is voluntarily provided without compensation, and HUD determines that the mortgagor has received full credit for any amounts saved through such donated services. The waiver provision in paragraph (b) has been revised in this final rule so that it also applies to public hospital mortgagors.

14. Section 242.69(c) has been revised by removing the phrase "Health and Human Services or his designee" and adding, in its place, the term "HHS".

15. Section 242.92, Eligibility of mortgages covering publicly supported hospitals, was originally proposed to require additional security before the Department would insure a mortgage on a hospital that received greater than 10 percent of its revenues from tax (or other public) appropriations for any one year in the five-year period immediately preceding the year in which the hospital submitted its proposal to the Department of Health and Human Services. In its January 12, 1987 rule, the Department revised its additional security requirements to make a mortgage *ineligible* for insurance if it covered a hospital with a projected annual operating support percentage greater than 10 percent.

As discussed in Part II above, section 412 of the 1987 Act requires the Department to process applications for mortgage insurance without regard to the level of outside financial support a hospital may receive, and without imposing more stringent requirements upon publicly owned or supported hospitals. Consequently, the Department has withdrawn its proposed additional security requirements under § 242.92, which included the letter of credit or escrow provisions for certain publicly supported hospitals, as well as the eligibility threshold for those hospitals with a projected operating support percentage greater than 10 percent.

16. Section 242.260, Insurance benefits, was proposed to be revised to correspond with the additional security requirements of § 242.92. The revision would have allowed the Commissioner to reduce the amount of an insurance claim otherwise payable in those instances where a jurisdiction failed to supply the appropriate POS in any of the five years immediately preceding default. Since the Department is not implementing the proposed additional security requirements of § 242.92 in this final rule, the corresponding revision to the payment of insurance benefits is obsolete and has been withdrawn.

Revisions to Other HUD Mortgage Insurance Programs

1. Section 232.42, Eligibility of refinanced mortgages, has been revised to permit the insurance, under section 223(a)(7) of the National Housing Act, of a mortgage given to refinance an insured mortgage covering a board and care home. In a prior rulemaking (50 FR 47327, November 20, 1985), the Department had revised § 232.42 to permit the insurance of a mortgage given to refinance a previously HUD-insured intermediate care facility. Since § 232.42, as revised by 50 FR 47327, applies only to an existing mortgage covering a facility "having 20 or more beds", it does not apply to an existing mortgage covering a board and care home. This omission was inadvertent. The Department, therefore, has revised this section so that it applies to any existing mortgage that is insured under Subpart A of Part 232 and that is otherwise eligible for insurance.

2. Section 241.70, which governs maximum loan amounts related to supplementary financing for HUD-insured project mortgages, was proposed to be revised to specify that the aggregate indebtedness insured for a project or facility could not exceed the maximum mortgage amount allowable for a project or facility under the applicable mortgage insurance regulations in Chapter II of Title 24. The revision was intended to clarify that regulatory limits on maximum mortgage amounts, such as those proposed in the Department's earlier rules on Part 242, would also apply to mortgage insurance for supplementary loans on a hospital. However, since the Department is not implementing its proposed revisions to § 242.27 (maximum mortgage amounts) and § 242.29 (adjusted and reduced mortgage amounts), the ancillary revision to the section 241 supplementary financing program is obsolete and has been withdrawn.

3. Section 241.165, Eligibility of refinancing transactions, has been added to permit the insurance, under section 223(a)(7) of the National Housing Act, of a loan given to refinance an insured supplemental loan. This provision provides authority for the Department to insure the refinancing of insured supplemental loans similar to the authority for refinancing of insured mortgages for hospitals (see 24 CFR 242.96, as added by 50 FR 47727, November 20, 1985) and for the various multifamily mortgage insurance programs (see, *e.g.*, 24 CFR 221.560).

IV. Comments and Discussion

Thirteen public comments were received in response to the January 1987 proposed rule, many of which addressed provisions contained in the two October 1984 proposed rules (49 FR 40044 and 40047). Commenters included hospitals, health care associations, local governments, a health care study group, a capital marketing organization, and the U.S. Department of Health and Human Services.

To the extent that these comments addressed proposed provisions that are mooted by the passage of the 1987 Act amendments (as discussed in Part II of this preamble, *e.g.*, the maximum mortgage amount/sliding scale, adjusted and reduced mortgage amounts, additional security requirements, and letter of credit provisions), the Department will not discuss these comments in this final rule.

The Department of Health and Human Services commented on § 242.3, Prior approval of applications, that as of January 1, 1987, five states have neither a Certificate of Need (CON) nor a 1122 review program—making hospitals in those states ineligible to apply for mortgage insurance under Section 242. HHS suggested that for hospitals located in such states, HUD consider using the § 242.3 detailed analyses to determine eligibility under Section 242. However, this suggestion is mooted by the 1987 Housing Act amendment (section 411 pertaining to substantial rehabilitation or new construction of hospitals) which provides for an alternative State certification procedure for hospital mortgagors located in States that either do not have a State agency designated under the Public Health Service Act, or where the agency exists but is not authorized to provide the statutorily required Certificate of Need. This final rule implements the alternative State certification procedure at § 242.5.

The Healthcare Finance Study Group (HFSG) requested that § 242.3 be amended to provide that an application for mortgage insurance conform to the provisions of Title VI of the Public Health Services Act and general standards of construction and equipment "or, in the absence of such standards, any other applicable standards which the Secretary of HHS may determine to be applicable." This language would obviate the need for further amendments should Title VI become unenforceable or inappropriate. The Department, after discussions with HHS engineering staff, has included the appropriate language in this final rule.

Also with regard to § 242.3, HFSG commented that in other mortgage insurance programs the application fee is not considered to be earned by the Department until an application is complete (referencing § 2–10 of HUD Handbook 4445.1) and asked that similar language be incorporated in this final rule. HFSG also asked that the fee by payable in installments, depending upon the pertinent stage in the application process, and that a refunding mechanism be developed to accommodate withdrawn or rejected applications. The Department has decided to adopt the provision, as proposed, with the application fee payable at the time the hospital proposal is submitted to HHS for processing, since hospitals frequently submit applications to more than one source of insurance or financing and then withdraw their Section 242 application. However, a provision dealing with the refunding of fees for those applications that are withdrawn within 14 days of HHS receipt will be added to the Department's Handbook on Mortgage Insurance for Hospitals (HUD Handbook 4615.1).

A number of commenters stated that the proposed revision to § 242.51, Prepayment privilege and prepayment charges, would eliminate the existing distinction between nonprofit and proprietary hospitals by requiring in each instance that the mortgage contain a provision permitting non-bond financed mortgages to be prepaid upon thirty days written notice. It was argued that existing regulations permit nonprofit hospitals to include "lockout" provisions for taxable financed projects which, it was argued, enable hospitals to obtain the lowest possible interest rates from the investor community. These commenters pointed out that lockout provisions are permitted for bond-financed mortgages under § 242.51(c). The Department was urged to retain the prepayment provisions as they apply to nonprofits or, alternatively, to extend the applicability of paragraph (c) to taxable and bond-financed mortgages.

Initially, it should be noted that under existing regulatory practice, nonprofit hospitals do not have the benefit of a "lockout" provision, which is generally understood to mean a provision preventing the prepayment of a mortgage debt. Section 242.51(b)(1) of the existing regulations, which pertains to nonprofit mortgagors, provides that:

> . . . The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated *only upon the condition that the Commissioner's prior written consent is obtained* and upon such terms and conditions as the Commissioner may prescribe. . . (Emphasis added).

Clearly, then, a nonprofit mortgagor is entitled to prepay the mortgage indebtedness under existing regulations *upon receiving the Commissioner's prior consent.*

In this final rule, the prepayment provisions applicable to profit mortgagors are extended to include nonprofits as well. Section 242.51(a), as it currently applies to profit mortgagors, states:

> Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days notice in writing in advance of its intention to so prepay.

For nonprofits, this simply eliminates the requirement for the Commissioner's prior consent to prepayment of the mortgage indebtedness, but does not purport to eliminate any existing lockout provisions. Moreover, lockout provisions are currently permitted at § 242.51(c) for bond-financed mortgages, in accordance with the criteria established in Mortgagee Letter 87–9, published February 20, 1987.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a major rule as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the

economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the revisions (1) to Part 242 apply to HUD-insured hospitals and applicants for HUD insurance for hospitals, most of which are not small entities and (2) to Parts 232 and 241, which simply permit the insurance of mortgages to refinance existing insured mortgages covering board and care homes and of loans to refinance existing insured supplementary loans, respectively, which constitute a small fraction of the entities with which the Department has dealings.

This rule was listed as item no. 947 in the Department's Semi-Annual Agenda that was published on April 25, 1988 (53 FR 13854, 13877).

The Catalog of Federal Domestic Assistance program numbers for this rule are program numbers 14.128 (Mortgage Insurance-Hospitals), 14.129 (Mortgage Insurance-Nursing Homes, Intermediate Care Facilities and Board and Care Homes), and 14.141 (Supplemental Loan Insurance-Multifamily Rental Housing).

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned, will be announced by separate publication in the **Federal Register**.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs, Health, Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

24 CFR Part 241

Energy conservation, Mortgage insurance, Solar energy project.

24 CFR Part 242

Hospitals, Mortgage insurance.

Accordingly, the Department amends 24 CFR Parts 232, 241, and 242 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for Part 232 continues to read as follows:

Authority: Secs. 211 and 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 232.42 is revised to read as follows:

§ 232.42 Eligibility of refinanced mortgages.

A mortgage given to refinance an existing insured mortgage may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act if it meets the requirements of §§ 207.32 (a) through (c) of this chapter as well as the requirements of this subpart. Mortgages insured under this subpart need not meet the requirement, in § 207.32, that the existing insured mortgage cover five or more rental units.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

3. The authority citation for Part 241 continues to read as follows:

Authority: Secs. 211 and 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 241.165 [Redesignated as § 241.170]

4. Section 241.165 is redesignated as § 241.170 and a new § 241.165 is added to read as follows:

§ 241.165 Eligibility of refinancing transactions.

A loan given to refinance an existing loan that is insured under this subpart may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act. Insurance of the refinancing loan is subject to the following limitations:

(a) *Principal amount.* The principal amount of the refinancing loan may not exceed the lesser of the original principal amount of the existing insured loan, or the unpaid principal amount of the existing insured loan, to which may be added loan closing charges associated with the refinancing loan and costs, as determined by the Commissioner, of improvements required to be made to property.

(b) *Debt service payment on a refinancing loan for a hospital.* The monthly debt service payment for the refinancing loan on a hospital may not exceed the debt service payment charged for the existing loan.

(c) *Loan term.* The term of the new loan shall not exceed the unexpired term of the existing loan, except that the new loan may have a term of not more than 12 years in excess of the unexpired term of the existing loan in any case in which the Commissioner determines that the insurance of the loan for an additional term will inure to the benefit of the insurance fund under which the loan is insured, taking into consideration the outstanding insurance liability under the existing insured loan and the remaining economic life of the property.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

5. The authority citation for Part 242 continues to read as follows:

Authority: Secs. 211 and 242, National Housing Act (12 U.S.C. 1715b, 1715z–7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 242.1, paragraph designations (a) through (g) are removed, the definition of "hospital" is revised and a new defined term, "Secretary of HHS", is added in appropriate alphabetical order, to read as follows:

§ 242.1 Definitions.

* * * * *

"Hospital" means a facility—

(a) Which provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(b) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(c) Which is a facility licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located) and is:

(1) A public facility owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) A proprietary facility; or

(3) A facility of a private nonprofit corporation or association.

* * * * *

"Secretary of HHS" means the Secretary of Health and Human Services or his or her designee.

* * * * *

7. A new § 242.2 is added to read as follows:

§ 242.2 Encouragement of certain programs.

The activities and functions provided for in this part shall be carried out by the Federal agencies involved so as to encourage provision of comprehensive health care, including outpatient and preventive care as well as hospitalization, to a defined population, and in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

8. Section 242.3 is revised to read as follows:

§ 242.3 Applications.

(a) *Prior approval.* An application for insurance of a mortgage under this part shall be considered only in connection with a hospital proposal that has been approved by the Secretary of HHS as substantially in accord with those provisions of Title VI of the Public Health Service Act and its implementing standards that relate to determining need for the facility and general standards of construction and equipment or, in the absence of such standards, any other comparable standard that the Secretary of HHS may determine to be applicable. The approval process entails a determination of the market need and feasibility of the proposal and stresses, on a marketwide basis, the impact of the proposed facility on, and its relationship to, other healthcare facilities and services (particularly other hospitals with mortgages insured under this part); the number and percentage of any excess beds; demographic projections; the reimbursement structure of the proposed hospital (including patient/payer mix); and the probable projected impact on the proposed hospital of general healthcare system trends, such as the development of health maintenance organizations, alternative health care delivery systems, and new reimbursement methods.

(b) *Application fee.* An application fee of $1.50 per thousand dollars of the amount of the loan to be insured shall be paid to the Commissioner at the time the hospital proposal is submitted to the Secretary of HHS for approval.

(c) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form by an approved mortgagee and by the sponsors of such project through the local FHA office.

9. Section 242.5 is revised to read as follows:

§ 242.5 Certification requirements.

(a) Every application for insurance under this part shall be accompanied by a certificate of the State agency designated in accordance with section 604(a)(1) of the Public Health Service Act for the State in which the project is or will be located, which certificate shall indicate that:

(1) There is a need for the hospital.

(2) There are in force in the State or other political subdivision of the State in which the proposed hospital will be located reasonable minimum standards of licensure and methods of operation for hospitals and such standards and methods of operation will be applied and enforced with respect to the hospital.

(b) If no such State agency of the type described in paragraph (a) of this section exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the hospital, the Secretary shall not insure any mortgage under this section unless:

(1) The State in which the hospital is located has conducted or commissioned and paid for the preparation of an independent study of market need and feasibility that:

(i) Is prepared in accordance with the principles established by the American Institute of Certified Public Accountants;

(ii) Assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital;

(iii) Is certified as acceptable as to form and substance by the appropriate State official; and

(iv) Is forwarded to the Secretary of HHS, for approval by HHS and the Secretary of HUD.

(2) If a State does not prepare the study of market need and feasibility described in paragraph (b)(1) of this section, a financial consultant selected by the State may, upon approval by the Secretary of HHS, be substituted to undertake the study.

(3) The State must also comply with the other requirements that must be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act.

(4) The proposed mortgagor may reimburse the State for the cost of preparing the independent feasibility study described in paragraph (b).

10. A new § 242.12 is added to read as follows:

§ 242.12 Transfer fee.

Upon application for review of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars of the original principal amount of the mortgage shall be paid to the Commissioner. A transfer fee is not required if both parties to the transfer transaction are nonprofit or public organizations.

11. Section 242.23 is revised to read as follows:

§ 242.23 Eligible mortgagors.

The mortgagor shall be a public mortgagor (i.e., an owner of a public facility), a private nonprofit corporation or association, or a profit-motivated mortgagor. The mortgagor shall be approved by the Commissioner and shall possess the powers necessary and incidental to operating a hospital.

12. Section 242.29 is revised by adding a new paragraph (d) as follows:

§ 242.29 Adjusted and reduced mortgage amounts.

* * * * *

(d) The Secretary of HHS shall have the discretion to evaluate, on a case by case basis, the amount of cash equity to be required under this section depending upon the financial circumstances of each hospital facility.

13. In § 242.47, paragraph (b) is revised to read as follows:

§ 242.47 Insurance of bonds secured by trust indenture.

* * * * *

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

* * * * *

14. In § 242.51, paragraphs (a) and (b) are revised to read as follows:

§ 242.51 Prepayment privilege and prepayment charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

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(b) *Paypayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage which the Commissioner may require pursuant to § 242.29(c) shall not be construed as a prepayment of the mortgage.

(3) No charge shall be made where the prepayment is made from the proceeds of a Federal grant.

(4) No charge shall be made where the prepayment is made from the proceeds of a loan guaranteed by the Secretary of HHS.

* * * * *

15. In § 242.57, paragraph (b)(2) is revised to read as follows:

§ 242.57 Funds and finances—insured advances—general requirements.

* * * * *

(b) *Letter of credit.* * * *

(2) *Public mortgagors and private nonprofit mortgagors.* In the case of a public mortgagor or private nonprofit mortgagor, the mortgagee may accept a letter of credit in lieu of the cash deposit required by paragraphs (a)(1) and (2) of this section. If a letter of credit is accepted in lieu of the cash deposit required by paragraph (a)(1) of this section, the mortgage proceeds may be advanced prior to any demand being made on the letter of credit.

16. In § 242.67, paragraph (b) is revised to read as follows:

§ 242.67 Labor standards.

* * * * *

(b) *Waiver of compliance with contract requirements-public mortgagor or private nonprofit mortgagor.* In the case of a public mortgagor or a private nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the hospital, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amount saved through such donated services.

§ 242.69 [Amended]

17. In § 242.69(c) remove the words, "Health and Human Services or his designee" and add, in their place, the term "HHS".

§§ 242.1, 242.31, 242.45, 242.67, 242.75, 242.81, 242.88, 242.91, 242.93, and 242.95 [Amended]

18. In addition to the amendments set forth above, 24 CFR Part 242 is amended by inserting immediately after the words, "he", "him" or "his" the words "or she", "or her", respectively, wherever the former words appear in the following places:

24 CFR 242.1, definition of "Commissioner"; 24 CFR 242.31(b); 24 CFR 242.45; 24 CFR 242.67(a)(2); 24 CFR 242.75; 24 CFR 242.81; 24 CFR 242.88; 24 CFR 242.91 introductory text; 24 CFR 242.93(a); and 24 CFR 242.95(a).

Date: April 26, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-9864 Filed 5-4-88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8199]

Income Tax; Deductions in Excess of $5,000 Claimed for Certain Charitable Contributions of Property and Information Returns by Donees Who Make Certain Dispositions of Donated Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document removes temporary regulations and provides final regulations relating to deductions in excess of $5,000 claimed for charitable contributions of property and to information returns by charitable donees that make certain dispositions of donated property. Changes to the applicable tax law were made by section 155 of the Tax Reform Act of 1984 (the "1984 Act"). The final regulations provide substantiation requirements with which certain donors must comply in order to obtain deductions for charitable contributions of certain property. In addition, the final regulations provide guidance regarding the filing of information returns by donees when they make certain dispositions of donated property.

DATES: Except as otherwise provided in this document, the regulations apply to certain charitable contributions of property made after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of Chief Counsel, International Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1984, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 170 and 6050L of the Internal Revenue Code of 1954, as well as temporary regulations [T.D. 8003] containing the same rules. The amendments were proposed to conform the regulations to section 155 of the 1984 Act. A hearing was held on June 28, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury Decision. These regulations supersede the temporary regulations issued under §§ 1.170A-13T and 1.6050L-1T.

Summary of Comments

Substantiation With a Receipt

Several commentators stated that temporary § 1.170A-13T(b)(1)(iii) might be interpreted to require a donee to estimate the fair market value of contributed property. Therefore, the provision has been amended to clarify that fair market value is one of the circumstance to be taken into account by a donee in determining the amount of detail to provide in the description of the property included on the receipt. The fair market value of the property does not have to be stated on the receipt.

Substantiation Requirements for the Deductibility of Certain Charitable Contributions

The final regulations provide that, pursuant to section 170(a)(1) of the Code, a deduction for certain charitable contributions made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation shall not be allowed unless the donor complies with certain substantiation requirements. These requirements apply to contributions of property (other than money and publicly traded securities to which § 1.170A-13(c)(7)(xi)(B) does not apply) if the donor claims or reports charitable contribution deductions for such item of property and all similar items of property for the same taxable year (whether or not donated to the same donee) that exceed, in the aggregate, $5,000. For such a contribution the donor must obtain a qualified appraisal and attach an appraisal summary to the return on which the deduction is first claimed.

In the case of nonpublicly traded stock, if the amount claimed or reported as a deduction is greater than $5,000 but does not exceed $10,000, the donor does not have to obtain a qualified appraisal. However, in such a case the donor must attach a partially completed appraisal summary form to the tax or information return on which the deduction is first claimed or reported. The same requirements apply with respect to publicly traded securities to which paragraph (c)(7)(xi)(B) applies.

Several commentators stated that the qualified appraisal requirement should not apply to nonpublicly traded stock subject to a buy-sell or redemption agreement. Although in certain cases a buy-sell or redemption agreement can be highly indicative of the fair market value of the subject stock, this is by no means always the case. Because of questions as to the financial stability of the purchasing party, the time value of money (when the agreement only applies at some future date), and agreements that may indicate a maximum but not a minimum value of the subject stock, it was decided not to include a special rule with respect to such agreements. In those instances where the agreement is a good indication of value, the qualified appraisal should be relatively easy to obtain.

Several commentators questioned how the substantiation requirements apply to contributions of partial interests. In response to these inquiries, § 1.170A-13(c)(2)(i)(A) of the final regulations has been amended to provide that, if the contributed property is a partial interest, the qualified appraisal is to be made of the partial interest.

One commentator suggested that the substantiation requirements not be applied to contributions of property to which section 170(e)(3) applies unless the amount claimed as a deduction with respect to the property during a taxable year exceeds the donor's cost basis in the property by $5,000. This suggestion is supported by the fact that, if the taxpayer sold the property instead of donating it, the taxpayer would be entitled to a cost of goods sold deduction with respect to the property pursuant to § 1.61-3. Section 1.170A-13(c)(1)(ii) of the final regulations requires an appraisal of property described in section 170(e) (3) or (4) only if the amount of the charitable deduction claimed exceeds the deduction otherwise available by $5,000.

Substantiation Requirements For C Corporations

The final regulations require certain C corporations (as defined in section 1361(a)(2)) to file with the Internal Revenue Service a partially completed appraisal summary for contributions of property that exceed the $5,000 threshold made after June 8, 1988. This requirement is included in the final regulations, in part, to provide a means of informing the donee (who must sign the summary) of the donee's reporting requirement under section 6050L. In addition, a notice of proposed rulemaking that applies all the substantiation requirements contained in § 1.170A-13(c) to all taxpayers (including C corporations, trusts, estates, and pooled income funds) is being published in the Proposed Rules portion of this issue of the Federal Register.

Qualified Appraisal

The final regulations provide that a qualified appraisal is an appraisal document that (a) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property, or later than the date specified in § 1.170A-13(c)(3)(iv)(B), (b) is prepared, signed, and dated by a qualified appraiser, and (c) does not involve a prohibited type of appraisal fee. In response to confusion expressed by some commentators regarding the timing of an appraisal performed subsequent to the contribution, the final regulations clarify that an appraisal can be made up until the date on which it must be received by the donor. It must be received by the donor before the due date (including extensions) of the return on which the deduction for the contributed property is first claimed (or reported in the case of a donor that is a partnership or S corporation) or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

Several commentators suggested that the 60-day period be extended. The suggestion has not been incorporated into the final regulations because the Internal Revenue Service is concerned that an appraisal prepared more than 60 days before the date of contribution may not reflect the proper fair market value of the property. Thus, if the appraisal is performed more than 60 days prior to the contribution, it must be updated within the period specified in § 1.170A-13(c)(3)(iv)(B).

The temporary regulations set forth the information that must be included in the qualified appraisal. Several commentators pointed out that the appraiser may be a nonresident alien who is not required to obtain a taxpayer identification number. Therefore, the final regulations have been revised to provide that the appraiser's taxpayer identification number must be provided only if the appraiser is otherwise required to obtain such a number.

Several commentators requested that the appraiser not be held accountable for the accuracy of information about the donated property provided by the donor. This suggestion has not been incorporated into the final regulations because such information affects the value of the property, and, therefore, its validity must be verified by the appraiser.

A separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year, provided the appraisal includes all the required information for each item. However, the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description rather than a specific description of each item will suffice.

Appraisal Summary

The appraisal summary must be made on the form prescribed by the Internal Revenue Service, signed and dated by the original donee and qualified appraiser, and attached to the donor's return on which a deduction with respect to the appraised property is first claimed or reported. The final regulations set forth the information that must be included on the appraisal summary.

One commentator suggested that the final regulations provide an exception to the donee signature requirement in appropriate situations when the donor is unable to obtain the donee's signature. In response to the comment, § 1.170A-13(c)(4)(iv)(C) provides that, in rare and unusual cases where it is not possible to obtain the donee's signature, the taxpayer's deduction will not be disallowed for that reason. An appropriate explanation should be attached to the appraisal summary.

A separate appraisal summary for each item of contributed property must be attached to the donor's return. If, however, similar items of property are

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contributed to the same donee, a single appraisal summary may be attached with respect to all similar items of property contributed to the same donee provided that the appraisal summary provides all the required information with respect to each item. However, the appraiser may select any items whose aggregate value is appraised at $100 or less for which a group description will suffice. A donor who contributes similar items of property to more than one donee must attach a separate appraisal summary for each donee.

The final regulations provide that every donor who presents an appraisal summary to a donee for signature after June 6, 1988, must furnish a copy of the appraisal summary to the donee. If the donor is a partnership or S corporation, the donor must provide a copy of the appraisal summary to every partner or shareholder who receives an allocation of a deduction for a charitable contribution of property described in the appraisal summary. The partner or shareholder must attach the appraisal summary to the partner's or shareholder's return. If a donor (or partner or shareholder of a donor) fails to attach the appraisal summary to the return, a charitable deduction will not be disallowed if the donor (or partner or shareholder) submits an appraisal summary within 90 days of being requested to do so by the Internal Revenue Service, provided that the failure to attach the appraisal summary was a good faith omission and the requirements of § 1.170A–13(c) (3) and (4) are met (including the timely completion of the appraisal).

Qualified Appraiser

The definition of the term "qualified appraiser" is important because a donor who fails to use such an appraiser will not be entitled to a deduction with respect to a charitable contribution of property valued in excess of $5,000. Section 155 of the 1984 Act left the definition of the term qualified appraiser largely to these regulations.

Various appraisers and appraisal groups have commented that the definition of the term qualified appraiser should ensure that only individuals with specific professional standards be permitted to prepare qualified appraisals. Several commentators, for example, recommended that a qualified appraiser be defined as someone who has completed a rigid program of education, testing, and certification through a recognized professional appraisal organization which self-regulates its members.

Other commentators recommended that a designation by one of several specified professional appraisal associations should establish conclusively that a person is a qualified appraiser. Several commentators suggested that the Internal Revenue Service establish a roll of qualified appraisers that would be filled through an examination or application process.

While the interest of appraisal groups (and the Internal Revenue Service) in ensuring that only truly qualified persons be permitted to prepare qualified appraisals is strong, other competing interests also exist. In particular, donors and donees have an interest in assuring that the definition of qualified appraiser provides reasonable certainty and objectivity to persons who contemplate a charitable contribution of property expected to be valued in excess of $5,000.

After careful consideration of the recommendations received and concerns expressed, the regulations define a qualified appraiser as an individual who includes on the appraisal summary a declaration that:

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications described in the appraisal, the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons that the final regulations exclude from being a qualified appraiser; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

Even if the individual complies with the requirements described above, the individual is not a qualified appraiser if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property. In no case is an appraiser a qualified appraiser if the appraiser is the donor, taxpayer, donee, employee of any of the foregoing or other person identified in § 1.170A–13(c)(5)(iv) of the final regulations.

Several commentators suggested that a state employee who makes appraisals of contributions made to the state should not be disqualified. Section 155 of the 1984 Act explicitly provides, however, that an employee of the donee cannot be a qualified appraiser. Hence, the final regulations do not permit an employee of a state to act as a qualified appraiser of gifts to the state.

More than one appraiser may appraise the donated property provided that each appraiser complies with the requirements of this Treasury decision, including signing the qualified appraisal and appraisal summary. In response to a request for clarification, the final regulations provide that, if more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the deduction.

Appraisal Fee

Generally, no part of the fee arrangement for a qualified appraisal can be based on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. This provision does not apply in certain circumstances to appraisal fees paid to a generally recognized association that regulates appraisers. Although many commentators objected to this exception, its inclusion in the regulations is mandated by section 155(a) of the 1984 Act.

Similar Items of Property

The final regulations define the phrase "similar items of property" to mean property of the same generic category or type, including stamp collections, coin collections, lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly traded stock, land, buildings, clothing, jewelry, furniture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver.

Donee

Several commentators questioned whether, in the case of property placed in trust for the benefit of a tax-exempt organization, the trust or the tax-exempt organization is considered to be the donee. In response to the comments, the final regulations prospectively define the term donee to mean the trust in such a case. See § 1.170A–13(c)(7)(v)(C) for the rule in effect for the past periods. In addition, see § 1.170A–13(c)(7) (v), (vi), and (vii) for definitions of donee, original donee and successor donee, respectively.

Publicly Traded Securities

The temporary regulations defined the term publicly traded securities to mean securities for which market quotations are readily available on an established securities market. The final regulations provide that market quotations are readily available on an established securities market for a security if (1) the security is listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities, lised on a recognized foreign, national, or regional exchange, (2) the security is regularly traded in the national or regional over-the-counter market for which published quotations are available, or (3) the security is a share of an open-end investment company (commonly known as a mutual fund) for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States. One commentator was concerned that this definition does not include bonds for which quotations of interest, but not bid or asked quotations, are listed daily in the "Yellow Sheets." In response to the comment, the Service issued Announcement 88–4, 1988–4 I.R.B. 51, which states that final regulations will provide that market quotations for an issue of a security are considered to be readily available on an established securities market for a computational period if certain requirements are met. These rules are contained in § 1.170A–13(c)(7)(xi)(B) of the final regulations.

Section 1.170A–13(c)(7)(xi)(C) clarifies that securities that are otherwise publicly traded are not considered to be publicly traded if the securities are subject to restrictions on the amount claimed as a deduction with respect to the contribution of such securities is different than the amount listed in market quotations that are readily available on an established securities market.

Information Return By Donees

The final regulations provide that a donee of any charitable deduction property who sells, exchanges, consumes or otherwise disposes of the property within 2 years after the date of the donor's contribution of such property must make an information return. This rule applies to property for which the donee signs an appraisal summary either before or after disposing of the property. It also applies prospectively to a disposition made by a successor donee of the property (see § 1.6050L–1(c)).

Several commentators stated that tracking an item of charitable deduction property with a *de minimis* value from the time of contribution until the time of disposition would be very burdensome. In response to the comments, the Service issued News Release IR 85–121 with accompanying Announcement 86–1, 1986–1 I.R.B. 35, on December 30, 1985. The Announcement states that final regulation will provide that donee reporting is not required with respect to an item of charitable deduction property disposed of by sale if the appraisal summary signed by a donee with respect to the item contains, at the time of the donee's signature, a statement signed by the donor that the appraised value of the item does not exceed $500. The rule is contained in § 1.6050L–1(a)(2)(i) of the final regulations. For purposes of this rule items that form a set [such as, for example, a collection of books written by the same author, components of a stereo system, or a group of place settings of a pattern of silverware) are considered one item. In addition, all nonpublicly traded stock is considered one item as are all nonpublicly traded securities other than nonpublicly traded stock. The final regulations also provide that donee reporting is not required with respect to an item of charitable deduction property consumed or distributed by a donee without consideration if the consumption or distribution is in furtherance of a purpose or function constituting a basis for such donee's exemption under section 501 of the Code.

Charitable Deduction Property

Charitable deduction property is defined as any property (other than money and certain publicly traded securities) contributed after December 31, 1984, with respect to which the donee signs an appraisal summary. If the donee signs an appraisal summary with respect to donated property after the date of contribution, the property is deemed to be charitable deduction property from the date of contribution.

Time For Filing Information

In response to comments that the requirement to file the donee information return within 90 days of the disposition of the charitable deduction property is too burdensome, the 90-day requirement has been replaced with a 125-day requirement in the final regulations. A special rule is provided in the case of a donee who has no reason to believe that the substantiation requirements of § 1.170A–13(c) apply with respect to the disposal of property.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB (control number 1545–0908).

Drafting Information

The principal author of these final regulations is Beverly A. Baughman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.170A–13 also issued under 26 U.S.C. 170 and section 155 of the Deficit Reduction Act of 1984 (98 Stat. 691). Section 1.6050L–1 also issued under 26 U.S.C. 6050L.

§ 1.170A–13T [Removed]

Par. 2. Section 1.170A–13T is removed.

Par. 3. In § 1.170A–13, paragraphs (b)(1) and (b)(3)(i)(B) are revised to read

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as follows, and the heading and text for paragraph (c) are added.

§ 1.170A–13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(b) *Charitable contributions of property other than money made in taxable years beginning after December 31, 1982*—(1) *In general.* Except in the case of certain charitable contributions of property made after December 31, 1984, to which paragraph (c) of this section applies, any taxpayer who makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, shall maintain for each contribution a receipt from the donee showing the following information:

(i) The name of the donee.

(ii) The date and location of the contribution.

(iii) A description of the property in detail reasonably sufficient under the circumstances. Although the fair market value of the property is one of the circumstances to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt.

A letter or other written communication from the donee acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (*e.g.*, by depositing property at a charity's unattended drop site). In such cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

* * * * *

(3) *Deductions in excess of $500 claimed for a charitable contribution of property other than money*—(i) *In general.* * * *

* * * * *

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities, held by the taxpayer for a period of less than 12 months (6 months for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988, immediately preceding the date on which the contribution was made and, when the information is available, of property, other than publicly traded securities, held for a period of 12 months or more (6 months or more for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988, preceding the date on which the contribution was made.

* * * * *

(c) *Deductions in excess of $5,000 for certain charitable contributions of property made after December 31, 1984*—(1) *General Rule*—(i) *In general.* This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation of an item of property (other than money and publicly traded securities to which § 1.170A–13(c)(7)(xi)(B) does not apply if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds $5,000. This paragraph also applies to charitable contributions by C corporations (as defined in section 1361(a)(2) of the Code) to the extent described in paragraph (c)(2)(ii) of this section. No deduction under section 170 shall be allowed with respect to a charitable contribution to which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such items of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) *Special rule for property to which section 170(e) (3) or (4) applies.* For purposes of this paragraph (c), in computing the amount claimed or reported as a deduction for donated property to which section 170(e) (3) or (4) applies (pertaining to certain contributions of inventory and scientific equipment) there shall be taken into account only the amount claimed or reported as a deduction in excess of the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee. For example, assume that a donor makes a contribution from inventory of clothing for the care of the needy to which section 170(e)(3) applies. The cost of the property to the donor was $5,000, and, pursuant to section 170(e)(3)(B), the donor claims a charitable contribution deduction of $8,000 with respect to the property. Therefore, $3,000 ($8,000–$5,000) is the amount taken into account for purposes of determining whether the $5,000 threshold of this paragraph (c)(1) is met.

(2) *Substantiation requirements*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

(A) Obtain a qualified appraisal (as defined in paragraph (c) (3) of this section) for such property contributed. If the contributed property is a partial interest, the appraisal shall be of the partial interest.

(B) Attach a fully completed appraisal summary (as defined in paragraph (c) (4) of this section) to the tax return (or, in the case of a donor that is a partnership or S corporation, the information return) on which the deduction for the contribution is first claimed (or reported) by the donor.

(C) Maintain records containing the information required by paragraph (b) (2) (ii) of this section.

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations.* (A) In cases described in paragraph (c) (2) (ii) (B) of this section, a qualified appraisal is not required, and only a partially completed appraisal summary form (as described in paragraph (c) (4) (iv) (A) of this section) is required to be attached to the tax or information return specified in paragraph (c)(2)(i)(B) of this section. However, in all cases donors must maintain records containing the information required by paragraph (b)(2)(ii) of this section.

(B) This paragraph (c)(2)(ii) applies in each of the following cases:

(*1*) The contribution of nonpublicly traded stock, if the amount claimed or reported as a deduction for the charitable contribution of such stock is greater than $5,000 but does not exceed $10,000;

(*2*) The contribution of a security to which paragraph (c) (7) (xi) (B) of this section applies; and

(*3*) The contribution of an item of property or of similar items of property described in paragraph (c)(1) of this section made after June 6, 1988, by a C corporation (as defined in section 1361(a)(2) of the Code), other than a closely held corporation or a personal service corporation.

(3) *Qualified appraisal*—(i) *In general.* For purposes of this paragraph (c), the term "qualified appraisal" means an appraisal document that—

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c) (3) (iv) (B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c) (5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c) (6) of this section.

(ii) *Information included in qualified appraisal.* A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—

(*1*) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(*3*) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of § 1.170A–1 (c) (2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c) (3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) *Special rules*—(A) *Number of qualified appraisals.* For purposes of paragraph (c) (2) (i) (A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph (c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description of such items.

(B) *Time of receipt of qualified appraisal.* The qualified appraisal must be received by the donor before the due date (including extensions) of the return of which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

(C) *Retention of qualified appraisal.* The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) *Appraisal disregarded pursuant to 31 U.S.C. 330(c).* If an appraisal is disregarded pursuant to 31 U.S.C. 330(c) it shall have no probative effect as to the value of the appraised property. Such appraisal will, however, otherwise constitute a "qualified appraisal" for purposes of this paragraph (c) if the appraisal summary includes the declaration described in paragraph (c)(4)(ii)(L)(*2*) and the taxpayer had no knowledge that such declaration was false as of the time described in paragraph (c)(4)(i)(B) of this section.

(4) *Appraisal summary*—(i) *In general.* For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term "appraisal summary" means a summary of a qualified appraisal that—

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated (as described in paragraph (c)(4)(iii) of this section) by the donee (or presented to the donee for signature in cases described in paragraph (c)(4)(iv)(C)(*2*) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(3) of this section); and

(D) Includes the information required by paragraph (c) (4) (ii) of this section.

(ii) *Information included in an appraisal summary.* An appraisal summary shall include the following information:

(A) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

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(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The manner of acquisition (*e.g.*, purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statment to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The name, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) For charitable contributions made after June 6, 1988, a statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution;

(I) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser who signs the appraisal summary and of other persons as required by paragraph (c)(3)(ii)(E) of this section;

(J) The appraised fair market value of the property on the date of contribution;

(K) The declaration by the appraiser described in paragraph (c)(5)(i) of this section;

(L) A declaration by the appraiser stating that—

(*1*) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(*2*) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser; and

(M) Such other information as may be specified by the form.

(iii) *Signature of the original donee.* The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of such done. In the case of a donee that is a governmental unit, the person who signs the appraisal summary for such donee shall be the official authorized by such donee to sign appraisal summaries. The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and § 1.6050L–1. In general, § 1.6050L–1 requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, consumes, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of the donor's contribution of such property.

(iv) *Special rules*—(A) *Content of appraisal summary required in certain cases.* With respect to contributions of nonpublicly traded stock described in paragraph (c)(2)(ii)(B)(*1*) of this section, contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions by C corporations described in paragraph (c)(2)(ii)(B)(*3*) of this section, the term "appraisal summary" means a document that—

(*1*) Complies with the requirements of paragraph (c)(4)(i) (A) and (B) of this section,

(*2*) Includes the information required by paragraph (c)(4)(ii) (A) and (B) of this section,

(*3*) Includes the amount claimed or reported as a charitable contribution deduction, and

(*4*) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in paragraph (c)(7)(xi)(B)(*2*)(iii) of this section).

(B) *Number of appraisal summaries.* A separate appraisal summary for each item of property described in paragraph (c)(1) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. If, however, during the donor's taxable year, a donor contributes similar items of property described in paragraph (c)(1) of this section to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description for such items.

(C) *Manner of acquisition, cost basis and donee's signature.* (*1*) If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii) (D) and (E) of this section (relating to the manner of acquisition and basis of the contributed property), an appropriate explanation should be attached to the appraisal summary. The taxpayer's deduction will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(*2*) In rare and unusual circumstances in which it is impossible for the taxpayer to obtain the signature of the donee on the appraisal summary as required by paragraph (c)(4)(i)(B) of this section, the taxpayer's deduction will not be disallowed for that reason provided that the taxpayer attaches a statement to the appraisal summary explaining, in detail, why it was not possible to obtain the donee's signature. For example, if the donee ceases to exist as an entity subsequent to the date of the contribution and prior to the date when the appraisal summary must be signed, and the donor acted reasonably in not obtaining the donee's signature at the time of the contribution, relief under this paragraph (c)(4)(iv)(C)(*2*) would generally be appropriate.

(D) *Information excluded from certain appraisal summaries.* The information required by paragraph (c)(4)(i)(C), paragraph (c)(4)(ii)(D), (E), (H) through (M), and paragraph (c)(4)(iv)(A)(*3*), and the average trading price referred to in paragraph (c)(4)(ii) (D), (E), (H) through do not have to be included on the appraisal summary at the time it is signed by the donee or a copy is provided to the donee pursuant to paragraph (c)(4)(iv)(E) of this section.

(E) *Statement to be furnished by donors to donees.* Every donor who presents an appraisal summary to a donee for signature after June 6, 1988, in order to comply with paragraph (c)(4)(i)(B) of this section shall furnish a copy of the appraisal summary to such donee.

(F) *Appraisal summary required to be provided to partners and S corporation shareholders.* If the donor is a partnership or S corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(G) *Partners and S corporation shareholders.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(H) of this section.

(H) *Failure to attach appraisal summary.* In the event that a donor fails to attach to the donor's return an appraisal summary as required by paragraph (c)(2)(i)(B) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the requirements of paragraph (c) (3) and (4) of this section are met (including the completion of the qualified appraisal prior to the date specified in paragraph (c)(3)(iv)(B) of this section).

(5) *Qualified appraiser*—(i) *In general.* The term "qualified appraiser" means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary (described in paragraph (c)(4) of this section), a declaration that—

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F) of this section), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330(c) (see paragraph (c)(3)(iii) of this section).

(ii) *Exception.* An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (*e.g.*, the donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

(iii) *Numbers of appraisers.* More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction pursuant to this paragraph (c). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraphs (c)(3)(i)(B) and (c)(4)(i)(C) of this section, respectively.

(iv) *Qualified appraiser exclusions.* The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deductions under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (*i.e.*, the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons (*e.g.*, if the donor acquired a painting from an art dealer, neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to that painting).

(E) Any person related to any of the foregoing persons under section 267(b), or, with respect to appraisals made after June 6, 1988, married to a person who is in a relationship described in section 267(b) with any of the foregoing persons.

(F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv) (A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

(6) *Appraisal fees*—(i) *In general.* Except as otherwise provided in paragraph (c)(6)(ii) of this section, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement for an appraisal is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. For example, an appraiser's fee that is subject to reduction by the same percentage as the appraised value may be reduced by the Internal Revenue Service would be treated as a fee that violates this paragraph (c)(6).

(ii) *Exception.* Paragraph (c)(6)(i) of this section does not apply to a fee paid to a generally recognized association that regulates appraisers provided all of the following requirements are met:

(A) The association is not organized for profit and no part of the net earnings of the association inures to the benefit of any private shareholder or individual (these terms have the same meaning as in section 501(c)),

(B) The appraiser does not receive any compensation from the association or any other persons for making the appraisal, and

(C) The fee arrangement is not based in whole or in part on the amount of the appraised value of the donated property, if any, that is allowed as a deduction under section 170 after Internal Revenue Service examination or otherwise.

(7) *Meaning of terms.* For purposes of this paragraph (c)—

(i) *Closely held corporation.* The term "closely held corporation" means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) *Personal service corporation.* The term "personal service corporation" means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of the Code).

(iii) *Similar items of property.* The phrase "similar items of property" means property of the same generic category or type, such as stamp collections (including philatelic supplies and books on stamp collecting), coin collections (including numismatic supplies and books on coin collecting), lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly trade stock, land, buildings, clothing, jewelry, funiture, electronic equipment, household appliances, toys,

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everyday kitchenware, china, crystal, or silver. For example, if a donor claims on her return for the year deductions of $2,000 for books given by her to College A, $2,500 for books given by her to College B, and $900 for books given by her to College C, the $5,000 threshold of paragraph (c)(1) of this section is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisals and appraisal summaries required when similar items of property are contributed, see paragraphs (c)(3)(iv)(A) and (c)(4)(iv)(B), respectively, of this section.

(iv) *Donor.* The term "donor" means a person or entity (other than an organization described in section 170(c) to which the donated property was previously contributed) that makes a charitable contribution of property.

(v) *Donee.* The term "donee" means—

(A) Except as provided in paragraph (c)(7)(v) (B) and (C) of this section, an organization described in section 170(c) to which property is contributed,

(B) Except as provided in paragraph (c)(7)(v)(C) of this section, in the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c), the trust, or

(C) In the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c) made on or before June 6, 1988, the beneficiary that is an organization described in section 170(c), or if the trust has assumed the duties of a donee by signing the appraisal summary pursuant to paragraph (c)(4)(i)(B) of this section, the trust.

In general, the term, refers only to the original donee. However, with respect to paragraph (c)(3)(ii)(D), the last sentence of paragraph (c)(4)(iii), and paragraph (c)(5)(iv)(C) of this section, the term "donee" means the original donee and all successor donees in cases where the original donee transfers the contribution property to a successor donee after July 5, 1988.

(vi) *Original donee.* The term "original donee" means the donee to or for which property is initially donated by a donor.

(vii) *Successor donee.* The term "successor donee" means any donee of property other than its original donee (*i.e.*, a transferee of property for less than fair market value from an original donee or another successor donee).

(viii) *Fair market value.* For the meaning of the term "fair market value," see section 1.170A–1(c)(2).

(ix) *Nonpublicly traded securities.* The term "nonpublicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (c)(7)(xi) of this section.

(x) *Nonpublicly traded stock.* The term "nonpublicly traded stock" means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term stock does not include a debenture or any other evidence of indebtedness.

(xi) *Publicly traded securities*—(A) *In general.* Except as provided in paragraph (c)(7)(xi)(C) of this section, the term "publicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market with respect to a security if:

(*1*) The security is listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis;

(*2*) The security is regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(*3*) The security is a share of an open-end investment company (commonly known as a mutual fund) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States.

(If the market value of an issue of a security is reflected only on an interdealer quotation system, the issue shall not be considered to be publicly traded unless the special rule described in paragraph (c)(7)(xi)(B) of this section is satisfied.)

(B) *Special rule—(1) In General.* An issue of a security that does not satisfy the requirements of paragraph (c)(7)(xi)(A) (*1*), (*2*), or (*3*) of this section shall nonetheless be considered to have market quotations readily available on an established securities market for purposes of paragraph (c)(7)(xi)(A) of this section if all of the following five requirements are met:

(*i*) The issue is regularly traded during the computational period (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iv*) of this section) in a market that is reflected by the existence of an interdealer quotation system for the issue,

(*ii*) The issuer or an agent of the issuer computes the average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section) for the issue for the computational period,

(*iii*) The average trading price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the United States not later than the last day of the month following the end of the calendar quarter in which the computational period ends,

(*iv*) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume, and

(*v*) The issuer or its agent permits the Internal Revenue Service to review the books and records described in paragraph (c)(7)(xi)(B)(*1*)(*iv*) of this section with respect to transactions during the computational period upon giving reasonable notice to the issuer or agent.

(*2*) *Definitions.* For purposes of this paragraph (c)(7)(xi)(B)—

(*i*) *Issue of a security.* The term "issue of a security" means a class of debt securities with the same obligor and identical terms except as to their relative denominations (amounts) or a class of stock having identical rights.

(*ii*) *Interdealer quotation system.* The term "interdealer quotation system" means any system of general circulation to brokers and dealers that regularly disseminates quotations of obligations by two or more identified brokers or dealers, who are not related to either the issuer of the security or to the issuer's agent, who compute the average trading price of the security. A quotation sheet prepared and distributed by a broker or dealer in the regular course of its business and containing only quotations of such broker or dealer is not an interdealer quotation system.

(*iii*) *Average trading price.* The term "average trading price" means the mean price of all transactions (weighted by volume), other than original issue or redemption transactions, conducted through a United States office of a broker or dealer who maintains a market in the issue of the security during the computational period. For this purpose, bid and asked quotations are not taken into account.

(*iv*) *Computational period.* For calendar quarters beginning on or after June 6, 1988, the term "computational period" means weekly during October through December (beginning with the first Monday in October and ending with the first Sunday following the last Monday in December) and monthly during January through September (beginning January 1). For calendar quarters beginning before June 6, 1988, the term "computational period" means weekly during October through December and monthly during January through September.

(C) *Exception.* Securities described in paragraph (c)(7)(xi) (A) or (B) of this section shall not be considered publicly traded securities if—

(*1*) The securities are subject to any restrictions that materially affect the value of the securities to the donor or prevent the securities from being freely traded, or

(*2*) If the amount claimed or reported as a deduction with respect to the contribution of the securities is different than the amount listed in the market quotations that are readily available on an established securities market pursuant to paragraph (c)(7)(xi) (A) or (B) of this section.

(D) *Market quotations and fair market value.* The fair market value of a publicly traded security, as defined in this paragraph (c)(7)(xi), is not necessarily equal to its market quotation, its average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section), or its face value, if any. See section 1.170A–1(c)(2) for the definition of "fair market value."

§ 1.170A–14 [Amended]

Par. 4. Paragraph (i) of § 1.170A–14 is amended by removing from the last sentence "§1.170A–13T(c)" and adding in its place "§1.170A–13(c)".

§ 1.6050L–1T [Removed]

Par. 5. Section 1.6050L–1T is removed.

Par. 6. A new § 1.6050L–1 is added immediately after § 1.6050K–1 to read as follows:

§ 1.6050L–1 Information return by donees relating to certain dispositions of donated property.

(a) *Information returns.*—(1) *Disposition of charitable deduction property.* If a donee of any charitable deduction property (as defined in paragraph (e) of this section), sells, exchanges, consumes, or otherwise disposes of (with or without consideration) such property (or any portion thereof) within 2 years after the date of the donor's contribution of such property, the donee shall make an information return on the form prescribed by the Internal Revenue Service. For special rules with respect to successor donees, see paragraph (c) of this section.

(2) *Disposition of items appraised for $500 or less*—(i) *In general.* Paragraph (a)(1) of this section shall not apply with respect to an item of charitable deduction property disposed of by sale if the appraisal summary (as defined in § 1.170A–13(c)(4)) signed by the donee with respect to the item contains, at the time of the donee's signature, a statement signed by the donor that the appraised value of the item does not exceed $500. In the case of an appraisal summary that describes more than one item, this exception shall apply only with respect to an item clearly identified as having an appraised value of $500 or less. For purposes of this paragraph (a)(2)(i), items that form a set (such as, for example, a collection of books written by the same author, components of a stereo system, or a group of place settings or a pattern of silverware) are considered one item. In addition, all nonpublicly traded stock is considered one item as are all nonpublicly traded securities other than nonpublicly traded stock.

(ii) *Transitional rule.* Paragraph (a)(2)(i) of this section is satisfied with respect to an appraisal summary submitted to the donee on or before January 31, 1989, if such donee obtained the required statement from the donor on or before March 31, 1988, on either an amended appraisal summary or an attachment to the original appraisal summary.

(3) *Consumption or distribution of exempt purpose.* Paragraph (a)(1) of this section shall not apply with respect to an item of charitable deduction property consumed or distributed by a donee without consideration if the consumption or distribution is in furtherance of a purpose or function constituting a basis for such donee's exemption under section 501 of the Code. For example, no reporting is required with respect to medical supplies consumed or distributed by a tax-exempt relief organization in aiding disaster victims.

(b) *Information required to be provided on return.* The information return required by paragraph (a)(1) of this section shall include the following:

(1) The name, address, and employer identification number of the donee making the information return;

(2) A description of the property (or portion disposed of) in sufficient detail to identify the charitable deduction property received by such donee;

(3) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a corporation or partnership);

(4) The date of the contribution to such donee;

(5) Any amount received by such donee with respect to the disposition;

(6) The date of the disposition by such donee; and

(7) Such other information as may be specified by the form or its instructions.

(c) *Successor donees*—(1) *In general.* Section 6050L and this section shall apply to successor donees that receive charitable deduction property (as defined in paragraph (e) of this section) that was transferred by the original donee after July 5, 1988, (whether the successor donee received the property from the original donee or another successor donee). For definitions of the terms "donor," "donee," "original donee," and "successor donee," see § 1.170A–13(c)(7)(iv)–(vii).

(2) *Information required to be provided on return.* With respect to charitable deduction property that is transferred to one or more successor donees to which this section applies, the information return required by paragraph (a)(1) of this section shall include, in addition to the information described in paragraph (b) of this section, the following:

(i) The name, address, and employer identification number of the immediately succeeding successor donee (if any) and the immediately preceding successor donee (if any);

(ii) The name, address, and employer identification number of the original donee if different from the information required by paragraph (b)(1) of this section;

(iii) The date of contribution to the original donee; and

(iv) Such other information as may be specified by the form or its instructions.

(3) *Information to be provided to transferor.* Every successor donee to which this section applies that receives any charitable deduction property within the 2-year period described in paragraph (a)(1) of this section shall provide its name, address, and employer identification number to that preceding donee on or before the 15th day after the later of—

(i) The date of transfer to such successor donee, or

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(ii) The date such successor donee receives a copy of the appraisal summary from the preceding donee.

(4) *Donees that transfer property to successor donees.* In addition to complying with the requirements of paragraph (a)(1) of this section, every donee that transfers any charitable deduction property to a successor donee to which this section applies within the 2-year period described in paragraph (a)(1) of this section—

(i) Shall provide its name, address, and employer identification number and a copy of the appraisal summary (as described in § 1.170A–13(c)(4)) relating to the transferred property to the successor donee on or before the 15th day after the latest of—

(A) The date of such transfer, or

(B) The date the original donee signs the appraisal summary, or

(C) In a case in which the transferring donee is a successor donee, the date such donee receives a copy of the appraisal summary from such donee's transferor, and

(ii) Shall provide a copy of its information return required by paragraph (a)(1) this section to the successor donee on or before the 15th day after the transferring donee files the information return pursuant to paragraph (e)(2) of this section.

(5) *Donee.* In the case of charitable deduction property that is transferred to a successor donee to which this section applies, the term "donee" as used in paragraph (a)(2) and (e) of this section means only the original donee.

(d) *Special rules*—(1) *Statement to be furnished to donors.* Every donee making a return under section 6050L and this section with respect to the disposition of charitable deduction property shall furnish a copy of the return to the donor of the property.

(2) *Retention of appraisal summary.* Every donee shall retain the appraisal summary described in § 1.170A–13(c)(4) in the donee's records for so long as it may be relevant in the administration of any internal revenue law.

(e) *Charitable deduction property.* For purposes of this section, the term "charitable deduction property" means any property (other than money and publicly traded securities to which § 1.170A–13(c)(7)(xi)(B) does not apply) contributed after December 31, 1984, with respect to which the donee signs (or is presented with for signature in cases described in § 1.170A–13(c)(4)(iv)(C)(*2*)) an appraisal summary (as required by § 1.170A–13(c)(4)(i)(B)). For purposes of this section, if such donee signs (or is presented with for signature in cases described in § 1.170A–13(c)(4)(iv)(C)(*2*)) the appraisal summary after the date of contribution of the property, the property is deemed to be charitable deduction property from the date of contribution.

(f) *Place and time for filing information returns*—(1) *Place for filing.* The donee information return required by section 6050L and this section shall be filed with the Internal Revenue Service center listed on the return form or its instructions.

(2) *Time for filing*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, the donee information return shall be filed on or before the 125th day after a donee sells, exchanges, consumes or otherwise disposes of the charitable deduction property. A donee information return filed pursuant to this paragraph (f)(2)(i) does not have to include the information required by paragraphs (b) (3), (4), (5), or (6), or (c)(2)(i)–(iii) of this section if such information is not available to the donee by the due date of the return.

(ii) *Exception.* Notwithstanding paragraph (f)(2)(i) of this section, in the case of a donee who, on the date of receipt of the transferred property, had no reason to believe that the substantiation requirements of § 1.170A–13(c) apply with respect to the property, the donee information return is not required to be filed until the 60th day after the later of May 5, 1988, or the date on which such donee has reason to believe that the substantiation requirements of § 1.170A–13(c) apply with respect to the property. A donee information return filed pursuant to this paragraph (f)(2)(ii) does not have to include the information required by paragraph (b) (3), (4), (5), or (6), or (c)(2)(i)–(iii) of this section if such information is not available to the donee by the due date of the return.

(g) *Penalties.* For penalties for failure to compy with the requirements of this section, see sections 6676, 6721, and 6723.

PART 602—OMB Control Numbers Under the Paperwork Reduction Act

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Paragraph (c) of § 602.101 is amended by inserting in the appropriate place in the table "§ 1.170A–13(c) * * * 1545–0908" and "§ 1.6050L–1 * * * 1545–0908".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
April 19, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
[FR Doc. 88–10007 Filed 5–4–88; 8:45 am]
BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 303

[FRL–3327–9]

Citizen Awards for Information on Criminal Violations Under Superfund

AGENCY: Environmental Protection Agency.

ACTION: Interim-final rule.

SUMMARY: The Environmental Protection Agency (EPA) today publishes on an interim-final basis a regulation in response to the requirements established by section 109(c) of the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499). Codified as CERCLA section 109(d), it authorizes the President to pay an award of up to $10,000 to any individual for information leading to the successful prosecution of any person for a criminal violation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended. That Section also requires the President to prescribe, by regulation, criteria for such an award. By Executive Order No. 12580, the President, on January 23, 1987, delegated to the Administrator of EPA the authority to promulgate the regulation, and thereafter to carry out the section 109(d) award program, The EPA has promulgated this regulation on an interim-final basis in order to permit the more expeditious protection of the public health and the environment, as directed by Congress for this provision of SARA. Nevertheless, EPA is issuing this rule in interim-final form and will accept public comments on it in developing the final rule. Today's notice sets forth who is eligible to file a claim for an award and who within EPA shall make the determination of eligibility for such an award, details procedures and requirements for filing a claim, and establishes the criteria for payment of an award. This notice also provides an assurance of confidentiality to those who provide such information on a confidential basis.

DATES: Effective date: September 2, 1988. Comments on this interim-final rule must be received on or before September 2, 1988.

ADDRESSES: Commenters must each send an original and two copies of their comments to the Office of Criminal Enforcement Counsel (LE–134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public docket for this interim-final rule is located in Room NE–114, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Appointments to examine these docket materials may be made in advance by calling (202) 475–9660.

FOR FURTHER INFORMATION CONTACT: Keith A. Onsdorff, Senior Attorney-Adviser, Office of Criminal Enforcement Counsel (LE–134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, phone: (202) 475–9668.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Deputy Assistant Administrator for Criminal Enforcement is authorized to exercise his discretion in paying up to $10,000 for information leading to the arrest and successful prosecution of any person for a criminal violation of CERCLA, as amended.

The environmental and public health dangers associated with the illegal disposal of hazardous materials have emerged as a matter of national interest and concern. In order to provide an incentive for individuals to come forward with information concerning such illegal practices, Congress has authorized EPA to establish a program to reward citizens for providing information useful in prosecuting those involved in illegal hazardous waste activity.

Because many informants are only available and reliable when they are given appropriate and efficacious assurances that their identity will be protected from disclosure, the security of assured confidentiality is necessary to protect their employment status or some other legitimate privacy interests. The award provision provides both the security of confidentiality and the incentive of a cash award for an informant to come forward with pertinent information on the criminal violations of CERCLA.

Both the initial determination of a claimant's eligibility for an award and the subsequent determination of any amount to be awarded to a claimant are matters vested by statute in the exclusive discretion of the Agency. These determinations entail subjective considerations relating to the sound administration of justice and to cooperation with EPA investigators and Department of Justice prosecutors. Providing information to the Agency by any private citizen does not create any obligation to pay compensation for such voluntary assistance. Law enforcement officials are not deemed to be "private citizens" as contemplated by this award program. Law enforcement official means any employee of the Federal government who takes part in, or is responsible for, the enforcement of Federal statutes and regulations governing the handling of hazardous substances or wastes.

Inasmuch as these decisions are made pursuant to the Deputy Assistant Administrator's discretionary grant authority under CERCLA section 109(d), they constitute final administrative action on any properly filed award claim. This award authority is properly deemed to constitute the making of a discretionary public grant. Because this rule relates to public grants, benefits, or contracts, it is exempt from all requirements of section 553 of the Administrative Procedures Act including notice and opportunity for comment and delayed effective date.

EPA believes the program will lead to increased enforcement activity with greater deterrent impact. This incentive will also help the Agency attain its mandated goals of a cleaner environment and the earlier intervention of remedial resources, which will result in cost savings, enhanced public health protection and more expeditiously conducted cleanups. To expedite this process, interim-final promulgation is both proper and appropriate.

II. Summary of Regulatory Analyses

A. Executive Order No. 12291

Proposed regulations must be classified as major or non-major to satisfy the rulemaking protocol established by Executive Order No. 12291. According to Executive Order No. 12291, major rules are those that are likely to result in:

(1) An annual cost to the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers or individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim-final regulation provides an entirely voluntary procedure by which individuals who learn of potential criminal violations of the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, may disclose their information to EPA and apply for an award of up to $10,000. Because this interim-final rulemaking imposes no new burdens of any nature upon any regulated entity and creates no additional regulatory entities, and since the maximum award is limited to $10,000, no formal Regulatory Impact Analysis is necessary. This interim-final rule was submitted to the Office of Management and Budget (OMB) for its review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." Because this rulemaking applies only to individuals who choose to volunteer information to the Agency regarding the criminal violations of CERCLA, it should have no effect upon any other organizations, entities, or businesses, either large or small. Therefore, EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1986 requires approval from the Office of Management and Budget (OMB) for information requests. Because the Act exempts from OMB clearance federal criminal matters or actions, and because this interim-final rulemaking is related to federal criminal enforcement under CERCLA, the Paperwork Reduction Act requirements do not apply.

List of Subjects in 40 CFR Part 303

Law enforcement, Intergovernmental relations, Superfund, Crime, Awards, National Response Center notification of release, Destruction of records required to be retained.

Dated: April 28, 1988.

Lee M. Thomas,
Administrator.

For the reasons set forth in the preamble, Part 303, Title 40 of the Code of Federal Regulations is added as set forth below:

PART 303—CITIZEN AWARDS FOR INFORMATION ON CRIMINAL VIOLATIONS UNDER SUPERFUND

Subpart A—General

Sec.
303.10 Purpose.
303.11 Definitions.
303.12 Criminal violations covered by this award authority.

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

303.20 Eligibility to file a claim for award.
303.21 Determination of eligibility and amount of award.

Subpart C—Criteria for Payment of Award

303.30 Criteria for payment of award.
303.31 Assurance of claimant confidentiality.
303.32 Pre-payment offers.
303.33 Filing a claim.

Authority: 42 U.S.C. 9609(d), Executive Order No. 12580.

Subpart A—General

§ 303.10 Purpose.

This regulation implements the "citizen award" authority granted by Congress to the President in the 1986 Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 109(d).

As authorized in the Superfund Amendments and Reauthorization Act of 1986 (SARA) section 109(c) and Executive Order No. 12580 (issued by the President on January 23, 1987), the Environmental Protection Agency is empowered to pay up to $10,000.00 from the Superfund to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under CERCLA as amended.

§ 303.11 Definitions.

(a) *Arrest.* Restraint of an arrestee's liberty or the equivalent through the service of judicial process compelling such a person to respond to a criminal accusation.

(b) *Conviction.* A judgment of guilt entered in U.S. District Court, upon a verdict rendered by the court or petit jury or by a plea of guilty, including a plea of *nolo contendere.*

(c) *Individual.* A natural person, not a corporation or other legal entity nor an association of persons.

§ 303.12 Criminal violations covered by this award authority.

(a) Failure to Give Required Notice of a Release of a Reportable Quantity of a Hazardous Substance, 42 U.S.C. 9603(a);

(b) Destruction or Concealment of Records Required under CERCLA to have been Retained, 42 U.S.C. 9603(d).

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

§ 303.20 Eligibility to file a claim for award.

(a) Any individual, except law enforcement officers and persons convicted in the case giving rise to the award claim and any persons identified in § 303.20(b) shall be eligible to file a claim for an award as provided for in § 303.33 of this Subpart.

(b) No person who was an employee of or contractor for the United States Environmental Protection Agency at the time he or she came into possession of the information disclosed to other Agency officials (or is so employed at the time of disclosure), which information constitutes in whole or part the basis for an award claim, shall be eligible to file a claim for an award.

(c) To be eligible for an award, the informant must disclose the identity of person(s) [or other pertinent information that leads to the expeditious disclosure of the identity of said person(s)] criminally culpable for the violations set forth in § 303.12 of Subpart A. Disclosure of such pertinent information must be made to an employee, agent or representative of the United States Environmental Protection Agency.

§ 303.21 Determination of eligibility and amount of award.

The Agency's determinations as to eligibility and award amount shall constitute final Agency action as to either amount or eligibility. These determinations, consistent with the need to preserve from disclosure the identity of confidential informants (as noted in Section 303.31) as well as to preserve from disclosure methods of Agency investigation, shall not be subject to administrative challenge by any person not making a claim to that award.

[Note: It is the Environmental Protection Agency's view that such determinations also would not be subject to judicial challenge by such person.]

Subpart C—Criteria for Payment of Award

§ 303.30 Criteria for payment of award.

Upon the filing of an eligible claim in accordance with the procedures as set forth in § 303.33, the Agency's Assistant Administrator for Enforcement and Compliance Monitoring, or his Deputy for Criminal Enforcement, in making the decision to grant an award, and if so, in what amount, shall consider all relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his judgment alone. Relevant criteria include one or more of the following:

(a) Whether the claimant's information constituted the initial, unsolicited notice to the Government of the violation;

(b) Whether the Government would readily have obtained knowledge of the violation in a timely manner absent claimant's information;

(c) Importance of the case, egregiousness of the violation, potential for or existence of environmental harm;

(d) Concealment of a person criminally culpable or existence of an organized criminal conspiracy to conceal the offense(s) committed by the named defendant(s);

(e) Willingness of the claimant to assist the Government's prosecution of the offense(s), which assistance includes providing further information and grand jury testimony, participating in trial preparation, and trial testimony if consistent with the limits on claimant identity disclosure as set forth in § 303.31.

(f) Value of the claimant's assistance in comparison to that given by all other sources of information and evidence which led to arrest and conviction.

§ 303.31 Assurance of claimant confidentiality.

No person, except as authorized by the Agency's Office of Enforcement and Compliance Monitoring to have this knowledge, shall be given access to the identity of, or information that would lead to the identity of, a claimant who has requested anonymity prior to disclosing information to the Agency.

§ 303.32 Pre-payment offers.

Prior to the actual payment of an award, no employee of the United States Government, including any person purporting to act on behalf of the United States Environmental Protection Agency, is authorized by these regulations to make any promise, offer, or representation with respect to the Agency's grant of an award in exchange for information.

§ 303.33 Filing a claim.

(a) Any individual seeking an award under this regulation is required to file a claim for such an award with the Deputy Assistant Administrator for Criminal Enforcement not later than 45 days after the conviction of the person(s) involved in the prosecution in which the information was provided.

(b) The claim submission must provide, at a minimum, a summary of the information provided, the date the information was provided, and the name and title of the person to whom the information was provided.

(c) All claim submissions must be submitted to the Office of Criminal Enforcement Counsel (LE–134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The claim envelope should also specify whether the information was submitted under a request for anonymity and whether such request is still in effect. All such externally identified claims shall be handled in accordance with the Agency procedures for maintaining informant confidentiality as referenced in § 303.31 of this Subpart.

[FR Doc. 88–9844 Filed 5–4–88; 8:45 am]
BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42, 101–43, 101–44, 101–45 and 101–46

[FPMR Amendment H–165]

Utilization and Disposal of Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises portions of FPMR Subchapter H that provide policy and procedures for the utilization and disposal of personal property. It clarifies content, eliminates duplication, and removes obstacles in utilizing and disposing of items of personal property.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Stanley M. Duda, Director, Property Management Division (FBP), 703–557–1240).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 101–42, 101–43, 101–44, 101–45 and 101–46

Government property management, Metals, Reporting and record keeping requirements, Surplus Government property.

PART 101–42—PROPERTY REHABILITATION SERVICES AND FACILITIES [REMOVED AND RESERVED]

1. Part 101–42 is removed and is reserved.

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

2. The authority citation for Part 101–43 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

3. The table of contents for Part 101–43 is amended by adding and revising the following entries to read as follows:

Sec.
101–43.001–1 Auxiliary or accessorial automatic data processing
101–43.001–2 Contractor inventory.
101–43.001–3 Controlled substances.
101–43.001–4 Cooperative agreement.
101–43.001–5 Cost-reimbursement contract.
101–43.001–6 Excess personal property.
101–43.001–7 Executive agency.
101–43.001–8 Fair market value.
101–43.001–9 Federal agency.
101–43.001–10 Foreign excess personal property.
101–43.001–11 Freeze.
101–43.001–12 GSA.
101–43.001–13 GSA regional office.
101–43.001–14 Holding agency.
101–43.001–15 Inspection.
101–43.001–16 Intangible personal property.
101–43.001–17 Line item.
101–43.001–18 Management.
101–43.001–19 Material.
101–43.001–20 Motor vehicle.
101–43.001–21 Nonappropriated fund property.
101–43.001–22 Nuclear Regulatory Commission-controlled materials.
101–43.001–23 Personal property.
101–43.001–24 Possessions.
101–43.001–25 Project grant.
101–43.001–26 Public agency.
101–43.001–27 Related personal property.
101–43.001–28 Salvage.
101–43.001–29 Scrap.
101–43.001–30 Screening period.
101–43.001–31 Surplus personal property.
101–43.001–32 Surplus release date.
101–43.001–33 United States.
101–43.002 Requests for deviations.

Subpart 101–43.1—General Provisions

101–43.101 Agency utilization reviews.
101–43.102 Reassignment of personal property.
101–43.103 Agency utilization officials.

Subpart 101–43.3—Utilization of Excess

Sec.
101–43.303 Retention of custody.
101–43.304 Reporting requirements.
101–43.304–1 Reporting.
101–43.304–2 Form and distribution of reports.
101–43.304–3 Excess personal property on or within excess real property.
101–43.304–4 Property at installations due to be discontinued.
101–43.305 Property not required to be formally reported.
101–43.306 Assistance in emergency and major disaster relief.
101–43.307 Items requiring special handling.
101–43.307–1 Contractor inventory.
101–43.307–2 Controlled substances, drugs, and biologicals.
101–43.307–3 Conditional gifts for defense purposes.
101–43.307–4 Conditional gifts to reduce the public debt.
101–43.307–5 Unconditional gifts.
101–43.307–6 Intangible personal property.
101–43.307–7 Nonappropriated fund property.
101–43.307–8 Noncertified electronic products.
101–43.307–9 Passenger motor vehicles.
101–43.307–10 Printing, binding, and blankbook equipment and supplies.
101–43.307–11 Property having unsafe or dangerous characteristics.
101–43.307–12 Shelf-life items.
101–43.307–13 Medical shelf-life items held for national emergency purposes.
101–43.308 Withdrawals and corrections.
101–43.308–1 Withdrawals.
101–43.308–2 Corrections.
101–43.309 Transfers of excess personal property.
101–43.309–1 Agencies eligible.
101–43.309–2 Information on availability.
101–43.309–3 Reimbursement.
101–43.309–4 Transfer for redistribution.
101–43.309–5 Procedure for effecting transfers.
101–43.310 Costs and proceeds.
101–43.310–1 Cost of care and handling.
101–43.310–2 Proceeds.
101–43.311 Determination of excess as surplus.
101–43.311–1 Reportable property.
101–43.311–2 Nonreportable property.
101–43.311–3 Property not utilized.
101–43.312 Use of excess personal property on cost-reimbursement contracts.
101–43.313 Use of excess personal property on cooperative agreements.
101–43.314 Use of excess personal property on grants.
101–43.315 Certification of non-Federal agency screeners.

Subpart 101–43.5— Utilization of Foreign Excess Personal Property

101–43.502 Holding agency responsibilities.
101–43.503 Payment of costs.
101–43.504 Donation availability.

4. Section 101–43.000 is revised to read as follows:

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§ 101–43.000 Scope of part.

This part prescribes the policies and methods governing the economic and efficient utilization of personal property located within and outside the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands, except that Part 201–33 of the Federal Information Resources Management Regulation (FIRMR) (41 CFR Part 201–33) prescribes the policies and procedures governing the worldwide reutilization of excess automatic data processing equipment (ADPE) and related supplies by the Federal Government. Pursuant to FIRMR Part 201–33, excess auxiliary or accessorial ADPE with a unit original acquisition cost of $1,500 or less shall be made available for transfer in accordance with this part.

5. Section 101–43.001 is revised to read as follows:

§ 101–43.001 Definitions.

For the purposes of this Subchapter H, the following terms shall have the meanings set forth in the following sections.

6. Sections 101–43.001–1 through 101–43.001–33 are revised to read as follows:

§ 101–43.001–1 Auxiliary or accessorial automatic data processing equipment.

"Auxiliary or accessorial automatic data processing equipment" means equipment such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment, etc., designed for use with digital, analog, or hybrid computer equipment, either cable or modem connected, wire connected, or stand-alone, and whether selected or acquired with a computer or separately.

§ 101–43.001–2 Contractor inventory.

"Contractor inventory" means any property acquired by and in the possession of a contractor or subcontractor (including Government furnished property) under a contract pursuant to the terms of which title is vested in the Government.

§ 101–43.001–3 Controlled substances.

"Controlled substances" means:

(a) Any narcotic, depressant, stimulant, hallucinogenic drug, or any other drug or other substance or immediate precursor included in schedules I, II, III, IV, or V of section 202 of the Controlled Substances Act (21 U.S.C. 812) except exempt chemical preparations and mixtures and excluded substances listed in 21 CFR Part 1308;

(b) Any other drug or substance which the Attorney General determines to be subject to control pursuant to title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(c) Any other drug or substance which by international treaty, convention, or protocol is to be controlled by the United States.

§ 101–43.001–4 Cooperative agreement.

"Cooperative agreement" means a legal instrument reflecting a relationship between the executive agency acting for the Federal Government, and a State or local government or other recipient whenever:

(a) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and

(b) Substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity. "Other recipient" includes any person or organization other than a State or local government who is authorized to receive Federal assistance or procurement contracts and includes any charitable or educational institution.

§ 101–43.001–5 Cost-reimbursement contract.

"Cost-reimbursement contract" means a contract providing for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract.

§ 101–43.001–6 Excess personal property.

"Excess personal property" means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

§ 101–43.001–7 Executive agency.

"Executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

§ 101–43.001–8 Fair market value.

"Fair market value" means the best estimate of the gross proceeds that would be recovered if the property were to be sold by competitive bid.

§ 101–43.001–9 Federal agency.

"Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

§ 101.43–001–10 Foreign excess personal property.

"Foreign excess personal property" means any excess personal property located ouside the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands. For the purposes of this regulation, the Trust Territory of the Pacific Islands is defined to include Palau and the former trust areas of the Federated States of Micronesia and the Marshall Islands.

§ 101–43.001–11 Freeze.

"Freeze" means the process of reserving at a holding activity, or at the controlling GSA regional office, an item of excess personal property that has been requested by a user or has been selected by a GSA area utilization officer or other GSA representative to fill an existing or known requirement.

§ 101–43.001–12 GSA.

"GSA" means the General Service Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this subchapter have been delegated by the Administrator of General Services.

§ 101–43.001–13 GSA regional office.

"GSA regional office" means the Federal Supply Service Bureau or other organizational unit of the GSA regions listed in § 101–43.4802 to which authority has been delegated to perform utilization and disposal functions specified in this Subchapter.

§ 101–43.001–14 Holding agency.

"Holding agency" means the executive agency which has accountability for the property involved.

§ 101–43.001–15 Inspection.

"Inspection" means the critical examination of material by any means to verify quantity, to determine condition, or to compare actual characteristics with those given in applicable specifications.

§ 101–43.001–16 Intangible personal property.

"Intangible personal property" means property including but not limited to such classes of items as patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, shares of stock, and similar evidences of value, except as, in a given case or class of cases, may be excluded by the Administrator of General Services.

§ 101–43.001–17 Line item.

"Line item" means a single line entry on a reporting form which indicates a quantity of personal property located at any one activity having the same description, condition code, and unit cost.

§ 101–43.001–18 Management.

"Management" means the safeguarding of the Government's interest in property in an efficient and economical manner consistent with the best business practices.

§ 101–43.001–19 Material.

"Material" means any item necessary for the equipment, maintenance, operation, and support of Governmental activities without distinction regarding its use for administrative or operational purposes.

§ 101–43.001–20 Motor vehicle.

"Motor vehicle" means a conveyance, self-propelled or drawn by mechanical power, designed to be principally operated on the streets and highways in the transportation of property or passengers.

§ 101–43.001–21 Nonappropriated fund property.

"Nonappropriated fund property" means property acquired by religious or morale, welfare or recreational activities, post exchanges, ship stores, military officer or enlisted clubs, veterans' canteens, and similar activities with funds generated by Government employees and their dependents for operation of these activities. Such property is not Federal property.

§ 101–43.001–22 Nuclear Regulatory Commission-controlled materials.

"Nuclear Regulatory Commission-controlled materials" means those materials the possession, use, and transfer of which are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC) pursuant to the Energy Reorganization Act of 1974 (88 Stat. 1233). The materials are defined as follows:

(a) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. (See 10 CFR Part 30.)

(b) "Source material" means:

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form, or

(2) Ores which contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material. (See 10 CFR Part 40.)

(c) "Special nuclear material" means:

(1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which NRC determines to be special nuclear material, but does not include source material, or

(2) Any material artificially enriched by any of the foregoing. (See 10 CFR Part 70.)

§ 101–43.001–23 Personal property.

"Personal property" means any property, except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

§ 101–43.001–24 Possessions.

"Possessions" means the Virgin Islands, Guam, American Samoa, Wake Island, Midway Island, and the Guano Islands, but does not include the Commonwealth of Puerto Rico.

§ 101–43.001–25 Project grant.

"Project grant" means a grant made for a specific purpose and with a specific termination date.

§ 101–43.001–26 Public agency.

"Public agency" means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

§ 101–43.001–27 Related personal property.

"Related personal property" means any personal property which: (a) Is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property. Normally, common-use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or

(b) Is determined by the Administrator of General Services to be related to the real property.

§ 101–43.001–28 Salvage.

"Salvage" means personal property having value greater than its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit (either by the holding or other Federal agency), and its repair or rehabilitation for use as a unit is clearly impracticable. Repairs or rehabilitation estimated to cost in excess of 65 percent of acquisition cost would be considered "clearly impracticable" for purposes of this definition.

§ 101–43.001–29 Scrap.

"Scrap" means personal property that has no value except for its basic material content.

§ 101–43.001–30 Screening period.

"Screening period" means: (a) For reportable excess personal property as defined in § 101–43.304, the calendar days from the day following receipt of a report in the appropriate GSA office to and including the day specified as the surplus release date.

(b) For nonreportable excess personal property as defined in § 101–43.305, the calendar days from the day following the date of the determination by the holding agency that the property is available for screening as excess, to and including the day specified as the surplus release date.

§ 101–43.001–31 Surplus personal property.

"Surplus personal property" means any excess personal property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator of General Services.

§ 101–43.001–32 Surplus release date.

"Surplus release date" means the predetermined date on which Federal utilization screening of excess personal property is terminated. The date signifies the transition of the property from excess of surplus status. This term is equivalent to "automatic release date" or "ARD".

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§ 101-43.001-33 United States

"United States" in the geographical sense means all the 50 States and the District of Columbia.

7. Section 101-43.002 is added to read as follows:

§ 101-43.002 Request for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection in accordance with Subpart 105-60.3 of this title.

8. Subpart 101-43.1 is revised to read as follows:

Subpart 101-43.1—General Provisions

§ 101-43.101 Agency utilization reviews.

Each executive agency shall continuously survey property under its control to assure maximum use and shall promptly make personal property that is excess to its needs available for transfer in accordance with this part.

101-43.102 Reassignment of personal property.

(a) When property is determined to no longer be required for the purpose of the appropriation from which it was purchased or for the use to which it has been applied, an executive agency shall, to the maximum extent feasible, reassign the property within its activities, including its cost-reimbursement contractors as described in 48 CFR Subpart 16.3, and shall immediately discontinue procurement of items for which the property can be substituted or adapted.

(b) Federal agencies in the legislative and judicial branches are encouraged to report and transfer excess personal property and fill their requirements from excess personal property or other Federal agencies. In reporting personal property as excess, each Federal agency shall comply with the provisions of this part.

§ 101-43.103 Agency utilization officials.

To promote the maximum utilization of excess personal property, agencies are requested to designate national and regional utilization officials who will be responsible for promoting the acquisition and profitable use of available excess.

9. Subpart 101-43.3 is revised to read as follows:

Subpart 101-43.3—Utilization of Excess.

§ 101-43.301 Federal Government procedure.

The first source of supply is excess personal property, which shall be used by executive agencies to the fullest extent practicable as prescribed in this part. A requirement for personal property expressed by an authorized Federal activity identified in § 101-43.309-1 shall supersede any disposal action. This means that Federal transfers may be accomplished for surplus property if the holding or [redacted] agency is notified prior to shipment or delivery of donated property or prior to actual removal of property from Government control in the case of sale.

§ 101-43.302 Agency responsibility.

(a) To obtain maximum utilization and to minimize the procurement of new items, each executive agency shall be responsible for making excess personal property available and for facilitating the transfer of the property to other Federal agencies for direct use or for use by their authorized cost-reimbursement contractors, cooperatives, and project grantees, and to the organizations specified in § 101-43.309-1. Each executive agency shall, to the maximum practicable extent, fulfill its requirements for property by obtaining excess personal property from other Federal agencies instead of initiating a new procurement.

(b) Agencies receiving or transferring excess personal property shall establish controls over the processing of transfer orders and shall establish and maintain an adequate system of property accountability. Each Federal agency shall develop and maintain an effective system for the prevention and detection of situations involving the nonuse, improper use, or unauthorized disposal or destruction of excess personal property received by the agency. This repsonsibility should include compliance reviews, field inspections, audits, and other procedures to monitor the excess personal property controlled by an agency. The system of accountability for excess personal property should be in accordance with agency procedures, and records subject to audit by an internal audit group of the Federal agency and made available to the General Accounting Office upon request.

(c) GSA will assist agencies in meeting their requirements for property of the types excepted by this part from formal reporting as excess. Federal agencies requiring such property should contact the appropriate GSA regional office indicated in § 101-43.4802. GSA area utilization officers, stationed at key excess generating points throughout the United States, screen and offer nonreported personal property as it becomes available for transfer.

(d) GSA regional offices will screen all requests for replenishment of stock and direct delivery purchase requests submitted by agencies against lists of excess personal property available in their regions. GSA may take physical custody of such excess personal property for redistribution or may direct its transfer to executive agencies instead of procurement of new property from commercial sources of supply. Notice of intent to substitute will be provided to the ordering agency if the excess personal property is used, rehabilitated, or differs in some substantial characteristics from the item ordered. This will give the ordering agency an opportunity to inspect the property before shipment. Acceptance of excess personal property under these circumstances shall be required unless the using agency submits a written justification stating that such transfers or substitutions would result in serious hardship or impairment to its operations.

(e) Part 101-27 prescribes standards for executive agencies use in computing inventory levels. To encourage the use of excess property which might otherwise be disposed of as surplus, inventory levels may be adjusted upward when items of stock are to be acquired from excess sources. Such adjustments should be computed with caution and arrived at after careful analysis which gives consideration to the factors set forth in Part 101-27 and this part. Generally, acquisitions of items for inventory from excess shall not exceed a 2-year supply except when:

(1) A greater quantity is needed to meet known requirements for an authorized planned program.

(2) The item is not available without special manufacture and a predictable requirement exists.

(3) Administrative determination has been made that in application of the economic order quantity (EOQ) principle of stock replenishment within an agency, an inventory level in excess of 2 years is appropriate for low dollar-volume items.

(4) The items are being transferred into authorized stock funds for resale to other Government agencies.

(5) In addition, the following conditions should be met prior to acquisition of excess:

(i) There must be a predictable requirement for an authorized program.

(ii) The cost of acquisition, including packing and shipping, carrying in inventory, and preservation, shall not exceed delivered cost of new material.

(iii) The supply acquired does not exceed the expected shelf life, considering condition at time of acquisition.

(iv) The supply of spare parts acquired shall not exceed the life expectancy of the equipment supported.

§ 101-43.303 Retention of custody.

(a) GSA may direct the holding agency to retain custody of property reported to GSA for utilization, donation, or sales action pending disposition. The holding agency shall make adequate provisions for the protection of property in its custody and reported to GSA against the hazards of fire, theft, vandalism, and weather commensurate with the condition and value of the property and the availability of storage space.

(b) GSA may order transfer of partial or total custody to other executive agencies, with their consent.

(c) At the end of a period of 180 days from the date the property is made available to GSA, the holding agency may, upon proper notification to the appropriate regional Federal Supply Service Bureau, elect to assume the responsibility to complete the disposal in compliance with all the processing requirements of this Subchapter H normally performed by GSA, except that property pending transfer or donation for a known requirement and property offered for sale in an invitation for bids will not be returned to holding agency control. Such property may be returned to holding agency control if the pending transfer or donation cannot be completed or the pending sales offering produces no bids.

§ 101-43.304 Reporting requirements.

§ 101-43.304-1 Reporting.

(a) Excess personal property shall be reported promptly in accordance with the Federal supply classification (FSC) groups and classes in § 101-43.4801 with descriptions in sufficient detail to permit transfer or sale without further reference to the holding agency. In the absence of these descriptions, adequate commercial descriptions shall be substituted. Exceptions to these reporting requirements are covered in § 101-43.305. Whenever possible, the national stock number (NSN) shall be provided as part of the description. It is essential that the excess personal property report reflect the true condition of the property as of the date it is reported excess through assignment of the appropriate disposal condition code designation as defined in § 101-43.4801(e). Each Department of Defense (DoD) excess personal property report must also contain the appropriate supply condition code as defined in § 101-43.4801(f), except reports of contractor inventory when a determination is made that inclusion of the supply condition code is impractical. When available from property records, civilian agencies shall also include the appropriate supply condition code in excess personal property reports. To expedite processing, reports may be submitted up to 60 days prior to the actual date of property availability, provided that the report clearly indicates this pending status and reflects the date on which the property will be determined excess.

(b) When an item of equipment is reported as excess, any available operating manual, parts list, circuit or wiring diagram, maintenance record log, or other instructional or information publication or brochure pertaining to the equipment shall be reported.

(c) If the property reported is a prefabricated movable structure that has been installed in a permanent manner and if the reporting agency requires that the site be restored at the expense of the transferee, donee, or purchaser, the nature and estimated cost of restoration shall be included.

(d) When the property being reported is an excess strategic or critical material previously reported to GSA in accordance with Subpart 101-14.1 but not accepted for transfer to the national stockpile, the fact that the material was previously reported shall be noted.

§ 101-43.304-2 Form and distribution of reports.

(a) Reports of excess property shall be made on Standard Form (SF) 120, Report of Excess Personal Property, and SF 120A, Continuation Sheet (Report of Excess Personal Property), illustrated at §§ 101-43.4901-120 and 101-43.4901-120A respectively, in accordance with the instructions in § 101-43.4901-120-1, or, when acceptable to GSA, by automatic data processing (ADP) media. Federal agencies having or developing automated property management systems should consider automated reporting of excess property as a means of reducing workload and expediting the reporting process.

(b) The SF 120 and SF 120A shall be submitted in an original and three copies. Reporting by ADP media shall be as specified and approved by GSA. Reports shall be directed to the GSA regional office for the region in which the property is located (see § 101-43.4802). However, reports of fixed-wing and rotary-wing aircraft shall be submitted to the General Services Administration (9FB), San Francisco, CA 94015, and excess Standard forms, with samples of these forms, shall be submitted to the General Services Administration (7FB), Ft. Worth, TX 76102, for potential redistribution under the Standard forms program. Reports of excess ADPE shall be submitted as set forth in FIRMR Part 201-33 (41 CFR Part 201-33), except for reports of excess auxiliary or accessorial ADPE with a unit original acquisition cost of $1,500 or less, which shall be submitted in accordance with this § 101-43.304-2.

§ 101-43.304-3 Excess personal property on or within excess real property.

Excess related personal property as defined in § 101-43.001-27 shall be reported to GSA in accordance with Part 101-47 of this chapter. Excess personal property, other than related personal property, which may be located on or within excess real property, shall be governed by this part. The fact that the excess personal property is located on or within excess real property shall be noted on the report.

§ 101-43.304-4 Property at installations due to be discontinued.

Executive agencies that have installations which are due to be discontinued, closed, or abandoned and at which there will be excess personal property shall, unless inadvisable in the interest of national security, give advance notice of such situations as early as possible by letter to the appropriate GSA regional office. In such cases, agencies shall identify the installations to be discontinued, provide the scheduled date for the removal of personnel from the location, and specify the last date when the personal property will be needed. As soon as possible after filing advance notice, the excess personal property shall be reported in accordance with § 101-43.304-1 to provide time for screening for Federal utilization and donation purposes. Seventy-five calendar days are usually required.

§ 101-43.305 Property not required to be formally reported.

(a) Excess personal property which is not required to be formally reported to GSA in accordance with § 101-43.304 is a valuable source of supply for Federal agencies. GSA regional offices and area utilization officers are responsible for

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local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to the nonreportable excess personal property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card. Holding agencies shall make reasonable efforts to obtain utilization among other Federal agencies of property not covered by GSA utilization screening processes. In the case of controlled substances, solicitation shall be limited to those agencies authorized for transfer under § 101–43.307–2(a) provisions.

(b) Unless otherwise directed by GSA, the following excess personal property shall not be reported:

(1) Perishables, defined for the purposes of this section as any foodstuffs which are subject to spoilage or decay;

(2) Property dangerous to public health and safety;

(3) Scrap and/or salvage, provided the property strictly conforms to the definitions for scrap and/or salvage §§ 101–43.001–28 and 101–43.001–29);

(4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;

(5) Other items excepted from reporting as listed in § 101–43.4801;

(6) Otherwise reportable property which, prior to reporting as required in § 101–43.304, is transferred directly between Federal agencies as provided in § 101–43.309–5(a) or by prearrangement with GSA to fill a known need;

(7) Trading stamps and bonus goods (see § 101–25.103–3); and

(8) Nonappropriated fund property (see § 101–43.307–7).

(c) Nuclear Regulatory Commission-controlled materials are exempt from reporting to GSA as excess personal property. Transfers of such materials shall be made in accordance with applicable NRC regulations. (See 10 CFR Parts 30, 40, and 70.)

§ 101–43.306 Assistance in emergency and major disaster relief.

In accordance with instructions of the Administrator, Federal Disaster Assistance Administration, Department of Housing and Urban Development, or his designee, excess personal property shall be utilized in behalf of or loaned to State and local governments, with or without compensation therefor, pursuant to the Disaster Relief Act of 1974 (Pub. L. 93–288) and Executive Order 11795 of July 11, 1974, to provide assistance to State and local governments in alleviating suffering and damage resulting from any emergency or major disaster. Excess medicines, foods, and other consumable supplies may be distributed to State and local governments for these purposes. In the event such property has been reported to GSA pursuant to § 101–43.304, it shall be withdrawn by the holding agency pursuant to § 101–43.308.

§ 101–43.307 Items requiring special handling.

§ 101–43.307–1 Contractor inventory.

Subject to the limitations contained in this part and in Parts 101–44 and 101–45, any executive agency may authorize any of its contractors or their subcontractors to retain or dispose of any contractor inventory pursuant to Federal Acquisition Regulation (48 CFR Subpart 45.6) and under such orders as such agency may prescribe. In the case of contractor-owned contractor inventory, compliance with the utilization requirements and procedures in this part should ordinarily occur prior to the Government's exercising the applicable option to take over such property. When utilization efforts disclose that an agency will accept transfer of such property, the appropriate agency shall take the necessary action to acquire title for the Government.

§ 101–43.307–2 Controlled substances, drugs, and biologicals.

(a) All controlled substances that the holding agency determines to be excess shall become surplus after the holding agency has complied with the utilization requirements of § 101–43.102. The holding agency is not required to report the controlled substances to GSA as excess personal property. In effecting utilization, holding agencies shall transfer excess controlled substances only to those Federal agencies which certify that they are registered with the Drug Enforcement Administration (DEA), Department of Justice, and are authorized to procure the particular controlled substances being transferred. The certification shall include the registration number of the DEA Form 223, Certificate of Registration, issued by DEA.

(b) Drugs and biologicals (other than controlled substances) in FSC class 6505 which are determined to be excess and fit for human use shall be handled as provided in § 101–43.305. Such items may be separately packaged or may be components of a drug kit. Drug kits shall be clearly labeled to identify components unfit for human use. Items determined unfit for human use due to expiration of shelf life may be transferred for animal experimental use on a case-by-case basis subject to prior approval of GSA. All other items determined to be unfit for human use shall be destroyed by the holding agency as provided in § 101–45.903.

§ 101–43.307–3 Conditional gifts for defense purposes.

(a) Any agency receiving an offer of a conditional gift (other than money or intangible property) for a particular defense purpose within the purview of the Act of July 27, 1954 (50 U.S.C. 1151–1156) shall notify the appropriate GSA regional office and shall submit a recommendation as to acceptance or rejection of the gift.

(b) Prior to such notification, the receiving agency shall acknowledge receipt of the offer and advise the donor of its referral to a GSA regional office but shall not indicate acceptance or rejection of the gift on behalf of the United States. A copy of the acknowledgment shall accompany the notification and recommendation to the regional office.

(c) When the gift is determined acceptable and can be used in the form in which offered, it will be transferred without reimbursement to a Federal agency designated by GSA for use for the particular purpose for which it was donated.

(d) If the gift is one which GSA determines shall be converted to money, the funds, after conversion, will be deposited with the Treasury Department for transfer to an appropriate account which will best effectuate the intent of the donor, as provided in Treasury Department Circular No. 957, dated February 24, 1955.

(e) Such conditional gifts of property will be accepted or rejected on behalf of the United States or transferred to an agency by GSA only after consultation with the interested agencies.

(f) GSA will advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

§ 101–43.307–4 Conditional gifts to reduce the public debt.

(a) Pursuant to 31 U.S.C. 3113, gifts may be made to the United States on the sole condition that the property be sold and the proceeds used to reduce the public debt. Any agency receiving an offer of a gift (other than money or intangible property) for such purpose shall notify the appropriate GSA regional office and shall submit a recommendation as to acceptance or rejection of the gift.

(b) Prior to such notification, the receiving agency shall acknowledge receipt of the offer and advise the donor of its referral to GSA but shall not indicate acceptance or rejection of the gift on behalf of the United States. A copy of the acknowledgment shall accompany the notification and recommendation to the GSA regional office.

(c) GSA will advise the donor and the agency concerned of the action taken with respect to acceptance or rejection of the conditional gift. If the gift is determined acceptable, GSA will convert it into money and the proceeds shall be deposited into a special account in the Department of the Treasury established for this purpose.

§ 101–43.307–5 Unconditional gifts.

Any unconditional gift accepted by a Federal agency, or by an employee or agent representing a Federal agency in an official capacity, shall immediately become property of the Federal Government. If the receiving agency has specific authority to use the property, it may then be used for any authorized purpose by that agency. Such property shall be accounted for in the same manner as personal property acquired from other authorized sources and shall lose its identity as an unconditional gift upon entry into the agency property account. When property acquired as an unconditional gift cannot be used or is no longer required by the receiving agency, it shall be reported to GSA as excess personal property in accordance with § 101–43.304.

§ 101–43.307–6 Intangible personal property.

Excess intangible personal property shall be reported to the General Services Administration (F), Washington, DC 20406, and shall not be transferred or disposed of without prior approval of GSA, except for bonds, notes, or other securities authorized to be disposed of by the Secretary of the Treasury under section 5 of the Act of April 3, 1945 (31 U.S.C. 324).

§ 101–43.307–7 Nonappropriated fund property.

(a) Nonappropriated fund property determined to be excess may be made available for transfer under those provisions of this part which apply to nonreportable property.

(b) Transfers of nonappropriated fund property shall be made upon such terms as shall be agreed upon by the owning activity and the receiving agency. However, an agency should not acquire such property if the reimbursement requested is greater than the best estimate of the gross proceeds if the property were to be sold on a competitive bid basis or the dollar value offered on a trade-in.

(c) Federal property in the custody of a nonappropriated fund activity, when determined to be excess, shall be reported or otherwise made available to GSA in accordance with this part for transfer without reimbursement, except as required by § 101–43.309–3.

§ 101–43.307–8 Noncertified electronic products.

(a) For the purpose of this section "noncertified electronic product" means any excess or exchange/sale electronic product for which there is an applicable radiation safety performance standard prescribed by the Food and Drug Administration (FDA) under 21 CFR Part 1000 and which the manufacturer has not certified as meeting such standard. The noncertification may be due to either:

(1) Manufacture of the product before the effective date of the standard or

(2) The product being exempted from the applicable standard and so labeled.

(b) Excess or exchange/sale noncertified electronic products shall be reported for transfer to Federal agencies in accordance with the provisions of §§ 101–43.304 and 101–43.307–8. The excess report shall identify the items as noncertified electronic products and shall contain a statement that the items may not be in compliance with applicable radiation safety performance standards prescribed by FDA under 21 CFR Part 1000.

(c) Excess property catalogs and bulletins circulated by GSA offering such items shall advise Federal agencies of the potential danger of using the items unless they are upgraded to meet Federal radiation safety standards.

(d) Transfers of noncertified electronic products among Federal agencies shall be accompanied as set forth in § 101–43.308. The transfer order form shall reflect a certification that the transferee:

(1) Is aware of the potential danger in using the item without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR Part 1000; and

(2) Agrees to accept the item from the holding agency under the conditions cited in paragraph (d)(1) of this section.

§ 101–43.307–9 Passenger motor vehicles.

When acquiring an excess passenger motor vehicle without reimbursement for upgrading or replacement purposes, an agency shall promptly report as excess the replaced vehicle (see § 101–43.304). The report must be submitted within 30 calendar days after delivery of the replacement vehicle unless the replacement vehicle is charged to the number of passenger motor vehicles authorized by current appropriations. When the replaced passenger vehicle is reported excess to GSA, the report shall be documented so as to identify the item control number on the transfer document for the replacement vehicle. Agencies having a temporary emergency need for passenger motor vehicles, and having authority to lease motor vehicles, shall obtain such vehicles from excess when they are not available from a GSA Fleet Management Center prior to leasing vehicles from private sources. Such temporary emergency use shall not exceed a period of 3 months.

§ 101–43.307–10 Printing, binding, and blankbook equipment and supplies.

Excess machinery, equipment, material, and supplies for printing, binding, and blankbook work shall be reported to the Public Printer for possible transfer to the Government Printing Office, as provided in section 3 of the Act of July 19, 1919 (44 U.S.C. 312), prior to reporting to GSA. Reports should be addressed to the Government Printing Office (GPO), Customer Service Manager, North Capitol and H Streets, NW., Washington, DC 20401. Property not needed by GPO shall be reported by the holding agency to GSA in accordance with this part.

§ 101–43.307–11 Property having unsafe or dangerous characteristics.

Any item of excess personal property having unsafe or dangerous characteristics must be rendered safe by the holding activity before shipment or pickup is made, or advice must be given the transferee regarding the actual or potential danger and the property clearly labeled to show this danger. Items on the U.S. Munitions List (22 CFR Part 121) that are subject to demilitarization requirements shall be identified on the excess personal property report by the reporting activity with the appropriate one-letter demilitarization codes listed in § 101–43.4804. Federal agencies acquiring these items shall perpetuate the demilitarization codes in their property records and on subsequent reports of excess personal property submitted to GSA. Demilitarization codes shall also be perpetuated on records of nonreportable property. Demilitarization will be a condition of excess personal

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property transfers, and demilitarization requirements, when applicable, will be carried out prior to transfer unless otherwise excepted by GSA. The requirement to demilitarize certain munitions list items prior to transfer will normally be waived for the following recipients:

(a) Federal agencies, when the agency requires the property for functional use and agrees to demilitarize the item prior to further disposition; and

(b) Contractors, project grantees, or other non-Federal recipients, provided the sponsoring Federal agency determines that prior demilitarization is not in the best interest of the Government and the recipient agrees to demilitarize the property prior to further disposition.

§ 101–43.307–12 Shelf-life items.

(a) When quantities on hand of an item of a deteriorative nature which has a predetermined expiration date exceed requirements for the period ending on the expiration date, or for the period ending on the extended expiration date, such quantities shall be determined excess to the needs of the holding agency, provided that the overages cannot be utilized, cross-serviced, or returned for credit. Management of such items prior to determination as excess shall be governed for executive agencies, except DoD, by Subpart 101–27.2, and for DoD by appropriate DoD instructions.

(b) Drugs and biologicals requiring refrigeration or deep freeze, medical shelf-life items held for national emergency purposes (see § 101–43.307–13), subsistence items, and ammunition are excepted from the provisions of this section.

(c) Shelf-life items which have a remaining useful life of 3 or more months before reaching the expiration date and are not otherwise utilized as provided in paragraph (a) of this section, shall be reported as excess in accordance with § 101–43.304. However, agencies may at their option also report shelf-life items not required to be reported by § 101–43.304. The report shall identify the items as shelf-life items by carrying the designation symbol "SL" and by showing the expiration date. If the item has an extendable-type expiration date, there also shall be furnished an indication as to whether the expiration date is the original or an extended date.

(d) Normally, items reported in accordance with paragraph (c) of this section will be given a surplus release date effective 60 days after the receipt of the report in the appropriate GSA regional office. This date may be shortened or extended consistent with utilization objectives and with the remaining useful shelf life. GSA will publicize reported items to other using agencies during the period ending on the surplus release date.

(e) Shelf-life items which have a remaining useful life of 3 or more months before reaching the expiration date but which are not reported shall be made available for use by other Federal agencies as provided in § 101–43.305. Documents listing such items shall show the expiration date and, in the case of items with an extendable expiration date, shall indicate whether the expiration date is the original or an extended date. A surplus release date shall be established by the holding agency upon determination that these items are excess so as to provide a minimum of 21 calendar days for selection or set-aside of the items for Federal use. The surplus release date may be extended by the holding agency when these items are selected by an authorized screener for transfer or are set aside by a GSA representative for potential or actual transfer.

(f) Shelf-life items which have a remaining useful life of less than 3 months, regardless of acquisition cost or condition, shall be made available for utilization by other Federal agencies in the manner provided in paragraph (e) of this section.

(g) Transfers among Federal agencies of shelf-life items which have been determined to be excess by the holding agency shall be accomplished as set forth in § 101–43.309. Transfers shall be made without reimbursememt.

§ 101–43.307–13 Medical shelf-life items held for national emergency purposes.

(a) Whenever the head of an executive agency determines that the remaining storage or shelf life of medical materials or supplies held for national emergency purposes is of too short duration to justify their continued retention of such purposes and that their transfer or disposal would be in the best interest of the United States, those materials or supplies shall be considered to be excess personal property. To the greatest extent practicable, the above determination shall be made at such time as to ensure that such medical materials or supplies can be transferred or otherwise disposed of in sufficient time to permit their use before their shelf life expires and the items are unfit for human use.

(b) Medical materials and supplies held by an agency for national emergency purposes and determined to be excess may be exchanged with another Federal agency without prior approval of GSA and without regard to the provisions of Part 101–46. Such exchanges, however, shall be only for other medical materials or supplies to be held for national emergency purposes.

(c) Medical shelf-life items held for national emergency purposes which have a remaining useful life of 3 or more months before the expiration date and which are not otherwise exchanged as provided in paragraph (b) of this section shall be reported as excess in accordance with § 101–43.304. Each agency may also report medical shelf-life items not required to be reported by § 101–43.304. The excess report shall identify items as medical shelf-life items held for national emergency purposes by carrying the designating symbol "MSL" and by showing the shelf-life expiration date. Information shall also be furnished regarding whether the expiration date is the original or the extended date. Further, whenever medical shelf-life items held for national emergency purposes are reported as excess, any specialized storage requirements pertaining to the items listed thereon shall be noted on the report.

(d) Normally, medical shelf-life items held for national emergency purposes and reported in accordance with paragraph (c) of this section will be given a surplus release date effective 60 calendar days after the receipt of the report in the appropriate GSA office. This date may be shortened or extended according to utilization objectives and the remaining useful shelf life. However, GSA offices will handle the screening of medical shelf-life items to permit their use before the shelf life expires and the items are unfit for human use.

(e) Medical shelf-life items held for national emergency purposes which have a remaining useful life of 3 or more months and which are not reportable in accordance with § 101–43.4801 shall be made available for use by other Federal agencies as provided in § 101–43.305. When such items are determined excess, a surplus release date shall be established by the holding agency providing a minimum of 21 calendar days for selection of the items for Federal use. For controlled substances (as defined in § 101–43.001–4), each executive agency shall comply with § 101–43.307–2.

(f) Transfers among Federal agencies of medical materials and supplies held for national emergency purposes and determined to be excess shall be accomplished in accordance with § 101–43.309, except that such transfers shall be made upon such terms and prices as shall be agreed to by the Federal agencies concerned. Proceeds from such transfers may be credited to the current applicable appropriation or fund of the tranferring agency and shall be available only for the purchase of medical materials or supplies for national emergency purposes.

§ 101–43.308 Withdrawals and corrections.

§ 101–43.308–1 Withdrawals.

Requests for withdrawal of property previously reported as excess shall be submitted to the GSA regional office to which the original report was forwarded. Withdrawal requests may be submitted on SF 120 or by any other method approved by GSA. Disposition of property shall not be made until after approval for withdrawal is received from GSA except in instances involving the physical transfer of property for purposes of major disaster relief.

§ 101–43.308–2 Corrections.

Corrections of reports of excess property shall be submitted on SF 120 or by any other method approved by GSA to the appropriate GSA regional office for necessary action.

§ 101–43.309 Transfers of excess personal property.

§ 101–43.309–1 Agencies eligible.

Transfers of excess personal property may be made among Federal agencies (including their cost-reimbursement contractors, cooperatives, and project grantees), the Senate, the House of Representatives, the Architect of the Capitol and any activities under his direction, mixed-ownership Government corporations as defined in 31 U.S.C. 9101, the municipal government of the District of Columbia, or non-Federal agencies for which GSA procures.

§ 101–43.309–2 Information on availability.

There are several methods of obtaining reliable information regarding the availability of excess personal property:

(a) Personal contact with GSA or the holding installations;

(b) Review of excess personal property catalogs and bulletins circulated by GSA;

(c) Examination and inspection of reports and samples of excess personal property assembled for this purpose in GSA regional offices; and

(d) Submission of current and future requirements for excess personal property to the appropriate GSA regional office using GSA Form 1539, Request for Excess Personal Property, illustrated at § 101–43.4902–1539. Instructions for submission of requirements may be obtained from any GSA regional office. Wherever possible, the NSN should be included for each item requested. GSA will assist agencies in obtaining NSN's so that requirements may be incorporated into the automated matching system. if substitute items are acceptable, these should be furnished at the same time and identified by NSN. Requirements for NSN items may be submitted through ADP media. If not currently available as excess, property requirements identified by NSN's will be incorporated into GSA's automated requirements bank and will be retained for approximately 180 calendar days. Property reported excess during this time, if matched with recorded requirements, will be offered for immediate transfer. Normally, items for which needs are registered will not be offered in GSA excess property catalogs and bulletins. Agencies should update their lists of items at the end of each 180-calendar-day period to retain visibility in the requirements bank.

§ 101–43.309–3 Reimbursement.

(a) *General.* Transfers of excess personal property shall be without reimbursement (the costs specified in § 101–43.310–1 are chargeable to the transferee agency), except when:

(1) The property transferred was acquired with funds either not appropriated from the general fund of the U.S. Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue or receipts, and payment is requested (it is the current policy of the executive branch of the Government that transfers of working capital fund property shall be without reimbursement);

(2) The transferor or the transferee agency (or the organizational unit affected is a wholly owned or mixed-ownership Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101), is the municipal government of the District of Columbia, or is a non-Federal agency for which GSA procures;

(3) The transferor or the transferee agency is the U.S. Postal Service (USPS);

(4) The property is designated as exchange/sale property and is transferred pursuant to Part 101–46;

(5) The transferee agency is acquiring the property for use by a project grantee which is a public agency or is nonprofit and exempt from taxation under 26 U.S.C. 501; or

(6) Reimbursement is directed by GSA.

(b) *Fair market value reimbursement.* Reimbursement of the fair market value may be requested by the transferor agency when:

(1) The property being transferred was acquired with funds not appropriated from the general fund of the U.S. Treasury;

(2) The property is designated exchange/sale rather than excess;

(3) The transferor or transferee agency is the USPS (in this case, reimbursement is required by Executive Order 11672);

(4) The property being transferred is owned by a nonappropriated fund activity of a Federal agency; or

(5) Authorized or required by other specific authority.

(c) *Fair value reimbursement.* (1) When a transfer is determined to be reimbursable and paragraph (b) of this section, is not applicable, fair value reimbursement, as determined in paragraphs (b)(2) through (4) of this section, is required to be paid by the transferee.

(2) To preclude the need of establishing the fair value to be reimbursed for each transfer subject to such reimbursement, fair value is defined to be 20 percent of the original acquisition cost of new or unused property in condition code 1 (condition codes are shown in § 101–43.4801(e)) and zero percent for all other personal property

(3) Where application of the above formula will not achieve the intended purpose because of special circumstances or the peculiar nature of the property, the holding agency may use other criteria for arriving at fair value if approved or directed by the appropriate GSA regional office.

(4) Where circumstances warrant and the agencies concerned agree thereto, fair value prices higher than those arrived at by use of the formula may be used.

(d) Transfer orders for property requiring reimbursement must be annotated with the amount of reimbursement required. Disagreements between agencies regarding reimbursement requirements shall be referred for final determination to the GSA Regional Administrator for the region in which the property is located.

§ 101–43.309–4 Transfer for redistribution.

Items reported as excess and determined by GSA to be suitable for redistribution within the Federal Government may be taken into physical custody by GSA or, upon notification by GSA, shall be retained by the holding agency for a period not to exceed 180 days. Items which are identical to or can be substituted for items listed in the GSA Supply Catalog shall be furnished to agencies through the GSA stock program at prices to be determined by GSA. To ensure maximum redistribution

of items available from excess, GSA may require that all orders for such items be forwarded to a GSA regional office until excess stocks are exhausted.

§ 101-43.309-5 Procedure for effecting transfers.

(a) All transfers of excess personal property between Federal agencies shall be by SF 122, Transfer Order Excess Personal Property (see § 101-43.4901-122), or any other transfer order form approved by GSA. Automated requisitions on approved forms may be used for excess personal property transfers. However, Federal agencies using automated requisitions shall ensure that identifying codes are controlled and records maintained indicating the official authorized to approve property transfers. Each transferee agency shall forward the original and three copies of the transfer order to the appropriate GSA regional office (see § 101-43.4802) for approval. An SF 120 is not required in addition to SF 122 for direct transfers. Prior approval by GSA is not required when the property involved in the given transaction is:

(1) Reportable under § 101-43.304 but has not yet been reported to GSA, and its total acquistion cost does not exceed $5,000, and the owning agency's regulations relative to internal redistribution have been satisfied; or

(2) Nonreportable under § 101-43.305 and has not been reserved at the holding location for special screening by the appropriate GSA regional office, and its total acquisition cost does not exceed $25,000; and

(3) The appropriate GSA regional office is furnished an information copy of each direct transfer order by the transferor agency within 10 workdays from receipt of the order.

(b) In those cases where a known requirement exists for excess personal property which exceeds the acquisition cost limitations for direct transfers in paragraphs (a)(1) and (a)(2) of this section, a request for approval of a prearranged transfer may be made. To effect a prearranged transfer, the requesting Federal agency must contact the appropriate GSA regional office for verbal approval. In considering such requests, GSA may apply the approval factors listed in paragraph (e) of this section, if competing known requirements exist. Upon approval of the prearranged transfer, the requesting agency must submit an SF 122 or other authorized transfer order form only. An SF 120 is not required in those cases where the property is reportable in accordance with § 101-43.304. Approval for the holding activity to release the property prior to receipt of the transfer order may also be given verbally at the discretion of the GSA regional office. These verbal approvals must be obtained from an authorized representative of the GSA regional office, and the requesting agency shall annotate the SF 122 with the name of the approving GSA official and the date telephone approval was obtained.

(c) The SF 122 shall be completed as shown in § 101-43.4901-122. All transfer orders shall be executed by an accountable Federal official, and will not be approved by GSA unless so executed.

(1) For wholly owned or mixed-ownership Government corporations, the Senate, the House of Representatives, the Architect of the Capitol and any activities under his direction, and the municipal government of the District of Columbia, transfer orders shall be executed by a responsible official of those organizations.

(2) For non-Federal agencies for which GSA procures, transfer orders shall be executed by a responsible official of the sponsoring Federal agency.

(3) For contractors and grantees, transfer orders shall be executed by the Federal contracting officer administering the contract or other responsible Federal official who is knowledgeable about the terms of the contract or grant.

(4) For nonappropriated fund activities of Federal agencies, transfer orders shall be executed by an accountable official of the sponsoring Federal agency. The transfer order shall state that the property will be entered on the accountable records of the sponsoring Federal agency and shall also state that the property will be used only for administrative or operational use but not for resale.

(d) When property is offered for transportation, the condition of the items shall be shown on the bill of lading. In order that the Federal Government may obtain the most economical rates for the movement of excess personal property in other than new condition, particular attention shall be given to the use of the appropriate classification decription as required by carriers' tariffs.

(e) While transfers of excess personal property will normally be approved by GSA on a first-come-first-served basis, consideration will be given to such factors as national defense requirements, emergency needs, preclusion of new procurement, energy conservation, equitable distribution, transportation costs, and retention of title in the Government. When competing Federal claims are made for particular items of excess personal property, with or without payment of reimbursement, GSA will give preference to the Federal agency that will retain title in the Government. Transfer requests for the purpose of cannibalization will be considered, but are normally subordinate to requests for the complete items. The GSA regional office may defer approval of any transfer request until all pertinent factors are considered. When competing requests are received, the GSA regional office may, at its discretion, request supporting justification from the ordering agencies to assist in making the allocation determination, including evidence that new procurement is involved. Placement of a freeze on an item of excess personal property by a Federal agency does not constitute an absolute claim on the property. The GSA regional office is responsible for evaluating the above factors prior to approval of a transfer order for a frozen item subject to competing requests.

(f) A copy of each approved or disapproved transfer order will be returned to the ordering agency by the GSA regional office with appropriate notation. Two copies of each approved order will be appropriately noted and transmitted by the GSA regional office to the holding agency for transfer action. Any billing by the holding agency shall be accomplished in accordance with § 101-43.310.

(g) If the transfer order does not contain complete shipping instructions, the transferee agency is required to transmit these to the holding agency within 15 calendar days after receipt of the transfer order by the holding activity in the case of domestic shipments, or 45 calendar days in the case of export shipments. The holding activity will communicate failure to receive such shipping instructions to the GSA regional office which approved the transfer. If the transfer order indicates the property is to be picked up by the transferee agency, the action must be accomplished within 20 calendar days from the time such agency is notified by the holding activity that the shipment is ready. The holding activity will communicate with the GSA regional office concerning the failure of the transferee agency to pick up property within the allotted time.

(1) Holding activities will carry out shipping instructions within 20 calendar days from receipt or make property available for pickup promptly

(2) If the holding activity is unable to ship or deliver as required, the ordering activity must be advised of the reason

for delay and a new scheduled shipping or delivery date.

(h) Whenever a transfer order covers excess personal property which has deteriorated materially below the reported condition, the holding agency shall advise the GSA regional office of its current condition. The GSA regional office will so advise the ordering agency. Shipment will not be made until the ordering agency has advised the GSA regional office that the existing condition is acceptable and the GSA regional office has so advised the holding agency.

(i) Whenever an excess item of equipment is transferred, any available operating manual, parts list, circuit or wiring diagram, maintenance record, log, or other instructional or informational publication or brochure pertaining to the equipment shall accompany and be transferred with the item of equipment.

(j) Use of the SF 97, Certificate of Release of a Motor Vehicle, is restricted to situations where title to the vehicle leaves the Federal Government (see Subpart 101-38.7).

§ 101-43.310 Costs and proceeds.

§ 101-43.310-1 Cost of care and handling.

Each holding agency shall be responsible for and bear the costs of performing care and handling of excess property pending disposition. Direct costs incurred incident to transfer shall be borne by the recipient if billed by the holding agency. Overhead or administrative costs or charges shall not be included. Only costs incurred in the actual packing, preparation for shipment, loading, and shipment may be recovered by the holding agency. Where such costs are incurred, they shall be reimbursed by the recipient upon appropriate billing unless the holding agency waives the amount involved. Billing by a holding agency for direct costs of less than $100 for any single shipment would appear to be uneconomical and should be avoided.

§ 101-43.310-2 Proceeds.

(a) The proceeds of a reimbursable transfer shall be paid to the transferor agency where:

(1) The transferor agency acquired the property with funds not appropriated from the general fund of the Treasury;

(2) The transferor agency is the USPS;

(3) The transferor agency is a wholly owned or a mixed-ownership Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 841);

(4) The transferor agency is the municipal government of the District of Columbia;

(5) The transferor agency is a non-Federal agency for which GSA procures;

(6) The transferor agency acquired the property with appropriated funds, but by law is authorized to recover the proceeds;

(7) The property is transferred under the exchange/sale authority; or

(8) The property transferred is the private property of a nonappropriated fund activity.

(b) The proceeds of a reimbursable transfer shall be deposited to miscellaneous receipts in the U.S. Treasury by the transferee agency in all cases where the transferor agency acquired the property with appropriated funds but has no specific authority to recover the proceeds. A copy of the deposit action shall be furnished to the transferor agency.

§ 101-43.311 Determination of excess as surplus.

§ 101-43.311-1 Reportable property.

Excess personal property, when reported to GSA in accordance with § 101-43.304 and not transferred to other Federal agencies, shall become surplus at the close of business on the surplus release date, which should be evidenced on the report of excess personal property. The surplus release date will be established to occur 60 calendar days or less after receipt of the report of excess personal property in the appropriate GSA regional office unless the property is held for redistribution in accordance with § 101-43.309-4. The appropriate GSA regional office will coordinate surplus release date extensions with the reporting activity to minimize impact on the utilization and disposal process.

§ 101-43.311-2 Nonreportable property.

(a) Property excepted from the reporting requirements of § 101-43.304 shall become surplus when it has been made available by the holding agency for Federal use for a minimum of 21 calendar days after excess determination and has not been selected for transfer to other Federal agencies. Holding agencies shall annotate property records in a manner that will indicate to authorized Federal agency representatives the date of the excess determination. The property will become surplus at the close of business on the surplus release date, which normally will occur 21 calendar days after the holding agency determines the property to be available for screening as excess unless extended by GSA. Authorized Federal agency representatives may request and, with the approval of GSA, holding agencies will grant additional time not to exceed 30 calendar days, unless otherwise agreed upon by the holding agency and the GSA regional office concerned. The release as surplus of property not transferred to other Federal agencies will be deferred by the same lengths of time.

(b) During the screening period following the determination that the property is excess, no holding agency shall take for its use any property in its custody which has been selected by a GSA area utilization officer for further screening or transfer for utilization, except with the approval of the appropriate GSA regional office; provided that holding activities may withdraw such property to meet their essential emergency requirements without this prior approval. The appropriate GSA regional office shall be notified of any such actions.

(c) This section is applicable to all nonreportable excess property other than perishables, dangerous property, classified property, trading stamps, and Nuclear Regulatory Commission-controlled materials.

§ 101-43.311-3 Property not utilized

Property determined to be surplus as provided in §§ 101-43.311-1 and 101-43.311-2 shall be held available for donation program screening in accordance with Part 101-44 before it shall be assigned for sale, abandonment, or destruction in accordance with Part 101-45. Property which requires reimbursement upon transfer, when determined surplus, shall not be available for donation but may be disposed of as provided in Part 101-45.

§ 101-43.312 Use of excess personal property on cost-reimbursement contracts.

(a) Excess personal property may be used to reduce the Government's contract costs and shall be considered for this purpose whenever possible. When preparing contract documents, Federal agencies shall ensure that appropriate provisions are included therein to accommodate the furnishing of excess personal property to cost-reimbursement contractors, as defined in § 101-43.001-6.

(b) Excess personal property may be transferred to a Federal agency for use by a cost-reimbursement contractor as Government-furnished property, provided that the contracting agency determines the transfer will result in a reduction in the cost to the Government or an enhancement of the product or benefit of the contract. All transfer

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orders submitted to GSA for excess personal property to be furnished to a cost-reimbursement contractor shall list the number and expiration date of the contract, must certify the cost reduction or product enhancement, and shall be executed by an authorized official of the contracting agency. If less than 60 calendar days remains before expiration of the contract, the transfer order will not be approved by GSA unless the contracting agency certifies that the contract will be extended or renewed or other written justification is provided.

(c) Certain Federal agencies have specific statutory authority to vest title to property under certain circumstances, but title to property furnished to a cost-reimbursement contractor normally remains vested in the Government. Contracts shall include adequate safeguards and assurances relative to use, maintenance, consumption, unauthorized use, and redelivery to Government custody of Government-furnished property.

(d) Property furnished to cost-reimbursement contractors is subject to the annual reporting requirements of § 101–43.4701(c).

§ 101–43.313 Use of excess personal property on cooperative agreements.

(a) Executive agencies may obtain excess personal property for the purpose of furnishing such property to agency cooperatives under cooperative agreements, as defined in § 101–43.001–5, made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301). Excess personal property may be furnished to cooperatives subject to the following conditions:

(1) Authorization for the cooperative to acquire excess property is contained in the cooperative agreement;

(2) A determination is made by the sponsoring Federal agency that the acquisition will result in a reduction in the cost to the Government of the agreement or an enhancement of the product or benefit from the agreement;

(3) The property will not be stockpiled by the cooperative, but will be placed in use within a reasonable period of time following the acquisition;

(4) The time remaining on the cooperative agreement is greater than 60 calendar days from the date a transfer order is received by GSA, unless the sponsoring Federal agency has certified that the cooperative agreement will be extended or renewed, or other justification is submitted; and

(5) The transfer is approved by an authorized official of the sponsoring Federal agency.

(b) The amount of excess personal property (in terms of original acquisition cost) transferred to a cooperative normally shall be limited to the dollar value of the cooperative agreement. Any higher percentage of excess personal property transferred to a cooperative shall be subject to approval by an official of the sponsoring Federal agency at an administrative level higher than the project officer administering the cooperative agreement.

(c) Title to excess personal property furnished to a cooperative by an executive agency remains vested in the Government, except that cooperative agreements for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research, normally include discretionary authority to vest in such institutions or organizations title to excess personal property furnished under the cooperative agreement on such terms and conditions specified in the cooperative agreement.

(d) Executive agencies shall keep in their cooperative agreement recordkeeping systems: total acquisition cost of property furnished to all cooperatives; original acquisition cost of each item furnished, identified to each recipient; and date of termination and the dollar value of each cooperative agreement under which excess personal property has been furnished.

(e) Excess personal property furnished to a cooperative shall be accounted for and disposed of in accordance with the specific provisions of the cooperative agreement and procedures established by the sponsoring executive agency to govern the accountability and disposition of excess personal property acquired under cooperative agreements. The cooperative agreement shall contain adequate safeguards and assurances relative to use, maintenance, consumption, disposition, unauthorized use, and redelivery of custody to the Government of excess personal property furnished under the agreement.

(f) Property furnished to a cooperative is subject to the annual reporting requirements of § 101–43.4701(c).

§ 101–43.314 Use of excess personal property on grants.

(a) Federal agencies may obtain excess personal property for the purpose of furnishing such property to agency grantees only when the non-Federal recipient is an institution or organization which is the holder of a Federally sponsored project grant and is a public agency as defined in § 101–43.001–28 or is nonprofit and exempt from taxation under section 501 of the Internal Revenue Code of 1954.

(b) Excess personal property is transferred between Federal agencies as provided in § 101–43.309–4 and may be furnished to project grantees: *Provided*, authorization for the grantee to use excess property is contained in the grant document; a written determination is made by the sponsoring Federal agency that the acquisition will result in a reduction in the cost to the Government of the grant or an enhancement of the product or the benefit from the grant; the property will not be stockpiled by the grantee but will be placed into use within a reasonable period of time following acquisition as directed in writing by the granting agency; and the transfer is approved by an authorized Federal official of the granting agency. Transfers to grantees are further subject to the following conditions:

(1) A Federal agency may obtain excess personal property for transfer to a project grantee when the sponsoring Federal agency pays an amount equal to 25 percent of the original acquisition cost (except for costs of care and handling) of the property, such funds to be deposited into the U.S. Treasury as miscellaneous receipts. Title to excess personal property so furnished shall vest in the grantee. Property obtained by a Federal agency from excess sources and placed in direct official use for a period of at least 1 year may subsequently be furnished to a grantee without reimbursement provided the official use was valid and not for the purpose of circumventing the reimbursement requirement. Title to excess personal property so furnished shall be retained by the grantor agency unless specific statutory authority exists to vest title in the grantee.

(2) The provisions of paragraph (b)(1) of this section, shall not apply to the following:

(i) Excess personal property transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358), when and to the extent that property to be transferred under that Act is not needed for donation under the provisions of Subparts 101–44.2 and 101–44.4 as determined by GSA. (This restriction shall not apply to excess personal property transferred for development loan programs under section 608 of the Foreign Assistance Act of 1961 which may be accomplished prior to donation screening.)

(ii) Excess personal property furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative State forest fire control programs, provided title to such property is retained in the Government.

(iii) Excess personal property furnish by Federal agencies in connection with grants to Indian tribes, as defined in Section 3(c) of the Indian Financing Act (25 U.S.C. 1452(c)) as eligible for services from the Department of the Interior, Bureau of Indian Affairs. Title to this property shall remain vested in the Government unless the title is vested under specific statutory authority.

(iv) Excess scientific equipment transferred pursuant to section 11(e) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870) (e)). GSA will consider items of personal property as scientific equipment for transfer without reimbursement to the National Science Foundation (NSF) for use by a project grantee when the property requested is within FSC groups 12 (Fire Control Equipment), 14 (Guided Missiles), 43 (Pumps and Compressors), 48 (Valves), 58 (Communication, Detection, and Coherent Radiation Equipment), 59 (Electrical and Electronic Equipment Components), 65 (Medical Dental, and Veterinary Equipment and Supplies) 66 (Instruments and Laboratory Equipment), 67 (Photographic Equipment), 68 (Chemicals and Chemical Products), or 70 (General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies, and Support Equipment). Excess ADPE other than auxiliary or accessorial items with a unit acquisition cost of $1,500 or more must be obtained under FIRMR Part 201–33 (41 CFR Part 201–33) provisions. GSA will give consideration to transfer without reimbursement of items of excess property in other FSC groups when NSF certifies the item requested is a component of or related to piece of scientific equipment or is an otherwise difficult-to-acquire item needed for scientific research. Items of property determined by GSA to be common-use of general purpose property, regardless of classification, shall not be transferred to NSF for use by a project grantee without reimbursement.

(v) Excess personal property furnished by the U.S. Department of Agriculture to State or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E), provided that title to such property remains vested in the Government.

(3) The exceptions listed in paragraph (b)(2) of this section, shall not preclude any Federal agency from obtaining excess personal property and furnishing it to a project grantee of that agency under the provisions of paragraph (b)(1) of this section.

(4) Excess property furnished as provided in paragraphs (b) (1) through (3) of this section shall be accounted for and disposed of in accordance with specific grant document provisions and procedures that are established by the granting agency to govern the accountability and disposition of personal property acquired under grant agreements.

(c) To ensure that all excess personal property transferred to project grantees is for the specific purpose authorized by the grantor agency, all transfer orders for excess personal property to be furnished to project grantees shall be signed by the Federal agency accountable officer and shall state the purpose of the transfer, the name of the project grantee, the grant number, the dollar amount of reimbursement required (if any), and the scheduled date of grant termination. If the grant expires in less than 60 calendar days, the transfer order will not be approved unless the grantor agency certifies the grant will be extended or renewed, or other written justification is provided. Upon receipt of the property, the grantor agency shall ensure that deposits are made to the U.S. Treasury as required by paragraph (b)(1) of section.

(d) With the exception of consumable items and within the limitations of § 101–43.314(b)(2)(iv), Federal grantor agencies may make available to their project grantees excess personal property that is determined by the granting agency to be necessary and usable for the purpose of the grant. Requests for transfer of a consumable item to a Federal agency for use by a project grantee will be considered by GSA provided adequate justification accompanies such requests. For the purpose of this section the term "consumble items" means those items which are intended for one-time use and are actually consumed in that one time; e.g., drugs, medicines, surgical dressings, cleaning and preserving materials, and fuels. When a question arises regarding the consumability of an item of excess personal property for transfer to a project grantee, final determination shall rest with the appropriate GSA regional office. Excess personal property may be transferred to a project grantee for the purpose of cannibalization when the granting Federal agency accompanies the transfer request with a supporting statement which clearly indicates that disassembly of the requested item for secondary use of its component parts, or for repair and maintenance of a similar item, has greater potential benefit than utilization of the item in its existing form and that a clear cost savings to the Government will result, subject to final determination by GSA. When circumstances warrant, agencies may set economic quantities for orders processed or set minimum life expectancies for excess personal property made available to grantees.

(e) To help ensure an equitable distribution of property among project grantees, Federal grantor agencies shall limit the amount of excess personal property (in terms of original acquisition cost) transferred to project grantee to the dollar value of the grant. Any higher percentage of excess personal property transferred to a project grantee shall be subject to approval by an official at an administrative level in the Federal grantor agency higher than the project officer administering the grant. It is expected that agencies will consider all factors in determining whether to approve or disapprove transfers to grantees of excess personal property above the dollar value of the grant. Pro forma approvals or disapprovals shall not be given.

(f) Federal grantor agencies shall include the following information in their grants recordkeeping systems: total original acquisition cost of excess property furnished for use by all project grantees; original acquisition cost of each excess property item furnished for use by each project grantee; name and address of each project grantee; date of grant termination; dollar value of the grant; and original acquisition cost of excess property furnished, expressed as a percentage of the total dollar value of the grant.

(g) Each Federal grantor agency shall develop and maintain an effective system for the prevention or detection of situations involving the nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished to grantees, whether or not title to that property is vested in the grantee. Grantor agencies shall publish procedures which clearly delineate the obligations of grantees with respect to the use and consumption or return to Government custody of property acquired from excess sources.

(h) Property furnished to project grantees is subject to the annual reporting requirements of § 101–43.4701(c).

§ 101–43.315 Certification of non-Federal agency screeners.

(a) To minimize delays in screening excess personal property at holding activities and to make property available quickly and efficiently, all

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non-Federal agency screeners shall be subject to certification by Federal authority.

(b) The sponsoring Federal agency recommending designation of a non-Federal agency screener shall prepare a request covering each designation and forward it for evaluation and approval to the GSA regional office for the region in which the intended screener is located (see § 101–43.4802 for regional office addresses and assigned areas). The request shall state the applicant's qualifications to screen excess personal property and shall indicate the name, number, and termination date of the specific contract, agreement, or grant to which the screener is to be assigned. Since certification is normally approved on a regional basis, a request for certification for interregional screening shall specify the additional regions for which certification is requested. The GSA regional office handling the request will coordinate as necessary with other GSA regional offices and advise the requesting agency of actions taken on each request.

(c) Sponsoring Federal agencies shall include GSA Form 2946, Screener's Identification, with each non-Federal agency screener request. GSA Form 2946 must contain the typed names of both the screener's organization and the sponsoring Federal agency, the signature of the sponsoring Federal agency official, the typed name and signature of the proposed non-Federal agency screener, and an affixed passport-style photograph of the screener.

(d) Following approval, the GSA regional office will complete the GSA Form 2946 and return it to the sponsoring Federal agency for issuance to the screener. When the request is for an applicant whose screening activities are confined to a single cost-reimbursement contract, cooperative agreement, or project grant, the expiration date on the GSA Form 2946 normally shall coincide with the expiration date of that specific project. If the organization employing the non-Federal agency screener is expected to have a subsequent contract, agreement, or grant when the current one expires, or if the applicant's screening activities cover more than a single project, the sponsoring Federal agency may request an expiration date accordingly. If the services of an approved non-Federal agency screener are discontinued prior to the expiration date, the sponsoring Federal agency shall recover the GSA Form 2946. Each sponsoring Federal agency shall be responsible for maintaining a record of the number of certified screeners operating under its authority and shall immediately notify the appropriate GSA regional office of any changes in screening assignments.

(e) Each non-Federal agency representative of a Federal agency physically screening property at holding installations for the purpose of selecting property for transfer shall possess a GSA Form 2946 validated by GSA as provided in this section. However, non-Federal personnel of eligible organizations visiting holding activities in order to participate in onsite screenings or for the purpose of technical inspection, evaluation, and/or removal of property previously set aside or approved by GSA for transfer shall not be required to possess a GSA Form 2946.

(f) A sponsoring Federal agency may request authorization for a non-Federal agency representative to screen excess personal property at specific holding installations on a one-time basis without formal certification. Such requests shall be submitted to the GSA regional office serving the area in which the holding installations are located. The GSA regional office shall coordinate with the holding installations and, if the request is approved, issue a letter authorizing the non-Federal agency representative to screen excess personal property at the holding installations specified; if possible, on the dates requested.

10. Subpart 101–43.5 is revised to read as follows:

Subpart 101–43.5—Utilization of Foreign Excess Personal Property

§ 101–43.501 Federal Government policy.

Foreign excess personal property, when determined available for return to the United States, together with domestic excess personal property is a first source of supply. To the maximum extent practicable, each executive agency shall fulfill its requirements for personal property by obtaining domestic excess personal property (see Subpart 101–43.3) or foreign excess personal property in accordance with this subpart in lieu of new procurement, or to enhance and further its program objectives.

§ 101–43.502 Holding agency responsibilities.

(a) Each executive agency having foreign excess personal property is responsible for its disposal as provided by title IV of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 et seq.), or by other governing statute. Before making foreign excess personal property available for return to the United States for further Federal use or for donation as prescribed in paragraph (b) of this section, and in Subpart 101–44.3, the holding agency may make such property available for use in authorized Federal programs outside the United States.

(b) It is the responsibility of each holding agency, or of GSA after consultation with such agency, to determine whether it is in the interest of the United States to return foreign excess personal property to the United States for further Federal use or for donation. Determinations to return property may be made in response to specific requests for transfer or from consolidated screening requirements.

§ 101–43.503 Payment of costs.

(a) All direct costs involved in returning foreign excess personal property to the United States under this subpart which are incurred by and billed to GSA from the point of origin to a GSA facility in the United States shall be reimbursed by the transferee agency upon appropriate billing by GSA. Direct costs include packing, handling, crating, and transportating.

(b) Transportation costs from the GSA location to the transferee agency shall be borne by the transferee agency. Payment of such transportation costs shall be made by the transferee agency to the transportation carrier.

§ 101–43.504 Donation availability.

Foreign excess personal property made available for return to the United States under this subpart, if not required for further Federal use as determined by GSA, shall be made available for donation in accordance with Subpart 101–44.3.

Subpart 101–43.47—Reports

11. Section 101–43.4701 is revised to read as follows:

§ 101–43.4701 Performance reports.

(a) An annual report of the utilization of domestic excess personal property shall be submitted in duplicate to GSA within 60 calendar days after the close of each fiscal year using SF 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property. Interagency report control number 0015–GSA–AN has been assigned to this report in accordance with FIRMR Subpart 201–45.6.

(b) [Reserved]

(c) In accordance with section 202(e) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), an annual report, in letter form, of personal property obtained as excess property or as property not excess to the owning

agency but determined to be no longer required for the purposes of the appropriation from which it was purchased, and subsequently furnished to a recipient other than a Federal agency in any manner within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, shall be submitted by each executive agency to the General Services Administration (FBP), Washington, DC 20406, within 90 calendar days after the close of each fiscal year. The report shall include only those items furnished to non-Federal recipients during the fiscal year being reported. Interagency report control number 0154–GSA–AN has been assigned to this report in accordance with FIRMR Subpart 201–45.6. Negative reports are required.

(1) The report shall reference FPMR 101–43.4701(c) and shall provide the following data:

(i) The name and address of each recipient;

(ii) The status of each recipient; i.e., cost-reimbursement contractor, fixed-price contractor, project grantee, etc. (If the recipient acquired Federal personal property of the types specified in this § 101–43.4701(c) under two or more arrangements; e.g., cost-reimbursement contract and project grant, each arrangement shall be specified in the report); and

(iii) The total original acquisition cost of all property furnished to each recipient, identified by each applicable two-digit FSC group.

(2) The Administrator will submit a report to the Senate and to the House summarizing and analyzing the reports of the executive agencies.

Subpart 101–43.48—Exhibits

12. Section 101–43.4801 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property groups and classes reportable to the General Services Administration. Property which meets the following criteria is to be reported:

(1) The condition code as defined in paragraph (e) of this section is the same as or better than the minimum reportable disposal condition code shown in the last column. For example, code 9 indicates that property in that group or class coded 1 through 9 is reportable.

(2) The acquisition cost (or standard price) of the line item is $1,000 or more, except that a line item in FSC group 71 will be reported to GSA if it has an acquisition cost (or standard price) of $500 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) The table in paragraph (d) of this section states that line items as specified herein shall be reported when in FSC classes 1510, 1520, 2810, 2840, or any class in FSC group 16. In agencies other than DoD, all line items in these classes shall be reported when dollar and condition criteria are met. In DoD, aircraft in FSC class 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC class 1520, and line items in the other classes which are components of these aircraft shall be reported when dollar and condition criteria are met.

(2) Items in FSC classes 1510 and 1520 held by DoD or other agencies shall be reported to the General Services Administration (9FB), San Francisco, California 94105.

(c) All ADPE as defined in FIRMR § 201–2.001, whether or not it falls within FSC group 70, shall be reported in the manner set forth in FIRMR Part 201–33 to the General Services Administration, Federal Equipment Data Center (WKHE), Suite 900, 4040 North Fairfax Drive, Arlington, Virginia 22203, except that auxiliary or accessorial ADPE with a unit original acquisition cost of $1,500 or less shall be reported to GSA regional offices in accordance with this part.

(d) The table follows:

Federal Supply Classification		Not Reportable to GSA	Reportable to GSA	Minimum Reportable Disposal Condition Code
Group No. and Group Identification	Classes			
10. Weapons	All	X		
11. Nuclear ordnance	All	X		
12. Fire control equipment	All	X		
13. Ammunition and explosives	All	X		
14. Guided missiles	All except		X	9
	1410 guided missiles	X		
	1440 launchers, guided missiles	X		
15. Aircraft and airframe structural components	All except	X		
	1510 aircraft, fixed wing, as specified by 101–43.4801(b)		X	9
	1520 aircraft, rotary wing, as specified by 101–43.4801(b)		X	9
	1560 airframe structural components, as specified by 101–43.4801(b)		X	9
16. Aircraft components and accessories	All		X	9
17. Aircraft launching, landing and ground handling equipment	All	X		
18. Space vehicles	All		X	7
19. Ships, small craft, pontoons, and floating docks	All except		X	8
	Vessels over 1500 gross tons	X		
20. Ship and marine equipment	All	X		
22. Railway equipment	All		X	9
23. Ground effect vehicles, motor vehicles, trailers, and cycles	All		X	9
24. Tractors	All		X	9
25. Vehicular equipment components	All		X	2
26. Tires and tubes	All except	X		
	2610 tires and tubes, pneumatic, except aircraft		X	4
28. Engines, turbines, and components	All except	X		
	2805 gasoline reciprocating engines, except aircraft; and components		X	9

Federal Supply Classification				
Group No. and Group Identification	Classes	Not Reportable to GSA	Reportable to GSA	Minimum Reportable Disposal Condition Code
	2610 gasoline, reciprocating engines, aircraft; and components; as specified by 101–43.4801(b).		X	9
	2615 diesel engines and components		X	9
	2940 gas turbines and jet engines, aircraft; and components; as specified by 101–43.4801(b).		X	9
29. Engine accessories	All			
30. Mechnsical power transmission equipment	All	X		
31. Bearings	All	X		
32. Woodworking machinery and equipment	All		X	9
34. Metalworking machinery	All		X	9
35. Service and trade equipment	All		X	7
36. Special industry machinery	All except		X	9
	3690 specialized ammunition and ordance machinery and related equipment.	X		
37. Agricultural machinery and equipment	All		X	9
38. Construction, mining, excavating, and highway maintenance equipment.	All		X	9
39. Materials handling equipment	All		X	9
40. Rope, cable, chain and fittings	All		X	9
41. Refrigeration, air conditioning, and air circulating equipment.	All		X	9
42. Firefighting, rescue, and safety equipment	All		X	9
43. Pumps and compressors	All		X	9
44. Furnace, steam plant, and drying equipment; and nuclear reactors.	All		X	4
45. Plumbing, heating, and sanitation equipment	All		X	7
46. Water purification and sewage treatment equipment	All		X	7
47. Pipe, tubing, hose, and fittings	All		X	9
48. Valves	All		X	4
49. Maintenance and repair shop equipment	All except		X	9
	4921 torpedo maintenance, repair, and checkout specialized equipment.	X		
	4923 depth charges and underwater mines maintenance, repair, and checkout specialized equipment.	X		
	4925 ammunition maintenance, repair, and checkout specialized equipment.	X		
	4927 rocket maintenance, repair, and checkout specialized equipment.	X		
	4931 fire control maintenance and repair shop specialized equipment.	X		
	4933 weapons maintenance and repair shop specialized equipment.	X		
51. Hand tools	All		X	9
52. Measuring tools	All		X	7
53. Hardware and abrasives	All		X	9
54. Prefabricated structures and scaffolding	All		X	9
55. Lumber, millwork, plywood and veneer	All		X	3
56. Construction and building materials	All		X	9
58. Communication, detection, and coherent radiation equipment.	All except		X	9
	5810 communications security equipment and components.	X		
	5811 other cryptologic equipment and components	X		
59. Electrical and electronic components	All		X	9
60. Fiber optics materials, components, assemblies, and accessories.	All		X	9
61. Electrical wire, and power and distribution equipment	All		X	9
62. Lighting fixtures and lamps	All		X	7
63. Alarm, signal, and security detection systems	All	X		
65. Medical, dental, and veterinary equipment and supplies	All except		X	9
	6505 drugs and biologicals	X		
	6508 medicated cosmetics and toiletries	X		
66. Instruments and laboratory equipment	All		X	6
67. Photographic equipment	All except		X	7
	6770 film, processed	X		
68. Chemicals and chemical products	All		X	2
69. Training aids and devices	All		X	9
70. General purpose automatic data processing equipment (including firmware), software, supplies and support equipment (see 101–43.4801(c)).	All		X	9
71. Furniture	All		X	9
72. Household and commercial furnishings and appliances	All		X	8
73. Food preparation and serving equipment	All		X	8
74. Office machines, text processing systems, and visible record equipment.	All		X	9
75. Office supplies and devices	All		X	7
76. Books, maps, and other publications	All except	X		
	7610 books and pamphlets		X	4

Federal Supply Classification				
Group No. and Group Identification	Classes	Not Reportable to GSA	Reportable to GSA	Minimum Reportable Disposal Condition Code
77. Musical instruments, phonographs, and hometype radios	All except		X	5
	7710 musical instruments		X	9
78. Recreational and athletic equipment	All		X	5
79. Cleaning equipment and supplies	All		X	5
80. Brushes, paints, sealers and adhesives	All		X	4
81. Containers, packaging, and packing supplies	All		X	8
83. Textiles, leather, furs, apparel, and shoe findings, tents, and flags.	All except	X		
	8305 textiles fabrics		X	9
	8340 tents and tarpaulins		X	9
84. Clothing, individual equipment, and insignia	All except		X	9
	8455 badges and insignia	X		
85. Toiletries	All	X		
87. Agricultural supplies	All	X		
88. Live animals	All	X		
89. Subsistence	All except	X		
	8965 beverages, alcoholic		X	2
91. Fuels, lubricants, oils and waxes	All		X	3
93. Nonmetallic fabricated materials	All		X	2
94. Nonmetallic crude materials	All	X		
95. Metal bars, sheets, and shapes	All		X	5
96. Ores, minerals, and their primary products	All		X	4
99. Miscellaneous	All except	X		
	9905 signs, advertising displays and identification plates		X	9
	9910 jewelry		X	9
	9999 miscellaneous items		X	9

* * * * *

13. Section 101–43.4802 is revised to read as follows:

§ 101–43.4802 Regional office addresses and assigned areas.

Region and office address	Regional areas
National Capital Region, 7th and D Streets, SW., Washington, DC 20407.	District of Columbia, Maryland (Prince Georges and Montgomery Counties only), Virginia (Prince William, Loudoun, Fairfax and Arlington Counties, and City of Alexandria only).
1—General Services Administration, Boston Federal Office Building, 10 Causeway Street, Boston, MA 02222.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
2—General Services Administration, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Commonwealth of Puerto Rico, Virgin Islands.
3—General Services Administration, 9th and Market Streets, Philadelphia, PA 19107.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia.
4—General Services Administration, 75 Spring Street, SW., Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
5—General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
6—General Services Administration, 9001 State Line Road, Suite 306, Kansas City, MO 64114.	Iowa, Kansas, Missouri, Nebraska.
7—General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
8—General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
9—General Services Administration, 525 Market Street, San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada, Pacific Ocean Areas.
10—General Services Administration, GSA Center, Auburn, WA 98002.	Alaska, Idaho, Oregon, Washington.

Subpart 101–43.49—Illustrations of Forms

14. Section 101–43.4901–122–1 is revised to read as follows:

§ 101–43.4901–122–1 Instructions for preparing Standard Form 122.

Instructions

Standard Form 122 is used by executive agencies to submit the transfer orders required by the Federal Property Management Regulations (41 CFR 101–43.309).

Block 3, Enter the complete address of the appropriate GSA regional office.

Block 4, Enter the name and address of the ordering agency.

Block 5, Furnish the name and address of the agency having control of the property ordered.

Block 6, Furnish the name and address of the consignee.

Block 7, Show the location of property (building number, etc.).

Block 9, Show the signature of the authorized representative of the ordering agency and date.

Block 10, Furnish the full appropriation symbol and title (when appropriate).

Block 12, Enter the GBL number if furnished.

Block 13(a), Enter both the appropriate GSA control number and the holding agency's document and item numbers used to report the item to GSA as excess.

Block 14, For GSA use.

Important

1. A separate transfer order shall be prepared for each different property location.

2. The transfer order normally shall be prepared by the ordering agency.

3. Complete shipping instructions or Government bills of lading must be furnished with each transfer order.

4. If reimbursement is required, the total fair value for the quantity requested must be shown below each item description in column C.

5. Four copies of the transfer order shall be mailed to the appropriate GSA regional office, Attention: Federal Supply Service Bureau. When prior GSA approval is not required, only one copy of the transfer order shall be mailed to the GSA regional office.

15. Section 101–43.4902 is revised to read as follows:

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§ 101–43.4902 GSA forms.

(a) GSA forms in this section show their text, format, and arrangement and provide a ready source of reference.

(b) GSA forms in this section may be obtained initially from the General Services Administration, National Forms and Publications Center, 4900 South Hemphill Street, Warehouse No. 4, Dock No. 1, Forth Worth, Texas 76115. Agency regional or field offices should submit future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (CAIR), Washington, DC 20405.

16. Section 101–43.4902–1539–1 is revised to read as follows:

§ 101–43.4902–1539–1 Instructions for preparing GSA Form 1539.

Instructions for Acquisition and Use of GSA Form 1539, Request for Excess Personal Property

1. Availability. GSA Form 1539 will be furnished to agencies upon request to GSA regional offices shown in § 101–43.4802. Information of a local or limited nature concerning the use of the form not covered in paragraph 2, below, will be furnished by GSA regional offices for customer agencies located in their areas.

2. Guidelines for use of GSA Form 1539.

a. To obtain maximum benefits from GSA Form 1539, agencies shall submit the completed form to the appropriate GSA regional office immediately upon determination of the need. The expiration date of a normal 180-day screening period should be shown in block 5 of GSA Form 1539. However, if this length of time is unacceptable, an earlier date should be shown.

b. Agencies are requested to restrict the use of GSA Form 1539 to:

(1) A single line item which, as a general rule, has a total acquisition cost of more than $1,000, and

(2) An item not currently listed in GSA excess property catalogs or bulletins.

c. To assist the appropriate GSA regional office in locating and offering the agency an available excess item which will meet the specific need, block 1 (item description) of GSA Form 1539 must fully describe the item required and indicate the minimum acceptable condition code.

d. Nationwide requirements originating at agency headquarters may be submitted to the General Services Administration (FBP), Washington, DC 20406.

PART 101–44—DONATION OF PERSONAL PROPERTY

17. The authority citation for Part 101–44 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

18. The table of contents for Part 101–44 is amended by removing, adding or revising the following entries:

101–44.002 Requests for deviations.
101–44.102 Responsibilities of holding agencies.
101–44.103 [Reserved]
101–44.106 [Reserved]
101–44.108–1 Drugs, biologicals, reagents, and other medical materials and supplies other than controlled substances.
101–44.108–3 [Reserved]
101–44.108–10 Donation of noncertified electronic products.
101–44.115 Overages and shortages.
101–44.202 State agency plan of operation.
101–44.702–8 Noncertified electronic products.

19. Section 101–44.000 is revised to read as follows:

§ 101–44.000 Scope of part.

This part prescribes policies and methods governing the donation of surplus personal property located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and the donation of foreign excess personal property designated for return to the United States.

20. Sections 101–44.001–4, 101–44.001–9, 101–44.001–13, and 101–44.001–14 are revised to read as follows:

§ 101–44.001–4 Donee.

"Donee" means a service educational activity; a State, political subdivision, municipality, or tax-supported institution acting on behalf of a public airport; a public agency using surplus personal property in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; an eligible nonprofit tax-exempt educational or public health institution or organization; the American National Red Cross; a public body; an eleemosynary institution; or any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act.

§ 101–44.001–9 No commercial value.

"No commercial value" means a determination that property has neither utility nor monetary value (either as an item or as scrap).

§ 101–44.001–13 State.

"State" means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 101–44.001–14 State agency.

"State agency" means the agency in each State designated under State law as responsible for the distribution within the State of all donations of surplus property to public agencies and eligible nonprofit tax-exempt activities.

21. Section 101–44.002 is added to read as follows:

§ 101–44.002 Requests for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection in accordance with Subpart 105–60.3 of this title.

Subpart 101–44.1—General Provisions

22. Section 101–44.101 is revised to read as follows:

§ 101–44.101 Withdrawal of donable property.

Surplus personal property set aside or approved for donation may be withdrawn for use by the holding agency with the prior approval of GSA. Holding activities may withdraw such property to meet their essential valid requirements in emergency situations without prior approval of GSA, but shall notify GSA immediately of such actions. The GSA regional office will advise the State agency or donee which applied for the property at the time a withdrawal is approved by GSA.

23. Section 101–44.102 is revised to read as follows:

§ 101–44.102 Responsibilities of holding agencies.

The role of agencies, other than State agencies, holding Federal property pending donation shall be limited to the following:

(a) Holding agencies shall cooperate fully with all agencies and their duly accredited representatives authorized to participate in the donation program in locating, screening and inspecting surplus personal property for donation. Upon reasonable request, holding agencies shall make available to these agencies or their representatives complete information regarding the quantity, description, condition, and location of donable property in their inventories. Holding agencies, however, need not prepare nor mail reports or listings not otherwise required by their procedures.

(b) Each holding agency shall annotate nonreportable personal property records to indicate to authorized State agencies, donee representatives or responsible Federal officials the date of the surplus determination by the holding agency.

(c) Pending donation, each holding agency shall be responsible for performing, and bearing the cost for, the care and handling of its property. Direct costs incurred by the holding agency in the actual packing, preparation for shipment, and loading of property incident to the donation may be reimbursable. Holding agencies may waive the amount involved as being uneconomical or impractical to collect. Where such charges are incurred, they shall be reimbursed promptly by the State agency or designated donee upon appropriate billing. Overhead or administrative costs or charges shall not be included.

(d) Holding agencies shall provide a period of 21 calendar days following the surplus release data for donation screening in accord with § 101–44.109. During this period, a holding activity shall not take for its own use any property in its custody, except as provided in § 101–44.101.

(e) Surplus property set aside for donation (see § 101–44.109) shall be retained by the holding agency for a period not to exceed 42 calendar days from the surplus release date, pending receipt of an approved Standard Form (SF) 123, Transfer Order Surplus Personal Property, from GSA and firm instructions for pickup or shipment of the property. The transferee is responsible for removing the property or for making arrangements with common carriers for its shipment. Property disposal officers or other representatives of holding activities shall not act as the agent or shipper for transferees in this regard. Upon receipt of the approved SF 123 and instructions for pickup or shipment, the holding activity shall promptly notify the transferee or the transferee's designated agent of the availability of the property. At the end of the 42-day period, the holding agency may proceed with the disposal of the property if the approved SF 123 and pickup or shipping instructions have not been received.

(f) Surplus property shall not be released by a holding activity for donation until the activity has received an SF 123 bearing the signed approval of the appropriate GSA official.

§ 101–44.103 [Removed and Reserved]

24. Section 101–44.103 is removed and reserved.

25. Section 101–44.104 is revised to read as follows:

§ 101–44.104 Costs incurred incident to donation.

Direct costs incurred by the holding agency in packing, loading, or preparing the property for shipment shall be borne by the State agency or the designated donee. Where such costs are incurred, they shall be reimbursed promptly by the State agency or designated donee upon appropriate billing, unless the holding agency waives the amount involved as being uneconomical or impractical to collect.

26. Section 101–44.105 is revised to read as follows:

§ 101–44.105 Assistance in major disaster relief.

(a) Upon declaration by the President of an emergency or a major disaster, surplus equipment and supplies may be donated to State and local governments for use and distribution by them for emergency or major disaster assistance purposes in accordance with the directions of the Federal Emergency Management Agency (FEMA) pursuant to the Disaster Relief Act of 1974 (Pub. L. 93–288) and Executive Order 12148, as amended. All donations of surplus personal property for major disaster assistance purposes require the prior approval of GSA, except where property already transferred for donation is donated to eligible donees by the State agency.

(b) When Federal surplus property in the custody of a State agency is requested by the State official in charge of disaster operations, and certified by FEMA as being usable and needed, the State agency will release the property to the authorized State official.

(c) Reimbursement to the State agency releasing surplus property for disaster assistance will be made by the State receiving the property. If reimbursement is sought, the State agency should coordinate and make arrangements with the State official in charge of disaster relief for reimbursement for services provided. In addition to services rendered, State agencies are entitled to reimbursement of documented expenses originally incurred in the care and handling of the property, including the screening, transporting, and receipt of property made available for disaster relief.

(d) Property previously obtained from or through the State agency for disaster relief purposes, and not used or no longer required, shall be returned to the State agency. Such property received by the State agency will be accounted for and disposed of in the same manner as any other property approved for donation under normal circumstances.

(e) Federal assistance under the Disaster Relief Act of 1974 is terminated upon notice to the Governor of the State by the Director, FEMA, or at the expiration of time periods prescribed in FEMA regulations, whichever occurs first.

§ 101–44.106 [Removed and Reserved]

27. Section 101–44.106 is removed and reserved.

28. Section 101–44.108–1 is revised to read as follows:

§ 101–44.108–1 Drugs, biologicals, reagents, and other medical materials and supplies other than controlled substances.

Surplus drugs, biologicals, and reagents in Federal supply classes 6505 and 6508 which are not required to be destroyed as provided by § 101–45.903 may be donated to public agencies and eligible nonprofit tax-exempt activities. When the report of excess or other communication from the holding activity listing drugs, biologicals, and reagents indicates any items that are unfit for human use, GSA will not offer these items for donation. Controlled substances (as defined in § 101–43.001–4) shall not be donated.

(a) Applications for transfer of surplus drugs, biologicals, and reagents must be accompanied by a letter of clearance from the Food and Drug Administration (FDA), Medical Product Quality Assurance Staff, indicating that the items may be safely donated. Items which do not fall within the purview of FDA, or which FDA indicates are unsuitable, will not be considered by GSA for donation.

(b) For purposes of obtaining the letter of clearance from FDA, the State agency or designated donee shall be responsible for obtaining and providing samples of any item that is to be examined. Before laboratory examinations are undertaken, FDA shall give the State agency an estimate of the expected cost of the quality assurance. Any payment of costs for laboratory examinations for quality assurance of these samples shall be arranged by the State agency.

(c) In the case of surplus drugs, biologicals, reagents, and other restricted medical materials and

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supplies (medical items that must be dispensed or used only by a licensed, registered, or certified individual) requested by a State agency, the SF 123 shall contain a statement that:

(1) The listed property will be transferred from the holding agency directly to the designated donee;

(2) The intended donee is licensed and authorized to administer and dispense such items or is authorized to store the items; and

(3) The State agency will obtain a certification from the donee indicating that:

(i) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(ii) Adequate facilities are available to effect full accountability and proper storage of the items in accordance with Federal, State and local statutes governing their acquisition, storage, and accountability; and

(iii) The administration or use of the items requested will comply with the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301–392).

(d) A State agency shall not pick up or store in its distribution center, surplus drugs, biologicals, reagents, and other restricted medical materials and supplies. This property shall be transferred from the holding agency directly to the designated donee.

(e) Shelf-life items and medical materials and supplies held for national emergency purposes, and determined to be surplus in accordance with § 101–43.307–13, shall be made available for donation screening as provided in § 101–44.109.

29. Section 101–44.108–2 is revised to read as follows:

§ 101–44.108–2 Donation of aircraft.

This section provides procedures and conditions for the donation of aircraft which are not classified for reasons of national security and after removal of lethal characteristics. The requirements of this paragraph apply to the donation of any fixed- or rotary-wing aircraft with a unit acquisition cost of $5,000 or more, but do not apply to the donation of individual aircraft components, accessories, parts, or appurtenances not attached to or an integral part of an aircraft. Combat-type aircraft shall not be donated for flight use.

(a) *Plan of utilization.* To assist GSA in the allocation and transfer of available surplus aircraft, each SF 123 submitted to GSA for donation of an aircraft covered by this section shall include a letter of intent, signed and dated by the authorized representative of the proposed donee, setting forth a detailed plan of utilization for the property. The letter of intent shall provide the following information:

(1) A description of the aircraft requested, including the type, model or size, and the serial number, if it is known;

(2) A detailed description of the donee's program and the number and types of aircraft currently owned by the donee;

(3) Whether the aircraft is to be used for flight purposes or nonflight purposes (including ground instruction or simulation use), and details of the planned utilization of the aircraft including but not limited to how the aircraft will be used, its purpose, how often and for how long. If for flight purposes, specify source of pilot(s) and where aircraft will be housed. When the aircraft is requested for cannibalization (recovery of parts and components), the letter of intent should provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, etc.); and

(4) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft.

(b) *Donation of aircraft to public agencies and eligible nonprofit tax-exempt activities.* (1) For the donation of an aircraft to a donee eligible in accordance with the provisions of Subpart 101–44.2, the following documentation shall be submitted to GSA along with the SF 123 and the donee's letter of intent:

(i) A letter, signed and dated by the State agency director, confirming and certifying the applicant's eligibility and containing the State agency's evaluation of the applicant's ability to use the aircraft for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation;

(ii) A State agency distribution document, signed and dated by the authorized representative of the donee, and containing the terms, conditions, and restrictions prescribed by GSA; and

(iii) A conditional transfer document, signed by both the donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA. The conditional transfer document may include additional State agency imposed terms, conditions, and restrictions on the use of the aircraft which are consistent with any Federal requirements or the State plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, shall be modified, amended, waived, released, or abrogated by the State agency without the prior written approval of GSA.

(2) Donation of aircraft to public agencies and eligible nonprofit tax-exempt activities shall be subject to the following terms, conditions, and restrictions:

(i) The donee shall apply to the Federal Aviation Administration (FAA) for registration of an aircraft intended for flight use within 90 calendar days of receipt of the aircraft. The donee's application for registration shall include a fully executed copy of the conditional transfer document and a copy of its letter of intent. If the aircraft is to be flown as a civil aircraft, the donee must obtain an FAA Standard Airworthiness Certificate within 12 months of receipt of the aircraft. The donee shall provide the State agency and GSA with a copy of the FAA registration and the Standard Airworthiness Certificate.

(ii) The aircraft shall be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter and it has been approved in writing by the State agency and GSA and a copy of the amendment recorded with FAA.

(iii) Combat-type aircraft, as designated by DOD, shall not be donated for flight purposes. The restrictions on combat-type aircraft shall be in perpetuity and shall not be released by the State agency without the prior written approval of the GSA Central Office.

(iv) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the aircraft shall, at the option of GSA, revert to the United States of America. The donee, at the option of GSA, shall be liable to the United States of America for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the aircraft at the time of any unauthorized transaction or use, as determined by GSA.

(v) If, during the period of restriction, the aircraft is no longer suitable, usable, or further needed by the donee for the purpose for which it was acquired, the donee shall promptly notify the State agency and request disposal instructions. Disposal instructions shall not be issued by the State agency except with the prior written concurrence of GSA.

(vi) In the case of any noncombat aircraft donated for nonflight use, and for all combat-type aircraft (unless certified by the Defense Reutilization and Marketing Office that the historical records and data plate have already been removed by the disposal agency), the State agency shall acquire from the donee, within 30 calendar days of the donee's receipt of the aircraft, the aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse) and the manufacturer's aircraft data plate and turn them over to the GSA allocting office. GSA will forward the records and data plates to the Chief, Aircraft Manufacturing Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

(c) *Donation of aircraft to service educational activities.* (1) Donation of a surplus Department of Defense (DOD) aircraft to a donee eligible in accordance with the provisions of Subpart 101–44.4 shall be made in accordance with the terms of the individual donation agreement executed by DOD and the service educational activity. The SF 123, with the donee's letter of intent and any additional required documentation specified, shall be submitted for approval to the appropriate GSA regional office.

(2) Surplus DOD aircraft which have been demilitarized may be approved for donation by GSA to service educational activities for nonflight use, for static display, or for ground instruction and simulation purposes.

(3) Surplus DOD noncombat and commercial-type aircraft may be approved for donation by GSA at the request of DOD for flight purposes by service educational activities subject to the following use conditions and agreements which DOD shall require of the donee:

(i) The aircraft shall be used solely in connection with the plan of utilization set forth in the donee's letter of intent unless DOD authorizes a change in writing to the donee's plan of utilization.

(ii) The donee shall apply to FAA for registration (and shall provide FAA with a copy of its letter of intent) within 30 calendar days of receipt of the aircraft and shall forward a copy of the registration to DOD and GSA.

(iii) The aircraft must be certified as airworthy prior to being put into flight use. The donee shall furnish a copy of the FAA Standard Airworthiness Certificate to DOD and GSA.

(d) *Donation of aircraft for public airport purposes.*

(1) When a surplus aircraft is donated to a donee eligible in accordance with the provisions of Subpart 101–44.5, the SF 123 and the donee's letter of intent shall be processed by and through FAA and submitted to GSA for approval.

(2) Surplus cannibalized or demilitarized aircraft may be approved for donation by GSA to a public airport for use in firefighting and rescue training.

(3) Flyable aircraft will not be approved for donation for public airport purposes.

(e) *Donation of condemned or obsolete combat aircraft for historical purposes.* Requests for donation of aircraft for historical purposes (museums, static display, etc.) from veterans' organizations, soldiers' monument associations, State museums, incorporated nonprofit educational museums, municipal corporations (cities, boroughs or incorporated towns), and Sons of Veterans Reserve shall be referred to DOD for processing in accordance with 10 U.S.C. 2572 (see § 101–44.901).

§ 101–44.108–3 [Removed and Reserved]

30. Section 101–44.108–3 is removed and reserved.

31. Section 101–44.108–4 is amended by revising paragraph (a) to read as follows:

§ 101–44.108–4 U.S. munitions list items.

(a) A State agency requesting the transfer for donation of munitions list items identified as requiring demilitarization shall include the demilitarization code on the SF 123 and a statement that the State agency will obtain certification from the donee that demilitarization will be accomplished prior to further disposition in accordance with the demilitarization instructions in § 101–43.4804. Service educational activities or public airport donees shall include a statement on the SF 123 that they will demilitarize the property prior to further disposition in accordance with the requirements of the codes as set forth in § 101–43.4804.

* * * * *

32. Section 101–44.108–9 is revised to read as follows:

§ 101–44.108–9 Donation of vessels.

This section provides procedures and conditions for the transfer for donation of any donable vessel which is 50 feet or more in length and has a unit acquisition cost of $5,000 or more. Each SF 123 submitted to GSA for donation of a vessel which is 50 feet or more in length shall be accompanied by a letter of intent from the applicant donee setting forth in detail the proposed use of the vessel. Each donee, as a condition of the donation, shall agree also to fully comply with all Federal, State, and local laws, regulations, ordinances, and requirements, including, but not limited to those pertaining to environmental pollution, health and safety, and to obtain all necessary permits, licenses, certificates, and clearances applicable to acquiring, owning, transporting, repairing, using, operating, and maintaining the vessel. Each donee, as a condition of the donation, shall agree to obtain documentation of the vessel under the applicable laws of the United States and the several States, to maintain this documentation at all times, and to record each document with the U.S. Coast Guard at the port of documentation of the property within 30 calendar days after acquisition of the vessel, and in compliance with applicable Federal and State laws.

(a) *Plan of utilization.* To assist GSA in the allocation and transfer of available surplus vessels, each SF 123 submitted to GSA for donation of a vessel covered by this § 101–44.108–9 shall include a letter of intent, signed and dated by the authorized representative of the proposed donee, setting forth a detailed plan of utilization for the property. The letter of intent shall provide the following information:

(1) A description of the vessel requested, including the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if it is known;

(2) A detailed description of the donee's program and the number and types of vessels currently owned by the donee;

(3) A detailed description of the planned utilization of the vessel including, but not limited to, how the vessel will be used, its purpose, how often and for how long and whether the vessel is to be operated on the waterways or not (including ground display, permanent mooring or permanent land use). If for waterway purposes, a source of pilot(s) and where the vessel will be docked must be specified. When the vessel is requested for permanent docking on water or land, the letter of intent should provide details of the process including the time to complete the process.

(4) Any supplemental information (such as geographical area and population served, number of students

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enrolled in educational programs, number of visitors and students if for museum purposes, etc.) supporting the donee's need for the vessel.

(b) *Donation of vessels to public agencies and eligible nonprofit tax-exempt activities.* (1) For the donation of a vessel to a donee eligible in accordance with the provisions of Subpart 101–44.2, the following documentation shall be submitted to GSA along with the SF 123 and the donee's letter of intent: (i) A letter, signed and dated by the State agency director, confirming and certifying the applicant's eligibility and containing the State agency's evaluation of the applicant's ability to use the vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation;

(ii) A State agency distribution document, signed and dated by the authorized representative of the donee, and containing the terms, conditions, and restrictions prescribed by GSA; and

(iii) A conditional transfer document, signed by both the donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA in accordance with § 101–44.108–9(b)(2). The conditional transfer document may include additional State agency imposed terms, conditions, and restrictions on the use of the vessel which are consistent with any Federal requirements or the State plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, shall be modified, amended, waived, released, or abrogated by the State agency without the prior written approval of GSA.

(2) Donation of vessels to public agencies and eligible nonprofit tax-exempt activities shall be subject to the following terms, conditions, and restrictions:

(i) The donee shall, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel to the U.S. Coast Guard at the port of documentation of the vessel, under the applicable laws of the United States and regulations promulgated thereunder and the applicable laws of the several States governing the documentation of said property, and agrees to maintain at all times such documentation. The donee's application for documentation shall include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee shall provide the State agency and GSA with evidence that the documentation is accomplished including a copy of all approved documentation.

(ii) The vessel shall be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter and it has been approved in writing by the State agency and GSA and a copy of the amendment recorded with the U.S. Coast Guard at the port of documentation of the vessel.

(iii) Naval vessels of the following categories shall not be donated: Battleships, cruisers, aircraft carriers, destroyers and submarines (40 U.S.C. 472 (d)).

(iv) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the vessel shall, at the option of GSA, revert to and become the property of the United States of America. The donee, at the option of GSA, shall be liable to the United States of America for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the vessel at the time of any unauthorized transaction or use, as determined by GSA.

(v) If, during the period of restriction, the vessel is no longer suitable, usable, or further needed by the donee for the purpose for which it was acquired, the donee shall promptly notify the State agency and request disposal instructions. Disposal instructions shall not be issued by the State agency except with the prior written concurrence of GSA.

(c) *Donation of vessels to service educational activities.* (1) Donation of a surplus Department of Defense (DOD) vessel to a donee eligible in accordance with the provisions of Subpart 101–44.4 shall be made in accordance with the terms of the individual donation agreement executed by DOD and the service educational activity and this section 101–44.108–9. The SF 123, with the donee's letter of intent and any additional required documentation specified, shall be submitted for approval to the appropriate GSA regional office.

(2) The vessel shall be used solely in connection with the plan of utilization set forth in the donee's letter of intent unless DOD authorizes a change, in writing, to the donee's plan of utilization.

(3) The donee shall apply to the U.S. Coast Guard at the port for documentation of the vessel (and shall provide the U.S. Coast Guard with a copy of its letter of intent) within 30 calendar days of receipt of the vessel and shall forward a copy of evidence of the documentation to DOD and GSA.

33. Section 101–44.108–10 is revised to read as follows:

§ 101–44.108–10 Donation of noncertified electronic products.

(a) Whenever noncertified electronic products (as defined in § 101–43.307–8) are requested for donation, the State agency, DOD, or FAA, as applicable, shall:

(1) Provide the applicable State radiation control agency in which the donee is located (see § 101–45.4809) with a copy of the donation document (SF 123, Transfer Order Surplus Personal Property) and the name and address of the donee; and

(2) Require that the donee certify on the SF 123 that it:

(i) Is aware of the potential danger in using the product without a radiation test to detemine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR Part 1000; and

(ii) Agrees to accept the item from the holding agency for donation under those conditions.

(b) Surplus noncertified cold-cathode gas discharge tubes may be donated only under conditions of destructive salvage.

34. Section 101–44.109 is revised to read as follows:

§ 101–44.109 Donation screening period.

(a) A period of 21 calendar days following the surplus release date (see § 101–43.001–32) shall be provided to set aside surplus reportable and nonreportable property determined to be usable and necessary for donation purposes in accordance with the provisions of Subparts 101–44.2, 101–44.4, and 101–44.5. Reportable surplus property will be set aside for donation when an application for donation, with an informational copy to the holding activity, is submitted to a GSA regional office for approval within the donation screening period. Nonreportable surplus property will be set aside for donation upon notification to a holding activity within the donation screening period by a responsible Federal official, a State agency representative, or an authorized donee representative that the property is usable and necessary for donation purposes.

(b) During the prescribed 21-day donation screening period, applications for surplus personal property will be processed by GSA regional offices in the following sequence:

(1) Department of Defense personal property reportable to GSA in accordance with § 101–43.304 will be reserved for public airport donation during the first 5 calendar days of the donation screening period and during the next 5 days for service educational activities. During the remaining portion of the donation screening period, the property will be available on a first-come, first-served basis to all applicants.

(2) Executive agency personal property, other than personal property of the Department of Defense, reportable to GSA in accordance with § 101–43.304 will be reserved for public airport donation during the first 5 calendar days of the donation screening period. During the remaining portion of the donation screening period, the property will be available on a first-come, first-served basis. This property is not available for donation to service educational activities.

(3) All executive agency personal property not reportable to GSA will be made available for donation on a first-come, first-served basis. Service educational activities are not eligible for donation of nonreportable surplus personal property of executive agencies other than the Department of Defense.

(c) To expedite donation, surplus property may be made available on a case-by-case basis for onsite screening. The GSA regional office will contact the holding agency not later than 15 calendar days before the date the onsite screening is scheduled to start so that all necessary arrangements can be coordinated and agreed upon. If time will not permit separate utilization and donation screening, concurrent screening may be scheduled with Federal, State, and donee representatives in attendance. Participation in donation screening sessions is limited to State agency employees and representatives of eligible donees designated by the State agency to attend such sessions. Screening sessions shall be conducted as follows:

(1) The donation screening period should be limited to the specific dates established by the agreement for the particular location. Generally, a screening period of 5 workdays should be sufficient.

(2) The property selected for the screening sessions should be set aside in separate areas and properly identified by the holding activity to facilitate screening sessions.

(3) GSA or State agency representatives should be present during all screening sessions.

(4) The State agency representatives shall prepare SF 123, Transfer Order Surplus Personal Property (illustrated at § 101–44.4901–123), at the site on a daily basis for the property selected. Upon approval by the GSA representative, the holding activity shall release the property. Processing of donation documents shall be expedited to ensure that the property is removed at the end of each daily session to the maximum extent possible. Property shall not be released until the transfer is approved by the GSA representative, except in emergency situations as determined by GSA.

(5) When onsite screening is conducted on a continuing day-to-day basis under procedures previously agreed to in writing by GSA, the holding agency, and the State agency concerned, the presence of authorized GSA or State agency representatives is not required. Arrangements may provide for processing the essential donation documents after the onsite screening and removal of the property.

35. Section 101–44.112 is amended by revising paragraph (a) to read as follows:

§ 101–44.112 Approval or disapproval of transfer orders.

(a) Surplus property shall not be released by a holding activity for donation until it has received an SF 123 bearing the signed approval of the appropriate GSA official. In approving the SF 123, GSA regional offices will comply with the sequence established in § 101–44.109. An SF 123 which is not fully or properly prepared may be returned to the applicant or held in suspense until the required information is made available. In those cases in which property is specifically requested for the purpose of cannibalization, the following statement shall be included on the SF 123: "Item(s) _____ requested for cannibalization." Cannibalization requests may be approved when it is clear that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form. Upon the request of a GSA regional office, the State agency (or the donee in the case of property donated under the provisions of Subparts 101–44.4 or 101–44.5) shall submit any additional information required to support and justify a donation application. The SF 123 will not automatically be held to the end of the screening period, but will be approved and distributed as expeditiously as possible. An SF 123 received after the end of the donation screening period may be approved if the property is still available, and the holding activity has agreed to set the property aside pending receipt of donation approval.

* * * * *

36. Section 101–44.114 is amended by revising paragraph (a) to read as follows:

§ 101–44.114 Pickup or shipment.

(a) Surplus property requested and set aside for donation will be retained by the holding agency for a maximum period of 42 calendar days from the surplus release date, pending receipt of the approved SF 123 and firm instructions for pickup or shipment of the property. At the end of this period, the holding activity may proceed with the sale or other authorized disposal of the property if the approved SF 123 and pickup or shipping instructions have not been received.

* * * * *

37. Section 101–44.115 is revised to read as follows:

§ 101–44.115 Overages and shortages.

(a) *Overages.* When a State agency, service educational activity (SEA), or public airport finds that it has received surplus property in excess of that listed on an approved SF 123, and the estimated fair market value or acquisition cost of the line items involved is less than $500, it shall annotate its receiving and inventory records to document the overage. The annotation must include a description of the property, its estimated condition, the estimated fair market value (or acquisition cost if known), and the name of the holding activity from which the property was received. If property having an estimated fair market value or acquisition cost of $500 or more is received, it shall be listed on an SF 123, and the SF 123 sent to the GSA regional office for approval. In the case of property received by a public airport, the SF 123 shall be forwarded to GSA through the Federal Aviation Administration (FAA).

(b) *Shortages.* When it is found that line items or portions of line items of property approved on an SF 123 were not received, and the total acquisition cost of the line items involved is less than $300, the State agency, SEA, or public airport shall annotate its receiving and inventory records to document the shortage. The annotation must include a description of each line item of property, the acquisition cost, and the name of the holding activity. If the total acquisition cost is $300 or more, a shortage report must be prepared and submitted to the GSA regional office for the region in which the holding activity

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is located. A copy of this report shall be sent to the holding activity. Shortage reports covering property approved for donation to a public airport should be forwarded to the GSA regional office through FAA.

(c) *Information.* Overages and shortages shall be reported, where required, within 90 calendar days of the date of transfer. The shortage report, or the SF 123 in the case of overages of $500 or more, shall be signed by the responsible State agency or donee representative and shall provide the following information.

(1) Name and address of the holding activity;

(2) All pertinent control numbers including the holding activity turn-in document number, the GSA control number if property was reported to GSA, and the State agency or donee transfer order number; and

(3) A description of each line item of property, whether it is a shortage or an overage, the condition code (estimated if an overage), the quantity and unit of issue, and the unit and total acquisition cost (estimated if an overage).

38. Section 101–44.116 is amended by revising paragraphs (b) and (e) to read as follows:

§ 101–44.116 Certification of screeners.

* * * * *

(b) The agency recommending the designation of a donee screener shall prepare a request to inform GSA of the proposed designation and forward it for evaluation and approval to the GSA regional office serving the region in which the intended screener is located. (See § 101–43.4802 for regional offices, addresses, and assigned areas.) The request shall state the name and address of the State agency or donee activity the prospective screener represents, and certify that the applicant is qualified to screen as an authorized representative of the cited organization. A list of the Federal installations the screener will be authorized to visit shall accompany each request. The list of Federal installations should be limited to those within the applicable State, except where there are particular reasons why State agency screeners or donee screeners should regularly visit installations outside the State. Special requests for State agency or donee screeners to visit installations outside the State or region on a regular or one-time basis may be authorized by the GSA regional offices involved. The recommending agency shall select qualified screeners representing public agencies and other eligible donee organizations within the State in order to expedite the movement of surplus property and enhance the opportunities of those public agencies and organizations to identify and select needed and useful items of property. GSA will give special consideration to requests of individual donees submitted through recommending agencies for allocation of specific items of property.

* * * * *

(e) Each State agency or other donee representative physically screening property at holding installations for the purpose of selecting property for donation shall possess a GSA Form 2946 validated by GSA as provided in this § 101–44.116. However, representatives visiting holding activities in order to participate in onsite screenings in accordance with § 101–44.109, or for the purpose of technical inspection, evaluation, and/or removal of specific property previously set aside or approved by GSA for donation, shall not be required to possess a GSA Form 2946.

39. Section 101–44.118 is revised to read as follows:

§ 101–44.118 Nondiscrimination.

All transfers of surplus property to the State agencies for donation to public agencies and eligible nonprofit tax-exempt activities, to service educational activities, and to public airports are conditioned on full compliance with GSA regulations on nondiscrimination as set forth in Subpart 101–6.2 and Part 101–8.

§ 101–44.119 [Removed]

40. Section 101–44.119 is removed.

Subpart 101–44.2—Donations to Public Agencies and Nonprofit Tax-Exempt Activities

41. Section 101–44.200 is revised to read as follows:

§ 101–44.200 Scope of subpart.

This subpart prescribes the authorities, responsibilities, policies and methods governing the donation of surplus personal property within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to eligible recipients as established in § 101–44.207.

42. Section 101–44.201 is revised to read as follows:

§ 101–44.201 Authority.

(a) Section 203(j)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484) (hereinafter called the act), gives the Administrator of General Services discretionary power to prescribe the necessary regulations for, and to execute, the surplus property donation program. This authority empowers the Administrator to transfer executive agency controlled surplus property to the agency of each State government designated under State law to be responsible for all property transferred in accordance with this subpart and Subpart 101–44.4.

(b) The property which may be transferred for donation includes all personal property which has been determined to be donable as defined in § 101–44.001–3.

43. Section 101–44.202 is amended by revising the section heading, introductory text and paragraphs (a), (c)(1) (i) and (ii), (c)(3), (c)(4), (c)(5), (c)(6), (c)(8), (c)(10), (c)(11), (c)(12), (c)(14) (iv) and (v), and (d); and by adding paragraph (c)(14)(vi) to read as follows:

§ 101–44.202 State agency plan of operation.

Section 203(j)(4) of the act provides that State agencies shall be established and operated in accordance with detailed plans developed according to State law and conforming with provisions of the act. A State must have its plan of operation approved by the Administrator before it may have property transferred to it. The plan must assure that the State agency has the necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: Accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups.

(a) *State action.* The State plan of operation shall be developed by the State legislature, certified by the chief executive officer of the State, and submitted to the Administrator for acceptance.

* * * * *

(c) * * *

(1) * * *

(i) The chief executive officer shall submit the plan and certify that the State agency is authorized thereby to acquire, warehouse, and distribute surplus property to all eligible donees in the State, to enter into cooperative agreements pursuant to the provisions of § 101–44.206, and to undertake other actions and provide other assurances as are set forth in the plan of operation; and

(ii) Copies of existing State statutes and/or executive orders relative to the operational authority of the State agency shall accompany the State plan. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the State plan shall include also the opinion of the State's Attorney General regarding the existence of such authority.

* * * * *

(3) *Inventory control and accounting systems.* The State plan shall require the State agency to use a management control and accounting system that will effectively govern the utilization, inventory control, accountability, and disposal of donable surplus property. The plan shall set forth the details of the inventory control and accounting system which will be used by the State agency.

(4) *Return of donated property.* The State plan shall require and set forth procedures for donees to return donable property to the State agency if such property while still usable, as determined by the State agency, has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for such purposes within 1 year of being placed in use.

(5) *Financing and service charges.* The State plan shall set forth the means and methods by which the State agency will be financed. When the State agency is authorized to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges shall be set forth in the plan. The charges shall be fair and equitable and based on services performed by the State agency, including but not limited to screening, packing, crating, removal, and transportation. In cases in which the State agency provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the charge levied by the State agency shall be minimal. The State plan shall provide for minimal charges to be assessed in such cases and include the bases of computation. The plan of operation shall set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds, are to be used for the operation of the State agency and the benefit of participating donees. Service charge funds may be used to cover direct and indirect costs of the State agency's operation, to purchase necessary equipment, and to maintain a reasonable working capital reserve. Such funds may be deposited or invested as permitted by State law, provided the plan of operation sets forth the types of depositories and/or investments contemplated. Service charge funds may be used for the purpose of rehabilitating donable surplus property, including the purchase of replacement parts. Subject to State authority and the provisions of the plan of operation, the State agency may expend service charge funds to acquire or improve office or distribution center facilities. When such acquisition or improvements are contemplated, the plan shall set forth what disposition is to be made of any financial assets realized upon the sale or other disposal of the facilities. When refunds of service charges in excess of the State agency's working capital reserve are to be made to participating donees, the plan shall so state and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.

(6) *Terms and conditions on donable property.* The State plan shall require the State agency to impose terms, conditions, reservations, and restrictions on the donee in the case of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. The specific terms, conditions, reservations, and restrictions which the State agency requires shall be set forth in the plan. In addition, the State plan shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of donable property other than items with a unit acquisition cost of $5,000 or more and passenger motor vehicles. Any such additional terms, conditions, reservations, and restrictions which the State agency elects to impose should be set forth in the plan. The State agency may amend, modify, or release such terms, conditions, reservations, or restrictions subject to the provisions of § 101–44.208(g), provided it sets forth in the plan the standards by which the State agency will grant any such amendments, modifications or releases. The State plan also shall provide assurance that the State agency will impose on the donation of a surplus item or items, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the Administrator may determine necessary because of the characteristics of the property, pursuant to § 101–44.108.

* * * * *

(8) *Fair and equitable distribution.* The State agency is responsible for the fair and equitable distribution of surplus personal property through donation to all eligible donees in the State. The State plan shall provide for distribution based on the relative needs and resources of public agencies and other eligible institutions and their abilities to utilize the property. The State plan shall set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. The State plan shall also require that the State agency, insofar as practicable, select property requested by a public agency or other eligible institution and, when so requested by the recipient, arrange for shipment of the property direct to the recipient.

* * * * *

(10) *Compliance and utilization.* The State agency shall effect utilization reviews for compliance by donees with the terms, conditions, reservations, and restrictions imposed by the State agency for any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. Such reviews also shall include a review of compliance by the donees with any special handling conditions or use limitations imposed on items of property by the Administrator, pursuant to § 101–44.108. The State plan shall set forth the provisions for and the proposed frequency of such reviews and shall provide adequate assurances that effective action shall be taken by the State agency to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. Reports on utilization reviews and compliance actions shall be prepared by the State agency. The State plan shall provide adequate assurance that the State agency shall initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property. The State agency shall immediately notify the Federal Bureau of Investigation (FBI) and GSA of any case involving alleged fraud. Further, GSA shall be advised of any misuse of donated property. The State agency shall assist GSA or other responsible Federal or State agencies in investigating such cases upon request.

(11) *Consultation with advisory bodies and public and private groups.* The State plan shall provide for consultation by the State agency with advisory bodies and public and private groups which can assist the State agency in determining the relative needs and resources of donees, the proposed utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees. Details of how the State agency will accomplish such

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consultation shall be set forth in the plan.

(12) *Audit.* The State plan shall provide for periodic internal audits of the operations and financial affairs of the State agency and compliance with the external audit requirements of Office of Management and Budget Circular No. A–128 "Audits of State and Local Governments." The State agency must provide the appropriate GSA regional office with two copies of any audit report made pursuant to the Circular, or with copies of those sections that pertain to the Federal donation program. An outline of the corrective actions which the State agency will take to comply with any exceptions or violations indicated by the audit, and the scheduled completion dates for these actions, must be submitted with the audit report. Periodically, GSA representatives may visit the State agency to coordinate program activities and review the State agency operations. GSA may, for appropriate reasons, conduct its own audit of the State agency following due notice to the chief executive officer of the State of the reasons for such audit. Financial records and all other books and records of the State agency shall be made available for inspection by representatives of GSA, the General Accounting Office, or other authorized Federal activities.

* * * * *

(14) * * *

(iv) Method of disposing of the agency's physical and financial assets;

(v) Retention of all available books and records of the State agency for a 2-year period following liquidation; and

(vi) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

* * * * *

(d) *Implementation.* (1) A State plan of operation developed by the State legislature and certified by the chief executive officer of the State shall be in effect and binding upon the State beginning with the date that the Administrator notifies the chief executive officer of the State that the plan conforms to the provisions of section 203(j)(4) of the act and the requirements of this Part 101–44 and that allocation and transfer of donable surplus property to the State agency will commence. Such plan of operation shall remain in effect until such time as the Administrator may accept revisions.

(2) GSA may, from time to time, propose modifications or amendments to the provisions of this Part 101–44. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State agencies to conform to any such regulatory changes affecting their operations.

* * * * *

44. Section 101–44.204 is amended by revising paragraphs (b)(2) and (b)(3)(iii) to read as follows:

§ 101–44.204 Certification and agreement by a State agency.

* * * * *

(b) * * *

(2) Title to the property shall remain in the United States of America although the State shall have taken possession thereof. Conditional title to the property shall pass to the eligible donee when the donee executes the certifications and appropriate agreements required by the State agency and has taken possession of the property.

(3) * * *

(iii) In the event of any loss of or damage to any or all of the property, file a claim and/or institute and prosecute to conclusion the proceedings necessary to recover for the account of the United States of America the fair market value of any of the property lost or damaged.

* * * * *

45. Section 101–44.205 is amended by revising paragraphs (a), (b)(1), (c), (j)(2), (j)(4), and (k) to read as follows:

§ 101–44.205 Property in the possession of a State agency.

(a) *Status.* Title to all donable property located in a State agency distribution center is vested in the United States of America. The right to possession only is granted to the State agency. The State agency may disassemble or cannibalize an item of donable property in its possession when it determines that the usable parts and components thereof have greater donation potential than that for which the complete item was originally manufactured. The State agency may retain and use surplus personal property in its possession for the purpose of performing its functions pursuant to the provisions of § 101–44.206.

* * * * *

(b) * * *

(1) Be responsible as a bailee for mutual benefit for surplus personal property transferred to it by GSA from the time it is released to the State or to the transportation agent designated by the State, and in the event of any loss of or damage to any or all of the property, the State agency shall promptly notify GSA and file a claim and/or institute and prosecute to conclusion the proceedings that are necessary to recover, for the account of the United States of America, the fair market value of any property lost or damaged, less the cost of care and handling incurred by the State agency in acquiring the property;

* * * * *

(c) *Insurance.* It is GSA policy not to require a State agency to carry insurance as a condition for acquiring Federal surplus personal property for distribution to eligible recipients. However, when a State agency carries insurance against damage to or loss of property due to fire or other hazards and when loss of or damage to Federal surplus personal property occurs, GSA, on behalf of the United States of America, will be entitled to reimbursement from the State agency of the fair market value of the damaged or destroyed Federal property payable from the insurance proceeds, less the State agency's actual cost of acquiring and rehabilitating the property prior to its damage or destruction.

* * * * *

(j) * * *

(2) When a Federal activity requests property from a State agency, costs incurred by the State agency in acquiring the property, including packing, handling, and transportation costs, shall be reimbursable at the time the property is transferred to the Federal activity. The SF 122 used in effecting the transfer must show the amount of reimbursement claimed by the releasing State agency.

* * * * *

(4) When disposing of undistributed property in the possession of a State agency by public sale, GSA may authorize reimbursement to the State agency for expenses related to care and handling incurred by the State agency in acquiring the property from within or outside the United States. Certification by the State agency of costs incurred is required and must be supported by documentation if requested by GSA. Reimbursement must not exceed the proceeds from the sale of the property. No reimbursement may be made to the State agency for actions subsequent to the receipt of property by the State agency from any source, including unloading, moving, repairing, preserving, or storing. Reimbursement will not be authorized by GSA for property acquired from any source if the property has been in the possession of the State agency for a period of 2 years from the date it was received by the State agency until the date it was reported to GSA for disposal. Costs of transporting property to a location outside a State agency distribution facility are not reimbursable unless transportation was specifically required by GSA. The sale of property at a location outside the State distribution facility, however, does not preclude authorized reimbursement to the State agency. Reimbursement is limited to:

(i) Direct costs incurred by the Federal holding agency and billed to and paid by the State agency, including but not limited to packing, preparation for shipment, and loading; and

(ii) Transportation costs paid or otherwise incurred by the State agency and not reimbursed by a donee to the State agency for initially moving the property from the Federal holding agency to the State agency distribution facility or other point of receipt designated by the State agency.

(k) *Abandonment or destruction.* When a GSA regional office finds that a State agency has property in its possession that is unusable, the State agency may be instructed to proceed promptly with the abandonment or destruction of such property in accordance with the findings and the processes prescribed in Subpart 101–45.9.

46. Section 101–44.206 is amended by revising paragraph (a) to read as follows:

§ 101–44.206 Cooperative agreements.

* * * * *

(a) *Authority.* Section 203(n) of the Federal Property and Administrative Services Act of 1949, as amended, provides that the Administrator (or the head of any Federal agency designated by him), for the purpose of carrying into effect the provisions of section 203(j) of the act, is authorized to enter into cooperative agreements with State surplus property distribution agencies designated in conformity with that section.

* * * * *

47. Section 101–44.207 is amended by revising the introductory text and paragraphs (a)(2), (a)(27), (b)(2)(vii), (c)(14), (f)(1) (ii) and (iv), (f)(3), (h), and (i) to read as follows:

§ 101–44.207 Eligibility.

This section sets forth the standards, guidelines, and procedures for determination of eligibility for public agencies and eligible nonprofit tax-exempt activities in each State to participate in the surplus personal property donation program, to receive surplus property through a State agency, and to use this property for the purposes authorized by the Federal Property and Administrative Services Act of 1949, as amended, and by section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d).

(a) * * *

(2) "Approved" means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. An educational institution or program may be considered approved if its instruction and credits therefor are accepted by three accredited or State-approved institutions, or if it meets the academic or instructional standards prescribed for public schools in the State; i.e., the organizational entity or program is devoted primarily to approved academic, vocational (including technical or occupational), or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year as prescribed by the State and employs a full-time staff of qualified instructors. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority. A health institution or program may be considered as approved when a State body having authority under law to establish standards and requirements for public health institutions renders approval thereto whether by accreditation procedures or by licensing or such other method prescribed by State law. In the absence of an official State approving authority for a public health institution or program or educational institution or program, the awarding of research grants to the institution or organization by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization may constitute approval of the institution or program provided all other criteria are met.

* * * * *

(27) "Programs for older individuals" means any State or local government agency or any nonprofit tax-exempt activity which receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act.

(b) * * *

(2) * * *

(vii) *Programs for older individuals.* State or local government agencies which receive funds appropriated for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act, or under titles VIII or X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act are eligible to receive surplus property through donation. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

(c) * * *

(14) Organizations or institutions that receive funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV and title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Act. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services and multipurpose senior centers.

* * * * *

(f) * * *

(1) * * *

(ii) Status of the applicant as a public agency or as an eligible nonprofit tax-exempt activity (evidence shall be included in the file that the applicant is a public agency or has been determined to be nonprofit and tax-exempt under section 501 of the Internal Revenue Code of 1954);

* * * * *

(iv) Evidence that the applicant is approved, accredited, or licensed, when it is a requirement of one or more of the applicant's programs, or certification of funding when the applicant is a nonprofit tax-exempt activity that conducts programs for older individuals.

* * * * *

(3) *Assurance.* Necessary assurances that the applicant will comply with GSA regulations on nondiscrimination as set forth in Subpart 101–6.2 and Part 101–8 must be provided in the format prescribed by GSA.

* * * * *

(h) *Maintaining eligibility.* The State agency shall update donee eligibility records as required to ensure continuing

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eligibility. Records for public agencies and nonprofit tax-exempt donees must be updated on a continuing basis, as frequently as necessary, to ensure that all documentation required to justify the donee's eligibility is current and accurate. Particular care must be taken to ensure that the donee resolution is current and that the statement of designated representatives contained therein is correct. When an eligible donee ceases to operate or when it loses its license, accreditation, or approval or otherwise fails to maintain its eligibility status, the State agency shall terminate its distribution of property to the activity.

(i) *Conditional eligibility.* In certain cases, newly organized activities may not have commenced operations or completed construction of their facilities, or may not yet have been approved, accredited, or licensed as may be required to qualify as eligible donees. In other cases, there may be no specific authority which can approve, accredit, or license the applicant as required for qualification. In these cases, the State agency may accept letters from public authorities, either local or State, which the State agency deems competent (such as a board of health or a board of education) stating that the applicant otherwise meets the standards prescribed for approved, accredited or licensed institutions and organizations. In the case of educational activities, letters from three accredited or approved institutions that students from the applicant institution have been and are being accepted may be deemed sufficient by the State agency. In the case of public health institutions or organizations, licensing may be accepted by the State agency as evidence of approval in States where there is no authority which can as a legal or as a policy matter, approve hospitals, clinics, health centers, or medical institutions, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution. If the construction of an applicant's facility or physical plant has not been completed, the State agency, after evaluating the progress and potential of the applicant, may at its discretion make available surplus items of property which can be immediately utilized at this point in the applicant's program. Under no circumstances shall conditional eligibility be granted to a potentially eligible nonprofit tax-exempt applicant before the State agency has received from the applicant a copy of a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code of 1954.

48. Section 101–44.208 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(3), (c), (f)(6), (g), (j), and (k)(1) to read as follows:

§ 101–44.208 Property distributed to donees.

(a) *Distribution document.* Donation of surplus personal property shall be accomplished by the use of a prenumbered State agency distribution document which shall include the:

(1) Certifications and agreements required of the donee by the State agency, including an agreement to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition;

* * * * *

(3) Terms, conditions, reservations, and restrictions, imposed by the State agency as provided in the State plan of operation on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle;

* * * * *

(c) *Conditional title.* Conditional title to surplus personal property shall pass to an eligible donee when the donee has executed the State agency distribution document and taken possession of the property.

* * * * *

(f) * * *

(6) Recover the gross proceeds realized from the disposal or the fair market value of the property, whichever is greater, when it is impossible or impracticable to recover property disposed of improperly during the period of restriction; and

* * * * *

(g) *Coordination with GSA.* In enforcing compliance with the terms and conditions imposed on donated property, the State agency shall coordinate with GSA before undertaking the sale of, or making demand for payment of the fair market value or fair rental value of donated property which:

(1) Is subject to any special handling condition or use limitation imposed by GSA or

(2) Has not been placed into use by the donee, for the purposes for which acquired, within 1 year of donation, or which has not been used for these purposes for 1 year after being placed in use.

* * * * *

(j) *Deposit of funds.* Any funds, including the gross proceeds of sale or the fair market value or the fair rental value of the property, derived by the State agency from enforcement of compliance involving a breach of any special handling condition or use limitation imposed on donated property by GSA, or involving donated property which had not been placed in use for the purposes for which it was acquired within 1 year of donation or not used for those purposes for 1 year after being placed in use by the donee, shall be remitted promptly by the State agency to GSA for deposit in the Treasury of the United States. The remittance shall be accompanied by supporting documentation indicating the source of the funds and essential background information. Funds derived by the State agency from the compliance action involving any term, condition, reservation, or restriction imposed on the donee by the State agency and funds derived by the State agency from any amendment, modification, or release thereof during the period of restriction may be retained and used by the State agency as provided in its plan of operation.

(k) * * *

(1) When a donee has used but no longer has a need or use for donated property which is subject to any special handling condition or use limitation imposed by GSA, and no breach of the conditions or limitations has occurred, the donee may be reimbursed on a prorated basis for the initial cost of repairs required to make the item usable when the property is transferred to a Federal agency or sold for the benefit and account of the United States of America.

* * * * *

Subpart 101–44.4—Donations to Service Educational Activities

49. Section 101–44.403 is revised to read as follows:

§ 101–44.403 Disposal.

When donated property, except for property that requires demilitarization, is no longer needed for use by the service educational activity or ceases to be used, the service educational activity shall report the property in writing to the State agency for the State in which the property is located for possible transfer. When the State agency does not require the property, it shall inform the service educational activity in writing. The service educational activity shall then request disposition advice, in writing, from the nearest Defense Reutilization and Marketing Office (DRMO). The DRMO may accept the property for disposal or advise the service educational activity to otherwise dispose of the property in accordance with the provisions of the service educational activity's donation agreement. Property which requires demilitarization, such as aircraft, weapons, ammunition, and explosives, shall be returned by the service educational activity, at its expense, to the nearest Department of Defense disposal activity for appropriate action, including possible donation. The military facility shall accept the property.

Subpart 101–44.7—Donations of Property to Public Bodies

50. Section 101–44.702–3 is revised to read as follows:

§ 101–44.702–3 Noncertified electronic products.

Whenever any item of the type defined under § 101–43.307–8 is donated to a public body in accordance with the provisions of this subpart, the head of the agency authorized to make the donation shall be responsible for the same safeguards, notifications, and certifications required by § 101–44.108–10.

Subpart 101–44.47—Reports

51. Section 101–44.4701 is amended by removing and reserving paragraph (b) and revising paragraph (e) to read as follows:

§ 101–44.4701 Reports.

* * * * *

(b) [Reserved]

* * * * *

(e) Each State agency shall submit a report in duplicate to the appropriate GSA regional office by the 25th day of the month following the quarter being reported, using GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. (The Office of Management and Budget Approval Number 3090–0112 has been assigned to this form.) Section 101–44.4902–3040 illustrates the GSA form and § 101–44.4902–3040–1 provides instructions for its use.

* * * * *

Subpart 101–44.49—Illustrations of Forms

52. Section 101–44.4901–123 is revised to read as follows:

§ 101–44.4901–123 Standard Form 123, Transfer Order Surplus Personal Property.

53. Section 101–44.4901–123–1 is revised to read as follows:

§ 101–44.4901–123–1 Instructions for preparing and processing Standard Form 123.

(a) *Preparing Standard Form 123*—(1) *General*—(i) The Standard Form 123 must include all information specified on the form. Particular care should be taken to ensure that the transfer order indicates the surplus release date (SRD), sometimes referred to as the automatic release date (ARD); identifies property as reportable or nonreportable; shows applicable GSA, Department of Defense (DOD), and holding activity control or report numbers; indicates the holding agency document or voucher number for nonreportable property; and contains authorized signatures in ink on the original (copies of transfer orders may have stamped signatures). All other entries must be typed or printed. All city and State addresses shown on the form should include the ZIP code. Transfer orders received without sufficient information will be returned to the applicant or held in suspense until the missing information is obtained from the appropriate source. SF 123–A . (Continuation sheet) shall be used for listing any additional property.

(ii) Reportable property, nonreportable property and property located at separate locations should not be requested on the same SF 123.

(iii) Recognized abbreviations for Federal agencies or donee organizations may be used in completing SF 123; e.g., GSA (General Services Administration); FAA (Federal Aviation Administration, Department of Transportation); SA (State agency); BSA (Boy Scouts of America); and DRMS (Defense Reutilization and Marketing Service).

(2) *Adjustments and disapprovals.* Any adjustment or partial disapproval made for the property listed in block 12 shall be initialed by the representative and/or officer signing in block 13b, 13d, 14b, or 14d. When a transfer order is disapproved in its entirety, the representative or officer who disapproves the action will return the SF 123 to the applicant with an explanation of the disapproval. When a line item is disapproved, it will be crossed out, marked "disapproved," and initialed by the representative or officer making the deletion.

(3) *Entries*—(i) *Order number(s) (block 1).* Enter the State serial number and/or transfer order and control numbers assigned by DOD, FAA, or the donees. If the continuation sheet (SF 123–A) is used, it must contain the same transfer order number(s).

(ii) *Type of Order (block 2).* Insert "X" in the appropriate square to identify the type of order.

(iii) *Surplus Release Date (block 3).* Enter the surplus release date, sometimes called the automatic release date, as follows:

(A) *DOD Property Reported to DRMS Only.* The correct date may be obtained from DRMS or the holding activity.

(B) *DOD Property Reported to GSA Through DRMS.* The correct date may be obtained from DRMS, GSA, or the holding activity.

(C) *Executive Agency Property Reported Directly to GSA.* The correct date may be obtained from GSA or the holding agency.

(D) *Property Not Reported to DRMS or GSA.* The surplus release date is assigned by the holding agency (property disposal officer) and must be obtained therefrom. When nonreported property items with several surplus release dates are listed, each date should follow the respective line item and block 3 will not be completed.

(iv) *Set-Aside Date (block 4).* Enter the date on which nonreported property was set aside at the holding agency by an authorized donee representative, pursuant to § 101–44.109. The insertion of a set-aside date will indicate to the GSA office that the property is available as surplus and that the holding agency has agreed to set the property aside pending receipt of donation approval.

(v) *Type of Property (block 5).* Insert an "X" in the appropriate square to identify the property as reportable or nonreportable to GSA. An "X" shall not be inserted to identify the property as nonreportable when any property listed is either reportable to GSA or had previously been reported on SF 120, Report of Excess Personal Property, to GSA in accordance with § 101–43.311. Reportable property never loses its identity.

(vi) *Total Acquisition Cost (block 6).* Enter the sum of all the total costs shown under block 12(h) and on continuation sheets when appropriate.

(vii) *General Services Administration (block 7).* Add the street address, city, State, and ZIP code of the appropriate GSA office.

(viii) *Location of Property (block 8).* Insert the actual location of the property, including if available the warehouse or building number, street address, city, State, and ZIP code or other specific location of the property listed in block 12.

(ix) *Holding Agency (block 9).* Enter the complete name and address of the

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holding agency, including ZIP code; i.e., the executive agency which has accountability and administrative control over the property. It may or may not be the same as the property location.

(x) *For GSA Use Only (block 10).* The GSA regional office will enter the appropriate codes in order to satisfy automated control reporting requirements.

(xi) *Pickup or Shipping Instructions (block 11).* Insert the name, address, including ZIP code, and telephone number of the State agency or donee representative to be notified of property availability when the property listed in block 12 is to be picked up. Enter shipping instructions when the property listed in block 12 is to be shipped. The applicant shall pay all transportation costs.

(xii) *Surplus Property List (blocks 12 (a), (b), (c), (d), (e), (f), (g), and (h))*—(A) *Line Item Number.* Enter in block 12(a) the identical number assigned to the line item on the document from which the control numbers indicated in block 12(b) are selected.

(B) *Identification Numbers.* Enter in block 12(b) pertinent identification numbers as follows:

(*1*) *GSA control number.* Military property reported to GSA through DRMS and all civilian and military agency property reported directly to GSA is assigned a GSA control number. The GSA control number may be obtained from the appropriate GSA office. In all cases in which a GSA control number is assigned, it must be entered on the SF 123.

(*2*) *DOD excess report number.* All excess property reported to DRMS is assigned a DOD excess report number. For such property subsequently reported to GSA, the DOD excess report number may be obtained from GSA or the DRMO/holding activity. The DOD excess report number for DOD property screened by DRMS but not reported to GSA for screening may be obtained from DRMS or the DRMO/holding activity. In all cases in which a DOD excess report number is assigned, it must be entered on the SF 123.

(*3*) *Holding agency control number.* The holding agency assigns a control number for all reportable property. For nonreportable property, the holding agency assigns a document or voucher number. This control number can be made available by the holding agency, and in the case of reported property, by GSA or DRMS (for DOD property), as appropriate.

(C) *Description.* Enter in block 12(c) the item description. Include national stock number and noun name, if available. Otherwise, furnish Federal supply class number and commercial description, when possible. This space on the form may also be used to insert additional data pertinent to the description of the property; e.g., serial numbers and packaging information.

(D) *Demilitarization Code.* For munitions list items identified as requiring demilitarization, enter in block 12(d) the one-letter demilitarization code assigned to the property. This information is available from the document on which the property was originally listed.

(E) *Condition Code.* Enter in block 12(e) the identical condition code indicated for the line item on the document from which each item of property listed in block 12(c) was selected. Condition codes are illustrated at § 101–43.4901–120–1.

(F) *Quantity and Unit of Issue.* Enter in block 12(f) the exact quantity and unit of issue (each, inches, feet, pounds, tons, dozen, gross, etc.) for each line item.

(G) *Unit Acquisition Cost.* Enter in block 12(g) for each line item the acquisition cost of the unit of issue indicated in block 12(f). This information is available from the document on which the property was originally listed.

(H) *Total Acquisition Cost.* Enter in block 12(h) for each line item the total acquisition cost of the quantity of unit of issue indicated in block 12(f). Care should be taken to ensure that the multiplication of the unit acquisition cost times quantity is correct.

(xiii) *Transferee Action (blocks 13 a, b, c, d, and e)*—(A) *State agency.* Enter in block 13a the name and address, including ZIP code, of the State agency which is making the request for the property. The authorized official of the State agency shall sign and enter his or her title in block 13b, and show in block 13c the date of signature.

(B) *Service educational activity.* Enter in block 13a the name and address of the school, club, or council specifically designated by the service educational activity (SEA). Include the ZIP code and the county in which the SEA is located. Enter in block 13b the title of the authorized donee representative (an officer of the school, club, or council authorized to request donable surplus property). The donee representative shall sign in block 13b and enter the date in block 13c. The head of the SEA (school or national headquarters) shall indicate approval by signing in block 13d and entering the date of signature in block 13e.

(C) *Public airport.* Enter in block 13a the name and address of the public airport or the authorized State aeronautical agency which is requesting the property. Include the ZIP code and the county in which the public airport or State aeronautical agency is located. The authorized official of the public airport or State aeronautical agency or its designated representative shall sign and enter his or her title in block 13b, and show in block 13c the date of signature.

(xiv) *Administrative action*—(A) *Determining Officer (DOD or FAA) (blocks 14a, b, and c)*—(*1*) *Department of Defense.* For donation of nonreportable surplus property to service educational activities, enter in block 14a the name and address, including ZIP code, of the property disposal officer (PDO) controlling the property. The PDO shall sign in block 14b and enter the date in block 14c. The PDO shall not authenticate SF 123 for donations for a State agency or a public airport.

(*2*) *Federal Aviation Administration.* Enter in block 14a the name and title of the appropriate FAA official. The official shall sign in block 14b and enter the date in block 14c.

(B) *GSA Approving Officer (blocks 14d, e, and f).* Enter in block 14d the name and title of the GSA officer approving the order. The GSA officer will sign in block 14e and enter the date in block 14f.

(b) *Processing SF 123*—(1) *Public agencies and eligible nonprofit tax-exempt activities.* (i) Upon a determination that surplus property is necessary and useful for public agencies and eligible nonprofit tax-exempt activities, the State agency shall prepare and submit an original and five copies of SF 123 to the appropriate GSA office and shall send an information copy to the holding agency. The State agency official shall sign in block 13b. When the location of the property is different from that of the holding agency, an additional copy may be sent to the location for informational purposes. Block 11, "Pickup or Shipping Instructions," shall be completed, as well as blocks 13b and c.

(ii) At the time the property is determined surplus and approved for transfer by GSA, the GSA office will complete the SF 123 in blocks 14d, e, and f; retain one copy for the files; return two copies to the State agency; and send the original and one copy directly to the holding agency.

(iii) The holding agency upon receipt of the SF 123 shall release the property for donation promptly in accordance with the pickup or shipping instructions.

(2) *Service educational activity*—(i) *DOD property reported to DRMS.* (A) Transfer orders for property listed in DRMS excess listings shall be initiated by a school or the national headquarters of the SEA by transmitting an original and five copies of the SF 123 to its authorized donee representative. The SF 123 shall be completed except for block 13.

(B) The authorized donee representative shall complete blocks 13a, b, and c and return the original and four copies to the national headquarters if applicable. The fifth copy shall be retained by the authorized donee representative.

(C) The head of the SEA (school or national headquarters) shall indicate approval by signing block 13d of the SF 123 and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to DRMS, retaining the fourth copy for its files.

(D) DRMS shall hold the SF 123 until it determines the property excess to the needs of DOD. When the property is determined excess, the SF 123 (the original and three copies), with a copy of the excess report, shall be sent to the appropriate GSA regional office.

(E) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete blocks 14d, e, and f; retain one copy; send the original and one copy to the holding agency; and send an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(F) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(ii) *DOD property reported directly to GSA.* (A) Transfer orders shall be initiated by the authorized donee representative of the SEA by preparing an original and five copies of SF 123. The authorized donee representative shall complete blocks 13a, b, and c and send the original and four copies to the national headquarters if applicable. The fifth copy shall be retained by the authorized donee representative.

(B) The head of the SEA (school or national headquarters) shall indicate approval by signing block 13d of the SF 123 and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to the GSA regional office for the region in which the property is located, retaining the fourth copy for its files.

(C) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete blocks 14d, e, and f; retain one copy; send the original and one copy to the holding agency; and send an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(D) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(iii) *DOD property not reported to either DRMS or GSA.* (A) Transfer orders shall be initiated by the authorized donee representative of the SEA by preparing an original and six copies of SF 123. The authorized donee representative shall complete blocks 13a, b, and c. The original and five copies shall be sent to the property disposal officer, who shall complete blocks 14a, b, and c.

(B) The property disposal officer shall retain one copy of the SF 123 and return the original and four copies to the authorized donee representative.

(C) The authorized donee representative shall send the original and four copies of the SF 123 to the head of the SEA for approval if applicable. The head of the SEA shall indicate approval by signing block 13d and entering the date in block 13e. That activity shall then forward the original and three copies of the SF 123 to the GSA regional office for the region in which the property is located, retaining the fourth copy for its files.

(D) At such time as GSA approves the transfer, the GSA office will complete the SF 123 in blocks 14d, e, and f; retain one copy, send the original and one copy to the holding agency; and send an informational copy to the State agency for the State in which the SEA school, club, or council is located.

(E) The property disposal officer, upon receipt of the approved SF 123 from GSA, shall release the property to the authorized donee representative in accordance with the pickup or shipping instructions shown in block 11.

(*3*) *Public airport.* (i) The applicant shall prepare and submit an original and four copies of SF 123 to the appropriate FAA official for surplus property required for public airport purposes. The applicant shall sign in block 13b. One copy of SF 123 shall be sent to the holding agency by the applicant.

(ii) The appropriate FAA official shall indicate approval by completing blocks 14 a, b, and c; retain one copy; and send the original and three copies to the appropriate GSA office.

(iii) At such time as the property is determined surplus and approved for transfer by GSA, the GSA office will complete the SF 123 in blocks 14 d, e, and f; forward the original to the holding agency; return two copies to the appropriate FAA official; and retain one copy for the files.

(iv) The appropriate FAA official shall send one copy of the SF 123 to the applicant and retain one copy for the files.

(v) The holding agency, upon receipt of the approved SF 123, shall proceed to release the property for donation in accordance with the pickup or shipping instructions.

(c) *General information regarding SF 123.* (1) SF 123 is printed in a 10-part, snap-out set. Sets can be purchased by FAA and DOD for distribution to authorized donees or applicants by ordering direct from the General Services Administration (FCNI), Washington, DC 20406. SF 123–A (Continuation sheet) can also be purchased from the same source. The continuation sheet is printed in a 10-part, snap-out set. State agencies may obtain copies of these forms from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402, or have them printed commercially. When printing these forms commercially, State agencies must ensure that the forms conform to the exact size, wording, arrangement, etc., of the approved Standard forms.

(2) SF 123 and SF 123–A sets are color coded, having two each of five different colors in each set.

(3) The SF 123 is designed for mailing in a 3⅞- by 8⅞-inch window envelope with a 1⅛- by 4-inch window positioned one-half inch from the bottom and three-fourths of an inch from the left side of the envelope. Slightly larger window envelopes may also be satisfactory, but the size and position of the window should not be altered. Copies should be folded along the horizontal line above block 11, and when inserted in a window envelope, the typed holding agency address will show through the window.

54. Section 101–44.4902–3040–1 is revised to read as follows:

§ 101–44.4902–3040–1 Instructions for preparing GSA Form 3040.

General

Each report shall be signed and dated by an approving official and submitted in duplicate to the appropriate GSA regional office by the 25th day of the month following the quarter being reported.

A. *Beginning inventory*—List the total original Government acquisition cost for all property on hand at the beginning of the report period.

B. *Property Received*—Original Government acquisition cost for:

1. From Federal agencies—Property received and posted to inventory records

during the report period from Federal agencies other than that received from sources identified under 2, 3, and 4, below.

2. From other State agencies—Property received from other State agencies via an overage or SF 123 action and posted to inventory records during the report period.

3. From Overseas—Property received through the overseas program and posted to inventory records during the report period.

4. Other receipts—Property received from all other sources and posted to inventory records during the report period, including property released by Federal agencies without documents, property returned by donees, overages not previously posted, etc. Major receipts (over $500 per line item) should be explained in detail under "Remarks."

C. *Property Donated*—Original acquisition cost of surplus property distributed to:

1. Public agencies (as defined in § 101–44.001–10)—The original Government acquisition costs for donation to public agencies during the report period shall be identified for purposes of:

a. Conservation.
b. Economic development.
c. Education.
d. Parks and recreation.
e. Public health.
f. Public safety.
g. Two or more (when the donee indicates on the State agency distribution document that the property will be used equally for two or more public purposes).
h. Other (when the property will be used for a public purpose other than a through *f*).

2. Nonprofit institutions or organizations—As indicated in § 101–44.207, donations to nonprofit institutions and organizations during the report period shall be identified by (a) educational and (b) public health purposes.

D. *Other Distribution*—Original Government acquisition cost for:

1. Transfer to other State agencies—Total acquisition cost of all property transferred to other State agencies and dropped from inventory during the report period as a result of an overage or SF 123 action.

2. Return to Federal agency—Total acquisition cost of all property returned to Federal agencies as approved by GSA and dropped from inventory during the report period with the exception of that property turned in for sale.

3. Sold—Total acquisition cost of all property dropped from inventory as a result of sales during the report period whether sold by the State agency or GSA.

4. Abandoned or destroyed—Total acquisition cost of all property dropped from inventory as a result of approved and documented abandonment or destruction actions during the report period.

5. Other adjustments—Total acquisition cost of all property redonated after having been returned from a donee, lost, stolen, or destroyed; shortages and inventory adjustments not previously posted, etc., which were dropped from inventory during the report period and documented in accordance with published procedures.

E. *Ending inventory*—To be computed by adding A and B, then subtracting C and D (A+B−C−D=E). F and G are for informational purposes only and are not included in E since they are already represented in C and D.

F. *Method of Distribution*—Total acquisition cost of property distributed during the report period identified as (1) distribution from a State agency facility or (2) picked up or shipped direct from the holding agency to a donee. (The total should be the same as the total of C and D.)

G. *Distribution to Public Agencies*—Total Government acquisition cost of property donated within the State during the reporting period.

1. Distribution to State public agencies such as State police departments, State hospitals, State parks, etc.

2. Distribution to county and local public agencies, such as a county civil defense unit, municipal health unit, county roads commission, etc.

(The total should be the same as the total of Part 1 of C.)

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

55. The authority citation for Part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

56. The table of contents for Part 101–45 is amended by removing, adding, or revising the following entries:

101–45.001–5 Sale item.
101–45.001–7 No commercial value.
101–45.002 Requests for deviations.
101–45.316 [Reserved]

Subpart 101–45.5—[Reserved]

Subpart 101–45.9—Abandonment or Destruction of Personal Property

101–45.900 Scope of subpart.
101–45.901 Authority to abandon or destroy.
101–45.902 Findings justifying abandonment or destruction.
101–45.902–1 Notice of proposed abandonment or destruction.
101–45.902–2 Abandonment or destruction without notice.
101–45.903 Destruction of surplus drugs, biologicals, and reagents.

Subpart 101–45.10—Recovery of Precious Metals

101–45.1000 Scope of subpart.
101–45.1001 General.
101–45.1002 Agency responsibilities.
101–45.1002–1 Precious metals recovery surveys.
101–45.1002–2 Agency reporting requirements.
101–45.1002–3 Precious metals recovery program monitor.
101–45.1002–4 Internal audits.
101–45.1003 Recovery of silver from precious metals bearing materials.
101–45.1003–1 Guidelines for the recovery of silver from used hypo solution and scrap film.
101–45.1003–2 Recovery of silver from used hypo solution.
101–45.1003–3 Recovery of silver from scrap film.
101–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.
101–45.1004–1 Civil agency participation in the DOD Precious Metals Recovery Program.
101–45.1004–2 Use of DOD-recovered fine precious metals.

Subparts 101–45.11—101–45.48—[Reserved]

101–45.4901–291 Standard Form 291, Report of Activities Generating Precious Metals.

57. Section 101–45.000 is revised to read as follows:

§ 101–45.000 Scope of part.

This part prescribes policies and methods governing the disposal by public sale, abandonment or destruction of personal property (including salvage, scrap, and waste materials) owned by the Government except foreign excess property and the recovery of precious metals.

58. Section 101–45.001–5 is revised to read as follows:

§ 101–45.001–5 Sale item.

"Sale item" means an item of personal property specified in an invitation for bids that, under the terms of the invitation, is susceptible to a separate contract award.

59. Section 101–45.001–7 is revised to read as follows:

§ 101–45.001–7 No commercial value.

"No commercial value" means a determination that property has neither utility nor monetary value (either as an item or as scrap).

60. Section 101–45.002 is added to read as follows:

§ 101–45.002 Requests for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection in accordance with Subpart 105–60.3.

Subpart 101–45.1—General

61. Section 101–45.102 is revised to read as follows:

§ 101–45.102 Needs of Federal agencies paramount.

Any need for personal property expressed by any Federal agency shall be paramount to any disposal, if such need is made known to the holding or selling agency prior to actual removal of the property from Government control in the case of sale.

62. Section 101–45.103–1 is amended by revising paragraph (e) to read as follows:

§ 101–45.103–1 Responsibilities of the General Services Administration.

* * * * *

(e) Accepting physical custody and accountability of property transported by holding agencies to a consolidated sales site when provided for by GSA;

* * * * *

63. Section 101–45.103–2 is amended by revising paragraph (e) to read as follows:

§ 101–45.103–2 Responsibilities of holding agencies.

* * * * *

(e) Assisting in the physical lotting of property to be sold at agency facilities.

64. Section 101–45.105–2 is revised to read as follows:

§ 101–45.105–2 Disposal of certain vessels.

The Secretary of Transportation has jurisdiction over the disposal of vessels of 1,500 gross tons or more which the Secretary determines to be merchant vessels or capable of conversion to merchant use.

65. Section 101–45.105–3 is revised to read as follows:

§ 101–45.105–3 Exemptions.

The sale by GSA of property (excluding personal property under the control of the Department of Defense) as required by this Part 101–45 has been determined at this time to be advantageous to the Government. Exemptions from the provisions of this Part 101–45 may be obtained only under the following circumstances:

(a) Any agency head who believes that authority with respect to the programs covered by section 602(d) of the Act would be impaired or adversely affected by this Part 101–45, may seek an exemption, in writing, from the Administrator of General Services; or

(b) After required screening under Parts 101–43 and 101–44 is completed, a holding agency, upon notification to the appropriate GSA regional office, may elect to sell small lots of personal property where the estimated proceeds from a sale will not exceed $5,000, and perishable items regardless of the estimated proceeds from a sale. Holding agencies are responsible for making or obtaining accurate estimates of the market value of small lots of personal property to ensure that the estimated total proceeds of the sale do not exceed $5,000. Optional Form 15, Poster, Sale of Government Property (see § 101–45.4903–15), and Optional Form 16, Sales Slip, Sale of Government Personal Property (see § 101–45.4903–16), are prescribed for use by holding agencies for the sale of this property. These forms may be obtained as stated in § 101–45.4903. Procedures for conducting these sales are set forth in § 101–45.304–3. Further information can be obtained from GSA regional offices.

(c) A holding agency may sell personal property, upon the approval of GSA, where the estimated proceeds from a sale exceed $5,000.

Subpart 101–45.3—Sale of Personal Property

66. Section 101–45.303–3 is revised to read as follows:

§ 101–45.303–3 Delivery.

(a) After full payment has been received from a buyer, the GSA regional office will notify the holding activity by copy of the GSA Form 27A, Purchaser's Receipt and Authority to Release Property, that property may be released to the purchaser. (See §§ 101–45.4902–27A (over-the-counter and self-mailer)). Upon completion of a sale, the servicing GSA finance office will simultaneously forward to the holding activity additional copies of the GSA Form 27A and completed copies of Standard Form 1081, Voucher and Schedule of Withdrawals and Credits, for use as internal accounting documents.

(b) If a purchaser fails to remove property within the period specified, the GSA regional office shall be advised of this fact, in writing, immediately in order that appropriate action may be taken.

(c) Delivery of motor vehicles to purchasers shall be evidenced by submission to the purchaser of a completed copy of Standard Form 97, The United States Government Certificate of Release of a Motor Vehicle. The form shall be signed in accordance with requirements established by the head of the agency selling the vehicle. Proper precautions shall be exercised by agency heads to prevent blank copies of Standard Form 97 from being obtained by unauthorized persons. Instructions for the use of this form are in § 101–45.4901–97–1. Standard Form 97 and 97A (agency record copy) are illustrated at §§ 101–45.4901–97 and 101–45.4901–97A, respectively.

67. Section 101–45.306 is revised to read as follows:

§ 101–45.306 Contractor inventory.

Except for contractor inventory where retention by the contractor is authorized by the terms of the contract, and after compliance with the applicable requirements of § 101–45.310, contractor inventory shall be sold in the same manner as surplus personal property.

68. Section 101–45.309–2 is amended by revising paragraph (b) to read as follows:

§ 101–45.309–2 Dangerous property.

* * * * *

(b) *Explosives.* For the purpose of this section, the term "explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and any other items appearing in the explosives list promulgated by the Secretary of the Treasury (18 U.S.C. 841(d)). The explosives list is published and revised at least annually in the **Federal Register** by the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, pursuant to 27 CFR 55.23. The following procedures shall apply in any disposal of explosives.

(1) All materials of the above classifications offered for sale shall be properly identified in the offering with respect to their hazardous characteristics.

(2) All the materials of the above classifications shall be labeled by the holding agency prior to shipment so that their hazardous characteristics will be immediately evident upon inspection.

(3) Purchasers of materials of the above classification shall be required by the sales offering to execute the following certification:

It is hereby certified that the purchaser will comply with all applicable Federal, State and local laws, ordinances and regulations with respect to the care, handling, storage and shipment, resale, export, and other use of the materials, hereby purchased, and that he is a user of, or dealer in, said materials capable of complying with all applicable Federal, State, and local laws. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

* * * * *

69. Section 101–45.309–6 is amended by revising the introductory text to read as follows:

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§ 101–45.309–6 Controlled substances.

Surplus controlled substances which are not required to be destroyed as provided in § 101–45.903 may be offered for sale by sealed bid in accordance with this Subpart 101–45.3 provided:

* * * * *

70. Section 101–45.309–7 is amended by revising the introductory text and paragraphs (a) introductory text, (a)(1), and (a)(2) to read as follows:

§ 101–45.309–7 Drugs, biologicals, and reagents other than controlled substances.

Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in § 101–45.903 may be offered for sale by sealed bid in accordance with the provisions of this Subpart 101–45.3: Provided, that the following safeguards and instructions are observed to ensure stability, potency, and suitability of the product and its labeling for use in civilian channels:

(a) Prior to reporting the surplus drugs, biologicals, and reagents to the selling agency pursuant to the provisions of § 101–45.303, holding agencies shall request that an examination be made by the Field Scientific Coordination Staff, ACFA–CF–30, located in the appropriate Food and Drug Administration (FDA) district office, of surplus unexpired drugs and reagents, having an acquisition cost of $500 or more per manufacturer's lot/batch number.

(1) When requesting such an examination, FDA requires the submission of a list and one sample of each of the drugs to be examined.

(2) Additional samples may be requested if necessary for laboratory examination. Reimbursement for examination of the surplus drugs or reagents may be required by FDA. Before laboratory examinations are undertaken, FDA will give the inquiring agency an estimate of the expected costs. If, in accordance with Subpart 101–45.9, the cost of the quality assurance is not justified by the value of the material involved, the lot or lots may be destroyed.

* * * * *

71. Section 101–45.309–9 is amended by revising paragraph (c) to read as follows:

§ 101–45.309–9 Gold.

* * * * *

(c) Each agency generating scrap gold and also having a continuing need for fine gold may arrange for the acceptance of scrap gold for fine gold with a private contractor or the Defense Logistics Agency in accordance with § 101–10.1004. Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

72. Section 101–45.316 is removed and reserved to read as follows:

§ 101–45.316 [Removed and Reserved]

73. Subpart 101–45.5 is removed and reserved to read as follows:

Subpart 101–45.5 [Removed and Reserved]

74. Subpart 101–45.9 is added to read as follows:

Subpart 101–45.9—Abandonment or Destruction of Personal Property

§ 101–45.900 Scope of subpart.

This subpart prescribes the policies and methods governing the disposition of personal property by abandonment or destruction by executive agencies and by a State agency.

§ 101–45.901 Authority to abandon or destroy.

Property may be abandoned or destroyed by an executive agency in accordance with this subpart when a written determination is made by a duly authorized official that the property has no commercial value, or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, except that:

(a) No abandonment or destruction shall be made in a manner which is detrimental or dangerous to public health or safety, or which will cause infringement of the rights of other persons.

(b) In accordance with 101–44.205(k), a State agency is required to notify the appropriate GSA regional office before taking any abandonment or destruction action. The notification shall include a detailed and accurate description of the property and its condition. If the GSA regional office does not contact the State agency within 30 calendar days, the property may be disposed of under this subpart.

(c) If at any time prior to the actual abandonment or destruction, donation becomes feasible, such procedures will be implemented.

§ 101–45.902 Findings justifying abandonment or destruction.

§ 101–45.902–1 Notice of proposed abandonment or destruction.

Public notice of intent to abandon or destroy property shall be given, except as noted in § 101–45.902–2. Included in the notice shall be an offer to sell in accordance with § 101–45.304–2. Such public notice shall be provided in a local newspaper and/or through the posting of signs in one or more common use facilities available to the public. Specific format or timeframe for advertising shall be in accordance with holding agency regulations.

§ 101–45.902–2 Abandonment or destruction without notice.

(a) Property may be abandoned or destroyed, without public notice, by an executive agency upon a written finding by an authorized official that was approved by a reviewing official who is not directly accountable for the property, that:

(1) The value of the property is so little or the cost of its care and handling is so great that its retention for advertising for sale, even as scrap, is clearly not economical; or

(2) Abandonment or destruction is required because of health, safety, or security reasons.

(b) Any item of property with an original cost (estimated if unknown) of less than $500 shall normally be considered for abandonment or destruction, without public notice, due to the expense and difficulty of care and handling, such as used or obsolete charts, electric light bulbs, radio tubes, and resistors.

§ 101–45.903 Destruction of surplus drugs, biologicals, and reagents.

(a) Surplus drugs, biologicals, and reagents shall not be abandoned and the following shall be destroyed by the holding agency or State agency in accordance with the provisions of this § 101–45.903:

(1) *Controlled substances.* (i) Controlled substances in a deteriorated condition or otherwise unusable.

(ii) Quantities of controlled substances determined to be surplus at one time and one place having an acquisition cost of less than $500.

(iii) Controlled substances which have been offered for sale in accordance with the provisions of § 101–45.309–6 but for which no satisfactory or acceptable bids have been received.

(2) *Drugs, biologicals, and reagents.* (i) Surplus drugs, biologicals, and reagents other than controlled substances determined by the holding agency or State agency to be unsafe because of deterioration or overage condition, in open or broken containers, or recommended for destruction by the Food and Drug Administration.

(ii) Surplus drugs, biologicals, and reagents other than controlled substances which have been offered for sale in accordance with the provisions of § 101–45.309–7 but for which no satisfactory or acceptable bid or bids have been received.

(b) When surplus drugs, biologicals, and reagents, including controlled substances, are required to be destroyed by the holding agency or State agency, they shall be destroyed in such a manner as to ensure total destruction of the substance to preclude the utilization of any portion thereof. The destruction shall be in accordance with Federal, State, and local air and water pollution control standards. When major amounts are to be destroyed, the action shall be coordinated with local air and water pollution control authorities. For controlled substances, in addition to the requirements set forth herein, each executive agency and State agency shall comply with the provisions of 21 CFR 1307.21 of Drug Enforcement Administration (DEA) regulations or with equivalent procedures approved by DEA.

(c) Destruction of surplus drugs, biologicals, and reagents, including controlled substances shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction unless in the case of controlled substances the Regional Director of DEA directs otherwise.

(d) When surplus drugs, biologicals, and reagents, including controlled substances, have been destroyed, the fact, manner, and date of the destruction and the type and quantity destroyed shall be certified to by the agency employee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement which shall appear on the certification below the signature of the certifying employee:

I have witnessed the destruction of the (controlled substances) (drugs, biologicals, and reagents other than controlled substances) described in the foregoing certification in the manner and on the date stated herein:

Witness	date
Witness	date

(e) Items mentioned parenthetically in the statement contained in paragraph (d) of this section which are not applicable at the time of destruction shall be deleted from the statement. The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency or State agency.

75. Subpart 101–45.10 is added to read as follows:

Subpart 101–45.10—Recovery of Precious Metals

§ 101–45.1000 Scope of subpart.

This subpart prescribes the policy and procedures for recovery of precious metals from articles of excess and surplus personal property.

§ 101–45.1001 General.

GSA is responsible for the initiation and development of Government-wide precious metals recovery programs, and for the issuance and administration of applicable contracts, except those issued and administered by DOD for precious metals recovery and refinement operations. Situations will occur where, in terms of economy, efficiency, and environmental quality, it is in the best interest of the Government to recover precious metals from articles of excess and surplus personal property instead of using other methods of disposal. GSA will determine when Government-wide recovery is appropriate on the basis of an evaluation of the supply-demand factor, the price of the commodity, the cost of recovering the precious metal, and applicable guidelines or regulations on pollution control.

§ 101–45.1002 Agency responsibilities.

Heads of executive agencies are responsible for establishing, maintaining, and pursuing a program for recovery of precious metals. The provisions of this § 101–45.1002 provide guidance with respect to surveys, reporting requirements, assignments of program monitors, and internal audits. Precious metals that may be designated for recovery include gold, silver, and metals in the platinum family. Examples of silver bearing scrap and waste include used photographic fixing (hypo) solution, photographic and X-ray film, silver alloys, and dental scrap. Other examples of precious metals bearing materials include electronic scrap, ADPE, welding and brazing wire, annodes, and batteries. Certain strategic and critical materials, lists of which are issued from time to time as provided in § 101–14.106, may also be designated for recovery.

§ 101–45.1002–1 Precious metals recovery surveys.

Each agency shall identify those activities that generate silver or other precious metals (including used hypo solution, scrap film, and other precious metals bearing materials). Activities identified as generating precious metals bearing materials shall be surveyed to obtain information regarding actual or potential precious metals recovery. Estimates of potential recovery may be obtained through use of testing papers for hypo solution; various charts, tables, and scales for scrap film, assays of samples of precious metals bearing materials; or other acceptable methods of estimating potential precious metals contents.

§ 101–45.1002–2 Agency reporting requirements.

(a) Each agency shall submit a consolidated annual report (based on fiscal year) containing information regarding precious metals recovery to the Manager, Federal Precious Metals Recovery Programs, General Services Administration (F), Washington, DC 20406. The consolidated report, Standard Form 291, Report of Activities Generating Precious Metals (interagency report control number 1529–GSA–A), shall be submitted within 45 calendar days after the end of the fiscal year. Agency requests for a waiver to the annual reporting requirement shall be submitted to the above GSA program manager for approval.

(b) Section 101–45.4901–291 illustrates Standard Form 291, Report of Activities Generating Precious Metals. The report provides for specific information regarding the types of silver and other precious metals bearing materials processed or generated. The report requires information to be submitted as to the potential amount of precious metals to be recovered from the precious metals bearing material as well as the actual amount of precious metals recovered. Significant differences between the potential and actual amount of precious metals recovered shall be explained on Standard. Form 291. When reporting estimated savings use either: the market value on the date of the transaction for material delivered to the DOD system; or amount of proceeds when material is sold under contract. All sales should be identified by contract number. Market value determination should be identified by source and date.

§ 101–45.1002–3 Precious metals recovery program monitor.

Each agency should designate an individual to monitor its precious metals recovery program. Responsibilities of the precious metals monitor should include conducting and coordinating surveys, implementing and improving recovery procedures; monitoring the agency's recovery program; and submitting the consolidated annual report to GSA.

§ 101–45.1002–4 Internal audits.

Each agency should require periodic internal audits of its precious metals

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recovery program. The internal audits should be of such frequency and scope as to provide for proper control over the recovery, storage, and disposition of precious metals bearing materials. Primary elements for review should include document control and record maintenance; storage facilities and security controls; methods of recovery and equipment operation; and procedures for recovering precious metals through service contracts or disposal through sales contracts.

§ 101–45.1003 Recovery of silver from precious metals bearing materials.

(a) Each agency should recover silver regardless of the quantity of used hypo solution or scrap film generated. Installations of a silver recovery unit consistent with the quantity of used hypo solution generated or storage of used hypo solution or scrap film until a processible quantity is obtained are two alternatives. If an activity generates small quantities of hypo solution and tests show that there is a minimal amount of silver per gallon of solution, arrangements should be made, to the extent feasible, with another activity in the area which is using a recovery unit to receive and process the hypo solution. When the actual amount of silver recovered is substantially less than the estimated amount potentially recoverable, agencies should fully document the reason for the substantial difference.

(b) When recovery by an agency is not economically feasible and consolidation with other activities is not practical, the regional GSA Federal Supply Service Bureau serving the area or the Defense Logistics Agency (DLA) (in accordance with § 101–45.1004) should be contacted for assistance. If it is determined that silver recovery cannot be accomplished economically by Government-owned equipment or by a commercial recovery contractor, the hypo solution, scrap film, or other silver bearing materials should be disposed of in accordance with Part 101–45 in an environmentally acceptable manner.

§ 101–45.1003–1 Guidelines for the recovery of silver from used hypo solution and scrap film.

The basic factors that determine the potential quantity of recoverable silver are: The amount of used hypo solution or scrap film generated; the amount and type of film processed; and the physical layout and available recovery equipment of the photographic facility. Since these factors may vary for each facility, a single method of recovery cannot be prescribed.

§ 101–45.1003–2 Recovery of silver from used hypo solution.

Used hypo solution should be processed to recover the maximum amount of silver from the solution, consistent with overall economic feasibility and environmental considerations. Recovery can be effected either by Government-owned equipment or through use of commercial recovery contracts. Various types and sizes of equipment using metallic replacement or electrolytic methods of recovery are available which permit economic silver recovery from both large and small quantities of used hypo solution.

§ 101–45.1003–3 Recovery of silver from scrap film.

Scrap film, the silver content of which varies according to the type of film and the degree of exposure, is a major source of recovered silver. One method of recovering silver from scrap film is by burning the film in specially designed and approved incinerators. The burning reduces the film to high content silver bearing ash which can be economically processed to produce fine silver. Recovery onsite by controlled burning should only be accomplished at those activities or installations where approved facilities exist and the local code on burning permits it. A common alternative method of recovery is through periodic disposal of accumulated scrap film by sale in accordance with Part 101–45.

§ 101–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Civil agencies may use the DOD Precious Metals Recovery Program as prescribed in § 101–45.1004.

§ 101–45.1004–1 Civil agency participation in the DOD Precious Metals Recovery Program.

(a) Civil Agencies wishing to participate in the DOD precious metals recovery system should contact the Manager, DOD Precious Metals Recovery Program, Attention: DLA–SMP, Cameron Station, Alexandria, VA 22314, for further information regarding the following plans:

(1) *Plan I.* An appraisal or survey of the agency's precious metals recovery potential and a recommendation as to appropriate recovery techniques and equipment;

(2) *Plan II.* DLA acceptance of photographic wastes, excess, and other precious metals bearing materials at Defense Reutilization and Marketing Offices (DRMO's) or other disposition sites;

(3) *Plan III.* Disposition and shipping instructions for recovered precious metals bearing materials not authorized for acceptance at local DRMO's;

(4) *Plan IV.* Assistance and recommendations as needed in the administration and operation of the agency's precious metals recovery program including an appraisal or survey of recovery potential; the furnishing of recovery and other supporting equipment; and the prescribing of procedures for the security and disposition of precious metals bearing materials. This plan will, in most cases, require a formal Memorandum of Understanding between DLA and the participating agency.

(b) Services addressed in the above plans will be provided to the extent that DLA resources permit.

(c) DLA will provide recovered fine precious metals to participating agencies (those generating precious metals bearing scrap for the DOD Precious Metals Recovery Program) for use as Government Furnished Materials (GFM) or other authorized internal uses in accordance with § 101–45.1004–2.

§ 101–45.1004–2 Use of DOD-recovered fine precious metals.

To determine the need for recovered fine precious metals as GFM to reduce new procurement costs, each agency shall review procurements for which fine precious metals will be required by a contractor. Each agency having requirements for recovered fine precious metals as GFM or for other authorized internal uses should submit a request to the Commander, Defense Industrial Supply Center (DISC), Attention: DISC–OIBA/YC, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111–5096. Recovered fine precious metals will be provided to agencies for use as GFM or for other authorized internal uses on a "as-needed-when-available" basis. There is a nominal charge for the recovered fine precious metals. Normally, the amount of recovered fine precious metals authorized for issue to individual civil agencies will not be restricted, except in those instances when the precious metals involved are not available in sufficient quantities to satisfy all requirements. No minimum ordering quantity is prescribed. Requiring activities should contact DISC to assure asset availability prior to the requisitioning of any quantity of precious metal other than silver. Advance inquiries for silver should be made only when requirements exceed 5,000 troy ounces.

Subparts 101–45.11—101–45.46—[Reserved]

Subpart 101–45.47—Reports

78. Section 101–45.4701 is revised to read as follows:

§ 101–45.4701 Performance reports.

An annual report of the sale or other disposition of surplus personal property shall be submitted in duplicate to GSA within 60 calendar days after the close of each fiscal year, using Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property.

Subpart 101–45.48—Exhibits

§ 101–45.4807 [Removed and Reserved]

77. Section 101–45.4807 is removed and reserved.

Subpart 101–45.49—Illustrations of Forms

78. Section 101–45.4901–291 is added to read as follows:

§ 101–45.4901–291 Standard Form 291, Report of Activities Generating Precious Metals.

79. Section 101–45.4902(b) is revised to read as follows:

§ 101–45.4902 GSA forms.

* * * * *

(b) GSA forms in this section may be obtained initially from the General Service Administration, National Forms and Publications Center, 4900 South Hemphill Street, Warehouse No. 4, Dock No. 1, Fort Worth, Texas 76115. Agency regional or field offices should submit future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (CAIR), Washington, DC 20405.

80. Part 101–46 is revised to read as follows:

PART 101–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

101–46.000 Scope of part.
101–46.001 Definitions of terms.
101–46.001–1 Acquire.
101–46.001–2 Combat material.
101–46.001–3 Exchange.
101–46.001–4 Historic item.
101–46.001–5 Replacement.
101–46.002 Requests for deviation.

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Authorization

101–46.200 General authorization.
101–46.201 Agency responsibilities.
101–46.201–1 Exchange or sale determination.
101–46.201–2 Transfer and exchange between Federal agencies.
101–46.202 Restrictions and limitations.
101–46.203 Special authorizations.

Subpart 101–46.3—Exchange and Sale Procedures

101–46.300 Scope of subpart.
101–46.301 Automatic data processing equipment (ADPE).
101–46.302 Exchange procedures.
101–46.303 Sales methods and procedures.
101–46.304 Availability of proceeds of sale.
101–46.305 Reports.

Subparts 101–46.4—101–46.48—[Reserved]

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

§ 101–46.000 Scope of part.

This part prescribes policies and methods governing the use by executive agencies of the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). It is applicable to all U.S. Government-owned personal property worldwide.

§ 101–46.001 Definition of terms.

For the purpose of this part, the following terms shall have the meanings set forth in this section.

§ 101–46.001–1 Acquire.

"Acquire" means procure, purchase, or obtain in any manner, including transfer and manufacture or production at Government-owned or operated plants and facilities.

§ 101–46.001–2 Combat material.

"Combat material" means arms, ammunition, and implements of war listed in the U.S. Munitions List (22 CFR Part 121).

§ 101–46.001–3 Exchange.

"Exchange" means to replace a nonexcess personal property item by trade or trade-in with the supplier of the replacement item when the value of the replaced item is used to reduce or offset the cost of the acquired item. The supplier may be a Government agency, commercial or private organization, or an individual.

§ 101–46.001–4 Historic item.

"Historic item" means property having added value for display purposes because of its historical significance that is greater than the fair market value of the item for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, would not be regarded as historic items.

§ 101–46.001–5 Replacement.

"Replacement" means and is limited to the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it was used.

§ 101–46.002 Requests for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with a complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator or designee's approval, will be available for public inspection in accordance with Subpart 101–50.3 of this title.

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Authorization

§ 101–46.200 General authorization.

Subject to the provisions of this part, in acquiring replacement personal property, similar items may be exchanged or sold and executive agencies are authorized to apply the exchange allowance or the proceeds from sale in such cases in total or in partial payment for the replacement property acquired. Any transaction carried out under this part shall be evidenced in writing.

§ 101–46.201 Agency responsibilities.

§ 101–46.201–1 Exchange or sale determination.

Each agency considering exchange or sale of property under the provisions of this part shall determine in each case whether exchange or sale will obtain the greater return for the Government. All administrative and overhead costs shall be considered when estimating the return by either method. If the sales transaction for a line item processed under this part has estimated proceeds of less than $100, it is normally considered to be uneconomical. If exchange is also impractical or the exchange allowance is unreasonably low, the property should be declared excess and processed in accordance with Part 101–43.

§ 101 46.201–2 Transfer and exchange between Federal agencies.

(a) Executive agencies having property other than automatic data processing equipment (ADPE) that is

determined to be available for exchange or sale under this part shall, to the maximum extent practicable or economical and prior to any disposal action, solicit Federal agencies known to use or distribute this property and arrange for transfers thereto, except that no attempt need be made to obtain further utilization of property that is eligible for replacement in accordance with replacement standards prescribed in Subpart 101–25.4. GSA will solicit other agencies' requirements for ADPE determined to be available for exchange or sale subsequent to reporting in accordance with FIRMR 201–33.011 (41 CFR 201–33.011).

(b) Executive agencies may exchange similar property with other Federal agencies and the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

(c) Transfers of personal property under this part shall be made upon such terms as shall be agreed to by the Federal agencies concerned (including those listed in paragraph (a) of this section). However, agencies offering property for transfer for further utilization within the Government shall not in any case require reimbursement of an amount greater than the best estimate of the gross proceeds if the property were to be sold on a competitive bid basis, or the dollar value offered on a trade-in basis. Funds shall be transferred in accordance with such terms, and the exchange allowance or other proceeds of transfer shall be applied in whole or part payment for personal property acquired.

§ 101–46.202 Restrictions and limitations.

(a) Items which are found in any of the Federal supply classification groups listed below are not eligible for handling under the provisions of this part.

Federal Supply Classification Group Number and Identification

10 Weapons.
11 Nuclear ordnance.
12 Fire control equipment.
14 Guided missiles.
15 Aircraft and airframe structural components.
16 Aircraft components and accessories.
17 Aircraft launching, landing, and ground handling equipment.
20 Ship and marine equipment.
22 Railway equipment.
31 Bearings.
32 Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band.
34 Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band.
40 Rope, cable, chain, and fittings.
41 Refrigeration, air conditioning, and air circulating equipment.
42 Firefighting, rescue, and safety equipment.
44 Furnace, steam plant, and drying equipment; and nuclear reactors.
45 Plumbing, heating, and sanitation equipment.
46 Water purification and sewage treatment equipment.
47 Pipe, tubing, hose, and fittings.
48 Valves.
51 Hand tools.
53 Hardware and abrasives.
54 Prefabricated structures and scaffolding.
55 Lumber, millwork, plywood, and veneer.
56 Construction and building materials.
68 Chemicals and chemical products, except medicinal chemicals.
71 Furniture.
75 Office supplies and devices, except cards, tabulating.
83 Textiles, leather, furs, apparel and shoe findings, tents and flags.
84 Clothing, individual equipment, and insignia.

(b) The application of exchange allowances or proceeds of sale in whole or in part payment for personal property acquired is authorized only when all of the following conditions apply:

(1) The item sold or exchanged is similar to the item acquired. Sufficient data shall be made a matter of record to establish that the acquired item and the replaced item were similar. Items are deemed similar when:

(i) The replaced item and the acquired item are identical;

(ii) The acquired item is designed and constructed for the same specific purpose as the replaced item, or both constitute parts or containers for identical or similar end items; or

(iii) The acquired item and the replaced item both fall within a single category in the following list:

Exchange/Sale Similarity List

Agriculture products, processed foods, and forage.
Ammunition and ammunition components.
Animals and animal products.
Batteries, storage.
Cards, tabulating.
Ditching machines.
Dozer blades.
Drill presses.
Drugs, biologicals, and official reagents.
Earth augers.
Graders, self-powered and towed.
Lathes.
Machines, adding and calculating.
Machines, dictating and transcribing.
Machines, duplicating.
Machines, punched card, bookkeeping, tabulating and accounting.
Milling machines.
Mixers, concrete, portable or truck mounted.
Pile drivers.
Plows, snow, motorized.
Road rollers, wheeled and sheepsfoot.
Saws, circular or band.
Scrapers, earth moving, towed.
Sedans, station wagons, coupes, limousines.
Spreaders, aggregate and lime.
Tractors, warehouse.
Tractors, wheeled or crawler, with or without special attachments up to 65 h.p.
Trailers, general purpose, multiple axle.
Trailers, general purpose, single axle.
Trailers, tank mounted.
Trucks, forklift.
Trucks, general purpose, cargo and construction, 12,500 GVW through 28,000 GVW (including truck tractors, dump, multiple drive, etc.)
Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries).
Trucks, straddle.
Trucks, tank (special purpose trailer of which the tank is an integral part of the construction).
Trucks, warehouse, platform, electric and gasoline powered.
Typewriters, manual and electric.

(2) The items sold or exchanged (with the exception of automatic data processing equipment to be exchanged by GSA) are not excess, and the items acquired are needed in the conduct of approved programs;

(3) One item is to be acquired to replace one similar item. The only exceptions to the one-for-one rule shall be:

(i) The items acquired must perform all or substantially all of the tasks in which the old items would otherwise be used; and

(ii) The items sold or exchanged and the items acquired are parts or containers for identical or similar end items.

(4) There has been at the time of exchange or sale (or at the time of acquisition if it precedes the sale) a written administrative determination to apply the exchange allowance or proceeds of sale in acquiring property in accordance with this Subpart 101–46.2;

(5) The transaction will foster the economical and efficient accomplishment of an approved program; and

(6) The item to be exchanged or sold was acquired for official use and not for the principal purpose of exchange or sale.

(c) This part shall not be construed to authorize:

(1) The acquisition of personal property by an executive agency when such acquisition is not otherwise authorized by law.

(2) The acquisition of personal property by an executive agency in contravention of:

(i) Any restriction upon the procurement of a commodity or commodities, or

(ii) Any replacement policy or standard, prescribed by the President, the Congress, or by the Administrator of General Services.

(3) The acquisition of personal property other than under a consolidated purchasing or stores program or Federal Supply Schedule contract where procurement under such program or contract is required by regulations or other directives prescribed by the Administrator of General Services.

(4) The sale, transfer, or exchange of excess property (other than automatic data processing equipment to be exchanged by GSA) or surplus property under this part.

(5) The sale, transfer, or exchange of strategic and critical materials, unless the provisions of § 101–14.103–2 are met.

(6) The sale, transfer, or exchange of Nuclear Regulatory Commission-controlled materials (as defined in Part 101–43) except in accordance with applicable regulations of the Nuclear Regulatory Commission (See 10 CFR Parts 30, 40, and 70).

(7) The sale or exchange of controlled substances, except in accordance with Part 101–45.

(8) The sale of personal property in new or unused condition under this part.

(9) The sale, transfer, or exchange of scrap materials under this part, except in the case of scrap gold for fine gold.

(10) Even though otherwise eligible, the exchange or sale of property which was originally acquired as excess or forfeited property, or from another source other than new procurement, unless such property has been placed in official use by the acquiring agency for a minimum of 1 year. Forfeited property placed in official use for less than 1 year may be exchanged or sold if the head of the agency certifies that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that the exchange or sale meets all other requirements of this part. Property exchanged or sold subject to such certification shall be reflected separately on the annual report required by § 101–46.305.

(11) The exchange or sale of property which is dangerous to public health or safety without first rendering such property innocuous or providing adequate safeguards therefor.

(12) The exchange or sale of combat material pursuant to this part without first demilitarizing such property if such demilitarization is found by a fully authorized official of the executive agency concerned to be in the best interest of public health, safety, or security. Such demilitarization may include rendering such property innocuous, stripping from it any confidential or secret characteristics, or making it unfit for military use. Demilitarization of property to be exchanged or sold shall be accomplished in such manner as to preserve so far as possible any civilian utility or commercial value of the property.

(d) This part does not apply to materials in the National Defense Stockpile (50 U.S.C. 98–98h), or the Defense Production Act inventory (50 U.S.C. App. 2093).

§ 101–46.203 Special authorizations.

(a) Notwithstanding any other provisions of this part, executive agencies may exchange, without monetary appraisal or detailed listing or reporting, books and periodicals in their libraries not needed for permanent use for other books and periodicals.

(b) In acquiring items for historical preservation or display at Federal museums, executive agencies may exchange historic items in the museum property account without regard to the Federal supply classification group or the requirement in § 101–46.202 to replace items on a one-for-one basis, provided the exchange transaction is documented and certified by the agency head to be in the best interest of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items as defined in § 101–46.001–3. Historic items so exchanged shall be reflected separately on the annual report required by § 101–46.305.

Subpart 101–46.3—Exchange and Sale Procedures

§ 101–46.300 Scope of subpart.

This subpart prescribes the policies and methods governing the actual exchange or sale of property which qualifies in accordance with this part. Any property to be sold will be reported for sale to GSA or other authorized agency sales office as provided in Part 101–45. This property will be reported in the same manner as surplus personal property but identified as replacement property subject to the same exemptions and exceptions on reporting as otherwise would be applicable to surplus personal property.

§ 101–46.301 Automatic data processing equipment (ADPE).

ADPE equipment that qualifies for exchange or sale in accordance with this part shall first be reported for possible reutilization among Federal agencies as provided in FIRMR Part 201–33 (41 CFR Part 201–33). If not transferred for other reutilization among Federal agencies, ADPE may be exchanged or sold in accordance with this part.

§ 101–46.302 Exchange procedures.

(a) Most exchange transactions should occur when a vendor delivers a replacement item and removes the item replaced. This is the most efficient and cost effective exchange procedure because the item being replaced may remain in use up to the time the replacement item is delivered, when it is immediately removed by the vendor. Exchanges of items which are not in use or when delivery of the replacement item and removal of the item replaced does not coincide generally involve additional storage, handling and administrative costs, and should be kept to a minimum.

(b) An executive agency may internally reassign eligible items no longer needed by one organizational unit to another for use by the gaining unit for exchange with the supplier of a replacement item. Physical movement of the reassigned item is unnecessary when the supplier of the replacement item will accept it at the original location. An item reassigned for exchange purposes may also be delivered directly to the supplier of the replacement item to minimize storage and handling.

§ 101–46.303 Sales methods and procedures.

(a) The methods of sale, terms and conditions of sale, and forms prescribed in 101–45.304 shall also be used in the sale of replacement property, except that negotiated sales of surplus personal property as prescribed in 101–45.304–2 are not applicable to the sale of property being replaced. Section 3709, Revised Statutes, as amended (41 U.S.C. 5), is applicable to such sales.

(b) While it is the policy to sell property eligible for exchange or sale after publicly advertising for bids, such property also may be sold by GSA or the holding agency by negotiation, subject to obtaining such competition as is feasible, when:

(1) The reasonable value involved in any one case does not exceed $500, or

(2) Otherwise authorized by law.

§ 101–46.304 Availability of proceeds of sale.

Except as otherwise authorized by law, proceeds from sales of personal property disposed of pursuant to this part shall be accounted for in accordance with General Accounting

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Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, section 15.4. The requirements for a written administrative determination to establish that a bona fide replacement is involved are set forth in § 101–46.200. Procedures for the application of the proceeds from sale of the acquisition of similar items follow:

(a) *Sale of property before the purchase of replacement property.* (1) When the property to be replaced is sold before the acquisition of the replacement property, the proceeds of such sales will be credited to the agency's account, using Standard Form 1081, Voucher and Schedule of Withdrawals, or Credits, or other approved forms.

(2) The proceeds of such sales will be available for obligation for the acquisition of similar replacement items of personal property during the fiscal year in which the sale is made and for one fiscal year thereafter.

(3) Proceeds of sales related to personal property for which an obligation for replacement has not been incurred during the period of availability following the date of sale, or sales proceeds which for other reasons an agency elects not to apply to replacement costs, shall be deposited to miscellaneous receipts account "2649 Proceeds from sale of equipment and other personal property not otherwise classified," unless other disposition is authorized by law.

(4) If it is determined at the time of collection that sales proceeds will not be applied to replacement acquisitions, the deposit should be made directly to the miscellaneous receipts account.

(b) *Sale of property after the purchase of replacement property.* When the replaced property is sold after the acquisition of the replacement property, the proceeds of such sale may be deposited as a direct reimbursement credit to the appropriation previously charged for the replacement of similar items of personal property.

(c) *Application of proceeds.* Executive agencies need not reassign property among their organizational units in order to apply sales proceeds from an eligible item sold from the property account of one organizational unit to the cost of a similar item acquired by another organizational unit of that agency.

§ 101–46.305 Reports.

(a) Within 90 calendar days after the close of each fiscal year, executive agencies shall submit a summary report in letter form on the transactions made under this part during the fiscal year except for transactions involving books and periodicals as follows:

(1) Total acquisition cost of property exchanged with the exchange allowance and total acquisition cost for property sold with the proceeds shall be furnished in separate columns and further broken down by two-digit Federal supply classification groups.

(2) Total acquisition cost for property acquired from any source other than new procurement which was subsequently exchanged or sold after being placed in official use for less than 1 year pursuant to § 101–46.202(c)(10) and for historical items exchanged pursuant to § 101–46.203(b) shall be reflected separately by two-digit Federal supply classification groups.

(3) These data shall also be separated into two categories by geographic location as follows:

(i) The States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands; and

(ii) All other areas of the world.

(b) The summaries shall not include any property that was initially designated for exchange/sale but which was transferred for further Federal utilization or was subsequently redesignated as excess or surplus property.

(c) Reports shall be addressed to the General Services Administration (FB), Washington, DC 20406.

(d) The report required by this regulation has been assigned interagency report control number 1528–GSA–AN in accordance with FIRMR 201–45.6 (41 CFR 201–45.6).

(e) Negative reports are required.

Subparts 101–46.4—101–46.48—[Reserved]

Dated: March 9, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–9778 Filed 5–4–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the current list of field offices of the Office of Hearings and Appeals in paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, as published in 52 FR 45584 (November 30, 1987), to reflect changes which have been effected heretofore. It removes the first listed field office of Administrative Law Judge in Louisville, KY, and the ninth listed field office of Administrative Law Judge (Indian Probate) in Portland, OR, these offices having been closed heretofore. It changes the location of the listed field office of Administrative Law Judge (Indian Probate) in Oklahoma City, OK, from Room 712 to Room 218, this change in location also having been effected heretofore.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, (703) 235–3810 (not toll free).

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and changes of field offices which have previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of Information Act, Privacy Act.

Therefore, under authority of the Secretary of the Interior contained in 5 U.S.C. 301, paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301, 552 and 552a, 31 U.S.C. 9701 and 43 U.S.C. 1460.

Appendix B—[Amended]

2. Paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended by removing the first listed field office of Administrative Law Judge in Louisville, KY, and the ninth listed field office of Administrative Law Judge (Indian Probate) in Portland, OR; and by changing the room number of the eighth listed field office of Administrative Law Judge (Indian Probate) in Oklahoma City, OK, from Room 712 to Room 218.

Date: April 21, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 88–10004 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 71146–8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that significant portions of the stablefish total allowable catches (TACs) allocated to hook-and-line gear in the Southeast Outside/East Yakutat and West Yakutat Districts of the Eastern Regulatory Area will be taken by May 2, 1988. The Secretary of Commerce (Secretary), is, therefore, prohibiting directed fisheries for sablefish in these districts by persons using hook-and-line gear from 12:00 noon on May 2, 1988 through December 31, 1988.

DATES: This notice is effective from 12:00 noon on May 2, 1988, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time, December 31, 1988.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska governs the groundfish fishery in the Exclusive Economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into total allowable catches (TACs) for each target groundfish species and species groups. For 1988, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the Southeast Outside, East Yakutat (EYK), and West Yakutat (WYK) Districts of the Eastern Regulatory Area in the Gulf of Alaska. The TAC for sablefish is 6,500 metric tons (mt) in the combined Southeast Outside/East Yakutat (SE/EYK) District. The TAC for the WYK District is 4,900 mt. Section 672.24(b)(1) of current regulations provides a quota for hook-and-line gear in the SE/EYK and WYK Districts equal to 95 percent of the TACs, or 6,180 mt and 4,660 mt, respectively.

The National Marine Fisheries Service conducted a program that required vessels to register prior to starting fishing (53 FR 11297, April 6, 1988). Based on the program, as many as 387 hook-and-line vessels registered to fish in the Southeast Outside/East Yakutat District and as many as 123 vessels registered to fish in the West Yakutat District.

In the SE/EYK district, the average fleet catch has been 141 mt per day during the period April 23–27. NMFS has set aside 300 mt of the 6,180 mt quota as bycatch that can be retained when fishing for other species, which leaves 5,880 mt available in the directed fishery. As of April 28, 4,917 mt has been landed. Based on the catch rate through April 27, NMFS projects the catch will total about 5,620 mt by 12:00 noon on May 2. Of the 5,880 mt amount intended for a directed fishery, NMFS estimates that a balance of about 260 mt could remain. Reports of deadloss resulting from lost gear or gear conflicts have been frequent but cannot be quantified. As a conservation measure, however, NMFS intends not to promote extra fishing time to harvest remaining quota in case deadloss has indeed been substantial.

In the WYK district, the average fleet catch per day has been 146 mt during the period April 24–26. NMFS has set aside 200 mt of the 4,660 mt quota as bycatch that can be retained when fishing for other species, which leaves 4,460 mt available in the directed fishery. As of April 27, 3,604 mt has been landed. Based on the catch rate through April 26, NMFS projects that the remainder of the quota intended for the directed fishery will be taken as of 12:00 noon on May 2.

Therefore, pursuant to § 672.24(b)(3)(i), the Secretary is prohibiting directed fishing for sablefish with hook-and-line gear in the SE/EYK and WYK Districts effective 12:00 noon, local time, May 2, 1988. Under § 672.2 as amended by 53 FR 7938 (March 11, 1988) and corrected at 53 FR 9773 (March 25, 1988), directed fishing for sablefish with hook-and-line gear means, "fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesing of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of groundfish or groundfish products on board at any time. It will be a rebuttable presumption that, when sablefish comprises 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of fish or fish products on board at any time such fishing was directed to fishing for sablefish."

This closure is effective after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(a), but no earlier than May 2, 1988. Public comments on this notice may be submitted to the Regional Director at the address above until May 17, 1988.

Classification

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 1988.

Ann D. Terbush,

Acting Director, Office of Fishery Conservation and Management.

[FR Doc. 88–10035 Filed 5–2–88; 5:00 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 87
Thursday, May 5, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 987 for the 1988–89 crop year established for that order. The proposal is needed for the committee to incur operating expenses during the 1988–89 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by May 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of California dates under this marketing order, and approximately 135 date producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular crop year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The California Date Administrative Committee unanimously recommended 1988–89 crop year expenditures of $394,500 and an assessment rate of $1.30 per hundredweight of assessable dates shipped under M.O. 987. In comparison, 1987 fiscal year budgeted expenditures were $411,267 and the assessment rate was $1.30 per hundredweight.

The major expenditure item this year is $350,000 for continuation of the committee's market promotion program. A total $40,000 of this amount will be used to cover the salary and other expenses of the executive director hired to manage that program and the remaining $310,000 will be used to cover the cost of the promotion program. The industry is faced with a serious oversupply of product dates and the committee considers this program necessary to stimulate sales.

The rest of the anticipated expenditures are for program administration which are budgeted at about last year's amounts. Revenue for the 1988–89 season is expected to total $394,500. Such revenue consists of $390,000 in assessments based on shipments of 30,000,000 pounds of dates and $4,500 in interest.

The committee also recommends that any unexpended funds or excess assessments from the 1987–88 crop year be placed in its reserve. The committee expects any excess funds to be minimal and result in a reserve well within the maximum authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period less than 30 days is appropriate because the budget and assessment rate approvals for the date program need to be expedited. This action must be in place soon so the committee can finalize its 1988–89 promotion program. Programs of this sort require a substantial amount of lead time for planning.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 987 be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.333, is added to read as follows:

§ 987.333 Expenses and assessment rate.

Expenses of $394,500 by the California Date Administrative Committee are authorized, and an assessment rate of $1.30 per hundredweight of assessable dates is established, for the crop year ending September 30, 1989. Unexpended funds from the 1987–88 crop year may be carried over as a reserve.

Dated: April 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–9914 Filed 5–4–88; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Parts 1497 and 1498

Payment Limitation and Foreign Persons Ineligible for Program Benefits

AGENCY: Commodity Credit Corporation (CCC) and Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice to extend comment period.

SUMMARY: This document extends the comment period from May 6, 1988, to May 23, 1988, for the proposed rule published in the **Federal Register** on April 6, 1988 (53 FR 11474) concerning provisions of the Food Security Act of 1985, as amended by the Agricultural Reconciliation Act of 1987, as included in the Omnibus Budget Reconciliation Act 1987, with respect to the application of maximum payment limitation provisions and payment eligibility provisions which are applicable to certain foreign individuals and entities.

DATE: Comment period extended to May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Section Chief, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: Several requests have been made to extend the comment period because of the complexity of the proposed rules. Due to the widespread applicability of these rules, it has been determined that it would be in the best interest of all interested parties and the Commodity Credit Corporation to extend the comment period to May 23, 1988.

Signed at Washington, DC on April 29, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–9982 Filed 5–4–88; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51 and 60

NEPA Review Procedures for Geologic Repositories for High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to revise its procedures for implementation of the National Environmental Policy Act (NEPA). The proposed rule would address the Commission's role under NEPA in connection with a license application submitted by the Department of Energy with respect to a geologic repository for high-level radioactive waste (HWL). The changes are needed in order to reflect the provisions of the Nuclear Waste Policy Act of 1982 (NWPA), as amended. Under that Act, the Commission is required to adopt the Department's environmental impact statement (EIS) to the extent practicable. The proposed rule, among other things, sets out the standards and procedures that would be used in determining whether such adoption is practicable.

In summary, under the proposed rule:

(1) The Commission will conduct a thorough review of DOE's draft EIS and will provide comments to DOE regarding the adequacy of the statement.

(2) If requested by Congress pursuant to the NWPA, the Commission will provide comments on DOE's EIS to the Congress with respect to a State or Tribal notice of disapproval of a designated site.

(3) The NRC will find it practicable to adopt DOE's EIS (and any DOE supplemental EIS) unless:

(a) The action proposed to be taken by the NRC differs in an environmentally significant way from the action described in DOE's license application, or

(b) Significant and substantial new information or new considerations render the DOE EIS inadequate.

(4) The DOE EIS will accompany the application through the Commission's review process, but will be subject to litigation in NRC's licensing proceeding only where factors 3(a) or 3(b) are present.

In accordance with NWPA, the primary responsibility for evaluating environmental impacts lies with DOE, and DOE would therefore be required to supplement the EIS, whenever necessary, to consider changes in its proposed activities or any significant new information.

DATES: Comment period expires August 3, 1988. Comments received after August 3, 1988 will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Submit written comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1641.

SUPPLEMENTARY INFORMATION:

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Introduction

All agencies of the Federal Government are charged with the duty to interpret and administer the laws of the United States, to the fullest extent possible, in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.* Under NEPA, the Nuclear Regulatory Commission is required to prepare an environmental impact statement (EIS) with respect to any major Federal action in which it is engaged that might significantly affect the quality of the human environment. The EIS contains a detailed statement of the environmental impacts of a proposed action, including adverse unavoidable effects resulting from its implementation, as well as an identification and environmental evaluation of alternatives to the proposed action.

The Commission is responsible for the licensing and regulation of activities involving the possession of nuclear materials. Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* The Department of Energy (DOE) must obtain a license from NRC before disposing of high-level radioactive waste (HLW) in geologic repositories. Section 202, Energy Reorganization Act of 1974, 42 U.S.C. 5842. The licensing of DOE to receive and possess HLW at a geologic repository involves one or more major Federal actions which might significantly affect the quality of the human environment. Accordingly, NEPA requires the Commission to have an EIS (or multiple EIS's if more than one major Federal action by NRC is involved) to accompany its decision process when it considers a license application from DOE involving HLW disposal. Further direction regarding NRC's NEPA responsibilities is provided by the Nuclear Waste Policy Act of 1982 (NWPA), as amended, 42 U.S.C. 10101 *et seq.*

The Commission in 1984 promulgated revised regulations (10 CFR Part 51) to implement section 102(2) of NEPA, the section which, among other things, calls for the preparation of an EIS. 49 FR 9352, March 12, 1984, and 49 FR 24512, June 14, 1984. In issuing these regulations, the Commission noted that it had initiated a review of the licensing procedures applicable to geologic repositories in the light of the Nuclear Waste Policy Act and that the Commission would determine, as part of that review, whether further changes to 10 CFR Part 51 are needed. On July 30, 1986, the Commission promulgated certain amendments to 10 CFR Part 60. 51 FR 27158. Those amendments deal with (1) the role of NRC during site screening and site characterization activities and (2) State, tribal, and public participation in NRC activities with respect to geologic repositories. In proposing those rules, the commission had noted that issues pertaining to NRC responsibilities under NEPA will require modifications to 10 CFR Part 51 and that such amendments would be the subject of a subsequent rulemaking. 50 FR 2579, Jan. 17, 1985. The statement of considerations accompanying the final amendments advised that Part 51 "will need to be changed—specifically to (1) define the alternatives that must be discussed in an environmental impact statement, (2) exempt the promulgation of the NRC licening requirements and criteria from environmental review under NEPA, and (3) set out procedures that will be followed by the Commission in determining whether or not to adopt the DOE EIS."

As contemplated by its prior statements, the Commission now proposes amendments dealing with NRC implementation of NEPA in connection with Department of Energy geologic repositories. A full appreciation of these amendments requires an understanding of NEPA itself and the Commission's original plans for meeting its NEPA responsibilities; an analysis of the text and legislative history of NWPA, and of the recent amendments thereto, with particular regard to the policies and procedures established by that law for the resolution of environmental issues; and, finally, the specific regulations the Commission would promulgate in order to implement the NWPA policies and procedures. These matters are examined in the following discussion.

The Pre-NWPA Licensing Framework

The Commission believes it will be helpful to outline the repository licensing procedure that it had approved before enactment of NWPA. As appears below, that procedure included a customary NEPA review of DOE's license application. With that intention in mind, the Commission required DOE to characterize at least three sites and to provide certain timely information to the Commission regarding its site selection process. The Commission's requirements had been promulgated before the passage of NWPA, and they were familiar to Congress. In some respects the new law tracked the Commission rules closely; in other cases, however, there were marked differences, and from these differences a modification of policy can be inferred. A review of the pre-NWPA framework is therefore essential.

To begin this review with fundamental considerations, it is first noted that the Atomic Energy Act of 1954 charges the Commission with several types of licensing responsibility. One class of Commission action is *materials licensing.* Under its statutory authority, the Commission prescribes such rules as it finds to be needed to assure that persons possess and use the regulated materials in a manner that protects public health and safety and is not inimical to the common defense and security. DOE's disposal of HLW at a geologic repository is subject to this materials licensing authority of the Commission. The Commission several years ago determined that it would be necessary, to protect health and safety, to review DOE's plans with respect to a geologic repository before commencement of construction. 46 FR 13971, Feb. 25, 1981 (final licensing procedures). Accordingly, DOE may not commence construction of a geologic repository unless it has first filed a license application and obtained the Commission's construction authorization. 10 CFR 60.3(b). A construction authorization is not itself a license, since it does not authorize possession or use of nuclear materials, but DOE's failure to comply with the requirement to apply for and to obtain construction authorization constitutes grounds for denial of the license that DOE would later need in order to receive high-level waste at the repository. Moreover, the Commission may, if necessary, issue orders to secure compliance with construction authorization conditions and to protect the integrity of the repository. 46 FR 13971.

In the pre-NWPA licensing framework, the Commission specified that an environmental report prepared in accordance with 10 CFR Part 51 was to accompany the license application. 10 CFR 60.21(a). The environmental report was to discuss relevant NEPA considerations. In particular, as provided by this regulation, 10 CFR 51.40(d)(1983):

> The discussion of alternatives shall include site characterization data for a number of sites in appropriate geologic media so as to aid the Commission in making a comparative evaluation as a basis for arriving at a reasoned decision under NEPA. Such characterization data shall include results of appropriate in site testing at repository depth unless the Commission finds with respect to a particular site that such testing is not required. The Commission considers the characterization of three sites representing two geologic media at least one of which is not salt to be the minimum necessary to satisfy the requirements of NEPA. (However, in light of the significance of the decision selecting a site for a repository, the Commission fully expects the DOE to submit a wider range of alternatives than the minimum required here.)

Failure to provide the specified site characterization data would constitute grounds for denial of a license application. 10 CFR 2.101(f)(4). If DOE had prepared its own EIS, that document could be submitted so long as it contained the information called for by the regulation; the Commission noted, however, that it could not be bound to accept judgments arrived at by DOE in its EIS. 46 FR 13973.

NRC was to publish notices of the availability of the environmental report and of its intant to prepare an environmental impact statement. 10 CFR 51.50(a), (b)(1983). An environmental impact statement would be required before issuance of a construction authorization, 10 CFR 51.5(a)(11)(1983); and an EIS might also be determined to be necessary for issuance of the license to possess high-level waste at a repository, *id.* at § 51.5(b)(11), or to terminate such license, *id.* at § 51.5(b)(10). The EIS prepared before construction would be supplemented prior to issuance of a license to take account of any substantial changes in the activities proposed to be carried out or significant new information regarding the environmental impacts of the proposed activities, *id.* at § 51.41.

Whenever an EIS was required, it was first to be distributed as a draft and, after receipt of comments, NRC would then prepare a final EIS which would respond to any responsible opposing view not adequately discussed in the draft. The draft and final statements, and comments received, were to accompany the application through the Commission's review processes. *Ibid.* (reference to §§ 51.22–51.26). In an adjudicatory hearing, as is required before issuance of construction authorization for a repository, the NRC staff was to offer the final EIS in evidence. Any part to the proceeding could have taken a position and offered evidence on NEPA issues. As a result of the hearing, the Commission could have arrived at findings and conclusions different from those in the final EIS prepared by the staff, and the final EIS would have been deemed modified to that extent. *Id.* at § 51.52(b).

Upon review and consideration of an application and environmental report, a construction authorization could have been issued if the following environmental standard was met:

> That, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, the action called for is issuance of the construction authorization, with any appropriate conditions to protect environmental values. 10 CFR 60.31(c).

While the Commission's formal NEPA determination would thus have been made in the course of licensing proceedings, the regulation Buenos Aires, Argentinas provided further for NRC involvement at an even earlier stage—namely, at the time of site characterization. Site characterization is a program of exploration and testing that includes specified activities "to determine the suitability of the site for a geologic repository." 10 CFR 60.2(p)(1983). It is needed not only to determine whether defects are present, but also to determine specific properties such as homogeneity, porosity, the extent of fracturing and jointing, and thermal response of the rock. Site characterization data are needed so as to provide a satisfactory basis for arriving, with confidence, at the technical judgments underlying the Commission's initial licensing decision. 44 FR 70410, Dec. 6, 1979 (proposed licensing procedures). The Commission noted its belief that it would be necessary for DOE to carry out site characterization at three or more sites in two (or more) geologic media, at least one of which is not salt. Such a program of multiple site characterization would provide the only effective means by which NRC could make a comparative evaluation of alternatives as a basis for arriving at a reasoned decision under NEPA. It was estimated that $30,000,000 represented the upper limit for the "at depth" portion of site characterization in soft rock, with a limit of up to about $40,000,000 in hard rock. 46 FR 13972–73.

The Commission regulations called upon DOE to submit, in advance of site characterization, a Site Characterization Report, which would have been reviewed informally by NRC. In addition to describing the site to be characterized and the proposed site characterization program, the report would have included several items of information pertaining to site selection, specifically:

- The criteria used to arrive at the candidate area.
- The method by which the site was selected for site characterization.
- Identification and location of alternative media and sites at which site characterization is contemplated.
- A description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and State views during selection.

10 CFR 60.11 (1983). The Commission found the inclusion of plans for considering alternative sites to be necessary so that NRC could call to the attention of DOE, in a timely manner, additional information that might be needed by the Commission in reviewing a license application in accordance with NEPA. 46 FR 13972. (Also, in the preamble to the proposed licensing procedures, the Commission had discussed the requirement that DOE describe the site selection process, and State involvement therein. The Commission noted its belief, in this connection, that many issues, "including the NEPA questions related to alternatives and alternative sites," would be more easily resolved if State concerns were identified and addressed at the earliest possible time. 44 FR 70412.)

The Nuclear Waste Policy Act of 1982

[Note: Under this heading, the Commission reviews its NEPA responsibilities under the Nuclear Waste Policy Act, as originally enacted; that is, this discussion does not reflect the 1987 amendments. The 1987 changes, which will be analyzed below (under the heading "Nuclear Waste Policy Amendments Act of 1987"), were not intended to alter the duties of the Commission with respect to NEPA; and it is therefore in order to review the pre-1987 situation in order to understand the Commission's role. All citations in this part of this notice are to NWPA as codified as of January 1, 1987.]

Congress established Federal policy for civilian radioactive waste disposal in the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10131 et seq.). The Commission's responsibilities for radiological safety, under prior law, were recognized and confirmed—most clearly in the express provision in section 114(f) that "Nothing

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in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nucler [sic] Regulatory Commission as established in title II of the Energy Reorganization Act of 1974 (Pub. L. 93–438)." 42 U.S.C. 10134(f).

The statute provides for a licensing process that conforms closely to the preexisting framework of 10 CFR Part 60. NWPA thus requires DOE to carry out a program of site characterization, after first submitting to NRC a general plan for site characterization activities (along with certain information regarding waste form or packaging as well as a conceptual repository design). Section 113(b)(1), 42 U.S.C. 10133(b)(1). This corresponds closely to the Site Characterization Report provision of Part 60, 10 CFR 60.11(a) (1982); notably, however, the NEPA-related requirement of the regulation that DOE include site screening and selection information in its submission was omitted. (As discussed below, the site screening and selection information must be identified in a separate document—the environmental assessment—which does not require NRC review.)

As provided earlier in Part 60, an application is to be submitted in advance of construction. This is to be followed by Commission review in accordance with the laws applicable to such applications and a decision approving or disapproving the issuance of a construction authorization. Section 114 (b), (d), 42 U.S.C. 10134 (b), (d). In addition to its action on applications for construction authorization, the Commission would review, and approve or disapprove, applications for licenses to receive and possess the waste (and spent fuel) in a respository and applications for closure and decommissioning. *See* section 121(b), 42 U.S.C. 10141(b). For the corresonding provisions of NRC regulations, *see* 10 CFR 60.31 (construction authorization), 60.41 (license to receive and possess), and 60.51 (license amendment for permanent closure).[1]

[1] One difference between the language of NWPA and Part 60 is worthy of note: that the statute differentiates between an application for construction authorization and an application for a license, whereas the regulation had referred, and continues to refer, solely to an application for a license to receive and possess waste (to be filed prior to construction). The Commission considers this differentiation to lack any substantive significance. In the view to the Commission, the information it needs in order to be able to consider the issuance of a construction authorization is generally the same as will be needed prior to issuance of the license to receive and possess HLW. For this reason, the Commission regulations call for the application to be as complete as possible in the light of information that is reasonably available at the time of docketing—i.e. prior to commencement of construction. 10 CFR 60.24(a). Accordingly, the Commission intends to retain its requirement of a unitary application; it is not required to, and it does not propose to, modify its rules to provide separately for applications for construction authorization on the one hand and a license to receive waste on the other.

The Nuclear Waste Policy Act also confirmed the Commission's most important stated position with respect to compliance with NEPA. In its regulations, cited above, the Commission had construed NEPA's direction to consider reasonable alternatives as constituting a mandate to characterize at least three sites, in at least two geologic media. Although establishing new procedures, NWPA followed precisely the same substantive approach.

Site Selection Under the Nuclear Waste Policy Act

The Nuclear Waste Policy Act directed the development of two geologic repositories. This section will describe the process leading to the selection of a site for the first repository. The process for a second repository was generally the same, except that the statutory dates for particular actions were several years later.

The site selection process, as carried out by DOE, began with the identification of States with "potentially acceptable sites"—sites at which DOE, after geologic studies and field mapping, was to undertake preliminary drilling and geophysical testing for the definition of site location. DOE was required to notify States involved, and affected Indian tribes, of the identification of such sites. Section 116(a), 42 U.S.C. 10136(a). DOE identified nine potentially acceptable sites for the first repository and provided notice to the six States in which such sites were located.

Before the selection process could move any further, DOE had to issue "general guidelines for the recommendation of sites for repositories." NWPA provided that, under the guidelines, DOE would need to consider the various geologic media in which sites may be located and, to the extent practicable, to recommend sites in different geologic media. The guidelines were to specify factors that qualify or disqualify a site from development as a repository; among the factors specified by the law were certain nonradiological environmental concerns as well as considerations related to the isolation of the radionuclides in the waste. NWPA required DOE, prior to issuance of the guidelines, to consult with the Council on Environmental Quality, the Environmental Protection Agency, the Geologic Survey, and interested Governors. DOE was also required to obtain the concurrence of the Commission in the guidelines. Section 112(a), 42 U.S.C. 10132(a). Guidelines have been issued by DOE. 49 FR 47714, Dec. 6, 1984. The concurrence of the Commission in the guidelines was published in the Federal Register on July 10, 1984. 49 FR 28130.

DOE was directed, following issuance of the guidelines and consultation with the governors of affected States, to nominate at least 5 sites determined to be suitable for site characterization. Section 112(b)(1)(A), 42 U.S.C. 10132(b)(1)(A). Nomination had to be preceded by public hearings near the site, on which occasions residents of the area would be solicited with respect to issues that should be addressed by DOE in its environmental assessment and site characterization plan. Section 112(b)(2), 42 U.S.C. 10132(b)(2). Also, before nomination DOE was required to notify the States or affected Indian tribes of its intent to nominate a site and of the basis for such nomination. Section 112(b)(1)(H), 42 U.S.C. 10132(b)(1)(H). The nomination itself needed to be accompanied by an environmental assessment, which set out the basis for nomination and which discussed the probable impacts of site characterization activities. The environmental assessment, to be made public, would contain an evaluation of the suitability of the site for site characterization under the general guidelines, an evaluation of the suitability of the site for development as a repository under each guideline that does not require site characterization as a prerequisite for application, an evaluation of the effects of site characterization on the public health and safety and the environment, a comparative evaluation with other sites that have been considered, a description of the decision process by which the site was recommended, and an assessment of the regional and local impacts of locating the repository at the site. The sufficiency of an environmental assessment with respect to these matters was subject to the judicial review provisions of the statute, which generally require petitions for review to be filed within 180 days after the action involved. Section 112(b)(1) (E through G), 119; 42 U.S.C. 10132(b)(1) (E through G), 10139. On May 28, 1986, DOE released final environmental assessments on five potential repository sites (at Yucca Mountain, Nevada; Deaf Smith County, Texas; the Hanford Reservation, Washington; Richton Dome, Mississippi; and Davis Canyon, Utah). (The NRC staff had previously reviewed and commented on the draft environmental assessments for these sites.)

Subsequent to site nomination, DOE was required to recommend to the President three of the nominated sites for characterization as candidate sites. Section 112(b)(1)(B), 42 U.S.C. 10132(b)(1)(B). Upon arrival of the candidate sites, the States and affected Indian tribes were to be notified. Section 112(c), 42 U.S.C. 10132(c). On May 28, 1986, the Secretary of Energy formally recommended the sites in Nevada, Texas, and Washington, and these recommendations were approved by the President.

Before sinking shafts at an approved site, DOE is to submit to the States and affected Indian tribes—and, in this instance to the Commission as well—for their review and comment, a general plan for site characterization activities, a description of the possible form or packaging of the waste, and a conceptual repository design. The general plan is to describe the site, the proposed site characterization activities, plans for decommissioning a site that is determined to be unsuitable (and plans for investigation of significant adverse environmental impacts of site characterization), the criteria to be used to determine site suitability (i.e., the siting guidelines), and other information related to site characterization activities required by the Commission. Section 113(b), 42 U.S.C. 10133(b). Congress has declared that site characterization activities shall not require the preparation of an environmental impact statement, or other environmental review under NEPA. Section 113(d), 42 U.S.C. 10133(d). However, DOE is to hold public hearings near a site, and to receive comments of residents of the area with respect to the site characterization plan. Section 113(b)(2), 42 U.S.C. 10133(b)(2). And these comments, as well as those received on the environmental assessments, are to be considered by DOE. DOE, in consultation with the States and affected Indian tribes (but not specifically the Commission), is to conduct site characterization activities in a manner that minimizes significant adverse environmental impacts identified in the comments. Section 113(a), 42 U.S.C. 10133(a). DOE is to report periodically to the Commission and to States and affected Indian tribes on the progress of site characterization and the information developed to date. Section 113(b)(3), 42 U.S.C. 10133(b)(3).

Under NWPA, the selection process was to continue with the identification of one site for development of a repository. DOE was required to hold hearings near that site, and it was also required to complete site characterization not only for that site but for at least two other sites as well. DOE might recommend to the President that he approve the site where hearings were held. The recommendation, notice of which would be given to States and affected Indian tribes, was to be accompanied by a description of the proposed repository and waste form or packaging; a discussion of data, obtained in site characterization activities, relating to the safety of the site; a final environmental impact statement, together with comments made concerning such statement by the Commission and others; preliminary Commission comments regarding the sufficiency of data for inclusion in a license application; comments of States and affected Indian tribes, with DOE's response; and an impact report prepared by States or affected Indian tribes requesting financial or technical assistance, to mitigate impacts. Section 114(a)(1), 42 U.S.C. 10134(a)(1). Subject to a good cause exception, the EIS might only be reviewed by the courts if a petition is filed within 180 days after the date of the decision concerned (i.e., presumably, the recommendation to the President). Section 119(a)(1)(D), 42 U.S.C. 10139(a)(1)(D). The alternative sites to be considered in the EIS would consist of three sites at which characterization has been completed and DOE has made a preliminary determination of their suitability for development as repositories under the guidelines issued earlier. Section 114(f), 42 U.S.C. 10134(f).

The President might submit to Congress a recommendation of a site that had previously been recommended to him by DOE. By law, the President's recommendation would not require the preparation of an EIS or other NEPA environmental review. Section 114(a), 42 U.S.C. 10134(a). A State might disapprove a site recommended by the President, by giving notice of such action to Congress. Any such notice of disapproval is to be accompanied by a statement of the State's reasons. Section 116(b), 42 U.S.C. 10136(b). In the case of a site on a reservation, the affected Indian tribe might submit such a notice of disapproval. Section 118(a), 42 U.S.C. 10136. The President's recommendation would then become effective only if Congress passes a resolution approving the site, and such resolution thereafter becomes law. Section 115(c), 42 U.S.C. 10135(c). In considering a notice of disapproval, Congress might obtain comments of the Commission, but the provision of comments would not bind the Commission with respect to any licensing action Section 115(g), 42 U.S.C. 10135(g).

If the site designation becomes effective—by virtue of a State or Tribe's failure to disapprove within the specified times or by virtue of the Congressional override of the State's or Tribe's notice of disapproval—DOE was directed then to submit its application to the Commission. Section 114(b), 42 U.S.C. 10134(b). The Commission was to consider an application in accordance with the laws applicable thereto. Section 114(d), 42 U.S.C. 10134(d).

If DOE's application is acceptable, the site selection process would then end, subject to judicial review, with the Commission's issuance of a construction authorization.

NRC NEPA Responsibilities in Light of NWPA

The Nuclear Waste Policy Act of 1982 generally preserves the Commission's obligation to comply with NEPA. Nevertheless, the scope of the inquiry and the standards and procedures to be applied in arriving at findings in accordance with NEPA are clearly influenced by the express and implied mandates of the later statute. The import of NWPA is especially forceful in relation to site selection, but the Commission regards the statute as having a pervasive effect upon all of its NEPA responsibilities.

First, there are several express provisions of NWPA that narrow the range of alternatives that must be considered in the environmental impact statement, especially for the first repository. Thus, DOE's compliance with the procedures and requirements of the Nuclear Waste Policy Act "shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository." Even more forcefully, the 1982 Act declares that any EIS prepared with respect to the first repository shall not consider the need for a repository or nongeologic alternatives to the site; and the alternative sites to be considered are those candidate sites (three in the case of the first repository, and at least three in the case of subsequent repositories) with respect to which site characterization has been completed and the Secretary of Energy has made a preliminary determination that such sites are suitable for development of

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repositories. Section 114(f), 42 U.S.C. 10134(f).

In addition, section 114(f) directs the Commission to adopt DOE's EIS "to the extent practicable." As a minimum, this requires the Commission to give substantial weight to the findings of other bodies, where relevant to the determinations to be made by the Commission itself. This is consistent with prior practice. For example, in *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–77–8, 5 NRC 503, 527 (1977), the Commission observed that a competent and responsible state authority's approval of the environmental acceptability of a site or a project after extensive and thorough and environmentally sensitive hearings is properly entitled to such substantial weight in the conduct of its own NEPA analysis. Similarly, to the extent that Congress has enacted legislation approving a specific project, an agency's obligation to discuss alternatives in its EIS is relatively narrow; although the "rule of reason" applies, such action does have a bearing on what is considered a reasonable alternative and a reasonable discussion. *Izaak Walton League* v. *Marsh*, 655 F.2d 346, 372 (D.C. Cir. 1981), citing *Sierra Club* v. *Adams*, 578 F.2d 389, 396 (D.C. Cir. 1978). The concept of adoption, as it appears in NWPA, is examined more fully below.

The Nuclear Waste Policy Act provides that adoption of the EIS shall be deemed to satisfy the Commission's NEPA responsibilities "and no further consideration shall be required." While the purpose of this provision is not entirely clear, it appears to counsel against the wide-ranging independent examination of environmental concerns that is customary in NRC licensing proceedings.

The final limitation on the Commission's consideration of NEPA issues stems from the judicial review provisions of the Nuclear Waste Policy Act. Section 119, 42 U.S.C. 10139 provides for the United States courts of appeals to have original and exclusive jurisdiction over any civil action for review of any environmental impact statement prepared with respect to a geologic repository and imposes a deadline of 180 days (with certain exceptions) for commencing such an action. Thus, a review of the adequacy of DOE's environmental impact statement must be sought, if at all, within 180 days after the Secretary has made a site recommendation to the President. As a minimum, any judicial findings with respect to the adequacy of the EIS prepared by DOE would be entitled to substantial weight in the Commission's deliberations. But this statement is incomplete. As explained below, if the EIS prepared by DOE has been adjudged to be adequate for purposes of the site recommendation made by the Department, further litigation of the issues in NRC adjudications would be precluded under the doctrine of collateral estoppel. *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3) ALAB–378, 5 NRC 557, 561 (1977). And, if an issue bearing upon the adequacy of that EIS could have been raised, but was not raised in a timely manner, the deadline for commencing action set out in section 119 operates to bar a challenge at a later date in NRC licensing proceedings.

In the light of the policies and procedures established by the Nuclear Waste Policy Act, the Commission regards the scope of its NEPA review to be narrowly constrained, with those issues that were ripe for consideration after issuance of DOE's EIS being excluded from independent examination, for purposes of NEPA, in the course of NRC licensing proceedings. It will be useful to review the legislative history of the Act and certain regulations of the Council on Environmental Quality, and to discuss applicable principles of repose, in order to explain the basis for the Commission's views.

Legislative History

The Nuclear Waste Policy Act of 1982 reflects a judgment that the Commission is to concern itself primarily with issues of health and safety rather than the other kinds of issues that are ordinarily considered in the context of reviews under NEPA. This judgment is especially clear in connection with the screening and selection of repository sites. The *only* provisions for NRC involvement in the site screening and selection process concern the issuance of the general guidelines for the recommendation of sites for repositories (in which the Commission is required to concur), the Department's plans for site characterization (which must be submitted to the Commission for review and comment), and the preparation of preliminary comments by the Commission to accompany the Secretary's recommendation of a site concerning the extent to which DOE's site characterization analysis and waste form proposal seem to be sufficient for inclusion in a license application. With the possible exception of the guidelines, the Commission's role is defined so as to address the safety issues (which are the subject of DOE's site characterization program and waste form proposal) that must be resolved in licensing proceedings. Where Congress sets up a detailed mechanism for consideration of particular issues by an agency, and both judicial and legislative review of that agency's decisions, as it has here done with respect to the NEPA actions of DOE, it may be inferred that it did not intend to rely upon this Commission to challenge DOE's possible "disregard of the law" after all these procedures have run their course. *Cf. Block v. Community Nutrition Institute*, 467 U.S. 340, 351, 81 L.Ed.2d 270, 279 (1984).

A consideration of the legislative history lends further support to this analysis. Although there were several bills dealing with nuclear waste issues before the 97th Congress, the provisions dealing with site selection issues can be traced directly to H.R. 3809, as reported out by the Committee on Interior and Insular Affairs. H.R. Rep. 97–491, Part 1, 97th Cong., 2d Sess. (1982). The bill included sections—similar to those ultimately enacted—on guidelines, site characterization, site approval and construction authorization, review of repository site selection by Congress, participation of States and Indian tribes, etc. The provision relating to the site characterization plan to be prepared by DOE was drawn directly from the corresponding NRC regulation. (*Compare* H.R. 3809, section 113(b)(1)(B) *with* 10 CFR 60.11(a) (1982). All the matters related to the ability of the site to host a repository and isolate radioactive waste were carried over from the regulation to the bill. But matters pertaining to the screening and selection of sites, though set out in the regulation, were omitted in the bill. These include the requirements that DOE discuss the decision process used by DOE in selecting sites for characterization and identify alternative media and sites at which DOE intended to conduct size characterization. Under the proposed legislation, this information would no longer come to the Commission for review. H.R. 3809 also included the provsion, ultimately enacted, that the Commission would be required to adopt the EIS prepared by the Secretary "to the extent practicable." The limited nature of the Commission's role was emphasized by the explanatory language of the report to the effect that the Commission would be required so to adopt the EIS "to the *maximum* extent practicable" (emphasis added). Moreover, the EIS "is intended to suffice regarding the issues addressed and not be duplicated by the Commission unless the Commission determines, in its discretion, that significant and substantial new information or new considerations render the Secretary's statement inadequate as a basis for the Commission's determinations." H.R. Rep. 97–491, Part 1, 53–54.

There was no specific provision in H.R. 3809 requiring DOE to carry out and document a comparative evaluation of sites considered for site characterization. Later in the year, however, such a provision was incorporated into the bill (now H.R. 6598), as reported by the Committee on Energy and Commerce. H.R. Rep. 97–785, Part 1, 97th Cong., 2d Sess. (1982). Among other things the bill (in section 113(b)(1)(A)(v)) would have required DOE to prepare, prior to site characterization, an environmental assessment which would include a description of any other sites considered for site characterization. This information would have been submitted to the Commission for its review and comment. The purpose of providing reports at this stage was "to assure that adequate information is available to the Commission regarding the Secretary's proposed activities." *Id.* at 64. H.R. 6598 retained the provision for NRC adoption of DOE's environmental impact statement. The report explained, *id.* at 69:

> This provision is intended to avoid the duplication caused as a result of the applicability of NEPA to the actions of both the Secretary and the Commission regarding the preparation of an environmental impact statement. While the Commission is encouraged to adopt the Secretary's statement, or parts of such statement, the independent responsibilities of the Commission are specifically recognized. To the extent the Commission determines it is not practicable to adopt all or part of the Secretary's environmental impact statement, the Commission's responsibilities under NEPA remain in force, thus requiring the preparation of a supplemental environmental impact statement.

Floor consideration in the House was addressed to H.R. 7187, as a substitute for both H.R. 3809 and H.R. 6598. The EIS-adoption language appears once again. However, the provisions for an environmental assessment were modified in two important ways. First, DOE would not explicitly be required to make "a reasonable comparative evaluation" of the sites that had been considered for site characterization. Section 112(b)(1)(A). Second, under H.R. 7187 the environmental assessment would precede, rather than follow, the President's approval of sites to be characterized, and it would no longer be submitted to the Commission for review and comment. *Ibid.*

There was no committee report on H.R. 7187, but a summary of its provisions noted:

> In issuing the construction permit and license the NRC will rely on the Environmental Impact Statement prepared by the Secretary of Energy in recommending the repository site. The Commission will have to supplement any environmental impact statement with considerations of the public health and safety required under the Atomic Energy Act of 1954.

128 Cong.Rec. H8163 (daily ed. Sept. 30, 1982) (statement of Rep. Udall). Rep. Moorhead also characterized the Commission's role in terms of its health and safety responsibilities:

> * * * an extensive environmental assessment must be developed by the Secretary of Energy in consultation with the States. There will be a full and complete review of the planned site under the National Environmental Policy Act, culminating in a comprehensive environmental impact statement. This as well as all other final agency actions—will be open to full judicial review. The Nuclear Regulatory Commission will have oversight authority over the development of this repository under its independent public health and safety standards.

Id. at H8170. Congressman Ottinger, too, differentiated in passing between "full environmental review" on the one hand and "full NRC licensing procedures to assure that the storage is safe" on the other. 128 Cong.Rec. H8527 (daily ed. Nov. 29, 1982).

The legislative history in the Senate is less illuminating, inasmuch as its bill, S. 1662, differs substantially from the final legislation. (S. 1662, as reported from the Committee on Energy and Natural Resources, appears at 128 Cong.Rec. S4139 ff., daily ed. Apr. 28, 1982.) Under S. 1662, the Commission would have a more substantive role with respect to implementation of NEPA. There would be no direction to the Commission to adopt the DOE environmental impact statement. Rather, under Section 405, the Commission would be required to consider the application in accordance with the laws applicable thereto; as an exception, however, the bill provided that the Commission need only consider as alternate sites for the proposed repository those sites which have been approved by the President for characterization. Senator Simpson, sponsor of the legislation, explained that the NRC licensing process would provide opportunities for "a detailed evaluation of the health and safety *and environmental* aspects of the proposed project" (emphasis added). 128 Cong.Rec. S4302 (daily ed. Apr. 29, 1982).

In December 1982, the Senate turned to consider legislation following the pertinent language of the bill which had by that time been passed by the House of Representatives. Senator Mitchell declared that the national nuclear waste policy should "preserve the integrity and full scope of the NRC licensing review and environmental analysis under the National Environmental Policy Act," 128 Cong.Rec. S15069 (daily ed. Dec. 20, 1982), but the broad scope of his remarks leaves it of doubtful import in the context of geologic repositories alone. Of more significance, perhaps, is the colloquy with respect to an amendment proposed by Senator Levin, and passed, to include in section 114(f) the language that nothing in the Act should be construed to amend or otherwise detract from the Commission's licensing requirements. Sen. Levin stated his understanding that the Act was not intended to restrict, or amend, or modify NRC requirments for the repository in any way "including, but not limited to, findings of need." Senator McClure, the floor manager of the bill, replied that Sen. Levin was correct and added that "that is my understanding also." Since findings of need have generally been regarded as NEPA issues, this could be taken to mean that the Commission should discharge its NEPA requirements in the same way as it would in the absence of the review procedures prescribed by the Nuclear Waste Policy Act. This cannot be the case, however, in light of the other provisions of the Act, including those in section 114(f) itself. It seems clear that the law was not intended to modify any of the Commission's licensing requirements under the Atomic Energy Act. The Commission construes the clause in question to be limited to those requirements; it does not pertain to the provisions of NEPA. The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history. *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 311, 60 L.Ed.2d 208, 231 (1979), especially where as here their significance is not apparent without further study. Whatever the understanding of Sen. Levin may have been, the Nuclear Waste Policy Act manifestly does affect the manner in which the NEPA responsibilities of the Commission must be carried out, and the rules proposed below indicate the approach which we intend to take.

Although the views of Congress are not entirely unambiguous, the overall tenor is that the Commission's role should focus upon radiological safety, with an independent review of NEPA factors only where warranted in the light of "significant and substantial new information or new consideration."

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"Adoption" and the Nuclear Waste Policy Act

The Council on Environmental Quality has established procedures to guide agencies that are engaged in actions that have related environmental impacts. These procedures allow for several approaches to NEPA compliance, including one approach in which the environmental impact statement prepared by one agency is "adopted" by another agency. 40 CFR 1506.3. In appropriate circumstances, an EIS prepared by another agency may be adopted, in accordance with CEQ regulations, in whole or part by NRC. 10 CFR Part 51, Appendix A to subpart ¶ 1(b). An examination of those regulations will illuminate the direction to the Commission, in section 114(f) of the Waste Policy Act, to "adopt" the DOE EIS to the extent practicable. In the absence of irreconcilable conflict with other provisions of NWPA, those regulations should be followed.

The CEQ regulations provide that where more than one agency is involved in the same action, either one agency will be designated a lead agency to prepare an EIS, or two (or more) agencies will be designated as joint lead agencies. Any agency which has jurisdiction by law with respect to the action shall be a cooperating agency, if so requested by the lead agency. An agency—even if it has jurisdiction—need not serve as a cooperating agency, however, unless the lead agency has requested it to do so. Whether or not it is a cooperating agency, a Federal agency with jurisdiction by law or special expertise with respect to any environmental impact involved has a duty to comment on a lead agency's statement within the commenting agency's jurisdiction, expertise, or authority. 40 CFR 1501.5, 1501.6, 1503.2.

In the context of NWPA, it is apparent that the Department of Energy would be the lead agency and that the Commission would not be a lead agency. The Commission could either be a cooperating agency, with the particular responsibilities set out in § 1501.6 of the CEQ regulations, or a commenting agency. The NWPA points to the Commission's assuming the latter role. A cooperating agency is required to participate in the NEPA process at the earliest possible time, to participate in the scoping process leading to preparation of the environmental impact statement, and to assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the EIS concerning which the cooperating agency has special expertise. The framework of NWPA, as rehearsed above, contemplates no such involvement by the Commission. It would be far more faithful to the statutory scheme for this agency merely to provide its comments, from time to time, with respect to environmental impacts failling within its jurisdiction or areas of special expertise. This is entirely consistent with the statutory provision that the Secretary of Energy's recommendation to the President of a site for repository development shall be accompanied by a final EIS, together with comments made by the Commission concerning such EIS. Section 114(a)(1)(D), 42 U.S.C. 10134(a)(1)(D).

As a commenting agency, the Commission would be authorized to adopt the EIS prepared by DOE provided that the statement meets the standards for an adequate statement under the CEQ regulations. The pendency or outcome of litigation with respect to the DOE EIS is one factor to be considered. This is apparent from CEQ's direction to the adopting agency to specify, where applicable, that "the statement's adequacy is the subject of a judicial action which is not final." Since the actions covered by the DOE EIS and the Commission's action are substantially the same—namely, development of a geologic repository of the proposed design at the proposed site—the Commission would not be required to recirculate the DOE EIS except as a final statement. 40 CFR 1506.3.

The Commission can follow the CEQ procedures for a commenting agency, including the procedures for adoption of DOE's EIS. But the IES can only be adopted if it meets the standards for an "adequate statement." The approach being taken by the Commission, in these proposed rules, is that NWPA and the principles of res judicata obviate the need for an entirely independent adjudication of the adequacy of the EIS by this agency. As this might be seen as a departure from established practices, the differences merit some further discussion.

It is well established that the Commission has a responsiblity to consider enviromental issues just as it considers other matters within its mandate. Moreover, the duty to consider environmental issues extends through all stages of the Commission's review processes, including proceedings before hearing boards. And the Commission may not simply defer totally to the standards set by other regulatory authorities with respect to enviromental matters within their jurisdiction; to do so would be an abdication of the Commission's NEPA authority. *Clavert Cliffs' Coordinating Committee* v. *U.S. Atomic Energy Commission*, 449 F.2d 1109 (D.C. Cir. 1971). There would be an abdication because NEPA mandates a case-by-case balancing judgment—a judgment that is entirely different from the piecemeal certification by another agency that its own environmental standards are met. The only agency in a position to make the kind of balancing judgment contemplated by NEPA is the agency with overall responsibility for the proposed federal action. *Id.* at 1123. In *Calvert Cliffs*, only the Atomic Energy Commission could make the required decision. In the case of a geologic repository, the Department of Energy is required to make precisely the kind of analysis that the court there deemed to be essential. For the Commission to adopt the DOE EIS without independent analysis, after there had been opportunity for judicial review, therefore, would be entirely consistent with the reasoning of the earlier case. Similarly, the overlap between DOE and Commission actions distinguishes the present situation from the other NEPA decisions which required an independent balancing judgment by each of the agencies involved in a project. *See Silentman* v. *Federal Power Commission*, 566 F.2d 237, 240 (D.C. Cir. 1977); *Henry* v. *Federal Power Commission*, 513 F.2d 395, 407 (D.C. Cir. 1975) (Bureau of Reclamation control of relevant water rights for coal gasification plant; FPC regulation of gas transportation).

The similarity of DOE and Commission actions, from the standpoint of their respective environmental impacts, has not in the past been considered, by itself, to be sufficient to persuade the Commission to defer to DOE's balancing judgments. The fact that the applicant for a license to build a nuclear power plant is another Federal agency has not excused NRC from carrying out its usual NEPA obligations, even though both agencies were considering the same impacts associated with construction and operation of the facility. *Tennessee Valley Authority* (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-506, 8 NRC 533, 545 (1978). But in prior practice there was no prior judicial determination that the other agency's EIS was adequate and there was no special statutory scheme for consideration of environmental impacts by interested parties and Congress. It is the judgment of the Commission that these unique considerations warrant, and indeed require, adoption of an EIS that is adequate to meet the obligations of DOE.

To repeat: the Commission must consider the environmental impacts resulting from the construction and development of geologic repository for high-level radioactive waste. All that is in question is the basis for the Commission's consideration. The factors discussed above make it entirely reasonable for the Commission not to reopen issues that have been, or could previously have been, brought before the courts for resolution. The Commission does not derogate the importance of NEPA issues. Under the Nuclear Waste Policy Act, they are extremely important—and in fact they are central to many of the elaborate procedural provisions incorporated in that legislation. It is to those provisions that parties concerned must turn. But once an application is submitted to the Commission, the primary question to be addressed is no longer one of environmental balancing, but rather the critical issue of radiological safety. That is an issue that is entrusted solely to the Commission, and the Commission can discharge its duties most effectively if it makes that the primary basis for decision.

The Preclusive Effect of Section 119

The approach being proposed by the Commission reflects the policies of respose associated with the rules of res judicata. Before examining those rules in detail, it might be helpful to go over, once again, salient features of the NWPA site selection and approval procedures.

The NWPA procedures really reflect two different kinds of review. The first requires judgments regarding the radiological safety of HLW disposal—matters to adjudicated solely by the Commission, taking into account the standards issued by the Environmental Protection Agency. The Act clearly recognizes that while the Commission's preliminary views are to be solicited and considered on several occasions, a final judgment of radiological safety can only be made at the conclusion of the adjudicatory licensing process. The Commission is expected and required to deny an application—long after other procedures had run their course—if it is unable to find, with reasonable assurance, that the relevant safety criteria have been met. The responsibility of consideration of the radiological consequences of a proposed action is advisedly vested in the Commission, which can bring its experience and expertise to the task, in accordance with the Atomic Energy Act.

The second kind of review involves the weighing of the range of environmental concerns that are addressed by NEPA. This review focuses heavily on the comparison of alternatives, including alternative sites, rather than with the narrower task of evaluating a specific site. Moreover, the relevant concerns under NEPA are multitudinous, as opposed to the single issue of radiological safety that is the primary concern of the Atomic Energy Act. While the Commission does have experience and expertise in carrying out a review under NEPA, Congress in 1982 elected not to rely upon the Commission in this regard. It structured the process in such a way that the evaluation of alternatives—in particular, alternative sites—would have been attended to before the Commission was required to act. This was accomplished largely through the State and Tribal participation provisions, including the requirement of Congressional action to proceed in the face of a notice of disapproval. And, additionally, it was accomplished through requiring early judicial review.

The consequence of this approach is that the Commission would carry out a licensing review to assure that a repository could be operated safely—but that it would, in general, treat as settled those other issues arising under NEPA.

The Commission's understanding, based in particular upon its reading of section 119, merits a fuller statement of the legal doctrines that are collectively referred to as the rules of *res judicata*. One of these doctrines is the rule of "claim preclusion"—that a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so. The related rule of "issue preclusion" (or collateral estoppel) reflects the principle that one who has actually litigated an issue should not be allowed to relitigate it. The effect, and value, of these rules is that they compel repose, so that the indefinite continuation of a dispute can be avoided. Judgments must in general be accorded finality despite flaws in the processes leading to decision and the unavoidable possibility that the results in some instances were wrong. Only when there is a substantial possibility of injustice might relitigation be warranted. *Restatement (Second) of Judgments* 2–12.

The clearest application of these principles would occur where there has actually been a timely challenge to the adequacy of DOE's environmental statement. A final judgment in such litigation would be conclusive, in any subsequent action between the parties, as to any issue of law or fact that had actually been litigated, *id.*, section 27. Moreover, the party who had challenged the EIS would thereafter be precluded from litigating such issues with another person as well, *id.*, section 29.

The judgment in an action, under section 119(a)(1)(D), for review of DOE's environmental impact statement will therefore preclude the petitioner from later litigating the same issues with NRC (even assuming that NRC is a different person, for these purposes, from its sister agency, DOE). The dimensions of the issue that were determined by the judgment may be a matter of debate. But if the litigant has had an adequate day in court, a desire to prevent repetitious litigation of what is essentially the same dispute justifies preclusion of the issue's being raised anew. While the action being taken by DOE is the recommendation to the President of a site for repository development and the action being taken by the Commission is the issuance of a construction authorization for a repository, the relevant considerations in the two situations are identical. Both agencies will be addressing the development of a repository at a specific location and both will require an environmental impact statement that describes the pertinent environmental impacts and considers appropriate alternatives. If the DOE EIS is found to be adequate to meet the requirements of NEPA, then it would ordinarily be proper to preclude a challenge to the "adequacy" of the identical EIS, if relied upon by the Commission. See *id.*, section 27.

The preclusive effect of a prior judgment sustaining DOE's environmental impact statement would not necessarily be limited to the petitioner of record in that proceeding. It can be argued that those who were represented by that petitioner would also be barred from litigating the issue in a subsequent action.[8]

Section 119 specifically requires that a civil action for review of an environmental impact statement with respect to any action under Subtitle A (pertaining to geologic repositories) be

[8] For example, if the EIS had been challenged by the public officials of the State in which a respository was proposed to be located, members of the public who had been represented by those officials might be precluded, to the same extent, from raising the issues anew. *Restatement (Second) of Judgments* § 41, comment d. The basis for this argument would be that, under the doctrine of *parens patriae*, a State is deemed to represent all of its citizens when the State is a party in a suit involving a matter of sovereign interest. See, *e.g.*, *Environmental Defense Fund, Inc.* v. *Higginson*,, 631 F.2d 738 (D.C. Cir. 1979); *U.S.* v. *Olin Corp.*, 606 F. Supp. 1301 (N.D. Ala. 1985).

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brought within a period of 180 days after the date of the action (or after obtaining actual or constructive knowledge thereof). Thus, a failure to meet the deadline for challenging the DOE environmental impact statement would foreclose any subsequent litigation with respect to the action to which that EIS pertains. The objective appears to have been to identify issues promptly and to seek to resolve them in a timely manner. Where there is litigation in accordance with this provision, the principles described above would preclude further judicial examination of the same issues as they relate to the Commission's action. But what would happen if for some reason the adequacy of the DOE environmental impact statement had not been challenged judicially before it was time for the Commission to act—or if it had been challenged, the action had been brought by other parties? If the Commission were to adopt the DOE environmental impact statement, would the merits of the decision to adopt be subject to further review? The Commission suggests that the courts should deny a petition under these circumstances as being untimely. There would be, in this case, only one environment impact statement; and, in accordance with section 119, there would be but one opportunity for review. To conclude otherwise would be to frustrate the objective of seeking an early resolution of the environmental issues that might be involved. *See Eagle-Picher Industries v. U.S. Environmental Protection Agency*, 759 F.2d 905, 911–919 (D.C. Cir. 1985). *See also National Wildlife Federation v. Gorsuch*, 744 F.2d 963 (3rd Cir. 1984), in which the National Wildlife Federation, having been aware of prior litigation and having elected not to intevene, was barred from later raising the issues of concern to it.

The Nuclear Waste Policy Amendments Act of 1987

The Nuclear Waste Policy Amendments Act of 1987 (Amendments Act), Title V, Subtitle A, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, redirected the nuclear waste program. Under section 5011 of that law site characterization for the first repository is to be carried out exclusively at the Yucca Mountain site in the State of Nevada, with site specific activities at other candidate sites to be phased out promptly. NWPA as amended, section 160(a), 42 U.S.C. 10172. The provision of NWPA that contemplated a second repository are removed, and DOE is expressly prohibited from conducting site specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities. NWPA as amended, section 161(a), 42 U.S.C. 10172a.

Conforming to this redirection of the waste program, the law revises the provisions of Section 114 of NWPA that deal with the application of NEPA to the licensing process. The langauge of section 114(a)(1)(D) describing DOE's final environmental impact statement, which is to be submitted to the President with DOE's recommendatition of approval for development of a respository, is revised so that DOE "shall not be required * * * to consider the need for a repository, the alternatives to geological disposal, *or alternative sites to the Yucca Mountain site"*, NWPA as amended, section 160(h), 42 U.S.C. 10134 (emphasis supplied). Section 114(f), 42 U.S.C. 10134(f), is revised in the same way, so that DOE "need not consider alternative sites to the Yucca Mountain site;" and, moreover, the Commission in its NEPA review is similarly advised that it need not consider such alternative sites. NWPA as amended, section 160(i), 42 U.S.C. 10134. (In the case of a site negotiated under Title IV of NWPA, added by Section 5041 of Pub L. 100–203, at a site other than Yucca Mountain, consideration would be given to Yucca Mountain as an alternate site. NWPA as amended, section 407, 42 U.S.C. 10247).

The merits of multiple site characterization were addressed in the course of the Congressional debate that immediately preceded passage of the Amendments Act. Senator Burdick, in particular, noted that full characterization of three sites (according to the original NWPA) was based, in part, on the important NEPA principle of fully considering reasonable alternatives when making important decisions that will significantly affect the human environment. In discussing the different approach (in the conference report on the pending budget reconcilation, legislation) that was soon to be adopted, he stated:

> Other than the elimination of the consideration of three alternate sites for the repository, which was just outlined, is a major and dangerous departure from current law, the [conference] substitute does not affect the application of NEPA to the repository program. Congressional Record, S 18674 (daily ed., Dec. 21, 1987).

The conference report expresses the same point. It declares:

> The provisions of the Nuclear Waste Policy Act pertaining to the application of the National Environmental Policy Act (NEPA) are preserved except that the existing requirement that the environmental impact statement accompanying DOE's repository siting recommendation consider alternative sites is eliminated. NEPA applies to the redirected program under this Act in the same way as NEPA applied to the Nuclear Waste Policy Act of 1982. The conferees do not intend that enactment of the conference substitute result in any change in NEPA application except as expressly provided. Omnibus Budget Reconciliation Act of 1987, Conference Report to Accompany H.R. 3545, 100th Cong., 1st Sess. H.R. Rept. 100–495, 776.

The Commission has explained above that, under NWPA as originally enacted, it should make an independent review of NEPA factor only when warranted in the light of "significant and substantial new information or new considerations." Further, it was the duty of the Commission, under that law, to adopt an EIS that is adequate to meet the obligations of DOE. Since the Amendments Act was not intended to affect the implementation of NEPA with respect to the repository program—except as to the consideration of alternative sites—the Commission will follow the same procedures, discussed below, that it would have had the Amendments Act not been passed.

The Proposed Rules

This rulemaking proceeding is primarily concerned with amendments to 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." The proceeding also encompasses conforming amendments to other parts of the Commission's regulations.

Subpart A of 10 CFR Part 51 sets out NRC regulations for implementing section 102(2) of NEPA. The principal matters addressed by Subpart A are the following: (1) Identification of licensing and regulatory actions requiring the preparation of enviornmental impact statements or environmental assessments; (2) requirements for the submission of environmental reports and information by license applicants and petitioners for rulemaking; (3) contents and distribution of draft and final environmental impact statements; (4) NEPA procedure and administrative action; and (5) public notice of and access to enviornmental documents. Since each of these topics is treated, expressly or implicitly, by the Nuclear Waste Policy Act, as amended, the Commission proposes to develop as part of Subpart A certain new rules, discussed below, that will apply to geologic repositories and that will take into account the provisions of the Act.[3]

[3] The Nuclear Waste Policy Act applies only with respect to geologic repositories that are used, at

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Actions Requiring Preparation of Environmental Document

Under Section 121 of the Nuclear Waste Policy Act, 42 U.S.C. 10141, the Commission's promulgation of technical requirements and criteria in 10 CFR Part 60 does not require the preparation of an environmental impact statement or other environmental review under section 102(2) of NEPA. The proposed rules incorporate this provision.[4] Under existing 10 CFR Part 51, certain procedural actions pertaining to the licensing of geologic repositories have been determined to be categorically excluded from environmental assessment. See references to 10 CFR Part 60 in 10 CFR 51.22(c). No change in those provisions is needed.

Under 10 CFR 51.20(a), an environmental impact statement is required if the proposed action is a major Federal action significantly affecting the quality of the human environment or if the Commission, in the exercise of its discretion, determines that the proposed action should be covered by such an EIS. Section 114(f) of the Nuclear Waste Policy Act, 42 U.S.C. 10134(f), reflects a Congressional understanding, with which the Commission is in full accord, that the issuance of a construction authorization and license for a geologic repository will require an environmental impact statement. This has been incorporated into the proposed rules. Other licensing actions, unless covered by existing categorical exclusions (see paragraphs (10), (11), and (12) of 10 CFR 51.22(c)), would require an environmental assessment under 10 CFR 51.21.

Ordinarily, a determination that an environmental impact statement (or supplement) will be prepared triggers public notice and the initiation of a scoping process. Where another agency prepares the EIS, however, it has the responsibility to carry out these functions. We are proposing to clarify this point by limiting the application of these procedures to situations in which the appropriate NRC staff director determines that an environmental impact statement will be prepared "by NRC." See the amendment to § 51.28(a).

Submission of Environmental Information

The Commission's regulations encourage prospective applicants or petitioners for rulemaking to confer with NRC staff before submitting environmental information. 10 CFR 51.40. The regulations also provide that the Commission may require such persons to submit information which may be useful in aiding the Commission in complying with section 102(2) of NEPA. 10 CFR 51.41. These general provisions are compatible with the requirements of the Nuclear Waste Policy Act.

The more specific regulations dealing with the submission of environmental reports are inappropriate in the context of the geologic repository program. Insead of providing for the submission of an environmental report, the Nuclear Waste Policy Act requires that NRC consider, and if practicable adopt, a final environmental impact *statement* prepared by DOE at the time of its recommendation to the President for the development of a repository at a particular site. Section 114, 42 U.S.C. 10134. The recommendation for development of a repository includes, as a minimum, the obtaining of a license from NRC to receive and possess wastes. The environmental impact statement must therefore address not only the environmental effects of construction but those of repository performance as well. This is reflected in the statutory direction to the Commission to adopt the environmental impact statement, to the exent practicable, "in connection with the issuance by the Commission of a construction authorization and license for such repository."

DOE will therefore be required to submit an environmental impact statement instead of an environmental report. The Commission may nevertheless be unable to adopt that statement, with respect either to the construction authorization or the license, unless it has been supplemented to take into account significant new information such as that developed during the course of construction as part of the performance confirmation program or significant changes in the plans of DOE since the time of its site recommendation to the President. *See* 40 CFR 1502.9(c)(1) (CEQ regulations). Accordingly, the proposed rules provide for the timely submission by DOE of supplemental environmental impact statements as needed.

The information to be contained in an environmental impact statement is set out in section 102(2) of NEPA itself, and the submission of such information is required by the proposed rules. The scope of alternatives to be considered in the EIS is restricted, however, to take into account the limitations in section 114(f) of the Nuclear Waste Policy Act, 42 U.S.C. 10134(f), with reapect to the need for a repository, the time of the initial availability of a repository, alternatives to the isolation of waste in a repository, and the identification of alternate sites. Moreover, the proposed rule requires DOE to inform the Commission of the extent to which, pursuant to section 119, 42 U.S.C. 10139, the environmental impact statement may have been found to be adequate or inadequate and the extent to which, under that section, issues related to the adequacy of the environmental impact statement may remain subject to judicial review.

Because one of the alternatives available to the Commission is denial of the application, the environmental impacts of such denial need to be addressed. Even though denial of an application involves action by the Commission, it is proper for the environmental impacts to be addressed by DOE, since the lead agency is required by CEQ regulations to include reasonable alternatives not within its jurisdiction. 40 CFR 1502.14(c).

The Commission has not included any specific requirements for the submission of environmental information by petitioners for rulemaking. The only rules likely to have significant environmental effects would be technical requirements and criteria to be used in licensing; as already noted, such rules would be exempt from the requirement of environmental review under NEPA. Section 121(c), 42 U.S.C. 10141(c). In a particular case, however, environmental information could be required, if needed to comply with law, pursuant to the general language of 10 CFR 51.41.

Preparation of Environmental Impact Statements

The NRC regulations include a group of sections that prescribe a procedure for preparation and distribution by the NRC of draft and final environmental impact statements. With respect to materials licenses, these requirements apply to certain specified categories of NRC actions other than the issuance of a construction authorization or license to receive and possess high-level radioactive waste at a geologic repository. 10 CFR 51.80 (citing

least in part, for the disposal of waste from civilian nuclear waste activities. Section 8, 42 U.S.C. 10108. Under the Act, however, high-level radioactive waste resulting from atomic energy defense activities is to be disposed of in such repositories, along with civilian wastes, unless the President finds that a separate facility is required. The President has determined that such a separate facility is not needed. In the light of those developments, the Commission believes that it is sufficient to limit the scope of this action to those facilities that may be situated and constructed in accordance with the Nuclear Waste Policy Act.

[4] See § 51.22(d). Conforming amendments would be made in § 51.21 and in the caption of § 51.22.

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§ 51.20(b)(7)–(12)). Because NRC, under the Nuclear Waste Policy Act, will in general have no need to prepare its own environmental impact statement, the proposed amendments would provide (in accordance with CEQ regulations) for the distribution of the EIS, if and as adopted by the Commission, only as a final statement.

NEPA Procedure and Administrative Action

Although the procedures established in Part 51 are designed for the case in which NRC prepares its own environmental impact statement, they can equally well be applied in the situation where the EIS is prepared in the first instance by a license applicant. Thus, no action will be taken by the Commission until necessary documents have been filed—in this case by DOE rather than NRC—with the Environmental Protection Agency. See 10 CFR 51.100. NRC will not take action concerning the proposal which would have an adverse environmental impact until a record of decision is issued. See 10 CFR 51.101. A record of decision will be prepared as part of the initial or final decision on issues adjudicated in formal hearings. See 10 CFR 51.102. The record of decision will state the decision, including alternatives considered and the relevant factors upon which preferences among the alternatives are based. See 10 CFR 51.103. In the case of the adoption of a EIS prepared by DOE concerning a geologic repository, the relevant factors would include the special provisions of the Nuclear Waste Policy Act.

In addition to these rules of general application, Part 51 includes specific procedural provisions for different categories of licensing actions. A new § 51.109 would be added to describe the NEPA procedure to be followed with respect to licenses issued under 10 CFR Part 60.

The basic premise of § 51.109 is that it is practicable to adopt the EIS prepared by DOE if that statement is adequate to meet the requirements of section 102(2)(C) of NEPA. The focus of the procedure, therefore, is the presiding officer's determination of the extent to which it is practicable to adopt the DOE EIS. To the extent adoption is practicable, the issues would be excluded from independent NRC inquiry. The adoption of the statement does not necessarily mean that NRC would independently have arrived at the same conclusions on matters of fact or policy. And, of course, the adoption of the EIS would have no probative weight with respect to any safety findings that the Commission must make under 10 CFR Part 60.

It would still be proper to consider NEPA contentions with respect to significant matters that arose after issuance of the EIS. But note, even in this regard, that if there are significant new circumstances or information relevant to environmental concerns and bearing on the action proposed by DOE or its impacts, DOE would be obliged to prepare a supplemental EIS that would be subject to adoption by the Commission under the same standards as the original document. Challenges to DOE's supplement should be adjudicated in the courts of appeals, pursuant to section 119 of NWPA, in the same manner as challenges to the original EIS.

The Commission fully expects that supplementation of the EIS by DOE will resolve any new circumstances or information that might arise, and that supplementation by the NRC will not be necessary. Nevertheless, in theory there might be situations when NRC must prepare a supplemental environmental impact statement. Under the proposed regulations, such action might be initiated by the staff before the hearing or might be found to be necessary in light of the record of the proceedings after the hearing. The former case is addressed in § 51.26(c), the latter (implicitly) in § 51.109(e). In each situation, though, the standards for adoption set out in § 51.109(c) would be observed.

The proposed rules provide a structured mechanism to address NEPA concerns in a licensing hearing. This is the presentation of the staff position with respect to the practicability of adoption, which appears in § 51.109(a)(1). As noted above, it is expected that DOE would, where necessary, supplement its EIS. Accordingly, the staff position is likely to be that it is practicable for the Commission to adopt the DOE EIS, as it may have been supplemented by DOE and as filed with the Commission. Nevertheless, in some situations, the staff position could be that it is not practicable to adopt the DOE EIS, as it may have been supplemented, in which case an NRC EIS would be required. In that event, the staf is under an obligation to have prepared the necessary final EIS so as to be able to present its position on matters within the scope of NEPA. Whatever the staff position may be, any other party may seek to have the issue regarding practicability of adoption resolved by the presiding officer, but any contentions to that effect must set forth the basis of the claim under the criteria set out in the proposed rule. Moreover, it is contemplated that the procedures that would be used by the presiding officer to resolve disputes regarding adoption would resemble those employed to rule on motions to reopen records. See 10 CFR 2.734.

Several situations in which adoption of DOE's EIS is impracticable could conceivably arise. For example, if the Commission were to impose license conditions requiring DOE to take actions other than those which DOE had proposed, the Commission would need to consider the environmental impacts of such actions in accordance with NEPA. However, the Commission does not anticipate imposition of license conditions with significant environmental impacts. Under NWPA, DOE has the primary responsibility for consideration of environmental matters; and if significant changes from DOE's original proposal are needed, the Commission believes that DOE should amend its license application and supplement its EIS, precluding any need for NRC supplementation. Should DOE fail to do so, the Commission might deny DOE's application rather than impose license conditions requiring NRC supplementation of DOE's EIS. In theory, though, it would still be possible for NRC to prepare its own EIS. The scope of the review would be limited, however, to the actions being required by the Commission. It is not intended that other environmental issues would be reopened and relitigated in the licensing proceeding.

Another situation in which NRC would prepare a supplemental EIS relates to new information which it regards as significant even though DOE may not have treated it as such. We recognize that DOE's failure to supplement the EIS might arguably be viewed as a final action, so that objecting parties might have to seek review in the courts within the statutory 180-day review period, with any failure to do so barring later challenge in NRC proceedings. But such a reading of the law would have undesirable consequences upon NRC administrative proceedings. It would require NRC to decide whether or not adoption is practicable on the basis of factual and legal considerations (pertaining to DOE's duty to supplement the EIS and, in particular, the time such duty may have arisen), which go far beyond the materials otherwise requiring NRC review. Accordingly, NRC proposes to prepare a supplemental EIS, if DOE is not doing so, whenever NRC regards such a supplemental EIS to be required by law.[5]

Furthermore, the Commission will review any statements in the DOE's environmental impact statement relating to radiological concerns. If such statements are inconsistent with the facts found by the Commission on the basis of the record of the proceedings, the Commission will specifically determine whether or not the findings constitute "significant and substantial new information or new considerations" which, under the rule, would render the environmental impact statement to that extent inadequate. The statement will be supplemented where required by law, or otherwise will be deemed modified to the extent necessary, in accordance with Commission practice. *Citizens for Safe Power v. NRC*, 524 F.2d 1291, 1294, n. 5 (D.C. Cir. 1975); *Public Service Company of New Hampshire* (Seabrook Station, Units 1 & 2), CLI–78–1, 7 NRC 1, 29 (1978).

The Commission would make its own NEPA findings, including an independent balance of relevant factors, "to the extent that it is not practicable to adopt" the DOE EIS—that is, to the extent that the Commission finds that the balance of these factors would be affected by the new information or new considerations involved. This procedure is consistent with 10 CFR 51.41, which states that the Commission "will independently evaluate and be responsible for the reliability of any information which it uses."

Public Information

Sections 51.116 through 51.118 concern public notices about the preparation of an environmental impact statement. They apply in any situation in which a notice of intent to prepare an EIS is prepared "in accordance with § 51.26." But, as discussed above, § 51.26 would be amended so as to apply only when NRC itself intends to prepare an EIS. Since the EIS with respect to a repository would be prepared by DOE rather than by NRC, the notice provisions of §§ 51.116—51.118 would not come into play. Section 51.118 would be amended, however, to require circulation of a final environmental impact statement, if and when adopted by NRC.

Commenting

It is the policy of the Commission to comment on draft environmental impact statements prepared by other Federal agencies, consistent with the provisions of 40 CFR 1503.2 and 1503.3. 10 CFR 51.124. The Commission intends to follow this policy in connnection with the draft environmental impact statement prepared by DOE in connection with a geologic repository recommendation. The submission of such comments is specifically called for, in fact, by the Nuclear Waste Policy Act. *See* Sec. 114(a)(1)(D), 42 U.S.C. 10134(a)(i)(D).

NRC will comment on environmental issues even though those issues may be precluded from litigation in the licensing proceedings. The reason for this is that an inadequate EIS may be set aside in the course of judicial review. Should this occur, it would of course not be practicable for the Commission to adopt it. If NRC has objections or reservations about the DOE proposal on grounds of environmental impact, it will specify the mitigation measures it considers necessary to withstand challenge in court. The theory underlying such comments is that if the EIS is found not to be adequate, in the course of judicial review, NRC could not adopt it and, in the absence of suitable revisions or supplementation, the Commission could not issue a construction authorization or license. *See* 40 CFR 1503.3(d) (duty to specify mitigation measures considered necessary to allow license to be granted).

Ordinarily an agency that receives comments from another agency must consider them, but it may exercise its discretion in determining how they should affect the decision at hand. In principle, therefore, DOE could in some cases reject comments made by NRC on grounds that might be unsatisfactory to the Commission. Still, the Commission's comments will be a matter of public record and will be available for consideration during judicial and Congressional review of DOE's EIS and related actions. The Commission regards these forums, rather than the NRC usual review, to be the appropriate place, under NWPA, for review of DOE's responses to comments as well as other matters related to the EIS.

Responsible Official

No change is required in the provision establishing responsibilities within NRC for NEPA compliance.

Conforming Amendments

Several changes to Part 60 of the Commission's regulations are needed in order to reflect the provisions of the Nuclear Waste Policy Act, as amended, that deal with environmental review.

Under the Nuclear Waste Policy Act, DOE is required to prepare an environmental impact statement instead of an environmental report. Several changes to Part 60 are proposed to reflect this direction. Revisions to the environmental impact statement would take the form of "supplements" instead of the "amendments" or "updates" referred to in the existing rule.

The requirement in § 60.15 that multiple sites be characterized is eliminated so as to conform to the provisions of the Amendments Act.

The language of the findings for the issuance of the construction authorization requires consideration of costs and benefits and consideration of alternatives. § 60.31(c). This language would not be changed. However, it should be understood that a determination that it is practicable to adopt the DOE environmental impact statement will necessarily result in the specified environmental finding that the action called for is issuance of the construction authorization.

The construction authorization is to include such conditions as the Commission "finds to be necessary to protect * * * environmental values." 10 CFR 60.32(a). The Commission would include such conditions only where the environmental impact statement (as it may have been supplemented) specifically calls for them. In principle, the incorporation of appropriate conditions in the construction authorization could enhance environmental protection, since NRC would then have a basis to inspect, and take enforcement action where needed, to assure that the conditions are observed. However, we doubt that the adequacy of the EIS would ever depend upon NRC's being vested with this authority. DOE can describe in the EIS—and in fact it must describe—the mitigation measures which are proposed to assure protection of the environment. Should DOE subsequently fail to implement these measures, affected parties can seek redress against DOE in the courts. Moreover, the written agreements to be entered into between DOE and the States and affected Indian tribes under section 117(c) of the Nuclear Waste Policy Act, 42 U.S.C. 10137(c), provide a supplemental channel for identifying and resolving environmental concerns on an ongoing basis without direct NRC participation. Our approach, therefore, will be to require the observance of environmental protection conditions where the environmental impact statement which we adopt provides for the Commission to include such conditions in the

[5] The Commission once again emphasizes that, under NWPA, DOE has the primary responsibility to supplement an EIS to take significant new information into consideration. This obligation is reflected in the proposed revision to § 60.24(c).

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construction authorization (or license); but if it is practicable for us to adopt an EIS that makes no provision for NRC to impose and enforce such conditions, we would not on our own initiative find such conditions to be necessary. Even if NRC comments on the DOE proposal had specified mitigation measures considered necessary to allow NRC to grant a construction authorization or license, these measures generally would not be incorporated as licensing conditions; for, as discussed above, the basis for NRC's comments was that the measures were necessary for the EIS to be considered " adequate" by the courts, and it is expected that this issue would already have been resolved.

The rules of practice (10 CFR Part 2) also need to be amended to take account of DOE's submission of an environmental impact statement instead of an environmental report. Because the EIS must conform to statutory requirements, and because its completeness would have been subject to challenge in court prior to filing with NRC, a completeness determination by NRC at the time of docketing is unnecessary, and provision for such determination would be omitted. As in the case of Part 60, reference would be made to "supplements" rather than "amendments" to the environmental impact statement.

Petition for Rulemaking

The States of Nevada and Minnesota have petitioned the Commission to amend 10 CFR 60.24 so as to adopt DOE's environmental impact statement only if such adoption "would not compromise the independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954". 50 FR 51701, December 19, 1985 (PRM–60–2A). (The language proposed by the petitioners also includes several matters which would be considered by the Commission in making the foregoing determination). In this regard, the Commission notes its resolve that adoption of the environmental impact statement must not compromise its independent responsibilities under the Atomic Energy Act. Adoption of the rules proposed herein would be fully consistent with this resolve.

The matters identified by petitioners for consideration by the Commission relate largely to the adequacy of the procedures followed by DOE in implementing the Nuclear Waste Policy Act and in preparing its EIS. Nevertheless, as stated in the cited **Federal Register** notice, the Commission will give further consideration, in this rulemaking proceeding, to the issues raised by the petitioners, as they may relate to this agency's responsibilities. Generally, the Commission proposes to deal with these issues in a manner consistent with the discussion above.

Any person desiring to comment on the rulemaking petition, insofar as it relates to 10 CFR 60.24, should do so as part of this rulemaking proceeding.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

The proposed rule contains no information collection requirements and therefore is not subject to the Paperwork Reduction Act (Pub. L. 96–511).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certified that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this amended rule is the U.S. Department of Energy.

List of Subjects

10 CFR Part 2

Administrative practice and procedure. Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and record keeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 51, and related conforming amendments to 10 CFR Parts 2 and 60.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.101, paragraphs (f) (1), (2), (5), and (7) are revised and (f)(4) is removed and reserved to read as follows:

§ 2.101 Filing of application.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental impact statement required in connection therewith pursuant to Subpart A of Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

* * * * *

(4) [Reserved]

(5) If a tendered document is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in Part 60 and Subpart A of Part 51 of this chapter require, (ii) serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

* * * * *

(7) Amendments to the application and supplements to the environmental impact statement shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental impact statement.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

3. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, (2 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Secs. 51.43 and 51.100 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

4. In § 51.20, existing paragraph (b)(13) is redesignated as paragraph (b)(14) and a new paragraph (b)(13) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

* * * * *

(13) Issuance of a construction authorization and license pursuant to Part 60 of this chapter.

* * * * *

5. Section 51.21 is revised to read as follows:

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in § 51.22(d) as other actions not requiring environmental review. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

6. Section 51.22 is amended, by revising the heading and adding a new paragraph (d), to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under Part 60 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

7. In § 51.26, paragraph (a) is revised and a new paragraph (c) is added, to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director determines that an environmental impact statement will be prepared by NRC in connection with a proposed action, a notice of intent will be prepared as provided in § 51.27, and will be published in the **Federal Register** as provided in § 51.116, and an appropriate scoping process (see §§ 51.27, 51.28 and 51.29) will be conducted.

* * * * *

(c) Upon receipt of an application and accompanying environmental impact statement under § 60.22 of this chapter (pertaining to geologic repositories for high-level radioactive waste), the appropriate NRC staff director will include in the notice of docketing required to be published by § 2.101(f)(8) of this chapter a statement of Commission intention to adopt the environmental impact statement to the extent practicable. However, if the appropriate NRC staff director determines, at the time of such publication or at any time thereafter, that NRC should prepare a supplemental environmental impact statement in connection with the Commission's action on the license application, the procedures set out in paragraph (a) of this section shall be followed.

8. A new § 52.67 is added to read as follows:

§ 51.67 Environmental information concerning geologic repositories.

(a) In lieu of an environmental report, the Department of Energy, as an applicant for a license or license amendment pursuant to Part 60 of this chapter, shall submit to the Commission any final environmental impact statement, and any supplement thereto, which the Department prepares in connection with any geologic repository developed under Subtitle A of Title I of the Nuclear Waste Policy Act of 1982.

(b) The final environmental impact statement which accompanies the Department of Energy's recommendation to the President to approve a site for a geologic repository shall be submitted to the Commission at the time and in the manner described in § 60.22 of this chapter. Such statement shall be prepared in accordance with the provisions of section 114(f) of the Nuclear Waste Policy Act of 1982. The statement shall include, among the alternatives under consideration, denial of a license or construction authorization by the Commission.

(c) Under applicable provisions of law, the Department of Energy is

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required to supplement its final environmental impact statement whenever the Department makes a substantial change in its proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Department shall submit any supplement to its final environmental impact statement to the Commission at the time and in the manner deacribed in § 60.22 of this chapter.

(d) Whenever the Department of Energy submits a final environmental impact statement, or a final supplement to an environmental impact statement, to the Commission pursuant to this section, it shall also inform the Commission of the status of any civil action for judicial review initiated pursuant to section 119 of the Nuclear Waste Policy Act of 1982. This status report, which the Department shall update from time to reflect changes in status, shall:

(1) State whether the environmental impact statement has been found by the courts of the United States to be adequate or inadequate; and

(2) Identify any issues relating to the adequacy of the environmental impact statement that may remain subject to judicial review.

9. A new § 51.109 is added to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) In a proceeding for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area, the NRC staff shall present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect in accordance with § 2.714(b) of this chapter. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as if may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.734 of this chapter.

(b) In any such proceeding, the presiding officer will determine those matters in controversy among the parties within the scope of NEPA and this subpart, specifically including whether, and to what extent, it is practicable to adopt the environmental impact statement prepared by the Secretary of Energy in connection with the issuance of a construction authorization and license for such repository.

(c) The presiding officer will find that it is practicable to adopt the environmental impact statement prepared by the Secretary of Energy unless:

(1)(i) The action proposed to be taken by the Commission differs from the action proposed in the license application submitted by the Secretary of Energy; and

(ii) The difference may significantly affect the quality of the human environment; or

(2) Significant and substantial new information or new considerations render the environmental impact statement inadequate. New information or new consideration shall not be deemed to render the environmental impact statement inadequate, for purposes of this paragraph, if the new information or new considerations have been addressed in a supplemental environmental impact statement that the Secretary of Energy has submitted to the Commission in accordance with the provisions of this chapter.

(d) To the extent that the presiding officer determines it to be practicable to adopt the environmental impact statement prepared by the Secretary of Energy, such adoption shall be deemed to satisfy all responsibilities of the Commission under NEPA and no further consideration under NEPA or this subpart shall be required.

(e) To the extent that it is not practicable to adopt the environmental impact statement prepared by the Secretary of Energy, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical and other benefits against environmental and other costs, whether the construction authorization or license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction authorization or license should be issued as proposed.

(f) In making the determinations described in paragraph (e) of this section, the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission or the Atomic Safety and Licensing Appeal Board reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarily distributed.

(g) The provisions of this section shall be followed, in place of those set out in §51.104, in any proceedings for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area.

10. In § 51.118, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added, to read as follows:

§ 51.118 Final environmental impact statement—Notice of availability.

(a) * * *

(b) Upon adoption of a final environmental impact statement or any supplement to a final environmental impact statement prepared by the Department of Energy with respect to a geologic repository that is subject to the Nuclear Waste Policy Act of 1982, the appropriate NRC staff director shall follow the procedures set out in paragraph (a) of this section.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

11. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213, 2228, as amended (42 U.S.C. 10134, 10141).

For the purpose of section 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 60.15, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

13. In § 60.21, paragraph (a) is revised to read as follows:

§ 60.21 Content of application.

(a) An application shall consist of general information and a Safety Analysis Report. An environmental impact statement shall be prepared in accordance with the Nuclear Waste Policy Act of 1982, as amended, and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

* * * * *

14. Section 60.22 is revised to read as follows:

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, shall be signed by the Secretary of Energy or the Secretary's authorized representative and shall be filed in triplicate with the Director.

(b) Each portion of such application and any amendments, and each environmental impact statement and any supplements, shall be accompanied by 30 additional copies. Another 120 copies shall be retained by DOE for distribution in accordance with written instructions from the Director or the Director's designee.

(c) DOE shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. At that time DOE shall also serve one such copy of the application and environmental impact statement on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or supplements to the environmental impact statement shall be served in the same manner.

(d) At the time of filing of an application and any amendments thereto, one copy shall be made available in an appropriate location near the proposed geologic repository operations area (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application are made. The environmental impact statement and any supplements thereto shall be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, shall be produced at any public hearing held by the Commission on the application, for use by any party to the proceeding.

(e) The DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of such documents submitted in accordance with the requirements of this part.

15. In § 60.24, the section heading and paragraphs (a) and (c) are revised to read as follows:

§ 60.24 Updating of application and environmental impact statement.

(a) The application shall be as complete as possible in the light of information that is reasonably available at the time of docketing.

* * * * *

(c) The DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

16. In § 60.31, the introductory paragraph is revised to read as follows:

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction if it determines:

* * * * *

17. In § 60.51, the introductory portion of paragraph (a), and paragraph (b), are revised to read as follows:

§ 60.51 License amendment for permanent closure.

(a) DOE shall submit an application to amend the license prior to permanent closure. The submission shall consist of an update of the license application submitted under §§ 60.21 and 60.22, including:

* * * * *

(b) If necessary, so as to take into account the environmental impact of any substantial changes in the permanent closure activities proposed to be carried out or any significant new information regarding the environmental impacts of such closure, DOE shall also supplement its environmental impact statement and submit such statement, as supplemented, with the application for license amendment.

Dated at Rockville, Maryland this 29th day of April 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-9979 Filed 5-4-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 88-303]

Preapproved Securities Brokerage Service Corporation Activities

Date: April 28, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt amendments to 12 CFR 545.74, its service corporation regulations, by inserting a new paragraph 545.74(c)(4) "Securities brokerage activities" and renumbering subsequent paragraphs. The purpose of the proposed amendments is to enable service corporations to commence certain types of securities brokerage activities, without preparing an application and obtaining individual Board approval. The amendments designate certain

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types of securities brokerage activities as preapproved service corporation activities.

DATE: Comments must be received by June 6, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Deputy Director for Corporate Activities, (202) 377–7289; V. Gerard Comizio, Director, (202) 377–6411; Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5(c)(4)(b) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(c)(4)(B), provides that a Federal association may invest up to three percent of its assets in a corporation chartered in the state where the association has its home office, provided that at least one half of the investments in excess of one percent must be for community development purposes. The Board has implemented this authority in 12 CFR 545.74, which authorizes investment in service corporations.

The Board considers service corporations an important adjunct to traditional association activities and recognizes the significant profit contributions that they may make. The Board also seeks to ensure that the associations conduct activities in ways that do not entail undue risk to institutional safety and soundness.

In recent years, the Board has received numerous applications for service corporations to conduct various types of securities brokerage activities. These applications are reviewed by the Supervisory Agent at the District Bank, then transmitted to the Board's Office of District Banks, Office of General Counsel, and Office of Regulatory Policy, Oversight, and Supervision for review prior to submission to the Board.

The staff has noted that while certain applications raise legal and/or safety and soundness concerns or present unusual or problematic facts, many applications present similar facts and seek permission to conduct activities structured in a way that either does not raise legal or supervisory concerns or that raises concerns that can be and have been addressed by imposing conditions on the approvals. Such applications are regularly approved by the Board, and standard types of conditions of approval have been developed.

The Board is sensitive to the importance of expediting the processing and review of applications in the minimum time period necessary to satisfy the Board's interests in assuring the safety, soundness, and legality of a proposed service corporation activity. As a result of this concern, the Board has in the past delegated authority to the Principal Supervisory Agents ("PSA") of the District Banks in certain cases to approve applications for securities brokerage activities that do not differ materially from certain applications that have been approved by the Board. In these cases, the PSA reviews the documents, analyzes the materiality of any differences between the application at hand and the precedential application approved by the Board, and (if there are no material differences) may approve the application subject to the conditions that the Board has specified.

Section 545.74(c) lists activities in which service corporations may engage without prior approval. The Board is proposing to add certain securities brokerage activities to those that are preapproved in order to eliminate the current unnecessarily cumbersome application process. The Board proposes to create a new paragraph (c)(4), "Securities brokerage activities," in which certain securities brokerage services are preapproved, and to make corresponding technical changes.

Section 545.74(c) has generally set forth a relatively brief, general description of each preapproved activity. The instant proposal would deviate from this approach by setting forth a number of particular requirements relating to the manner in which it would be conducted and regulated. These limitations and conditions are set forth under two paragraphs (i)(A)–(I), which would set out the requirements relating to the manner in which the business would be conducted, and (ii)(A)–(I), which would set forth activities that the service corporation would be prohibited from conducting without express Board approval.

The Board specifically seeks comment on whether the material included in (i)(A)–(I) and (ii)(A)–(I) should be included at all and whether any requirements should be expanded, modified, or deleted. On the one hand, it may be advantageous for the Board to spell out in a readily available publication, such as the Code of Federal Regulations, detailed rules specifying what is expected of a service corporation to engage in securities brokerage activity. On the other hand, promulgating regulations that attempt to detail conditions and limitations on a preapproved activity may be thought to add inordinate expense to institutions' compliance activities, limit competitive flexibility, and create significant penalties and disincentives.

If, however, the Board were to delete these provisions and promulgate a rule that permits all securities brokerage activities on an agency or riskless principal basis without any conditions, commenters are asked to provide views on the most appropriate way to provide supervisory guidance to service corporations engaging in securities brokerage activities.

The Board proposes to preapprove the type of securities brokerage activities that it has routinely approved on a case-by-case basis. For example, a preapproved type of service corporation would be limited to selling securities on an agency or "riskless principal" basis because such transactions do not entail inventory and other brokerage risks. Because sustained losses could raise supervisory concerns, preapproval would apply only if operations are projected to be profitable within one year. In addition, to qualify for preapproval, brokerage services must be provided in areas segregated from the areas where depository activities are conducted and, if advertised, must be advertised to distinguish the service corporation from the insured institution in order to minimize the opportunities for investor confusion between the brokerage services, where investments are not insured, and the savings activities, guaranteed by the Federal Savings and Loan Insurance Corporation.

Where a service corporation contracts with a third-party broker-dealer, the arrangement is not eligible for preapproval if the broker-dealer and its officers, principals, and owners have been sanctioned with regard to securities activities by a court, governmental agency, or self-regulatory organization. Any contract entered into with a third-party broker-dealer must be with the service corporation, not the association, and must provide that the broker-dealer will indemnify the service corporation for misconduct by broker-dealer personnel. A service corporation's use of any association customer list would be preapproved solely for its own business purposes and not for distribution to third parties. To continue the preapproved services, a service corporation would be required to provide the PSA with certifications regarding the adequacy of the service corporation's supervisory procedures and its maintenance of a separate corporate identity from the association. These are certifications that the Board typically has required of brokerage service corporations.

Notably, a service corporation's eligibility for preapproval will not be affected by the form of compensation of the service corporation's employees, who may be compensated on a salary or commission basis. Until recently, the Board had limited its case-by-case approvals to those situations where service corporation employees were compensated only on a salaried basis. After re-examining the issue, however, the Board determined that such a limitation was not needed as a safeguard in the conduct of service corporation securities brokerage activities and its removal would afford the service corporation valuable flexibility in structuring its employment compensation arrangements. Accordingly, the proposed preapproval criteria do not distinguished between commission or salary compensation of service corporation employees as a factor affecting preapproved status.

The Board requests comment on the elements of the proposed preapproved securities brokerage activities and whether other activities should be preapproved. The Board also solicits comments as to whether any other safeguards should be added to the preapproval conditions or whether any of the preapproval criteria are unnecessary and, if so, why they should be eliminated or modified.

Many activities would not be preapproved, particularly those that the Board has, upon application, previously denied. The regulation specifically identifies some of these, and a service corporation must obtain Board approval to engage in an activity that is not pre-approved. For example, non-preapproved activities include executing transactions as a principal (other than a riskless principal), providing certain investment advisory services; paying referral fees to association employees; obtaining association customer account balances; soliciting specific securities transactions; indemnifying a third-party broker-dealer; permitting non-registered employees to perform other than clerical and administrative duties; and the association's providing margin credit or entering certain contracts. The Board solicits comments on whether any of these activities should also be preapproved.

Any service corporation that intends to engage in preapproved securities brokerage activities would be required to furnish to its PSA, no later than 30 days prior to the commencement of operations, a written notice of the identity of the service corporation and the brokerage services to be provided, copies of all contractual agreements and memoranda entered into by the service corporation with broker-dealers, investment advisors, and their affiliates, and the parent insured institution, and a legal opinion, from counsel independent from the association, stating that the activities to be conducted qualify for preapproved status.

II. Public Comment Period

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest in order to make the amendments and expedited procedures available as soon as possible.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as the present rules, may tend to prolong the waiting for permission to engage in brokerage activities. More liberal provisions may raise questions of statutory authority.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 545, Subchapter C, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256 as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, and 1730); Reorg. Plan No. 3 of 1947, FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 545.74 by redesignating the existing paragraphs (c) (4), (5), and (6) as the new paragraphs (c) (5), (6), and (7); by adding a new paragraph (c)(4); by revising the new paragraph (c)(5)(v); and by revising the new paragraph (c)(7) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) Permitted activities. * * *

(4) *Securities brokerage services.* (i) Execution of securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, provided that the service corporation:

(A) Furnishes to the Principal Supervisory Agent within 60 days after the commencement of operations an initial opinion of counsel, with an undertaking to provide annual certifications thereto from the board of directors of the association thereafter, that the association and its service corporation are conducting the subject brokerage operations in a manner that is consistent with the Board's policy on the establishment of separate corporate identities for savings and loan associations and their service corporations, as set forth in 12 CFR 563.37 and 570.10;

(B) Projects the operations will be profitable or will become profitable on a fiscal year basis within one year based on reasonable assumptions, provides written documentation of such projection to the Principal Supervisory Agent within 60 days of commencement of operations, and provides the Principal Supervisory Agent annually with financial statements of the service corporation, in form and content satisfactory to the Principal Supervisory Agent;

(C) Agrees in writing with the association that the service corporation will not disclose to any third parties the list of the names and addresses of the customers of the association for any purpose and that the service corporation will use any such customer list solely for its business purposes;

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(D) Conducts securities brokerage activities in an area segregated from the areas where the association's depository functions are performed and clearly identifies and distinguishes the area from other portions of the association's public premises as dedicated to the securities business;

(E) Distinguishes advertising by the service corporation from the association, in particular so that advertising does not indicate or imply that the securities or transactions of the service corporation are insured by the FSLIC;

(F) Does not enter into any third party contract, such as with a broker-dealer, with an entity that in the past ten years has been limited, or whose officers, principals, or owners in the past ten years have been limited, in its securities activities, such as by censure, suspension, injunction, or consent decree, by a court, governmental agency, or self-regulatory organization, in securities industry activities or has been convicted of a felony or filed for bankruptcy;

(G) Where the service corporation enters a contract with a third-party broker-dealer, the contract provides that the third-party broker-dealer agrees to indemnify fully the service corporation and the association for any liability caused by the negligence, recklessness, or intentional conduct of the broker-dealer or its employees;

(H) Provides to the Principal Supervisory Agent an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program that the program has been established pursuant to operational procedures that are intended to ensure that the program is conducted in conformity with applicable securities laws and regulations and that such procedures include internal controls and supervisory systems that have been established and are to be applied to reasonably detect and prevent violations of Federal securities statutes, the rules adopted thereunder, and the rules of self-regulatory organizations applicable to broker-dealers, including but not limited to those provisions designed to prevent churning, unsuitable recommendations, charging excessive prices, and the making of fraudulent representations in connection with the offer, sale, or purchase of securities ("the regulations"); and on an annual basis thereafter provides a certification by the senior securities principal responsible for supervising and overseeing the subject brokerage program that he or she has discharged the obligations incumbent upon him or her by reason of such procedures and systems previously described and has no reasonable belief or cause to believe that such procedures and systems are not being complied with or that a violation of the regulations has occurred;

(I) Does not condition the sale of securities to a customer on the customer's utilizing services of any affiliate of the insured institution, the service corporation, or a third-party broker-dealer;

(ii) Service corporation activities authorized under this paragraph (c)(4) may not include the following activities:

(A) Execution of securities transactions on a principal basis, including market-making and underwriting, except on a riskless principal basis and except as permitted under paragraph (c)(3) of this section;

(B) Provision of investment advisory services, except for: (*1*) Standardized investment advice derived from unaffiliated third-party sources; (*2*) individualized investment advice provided to natural persons; and (*3*) investment advisory services authorized pursuant to paragraph (c)(2) of this section;

(C) Payment of a referral fee, bonus, or any incentive compensation, in cash or in kind, to any employee of the association for referring any customer to the service corporation;

(D) Provision by the association or the acceptance by the service corporation of information relating to the association's customers' balance in savings accounts, certificates of deposit, individual retirement accounts or other accounts, or the maturity dates of any account or certificate;

(E) Solicitation of specific securities transactions by any registered representative;

(F) Indemnification by the association or the service corporation of a third-party broker-dealer;

(G) Extension of margin credit by the association to customers of the service corporation;

(H) Entry into any third-party contract, such as with a broker-dealer, directly by the association;

(I) Non-registered representatives who are dual employees of the association performing other than clerical or ministerial tasks.

(iii) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the Principal Supervisory Agent, no later than 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided, together with copies of all executed contractual agreements and memoranda between the service corporation and third-party broker-dealers, investment advisors, and their affiliates, and the parent insured institution, and a legal opinion from independent counsel that the securities brokerage services qualify as preapproved under this paragraph (c)(4).

(iv) The Principal Supervisory Agent may request additional information at any time regarding the operations of the service corporation if he has supervisory concerns about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

(5) *Other investments.* * * *

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 302(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (c) (1) through (6) of this section;

* * * * * *

(7) Activities reasonably incident to those listed in paragraphs (c) (1) through (6) of this section.

* * * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10025 Filed 5-4-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 88N-0027]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its tamper-resistant packaging regulation, which applies to all over-the-counter (OTC) human drug products, except dermatologics, dentifrices, insulin, and throat lozenges. Under the proposed amendment, manufacturers and packagers would be required to market two-piece hard gelatin capsules in packaging utilizing a minimum of two tamper-resistant packaging features, unless the capsules are manufactured in such a way that the capsules are sealed by a tamper-resistant packaging technology, in which case the standard OTC tamper-resistant packaging requirement for a minimum of one tamper-resistant feature is applicable. This proposed new requirement for capsules relates only to hard gelatin capsules, and has no applicability to soft gelatin capsules (also known as soft gels). This action is proposed as part of agency efforts to improve consumer protection from the threat of product tampering.

DATES: Comments by July 5, 1988. The proposed effective date is 1 year after the date of publication of a final rule in the **Federal Register**. All products subject to the final rule initially introduced or initially delivered for introduction in Interstate commerce after the effective date of the final rule and not in compliance with the final rule would be subject to regulatory action.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally L. Maher, Center for Drug Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is proposing to amend its tamper-resistant packaging regulations for OTC drug products (21 CFR 211.132). The drug products that are covered by the regulations include all OTC drug products, except dermatologics (i.e., products applied to the skin), dentifrices, insulin, and throat lozenges. The proposed amendment is part of the agency's continuing review of the potential public health threat posed by product tampering. For example, tampering incidents resulted in one death in February 1986, and two subsequent deaths in June 1986, of consumers who unknowingly consumed OTC encapsulated drugs that had been poisoned with cyanide.

The agency recognizes that the requirements for tamper-resistant packaging that were promulgated in 1982 are in large part responsible for a vast improvement in tamper-resistant packaging, and that this has been an enormous benefit to public health and safety. Nonetheless, despite an unprecedented effort since 1982 by drug manufacturers and packagers to provide tamper-resistant features of OTC products, the agency believes it may be necessary to amend the existing regulations to improve consumer protection in regard to two-piece hard gelatin capsules, the dosage form associated with the most serious tampering incidents.

A consumer's first defense against being harmed by a product that has been tampered with is being aware of the fact that tampering has occurred. In promulgating the tamper-resistant packaging regulations (47 FR 50442; November 5, 1982), FDA recognized that such packaging should offer a signal to consumers that a product has been tampered with. The regulation defined a tamper-resistant package as one "having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred." FDA's investigations of the tampering incidents since tamper-resistant packaging was introduced, show that such packaging is indeed tamper-evident and has, in fact, usually offered a signal to users that the product has been tampered with.

FDA believes that the proposed amended tamper-resistant requirements for two-piece hard gelatin capsules would provide a necessary additional measure of consumer protection. Many manufacturers have already voluntarily taken measures that are consistent with this proposal. However, the agency believes there is a need to amend the regulation to ensure that all manufacturers of this dosage form provide this increased level of protection.

II. Proposed Revisions to the Regulation

The agency is proposing that manufacturers and packagers be required to market two-piece hard gelatin capsules in packaging utilizing a minimum of two tamper-resistant packaging features, unless the capsules are manufactured in such a way that the capsules are sealed by a tamper-resistant technology, in which case the standard OTC tamper-resistant requirement for a minimum of one tamper-resistant feature is applicable.

Because all of the known fatalities resulting from tampering with OTC drugs were associated with unsealed, two-piece hard gelatin capsules, FDA believes it would be prudent to require that extra precautions to protect against tampering be taken for products marketed over-the-counter in this dosage form. Under the proposed amendment, such capsules would be required to provide an increased level of protection against tampering.

This proposal states that a minimum of two tamper-resistant features is required on the packaging of hard gelatin capsules that are not acceptably sealed. Under the proposal, therefore, the manufacturer would have a choice of two approaches to increasing the tamper-resistance of two-piece hard gelatin capsules: (1) Use a tamper-resistant technology to seal the capsules; or (2) use a minimum of two tamper-resistant features on the packaging for the capsules. (This provision would have no applicability to soft gelatin capsules, also known as soft gels.) The proposal would add this requirement to paragraph (b) of the regulation.

FDA is also proposing several technical changes, for purposes of updating the regulation as follows:

1. The agency is proposing to modify the introductory provision in paragraph (a) to acknowledge that tamper-resistant packaging has now been utilized for some time.

2. The provision in paragraph (e), stating that OTC products subject to new drug applications are also subject to the tamper-resistant packaging regulations, is proposed to be changed to update the citations and to explain the applicability of the cited provisions.

3. The agency is proposing to delete paragraph (g). This paragraph is proposed to be deleted in its entirety because it refers to dates in 1983 and 1984 for compliance with the original regulation.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a Compliance Policy Guide which updates the list of acceptable tamper resistant technologies first contained in the preamble of the November 5, 1982 (47 FR 50442), final rule. This updated listing also describes acceptable technologies for sealing hard gelatin capsules.

III. Legal Basis for Proposed New Requirements

The Federal Food, Drug, and Cosmetic Act (the act) sets up a system of regulation regarding the safety and effectiveness of drug products. Under the act, FDA has the authority to establish requirements for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products.

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IV. State and Local Requirements

FDA's proposed amendment to the tamper-resistant packaging regulation constitutes a reasonable response, capable of being implemented in an orderly fashion, to any renewed threat of OTC drug product tampering with two-piece, unsealed hard gelatin capsules. The agency believes that the proposed amendment provides adequate safeguards to protect consumers from such tampering, and should eliminate the need for additional action at the State or local level. FDA invites comments on the adequacy of the agency's proposed amendment in this regard.

V. Economic Considerations

This proposed regulation may impose additional costs on manufacturers of OTC drug products for providing two tamper-resistant packaging features for unsealed, two-piece hard gelatin capsule products. To assess this impact, the Proprietary Association's (PA) Expert Technical Committee conducted a survey of 25 member companies in August 1986. The survey estimated that a large company would experience one-time capital costs plus first-year recurring costs of $568,000 and that smaller firms with annual sales of less than $20 million would incur similar costs of $93,000. The survey estimated the costs for all PA member firms would approximate $26.4 million. A copy of the PA's Summary Statement of Cost Estimates is on file in FDA's Dockets Management Branch (address above).

FDA estimated that there may have been as many as 100 non-PA member firms producing unsealed, two piece hard gelatin capsule products in 1986. If these firm's costs were comparable to those for smaller PA member firms, the total non-PA costs would approximate $9.3 million, and the total industry costs would approximate $35.7 million at the time of the PA survey.

Since 1986, many manufacturers of unsealed, two-piece hard gelatin capsule products have voluntarily shifted to alternative noncapsule or sealed capsule products. Others have voluntarily upgraded packaging to provide two tamper-resistant features. Thus, the costs of implementing the proposed requirements in 1988 are some fraction of the costs estimated in 1986.

FDA is interested in obtaining current information on what has already been accomplished by the industry in regard to improving the tamper-resistance of two-piece hard gelatin capsules. The agency is also interested in obtaining information on the costs that would be incurred by industry if the amendment proposed in this document was finalized.

Since the projected costs of this proposed regulation are less than $100 million annually and less than one-tenth of 1 percent of manufacturers' sales of OTC drug products, the rule does not pose a major cost impact as defined by Executive Order 12291. These costs are not expected to pose a significant economic impact on small manufacturers. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96-543), the agency certifies that this proposal does not require a regulatory flexibility analysis.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a) (10) and (11) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before July 5, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Manufacturing, Packaging and containers, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 211 is proposed to be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for Part 211 is proposed to be revised to read as follows:

Authority: Secs. 201(n), 501, 502, 505, 506, 507, 701 (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

2. Part 211 is proposed to be amended by revising § 211.132 to read as follows:

§ 211.132 Tamper-resistant packaging requirements for over-the-counter (OTC) human drug products.

(a) *General.* The Food and Drug Administration has the authority under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national requirement for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products. An OTC drug product (except a dermatological, dentifrice, insulin, or throat lozenge product) for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, insulin, or lozenge product) for retail sale, shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of successful tampering, and to increase the likelihood that consumers will discover if a product has been tampered with, the package is required to be distinctive by design (e.g., an aerosol product container) or by the use of one or more indicators or barriers to entry that employ an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available materials or through commonly available processes. For purposes of this section, the term "aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(1) For two-piece hard gelatin capsule products subject to this requirement, a minimum of two tamper-resistant packaging features is required, unless the capsules are sealed by a tamper-resistant technology.

(2) For all other products subject to this requirement, including two-piece hard gelatin capsules that are sealed by a tamper-resistant technology, a minimum of one tamper-resistant feature is required.

(c) *Labeling.* Each retail package of an OTC drug product covered by this section, except ammonia inhalant in crushable glass ampules, aerosol products as defined in paragraph (b) of this section, or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper resistant feature of the package is breached or missing. If the tamper resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

(d) *Request for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-resistant Rule." The petition is required to contain the following:

(1) The name of the drug product or, if the petition seeks an exemption for a drug class, the name of the drug class, and a list of products within that class.

(2) The reasons that the drug product's compliance with the tamper-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved.

(3) A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the product or drug class will be the subject of malicious adulteration.

(4) Other information justifying an exemption.

(e) *OTC drug products subject to approved new drug applications.* Holders of approved new drug applications for OTC drug products are required under § 314.70 of this chapter to provide the agency with notification of changes in packaging and labeling to comply with the requirements of this section. Changes in packaging and labeling required by this regulation may be made before FDA approval, as provided under § 314.70(c). Manufacturing changes by which capsules are to be sealed require prior FDA approval under § 314.70(b) of this chapter.

(f) *Poison Prevention Packaging Act of 1970.* This section does not affect any requirements for "special packaging" as defined under § 310.3(l) of this chapter and required under the Poison Prevention Packaging Act of 1970.

(Collection of information requirements in this section were approved by the Office of Management and Budget under OMB control number 0910-0149)

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: April 13, 1988.

[FR Doc. 88-10010 Filed 5-4-88; 8:45 am]

BILLING CODE 4160-01-M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1507

Privacy Act Regulations

AGENCY: African Development Foundation.

ACTION: Proposed rule.

SUMMARY: This action proposes policies and procedures the African Development Foundation plans to establish, in accordance with the requirements of the Privacy Act, to safeguard systems of records containing personal information, and to ensure that such records contain only accurate, relevant, timely, and material information. The proposed regulations include procedures for individuals to identify records maintained by the Foundation which contain information about them, and to request the correction or deletion of records which are deemed inaccurate, immaterial, or untimely; and establishes fees for costs associated with responding to such requests.

DATES: Comments must be received on or before July 5, 1988.

ADDRESS: Comments may be mailed to the General Counsel, Suite 600, African Development Foundation, 1625 Massachusetts Avenue, NW., Washington, DC 20036, or delivered to the same address between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel or Tom Wilson, Director, Administration & Finance, (202) 673-3916.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The African Development Foundation has determined that this rule is not a major rule for the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The President of the Foundation certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 1507

Privacy.

Accordingly, it is proposed to add Part 1507 to 22 CFR Chapter XV to read as follows:

PART 1507—RULES SAFEGUARDING PERSONAL INFORMATION

Sec.

1507.1 Purpose.
1507.2 General policies.
1507.3 Definitions.
1507.4 Conditions of disclosure.
1507.5 Accounting for disclosure of records.
1507.6 Access to records.
1507.7 Contents of record systems.
1507.8 Fees.
1507.9 Judicial review.
1507.10 Exemptions.
1507.11 Mailing list.
1507.12 Criminal penalties.
1507.13 Reports.

Authority: 5 U.S.C. 552a.

§ 1507.1 Purpose.

The purpose of this part is to set forth the basic policies of the African Development Foundation ("the Foundation" or "ADF") governing the maintenance of systems of records containing personal information as defined in the Privacy Act of 1974 (5 U.S.C. 552a).

§ 1507.2 General policies.

It is the policy of the Foundation to safeguard the right of privacy of any individual as to whom the Foundation maintains personal information in any records system, and to provide such individuals with appropriate and complete access to such records, including adequate opportunity to correct any errors in said records. It is

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further the policy of the Foundation to maintain its records in such a fashion that the information contained therein is, and remains, material and relevant to the purposes for which it is collected. Information in such records will be collected, maintained, used or disseminated in a manner that assures that such action is for a necessary and lawful purpose, and that adequate safeguards are provided to prevent misuse of such information. Exemptions from records requirements provided in 5 U.S.C. 552a will be permitted only where an important public policy need for such exemptions has been determined pursuant to specific statutory authority.

§ 1507.3 Definitions.

(a) "Record" means any document, collection, or grouping of information about an individual maintained by the Foundation, including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or personal identification number, symbol, photograph, or other identifying particular assigned to such individual, such as a finger or voiceprint.

(b) "System of Records" means a group of any records under the control of the Foundation from which information is retrieved by use of the name of an individual or by some identifying particular assigned to the individual.

(c) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term "Foundation" means the African Development Foundation or any component thereof.

(e) The term "individual" means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term "maintain" includes the maintenance, collection, use or dissemination of any record.

(g) The term "Act" means the Privacy Act of 1974 (5 U.S.C. 552a) as amended from time to time.

§ 1507.4 Conditions of disclosure.

The Foundation will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request or prior written consent of the individual to whom the record pertains or his or her agent or attorney, unless such disclosure is:

(a) To those officers and employees of the Foundation who have a need for the records in the official performance of their duties;

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to Title 13, United States Code;

(e) To a recipient who has provided the Foundation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services, or designee, to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Foundation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person, pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if, promptly following such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(i) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any authorized representative, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction. If any record disclosed under compulsory legal process is subsequently made public by the court which issued it, the Foundation must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

(l) To consumer reporting agencies as defined in 31 U.S.C. 370(a)(3) in accordance with 31 U.S.C. 3711, and under contracts for collection services as authorized in 31 U.S.C. 3718.

§ 1507.5 Accounting for disclosure of records.

(a) With respect to each system of records under ADF control, the Foundation will keep an accurate accounting of routine disclosures, except those made to employees of the Foundation in the normal course of duties or pursuant to the provisions of the Freedom of Information Act. Such accounting shall contain the following:

(1) The date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Sufficient information to permit the construction of a listing of all disclosures at appropriate periodic intervals; and

(3) The justification or basis upon which any release was made including any written documentation required.

(b) The Foundation will retain the accounting made under this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosure made under paragraph (g) of § 1503.3, the Foundation will make the accounting under paragraph (a) of this section available to the individual named in the record at his or her request.

(d) The Foundation will inform any person or other agency about any correction or notation of dispute made by the agency of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1507.6 Access to records.

(a) Except as otherwise provided by law or regulation, any individual, upon request made either in writing or in person during regular business hours, shall be provided access to his or her record or to any information pertaining to him or her which is contained in a system of records maintained by the Foundation. The individual will be permitted to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) An individual will be notified, upon request, if any Foundation system of records contains a record pertaining to him or her. Such request may be made in person during regular business hours, or in writing over the signature of the person making the request. Individuals requesting the information will be required to identify themselves by providing their names, addresses, and a signature. If they are requesting disclosure in person, they are also required to show an identification card, such as a drivers license, containing a photo and a sample signature. If the request is received through the mail, the Foundation may request such information as may be necessary to assure that the requesting individual is properly identified. This may include a requirement that the request be notorized with a notation that the notary received an acknowledgement of identity from the requestor.

(c) A record may be disclosed to a representative of the person to whom a record relates when the representative is authorized in writing by such person to have access.

(d) Requests for access to or copies of records should contain, at a minimum, identifying information needed to locate any given record, and a brief description of the item or items of information required. If the individual wishes access to specific documents, the request should identify or describe, as nearly as possible, such documents. The request should be made to the Director, Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC 20036. Personal contacts should normally be made during the regular duty hours of the officer concerned, which are 8:30 a.m. to 5:00 p.m. Monday through Friday.

(e) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Foundation. Mail or personal requests for documents which are not in the immediate custody of ADF or which are otherwise not immediately available, will be acknowledged within ten working days of receipt, and the records will be provided as promptly thereafter as possible.

(f) Special procedures may be established by the President of the Foundation governing the disclosure to an individual of his or her medical records, including psychological records.

(g) Any individual may request the Director, Administration and Finance, to amend any Foundation record pertaining to him or her. Not later than 10 working days after the date of receipt of such request, the Director, Administration and Finance, or his/her designee, will acknowledge such receipt in writing. Promptly after acknowledging receipt of a request, the Director, Administration and Finance or his/her designee will:

(1) Correct any portion of the record which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the Foundation's refusal to amend the record in accordance with the request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the President of the Foundation, or his/her designee, and the name and address of such official; or

(3) Refer the request to the agency that has control of and maintains the record when the record requested is not the property of the Foundation, but of the controlling agency.

(h) Any individual who disagrees with the refusal of the Director, Administration and Finance to amend his or her record may request a review of that refusal. Such request for review must be made within 30 days after receipt by the requester of the initial refusal to amend. The President of the Foundation, or designee, will complete such review not later than 30 working days from the date on which the individual requests such review, and make a final determination, unless for good cause shown, the President or designee extends such 30-day period and notifies the requester in writing that additional time is required to complete the review. If, after review, the President or designee refuses to amend the record in accordance with the request, the individual will be advised of the right to file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal, and also advised of the provisions in the Act for judicial review of the President's determination.

(i) In any disclosure containing information about which the individual has filed a statement under paragraph (g) of this section, the Foundation will clearly note any part of the record which is disputed and provide copies of the statement and, if the Foundation deems it appropriate, copies of a concise statement of the Foundation's reasons for not making the amendment requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 1507.7 Contents of records systems.

(a) The Foundation will maintain in its records only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which it was acquired as authorized by statute or Executive Order.

(b) The Foundation will collect information, to the greatest extent practicable, directly from the individual to whom the record pertains when the information may result in adverse determinations about the individual's rights, benefits and privileges under Federal programs.

(c) The Foundation will inform each individual whom it asks to supply information on any form which it uses to collect the information, or on a separate form that can be retained by the individual, of:

(1) The authority which authorizes the solicitation of the information and whether provision of such information is mandatory or voluntary;

(2) The purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d) of this section; and

(4) The effects on the individual, if any, of not providing all or any part of the requested information.

(d) Subject to the provisions of paragraph (k) of this section, the Foundation will publish in the Federal Register, at least a notice of the existence and character of its system(s) of records upon establishment or revision. This notice will include:

(1) The name and location of the system or systems;

(2) The categories of individuals on whom records are maintained in the system or systems;

(3) The categories of records maintained in the system or systems;

(4) Each routine use of the records contained in the system or systems, including the categories of users, and the purpose of such use;

(5) The policies and practices of the Foundation regarding storage, retrievability, access controls, retention, and disposal of the record;

(6) The title and business address of the Foundation official or officials responsible for the system or systems of records;

(7) The Foundation's procedures whereby an individual can be notified at his or her request if the system or systems of records contains a record pertaining to him or her;

(8) The Foundation's procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her contained in the system or systems of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system or systems.

(e) All records used by the Foundation in making any determination about any individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably

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necessary to assure fairness to the individual in the determination.

(f) Before disseminating any record about an individual to any person other than an agency or pursuant to 5 U.S.C. 552, the Foundation will make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Foundation purposes.

(g) The Foundation will maintain no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to, and within the scope of, an authorized law enforcement activity.

(h) The Foundation will establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record. Each such person will be instructed regarding such rules and the requirements of 5 U.S.C. 552a. The instruction will include any other rules and procedures adopted pursuant to 5 U.S.C. 552a, and the penalties provided for noncompliance.

(i) The Foundation will establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(j) At least 30 days prior to the publication of the notice in the Federal Register regarding the routine use of the records contained in the Foundation's system or systems of records, including the categories of users and the purpose of such use pursuant to paragraph (d) of this section, the Foundation will also:

(1) Publish a notice in the Federal Register of any new or revised use of the information in the system or systems maintained by the Foundation; and

(2) Provide an opportunity for interested persons to submit written data, views, or arguments to the Foundation.

§ 1507.8 Fees.

Fees to be charged, if any, to any individual for making copies of his or her record will be as follows:

(a) Photocopy reproductions from all types of copying processes, each reproduction image, $0.10 per page.

(b) Where the Foundation undertakes to perform for an individual making a request, or for any other person, services which are very clearly not required to be performed under section 552a, Title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Foundation, etc.), the question of charging fees for such services will be determined by the Director of Administration and Finance, in light of the Federal user charge statute (31 U.S.C. 483a), and any other applicable law.

(c) No fees shall be charged for search time expended by the Foundation to produce a record.

§ 1507.9 Judicial review.

Any person may file a complaint against the Foundation in the appropriate U.S. district court, as provided in 5 U.S.C. 552a(g), whenever the Foundation:

(a) Makes a determination not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section; or

(b) Refuses to comply with an individual's request; or

(c) Fails to maintain any record concerning an individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply with any other provision of 5 U.S.C. 552a, or any Foundation regulation promulgated thereunder, in such a way as to have an adverse effect on an individual.

§ 1507.10 Exemptions.

No Foundation system or systems of records, as such, are exempted from the provisions of 5 U.S.C. 552a, as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

§ 1507.11 Mailing list.

An individual's name and address may not be sold or rented by the Foundation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

§ 1507.12 Criminal penalties.

Section 552a(e), Title 5, United States Code, provides that:

(a) Any officer or employee of the Foundation, who, by virtue of his or her employment or official position, has possession of, or access to, Foundation records which contain individually identifiable information, the disclosure of which is prohibited by 5 U.S.C. 552a, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(b) Any officer or employee of the Foundation who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) shall be guilty of a misdemeanor and fined not more than $5,000.

(c) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Foundation under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 1507.13 Reports.

(a) The Foundation shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or alter any system or records as defined herein. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

(b) If at any time Foundation system or systems of records is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the records contained in such system or systems will be separately listed and reported to the Office of Management and Budget in accordance with the then prevailing guidelines and instructions of that office.

Dated: April 28, 1988.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 88-9931 Filed 5-4-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-83-87]

Deductions in Excess of $5,000 Claimed For Charitable Contributions of Certain Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the income tax regulations relating to deductions in excess of $5,000 claimed for charitable contributions of certain property. The proposed regulations would provide substantiation requirements with which all donors must comply with respect to charitable contributions of certain property if the amount claimed or reported as a deduction with respect to the contribution exceeds $5,000.

DATES:

Proposed Effective Dates

The regulations are proposed to be effective for certain charitable contributions of property made after the date that is 30 days after a Treasury decision on this subject is published in the Federal Register.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by July 5, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-83-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call.)

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1984, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 170(a) and 6050L of the Internal Revenue Code of 1954, as well as temporary regulations (T.D. 8003) containing the same rules. The temporary regulations set forth substantiation requirements with which individuals, closely held corporations, personal service corporations, partnerships, and S corporations must comply with respect to charitable contributions of certain property made after December 31, 1984, if the amount claimed or reported as a deduction with respect to the contribution exceeds $5,000. Treasury decision 8199, which is contained in the Rules and Regulations portion of this issue of the Federal Register, finalizes the temporary and proposed regulations. The final regulations add the requirement that C corporations (as defined in section 1361(a)(2)) must comply with some of the substantiation requirements contained in the regulations with respect to contributions of certain property made after June 6, 1988.

This document contains proposed amendments to § 1.170A-13 of the Income Tax Regulations (26 CFR Part 1), as amended by T.D. 8199.

Explanation of Provisions

The proposed regulations would apply all the substantiation requirements contained in § 1.170A-13(c) to all donors (including C corporations, trusts, estates, and pooled income funds) with respect to contributions of certain property made after the date that is 30 days after a Treasury decision on the subject of this notice of proposed rulemaking is published in the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs for OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61-1 Through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.641-0 Through 1.692-1

Income taxes, Estates, Trusts and trustees, Beneficiaries.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.170A-13 also issued under 26 U.S.C. 170 and sec. 155 of the Deficit Reduction Act of 1984 (98 Stat 691).

Par. 2. Paragraph (a)(1) of § 1.642(c)-1 is amended by revising the first sentence to read as set forth below.

§ 1.642(c)-1 Unlimited deduction for amounts paid for charitable purpose.

(a) *In general.* (1) Any part of the gross income of an estate or trust which, pursuant to the terms of the governing instrument, is paid (or treated under paragraph (b) of this section as paid) during the taxable year for a purpose specified in section 170(c) shall be allowed as a deduction to such estate or trust in lieu of the limited charitable contributions deduction authorized by section 170(a) (provided that the recordkeeping and return requirements for charitable contribution deductions contained in § 1.170A-13 are satisfied). * * *

Par. 3. Section 1.642(c)-2 is amended by adding a new paragraph (e) immediately after paragraph (d) to read as set forth below.

§ 1.642(c)-2 Unlimited deduction for amounts permanently set aside for a charitable pupose.

* * * * * *

(e) *Substantiation requirements.* No deduction shall be allowed under

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paragraphs (a), (b)(2), or (c) of this section unless the recordkeeping and return requirements for charitable contribution deductions contained in § 1.170A–13 are satisfied.

Par. 4. Section 1.170A–13 is amended as follows:

1. The heading for paragraph (c) is revised to read as set forth below.

2. Paragraph (c)(1)(i) is revised to read as set forth below.

3. Paragraph (c)(1)(ii) is redesignated as paragraph (c)(1)(iii) and a new paragraph (c)(1)(ii) is inserted after paragraph (c)(1)(i) to read as set forth below.

4. Paragraph (c)(2)(ii)(B)(*3*) is revised to read as set forth below.

5. Paragraph (c)(4)(iv)(A) is revised to read as set forth below.

§ 1.170A–13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(c) *Deductions in excess of $5,000 for charitable contributions of certain property*—(1) *General rule*—(i) *In general.* No deduciton under section 170 shall be allowed with respect to a charitable contribution to which this paragraph (c) applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. This paragraph (c) applies to any charitable contribution described in paragraph (c)(1)(ii) of this section made by any donor after [THE DATE THAT IS 30 DAYS AFTER TREASURY DECISION ON THE SUBJECT OF THIS NOTICE OF PROPOSED RULEMAKING IS PUBLISHED IN THE FEDERAL REGISTER]. It also applies to any such contribution made before that date as follows:

(A) In the case of an individual, closely held corporation, personal service corporation, parthership, or S corporation if made after December 31, 1984, and

(B) In the case of a C corporation (as defined in section 1361(a)(2) of the Code) if made after June 6, 1988. (See paragraph (c)(2)(ii) of this section for special rules with respect to contributions made by C corporations on or before [THE DATE THAT IS 30 DAYS AFTER A TREASURY DECISION ON THE SUBJECT OF THIS NOTICE OF PROPOSED RULEMAKING IS PUBLISHED IN THE FEDERAL REGISTER].)

(ii) *Charitable contribution.* Paragraph (c)(1)(i) of this section applies to a charitable contribution of an item of property (other than money and publicly traded securities to which paragraph (c)(7)(xi)(B) of this section does not apply) if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds $5,000. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such item of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

* * * * *

(2) *Substantiation requirements.* * * *

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations.* * * *

(B) * * *

(*3*) The contribution by a C corporation (as defined in section 1361(a)(2)), other than a closely held corporation or a personal service corporation, of an item of property or of similiar items of property described in paragraph (c)(1) of this section made after June 6, 1988, and on or before [THE DATE THAT IS 30 DAYS AFTER A TREASURY DECISION ON THE SUBJECT OF THIS NOTICE OF PROPOSED RULEMAKING IS PUBLISHED IN THE FEDERAL REGISTER].

* * * * *

(4) *Appraisal summary.* * * *

(iv) *Special rules*—(A) *Content of appraisal summary required in certain cases.* With respect to contributions of nonpublicly traded stock described in paragraph (c)(2)(ii)(B)(*1*) of this section contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions described in paragraph (c)(2)(ii)(B)(3) of this section made after and on or before [THE DATE THAT IS 30 DAYS AFTER A TREASURY DECISION ON THE SUBJECT OF THIS NOTICE OF PROPOSED RULEMAKING IS PUBLISHED IN THE FEDERAL REGISTER] by a C corporation, the term "appraisal summary" means a document that—

(*1*) Complies with the requirements of paragraph (c)(4)(i) (A) and (B) of this section,

(*2*) Includes the information required by paragraph (c)(4)(ii) (A) and through (H) of this section,

(*3*) Includes the amount claimed or reported as a charitable contribution deduction, and

(*4*) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in paragraph (c)(7)(xi)(B)(2)(*iii*) of this section).

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–10006 Filed 5–4–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nurse Practitioner Traineeship Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice would amend the regulations governing the Grants for Nurse Practitioner Traineeship Programs by adding: (1) definitions of "nurse midwife", "public health care facility", "completion of the educational program", "program director"; and (2) procedures to improve the administration of these grants and to collect indebtedness owed to the United States. These new definitions afford the public greater choice and access to primary care services of nurse practitioners and nurse midwives. This notice also proposes to amend the regulations to conform with amendments made to section 822(b) of the Public Health Service Act (the Act) by Pub. L. 99–92, the Nurse Education Amendments of 1985, enacted on August 16, 1985; by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted January 14, 1986; and other changes which are of a technical nature.

DATE: As discussed below, comments are invited. To be considered, comments must be received no later than July 5, 1988. Technical changes made to conform the regulations to legislative amendments will be effective as of the effective date in the relevant legislation.

ADDRESSES: Written comments should be addressed to Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Eleanor Elliott, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–5877.

SUPPLEMENTARY INFORMATION: Section 822(b) of the Act, as amended by Pub. L. 99–92, authorizes grants to schools of nursing and public health, schools of medicine which received grants under section 822(b) prior to October 1, 1985, public or nonprofit private hospitals, and other public or nonprofit private entities to establish and operate traineeship programs to train nurse practitioners and nurse midwives. Regulations governing the grants for Nurse Practitioner Traineeship Programs are codified at 42 CFR Part 57, Subpart AA.

Public Law 99–92 amended section 822(b) by: (1) including nurse midwifery traineeship programs as eligible grant projects under this authority; and (2) including a "public health care facility" as an additional site in which a traineeship recipient may fulfill the obligatory practice commitment. In accordance with these amendments, the Department is proposing to add the following definitions to § 57.2802, entitled "*Definitions*":

"Nurse midwife" means a registered nurse who has completed a formal program of study designed to prepare registered nurses to perform in an expanded role in the delivery of primary health care to women and babies including the management of normal antepartum, intrapartum, and postpartum care, as well as family planning and gynecology.

This definition is consistent with the definition established through rulemaking procedures for the regulations governing the Grants for Nurse Practitioner and Nurse Midwifery Programs codified at 42 CFR Part 57, Subpart Y.

"Public Health care facility" means an agency, institution, or other entity, controlled by a public agency or a nonprofit private organization which provides health care.

It is proposed to define the term "public health care facility" broadly in order to reflect congressional intent to increase the number of potential sites for the obligatory practice required of nurse practitioner or nurse midwifery traineeship recipients. Formerly, only practice performed in a health manpower shortage area, designated as short of primary care under section 332 of the Act, fulfilled the obligation incurred by a traineeship recipient. The Congress recognized that health manpower shortage areas, designated under section 332 of the Act, have scarce resources, resulting in limited employment opportunities for nurse practitioners and nurse midwifes in those areas. Despite a traineeship recipient's desire and willingness to work in a health manpower shortage area, sufficient positions were not always available. The Congress further recognized that there were population groups and geographic areas in need of primary health care which did not meet the criteria for designating health manpower shortage areas under section 332 of the Act. To resolve this discrepancy, Congress expanded the site acceptable for the obligatory practice by the addition of public health care facilities. Consistent with this, the proposed definition affords the public greater choice and access to primary care services of nurse practitioners and nurse midwives.

The Department, also, is proposing amendments to (1) the grantee's administration of the Nurse Practitioner Traineeship Program, and (2) the trainee's communications with the Secretary concerning the practice commitment. These amendments would increase the grantee's responsibilities to ensure that traineeship recipients understand the terms and obligations of the traineeship. The proposed provisions, also, would require the trainee to take specific steps to inform the Secretary of the intended and actual site for the obligatory practice and the completion of such practice.

The proposed provisions are described below according to the section of the regulations they affect.

Section 57.2602 "Definitions."

The Department is proposing to add two definitions to this section.

"Completion of the educational program" means the satisfaction of all the grantee's requirements for the nurse practitioner or nurse midwifery educational program in which the traineeship recipient originally enrolled.

The Department believes it is necessary to add this definition since the trainee's responsibilities and obligations become due upon completion of the educational program. The purpose of this definition is to prevent a trainee from delaying the practice commitment or repayment obligation by continuing as a full-time student in other educational programs.

"Program director" means a qualified individual designated by the grantee and approved by the Secretary who is to be functionally responsible for the traineeship program(s) being supported under this subpart.

This is a standard definition for Title VIII programs and was established through rulemaking procedures. This definition is consistent with the definition established in the regulations governing the Grants for Nurse Practitioner and Nurse Midwifery Programs codified at 42 CFR Part 57, Subpart Y. The Department believes this definition is necessary to avoid ambiguity over the individual responsible for the programmatic aspects of the traineeship grant. During past administration of the training program, the Secretary and the grantees experienced difficulties in identifying the individual responsible for the traineeship program because the program director of the nurse practitioner educational program was not necessarily the program director of the nurse practitioner traineeship program. These difficulties were compounded by the fact that a grantee often had multiple nurse practitioner educational programs, each with a different program director.

Section 57.2604 "How will applications be evaluated?"

The Department is proposing to amend this section by modifying: (1) The review criterion concerning the applicant's recruitment of trainees who are residents of a health manpower shortage area; and (2) the statutory special consideration for funding of applications to educate individuals who are residents of a health manpower shortage area. In both instances, the proposed revisions would specify that the trainee or individual be a resident of a primary care health manpower shortage area.

The Department believes this revision is necessary because nurse practitioners and nurse midwives are prepared under these traineeships to deliver primary care. Therefore, their practice commitment can be fulfilled only by practice in primay care health manpower shortage areas or a public health care facility. In prior administration of the program, the discrepancy between the health manpower shortage areas from which individuals were recruited and those in which they could practice caused placement difficulties.

In addition, this notice proposes to amend this section by removing the non-statutory funding preferences. Currently, this section includes non-statutory funding preferences: First, to "applications which provide nurse practitioner training in schools of

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nursing" and, second, to "applicants other than schools of nursing that award academic credit to students who complete the program." The Secretary has decided to remove these funding preferences from the permanent regulations and retain in the regulations only those funding preferences that are in the statute. As part of a newly implemented policy, the Department will announce, and solicit public comment on, any special funding factors related to national needs in periodic notices in the Federal Register. The policy was adopted by the Secretary to provide maximum flexibility for program management, thus enabling the grant program to respond more quickly to new and emerging health care needs. (April 26, 1988, 53 FR 14789). The removal of the funding preferences in this instance does not necessarily preclude the announcement of all or a part of the funding preferences in a forthcoming Federal Register notice.

Section 57.2605 "How long does grant support last?"

The Department is proposing to amend paragraph (b) of this section to indicate that failure to comply with the requirements of § 57.2610, entitled "*What are the requirements for traineeships and the appointment of trainees?*", will jeopardize continuation of grant awards.

The grantee's practices and procedures to inform the trainee concerning the terms and obligations of the practice commitment and the traineeship support are essential to assuring fulfillment of the commitment and, if necessary, to facilitate debt collection efforts. For this reason, the grantee's performance in the administration of these requirements must be considered in the decision to award future grant support.

Section 57.2610 "What are the requirements for traineeships and the appointment of trainees?"

The Department proposes to amend paragraph (a) of this section to specify that *both* the program director and the trainee are to complete and sign the statement of appointment form and that the grantee must retain this form as part of the trainee's record until notification by the Secretary that the trainee's practice commitment has been fulfilled or any amount owed to the United States has been paid or waived.

The Department, also, proposes to amend paragraph (b) of this section to require that the original copy of the trainee's signed commitment with the Secretary be submitted to the Secretary before any funds are disbursed to the trainee.

The Department further proposes to amend paragraph (d) of this section by revising the requirement that priority in the allocation of traineeships be given to residents of health manpower shortage areas to a requirement that special consideration in the allocation of traineeships be given to residents of primary care health manpower shortage areas.

The Department believes this revision is necessary because nurse practitioners and nurse midwives are prepared under these traineeships to deliver primary care. Therefore, their practice commitment can be fulfilled only by practice in primary care health manpower shortage areas or a public health care facility. In prior administration of the program, the discrepancy between the health manpower shortage areas from which individuals were recruited and those in which they could practice caused placement difficulties.

Furthermore, the Department proposes to amend this section to include extensive requirements for the grantee to fulfill concerning informing the trainees of the responsibilities incurred in accepting a traineeship. These proposed requirements are as follows:

1. The grantee must conduct an entrance interview with the trainee before the trainee begins the educational program and an exit interview at the completion or termination of the educational program. The obligations and terms of the traineeship must be discussed during these interviews. A form verifying that the interivews were conducted must be signed by the program director and the trainee and retained by the grantee as part of the trainee's record.

2. The grantee must provide the traineee with: (a) Copies of all forms signed by the trainee, (b) traineeship program documents, and (c) a financial statement of each disbursement for the traineeship which details the funds paid from the grant for the trainee's education and support. The statement of the initial disbursement must state the maximum legal prevailing rate of interest that will be applied to the trainee's indebtedness if the trainee does not fulfill the practice commitment. The statement of the final disbursement must include an estimate of the amount owed including interest if the trainee does not fulfill the practice commitment. If the trainee fails to complete the program, the interest is not included in the individual's indebtedness as specified in § 57.2614, entitled *"What are the consequences if the trainee fails to comply with the terms of the commitment? * * * (a) Failure to complete the training program."*

3. The grantee must submit a notice of completion or termination form within 30 days to the Secretary when the trainee completes, is dismissed, or withdraws from the educational program. This is necessary for accurate determination of the number of months that the trainee is obligated under the practice commitment for trainess who complete the educational program; or, in the case of a trainee's withdrawal or dismissal, of the amount of traineeship support that must be repaid.

4. Ninety days prior to completion of the educational program, the grantee must provide each trainee with a copy of the Federal Register notice, in effect as of that date, listing the primary care health manpower shortage areas, designated under section 332 of the Act.

5. The grantee must maintain an accurate, complete, and retrievable record for each individual who receives a traineeship. This record must be retained until notification by the Secretary that the trainee's practice commitment is fulfilled or any amount owed to the United States by the trainee has been paid or waived. This record must document that the grantee has complied with the requirements of §57.2610.

Section 57.2613 "What must a trainee agree to do in return for traineeship support?"

The Department proposes to amend this section by: (1) Modifying the number of hours per week used as the basis for full-time employment; (2) adding a paragraph specifying the primary care health manpower shortage area designations which qualify for the trainee's practice commitment; (3) clarifying the requirements for informing the Secretary of the practice location and beginning practice at that location; and (4) clarifying the requirement for notifying the Secretary of changes in name, address, and employment during the period of obligatory practice and introducing a requirement to inform the Secretary of the completion of the obligatory practice.

Specifically the following amendments to paragraph (a) of this section are proposed:

1. It is proposed to reduce the number of hours per week used as the basis for full-time employment from 40 to 35 hours per week. This change is necessary to reflect actual work conditions for nurse practitioners and nurse midwives and the trend toward a 35 hour week in industry reported in the Bureau of Labor Statistics *Current Population Survey Supplement*, May 1985.

2. It is proposed to add a paragraph to specify that the primary care health manpower shortage areas, designated under section 332 of the Act, in effect at the time the trainee completes the educational program or in effect 90 days prior to completion of the educational program if a trainee has received a written commitment of employment, will qualify for approval of the practice site. The Department believes this clarification will avoid previous placement difficulties caused by revisions to the list of primary care health manpower shortage areas, designated under section 332 of the Act.

The Department proposes to revise paragraph (c) of this section, entitled *"Beginning of Practice."*, to specify that the trainee must inform the Secretary of his or her intended practice location selected from either a public health care facility or a primary care health manpower shortage area within 30 days after completion of the educational program and to begin practice at that location within 60 days after receipt of notification from the Secretary that the location is approved for the practice commitment.

A new provision, paragraph (d) entitled *"Fulfillment of Practice."*, is proposed to incorporate the requirement that the trainee notify the Secretary of changes of name, address, or employment by submitting an annual form to the Secretary reporting changes in names, address, and dates of employment, signed by the employer who certifies the dates of employment.

This provision also would require that, upon completion of the practice commitment, the trainee submit to the Secretary a written statement on the employer's stationery, signed by the employer, certifying the dates of employment and practice site, and requesting confirmation from the Secretary that the practice commitment has been fulfilled.

Interested persons may submit written comments on these proposals to the Director of the Bureau of Health Professions at the address given above. Following the close of the comment period, the regulations will be revised as warranted by public comment.

In addition to the changes proposed above, further amendments are made to clarify these regulations as well as to conform the regulations to the authorizing legislation and amendments made to section 882(b) by Pub. L. 99–92 and Pub. L. 99–239, and to the implementing regulations, 42 CFR Part 5, of section 332 as follows:

1. Revise the title of 42 CFR Part 57, Subpart AA from "Grants for Nurse Practitioner Traineeship Programs" to "Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs," and replace the word "training" with "education" or "educational" (as appropriate) whenever it appears in the text. Also, the words "or nurse midwife," "or nurse midwives," or "or nurse midwifery" (as appropriate) are to be inserted immediately following the words "nurse practitioner" or "nurse practitioners" throughout the text of the regulations.

2. Revise § 57.2601, entitled *"To what programs do these regulations apply?"*, to limit the applicability of schools of medicine to those that received grants prior to October 1, 1985.

3. Revise § 57.2602, entitled *"Definitions."*, to amend the following terms:

(a) The definition of health manpower shortage area is revised to read, "Health manpower shortage area" means any of the following which the Secretary determines has a shortage of health manpower: (1) An urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services); (2) a population group; or (3) a public or nonprofit private medical facility.—in accordance with section 332 of the Act and its implementing regulations, 42 CFR Part 5, "Designation of Health Manpower Shortage Areas";

(b) The definition of "primary health care" is revised to include nurse midwifery services (when appropriate), in accordance with Pub. L. 99–92; and

(c) The definition of "State" by striking out "the Canal Zone" and by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia," in accordance with Pub. L. 99–239.

4. Revise § 57.2603, entitled *"Who is eligible to apply for a grant?"*, to:

(a) Limit the eligibility of schools of medicine to those which received grants prior to October 1, 1985, in accordance with Pub. L. 99–92; and

(b) Add current departmental grants policy language to reflect that eligible institutions may submit an application as the Secretary may prescribe along with a footnote which provides the address for obtaining application forms and instructions.

5. Revise § 57.2604, entitled *"How will applications be evaluated?"*, to:

(a) Clarify paragraph (a)(2) by adding a clause stating that the educational program must conform to the guidelines codified at 42 CFR Part 57, Subpart Y, Appendix; and

(b) Clarify paragraph (a)(3) by adding after "areas", "designated under section 332 of the Act."

6. Revise § 57.2605, entitled *"How long does grant support last?"*, to:

(a) Reflect current departmental grants policy language in paragraph (c) by adding a sentence regarding continuation support; and

(b) Remove paragraph (d), concerning federally obligated grant funds, and relocate it in § 57.2607, entitled *"For what purposes may grant funds be spent?"*

7. Revise § 57.2606, entitled *"How is the amount of the award determined?"*. The Department is proposing to clarify this section by specifying that the amount of the grant award is based on the Secretary's estimate of the sum necessary during the budget period to cover 100 percent of the costs of tuition, reasonable living and moving expenses (including stipends), books, fees, and necessary transportation for each traineeship awarded to the grantee. This revision, also, indicates that the number of traineeships funded will be determined by the availability of Federal funds.

The Department believes the clarification to this section is necessary because 100 percent of the costs for each traineeship may differ within an institution due to factors such as the trainee's resident or non-resident status, required books and fees, and distance from practice site.

8. Revise § 57.2607, entitled *"For what purposes may grant funds be spent?"*, by adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds in order to reflect current departmental grants policy language.

9. Revise § 57.2608, entitled *"What financial support is available to trainees?"*, to substitute "transportation" for "travel" and to insert "necessary" before "transportation" in paragraph (c) and "reasonable" before "moving expenses" in paragraph (d), in accordance with the authorizing legislation.

10. Revise § 57.2609, entitled *"Who is eligible for financial assistance as a trainee?"*, to:

(a) Incorporate in paragraph (a) the eligibility requirement of a trainee's United States Citizenship status provided by the Immigration and

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Naturalization Service policy as it relates to the admission, into the United States, its territories and possessions, of citizens of the Republic of the Marshall Islands and the Federated States of Micronesia (formerly entities of the Trust Territory of the Pacific Islands), per Pub. L. 99–239; and

(b) Add current departmental grants policy language in paragraph (c).

11. Revise § 57.2610, entitled "*What are the requirements for traineeships and the appointment of trainees?*" to:

(a) Insert in paragraph (b) the words "primary care" before "health manpower shortage area", in accordance with section 332 of the Act and its implementing regulations, 45 CFR Part 5; remove "designed as being short of primary care health manpower" and substitute "designated under section 332 of the Act", in accordance with the authorizing legislation and add "or in a public health care facility", in accordance with Pub. L. 99–92; and

(b) Remove in paragraph (d) the word "priority" and substitute "special consideration" in accordance with Pub. L. 99–92; and

(c) Reflect the current OMB information collection approval number at the end of the section text.

12. Revise § 57.2613, entitled "*What must a trainee agree to do in return for traineeship support?*", to:

(a) Insert in paragraph (a)(1) "primary care" before "health manpower shortage area", in accordance with section 332 of the Act and its implementing regulations, 42 CFR Part 5; remove "designated as having a shortage of primary medical care health manpower" and substitute "designated under section 332 of the Act", in accordance with the authorizing legislation and add "or in a public health care facility", in accordance with Pub. L. 99–92; and

(b) Reflect the current OMB information collection approval number at the end of the section text.

13. Revise § 56.2615, entitled "*When can the practice or payment obligation be waived or suspended?*", to reflect the current OMB information collection approval number at the end of the section text.

14. Revise § 57.2616, entitled "*What additional Department regulations apply to grantees?*", to add 42 CFR Part 57, Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs; 45 CFR Part 5—Designation of Health Manpower Shortage Areas; and 45 CFR Part 30—Claims Collection.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The information collection requirements contained in § 57.2610 (a) and (b), § 57.2613(a), and § 57.2615(a) have been approved by the Office of Management and Budget (OMB) under control number 0915–0060.

Sections 57.2610 (e) through (i) and 57.2613 (c) and (d) also contain new information collection requirements which are subject to OMB review. We have submitted an information request to OMB for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart AA of 42 CFR Part 57 is proposed to be amended as set forth below.

Dated: March 22, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 14, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.298, Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The title of 42 CFR Part 57, Subpart AA is revised to read as follows:

Subpart AA—Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs

2. The authority citation for Subpart AA is revised to read as follows:

Authority: Sec. 215 of Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 822(b) of the Public Health Service Act; 91 Stat. 393; as amended by 95 Stat. 930; as amended by 99 Stat. 395 (42 U.S.C. 298m).

3. Section 57.2601 is revised to read as follows:

§ 57.2601 To what programs do these regulations apply?

These regulations apply to grants awarded to schools of nursing and public health, schools of medicine which received grants or contracts under this subsection prior to October 1, 1985, public or nonprofit private hospitals, and other public or nonprofit private hospitals, and other public or nonprofit private entities to meet the costs of traineeships under section 822(b) of the Public Health Service Act.

4. Section 57.2602 is amended by adding alphabetically the definitions for "completion of the education program", "nurse midwife", "program director", and "public health care facility"; and by revising the following definitions for "health manpower shortage area", "nurse practitioner or nurse midwifery educational program", "primary health care", and "State" to read as follows:

§ 57.2602 Definitions.

* * * * *

"Completion of the educational program" means the satisfaction of all the grantee's requirements for the nurse practitioner or nurse midwifery educational program in which the traineeship recipient originally enrolled.

"Health manpower shortage area" means any of the following which the Secretary determines has a shortage of health manpower:

(a) An urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services);

(b) A population group; or

(c) A public or nonprofit private medical facility.

* * * * *

"Nurse midwife" means a registered nurse who has completed a formal program of study designed to prepare registered nurses to perform in an expanded role in the delivery of primary health care to women and babies including the management of normal antepartum, intrapartum, and postpartum care, as well as family planning and gynecology.

* * * * *

"Nurse practitioner or nurse midwifery educational program" means a full-time educational program for registered nurses (irrespective of the type of school of nursing in which the nurses received their education) which meets the guidelines prescribed by the Secretary in 42 CFR Part 57, Subpart Y, Appendix. The objective of this program is the education of nurses (including pediatric and geriatric nurses) who will, upon completion of their studies in this program, be qualified to perform effectively in an expanded role in the delivery of primary health care, including care in homes, in ambulatory and long-term care facilities, and in other health care institutions.

"Primary health care" means care which may be initiated by the client or provider in a variety of settings and which consists of a broad range of personal health care services, including:

(a) Promotion and maintenance of health;

(b) Prevention of illness and disability;

(c) Basic care during acute and chronic phases of illness;

(d) Guidance and counseling of individuals and families;

(e) Referral to other health care providers and community resources when appropriate; and

(f) Nurse midwifery services (when appropriate).

"Program director" means a qualified individual designated by the grantee and approved by the Secretary who is to be functionally responsible for the traineeship program(s) being supported under this subpart.

"Public health care facility" means an agency, institution, or other entity, controlled by a public agency or a nonprofit private organization which provides health care.

* * * * *

"State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

* * * * *

5. Section 57.2603 is revised to read as follows:

§ 57.2603 Who is eligible to apply for a grant?

Any school of nursing or public health, or school of medicine which received grants or contracts under this section prior to October 1, 1985, public or nonprofit private hospital or other public or nonprofit private entity which is located in a State and which provides a nurse practitioner or nurse midwifery educational program is eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

6. Section 57.2604 is amended by revising paragraphs (a)(2) and (a)(3); by removing paragraph (b); and by revising and redesignating paragraph (c) as (b) to read as follows:

§ 57.2604 How will applications be evaluated?

(a) * * *

(2) The administrative and managerial ability of the applicant to carry out the proposed project, including compliance with the nurse practitioner and nurse midwifery program guidelines in 42 CFR Part 57, Subpart Y, Appendix; and

(3) The extent to which the applicant will recruit trainees who are residents of primary care health manpower shortage areas, designated under section 332 of the Act.

(b) In determining the level of funding for traineeship programs funded under this section, the Secretary shall give special consideration to applications for traineeships to educate individuals who are residents of primary care health manpower shortage areas, designated under section 332 of the Act. However, should specific needs warrant, the Secretary will consider any other special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register.**

7. Section 57.2605 is amended by removing paragraph (d) and by revising paragraphs (b) and (c) to read as follows:

§ 57.2605 How long does grant support last?

* * * * *

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the availability of funds and the grantee's progress and management practices. Failure to comply with the requirements of § 57.2610 will jeopardize continuation of grant awards. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

8. Section 57.2606 is revised as follows:

§ 57.2606 How is the amount of the award determined?

The amount of the award to the grantee will be determined on the basis of the Secretary's estimate of the sum necessary during the budget period to cover 100 percent of the costs of tuition, reasonable living and moving expenses (including stipends), books, fees, and necessary transportation for each traineeship awarded to the grantee. The number of traineeships funded will be determined by the availability of Federal funds.

9. Section 57.2607 is amended by adding a new paragraph (c) to read as follows:

§ 57.2607 For what purposes may grant funds be spent?

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds provided and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts provided by withdrawing the excess. A

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

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budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

10. Section 57.2608 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 57.2608 What financial support is available to trainees?

* * * * *

(b) Initial necessary transportation from the trainee's residence to the educational site;

(c) Necessary transportation required for clinical practice during the educational program; and

(d) Necessary transportation and reasonable moving expenses from the educational site to the site of the obligated practice.

11. Section 57.2609 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 57.2609 Who is eligible for financial assistance as a trainee?

* * * * *

(a) Be a resident of the United States and either a U.S. citizen, a U.S. National, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands (CNMI), a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands (RMI) or the Federated States of Micronesia (FSM) (both formerly part of the TTPI);

(b) Be accepted for enrollment, or be enrolled, as a full-time student in a nurse practitioner or nurse midwifery educational program;

(c) Not be receiving concurrent support for the same education from another Federal source, except educational benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources; and

* * * * *

12. Section 57.2610 is revised to read as follows:

§ 57.2610 What are the requirements for traineeships and the appointment of trainees?

(a) The grantee must require each trainee and the program director to complete a statement of appointment by the beginning of the academic term. The program director and the trainee must sign the statement of appointment and the grantee must retain it as part of the trainee's record.

(b) The grantee must require each trainee to sign a commitment with the Secretary to practice as a nurse practitioner or nurse midwife in a primary care health manpower shortage area, designated under section 332 of the Act, or in a public health care facility. The commitment must meet the requirements of § 57.2613. The original copy of the trainee's signed commitment must be submitted to the Secretary before any funds are disbursed to or for the trainee.

(c) The grantee may not require trainees to perform any work which is not an integral part of the nurse practitioner or nurse midwifery educational program and required of all students in the program.

(d) The grantee shall give special consideration in the allocation of traineeships to individuals who are residents of primary care health manpower shortage areas, designated under section 332 of the Act.

(e) The grantee must conduct an entrance interview with the trainee before the trainee begins the educational program and an exit interview at the completion or termination of the educational program. The obligations and terms of the traineeship must be discussed during these interviews and statements verifying that these interviews were conducted must be signed by the program director and the trainee. These statements must be retained by the grantee as part of the trainee's record.

(f) The grantee must submit a completion or termination notice to the Secretary within 30 days of the time a traineeship is terminated by completion, dismissal from the educational program, or withdrawal.

(g)(1) The grantee must provide the trainee with copies of all forms signed by the trainee, program documents, and a financial statement at each disbursement for the traineeship detailing the amounts paid for the trainee's education and support. A copy of each financial statement, signed by the trainee, must be retained by the grantee as part of the trainee's record.

(2) At the initial disbursement for the traineeship, the financial statement must indicate the maximum legal prevailing interest rate as determined by the United States Treasury at the time the trainee initially received the traineeship which will be applicable to the trainee's indebtedness if the practice commitment is not fulfilled.

(3) At the final disbursement, the financial statement must include an estimate of the simple interest at the maximum legal prevailing interest rate as determined by the United States Treasury at the time the traineeship for which the trainee will be indebted, in addition to the indebtedness for traineeship funds, if the practice commitment is not fulfilled.

(h) Ninety days prior to completion of the educational program, the grantee must provide each trainee with a copy of the **Federal Register** notice, in effect as of that date, listing the primary care health manpower shortage areas, designated under section 332 of the Act.

(i) The grantee must maintain an accurate, complete, and retrievable record with respect to each individual who receives a traineeship. This record must be retained until the trainee's practice commitment is fulfilled or any amount of the United States is owed has been paid or waived. This record must document that requirements (a) through (h) of this section have been met.

(Approved by the Office of Management and Budget under control number 0915-0060.)

13. Section 57.2611 is revised to read as follows:

§ 57.2611 Duration of traineeships.

Initial appointment to traineeships must be made for a full academic year, not to exceed 12 months, except that a shorter appointment may be made when necessary to enable the trainee to complete the educational program. Appointments may be extended on a year-to-year basis. The total period of support for any trainee may not exceed 24 months.

14. Section 57.2612 is amended by revising paragraph (b) to read as follows:

§ 57.2612. Termination of traineeships.

* * * * *

(b) If the trainee is no longer enrolled full-time in the nurse practitioner or nurse midwifery educational program for which the trainee was receiving a traineeship under this subpart; or

* * * * *

15. Section 57.2613 is revised to read as follows:

§ 57.2613 What must a trainee agree to do in return for traineeship support?

(a) *General.* (1) Each trainee must sign a commitment with the Secretary to practice as a nurse practitioner or nurse midwife on a full-time basis (at least 35 hours per week) in a primary care health manpower shortage area, designated under section 332 of the Act, or in a public health care facility.

(a) With respect to the primary care health manpower shortage areas, designated under section 332 of the Act, designations in effect at the time the trainee complete the educational program or, designations in effect 90 days prior to completion of the educational program if a trainee has received a written commitment of employment, will quality for approval as a practice site.

(b) *Duration of practice.* The period for which a trainee must agree to practice is equal to 1 month for each month for which the trainee receives support from grant funds. Once practice has begun, it must be continuous for the entire period of practice required by the commitment, unless the Secretary permits suspension of the obligation in accordance with § 57.2615.

(c) *Beginning of practice.* The trainee must inform the Secretary within 30 days after his or her completion of the educational program of the intended practice site, selected from either a public health care facility or a primary care health manpower shortage area. The trainee must begin the practice at that site within 60 days after receipt of notification from the Secretary that the site is approved for the practice commitment either as a primary care health manpower shortage area, designated under section 332 of the Act, or as a public health care facility.

(d) *Fulfillment of practice.* (1) The trainee must agree to report annually to the Secretary his or her current name, address, and dates of employment on a form, signed by the employer, who certifies the dates of employment, and to report changes in name or address within 30 days of their occurrence.

(2) At the end of the period of the practice commitment, the trainee must report to the Secretary, in writing on the employer's stationery, the dates and practice site. The written statement must be signed by the employer who attests the dates and practice site. The practice commitment will not be considered fulfilled until this statement has been received and the dates and practice site are accepted by the Secretary.

(Approved by the Office of Management and Budget under control number 0915-0060.)

16. Section 57.2614 is revised to read as follows:

§ 57.2614 What are the consequences if the trainee fails to comply with the terms of the commitment?

If a trainee fails to complete the educational program or fails to begin or complete the period of practice required by the commitment under § 57.2613, the trainee must repay the traineeship support to the United States Treasury. The trainee must pay the amount owed within 36 months of the date on which he or she failed to complete the educational program or failed to begin or complete the period of required practice, as determined by the Secretary.

(a) *Failure to complete the educational program.* A trainee who is dismissed from the academic program or who voluntarily terminates academic education must repay the traineeship support to the United States Treasury. This individual shall be liable for an amount equal to the cost of tuition and other education expenses paid to or for such individual from Federal funds plus any other payments which were received under the traineeship.

(b) *Failure to begin or complete the period of practice.* If for any reason an individual who received a traineeship and completed the educational program fails to complete a practice obligation, this individual must repay the traineeship support plus interest to the United States Treasury. The amount of repayment must equal the sum of all traineeship support received, together with interest at the maximum legal prevailing rate in effect on the date the trainee initially received traineeship assistance. The Secretary will also charge this individual the Department's administrative costs of collecting the repayment, as well as the penalty charge of 6 percent a year if the repayment is more than 90 days overdue. Late payment charges will accrue from the date the repayment becomes overdue until the overdue amount is paid.

17. Section 57.2615 is amended by revising the OMB approval number at the end of the section to read as follows:

§ 57.2615 When can the practice or payment obligation be waived or suspended?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060.)

18. Section 57.2616 is amended by adding numerically the following CFR Part references to read as follows:

§ 57.2616 What additional Department regulations apply to grantees?

* * * * *

42 CFR Part 57, Subpart Y—Grants for Nurse Practitioner and Nurse Midwifery Programs
45 CFR Part 5—Designation of Health Manpower Shortage Areas
* * * * *
45 CFR Part 30—Claims Collection
* * * * *

[FR Doc. 88-9640 Filed 5-4-88; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-114; FCC 88-100]

Broadcast Services; Deregulatory Review of Technical and Operational Regulations for Television Stations

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This action initiates a review of technical and operational regulations for television broadcast stations. It identifies and proposes to delete burdensome or outdated regulations that are no longer needed. This action continues the Commission's deregulatory review of technical and operational regulations for various radio services.

DATES: Interested parties may file comments on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted March 9, 1988 and released April 29, 1988. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. This action proposes to delete certain technical and operational television broadcast regulations that are outdated and unnecessary.

2. First, the Commission proposes to amend Rule § 73.653 to liberalize the permitted time of day for operation of separate TV aural and visual transmitters. The picture and sound are simultaneously transmitted via separate video and audio transmitters. Under certain conditions, however, these transmitters may operate separately and independent of each other. For example, they may provide an additional broadcast sevice in the form of an audio program with or without visual displays,

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or a video informational bulletin board with or without related sound. Currently, this service is restricted, by our Rules, primarily to "graveyard hours" (12 midnight to 6 a.m.), or for only 15 minutes just prior to a station regular sign-on time, if after 6 a.m.

3. Upon reevaluation, we now believe that the public interest would be better served by allowing the TV licensee maximum flexibility to establish the duration and time of day that it determines as most appropriate within the competitive framework of their individual market areas. Therefore, the Commission proposes to eliminate all time restrictions for the operation of separate TV aural and visual transmitters.

4. Second, the Commission proposes to amend Rule § 73.663(b)(3) to eliminate a periodic 6-month power meter calibration requirement. Our Rules currently specify that a television broadcast licensee must have the capability of determining the station's visual power at all times.

Because one Rule stipulates that the line meter used for this purpose should be calibrated as often as necessary to ensure compliance with the appropriate power level, we find that another Rule requiring such calibration at least once every 6 months to be unnecessary and burdensome. Thus, in view of the overriding requirement to perform meter calibration as often as needed, the Commission proposes to eliminate the periodic 6-month calibration requirement of the power meter.

5. Third, the Commission proposes to delete Note 8 in Figure 6 of Rule § 73.699, which requires that color burst signals be omitted during the extended transmission of black-and-white programming. Such deletion would permit the color burst to be retained during black-and-white transmission. The color burst is a special synchronizing signal, transmitted within the television picture signal to enable the receiver to decode the color information for proper display on the screen. During the transmission of black-and-white video programming, however, the color burst signals do not benefit reception, and, in fact, were originally found to degrade the picture quality.

6. In recent years, however, in omitting the color burst signal during black-and-white transmission, broadcasters have encountered certain operational disadvantages when using video tape processing equipment, which typically relies on the color burst to correct video signal stability or timing errors.

7. While there is some disagreement and question in the industry, including broadcasters and receiver manufacturers, as to the extent of black-and-white picture degradation caused by the presence of the color burst, we note that the color burst omission requirement is a quality control regulation and does not relate to preventing or restricting adjacent or co-channel station interference. Thus, while the elimination of the color burst omission requirement might lead to some measure of picture degradation, we believe, in such cases, that the broadcaster will be responsive to any audience complaints and strike the proper balance between the most efficient manner to operate its video tape equipment and the public's demand for the highest quality picture signal. Therefore, the Commission proposes to eliminate the requirement that the color burst signal must be omitted during the transmission of black-and-white television programming.

8. Fourth, the Commission proposes to amend Rule § 73.685(e) to eliminate restrictions on the degree of radiation suppression (ratio of maximum-to-miniumum power radiated) for television directional antennas, which are not routinely authorized. In using directional antenna systems, one of the applicable restrictions pertains to the ratio of the maximum radiated power at any point in the antenna pattern to the minimum radiated power at some other point in the pattern (the degree of suppression or null). The Commission adopted such limits in the early 1950s, when it concluded that the limits were needed because of the instability of antenna patterns with very sharp nulls and the difficulty in predicting the actual pattern.

9. We now believe, however, that antenna design has progressed to the point that antennas with sharp nulls have much improved stability and that there is increased accuracy in predicting and attaining the desired radiation pattern. Moreover, over the years broadcasters have requested and have received waivers to exceed the current limits so as not to waste power over large bodies of water or to avoid excessive signal radiation toward the face of a hill or mountain, which could reflect the signal and cause picture "ghost image" degradation. Because, we have received no reports of significant problems as a result of our granting such waivers, and because these limits have no bearing on adjacent or co-channel station interference, the Commission proposes to eliminate the maximum-to-minimum radiation limitations for television station directional antennas.

10. Fifth, the Commission proposes to amend Rule Section 73.687 to delete specifications that pertain to equipment installation and safety requirements. Today, in contrast to the time when many broadcasters designed and built their own facilities, broadcasters acquire their transmission system equipment from manufacturers that must meet the safety requirements imposed by other regulatory agencies, *e.g.*, OSHA and various local and state agencies. Therefore, the Commission proposes to remove these specifications from our Rules.

11. Finally, the Commission proposes to amend Rule § 73.698 by deleting Table I, a conversion table of minutes and seconds of a degree converted to decimal parts of a degree. These values may be used in the calculation of geographical distance separations between television channel assignment locations. The advent of and widespread availability of electronic calculators and computers for calculating coordinate distance separations with increased accuracy and speed, have made this table unneccessary. Therefore, the Commission proposes to remove the reference table of minutes and seconds of a degree converted to decimal parts of a degree.

12. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these proposals will provide broadcasters with increased flexibility and less burdensome regulations, eliminating the need for filing waiver or other requests reducing procedural burdens on applicants, licensees and the Commission. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

14. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

15. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 20, 1988, and reply comments on or before July 5, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9989 Filed 5-4-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

Consumer Information Regulations; Uniform Tire Quality Grading

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the Rubber Manufacturers Association, requesting that the agency delete the requirement in the Uniform Tire Quality Grading Standards for placing a label bearing grading information on the tire tread surface. The petitioner raised again arguments which had previously been considered by the agency in its decision to adopt the requirement. Because NHTSA sees no basis for proposing the requested amendment, the RMA petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION: Section 575.104, Uniform Tire Quality Grading Standards (UTQGS), specifies requirements for the purpose of assisting consumers in making informed choices in purchasing passenger car tires. Motor vehicle and tire manufacturers and tire brand name owners are required to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance.

Under the UTQGS program, grading information is brought to the attention of consumers in several ways. Each new tire other than those sold as original equipment on new cars must have a label affixed to its tread surface, setting forth the grades assigned to the tire and an explanation about the grades. The grades assigned to a tire must also be permanently molded into or onto the tire sidewall. However, the information on the tire sidewall does not include an explanation of the grades. In addition, tire manufacturers and tire brand name owners are required to provide for examination by prospective purchasers, at each location where their tires are sold, information about the grades assigned to each tire offered for sale at that location and an explanation of the grades. Finally, manufacturers and brand name owners are required to provide NHTSA with information about the grades assigned to their tires, which the agency then makes available to the public.

The Rubber Manufacturers Association (RMA), representing the domestic tire manufacturers, submitted a petition for rulemaking requesting deletion of the requirement for a tire tread surface label, asserting that the labeling requirement is unreasonably duplicative and unnecessarily burdensome. The petitioner argued that the requirement for point-of-sale information provides all of the information which any consumer will need or use in making an informed choice in the purchase of tires, and that the tire tread surface label does not add to the assistance already given the consumer in making a purchasing decision.

RMA also argued that the consumer will already have made the purchasing choice before the selected tires have been removed from stock for installation on the car. The petitioner stated that a 1975 consumer survey, commissioned by RMA and submitted to the docket at that time, confirms that most tire purchasers do not see the actual tires purchased before they are installed. RMA also stated that many service stations and tire stores, for safety reasons and to avoid liability, forbid customers to enter the working areas where their tires are removed from stock and installed.

The petitioner also argued that it is undisputed from the record before the agency that the tire tread surface label requirement is burdensome and costly. RMA cited a 1974 docket submission by Firestone Tire and Rubber Company in which the cost to the domestic tire industry of complying with the labeling requirement was estimated to range from $15 million to $17 million.

The requirement for a tire tread surface label was adopted by NHTSA in a final rule published in the **Federal Register** (40 FR 23073) on May 28, 1975. The agency stated the following:

Several commenters objected to the proposed tread label requirement, suggesting that point-of-sale material such as posters and leaflets could provide the consumer with adequate information about tire grades. For the reasons discussed in Notice 12, the NHTSA is convinced that labels affixed to the tread of the tire are the only satisfactory method of providing complete information to replacement tire purchasers. Therefore, the scheme of transmitting quality grading information to consumers, combining sidewall molding, tread labels, and point-of-sale materials, has been adopted substantially as proposed * * *. 40 FR at 23077.

In Notice 12, the NPRM, NHTSA had stated the following:

> * * * Although the actual tires a motorist purchases may not be seen by him prior to delivery, representative tires are usually displayed in most locations where tires are sold. Such display tires would have labels affixed to their tread surface, and the information would thus be available to purchasers before sale in an obvious and conspicuous location.
>
> Point-of-sale material, in the form of retainable printed matter, would be required as well, under the general consumer information requirements that information be provided to prospective consumers. The NHTSA does not consider it desirable, however, to rely on point-of-sale material alone. The dissemination of that material under existing consumer information requirements has frequently been hampered by a lack of knowledge as to its availability on the part of both dealers and consumers. Under the proposed tread-label approach the tire must be labeled at the time of sale, and the NHTSA has clear authority to enforce the labeling requirement throughout the entire chain of distribution. 39 FR 20810, June 14, 1974.

Tire manufacturers sought judicial review of the May 1975 final rule, focusing among other things on the requirement for a tire tread surface label. See *B.F. Goodrich Company v. DOT*, 541 F.2d 1178 (6th Cir. 1976), cert. denied 300 U.S. 930 (1977). The manufacturers argued that the label requirement was arbitrary and unreasonable in cost, claiming that it would add 15 to 17 million dollars of cost, that the label was impossible to keep affixed to every tire, and that, anyhow, less than a majority of prospective purchasers would ever see the label. The court found the agency's responses, including a portion of the above-quoted language of the NPRM and a submission from the Federal Trade Commission, to be "convincing and supported by 'ample evidence' in this record." 541 F.2d at 1186.

On the issue of costs, the court stated that it seemed obvious to it, "as it does to the agency, that full information (as contrasted to the minimum information supplied on the tire wall) can be cheaply provided to the ultimate consumer merely by some expansion of the tire

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label now in widespread use in the industry." The court noted that the "largely unsupported estimate" in petitioners' brief of $17 million cost per year for tire labels would produce a per tire cost of only 12-plus cents, and that the agency had cited a three cent per label cost estimate by Uniroyal and had provided its own estimate of five cents per tire for all labeling costs.

NHTSA notes that RMA's petition raised again arguments and data that had previously been considered by NHTSA, as well as by a reviewing court. The petitioner did not address the past reasoning of NHTSA in adopting the tire tread surface label requirement, or offer any new arguments in its petition.

After receiving RMA's petition, a NHTSA representative visited 20 large private and franchise tire dealerships in the Washington, DC metropolitan area, to determine if tire manufacturer information sheets were available on each tire offered for sale and to determine whether tire tread surface labels were attached to the display tires. Only five of the dealerships openly displayed information sheets for consumer use on each line of tires offered for sale. Another five had the information sheets available to consumers upon request. Thus, for this second group of five dealerships, consumers would likely obtain the information sheets only if they knew to ask for them. Of the remaining ten dealerships, eight did not have tire information sheets for any of the tires they offered for sale, while the other two offered the information sheets for only one of the tire brands they offered for sale. Twelve of the tire dealerships, including seven of the 10 dealerships that had limited or no information sheets available, had tire tread surface labels on their display tires.

The sample size in NHTSA's survey of tire dealerships was small, and the agency recognizes that the percentages of tire dealerships offering tire information sheets and displaying tire tread surface labels on their display tires may differ for a larger sample. However, the results of the survey confirm the agency's earlier conclusions that the effectiveness of point-of-sale material is limited, and that even if a consumer does not see the actual tires being purchased prior to sale, he or she may see the tire tread surface label on display tires.

NHTSA concludes that RMA has not shown that the agency should change its previous decision to require the tire tread surface label. Because NHTSA sees no basis for proposing the requested amendment, the RMA petition is denied.

List of Subjects in 49 CFR Part 575

Imports, Motor vehicles, Tires.

(15 U.S.C. 1392, 1401, 1407, 1421, 1423, delegations of authority at 40 CFR 1.50 and 501.8)

Issued on April 29, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-9925 Filed 5-4-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 53, No. 87

Thursday, May 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Compliance With the Privacy Act of 1974; System of Records

AGENCY: African Development Foundation.

ACTION: Notice of proposed adoption of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that ADF proposes to adopt the notice of systems of records as set forth below.

This notice does not include specific identification of Office of Personnel Management (OPM) records in the custody of the African Development Foundation (ADF). OPM has assumed responsibility for publishing government-wide notices pertaining to Federal employee personnel records.

Special note should be taken of the preliminary statement to the systems of records. It contains an indication of general routine uses, location of files, and general procedures as to notification, access and contest applicable to ADF records systems generally. Information is provided in this manner in order to avoid unnecessary repetition and duplication in the publication of each system of records. The publication on general routine uses and exemptions does not serve as an indication that each system will be normally used or usable for each such purpose or is subject to each such exemption.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on June 6, 1988, unless modified by a subsequent notice to incorporate public comment. ADF invites comments from the public on this proposal, to be received by the contact person listed below on or before June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas Wilson, Director of Administration and Finance, African Development Foundation, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036, 202-673-3916.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, ADF proposes to adopt a number of systems of records which contain information relative to employment with the Foundation, present, past and prospective, and to individuals and businesses with whom it does business. This information will be collected during the normal course of doing business as a U.S. Government Corporation, and will include only such data as is essential to the conduct of such business. All systems will be located at the Foundation's headquarters at 1625 Massachusetts Ave. NW., Suite 600, Washington, DC 20036.

A "Report on new systems" required by 5 U.S.C. 552a(o) has been sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget.

Signed at Washington, DC, on April 28, 1988.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

The African Development Foundation proposes to adopt the following notice of systems of records.

Notice of Systems of Records, Preliminary Statement

Official Personnel Files

Official personnel files of Federal employees in the General Schedule in the custody of ADF are considered the property of OPM. Access to such files shall be in accordance with such notices as are published by OPM. Access to such files in the custody of ADF will be granted to individuals to whom such files pertain upon request to the Personnel Officer, ADF, Suite 600, 1626 Massachusetts Avenue, NW., Washington, DC 20036.

Various ADF offices maintain files which contain miscellaneous copies of personnel material affecting ADF employees. This includes copies of standard personnel forms, evaluation forms, etc. These files are kept only for immediate office reference use and are considered by the Foundation to be part of the personnel file system. ADF's internal regulations provide that such information is part of the general personnel files and can only be disclosed through the Director of Personnel in order to ensure that any material disclosed is relevant, material, current, and fair to the individual employee. It is also ADF policy to limit the use of such files and to encourage the destruction of as many as possible.

Security Classification

None of the files maintained by ADF contain classified information.

Statement of General Routine Uses

The following general routine uses are incorporated by this reference into each system of records set forth herein, unless such incorporation is specifically limited in the system description.

1. In the event that a record in a system of records maintained by ADF indicates any violation or potential violation of the law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant record in this system of records may be referred as a routine use to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall also include and be deemed to authorize any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal Government having an interest in the individual for employment purposes, including the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. Routine Use for Disclosure to the Department of Justice for Use in Litigation:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Routine Use for Agency Disclosure in Litigation

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. Information from records systems may be disclosed to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

5. Information in any system of records may be disclosed to a Congressional office, in response to an inquiry from the office, made at the request of the individual to whom the record pertains.

6. Any record from any system of records may be disclosed as a routine use to the National Archives and Records Service, General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

7. Information from records systems may be released to auditors in the conduct of an audit of ADF operations or accounts, but only to the extent it is relevant and necessary to the conduct of the audit.

Location of Files

All files are located in the office indicated under "System Location" at ADF headquarters in Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

Notification

Individuals may inquire whether any system contains information pertaining to them by addressing the Director of Administration and Finance in person or in writing. If in writing, such request should include the individual's name and address, social security number, and any relevant data concerning the information sought which will assist in identifying the record. ADF may require that the individual furnish the Foundation with additional information to assure that he or she is properly identified.

Access and Contest

In response to a request by an individual, the Director of Administration and Finance shall arrange for access to the requested record, or advise the requester if no such record exists. If an individual wishes to contest the content of any record, he/she may do so by addressing a written request to the Director of Administration and Finance, Suite 600, 1625 Massachusetts Ave., NW., Washington, DC 20036. The Director will provide all necessary information regarding such contest and appeal.

ADF 1

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

Office of Administration and Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of ADF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of current personnel status, amounts of pay, hours worked, leave accrued, allotments authorized, and benefits paid by the Government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual; 31 U.S.C. 3512; and the Budget and Accounting Procedures Act of 1950.

PURPOSE(S):

This system was established to record moneys paid, allotments authorized, leave earned and used, and retirement benefits accrued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Information in these records are routinely provided as follows:

1. To the Federal Agency designated through inter-agency agreement to perform payrolling services for ADF. The Department of Energy is currently performing this function.

2. Through the Department of Energy, to the Treasury for payroll and savings bonds and other deduction purposes; to the Internal Revenue Service with regard to tax matters; and to participating insurance companies holding policies with respect to ADF employees.

3. General routine uses listed in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pay and leave records are maintained in looseleaf binders in metal file cabinets with key locks. Individual Time and Attendance records are maintained by the Personnel Officer in a separate metal file cabinet with a key lock. Microfiche pay and leave records are maintained in a Microfiche index which is kept in a metal file cabinet with a key lock.

RETRIEVABILITY:

Records are indexed in alphabetical order by pay period.

SAFEGUARDS:

Access to data in this system is restricted to ADF and Department of Energy staff, including employees, interns, consultants and contractors, with a need to know in connection with the performance of their official duties.

RETENTION AND DISPOSAL:

Records in this system are maintained for three years after the end of the fiscal year in which an employee terminates employment with ADF, and then retired to the Federal Records Center. The Time and Attendance sheets are maintained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration and Finance, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary statement.

CONTESTING RECORD PROCEDURES:

Same as "record Access Procedures".

RECORD SOURCE CATEGORIES:

ADF employees and the individual to whom the record pertains.

ADF 2

SYSTEM NAME:

Locater files.

SYSTEM LOCATION:

Office of the President and at agencywide desk top word processors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the ADF Board of Directors and Advisory Council, American Ambassadors and AID Mission Directors in Africa, ADF staff and personal services contractors, and press contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain names and current addresses and phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The African Development Foundation Act, 22 U.S.C. 290h *et seq.*

PURPOSE(S):

The purpose of this system is to enable ADF to contact individuals whose names are on file either in writing or by phone.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these file are used by ADF staff, consultants and contractors to contact individuals whose names are in the file in connection with official ADF business. Information in the file is also available for routine uses 2 through 6 listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in disk packs with floppy diskette backup. These are filed and maintained in metal cabinets with key locks.

RETRIEVABILITY:

Records in these files are maintained in alphabetical order.

SAFEGUARDS:

Access to the data in the files is through the use of a password. Only those with a need for the information in the files in connection with their regular duties have the password.

RETENTION AND DISPOSAL:

Information in this file is kept current. Names and addresses of officials who no longer hold positions noted under "Categories of Individuals" above are purged from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the President, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as " Record Access Procedures.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the individuals listed in the system.

ADF 3

SYSTEM NAME:

Mailing List.

SYSTEM LOCATION:

Office of the President, ADF, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Academicians; Federal, state, and local government employees; officials in private voluntary and religious organizations involved in overseas development; officers of corporations and financial institutions doing business in Africa, librarians, media people, and other individuals having an interest in, and/or a need to know information about grassroots development in Africa.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and current addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The African Development Foundation Act, 22 U.S.C. 290h *et seq.*

PURPOSE(S):

This system is maintained as an up to date mailing list for ADF publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names and addresses maintained in this system allow the Foundation to carry out its purpose of disseminating information about grassroots development in Africa through the mailing of publications to persons and institutions involved in development and/or African affairs, both at the academic and practical level. Employees, interns, consultants and contractors having a need for the information in the course of updating the list or mailing the publications have access to it. Since mailing services are provided routinely through an outside contractor, that contractor and its employees will have periodic access to the system in order to prepare mailing labels. Information in the system is also subject to routine uses 2 through 6 as listed above in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on magnetic tape with a backup. The tapes are stored on the premises of the firm which has the mailing contract with ADF in a room designated as a tape library. Two hard copy printouts of the tapes are retained by ADF in metal cabinets with key locks.

RETRIEVABILITY:

The records are maintained in alphabetical order.

SAFEGUARDS:

Records are being maintained by the contractor so as to permit access only to employees who have a need to know in connection with the provision of services under the contract. Similarly, access to the hard copies maintained by the Foundation is limited to ADF employees, interns, consultants with a need to know in connection with their duties.

RETENTION AND DISPOSAL:

The records are updated semi-annually and obsolete names and/or addresses are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the President, ADF, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036

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NOTIFICATION PROCEDURE:

See the Notification paragraph in the above Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Some of the names and addresses of firms and individuals involved in grassroots development were furnished by the Agency for International Development. Others came from ADF employees, and the remainder were furnished by the individuals listed in the system.

ADF 4

SYSTEM NAME:

Paid Voucher Files.

SYSTEM LOCATION:

Office of Administration and Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, vendors, suppliers, consultants and grantees who have received payment from ADF.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include paid vouchers, purchase orders, contracts, travel orders, and other obligating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The African Development Foundation Act, 22 U.S.C. 290h *et seq.*; The Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; and the Federal Claims Collection Act of 1966.

PURPOSE(S):

The purpose of this system is to maintain a record of all payments made by ADF pursuant to purchase orders, contracts, grants and other obligating documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

These records are used by ADF staff and contractors to determine amounts to be paid, verify administrative authorizations and eligibility for payment, ensure that payments are made promptly and accurately, confirm costs, and ensure accuracy of accounting information. Other routine uses would be those listed in the above Preliminary Statement. The information is used by ADF employees, consultants, and contractors who have a need for the information in connection with the performance of their official duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in metal filing cabinets with key locks.

RETRIEVABILITY:

Records are filed by fiscal year, alphabetically by the last name of the payee.

SAFEGUARDS:

Records are available only to appropriate Administration and Finance personnel and other appropriate ADF officials with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are held for three years and retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administration and Finance, African Development Foundation, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Data is obtained from documents provided by the individual or the vendor.

ADF 5

SYSTEM NAME:

Procurement/Contracting.

SYSTEM LOCATION:

Office of Administration & Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All vendors, both companies and individuals, with whom ADF does or has done business, as well as organizations and individuals with whom the Foundation may wish to do business in the future. Included are the records pertaining to vendors, contractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of purchase orders and contracts, as well as resumes and SF 171's, and invoices from contractors, vendors and consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

48 CFR Ch. 1, subpart 4.8 (the Federal Acquisition Regulations), the African Development Foundation Act, 22 U.S.C. 290h *et seq.*

PURPOSE(S)

Information in the system is used to: (1) Provide a complete background as a basis for informed decisions at each step in the acquisition process; (2) support actions taken; (3) provide information for reviews and investigations; (4) provide information on which to base future procurement decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

Disclosures may be made to ADF employees, contractors, consultants, and interns, performing services for ADF at ADF headquarters, with a need to know in order to make informed recommendations or decisions, or take actions, with regard to the procurement of goods or services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinets with key locks.

RETRIEVABILITY:

Records are indexed alphabetically by fiscal year.

SAFEGUARDS:

Information from records is only available to ADF staff who have a need to know in the performance of their official duties, and is usually provided through the Contracting Officer or, in his/her absence, the Director of Administration and Finance.

RETENTION AND DISPOSAL:

Records are retained for three years and then reviewed, and either destroyed or forwarded to the Federal Record Center.

SYSTEM MANAGER(S) AND ADDRESS:

Contract Officer, Office of Administration and Finance, ADF, Suite 600, 1625 Massachusetts Avenue NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Data is obtained from documents provided by the individual or vendor and, on occasion, by other organizations within or without the Government who may have done business with the individual or organization.

ADF 6

SYSTEM NAME:

Security Files.

SYSTEM LOCATION:

Office of Administration & Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present ADF employees and applicants for employment from 1986 onwards.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, behavior in the community; arrests and convictions for any violations of the law; reports of interviews with former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries to law enforcement agencies, former employers, educational institutions attended; and other similar information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, and Federal Personnel Manual, Chapters 731, 732, and 736. In addition, there are various acts of Congress relating to personnel investigations authorizing the same by the Office of Personnel Management, which responsibility can, under Civil Service regulations and law, be delegated in whole or in part to agencies.

PURPOSE(S):

This system was established to keep on record information used to determine eligibility or suitability for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records may be disclosed and used as follows: 1. To the Office of Personnel Management as part of the central OPM personnel investigation records system; 2. to the Foundation's Security Officer and the President of the Foundation for the purposes of making employment suitability and eligibility determinations; and 3. subject to the general routine uses listed in the above Preliminary Statement.

RECORD SOURCE CATEGORIES:

Data is obtained from documents provided by the individual or vendor and, on occasion, by other organizations within or without the Government who may have done business with the individual or organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative folders are maintained in a fireproof, combination lock safe in a room accessible only to authorized personnel.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

Access to the records in this system is restricted to the Foundation Security Officer (the Personnel Officer) and the President, and to the General Counsel of ADF on a need to know basis.

RETENTION AND DISPOSAL:

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer (Personnel Officer), Office of Administration & Finance, African Development Foundation, Suite 600, 1625 Massachusetts Avenue NW., Washington, DC 20036

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement in this notice.

RECORD ACCESS PROCEDURE:

See the Access and Contest paragraph in the Preliminary Statement in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure".

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: 1. Applications and other forms and information furnished by the individual. 2. By personal investigation or written inquiry from such sources as employers, schools, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials and other sources as may be developed.

ADF 7

SYSTEM NAME:

Travel Advance Records.

SYSTEM LOCATION:

Office of Administration and Finance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any ADF employees, experts, consultants, contractors or others who have engaged in authorized official travel for ADF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated records of travel advances made to employees, consultants and others, and records of repayment or liquidation of such advances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The African Development Foundation Act, 22 U.S.C. 290h *et seq.*; the Budget and Accounting Act of 1921; the Accounting and Auditing Act of 1950; the Federal Claim Collection Act of 1966.

PURPOSE(S):

This system is maintained to provide a record to account for and issue payments due as the result of authorized official ADF travel; and for audit purposes to account for the expenditure of Federal funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

1. To ADF employees, interns, consultants, and contractors in the office of Administration and Finance, and senior management personnel who require access in the performance of their official duties.

2. To the Federal Agency which is performing accounting services for ADF pursuant to inter-agency agreement, in this case the National Transportation Safety Board, in the event of a problem with the accounting system which requires the examination of individual transactions.

3. Subject to the routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are kept in key locked metal filing cabinets. Automated records are on hard disks in the computer accessible only by password available to employees of the Office of Administration and Finance and NSTB employees responsible for systems maintenance.

RETRIEVABILITY:

Manual records are maintained alphabetically by name. The automated records are maintained by social security number.

SAFEGUARDS:

Records are available to only those with a need to know in connection with

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the performance of their duties. The records are accessible through the use of a password kept by the Director of Administration and Finance. It is changed every six months by the Director of Administration and Finance.

RETENTION AND DISPOSAL:

Records in the system are maintained for one year after the individual leaves the Foundation.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration and Finance, Suite 600, 1625 Massachusetts Ave. NW., Washington, DC 20036.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the above Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Information is furnished by the individual traveler, supervisors, or other ADF staff.

[FR Doc. 88-9932 Filed 5-4-88; 8:45 am]

BILLING CODE 6616-01-M

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities Under Review by Office of Management and Budget

April 29, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Stabilization and Conservation Service,* 7 CFR Part 700—Rural Clean Water Program (RCWP) Regulations, Request for Cost-Sharing, On occasion, Individuals or households; Farms; 500 responses; 250 hours; not applicable under 3504(h).

Paul E. Smith (202) 447-5784.

- *Economic Research Service,* Supplemental Qualifications Statement, EMS-459, With application for employment, Individuals or households; 125 responses; 625 hours; not applicable under 3504(h).

Mildred A. Russell (202) 447-7929.

- *Food and Nutrition Service,* Food Coupon Accountability Report, Monthly, State or local governments; 31,428 responses; 94,284 hours; not applicable under 3504(h).

Paul Jones (703) 756-3385.

- *Food and Nutrition Service,* National Commodity Processing Program for Processing USDA Donated Food Monthly; Annually, Businesses or other for-profit; 114,250 responses; 37,425 hours; not applicable under 3504(h).

Joseph E. Shepherd (703) 756-3585.

- *National Agricultural Statistics Service,* List Sampling Frame Survey, On occasion, Farms; 80,500 responses; 8,208 hours; not applicable under 3504(h).

Larry Gambrell (202) 447-7737.

New

- *Food and Nutrition Service,* WIC Vendor Management Study, One-time Study, State or local governments; 49 responses; 367 hours; not applicable under 3504(h).

Dr. Gary Bickel (703) 756-3125.

- *Foreign Agricultural Service,* Conflict of Interest Provisions related to FAS Foreign Market Development Programs, One time only, Businesses or other for-profit; 60 responses; 600 hours; not applicable under 3504(h).

Richard E. Passig (202) 447-4327.

- *Soil Conservation Service* Volunteer Program—Earth Team, SCS-PER-001, -001a, -002, -002a, -003, On ocassion, Individuals or households; 2,400 responses; 218 hours; not applicable under 3504(h).

Helen Gilbert (202) 447-7730.

Revision

- *Agricultural Marketing Service,* Potatoes Grown in the State of Washington Marketing Order No. 946, On occasion; Monthly; Annually; Recordkeeping, Farms; Businesses or other for-profit; 1,332 responses; 215 hours; not applicable under 3504(h).

Virginia M. Olson (202) 447-5057.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-9986 Filed 5-4-88; 8:45 am]

BILLING CODE 3410-01-M

Agriculture Biotechnology Research Advisory Committee; Public Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.

Date: June 23-24, 1988.

Time: 9:00 a.m. to approximately 5:00 p.m. on June 23, 9:00 a.m. to approximately 3:00 p.m. on June 24.

Place: Room 104-A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. A major action to be considered at this meeting is the development of guidelines for biotechnology research in agriculture.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agriculture Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321-A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447-9165.

Done at Washington, DC, this 27th day of April, 1988.

Orville G. Bentley,

Assistant Secretary,

[FR Doc. 88-9983 Filed 5-4-88; 8:45 am]

BILLING CODE 3410-22-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

1988-89 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1988 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938 as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1988 marketing quota for flue-cured tobacco to be 755 million pounds and that the price support level for 1988 would be $1.442 per pound.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic region, or (3) significant adverse effects on competition, employment, investment productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act") and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1988 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1985, 1986, and 1987 crop years;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve:

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 317(a)(1) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1988 crop of flue-cured tobacco by December 1, 1987. Six such manufacturers were required to submit such a statement for the 1988 crop and the total of their intended purchases for the 1988 crop was 441 million pounds.

For the years prior to 1986, industry officials noted that significant amounts of both domestic and foreign-grown burley tobaccos blended with domestic flue-cured tobacco were reported to the Bureau of Census as flue-cured tobacco exports. Census recorded exports of flue-cured totaled 435.0 million pounds, farm sales-weight, for the 1985-86 year; however, the USDA adjusted number more accurately reflects actual exports.

At the request of the Bureau of Census, exporters have enhanced the accuracy of their declaration. It appears that due to shifts among certain export categories beginning in 1986, Census data are now significantly more accurate. Because of this, actual Census data was used for 1986-87. Accordingly, the three-year average of exports is 388 million pounds. This is based on adjusted 1985 exports of 376.1 million pounds, 1986 Census-reported exports of 393.3 million pounds, and USDA-projected 1987 exports of 395 million pounds.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1987 marketing quota for flue-cured tobacco. The national marketing quota for the 1987 crop year was 707 million pounds (52 FR 12947). Accordingly, the reserve stock level for use in determining the 1988 marketing quota for flue-cured tobacco is 106 million pounds.

As of December 2, the Flue-Cured Tobacco Stabilization Corporation had

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in its inventory 157 million pounds (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 51 million pounds.

The total of the three marketing quota components for the 1988–89 marketing year is 778 million pounds. Section 317 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. To ensure against the development of an oversupply situation, the Secretary exercised this discretionary authority to decrease the three-component total by three percent. Accordingly, the national marketing quota for the marketing year beginning July 1, 1988 for flue-cured tobacco is 755 million pounds.

Section 317(a) of the 1938 Act sets forth the manner in which the flue-cured tobacco national average yield goal is established. Section 317(a) was amended by the Agricultural Reconciliation Act of 1987 to remove the requirement that such goal be redetermined at 5-year intervals using the previous 5 years' moving national average yield. Accordingly, it has been determined that the national average yield goal for the 1988–89 marketing year will be 1989 pounds per acre.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1988 crop of flue-cured tobacco is determined to be 379,587.73 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1988 crop of flue-cured tobacco of 360 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1988 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(4) of the 1949 Act provides that the level of support for the 1988 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1987 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, exluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II) is 1.4 cents per pound. The difference in the cost index from January 1 to December 31, 1987 is 0.5 cents per pound. Applying these components to the price support formula (1.4 cents per pound, two-thirds weight; 0.5 cents per pound, one-third weight) result in an increase in the price support level of 1.1 cents per pound. However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred if an oversupply exists for such kind of tobacco. Because the total supply of flue-cured tobacco is sufficient for about 2.7 years, use with 2.4 years being considered normal, the Secretary has determined that supplies of flue-cured tobacco are excessive. Accordingly, the 1988 crop of flue-cured tobacco will be supported at 144.2 cents per pound, 0.7 cent higher than in 1987.

The level of support for the 1988 crop of flue-cured tobacco and the national marketing quota for the 1988 flue-cured marketing year were announced on December 15, 1987 by the Secretary of Agriculture. This notice affirms these determinations.

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1988:

Determinations 1988–89 Marketing Year

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1988 year totaled 441 million pounds.

(B) *3-year average exports.* The 3-year average of exports is 388 million pounds, based on exports of 376 million pounds, 393 million pounds and 395 million pounds for the 1985, 1986, and 1987 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 106 million pounds, based on 15 percent of 1987's national marketing quota of 707 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is 51 million pounds, based on a reserve stock level of 106 million pounds and anticipated loan stocks of 157 million pounds.

(e) *National marketing quota.* The national marketing quota is 755 million pounds based on the total of the three components which comprise the quota minus a three percent downward discretionary adjustment in those three components.

(f) *National average yield goal.* The national average yield goal is determined to be 1,989 pounds. This goal is based on the 5-year national average yield for the 1977–81 marketing years.

(g) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined to be 379,587.73 acres. This allotment is determined by dividing the national marketing quota of 755 million pounds by the national average yield goal of 1,989 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 360 acres.

(i) *National acreage factor.* The national acreage factor is determined to be 1.08.

(j) *National yield factor.* The national yield factor is determined and announced to be .8852.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1986–87, 1987–88, and 1988–89 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support for the 1988 crop of flue-cured tobacco is 144.2 cents per pound.

(Secs. 301, 313, 317, 375, 52 Stat. 38, as amended, 47, as amended, 79 Stat. 66, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375); Secs. 106, 401, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445, 1421))

Signed at Washington, DC on April 26, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–9981 Filed 5–4–88; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Group Quarters Listing.

Form Number: Agency—D–116; OMB—N/A.

Type of Request: New collection.

Burden: 5,000,000 respondents; 125,000 reporting hours.

Needs and Uses: The purpose of the survey is to identify by name all persons residing in institutional and noninstitutional group quarters (e.g., rooming or boarding houses, missions, shelters for the homeless, college student dormitories, workers' dormitories, and military barracks). As a result of this survey, each person will be given a long or short 1990 Census form.

Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, and small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: April 29, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–9986 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Public Assistance Payments by County.

Form Number: Agency—NA; OMB—0608–0037.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 24 respondents; 144 reporting hours.

Needs and Uses: The purpose of this annual survey is to collect unpublished county data on public assistance administered by State agencies. BEA uses these data to prepare and develop the regional personal income accounts of the United States.

Affected Public: State and local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395–7340.

Agency: Bureau of Economic Analysis.

Title: Industry Classification Questionnaire.

Form Number: Agency—BE–507; OMB—0608–0032.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 500 respondents; 250 reporting hours.

Needs and Uses: This survey collects necessary information to correctly classify, by industry, data on related forms for U.S. direct investment abroad (forms BE–133B, BE–133C, and BE–577). The information is only collected when a respondent and its foreign affiliates are new entrants, or when a respondent changes industry during the year. Data classified by industry are essential in analyzing differing effects of changes in Government policies on affiliates in different industries. They are also used to monitor, analyze the impact of, and formulate Government policy on U.S. direct investment abroad.

Affected Public: Businesses or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3008 New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–9980 Filed 5–4–88; 8:45 am]

BILLING CODE 3510 CW–M

Export Now Advisory Committee; Open Meetings

Meetings of the Export Now Advisory Committee will be held on:

Date	Time	Room
May 23, 1988	2:00 p.m.–3:30 p.m.	5839
July 12, 1988	10:00 a.m.–12:00 noon	4830
Sept. 13, 1988	10:00 a.m.–12:00 noon	4830

Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The meetings will be open to the public with a limited number of seats available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after each meeting.

The Committee was established by the Secretary of Commerce on February 25, 1988 to advise Department officials on the objectives and conduct of the Export Now Program, including methods of increasing public awareness of the advantages of exporting, improving Federal coordination with state, local

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and private sector export activities, and implementing programs of education and training to increase the export effectiveness of all segments of the U.S. economy.

The purpose of each meeting is to report on the status of the Export Now Program and to receive advice from the public on the conduct and future implementation of the program. A more specific agenda will be available to the public at the beginning of each meeting.

For further information or copies of the minutes, contact Lew W. Cramer or Don Forest, Export Now Program, Herbert C. Hoover Building, Room 5835, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–2073.

Dated: May 2, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–10006 Filed 5–4–88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 21–88]

Foreign-Trade Zone 50—Long Beach, CA; Application for Extension of Subzone Status at Toyota Auto/Truck Parts Plant (SZ 50A), Long Beach

An application has been submitted to the Foreign-Trade Zones Board (TFZ Board) by the Board of Harbor Commissioners of the City of Long Beach, California (BHC), grantee of FTZ 50, requesting a time-extension of the authority for Subzone 50A at the auto/truck parts manufacturing plant of Toyota Auto Body, Inc., of California (Toyota) (formerly, Toyota Motor Manufacturing U.S.A., Inc.) in Long Beach, California. The 19-acre facility (plant space—284,000 sq. ft.), located at 6357 Paramount Blvd., Long Beach, California, presently employs 300 persons. The application also requests authority for certain new activity that was not part of the original application. It was submitted pursuant to the provisions of the Foriegn-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 18, 1988.

On July 14, 1983, the FTZ Board authorized Subzone 50A for a period of 5 years, subject to extension (Board Order 213, 48 FR 34792, 8–1–83). The original authority applied to truck beds, and administrative authority was given for fuel tank activity in March 1986. BHC is now requesting an indefinate time-extension of the subzone, and authority to expand the scope of operations conducted under zone procedures to include the stamping of auto body parts and the coating of catalytic converter substrates. Virtually all of the steel material used by Toyota is and would continue to be sourced abroad. Most of the remaining materials are domestic. Some experts are planned.

Zone procedures would exempt Toyota from duty payments on the foreign steel used in its exports. On its domestic sales, it would select the duty rate on truck beds (3.7%) and the rate on the fuel tanks and stampings (3.1%), rather than the rates on steel (4.0 to 6.5%). The applicant indicates that continued zone savings will help keep the plant internationally competitive.

In accordance with the Board's regulations, an examiners committee has been appointed to investigage the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Heinrich, District Director, U.S. Customs Service, Pacific Region, 300 South Ferry St., Terminal Island, San Pedro, CA 90731; and, Colonel Tadahiko Ono, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 271, Los Angeles, CA 90053.

Comments concerning the proposed subzones extension are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 15, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 11777 San Vicente Blvd., Rm 800, Los Angeles, CA 90049.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–10017 Filed 5–4–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than May 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping duty proceeding	Period
Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan	05/01/87–04/30/88
Certain Welded Carbon Steel Standard Pipes and Tube Products from India	05/01/87–04/30/88
Certain Welded Carbon Steel Standard Pipe and Tube Products from Turkey	05/01/87–04/30/88
Frozen Concentration Orange Juice from Brazil	10/23/86–04/30/88
Iron Construction Castings from Brazil	05/01/87–04/30/88
Iron Construction Castings from India	05/01/87–04/30/88
Iron Construction Casings from the People's Republic of China	05/01/87–04/30/88
Impression Fabric of Man-Made Fiber from Japan	05/01/87–04/30/88
Malleable Cast Iron Pipe Fittings from Brazil	05/01/87–04/30/88
Malleable Cast Iron Pipe Fittings from South Korea	05/01/87–04/30/88
Malleable Cast Iron Pipe Fittings from Taiwan	05/01/87–04/30/88
Portable Electric Typewriters from Japan	05/01/87–04/30/88

Antidumping duty proceeding	Period
Portland Cement, Other Than White, Nonstaining Portland Cement, from the Dominican Republic	05/01/87–04/30/88
Tubeless Steel Disc Wheels from Brazil	12/19/86–04/30/88
Bricks from Mexico	01/01/87–12/31/87
Ceramic Tile from Mexico	01/01/87–12/31/87
Certain Heavy Iron Construction Castings from Brazil	01/01/87–12/31/87
Fresh Whole Atlantic Groundfish from Canada	01/01/87–12/31/87
Viscose Rayon Staple Fiber from Sweden	01/01/87–12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by May 31, 1988.

If the Department does not receive by May 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or conservailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 26, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–10021 Filed 5–4–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–003]

Fireplace Mesh Panels From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 10, 1988, the Department of Commerce published the preliminary results of antidumping duty administrative review on fireplace mesh panels from Taiwan. The review covers one manufacturer/exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5289/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7772) the preliminary results of its administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are fireplace mesh panels. Such panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of the kind used in the manufacture of safety screening for fireplaces. This product is currently classifiable under TSUSA numbers 642.7800 and 654.0045 and HS item numbers 7314.49.00 and 7323.99.00.

The review covers one manufacturer/exporter of Taiwanese fireplace mesh panels to the United States, Yeh Sheng, and the period June 1, 1986 through May 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review. The Department determined that a dumping margin of 6.4 percent exists for Yeh Sheng for the period June 1, 1986 through May 31, 1987. The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 6.4 percent for Yeh Sheng. For any future shipments from the remaining known exporters not covered in this review, a cash deposit of 6.4 percent shall be required as published in the final results of the last administrative review (49 FR 28592, July 13, 1984).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1987 and who is unrelated to any reviewed firm, or to any previously reviewed firm, a cash deposit of 6.4 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review, and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–10016 Filed 5–4–88; 8:45 am]

BILLING CODE 3510-DS-M

[A 583–507]

Malleable Cast-Iron Pipe Fittings, Other Than Grooved, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Adminsitration, Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

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On January 15, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on malleable cast-iron pipe fittings, other than grooved, from Taiwan. The review covers two manufacturers and/or exporters of this merchandise and the period January 14, 1986 through April 30, 1987.

We gave the interested parties an opportunity to comment on the preliminary results. We received comments from one respondent. Based on our analysis of the comments received, the final results of review are unchanged from the those presented in the preliminary results of review.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1050) the preliminary results of its administrative review of the antidumping duty order on malleable cast-iron pipe fittings, other than grooved, from Taiwan (51 FR 18918, May 23, 1986). The Department has now completed that adminstrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of malleable cast-iron pipe fittings other than grooved, currently classifiable under Tariff Schedules of the United States Annotated items 610.700 and 610.7400 and Harmonized System item number 7307.19.10.

The review covers two manufacturers and/or exporters of Taiwanese malleable cast-iron pipe fittings, other than grooved, to the U.S. and the period January 14, 1986 through April 10, 1987.

Comment 1: Respondent Tai Yang asserts that the Department should suspend further review of this case until the Court of International Trade (CIT) renders its judgment concerning Tai Yang's appeal of its fair value rate, or until Tai Yang has exhausted all of its appellate remedies. Tai Yang further asserts that section 751 of the Tariff Act and 19 CFR 353.53a merely direct, and do not mandate, completion of a section 751 adminstrative review within one year, so long as the review is conducted within a reasonable time and no adverse consequences follow from the delay.

Department's Position: Section 751 of the Tariff Act contains no provision for suspending completion of administrative reviews pending the outcome of litigation challenging the fair value investigation, since the outcome of the litigation would not be dispositive with respect to the entries subject to the administrative review. *See Alhambra Foundry v. United States*, 635 F. Supp. 1475 (1986). Timely completions of section 751 reviews would be a practical impossibility if the Department were to suspend their completion every time there was litigation pending regarding a prior proceeding. During the present administrative review since neither respondent filed a response to the Department's questionnaire, and the Department used the fair value rate as best information available (BIA), the Department has no reason for postponing the issuance of the final results of this review.

Comment 2: Tai Yang argues that the final results of this first administrative review should reflect the most recent lawfully determined margin for Tai Yang as the best information available. Therefore, if the CIT reverses and remands *Tai Yang Metal Industrial Co., Ltd. v. United States*, No. 86–06–00786 (CIT, filed July 3, 1986), which challenges the results of the fair value investigation, Tai Yang asserts that any amended margin computed pursuant to a remand should be reflected in the final results of this first administrative review.

Department's Position: We disagree. Nowhere in the statute or regulations does it state that the Department must rely upon the "most recently lawfully determined margin" for a firm as BIA in a subsequent review. The outcome of litigation regarding the less-than-fair value investigation does not govern the administrative review of entries which are the subject of a separate administrative proceeding. In the present case, neither firm responded to the Department's questionnaire. Therefore, the best information available is the published margin from the fair value investigation.

Final Results of the Review

Based on our analysis of the comments received, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margins exist for the period January 14, 1986 through April 30, 1987:

Manufacturer/exporter	Margin (percent)
San Yang	27.90
Tai Yang	37.09

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, in accordance with section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise from a new exporter, not covered by this or prior administrative reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to any reviewed firm, a cash deposit of 37.09 percent shall be required. These cash deposit requirements are effective for all shipments of Taiwanese malleable cast-iron pipe fittings, other than grooved, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 26, 1988.

[FR Doc. 88–10019 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–068]

Steel Wire Strand For Prestressed Concrete From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: We initiated this review of the antidumpting finding on Japanese steel wire strand for prestressed concrete on June 17, 1987. The Department has now conducted that administrative review. The review covers one exporter of this merchandise to the U.S., Mitsui, and the period April 1, 1978 through November 30, 1985. The review indicates the existence of dumping margins.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Since information received in response to our questionnaries was inadequate, we used the best information otherwise available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/36701.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1978 the Treasury Department published in the **Federal Register** (43 FR 57599) the antidumping finding on steel wire strand for prestressed concrete from Japan. The Department of Commerce ("the Department") published a notice of initiation of the antidumpting duty administrative review on June 17, 1987 (52 FR 23063).

Scope of the Review

The United States has developed a system of tariff classification based on the internationalized harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs pruposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department. A refereneece copy of the Proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import specialists at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel wire strand, other than alloy steel, not galvanized, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under TSUSA item 642.1120 and HS item number 7312.10.30.15.

The review covers one exporter of Japanese steel wire strand for prestressed concrete to the U.S., Mitsui & Co., Ltd., and the period April 1, 1978 through November 30, 1985.

Mitsui provided untimely and inadequate responses to the Department's questionnaires. The responses were inadequate because, despite several requests, Mitsui furnished a computer tape which omitted a large number of U.S. prices, quantities, and adjustments. Therefore, the Department used the best information otherwise available, which is the highest rate from the fair value investigation.

Preliminary Results of the Review

As a result of our analysis, we preliminarily determine that the following margins exist:

Exporter	Time period	Margin (Percent)
Mitsui	4/1/78–11/30/85	15.80

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interesteds parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Further, as provided for by §353.48(b) of the Commerce Regualtions, a cash deposit of estimated antidumping duties of 15.80 percent shall be required for Mitsui. These deposit requirements are effective for all Japanese steel wire strand for prestressed concrete shipments by Mitsui entered, or withdrawn from warehouse, on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: April 26, 1988.

[FR Doc. 88–10020 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DS–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held May 26, 1988, at 9:30 a.m., in the Herbert C. Hoover Building, Room B–841, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems.

General Session

Agenda

1. Comments from the public.
2. Election of the Chairperson.
3. Presentation on ISDN.
4. Discussion of Joint TAC Working Group.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the

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Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202–377–2583.

Date: April 28, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–9966 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held May 25, 1988, 8:30 a.m., in the Herbert C. Hoover Building, Room B–841, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda

1. Comments from the Public.
2. IBM Presentation on x.25.

Executive Session

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202–377–2583.

Dated: April 28, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–9969 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held May 25, 1988, at 3:00 p.m., in the Herbert C. Hoover Building, Room B–841, 14th Street & Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Comments from the public.
2. The ten most important changes to assist the Exporter in dealing with the Export Administration Regulations.
   a. Electronic Bulletin Board of Exporters.
   b. Reformatted 1565A.
   c. Short form 6031–P.
   d. Validation of SED for hand-carried products at any Custom port.
   e. Proposal to do away with a License Return Regulation.
   f. Proposal to combine SED's for general and validated General Licenses.
   g. Reserved.
   h. Reserved.
   i. Reserved.
   j. Reserved.
3. Development of the "Twenty-Five most asked questions brochure".

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, contact Carole P. Willis, 202–377–2583.

Date: April 28, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–9970 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held May 25, 1988, 11:30 a.m., in the Herbert C. Hoover Building, Room B841, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda:

1. Comments from the Public.
2. Presentation on the OSI model. (NBS)

Executive Session

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202–377–2583.

Date: April 28, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–9967 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish Fishery Management Plan (FMP) Monitoring Team will convene a public meeting, May 5, 1988, from 1 p.m. to 4 p.m., at the Council's Office (address below), to: (1) Discuss the status of Amendment 2 to the Bottomfish FMP; (2) distribute the final 1986 Bottomfish Annual Report; (3) discuss the status of the 1987 Annual Report (review draft modules from Plan Management Team members, and discuss team strategy for compiling modules into a cohesive annual report); (4) draft criteria for defining fishing power of replacement vessels and new entrants for the Northwestern Hawaiian Islands bottomfish fishery, under the limited entry program established in Amendment 2; (5) discuss the status of bottomfish programmatic projects (review of programs), and (6) discuss research and data needs for 1990–1995.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: April 28, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–10003 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Modification of Permit; Southwest Fisheries Center, NMFS (P77#18)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 555 issued to the Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038 is further modified as follows:

Section B.7 is added as:

7. The Permit Holder may test commerical hair lighteners and commercial livestock dyes or paint for development of temporary tagging techniques. The Holder may also test different tags for their retention, durability, and legibility over time for development of permanent tagging techniques. Cryogenic marking may also be tested.

This modification became effective on April 25, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: April 28, 1988.

Rolland A. Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–9984 Filed 5–4–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 27, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet for the first time on 24–25 May 1988, from 8:00 a.m. to 5:00 p.m., at the Office of the USAF Scientific Advisory Board, Room 5D982, the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the task statement, focus on the task, decide on a study approach, agree on the required milestones, and obtain required reliability and maintainability informational briefings on the representative system to be studied. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–9998 Filed 5–4–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Military Traffic Management Command, Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 19 May 1988 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of this symposium is to provide a public forum for discussion of a proposal made by the Directorate of Personal Property to limit and, subsequently, eliminate the use of freight forwarders in the domestic household goods program. Other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program will be discussed, time permitting.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 11 May 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88–9934 Filed 5–4–88; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Inland Waterways Users Board; Open Meeting

AGENCY: Department of the Army, Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: June 1, 1988.

Place: Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Time: 9 a.m. to 5 p.m.

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Proposed Agenda

A.M. Session

9:00 Call to order and Disposition of Prior Meeting Minutes
9:15 Presentation of Information to Board
10:00 Development of Board Recommendation

P.M. Session

1:00 Recommendations to the Assistant Secretary of the Army for Civil Works
2:00 Proposed Recommendations for the 1988 Board Annual Report
3:00 Other Business
3:30 Public Comment Period
4:00 Instructions to Board Support Staff
5:00 Meeting Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–9835 Filed 5–4–88; 8:45 am]

BILLING CODE 3710–92–M

Availability of "Potable Water Corrosion Test Loop and Specimen Holder Therefor" for Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a Potable Water Corrosion Test Loop and Specimen Holder Therefor for exclusive licensing. Inventors at the U.S. Army Construction Engineering Research Laboratory (USACERL) have applied for a patent on a potable water corrosion test loop and specimen holder. The rights to this invention belong to the United States Government.

The new potable water corrosion test loop and specimen holder therefor is a water quality monitoring pipe test loop system developed by USACERL to objectively evaluate the effectiveness of various chemicals on the control of water quality. The invention can be used to determine the effects of water treatment chemicals on scaling and corrosion of water pipes, on a non-intrusive basis (i.e., without having to excavate).

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by USACERL wishes to exclusively license rights to the Potable Water Corrosion Test Loop and Specimen Holder Therefor to a party interested in producing and marketing the invention for sale to the public and private sectors.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Scholze, USACERL, ATTN: CECER-EN, P.O. Box 4005, Champaign, IL 61820–1305, (217) 373–6743.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–9899 Filed 5–4–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Education Appeal Board Hearings; Intent to Compromise a Claim, California Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the California Department of Education now pending before the Education appeal Board (EAB), Docket No. 9(245)87 (20 U.S.C. 1234a(f)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before June 20, 1988.

ADDRESS: Comments should be addressed to Richard B. Mellman, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4091, FOB–6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from a single state audit of programs administered by the California State Department of Education for the fiscal year ended June 30, 1984. The audit was performed jointly by the California Office of the Auditor General, the Department of Finance, and the State Controller in accordance with the requirements of Office of Management and Budget Circular A–102, Attachment P. Among the programs examined was the migrant education program funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 *et seq.*).

Under the Chapter 1 migrant education program, Federal funds are provided to State educational agencies, such as the California Department of Education, for programs "which are designed to met the special educational needs of migratory children" (20 U.S.C. 2762). Federal funds could also be used to defray the administrative costs of implementing a State's migrant education program and projects, but had to be obligated for allowable costs by the end of the fiscal year following the fiscal year for which the funds were distributed (20 U.S.C. 1225(b)).

During the course of the audit, the auditors discovered that the California Department of Education had charged Chapter 1 migrant education program funds for the salary of an employee during a period in which he was not working on migrant program affairs. The auditors also determined that during a period in which he did work on migrant program affairs, the State had used migrtant program funds to provide the same employee with both extended leave for out-of-service traning and reimbursement of training costs although his training was not directly related to work performed for the migrant education program. Based on these findings, the Assistant Secretary for Elementary and Secondary Education notified the California Department of Education in a final determination letter dated March 31, 1987, that it had to repay a total of $43,200 for its improper expenditure of Chapter 1 migrant education program funds.

The California Department of Education did not contest $500 of the $43,200. This amount was attributable to its reimbursement of some of the employee's training expenses in excess of State limitations on the amount of reimbursement permitted in any fiscal year. The State repaid this $500 in February of 1987. The State appealed to the EAB the determination that it return the remaining amount.

The Department proposes to compromise the full amount of the remaining $42,700 claim for $15,000. While doubt exists as to the effect and timeliness of its actions, the California Department of Education took steps in subsequent years to reimburse the migrant program for the employee's salary that had been incorrectly charged to migrant program funds. Furthermore, factual disputes exist about both the legitimacy and extent of the leave the employee may have received for his out-of-service training. Given these factors, the percentage of the claim to be repaid, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover the Department is satisfied

that the practices that resulted in the claim have been corrected and will not recur.

The public is invivted to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Richard B. Mellman, Esq. at the address given at the beginning of the notice.

(20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84.011 Migrant Education—Basic State Formula Grant Program; No. 84.012 Educationally-Deprived Children—State Administration)

Dated: May 1, 1988.

Mary M. Rose,

Deputy Under Secretary for Management.

[FR Doc. 88–10031 Filed 5–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88–317–000 et al.]

Orange and Rockland Utilities, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Orange & Rockland Utilities, Inc.

[Docket No. ER88–317–000]

Take notice that on April 25, 1988, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and KW Control Systems (KW Control).

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Arkansas Power & Light Company

[Docket No. ER88–363–000]

Take notice that on April 25, 1988, Arkansas Power & Light Company (AP&L) tendered for filing pursuant to Part 131.53 of the Commission's Regulations a Notice of Cancellation of Rate Schedule FERC No. 112.

AP&L requests that the cancellation be made effective as of June 30, 1988. Consequently, AP&L requests waiver of the notice requirements to the extent necessary to accomplish the foregoing.

Comment date: May 16, 1988, in accordance with Standard Paragraphs E at the end of this notice.

3. San Diego Gas & Electric Company

[Docket No. ER88–365–000]

Take notice that on April 25, 1988, San Diego Gas & Electric Company (SDG&E) tendered for filing its concurrence with Public Service Company of New Mexico's (PNM) Notice of Termination of the PNM and SDG&E 236 MW San Juan Contingent Capacity Agreement (Agreement), (SDG&E Rate Schedule FERC No. 47).

SDG&E concurs with termination of the Agreement as of April 30, 1988, pursuant to its terms and respectfully requests waiver of the Commission's prior notice requirements.

Copies of this filing have been served upon the Public Utilities Commission of the State of California and PNM.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power & Light Company

[Docket No. ER88–364–000]

Take notice that on April 25, 1988, Wisconsin Power & Light Company (WPL) tendered for filing a wholesale power agreement amendment dated April 8, 1988 between the Wisconsin Public Power Incorporated System (the System) and WPL. WPL states that this wholesale power agreement amendment supplements the existing agreement and amendments between the two parties. The agreement was dated February 14, 1983 and was designated Rate Schedule No.132 by this Commission.

The purpose of this new amendment is to provide for an additional delivery point. All other provisions of the existing agreement and amendments remain the same.

Based on the parties' willingness to execute the amendment, WPL requests an effective date concurrent with the filing date. WPL states that copies of the agreement and the filing have been provided to the System and the Wisconsin Public Service Commission.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Company

[Docket No. ER88–369–000]

Take notice that on April 27, 1988, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Utility Board of the city of Key West, and the Cities of Gainesvillee, Kissimmee, Lake Worth, Lakeland, St. Cloud, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1987 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange agreements and in all previous annual revisions.

Tampa electric requests that the revised daily capacity charge be made effective as of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange agreements with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER88–367–000]

Take notice that on April 26, 1988, Carolina Power & Light Company (Company) tendered for filing changes to Company's Backstand Power and Transmission rates previously filed as Exhibit No. 1 to Appendix A of the "Amendment to the Service Agreement Between the City of Fayetteville and Carolina Power & Light Company" (Amendment) dated January 16, 1986. The Amendment and the Exhibit No. 1 to Appendix A are on file with the Commission and have been designated Supplement No. 35 to FPC No. 102 and Supplement No. 4 to Supplement No. 35 to FPC No. 102 and Supplement No. 4 to Supplement No. 35 to FPC No. 102, respectively. This filing is made as a result of a change in the Commission's advisory benchmark rate of return on common equity which is a component of Company's Backstand Power Transmission rates.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER88–360–000]

Take notice that on April 26, 1988, Southern Company Services, Inc. acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric & Power Company tendered for filing an Interim Operating Agreement showing the basis

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for the interchange of capacity and energy between the operating subsidiaries of the Southern Company. The Interim Operating Agreement provides a contractual vehicle for the coordinated and integrated operation of the electric facilities of the operating subsidiaries of the Southern Company and Savannah Electric & Power Company which by virtue of a merger on March 3, 1988 has also become an operating subsidiary of the Southern Company. The Interim Operating Agreement is proposed to become effective on May 1, 1988 and continue to December 31, 1988 when a new intercompany interchange contract will be filed. The Agreement provides for certain power pooling transactions, including exchanges of interchange energy and the pricing thereof, the purchase and sale of capacity and the rates and charges therefore, as well as other interchange arrangements between the operating subsidiaries.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. CEI–PJM Group Interconnection Agreement—The Cleveland Electric Illuminating Company and Pennsylvania-New Jersey-Maryland Interconnection (Referred to as the PJM Group)

[Docket No. ER88–368–000]

Take notice that on April 27, 1988, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing on behalf of the above listed parties to the CEI-PJM Agreement, Modification No. 1 to Schedule 7.05 and Schedule 9.04 superseding Schedule 9.03 currently in effect.

Modification No. 1 to Schedule 7.05 provides for increased ceiling reservation charges and adders for Short Term Power supplied by CEI. Proposed Schedule 9.04 modifies the rates charged by either party for Non-Replacement Energy. Fixed adders are replaced by ceiling rates and provision is made for ceiling services charges. The parties have requested an effective date of May 1, 1988 for both schedules.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10014 Filed 5–4–88; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2307–008 et al]

Availability of Environmental Assessments; Annex Creek and Salmon Creek et al.

May 2, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR, Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses listed below and has prepared Environmental Assessments (EA's) for the proposed project.

Project No.	Project Name	State	Applicant
2307–008	Annex Creek and Salmon Creek	AK	Alaska Electric Light & Power Co. of Juneau.
4285–008	Logan No. 2 Hydroelectric	UT	City of Logan, UT.
6151–006	Cabin Creek	WA	S.V. Hydrotech, Inc.
7830–002	Lemo Dam Hydroelectric	CO	Florida Water Conservancy District.
8377–001	Isabella Hydroelectric	CA	Central Hydroelectric Corp.
8722–000	Landis-Harde	CA	David O. Harde.
9193–001	Davis-Weber Canal	UT	Riverdale Hydro Associates.
9635–001	Hawkins	CO	Clarence A. and Lottie E. Hawkins and Hawkins Hydro Co.
10064–000	Whitter Creek Hydroelectric	AK	William J. Lathan

In the EA's, the Commission's staff has analyzed the potential environmental impacts of the proposed projects and has concluded that approval of the proposed projects, with appropriate mitigative measures, would not constitute major federal actions significantly affecting the quality of the human environment.

Copies of the EA's are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10013 Filed 5–4–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of January 1 Through January 8, 1988

During the Week of January 1 through January 8, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 1 through January 8, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 5, 1988	William R. Bowling, III Rolla, MO	KFA–0156	Appeal of an Information Request Denial. If granted: The December 21, 1987 Freedom of Information Request Denial issued by the Director, Executive Secretariat, would be rescinded and William R. Bowling, III, would receive access to copies of certain Atomic Energy Commission meeting minutes.
Jan. 5, 1988	Florida Rock Industries, Inc. Washington, DC	RR272–6	Request for Modification/Rescission. If granted: The October 20, 1988 Decision and Order issued to Florida Rock Industries, Inc. (Case No. RF272–167) would be rescinded regarding the firm's application for refund in the Crude Oil Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of January 1, 1988 through January 8, 1988]

Date	Name	Case No.
1/6/88	Vickers/Michigan	RO1–426
1/1/88 thru 1/8/88	Crude Oil Refund Applications Received	RF272–30034 thru RF272–41174
1/1/88 thru 1/8/88	Gulf Oil Refund Applications Received.	RF300–4590 thru RF300–4729
1/6/88	Jenkins Truck Line, Inc.	RF270–2514
1/7/88	Turpin Oil Company	RF253–44
12/18/87	Anderson Propane	RF265–2594
1/11/88	Perkins Petroleum, Inc.	RF253–46
1/11/88	Fowler Oil Company	RF253–45
1/11/88	Contract Freighters, Inc.	RF270–2515
1/12/88	Vanguard Petroleum Corp.	RF299–53
7/29/86	Amos Post Co.	RF225–10931

[FR Doc. 88–9975 Filed 5–4–88; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed; Week of January 8 Through January 15, 1988

During the Week of January 8 through January 15, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 8 Through Jan. 15, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 11, 1988	Storage Tek Corp., Silver Spring, MD	KFA–0157	Appeal of an information request denial. If granted: The December 29, 1987 Freedom of Information Request Denial issued by the Schenectady Naval Reactors Office would be rescinded, and Storage Tek Corporation would receive access to and be permitted to copy documents regarding a contract awarded to "NAS" by General Electric—Knolls Atomic Power Laboratory—RFP. No. 09034B.BJ.
Do	Wickett Refining Co., Washington, DC	KEF–0099	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the consent order entered into with Wickett Refining Company.
Jan. 13, 1988	Oklahoma, Oklahoma City, OK	KEG–0028	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Jan. 14, 1988	Sears, Roebuck and Co., Washington, DC	RR270–29	Request for modification/rescission. If granted: The October 15, 1987 Decision and Order issued to Sears, Roebuck & Company (Case No. RF270–1653) would be modified regarding the firm's Application for Refund as a surface transporter in the stripper well litigation proceeding.

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Refund Applications Received

[Week of Jan. 8 Through Jan. 15, 1988]

Date	Name	Case No.
9/29/87	T. J. Barlett Co., Inc.	RF300-4319
11/25/87	Orange Grove Service station.	RF300-4320
12/14/87	Towne Bus Corporation.	RF300-4321
12/14/87	Howard Sober, Inc	RF300-4322
12/14/87	Celestina Hidalgo	RF300-4323
12/14/87	Earnie's Gas Station	RF300-4324
12/14/87	City of St. Albans	RF300-4325
12/14/87	George Gee, Sr	RF300-4326
12/14/87	Rose Gulf Service	RF300-4327
12/14/87	Norman L. Tate	RF300-4328
12/14/87	School Board of Lake County.	RF300-4329
12/14/87	Edinburg Cons. Indep. School.	RF300-4330
12/14/87	Town of Plymouth, Cemetary Dept.	RF300-4331
12/14/87	Crete Carrier Corporation.	RF300-4332
12/14/87	Prima Asphalt Concrete, Inc.	RF300-4333
12/14/87	Mack Patron Midway Haichts.	RF300-4334
12/14/87	Buck's Gulf Service	RF300-4335
12/14/87	Monongahela Railway Company.	RF300-4336
12/14/87	Alexander's Gulf Service.	RF300-4337
12/09/87	Brian P. Schaumburg	RF272-14860
12/10/87	Richard Rayder	RF272-14861
12/10/87	Ralph Ingram	RF272-14862
1/11/88	Amoco II/Louisiana	RQ251-429
1/8/88 thru 1/15/88	Crude Oil Refund Applications Received	RF272-41175 thru RF272-42199
1/8/88 thru 1/15/88	Gulf Oil Refund Applications Received	RF300-4729 thru RF300-4782
01/14/88	Lakewood Oil Company, Inc.	RF225-10932
01/14/88	Lakewood Oil Company, Inc.	RF225-10933
01/14/88	Lakewood Oil Company, Inc.	RF225-10934
01/14/88	Larko, Inc	RF225-10935
01/14/88	Kirkland Oil Company	RF225-10936
01/14/88	Kirkland Oil Company	RF225-10937
01/14/88	Kirkland Oil Company	RF225-10938
012/14/87	C.W. Oil Company	RF253-47
01/14/88	Rok Oil Company	RF265-2595
01/15/88	Enterprise Products Company.	RF299-54

[FR Doc. 88-9976 Filed 5-4-88; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of February 1 Through March 4, 1988

During the period of February 1 through March 4, 1988, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All request to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

King Petroleum, Inc., Richard C. King, Dewveall Petroleum, Inc., Willard C. Dewveall, Houston, Texas, Katy, Texas, Houston, Texas, Spring, Texas, KRO-0640, Crude Oil

On March 3, 1988, the State of California, c/o Lobel, Novins, Lamont and Flug, 1275 K Street, NW., Washington, DC 20005, filed a Notice of Objection. On March 7, 1988, King Petroleum, Inc., 4801 Woodway, Suite 300 East, Houston, Texas 77056; Richard King, 21303 Cimarron Parkway, Katy, Texas 77450; Dewveall Petroleum, Inc., 5629 West, Suite 119, Houston, Texas, 77069; and Willard C. Dewveall, 9603 Windrush, Spring, Texas 77379, filed Notices of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA), Houston District Office, issued to the recipients on December 18, 1987. In the PRO, the ERA determined that during August 1, 1980 to January 27, 1981, the PRO recipients sold improperly certified crude oil in violation of 10 CFR 212.131, 210.62(c) and 205.202; resold crude oil at increased prices without performing any service traditionally and historically associated with the resale of crude oil in violation of 10 CFR 205.202, 210.62(c) and 212.186, and did not file ERA-69 reports in violation of 10 CFR § 212.187(b). According to the PRO, the violations resulted in $12,755,238.09 in overcharges.

Tesoro Petroleum Corp./Demenno-Kerdoon, Inc., San Antonio, Texas, Compton California, KRO-0630, Crude Oil

On March 2, 1988, Tesoro Petroleum Corporation (Tesoro), 8700 Tesoro Drive, San Antonio, Texas 78217 and Demenno-Kerdoon, Inc. (Demmo), 2000 North Alameda Street, Compton, California 90222 filed Notices of Objection to a Proposed Remedial Order (PRO) which the DOE Economic Regulatory Administration (ERA) issued to the firms on December 8, 1986. The Controller of the State of California also filed a Notice of Objection to the PRO on March 2, 1988. In the PRO, the ERA determined that small refiner bias entitlements, 10 CFR 211.67(e), for crude oil refined by Tesoro during the period November 1976 through May 1977 were improperly issued to Demenno and that, therefore, Tesoro and Demenno filed erroneous Refiners Monthly Reports (Form P-102-M-1) for the period November 1976 through July 1977. The ERA also determined that Demenno's and Tesoro's crude oil processing arrangement was a joint venture entered into between them to engage in practices which resulted in the circumvention and contravention of the Entitlements Program in violation of 10 CFR 205.202. According to the PRO, the misreporting and circumvention violations resulted in losses to the Entitlements Program of $2,047,382.48, before interest.

[FR Doc. 88-9977 Filed 5-4-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59258A; FRL-3375-1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-88-8 and TME-88-9. The test marketing conditions are described below.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460, (202-382-7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1)of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-8 and TME-88-9. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME-88-8 and TME-88-9. A bill of lading accompanying each shipment must state that the use of the substances are restricted to that approved in the TMEs. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantities of the TME substances produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T-88-8

Date of Receipt: March 16, 1988.
Notice of Receipt: April 15, 1988 (53 FR 12588).
Applicant: Confidential.
Chemical: (G) Tertiary amine salt.
Use: (G) Catalyst for contained use.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: One year, commencing on first day of manufacture.
Risk Assessment: EPA identified concerns for sensitization and neurotoxicity based on analogous chemical substances. However, because the TME substance is poorly absorbed via the dermal route and no exposures via routes other than the dermal route are expected, EPA does not believe the substance will present an unreasonable risk to human health. EPA also identified ecotoxicity concerns based on acute aquatic test data. However, EPA does not believe the TME substance will present a significant risk to the environment because it will not be released to water during manufacturing, processing, or use.

T-88-9

Date of Receipt: March 16, 1988.
Notice of Receipt: April 15, 1988 (53 FR 12588).
Applicant: Confidential.
Chemical: (G) Tertiary amine salt.
Use: (G) Catalyst for contained use.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: One year, commencing on first day of manufacture.
Risk Assessment: EPA identified concerns for sensitization and neurotoxicity based on analogous chemical substances. However, because the TME substance is poorly absorbed via the dermal route and no exposures via routes other than the dermal route are expected, EPA does not believe the substance will present an unreasonable risk to human health. EPA also identified ecotoxicity concerns based on acute aquatic test data. However, EPA does not believe the TME substance will present a significant risk to the environment because it will not be released to water during manufacturing, processing, or use.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-9994 Filed 5-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Securities of Insured Nonmember Banks (OMB No. 3064-0030).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESSES: Written comments regarding the submission should be addressed to:

Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval for a three-year extension of the expiration date of the reporting requirements for insured nonmember banks and certain bank securities shareholders that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The reporting requirements are fully described in FDIC regulation 12 CFR Part 335. The periodic reporting from each bank consists of narrative comments, financial statements and other financial data that provide an ongoing, publicly available record of a bank's activities and results of operations. Other individual respondents provide information related to their transactions in and ownership of the bank's own securities. The information required to be reported and disclosed by respondents is deemed necessary for actual and potential investors making investment decisions concerning securities issued by respondent banks. It is estimated that these requirements impose an annual reporting burden of 57,529 hours, collectively, on the respondents.

Dated: May 2, 1988.

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Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-10032 Filed 5-4-88; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

American Federal Savings and Loan Association, Anderson, IN; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for American Federal Savings and Loan Association, Anderson, Indiana, on April 28, 1988.

Dated: April 28, 1988.

By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.
[FR Doc. 88-10036 Filed 5-4-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010946-003.

Title: Port of Freeport Terminal Lease Agreement.

Parties:
Brazos River Terminal Agreement
American Rice, Inc. (Lessee)

Synopsis: The proposed agreement (1) establishes a temporary lease to Lessee for exclusive use of Warehouse Transit Shed A (approx. 36,720 sq. ft.) and Shed 1 (the northern 50,000 sq. ft.) at the Port of Freeport, Texas and; (2) suspends the Lessee's right to preferential use of Sheds 1A and 2 during this interim period.

By Order of the Federal Maritime Commission.

Dated: May 2, 1988.

Joseph C. Polking,
Secretary.
[FR Doc. 88-10016 Filed 5-4-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

City Holding Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 27, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to acquire 100 percent of the voting shares of First State Bank & Trust, Rainelle, West Virginia.

Board of Governors of the Federal Reserve System, May 2, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10029 Filed 5-4-88; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0197, General Services Administration Acquisition Regulation (GSAR), Part 537, Service Contracting.

AGENCY: Office of Acquisition Policy, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 2,200; responses, 1 per year; average hours per response, 1 hour (responses may vary between 10 minutes and 2 hours); burden hours, 2,200.

Purpose: Contractors must provide information as to the firms' qualifications for GSA contracting officers' use in reaching a responsibility determination, as required by the Federal Acquisition Regulation.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, 202-566-1224.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: April 26, 1988.

Emily C. Karam,
Director, Information Management Division (CAI).
[FR Doc. 88-9944 Filed 5-4-88; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Committees; establishment, renewal, termination; Neurosciences Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces the reestablishment of the Neurosciences Research Review Committee on April 30, 1988.

Date: April 30, 1988.

Donald Ian Macdonald,
Administrator, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 88-9971 Filed 5-4-88; 8:45 am]
BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88G-0099]

Enzyme Bio-Systems, Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 7G0328) has been filed on behalf of Enzyme Bio-Systems, Ltd., proposing that alpha amylase produced from a strain of *Bacillus subtilis* containing a *Bacillus megaterium* alpha amylase gene be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by July 5, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eric Flamm, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 7G0328) has been filed on behalf of Enzyme Bio-Systems, Ltd., International Plaza, Englewood Cliffs, NJ 07632, proposing that alpha amylase produced from a strain of *Bacillus subtilis* containing a *Bacillus megaterium* alpha amylase gene be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

The GRAS affirmation petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in § 170.30 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before July 5, 1988, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of the document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is, or is not, GRAS. A copy of the petition and received comments must be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 21, 1988.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 88-9974 Filed 5-4-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88E-0109]

Determination of Regulatory Review Period for Purposes of Patent Extension; Rimadyl ®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Rimadyl ® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Rimadyl ® (carprofen), which is indicated for acute or long-term use for the relief of signs and symptoms of the following: (1) Rheumatoid arthritis, (2) osteoarthritis, and (3) acute gouty arthritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Rimadyl ® (U.S. Patent No. 3,896,145) from Hoffmann-LaRoche, Inc., and

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requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 31, 1988, FDA advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, carprofen, represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Rimadyl ® is 5,189 days. Of this time, 2,534 days occurred during the testing phase of the regulatory review period, while 2,655 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 18, 1973. FDA has verified the applicant's claim that an investigational new drug application for Rimadyl ® became effective on October 18, 1973.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 24, 1980. The applicant claimed that a new drug application for the drug (NDA–18–550) was initially submitted on July 31, 1981. FDA records indicate that NDA 18–550 was initially submitted on September 24, 1980. The marketing applicant voluntarily withdrew the NDA on November 20, 1980, and resubmitted it on July 31, 1981, but for patent term restoration purposes, the application was sufficiently complete for FDA review to begin (and thus "initially submitted") on September 24, 1980.

3. *The date the application was approved:* December 31, 1987. FDA has verified the applicant's claim that NDA 18–550 was approved on December 31, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 5, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 1, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41 42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88–9972 Filed 5–4–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88D–0026]

Tamper-Resistant Packaging; Availability of Compliance Policy Guides

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Compliance Policy Guide (CPG) entitled "Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products" (CPG 7132a.17). The CPG provides guidance to FDA district offices on what is, and what is not, acceptable tamper-resistant packaging and acceptable methods of sealing hard gelatin capsules. FDA is also announcing the availability of CPG's entitled "Packaging Technologies and Tamper-Resistant Packaging Requirements for Contact Lens Solutions and Tablets" (CPG 7124.29) and "Packaging Technologies and Tamper-Resistant Packaging Requirements for Certain Cosmetic Products" (CPG 7128.06). These CPG's provide reference to the CPG on OTC human drug products as that CPG may affect contact lens solutions and tablets, and certain cosmetic products.

ADDRESS: Written requests for single copies of FDA's Compliance Policy Guides 7124.29, 7128.06, and 7132a.17 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Lana J. Ragazinsky, Center for Drug Evaluation and Research (HFN–336), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 1982 (47 FR 50442 through 50456), FDA published final regulations (21 CFR 211.132, 700.25, and 800.12) requiring that all OTC human drug products (except dermatologics, dentifrices, insulin, and lozenges), certain cosmetics, and contact lens solutions and tablets intended for retail sale, be packaged in tamper-resistant packaging. Several methods of packaging that FDA believed would result in a tamper-resistant package were described in the preamble to one of these final regulations (47 FR 50442 at 50444). Since that time new methods of packaging and improvements in tamper-resistant barriers have been developed. The information concerning tamper-resistant barriers in CPG 7132a.17 ("Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products") is intended to update (and, in certain instances, to supersede) what was stated on this subject in the preamble to the November 5, 1982, final rule. This CPG also describes acceptable methods of sealing hard gelatin capsules.

The agency is also announcing the availability of CPG's entitled "Packaging Technologies and Tamper-Resistant Packaging Requirements for Contact Lens Solutions and Tablets" (CPG 7124.29) and "Packaging Technologies and Tamper-Resistant Packaging Requirements for Certain Cosmetic Products" (CPG 7128.06). These CPG's provide reference to the CPG on OTC human drug products as that CPG may affect contact lens solutions and tablets, and certain cosmetic products.

In the **Federal Register** of August 19, 1983 (48 FR 37715), FDA published a notice of availability of a "Tamper-Resistant Packaging Compliance Program," No. 7356.838, that had originally issued on June 1, 1983. This document was intended to make available current agency thinking on acceptable tamper-resistant technologies as well as those technologies for which the agency has identified a problem. The information in Compliance Program No. 7356.838 is no longer current and the program is no longer available for distribution.

The Compliance Policy Guides are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the CPG's should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: April 27, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10011 Filed 5–4–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence As An Indian Tribe

April 20, 1988.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Wukchumni Council, c/o Ms. Martha Tapleras, 1420 N. Encina Street, Visalia, California 93291, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on February 22, 1988, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of, or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 32–SIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343–3568.

Ross O. Swimmer,

Assistant Secretary; Indian Affairs.

[FR Doc. 88–9942 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use and Distribution of the Crow Creek Sioux Tribe's Indian Judgment Funds in Docket 115 Before the United States Claims Court

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, Tribal Services Specialist, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 32 SIB, 18th and C Streets NW., Washington, DC 20245.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian Tribe. Funds were appropriated on November 14, 1986, in satisfaction of the award granted to the Crow Creek Sioux Tribe before the United States Claims Court in Docket 115. The plan for the use and distribution of the funds was submitted to Congress with a letter dated November 12, 1987, and was received (as recorded in the Congressional Record) by the Senate on December 7, 1987, and by the House of Representatives on December 7, 1987. The plan became effective on March 15, 1988, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Crow Creek Sioux Tribe's Judgment Funds in Docket 115 Before the United States Claims Court.

The funds of the Crow Creek Sioux Tribe, appropriated November 14, 1986, in Docket 115 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows:

One hundred percent (100%) of the funds shall be used for programming purposes. The funds shall be divided among the Big Bend, Crow Creek and Ft. Thompson districts of the Crow Creek Sioux Tribe, based upon a population survey conducted in November 1986 and updated May 1987 including resident enrolled members. The division shall be 8% for the Big Bend District, 13% for the Crow Creek District and 19% for the Fort Thompson District. The proportionate share of the districts will be used as followed:

The Big Bend District will use their proportionate share of the funds for youth recreation. the Crow Creek District will use their proportionate share for youth recreation and start-up money for a Crow Creek District store. The Ft. Thompson District will use their proportionate share which may include, as resources permit, the purchase of a mini-bus to provide elderly center building expenses, seed money for an elderly home, clothing for children and burial program assistance. None of the funds will be available for per capita payments.

General Provision

None of the funds made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 88–9940 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use and Distribution of the Lower Brule Sioux Tribe's Indian Judgment Funds in Docket 116 Before the United States Claims Court

April 15, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, Tribal Services Specialist, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 32 SIB, 18th and C Streets NW., Washington, DC 20245.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian Tribe. Funds were appropriated on November 14, 1986, in satisfaction of the award granted to the Lower Brule Sioux Tribe before the United States Claims Court in Docket 116. The plan for the use and distribution of the funds was submitted to Congress with a letter dated November 5, 1987, and was received (as recorded in the Congressional Record) by the Senate on November 30, 1988, and by the House of Representatives on November 19, 1987. The plan became effective on March 8, 1988, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

> For the Use of Lower Brule Sioux Tribe's Judgment Funds in Docket 116 Before the United States Claims Court.

The funds of the Lower Brule Sioux Tribe, appropriated November 14, 1986, in Docket 116 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows:

One hundred percent (100%) of the funds shall be used to establish an irrevocable trust for a period of not less than ten (10) years. Only the interest and investment income accrued shall be utilized on a budgetary basis, subject to the approval of the Secretary, for grants to persons under the Lower Brule Sioux Tribe's Educational Assistance Grant Program. The annual investment shall be scheduled to mature as recommended by the Education Committee so that funds are available at the awarding of the grants.

The Education Fund investment shall continue for a period of not less than ten (10) years following the effective date of his plan, unless revoked by referendum vote of the Lower Brule Sioux Tribe, at which an alternative use shall be subject to the approval of the Secretary of the Interior. An alternative plan devised will also provide for programing purposes.

General Provision

None of the funds made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, excpet for per capita shares in excess of $2,000, any Federal or Federally assisted program.

W.P. Ragsdale,

Acting Assistant Secretary; Indian Affairs.

[FR Doc. 88–9941 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–62–M

Bureau of Land Management

[WY–060–08–4121–08]

Environmental Statements; Buffalo Resources Area; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed plan amendment: Buffalo Resource Area, Wyoming.

SUMMARY: Notice is hereby given that the Bureau of Land Management is proposing to amend the Buffalo Resource Area Resource Management Plan. The amendment modifies an existing decision which precludes the Bureau from considering coal lease applications within a 3-mile buffer zone which surrounds the planning district of the city of Gillette, Wyoming. The new decision would allow the Bureau to consider applications for emergency coal leases, exchanges, or lease modifications inside the buffer zone. All applications within the Gillette Buffer Zone would have to be adjacent to an existing mining operation and extend no more than 1 mile beyond the existing coal lease boundaries. The Gillette City Council is in agreement with this proposal and they would be consulted with before any new application is approved.

DATES: Comments on this plan amendment may be filed within 30 days from the date of this Notice. The required consistency review by the Governor is occurring concurrently with this Notice.

FOR FURTHER INFORMATION CONTACT: Comments on the plan amendment should be sent to Glenn Bessinger, Buffalo Resource Area Manager, 189 North Cedar, Buffalo, WY 82834.

Hillary A. Oden,

State Director.

[FR Doc. 88–9938 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–22–M

[OR120–6310–02; GP8–129]

Coos Bay District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, June 7, 1988, beginning at 9:00 a.m. The meeting will be held in the conference room of the BLM Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR.

Agenda: The agenda for the meeting will include:

1. Review and comment on the proposed "State Director Guidance" for the 1990s Oregon Resource Management Planning process. Deliberations should result in a Council recommendation to the District Manager, which will be entered as public comment to the proposed guidance.

2. Discussion of the current state of management of the Dean Creek Elk Viewing Area.

3. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 10:00 a.m. to 10:30 a.m. on Tuesday, June 7, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Tuesday, May 31, 1988 (Telephone 503–269–5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Date: April 27, 1988.

David W. Taylor,

Associate District Manager.

[FR Doc. 88–9943 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–33–M

[CA–060–08–7122–10–1018; CA–21608]

Realty Action; Exchange of Public and Private Lands, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA–21608.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 5 E.
Sec. 30: Lots 14, 16, 21, and 25.
Containing 20.71 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands from The Nature Conservancy:

San Bernardino Meridian California

T. 4 S., R. 6 E.
Sec. 14: SE¼SE¼SE¼.
Containing 10 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for a Federal Aid Highway, serial No. LA 097054, under the Act of November 9, 1921 (42 Stat. 212; 23 U.S.C. 18).

3. A right-of-way for a Federal Aid Highway, serial No. R 243, Act of August 27, 1958, as amended (23 U.S.C. 317).

4. Those rights for transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial No. R 458, under the Act of March 4, 1911 (43 U.S.C. 961).

5. Those rights for electrical transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial No. R 964, under the Act of March 4, 1911 (43 U.S.C. 961).

6. The reservation to the United States, its permittees and licensees, to enter upon, occupy and use any part or all of the said land lying within 50 feet of the centerline of an electric transmission line authorized under Power Project 1397 and Powersite Reserve 530, and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323–4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Date: April 29, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88–9949 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–40–M

[ES–030–08–4212–11; ES–00157–014; ES–32711]

Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Crow Wing County, MN

SUMMARY: The following described parcel has been classified as suitable for disposal to Crow Wing County by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (U.S.C. 869):

Fifth Principal Meridian, Minnesota

1. ES–32711 Crow Wing County: T.138N., R.25W., Sec. 16 NENE, total of 40 acres

The purpose of the conveyance is the parcels management for recreation and wildlife in the Duck Lake Memorial Forest.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act.

This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this notice, or upon publication of a Notice of Termination.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Larry Johnson at (414) 291–4413.

Bert Rodgers,

District Manager.

[FR Doc. 88–9948 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–GJ–M

[MT–070–04–4212–13; M–75428]

Realty Action; Exchange; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands in Granite, Missoula, and Powell counties,

Montana, for possible transfer out of Federal ownership in exchange for land owned by Milwaukee Land Company.

SUMMARY: BLM proposes to exchange public land to achieve better management through consolidation.

The following public land is being considered for disposal in an equal value exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 2976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 10 N., R. 6 W.,
Sec. 8, Lot 1
T. 13 N., R. 12 W.,
Sec. 15, Lot 1
T. 14 N., R. 13 W.,
Sec. 6, Lot 2
T. 15 N., R. 13 W.,
Sec. 32, S½SW¼
T. 5 N., R. 14 W.,
Sec. 18, S½SE¼SE¼
T. 7 N., R. 14 W.,
Sec. 18, Lots 2,3,4, E½SW¼
Sec. 20, S½S½
Sec. 30, N½NE¼
T. 9 N., R. 14 W.,
Sec. 32, SE¼SE¼
T. 11 N., R. 14 W.,
Sec. 3, Lot 11
Sec. 18, Lots 1,2,7,8
T. 7 N., R. 15 W.,
Sec. 13, NE¼NE¼
Sec. 24, W½SE¼, SW¼
Sec. 25, NW¼NE¼, NE¼NW¼
T. 11 N., R. 16 W.,
Sec. 12, Lot 2
T. 13 N., R. 17 W.,
Sec. 6, SW¼NE¼, NW¼SE¼

The lands described above comprise 1,301 acres, more or less. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATE: For a period of 45 days from date of publication in the **Federal Register**, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office.

April 27, 1988.

Gerald L. Quinn,

Acting District Manager.

[FR Doc. 88-9951 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-08-4212-22]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on the dates shown below.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5484.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

Mount Diablo Meridian, Nevada	Date filed
T. 45 N., R. 19 E.—Dependent Resurvey	4/13/88
T. 46 N., R. 19 E.—Dependent Resurvey	4/13/88
T. 38 N., R. 68 E.—Dependent Resurvey	4/25/88
T. 38 N., R. 69 E.—Dependent Resurvey	4/25/88
T. 39 N., R. 68 E.—Dependent Resurvey	4/25/88
T. 39 N., R. 69 E.—Dependent Resurvey	4/25/88
T. 40 N., R. 70 E.—Dependent Resurvey	4/25/88
T. 40 N., R. 69 E.—Dependent Resurvey	4/25/88
T. 41 N., R. 68 E.—Dependent Resurvey	4/25/88
T. 21 S., R. 59 E.—Supplemental Plat	4/25/88

The surveys on Ts. 45 and 46 N., R. 19 E. were accepted on March 30, 1988; the remaining surveys were accepted on April 13, 1988. All the surveys and the supplemental plat were executed to meet certain administrative needs of the Bureau of Land Management.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-9947 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-HC-M

[CO-940-08-4220-10; COC 48469]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 4,584 acres of National Forest System lands for a period of 20 years to protect Wild and Scenic values in a 23-mile segment of the South Platte River. This notice will segregate this site from location and entry under the mining laws for a period of 2 years pending final determination on this application. The lands have been and will continue to be open to mineral leasing and Forest Service management.

DATE: Comments should be received on or before August 3, 1988.

ADDRESS: Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303-236-1768.

SUPPLEMENTARY INFORMATION: The Department of Agriculture filed application on April 13, 1988, to withdraw the following described National Forest System lands from location and entry under the U.S. mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Sixth Principal Meridian

Pike National Forest

T. 10 S., R. 71 W.,
Sec. 22, S½N½NE¼SE¼, S½NE¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 26, W½NW¼NW¼;
Sec. 27, E½NE¼, NE¼NW¼NE¼, S½NW¼NE¼,SW¼NE¼, NE¼SW¼, S½NW¼SW¼,S½SW¼, and SE¼;
Sec. 33, SE¼SE¼ and SE¼;
Sec. 34, W½NW¼NE¼, SW¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼, SW¼,N½NW¼SE¼, and SW¼NW¼SE¼.
T. 11 S., R. 71 W.,
Sec. 3, lots 8, 9, 15, 16, and S½ of lot 10, W½SW¼;

Sec. 4, lots 5, 12, 13, SE¼NE¼SW¼, SE¼SW¼, E½SE¼, S½NW¼SE¼, and SW¼SE¼;
Sec. 9, W½E½, W½SE¼NE¼, E½NW¼, E½NE¼SW¼, SE¼SW¼, NE¼SE¼, and W½SE¼SE¼;
Sec. 16, W¼NE¼, W½SE¼NE¼, E½NW¼, NE¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 21, NE¼, E½E½NW¼, SW¼SE¼NW¼,E½SW¼, SE¼NW¼SW¼, E½SW¼SW¼, W½NE¼SE¼, NW¼SE¼, NE¼SW¼SE¼, W½SW¼SE¼;
Sec. 28, W½W½NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼, N½SW¼, SW¼SW¼, and NW¼SE¼SW¼;
Sec. 29, E½SE¼, SE¼NW¼SE¼, and E½SW¼SE¼;
Sec. 32, lot 6, E½NE¼, E½W½NE¼, N½NE¼NE¼SE¼, SW¼NE¼NE¼SE¼, W½NE¼SE¼, and SE¼NE¼SE¼;
Sec. 33, lot 6, NW¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, and E½SE¼NW¼SW¼.
T. 12 S., R. 71 W.,
Sec. 4, lots 5, 6, 10, 13, and W½SW¼SW¼;
Sec. 5, lots 6, 7, W½NE¼SE¼, and NW¼NE¼NE¼SE¼;
Sec. 7, E½SE¼SE¼ and SW¼SE¼SE¼;
Sec. 8, W½NE¼, SE¼NE¼NW¼, S½SW¼NW¼, SE¼NW¼, SW¼, N½NW¼SE¼, and SW½NW¼SE¼;
Sec. 9, NW¼NW¼NW¼;
Sec. 17, W½NE¼NW¼, W½NW¼, and N½NW¼SW¼;
Sec. 18, NE¼NE¼, N½SE¼NE¼, and SW¼SE¼, exclusive of patented lands;
Sec. 19, NW¼NE¼, exclusive of patented lands;
Sec. 31, SE¼SW¼NE¼, SE¼NE¼NW¼, SE¼NW¼, and W½NW¼SE¼.
T. 13 S., R. 73 W.,
Sec. 1, E½ of lot 7, SW¼SW¼NE¼, E½SW¼NW¼, E½NW¼SW¼, and W½W½SE¼;
Sec. 2, N½SE¼SE¼;
Sec. 11, N½of lot 2, S½NE¼NE¼, W½SE¼NE¼, S½NW¼SE¼, and NW¼NE¼SE¼;
Sec. 12, SW¼NE¼NW¼ and S½NW¼NW¼;
Sec. 15, W½SW¼NE¼, and N½NE¼SW¼;
Sec. 16, N. 10 chains of lot 7;
Sec. 20, lot 5 and W½NW¼NE¼.

The areas described aggregate approximately 4,584 acres of National Forest System lands in Douglas, Jefferson, Park and Teller Counties.

The purpose of this withdrawal is to protect this segment of the South Platte River which has been determined to be eligible for a suitability evaluation for designation as a Wild and Scenic River.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, this meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

The temporary uses which may be permitted during this segregation period are those which the Forest Service determines will not diminish or change the free-flowing character, water quality, or the scenic, recreational, fish and wildlife, and other values which make the river eligible for designation.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-9933 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-940-08-4212-13; A-22971]

Realty Actions; Exchange of Public and Private Lands in Mohave County; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Scattered and Random Land Investments, a partnership. The United States transferred 1,194.21 acres in Mohave County and Scattered and Random Land Investments, a partnership, conveyed 7,751.53 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: On April 14, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02-88-0028, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 21 W.,
Sec. 6, lots 1 to 5, incl., N½SW¼NE¼, SE¼NE¼, N½SE¼NW¼, NE¼SE¼, E½NW¼SE¼, SW¼NW¼SE¼, N½N½SW¼SE¼.
T. 19 N., R. 21 W.,
Sec. 18, lots 3 and 4, E½SW¼.
T. 22 N., R. 19 W.,
Sec. 34, W½.
T. 24 N., R. 17 W.,
Sec. 8, NE¼NE¼;
Sec. 10, N½.

The areas described comprise 1,194.21 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 24 N., R. 17 W.,
Sec. 5, lots 2, 3, 4, W½SW¼, NW¼SE¼;
Sec. 7, NE¼NW¼;
Sec. 8, NE¼NW¼, W½W½, NE¼SW¼;
Sec. 13, that portion of the SE¼NW¼, SW¼ and W½SE¼ lying south and west of a straight line connecting the northwest and southeast section corners;
Sec. 15, E½NW¼;
Sec. 17, NE¼NE¼, S½NE¼, NW¼NW¼, E½SW¼;
Sec. 19, lot 3, SE¼NW¼, SE¼SW¼, NW¼SE¼;
T. 24N., R. 17 W., (cont.)
Sec. 21, NW¼NE¼, W½W½, SE¼NW¼, NW¼SE¼, SE¼SE¼;
Sec. 23, S½NE¼, NE¼NW¼, S½;
Sec. 29, SE¼NW¼, NW¼SW¼, N½SE¼.
T. 24 N., R. 18 W.,
Sec. 13, NW¼SW¼.
T. 25 N., R. 17 W.,
Sec. 21, NW¼SE¼;
Sec. 27, NW¼SE¼, S½SE¼;
Sec. 29, S½;
Sec. 33, N½NE¼, E½NW¼, NW¼SW¼;
T. 25 N., R. 18 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, Beginning at a point on the Easterly boundary line of said Section 7; which point lies North 0 degrees 05 minutes 45 seconds West, a distance of 366.66 feet from the Southeast Section corner of said Section 7; Thence North 89 degrees 59 minutes 30 seconds West, a distance of 313.48 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 322.00 feet; Thence North 89 degrees 59 minutes 30 seconds West, a distance of 271.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 161.00 feet; Thence North 89 degrees 59 minutes 30 seconds West, a distance of 311.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 644.00 feet; Thence North 89 degrees 59 minutes 30 seconds West a distance of 582.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 644.00 feet; Thence North 89 degrees 59 minutes 30 seconds West, a distance of 582.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance 1,127.00 feet; Thence South 89 degrees 59 minutes 30 seconds East, a distance of

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311.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 161.00 feet; Thence South 89 degrees 59 minutes 30 seconds East, a distance of 271.00 feet; Thence North 0 degrees 02 minutes 00 seconds West, a distance of 483.00 feet; Thence South 89 degrees 59 minutes 30 seconds East, a distance of 582.00 feet; Thence South 0 degrees 02 minutes 00 seconds East, a distance of 483.00 feet; Thence South 89 degrees 59 minutes 30 seconds East, a distance of 271.00 feet; Thence South 0 degrees 02 minutes 00 seconds East, a distance of 161.00 feet; Thence South 89 degrees 59 minutes 30 seconds East, a distance of 311.00 feet; Thence South 0 degrees 02 minutes 00 seconds East, a distance of 483.00 feet; Thence South 9 degrees 59 minutes 30 seconds East, a distance of 311.00 feet to an intersection with the Easterly boundary of said Section 7; Thence South 0 degrees 02 minutes 00 seconds East, along the Easterly boundary of said Section 7, a distance of 141.00 feet to the East ¼ Section corner of said Section 7; Thence South 0 degrees 05 minutes 45 seconds East, along the Easterly boundary of said section 7, a distance of 2,234.00 feet (2274.00 feet-measured) to the Point of Beginning;

Sec. 9, all.

T. 28 N., R. 14 W.,

Sec. 31, all.

T. 28 N., R. 15 W.,

Sec. 25, that portion lying south and east of straight line connecting the southwest and northeast corners of said section, except the S½NE¼SE¼, E½SW¼SE¼ and SE¼SE¼;

Sec. 35, that portion lying south and east of straight line connecting the southwest and northeast corners of said section, except the SE¼SW¼.

T. 28 N., R. 17 W.,

Sec. 1, lot 1, SE¼NE¼, N½SW¼, SW¼SW¼;

Sec. 11, all.

T. 28 N., R. 18 W.,

Sec. 33, all.

T. 27 N., R. 17 W.,

Sec. 27, all.

The areas described comprise 7,751.53 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The surface of the land transferred to the United States in this exchange will be administered by the Bureau of Land Management. The mineral estate in the reconveyed land remains out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-9952 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-7122-10-1016; CA-20338]

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action-exchange of public and private lands, CA 20338.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

San Bernardiono Meridian, California

T. 5 S., R. 2 W.,

Sec. 20: SW1/4NW1/4, NW1/4SW1/4.

Containing 80 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchagne.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1980 (43 U.S.C. 945).

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323-4421.

For a period of 45 days after publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Date: April 28, 1988.

K. Vernon Stephens,

Acting District Manager.

[FR Doc. 88-9953 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-060-08-4212-13; I-22273]

Coeur d'Alene District Cottonwood Resource Area, Idaho; Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, competitive sale offering of public lands in Clearwater County, Idaho.

DATE AND ADDRESS: The sale offering will be held on Friday, July 15, 1988, at 11:00 a.m. at the Cottonwood Resource Area Office, Route 3, Box 181, Cottonwood, Idaho 83522. If no acceptable bids are received the parcel will be offered over-the-counter through March 31, 1989, on which date this sale offering will be suspended.

SUMMARY: The following described lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal. Fair market value has been determined to be $7,300.00.

Parcel	Legal description	Sale method
I-22273	T. 36 N., R. 2 E., B.M., section 25, lot 2 (16.15 acres).	Competitive bid.

When patented, the lands will be subject to road right-of-way I-23049 and a right-of-way reservation to the United States for ditches and canals (43 U.S.C. 945) as well as any valid existing rights.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

Sale Procedures: Sale parcel I-22273 will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Cottonwood Resource Area Office, Route 3, Box 181, Cottonwood, Idaho 83522. The bid must be sealed in an envelope with the envelope specifying the serial number and sale date in the lower left hand corner (i.e., "Sealed bid—public land sale I-22273—July 15, 1988). All bids will be publicly opened on the sale date. If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

Bids must be an amount equal to or greater than fair market value. A bid will constitute an application to purchase the mineral estate. There are no known mineral values. A deposit of not less than twenty percent (20%) of the bid amount must accompany each bid as well as a $50.00 fee for processing of the mineral conveyance. All fees and deposits must be in the form of a certified check, money order, bank draft or cashier's check made payable to USDI-BLM. Bids will be rejected if accompanied by a personal check. Fees and deposits will be returned to all unsuccessful bidders following the sale offering.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Ron L. Grant at (208) 962-3245.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manger, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 27, 1988.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 88-9961 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-08-4212-14; UTU-52797, UTU-62536]

Realty Action; Noncompetitive Sale of Public Lands in San Juan County, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of realty action, UTU-52797 and UTU-62536, noncompetitive sale of public lands in San Juan County, Utah.

SUMMARY: A Notice of Realty Action was published in the Federal Register, Volume 50, Page 6259 (February 14, 1985) offering in part the following described 15 acres of public land for direct sale under the Authority of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713):

Salt Lake Meridian, Utah

T. 34 S., R. 24 E.,

Sec. 30, N½W¼SW¼SE¼, S½S½SW¼SE¼.

By Notice of Realty Action published in Federal Register, Volume 52, Page 31451-31452 (August 20, 1987) the offering of the above-referenced described land was cancelled to allow for disposal of these lands by exchange under section 206 of FLPMA.

The above-described public lands (15 acres) are hereby reoffered for direct sale to William H. Gonzales, and the terms, conditions and reservations specified in the Notice of Realty Action published in Federal Register, Volume 50, Page 6529 (February 14, 1985) except for changes in fair market value, if any, shall apply.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred and seventy (270) days from the date of the publication, whichever occurs first.

DATES: For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Dave Krouskop, Area Realty Specialist, at the San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587-2141, or from Brad Groesbeck, District Realty Specialist, at the Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Date: April 27, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88-9955 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-88-4212-21]

Salt Lake District; Realty Action; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action for Firex 88 Correction.

In notice document 88-8276 appearing on page 12609, in the issue of Friday, April 15, 1988, add the following legal descriptions:

T. 9 S., R. 7 W., SLM.,

Sec. 1: NW¼SW¼NE¼.

T. 8 S., R. 8 W., SLM,

Sec. 29: NE¼NW¼, SE¼.

Sec. 32: NE¼NE¼.

Containing 250 Acres.

Accumulative Total Containing 16,229.98 Acres.

Deane H. Zeller,

District Manager.

[FR Doc. 88-9962 Filed 5-4-88; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-940-08-4220-11; NM NM 0555214, NM NM 52390, NM NM 52396]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that three existing land withdrawals for the Sumner Dam and Lake portion of the Carlsbad Project (formerly known as the Alamogordo Reservoir) continue for an additional 100 years. This is the estimated remaining life of the improvements with which the Sumner Dam is associated. The 1,801.51 acres involved would remain closed to surface entry and the mining laws, but

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the entire acreage has been and would remain open to the mineral leasing laws.

DATE: Comments should be received by August 3, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505–988–6554.

The Bureau of Reclamation proposes that the existing land withdrawals made by Public Land Order No. 3632, Secretarial Orders of March 20, 1921, and March 8, 1937, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are located within the following described townships:

New Mexico Principal Meridian

T. 5 N., R. 23 E.
T. 6 N., R. 23 E.
T. 4 N., R. 24 E.
T. 5 N., R. 24 E.

The areas described aggregate 1,801.51 acres, more or less, in Guadalupe and DeBaca Counties.

The land is located approximately 19 miles north of Fort Sumner. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuaton may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Larry L. Woodard,
State Director.

Dated: April 22, 1988.

[FR Doc. 88–0954 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Study of High Nonresponse Rates in Questionnaires to Waterfowl Hunters.

Abstract: Migratory waterfowl hunting is authorized throughout the United States including Alaska. Information on the magnitude and composition of the harvest is needed for sound management, to preclude over-harvest of the species involved, and to allow the Service to set appropriate hunting regulations. Such data is obtained though the Service's annual waterfowl harvest surveys. The response rates are often less than 15% for sampling units.

Such low response rates introduce the potential of substantial bias due to nonresponse in the current surveys. The data collected in this study will be used to evaluate potential nonresponse problems in current operational surveys and to provide recommendations for reducing the burden and costs of the current operational surveys.

Service Form number(s): 2056–PAT
Frequency: One time only
Description of Respondents: Individuals or households (migratory bird hunters)
Annual Responses: 10,385
Annual Burden Hours: 1,109
Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: April 18, 1988.

Marvin L. Plenert,
Acting Assistant Director-Refuges and Wildlife.

[FR Doc. 88–10000 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–55–M

Open Meetings; Klamath River Basin Fisheries Task Force and Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath River Basin Fisheries Task Force and Klamath Fishery Management Council, both established under the authority of the Klamath River Basin Fisheries Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meetings are open to public.

DATES: The Task Force meeting will be held from 1:00 p.m. to 4:00 p.m., Tuesday, May 31, 1988, and from 9:00 a.m. to 12:00 Noon Wednesday, June 1, 1988.

The Management Council meeting will be held from 8:00 a.m. to 4:00 p.m., Thursday, June 2, 1988, and from 8:00 a.m. to 3:00 p.m., Friday, June 3, 1988.

ADDRESS: Both the Task Force and the Management Council meetings will be held at the Red Lion Inn, 1929 4th Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, California 96097, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force and Management Council, please refer to the notice of their initial meetings that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

During the Task Force meeting, agenda items for discussion will be the work plan and budget, for Federal Fiscal Year 1989 and State Fiscal Year 1988–1989, for the Klamath River Basin Conservation Area Restoration Program. The Task Force will also discuss a statement of mission and goals for the Task Force, and will develop interagency memorandums of agreement for implementing the Restoration Program.

During the meeting of the Management Council, it will review the Klamath River Salmon Management Long-Term Harvest Sharing Agreement for possible revisions, discuss the role of the Management Council in the harvest management process, hear reports from its Technical Advisory Team on status of 1988 salmon fisheries and a plan for in-season monitoring of ocean harvest, and adopt operating procedures for conducting Management Council business.

Dated: April 27, 1988.

Wally Steucke,
Regional Director.

[FR Doc. 88–0959 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of Environmental Documents Prepared for Outer Continental Shelf (OCS) Minerals Exploration Proposals on the Alaska OCS

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for the following oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding the Notice.

ACTION: The EA determines whether changes to the Beaufort Sea Planning Area resource estimates, upon which the Sale 97 Oil-Spill-Rick Analysis is predicated, would result in changes in the analysis presented in the Sale 97 FEIS that would required preparation of a new environmental impact statement.

Environmental Assessment
EA No. AK 88–01
Location
Beaufort Sea Planning Area
FONSI Date
January 1988.

FOR FURTHER INFORMATION: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m., and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261–4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environmental in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will now result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 28, 1988.

Alan D. Powers,
Regional Director, Alaska OCS Region.

[FR Doc. 88–0963 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5290, Block 187, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 21, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph: Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit: Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 21, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–0945 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of

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hydrocarbons with support activities to be conducted from an existing onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on April 28, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson: Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit: Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: April 28, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–9948 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Pennzoil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2607 and 2317, Blocks 312 and 333, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 28, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 29, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–9950 Filed 5–4–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31285]

Wisconsin Central LTD.—Exemption—Trackage Rights—Duluth, Missabe and Iron Range Railway Co.

Duluth, Missabe and Iron Range Railway Company (DM&IR) has agreed to grant overhead trackage rights to Wisconsin Central Ltd., at Saunders, WI, between milepost 13.00 and milepost 19.43 of DM&IR's Interstate Branch, a distance of approximately 6.43 miles. The trackage rights became effective on April 22, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: April 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9984 Filed 5–4–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Stipulation and Order Modifying Stipulation on Requisite Remedial Technology Program (RRT Program) in an Action To Enjoin Discharges of Pollutants; Hooker Chemicals and Plastics Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a stipulation and order modifying the Stipulation On Requisite Remedial Technology Program (RRT Program) which had been entered by order dated August 11, 1986 in *United States of America et al. v. Hooker Chemicals & Plastics Corporation, et al. (Hyde Park Landfill)*, Civil Action No. 79–989C (W.D.N.Y.), was lodged with the United States District Court for the Western District of New York on April 21, 1988. The Stipulation On Requisite Remedial Technology Program established a program for Hooker Chemicals & Plastics Corporation (now named "Occidental Chemical Corporation"), which owned and operated the Hyde Park Landfill located in the Town of Niagara, Niagara County, New York, to implement the "requisite" technology as part of a comprehensive remedial program for the site relating to the discharge of pollutants into the environment.

The proposed modification addresses changes in the health and safety elements of the RRT Program with respect to the instruments to be used for volatile organic air monitoring, as well as laboratory analytical requirements and action levels for organic chemical vapors to assure the protection of workers during survey and remedial activities.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the stipulation and order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States of America et al. v. Hooker Chemicals & Plastics Corporation, et al. (Hyde Park Landfill)*, D.J. Ref. No. 90–7–1 40.

The Stipulation And Order Modifying The Stipulation On Requisite Remedial Technology Program may be examined at the office of the United States Attorney, Western District of New York, United States Courthouse, Buffalo, New York 14202; at the Region II office of the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of The Stipulation And Order Modifying The Stipulation On Requisite Remedial Technology Program may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–9939 Filed 5–4–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Midwest Asbestos Removal Service, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Midwest Asbestos Removal Service, Inc.* was lodged with the United States District Court for the Northern District of Illinois on April 22, 1988. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Air Act and the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) at numerous sites in Indiana and Illinois.

The consent decree provides for compliance with the Clean Air Act and NESHAP and payment of $25,000 in settlement of the action, as well as stipulated penalties if certain provisions of the decree are not met.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to "*United States v. Midwest Asbestos Removal Service, Inc.*, D.J. Ref. 90–5–2–1–1040."

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Illinois or the regional office of the Environmental Protection Agency as follows:

U.S. attorney	EPA
U.S. Attorney, Northern District of Illinois, 219 South Dearborn St., Chicago, IL 60604.	Office of Regional Counsel, Region V, Third Floor, 111 West Jackson St., Chicago, IL 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at the address above. In requesting a copy of the decree, please enclose a check payable to the United States Treasurer in the amount of $1.90.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530.

[FR Doc. 88–9956 Filed 5–4–88; 8:45 am]

BILLING CODE 4410–01–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity To Comment on the Coverage of a Review of Actions Taken by the Office of Personnel Management (OPM) During Calendar Year 1987

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to comment on the coverage of a review of actions taken by the Office of Personnel Management (OPM) during calendar year 1987

SUMMARY: 5 U.S.C. 1209(b) requires the Board to report annually to the President and the Congress on the "significant actions" of OPM, including an analysis of whether those actions are in accord with merit system principles and free from prohibited personnel practices. The Board is in the process of reviewing OPM's significant actions during calendar year 1987. This notice explains the Board's study and invites public comment on OPM's programs and activities.

DATE: Comments must be received on or before June 6, 1988.

ADDRESS: Comments must be made in writing and sent to the Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, Attention: Charles Friedman.

FOR FURTHER INFORMATION CONTACT: Charles Friedman, Project Manager, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, (202) 653–7208.

SUPPLEMENTARY INFORMATION:

(a) Background

The Civil Service Reform Act of 1978 established the merit principles (5 U.S.C. 2301) and prohibited personnel practices (5 U.S.C. 2302) to govern the conduct of personnel management in the Federal Government. The Board is responsible for protecting the public interest in a civil service administered in accord with these merit principles and free from the prohibited personnel practices. The Board does this by adjudicating employee appeals, acting on actions brought by the Special Counsel, conducting special studies of the civil service and other merit systems, and reviewing the regulations and signficant actions of OPM. The Office of Policy and Evaluation has principal responsibility within the Board for merit systems studies and OPM oversight, including the annual report on OPM's significant actions.

(b) What Is a Significant Actions Report?

The law (5 U.S.C. 1209(b)) allows the Board substantial discretion to determine which actions of OPM are significant to the merit system in any given year. In exercising its discretion as to which actions of OPM it will study, the Board considers several criteria, as follows:

(1) Any OPM policy or program which might conflict with the statutory merit principles or contribute to the commission of a prohibited personnel practice;

(2) The extent to which other major decisions made or actions taken by OPM are in accord with and promote the merit principles; and

(3) OPM's impact, overall, on personnel management within the merit systems of the Federal civil service.

The Board's review of OPM's significant actions in 1986 considered five major subject areas: pay for performance (the Performance Management and Recognition System);

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expanded authority for temporary appointments; reduction in force; hiring of entry-level Federal employees; and performance management.

(c) Public Comment on significant Actions

The Board invites any interested person or organization to comment on: which actions of OPM during calendar year 1987 were "significant" for the merit system; whether those actions were consistent with the merit systems principles and free from prohibited personnel practices; what types of data would be most pertinent in evaluating the significant action(s) being suggested; and from what sources could these data be most appropriately obtained.

Although comments are invited on any action taken by OPM during 1987, comments should be germane to the Board's criteria as described above. Consideration may also be given to the fact that a lack of action on an issue by OPM can constitute a significant action for purposes of this review.

In addition, the Board invites comments on the following topics which are already under consideration:

—Development and implementation of new or revised classification and qualification standards;
—Quality of worklife activities, as reflected in such Government policies and programs as the drug-free workplace program, and the problems of individuals suffering from Acquired Immune Deficiency Syndrome (AIDS), as well as the concerns of their co-workers;
—Executive development, including the status of the Federal Executive Institute; and
—College recruitment, concentrating on OPM's progams to assist the Government in attracting the best college graduates from all segments of society.

Finally, the Board also invites comments on the relative priority that should be assigned to each of the significant actions being suggested, including those topics listed above.

(d) Format for Comments

For each topic being suggested, please provide a short statement of the issue being raised, along with a brief explanation as to why it should be reviewed, and the impact—positive or negative—that OPM's related action has had on the Federal service.

Suggestions on what data (nature and sources) would be most useful in evaluating the issue and OPM's action(s), as well as comments on the relative priority of all potential study topics, should be shown in a separate paragraph.

(e) Confidentiality

The Board will protect the identify of persons submitting comments and the confidentiality of such comments to the extent permitted by law.

Date: May 2, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88-10015 Filed 5-4-88; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL ECONOMIC COMMISSION

Meeting; Change of Location

AGENCY: National Economic Commission.

ACTION: Change of location of Commission Meeting.

SUMMARY: The location of the National Economic Commission's first public meeting on May 10, 1988 has been changed to Room 608 of the Senate Dirksen Office Building. The meeting will be from 3–6 p.m.

SUPPLEMENTARY INFORMATION: See Federal Register, Vol. 53, No. 80, Tursday, April 26, 1988, page 14871.

FOR ADDITIONAL INFORMATION CONTACT: Alexander Platt, General Counsel, 789–1993, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-10100 Filed 5-4-88; 8:45 am]

BILLING CODE 6820-AS-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee, Industry Executive Subcommittee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, June 21, 1988. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.
B. Administrative remarks.
C. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–9274 or write the Manager, National Communications System, Washington, DC 20305–2010.

Robert V. Dowsey,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 88-9857 Filed 5-4-88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1); Hearing

[Docket No. 50-322-OL-3 (Emergency Planning)]

April 28, 1988.

Before Administrative Judges: James P. Gleason, Chairman, Dr. Jerry R. Kline, Mr. Frederick J. Shon.

Notice is hereby given that, in accordance with the Licensing Board's Memorandum and Order of March 10, 1988, evidentiary hearings on emergency planning issues will commence in Hauppauge, New York, beginning at 9:30 a.m. on May 16, 1988. The hearings will take place in the Court of Claims Courtroom, State Office Building, located on Veterans Memorial Highway. Parties to the proceeding are the Long Island Lighting Company, New York State, Suffolk County, the Town of Southampton, and the Nuclear Regulatory Staff.

For the Atomic Safety and Licensing Board.

James P. Gleason,

Chairman, Administrative Judge.

[FR Doc. 88-9878 Filed 5-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated March 18, 1988 (Reference G02–88–065).

The proposed amendment would change Technical Specification Section 4.8.2.1, "D.C. Sources Surveillance Requirements." Subsection d. of that Section specifies the discharge amperage profiles which must be achievable for the DC batteries to be declared operable. The proposed amendment would revise those discharge amperage profiles. This change is being made because review of design documents indicated an inconsistency with the Technical Specifications. Battery load profiles were recalculated to provide the revised values.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

June 6, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative of the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005–3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 25th of April 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9867 Filed 5-4-88; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Certification of Relinquishment of Rights.

(2) *Form(s) submitted:* G–88.

(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) *Frequency of use:* On occasion.

(5) *Respondents:* Individuals or households.

(6) *Annual responses:* 4,500.

(7) *Annual reporting hours:* 375.

(8) *Collection description:* Under section 2(e)(2) of the Railroad

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Retirement Act, the Board must have evidence that an applicant for an employee, spouse or divorced spouse annuity has relinquished rights to return to employer service as a condition for receiving an annuity. The collection provides the means for obtaining this evidence.

Summary of Proposal(s)

(1) *Collection title:* Requests for Consultative Medical Examinations.
(2) *Form(s) submitted:* RL–12/ID–31a.
(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) *Frequency of use:* On occasion.
(5) *Respondents:* Businesses or other for-profit, small businesses or organizations.
(6) *Annual responses:* 10,100.
(7) *Annual reporting hours:* 10,100.
(8) *Collection description:* Under section 2 of the RRA and section 2 of the RUIA, disability and sickness benefits are respectively provided for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–9930 Filed 5–4–88; 8:45 am]

BILLING CODE 7905–01–M

Actuarial Advisory Committee; Public Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Actuarial Advisory Committee will hold a meeting on May 19, 1988, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 17th Actuarial Valuation of the Railroad Retirement Account. The agenda for this meeting will include a discussion of the results and presentation of the 17th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Beatrice Ezerski,

Secretary to the Board.

Dated: April 27, 1988.

[FR Doc. 88–9958 Filed 5–4–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25627; File No. SR–CBOE–88–05]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On March 25, 1988, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change to modify the opening rotation procedures in S & P 100 Options ("OEX").

The proposed rule change was noticed and partially approved on an accelerated basis in Securities Exchange Act Release No. 25545, April 1, 1988, 53 FR 11720 (April 8, 1988). No comments were received on the proposed rule change.

The proposed rule change will adopt Rule 8.15, which sets forth selection and removal criteria for Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") and articulates their respective obligations, and Interpretation .02 to Rule 24.13, which describes, in part, the method by which nonparticipating market-maker and proprietary orders may participate in the opening and the setting of markets by the Order Book Official ("OBO"). Proposed Rule 8.15 provides that the Market Performance Committee ("Committee") may appoint one or more market-makers in good standing with an appointment in the OEX as LMMs and SMMs to participate in the modified opening rotation. LMMs and SMMs shall be appointed on the first day following an expiration for a period of one month ("expiration month") and shall be assigned to a zone with one or more LMMs or SMMs. The Committee is also responsible for selecting the series to be included in a zone. Proposed Rule 8.15 provides also that in selecting LMMs and SMMs the Committee shall consider: adequacy of capital, experience in trading index options, presence in the OEX trading crowd, adherence to Exchange rules and ability to meet other specified obligations.[3]

LMMs will be obligated to: (1) Quote firm two-sided markets of sufficient size in all series assigned to their zone to accommodate relatively active openings; (2) facilitate customer order imbalances in all series assigned to their zone; (3) assist LMMs in other zones to facilitate excessive imbalances; and (4) perform the above obligations for one expiration month commencing on the first day following an expiration. SMMs will be obligated to accept a previously agreed to portion of opening order imbalances and participate with the LMM in the modified trading rotation for one calendar week. Failure by either the LMM or SMM to perform his obligations may result in suspension of up to three months from trading in all OEX series.

The Committee may remove one or all LMMs and SMMs in a zone if one or more LMMs or SMMs assigned to the zone fails to meet his obligations or any other applicable exchange rule. An LMM or SMM removed under this Rule may seek review of that decision under Chapter XIX of the Exchange Rules. Proposed Rule 8.15 also authorizes the Committee to appoint an interim LMM to complete the monthly obligations of any LMM who is removed from, no longer eligible for, resigns from, or fails to perform the duties of his appointment.

Interpretation .02 to Rule 24.13 provides, in part, that one or more LMMs in each zone shall be responsible for quoting a two-sided market in each of the series assigned to the zone. The OBO shall apprise such LMM of the order imbalances to be facilitated only in extreme market conditions or when there exists an extremely large imbalance of opening orders. Upon receiving the LMM market, the OBO will state the net imbalance in each series to the LMM who shall then buy or sell the imbalance. Market-makers who are not holding LMM or SMM appointments can participate in the opening of an OEX series by transmitting written non-cancellable proprietary and market maker orders to the LMM in that zone ten minutes prior to the opening of trading. The participation at the opening of such market maker shall not exceed that of an SMM in that zone.

The CBOE states that the proposed rule change is designed to provide for a more rapid opening for the OEX by reducing the average time for opening rotations to approximately ten minutes, even under extreme market conditions such as those experienced in October. The CBOE notes further that the modified rotation process evolved from pilot programs using simultaneous rotations for series in the more distant expirations. The proposed modified OEX rotation differs from the pilot programs by providing for several sub-crowds or zones and the creation of LMMs and SMMs.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder in that the proposed rule change will expedite the completion of the opening rotation. The Commission believes that the establishment of designated zones for certain option series that will open simultaneously with the main rotation and the appointment of one or more LMMs and SMMs per zone will increase the speed of opening rotations. Faster opening rotations will reduce the problems associated with delayed free trading, especially during extreme market conditions as witnessed during the October 1987 market decline.[4] More specifically, a more timely completion of opening rotation and the commencement of free trading in all OEX option series will facilitate fair options pricing, permit market makers to hedge positions more effectively, provide more depth and liquidity and contribute to price continuity. Finally, the Commission also notes that the proposed rule change will increase the participation of more highly capitalized persons (LMMs, SMMs, and non-participating market makers) during opening rotation, and thereby contribute to a more deep, liquid, orderly, and efficient market maker in index options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9956 Filed 5–4–88; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The CBOE has clarified that these criteria are intended to establish minimum participation levels only. The CBOE intends to allow as many qualified members as apply to become LMMs or SMMs. If more than enough members who meet the minimum participation levels apply, the Committee either will appoint competing LMMs in a zone or rotate appointments each month. *See* Letter from Fredric M. Kreiger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 4, 1988.

[4] *See* Securities Exchange Commission, *A Report by the Division of Market Regulation on the October 1987 Market Break,* February, 1988, p. 6–8.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1988).

[Release No. 34–25628; File No. SR–NASD–88–6]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 16, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposal amends the Interpretation of the Board of Governors—Review of Corporate Financing, at Article III, Section 1 of the NASD Rules of Fair Practice, to require the participation of a qualified independent underwriter in certain public offerings in which more than 10 percent of the net proceeds of the offering are directed to NASD members participating in the distribution of the offering, or to associated or affiliated persons of such members, or to immediate family members of such persons.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Security Exchange Act Release No. 25477, March 17, 1988) and by publication in the **Federal Register** (53 FR 9551, March 23, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved. In accordance with the letter amendment filed by the NASD on April 29, 1988, the proposed rule change will become effective on June 1, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: April 29, 1988.

[FR Doc. 88–9957 Filed 5–4–88; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 200.30–3(a)(12) (1988).

[File No. 500–1]

Fluid Corp.; Order of Suspension of Trading

May 2, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current and adequate information concerning the securities of Fluid Corporation ("Fluid") and that questions have been raised concerning, among other things, Fluid's assets, business operations, and financial condition as a result of an action filed on March 2, 1988 by the United States Small Business Administration against Fluid's wholly owned subsidiaries, Fluid Capital Corporation and Fluid Financial Corporation, in the United States District Court for the District of New Mexico. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Fluid Corporation.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Fluid Corporation, over-the-counter or otherwise, is suspended for the period from 11:30 a.m. e.d.t., May 2, 1988 through 11:59 p.m. e.d.t., on May 11, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10026 Filed 5–4–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

World Resources International, Inc. Order of Suspension of Trading

May 2, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate information concerning the securities of World Resources International, Inc. ("World") and that questions have been raised about adequacy and accuracy of publicly disseminated information concerning, among other things, World's financial

statements, financial condition, assets, business operations, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of World.

Therefore, it is ordered, pursuant to section 12(k) of the Securities and Exchange Act of 1934, that trading in the common stock of World, over-the-counter or otherwise, is suspended for the period from 11:45 a.m. (e.d.t.) May 2, 1988 through 11:59 p.m. (e.d.t.) on May 11, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10027 Filed 5-4-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0345]

Intergroup Venture Capital Corp., Surrender of License

Notice is hereby given that Intergroup Venture Capital Corporation, 230 Park Avenue, New York, New York 10169, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Intergroup Venture Capital Corporation was licensed by the Small Business Administration on August 7, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 22, 1988 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 2, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-10033 Filed 5-4-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0345]

Queneska Capital Corp.; Issuance of a Small Business Investment Co. License

On January 21, 1988, a notice was published in the **Federal Register** (53 FR 13) stating that an application had been filed by Queneska Capitol Corporation, 123 Church Street, Burlington, Vermont 05401, with the Small Buisness Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until the close of business February 20, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0345 on April 25, 1988, to Queneska Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011. Small Business Investment Companies)

Dated: May 2, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-10034 Filed 5-4-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 10:30 a.m. on Wednesday, May 11, 1988, in Room 1205 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (2:30 p.m. to 3:30 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the immunity of foreign States and their instrumentalities in United States courts, the International Court of Justice, the work of the International Law Commission and its relation to the Sixth Committee of the United Nations General Assembly, the Torture Convention and Torture Victims Protection Act and the United States relationship to the International Court of Justice. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to May 10, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-6771) of their name, affiliation, address and telephone number in order to arrange admittance.

This notice does not provide the normal 15-day advance notice of the subject meeting because the date of the meeting was changed from that originally contemplated to allow responsible senior government officials to attend.

Bruce C. Rashkow,

Executive Director.

April 22, 1988.

[FR Doc. 88-9929 Filed 5-4-88; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1060]

Privacy Act of 1974; New System of Records

Notice is hereby given that the Department of State intends to adopt a new system of records, the "Communications Training Records, STATE-57," pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)) and the Office of Management and Budget Circular No. A-130, Appendix I. A notice was published at 53 FR 2798, February 1, 1988, proposing the creation of this system and inviting public comment during the sixty day period. Since no comments were received, the Department is adopting the new system which will read as set forth below.

For the Secretary of State.

Dated: April 21, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

STATE-57

SYSTEM NAME:

Communications Personnel Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Communications, Resource Management Training Division, 2201 C Street, NW., Washington, DC 20520; and Warrenton Training Center, Bear Wallow Road, Warrenton, Virginia 22186.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Foreign Service professional communications personnel, Foreign Service officer and secretary back-up communications personnel, and Civil Service communications personnel employed by the Department of State.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security account number, grade, date and place of birth, current and previous assignments, Continuing Education Units (CEU'S) awarded, previous experience and educational backgrounds, and technical training provided by the Office of Communications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Service Act of 1980, as amended, (22 U.S.C. 3901), and the Civil Service Reform Act of 1978 (5 U.S.C. 1101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office of Communications will use this record system in determining current and future training requirements of those individuals who are professional communications personnel and who have been tasked to perform additional back-up communications duties at Foreign Service posts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, computer media.

RETRIEVABILITY:

By individual name, social security account number, assignment/posts and types of training.

SAFEGUARDS:

All employees of the Department of State have undergone a background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

Biographic training data may be maintained in the system for as long as the individual is employed by the Department of State. More specific information regarding retention and disposal may be obtained by writing to the Director, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520.

SYSTEM MANAGER AND ADDRESS:

Chief of Training Division, Warrenton Training Center, Box 3050, B-47, Warrenton, Virginia 22186.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Communications Personnel Training Records might contain records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520. The individual must specify that he/she wishes the records of the Communications Personnel Training Records to be checked. At a minimum, the individual must include: Date and place of birth; current mailing address and zip code; signature.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

The individual employee and the Department's central personnel database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-9936 filed 5-4-88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-24]

Commercial Gauger Approval; Compu-Survey

AGENCY: Customs Service, Treasury.

ACTION: Notice of approval of a commercial gauger.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), Compu-Survey, 4909 College Park Drive, (P.O. Box 69), Deer Park, Texas 77536, applied to Customs for approval to gauge imported petroleum and petroleum products and bulk liquid organic chemicals. Customs has determined that Compu-Survey meets all of the requirements for approval.

Accordingly, Compu-Survey is hereby conditionally approved to gauge imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: April 29, 1988.

John B. O'Loughlin,

Director, Office of Technical Services.

[FR Doc. 88-10023 Filed 5-4-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Book and Library Advisory Committee, Meeting

A meeting of the Book and Library Advisory Committee will take place on May 10, 1988, in New York City, NY.

The meeting will be held at the New York Public Library (Fifth Avenue and 41st Street Entrance), from 2:30 p.m. until 4:30 p.m.

Please contact Louise Wheeler on (202) 485-8889 for further information.

Dated: April 29, 1988.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 88-9960 Filed 5-4-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 87
Thursday, May 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 13461, April 25, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 27, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added:

Item No., Docket No., and Company

CAC-0

RP86-63-000 and RP86-114-000, Southern National Gas Company

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10094 Filed 5-3-88 3:39 pm]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 15168, April 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, May 2, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Request by the General Accounting Office for Board comment on a draft report regarding competitive concerns of foreign financial institutions in Japan, the United Kingdom, and the U.S.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: May 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10028 Filed 5-2-88; 4:34 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 53, No. 87
Thursday, May 5, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 70473-7274]

Public Information; Freedom of Information Act

Correction

In rule document 88-3797 beginning on page 6972 in the issue of Friday, March 4, 1988, make the following corrections:

§ 4.3 [Corrected]

1. On page 6973, in the second column, in § 4.3(c)(1), in the 10th line, "our" should read "out".

§ 4.5 [Corrected]

2. On page 6974, in the first column, in § 4.5(a), in the 18th line, "in" should read "is".

3. On the same page, in the second column, in § 4.5(c), in the 15th line, "when" should read "which".

§ 4.6 [Corrected]

4. On the same page, in the same column, in § 4.6(a), in the fifth line, "including" should read "excluding".

5. On the same page, in the third column, in § 4.6(a)(4), in the second line, "indicate" should read "indicates".

6. On page 6975, in the first column, in § 4.6(b)(3), in the second line from the bottom, "go" should read "forego".

§ 4.9 [Corrected]

7. On page 6977, in the second column, in § 4.9(a)(8), in the 26th line, "is" should read "if".

Note: For a Department of Commerce correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240080; FRL-3360-8]

State Registrations of Pesticides; Arizona et al.

Correction

In notice document 88-7513 beginning on page 11339 in the issue of Wednesday, April 6, 1988, make the following corrections:

1. On page 11340, in the second column, under **Florida**, in the third paragraph, in the first line, "Phone-" should read "Rhone-"; and in the third line, "Brank" should read "Brand".

2. On the same page, in the third column, under **Nevada**, in the first and third lines, "Wilcon" should read "Wilco".

3. On the same page, in the same column, under **North Carolina**, in the second line, "Chemical" was misspelled.

4. On page 11341, in the first column, under **South Dakota**, in the fourth line, "rose" should read "rows".

5. On the same page, in the same column, under **Wyoming**, in the second line, "Cyanamid" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Solid Waste Disposal Act; Hermes Consolidated, Inc.

Correction

In notice document 88-9061 beginning on page 14862 in the issue of Tuesday, April 26, 1988, make the following correction:

On page 14862, in the third column, in the third line, "*April 25, 1988*" should read "*April 15, 1988*".

BILLING CODE 1505-01-D

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federal register

Thursday
May 5, 1988

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Income Taxes; Corporate Distributions, Certain Nonrecognition Exchange and Other Transfers; Temporary Regulations and Proposed Rulemaking by Cross-Reference

VOL 53 ISS 87 MY 5 1988 UMI

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8198]

Income Taxes; Corporate Distributions and Certain Nonrecognition Exchange and Other Transfers Under Section 897 (c), (d), (e), (g), (i), and (j) and Section 367(e)(2) and Withholding Under Section 1445(e) (5) and (6)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to certain dispositions of U.S. real property interests. The regulations provide rules for the exchange, distribution, or transfer of U.S. real property interests without recognition of gain under the Foreign Investment in Real Property Tax Act of 1980. The regulations also treat interests in certain partnerships as entirely U.S. real property interests for purposes of withholding on the proceeds from dispositions of such interests. In addition, the regulations provide rules with respect to the treatment of interests in publicly traded corporations. The text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed regulations in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Except as otherwise specifically provided, §§ 1.897–4AT, 1.897–5T, and 1.897–6T apply to exchanges, distributions, or transfers of U.S. real property interests occurring after June 10, 1980, and are effective as of that date. Changes and additions to portions of the existing regulations made by §§ 1.897–7T, 1.897–8T, 1.897–9T except paragraph (e) of 1.1445–10T and 1.1445–11T are generally effective after June 6, 1988. Paragraph (e) of § 1.897–9T dealing with foreign governments and international organizations is effective July 1, 1988. The special rules of § 1.1445–9T for section 1034 nonrecognition are effective after August 3, 1988.

FOR FURTHER INFORMATION CONTACT: Charles P. Besecky of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3319 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 897 (c), (d), (e), (g), (i) and (j) of the Internal Revenue Code of 1986, as added by section 1122 of the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") (94 Stat. 2599, 2682, Pub. L. 96–499) and amended by section 831 of the Economic Recovery Tax Act of 1981 (95 Stat. 172, 352, Pub. L. 97–34). This document also contains limited temporary Income Tax Regulations (26 CFR Part 1) under the authority of section 367(e)(2) of the Internal Revenue Code of 1986, as added by section 631(d)(1) of the Tax Reform Act of 1986 (100 Stat. 2085, 2272, Pub. L. 99–514). The regulations are issued under the authority contained in section 897 (d), (e), (g), and (j), section 1125(d) of FIRPTA, section 367(e)(2), section 1445(e) (5) and (6), and section 7805(a).

Section 897(a) of the Internal Revenue Code treats gain or loss derived by nonresident alien individuals or foreign corporations from the disposition of U.S. real property interest as if such gain or loss were effectively connected with a U.S. trade or business. Section 897 (d), (e), and (g) provide rules for the application of section 897(a) to certain distributions and nonrecognition exchanges. Section 897(c) provides, *inter alia*, a rule excepting from treatment as U.S. real property interests certain interests in publicly traded domestic corporations. The temporary regulations under section 367(e)(2) relate to the liquidation of certain corporations holding U.S. real property interests. The regulations under section 1445(e)(6) require withholding in certain instances on the disposition of partnership interests and on the distribution of U.S. real property interests by partnerships.

Discussion

Section 897(d) in General

Section 897(d)(1) provides, in general, that gain shall be recognized by a foreign corporation on its distribution, including by way of liquidation or redemption, of a United States real property interests, except to the extent otherwise provided in regulations. The gain recognized is the excess of the fair market value of such interest as of the time of the distribution over its adjusted basis.

Section 897(d)(2) provides that gain is not recognized under section 897(d)(1) if certain conditions are satisfied. The conditions are that, at the time of the receipt of the property, the distributee would be subject to income taxation on a subsequent disposition of the property, and the basis of the property is no greater than the adjusted basis of such property before the disposition increased by the amount of gain recognized by the distributing corporation.

Distributions by Domestic Corporations

Generally, the basis of property received by a foreign shareholder from a domestic corporation in a section 301 distribution is determined under section 301(b). Section 897(f) provides that, in the case of a distribution of a United States real property interest by a domestic corporation to a foreign shareholder, such shareholder's basis shall not exceed the adjusted basis of the property before the distribution in the hands of the domestic corporation increased by gain recognized by the domestic corporation on the distribution that is subject to U.S. taxation and increased by any U.S. tax paid by or on behalf of the foreign shareholder with respect to the distribution.

If a corporation that is a United States real property holding corporation distributes property to a foreign shareholder with respect to its stock, the foreign shareholder is treated as having disposed of a United States real property interest. Gain or loss is recognized to the extent that part or all of the distribution is treated under sections 301(c)(3)(A), 302(a), or 331(a) as made in full payment in exchange for stock.

If a United States real property holding corporation completely liquidates under section 331(a) after the repeal of the *General Utilities* doctrine, and all gain is recognized at the U.S. corporate level under section 336(a), there is no further shareholder level tax under section 897(a) with respect to the section 331 exchange. Under the cleansing provision of section 897(c)(1)(B), the shares in the U.S. corporation are not treated as U.S. real property interests.

If a corporation (other than certain corporations making an effective election under section 897(i)) that is a United States real property holding corporation distributes property after July 31, 1986, and after the repeal of the *General Utilities* doctrine under sections 332 and 334(b)(1) to an 80 percent foreign corporate shareholder with respect to its stock, the foreign corporate shareholder is not treated as having disposed of a United States real property interest in a recognition transaction. The foreign corporate shareholder's basis in the U.S. real property interest will be the same as in the hands of the domestic corporation.

The consequences of the transaction under section 367(e)(2) are also clarified.

Rules are provided for foreign corporations that have elected under section 897(i) to be treated as domestic corporations for purposes of section 897. A rule is also provided for section 338 elections.

Distributions by Foreign Corporations

A foreign corporation that distributes a United States real property interest must recognize gain, but not loss, on the distribution except as otherwise provided. Gain is not recognized by a foreign corporation if, at the time of the distribution, the recipient shareholder would be subject to United States taxation in accordance with the provisions of the regulations on a subsequent disposition of the United States real property interest, and the recipient shareholder's basis in the United States real property interest is equal to or less than the basis of the property in the corporation's hands increased by the amount of gain recognized by the corporation. Regulations for determining the distributee's basis in the distributed property are provided.

The distributing foreign corporation in a liquidation distribution to its 80 percent foreign corporate shareholder after July 31, 1986, under sections 332(a), 337(a) and 367(e)(2) shall not recognize gain on the U.S. real property interests distributed.

Regulations are provided for certain section 355 distributions by foreign corporations and the distribution of domestic corporation stock by a foreign corporation in a reorganization under section 368(a)(1) (C), (D), or (F). The Service invites comments concerning alternative methods of treating the distribution of domestic corporation stock by a foreign corporation in an inbound reorganization such as basis adjustments. An anti-abuse rule that treats certain stock transfers followed by a liquidation as an inbound reorganization is also provided.

A foreign corporation may not use section 337 as in effect prior to the Tax Reform Act of 1986 to sell a U.S. real property interest.

The regulations also include a provision for the section 897(l) credit in complete liquidations.

General Nonrecognition Rules

Nonrecognition of gain or loss may be obtained with respect to certain distributions or exchanges under proposed §§ 1.897–5T and 1.897–6T of United States real property interests if the interests are subject to United States taxation on subsequent disposition. Certain procedural requirements must also be fulfilled. If a recipient waives the otherwise applicable benefits of a United States income tax treaty, an interest otherwise qualifying shall be considered to be subject to United States taxation upon its subsequent disposition.

Section 897(e) in General

Section 897(e)(1) provides that any nonrecognition provision shall apply to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to United States taxation.

Section 897(e)(2) authorizes the Secretary to issue necessary or appropriate regulations to prevent the avoidance of Federal income taxes. These regulations provide the extent to which nonrecognition provisions shall apply under section 897, and the extent to which transfers of property in reorganizations shall be treated as sales of property at fair market value.

Nonrecognition Exchanges

The regulation provides that a nonrecognition provision shall apply to a transfer of a United States real property interest by a foreign person only to the extent that a United States real property interest is exchanged for a United States real property interest which immediately following the exchange would be subject to United States taxation upon its disposition. An interest is subject to United States taxation upon its disposition in accordance with the general nonrecognition rules described above. A nonrecognition provision is any provision of the Code which provides that gain or loss shall not be recognized if the requirements of that provision are met. If the nonrecognition provision does not apply, then the interest transferred is subject to taxation under section 897.

If a nonrecognition provision applies to the transfer of a United States real property interest, then the basis of the property received by the transferor is determined under the generally applicable rules. The basis of the exchanged property received by the transferee is determined under the generally applicable rules. If the transferor recognizes gain on the exchange of a United States real property interest, then the transferee's basis in the property will be increased if the generally applicable rules so provide.

A transferor that receives nonqualifying property, such as a foreign real property interest, in addition to United States real property interests subject to United States tax on disposition must recognize gain or loss equal to the lesser of either (1) the sum of the cash received plus the fair market value of the nonqualifying property received, or (2) the gain or loss realized with respect to the United States real property interest transferred. Specific rules are provided for mixed exchanges where both a United States real property interest and other property (including cash) is transferred in exchange both for qualifying and nonqualifying property.

Rules are also provided for certain foreign to foreign transfers in section 361 transactions, and contributions to capital under section 897(j).

Anti-Abuse Provisions

Rules denying nonrecognition with respect to certain tax avoidance transfers are provided. These include certain transfers by foreign persons to domestic corporations, basis adjustment for certain related person transactions, and the rearrangement of ownership to gain a treaty benefit.

Partnership Interests—Section 897(g) and Section 1445(e)

An interest in a partnership in which fifty percent or more in value of the gross assets consist of U.S. real property interests and ninety percent or more of the value of the gross assets consist of U.S. real property interests and cash or cash equivalents is considered entirely a U.S. real property interest for purposes of withholding on dispositions of such interests.

Section 1034 Rollovers—Sections 897(e) and 1445

A rule is provided under section 897(e) that permits a nonresident alien individual to utilize section 1034 on the sale of a principal residence that is a U.S. real property interest when another U.S. real property interest is purchased and used as a principal residence within a two year period before or after the sale. Gain recognition is required if the principal residence purchased is not a U.S. real property interest. Special withholding rules under section 1445 are also provided with respect to the sale of a principal residence for more than $300,000.

Section 897(i) Elections—U.S. real property holding corporation status required

A rule is provided under section 897(i) that requires that a foreign corporation making an election under that provision

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must be a U.S. real property holding corporation.

Section 897(a)—Definition of foreign person

The definition of foreign person in the regulations under section 897(a) is clarified to explain under which circumstances a foreign government is taxable under (or subject to) sections 897, 1445, and 6039C.

Section 897(c)(3) in general

Section 897(c)(3) excepts certain interests in a U.S. real property holding corporation from treatment as a U.S. real property interest. Dispositions by foreign persons of interests in a U.S. corporation which are not treated as U.S. real property interests are not subject to tax under section 897. Beneficial ownership of an interest of five percent or less of any class of stock of a domestic corporation which is regularly traded on an established securities market is not treated as a U.S. real property interest. In addition, the current regulations provide that any other interest in a domestic U.S. real property holding corporation is not treated as a U.S. real property interest if the fair market value of the interest is five percent or less of the fair market value of the regularly traded class of stock of the U.S. real property holding corporation with the lowest fair market value. The regulations under section 897(c)(3) are being modified in the following respects.

Interests Traded on Foreign Securities Markets

Interests in a domestic corporation traded on foreign securities markets must be registered pursuant to the Securities Exchange Act of 1934 (the "1934 Act"), 15 U.S.C. 78, to be treated as "regularly traded" interests for purposes of section 897(c)(3). This rule is modified to provide an alternative reporting requirement for corporations not otherwise required to register under the 1934 Act. In lieu of registration with the SEC, such corporations may file with the Service a report disclosing the beneficial owners of interests greater than 5 percent of any class of interests in the corporation which are traded on foreign securities markets, and such other identifying information as the Service requires. In addition, a class of interest traded on foreign securities markets must satisfy certain volume requirements to be treated as regularly traded within the meaning of section 897(c)(3).

Non-Regularly Traded Interests in Publicly Traded Corporations

Beneficial ownership of an interest in a domestic U.S. real property holding corporation which is not itself regularly traded is treated as a U.S. real property interest only if the fair market value of the interest on the date it was acquired is greater than five percent of the fair market value of the regularly traded class of interests of the U.S. real property holding corporation having the lowest fair market value. This rule is modified to provide that beneficial ownership of an interest in a class of non-regularly traded convertible interests in a domestic U.S. real property holding corporation will be treated as a U.S. real property interest only if the interest is greater than 5 percent of the fair market value of the class of stock into which the interest is convertible.

Need for Temporary Regulations

These regulations, if adopted, would generally apply to all transactions occurring after June 18, 1980. However, § 1.897–5T(b)(2)(iv) applies only to certain transactions occurring after July 31, 1986; §§ 1.897–7T, 1.897–8T, and 1.1445–10T apply only to certain transactions occurring 30 days after publication of this document in the **Federal Register**, and § 1.1445–9T applies only to certain transfers occurring 90 days after publication of this document in the **Federal Register**.

The temporary regulations will clarify unsettled law in this area, and provide taxpayers with needed immediate guidance. Many taxpayers have not been able to effectuate transactions, such as corporate reorganizations, because of the lack of regulatory guidance. This effective date is also necessary to prevent avoidance of tax.

The effective date for § 1.897–5(b)(2)(iv) corresponds with the effective date of the repeal of the *General Utilities* doctrine. The concepts underlying the repeal of the *General Utilities* doctrine are incorporated in the proposed regulations. The effective date of paragraph (e) of § 1.897–9T corresponds with the effective date of the amendment of section 892 by the Tax Reform Act of 1986.

The extraordinary, retroactive regulatory relief from the rules of section 897 (d) and (e) has been provided because these regulations are considered to be issued under unusual circumstances.

For all of these reasons, this regulation is not issued subject to the public notice requirements of 5 U.S.C. section 553 (b) or to the effective date limitation of paragraph (d) of that section.

Special Analyses

It has been determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. It has also been determined that these regulations will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.861–1 to 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

26 CFR 1.1441–1 to 1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

Income Tax Regulations

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations: (citations before * * * indicate general rulemaking authority).

Authority: 26 U.S.C. 7805 * * * Sections 1.897–5T, 1.897–6T and 1.897–7T also issued under 26 U.S.C. 897 (d), (e), (g) and (j) and 26 U.S.C. 367(e)(2) * * * section 1.1445–10T also issued under 26 U.S.C. 1445(e)(6).

§ 1.897–1 [Amended]

Par. 2. Section 1.897–1 is amended by removing paragraphs (c)(2)(iii)(B), and (n) effective on June 6, 1988, by removing the first, second, fifth and sixth sentences of paragraph (k), effective on June 6, 1988, and by removing the third and fourth sentences of paragraph (k), effective July 1, 1986. Paragraphs (c)(2)(iii)(B), (k), and (n) are hereby reserved.

Par. 3. The following new sections are added immediately after § 1.897–4:

§ 1.897–4AT Table of contents (Temporary).

§ 1.897–5T Corporate distributions (Temporary).

(a) Purpose and scope.
(b) Distributions by domestic corporations.
(1) Limitation of basis upon dividend distribution of U.S. real property interest.
(2) Distributions by U.S. real property holding corporation under generally applicable rules.
(3) Section 332 liquidations of U.S. real property holding corporations.
(i) General rules.
(ii) Distribution to a foreign corporation under section 332 after June 18, 1980, and before the repeal of the General Utilities doctrine.
(iii) Distribution to a foreign corporation under section 332 and former section 334(b)(2) after June 18, 1980.
(iv) Distribution to a foreign corporation under section 332(a) after July 31, 1986 and after the repeal of the General Utilities doctrine.
(A) Liquidation of domestic corporation.
(B) Liquidation of certain foreign corporations making a section 897(i) election.
(v) Transfer of foreign corporation stock followed by a section 332 liquidation treated as a reorganization.
(4) Section 897(i) companies.
(5) Examples.
(6) Section 333 elections.
(i) General rule.
(ii) Example.
(c) Distributions of U.S. real property interests by foreign corporations.
(1) Recognition of gain required.
(2) Recognition of gain not required.
(i) Statutory exception.
(ii) Section 332 liquidations.
(A) In general.
(B) Recognition of gain required in certain section 332 liquidations.
(iii) Examples.
(3) Limitation of gain recognized under paragraph (c)(1) of this section for certain section 355 distributions.
(i) In general.
(ii) Example.
(4) Distribution by a foreign corporation in certain reorganizations.
(i) In general.
(ii) Statutory exception.
(iii) Regulatory limitation on gain recognized.
(iv) Examples.
(5) Sales of U.S. real property interests by foreign corporations under section 337.
(6) Section 897(l) credit.
(7) Other applicable rules.
(d) Rules of general application.
(1) Interests subject to taxation upon later dispositions.
(i) In general.
(ii) Effects of income tax treaties.
(A) Effect of treaty exemption from tax.
(B) Effect of treaty reduction of tax.
(C) Waiver of treaty benefits to preserve nonrecognition.
(iii) Procedural requirements.
(2) Treaty exception to imposition of tax.
(3) Withholding.
(4) Effect on earnings and profits.
(e) Effective date.

§ 1.897–6T Nonrecognition exchanges applicable to corporations their shareholders, and other taxpayers, and certain transfers of property in corporate reorganizations (Temporary).

(a) Nonrecognition exchanges.
(1) In general.
(2) Definition of nonrecognition provision.
(3) Consequence of nonapplication of nonrecognition provisions.
(4) Section 355 distributions treated as exchanges.
(5) Section 1034 rollover of gain.
(i) Purchase of foreign principal residence.
(ii) Purchase of U.S. principal residence.
(6) Determination of basis.
(7) Examples.
(8) Treatment of nonqualifying property.
(i) In general.
(ii) Treatment of mixed exchanges.
(A) Allocation of nonqualifying property.
(B) Recognition of gain.
(C) Treatment of other amounts.
(iii) Example.
(9) Treaty exception to imposition of tax.
(b) Certain foreign to foreign exchanges.
(1) Exceptions to the general rule.
(2) Applicability of exception.
(3) No exceptions.
(4) Examples.
(5) Contribution of property.
(c) Denial of nonrecognition with respect to certain tax avoidance transfers.
(1) In general.
(2) Certain transfers to domestic corporations.
(i) General rule.
(ii) Example.
(3) Basis adjustment for certain related person transactions.
(4) Rearrangement of ownership to gain treaty benefit.
(d) Effective date.

§ 1.897–7T Treatment of certain partnership interests as entirely U.S. real property interests under section 897(g) (Temporary).

(a) Rule.
(b) Effective date.

§ 1.897–8T Status as a U.S. real property holding corporation as a condition for electing section 897(i) pursuant to § 1.897–3 (Temporary).

(a) Purpose and scope.
(b) General conditions.
(c) Effective date.

§ 1.897–9T Treatment of certain interests in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (Temporary).

(a) Purpose and scope.
(b)
(c) Foreign person.
(d) Regularly traded.
(e) Foreign governments and international organizations.
(f) Effective date.

§ 1.897–5T Corporate distributions (Temporary).

(a) *Purpose and scope.* This section provides rules concerning the recognition of gain or loss and adjustments to basis required with respect to certain corporate distributions that are subject to section 897. Paragraph (b) of this section provides rules concerning such distributions by domestic corporations, including distributions under section 301, distributions in redemption of stock, and distributions in liquidation. Paragraph (c) sets forth rules concerning distributions by foreign corporations, including distributions under sections 301 and 355, distributions in redemption of stock, and distributions in liquidation. Finally, various rules generally applicable to distributions subject to this section, as well as to transfers subject to § 1.897–6T, are set forth in paragraph (d). The rules contained in this section are also subject to the tax avoidance rules of § 1.897–6T(c).

(b) *Distributions by domestic corporations*—(1) *Limitation of basis upon dividend distribution of U.S. real property interest.* Under section 897(f), if any domestic corporation (distributing corporation) distributes a U.S. real property interest to a shareholder that is a foreign person (distributee) in a distribution to which section 301 applies, then the basis of the distributed U.S. real property interest in the hands of the foreign distributee shall be determined in accordance with the provisions of section 301(d), and shall not exceed—

(i) The adjusted basis of the property before the distribution in the hands of the distributing corporation, increased by

(ii) The sum of—

(A) Any gain recognized by the distributing corporation on the distribution, and

(B) Any U.S. tax paid by or on behalf of the distributee with respect to the distribution.

(2) *Distributions by U.S. real property holding corporations which are taxable exchanges of stock under generally applicable rules.* If a domestic corporation, stock in which is treated as

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a U.S. real property interest, distributes property with respect to such stock to a foreign shareholder, the distributee shall be treated as having disposed of a U.S. real property interest, and shall recognize gain or loss on the stock of such domestic corporation to the extent that, with respect to the distributees—

(i) Part of all of the distribution is treated pursuant to section 301(c)(3)(A) as a sale or exchange of stock;

(ii) Part or all of the distribution is treated pursuant to section 302(a) as made in part or full payment in exchange for stock; or

(iii) Part or all of the distribution is treated pursuant to section 331(a) as made in full payment in exchange for stock.

Stock in a domestic corporation shall not be considered a U.S. real property interest pursuant to the provisions of § 1.897–2(f)(2) if the corporation does not hold any U.S. real property interests and has disposed of all of its U.S. real property interests owned within the previous five years in transactions in which the full amount of gain was recognized under the rules of § 1.897–2(f)(2). If gain is recognized at the corporate level on either a distribution of a U.S. real property interest or a sale of a U.S. real property interest in a liquidation, such distribution or sale shall be considered a disposition for purposes of § 1.897–2(f)(2). With regard to the consequences of a distribution from a U.S. real property holding corporation under section 355(a), see § 1.897–6T(a) (1) and (4).

(3) *Section 332 liquidations of U.S. real property holding corporations*—(i) *General rules.* Exchanges that are subject to section 897(e) are normally covered by § 1.897–6T(a) (1), (2) and (3). This paragraph (b)(3) provides rules concerning the application of section 897(e) and the general principles of § 1.897–6T(a) (1), (2) and (3) to section 332 liquidations of U.S real property holding corporations.

(ii) *Distribution to a foreign corporation under section 332 after June 18, 1980, and before the repeal of the General Utilities doctrine.* Except for distributions under paragraph (b)(3)(iii) of this section (relating to section 332 and former section 334(b)(2)), the rules of this paragraph (b)(3)(ii) shall apply to section 332 distributions after June 18, 1980, and before January 1, 1999, pursuant to section 336(a) as in effect prior to the effective dates of the amendments made by section 631 of the Tax Reform Act of 1986. A foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in a domestic corporation that is a U.S. real property interest shall not, after December 31, 1984, be subject to taxation by reason of section 367(a). The foreign corporation shall recognize gain pursuant to section 897(e)(1) on such stock upon the receipt of property in a section 332(a) liquidation from such domestic corporation, but only to the extent that the property received constitutes property other than a U.S. real property interest. The gain on the stock in the domestic corporation to be recognized by the foreign corporation pursuant to section 897(e)(1) shall be determined by multiplying the gain realized on the distribution by a fraction. The numerator of the fraction shall be the fair market value of the property other than U.S. real property interests received by the foreign corporation on the distribution, and the denominator shall be the fair market value of all property received by the foreign corporation on the distribution. The bases of the distributed U.S. real property interests in the hands of the foreign corporation shall be the same as the bases in the hands of the domestic corporation. The bases of the property other than U.S. real property interests in the hands of the foreign corporation shall be the same as the bases in the hands of the domestic corporation, plus any gain recognized by the foreign corporation on the distribution allocated among such assets in proportion to the potential gain inherent in each such asset at the time of distribution. However, the basis of each asset is limited to its fair market value. Property, other than a U.S. real property interest that is distributed by the domestic corporation, shall not be considered to be distributed by the domestic corporation pursuant to a section 332 liquidation (that is, the foreign corporation shall not be considered to be a corporation for purposes of section 332) if the requirements of section 367(a) are not satisfied. *See*, for example, sections 1245(b)(3) and 1250(d)(3) regarding the consequences to the distributing domestic corporation if the requirements of section 367(a) are not satisfied.

(iii) *Distribution to a foreign corporation under section 332 and former section 334(b)(2) after June 18, 1980.* The rules of this paragraph (b)2)(iii) shall apply to section 332 distributions after June 18, 1980 where the basis of the distributed property in the hands of the foreign corporation is determined under section 334(b)(2) as in effect prior to the Tax Equity and Fiscal Responsibility Act of 1982. A foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in a domestic corporation that is a U.S. real property interest recognize gain on the reciept of property in a section 332(a) liquidation where section 334(b)(2) applies to the extent that the fair market value of the distributed assets that are not U.S real property interests exceeds the basis of such assets determined under section 334(b)(2) (for example, if the liquidation does not occur immediately upon the purchase of stock in the domestic corporation). The gain recognized shall not exceed the excess of the fair market value of the stock of the domestic corporation in the hands of foreign at the time of the distribution over the shareholder's adjusted basis in such stock. The basis of the distributed U.S. real property interests in the hands of the foreign corporation shall be determined under section 334(b)(2), by reference to the adjusted basis of the stock with respect to which the distribution was made. The basis of such property other than U.S. real property interests shall be tentatively determined under section 334(b)(2), and then increased by any gain recognized by the foreign corporation on the distribution allocated among such assets in proportion to the potential gain inherent in each such asset at the time of distribution (computed using the tentative basis as determined under section 334(b)(2)). The basis of each asset is limited, however, to its fair market value.

(iv) *Distribution to a foreign corporation under section 332 after July 31, 1986 and after the repeal of the General Utilities doctrine.* The rules of this subdivision (iv) shall apply to section 332 distributions after July 31, 1986, pursuant to section 337(a) as in effect after the effectivie dates of the amendments of section 631 of the Tax Reform Act of 1986.

(A) *Liquidation of domestic corporation.* A foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in a domestic corporation that is a U.S. real property interest (except a foreign corporation that has made an effective election under section 897(i) and the stock of which is treated as a U.S. real property interest) shall not recognize any gain under sections 367(a) or 897(e)(1) on the receipt of property in a section 332(a) liquidation. The domestic corporation shall not recognize gain under section 367(e)(2) on the distribution of U.S. real property interests (other than stock in a former U.S. real property holding corporation which is treated as a U.S. real property interest) to the foreign corporation. The domestic corporation shall recognize gain under section 367(e)(2) on the distribution of stock in a former U.S. real property holding corporation which is treated as a U.S. real property interest. With respect to recognition of gain or loss by the domestic corporation under section 367(e)(2) on the distribution of property other than U.S. real property interests, see the regulations under section 367(e)(2). The basis of the distributed U.S. real property interests (other than stock in a former U.S. real property holding corporation) in the hands of the foreign corporation shall be the same as it was in the hands of the domestic corporation. The basis of any property (other than U.S. real property interests) and stock in a former U.S. real property holding corporation that is a U.S. real property interest in the hands of the foreign corporation shall be the same as it was in the hands of the domestic corporation increased by any gain recognized by the distributing corporation on the distribution that was subject to U.S. taxation.

(B) *Liquidation of certain foreign corporations making a section 897(i) election.* A foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in another foreign corporation, that has made an effective election under section 897(i) and the stock of which is treated as a U.S. real property interest, shall recognize gain pursuant to section 897(e)(1) on such stock upon the receipt from the distributing foreign corporation of property that is not a U.S. real property interest, and that is not used by the distributee foreign corporation in the conduct of a trade or business within the United States (if the distributee foreign corporation is not a resident of a country with which the United States maintains an income tax treaty) or in a permanent establishment within the United States (if the distributee foreign corporation is a resident of a country with which the United States maintains an income tax treaty). The gain on the stock in the foreign corporation (making an effective election under section 897(i)) to be recognized by the distributee foreign corporation pursuant to section 897(e)(1) shall be determined by multiplying the gain realized on the distribution by a fraction. The numerator of the fraction shall be the fair market value of the property received by the distributee foreign corporation upon which it must recognize gain, and the denominator of the fraction shall be the fair market value of all property received by the distributee foreign corporation on the distribution. The distributing foreign corporation shall not recognize gain under section 367(e)(2) on the distribution of U.S. real property interests to the distributee foreign corporation. With respect to the recognition of gain or loss under section 367(e)(2) on the distribution of property other than U.S. real property interests, see the regulations under section 367(e)(2). The basis of the distributed U.S. real property interests in the hands of the distributee foreign corporation shall be the same as it was in the hands of the distributing foreign corporation. The basis of the property upon which the distributee foreign corporation recognized gain in the hands of the distributee foreign corporation shall be the same as the basis in the hands of the distributing foreign corporation, plus any gain recognized by the distributee foreign corporation on the receipt of such property allocated among such property in proportion to the potential gain inherent in each such property at the time of the distribution. In regard to the basis of any other property received by the distributee foreign corporation in the liquidation, see the regulations under section 367(e)(2). However, the basis of each asset is limited to its fair market value.

(v) *Transfer of foreign corporation stock followed by a section 332 liquidation treated as a reorganization.* If a nonresident alien or foreign corporation transfers the stock of a foreign-corporation that owns a U.S. real property interest to a domestic corporation in exchange for stock of the domestic corporation (or its domestic or foreign parent corporation) in a reorganization under section 368(a)(1)(B) or in an exchange under section 351(a), and if the foreign corporation then distributes the U.S. real property interest to the domestic corporation in a liquidation described in section 332(a) within five years of the transfer of the stock of the foreign corporation to the domestic corporation, then the transfer of the foreign corporation stock and the liquidation shall be treated as a reorganization described in section 368(a)(1) (C) or (D). The rules of § 1.897–6T(a)(1) shall apply to the transfer of the U.S. real property interest to the domestic corporation in exchange for domestic corporation stock, and the rules of § 1.897–5T(c)(4) shall apply to the distribution of domestic corporation stock by the foreign corporation. However, the rules of this paragraph (b)(3)(v) shall not apply if the transfer of the foreign corporation stock and the liquidation under section 332(a) are separate and independent transactions justified by substantial and verifiable business purposes.

(4) *Section 897(i) companies.* Except as otherwise provided herein for purposes of this section and § 1.897–6T, a foreign corporation that has made a valid election under section 897(i) shall be treated as a domestic corporation and not as a foreign corporation in determining the application of section 897. For rules concerning the making of a section 897(i) election, see §§ 1.897–3 and 1.897–8T. In regard to section 367(e)(2) and foreign corporations that have made an effective election under section 897(i), see paragraph (b)(3)(iv) of this section.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b). In each example there is no applicable income tax treaty to which the United States is a party.

Example (1). (i) A is a nonresident alien who owns 100 percent of the stock of DC, a U.S. real property holding corporation. DC's only asset is Parcel P, a U.S. real property interest, with a fair market value of $500,000 and an adjusted basis of $300,000. DC completely liquidates in 1987 and distributes Parcel P to A in exchange for the DC stock held by A.

(ii) Under section 336(a), DC must recognize gain to the extent of the excess of the fair market value ($500,000) over the adjusted basis ($300,000), or $200,000.

(iii) A does not recognize any gain under section 897(a) because the DC stock in the hands of A is no longer a U.S. real property interest under paragraph (b)(2) of this section and paragraph 2(f) of § 1.897–2. A does recognize gain (if any) under section 331(a); however, the gain is not subject to taxation under section 871(a). A's adjusted basis in Parcel P is $500,000.

(iv) If DC did not recognize all of the gain on the disposition under a transitional rule to section 631 of the Tax Reform Act of 1986, then paragraph (b)(2) of this section and paragraph 2(f) of § 1.897–2 would not apply to A. A would recognize gain (if any) under paragraph (b)(2) because the distribution is treated as in full payment in exchange for the DC stock under section 897(a).

Example (2). (i) FC, a Country F corporation, owns 100 percent of the stock of DC, a U.S. real property holding corporation. FC's basis in the stock of DC is $400,000, and the fair market value of the DC stock is $800,000. DC owns a U.S. real property interest with an adjusted basis of $350,000 and a fair market value of $600,000. DC also owns other assets that are not U.S. real property interests that have an adjusted basis of $125,000 and a fair market value of $200,000. DC completely liquidates in 1985 and distributes all of its property to FC in exchange for the DC stock held by FC.

(ii) Under paragraph (b)(3)(ii) of this section, FC recognizes $100,000 of gain under section 897(a) on the disposition of the DC stock. This is determined by multiplying FC's gain realized ($400,000) by a fraction. The

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numerator of the fraction is the fair market value of the property other than U.S. real property interests ($200,000), and the denominator of the fraction is the fair market value of all property received ($800,000). FC takes a carryover adjusted basis in the U.S. real property interest ($350,000). FC's adjusted basis in the assets that are not U.S. real property interests ($200,000) is the basis of those assets in the hands of DC ($125,000) plus the gain recognized by FC on the distribution ($100,000) not to exceed the fair market value ($200,000).

Example (3). (i) FC, a Country F corporation, owns 100 percent of the stock of DC, a U.S. real property holding corporation. FC's basis in the stock of DC is $300,000, and the fair market value of the DC stock is $500,000. DC owns Parcel P, a U.S. real property interest, with an adjusted basis of $250,000 and a fair market value of $400,000. DC also owns all of the stock of DX, a former U.S. real property holding corporation whose stock is a U.S. real property interest, with an adjusted basis of $50,000 and a fair market value of $100,000. DC completely liquidates in 1987 and distributes all of its property to FC in exchange for the DC stock held by FC.

(ii) Under paragraph (b)(3)(iv)(A) of this section, DC recognizes $50,000 of gain on the distribution to FC of the DX stock. DC does not recognize any gain for purposes of section 367(e)(2) on the distribution to FC of Parcel P.

(iii) Under paragraph (b)(3)(iv)(A) of this section, FC's disposition of its DC stock is not treated as a disposition of a U.S. real property interest. Under section 334(b)(1), FC takes a carryover adjusted basis of $250,000 in Parcel P. FC takes an increased basis of $100,000 in the DX stock which is equal to DC's basis ($50,000) increased by the gain recognized by DC ($50,000).

(iv) The result would be the same if FC had made an effective election under section 897(i).

(6) *Section 333 elections*—(i) *General rule.* A foreign shareholder that elects section 333 as in effect prior to its repeal by the Tax Reform Act of 1986 upon the distribution of property in a liquidation by a domestic corporation whose stock is treated as a U.S. real property interest shall recognize gain on such stock to the extent that—

(A) The property received by the foreign shareholder constitutes property other than U.S. real property interests subject to U.S. taxation upon its disposition as specified by paragraph (a)(1) of this section, or

(B) The basis of a U.S. real property interest subject to U.S. taxation upon its disposition in the hands of the recipient foreign shareholder exceeds the basis of the U.S. real property interest in the hands of the liquidating domestic corporation.

In determining the amount of gain recognized by the foreign shareholder, the foreign shareholder shall be considered to have exchanged the domestic corporation stock for all the property distributed on a proportionate fair market value basis. The gain recognized on a respective portion of domestic corporation stock shall not exceed the gain realized on that portion. Property other than U.S. real property interests subject to U.S. taxation upon disposition shall have a fair market value basis in the hands of the foreign shareholder. The basis of U.S. real property interests subject to U.S. taxation upon disposition shall be the basis of the proportionate part of the domestic corporation stock cancelled or redeemed in the liquidation, increased in the amount of gain recognized (other than gain recognized under this section) by the shareholder in respect to that proportionate part of the domestic corporation stock.

(ii) *Example.* The rules of paragraph (b)(6)(i) of this section may be illustrated by the following example.

Example. (i) A is a citizen and resident of Country F with which the U.S. does not have an income tax treaty. A owns all of the stock of DC, a U.S. real property holding corporation. The DC stock has a fair market value of $1,000,000. A acquired the DC stock in two purchases. The basis of one lot of the DC stock is $150,000, and the basis of the other lot is $650,000.

(ii) DC owns Parcel P, a U.S. real property interest, with a fair market value of $750,000 and an adjusted basis of $400,000. DC's only other property is equipment with a fair market value of $250,000 and an adjusted basis of $100,000. DC does not have any earnings and profits.

(iii) DC completely liquidates in 1985 in accordance with section 333 by distributing Parcel P and the equipment to A. A elects section 333 treatment.

(iv) A is considered as having exchanged 75 percent (fair market value of Parcel P/fair market value of all property distributed) of the DC stock for Parcel P. A realized gain of $150,000 on that portion of the DC stock ($750,000–$600,000). All of the gain of $150,000 is recognized under section 897 (a) because A's basis in Parcel P under section 334 (c) ($600,000) would exceed DC's basis in Parcel P ($400,000) by at least the amount of realized gain. A takes a basis of $750,000 in Parcel P.

(v) A is considered as having exchanged 25 percent (fair market value of equipment/fair market value of all property distributed) of the DC stock for the equipment. A realized gain of $50,000 on that portion of the DC stock ($250,000–$200,000). All of the gain of $50,000 is recognized under section 897 (a). A takes a basis of $250,000 in the equipment.

(c) *Distributions of U.S. real property interests by foreign corporations*—(1) *Recognition of gain required.* If a foreign corporation makes a distribution (including a distribution in liquidation or redemption) of a U.S. real property interest to a shareholder (whether foreign or domestic), then, except as provided in paragraph (c) (2), (3), or (4) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 967 (d) (1). The gain recognized shall be equal to the excess of the fair market value of the U.S. real property interest (as of the time of the distribution) over its adjusted basis. Except as otherwise provided, the distributee's basis in the distributed U.S. real property interest shall be determined under the otherwise applicable sections of the Code. The distributee (whether domestic or foreign) of a foreign corporation in a liquidation under section 332 shall take the foreign corporation's basis in the distributed U.S. real property interest increased by any gain recognized (and subject to U.S. income taxation) by the foreign corporation on the distribution of such U.S. real property interest.

(2) *Recognition of gain not required*—(i) *Statutory exception rule.* Under section 897(d)(2)(A), gain shall not be recognized by a distributing foreign corporation if—

(A) At the time of the receipt of the distributed U.S. real property interest, the distributee would be subject to U.S. income taxation on a subsequent disposition of the U.S. real property interest, determined in accordance with the rules of paragraph (d)(1) of this section;

(B) The basis of the distributed U.S. real property interest in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation upon the distribution and added to the adjusted basis under the otherwise applicable provisions; and

(C) The distributing corporation complies with the filing requirements of paragraph (d)(1)(iii) of this section.

(ii) *Section 332 liquidations*—(A) *In general.* A distributing foreign corporation that meets the requirements of paragraph (c)(2)(i) in a section 332(a) liquidation shall not recognize gain on the distribution of U.S. real property interests to a foreign corporation meeting the stock ownership requirements of section 332(b) if the distributing corporation complies with the procedural requirements of paragraph (d)(1)(iii). Whether a foreign corporation recognizes gain on the distribution of U.S. real property interests to a U.S. corporation meeting the stock ownership requirements of section 332(b) depends upon whether the U.S. corporation satisfies the subject to tax requirement provided in paragraph (d)(1)(i) (in addition to the procedural requirements of paragraph (d)(1)(iii)). With respect to section 332 distributions by a foreign corporation

occurring after July 31, 1986, section 367(e)(2) shall not affect the application of section 337(a) (as in effect after the Tax Reform Act of 1986) and paragraph (c)(2)(i) of this section to the distribution of a U.S. real property interest.

(B) *Recognition of gain required in certain section 332 liquidations.* Notwithstanding the other rules of this paragraph (c), a foreign corporation shall, pursuant to the authority conferred by section 897(e)(2), recognize gain on its distribution after May 5, 1988 of a U.S. real property interest to a domestic corporation meeting the stock ownership requirements of section 332(b) if—

(*1*) The foreign corporation has not made an election under section 897(i), and any gain on the stock in the foreign corporation would be subject to U.S. taxation if an election were made on the date of the liquidation; and

(*2*) The distribution of the U.S. real property interest by the foreign corporation to the domestic corporation pursuant to section 332(a) occurs less than five years after the date of the last gain from the disposition of stock of the foreign corporation that would be subject to payment of tax under § 1.897–3(d)(2)(i) if an election under section 897(i) were made by the foreign corporation on the date of its liquidation.

With regard to the treatment of certain foreign corporations as domestic corporations under section 897(i), however, see §§ 1.897–3 and 1.897–8T.

(iii) *Examples.* The rules of this paragraph (c)(2) may be illustrated by the following examples.

Example (1). (i) DC, a domestic corporation, owns 100 percent of the stock of FC, a Country F corporation. FC's only asset is Parcel P, a U.S. real property interest, with a fair market value of $500x and an adjusted basis of $100x. In September 1987, FC liquidates under section 332(a) and transfers Parcel P to DC. The transitional rules contained in section 633 of the Tax Reform Act of 1986 concerning the repeal of the *General Utilities* doctrine would not be applicable to a subsequent distribution or disposition of assets by DC.

(ii) Assume that FC complies with the filing requirements of paragraph (d)(1)(iii). DC will be subject to U.S. income taxation on a subsequent disposition of Parcel P under the rules of paragraph (d)(1). The basis of Parcel P in the hands of DC will be $100x under section 334(b)(1), and thus no greater than the basis of Parcel P in the hands of FC. FC does not recognize any gain under the rules of paragraph (c)(1) of this section on the distribution because the exception of paragraph (d)(2)(1) applies.

Example (2). If in *Example* (1) the distribution by FC to DC occurred in September 1985, and DC sold or exchanged Parcel P under sections 336(a) or 337(a) as in effect prior to the Tax Reform Act of 1986, then FC must recognize gain of $400x on the distribution of Parcel P. The gain must be recognized because Parcel P in the hands of DC is not considered subject to U.S. income taxation on a subsequent disposition under the rules of paragraph (d)(1) of this section.

(3) *Limitation of gain recognized under paragraph (c)(1) of this section for certain section 355 distributions*—(i) *In general.* Under paragraph (c)(1) of this section, a foreign corporation that distributes stock in a domestic corporation that constitutes a U.S. real property interest in a distribution to which section 355 applies shall recognize gain on the distribution to the extent that the fair market value of the distributed stock exceeds its adjusted basis in the hands of the distributing foreign corporation. The gain recognized shall be limited under this paragraph (c)(3), however, to the amount by which the aggregate basis of the distributed stock in the hands of the distributees exceeds the aggregate adjusted basis of the distributed stock in the hands of the distributing corporation. The distributees' basis in the distributed U.S. real property interest shall be determined under the otherwise applicable provisions of section 358. (Thus, the distributees' basis in the distributed U.S. real property interest shall be determined without any increase for any gain recognized by the foreign corporation).

(ii) *Example.* The rules of paragraph (c)(3)(i) of this section may be illustrated by the following example.

Example. (i) C is a citizen and resident of Country F. C owns all of the stock of FC, a Country F corporation. The fair market value of the FC stock is 1000x, and C has a basis of 600x in the FC stock; Country F does not have an income tax treaty with the United States.

(ii) In a transaction qualifying as a distribution of stock of a controlled corporation under section 355(a), FC distributes to C all of the stock of DC, a U.S. real property holding corporation. C does not surrender any of the FC stock. The DC stock has a fair market value of 600x, and FC has an adjusted basis of 200x in the DC stock. After the distribution, the FC stock has a fair market value of 400x.

(iii) Under paragraph (c)(3)(i) of this section, FC must recognize gain on the distribution of the DC stock to C equal to the difference between the fair market value of the DC stock (600x) and FC's adjusted basis in the DC stock (200x). This results in a potential gain of 400x. Under section 358, C takes a 360x adjusted basis in the DC stock. Provided that FC complies with the filing requirements of paragraph (d)(1)(iii) of this section, the gain recognized by FC is limited under paragraph (c)(3)(i) to 160x because (A) this is the amount by which the basis of the DC stock in the hands of C (360x) exceeds the adjusted basis of the DC stock in the hands of FC (200x), and (B) at the time of receipt of the DC stock, C would be subject to U.S. taxation on a subsequent disposition of the stock.

(iv) C's adjusted basis in the DC stock is not increased by the 160x recognized by FC.

(4) *Distribution by a foreign corporation in certain reorganizations*—(i) *In general.* Under paragraph (c)(1) of this section, a foreign corporation that transfers property to another corporation in an exchange under section 361(a) for stock of a domestic corporation which is a United States real property holding corporation immediately after the transfer in a reorganization under section 368(a)(1)(C), (D), or (F) shall recognize gain under section 897(d)(1) on the distribution (whether actual or deemed) of the stock of the domestic corporation received by the foreign corporation to its shareholders (whether domestic or foreign). See §1.897–6T(a) of the regulations for the consequences to the foreign corporation of the exchange of its property for the domestic corporation stock.

(ii) *Statutory exception.* Pursuant to the exception provided in section 897(d)(2)(A), no gain shall be recognized by the foreign corporation on its distribution of the domestic corporation stock if—

(A) At the time of the distribution, the distributee (*i.e.*, the exchanging shareholder in the section 354 exchange) would be subject to U.S. taxation on a subsequent disposition of the stock of the domestic corporation, determined in accordance with the rules of paragraph (d)(1) of this section;

(B) The distributee's adjusted basis in the stock of the foreign corporation immediately before the distribution was no greater than the foreign corporation's basis in the stock of the domestic corporation determined under section 358; and

(C) The distributing corporation complies with the filing requirements of paragraph (d)(1)(iii) of this section.

(iii) *Regulatory limitation on gain recognized.* If the requirements of subdivisions (A) and (C) of paragraph (c)(4)(ii) are met, the amount of any gain recognized by the foreign corporation shall not exceed the excess of the distributee's adjusted basis in the stock of the foreign corporation immediately before the distribution over the foreign corporation's basis in the stock of the domestic corporation immediately before the distribution as determined under section 358.

(iv) *Examples.* The rules of paragraph (c)(4) of this section may be illustrated by the following examples.

Example (1). (i) A, a nonresident alien, organized FC, a Country W corporation, in

September 1980 to invest in U.S. real estate. In 1986, FC's only asset is Parcel P, a U.S. real property interest with a fair market value of $600,000 and an adjusted basis to FC of $200,000. Parcel P is subject to a mortgage with an outstanding balance of $100,000. The fair market value of the FC stock is $500,000, and A's adjusted basis in the stock is $100,000. FC does not have liabilities in excess of the adjusted basis in Parcel P. The United States does not have a treaty with Country W that entitles FC to nondiscriminatory treatment as described in section 1.897–3(b)(2) of the regulations.

(ii) Pursuant to a plan of reorganization under section 368(a)(1)(D), FC transfers Parcel P to DC, a newly formed domestic corporation, in exchange for DC stock. FC distributes the DC stock to A in exchange for A's FC stock.

(iii) FC's exchange of Parcel P for the DC stock is a disposition of a U.S. real property interest. Under § 1.897–6T(a)(1), there is an exchange of a U.S. real property interest (Parcel P) for another U.S. real property interest (DC stock) so that no gain is recognized on the exchange under section 897(e). DC takes FC's basis of $200,000 in Parcel P under section 362(b). Under section 358(a)(1), FC takes a $100,000 basis in the DC stock because FC's substituted basis of $200,000 in the DC stock is reduced by the $100,000 of liabilities to which Parcel P is subject.

(iv) Under section 897(d)(1) and paragraph (c)(4)(i) of this section, FC generally must recognize gain on the distribution of the DC stock received in exchange for FC's assets equal to the difference between the fair market value of the DC stock ($500,000) and FC's adjusted basis in the DC stock prior to the distribution ($100,000). This results in a potential gain of $400,000. Under section 358(a)(1), A takes a basis in the DC stock equal to its basis in the FC stock of $100,000. Provided that FC complies with the filing requirements of paragraph (d)(1)(iii) of this section, no gain is recognized by FC on the distribution of the DC stock under the statutory exception to the general rule of section 897(d)(1) provided in section 897(d)(2)(A) and paragraph (c)(4)(ii) of this section because (*1*) A's basis in the DC stock ($100,000) does not exceed FC's adjusted basis in the DC stock ($100,000) immediately prior to the distribution and (*2*) A, at the time of receipt of the DC stock, would be subject to U.S. taxation on a subsequent disposition of the stock.

(v) The FC stock in the hands of A is not a U.S. real property interest because FC is a foreign corporation that has not elected to be treated as a domestic corporation under section 897(i). Accordingly, the exchange of the FC stock by A for DC stock is not a disposition of a U.S. real property interest under section 897(a).

Example (2). The facts are the same as in Example (1), except that A purchased the FC stock in September 1983 for $100,000 from S, a nonresident alien, and that S had a basis of $40,000 in the FC stock at the time of the sale to A. The results are the same as in Example 1.

Example (3). (i) The facts are the same as in *Example* 1, except that A's adjusted basis in the FC stock prior to the reorganization is $300,000. Following the distribution, A takes its basis of $300,000 in the FC stock as its basis in the DC stock pursuant to section 358(a)(1).

(ii) FC does not qualify under the statutory exception of paragraph (c)(4)(ii) to the general recognition rule of section 897(d)(1) and paragraph (c)(4)(i) of this section because A's basis in the DC stock ($300,000) exceeds FC's adjusted basis in the DC stock ($100,000) immediately prior to the distribution. However, provided that FC complies with the filing requirements of paragraph (d)(1)(iii) of this section, the gain recognized by FC is limited to $200,000 under the regulatory limitation of gain provided by paragraph (c)(4)(iii). This is the excess of A's basis in the FC stock immediately before the distribution ($300,000) over A's adjusted basis in the DC stock immediately before the distribution ($100,000).

(iii) A takes a basis of $300,000 in the DC stock under section 358(a)(1). A's basis in the DC stock is not increased by the gain recognized by FC. DC takes a basis of $200,000 in Parcel P under section 362(b).

Example (4). (i) The facts are the same as in *Example* (3), except that the United States has an income tax treaty with Country W entitling FC to nondiscriminatory treatment under section 1.897–3(b)(2) of the regulations. A valid election under section 897(i) is made to treat FC as a U.S. corporation.

(ii) FC is treated as a domestic corporation for purposes of section 897 and is not required to recognize gain under section 897(d)(1) and paragraph (c)(4)(i) of this section on the distribution of the DC stock as described in *Example* 3. (If a valid section 897(i) election were not made, the result would be same as in *Example* (3).)

(iii) The FC stock in the hands of A is a U.S. real property interest because an election was made under section 897(i) to treat FC as a U.S. corporation. The exchange of the FC stock for DC stock by A is a disposition of a U.S. real property interest. Under section 897(e)(1) and paragraph (a) of § 1.897–6T, A does not recognize gain on the exchange because there is an exchange of a U.S. real property interest (the FC stock) for another U.S. real property interest (the DC stock). Under section 358(a)(1), A takes as its basis in the DC stock A's basis in the FC stock ($300,000).

(5) *Sales of U.S. real property interests by foreign corporations under section 337.* Section 337 as in effect prior to the Tax Reform Act of 1986 shall not apply to any sale or exchange (including a deemed section 337 sale pursuant to an election under section 338(a) to treat a stock purchase as an asset acquisition) of a U.S. real property interest by a foreign corporation.

(6) *Section 897(l) credit.* If a foreign corporation adopts a plan of complete liquidation and if, solely by reason of section 897(d) and this section, section 337(a) (as in effect before the Tax Reform Act of 1986) does not apply to sales or exchanges of, or section 336 (as in effect before the Tax Reform Act of 1986) does not apply to distributions of, United States real property interests by the liquidating corporation, then—

(i) The amount realized by the shareholder on the distribution shall be increased by its proportionate share of the amount by which the tax imposed by chapter 1 of the Code, as modified by the provisions of any applicable U.S. income tax treaty, on the liquidating corporation would have been reduced if section 897(d) and this section had not been applicable, and

(ii) For purposes of the Code, the shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by subtitle A of the Code on the shareholder for the taxable year, an amount of tax equal to the amount of increase in the amount realized described in subdivison (i) of this paragraph (c).

The special rule provided by this paragraph (c)(5) applies only to shareholders who are United States citizens or residents, and who have held stock in the liquidating corporation continuously since June 18, 1980. This special rule also only applies for the first taxable year of any such shareholder in which the shareholder receives a distribution in complete liquidation from the foreign corporation.

(7) *Other applicable rules.* For rules concerning exemption of gain pursuant to a U.S. income tax treaty, withholding of tax from distributions, and other applicable rules, see paragraph (d) of this section. For the treatment of liquidations described in section 334(b)(2)(A) of certain foreign corporations acquired before November 6, 1980, see § 1.897–4.

(d) *Rules of general application*—(1) *Interests subject to taxation upon later disposition*—(i) *In general.* Pursuant to the otherwise applicable rules of this section and § 1.897–6T, nonrecognition of gain or loss may apply with respect to certain distribution or exchanges of U.S. real property interests if any gain from a subsequent disposition of the interests that are distributed or received by the transferor in the exchange would be included in the gross income of the distributee or transferor and be subject to U.S. taxation. Gain is considered subject to U.S. taxation if the gain is included on the income tax return of a U.S. tax paying entity even if there is no U.S. tax liability (for example, because of net operating losses or an investment tax credit). Gain is not considered subject to U.S. taxation if the gain is derived by a tax exempt entity. A real estate investment trust is considered to be a pass-through entity for purposes of the rule of taxability of this paragraph (d)(1)(i). Thus, for example, a tax exempt entity holding an interest in a real estate investment trust is not subject to tax. A domestic corporation (including a foreign corporation that makes an effective section 897(i) election after receipt of the U.S. real property interest) shall not be considered subject to U.S. taxation on a subsequent disposition of a U.S. real property interest if it received the U.S. real property interest prior to the effective date of the repeal of section 336(a) or 337(a) as in effect prior to the Tax Reform Act of 1986, unless the U.S. real property interest has not been sold or exchanged by the domestic corporation prior to such effective date in a transaction to which either section 336(a) or section 337(a) (as in effect prior to such effective date) applied. In addition, an interest shall be considered to be subject to U.S. taxation upon its subsequent disposition only if the requirements set forth in subdivision (iii) of this paragraph (d)(1) are met.

(ii) *Effects of income tax treaties*—(A) *Effect of treaty exemption from tax.* Except as otherwise provided in subdivision (C) of this paragraph (d)(1)(ii), a U.S. real property interest shall not be considered to be subject to U.S. taxation upon a subsequent disposition if, at the time of its distribution or exchange, the recipient is entitled pursuant to the provisions of a U.S. income tax treaty to an exemption from U.S. taxation upon a disposition of the interest.

(B) *Effect of treaty reduction of tax.* If, at the time of a distribution or exchange, a distributee of a U.S. real property interest in a distribution or a transferor who receives a U.S. real property interest in an exchange would be entitled pursuant to the provisions of a U.S. income tax treaty to reduced U.S. taxation upon the disposition of the interest, then a portion of the interest received shall be treated as an interest subject to U.S. taxation upon its disposition, and, therefore, that portion shall be entitled to nonrecognition treatment under the rules of this section or § 1.897–6T. The portion of the interest that is treated as subject to U.S. taxation is determined by multiplying the fair market value of the interest by a fraction. The numerator of the fraction is the amount of tax that would be due pursuant to the provisions of the applicable U.S. income tax treaty upon the recipient's disposition of the interest, determined as of the date of the distribution or transfer. The denominator of the fraction is the amount of tax that would be due upon such disposition but for the provisions of the treaty. However, nonrecognition treatment may be preserved in accordance with the provisions of subdivision (C) of this paragraph (d)(1)(ii). With regard to the provisions of this paragraph, see Article XIII (9) of the United States-Canada Income Tax Convention.

(C) *Waiver of treaty benefits to preserve nonrecognition.* Notwithstanding the provisions of subdivisions (A) and (B) of this paragraph (d)(1)(ii), an interest shall be considered to be subject to U.S. taxation upon its subsequent disposition if, in accordance with paragraph (d)(1)(iii)(F) of this section, the recipient waives the benefits of a U.S. income tax treaty that would otherwise entitle the recipient to an exemption from (or reduction of) U.S. tax upon a disposition of the interest.

(iii) *Procedural requirements.* If a U.S. real property interest is distributed or transferred after December 31, 1987, the transferor or distributor (that is a nonresident alien individual or a foreign corporation) shall file an income tax return for the taxable year of the distribution or transfer. Also, if a U.S. real property interest is distributed or transferred in a transaction before January 1, 1988, with respect to which nonrecognition treatment would not have been available under the express provisions of section 897 (d) or (e) of the Code but is available under the provisions of this section or § 1.897–6T, then the person that would otherwise be subject to tax by reason of the operation of section 897 must file an income tax return for the taxable year of the distribution or transfer. This requirement is satisfied by filing a tax return or an amended tax return for the year of the distribution or transfer by May 5, 1989, or by the date that the filing of the return is otherwise required. The person filing the return must attach thereto a document setting forth the following:

(A) A statement that the distribution or transfer is one to which section 897 applies;

(B) A description of the U.S. real property interest distributed or transferred, including its location, its adjusted basis in the hands of the distributor or tranferor immediately before the distribution or transfer, and the date of the distribution or transfer;

(C) A description of the U.S. real property interest received in an exchange;

(D) A declaration signed by an officer of the corporation that the distributing foreign corporation has substantiated the adjusted basis of the shareholder in its stock if the distributing corporation has nonrecognition or recognition limitation under paragraph (c) (3) or (4) of this section;

(E) The amount of any gain recognized and tax withheld by any person with respect to the distribution or transfer;

(F) Identification by name and address of the distributee or transferee, including the distributee's or transferee's taxpayer identification number (if any);

(G) The treaty and article (if any) under which the distributee or transferor would be exempt from U.S. taxation on a sale of the distributed U.S. real property interest or the U.S. real property interest received in the transfer; and

(H) A declaration, signed by the distributee or transferor or its authorized legal representative, that the distributee or transferor shall treat any subsequent sale, exchange, or other disposition of the U.S. real property interest as a disposition that is subject to U.S. taxation, notwithstanding the provisions of any U.S. income tax treaty or intervening change in circumstances.

A person who has provided or filed a notice described in § 1.1445–2(d)(2)(iii) or § 1.1445–5(b)(2)(ii) in connection with a transaction may satisfy the requirement of this paragraph (d)(1)(iii) by attaching to his return a copy of that notice together with any information or declaration required by this subdivision not contained in that notice.

(2) *Treaty exception to imposition of tax.* If gain that would be currently recognized pursuant to the provisions of this section or § 1.897–6T is subject to an exemption from (or reduction of) U.S. tax pursuant to a U.S. income tax treaty, then gain shall be recognized only as provided by that treaty, for dispositions occurring before January 1, 1985. For dispositions occurring after December 31, 1984, all gain shall be recognized as provided in section 897 and the regulations thereunder, except as provided by Articles XIII (9) and XXX (5) of the United States-Canada Income Tax Convention or other income tax treaty entered into force after June 6, 1988.

With regard to Article XXX (5) of the Income Tax Treaty with Canada, see, Rev. Rul. 85–76, 1985–1 C.B. 409. With regard to basis adjustments for certain related person transactions, see, § 1.897–6T(c)(3).

(3) *Withholding.* Under sections 1441 and 1442, as modified by the provisions of any applicable U.S. income tax treaty, a corporation must withhold tax from a dividend distribution to which section 301 applies to a shareholder that is a

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foreign person, if the dividend is considered to be from sources inside the United States. For a description of dividends that are considered to be from sources inside the United States, see section 861(a)(2). Under section 1445, withholding is required with respect to certain dispositions and distributions of U.S. real property interests.

(4) *Effect on earnings and profits.* With respect to adjustments to earnings and profits for gain recognized to a distributing corporation on a distribution, see section 312 and the regulations thereunder.

(e) *Effective date.* Except as otherwise specifically provided in the text of these regulations, this section shall be effective for transfers, exchanges, distributions and other dispositions occurring after June 18, 1980.

§ 1.897-6T Nonrecognition exchanges applicable to corporations, their shareholders, and other taxpayers, and certain transfers of property in corporate reorganizations (Temporary).

(a) *Nonrecognition exchanges*—(1) *In general.* Except as otherwise provided in this section and in § 1.897–5T, for purposes of section 897(e) any nonrecognition provision shall apply to a transfer by a foreign person of a U.S. real property interest on which gain is realized only to the extent that the transferred U.S. real property interest is exchanged for a U.S. real property interest which, immediately following the exchange, would be subject to U.S. taxation upon its disposition, and the transferor complies with the filing requirements of paragraph (d)(1)(iii) of § 1.897–5T. No loss shall be recognized pursuant to section 897(e) or the rules of this section unless such loss is otherwise permitted to be recognized. In the case of an exchange of a U.S. real property interest for stock in a domestic corporation (that is otherwise treated as a U.S. real property interest), such stock shall not be considered a U.S. real property interest unless the domestic corporation is a U.S. real property holding corporation immediately after the exchange. Whether an interest would be subject to U.S. taxation in the hands of the transferor upon its disposition shall be determined in accordance with the rules of § 1.897–5T(d)(1).

(2) *Definition of "nonrecognition" provision.* A "nonrecognition provision" is any provision of the Code which provides that gain or loss shall not be recognized if the requirements of that provision are met. Nonrecognition provisions relevant to this section include, but are not limited to, sections 332, 351, 354, 355, 361, 721, 731, 1031, 1033, 1034 and 1036. For purposes of section 897(e), sections 121 and 453 are not nonrecognition provisions.

(3) *Consequence of nonapplication of nonrecognition provisions.* If a nonrecognition provision does not apply to a transaction, then the U.S. real property interest transferred shall be considered exchanged pursuant to a transaction that is subject to U.S. taxation by reason of the operation of section 897. See, however, § 1.897–5T (d)(2) with respect to the treaty exceptions to the imposition of tax. If a U.S. real property interest is exchanged for an interest the disposition of which is only partially subject to taxation under chapter 1 of the Code (as modified by the provisions of any applicable U.S. income tax treaty), then any nonrecognition provision shall apply only to the extent that the interest received in the exchange would be subject to taxation under chapter 1 of the Code, as modified. For example, the exchange of a U.S. real property interest for an interest in a partnership will receive nonrecognition treatment pursuant to section 721 only to the extent that a disposition of the partnership interest will be subject to U.S. taxation by reason of the operation of section 897(g).

(4) *Section 355 distributions treated as exchanges.* If a domestic corporation, stock in which is treated as a U.S. real property interest, distributes stock in a foreign corporation or stock in a domestic corporation that is not a U.S. real property holding corporation to a foreign person under section 355(a), then the foreign person shall be considered as having exchanged a proportionate part of the stock in the domestic corporation that is treated as a U.S. real property interest for stock that is not treated as a U.S. real property interest.

(5) *Section 1034 rollover of gain*—(i) *Purchase of foreign principal residence.* A nonresident alien individual shall not be entitled to nonrecognition under section 1034 on the sale of a principal residence when the new principal residence acquired is not a U.S. real property interest.

(ii) *Purchase of U.S. principal residence.* A nonresident alien individual who sells his principal residence that is a U.S. real property interest and, within a period beginning two years before the date of such sale and ending on the date (with extensions) of filing his income tax return for the taxable year of the sale of the principal residence, purchases and uses another U.S. real property interest as a principal residence, shall, to the extent provided by section 1034, not recognize gain on the sale of the principal residence. If the individual has not purchased another U.S. real property interest as a principal residence at the time of the filing of the return for the year of sale, the individual must file a timely income tax return for the year of sale without claiming the benefit of section 1034. If the individual subsequently purchases another U.S. property interest as a principal residence that otherwise qualifies under section 1034 after the due date of the income tax return for the year of the sale of the principal residence and before a date that is two years after the sale of the principal residence, the individual may then apply section 1034 by filing an amended income tax return for the year of the sale of the principal residence and claim a refund. A nonresident alien may not claim the benefits of section 1034 unless such individual files a complete and timely income tax return with the appropriate forms for the year of the sale of the principal residence. The rules of this paragraph (a)(5)(ii) shall first apply to the sale of principal residences after June 6, 1988.

A nonresident alien individual who sells his principal residence that is a U.S. real property interest on or before June 6, 1988 shall, to the extent provided by section 1034, not recognize gain on the sale of the principal residence if the new principal residence is a U.S. real property interest.

(6) *Determination of basis.* If a nonrecognition provision applies to the transfer of a U.S. real property interest pursuant to the provisions of this section, then the basis of the property received in the exchange shall be determined in accordance with the rules generally applicable with respect to such nonrecognition provision. Similarly, the basis of the exchanged property in the hands of the transferee shall be determined in accordance with the rules that generally apply to such transfer.

(7) *Examples.* The rules of paragraphs (a) (1) through (6) of this section may be illustrated by the following examples. In each instance, the filing requirements of paragraph (d)(1)(iii) of § 1.897–5T have been satisfied.

Example (1). (i) A is a citizen and resident of Country F with which the U.S. does not have an income tax treaty. A owns Parcel P, a U.S. real property interest, with a fair market value of $600,000 and an adjusted basis of $300,000. A transfers Parcel P to DC, a newly formed U.S. real property holding corporation wholly owned by A, in exchange for DC stock.

(ii) Under paragraph (a)(1) of this section, A has exchanged a U.S. real property interest (Parcel P) for another U.S. real property interest (DC stock) which is subject to U.S. taxation upon its disposition. The nonrecognition provisions of section 351(a) apply to A's transfer of Parcel P.

(iii) Under paragraph (a)(6) of this section, the basis of the DC stock received by A is determined in accordance with the rules generally applicable to the transfer. A takes a $300,000 adjusted basis in the DC stock under the rules of section 358(a)(1).

Example (2). (i) A is a citizen and resident of Country F who is stationed in Washington, DC as a full-time employee of an international organization. A sells his principal residence in Washington, and in the same taxable year A purchases another principal residence in Washington. The cost of the new residence exceeds the adjusted sales price of the old residence.

(ii) Under section 7701(b), A is a nonresident alien for U.S. tax purposes, and is subject to taxation under section 897(a). Under paragraphs (a)(1) and (5)(ii) of this section, A is considered to have exchanged a U.S. real property interest (the old principal residence) for another U.S. real property interest (the new principal residence) which is subject to U.S. taxation upon its disposition. The nonrecognition and basis provisions of section 1034(a) apply to A.

Example (3). If in *Example* (2). A had instead purchased a new principal residence in Country F, there would be an exchange of a U.S. real property interest for property that is not a U.S. real property interest. Under paragraph (a)(5)(i) of this section, A would recognize gain under section 897(a) on the disposition of the old principal residence.

Example (4). (i) B is a citizen and resident of Country F with which the U.S. does not have an income tax treaty. B owns stock in DC1, a U.S. real property holding corporation. In a reorganization qualifying for nonrecognition under section 368(a)(1)(B), B exchanges the DC1 stock under section 354(a) for stock in DC2, a U.S. real property holding corporation.

(ii) A does not recognize any gain under paragraph (a)(1) of this section on the exchange of the DC1 stock for DC 2 stock because there is an exchange of a U.S. real property interest (the DC1 stock) for another U.S. real property interest (the DC2 stock) which is subject to U.S. taxation upon its disposition.

Example (5). (i) C is a citizen and resident of Country F with which the U.S. does not have an income tax treaty. C owns all of the stock of DC, a U.S. real property holding corporation. The fair market value of the DC stock is 500x, and C has a basis of 100x in the DC stock.

(ii) In a transaction qualifying as a distribution of stock of a controlled corporation under section 355(a), DC distributes to C all of the stock of FC, a foreign corporation that has not made a section 897(i) election. C does not surrender any of the DC stock. The FC stock has a fair market value of 200x. After the distribution, the DC stock has a fair market value of 300x.

(iii) Under the rules of paragraph (a)(4) of this section, C is considered to have exchanged DC stock with a fair market value of 200x and an adjusted basis of 40x for FC stock with a fair market value of 200x. Because the FC stock is not a U.S. real property interest, C must recognize gain of 160x under section 897(a) on the distribution. C takes a basis of 200x in the FC stock. C's basis in the DC stock is reduced to 60x pursuant to section 358(c).

Example (6). (i) A is an individual citizen and resident of Country F. F has an income tax treaty with the United States that exempts gain from the sale of stock, but not real property, by a resident of F from U.S. taxation. In 1981, A transferred Parcel P, an appreciated U.S. real property interest, to DC, a U.S. real property holding corporation, in exchange for DC stock. A owned all of the stock of DC.

(ii) Under the rules of paragraph (a)(1) of this section, A must recognize gain on the transfer of Parcel P. Even though there is an exchange of a U.S. real property interest for another U.S. real property interest, there is gain recognition because the U.S. real property interest received (the DC stock) would not have been subject to U.S. taxation upon a disposition immediately following the exchange. A may not convert a U.S. real property interest that was subject to taxation under section 897 into a U.S. real property interest that could be sold without taxation under section 897 due to a treaty exemption.

Example (7). (i) A, a nonresident alien, organized FC1, a Country W corporation in September 1980 to invest in U.S. real property. FC1's only asset is Parcel P, a U.S. real property interest with a fair market value of $500,000 and an adjusted basis of $200,000. The FC1 stock has a fair market value of $500,000 and A's basis in the FC1 stock is $100,000. The United States does not have a treaty with Country W.

(ii) A, organized FC2, a Country W corporation in July 1987. FC2 organized DC in August 1987. Pursuant to a plan of reorganization under section 368 (a)(1)(C), FC1 transfers Parcel P to DC in exchange for FC2 voting stock. As a result of the transfer, DC is a U.S. real property holding corporation wholly owned by FC2. The FC2 stock used by DC in the acquisition had been transferred by FC2 to DC as part of the plan of reorganization. FC1 distributes the FC2 stock to A in exchange for A's FC1 stock.

(iii) FC1's exchange of Parcel P for the FC2 stock under section 361(a) is a disposition of a U.S. real property interest. FC1 must recognize gain of $300,000 under section 897(e) and paragraph (a)(1) of this section on the exchange because the FC2 stock received in exchange for Parcel P is not a U.S. real property interest.

(iv) Under section 362(b), DC takes a basis of $500,000 in Parcel P. FC2 takes a basis of $500,000 in the DC stock. A takes a basis of $100,000 in the FC2 stock under section 358(a)(1). Section 897(d) and paragraph (c)(1) of § 1.897–5T do not apply to FC1's distribution of the FC2 stock because the FC2 stock is not a U.S. real property interest.

Example (8). The facts are the same as in *Example 7*, except that the United States has a treaty with Country W that entitles FC1 and FC2 to nondiscriminatory treatment as described in § 1.897–3(b)(2). FC1, but not FC2, makes a valid section 897(i) election prior to the transaction.

(ii) FC1's transfer of Parcel P to DC in exchange for FC2 stock is not subject to section 897(e) and paragraph (a)(1) of this section because FC1 made an election under section 897(i). DC takes a basis of $200,000 in Parcel P under section 362(b).

(iii) FC1's distribution of the FC2 stock to A in exchange for the FC1 stock is not subject to the section 897(d) and paragraph (c)(1) of § 1.897–5T because FC1 made an election under section 897(i).

(iv) A must recognize gain on the exchange under section 354(a) of the FC1 stock for the FC2 stock. A exchanged a U.S. real property interest (the FC1 stock) for an interest which is not a U.S. real property interest (the FC2 stock). A recognizes gain of $400,000. Under section 1012, A takes a $500,000 basis in the FC2 stock.

Example (9). (i) The facts are the same as in *Example 7* except that the United States has a treaty with Country W that entitles FC1 and FC2 to nondiscriminatory treatment as described in § 1.897–3(b)(2). FC2, but not FC1, makes a valid section 897(i) election prior to the transaction.

(ii) FC1's exchange of Parcel P for the FC2 stock under section 361(a) is a disposition of a U.S. real property interest. FC1 does not recognize any gain under section 897(e) and paragraph (a)(1) of this section because there is an exchange of a U.S. real property interest (Parcel P) for another U.S. real property interest (the FC2 stock). DC takes a basis of $200,000 in Parcel P under section 362(b). FC2 takes a basis of $200,000 in the DC stock.

(iii) FC1's distribution of the FC2 stock to A in exchange for the FC1 stock is subject to section 897(d) and paragraph (c)(1) of § 1.897–5T. Because A takes a basis of $100,000 in the FC 2 stock under section 358(a) (which is less than the $200,000 basis of the FC2 stock in the hands of FC1), and A would be subject to U.S. taxation under section 897(a) on a subsequent disposition of the FC2 stock, FC1 does not recognize any gain under paragraph (c)(1) of § 1.897–5T due to the statutory exception of paragraph (c)(2)(i) of that section, provided that FC1 complies with the filing requirements of paragraph (d)(i)(C) of § 1.897–5T.

(iv) Since, the FC1 stock was not a U.S. real property interest, its disposition by A in the section 354(a) exchange for FC2 stock is not subject to section 897(e) and paragraph (a)(1) of this section.

Example (10). The facts are the same as in *Example 7*, except that the United States has a treaty with Country W that entitles FC1 and FC2 to nondiscriminatory treatment as described in § 1.897–3(b)(2). FC1 and FC2 made valid section 897(i) elections prior to the transactions.

(ii) FC1's transfer of Parcel P to DC in exchange for FC2 stock is not subject to section 897(e) and paragraph (a)(1) of this section because FC1 made an election under section 897(i). DC takes a basis of $200,000 in Parcel P under section 362(a). FC2 takes a basis of $200,000 in the DC stock.

(iii) FC1's distribution of the FC2 stock to A in exchange for the FC1 stock is not subject to section 897(d) and paragraph (c)(1) of § 1.897–5T because FC1 made an election under section 897(i).

(iv) A does not recognize any gain on the exchange of the FC1 stock for the FC2 stock

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under section 354(a). Under paragraph (a)(1) of this section, there is an exchange of a U.S. real property interest (FC1 stock) for another U.S. real property interest (FC2 stock). A takes a basis of $100,000 in the FC2 stock under section 358(a).

(8) *Treatment of nonqualifying property*—(i) *In general.* If, under paragraph (a)(1) of this section, a nonrecognition provision would apply to an exchange but for the fact that nonqualifying property (cash or property other than U.S. real property interests) is received in addition to property (U.S. real property interests) that is permitted to be received under paragraph (a)(1) of this section, then the transferor shall recognize gain under this section equal to the lesser of—

(A) The sum of the cash received plus the fair market value of the nonqualifying property received, or

(B) The gain realized with respect to the U.S. real property interest transferred. However, no loss shall be recognized pursuant to this paragraph (a)(8) unless such loss is otherwise permitted to be recognized.

(ii) *Treatment of mixed exchanges.* In a mixed exchange where both a U.S. real property interest and other property (including cash) is transferred in exchange both for property the receipt of which would qualify for nonrecognition treatment pursuant to paragraph (a)(1) of this section and for other property (including cash) which would not so qualify, the transferor will recognize gain in accordance with the rules set forth in subdivisions (A) through (C) of this paragraph (a)(8)(ii).

(A) *Allocation of nonqualifying property.* The amount of nonqualifying property (including cash) considered to be received in exchange for U.S. real property interests shall be determined by multiplying the fair market value of the nonqualifying property received by a fraction ("real property fraction"). The numerator of the fraction is the fair market value of the U.S. real property interest transferred in the exchange. The denominator of the fraction is the fair market value of all property transferred in the exchange.

(B) *Recognition of gain.* The amount of gain that must be recognized, and that shall be subject to U.S. taxation by reason of the operation of section 897, shall be equal to the lesser of:

(*1*) The amount determined under subdivision (A) of this paragraph (a)(8)(ii), or

(*2*) The gain or loss realized with respect to the U.S. real property interest exchanged.

(C) *Treatment of other amounts.* The treatment of other amounts received in a mixed exchange shall be determined as follows:

(*1*) The amount of nonqualifying property (including cash) considered to be received in exchange for property (including cash) other than U.S. real property interests shall be treated in the manner provided in the relevant nonrecognition provision. Such amounts shall be determined by subtracting the amount determined under subdivision (A) of this paragraph (a)(8)(ii) from the total amount of nonqualifying property received in the exchange.

(*2*) The amount of qualifying property considered to be received in exchange for U.S. real property interests shall be treated in the manner provided in paragraph (a)(1) of this section. Such amount shall be determined by multiplying the total fair market value of qualifying property received in the exchange by the real property fraction described in subdivision (A) of this paragraph (a)(8)(ii).

(*3*) The amount of qualifying property considered to be received in exchange for property other than U.S. real property interests shall be treated in the manner provided in the relevant nonrecognition provision. Such amount shall be determined by subtracting the amount determined under subdivision (*2*) of this paragraph (a)(8)(ii)(C) from the total fair market value of qualifying property received in the exchange.

(iii) *Example.* The rules of paragraph (a)(8)(ii) of this section may be illustrated by the following example.

Example. (i) A is an individual citizen and resident of country F. Country F does not have an income tax treaty with the United States. A is the sole proprietor of a business located in the United States, the assets of which consist of a U.S. real property interest with a fair market value of $1,000,000 and an adjusted basis of $700,000, and equipment used in the business with a fair market value of $500,000 and an adjusted basis of $250,000. A decides to incorporate the business, and on January 1, 1987, A transfers his assets to domestic corporation DC in exchange for 100 percent of the stock of DC, with a fair market value of $900,000. In addition, A receives a long term note (constituting a security) from DC for $600,000, bearing arm's length interest and repayment terms. DC has no assets other than those received in the exchange with A. Pursuant to section 897(c)(2) and § 1.897–2, DC is a U.S. real property holding corporation. Therefore, the stock of DC is a U.S. real property interest. Assume that the note from DC constitutes an interest in the corporation solely as a creditor as provided by § 1.897–1(d)(4) of the regulation. A complies with the filing requirements of paragraph (d)(1)(iii) of § 1.897–5T.

(ii) Because the note from DC would not be subject to U.S. taxation upon its disposition, it is nonqualifing property for purposes of determining whether A is entitled to receive nonrecognition treatment pursuant to section 351 with respect to his exchange of the U.S. real property interest. Thus, A must recognize gain in the manner provided in paragraph (a)(8)(ii) of this section. Pursuant to paragraph (a)(8)(ii)(A), the amount of nonqualifying property received in exchange for the real property interests is determined by multiplying the fair market value of such property ($600,000) by the real property fraction. The numerator of the fraction is $1,000,000, the fair market value of the real property transferred by A. The denominator is $1,500,000, the fair market value of all property transferred by A. Thus, A is considered to have received $400,000 of the note in exchange for the real property ($600,000 X $1,000,000/$1,500,000). Pursuant to paragraph (a)(8)(ii)(B), A must recognize the lesser of the amount initially determined or the gain realized with respect to the U.S. real property interest. Therefore, A must recognize the $300,000 gain realized with respect to the real property.

(iii) Pursuant to paragraph (a)(8)(ii)(C) of this section, A is considered to have received $200,000 of the note in exchange for equipment ($600,000 [total value of note received] minus $400,000 [portion of note received in exchange for real property]), $600,000 of the stock in exchange for real property ($900,000 [total value of stock received] times $1,000,000/1,500,000) [proportion of property exchanged consisting of real property]), and $300,000 of the stock in exchange for equipment ($900,000 [total value of stock received] minus $600,000 [portion of stock received in exchange for real property]). All three amounts are entitled to nonrecognition treatment pursuant to section 351.

(iv) Pursuant to paragraph (a)(2) of this section, A's basis in the stock and note received and DC's basis in the U.S. real property interest and equipment will be determined in accordance with the generally applicable rules. The $400,000 portion of the note received in exchange for the real property interest is other property. Pursuant to section 358(a)(2), A takes a fair market value ($400,000) basis for that portion of the note. Pursuant to section 358(a)(1), A's basis in the property received without the recognition of gain (the DC stock and the other portion of the note) will be equal to the basis of the property transferred ($950,000 [$700,000 basis of U.S. real property interest plus $250,000 basis of equipment]), decreased by the fair market value of the other property received ($400,000 portion of the note), and increased by the amount of gain recognized to A on the transaction ($300,000). Thus, A's basis in the stock and the nonrecognition portion of the note is $950,000 ($950,000–$400,000+$300,000). Under § 1.358–2(b)(2) of the regulations, the $950,000 is allocated between the stock and the nonrecognition portion of the note in proportion to their fair market values. A takes a basis of $667,000 in the DC stock ($950,000×$900,000/1,350,000). A takes a basis of $283,000 in the nonrecognition portion of the note ($950,000×$600,000/1,350,000). A's basis in the note is $683,000 ($400,000+$283,000). DC's basis in the property received from A will be determined under section 362(a). DC takes a basis of $1,000,000 in the real property interest (A's basis of $700,000 increased by the $300,000 of gain recognized by A on it). DC takes a basis of $250,000 in the equipment (A's basis of $250,000).

(9) *Treaty exception to imposition of tax.* If gain that would be currently recognized pursuant to the provisions of this section is subject to an exemption from, or reduction of, U.S. tax pursuant to a U.S. income tax treaty, then gain shall be recognized only as provided by that treaty for dispositions occurring before January 1, 1985. For dispositions occurring after December 31, 1984, all gain shall be recognized as provided in section 897 and the regulations thereunder, except as provided by Articles XII (9) and XXX (5) of the United States-Canada Income Tax Convention or other income tax treaty entered into after June 6, 1988. In regard to Article XXX (5) the Income Tax Treaty with Canada, see, Rev. Rul. 85–76, 1985–1 C.B. 409.

(b) *Certain foreign to foreign exchanges*— (1) *Exceptions to the general rule.* Notwithstanding the provisions of paragraph (a)(1) of this section and pursuant to authority conferred by section 897(e)(2), a foreign person shall not recognize gain, in the instances described in paragraph (b)(2) of this section, on the transfer of a U.S. real property interest to a foreign corporation in exchange for stock in a foreign corporation, but only if the transferee's subsequent disposition of the transferred U.S. real property interest would be subject to U.S. taxation, as determined in accordance with the provisions of § 1.897–5T(d)(1), if the filing requirements of paragraph (d)(1)(iii) of § 1.897–5T have been satisfied, if one of the five conditions set forth in paragraph (b)(2) exists, and if one of the following three forms of exchange takes place.

(i) The exchange is made by a foreign corporation pursuant to section 361(a) in a reorganization described in section 368(a)(1) (D) or (F) and there is an exchange of the transferor corporation stock for the transferee corporation stock under section 354(a); or

(ii) The exchange is made by a foreign corporation pursuant to section 361(a) in a reorganization described in section 368(a)(1)(C); there is an exchange of the transferor corporation stock for the transferee corporation stock (or stock of the transferee corporation's parent in the case of a parenthetical C reorganization) under section 354(a); and the transferor corporation's shareholders own more than fifty percent of the voting stock of the transferee corporation (or stock of the transferee corporation's parent in the case of a parenthetical C reorganization) immediately after the reorganization; or

(iii) The U.S. real property interest exchanged is stock in a U.S. real property holding corporation; the exchange qualifies under section 351(a) of section 354(a) in a reorganization described in section 368(a)(1)(B); and immediately after the exchange, all of the outstanding stock of the transferee corporation (or stock of the transferee corporation's parent in the case of a parenthetical B reorganization) is owned in the same proportions by the same nonresident alien individuals and foreign corporations that, immediately before the exchange, owned the stock of the U.S. real property holding corporation.

If, however, a nonresident alien individual or foreign corporation which received stock in an exchange described in subdivision (iii) of this paragraph (b)(1) (or the transferee corporation's parent) disposes of any of such foreign stock within three years from the date of its receipt, then that individual or corporation shall recognize that portion of the gain realized with respect to the stock in the U.S. real property holding corporation for which foreign stock disposed of was received.

(2) *Applicability of exception.* The exception to the provisions of paragraph (a)(1) provided by paragraph (b)(1) shall apply only if one of the following five conditions exists.

(i) Each of the interests exchanged or received in a transferor corporation or transferee corporation would not be a U.S. real property interest as defined in § 1.897–1(c)(1) if such corporations were domestic corporations; or

(ii) The transferee corporation (and the transferee corporation's parent in the case of a parenthetical B or C reorganization) is incorporated in a foreign country that maintains an income tax treaty with the United States that contains an information exchange provision; the transfer occurs after May 5, 1988; and the transferee corporation (and the transferee corporation's parent in the case of a parenthetical B or C reorganization) submit a binding waiver of all benefits of the respective income tax treaty (including the opportunity to make an election under section 897 (i)), which must be attached to each of the transferor and transferee corporation's income tax returns for the year of the transfer; or

(iii) The transferee foreign corporation (and the transferee corporation's parent in the case of a parenthetical B or C reorganization) is a qualified resident as defined in section 884(e) and any regulations thereunder of the foreign country in which it is incorporated; or

(iv) The transferee foreign corporation (and the transferee corporation's parent in the case of a parenthetical B or C reorganization) is incorporated in the same foreign country as the transferor foreign corporation; and there is an income tax treaty in force between that foreign country and the United States at the time of the transfer that contains an exchange of information provision; or

(v) The transferee foreign corporation is incorporated in the same foreign country as the transferor foreign corporation; and the transfer is incident to a mere change in identity, form, or place of organization of one corporation under section 368(a)(1)(F).

For purposes of any election by a transferee foreign corporation (or the transferee corporation's parent in the case of a parenthetical C reorganization) to be treated as a domestic corporation under section 897(i) and § 1.897–3 where the exchange was described in subdivisions (i) or (ii) of paragraph (b)(1) of this section, any prior dispositions of the transferor foreign corporation stock will be subject to the requirements of § 1.897–3(d)(2) upon an election under section 897(i) by the transferee foreign corporation (or the transferee corporation's parent in the case of a parenthetical C reorganization).

(3) *No exceptions.* No exception to recognition of gain under paragraph (a)(1) of this section is provided for the transfer of a U.S. real property interest by a foreign person to a foreign corporation in exchange for stock in a foreign corporation other than as provided in this paragraph (b). Thus, no exception is provided where—

(i) Such exchange is made pursuant to section 351 and the U.S. real property interest transferred is not stock in a U.S. real property holding corporation; or

(ii) Such exchange is made pursuant to section 361(a) in a reorganization described in section 368(a)(1) that does not qualify for nonrecognition of gain under this paragraph (b). With regard to the treatment of certain foreign corporations as domestic corporations under section 897(i), see §§ 1.897–3 and 1.897–8T.

(4) *Examples.* The rules of paragraph (b)(1) and (2) of this section may be illustrated by the following examples. In each instance, the filing requirements of paragraph (d)(1)(iii) of § 1.897–5T have been satisfied.

Example (1). (i) FC is a Country F corporation that has not made a section 897 (i) election. FC owns Parcel P, a U.S. real property interest, with a fair market value of $450x and an adjusted basis of 100x.

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(ii) FC transfers Parcel P to FS, its wholly owned Country F subsidiary, in exchange for FS stock under section 351 (a). FS has not made a section 897(i) election. Under the rules of paragraph (a)(1) of this section, FC must recognize gain of 350x under section 897 (a) because the FS stock received in the exchange is not a U.S. real property interest. No exception to the recognition rule of paragraph (a)(1) is provided under this paragraph (b) for a transfer under section 351 (a) of a U.S. real property interest (that is not stock in a U.S. real property holding corporation) by a foreign corporation to another foreign corporation in exchange for stock to the transferee corporation.

Example (2). (i) FC is a Country F corporation that has not made a section 897(i) election. FC owns several U.S. real property interests that have appreciated in value since FC purchased the interests. *FP*, a Country F corporation, owns all of the outstanding stock of FC. Country F maintains an income tax treaty with the United States.

(ii) For valid business purposes, FC transferred substantially all of its assets including all of its U.S. real property interests to FS in 1989 under section 351(a) in a reorganization in exchange for FS stock. FS is a newly formed Country F corporation that is owned by FC. The transfer qualifies as a reorganization under section 368(a)(1)(D). FC immediately distributes the FS stock to FP in exchange for the FC stock and FC dissolves. FP has no gain or loss on the exchange of the FC stock for the FS stock under section 354(a).

(iii) Under the rules of paragraph (b)(1)(i) of this section, FC does not recognize any gain on the transfer of the U.S. real property interests to FS under section 351(a) in the reorganization under section 368(a)(1)(D) because FS would be subject to U.S. taxation on a subsequent disposition of the interests, as required by paragraph (b)(1) of this section; there is an exchange of stock under section 354(a), as required by paragraph (b)(1)(i); and FC and FS are incorporated in Country F which maintains an income tax treaty with the United States, as required by paragraph (b)(2)(iv).

(5) *Contributions of property.* A foreign person that contributes a U.S. real property interest to a foreign corporation as paid in surplus or as a contribution to capital (including a contribution provided in section 304(a)) shall be treated, for purposes of section 897(j) and this section, as exchanging the U.S. real property interest for stock in the foreign corporation.

(c) *Denial of nonrecognition with respect to certain tax avoidance transfers*—(1) *In general.* The provisions of § 1.897–5T and paragraphs (a) and (b) of this section are subject to the rules of this paragraph (c).

(2) *Certain transfers to domestic corporations*—

(i) *General rule.* If a foreign person transfers property, that is not a U.S. real property interest, to a domestic corporation in a nonrecognition exchange, where—

(A) The adjusted basis of such property transferred exceeded its fair market value on the date of the transfer to the domestic corporation;

(B) The property transferred will not immediately be used in, or held by the domestic corporation for use in, the conduct of a trade or business as defined in § 1.897–1(f); and

(C) Within two years of the transfer to the domestic corporation, the property transferred is sold at a loss;

then, it will be presumed, absent clear and convincing evidence to the contrary, that the purpose for transferring the loss property was the avoidance of taxation on the disposition of U.S. real property interests by the domestic corporation. Any loss recognized by the domestic corporation on the sale or exchange of such property shall not be used by the domestic corporation, either by direct offset or as part of a net operating loss or capital loss carryback or carryover to offset any gain recognized from the sale or exchange of a U.S. real property interest by the domestic corporation.

(ii) *Example.* The rules of paragraph (c)(2)(i) of this section may be illustrated by the following example.

Example. A is an individual citizen and resident of country F, which does not have an income tax treaty with the U.S. On January 1, 1987, A transfers a U.S. real property interest with a basis of $100,000 and a fair market value of $900,000 to domestic corporation DC in exchange for all of the stock of DC. On October 29, 1987, A transfers stock of a publicly traded domestic corporation with a basis in his hands of $600,000 and a fair market value of $500,000, in exchange for additional stock of DC. The stock of the publicly traded domestic corporation does not constitute an asset used or held for use in DC's trade or business. If DC sells the stock of the publicly traded domestic corporation before October 29, 1988 and recognizes a loss, the loss may not be used to offset any gain recognized on the sale of the U.S. real property interests by DC.

(3) *Basis adjustment for certain related person transactions.* In the case of any disposition after December 31, 1979, of a U.S. real property interest to a related person (within the meaning of section 453(f)(1)), the basis of the interest in the hands of the person acquiring such interest shall be reduced by the amount of any gain which is not subject to taxation under section 871(b)(1) or 882(a)(1) because the disposition occurred before June 19, 1980 or because of any treaty obligation of the United States. If a foreign corporation makes an election under section 897(i), and the stock of such corporation was transferred between related persons after December 31, 1979 and before June 19, 1980, then such stock shall be treated as a U.S. real property interest solely for purposes of this paragraph (c)(3).

(4) *Rearrangement of ownership to gain treaty benefit.* A foreign person who directly or indirectly owns a U.S. real property interest may not directly or indirectly rearrange the incidents of ownership of the U.S. real property interest through the use of nonrecognition provisions in order to gain the benefit of a treaty exemption from taxation. Such nonrecognition will not apply to the foreign transferor. The transferor will recognize gain but not loss on the transfer under section 897(a).

(d) *Effective date.* Except as specifically provided otherwise in the text of the regulations, paragraphs (a) through (c) shall be effective for transfers, exchanges and other dispositions occurring after June 18, 1980. Paragraph (a)(5)(ii) of this section shall be effective for exchanges and elections occurring after June 6, 1988.

§ 1.897–7T Treatment of certain partnership interests as entirely U.S. real property interests under sections 897(g) and 1445(e) (Temporary).

(a) *Rule.* Pursuant to section 897(g), an interest in a partnership in which, directly or indirectly, fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents shall, for purposes of section 1445, be treated as entirely a U.S. real property interest. For purposes of section 897(g), such interest shall be treated as a U.S. real property interest only to the extent that the gain on the disposition is attributable to U.S. real property interests (and not cash, cash equivalents or other property). Consequently, a disposition of any portion of such partnership interest shall be subject to partial taxation under section 897(a) and full withholding under section 1445(a). For purposes of this paragraph, cash equivalent means any asset readily convertible into cash (whether or not denominated in U.S. dollars) including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and bonds, corporate obligations and bonds, precious metals or commodities, and publicly traded instruments.

(b) *Effective date.* Section 1.897–7T shall be effective for transfers, exchanges, distributions and other dispositions occurring after June 6, 1988.

§ 1.897–8T Status as a U.S. real property holding corporation as a condition for electing section 897(i) pursuant to § 1.897–3 (Temporary).

(a) *Purpose and scope.* This section provides a temporary regulation that if and when adopted as a final regulation, will be added to paragraph (b) of § 1.897–3. Paragraph (b) of this section would then appear as paragraph (b)(4) of § 1.897–3.

(b) *General conditions.* The foreign corporation upon making an election under section 897(i) (including any retroactive election) must qualify as a U.S. real property holding corporation as defined in paragraph (b)(1) of § 1.897–2.

(c) *Effective Date.* Section 1.897–8T shall be effective as of June 6, 1988, with respect to foreign corporations making an election under section 897(i) after May 5, 1988.

§ 1.897–9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations. (Temporary).

(a) *Purpose and scope.* This section provides a temporary regulation that, if and when adopted as a final regulation will be added as new paragraphs (c)(2)(iii)(B), (k), (n) and (q) of § 1.897–1. Paragraph (b) of this section would then appear as paragraph (c)(2)(iii)(B) of § 1.897–1. Paragraph (c) of this section would then appear as paragraph (k) of § 1.897–1. Paragraph (d) of this section would then appear as paragraph (n) of § 1.897–1. Paragraph (e) of this section would then appear as paragraph (q) of § 1.897–1.

(b) Any other interest in the corporation (other than an interest solely as a creditor) if on the date such interest was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation's stock with the lowest fair market value. However, if a non-regularly traded class of interests in the corporation is convertible into a regularly traded class of interests in the corporation, an interest in such non-regularly traded class shall be treated as a U.S. real property interest if on the date it was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation's stock into which it is convertible. If a person holds interests in a corporation of a class that is not regularly traded, and subsequently acquires additional interests of the same class, then all such interests must be aggregated and valued as of the date of the subsequent acquisition. If the subsequent acquisition causes that person's interests to exceed the applicable limitation, then all such interests shall be treated as U.S. real property interests, regardless of when acquired. In addition, if a person holds interests in a corporation of separate classes that are not regularly traded, and if such interests were separately acquired for a principal purpose of avoiding the applicable 5 percent limitation of this paragraph, then such interests shall be aggregated for purposes of applying that limitation. This rule shall not apply to interests of separate classes acquired in transactions more than three years apart. For purposes of paragraph (c)(2)(iii) of § 1.897–1, section 318(a) shall apply (except that section 318(a)(2)(C) and (3)(C) shall each be applied by substituting "5 percent" for "50 percent").

(c) *Foreign person.* The term "foreign person" means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (1) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined respectively by § 1.871–2 and by 7701 and the regulations thereunder. A resident alien individual, including a nonresident alien with respect to whom there is in effect an election under section 6013(g) or (h) to be treated as United States resident, is not a foreign person. With respect to the status of foreign governments and international organizations, see paragraph (e) of this section.

(d) *Regularly traded*—(1) *General rule*—(i) *Trading requirements.* A class of interests that is traded on one or more established securities markets is considered to be regularly traded on such market or markets for any calendar quarter during which—

(A) Trades in such class are effected, other than in *de minimis* quantities, on at least 15 days during the calendar quarter;

(B) The aggregate number of the interests in such class traded is at least 7.5 percent or more of the average number of interests in such class outstanding during the calendar quarter; and

(C) The requirements of paragraph (d)(3) of this section are met.

(ii) *Exceptions*—(A) in the case of the class of interests which is held by 2,500 or more record shareholders, the requirements of paragraph (d)(1)(i)(B) of this section shall be applied by substituting "2.5 percent" for "7.5 percent".

(B) If at any time during the calendar quarter 100 or fewer persons own 50 percent or more of the outstanding shares of a class of interests, such class shall not be considered to be regularly traded for purposes of sections 897, 1445 and 6039C. Related persons shall be treated as one person for purposes of this paragraph (d)(1)(ii)(B).

(iii) *Anti-abuse rule.* Trades between related persons shall be disregarded. In addition, a class of interests shall not be treated as regularly traded if there is an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(1). For example, trades between two persons that occur several times during the calendar quarter may be treated as an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(1).

(2) *Interests traded on domestic established securities markets.* For purposes of sections 897, 1445 and 6039C, a class of interests that is traded on an established securities market located in the United States is considered to be regularly traded for any calendar quarter during which it is regularly quoted by brokers or dealers making a market in such interests. A broker or dealer makes a market in a class of interests only if the broker or dealer holds himself out to buy or sell interests in such class at the quoted price. Stock of a corporation that is described in section 851(a)(1) and units of a unit investment trust registered under the Investment Company Act of 1940 (15 U.S.C. sections 80a–1 to 80a–2) shall be treated as regularly traded within the meaning of this paragraph.

(3) *Reporting requirement for interests traded on foreign securities markets.* A class of interests in a domestic corporation that is traded on one or more established securities markets located outside the United States shall not be considered to be regularly traded on such market or markets unless such class is traded in registered form, and—

(i) The corporation registers such class of interests pursuant to section 12 of the Securities Exchange Act of 1934, 15 U.S.C. section 78, or

(ii) The corporation attaches to its Federal income tax return a statement providing the following:

(A) A caption which states "The following information concerning certain shareholders of this corporation is provided in accordance with the requirements of § 1.897–9T."

(B) The name under which the corporation is incorporated, the state in which such corporation is incorporated, the principal place of business of the

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corporation, and its employer identification number, if any;

(C) The identity of each person who, at any time during the corporation's taxable year, was the beneficial owner of more than 5 percent of any class of interests of the corporation to which this paragraph (d)(3) applies;

(D) The title, and the total number of shares issued, of any class of interests so owned; and

(E) With respect to each beneficial owner of more than 5 percent of any class of interests of the corporation, the number of shares owned, the percentage of the class represented thereby, and the nature of the beneficial ownership of each class of shares so owned.

Interests in a domestic corporation which has filed a report pursuant to this paragraph (d)(3)(ii) shall be considered to be regularly traded on an established securities market only for the taxable year of the corporation with respect to which such a report is filed.

(4) *Coordination with section 1445.* For purposes of section 1445, a class of interests in a corporation shall be presumed to be regularly traded during a calendar quarter if such interests were regularly traded within the meaning of this paragraph during the previous calendar quarter.

(e) *Foreign governments and international organizations.* A foreign government shall be treated as a foreign person with respect to U.S. real property interests, and shall be subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations issued under section 892. An international organizaton (as defined in section 7701(a)(18)) is not a foreign person with respect to U.S real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest. Buildings or parts of buildings and the land ancillary thereto (including the residence of the head of the diplomatic mission) used by the foreign government for a diplomatic mission shall not be a U.S real property interest in the hands of the respective foreign government.

(f) *Effective date.* Section 1.897–9T with the exception of paragraph (e) shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after June 6, 1988. Paragraph (e) of this section shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after July 1, 1988.

§ 1.1445–2 [Amended]

Par. 4. Section 1.1445–2 is amended by removing paragraph (d)(2)(iii), effective after August 3, 1988, and by removing paragraph (d)(2)(iv), effective after June 6, 1988.

Section 1.1445–2 is also amended by removing paragraph (d)(6), effective after June 6, 1988. Paragraph (d)(6) is hereby reserved.

§ 1.1445–5 [Amended]

Par. 5. Section 1.1445–5 is amended by removing paragraphs (b)(2)(iii), (b)(8)(v), and (c)(2)(i), effective after June 6, 1988. Paragraphs (b)(8)(v) and (c)(2)(i) are hereby reserved.

Par. 6. The following new sections are added immediately after § 1.1445–8T.

§ 1.1445–9T Special rule for section 1034 nonrecognition (Temporary).

(a) *Purpose and scope.* This section provides a temporary regulation that, if and when adopted as a final regulation, will add a new paragraph (d)(2)(iii) to § 1.1445–2. Paragraph (b) of this section would then appear as paragraph (d)(2)(iii) of § 1.1445–2.

(b) No particular form is required for a transferor's notice to a transferee that the transferor is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labeled to correspond with the designation set forth below:

(1) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of § 1.1445–2(d)(2);

(2) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(3) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(4) A brief description of the transfer;

(5) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer; and

(6) If the transferor claims nonrecognition on the sale or exchange of a principal residence under section 1034(a) and another principal residence in the United States has not been purchased as of the date of sale of the principal residence, either (i) a copy of an executed binding contract for purchase by the transferor of a further principal residence in the United States with a purchase price exceeding the adjusted sales price of the old principal residence or (ii) an affidavit by the transferor signed under penalties of perjury stating that the transferor intends to complete purchase of another principal residence within the United States with a purchase price exceeding the adjusted sales price of the old principal residence by April 15 of the year following the taxable year of the sale of the principal residence, and that the transferor is expected to continue to be employed or stationed in the United States for a period of two years from the sale of the principal residence. If the transferor's adjusted sales price of the old principal residence exceeds the transferor's cost of purchasing another principal residence in the United States, withholding shall be required at the rate of ten percent on the portion of the gross amount realized on the sale or exchange of the principal residence equal to such excess.

(c) *Effective Date.* The rules of this section are effective with respect to sale of a principal residence after August 3, 1988.

§ 1.1445–10T Special rule for Foreign governments (Temporary).

(a) This section provides a temporary regulation that, if and when adopted as a final regulation will add a new paragraph (d)(6) to § 1.1445–2. Paragraph (b) of this section would then appear as paragraph (d)(6) of § 1.1445–2.

(b) *Foreign government—(1) As transferor.* A foreign government is subject to U.S. taxation under section 897 on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations issued under section 892. A foreign government that disposes of a U.S. real property interest that is not subject to taxation as specifically provided by the regulations under section 892 may present a notice of nonrecognition treatment pursuant to paragraph (d)(2) of this section that specifically cites the provision of such regulation, and thereby avoids withholding by the transferee of the property. A foreign government that disposes of a U.S. real property interest or the transferee of the property may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of section 892, but neither is required to do so. Rules concerning the issuance of withholding certificates are provided in § 1.1445–3.

(2) *As transferee.* A foreign government or international organization that acquires a U.S. real property interest is fully subject to section 1445 and the regulations thereunder. Therefore, such an entity is required to withhold tax upon the acquisition of a U.S. real property interest from a foreign person.

(c) *Effective date.* The rules of this section shall be effective for transfers, exchanges, distributions and other dispositions occuring on or after June 6, 1988.

§ 1.1445–11T Special rules requiring withholding under § 1.1445–5 (Temporary).

(a) *Purpose and scope.* This section provides temporary regulations that, if and when adopted as a final regulation will add certain new paragraphs within § 1.1445–5 (b) and (c). The paragraphs of this section would then appear as set forth below. Paragraph (b) of this section would then appear as paragraph (b)(8)(v) of § 1.1445–5. Paragraph (c) of this section would then appear as paragraph (c)(2)(i) of § 1.1445–5. Paragraph (d) of this section would then appear as paragraph (g) of § 1.1445–5.

(b) *Dispositions of interests in partnerships, trusts, and estates.* The provisions of section 1445(e)(5), requiring withholding upon certain dispositions of interests in partnerships, trusts, and estates, that own directly or indirectly a U.S. real property interest shall apply to dispositions on or after the effective date of a later Treasury decision under section 897(g) of the Code except in the case of dispositions of interests in partnerships in which fifty percent of the value of the gross assets consist of U.S. real property interests and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. The provisions of section 1445(e)(5), shall apply, however, to dispositions after June 6, 1988, of interests in partnerships in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. See paragraph (d) of this section.

(c) *Transactions covered elsewhere.* No withholding is required under this paragraph (c) with respect to the distribution of a U.S. real property interest by a partnership, trust, or estate. Such distributions shall be subject to withholding under section 1445(e)(4) and paragraph (f) of this § 1.1445–5 on the effective date of a later Treasury decision published under section 897(g) of the Code. No withholding is required at this time for distributions described in the preceding sentence. See paragraph (b)(8)(iv) of this § 1.1445–5. No withholding is required under this paragraph with respect to the disposition of an interest in a trust, estate, or partnership except in the case of a partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. See paragraph (b)(8)(v) of § 1.1445–5. Withholding shall be required as provided in section 1445(e)(5) and paragraph (g) of this section with respect to the disposition after June 6, 1988, of an interest in a partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents.

(d) *Dispositions of interests in partnerships, trusts or estates—(1) Withholding required on disposition of certain partnership interests.* Withholding is required under section 1445(e)(5) and this paragraph with respect to the disposition by a foreign partner of an interest in a domestic or foreign partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. For purposes of this paragraph cash equivalents mean any asset readily convertible into cash (whether or not denominated in U.S. dollars), including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and bonds, corporate obligations and bonds, precious metals or commodities, and publicly traded instruments. The taxpayer on filing an income tax return for the year of the disposition may demonstrate the extent to which the gain on the disposition of the interest is not attributable to U.S. real property interests. A taxpayer is also permitted by § 1.1445–3 to apply for a withholding certificate in instances where reduced withholding is approporiate.

(2) *Withholding not required—(i) Transferee receives statement that interest in partnership is not described in paragraph (d)(1).* No withholding is required under paragraph (d)(1) of this section upon the disposition of a partnership interest otherwise described in that paragraph if the transferee is provided a statement, issued by the partnership and signed by a general partner under penalties of perjury no earlier than 30 days before the transfer, certifying that fifty percent or more of the value of the gross assets does not consist of U.S. real property interests, or that ninety percent or more of the value of the gross assets of the partnership does not consist of U.S. real property interests plus cash or cash equivalents.

(ii) *Reliance on statement not permitted.* A transferee is not entitled to rely upon a statement described in paragraph (d)(2)(i) of this section if, prior to or at the time of the transfer, the transferee either—

(A) Has actual knowledge that the statement is false, or

(B) Receives a notice, pursuant to § 1.1445–4.

Such a transferee's withholding obligations shall apply as if the statement had never been given, and such a transferee may be held fully liable pursuant to § 1.1445–1(e) for any failure to withhold.

(iii) *Belated notice of false statement.* If, after the date of the transfer, a transferee receives notice that a statement provided under paragraph (d)(2)(i) of this section is false, then such transferee may rely on the statement only with respect to consideration that was paid prior to the receipt of the notice. Such a transferee is required to withhold a full 10 percent of the amount realized from the consideration that remains to be paid to the transferor. Thus, if 10 percent or more of the amount realized remains to be paid to the transferor, then the transferee is required to withhold and pay over the full 10 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor, until the full 10 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this § 1.1445–10T(d)(2)(iii) may not obtain a withholding certificate pursuant to § 1.1445–3, but must instead withhold and pay over the amounts required by this paragraph.

(e) *Effective date.* The rules of this section are effective for transactions after June 6, 1988.

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PART 602—[AMENDED]

OMB Control Numbers Under The Paperwork Reduction Act

Par. 7. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.897–5T * * * 1545–0902"
"§ 1.897–6T * * * 1545–0902"
"§ 1.1445–9T * * * 1545–0902"
"§ 1.1445–10T * * * 1545–0902".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
Approved April 15, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88–9782 Filed 5–4–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–491–87]

Income Taxes; Corporate Distributions and Certain Nonrecognition Exchanges and Other Transfers Under Section 897 (c), (d), (e), (g), (i) and (j) and Section 367(e)(2) and Withholding Under Section 1445(e) (5) and (6)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue, the Internal Revenue Service is issuing temporary regulations that add new §§ 1.897–4AT, 1.897–5T, 1.897–6T, 1.897–7T, 1.897–8T and 1.897–9T relating to corporate distributions and certain nonrecognition exchanges, and new §§ 1.1445–9T and 1.1445–10T relating to certain withholding provisions, all in the context of the Foreign Investment in Real Property Tax Act (FIRPTA). In addition, the regulations provide rules with respect to the treatment of interests in publicly traded corporations. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before July 5, 1988.

Except as otherwise specifically provided, §§ 1.897–4AT, 1.897–5T, and 1.897–6T are proposed to apply to exchanges, distributions, or transfers of U.S. real property interests occurring after June 18, 1980. Although these regulations are proposed to be applied as of June 18, 1980, it is anticipated that any taxpayer desiring to apply the temporary regulations in lieu of the final regulations for the period prior to the adoption of the final regulations will be allowed to so choose. All changes and additions to portions of the existing regulations are made by §§ 1.897–7T, 1.897–8T, 1.897–9T except paragraph (e) 1.1445–10T, and 1.1445–11T proposed to be generally effective after June 6, 1988. Paragraph (e) of § 1.897–9T dealing with foreign governments and international organizations is effective July 1, 1988. The special rules of § 1.1445–9T for section 1034 nonrecognition are effective after August 3, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–491–87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Charles P. Besecky of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3319, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add §§ 1.897–4AT, 1.897–5T, 1.897–6T, 1.897–7T, 1.897–8T, 1.897–9T, 1.1445–9T and 1.1445–10T to 26 CFR Part 1. The final regulations that are proposed to be based on these temporary regulations would amend 26 CFR Part 1 by adding these temporary regulations sections as final regulations under section 897 (c), (d), (e), (g), and (j), under the authority of section 367(e)(2), and under section 1445 of the Internal Revenue Code of 1986. For the text of the temporary regulations, see FR Doc. 88–9782 [T.D. 8198] published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. It has also been determined that this rule will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of this regulation is Charles P. Besecky of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matter of substance and style.

List of Subjects

26 CFR 1.861–1 to 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

26 CFR 1.1441–1 to 1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 602

Reporting and recordkeeping requirements.

* * * * *

Proposal of regulations

The temporary regulations, FR Doc. 88–9782 [T.D. 8198] published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 897 and 1445 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 88–9783 Filed 5–4–88; 8:45 am]
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S.J. Res. 235/Pub. L. 100–385

Deploring the Soviet Government's active persecution of religious believers in Ukraine. (May 2, 1988; 102 Stat. 452; 2 pages) Price: $1.00

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WHEN: May 26; at 9:00 a.m.
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WHEN: June 13; at 1:00 p.m.
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RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Presidential Documents

Title 3—

The President

Proclamation 5807 of May 3, 1988

Asian/Pacific American Heritage Week, 1988

By the President of the United States of America

A Proclamation

We do well to salute Americans of Asian and Pacific ancestry for their accomplishments and for those of their forebears who through the decades have offered our land their talents, their determination, and a truly immeasurable gift, the treasure of their ancient heritages.

The contributions of Asian and Pacific Americans and their cultural vitality have benefited the United States in countless ways. Not least among them have been deep appreciation of the unalienable rights to life, liberty, and the pursuit of happiness that form the core of the American ethos, and the willingness and ability to defend these treasures always. Asian and Pacific Americans have won distinction in every field, and continue to strengthen our Nation with industry, initiative, and love of country; that is cause for rejoicing among all Americans, during Asian/Pacific American Heritage Week and the entire year.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning May 8, 1988, as Asian/Pacific American Heritage Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10228
Filed 5-4-88; 2:51 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of May 3 on signing Proclamation 5807, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 18).

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Presidential Documents

Proclamation 5806 of May 3, 1988

National Digestive Disease Awareness Month, 1988

By the President of the United States of America

A Proclamation

Digestive diseases rank second among all of the causes of disability due to illness in the United States, and account for one-tenth of the economic burden of illness in our land. Their social and economic impact is enormous; half of all Americans are affected by them at some time during life. More Americans are hospitalized for digestive diseases than for any other family of illness.

In recent years major advances have taken place in digestive disease research, but efforts to determine their causes and to develop ways to prevent and treat them have only begun. Knowing the impact of these diseases and of the critical need for research in this field, private, scientific, and governmental organizations have committed themselves to increasing public awareness and understanding of gastrointestinal diseases.

In recognition of the fourth anniversary of the National Digestive Disease Education Program and of the importance of all efforts to combat digestive diseases, the Congress, by House Joint Resolution 421, has designated the month of May 1988 as "National Digestive Disease Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1988 as National Digestive Disease Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to take part in appropriate activities to encourage further research into the causes and cures of all types of digestive disorders.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10229
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Presidential Documents

Proclamation 5809 of May 3, 1988

National Drinking Water Week, 1988

By the President of the United States of America

A Proclamation

Americans are thankful for the amount of water with which our country is blessed—for our more than two million miles of streams, our more than 30 million acres of lakes and reservoirs, our other surface waters, and our subterranean reserves known as aquifers. We also appreciate our public water systems, whose complex processes provide us with some 12 billion gallons of generally inexpensive and high-quality drinking water daily.

We can be grateful too for the Americans who are helping to bring safe drinking water to millions in the developing world through the efforts of charitable, business, and other private groups and the Agency for International Development. From providing technical assistance to water systems in burgeoning cities to helping construct one-pipe water stands in countless villages in Africa, Asia, and Latin America, dedicated Americans are bringing water to a thirsty world. Water supplies in those developing lands mean improved health and well-being and often presage better productivity and economic vitality that benefit us all.

Less than a century ago, epidemics of waterborne disease were a major public health threat in our country. Today, behind every drop of good drinking water are dedicated individuals such as scientists, engineers, elected officials, water plant owners and operators, regulatory officials, and citizen groups, whose unceasing efforts allow us to enjoy the world's best drinking water.

We must be aware, however, that we do face some difficulties regarding drinking water. Lead eroding from the lead pipes and solder used in some water systems is causing health problems, especially for children; natural contaminants such as radon need attention in many water systems; and man-made contaminants are at levels of concern in some water supplies. Controlling these problems will be a challenge, but not one beyond our abilities or our determination.

State and local governments continue their efforts in this regard, and the Safe Drinking Water Act of 1974, as amended in 1986 (Public Law 99-339), enlists the help of the Environmental Protection Agency in preserving and improving our drinking water. Because of this law and growing public concern, dramatic changes in public water systems over the next 5 years are likely to affect every community.

Consumers and the private sector help protect and improve drinking water by checking the quality of local systems and regional supplies and by working with utilities and State and local officials to protect and improve them. They help preserve water supplies by supporting wellhead protection and watershed control measures. And consumers encourage improved operation and maintenance of water facilities, increased monitoring, replacement of aging pipes and equipment, and installation of new treatment technologies where necessary.

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We desire drinking water of the highest quality and realize that our large water supply is neither limitless nor without expense. Knowing that good drinking water is a precious resource and one of the world's most important products, we need to continue to understand and identify potential hazards, how such hazards enter our water supply, and the best means to eliminate them.

The Congress, by Senate Joint Resolution 185, has designated May 2 through May 8, 1988, as "National Drinking Water Week" and has authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 2 through May 8, 1988, as National Drinking Water Week. I call upon the people of the United States and government officials to observe that week with appropriate programs, ceremonies, and activities to enhance public awareness about drinking water and recognition of the benefits of drinking water.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10230
Filed 5-4-88; 2:53 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5810 of May 3, 1988

Father's Day, 1988

By the President of the United States of America

A Proclamation

Once again we celebrate Father's Day, by tradition the third Sunday in June, a day to honor and salute fathers everywhere for their love and devotion.

As a weary child tumbles into his father's arms, to be lifted up and carried, he feels his father's strength and is content. In that perch he is like a captain, confidently scanning the horizons of his world, secure in the knowledge that his ship will carry him safely through any threatening seas. Children, vulnerable and dependent, desperately need such security, and it has ever been a duty and a joy of fatherhood to offer it.

Being a father requires strength in many ways; above all, it requires character. Raising a family is no easy task, of course, but one of trial, frustration, and disappointment. Great strength and more than a little courage are needed to persevere, to fight discouragement, and to keep working for the family. In that strength, and with God's grace, fathers find the patience to teach, the fortitude to provide, the compassion to comfort, and the mercy to forgive. All of this is to say that they find the strength to love their wives and children selflessly. And it is above all for this wondrous, mysterious love that fathers shower upon their families, and that allows them to ceaselessly put their families' needs first, that we honor fathers with their own special day.

Our gratitude is not limited to Father's Day, but remains constant; indeed, there are not enough days in the year to express it properly. Still, it is fitting that on such a day the American people pause to celebrate all fathers for their loving care for their youngsters. Our Nation can only continue to prosper if our families prosper. Nothing can replace the family's role as prime nurturer and educator of children, and nowhere are our country's shared values more effectively transmitted to future generations.

So let us thank all fathers on this day; but, above all, let us each take this occasion to express our thanks and our affection to our own fathers, whether we can do so in person or in prayer. We are perhaps no longer little children riding on our fathers' shoulders, yet we will forever feel their firm and loving guidance through life's challenges.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 19, 1988, as Father's Day. I invite the States and communities and people of the United States to observe that day with appropriate ceremonies as a mark of appreciation and abiding affection for their fathers. I direct government officials to display the flag of the United States on all Federal government buildings, and I urge all Americans to display the flag at their homes and other suitable places on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10231]
Filed 5-4-88; 2:54 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 88
Friday, May 6, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 612]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 612 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period May 8 through May 14, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 612 (§ 910.912) is effective for the period May 8 through May 14, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein..

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This section is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on May 3, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 11-2 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5.U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.912 is added to read as follows:

(This section will not appear in the Code of Federal Regulations.)

§ 910.912 Lemon Regulation 612.

The quantity of lemons grown in California and Arizona which may be handled during the period May 8, 1988, through May 14, 1988, is established at 350,000 cartons.

Dated: May 4, 1988.

Robert C. Keeney,
Deputy Director,
Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-10225 Filed 5-5-88; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Predetermined Amortization Schedule System (PASS) Account Servicing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Multiple Family Housing Servicing and Collections Accounting Procedure to implement administrative procedures regarding transfers of accounts and to implement amortization of recoverable costs through the Automated Multiple Housing Accounting System (AMAS). The intended effects of this action are to allow transfers to be more easily handled under AMAS and to reduce possible monetary defaults.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Arlene Halfon, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5329, 14th

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and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 447–3187.

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR, Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of accounting changes, does not constitute a major Federal Action significantly affecting the quality of human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.405, Farm Labor Housing Loans and Grants and 10.415, Rental Housing Loans. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

General Information

1. The Automated Multi-Housing Accounting System (AMAS) being used to process transfers of Predetermined Amortization Schedule System (PASS) accounts allows only accounts showing current (neither delinquent nor "Future Paid") to be transferred on same terms. If the account has had overpayments or advance regular payments, these payments are held in "Future Paid" status under AMAS. Provisions must be made for rolling back the account to current status in order to allow the transfer to take place.

2. Recoverable costs currently are charged to a borrower's account in a lump sum. In order to more effectively service borrowers' accounts, AMAS will allow recoverable costs to be amortized over a period not to exceed 5 years, thereby reducing the necessity of raising rental payments to cover the burden of bringing the account current after the lump sum payment has been made. Guidelines for determining the amortization period for recoverable costs are being provided.

Discussion of Comments

A proposed rule was published in the **Federal Register** (52 FR 27562) on July 22, 1987, and invited comments for 60 days ending September 21, 1987. Only one comment was received, from an association of borrowers. They had no objections to any of the provisions of the proposed regulation and actively support amortization of the vouchered cost.

Several minor changes are being made in the final rule: (1) A change in the guidelines for determining the period of the amortization of the recoverable costs are being made. (2) Due to delays in developing the procedure and the automated software for amortizing the recoverable costs, FmHA will allow amortization of cost items to be processed retroactively in select cases. (3) Several other minor clarifications have been added.

List of Subjects in 7 CFR Part 1951

Account servicing, Accounting, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

2. In § 1951.501, the last sentence of paragraph (a)(2)(ii) is revised and paragraph (c) is added to read as follows:

§ 1951.501 General.

(a) * * *

(2) * * *

(ii) * * * Payment billings are subject to § 1951.506 of this subpart.

* * * * *

(c) All FmHA MFH loans (RRH, RCH, LH, RHS, and SO) whether DIAS or PASS, are subject to the definitions contained in § 1951.504 of this subpart, and payment application as outlined in § 1951.510 of this subpart.

3. Section 1951.504 is amended by redesignating current paragraphs (i) through (s) as paragraphs (k) through (u) and current paragraphs (c) through (h) as paragraphs (d) through (i), respectively, and adding new paragraphs (c) and (j) to read as follows:

§ 1951.504 Definitions and statements of policy.

* * * * *

(c) *Amortized recoverable costs.* Recoverable cost items may be amortized over a period up to 5 years. This function will allow the servicing official to voucher recoverable cost items such as taxes.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher, the amortization period of the tax advance will be the number of months for which the taxes are being vouchered with a maximum of 5 years.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be amortized for 12 months unless, based on the borrower's repayment ability, a longer period is needed. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type. In no case, however, will the repayment period exceed 5 years.

(3) *Retroactive amortization of recoverable costs.* Recoverable costs which have been vouchered since May 1, 1985, may, with National Office approval, be retroactively amortized for applicable time periods as shown in paragraphs (c)(1) and (c)(2) of this section, if payments made since the costs were vouchered are sufficient to bring both the loan and cost accounts current. The following information should be forwarded to the National Office for approval of the reclassification to amortized status, and forwarded to the Finance Office for processing: An audit showing all costs vouchered along with payments made since the date of the cost item and to be made prior to the reclassification; the estimated reapplication of the payments due to reclassification showing that the account will be current after the reclassification; and the proposed budget and management case files.

* * * * *

(j) *Non-recoverable costs.* Payments charged to a loan program insurance fund by use of a fund code. These costs are only incurred after Government acquisition of title to the property, and are therefore charged to an inventory account.

* * * * *

§ 1951.507 [Amended]

4. In § 1951.507, paragraph (e)(1) is amended in the last sentence by removing the words "From _____ To _____," and inserting in their place the words "as of _____".

5. Section 1951.510 is amended by redesignating current paragraphs (e)(5) through (e)(8) as paragraphs (e)(6) through (e)(9) respectively; revising paragraph (e)(4); and adding new paragraph (e)(5) to read as follows:

§ 1951.510 Payment application.

* * * * *

(e) * * *

(4) Amortized recoverable costs due.

(5) Unamortized recoverable costs due.

* * * * *

6. Section 1951.514 is revised to read as follows:

§ 1951.514 Recoverable and non-recoverable cost charges.

The District Director will service recoverable and non-recoverable cost items according to § 1951.14 of Subpart A of this Part and Subpart P of Part 2024 which is available in any FmHA office. (Recoverable and non-recoverable costs are defined in § 1951.504 of this subpart.)

§ 1951.517 [Amended]

7. In § 1951.517, paragraph (b)(1) is amended in the first sentence by changing the reference from "§ 1951.501(a)(3)" to read "§ 1951.501(a)(2)(i)."

8. Section 1951.518 is added to read as follows:

§ 1951.518 Determining current loan balances for transfer.

Same terms transfers, when the transferor has been converted to PASS, must take place in a current loan status on the date of the transfer. Any delinquent principal and interest must be brought current. Overpayments and advance regular payments made on PASS accounts result in the creation of a "future paid" status account under AMAS. These advance payments must be reversed off and applied to the transferor's principal balance prior to determining the loan balance to be transferred. If the future payments have been made through rental assistance, they must be refunded to the transferor and reapplied in the form of cash on the loan balance.

Date: January 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–10120 Filed 5–5–88; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–026]

CITE® Test, Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations by allowing designated epidemiologists to consider the results of the concentration immunoassay technology (CITE®) test as a diagnostic supplement to the standard card testing of official vaccinates. This action is warranted in order to permit faster diagnostic testing than has been available to determine brucellosis disease status, and to avoid the unnecessary destruction of valuable cattle and bison.

DATES: This interim rule was effective on April 27, 1988. Consideration will be given only to comments postmarked or received on or before July 5, 1988. The incorporation by reference of certain procedures in the regulations is approved by the Director of the Federal Register April 27, 1988.

ADDRESSES: Send an original and two copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket No. 88–026. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8713.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious and contagious disease, caused by bacteria of the genus *Brucella*, that affects animals and man. The Secretary of Agriculture is authorized to cooperate with the states in conducting a brucellosis eradication program. The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis.

Official brucellosis tests are used for determining the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements of cattle, bison, and swine. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

The standard card test is the official test used most often in cattle and bison sent to market. However, this test is so sensitive that cattle and bison that have antibodies from being vaccinated against brucellosis may erroneously test "positive."

Cattle and bison that react positively to the standard card test cannot be moved interstate except for immediate slaughter unless they are later found to have been incorrectly classified as brucellosis reactors. This can involve holding these animals in quarantine for several days until a final diagnostic test is done at a laboratory.

The CITE® test is a new procedure that permits diagnostic testing in the stockyard, and therefore provides faster results than can be provided by tests performed in a laboratory. The CITE® test is less sensitive than the standard card test to antibodies resulting from brucellosis vaccination and serves, therefore, as a supplemental procedure for immediate verification of standard card test results.

The procedures for conducting the CITE® test and determining its results are incorporated by reference and are on file at the Office of the Federal Register. The CITE® test was licensed by the United States Department of Agriculture, effective December 31, 1987, as being safe, pure, potent, and effective. Licensing was based on the results of tests performed on approximately 1,000 samples from certified brucellosis free cattle, over 700 samples cultured positive in laboratories, and roughly 2,000 random field samples.[1]

This amendment allows designated epidemiologists to use the CITE® test as a diagnostic supplement to standard card testing when determining the brucellosis disease status of official vaccinates.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment. Standard card test errors are currently

[1] Further information may be obtained from AgriTech Systems, Inc., 100 Fore Street, Portland, ME 04101.

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resulting in the unnecessary destruction of cattle and bison valuable because of their breeding characteristics. This occurs because many livestock markets operate on the basis of one-day sales and are not able to hold animals while laboratory verification of non-specific standard card test reaction is being conducted. If the owner of the cattle or bison cannot transport and hold the animals elsewhere under quarantine conditions, they can only be moved for slaughter.

At present, many cattle and bison with false "positive" reactions to the standard card test (caused by vaccination antibodies) are moved for slaughter because the owner is unable to hold the animals until laboratory verification can be obtained. The CITE® test will supply immediate supplementary data, allowing same-day verification of most questionable standard card test results. This will prevent the slaughter of many official vaccinates whose genes would otherwise be lost to this country's breeding pool.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action allows designated epidemiologists a faster method of gathering data to supplement standard card test results. The current procedure of verifying standard card test results through laboratory testing would remain a viable option.

This amendment does not change the testing requirements for brucellosis. It merely authorizes an optional methodology to laboratory verification of standard card test results. CITE® testing is faster than laboratory testing and allows for faster marketing, but the economic effect on owners of official vaccinate cattle or bison should not be significant.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Incorporation by reference, Quarantine, Transportation.

Accordingly, 9 CFR Part 78 would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "official test" is amended by redesignating paragraph (a)(9) as paragraph (a)(10) and by adding a new paragraph (a)(9) to read as follows:

§ 78.1 Definitions.

* * * * *

(a) * * *

(9) *Concentration immunoassay technology (CITE®) test.* An enzyme immunoassay that may be used as a diagnostic supplement to the standard card test by designated epidemiologists determining the brucellosis disease status of official vaccinates. The test must be done in accordance with the CITE® *Brucella abortus* Antibody Test Kit instructions, licensed by the United States Department of Agriculture and approved as of December 31, 1987, and incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from AgriTech Systems, Inc., 100 Fore Street, Portland, ME 04101. Copies may be inspected at Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

3. In § 78.1, the definition of "official test" is further amended by adding a new paragraph (i) to newly redesignated paragraph (a)(10) to read as follows:

* * * * *

(a) * * *

(10) * * *

(i) The designated epidemiologist may consider the results of CITE® tests when evaluating the results of standard card tests of official vaccinates.

* * * * *

Done in Washington, DC, this 27th day of April, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9722 Filed 5-5-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-37-AD; Amendment 39-5904]

Airworthiness Directives; Beech Models A23–24, A24, A24R, B24R and C24R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Models A23–24, A24, A24R, B24R and C24R airplanes. It requires the replacement of the electric fuel boost pump with a pump having improved vane material. Reports have been received of engine power loss which resulted from loss of fuel pressure, caused by broken electric fuel boost pump vane material obstructing fuel flow in the engine driven fuel pump. Incorporation of the replacement fuel pump will preclude breakage of the electric boost pump vanes and thereby eliminate the resultant engine failures.

EFFECTIVE DATE: June 6, 1988.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Beech Service Bulletin (MSB) No. 2217, dated February, 1988, applicable to this AD, may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, telephone (316) 681–9111 or at the Rules Docket, FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Aircraft Certification Office, ACE–140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the electric fuel boost pump on certain Beech Models A23–24, A24, A24R, B24R and C24R airplanes was published in the **Federal Register** on January 8, 1988 (53 FR 514). The proposal resulted from six reports of electric boost pump vane failure on Beech Models A23–24, A24, A24R, B24R and C24R airplanes which caused partial or complete loss of engine power. These losses were attributed to blockage of the fuel flow path by broken vane pieces. In all the reported cases the pilots were able to either abort the take-off or safely make an emergency landing.

Investigation revealed that these airplanes are prone to fuel system blockage because they do not employ a screen or filter between the boost pump and the engine driven pump, and because the engine driven pump is susceptible to blockage by contaminants. Installation of an in-line filter between the boost pump and engine driven pump was not feasible due to difficulties associated with plumbing changes, pressure drop and possible water entrapment. Also, adding a filter would not resolve the original problem of vane breakage. As a result, Beech introduced a new fuel boost pump incorporating improved vane material, less susceptible to breakage. The new pump is being incorporated into Beech production type design data.

The FAA examined the above reports and determined that an unsafe condition exists or may develop in certain Beech Models A23–24, A24, A24R, B24R and C24R airplanes. Accordingly, the FAA proposed an AD which would require the incorporation of the improved fuel boost pump on the airplanes in question. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. However, Beech subsequently issued MSB No. 2217, dated February, 1988, which described replacement procedures for the electric fuel boost pump. The FAA has determined that compliance with Beech MSB No. 2217 fully meets the requirements specified in the NPRM and does not impose any additional burden. Accordingly, the proposal is adopted with the addition of Beech MSB No. 2217 as the means of compliance.

The FAA has determined that this regulation only involves approximately 1163 airplanes at an approximate one time cost of $220 for each airplane or a total one-time fleet cost of $255,860. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C 1301, et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Models A23–24 and A24 (Serial Numbers (S/Ns) MA–1 through MA–366); Model A24R (S/Ns MC–2 through MC–95); Models A24R, B24R and C24R (S/Ns MC–96 through MC–795), airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent reduction or loss of engine power due to fuel flow blockage resulting from broken electric fuel boost pump vanes in the engine driven fuel pump, accomplish the following:

(a) For airplanes with 14 volt electrical systems, replace the existing electric fuel boost pump with a Beech P/N 1616–00–1 pump in accordance with the instructions in Beech Service Bulletin (MSB) No. 2217, dated February, 1988.

(b) For airplanes with 28 volt electrical systems, replace the existing electric fuel boost pump with a Beech P/N 1617–00–1 pump in accordance with the instructions in Beech MSB No. 2217, dated February, 1988.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on June 6, 1988.

Issued in Kansas City, Missouri, on April 19, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-10038 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-150-AD; Amdt. 39-5909]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, which currently require inspection for cracking of the wing front spar upper chord and repair, if necessary. This amendment combines the inspections presently required by both AD's, extends the area to be inspected, and requires repetitive inspections of front spar area previously modified. This amendment is prompted by several reports of cracks up to 18 inches long on airplanes on which terminating action had been completed. This condition, if not corrected, could compromise the ultimate load capability of the wing.

EFFECTIVE DATE: June 13, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for cracking and repair or replacement, if necessary, of the wing front spar upper chord from the side of body (station 90) to station 225 on certain Boeing Model 737 airplanes, was published in the Federal Register on December 7, 1987 (52 FR 47943).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America submitted comments on behalf of three operators. The operators requested that they be allowed to phase in the requirements of this AD with the inspection program of the existing AD 74-01-01 for airplanes that have not been modified by the terminating action of AD 74-01-01, and that they be able to pick up the new inspections required by this AD on the next repetitive interval for AD 74-01-01. The proposed requirement of paragraph A. would require them to start inspections within 100 landings after the effective date of the AD, whereas AD 74-01-01 currently requires repetitive inspection, at 1,000-hour intervals, of a slightly smaller portion of the spar chord. One operator reported that, for the last six inspection cycles, it has inspected the additional area required to be inspected by the proposed AD, in conjunction with the inspection required by AD 74-01-01, and has not found any cracking in the additional area. The FAA concurs with the commenters' request since it has been determined that cracks will always occur first in the areas specified for inspection by AD 74-01-01. The final rule has been revised to include a new paragraph B. which provides alternate times for complying with this AD for unmodified airplanes. The FAA has determined that this change will not compromise safety, increase the economic burden on any operator, or expand the scope of the AD.

Another commenter requested that the repetitive inspection interval be extended to 1,100 flight hours to align with its current inspection interval under AD 74-01-01, which had been approved by the FAA based on the commenter's submittal of data which justified an equivalent level of safety. The FAA does not consider it appropriate to extend the inspection intervals required by paragraph A. to all operators without technical justification. However, any operator may request an adjustment of the compliance time on an individual basis based upon the provisions of paragraph F. of this AD, if the request includes substantiating data.

The commenters requested that the AD be revised to specify the repetitive inspection intervals of 1,000 landings be changed to flight hours rather than landings. The operators currently performing repetitive 1,000-hour inspections under the requirements of AD 74-01-01 would thereby be able to continue the new inspection program on their previously established schedule. The FAA has reviewed this request and concurs, since the cracking problems are caused by stress corrosion, a phenomenon that is primarily a function of time rather than flight cycles. Since the average flight time for the Model 737 is approximately one hour, this change does not increase the scope of the AD.

One commenter proposed that the issuance of the final rule be coordinated with the release of the next revision of Boeing Service Bulletin 737-57A1061. The operator stated that the existing Revision 10 of the service bulletin does not contain information necessary to remove access panels for inspection of the front spar adjacent to the side of the body. The FAA does not concur, since procedures describing proper access to areas which must be inspected are available in the applicable maintenance manual.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph F.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 300 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $96,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 74-01-01, Amendment 39-2799 (42 FR 2054; January 10, 1977), and AD 87-05-52, Amendment 39-5627 (52 FR 18902; May 20, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the wing front spar upper chord structure, accomplish the following:

A. Within 100 flight hours after the effective date of this AD, unless previously accomplished within the last 900 flight hours, visually inspect for cracks the forward side of the wing front spar upper chord from front spar station (FSS) 90 to FSS 225, both left and right sides, in accordance with Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987. Repeat these inspections at intervals not to exceed 1,000 flight hours.

B. Alternate means of compliance for paragraph A., above, only for airplanes which have been inspected in accordance with AD 74-01-01 and on which the spar chord segment, left FSS 108 to FSS 198 and/or right FSS 108 to FSS 198, was found to be free of cracks at the last inspection: Visually inspect that chord or chords for cracks in the forward side of the wing from FSS 90 to FSS 225, in accordance with Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987, within 900 flight hours from the last inspection, or within 100 flight hours after the effective date of this AD, whichever occurs later. Repeat these inspections at intervals not to exceed 1,000 flight hours.

C. Apply organic corrosion inhibitor after each inspection required by paragraph A. or B., above, in accordance with Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987.

D. If cracks are found as a result of the inspections required by paragraph A. or B., above, accomplish the following:

1. If cracks less than two inches in length are found, stop drill prior to further flight, in accordance with Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987. Thereafter, reinspect daily, using eddy current or dye penetrant inspection methods. If crack growth is observed, or prior to the accumulation of 400 hours time-in-service after stop drilling, whichever occurs first, repair in accordance with Boeing Alert Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987. After repair, continue to inspect in accordance with paragraph A., above.

2. If cracks are equal to or greater than two inches in length, repair prior to further flight, in accordance with Boeing Service Bulletin 737-57A1061, Revision 10, dated July 16, 1987. After repair, continue to inspect in accordance with paragraph A., above.

E. Installation of new and improved upper chord segment in accordance with Boeing Service Bulletin 737-57-1061, Revision 7, dated March 21, 1980, is considered terminating action for the repetitive inspections required by this AD for the structure replaced. However the repetitive inspections required by paragraph A., B., or D., above, as applicable, must continue for the structure *not* replaced.

F. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 74-01-01, Amendment 39-2799; and AD 87-05-52, Amendment 39-5627.

This amendment becomes effective June 13, 1988.

Issued in Seattle, Washington, on April 25, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10043 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-41-AD; Amdt. 39-5905]

Airworthiness Directives: The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-8-100 series airplanes not equipped with an Electronic Flight Instrument System (EFIS), which requires certain changes to the Airplane Flight Manual (AFM) procedures during Very High Frequency Omni Range (VOR) mode operations and the installation of a placard. This amendment is prompted by a report of inconsistent VOR Flight Director Mode operation, in the form of nuisance transitions to the VOR Overstation Sensor (VOR OSS) mode. This condition, if not corrected, could result in erroneous Flight Director VOR and VOR approach mode operation, or erroneous Autopilot VOR and VOR approach mode operation, which could lead to off-course approaches when in the VOR mode.

EFFECTIVE DATE: May 18, 1988.

ADDRESSES: The applicable service information may be obtained from de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cuneo, Systems Branch (ANE-173), New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report that the Digital Air Data Computer (DADC), modified with DHC Modification No. 8/0794, as installed on de Havilland Model DHC-8-100 series airplanes, fails to transmit DME DISTANCE and VOR TO/FROM data over the Digital Data Bus to the Flight Guidance Computers. Displayed raw DME and VOR information remains valid, and EFIS-equipped airplanes are not affected.

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This condition, if not corrected, could result in erroneous Flight Director VOR and VOR approach mode operation, or Autopilot VOR and VOR approach mode operation, which could lead to off-course approaches when the airplane is in the VOR mode.

De Havilland has issued Alert Service Bulletin A8-34-53, Revision B, dated April 1, 1988, which describes certain changes to operational procedures to address this problem. This service bulletin also describes procedures for installation of DADC part number (P/N) 7000700-975 Mod BF which, if installed, eliminates the need for the operational limitations.

The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF-88-05, dated March 4, 1988, which requires the operational limitations, and eventual installation of the modified DADC, as described above.

This airplane is manufactured in Canada and type certificated in the U.S. under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the U.S., this AD requires a change to the AFM procedures to prohibit operations in Flight Director VOR and VOR approach mode, and Autopilot VOR and VOR approach mode; and installation of a placard adjacent to the Flight Guidance Controller stating that VOR approach modes are prohibited. This amendment provides for optional terminating action for these requirements by the installation of DADC P/N 7000700-075 Mod BF, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to all Model DHC-8-100 series airplanes, Post Mod. 8/0794 [Digital Air Data Computer (DADC) P/N 7000700-975], not equipped with an Electronic Flight Instrument System (EFIS), certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude erroneous Flight Director or Autopilot VOR operations, accomplish the following:

A. Within 48 hours after the effective date of this AD:

1. Include the following limitation in the limitations section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM: "Operation in Flight Director VOR and VOR approach mode, or Autopilot VOR and VOR approach mode, is prohibited."

2. Install a placard adjacent to the Flight Guidance Controller on the glare shield, stating: "VOR MODES PROHIBITED"

B. Installation of DADC P/N 7000700-075 Mod BF, in accordance with Part B of de Havilland Service Bulletin A8-34-53, Revision B, dated April 1, 1988, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective May 16, 1988.

Issued in Seattle, Washington, on April 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10044 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-137-AD; Amdt. 39-5916]

Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to SAAB-Fairchild Model SF-340A series airplanes, which currently requires the use of continuous ignition during operations in icing conditions to prevent engine flameout due to ice ingestion. This amendment would permit an optional installation of an automatic ignition system which operates the ignition, when necessary, to prevent engine flameout.

EFFECTIVE DATE: June 17, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB-SCANIA, Product Support, S-58188, Linkoping Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Armella Donnelly, Standardization Branch, ANM-113; telephone [206] 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise Airworthiness Directive (AD) 85-26-51-R1, Amendment 39-5376 (51 FR 27527; August 1, 1986), applicable to SF-340A series airplanes, to provide for the optional installation of an automatic continuous ignition system, and a revision of the related Airplane Flight Manual procedures, was published in the Federal Register on November 18, 1987 (52 FR 44134).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter agreed with the proposal, but suggested that a warning be included in the automatic continuous ignition system design to alert the crew in the event of this system failure, thereby allowing for manual use of continuous ignition, if necessary. The FAA does not concur with this suggestion. Since failure of the ignition system is not, in itself, an unsafe condition, the FAA has determined that the addition of such a warning system is not necessary.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 manhours per airplane to accomplish the optional modification, and that the average labor cost will be $40 per manhour. Based on these figures, the cost of the optional modification to U.S. operators, should they choose to incorporate it, is estimated to be $2,000 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance with this amendment per airplane ($2,000). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 FR 11.89.

§ 39.13 [Amended]

2. By amending AD 85-26-51-RI, Amendment 39-5376 (51 FR 27527; August 1, 1986), by revising paragraph B.2., as follows:

Saab-Fairchild: Applies to all Model SF-340A series airplanes, certificated in any category. Compliance required as shown below.

To minimize the hazards associated with engine flameout due to potential ice ingestion, accomplish the following, unless previously accomplished:

A. Prior to further flight, install a continuous ignition switch by incorporating the provisions of SAAB-Fairchild SF-340 Service Bulletin SF340-74-002, Revision 1, dated December 15, 1985.

B. Incorporate the following into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the airplane flight manual.

1. Takeoff in conditions of slush on the runway is prohibited unless Modification 1165, "Nacelle—Exhaust Nozzle—Improved Drainage and Ventilation of Inlet Protection Device (IPD) and Special Inspection," as described in SAAB-Fairchild Service Bulletin SF340-54-002, Revision 1, dated April 3, 1985, has been accomplished.

2. Turn the engine and propeller anti-ice systems on and set the ignition ("IGN") switch to the continuous ("CONT") position during all operations in which icing could reasonably be expected to occur and for a period of five minutes after these conditions no longer exist. When Modification 1414, "Ignition—Introduction of Auto Ignition System," has been accomplished in accordance with SAAB Service Bulletin SF340-74-004, dated October 24, 1986, or a production equivalent, set the ignition switch to the "NORM" position.

3. In the definition of icing conditions stated in the FAA-approved flight manual on page 2-11, change the temperature stated in "Icing Conditions," paragraph 1, line 4, from "5° C" to "10° C," unless Modification 1319, "Installation of New Lower Inlet, IPD and Exhaust Nozzle," as described in SAAB-Fairchild Service Bulletin SF340-71-017, dated November 22, 1985, has been accomplished. If this modification has been accomplished, "5° C" can remain in the definition.

C. Conduct engine performance monitoring in accordance with General Electric Operating Engineering Bulletin (OEB) 2, Revision 4, dated December 14, 1985, or later FAA-approved revision.

D. Prior to further flight, and at intervals specified in General Electric OEB 4, Revision 4, dated December 14, 1985, or later FAA-approved revisions, perform an inspection and perform maintenance, as necessary, of the ignition system in accordance with that OEB.

E. Unless Modification 1319, as described in paragraph B.3., above, has been accomplished, in the event of an icing encounter, an inspection must be accomplished prior to the next departure to assure that no snow, ice, or slush accumulation is present in or around the inlet or the inlet protection device.

F. Following each flameout or re-ignition event, conduct an inspection of Stage 1 compressor blades, in accordance with General Electric OEB 4, Revision 4, dated December 14, 1985, or later FAA-approved revisions.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to SAAB-SCANIA, Product Support, S-58188, Linkoping, Sweden.

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 17, 1988.

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Issued in Seattle, Washington, on April 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10039 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-48]

Amendment of Transition Area; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Lake Charles, LA. This revision is necessary since a new standard instrument approach procedure (SIAP) to Runway 15 at Chennault Industrial Airpark, Lake Charles, LA, has been developed. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this amendment, the status of the Chennault Industrial Airpark will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On November 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Lake Charles, LA (52 FR 44139).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Lake Charles, LA. The development of a new SIAP to Runway 15 at the Chennault Industrial Airpark, Lake Charles, LA, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP by expanding the existing 700-foot Lake Charles Transition Area. Coincident with this action is the changing of the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake Charles, LA [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lake Charles Municipal Airport (latitude 30°07'32" N., longitude 93°13'22" W.), and within an 8.5-mile radius of the Chennault Industrial Airpark (latitude 30°12'37" N., longitude 93°08'35" W.).

Issued in Fort Worth, TX, on April 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-10041 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-36]

Revision of Transition Area; Big Sandy, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Big Sandy, TX. The development of a new standard instrument approach procedure (SIAP) to the Ambassador Field Airport, Big Sandy, TX, utilizing the Quitman Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. In addition, the SIAP to the Holly Lake Ranch Airport has been canceled, also making this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Ambassador Field Airport, and to return that controlled airspace no longer required due to the cancellation of the SIAP that was serving the Holly Lake Ranch Airport. Coincident with this action is the changing of the status of the Ambassador Field Airport from visual flight rules (VFR) to instrument flight rules (IFR) and the changing of the status of the Holly Lake Ranch Airport from IFR to VFR.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On December 18, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Big Sandy, TX (53-FR-516).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the transition area located at Big Sandy, TX. The development of a new SIAP to the Ambassador Field Airport, utilizing the Quitman VORTAC, and the cancellation of the SIAP that was serving the Holly Lake Ranch Airport have made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Ambassador Field Airport and to return that controlled airspace no longer required due to the cancellation of the SIAP that was serving the Holly Lake Ranch Airport. Coincident with this action is the changing of the status of the Ambassador Field Airport from VFR to IFR, and the changing of the status of the Holly Lake Ranch Airport from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Big Sandy, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ambassador Field Airport (latitude 32°35'03" N., longitude 95°04'03" W.), and within 4.5 miles each side of the 139° radial of the Quitman VORTAC (latitude 32°52'40" N., longitude 95°22'00" W.), extending from the 6.5-mile radius to 15 miles northwest of the Ambassador Field Airport; and within a 5-mile radius of the Gilmer Upshur County Airport (latitude 32°41'47" N., longitude 94°56'55" W.); and within a 5-mile radius of the Gladewater Municipal Airport (latitude 32°31'44" N., longitude 94°56'16" W.).

Issued in Fort Worth, TX, on April 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-10042 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-37]

Revision of Transition Area; Dalhart, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Dalhart, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Dalhart Municipal Airport, utilizing the Dalhart Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the airport.

EFFECTIVE DATE: 0901 UTC, June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On December 18, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Dalhart, TX (53 FR 619).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Dalhart, TX. The development of a new SIAP to Runway 35 at the Dalhart Municipal Airport, utilizing the Dalhart VORTAC, has necessitated this revision. This revision will increase the existing transition area by one-half mile and will add a new 4-mile wide arrival extension south of the airport. The existing 4-mile wide arrival extension north of the airport will remain the same. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Dalhart, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Dalhart Municipal Airport (latitude 36°01'16" N., longitude 102°32'52" W.), within 2 miles each side of the 002°

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radial of the Dalhart VORTAC (latitude 36°05'39" N., longitude 102°32'39" W.), extending from the 9.5-mile radius area to 12 miles north of the airport; and within 2 miles each side of the 181° radial of the Dalhart VORTAC extending from the 9.5-mile radius area to 14.5 miles south of the airport.

Issued in Fort Worth, TX, on April 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-10040 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71268-7268]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers; Correction

March 29, 1988.

AGENCY: Export Administration, Commerce.

ACTION: Final rule; correction.

SUMMARY: A final rule that revised Export Control Commodity Number (ECCN) 1565A on the Commodity Control List (15 CFR 399.1, Supplement No. 1) was published in the **Federal Register** on January 29, 1988 (53 FR 2582). That rule decontrolled certain 16-bit computers and made other editorial changes to ECCN 1565A, which were based on agreements made by the Coordinating Committee. This document corrects three errors that appeared in the January rule.

Specifically, paragraph references cited in paragraph (d)(2) of Advisory Note 5 to equipment that would not likely be approved for export to Country Groups QWY are corrected, the word "and" is added to appear after paragraph (c) and not paragraph (d)(2), and the word "instruction" that appears in the definition of "fixed point processing data rate" is changed to the plural.

FOR FURTHER INFORMATION CONTACT: Joseph Westlake, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-2279.

Accordingly, the following corrections are made to Supplement No. 1 to § 399.1, ECCN 1565A, in the "Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers," which was published in the **Federal Register** on January 29, 1988:

Supplement No. 1 to § 399.1
[Corrected]

On page 2586, in the first column, in Advisory Note 5, paragraph (c) is corrected by adding "and" at the end of the paragraph after the semi-colon; and paragraph (d)(2) is correctly revised to read "(2) Equipment described in paragraph (h)(1)(i)(C) and (h)(1)(i) (E) to (M)."

On page 2591, in the first full Note in the second column, in the definition of "fixed point processing data rate," the text that appears between the first and second formulas is correctly revised to read "*or* if no fixed point multiplication instructions are implemented ($t_{mx} = t_{mcub}$), then:".

Dated: May 3, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-10116 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 390

[DoD Directive 5105.33]

Armed Forces Radiobiology Research Institute (AFRRI); Establishment

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the Armed Forces Radiobiology Research Institute as a subordinate command of the Defense Nuclear Agency. This part updates and clarifies the responsibilities of the (AFRRI). The Institute was established under the authority vested in the Secretary of Defense and serves as the principal ionizing radiation radiobiology research laboratory for the Department of Defense.

EFFECTIVE DATE: November 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. R. Sphar, Office of the Under Secretary of Defense (Acquisition), Room 3D129, the Pentagon, Washington, DC 20301-3080, telephone number (202) 697-8535.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 390

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 390 as follows:

PART 390—ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE

Sec.

390.1 Purpose.
390.2 Applicability.
390.3 Policy.
390.4 Responsibility.
390.5 Organization.
390.6 Functions.
390.7 Authority.
390.8 Effective date and implementation.

Authority: 10 U.S.C. 133.

§ 390.1 Purpose.

This part is issued to update and clarify the responsibilities and functions of the Armed Forces Radiobiology Research Institute (AFRRI). It sets forth the organizational relationships and establishes the management and administrative procedures for AFRRI, in accordance with 32 CFR Part 381 and provides for the establishment of a Board of Governors.

§ 390.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 390.3 Policy.

It is DoD Policy that:

(a) AFRRI is designated a subordinate command of the Defense Nuclear Agency (DNA) established under the authority vested in the Secretary of Defense.

(b) AFRRI shall serve as the principal ionizing radiation radiobiology research laboratory for the Department of Defense and shall support defense research requirements identified by the DoD Components. AFRRI may provide services and perform cooperative research with other Federal and civilian agencies and institutions with the approval of the Director, DNA.

(c) The mission of AFRRI shall be to conduct research in the field of radiobiology and related matters essential to the operational and medical support of the Department of Defense and the Military Services.

(d) For purposes of cognizance by the Under Secretary of Defense for Acquisition (USD(A)), the AFRRI program shall be considered an integral part of the medical and life sciences research, development, test, and evaluation program.

§ 390.4 Responsibilities.

(a) The *Director, Defense Nuclear Agency*, shall:

(1) Manage the AFRRI, as provided by 32 CFR Part 381.

(2) Provide adequate support for the operation and maintenance of AFRRI within the limits of resources available to the DNA for such purposes.

(3) Chair the AFRRI Board of Governors, which shall consist of the Surgeons General of the Army, Navy, and Air Force; the Deputy Chiefs of Staff for Operations of the Army, Navy, and Air Force, or their designated representatives; and representatives of the (USD(A)) and the Assistant Secretary of Defense for Health Affairs (ASD(HA)). The Board of Governors shall:

(i) Meet at least annually and at the call of the Chair.

(ii) Invite advisors to these meetings.

(iii) Make periodic visits to AFRRI.

(iv) Advise the Director, DNA, and the Director, AFRRI, on AFRRI's performance by doing the following:

(A) Review the AFRRI research program and scientific findings.

(B) Provide advice on the long term direction of AFRRI's research program.

(C) Facilitate the communication of Service requirements and the dissemination of AFRRI research findings.

(D) Review Service nominations for Director, AFRRI, and provide a prioritized list of nominees to the Director, DNA.

(b) The *Director, Armed Forces Radiobiology Research Institute* (AFRRI), shall:

(1) Execute the approved day-to-day research program.

(2) Prepare the AFRRI long-range research program; annual planning, programming, and budgeting system submission; and facilities master plans for approval by the Director, DNA.

(3) Plan, program, and budget for funds to include in the DNA program. This does not prevent AFRRI's participation in reimbursable activities, subject to the approval by the Director, DNA.

§ 390.5 Organization.

AFRRI shall consist of a Director, a Scientific Director, and a supporting staff.

(a) The Director, AFRRI, shall be a military officer (in grade O-6) who holds an earned doctoral degree in one of the life sciences. The candidates for Director shall be nominated by the Surgeons General of the Army, Navy, and Air Force. Each Service shall nominate one individual with the proper background. Candidates shall be nominated on the basis of professional qualifications and demonstrated management ability. The Board of Governors shall review the Service nominees and provide a prioritized list of candidates to the Director, DNA, who shall select and appoint the Director, AFRRI. This appointment shall be for a 4-year period.

(b) The Scientific Director shall be a civilian with professional qualifications acceptable to the Board of Governors and the Director, AFRRI.

(c) The professional, technical, and supporting staff shall consist of military and civilian personnel authorized by a Joint Table of Distribution (JTD), developed by the Director, AFRRI, with approval of Director, DNA, and approved by the Joint Chiefs of Staff (JCS). Insofar as possible, the military members of the staff shall be provided equally by the Military Departments.

(d) The Military Departments shall assign military personnel to AFRRI in accordance with approved authorizations. Procedures for such assignments shall be as agreed between the Director, DNA, and the individual Military Departments.

(e) The pay, allowances (including subsistence), and permanent change-of-station costs of military personnel assigned to AFRRI shall be budgeted for and paid by the Military Department concerned. Additionally, these and other costs that are caused by or benefiting AFRRI, regardless of financing, shall be allocated to AFRRI in accordance with DoD Instruction 7220.24 [1] to identify the total cost associated with operating AFRRI and the share of that total cost allocatable to each of AFRRI's research projects.

§ 390.6 Functions.

Under established DoD policies, AFRRI shall:

(a) Operate research facilities for the study of radiobiology and ionizing radiation bioeffects, and disseminate the results.

(1) The scope of this research shall reflect requirements identified by DoD Components in support of military operational planning and employment (current and future), and shall give special emphasis to individual and organizational performances under nuclear combat conditions in realistc operational scenarios.

(2) The AFRRI program shall consider the present and projected threats, Service operational concepts and weapons, and defense systems developments.

(b) Provide analysis, study, and consultation on the impact of the biological effects of ionizing radiation on the organizational efficiency of the Military Services and their members.

(c) Conduct cooperative research with the Military Medical Departments in those aspects of military operational and medical support considerations related to nuclear weapons effects and the radio biological hazards of space operations.

(d) Conduct advanced training in the field of radiobiology and the biological effects of nuclear weapons to meet the internal requirements of AFRRI, the Military Services, and other Dod Components and organizations.

(e) Perform such other functions as may be assigned.

§ 390.7 Authority

32 CFR Part 381 applies to the Director, DNA, for exercising headquarters management of AFRRI and fulfilling the functional responsibilities implicit in this part.

§ 390.8 Effective date and implementation.

This part is effective November 25, 1987. Forward two copies of implementing documents to the Under Secretary of Defense of Acquisition within 120 days.

May 2, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 2, 1988.

[FR Doc. 88-10112 Filed 5-5-88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center, Attention: Codes 1052, Philadelphia, PA 19120.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-22]

Special Local Regulations; Marine Event; American Diabetes Association Choptank River Swim Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the American Diabetes Association Choptank River Swim. This event will consist of approximately 400 swimmers swimming the Choptank River from shore to shore. The swim course will begin at the sandy beach in front of the Ferry Boat Restaurant on the Talbot County side,

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run parallel to and within 200 feet of the Choptank River Bridge and end at the south shore. The intended effect will be to restrict general navigation in the regulated area. These regulations are needed to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 9:30 a.m. until 12:00 Noon, May 29, 1988.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received in sufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this regulation are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

Fletcher Hanks is sponsoring the event, which will consist of approximately 400 swimmers swimming the Choptank River from the north shore in front of the Ferry Boat Restaurant on the Talbot County side, run parallel to and within 200 feet of the Choptank River Bridge, and end at the south shore. It is necessary to close a portion of the Choptank River to all traffic except participants for the safety of those competing in the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0522 is added to read as follows:

§ 100.35–0522. Choptank River, MD.

(a) *Definitions:*

(1) *Regulated Area:* The waters of the Choptank River, from shore to shore, between the Choptank River Bridge and a line drawn from the north shore at latitude 38°37'37" North, longitude 76°03'08" West and the south shore at latitude 38°34'25" North, longitude 76°04'03" West.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations:*

(1) Except for participants in the Choptank River Bridge Swim, or vessels authorized by the Coast Guard Patrol Commander, no vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

Effective Date: These regulations are effective from 09:30 a.m. until 12:00, Noon, May 29, 1988.

Dated: April 26, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–10063 Filed 5–5–88; 8:45 am]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Part 9

Implementation of the Freedom of Information Reform Act of 1986 and Revisions to the Fee Schedule of the Freedom of Information Act

AGENCY: Panama Canal Commission.

ACTION: Final rule with change.

SUMMARY: This rule revises the Panama Canal Commission regulations implementing the Freedom of Information Reform Act of 1986 and updates its fee schedule for Freedom of Information Act and Privacy Act requests. In addition to the changes detailed in the interim rule identifying different types of requesters and bringing the fees into conformance with OMB guidelines and in line with current costs, this agency is including a fee waiver policy.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Duty, Agency Records Officer, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011–5000.

SUPPLEMENTARY INFORMATION: On August 20, 1987, (52 FR 31396) the Panama Canal Commission published an interim rule concerning its regulations implementing the Freedom of Information Reform Act (Pub. L. 99–570) and updating the fees it charges requesters under the Freedom of Information Act and the Privacy Act. The public was provided a 60-day comment period which ended on October 19, 1987. One comment was received and it was from the Justice Department requesting that this agency institute a fee waiver policy. After review of this request, the Panama Canal Commission is including a fee waiver policy in its Fee Schedule. This fee waiver policy follows the procedures set by the Justice Department in an April 2, 1987 memorandum. Consequently, the Panama Canal Commission's Freedom of Information Act/Privacy Act regulations and fee schedule are adopted as a final rule with the revision to include the fee waiver.

This rule is not a major rule under the requirements of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 9

Freedom of information, Organization, Functions and availability of records, Panama Canal Commission, Privacy.

Accordingly, the interim rule amending 35 CFR Part 9 is adopted as a final rule with the following change:

PART 9—ORGANIZATION, FUNCTIONS, AND AVAILABILITY OF RECORDS PANAMA CANAL COMMISSION

1. The authority citation for Part 9 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207; 22 U.S.C. 3611.

§ 9.11 [Amended]

2. Section 9.11(e) is revised to read as follows:

* * * * * * *

(e) If you wish to request a waiver or reduction of fees, you must do so in writing to the Chief, Administrative Services Division, Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. The Agency Records Officer may waive or reduce the fees if the official decides that providing the records you request would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Agency Records Officer will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Agency Records Officer will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(3) The Agency Records Officer will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Agency for another information access request.

(4) The Agency's decision to refuse to waive or reduce fees as requested under this section may be appealed to the Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011–5000. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees. The requester will be notified within thirty working days from the date on which the Agency received the appeal.

Dated: May 3, 1988.

D.P. McAuliffe,

Administrator.

[FR Doc. 88–10127 Filed 5–5–88; 8:45 am]

BILLING CODE 3640–04–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

NARA Fee Schedule

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** on Wednesday, April 13, 1988 (53 FR 12150). Section 1258.12, appearing on page 12151, contains no paragraph (d). This document corrects the paragraph designations.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 523–3214.

Accordingly, in 36 CFR 1258.12 appearing in columns 2 and 3 of 53 FR 12151, paragraphs (e) through (i) are correctly designated as paragraphs (d) through (h).

Dated: April 29, 1988.

Claudine Weiher,

Acting Archivist of the United States.

[FR Doc. 88–10131 Filed 5–6–88; 8:45 am]

BILLING CODE 7515–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Amendments to Veterans' Job Training Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Compensation Cost-of-Living Adjustment Act of 1987 contains a provision which extends the deadline for a veteran to apply for training under the Veterans' Job Training Act to June 30, 1988. The regulation which contains this deadline is amended to reflect this new provision of law.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Pub. L. 100–227, the Veterans Compensation Cost-of-Living Adjustment Act of 1987, contains a provision which affects the Veterans' Job Training Act. The deadline for a veteran to apply for training has been extended to June 30, 1988. The Veterans Administration (VA) is adopting an amendment to § 21.4632(e) in order to make it consistent with the law.

The VA finds that good cause exists for making the amended regulation final without previous publication of a notice of proposed rulemaking; and for making this extension retroactively effective on the effective date of the law. The change contained in the regulation is directly based upon the law. The VA must make the Code of Federal Regulations agree with the law. Public participation in this rulemaking is, therefore, unnecessary. Since a Notice of Proposed Rulemaking is unnecessary and will not be published, this change does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2), and is, therefore, not subject to the requirements of that Act.

Nevertheless, this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. Although small entities will be affected by the extension of the Veterans' Job Training Act, all the effects will derive from the change in the law upon which the regulation is based. The regulation itself will have no effect upon small entities.

The VA has determined that the amended regulation does not contain a major rule as the term is defined by Executive Order 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.121.

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List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 13, 1988.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.4632(e)(2)(i) to read as follows:

§ 21.4632 Payments.

* * * * *

(e) * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after June 30, 1988;

(Authority: Pub. L. 98–543, sec. 212; Pub. L. 99–108; Pub. L. 99–238, sec. 201(e); Pub. L. 100–77, sec. 901(b); Pub. L. 100–227, sec. 201)

* * * * *

[FR Doc. 88–10098 Filed 5–5–88; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Mailer Endorsement Specifications for Requesting Ancillary Services

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking modifies postal regulations to improve and standardize the endorsements through which a mailer requests certain forwarding or address correction services if a mail piece is undeliverable as addressed. To aid in execution of the service the mailer intends to request, the regulation prescribes the location, wording, and print size of permissible endorsements. When this rule becomes effective, a mail piece bearing a nonstandard endorsement will be refused.

EFFECTIVE DATE: November 5, 1988.

FOR FURTHER INFORMATION CONTACT: John Sadler, (202) 268–3523.

SUPPLEMENTARY INFORMATION: On February 25, 1988, the Postal Service published a proposed rule to modify the requirements for mailer ancillary service endorsements. 53 FR 5593. The Postal Service received twenty-one written comments to the proposed rule.

Ten respondents stated they support the Postal Service in its effort to standardize the placement and use of specific endorsement language for ancillary services. These respondents concurred with the Postal Service's judgment that enforcement of definitive regulations governing the use of mailer endorsements will facilitate the appropriate handling of mail at reduced costs for both mailers and the Postal Service.

The proposed rule would require a clear space of at least ¼ inch above and ¼ inch below an endorsement. Sixteen respondents expressed the view that the ¼" clear space requirement is unworkable on smaller envelopes. Operationally it is essential to leave a clear zone above and below the endorsement to ensure that the requested ancillary service is consistently provided. While the size of a #10 envelope leaves relatively little space between the return address and the address block, particularly when it is bar coded, the Postal Service believes that the ¼" clear space can and should be maintained. Mailers utilizing smaller envelopes can resolve their problems by choosing to eliminate non-address information in the return address area, eliminate the endorsement, or use a larger envelope. For these reasons, there will be no change to the specification for a ¼" clear space above and below the endorsement.

Fifteen respondents stated that the proposed print size requirements for endorsements are too restrictive in those situations where firm names and logos are considered. We recognize that a comparison to type size is unworkable when the oversize type for firm names and logos is used. Many respondents suggested that a specific type size requirement would be easier to comply with than a comparison to return address size or recipient address size. For these reasons, the final rule has been changed to provide that endorsements must be no smaller than 8 point Helvetica medium type or a manufacturer's generic equivalent.

Twelve respondents felt that the proposed prohibition on the use of brilliant colors and reverse printing for endorsements is unnecessary. These respondents expressed the opion that the maintenance of a ¼" clear space would eliminate the need for a prohibition on the use of brilliant colors. There seems to be some confusion over this proposal. This requirement comes from an existing regulation and specifically applies to the use of brilliantly colored envelopes which are not allowed under section 2000.011 of the Domestic Mail Classification Schedule (See 39 CFR Part 3001, Subpt. C, App. A). This provision has been clarified in the final rule to focus only on the use of brilliantly colored envelopes. Because recognition of information presented using reverse printing is more difficult for the human eye to assimilate, the prohibition on reverse printing will remain in the regulation.

Eleven respondents opposed the mandatory endorsement requirements of the proposed rule as being too restrictive. The Postal Service recognizes that these requirements are stringent, but believes they are fully justified. Operationally we feel we must have the authority to refuse mail improperly prepared, because without that authority the current problems cannot be eliminated. Mailers will continue to place endorsements all over mail pieces and use unclear abbreviations, and delivery personnel will continue to spend excessive time trying to find and decipher the endorsement to provide the requested service.

Eight respondents expressed the view that the authorized abbreviations are unclear. However, only one respondent offered alternatives to the proposed abbreviations. While full endorsements are more understandable, the commenter's suggestions would cause a greater lack of clarity operationally. The Postal Service permits abbreviations for long endorsements because we recognize there are situations where abbreviations are necessary. We believe the abbreviations published in the proposed rule are appropriate to cover such situations.

Seven respondents stated that the endorsement location requirement is unclear or too restrictive for non-letter size mail. Operationally this is the most important requirement of all. If the endorsement is consistently placed, delivery personnel can easily find it. In order to simplify the rules, however, the final regulations will specify, for all types of mail, that the endorsement be placed directly below the return address. We are also retaining the requirements that a full return address be used on all endorsed mail and that endorsements read in the same direction as the recipient's address.

Five respondents felt that the implementation timeframe is too short. While implementation timeframes were not specifically addressed in the proposed rule, the respondents stated that existing envelope stocks would take at least six months to exhaust. Therefore, we are delaying the implementation of this rule for six months. During the six month phase-in period mail will be accepted and delivered according to current practice.

We hope that the six month period will be used by both industry and postal personnel as an educational opportunity. Mailers who still have problems after the November 5 implementation date should consult their local postmaster.

Two respondents requested that if mail not bearing correct endorsements is nevertheless entered into the mailstream, such mail should be handled in accordance with the mailer's endorsement and not be returned by delivery personnel for violating the endorsement requirements. Section 151.151 has been amended to reflect this view.

One respondent suggested that we remove those sections dealing with invalid endorsements. The Postal Service has in the past used this section to clarify exactly which endorsements are not valid. With this rulemaking, the emphasis has shifted to the specification of valid endorsements, as outlined in Exhibits 159.151a–f. Accordingly, the final rule is changed to delete the listing of invalid endorsements for each class of mail.

Based on the proposed rule and consideration of the comments received, the Postal Service hereby amends the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1.), as follows:

PART III—[AMENDED]

1. The authority citation in 39 CFR Part III continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 122—DELIVERY ADDRESS

2. In Part 122, 122.17 is revised as follows:

122.17 Endorsements.

A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service or return (see 159.3), must appear below the sender's return address. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece, directly below the return address; on other mail, the information must appear directly below the return address. Endorsements must be no smaller than 8 point Helvetica medium type or a manufacturer's generic equivalent. Endorsements must be printed so that they read in the same direction as the delivery address. There must be a clear space of at least ¼ inch both above and below the endorsement. An endorsement must stand out clearly against its background. A reasonable degree of color contrast (see 324.614 for acceptable specifications) must be maintained between the endorsement and the background of the mail piece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colored envelopes and reverse printing are not permitted. See Exhibits 159.151a–f for specific mailer endorsements authorized for each class of mail. Mail bearing an endorsement that does not meet the requirements of this section and 159.151 will not be acceptable for mailing.

Examples

a. Frank B White, 2416 Front Street, St Louis MO 63135–1234
FORWARDING & RETURN POSTAGE GUARANTEED

b. Frank B White, 2416 Front Street, St Louis MO 63135–1234
ADDRESS CORRECTION REQUESTED

c. Frank B White, 2416 Front Street, St Louis MO 63135–1234
FORWARDING & RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION REQUESTED

d. Frank B White, 2416 Front Street, St Louis MO 63135–1234
FORWARDING & ADDRESS CORRECTION REQUESTED

* * * * *

PART 159—UNDELIVERABLE MAIL

3. In Part 159, 159.151 is revised as follows:

159.15 Treatment of Undeliverable-as-Addressed Mail.

.151 Except as provided in 159.153, mail that is undeliverable as addressed may be forwarded, returned to the sender, or treated as dead mail, depending on the treatment authorized for that particular class of mail. A summary of the procedures for handling undeliverable as addressed mail is presented in Exhibits 159.151a–f. The chapters covering each class of mail contain more detailed provisions. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece, directly below the return address; on other mail, the information must appear directly below the return address. Endorsements must be no smaller than 8 point Helvetica medium type or a manufacturer's generic equivalent. Endorsements must be printed reading in the same direction as the delivery address. There must be a clear space of at least ¼ inch both above and below the endorsement. An endorsement must stand out clearly against its background. A reasonable degree of color contrast (see 324.614 for acceptable specifications) must be maintained between the endorsement and the background of the mail piece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colored envelopes and reverse printing are not permitted. Mail bearing an endorsement that does not meet these requirements will not be accepted for mailing.

Note.—These requirements are to be applied only by trained acceptance personnel. Delivery personnel are not to make determinations about the correctness of endorsements. If mail, bearing an endorsement that does not meet these requirements, is accepted, the Postal Service will make reasonable efforts to honor the mailer's service request.

4. Exhibits 159.151a through 159.151f are amended as follows:

EXHIBIT 159.151a.—TREATMENT OF UNDELIVERABLE EXPRESS MAIL AND FIRST-CLASS MAIL, INCLUDING POSTAL AND POSTCARDS AND PRIORITY MAIL

Mailer endorsement	USPS action
No Endorsement	Forward at no charge (months 1–12). If undeliverable, return to sender with reason for nondelivery.
Address Correction Requested, or Do Not Forward.	Do Not Forward. Provide address correction or reason for nondelivery on mail piece. Return entire mail piece at no charge to sender.
Forwarding and Address Correction Requested.	Forward at no charge (months 1–12). If undeliverable, return to sender with reason for nondelivery attached at no charge. Charge the address correction fee if separate address correction is provided to mailer.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

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EXHIBIT 159.151b.—TREATMENT OF UNDELIVERABLE SECOND-CLASS MAIL

Mailer endorsement	USPS action
No Endorsement	Forward at no charge for 60 days. After 60-day period, provide separate address correction or reason for nondelivery; charge address correction fee.
Return Postage Guaranteed.	Forward at no charge for 60 days. After 60-day period, return item to sender with new address or reason for nondelivery attached; charge the single piece third- or fourth-class rate.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

EXHIBIT 159.151c.—TREATMENT OF UNDELIVERABLE THIRD-CLASS BULK BUSINESS MAIL—WEIGHING 1 OUNCE OR LESS (FORWARDED UP TO 12 MONTHS)

Mailer endorsement	USPS action
No Endorsement or Do Not Forward. Address Correction Requested.	No forwarding or return service is provided. No forwarding service is provided. Return entire mail piece with address correction or reason for nondelivery; charge the first ounce single piece third-class rate, do not charge the address correction fee.
Forwarding and Return Postage Guaranteed.	Forward at no charge. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Forwarding and Return Postage Guaranteed, Address Correction Requested.[2]	Forward at no charge. If separate address correction notice is provided, charge the address correction fee. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Do Not Forward, Address Correction Requested, Return Postage Guaranteed.[3]	Do not forward. Return entire mail piece with the new address or reason for nondelivery; charge the first ounce single piece third-class rate; do not charge the address correction fee.

[1] The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1–12 when forwarding is unsuccessful and the mail piece is returned to the sender. During months 13–18 charge this fee on mail pieces endorsed *Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.*

[2] The authorized abbreviation for this endorsement is *Forward & Address Correction.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

[3] The authorized abbreviation for this endorsement is *Do Not Forward—Address Cor-Return Guar.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

EXHIBIT 159.151d.—TREATMENT OF UNDELIVERABLE THIRD-CLASS BULK BUSINESS MAIL—WEIGHING OVER 1 OUNCE (FORWARDED UP TO 12 MONTHS)

Mailer endorsement	USPS action
No Endorsement or Do Not Forward. Address Correction Requested.	No forwarding or return service is provided. No forwarding service is provided. Address correction is provided via Form 3547 or Form 3579; charge the address correction fee.
Forwarding and Return Postage Guaranteed.	Forward at no charge. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Forwarding and Return Postage Guaranteed, Address Correction Requested.[2]	Forward at no charge. If separate address correction notice is provided, charge the address correction fee. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Do Not Forward, Address Correction Requested, Return Postage Guaranteed.[3]	Do not forward. Return entire mail piece with the new address or reason for nondelivery; charge the appropriate single piece third-class rate; do not charge the address correction fee.

[1] The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1–12 when forwarding is unsuccessful and the mail piece is returned to the sender. During months 13–18 charge this fee on mail pieces endorsed *Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.*

[2] The authorized abbreviation for this endorsement is *Forward & Address Correction.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

[3] The authorized abbreviation for this endorsement is *Do Not Forward—Address Cor-Return Guar.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

EXHIBIT 159.151e.—TREATMENT OF UNDELIVERABLE THIRD-CLASS MAIL, SINGLE PIÉCE RATE (FORWARDED UP TO 12 MONTHS)

Mailer endorsement	USPS action
No Endorsement	No forwarding service is provided. Return the mail piece to the sender at the single piece third-class rate, with the reason for nondelivery or new address: do not charge the address correction fee.
Do Not Forward	No forwarding or return service is provided.
Address Correction Requested.	No forwarding service is provided. If the mail piece weighs one ounce or less, return the entire piece with the new address or the reason for nondelivery; charge the third-class single piece rate. Pieces over one ounce will receive an address correction notice via Form 3579 or Form 3547; charge the address correction fee.
Forwarding and Return Postage Guaranteed.	Forward at no charge. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Forwarding and Return Postage Guaranteed, Address Correction Requested.[2]	Forward at no charge. If separate address correction notice is provided, charge the address correction fee. If mail is not forwardable, return the entire mail piece with reason for nondelivery; charge the appropriate third-class weighted fee.[1]
Do Not Forward, Address Correction Requested, Return Postage Guaranteed.[3]	Do not forward. Return entire mail piece with the new address or reason for nondelivery; charge the appropriate single piece third-class rate, do not charge the address correction fee.

[1] The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1–12 when forwarding is unsuccessful and the mail piece is returned to the sender. During months 13–18 charge this fee on mail pieces endorsed *Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.*

[2] The authorized abbreviation for this endorsement is *Forward & Address Correction.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

[3] The authorized abbreviation for this endorsement is *Do Not Forward-Address Cor-Return Guar.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

EXHIBIT 159.151f.—TREATMENT OF UNDELIVERABLE FOURTH-CLASS MAIL INCLUDING PARCEL POST (FORWARDED UP TO 12 MONTHS)

Mailer endorsement	USPS action
No Endorsement	Forward locally at no charge, forward out of town postage due. If undeliverable or addressee refuses to pay postage, return mail piece with new address or reason for nondelivery; charge both forward (where attempted) and return postage
Do Not Forward, Do Not Return.[1]	No forwarding or return service is provided; mail piece is disposed of by the Postal Service.
Forwarding and Return Postage Guaranteed.	Forward locally at no charge, forward out of town postage due. If undeliverable or addressee refuses to pay postage, return mail piece with new address or reason for nondelivery; charge both forward (where attempted) and return postage.
Forwarding and Return Postage Guaranteed, Address Correction Requested.[2]	Forward locally at no charge; forward out of town postage due. If forwarded provide a separate address correction notice; charge address correction fee. If mail piece is undeliverable, or addressee refuses to pay postage, return mail piece with new address or reason for nondelivery; charge both forwarding (where attempted) and return postage.
Do Not Forward, Do Not Return, Address Correction Requested.[3]	No forwarding or return service is provided; provide a separate address correction notice; charge address correction fee; mail piece is disposed of by Postal Service.
Do Not Forward, Address Correction Requested, Return Postage Guaranteed.[4]	No forwarding service is provided; return mail piece with new address or reason for nondelivery; charge return postage.

[1] Mailers may continue to use the endorsements *Do Not Forward* which has been changed to *Do Not Forward-Do Not Return* and the *Address Correction Requested* endorsement until December 24, 1988, when a one year grace period expires.

[2] The authorized abbreviation for this endorsement is *Forward & Address Correction.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

[3] The authorized abbreviation for this endorsement is *Do Not Forward or Return-Address Cor.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

[4] The authorized abbreviation for this endorsement is *Do Not Forward-Address Cor-Return Guar.* This abbreviation is authorized in those limited situations where the full endorsement cannot be accommodated.

Notes.—These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time. When necessary, more than one line may be used to print the mailer endorsement.

PART 361—ADDRESSING

5. In Part 361, renumber 361.2, 361.3 and 361.4 as 361.3, 361.4 and 361.5 and add new 361.2 as follows:

361.2 Ancillary Service Endorsements.

Ancillary service endorsements must be those authorized in 159.151

PART 460—PREPARATION OF BULK RATE MAILINGS

6. In Part 460, add new 461 as follows:

461 Addressing.

The general procedures for addressing are contained in 122. Ancillary service endorsements must be those authorized in 159.151.

PART 661—ADDRESSING

7. In Part 661, the following sentence is added to 661.1: Ancillary service endorsements must be those authorized in 159.151.

PART 761—GENERAL REQUIREMENTS

8. In Part 761, amend 761.1 to read as follows:

761.1 Addressing.

.11 General. The general procedures for addressing are contained in 122.

.12 Ancillary Service Endorsement Requirements. Ancillary service endorsements must be those authorized in 159.151.

.13 ZIP Code. The address on all fourth-class matter mailed at bulk parcel post, bound printed matter, library, and special fourth-class rate must contain either the ZIP + 4 code or the five-digit ZIP Code.

.14 Return Address. The return address of the sender must be shown on all fourth-class mail.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–10114 Filed 5–5–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3376–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Texas Lead Plan for El Paso County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action announces EPA's final approval of revisions to the Texas State Implementation Plan (SIP) for lead for the El Paso area of the State, and announces EPA's approval of the Texas Lead SIP's National Ambient Air Quality Standards attainment date for El Paso County and for the limited area surrounding the ASARCO smelter in El Paso County. These revisions are to certain stack emission limits in Texas Regulation III, Subchapter B, titled Lead from Stationary Sources, Nonferrous Smelters in El Paso County. A modeling analysis using these revised emission limits now demonstrates attainment by modeling of the NAAQS for El Paso County. The rest of the Texas SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a **Federal Register** notice published on October 4, 1983 (48 FR 45246).

EFFECTIVE DATE: This rule will become effective on June 6, 1988.

ADDRESSES: Copies of the SIP and EPA's evaluation report (EPA Evaluation Report for the Texas Lead SIP Revisions for the El Paso Area, March 1988) are available for public inspection during normal business hours at the following locations: EPA, Region 6, Library, 12th Floor, Allied Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202; Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jim Callan, EPA, Region 6, telephone (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: The pertinent background information concerning this final rule was presented in the proposed rulemaking which was published in the **Federal Register** on August 16, 1985 (50 FR 33069) and on September 28, 1987 (52 FR 36282). The 1987 proposed action was based upon the Texas Air Control Board (TACB) draft SIP revision submittal of January 8, 1987 and modeling submittal of May 15, 1987. EPA's review of the State's draft

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submittals raised two concerns. The first concern is the potential impact of emissions from the zinc plant on ambient lead levels since these emissions were not considered in the May 15, 1987, modeling. The second concern is an inconsistency in the options used in the Industrial Source Complex (ISC) modeling. Both concerns are addressed in today's notice.

The September 28, 1987, **Federal Register** notice proposed approval of revisions to the El Paso County Lead State Implementation Plan (SIP) contingent upon resolution of the two aforementioned concerns. This proposal was published as a parallel process action whereby EPA received a draft revision from the State and proposed approval of this draft. Subsequently, on August 14, 1987, the State of Texas adopted these revisions and submitted them to EPA under an October 26, 1987, letter from the Governor. Modeling was revised to address the two concerns and was submitted by the TACB in March 1988. Since no substantive changes exist between the draft revision and the adopted revision, and all necessary revisions to the atmospheric dispersion modeling were made, and no substantive adverse comments were received during the public comment period, EPA today takes final action approving the revisions to the El Paso County Lead SIP.

TACB Regulation III, Subchapter B, Lead from Stationary Sources, Nonferrous Smelters in El Paso County, requires Reasonably Available Control Technology (RACT) measures for the smelting of lead, copper, and zinc to control lead emissions from fugitive sources and point sources (stacks). The Regulation III provisions ensure that: (A) All point sources (stacks) at ASARCO having the potential to emit significant quantities of lead have emission limitations requiring the use of RACT such as baghouses, electrostatic precipitators, or scrubbers, and (B) all significant sources of fugitive lead emission are controlled by RACT methods such as enclosure or local hooding of emission points with routing to a ventilation system, and paving, cleaning, wetting and/or chemical treatment of plant roads and open unpaved plant property. All point sources (stacks) at the smelter are equipped with RACT, including baghouses, electrostatic precipitators (ESP's), or ESP's followed by an acid plant.

The current modeling demonstration utilized both the Industrial Source Complex Model-Long Term (ISC–LT) and Valley-BID models. Fugitive emission rates modeled remained the same as in the previous SIP analysis. Stack emission rates were revised in the modeling analysis consistent with revisions in TACB regulation 113.71(1). Stack sampling also revealed differences in stack exit parameters from those used in the original SIP, and changes in the modeling parameters were made accordingly.

Air Quality Impact Analysis

The previous air quality analysis performed by the TACB showed that for most of El Paso County, Texas and for all affected areas in the State of New Mexico, which is across the Rio Grande River immediately to the northwest, the lead National Ambient Air Quality Standard would be attained and maintained by August 13, 1984. However, the previous modeling identified potential violations in an area conterminous to the smelter.

The lead air quality impact analysis which supports this demonstration of attainment and maintenance was separated into two evaluations based on the type of terrain. In other words, the model known as Valley was applied to assess ASARCO lead emission impact on those receptors in complex terrain areas, and the ISC–LT model was used for evaluating the lead air quality impact in the other areas surrounding the smelter.

EPA's proposed approval action of September 28, 1987 (52 FR 36282) required ASARCO to revise its ISC–LT modeling to conform with the guidance with respect to the UNAMAP 6 Version and to address the emissions from the zinc plant. TACB submitted this previous modeling on May 15, 1987. Specifically, this UNAMAP Version 6 of ISC–LT utilizes all three regulatory options: buoyancy induced dispersion (BID), stack-tip downwash, and final plume rise. Whereas ASARCO's preliminary modeling submitted May 15, 1987, incorporated the first option, it failed to utilize the latter two.

ASARCO reworked the ISC–LT modeling to include both the stack-tip downwash and final plume rise options in addition to BID. In addition, ASARCO included emissions at maximum operating capacity from its zinc plant in both the Valley model and the reworked ISC–LT in UNAMAP Version 6 model described above. TACB received a formal submittal of both model outputs from ASARCO on December 23, 1987. Therefore, the modeling analysis was evaluated based on the modeling guidelines in place on that date, i.e. EPA's Guideline on Air Quality Models (Revised) (July 1986). EPA's subsequent promulgated revisions to this guideline on January 6, 1988 (53 FR 392) were not considered for this modeling analysis submittal.

With addition of the zinc plant emissions, the use of the UNAMAP Version 6, and the lower emission limits required in Regulation III, no exceedance of the lead standard (1.5 micrograms/m3) is predicted in the area conterminous to the smelter.

Public Comment

One letter was received during the public comment period. This October 27, 1987, letter was from Brown, Maroney, Rose, Barber & Dye, attorneys for ASARCO, Inc. These comments were on behalf of ASARCO. These comments noted approval of EPA's action proposing approval of the El Paso County Lead SIP, but objected to EPA's requirement that the ISC–LT modeling be reworked. Additionally, this letter stated the conditions under which ASARCO would request a State board order enforcing permanent shutdown of the zinc plant. These objections are addressed below. Since the modeling, both Valley and ISC–LT, was performed again to include the zinc plant's emissions, the letter's comments regarding an enforceable shutdown are a moot point.

Comment: EPA required use of the ISC–LT regulatory options to include final plume rise, buoyancy induced dispersion, and stack tip downwash. The commenter argues that use of all three options is inconsistent and technically inferior to the method used by ASARCO's consultant.

Response: With the effective date of the *Guideline on Air Quality Models (Revised)*, EPA–450/2–78–027R, July 1986, the use of the regulatory option became recommended guidance in the application of the ISC–LT air quality model. The regulatory option includes consideration of buoyancy induced dispersion, stack tip downwash and final plume rise. Since ASARCO's lead modeling was prepared after this effective date, the regulatory option as coded in the UNAMAP Version 6 of ISC–LT should have been exercised for the sake of national consistency.

The *Guideline on Air Quality Models (Revised)* also provides procedures for demonstrating that deviations from modeling guidance, such as using the non-recommended options that ASARCO considers to be technically superior, are appropriate. Since ASARCO did not provide evidence of such a demonstration, the use of the recommended options is appropriate.

Comment: The commentor expresses concern that, to their knowledge, none of the other three primary lead smelters in the county has been required to utilize all three options. He concludes that doing so for ASARCO—El Paso will not achieve consistency.

Response: As explained earlier, modeling of predicted ambient lead concentrations is to be conducted as per the current EPA modeling guidance. At the time ASARCO–El Paso was modeled, ISC–LT in UNAMAP Version 6 was the recommended model. The other three primary lead smelters referred to in the comments were modeled according to guidance in effect at that time.

Effects of Revision

This revision to TACB Regulation III and the El Paso Lead SIP changes only certain emission limits pertaining to stacks at the ASARCO facility. These changes result in a net reduction in the SIP's allowed lead emission rate limits. Modeling at these lower revised limits shows attainment of the NAAQS for lead based on 16 consecutive quarters of on site meteorological data and maximum plant operating rates, and typical operating parameter conditions. This revision demonstrates that the lead NAAQS around the ASARCO facility will be attained. As this is not a revision of the control technology, these revised limits were in effect immediately upon approval by the TACB. ASARCO is not committing to any additional controls, but is simply committing to lower emission limits.

Final Action

EPA is approving the State's request for a revision of the stack lead emission limits in the Texas Lead SIP for El Paso. With this approval of these tightened emission limits by the State and EPA, attainment of the NAAQS for lead is demonstrated by modeling for the limited area surrounding the ASARCO facility in El Paso County. Earlier modeling demonstrated attainment for all other areas. The Governor's request for a two year attainment date extension is now a moot point since the State has demonstrated attainment by August 1987 and therefore no further action by EPA is required on that request. This action announces EPA's approval of the part of the Texas Lead SIP for El Paso that was not previously approved on August 13, 1984 (49 FR 32184).

The Administrator hereby issues this notice setting forth EPA's approval of the request for a revision of the lead emission limits for the vent gas stacks in the Texas Lead SIP for El Paso, and announces EPA's approval of the demonstration of attainment by August 14, 1987, of the Texas Lead SIP for El Paso County and the limited area surrounding ASARCO. By this action, the entire lead SIP for El Paso is now approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1988. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).)

Incorporation by reference of the Texas State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Particulate matter, Incorporation by reference.

Dated: April 28, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart SS, is amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(65) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(65) In a October 26, 1987, letter, the Governor of Texas submitted a revision to the Texas State Implementation Plan for Lead in El Paso County. These revisions to the control strategy are adequate to demonstrate attainment by August 14, 1987, of the National Ambient Air Quality Standards for lead in El Paso County by modeling. Enclosed in this letter were Texas Air Control Board (TACB) Board Order No. 87–14 as passed and approved on August 14, 1987; the revisions to Regulation III, Subchapter B as appended to the Board Order; and a certification of Public Hearing.

(i) Incorporation by reference

(A) TACB Board Order No. 87–14, as adopted on August 14, 1987.

(B) The March 23, 1988, letter and enclosures from TACB to EPA.

3. Section 52.2279 is amended by adding "f." to read "f. August 14, 1987." under Note 1, and by revising the third and fourth from the last entry in the table to read as follows:

§ 52.2279 Attainment Dates for National Standards.

* * * * *

Air Quality Control Region	Particulate Matter		Sulfur Oxides		Nitrogen Dioxide	Carbon Monoxide	Ozone	Lead
	Primary	Secondary	Primary	Secondary				
* * *								
El Paso-Las Cruces Almagordo Interstate (El Paso County only)..... In City of El Paso, for an area immediately around ASARCO smelter, 0.5 km to the West and South, 2.0 to the North and East, and 1.5 km to the Southeast from the Smelter's copper stack	1c	1d	b	b	a	1c	c	f
* * *								f

Note 1:

* * * * * * *

f. August 14, 1987.

* * * * * * *

[FR Doc. 88–10214 Filed 5–5–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL-3375-6]

Maine; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Maine's application for final authorization.

SUMMARY: Maine has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Maine's application and has reached a final determination that Maine's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Maine to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Today, EPA is also publishing a compliance schedule for Maine to modify its program in accordance with 40 CFR 271.21(g) to adopt the Federal program modification.

EFFECTIVE DATE: Final authorization for Maine shall be effective at 1:00 p.m., on May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Stanley Chin, ME and VT Waste Management Branch, U.S. EPA (HPR-CAN2), JFK Federal Building, Boston, MA 02203, telephone: (617) 573-5777.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On February 8, 1985, Maine submitted an official application to obtain final authorization to administer the RCRA program. On August 13, 1987, EPA published a tentative decision announcing its intent to grant Maine final authorization. Further background on the tentative decision to grant authorization appears at 52 FR 30192, August 13, 1987.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application if sufficient public interest in holding a hearing was expressed. After letters requesting a public hearing were received, a public hearing was held on September 16, 1987 in Augusta, Maine, and the public comment period ended at 5:00 p.m., on Wednesday, September 23, 1987.

II. Responsiveness Summary

Five oral comments, some supplemented in writing, and twelve written comments were received during the public comment period. EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from the contact person listed previously. The significant issues raised by the commenters and EPA's responses are summarized below.

Comment: Many commenters asked what improvements have been made within the Maine Department of Environmental Protection (ME DEP) to (1) warrant final authorization and (2) create a more responsive attitude toward public participation?

Response: (1) Since January of 1986, when interim authorization for RCRA reverted to EPA, the ME DEP has made great strides to improve its hazardous waste management program. The ME DEP reorganized the Bureau responsible for the hazardous waste management program to better define responsibilities. New and additional staff were hired. EPA and the ME DEP developed multi-year strategies for permitting and compliance and enforcement. RCRA grant commitments for permitting, closure plan review, and inspections in FY'86 and FY'87 were met or exceeded by the ME DEP. For example, in FY'85, the ME DEP performed 24 RCRA inspections and finalized 3 Consent Agreements; in FY'87, the ME DEP performed 49 RCRA inspections and finalized 7 Consent Agreements. Quality of permits, closure plan review, inspections and enforcement actions improved. Communication between EPA and the ME DEP also improved. In FY'87, ME DEP and EPA initiated a monthly conference call to discuss compliance and enforcement issues. An additional monthly conference call will be added in FY'88 to discuss corrective action activities in the State. A more detailed description of the ME DEP's progress can be found in the Capability Assessment of Maine's application for final authorization. This Capability Assessment is available by request to the contact person listed earlier in this notice.

(2) Both EPA and the ME DEP welcome and encourage public participation in the RCRA process. Public participation by citizens and public interest groups have contributed to the strengthening of the Maine program. EPA will continue to work closely with the ME DEP to assure that the public is notified and involved as required under the RCRA process. ME DEP has implemented a citizen complaint log to assure that all complaints receive adequate followup. ME DEP maintains a mailing list to assure that all interested parties are informed of upcoming events and/or actions. EPA will also continue to conduct periodic reviews of the ME DEP to assure that all citizen complaints are addressed and resolved in a timely fashion. Finally, any official action taken by the ME DEP must be presented to and approved by the Board of Environmental Protection. The Board meetings are always open to the public for its input.

Comment: One commenter raised a number of questions focusing on three major issues: (1) What improvements have been made within the ME DEP to warrant final authorization, (2) what assurances do we have that commitments in the Letter of Intent will be carried out and (3) what role do citizens of Maine play in cooperating with the State to protect human health and the environment?

Response: (1) See previous EPA response above. (2) Both EPA and the ME DEP will make every effort to uphold the commitments set forth in the Letter of Intent. Maine's ability to run an authorized hazardous waste management program has been demonstrated by the improvements and the restructuring of the ME DEP. If commitments are not met for some reason (loss of staff, budget constraints, hiring freeze), EPA has other means to assure that all commitments are carried out. EPA can withhold federal funds under the annual RCRA grant from the State. In addition, EPA can overfile enforcement cases where the ME DEP has failed to take a timely and/or appropriate enforcement action. The ME DEP can also refer cases directly to EPA for action as it deems necessary. The EPA and ME DEP will continue to work closely after final authorization is granted to assure that the State's hazardous waste management program continues to be effective and commitments in the Letter of Intent are met. Finally, pursuant to 40 CFR 271.23(b), if the State fails to administer a program in conformity with RCRA and the RCRA regulations, EPA can withdraw authorization from the State and revert the program back to EPA. (3) See previous EPA response above.

Comment: One commenter questioned which agency would oversee the corrective action at a facility in Saco, ME in the event final authorization is granted.

Response: Corrective action authority is contained in the Hazardous and Solid Waste Amendments of 1984 (HSWA) to RCRA. Today's determination does not authorize Maine to implement the HSWA. This authority will remain with EPA. EPA will continue to be the primary contact at this site after final authorization is granted. However, EPA will continue to work closely with both the ME DEP and the public concerning the corrective action at this site.

Comment: Seven commenters questioned whether the ME DEP had enough staffing to perform inspections and enforcement adequately at RCRA regulated facilities.

Response: EPA has performed periodic reviews of the State's performance in FY'86 and FY'87. Although staffing was previously a concern, the ME DEP's performance has shown that the State is capable of operating an adequate hazardous waste program. The State has also committed, through the Letter of Intent, to hire two additional staff persons. These additional staff will help fill needs in the areas of inspections/enforcement and hydrogeology. EPA will continue to encourage additional staffing increases to the State program.

Comment: Six commenters requested that another public hearing be held or the public comment period be extended because proper notice of this hearing was not adequate.

Response: The tentative determination for Maine's authorization was published in the **Federal Register** on August 13, 1987 (52 FR 30192). The notice was also published in Maine's largest circulating newspaper on four separate dates and sent to all interested parties on the ME DEP's mailing list. The public comment period was open from August 13, 1987 to September 23, 1987 and a public hearing was held on September 16, 1987 in Augusta, ME. EPA believes that there was sufficient time allowed for public comment. Therefore, an extension or an additional public hearing is not necessary.

Comment: Ten commenters requested that final authorization be denied. The commenters cited the ME DEP's action or inappropriate action at a commercial solid waste landfill in Norridgewock, ME as the reason for denial.

Response: Today's final determination authorizes Maine, specifically the ME DEP's Bureau of Oil and Hazardous Materials Control, to operate its hazardous waste management program under Subtitle C of RCRA in lieu of the federal hazardous waste management program. The landfill in Norridgewock, ME is not regulated under this program and is not affected by today's determination. The ME DEP's Bureau of Land Quality Control operates the solid (non-hazardous) waste program which oversees and regulates the landfill in Norridgewock.

Comment: Three commenters questioned the ME DEP's ability to regulate hazardous waste. The commenters cited the ME DEP's inaction at three CERCLA sites and two facilities emitting odors into the ambient air.

Response: Today's final determination authorizes the State to operate its hazardous waste management program under Subtitle C of RCRA in lieu of the federal hazardous waste management program. EPA is not authorizing the State to oversee corrective action at CERCLA sites. This authority will remain with EPA. Air emissions are regulated under the federal Clean Air Act.

Authority to regulate air pollution sources in the State has been delegated to the ME DEP's Bureau of Air Quality Control. This Bureau is directly responsible for responding to citizen complaints and inquiries concerning air pollution sources.

Comment: One commenter opposed authorization, alleging that Maine's fee schedule for the disposal of out-of-state waste discriminates against interstate commerce and therefore was an unconstitutional and unreasonable restriction on the free flow of hazardous waste.

Response: EPA has evaluated Maine's fee schedule under the standard set forth in 40 CFR 271.4(a), which requires that any aspect of the State program which "unreasonably restricts, impedes, or operates as a ban" on the free movement of hazardous wastes across the state border from or to other States be deemed inconsistent with the Federal program. RCRA Section 3006 requires that EPA authorize State programs unless EPA finds that they are: (1) Not equivalent, (2) not consistent, or (3) lacking adequate enforcement authority. The Agency has interpreted the term "consistent" in 40 CFR 271.4 to preclude authorizing state programs with unreasonable restrictions or impediments or bans on the interstate flow of wastes. EPA has stated that it regards this interpretation as supported by the Supreme Court's decision in *City of Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978), which held unconstitutional a state statute banning transportation of certain wastes into the state for disposal because it violated the commerce clause of the Constitution (see 45 FR 33395, 33465-33466, May 19, 1980).

However, the Agency does not believe that it is required either by 40 CFR 271.4 or by RCRA Section 3006 to adjudicate the constitutionality of a state statute in the absence of any definitive judicial decision applicable to the statute at hand.

In reviewing the Maine program for consistency under 40 CFR 271.4(a), EPA has undertaken an evaluation to determine as a factual matter whether the fees unreasonably restrict, impede, or operate as a ban on interstate waste shipments. However, it should be noted that this evaluation of the effects of the fee must be strictly hypothetical because, at the present time, there are no commercial hazardous waste treatment or disposal facilities within Maine's borders and no shipments of hazardous waste to which the fees would apply. Thus, the fee has no demonstrable present effect on interstate commerce. The only question is whether the fee might be discouraging companies seeking to locate commercial hazardous waste facilities in Maine.

To determine whether the fee imposes such an unreasonable restriction, EPA obtained data on the fee's hypothetical effects, and actual past effects, from the ME DEP. EPA also performed its own assessment of the fee's effects. This information is available for inspection in the Responsiveness Summary which is available from the contact person listed previously in this notice. Based on this review, EPA is convinced that the fee is not a significant discouraging factor to the siting of a commercial hazardous waste facility in Maine and that it is not an unreasonable restriction.

In 1982, Maine adopted its present double fee on out-of-state wastes. At that time, there was one operating commercial hazardous waste facility in Maine (Union Chemical, South Hope, ME) which was subject to the double fee statute. In 1981, the year before the fee was imposed, Union Chemical received 68% of its waste from out of state. In 1983 and 1984, the years following the adoption of the fee, the percentage of out-of-state waste received by Union Chemical was 61.3% and 76% respectively. In addition, Maine currently has two commercial waste oil facilities which operate under a similar doubling provision. While these

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facilities were not in existence prior to the adoption of the double fee statute, they do indicate that the present effects of a doubling fee is not acting as a restriction or a ban on out-of-state waste. The percentage of out-of-state waste oil received by these facilities in 1986 and 1987 were as follows:

	1986 (percent)	1987 (percent)
Clean Harbors	73	77
Jetine	3	28

Clearly, these figures indicate that the doubling of the fee for out-of-state waste did not unduly restrict, impede, or operate as a ban on the flow of out-of-state waste to Union Chemical or the two waste oil facilities.

When analyzing the fee with respect to the overall costs of disposal of hazardous waste, the percentage increase ranges from 3.7% to 12.8% of the total disposal costs. In addition, New England presently does not have a commercial hazardous waste facility within its borders. If a commercial hazardous waste facility were to locate in Maine, it would be more economical for most generators in New England to dispose of its waste at the Maine facility even with the additional fee. This is true because the transportation costs to the present nearest facility (located in Buffalo, N.Y.) would be greater than the fee and transportation costs to Maine.

In addition, Maine contends that the State incurs additional administrative costs for out-of-state waste. The State is more likely to sample and analyze out-of-state waste because it has no knowledge of the generator's process and waste profile. The doubling fee is intended to defray these additional costs.

Moreover, the ME DEP has agreed to waive the fee for wastes originating in states which agree to provide reciprocal treatment to waste originating in Maine. Region I believes that it should be likely that in the event of the establishment of a permitted facility in Maine, Maine should be able to obtain reciprocity with most neighboring states. As a result, the incremental burden imposed by the fee would be minimal.

Therefore, the Agency is making a final determination that the Maine fee schedule does not impose an unreasonable impediment or restriction or operate as a ban on the free movement of hazardous waste under 40 CFR 271.4.

Notwithstanding, the Agency recognizes that the issue of discriminatory fees is difficult and complex. The Agency is currently undertaking an indepth examination of the issue. EPA is considering changes to 40 CFR 271.4. In the anticipated regulatory revision, EPA intends to further clarify its existing approach toward: the differences between fees and restrictions imposed by States that impede waste flow or affect waste treatment, storage or disposal capacity or facility siting, etc.; the level of scientific or legislative justification that States will have to provide to demonstrate that restrictions have an environmental basis; and, the degree to which economic inviability causes the fees or restrictions to act as prohibitions on waste transport or treatment, storage or disposal.

III. Limitations

Maine's hazardous waste regulatory program is broader in scope than is the Federal program, in that the State lists as hazardous wastes "* * * any chemical substances and combination of substances that contain 50 parts per million (on a dry weight basis) or greater of PCBs * * *", with certain exclusions. Such wastes are not regulated by the EPA under the RCRA program. In accordance with 40 CFR 271.1(i), state-imposed requirements which are beyond the coverage of the Federal program are not part of the Federally-approved program. Therefore, EPA approval of Maine's hazardous waste program does not include the State's PCB regulation. Also pursuant to 40 CFR 271.1(i), the State may adopt or enforce requirements which are more stringent than the Federal requirements. In either case, the State may adopt and enforce programs that are either broader in scope or more stringent than the Federal program while remaining consistent with and equivalent to the Federal program under RCRA for the purpose of program authorization.

During the program reversion period, Maine did not issue any State hazardous waste permits and EPA did not issue any RCRA permits. Maine will administer the three RCRA permits it issued during Phase II interim authorization.

Maine is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

Today, EPA is publishing a compliance schedule for Maine to obtain the program revision for the following Federal program requirement: 40 CFR 264.113—Time allowed for closure.

Maine has agreed to obtain the needed program revision according to the following schedule:

1. Public notice—June 15, 1988.
2. Approval by Board of Environmental Protection—September 15, 1988.
3. Regulation promulgated—October 31, 1988.

Maine expects to submit an application to EPA for authorization of the above mentioned program revision by December 31, 1988.

In November of 1986, Maine adopted changes to its regulatory program to meet the requirements of non-HSWA Cluster I. Maine expects to submit an application to EPA for the non-HSWA Cluster I program revision 60 days after the effective date.

IV. Decision

After reviewing the public comments and the changes the State has made to its application and program since the tentative decision, I conclude that Maine's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Maine is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). In accordance with 40 CFR 271.21(e)(1)(i), official State applications shall be reviewed on the basis of Federal self-implementing statutory provisions that were in effect twelve months prior to the State's submission of its official application and the regulations in 40 CFR Parts 124, 260–266, 270, and 271 that were promulgated twelve months prior to the State's submission of its official application. In addition, a State may receive final authorization for any provision of its program corresponding to a Federal provision in effect on the date of the State's authorization. Therefore, Maine is receiving final authorization for its program corresponding to any Federal self-implementing statutory provisions that were in effect on February 8, 1984 and changes to the Federal regulatory program promulgated up to February 8, 1984 as well as for the technical amendment issued on November 21, 1984 (49 FR 46094).

Maine now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the limitations on its authority imposed by the HSWA. Maine also has primary enforcement responsibility, although EPA retains the right to conduct any activity under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

As stated above, Maine's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Maine. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce these portions of the HSWA in Maine until the State receives authorization to do so.

Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Maine.

Maine is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Maine's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Inter-governmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 31, 1988.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-10079 Filed 5-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OMB-14-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule and correction notice.

SUMMARY: This final rule amends a general HCFA regulation that displays control numbers assigned by the Office of Management and Budget (OMB) to approved "collection of information" requirements contained in regulations governing the Medicare and Medicaid programs. It also corrects for consistency the regulation section citation given in 52 FR 30362 for which OMB approval was obtained.

This rule is issued in accordance with OMB regulations for controlling paperwork burdens on the public and serves as notice that the cited collections of information are approved.

EFFECTIVE DATES:

1. For revisions to 42 CFR 400.310, May 6, 1988.
2. For correction, September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Maxine Turnipseed, (301) 966–1961.

SUPPLEMENTARY INFORMATION:

General Information

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain Office of Management and Budget (OMB) approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this Act, OMB has established regulations under Part 1320 of title 5 of the Code of Federal Regulations (CFR). The OMB regulations require Federal agencies (1) to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and (2) to display the control number assigned by OMB after approval of the requirement as part of the agency's regulatory text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections as a means of notifying the public that the information collection requirements have been approved. We update this regulation routinely to add the most recent OMB control numbers or to delete entries that are no longer in effect.

Provisions of These Regulations

In the preamble of final rules containing information collection requirements, we identify sections of the regulations for which we requested assignment of an OMB control number. Control numbers have been assigned for the following documents published in the **Federal Register**:

Appeals Procedures for Determinations That Affect Participation in Medicare (52 FR 22444, June 12, 1987), Sections 498.22, 498.40, 498.58 and 498.82.

Hospice "Core" Service' Nursing (52 FR 7412, March 11, 1987), Section 418.83.

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Income and Eligibility Verification Procedures for Food Stamps, Aid to Families with Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs (51 FR 7178, Feb. 28, 1986), Sections 431.17, 431.306, 435.910, 435.919, 435.920, 435.940, 435.945, 435.948, 435.952, 435.955, 435.960 and 435.965.

Intermediate Sanctions for Long-Term Care Facilities (51 FR 24484, July 3, 1986), Section 442.118.

End-Stage Renal Disease Program and Redesignation of Networks and Reorganization of Network Organizations (51 FR 30356, Aug. 26, 1986), Section 405.2112. (This section already appears in § 400.310, but it now contains new information collection requirements.) The preamble to this rule also identified § 405.2136 as requiring approval; however, it already had approval and has since then been reapproved.

Identification of Third Party Liability Resources for Medical Assistance (52 FR 5967, Feb. 27, 1987), Sections 431.306, 433.138, 435.945 and 435.960.

We also submit for OMB approval information collection requirements that we identify in existing regulations. After the approval is obtained, we publish in the **Federal Register** whether the action is a new approval or reapproval. (Before May 2, 1983, it was not necessary to publish OMB control numbers in agency regulations (5 CFR 1320.2); hence, occasionally an item will be identified for inclusion in our table at § 400.310 based on an OMB reapproval action. Also, ordinarily a reapproval item retains its original control number. This is not always the case and some of our information collection have been assigned two control numbers.)

We are adding the following approved and reapproved items to § 400.310 based on this process:

Approved: Sections 405.2138, 405.2140, and 405.2171 (52 FR 4662)

Reapproved: 405.2123, 405.2136, 405.2137, 405.2139 (52 FR 4662)

We have also determined that the following sections, which were formerly approved, no longer have paperwork requirements and thus are deleting them from § 400.310: Sections 405.2111, 405.2113, 405.2114, and 405.2134. (Sections 405.2111 and 405.2114 have been deleted in their entirety from the Code of Federal Regulations.)

Correction

On August 14, 1987, we published a final rule on payment adjustments for sole community hospitals (52 FR 30362). In it, we amended 42 CFR 400.310 to show that OMB had approved the information collection requirements in § 412.92(f). In keeping with our recently instituted policy of not including paragraph designations in § 400.310, we are correcting § 400.310 to delete the "(f)" in the citation for § 412.92.

Waiver of Proposed Rulemaking and Delay In Effective Date

This regulation and correction notice merely update our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations and correct a previously published preamble. They are technical in nature. To publish either in proposed form is unnecessary and would serve no useful purpose. Therefore, we find good cause to waive notice of proposed rulemaking.

We are publishing this final rule without the usual 30-day delay in effective date. The rule is technical in nature, and it is unnecessary and would serve no useful purpose to delay the effective date beyond the date of publication. Therefore, we find good cause to waive a delay in effective date.

Impact Analysis

As noted above, this regulation is technical in nature and merely updates the display of OMB control numbers of approved collection of information requirements contained in HCFA regulations. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive Order 12291. In addition, the Secretary certifies, consistent with the Regulatory Flexibility Act, that this document would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 400 is amended as follows:

PART 400—INTRODUCTION: DEFINITIONS

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised to read as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
403.232, 403.239–403.258	0938–0264
403.304, 403.308, 403.312, 403.316, 403.318 and 403.320–403.322	0938–0473
405.165, 405.170	0938–0454
405.262	0938–0267
405.334, 405.336	0938–0465
405.481	0938–0285
405.552	0938–0285
405.1121–405.1128, 405.1136, 405.1137	0938–0364
405.1201, 405.1202, 405.1221, 405.1223– 405.1226, 405.1228, 405.1229	0938–0365
405.1315, 405.1317	0938–0368
405.1413. 405.1414, 405.1416	0938–0338
405.1627, 405.1629	0938–0308
405.1632	0938–0454
405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1725, 405.1736	0938–0336
405.2112, 405.2123, 405.2136–405.2140, 405.2171	0938–9386
412.44	0938–0445
412.71	0938–0288
412.92	0938–0306 and 0938–0477
412.118	0938–0337 and 0938–0456
413.30	0938–0337
416.47	0938–0266
417.412–417.414, 417.416, 417.424, 417.426, 417.426, 417.430, 417.432, 417.436, 417.444, 417.446, 417.454, 417.460, 417.474, 417.476, 417.478, 417.480, 417.481, 417.486, 417.488, 417.492, 417.494, 417.520, 417.522, 417.532, 417.548, 417.560, 417.566, 417.568, 417.570, 417.572, 417.576, 417.586, 417.592, 417.594, 417.596, 417.598, 417.604, 417.606, 417.616, 417.620, 417.624, 417.632, 417.650, 417.662, 417.690, 417.801, 417.808, 417.810	0938–0406
418.22, 418.26, 418.56, 418.58, 418.70, 418.74, 418.83, 418.100	0938–0302 and 0938–0476
431.17	0938–0467
431.56	0938–0295
431.306	0938–0467 and 0938–0502
431.630	0938–0445
431.800	0938–0431
432.50	0938–0459
433.112	0990–0058 and 0938–0247
433.116	0938–0247 and 0938–0442
433.117	0990–0058 and 0938–0247
433.138	0938–0502
433.139	0938–0459
434.6–434.20, 434.23–434–27, 434.30, 434.32, 434.36, 434.50, 434.53, 434.55	0938–0326
435.910, 435.919, 435.920, 435.940	0938–0467
435.945	0938–0467 and 0938–0502
435.948, 435.952, 435.955	0938–0467
435.960	0938–0467 and 0938–0502
435.965	0938–0467
441.56, 441.58, 441.60, 441.61	0938–0354
441.255–441.259	0938–0481
441.301	0938–0449
441.302	0938–0266 and 0938–0449
441.303	0938–0272 and 0938–0449
442.118	0938–0488
442.307, 442.308, 442.309, 442.311, 442.313, 442.314, 442.318, 442.319, 442.320	0938–0370
442.402, 442.404–442.407, 442.412, 442.413, 442.417, 442.421, 442.423–442.425, 442.427, 442.430, 442.434, 442.441, 442.443, 442.457, 442.460, 442.463, 442.466, 442.468, 442.475, 442.482–442.487, 442.490, 442.492, 442.497, 442.500–442.503, 442.505, 442.506, 442.512	0938–0366
447.30	0938–0067
447.31	0938–0287
447.53	0938–0429
447.253(a)	0938–0193
447.255	0938–0193
456.654	0938–0445
466.70, 466.72, 466.74, 466.78, 466.80, 466.94	0938–0445
473.18, 473.34, 473.36, 473.42	0938–0443
474.36, 474.38–474.40	0938–0444
476.104, 476.105, 476.116, 476.134	0938–0426
482.12, 482.22, 482.27, 482.30, 482.41, 482.53, 482.56, 482.57 and 482.60–482.62	0938–0328
486.56, 488.60, 488.64	0938–0267
498.22, 498.40, 498.58, 498.82	0938–0508

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 16, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 8, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–10083 Filed 5–5–88; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6675

[NM–940–08–4220–10; NM NM 66022]

Withdrawal of Public Land for Protection of Recreational Values Along the Rio Grande; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 264.39 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect, preserve, and maintain existing and future recreational values located along the "Pilar" section of the Rio Grande. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6554.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, to protect two sites important for recreational use on the Rio Grande:

New Mexico Principal Meridian

County Line Site

T. 23 N., R. 10 E.,
Sec. 14, lot 4;
Sec. 15, lot 4.

Fishing Hole Site

T. 24 N., R. 11 E.,
Sec. 32, lots 5, 6, 7, 8, SW¼SE¼.

The areas described aggregate 264.39 acres in Taos and Rio Arriba Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

May 3, 1988.

James W. Ziglar,

Assistant Secretary of the Interior.

[FR Doc. 88–10087 Filed 5–5–88; 8:45 am]

BILLING CODE 4310–FB–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 62, 65, 70, and 72

National Flood Insurance Program; Flood Plain Management Standards

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations dealing with: flood plain management standards; criteria for the identification of coastal high hazard areas, more commonly referred to as V-zones, and delineated as Zone V, VO, V1–30 or VE on NFIP maps; requirements for maintenance of altered watercourses; criteria under which communities may permit flood plain and floodway developments which could increase base flood elevations; procedures for map correction; reimbursement procedures for the review of proposed projects to determine if they would qualify for NFIP map revisions upon their completion; and changes in the Standard Flood Insurance Policy (SFIP) terms and provisions.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: On November 3, 1987, FEMA published for comment in the **Federal Register** (Vol. 52, page 42117) a proposed rule containing revisions to the NFIP which were the result of a continuing reappraisal of the NFIP to achieve greater administrative and fiscal effectiveness in the operation of the program and to encourage sound flood plain management so that reductions in loss to life and property and in disaster expenditures can be realized. This reappraisal included the risk assessment (i.e., mapping of flood hazard areas) component of the NFIP, the loss

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reduction (i.e., flood plain management) component and the claims, coverage, rating and sale of insurance component of the NFIP.

In the process of developing this final rule 32 comments were received, logged and analyzed based on the 7 subject areas discussed in the proposed rule supplementary information. The tally of comments included 1 individual, 17 representatives of private companies, 3 associations (including one on behalf of three associations), 4 local governments and 7 State governments. Many of the comments generally concurred with the proposed rule while specifically addressing one or more of its provisions. The comment contents ranged from strong support for, to strong opposition to, one or more of the proposed changes.

The analysis of the comments resulted in language clarification, a minor change to the numbering of provisions and, due to editorial oversight in the proposed rule, inclusion of changes to §§ 60.3(d) and 60.3(e) to incorporate appropriate cross references for consistency. Also, the Standard Flood Insurance Policy duplicate policy provision in the proposed rule was revised to make it more flexible. The comments received are addressed under the subject headings below.

Community Ordinances

Two commentators expressed a general concern that the final rules will require corresponding changes in community ordinances. In fact, the final rules are primarily procedural and will not require ordinance revisions at the local level. However, the new provisions at §§ 60.3(c)(13) and 60.3(d)(4), requiring a community to apply to FEMA for a conditional Flood Insurance Rate Map (FIRM) revision prior to permitting development or encroachments within the special flood hazard areas or within the regulatory floodway that would result in an increase in base flood elevations exceeding NFIP's standards, are voluntary and need only be adopted by a community if it wishes to permit such development. FEMA believes these situations should affect relatively few communities.

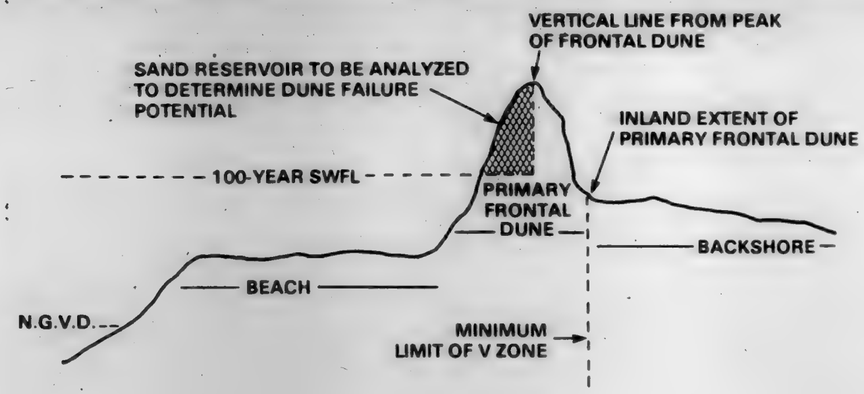
As for the final rule amending § 60.3(d)(3) which specifies use of hydraulic and hydrologic analyses in connection with a community's review of proposed development in floodways, this requirement is a clarification of the meaning implicit in the current regulations and, therefore, local ordinances do not need to be changed to reflect this clarification.

Coastal High Hazard Area and Erosion Considerations for Sand Dunes

Six commentators addressed this proposed rule and all expressed general support for including primary frontal dunes in V-zones and considering dune erosion during the base flood event in order to better reflect coastal areas actually at risk. However, clarification of the intent of the final rule is necessary to resolve apparent misunderstandings of the proposed rule as expressed by several of the commentators.

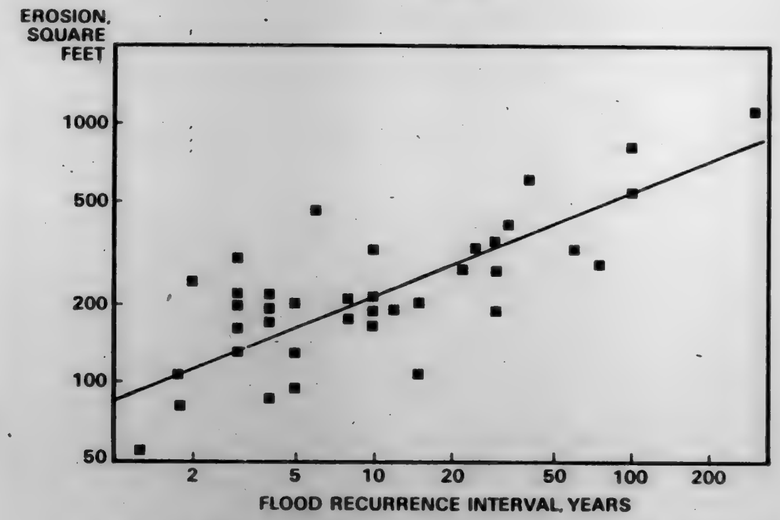
The final rule definition of coastal high hazard area includes all primary frontal dunes. Therefore, the boundary line of the V-zone, at a minimum, becomes the landward "toe" of the dune. Figure 1 clarifies the evaluation criterion for considering such dunes as effective barriers to base flood storm surges and associated wave action and depicts the inland limit of the dune. This figure also illustrates another provision of the rule that the cross-sectional area of the dune, as measured from the ocean side of the dune crest and above the 100-year stillwater flood level (SWFL), must be at least 540 square feet in order for the dune to be considered effective in attenuating wave action. Under the rule all dunes with a cross-sectional area less than 540 square feet will be treated as completely eroded during the 100-year storm in the preparation of FIRMs. Such a dune will not be credited with offering any protection against flooding or wave action to areas on the landward side of that dune. For dunes with a cross-sectional area smaller than 540 square feet, the methods used to determine areas subject to wave action will be employed as if the dune did not exist. Conversely, any dune with a cross-sectional area greater than 540 square feet may not be totally destroyed during the 100-year event and the dune will be credited with offering some level of protection to areas on its landward side. In this case, the method used to determine areas subject to wave action will be employed in conjunction with a dune erosion model which predicts how much of the dune will be eroded and how much protection it provides.

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FACTORS TO BE CONSIDERED IN DETERMINING DUNE FAILURE POTENTIAL AND V ZONE MAPPING

FIGURE 1



MEDIAN CROSS-SECTIONAL EROSION ABOVE FLOOD ELEVATION VERSUS FLOOD RECURRENCE INTERVAL BASED ON 38 CASES OF DUNE RETREAT DURING VARIOUS COASTAL STORMS.

FIGURE 2

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1. One State government and one association commented that by choosing the 50 percentile (median) cross-sectional area of 540 square feet as a criterion, FEMA has, by definition, underestimated dune erosion in half of all base (100-year) flood events (see figure 2). The commentators suggested using the 90–95 percentile in figure 2, which represents a cross-sectional area of 1,000 square feet or more.

The risk analysis methodology decisions incorporated in the NFIP have traditionally been based on selection of a median value, i.e., an estimate that has an equal chance of being too high or too low. Such has been the case in estimation of 100-year flood discharges and base flood elevations. It would be inconsistent to select a criterion for evaluating dune integrity which would overestimate dune erosion more than 50% of the time. Further, a value other than the median value would be inequitable in the determination of actuarial insurance rates.

In addition, dunes that meet the cross-sectional criteria of 540 square feet will not necessarily be considered as providing total protection from the 100-year flood. A post-flood eroded profile of the dune will be considered in computing wave runup on the dune face and overtopping on the dune crest when appropriate.

It is important to note that a criterion of 540 square feet for the cross-sectional area above the storm surge elevation and seaward of the dune crest represents a dune of significant size. FEMA believes use of this area is appropriate because it is consistent with other median values utilized in the NFIP and is based on an empirical relationship between the quantity of sand that would be removed from a frontal dune and the recurrence interval of the local storm tide.

2. Several commentators expressed concern that site-specific conditions should be analyzed in determining potential dune erosion rather than adopting a criterion for general dune integrity. FEMA has assessed the state-of-the-art in erosion modeling approaches and determined that they are not always effective in differentiating between local conditions. Moreover, site specific analyses will be considered in each flood risk analysis performed. Measurements of dunes will be taken locally to determine the volume of sand in the dune and whether the dune meets the 540 square feet criterion. Where the dune does not meet the 540 square feet criterion, site specific conditions will be considered in estimating a post-storm dune profile for wave runup and overtopping computations. Where the dune does meet the criterion, the protection afforded by the post-storm configuration of the dune will be factored into the wave runup calculations.

3. A State commentator suggested that FEMA develop provisions which take into account long-term erosional retreat rates of oceanfront shorelines in its mapping. The issue of using future risk conditions, such as long-term erosion effects, in flood risk analysis and mapping has been previously examined by FEMA. The NFIP legislation has not previously addressed long-term erosion and a consistent data set does not now exist to allow FEMA to uniformly consider long-term erosion in the mapping of flood risks. FEMA has addressed this issue in the past by striving to maintain the accuracy of its maps through periodic map revisions. Additional efforts in erosion risk analysis and management will be forthcoming as FEMA implements the provisions of section 544 of the Housing and Community Development Act of 1987 pertaining to erosion.

4. Several associations and a State agency commented that FEMA should incorporate restrictive building requirements in areas subject to wave action. Language to amend § 60.3(e)(7) was suggested. It was also suggested that FEMA establish regional coastal construction requirements for structural foundations and that FEMA incorporate its Coastal Construction Manual into the final rule. Revision of flood plain management regulations for coastal areas is not being considered by FEMA during FY 1988 rulemaking. Presently, the NFIP regulations for construction in V-zones at § 60.3(e)(4) and § 60.3(a)(5)(ii) do require more rigorous construction standards such as piling or column foundations and anchoring for wind and water forces designed to exceed 100-year values for wind and water loading. With the final rule, these restrictive standards will become more comprehensive in geographic extent by the inclusion of all primary frontal dunes in the V-zone, and the extension of V-zones into areas behind dunes which do not have substantial cross sections.

Further, § 60.3(e)(7) prohibits any man-made alteration of sand dunes in V-zones which would increase potential flood damage. Most development that currently alters frontal dunes occurs on dunes mapped as outside the V-zone. The final rule incorporates all primary frontal dunes into the V-zone and thereby makes § 60.3(e)(7) much more encompassing and effective in protecting the integrity of frontal dune systems. It is envisioned that, as new V-zone delineations are established under the rule, construction activity (e.g., excavation and grading) which would jeopardize the integrity of primary frontal dunes will be prohibited by communities participating in the NFIP.

With regard to coastal foundation construction, while § 60.3(e)(4) does not specifically state that foundation design should incorporate an increase in foundation loadings due to erosion of supporting soil during a base flood event, this requirement is implicit in subparagraph (ii) of this section.

The current regulation is in agreement with the Coastal Construction Manual and, thus, the latter does not need to be incorporated into the rule. However, communities and interested parties are encouraged to utilize the manual for additional design considerations. Further, FEMA recognizes and encourages those local and State governments that wish to adopt more restrictive requirements than FEMA's standards to do so.

5. Another State suggested that FEMA include a definition in the rule for "alterations of sand dunes." FEMA believes the term, "man-made alteration of sand dunes" as used in § 60.3(e)(7), is self-explanatory; therefore, a definition is not necessary.

6. A joint comment submitted by three associations suggested that bluffs, secondary dunes, wetlands and other coastal barriers be included in V-zones. This suggestion is outside the realm of the proposed rule. Further, the definition of coastal high hazard area (V-zone) remains related to areas impacted by significant wave action. Primary frontal dunes are being included in V-zones because they are features that absorb the brunt of the wave action. Areas such as coastal wetlands, secondary dunes, and bluffs are not consistently affected by wave action during flood events and, thus, should not be included in V-zones by definition. Where such features can be shown to be subject to significant wave action in major storms through the engineering analyses performed in a flood risk study, they will be included in V-zones.

7. A State agency suggested that FEMA immediately provide revised FIRM's reflecting the new criterion for erosion consideration for sand dunes to any coastal community requesting such a revision, rather than waiting to incorporate the changes in new flood risk assessment studies or restudies. It is FEMA's intention to eventually revise all FIRM's where the V-zones may be presently underestimated. These revisions must be processed through the normal map revision procedures rather than by special restudy effort because of current budgetary constraints. Priorities for performing map updates through the restudies and revisions procedures for communities impacted by the new erosion criteria will be based on cost/benefit considerations, as is presently the case with determining priorities for other types of restudies. A community's need for revised V-zone mapping will be a factor in determining its priority. Where costs can be reduced through local cost-sharing, or other approaches, adjustments in priority will be made.

Requirements for Maintenance of Altered Watercourses

Seven commentators addressed this proposed rule including three State governments, two local governments and two associations. Four commentators generally supported the rule but proposed modifications or substitute language; one commentator did not directly address the issue; and two commentators objected to the proposed rule, citing problems with access to private property, cost and legal liability associated with mandatory maintenance.

1. Two local governments and two associations pointed out that not all altered or relocated watercourses will require maintenance of their flood carrying capacity by virtue of their design. They asserted that the design criteria for a watercourse may include factors that account for regrowth of vegetation, sediment deposition, etc., thus obviating the need for maintenance. FEMA agrees that such situations should be addressed in the final rule and a new paragraph (a)(13) has been added to § 65.6.

The new paragraph provides that in lieu of the requirement to submit documentation that the provisions of § 60.3(b)(7) will be met prior to FEMA's revising the NFIP map to reflect the flood hazard mitigation effects of the altered or relocated watercourse, a community may submit certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

2. A local government and an association suggested that altered or relocated watercourses on open space areas such as golf courses where no existing development will be impacted should be exempted from the maintenance requirement. FEMA's concern in this rule deals only with the maintenance of modifications of watercourses for which flood control benefits have been reflected or are proposed to be reflected on flood maps. This is very rarely, if ever, the case in undeveloped areas. Further, if a map revision is not sought on the basis of watercourse alteration, then FEMA agrees that the data submission requirement regarding watercourse maintenance does not apply and FEMA would not request a community to make such a submission.

3. Comments from a local government and an association suggested that the proposed amendments to § 65.6 be deleted or revised due to problems of access to private property, cost, legal liability and environmental impacts. It is important to note that FEMA is not creating a new requirement for maintenance of altered or relocated watercourses by the final rule. Such a requirement has existed for many years under § 60.3(b)(7). Instead, the final rule merely establishes a procedure whereby FEMA can verify that maintenance, where appropriate, will be carried out for new watercourse alterations for which map revisions are being sought. The final rule enables FEMA to obtain documentation as to the nature of the maintenance activities to be performed, the frequency with which they will be performed, and the title of the local official who will be responsible for assuring that the maintenance activities are accomplished. If it is prohibitive for a community to maintain its altered or relocated watercourses (for whatever reason), FEMA will not credit the flood control benefit of those projects on its maps. It is up to each community to evaluate the benefit of lower BFE's and reduced Special Flood Hazard Areas versus the costs of maintaining its watercourse modifications originally intended for these purposes.

4. A local government, a State agency and two associations addressed the environmental considerations connected with maintenance of altered watercourses. Some commented that implementation policies for maintenance of altered watercourses should be developed in concert with other Federal agencies and that such policies should specify criteria which is environmentally sensitive. While FEMA agrees that there is a need for better coordination among appropriate Federal agencies in regard to environmental issues and the Federal permitting process in connection with the maintenance of altered watercourses, the final rule is not the appropriate mechanism by which to address these issues. Further, it is unlikely that situations will arise where the alteration of watercourses for flood control purposes would be permitted, but maintenance of such alterations would not. Should such situations occur, then FEMA will not revise the map to reflect the mitigating effects of the altered watercourse and, therefore, no maintenance responsibilities will be imposed.

5. A State government and an association suggested that FEMA should require communities to report periodically regarding their maintenance activities and the continued effectiveness of their altered watercourses. FEMA agrees with the concept of monitoring community compliance with this requirement and is considering modification of the Community Assistance Visit Program to include elements relative to the maintenance of altered watercourses. However, establishing a formal reporting requirement would create an unnecessary paperwork burden on NFIP communities and an unnecessary administrative burden on the Agency. Therefore, reporting requirements will not be included in the final rule.

6. The same two commentators suggested that in rapidly urbanizing areas, future development of the watershed upstream from the altered watercourse should be considered in estimating design flows and flood plain limits. They asserted that with any flood control project, there is a potential for the benefits to be partially or completely negated by upstream development which increases runoff and the 100-year flood discharge. FEMA has taken these comments under advisement. A study is presently underway to examine the feasibility of considering future development in flood risk determinations. However, certain administrative issues become immediately apparent. First is the issue of equitable charging of actuarial premium rates for flood insurance coverage when rates are based on future rather than current risk conditions. Secondly, the estimation of future development and its effects on hydrologic conditions adds an additional level of uncertainty on the regulatory data established. This data remains subject to individual rights to appeal, and therefore, must be scientifically, technically and legally defensible. While FEMA is aware of the impact of possible future urbanization on the flood risk, these significant administrative concerns may prove too complex to implement effectively. Nevertheless, communities are encouraged to address the issue of the impacts of upstream future development on the potential benefits of a flood control project and adopt more restrictive local standards as necessary.

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7. One State suggested that FEMA require proof from any applicant for a map revision, based on an altered watercourse, that a State permit has been granted before FEMA modifies the flood plain delineation on the FIRM. Requiring proof of a State permit is not an appropriate FEMA function in this activity. Typically, permitting processes occur in advance of installation of a flood control project, whereas a FEMA map revision occurs after the project's completion. To require proof of a State permit would be an after-the-fact effort solely to police compliance with State laws. Instead, FEMA requires at § 60.3(a)(2) that communities review all proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law. Further, in correspondence with applicants for map revisions, FEMA emphasizes the responsibility of the applicant to obtain all required permits, and to assure that the community has been informed of the revision request.

8. Another State suggested that by delineating to local citizenry the potential adverse consequences and benefits of sound watershed management, it is possible to increase the likelihood of gaining local support for the maintenance of watercourse issue. FEMA recognizes the virtues of this suggestion; however, the issue of public awareness activities is beyond the scope of this rulemaking. Nevertheless, FEMA encourages State and local governments to conduct public awareness efforts regarding sound watershed management.

Flood Plain Management Criteria for Regulatory Floodways

Five comments were received on this issue from three States and two associations. One commentator found the proposed language insufficient and suggested substitute language; three commentators supported the proposed rule; and one commentator objected to allowing any encroachment within the floodway.

The final rule to amend § 60.3(d)(3) is intended to make clear the intent that hydrologic and/or hydraulic analyses be performed as a part of a community's decision making regarding proposed encroachments in the floodway. Development actions that result in no rise in BFE's have always been allowed by the NFIP regulations and their prohibition was not addressed in this rulemaking. Therefore, the comment opposing encroachment in the floodway is not being considered at this time. Further, standards more restrictive than the NFIP can always be adopted by States or communities and FEMA encourages such action.

1. One State and an association suggested specific hydraulic modeling procedures for demonstrating that the proposed encroachment does not result in any increase in the BFE's. The procedures suggested are consistent with those set forth in § 65.7 and they are suitable; however, under certain situations, alternate analytical approaches may also suffice. FEMA does not want to establish procedures that would preclude the use of alternative approaches. Rather, the final rule is an effort to ensure that communities base their floodway encroachment decisions on hydrologic and hydraulic analyses performed in accordance with standard engineering practice which demonstrate that the proposed encroachments do not result in any increase in BFE's.

2. Substitute language was provided by an association that would give the local flood plain administrator the option of determining when and if a hydraulic or hydrologic analysis would be necessary. To allow the community to have the option of requiring an engineering analysis would result in perpetuation of the current situation which has proven unsuitable, i.e., unsupported decision making. Instead, the final rule assures that the community obtains an engineering analysis on which to base the decision regarding proposed development in the floodway. The final rule does not preclude the analysis from being performed by the local flood plain administrator if he or she has the technical expertise to do so. The local flood plain administrator does have the authority to specify the depth of the analysis which should be governed by common sense and the level of detail dependent on the nature of the proposed action. Computer modeling may not be required in every instance; however, supporting documentation sufficient to show that a zero rise in BFE's would result should be obtained by the community and maintained on file.

3. The same association asked whether other methods of mitigating the impact of the encroachment such as public land acquisition of the impacted area or hold harmless agreements would be acceptable in lieu of an engineering analysis. FEMA believes that before determining the appropriate form of compensatory action, an engineering analysis to determine the impact of the encroachment would still be necessary. Further, FEMA would not encourage hold harmless agreements because such agreements are likely to be between the project sponsor and the affected properties' owners and are likely to exclude indemnification of the National Flood Insurance Fund which would likely be susceptible to increased payments to individual policyholders when they submit claims for the increased flood damages caused by the project. Before approving such a project, FEMA would require assurances that no insurable structures are adversely impacted. This assurance is discussed in greater detail in the following subheading.

One commentator incorrectly analyzed the effect of the amendment to § 60.3(d)(3) by stating that *all* floodway encroachments will require that analyses be submitted to FEMA prior to issuance of a flood plain use permit to assure a community's compliance in the NFIP. The final rule amending § 60.3(d)(3) retains decision making for permitting encroachments that cause no rise in BFE's at the local level. The commentator is referring to amendments adding § 60.3(c)(13) and § 60.3(d)(4) which pertain to development that would result in BFE increases exceeding the NFIP standards. These amendments are discussed under the following subheading.

Revision of FIRMs To Reflect BFE Increases Exceeding NFIP Standards

Six comments on this rule were received from four States and two associations. Three commentators agreed with the concept but expressed concerns, two supported the amendment and one objected to any change to § 60.3 at the present time.

The intent of the final rule is to establish a mechanism within the NFIP regulations to allow for exceptions to the limitations on BFE increases contained in § 60.3 (c)(10) and (d)(3) to accommodate situations where the proposed flood plain actions can result in reduced flood hazards or have a net public benefit. The final rule also prevents, or compensates for, adverse impacts on property owners and the National Flood Insurance Fund, and assures proper notification of all affected property owners. This is achieved through the submission to FEMA of an application for conditional map revision for such action prior to permitting the encroachments to occur. The application will include scientific and technical information to support the request, evidence that a BFE increase is justified, that all engineering alternatives have been considered and determined to be unsuitable, that community approval has been obtained, that no insurable structures are impacted, and that any property owners adversely impacted are properly notified.

1. An association submitted the following questions regarding this issue. First, must the community pay FEMA for the review of the conditional map revision request? The appropriate initial fee or a request for exemption from the fee would be required as specified by § 72.5 of the existing rule. Second, will FEMA establish a schedule for review of the request in order to process it without undue delay and hardship to the applicant? Such a schedule presently exists at § 72.4 of the NFIP regulations. Third, will FEMA allow the determination to be made by the State Coordinator for the NFIP or by the FEMA Regional Offices? Authority to make such a determination is not being delegated at this time.

2. A State agency and an association suggested that the final rule not be limited to areas where no existing development would be impacted by the BFE increases. FEMA points out that in cases where structures may be impacted by proposed projects exceeding the allowable BFE's, the applicant always has the option of purchasing and removing them, elevating them to the new base flood elevation that would result from construction of the proposed project, or providing other forms of mitigation.

The commentators further suggested that adverse impacts to the National Flood Insurance Fund could be avoided by assessing actuarial rates to any structure whose owner agrees to the increase. The final rule limits conditions to areas where no insurable structures are impacted because no workable mechanism exists for indemnifying the National Flood Insurance Fund to compensate for the increased claims likely to result from insured or potentially insurable structures. The creation of such mechanisms would be prohibitively complex from an administrative standpoint.

3. These commentators also stated that simple notification to all affected property owners of an impending increase in BFE's is insufficient and that FEMA should verify that appropriate legal arrangements have been made before such a project is permitted. The final rule provides for legal notification to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property. In connection with many such projects, the community will also be seeking revisions to the floodway designation and BFE determinations. Such actions will involve due process requirements specified under Parts 65 and 67 of the NFIP regulations, as well. FEMA believes that these combined procedures provide for sufficient notification to affected property owners and an opportunity for them to either publicly participate in the community's decision making or to avail themselves of a legal recourse, if desired.

FEMA does not believe it is appropriate for this agency to identify what constitutes "appropriate legal arrangements" or verify that such arrangements have been made in each case.

4. Regarding the requirement in the final rule at § 65.12(a)(2) for submission of an evaluation of alternatives which do not result in BFE increases and demonstration why such alternatives are not feasible, another association suggested alternate language. The commentator is concerned that communities will be required to submit detailed economic analyses of numerous alternatives. FEMA believes that the alternate wording offered by the commentator does not represent a significant difference from the language of the proposed rule. The intent of the final rule is not to require detailed economic analyses, but instead to ensure that communities have considered possible engineering alternatives which would not raise flood levels, and that they were rejected for legitimate reasons.

5. A State agency objected to including provisions which would allow certain development exceeding the NFIP standards for BFE increases in the flood plain management criteria section of the regulations. The commentator feared that such exceptions will become part of all NFIP participating communities' local regulations and will then subject communities to increasing requests for floodway revisions. Further, the commentator stated that § 65.7, pertaining to floodway revisions, was adequate and that exceptions to § 60.3 (c) and (d) should not be incorporated into the NFIP regulations.

With regard to local adoption of the final rule amendments, the provisions of § 60.3 (c)(13) and (d)(4) of the final rule need only be adopted in local ordinances if a community elects to take advantage of them. No mandatory inclusion of these amendments in all local ordinances adopted by communities participating in the NFIP will occur. FEMA estimates receiving fewer than 50 requests per year for conditional map revisions for floodway encroachments.

As for the adequacy of § 65.7, FEMA believes that the existing provisions of § 65.7 do not sufficiently accommodate projects which by their nature must be included in floodways such as stormwater detention basins, dams and bridges. Section 65.7 enables communities to revise the boundaries of a floodway, if certain criteria are met, so as to no longer include certain proposed projects within the floodway. In addition, under § 65.7 the revised floodway limits must be set so that neither the effective BFE's nor the proposed BFE's are increased by more than one foot at any point. Projects such as detention basins, dams and certain bridges cannot be located outside the floodway and in some cases the BFE increases caused by them may be greater than one foot. Thus, § 65.7 does not accommodate all situations and the final rule amending § 60.3 is necessary.

The current regulations constitute a complete prohibition of any development in the floodway which would cause any rise in BFE's. The current regulations also prohibit any action in a flood plain which would cause more than a one foot rise in BFE's when a floodway has not been adopted. Because of the need to allow for exceptions to the limitations on BFE increases in cases where floodway or flood plain projects reduce flood hazards and/or result in a net public benefit, a mechanism for such exceptions must be established in the NFIP regulations. Without such a mechanism, communities cannot accommodate such proposed projects and FEMA cannot approve map revisions for them. The need to allow exceptions such as these will increase as more States and communities require stormwater management facilities to offset increased runoff rates due to development.

Procedure for Map Correction

Eleven comments addressing this proposed rule were received from two States, one association, one individual, five private companies, and two local government agencies. Three commentators supported the proposed rule, one objected and the remainder expressed concerns as a result of their misinterpreting the proposed rule.

Seven commentators from Texas expressed the same concern that the proposed rule would impact commercial structures with loading areas below the BFE. The commentators apparently did not understand that the amendment has the effect of deleting an unnecessary requirement for the data needed to support a request for a Letter of Map Amendment (LOMA). The rule change eliminates the need for appellants, seeking a LOMA, to incur the cost of

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obtaining and providing extraneous information that FEMA does not use in making LOMA determinations.

The commentators appear to have construed the amendment to affect the Letter of Map Revision (LOMR) process, which it does not. The two procedures are explained below to remedy the confusion.

The LOMA process pertains to any owner or lessee of property who believes his or her property (at natural grade) has been inadvertently included (i.e., mapped) in a designated Special Flood Hazard Area (SFHA). The governing criterion for granting the LOMA, which technically removes a structure from the SFHA and lifts the Federal requirement for mandatory flood insurance purchase, is whether the lowest adjacent grade to the structure is at or above the base flood elevation.

The LOMR process applies when alterations of topography have occurred and specifically pertains to structures which have been elevated by fill. Requests for LOMRs are processed under 44 CFR Part 65. The governing criteria when fill is involved are whether the lowest adjacent grade to, and the lowest floor (including basement) of, the structure are at or above the BFE.

The final rule amending § 70.3(b) does not affect the LOMR process or the flood plain management regulations which communities must enforce. To be compliant with § 60.3(c) of the NFIP regulations, communities must require new construction in the SFHA to have the lowest floor elevated (by whatever means) to or above the BFE. The lowest adjacent grade to the structure can be below the BFE and still be compliant with § 60.3(c), but it would not qualify for a LOMR.

Procedure and Fees for Conditional Approval of Map Changes

Three commentators made up of two States and one association expressed support for this rule.

Standard Flood Insurance Policy

There were three comments on the proposed changes to the Standard Flood Insurance Policy (SFIP). Two expressed support for these proposed changes, and one stated that the language of the change specifically excluding coverage for damage caused by destabilization of land resulting from the accumulation of water in subsurface land areas was not clear. Since this proposed change was in response to a recent court decision, FEMA feels it is necessary to use the language of the court, which the proposed rule did, and so this final rule makes no change in the language of the proposed rule.

Also, FEMA has concluded that the duplicate policy provision in the proposed rule should be made more flexible. The proposed rule specified that, when duplicate policies (i.e., more than one policy for a building or the contents in a building) were discovered, the earlier policy had to be the one that was kept in effect. The final rule permits the policyholder to choose which policy to keep in effect. One situation in which this could be useful is where a lender purchases a flood insurance policy on behalf of the borrower when the borrower already had a flood insurance policy. In such cases, it may be more convenient to the parties to keep the later policy purchased by the lender in effect.

This duplicate policy provision applies to all NFIP policies, whether with the same or different Write-Your-Own companies or with the direct NFIP business or with both the direct NFIP business and a Write-Your-Own company.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, 62, 65, 70, and 72

Flood insurance, Flood plains, Claims.

Accordingly, 44 CFR Chapter I, Subchapter B, is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By revising the definition of "Coastal high hazard area" to read as follows:

* * * * *

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

* * * * *

b. By adding, alphabetically, a definition of "Primary frontal dune" to read as follows:

* * * * *

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

* * * * *

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

3. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By adding a new paragraph (c)(13) to read as follows:

* * * * *

(c) * * *

(13) Notwithstanding any other provisions of § 60.3, a community may approve certain development in Zones A1–30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12, and receives the approval of the Administrator.

b. By removing in paragraph (d)(1) the phrase "(12)" and adding in its place the phrase "(13)".

c. By removing in paragraph (d)(3) the phrase "that would" and adding in its place the phrase "unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not".

* * * * *

d. By adding a new paragraph (d)(4) to read as follows:

* * * * *

(d) * * *

(4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Administrator.

e. By removing in paragraph (e)(1) the phrase "(12)" and adding in its place the phrase "(13)".

PART 61—INSURANCE COVERAGE AND RATES

5. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.4 [Amended]

6. Section 61.4 is amended by removing in paragraph (c) the phrase "or from earthquakes" and adding in its place the phrase ", destabilization or movement of land resulting from the accumulation of water in subsurface land areas, earthquakes,".

§ 61.5 [Amended]

7. Section 61.5 is amended by removing in paragraph (f)(4) the words "driveways and other surfaces outside the foundation walls of the building;" and adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building;" and by adding a new paragraph (j) to read as follows:

* * * * *

(j) *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the National Flood Insurance Act of 1968, as amended. When the insurer finds that duplicate policies are in effect, the insurer shall by written notice give the insured the option of choosing which policy is to remain in effect. If the insured chooses to keep in effect the policy with the earlier effective date, the insurer shall by the same written notice give the insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If the insured chooses to keep in effect the policy with the later effective date, the insurer shall by the same written notice give the insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, the insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the insured's insurable interest, whichever is less. The insurer shall make a refund to the insured, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph (j), the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph (j) for increasing policy limits, the usual procedures for increasing policy limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the insured chooses to keep in effect.

Appendix A(1) of Part 61—[Amended]

8. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. The Dwelling Form—Insuring Agreement (appearing immediately before Article I) is amended by adding after the phrase "42 U.S.C. 4001, *et seq.*" and within the parentheses the phrase ", hereinafter called the Act" and by removing the clause beginning with the words "we insure" and ending at the end of the sentence, and adding in its place the following: "we insure you and your legal representatives against all "Direct Physical Loss by or from Flood", as defined in Article II of this Agreement, to the insured property, to the extent of the actual cash value, not including any antique value, of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss."

b. In Article II—Definitions, the definition of "Direct Physical Loss by or from Flood" is amended by adding in the first sentence after the word "labor" and before the word "at" the words "and the labor of members of your household".

c. In Article III—Losses Not Covered, paragraph A.1 is amended by adding after "landslide," and before "gradual erosion" the following: "destabilization or movement of land resulting from the accumulation of water in subsurface land areas,".

d. In Article IV—Property Covered (Subject to "Property Not Covered" Provision), paragraph A.1 is amended by removing the comma and the words "if your" after the words "building's common elements" and adding in their place the following: "and the common elements of any other building of your condominium association covered by insurance that is: (i) in the name of your condominium association, (ii) provided under the Act, and (iii) in an amount at least equal to the actual cash value of the building's common elements at the beginning of the current policy term or the maximum building coverage limit available under the Act, whichever is less; provided that the insurance under this policy shall be excess over any insurance in the name of your condominium association covering the same-property covered by this policy; provided, your condominium" and by removing after the words "one family and" the word "if".

e. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph A.7 is amended by adding after the word "labor" and before the word "at" the words "and the labor of members of your household".

f. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph C is amended by removing in the first sentence the words "antique furniture," and the words ", antique silver".

g. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph D is amended by adding after the word "labor" and before the word "at" the words "and the labor of members of your household".

h. In Article V—Property Not Covered, paragraph D is amended by removing the words "driveways and other surfaces, outside the foundation walls of the building" and adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building."

i. In Article VIII—General Conditions and Provisions, paragraph E is amended by removing the words ", but with retention of the expense constant" at the end of paragraph 1.b; and by removing the words "on a short-rate basis" and adding in their place the words "pro rata but with retention of the expense constant" in paragraph 1.c.

j. In Article VIII—General Conditions and Provisions, paragraph G is amended

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by revising the second paragraph to read as follows:

* * * * *

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by us at the office of the NFIP within 30 days of the expiration date of this policy, subject to Article VIII.F of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

k. Article VIII—General Conditions and Provisions is amended by adding a new paragraph T to read as follows:

* * * * *

T. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. When we find that duplicate policies are in effect, we shall by written notice give you the option of choosing which policy is to remain in effect. If you choose to keep in effect the policy with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If you choose to keep in effect the policy with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interest, whichever is less. We shall make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph T, the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph T for increasing policy limits, the usual procedures for increasing policy limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy you choose to keep in effect.

Appendix A(2) of Part 61—[Amended]

9. Appendix A(2) of Part 61, Standard Flood Insurance Policy is amended as follows:

a. The statement in brackets immediately following the heading "Standard Flood Insurance Policy" is amended by adding after the word "Thereof" and before the comma the phrase "(hereinafter called the Act)".

b. The paragraph immediately following the heading "General Property Form" is amended by adding after the words "actual cash value" the phrase ", not including any antique value,".

c. The following headings are amended by adding article numbers as indicated below:

Article I—Persons Insured

Article II—Definitions

Article III—Perils Excluded

Article IV—Property Covered (Subject to "Property Not Covered" Provisions)

Article V—Property Not Covered

Article VI—Deductibles

Article VII—General Conditions and Provisions

d. In newly designated Article III—Perils Excluded, paragraph D is amended by adding after "landslide," and before "gradual erosion" the following: "destabilization or movement of land resulting from the accumulation of water in subsurface land areas,".

e. In newly designated Article IV—Property Covered, paragraph B.2 is amended by removing in the last paragraph the words "antique furniture," and the words "antique silver,".

f. In newly designated Article V—Property Not Covered, paragraph D is amended by removing the words "driveways and other surfaces outside the foundation walls of the building" and adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building."

g. In newly designated Article VII—General Conditions and Provisions, paragraph J is amended by revising the second and third paragraphs to read as follows:

* * * * *

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by the National Flood Insurance Program (NFIP) at its office within 30 days of the expiration date of this policy, subject to Article VII.E of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received so long as the renewal premium payment is received within the required 30 days.

In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, the Insurer shall not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

h. In newly designated Article VII—General Conditions and Provisions, paragraph K is revised to read as follows:

* * * * *

K. *Cancellation of policy by insured.* 1. The Insured can cancel this policy at anytime but a refund of premium will be made only when:

a. The Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for cancellation (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the policy's term, pro rata but with retention of the expense constant.

b. The Insured cancels because it has been determined that the insured property is not, in fact, in a special flood hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Pub. L. 93–234, section 102; and the lender or Federal agency no longer requires the retention by the Insured of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded to the Insured in full, according to applicable regulations.

c. The Insured cancels a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is:

(i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or (ii) the Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage.

Refund of any premium under this subparagraph "c" shall be pro rate but with retention of the expense constant.

* * * * *

i. Newly designated Article VII—General Conditions and Provisions is amended by adding a new paragraph X to read as follows:

* * * * *

X. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer shall by written notice give the Insured the option of choosing which policy is to remain in effect. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, the Insured must pay the pro-rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less. The Insurer shall make a refund to the Insured, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph X, the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph X for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

j. The Condominium Association Endorsement is amended by adding a new paragraph 8 to read as follows:

* * * * *

8. The Insurer shall not be liable for any loss or any portion of any loss for which payment is made under any insurance in the name of any condominium unit owner, i.e., any member of the condominium association.

Appendix A(3) of Part 61—[Removed]

10. Part 61 is amended by removing Appendix A(3).

Appendix A(4) of Part 61—[Removed]

11. Part 61 is amended by removing Appendix A(4).

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

12. The authority citation for Part 62 is revised to read as set forth below and the authority citations following all the sections in Part 62 are removed.

Authority: 42 U.S.C. 4001; *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

* * * * *

§ 62.5 [Amended]

13. Section 62.5 is amended by removing in the last sentence the words "on a short-rate basis." and adding in their place the words "pro rata but with retention of the expense constant."

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

14. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 65.6 [Amended]

15. Section 65.6 is amended by adding new paragraphs (a)(12) and (a)(13) to read as follows:

* * * * *

(a) * * *

(12) If a community or other party seeks recognition from FEMA, on its FHBM or FIRM, that an altered or relocated portion of a watercourse provides protection from, or mitigates potential hazards of, the base flood, the Administrator may request specific documentation from the community certifying that, and describing how, the provisions of § 60.3(b)(7) of this subchapter will be met for the particular watercourse involved. This documentation, which may be in the form of a written statement from the Community Chief Executive Officer, an ordinance, or other legislative action, shall describe the nature of the maintenance activities to be performed, the frequency with which they will be performed, and the title of the local community official who will be responsible for assuring that the maintenance activities are accomplished.

(13) Notwithstanding any other provisions of § 65.6, a community may submit, in lieu of the documentation specified in § 65.6(a)(12), certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

§ 65.13 [Redesignated from § 65.11]

16. Part 65 is amended by redesignating § 65.11 as § 65.13 and adding new § 65.11 and § 65.12 to read as follows:

§ 65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.

(a) *General conditions.* For purposes of the NFIP, FEMA will consider storm-induced dune erosion potential in its determination of coastal flood hazards and risk mapping efforts. The criterion to be used in the evaluation of dune erosion will apply to primary frontal dunes as defined in § 59.1, but does not apply to artificially designed and constructed dunes that are not well-established with long-standing vegetative cover, such as the placement of sand materials in a dune-like formation.

(b) *Evaluation criterion.* Primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to, or less than, 540 square feet.

(c) *Exceptions.* Exceptions to the evaluation criterion may be granted where it can be demonstrated through authoritative historical documentation that the primary frontal dunes at a specific site withstood previous base flood storm surges and associated wave action.

§ 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.

(a) When a community proposes to permit encroachments upon the flood plain when a regulatory floodway has not been adopted or to permit encroachments upon an adopted regulatory floodway which will cause base flood elevation increases in excess of those permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter, the community shall apply to the Administrator for conditional approval of such action prior to permitting the encroachments to occur and shall submit the following as part of its application:

(1) A request for conditional approval of map change and the appropriate initial fee as specified by § 72.3 of this subchapter or a request for exemption from fees as specified by § 72.5 of this subchapter, whichever is appropriate;

(2) An evaluation of alternatives which would not result in a base flood elevation increase above that permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter demonstrating why these alternatives are not feasible;

(3) Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property.

(4) Concurrence of the Chief Executive Officer of any other communities impacted by the proposed actions;

(5) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(6) A request for revision of base flood elevation determination according to the provisions of § 65.6 of this part;

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(7) A request for floodway revision in accordance with the provisions of § 65.7 of this part;

(b) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to the Administrator of the adoption of flood plain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.

(c) Upon completion of the proposed encroachments, a community shall provide as-built certifications in accordance with the provisions of § 65.3 of this part. The Administrator will initiate a final map revision upon receipt of such certifications in accordance with Part 67 of this subchapter.

PART 70—PROCEDURE FOR MAP CORRECTION

17. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 70.3 [Amended]

18. Section 70.3 is amended as follows:

a. By removing the phrase "floor (including basement) of the" in paragraph (b)(2)(iv) and adding in its place the phrase "adjacent grade to a"

b. By revising paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

19. The authority citation for Part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.5 [Amended]

20. Section 72.5 is amended by adding after the word "if", the phrase "the Administrator determines or".

Dated: May 2, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-10064 Filed 5-5-88; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5215 and 5252

Navy Acquisition Regulations Supplement; Policy Concerning the Use of Cost or Pricing Data and Cost Evaluation Where Adequate Price Competition Exists

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is adding Part 5215 and amending Part 5252 of the Navy Acquisition Regulations Supplement (NARSUP) to the Federal Acquisition Regulations (FAR). Part 5215 of the NARSUP is being supplemented to clarify existing language contained in FAR Part 15 on Adequate Price Competition, and on the type of data and evaluation that might be required even when there is adequate price competition. A provision is also being added to Part 5252 of the NARSUP for use in all solicitations where it is anticipated that an award will be based on adequate price competition.

As a result of the public comments received on the proposed rule (52 FR 48550, December 23. 1987), several minor changes have been made.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Callaway. 202-692-3324.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of the passage of the Competition in Contracting Act of 1984, competition has become the rule of doing business in DoD; negotiations supported by detailed cost analysis have become the exception. Competition is the cornerstone of Navy acquisition policy. As a result, the Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis.

Even though the Navy has been a strong advocate of competition, there is still a tendency for some contracting officers to require the submission of cost or pricing data when there is an expectation that adequate price competition will result, or has resulted on a given procurement. Both the Assistant Secretary of the Navy, Shipbuilding and Logistics (ASN)(S&L) and the Deputy Assistant Secretary of Defense, Procurement (DASD)(P), issued memorandums stating that contracting officers were not to require certified cost or pricing data, other than selected data for cost realism evaluation purposes, when adequate price competition is anticipated. This practice undermines the competitive process, increases bid and proposal costs, unnecessarily burdens the government support offices with requirements for detailed audit and proposal reviews, and extends procurement lead time.

The principal cause of this problem is a failure to distinguish between requiring detailed cost or pricing data necessary in a sole source situation to negotiate a fair and reasonable price versus a requirement for only that data necessary to conduct a cost realism evaluation in a competition for the purposes of determining the realism of the offeror's price. The current coverage offers little guidance to distinguish between these two types of situations. The clarifying language provides needed guidance.

B. Regulatory Flexibility Act

The rule does not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. et seq. because, although most contracts are awarded to small entities on a competitive basis, the dollar value of these contracts is usually under $100,000, which has been the threshold at which the detailed cost or pricing data has been erroneously required.

C. Paperwork Reduction Act Analysis

Because the majority of small businesses generally do not receive contracts where the requirement to submit the detailed cost or pricing data would be applicable ($100,000 or greater), the Paperwork Reduction Act analysis is not applicable.

List of Subjects in 48 CFR Parts 5215 and 5252

Government procurement.

For the reasons set out in the preamble, Part 52 of Title 48 of the Code of Federal Regulations is amended as follows:

1. Part 5215 is added to read as follows:

PART 5215—CONTRACTING BY NEGOTIATION

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

Sec.
5215.402 General.
5215.407 Solicitation provisions.

Subpart 5215.6—Source Selection.
5215.605 Evaluation factors.
5215.608 Proposal evaluation.

Subpart 5215.8—Price Negotiation.
5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation, only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

5215.407 Solicitation provisions.

(S-90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

(S-90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation.

(i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to: (A) Verify the offeror's understanding of the requirements; (B) assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and (C) assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are: (A) Manloading (quantity and mix of labor hours); (B) engineering, labor and overhead rates; and (C) make or buy plans. A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.608 Proposal evaluation.

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S-90), the resulting realistic cost estimate shall be used in the evaluation of cost.

Subpart 5215.8—Price Negotiation.

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a

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secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 5252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

3. Section 5252.215–9000 is added to read as follows:

5252.215–9000 Submission of cost or pricing data.

As prescribed at 5215.407, insert the following provision:

Submission of Cost or Pricing Data (Nov 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804–3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of Clause)

Alternate I (Nov 1987). As prescribed at 5215.407, substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within [1] calendar days from the date of the contracting officer's request.

(End of Clause)

April 26, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–9814 Filed 5–5–88; 8:45 am]

BILLING CODE 3810–AE–M

[1] To be completed by the contracting officer.

Proposed Rules

Federal Register
Vol. 53, No. 88
Friday, May 6, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15

Nondiscrimination; Revision of Appendix

AGENCY: United States Department of Agriculture (USDA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The United States Department of Agriculture has determined that public interest requires greater elaboration on the extent of its programs covered by Civil Rights Laws and Regulations. Hence, the Department is revising and updating the Appendix for Subpart A which lists Federally assisted programs. In addition, the Department is promulgating under Subpart B, a list of direct assistance and Federally conducted programs and activities of the Department covered under agency program statutes.

DATE: To be considered, comments must be received on or before June 6, 1988.

ADDRESS: Comments should be submitted to Anthony M. Thielen, Compliance, Complaints and Adjudication Division, Office of Advocacy and Enterprise, Equal Opportunity, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Anthony M. Thielen; Phone—202–382–9207.

SUPPLEMENTARY INFORMATION: The Director, Office of Advocacy and Enterprise, has determined that this regulation is not a major role as defined by Executive Order 12291, since it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets. As a result, it is not necessary to prepare a Regulatory Impact Analysis. Furthermore, the Director has determined that this action will not have a significant economic impact on a substantial number of small entities. Therefore, no Regulatory Flexibility Analysis is required.

List of Subjects in 7 CFR Part 15

Civil Rights, Nondiscrimination.

PART 15—[AMENDED]

Accordingly, it is proposed to amend 7 CFR 15 Subpart A and Subpart B as follows:

1. The authority for Subpart A is revised to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794; 42 U.S.C. 2000d–1, unless otherwise noted.

2. The authority for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301.

Subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

3. It is proposed to revise the Appendix to Subpart A to read as follows:

Appendix A—List of USDA-Assisted Programs

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

Program	Authority
Administered by the Agricultural Cooperative Service	
1. Cooperative Development	Cooperative Marketing Act of 1926, 7 U.S.C. 451 et seq. Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 et seq.
Administered by the Agricultural Marketing Service	
2. Federal-State marketing improvement program	Agricultural Marketing Act of 1946, Section 204b, 7 U.S.C. 1623(b).
Administered by the Agricultural Research Service	
3. Soil and Water Conservation	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
4. Animal Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862; (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621), and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
5. Plant Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862, (7 U.S.C. 2201), the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
6. Commodity Conversion and Delivery	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201), the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 427, 1621), and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
7. Human Nutrition	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201), the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 427, 1621), and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).
8. Integration of Agricultural Systems	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201), the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 427, 1621), and the Food Security Act of 1985 (7 U.S.C. 1281 et seq).

Program	Authority
Administered by the Agricultural Stabilization and Conservation Service	
9. Price support programs operating through producer associations, cooperatives and other recipients in which the recipient is required to furnish specified benefits to producer (e.g. tobacco, peanuts, cotton, rice, honey, dry edible beans, lung oil, naval stores and soybeans price support programs).	Agricultural Adjustment Act of 1938, 7 U.S.C. 1301–1393; Pub. L. 73–430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714 et. seq.; Agricultural Act of 1949, as amended; 7 U.S.C. 1421, et seq; Pub. L. 81–439, as amended; Agriculture and Food Act of 1961; Pub. L. 97–98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98–180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98–258; Food Security Act of 1985; Pub. L. 99–198.
Administered by Cooperative State Research Service	
10. 1890 Research Facilities	Sec. 1433 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, Pub. L. 95–113, as amended; 7 U.S.C. 3195.
11. Payments to 1890 Land-Grant Colleges and Tuskegee Institute.	Sec. 1445 of the National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 85–113, as amended; 7 U.S.C. 3222.
12. Cooperative Forestry Research (McIntire-Stennis Act).	Cooperative Forestry Research Act of October 10, 1962; Pub. L. 87–788; 16 U.S.C. 582a–582q–7.
13. Payments to Agricultural Experiment Stations under Hatch Act.	Hatch Act of 1887, as amended; 7 U.S.C. 361a–361i.
14. Grants for Agricultural Research Competitive Research Grants.	Sec. 2(b) of Pub. L. 89–106; 7 U.S.C. 450i(b), as amended.
15. Grants for Agricultural Research, Special Research Grants.	Sec. 2(c) of Pub. L. 89–106; 7 U.S.C. 450i(c), as amended.
16. Animal Health and Disease Research	National Agricultural Research, Extension and Teaching Policy Act of 1977, Sec. 1433, Pub. L. 95–113, as amended; 7 U.S.C. 3195.
Administered by Extension Service	
17. Home Economics	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Post-secondary Education Reorganization Act, D.C. Code, Sec. 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq. Sec. 14, Title 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended.
18. 4-H Youth Development	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code Sec. 31–1518; Title VI, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et seq.; Sections 1425 and 1444, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3221, 3175; Pub. L. 96–374, Sec. 1361(c); 7 U.S.C. 301 note; Pub. L. 97–98, Agricultural and Food Act of 1981, sec. 1401
19. Agricultural and Natural Resources	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Public Postsecondary Reorganization Act; D.C. Code Sec. 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et. seq.; Sec. 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3101, et seq.
20. Community Resource Development	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Post-secondary Reorganization Act; D.C. Code 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661, et. seq.; National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3101, et seq; Renewable Resources Extension Act of 1978; 16 U.S.C. 1671–1676.
Administered by Federal Crop Insurance Corporation	
21. Crop Insurance	Federal Crop Insurance Act, as amended; 7 U.S.C. 1501–1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980; Pub. L. 96–365 (Sept. 26, 1980); 94 Stat. 1312–1319.
Administered by Farmers Home Administration	
22. Farm Ownership Loans to install or improve recreational facilities or other nonfarm enterprises.	Section 302 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1923.
23. Farm Operating Loans to install or improve recreational facilities or other nonfarm enterprise.	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1942.
24. Community Facility Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
25. Rural Rental Housing and related facilities for elderly persons and families of low income.	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
26. Rural Cooperative Housing	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
27. Rural Housing Site Loans	Sec. 524, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490d.
28. Farm and Labor Housing Loans	Sec. 514, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1484.
29. Farm Labor Housing Grants	Sec. 516, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1486.
30. Mutual self-help housing grants. (Technical assistance grants).	Sec. 523, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490c.
31. Technical and supervisory assistance grants	Sec. 525, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490e.
32. Individual Recreation Loans	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
33. Recreation Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
34. Private enterprise grants	Sec. 310(B)(c) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932(c).
35. Indian Tribal Land Acquisition Loans	Pub. L. 91–229, approved April 11, 1970; 25 U.S.C. 488.
36. Grazing Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
37. Irrigation and Drainage Associations	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
38. Area development assistance planning grant program.	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926(a)(11).
39. Resource conservation and development loans.	Sec. 32(e) of Title III, the Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1011(e).

40. Rural Industrial Loan Program	Sec. 310B of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932.
41. Rural renewal and resource conservation development, land conservation and land utilization.	Sec. 31–35, Title III, Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1010–1013a.
42. Soil and water conservation, recreational facilities, uses; pollution abatement facilities loans.	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
43. Watershed protection and flood prevention program.	Sec. 1–12 of the Watershed Protection and Flood Prevention Act, as amended; 16 U.S.C. 1001–1008.
44. Water and Waste Facility Loans and Grants	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
Administered by Food and Nutrition Service	
45. Food Stamp Program	The Food Stamp Act of 1977, as amended; 7 U.S.C. 2011–2029.
46. Nutrition Assistance Program for Puerto Rico. (This is the Block Grant signoff of the Food Stamp Program for Puerto Rico.	The Food Stamp Act of 1977, as amended; Sec. 19, 7 U.S.C. 2028.
47. Food Distribution (Food Donation Program). (Direct Distribution Program).	Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165. 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 7 U.S.C. 1859); sec 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5189); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612 note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 96–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).
48. Food Distribution Program Commodities on Indian Reservations.	The Food Stamp Act of 1977, as amended, Section 4(b), 7 U.S.C. 2013(b).
49. National School Lunch Program	National School Lunch Act, as amended; 42 U.S.C. 1751–1760.
50. Special Milk Program for Children (School Milk Program).	Child Nutrition Act of 1966, Sec. 3, as amended, 42 U.S.C. 1772.
51. School Breakfast Program	Child Nutrition Act of 1966, Sec. 4, as amended; U.S.C. 1773.
52. Summer Food Service Program for Children	National School Lunch Act, Sec. 13, as amended; 42 U.S.C. 1761.
53. Child Care Food Program	National School Lunch Act, Sec. 17, as amended; 42 U.S.C. 1766.
54. Nutrition Education and Training Program	Child Nutrition Act of 1966, Sec. 19, 42 U.S.C. 1788.
55. Special Supplemental Food Program for Women, Infants and Children.	Child Nutrition Act of 1966, Sec. 17, 42 U.S.C. 1786.
56. Commodity Supplemental Food Program	Agriculture and Consumer Protection Act of 1973, as amended; 7 U.S.C. 612c note.
57. Temporary Emergency Food Assistance Program.	Temporary Emergency Food Assistance Act of 1983, as amended; 7 U.S.C. 612c note.
58. State Administrative Expenses for Child Nutrition.	Child Nutrition Act of 1966, Sec. 7, as amended; 42 U.S.C. 1776.
59. Nutrition Assistance Program for the Commonwealth of the North Mariana Islands. (This is the Block Grant spin-off of the Food Stamp Program for CNMI).	Trust Territory of the Pacific Island, 48 U.S.C. 1681 note.
Administered by Forest Service	
60. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended 16 U.S.C. 4971, Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
61. Youth Conservation Corps	Act of August 13, 1970, as amended, 16 U.S.C. 1701–1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.
62. Job Corps	29 U.S.C. 1691–1701. Note: This is a Federally financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
63. Permits for disposal of common varieties of mineral material from lands under the Forest Service jurisdiction for use by other individuals at a nominal or no charge.	Secs. 1–4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601–603, 611.
64. Use of Federal land for airports	Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 2202, 2215, National Forest lands are exempt, Sec. 2215(c).
65. Conveyance of land to States or political subdivision for widening highways, streets and alleys.	Act of October 13, 1964, 78 Stat. 1089. Forest Road and Trail Act, codified at 16 U.S.C. 532–538.
66. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
67. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577 g–1.
68. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to Counties for school and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
69. Cooperative action to protect, develop, manage and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101–2111.
70. Advance of funds for cooperative research	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581–1.
71. Grants for support of scientific research	Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, 16 U.S.C. 1600 et seq.
72. Research Cooperation	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C.
73. Grants to Maine, Vermont and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	Older Americans Act of 1965, as amended, 42 U.S.C. 3056.

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74. Senior Community Service Employment, develop, manage and utilize forest resources on State and private lands.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
75. Cooperative Law Enforcement	16 U.S.C. 551a and 553.
76. Forest Utilization and Marketing	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, 16 U.S.C. 1606, 2101-2111.
77. Fire prevention and suppression	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Sec. 7, 16 U.S.C. Sec. 2106.
78. Assistance to States for tree planting	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Secs. 3, 6, 16 U.S.C. 2102, 2105.
79. Technical assistance forest management	Cooperative Forestry Assistance Act of 1978, Pub. L. 95-313, Sec. 8, 16 U.S.C. 2107.
80. Extramural Research (Cooperative Agreements and Grants).	Range Renewable Resources Act of 1978; Rangeland and Latest Renewable Resources Research Act; 16 U.S.C. 1641-1647.
Administered by Food Safety and Inspection Service	
81. Federal-State Cooperative Agreements and Talmadge-Aiken Agreements.	Federal Meat Inspection Act; 21 U.S.C. 601 .et seq. Talmadge-Aiken Act; 7 U.S.C. 450. Poultry Products Inspection Act; 21 U.S.C. 451 et seq.
Administered by Office of International Cooperation and Development	
82. Technical Assistant	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
83. International Training	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
84. Scientific and Technical Exchanges	7 U.S.C. 3291.
85. International Research	7 U.S.C. 3291.
Administered by Soil Conservation Service	
86. Conservation Technical Assistance to Landusers.	Sec. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a-590f, 590g.
87. Plant Materials Conservation	Soil Conservation Act of 1935, Pub. L. 74-46; 49 Stat. 163, 16 U.S.C. 590(a-f).
88. Technical and financial assistance in Watershed Protection and flood prevention.	Watershed Protection and Flood Protection Act, as amended, 16 U.S.C. 1001-1005, 1007-1008; Flood Control Act, as amended and supplemented; 33 U.S.C. &01; 16 U.S.C. 1606(a) and Sec. 403-405 of the Agriculture Credit Act of 1978; 16 U.S.C. 2203-2205. Flood Prevention: Pub. L. 78-534; 58 Stat. 905; 33 U.S.C. 701(b)(1); Pub. L. 81-516.
89. Technical and financial assistance in watershed protection and flood prevention.	Emergency Operation (216); 68 Stat. 184; 33 U.S.C. 701(b)(1). Watershed Operation: Pub. L. 83-566; 68 Stat. 666; 16 U.S.C. 1001 et. seq.
90. Soil Survey	Sec. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.
91. Rural Abandoned Mine Program	Surface Mining Control and Reclamation Act of 1977, Sec. 406; Pub. L. 95-87, 30 U.S.C. 1236, 91 Stat. 460.
92. Resource Conservation and Development	Soil Conservation Act of 1935; Pub. L. 74-46; Bankhead-Jones Farm Tenant Act; Pub. L. 75-210, as amended, Pub. L. 89-796; Pub. L. 87-703; Pub. L. 91-343; Pub. L. 92-419; Pub. L. 97-98; 95 Stat. 1213; 16 U.S.C. 590a-590f, 590g.
93. Great Plains Conservation	Soil Conservation and Domestic Allotment Act, Pub. L. 74-46, as amended by the Great Plains Act of August 7, 1956; Pub. L. 84-1021, Pub. L. 86-793 approved September 14, 1960. Pub. L. 91-118 approved November 1, 1969; Pub. L. 96-263 approved June 6, 1980; 16 U.S.C. 590a-590f, 590g.

Subpart B—Nondiscrimination, Direct USDA Programs and Activities

4. It is proposed to add Appendix B to Subpart B to read as follows:

Appendix B—USDA Direct Programs and Activities

Programs conducted by the U.S. Department of Agriculture which include but are not limited to the following.

Program	Authority
Administered by the Agricultural Marketing Service	
1. Agricultural Fair Practice Act	7 U.S.C. 2301-2306.
2. Commodity Credit Corporation's Dairy Collection Program.	Omnibus Budget Reconciliation Act of 1982; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513); Food Security Improvements Act of 1986.
3. Commodity Purchases	Section 32 (7 U.S.C. 612c); Sec. 6a, 8c and 14 of the National School Lunch Act; Sec. 4(a) of the Agriculture and Consumer Protection Act of 1973; 7 U.S.C. 612(c); Older Americans Act (42 U.S.C. 1751, 1755, 1758 and 1761.
4. Commodity Research and Promotion	Agricultural Marketing Act of 1946 (7 U.S.C. 1621 Act); (7 U.S.C. 2101-2119); Egg Research and Consumer Information Act (7 U.S.C. 2701-2718); Export Apple and Pear Act (7 U.S.C. 581-590); Export Grape and Plum Act (7 U.S.C. 591-599); Federal Seed Act (7 U.S.C. 1551-1611); National Wool Act of 1954, as amended; (7 U.S.C. 1781-1787); Plant Variety Protection Act (7 U.S.C. 2321-2331, 2351-2357, 2371-2372, 2401-2404, 2421-2417, 2441-2442, 2461-2463, 2481-2486, 2501-2504, 2531-2532; 2541-2545, 2561-2569, 2581-2583); Floral Research, Education and Consumer Information Act of 1981 (7 U.S.C. 4301-4319); Wheat and Wheat Foods Research and Nutrition Education Act of 1977 (7 U.S.C. 3401-3417); Cotton Research and Promotion Act of 1966, as amended, (7 U.S.C. 2101-2119); Dairy and Tobacco Adjustment Act of 1983, (7 U.S.C. 4501-4513); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Agricultural Fair Practices Act (7 U.S.C. 2301-2306); Capper Volstead Act (7 U.S.C. 291-292); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611-2627); Beef Promotion and Research Act of 1985; the Pork Promotion Research and Consumer Information Act of 1985.
5. Federal Seed Act Administration	Federal Seed Act (7 U.S.C. 1551-1575 and 1591-1611); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627).
6. Governmentwide Food Quality Assurance	Federal Property and Administrative Services Act of 1949 (63 Stat. 377).
7. Inspection Grading and Standardization	Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Cotton Statistics and Estimates Act (7 U.S.C. 471-476); U.S. Cotton Futures Act (7 U.S.C. 15b); U.S. Cotton Standards Act (7 U.S.C 51-65); Naval Stores Act (7 U.S.C. 91-99); Tobacco Inspection Act (7 U.S.C. 511-511q); Wool Standards Act (7 U.S.C. 415b-d); Egg Products Inspection Act 1970, Pub. L. 91-597; 21 U.S.C. 1031-1056; Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35; Dairy and Tobacco Adjustment Act of 1983; (7 U.S.C. 4501-4513); Tobacco Statistics of 1929 (7 U.S.C. 501-508); Tobacco Inspection Act of 1983 (7 U.S.C. 511r).

Program	Authority
8. Market Assistance and Analysis	Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Export apple and Pear Act of 1933 (7 U.S.C. 581-590); Export Grape and Plum Act of 1960; (7 U.S.C. 591-599); Tobacco Seed and Plant Exportation Act (7 U.S.C. 516-517).
9. Marketing Agreements and Orders	Agricultural Marketing Agreement Act of 1937, as amended; 7 U.S.C. 601, 602, 608a-e, 612, 614, 624, 671-674; Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501-4513).
10. Marketing Research	Agricultural Marketing Act of 1946; Food and Agriculture Act of 1977.
11. Market News	Cotton Statistics and Estimates Act (7 U.S.C. 471-473, 473b, 475-476; Tobacco Inspection Act of 1935; (7 U.S.C. 511-511a); Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627); Tobacco Statistics Act (7 U.S.C 501-508); Naval Stores Act (7 U.S.C. 91-99); U.S. Cotton Futures Act (7 U.S.C. 15b); Peanut Statistics (7 U.S.C. 951-957); Turpentine and Rosin Statistics (7 U.S.C. 2248); Agriculture and Food Act of 1981 (7 U.S.C. 2242A).
12. Perishable Agricultural Commodities Act	Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. 499a-499s); Produce Agency Act (7 U.S.C. 491-497).
13. Plant Variety Protection	U.S. Plant Variety Protection Act of 1970, 84 Stat. 1542, 7 U.S.C. 2321 et seq.
Administered by Animal and Plant Health Inspection Service	
14. Animal and Animal Products (Veterinary Services).	7 U.S.C. 429, 430, 450, 1622, 1624, 2131-2147, 2149-2155, 3374, 2260, 3801-3812, 15 U.S.C. 1621-1631; 19 U.S.C. 1202, Sch. 1, part 1, Item 100.01 and 1306; 21 U.S.C. 102-135; 151-158, 612-614 and 618; 45 U.S.C. 71-74; 46 U.S.C. 3901-3902; 49 U.S.C. 1741; 50 U.S.C. App. 2061 et seq.; Executive Order 11987.
15. Plant and Plant Products Inspection Programs (Plant Protection and Quarantine.	7 U.S.C. 147a, 147b, 148, 148e-148f, 149, 150-150g, 150aa-150, 151-164-a, 166, 167, 281-286, 450, 1581-1612, 1651-1656, 2260, 2801-2813; 49 U.S.C. 1741; 50 U.S.C. 2061 et. seq.; 2251 et. seq. 87 Stat. 884; Executive Order 11987.
Administered by the Agricultural Stabilization and Conservation Service	
16. Agricultural Conservation Program	The Soil Conservation and Domestic Allotment Act of 1936, Secs. 7 to 15, 16(a), 16(f) and 17, as amended and supplemented; (16 U.S.C. 590g-590o, 590p(a), 590(q); secs. 1001-1008 and 1010 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501-1508 and 1510), Sec. 1501 of the Food and Agriculture Act of 1977; Sec. 259 of the Energy Security Act of 1980 (Pub. L. 96-294).
17. Conservation Reserve Program	Food Security Act of 1985.
18. Cotton Program	Commodity Credit Corporation Charter Act, Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1444; Extra Long Staple Cotton Act of 1983, Pub. L. 98-88; Food Security Act of 1985, Pub. L. 99-198.
19. Dairy Indemnity Payment Program	Pub. L. 90-484, as amended; the Agricultural Act of 1970, Title II, Sec. 204, 7 U.S.C. 450j-450l. Pub. L. 91-524; Agricultural and Consumer Protection Act of 1973; Pub. L. 93-86; Food and Agriculture Act of 1977; Pub. L. 95-113; Food and Agriculture Act of 1981, Pub. L. 97-98.
20. Dairy Termination Program	Agricultural Act of 1949, as amended by the Food Security Act of 1985.
21. Emergency Conservation Program	Agricultural Credit Act of 1978, Title IV, Pub. L. 95-334, 16 U.S.C. 2201-2205.
22. Emergency Feed Assistance Program	Agricultural Act of 1949, Sec. 407.
23. Farm Facility Loan Program	Agricultural Act of 1949, as amended; 12 U.S.C. 1134(c), Pub. L. 81-439; Commodity Credit Corporation Charter Act, as amended; 15 U.S.C. 714(b) and (c); Food and Agriculture Act of 1977, 15 U.S.C. 714(b). Pub. L. 95-113; Pub. L. 96-234; Agriculture and Food Act of 1981, Pub. L. 97-98.
24. Feed Grain Donation Program	Agricultural Act of 1949, Sec. 407.
25. Feed Grain Program	Commodity Credit Corporation Charter Act, Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1421, Pub. L. 81-439; Federal Crop Insurance Act of 1980; Pub. L. 96-365, Food Security Act of 1985, Pub. L. 99-198.
26. Forestry Incentives Program	Cooperative Forestry Assistance Act of 1978; Pub. L. 95-313.
27. Grain Reserve Program	Agricultural Act of 1949; 7 U.S.C. 1445; Pub. L. 81-439; Commodity Credit Corporation Charter Act 15 U.S.C. 714, Pub. L. 80-808; Agriculture and Food Act of 1981, Pub. L. 97-98; Food Security Act of 1985, Pub. L. 99-198.
28. Herd Preservation Program	Agricultural Act of 1949, Sec. 407.
29. Indian Acute Distress Donation Program	Agricultural Act of 1949, Sec. 407; Executive Order 11336.
30. Programs which do not operate through producers, associations, cooperatives or other recipients.	Agricultural Adjustment Act of 1938; 7 U.S.C. 1301-1393, Pub. L. 73-430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714, et seq; Agricultural Act of 1949; as amended; 7 U.S.C. 1421, et seq. Pub. L. 81-439; as amended; Agricultural and Food Act of 1981; Pub. L. 97-98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98-180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98-258; Food Security Act of 1985; Pub. L. 99-198.
31. Rice Program	Commodity Credit Corporation Charter Act; Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1441, Pub. L. 81-439; Food Security Act of 1985, Pub. L. 99-198.
32. Rural Clean Water Program	Agricultural, Rural Development and Related Agencies Appropriations Act of 1980, Pub. L. 96-108; 93 Stat. 821, 835 and Pub. L. 96-528; 94 Stat. 3095, 3111.
33. Water Bank Program	Water Bank Act; Pub. L. 91-559; Pub. L. 96-182.
34. Wheat Program	Commodity Credit Corporation Charter Act. Pub. L. 80-89; Agricultural Act of 1949, as amended, 7 U.S.C. 1445; Pub. L. 81-439; Food Security Act of 1985; Pub. L. 99-198.
35. Wool and Mohair Incentive Payment Program	National Wool Act of 1954, as amended; 7 U.S.C. 1781-1787; Pub. L. 83-690; Agricultural and Food Act of 1981; Pub. L. 97-98; Food Security Act of 1985; Pub. L. 99-198.
Administered by the Economic Research Service	
36. Rural Economics Research Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
37. International Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627
38. National Resource Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
39. National Economics Division	Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627.
Administered by Federal Crop Insurance Corporation	
40. Crop Insurance	Federal Crop Insurance Act, as amended, 7 U.S.C. 1501-1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980, Pub. L. 96-365 (September 26, 1980), 94 Stat. 1312-1319.
41. Standardization Activities	Sec. 203(c) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1622(c).
42. Inspection Activities	Sec. 7 of the United States Grain Standards Act, as amended, 7 U.S.C. 79.

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Program	Authority
43. Compliance Activities	Sec. 203(h) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1622(h).
44. Research and Development	Sec. 203 of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1622.
45. Weighing Activities	Sec. 7A of the United States Grain Standards Act, as amended, 7 U.S.C. 79a.
Administered by Farmers Home Administration	
46. Emergency Loans	Sec. 321–330 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1968.
47. Farm Operating Loans	Sec. 311, Title I of the Rural Development Act, as amended, 7 U.S.C. 1941.
48. Farm Ownership Loans	Sec. 302 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1922.
49. Section 502 Rural Housing Loans	Sec. 502, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1471.
50. Rural Housing Loans and Grants (Section 504 repair loan and grant).	Sec. 504, Title V, Housing Act of 1949, as amended, 42 U.S.C. 1471.
51. Soil and Water Loans	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924.
Administered by the Forest Service	
52. Permits for use of National Forests and National Greenlands by other than individuals at a nominal or no charge to any group.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915; as amended, 16 U.S.C. 497; Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011
53. Timber granted free or at nominal cost to any group.	Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
54. Forest seedling production and distribution	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, 28 U.S.C. 2102.
55. Control of White Pine Blister Rust	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313; 16 U.S.C., Sec. 2104, (Insect and disease control, White Pine Blister Rust not specifically mentioned).
56. Protection of Forest Resources from insects, pests and diseases.	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, 16 U.S.C. 2104.
57. Job Corps	29 U.S.C. 1691–1701. Note: This is a Federally-financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
58. Youth Conservation Corps	Act of August 13, 1970, as amended, 16 U.S.C. 1701–1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teen-age youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.
Administered by Food Safety and Inspection Service	
59. Meat and Poultry Inspection Program	Federal Meat Inspection Act; Pub. L. 90–201; 21 U.S.C. 601, *et seq.* Poultry Products Inspection Act; Pub. L. 90–492; 21 U.S.C. 601, *et seq.* Humane Slaughter Act; Pub. L. 85–765; 7 U.S.C. 1901, *et seq.*
60. Meat and Poultry Inspection Operations	Federal Meat Inspection Act; 21 U.S.C. 601, *et seq.* Poultry Products Inspection Act; 21 U.S.C. 451, *et seq.*
Administered by Human Nutrition Information Service	
61. Nutrient Data Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
62. Guidance and Education Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
63. Food Consumption Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
64. Diet Appraisal Research	National Agriculture Research Extension and Teaching Policy Act of 1977, Sec. 1428; 7 U.S.C. 3178a.
Administered by National Agricultural Statistics Service	
65. Crop and Livestock Estimates	7 U.S.C. 292, 411a, 411b, 427, 471, 475, 476, 501, 961, 953, 955, 956, 957. Agricultural Marketing Act of 1946; 7 U.S.C. 1621–1627; 7 U.S.C. 2201, 2202, 2248, 3103, 3291, 3311, 3504; 22 U.S.C. 3101; 44 U.S.C. 3501–3511; 50 U.S.C. 2061, *et seq.* 50 U.S.C. 2251, *et seq.*
66. Statistical Research	Agricultural Marketing Act of 1946; 7 U.S.C. 1621.
Administered by the Office of Transportation	
67. Rural Transportation Development	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291; Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, *et seq.*
68. Foreign Market Development	Section 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1661(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, *et seq.*
69. Economic Analysis	Sec. 201 of the Agricultural Adjustment Act of 1938; 7 U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. (1662(j)).
70. Facilities Research and Development	Sec. 201 of the Agricultural Adjustment Act of 1938, U.S.C. 1291 and Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1662(j). International Carriage of Perishable Foodstuffs Act, 7 U.S.C. 4401, *et seq.*
Administered by Rural Electrification Administration	
71. Rural Electrification Loans and Loan Guarantees.	Titles I and II of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 901–916, 931–940 (1982).
72. Rural Telephone, Loans and Loan Guarantees	Titles II and III of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 922–924, 931–940 (1982).
73. Rural Telephone Bank Loans	Title IV of the Rural Electrification Act of 1936, as amended; 7 U.S.C. 941–950b (1982).
Administered by Soil Conservation Service	
74. Snow Survey and Water Supply Forecasting	Soil Conservation and Domestic Allotment Act, Pub. L. 74–46; 16 U.S.C. 590a–590f, 590g.

Program	Authority
75. Inventory and Monitoring	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended; 16 U.S.C. 590a–590f, 590g.
76. River Basin Surveys and Investigations	Sec. 502 of the Rural Development Act of 1972, 7 U.S.C. 1010a. Watershed Protection and Flood Prevention Act; Pub. L. 83–566, as amended, Sec. 6, 16 U.S.C. 1006.

Done this 2nd day of May 1988 in Washington, DC.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–10071 Filed 5–5–88; 8:45 am]

BILLING CODE 3410–04–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–33–AD]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain CASA Model C–212 series airplanes, which currently requires replacement of the power quadrant cover with a cover incorporating slot protection. That action was prompted by reports that additional protection was needed to prevent foreign objects from dropping in to the pedestal which could jam or interfere with the power or trim control system, and cause partial loss of controllability of the airplane. This action would expand the applicability of the existing AD to include additional U.S.-registered airplanes.

DATE: Comments must be received no later than June 8, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On September 17, 1987, FAA issued AD 87–05–05–R1, Amendment 39–5738 (52 FR 38745; October 19, 1987), applicable to certain CASA Model C–212 series airplanes, to require replacement of the power control quadrant cover with a modified cover on CASA Model C–212 series airplanes, in accordance with CASA Service Bulletin 212–76–05, Revision 1A, dated August 8, 1986. The modified cover incorporates slot protection, the purpose of which is to prevent objects from falling into the open slots and jamming or interfering with the power or trim control system. This condition, if not corrected, could result in partial loss of controllability of the airplane.

Since issuance of that AD, the FAA has been notified that 8 additional affected U.S.-registered CASA C–212 airplanes were not identified in the effectivity of the CASA Service Bulletin.

CASA has now issued Service Bulletin 212–76–05, Revision 1, dated July 20, 1987, which includes the 8 additional airplanes in its effectivity.

Since the unsafe condition addressed in AD 87–05–05–R1 is likely to exist or develop on other airplanes of this same type design registered in the U.S., an AD is proposed which would expand the applicability of AD 87–05–05–R1 to include all affected U.S.-registered airplanes, and reflect Revision 1 of the service bulletin in the requirements of the AD. This action would ensure that all affected airplanes replace the power control quadrant cover.

Additionally, the compliance time of the AD would be revised from "prior to February 28, 1988" to "within 3 months after the effective date of the final rule." This revision would provide adequate time for operators now affected by this action to order and install the required modification parts.

It is estimated that 8 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $553 per airplane. Based on these figures, the total cost impact of this amendment on U.S. operators is estimated to be $5,384.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have

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federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($673). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-05-05-R1, Amendment 39-5739 (52 FR 38745; October 19, 1987), by revising the applicability statement and paragraph A., as follows:

CASA: Applies to all Model C-212 series airplanes, certificated in any category. Compliance is required within 3 months after the effective date of this AD, unless previously accomplished.

To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following:

A. Replace the power quadrant cover with a cover incorporating slot protection, in accordance with CASA Service Bulletin 212-76-05, Revision 1A, dated August 7, 1986, or Revision 1, dated July 20, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 25, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10047 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-56]

Proposed Revision of Transition Area; Brenham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Brenham, TX. The development of a new standard instrument approach procedure (SIAP) to the Brenham Municipal Airport utilizing the College Station Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC) has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airport.

DATES: Comments must be received on or before June 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-56, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-56." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Brenham, TX. The development of a new SIAP to the Brenham Municipal Airport, utilizing the College Station VORTAC, has necessitated this proposed revision. The transition area would increase from the present 5-mile radius of the airport to a 6.5-mile radius

of the airport. The existing northwest arrival extension would remain the same. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brenham, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Brenham Municipal Airport (latitude 30°13'00" N., latitude 96°22'25" W.) and within 3 miles each side of the 341° bearing from the Brenham NDB (latitude 30°13'20" N., longitude 96°22'22" W.), extending from the 6.5-mile radius area to 8 miles northwest of the Brenham Municipal Airport.

Issued in Fort Worth, TX, on April 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-10046 Filed 5-5-88; 8:45 a.m.]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-55]

Proposed Revision of Transition Area; Brownwood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Brownwood, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Brownwood Municipal Airport, utilizing the Brownwood Very High Frequency Omnidirectional Radio Range (VOR), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airport.

DATE: Comments must be received on or before June 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-55, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-55." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Brownwood, TX. The development of a new SIAP to Runway 35 at the Brownwood Municipal Airport, utilizing the Brownwood VOR, has necessitated this proposed revision. The existing 700-foot transition area would remain the same, with a new arrival extension being added south of the airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the Brownwood Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

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routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brownwood, TX [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Brownwood Municipal Airport (latitude 31°47'37" N., longitude 98°57'22" W.), and within 5.5 miles each side of the 179° radial of the Brownwood VOR (latitude 31°53'33" N., longitude 98°57'26" W.), extending from the 8.5-mile radius area to 16 miles south of the Brownwood Municipal Airport.

Issued in Fort Worth, TX, on April 21, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-10045 Filed 5-5-88; 8:45 a.m.]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD7-88-8]

Drawbridge Operation Regulations; Great Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Tortoise Island Homeowners Association, the Coast Guard is considering a change to the regulations governing the Tortoise Island drawbridge by requiring that advance notice for opening be given during certain periods. This proposal is being made because of a lack of requests to open the bridge at night. This action would relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 20, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The bridge is presently opened on signal. In a recent 9 month period there were only 12 requests for openings between 10 p.m. and 6 a.m. Most of these openings were during summer weekends. This proposal will provide for bridge openings on demand, except during weekday evening hours when 15 minutes advance notice will be required. Notification will be given by telephone or radio to the Tortoise Island Gatehouse which is manned 24 hours per day. The proposed rule is similar to the existing operating rule for the Mathers swingspan bridge at Indian Harbor Beach which provides access to the Indian River for the majority of vessels transiting the Great Canal.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because there are few openings during the proposed advance notification period. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Part 117 is proposed to be amended by adding a new § 117.285 to read as follows:

§ 117.285 Great Canal.

(1) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal, except that from 10 p.m. to 6 a.m. Monday through Friday except Federal holidays, the draw shall open on signal if at least 15 minutes notice is given.

Dated: April 19, 1988.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-10082 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 200

Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; Financial Assistance to Meet Special Educational Needs of Children

AGENCY: Department of Education.

ACTION: Notice of regional meetings.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education will convene five regional meetings to solicit input for the Department on the content of proposed regulations under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. These meetings will include representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with the implementation of local educational agency programs under Chapter 1.

DATES: The regional meetings are scheduled to be held as follows:

May 23, 24, 25—Atlanta, Georgia
May 26-27—Philadelphia, Pennsylvania
June 1-2—Indianapolis, Indiana
June 6, 7, 8—Denver, Colorado
June 9-10—San Francisco, California

SUPPLEMENTARY INFORMATION: Section 1431(b)(1) of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 requires the U.S. Department of Education to "convene regional meetings which shall provide input to the Secretary on the content of proposed regulations." These meetings must include representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with implementation of local educational agency programs under Chapter 1. To meet this requirement, the Assistant Secretary for Elementary and Secondary Education will convene five meetings on the dates and at the locations listed in this notice. Each meeting will begin at 9:00 a.m. on the first day and end at approximately 3:00 p.m. on the second day.

The Assistant Secretary has asked each Chief State School Officer and a number of educational organizations and interest groups to nominate representatives to attend these meetings. The Assistant Secretary anticipates that approximately 225 persons will attend each meeting. The meetings will focus primarily on the following topics: parental involvement, targeting of schools, schoolwide projects, program improvement, State administration, and national evaluation standards. However, additional issues may be discussed as time permits.

On May 25 in Atlanta and June 8 in Denver, a separate session will be held from 9:00 a.m. to 1:00 p.m. to discuss issues solely related to national evaluation standards for the migrant education program under Chapter 1.

FOR FURTHER INFORMATION CONTACT: Other persons interested in attending one of the meetings should contact Carol Chelemer, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-4705.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: May 3, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education

[FR Doc. 88-10139 Filed 5-5-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Health Professions Projects in Geriatrics

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes regulations for governing Grants for Health Professions Projects in Geriatrics, authorized by section 788(d) of the Public Health Service Act (the Act), as amended. It establishes project requirements and criteria for application evaluation.

DATE: Comments must be received no later than July 5, 1988.

ADDRESS: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7-74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Koenig, Deputy Chief, Associated Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-103, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-6887.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to add a new Subpart OO to Part 57 of Title 42 of the Code of Federal Regulations to implement section 788(d) of the Public Health Service Act (the Act). Section 788(d), as revised by Pub. L. 99-129 and Pub. L. 99-660, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine, osteopathy, dentistry, pharmacy, optometry, podiatry, veterinary medicine, chiropractic, allied health, and programs for the training of physician assistants to assist in meeting the costs of projects to:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction (other than training and retraining of faculty for schools of medicine and osteopathy);

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

The Department proposes to implement section 788(d) by awarding grants for projects which support one or more of the statutory purposes and provides assistance to either a single health professions school or program, or a group of such schools or programs. This approach is proposed for the following reasons:

1. The Department recognizes that the purposes listed in section 788(d)(1) are not mutually exclusive, but encompass the range of interrelated efforts (such as developing curriculum, training health professionals and faculty, and establishing affiliations to provide students with clinical training) which national scientific and educational organizations have urged health professions schools to undertake.

2. The Department believes that these purposes should be addressed through cooperative efforts of schools representing several of the health professions necessary to provide health care to the aged, as well as projects involving a single profession. This flexible approach emphasizes that health professionals in virtually all professions need to be better prepared

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to address the needs of an increasing elderly population. To encourage cooperation among eligible health professions schools and make maximum use of available resources, the Department wishes to emphasize that projects under this authority may involve collaborative participation of various types of health professions schools and programs identified in section 788(d).

Pub. L. 99–660 amended section 788(d)(1)(D) by excluding projects for training and retraining of faculty for schools of medicine and osteopathy under this section, and concurrently establishing a new section 788(e) of the Act authorizing separate support for projects to provide 1- or 2-year internal medicine or family medicine fellowship programs. The Department believes this amendment was intended to prevent training programs eligible under section 788(e) of the Act from being supported under section 788(d) of the Act, and not to exclude all medical school faculty from participating in short-term and other training activities under section 788(d) of the Act. Therefore, this notice proposes a definition of "training and retraining of faculty" which excludes the type of training and retraining authorized under section 788(e) of the Act. This definition is meant to clarify that faculty of schools of medicine and osteopathy are eligible to enroll in and attend courses supported under section 788(d), as long as the courses are not the type of training eligible for support under section 788(e).

In determining the priority for funding applications approved under this grant program, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**. (See § 57.4005, entitled *"How will applications be evaluated?"*) At that time, public comments on the proposed special factors will be solicited.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Section 57.4009 contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of these information collection requirements to OMB for approval. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20205, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Dated: January 27, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 9, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.969, Grants for the Training of Health Professions in Geriatrics)

It is therefore proposed to add a new Subpart OO to Part 57 of Title 42 of the Code of Federal Regulations, as set forth below.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart OO, entitled "Grants for Health Professions Projects in Geriatrics" to read as follows:

Subpart OO—Grants for Health Professions Projects in Geriatrics

Sec.

57.4001 To what projects do these regulations apply?
57.4002 Definitions.
57.4003 Who is eligible to apply for a grant?
57.4004 Project Requirements.
57.4005 How will applications be evaluated?
57.4006 How long does grant support last?
57.4007 For what purposes may grant funds be spent?
57.4008 What additional Department regulations apply to grantees?
57.4009 What other audit and inspection requirements apply to grantees?
57.4010 Additional conditions.

Subpart OO—Grants for Health Professions Projects in Geriatrics

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 788(d) of the Public Health Service Act, 90 Stat. 542 (42 U.S.C. 295g–6).

§ 57.4001 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 788(d) of the Public Health Service Act for geriatric training projects.

§ 57.4002 Definitions.

"Act" means the Public Health Service Act, as amended.

"Allied health professional" means an individual who has received a certificate, an associate degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care and meets the requirements as established in section 701(13) of the Act.

"Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes, as specified in the grant award document.

"Continuing Education" means structured educational programs for practicing health professionals and allied health professionals for the purpose of improving the knowledge and skills in geriatrics of such practitioners with respect to treatment of the health problems of elderly individuals.

"Geriatric Medicine" means the prevention, diagnosis, care and treatment of illness and disability as required by the distinct needs of the elderly.

"Geriatrics" is the total health and social care of the elderly.

"Health professional" means any allopathic or osteopathic physician, dentist, optometrist, podiatrist, pharmacist, nurse, nurse practitioner, physician assistant, chiropractor, or allied health professional.

"Health professions school" means any accredited school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, and chiropractic as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

"Nonprofit" means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Program for the training of physician assistants" means any educational program as defined in section 701(8) of the Act.

"Project director" means an individual designated by the grantee in the grant application and approved by the Secretary to direct the project being supported under this subpart.

"Project period" means the total time for which support for a project has been approved including any extensions of the project.

"School of allied health" means a public or nonprofit private junior college, college, or university which provides or can provide a program of education to enable individuals to become allied health professionals or to provide additional training for allied health professions and which meets the criteria set forth in section 701(10) of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Training and retraining of faculty" means a program to train and retrain faculty to provide geriatric instruction which is not a 1-year retraining program for faculty in schools of medicine and osteopathy in geriatrics or a 1-year or 2-year internal medicine or family medicine fellowship program as identified in section 788(e)(3) of the Act.

§ 57.4003 Who is eligible to apply for a grant?

Any public or nonprofit health professions school, school of allied health, or program for the training of physician assistants located in a State may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at the time the Secretary may prescribe.[1]

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

§ 57.4004 Project Requirements.

(a) The Secretary will award grants to meet the cost of carrying out one or more of the following six purposes:

(1) Improve the training of health professionals in geriatrics;

(2) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(3) Expand and strengthen instruction in methods of geriatric treatment;

(4) Support the training and retraining of faculty;

(5) Support continuing education of health professionals and allied health professionals who provide geriatric treatment; and

(6) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Projects may include one or more of the activities in (a)(1)–(6) for one or more types of health professionals as defined in § 57.4002 of this subpart.

(b) Each project must evaluate the program systematically, including the determination of a baseline at the outset of the project and the measurement of the degree to which program and educational objectives are met.

§ 57.4005 How will applications be evaluated?

(a) After a peer review group, as required by section 788(d)(2)(B) of the Act, composed principally of non-Federal experts, makes recommendations concerning each application, the Secretary will consult with the National Advisory Council on Health Professions Education, established in section 702 of the Act, with respect to such applications. The Secretary will decide which applications to approve by considering, among other factors:

(1) The degree to which the proposed project adequately provides for the project requirements described in § 57.4004;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served.

(3) The ability of the project to achieve the project objectives within the proposed geographic area.

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives.

(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project.

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner; and

(8) The potential of the project to continue on a self-sustaining basis.

(b) In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

§ 57.4006 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 5 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.4007 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

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(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.4008 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [2]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.4009 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

[2] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 98-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 98-63.

§ 57.4010 Additional conditions.

The Secretary may impose additional conditions in the grant award before or at the time of the award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 88-9679 Filed 5-5-88; 8:45 am]
BILLING CODE 4160-15-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1145

[Ex Parte Nos. 394 and 290; Sub Nos. 3 and 2]

Cost Ratios for Recyclables; Compliance and Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: An environmental assessment (EA) has been prepared for this proceeding which proposes to adopt regulations implementing the Congressionally-mandated rate limitations on the rail movement of recyclable materials other than iron and steel (see 51 FR 21780, June 16, 1986, and 52 FR 13482, Apr. 23, 1987, and 49 U.S.C. 10731(e)). The EA concludes that the adoption of this action would not have a significant impact on the quality of the human environment or on energy consumption. The EA identifies potential environmental effects of this action, and concludes that the potential environmental benefits would be greater than any remotely possible adverse environmental effects. The EA will be served on all parties of record. Other interested parties may receive copies of the EA from the contact peson listed below.

DATE: Comments are requested and should be filed by June 6, 1988.

ADDRESS: Send an original and one copy of pleadings addressed to: (1) Ex Parte No. 394 (Sub-No. 3) and Ex Parte No. 290 (Sub-No. 2), Environmental Assessment, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Dennis B. Wierdak (Telephone 202-275-0841 or 275-0600).

Assistance for the hearing-impaired is available through TDD services (202) 275-1721.

Authority: 42 U.S.C. 4321, et seq.

Noreta R. McGee,
Secretary.

[FR Doc. 88-10101 Filed 5-5-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird, Upland Game, and Big Game Hunting, and Two to the List for Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to add five national wildlife refuges (NWRs) to the lists of open areas for migratory game bird, upland game, and/or big game hunting, and two NWRs to the list for sport fishing. The Service has determined that such uses would be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action would be in accordance with the provisions of all applicable laws, would be consistent with the principles of sound wildlife management, and would otherwise be in the public interest by providing additional recreational opportunities.

DATE: Comments must be received on or before June 6, 1988.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David E. Heffernan, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343-1014.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open five refuges to hunting and two to sport fishing. Some of the proposed hunting and fishing programs require refuge-specific hunting or fishing regulations. These regulations will be included in a separate rulemaking document on refuge-specific hunting and fishing regulations.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the opening of the refuges cited below to migratory game bird, upland game or big game hunting, and/or sport fishing. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director—Refuges and Wildlife (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary.

The Refuge Recreation act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of these permitted forms of recreation.

In accordance with the NWRSAA and the Refuge Recreation Act, the Secretary has determined that the proposed openings for hunting and fishing would be compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer these programs. The hunting and fishing programs will be within State and Federal (migratory game bird) regulatory frameworks. A discussion of the compatibility of the hunting and fishing programs with the purpose(s) for which each refuge was established and the availability of funding for each program follows:

Cache River NWR was established in June 1987, by authority of the Migratory Bird Conservation Act to protect and preserve a portion of internationally significant waterfowl habitat. The bottomland hardwood forest contained within the refuge serves as important wintering habitat for mallards and excellent year-round habitat for a variety of other wildlife species. It is proposed to open the refuge to migratory game bird (waterfowl, dove, woodcock, snipe), upland game (squirrel, rabbit, quail, raccoon) and big game (deer) hunting, as well as sport fishing. Present numbers of included wildlife species are large enough to support a hunting and fishing program and provide for the beneficial use of a renewable resource. The proposed activities would not interfere with the continued protection and preservation of the bottomland hardwood forest and its ability to provide for migratory waterfowl throughout the year. Refuge-specific regulations would reduce any time and space conflicts between these activities and other permitted uses. By ensuring that the populations of key wildlife species, particularly deer, are maintained within the capacity of the available habitat to support them, the important hardwood tree species typical of the bottomland forest will continue to be preserved and food will be available for all species of wildlife. A section 7 evaluation under the Endangered Species Act concludes that the proposed programs "will not affect" any listed endangered or threatened species. Opening the refuge to hunting and sport fishing would contribute to the attainment of refuge objectives in terms of wildlife—oriented recreation, would be compatible with the purpose for which the refuge was established and thus be in compliance with the NWRSAA. The annual cost to administer the programs is estimated at $13,000. Within the current annual refuge complex budget of $357,000 the necessary funds are available to administer these programs. Therefore, opening the Cache River NWR to hunting and sport fishing would be in compliance with the Refuge Recreation Act.

Edwin B. Forsythe NWR was created in 1984 by combining the former Brigantine (established in 1939 by authority of the Migratory Bird Conservation Act) and Barnegat (established in 1967, same authority) NWRs and renaming the refuge after the late New Jersey congressman. The purpose of the refuge is to provide habitat for migratory birds, particularly black ducks and Atlantic brant. It is proposed to open the refuge to big game (deer) hunting. The purpose of the hunt is to maintain the refuge deer herd within the carrying capacity of the habitat and provide for the use of a renewable natural resource. The deer herd is currently near the carrying capacity of the habitat and it is likely that it will exceed this capacity in the near future. Overbrowsing by a large population of deer will adversely impact important habitat used by migratory birds thereby reducing the ability of the refuge to meet its primary purpose. The hunting activity itself would generally be confined to the upland areas of the refuge and cause minimal disturbance to migratory birds. Refuge regulations would be established to ensure the objectives of the deer hunt are met and to reduce space and time conflicts with other permitted uses. A Section 7 evaluation concludes that the proposed program "will not affect" any listed endangered or threatened species. Opening the refuge to big game hunting would enhance the ability of the refuge to achieve its primary purpose, is compatible with the purpose of the refuge, and would be in compliance with the NWRSAA. The estimated annual cost of the hunting program is $6,800. Within the current annual budget for the refuge, the necessary funds are available to administer the proposed hunting program. Therefore, opening Edwin B. Forsythe NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Supawna Meadows NWR was established in 1934 by Executive Order 6582 as a refuge and breeding ground for wild birds and animals. Originally known as the Goose Pond Addition to the Killcohook Migratory Bird Refuge, the Supawna Meadows portion was separated from Killcohook (now known as the Killcohook Coordination Area) and renamed the Supawna Meadows National Wildlife Refuge in 1974. It is proposed to open the refuge to big game (deer) hunting. Current habitat conditions indicate a deer population exceeding the capacity of the area and further habitat deterioration is likely

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unless numbers are reduced. Frequent deer/vehicle collisions on public roads surrounding the refuge and complaints of crop depredations from farmers around the refuge also indicate a high population. A deer population exceeding the capacity of its habitat to support it results in the deterioration of that habitat and is detrimental not only to the deer population but also the wide variety of other wild birds and animals found there. Such deterioration would be in direct conflict with the purpose of the refuge. A section 7 evaluation concludes that the proposed hunting program "will not affect" any endangered or threatened species. Opening Supawna Meadows NWR to big game hunting would therefore be supportive of and compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost of administering the hunting program is $6,000. Within the current refuge budget funds are sufficient to carry out the proposed program. Therefore, opening Supawna Meadows NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Little River NWR was established in 1987 by authority of the Migratory Bird Conservation Act to preserve bottomland hardwood habitat for migratory waterfowl, particularly mallards and wood ducks. It is proposed that the refuge be opened to upland game hunting (rabbit and squirrel) and sport fishing. Both of these activities would provide the public with an opportunity to enjoy wildlife-oriented activities while at the same time utilizing a renewable natural resource. Hunting of rabbits and squirrels will not interfere with the continued preservation of the bottomland hardwood habitat nor cause undue disturbance to migratory waterfowl. As hunting would be taking place on the upland portions of the refuge and largely before significant numbers of waterfowl are present, such hunting is compatible with refuge purposes. The sport fishing program would be confined to major stream courses and would pose no conflicts with waterfowl production. A section 7 evaluation concludes that the programs "will not affect" the continued existence or habitat of any endangered or threatened species. Opening Little River NWR to upland game hunting and sport fishing would be compatible with the purpose for which the refuge was established and therefore in compliance with the NWRSAA. The annual cost of administering the program is estimated at $2,000. Within the current annual refuge budget of $130,600 the necessary funds are available to administer these programs. Therefore, the opening of Little River NWR to upland game hunting and sport fishing would be in compliance with the Refuge Recreation Act.

Salt Plains NWR was established in 1930 by Executive Order 5314 for the purpose of providing a migration, resting and wintering area for migratory birds. It is proposed to open the refuge to migratory birds and upland game hunting. Present populations of species to be hunted (primarily mourning doves and quail) are adequate to support such a program and provide for the public use of renewable natural resources. Under the proposed program only a small portion of the refuge (about 4% of total area, comprised of upland and associated croplands) will actually be hunted thus reducing disturbance to migratory birds on the main portion of the refuge (Salt Plains Reservoir) to a minimum. The area proposed for hunting is used only sparingly by waterfowl but provides good conditions for mourning doves and quail and other upland species. Refuge regulations would limit time and space conflicts with other permitted uses. A section 7 evaluation of the program concludes that opening the refuge to these activities "will not affect" the continued existence or habitat of any endangered or threatened species. Potential conflicts between hunt participants and listed species (whooping crane, bald eagle, interior least tern) would be avoided by leaving those areas frequented by these species (mainly the reservoir area) closed to public use. Opening the refuge to migratory birds and upland game hunting would contribute to the attainment of refuge objectives in terms of providing opportunities for wildlife-oriented recreation, would be compatible with the purpose for which the refuge was established and thus in compliance with the NWRSAA. The annual cost to administer the programs is estimated at $2,100. Within the current annual refuge budget of $229,500 adequate funds are available to administer the programs. Therefore, opening Salt Plains NWR to migratory birds and upland game hunting would be in compliance with the Refuge Recreation Act.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the proposed opening of these refuges to hunting and fishing will generate approximately 71,550 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and the 1987 Economic Report of the President (Consumer Price Index), total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $2,406,429, or substantially less than $100 million. In addition, since these estimated receipts will be spread over three states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule would have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The proposed openings would provide recreational opportunities and generate economic benefits that would not otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule would be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs.

Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C), environmental assessments have been prepared for these proposed openings. Section 7 evaluations have been prepared pursuant to the Endangered Species Act. These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, or by mail, addressing the Director at the above address.

David E. Hefferman, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.11 would be amended by adding Cache River NWR, AR, and Salt Plains NWR, OK, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Arkansas

Cache River National Wildlife Refuge

* * * * *

Oklahoma

* * * * *

Salt Plains National Wildlife Refuge

* * * * *

3. Section 32.21 would be amended by adding Cache River NWR, AR, Little River NWR, OK, and Salt Plains NWR, OK, alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

Oklahoma

Little River National Wildlife Refuge

* * * * *

Salt Plains National Wildlife Refuge

* * * * *

4. Section 32.31 would be amended by adding Cache River NWR, AR, Edwin B. Forsythe NWR, NJ, and Supawna Meadows NWR, NJ, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

* * * * *

New Jersey

Edwin B. Forsythe National Wildlife Refuge

* * * * *

Supawna Meadows National Wildlife Refuge

PART 33—[AMENDED]

1. The authority citation for Part 33 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460K, 664, 668dd, 715i.

2. Section 33.4 would be amended by adding Cache River NWR, AR, and Little River NWR, OK, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Arkansas

* * * * *

Cache River National Wildlife Refuge

* * * * *

Oklahoma

Little River National Wildlife Refuge

* * * * *

Dated: April 18, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-10086 Filed 5-5-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 80461-8061]

Status of Steller Sea Lions in Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: Based on a preliminary review of a status report on the Steller sea lion in Alaska, NMFS intends to publish a proposed rule designating this population as depleted under the Marine Mammal Protection Act (MMPA). If this population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation. In this instance, based on recent court decisions, restrictions on commercial fishing in the North Pacific Ocean and Bering Sea are possible consequences of this rulemaking.

DATE: Comments must be submitted on or before July 5, 1988.

ADDRESS: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202-673-5351.

SUPPLEMENTARY INFORMATION: On April 24, 1987, NMFS announced its intention to prepare a report on the population status of Steller sea lions to determine abudnance and trends (52 FR 13743). The resultant report, entitled "Status Review, Northern (Steller) Sea Lion (*Eumetopias jubatus*) in Alaska" (January 1988), concludes that the number of adult and juvenile sea lions observed on rookeries in southwest Alaska declined at least 52 percent from approximately 140,000 in 1956-60 to about 68,000 in 1985. Copies of this report are available from the information contact noted above. In addition, copies of the report and this notice are being sent to over 75 interested individuals, agencies, and organizations.

Decline Rates

Although the number of Steller sea lions has declined throughout Alaska (52 percent overall in 27 years), the greatest decline has been observed in the eastern Aleutian Islands (−79 percent) and western Gulf of Alaska (−73 percent).

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Declines have also occurred in the central Gulf of Alaska (−31 percent) and central Aleutian Islands (−8 percent). These declines may have occurred in two phases. The first phase probably began in the early 1970s and was confined to the eastern Aleutian Islands and western Gulf of Alaska. Numbers of sea lions in the Aleutians and Gulf of Alaska fell by 25 percent (−1.6 percent per year) between 1958–77. Numbers in the eastern Aleutian Islands appeared to stabilize in the mid–1970s while those in the central Aleutians and western Gulf may have increased slightly. A second phase of the decline probably began during the late 1970s affecting all areas and resulting in a further decline of 36 percent (−5.2 percent per year) between 1977–85. During 1986–87, counts of adults and pups at Marmot Island, the largest rookery in Alaska, indicate that the decline is continuing. Pups counted at Marmot Island totalled 6,741 in 1979, 4,286 in 1986 and only 2,910 in 1987.

Possible Causes of Decline

Fisheries-related mortality factors have been examined as possible causes of the observed declines in Steller sea lions. These factors include incidental take in the course of commercial fishing in the Bering Sea and North Pacific Ocean, directed killing of sea lions by fishermen, changes in quantity or quality of prey species, especially walleye pollock, and entanglement in lost or discarded fishing gear or other debris. NMFS is also examining reproduction and natural mortality rates, changes in environmental carrying capacity, oceanographic conditions, disease and toxic substances, predation, and the effects of past commercial and subsistence harvests. However, data gaps exist that preclude final conclusions regarding the factors contributing to the decline.

Population Status

The Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361–1407, states that marine mammal species and population stocks should not be permitted to diminish below their optimum sustainable population (OSP). NMFS has defined OSP as a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction and growth, less losses due to natural mortality (See 50 CFR 216.3 and 51 FR 47156, December 30, 1986). MNP is often represented as a percentage of carrying capacity. For example, in northern fur seals, MNP occurs when the population is at about 60 percent of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50 percent of carrying capacity.

The current population level of Steller sea lions in most of Alaska (68,000) is about 48 percent of the population level observed during 1956–60 (140,000). However, the counts made during 1956–60 are now believed to have underestimated sea lion numbers because they were conducted before the season of peak abundance and some haul-out sites were missed. Therefore, the current population may be below 50 percent of historic carrying capacity and below the lower bound of OSP for this population.

The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under * * * this Act, determines that a species or population stock is below its [OSP]." NMFS will request consultation and concurrence by the Marine Mammal Commission before publishing a proposed rule regarding depletion of this population.

Consequences of a Depletion Designation

Under the MMPA, NMFS must make a depletion determination solely on the basis of the available biological information. NMFS has no discretion to consider the potential consequences of a depletion designation. Nevertheless, NMFS is requesting comments on both the scientific information presented above and on impacts that may ensue as a consequence of the expected designation. NMFS wants to determine, at the earliest possible date, what other regulatory, administrative, or legislative actions may be appropriate to address any public concerns.

Currently, once a species or population stock has been designated as depleted, there are only three categories of allowable takes. Alaska Natives may take depleted species for subsistence and handicraft purposes. Permits may be issued authorizing takings for research purposes; and small incidental takes that have a negligible impact on the population may be authorized for certain activities. However, a number of restrictions apply to taking of depleted species including a prohibition on takes in the course of commercial fishing (MMPA, 16 U.S.C. 1371(a)(3)(B)).

Six domestic general permits issued by NMFS in 1984 authorize the incidental take of Steller sea lions and other marine mammals in the North Pacific Ocean. A total of 2,880 Steller sea lions are authorized to be taken annually incidental to commercial fishing operations. These five-year permits expire on December 31, 1988. If Steller sea lions are designated as depleted, NMFS under present law cannot issue permits for their incidental take, although it is known that these animals will inevitably be taken in the course of some fisheries operations.

NMFS has interpreted its authority under the NMFS to include discretion to issue permits for incidental taking when populations covered by the permit will not be disadvantaged, without requiring proof that all other species that might possibly be taken are also within OSP. However, in a recent decision involving a permit issued to the Federation of Japan Salmon Fisheries Cooperative Association (Federation) to take Dall's porpoises incidental to commercial salmon fishing, a much stricter interpretation of the MMPA has been adopted by the courts (*Kokechik Fishermen's Ass'n et al. v. Secretary of Commerce, et al.*, No. 87–5239, slip op. (D.C. Cir. February 16, 1988). The courts considered whether or not NMFS may legally issue a permit allowing incidental taking of one protected marine mammal population that was above OSP knowing that other protected marine mammals (not demonstrably at OSP) would also be taken. The courts held the permit NMFS issued to the Federation to be invalid and "contrary to the requirements of the MMPA." NMFS is seeking additional review of this decision.

In response to concerns about impacts on commercial fisheries that have arisen out of this case, NMFS announced FR 19874, May 28, 1987). This amendment would allow incidental, but not intentional, takings of small numbers of depleted marine mammals by vessels engaged in commercial fishing if such taking will have only a negligible impact on the affected population. NMFS is considering whether or not it can reissue domestic general permits for fisheries that may also take either depleted stocks or species for which no OSP determination has been made (See 53 FR 2089, January 26, 1988). Consequences of a depletion determination for Steller sea lions will depend on these deliberations and on potential Congressional action on MMPA reauthorization during 1988.

Date: May 2, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88–10097 Filed 5–5–88; 8:45 am]

BILLING CODE 3510–22–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[Common Carrier Docket No. 87–215; FCC 88–151]

Enhanced Service Providers

AGENCY: Federal Communications Commission (FCC).

ACTION: Termination of proposed rule.

SUMMARY: This Order terminates CC Docket No. 87–215 in which the Commission proposed to eliminate the exemption from interstate access charges currently permitted enhanced service providers. The Commission has concluded that it would not be appropriate at this time to go further with this rulemaking.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruth Milkman, tele: (202) 632–6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in Common Carrier Docket 87–215, FCC 88–151, Adopted April 19, 1988, and Released April 27, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Order

1. In this *Order*, the Commission is terminating CC Docket No. 87–215. In the Notice of Proposed Rulemaking in this docket, the Commission proposed to eliminate the exemption from interstate access charges currently permitted enhanced service providers. The Commission sought comment from interested parties on this issue, and asked for detailed data on the state of the enhanced services industry. The record in this proceeding indicates that, as a result of a number of complex and interrelated factors, the enhanced services industry is entering a unique period of rapid and substantial change. The Open Network Architecture plans required in the *Computer III* proceeding were filed on February 1, 1988, but have not yet been implemented. In addition, the District Court overseeing the Modification of Final Judgment (MFJ) in the Bell System divestiture case has recently modified the restriction in the decree that had previously prevented the Bell Operating Companies (BOCs) from offering any information services. These regulatory and judicial events make this an unusually volatile period for the enhanced services industry. The Commission has concluded that it would not be appropriate at this time to eliminate the exemption from interstate access charges currently permitted enhanced service providers. Accordingly, the Commission has decided to terminate this rulemaking proceeding.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–9980 Filed 5–5–88; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 53, No. 88
Friday, May 6, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental statement; Ridge Timber Sale; Okanogan National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of environmental impact statement cancellation.

SUMMARY: The Department of Agriculture, Forest Service, has withdrawn its notice of intent to prepare an environmental impact statement for the Ridge Timber Sale on the Twisp Ranger District of the Okanogan National Forest. As a result of on going planning and environmental analyses for the Forest Land and Resource Management Plan, it was determined that the issues and concerns raised for the Ridge Timber Sale would be more appropriately considered and addressed in the environmental impact statement for the Okanogan National Forest Land and Resource Management Plan.

The Notice of Intent, published in the **Federal Register** of December 16, 1986, is hereby rescinded (51 FR 45029).

FOR FURTHER INFORMATION CONTACT: Jim Hulbert, District Ranger, Twisp Ranger District, Okanogan National Forest, P. O. Box 188, Twisp, Washington 98856 (telephone (509) 997–2131).

William D. McLaughlin,
Forest Supervisor.

Date: April 22, 1988.

[FR Doc. 88–10070 Filed 5–5–88; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

North Delaney Butte Lake, Critical Area Treatment RC&D Measure, CO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the North Delaney Butte Lake Critical Area Treatment RC&D Measure, Jackson County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0295.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

This critical area treatment measure concerns a plan to prevent water erosion above the lake. This gully erosion is damaging the water quality of the lake. The planned works of improvement include constructing approximately 450 feet of pipeline with appurtenances, a grade stabilization structure, 1,750 feet of diversion structure, and 15 acres of critical area planting.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy requests. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Sheldon G. Boone,
State Conservationist.

Date: April 29, 1988.

[FR Doc. 88–10125 Filed 5–5–88; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration
Title: Swedish Consignee's Letter of Assurance
Form Number: Agency—N/A; OMB—0625–0142
Type of Request: Reinstatement
Burden: 259 respondents; 139 reporting/recordkeeping hours
Needs and Uses: The information requested by this reporting requirement is submitted voluntarily by Swedish importers of controlled U.S. origin goods and technical data. This documentation affirms that the importer will comply with our export policies. The purpose of this requirement is to provide the U.S. with an extra measure of security against diversion of these goods or technology to unauthorized destinations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: Bureau of Export Administration
Title: Magnetically-Enhanced Sputtering Equipment
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 12 respondents; 60 reporting hours
Needs and Uses: A foreign availability request has been received. In accordance with the Export Administration Act, the Department must evaluate the economic impact should controls be maintained on magnetically-enhanced sputtering equipment.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395–7340

Agency: Bureau of Export Administration
Title: Digital Computer Systems Parameters
Form Numbers: Agency—ITA–6031P; OMB—0625–0038
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 5,725 respondents; 13,768 reporting/recordkeeping hours
Needs and Uses: The information provided on computers and software is used by U.S. government export licensing personnel to determine if a license should be issued to export such items to Communist bloc countries and the Peoples Republic of China.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: Bureau of Export Administration
Title: Statement by Foreign Consignee in Support of a Special License Application
Form Numbers: Agency—ITA–6052P; OMB—0625–0135
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 645 respondents; 343 reporting/recordkeeping hours
Needs and Uses: Special licenses (project and service supply) allow multiple shipments, thus eliminating the need for an individual license for each export. Information in support of a special license is submitted by foreign consignees of U.S. exporters, which is used to determine the reliability of the foreign consignee. By using this procedure, the foreign consignee need not submit supporting documentation every time they place an order.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: Bureau of Export Administration
Title: Written Assurance for Exports of Technical Data Under General License GTDR (Technical Data Under Restriction)
Form Numbers: Agency—EAR 379.4(e)(f); OMB—0625–0140
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 550 respondents; 284 reporting/recordkeeping hours
Needs and Uses: Foreign importers are required to provide letters of assurance to U.S. exporters stating that certain technical data will not be used for certain purposes or shipped to proscribed destinations. The purpose of the written assurance is to ensure that the importer will comply with our export laws. This document can be used as evidence against firms who have not compiled with the Export Administration Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 2, 1988.

Edward Michals,
Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10065 Filed 5–5–88; 8:45 am]
BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket 22–88]

Foreign-Trade Zone 133—Quad-City, Iowa; Application for FTZ Subzones; Maytag Corporation Plants in Newton, Iowa, Etc.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Quad-City Foreign-Trade Zone, Inc. (QCFTZ), grantee of FTZ 133, requesting special-purpose subzone status for three plants of the Maytag Corporation, which produce major home appliances. One of the plants is located in Iowa, while the other two are in Illinois. QCFTZ is authorized under the laws of Iowa and Illinois to apply for zone projects in both states. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 25, 1988.

The Three Maytag plants are: Admiral Division of Maytag (50 acres), Monmouth Boulevard and Linwood Road, Galesburg, Illinois (refrigerators and dehumidifiers); Norge, a division of Admiral (34 acres), Lyerla Drive, Herrin, Illinois (clothes washing machines and dryers); Maytag (plant #2, Newton, 37 acres), N. 19th Avenue East and E. 8th Street North, Newton, Iowa (clothes washing machines and dryers, dishwashers and food waste disposers). The plants employ a total of some 6,400 persons.

The plants source certain parts from abroad, including compressors, ball bearings, capacitors, controllers, and thermostats, which account for up to 20 percent of total material costs.

Zone procedures would exempt Maytag from Customs duties on the foreign components that are reexported in finished products. On products shipped into the United States, the company would be able to take advantage of the same duty rate available to importers of finished refrigerators, clothes washers and dryers and dishwashers. (The company does not plan to use zone procedures for the production of dehumidifiers and food waste disposers.) The duty rates on components used at the three plants range from 3.4 to 11.0 percent, whereas the rates on the finished products range from 2.8 to 3.6 percent. The application indicates that the savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC. 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 South Canal Street, Chicago, Illinois 60607; Theodore Galantowicz, District Director, U.S. Customs Service, North Central

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Region, 7911 Forsyth Boulevard, Suite 625, Clayton, Missouri 63105; Colonel Neil A. Smart, District Engineer, U.S. Army Engineer District Rock Island, P.O. Box 2004, Clark Tower Building, Rock Island, Illinois 61204–2004; and Colonel Daniel M. Wilson, District Engineer, U.S. Army Engineer District St. Louis, 210 Tucker Boulevard N., St. Louis, Missouri 63101–1986.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 20, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 525 East 10th Avenue, P.O. Box 767, Milan, Illinois 61264

Office of the District Director, U.S. Customs Service, 7911 Forsyth Boulevard, Suite 625, Clayton, Missouri 63105

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: May 2, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–10118 Filed 5–5–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–559–701]

Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of carbon steel wire rod (wire rod), as described in the "Scope of Investigation" section of this notice.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Cary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3217 or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Singapore of wire rod.

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Preliminary Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (53 FR 5207, February 22, 1988)], the following events have occurred. We conducted verification in Singapore of the questionnaire responses of the Government of Singapore, National Iron and Steel Mills (NISM), Kloeckner Pte. Ltd. (Kloeckner), and Mitsui & Co. Ltd. of Singapore (Mitsui) from March 7–11, 1988. A supplemental response was submitted by the respondents on March 21, 1988. Briefs were filed on April 22 and 25, 1988.

Scope of Investigation

For the purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classified under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under items 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the Harmonized System.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1986. Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioners, we determine the following:

I. Programs Determined not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Singapore of wire rod under the following programs:

A. Development Bank of Singapore Short-Term Trade Financing

Although not alleged by petitioners and not included in our notice of initiation or preliminary determination, we found during verification that the Development Bank of Singapore (DBS) offers short-term trade financing. This facility is a line of credit available for financing import and export transactions for periods of up to 90 days. We verified that NISM, Kloeckner, and Mitsui had short-term trade financing from the DBS outstanding during the review period. Government ownership or control of a bank does not necessarily lead to the conclusion that the bank is operating in other than a commercial fashion. Unless we are investigating a loan program established by the government or mandated by a government directive, it has generally been our practice in this type of situation to analyze initially whether the bank is operating as a commercial entity.

For example, in *Final Affirmative Countervailing Duty Determination: Industrial Nitrocellulose from France* (48 FR 11971, March 22, 1983), we examined two types of lending activities by Credit National, a bank partially owned by the French government which also accounted for a majority of the bank's directors. Loans which were administered jointly by Credit National and the government were subjected to the "specificity" and "benchmark" tests usually employed by the Department, and were found to be countervailable. For the other, "ordinary" loans made by Credit National, we found that the terms were generally comparable to those offered by commercial banks. Thus, we concluded that we did not have reason to investigate whether individual loans made outside of the government-directed programs conferred a subsidy.

In *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (51 FR 3357, January 27, 1986), we found that "although the DBS was established in 1968 as a government development bank, since 1973 it has functioned as an ordinary commercial bank." Moreover, it was determined that the terms of the long-term financing under investigation were similar to those offered by other commercial banks in Singapore.

Based on information gathered at verification in this investigation, we found that the Government of Singapore is the majority shareholder in DBS and controls three of the nine members of the bank's board of directors. However, we also found that the bank continues to operate as a profitable institution and that the terms of the short-term trade financing were comparable to terms offered by other commerical banks in Singapore. Therefore, we have no reason to believe that the short-term trade financing offered by DBS constitutes a bounty or grant to respondents or other borrowers.

B. Section 16 of the Income Tax Act (ITA)

The Economic Development Board (EDB) administers section 16 of the ITA, which provides for an annual allowance of 3 percent plus an additional initial allowance of 25 percent for the depreciation of industrial buildings. We verified that these allowances are the standard depreciation allowances permitted in Singapore and apply to all types of industrial buildings, including buildings for research and development (R&D). There is no evidence on the record that these allowances are excessive for the steel industry. Therefore, we determine that initial and annual allowances for industrial buildings provided for under section 16 of the ITA are not countervailable.

c. Section 19A of the ITA

In 1985, the Government of Singapore instituted a system of accelerated depreciation. Section 19A of the ITA, administered by the EDB, allows a company to depreciate all capital expenditures over a three year period, with the exception of automobiles and robotics. Currently, an enterprise must choose between using section 19 of the ITA (the normal depreciation schedule) or section 19A when depreciating an asset for tax or financial purposes.

We verified that this provision applies to all capital expenditures, except as noted above, and that it is available to all enterprises in Singapore. Therefore, we determine that the accelerated depreciation provided for under section 19A of the ITA is not countervailable.

II. Programs Determined Not To Be Used

Based on verified information, we determine that manufacturers, producers, or exporters in Singapore of wire rod did not apply for, claim, or receive benefits during the review period for exports of wire rod to the United States under the programs listed below. These programs were described in the preliminary determination in this investigation unless otherwise noted. (Because the Economic Expansion Incentives Act (EEIA) of 1967 was amended in 1985, the numbers corresponding to certain section titles have been changed. Therefore, the section numbers of the EEIA of 1967, which were used in the preliminary determination, are listed below in parentheses after the 1985 part numbers, where appropriate.)

A. Export Tax Incentives

1. Part VI (IV) of the EEIA as amended, Production for Export.
2. Part VII (IVA) of the EEIA as amended, International Trade Incentives.
3. Part XI (VIB) of the EEIA as amended, Warehousing and Servicing Incentives.
4. Section 14 (B) and 14(C) of the ITA, Double Deduction of Export Promotion Expenses.

B. Other Tax Incentives

1. Part II (same number) of the EEIA as amended, Pioneer Industries.
2. Part IV (III) of the EEIA as amended, Expansion of Established Enterprises.
3. Part VIII (V) of the EEIA as amended, Foreign Loans for Productive Equipment.

C. Research and Development Incentives

1. Part III (IIA) of the EEIA as amended, Pioneer Service Companies.
2. Part IX (VI) of the EEIA as amended, Royalties, Fees, and Development Contributions.
3. Part X (VIA) of the EEIA as amended. Under Part X of the EEIA, companies are granted a tax exemption on profits equal to a percentage of the fixed investments in plant and equipment incurred by a company on a project. Part VIA of the original EEIA (Part X as amended) was found to be not countervailable in *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore* (50 FR 9840, March 12, 1985) (*Textiles*).

The petition in this investigation included information concerning certain R&D allowances provided by the Government of Singapore as administered by the EDB. While the Department did not initiate an investigation specifically on Part X of the EEIA, it did initiate on R&D allowances in general. Respondents reported that R&D investment allowances are provided for under Part X of the EEIA as amended and stated that the companies under investigation did not use this allowance for R&D purposes. Although this program was found to be not countervailable in *Textiles*, we continued to investigate Part X due to possible amendments concerning R&D investment allowances. Therefore, in the preliminary determination in this investigation, we determined that Part X was not used.

Although we found no new information at verification and petitioners have not presented any new information which would cause us to reconsider our determination in *Textiles*, we are not determining the countervailability of Part X of the EEIA, as amended, for purposes of wire rod because the respondents did not use the R&D part of this program during the period investigation.

4. Sections 14(E) of the ITA, Double Deduction for Research and Development.
5. Section 19(B) of the ITA, Writing-Down Allowance for Approved Know-How and Patent Rights.
6. Singapore Science Council Research and Development Assistance Scheme.

D. Government Financial Assistance

1. Monetary Authority of Singapore Rediscount Facility.
2. Singapore Economic Development Board Programs.

a. Capital Assistance Scheme
b. Product Development Assistance Scheme
c. Initiatives in New Technology

III. Program Determined Not to Exist

Based on verified information, we determine that the *Development Bank of Singapore Working Capital Loan Fund* does not exist. This program was described in the preliminary determination in this investigation.

Interested Party Comments

Comment 1: Petitioners contend that NISM received countervailable benefits for wire rod in 1986 and 1987 in the form of investment allowances under Part X of the EEIA. Petitioners argue that any benefits received under Part X are countervailable, whether they were granted for R&D investments or other types of projects. Petitioners contend that one factor the Department considers in assessing specificity is the extent and manner of discretion exercised by the government in making the program available. Because the Government of Singapore exercises complete discretion as to the projects approved and the percentage of an approved investment eligible for the

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allowance under Part X, the specificity test is met.

Petitioners further argue that the Department's verification reports contain no information demonstrating that this program, as administered, is provided to other than a specific industry, enterprise, or group thereof. Finally, citing *Cabot Corp. v. United States*, 664 F. Supp. 525 (1987) and *Baker Industries Corp. v. United States*, 7 CIT 313 (1984), petitioners argue that the Department's determination in *Textiles* is not relevant because this investigation must be decided on the facts of record in this proceeding.

Respondents contend that Part X of the EEIA as amended was found not to be limited to a specific enterprise or industry, or group of enterprises or industries in *Textiles* and that an investigation of Part X was initiated in this proceeding only with respect to R&D. They argue that petitioners have presented no new information that would suggest that the Department should review or reverse the *Textiles* determination and that nothing on the face of the law or its operation suggests that the program should be considered a countervailable benefit.

DOC Position: See section II.C.3. of this notice.

Comment 2: Petitioners contend that NISM claimed and received benefits under section 19B of the ITA for licensing and know-how fees paid for a manufacturing process which petitioners claim is used in the production of both wire rod and reinforcing bars. Petitioners argue that, although benefits under this program may be generally available to companies which meet the program's eligibility requirements, since NISM is not eligible but did receive benefits, the specificity requirement is satisfied. Petitioners further contend that, despite the Government of Singapore's statement that it will disallow the benefits NISM improperly received under the program after completion of an audit, NISM did claim the allowance during the review period.

Finally, petitioners state that the Department has addressed only the R&D provision of this tax incentive and, since approval of application for benefits is at the discretion of the Ministry of Trade and Industry, all benefits received by NISM under this provision should be countervailed.

Respondents contend that there is nothing on the record to suggest that the allowance provided under section 19B should be considered a countervailable benefit. These allowances are available to any company which makes a payment for approved know-how or patent rights and, therefore, are not countervailable. Respondents further contend that, if the allowance is not properly claimed, an adjustment to the company's tax liability will be made after the government's tax audit.

DOC Position: At verification, we found that the allowance claimed by NISM under this program was related to the production of reinforced bars not to the production of wire rod. Therefore, for purposes of this determination, we have found this program not to be used.

Comment 3: Petitioners contend that the DBS generally lends at the prime rate plus a spread for short-term trade financing. Petitioners argue that: (a) NISM received short-term trade financing from DBS during the review period at an interest rate considerably lower than the prime rate plus a spread, and (b) the interest rate NISM received is not generally available to non-DBS owned entities and is inconsistent with commercial considerations. Petitioners also contend that the interest rate differential is the result of a decision by, or at the direction of, the government to benefit specific companies in which the Government of Singapore has direct or indirect equity.

Respondents contend that the DBS operates as a domestic commercial bank extending credit on commercial terms to all recipients. Respondents argue that the rate charged by the DBS is pegged to the inter-bank rate, which is comparable to the rates offered by other commercial lenders for short-term trade financing. Further, respondents argue that similar rates were provided to Mitsui and Kloeckner, companies unrelated to the DBS.

DOC Position: We verified that all three respondents, including those in which the DBS does not hold any equity, received trade financing from the DBS. *See* section I.A. of this notice.

Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

May 2, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10117 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certification of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, application # 84-2A012.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of Northwest Fruit Exporters granted on June 11, 1984 (49 FR 24581, June 14, 1984). The amendment was deemed submitted on February 1, 1988, and a summary of the application was published in the **Federal Register** on February 18, 1988 (53 FR 4867). This notice summarizes the revisions made to the original certificate.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title II of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84-00012, issued on June 11, 1984, is amended by revising the list of "Members" under the caption "Definitions" as follows:

1. Adding the name of the following company:

—Muriel Oliver-Winterscheid, Mercer Island, WA

2. Deleting the names of the following companies:

—Andrus & Roberts Produce Company, Sunnyside, WA
—Highland Fruit Growers, Yakima, WA
—Obert Cold Storage, Zillah, WA
—Phillippi/Pro Pak, Wenatchee, WA
—Roche Fruit Company, Yakima, WA
—Yakima Fruit & Cold Storage, Yakima, WA.

3. Changing the names of the following companies:

Company (Current Listing)

—Pacific Fruit Company
—The Dalles Cherry Growers
—Wenatchee Wenoka Growers

New Listing

—Amerifresh
—Oregon Cherry Growers
—Chief Wenatchee Growers

4. Changing the locations of the following companies:

Company

—Mojonnier & Sons
—Stadelman Fruit, Inc.

Old Location

—Walla Walla, WA
—The Dalles, OR *and* Yakima, WA

New Location

—Sunnyside, WA
—Yakima, WA *only*

5. Making the following typographical changes:

Company (Current Listing)

—Inland Fruit & Produce Company
—C.M. Holtzinger Company

New Listing

—Inland Fruit & Produce Company, Inc.
—C.M. Holtzinger & Fruit Company, Inc.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: May 2, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-10115 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

Announcing Symposium on Testing for Conformance to Information Technology (IT) Standards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology (ICST) at the National Bureau of Standards (NBS) is sponsoring an open symposium to discuss conformance testing requirements of national and international organizations, and proposed policies and procedures developed for the Federal government for testing for conformance to Federal Information Processing Standards (FIPS). The symposium will focus on tests and certification procedures needed for correct implementation of standards and for interoperability of computer products, and will be of interest to Federal agency managers, industry vendors and users, standards developers, testing organizations and the international community.

DATE: The symposium will be held on May 24-25, 1988 at NBS, Gaithersburg, MD.

ADDRESS: To register or to receive a brochure on the symposium, contact Tina Faecke (301) 975-3240 or Arlene Carlton (301) 975-2821, National Bureau fo Standards, Building 225, Room B154, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Arnold Johnson; (301) 975-3247 or Shirley Radack, (301) 975-2833.

SUPPLEMENTARY INFORMATION: Attendance at the symposium is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis. A registration fee (advance $110; on-site $125) to help defray the costs of conducting the symposium will be charged. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the symposium.

Ernest Ambler,

Director.

Date: May 1, 1988.

[FR Doc. 88-10060 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Marine World Foundation (P172C)

On March 7, 1988, notice was published in the **Federal Register** (53 FR 7223) that an application had been filed by Marine World Foundation, Marine World Parkway, Vallejo, California 94589 for a permit to import four (4) false killer whales for the purpose of public display.

Notice is hereby given that on April 29, 1988 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Rolland A. Schmitten,

Acting Assistant Administrator for Fisheries.

Date: April 29, 1988.

[FR Doc. 88-10084 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; E.I. duPont DeNemours & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to E.I. duPont deNemours and Company, having a place of business in Boston, MA 02118, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S. N. 7-100,909, "Probes for GTP-Binding Proteins." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-10124 Filed 5-5-88; 8:45 am]

BILLING CODE 3510-04-M

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Patent and Trademark Office

Public Advisory Commitee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of renewal.

SUMMARY: in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA it has been determined that the renewal of the charter of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Committee was first established in September 1970, and is now being renewed. The Committee's purpose is to advise the Patent and Trademark Office concerning steps which can be taken to increase the efficiency and effectiveness of administration of the Trademark Act and to provide a continuing flow of knowledge from the private sector to the government in the field of trademarks.

As it was initially established, the Committee will continue to comprise the members of the Advisory committee for Trademark Affairs of the United States Trademark Association. The membership is balanced and is selected by the President of said association, subjet to the approval of the Assistant Secretary and Commissioner of Patents and Trademarks. The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act.

FOR FUTHER INFORMATION CONTACT: Carlisle E. Walters, Committee Control Officer, Office of the Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231, telephone: (703) 557–7464, or Suzette Kern, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–4217.

Date: April 29, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–10080 Filed 5–5–88; 8:45 am]

BILLING CODE 3510–16–M

Extension of Previously-Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Extension of interim orders.

SUMMARY: On November 18, 1987, a Notice of Initiation of Proceedings was published at 52 FR 44200, whereby the Commissioner requested comments on the extension of existing interim orders under the Semiconductor Chip Protection Act of 1984. A hearing was held on March 16, 1988. To promote the development of international comity in the protection of mask works, the Commissioner extended the existing interim orders until May 31, 1988.

By Amendment 2 to Department Organization Order 10–14, the Secretary of Commerce delegated to the Assistant Secretary and Commissioner of Patents and Trademarks (hereinafter the Commissioner) the authority, under section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), 17 U.S.C. 914, to make findings and issue orders for interim protection of semiconductor mask works produced in foreign countries. Pursuant to the Semiconductor Chip Protection Act Extension of 1987, Pub. L. 100–159, the Commissioner's authority to grant interim protection orders was extended until July 1, 1991.

Interim orders have been issued, and extended, in favor of mask works produced in eighteen (18) countries—Japan, Australia, Sweden, Switzerland, Finland, Canada, and the twelve Member States of the European Communities (EC). This proceeding was initiated to review the further progress that has been made toward establishing legal protection of semiconductor mask works in the eighteen (18) subject countries, and to permit the Commissioner to determine, on a case-by-case basis, whether to extend the orders or to recommend that permanent protection be granted through the issuance of a Presidential proclamation pursuant to section 902(a)(2) of the SCPA, 17 U.S.C. 902(a)(2).

Comments were received from or on behalf of all countries that have been granted interim protection under the SCPA. At the hearing on March 16, 1988, testimony was received from the Government of Switzerland, the Commission of the European Communities, the Electronic Industry Association of Japan, and the U.S. Semiconductor Industry Association.

Based on the record, the Commissioner has decided to extend all eighteen (18) interim protection orders until May 31, 1989.

DATES: The effective date of this order shall be June 1, 1988. The termination date of this order shall be May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The SCPA established a new form of intellectual property protection for mask works that are fixed in semiconductor chips. Mask works are defined as a "series of related images, however fixed or encoded," that represent the three-dimensional pattern in the layers of the semiconductor chip. Thus, the subject matter of protection under the SCPA are the layout designs of semiconductor chips, known in some countries as "integrated circuit layout designs" or as "semiconductor topographies." The SCPA provides a ten-year term of protection for original mask works measured from their date of registration or first commercial exploitation anywhere in the world. To maintain protection, mask works must be registered in the United States Copyright Office within two years of first commercial exploitation.

Protection for foreign mask works may be extended under both section 902 and section 914 of the SCPA. Protection of foreign mask works under section 902 continues until revoked. Section 902 sets out three different ways that foreign mask works may become eligible for protection in the United States. First, on the date the work is registered or is first commercially exploited anywhere in the world, the mask work is protectible if its owner is a national, domiciliary or sovereign authority of a foreign nation that is party to a treaty that provides protection of mask works and to which the United States is also a party, or a stateless person wherever domiciled. Second, foreign mask works may be protected when they are first commercially exploited in the United States. The third way, set forth in section 902(a)(2), is when the foreign mask work comes within the scope of a Presidential proclamation. The President may issue a proclamation upon finding that a foreign nation extends protection to mask works of U.S. nationals or domiciliaries (1) on substantially the same basis as it protects mask works of its own nationals and domiciliaries, or (2) on substantially the same basis as the SCPA.

Section 914 was included in the SCPA as a transitional provision, intended by Congress to encourage other countries to pass laws extending protection to this new form of intellectual property. Once laws were in place, it was reasoned, permanent protection for foreign mask works could be conferred under section 902 or through a multilateral treaty that extended coverage to mask works. Section 914 gives the Secretary of Commerce authority to issue orders extending interim protection to foreign mask work owners upon the satisfaction of certain conditions. First, the Secretary must find that the foreign nation is making good-faith efforts and reasonable progress toward entering into a treaty with the United States, or that the foreign government is in the process of enacting legislation that will protect U.S. mask works on the same basis as domestic mask works, or a level similar to that provided under the SCPA. Second, the Secretary must determine that nationals, domiciliaries and sovereign authorities of the foreign nation are not engaged in the misappropriation, unauthorized distribution, or commerical exploitation of mask works. Finally, the Secretary must determine that issuance of an interim order would promote the purposes of the SCPA and international comity with respect to the protection of mask works.

Under the original terms of the SCPA, the Secretary's authority under section 914 expired on November 7, 1987. Congress included the three-year transition perid to encourage other countries time to enact legislation providing mask work protection. It was also thought that progress would be made under the auspices of the World Intellectual Property Organization (WIPO) toward the development of a multilateral treaty extending protection to integrated circuit layout designs. While commendable progress has taken place on both fronts, the Congress recently extended the Secretary's authority under section 914 until July 1, 1991. *See* Pub. L. 100–159, November 8, 1987. The purpose of the extension was to enable the United States to "provide a continued incentive for foreign nations to move expeditiously to enact chip protection legislation," and to "lay a sound basis for the development of a new multilateral treaty under the auspices of the WIPO, or another appropriate forum." H.R. Rep. No. 100–388, 100th Cong., 1st Sess. 3–4 (1987).

The Secretary of Commerce has delegated to the Commissioner of Patents and Trademarks the authority under section 914 to make pertinent findings and to issue orders for the interim protection of foreign mask works. The Patent and Trademark Office established procedures for submission of requests for interim orders. The Commissioner has issued orders granting interim protection under section 914 for mask works produced in Australia, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. With the exception of orders in favor of mask works produced in Switzerland and Finland, all of the interim orders have been extended. *See Interim Protection for Mask Works of Foreign Nationals*, 51 FR 30680 (August 28, 1986). Orders for all eighteen (18) countries are in effect until May 31, 1988.

On November 18, 1987, a Notice of Initiation of Proceedings was published at 42 FR 44200, whereby the Commissioner requested comments and scheduled a hearing concerning the status of the interim protection orders previously issued under section 914. The Commissioner announced that he would detemine, on a case-by-case basis, whether to extend the interim protection available under section 914 or to recomend that the President confer permanent protection through a proclamation under section 902(a)(2) of the SCPA. On February 25, 1988, a Notice of Proposed Rulemaking was published at 53 FR 5588–90, setting forth proposed regulations that specify the content and procedures for submission of requests to the Secretary of Commerce for the issuance of such proclamations.

Submissions of the Parties

Comments were submitted by the Governments of Japan, Switzerland, Sweden, Finland, Canada, and Australia; the Commission of the European Communities submitted comments on behalf of the EC Member States. Comments were also received from the Electronic Industries Association of Japan (EIAJ) and the U.S. Semiconductor Industry Association (SIA). At the hearing on March 16, 1988, testimony was received from the Government of Switzerland, the Commission of the European Communities, the EIAJ and the SIA.

European Communities

The views of the Commission of the European Communities were delivered at the hearing by Mme. Margarita Langer, Director General for Internal Markets and Industrial Affairs. Mme. Langer began her testimony by observing that considerable progress has taken place in the EC relative to the legal protection of semiconductor chip layout designs. On December 16, 1986, the Council of the EC issued its *Directive on the Legal Protection of Topographies of Semiconductor Products* (Directive), 87/54/EEC, OJ No. L24, 27.1.87, p. 36. The Directive sets forth principles to be applied in all EC Member States, obligating them to enact laws and administrative provisions necessary to provide protection for topographies according to the principles.

Mme. Langer stated that the standards of protection required under the Directive are substantially similar to those in the SCPA. Member States must grant exclusive rights to authorize or prohibit the reproduction and commercial exploitation of a protected topography, however, it is fixed or encoded. Reverse engineering is permitted, and no liability attaches to an innocent infringer prior to notice that the work is protected. Protection is granted for ten years from the date of first commercial exploitation anywhere in the world, or from the date of the filing of an application for registration in those Member States that require registration. Registration and deposit of identifying material are optional; if the law of a Member State requires a deposit, trade secret material must remain confidential. The Member States have discretion under the Directive to protect foreign mask works through membership in a multilateral treaty or through bilateral measures.

The Directive required that all Member States enact legislation protecting semiconductor topographies by November 7, 1987. Mme. Langer stated that, while legislation was not completed in all twelve Member States by that date, laws are in place in five Member States—Denmark, the Federal Republic of Germany, France, the Netherlands, and the United Kingdom. Protection for foreign mask works under all of these laws is based on the existence of reciprocal protection in the particular foreign country.

Mme. Langer reported that progress towards implementation of the Directive in the other seven states has been substantial. In Belgium, a draft law has been prepared and is awaiting presentation to the Parliament, following endorsement by a newly-formed government. A presidential decision to implement the Directive has been prepared in Greece, and implementing legislation is pending before the Greek Parliament. Adoption of a draft law in Spain is expected by May 1988. In Ireland, issuance of a national instrument is expected shortly. Draft laws are before the Parliaments of Italy and Luxembourg. A decree-law has been prepared in Portugal, and at the time of the hearing was awaiting action by the Portuguese Council of Ministers.

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To assure that U.S. mask works are protected in the EC while national laws protecting semiconductor topographies are finalized, the Council of the European Communities adopted a decision on October 26, 1987, obligating the Member States to extend protection under the Directive to U.S. nationals and domiciliaries until November 7, 1990. *Council Decision of 26 October 1987*, 87/532/EEC, OJ No. L313, 4.1187, p. 22. This protection is based on continued U.S. protection of mask works produced in the EC. Mme. Langer testified that no mask misappropriation of mask works is taking place in the Member States. Since legislation is not in place throughout the EC, Mme. Langer requested an extension of the interim orders granting protection under section 914 of the SCPA to mask works produced in the twelve Member States. She stated that the Commission will request a Presidential proclamation conferring permanent protection under section 902(a)(2) as soon as all laws are final.

Government of Switzerland/Swiss Federation of Commerce and Industry (SFCI)

The views of the Government of Switzerland, supported by the SFCI, were conveyed at the hearing by Dr. Roland Grossenbacher, Assistant Director-General of the Swiss Federal Intellectual Property Office. Dr. Grossenbacher indicated that a degree of protection for mask works in Switzerland is currently available through a recently-enacted unfair competition statute. On the international level, he noted that the Government of Switzerland has strongly supported the movement within WIPO to conclude a treaty on the protection of integrated circuits.

Dr. Grossenbacher stated that permanent protection of mask works will be established in the context of a total revision of the Swiss Copyright Act. Dr. Grossenbacher noted that a Federal commission concluded the preparation of a draft law in December, 1987, and that the draft includes a chapter concerning the protection of mask works. He stated that the chapter is framed along the lines of the SCPA and the EC Directive. Dr. Grossenbacher indicated that final legislation should be in place by late 1989 or early 1990.

Protection of mask works under the proposed chapter is of a *sui generis* nature, according to Dr. Grossenbacher, even though it will likely be included in the Copyright Act. The subject matter of protection is to be topographies and parts of topographies manufactured by any process, "provided that their structure is not evident." Dr. Grossenbacher stated that the term "parts of topographies" indicates that protection will extend to discrete semiconductor devices that meet the requisite standard of originality.

Like the SCPA, the Swiss draft contains exceptions to the rights of mask work owners for reverse engineering and innocent infringement. The draft goes beyond the SCPA, however, by providing that innocent infringers must pay royalties to mask work owners for all uses of a protected work, not merely for those occurring after the innocent infringer had notice that the work was protected. The draft provides for a ten-year term of protection extending from the date of the application for registration or the date of first commercial exploitation of the mask work, whichever comes first. Registration must be made within two years after first commercial exploitation to maintain protection for the ten-year period. While permitting any party to inspect the register of mask works, the draft chapter safeguards against disclosure of trade secrets by precluding public access to the application files.

Protection for foreign mask works under the draft will be provided on the basis of reciprocity, according to Dr. Grossenbacher. Stating that no misappropriation of mask works has been or is taking place in Switzerland, Dr. Grossenbacher requested that the order granting interim protection under the SCPA to mask works produced in Switzerland be extended for two years, until May 31, 1990.

Government of Sweden/Federation of Swedish Industries (FSI)

In comments presented on behalf of the Government of Sweden and supported by the FSI, the Swedish Ministry of Justice stated that an *Act for the Protection of the Layout-Design of the Circuitry in Semiconductor Products* (Swedish Act) has been in force since April 1, 1987. The Government has issued a Special Decree extending protection under the Act to mask works of U.S. nationals and domiciliaries, and to mask works first commercialized in the United States, until May 8, 1988. The basis for the protection of U.S. works under the Special Decree is reciprocity.

The Ministry stated that protection afforded to U.S. mask works under the Swedish Act and the Special Decree is substantially the same as that provided under the SCPA. The Government and the FSI requested an extension of the section 914 interim order in favor of Swedish mask works for an "appropriate" period; the Government of Sweden will extend reciprocal protection to U.S. works under the Special Decree for an identical period. The Swedish Government is prepared to begin negotiations on the question of permanent protection for Swedish mask works under section 902 at any time, according to the Ministry.

Government of Finland

On behalf of the Government of Finland, the Finnish Ministry of Education presented a Progress Report on the preparation of integrated circuits legislation. The Ministry states that the State Copyright Committee published a report, *Information Technology and Copyright*, in April 1987. In the report, the Committee proposed a draft *sui generis* law for the protection of integrated circuit layout designs. Fifty-seven written comments on the proposal were received, and reaction to the Committee draft was supportive.

The Ministry reported that the proposed legislation is being modified to incorporate suggestions made in the written comments.

The points of clarification are: More precise definitions; provision for an exclusive right of importation; deletion of a provision concerning private use; provisions covering reverse engineering and innocent infringement; simplification of the duration provision; and more precise formulation of penalties for infringement.

The Ministry stated that a final version of the draft will be presented to the Finnish Parliament in mid-1988.

Government of Canada/Information Technology Association of Canada (ITAC)

The Canadian Government, supported by ITAC, presented comments requesting a one-year extension of the order protecting Canadian mask works under the SCPA. The Government noted that the Ministry of Consumer and Corporate Affairs issued a discussion paper in April 1987, containing recommendations for legislation protecting semiconductor layout designs. The Ministry has stated its intention to introduce such legislation in the first half of 1988. The Government also cited its strong support for multilateral efforts to conclude an international convention for the protection of integrated circuit designs.

Government of Australia

In written comments presented on behalf of the Government of Australia, the Australian Attorney-General's Department reported that the design and manufacture of integrated circuits is a small but growing sector of Australian industry. The Department referred to its discussion paper published in March 1987, *Copyright Protection for Artistic Works Industrially Applied*, in which the need for legal protection for integrated circuits was recognized. Based on comments on the discussion paper, the Attorney-General has concluded tentatively that a *sui generis* regime of protection for integrated circuits should be developed in Australia.

While formal proposals for legislation have not yet been considered, the Department maintained that protection for U.S. mask works is currently available in Australia under the Copyright Act of 1968. Should a court find that the Act does not protect mask works, the Department stated that it will seek immediate introduction of appropriate legislation. The Department requests an appropriate extension of the order granting interim protection in the United States to mask works produced in Australia.

Electronic Industries Association of Japan (EIAJ)/Government of Japan

The views of the EIAJ, with the concurrence of the Government of Japan, were delivered at the hearing by Mr. Robert Schwartz, Esquire, Washington counsel to EIAJ. Mr. Schwartz testified that a Presidential proclamation should be granted to Japan as soon as the Patent and Trademark Office has issued final rules implementing section 902(a)(2) of the SCPA. He noted that the Japanese *Act Concerning the Circuit Layout of a Semiconductor Integrated Circuit* has been in force since January 1, 1986. The standards of protection under the Japanese Act are virtually identical to those under the SCPA, Mr. Schwartz claimed, and protection is available for mask works produced anywhere in the world, including the United States.

Mr. Schwartz recalled the 1986 proceeding in which the Patent and Trademark Office considered extensions of previously-issued interim protection orders. He referred to two arguments made at a July 9, 1986, hearing against the issuance of a Presidential proclamation in favor of Japanese mask works; he stated that the concerns on which those arguments were based have been superseded by events. The first argument was that Presidential proclamations in general should not be issued unless it is clear that they can also be revoked in light of changed circumstances. Mr. Schwartz stated that the recently-enacted SCPA Extension clarifies the President's authority to revoke proclamations issued under section 902(a)(2).

The other argument against the issuance of a Presidential proclamation was that as of July 1986 there had been only six months' experience under the Japanese Act. Mr. Schwartz maintained that this concern is now obsolete. Japan now has two full years' experience under the Act, nearly 1500 mask works have been registered in Japan as of March 1988, and roughly 18 percent of the applications processed in 1987 were from U.S. entities.

Mr. Schwartz urged that interim protection for mask works produced in Japan continue in force until final rules are issued and the appropriate actions toward the issuance of a Presidential proclamation can be taken.

U.S. Semiconductor Industry Association (SIA)

Mr. William Cray, Operations Law Group Manager, Digital Equipment Corporation, presented the views of SIA at the March 16 hearing.

SIA favors a blanket one-year extension of all 18 interim protection orders under section 914 of the SCPA, and opposes the issuance of a Presidential proclamation under section 902(A)(2) to any country at this time. Mr. Cray stated that section 914 is the best mechanism for review and evaluation of mask work legislation in the United States and foreign countries, that the extent of such review under the Presidential proclamation provisions is not yet clear, and that section 914 provides full, if not permanent, protection to foreign mask work owners. He stated that the issuance of a Presidential proclamation could jeopardize the negotiation of the multilateral integrated-circuits treaty in WIPO (1) by relegating international dialogue concerning mask work legislation solely to the treaty negotiations, and (2) because the grant of bilateral protection through a Presidential proclamation will compromise the negotiation of a multilateral treaty.

Mr. Cray noted SIA's longstanding concern that adequate protection for the discrete class of semiconductor products be provided under both the SCPA and mask work protection laws of other countries.

Concerning the degree of legal protection for mask works in each of the countries under consideration, Mr. Cray urged that the Commission of the European Communities continue its aggressive efforts to ensure that legislation compatible with the Directive soon be in place in all EC Member States. Concerning the draft law in Switzerland, Mr. Cray made several recommendations—that the definition of "topography" be made more precise, that the limitation on the right of reproduction for purposes of analysis be clarified, and that a provision for reverse engineering be included.

Mr. Cray congratulated the Government of Sweden on the enactment of its mask work protection law in April 1987, stating that SIA prefers to see the law in operation for a substantial period of time prior to the issuance of a Presidential proclamation. He also requested that the Swedish Government explain the purpose of a provision in the law permitting reproduction of single copies of mask works for private use. Mr. Cray expressed SIA's pleasure with the progress made in Finland toward the development of mask work legislation during the short period since interim U.S. protection was granted to Finnish works.

Praising the Canadian Government's plans to introduce legislation protecting integrated circuits by July 1988, Mr. Cray voiced SIA's concern that the current draft does not adequately protect the discrete class of semiconductor products. He suggested statutory language to ensure coverage of "discretes." Noting that draft legislation has yet to be prepared in Australia, Mr. Cray nonetheless cited the Australian Government's active participation in the WIPO negotiations for a multilateral treaty as evidence of its good faith intent to provide adequate legal protection for mask works. He restated an SIA concern that Australia's current copyright law does not adequately protect mask works, since it does not provide for reverse engineering, innocent infringement, or registration and notice of mask works. Mr. Cray urged the Australian government to proceed expeditiously with the preparation of specific legislation to protect mask works.

As to Japan, Mr. Cray noted the record of success under the Japanese law protecting integrated circuits since it became effective in January 1986, but voiced SIA's opposition to the issuance of a Presidential proclamation in favor of Japanese mask works at this time. Restating SIA's objections to Presidential proclamations in general, he cited two concerns specific to the Japanese law. First, SIA claimed that the quasi-governmental agency responsible for registering claims to mask work protection, the Industrial Property Cooperation Center (IPCC), has strong ties to the Japanese semiconductor industry. Second, the Japanese law requires the inclusion of trade secret material in applications for mask work

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registration; because the IPCC is sponsored by Japanese companies, SIA feared that the confidentiality of proprietary information contained in the IPCC registry may not be maintained.

Supplemental Comments

To allow the parties to address issues raised in written comments or in testimony at the March 16 hearing, the record in this proceeding remained open until April 4, 1988. Supplemental comments were received from the Swedish Ministry of Justice on behalf of the Government of Sweden, from the EIAJ, and from SIA.

The Swedish Ministry of Justice addressed SIA's concern regarding a private-use exemption in the new Swedish law, explaining that the exemption was included for two reasons. First, since protection under the law extends to both two- and three-dimensional expressions of layout designs, a private-use exemption was included to permit private copying of two-dimensional representations of mask works, such as magazine photographs. The provision does not permit manufacture of semiconductor products for private use. Second, a private-use exemption is included in the Swedish Copyright Act, under which mask works were arguably protected before the new integrated-circuits law took effect. It seemed reasonable, according to the Ministry, to include in the new law a similar exemption for private copying of two-dimensional expressions of semiconductor layout designs.

The EIAJ addressed SIA's concerns regarding the quasi-governmental nature of IPCC and the confidentiality of trade-secret information in the registration process. Concerning the nature of IPCC, EIAJ stated that IPCC exists only by statute and regulation, and that it may be dissolved in the event of any violation of law. Moreover, as the Government of Japan confirmed at the most recent session of the WIPO committee of experts on integrated circuits, IPCC enjoys the legal status of a "national public authority." EIAJ also pointed out that no specific allegation of impropriety has ever been made with respect to the composition of IPCC.

Concerning the confidentiality of trade secret material, EIAJ stated that the registration officers at IPCC are former Japanese Patent Office employees appointed by the Minister of Trade and Industry, and that they have no links to the semiconductor industry. EIAJ cited Article 38 of the Japanese law, which makes it a crime for any IPCC officer or staff member to leak trade secret information. EIAJ also provided evidence that practice in Japan allows the obliteration of proprietary material from photographs or drawings of mask works deposited with registration applications.

SIA's additional comments reaffirmed its position concerning the importance of continued interim protection for foreign mask works under section 914 of the SCPA, its view that issuance of Presidential proclamations will compromise the multilateral treaty negotiations within WIPO, and its objection to the issuance of a Presidential proclamation in favor of Japanese mask works at this time. SIA expressed particular concern that an opportunity for review be provided as part of the Presidential proclamation process to ensure that U.S. mask works continue to receive reciprocal protection in particular foreign countries.

Findings of the Commissioner

Based on the record in this proceeding, consisting of the written submissions of the parties and the oral testimony received at the hearing on March 16, 1988, the Commissioner of Patents and Trademarks has decided to extend all of the interim orders previously issued under section 914 of the SCPA until May 31, 1989, one year from the date on which they are now scheduled to expire. No recommendations concerning the issuance of a Presidential proclamation under section 902(a)(2) of the SCPA will be made in this proceeding.

The Commissioner finds that substantial progress toward the enactment of legislation protecting mask works has been made in all eighteen (18) countries subject to interim protection orders. Indeed, legislation is now in place in seven countries—Denmark, the Federal Republic of Germany, France, Japan, the Netherlands, Sweden and the United Kingdom. Mask works of U.S. nationals and domiciliaries, and mask works first commercialized in the United States, are entitled to protection under all of these laws on the same basis as the laws protect domestic works, and on substantially the same basis as mask works are protected under the SCPA.

Moreover, the other eleven (11) countries are making good faith efforts toward the enactment of legislation that will protect U.S. mask works on the same basis as domestic works, or at a level similar to that provided under the SCPA. It is also noteworthy that these countries are actively supporting the work of WIPO in developing a new multilateral agreement that would establish a regime of international protection for mask works.

The record reveals no evidence that nationals, domiciliaries or sovereign authorities of any country subject to an interim protection order are engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works. The Commissioner also finds that a one-year extension of the previously-issued interim protection orders will promote the purposes of the SCPA and international comity with respect to the protection of mask works. While some of the parties requested extensions for a longer period, a one-year extension will permit further review of progress toward enactment of legislation in all countries now subject to interim orders, if such review is appropriate at the time.

Concerning the issuance of Presidential proclamations under section 902(a)(2) of the SCPA to those countries that provide permanent, reciprocal protection to U.S. mask works, it is commendable that legislation providing such protection is in place in seven [7] foreign countries and in varying degrees of preparation in eleven (11) others. However, no party in this proceeding requested the issuance of a Presidential proclamation at this time. The Commission of the European Communities noted that legislation protecting U.S. mask works is in effect in five Member States, but stated that it would request a Presidential proclamation conferring permanent protection under the SCPA only when laws have been enacted in all twelve (12) Members States. Similarly, the Government of Sweden stated its readiness to begin negotiations on the question of permanent U.S. protection for Swedish mask works, but did not formally request a Presidential proclamation. The EIAJ, while avowing that the first proclamation issued under section 902(a)(2) should be in favor of Japanese mask works, stated that no request would be made until the Patent and Trademark Office has promulgated final rules for the submission of such requests.

In a Notice of Proposed Rulemaking published at 53 FR 5566-90 on February 25, 1988, the Patent and Trademark Office proposed regulations under section 902(a)(2) that specify the content and procedures for submission of requests for Presidential proclamations to the Secretary of Commerce. The proposed rules provide that an evaluation concerning the issuance of a Presidential proclamation will be initiated by the Commissioner upon request of a foreign government, or upon the Commissioner's own motion. The proposed rules also provide that the record in proceedings under section 914 will form the basis for determining whether a recommendation should be made that the President issue a proclamation.

The Commissioner does not agree with SIA that issuance of Presidential proclamations will jeopardize the ongoing work within WIPO to negotiate a multilateral agreement for the protection of semiconductor layout designs. The evidence adduced in this proceeding demonstrates that the semiconductor industry is increasingly international in scope. While the United States is a large market for semiconductor products, other markets are strong and growing. It is axiomatic that protection for foreign mask works in the United States under a Presidential proclamation is no substitute for protection in other countries under a widely-ratified multilateral agreement. It strains reason to suggest, as SIA does, that protection of foreign mask works in the United States under a Presidential proclamation may compromise successful completion of the draft integrated-circuits treaty, which is clearly in the best interest of all countries where semiconductor products are manufactured. The Commissioner sees no valid reason, in the meantime, to withhold permanent U.S. protection for mask works produced in those countries that clearly meet the statutory criteria of eligibility in section 902(a)(2)(A) and (B) of the SCPA.

Issuance of final rules implementing the Presidential proclamation provisions of section 902 is forthcoming. Once issued, the Commissioner will take appropriate steps to assure that U.S. protection is made available to eligible foreign mask works. Interim protection under section 914 will continue in force for one additional year, that is, until May 31, 1989.

Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9 of Title 17, United States Code

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the record of this proceeding commenced on November 18, 1987, I find that Australia, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom are making good faith efforts toward providing protection for U.S. mask works in conformity with 17 U.S.C. 902(a)(2). I find further that nationals, domiciliaries and sovereign authorities of those countries, and persons controlled by them, are not engaged in the misappropriation, unauthorized distrubution or unauthorized commercial exploitation of mask works. I find further that the extension of the expiration date for interim orders for those countries will promote the purposes of the Semiconductor Chip Protection Act of 1984 and international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for Australia, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland and the United Kingdom are hereby extended and shall terminate on May 31, 1989.

Donald J. Quigg

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: April 29, 1988.

[FR Doc. 88–10091 Filed 5–5–88; 8:45 am]
BILLING CODE 3510–16–M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 6, 1988.

ADDRESS: Committee for Purchase from the Blind And Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 21, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 31659) of proposed additions to and deletions from Procurement List 1988, December 10, 1987 (52 FR 46926).

The current contractor for this item submitted comments in response to the notice in the Federal Register of its proposed addition to the Procurement List.

The commenter indicated that his firm had been successfully supplying this strap for the past five years, it is not suitable for production since it is a safety-critical item and the addition of the strap to the Procurement List, when combined with two other items added to the Procurement List in the past, constitutes severe impact on his firm.

The workshop which will produce this item is currently producing a similar safety belt satisfactorily, meeting all of the safety and specification requirements of the Government. In fact, this –1210 strap is a component of a parachute harness produced by the workshop; thus, the workshop has produced this strap satisfactorily.

A Safety Belt, NSN 1680–00–407–5335, was added to the Committee's Procurement List on March 11, 1988. The firm's contract for that item was $118,896. That contract was awarded in September 1986 with deliveries scheduled to be completed in July 1987.

A safety Belt, NSN 1680–00–725–5827, was added to the Procurement List in November 1983. The value of the firm's contract for that item at the time it was added to the Procurement List was $416,305 and represented 12% of the firm's annual sales of about $3.5 million at that time. The addition of the 5927 strap in 1983 is not included in determining the cumulative impact on the commenter's firm since it occurred over five years ago.

The current value of the firm's contract for the Quick Release Strap (1670–01–079–1210) is $47,092, which represents 1.9% of its annual sales of about $2.5 million. That contract was awarded in 1986 with deliveries to be completed in November 1986. The cumulative value of additions of the –5335 belt and the –1210 strap is $165,938 or 6.6%. This is not considered to be severe impact.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

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Accordingly, the following commodity is hereby added to Procurement List 1988:

Strap, Quick Release
1670-01-074-1219

E.R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 88-10095 Filed 5-5-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1988 Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1988 commodities and military resale commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 6, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 11, 1988 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 7963) of proposed additions to and deletions from Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the military resale commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the military resale commodities and commodity listed.

c. The actions will result in authorizing small entities to produce the military resale commodities and commodity procured by the Government.

Accordingly, the following military resale commodities are hereby added to Procurement List 1988:

Military Resale Item Nos. and Names

No. 620 Vest, Safety, Joggers, Small
No. 621 Vest, Safety, Joggers, Medium
No. 622 Vest, Safety, Joggers, Large

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and military resale commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Commodity

Refill, List Finder, Automatic
7510-00-285-2800

Military Resale Item Nos. and Names

No. 940 Towel, Heritage Design
No. 942 Dish Cloth, Heritage Design

E.R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 88-10096 Filed 5-5-88; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Secretary's Commission on Base Realignment and Closure

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Defense Secretary's Commission on Base Realignment and Closure has been determined to be in the public interest and has therefore been established.

The Commission will study the issues surrounding military base realignment and closure within the United States, its commonwealths, territories, and possessions. The primary objectives of the Commission will be: (a) to determine the best process, including necessary administrative changes, for identifying bases to be closed or realigned; how to improve and best use Federal Government incentive programs to overcome the negative impact of base closure or realignment; and the criteria for realigning and closing bases; (b) review the current and planned military base structure in light of force structure assumptions, and the process and criteria developed to conduct a comprehensive review, and identify which bases should be realigned or closed; and, (c) report findings and recommendations to the Secretary of Defense by December 31, 1988.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 4, 1988.

[FR Doc. 88-10181 Filed 5-4-88; 12:26 pm]
BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: June 16, 1988, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10111 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Meeting

ACTION: Change in location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for May 5-6, 1988 as published in the **Federal Register** (Vol. 53, No. 44, Page 7225, Monday, March 7, 1988, FR Doc. 88-4941) will be held at the Institute for Defense Analyses, Alexandria, Virginia.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10109 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Technological and Operational Surprise scheduled for May 3-4, 1988 as published in the **Federal Register** (Vol. 53, No. 35, Page 5293, Tuesday, February 23, 1988, FR Doc 88-3773) has been cancelled.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10110 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for April 25-26, 1988 as published in the **Federal Register** (Vol. 53, No. 67, Page 11545, Thursday, April 7, 1988, FR Doc. 88-7633) will be held on May 10-11, 1988. This notice supercedes the change previously submitted to the original submission in **Federal Register** (Vol. 53, No. 14, Page 1815, Friday, January 22, 1988, FR Doc. 88-1314).

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10105 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Change in location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for April 27, 1988 as published in the **Federal Register** (Vol. 53, No. 59, Page 9964, Monday, March 28, 1988, FR Doc. 88-6661) will be held at the Pentagon, Arlington, Virginia.

May 2, 1988.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-10106 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Meeting

ACTION: Change in location and partially opening session of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Use of Commercial Components in Military Equipment scheduled for May 11, 1988 as published in the **Federal Register** (Vol. 53, No. 14, Page 1815, Friday, January 22, 1988, FR Doc. 88-1315) will be held at the TRW Corporation, Merrifield Virginia and will be in Open Session from 10:00 a.m. until they adjourn. In all other respects the original notice remains unchanged.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10107 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Defense Industrial and Technology Base; Meeting

ACTION: Change in location of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board 1988 Summer Study on Defense Industrial and Technology Base scheduled for May 17, 1988 as published in the **Federal Register** (Vol. 53, No. 40, Page 6189, Tuesday March 1, 1988, FR Doc. 88-4403) will be held at Science Applications International Corporation, Tysons Corner, Virginia.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10108 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable form, and Applicable OMB Control Number: AFROTC Nonscholarship Referrals; ATC Form (no assigned number); and No OMB Control Number.

Type of Request: New.

Annual Burden Hours: 4,200.

Annual Responses: 25,200.

Needs and uses: The Air Force needs the information to be able to identify and enroll high quality, first year college students into the AFROTC program. Air Force recruiters will use the information to refer interested and qualified high school students and graduates to AFROTC detachments. Detachment recruiting officers will contact students referred and encourage enrollment in AFROTC on a nonscholarship basis.

Affected Public: High school and college students.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 2, 1988.

[FR Doc. 88-10103 Filed 5-5-88; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the

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Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable form, and Applicable OMB Control Number: Credentials Evaluation of Health Care Practitioners; AF Form 1562; and OMB Control Number 0701–0097.

Type of Request: Extension.

Annual Burden Hours: 3,150.

Annual Responses: 4,200.

Needs and Uses: The Air Force uses this form to collect information about the qualifications of health care practitioners who wish to join or be employed by the Air Force. The Air Force needs this information to make an objective evaluation of an applicant's qualifications. The Air Force makes the evaluation to help decide whether an applicant should be employed as a health care practitioner.

Affected Public: Individuals.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS-DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 2, 1988.

[FR Doc. 88–10104 Filed 5–5–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 6, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 3, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: New
Title: Lender's Participation Questionnaire
Frequency: Annually
Affected Public: Businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 12,000
Burden Hours: 3,000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form is used by lenders who are eligible for reimbursement of interest, special allowances and Federal Insured Student Loan (FISL) claim payments under the Guaranteed Student Loan Program. The information will be used to update lender identification numbers, lender names, addresses and other pertinent information.

Type of Review: Extension
Title: Institutional Quality Control Project
Frequency: Quarterly
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 80
Burden Hours: 10,880
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Institutional Quality Control Workbook will be used by financial aid administrators in coordination with the performance of quality control activities related to the institutions' administration of Federal student financial aid programs.

Type of Review: Revision
Title: Application for Federal Student Aid
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 6,800,330
Burden Hours: 7,906,743
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will collect information from students who are applying for Federal student aid. The Department will determine eligibility for student aid under the Department's student financial assistance programs.

Type of Review: New
Title: Application for Grants under the Graduate Assistance in Areas of National Need Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 200
Burden Hours: 1,000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by postsecondary institutions to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department will use the information to make grant awards.

Type of Review: Revision

Title: Application for Grants under the Jacob K. Javits Fellows Program
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 1,500
Burden Hours: 7,500
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by graduate students to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Type of Review: Extenion
Title: Performance Report for International Education Programs
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 425
Burden Hours: 425
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: Institutions of higher education that have participated in the National Resource Centers Program are to submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Type of Review: Extension
Title: Application for Grants under the Law School Clinical Experience Program
Frequency: Annually
Affected Public: Businesses and other for-profit
Reporting Burden:
Responses: 56
Burden Hours: 1,400
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by Postsecondary Institutions to apply for funds under the Law School Clinical Experience Program. The Department will use the information to make grant awards.

[FR Doc. 88–10121 Filed 5–5–88; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Education; Meeting

AGENCY: National Advisory Council on Adult Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: May 23–24, 1988, 8:30 a.m. to 5:00 p.m., Executive Committee Meeting.

ADDRESS: Council office: 330 C Street SW., Conference Room 4409, Mary E. Switzer Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen S. Saunders, National Advisory Council on Adult Education, 330 C Street SW., Room 4060, Mary E. Switzer Building, Washington, DC 20202–2421, (202) 732–3896.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1209). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Executive Committee is open to the public. The proposed agenda includes:

Old Business
Symposium Publication
Council Reports
New Business—Liquidation of Council

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 330 C Street SW., Room 4060, Mary E. Switzer Building, Washington, DC 20202–2421, from the hours of 8:30 a.m. to 5:30 p.m.

Signed at Washington, DC, on May 3, 1988.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 88–10130 Filed 5–5–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Enhancing the Use of Eastern and Midwestern Coals by Gas Reburning-Sorbent Injection at Illinois Power Company, Hennepin Station Boiler No. 1, Hennepin, IL

AGENCY: Department of Energy.

ACTION: Statement of Findings.

SUMMARY: Information contained in this Statement of Findings is presented in support of the decision by the Department of Energy (DOE) to fund, in part, a project entitled "Enhancing the Use of Eastern and Midwestern Coals by Gas Reburning-Sorbent Injection at Illinois Power Company, Hennepin Station Boiler No. 1." The related Floodplain/Wetlands Involvement Notification was published in the **Federal Register**, Vol. 53, No. 32, Page 4875, dated February 18, 1988. A Floodplain/Wetlands Assessment was prepared, in accordance with the requirements of 10 CFR 1022.12.

DATE: No action will be taken until May 23, 1988.

ADDRESS: Requests for copies of the Floodplain/Wetlands Assessment can be directed to the Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA. 15236. All communications should refer to the project title.

FOR FURTHER INFORMATION CONTACT: Dr. Earl Evans, Environmental Project Manager, Pittsburgh Energy Technology Center, Department of Energy, Pittsburgh, PA, (412) 892–6237.

I. Project Description

The proposed demonstration project will be performed at the Illinois Power Company, Hennepin Station, Unit 1. Hennepin Station occupies a 533-acre site on the shores of the Illinois River. Located in Putnam County, the site is approximately two miles northeast of Hennepin, Illinois, and about 85 miles west-southwest of Chicago. The Department of Energy (DOE) is making the presumption that all 533 acres of the Hennepin Station site are located within the 100-year floodplain. There are now known wetland areas on the site. The Station contains two coal fired steam electric generating units with a total net generating capacity of 310 MWe. The project will be conducted in Unit 1, an 80 MWe tangentially fired boiler.

This proposed project is intended to demonstrate that gas reburning-sorbent injection (GR–SI) technologies can provide a cost effective approach for the reduction of NO_x and SO_2 emissions

from coal fired burners. In general, GR–SI involves the introduction of natural gas above the main heat release zone in the boiler to reduce the formation of NO_x. Downstream of this point, burnout air and a sorbent derived from limestone are injected into the fuel gas stream and reacts with gas phase SO_3/SO_2 to form calcium sulfate. The calcium sulfate is subsequently removed along with fly ash by the plant particulate control equipment and combined with bottom ash to be disposed of as solid waste. These waste streams are sluiced to on-site ash ponds within the floodplain for disposal

Most project construction will involve retrofit to the existing power plant. The only construction that will occur external to the boiler unit, and could therefore affect floodplain values, would be the installation of a sorbent storage silo with an associated runoff area and feeder equipment in a disturbed area immediately adjacent to Unit 1. Once the equipment has been installed, the GR–SI demonstration will be run for a period of 12 months. Under normal operating conditions, 12 months of solid waste generation for Unit 1 would require approximately 9.8 acre-feet of disposable volume. Under the proposed action, the Unit 1 requiremens will increase to 21–34 acre-feet of disposal volume, depending on compaction density of the GR–SI waste. After the GR–SI demonstration, the plant will return to generating approximately 9.8 acre-feet per year.

To demonstrate the potential for retrofitting existing coal fired power plants with the GR–SI technology and thereby achieve the expected 60% reduction in nitrogen oxides (NO_x) and 50% reduction in sulfur dioxide (SO_2), it is necessary to select an appropriate operating power plant. Selection from among existing plants is restricted by the fact that power generating plants, due to their need for cooling water, have historically been located on the shores of rivers and are, therefore, commonly found within the 100-year floodplain. After analysis of alternatives (see Section III), the Hennepin site was selected.

II. Floodplain Impacts

Impacts of Construction

All project construction will occur on the existing site. The largest share of the construction will involve internal structure retrofit that will have no impact on floodplain values. External construction will be limited to the 0.1 acre of disturbed habitat that will be utilized for sorbent storage and feeding equipment. Mitigation of floodplain impacts will be achieved through minimizing the size of the affected area.

Impacts of Operation

Operation of the GR–SI demonstration project will produce an increased volume of solid waste to be disposed into the existing ash pond at Hennepin Station. Under normal operation without GR–SI, Unit 1 would generate 9.8 acre-feet of waste per year. With GR–SI, solid waste volume would increase to between 21 and 34 acre-feet for a one-year demonstration period. The increment of 11.6 to 24.2 acre-feet volume that is expected to result from the proposed action represents 1.2 to 2.5 years of Unit 1 solid waste production without GR–SI. The remaining volume of the Unit 1 ash pond available for disposal is estimated at 163 acre-feet, or 16.6 years of remaining usable life without GR–SI. The proposed action will hasten the day, by an estimated 1.2 to 2.5 years, when Hennepin Station must turn to alternative disposal options.

III. Consideration of Alternatives

One goal of DOE's Clean Coal Technology Program is to demonstrate the benefits of air emissions reduction that can be achieved through retrofitting three different types of coal fired boilers with the GR–SI technology. The three types of boilers are selected to represent a large segment of the existing boiler populations including tangentially fired, front wall fired and cyclone fired boilers. Hennepin Station represents the alternative site selected to represent the tangentially fired boiler population. The "no action" alternative, i.e., not demonstrating GR–SI, would limit the options for demonstrating reduction SO_2 and NO_x emissions through the use of this retrofit technology.

Two other retrofit technologies for emission reduction are currently available for commercial operation in coal fired power plants. These are the wet limestone flue gas desulfurization and the spray dryer SO_2 control processes, both of which would require a significantly greater amount of land for installation construction than the proposed action. Selection of the GR–SI alternative will minimize potential impact to the floodplain by limiting the area required for construction.

Six sites were investigated by DOE for the proposed demonstration of the GR–SI technology through retrofit of an operational generating plant. Three of the six sites were found to lack the necessary characteristics of existing design, technical feasibility and boiler configuration. All three of the remaining alternative sites, including Hennepin Station, for the reason previously identified, have a floodplain imvolvement. All three sites have been selected for use for GR–SI demonstration projects, to represent each of the three classes of boiler population.

The two sources of foodplain impact associated with this project are due to construction and waste disposal. The construction-related impacts have been mitigated by minimization of the additional facility to 0.1 acre within the 533-acre existing Hennepin site.

The alternative of transporting the fly ash to an area outside the floodplain for disposal, rather that adding to the amount already scheduled for disposal within the existing ash pond, was also analyzed. Locations for fly ash disposal elsewhere than on Hennepin Station are limited by the availability of land, distance, space requirements, ownership, drainage, accessibility and esthetics.

The proposed site was selected because it is within an operating, on-site ash pond that allows for immediate access from the power plant and provides for cost-effective disposal of ash during the period of the demonstration project and substantially beyond that time period. Due to the costs and distances involved, the alternative of transporting the fly ash to a site outside of the floodplain was deemed not practicable, within the meaning of DOE's regulations for compliance with the floodplain environmental review requirements found at 10 CFR 1022.4(3)(p).

IV. Determination

As a result of its review of alternatives and evaluation of the environmental impacts, DOE has determined that there is no practical alternative to locating the fly ash disposal site in a floodplain. All actions will be in conformity with local floodplain protection standards and the requirements of the Illinois Department of Transportation and the U.S. Army Corps of Engineers pertaining to floodplains.

Issued at Washington, DC, May 3, 1988.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–10092 Filed 5–5–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3375–2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed April 25, 1988 Through April 29, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880131, Draft, COE, OK, Coal Creek Local Flood Protection, Implementation, City of Henryetta, Okmulgee County, OK, Due: June 20, 1988, Contact: J. Paul Mace (918) 581–7857.

EIS No. 880132, Final, VAD, CA, Northern California Veteran Administration, National Cemetary Development, Alameda and Merced Counties, CA, Due: June 6, 1988, Contact: Susan Livingstone (202) 233–2922.

EIS No. 880133, Draft, FHW, WA, I–90 Improvements, Four Lakes to the Idaho State Line, Funding and 404 Permit, Spokane County, WA, Due: June 20, 1988, Contact: P.C. Gregson (208) 753–2120.

EIS No. 880134, DSuppl, BLM, AK, Utility Corridor Planning Area Resource Management Plan and Central Arctic WSA Recommendations, Preferred Alternative Modification, Additional State Land Selections, Implementation, AK, Due: June 20, 1988, Contact: Dave Ruppert (907) 356–5182.

EIS No. 880135, Final, FHW, WI, WI–TH–83 Improvement, I–94 to Cardinal Lane/WI–TH–16, Funding and 404 Permit, Waukesha County, WI, Due: June 6, 1988, Contact: Robert W. Cooper (608) 264–5940.

EIS No. 880136, Final, AFS, CA, Gallatin Marina (Formerly Eagle Lake Marina) Future Development Policy, Approval, Special Use and 404 Permits, Lassen National Forest, Lassen County, CA, Due: June 6, 1988, Contact: Steve Young (916) 257–2151.

EIS No. 880137, Draft, AFS, ID, Boise National Forest, Land and Resource Management Plan, Implementation, Ada, Boise, Gen, Elmore, Valley and Washington, ID, Due: August 4, 1988, Contact: David Rittersbacher (208) 334–1516.

EIS No. 880138, Final, AFS, ID, Payette National Forest, Land and Resource Management Plan, Implementation, Adams, Idaho, Valley and Washington Counties, ID, Due: June 8, 1988, Contact: Veto LaSalle (208) 634–8151.

EIS No. 880139, DSuppl, NOA, AK, Groundfish Fishery of the Bering Sea and Aleutian Islands, Fishery Management Plan, Increase of the Optimum Yield Range, Implementation, AK, Due: June 20, 1988, Contact: Robert W. McVey (907) 586–7221.

EIS No. 880140, Draft, FHW, WA, Riverside Parkway/Bothell Bypass Construction, Funding, Section 10 and 404 Permits, City of Bothell, King County, WA, Due: June 20, 1988, Contact: P.C. Gregson (206) 753–2120.

EIS No. 880141, DSuppl, NRC, PA, Three Mile Island Nuclear Power Station, Decontamination/Disposal of Radioactive Waste, Resulting from the March 28, 1979 Accident, Post Defueling Monitored Storage (PDMS), Londonderry Township, Dauphin County, PA, Due: June 20, 1988, Contact: Michael Masnik (301) 492–1373.

EIS No. 880142, Final, USN, NJ, Colts Neck, Naval Weapons Station Earle Family Housing Development, Construction, Mammouth County, NJ, Due: June 6, 1988, Contact: Thomas Peeling (202) 325–7344.

Amended Notices

EIS No. 880127, DSuppl, COE, CA, Santa Ana River Mainstem and Santiago Creek Multipurpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Counties, CA, Due: June 20, 1988, Contact: Mr. Dee Gonzales (213) 894–7053. Published FR 4–29–88—Review period reestablished. The 45 day NEPA review period is calculated from 5–6–88.

EIS No. 880129, Final, COE, MO, Coldwater Creek Watershed Flood Damage Reduction and Related Improvement Plan, Implementation, St. Louis County, MO, Due: May 31, 1988, Contact: James Zerega (314) 263–5600. Published FR 4–29–88—Incorrect Accession Number, published as 880118.

EIS No. 880130, Final, FAA, CT, Groton-New London Airport Runway 5 Medium Intensity Approach Lighting System Installation, Funding, City and Town of Groton, CT, Due: May 31, 1988, Contact: Mr. M. Ashraf (617) 273–7080. Published FR 4–29–88—Incorrect Accession Number, published as 880119.

Dated: May 3, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–10126 Filed 5–5–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3375–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 18, 1988 through April 22, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–BLM–G40120–NM, Rating LO, Socorro Resouce Area Management Plan, Implementation, Las Cruces District, Socorro and Catron Counties, NM.

Summary

EPA has no obejctions to the proposed project. However, the EPA suggests that BLM provide additional management practice for ORV use and grazing to reduce impacts from erosion.

ERP No. D–BOP–F81012–IL, Rating EC2, East Peoria Federal Correctional Institution Complex, Construction and Operation, Tazewell County, IL.

Summary

EPA is concerned that this document does not discuss the loss of prime farmland. The final EIS should provide an analysis of the alternative sites considered with information on the prime farmland, wetlands, etc., to be impacted for each.

ERP No. D–DOE–L10004–00, Rating EC2, Special Isotope Separation Production Plant Construction and Operation and the use of Atomic Vapor Laser Isotope Separation Technology, Site Selection and Implementation, Idaho National Engineering Laboratory near Idaho Falls, ID, Handford Site near Richland, WA and Savannah River Plant near Aiken, SC.

Summary

EPA recommends additional analysis because the document did not include enough detailed information for the accident analyses to determine if the accidents presented are the worst that can be reasonably postulated.

ERP No. D–FHW–E40713–KY, Rating EC2, Richmond Bypass Extension, US 25/421 North to US 25/421 South, Funding, Madison County, KY.

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Summary

EPA has concerns with potential noise and channel relocation impacts and the lack of mitigation proposals to minimize or offset these impacts.

ERP No. D–FHW–L40159–AK, Rating EO2, Glenn Highway Improvement, Village of Eklutna to Parks Highway, Funding and Section 404/10 Permit, Municipality of Anchorage, Matanuska-Susitna Borough, AK.

Summary

EPA's primary environmental objection to the project centers on the avoidable loss of high value aquatic resources associated with the preferred interchange option. Additional information and clarification are also needed regarding secondary impact, water quality, mitigation, and construction methods and impacts.

ERP No. D–FHW–L40160–WA, Rating EC2, WA–20 Widening, Weeman Bridge to Winthrop, Funding and Possible 404 Permit, Okanogan County, WA.

Summary

EPA's concerns are based on the potential for water quality effects and potential impacts on anadromous fish and their habitat. Additional information is needed on site-specific water quality, characterization and quantification of highway runoff pollutants, and mitigation for wetland impacts.

Note: The above summary should have appeared in the 04–29–88 FR Notice.

Final EISs

ERP No. F–BPA–L09800–00, Pacific Northwest/Pacific Southwest Intertie, Capacity Increase and Long Term Intertie Access Policy Development Plan, Implementation, WA, OR, ID, MI, WY, CA, NV, UT, NM and AZ.

Summary

EPA has found this project to be satisfactory. No formal comments were made to the agency.

ERP No. F–COE–G36138–NM, Cuchillo Dam/Cuchillo Negro Creek and Rio Grande Flood Control Plan, Truth or Consequences and Williamsburg Areas, Implementation, Sierra County, NM.

Summary

EPA has no objections to the proposed project.

ERP No. FS–FHW–E40146–NC, US 74/ Independence Boulevard Corridor Improvements, Mecklenburg County to Uptown Charlotte, Additional Alternatives, Funding, Mecklenburg County, NC.

Summary

EPA's concern remains based on the notice impacts associated with the preferred alternative (high occupancy vehicle lane addition). Noise barriers proposed for the project should adequately reduce noise levels at most residential sites.

Dated: May 3, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–10129 Filed 5–5–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

National Registry Proposal; Procedures; Development; Open Meeting

ACTION: Notice of Meeting.

Time and Date: 8:30 a.m.–4:00 p.m., May 20, 1988.

Place: Conference Room, Building 32, Agency for Toxic Substances & Disease Registry, 4770 Buford Highway, Chamblee, GA 30341.

Status: Open to the public for observation and participation, limited only by the space available.

Matters to be Considered: The following meeting will be convened by the Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Public Health Service, to discuss the "Proposed Procedures Document for the National Registry of Persons Exposed to Toxic Substances: (The National Exposure Registry)," in order to finalize the document for publication.

Contact Person for more Information: JeAnne Burg, Ph.D., Chief, Exposure and Disease Registry Branch, ATSDR, 1600 Clifton Road, NE., MS–F–38, Atlanta, Georgia 30333. Telephones: FTS: 236–4810; Commercial: 404/488–4810.

Dated: May 2, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 88–10067 Filed 5–5–88; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

Third National Conference on Chronic Disease Prevention and Control; Meeting

ACTION: Notice of meeting.

Time and Date:

8:30 a.m. to 5:00 p.m.—October 19–20, 1988

8:30 a.m. to 12:00 noon—October 21, 1988

Place: Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado 80202

Status: Open to the public, limited only by the space available.

Matters to be Considered: The Third National Conference on Chronic Disease Prevention and Control: *Putting Science into Practice* will be convened by the Centers for Disease Control and the Association of State and Territorial Health Officials. There will be no registration fee.

The Conference will build on the strategies identified by participants at the First and Second National Conferences on Chronic Disease Prevention and Control. Those two conferences placed particular emphasis on the interactions among Federal, State, and local health departments, voluntary health agencies, professional organizations, and others. This has served to forge new working relationships and to start the building of a strong, broadly representative coalition for chronic disease prevention.

This year's conference will include plenary sessions that address the following topics:

—Health Education/Mass Media Approaches for Changing Behaviors

—Preventive Health Services in Primary Care Settings (including benefit/cost and cost-effectiveness of chronic disease prevention and control strategies)

—Long-Term/Broad Strategic Issues for Public Health Chronic Disease Control

In addition, concurrent afternoon sessions will focus on Breast Cancer, Cervical Cancer, Cholesterol/ Cardiovascular Disease, Diabetes, and Smoking.

Contact Person for More Information: Martha S. Brocato, (404) 488–4251; FTS: 236–4251, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control (F10), 1600 Clifton Road NE., Atlanta, Georgia 30333

Dated: April 29, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–10068 Filed 5–5–88; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

National Cancer Institute; Cancellation of Meeting of the Cancer Biology-Immunology Contracts Review Committee

Notice of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, scheduled for June 3, 1988, published in the **Federal Register** (53 FR 13449) on April 25 is hereby cancelled due to the conflicts of schedules of committee members.

For further information, please contact Dr. Wilna Woods, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, Westwood Building, Room 807, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7153).

Dated: April 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10052 Filed 5–5–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Development of the NIDR Long-Range Research Plan for the Nineties

The National Institute of Dental Research (NIDR) is initiating the development of a Long-Range Research Plan for the 1990s. As part of this effort, a preliminary state-of-the-science report will be prepared for each major area of oral health research to be covered by the plan. These include, but are not limited to:

(1) Acquired Craniofacial Defects
(2) Behavioral Studies
(3) Congenital Craniofacial Malformations
(4) Dental Caries
(5) Dentofacial Malrelations
(6) Fluoride Studies
(7) Mineralized Tissue
(8) Nutrition
(9) Oral Sensory-motor Dysfunctions
(10) Orofacial Pain
(11) Periodontal Diseases
(12) Pulp Biology
(13) Restorative Materials
(14) Salivary Glands and Secretions
(15) Soft Tissue Diseases
(16) Tooth Implants, Replants, and Transplants

The preliminary state-of-the-science report will address the following four questions about each of the above sixteen areas.

(1) What have been the most important advances over the past decade? These could include developments in related fields, new methodologies that directly influence research in the field, and commercial products.

(2) Which specific journal articles, books, patents, techniques, products or other events and discoveries have been most important in establishing the advances?

(3)(a) What will be the most important research issues or problems to be investigated and commercial products to be developed in the particular area during the next ten to fifteen years?

(b) What new areas should be considered in the development of an oral health research plan for the 1990s, e.g., geriatric dentistry, social epidemiology, and new diagnostic approaches, such as biochemical indicators, genetic markers, imaging techniques, and the use of computers?

(c) For each item listed in parts a and b, which individuals, institutions, organizations and companies are likely to be the key players?

(4) What are the implications, if any, for dental education and practice, of the knowledge generated or products developed in the items identified in questions 3a and b?

The NIDR seeks information about these four questions for each of the sixteen areas to be covered in the Long-Range Plan, as well as any new areas you might suggest. All knowledgeable parties are encouraged to submit comments. It is essential that you indicate the specific area(s) for which your response is submitted. Please include your institutional or corporate affiliation, if any. Comments should be forwarded to: Dr. James A. Lipton, Chief, Planning and Evaluation Section, Office of Planning, Evaluation, and Communications, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C–36, Bethesda, Maryland 20892.

If further information is desired, please contact Dr. Lipton at 301–496–6705. All responses must be received by June 30, 1988.

Dated: April 29, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–10053 Filed 5–5–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on June 6, 1988, from 8:30 a.m. to approximately 5 p.m. at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: April 29, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–10054 Filed 5–5–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–920–08–4212–12; A–20347(D)]

Realty Action; Arizona; Conveyance of Public Land in Exchange for State Land

April 29, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action serves to inform the public and interested State and local governmental officials of the transfer of public land and the conveyance of State land to the Federal Government.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange between the United States and the State of Arizona. The following described land was transferred to the State of Arizona pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 7 S., R. 16 E.,
Sec. 1, lots 1 and 2, S½NE¼;
Sec. 12, SE¼;
Sec. 13, E½, SW¼;
Sec. 14, W½SW¼, SE¼SW¼, S½SE¼, E½NE¼SE¼;
Sec. 15, lot 10.
T. 7 S., R. 17 E.,
Sec. 6, lots 2 thru 5, incl., SW¼NE¼, SE¼NW¼, NE¼SW¼, W½SE¼;

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Sec. 7, lots 3 and 4, E½SW¼, SE¼;
Sec. 8, SW¼NE¼, S½NW¼, S½;
Sec. 17, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½
T. 17 S., R. 19 E.,
Sec. 5, lot 3.
T. 17 S., R. 20 E.,
Sec. 7, N½NE¼.
T. 18 S., R. 20 E.,
Sec. 2, W½SE¼, SE¼SE¼.

The areas described comprise 3,570.12 acres in Cochise and Pinal Counties.

In exchange the following described State-owned land was conveyed to the Untied States:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 21 E.,
Sec. 29, W½SE¼ (Surface only);
Sec. 32, lots 2 and 7.
T. 20 S., R. 21 E.,
Sec. 2, lots 1 to 7, incl., S½NE¼, SE¼NW¼, SE¼;
Sec. 4, lots 1 to 4, incl., (Surface only).
T. 21 S., R. 21 E.,
Sec. 3, lots 1 to 4, incl., (Surface only);
Sec. 12, N½NE¼, NW¼SW¼.

The areas described comprise 1,099.00 acres in Cochise County.

The land acquired by the United States in this exchange will remain closed to appropriation under the public land laws, including the mining and mineral leasing laws pending completion of an inventory and the planning process.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-10126 Filed 5-5-88; 8:45am]
BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Additional Information With Regard To Application for Permit

The following application has submitted additional information in support of its application for a permit to conduct certain activities with endangered species. This supplemental notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-725828

Applicant: Michigan Department of Natural Resources, Lansing, Michigan

On March 18, 1988, a notice of application for a permit to import a pair of giant pandas from China for temporary exhibition was published (53 FR 8984) and 30 days was provided for comment. The applicant has now submitted additional information on the specific animals proposed for import, the facilities where the animals would be held and displayed, and more details on how the Chinese authorities would use the funds received to benefit the species.

Documents and other information submitted with the application are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street, NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329. Copies of the additional information that has now been received is being provided to all persons who have commented on the original permit notice to facilitate this additional review period. This additional information will also be available to the public as provided above.

Interested persons may comment on this additional information or the original application within 30 days from the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the original applicant and PRT number when submitting comments.

Dated: May 4, 1988.

Marshall P. Jones,
Acting Chief, U.S. Office of Management Authority.

[FR Doc. 88-10173 Filed 5-5-88; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

Draft Environmental Assessment; Mineral Validity Examinations in National Park System Units

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of draft environmental assessment for mineral validity examinations in National Park System units.

SUMMARY: The National Park Service proposes systematic validity examinations of 284 unpatented mining claims in six units of the National Park System. These validity examinations will be accomplished during the 10-year period from 1988 to 1998. An Environmental Assessment (EA) that addresses the impact of validity examinations on natural and cultural resources of National Park System units has been prepared and is available for comment. A separate EA, dated June 2, 1987, covered mineral validity examinations in Alaskan units.

DATE: Comments on the draft EA should be received no later than June 20, 1988.

ADDRESSES: Comments on the Draft EA should be submitted to: David L. Sharrow, National Park Service, Mining and Minerals Branch, Land Resources Division, P.O. Box 25287, Denver, CO 80225. Copies of the EA are available on request from this address.

FOR FURTHER INFORMATION CONTACT: Mr. David Sharrow, National Park Service, Mining and Minerals Branch, Land Resources Division, P.O. Box 25287, Denver, CO 80225, (303) 969-2015.

SUPPLEMENTARY INFORMATION: The National Park Service proposes to undertake a multi-year mineral examination program to determine the validity of unpatented mining claims in several units of the National Park System located in the lower 48 states. Unpatented mining claims exist in these units because they were filed prior to the area being withdrawn from mineral entry by an Act of Congress or a Presidential Proclamation. An EA has been prepared that addresses the impacts of conducting validity examinations of 284 unpatented mining claims in Great Basin National Park, Bighorn Canyon National Recreation Area, Lake Mead National Recreation Area, Black Canyon of the Gunnison National Monument, Chiricahua National Monument and Whiskeytown-Shasta-Trinity National Recreation Area. A separate EA, dated June 2, 1987, was prepared for validity examinations being conducted in Alaska.

The purpose of a validity examination is to evaluate an unpatented mining claim to determine if an individual has indeed made a discovery of a valuable mineral deposit as required by the Mining Law of 1872 and case law. If an individual has not located a valuable mineral deposit, the individual does not have a legal right to extract minerals from the claim. In such cases, the claim is invalid and will be deemed null and void by the Bureau of Land Management (BLM). Consistent with the Mining in the Parks Act of 1976, the National Park Service will only consider approving plans of operations on "valid" claims inside National Park System Units. Validity examinations will be conducted under the guidelines of the BLM Handbook for Mineral Examiners (H-3890-1) and BLM Manual 3920. Access to claims will be gained by vehicles on existing roads, or by pack animal or helicopter. Claimants will be notified of pending mineral examinations so that they will have an opportunity to show the mineral examiner discovery points and other pertinent aspects of the discovery. In the event claimants disagree with the results of the validity examination, they can appeal the determination of validity through the Office of Hearing and Appeals within the Department of the Interior.

Sampling will be conducted by methods similar to those used in making the original discovery. With the exception of bentonite claims in Bighorn Canyon NRA, and the Jeff Davis placer claims in Great Basin National Park, hand sampling will be adequate to evaluate all of the claims.

The vicinity of these mining claims have been, or will be, inventoried to document vegetation, wildlife, cultural resources and existing surface disturbances prior to validity examinations. The area of disturbance resulting from hand-sampling will be minimal, generally limited to 2 to 4 square feet. Impacts to wildlife and vegetation will be minor and short-term as most of the proposed examinations will occur on previously disturbed sites and the area of impact will be very small.

Sampling which may affect listed species or habitat designated as critical to such species will require compliance with section 7 of the Endangered Species Act. Sampling methods that will result in surface disturbance that may affect properties listed or eligible for listing on the National Register of Historic Places will require compliance with section 106 of the National Historic Preservation Act.

The bentonite clay claims in Bighorn Canyon NRA may require that bulk samples as large as one-half cubic yard be taken. Placer claims in Great Basin National Park will be sampled with hand-dug pits or channels or, if necessary, a suction dredge. Sampled material will be panned by hand or fed through a sluice. Wastewater will be settled prior to being discharged into a flowing stream. Excavations will be reclaimed through backfilling, replacement of top soil and replanting with vegetation salvaged from the site.

Dated: April 21, 1988.

Robert Stanton,
Associate Director, Operations.

[FR Doc. 88-10061 Filed 5-5-88; 8:45 am]
BILLING CODE 4310-70-M

Realty Action; Proposed Exchange of Right-of-Way Interest in Federally-owned Lands for Privately-Owned Right-of-Way Interest (Also in Federally-owned Lands) Both Within Custer County, SD

I. It has been determined to be in the best interest of the United States of America for the United States to exchange to the Black Hills Electric Cooperative a right-of-way easement for the purpose of erecting, operating and maintaining an electrical power transmission line over the south 20 feet of the following described Federally-owned lands. The authority for this exchange is the Act of July 15, 1968 (16 U.S.C. 460*l*-22).

This selected right-of-way lies adjacent to the south boundary and within the Wind Cave National Park. The lands involved have been surveyed for cultural resources and endangered and threatened species. An Environmental Assessment has been prepared. These reports along with the Finding of No Significant Impact are available upon request.

Right-of-Way interests only are to be exchanged. There are no leases or permits affecting these lands.

Black Hills meridien

Township 6 South, Range 5 East,
Section 23, N½ N½;
Section 24, N½ NW¼ lying west of U.S. Highway 385.

The right-of-way will contain 3.64 acres, more or less.

The right-of-way over the above lands will be conveyed subject to existing easements for public roads and highways, public utilities and pipelines.

II. In exchange for the right-of-way identified in Paragraph I the United States of America will acquire the right-of-way interest currently held by the Black Hills Electric Cooperative across the center of the same lands described above. Acquisition of this existing right-of-way will enable the power line to be relocated to the southern boundary of Wind Cave National Park which will lessen the impact of this line upon the park. The existing right-of-way interest only is to be acquired.

The area of the existing right-of-way, including two service taps therefrom, is 4.24 acres, more or less.

The value of the interests to be exchanged has been determined by a current valuation report to be approximately equal.

Detailed information concerning this exchange including environmental assessment, cultural reports and Finding of No Significant Impact are available at the office of the Superintendent, Wind Cave National Park, Hot Springs, South Dakota 57747.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

Dated: April 19, 1988.

L. Lorraine Mintzmyer,
Regional Director, Rocky Mountain Region.

[FR Doc. 88-10082 Filed 5-5-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Agri-Empresa, Inc., 1355 County Road I-33 West, Midland, Texas 79711.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation: Agri-Empresa Transportation, Inc., 1355 County Road I-33 West, Midland, Texas 79711.

Norita R. McGee,
Secretary.

[FR Doc. 88-10072 Filed 5-5-88; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-F-19609]

Motor Carriers; Monfort Food Distributing Co. et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Monfort Food Distributing Co. (Monfort Food), a noncarrier, seeks an exemption from the requirement of prior regulatory approval for its purchase of a portion of the operating rights of Steinbecker Brothers, Inc. (Steinbecker) (MC-151471).

The rights being transferred authorize: (1) The common carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), and (2) the contract carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), under continuing contracts with shippers and receivers of such commodities. The Motor Carrier Board has granted temporary authority to Monfort Food to lease Steinbecker's operating rights.

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Monfort Food is a wholly-owned subsidiary of Monfort of Colorado, Inc., which in turn is a noncarrier subsidiary of ConAgra, Inc. At the time this petition was filed ConAgra controlled, directly or indirectly, nine motor carriers: Armour Food Express Company (MC–140364 and MC–152245); Balcom Chemicals, Inc. (MC–174324); Lynn Transportation Company, Inc. (MC–133604), U.S. Tire, Inc. (MC–170511); Yellowstone Valley Chemicals, Inc. (Yellowstone) (MC–185117); ConAgra Transportation, Inc. (Transportation) (MC–150422); Monfort Transporation Co., (MC–144572); Miller Bros. Co., Inc. (Miller) (MC–117699); and Longmont Transportation Co., Inc. (MC–141668). Yellowstone and Miller also hold property broker authority and Transportation also holds water carrier authority in No. W–1333.

Under 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra, a noncarrier, already controls nine carriers, and will control a tenth, upon consummation of Monfort Food's purchase of Steinbecker's operating authority. Therefore, Monfort Food's purchase and ConAgra's control of the new carrier are subject to the Commission's jurisdiction and can be carried out only under Commission regulation or exemption from regulation.

Petitioners assert that the transaction is of limited scope in that it involves the addition of only a single carrier to the existing ConAgra system whose affiliation already has been approved by the Commission, and that the transaction will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

DATES: Comments must be received by June 6, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–19009 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioners' representative: John T. Wirth, Esq., Nelson & Harding, 717 Seventeenth Street, Denver, CO 80202

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 275–7974, [TDD for hearing impaired (202) 275–1721],

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures-Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982)

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC offices of the Interstate Commerce Commission during normal business hours. (Assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10073 Filed 5–5–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31258]

Ohio Railroad Corp.; Continuance in Control Exemption; Ohio Central Railroad Co.

Ohio Railroad Corporation (ORC) has filed a notice of exemption to continue in control of Ohio Central Railroad Company (OCR). ORC, a non-carrier, controls two class III railroads: the Ohio Southern Railraod and Youngstown & Austintown Railroad.

OCR, another subsidiary of ORC, has filed a notice of exemption in Finance Docket No. 31258, *Ohio Central Railroad—Exemption—Acquisition and Operation of a Line of Railroad in Ohio.* There, OCR seeks an exemption to purchase and operate 70.6 miles of rail line between Harmon and Zanesville, OH, that was formerly operated by the Norfolk and Western Railway Company.

ORC indicates that: (1) OCR will not connect with any railroads in the ORC corporate family; (2) the continuance is not part of a series of transactions that would connect any railroad in the ORC coporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9985 Filed 5–5–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30075; Sub-No. 1]

Burlington Northern Railroad Co.; Trackage Rights Exemption

Dakota, Minnesota and Eastern Railroad Corporation (DM&E) has agreed to grant to Burlington Northern Railroad Company (BN) trackage rights as a supplement to previously existing trackage rights. The supplemental agreement grants BN the right to transport traffic originating at or destined to Huron, SD, on trackage owned by DM&E between Huron and Wolsey, SD, a distance of 12.9 miles. The instant rights supplement and modify the bridge trackage rights between Huron and Wolsey, which BN acquired from DM&E's predecessor in interest, Chicago and North Western Transportation Company. The initial rights restricted BN from moving traffic over the joint line which originated or terminated at Huron or Wolsey. The supplemental rights were proposed to become effective April 27, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 3, 1988.

By the Commission, Joseph H, Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary

[FR Doc. 88–10183 Filed 5–5–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

Dated: May 2, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) and estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

New Collection

(1) Application for Certificate of Citizenship in Behalf of an Adopted Child
(2) N–603, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. This application is to be filed by U.S. citizen parent or parents in behalf of an adopted alien child.
(5) 10,000 respondents at .5 hours each.
(6) 5,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Application for Issuance or Replacement of Northern Mariana Card
(2) I–777, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. This application is to be filed by a U.S. citizens of the Northern Mariana Islands, who were born prior to 11/2/86 and acquired citizenship under Pub. L. 94–241. The benefit adjudicated is the issuance of or replacement of a U.S. citizen ID card. The issuance program expires 7/1/91, but the replacement program will remain in effect.
(5) 10,000 respondents at .5 hours each.
(6) 5,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–10102 Filed 5–5–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88–1 (Jan. 8, 1988)—pp. 78–79, pp. 82–84
New York:
NY88–14 (Jan. 8, 1988)—p. 810
Pennsylvania:

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PA88-1 (Jan. 8, 1988)—pp. 840, 842, pp. 846-849
PA88-8 (Jan. 8, 1988)—pp. 912, 914

Volume II

Illinois:
IL88-1 (Jan. 8, 1988)—pp. 68, 70-71, pp. 74, 77-78
IL88-2 (Jan. 8, 1988)—pp. 97-98
IL88-3 (Jan. 8, 1988)—p. 114
IL88-4 (Jan. 8, 1988)—p. 120
IL88-5 (Jan. 8, 1988)—p. 126
IL88-13 (Jan. 8, 1988)—p. 174
IL88-14 (Jan. 8, 1988)—p. 184
IL88-15 (Jan. 8, 1988)—p. 194
IL88-16 (Jan. 8, 1988)—p. 204
IL88-17 (Jan. 8, 1988)—p. 214
Indiana:
IN88-1 (Jan. 8, 1988)—pp. 234-240
IN88-2 (Jan. 8, 1988)—pp. 248-264
IN88-3 (Jan. 8, 1988)—pp. 266-275
Minnesota:
MN88-5 (Jan. 8, 1988)—pp. 536-538
Missouri:
MO88-2 (Jan. 8, 1988)—pp. 602-607
Nebraska:
NE88-3 (Jan. 8, 1988)—pp. 678-679
Wisconsin:
WI88-7 (Jan. 8, 1988)—p. 1108

Volume III

Oregon:
OR88-1 (Jan. 8, 1988)—p. 302

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 56 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of April 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-9828 Filed 5-5-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336]

Northeast Nuclear Energy Co. et. al., (Millstone Nuclear Power Station Unit 2); Exemption

I

The Northeast Nuclear Energy Company, et al. (the licensee) is the holder of Facility Operating License No. DPR-65, which authorizes operation of the Millstone Nuclear Power Station, Unit 2 at a steady-state power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in the town of Waterford, Connecticut. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 16, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this exemption request. Specifically, Subsection III.G.2.b provides that,

> • • • where cables or equipment, including associated non-safety circuits that could prevent operation or cause maloperation due to hot shorts, open circuits, or shorts to ground, of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area outside of primary containment, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:
>
> b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

III

By letter dated February 29, 1988, the licensee requested exemption from the requirements of Section III.G.2.b of Appendix R, as these requirements apply to separation of 20-feet, free of intervening combustibles, with fire detection or suppression capabilities, for redundant Auxiliary Feedwater Isolation Valves 2-FW-43A and B. The acceptability of the exemption request is addressed below.

IV

The purpose of Section III.G.2 to Appendix R is to ensure that redundant components of safety system, required to achieve and maintain post-fire hot shutdown, are protected in such a way that at least one such component will remain free of damage which could prevent the completion of the safety function. One such means of protecting these redundant safety components is provided for in Section III.G.b, that is, separate the components by at least 20-feet without intervening combustibles or fire hazards, with a fire detection and suppression capability.

One system for Millstone Unit 2 which is relied upon to achieve and maintain post-fire hot shutdown is the Auxiliary Feedwater System. Valves 2-FW-43A and B are redundant components which provide an isolation/control function. These valves are normally closed and at least one of the two valves is required to open to permit flow of auxiliary feedwater to a steam generator upon loss of normal feedwater. The valves are located on the 14'-07" elevation of the turbine building (Fire Area R-3). The valves and their control cables are separated by less than 20 feet with no fire barriers, fire detection, or fire suppression capability.

The licensee has performed an electrical control analysis of 2-FW-43A and B which indicates that no credible failure, or combination of failures would render both valves inoperable. The identified failure modes either cause the valves to open or render the valves closed but capable of being opened.

We have reviewed the analysis and concur with the conclusion that either 2-FW-43A or B (or both) will open or remain operable in the event of a fire. Accordingly, the protection of 2-FW-43A and B by separation of at least 20-feet, with no intervening combustibles or fire hazards, with a fire detection and suppression capability, is not required. The remaining means of protecting redundant components of safety systems required for achieving and maintaining post-fire hot shutdown, addressed in Subsection III.G.2 (e.g., fire barriers) for 2-FW-43A and B are similarly unnecessary.

V

Based on the above evaluation, the staff considers the licensee's alternative fire protection configuration to be equivalent to that achieved by conformance with Appendix R to 10 CFR Part 50. Therefore, the licensee's request for exemption from Section III.G.2.b as these requirements relate to separation of valves 2-FW-43A and B by at least 20-feet, with no intervening combustibles or fire hazards, and with a fire detection and suppression capability, is granted.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that: (1) This exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Specifically, the underlying purpose of Appendix R, Section III.G.2.b is to assure that a suitable complement of safe-shutdown equipment will be available, post-fire, to achieve and maintain hot shutdown of the reactor. The analysis of valves 2-FW-43A and B indicates that one or both valves will be capable of performing their post-fire shutdown role without additional fire protection enhancements. Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 13454).

Dated at Rockville, Maryland, this 29th day of April 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10076 Filed 5-5-88; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan Amendments; Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed protected areas amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The Council adopted the Northwest Conservation and Electric Power Plan (power plan) on April 27, 1983. The program and the power plan have been amended from time to time since then. Major revisions of the program were adopted in 1984 and 1987, and a major revision of the power plan was adopted in 1986. On April 14, 1988 the Council voted to initiate rulemaking pursuant to section 4(d)(1) of the Northwest Power Act to amend the program and the power plan to incorporate measures to protect critical fish and wildlife habitat from new hydropower development. This notice contains a brief description of the proposed amendments, describes how to obtain a full copy of the proposed amendments and background information concerning them, and explains how to participate in the amendment process.

Public Comment: All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on July 8, 1988. Comments should be submitted to Dulcy Mahar, Director of Public involvement, at this address. Comments should be clearly marked "Protected Areas Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment, and will supply notice of such consultations. Consultations may be held up to the time of the Council's final action in this rulemaking.

Hearings: Public hearings will be held in Idaho, Montana, Oregon, and Washington, beginning on or about May 11, 1988. If you wish to obtain a schedule of the hearings, or more information about this process, contact the Council's Public Involvement Division, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis in the Public Involvement Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

Final Action: The Council expects to take final action on the proposed protected areas amendments at its August 1988 meeting. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION CONTACT: A fuller version of this notice, including a paper entitled "Protected Areas: Background and Test of Proposed Amendments," has been prepared that explains the reasons for the rulemaking, the process to date, summarizes the proposal itself, responds to certain issues raised in earlier comments, and sets out the text of the proposed amendments. In addition, the Council staff prepared an issue paper in October 1987, entitled "Protected Area Designations," which discusses the background of this issue and identifies alternatives the Council has considered. Those wishing to receive a copy of either paper should contact Judy Allender at the address or telephone numbers listed above.

SUPPLEMENTARY INFORMATION:

1. Reasons for the Rulemaking

Substantial losses of fish and wildlife habitat have occurred in the Columbia River Basin and in the region as a whole as a result of hydroelectric and other development. Past mitigation efforts have not been able to compensate fully for the effects of hydropower and other development. Not only is mitigation risky, it is expensive and time consuming. Protracted disputes over the possible effects of hydroelectric development on sensitive fish and wildlife populations are common. These disputes add to developer costs and utility rates, and leave the region less certain about its ability to develop new resources quickly when they are needed.

2. The Process to Date

The Council initiated a process six years ago to study areas where development would have substantial and irreversible adverse effects on fish and wildlife. Extensive studies of regional fish and wildlife habitat were conducted in the 1984-86 period, and data bases were developed for anadromous fish, resident fish and

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wildlife, and hydropower potential in the region. Common criteria were developed and adapted for each of the Northwest states to apply to the data to identify critical fish and wildlife habitat for protection from future hydropower development. Their lists of critical habitat were submitted to the Council.

The Council staff released an issue paper in October 1987, proposing that the Council designate the identified areas for protection from all future hydropower development. About 415 written submissions were received from 400 individuals or organizations. In addition, 8 consultations were held with interested parties, and public comment has been heard at three Council meetings.

3. Protected Areas

This notice outlines a Council proposal, not a final Council decision. The Council will consider all comments before making a final decision. Based on the studies referred to above, the Council has prepared a list of proposed protected areas. In protected areas where anadromous fish (salmon and steelhead trout) and wild resident (non sea-going) fish are present, the Council proposes to say that any development would involve unacceptable risks of irreparable harm to such fish, their spawning grounds or habitat. In protected areas where non-wild resident fish or wildlife are present, the Council proposes to say that no hydropower development should occur that would result in a net loss of such fish and wildlife, considering possibilities for mitigation. A copy of the Council's list of protected areas is available on computer disc or hard copy, free of charge. Please contact Judy Allender at the above address or telephone number for a copy of this list.

4. Effects on Federal Agencies

a. Columbia River Basin Fish and Wildlife Program

The proposed amendments would have their strongest effects through the Columbia River Basin Fish and Wildlife Program. The Council does not itself regulate hydroelectric development through the fish and wildlife program, but influences federal agencies involved in operating, developing and regulating the hydropower system in the Columbia River Basin. Generally, fish and wildlife activities of the Bonneville Power Administration should be "consistent with" the fish and wildlife program and the power plan within the Columbia River Basin. For nonfederal hydroelectric development, the Federal Energy Regulatory Commission (FERC), which makes licensing decisions on particular hydroelectric project proposals, must take the program into account at all relevant stages of its decisionmaking processes "to the fullest extent practicable."

b. Northwest Conservation and Electric Power Plan

The proposed amendments to the Northwest Conservation and Electric Power Plan would guide Bonneville resource acquisitions throughout the Pacific Northwest region, and would not be confined to the Columbia River Basin. As a comprehensive plan that balances regional energy and fish and wildlife needs, the power plan merits the FERC's consideration under the Electric Consumers Protection Act of 1986.

5. Applies Only to New Hydropower Projects

The proposed amendments would apply only to new hydropower projects, not to existing dams. A new hydropower project would be a new structure containing hydroelectric facilities for which FERC has not issued a license.

6. No Effect on State Sovereignty or Water Rights

The Northwest Power Planning Council is not a federal agency, but is an organization of the four Northwest states with special authority to guide and constrain certain federal agencies in the Northwest. The Council's plan and program are addressed to federal agencies involved in developing or regulating hydroelectric projects, not state agencies.

The proposed action would not authorize the appropriation of water by any entity or individual, affect water rights or jurisdiction over water, or alter or establish any water or water-related right. Nor would the amendments alter, amend, repeal, interpret, modify, or conflict with any interstate compact made by the states.

The Council would promptly and carefully consider revising protected areas if any of the states completes a comprehensive, or river basin, or watershed plan, and would acknowledge the strong state interests in resident fish and wildlife.

7. River Miles and Hydropower Development Affected

Region-wide, 40,794 river miles would be affected by the proposed amendments (less than 15% of the region's river miles). The Council estimates that of 327 hydroelectric projects currently proposed or under study in the Pacific Northwest, 202 would be affected, representing 688 average megawatts of energy, and 125 projects representing 800 average megawatts would be unaffected.

8. Amendments to Protected Areas

Under the proposal, protected areas could be amended through four processes: (1) The Council through an expedited amendment process, could remove from the list areas erroneously included on the List because of incorrect data or other technical errors; (2) the Council would promptly initiate amendment proceedings and consider revising Protected Area designations in light of any state comprehensive rivers plans, or state river basin or watershed plans; the Council would recognize the individual states special intereat in habitat for resident fish and wildlife: (3) the Council could amend the Protected Areas designations upon completion of its system plan for anadromous fish in the Columbia River Basin; and (4) the Council would accommodate other amendments to protected areas, including consideration of an exception for any hydropower project that is believed to entail exceptional fish and wildlife benefits, through its usual amendments processes.

Edward Sheets,
Executive Director.

[FR Doc. 88-10061 Filed 5-5-88; 8:45 am]
BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25630; File No. SR-AMEX-88-9]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Expansion of the Use of the AUTO-EX System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to expand its automatic execution system ("AUTO-EX") to forty equity options on a pilot program basis until permanent approval is obtained to expand the system to all equity options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to expand the application of its AUTO-EX system to forty equity options on a pilot program basis. AUTO-EX is an automated execution system that enables member firms to route public customer market and marketable limit orders in options for automatic execution at the best bid or offer at the time the order is entered. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order, thus assuring public customers' orders on the book retain priority over orders in the crowd. If the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned on a rotation basis to either one of the AMEX Registered Options Traders ("ROTs") who have signed on the system or to the specialist.

Each specialist in an AUTO-EX eligible option is automatically signed on to the system, while ROTs participate on a voluntary basis. Prior to signing on to the AUTO-EX system, ROTs must sign an agreement with the Exchange undertaking to satisfy the following requirements prior to and during their participation on the system. A ROT:

1. Must be in good standing at the AMEX;

2. Must have the written concurrence of his or her clearing firm to participate on the system;

3. Once signed on the system for a given option class, must remain in the trading crowd for that option. The ROT may, however, sign on to one additional AUTO-EX option class so long as the ROT can be considered in the crowd for both options;

4. May sign on the system at any time during the day, but may only sign off and back on the system one additional time during the day;

5. While signed on the AUTO-EX system in a given option class, may not place orders on the specialist's book for that option; and

6. Must accept Exchange-mandated price adjustments when a trade is automatically executed at an incorrect price.

Since its initial implementation in December 1985, AUTO-EX has been extended to: (i) Full-time use in selected series of Major Market Index ("XMI") options, (ii) use during periods of extremely high order flow in stock options and (iii) use in selected competitively traded stock options.[1] Overall, member firms have been supportive of these various applications of AUTO-EX and the Member Firm Advisory Committee, representing the major wire houses, has urged the Exchange to make AUTO-EX more generally available for stock options.

On October 9, 1987, the Exchange filed a proposal to expand the AUTO-EX system to all equity options on a full-time, permanent basis.[2] While this filing continues to await SEC approval, the Exchange proposes to expand AUTO-EX to forty equity options on a pilot program basis and continue the pilot program until a decision is reached regarding permanent approval to expand the system to all equity options.

The Exchange believes the expansion of the AUTO-EX system to forty equity options and the eventual expansion floorwide is necessary for it to continue to offer the level of service that member firms and their customers require, while remaining competitive with other marketplaces.

The AMEX believes the proposed rule change is therefore consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The AUTO-EX Ad Hoc Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The AMEX has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, so that the Exchange can begin using the AUTO-EX system on select equity options while awaiting permanent approval to expand the system to all equity options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by affording them a more efficient method of executing small market and marketable limit orders in the forty equity options selected than was previously available at the AMEX. Specifically, the Commission previously has approved, on a pilot basis, the use of AUTO-EX in equity options during emergency or break out situations. The AMEX's experience for these options has been that AUTO-EX's availabily enhances order execution and brings operational efficiencies to the trading post during these emergencies.[3] Extension of the

[1] *See* Securities Exchange Act Release No. 23544, dated August 27, 1986, approving SR-AMEX-86-16 for use of AUTO-EX on a permanent basis in XMI options; Securities Exchange Act Release No. 24228, dated March 18, 1987, approving SR-AMEX-87-4 to use AUTO-EX during emergency situations, subsequently extended until June 30, 1988 (see SR-AMEX-88-1); and Securities Exchange Act Release No. 24714, dated July 17, 1987, approving SR-AMEX-87-19 to use AUTO-EX in competitively traded options on a 90-day trail basis, subsequently extended until June 30, 1988 (see SR-AMEX-87-28 and 88-8).

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25056 (October 23, 1987), 52 FR 42186 (File No. SR-AMEX-87-28).

[3] *See The October 1987 Market Break.* A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988).

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system to forty options will allow the Commission and the AMEX to monitor in a more comprehensive fashion the operation of AUTO-EX until a final decision on permanent approval is reached.

The Commission understands that the AMEX plans gradually to introduce AUTO-EX to additional equity options and that it does not expect to bring AUTO-EX up in all forty options immediately. The AMEX believes that operation of AUTO-EX in up to forty additional equity options will have no adverse impact on the Exchange's system capacity. In this regard, the AMEX has represented that currently all option orders are routed to the appropriate post through the Exchange's PER/AMOS order routing system, regardless of whether AUTO-EX is available. After arriving at the appropriate specialists post, the order must be executed either automatically, through AUTO-EX, or printed out and executed manually. The use of AUTO-EX will not increase the number of messages being processed through the AMEX's automated order routing systems. Currently, these systems have a capacity to process 18 messages per minute, which is 4½ times the peak one minute message traffic received on an average day and 3½ times the traffic experienced on the business trading day ever experienced at the Exchange.[4]

Finally, the Commission notes that the operation of AUTO-EX in these options will not negatively affect public customer limit orders because these orders will receive the customary limit order protection afforded public customer orders placed on the book.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Exchange previously has demonstrated the operational efficiencies of AUTO-EX for an extended period. In addition, approval of the proposed rule change will keep the AMEX competitive with other marketplaces with similar automatic execution systems. Moreover, the Commission previously has solicited comments on AUTO-EX on four separate occasions, two of which specifically covered its application to options on individual securities, and has not received any adverse comments on AUTO-EX or its usage in options on individual securities. Finally, the Commission's approval is limited until the AMEX receives permanent approval to expand AUTO-EX to all equity options.

[4] *See*, Letter from Paul Stevens, Executive Vice President, AMEX, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 8, 1988.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 says after the date of this publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10074 Filed 5-5-88; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78s(b) (1982).

[6] 17 CFR 200.30-3(a)(12) (1986).

[File No. 22-17935]

Application and Opportunity for Hearing: Citicorp

May 2, 1988.

Notice is hereby given that Citicorp (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of United States Trust Company of New York (the "Bank") under indentures dated as of February 15, 1972 (the "1972 Indenture"), supplemented as of November 15, 1972 (the "November 1972 Supplement") and June 30, 1974 (the "June 1974 Supplement"), March 15, 1977 (the "March 1977 Indenture") supplemented as of July 1, 1977 (the "July 1977 Supplement"), July 15, 1978 (the "July 1978 Supplement"), February 1, 1979 (the "February 1979 Supplement"), April 15, 1980 (the "April 1980 Supplement"), Feburary 1, 1981 (the "February 1981 Supplement"), May 1, 1981 (the "May 1981 Supplement"), August 1, 1981 (the "August 1981 Supplement"), November 1, 1981 (the "November 1981 Supplement"), Feburary 1, 1982 (the "February 1982 Supplement"), Feburary 15, 1982 (the "February 15, 1982 Supplement"), and March 15, 1982 (the "March 1982 Supplement"), August 25, 1977 (the "August 1977 Indenture"), and April 21, 1980 (the "1980 Indenture") between the Company and Bank which were heretofore qualified under the Act, and under a Pooling and Servicing Agreement dated as of September 1, 1987 (the "September Agreement") between Citicorp Mortgage Securities, Inc. ("Citicorp Mortgage") and the Bnak which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of these indentures or the September Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the 1972 Indenture, the Company has issued $650,000,000 aggregate principal amount of its Floating Rate Notes Due 1989 (the "Notes") under the June 1974 Supplement, of which $74,304,000 are outstanding as of April 1, 1988. The Notes were registered under the Securities Act of 1933 ("1933 Act") and the 1972 Indenture was qualified under the Act.

(2) Pursuant to the March 1977 Indenture, the Company has issued $350,000,000 aggregate principal amount of its 8.45%. Notes Due March 15, 2007. The Company has issued in aggregate

principal amount (i) $250,000,000 of its 8⅛% Notes Due July 1, 2007 under the July 1977 Supplement; (ii) $200,000,000 of its Floating Rate Notes Due 1998 under the July 1978 Supplement; (iii) $500,000,000 of its Floating Rate Notes Due 2004 under the February 1979 Supplement; (iv) $250,000,000 of its Floating Rate Notes Due 2010 under the April 1980 Supplement; and (v) $100,000,000 of its Floating Rate Notes Due March 10, 1989 under the March 1982 Supplement (collectively, the "Notes"). Of these, $1,053,134,000 are outstanding as of April 1, 1988. The Notes were registered under the 1933 Act and the March 1977 Indenture was qualified under the Act.

(3) Pursuant to the August 1977 Indenture, the Company has issued $250,000,000 aggregate principal amount of its Rising-Rate Notes, Series A (the "Notes"), of which none are outstanding as of April 1, 1988. The Notes were registered under the 1933 Act and the August 1977 Indenture was qualified under the Act.

(4) Pursuant to the 1980 Indenture, the Company has outstanding as of April 1, 1988, $7,209,076,953 aggregate principal amount of various series of notes (the "Notes"). The Notes were registered under the 1933 Act and the 1980 Indenture was qualified under the Act. The four indentures are hereinafter called the "Indentures," and the sescurities issued pursuant to the Indentures are hereinafter called the "Notes."

(5) Pursuant to the September Agreement, Citicorp Mortgage Securities, Inc. ("Citicorp Mortgage"), a subsidiary of the Company, issued Mortgage Pass-Through CitiCertificates, Series 1987-17, 9.50% Pass-Through Rate (the "Series 1987-17 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to four-family mortgage loans (the "1987-17 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $62,504,195.34 at the close of business on September 1, 1987, which mortgage loans were assigned to the Bank as Trustee simultaneously with the issuance of the Series 1987-17 Certificates. On September 18, 1987, the Company entered into a Guaranty of even date (the "1987-17 Guaranty") pursuant to which, for the benefit of the holders of the Series 1987-17 Certificates, it agreed to be liable for 5.50% of the initial aggregate principal balance of the 1987-17 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-17 Guaranty. The Company's obligations under the 1987-17 Guaranty rank *pari passu* with all unsecured and unsubordinated indebtedness of the Company, and accordingly, if enforced against the Company, the 1987-17 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987-17 Certificates were registered under the 1933 Act as part of a delayed or continuous offering of $2,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The September Agreement has not been qualified under the Act.

(6) Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(7) The obligations of the Company under the Indentures and the 1987-17 Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*.

(8) Such differences as exist among the Indentures and the respective obligations of the Company under the 1987-17 Guaranty are unlikely to cause any conflict of interest in the trusteeship of the Bank under the Indentures and the September Agreement.

The Company has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17935, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than May 26, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10122 Filed 5-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25632; File No. SR-NASD-87-18]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 8, 1987, and amended on March 17, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal eliminates Section B.3 from part IV of Schedule D to the NASD By-Laws, which permitted a refund of issuer fees for securities removed from the NASDAQ System.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25512, March 25, 1988) and by publication in the **Federal Register** (53 FR 10455, March 31, 1988). No comment letters were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to setion 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10075 Filed 5-5-88; 8:45 am]

BILLING CODE 8010-01-M

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF THE COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Captial Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 8.00 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1987.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which: (a) The average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calender year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: April 28, 1988.

So Ordered by: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

E.L. Chao,

Maritime Administrator.

J. Curtis Mack, II,

Acting Administrator, National Oceanic and Atmospheric Administration.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-10009 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

[Order 88-4-25]

Order Regarding China Airlines, Ltd. the Airline of Taiwan

AGENCY: Department of Transportation.

ACTION: Proposed order to condition the foreign air carrier operations of China Airlines, Ltd.

SUMMARY: The Air Transport Agreement between the American Institute in Taiwan (AIT) and the Coordination Council for North America Affairs (CCNAA), provides, among other things, that the designated airlines of each party may perform their own ground services ("self-handling"). China Airlines Ltd. (CAL), currently self-handles at Los Angeles. Since September 1987, United Air Lines has been trying unsuccessfully to initiate self-handling at Taipei. Taiwanese have created a series of obstacles that have effectively denied United its rights under the agreement. The attached order tentatively finds that it is in the public interest to condition the foreign air carrier operations of CAL. Specifically, the order proposes to prohibit CAL from self-handling at Los Angeles, and would give the Department the authority to determine CAL's ground-handling agent at Los Angeles. The order also proposes to revoke CAL's exemption authority to perform intermodal (air/surface) operations in the United States. The Department tentatively finds that these actions are an appropriate response to Taiwan's withholding of self-handling rights from United, and invites interested parties to file comments on the proposed actions.

DATES: Objections to the Department's proposed actions are due May 6, 1988. Answers are due not later than May 13, 1988. Interested parties may obtain a service copy of the order by calling the Documentary Services Division (202) 366-9327 or by writing to the address below.

ADDRESS: Objections, comments and supporting information should be filed in Docket 45607, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45607.

Dated: April 29, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10061 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-88-17]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (4 CFR Part 11) this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions seeking relief from specified requirments of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 26, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 26, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
13199	American Airlines, Flight Academy	14 CFR 61.63(d) (2) and (3)	To extend Exemption No. 4652 that allows the use of an approved visual simulator by American Airlines for applicants for a Cessna 500 (CE-500) type rating who have completed the training course of American Airlines as approved by the FAA pursuant to § 121.424(d).
25576	Normalair-Garrett Limited Product Support Division.	14 CFR 145.71 and 145.73(a)	To allow petitioner, pursuant to the foreign repair station certificate for which it is concurrently applying, to perform warranty and other maintenance work on aircraft components that it manufacturers in aircraft that are registered in the United States without limitation as to where such aircraft operate.
25578	Chromalloy Gas Turbine Corporation and Support Europa, B.V.	14 CFR 145.57(b) and 145.61(d)	To allow petitioners to perform services including inspection, repair, and overhaul of aircraft engine components and parts consistent with its current agency certificate relating to limited specialized services on any U.S.-registered aircraft without geographical limitations and in accordance with their ratings.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20044	Air Transport Association of America	14 CFR 61.63 (b) and (c) and 121.437(c).	To extend Exemption No. 2965, as amended, to allow pilots employed by Part 121 certificate holders to be issued additional category and class ratings based on successful completion of an approved Part 121 second-in-training program. *Grant, April 18, 1988, Exemption No. 2965E.*
25311	Hamilton Standard Corporation	14 CFR 145.101(b)(4)	To allow petitioner to repair and modify (under the authorization of petitioner's manufacturer's maintenance facility (MMF) certificate No. MMF-NE-40-04) its own products that are shipped direct to users and are of a like-configuration to those shipped via FAA parts manufacturer approval (PMA) authorization. *Denial, April 21, 1988, Exemption No. 4925.*
25403	CCAir, Inc., dba Piedmont Commuter System.	14 CFR 121.371(a) and 121.378	To allow petitioner to purchase goods and servcie from foreign original equipment manufacturers in support of petitioner's British Aerospace, Jetstream Model 3101 and Shorts SD3-60 aircraft. *Grant, April 21, 1988, Exemption No. 4926.*

[FR Doc. 88-10049 Filed 5-5-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 26, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——— 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 1, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21516	Type Rating Training	14 CFR 61.63(d) and (3) and 61.157(d)(1).	To extend Exemption No. 4683 that allows students of petitioner who are applicants for a type rating to be added to any grade of pilot certificate, in Boeing 727 and 737 and McDonnell Douglas DC-9 and DC-10 airplanes, to complete a portion of that practical test in an airplane simulator
23980	United States Hang Gliding Association	14 CFR 91.17 and 103.1(b)	To extend Exemption No. 4144, as amended, that allows petitioner to tow unpowered ultralights with a powered ultralight.
25821	Sailair, Inc	14 CFR 185.203(a)(1)	To allow petitioner to operate under visual flight rules (VFR) outside of controlled airspace, over water and at an altitude between 100-500 feet under certain conditions.
25588	Soaring Society of America, Inc	14 CFR 45.11 (a) and (d) and 45.29(h).	To allow glider operations without external ID plates or owner-affixed external ID information and exemption from the size requirements for registration markings on aircraft penetrating an ADIZ or DEWIZ.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20049	T.B.M., Inc	14 CFR 91.211(a)(1)	To extend Exemption No. 2956, as amended, that allows petitioner to operate its Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under Part 137. *Grant, April 25, 1988, Exemption No. 2956E*
24041	Butler Aircraft Co	14 CFR 91.211(a)(1)	To extend Exemption No. 2989, as amended, that allows petitioner to operate its Douglas DC-6 and DC-7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under Part 137. *Grant, April 25, 1988, Exemption No. 2989D.*

[FR Doc. 88-10050 Filed 5-5-88; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 162 (5th Mtg.), Aviation System Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 162 on Aviation System Design Guidelines for Open Systems Interconnection (OSI) to be held on June 1-3, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory remarks, (2) Approval of the fourth meeting's minutes, (3) Reports on Working Groups' Activities, (4) Reports of Related Activities Being Conducted by Other Organizations, (5) Working Groups Meet in Separate Sessions, (6) Develop Committee Report Content List, (7) Develop a List of Questions to be Answered, (8) Assignment of Tasks, (9) Other Business, and (10) Time and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 25, 1988.

R.E. Reichenbach,

Acting Designated Officer.

[FR Doc. 88-10048 Filed 5-5-88; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-828]

Apex Resources, Inc., et al.; Notice of Application To Effect Proposed Sale of Certain Vessels and Proposed Assignment of ODSAs

In the matter of Apex Resources, Inc., American Shipping, Inc., and Aeron Marine Shipping Company.

Certain partnerships and companies in which Apex Resources, Inc. and its subsidiaries (collectively Apex) have an interest propose to sell to Liberty Shipping Group (Liberty) four U.S.-flag vessels—ARCHON, ALTAIR, ASPEN, and ARION (the Vessels)—and to assign to Liberty the contractor's rights under two related ODSAs—ODSA Contract MA/MSB-166(a) with Aeron Marine Shipping Company (Aeron) for which no ship is currently named, and ODSA Contract MA/MSB-272 with American Shipping Inc. for which the BEAVER STATE is named.

An addendum to Contract MA/MSB-166(a) proposed in early 1987 by the Maritime Administration and not yet accepted by Aeron would have placed the ARCHON under MA/MSB-166(a). In addition, certain partners in partnerships which own the vessels AURORA and BEAVER STATE propose to sell their partnership interests to Liberty. Liberty will be formed as a partnership which will be controlled by Schnitzer Investment Corp. (SIC), currently a subsidiary of Schnitzer Steel Products Co. The partners in Liberty will be SIC and Philip J. Shapiro or an entity to be formed by him.

Apex requests the following approvals and determinations under the Merchant Marine Act, 1936, as amended (Act), in connection with the sale to Liberty of the Vessels and the ODSAs:

(1) Under Title VI (a) approval pursuant to section 606 to transfer to Liberty the contractors' rights under the ODSAs; (b) approval for Liberty to operate any of the Vessels pursuant to either of the ODSAs for a maximum of 730 total voyage days in any one calendar year under a sharing system; (c) confirmation that the Vessels may continue carrying, without operating-differential subsidy (ODS), cargoes subject to the cargo preference statutes of the United States without restriction; and (d) approval, to the extent necessary, to transfer to Liberty the rights arising from the prior approvals applicable to the Vessels granted pursuant to section 615.

(2) Under section 804(a) a determination that foreign-flag bulk vessels owned by companies which may be related to Liberty do not compete "with any American-flag service determined * * * to be essential" within the meaning of section 804(a); or alternatively (b) if it is determined that such foreign-flag operators compete with an essential U.S.-flag service within the meaning of section 804(a), a waiver for special circumstances and good cause shown pursuant to section 804(b) to permit Liberty to receive ODS with respect to the operation of any of the Vessels in the U.S. foreign and foreign-to-foreign commercial trades during the remaining terms of the ODSAs.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on May 20, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of the Maritime Administrator.

Date: April 4, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-10178 Filed 5-5-88; 8:45 am]
BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Proceeding to Determine Noncompliance by Mercedes-Benz of North America With Fuel Economy Standard

Pursuant to section 508 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2008 ("the Act"), and 49 CFR 511.11, the National Highway Traffic Safety Administration (NHTSA) has on April 28, 1988, issued a complaint, instituting a proceeding against Mercedes-Benz of North America ("Mercedes") to enforce a corporate average fuel economy standard.

The complaint, filed with the Docket Section, Office of the Secretary, Department of Transportation, alleges that Mercedes failed to comply with the corporate average fuel economy standard applicable to it under section 502 of the Act (15 U.S.C. 2002) for passenger cars which Mercedes imported during model year 1985, and that Mercedes' failure to comply with unlawful conduct within the meaning of section 507(a) of the Act. 15 U.S.C. 2007(a). In the complaint, Complaint Counsel requests a determination that Mercedes committed the aforementioned violation of the Act and is liable for a civil penalty of $5,509,400.00.

The filing of the complaint has commenced an adjudicative proceeding conducted pursuant to section 508(a)(2) of the Act (15 U.S.C. 2008(a)(2)), and 49 CFR Part 511. Mercedes has the right to file an answer and to request a hearing within twenty days after the filing of the complaint. In the event that Mercedes disputes the allegations in the complaint, an Administrative Law Judge will be appointed by the Chief Administrative Law Judge of the Office of Hearings, Department of Transportation, to act as Presiding Officer at the hearing and to render an initial decision in the case. Pursuant to 49 CFR 511.11, any interested person who desires to participate in the proceeding as a party should file a notice of intention to participate no later than the first prehearing conference. Pursuant to 49 CFR 511.17, any interested person who wishes to participate in the hearing as a non-party "participant" should file a notice of intention to participate no later than the commencement of the hearing. The rights of parties and non-party participants are delineated at 49 CFR 511.41.

Notice of intention to participate should be filed by hand delivery or mail addressed to Docket Section, Office of the Secretary, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

A public docket has been established for this proceeding, and is available for inspection during regular working hours (9:00 a.m.-5:00 p.m.) Monday through Friday, in the Docket Section, Room 4107, 400 Seventh Street SW., Washington, DC 20590. The docket number is 45610.

The Assistant Chief Counsel for Litigation of NHTSA has been delegated the authority to determine the legal sufficiency of the NHTSA investigation of alleged violations of the corporate average fuel economy standard for model year 1985 passenger cars by Mercedes, to sign and issue the complaint described above and to act as the Complaint Counsel in an adjudicative proceeding under 49 CFR Part 511. The Assistant Chief Counsel has been directed to consult with the Associate Administrator for Enforcement with respect to the exercise of this authority.

This notice also establishes a separation of functions among offices and employees of the NHTSA who participate in the prosecution or decision-making of the adjudicative proceeding that has been commenced by the above described complaint. Section 511.78 of Part 511 prohibits *ex parte* communications regarding the merits of the proceeding between parties to the proceeding or their representatives and the decision-maker, including in addition to the Presiding Officer, the Administrator and those NHTSA employees who advise the Administrator regarding the decision in the adjudicative proceeding. In order to help ensure compliance with this prohibition, there shall be a separation of functions as follows.

For purposes of the proceeding, the Administrator shall be advised by the Deputy Administrator, the Chief Counsel, the Assistant Chief Counsel for Rulemaking, the attorneys assigned to the Rulemaking Division of the Office of Chief Counsel who are specifically assigned to participate in the proceeding, the Associate Administrator for Rulemaking, the Director and staff members of the Office of Market Incentives who are specifically assigned to participate in the proceeding and

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support staffs who ordinarily assist these officers and employees. These employees shall be on the "decision-maker" side of the agency for purposes of Part 511, and shall not discuss the merits of the proceeding with agency staff on the "prosecution" side of the agency.

The "prosecution" side of the agency for purposes of Part 511 shall include the Associate Administrator for Enforcement, the staff members of the Office of Vehicle Safety Compliance who are specifically assigned to participate in the proceeding, the Assistant Chief Counsel for Litigation, the attorneys assigned to the Litigation Division of the Office of Chief Counsel who are specifically assigned to participate in the proceeding and support staffs who normally assist these officers and employees. None of the NHTSA employees involved in the prosecution of the proceeding shall make any oral or written *ex parte* communications relative to the merits of that proceeding with any NHTSA employees on the decision-making side of the proceeding.

The Complaint Counsel or the Chief Counsel may find it necessary to seek advice regarding the proceeding from agency employees not identified above. The Managing Director of the National Highway Traffic Safety Administration has been delegated the authority to decide, on a case-by-case basis, whether such agency employees may assist the decision-making or prosecution side. Any such employees who provide assistance to either side become members of that side for the duration of the proceeding and remain subject to the restrictions on *ex parte* communications stated herein.

Prior to the first prehearing conference, the Complaint Counsel shall file with the Docket Section, Office of the Secretary of Transportation, lists of agency employees specifically assigned to participate in this proceeding on the prosecution side, and the Chief Counsel shall file a list of agency employees specifically assigned to participate in the proceeding on the decision-making side. Amendments to these lists shall be filed as needed.

Authority: 5 U.S.C. 554–557, 15 U.S.C. 2008, 49 CFR Part 511; delegations of authority at 49 CFR 1.45(b), 1.50(f), 501.8.

Issued on May 3, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88–10088 Filed 5–3–88; 3:03 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0166
Form Number: 4255
Type of Review: Revision
Title: Recapture of Investment Credit
Description: Internal Revenue Code section 47 and Regulations section 1.47 require that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the useful life or recovery period used in the original computation of the investment credit.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 114,414 hours

OMB Number: 1545–0351
Form Number: 3975, 3975A, 3975B, 3975C, 3975G, 3975H, 3975I, 3975J and 3975K
Type of Review: Revision
Title: Tax Practitioners Mailing File (TPMF)
Description: Form 3975 Series allows practitioners a systematic way to remain on the mailing file (TPMF) and to order information copies of tax forms materials.
Respondents: Businesses or other for-profit
Estimated Burden: 27,425 hours

OMB Number: 1545–0941
Form Number: 8308
Type of Review: Extension
Title: Report of a Sale or Exchange of Certain Partnership Interests
Description: Form 8308 is an information return that gives the IRS the names of the parties involved in a section 751(a) exchange of a partnership interest. It is also used by the partnership as a statement to the transferor or transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 60,134 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–10065 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 10–88]

Treasury Notes; Series Z–1990

Washington, April 28, 1988.

The Secretary announced on April 27, 1988, that the interest rate on the notes designated Series Z–1990, described in Department Circular—Public Debt Series—No. 10–88 dated April 21, 1988, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88–10066 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; American Indemnity Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Indemnity Company, of Galveston, Texas, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24605, July 1, 1987.

With respect to any bonds currently in force with American Indemnity Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: April 29, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–10055 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; American Mutual Liability Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Mutual Liability Insurance Company, of Wakefield, Massachusetts, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24605, July 1, 1987.

With respect to any bonds currently in force with American Mutual Liability Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: April 29, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–10056 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds; the American Road Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24605 to reflect this addition.

THE AMERICAN ROAD INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1736, Dearborn, MI. 48121. UNDERWRITING LIMITATION [b]: *$31,744, 000. SURETY LICENSES* [c]: All. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: April 29, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–10058 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Fremont Indemnity Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Fremont Indemnity Company, of Los Angeles, California, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24612, July 1, 1987.

With respect to any bonds currently in force with Fremont Indemnity Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: April 29, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–10057 Filed 5–5–88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 20]

Surety Companies Acceptable on Federal Bonds; General Accident Insurance Co. (Puerto Rico) Ltd.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24612 to reflect this addition:

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED.
BUSINESS ADDRESS: G.P.O. 3788. San Juan, Puerto Rico 00936.
UNDERWRITING LIMITATION [b]: *$725,000.*
SURETY LICENSES [c]: PR, and VI.
INCORPORATED IN: Puerto Rico.
FEDERAL PROCESS AGENTS [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Dated: April 29, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–10059 Filed 5–25–88; 8:45 am]

BILLING CODE 4810-35-M

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Correction

AGENCY: United States Sentencing Commission.

ACTION: Correction.

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SUMMARY: In Notice Document 88–9490 beginning on page 15530 in the issue of Friday, April 29, 1988, text was inadvertently omitted. This document corrects that omission. On page 15533, in the third column in § 2F1.1, additional text is added to precede the current first paragraph. This additional text reads as follows:

Section 2F1.1(b)(1) is amended by deleting "estimated, probable, or intended."

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 by inserting as the first sentence the following: "Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)."

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 88–10113 Filed 5–5–88; 8:45 am]

BILLING CODE 2210–40–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 88
Friday, May 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting Wednesday, May 11, 1988, 11:00 a.m. (Time approximate—meeting will begin immediately after the Public Hearing on Priorities for FY 1990.)

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY90 Priorities Projects

The staff will brief the Commission on recommendations for priority projects for fiscal year 1990.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–10232 Filed 5–4–88; 3:24 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:20 p.m. on Tuesday, May 3, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (i) matters relating to the possible closing of a certain insured bank, and (ii) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L.Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consdieration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: May 4, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88–10175 Filed 5–4–88; 11:55 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., May 11, 1988.

PLACE: Hearing Room I, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreement No. 203–011171—Trans Freight Lines/Nedlloyd/Sea-Land Cooperative Working Agreement.
2. Trans-Atlantic Amnesty Agreement and Modification of the U.S. Atlantic-North Europe Conference Agreement.
3. Docket No. 87–6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade—Comments on Reconsideration.
4. Docket No. 87–14—Banfi Products Corporation Possible Violations of section 16, Initial Paragraph, Shipping Act of 1916 and section 10(a)(1) of the Shipping Act of 1984—Motion to Amend Order of Investigation.
5. Docket No. 87–18—Matson Navigation Company, Inc.,—Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii—Consideration of the Record.
6. Section 15 Order Responses: Practices Affecting Shipping in the United States/Taiwan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary. (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–10171 Filed 5–4–88; 11:23 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 20, 1988.

TIME AND DATE: 10:00 a.m., Thursday, April 21, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Arnold Sharp v. Big Elk Creek Coal Co.*, Docket No. KENT 86–149–D.

It was determined by a unanimous vote of Commissioners that this item be included in the meeting and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–10140 Filed 5–4–88; 9:56 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 11, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals to implement the Expedited Funds Availability Act to provide availability for deposits within specified time periods and to improve the check return system. (Proposed earlier for public comment; Docket Nos. 0620 and 0621).
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: May 4, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10165 Filed 5-4-88; 10:48 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:00 noon, Wednesday, May 11, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before the meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 4, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10166 Filed 5-4-88; 10:48 am]
BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 53, No. 88
Friday, May 6, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Correction

In notice document 88-9496 appearing on page 15333 in the issue of Thursday, April 28, 1988, make the following correction:

In the first column, in the third document, under "**TIME AND DATE**", May 13, 1988" should read "May 20, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-20-NG]

Application to Import Natural Gas From Canada and Mexico; Amalgamated Pipeline Co.

Correction

In notice document 88-9388 beginning on page 15274 in the issue of Thursday, April 28, 1988, the docket number should read as it appears in the bracketed heading above.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-41]

Intent To Prepare an Environmental Impact Statement (EIS); Advanced Solid Rocket Motor (ASRM)

Correction

In notice document 88-9217 beginning on page 15157 in the issue of Wednesday, April 27, 1988, make the following corrections:

1. On page 15157, in the second column, under **ACTION**, in the third line, "developing" should read "development".
2. On page 15158, in the first column, in the first complete paragraph, in the 12th line, after "Phase C/D" insert "SEB".
3. On the same page, in the second column, in paragraph (f), "infrastructure" was misspelled.
4. On the same page, in the same column, in the 10th complete paragraph, in the fourth line, "REF" should read "RFP".
5. On the same page, in the third column, in the first complete paragraph, in the seventh line, "preferred" was misspelled.
6. On the same page, in the same column, in the third complete paragraph, in the fourth line, "affecting" should read "affected"; and in the last line, after "production" insert "facility".
7. On the same page, in the same column, in the last paragraph, in the last line, "identification" was misspelled.
8. On page 15159, in the first column, under **DATE**, in the fourth line, "of" should read "or".

BILLING CODE 1505-01-D

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Friday
May 6, 1988

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest; Final Rule

VOL 53 ISS 88 MY 6 1988 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest. The amendments include the following changes: (1) Deadline date moved up from October 1 to September 15; (2) Provides for a procedure for judging a tie vote for first, second, and third place; (3) Identifies forty two species from which five are eligible in any given year. The dates and location of this year's contest are also announced, and the public is invited to attend.

DATES: 1. This rule is effective July 1, 1988, the beginning of the 1988–1989 contest.

2. This year's contest will be held on November 7 and 8, 1988, beginning at 11 a.m. on Monday and 9 a.m. on Tuesday.

3. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and display agreements should be addressed to: Migratory Bird Hunting and Conservation Stamp Contest, Department of the Interior, U.S. Fish and Wildlife Service, Room 7349, Washington, DC 20240.

Location of Contest: Department of the Interior Building Auditorium (C Street Entrance), 1800 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Coordinator, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Room 7349, Washington, DC 20240, Telephone: (202) 343–5508.

SUPPLEMENTARY INFORMATION: Analysis of these revisions to 50 CFR Part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The revisions also will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601 *et seq.* The revisions do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or revisions to an approved action (the Duck Stamp Contest), that have no potential for causing substantial environmental impact.

Analysis of Public Comment

Approximately 900 copies of the proposed regulations (53 FR 6936) were mailed to artists, art dealers and publishers, the press and the general public.

Thirty-six comments were received addressing the three proposed changes in the regulations of the Migratory Bird Hunting and Conservation Stamp Contest. The three proposed changes were: (1) to change the deadline date from October 1 to September 15; (2) to establish procedures for judging a tie vote for second and third place; and (3) to limit the number of eligible species to five.

Nineteen people favored changing the contest deadline to September 15, two people were opposed to the change, and 16 people made no comment regarding the contest deadline. Those that favored the change stated that the deadline date was unimportant, that work seems to fit the time allotted for it, but that it would be helpful to have the regulations sent to the artists as early as possible. Of the two people opposing the deadline change, one gave no reason and the other simply stated that he preferred the October 1 deadline.

Nineteen people supported establishing a procedure for judging tie votes for second and third place, two people opposed the change, and 15 people made no comment regarding the tie vote procedure. Those that favored the change stated it was a housekeeping change and that the reasons cited in the press release seemed reasonable and fair. One individual who opposed the establishment of this saw no purpose in a tie breaker procedure, and another person didn't provide a reason for opposing.

Twenty people favored limiting the eligible species to five, seven opposed the change and nine made no comment. Although many people did not give their reasons for supporting the change to five eligible species, one comment was of particular interest. "Eligible species changes gave me pause at first. I have my favorites and push them. Then I realized that my attitude did not push me. You are giving me a choice—there are five to choose from—and you are asking me to stretch myself—better for both of us, but particularly for the artist; very good idea. Thanks for asking." The main concern of the seven individuals opposed to limiting the species was that artists living in certain areas of the country would have difficulty obtaining live references for their designs. In establishing the eligible species each year, the U.S. Fish and Wildlife Service will make every effort to include one species from each of the flyways, with intent to minimize difficulty in locating live reference material.

Other comments that were received that did not deal with the changes but addressed other aspects of the contest and the regulations included:

(1) Regulations should be sent to the artists much earlier than in previous years—could be included when artwork is returned from current contest.

(2) Change the contest eligibility to include other wildlife species besides ducks, geese, and swans.

(3) Prohibit artists who have won the competition from entering again.

(4) Increase the entry fee to $100.00.

(5) Keep the entry fee at $50.00 for several years.

(6) Thank you from several for the opportunity to comment.

(7) Allow a vertical design.

The comments listed above will be given consideration in future changes of the Duck Stamp contest regulations.

The primary authors of this document are David Fisher, James E. Pinkerton, and Norma E. Opgrand, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Accordingly, 50 CFR Part 91 is revised to read as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

Subpart A—Introduction

Sec.

91.1 Purpose of regulations.
91.2 Definitions.
91.3 Public attendance at contest.
91.4 Eligible species.

Subpart B—Procedures for Entering the Contest

91.11 Contest deadlines.
91.12 Contest eligibility.
91.13 Technical requirements for design and submission of entry.
91.14 Restrictions on subject matter of entry.
91.15 Suitability of entry for engraving.
91.16 Submission procedures for entry.
91.17 Property insurance for entries.
91.18 Failure to comply with contest regulations.

Subpart C—Procedures for Administering the Contest

91.21 Selection and qualification of contest judges.
91.22 Display of entries for contest.
91.23 Scoring criteria for contest.
91.24 Contest procedures.

Subpart D—Post-Contest Procedures

91.31 Return of entries after contest.

Authority: 5 U.S.C. 301; 31 U.S.C. 9701.

Subpart A—Introduction

§ 91.1 Purpose of regulations.

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp.

(b) All individuals entering the contest must comply with these regulations, a copy of which (along with the reproduction rights and display agreements) may be requested from the Migratory Bird Hunting and Conservation Stamp Office (Duck Stamp Office), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the immediately preceding contest will be sent a copy of the regulations, the display agreement, and the reproduction rights agreement.

§ 91.2 Definitions.

Contest Coordinator—the contest official responsible for overseeing the judges' scores for each entry. The contest coordinator will be named by the Secretary of the Interior and will not be a past or present employee of the Fish and Wildlife Service.

Display agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry for the Migratory Bird Hunting and Conservation Stamp for promotional purposes.

Qualifying entry—each original work of art submitted to the contest that satisfies the requirements outlined in Subpart B.

Reproduction rights agreement—a document that each contestant must sign and submit with the entry. The signed agreement certifies that the entry is an original work of art and stipulates how the Fish and Wildlife Service may use the winning entry.

§ 91.3 Public attendance at contest.

All phases of the voting process will be open for viewing by the general public.

§ 91.4 Eligible species.

Five of the below listed species will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

(a) *Whistling-Ducks.* (1) Fulvous Whistling-Duck (Dendrocygna bicolor)
(2) Black-bellied Whistling-Duck (Dendrocygna autumnalis)
(b) *Swans.* (1) Trumpeter Swan (Cygnus buccinator)
(2) Tundra Swan (Cygnus columbianus)
(c) *Geese.* (1) Greater White-fronted Goose (Anser albifrons)
(2) Snow Goose (including bluephase) (Chen caerulescens)
(3) Ross' Goose (Chen rossii)
(4) Emperor Goose (Chen canagica)
(5) Canada Goose (Branta canadensis)
(d) *Brant.* (1) Brant (Branta bernicla)
(e) *Dabbling Ducks.* (1) Wood Duck (Aix sponsa)
(2) American Widgeon (Anas americana)
(3) Gadwall (Anas strepera)
(4) Green-winged Teal (Anas crecca)
(5) Mallard (Anas platyrhynchos)
(6) Mottled Duck (Anas fulvigula)
(7) American Black Duck (Anas rubripes)
(8) Northern Pintail (Anas acuta)
(9) Blue-winged Teal (Anas discors)
(10) Cinnamon Teal (Anas cyanoptera)
(11) Northern Shoveler (Anas clypeata)
(f) *Diving Ducks.* (1) Canvasback (Aythya valisineria)
(2) Redhead (Aythya americana)
(3) Ring-necked Duck (Aythya collaris)
(4) Greater Scaup (Aythya marila)
(5) Lesser Scaup (Aythya affinis)
(g) *Sea-Ducks.* (1) Common Eider (Somateria mollissima)
(2) King Eider (Somateria spectabilis)
(3) Spectacled Eider (Somateria fischeri)
(4) Steller's Eider (Polysticta stelleri)
(5) Harlequin Duck (Histrionicus histrionicus)
(6) Oldsquaw (Clangula hyemalis)
(7) Black Scoter (Melanitta nigra)
(8) Surf Scoter (Melanitta perspicillata)
(9) White-winged Scoter (Melanitta fusca)
(10) Bufflehead (Bucephala albeola)
(11) Barrow's Goldeneye (Bucephala islandica)
(12) Common Goldeneye (Bucephala clangula)
(h) *Mergansers.* (1) Hooded Merganser (Lophodytes cucullatus)
(2) Red-breasted Merganser (Mergus serrator)
(3) Common Merganser (Mergus merganser)
(i) *Stiff Tails.* (1) Ruddy Duck (Oxyura jamaicensis)

Subpart B—Procedures for Entering the Contest

§ 91.11 Contest deadlines.

(a) The contest will officially open on July 1 of each year.

(b) Entries must be postmarked no later than midnight of September 15.

§ 91.12 Contest eligibility.

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding three years shall be ineligible to submit an entry in the current year's contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a non-refundable fee of $50.00 by a cashier's check, certified check, or money order made payable to: Fish and Wildlife Service. (Personal checks will not be accepted). All entrants must submit signed reproduction rights and display agreements.

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting seven (7) inches high and ten (10) inches wide. The entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scrollwork, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (over or under) with a nine (9) inch by twelve (12) inch white mat, one (1) inch wide, and cannot exceed one quarter (¼) inch in total thickness. Entries must not be framed, under glass, or have a protective covering that is attached to the entry.

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five identified eligible species must be the dominant feature of the design. The design may depict more than one of the eligible species. The design must be the contestant's original creation and may not be copied or duplicated from previously published art, including photographs. An entry submitted in a prior contest that was not selected for the Federal or a state stamp design may be submitted in the current contest if it meets the above criteria.

§ 91.15 Suitability of entry for engraving.

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The

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engraver relies on the accuracy of the artist's work for successful interpretation. An entry that is a line pencil drawing, scratchboard, or an etching should effectively interpret the full range of tone, rather than duplicate line engraving techniques of past Migratory Bird Hunting and Conservation Stamps. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of the stamp.

§ 91.16 Submission procedures for entry.

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail or hand delivered to: Migratory Bird Hunting and Conservation Stamp Contest, U.S. Fish and Wildlife Service, Room 7048, Department of the Interior, Washington, DC 20240.

§ 91.17 Property insurance for entries.

Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. The Department of the Interior will not insure the entries it receives. The Department of the Interior is not responsible for loss or damage unless it is caused by its negligence or willful misconduct; in any event, the liability of the Department of the Interior will not exceed the amount of the fifty dollar ($50.00) entry fee.

§ 91.18 Failure to comply with contest regulations.

Any entry that does not comply with the requirements of Subpart B will be disqualified from the contest.

Subpart C—Procedures for Administering the Contest

§ 91.21 Selection and qualification of contest judges.

Judges will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

§ 91.22 Display of entries for contest.

All eligible entries will be displayed in the Department of the Interior auditorium in numerical order. The only visible identification on each entry will be the number assigned to it in chronological order when it is received and processed by the Service.

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition and suitability for engraving in the production of a stamp.

§ 91.24 Contest procedures.

(a) The day before the judging begins, the judges will be briefed on all aspects of the judging procedures and other details of the competition, and will preview all eligible artwork entered.

(b) Prior to the first round of judging, the judges will spend an additional two hours in the auditorium reviewing the entries the first day before the official contest is open to the public.

(c) All qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

(d) Prior to the second round of judging, each judge may select not more than five entries from those eliminated in the first round. Those additional entries selected by the judges will be eligible to be judged in the second round.

(e) Prior to the second round of judging, the entries selected by the judges under the procedures of paragraphs (c) and (d) of this section will be displayed in numerical order in the front of the auditorium.

(f) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote by indicating a numerical score from one to nine for each entry. One highest and one lowest score for each entry will be eliminated and the remaining scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third and final round.

(g) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(h) In case of a tie vote for first, second, or third place in the final round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(i) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Duck Stamp Contest the following year. The artists placing first, second, and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Subpart D—Post-Contest Procedures

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Date: April 14, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-10097 Filed 5-5-88; 8:45 am]

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federal register

Friday
May 6, 1988

Part III

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Total Coliforms; Notice of Availability; Close of Public Comment Period; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3375-7]

National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Total Coliforms

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; close of public comment period.

SUMMARY: On November 3, 1987, EPA proposed surface water treatment requirements and a national primary drinking water regulation for total coliforms, plus maximum contaminant level goals for certain microbiological contaminants under the Safe Drinking Water Act (52 FR 42178 and 52 FR 42224). In today's notice, EPA is soliciting specific data, offering additional regulatory options for comment, and clarifying and correcting statements made in the November 3, 1987, proposals. In general, these options would increase the States' latitude in applying the proposed filtration criteria and certain other proposed requirements to account for site-specific considerations. The public comment period on the November 3, 1987, proposals and today's notice will close on July 5, 1988.

DATES: The public comment period on the November 3, 1987, proposals and today's notice closes July 5, 1988.

Another public hearing on these two proposed rules will be held on June 27, 1988, from 9:00 am to 4:00 pm in North Conference Room #3, at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

ADDRESSES: Send written comments on the November 3, 1987, proposed rules and today's notice to Surface Water Treatment Requirements Comment Clerk, or Coliforms Comment Clerk, as appropriate, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review at the EPA Drinking Water Docket, 401 M Street SW., Washington, DC 20460. For access to the docket materials, call (202) 382-3027 between 9:00 am and 3:30 pm.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426-4791, or (202) 382-5533 in the Washington, DC, metropolitan area, or Stig Regli (surface water treatment requirements) or Paul S. Berger, Ph.D. (total coliforms), Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382-7379 or 382-3039. If you plan to attend the public hearing, contact Marlene Regelski, EPA (WH-550D), 401 M Street SW., Washington, DC 20460, telephone (202) 382-3639, at least two weeks before the hearing date.

SUPPLEMENTARY INFORMATION:

I. Background

As required by the 1986 amendments to the Safe Drinking Water Act, EPA published two proposed rules on November 3, 1987; these rules would regulate turbidity, *Giardia lamblia*, viruses, *Legionella*, heterotrophic bacteria, and total coliforms; establish criteria by which States would determine which public water systems using surface water must practice filtration; and establish disinfection requirements for all public water systems using surface water (52 FR 42178 and 52 FR 42224). Two public hearings on these proposals have been held to date: In Washington, DC, on November 23-24, 1987; and Denver, Colorado, on December 2-3, 1987.

On January 4, 1988, the Agency published a notice extending the public comment period for these two proposed rules (53 FR 31). The notice indicated that a subsequent **Federal Register** notice would set the closing date for the public comment period, and that EPA would hold at least one additional public hearing. The January 4, 1988, notice also stated that EPA would soon publish another notice describing additional information and other possible regulatory options for public comment.

This is the subsequent notice referred to in the January 4, 1988, **Federal Register** notice. In this notice, EPA is soliciting specific data, offering additional regulatory options for comment, and clarifying and correcting statements made in the November 3, 1987, **Federal Register** proposals.

II. Discussion

A. Proposed Total Coliform Rule

1. Update of Interim Rule (Option)

In addition to what was proposed, another option under consideration is to update the interim total coliform MCL (40 CFR 141.14). This standard consists of monthly and single sample MCL. This standard has been in place since 1975 and a number of comments favor not changing the rule. The minimum monitoring frequency under the interim rule is one sample per month or one sample per quarter for systems serving less than 1000 people if the system meets the criteria in 40 CFR 141.2.

The Agency requests comments on retaining the current coliform MCL with minor adjustments (e.g., updating analytical methods).

2. Number of Sampling Sites

The proposed total coliform rule would require that systems use at least three times as many sampling sites annually as the number of samples required to be taken monthly. The intent of the proposal was to prevent a system from repeatedly using the same small number of sampling sites to the exclusion of other sites in isolated parts of the distribution system. A number of commenters, primarily large systems, oppose this proposed requirement. The following reasons were given:

- It is difficult to sample in residential areas, and nonresidential locations are too few in number to meet the proposed requirement.
- By requiring additional sampling sites, the proposed rule would reduce the number of samples collected at known trouble spots.
- The proposed rule would preclude systems from monitoring water quality at specific representative sites over time Thus, systems would lose historical data and trend information.

Several commenters offered alternative proposals for insuring that systems monitor all parts of the distribution system over time. These proposals included requiring a system to use: (1) At least the number of sampling sites annually as the number of samples required monthly; (2) at least one-half the number of sampling sites as the number of samples required monthly; (3) at least five sites/year; and (4) three times as many sampling sites annually as the number of samples required to be taken monthly (i.e., the proposed standard) but only if the system serves 3300 persons or fewer. One commenter suggested that the ratio of number of sites/year to the monthly monitoring frequency should be based upon population served, with larger systems being allowed to use a smaller ratio.

EPA still believes that it is important to require systems to monitor all parts of the distribution system over time, but recognizes that there may be practical difficulties associated with the proposed requirement. Therefore, EPA is requesting comment on an approach that would not specify the number of locations, but rather would require the State to approve the sampling siting plan for each public water system within the State. To approve the plan, the State would have to find that it will ensure that the sampling is representative of the entire distribution system. The State would periodically review the sampling plan to insure that the locations are still representative. EPA is also soliciting comment on the four options mentioned above, and any other options that would ensure that systems sample representative sites in the distribution system.

3. Public Notification for a Single Fecal Coliform-Positive Sample

The proposed rule would require a system to test all total coliform-positive samples for fecal coliforms. If fecal coliforms were detected, this would be deemed an "acute violation" under the public notification rule (52 FR 41534, October 30, 1987); thus, the system would be required to notify the public of the violation via electronic media within 72 hours. A number of commenters opposed this proposed requirement; they gave the following reasons:

- Some fecal coliform-positive results are due to "false positives" (e.g., the presence of *Klebsiella* causes the positive result rather than *E. coli*), sample contamination, or poor laboratory procedure. Thus, all fecal coliform-positive results should be confirmed by another sample before notifying the public.
- Some large systems claim they commonly have several fecal coliform-positive samples each year without apparent health risk, and notifying the public of an acute health risk for every such sample might eventually cause indifference to such notices.
- When sampling, systems might intentionally bypass trouble spots to reduce the probability of finding fecal coliforms, if this proposal were in place.
- Only a small number of people may be affected, e.g., a single household in a metropolitan area. Notifying the entire community via electronic media for a localized problem would be inappropriate; those affected could be warned in a more direct manner without needlessly alarming the entire community.
- The proposed requirement is too inflexible. State and local authorities are in a good position to decide, after discussing the situation with the system, what precautions are necessary (e.g., issuing a boil water notice to a single neighborhood).

EPA still believes that fecal contamination in drinking water represents a significant health risk, but believes also that it is appropriate to provide some latitude to the States for deciding what action is appropriate when a single fecal coliform-positive sample is found. EPA believes that States are generally in a position to judge whether electronic media notification is appropriate. Therefore, EPA is reconsidering its proposal to classify every fecal coliform-positive sample as an acute violation. The Agency requests comment on the following alternative requirement. When a system detects fecal coliforms in a routine water sample (after identifying a total coliform-positive sample), it would: (1) Immediately notify the appropriate State agency so the agency can determine whether the public should be notified and if so, by what means; and (2) take the required number of repeat samples at the same site where the fecal coliform were found, with the exception that some, but not all, of the repeat samples may be collected at the next adjacent service connection upstream or downstream from the one where the coliform-positive sample originated. If after a system detects fecal coliforms in a routine total coliform sample it also detects fecal coliforms in any repeat sample at that location or immediately adjacent service connection, the system would be out of compliance with the monthly MCL for total coliforms. This violation would be classified as acute and § 141.21(d) of the proposed rule would apply. Section 141.21(d) requires the system to: (1) Report the monthly MCL violation to the State within 48 hours of detection of fecal coliforms; and (2) Notify the public of the violation via the electronic media, as specified in § 141.32 of the public notification rule. The State could choose to require language in the public notice specifying the extent of the fecal contamination (e.g., system-wide or confined to a specific locale). EPA believes this option would allow verification of suspected contamination and give the State the necessary flexibility to tailor the response to site-specific circumstances.

On a related issue, in the November 3, 1987, proposal, EPA requested public comment on whether *E. coli* monitoring should be allowed in lieu of monitoring for fecal coliforms. Preliminary comments were favorable. Thus EPA is considering allowing a system with a total coliform-positive sample to test for either fecal coliforms or *E. coli*, for the reasons set out in the proposal. The same requirements would apply to either group of indicator organisms for determining whether a violation has occurred and public notification is required. EPA welcomes additional comments on this proposal.

4. Monitoring Frequency

The proposed rule would require State approval for a system serving 3300 persons or fewer to reduce total coliform monitoring to less than five samples/month (see Table 1 of the proposed rule). The preamble to the proposed rule requested public comment on an alternative monitoring frequency for those ground-water systems that serve 500 persons or fewer (see 52 FR 42232, November 3, 1987). Under this approach, systems serving 500 persons or fewer would monitor at the lower monitoring frequency shown in Table 1 (52 FR 42243, November 3, 1987) of the proposed rule (i.e., one sample/month for systems using disinfected ground water; one sample/month for systems using undisinfected ground water which serve 25-300 persons, and three samples/month for systems using undisinfected ground water which serve 301-500 persons), unless the State deems it necessary to require more frequent monitoring.

Some commenters favor the alternative approach, primarily because it would reduce administrative costs for the State. The Agency is considering the adoption of this alternative in the final rule and is seeking additional public comment on it. In addition, EPA is considering broadening this alternative; the number of systems allowed to monitor fewer than five samples/month without initial State approval would be increased by including, in addition to ground-water systems that serve 500 persons or fewer, those systems serving 500 persons or fewer which use filtered surface water. EPA believes that most systems using filtered surface water would qualify for a monitoring frequency below the five samples/month specified in Table 1 of the proposed rule. By permitting such systems to monitor at the lower frequency indicated in Table 1 (i.e., one sample/month) without initial State approval, the administrative burdens on the State would be reduced.

The Agency is also examining whether all systems using undisinfected ground water and serving 25-500 persons should be allowed to reduce monitoring to one sample/month, rather than to three samples/month for systems serving 301-500 persons, as specified in the proposed coliform rule (52 FR 42224). This monitoring frequency (which is the same as the current requirement for community water systems) would reduce the burden on States because they would not have to determine which of these systems would qualify for reduced monitoring, as

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specified in the proposal. EPA believes this monitoring frequency could result in the same health protection for systems serving 301–500 persons, because these systems would be required to perform a periodic sanitary survey, and if the results are unsatisfactory, they would no longer be entitled to monitor at the lower frequency (i.e., once sample/month).

In response to some commenters, the Agency is also examining whether to retain the monitoring frequency scheme in the current rule (40 CFR 141.21 (b) and (c)). The monitoring frequencies under the current rule range from one sample/month to 500 samples/ month, depending on the number of people served, for community public water systems, and one sample/quarter for non-community public water systems. The lower monitoring frequency in the current rule for many small systems, compared to the proposed rule, could prevent increased costs and still protect public health because of the added emphasis on sanitary surveys in the proposed coliform rule, the increased emphasis on treatment under the proposed surface water treatment requirements, and the forthcoming disinfection requirements for groundwater systems.

EPA is also considering an option which, regardless of the monitoring frequency scheme selected, would require a system collecting fewer than five samples/month to collect additional routine water samples for a period of time specified by EPA, whenever the system detects a total coliform-positive sample. This option, along with the proposed requirement for repeat samples, would allow the system to determine more quickly whether the drinking water was contaminated or not. Under this option, the Agency would specify the minimum number of additional routine samples a system would be required to collect.

EPA requests public comment on these issues.

5. Sanitary Surveys

EPA intends to promote the concept that a periodic comprehensive on-site evaluation (e.g., a sanitary survey) should be the basis for a variety of water quality and technology judgments that must be made in each water system. Thus, in this regulation, the Agency has proposed to require periodic on-site evaluations to determine appropriate monitoring requirements. This is not a new concept. Vulnerability assessments are already required by EPA's national primary drinking water regulations for volatile organic chemicals (VOCs) (52 FR 25690, July 8, 1987) for systems which want to reduce VOC monitoring. The assessments must be repeated every three years (or every five years for systems with fewer than 500 service connections). Also, the proposed surface water treatment requirements would require unfiltered surface water systems to conduct a sanitary survey once a year and obtain acceptable results (among other requirements) to avoid filtration. In addition, EPA intends to promulgate disinfection requirements for groundwater systems, including criteria for obtaining variances. One of the anticipated criteria for obtaining a variance would be a sanitary survey with satisfactory results. Because of these related requirements, which are summarized in Table 1, if a single sanitary survey is conducted periodically to address a variety of regulatory requirements, the incremental cost to satisfy each different regulatory requirement would be minimized. Under such a framework, EPA believes it would not be burdensome to require systems to conduct sanitary surveys at a specified frequency. EPA may base the frequency of this periodic comprehensive, multipurpose sanitary survey on system size or system type (i.e., community or noncommunity system).

TABLE 1.—FREQUENCY OR PROPOSED FREQUENCY FOR SANITARY SURVEYS/ VULNERABILITY ASSESSMENTS

Rule	No. systems affected	Frequency of sanitary survey/ vulnerability assessment (in years)
Volatile organic chemicals:		
≥500 connections	Up to 21,000	3
<500 connections	Up to 33,500	5
Coliforms:		
Surface water	10,000	3–5
Ground water	190,000	3–5
Surface water treatment requirements	450	Annual.
Groundwater disinfection	190,000	?
Other future regulations	?	?

Statutory authority for requiring a periodic on-site sanitary survey is found in sections 1401(1)(D) and 1413(a)(2) of the Safe Drinking Water Act. Section 1401(1)(D) states that the term "primary drinking water regulation" means a regulation which "contains criteria and procedures to assure a supply of drinking water which dependably complies with * * * maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (1) the minimum quality of water which may be taken into the system * * *." Section 1413(a)(2) states that to obtain primary enforcement responsibility a State must adopt drinking water regulations and must adopt and implement "adequate procedures for the enforcement of * * * State [drinking water] regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation."

As described in more detail in the previous section, systems serving 500 persons or fewer would be allowed to monitor at the lower monitoring frequency in Table 1 of the proposed rule without initial State approval, as long as they perform sanitary surveys at the frequency specified in Table 1. In order to clarify the role of the sanitary survey under this alternative approach for setting the monitoring frequency, EPA is considering requiring each system serving 500 persons or fewer which collects fewer than five samples/month to complete an initial sanitary survey within a reasonable time period from the effective date of the final rule. EPA is considering at least two options for defining what constitutes a "reasonable" time period. Under the first option, EPA would not specify a date by which this survey and analysis of results must be accomplished. Under the second option, EPA would specify a specific date, perhaps two years after the effective date of the final rule.

Under either option, EPA is further considering requiring systems serving 500 persons or fewer which collect fewer than five samples/month to conduct subsequent sanitary surveys as follows: Systems which use ground water and disinfect or which use surface water and practice filtration and disinfection would be required to conduct a sanitary survey every five years; systems which use undisinfected ground water would be required to conduct a sanitary survey every three years; and systems which use unfiltered surface water would be required to conduct sanitary surveys annually. These sanitary survey frequencies are identical to those in Table 1 of the proposed rule, except in the case of systems which use surface water and do not practice filtration. In this case, EPA believes that an annual sanitary survey is necessary because of the relatively greater potential health risk of using unfiltered surface water versus filtered surface water or ground water.

EPA solicits public comment on: (1) The length of time EPA should specify for the completion of all initial sanitary surveys; and (2) whether this initial time period or the time period between subsequent sanitary surveys should depend on system size or system type.

6. Number of Repeat Samples

The proposed rule would require each public water system to collect five repeat samples for each coliform-positive sample (under the current total coliform rule, when a coliform-positive sample is found, the system must collect daily check samples until coliforms are not detected in two consecutive samples). For systems serving 3,300 persons or fewer, the rationale for requiring five repeat samples is that under the proposal, systems permitted to reduce their regular monitoring frequency below five samples/month are allowed to do so on the basis that they would perform a periodic sanitary survey and the results would be satisfactory. The finding of a coliform-positive sample in a system that had qualified for less frequent monitoring might call that conclusion into question. In the case of a coliform-positive sample, repeat samples would allow a system to determine quickly whether a serious contamination problem exists, and if coliforms were not detected in these samples, would provide confidence that only a small percentage of its samples are coliform-positive. For a system that collects five or more samples/month, the five repeat samples would allow that system to determine quickly the severity of a local contamination problem. More repeat samples would increase the probability of detecting coliforms.

Some commenters stated that five repeat samples is an unnecessarily rigid requirement that would pose too great a financial burden to many systems. Some of these commenters thought that two repeat samples, as specified in the current rule, are adequate. EPA believes that the financial burden posed by five repeat samples would be ameliorated by the provisions in the proposed rule specifying that: (1) All repeat samples would be collected on the same day during a single trip as opposed to the current requirement which requires at least two *daily* trips to collect two different repeat samples; and (2) Repeat samples would be counted as part of the minimum monthly monitoring requirements, which the system must take anyway. Nevertheless, EPA is reexamining what the most appropriate number of repeat samples should be.

One alternative to the proposal (i.e., five repeat samples) would be to require only four repeat samples for those systems which collect fewer than five coliform samples/month. The rationale for this requirement would be that systems which monitor fewer than five times/month would be allowed to do so only if they could demonstrate that their drinking water is safe, as indicated by a periodic sanitary survey. If coliforms were detected in a sample, this assumption would be suspect and the system should be required, at least for that month, to revert to sampling at the higher baseline of at least five samples/month. For a system which collects fewer than five samples/month, the four repeat samples would bring the total number of samples for the month at least to the higher baseline. For systems which collect five or more samples/month, the four repeat samples would allow them to determine quickly the extent of local contamination.

Another option is to require systems which collect fewer than five samples/month to collect four repeat samples when a coliform-positive sample is found, as above, but allow systems which collect five or more samples/month to collect two repeat samples, rather than four. The rationale for fewer repeat samples is that systems collecting a larger number of routine samples (i.e., five or more samples/month) are more likely to detect contamination than a system collecting fewer samples, and thus fewer repeat samples are necessary.

Finally, another alternative to the proposal would be to require a minimum of two repeat samples per coliform-positive sample for all systems. States could increase the number of repeat samples, as necessary, on a case-by-case basis. The advantage of this requirement is that it is similar to the current requirement (i.e., a repeat sample on each of two consecutive days) and thus would require little readjustment by systems. Also, this requirement would be less costly. A variation of this proposal would be to require two repeat samples of 250 ml each, which would result in examination of the same volume of water as five 100-ml repeat samples. EPA is also considering requiring two repeat sample volumes of 200 ml or 300 ml to allow systems to use even multiples of the standard 100-ml sample bottles.

The Agency requests public comment on the appropriate number of repeat samples, the volumes of each repeat sample and the rationale for the recommendation. EPA also requests that commenters provide any data which would indicate the increase in costs, especially for a small system, posed by the proposed requirement for five repeat samples.

7. Long-term MCL

Some commenters have indicated that States might have difficulty keeping track of compliance with the proposed long-term MCL. The primary rationale for the proposed long-term MCL is to insure that intermittent (as opposed to continuous) contamination is controlled. A shortcoming of the current coliform rule is that it fails to address this problem. Under the November 3, 1987, proposal, without the proposed long-term MCL, a system collecting one sample/month could regularly have total coliforms in 20 percent of its samples month after month (assuming that the system finding a coliform-positive sample then collects four repeat samples, as specified in the proposal, and each is coliform-negative), and still be in compliance with the proposed monthly coliform MCL, even though the system is obviously subject to intermittent contamination. For this reason, the Agency believes that some limit should be placed on the percentage or number of samples over time which are coliform-positive. This is the purpose of the long-term MCL.

One alternative to the proposed long-term MCL for systems which collect fewer than 60 samples/year would be to define non-compliance with the long-term MCL as follows: Noncompliance occurs when in any four or more months out of a consecutive 12-month period, a system detects coliforms in more than five percent of its monthly samples. In this way, States would not have to track systems for more than one year. Many noncommunity systems, however, do not provide water more than three months of the year, and thus might never violate this alternative long-term MCL, even though intermittent contamination may exist. For this reason, EPA is considering another alternative, at least for non-community systems which collect fewer than 60 samples/year. Under this option, a system would violate the long-term MCL if more than three samples in 12 consecutive calendar months were coliform-positive. For systems which collect fewer than 60 samples/year, three coliform-positive samples are five percent of 60 samples. Therefore, in this instance, if a system draws four or more coliform-positive samples it is in violation of the proposed long-term MCL, which is based on 60 samples.

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EPA is also examining another alternative which would define a violation of the long-term MCL as occurring when a system detects coliforms in more than five percent of the samples collected during a month, unless the system can demonstrate that no more than five percent of its most recent 60 samples were total coliform-positive. Under this alternative, the proposed follow-up actions to a coliform-positive sample (e.g., repeat samples and fecal coliform determinations) would still apply.

Another option would be to delete the proposed long-term MCL, but require States to choose from a list of EPA-approved actions (e.g., perform a sanitary survey, require system to issue a boil water notice, require system to disinfect continuously), whenever the number of total coliform-positive samples from a system exceeds five percent of the total number of samples during an EPA-specified time period (e.g., most recent 12 months).

EPA seeks public comment on these alternative approaches, and requests other reasonable ideas for identifying intermittent contamination.

8. Analytical methods for coliforms

The proposed coliform rule, in § 141.21(b), would approve three analytical methods for detection of total coliforms. Since the proposal, EPA has been evaluating additional methods for possible approval, including the "Colilert" system (unpublished). In this notice, EPA is proposing to approve the Autoanalysis Colilert system for total coliform analysis, in addition to the previously proposed Membrane Filter (MF) Technique, Multiple-Tube Fermentation (MTF) Technique, and the Presence-Absence Coliform (P–A) Test.

The Autoanalysis Colilert test represents a technology transfer from clinical microbiology, and is based on the ability of coliforms to produce the enzyme b-galactosidase to hydrolyze o-nitrophenyl-b-D-galactopyranoside and produce a yellow color. The test formulation does not support the growth of non-coliform organisms. In addition, the enzyme b-glucuronidase produced by *E. coli* forms a fluorescent substance when it hydrolyzes 4-methylumbilliferyl-b-D-glucuronide (MUG). The combination of these two substrates in a single formula allows detection and confirmation of both total coliforms and *E. coli* within 24 hours. The test is simple; it requires the addition of measured amounts of water to a powdered medium, incubation, and observation of a yellow color if total coliforms are present. If the yellow tubes are subjected to ultraviolet light (366 nm), and *E. coli* are present, the tubes will fluoresce.

EPA and the American Water Works Association Research Foundation supported an extensive field evaluation that compared recoveries of total coliforms by the MF method, 5- and 10-tube MTF method, the P–A test, and the Autoanalysis Colilert system as a 10-tube test for coliform density and as a 100-ml test for the presence or absence of coliforms. Statistical analyses showed either no significant difference or slightly higher coliform-positive results with the Autoanalysis Colilert system than the MTF technique. The Autoanalysis Colilert system was significantly more precise than the MTF technique at two of the five test sites and equivalent to the MTF technique at the remaining three sites. When recoveries using the P–A test and the Colilert system were compared, the results were equivalent 95 percent of the time. Recoveries using the MF technique and the Colilert system were also equivalent. These data have not as yet been published, but the study report has been placed in the coliform docket for the proposed rule.

EPA is also proposing to approve the Autoanalysis Colilert system for analyzing samples taken to comply with the current coliform rule as a five-tube quantitation method; the Agency believes the data demonstrate that this method is at least as good as the currently approved methods and its use should not be delayed until the effective date of the final revised coliform rule.

The Agency requests public comment and data on the effectiveness and practicality of this new analytical procedure and of any other procedures which detect total coliforms, and any data indicating that any procedures proposed should not be approved.

9. Clarifications and corrections to the proposed coliform rule

(i) Section 141.21(a)(5) of the proposed rule states that public water systems that do not provide water year-round need only collect samples each month that the system provides water to the public, and that such systems must monitor as specified in Tables 1 and 2, using the estimated population, including transients, served during that month. For the purposes of this rulemaking, estimated population during the month is proposed to be defined as the average daily population during the month, not the total monthly population.

(ii) Section 141.21(f) (1) and (2) of the proposed rule defines potential interference with the analysis for total coliforms by high levels of heterotrophic bacteria. To clarify § 141.21(f)(1), interference should be reported if a turbid culture appears in *one or more tubes* in the absence of gas production, using the multiple tube fermentation technique.

(iii) Section 141.63(2)(iv) of the proposed rule should read, "Public water systems which have violated the long-term MCL remain in noncompliance until coliforms are not detected in more than five percent of the most recent 20 or more samples."

(iv) Section 142.16 of the proposed rule should be titled, "Special primacy requirements."

(v) Table 1 of the proposed rule identifies three population categories: 25–500 persons, 501–3,300 persons, and over 3,300 persons. For the purposes of this rule, public water systems serving fewer than 25 persons, but having at least 15 service connections, would be included in the 25–500 person category.

B. Proposed Surface Water Treatment Requirements

1. Disinfection Residual in the Distribution System

The proposed rule would require that all surface water systems measure and record the disinfectant residual in the distribution system at the same frequency and locations as required for total coliform measurements under the proposed total coliform rule. The purpose of this requirement is to: (1) Ensure that the distribution system is properly maintained and identify and limit contamination from outside the distribution system; (2) limit the growth of heterotrophic plate count bacteria (HPC) and *Legionella* within the distribution system; and (3) provide a minimum target which, if exceeded, would trigger remedial action. Under the proposed rule, disinfectant residuals could not be less than 0.2 mg/l at any location in the system in more than five percent of the samples in a month, for any two consecutive months, on an ongoing basis. Failure to meet this requirement would constitute a Tier 1 (non-acute) violation of a treatment technique requirement, as defined in the revised public notification requirements in § 141.32(a), and thus would require the system to notify the public by newspaper, posting, or hand delivery within 14 days following the violation, as specified in the revised public notification rule. The basis for these proposed requirements is given in the preamble to the proposed rule (52 FR 42199, November 3, 1987).

Commenters made the following observations pertaining to this requirement:

- Many systems which have microbiologically safe water in the distribution system would not be able to meet this criterion.
- Achieving compliance with this requirement by increasing the levels of free chlorine in the distribution system might increase exposure to disinfectant by-products and/or result in violations of current or future total trihalomethane and other disinfectant by-product regulations.
- There is no evidence of any benefit in maintaining disinfectant residuals of 0.2 mg/l or greater.
- If disinfectant residuals are required, the requirements should be different for different disinfectants because they vary in effectiveness.

Commenters proposed the following alternatives to address the issues they raised: (1) Delete any disinfectant residual requirements for distribution systems from this rule, postponing the determination of appropriate requirements, if any, until the disinfection by-products rulemaking (scheduled for promulgation by January 1991); (2) Maintain the proposed criterion but, in lieu of requiring residuals of at least 0.2 mg/l, simply require residuals to be "detectable" or "measurable"; (3) Maintain the proposed criterion but allow systems to measure for HPC using the standard pour plate method at sites with residuals of less than 0.2 mg/l and, if the HPC measurement is less than 500/ml, consider the site as having met the residual requirements; and (4) A combination of (2) and (3), i.e., maintain the proposed criterion but require "detectable" residuals in lieu of residuals of at least 0.2 mg/l, and consider sites that do not have "detectable" residuals but have HPC measurements of less than 500/ml to be equivalent to sites with "detectable" residuals for purposes of determining compliance. EPA is considering adoption of the last alternative described above because the Agency believes this option would fulfill the same objectives as the requirements in the proposed rule (as set out above). Under the alternative option, EPA believes the potential conflict between this requirement and any future regulations to control disinfectant residuals and disinfectant by-products, and cost impacts resulting from changes in disinfection practice to meet these requirements, would be minimized.

EPA would like to receive additional comments on the appropriateness of the proposed alternative, as well as the other options described above. EPA specifically solicits comments on the following issues: What data are available to indicate that "detectable" total chlorine, free chlorine, chloramine, or chlorine dioxide residuals would inhibit growth of HPC in the distribution system? Would small systems be expected to have difficulty in meeting the November 3, 1987, proposed requirements? Since HPC samples must be analyzed within eight hours and in-house monitoring capability for small systems is generally not expected to be available, would the option of measuring HPC at sites where residuals were less than 0.2 mg/l (or not "detectable") be feasible for small systems? If not, what options should be allowed for small systems?

As noted above, the proposed rule would require that all surface water systems measure the disinfectant residual in the distribution system at the same frequency and locations as required for total coliforms under the proposed total coliform rule. If the monitoring requirements for total coliforms in the distribution system are changed in the final rule from what was proposed, is it appropriate to also change the requirements for monitoring the disinfectant residual in the distribution system? In other words, should the requirements for monitoring disinfectant residual in the distribution system coincide with the monitoring requirements for total coliforms in the final total coliform rule? If not, what monitoring requirements for disinfectant residuals would be appropriate?

2. Continuous Disinfection Residual at the Entry Point to the Distribution System

The proposed rule would require that all surface water systems continuously monitor the disinfectant residual entering the distribution system in order to assure a continuous treatment barrier of protection from pathogenic organisms. Each system would be required to record the lowest disinfectant residual concentration entering the distribution system each day; any time the residual was less than 0.2 mg/l would be considered an "acute" violation of a treatment technique requirement for purposes of public notification (see § 141.32(a)(iii)). Thus, as specified in the revised public notification rule, a system that has such a violation would be required to notify the public of the violation within 72 hours via electronic media, as well as comply with the public notification requirements for all Tier 1 violations (which include treatment technique violations).

Commenters made the following points regarding this requirement:

- The cost for very small systems to install continuous monitoring equipment is excessive (cited as about $5,000 for one analyzer and continuous recorder; with another unit as a backup, the capital costs would be $10,000).
- The short-term absence of a disinfectant residual at the entry point to the distribution system should not automatically trigger immediate public notification via electronic media since the actual health risks, which would depend upon site-specific circumstances, may not be significant.

Based on these comments, EPA is proposing to: (1) Allow systems serving less than 500 people to collect and analyze one grab sample of disinfectant residual each day in lieu of continuous monitoring; (2) Require systems serving less than 500 people that only analyze one grab sample each day to collect and analyze another disinfectant residual measurement within four hours of any measurement which is less than 0.2 mg/l (or does not have a "detectable" disinfectant residual, as described in the previous section); (3) Require all systems, regardless of system size, to notify the State immediately when the residual concentration is less than 0.2 mg/l (or, alternatively, when there is no "detectable" residual concentration in the water) regardless of whether or not the residual concentration is restored within four hours; and (4) Define a violation of this particular requirement as a violation of a treatment technique requirement, i.e., Tier 1, but not acute, for purposes of public notification, if within 4 hours the residual remains less than 0.2 mg/l (or, alternatively, a "detectable" residual concentration has not been restored within 4 hours). EPA believes these changes would reduce the cost burden, especially for small systems, and avoid unnecessary public notification, and still ensure that any significant lapse in disinfection would be detected.

EPA solicits comments on these suggested changes to the November 3, 1987, proposed rule. Also, if the final rule requires a "detectable" residual in lieu of a residual of 0.2 mg/l in the distribution system, should the requirement for the water entering the distribution system also be the presence of a "detectable" residual? Should another cutoff point (e.g., 500 service connections or 3300) be used for determining when daily grab sample monitoring could be used in lieu of continuous monitoring? In addition, as an added measure of protection, should total coliform measurements be required at the point of entry to or in the distribution system when the system

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fails to maintain the required disinfectant residual? If so, what action should be taken if such samples are coliform-positive?

3. Turbidity Monitoring and Performance Criteria

Under the proposed rule, systems which use conventional treatment or direct filtration would be required to monitor the turbidity of a representative sample of filtered water with one grab sample every four hours when water is being delivered to the distribution system. The system could substitute continuous monitoring for grab sampling, upon State approval, and use the turbidity value for every four hours to determine compliance with the turbidity performance criterion. Under the proposed rule, for a system using conventional treatment or direct filtration, the turbidity level of the system's filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month. For a system using slow sand or diatomaceous earth filtration, the turbidity level must be less than 1 NTU in at least 95 percent of the measurements taken each month. If the State determined that on-site studies demonstrate at least 99.9 percent overall removal/inactivation of *Giardia* cysts, the State could specify a higher performance standard, up to 1 NTU in 95 percent of the samples in a month. The basis for the proposed turbidity monitoring and performance criteria was explained in the preamble to the proposed rule (52 FR 42200, November 3, 1987).

Commenters raised the following issues pertaining to this criterion:

- Monitoring of turbidity either every four hours, or by continuous monitoring and recording equipment, is not feasible for small systems.
- The same turbidity performance criteria should apply to all technologies because the same water quality should be required for all systems.
- There is no evidence of significant increased health protection, in terms of avoiding waterborne disease outbreaks, under the criteria of the proposed rule versus the existing (less stringent) turbidity MCL.
- Many systems, especially smaller systems, would incur significant costs to make treatment changes to comply with the proposed criteria.

For systems serving less than 500 people, EPA is considering allowing the State to reduce the monitoring to one grab sample per day, if the historical performance and operation of the system indicate effective turbidity removal under the variety of conditions expected to occur in that system. EPA believes the provision for reduced monitoring is appropriate because, for very small systems, grab sample monitoring every four hours of operation is not feasible, and automated turbidity monitoring equipment is costly to purchase and maintain. At the reduced monitoring frequency, the same performance criteria would apply. Thus, if two out of 30 samples taken in one month exceed the turbidity limit, then less than 95 percent of the samples would meet the turbidity performance criterion, and the system would be in violation of a treatment technique requirement (however, this would not be considered an acute violation under the revised public notification requirements). EPA solicits comments on this suggested change to the November 1987 proposed rule.

EPA believes that it is feasible for most systems using conventional treatment or direct filtration to achieve the turbidity performance criterion of 0.5 NTU (see 52 FR 42200, 42205–42206), and that this turbidity level is generally necessary to achieve at least 99 percent removal of *Giardia* cysts under all conditions of raw water quality. In addition, EPA believes it is generally necessary for systems using conventional treatment or direct filtration to meet the proposed turbidity limit in order to achieve at least 99.9 percent removal/inactivation of *Giardia* cysts with filtration and disinfection. EPA recognizes that many existing filtered systems may currently not be meeting the proposed turbidity limit; however, EPA believes that most of these systems would be able to meet the proposed limits with treatment modifications that involve very low costs (see Table VII–3, 52 FR 42206).

EPA recognizes that it may be possible for some systems that are not meeting the proposed turbidity performance criteria, depending upon raw water quality and other treatment characteristics, to achieve the overall minimum (or better) removal and/or inactivation of *Giardia* cysts. Therefore, the proposal allows for the State to specify higher turbidity performance criteria up to 1 NTU if the system can demonstrate to the State that it is achieving at least 99.9 percent removal/inactivation of *Giardia* cysts by filtration and disinfection. EPA has developed draft guidelines for making such determinations in the October 8, 1987, "Draft Guidance Manual for Compliance With the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources" ("draft Guidance Manual"). One of the recommended approaches in the draft Guidance Manual is to determine, by pilot plant studies, the percent removal of particles equivalent in size to *Giardia* cysts and to combine this with the percent inactivation of *Giardia* cysts achieved by disinfection, as determined from CT values (the CT value is the product of residual disinfectant concentration "C" in mg/l and the disinfectant contact time "T" in minutes) to determine the overall removal and/or inactivation. The proposal would also allow for demonstrations for one system to apply to another system with the same design and operating conditions and similar source water quality.

EPA is considering modifying the November 1987 proposed criteria to allow the State to determine whether the system is achieving the minimum performance requirement of 99.9 percent removal/inactivation of *Giardia* cysts at filtered turbidities up to no more than 1 NTU 95 percent of the time, without any required showing by the system (e.g., pilot plant study results). Such a determination could be based upon an analysis of existing design and operating conditions (e.g., adequacy of treatment prior to filtration, percent turbidity removal across the entire treatment chain, and stringency of disinfection), and/or performance relative to certain water quality characteristics (e.g., microbiological analysis of the filtered water, and particle size counting before and after the filter). Under this option, the State could consider such factors as source water quality and system size in determining the extent of analysis necessary (e.g., whether a pilot plant demonstration would be needed). In the final Guidance Manual, EPA intends to provide additional guidance to the States for determining when higher turbidity performance criteria could be allowed.

Also, EPA notes that Section 1416 of the SDWA allows States to grant one-year exemptions to systems which cannot meet the treatment requirements in the time specified due to "compelling factors" (which may include economic factors) if they determine that the exemption would not result in an unreasonable risk to health. The initial one-year exemptions may be extended for up to three additional years if certain requirements are met. Systems with 500 or fewer service connections are eligible for additional two-year extensions of the exemptions if the system is taking all practicable steps to meet the standard. (See Section 1416 of the Safe Drinking Water Act for a more complete description of the standards for exemptions.)

EPA solicits information on the following issues related to the proposed turbidity performance criteria: What criteria should be used to allow systems to exceed the turbidity limit of 0.5 NTU? What treatment modifications have systems attempted that still result in failure to meet the proposed turbidity performance criteria? Do source water conditions exist that make it unreasonable to expect certain systems to achieve filtered water turbidities of less than 0.5 NTU? Should another cutoff point (e.g., 500 service connections) be used for determining when once a day grab sample monitoring for tubidity might be appropriate? Are data available that indicate effective *Giardia* cyst removal at higher turbidity limits than those which have been proposed? Are EPA's estimated costs for systems to upgrade to meet the proposed turbidity performance criteria reasonable (see Table VII–3, 52 FR 42206)? In responding to this last question, EPA would especially appreciate detailed system level costs where all assumptions are explicit and total costs are reported in cents per 1000 gallons of water produced.

4. CT Values

To avoid filtration, the proposed rule would require surface water systems to disinfect and to achieve at least 99.9 percent and 99.99 percent inactivation of *Giardia lamblia* cysts and enteric viruses, respectively, as determined by CT values. The proposed rule would require filtered systems to disinfect, and for the overall treatment (i.e., filtration and disinfection) to achieve at least 99.9 percent removal/inactivation and 99.99 percent removal/inactivation of *Giardia* cysts and enteric viruses, respectively. The State would determine whether the system complies with the overall treatment performance requirement for *Giardia lamblia* cysts and enteric viruses. In the draft Guidance Manual, EPA recommends that, in general, filtration (with any pretreatment appropriate for the specific technology used) should be assumed to achieve at least 99 percent removal of *Giardia lamblia* cysts and 90 percent removal of enteric viruses. Therefore, in order for a system which is filtering to achieve at least 99.9 percent and 99.99 percent removal/inactivation of *Giardia lamblia* cysts and enteric viruses, respectively, the system should provide disinfection which achieves at least a 90 percent inactivation of *Giardia lamblia* cysts. With the possible exception of chloramines, CT values which achieve greater than a 50 percent inactivation of *Giardia lamblia* cysts would be expected to achieve greater than a 99.99 percent inactivation of enteric viruses; thus, a system which achieves greater than 50 percent inactivation of *Giardia lamblia* cysts would also satisfy the overall minimum performance requirement for enteric viruses.

EPA received the following comments about the CT values presented in the proposal:

- The data base used to establish CT values is not substantial.
- The proposed safety factors associated with the CT values are excessive.
- The proposed CT values are based on laboratory data which might not reflect field conditions.
- The methods prescribed in the proposed rule and draft Guidance Manual for calculating "C" and "T" to determine "CT" are overly conservative.
- For filtered systems, the guidelines restricting predisinfection credit to water with low turbidity is unwarranted.
- The methods prescribed in the proposed rule and Guidance Manual for calculating ozone CT values are not reasonable given the nature of its rapid decomposition in water and the nature of its application in contact basins.
- The CT values for ozone in the proposed rule were based upon ozone measurement using the Idiometric method which measures ozone and free radicals, whereas the proposed rule would require systems to measure ozone using the Indigo method (which only measures ozone residuals). EPA should allow the Idiometric method to be used for measuring ozone residuals to determine "C."
- More flexibility is needed for demonstrating that chloramines are an adequate primary disinfectant when long contact times are used.

In sum, many industry commenters claim that most filtered systems would not be able to achieve the percent inactivations recommended in the Guidance Manual using their current disinfection practice. These commenters further claim that since there is no evidence of waterborne disease associated with current conventional treatment systems that are properly operated, the CT values recommended in the draft Guidance Manual are not justified. In addition, some commenters claim that the same argument applies to many unfiltered supplies.

EPA is considering all of the above issues and comments in the development of the final rule and final Guidance Manual. Specifically, the Agency is currently reevaluating the basis for the CT values in the November 3, 1987, proposed rule and in the draft Guidance Manual. As a result of this analysis, which is not yet complete, the CT values in the final rule and final Guidance Manual may change from those which were proposed. EPA solicits comment on the rationale that should be used for determining appropriate CT values and methods for their calculation.

In addition, based on analysis of existing data and comments received to date, EPA is considering adopting certain changes to the proposed rule and draft Guidance Manual regarding the determination of CT values by public water systems. EPA solicits comment on these changes, which are described below:

a. *Calculation of CT values for ozone.* Under the proposed rule, systems without filtration would be required to calculate CT values for ozone using the same methodology as for other disinfectants, i.e., the ozone concentration would be measured at some point prior to the application of any other disinfectant. Because ozone is highly reactive and dissipates quickly, measuring ozone at the effluent downstream of the contact basin, as specified in the proposal, could grossly underestimate or overestimate (in the case of a counter current reactor) the actual CT value. Thus, EPA is now considering allowing the State to determine on a case-by-case basis, for each system using ozone, how ozone concentrations should be measured for the purpose of calculating whether the CT values in the rule have been met. EPA would recommend in the final Guidance Manual how "C" and "T" should be determined for the purpose of obtaining a CT value. In principal, EPA intends to revise the draft Guidance Manual to recommend that the system determine, during peak hourly flow, the profile of ozone concentration across the contact basin, or each contact basin in the case of multiple stage reactors, and use the average concentration in lieu of the effluent concentrations to determine "C." The average concentration, "C," could be calculated across any reactor in which there was a measureable concentration of ozone in the effluent (or influent in the case of a counter current reactor). This approach would provide a more representative measurement of ozone. This guidance would also apply to filtered systems using ozone for determining their CT values. EPA still intends to require that ozone residual be measured using the Indigo method; however, EPA is considering lowering the proposed CT values for ozone since they were originally based upon measurements using the Idiometric method.

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According to the draft Guidance Manual, within the contact basin, "T" should be based upon the time it would take the tracer concentration in the effluent to reach 10 percent of the tracer concentration in the influent (i.e., the T_{10} value) during peak hourly flow. Commenters have suggested that this is unrealistic, especially for ozone applied in a contact basin, which simulates a completely mixed reactor. Some commenters have suggested that the T_{50} value during peak hourly flow, rather than the T_{10} value, be used in the CT calculation. EPA has concerns about adopting such a guideline for ozone (or for other disinfectants) because at the T_{50} value, only 50 percent of the water is receiving the contact time necessary to meet the designated CT value (versus 90 percent of the water receiving the contact time to meet the designated CT value if the T_{10} value were used). EPA solicits additional comments on this particular issue. Should another methodology be used for determining "T" in ozone reactors? Is it appropriate to allow use of T_{50} for CT determinations for ozone versus T_{10} for CT values for other disinfectants, given that the CT values in the rule for ozone, extrapolated from laboratory data, are based upon a much larger safety factor than are the CT values for chlorine? If the revised method for calculating "C" and the procedure for determining "T" (i.e., using the T_{10} value) were adopted, are the proposed CT values for ozone in unfiltered supplies in the November 1987 proposed rule, and the recommended CT values for filtered water supplies in the draft Guidance Manual, feasible for systems to achieve?

b. *Chloramines.* Under the proposed rule, unfiltered supplies using chloramines could demonstrate, through the use of a State-approved protocol for on-site disinfection challenge studies, that lower CT values than those indicated in the rule achieve the required percent inactivation. This provision is included for chloramines, but not for other disinfectants, because chloramination, as conducted in the field, is more effective than using preformed chloramines. (The CT values in the rule are based on laboratory data using preformed chloramines.)

The draft Guidance Manual recommends that animal infectivity studies be used to determine the CT values necessary to achieve 99.9 percent inactivation of *Giardia* cysts and that the MS_2 bacteriophage be used as an indicator to determine CT values necessary to achieve 99.99 percent inactivation of enteric viruses. EPA believes that other methodologies also may be appropriate. In the final Guidance Manual, EPA intends to recommend that the procedure for evaluating disinfection efficiency of *Giardia* cyst inactivation using excystation, discussed by Hoff, *et al.*, 1985, be allowed to determine CT values for achieving up to 99 percent inactivation of *Giardia* cysts using chloramines. EPA intends to recommend that $CT_{99.9}$ values (CT values necessary to achieve 99.9 percent inactivation) be estimated based upon multiplying CT_{99} values, determined using excystation, by two; $CT_{99.9}$ values cannot be directly determined using excystation because of the constraints of the methodology. Multiplication by the factor of two, rather than 1.5, provides a margin of safety more conservative than the assumption of direct extrapolation using first order kinetics. In the final Guidance Manual, EPA also intends to recommend that *Giardia muris* cysts be allowed to be used as a model for *Giardia lamblia* cysts using excystation, since results of disinfection experiments using excystation to measure viability consistently indicate that *Giardia muris* cysts, which apparently are not pathogenic to humans, are more resistant to inactivation than *Giardia lamblia* cysts. The final Guidance Manual would also recommend use of excystation, as described by Hoff, *et al.*, 1985, to determine percent *Giardia* cyst inactivation in filtered systems to demonstrate the effectiveness of chloramines as a primary disinfectant (e.g., 90, 95, or 99 percent inactivation, as needed). EPA intends to conduct a workshop in 1988 to demonstrate how excystation can be used for determining CT values for systems using chloramines. EPA also intends to recommend in the final Guidance Manual that systems using chloramines for primary disinfection be required by the State to monitor the water entering the distribution system on a regular basis for HPC and, in general, maintain levels of less than ten organisms/ml using the standard pour plate procedure. According to Geldreich, *et al.* (1987), HPC is a good overall indicator of treatment efficiency and the density of heterotrophic bacteria in the plant effluent can easily be maintained at less than ten organisms/ml.

EPA solicts comment on the above criteria. EPA also requests comment on whether other methodologies or performance criteria would be appropriate for determining whether chloramines should be allowed as a primary disinfectant.

c. *Predisinfection credit.* In the draft Guidance Manual, EPA recommends that, in filtered water supplies, disinfection credit toward *Giardia* and virus inactivation only be allowed if the turbidity in the water is less than 5 NTU and 1 NTU, respectively. EPA intends to delete this recommendation and allow credit for disinfection of *Giardia* and viruses prior to filtration, regardless of the turbidity level, because EPA believes it is reasonable to assume that any pathogens present in the water would either be removed along with the turbidity removed by filtration, or be directly exposed to disinfection. The time of exposure (i.e., the "T" disinfectant contact time, in "CT"), type of disinfectant, disinfectant concentration, and the pH and temperature of the water would determine the amount of inactivation that is achieved. Percent inactivation achieved by disinfection for each unit process prior to filtration would be based upon CT values, where "C" is measured at the end of each unit process (with the exception of ozone, as previously described), and "T," as determined by tracer studies, is measured across each unit process.

d. *Other issues.* In the November 1987 proposal, EPA solicited comment on the appropriateness of various criteria specifically related to the "CT" concept in the proposed rule and the draft Guidance Manual (52 FR 42209). EPA would like to receive additional comments on the following questions.

Are the recommended general guidelines that filtration can be assumed to achieve at least a 99 percent removal of *Giardia*, and that such systems should achieve at least 90 percent inactivation of *Giardia* by disinfection, in order to satisfy the overall 99.9 percent removal/inactivation requirement, appropriate? Under what circumstances should systems which achieve less than 90 percent inactivation by disinfection be considered to achieve the overall removal/inactivation requirement of 99.9 percent for *Giardia* cysts? What data are available to indicate disinfection efficiencies for *Giardia* cyst and enteric virus inactivation at high pH conditions encountered in such unit processes as lime softening? What data are available to indicate that systems are meeting the overall minimum performance requirements (99.9/99.99 percent removal/inactivation of *Giardia* and viruses) without meeting the proposed minimum turbidity criteria and/or CT values?

The draft Guidance Manual suggests that systems using conventional treatment or slow sand filtration, with source water low in total coliform concentrations, might in some circumstances be allowed to achieve as little as 50 percent inactivation of *Giardia* cysts (which is also considered to achieve greater than a 99.99 percent inactivation of enteric viruses), and still be considered as meeting the overall minimum performance criteria. Are such guidelines appropriate?

Should CT values for unfiltered systems be included in the Guidance Manual rather than in the rule? One of the major reasons why EPA included CT values for unfiltered systems in the proposed rule was to make the determination of whether filtration should be required to be more self-implementing. To the extent the final rule contains self-implementing criteria, the system knows what it is required to do from the face of the rule, a judgment by the State (either a system-specific decision, or the State's own self-implementing criteria) is unnecessary. Because self-implementing criteria minimize transactional costs and are easier to enforce, they are generally desirable. However, since self-implementing criteria do not allow for site-specific considerations, they are not always appropriate. As proposed, the disinfection requirements, as they relate to CT values, are self-implementing for unfiltered systems, but not for filtered systems.

Other reasons why EPA included CT values in the rule for unfiltered systems, versus not for filtered systems, were: (1) For free chlorine, which is the most widely used disinfectant, more data are available on which to base the CT values required for unfiltered systems than there are for filtered systems; (2) In general, unfiltered supplies are at greater risk to waterborne disease than are filtered supplies and, therefore, depending upon the technology in place, source water quality, and issues relating to disinfectant by-products, States should have less flexibility in setting disinfection requirements for unfiltered systems; and (3) The proposed rule includes self-implementing turbidity performance criteria for filtered supplies that, in part, serve as an indicator for *Giardia* cyst removal; without CT values in the rule for unfiltered systems, there would be no self-implementing indicator for the level of *Giardia* cyst inactivation in these systems. Is EPA's rationale for including CT values in the rule for unfiltered systems but not for filtered systems reasonable?

For unfiltered systems, is it reasonable to include in the rule CT values for some disinfectants (e.g., chlorine) and not for others (e.g., ozone), leaving the latter to guidance, depending on the amount of data that is available for a given disinfectant. Should EPA include CT values in the rule for unfiltered supplies for all disinfectants and give States the option of allowing lower CT values based on site-specific studies in which the system demonstrates that disinfection achieves at least 99.9 percent and 99.99 percent inactivation of *Giardia* cysts and enteric viruses, respectively? Should CT values for filtered systems be included in the rule, rather than leaving them in guidance? What rationale should support EPA's decisions on these issues?

III. Economic Impact

The additional regulatory options and clarification in this notice would have varying effects on the total cost of the compliance with the rules. In most cases, costs would be lower than the proposed rules.

Following is a brief discussion of the cost implications of the changes discussed in the two proposed rules. Where dollar values are shown, the estimates should be considered highly approximate. They will be refined by the time the rule is promulgated.

1. Coliform Rule

- *Number of sampling sites.* States would incur additional costs to review each system's sampling plan but system would have reduced costs due to need to identify fewer locations.

These costs are expected to be negligible.

- *Public notification for a single fecal coliform-positive sample.* Latitude given to the States is expected to result in fewer notifications, but maintain the follow-up requirement, with lower attendant costs.
- *Monitoring frequency.* The reduction in monitoring frequency for systems serving fewer that 500 people is expected to reduce the "best case" cost estimate from $72 million/year to $55 million/year.
- *Sanitary surveys.* No significant change in costs.
- *Number of repeat samples.* Several options for a reduction in the number of repeat samples are presented. A representative estimate of the savings is less than one million dollars per year, nationwide. The savings to any particular small system could be 40 percent of previous estimates.
- *Long-term MCL.* No significant change in costs is expected, since the number of samples taken would remain unchanged. There may be some small savings in implementation costs to the States because they will not have to track systems for more than one year.
- *Analytical methods for coliforms.* Costs for coliform testing are expected to decrease significantly, perhaps as much as 33 percent, with the use of the Autoanalysis Colilert test. The test is simpler and less labor-intensive than existing methods. In addition, systems may be permitted to test for *E. coli* in place of fecal coliforms. Testing for *E. coli* by the Autoanalysis Colilert method can be done at no additional cost, since it merely involves viewing a total coliform-positive culture under an ultraviolet light.
- *Clarifications and corrections to the proposed coliform rule.* The compliance costs for noncommunity water systems are expected to be less because monitoring requirements are tied to population served, and the definition of population served would be changed from total monthly population to average daily population. National costs might drop by as much as 10 percent.

2. Surface Water Treatment Rule

- *Disinfection residual in the distribution system.* Other than the costs for monitoring, and the costs for systems not currently disinfecting to install disinfection, the costs assumed for compliance with this criterion were assumed to be negligible under the proposed rule. Based on public comments received, it appears that EPA may have underestimated the cost associated with this criterion. If EPA adopted the option discussed in this notice the cost impacts for complying with this criterion would be reduced. EPA anticipates that the national costs associated with complying with this criteria, modified according to the option discussed in this notice, would be very small relative to the other costs for complying with this rule. EPA is currently evaluating these costs and solicits comment on data that might be considered in this analysis.
- *Continuous disinfection residual at the entry to the distribution system.* A change from continuous monitoring to the use of a grab sample for systems serving fewer than 500 people is expected to reduce national costs from $8.6 million to $4.3 million per year. System level costs of residual monitoring would drop by 85 percent.
- *Turbidity monitoring and performance criteria.* These changes are expected to reduce national costs from $3.5 million to $1.6 million per year. System level costs of turbidity monitoring would drop by 85 percent.
- *CT values.* The various changes under consideration would reduce the cost of compliance compared to the proposed rule for unfiltered systems.

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However, a review of the public comments suggests that the costs in the proposed rule may have been underestimated for filtered systems. Although CT values are not specified in the rule for filtered systems, the Guidance Manual recommends different levels of disinfection as a function of different source water quality criteria. Under the proposed rule, EPA assumed that costs for filtered systems to modify existing disinfection practice to be negligible when compared with treatment costs to upgrade filtration practice. EPA is currently evaluating the national costs for filtered systems to upgrade disinfection to meet the guidelines that will be recommended in the final Guidance Document. This analysis is not yet complete because, as already mentioned, the CT values are under consideration for change.

The Agency solicits comments on its use of the population-based discriminator found throughout the rule package. Generally, monitoring requirements are less onerous for systems which serve fewer than 500 people. EPA would like comments on alternative size discriminators, for all elements of the filtration and coliform rule including the use of service connections in place of population.

IV. Request for Public Comments

EPA welcomes any comments on the November 3, 1987, proposed rules, as well as comments on the specific issues and options described in this notice.

V. Citation

Hoff, J.C., Rice, E.W., and Schaefer, F.W. Comparison of Animal Infectivity and Excystation as Measures of *Giardia muris* Cyst Inactivation by Chlorine. Appl. Environ. Microbiol. 50:1115–1117. 1985.

Geldreich, E.E., Greenberg, C.H., Haas, C.H., Hoff, J.C., Karlin, R.J., Martin, J., Moser, R.H., Regunathon, P., Reich, K., and Victoreen, H. Organisms in Water Committee Report: Microbiological Considerations for Drinking Water Regulation Revisions. Jour. AWWA. pp. 81–86, May 1987.

Date: April 27, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

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May 6, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 25, and 36
Standards Governing the Noise Certification of Aircraft; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, and 36

[Docket No. 23340 Amendment Nos. 21-82, 25-63, and 36-15]

Standards Governing the Noise Certification of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the regulations prescribing requirements for aircraft noise certification to make them more understandable and easier to use. This amendment also contains substantive regulatory changes simplifying noise certification test and recordkeeping requirements. This regulation is part of the President's regulatory reform program and is based on the body of good engineering practice that has developed since the original adoption of Part 36 in 1969. It also reflects comments received from the general public and the aviation industry in response to a Petition for Rulemaking from the Aerospace Industries Association of America and to an FAA Notice of Proposed Rulemaking.

EFFECTIVE DATE: Effective date of this amendment is May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey VanWyen, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-3558.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend portions of the Federal Aviation Regulations (14 CFR Part 36) and amend references in Part 36 contained in other parts (14 CFR Parts 21 and 25). This amendment is based on Notice No. 85-2 (50 FR 4172, January 29, 1985). Comments were invited. All comments have been received and considered in the issuance of this final rule.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulation (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. As the part is currently organized, Subparts B and C and Appendices A, B, and C apply in part to transport category large airplanes and subsonic turbojet powered airplanes regardless of category. This amendment revises these sections of the part to better reflect the actual technical basis for noise certification of aircraft. Substantive changes are made in the noise certification testing, recordkeeping and reporting requirements. The Federal Aviation Administration (FAA) has found that while there will be a substantial cost reduction realized as a result of these changes, there will be no net increase or decrease in noise standard compliance stringency for any class of aircraft. Further, this amendment will not result in any increase or decrease in aircraft noise levels.

Changes in Test Requirements

This amendment to the noise certification test requirements is intended to simplify the noise test procedures, to clarify the purpose of the tests, to update equipment specifications to better accommodate the use of modern digital electronics, and to further reduce the number of flight tests conducted solely for approval of relatively minor aircraft modifications. One such change involves decreasing from four to two the minimum number of sideline noise measuring stations which are used to define the maximum sideline noise. By placing the remaining microphones on either side of the point where the jet aircraft reaches 1000 feet or 1440 feet altitude (AGL), the maximum aircraft noise can be accurately determined at significantly lower costs for equipment, installation, calibration and data reduction.

Similarly, relative humidity and wind limits on test conditions are eased to maximize available test sites and usable days at those sites. The humidity limit is increased for those applicants using higher-precision instruments, while the wind limit increase is based on wide industry/government experience. The requirement which specifies the location of the meteorological instrumentation is clarified to require that the weather be measured in the vicinity of the noise measuring stations, rather than at the nearest airport.

A number of technical amendments to the analyzer specifications and to the data reporting requirements are adopted to facilitate the use of a wider variety of instrumentation, particularly the newer digital analyzers. Further, because recent computer processing advances make it possible to use data closer to the ambient noise floor and, in some cases, to reconstruct data where parts of the spectrum are below the ambient, greater flexibility is provided to the FAA in approving test and analysis procedures.

One of the major purposes of this amendment is to provide clearer guidelines on the use of nonflight, supplemental tests to meet Part 36 certification requirements. The cost of noise certification of a single jet aircraft type often runs from several hundred thousand dollars to well over a million. Where a long production run of a complex and sophisticated aircraft is anticipated, this cost is generally insignificant when compared to the total development cost of the project. However, to meet the increasingly competitive nature of aviation in this decade, aircraft manufacturers have shortened production runs of standard models and now produce families of related short production run versions. This revision will make it easier to collect a flight data base of sufficient quality and breadth from the first aircraft in such a family so that other related aircraft can be noise certificated using that data base, supplemented by only relatively simple and inexpensive tests and analyses. For instance, noise data from static tests conducted at either the engine or aircraft manufacturer's ground facilities may be approved, as appropriate, by FAA certificating authorities.

Changes in Documentation Requirements

The documentation requirements placed on industry and on individual applicants ae reduced as a result of this amendment. These changes will result in lower expenditures in manpower and effort by the government in the review and approval of noise certification documents.

The elimination of certain requirements for prior FAA approval of test procedures greatly simplify the paperwork prior to the test, as well as simplify the test itself. As amended, Part 36 retains the requirement for an approved test plan, albeit a simpler one. Similarly, the certification report requirement which contains the engineering data supporting the certification also remains.

Reduction of the post-certification paperwork, however, is where this amendment works its greatest effect. Previously, Part 36 required that each Airplane Flight Manual (AFM) must contain all procedures that are employed in the flight test, the certificated noise levels, any weight limitations that were required to meet the noise level requirements, and "other information for the flight crew." While this did not appear to be an onerous burden at the time the original Part 36 was adopted, the FAA has found a number of situations where these seemingly simple requirements have resulted in a distortion of the AFM functions. Several large commercial jet aircraft types have been certificated with hundreds of different versions within each type. As a result, the AFMs contain hundreds of pages of noise "information." Under these circumstances, it becomes extremely difficult to identify which data are applicable to any particular airplane on a given day.

The AFM is a required document providing on-board information necessary for the flight crew. It contains specific aircraft performance data, flight procedures, and aircraft limitations vital to the safe operation of the airplane. As indicated above, noise information is also included. However, after careful consideration, the FAA found that it was appropriate to greatly reduce and simplify the noise portion of the manual. Aircraft weight limits or operating configurations required to meet Part 36 certification will continue to be placed in the limitations section of the AFM. However, beyond this, the FAA feels that only the minimum information necessary to obtain a Part 36 compliance statement and the takeoff, approach, and sideline noise levels for that specific airplane configuration is needed. Thus, the FAA clarifies Parts 25 and 36 to preclude the inclusion of inappropriate information in the AFM.

Other Changes

The acoustical change provisions of Part 21 are clarified by specifically excepting from the noise certification requirements several temporary configurations and conditions used for maintenance. Since none of these conditions represents the permanent configuration of any aircraft type, the FAA finds that this action is consistent with Section 611 of the Federal Aviation Act (as amended).

Numerous references to obsolete dates and conditions are removed to shorten and simplify Part 36 while several sections have been retitled more appropriately.

Regulatory History

Since its adoption in November 1969, FAR Part 36 has been a significant basis for all Federal aircraft noise regulations in the United States. That regulation was structured to provide a firm, consistent foundation for subsequent rulemaking activities to abate and control aircraft noise. Part 36 includes precise instructions concerning the acquisition, processing, and documentation of noise data from inflight aircraft. As originally promulgated, part 36 applied only to turbojet aircraft and propeller-driven transport category airplanes over 12,500 pounds maximum gross weight.

Amendment 36-4 (40 FR 1029, January 6, 1975) added noise certification standards for propeller-driven small airplanes. The noise level limits for certain new turbojets and transport category airplanes were lowered in 1977 by Amendment 36-7 (42 FR 12360, March 3, 1977). In 1978, these lower noise level standards were applied to derivatives of older aircraft types. Noise standards for Concorde supersonic transport airplanes were also adopted in 1978 by Amendment 36-10 (43 FR 28406, June 29, 1978).

Amendment 36-9 (43 FR 873, March 2, 1978), which was adopted in 1978, widely revised the test and analysis specifications contained in Appendices A and B of Part 36. The specifications were expanded to include technical details that had been omitted from the original publication. An example of this was the addition of a section on the calibration of acoustical test equipment. Other changes were made to bring FAR Part 36 into substantial agreement with international standards on noise measurement and with the procedures adopted for noise certification by the International Civil Aviation Organization (ICAO).

The FAA published (47 FR 47854, October 28, 1982) for public comment, a petition from the Aerospace Industries Association of America (AIA) on behalf of its member aircraft manufacturers for amendment of FAR Parts 21 and 36. Notice No. 85-2 (50 FR 4172, January 29, 1985) contained a summary of the comments submitted to the Docket in response to the petition, and the disposition of the issues raised. Notice No. 85-2 also proposed 41 specific changes to Part 36. A discussion of docketed comments on those proposals and the disposition of the issues follow.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed April 4, 1985. All comments received have been reviewed and considered in the issuance of this final rule.

Thirteen public comments were received in response to the notice (Docket No. 23340). All of the commenters supported the stated goals and most of the 41 proposed amendments. In addition, nearly every response contained specific suggestions or recommendations about one or more issues.

The comments are discussed below. They are grouped by broad categories of issues.

Acoustical Change

Meeting the noise requirements of Part 36 is one of the steps in the certification approval process for any change to an already certificated aircraft. Included are changes to the aircraft type design which might affect the noise emission characteristics of the aircraft. The definition of acoustical change and the requirement to meet Part 36 standards for design changes within that definition are in Part 21. In Notice 85-2, the FAA proposed to exempt from the definition of acoustical change for turboject aircraft and transport category large aircraft configured for (a) gear down flight with one or more retractable landing gear down during the entire flight and (b) carriage of a spare engine and nacelle carriage external to the skin of the airplane (and just the pylon or other external mount).

Only two comments were received on this issue. Both supported the proposed change as reasonable and necessary. The FAA agrees and is adopting the modification as proposed.

Aircraft Flight Manual

Over the past several years, there has been some concern that the aircraft operational limits, if any, that are established as a result of FAR 36 noise certification are not being expressed properly in the Aircraft Flight Manual (AFM) when promulgated with reference to the airworthiness limitations. To clarify the intent of the existing regulations, Notice No. 85-2 proposed to add clarifying language in Part 25 (where additional AFM requirements are listed) and in Part 36.

Section 25.25(a) clarifies that the maximum gross weight which meets the noise requirements of Part 36 limits the maximum certification weight. One of the two commenters supported the clarification; the other, a large trade association, reported that some members were opposed while others were favorable. The FAA notes that this provision does not change the regulatory requirement, but simply clarifies the Part 25 certification process by expressly referencing the weight certification requirements of Part 36. The FAA, therefore, is adopting this clarification.

Similarly, Notice No. 85-2 proposed to clarify the definition of Stage 1, Stage 2, and Stage 3 airplanes by categorically stating that each airplane can only be classified in one stage given a specific configuration.

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Five commenters responded on this issue. All were opposed to the specific wording proposed for § 36.1(g) because, in their opinion, the words could be interpreted as requiring each airplane to remain within one Part 36 Stage. However, none of the commenters appeared to object to the stated intent of the proposal and several suggested small changes in the regulatory language to eliminate the problem.

For more than a decade, the FAA has both encouraged and required the application of available noise reduction technology. The goal has been to move Stage 1 aircraft into Stage 2 and Stage 2 aircraft into Stage 3. In most cases, this has been done voluntarily without the need for regulation. The FAA does not intend to inhibit such actions. Therefore, in light of the comments the FAA had decided to accept the suggestion of one commenter that the regulation should more clearly indicate that an airplane may not be certified to two stages simultaneously or that an airplane may not, without a change in type design configuration, comply with one stage and then another. Further, it should be noted that current regulations clearly prohibit Stage 2 or Stage 3 aircraft from becoming Stage 1 aircraft.

Notice No. 85–2 also proposed three minor changes in § 36.1581 to clarify that the AFM allows only one certification noise value each for takeoff, approach, and sideline. Since, for flight safety reasons, the AFM on board any airplane may only describe the one current certificated configuration for the airplane, the present rules only require the AFM to have the noise information for that one configuration. As noted in Notice 85–2, the lack of clarity in the Federal Aviation Regulations has caused some manuals to contain detailed noise information on dozens and possibly hundreds of different configurations. The AFM, however, is basically a flight safety document containing vital information for the pilot and crew. While it was determined more than 15 years ago that it would serve a legitimate and useful purpose for the AFM to contain limited noise information, it never was intended for the AFM to become a noise primer on every possible variation in noise levels that might result from changes in configuration, operating procedure, or weather conditions. Thus, Notice 85–2 proposed to consolidate the existing regulations that affect the selection of noise data for the AFM and eliminate the requirement for noise certification test procedures to be included.

Seven comments were received on the proposed amendments to § 36.1581. All agreed with the need to reduce the volume of noise information in the AFMs and with the proposal to eliminate the requirement for noise certification test procedure documentation. Several commenters expressed concern that the FAA's proposed language would limit the use of several "configurations" that have been approved for both safety and noise. The FAA cannot agree.

An airplane is a versatile machine. In most cases, it is designed and built so that it may be operated with different combinations of weight, speed, flap settings, engine power setting, etc. Combinations of these parameters are optimized by the manufacturer for different missions (range payload, speed, weather, runway length, etc.). Each combination is called a configuration. Each configuration, in turn, has clearly stated operating limits involving various parameters. These limits are set by the airplane's manufacturer on the basis of safety. Occasionally, these limits may be further restricted by the manufacturer to lower the noise level of the airplane. The FAA oversees this process on each configuration of every airplane type, maintaining first the highest degree of safety. The FAA's approval is called certification. As a part of this certification, the FAA approves the manufacturer's AFM which contains detailed information needed by the pilot and crew to safely operate the airplane within the limitations of one configuration.

An airline or other operator may purchase from the manufacturer the right to use several different configurations of the same airplane. However, for safety reasons it is vital that the pilot and crew know the limitations applicable to the specific configuration that they are flying that day. Thus, FAA safety rules require each AFM to describe only one configuration at any point in time, no matter how many other configurations the manufacturer has sold to the operator. The proposed changes to § 36.1581 would not change this; they would only restate the existing airworthiness requirement in that portion of Part 36 which deals with AFM information. The FAA believes that this is necessary to avoid confusion. For that reason, the proposed amendments to § 36.1581 are adopted.

Obsolete Dates and Conditions

Numerous references to dates and conditions that are no longer pertinent to present and future applicants for type certification were proposed for removal under Notice No. 85–2. All commenters to the Docket endorsed this activity. Three, however, had comments on specific proposed deletions. A U.S. trade association suggested that "(except as provided in § 36.7)" be inserted in § 36.201(b) after the words "type certifications." The FAA does not agree and the language as proposed in the Notice is adopted.

A British trade association and a British manufacturer submitted identical comments suggesting deletion of the provisions, contained in § 36.7(d), which use the engine bypass ratio in determining which provisions apply to applications for "acoustical changes". The FAA agrees that § 36.7(d) should be simplified and shortened. However, the FAA also believes that implementation of this specific suggestion would be neither economically reasonable nor technologically practicable. The differing technologies available to high and low bypass ratio engines require different treatment under the retulation. Thus, the FAA believes that implmeentation of this suggestion would have the effect of restricting the applicability of Part 36 to new type designs and to the first few derivative configurations. Since adoption of this restriction would prevent the FAA from complying with the intent of Part 36, the FAA declines to accept the suggestion.

Certification Reports

Sections 36.1501 and A36.5 contain the documentation requirements for technical data reports on certification tests and results. Notice 85–2 proposed to clarify the required information and further proposed to specifically allow inclusion of data from supplemental test (such as ground-based static tests of engines). This increased flexibility would allow wider use of cost-saving equivalent procedures as long as the data could be analyzed to yield results that would be equivalent to the results of actual aircraeft flight tests.

Only one comment was received on the proposed change to § 36.1501. The commenter opposed the use of "equivalent procedures" such as ground-based static engine tests since such tests by themselves would not be a true measure of the noise increments experienced from an engine change. The commenter states that such changes are often accompanied by changes in nacelles, wing design, fuselage length, and gross weight. The FAA, on the basis of experience, agrees with the reasoning but does not agree with the conclusion. No equivalent procedure has ever been approved (nor would it be under the revised text) under the conditions described where the only supplemental data are those derived from static engine testing. All acoustical and performance data used to develop noise certification levels are based on actual flight tests. The supplemental tests which would be documented under § 36.1501 and section A36.5 are only used to make adjustments to the flight data where it can be shown that there are no other changes to the noise sources, including their relative contributions to the total noise signature. Supplemental flight data or a totally new flight data base might be necessary to derive the noise level numbers under the cited conditions. For these reasons, and because the proposed change would not affect the approval of equivalent procedures but only the test documentation, the FAA disagrees and adopts the language proposed on the Notice.

Two comments were received on the proposed change to section A36.5. Both suggested the inclusion of "appropriate propeller powered aircraft performance parameters relevant to noise generation." While the FAA believes this suggestion may be valuable, its inclusion would be outside the scope of Notice 85–2. The FAA will consider including this concept in future rulemaking.

One commenter also noted that the wording of the proposed revision to section A36.5(b)(5)(vii) would remove the requirement for aircraft height and position data independent of normal flight instrumentation. Since this is a key part of ICAO certification, adoption of the proposed wording could have the effect of invalidating international acceptance of U.S. certifications, along with the attendant economic consequences. The FAA did not intend to remove the requirement for independent height and position data, but agrees that the proposed wording would have that effect. Consequently, the FAA has decided not to adopt the proposed revision of that section.

Test Procedures

Notice 85–2 proposed nine separate changes in the Part 36 noise certification test procedures. In each case, the intent of the proposed change was to lower the cost of certification without significantly diluting the quality of the noise data used for certification.

Seven comments were received on the proposed changes to section A36.1(b). All supported the proposed simplifications, although one commenter expressed concern with regard to the FAA's credibility in administering the noise certification process. It should be noted that the FAA continues its commitment to a strong noise regulatory structure. To this end, the FAA has reviewed these procedures with national and international experts and remains confident that the noise certification process will remain intact and effective. Simplification and cost savings are not being purchased by a decrease in stringency or thoroughness.

In response to a British suggestion, the word "height" is substituted for "altitude" in section A36.1(b)(7) to signify the airplane's height above the local terrain containing the noise measuring sites. Similarly, a test tolerance (500 to 0 ft.) on this height is inserted, because without such a tolerance the airplane would be required to make every test flight 1000 to 1440 ft. above the terrain.

Notice 85–2 proposed to require more accurate measurements of ambient temperature and relative humidity. It also establishes a higher upper limit average wind speed for the microphone and a higher limit crosswind speed average for the aircraft. It also proposed to increase the upper limit average wind speed from 10 knots to 12 knots for the instrumentation and the acceptable crosswind speed for the microphone from 5 knots to 7 knots. The maximum wind speed cannot exceed 15 knots for the instrumentation and 10 knots for the crosswind. The Notice also proposed to clarify that the meteorological variables should be measured in the vicinity of the noise monitors. Widening these weather windows would lower costs to both industry and government by minimizing the delays which presently tie up equipment, aircraft, and personnel for days while waiting for specific weather conditions. Five comments were received. One supported the proposal, one wanted to remove all test weather limits under certain conditions, and three foreign organizations objected because of the belief that the Notice proposed maximum winds of 15 knots and crosswind limits of 10 knots. They suggested use of the ICAO limits, 12 and 7 knots, respectively. However, the FAA notes that Notice 85–2 did, indeed, propose the ICAO values of 12 and 7 knots for the upper average limits while also setting maximum values. Therefore, the FAA adopts the proposed revisions.

A number of changes were proposed in the technical specifications for the electronic equipment used in the collection and analysis of the noise data. These changes generally follow the standards adopted by the ICAO and should minimize costs where manfacturers have to certificate to both ICAO and U.S. standards.

Eight comments were received on the proposed revisions to the microphone specifications. Most were general comments on the need to duplicate the ICAO specifications. One specific comment noted that the wording of the last sentence of section A36.3(c)(2)(ii) varied somewhat from the ICAO standard and that this difference would cause applicants difficulty. After considering the issue, the FAA agrees and the amended specification is adopted with the suggested change.

The FAA also proposed to revise the electronic specifications for the noise analyzer. Earlier specifications were based on the analog system used a decade ago. Notice 85–2 proposed, instead, to update this section, based on the digital equipment currently in use. Since ICAO has not yet adopted similar revisions, most of the seven commenters recommended delaying adoption. However, the FAA believes that the problems encountered by both applicants and government in trying to qualify digital systems under analog specifications require the FAA to act. Thus, the proposed revision to section A36.3(d) is adopted. However, should ICAO eventually adopt differing specifications, it is the intention of the FAA to issue a subsequent notice proposing adoption of the ICAO standard in the United States. In adopting section A36.3(d)(5)(i), the FAA also corrects a typographical error that appeared in the Notice. The correct standard deviation is 0.48 decibels.

Data Correction and Analysis

Notice 85–2 proposed to amend section A36.5 to clarify the information that is needed to correct the data to standard reference conditions in that the referenced atmosphere should be considered to be homogeneous. Specifically, only those engine performance parameters relevant to noise generation, such as net thrust, engine pressure ratio, exhaust temperatures, and fan or compressor rotational speeds, would be reported. Aircraft sound pressure levels need to exceed the ambient background by only 3 decibels instead of the present 5 decibels. The Notice proposed to allow lower signal-to-noise ratios if the method for separating the signal from the noise is approved by the FAA. Several other amendments to Appendices A and B of FAR 36 were proposed that would make relatively minor changes to mathematical constants in the correction procedures or that would make minor revisions in the description of the procedures. These were considered to be clarifying, not substantive, even when the amount of data to be reported was reduced.

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Seven of the comments responded to these proposed changes with suggestions for improving the clarity of the revisions. These minor typographical suggestions have been incorporated.

Other Comments

Several respondents to the Docket took the opportunity to make suggestions for additional changes and modifications outside the scope of Notice 85–2. Even though some of these comments appear to have merit, the FAA does not believe their cumulative value justifies a delay in issuing this final rule in order to issue a supplemental NPRM.

Section-by-Section Analysis

Part 21

Section 21.93 prescribes the procedural requirements for the approval of changes in type design that may increase the noise levels of an airplane type. Paragraph (b)(2) is amended to add an exclusion for gear down flight with one or more retractable landing gear down during the entire flight and for spare engine and nacelle carriage external to the airplane skin (and the return of the pylon or other external mount).

Part 25

Section 25.25 contains the criteria upon which the maximum weight of an aircraft is based. This section is clarified to note that the highest weight at which compliance is shown with the certification requirements of Part 36 may be, under some circumstances, the limiting maximum weight.

Part 36

The last sentence of § 36.7(e)(1) is amended to clarify that Part 36 noise tradeoff provisions may not be used to increase non-complying Stage 1 noise levels. The Part 36 tradeoff provisions can be used, however, once the modified airplane qualifies as a complying Stage 2 airplane. This could occur, for instance, when the aircraft increase in weight raised the allowable Stage 2 limit by more than the measured increase in noise.

Sections 36.7 (d) and (e) and 36.301(b) are revised to remove obsolete language, dates, and references. Sections 36.201 (c) and (d) are deleted for similar reasons.

Section 36.1501 is expanded to clarify the need for approval of equivalent procedures and to allow wider flexibility in the use of non-flight test data to supplement approved flight data bases.

Two subparagraphs are added to § 36.1581(a) to clarify that only one value for each noise certification test point for takeoff, sideline, and approach as defined by Appendix C may be placed in the Aircraft Flight Manual, along with associated weight and configuration. Similarly, one value for flyover as defined by Appendix F for propeller driven small airplanes may be placed in the Aircraft Flight Manual. If additional operational noise information is included in the Aircraft Flight Manual, it must be segregated from the certification data in accordance with § 36.1581(b). The old § 36.1581(c) is reworded to clarify its intent and redesignated as (d).

Appendix A of Part 36

Section A36.1(b) is revised to allow flight path intercept tests, rather than requiring only full stop takeoffs and landings for every test. This section is also amended to allow a minimum of two symmetrically-placed microphones to measure the sideline noise rather than the minimum of four currently required. Both changes are expected to provide wider flexibility in the choice of test sites and to significantly lower the cost of such tests.

Section A36.1 is revised to expand the flight test weather window when the dew point and dry bulb temperature are measured with an instrument accurate to within one-half degree Centigrade. The allowable winds during the test are increased to those specified in ICAO Annex 16. The requirements to generate noise level versus weight information for takeoff and approach are deleted.

A number of the technical specifications in section A36.3 are revised to accommodate the use of digital recording and filtering techniques. Sections A36.3(e)(7) is revised to require a performance calibration analysis of each piece of calibration equipment at least once every six months.

Section A36.5 contains the requirements on reporting and correcting measured data. Section A36.5(b) is revised to eliminate the need to obtain engine performance data solely from flight instrumentation or manufacturer's data. By this revision, static tests and other sources of supplemental data can be employed. Section A36.5(c) is also amended to indicate that the noise certification atmosphere is homogeneous. That section is also amended to replace an erroneous reference to "design" landing weight with the correct reference to "maximum" landing weight.

Section A36.5(d) is amended to accept one-third octave band data that are at least 3 decibels above the mean background noise in that band. Before this amendment, the data had to be at least 5 decibels above ambient. This change permits greater flexibility in the choice of test conditions and is particularly necessary for the test of quiet airplanes. Greater flexibility is also provided by the approved use of time/frequency interpolation and equivalent procedures within the indicated limits.

Section A36.5(e) is revised to add a new paragraph (4) which specifically allows the orderly development of noise certification for certain derivatives of aircraft type design, and provides simplified methods for computing the 90 percent confidence limit for those derivatives.

The requirements in section A36.9(b) for locating meteorological measurements have been changed to permit their placement near the measuring stations, rather than using meteorological data from the nearest airport. This is intended to improve the quality of the meteorological data in those cases where the flight tests are not conducted at an airport. Another change to the meteorological specifications is made in section A36.9(d)(2) where the criterion for using the simplified method for deriving the values of the atmospheric coefficients has been broadened. Accordingly, the simplified method may be used if the atmospheric absorption coefficients do not vary over the sound propagation path of the maximum noise by more than plus or minus 1.6 decibels per thousand feet in the 3150 Hertz one-third octave band.

Section A36.11(a)(3)(v) is amended to delete the requirement for graphical or tabular data presentations during data correction. These corrections may not be done by computer or other appropriate means.

Several small corrections are made to section A36.11(e). One updates a cross-reference to sections A36.11 (b) and (c), while the others correct a mathematical constant used in the Delta 2 calculations for takeoff, approach and sidelines.

Section A36.11(f) is completely revised and considerably shortened to provide clearer guidance or appropriate correction procedures when the takeoff and/or approach noise measurements are made at non-standard locations. Two alternative methods are provided.

Appendix B of Part 36

Section B36.5(h) and Table B–2 are revised to eliminate calculation of tone penalties for tones less than 1.5 decibels.

Sections B36.9, B36.11, and B36.13 contain the technical and mathematical details of the methods for calculating Effective Perceived Noise Levels (EPNL). Several small changes are made in the formulation to simplify the computerized procedure.

Appendix C of Part 36

Sections C36.5(c), C36.7(d), and C36.9(d) are deleted as unnecessary and the subsequent sections are redesignated accordingly. Sections C36.7 and C36.9 are retitled to better describe their functions.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation assesses the economic impact of all changes to Parts 21, 25, and 36. The FAA has determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. This rule imposes no additional costs on the Federal government.

The amendments in this rule will provide benefits in the aggregate to the aviation industry and the general public. These benefits arise from deletion of unnecessary noise certification testing and recordkeeping requirements, clarification of regulatory text, and relaxation of certain test and documentation requirements. The amendments better reflect new technologies and consequently many amendments are clarifying and editorial in nature. As an overall result of these amendments, the regulations are more concise and easier to understand. None of the amendments are expected to result in a major cost to the aviation industry. There are 10 amendments which are expected to yield minimal to minor benefits and three amendments are expected to result in minimal to minor costs. One of the amendments which will reduce from 4 to 2 the number of sideline measurement stations needed as part of the aircraft noise certification process is estimated to save manufacturers approximately $2.0 million discounted over a 10 year period. For the reasons stated above, the benefits flowing from these amendments substantially outweigh any associated costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

These amendments directly impact large manufacturers of aircraft. The FAA size threshold for a determination of a small entity for aircraft manufacturers is 75 employees; that is, any aircraft manufacturer with more than 75 employees is considered not to be a small entity. Based upon this size threshold, the aircraft manufacturers affected by this rule are not small entities. Moreover, of the potential cost impacts, three require minimal computer programing changes which can be accomplished in-house. One of the amendments is estimated to save the manufacturers approximately $2.0 million. The remaining changes are editorial in nature. This rule will not have any significant economic impact.

Therefore, the FAA certifies, this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been made. These amendments are primarily administrative, clarifying and organizational, and do not significantly affect the quality of the human environment.

Conclusion

For the reasons stated above, the FAA has determined that this document involves a regulation which is not major as defined in Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, the FAA certifies that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation may be examined in the regulatory docket or obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 21

Aircraft certification procedures for products and parts, Aircraft.

14 CFR Part 25

Airworthiness standards, Aircraft.

14 CFR Part 36

Noise standards, Aircraft noise and type certification.

The Final Rule

Accordingly, the Federal Aviation Regulations (14 CFR Parts 21, 25, and 36) are amended, effective May 6, 1988, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 21.93(b)(2) is revised to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(2) Turbojet powered airplanes (regardless of category). For airplanes to which this paragraph applies, "acoustical changes" do not include changes in type design that are limited to one of the following—

(i) Gear down flight with one or more retractable landing gear down during the entire flight, or

(ii) Spare engine and nacelle carriage external to the skin of the airplane (and return of the pylon or other external mount), or

(iii) Time-limited engine and/or nacelle changes, where the change in type design specifies that the airplane may not be operated for a period of more than 90 days unless compliance with the applicable acoustical change provisions of Part 36 of this chapter is shown for that change in type design.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for Part 25 is revised to read as follows and the authority citations following the sections in Part 25 are removed:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. Section 25.25 is amended by adding "; or" at the end of paragraph (a)(2) and by adding a new paragraph (a)(3) to read as follows:

§ 25.25 Weight limits.

(a) * * *

(3) The highest weight at which compliance is shown with the certification requirements of Part 36 of this chapter.

* * * * *

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PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

5. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 96-473, E.O. 1114, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. Section 36.1 is amended by redesignating (g) as (h) and adding a new (g) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(g) For purposes of showing compliance with this part for transport category large airplanes and turbojet airplanes regardless of category, each airplane may not be identified as complying with more than one stage or configuration simultaneously.

7. Section 36.7 is amended by revising the last sentence of paragraph (c)(1), and revising paragraphs (d) and (e) to read as follows:

§ 36.7 Acoustical change: Transport category large airplanes and turbojet powered airplanes.

* * * * *

(c) * * *

(1) * * * There tradeoff provisions of section C36.5(b) of Appendix C of this part may not be used to increase the Stage 1 noise levels, unless the aircraft qualifies as a Stage 2 airplane.

* * * * *

(d) *Stage 2 airplanes.* If an airplane is a Stage 2 airplane prior to the change in type design, the following apply, in addition to the provisions of paragraph (b) of this section:

(1) *Airplanes with high bypass ratio turbojet engines.* For an airplane that has turbojet engines with a bypass ratio of 2 or more before a change in type design—

(i) The airplane, after the change in type design, may not exceed either (A) each Stage 3 noise limit by more than 3 EPNdB, or (B) each Stage 2 noise limit, whichever is lower;

(ii) The tradeoff provisions of section C36.5(b) of Appendix C of this part may be used in determining compliance under this paragraph with respect to the Stage 2 noise limit or to the Stage 3 plus 3 EPNdB noise limits, as applicable; and

(iii) During the takeoff and sideline noise test conducted before the change in type design, the quietest airworthiness approved configuration available for the highest approved takeoff weight must be used.

(2) *Airplanes that do not have high bypass ratio turbojet engines.* For an airplane that does not have turbojet engines with a bypass ratio of 2 or more before a change in type design—

(i) The airplane may not be a Stage 1 airplane after the change in type design; and

(ii) During the takeoff and sideline noise tests conducted before the change in type design, the quietest airworthiness approved configuration available for the highest approved takeoff weight must be used.

(e) *Stage 3 airplanes.* If an airplane is a Stage 3 airplane prior to the change in type design, the following apply, in addition to the provisions of paragraph (b) of this section:

(1) If compliance with Stage 3 noise levels is not required before the change in type design, the airplane must—

(i) Be a Stage 2 airplane after the change in type design and compliance must be shown under the provisions of paragraph (d)(1) or (d)(2) of this section, as appropriate; or

(ii) Remain a Stage 3 airplane after the change in type design. Compliance must be shown under the provisions of paragraph (e)(2) of this section.

(2) If compliance with Stage 3 noise levels is required before the change in type design, the airplane must be a Stage 3 airplane after the change in type design.

8. Section 36.201(b) is revised and (c) and (d) are removed.

§ 36.201 Noise limits.

* * * * *

(b) Type certification applications for subsonic transport category large airplanes and all subsonic turbojet powered airplanes must show that the noise levels of the airplane are no greater than the Stage 3 noise limits prescribed in section C36.5(a)(3) of Appendix C of this part.

9. Section 36.1501 is revised to read as follows:

§ 36.1501 Procedures, noise levels and other information.

(a) All procedures, weights, configurations, and other information or data employed for obtaining the certified noise levels prescribed by this part, including equivalent procedures used for flight, testing, and analysis, must be developed and approved. Noise levels achieved during type certification must be included in the approved airplane (rotorcraft) flight manual.

(b) Where supplemental test data are approved for modification or extension of an existing flight data base, such as acoustic data from engine static tests used in the certification of acoustical changes, the test procedures, physical configuration, and other information and procedures that are employed for obtaining the supplemental data must be developed and approved.

10. Section 36.1581 is amended by revising paragraph (a); removing paragraph (c); redesignating paragraphs (b), (d), (e), and (f), as (c), (e), (f), and (g) respectively; adding new paragaphs (b) and (d); and revising newly redesignated paragraph (g) to read as follows:

§ 36.1581 Manuals, markings, and placards.

(a) If an Airplane Flight Manual or Rotorcraft Flight Manual is approved, the approved portion of the Airplane Flight Manual or Rotorcraft Flight Manual must contain the following information, in addition to that specified under § 36.1583 of this part. If an Airplane Flight Manual or Rotorcraft Flight Manual is not approved, the procedures and information must be furnished in any combination of approved manual material, marketing, and placards.

(1) For transport category large airplanes and turbojet powered airplanes, the noise level information must be one value for each takeoff, sideline, and approach as defined and required by Appendix C of this part, along with the maximum takeoff weight, maximum landing weight, and configuration.

(2) For propeller driven small airplanes the noise level information must be one value for flyover as defined and required by Appendix F of this part, along with the maximum takeoff weight and configuration.

(b) If supplemental operational noise level information is included in the approved portion of the Airplane Flight Manual, it must be segregated, identified as information in addition to the certificated noise levels, the clearly distinguished from the information required under § 36.1581(a).

* * * * *

(d) For transport category large airplanes and turbojet powered airplanes, for which the weight used in meeting the takeoff or landing noise requirements of this part is less than the maximum weight established under the applicable airworthiness requirements, those lesser weights must be furnished, as operating limitations in the operating limitations section of the Airplane Flight Manual. Further, the maximum takeoff weight must not exceed the takeoff weight that is most critical from a takeoff noise standpoint.

* * * * *

(g) Except as provided in paragraphs (d), (e), and (f) of this section, no operating limitations are furnished under this part.

Appendix A—Aircraft Noise Measurement Under § 36.101

11. Section A36.1 is amended by revising paragraphs (b)(1), (b)(7), (c)(3), (c)(4); and removing (d) (5)(iii) and (7)(iii) to read as follows:

Section A36.1 *Noise certification test and measurement conditions.*

* * * * *

(b) * * *

(1) Tests to show compliance with established aircraft noise certification levels must consist of a series of takeoffs and approaches (or stabilized flight path segments thereof) during which measurements must be taken at noise measuring stations located at the measuring points prescribed in section C36.3 of Appendix C of this part. Each recorded segment must include measurements throughout the entire time period in which the recorded signal is within 10 dB of PNLTM.

* * * * *

(7) A minimum of two noise measuring stations, symmetrically positioned about the test flight track, must be used to define the maximum sideline noise with respect to location and level as required by section C36.3 of Appendix C of this part. For turbojet powered aircraft, when approved by the FAA, the maximum sideline noise at takeoff thrust may be assumed to occur at the point (or its approved equivalent) along the extended centerline of the runway where the aircraft reaches 1000 feet (305 meters) altitude above ground level. A height of 1440 feet (439 meters) may be assumed for Stage 1 or Stage 2 four engine airplanes. The altitude of the aircraft as it passes the microphone stations must be within +500 to −0 feet (+150 to −0 meters) of the target altitude. For aircraft powered by other than turbojet engines, the altitude for maximum sideline noise must be determined experimentally.

(c) * * *

(3) Relative humidity and ambient temperature over that portion of the sound propagation path between the aircraft and a point 10 meters above the ground at the noise measuring station is such that the sound attenuation in the one-third octave band centered a 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 and 95 percent, inclusively. However, if the dew point and dry bulb temperature used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C, the sound attenuation rate shall not exceed 14 dB/100 meters in the one-third octave band centered at 8kHz.

(4) Average wind velocity 10 meters above ground is not to exceed 12 knots and the crosswind velocity for the airplane is not to exceed 7 knots. The average wind velocity shall be determined using a thirty-second averaging period spanning the 10 dB down time interval. Maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB down time interval.

* * * * *

12. Section A36.3 is amended by revising paragraphs (c)(2), (d)(2), (d)(5), (d)(6), and (e)(7) to read as follows:

Section A36.3 *Measurement of aircraft noise received on the ground.*

* * * * *

(c) * * *

(2) The microphone must be a pressure sensitive capacitive type, or its approved equivalent, such as free field type with incidence corrector.

(i) After an adequate "warm-up" period, at least as long as that specified by the equipment manufacturer, the system output for constant acoustical input shall change by not more than 0.3 dB within any one hour nor by more than 0.4 dB within 5 hours.

(ii) The variation of microphone and preamplifier system sensitivity within an angle of ±30 degrees of grazing (60–120 degrees from the normal to the diaphragm) must not exceed the following values:

Frequency (Hz)	Change in sensitivity (dB)
45 to 1,120	1
1,120 to 2,240	1.5
2,240 to 4,500	2.5
4,500 to 7,100	4
7,100 to 11,200	5

With the wind screen in place, the variation in sensitivity in the plane of the diaphragm of the microphone system shall not exceed 1.0 dB over the frequency range 45 to 11,200 Hz.

* * * * *

(d) * * *

(2) A set of 24 consecutive one-third octave filters must be used. The first filter of the set must be centered at a geometric mean frequency of 50 Hz and the last filter at 10,000 Hz.

(i) The output of each filter must contain less than 0.5 dB ripple.

(ii) The correction for effective bandwidth relative to the response at the center frequency response for each one-third octave band filter must be determined by measuring the filter response to sinusoidal signals at a minimum of 20 frequencies equally spaced between the two adjacent preferred one-third octave frequencies or by using an approved equivalent procedure.

* * * * *

(5) The averaging properties of the integrator must be tested as follows:

(i) White noise must be passed through the 200 Hz one-third octave band filter and the output fed in turn to each detector/integrator. The standard deviation of the measured levels must then be determined from a large number of samples of the filtered white noise taken at intervals of not less than 5 seconds. The value of the standard deviation must be within the interval 0.48±0.06 dB for a probability limit of 95 percent. (An approved equivalent method may be substituted for this test on those analyzers where the test signal cannot readily be fed directly to each detector/integrator.)

(ii) For each detector/integrator, the response to a sudden onset or interruption of a constant amplitude sinusoidal signal at the respective one-third octave band center, frequency must be measured at sampling times 0.5, 1.0, 1.5, and 2.0 seconds after the onset or interruption. The rising responses must be the following amounts before the steady-state level:

0.5 seconds	4.0±1.0 dB
1.0 seconds	1.75±0.75 dB
1.5 seconds	1.0±0.5 dB
2.0 seconds	0.6±0.5 dB

(iii) The falling response must be such that the sum of the decibel readings (below the initial steady-state level) and the corresponding rising response reading are 6.5±1.0 dB, at each sampling time.

(iv) Analyzers using true integration cannot meet the requirements of paragraphs (d)(5)(i), (ii), and (iii) of this section directly, because their overall average time is greater than the sampling interval. For these analyzers, compliance must be demonstrated in terms of the equivalent output of the data processor. Further, in cases where readout and resetting require a dead-time during acquisition, the percentage loss of the total data must not exceed one percent.

(6) The sampling interval between successive readouts shall not exceed 500 milliseconds and its precise value must be known to within ±one (1) percent. The instant in time by which a readout is characterized, shall be the midpoint of the average period. (The averaging period is defined as twice the effective time constant of the analyzer.)

* * * * *

(e) * * *

(7) A performance calibration analysis of each piece of calibration equipment, including piston phones, reference microphones, and voltage insert devices, must have been made during the six calendar months preceding the beginning of each day's test series. Each calibration must be traceable to the National Bureau of Standards.

* * * * *

13. Section A36.5 is amended by revising paragraph (b)(5)(vi) to read as follows:

Section A36.5 *Reporting and correcting measured data.*

* * * * *

(b) * * *

(5) * * *

(vi) Engine performance parameters relevant to noise generation, such as net thrust, engine pressure ratio, exhaust temperatures, and fan or compressor rotational speeds.

* * * * *

14. Section A36.5(c)(1) is amended by adding the word "homogeneous" ahead of the words "noise certification reference."

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15. Section A36.5(c)(2)(i) is revised to read as follows:

* * * * *

(c) * * *

(2) * * *

(i) Maximum landing weight, except as provided in § 36.1561(d) of this part;

* * * * *

16. Section A36.5(d)(3) is amended by revising the first sentence up to the words "octave band" to read as follows:

* * * * *

(d) * * *

(3) Aircraft sound pressure levels within the 10 dB-down points (described in section B36.9 of Appendix B) must exceed the mean background sound pressure levels determined under section A36.3(f)(3) by at least 3 dB in each one-third octave band * * *

* * * * *

17. Sections A36.5(d) (4) and (5) are added to read as follows:

* * * * * *

(d) * * *

(4) Where more than seven one-third octaves are within 3 dB of the ambient noise levels, a time/frequency interpolation of the noise data shall be performed using an approved procedure.

(5) If equivalent test procedures, different from the reference procedures are used, the test procedures and all methods for adjusting the results to the reference procedures must be approved by the FAA. The amounts of adjustments must not exceed 16 EPNdB on takeoff and 8 EPNdB on approach, and if the adjustments are more than 8 EPNdB and 4 EPNdB respectively, the resulting numbers must not be within 2 EPNdB of the appropriate Appendix C noise levels including tradeoffs.

* * * * *

18. Section A36.5(e) is amended by substituting the word "mean" for the word "average" each place it appears and by adding a new paragraph (4) to read as follows:

* * * * *

(e) * * *

(4) If equivalent procedures are to be used to certificate several airplane configurations of the same type from noise tests of a single airplane, the test procedures and analysis methods must be approved by the FAA. The request for approval must identify the noise measurement test procedures and data base, the airplane configurations, procedures and analysis methods, the method for establishing the 90 percent confidence limit for each noise certification level, and the proposed equivalent procedures.

19. Section A36.9 is amended by revising paragraph (b)(1) and (d)(2) to read as follows:

Section A36.9 *Atmospheric attenuation of sound.*

* * * * *

(b) * * *

(1) The wind velocity, temperature and relative humidity measurements required under this part must be measured in the vicinity of the noise measuring stations. The location of the meteorological measurements must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geographical area in which aircraft noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

* * * * *

(d) * * *

(2) If the atmospheric absorption coefficients do not vary over the PNLTM sound propagation path by more than ± 1.6 dB/1000 ft (± 0.5 dB/100 meters) in the 8150 Hz one-third octave band from the value of the absorption coefficient derived from the meteorological measurement obtained at 10 meters above the surface, the mean of the values of the atmospheric absorption coefficients at 10 meters above the surface and at the altitude of the aircraft at PNLTM may be used to determine the atmospheric attenuation rates for each one-third octave band. The resulting atmospheric attenuation rate may be used to compute the PNLTM correction under section A36.11(d) of this appendix.

* * * * *

20. Section A36.11 [Amended].

a. Section A36.11(a)(3)(v) is amended by removing the phrase "in the form of curves or tables giving the variation of EPNL with approach angle."

b. Section A36.11(e) introductory text is amended by revising the first sentence to read as follows: "If the measured takeoff and approach flight paths do not conform to those prescribed as the corrected and reference flight paths, under sections A36.11 (b) and (c) respectively, it will be necessary to apply duration corrections to the EPNL values calculated from the measured data."

c. Section A36.11(e) is amended by revising paragraph (1) up to the words "which represents", (2) up to the words "where NT is", and (3) up to the words "where LX and LXc are" to read as follows:

* * * * *

Section A36.11 *Detailed correction procedures.*

(e) * * *

(1) *Takeoff flight path.* For the takeoff flight path shown in Figure A2, the correction term is calculated using the formula—

$\Delta 2 = -7.5 \log (KR/KRc)$

which represents * * *

(2) *Approach flight path.* For the approach flight path shown in Figure A5, the correction term is calculated using the formula—

$\Delta 2 = -7.5 \log (NT/30)$

where NT is * * *

(3) *Sideline flight path.* For the sideline flight path, the correction term is calculated during the formula—

$\Delta 2 = -7.5 \log (LX/LXc)$

where LX and LXc are * * *

* * * * *

d. Section A36.11(f) introductory text, (1), (2) introductory text up to the words "the noise levels", and (2)(ii) up to the words "noise evaluation" are revised as follows:

* * * * *

(f) *Nonstandard location correction.* When takeoff and approach noise measurements are conducted at points other than those prescribed in section C36.1 of Appendix C, the EPNL value computed from these measurements must be corrected to the value that would have occurred at the prescribed measuring points under one of the following procedures:

(1) *Simplified procedure.* Unless the amount of adjustment exceeds 6 dB on takeoff or 4 dB on approach, or the correction results in a final EPNL value which is within 1.0 dB of the noise levels prescribed in Appendix C of this part, the correction procedures prescribed in paragraphs (d) and (e) of this section may be used. Since this procedure accounts for extrapolation of PNLTM from the close-in measurement station to the prescribed measuring point, the remaining corrections for differences between test and reference conditions, including thrust and airspeed, must be made afterward.

(2) *Integrated procedure.* If the correction factor exceeds 6 dB on takeoff or 4 dB on approach, or the correction results in a final EPNL value which is within 1.0 dB of the noise levels * * *

* * * * *

(ii) After the measured one half (½) second spectra have been corrected to the measuring points prescribed in section C36.1 of Appendix C, the remaining noise evaluation * * *

Appendix B—Aircraft Noise Evaluation Under § 36.103

21. Section B36.5(h) is amended by replacing "zero" with "one and a half".

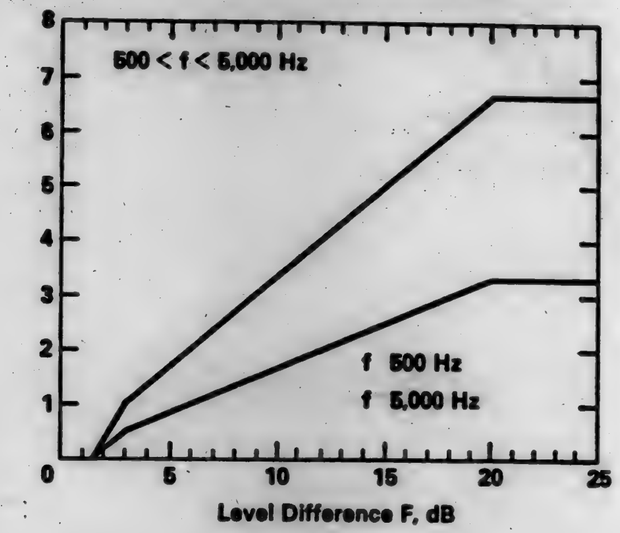
22. The graph and Table B2 now appearing in section B36.7(a) is moved into section B36.5(i) and revised to read as follows:

Section B36.5 *Correction for spectral irregularities.*

* * * * *

(i) * * *

Table B2 — Tone Correction Factors



Frequency f, Hz	Level difference F, dB	Tone correction C, dB
50<f<500	1⅓°<F<3	F/3−⅓
	3<F<20	F/6
	20<F	3⅓
500<f<5,000	1⅓°<F<3	2 F/3−1
	3<F<20	F/3
	20<F	6⅔
5,000<f<10,000	1⅓°<F<3	F/3−⅓
	3<F<20	F/6
	20<F	3⅓

* See Step 8.

* * * * *

23. Section B36.9(c) is amended by revising the definition of Δt as follows:

Section B36.9 *Duration correction.*

* * * * *

(c) * * *

Δt=0.5 sec. (or the approved sampling time interval), and

* * * * *

24. Section B36.9(f) is revised to read as follows:

* * * * *

(f) The aircraft testing procedures must include the 10 dB-down points in the flyover noise/time record.

* * * * *

25. Section B36.11(c) is added to read as follows:

Section B36.11 *Effective perceived noise level.*

* * * * *

(c) If, during a test flight, one or more peak values of PNLT are observed which are within 2 dB of PNLTM, the value of EPNL shall be calculated for each, as well as for PNLTM. If any EPNL value exceeds the value at the moment of PNLTM, the maximum value of such excedance must be added as a further adjustment to the EPNL calculated from the measured data.

26. Section B36.13 is amended by revising paragraphs (a) and (b), Figure B3 and adding Table B4 to read as follows:

Section B36.13 *Mathematical formulation of noy tables.*

(a) The relationship between sound pressure level and perceived noisiness given in Table B1 is illustrated in Figure B3. The variation of log (n) with SPL for a given one-third octave band can be expressed by straight lines as shown in Figure B3.

(1) The slopes of the straight lines M(b), M(c), and M(d) and M(e);

(2) The intercepts of the lines on the SPL axis, SPL (b) and SPL (c); and

(3) The coordinates of the discontinuities, SPL (a) and log n(a); SPL (d) and log n = −1.0; and SPL (e) and log n = log (0.3).

(b) The important aspects of the mathematical formulation are:

(1) SPL > SPL (a)

n = antilog [M(c)*(SPL–SPL(c))]

(2) SPL (b) < SPL < SPL (a)

n = antilog [M(b)*(SPL–SPL(b))]

(3) SPL (e) < SPL < SPL (b)

n = antilog [M(e)*(SPL–SPL(b))]

(4) SPL (d) < SPL < SPL (e)

n = 0.1 antilog [M(d)*(SPL–SPL(d))]

(c) * * *

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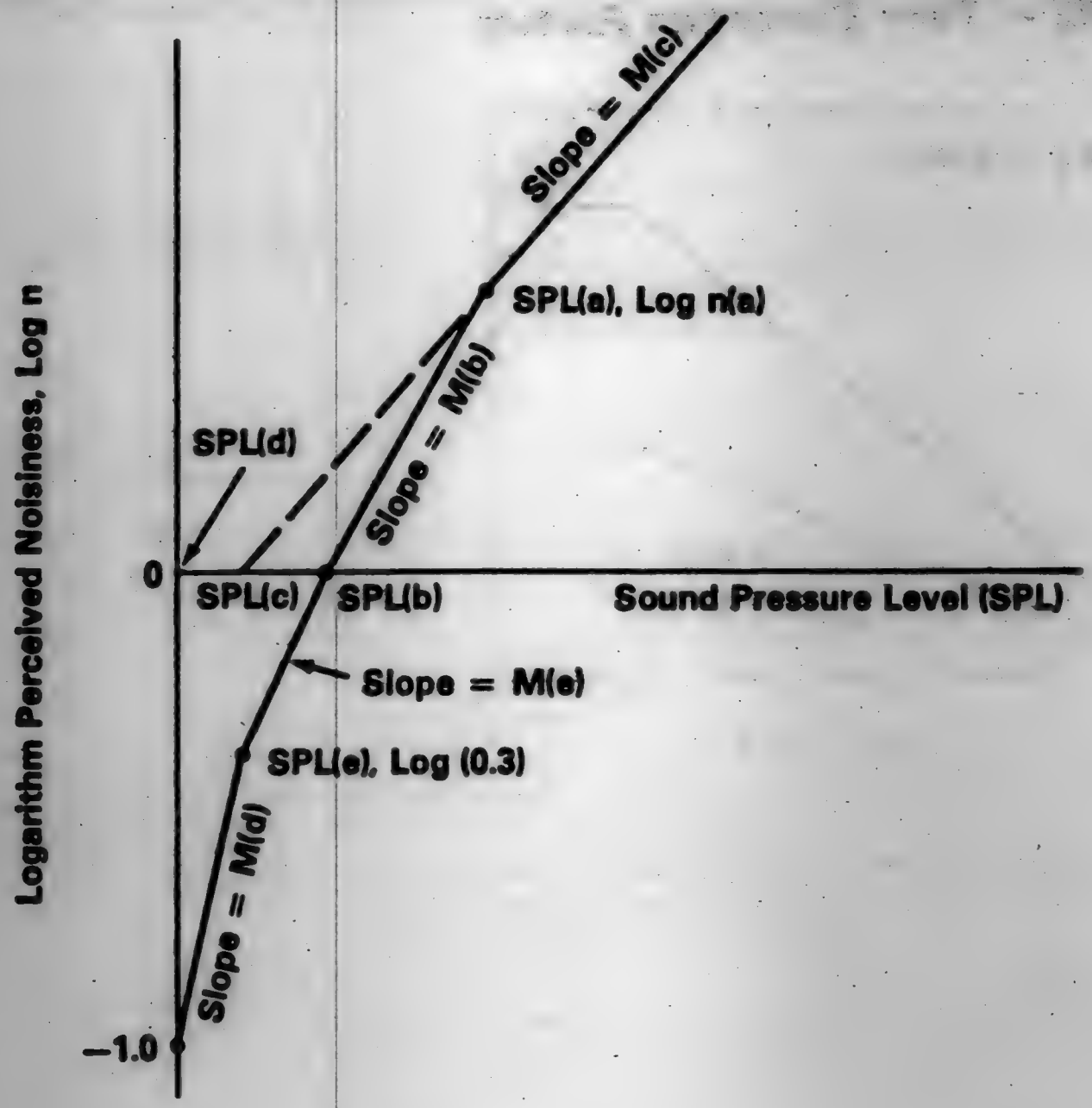


Fig. B3. Perceived Noisiness As a Function of Sound Pressure Level.

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Table B4 Constants for Mathematically Formulated NOY Values

Band (i)	f Hz	SPL (a)	SPL (b)	SPL (c)	SPL (d)	SPL (e)	M(b)	M(c)	M(d)	M(e)
1	50	91.0	64	52	49	55	0.043478	0.030103	0.079520	0.058098
2	63	85.9	60	51	44	51	0.040570	↑	0.068160	"
3	80	87.3	56	49	39	46	0.036831	↑	"	0.052288
4	100	79.9	53	47	34	42	"	↑	0.059640	0.047534
5	125	79.8	51	46	30	39	0.035336	↑	0.053013	0.043573
6	160	76.0	48	45	27	36	0.033333	↑	↑	"
7	200	74.0	46	43	24	33	"	↑	↑	0.040221
8	250	74.9	44	42	21	30	0.032051	↑	↑	0.037349
9	315	94.6	42	41	18	27	0.030675	0.030103	↑	0.034859
10	400	∞	40	40	16	25	0.030103	Not Applicable	↑	↑
11	500	↑	40	40	16	25	↑	↑	↑	↑
12	630	↑	40	40	16	25	↑	↑	↑	↑
13	800	↑	40	40	16	25	↑	↑	↑	↑
14	1000	↑	40	40	16	25	↑	↑	0.053013	↑
15	1250	↑	38	38	15	23	0.030103	↑	0.059640	0.034859
16	1600	↑	34	34	12	21	0.029960	↑	0.053013	0.040221
17	2000	↑	32	32	9	18	↑	↑	"	0.037349
18	2500	↑	30	30	5	15	↑	↑	0.047712	0.034859
19	3150	↑	29	29	4	14	↑	↑	"	↑
20	4000	↑	29	29	5	14	↑	↑	0.053013	↑
21	5000	↑	30	30	6	15	↑	↑	"	0.034859
22	6300	∞	31	31	10	17	0.029960	↑	0.068160	0.037349
23	8000	44.3	37	34	17	23	0.042285	0.029960	0.079520	"
24	10000	50.7	41	37	21	29	"	"	0.059640	0.043573

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Appendix C—Noise Levels for Transport Category and Turbojet Powered Airplanes Under § 36.201

27. Section C36.5, the table after paragraph (b)(3), and paragraph (c) is removed.

28. Section C36.7 *Takeoff test conditions* is retitled *Takeoff Reference and Test Limitations.*

29. Section C36.7(d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively.

30. Section C36.9 *Approach test conditions* is retitled *Approach Reference and Test Limitations.*

31. Section 36.9(d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively.

Issued in Washington, DC, on April 14, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-10005 Filed 5-5-88; 8:45 am]

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federal register

Friday
May 6, 1988

Part V

Department of Health and Human Services

Centers for Disease Control

National Committee on Vital and Health Statistics; Change in Meeting Dates

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics; Meeting

Action: Notice of Change in National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics Meeting.

Federal Register Citation of Previous Announcement: 53 FR 12599, April 15, 1988.

Previously Announced Date and Time of the Meeting:

May 10, 1988, 9:00 a.m.—5:00 p.m.
May 11, 1988, 9:00 a.m.—12:00 Noon.

Change in the Meeting: The Subcommittee will meet on May 10, 1988, 9:00 a.m.—5 p.m. only. It will not meet on May 11.

Dated: May 4, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-10316 Filed 5-5-88; 11:51 am]
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H.J. Res. 421/Pub. L. 100-306
Designating May 1988 as "National Digestive Disease Awareness Month." (May 3, 1988; 102 Stat. 454; 2 pages)
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Laurice Clark, 202–523–3517

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WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Presidential Documents

Title 3—

The President

Proclamation 5811 of May 5, 1988

National Defense Transportation Day and National Transportation Week, 1988

By the President of the United States of America

A Proclamation

Transportation is essential to American life. Our safe, fast, economical, and convenient movement of people and goods is the cornerstone of our country's social and economic welfare and of our national defense. Now, as in the past, our transportation systems—highways, airports, inland waterways, railroads and public transit, our merchant fleet and the Great Lakes and St. Lawrence Seaway—provide a superior emergency response network and are available as a critical component of our national defense. As our citizens travel in record numbers for business or pleasure, our local, State, and Federal governments continue to work with the transportation industry to enhance transportation safety.

The growth of our Nation and the development of transportation have been intertwined throughout our history. Those who first explored this vast country were followed by pioneers who established settlements. Most of the road routes, river systems, and ocean ports used by our earliest settlers are still in use today. Many of our great cities originated as towns that were starting or end points for transportation systems. As trade and commerce grew, transportation provided the necessary link to vital resources that in turn enabled further national growth. On land and water, in the air, and in space, our transportation systems have become an essential element of our Nation's economic health, providing indispensable services and generating employment for millions of people.

This week we acknowledge the contributions of the dedicated people who build, maintain, and safeguard our transportation systems—from the flagman on a highway project to the space engineer. We honor those who led the way in the development and improvement of ships, waterways, motor vehicles, highways, trains, airplanes, and our newest transportation vehicles, spacecraft. The recent announcement of our National Space Policy means that we continue to call for the help of modern-day pioneers on the frontiers of space technology. With public and private cooperation, our Nation is building a highway to space that will serve as an economic bridge to the 21st century.

In recognition of the importance of transportation and of the millions of Americans who serve and supply our transportation needs, the Congress has requested, by joint resolution approved May 16, 1957 (36 U.S.C. 160), that the third Friday in May of each year be designated as "National Defense Transportation Day"; and by joint resolution approved May 14, 1962 (36 U.S.C. 166), that the week in which that Friday falls be proclaimed "National Transportation Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, May 20, 1988, as National Defense Transportation Day and the week of May 15 through May 21, 1988, as National Transportation Week. I urge the people of the United States to observe these occasions with appropriate ceremonies that will give full recognition to the citizens and groups that operate the transportation systems of our country.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10381
Filed 5-5-88; 4:32 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 89
Monday, May 9, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 252

Food Distribution Program; National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule will extend the National Commodity Processing (NCP) Program until September 30, 1990. NCP was established in the June 23, 1983 rule and extended through June 30, 1988 by the June 30, 1986 and May 5, 1987 interim rules. This action will promote a regular supply of processed end products to eligible recipient agencies for the 1988–89 and 1989–90 agreement years.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Shepherd, Director, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive—Room 602, Alexandria, Virginia 22302, (703) 756–3585.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), information collection requirements contained in the current interim rules have been approved by the Office of Management and Budget (OMB #0584–0325) for use through September 30, 1990.

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of The Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Background

To comply with the amendment made by section 6 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237), the Department is hereby extending the operations of the NCP Program through September 30, 1990. The provisions of the interim rules published on June 30, 1986 (51 FR 23519) and July 2, 1987 (52 FR 16369) will remain in effect. Only one change is being made by this interim rule—amending the reference to the agreement termination date specified in the May 5, 1987 rule.

In order to improve the program, the Department has issued a proposed rulemaking, published on March 7, 1988, which would amend the interim rule governing the NCP Program.

List of Subjects in 7 CFR Part 252

Agricultural commodities, Grant programs-social programs, Price support programs, Surplus agricultural commodities.

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 252.4, paragraph (b) is revised to read as follows:

§ 252.4 Application to participate and agreement.

* * * * *

(b) *Agreement between FNS and Participating Food Processors.* Upon approval of an application for participating in the NCP Program, FNS shall enter into an agreement with the applicant food processor. All agreements under the NCP Program will terminate on the June 30th following the agreement approval date.

* * * * *

Date: May 3, 1988.
Ana Kondratas,
Administrator.

[FR Doc. 88-10227 Filed 5-6-88; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-42-AD; Amdt. 39-5913]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, which requires inspection, and repair or modification, if necessary, of certain heat shield and aft nacelle fairing attachment fastener holes. This amendment is prompted by results of recent testing and analyses by the manufacturer, which revealed that failure of the wing can occur at less than ultimate load due to cracking at fastener holes in the dry bay area between outer wing stations 161 to 195. Failure to detect and repair cracks could result in severe damage to the Nos. 3 and 4 lower surface panels of the outer wings, which could lead to failure of the wing to withstand design loads.

EFFECTIVE DATE: May 25, 1988.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company-Georgia, 86 South Cobb Drive,

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Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Airframe Branch (ACE-120A), FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: Recent residual strength testing performed by Lockheed Aeronautical Systems Company-Georgia on wings removed from United States Air Force (USAF) Model C-130 airplanes revealed that catastrophic failure of a wing can occur at less than ultimate load, due to cracking present at a fastener hole in the dry bay area between outer wing stations 161 and 195. Such cracking, if not corrected, could result in severe damage to the Nos. 3 and 4 lower surface panels of the outer wings, which could lead to failure of the wing to withstand design loads.

In light of the foregoing, the FAA has determined that inspection, and repair or modification, if necessary, are required on certain Lockheed Model 382 series airplanes with wings of the same configuration as the Model C-130 airplanes.

The FAA has reviewed and approved Lockheed Service Bulletins A382-57-71, dated November 30, 1987, and 382-57-73, dated January 28, 1988, which describe procedures for nondestructive inspections of heat shield and aft nacelle fairing attachment fastener holes from outer wing station 161 to 195 to determine if cracking exists, and modification, if necessary, of the outer wing lower surface skin panels between outer wing stations 161 and 195.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of heat shield and aft nacelle fairing attachment fastener holes for cracking, and modification of the outer wing lower surface skin panels, if necessary, in accordance with the service bulletins previously mentioned. Repair of detected cracking must be accomplished in accordance with a method approved by the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company—Georgia: Applies to Model 382 series airplanes, Serial Numbers 3946 through 4250, and 4299 through 4303, except those having outer wings installed to a configuration equivalent to Serial Number 4542 or subsequent; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent severe damage to the lower surface panels of the outer wings, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD; or upon the accumulation of 11,000 flight hours total time-in-service for airplanes Serial Numbers 3946 through 4250, or 16,000 flight hours total time-in-service for airplanes Serial Numbers 4299 through 4303; whichever occurs later, perform an inspection of the outer wing lower surface panels 1, 2, 3, and 4, in accordance with Lockheed Service Bulletin A382-57-71, dated November 30, 1987, to determine the existence of doublers on those panels between outer wing stations 161 and 195.

B. If doublers have been installed on panels 1, 2, 3, and 4, left and right, in accordance with Northwest Industries (NWI) Drawing 3809103, the airplane may be returned to normal service.

C. If doublers have been installed on panels 1 and 2 in accordance with Lockheed Service Bulletin 382-152 (382-57-35), dated September 2, 1987, or later FAA-approved revisions, prior to further flight, accomplish either of the following:

1. Inspect the heat shield and nacelle fairing attachment fastener holes from outer wing station 161 to 195, in accordance with Lockheed Service Bulletin A382-57-71, dated November 30, 1987.

a. If no cracks are found, repeat this inspection at intervals not to exceed 300 flight hours.

b. If cracks are found, prior to further flight, repair in accordance with an FAA-approved method.

2. Modify the wing in accordance with Lockheed Service Bulletin 382-57-73, dated January 28, 1988. Installation of this modification constitutes terminating action for the repetitive inspections required by paragraph C.1.a., above.

D. If doublers have not been installed on panels 1, 2, 3, and 4, prior to further flight, accomplish either of the following:

1. Inspect the heat shield and nacelle fairing attachment fastener from outer wing station 161 to 195, in accordance with Lockheed Service Bulletin A382-57-71, dated November 30, 1987.

a. If no cracks are found, repeat this inspection at intervals not to exceed 300 flight hours.

b. If cracks are found, prior to further flight, repair in accordance with an FAA-approved method.

2. Modify the wing in accordance with Northwest Industries (NWI) Drawing 3809103. Installation of this modification constitutes terminating action for the repetitive inspections required by paragraph D.1.a., above.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request for alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Atlanta Aircraft Certification Office.

All persons affected by this directive who have not already received the applicable service information from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company—Georgia, Attn: Commercial and Customer Support, Department 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment becomes effective May 25, 1988.

Issued in Seattle, Washington, on April 27, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10142 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-43-AD; Amdt. 39-5914]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, which requires inspection of the interior surface of the wing lower panels from outer wing station 0.0 to 360 for previous repairs and cracks, and for repair of cracks and/or modification of existing riser repairs, if necessary. This amendment is prompted by results of recent testing and analyses by the manufacturer, which revealed that failure of the wing can occur at less than ultimate load due to cracking at the end of a previously installed repair. Failure to detect and repair these cracks could result in severe damage to the lower surface panels of the wings, and could lead to failure of the wing to withstand design loads.

EFFECTIVE DATE: May 25, 1988.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company—Georgia, Attn: Commercial and Customer Support, Department 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Airframe Branch (ACE-120A), Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: Recent residual testing performed by Lockheed Aeronautical Systems Company—Georgia on wings removed from United States Air Force (USAF) Model C-130 airplanes revealed that catastrophic failure of a wing can occur at less than ultimate load due to cracking at the end of a previously installed repair. Such cracking, if not detected and corrected, could result in severe damage to the lower surface panels of the wings, and could lead to failure of the wing to withstand design loads.

The FAA has determined that inspection, and modification and/or repair, if necessary, is required on certain Lockheed Model 382 series airplanes with wings of the same configuration as those of the Model C-130 airplanes.

The FAA has reviewed and approved Lockheed Service Bulletins A382-57-69, dated November 30, 1987, and 382-57-70, dated January 28, 1988, and Work Card SP-209 of SMP515A, Lockheed Hercules Airfreighter Inspection Procedures, which describe inspection procedures for identification of cracks, and modifications to existing riser repairs to reduce the susceptibility to cracking that may occur at the ends of existing repairs.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection for existing repairs and cracks, and repair and/or modification to existing riser repairs, as necessary, of the outer wing lower surface skin panels, outer wing stations 0.0 to 360, in accordance with the service bulletins previously mentioned. Repair of identified cracking must be accomplished in accordance with a method approved by FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company—Georgia: Applies to Model 382 series airplanes; Serial Numbers 3946 through 4541, except those airplanes having outer wings installed of a configuration equivalent to Serial Number 4542 or subsequent; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent severe damage to the outer wing lower surface panels, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, perform an inspection in accordance with Lockheed Service Bulletin A382-57-69, dated November 30, 1987, to determine the existence of repairs on the interior of the outer wing lower

surface panel risers between outer wing stations 0.0 and 360.

B. If no outer wing lower surface panel riser repair exists, the airplane may be returned to normal service.

C. If any outer wing lower surface panel riser repair exists that does not conform to Lockheed Service Bulletin 382–57–70, dated January 28, 1988, prior to further flight, perform inspections in accordance with Lockheed Service Bulletin A382–57–69, dated November 30, 1967, and Work Card SP–200 of SMP515A, Lockheed Hercules Airfreighter Inspection Procedures.

1. If crack(s) are found, prior to further flight, repair in accordance with an FAA-approved method.

2. If no cracks are found, accomplish either of the following:

a. Prior to further flight, install repair modification in accordance with Lockheed Service Bulletin 382–57–70, dated January 28, 1988; or

b. Reinspect repairs in accordance with Work Card SP–209 of SMP515A, Lockheed Hercules Airfreighter Inspection Procedures, at intervals not to exceed 450 flight hours, until the repair modification is installed, in accordance with Lockheed Service Bulletin 382–57–70.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Aircraft Certification Office, FAA, Central Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Atlanta Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company—Georgia, Attn: Commercial and Customer Support, Department 72–05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment becomes effective May 25, 1988.

Issued in Seattle, Washington, on April 27, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10141 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–36–AD; Amdt. 39–5906]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 and KC–10 series airplanes, which requires inspection and modification or repair, if necessary, of the DC power feeder cable installation at the R1 passenger door. This amendment is prompted by reports of a DC power feeder cable chafing against the forward right cabin entrance door push-pull cable. This condition, if not corrected, could result in an in-flight fire in the overhead of the cabin near the forward right cabin entrance door.

EFFECTIVE DATE: May 20, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

SUPPLEMENTARY INFORMATION: A United States Air Force (USAF) Model KC–10 airplane experienced an in-flight electrical fire while flying at an altitude of 35,000 feet. The crew noticed a DC Ground Service Bus Off indication and smoke in the upper forward cargo compartment, and declared an in-flight emergency. Flames found behind a cargo liner were extinguished with a Halon fire extinguisher bottle. Substantial smoke and fumes in the cargo area and cockpit caused the crew to don oxygen masks. The airplane made an emergency landing without incident.

Subsequent investigation revealed that the DC Ground Service Bus power feeder cable had chafed against the forward right cabin entrance door push-pull cable approximately one foot aft of the entrance door. The push-pull cable rubbed through the DC power feeder cable insulation and contacted the power cable which, in turn, caused the fire and smoke behind the cargo liner.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A24–140, dated March 24, 1988, which describes procedures for inspection for minimum clearance between the DC power feeder cable and the forward right cabin entrance door push-pull cable, and for chafing of the DC power feeder cable. The service bulletin also provides modification instructions if the clearance is less than minimum, and repair instructions if DC power feeder cable chafing is found.

Since this condition is likely to exist or develop on other airplanes of the same type design, this Adopted Rule requires inspection and modification or repair, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Action of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10 and KC–10 series airplanes, as listed in McDonnell Douglas Service Bulletin A24–140, dated March 24, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire and smoke resulting from chafing of the DC Ground Service Bus power feeder cable against the forward right cabin entrance door push-pull cable, accomplish the following:

A. Within 30 days after the effective date of this airworthiness directive (AD), inspect the DC power feeder cable for evidence of chafing and inspect for minimum clearance between the DC power feeder cable and the forward right cabin entrance door push-pull cable, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A24–410, dated March 24, 1988.

1. If the clearance is less than the minimum allowable, modify the installation in accordance with the service bulletin.

2. If there is evidence of chafing on the DC power feeder cable, repair the power cable in accordance with the service bulletin.

B. Alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 20, 1988.

Issued in Seattle, Washington, on April 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10148 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–34–AD; Amdt. 39–5912]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 airplanes, which requires inspections and rework or replacement, if necessary, of both the left and right inboard wing flap drive link assemblies at wing station X_w=97.906. This amendment is prompted by reports of fatigue cracking on flap drive link assemblies. This condition, if not corrected, could result in the loss of control of the airplane in a critical flight regime due to the loss of structural integrity of the flap system.

EFFECTIVE DATE: May 25, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: The FAA has recently received two reports from operators of McDonnell Douglas Model DC–8 series airplanes where momentary loss of airplane control was experienced during landing approach. The loss of control has been attributed to the failure of an inboard wing flap drive link assembly, which led to a split flap condition. Over the past several years, there have been numerous reports of instances of flap drive link assembly failure at wing station X_w=97.906. Failures have occurred on airplanes having accumulated approximately 25,000 flight-hours or more, and have been attributed to fatigue which is aggravated by insufficient lubrication. If not corrected, a failed link assembly could result in the loss of structural integrity of the flap system, the loss of a flap, and possible loss of control of the airplane in a critical flight regime.

The FAA has reviewed and approved McDonnell Douglas DC–8 Alert Service Bulletin A27–269, dated March 25, 1988, which describes procedures for inspections for fatigue cracking, and rework or replacement of the inboard wing flap drive link assembly at wing station X_w=97.906.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspections for fatigue cracking and rework or replacement, as necessary, of the flap drive link assemblies at wing station X_w=97.906, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

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List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series airplanes, equipped with P/N(s) 5644642 or 5751152, LH and RH wing flap drive link assembly installed at wing station X_w=97.906, certificated in any category. Compliance required as indicated.

To prevent the loss of airplane control in a critical flight regime due to metal fatigue failure of the flap drive link assembly, accomplish the following:

A. Prior to the accumulation of 6,250 landings on the inboard flap drive link assembly, P/N 5644642 or 5751152, or within the next 375 landings after the effective date of this AD, whichever occurs later, unless already accomplished within the last 375 landings, conduct inspections for fatigue cracking of specific areas of the link assembly in accordance with Figure 2. of McDonnell Douglas DC-8 Alert Service Bulletin A27-269, dated March 25, 1988 (hereafter referred to as SB A27-269).

B. If no cracks are found, repeat inspections in accordance with Figure 2. of SB A27-269, at intervals not to exceed 750 landings.

C. If cracks are found, accomplish the following before further flight:

1. If cracks are within the blend limits of Figure 3. of SB A27-269, rework in accordance with Figure 3. of SB A27-269 and repeat inspections in accordance with Figure 2. of SB A27-269, prior to the accumulation of 750 landings and at intervals thereafter not to exceed 390 landings.

2. If cracks exceed the blend limits of Figure 3. of SB A27-269, replace with new part of the same part number, in accordance with Figure 4. of SB A27-269.

D. Alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 25, 1988.

Issued in Seattle, Washington, on April 27, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10148 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-14; Amdt. 39-5897]

Airworthiness Directives; McDonnell Douglas Helicopter Co., Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time inspection and replacement of the outer race component of the overrunning clutch assembly (sprag clutch) on McDonnell Douglas Helicopter Company (MDHC) Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, D, E, F, and FF helicopters. The AD is prompted by reports that the outer race component of the overrunning clutch has failed in flight which could result in loss of power to the main rotor transmission and possible loss of the helicopter.

DATES: *Effective Date:* May 20, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1988.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from McDonnell Douglas Helicopter Company, ATTN: Mr. Barry Hautz, LH3/G35, 5000 E. McDowell Road, Mesa, Arizona 85205-9797.

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Golinski, Aerospace Engineer, Propulsion Section, ANM-174W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1128.

SUPPLEMENTARY INFORMATION: There have been two reported cases of failure of the outer race component (P/N 369A5352) of the overrunning clutch assembly (P/N 369A5350) resulting from improper heat treatment processes. One of the cases involved an autorotation that resulted in a hard landing with substantial aircraft damage. Helicopters which have outer race Part Number (P/N) 369A5352, serial numbers 0892 through 0927, must have the outer race assemblies removed from service. MDHC has issued a Mandatory Service Information Notice (SIN) HN-215/DN-156/EN-46/FN-34, dated March 18, 1988. Since this condition is likely to exist or develop in other helicopters of the same type design, an airworthiness directive is being issued which requires a one-time inspection of the clutch assembly to identify the outer race serial number and determine whether the outer race assembly is airworthy or needs to be removed from service on MDHC Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, DE, E, F, and FF helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been

further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983), and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to Model 369 (YOH-6A), A(OH-6A), H, HM, HS, HE, D, E, F, and FF helicopters, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To prevent possible loss of power to the main rotor transmission, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, perform a one-time inspection of the outer race (P/N 369A5352) component of the overrunning clutch (sprag) assembly (P/N 369A5350) to identify the serial number and remove unairworthy components in accordance with MDHC SIN HN-215/DN-156/EN-46/FN-34, dated March 18, 1988, Procedure Section, paragraphs a through g. The outer race (P/N 369A5352) with serial numbers 0892 through 0927 is unairworthy and must be removed from service prior to further flight.

(b) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

Note.—At certain flight conditions a failure of the outer race may result in an engine overspeed condition.

(c) An alternate method of compliance, which provides an equivalent level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, Department of Transportation, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Hawthorne, California 90009-2007.

The procedure shall be done in accordance with MDHC Mandatory SIN HN-215/DN-156/EN-46/FN-34, dated March 18, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from MDHC ATTN: Mr. Barry Hautz, LH3/G35, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective May 20, 1988.

Issued in Fort Worth, Texas, on April 15, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-10150 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-152-AD; Amdt. 39-5917]

Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain SAAB-Fairchild Model SF-340A series airplanes, which currently requires the installation of a positive stop to limit the maximum flap setting to 20° to prevent an uncommanded pitch excursion. This amendment provides for optional modifications which, if incorporated, allow removal of the limitations required by the AD.

EFFECTIVE DATE: June 17, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to revise Part 39 of the Federal Aviation Regulations by amending AD 86-06-03, Amendment 39-5258 (51 FR 8791; March 14, 1986), applicable to SAAB-Fairchild SF-340A series airplanes, to provide for the optional installation of two modifications that would constitute terminating action for certain limitations to flap operations, was published in the **Federal Register** on February 3, 1988 (53 FR 3048).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter supported the proposal.

Since the issuance of the Notice, SAAB has issued Service Bulletin SF340-55-008, Revision 2, dated March 31, 1988, which merely clarifies and updates the procedures for installation of optional Modification 1462. Paragraph 5 of the final rule has been revised to reflect this latest revision to the service bulletin. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously mentioned.

It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 94 manhours per airplane to accomplish the optional modification, and that the average labor cost will be $40 per manhour. Parts are estimated to be $83,709 per airplane. Based on these figures, the cost impact to U.S. operators to incorporate the optional modification is estimated to be $87,469 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and

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Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because it does not impose a requirement, but provides an optional means of complying with an existing regulation. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 86–06–03, Amendment 39–5258 (51 FR 6791; March 14, 1986), to read as follows:

SAAB-Fairchild: Applies to Model SF–340A series airplanes, serial numbers 003 through 048, inclusive, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To prevent uncommanded pitch excursions, accomplish the following:

1. Within the next 7 days after the effective date of this AD, incorporate the following into the limitations section of the airplane flight manual: "More than 30° flap is not authorized at any time." This may be accomplished by including a copy of this AD in the airplane flight manual.

2. Within the next 21 days after the effective date of this AD, install a mechanical stop on the flap handle to limit the flap extension to a maximum setting of 20°, in accordance with SAAB-Fairchild Service Bulletin SF340–27–036, dated February 13, 1986.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

4. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

5. Installation of Modification 1784 in accordance with SAAB Service Bulletin SF340–27–040, Revision 1, dated July 21, 1987, and Modification 1462 in accordance with SAAB Service Bulletin SF340–55–008, Revision 2, dated March 31, 1988, constitutes terminating action for the requirements of paragraphs 1. and 2., above.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends AD 86–06–03, Amendment 39–5258.

This amendment becomes effective June 17, 1988.

Issued in Seattle, Washington, on April 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10147 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ANE–16; Amdt. 39–5902]

Airworthiness Directives; TEXTRON Lycoming (Formerly Avco Lycoming TEXTRON) LTS101 Turboshaft and LTP101 Turboprop Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of TEXTRON Lycoming LTS101 series turboshaft and LTP101 series turboprop engines by individual priority letter AD 87–11–09, issued May 29, 1987, which superseded priority letter AD 87–10–09, issued May 15, 1987. The AD requires an initial and repetitive dye or fluorescent penetrant inspection of all power turbine (PT) rotors for blade cracking. A PT rotor with a blade containing a crack must be removed from service. The AD is needed to prevent failure of PT rotor blades installed in TEXTRON Lycoming LTS101 turboshaft and LTP101 turboprop series engines.

DATES: Effective—May 19, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–11–09, issued May 29, 1987, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of May 19, 1988.

ADDRESSES: The applicable service bulletins may be obtained from TEXTRON Lycoming, Williamsport Division, LT101 Product Support, 652 Oliver Street, Williamsport, Pennsylvania 17701.

A copy of the service bulletins is contained in Rules Docket Number 87–ANE–16, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Robbin Goulet, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7089.

SUPPLEMENTARY INFORMATION: On May 29, 1987, priority letter AD 87–11–09, which superseded priority letter AD 87–10–09, issued May 15, 1987, was issued and made effective immediately as to all known U.S. owners and operators of TEXTRON Lycoming LTS101 series turboshaft and LTP101 series turboprop engines. This AD requires an initial and repetitive dye or fluorescent penetrant inspection of all PT rotors for blade cracking.

The FAA has determined that an engine power loss, possibly resulting in a forced landing and minor airframe damage, may occur following a PT blade failure. Twelve PT blade fracture events have occurred of which one was uncontained, three resulted in penetration of the tailpipe, and eight were contained. Although the cause of blade fracture has not yet been identified, PT rotors have been documented with blade cracking in the trailing edge root area. One hundred and seventeen reports of PT rotors with cracked blades have been received by the FAA. A PT rotor with a blade containing a crack must be removed from service. The investigation of these failures is continuing, and pending the results, this AD may be amended.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter AD 87–11–09, issued May 29, 1987, to all known U.S. owners and operators of TEXTRON Lycoming LTS101 series turboshaft and LTP101 series turboprop engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C 1301. *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

TEXTRON Lycoming (formerly Avco Lycoming Textron): Applies to TEXTRON Lycoming LTS101 series turboshaft and LTP101 series turboprop engines.

Compliance is required as indicated, unless already accomplished.

To prevent power turbine (PT) blade fracture which could result in engine power loss and aircraft damage, accomplish the following:

(a) Perform a dye penetrant inspection or a fluorescent penetrant inspection of all part number PT rotors installed in engines, in accordance with the procedures in Avco Lycoming TEXTRON Service Bulletin (SB) Number LT 101–72–00–0093, Revision 2, dated May 12, 1987, or Revision 3, dated May 29, 1987, as follows:

(1) Inspect for blade cracks within 10 hours in service after receipt of priority letter AD 87–10–09, dated May 15, 1987, or within 10 hours in service after the effective date of this AD, unless already accomplished within the last 40 hours in service prior to receipt of priority letter AD 87–10–09, or within the last 40 hours in service prior to the effective date of this AD, respectively.

(2) Thereafter, inspect for blade cracks at intervals not to exceed 50 hours in service since the last dye or fluorescent penetrant inspection.

(3) Remove airframe exhaust interface components, including tailpipe and exhaust cone, prior to conducting the above inspections.

(4) Remove from service, prior to further flight, PT rotors in which blade cracks are found during the above inspections and replace with serviceable parts.

(b) Perform a fluorescent penetrant inspection of all part number PT rotors prior to installation into a PT module in accordance with the procedures pertaining to fluorescent penetrant inspection given in Avco Lycoming TEXTRON SB Number LT 101–72–00–0093, Revision 2, dated May 12, 1987, or Revision 3, dated May 29, 1987. PT rotors in which blade cracking is found during this fluorescent penetrant inspection may not be returned to service and must be replaced with serviceable parts.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, may adjust the compliance times specified in this AD.

Avco Lycoming TEXTRON SB Number LT 101–72–00–0093, Revision 2, dated May 12, 1987, and Revision 3, dated May 29, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies, upon request, from TEXTRON Lycoming, Williamsport Division, LT101 Product Support, 652 Oliver Street, Williamsport, Pennsylvania 17701. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 87–ANE–16, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on May 19, 1988 as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–11–09, issued May 29, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on April 14, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88–10149 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–18]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Hyman, TX, very high frequency omni-directional radio range (VOR) has been scheduled for decommissioning on June 30, 1988. Several Federal Airways are affected by the decommissioning and their descriptions must be amended to reflect these changes. This action amends the descriptions of all airways where necessary.

DATES: Effective date—0901 UTC, June 30, 1988.

Comments must be received on or before June 7, 1988.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88–ASW–18, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours

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at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

This action is in the form of a final rule, which involves amending the descriptions of VOR Federal Airways V–66, V–76, and V–94 located in the vicinity of Hyman, TX. The HYMAN VOR is being decommissioned June 30, 1988, and this action is being implemented to coincide with that action. For that reason, this action is not preceded by notice and public procedure. Comments are invited on the rule and when the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the descriptions of VOR Federal Airways V–66, V–76, and V–94 due to the decommissioning of the HYMAN VOR. These airways have been redescribed and several intersections associated with the decommissioned VOR have been redefined. This action supports and coincides with the decommissioning of that facility. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of all airways that have HYMAN in their descriptions due to the decommissioning of the HYMAN, TX, VOR. Because this action involves a minor, technical amendment which does not significantly affect the airspace configuration and in which the public would not be particularly interested in commenting, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–66 [Amended]

By removing the words "Midland, TX; Hyman, TX, INT Hyman 074° and Abilene, TX, 251° radials;" and substituting the words "Midland, TX; INT Midland 081° and Abilene, TX, 253° radials;"

V–76 [Amended]

By removing the words "Big Spring; Hyman, TX; San Angelo, TX;" and substituting the words "Big Spring; INT Big Spring 129° and San Angelo, TX, 323° radials; San Angelo;"

V–94 [Amended]

By removing the words "Midland, TX; Hyman, TX; Tuscola, TX;" and substituting the words "Midland, TX; INT Midland 081° and Tuscola, TX; 265° radials; Tuscola;"

Issued in Washington, DC, on April 21, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–10146 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25600; Amdt. No. 1373]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on April 29, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective July 28, 1988*

Oshkosh, WI—Wittman Field, VOR RWY 36, Amdt. 16
Oshkosh, WI—Wittman Field, NDB RWY 36, Amdt. 5
Oshkosh, WI—Wittman Field, ILS RWY 36, Amdt. 6

. . . *Effective June 30, 1988*

Kingman, AZ—Kingman, VOR/DME RWY 21, Amdt. 6
Atlanta, GA—Fulton County Airport-Brown Field, VOR/DME RWY 26, Orig.
Atlanta, GA—Fulton County Airport-Brown Field, RADAR–1, Amdt. 17
Brunswick, GA—Malcolm McKinnon, NDB RWY 4, Amdt. 4
Brunswick, GA—Malcolm McKinnon, NDB RWY 22, Amdt. 4
Columbus, GA—Columbus Metropolitan, LOC BC RWY 23, Amdt. 12
Kahului, HI—Kahului, VOR RWY 20, Amdt. 11
Kahului, HI—Kahului, VOR/DME or TACAN RWY 20, Amdt. 7
Kahului, HI—Kahului, LOC/DME (BC) RWY 20, Amdt. 11
Danville, IL—Vermilion County, VOR/DME RWY 3, Amdt. 11
Danville, IL—Vermilion County, VOR RWY 21, Amdt. 13
Danville, IL—Vermilion County, ILS RWY 21, Amdt. 5
Danville, IL—Vermilion County, RNAV RWY 34, Amdt. 4
Flora, IL—Flora Muni, NDB RWY 21, Amdt. 4
Auburn, IN—Auburn-DeKalb, VOR–A, Amdt. 8
Wabash, IN—Wabash Muni, VOR–A, Amdt. 8
Wabash, IN—Wabash Muni, NDB RWY 27, Amdt. 10
Winamac, IN—Arens Field, VOR/DME–A, Amdt. 3
Corning, IA—Corning Muni, NDB RWY 17, Amdt. 4, CANCELED
Oelwein, IA—Oelwein Muni, NDB RWY 13, Amdt. 2
Perry, IA—Perry Muni, NDB RWY 13, Amdt. 1
Perry, IA—Perry Muni, NDB RWY 31, Amdt. 4
Baltimore, MD—Baltimore-Washington Intl, RADAR 1, Amdt. 11, CANCELED
New Bedford, MA—New Bedford Muni, LOC BC RWY 23, Amdt. 6
New Bedford, MA—New Bedford Muni, NDB RWY 5, Amdt. 10
Motley, MN—Morey Fish House, VOR RWY 9, Amdt. 1
Morriston, NJ—Morristown Muni, ILS RWY 23, Amdt. 7
East Hampton, NY—East Hampton, RNAV RWY 10, Amdt. 4

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East Hampton, NY—East Hampton, RNAV RWY 28, Amdt. 1
Washington, NC—Warren Field, NDB RWY 5, Orig.
Washington, NC—Warren Field, NDB–A, Amdt. 2, CANCELED
Ashland, OH—Ashland County, VOR–A, Amdt. 5
Ashland, OH—Ashland County, NDB RWY 18, Amdt. 7
Cleveland, OH—Cuyahoga County, LOC BC RWY 5, Amdt. 8
Cleveland, OH—Cuyahoga County, NDB RWY 23, Amdt. 5
Cleveland, OH—Cuyahoga County, ILS RWY 23, Amdt. 10
Lorain/Elyria, OH—Lorain County Regional, VOR RWY 7, Amdt. 12
Lorain/Elyria, OH—Lorain County Regional, ILS RWY 7, Amdt. 5
Oklahoma City, OK—Will Rogers World, LOC BC RWY 17L, Amdt. 5
Lawrenceburg, TN—Lawrenceburg Muni, NDB RWY 16, Amdt. 1
Lubbock, TX—Lubbock Intl, VOR–A, Amdt. 5
Lubbock, TX—Lubbock Intl, VOR/DME or TACAN RWY 26, Amdt. 8
Lubbock, TX—Lubbock Intl, LOC BC RWY 35L, Amdt. 13
Roanoke, VA—Roanoke Regional/Woodrum Field, VOR/DME–A, Amdt. 3
Roanoke, VA—Roanoke Regional/Woodrum Field, VOR RWY 33, Amdt. 6
Roanoke, VA—Roanoke Regional/Woodrum Field, RADAR 1, Amdt. 8
Petersburg, WV—Grant County, VOR/DME–A, Orig.
Summersville, WV—Summersville, NDB RWY 4, Amdt. 2
LaCrosse, WI—LaCrosse Muni, VOR RWY 13, Amdt. 28
LaCrosse, WI—LaCrosse Muni, VOR RWY 36, Amdt. 27
LaCrosse, WI—LaCrosse Muni, NDB RWY 18, Amdt. 14
LaCrosse, WI—LaCrosse Muni, ILS RWY 18, Amdt. 15
Watertown, WI—Watertown Muni, NDB RWY 5, Amdt. 2
Watertown, WI—Watertown Muni, NDB RWY 23, Amdt. 4
Watertown, WI—Watertown Muni, RNAV RWY 5, Amdt. 1

. . . Effective June 2, 1988

Washington, DC—Dulles Intl, RADAR–1, Amdt. 11, CANCELED
St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 32, Orig., CANCELED
St. Paul, MN—St. Paul Downtown Holman Fld, ILS RWY 32, Orig.
Mobridge, SD—Mobridge Muni, NDB RWY 12, Orig.

. . . Effective April 22, 1988

Providence, RI—Theodore Francis Green State, ILS/DME RWY 34, Amdt. 5

. . . Effective April 20, 1988

St. Paul Island, AK—St. Paul Island, NDB/DME RWY 16, Amdt. 1

The FAA published an Amendment in Docket No. 25584, Amdt. No. 1371 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 72, Page 12377; dated Thursday, April 14, 1988), under Section 97. Effective March 25, 1988, which is hereby amended as follows:

Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 33L, Orig., should read Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 33L, Amdt. 1

The FAA published an Amendment in Docket No. 25584, Amdt. No. 1371 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 72, Page 12377; dated Thursday, April 14, 1988), under Section 97. Effective 30 JUN 88, which is hereby amended as follows:

Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 7
Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 31
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 33
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 11
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 3
Gastonia, NC—Gastonia Muni, NDB RWY 3, Amdt. 6
Southern Pines, NC—Moore County, VOR–A, Amdt. 2

Effective Dates changed to 25 AUG 88.

[FR Doc. 88-10145 Filed 5-6-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 372

[Docket No. 71160-7260]

Clarification of Emergency License Procedures; Correction

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; correction.

SUMMARY: A final rule that clarified the procedures for submitting emergency license applications, reexport authorization requests, and amendment requests for expedited processing to the Office of Export Licensing was published in the **Federal Register** on January 21, 1988 (53 FR 1614). That rule amended paragraph (h) of § 372.4. However, paragraph (h) ("emergency clearance") had been redesignated as paragraph (i) by an earlier rule (52 FR 48808, Dec. 28, 1987) that established the procedure for the electronic submission of validated export license application.

This document corrects the January rule to reflect the December redesignation of the emergency clearance provisions.

FOR FURTHER INFORMATION CONTACT: Joan Maguire, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–4479.

Accordingly, the following corrections are made to "Clarification of Emergency License Procedure," which was published in the **Federal Register** on January 21, 1988:

On page 1615, in the middle column, item 3 amendatory language is corrected to read as follows:

"3. Section 372.4 is amended by revising paragraphs (i)(1) and (i)(3) and adding a new paragraph (i)(6) to read as follows:"

§ 372.4 [Corrected]

On page 1615, in the middle column, the first line of regulatory text under § 372.4 is corrected to read "(i) *Emergency clearance.* (1) When an".

On page 1615, in the third column, in correctly redesignated paragraph (i)(1)(iii), the references to "paragraphs (h)(1) (i) and (ii)" are corrected to read "paragraphs (i)(1) (i) and (ii) of this section".

On page 1615, in the third column, in correctly redesignated paragraph (i)(6), the reference to "paragraph (h) of this section" is corrected to read "paragraph (i) of this section".

§ 372.11 [Corrected]

On page 1616, in the first column, in § 372.11(h)(5), the reference to "§ 372.4(h)" is corrected to read "§ 372.4(i)".

Dated: May 4, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-10222 Filed 5-6-88; 8:45 am]
BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Grant of an exemption from the Commission's Used Car Rule to the State of Maine.

SUMMARY: The Federal Trade Commission has determined that the request by the State of Maine for exemption from the Used Motor Vehicle Trade Regulation Rule, 16 CFR Part 455 (1987), meets the standards for such exemptions as set out in § 455.6 of the Rule. The granting of this exemption will allow Maine used vehicle dealers to use the disclosure label prescribed by a Maine administrative regulation in the place of the Buyers Guide required by the FTC Rule. The Commission therefore grants Maine's request and sets forth its reasons for reaching this determination in this notice.

DATE: This statewide exemption will become effective on May 24, 1988. The Commission's Used Car Rule will remain in effect until that date.

FOR FURTHER INFORMATION CONTACT: Matthew D. Gold (202/326–3019) or Joyce E. Plyler (202/326–3021), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1987, the Maine Secretary of State filed a petition for statewide exemption (the "Petition") from the Federal Trade Commission's (the "Commission") Used Motor Vehicle Trade Regulation Rule (the "FTC Rule"), 16 CFR Part 455 (1987).[1] The Petition, filed pursuant to § 455.6 of the Rule, sought to allow Maine used vehicle dealers to use a disclosure label prescribed by the Maine Used Car Information Act Sticker Rule (the "Maine Rule"), a Maine administrative regulation, in place of the Buyers Guide required by the FTC Rule.[2]

Currently, in addition to posting the FTC Buyers Guide, Maine used car dealers must post on each used vehicle a statement containing pre-purchase disclosures required by the Maine Used Car Information Act ("MUCIA").[3] The Maine Rule, which has an effective date of twenty-one days after the Commission grants an exemption, prescribes a single, uniform window sticker that incorporates the MUCIA disclosures and the requirements of the FTC Rule.

On December 28, 1987, the Commission published a notice in the **Federal Register** seeking comment on whether the Maine Petition satisfies the FTC Rule's exemption criteria.[4] The notice contained the following: (1) An explanation of the standards applicable to and the appropriate procedures for Used Car Rule state exemption petitions; (2) a provision-by-provision comparison of the Maine Rule and the FTC Rule; (3) a discussion regarding Maine's willingness and ability to enforce its Rule; and (4) specific questions designed to focus public comment on several important issues involved in the Commission's consideration of the Petition. The period for public comment expired on January 27, 1988. The Commission received no comments.

This notice explains the reasons for the Commission's approval of Maine's request for statewide exemption from the FTC Rule. Because most of the provisions of the Maine Rule, including the disclosure requirements for the Maine window sticker, are virtually identical to analogous provisions in the FTC Rule, the Commission's analysis focuses on the areas in which the Rules substantially differ.

II. Exemption Standards and Procedures

Section 455.6 of the FTC Rule sets forth the Commission's standards for exemption a state from the Rule's requirements. It states:

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.

(b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in subsection (a), and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

III. The Merits of the Petition

A. Does the Maine Rule Apply to the Same Transactions to which the FTC Rule Applies?

In granting Maine's request for exemption from the FTC Rule, the Commission has concluded that the Maine Rule applies to the same transactions as does the FTC Rule. This section sets out the reasons for this conclusion.

The definition sections of both the FTC Rule and the Maine Rule govern the scope of each Rule. Both rules cover sales and offers of "used vehicles" [5] from "dealers" [6] to "consumers." [7] In its definition of "dealer," the FTC Rule excludes from coverage banks, financial institutions and some sales by leasing companies and other businesses. The Maine Rule's definition of dealer covers all of these entities. On the other hand, unlike the FTC Rule, the Maine Rule excludes auction houses from coverage. However, because dealers selling their vehicles through auctions are required to comply with the Maine Rule, both rules effectively cover such sales. In general, therefore, the definition of "dealer" under the Maine Rule is considerably more expansive than that included in the FTC Rule.

Similarly, the definition of "consumer" in the Maine Rule is more expansive than the definition of that term in the FTC Rule. While dealer-to-dealer sales are not covered by the FTC Rule, such sales are covered by the Maine Rule.

The definitions of "vehicle" and "used vehicle" in the two rules are almost identical. Both rules define "vehicle" in terms of size and weight specifications, and one of the weight limits in the Maine Rule is larger than its FTC Rule counterpart.

In sum, the Maine Rule applies to the same transactions as does the FTC Rule. Where the rules differ, the definitions of the terms "dealer," "consumer," "vehicle," and "used vehicle" are more inclusive in the Maine Rule.

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[1] The Maine Petition included the following materials: (1) A provision-by-provision comparison of the Used Car Rule and the Maine Rule (Appendix A); (2) a copy of the Maine Rule, which was adopted on January 22, 1987, with an effective date of twenty-one days after a statewide exemption is granted (Appendix B); (3) a copy of the Maine window label (Buyer's Guide) required by the Maine Rule (Appendix C); (4) copies of the relevant Maine statutes (Appendix D); (5) a discussion of Maine's willingness and ability to enforce the MUCIA and the Maine Rule (Appendix E); and (6) a letter from Maine Attorney General James E. Tierney stating that Maine law provides adequate authority to support the Maine Rule, as well as the conclusions, interpretations, policies and procedures describes in the Petition and in the Appendices (Appendix F). The Maine Petition has been placed on the public record and is identified as Document 100–6 in FTC File No. 215–54. It and other documents referred to in this notice are available for inspection at the Office of the Secretary of the Federal Trade Commission.

[2] The Buyers Guide is the standard disclosure form which must be affixed to a side window of each used vehicle offered for sale by a dealer to a consumer, under § 455.2 of the FTC Rule. Both the FTC and the Maine disclosure forms are printed at the end of this notice.

[3] Me. Rev. Stat. Ann. tit. 10, §§ 1471–1477 (1980 & Supp. 1985–1986). The MUCIA was amended in 1985 to require, *inter alia*, Maine used vehicle dealers to affix a written disclosure statement to each used vehicle offered for sale, and to authorize the Division of Motor Vehicles to promulgate rules implementing this requirement. *See* §§ 1475(1); 1475(2)(G). The Maine Rule was promulgated under this authority. Section 1475(2)(G) of the MUCIA specifically authorizes the Division of Motor Vehicles to include on its uniform disclosure sticker any information contained on the FTC Buyers Guide, unless such information were to conflict with information required by the MUCIA.

[4] 52 FR 48906.

[5] The terms "vehicle" and "used vehicle" are defined in §§ 455.1(d) (1) and (2) of the FTC Rule, and sections I(A) (5) and (8) of the Maine Rule.

[6] The term "dealer" is defined in § 455.1(d)(3) of the FTC Rule and section I(A)(2) of the Maine Rule.

[7] The term "consumer" is defined in § 455.1(d)(4) of the FTC Rule and section I(A)(1) of the Maine Rule.

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B. Does the Maine Rule Provide an Overall Level of Protection to Consumers Which is as Great as or Greater than that Provided by the FTC Rule?

In granting Maine's request for exemption from the FTC Rule, the Commission has concluded that the Maine Rule provides an overall level of protection to consumers which is at least as great as that provided by the FTC Rule. This section sets out the reasons for this conclusion.

1. The Buyer's Guide

(a) *Format.* Both rules require dealers to complete and display a disclosure form on a side window of each used vehicle offered for sale to consumers.[8] The provisions of the Maine Rule regarding format and display of the Maine Buyer's Guide are virtually identical to analogous provisions in the FTC Rule.[9] The printing specifications for the Maine Buyer's Guide are designed to create a window form that is very similar in appearance to the FTC Buyers Guide. To accommodate additional disclosures, the Maine Buyer's Guide is larger.[10]

(b) *Text of Window Stickers—Similar Provisions.* All of the disclosures required on the FTC Rule Buyers Guide are also required on the Maine Rule Buyer's Guide. In some instances, the wording of these disclosures on the Maine window sticker varies from the language used on the FTC sticker. However, these differences do not individually, or as a whole, adversely affect the overall level of protection provided by the Maine Rule.[11]

The major differences between the Maine Buyer's Guide and the FTC Buyers Guide (apart from the additional disclosures required by the Maine Rule) stem from specific motor vehicle regulations in Maine. First, Maine does not permit "as is" sales of used cars. Maine law states that a dealer may not sell or transfer a vehicle unless it meets the state inspection standards and displays a valid inspection sticker.[12] A Maine dealer's minimum post-sale responsibility extends to the repair of any defect in systems or components on the state inspection "checklist," if the purchaser can show that the defect existed at the time of sale. Consequently, unless the vehicle is a reconstructible motor vehicle,[13] the Maine Rule requires Maine dealers to check a box on the Buyer's Guide next to the words "WARRANTY OF INSPECTABILITY."

Second, the Maine Buyer's Guide contains a more detailed disclosure regarding implied warranties than does the FTC Buyers Guide. Unlike the FTC sticker, the Maine Buyer's Guide refers to both the implied warranty of merchantability and the implied warranty of fitness for a particular use.[14] In addition, Maine dealers must check one of three boxes to disclose whether or not they are disclaiming implied warranties, or whether they are limiting the duration of implied warranties to the duration of an express warranty. The FTC Rule does not contain a comparable provision.

(c) *Text of Window Stickers—Additional Disclosures Required by Maine.* Unlike the FTC Rule, the Maine Rule requires that dealers disclose, on the Buyer's Guide, all mechanical defects known at the time of sale, even if the dealer has fully repaired the defect.[15] The Maine Rule also requires dealers to disclose on the Buyer's Guide "any and all substantial damage that the vehicle has sustained that is known to [the dealer], including damage to the body or engine from collision, fire, water or other causes. [The dealer] must make this disclosure even if [the dealer has] fully repaired the damage."[16]

The Commission considered, but ultimately rejected, a provision that would have required dealers to disclose known defects on the FTC Buyers Guide. One of the Commission's reasons for rejecting such a provision was its determination that consumers should not be encouraged to rely on dealer-provided information about the vehicle.[17] The Commission therefore substituted, at the bottom of the FTC Buyers Guide, a suggestion that the consumer request an independent inspection of the vehicle prior to purchase.

The Maine Rule Buyer's Guide also contains an independent inspection suggestion. In large letters under the spaces for the disclosures of known mechanical defects and prior substantial damage is the following statement:

"IMPORTANT: THESE ARE THE ONLY PROBLEMS KNOWN TO THE DEALER. ASK IF YOU MAY GET AN INDEPENDENT INSPECTION BEFORE PURCHASE."

This disclosure is in larger type than its FTC Rule counterpart. It is placed adjacent to the mechanical defects and prior substantial damage disclosures, rather than on the bottom of the form, as is the case with the FTC Buyers Guide.

It is possible that consumers may misinterpret the Maine Rule Buyer's Guide if the spaces for disclosure of mechanical defects and prior substantial damage are left blank. If there are no entries in these spaces, one might believe that the vehicle is in perfect condition, when blank spaces may mean only that the dealer has no knowledge of existing mechanical defects or prior substantial damage. However, this possibility is diminished by both the size and prominent placement of the Maine Rule's independent inspection disclosure. On balance, the Commission concludes that the inclusion of these disclosures on the Maine Buyer's Guide does not adversely affect the overall level of protection provided by the Maine Rule.

The following disclosures are also included on the Maine Buyer's Guide but not on the FTC Buyers Guide: (1) The prior use of the vehicle; (2) how the vehicle was acquired; (3) the availability of the prior owner's name and address; and (4) whether the vehicle has been returned to the manufacturer. These disclosures provide information that may or may not be material to consumers.[18] Even if they are not material, their presence on the Maine Buyer's Guide does not detract from the other information so as to affect significantly the overall level of protection provided to consumers by the Maine Rule.

2. Spanish Language Sales

Unlike the FTC Rule, the Maine Rule does not contain a requirement that dealers prepare, display, and provide a Spanish language Buyer's Guide if the transaction is conducted in that language. The Maine petition states that such a requirement is not necessary in Maine due to Maine's low percentage of Spanish-speaking people.[19] According to the 1980 census,[20] Maine had both the lowest percentage and the lowest raw number of Spanish speaking persons in the United States.[21]

The Commission has no indication that the number of Spanish speaking persons in Maine has increased substantially since the 1980 census.[22] Although the lack of a Spanish language requirement in the Maine Rule may reduce the level of consumer protection for persons in Maine who speak only Spanish, the Commission, based upon the evidence before it, concludes that any potential adverse effect on the overall level of protection is minimal.

C. Does Maine Evidence a Willingness and Ability to Enforce Its Sticker Rule?

In granting Maine's request for exemption from the FTC Rule, the Commission has concluded that Maine has the resources necessary to administer and enforce effectively the Maine Rule. This section sets out the reasons for this conclusion.

[8] Maine's sticker is called a "Buyer's Guide," while the FTC's sticker is called a "Buyers Guide" (no apostrophe).

[9] *Compare* Sections 1(C)(1) (a) and (b) of the Maine Rule *with* 16 CFR 455.2(a) (1) and (2) (1987).

[10] The Maine Rule requires a minimum size of 12½ inches by 8½ inches. The FTC Rule requires a minimum size of 11 inches by 7¼ inches.

[11] All of the wording differences are described in the December 28, 1987 **Federal Register** notice, *See* 52 FR at 48910–48912.

[12] Me. Rev. Stat. Ann. tit. 10, § 1471, subsection 6-A.

[13] *Id.* This section defines a "reconstructible" motor vehicle as "a used motor vehicle which does not meet the [state] inspection standards * * * and which is sold, offered for sale or negotiated for sale to a person other than another dealer for the purpose of transportation after repair or rebuilding."

[14] *See* section 1(C)(2)(j) of the Maine Rule. This disclosure reads: "Maine's implied warranty law may give you additional rights. If the vehicle is still within its useful life and has not been abused, you may have the right to have the dealer repair defects in materials or workmanship that were not apparent when you bought the vehicle. Or you may be able to return the car if the dealer promised you it was fit for a particular use and it was not." In contrast, the FTC "Implied Warranties Only" Buyers Guide refers only to the implied warranty of merchantability by stating that " 'implied warranties' may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle."

[15] Section 1(C)(2)(c) of the Maine Rule; Me. Rev. Stat. Ann. tit. 10, section 1475(2)(C).

[16] Section 1(C)(2)(e) of the Maine Rule; Me. Rev. Stat. Ann. tit. 10, section 1475(2)(D).

[17] SBP, 49 FR at 45716.

[18] In rejecting a prior use disclosure requirement when issuing its rule, the Commission

Continued

acknowledged that such a disclosure might be material to consumers, but concluded that it would not "[provide] consumers with an accurate indication of a car's mechanical condition." SBP, 49 FR at 45720.

[19] Petition, Appendix A, at 4.

[20] June 12, 1987. Letter from Paul M. Siegel, Chief, Education and Social Stratification Branch, Population Division, Bureau of the Census, United States Department of Commerce, Washington, DC 20233.

[21] These data are derived from two census questions. First, the subject was asked: "Does this person speak a language other than English at home?" If the answer to that question was yes, the person was asked: "What is that language?" 2,987 Maine citizens, or 0.3% of Maine's population, answered "Yes" and "Spanish," respectively, to these questions in 1980. This data compares to 3,270,287, or 14.5% of California residents. Of course, many of the persons who answered "yes" to both census questions might also speak English well enough that they would not need a Spanish language Buyer's Guide while shopping for a used vehicle.

[22] The Commission did not receive a response to its specific request for more up-to-date information concerning the number of Spanish-speaking persons in Maine.

Both the Maine Department of the Attorney General and the Maine Department of Motor Vehicles enforce the provisions of the Maine Used Car Information Act, the enabling statute for the Maine Rule. A violation of the Maine Rule will be a *per se* violation of the Maine Unfair Trade Practices Act, which the Maine Attorney General's office is primarily responsible for enforcing.[23] The Department of Motor Vehicles has the power to deny, suspend or revoke the license of any dealer who does not comply with the Maine Rule.[24]

1. Funding and Staffing of Agencies

The Maine Department of the Attorney General has four assistant attorneys general, five paralegals, one investigator and two clerical workers assigned exclusively to consumer protection matters in the state.[25] The enforcement staff at the Department of Motor Vehicles consists of fifteen investigators and two clerical workers.[26] There are also two state police officers who conduct MUCIA inspections on a part-time basis.[27]

2. Enforcement Procedures

(a) *Department of Attorney General:* According to the Maine Petition, enforcement of the MUCIA can commence in at least two ways. First, investigators within the Consumer and Antitrust Division of the Attorney General's Office have been instructed generally to survey used car lots during their travels around the state and to submit reports of their findings to the Director of Investigations.[28] Second, mediators in that office attempt to resolve complaints involving used motor vehicle transactions. As part of this process, the mediator determines whether the dealer in question has been making the disclosures required by both the Maine Rule and the FTC Rule. According to the Petition, repeated failure to make the required disclosures results in an unfair trade practice investigation, which may lead to an Assistant Attorney General initiating a formal enforcement action.

(b) *Department of Motor Vehicles.* The Department of Motor Vehicles employs investigators who enforce the disclosure requirements of the MUCIA.[29] According to the Petition, the DMV typically gives a violating dealer ten days to comply. Failure to do so results in the issuance of a civil complaint in state district court.[30]

3. History of Enforcement of the MUCIA

The mediation program of the Consumer and Antitrust Division of the Attorney General's Office has resolved 197 out of 481 complaints received since January, 1985.[31] During the past two years, that Division has conducted 59 MUCIA civil or criminal investigations, eleven of which were litigated. All eleven resulted in either a consent decree or a court injunction with penalties.[32]

4. Penalties

Each violation of the MUCIA subjects the violator to a civil penalty of between $100 and $1,000.[33] Under the FTC Act, violators of trade regulation rules may be punished by penalties of up to $10,000 per violation.[34] The Maine Rule contains a two-year statute of limitations.[35] This contrasts with the five-year statute of limitations applicable to enforcement of FTC trade regulation rules.[36] Additionally, the Maine Rule specifically provides dealers with a defense if the alleged violations are shown to be "unintentional" and "bona fide error[s]."[37] Neither the FTC Rule nor the FTC Act contains a defense based on intent.[38]

[23] *See* Section I(E) of the Maine Rule; Appendix E of Petition, at 1; Letter from Maine Attorney General James E. Tierney to Secretary, Federal Trade Commission, Appendix F of Petition, at 2.

[24] *See* Me. Rev. Stat. Ann. tit. 29, section 343(1)(F); Me. Rev. Stat. Ann. tit. 29, section 350-A(F); Appendix E of Petition, at 2. To qualify as a "dealer" under this provision, one must comply with the disclosure requirements of the MUCIA.

[25] September 17, 1987 telephone conversation between James McKenna and Matthew Gold. Mr. McKenna stated that the yearly budget for the attorney general's office is not broken down among the various divisions, so he is unable to provide staff with a specific dollar amount representing the budget for his division.

[26] *Id.*

[27] *Id.*

[28] *See* attachment to Appendix E.

[29] Petition, Appendix E, at 2. *See also supra* text accompanying note 31.

[30] *Id.*

[31] Petition, Appendix E, at 1.

[32] *Id.*

[33] Me. Rev. Stat. Ann. tit. 10, § 1477(2).

[34] 15 U.S.C. 45(m)(1)(A) (1978 & Supp. 1987).

[35] Me. Rev. Stat. Ann. tit. 10, section 1477(2). The statute reads: "No action may be brought for a civil violation under this subsection more than 2 years after the date of the occurrence of the violation."

[36] 28 U.S.C. 2462 (1978 & Supp. 1987).

[37] *Id.* The statute reads: "No dealer may be held liable for a civil violation under this subsection if he shows by a preponderance of the evidence that the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error."

[38] *But see* Section 45(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (1978 & Supp. 1987), which requires the Commission to prove "actual knowledge [of a trade regulation rule] or knowledge fairly implied on the basis of objective circumstances." The Main Rule does not contain a specific notice requirement.

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5. Private Right of Action

A dealer who violates the MUCIA may be liable to the purchaser in an amount not less than $100 and not more than $1,000 in liquidated damages, in addition to costs and reasonable attorneys fees.[39] This penalty may be imposed in addition to any civil penalty awarded in a separate action brought by a state agency.[40]

6. Conclusion With Regard to Enforcement

The Petition demonstrates that, based on its enforcement of the Maine Used Car Information Act and other state laws regulating used vehicle dealers, Maine has in place a statewide enforcement program adequate to enforce its Rule effectively.[41] The Maine Attorney General states that his office "has in the past aggressively enforced [the Maine Used Car Information Act] and will continue to do so."[42]

The Commission believes that continued aggressive enforcement should offset the lower civil penalties available under state law. Further, the two-year statute of limitations does not appear to be a significant hindrance to effective enforcement, because rule violations are relatively easy to detect. Additionally, the private right of action available in Maine should increase the overall level of protection provided to consumers. In sum, the Commission concludes that the Petition demonstrates Maine's willingness and ability to enforce its Rule.

IV. Conclusion

For the reasons set forth above, the Commission has determined that Maine has met the exemption standard set out in § 455.6 of the FTC Rule. Specifically, the Commission has determined that: (1) The Maine Rule applies to the same transactions to which the FTC Rule applies; (2) the Maine Rule affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the FTC Rule; and (3) Maine has demonstrated its willingness and ability to enforce its Rule. Accordingly, the Commission grants a statewide exemption, which will be in effect for as long as the State of Maine administers and enforces effectively its Rule.

To ensure that the standards for statewide exemption continue to be met, the State of Maine shall, as a condition to the statewide exemption, be required to provide timely notice to the Commission of any changes in state law, policies or procedures, including court decisions, that significantly affect: (1) Whether state law continues to afford consumers an overall level of protection that is equal to or greater than that provided by the FTC Rule; or (2) whether the state is administering and enforcing effectively its Rule.[43]

The Commission reserves the right to revise this reporting requirement at a later date or to request additional information, should circumstances warrant such action. The Commission also specifically reserves the right to revise, modify, or revoke this statewide exemption, should the public interest so require.

The effective date of the Maine Rule is twenty-one days after the date the Commission grants the exemption. Accordingly, the FTC Rule remains in effect in Maine until May 24, 1988.

List of Subjects in 16 CFR Part 455

Used cars, trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

Editorial Note.—This form, which appears in the Code of Federal Regulations in 16 CFR Part 455, is republished for the convenience of the reader.

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[39] Me. Rev. Stat. Ann. tit. 10, section 1477(3).

[40] *Id.*

[41] Of course, because the Maine Rule itself will not be in effect until twenty-one days after the Commission grants this exemption, there is no record of state enforcement of the Rule to aid the Commission in its consideration of the Petition.

[42] Petition, Appendix F, at 2.

[43] The Commission included these notice requirements when it granted the Wisconsin Petition. *See* 51 FR at 20943–20944.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ **AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☐ **WARRANTY**

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

Editorial Note: This form will not appear in the Code of Federal Regulations.

USED VEHICLE BUYER'S GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

PRIOR USE: ☐ **PERSONAL:** ☐ **OTHER**_____

HOW ACQUIRED: ☐ **TRADE-IN:** ☐ **OTHER**_____

MECHANICAL DEFECTS IF ANY KNOWN: _____

PRIOR SUBSTANTIAL DAMAGE TO BODY OR ENGINE IF ANY KNOWN:

IMPORTANT: THESE ARE THE ONLY PROBLEMS KNOWN TO THE DEALER. ASK IF YOU MAY GET AN INDEPENDENT INSPECTION BEFORE PURCHASE.

☐ WARRANTY OF INSPECTABILITY

STATE LAW REQUIRES THAT THIS VEHICLE MEETS STATE INSPECTION STANDARDS AND HAS A VALID INSPECTION STICKER ISSUED WITHIN 30 DAYS OF THE SALE OF THIS VEHICLE.

☐ NO EXPRESS WARRANTY EXCEPT THAT VEHICLE MEETS STATE INSPECTION STANDARDS

YOU WILL PAY ALL COSTS FOR ANY REPAIRS NOT RELATED TO MEETING STATE INSPECTION STANDARDS. REGARDLESS OF ANY ORAL STATEMENTS ABOUT THE VEHICLE, THE DEALER ACCEPTS NO RESPONSIBILITY FOR REPAIRS EXCEPT THOSE NECESSARY TO PASS STATE INSPECTION.

☐ DEALER EXPRESS WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under Maine law, "implied warranties" may give you even more rights and cannot be limited by the dealer while this express warranty is still in effect. For each repair the buyer will pay a deductible of $ _____

SYSTEMS COVERED:	DURATION:

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, Maine "implied warranties" cannot be limited by the dealer and may give you additional rights.

IMPLIED WARRANTIES

☐ **YES** ☐ **NO** ☐ **LIMITED TO DURATION OF EXPRESS WARRANTY**

Maine's implied warranty law may give you additional rights. If the vehicle is still within its useful life and has not been abused, you may have the right to have the dealer repair defects in materials or workmanship that were not apparent when you bought the vehicle. Or you may be able to return the car if the dealer promised you it was fit for a particular use and it was not.

IMPORTANT INFORMATION

- PRIOR OWNERS NAME AND ADDRESS IS AVAILABLE FROM THE DEALER UPON REQUEST.
- SEE THE BACK OF THIS FORM FOR ADDITIONAL INFORMATION, INCLUDING A LIST OF SOME MAJOR DEFECTS THAT MAY OCCUR IN USED MOTOR VEHICLES.

IMPORTANT NOTE: THIS FORM HAS BEEN REDUCED FROM THE 8½" x 12½" MINIMUM SIZE PRESCRIBED BY SECTION 1(C) (1)(b) of the MAINE USED CAR INFORMATION ACT STICKER RULE

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Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks — bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not worn under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfr. Specs.)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than ¼ inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

Vehicle Returned to Manufacturer.

This vehicle has _____ has not _____ been returned to the manufacturer, its agent or authorized dealer, for its non-conformity with express warranties. These non-conformities were: _____

_____

_____

Notice of Breach of Warranty.

If a dealer fails to perform his obligation under the warranty, the purchaser shall give the dealer written notice of such failure before the purchaser initiates a civil action in accordance with 10 MRSA § 1476. This notice must be sent by registered or certified mail to the dealer's last known business address.

Dealer _____

Address _____

_____

If you have a complaint about this vehicle contact the following representative of the dealer:

Name _____

Title _____ Phone _____

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of the Used Car Information Act (10 MRSA §§ 1471-1477) and the Rules promulgated by the Maine Secretary of State.

IMPORTANT NOTE: THIS FORM HAS BEEN REDUCED FROM THE 8½" x 12½" MINIMUM SIZE PRESCRIBED BY SECTION 1(C) (1)(b) of the MAINE USED CAR INFORMATION ACT STICKER RULE

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-25631; IC-16387; File Nos. S7-11-87 and S7-23-87]

Facilitation of Shareholder Communications; Exclusion of Specified Employee Benefit Plan Participants From Application of the Proxy Processing and Direct Communications Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments that would exclude specified employee benefit plan participants from the operation of the proxy processing and direct communications provisions of the shareholder communications rules. The exclusion would apply only with respect to securities held by an employee benefit plan established by the issuer of the securities or, at the option of the issuer, by its affiliate. Under the amendments, registrants would be required to cause proxy material to be furnished, in a timely manner, to plan participants excluded from the operation of the proxy processing provisions. Finally, the Commission also is adopting an amendment to the definition of employee benefit plan, for purposes of the shareholder communications rules, to include those plans that are established primarily for employees but also include other persons, such as consultants.

EFFECTIVE DATE: These amendments are effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Sarah A. Miller, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Cecilia D. Blye, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of amendments to Rules 14a-1,[1] 14a-13,[2] 14b-1,[3] 14b-2,[4] 14c-1,[5] 14c-7,[6] and 17a-3(a)(9)[7] under the Securities Exchange Act of 1934 ("Exchange Act").[8]

I. Background and Summary

On November 25, 1986, the Commission adopted new shareholder communications rules and related amendments[9] to effect the Shareholder Communications Act of 1985.[10]

The new rules set forth the obligations of banks, associations and other entities that exercise fiduciary powers ("banks") in connection with forwarding proxy material[11] to beneficial owners and facilitating registrants' communications with beneficial owners of securities registered in the banks' names. At the time it adopted the new rules, the Commission deferred, until July 1, 1987, the effectiveness of paragraphs (a) through (c) of Rule 14b-2,[12] which set forth the proxy processing obligations of banks and the omnibus proxy system, to give banks sufficient time to establish workable procedures for the implementation of the proxy processing system. Banks' obligations with respect to the direct communications systems, however, became effective on December 28, 1986.

While the new bank rules, as adopted, covered employee benefit plan participants, the Commission indicated that it would consider, in a separate rulemaking proceeding, the application of the shareholder communications rules to employee benefit plans with securities held in nominee name by either brokers and dealers ("brokers") or banks. On March 27, 1987, the Commission issued a release proposing rules to exclude, under specified circumstances, employee benefit plan participants from the proxy processing and direct communications provisions at the option of the registrant.[13] Specifically, under the March proposal, the registrant could choose to exclude plan particpants with securities held in nominee name pursuant to the plan from the proxy processing system established under the shareholder communications rules, where the plan contained a mechanism for timely dissemination of proxy material to plan participants and action was taken reasonably calculated to assure that plan participants received such materials in accordance with that mechanism. With regard to the direct communications provisions, the proposal provided that a registrant could choose to exclude plan participants from a request for a list of beneficial owners, if the registrant had access, by some means other than the direct communications provisions, to the names and addresses of the plan participants.

In addition, the release set forth a number of alternatives to the proposal. These alternatives included: (1) Making one or both of the exclusions mandatory rather than optional; (2) basing automatic or optional exclusion from the shareholder communications rules on satisfaction of both prerequisites; (3) basing automatic or optional exclusion on satisfaction of only one prerequisite; and (4) an automatic across-the-board mandatory exclusion of employee benefit plan participants from all aspects of the proxy processing and direct communications systems.

Twenty-one commentators responded to the Commission's request for comment on the March proposal.[14] Sixteen of these commentators favored mandatory exclusion of plan participants from the proxy processing system either on an automatic across-the-board basis or on satisfaction of the prerequisite that the plan have a system for obtaining and forwarding proxy material to plan participants.

Two commentators favored an exclusion at the option of the registrant. One commentator opposed, on recordkeeping grounds, any exclusion of plan participants from the proxy processing system. Another commentator, the American Bankers Association ("ABA"), suggested an additional approach to excluding plan participants. The ABA recommended an amendment to the proxy processing provisions that would make registrants solely responsible for ensuring that proxy material is distributed to participants who hold securities of the registrant in nominee name pursuant to an employee benefit plan that provides pass-through voting (the "ABA approach"). Another commentator, the Department of Labor, stated that it had no objections to the ABA approach.

To permit consideration of the ABA approach in addition to the March proposal, the Commission, on June 18,

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[1] 17 CFR 240.14a-1.
[2] 17 CFR 240.14a-13.
[3] 17 CFR 240.14b-1.
[4] 17 CFR 240.14b-2.
[5] 17 CFR 240.14c-1.
[6] 17 CFR 240.14c-7.
[7] 17 CFR 240.17a-3(a)(9).
[8] 15 U.S.C. 78a, *et seq.*
[9] Release No. 34-23847 (November 25, 1986) (51 FR 44267).
[10] Pub. L. No. 99-222, 99 Stat. 1737 (1985), amending 15 U.S.C. 78n(b) (1982).
[11] The phrase "proxy material" is used in this release to refer collectively to proxy cards or requests for voting instructions, proxy soliciting material and annual reports to security holders.
[12] 17 CFR 240.14b-2 (a) through (c).
[13] Release No. 34-24274 (March 27, 1987) (52 FR 11083) (the "March proposal").
[14] The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7-11-87).

1987, published for comment another proposal for the treatment of plan participants under the proxy processing rules that reflected the ABA approach.[15] Under the June proposal, beneficial owners who are employee benefit plan participants would be excluded from the proxy processing provisions with respect to securities of a registrant held in nominee name pursuant to the plan, if two prerequisites were satisfied. The first prerequisite would require the registrant to have access to the names and addresses of such participants by some means other than the direct communications provisions. The second prerequisite would require that the registrant not be prohibited by the terms of the plan from communicating directly with such participants. The June proposal did not require that the plan itself contain a mechanism for furnishing proxy material to plan participants. Rather, it included a requirement that registrants cause proxy material to be furnished to plan participants.

With respect to the direct communications provisions, registrants' requests for lists of beneficial owners would not cover employee benefit plan participants with securities of that registrant held in nominee name pursuant to the plan. Just as for the proxy processing provisions, the exclusion would be conditioned on registrant access to participant names and addresses, by some means other than the direct communications provisions.

Under the June proposal, registrants would have been required to notify brokers and banks of those plans satisfying the necessary prerequisites. Once such notice was received, a broker or bank would not include plan participants when fulfilling its obligations under either the proxy processing or direct communications systems.

Sixteen commentators addressed the June proposal.[16] Of the 15 commentaters that addressed this issue, 12 supported a mandatory exclusion of plan participants from the shareholder communications rules, while two commentators opined that the exclusion should be optional. The Department of Labor stated that it had no objection to adoption of the proposed amendments.

Exclusion of employee benefit plan securities from the shareholder communications rules will result in cost savings to registrants and lessen the administrative burden on brokers and banks. Absent the exclusion, registrants would be required to reimburse brokers and banks for expenses incurred in connection with complying with their obligations with respect to such beneficial owners under the proxy processing and direct communications systems. This would be true even if the registrant has an established system for communicating with such plan participant beneficial owners. In addition, brokers and banks would be required to maintain records regarding plan participants' names, addresses and securities positions, if such participants were covered by the shareholder communications rules.

At the same time, when coupled with a requirement that registrants cause proxy materials to be furnished to these plan participants, the exclusion presents little danger that plan participants will be disenfranchised. Accordingly, as proposed in June, the Commission is adopting a mandatory exclusion from the shareholder communications rules. In contrast, securities of companies unaffiliated with the plan sponsor that are held in an employee benefit plan will continue to be subject to the shareholder communications rules.

The amendments adopted today differ from the June proposal in a number of respects. First, the exclusion is effected through a definition of "exempt employee benefit plan securities," while the June proposal structured the exclusion through prerequisites. Second, the notice requirement has been eliminated for plans established by the registrant ("registrant-sponsored plans"). A notice requirement has been retained, however, with regard to plans established by an affiliate of the registrant and holding securities of the registrant ("affiliate-sponsored plans"). Third, while the exclusion from the shareholder communications rules for securities held by registrant-sponsored plans is mandatory, the exclusion for those held by affiliate-sponsored plans is optional.

The Commission also is amending the definition of employee benefit plan applicable to the shareholder communications rules. As proposed in June, the amendment would expand the term to cover plans primarily for employees, but that also include other persons.

Finally, other technical and clarifying amendments, necessitated by the amendments adopted today, have been made.[17]

II. Discussion

Under the proxy processing exclusion adopted today, registrants generally will be responsible for providing proxy material to employee benefit plan participants. Brokers and banks generally will have no obligation with regard to either responding to registrants' requests for the number of sets of proxy material needed for forwarding to beneficial owners or forwarding such material to these plan participants. Brokers' and banks' sole obligation will be to sign the proxy card on behalf of the voting plan participant. Getting instructions to brokers and banks on the timing and method of signing the proxy card will be the responsibility of the registrant.

The proxy processing exclusion is only an exclusion in the sense that beneficial owner plan participants generally will not receive proxy material in accordance with the shareholder communications procedures. These plan participants, however, will receive such material directly from the registrant, and in a timely manner. In contrast, the exclusion from the direct communications rules is a total exclusion. No alternate procedure for obtaining the names, addresses and securities positions of plan participants is mandated under these rules. Registrants should note, however, that they may be required under the Employee Retirement Income Security Act ("ERISA") [18] to forward directly to plan participants the same shareholder communications they forward to beneficial owners through the direct communications system.[19]

A. Proxy Processing Provisions

1. The Exclusion

The amendments exclude from operation of the proxy processing provisions securities of the registrant held by an employee benefit plan established or sponsored by either the same registrant or an affiliate [20] of the registrant.[21] Securities of a registrant held by a plan sponsored by the same registrant are automatically excluded, while securities held by a plan sponsored by an affiliate of the registrant are excluded only at the option of the registrant.[22] The registrant is required to furnish proxy material to plan participants excluded (either automatically or at the election of the registrant) from the proxy processing provisions.[23]

a. Mandatory—Registrant-Sponsored Employee Benefit Plans. With regard to the mandatory exclusion, the amendments add a proviso to paragraph (a)(2) of Rule 14a–13 specifying that a registrant's Rule 14a–13(a)(1)[24] and (a)(2)[25] search card inquiry shall not cover beneficial owners[26] of exempt employee benefit plan securities. The term "exempt employee benefit plan securities" is defined in new paragraph (d) to Rule 14a–1[27] to include securities of the registrant held by an employee benefit plan[28] established by the same registrant (as well as specified securities held by an affiliate-sponsored plan, which are exempt at the option of the registrant, as discussed below).

All other proxy processing obligations of the registrant are derived from the Rule 14a–13(a) search card inquiry. Accordingly, no other revisions are required to exclude employee benefit plan securities from the proxy processing procedures. Corollary amendments have been made to Rules 14b–1(d)(1)[29] and 14b–2(g)(1),[30] making it clear that brokers and banks have no obligation under the proxy processing provisions to respond to registrants' Rule 14a–13(a) search card inquiries with respect to beneficial owners of exempt employee benefit plan securities or to forward proxy material to such security holders.

The exclusion from the proxy processing provisions does not excuse a bank from executing an omnibus proxy under Rule 14b–2(b)[31] in favor of respondent banks with respect to exempt employee benefit plan securities. Although proxy material will not be distributed to beneficial owners of exempt employee benefit plan securities under Commission shareholder communications procedures and, instead, will be distributed directly by the registrant, the omnibus proxy procedure still will be required to ensure that legal voting authority reaches the bank with which plan securities have been deposited. Alternatively, banks may comply with the terms of any Commission-approved alternate procedure to the omnibus proxy under Rule 14b–2 (d).[32]

New paragraph (d) to Rule 14a–13[33] requires that a registrant cause proxy material to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan.[34] Under this provision, a registrant may adopt in-house procedures to perform its obligations under paragraph (d) of Rule 14a–13 or designate an agent, such as the plan administrator or trustee, to perform the service.[35] These amendments are intended to ensure that employee benefit plan participants, like other beneficial owners, receive proxy material in a timely fashion.

Because banks often do not perform recordkeeping functions for employee benefit plans, they may not have access to the names and addresses of plan participants. Thus, these amendments eliminate the need to require, banks to obtain that information and maintain records regarding plan participants that duplicate those of the registrant. Once a determination has been made that securities held by a registrant-sponsored plan are exempt from the shareholder communications rules, a bank, to the extent it maintains such information, would be free to delete plan participant information, insofar as it relates to the exempt securities, from its beneficial owner records.

To permit brokers to delete information from their records regarding whether or not beneficial owners of exempt employee benefit plan securities objected to disclosure of their names, addresses and securities positions to registrants,[36] Rule 17a–3(a)(9)(ii) [37] has been amended to eliminate the requirement that brokers maintain this information as part of their recordkeeping obligations.[38] This recordkeeping obligation was added as part of the shareholder communications rules.[39] By deleting this requirement as it applies to exempt employee benefit plan securities held by registrant-sponsored plans, the Commission is leaving unchanged what is required under the general broker recordkeeping rules.

b. Optional—Affiliate-Sponsored Employee Benefit Plans. The June proposal generally would have required registrants to exclude employee benefit plan holdings of their securities if the plan was sponsored by an affiliate of the registrant. The exclusion would have been accomplished through the prerequisite that the registrant have

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[15] Release No. 34–24807 (June 19, 1987) (52 FR 23855) (the "June proposal"). Pending further consideration of the manner in which employee benefit plan participants would be treated under the shareholder communications rules, the Commission temporarily deferred imposing on banks an obligation under the shareholder communications rules to distribute proxy material to employee benefit plan participants. Corollary amendments to Rules 14a–13 and 14c–7 temporarily relieved registrants of their corresponding obligations under the shareholder communications rules with respect to such beneficial owners. Release No. 34–24800 (June 18, 1987) (52 FR 23843). The deferral did not apply to employee benefit plans with securities held in nominee name by brokers.

[16] The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–23–87).

[17] All proxy rule amendments discussed below also have been made, where appropriate, to Rules 14c–1 and 14c–7, which govern information statements.

[18] 29 U.S.C. 1001, *et seq.*

[19] *See* n. 23 *infra.*

[20] The term "affiliate" should be interpreted as defined in Rule 12b–2 (17 CFR 240.12b–2).

[21] The term "registrant" means the issuer of the securities in respect of which proxies are to be solicited. *See* Rule 14a–1(j) (17 CFR 240.14a–1(j)).

[22] *See* Section II.A.1.b. *infra* for discussion of the optional exclusion for affiliate-sponsored plans.

[23] Compliance with the provisions of this requirement does not necessarily establish compliance with the fiduciary responsibility provisions of ERISA. Under section 404(a)(1)(D) of ERISA (29 U.S.C. 1104(a)(1)(D)), fiduciaries of employee benefit plans generally are required to discharge their duties in accordance with the documents and instruments governing the plan insofar as they are consistent with requirements of ERISA. In this respect, under sections 403 and 404(a) of ERISA (29 U.S.C. 1103 and 1104(a)), every plan fiduciary must discharge his duties for the exclusive benefit, and solely in the interest, of plan participants and beneficiaries. A fiduciary must adhere strictly to these standards in implementing any plan provisions relating to proxy materials. The Department of Labor has indicated that, in the case of a plan which permits participants to direct plan responses to tender offers, plan trustees would be relieved of liability for losses resulting from participant decisions only if, among other things, they assure that participants are provided information necessary to make independent decisions. *See* letter to John Welch dated April 30, 1984, reprinted in BNA Pens. Rptr., vol. 11, no. 19, at 933 (May 7, 1984). The Department of Labor views the duties of plan fiduciaries under ERISA with respect to pass-through voting of securities similar to those with respect to pass-through of tender offers as articulated in the Welch letter. Thus, in discharging their duties under ERISA, plan trustees may be obliged to take steps to disseminate materials to participants in addition to the materials required to be distributed under the plan.

[24] 17 CFR 240.14a–13(a)(1).

[25] 17 CFR 240.14a–13(a)(2).

[26] If voting authority rests with the plan trustee, the trustee is the beneficial owner for purposes of the shareholder communications rules. *See* Rule 14b–2(i) (17 CFR 240.14b–2(i)).

[27] 17 CFR 240.14a–1(d).

[28] *See* Section II.C.1 *infra* for discussion of the revised definition of "employee benefit plan."

[29] 17 CFR 240.14b–1(d)(1).

[30] 17 CFR 240.14b–2(g)(1).

[31] 17 CFR 240.14b–2(b).

[32] 17 CFR 240.14b–2(d).

[33] 17 CFR 240.14a–13(d).

[34] A new Note 3 to Rule 14a–13(a) directs registrants' attention to their obligations under paragraph (d) of Rule 14a–13. In addition, Note 2 to Rule 14a–13(a) has been amended to add a reference to the newly adopted exclusion.

[35] A registrant that chooses to carry out these obligations through an agent may be liable for the acts or omissions of its agent.

[36] Brokers are required to collect this information pursuant to their obligations under the direct communications provisions. *See* Rule 14b–1(c) (17 CFR 240.14b–1(c)).

[37] 17 CFR 240.17a–3(a)(9)(ii).

[38] In both the March and June proposals comment was solicited on whether Rule 17a–3(a)(9) should be amended to permit brokers to delete such information. Data on the costs associated with brokers continuing to request beneficial owner information from plan participants and maintain this information also was requested. No comments on this issue were received.

[39] Release No. 34–20021 (July 20, 1983) (48 FR 35082).

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access to plan participants' names and addresses, which presumably would be the case with regard to most affiliate-sponsored plans. However, because such access cannot be presumed for all affiliate-sponsored plans, the amendments provide for an exclusion at the option of the registrant that will permit registrants to exclude from the proxy processing provisions their securities held by such plans.

If a registrant has access to the names and addresses of participants in an affiliate-sponsored plan, the amendments would permit the registrant to realize the cost savings associated with the exclusion. If, however, the registrant does not have access to the names and addresses of these plan participants, the registrant will be unable to comply with its obligation under the exclusion to forward proxy materials to plan participants and, instead, will comply with its obligations under the proxy processing provisions of the shareholder communications rules.

Specifically, the amendments provide that the term "exempt employee benefit plan securities" includes securities of the registrant held by an employee benefit plan where such plan is established by an affiliate of the registrant and notice regarding the current solicitation has been given pursuant to Rule 240.14a-13(a)(1)(ii)(C).[40] Once all requirements of the definition are satisfied, registrants would be required under Rule 14a-13(d) to cause proxy material to be furnished, in a timely manner, to beneficial owners of these exempt employee benefit plan securities. The corollary amendments made to Rules 14b-2(d)(1) and 14b-2(g)(1) provide that brokers and banks have no obligation under the proxy processing provisions to respond to registrants' Rule 14a-13 (a)(1) and (a)(2) search card inquiries with respect to beneficial owners of these exempt employee benefit plan securities or to forward proxy material to such security holders.[41]

The June proposal provided that brokers and banks would have been aware of excluded affiliate-sponsored plans through the notice requirement. In the absence of a notice provision, brokers and banks might have difficulty ascertaining which employee benefit plan securities are subject to the exclusion. Thus, the definition of exempt employee benefit plan securities provides for a notification procedure that will inform brokers and banks by means of the search card that securities of the registrant held by an affiliate-sponsored plan are not to be included in responding to registrants' Rule 14a-13 (a)(1) and (a)(2) search cards. New paragraph (a)(1)(ii)(C) of Rule 14a-13 provides that registrants, at their option, may give notice of any affiliate-sponsored plan of the registrant holding securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities. Once such notice is received, a broker or bank will know not to include such beneficial owners in its response to that search card or to forward the forthcoming proxy material to such security holders.

Because the relationship between a registrant and its affiliates may change, the rules have been structured so the notice does not trigger a permanent exclusion from the Commission's proxy processing procedures. Rather, the exclusion only applies to the particular solicitation with respect to which the registrant provided notice through its search card. Accordingly, the definition of exempt employee benefit plan securities refers to notice regarding the current solicitation.

Since the exclusion is optional with respect to securities held by an affiliate-sponsored plan and notice is to be given for every proxy solicitation, the amendments to Rule 17a-3(a)(9)(ii)[42] do not permit brokers to exclude from their records beneficial owner information regarding whether such beneficial owners objected to disclosure of their name, address and securities position to registrants. Similarly, because the exclusion is an optional one with regard to affiliate-sponsored plans and information regarding participants in such plans can be requested at any time, banks should not delete affiliate plan participant information from their beneficial owner records.

2. Proposed Access Prerequisite

The June proposal conditioned mandatory exclusion on the registrant having access to the names and addresses of beneficial owners who are employee benefit plan participants, by some means other than the direct communications provisions of paragraph (b) of Rule 14a-13.[43] This access prerequisite was intended to ensure that registrants could obtain the information necessary to forward proxy material to such plan participants in accordance with the obligation proposed to be placed on registrants. For example, registrants could obtain information as to names, addresses and securities positions of plan participants through payroll deductions or a list of plan participants provided by the plan administrator. Commentators generally opposed the access prerequisite as introducing unnecessary lack of definitiveness, stating that plan sponsor registrants always will have access to the names and addresses of plan participants. As proposed, the access requirement also compelled a notice requirement commentators viewed as burdensome.[44]

The proposed access prerequisite also was designed to limit the exclusion to participants in employee benefit plans only with respect to their holdings of securities issued by a registrant that is the plan sponsor or an affiliate of the sponsor. Ordinarily, a registrant would not have access to the names and addresses of beneficial owners who are participants in employee benefit plans that it does not sponsor.[45] Under the June proposal, the exclusion would not have been applicable to such securities. Rather, the proxy material would have been furnished to plan participants pursuant to the shareholder communications rules.

The rules, as adopted, address commentators' concerns about the access and notice prerequisites by mandating delivery of proxy material to plan participants by the registrant. The mandated delivery requirement is based on the premise that all registrants have or can obtain access to the names and addresses of participants in plans sponsored by them. With respect to affiliate-sponsored plans, the Commission was unable to conclude that all registrants would have access to the names and addresses of such plan participants or that brokers and banks would know which plans are affiliate-sponsored. Therefore, the exclusion was made optional and a notice provision was necessary to effect the exclusion. The registrant, of course, should not give notice regarding affiliate-sponsored plans unless it has access to the information needed to enable it to comply with its obligation to deliver proxy material to the plan participants holding its securities.

In contrast, the definition does not encompass securities held by plans established by parties other than the registrant or its affiliate. With respect to such securities, registrants are required to comply with the proxy processing procedures with respect to plan participant holdings of their securities. Banks and brokers, correspondingly, are required to carry out their proxy processing obligations with respect to such securities.

3. Obtaining Beneficial Owner Information for Plan Participant Holdings

The Commission recognizes that brokers and banks that do not perform participant recordkeeping duties may not necessarily have access to the information necessary to perform their proxy processing obligations regarding securities of the registrant held by either affiliate-sponsored plans (where the registrant has chosen not to trigger the exclusion) or plans sponsored by entities not affiliated with the registrant. Where there is no exclusion from the proxy processing provisions, a broker or bank, in order to satisfy the registrant's request for the number of sets of proxy material needed for forwarding to beneficial owners who are plan participants, would have to request such information from the party performing the recordkeeping function (which may be the registrant itself in the case of a non-plan sponsor's request). If the broker or bank makes a good faith effort to obtain that information from the recordkeeper and is denied access to that information, in the Commission's view, it need not take further steps to satisfy its obligations under these rules.[46]

4. Proposed Prerequisite That Registrants Not Be Prohibited From Communicating With Plan Participants

The June proposal also contained an additional requirement for mandatory exclusion of plan participants from the proxy processing provisions—that a registrant not be prohibited by the terms of the employee benefit plan from communicating directly with beneficial owners who are employee benefit plan participants. This prerequisite was intended to recognize the possibility that a registrant could be unable to fulfill its obligation to cause proxy material to be furnished to plan participants. Under the proposal, distribution of proxy material, in such a situation, would have been accomplished in the most effective manner through the proxy processing provisions of the shareholder communications rules.

Several commentators addressed this prerequisite and stated that it was unnecessary for the rules to distinguish between plans that meet the prerequisite and plans that do not because, in effect, all plans do meet the prerequisite. Plans generally do not prohibit a registrant from communicating directly with plan participants. Plan confidentiality provisions typically restrict management from learning an employee's voting or tender instructions and from gaining access to account records where a tender offeror has purchased any employer stock from the plan pursuant to a hostile tender offer. The latter type of confidentiality provision may, under limited circumstances, prevent the employer only from examining plan records to determine whether any particular employee is still a "beneficial owner" of employer stock in the aftermath of a hostile tender offer. Further, even in the most unlikely event that a plan did contain such a prohibition on communicating directly with participants, the registrant could use a third party such as the plan trustee for distributing proxy materials to plan participants.

5. Proposed Notice Requirement

The June proposal would have required registrants to notify brokers and banks of plans that met the prerequisites for exclusion from the proxy processing provisions. Under the proposed notice provision, the mandatory notice generally would have been given to only one broker or bank—the entity that directly held the registrant's securities in nominee name pursuant to an employee benefit plan. If the registrant failed to notify the appropriate broker or bank, it would have been liable for any reasonable costs incurred by the broker or bank in performing its obligations under the proxy processing provisions with regard to such excluded plan participants.

In recognition of some of the difficulties involved in requiring a notice prior to effectiveness of a mandatory exclusion, the Commission specifically stated in the June proposal that it was considering eliminating the notice requirement because of the increased administrative burdens on banks and brokers. With a notice requirement, banks and brokers would have to: (1) Determine which registrant/plan sponsors had provided notice and which had not; and (2) make provision in their recordkeeping systems for two categories of plans. In addition, a notice requirement could have the result of converting a mandatory exclusion to an optional one because brokers and banks would not be permitted to exclude securities that otherwise satisfied the requirements unless notice had been furnished by the registrant. Consistent with those concerns and commentators' general opposition to a notice requirement, the Commission has deleted the notice requirement from the amendments applicable to the mandatory exclusion. As adopted today, the mandatory exclusion will put all banks and brokers on notice that specific securities held by employee benefit plans are excluded from the proxy processing provisions of the shareholder communications rules.

As discussed above, securities held in affiliate-sponsored plans may be excluded at the option of the registrant. Notice must be given through the search card request in order to trigger the exclusion for such securities with respect to a particular proxy solicitation.

B. Direct Communications Provisions

1. The Exclusion

a. Mandatory—Registrant-Sponsored Employee Benefit Plans. Paragraph (b)(3) of Rule 14a-13[47] is amended to provide that a registrant's request for a list of beneficial owners shall not cover beneficial owners of exempt employee benefit plan securities.[48] Corollary amendments to Rules 14b-1 and 14b-2 provide that brokers and banks shall not include such information when responding to registrants' requests for lists of beneficial owners.[49] This provision is intended to permit registrants to realize cost savings in connection with requesting beneficial owner lists while, at the same time, not requiring brokers and banks that generally do not perform plan recordkeeping duties to develop and maintain such records.

b. Optional—Affiliate-Sponsored Employee Benefit Plans. The optional exclusion regarding registrants' requests for beneficial owner information concerning beneficial owners of the registrants' securities held by an affiliate-sponsored plan is structured in a similar fashion to the mandatory

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[40] 17 CFR 240.14a-13(a)(1)(ii)(C).

[41] As with the mandatory exclusion, the optional exclusion from the proxy processing provisions would not excuse a bank from executing an omnibus proxy under Rule 14b-2(g) in favor of respondent banks with respect to these exempt employee benefit plan securities. *See* discussion *supra* Section II.A.1.a.

[42] *See* discussion *supra* Section II.A.1.a.

[43] 17 CFR 240.14a-13(b).

[44] *See* discussion at Section II.A.5. *infra* regarding the proposed notice requirement.

[45] For example, some plans permit the participants to designate investments in securities other than those issued by the sponsoring registrant.

[46] Non-plan sponsor registrants also would comply with the direct communications procedures under the shareholder communications rules, while registrants may wish to comply with such procedures regarding affiliate-sponsored plan holdings of its securities. *see* discussion *infra* at Section II.B. Broker or bank difficulties, in such cases, in gaining access to the necessary information also would be subject to a good faith effort standard.

[47] 17 CFR 240.14a-13(b)(3).

[48] *See* Section II.A.1 *supra* for discussion of the new definition of exempt employee benefit plan securities.

[49] Rules 14b-1(d)(2) and 14b-2(g)(2) (17 CFR 240.14b-1(d)(2) and 14b-2(g)(2)).

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exclusion from the direct communications provisions. The term "exempt employee benefit plan securities" includes such securities if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to Rule 14a–13(b)(3). Notice is to be given at the time the registrant makes its request for a beneficial owner list. Like the notice provision for the proxy processing provisions, the notice is to be given each time a request for beneficial owner information is made.

2. The Proposed Access Prerequisite

The June proposal provided for an access prerequisite similar to that proposed for the proxy processing exclusion.[50] Commentators similarly viewed an explicit access prerequisite as unnecessary because plan sponsor registrants always will have access to plan participants' names and addresses. The Commission agrees. Instead of an explicit prerequisite, the rules, as adopted, address the need for access through the definition of exempt employee benefit plan securities, as is done in the proxy processing system.

3. Proposed Notice Requirement

The June proposal provided for a notice requirement for the direct communications system like that proposed for the proxy processing exclusion. For the same reasons the Commission deleted the notice requirement for the proxy processing provisions, the Commission has deleted the notice requirement for the direct communications system, except with respect to the optional exclusion for affiliate-sponsored plans.

C. Other Revisions

1. Amendment to the Definition of Employee Benefit Plan

As proposed in June, amendments to paragraph (b) to Rule 14a–1 [51] and paragraph (b) to Rule 14c–1 [52] substitute the term "primarily" for the term "solely" in the definition of employee benefit plan. These definitions previously included only plans solely for employees, directors, trustees or officers.[53] The amended definitions also encompass plans that are primarily for employees but also include other persons, such as consultants.

2. Dividend or Interest Reinvestment Plans

In the June proposal, the Commission requested comment on whether the proposed exclusions from the proxy processing and direct communications provisions should be expanded further to include dividend or interest reinvestment plans. Such plans often allow holders of securities to have their dividends or interest automatically reinvested by the dividend or interest paying agent in additional securities in lieu of cash distribution. Securities purchased under the plan generally are held in nominee name. One commentator on the March proposal stated that a common requirement for such plans is that a participant must hold at least one share of the registrant's stock in his own name. According to this commentator, this requirement assures that the name and address of the participant is known to the registrant, despite the fact that the participant's ownership of the registrant's securities is in nominee name. Accordingly, the Commission solicited comment in connection with the June proposal on whether, in fact, this is a common feature of such plans.

Commentators were divided on whether this was a common feature of dividend or interest reinvestment plans. Two commentators noted that, although the plan may require the participant to be a record holder of at least one share of the registrant's stock at the time of enrolling in the plan, some plans do not require the record holder to maintain any shares directly in its name after joining the plan.

Due to the division among commentators regarding common features of these plans and the Commission's desire not to make it more difficult for security holders to exercise their right to vote, the Commission has determined that, at this time, it will not exclude securities held pursuant to a dividend or interest reinvestment plan from the shareholder communications rules. Participants in such plans will continue to receive proxy material and other corporate communications through established shareholder communications systems.

III. Cost-Benefit Analysis

The Commission requested commentators to provide views and data as to the costs and benefits associated with the proposed amendments. In the June release, the Commission noted that the proposal would obligate the registrant to furnish proxy material to beneficial owners whose securities are held in nominee name pursuant to an employee benefit plan, but eliminate both the requirement that record holders and respondent banks distribute proxy material to such plan participants, and the need for record holders and respondent banks to obtain and maintain beneficial owner information regarding such plan participants. In addition, the Commission noted that the proposals would permit further cost savings to registrants in obtaining beneficial owner lists, the charges for which are calculated on a per name basis.

The Commission also noted that additional costs would be incurred in connection with the notice requirement. The notice requirement has been deleted from the amendments as adopted, except for notice with respect to the optional exclusion for affiliate-sponsored plans.

Commentators generally expressed the view that the proposed amendments would decrease costs of complying with the shareholder communications rules for both brokers and banks and registrants.

IV. Statutory Basis and Text of Amendments

These amendments are being adopted pursuant to sections 12, 14, 17, and 23(a) of the Securities Exchange Act of 1934.[54]

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Banks, Associations.

V. Text Of Amendments

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

(Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat 901, as amended; 15 U.S.C. 78w * * * Sections 240.14a–1, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1 and 240.14c–7 also issued under sections 12, 15 U.S.C. 78*l*, and 14, Pub L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n.

2. By revising paragraph (b), redesignating current paragraph (d) through (k) as (e) through (l) and adding new paragraph (d) to § 240.14a–1 to read as follows:

§ 240.14a–1 Definitions.

* * * * *

(b) *Employee benefit plan.* For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

* * * * *

(d) *Exempt employee benefit plan securities.* For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term "exempt employee benefit plan securities" means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current solicitation has been given pursuant to § 240.14a–13(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14a–13(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

* * * * *

3. By revising paragraphs (a)(1)(ii) (A) and (B), paragraph (a)(2), Notes 1 and 2 to paragraph (a), paragraph (b)(3) and paragraph (d) and adding Note 3 to paragraph (a) and new paragraph (a)(1)(ii)(C) to § 240.14a–13, to read as follows:

§ 240.14a–13 Obligations of registrants in communicating with beneficial owners. [Effective July 1, 1987]

(a) * * *
(1) * * *
(ii) * * *

(A) whether the registrant, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to § 240.14b–1(c) and § 240.14b–2(e) (2) and (3); (B) the record date; and (C) at the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to § 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

* * * * *

Note 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14a–1(i)).

Note 2: The attention of registrants is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to § 240.14b–1(b) and § 240.14b–2(b) (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to §§ 240.14b–1(c) and 240.14b–2(e) (2) and (3).

Note 3: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercises fiduciary powers; *Provided however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in § 240.14a–1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

* * * * *

(d) If a registrant solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause proxies (or in lieu thereof requests or voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

4. By redesignating current paragraph (d) as (e) and adding new paragraph (d) to § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(d) With regard to beneficial owners of exempt employee benefit plan securities:

(1) Not include information in its response pursuant to paragaph (a) of this section or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, or annual reports to security holders pursuant to paragraph (b) of this section to such beneficial owners; and

(2) Not include in its response pursuant to paragraph (c) of this section data concerning such beneficial owners.

* * * * *

5. By revising paragraphs (e)(2)(i) and (f)(1), removing current paragraph (j), redesignating paragraphs (g) through (i) as (h) through (j), adding new paragraph (g) and revising newly redesignated paragraph (h) of § 240.14b–2 to read as follows:

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(e) * * *
(2) * * *

(i) With respect to customer account opened on or before December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have consented

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[50] The March proposal contained a similar access prerequisite for the direct communications exclusion. That exclusion was to be optional on the part of the registrant. The exclusion adopted today, however, is mandatory, except with respect to affiliate-sponsored plans.

[51] 17 CFR 240.14a–1(b).

[52] 17 CFR 240.14c–1(b).

[53] The amended definitions apply only to the shareholder communications rules and do not modify, in any way, the definitions included in Rules 405 (17 CFR 230.405) and 701 (17 CFR 230.701) under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), and Rule 16b–3 (17 CFR 240.16b–3) under the Exchange Act.

[54] 15 U.S.C. 78*l*, 78n, 78q and 78w(a).

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affirmatively to disclosure of such information, subject to paragraph (i) of this section; and

* * * * * *

(f) * * *

(1) Its obligations under paragraphs (b), (c), (e) and (i) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b), (c), (e) and (i) of this section; or

* * * * * *

(g) With regard to beneficial owners of exempt employee benefit plan securities, shall not: (1) Include information in its response pursuant to paragraph (a) of this section; forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, or annual reports to security holders pursuant to paragraph (c) of this section to such beneficial owners; or comply with any alternative to paragraph (c) of this section approved by the Commission pursuant to paragraph (d) of this section; or

(2) Include in its response pursuant to paragraphs (e) and (i) of this section data concerning such beneficial owners.

(h) For purposes of determining the fees which may be charged to registrants pursuant to § 240.14a–13(b)(5) and paragraph (f)(1) of this section for performing obligations under paragraphs (b), (c), (e) and (i) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b) and (c) of § 240.14b–1 shall be deemed to be reasonable.

* * * * * *

6. By revising paragraph (b), redesignating current paragraphs (d) through (j) as (e) through (k) and adding new paragraph (d) to § 240.14c–1 to read as follows:

§ 240.14c–1 Definitions.

* * * * * *

(b) *Employee benefit plan.* For purposes of § 240.14c–7, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

* * * * * *

(d) *Exempt employee benefit plan securities.* For purposes of § 240.14c–7, the term "exempt employee benefit plan securities" means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current distribution of information statements has been given pursuant to § 240.14c–7(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14c–7(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

* * * * * *

7. By revising paragraphs (a)(1)(ii) (A) and (B), paragraph (a)(2), Note 3 to paragraph (a), paragraph (b)(3) and paragraph (d) and adding Note 4 to paragraph (a) and new paragraph (a)(1)(ii)(C) to § 240.14c–7 to read as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners. [Effective July 1, 1987]

(a) * * *

(1) * * *

(ii) * * *

(A) whether the registrant pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to § 240.14b–1(c) and § 240.14b–2(e)(2) and (3); (B) the record date; and (C) at the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to § 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

* * * * * *

Note 3: The attention of registrants is called to the fact that each broker and dealer has an obligation pursuant to applicable self-regulatory organization requirements to obtain and forward, in a timely manner, (a) information statements to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the broker or dealer that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to § 240.14b–1(c).

Note 4: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause information statements and annual reports to security holders to be furnished, in accordance with § 240.14c–2, to beneficial owners of exempt employee benefit plan securities.

(b) * * *

* * * * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in § 240.14a–1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

* * * * * *

(d) If a registrant furnishes information statements to record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause information statements and annual reports to security holders to be furnished, in accordance with § 240.14c–2, to beneficial owners of exempt employee benefit plan securities.

8. By adding the word "and" at the end of paragraph (a)(9)(i) and adding an introductory clause to paragraph (a)(9)(ii) of § 240.17a–3 to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(9) * * *

(ii) Except with respect to exempt employee benefit plan securities as defined in § 240.14a–1(d), but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, * * *

* * * * * *

By the Commission.

Jonathan G. Katz,

Secretary

April 27, 1988.

[FR Doc. 88–10197 Filed 5–6–88; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM88–16–000; Order No. 495]

Regulations Amending Commission Review of Contested DOE Remedial Orders

Issued: April 25, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising the procedures for Commission review of contested Department of Energy (DOE) remedial orders. These revised procedures provide that participants will have 15 days to file written comments with the Commission on the presiding officer's decision and proposed order and seven days to file reply comments. The Commission will consider these comments in its final order affirming, modifying or vacating the contested DOE remedial order.

EFFECTIVE DATE: April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising the procedures for Commission review of contested Department of Energy (DOE) remedial orders. These revised procedures provide that participants will have 15 days to file written comments with the Commission on the presiding officer's decision and proposed order and seven days to file reply comments. The Commission will consider these comments in its final order affirming, modifying or vacating the contested DOE remedial order.

II. Background and Discussion

Section 503(c) of the Department of Energy Organization Act [1] authorizes the Commission to review contested remedial orders issued by the Office of Hearings and Appeals of the Department of Energy (DOE) to parties in violation of the DOE's Mandatory Petroleum Price Regulations.[2] DOE's regulations were promulgated to effectuate the statutory mandates of the Emergency Petroleum Allocation Act of 1973 (EPAA).[3] The Commission's procedures for review of contested DOE remedial orders are contained in Subpart I of Part 385, in the Commission's regulations.[4]

Under the Commission's current regulations, at the conclusion of the Commission's proceeding to review DOE's remedial order, the presiding officer certifies the proposed findings of fact and conclusions of law with a copy of the record of the proceedings to the Commission.[5] The Commission then issues a final order affirming, modifying or vacating the contested DOE remedial order, or directs other appropriate relief.[6]

In this final rule, the Commission is revising § 385.913 of its regulation to provide that participants will have 15 days to file with the Commission written comments on the presiding officer's decision and proposed order. Under § 385.913, participants will then have seven days to file reply comments in the proceeding. These written comments must be limited to 15 pages, double spaced, unless otherwise ordered by the Chief Administrative Law Judge.

III. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant effect on the human environment.[7] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[8] No environmental consideration is necessary for the promulgation of a rule that is procedural or that does not substantially change the effect of the regulations being amended.[9] This final rule is procedural in nature. It requires the Commission to give notice and allow an opportunity for comment on a proposed initial decision in a contested DOE remedial order proceeding. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

IV. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA),[10] and the Office of Management and Budget's (OMB) regulations,[11] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements provided for in this rulemaking do not require OMB approval since this information is being collected as part of a general solicitation of fact or opinion from the public as provided in OMB regulations.[12] Therefore, this rule will not be submitted to OMB for review or approval.

V. Effective Date

This final rule is a matter of agency organization, procedure and practice. Since this rule does not itself alter the substantive rights or interests of any interested persons, although it does alter the manner in which these persons present their viewpoints to the Commission, prior notice and comment are unnecessary under section 4 of the Administrative Procedure Act.[13] Therefore, the Commission finds good cause to make this rule effective immediately upon issuance.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 385, Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective April 25, 1988.

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[1] 42 U.S.C. 7193(c) (1982).

[2] 10 CFR Part 212 (1987).

[3] 15 U.S.C. 751 *et seq.* (1982).

[4] 18 CFR 385.901–917 (1987).

[5] 18 CFR 385.913 (1987).

[6] 18 CFR 385.914 (1987).

[7] "Regulations Implementing National Environmental Policy Act," Order No. 486, 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶30,783 (Dec. 10, 1987), to be codified at 18 CFR 380.2(a) and 380.4(a).

[8] *Id.* to be codified at § 380.4.

[9] *Id.*, to be codified at § 380.4(a)(2)(ii).

[10] 44 U.S.C. 3501–3520 (1982).

[11] 5 CFR 1320.12 (1987).

[12] 5 CFR 1320.7(k)(4) (1987).

[13] 5 U.S.C. 553(b) (1982).

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By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. Section 385.913 is revised to read as follows:

§ 385.913 Proposed order (Rule 913).

(a) After the conclusion of the hearing and after the filings under Rule 912 (a) and (b), (proposed findings of fact, conclusions of law, and comments) the presiding officer will issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order will be based on the entire record before the presiding officer, including the record of prior proceedings certified by the Secretary.

(b) Participants may file with the Secretary of the Commission, within 15 days of issuance of the proposed order of the presiding officer, written comments on the presiding officer's decision and proposed order.

(c) Participants may file with the Secretary of the Commission, within seven days of the end of comment period prescribed in paragraph (b) of this section, reply comments limited to a response to any arguments and issues raised in the written comment.

(d) The presiding officer will certify and file with the Secretary of the Commission a copy of the record in the proceedings and copies of the written and reply comments filed pursuant to paragraphs (b) and (c) of this section. The presiding officer will also submit to the Commission a revised proposed order.

(e) Unless otherwise ordered by the Chief Administrative Law Judge, written comments and reply comments must be limited to 15 pages, doublespaced.

[FR Doc. 88–10253 Filed 5–6–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8179]

Organizations Under Common Control; Eighty Percent Control Test For a Brother-Sister Controlled Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8179, which was published in the **Federal Register** for Wednesday, March 2, 1988 (53 FR 6603). T.D. 8179 issued final regulations and withdrawal of temporary regulations relating to organizations under common control for purposes of certain rules relating to pension, profit-sharing, and stock bonus plans.

FOR FURTHER INFORMATION CONTACT: Patricia Pellervo, 202–566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these corrections relate to the aggregation of employees of members of a group of corporations, trades, or businesses that are under common control.

Need For Corrections

As published, Treasury Decision 8179 contains errors (in the instructional paragraphs) on page 6605, second column.

Corrections of Publication

Accordingly, the publication of Treasury Decision 8179, which was the subject of FR. Doc. 88–4238, items 1 and 2 of Par. 2 are corrected to read as follows:

Par. 2. Section 1.52–1 is amended as follows:

1. Paragraphs (c)(1)(i) and (c)(1)(ii) are amended by removing "§ 11.414(c)–4(b)(1)" and adding instead "§ 1.414(c)–4(b)(1)".

2. Paragraph (d)(1)(i) is amended by removing § 11.414(c)–4 and adding instead § 1.414 (c)–4 and by removing ", singly or in combination, ".

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 88–10099 Filed 5–6–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 210 and 216

43 CFR Part 3160

Onshore Oil and Gas Production Accounting, Transfer of Responsibility

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is issuing this final rulemaking to amend its regulations governing production accounting at 30 CFR Part 216 to add a requirement for lease operators to report onshore production data to MMS. This final rule provides for the transfer of responsibility for production reporting for onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to MMS.

A phased conversion schedule will be followed to accomplish the transfer of production reporting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 will remain in effect until the transfer is completed. However, this final rulemaking amends 43 CFR Part 3160 to provide instructions to operators during the conversion.

This final rulemaking also amends 30 CFR Part 210 to add a reference to an "Onshore Production Reporter Handbook" which will be distributed to all operators and will provide specific guidance on how to prepare and submit the required production data to MMS.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Gregory Smith of the Production Accounting Division of the Royalty Management Program, MMS.

I. Background

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the Production Accounting and Auditing System (PAAS) to onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory

Committee (RMAC) propose recommendations on the issue.

The DOI study, called the "Mineral Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160–6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs (BIA), States, and Indian Tribes.

Based on these studies, the Secretary decided in June 1987 that:

—Responsibilities for receipt and processing of production data should be transferred from BLM to MMS,

—Operators of Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report which will be slightly modified, and

—The MMS should distribute production data to all users.

II. Summary of Rule Adopted

On January 15, 1988, MMS published a Notice of Proposed Rulemaking in the **Federal Register** (53 FR 1039) to amend its regulations to provide for lease operators to report onshore production data to MMS. The amendments being adopted are substantially the same as the proposed amendments. Therefore, much of the discussion in the preamble to the proposed amendments applies to the final amendments. The proposed rulemaking provided for a 30-day public comment period which ended February 16, 1988. Based on comments received from the public on the proposed amendments, certain changes were made. These changes are discussed below in Section III, Comments Received on Proposed Rule.

Onshore production data will be reported to MMS on the new Form MMS–3160 described in the proposed rule. Section 216.10 of the adopted rule provides for obtaining information reporting forms from MMS including the Form MMS–3160.

Specific and detailed guidance for preparation of the Form MMS–3160 will be forthcoming in an "PAAS Onshore Oil and Gas Reporter Handbook" to be distributed to all operators. This final rulemaking includes the addition of a reference to the "PAAS Onshore Oil and Gas Reporter Handbook" in §§ 210.53 and 216.15.

III. Comments Received on Proposed Rule

One commenter requested that MMS allow operators to also report the currently reported operator well number on the Form MMS–3160 in addition to requiring reporting by API well number.

MMS Response: The MMS will allow the operator well number on the Form MMS–3160.

One commenter requested that MMS provide operators with both the BLM and MMS lease/agreement numbers during the conversion phase, presumably for facilitating communication with each agency.

MMS Response: The BLM and MMS have synchronized the relevant data bases [BLM's Automated Inspection Records System (AIRS) and MMS's Production Accounting and Auditing System (PAAS)] with the same lease/agreement numbers. As a result, operators will be able to refer to one unique number for any particular lease or agreement when communicating with either BLM or MMS for production-related inquiries.

Three commenters requested that the due date for the Form MMS–3160 be changed to the 15th day of the second month following the month being reported to allow more time for gas reporting and to be consistent with the due date for the Form MMS–4054.

MMS Response: The MMS agrees and has changed the due date for Form MMS–3160 in the adopted regulation to the 15th day of the second month following the month being reported.

Two commenters provided miscellaneous comments relative to the "PAAS Onshore Oil and Gas Reporter Handbook."

MMS Response: The comments have been reviewed and have been incorporated into the handbook, as appropriate.

One commenter stated that companies reporting on the standard PAAS forms, including Form MMS–4054, incur a greater exposure to penalties.

MMS Response: The line-item approach to assessments will apply to both the Form MMS–3160 and the Form MMS–4054. The MMS will not issue reporting assessments for any onshore operators until all onshore operators have been converted and are reporting production data for all leases/agreements to MMS.

Three commenters stated that the current regulations provide for a 1-year notification of any change to production reporting requirements. These commenters further stated that only a 2-week period was allowed to comment on the proposed rule.

MMS Response: Final rulemaking by MMS on PAAS reporting and recordkeeping requirements was published in the **Federal Register** on March 7, 1986 (51 FR 8168) and codified in the Code of Federal Regulations at 30 CFR Part 216. Section 216.20 provides for a 1-year advance notice prior to the application of the existing PAAS reporting requirements to operators not already reporting to the PAAS on April 7, 1986. The existing PAAS reporting requirements, at that time, included the standard PAAS forms as originally designed—Forms MMS–4050 through 4061. The Form MMS–3160 was not a PAAS reporting requirement on April 7, 1986. Because operators are currently required to report production data to BLM, the new MMS requirements do not impose substantially additional requirements. The proposed rule provided for a 30-day public comment period.

Five commenters stated that the onshore reporting changes would inflict paperwork hardships and associated increased costs on industry. One of these commenters explained that the increased burden would be caused by changes in reporting method, office identification numbers, and data elements reported. Two of these commenters thought that the present system is good and that currently-reported information is sufficient for MMS.

MMS Response: The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) requires that the Department of the Interior develop a comprehensive production accounting and auditing system. The primary reason for developing a system to automate the existing production reports rather than requiring reporting on standard PAAS forms was to minimize reporting burdens to industry. This decision was based mostly on a recommendation of an RMAC panel which included four industry representatives who surveyed many other industry personnel during their deliberations. Changes to current reporting include only those items (mostly identifying numbers) needed to

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automate the data and to allow for production/sales comparisons. The format of the report is essentially unchanged. The MMS feels that although some up-front costs will be incurred by industry to incorporate new identifying numbers into files/systems, the proposed changes are quite minor.

Two commenters said that the 30-day operator notification period before each phase of conversion was too short. Another commenter requested that conversion correspondence should be sent to an official designated by the operator and that the 30-day compliance be conditioned on the date of receipt of notification.

MMS Response: The MMS agrees and has changed the official notification period to 60 days. As an additional notification procedure, MMS has and will continue to send updates to the conversion schedule to each operator when and if they occur. Individual companies are welcome to identify and inform MMS of official designees to receive conversion correspondence.

One commenter requested that conversion phases not include areas smaller than a State because this may fragment a company's recordkeeping procedures.

MMS Response: The MMS agrees and, except for an initial pilot phase of leases/agreements under the jurisdiction of BLM's Rawlins (Wyoming) District Office, conversion phases will include areas at least as large as one State.

One commenter stated that any further changes to onshore reporting requirements should require new regulations.

MMS Response: The MMS agrees that any further substantial changes should require publication of both proposed and final regulations.

One commenter requested that once the initial phase of conversion is underway, operators be given the option of reporting their unconverted leases/agreements to BLM on either the existing production report (BLM Form 3160–6) or the Form MMS–3160.

MMS Response: The BLM and MMS agree and have changed the provisions of 43 CFR Part 3160 to reflect this option. The BLM will accept either the Form MMS–3160 or the BLM Form 3160–6 for unconverted leases/agreements once the initial phase of conversion is underway.

Three commenters thought that any present or future requirement to submit reports detailing gas analysis and/or operations at gas or fractionation plants is not justified. One of these commenters further stated that there is no justification for requiring these reports from those companies reporting onshore operations on standard PAAS forms, while not requiring these reports from other companies.

MMS Response: The Department is currently assessing the usefulness and cost effectiveness of requiring gas analysis and gas/fractionation plant reports for onshore production. The MMS provides companies who currently report on standard PAAS forms (including gas analysis and plant reports) the option of continuing such reporting or adopting the Form MMS–3160 as the onshore production report.

The Council of Energy Resource Tribes thought that MMS's intended treatment of confidential production data was appropriate. One commenter stated that no production data should be treated as confidential, while another commenter felt that all production data should be treated as confidential. One commenter stated that all Indian production data is confidential in nature. Two additional commenters stated that MMS should allow operators to label certain reports as confidential and honor these requests for confidential treatment.

MMS Response: It is MMS's position that production data related to Federal leases/agreements and Indian leases involved in a unitization or communitization agreement containing non-Indian leases are not confidential in nature. The basis for this position is that the data are nonfiscal in nature and are generally available through commercial information services or through State governmental agencies. Production data from Indian leases involved in agreements that include non-Indian leases are not considered confidential because production data from the entire agreement and from the non-Indian leases is likely to be publicly available. Because this data is available, the production data on the Indian leases could be determined. However, an exception to this position may be certain production data specifically protected by statute. For example, the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. 2101–2108, states that "* * * information possessed by the Department regarding * * * the production, products or proceeds thereof, shall be held by the [Department] as a privileged proprietary information of the affected Indian or Indian Tribe." This language may require the Department to protect production data related to any IMDA leases which may be involved in units including non-Indian leases.

Production data from leases/agreements that have *only* Indian interests will be considered confidential. This position is based on extensive Departmental precedent with regard to Indian mineral lease data. Certain data that industry claims as confidential, such as "tight hole" data or test production data will be protected if MMS so classifies the data. Operators must petition MMS for such classifications, which will be reviewed on a case-by-case basis. Requests for confidential classification must be submitted in writing to the Chief, Production Accounting Division, Royalty Management Program, MMS, prior to submitting the first report for which confidential status is desired. Requests must provide justification why the data should be designated as confidential.

A new subsection has been added to 30 CFR 216.50 stating that all other information will be released.

Two commenters requested that the Department consider well-level reporting of sales volumes and quality in addition to the currently-reported well production volumes and lease/agreement sales volumes/quality data.

MMS Response: Implementation of this proposal would require more detailed onshore production reporting and would, therefore, cause impacts to Departmental Agencies (BLM and MMS) and industry. The Department is currently assessing these impacts. If a decision is made to implement the proposal, a separate proposed rulemaking would be issued and comments would be solicited.

Two commenters expressed concern that production data will not be expeditiously provided to royalty owners. One of these commenters stated that a 3- to 6-month delay in receiving the information will occur because of this delay. This commenter requested that MMS require operators to submit reports both to royalty owners and to MMS.

MMS Response: Onshore production reports will be due on or before the 15th day of the second month following the period of production. After the end of this month, MMS will send the production data to States, tribes, and BIA. The MMS feels that this constitutes expeditious provision of data to royalty owners. In addition, MMS will provide the production data to BLM on a bi-weekly basis. The MMS does not require duplicate submission of reports and will not interfere with arrangements by royalty owners to acquire such reports from operators.

One commenter expressed concern that royalty owners would have more difficulty than now exists in gaining access to source documents for production data.

MMS Response: The MMS will provide monthly reports of production data to offices of State and tribal royalty owners and to the BIA for tribal and individual Indian royalty owners. These reports, which will be sent directly to state, tribal, and BIA offices, will eliminate the current necessity of royalty owners having to contact BLM offices for production data. This service, which the Department has not provided in the past, will especially benefit those royalty owners living far from BLM offices. Overall, access to production data by royalty owners will be improved.

One commenter stated that BIA should be allowed to provide comments on the onshore production system and that training in the use of the system should be provided to tribal personnel.

MMS Response: The MMS agrees. The BIA has been involved and has received and commented on the format of reports planned for distribution to tribes and BIA. Upon request, tribal personnel will be provided training in production reporting requirements, system processing, and content and meaning of output reports provided to tribes and BIA.

IV. Conversion Schedule

A phased conversion schedule will be followed to accomplish the transfer of production accounting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 will remain in effect until the conversion is completed. However, this final rule amends 43 CFR Part 3160 to provide instructions to operators during the conversion. Operators are required to continue reporting production data to BLM on BLM Form 3160–6 until such time as they are notified to begin reporting to MMS. Notification will include start-up schedules, specific reporting guidelines, and facsimile (sample) reports to guide initial reporting.

In Phase 1a of the conversion schedule, only production reports (Form MMS–3160) related to production on leases/agreements under the jurisdiction of the Rawlins, Wyoming, BLM District Office will be due for receipt by MMS in Lakewood, Colorado. In Phase 1b of the schedule, only reports under the jurisdiction of the Colorado, Montana, and Utah BLM State Offices and the remaining reports under the jurisdiction of the Wyoming BLM State Office will be due for receipt by MMS. In Phase 2, production reports related to production on leases/agreements under the jurisdiction of the Eastern States, Nevada, California, and Alaska BLM State Offices will be due for receipt by MMS. In Phase 3, production reports related to production on leases/agreements under the jurisdiction of the BLM Tulsa District Office will be due for receipt by MMS. In Phase 4, production reports related to production on all other leases/agreements under the jurisdiction of the New Mexico BLM State Office will be due for receipt by MMS.

The effective date of this final rule is June 1, 1988. Consequently, all operators of leases under the jurisdiction of the Rawlins, Wyoming, BLM District Office (Phase 1a of the conversion schedule), should begin reporting onshore production data to MMS on the new Form MMS–3160 for the April 1988 report month, due to MMS by June 15, 1988. The MMS will publish a notice in the Federal Register on the receipt due date for the other phases of the conversion schedule at least 60 days prior to the date required. Each operator will be given written notice to begin reporting to MMS on the Form MMS–3160 at least 60 days before the beginning of the production month for which they are being converted.

The conversion schedule may be delayed if BLM or MMS experiences significant difficulty in preparatory work related to this transfer of responsibilities. Likewise, the conversion schedule may be delayed if the error rate for reports in any phase remains at a high level for 3 months after conversion.

Operators submitting corrected/amended reports for reporting periods prior to the effective date of this rule should submit them to the appropriate BLM office. Those reports may be submitted on either the Form MMS–3160 or Form BLM 3160–6. However, all corrected/amended reports for prior periods must show the same well numbers as shown on the original submission.

V. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rulemaking establishes in MMS regulations a reporting requirement that currently exists in BLM regulations, with a few additions to the information collection requirements.

Administrative Procedure Act

Congress has recognized the need for MMS to improve its production accounting system. The MMS needs to begin implementation of the conversion as soon as possible, and since the new reporting requirements are not a significant change, MMS has determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this rule effective June 1, 1988.

Paperwork Reduction Act of 1980

The information collection requirements contained in § 216.50 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0040.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: April 21, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 210 and 216 and 43 CFR Part 3160 are amended as set forth below:

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TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 210.53(a) is revised to read as follows:

§ 210.53 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in the *Auditing and Financial System (AFS) Oil and Gas Payor Handbook, Production Accounting and Auditing System (PAAS) Reporter Handbook, and PAAS Onshore Oil and Gas Reporter Handbook* which are available from: Minerals Management Service, Attention: Lessee(or Reporter) Contact Branch, P.O. Box 17110, Denver, Colorado 80217.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for Part 216 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Section 216.10 is revised to read as follows:

§ 216.10 Information collection.

The information collection requirements contained in Part 216 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name and filing date	OMB No.
MMS–3160—Monthly Report of Operations—due by the 15th day of the second month following the production month	1010–0040
MMS–4050—Mine Information Report—due at the request of MMS during the initial conversion of the mine/lease to the PAAS	1010–0063
MMS–4051—Facility and Measurement Information Form and Supplement—due at the request of MMS during the initial conversion of the facility and measurement device operators to the PAAS	1010–0040
MMS–4052—Well Information Form—due at the request of MMS during the initial conversion of the lease and agreement operators to the PAAS	1010–0040
MMS–4053—First Purchaser Report—due at the request of MMS	1010–0040
MMS–4054—Oil and Gas Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4055—Gas Analysis Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4056—Gas Plant Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4057—Fractionation Plant Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4058—Production Allocation Schedule Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4059—Solid Minerals Operation Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4060—Solid Minerals Facility Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4061—API Well Number Change Report—due 10 days prior to submission of Form MMS–4054	1010–0040

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information collected will be used to permit accounting and auditing of production information submitted by the reporter for mineral production from Federal and Indian leases and federally approved agreements. The reports are mandatory. Information reporting forms are available from MMS. Requests shall be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

3. Section 216.15 is revised to read as follows:

§ 216.15 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in the *Production Accounting and Auditing System (PAAS) Reporter Handbook, and PAAS Onshore Oil and Gas Reporter Handbook*, which are available from: Minerals Management Service, Attention: Reporter Contact Branch, P.O. Box 17110, Denver, Colorado 80217.

(b) Production reporters should refer to these handbooks for specific guidance with respect to production reporting requirements. If additional information is required, the reporter should contact the MMS Reporter Contact Branch at the above address. The telephone number is listed in the handbooks.

4. Section 216.40(c) is revised to read as follows:

§ 216.40 Assessments for incorrect or late reports and failure to report.

* * * * *

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Monthly Report of Operations (Form MMS–3160), Oil and Gas Operations Report (Form MMS–4054), Gas Analysis Report (Form MMS–4055), Gas Plant Operations Report (Form MMS–4056), Fractionation Plant Operations Report (Form MMS–4057), and Production Allocation Schedule Report (Form MMS–4058).

* * * * *

5. Section 216.50 is added to read as follows:

§ 216.50 Monthly report of operations.

(a) Notwithstanding the provisions of §§ 216.6(e) and 216.20 of this part, an operator will be required to comply with the requirements of this section at the beginning of the production month that is more than 60 days after MMS notifies the operator that it is subject to the requirements of this section. Until this section is applicable, operators shall continue to be subject to the reporting requirements of 43 CFR Part 3160.

(b) A Monthly Report of Operations (Form MMS–3160) must be filed by each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned unless production data is authorized to be reported on Form MMS–4054. This requirement does not apply to reporting of operations of gas storage agreements, which will continue to be reported to the appropriate BLM Office. A completed Form MMS–3160 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM, or until monthly omission of the report is authorized by the MMS. The MMS may grant time extensions for filing Form MMS–3160 on a case-by-case basis upon written request to the Chief, Production Accounting Division, Royalty Management Program, MMS.

(c) Specific and detailed guidance on how to prepare and submit the required production data on the Form MMS–3160 are contained in the MMS *PAAS Onshore Oil and Gas Reporter Handbook*. See § 216.15 of this part.

(d)(1) Operators already reporting onshore lease production data to MMS in accordance with § 216.54 of this part on the effective date of this rule may request to change to the provisions of this section. Any request to change to the requirements of this section must be made by advance written notice to MMS and have MMS approval.

(2) An operator who reports production data to MMS for offshore leases in accordance with § 216.54 of this part may request to report for its onshore leases in accordance with the requirements of that section. Any such request must be made by advance written notice to MMS and have MMS approval.

(e)(1) Except where disclosure is required by law, information submitted on Form MMS–3160 that MMS classifies as confidential will be protected as such by both MMS and BLM for the period of 1 year. Operators must petition MMS for each lease or agreement to obtain a confidential classification and to extend the classification period beyond 1 year.

(2) Except as provided by statute, information submitted on Form MMS–3160 in regard to Federal leases and Indian leases which are part of a unit containing non-Indian leases is not considered to be confidential.

(3) Except where disclosure is required by law, all information submitted on Form MMS–3160 in regard to Indian leases, other than those included in paragraph (e)(2) of this section, will be considered to be confidential.

(4) Except as provided in this subsection, all other information will be released.

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS—GENERAL

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 398), the Act of May 11, 1938, as amended (25 U.S.C. 398e–398q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Section 3162.4–3 of Subpart 3162—Requirements for Lessees and Operators, is amended by adding two sentences at the beginning of the introductory text to read as follows:

§ 3162.4–3 Monthly report of operations [Form 3160–6].

The operator shall report production data to BLM in accordance with the requirements of this section until required to begin reporting to MMS pursuant to 30 CFR 216.50. When reporting production data to BLM in accordance with the requirements of this section, the operator shall either use Form BLM 3160–6 or Form MMS–3160. * * *

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[FR Doc. 88–10123 Filed 5–6–88; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 80480–8080]

Communications with the Office of the Solicitor

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: On March 24, 1987, final rules regarding the address of certain communications to the Patent and Trademark Office were issued. (52 FR 9394, March 24, 1987.) Also, on March 7, 1985 and August 11, 1986, final rules regarding the court review of decisions by the Patent and Trademark Office Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board, respectively, were issued. (50 FR 9383, March 7, 1985 and 51 FR 28710, August 11, 1987.)

This notice makes technical corrections to §§ 1.1, 1.302, and 2.145(b) by specifying the address to which correspondence should be sent to the Office of the Solicitor. The change reflects existing practice consistent with rules of court governing service of court papers on the Solicitor. The change also will expedite the processing of other non-court communications with the Office of the Solicitor.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: John H. Raubitschek by telephone at (703) 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) finds for good cause that because the technical changes made by this rule will have no substantive effect, it is unnecessary to seek prior public comment of this rule under 5 U.S.C. 553. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this technical amendment, this rule is also exempt from the provisions of the Regulatory Flexibility Act requiring a regulatory flexibility analysis. The PTO has determined that this rule is not a major rule within the meaning of section 1(b) of Executive Order 12291. The PTO has also determined that this rule has no federalism implications affecting the relationship between the national government and the States as outlined in Executive Order 12612. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 37 CFR Parts 1 and 2

Administrative practice and procedure, Courts, Inventions and patents, Trademarks.

For the reasons set forth above, 37 CFR Parts 1 and 2 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

§ 1.1 [Amended]

2. Section 1.1 is amended by adding new paragraph (g).

* * * * *

(g) All communications relating to pending litigation which are required by the Federal Rules of Civil or Appellate Procedure or by a rule or order of a

court to be served on the Solicitor shall be hand-delivered to the Office of the Solicitor or shall be mailed to: Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215 or such other address as may be designated in writing in the litigation. All other communications to the Office of the Solicitor should be addressed to: Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231. Any communication which does not involve pending litigation which is received at P.O. Box 15667 will not be filed in the Office but will be returned. See §§ 1.302(c) and 2.145(b)(3) for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

§ 1.302 [Amended]

3. Section 1.302 is amended by adding new paragraph (c).

* * * * *

(c) A notice of appeal, if mailed to the Office, shall be addressed as follows: Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

4. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

§ 2.145 [Amended]

5. Section 2.145(b) is amended by adding new paragraph (b)(3).

* * * * *

(b)(3) The notice, if mailed to the Office, shall be addressed as follows: Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

Date: May 3, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-10177 Filed 5-6-88; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 99

[Docket No. 16; Amdt. No. 99-14]

Employee Responsibilities and Conduct

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends 49 CFR Part 99, the Department of Transportation's regulations governing employee responsibilities and conduct by adding to Appendix A an exemption from the financial interests proscriptions of section 208(a) of title 18, United States Code, for participation in air carrier frequent flyers or similar programs by Department of Transportation officials and employees.

DATES: This rule is effective May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Office of Environmental, Civil Rights and General Law, Room 10102, Department of Transportation; 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9161.

SUPPLEMENTARY INFORMATION: This amendment exempts from the financial interests proscriptions of section 208(a) of title 18, United States Code, participation in air carrier frequent flyers or similar programs by Department of Transportation officials and employees. Under the terms of these programs, any consumer who travels a certain amount of miles via a particular air carrier is eligible to receive additional reduced rate air transportation on the air route systems of that air carrier. Air carriers are regulated and otherwise affected by the Department's programs.

The frequent flyers programs are analogous to various other commercial discounts carriers make available to the flying public at large, which discounts the Office of Government Ethics has ruled do not violate *per se* the Federal ethics laws. As with those discounts, frequent flyers participants may obtain reduced rate airfare subject to certain requirements and restrictions. Both the discounts and the frequent flyers programs are not aimed specifically in any way at Department of Transportation or any other Federal employees. The principal difference between the two is that the discounts provide immediate reductions in the cost of air travel while the frequent flyers programs provide a reduction in the future. Furthermore, the fact that many discount fares require purchase substantially in advance of use and are nonrefundable make the frequent flyers programs and these discounts even less distinguishable.

In addition, unlike those types of financial interests to which the 18 U.S.C. 208(a) proscriptions traditionally apply, such as stockholdings and similar types of direct investments in a business concern, the frequent flyers programs require no collateral or other type of direct financial investment in the carrier. Thus the loss of frequent flyers credits would not result in direct out of pocket financial loss to the program participant.

Under these circumstances, the Department has concluded that frequent flyers program participation results only in a financial interest, if any can be deemed to exist, that is too remote and too inconsequential to affect the integrity of the services of Departmental officers and employees. This exemption does not affect any Government rules proscribing employee personal use of frequent flyers credits earned on official business.

Since this amendment relates to Departmental procedures and practice, under 5 U.S.C. 553(b)(3)(A) and (d)(1),(3), notice and public comment on it are unnecessary and good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. This action is taken pursuant to authority delegated by the Secretary (see memorandum dated May 4, 1988).

Issued in Washington, DC, on May 4, 1988.

B. Wayne Vance,

General Counsel, U.S. Department of Transportation.

List of Subjects in 49 CFR Part 99

Conflicts of interest, Ethics.

Accordingly, 49 CFR Part 99, Employee Responsibilities and Conduct, is amended to read as follows:

PART 99—[AMENDED]

1. The authority citation for Part 99 is revised to read as follows:

Authority: 49 U.S.C. 322; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306.

2. 49 CFR Part 99 is amended by adding to Appendix A the following new paragraph I.(a)(3):

Appendix A [Amended]

I * * *

(a) * * *

(3) Participation in an air carrier frequent flyers or substantially similar program that is available to the general public on the same terms and conditions and involves no direct financial interest in the carrier, such as stockholdings or similar types of investment interests.

[FR Doc. 88-10339 Filed 5-5-88; 4:00 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the U.S. exclusive economic zone (EEZ) from Sisters Rocks to Chetco Point, Oregon, at midnight, May 4, 1988, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife (ODFW) that the commercial fishery quota of 7,500 chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the U.S. EEZ from Sisters Rocks to Chetco Point, Oregon, to commercial salmon fishing is effective at 2400 hours local time, May 4, 1988. Comments on this closure will be received until May 19, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery for all salmon except coho from Sisters Rocks to Chetco Point, Oregon, was established as May 1, 1988, through the earlier of May 31, 1988, or the attainment of a quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea is projected to reach the 7,500 chinook quota by midnight, May 4, 1988.

Therefore, NOAA issues this notice to close the commercial salmon fishery in the U.S. EEZ from Sisters Rocks to Chetco Point, Oregon, effective midnight, May 4, 1988. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and ODFW regarding a closure of the commercial fishery between Sisters Rocks and Chetco Point, Oregon. The ODFW representative confirmed that Oregon will close the commercial fishery in state waters adjacent to this subarea of the EEZ effective midnight, May 4, 1988.

The Secretary has determined that good cause exists for issuing this notice without affording a prior opportunity for public comment. Public comments will be accepted, however, for 15 days after the effective date of this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: May 4, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-10250 Filed 5-4-88; 4:14 pm]

BILLING CODE 3510-22-M

VOL 53 ISS 89 MY 9 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 89
Monday, May 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to permit the payment of estimated loss claims while a borrower is engaged in a reorganization bankruptcy at the time the plan is confirmed by the bankruptcy court, and at the completion of the bankruptcy plan. This amendment is needed to remove an administration barrier to allow greater participation in the guaranteed loan program and to create a more cost effective program for the Government.

DATES: Comments must be submitted on or before June 8, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection under regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farmer Program Loan Making Division, USDA, Room 5440–S, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291; and it has been determined to be non-major because there is no annual effect on the economy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions, or significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exceptions of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan and Business and Industrial Loan Programs are subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10. 406 Farm Operating Loans
10. 407 Farm Ownership Loans
10. 416 Soil and Water Loans
10. 422 Business and Industrial Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

The agency is proposing to amend its guaranteed loan regulations to permit the payment of estimated loss claims, while a borrower is engaged in a reorganization bankruptcy at the time a plan is confirmed by the bankruptcy court, and at the completion of the bankruptcy plan, with regular annual payments to compensate the lender for any court ordered permanent reduction in the interest rate. This amendment is needed to remove an administrative barrier to allow greater participation in the guaranteed loan program and to create a more cost effective program for the Government. Under existing regulations, the only alternative in bankruptcy reorganization cases is to wait until the loan is paid in full which may be up to forty years, during which time the lender will continue to accrue interest on the principal portion of the loan which was written off by the bankruptcy court. The agency would then be obligated to pay on the loss sustained, including a loss of accured interest that would normally be at a rate in excess of the Government's cost of money.

In a bankruptcy the amount or terms of the debt may be changed by a confirmed reorganization plan resulting in an immediate and ascertainable loss to the creditor. It is more equitable that FmHA as the guarantor fulfill its obligation to the lender at the time the plan is confirmed rather than waiting until the plan is completed. On November 26, 1986, the United States Congress enacted the new Chapter 12 of the Bankruptcy Code. Under this legislation, farmers, are given the opportunity to reorganize their finances based on the value of the property held and pay off their delinquent debts over a three to five year period with the balance written off, rather than facing potential liquidation. Chapter 12 does not allow the creditor to veto the farmers' reorganization plan, have the bankruptcy proceedings dismissed, or have the proceedings converted to a Chapter 7 liquidation, except in cases where the borrower commits fraud in the bankruptcy plan.

Although participation in the guaranteed loan program administered by FmHA is increasing, many lenders

are becoming reluctant to make agricultural loans and business and industry loans even with the benefit of a Government guarantee. Lenders that have a concentration of loan protfolio in agriculture are obviously more vulnerable when farm conditions deteriorate. Also, in order to generate increased revenue to cover loan losses lenders must increase interest rate and deny credit to certain types of applicants. Farmers and rural businesses are then faced with few alternative sources of credit, especially those in the most precarious financial situations who must obtain operating credit and credit necessary in connection with debt restructuring.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—agriculture

Therefore, Chapter XVII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

§ 1980.68 [Redesignated from § 1980.67]

2. Existing § 1980.67 is redesignated as § 1980.68 and a new § 1980.67 is added to read as follows:

§ 1980.67 Bankruptcy.

(a) *Reference.* Refer to Subpart B, C, E or F of this part. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Payments will be made in accordance with applicable FmHA regulations.

(b) *Lender's option.* If a lender has made a loan or line of credit guaranteed by FmHA under previous regulations, and the borrower has filed for protection under a reorganization bankruptcy, the lender has the option of requesting an estimated loss payment under the provisions of this part.

3. Appendix B is revised to read as follows:

BILLING CODE 3410-07-M

USDA-FmHA
Form FmHA 449-35
(Rev. 4-88)

Position 9

Appendix B

FORM APPROVED
OMB NO 0575-0024

LENDER'S AGREEMENT

Type of Loan: _____ FmHA Loan Ident. No.
Applicable 7 CFR Part 1980 Subpart _____

_____

_____ [Lender] of

_____ has made a loan(s) to

_____ (Borrower)

_____ in the principal

amount of $ _____ as evidenced by _____ note(s)

(include Bond as appropriate) described as follows: _____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a

percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449-38, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $ _____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980—44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accured interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans(s) accuring after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to faciliate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accuring from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder'(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation, however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14

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XVI. Bankruptcy.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender may request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the reorganization plan is completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449-30.

XVII. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVIII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. Notices.

All notices and actions will be initiated through FmHA for _____

(State) with mailing address at the date of this instrument _____

_____

Dated this _____ _____ day of _____, 19__.

LENDER:

ATTEST: _____ (SEAL)

By _____

Title _____

UNITED STATES OF AMERICA
Farmers Home Administration

By _____

Title _____

4. Appendix E is revised to read as follows:

Appendix E

USDA FmHA
Form FmHA 1980-38
(Rev 4-88)

FORM APPROVED
OMB NO. 0575-0079

Type of Loan
☐ OL ☐ EL or ☐ EE
FmHA Loan ID No.

LENDER'S AGREEMENT
(Line of Credit)

Applicable 7 CFR Part 1980, Subpart _____

_____ (Lender) of _____

has established a line of credit to _____ (Borrower) for the fiscal period ending

_____, 19___, for the purpose of _____

_____

in the maximum sum of $ _____ as evidenced by a "Line of Credit Agreement" dated _____, 19___

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed _____% of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed _____ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. Full Faith and Credit.

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder

This form is used by lenders to meet certain conditions precedent to issuance of a Contract of Guarantee in Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan cases. This report contains information that is required to provide future reports and information which must be agreed to by the lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender

VI The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent subsidiaries or affiliates since it requested a Contract of Guarantee

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit

B It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note if one exists), security instruments and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner.
2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.
3. Inspecting the collateral as often as necessary to properly service the line of credit
4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA, proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch.
6 Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.
8. Assuring that the borrower obtains marketable title to the collateral.
9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit except in accordance with FmHA regulations.
10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".
11. Obtaining from the Borrower periodic financial statements under the following schedule: _____

_____

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

12. Monitoring loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to do so will be considered negligent servicing and any loss attributed to such negligent servicing will not be paid by FmHA, as explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Defaults.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

XI. Liquidation.

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets; advice as to whether or not each item is serving as collateral for the guaranteed line of credits.
3. A proposed method making the maximum collection possible on the indebtedness.
4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation proposal. FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C Acceleration. The Lender or FmHA if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation, Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.
2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

   After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender

   After liquidation has been completed a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.
3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.
4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved:
   a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.
   b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.
6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII. Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accured interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI. Bankruptcy.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. If the loan is involved in a reorganization bankruptcy proceeding under Chapter 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments
   a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender may request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the reorganization plan is completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.
   b. The Lender will use Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.
   c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

(XVI.B - continued)

2. Interest Loss Payments
   a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.
   b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.
   c. Form FmHA 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.
3. Final Loss Payments
   a. Final loss payments will be processed when the loan is liquidated.
   b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.
4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.
5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.
6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449-30.

XVII. Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVIII. Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. Notices.

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State with mailing address at the date of this instrument

_____.

Dated this _____ day of _____, 19__.

LENDER:

ATTEST: _____ SEAL

By _____

Title _____

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By _____

Title _____

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

5. Section 1980.144 is added to read as follows:

§ 1980.144 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: Liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C.5 of Form FmHA 449–35 or Form 1980–38). These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the bankruptcy estate, will immediately seek adequate protection of the collateral. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(5) FmHA will be kept adequately and regularly informed in writing on all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In Chapter 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses, in a Chapter 11, 12, or 13 reorganization case, are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees), while the borrower is in reorganization, are considered normal expenses of servicing the account, and therefore are the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Attorney fees incurred by the lender, without exception, cannot be approved. Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases provided the lender is doing the actual liquidation of the collateral and presents adequate written justification for each expense and secures FmHA's written concurrence prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender, in this instance, is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the actual liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in actual liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss payments.* See paragraph XVI of Form FmHA 449–35 or Form FmHA 1980–38.

Administrative

(A) The lender is responsible for advising FmHA of the completion of the reorganization plan; however, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

(B) If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays the loan in full without an additional loss sustained by the lender, a Final Report of loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

(C) If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

(D) Protective Advances—Authorized Protective Advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not generally authorized.

(E) Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

(F) Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on the principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for the accuracy of the interest calculations on the final report of loss before submission to the Finance Office.

(G) Repurchase of Notes—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of the loan(s) from any holder(s) to reduce interest accrual during a Chapter 7 proceeding, or after a Chapter 11 proceeding becomes a liquidation proceeding. (Refer to paragraph X.C of Form FmHA 449–35 or Form FmHA 1980–38.)

(H) County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payments on Form 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determination in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of any losses.

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6. Exhibit A, Attachment 1 to Subpart B is amended by redesignating existing paragraphs XIV, XV, XVI, XVII and XVIII as XV, XVI, XVII, XVIII and XIX and by adding a new paragraph XIV to read as follows:

Exhibit A of Subpart B, Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

* * * * *

XIV. *Bankruptcy.*

A. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. If the loan is involved in a reorganization bankruptcy proceeding under Chapter 11, 12 or 13 of the Bankruptcy Code, payment of loss claim may be made as provided in this paragraph XIV. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 7 bankruptcy, only paragraphs XIV B3 and B6 are applicable.

B. *Loss Payments.*

(1) Estimated Loss Payments.

(a) If a borrower has filed for protection under a reorganization bankruptcy, the lender may request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the reorganization plan is completed, the lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the lender for any court ordered interest rate reduction during the term of the reorganization plan.

(b) The lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claims as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

(c) Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status" and forward this form to the Finance Office.

(2) Interest Loss Payments.

(a) Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XIV(B)(1).

(b) Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(c) Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

(3) Final loss Payments.

(a) Final loss payments will be processed when the loan is liquidated.

(b) If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

(4) Payment Application—The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the FmHA servicing office.

(5) Overpayments—Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss for issuance in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(6) Protective Advances—If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

* * * * *

7. Exhibit A, Attachment 2 to Subpart B is amended by redesignating existing paragraphs XIV, XV, XVI, XVII and XVIII as XV, XVI, XVII, XVIII and XIX and by adding a new paragraph XIV to read as follows:

Exhibit A, Attachment 2—Farmers Home Administration, Approved Lender Program (ALP)

* * * * *

XIV. *Bankruptcy.*

A. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. If the loan is involved in a reorganization bankruptcy proceeding under Chapter 11, 12, or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XIV. For a Chapter 7 bankruptcy a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XIV B3 and B6 are applicable.

B. *Loss Payments.*

(1) Estimated Loss Payments.

(a) If a borrower has filed for protection under a reorganization bankruptcy, the lender may request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the reorganization plan is completed, the lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

(b) The lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

(c) Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status" and forward this form to the Finance Office.

(2) Interest Loss Payments.

(a) Interest loss payment sustained during the period of the reorganization plan will be processed in accordance with paragraph XIV (B)(1).

(b) Interest loss payment sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(c) Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

(3) Final Loss Payments.

(a) Final loss payments will be processed when the loan is liquidated.

(b) If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

(4) Payment Application—The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the FmHA servicing office.

(5) Overpayments—Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(6) Protective Advances—If approved protective advances have been made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

Subpart C—Emergency Livestock Loans

8. Section 1980.284 is added to read as follows:

§ 1980.294 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: Liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C.5 of Form FmHA 449–35 or Form FmHA 1980–38). These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the bankruptcy estate, will immediately seek adequate protection of the collateral. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In a Chapter 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses, in a Chapter 11, 12, or 13 reorganization case, are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees) while the borrower is in reorganization are considered normal expenses of servicing the account and therefore are the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Attorney fees incurred by the lender, without exception, cannot be approved. Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases provided the lender is doing the actual liquidation of the collateral and presents adequate written justification for each expense and secures FmHA's written concurrences prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender in this instance is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the actual liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in actual liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss Payments.* See paragraph XVI of Form FmHA 449–35 or Form FmHA 1980–38.

Administrative

(A) The lender is responsible for advising FmHA of the completion of reorganization plan; however, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

(B) If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays the loan in full without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

(C) If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

(D) Protective Advances—Authorized Protective Advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not generally authorized. The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

(E) Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on the principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for the accuracy of the interest calculations on the final report of loss before submission to the Finance Office.

(F) Repurchase of Notes—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of loan(s) from any holder(s) to reduce interest accrual during a Chapter 7 proceeding, or after a Chapter 11, proceeding becomes a liquidation proceeding. (Refer to paragraph X.C of Form 449–35 or Form FmHA 1980–38.)

(G) County Supervisors are authorized to accept Report of Estimated Loss or Final Los Payments on Form FmHA 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to

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accept the determination in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses.

Subpart E—Business and Industrial Loan Program

9. Section 1980.475 is amended by redesignating paragraph (a)(5) to (a)(6), adding a new paragraph (a)(5), revising paragraph (b), adding a new paragraph (d), and revising the Administrative section to read as follows:

§ 1980.475 Bankruptcy.

(a) * * *

(5) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(b) In a Chapter 11 reorganization if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

* * * * *

(d) *Estimated Loss Payments.* See paragraph XVI of Form FmHA 449-35.

Administrative

Refer to Appendix G of this subpart (available in any FmHA Office) for advice on how to interact with the lender on liquidation and property management.

(A) It is the responsibility of the State Program Chief to see that FmHA is being fully informed by the lender in all bankruptcy cases.

(B) All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

(C) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses from that point forward may be shared as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee then the lender cannot claim expenses.

(D) The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be halted in accordance with the Lender's Agreement and carry the approval of the State Director.

(E) The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

(F) The lender is responsible for advising FmHA of the completion of the Chapter 11 reorganization plan; however, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

(G) If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays the loan in full without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

(H) If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

(I) Protective Advances—Authorized Protective Advances may be included with the estimated loss payment associated with the Chapter 11 reorganization provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not generally authorized.

(J) Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

Subpart F—Economic Emergency Loans

Section 1980.583 is added to read as follows:

§ 1980.583 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: Liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C.5 of Form FmHA 449-35 or Form FmHA 1980-35 or Form FmHA 1980-38.) These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the bankruptcy estate, will immediately seek adequate protection of the collateral. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In a Chapter 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses in a Chapter 11, 12, or 13 reorganization case are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees), while the borrower is in reorganization, are considered normal expenses of servicing the account, and therefore are the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Attorney fees incurred by the lender, without exception, cannot be approved. Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases, provided the lender is doing the actual liquidation of the collateral and presents adequate written justification for each expense and secured FmHA's written concurrence prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender in this instance is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the actual liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in actual liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss Payments.* See paragraph XVI of Form FmHA 449-35 or Form FmHA 1980-38.

Administrative

(A) The lender is responsible for advising FmHA of the completion of reorganization plan; however, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing action.

(B) If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays the loan in full without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

(C) If the bankruptcy court attempts to direct that loss payment will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

(D) Protective Advances—Authorized Protective Advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not generally authorized.

(E) Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, inducing petitioning for a super priority.

(F) Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on the principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for the accuracy of the interest calculations on the final report of the loss before submission to the Finance Office.

(G) Repurchase of Notes—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of the loan(s) from any holder(s) to reduce interest accrual during Chapter 7 proceeding, or after a Chapter 11 proceeding becomes a liquidation proceeding. (Refer to paragraph X.C of Form FmHA 449-35 or Form FmHA 449-38.)

(H) County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payments on Form FmHA 449-30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determination in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses.

Vance L. Clark,

Administrator, Farmers Home Administration.

Dated: March 30, 1988.

[FR Doc. 88-10110 Filed 5-6-88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low-Power Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to establish more clearly what emergency planning and preparedness requirements are needed for fuel loading and lower power operation of nuclear power plants. Current rules provide for a finding prior to fuel loading and low power on the licensee's plans and state of preparedness for dealing with accidents that could affect persons onsite, and for coordinating with offsite personnel and agencies so that the necessary resources (for example fire equipment) can be applied onsite for mitigating and containing accidents and so that offsite agencies can be kept informed of plant events. Current rules also provide that no finding regarding the planning or preparedness of offsite agencies for dealing with accidents that could affect persons offsite is required at this stage. The Commission is not proposing to change these aspects of the current rules. However, practice under the current rule has been to consider also, as part of review of licensees' plans, certain offsite elements of those plans that seem pertinent only to protecting persons offsite. It is the purpose of this public rulemaking to consider whether this prior practice should be discontinued or modified in view of the principal basis for the current rule, which is that there is a low degree of risk posed to offsite persons by fuel loading and low power operation (up to 5% of rated power). Specifically, the Commission is considering amending § 50.47(d) to include as prerequisites for low power operation, seven standards with offsite aspects that are believed to be appropriate for fuel loading and low power operation. The capability for prompt notification of the surrounding populace (as distinct from the capacity to keep offsite emergency planning agencies informed promptly of plant accidents) is not included in the rule as a requirement for fuel load and low power operations. However, nothing in this proposed rule is intended to change the emergency planning standards which must be satisfied before operations at full power.

DATES: The comment period expires June 8, 1988. Comments filed after this date will be considered if practical to do so, but only those comments filed on or before this date can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to either the Public Document Room, 1717 H Street, NW., Washington, DC 20555, between the hours of 7:45 a.m. and 4:30 p.m. or

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the Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between the hours of 7:30 a.m. and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–1641, or Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3918.

SUPPLEMENTARY INFORMATION:

A. Background

On August 19, 1980, the Nuclear Regulatory Commission published revised and upgraded emergency planning regulations culminating a process that had been initiated by the events at Three Mile Island. See 45 FR 55402. Less than two years later, the Commission revisited those regulations in order to clarify them in two respects, one of them central to the Commission's current proposed rule.[1]

Specifically, the Commission recognized that its 1980 rulemaking had not addressed the subject of low power operations and had not differentiated with respect to whether and to what extent emergency planning requirements should be applicable to fuel loading and low power (up to 5% of rated power) testing. The Commission then issued a proposed rule for comment (46 FR 61132) and thereafter on July 13, 1982 promulgated as a final rule a new § 50.47(d) to provide that only a finding as to the adequacy of applicant's *onsite* emergency planning and preparedness is required for low power. 47 FR 30232. However, in language accompanying the publication of the rule the Commission provided that review of an applicant's *onsite* emergency plan would involve aspects of some *offsite* elements.

More specifically, the Commisison said in the rule preamble (but not in the rule itself) that prior to low power it would review the following offsite aspects of *applicant's* plans:

(a) Section 50.47(b)(3). Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff and the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned response have been identified.

(b) Section 50.47(b)(5). Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(c) Section 50.47(b)(6). Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(d) Section 50.47(b)(8). Adequate emergency facilities and equipment to support the emergency responses are provided and maintained.

(e) Section 50.47(b)(9). Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(f) Section 50.47(b)(12). Arrangements are made for medical services for contaminated injured individuals.

(g) Section 50.47(b)(15). Radiological emergency response training is provided to those who may be called on to assist in an emergency.

The foundation for the July 1982 rule change was the Commission's determination that the degree of emergency planning and preparedness necessary to provide adequate protection of the public health and safety is significantly less than that required for full power operation in light of the significantly lower risks associated with even low likelihood accidents at that stage. 47 FR at 30233 (See also n.1 citing conclusions that low power risk is several orders of magnitude less than full power risk according to staff evaluations in several operating license cases).

B. Commission Consideration of the Appeal Board's Decision in Seabrook, Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB–863 (February 3, 1988)

Recently the Commission has had its attention refocused on the emergency preparedness requirements for low power operation. This is so because existing siren systems that were to serve for prompt notification throughout the Massachusetts portion of the Seabrook offsite emergency planning zone in the event of an accident with potential offsite consequences had been or were about to be dismantled. The absence of a prompt notification system was brought to the attention of the Appeal Board which, entertaining the matter in the first instance rather than as appellate reviewer, reopened the record in the Seabrook operating license proceeding for litigation of contentions related to the absence of a prompt notification system. Moreover, the Appeal Board held that low power testing must await the resolution of those issues before an Atomic Safety and Licensing Board. ALAB–863, slip op. at 18–24.

Petitions for Commission review of the Appeal Board decision were then timely filed with the Commission. This was the first time that contested issues regarding compliance with any of the seven offsite elements of applicants' onsite plans (items (a)–(g) above) had come before the Commission. The Commission itself had not until then had occasion to apply and interpret this aspect of the 1982 rule change in an adjudicatory hearing context.

C. The Need for Rulemaking

Related to its consideration of whether to take review of the need for a prompt notification system in *Seabrook* prior to low power, the Commission reexamined the July 1982 rule change in order to determine whether there is any safety basis for continuing public notification as a requirement for low power, and if there was not, whether further rule changes were needed. As a part of this rulemaking consideration, the Commission reevaluated and sees no reason to doubt the safety rationale stated by the Commission in promulgating its 1982 rule. Although at low power plant operators typically have less experience and there is a greater potential for undiscovered defects, the risk to public health and safety at low power is significantly lower than at full power as a result of several factors. Those reasons were stated earlier by the Commission as follows: First, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full-power operation. The Commission notes that the regulatory requirements for safety systems during reactor power operation, including containment integrity, emergency core cooling, and redundant power supplies are the same for 5% power operation as they are for 100% power. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the additional time available (at least 10 hours), even for a postulated low likelihood sequence which could eventually result in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site [2] (47 FR 30233).

The safety basis for the 1982 rule was reviewed. The analyses done at that time are still applicable. The Commission reexamined the need at low power to review those aspects of applicants' onsite plans that seem relevant only to offsite protective measures that may be needed if there were an accident with offsite dose effects. Several considerations recommend the choice of a rulemaking forum for this effort rather than address these factors in the first instance in the context of the Seabrook adjudication. First, and most important, the question is essentially a generic safety question with applicability to all pending and future applications for fuel loading and low power, and the Commission prefers to subject its proposal to a broader spectrum of public comment than simply the litigants in the Seabrook case. Second, to the extent that *any* review bearing on offsiet preparedness is required before low power, including a limited review of applicants' plans as contemplated by this proposed rule, the current rule language codified in 10 CFR 50.47(d) is misleading in that it suggests that no such review is needed.

D. The Proposed Rule

The proposed rule requires NRC findings on the applicant's onsite plan and only those offsite elements of that plan which could reasonably be expected to be needed in the event of a radiological emergency at low power. The principal focus of these requirements is on such coordination by applicants with offsite agencies as may be necessary to bring offsite personnel and equipment to the site to mitigate and contain the accident. For example, offsite fire equipment and medical services may be needed to deal with a fire and to treat injured plant workers. A secondary focus of such requirements is on coordination with offsite agencies to ensure that offsite authorities are kept informed of plant status, including details of the emergency and of the onsite response so that they can be of maximum assistance to the response and can respond fully and accurately to questions from the media and the public. The offsite elements include establishing arrangements for requesting and using offsite assistance resources onsite as well as arrangements to accommodate State and local staff (or appropriate members of the utility emergency organization) at the near-site emergency facility, and identifying other organizations capable of augmenting the planned onsite response.

They also include establishing procedures for licensee notification of State and local response organizations, provisions for prompt communications among principal response organizations to offsite emergency personnel who would be responding to onsite emergencies; providing adequate emergency facilities and equipment to support the emergency response planned onsite; providing adequate methods, systems, and equipment for assessment and monitoring of actual or potential offsite consequences; making arrangements for medical services for contaminated injured individuals on site, and providing radiological emergency response training to those offsite who may be called on to assist in an emergency onsite.

It has been difficult on at least initial consideration for the Commission to discover a basis for requiring a review before lower power operation of prompt (within minutes) notification of the public when a worst case analysis of a low likelihood accident at low power would appear to recognize that such notice would be far in excess of what would reasonably be needed. Under the proposed rule, review would *not* be required before low power operations to established compliance with the full power standard which requires that means be established to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone. For low power, to the extent persons offsite become concerned about an accident and its potential effects, plans will be in place for licensee to keep offsite planning and response agencies fully informed of the details of the emergency, and licensees, in conjunction with these offsite agencies, can keep the media and the public informed.

Other offsite aspects of applicants' onsite plans, as listed in (a)-(g) above from the 1982 rule preamble, have been modified to reflect the proper focus of offset coordination for low power operations, and inserted into the rule itself.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Enviornmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environmental and therefore an environmental impact statement is not required. The enviornmental assessment and finding of no significant impact on which this determination is based are availabie for inspection at the NRC Public Document Room, 1717 H Street, NW., Washington DC 20555.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3918.

Regulatory Flexibility Certification

This proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule will reduce or at least postpone the procedural burden on NRC licensees by reducing the process required before low power operations may be commenced. Nuclear power plant licensees do not fall within the definition of small businesses in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR Part 121, or the Commission's Size Standards published at 50 FR 50241 (Dec. 9, 1985). Therefore, in accordance

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[1] The other issue was whether emergency preparedness exercises may be litigated in Commission proceedings and is not relevant to the rule proposed in this notice. In *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied sub nom. Arkansas Power & Light Co. v. Union of Concerned Scientists*, 469 U.S. 1132 (1985) it was held that emergency preparedness exercises may be litigated.

[2] The level of risk associated with low-power operation has been estimated by the staff in several recent operating license cases: Diablo Canyon, Docket Nos. 275–OL, 323–OL, San Onofre, Docket Nos. 361–OL, 362–OL, Shoreham, Sequoyah, TMI–1 and LaSalle, Docket Nos. 373–OL, 374–OL. In each case the Safety Evaluation Report concluded that low-power risk is several orders of magnitude less than full-power risk. These findings support the general conclusions in the text that a number of factors associated with low-power operation imply greatly reduced risk compared with full power.

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with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

Backfit analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, penalty, Radiation protection, Reactor siting criteria, and Reporting requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is proposing to adopt the following amendments to Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c), and 50.43 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.47, paragraph (d) is revised to read as follows:

§ 50.47 Emergency plans.

* * * * *

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, and except as specified by this paragraph, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading or low power operation or both may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's onsite emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E. Review of applicant's onsite plans will consider only the following standards with offsite aspects:

(1) Arrangements for requesting and effectively using offsite assistance onsite have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned onsite response have been identified.

(2) Procedures have been established for licensee communications with State and local response organizations; including, initial notification of the declaration of emergency and periodic provision of plant and response status reports.

(3) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel, who would be responding onsite.

(4) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(5) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are available.

(6) Arrangements are made for medical services for contaminated and injured onsite individuals.

(7) Radiological emergency response training has been made available to those offsite who may be called to assist in an emergency onsite.

Dated at Rockville, MD, this 4th day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–10245 Filed 5–6–88; 8:45 am]

BILLING CODE 7590–01–M

S–021999 6012(00)(06–MAY–88–11:21:51)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–10]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 365 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires repetitive inspections of the main rotor mast on Aerospatiale Model SA 365 series helicopters. This proposed amendment would limit the AD's applicability to helicopters equipped with masts which need repetitive inspections because some masts are not susceptible to the conditions requiring these inspections.

DATES: Comments must be received on or before June 20, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attention: Rules Docket, Fort Worth, Texas 76193–0007, or delivered in duplicate to Office of the Regional Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas. Comments must be marked: "Docket No. 85–ASW–10." Comments may be inspected at the above location between 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support, or examined in the Regional Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513–3830, or R.T. Weaver, Rotorcraft Standards Staff, ASW–110, Federal Aviation Administration, Fort Worth, Texas 76193–0111, telephone (817) 624–5122.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85–ASW–10." The postcard will be date/time stamped and returned to the commenter.

Amendment 39–5093 (50 FR 29649; July 22, 1985), AD 85–15–01, as amended by Amendment 39–5679 (52 FR 27787; July 24, 1987), currently requires inspection of the main rotor mast for cracks and repair or replacement, as necessary, on certain Aerospatiale Model SA 365 series helicopters. After issuing Amendment 39–5679, the FAA has determined that the manufacturer has designed newly improved parts which provide an equivalent level of safety without the need for repetitive inspection. The proposed amendment to Amendment 39–5093, as amended, would limit its applicability to certain main rotor masts installed on certain Aerospatiale Model SA 365 series helicopters.

This proposed amendment provides a clarification, is relieving in nature, and imposes no additional burden on any person.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301. *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this proposed revision of an existing regulation only involves 13 helicopters in operation in the United States and imposes no increase in cost. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39–5093 (50 FR 29649; July 22, 1985), AD 85–15–01, as amended by Amendment 39–5679 (52 FR 27787; July 24, 1987), by deleting paragraph (h) of the AD, and by revising the applicability statement and the compliance statement as follows:

Societe Nationale Industrielle Aerospatiale: Applies to Aerospatiale Model SA 365 series helicopters, certificated in any category, when equipped with main rotor masts with Part Numbers 365A31–1060–23 or –25, or 365A31–1179–03, –20, or –21.

Compliance with this amendment to the AD is required as indicated after the effective date of this AD amendment, unless already accomplished.

* * * * *

Issued in Fort Worth, TX, on April 22, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88–10144 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–13–M

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Notices

Federal Register
Vol. 53, No. 89
Monday, May 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of State Foresters; Open Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Jackson, Mississippi, on June 2, 1988. The meeting will be held in the Oxford Room of the Holiday Inn Hotel, 200 East Amite Street, from 8 a.m. to 12 p.m.

The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee to consult with reresentatives of the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313). The Chief of the Forest Service, F. Dale Robertson, will chair this meeting, which is open to the public.

Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary before or after the meeting.

FOR FURTHER INFORMATION CONTACT: Allan J. West, Executive Secretary, Committee of State Foresters, (3000) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–6657.

Dated: May 2, 1988.

George M. Leonard,

Associate Chief, Forest Service.

[FR Doc. 88–10170 Filed 5–6–88; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Magic Valley Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant imapct.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. section 4321 et seq.), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 138 kV transmission line and four associated substations in Cameron and Hidalgo Counties, Texas, by Magic Valley Electric Cooperative, Inc. (MVEC).

FOR FURTHER INFORMATION CONTACT: Martin G. Seipel, Director, Southwest Area—Electric, Room 0205, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8848.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from MVEC, required that MVEC develop environmental support information reflecting the potential environmental impacts of the project. The information supplied by MVEC is contained in a Borrower's Environmental Report (BER) which was used by REA to develop its Environmental Assessment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The proposed project consists of constructing approximately 95 kilometers (km) (59 mi) of new single circuit 138 kV transmission line and four new 138/12.5 kV distribution substations and the rebuilding of 3.3 km (2.1 mi) of existing 69 kV line to 138 kV. The line would originate at either the Loma Alta Substation of the Brownsville Public Utility Board or the Union Carbide Switching Station of Central Power & Light Company and would connect the proposed Highway 511-Kellers Corner, Central Avenue, Arroyo City and Burns Substations before terminating at MVEC's existing Heidelberg Substation. The majority of the single pole wood structures would be routed parallel and adjacent to existing roads within a 15.3 meter (50 ft) right-of-way. Each of the four distribution substations would require approximately 0.8 hectare (2 ac) of land.

REA has concluded that the proposed project will have no effect on prime forest land or rangeland, threatened or endangered species or critical habitat and properties listed or eligible for listing in the *National Register of Historic Places*. A maximum of 0.8 ha (2 ac) of important farmland could be impacted at the Arroyo City Substation site. Certain other impacts resulting from the proposed project are unavoidable such as the placement of a majority of the transmission structures in the 100-year floodplain and routing the transmission line over small wetlands and deepwater habitat. No other matters of environmental concern have come to REA's attention.

Alternatives examined for the proposed project included no action, energy conservation, alternative line routing and alternative substation sites. REA determined that there is a need for the proposed facilities and that constructing these facilities is recommended is an environmentally acceptable alternative for MVEC to increase system capacity, improve service reliability and reduce system power losses.

Based upon the environmental support information provided, REA prepared an EA concerning the proposed project and its impacts. As a result of its independent evaluation, REA has concluded that approval of financing assistance enabling MVEC to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

Copies of REA's EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0205, 14th and Independence Avenue SW., Washington, DC 20250; or at the office of Magic Valley Electric Cooperative, Inc. (Billy Ryan, Manager), P.O. Drawer 267, Mercedes, Texas 78570, during regular business hours.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in final rule related notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Date: May 3, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88–10180 Filed 5–6–88; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 7106–01, 7106–02, 7106–01, 7107–02]

Action Affecting Export Privileges; Hans Wirth et al.

In the matter of Hans Wirth, individually and doing business as Cosmotrans AG, Bruno Barbarits, individually and doing business as Cosmotrans AG, Respondents; Docket Nos. 7016–01, 7106–02, 7107–01, and 7107–02.

Summary

Pursuant to the April 4, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, Hans Wirth and Bruno Barbarits, both individually and doing business as Cosmotrans, A.G. (a/k/a Cosmotrans Ltd.) and Cosmotrans USA Inc., all with addresses at

Cosmotrans LTD., Fracht West Building, Office 274, CH 8058, Zurich—Switzerland,

and

Cosmotrans USA, Inc., P.O. Box 30978, JFK International Airport, Jamaica, New York 11430,

are denied all U.S. export privileges for a period of twenty (20) years from the date hereof.

Order

On April 4, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: May 3, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Appearance for Respondent: Dr. Stephen Zimmermann, Esq., Zimmermann & Breitenmoser, Rechtsanwalte, Mitglieder Des Schweizerischen, Anwaltsverbandes 8008 Zurich, Zollikerstrasse 4 Switzerland.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, Washington, DC 20230.

Preliminary Statement

On July 27, 1987, the Office of Export Enforcement (OEE), United States Department of Commerce (Agency), issued charging letters to both Respondent Hans Wirth and Bruno Barbarits, both individually and doing business as Cosmotrans, A.G. (hereinafter collectively referred to as "Respondents").[1] The charging letters allege that Respondents violated §§ 387.2, 387.3, 387.4, and 387.5 of the Export Administration Regulations (15 CFR Parts 368–399) (the Regulations), issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act).

Respondents filed their answers to the initial charging letter on August 20, 1987. Counsel for Respondents states in his "Preliminary Position on Issues and Procedure", dated September 30, 1987, that he was prepared to have a hearing in Zurich, Switzerland. This request was denied.[2] Pursuant to § 368.14 of the Regulations, this matter is adjudicated on the record without a hearing. Both Agency counsel and Respondents made written submissions to the record, which closed on December 21, 1987.

Charges

In the amended charging letter, Agency alleges that, between on or about January 2, 1979 and on or about March 8, 1983, Respondents conspired and acted in concert with Robert J. Lambert, Dierk Hagemann and Albert Kessler in order to bring about the following series of acts, which constitute violations of the Act and the Regulations.

There was a conspiracy between the Respondents, the purpose of which was to divert U.S.-origin electronic test equipment, originally approved for export to specified consignees in Israel and other destinations, to unauthorized consignees in the German Democratic Republic (G.D.R.), Bulgaria and the Union of Soviet Socialist Republics (U.S.S.R.), without the required export licenses or reexport authorizations. The Respondents knew, or had reason to know, that the Department had not authorized export of this equipment to East bloc destinations.

Respondents Hans Wirth and Bruno Barbarits, individually and doing business as Cosmotrans AG (also known as Cosmotrans Ltd), aided and abetted the reexport or diversion from Switzerland of numerous shipments of U.S.-origin electronic test equipment to unauthorized end users and destinations. Specifically, Robert Lambert, using Dierk Hagemann's freight forwarding company, Uni-Data World Transport, Inc., exported the equipment from the United States to customs bonded warehouses operated by Cosmotrans in Switzerland.[3] Respondents prepared false shipping documents, including, but not limited to air waybills and invoices, showing new consignees, destinations and descriptions of contents, neither known to nor authorized for reexport by the Department.

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[1] An initial charging letter to Respondents Wirth, individually and doing business as Cosmotrans, was issued by the Agency on July 21, 1988. Respondent Wirth filed an answer to that charging letter on August 10, 1988. On September 19, 1988, Agency Counsel's petition to amend the charging letter was granted. The amended charging letter does not alter the basic charges. A charging letter to Respondent Barbarits, individually and doing business as Cosmotrans, was issued by the Agency on July 27, 1987.

Agency counsel and Respondents' counsel filed submissions for the record consolidating the actions against Wirth, Barbarits and Cosmotrans.

[2] On October 19, 1987, the undersigned Administrative Law Judge denied Respondent's request for a hearing in Zurich. Section 388.13(a) of the Export Administration Regulations provides: "all hearings will be held in Washington, DC unless the Administrative Law Judge determines, based upon a good cause showing, that another location would better serve the interests of justice." Respondent's counsel has made no showing of good cause.

A full presentation was made on the record by written submission by the Agency and the Respondents.

[3] Robert J. Lambert, Albert Kessler and Dierk Hagemann were found to have conspired and acted in concert to export U.S.-origin computer test equipment without the required validated licenses in violation of the Act and Regulations. *See In the Matter of Robert J. Lambert, et al.*, Docket No. 3601–01 to 3640–00, July 14, 1988 (51 FR 26030, July 18, 1988). In that Decision the acts that Lambert and Hagemann were found to have committed are the same as those referred to above, and were subjected to civil penalties.

The legal basis for those administrative charges against Respondent was their September 7, 1983 criminal conviction for the aforementioned scheme.

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Respondents reexported these U.S.-origin goods to unauthorized consignees in the G.D.R., Bulgaria and the U.S.S.R. In carrying out the activities described in this and the two preceding paragraphs, Respondents violated §§ 387.2, 387.3, 387.4, and 387.5 of the Regulations. Each of those violations involved U.S.-origin goods controlled under Section 5 of the Act, for national security reasons.

Discussion

In a sworn statement dated November 10, 1987, Robert J. Lambert testified that Respondents would typically place orders for U.S.-origin goods, provide guidelines for preparing shipping documents, including the identity of the ultimate consignee, and specify routes for U.S. exporters shipping these goods.[4] (Govt. Exh. 2)

Lambert referenced three transactions representing the pattern of activity engaged in by Respondents and the others. The evidence indicates that he received all three of these orders for U.S.-origin electronic test equipment from Wirth or Cosmotrans, that this equipment was exported under validated license A527828 via the Consignee, Tadiran Israel Electronics Ind. (Tadiran), in Israel.

The Shipper's Export Declarations for all three shipments referred to individual validated license A527828, which the Agency issued to Lambert's company, Warner Trading Associates, on December 15, 1980, authorizing exports to Tadiran of computers and related equipment valued at $1,000,000 until December 31, 1981.[5] (Govt. Exh. 7) Lambert testified that all of his shipments to Respondents were sent to the Cosmotrans freight forwarding facility and that he and Respondents "understood" where the equipment being shipped to Cosmotrans would end up. Lambert explained that Wirth dealt with the G.D.R., that Barbarits dealt with Bulgaria, and that Kessler had customers in the U.S.S.R. (Govt. Exh. 1, 2) [6]

Special Agent Roberts stated that interviews of Tadiran officials, conducted by a U.S. Customs Attache, disclosed that Tadiran had never heard of Lambert or any of his companies, had never placed an order with Wirth, Barbarits or Cosmotrans, and had never received any shipments from Cosmotrans.[7] (Govt. Exh. 3)

Evidence indicates that either Respondent Wirth or Barbarits ordered U.S.-origin electronic test equipment from Lambert, directing that Lambert show "Tadiran Israel Electronics, Ind.", as the purported ultimate consignee on export control documents, that Lambert use Hagemann's freight forwarding company, to ship this equipment from the United States.[8] The U.S.-origin equipment was to be routed to Israel, via Cosmotrans in Zurich. Cosmotrans was shown on export control documents as the intermediate consignee. (Govt. Exh. 5B).

The Shipper's Export Declarations and air waybills for these shipments show one of Lambert's companies as the exporter for U.S.-origin goods going to Tadiran Israel Electronics Ind., and shows Tadiran as the ultimate consignee.[9] The air waybills, which accompanied the shipments, described the goods as "elect." or "electr.", apparently so that the goods would not be perceived as electronic goods by Swiss authorities.[10] (Govt. Exh. 1, 4C, 5C) Lambert testified that Cosmotrans prepared new shipping documents for the U.S.-origin equipment when it arrived in Zurich, and forwarded the shipments to end-users in the East bloc. (Govt. Exh. 1, 2)

The invoice for one of the shipments reflects Lambert's practice of listing the purchaser's initials and date of order as the purchase order, here, "HW 200582", presumably referring to Hans Wirth.[11] (Govt. Exh. 3, 6A) Telexes between Respondents to Lambert indicates that Respondents did, in fact have meaningful contact with him during the course of these transactions.[12] (Govt. Exh. 6B, 6C)

[4] Agency relies heavily on the testimony of Robert Lambert to support its case. Mr. Lambert's statements are substantiated by those of Customs Service Special Agent Richard E. Roberts and OEE Special Agent David J. Peters, as well as other documentary evidence. Thus, Respondents contend that the Agency's case rests entirely on suppositions, and conclusions and that the Agency is merely trying to "transfer the 'problems' of Messrs. Lambert and Kessler" to the Respondents Wirth and Barbarits (Resp. Submission at 1). These assertions are not supported by the evidence. Respondents, however offer no evidence in support of their position and refute Agency's charges with only suppositions and conclusions of their own.

[5] It is pointed out that the acts of one co-conspirator are attributable to each member of the conspiracy. *See United States v. Baumgarten*, 517 F.2d 1020 (8th Cir. 1975), *cert. denied* 423 U.S. 876 (1975); *United States v. Kaplan*, 554 F.2d 966 (9th Cir. 1977), *cert. denied* 434 U.S. 968 (1977), *rehearing denied* 434 U.S. 1026 (1977).

[6] Respondents state that they never had any contact with Kessler in their answers, yet in their submission for the record they claim that Kessler accepted consignments as the representative of Tadiran, therefore admitting that they had some contact with him.

[7] Respondents do not contest that Tadiran has never heard of, placed orders with, or received any shipments from Wirth, Barbarits, Cosmotrans or Lambert. Respondents state that when the consignments for Tadiran were forwarded via Cosmotrans, Cosmotrans, was not able to make the shipment to Israel, therefore Tadiran consignments in Zurich had to go through forwarding companies for further shipping. Thus, Respondents argue, it is not unusual that Tadiran does not know of Cosmotrans. I disagree. I would think it was very unusual for Tadiran not to be aware of, at the very least, the name of the forwarding company handling goods in which it had an interest.

[8] Respondents deny that Lambert had been told that he should declare Tadiran as ultimate purchaser. Respondents argue that Lambert's statements made during interrogation in this matter were produced by feeding all of the information to the person being questioned, who himself was under criminal investigation, in order to "create" relationships. (Resp. Submission at 2) This suggestion is without merit. There is no evidence that when questioned the declarant was coerced into fabricating these statements.

Respondents further allege that Mr. Lambert's statements lack dependability due to the fact that (1) they were made years after the events in question; and (2) Lambert wants to involve Cosmotrans into the matter. Neither of these contentions is accepted. Lambert's memory as to the events and conversations recalled in his statements appears to be certain. It is consistent with statements he made earlier, while investigations were going on. Further, there is no motive attributed to Lambert by the Respondents to show why he would want to implicate Cosmotrans. Lambert did not exculpate himself by making statements against Cosmotrans.

[9] Additionally, Lambert placed on the right margin of the Shipper's Export Declaration the statement: This must go via Zurich. Strip of [sic] any markings on this shipment. Put ZRH [Zurich] label of agent on freight (Govt. Exh. 4D).

[10] Respondents maintain that Cosmotrans was only a forwarding agent, and that under the Regulations in effect until December 31, 1985, neither the authorities nor forwarding agents in Switzerland had the right or the opportunity to check consignments shipped via the bonded warehouse. Therefore, Respondents contend that it would have made no difference whether the consignments had been labeled "electronic" instead of "electr.". Further, Respondents note the "Uni-data House Air Waybill" of May 4, 1981, contained no information on whether a license had been issued for "restricted" or "non-restricted" goods. Respondents note that this bill states "Commercial invoices airmailed ahead". (Resp. Submission at 3)

Respondents claim that in the forwarding business forwarding agents are often used as "mailboxes" by their customers. Respondents argue that as a forwarding agent, Cosmotrans had no opportunity to verify for which country a license had been issued.

The assertion that they could not physically check the goods is not an excuse for furthering fraud. In light of all the evidence indicating Respondents participation in these transactions, it is unbelievable that Respondents were incapable of verifying the ultimate end user.

[11] Respondents contend that the initials "H.W." on the various documents do not implicate Respondent Hans Wirth, reasoning that anyone can unlawfully use those initials. This does not appear likely in view of the evidence, which indicates that the initials on the documents referenced Respondent Wirth.

[12] Respondents argue that these telexes are of the type made by forwarding businesses for forwarding agents in the ordinary course of business and does not indicate involvement in the plan. To the contrary, the telexes confirm that Cosmotrans effectively and with understanding, communicated with Lambert concerning shipments which Cosmotrans handled for its customers.

Findings

Wirth/Cosmotrans ordered U.S.-origin equipment from Lambert, including the U.S.-origin electronic test equipment in the three representative shipments, and further, that Lambert, using Hagemann's freight forwarding company, Uni-Data, shipped this equipment to an ultimate consignee allegedly in Israel via Cosmotrans in Zurich, listed on export control documents as the intermediate consignee.

Following arrival of the U.S.-origin equipment at Cosmotrans' warehouse facilities in Zurich, Respondents, in concert with others, aided or abetted the preparation of false shipping documents, showing new consignees and destinations, not authorized for reexport by the Agency. Respondents, in concert with others, thereafter aided or abetted the reexport of these shipments of U.S.-origin electronic test equipment to unauthorized consignees in the G.D.R., Bulgaria and the U.S.S.R.

Respondents knew that Tadiran was identified on the export control documents as the ultimate consignee for the three representative shipments of U.S.-origin electronic test equipment.

Respondents ordered the U.S.-origin electronic test equipment from Lambert or his companies and "Cosmotrans" prepared new shipping documents once the equipment arrived in Zurich, indicating that Respondents were actively involved in the scheme. There is no record of Respondents notifying the Agency of the changed end-users or destinations.

The actions of the Respondents, when considered with those of Lambert, Hagemann and Kessler, show a concerted effort to divert U.S.-origin electronic test equipment controlled for reasons of national security without the required validated export licenses.[13]

Respondents concealed the fact that the equipment was not going to Tadiran in Israel, and instead going to end-users and destinations within the East bloc, clearly material facts in these transactions.

Based on the foregoing, I find that Respondents were party to a conspiracy, with others, to divert U.S.-origin electronic test equipment from end-users and destinations originally approved by the Agency to end-users and destinations within the East bloc, without the requried validated licenses and reexport authorizations, in violation of § 387.3 of the Regulations. I further find that Respondents aided or abetted the diversion of U.S.-origin electronic test equipment, knowing or having reason to know that the required reexport authorizations had not been obtained, in violation of §§ 387.2 and 387.4 of the Regulations and that Respondents concealed from the Agency that the electronic test equipment exported in the three representative shipments did not go to Tadiran in Israel, but instead went to some other destination, probably within the East bloc, in violation of § 387.5 of the Regulations.

Based on the above findings of fact, I conclude that an Order denying U.S. export privileges for a period of 20 years to Respondents Hans Wirth, Bruno Barbarits and Cosmotrans AG, from the date a final order becomes effective in this proceeding, is appropriate. I do not concur in Agency counsel's suggestion of a 30 year denial period. A 20 year denial period is sufficient punishment for these acts and can and/or will successfully bar Respondents from participating in the export of U.S. goods for their lifetimes. I further find that a civil monetary penalty, in addition to the barring from export privileges is unnecessary. The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondents.

Order

I. For a period of 20 years from the date of the final Agency action, Respondents

Hans Wirth, and Bruno Barbarits, each individually and doing business as COSMOTRANS, AG,

a/k/a

COSMOTRANS LTD., Fracht West Building, Office 274, CH 8058, Zurich, Switzerland

Cosmotrans USA Inc., P.O. Box 30978, JFK International Airport, Jamaica, New York 11430

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial or export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

[13] This is evidenced by the listing of this equipment, under entry 158A, on the Commodity Control List. (Govt. Exh. 7)

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(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: April 4, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-10223 Filed 5-6-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On January 6, 1988, the Department of Commerce published the preliminary results of its administrative review of and intent to revoke in part the antidumping finding on pressure sensitive plastic tape from Italy. The review covers three manufacturers and/or exporters of pressure sensitive plastic tape and the period October 1, 1985 through September 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margins from those presented in our preliminary results of review.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 550) the preliminary results of its administrative review of and intent to revoke in part the antidumping finding on pressure sensitive plastic tape from Italy (42 FR 56110, October 21, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of pressure sensitive plastic tape measuring over 1¼ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 3919.80.20, 3919.90.50, 4811.21.00, 4821.90.20, 4823.11.00, and 5908.10.00.

The review covers three manufacturers and/or exporters of Italian pressure sensitive plastic tape to the U.S. and the period October 1, 1985 through September 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and intent to revoke in part. We received comments from the petitioner, Minnesota Mining and Manufacturing ("3M"), and one respondent, N.A.R., S.p.A. ("NAR"). (We received additional comments from NAR concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Petitioner's Comments

Comment 1: 3M argues that the Department should have adjusted for differences in physical characteristics of the merchandise associated with NAR's U.S. and home market sales. 3M suggests that we use cost data from another Italian tape manufacturers as best information available.

Department's Position: We agree. Since NAR failed to provide such data in this review, as best information available we used another firm's publicly available cost data on merchandise differences for the last review period, and we adjusted foreign market value ("FMV") to account for these merchandise differences.

Comment 2: The petitioner argues that the Department should treat U.S. brokerage and handling expenses as movement expenses rather than indirect selling expenses, and deduct them from NAR's U.S. sales.

Department's Position: We agree that brokerage and handling are movement expenses. However, NAR did not furnish such data in this review and we did not have a reasonable figure available to use as best information available. Moreover, it has been our experience that these adjustments are generally insignificant in relation to the price or value of the merchandise. Therefore, we made no adjustment for these expenses.

Comment 3: 3M suggests that the Department should use the same number of days for bank clearance in both markets in calculating credit expenses.

Department's Position: In our preliminary results we incorrectly added an additional number of days for bank clearance to the payment terms in both markets. In our final calculations we have deleted the additional number of days for bank clearance in both markets because they are already accounted for in the payment terms.

Respondent's Comments

Comment 4: NAR claims that the Department should not have used home market sales to end-users in its calculation of FMV, since it sold exclusively to wholesalers in the United States.

Department's Position: We used home market sales to wholesalers, retailers, and end-users because we examined pricing patterns and found unexplained inconsistencies; that is, at times prices differed though purchased quantities were the same, and vice-versa. We are not satisfied that these classes of purchasers were different, as claimed.

Comment 5: NAR claims that the Department should have adjusted for home market movement expenses that it incurred on certain sales to end-users.

Department's Position: In our calculations we included the actual sale-by-sale movement expenses submitted by NAR.

Comment 6: NAR contends that the Department should not have used the Federal Reserve Board quarterly exchange rates in its calculations, but should have used the exchange rates which NAR submitted in its February 4, 1987 submission.

Department's Position: Using the Federal Reserve Board rates of exchange is in accordance with § 353.56(a) of the Commerce Regulations.

Comment 7: NAR contends that the Department should have used a weighted-average U.S. price, since Congress intended that section 777A of the Tariff Act provide for a fairer comparison between U.S. price and FMV. NAR claims that weight-averaging would produce fairer results here because NAR would be credited for U.S. sales made at or above its FMV and Commerce would be less likely to find sales at margin.

Department's Position: We disagree. Congress added this section of the Tariff Act allowing sampling and averaging of U.S. sales data to reduce Departmental costs and the administrative burden where a significant volume of sales were involved or a significant number of adjustments to prices were required. Congress did not intend to discourage the Department from using individual sales data when available and administratively feasible. *See* H.R. Rep. No. 725, 96th Cong., 2d Sess. 9 (1984).

Comment 8: NAR contends that the Department should use average U.S. and home market movement expenses, rather than sale-by-sale movement expenses.

Department's Position: We prefer to adjust for movement expenses on a sale-by-sale basis, when, as here, such data are available, since this more accurately reflects the actural expenses incurred.

Comment 9: NAR argues that the Department should not have offset home market commission with U.S. indirect selling expenses because § 353.15(c) of the Commerce Regulations is applicable only in exporter's sales price calculations.

Department's Position: We disagree. Only the last sentence of § 353.15(c) is restricted to exporter's sales price situations. The rest of this section is applicable in both purchase price and exporter's sales price situations. Therefore, this section authorizes the Department's adjustment;

Comment 10: NAR argues that the Department incorrectly assumed that U.S. indirect selling expenses equalled or exceeded the full amount of the commissions paid in the home market. In addition, NAR contends that the Department overstated the amount of U.S. indirect selling expenses because salaries for salesmen who service the U.S. market should be treated as direct selling expenses. If such salaries are treated as indirect selling expenses, only indirect selling expenses incurred *in the U.S.* should be included in the offset against home market commissions (*See Silver Reed America v. U.S.*, CIT, Slip. Op. 88-5 (January 12, 1988)). Similarly, the Department incorrectly considered as an indirect U.S. selling expense the imputed interest for the time the merchandise was on the water prior to importation, an expense not incurred *in the U.S.*

Department's Position: We disagree. We did not assume that U.S. indirect selling expenses equalled or exceeded home market commissions. In cases where U.S. indirect selling expenses were greater than home market commissions, we limited our adjustment for U.S. indirect selling expenses by the amount of the home market commissions. We consider salesmen's salaries to be indirect, rather than direct, selling expenses, since they are paid whether specific sales are made or not. We did not impute an interest expense for the time the merchandise was on the water; since these sales occurred before exportation, all credit expenses were actual and we consider them to be directly related U.S. selling expenses. On March 18, 1988 the Court of International Trade amended its order in *Silver Reed* to hold that the Department correctly deducted indirect expenses incurred during the period the merchandise was on the water (Slip Op. 88-37). Therefore, NAR's reliance on that case is misplaced and we are continuing our policy of adjusting FMV for indirect U.S. selling expenses, whether they were incurred *in the U.S.* or not. Also, we did not include direct selling expenses in the offset to home market commissions. Finally, we note that we used only data furnished by NAR.

Comment 11: NAR contends that for U.S. sales the Department should not have included in its calculations the number of days that it takes NAR's bank to credit NAR's account after the bank receives payment from NAR's customers; rather, the Department should have used the actual credit days provided in its submission.

Department's Position: We agree in part. In our final calculations we did not include the number of days that it takes NAR's bank to credit NAR's account after the bank receives payment from NAR's customers because the additional number of days was already included in the payment terms; however, we did calculate credit costs on a sale-by-sale basis from the date of shipment to the date that the payment was credited to NAR's account.

Comment 12: NAR contends that in calculating the U.S. credit expenses the Department should use the gross price minus the discount.

Department's Position: We agree; we note that we changed our calculations of both U.S. and home market credit expenses.

Comment 13: NAR argues that the Department should calculate foreign inland freight insurance by dividing the expense by the total square meters sold and not by the total square meters sold under review.

Department's Position: We disagree. The expense reported for foreign inland freight insurance was only for those U.S. sales under review.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results for NAR and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
NAR	Oct. 01, 1985-Sept. 30, 1986.	6.39
Manuli	do	[1] 0

[1] No shipments during the period; margin from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. For the reasons set forth in the preliminary results of review, tentative revocation in part, and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Autoadesivitalia, S.p.A. Accordingly, we revoke in part the antidumping finding on pressure sensitive plastic tape from Italy. This partial revocation applies to all unliquidated entries of this merchandise manufactured and/or exported by Autoadesivitalia, S.p.A., entered, or withdrawn from warehouse, for consumption on or after October 5, 1982, the date of the tentative revocation in part.

As provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms.

For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 35688, August 5, 1983 and 51 FR 43955, December 5, 1986). For any shipments from a new exporter not covered in this or prior administrative reviews, whose first shipments of Italian pressure sensitive plastic tape occurred after September 30, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 6.39 percent shall be required. These deposit requirements are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

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This administrative review and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a and 353.54.

Date: April 25, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 88-10242 Filed 5-6-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain flat-rolled steel products.

DATE: Comments must be submitted on or before May 19, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products * * *."

We have received a short-supply request for the following flat-rolled steel products:

(1) *Certain hot-rolled steel:* SAE grades C1006, C1008, and C1010 hot-rolled coils; 0.055 to 0.247 inches in thickness; 25.25 to 65.70 inches in width; in coil weights up to 32,000 pounds; of drawing, structural and commercial quality; continuous cast; pickled and oiled; with half standard gauge tolerances.

(2) *Certain cold-rolled steel:* SAE grades C1008, C1010, C1017, and C1020 cold-rolled coils; 0.015 to 0.122 inches in thickness; 36.00 to 60.00 inches in width; in coil weights of 20,000 to 40,000 pounds; of drawing and commercial quality; continuous cast; with half standard gauge tolerances.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 19, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 3, 1988.

[FR Doc. 88-10244 Filed 5-6-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Hot-Rolled Sheet; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain hot-rolled sheet for use in the manufacture of ASTM A214 condenser tubing.

DATE: Comments must be submitted on or before May 19, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Austria, U.S.-Australia, U.S.-Brazil, U.S.-EC, U.S.-Hungary, U.S.-Korea, U.S.-Poland, U.S.-Spain, and U.S.-Trinidad & Tobago Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Romania and U.S.-Venezuela Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico and U.S.-Finland Understandings Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for AISI grade C1010 hot rolled steel sheet, aluminum killed, fine grain, pickled and oiled, in coils weighing from 22,000 to 30,000 pounds, in widths ranging from 40.313 to 43.000 inches and in thicknesses ranging from 0.061 to 0.122 inch, for use in the manufacture of ASTM A214 tubing.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 19, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import

Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 2, 1988.

[FR Doc. 88-10243 Filed 5-6-88; 8:45 am]

BILLING CODE 3510-DS-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 88-1]

Philip A. Dye and Marilyn J. Dye, d/b/a P&M Enterprises; Prehearing Conference Change

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of change of prehearing conference date.

SUMMARY: This notice announces a change of the date of the prehearing conference announcement that appeared at page 13436 in the Federal Register of Monday, April 25, 1988, (53 FR 13436).

DATE: The prehearing conference in the matter Philip A. Dye and Marilyn J. Dye, d/b/a P&M Enterprises, will be held on May 12, 1988, at 9:30 a.m. instead of May 10, 1988, as previously announced.

ADDRESS: The prehearing conference will be in Room 1211, Interstate Commerce Commission, 12th Street NW. and Constitution Avenue, Washington, DC. For additional information contact: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6800.

Date: May 4, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-10233 Filed 5-6-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Closed Meeting

May 2, 1988.

The USAF Scientific Advisory Board Space Division Advisory Group will meet on 24-25 May 1988, from 8:00 a.m. to 5:00 p.m., at Los Angeles Air Force Base, CA, Building 100, Room 1330.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force Space programs including the integration of USAF elements of the Strategic Defense Initiative. This meeting will involve discussions of classified defense matters listed in § 552b(c) of Title 5, United States Code, specifically paragraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10193 Filed 5-6-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.192, 84.198, 84.203]

Adult Education for Homeless Program; Grants

AGENCY: Department of Education.

ACTION: Correction to application notices for the Adult Education for the Homeless Program, the Workplace Literacy Partnerships Program, and the Star Schools Program.

Notices for the transmittal of applications for certain new programs were published as follows:

The Adult Education for the Homeless Program (53 FR 4102, February 11, 1988), the Workplace Literacy Partnerships Program (53 FR 9234, March 21, 1988), and the Star Schools Program (53 FR 11176, April 5, 1988). The deadline for Intergovernmental Review was inadvertently omitted from these notices. Deadlines for Intergovernmental Review are established as follows:

CFDA No. 84.192—Adult Education for the Homeless Program.

Deadline for Transmittal of Applications: July 1, 1988.

Deadline for Intergovernmental Review Comments: The deadline for Intergovernmental Review of the Adult Education for the Homeless Program in a State will be 30 days after that State submits its application for assistance to the U.S. Department of Education, but in no case will that deadline be earlier than 30 days after publication of this notice in the Federal Register.

For Further Information Contact: Sarah Newcomb, Program Services, Division of Adult Education, Office of Adult and Vocational Education, U.S. Department of Education, Room 522, Reporters Bldg., 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-2380.

CFDA No. 84.198—Workplace Literacy Partnerships Program.

Deadline for Transmittal of Applications: June 15, 1988.

Deadline for Intergovernmental Review Comments: August 5, 1988.

For Further Information Contact: Nancy E. Smith, National Projects Branch, Division of Innovation and Development, 514 Reporters Bldg., Office of Adult and Vocational Education; U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5516. Telephone (202) 732-2359.

CFDA No. 84.203—Star Schools Program.

Deadline for Transmittal of Applications: June 15, 1988.

Deadline for Intergovernmental Review Comments: August 15, 1988.

For Further Information Contact: Gordon McAndrew, Educational Networks Division, Office of Educational Research and Improvement, 502 New Jersey Avenue, NW., Washington, DC 20208. Telephone (202) 357-6126.

Intergovernmental Review of Federal Programs

These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In States that have established a State Review Process, applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. If a program permits an applicant to perform activities in more than one State and the applicant proposes to do so, the applicant should contact, immediately upon receipt of this notice, the Single Point of Contact for each State in which it proposes to perform activities and follow the procedures established in those States under the Executive Order. A list of the State Single Points of Contact is included at the end of this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the deadline for Intergovernmental Review indicated in this notice to the following

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address: The Secretary, E.O. 12372—CFDA# [fill in number], U.S. Department of Education, MS 6355, 400 Maryland Avenue, SW., Washington, DC 20202. In those States that require review for these programs, applications are to be submitted simultaneously to the State Single Point of Contact and the U.S. Department of Education.

If an applicant has submitted an application under any of the programs referred to in this notice prior to the publication of this notice in the Federal Register, the applicant did not also submit the application to the State Single Point of Contact, the applicant must immediately submit the application to the State Single Point of Contact.

Proof of mailing to the State Single Point of Contact will be determined on the same basis as the mailing of applications to the Department of Education.

State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, State Single Point of Contact, Alabama State Clearinghouse, Department of Economic & Community Affairs, P.O. Box 2939, 3465 Norman Bridge Road, Montgomery, Alabama 36105–0939, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 1700 West Washington Avenue, Fourth Floor, Phoenix, Arizona 85007, Telephone (602) 255–5004

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW. Washington, DC 20004, Telephone (202) 727–9111

Florida

George H. Meier, Director of Intergovernmental Coordination, Single Point of Contact, Executive Office of the Governor, Office of Planning & Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of the Budget, Room 152–E, State Capitol Building, Topeka, Kansas 66612, Telephone (913) 296–2436

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Louisiana

Colby S. LaPlace, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Telephone (504) 342–9790

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Telephone (617) 727–3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–1838

Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911, Telephone (517) 334–6190

Mississippi

Mr. Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Building, 500 High Street, Jackson, Mississippi 39202, Telephone (601) 359–3150

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430 Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Captiol Station, Room 210—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 885–4420

Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator

New Hampshire

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Please direct correspondence and questions to: Linda E. Wise

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone: (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0435

South Carolina

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 533–5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing & Community Development, 205 North 4th Street, Richmond, Virginia 23219, Telephone (804) 786–4474

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Telephone (206) 753–4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community & Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741

Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam, 96910, Telephone: (671) 472–2285

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Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–99885, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (8O9) 774–0750

(E.O. 12372)

Dated: May 3, 1988.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–10258 Filed 5–6–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coal Policy Committee, National Coal Council; Meeting Cancellation Notice

An open meeting of the Coal Policy Committee of the National Coal Council which was scheduled to be held on Thursday, May 19, 1988, at 9:30 a.m., the Hyatt Regency Hotel, 2799 Jefferson Davis Hwy., Arlington, VA 22202, has been canceled. This meeting was announced in the **Federal Register**, Vol. 53, No. 77 on Thursday, April 21, 1988.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–10235 Filed 5–6–88; 8:45 am]

BILLING CODE 6450–01–M

Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and time: Wednesday, May 25, 1988, 1:00 p.m.

Place: O'Hara Marriott Hotel, Salon Seven, 8535 West Higgins, Chicago, Illinois.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman.
—Discuss the pipeline survey.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 am and 4:00 pm Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–10236 Filed 5–6–88; 8:45 am]

BILLING CODE 6450–01–M

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories and Storage Task Group of the Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and time: Tuesday, May 17, 1988, 1:00 p.m. (PLEASE NOTE: This meeting replaces the one scheduled for April 19, 1988, which had to be canceled.)

Place: Hyatt Regency DFW Hotel, Concord Room (East Tower), International Parkway, Dallas/Fort Worth Airport, Dallas, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the parent council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Discuss surveys and progress on assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public participation: The meeting is open to the public. The Chairman of the Inventories and Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–10237 Filed 5–6–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Docket No. RFC–Alt.F.–88–1]

Capability/Delivery of Alternative-Fuel Vehicles for the Federal Government Fleet; Request for Information

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Request for information.

The Department of Energy (DOE), Office of Transportation Systems is interested in receiving comments on the practicability of designing, building and delivering vehicles that can operate on an alternative fuel in a highly efficient and effective manner.

The DOE will not be procuring vehicles for the Federal government, but serves as technical and general advisors to the General Services Administration in their function as the purchaser and other agencies as users of vehicles. The DOE is particularly interested in the following subjects or issues as the basis for evaluation of approach(es) in light of constraints reflected in criteria given below:

(1) The range of minimum quantity necessary for the respondent to build at essentially a production price.

(a) Note if there is any special effect for a quantity of 5,000 vehicles total.

(b) Note if there is any special effect for a quantity of 5,000 per year for four years.

(2) The lead time required to provide the above quantity.

(3) The fuel(s) on which the vehicle would operate.

(a) Identify whether these would be mono- or dual-fuel on-board storage/use.

(4) The type(s) of vehicle that could be provided, and the number of different types that could be accommodated in the above situations. Include a specific note as to ability to provide compact or mid-size sedans.

(5) Any significant differences in operation (e.g., cold start, power output, acceleration, refueling time; and range) that would be encountered in use of the alternative fuel.

(6) Emissions and/or energy economy benefits that would be provided.

(7) Benefits that would accrue to the vehicle manufacturer; to the industry.

(8) Factors that would deter manufacturer interest (e.g. absence of CAFE credits and alternative emissions standards).

Criteria that are presently envisioned are as follows:

(a) The maximum cost of vehicles must comply with statuatory price limitations (Pub. L. 98–591 Section 601) plus added systems and equipment allowances (Pub. L. 91–423).

(b) Life cycle costs, including trade-in value of vehicles after three years and approximately 40,000 miles, must be reasonably competitive with those for conventional gasoline-fueled vehicles.

(c) Standard warranty arrangements (Federal Standard 122AB Automobiles, Section 3.5 Warranty) would apply.

(d) Maintenance and parts must be available from local dealers skilled in repairs of conventional vehicles plus any special features resulting from alternative fuel capability.

(e) Vehicles must reet all applicable Federal and state regulations such as EPA emissions requirements, DOT Corporate Average Fuel Economy (CAFE) and safety standards, and California emissions standards (if pertinent), or receive waivers to them.

(f) Performance, reliability, utilization and durability must be generally comparable to that of gasoline vehicles of the same type and class. The vehicles will typically be used for general transportation and by a variety of drivers. Ease of operation and refueling should be comparable to vehicles used in a public, daily rental operation.

(g) A sizeable portion of vehicles purchased will be used, at least initially, in areas where the alternative fuel is not widely or regularly available, so the vehicles must be capable of being operated on gasoline too, and items (e) and (f) must be met under these conditions. Supply of vehicles may be divided between those dedicated to the alternative fuel and those operable on the alternative fuel or gasoline or any blend. However, the quantity split would be dependent on selection of dedicated vehicles by the using agency following contractual committments.

(h) Operational convenience, including that of refueling, and cost of alternative fuel vehicles need to be relatively close to that of present vehicles of comparable size and utility in order that agencies can be encouraged to choose them.

DATES: Ten (10) copies of any response to this **Federal Register** notice must be received by the Department by June 23, 1988. Please label both the comment and the envelope with the Docket Number.

ADDRESS: Written comments are to be submitted to the following address: U.S. Department of Energy, Office of Conservation and Renewable Energy, CE–43.1, Room 6B–025, Docket No. RFC–Alt.F.–88–1, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: Ms. Andrea Kasarsky, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT: David Garrett, U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Transportation Systems, CE–151, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8032.

Following receipt and review of these comments, the DOE may hold a public meeting for respondees and other interested parties to discuss various items and potential ramifications thereof as they would affect any forthcoming government action. If such a meeting were held it would likely be in the Detroit area in early July. A **Federal Register** notice would be published Prior to any meeting indicating date and location.

Issued at Washington, DC on May 3, 1988.

Donna R. Fitzpatrick,

Assistant Secretary for Conservation and Renewable Energy.

[FR Doc. 88–10240 Filed 5–6–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–58–NG]

Great Lakes Gas Transmission Co. and Michigan Gas Co.; Order Reassigning an Authorization To Import Natural Gas From Canada and Granting Intervention

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting authorization to import natural gas from Canada and amending prior authorization.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order transferring authority to import natural gas from Canada to Michigan Gas Company (Michigan Gas) from Great Lakes Gas Transmission Company (Great Lakes). The order issued in ERA Docket No. 87–58–NG authorizes Michigan Gas to import up to 7,300 Mcf per day, subject to an annual limitation of 1,367,000 Mcf, over a period ending November 1, 1991, and reduces Great Lakes' authority to import natural gas for resale to Michigan Gas by an equivalent amount.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076; Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

BEST COPY AVAILABLE

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Issued in Washington, DC, April 29, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-10236 Filed 5-6-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-359-000, et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

May 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-359-000]

Take notice that on April 25, 1988 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-359-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon facilities previously used to provide transportation of gas on behalf of Amoco Production Company (Amoco) and to purchase gas from Amoco, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline requests Commission authorization to abandon measuring facilities on Amoco's Ship Shoal Block 292 "A" Platform together with the six-inch line from Ship Shoal Blocks 292 to 274, offshore Louisiana. Trunkline states that it was authorized to construct such facilities in Docket No. CP77-314 and that it was authorized to abandon the transportation service for Amoco by Commission order issued September 15, 1987, in Docket No. CP87-340. Trunkline further states that Amoco was authorized to sell gas from Ship Shoal Block 292 to Trunkline by order issued September 9, 1977, in Docket No. CI77-729.

Comment date: May 26, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-353-000]

Take notice that on April 22, 1988, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-353-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon gas production and gas reserves located in the Seven Oaks Area, Polk County, Texas by conveyance to Mitchell Energy Corporation (Mitchell Energy), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to abandon some 5.7 Bcf of gas reserves owned by Applicant by conveyance to Mitchell Energy. Applicant states such proposal would relieve operating a high maintenance cost gathering system and marketing minor volumes of gas reserves that would not affect Applicant's ability to serve its customers. Applicant does not propose to abandon any jurisdictional gas supply facilities herein.

Comment date: May 26, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-357-000]

Take notice that on April 22, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-357-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to establish a new delivery point to The Southern Connecticut Gas Company (Southern Connecticut) an existing Rate Schedule CD-6 firm sales customer, under Applicant's blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that it is currently authorized to deliver natural gas to Southern Connecticut at Milford, Connecticut, for the account of Algonquin Gas Transmission Company (Algonquin) pursuant to the terms of an exchange agreement between Algonquin and Applicant. Applicant indicates that Southern Connecticut has requested Applicant to establish Milford as a delivery point for firm sales service from Applicant to Southern Connecticut. Applicant states that no new facilities are required to establish this delivery point.

Applicant proposes no increase in the total daily and/or annual quantities it is authorized to deliver to Southern Connecticut. Applicant asserts that the establishment of the proposed delivery point is not prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed delivery point without detriment or disadvantage to any of Applicant's other customers.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10256 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-339-000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

May 2, 1988.

[Docket No. CP88-339-000]

Take notice that on April 19, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP88-339-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Production Company (Amoco), a producer, under Applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant requests authorization to reansport up to 40,000 dt per day on behalf of Amoco pursuant to a transportation agreement dated February 11, 1988, between Applicant and Amoco (Agreement). The Agreement, it is said, provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Applicant states that it would then transport and redeliver the gas, less fuel used and unaccounted for line loss to Northern Indiana Public Service in various locations in Indiana.

Applicant further states that the maximum daily and annual quantities would be 40,000 dt and 7,300,000 dt, respectively. Applicant avers that service under § 284.223(a) commenced on March 1, 1988, as reported in Docket No. ST88-2886.

Comment date: June 16, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. CNG Trading Company

[Docket No. CI87-811-001]

May 2, 1988.

Take notice that on April 21, 1988, CNG Trading Company (CNG) of 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for at least one year, through March 31, 1989, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 16, 1988, in accordance with Standard Paragraph J at the end of the notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP88-344-000]

May 3, 1988.

Take notice that on April 20, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-344-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to transport, on an interruptible basis, up to a maximum of 5,000 MMBtu (plus any additional gas accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Olin Corporation (Olin), an end-user, under the authorization issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that transportation would be from 42 receipt points located in Oklahoma, Texas, Arkansas, Kansas, Iowa, New Mexico and Louisiana to interconnections with Northern Illinois Gas Company (NI-Gas) in Illinois for redelivery by NI-Gas to Olin at its Joliet, Illinois, plant. Natural states that it commenced the transportation of natural gas for Olin on March 1, 1988, for a 120-day period ending June 29, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and that it proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b).

Comment date: June 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-355-000]

May 3, 1988.

Take notice that on April 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-355-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 25,750 MMBtu on a peak day and up to 9,398,750 MMBtu on an annual basis for Chevron. It is stated that United would receive the gas for Chevron's account at various existing points on United's line in Louisiana and would deliver equivalent amounts of gas at an existing interconnection between United and Gulf South Pipeline Company at a Chevron-Monsanto plant in St. Charles Parish, Louisiana. It is asserted that the transportation service would be effected using existing facilities. It is explained that the service commenced March 29, 1988, under the automatic authorization provisions of § 284.223, with a report filed in Docket No. ST88-2996-000.

Comment date: June 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-337-000]

May 3, 1988.

Take notice that on April 14, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-337-000 an application pursuant to section 7(b) the Natural Gas Act, for permission and approval to abandon a transportation service for Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that under a transportation agreement dated March 3, 1987, it transports natural gas on an interruptible basis for Diamond Shamrock under Rate Schedule X-279 to Transco's FERC Gas Tariff, Original Volume No. 2. This service, it is indicated, was certificated by Commission order issued January 30, 1987, in Docket No. CP87-58-000. Transco explains that it receives natural gas from Columbia Gulf Transmission Company (Columbia Gulf) for the account of Diamond Shamrock at existing points of interconnection at: (1) The Acadia Plant, Acadia, Parish, Louisiana and (2) Terrebonne Parish,

Louisiana. Transco indicates that it then transports up to 1,000 Mcf per day for delivery to Diamond Shamrock at Vermilion Block 37, Offshore Louisiana (Vermilion 37). For this service, it is stated, Transco charges Diamond Shamrock the applicable transportation rates based on the maximum rates set forth in Original Sheet No. 19 of its FERC Gas Tariff, Second Revised Volume No. 1.

Transco states that it is advised by Diamond Shamrock that production at Vermilion 37 "A" Platform has ceased and that Diamond Shamrock's lease has expired and has been surrendered to the Minerals Management Service (MMS) effective September 16, 1987. Transco further states that MMS granted its requested relinquishment of right-of-way for the 5.31 miles of pipeline which had been operated by it to perform the subject service, effective November 13, 1987. Accordingly Transco requests that the Commission authorize the abandonment of the transportation service, effective retroative to November 13, 1987. Transco notes that the proposed abandonment of service to Diamond Shamrock would not result in the abandonment of any facilities presently in use.

Comment date: May 24, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP88-345-000]

May 3, 1988.

Take notice that on April 20, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88-345-000 a request, pursuant to § 157.205 of the Commission's Regulations for authorization to provide a transportation service on behalf of International Paper Company (IP), and end-user, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to two agreements, Natural proposes to transport up to a total of 64,000 MMBtu per day of natural gas for use by IP at its Pine Bluff plant in Jefferson County, Arkansas and at its Camden plant in Ouachita County, Arkansas. Under the first agreement, Natural anticipates the average daily amount of natural gas to be about 5,000 MMBtu and the annual amount to be about 1,825,000 MMBtu of natural gas. Under the second agreement, Natural estimates the average daily amount of natural gas to be 3,000 MMBtu and the annual amount to be 1,095,000 MMBtu.

Natural indicates that in accordance with both agreements, service respective to the provisions stipulated under § 284.223(a) commenced March 1, 1988, and is reported in Docket No. ST88-2833 and ST88-2841.

Comment date: June 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP88-129-002]

May 4, 1988

Take notice that on April 26, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP88-129-002 an amendment to its pending application filed on January 14, 1988, in Docket No. CP88-129-001 pursuant to section 7(c) of the Natural Gas Act to construct and operate natural gas facilities and to provide firm service to a new resale customer, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket No. CP88-129-001, Applicant requested authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant stated that Elizabethtown Gas Company (Elizabethtown) had requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dth per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdth annually. Applicant further stated that in order to provide the requested services, it proposed to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey and that the proposed extension would consist of the construction of approximately 36.1 miles of 16-inch pipeline and three interconnecting measuring facilities at a total estimated cost of $23,723,000.

Applicant's amending application, Docket No. CP88-129-002 proposes a revision to the proposed pipeline route and reflects an increase in the estimated cost of construction. Applicant asserts that the newly proposed route utilizes more of existing utility corridors; such as, power lines, other pipelines and an abandoned railroad bed. Applicant further asserts that the route currently proposed was shown in Exhibit F-IV (Page 22, Alternate (A) of Applicant's Docket No. CP88-129-001. Applicant now estimates that the total cost of the facilities would be $27,300,000, an increase of $3,577,000. Applicant asserts that this would be due to: (1) An overall increase in estimated costs of acquiring the right-of-way, (2) an increase of 1.7 miles in the length of the proposed pipeline and, (3) an increase in the cost to purchase material.

Comment date: May 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Trunkline Gas Company

Docket No. CP88-340-000]

May 4, 1988.

Take notice that on April 19, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-340-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for World Color Press (World Color), under Applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authority to transport up to 1,000 dt equivalent of natural gas per day on behalf of World Color pursuant to a transportation agreement dated February 23, 1988, between Applicant and World Color (Agreement). Applicant states that the Agreement provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Applicant states it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Central Illinois Public Service Company located in Effingham, Illinois.

The Applicant further states that the maximum daily and annual quantities would be 1,000 dt equivalent and 240,000 dt equivalent, respectively. Service under § 284.223(a) commenced March 1, 1988, as reported in Docket No. ST88-2888.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP88-358-000]

May 4, 1988.

Take notice that on April 22, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-358-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for CNG Trading Company, a marketer, (CNG Trading), under Applicant's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated March 7, 1988, as amended on March 22, 1988, it proposes to receive up to 450,000 dt equivalent of natural gas per day for CNG Trading at numerous points located in the states of Texas, Louisiana, New York, and Offshore Louisiana and redeliver the gas at specified delivery points located in the states of Texas, Louisiana, Mississippi, New Jersey, Connecticut, West Virginia, Ohio, Pennsylvania, Kentucky, New York, Massachusetts, and Tennessee.

Applicant further states that the peak day, average day, and annual quantities would be 450,000 dt equivalent of natural gas, 9,710 dt equivalent of natural gas and 3,544,150 dt equivalent of natural gas, respectively. It is indicated that a 120-day transportation service under § 284.223(a) commenced on March 23, 1988, as reported in Docket No. ST88-3180 on April 13, 1988.

Applicant states that no facilities need be constructed to implement the service. Applicant states that the primary term of the transportation service would expire two years from the date of execution of the transportation agreement but would continue on a month-to-month basis unless terminated by either party on thirty days prior notice. Applicant proposes to charge the rates and abide by the terms and conditions of its Rate Schedule No. IT.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP88-362-000]

May 4, 1988.

Take notice that on April 25, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-362-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order approving the permanent abandonment of certain certificated levels of firm sales entitlements of five firm sales customers under Rate Schedule CD-1, of ANR's Original Volume No. 1 of its FERC Tariff, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to Section 284.10 of the Commission's Regulations certain of ANR's eligible firm sales customers have elected to convert a portion of their firm sales entitlements to firm transportation. ANR states that as provided in § 284.10(d) of the Commission's Regulations, ANR is filing under § 157.18 of the Commission's Regulations to abandon sales service to the extent of such conversions. It is also indicated that § 284.10(d)(2) provides that the customer by exercise of its option under § 284.10 consents to the proposed abandonment and that § 284.10(d)(3) deems such abandonments to be premitted by the present or future convenience and necessity. A summary of the requested changes is attached as an appendix.

Comment date: May 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

ANR PIPELINE COMPANY

[Summary of reductions in firm sales entitlements (dth)]

Line No.	Company	Current level MDQ	Renominated MDQ	Increase (decrease)	Effective date of requested abandonment
1	Iowa Electric Light & Power Company	8,791	7,683	(1,108)	4-1-88
2	Iowa Southern Utilities Company	60,300	52,702	(7,598)	3-1-88
3	Michigan Gas Utilities Company	135,301	125,220	(10,081)	3-1-88
4	Michigan Power & Light Company	170,010	148,590	(21,420)	3-1-88
5	Wisconsin Public Service Corporation	320,000	303,000	(17,000)	3-1-88
6	Total	694,402	637,195	(57,207)	

Line No.	Company	Current level [1] ACQ	Renominated ACQ	Increase (decrease)	Effective date of requested abandonment
1	Iowa Electric Light & Power Company	860,000	751,000	(108,360)	4-1-88
2	Iowa Southern Utilities Company	4,400,000	3,845,600	(554,400)	3-1-88
3	Michigan Gas Utilities Company	14,400,000	13,320,000	(1,080,000)	3-1-88
4	Michigan Power & Light Company	20,600,000	18,004,400	(2,595,600)	3-1-88
5	Wisconsin Public Service Corporation	35,000,000	35,000,000	0	3-1-88
6	Total	75,260,000	70,921,640	(4,338,360)	

[1] Current levels of ACQ are currently pending approval before the Commission in Docket No. CP88-317-000.

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11. Equitrans, Inc.

[Docket No. CP88-320-000]

May 4, 1988.

Take notice that on April 1, 1988, Equitrans, Inc. (Equitrans) 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP88-320-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authority to provide interruptible transportation service for Phoenix Diversified Ventures, Inc. (Phoenix) under Equitrans blanket certificate issued on February 13, 1987, in Docket No. CP86-553,[1] all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport, under its Rate Schedule ITS, up to 3,211 dekatherms of natural gas per day, (DTHD) or an annual amount of approximately 1,088,630 dt from various receipt points in Braxton, Gilmer, Doddridge and Nicholas Counties, West Virginia, and redeliver the gas for the account of Phoenix at an existing interconnection of the factilities of Equitrans and Columbia Gas of Pennsylvania at Groveton, Allegheny County, Pennsylvania.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP88-354-000]

May 4, 1988.

Take notice that on April 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP88-353-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Chevron U.S.A. Inc. (Chevron), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the underlying interruptible gas transportation agreement was executed February 12, 1988, and provides for the transportation of a maximum daily quantity of 2,575 MMBtu from a point of receipt located in Plaquemines Parish, Louisiana to three points of delivery located in Jefferson, St. Bernard and Plaquemines Parish Louisiana. United further states that service commenced March 1, 1988, as reported in Docket No. ST88-2997-000, on March 29, 1988, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. ANR Pipeline Company

[Docket No. CP88-352-000]

May 4, 1988.

Take notice that on April 21, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-352-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the interruptible transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes the interruptible transportation of up to 6,000 dekatherms of gas per day (dthd) for Panhandle pursuant to a transportation agreement dated June 30, 1987. Pursuant to the terms of the agreement, ANR will receive the gas for Panhandle's account at an existing interconnection in Block 355 in the High Island area offshore Texas (HI 355), and redeliver equivalent quantities of gas to Panhandle at an existing interconnection in HI 343. No new facilities are proposed in the subject application.

ANR proposes to charge Panhandle a transportation rate of 4.6 cents per dt. This rate is comparable to the transportation service ANR provides Trunkline Gas Company pursuant to ANR's Rate Schedule X-151 of its Gas Tariff Original Volume No. 2. The term of the transportation agreement is for an initial period ending June 30, 1992, and year to year thereafter until terminated by either party upon 60 days prior written notice.

Comment date: May 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will

[1] Formerly Equitable Gas Company, a Division of Equitable Resources, Inc.

be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10163 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-127-000, and TQ88-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised and additional tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff pursuant to Section 154.309 of the Commission's Regulations and Commission Order No. 483:

Seventh Revised Sheet No. 47
Seventh Revised Sheet No. 48
First Revised Sheet No. 86
Second Revised Sheet No. 87
Second Revised Sheet No. 88
Second Revised Sheet No. 89
Third Revised Sheet No. 90
First Revised Sheet No. 91
Second Revised Sheet No. 92

Original Sheet No. 92a
Original Sheet No. 92b
Original Sheet No. 92c
Original Sheet No. 92d
Original Sheet No. 92e

The proposed effective date of these tariff sheets is June 1, 1988, as contemplated by Order No. 483.

Carnegie states that the filing substantially revises its PGA clause in Article 22 of its FERC Gas Tariff and that, pursuant to that revised clause, Carnegie proposes to change its rates to reflect an increase of $.0907 per Dth in the demand charge applicable to LVWS and CDS service to $10.0831 per Dth, a decrease of $.1977 per Dth in the commodity charge applicable to LVWS and CDS service to $2.4189 per Dth, and a decrease of $.1947 in the commodity charge applicable to LVIS service to $2.7504. Carnegie states that the filing is also submitted in compliance with the Commission's Letter Orders of February 26, 1988 and March 28, 1988 in Docket No. TA88-1-63.

Carnegie states that its filing was served on each of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10261 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-131-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, Carnegie Natural Gas Company ("Carnegie") tendered for filing certain revised and additional tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff.[1] The proposed effective date of these tariff sheets is June 1, 1988.

Carnegie states that the filing proposes a change in its currently effective sales rates without any increase to existing customers, based on the test period (the twelve months ended December 31, 1987, adjusted for known changes through September 30, 1988 and further adjusted as outlined in the tariff filing).

Carnegie also states that, in addition to a general rate decrease, its filing reflects revisions in the design of its sales rates which have a demand-commodity rate structure, with D-1 and D-2 demand rates and winter and summer commodity rates, and utilize a modified fixed-variable rate design. Carnegie states that new tariff sheets provide an adjustment provision for changes in income tax rates and an Annual Charge Adjustment Clause.

Carnegie states that it recently filed an application for a blanket certificate authorizing "open access" transportation of gas on its pipeline system. Carnegie states that, as part of that certificate filing, it filed tariff sheets for firm and interruptible transportation service under Order Nos. 436 and 500 to be effective April 25, 1988,[2] and that those tariff sheets are also included in this filing which provides detailed support for the transportation rates.

Carnegie states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10274 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-125-000 and TQ88-1-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on April 29, 1988, filed the following revised tariff sheets all to Original Volume No. 1 of its tariff:

Original Sheet Nos. 40, 41 and 170.
Alternate Original Sheet Nos. 40 through 43
Substitute Original Sheet Nos. 31, 32, 34 and 150 through 169.
Alternate Substitute Original Sheets Nos. 160 through 162.

The proposed effective date is June 1, 1988.

CNG has included in its filing:

(1) Revisions to the PGA clause (Section 12) of the General Terms and Conditions of its tariff to comport with the Commission's PGA regulations adopted in Order Nos. 483 and 483-A, except that, CNG seeks a waiver of the regulations to permit it to use an annual

[1] Eighth Revised Sheet Nos. 47 and 48, First Revised Sheed Nos. 50, 51, 54B, 54C and 63, Second Revised Sheet Nos. 93 and 94 and Original Sheet No. 94a.

[2] Original Sheet Nos. 47a and 95 through 134.

estimate of gas supply and requirements in calculating changes in purchased gas costs.

(2) An increase in rates to RQ and CD customers to reflect the current cost of gas. RQ and CD rates would decrease by 0.3 cents per dekatherm in commodity, increase by $0.03 per dekatherm in D–1 demand, and increase by 0.54 cents per dekatherm in D–2 demand.

(3) PGA tariff provisions—primary and alternate—to provide a mechanism for CNG to recover take-or-pay costs billed by its pipeline suppliers.

Copies of the filing were served upon CNG's sales, storage and transportation customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10286 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-120-000]

Chandeleur Pipe Line Co.; Change in Rate

May 4, 1988

Take notice that on April 29, 1988, Chandeleur Pipe Line Company (Chandeleur) tendered for filing a notice of change in rates for transportation services rendered for its two customers, Chevron U.S.A. Inc. (Chandeleur affiliate) and Mississippi Power Company. Chandeleur also tendered proposed tariff sheets designed to implement technical changes to its FERC Gas Tariff.

The proposed effective date for the proposed tendered tariff sheets and change in rates is June 1, 1988. Chandeleur specifically requests that if the rates are suspended, that they be suspended for one day only, and then be permitted to become effective subject to refund.

In support of its request for a one-day suspension, Chandeleur submitted a study of its actual costs and revenues for the twelve months ended December 31, 1987. The study demonstrates that Chandeleur did not earn its allowed rate of return and is suffering from a significant erosion of earnings. Accordingly, Chandeleur requested waiver of the five-month suspension period which is designed to limit its serious revenue deficiency.

Chandeleur also requests waiver of § 154.63(b)(3) of the Commission's Regulations to permit the filing of Statement P 30 days after the date of any Commission action on the waiver request.

While Chandeleur believes it has complied with all the requirements of § 154.63 of the Commission's Regulations, it nevertheless, respectfully requests that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement this notice of change in rates effective June 1, 1988.

Chandeleur states that a copy of this filing has been mailed to each of Chandeleur's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10287 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-119-000 and TQ88-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on April 29, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988:

One hundred and twenty-fifth Revised Sheet No. 16
Fourteenth Revised Sheet No. 16A2
First Revised Sheet No. 46D
First Revised Sheet No. 46E
Fifty-first Revised Sheet No. 64
Thirty-third Revised Sheet No. 64A
Twenty-seventh Revised Sheet No. 64B
Eighth Revised Sheet No. 64C
Seventh Revised Sheet No. 64D
Fifth Revised Sheet No. 64D1
Third Revised Sheet No. 64D2
Second Revised Sheet No. 64D3
Thirteenth Revised Sheet Nos. 64E through 64I
Fourth Revised Sheet No. 67

Columbia states that the sales rates set forth on One hundred and twenty-fifth Revised Sheet No. 16 reflect an overall decrease of 13.77 cents per Dth in the Commodity rate, and overall increases of $0.413 per Dth in the Demand-1 rate and 1.72 cents per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Fourteenth Revised Sheet No. 16A2 reflect a decrease in the Fuel Charge component of 0.37 cents per Dth.

Columbia states that the purposes of the revised tariff sheets are:

(1) To implement Columbia's initial current adjustment to its PGA rates in accordance with § 154.310 of the Commission's revised PGA Regulations promulgated in Order Nos. 483 and 483–A;

(2) To revise Columbia's PGA clause, contained in section 20 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Original Volume No. 1, to conform to the Commission's revised PGA regulations promulgated in Order Nos. 483 and 483–A;

(3) To eliminate all references to incremental pricing in the tariff in accordance with the provisions of Order No. 478; and

(4) To revise the Table of Contents to the General Terms and Conditions.

Columbia states that its PGA Clause, which is contained in GTC section 20 of its tariff, has been revised to comply with the Commission's revised PGA Regulations promulgated in Order Nos. 483 and 483–A, with certain exceptions for which Columbia seeks wavier of the Regulations. These requests for waiver include:

(1) A limited waiver of the requirements of § 154.305(c)(1) in order to project demand costs in each PGA on a 12-month rather than a three-month basis;

(2) A waiver of the requirements of § 154.305(g) in order to utilize its two monthly book closing dates rather than the literal "within 60 days of the end of the month in which the purchases were made and received" requirement of § 154.305(g)(1)(iii) of the revised PGA Regulations;

(3) Modification of the assessment test in section 154.306 to account for the calculation of purchased gas costs between accounting closing dates and to eliminate the demand costs associated with the cost of storage gas for purposes of applying the assessment test; and

(4) Waiver of the requirement of displaying producer codes in the FERC Form No. 542-PGA for its Appalachian small producer suppliers.

Columbia states that copies of the filing were served upon Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for Public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10262 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-109-000]

Corning Natural Gas Corp. v. North Penn Gas Co.; Complaint

April 29, 1988.

Take notice that on April 25, 1988, Corning Natural Gas Corporation (Corning) filed a complaint and request for expeditious procedures in Docket No. RP88-109-000, pursuant to Rules 206 and 212 of the Commission's rules of practice and procedure. Corning alleges that existing tariff provisions of North Penn Gas Company (North Penn) no longer operate in a just and reasonable fashion and result in an ultimate rate to Corning that is unjust and unreasonable.

Specifically, Corning complains that although North Penn has received refunds from its pipeline suppliers through December 31, 1987 and there is a substantial credit in Account No. 191 as of November 1, 1987, North Penn proposes to retain such refunds and credits for an indefinite period and to use such amounts as an offset to indeterminable liabilities which North Penn claims that Corning may owe it in the future. Corning requests that the Commission order North Penn to promptly refund Corning, on a lump sum basis and with interest, (1) Corning's share of the jurisdictional refunds from North Penn's suppliers and any outstanding credit balance in Account No. 191 as of November 1, 1987, and (2) any future refunds and credits relating to the period prior to November 1, 1987. Corning also moves that the Commission act expeditiously to order that the refunds be made.

Corning states that North Penn was its principal supplier of natural gas until November 1, 1987, when its service agreement with North Penn terminated pursuant to its own terms. It further states that since November 1, 1987, Corning has purchased no gas from North Penn and has been purchasing gas from other suppliers and receiving its supplies through the facilities of Consolidated Gas Transmission Corporation (Consolidated). Consolidated has a pending application to provide firm sales service to Corning in Docket No. CP87-195-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1988)). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 25, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10158 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-141-000 and TQ88-1-2-000]

East Tennessee Natural Gas Co.; Tariff Filing

May 4, 1988

Take notice that on April 29, 1988, East Tennessee (East Tennessee) tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, to be effective June 1, 1988:

Summary Rate Sheet: Thirty-Eighth Revised Sheet No. 4

PGA Clause:

First Revised Sheet No. 116
Fifth Revised Sheet No. 119
Fourth Revised Sheet No. 120
Sixth Revised Sheet No. 121
Tenth Revised Sheet No. 122
Second Revised Sheet No. 122A
Second Revised Sheet No. 123
Second Revised Sheet No. 123A
Fifth Revised Sheet No. 124
Third Revised Sheet No. 125

East Tennessee states that, pursuant to Order 483, it is revising the Purchased Gas Adjustment clause of its tariff to conform to Sections 154.301–154.310 of the Commission's Regulations. East Tennessee is also restating its currently effective rates pursuant to § 154.310 of the Commission's regulations; however, the rates have not been changed.

East Tennessee states that the following changes to the PGA clause are reflected in the revised tariff sheets.

Annual and Quarterly Filings

Section 22.1 has been revised to provide for quarterly and annual gas rate adjustments. It also incorporates the new reporting requirements for the annual rate adjustment. New timing periods have been defined for the PGA Period and the Deferral Period.

Current Adjustments

The base period references in the projection of gas costs have been deleted. Prospective rates of suppliers based on estimated changes in the PGA Periods have been incorporated into the projection of gas costs.

Demand Adjustments

Section 22.2 has been revised to specify D_1 and D_2 demand rate adjustments. Section 22.3 has been revised to provide for D_1 and D_2 bifurcation in the Unrecovered Gas Cost Account and the Demand Surcharge for Amortizing Unrecovered Gas Costs. Demand costs are classified as-billed.

Refunds

A new § 22.5 establishes a refund subaccount in Account 191 to be credited with refunds, credits, past period credit billing adjustments and debited for past period debit billing adjustments. This section provides for disbursement of the balance in the refund account when the threshold under § 154.305 of the Commission's Regulations is attained. The separate disbursement procedures for demand and commodity components follow the allocation procedure prescribed in Section 154.305 of the Commission's

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Regulations. Previous language addressing the flow-through of refunds has been deleted, but the section addressing refunds arising from rate proceedings has been retained.

Assessment Test

The 103% assessment test has been removed from Section 22.4, covering Interim Adjustments, and replaced by a new Section 23 establishing an overall assessment test for test intervals throughout the year.

Jurisdictional Allocation

The allocation factors used in computing the jurisdictional portion of gas costs for purposes of the Current Adjustment and the Unrecovered Gas Costs have been changed to more closely estimate system performance during the relevant period. The allocation factors for refunds have not been changed. East Tennessee believes that the jurisdictional allocation of as-billed current gas costs in the PGA should not be determined by the allocation used to establish base tariff rates (Section 4 Allocation Factors). Because the PGA is designed to track current gas costs, the factors used in the calculations should be dynamic and should estimate expected future sales patterns. Thus, the use of Section 4 Allocation Factors, for the PGA which may be up to three years out of date, is an anomaly.

The D_1 factor has been changed from actual three day peak system experience to current contract demand ratios. The new allocation factor will more closely track developments on the East Tennessee system where contract demand levels are changed regularly. It will also be free from the happenstance anomalies that can distort the three day peak volumes.

The D_2 allocation factor has been changed from a Section 4 Allocation Factor (which was only recently adopted in November, 1987, when East Tennessee incorporated two part demand adjustments in its PGA) to an actual sales ratio reflecting recent twelve-month experience. The twelve-month period used for each current adjustment, creates a "moving base period" thus capturing recent changes in system experience.

Annual Allocation of Fixed Commodity Costs

A new Section 22.1 allows East Tennessee to allocate on an annual basis fixed gas costs that are determined on an annual or semiannual basis and that are classified to Seller's commodity rates to be allocated to quarterly gas costs on an annual basis. These types of costs—such as minimum bill charges, the portion of fixed transmission charges for imported gas classified to commodity rates and purchased gas demand costs included in single part rate schedules—are essentially annual fixed costs which should be allocated on a level basis to commodity rates. The allocation would be calculated in the Annual Gas Rate Adjustment using the projected annual sales and would attribute to each quarterly PGA Period a total annual fixed cost based on projected billing determinants for that PGA Period. The quarterly and monthly costs derived through the annual allocation would be used for calculating the Current Adjustment, the Unrecovered Gas Costs and the Assessment Test.

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10268 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-113-000]

El Paso Natural Gas Co.; Petition for Waiver of Regulations Under Order No. 483

May 3, 1988

Take notice that on April 28, 1988, El Paso Natural Gas Company (El Paso) filed a petition for waiver of regulations under Order No. 483.

El Paso states that because of the timing of its last PGA filing and the timing of its initial annual PGA filing, El Paso believes that the transitional filing required under § 154.310 will complicate rather than facilitate the transition to the Commission's new PGA procedures. El Paso states that its most recent filing became effective on April 1, 1988, and its initial annual filing will be effective on July 1, 1988, making the transitional filing effective for a one-month period commencing June 1, 1988. El Paso believes that any benefit that might result from the transitional adjusted current PGA rate for El Paso would be outweighed by the burdens associated with preparing, processing, and reviewing a transitional El Paso PGA filing which would be effective for only a brief period and that any adverse consequence that might result from waiver of the transitional filing requirement will be accommodated through its acceptance of the three percent test for assessment of past performance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10159 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-136-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on April 29, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes would revise Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's First Revised Volume No. 1 Tariff.

El Paso states that by Order No. 483, *et seq.*, issued at Docket No. RM86-14-000, the Federal Energy Regulatory Commission ("Commission") amended its regulations governing the procedures by which a pipeline company may pass through changes in the cost of purchased gas to its jurisdictional customers under the PGA clause option. Pipelines electing to continue use of the PGA option for purchased gas cost recovery are required, under § 154.303 of the Commission's Regulations, to file tariff sheets on May 1, 1988 to be effective on June 1, 1988, revising the PGA provisions of the company's tariff consistent with the amended PGA Regulations. Accordingly, El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will confirm El Paso's election to continue to recover purchased gas costs via the PGA clause option by revising the PGA provisions of El Paso's tariff in compliance with the Commission's Regulations. For reasons set forth in its filing, El Paso requested waiver of certain of the Commission's Regulations related to the refund subaccount maintenance procedures and transition rules.

El Paso requested that the Commission grant such waiver of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets and the revised PGA provisions set forth therein to become effective June 1, 1988, as provided for in the Commission's Regulations.

Copies of the filing were served upon El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 835.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10270 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-132-000 and TQ88-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective June 1, 1988.

FERC Gas Tariff, First Revised Volume No.

27th Revised Sheet No. 8
2nd Revised Sheet No. 41
2nd Revised Sheet No. 42
4th Revised Sheet No. 43
4th Revised Sheet No. 44
2nd Revised Sheet No. 45
2nd Revised Sheet No. 46
2nd Revised Sheet No. 47
2nd Revised Sheet No. 48

FERC Gas Tariff, Original Volume No. 2

49th Revised Sheet No. 128

Reason for Filing

In compliance with the amended regulations set forth in Order No. 483, FTG is filing Revised Sheet Nos. 41 through 48, to be effective June 1, 1988 to establish a revised Section 15 (Purchased Gas Adjustment Clause) of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

27th Revised Sheet No. 8 and 49th Revised Sheet No. 128 are being filed pursuant to the transition rules in Section 154.310 and contain revisions to FTG's Rate Schedules G and I and Rate Schedule T-3, respectively, to: (1) Revise the current adjustment to reflect a decrease in FGT's average cost of gas purchased for sale and company use; (2) maintain the existing surcharge rate established in Docket No. TA88-3-34-000; and (3) adopt the tariff sheet format specified in the regulations.

FTG states that the effect of the purchased gas cost reduction being filed represents a decrease of 1.054¢/therm for Rate Schedules G and I and .33¢/Mcf for Rate Schedule T-3 as measured against FGT's Semi-Annual PGA filing in Docket No. TA88-3-34-00 effective April 1, 1988.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary

[FR Doc. 88-10263 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-112-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Request for Waiver of Purchase Gas Adjustment Regulations

May 3, 1988.

Take notice that on April 27, 1988, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines) filed a request for waiver of purchase gas adjustment regulations. Minnesota Pipelines requests the Commission to waive the May 1, 1988 filing deadlines established under Order Nos. 483 and 483-A.

Minnesota Pipelines believes that a waiver from the Commission's May 1, 1988 required filing is warranted because it intends to file with the Commission, by July 31, 1988, an application to fully "unbundle" its services that will have the support of its customers. The result of the proposed unbundling will be the conversion of all present sales services to firm transportation leaving the pipeline with no purchased gas costs at all, which would make the May 1 PGA revision become obsolete.

Minnesota Pipelines states that it currently uses and would elect to continue using its PGA clause, if it were to remain a seller of gas. However, Minnesota Pipelines states that given its small size and the nature of its gas purchases, together with the fact that it intends to "unbundle" its services, the May 1 filing would have only an interim impact.

Minnesota Pipelines states that a waiver of the May 1, 1988 filing would not in any way disturb the policy behind the new PGA regulations because Minnesota Pipelines has no competition in its service area and it will, therefore, receive no competitive advantage as a result of this waiver. Minnesota Pipelines states that if the Commission

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denies the requested waiver, Minnesota Pipelines will suffer undue hardship.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10160 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-116-000]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, Louisiana-Nevada Transit Compnay (LNT) tendered for filing Fourteenth Revised Sheet No. 4 to its FERC gas tariff changing the rates in its Rate Schedules G-1 and X-2 effective June 1, 1988. LNG also tendered for filing First Revised Sheet No. 18 to delete the PGA clause effective June 1, 1988. The following tariff sheets are being deleted to eliminate the PGA clause:

Original Sheet No. 19
Original Sheet No. 20
Original Sheet No. 21
Original Sheet No. 22
Original Sheet No. 23

LNT states that the changes in rate filed herein are to comply with § 154.38(d)(4)(vi)(a) of the Commission's Regulations and establish new Base Tariff Rates. The tariff changes to delete the PGA clause are made in accordance with § 154.303(b)(3) of the Commission's Regulations.

LNT states that the new Base Tariff Rate for Rate Schedules G-1 and X-2 amounts to $1.2246/Mcf which is a reduction of $.347/Mcf from the present rate of $1.5718. The reduction for these rate schedules is $368,604 annually.

Copies of this filing were served upon LNT's jurisdictional customers, Arkansas Louisiana Gas Company and United Gas Pipeline Company, and upon the Public Service Commissions of the states of Arkansas and Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10272 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-47-001]

MIGC, Inc.; Correction to Filing

May 3, 1988.

Take notice that on April 25, 1988, MIGC, Inc. (MIGC) tendered for filing Substitute Forty-Sixth Revised Sheet No. 32 to be effective May 1, 1988, as a corrected substitute for Forty-Sixth Revised Sheet No. 32 contained in MIGC's March 15, 1988, filing (53 FR 9684, March 24, 1988).

MIGC states that in preparing Forty-Sixth Revised Sheet No. 32 for inclusion in its March 14, 1988, PGA filing herein, MIGC inadvertently utilized the ($.9373) cumulative PGA adjustment reflected on Forty-Fifth Revised Sheet No. 32 instead of the revised, superseding cumulative adjustment of ($.7704) reflected on Substitute Forty-Fifty Revised Sheet No. 32.

MIGC requests such waivers of the Commission's Rules and Regulations and/or the provisions of its FERC Gas Tariff as may be necessary to permit Substitute Forty-Sixth Revised Sheet No. 32 to become effective May 1, 1988, as proposed.

Copies of this corrected tariff sheet are being sent to all of MIGC's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10161 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-129-000 and TQ88-1-16-000]

National Fuel Gas Supply; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that National Fuel Gas Supply Corporation ("National") on April 29, 1988, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, six copies of the following tariff sheets:

Thirteenth Revised Sheet No. 4
Second Revised Sheet No. 59
Third Revised Sheet No. 60
Third Revised Sheet No. 61
Second Revised Sheet No. 62
Third Revised Sheet No. 63
Third Revised Sheet No. 64
Third Revised Sheet No. 65
Fourth Revised Sheet No. 66
Third Revised Sheet No. 67
Second Revised Sheet No. 67-A
Third Revised Sheet No. 68

National states that the purpose of the filing is to reflect the PGA rate changes in compliance with Order Nos. 483 and 483-A.

National states that Thirteenth Revised Sheet No. 4 reflects an overall decrease of 24.57 cents per dth. The change results from a decrease in current purchased gas costs only.

National states that the revised tariff sheets also propose a two part LIFO storage rate which recognizes both demand-related and commodity-related storage gas costs for purposes of developing National's quarterly rates. The revised sheets also propose to implement a demand cost subaccount of No. 191 and a commodity cost subaccount of Account No. 191, and to separately state demand and commodity cost components in National's annual PGA surcharge.

The proposed effective date of the tariff sheets is June 1, 1988.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10264 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-128-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that National Fuel Gas Supply Corporation ("National") on April 29, 1988, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 1
First Revised Sheet No. 1-A
Second Revised Sheet No. 69
Second Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 72

National states that the purpose of this filing is to establish the procedures pursuant to which National will recover the take-or-pay charges approved by the Federal Energy Regulatory Commission ("Commission") to be billed by Texas Eastern Transmission Corporation ("Texas Eastern") and subsequently paid by National, under Texas Eastern's tariff sheets accepted for filing at Docket No. RP88-80-000.

On March 22, 1988, Texas Eastern filed at Docket No. RP88-80-000 tariff sheets containing a mechanism for the recovery of take-or-pay charges billed by United Gas Pipe Line Company ("United"), pursuant to Commission authority issued at Docket No. RP88-27-000. Subsequently, on April 21, 1988, the Commission issued an order accepting Texas Eastern's tariff sheets for filing, suspending the tariff sheets, and placing the tariff sheets into effect subject to refund.

National states that if at any time Texas Eastern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant to those procedures, National will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. National further states that it agrees to refund to its customers any refunds received from Texas Eastern in Docket No. RP88-80-000.

The proposed effective date of the tariff sheets listed above is May 1, 1988.

Copies of National's filing were served on National's jurisdictional customers and on interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10271 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-110-000]

North Penn Gas Co.; Petition of North Penn Gas Co. for Authority to Institute Direct Billing Procedure to Recover Certain LNG Costs

May 3, 1988.

Take notice that on April 25, 1988, North Penn Gas Company (North Penn) filed a petition for authority to implement a direct billing mechanism to recover certain LNG costs that North Penn is being assessed on a direct bill basis by CNG Transmission Corporation (CNG). North Penn stresses that its recovery proposal is applicable to Corning Natural Gas Corporation (Corning).

North Penn requests that the Commission require the joinder of Corning and CNG as indispensible parties. North Penn also requests consolidation of the instant docket with *Consolidated Gas Supply Corp.*, Docket No. CP87-195.

North Penn requests waiver of Commission regulations, rules and orders to the extent necessary to permit the proposed direct billing mechanism.

North Penn states that it has served a copy of the petition on CNG, North Penn's wholesale customers (including Corning), interested State Commissions, and each person listed on the service list in *Consolidated Gas Supply Corp.*, Docket No. CP87-195. North Penn also requests expeditious Commission consideration of the petition.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10164 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-106-000]

Northern Natural Gas Co., Division of Enron Corp.; Filing

May 2, 1988.

Take notice that on April 22, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) FERC Gas Tariff, Third Rivised Volume No. 1,

First Revised Sheet No. 52c.9a

Northern states that in order to implement the first come, first served scheduling requirements in the least disruptive manner and to recognize the proper priority of those requests received during the 45-day open season period, Northern proposes the enclosed tariff modification to clarify that requests received during the 45-day period will be considered as

concurrently received for the purpose of scheduling of capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10156 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-107-000]

Northern Natural Gas Co., Division of Enron Corp.; Notice of Filing

May 2, 1988.

Take notice that on April 22, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) FERC Gas Tariff, Third Revised Volume No. 1.

Original Sheet No. 52f.12a
First Revised Sheet No. 52f.13
Second Revised Sheet No. 85o.5
First Revised Sheet No. 85p
First Revised Sheet No. 85p.1
Second Revised Sheet No. 85p.2
First Revised Sheet No. 85p.3
First Revised Sheet No. 85p.4
Second Revised Sheet No. 85p.5

Northern states that Sheet Nos. 52f.12a, 52f.13, 85o.5 and 85p.5 reflect a revision to the data to be provided on a transportation request for Rate Schedules FT-1 and IT-1 as stated in the General Terms and Conditions (GT&C) section 18A of the Rate Schedule FT-1. Northern has listed in the revised section 18A of the GT&C all information required for a valid request.

Northern states that Sheet Nos. 85p through 85p.4 reflect modifications to the Form of Transportation Service Agreement for Rate Schedule IT-1 as contained in Northern's FERC Gas Tariff Third Revised Volume No. 1. The purpose of the proposed change is to streamline the administrative procedure and thus expedite and make more efficient the administrative process associated with providing transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10157 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-122-000, TA88-2-55-000, TA87-3-55-004]

Questar Pipeline Co.; Rate Change

May 4, 1988.

Take notice that on April 29, 1988, Questar Pipeline Company (Questar Pipeline), formerly Mountain Fuel Resources, Inc., tendered for filing and acceptance revised tariff sheets, to be effective June 1, 1988, to its FERC Gas Tariff, First Revised Volume No. 1, as follows:

Fourteenth Revised Sheet No. 12
First Revised Sheet No. 57
Third Revised Sheet No. 58
Third Revised Sheet No. 59
Third Revised Sheet No. 60
First Revised Sheet No. 66

Questar Pipeline also tendered for filing and acceptance the following tariff sheets, to be effective January 1, 1988:

Eighth Revised Sheet No. 14
Second Revised Sheet No. 63
Second Revised Sheet No. 65

Questar Pipeline states that the purpose of this filing is: (1) To adjust the purchased gas cost charge under its sale-for-resale Rate Schedule CD-1; (2) to implement a new Purchased Gas Adjustment clause to its FERC Gas Tariff, First Revised Volume No. 1, pursuant to Commission orders in Docket No. RM86-14; and (3) to remove the incremental pricing provision from its FERC Gas Tariff pursuant to Commission order dated July 27, 1987, in Docket No. RM87-28-000.

Questar Pipeline further states that Fourteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $1.99160/Dth for sales under Rate Schedule CD-1 which is $0.14551/Dth less than the currently effective rate of $2.13731/Dth. The demand base cost of purchased gas as adjusted is increased by $0.28823 to $1.39705/Mcf, and its surcharge adjustment is increased by $0.17313/Dth from $(0.21530)/Dth to $(0.04217)/Dth.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations. Regulations to allow the tendered tariff sheets to become effective as proposed, and states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10285 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA86-19-001]

System Energy Resources, Inc.; Order Phasing Proceeding and Establishing Hearing Procedures

Issued May 4, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Introduction

On June 18, 1987, the Commission issued a letter order noting the disagreement of System Energy Resources, Inc. (SERI) with certain items contained in staff's audit report of SERI's books and records.[1] The disagreement related to whether SERI has: (1) Properly accounted for income tax benefits during the construction and operation of the Grand Gulf Project; (2) properly capitalized miscellaneous expenses as plant in service; and (3) properly accounted and billed for bank fees. On July 17, 1987, SERI requested that the matters be set for hearing pursuant to § 41.7 of the Commission's regulations (18 CFR 41.7 (1987)). On September 16, 1987, the Commission issued an order establishing hearing procedures.[2]

[1] System Energy Resources, Inc., 39 FERC ¶ 61, 386 (1987).

Background

SERI is a wholly-owned subsidiary of Middle South Utilities (MSU). SERI joined its parent MSU and the other wholly-owned subsidiaries of MSU [3] (the MSU Group) in filing consolidated Federal income tax returns. The major issue in the above-captioned proceeding is whether SERI properly accounted for the time value of all cost-free capital realized by the MSU Group from income tax deductions generated by SERI and used to reduce the consolidated income tax liability of the MSU Group. Audit staff asserted that SERI's method of accounting for such tax benefits resulted in an overstatement of: (1) Allowance for funds used during construction (AFUDC) accrued during the construction period; and (2) cost-of-service tariff billings to other companies in the MSU Group.

MSU's method of distributing consolidated income tax liability among the MSU Group and the use of such distributions as a basis for each company recognizing in its accounts current and deferred income taxes, including investment tax credits (ITCs), is a contributory cause of the disputed income tax accounting issue in the ongoing SERI proceeding. The method of tax allocation used by the MSU Group withheld from SERI certain amounts of cost-free capital that were distributed to other companies in the MSU Group. SERI did not recognize such cost-free capital when accruing AFUDC during the construction period and when calculating its return on rate base when tariff billings commenced.

Subsequent to the onset of the ongoing SERI proceeding, audit staff completed financial audits of four other companies in the MSU Group: Arkansas Power & Light Company, Mississippi Power & Light Company, Louisiana Power & Light Company and New Orleans Public Service Company. The audit staff, consistent with its position in this proceeding, has taken the position that these companies also have not complied with the Commission's accounting requirements for recording income tax expense. Audit staff asserts that these companies have improperly recognized ITCs that were not realized on the consolidated income tax returns, and thereby overstated the amounts of accumulated deferred ITCs recorded in their accounts and financial reports to the Commission.

In Arkansas Power & Light Company, Mississippi Power & Light Company, and Louisiana Power & Light Company, the Commission issued letter orders noting that the issue involving the accounting for income tax benefits and unused investment tax credits will be resolved in a separate proceeding.[4] In New Orleans Public Service Company, the Chief Accountant issued a letter order noting NOPSI's disagreement with audit staff concerning NOPSI's recording of unused investment tax credits, and referred that issue to the Commission for separate action.[5] In all four proceedings, this issue affects affiliated service company billings to each company from MSU System Services Inc., and affiliated fuel company billings to each company from System Fuels, Inc. Because audit staff is in the process of completing its reports on the examinations of these affiliated companies, the Commission and the Chief Accountant reserved approval of each company's accounting for costs by MSU System Services Inc., and System Fuels, Inc., pending the completion of audit staff's reports and the instant proceeding.

Discussion

The Commission finds that the income tax issue in the ongoing SERI proceeding in Docket No. FA86-19-001 should be addressed in Phase II of Docket No. FA86-19-001, and expanded to include an investigation into the accounting methods used by other companies in the MSU Group. First, the tax allocation policies that are at issue in the ongoing SERI proceeding are also followed by other members of the MSU Group. Second, a complete record of the effects of the method of allocating consolidated income tax liability to members of the MSU Group is necessary to decide the tax allocation question at issue in the ongoing proceeding. The Commission needs to consider the effects of the recording of the unused ITCs by Arkansas Power & Light Company, Mississippi Power & Light Company, Louisiana Power & Light Company and New Orleans Public Service Company. Thus, the above jurisdictional companies need to be parties to the ongoing proceeding. Third, resolving the issue of the tax allocation policies used by the MSU Group in one proceeding would be administratively efficient. Fourth, it is necessary to resolve this issue on a timely basis in order to address the possibility of significant rate refunds from SERI, and to resolve issues which arise from recording approximately $300 million of unused ITCs on the financial statements of the MSU Group.

Accordingly, the above described issues are severed from the ongoing proceeding and are to be addressed in Phase II of Docket No. FA86-19-001.

Any interested person seeking to participate in Phase II of Docket No. FA86-19-001 shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)) no later than May 24, 1988.

The Commission Orders:

(A) The above described issues involving the accounting for income tax benefits and investment tax credits and as set forth in Docket Nos. FA86-19-001, FA85-58-000, FA85-65-000, FA86-63-000 and FA87-23-000 will be addressed in Phase II of Docket No. FA86-19-001.

(B) System Energy Resource, Inc., Arkansas Power & Light Company, Mississippi Power & Light Company, Louisiana Power & Light Company, and New Orleans Public Service Company are hereby made parties to the proceeding in Phase II.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of the accounting practices of the MSU Group as discussed above.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in Phase II of this proceeding, to be held within approximately 20 days of the date of this order, in a hearing room of

[2] System Energy Resources, Inc., 40 FERC ¶ 61, 249 (1987).

[3] The other wholly-owned subsidiaries of MSU are: Mississippi Power & Light Company; Louisiana Power & Light Company; Arkansas Power & Light Company; New Orleans Public Service, Inc.; and MSU System Services Inc.

[4] Arkansas Power & Light Company, Docket No. FA85-58-000; Mississippi Power & Light Company, Docket No. FA85-65-000; Louisiana Power & Light Company, Docket No. FA86-63-000.

[5] New Orleans Public Service Company, Docket No. FA87-23-000 (issued April 20, 1988).

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the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Acting Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10257 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing its FERC Gas Tariff, Original Volume No. 2-A, and changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and services by approximately $85 million, exclusive of the recovery of payments made in lieu of take-or-pay obligations, based on the twelve-month period ended January 31, 1988, as adjusted, compared with the underlying rates. The underlying rates are the base tariff rates as set forth on Texas Gas' FERC Gas Tariff, Original Volume No. 1, Substitute Eleventh Revised Sheet No. 10, effective February 1, 1988, plus the current purchased gas adjustment.

Texas Gas states that the adjustment in rates are attributable to:

(1) Revised system rate design quantities;

(2) Increases in operating expense;

(3) Increase in rate of return and related taxes; and

(4) The recovery of payments made in lieu of take-or-pay obligations.

Texas Gas requests an effective date of November 1, 1988, for the proposed Tariff Sheets. Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. In accordance with Rule 2.14 and 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10273 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-004]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

May 4, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on April 29, 1988 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are to become effective May 1, 1988.

Transco states that the purpose of its tariff filing is to revise the rates and tariff provisions related to the recovery of producer buyout and buydown costs which were included in Transco's filing of March 1, 1988 in Docket No. RP88-68. Such revisions are being made to comply with Ordering Paragraphs (E), (F), and (I) of the Commission's Order dated March 31, 1988. Transco further states that it has satisfied the remaining conditions of the Commission's March 31, 1988 order required for a May 1, 1988 effective date, namely, the acceptance of its blanket certificate under Part 284, Subpart G, of the Regulations (issued April 29, 1988 in Docket No. CP88-328-000).

Transco also states that copies of the instant filing are being mailed to its jurisdictional customers, state commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said compliance tariff filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10269 Filed 5-6-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3376-7]

Hazardous Waste (RCRA); Integrated Training and Technical Assistance Initiative

AGENCY: Environmental Protection Agency.

ACTION: Extension of Grant Application Deadline.

RCRA Integrated Training and Technical Assistance Program: (Original FR Notice January 22, 1988, Vol. 53, No. 14, pg. 1836-37).

The deadline for submission of grant applications by States under the RCRA Integrated Training and Technical Assistance (RITTA) Program (53 FR 1836-37.) is extended by 10 days (from May 15, 1988) to May 25, 1988 (i.e., postmarked by May 25, 1988). This extension is being provided to allow States additional time to coordinate with the various agencies, institutions, etc., which may be taking an active role with the regulatory agency in accomplishing RITTA Program goals. No further extensions will be available.

FOR FURTHER INFORMATION CONTACT: Kate Connors, Office of Solid Waste and Emergency Response (WH-562A), Office of Program Management and Technology, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9829.

SUPPLEMENTARY INFORMATION: Applicants are reminded that this program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

T. Michael Talmi,

Director, Cross-Media Analysis Staff.

May 2, 1988.

Thomas W. Devine,

Director, Office of Program Management and Technology.

May 2, 1988.

[FR Doc. 88-10217 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-60091; FRL-3376-9]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee. The meeting will be open to the public. The Committee will be informed of and discuss issues associated with rulemaking for biotechnology within the Offices of Toxic Substances and Pesticide Programs. The Committee will also discuss confidentiality issues and be informed of recent product reviews. A status report will be presented to the committee highlighting an upcoming conference sponsored by EPA, USDA, and FDA to discuss scientific issues and safety assessment considerations for transgenic plants.

DATES: The meeting will be held on Monday, May 23, 1988, starting at 10 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Grand Hyatt Hotel, 1000 H St., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, The TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS-799), 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: May 4, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-10313 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180778; FRL-3376-6]

Receipt of an Application for a Specific Exemption To Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide™) to control two-spotted spider mites (*Tetranychus urticae*) and European red mites (*Panonychus ulmi*) on 21,500 acres of pears in California. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 18624, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before May 16, 1988.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180778" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as Agrimec 0.15 EC Miticide/Insecticide™, by MSD AGVET, a division of Merck & Co., Inc., on pears in California. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes product per acre per application. A maximum of two applications will be made per crop season. Applications would be made through October 31, 1988.

The Applicant indicates that the percent control with registered alternatives has been steadily decreasing over the past five years. Those products include hexakis, amitraz, dicofol, chinomethionat, foliar spray oil, formetanate, and propargite.

The Applicant indicates that without adequate control of the mites economic losses expected could total over $5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: April 28, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10218 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-180777; FRL-3376-4]

Receipt of Applications for Specific Exemptions to use Clofentezine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Maryland, New Hampshire, and North Carolina Departments of Agriculture (hereafter referred to individually by State or collectively as "Applicants") for use of the unregistered active ingredient clofentezine (3, 6-bis (2-chlorophenyl)-1, 2, 4, 5-tetrazine) to control European red mites and (in New Hampshire) two spotted spider mites on apples. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before May 16, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180777," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Libby A. Pemberton, Registration Division (TS-767 C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered active ingredient, clofentezine, available as the pesticide product Apollo, manufactured by Nor-Am Chemical Company, to control European red mites and (in New Hampshrie) two spotted spider mites on apples.

Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Maryland has requested authorization to make one complete or two "alternate row middle spray" applications with Apollo. A maximum of eight ounces of formualted product (0.25 pound active ingredient) is proposed to be applied per acre by ground equipment as a dilute or concentrate spray. The time of treatment extends until 45 days before harvest.

New Hampshire has requested authorization to make one application using up to eight ounces of formulated product (0.25 pound active ingredient) per acre. Optimal application time is at first or second cover which is expected in late May or early June. No applications will take place after June 30.

North Carolina has requested authorization to make one application using up to four ounces of formulated product (0.125 pound active ingredient) per acre by ground equipment as a dilute or concentrate spray. Application time is from tight cluster to within 45 days of harvest. Requested expiration date is November 15.

Maryland proposes to treat a maximum of 5,000 acres of apples. A maximum of 1,250 gallons of product would be needed under the proposed exemption.

New Hampshire proposes to treat a maximum of 1,200 acres of apples throughout the state. A maximum of 75 gallons of Apollo will be needed.

North Carolina proposes to treat a maximum of 14,531 acres of apples. A maximum of 227 gallons of Apollo will be needed.

The Applicants claim that European red mites and (in New Hampshire) two spotted spider mites have developed resistance to Plictran (cyhexatin) and Kelthane (dicofol) which historically has been used for control of mites. Similar resistance also exists to the related organo-tin acaricide, Vendex (febutatin-oxide). Other acaricides such as demeton, foremetanate hydrochloride, oxamyl and propargite are not effective, toxic to beneficials or otherwise not appropriate for mite control at various times.

The Applicants state that the result of not having an effective control of these mites would be decreased fruit size, loss of fruit set and reduced fruit quality. Maryland estimates that losses of up to $1.3 million in gross revenues for Maryland apple growers will result if Apollo is not available for use in 1988. New Hampshire apple growers would experience an approximate $60,000 loss without use of Apollo this year.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on applications involving an unregistered active ingredient. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: April 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10219 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140095; FRL-3376-3]

Access to Confidential Business Information by the Cadmus Group, Dynamac Corp., and Icair Life Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, The Cadmus Group, and The Cadmus Group's subcontractors, Dynamac Corporation and ICAIR Life Systems, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract number 68-01-7363, EPA's contractor The Cadmus Group (CAD), 375 Concord Avenue, Belmont, MA and its subcontractors Dynamac Corporation (DYN), Dynamac Building, 11140 Rockville Pike, Rockville, MD; and ICAIR Life Systems (ILS), 1725 Jefferson Davis Highway, Arlington, VA, will assist the Office of Policy, Planning, and Evaluation's Chemical and Statistical Policy Division in the analysis of data collected under TSCA for the purpose of evaluating agency policies, regulations, administrative actions, and regulatory activities.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68-01-7363, CAD, DYN and ILS will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. CAD, DYN, and ILS personnel will require access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CAD, DYN, and ILS access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters or at the contractor and subcontractor sites identified above. Upon completing review of the CBI materials under the contract, CAD, DYN, and ILS will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

CAD, DYN, and ILS have been authorized for access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved security plans prepared by CAD, DYN, and ILS and has performed the required inspection of their facilities and found them to be in compliance with the requirements of the manual. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 2, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-10220 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

[FR 3375-9]

Water Pollution Control; Final Determination of the Assistant Administrator for Water Concerning the Russo Development Corporation Site; Carlstadt, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to prohibit the authorization of wetlands owned by the Russo Development Corporation for the discharge of dredged or fill material in Carlstadt, New Jersey.

SUMMARY: This notice of EPA's final determination pursuant to section 404(c) of the Clean Water Act to prohibit authorization of approximately 52.5 acres of existing, unauthorized fill in wetlands and prohibit the placement of fill into an additional 5 acres of wetlands owned by the Russo Development Corporation (Russo) based upon findings that the discharges of fill material into the wetlands have resulted and would result in unacceptable adverse effects to wildlife.

EFFECTIVE DATE: The effective date of the final determination is March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Charles K. Stark, Jr., Office of Wetlands Protection, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 475-8796.

Copies of EPA's final determination are available for inspection in the Public Information Reference Unit, EPA Library, Room M 2904, 401 M Street SW., Washington, DC 20460 and the Marine and Wetlands Protection Branch, EPA Region II, Jacob K. Javits Federal Building, Room 837, New York, New York 10278

SUPPLEMENTARY INFORMATION: Under section 404(c) of the Clean Water Act, the Administrator of EPA has the authority to prohibit or restrict the use of a site as a disposal site for dredged or fill material, after notice and opportunity for public hearing, whenever he determines that such disposal will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Responsibility for 404(c) determinations has been formally delegated to the Assistant Administrator for Water.

In accordance with section 404(c) regulations (40 CFR Part 231), EPA's Regional Administrator, Region II, Mr. Christopher Daggett, initiated section 404(c) proceedings with respect to the existing and proposed fill in the Russo owned wetlands in Carlstadt, New Jersey. The site (Block 131.1, Lots 59, 64.01-74.06, 66.01/02) is situated in the northern portion of the Hackensack Meadowlands, west of the Hackensack River. Fill is in place on approximately 52.5 acres and six warehouses have been constructed on 44 acres of that fill. No construction has occurred on approximately 8.5 of the 52.5 acres. Wetlands and open water remain on 5 acres of the site. It was determined from interpretation of aerial photography and on site investigations that the 52.5 acres of wetlands that have received fill, as well as 5 unfilled acres of wetlands, were comprised of a mixture of emergent vegetation, wet meadow, common reed, old field, and a wooded stand. The site provided/provides valuable wildlife habitat for a variety of amphibians, reptiles, birds, and mammals. The vegetational diversity and occurrence of a relatively uncommon habitat for the Hackensack Meadowlands, wet meadow, contributed to the site's wildlife habitat value.

The Regional Administrator's action was in response to a notice by the U.S. Army Corps of Engineers, New York District, of their intent to issue a section 404 permit to Russo which would authorize the 52.5 acres of fill now in place and authorize the placement of 5 additional acres of fill on site in order to complete a warehouse complex. Russo proposed mitigation for the loss of wetlands values which included enhancement of nearby (although not delineated) wetlands northeast of the project site in the Hackensack Meadowlands and preservation of 23 acres of wetlands in Troy Meadows of the Passaic River basin. The mitigation effort would provide a one-half to one (enhanced to lost) compensation, on a value-for-value basis, for the values lost from filling approximately 57.5 acres of wetlands on site.

On January 19, 1988, Mr. Daggett forwarded a recommended determination to prohibit the

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authorization of the Russo owned wetlands as a discharge site to EPA Headquarters for review and final determination. The administrative record was subsequently delivered to headquarters on January 21, 1988. Mr. Deggett's recommendation was based upon unacceptable adverse effects to wildlife.

EPA's Assistant Administrator for Water considered the record in this case, public comments, information received during EPA's public hearing, and information provided by other agencies and organizations. He also consulted with Russo, the Corps of Engineers, and other knowledgeable individuals. Based upon this review, the Assistant Administrator determined that authorizing the maintenance of approximately 52.5 acres of fill and the placement of additional fill into 5 acres of wetlands has resulted and would result in unacceptable adverse effects to wildlife.

The record in this case revealed that the Russo tract was/is comprised of a mix of wetland types and that the juxtaposition of these wetland types to each other as well as to adjacent wetlands provided/provide valuable wildlife habitat that is rare and contributed/contributes to wildlife habitat diversity within the Hackensack Meadowlands. In addition, the Russo tract provided/provides habitat for a large mix of species, many of which are experiencing population declines, that is in whole or in part attributed to the loss and/or deterioration of habitat. The Assistant Administrator concluded that the Russo owned wetlands did/do provide important wildlife habitat from a site specific and cumulative standpoint and that the existing and proposed fill has destroyed/will destroy this habitat thereby seriously impacting wildlife. He also concluded that these impacts are such that the diversity and habitat values that were/are provided by the Russo owned wetlands should be preserved. That is, there should be no net loss of these wildlife values as a result of the fill. Like the Regional Administrator, the Assistant Administrator concluded that the offered mitigation would not offset the significant wildlife impacts identified in the recommended and final determinations and that, accordingly, the existing/proposed fill has resulted/will result in unacceptable adverse impact to wildlife under section 404(c) of the Clean Water Act. Under the authority delegated by the Administrator of the Environmental Protection Agency, the Assistant Administrator prohibited authorization of the Russo owned wetlands as a discharge site. EPA's action denies Russo legal authorization for approximately 52.5 acres of existing fill and prohibits the proposed deposition of fill material on the remaining 5 acres of wetlands.

Dated: April 28, 1988.

Tudor Davies,

Acting Assistant Administrator for Water.

[FR Doc. 88-10221 Filed 5-6-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consumer Satisfaction Survey.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for the review and approval of the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval to initiate an annual survey of 500 bank consumer complainants to obtain information concerning the effectiveness of FDIC's complaint handling and inquiry system. Responses are voluntary. It is estimated that it would take the average respondent 10 minutes to complete the questionnaire. The total annual burden of all 500 respondents would be approximately 85 hours.

Dated: May 2, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-10170 Filed 5-6-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register, in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010756-001

Title: Transocean Terminal Operators, Inc.

Parties: Cavalair Corporation, Oceanic Shipping Company, Inc.

Synopsis: The amendment modifies the basic agreement to convert it from a joint venture to a corporation under the name Transocean Terminal Operators, Inc., to provide terminal and stevedoring operations at the Port of New Orleans.

By Order of the Federal Maritime Commission.

Dated: May 4, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-10172 Filed 5-6-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Wyoming Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-1699) published at page 2539 of the issue for Thursday, January 28, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for First Wyoming Bancorporation is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Wyoming Bancorporation,* Cheyenne, Wyoming; to acquire 50 percent of the outstanding common stock of Item Processing Center, Inc., Cheyenne, Wyoming, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted throughout the United States.

Comments on this application must be received by May 25, 1988.

Board of Governors of the Federal Reserve System, May 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10151 Filed 5-6-88; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.,* Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Financial Services, Inc., Louisville, Kentucky, in selling insurance, as agent, that is directly related to the extension of credit by Company and is limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. In addition, insurance will be sold limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and the extension of credit is not more than $10,000 or $25,000 if it is to finance the purchase of a residential manufactured home and the credit is secured by the home, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, May 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10152 Filed 5-6-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88P-0134]

Canned Pineapple Deviating from Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Dole Packaged Foods Co., a subsidiary of Castle & Cooke, Inc., to market test a style of pack of canned pineapple, designated as "whole," that is not provided for by the U.S. standard of identity for canned pineapple (21 CFR 145.180(a)). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0109.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Dole Packaged Foods Co., 50 California St., San Francisco, CA 94111.

The permit covers limited interstate marketing tests of canned, peeled and cored, whole pineapple packed in pineapple juice. The test product deviates from the U.S. standard of identity for canned pineapple in § 145.180(a) in that the style of pack is whole pineapple, a style not provided for by the standard. The product meets all requirements of the standard with the exception of this deviation. The permit provides for the temporary marketing of 100,000 cases, each containing 12 20-ounce cans. The test product will be distributed in St. Louis, MO, Des Moines, IA, and Indianapolis, Fort Wayne, and Evansville, IN.

The test product is to be manufactured at Dole Philippines, Inc., Makati, Rizal, Philippines.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 8, 1988.

Dated: April 29, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc 88-10160 Filed 5-6-88; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

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[Docket No. 87N-0056]

Model Food Protection Unicode; Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is making available for comment the draft model Food Protection Unicode that updates and combines the food protection and sanitation provisions currently contained in separate model codes covering food service, food vending, and retail food stores. FDA will continue to provide upon request copies of separate codes, taken from the completed Food Protection Unicode, to those jurisdictions that regulate only part of the retail food industry. The model Food Protection Unicode was intiated in cooperation with several national organizations concerned with retail food protection.

DATE: Comments by August 8, 1988.

ADDRESSES: A copy of the draft model Food Protection Unicode is available for public review at, and written comments on the draft may be submitted to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the draft model Food Protection Unicode may be obtained by contacting Arthur L. Banks (address below).

FOR FURTHER INFORMATION CONTACT: Arthur L. Banks, Center for Food Safety and Applied Nutrition (HFF–342), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0140.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 13, 1987 (52 FR 11885), FDA announced that is was planning to update the existing retail food protection and sanitation codes and to combine them into a new model Food Protection Unicode. In that notice, the agency supported the need for such action by citing the problems with the codes that States have adopted in response to the model codes as well as the opportunities offered by a new unified code (see 52 FR 11885 for complete discussion). FDA is now announcing that the draft model Food Protection Unicode is available for comment.

Interested persons may, on or before August 8, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10166 Filed 5–6–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1988:

Name: National Advisory Council on the National Health Service Corps; HHS.

Date and Time: May 23–25, 1988, 8:00 a.m.

Place: Fairmont Hotel, Anaconda, Montana 59711. Visits will be made to National Health Service Corps and Indian Health Service sites in Billings, Big Timber and Deer Lodge on Monday and Tuesday, May 23 and 24. No transportation will be provided for visitors and observers.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a discussion of Indian Health Service activities, overall NHSC policies, budget and other topics at the pleasure of the Council.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–4814.

Agenda Items are subject to change as priorities dictate.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–10234 Filed 5–6–88; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health; HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on June 9 and 10, 1988.

DATE: Date, time and place: Open Public Meeting, June 9, 1988, 9:00 a.m.–4:00 p.m. and June 10, 1988, 8:30 a.m.–5:00 p.m.; Open Public Session, June 9, 1988, 4:00 p.m.–5:00 p.m.; Farragut Square Room, Grand Hyatt, 1000 H St., NW., Washington, DC 20001. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18–38, Rockville, MD 20857, 301–443–6156.

Agenda: Open Public Session

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on June 9 from 4 p.m. to 5 p.m. Those desiring to make oral presentations should notify the contact person before May 27, 1988 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

Agenda: Open Commission Meeting

The Commission will review the draft summary of the public hearing held in Dallas, Texas on February 4, 1988, as well as an overall summary of all four public hearings held by the Commission between July, 1987 and February, 1988. The Commission will discuss the reports on product and professional liability issues and the peer review process. Preliminary results of the survey of rare disease research activities of Federal agencies will also be discussed. In addition, the Commission will hold roundtable discussions with representatives of private foundations and rare disease voluntary organizations.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda published in this Federal Register notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: April 29, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–10209 Filed 5–6–88; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–08–4212–13; AZA–23085]

Realty Action; Exchange of Public Lands, Maricopa, Cochise and Pima Counties, AZ

The following described federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Maricopa County, Arizona

Township 6 North, Range 2 West.
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 17, all;
Sec. 18, lots 1–4, incl., W½NE¼, SE¼NE¼, E½NW¼, E½SE¼.
Total acres 4,878.43.

In exchange for the above described public lands, the United States will acquire all or part of the below-described private lands from San Pedro Investment Group, an Arizona General Partnership, or their nominee.

Gila and Salt River Base and Meridian, Mohave County, Arizona

Parcel 1(A)

Lot 3, the south half of Lot 4, the east half of the SW quarter, that portion of the north half of the SE quarter lying west of the west boundary of the Southern Pacific Railroad and that portion of the SW quarter of the SE quarter lying west of the west boundary of the Southern Pacific Railroad, all in section 19, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all coal and other minerals as reserved in patents to said land.

Parcel 1(B)

Lots 2 and 3 and that portion of Lot 1 lying west of the west boundary of the Southern Pacific Railroad in section 30, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all coal and other minerals as reserved in patents to said land.

Parcel 2

The north half of Lot 4 in section 19, T. 21 S., R. 22 E., Gila and Salt River Base and Meridan, Cochise County, Arizona.

Except all coal and other minerals as reserved in patents to said land.

Parcel 3(A)

That portion of the following described property lying east of the east line of the Southern Pacific Railroad Company's right-of-way:

The SW quarter of the SE quarter of section 19; and Lot 1 of section 30;

All in T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Parcel 3(B)

That portion of the north half of the SE quarter lying east of the railroad right-of-way;

The SE quarter of the SE quarter, and all that portion of the south half of the NE quarter lying east of the railroad right-of-way of section 19;

The south half of the NW quarter; the west half of the SW quarter; the NE quarter of the SW quarter and the NE quarter of section 20;

All in T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Excepting therefrom all the coal and other minerals as reserved unto the United States of America.

Parcel 4(A)

That portion of the SE quarter of the NE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying southerly of the Southern Pacific Railroad as it existed on November 28, 1986.

Parcel 4(B)

The NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Parcel 4(C)

Those portions of the SE quarter of the NW quarter, the NE quarter of the SW quarter and Lot 2 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying westerly of the Southern Pacific Railroad as it existed on November 28, 1986.

Except all coal and other minerals as reserved in the patent.

Parcel 4(D)

Lot 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all coal and other minerals as reserved in the patent.

Except that portion of the SE quarter of the NE quarter and NE quarter of the SE quarter of section 13, T. 21 S., R. 21 E., and the NE quarter of the SW quarter and Lots 2 and 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

Beginning at a point on the west line of said section 18, said point being N. 00°01'40" east, a distance of 2,715.21 feet from the SW corner of said section 18;

Thence N. 89°35'50" east, a distance of 203.62 feet;

Thence N. 79°13'50" east, a distance of 708.88 feet to a point on the westerly right-of-way line of the Southern Pacific Railroad;

Thence southerly along the arc of a circular curve to the right, having a central angle of 12°40'40" and a radius of 4,631.60 feet, a distance of 1,024.83 feet along said right-of-way;

Thence S. 26°44'20" E., a distance of 744.76 feet along said right-of-way to the south line of said NE quarter of the SW quarter of section 18;

Thence S. 89°47'30" W., a distance of 1,793.36 feet along said line to the west line of said section 18;

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Thence N. 89°56'40" W., a distance of 400.00 feet along the south line of the NE quarter of the SE quarter of said section 13;
Thence N. 07°51'40" E., a distance of 364.83 feet;
Thence N. 27°59'20" W., a distance of 314.90 feet;
Thence N. 62°13'20" W., a distance of 150.22 feet;
Thence N. 24°21'40" E., a distance of 302.02 feet;
Thence N. 12°32'40" E., a distance of 436.16 feet;
Thence S. 71°16'00" E., a distance of 297.21 feet to the Point of Beginning.

Parcel 5(A)

The SW quarter of section 17; the SW quarter; the SW quarter of the NE quarter; and those portions of the SE quarter of the NW quarter and the NE quarter of the SW quarter of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying easterly of the Southern Pacific Railroad Transportation Company right-of-way as it existed on November 28, 1986.

Excepting all the coal and other minerals as more fully set forth and reserved in the patent to the United States of America.

Parcel 5(B)

Those portions of Lots 2 and 3 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona, lying easterly of the Southern Pacific Railroad Transportation Company right-of-way as it existed on November 28, 1986.

Parcel 5(C)

Lot 1 of section 18, T. 21 S., R. 22 E., Gila and Salt River Base and Meridian, Cochise County, Arizona.

Except all oil, gas and other hydrocarbons and all other minerals of whatever kind of character, whether now known to exist or hereafter discovered (it being intended that the word "minerals" as used herein shall be defined in the broadest sense of the word and shall include, but not be limited to, oil, gas, other hydrocarbons, sand, gravel, stone, pumice, pumicite, cinders, clay and all other common materials and all other mineral substances and products, both metallic and nonmetallic, solid or liquid or gaseous) as more fully set forth and reserved in deed recorded November 2, 1984 in Docket 1808, page 565.

Parcel 6(A)

T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona
Sec. 17, SW¼SW¼SW¼NW¼, E½ E½SW¼NW¼, SE¼NW¼, NE¼ NW¼SW¼, S½NW¼SW¼, NE¼ SW¼;
Sec. 18, S½NE¼NW¼, SE¼NW¼ NE¼NW¼, S½NE¼NE¼NW¼, SE¼NW¼, NE¼SW¼, S½N½ SE¼.

Parcel 6(B)

T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona
Sec. 18, W½ Argonaut Patented Mining Claim (SW¼SE¼, W½SE¼ SE¼);
Sec. 19, Colchis Patented Placer Mining Claim (E½NW¼, NE¼ SW¼).

Parcel 7(A)

T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona
Sec. 15, All that part of W½SW¼ lying northerly of the Greaterville Road as now established; except one acre owned by School District No. 37, Pima County, Arizona, and described as follows: Beginning at the NW corner of the SW quarter of said section 15; Thence east 8 rods; Thence south 20 rods; thence west 8 rods; thence north 20 rods to the Point of Beginning.

Parcel 7(B)

T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona
Sec. 16, All that part of S½ lying northerly of the Greaterville Road as now established; except Parcel 206, Singing Valley Central, Book 5 of Records of Surveys, Page 6, Pima County Records.

Parcel 7(C)

T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona
Sec. 17, SE¼.

Parcel 7(D)

The east half of that certain Patented Placer Mining Claim known as the Argonaut in the Greaterville Mining District in the County of Pima, said east half comprising the S½SW¼, section 17, and the E½SE¼SE¼, section 18, T. 19 S., R. 16 E., Gila and Salt River Base and Meridian, Arizona.

Parcel 7(E)

Sec. 21, NW¼.

Excepting from Parcels 2, 3 and 5, the building site consisting of no more than 40 acres to be surveyed.

Parcels 1, 2, 3, 4 and 5 are shown as Parcels 201 through 205 and 207 through 216 inclusive, Singing Valley Central as shown in Book 5 of Record of Surveys, Page 6, Pima County Records.

The exchange proposal involves all of the exchange proponent's interest in the surface and mineral estate of the private lands and the surface and mineral estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All valid existing rights.

The lands to be acquired by the United States from San Pedro Investment Group shall be subject to certain easements, permits, and other encumbrances detailed in Schedule B of Ticor Title insurance policies: F-830736, F-830918, F-830730-B, E-456107, E-456123 and Cochise Title Policy 30-012,673.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange proposals filed by any proponent other than San Pedro Investment Group or their nominee.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the Federal Register of a notice of termination of the segregation, or the expiration of two years from the date of initial publication (November 27, 1987), whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Herman L. Kast,
Acting District Manager.
Date: May 3, 1988.

[FR Doc. 88-10194 Filed 5-6-88; 8:45 am]
BILLING CODE 4310-32-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Private Rental Survey
Abstract: Respondents supply identifying information, and descriptive and rental data on private rental houses, apartments, mobile homes, and trailer spaces. This information allows the Bureau to establish comparable rental rates for occupants of Government furnished quarters
Bureau Form Numbers: 7-2226 and 7-2227
Frequency: On occasion
Description of Respondents: Small businesses or organizations
Annual Responses: 3,000
Annual Burden Hours: 590
Bureau clearance officer: Pat Scott, 202-343-4249.

C. Dale Duvall,
Commissioner.
Date: April 21, 1988.

[FR Doc. 88-10195 Filed 5-6-88; 8:45 am]
BILLING CODE 4310-09-M

National Park Service

Management Policies

AGENCY: National Park Service, Interior.

ACTION: Notice of extension of comment period for draft National Park Service revised management policies.

SUMMARY: On March 25, 1988, the National Park Service published a notice of availability of draft revised management policies for public review and comment (53 FR 9821). The comment period was scheduled to close on May 10, 1988. This notice extends the comment period on those proposed policies.

DATES: The National Park Service will consider all comments on the draft revised management policies submitted or postmarked by June 10, 1988.

ADDRESS: Comments should be directed to: Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB-MS1226, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Office of Policy, 202/343-4298 or 7456.

SUPPLEMENTARY INFORMATION: On March 25, 1988, the National Park Service published notice of availability of proposed draft management policies for management and operation of National Park Service areas with request for public review and comment. Several individuals and groups have requested an additional period of time in which to comment. Because of this interest, and in an effort to ensure maximum public involvement, the Service is extending the comment period to June 10, 1988.

Denis P. Galvin,
Acting Director.

[FR Doc. 88-10259 Filed 5-6-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31202]

Supplement; the Mahoning Valley Railway Co.; Lease, Acquisition and Operation Exemption; Certain Lines of LTV Steel Co., Inc.

The notice of exemption published January 20, 1988, 53 FR 1528, concerned the lease, acquisition, and operation by The Mahoning Valley Railway Company (MVR) of certain properties of LTV Steel Company, Inc. (LTV), a noncarrier.

The notice of exemption stated that the involved lines total 24.07 miles and consist of 15.38 route miles and 8.69 miles of industrial track. The notice also stated that this property is divided into two sections, the Massillon Line and the Canton Line and that MVR will operate over LTV's property and assigned easement rights pursuant to a lease agreement with LTV.

By supplemental statement filed April 11, 1988, MVR states that the 24.07 miles consists of 0.24 route miles and 23.83 miles of industrial spur track. It also states that the Massillon Line crosses property owned by LTV. The notice should have referred to LTV Steel, Bar Division (LTV Bar) as the owner of the subject property.

The appropriate portions of the notice of exemption are clarified as follows:

The lines total 24.07 miles and consist of 0.24 route miles and 23.83 miles of industrial spur track. The LTV property over which MVR will operate is divided into two sections. No mileposts have been erected. (1) The Massillon Line is approximately 8.60 track miles (composed of 0.04 route miles and 8.56 miles of industrial spur track), beginning at a point approximately 2,300 feet south of Ordbrook Ave., SW., Perry Township, Stark County, OH, and running in a northeasterly direction for a distance of approximately 1.22 miles to a point also in Perry Township, adjacent to Conrail Interchange Yard. The Massillon Line crosses property owned by LTV Bar and Mercury Stainless, Inc. (Mercury). MVR will operate over LTV Bar's properties under a lease agreement with LTV. It will operate over Mercury's property as the assignee of the rights held by LTV under a perpetual easement. MVR will also operate over certain industrial spur track which connects with the Massillon Line. (2) The Canton Line is approximately 15.47 track miles (composed of 0.2 route miles and 15.27 miles of industrial spur track), bounded on the north by the line of Conrail and on the south by properties of LTV Bar, and beginning at a point approximately 1,500 feet east of Trump Road in Perry Township, and then running in a southwesterly direction approximately 1.44 miles to a point in the city of Canton, OH, approximately 750 feet from the western border of LTV Bar. The Canton Line then encircles the LTV Bar facilities and merges back into itself. MVR will also operate over certain industrial spur track which connects with the Canton Line. The transaction was expected to be consummated on or before April 16, 1988.

The notice of exemption should be considered clarified to the extent indicated here, and in all other respects it shall remain in full force and effect.

Decided: April 27, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-9639 Filed 5-6-88; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31159]

Waccamaw Coastline Railroad Co., Inc.; Modified Rail Certificate

A notice was filed by Waccamaw Coastline Railroad Co., Inc. (Waccamaw), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. Waccamaw has entered into an agreement with Horry County, SC, to operate 14.10 miles of

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track from Conway, SC (milepost ACD 336.10) to Myrtle Beach, SC (milepost ACD 350.20). Horry County Coastline Railroad Co., Inc. (HCCR), operated the line prior to Waccamaw, which began operations on October 10, 1987.

Horry County purchased the track from Seaboard System Railroad, Inc. (Seaboard) and HCCR was authorized to operate the line on November 5, 1984 in Finance Docket No. 30564. The abandonment of the track by Seaboard was approved by the Commission on September 12, 1984 in No. AB–55 (Sub-No. 107).

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: May 2, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10182 Filed 5–6–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Resource Conservation and Recovery Act; Erie Coatings & Chemicals, Inc., et al.

In accordance with Departmental policy, notice is hereby given that on April 28, 1988, a proposed Consent Decree in *United States v. Erie Coatings & Chemicals, Inc., et al.*, Civil Action No. 88–CV–60136–AA, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree provides for compliance with interim status standards under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at defendants' facility in Erie, Michigan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Erie Coatings & Chemicals, Inc., et al.*, D.J. reference 90–7–1–304.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Federal Building and United States Courthouse, 231 W. Lafayette Street, Detroit, Michigan 48226, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10133 Filed 5–6–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 87–29]

Joseph P. Hutsko, D.O.; Denial of Application for Registration

On Februrary 17, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph P. Hutsko, D.O., of 111 West Susquehanna Street, Allentown, Pennsylvania. The Order to Show Cause sought to deny Dr. Hutsko's pending application for registration as a practitioner under 21 U.S.C. 823(f), executed on November 24, 1986, on the ground that his registration would be inconsistent with the public interest, based upon the following: (1) On April 8, 1985, in the Pennsylvania Court of Common Pleas for Lehigh County, he was convicted, after a trial by jury, of nine counts of unlawful dispensing of Phentermine, a Schedule IV controlled substance, in violation of P.S. 780–113(14), all felony offenses relating to controlled substances; nine counts of dispensing Phentermine without proper labeling in violation of P.S. 780–113(17); and eight counts of intentionally submitting fraudulent claims for furnishing services under the Pennsylvania Medical Assistance Program, in violation of 62 Pa. C.S. 1407(a)(1)(4)(6)(7); and (2) On October 17, 1986, the Administrator revoked Dr. Hutsko's previous DEA Certificate of Registration and denied his pending application for renewal, executed on September 23, 1985, based upon his improper handling of controlled substances.

Through counsel, Dr. Hutsko filed a timely request for a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. On March 17, 1987, Judge Young issued an order for prehearing statements requiring each party to submit prehearing statements on or before April 20, 1987. Both parties complied with that order. On August 20, 1987, a telephonic prehearing conference was held and the hearing was scheduled for October 29, 1987. In a letter addressed to counsel for the Government dated September 15, 1987, Dr. Hutsko requested that the hearing in this matter be cancelled. He also made statements denying that he improperly dispensed controlled substances, claiming he had been duped by the undercover state agents. On October 2, 1987, counsel for Dr. Hutsko informed Judge Young that his client wished to withdraw his earlier request for a hearing in the matter, and, instead, desired to file a written statement. Based upon that request, Judge Young terminated the proceedings before him and granted Dr. Hutsko permission to file a written statement for consideration by the Administrator on or before November 9, 1987. On November 12, 1987, counsel for Dr. Hutsko submitted a written statement on behalf of his client to the Office of the Administrative Law Judge.

The Administrator finds that Dr. Hutsko has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and enters this final order based upon the investigative file, the record of the proceeding and the written statement submitted on behalf of Dr. Hutsko. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

On October 17, 1986, the Administrator issued a final order revoking Dr. Hutsko's previous DEA Certificate of Registration. See *Joseph P. Hutsko, D.O.*, 51 FR 37091 (1986). Dr. Hutsko did not request a hearing in that matter. At that time, Dr. Hutsko's registration was revoked based upon his having been found guilty of numerous violations relating to controlled substances and of numerous charges of submitting fraudulent claims for payment with the Pennsylvania Medical Assistance Program, and the suspension of his state medical license. He has yet to be sentenced on the criminal charges. Since the issuance of the previously mentioned final order, Dr. Hutsko's state medical license has been reinstated. All of the findings contained in the October 17, 1986, order revoking Dr. Hutsko's previous registration are incorporated in this final order as though they were set forth at length herein, with the exception of the finding and discussion with respect to his lack of state authorization to handle controlled subtances.

In his written statement, Dr. Hutsko alleged that he had been practicing as an osteopathic physician in Allentown for 17 years and has enjoyed a "reputation as an excellent family practitioner who devotes a majority of his practice to the care of the poor." He also alleged that he has complied with the terms of probation regarding his medical license. Finally, he claimed that the money he received as a result of submitting fraudulent claims under the Pennsylvania Medical Assistance Program was nominal and that he never billed the undercover agents for the controlled substances they received during their visits. Dr. Hutsko provided no other documentation to support the allegations in his written statement.

The Administrator is not persuaded that granting Dr. Hutsko's application for registration would be consistent with the public interest. Dr. Hutsko has been found guilty of numerous criminal violations relating to the improper handling of controlled substances and submission of fraudulent claims under the Medical Assistance Program. In his letter to Government counsel, Dr. Hutsko continued to deny any impropriety on his part, even after his guilt was established after a lengthy jury trial. In addition, he reapplied for a DEA Certificate of Registration just one month after his previous registration had been revoked. Finally, the written statement provided nothing more than an unsupported, self-serving statement to the effect that the doctor can be entrusted with a DEA registration. Based upon the overwhelming volume of inculpatory information against Dr. Hutsko, and the lack of any real exculpatory evidence presented on his behalf, the Administrator concludes that his registration would not be consistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the pending application for registration, executed by Joseph P. Hutsko, D.O. on November 24, 1986, be, and it hereby is, denied.

This order is effective May 9, 1988.

John C. Lawn,

Administrator,

Date: May 2, 1988.

[FR Doc. 88–10154 Filed 5–6–88; 8:45 am]

BILLING CODE 4410–09–M

Edward L. McIver, M.D.; Revocation of Registration

On March 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Edward L. McIver, M.D. of 1304 Liberty Road, Youngstown, Ohio 44505 proposing to revoke his DEA Certificate of Registration AM5810444 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. McIver's lack of authorization to handle controlled substances in the State of Ohio. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. McIver by registered mail. More than thirty days have passed since the Order to Show Cause was recived by Dr. McIver and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Edward L. McIver, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on June 11, 1986, the State Medical Board of Ohio revoked Dr. McIver's license to practice medicine in the State of Ohio, thereby terminating his authority to posses, prescribe, administer, dispense or otherwise handle controlled substances in Ohio. The Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.* Docket No. 86–54, FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr. McIver's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Ohio. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AM5810444, previously issued to Edward L. McIver, M.D., be, and it hereby is revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,

Administrator.

Dated: May 2, 1988.

[FR Doc. 88–10155 Filed 5–6–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,445]

Fairbanks Morse Engine Accessories, Roscoe, IL; Negative Determination Regarding Application for Reconsideration

By an application dated April 11, 1988, Local #1533 of the United Steel Workers of America (USW) requested administrative reconsideration of the Department's notice of negative determination on the subject petition for trade adjustment assistance for workers at Fairbanks Morse Engine Accessories, Roscoe, Illinois. The denial notice was signed on April 1, 1988 and published in the Federal Register on April 11, 1988 (53 FR 11920).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the company has a neighboring plant in Beloit, Wisconsin whose workers were certified for adjustment assistance, TA–W–20,444. Workers in both plants work under the same contract and have the right to transfer from one plant to the other. The union claims that the Roscoe workers have been hurt by foreign trade because of the limited number of jobs available in the Beloit plant to which Roscoe workers may transfer.

The Department's denial was based on the fact that the "contributed importantly" test was not met. Respondents to the Department's survey revealed that they did not import ignition system components in 1986 or 1987. Further, major layoffs at the Roscoe plant occurred in December.

1986, more than one year prior to the date of the petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers separated more than one year prior to the date of the petition which is January 19, 1988.

Certification for adjustment assistance under the Trade Act of 1974 is based on increased imports of the products produced at the workers' firm. Workers at the Beloit and Roscoe plants produce different products. Workers at Beloit produce diesel engines for ship propulsion, power generation and pumping which do not use ignition systems. Workers at the Roscoe plant produce ignition system components. There is no integration of production between the two plants. Further, the fact that workers at both plants are governed by the same collective bargaining agreement would not form a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of April 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-10136 Filed 5-6-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,370A]

Health-Tex, Inc., Cranston, RI; Investigation Regarding Termination of Certification of Eligibility To Apply for Worker Adjustment Assistance

Following a Department of Labor investigation under section 222 of the Trade Act of 1974 and in accordance with section 223 of the Act, on March 29, 1988, the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers of the Cranston, Rhode Island distribution center of Health-Tex, Inc. A significant portion of output at Cranston was part of the integrated production process of children's wear manufactured at Central Falls, Rhode Island whose workers are certified for trade adjustment assistance under petition, TA-W-20,370.

The notice of certification was published in the **Federal Register** on April 11, 1988 (53 FR 11921).

Pursuant to section 223(d) of the Act and 29 CFR 90.17, the Director of the Office of Trade Adjustment Assistance has instituted an investigation to determine whether the total or partial separations of the certified workers at Cranston, Rhode Island continue to be attributable to the conditions specified in section 222 of the Act and 29 CFR 90.16(b) in the Departmental regulations.

Pursuant to 29 CFR 90.17(b) the group of workers or any other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated, provided that such request or submission is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below no later than May 19, 1988.

The record of the certifications (TA-W-20,370, TA-W-20,370A and TA-W-20,370B), containing non-confidential information is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of April 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-10137 Filed 5-6-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-45]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Open Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: June 1, 1988, 9:30 a.m. to 5:30 p.m., June 2, 1988, 8 a.m. to 5 p.m., June 3, 1988, 8:30 a.m. to 1 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee consults with and advises NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Sciences programs. The Committee will meet to review programs in the Office of Space Science and Applications (OSSA) and issue final position statements from the Committee. The Committee is chaired by Dr. Louis Lanzerotti and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 including members of the committee).

Type of Meeting: Open.

Agenda

June 1, 1988

9:30 a.m.—Introductory Comments.

9:45 a.m.—Status Report and Charge to SESAC.

11 a.m.—New Initiatives: Comet Rendezvous-Asteroid Flyby (CRAF)/Cassini.

1 p.m.—New Initiatives: High Resolution Solar Observatory.

2 p.m.—SESAC Discussion.

3:30 p.m.—Office of Exploration Science Planning and Science Interactions with the Space Science Board (SSB) and OSSA.

4:30 p.m.—Science Presentation: The Solar Cycle, Its Prediction, and Its Effects.

5:30 p.m.—Adjourn.

June 2, 1988

8 a.m.—New Initiatives: Earth Probes.

9 a.m.—SESAC Discussion.

9:30 a.m.—Research Base Augmentation and Enhancements.

11:30 a.m.—Panel Discussion on Research and Analysis.

12:30 p.m.—SESAC member Discussions and Writing.

3 p.m.—Panel on Soviet Discussions and Plans.

4 p.m.—Status of the Ongoing OSSA Program.

5 p.m.—Adjourn.

June 3, 1988

8:30 a.m.—Strategic Planning Follow-Up Discussion.

9:30 a.m.—Discussion of SESAC Position Statements.

11:30 a.m.—Legacy to Space Science and Applications Advisory Committee.

1 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

Date: May 3, 1988.

[FR Doc. 88-10153 Filed 5-6-88; 8:45 am]

BILLING CODE 7501-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co., Surry Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix J to 10 CFR Part 50 to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The exemptions would grant relief from 10 CFR Part 50, Appendix J, paragraph III.A.3, which requires that all Type A (Containment Integrated Leak Rate) tests be performed in accordance with ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4-1972 requires that leakage calculations be performed using the Point-to-Point method or the Total Time method. Instead, the licensee would rely on the Mass-Point method described in ANSI/ANS 56.8-1987, "Containment System Leakage Testing Requirements."

The licensee's request for exemption and the bases therefore are contained in a letter dated March 1, 1988, as revised on April 8, 1988.

The Need for the Proposed Action

The proposed exemptions are from the standard (ANSI N45.4-1972) referenced in 10 CFR Part 50, Appendix J, which requires the containment leakage calculations be performed using either the Point-to-Point or Total Time method. The licensee proposes to perform the calculations using the Mass-Point method, a newer method that has been accepted by the NRC staff. The method is described in the ANSI/ANS 56.8-1987 standard. This method is expected to be incorporated into a planned revision of Appendix J.

Environmental Impacts of the Proposed Action

The proposed exemptions would permit the use of the Mass-Point method in performing leakage calculations. The Mass-Point method has been accepted by the NRC staff as a more accurate technique that will increase confidence in the integrity of the containment. These exemptions will not negatively impact containment integrity and do not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemptions do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemptions, any alternative to the exemptions will have either no environmental impacts or greater environmental impacts.

The principal alternative to the exemptions would be to deny the requested exemptions. Such action would not reduce environmental impacts of the Surry Units 1 and 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statements for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemptions from 10 CFR Part 50, Appendix J, dated March 1, 1988, as revised on April 8, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 2nd day of May 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10210 Filed 5-6-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regional Programs, Meeting

The ACRS Subcommittee on Regional Programs will hold a meeting on May 24, 1988, at the NRC Region II Office, 101 Marietta Street, Atlanta, GA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, May 24, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the activities under the control of the NRC Region II Office.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr Paul Boehnert (telephone 202/634-3267) between 7:15 a.m. and 4:15 p.m. Persons

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planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 2, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-10246 Filed 5-6-88; 8:45 am]

BILLING CODE 7590-01-M

All Chemical Isotope Enrichment, Inc.; Establishment of Atomic Safety and Licensing Board

[Docket No. 50-603-CP/OL; ASLBP No. 88-570-01-CP/OL]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

ALL CHEMICAL ISOTOPE ENRICHMENT, INC.
AlChemIE Facility-1 CPDF

This Board is being established pursuant to a notice published by the Commission on April 28, 1988, in the **Federal Register** (53 FR 15317) entitled, "Receipt of Application for Construction Permit, Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report, Consideration of Issuance of Construction Permit and Facility Operating License and Notice of Opportunity for Hearing." The proposed construction permit and facility operating license would permit the Applicant to use centrifugal machines to enrich nonradioactive isotopes at the existing Centrifugal Plant Demonstration Facility ((AlChemIE) Facility-1 CPDF), located at the Oak Ridge Federal reservation in Oak Ridge, Tennessee. The nonradioactive isotopes would be used in medical, industrial and environmental and energy conservation purposes.

The Board is comprised of the following Administrative Judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Emmeth A. Luebke, 5500 Friendship Boulevard, Apt. 1923N, Chevy Chase, Maryland 20815

Dr. Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 3rd day of May 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-10248 Filed 5-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-604-CP; ASLBP No. 88-571-01-CP]

All Chemical Isotope Enrichment, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

ALL CHEMICAL ISOTOPE ENRICHMENT, INC.
AlChemIE Facility-2 Oliver Springs

This Board is being established pursuant to a notice published by the Commission on April 28, 1988, in the **Federal Register** (53 FR 15315) entitled, "Receipt of Application for Construction Permit, Availability of Applicant's Environmental Report, Consideration of Issuance of Construction Permit and Notice of Opportunity for Hearing." The proposed construction permit would permit the Applicant to use centrifugal machines to enrich nonradioactive isotopes at AlChemIE Facility-2 located at Oliver Springs, Tennessee. The nonradioactive isotopes would be used in medical, industrial, and environmental and energy conservation purposes.

The Board is comprised of the following Administrative Judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Emmeth A. Luebke, 5500 Friendship Boulevard, Apt. 1923N, Chevy Chase, Maryland 20815

Dr. Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 3rd day of May 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-10249 Filed 5-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-04951, 030-04971; License Nos. 22-00057-06, 22-00057-32G]

Minnesota Mining and Manufacturing Co.; Confirmatory Order Modifying General License, Effective Immediately

I

Minnesota Mining and Manufacturing Company, 3M Center 220-2E-02, St. Paul, MN 55144-1000, (3M; licensee) is the holder of several byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. License No. 22-00057-06 authorizes 3M to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including manufacturing, testing, installing and repairing radioactive sources, and the devices in which they are used.

License No. 22-00057-32G authorizes 3M to distribute Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5.

Section 110.23(a)(4) of the Commission's regulations provides a general license to any person to export to any country not listed in § 110.28 (embargoed destinations), polonium-210 in individual shipments of 100 curies or less when contained in static eliminators.

II

On January 25, 1988, 3M's specific licenses were amended by an immediately effective Order which, among other things, suspended the authority of 3M to distribute Model Nos. 902, 902F, 906, and 908 Po-210 static elimination devices.

In January 1988, the NRC Staff received a list from 3M of domestic general licensees who possess the above-described static elimination devices, including persons who appeared to be manufacturing products or packages for products such as food, beverages, pharmaceuticals and cosmetics which are to be consumed by or applied to humans. NRC inspectors reviewing records during January 1988 at the 3M Center in St. Paul, Minnesota also determined that there were indications of a number of failed devices during the previous year that included devices used at facilities which manufacture products for human consumption. Further investigation conducted by 3M, NRC and State personnel revealed additional instances of device failure, including some located at beverage and food processing plants.

Subsequently, the NRC received reports of additional failed static elimination devices used in plants that manufacture products and packages, or package materials for products, which would constitute a direct pathway for human exposure if contaminated.

By Order Modifying General License Issued to Minnesota Mining and Manufacturing Co., published in the **Federal Register** on February 25, 1988 (53 FR 5661), the Commission, pursuant to sections 81, 161b., and 161i. of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 2 and 31, ordered that the general license in 10 CFR 31.5 be modified effective immediately to suspend the use of any Po-210 static elimination device manufactured by 3M and distributed to general licensees pursuant to 3M License Nos. 22-00057-06 and 22-00057-32G and to require general licensees possessing 3M static elimination devices to return the item within 90 days of the date of the Order to 3M in accordance with instructions provided by 3M. The Order was based on information reviewed to date indicating that 3M static eliminators have experienced frequent failures in what appear to be normal and customary industrial environments (i.e., under ordinary conditions of use). The Commission Order pointed out that such failures are in direct conflict with the domestic licensing basis of these devices including the requirements of 10 CFR 32.51(a)(2)(ii) which states, in part, that "[u]nder ordinary conditions of handling, storage and use of the device, the byproduct material contained in the device will not be released * * *."

III

For the reasons underlying the suspension of the domestic general license ordered on February 18, 1988, in particular, the determination that there is no longer reasonable assurance that such devices will not fail in ordinary use and, thus, that they are not suitable for general license, 3M has agreed to suspend exports under the general license provided for by § 110.23(a)(4) of any such polonium-210 static elimination device manufactured by 3M. 3M's action was confirmed to the Commission by letter dated April 7, 1988. We have determined to confirm 3M's action by this Order. Because of 3M's assent to the terms of this order, prior notice need not be provided and this Order shall be effective immediately.

IV

Accordingly, in view of the foregoing and pursuant to sections 82 and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 110, it is hereby ordered, effective immediately, as follows:

The general license in 10 CFR 110.23(a)(4) is suspended with respect to the export of any Po-210 static elimination device by 3M.

Pursuant to the Atomic Energy Act of 1954, as amended, any person other than the licensee who may be adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, International Programs, GPA, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement at the same address. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing is whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 22nd day of April, 1988.

James R. Shea,

Director, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 88-10211 Filed 5-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-34, issued to Public Service Company of Colorado (the licensee), for operation of the Fort St. Vrain Nuclear Generating Station (FSV) located in Weld County, Colorado.

The amendment would modify the setpoints used in the FSV Plant Protective System (PPS). It would bring the method of determining those setpoints into compliance with IST Standard S67.04-1982, "Setpoints for Nuclear Safety-Related Instrumentation Used in Nuclear Power Plants". The licensee has summarized this matter in Attachment 3 to the amendment application, dated February 8, 1988 (P-88025).

The methodology developed by the licensee allows the PPS instrumentation setpoints to account for potential inaccuracies in the instrumentation. Inaccuracies can arise from several factors. These are:

—Accuracy of components not tested when the setpoint is measured
—Accuracy of test equipment, and
—Environmental effects on equipment accuracy.

A separate safety evaluation has been provided for each parameter in the proposed Technical Specification changes. These are:

—Primary Coolant Pressure—High and Low
—Low Superheat Header Temperature and High Differential Temperature between Loop 1 and Loop 2
—Circulator Speed Low
—Loss of Circulator Bearing Water and
—Circulator Speed High-Steam (Drive)

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

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the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Kelly, Stansfield & O'Donnell, Room 900, 550 15th Street, Denver, Colorado 80202, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 8, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Greely Public Library, City Complex, Greely, Colorado.

Dated at Rockville, Maryland this 28th day of April, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate–IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10212 Filed 5–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–11623, License No. 24–04581–19, EA 87–234]

St. Louis University; Order Imposing Civil Monetary Penalty

I

St. Louis University, St. Louis, Missouri, is the holder of Byproduct Material License No. 24–04581–19 issued by the Nuclear Regulatory Commission (NRC/Commission) on January 26, 1976 and renewed in its entirety on September 9, 1981. The license authorizes the licensee to use a teletherapy unit for treatment of humans in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted on December 3–11, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 29, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) by letter dated February 16, 1988. In its response, the licensee admits the violations occurred as described in the Notice and offered several reasons why the University believes that the imposition of the $6,000 civil penalty is excessive when all the circumstances of the alleged violations are considered.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Six Thousand Dollars ($6,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 3rd day of May 1988.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On January 29, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to St. Louis University for violations identified during a special NRC inspection. St. Louis University responded to the Notice on February 16, 1988. During the inspection, which was conducted in response to a reported employee overexposure obtained from a cobalt-60 teletherapy unit, three 10 CFR Part 20 violations were identified. In its response, the licensee admits the violations occurred as described in the Notice but offers several reasons why the University believes that the imposition of the $6,000 civil penalty is excessive when all the circumstances of the alleged violations are considered. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

Restatement of the Violations

A. 10 CFR 20.101(a) requires that no licensee possess, use, or transfer licensed material in such a manner as to cause any individual in a restricted area to receive in any period of one calendar quarter from radioactive material a total whole body occupational dose in excess of 1.25 rems.

Contrary to the above, during the fourth calendar quarter of 1987, an individual using licensed material in a restricted area received a whole body occupational dose of at least 7.5 rems.

B. 10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary for the licensee to comply with the regulations in Part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "Survey" means an evaluation of the radiation hazards incident to the use or presence of radioactive materials under a specific set of conditions.

Contrary to the above, the licensee did not make a survey (evaluation) of a radiation hazard to assure compliance with 10 CFR 20.201(a) in that an individual entered a teletherapy room on October 27, 1987, while an 8990 curie cobalt-60 source was in an exposed position and did not evaluate the radiation hazard by surveying the radiation field or by observing the warning light on the control panel, the warning light above the entrane door to the teletherapy room or the Primealert warning light in the maze entrance to the teletherapy room.

C. 10 CFR 20.403(b) requires that a licensee within 24 hours of discovery of an event, report any event involving licensed material possessed by the licensee that may have caused or threatens to cause exposure of the whole body of any individual to 5 rems or more of radiation.

Contrary to the above, on October 27, 1987, the licensee was aware of an overexposure event that threatened to cause whole body exposure in excess of 5 rems and failed to report the event to the NRC within 24 hours. Subsequently, on November 18, 1987, the licensee was informed by its badge processor, Radiation Detection Company, that an individual involved in that event had received a whole body dose of 7.5 rems; however, the licensee did not report the event to the NRC until November 23, 1987.

Collectively, these violations have been classified as a Severity Level II problem (Supplement IV).

Cumulative Civil Penalty—$6,000 (assessed equally among the violations).

Summary of Licensee's Response

The licensee, in its response, admits the violations. However, the licensee presents reasons why the civil penalty is excessive. The reasons are stated below together with the NRC's evaluation.

1. Licensee's Assertions

The University rejects the contention that its employees performed in a "careless" manner and that the followup actions were anything but appropriate in view of the information available at the times the various actions were taken. The judgment of the NRC staff does not take into account the circumstances of the incident, long term performance of personnel nor good faith efforts by involved persons to deal appropriately with the matter.

The University performed both an informal and formal investigation of this incident and developed a series of corrective measures prior to any actions taken by the NRC.

NRC Evaluation

The NRC used the word "careless" to describe the failure of individuals to follow basic radiation safety practices that would have prevented an overexposure of an individual. Before concluding that the involved individuals were careless, the NRC carefully considered that a radiation therapy physicist and the University radiation Safety Officer, probably the two most knowledgeable individuals in the area of radiation safety, disabled a door interlock switch which was part of an essential safety system to control access to the teletherapy treatment room. These individuals then entered the room without verifying that an exposed 8990 curie cobalt-60 source had been returned to a safe shielded position, without making routine direct reading radiation surveys to ensure that it was safe to enter the room, and without observing several warning lights. After considering these factors, the NRC concluded that these failures to follow basic radiation safety practices clearly demonstrated acts of carelessness.

The staff examined the past performance of the licensee, the corrective actions to prevent recurrence and the licensee's identification and reporting of the problem. As stated in the NOV, the NRC concluded that the licensee's corrective actions were not prompt and were only minimally acceptable.

2. Licensee's Assertions

The University believes that the imposition of the $6,000 civil penalty is excessive when all of the circumstances of the alleged violations are considered. In addition, the penalty is nonproductive.

NRC Evaluation

The proposed civil penalty was based on a 50 percent increase in the base amount of the civil penalty for a Severity Level II violation in accordance with the NRC's Enforcement Policy (Appendix C, 10 CFR Part 2). The penalty was raised 50 percent due to the NRC's assessment that the licensee's corrective actions to prevent recurrence were not prompt and were only minimally acceptable. The penalty was proposed to send a message that the NRC considers this violation as a serious matter and to emphasize the need to take timely and comprehensive corrective actions. In its reply to the Notice of Violation, the licensee provides no new or additional

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information which would warrant mitigation of the civil penalty proposed. Furthermore, as indicated in Enclosure 2 to the letter transmitting this Order, further clarification is necessary to provide assurance that the corrective action will be effective.

NRC's Conclusion

The NRC staff has concluded that the licensee has not provided a sufficient basis for mitigation of the proposed $8,000 civil penalty. Accordingly, a civil penalty in the amount of $8,000 is imposed.

Enclosure 2—NRC Evaluation of the Licensee's Corrective Actions

Licensee's Corrective Actions

In its February 16, 1988 response, the licensee described corrective actions that it had taken and would take in the future. These actions are as follows:

1. Since the teletherapy head is maximally loaded at this time and the necessary surveys have been completed, further surveys of the kind conducted will be justified only if there is clinical need to create a treatment geometry significantly different from those which have already been evaluated;

2. Any plans to conduct surveys with safety features overridden or disabled should be conducted only by designated qualified personnel and only with the prior knowledge and approval of the Committee Chairman or his designee.

3. A written plan for such surveys should be developed which includes assignment of responsibility to only one person for operation of the teletherapy console.

4. During any procedure which may involve high radiation fields, direct reading personnel monitors should be employed and read during the course of, and at the conclusion of, the procedure.

5. Any exposures estimated by calculation to be within 50% of the regulatory limits specified by 10 CFR 20.101(a) should be confirmed as soon as possible from personnel monitoring service.

6. The audible alarm feature of both the interior and exterior beam ON indicators should be activated during surveys when safety devices are disabled.

7. The visual beam ON indicator at the end of the entrance maze has been relocated to eye level.

NRC Evaluation of the Licensee's Corrective Actions

The NRC has reviewed the licensee's reponse to the Notice and has concluded that additional information is required for several of the licensee's corrective actions.

1. With regard to corrective action, Item 2, the licensee should describe how its procedures will be modified to ensure that, before any safety features are overridden or disabled, the matter will be reviewed by the entire Radiation Safety Committee and written approval of the committee will be required before proceeding.

2. With regard to corrective action, Items 3, 4, and 6, the licensee should verify that these corrective actions *will* be implemented, not that they should be implemented.

3. With regard to corrective action, Item 5, the licensee should verify that any entry into a high radiation area that results in an unplanned radiation dose will result in the immediate processing of personnel monitoring devices. It should be noted that it was the licensee's inability to make an accurate estimate or calculation of a radiation dose that resulted in the late reporting of an overexposure event that occurred on October 27, 1987.

[FR Doc. 88-10213 Filed 5-6-88; 8:45 am]
BILLING CODE 7590-01-M

Texas Utilities Electric Co. et al.; Prehearing Conference

Before Administrative Judges: Peter B. Block, Chair, Dr. Walter H. Jordan, and Dr. Kenneth A. McCollom.

In the matter of Texas Utilities Electric Co., *et al.*, (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445-OL2, 50-446-OL2, ASLBP No. 79-430-06-OL, May 2, 1988; and Texas Utilities Electric Co., *et al.*, (Comanche Peak Steam Electric Station, Unit 1), Docket No. 50-445-CPA, ASLBP No. 86-528-02-CPA, May 2, 1988.

We have scheduled a public prehearing conference for May 11, 1988, for the purpose of conducting oral argument concerning consolidation of the two captioned cases and clarifying, to the extent that is currently feasible, the order in which specific issues may be litigated.

The conference is scheduled for 9 am to 1 pm in the Dallas Room of the Downtown Dallas Hilton, 1914 Commerce Street.

For The Atomic Safety and Licensig Board.

Peter B. Block,

Chair, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 88-10247 Filed 5-6-88; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Demonstration Project; Airway Science Curriculum

AGENCY: Office of Personnel Management.

ACTION: Notice of extension of Demonstration Project: Airway Science Curriculum.

SUMMARY: This action extends the Airway Science Curriculum Demonstration Project until July 6, 1992, in order to validate the results of the demonstration.

EFFECTIVE DATE: This action is effective as of July 7, 1988, and expires July 6, 1992.

FOR FURTHER INFORMATION CONTACT: at FAA, Don Higgins, (202) 267-3997; at OPM, Francoise Gianoutsos, (202) 632-6164.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) is conducting a demonstration project under Title VI of the Civil Service Reform Act of 1978 (92 Stat. 1185) entitled "Airway Science Curriculum Demonstration Project." The purpose of the project is to evaluate alternative selection methods for filling positions in several of FAA's technical occupations. The performance, work related attitudes, and perceived potential for supervisory positions of individuals with an aviation-related college-level education, or its equivalent, are compared with those of individuals recruited for the same occupations through traditional methods. In support of this purpose, FAA, with assistance from the University Aviation Association, developed a model Airway Science Curriculum which emphasizes college-level courses in aviation, science and technology, mathematics, computer science, management and general studies as well as technical areas relevant to the pertinent FAA occupations.

Applicants for FAA positions as air traffic controller, electronics technician, aviation safety inspector, and computer specialist who respond to the demonstration Airway Science Announcement are rated on their knowledges, skills, abilities, and other characteristics required by the model Airway Science Curriculum. On the basis of this rating, these individuals are ranked on a separate register parallel to those currently in use. Additionally, applicants for air traffic controller positions must pass the air traffic control examination, and applicants for aviation safety inspector must hold listed certificates and ratings.

This plan was approved as a title VI demonstration project by OPM on July 7, 1983, and the final project plan was published on Friday, July 15, 1983 in the **Federal Register** (48 FR 32490).

Since then, very few airway science graduates have been hired. This is due in large measure to the fact that the four-year recognized degree programs are only beginning to produce graduates from the program. A four-year extension of the project is necessary to allow for a valid statistical analysis of the program. Under 5 U.S.C. 4703(d)(1)(B), a demonstration project may be extended beyond five years, "* * * to the extent necessary to validate the results of the project." It is expected that within an additional four-year period there will be enough graduates from the Airway Science Curriculum to allow a comparison of job performance between graduates of the program, and traditional hires. Therefore, OPM is extending the FAA demonstration project for four years starting July 7, 1988 to expire on July 6, 1992.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-10170 Filed 5-6-88; 8:45 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25633; File No. SR-MSE-88-3]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange Incorporated Relating to Odd Lot Differential

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1988, the Midwest Stock Exchange, Incorporated ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXXI, Rules 1, 7, and 10, relating to the trading of odd-lots.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the Exchange rules require odd lot market orders to be executed based on the last sale price of a round lot order. In addition, a differential of ⅛ point is added or subtracted, whichever is applicable, in all odd lot executions. For example, where a last sale of a round lot occurs at 25, an odd lot sale would take place at 24⅞.

The proposed rule changes will eliminate the ⅛ point differential requirement as well as the use of the last sale as the applicable pricing basis. Instead of basing executions on the last sale, under the proposed change odd lots would be executed based on the best consolidated bid or offer with no differential. Differentials on odd-lot limit orders also will be eliminated.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] A copy of the text of the amendments was submitted by the Exchange and is available for inspection at the places specified in Item IV below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10196 Filed 5-6-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission

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pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Hadson Corp.
Common Stock, $.10 Par Value (File No. 7–3296)
High Yield Plus Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3299)
National Heritage, Inc.
Common Stock, $.01 Par Value (File No. 7–3300)
First City Bancorporation of Texas, Inc. (Delaware)
Common Stock, $.01 Par value (File No. 7–3301)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 24, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10202 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Templeton Global Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3285)
MFS Intermediate Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3286)
Careercom Corp.
Common Stock, $.01 Par Value (File No. 7–3287)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 24, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10203 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25636; File No. SR–NASD–88–13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Amendment to the Corporate Financing Interpretation To Prohibit Non-Cash Sales Incentives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to add a provision to the NASD's Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice ("Corporate Financing Interpretation"). The new provision is proposed to follow the paragraph on "Overallotment Options" under the "Arrangement Factors" section of the Corporate Financing Interpretation at page 2033 of the *NASD Manual*. New language is italicized.

Sales Incentives

When proposed in connection with the distribution of a public offering of securities, it shall be an unfair and unreasonable arrangement for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item, including but not limited to travel bonuses, prizes and awards, from an issuer or an affiliate of an issuer in excess of $50 per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, affiliate of the issuer, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In Fall of 1985, the NASD Board of Governors approved the recommendation of the Direct Participation Programs and Real Estate Committtees to amend Appendix F to Article III, Section 34 ("Appendix F") of the NASD Rules of Fair Practice to prohibit a sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member) or a direct participation program from directly or indirectly offering or providing non-cash sales incentive compensation to a member or its associated persons including, but not limited to, travel bonuses, prizes and awards in excess of $50 per person per sponsor. The Direct Participation Programs and Real Estate Committees expressed concern that the emphasis given to non-cash sales incentives undermines members' ability to supervise their sales persons. The proposed amendment to Appendix F would not prohibit a member from offering its own in-house sales incentive program.[1]

The Board of Governors also approved the recommendation of the Committees that the proposed prohibition on non-cash sales incentives should be extended to other product areas and referred the issue to the Investment Companies, Variable Contracts and Corporate Financing Committees. Subsequently, the issue was considered by the referenced Committees.[2]

With respect to the Corporate Financing Committee, the Board of Covernors approved the recommendation of that Committee that non-cash sales incentive programs be prohibited in connection with real estate investment trusts and debt or equity corporate offerings, which are not covered by the provisions of Appensix F.[3] The NASD believes that certain changes in the tax laws embodied in the Tax Reform Act of 1986 and other factors in the real estate market have let to a marked increase in the number of publicly offered REITs in late 1986 and in 1987 in comparison to direct participation programs. Further, sales of REITs are considered to be in direct competition with sales of direct participation programs. In many cases, REITs are sponsored by members or affiliates of members that previously confined their activities to direct participation programs. The characteristics of sales incentives that have been utilized with respect to the distribution of REITs and direct participation programs are similar, although not as frequently used. In comparison, sales incentives have not traditionally been employed in connection with the distribution of corporate debt and equity offerings. Therefore, although sales incentives do not currently appear to be a significant problem in connection with the sale of REIT and corporate offerings, the NASD has determined to adopt the proposed rule change to avoid problems in the future and in light of several complaints that have been received from members with respect to sales incentive programs for REITs.

The rule change proposed by the NASD would insert a new provision under the heading "Arrangement Factors" to provide that it shall be presumed to be an unfair and unreasonable arrangement for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item, including but not limited to travel bonuses, prizes and awards, from an issuer or an affiliate of an issuer in excess of $50 per person per issuer annually. The proposed rule change also includes a provision that provides an exception to the foregoing prohibition for members' in-house sales incentive programs. The proposed rule change states that, notwithstanding the foregoing restrictions on non-cash sales incentives, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, affiliate of the issuer, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change presents no impact on competition that is not necessary in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD published the proposed rule change for comment in Notice to Members 86–33 (May 7, 1986). The NASD received 23 comments on the proposed rule change from 22 commenters. Eighteen of the commenters were in favor of the proposed amendment and did not suggest any changes to the language of the proposed provision. Four commenters were opposed to the amendment.

The commenters opposed to the proposed amendment pointed out that the problems experienced by the direct participation program industry with respect to non-cash sales incentives are not present in the context of corporate and REIT offerings. It was further pointed out that corporate and REIT securities lack the characteristics of direct participation programs, which are long-term, illiquid and considered high-risk. Instead, it was urged that the Corporate Financing Department staff evaluate the appropriateness of any arrangement for non-cash sales incentives on a case-by-case basis. However, no guidelines were suggested for such review.

The NASD believes that the sale of REITs are in competition with sales of direct participation programs and are often offered by the same sponsors. Further, the characteristics of sales incentive programs for REITs and direct participation programs are similar. Finally, the NASD has received several complaints from members relating to sales incentive programs for REITs. Therefore, although sales incentives are not currently considered a significant problem in the sale of corporate and REIT offerings, the NASD has determined that the proposed rule change should be adopted at this time to avoid problems in the future.

In addition, one commenter was opposed to the proposed amendment on the basis that non-cash incentives will continue to be permitted for insurance and mutual fund products. As indicated above, the NASD currently has published for comment similar proposed rule changes to prohibit the receipt of non-cash compensation in connection with mutual fund and variable contracts products in Notice to Members 88–17 (March 1, 1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[1] The proposed rule change to Appendix F to Article III, Section 34 of the NASD Rules of Fair Practice was filed with the SEC pursuant to SEC Rule 19b–4. See SR–NASD–86–22 and Amendments Nos. 1, 2 and 3 thereto.

[2] At its meeting on January 16, 1986, the NASD Board of Governors approved the publication for comment of proposed rule changes to Article III, Sections 26 and 29 of the NASD Rules of Fair Practice to prohibit the receipt of non-cash compensation in connection with sales of investment company and variable contract securities, respectively. The proposed rule changes were published for comment in Notice to Members 87–17 (March 1, 1986).

[3] The Board of Governors also determined that the proposed rule change to the Corporate Financing Interpretation should become effective concurrently with that to Appendix F, or as soon thereafter as possible. Subsequently, the NASD filed two amendments to SR–NASD–86–22 with substantial language changes on May 14, 1987 and August 7, 1987. Therefore, the NASD postponed the filing of the proposed rule change to the Corporate Financing Interpretation until the staff of the SEC had had an opportunity to review the revised proposed rule change to Appendix F.

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organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–13 and should be submitted by May 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 2, 1988.

[FR Doc. 88–10199 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25637; File No. SR–NASD–87–55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On December 31, 1987, and January 15, 1988, the National Association of Securities Dealers, Inc. ("NASD"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to establish a mandatory price and volume reporting system for over-the-counter equity securities that are not part of the NASDAQ System ("non-NASDAQ OTC Securities"), and amend its Best Execution Interpretation relating to retail transactions in these stocks.

The new Schedule H of the NASD's By-Laws requires NASD members executing principal transactions in non-NASDAQ OTC Securities to report price and volume data for days on which their sales or purchases exceed 50,000 shares or $10,000. Where the reporting requirement has been triggered, members must report aggregate volume and the highest price at which they sold the security and the lowest price at which they bought it. Pursuant to a clarifying amendment filed by the NASD on March 31, 1988, members must also report whether the trades establishing the highest price at which they sold and the lowest price at which they purchased the security represented an execution with a customer or with another broker-dealer. Members will have the option of reporting between 4:00 p.m. and 6:30 p.m. Eastern Time on the trade date or between 7:30 a.m. and 9:00 a.m. Eastern Time on the next business day. NASD members that are NASDAQ subscribers will be able to enter the reported information directly into NASDAQ. An alternative electronic reporting vehicle is being developed for those NASD members that are not NASDAQ subscribers.

The amendment to the Best Execution Interpretation requires members dealing in non-NASDAQ OTC Securities to check a minimum of three dealers (or all dealers if three or less) prior to executing any transaction on behalf of a customer.

The proposed rule change was noticed in Securities Exchange Act Release No. 25399, 53 FR 6901 (March 3, 1988). The Commission received one comment letter from the National Quotation Bureau ("NQB"),[1] the publisher of the "pink sheets."

NQB's letter relates to that part of the rule filing which requires price and volume reporting for non-NASDAQ OTC Securities. While NQB supports this initiative, it urges the Commission to require the NASD to make publicly available, on a stock-by-stock basis with data aggregated for all reporting market makers, the price and volume information that will be collected. In support of its position, NQB cites the Congressional finding in section 11A(a)(1)(C) of the Act regarding the benefits of assuring the availability of information with respect to quotations for and transactions in securities.

Although the Commission agrees with NQB that it would be consistent with the purposes of the Act for the reported price and volume information to be publicly disseminated, we do not consider it appropriate to require such dissemination at this point. The proposed price and volume reporting requirements have been devised, in the first instance, as regulatory measures to improve surveillance of trading in non-NASDAQ OTC Securities. We understand that the NASD is considering how the reported information might be disseminated, and we see no reason why the information should not eventually be made publically available.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of sections 11A, 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 2, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10200 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[1] Letter from David M. Burnett, President, National Quotation Bureau, to Jonathan G. Katz, Secretary, SEC, dated March 24, 1988.

[Release No. 34–25641; File No. SR–NSCC–87–12]

Self-Regulatory Organizations; National Securities Clearing Corporation ("NSCC"); Order Extending Approval Of Proposed Rule Change On A Temporary Basis

On October 15, 1987, NSCC filed a proposed rule change (File No. SR–NSCC–87–12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change revised NSCC's rules to authorize and establish financial and operational standards for a new category of broker-dealer membership, whose activities would be restricted exclusively to the use of the Fund/SERV Service. The proposal also revised NSCC's rules concerning Fund/SERV clearing fund contributions and allocating losses to that fund in the event of systems losses or member default. On January 26, 1988, the Commission approved the proposed rule change on a temporary basis for three months, through April 30, 1988. As discussed below, the Commission is extending its approval of the proposed rule change, on a temporary basis, through June 30, 1988.

The Commission, in its temporary approval order, asked NSCC to evaluate the benefits accruing from lower Fund/SERV clearing fund contributions and limited member assessments. The Commission also asked NSCC to monitor member Fund/SERV settlement activity, and report on the risk that Fund/SERV settlement debits and credits could not be reversed and fully-collected from other Fund/SERV system users. Pursuant to our request, NSCC has provided the Commission with information regarding the benefits and risks associated with the proposed rule change.

The Commission has not fully analyzed the information provided by NSCC and, thus needs more time to study this information before granting final approval of the proposed rule. Nothing in NSCC's information, however, appears to contradict the Commission's preliminary finding that the proposed rule change is consistent with Act and, in particular, with section 17A. Therefore, the Commission believes that it is appropriate to extend the proposed rule change for 60 days.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–87–12) be, and hereby is, approved on a temporary basis through June 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 2, 1988.

Jonathan Katz,

Secretary.

[FR Doc. 88–10201 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securites:

Smucker (J.M.) Company
Common Stock, No Par Value (File No. 7–3288)
TCW Convertible Securities Fund, Inc.
Comon Stock, $0.01 Par Value (File No. 7–3289)
Thor Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7–3290)
USLICO Corporation
Common Stock, $1.00 Par Value (File No. 7–3291)
Land's End Inc.
Comon Stock, $0.01 Par Value (File No. 7–3292)
Newell Company
Common Stock, $1.00 Par Value (File No. 7–3293)
Nuveen California Municipal Value Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3294)
Sahara Casino Partners, L.P.
Depositary Units (File No. 7–3295)
W.W. Grainger, Inc.
Common Stock, $1.00 Par Value (File No. 7–3296)
M.A. Hanna Company
Common Stock, $1.00 Par Value (File No. 7–3297)

These securities are listed and registered on one or more other national securities exchanger and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 24, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 88–10204 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securites:

Granges Exploration Ltd.
Common Stock, No Par Value (File No. 7–3280)
Chicago Pacific Corporation
Common Stock, $0.01 Par Value (File No. 7–3281)
Freeport-McMoran Oil & Gas Royalty Trust
Units of Beneficial Interest (File No. 7–3282)
CTS Corporation
Common Stock, No Par Value (File No. 7–3283)
Cedar Fair, L.P.
Limited Partner's Units (File No. 7–3284)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 24, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 88–10205 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–17937]

Application and Opportunity for Hearing; Citicorp

May 3, 1988.

Notice is hereby given that Citicorp (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Bank") under indentures dated as of February 15, 1972 (the "1972 Indenture"), supplemented as of November 15, 1972 (the "November 1972 Supplement") and June 30, 1974 (the "June 1974 Supplement"), March 15, 1977 (the "March 1977 Indenture") supplemented

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as of July 1, 1977 (the "July 1977 Supplement"), July 15, 1978 (the "July 1978 Supplement"), February 1, 1979 (the "February 1979 Supplement"), April 15, 1980 (the "April 1980 Supplement"), February 1, 1981 (the "February 1981 Supplemnent"), May 1, 1981 (the "May 1981 Supplement"), August 1, 1981 (the "August 1981 Supplement"), November 1, 1981 (the "November 1981 Supplement"), February 1, 1982 (the "February 1982 Supplement"), February 15, 1982 (the "February 15, 1982 Supplement"), and March 15, 1982 (the "March 1982 Supplement"), August 25, 1977 (the "August 1977 Indenture"), and April 21, 1980 (the "1980 Indenture") between the Company and Bank which were heretofore qualified under the Act, and under a Pooling and Servicing Agreement dated as of October 1, 1987 (the "October Agreement") between Citicorp Mortgage Securities, Inc. ("Citicorp Mortgage") and the Bank which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of such indentures or agreement. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the 1972 Indenture, the Company has issued $650,000,000 aggregate principal amount of its Floating Rate Notes Due 1999 (the "Notes") under the June 1974 Supplement, of which $74,304,000 are outstanding as of March 1, 1988. The Notes were registered under the Securities Act of 1933 ("1933 Act") and the 1972 Indenture was qualified under the Act.

(2) Pursuant to the March 1977 Indenture, the Company has issued $350,000,000 aggregate principal amount of its 8.45% Notes Due March 15, 2007. The Company has issued in aggregate principal amount (i) $250,000,000 of its 8⅛% Notes Due July 1, 2007 under the July 1977 Supplement; (ii) $200,000,000 of its Floating Rate Notes Due 1998 under the July 1978 Supplement; (iii) $500,000,000 of its Floating Rate Notes Due 2004 under the February 1979 Supplement; (iv) $250,000,000 of its Floating Rate Notes Due 2010 under the April 1980 Supplement; and (v) $100,000,000 of its Floating Rate Notes Due March 10, 1989 under the March 1982 Supplement (collectively, the "Notes"). Of these, $1,051,334,000 are outstanding as of March 1, 1988. The Notes were registered under the 1933 Act and the March 1977 Indenture was qualified under the Act.

(3) Pursuant to the August 1977 Indenture, the Company has issued $250,000,000 aggregate principal amount of its Rising-Rate Notes, Series A (the "Notes"), of which none are outstanding as of March 1, 1988. The Notes were registered under the 1933 Act and the August 1977 Indenture was qualified under the Act.

(4) Pursuant to the 1980 Indenture, the Company has outstanding as of March 1, 1988, $5,379,488,997 aggregate principal amount of various series of notes (the "Notes"). The Notes were registered under the 1933 Act and the 1980 Indenture was qualified under the Act. The four indentures are hereinafter called the "Indentures," and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(5) Pursuant to the September Agreement, Citicorp Mortgage Securities, Inc. ("Citicorp Mortgage"), a subsidiary of the Company, issued Mortgage Pass-Through Certificates, Series 1987–18A 10.50%. Pass-Through Rate (the "Series 1987–18A Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–18A Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $72,993,941.87 at the close of business on October 1, 1987, which mortgage loans were assigned to the Bank as Trustee simultaneously with the issuance of the Series 1987–18A Certificates. On October 29, 1987, the Company entered into a Guaranty of even date (the "1987–18A Guaranty") pursuant to which, for the benefit of the holders of the Series 1987–18A Certificates, it agreed to be liable for 8.00% of the initial aggregate principal balance of the 1987–18A Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–18A Guaranty. The Company's obligations under the 1987–18A Guaranty rank *pari passu* with all unsecured and unsubordinated indebtedness of the Company, and accordingly, if enforced against the Company, the 1987–18A Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987–18A Certificates were registered under the 1933 Act as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass Through Certificates pursuant to Rule 415 under the 1933 Act.

(6) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(7) The obligations of the Company under the Indentures and the 1987–18A Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*.

(8) Such differences as exist among the Indentures and the respective obligations of the Company under the 1987–18A Guaranty are unlikely to cause any conflict of interest in the trusteeship of the Bank under the Indentures and the September Agreement.

The Company has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is on file in the Offices of the Commission's Public Reference Section, File Number 22–17937, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than May 27, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by said application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10206 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–17906]

Application and Opportunity for Hearing; Norstar Bancorp, Inc.

May 3, 1988.

Notice is hereby given that Norstar Bancorp Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Chemical Bank (the "Bank") under an indenture dated as of January 11, 1982 (the "1982 Indenture") between Security New York State Corporation ("Security") and the Bank which has not been qualified under the Act, and under an indenture dated January 1, 1985 (the "1985 Indenture") between the Company and the Bank which was qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest as defined in the section it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obliger.

The Company alleges:

1. Pursuant to the 1982 Indenture, Security issued approximately $2,276,908 aggregate principal amount of its 10% Notes due 1992 (the "10% Notes) issued in connection with the purchase by Security of all of the outstanding shares of Mohawk National Bank of Schenectady, New York. Subsequent to the issuance of the 10% Notes, Security and the Company merged. The 1982 Indenture was not qualified under the Act in reliance upon section 304(a)(9) of the Act.

2. Pursuant to the 1985 Indenture, the Company issued $100 million aggregate principal amount of its Floating Rate Subordinated Capital Notes due January 1998 (the "Floating Rate Notes"). The Floating Rate Notes were registered under the Securities Act of 1933 ("1933 Act"), and the 1985 Indenture was qualified under the Act.

3. The Company is not in default under the 1982 Indenture, the 1985 Indenture, or any other existing indenture.

4. The Company's obligations under the 1982 Indenture and the 1985 Indenture are wholly unsecured and rank *pari passu*.

5. The provisions of the 1982 Indenture and the 1985 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of such indentures.

The Company has waived notice of hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to such application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–17908, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than May 31, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of fact or law raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10207 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–8085]

Issuer Delisting; Application to Withdraw From Listing and Registration; (UC Corp. Common Stock, Par Value $.34)

May 3, 1988.

UC Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of its common stock on the Amex. The Company does not see any advantage in the trading of its stock in view of the fact that it has disposed of substantially all of its assets. The Company is no longer conducting an active operating business and its activities are limited to those relating to making liquidating distributions.

Any interested person may, on or before May 24, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10208 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–5376]

San Joaquin Business Investment Group Inc.; Issuance of a Small Business Investment Company License

On February 1, 1988, a notice was published in the **Federal Register** (Vol. 53, No. 26) stating that an application has been filed by San Joaquin Business Services Group, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company. Subsequently the company changed its name to San Joaquin Business Investment Group, Inc.

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Interested parties were given until close of business March 3, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5376 on April 23, 1988, to San Joaquin Business Investment Group, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 3, 1988.

[FR Doc. 88-10251 Filed 5-6-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 29, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45166

Parties: Pan American World Airways, Inc.

Date Filed: April 26, 1988.

Subject: Application of Pan American World Airways, Inc. pursuant to sections 412 and 414 of the Act, requests (1) approval of an agreement between Pan Am Commercial Services, Inc. and the General Department of International Air Services (Aeroflot Soviet Airlines) (Aeroflot), known as the SPATE Agreement of Commercial Partnership between Pan Am and Aeroflot, dated January 1, 1988, and (2) the concomitant conferral of antitrust immunity.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-10276 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45600

Date Filed: April 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 25, 1988.

Description: Application of Points of Call Airlines Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to conduct Class 9-4 (Non-Scheduled International) Charter flights from any point or points in Canada to any points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-10279 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 88-4-86]

Fitness Determination of ChartAir, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 88-4-86, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that ChartAir, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: April 29, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10135 Filed 5-6-88; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Hazardous materials; Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in March 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
970-X	DOT-E 970	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.21(b), 173.300, 173.302(g).	To authorize use of DOT Specification 3AA2015 or 3AA2400 cylinders, for transportation of a flammable poisonous gas. (Modes 1, and 2.)
2136-X	DOT-E 2136	do	49 CFR 173.1, 173.3(a), 173.7(a), 174.10, 174.104, 174.3, 174.90(a), 177.801, 177.802.	To authorize shipment of radioactive materials with explosives in Department of Defense containers packaged and loaded by the Department of Defense without carrier inspection. (Modes 1, and 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Airco Special Gases, San Marcos, CA.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582 (Modes 1, 2, 3, and 4.)
3004-X	DOT-E 3004	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable, and nonflammable compressed gases. (Modes 1, 2, 4, and 5.)
3004-X	DOT-E 3004	Liquid Air Corporation Walnut, CA	49 CFR 173.302, 175.3	Do.
3004-X	DOT-E 3004	Union Carbide Corporation, Danbury, CT.	49 CFR 173.302, 175.3	Do.
3004-X	DOT-E 3004	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	Do.
3004-X	DOT-E 3004	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302, 175.3	Do.
3126-X	DOT-E 3126	Hercules, Inc., Wilmington, DE	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	To authorize transport of Class A explosives in DOT Specification 5 metal drums, or in DOT Specification 42B aluminum drums. (Mode 1.)
3549-X	DOT-E 3549	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a), 173.77	To authorize shipment of Class A explosives in special non-DOT specification packagings. (Modes 1, and 2.)
3941-X	DOT-E 3941	Pacific Engineering & Production Co. of Nevada, Henderson, NV.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, and 2.)
3941-X	DOT-E 3941	Aerojet Solid Propulsion Co., Sacramento, CA.	49 CFR 173.239a(a)(2)	Do.
3996-X	DOT-E 3996	Stauffer Chemical Co., Westport, CT.	49 CFR 173.188	To authorize shipment of phosphoric anhydride in DOT Specification 6K metal drums. (Modes 1, and 2.)
4039-X	DOT-E 4039	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.316(a)	To authorize shipment of liquefied hydrogen in a non-DOT specification vacuum insulated portable tank. (Mode 1.)
4612-X	DOT-E 4612	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.)
4850-X	DOT-E 4850	The Ensign-Bickford Co. and Dist., Simsbury, CT.	49 CFR 173.100(cc), 175.3	To authorize shipment of flexible linear shaped charges, metal clad, in lengths not exceeding 100 feet, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosives. (Modes 1, 2, and 4.)
5403-X	DOT-E 5403	Halliburton Services Duncan, OK	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well acidizing and industrial cleaning operations. (Modes 1, and 3.)
5403-X	DOT-E 5403	Vann Systems, division of Halliburton Co. Houston, TX.	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	Do.
5701-X	DOT-E 5701	Mallinckrodt, Inc., Paris, KY	49 CFR 173.268(a)(3)	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification 312 with exceptions, for transportation of a certain oxidizer. (Mode 1.)
5704-X	DOT-E 5704	Hercules, Inc., Wilmington, DE	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in non-DOT specification steel drums. (Modes 1, 2, and 3.)
5704-X	DOT-E 5704	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.93(e)	Do.
5704-X	DOT-E 5704	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62, 173.93(e)	Do.
5704-P	DOT-E 5704	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704 (Modes 1, 2, and 3.)
6016-P	DOT-E 6016	S.J. Smith Company, Inc., Davenport, IA.	49 CFR 173.315(a)	To become a party to exemption 6016 (Mode 1.)
6045-X	DOT-E 6045	Viskase Corp., Chicago, IL	49 CFR 173.121	To authorize use of DOT Specification MC-312 cargo tanks for transportation of a flammable liquid. (Modes 1, and 3.)
6080-X	DOT-E 6080	U.S. Department of Energy, Washington, DC.	49 CFR 173.301(d), 173.327(a), 173.337(a)(1).	To authorize use of manifolded cylinders, for transportation of a Class A poison. (Mode 1.)
6309-X	DOT-E 6309	Foam Supplies, Inc., Olivette, MO	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, and 2.)
6309-X	DOT-E 6309	Freeman Chemical Corp., Port Washington, WI.	49 CFR 173.315(a)(1), 174.63(b)	Do.
6309-P	DOT-E 6309	Industrial Polymer Corp., Orange, CA.	49 CFR 173.315(a)(1), 174.63(b)	To become a party to exemption 6309 (Modes 1, and 2.)
6309-X	DOT-E 6309	General Latex and Chemical Corp. of Georgia Dalton, GA.	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, and 2.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
6418–X	DOT–E 6418	PureGro Co., West Sacramento, CA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC–303, MC–304, MC–306, MC–307, MC–310 or MC–312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
6418–X	DOT–E 6418	Wilbur-Ellis Co., Fresno, CA	49 CFR 173.357(b)	Do.
6418–X	DOT–E 6418	Western Farm Service, Inc., Walnut Creek, CA.	49 CFR 173.357(b)	Do.
6418–X	DOT–E 6418	The Dow Chemical Co., Midland, MI.	49 CFR 173.357(b)	Do.
6418–X	DOT–E 6418	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.357(b)	Do.
6484–X	DOT–E 6484	The Dow Chemical Co., Freeport, TX.	49 CFR 172.101, 173.149a	To authorize transport of mixtures of nitromethane and various solvents in DOT Specification MC–307 or MC–312 tank motor vehicles. (Mode 1.)
6484–X	DOT–E 6484	W.R. Grace & Co., Lexington, MA	49 CFR 172.101, 173.149a	Do.
6563–X	DOT–E 6563	Monongahela Power Co., Fairmont, WV.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made generally in compliance with DOT Specification 3E with certain exceptions. (Modes 1, 2, 3, 4, and 5.)
6589–X	DOT–E 6589	International Safety Devices, Inc., Hesperia, CA.	49 CFR 173.302(a)(1), 175.3	Reinstatement of exemption that authorizes the shipment of materials in non-DOT specification cylinders. (Modes 1, 2, 4, and 5.)
6611–X	DOT–E 6611	Teisan Kabushiki Kaisha, Tokyo, 105 Japan.	49 CFR 173.318(a)	To authorize use of a non-DOT specification vacuum insulated portable tank, for transportation of a nonflammable gas. (Modes 1 and 3.)
6626–P	DOT–E 6626	National Welders Supply Co., Inc., Charlotte, NC.	49 CFR 173.34(e)15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626. (Modes 1, 2, 3, 4, and 5.)
6651–X	DOT–E 6651	Ethone, Inc., West Haven, CT	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of single-trip containers for transportation of certain Class B poisonous solids. (Mode 1.)
6704–X	DOT–E 6704	The Dow Chemical Co., Midland, MI.	49 CFR 173.245a, 173.249, 173.253, 173.294, 178.340, 178.343.	To authorize use of non-DOT specification cargo tanks for shipment of certain corrosive liquids. (Mode 1.)
6890–X	DOT–E 6890	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.100(cc), 175.3	To authorize transport of an explosive severance system consisting of linear segments which may contain up to 79 grams of hexanitrostilbene. (Modes 1, 2, 3, and 4.)
6895–X	DOT–E 6895	GTE Products Corp., Danvers, MA	49 CFR 173.140(a)(1), 175.3	To authorize shipment of zirconium liquid mixtures in a DOT Specification 37A steel drum. (Modes 1, 2, 3, and 4.)
6904–X	DOT–E 6904	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.246(a), 175.3	To authorize transport of certain corrosive materials in DOT Specification 12A fiberboard boxes having inside glass, acid resistant bottles not exceeding 1 pint capacity. (Modes 1, 3, and 4.)
6929–X	DOT–E 6929	Morton-Thiokol, Inc., Brigham City, UT.	49 CFR 173.88(e)(2)(ii), 173.92(b)	To authorize shipment of a Class B explosive in rocket motors in a propulsive state. (Modes 1 and 3.)
6929–X	DOT–E 6929	U.S. Department of Energy, Washington, DC.	49 CFR 173.88(e)(2)(ii), 173.92(b)	Do.
6962–X	DOT–E 6962	do	49 CFR 173.301(d)	To authorize shipment of argon or helium in a slightly opened DOT Specification 3AA1800 or 3AA2000 cylinder. (Modes 1 and 2.)
6971–X	DOT–E 6971	Chem Service, Inc., West Chester, PA.	49 CFR Parts 100–199	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, and 5.)
7011–X	DOT–E 7011	Russell-Stanley Corporation, Red Bank, NJ.	49 CFR 173.154, 173.217, 173.239a, 173.245, 173.245b (a)(6), 173.365.	To authorize additional materials that are approved for shipment in DOT Specification 21C fiber drums. (Modes 1, 2, and 3.)
7011–X	DOT–E 7011	do	49 CFR 173.154, 173.217, 173.239a, 173.245, 173.245b (a)(6), 173.365.	To authorize additional solid materials that are classed as corrosive, flammable, poison B and oxidizer, presently authorized in DOT Specification 21C fiber drums. (Modes 1, 2, and 3.)
7011–X	DOT–E 7011	do	49 CFR 173.154, 173.217, 173.239a, 173.245, 173.245b (a)(6), 173.365.	To authorize manufacture, marking and sale of removable head non-DOT blow-molded high molecular weight polyethylene container, for transportation of certain materials and those corrosive, flammable, poison B and oxidizers solids presently authorized to be packed in a DOT–21C fiber. (Modes 1, 2, and 3.)
7024–X	DOT–E 7024	B.I. Transportation, Inc., Burlington, NC.	49 CFR 173.249(a)(7)	To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1.)
7040–X	DOT–E 7040	Polaroid Corp., Needham Heights, MA.	49 CFR 172.101, 175.3	To authorize carriage of larger quantities of corrosive liquids in DOT Specification 6D cylindrical steel overpack with inside DOT Specification 2SL container mounted on a pallet and covered with a wooden overwrap. (Mode 4.)
7052–P	DOT–E 7052	Siemens Corporate Research and Support, Inc., Jamaica, NY.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	Siemens, AG Munchen, West Germany.	49 CFR 172.101, 172.420, 175.3	Do.

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
7052–X	DOT–E 7052	EIC Laboratories, Inc., Norwood, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	General Motors Corp., Warren, MI	49 CFR 172.101, 172.420, 175.3	Do.
7052–P	DOT–E 7052	Mil-Com Electronics Corp., San Antonio, TX.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	EnScan, Inc., Eden Prairie, MN	49 CFR 172.101, 172.420, 175.3	Do.
7052–X	DOT–E 7052	Crompton Parkinson, Ltd., Tyne & Wear, England.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Eveready Battery Co., Inc., Rocky River, OH.	49 CFR 172.101, 172.420, 175.3	Do.
7052–X	DOT–E 7052	Terra Tek Systems, Salt Lake City, UT.	49 CFR 172.101, 172.420, 175.3	Do.
7052–P	DOT–E 7052	Acme Aerospace Products Group, Salt Lake City, UT.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	Hoppecke Battery Co., Hoppecke, West Germany.	49 CFR 172.101, 172.420, 175.3	Do.
7060–X	DOT–E 7060	Federal Express Corp., Memphis, TN.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo aircraft only when the combined transport index exceeds the usual authorized limits specified in Part 175 or the separation distance criteria cannot be met. (Mode 4.)
7060–X	DOT–E 7060	Airborne Express, Ind., Wilmington, OH.	49 CFR 175.702(b), 175.75(a)(3)(ii)	Do.
7060–X	DOT–E 7060	Central Skyport, Inc., Columbus, OH.	49 CFR 175.702(b), 175.75(a)(3)(ii)	Do.
7218–X	DOT–E 7218	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
7455–X	DOT–E 7455	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.177(g), 176.177(h), 176.177(n), 176.177(q), 176.177(r), 176.410(e).	To authorize handling and stowage of explosive material in an anchored and unmanned barge. (Mode 3.)
7477–X	DOT–E 7477	Systron Donner Corp, Concord, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize use of non-DOT specification seamless aluminum cylinders, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, and 4.)
7498–X	DOT–E 7498	General Chemical Corp., Parsippany, NJ.	49 CFR 173.263(a)(15), 178.210	To authorize shipment of a corrosive liquid in a non-DOT specification corrugated polypropylene box. (Modes 1, 2, and 3.)
7549–P	DOT–E 7549	ICI Americans Inc., Wilmington, DE	49 CFR 173.245a(a), 173.3a, 174.63(b), 178.245.	To become a party to exemption 7549. (Modes 1, 2, and 3.)
7607–P	DOT–E 7607	Radian Corp., Herndon, VA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7616–P	DOT–E 7616	Illinois Central Gulf Railroad, Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	Burlington Northern Railroad Co., Overland Park, KS.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	Do.
7708–X	DOT–E 7708	HTL Division, Pacific Scientific Co., Duarte, CA.	49 CFR 173.302(a), 175.3, 178.44	To authorize use of non-DOT specification small, high pressure cylinders of welded construction for military weapons systems use only. (Modes 1, 2, 4, and 5.)
7753–P	DOT–E 7753	Albright & Wilson Americas, Richmond, VA.	49 CFR 173.190(b)(2)	To become a party to exemption 7753. (Modes 1, 2, and 3.)
7768–X	DOT–E 7768	Sonoco Plastic Drum, Inc., Lockport, IL.	49 CFR 173.154, 173.217, 173.245b, 173.365, 178.19.	To authorize manufacture, marking and sale of non-DOT specification blow-molded, high molecular weight polyethylene drums, with removable head, for shipment of certain oxidizers, corrosive, flammable and poison B solids. (Modes 1, 2, and 3.)
7770–X	DOT–E 7770	Parlefer S.A.R.L., Paris, France	49 CFR 173.143, 173.264(b)(4), 174.63(b).	To authorize transport of anhydrous hydrogen fluoride or anhydrous methylchloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, and 3.)
7811–X	DOT–E 7811	Burdick & Jackson, Div. of Baxter Healthcare Corp., Muskegon, MI.	49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, 178.210.	To authorize use of DOT Specification 12A corrugated fiberboard box with handholes, for shipment of certain corrosive, flammable, and Class B poisonous liquid. (Modes 1, 2, 3, and 4.)
7811–X	DOT–E 7811	Scientific Products, Div. of Baxter Healthcare, McGaw Park, IL.	49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, 178.210.	Do.
7835–P	DOT–E 7835	US Airgas, Inc., Randnor, PA	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7876–X	DOT–E 7876	General Chemical Corp., Parsippany, NJ.	49 CFR 173.299(a), 175.3	To authorize shipping description etching acid, liquid, n.o.s. to be used for products which do not comply with the definition in 49 CFR 173.229(a). (Modes 1, 2, 3, and 4.)
7948–X	DOT–E 7948	Erickson, Inc., Richmond, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC–307/312 except for bottom outlet valve variation, for shipment of liquid and semi-solid waste material. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
7959–X	DOT–E 7959	Woods Hole, Marthas Vineyard & Nantucket, Steamship Woods Hole, MA.	49 CFR 172.101, 176.78(k)	To authorize stowage of recreational vehicles carrying liquefied petroleum gas for heating and cooking on the vehicle deck of passenger-carrying ferries and other passenger-carrying vessels. (Mode 3.)
7963–P	DOT–E 7963	ICI Americas Inc., Wilmington, DE	49 CFR 173.245, 173.356, 173.360(a)(5).	To become a party to exemption 7963 (Modes 1, 2, and 3.)
7972–X	DOT–E 7972	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 172.504	To authorize transport of limited quantities of explosive in a special shipping container without placarding the vehicle. (Mode 1.)
7987–X	DOT–E 7987	Stauffer Chemical Co., Westport, CT.	49 CFR 173.343, 173.377	To authorize shipment of a poison B, in non-DOT specification five ply natural kraft multiwall bags. (Modes 1, and 2.)
7987–P	DOT–E 7987	ICI Americas Inc., Wilmington, DE	49 CFR 173.343, 173.377	To become a party to exemption 7987. (Modes 1, and 2.)
8074–X	DOT–E 8074	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 173.34(d), 175.3	To authorize use of a DOT Specification 3E cylinder without safety devices, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8077–X	DOT–E 8077	Dow Corning Corp., Midland, MI	49 CFR 173.119, 173.136(a)(3), 173.247(a)(7).	To authorize use of non-DOT specification steel drums, for shipment of a flammable and corrosive liquid. (Modes 1, and 2.)
8091–X	DOT–E 8091	AT&T Technologies, Inc., Greensboro, NC.	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, and 5.)
8230–P	DOT–E 8230	Fisher Scientific Co., Fair Lawn, NJ	49 CFR 173.268(b)(6), 173.269(a)(4).	To become a party to exemption 8230 (Modes 1, 2, 3, and 4.)
8284–X	DOT–E 8284	General Chemical Corp., Parsippany, NJ.	49 CFR 173.272(a)(i)22, 174.3, 179.202–12(b).	To authorize shipment of oleum in DOT Specification 103AW or 111A100W2 tank cars equipped with safety valves instead of safety vents. (Mode 2.)
8354–X	DOT–E 8354	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.123, 173.315	To authorize use of non-DOT specification portable tanks, for transportation of certain liquefied petroleum gases and other gases classed as flammable gases and a flammable liquid. (Modes 1, 2, and 3.)
8369–X	DOT–E 8369	Degussa Corp., Teterboro, NJ	49 CFR 173.21	To authorize transport of glycidol separated from certain other chemicals, in non-DOT specification single-trip steel drums or DOT Specification 17E steel drums. (Modes 1, 2, and 3.)
8386–X	DOT–E 8386	J. J. Mauget Co., Los Angeles, CA	49 CFR 172.101, 172.400	To authorize transport of a Class B poison in special pressure sealed polyethylene capsules without the POISON label. (Modes 1, and 2.)
8390–X	DOT–E 8390	Mallinckrodt, Inc., Paris, KY	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A60 fiberboard boxes. (Mode 1.)
8394–X	DOT–E 8394	Whirlpool Corp., La Porte, IN	49 CFR Parts 100–177	To authorize transport of certain thermostatic elements containing small quantities of sodium potassium alloy, liquid packed in a strong fiberboard box. (Modes 1, 2, 3, 4, and 5.)
8401–X	DOT–E 8401	ERA Helicopters, Inc., Anchorage, AK.	49 CFR 175.3, 175.310(c)(3), 175.310(d).	To authorize carriage of fuel in Canadian 5B drums loaded in cargo compartments of passenger-carrying helicopters. (Mode 5.)
8408–X	DOT–E 8408	Presvac Systems (Burlington), Ltd., Burlington, Ont., Canada.	49 CFR 173.119(a), 173.119(m), 1732.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC–307 or MC–312, for transportation of flammable liquids, corrosive materials or poison B materials. (Mode 1.)
8414–X	DOT–E 8414	SLEMI, Paris 75116, France	49 CFR 173.315, 174.63(b)	To authorize transport of certain nonflammable gases in non-DOT specification intermodal portable tanks. (Modes 1, 2, and 3.)
8432–X	DOT–E 8432	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.154, 175.3	To authorize transport of plastic bottles containing an aqueous solution of sodium perchlorate and plastic bottles containing aluminum powder together in a wire bound plywood box. (Modes 1, 2, 3, and 4.)
8445–X	DOT–E 8445	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	49 CFR Part 173, Subpart D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	Eveready Battery Company, Inc., Rocky River, OH.	49 CFR Part 173, Subpart D, E, F, H.	Do.
8445–X	DOT–E 8445	Keegan Technology & Testing Associates, Inc., South Plainfield, NJ.	49 CFR Part 173, Subpart D, E, F, H.	Do.
8451–P	DOT–E 8451	Rocket Research Co., Redmond, WA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (Modes 1, 2, and 4.)
8451–X	DOT–E 8451	ICI Americas, Inc., Byron, GA	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pyrotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
8457–X	DOT–E 8457	DU, Inc., Bethyl, CT	49 CFR Parts 100–177	To authorize transport of an electronic device containing one lithium cell which meets certain prescribed requirements. (Modes 1, 2, 3, 4, and 5.)
8470–X	DOT–E 8470	Morton Thiokol Corp., Brigham City, UT.	49 CFR 173.92(a)	To authorize use of an non-DOT specification box for shipping rocket motors. (Mode 1.)
8518–P	DOT–E 8518	Central Pumping Co., Inc., La Habra, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8554–P	DOT–E 8554	Baxter Blasting Co., dba M.J. Baxter Drilling Co., El Cajon, CA.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8582–S	DOT–E 8582	Chicago and Northwestern Transportation Co., Chicago, IL.	49 CFR Parts 100–177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8585–P	DOT–E 8585	Dixie Poly-Drum Corp., Yemassee, SC.	49 CFR 173.247, 178.19, Part 173 Subpart D, F, H.	To become a party to exemption 8585. (Modes 1, 2, and 3.)
8585–X	DOT–E 8585	Burgen Barrel and Drum Co., Kearny, NJ.	49 CFR 173.247, 178.19, Part 173 Subpart D, F, H.	To renew and authorize certain hazardous materials which are not presently authorized in DOT Specification 34 containers. (Modes 1, 2, and 3.)
8597–X	DOT–E 8597	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 173.268, Part 172 Subpart C.	To authorize transport of nitric acid in stainless steel non-DOT specification portable tanks. (Mode 1.)
8627–X	DOT–E 8627	Petrolite Corp., Saint Louis, MO	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chasis, for transportation of flammable and corrosive liquids. (Mode 1.)
8627–X	DOT–E 8627	Ancor Services, Inc., Kilgore, TX	49 CFR 173.119, 173.245, 178.253	Do.
8627–X	DOT–E 8627	Champion Chemicals, Inc., Houston, TX.	49 CFR 173.119, 173.245, 178.253	Do.
8627–P	DOT–E 8627	Nalco Chemical Co., Naperville, IL	49 CFR 173.119, 173.245, 178.253	To become a party to exemption 8627 (Mode 1.)
8627–P	DOT–E 8627	Omega Treating Chemicals, Inc., Midland, TX.	49 CFR 173.119, 173.245, 178.253	Do.
8627–X	DOT–E 8627	Chemlink Petroleum, Inc., Sand Springs, OK.	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chasis, for transportation of flammable and corrosive liquids. (Mode 1.)
8697–X	DOT–E 8697	ERA Helicopters, Inc., Anchorage, AK.	49 CFR 172.101 Column 6(b), 175.30(a)(1).	To authorize carriage of propane in DOT Specification 4B240, 4BA240, 4BW240 cylinders via helicopter utilizing sling loads. (Mode 4.)
8761–X	DOT–E 8761	The Heil co., Athens, TN	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC–307/312 except for bottom outlet valve variations for transportation of liquid and semi-solid waste materials. (Mode 1.)
8780–X	DOT–E 8780	Container Corporation of America, Wilmington, DE.	49 CFR 178.19, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification reusable, blowmolded, polyethylene containers, for tranportation of certain corroive liquids and an oxidizer. (Modes 1, 2, and 3.)
8781–X	DOT–E 8781	Mauser Packaging, Ltd., Litchfield, CT.	49 CFR 171.12(c), 178.116–6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 guage, 55-gallon capacity DOT Specification 17E drums, for transportation of various hazardous materials. (Modes 1, 2, and 3.)
8786–X	DOT–E 8786	Gas Spring Corp., Colmar, PA	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To authorize shipment of limited quantities of compressed gases, in accumulators which deviate from the required retest parameters. (Modes 1, 2, 3, 4, and 5.)
8786–X	DOT–E 8786	Stabilus GmbH, Koblenz, West Germany.	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	Do.
8791–X	DOT–E 8791	Stauffer Chemical Co., Westport, CT.	49 CFR 173.245a, 173.3a, 178.245–1.	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51 portable tank, for transportation of ethyl chloroformate. (Modes 1, 2, and 3.)
8791–P	DOT–E 8791	ICI Americas Inc., Wilmington, DE	49 CFR 173.245a, 173.3a, 178.245–1.	To become a party to exemption 8791. (Modes 1, 2, and 3.)
8840–X	DOT–E 8840	Walter Kidde Co., Mebane, NC	49 CFR 173.23(c), 173.302(a)(5), 175.3.	To authorize manufacture, marking and sale of non-DOT specification inside seamless aluminum containers, for transportation of various compressed gases. (Modes 1, 2, 3, and 4.)
8842–X	DDOT–E 8842	HTL Division, Pacific Scientific Co., Duarte, CA.	49 CFR 173.302(a), 175.3, 178.44	To authorize use of non-DOT specification small, high pressure cylinders of welded construction for aircraft use or military weapons system only. (Modes 1, 2, 4, and 5.)
8844–X	DOT–E 8844	Beall Trailers of Montana, Inc., Billings, MT.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
8845–P	DOT–E 8845	NL Petroleum Services, Inc., Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845. (Modes 1 and 3.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
8845–P	DOT–E 8845	Penwood, Inc., Fort Worth, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	Do.
8845–P	DOT–E 8845	Wedge CRC, Inc., Arlington, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	Do.
8845–X	DOT–E 8845	GOEX, Inc., Cleburne, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To authorize transport of charged oil well jet perforating guns with detonators attached. (Modes 1 and 3.)
8845–X	DOT–E 8845	Western Atlas International, Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	Do.
8859–X	DOT–E 8859	AVM Corp., Pittsburgh, PA	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To reinstate and authorize different size penumatic springs of the same design and process as those presently identified in the original exemption. (Modes 1, 4, and 5.)
8870–X	DOT–E 8870	Hach Co., Ames, IA	49 CFR 172.101, 173.286, 175.3	To commingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, and 5.)
8915–P	DOT–E 8915	Liquid Air Corp., Walnut Creek, CA	49 CFR 173.301(d), 173.302(a)(3)	To become a party to exemption 8915. (Modes 1 and 3.)
8915–X	DOT–E 8915	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(d), 173.302(a)(3)	To authorize shipment of certain flammable and nonflammable compressed gases in DOT Specifications 3A, 3AA, 3AX, 3AAX and 3T cylinders. (Modes 1 and 3.)
8915–X	DOT–E 8915	Ethyl Corp., Baton Rouge, LA	49 CFR 173.301(d), 173.302(a)(3)	Do.
8915–X	DOT–E 8915	Union Carbide Corp., Danbury, CT	49 CFR 173.301(d), 173.302(a)(3)	Do.
8978–P	DOT–E 8978	GTE Products Corp., Waltham, MA	49 CFR 172.101, 175.3	To become a party to exemption 8978. (Modes 1, 2, 3, and 4.)
9067–X	DOT–E 9067	Watco Truck Rigging, Inc., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
9134–X	DOT–E 9134	I.S.C., Limited Avonmouth, Bristol, England.	49 CFR 173.264, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain corrosive materials. (Modes 1, 2, and 3.)
9157–X	DOT–E 9157	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 173.314(c), 179.300–7	To authorize use of a non-DOT specification multi-unit tank car tank, for transportation of a flammable gas. (Mode 1.)
9162–X	DOT–E 9162	Sun Pipe Co., Longview, TX	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for transportation of flammable liquids or flammable gases. (Mode 1.)
9201–X	DOT–E 9201	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.370	To authorize shipment of calcium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bags having capacity not exceeding 4,400 pounds, overpacked in wax-impregnated 500-pound test, double-wall (BC flute) corrugated fiberboard boxes, in full freight loads. (Modes 1, 2, and 3.)
9209–X	DOT–E 9209	General Chemical Corp., Pasippany, NJ.	49 CFR 173.266(c)	To authorize shipment of hydrogen peroxide solution in water containing 29%–32% hydrogen peroxide by weight, in a DOT–12P fiberboard box containing one inside DOT–2U polyethylene container of not over five gallons or two inside DOT–2U polyethylene containers of not over 2½ gallon capacity each. (Modes 1, 2, and 3.)
9244–X	DOT–E 9244	Stoneco, Inc., Oconto, CO	49 CFR 172.101, 175.30	To authorize transport of explosive pest repellant devices, in fiberboard boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, and 4.)
9248–X	DOT–E 9248	Kross, Inc., Valencia, CA	49 CFR 173.1200, 173.154a	To authorize transport of a safety kit containing 2 fifteen minute highway fusees as a Consumer Commodity. (Modes 1 and 2.)
9279–X	DOT–E 9279	Keystone Steel & Wire Co., Peoria, IL.	49 CFR 173.154	To authorize transport of a flammable solid which is water reactive in open-top freight containers and open top trailers covered with tarpaulins. (Mode 1.)
9281–X	DOT–E 9281	GOEX, Inc., Cleburne, TX	49 CFR 172.101, 173.100	To authorize transport of cylindrical pellets of desensitized RDX, HMX, HNS and PYX in DOT Specification 12B65 fiberboard boxes. (Modes 1, 2, 3, 4, and 5.)
9289–P	DOT–E 9289	ICI Americas Inc., Wilmington, DE	49 CFR 173.118a(b)(1)	To become a party to exemption 9289. (Mode 1.)
9370–X	DOT–E 9370	NI Industries, Inc., Longview, TX	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders complying in part with DOT Specification 3T cylinders, for transportation of nonflammable gases. (Modes 1, 2, 3, and 4.)
9421–X	DOT–E 9421	Taylor-Wharton, Division of Harsco Corp., Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders complying in part with DOT Specification 3AA specification, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, and 4.)
9491–X	DOT–E 9491	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.302, 173.304	To authorize transport of hexafluoroethane and trifluoromethane in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
9533–X	DOT–E 9533	B.A.G. Corp., Dallas, TX	49 CFR Part 173 Subpart E, F	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2260 pounds each, and top and bottom outlets, for shipment of poison B solid, corrosive solids and oxidizers (solids only). (Modes 1, 2, and 3.)
9545–X	DOT–E 9545	Keystone Diagnostics, Inc., Columbia, MD.	49 CFR 173.118(a)	To authorize a 99.5 percent acetone and 0.5 percent p-Toluene sulfonic acid mixture, classed as flammable liquid but having a secondary hazard of corrosive material, to be shipped under the limited quantity provisions for flammable liquids. (Modes 1 and 2.)
9549–X	DOT–E 9549	Pesco, Inc., Mills, WY	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard box. (Modes 1, 3, and 4.)
9549–X	DOT–E 9549	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.100(v), 175.30	Do.
9549–X	DOT–E 9549	Western Atlas International, Houston, TX.	49 CFR 173.100(v), 175.30	Do.
9550–X	DOT–E 9550	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.400, 173.206, 173.260, 175.3.	To authorize carriage of a cesium clock containing 5 grams of cesium and wet storage batteries in the passenger compartment of an aircraft. (Modes 1 and 5.)
9571–X	DOT–E 9571	National Institutes of Health, Bethesda, MD.	49 CFR Parts 100–177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 3, 4, and 5.)
9571–X	DOT–E 9571	Environmental Health Research & Testing, Inc., Lexington, KY.	49 CFR Parts 100–177	Do.
9571–X	DOT–E 9571	U.S. Department of Justice, Washington, DC.	49 CFR Parts 100–177	Do.
9571–X	DOT–E 9571	U.S. Department of State, Washington, DC.	49 CFR Parts 100–177	Do.
9578–X	DOT–E 9578	Hughes Aircraft Co., Miami, FL	49 CFR 172.101 Column 6(b), 175.30.	To authorize shipment of three rocket motors, having a gross weight in excess of that presently authorized for cargo aircraft. (Mode 4.)
9606–X	DOT–E 9606	Ensign-Bickford Co., Simsbury, CT	49 CFR 173.66(b)	To authorize shipments of more than 110 detonators in one inside specially designed package. (Modes 1 and 3.)
9617–P	DOT–E 9617	Explo-Tech, Inc., Norristown, PA	49 CFR 177.848(f), Part 107 Append B(1).	To become a party to exemption 9617. (Mode 1.)
9617–X	DOT–E 9617	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 177.848(f), Part 107 Append B(1).	To authorize transport of a specially defined detonating cord on the same motor vehicle with Class A and C detonators. (Mode 1.)
9632–X	DOT–E 9632	Arbel-Fauvet-Rail, St. Laurent-Blangy France.	49 CFR 173.315, 178.245	To authorize an alternative packaging that is the same as the currently approved packaging except there are no baffles. (Modes 1, 2, and 3.)
9723–P	DOT–E 9723	Bishop & Associates, Inc., Brooklandville, MD.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Emergency Technical Services Corp. of Illinois Schaumburg, IL.	49 CFR 177.848(b)	Do.
9781–P	DOT–E 9781	Jones Chemicals, Caledonia, NY	49 CFR 49 CFR 173.304(a)(2), 173.34(d), (e).	To become a party to exemption 9781. (Mode 1.)
9781–P	DOT–E 9781	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.304(a)(2), 173.34(d), (e).	Do.
9785–P	DOT–E 9785	Atlantic Container Line, Elizabeth, NJ.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785–P	DOT–E 9785	Sea-land Service, Inc., Elizabeth, NJ.	49 CFR 173.30, 176.11, 176.83	Do.
9785–P	DOT–E 9785	Compagnie Generale Maritime, Paris, France.	49 CFR 173.30, 176.11, 176.83	Do.
9785–P	DOT–E 9785	Polish Ocean Lines, 81–364 Gdynia, Poland.	49 CFR 173.30, 176.11, 176.83	Do.
9785–P	DOT–E 9785	Trans Freight Lines, Wayne, NJ	49 CFR 173.30, 176.11, 176.83	Do.
9790–X	DOT–E 9790	Taylor-Wharton, Division of Harsco Corp., Indianapolis, IN.	49 CFR 173.316, 178.57–21(a)	To authorize removable of section 8.a., which requires carrying the exemption aboard the motor vehicle. (Mode 1.)
9841–P	DOT–E 9841	Greenfield Oversees Containers, Inc., Sandton, South Africa.	49 CFR 173.315, 178.245–1(b)	To become a party to exemption 9841. (Modes 1, 2 3.)
9841–P	DOT–E 9841	Liquid and Gas Transport BV, Rotterdam-Botlek, Holland.	49 CFR 173.315, 178.245–1(b)	Do.
9896–P	DOT–E 9896	ICI Americas Inc., Wilmington, DE	49 CFR 172.301, Part 107, Appendix B(i).	To become a party to exemption 9896. (Modes 1 and 3.)

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NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9736–N	DOT–E 9736	Aqua-Tech, Inc. Port Washington, WI.	49 CFR Part 173, Subparts D, E, F, and H.	To authorize reuse of DOT–17H steel drums a maximum of three times before reconditioning, for shipment of various liquid or solid hazardous substances and wastes packed in inside plastic, glass, earthenware or metal container, not exceeding 1-gallon capacity for disposal, repacking or reprocessing (Mode 1.)
9745–N	DOT–E 9745	Metal Box Enterprises, Inc., Vernone, NJ.	49 CFR 173.1200(a)(6), 173.306(a), (b), (c), 175.3, and 178.33.	To authorize manufacture, marking and sale nonrefillable non-DOT specification inside metal containers conforming with DOT Specification 2P containers, for shipment of nonflammable or flammable gases. (Modes 1, 2, 3, 4.)
9773–N	DOT–E 9773	SST Industries, Inc., Cincinnati, OH	49 CFR 173.154, 173.217, 173.245b.	To authorize manufacture, marking and sale of non-DOT specification fully removable head polyethylene drums of a rated volumetric capacity not exceeding 30-gallons, for shipment of certain viscous solids, and oxidizer solids. (Modes 1, 2, and 3.)
9774–N	DOT–E 9774	Harcotar Ltd., Hyde Park Holdings, Inc. Stamford, CT.	49 CFR Part 173, Subparts F, H	To authorize manufacture, marking and sale of non-DOT specification blow-molded, high molecular weight polyethylene drums, with removable head, for shipment of corrosive material solids and poison B solids. (Modes 1, 2, and 3.)
9812–N	DOT–E 9812	Shinko-Pfaudler Co. Ltd., Kobe, Japan.	49 CFR 178.270–3(a)	To authorize shipment of certain hazardous materials in a non-DOT specification portable tank equivalent to a DOT Specification IM 101 except for the material of construction. (Modes 1, 2, and 3.)
9831–N	DOT–E 9831	L'Air Liquide, Sassenage, France	49 CFR 172.203, 173.318, 173.320, 178.30, 178.76(h), and 178.338.	To authorize manufacture, mark and sell of vacuum insulated non-DOT specification portable tanks, for transportation of helium, refrigerated liquid, (Modes 1, 3.)
9839–N	DOT–E 9839	Vulcan Packaging Inc., Toronto, Ontario, Canada.	49 CFR 178.116–6	To authorize manufacture, marking and sale of non-DOT specification steel drums of 24 gauge thickness and six U.S. gallon capacity, to be used in place of 24 gauge, five-gallon capacity, DOT Specification 17E steel drums. (Modes 1, 2, and 3.)
9841–N	DOT–E 9841	Consani Engineering (Pty) Ltd., Elsies River 7480, South.	49 CFR 173.315, 178.245–1(b)	To authorize shipment of flammable gases, nonflammable gases and flammable liquids in a non-DOT specification IMO Type 5 portable tanks. (Modes 1, 2, and 3.)
9857–N	DOT–E 9857	Van Leer Verpackungen, GmbH, Am Westhover Berg, West G.	49 CFR 178.224, Part 173	To authorize manufacture, marking and sale of non-DOT Specification fiber drum, not exceeding 210 liter capacity, for shipment of those hazardous materials authorized in DOT Specification 21C fiber drum. (Modes 1, 2, and 3.)
9870–N	DOT–E 9870	Bergen Barrell Drum Co., Kearny, NJ.	49 CFR 173.247, 173.266, 178.19, Part 173, and Subparts D, F, H.	To authorize manufacture, marking and sale of non-DOT specification 15-, 20-, 30-, 35-, and 55-gallon polyethylene drums conforming with DOT Specification 34 except for having one opening of 2.75-inch in diameter, for shipment of certain corroeive, flammable and poison B liquids and an oxidizer. (Modes 1, 2, and 3.)
9877–N	DOT–E 9877	Systron Donner, Concord, CA	49 CFR 173.304(b), and 173.304-(a)(2).	To authorize a filling density of 144 percent for bromotrifluoromethane (Halon-1301) pressurized with nitrogen, in DOT specification 39 cylinders having a maximum volume of 10 cubic inches. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453–X	DOT–E 4453	Kentucky Powder Co., Lexington, KY.	49 CFR 172.101, 173.114a(h)(3), and 178.415, 178.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1 and 3.)
EE 7024–X	DOT–E 7024	Greenwood Motor Lines, Inc., Greenwood, SC.	49 CFR 173.249(a)(7)	To authorize transport of an alkaline corroeive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1.)
EE 7052–X	DOT–E 7052	Technical Oil Tool Corp., Norman, OK.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7052–X	DOT–E 7052	Exploration Logging, Inc., Sacramento, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7052–X	DOT–E 7052	Engineered Assemblies Corp., Clifton, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solids. (Modes 1, 2, 3, and 4.)
EE 8390–X	DOT–E 8390	Jones-Hamilton Co., Newark, CA	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8627–X	DOT–E 8627	Chemlink Petroleum, Inc., Sand Springs, OK.	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corroeive liquids. (Mode 1.)
EE 8898–X	DOT–E 8898	Petrolane Gas Service Limited Partnership, Anchorage, AL.	49 CFR 173.315	To authorize use of a non-DOT specification ASME Code stamped portable tank, for transportation of liquefied compressed gases. (Modes 1 and 3.)
EE 8978–P	DOT–E 8978	GTE Products Corporation, Westborough, MA.	49 CFR 172.101, 175.3	To become a party to exemption 8978 (Modes 1, 2, 3, and 4.)
EE 9851–P	DOT–E 9851	Trans World Airlines, Inc., Kansas City, MO.	49 CFR Parts 100–199	To become a party to exemption 9851 (Mode 5.)
EE 9851–P	DOT–E 9851	Northwest Airlines, St. Paul, MN	49 CFR Parts 100–199	To become a party to exemption 9851 (Mode 5.)
EE 9932–N	DOT–E 9932	U.S. Customs Service, Oakland, CA.	49 CFR 173.61(b), 173.86(b)	To authorize a one-time shipment by motor vehicle of unclassified explosives. (Mode 1.)
EE 9940–N	DOT–E 9940	G.E. Reuter-Stokes, Twinsburg, OH	49 CFR 172.400, 173.306, 175.3	To authorize manufacture, marking and sale of non-DOT specification, metal, single trip, inside containers, described as hermetically sealed electron tube devices.

WITHDRAWAL EXEMPTIONS

Application	Applicant	Regulation(s)	Nature of exemption thereof
7607–P	NUS Corp., Wayne, PA	49 CFR 172.101, 175.3	To become a party to exemption 7607 (Mode 5.)
9785–P	Eastman Kodak Co., Rochester, NY	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (Modes 1, 2, and 3.)
9807–N	Stack Chemical Co., Inc., Carthage, NY	49 CFR 173.245	To authorize shipment of solutions of hydrofluoric acid or hydrofluosilicic acid, classed as corrosive, in non-DOT specification steel jacketed polyethylene tanks currently approved in DOT–E 8837. (Mode 1.)

DENIALS

7828–P Request by MarkAir, Inc. Anchorage, AK to authorize carriage of a larger quantity of liquid petroleum gas in DOT Specification 51 steel portable tanks denied March 10, 1988.

8528–X Request by Cleveland, Columbus & Cincinnati Highway, Inc. Cleveland, OH to authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment denied March 9, 1988.

9862–N Request by Morton Thiokol, Inc. Huntsville, AL to authorize shipment of a rocket motor, classed as Class B explosive, in a propulsive state, in a DOT Specification 15A wooden box denied March 9, 1988.

9875–N Request by Fabricated Metals, Inc. San Leandro, CA to authorize manufacture, marking and sale of a stainless steel DOT Specification 57 portable tank without a bottom outlet for use in the transport of toluene diisocyanate, classed as a poison B denied March 21, 1988.

Issued in Washington, DC, on April 22, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–10277 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–60–M

Hazardous Materials; Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in February 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1–Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3549–P	DOT–E 3549	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.65(a), 173.77	To become a party to exemption 3549 (Modes 1, 2.)
3583–X	DOT–E 3583	U.S. Dept. of Energy, Washington, DC.	49 CFR 172.01, 173.302(a), 173.415, and 175.3.	To authorize transport of a nonflammable, nonliquefied compressed gas, in an inside steel sphere. (Modes 1, 2, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3569–P	DOT–E 3569	NL Petroleum Services, Inc., Houston, TX.	49 CFR 173.246; 172.101 Column 4, and 175.3.	To become a party to exemption 3569 (Modes 1, 2, 3, and 4.)
3630–X	DOT–E 3630	General Chemical Corp., Parsippany, NJ.	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid. (Mode 1.)
3941–X	DOT–E 3941	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, 2.)
4052–X	DOT–E 4052	Boeing Aerospace Co., Seattle, WA.	49 CFR 173.305, 173.34(d), 175.3	To authorize shipment of an aerosol formulation pressurized with nitrogen in a DOT Specification 39 seamless aluminum cylinder. (Modes 1, 2, 4, and 5.)
4850–X	DOT–E 4850	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.100(cc), 175.3	To authorize shipment of flexible linear shaped charges, metal clad, in 100 feet lengths, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive. (Modes 1, 2, and 4.)
5022–P	DOT–E 5022	Altantic Research Corp., Gainesville, VA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, and 177.834(L)(1).	To become a party to exemption 5022 (Modes 1, 2.)
5036–X	DOT–E 5036	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 173.346, 173.620, and 173.630, 175.3.	To authorize shipment of dimethyldichlorosilane, trichlorosilane, other specifically identified flammable liquids, silicon tetrachloride, carbon tetrachloride and chloroform in non-DOT specification type 304 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
5600–P	DOT–E 5600	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 175.3, Part 173, Subparts D, F, and G.	To become a party to exemption 5600 (Modes 1, 2, and 4.)
5643–X	DOT–E 5643	Union Carbide Corp., Danbury, CT	49 CFR 172.101, 173.315(a)(1)	To authorize shipment of a nonflammable gas in vacuum insulated non-DOT specification portable tanks. (Modes 1, 3.)
5704–X	DOT–E 5704	Trojan Corp., Salt Lake City, UT	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, and 3.)
5876–X	DOT–E 5876	FMC Corp., Philadelphia, PA	49 CFR 173.365, 178.241, Part 107, Appendix B.	To authorize transport of a Class B poison in DOT Specification 44D multiwall paper bags or non-DOT specification pinch bottom, heat-sealed multiwall bags. (Modes 1, 2, and 3.)
5891–X	DOT–E 5891	U.S. Department of Energy, Washington, DC.	49 CFR 173.64(a)(4)	To authorize transport of high explosives in quantities greater than those authorized in 49 CFR, in DOT Specification 15A wooden boxes. (Mode 1.)
5945–X	DOT–E 5945	Cardox Corp., Countryside, IL	49 CFR 173.315, 178.245	To authorize use of a small capacity DOT Specification 51 insulated portable tank, for shipment of a nonflammable compressed gas. (Mode 1.)
6154–X	DOT–E 6154	UNIROYAL Chemical Co., Inc., Middlebury, CT.	49 CFR 173.154(a)(12), 178.205–16.	To authorize transport of certain flammable solids in a modified DOT Specification 12B fiberboard box. (Modes 1, 2, and 3.)
6263–X	DOT–E 6263	Amtrol, Inc., West Warwick, RI	49 CFR 173.302(a)(1)	To authorize transport of certain nonflammable compressed gases, in non-DOT specification welded, cylindrical or spherical, steel tanks. (Modes 1, 2.)
6299–X	DOT–E 6299	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.315(a)(1)	To authorize manufacture, marking and sale of non-DOT specification portable tanks, for transportation of nonflammable gases. (Modes 1, 3.)
6309–X	DOT–E 6309	Olin Corp., Stamford, CT	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2.)
6325–X	DOT–E 6325	Mining Services International Corp., Salt Lake City, UT.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC–306, MC–307 or MC–312 cargo tanks. (Mode 1.)
6333–X	DOT–E 6333	General Chemical Corp., Parsippany, NJ.	49 CFR 173.245(a)(31), 173.263(a)(10), 173.266(b)(3), 173.272(i)(25), and 178.343–1(b).	To authorize transport of certain corrosive materials, in non-DOT specification type MC–312 glass lined cargo tanks. (Mode 1.)
6484–X	DOT–E 6484	ANGUS Chemical Co., Northbrook, IL.	49 CFR 172.101, 173.149a	To authorize transport of mixtures of nitromethane and various solvents in DOT Specification MC–307 or MC–312 tank motor vehicles. (Mode 1.)
6497–X	DOT–E 6497	EMC Corp., Philadelphia, PA	49 CFR 173.365, 174.63(c)	To authorize use of a modified DOT Specification 56 portable tank, for transportation of Class B poison solids. (Modes 1, 2.)
6517–X	DOT–E 6517	Coyne Cylinder Co., Huntsville, AL	49 CFR 173.303(a)	To authorize use of non-DOT specification steel cylinders comparable to DOT Specification 4BW for shipment of Acetylene. (Modes 1, 2, and 3.)
6530–X	DOT–E 6530	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530–X	DOT–E 6530	Acme Welding Supply Co., Inc., Bismarck, ND.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1, 2).
6611–X	DOT–E 6611	L'Air Liquide Corp., Le Blanc-Meanil, France.	49 CFR 173.318(a)	To authorize use of a non-DOT specification vacuum insulated portable tank, for transportation of a nonflammable gas. (Modes 1, 3).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6611–X	DOT–E 6611	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.316(a)	To authorize use of a non-DOT specification vacuum insulated portable tank, for transportation of a nonflammable gas. (Modes 1, 3).
6614–P	DOT–E 6614	Cellasto Plastics Corp., Marshall, MI.	49 CFR 173.263(a)(28), and 173.277(a)(6).	To become a party to exemption 6614 (Mode 1).
6626–X	DOT–E 6626	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), and 175.3.	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC–3, 3A or 3AA, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5).
6637–X	DOT–E 6637	Russell-Stanley Corp., Rancho-Cucamonga, CA.	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.221, 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.266(b)(8), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.346(a), 173.357(b), 173.358(a), 173.359(a), 173.359(b), and 178.19.	To authorize manufacture, marketing and sale of non-DOT Specification polyethylene drums, for shipment of organic peroxides, oxidizers, flammable, corrosive and Class B poisonous liquids. (Modes 1, 2, and 3).
6691–X	DOT–E 6691	Union Carbide Corp., Danbury, CT	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To authorize use of DOT Specification 3A or 3AA cylinders over 35 years old which may be retested every 10 years, for transportation of certain flammable and nonflamable compressed gases. (Modes 1, 2, 3, 4, and 5.)
6746–X	DOT–E 6746	The Firestone Tire & Rubber Co., Akron, OH.	49 CFR 173.315(a)(1)	To authorize shipment of anhydrous ammonia in portable tanks built, market and maintained in compliance with the DOT Specification MC–331 cargo tank. (Modes 1, 3.)
6765–X	DOT–E 6765	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and a nonflammable gas. (Modes 1 and 3.)
6765–X	DOT–E 6765	Union Helium Co., Ltd., Minato-ku, Tokyo, Japan.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and a nonflammable gas. (Modes 1 and 3.)
6787–X	DOT–E 6787	Russell-Stanley Corp., Rancho Cucamonga, CA.	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.221, 173.245, 173.346(a), 173.357(b), 173.358(a), 173.359(a), and 173.359(b).	To authorize manufacture, marking and sale of DOT Specification 34 polyethylene drums, for shipment of Class B poisonous liquids, flammable liquids, organic peroxides and corrosive liquids. (Modes 1, 2, and 3.)
6805–X	DOT–E 6805	Union Carbide Corp., Danbury, CT	49 CFR 173.301(d), 173.302(a)(3)	To authorize use of DOT Specification 3AAX steel cylinders, for transportation of a flammable compressed gas mixture. (Mode 1.)
6921–X	DOT–E 6921	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 172.101, 173.315(a)(1)	To authorize use of an insulated containerized non-DOT specification portable, tank for transportation of liquefied helium. (Modes 1 and 3.)
6985–X	DOT–E 6985	U.S. Dept. of Energy, Washington, DC.	49 CFR 173.154(a)(8), 173.86(a)	To authorize shipment of diallyl phthalate-pyrotechnic materials in an aluminum case packed in a DOT Specification wooden box. (Mode 1.)
7052–P	DOT–E 7052	Penwood, Inc., Fort Worth, TX	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	FABRIKA Ni-Cd BATERIJA "TREPCA", Gnjilane, Yugoslavia.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Aluminum Co. of America, Pittsburgh, PA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Tadiran Ltd. Industries, Inc., Rehovot, Israel.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Tadiran Electronic Industries, Inc., Woodland Hills, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	U.S. Dept. of Energy, Washington, DC.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Rayovac Corp., Madison, WI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Syntron, Inc., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Datasonics, Inc., Cataumet, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3 and 4.)
7052–X	DOT–E 7052	Panasonic Industrial Co., Secaucus, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052–X	DOT–E 7052	Matsushita Battery Industrial Co., Osaka, Japan.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7070–X	DOT–E 7070	Lee-Ronal, Inc., Freeport, NY	49 CFR 173.365, 175.3, 175.630	To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.)
7076–X	DOT–E 7076	LaMotte Chemical Products Co., Chestertown, MD.	49 CFR 173.266(b)	To authorize packaging not prescribed in the Hazardous Materials Regulations, for transportation of a certain corrosive liquid and flammable liquid. (Modes 1, 2, and 3.)
7277–X	DOT–E 7277	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), and 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders, for transportation of certain flammable and nonflammable compressed gas. (Modes 1, 2, 3, 4, and 5.)
7454–X	DOT–E 7454	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 176.410(e)(2), 176.83	To authorize blastings agent to be stowed in proximity to certain explosives without a bulkhead separating these materials. (Mode 3.)
7476–X	DOT–E 7476	Thompson Tank & Manufacturing Co., Inc., Long Beach, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.340–8(c), 178.342–5, and 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC–307 or MC–312 with certain exceptions, for transportation of flammable, corrosive and poisonous waste materials. (Mode 1.)
7594–X	DOT–E 7594	Bromine Compounds, Ltd., Beer Sheva, Israel.	49 CFR 173.353	To authorize transport of certain poison B liquids in non-DOT specification portable tanks. (Modes 1, 2, and 3.)
7598–X	DOT–E 7598	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	49 CFR 173.182(b), 173.194(a), 1737.234(a), 173.245(a), 173.249(a), 173.263, 173.264, 173.266, 173.268, 173.272, 173.283, 173.287, 173.352, 173.370, 173.54(a), and 178.244–1(a).	To authorize shipment of certain corrosive materials, oxidizers and Class B poisons in a portable tank complying with DOT Specification 60, except the ends are bolted instead of welded. (Mode 1.)
7654–X	DOT–E 7654	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7731–X	DOT–E 7731	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 172.203, 173.316, 173.320, 173.336, 178.30, 176.76(h), and 177.840.	To authorize manufacture, marking and sale of non-DOT specification super-insulated portable tanks, for transportation of flammable, and non-flammable cryogenic liquids. (Modes 1, 3.)
7737–X	DOT–E 7737	Parker Hannifin Corp., Eastlake, OH.	49 CFR 173.119(a), 173,119(b), 173.119(f), 173.124(a), 173.146(a), 173.302(a), 173.304(a), 173.304(d), 173.328, 173.332, 173.336, 173.337, 173.356, 175.3, and 178.42.	To authorize manufacture, marking and sale of non-DOT specification seamless aluminum cylinders, for shipment of flammable gas, nonflammable gas, flammable liquid, or poison A. (Modes 1, 2, 3, and 4.)
7770–X	DOT–E 7770	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.143, 173.264(b)(4), and 174.63(b).	To authorize transport of anhydrous hydrogen fluoride or anhydrous methylchloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, and 3.)
7777–X	DOT–E 7777	Sentry Chemical Co., Greeley, CO	49 CFR 173.248	To authorize use of DOT Specification 34 polyethylene containers, DOT Specification 12B or 12P corrugated fiberboard boxes, or DOT Specification 6D or 37M cylindrical steel overpacked with an inside Specification 2SL polyethylene containers, for shipment of spent sulfuric acid. (Modes 1, 2, and 3.)
7803–X	DOT–E 7803	Plastican, Inc., Leominster, MA	49 CFR 178.19, Part 173, Subpart D, F	To authorize manufacture, marking and sale of non-DOT specification removable head polyethylene drums, for shipment of corrosive liquids and flammable liquids. (Modes 1, 2, and 3.)
7811–X	DOT–E 7811	EM Science, Cincinnati, OH	49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, and 178.210.	To authorize use of DOT Specification 12A corrugated fiberboard box with handholes, for shipment of certain corrosive, flammable, and Class B poisonous liquid. (Modes 1, 2, 3, and 4.)
7811–X	DOT–E 7811	J.T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, and 178.210.	To authorize use of DOT Specification 12A corrugated fiberboard box with handholes, for shipment of certain corrosive, flammable, and Class B poisonous liquid. (Modes 1, 2, 3, and 4.)
7876–X	DOT–E 7876	J.T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 173.299(a), 175.3	To authorize shipping description etching acid, liquid, n.o.s. to be used for products which do not comply with the definition in 49 CFR 173.229(a). (Modes 1, 2, 3, and 4.)
7891–X	DOT–E 7891	Fisher Scientific Co., Fair Lawn, NJ	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), and 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, and 4.)
7891–X	DOT–E 7891	Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173,126, 173.138, 173.237, 173.246, 173.25(a), and 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7907–P	DOT–E 7907	C–I–L Inc., North York, Ontario, Canada.	49 CFR 173.127, 173.184, 178.224	To become a party to exemption 7907 (Modes 1, 2, and 3.)
7928–X	DOT–E 7928	Alaska Marine Highway System, State of Alaska, Juneau, AK.	49 CFR 172.101, 176.905(L)	To authorize stowage of certain hazardous materials on the vehicle deck of passenger vessels. (Modes 3.)
7929–X	DOT–E 7929	Trojan Corp., Salt Lake, UT	49 CFR 173.65	To authorize transport of flaked or pelletized TNT in woven polyethylene or polypropylene cloth outer bags, with plastic film liners. (Modes 1, 2.)
7929–X	DOT–E 7929	C–I–L, Inc., North York, Ont. Canada.	49 CFR 173.65	To authorize transport of flaked or pelletized TNT in woven polyethylene or polypropylene cloth outer bags, with plastic film liners. (Modes 1, 2.)
7954–X	DOT–E 7954	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 172.504, 173.301(d)(2), and 173.302(a)(3).	To authorize shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders. (Modes 1, 3.)
7972–X	DOT–E 7972	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.504	To authorize transport of limited quantities of explosive in a special shipping container without placarding the vehicle. (Mode 1.)
7991–X	DOT–E 7991	Union Pacific Railroad Co., Omaha, NE.	49 CFR Parts 100–177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
8006–X	DOT–E 8006	Strombecker Corp., Chicago, IL	49 CFR 172.400(a), 172.504 Table 2.	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1000 pounds or more. (Mode 1.)
8035–P	DOT–E 8035	NL Petroleum Services, Inc., Houston, TX.	49 CFR 173.100(v), 173.112, 175.3	To become a party to exemption 8035 (Modes 1, 2, 3, and 4.)
8074–X	DOT–E 8074	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.34(d), 175.3	To authorize use of a DOT Specification 3E cylinder without safety devices, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8091–X	DOT–E 8091	Mountain Bell, Denver, CO	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091–X	DOT–E 8091	Northwestern Bell, Omaha, NE	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091–X	DOT–E 8091	Pacific Northwest Bell, Seattle, WA	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8091–X	DOT–E 8091	US West Materiel Resources, Inc., Englewood, CO.	49 CFR Parts 100–177	To authorize transport of certain mercury relays exempted from 49 CFR 100–177, in heat sealed glass vials. (Modes 4, 5.)
8156–X	DOT–E 8156	Scott Environmental Technology Inc., Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), and 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156–X	DOT–E 8156	Cryogenic Rare Gas Laboratories, Inc., Hanahan, SC.	49 CFR 173.121, 173.302(a)(4), 173.302(f), and 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8196–P	DOT–E 8196	Campagnie des Containers Reservoirs, Paris, France.	49 CFR 173.119, 173.315(a), 178.245.	To become a party to exemption 8196 (Modes 1, 2, and 3.)
8232–P	DOT–E 8232	Campagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123(a), 173.315	To become a party to exemption 8232 (Modes 1, 2, and 3.)
8269–X	DOT–E 8269	Fort Worth Fabrication, Inc., Fort Worth, TX.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, and 178.343–5.	To release for transporting or offering liquid and semi-solid waste materials in non-DOT specification cargo tanks. (Mode 1.)
8307–X	DOT–E 8307	U.S. Department of Energy, Washington, DC.	49 CFR 173.21, 173.247, 173.25(b), and 175.3.	To authorize shipment of non-pyrotechnic smoke generators containing titanium tetrachloride, ammonium hydroxide, and explosive valve and nitrogen. (Modes 1, 2, 3, and 4.)
8352–X	DOT–E 8352	Degussa Corp., Teterboro, NJ	49 CFR 173.154	To authorize shipment of ammonium persulfate and sodium persulfate in non-DOT specification plastic bags similar to DOT Specification 44P bags. (Modes 1, 2, and 3.)
8368–X	DOT–E 8368	B.W. Norton, Manufacturing Co., Inc., Hayward, CA.	49 CFR 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of non-DOT specification removable head molded polyethylene drum, for shipment of corrosive and flammable liquids. (Modes 1, 2, and 3.)
8390–X	DOT–E 8390	Ashland Oil, Inc., Dublin, OH	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390–X	DOT–E 8390	Olin Hunt Specialty Products, Inc., West Paterson, NJ.	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390–X	DOT–E 8390	Hi Pure Chemicals, Inc., Nazareth, PA.	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8390–X	DOT–E 8390	Image Technology, Tempe, AZ	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390–X	DOT–E 8390	Texas Instruments, Inc., Dallas, TX	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390–X	DOT–E 8390	General Chemical Corp., Parsippany, NJ.	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1).
8391–X	DOT–E 8391	EFI Corp., d/b/a EFIC, San Jose, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), and 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8409–X	DOT–E 8409	EM Science, Cincinnati, OH	49 CFR 173.264(a)(4), 178.210	To authorize shipment of hydrofluoric acid solution no greater than 70% strength, in non-DOT Specification polyethylene bottles, not exceeding a capacity of 6 liters, packed in DOT specification 12A fiberboard boxes. (Modes 1, 3.)
8410–X	DOT–E 8410	EM Science, Cincinnati, OH	49 CFR 173.268(a)(1)	To authorize shipment of perchloric acid no greater than 72% strength in glass bottles, not exceeding a capacity of 2.5 liters, packed in non-DOT specification IMCO 4C2 wooden boxes. (Modes 1, 3.)
8414–X	DOT–E 8414	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.315, 174.63(b)	To authorize transport of certain nonflammable gases in non-DOT specification intermodal portable tanks. (Modes 1, 2, and 3.)
8426–P	DOT–E 8426	Paramount Tank, Inc., Paramount, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, and 178.343–5.	To become a party to exemption 8426 (Mode 1.)
8426–X	DOT–E 8426	C.K.C., Inc., Paso Robles, CA	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, and 178.343–5.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC–307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (Mode 1.)
8445–X	DOT–E 8445	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173, Subpart D, E, F, and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445–X	DOT–E 8445	SET Liquid Waste Systems, Inc., Wheeling, IL.	49 CFR 173, Subpart D, E, F, and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8450–X	DOT–E 8450	LTV Aerospace and Defense Co., Dallas, TX.	49 CFR 173.92	To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (Mode 1.)
8451–P	DOT–E 8451	IRECO Inc., Salt Lake City, UT	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451–P	DOT–E 8451	Reynolds Industries Systems, Inc., San Ramon, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451–P	DOT–E 8451	Hercules Inc., Wilmington, DE	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8518–P	DOT–E 8518	Ventura Petroleum Services, Inc., Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, and 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8627–X	DOT–E 8627	Exxon Chemical Americas, Houston, TX.	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
8795–X	DOT–E 8795	The Marison Co., South Elgin, IL	49 CFR 173.302(a), 173.304(a), 173.305(a), 175.3, and 178.55.	To authorize manufacture, marking and sale of non-DOT specification cylinders made in compliance with DOT Specification 4B240ET with certain exceptions, for transportation of flammable and nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8843–X	DOT–E 8843	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.246, 175.3	To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride. (Modes 1, 2, 3, and 4.)
8870–X	DOT–E 8870	EM Science, Cincinnati, OH	49 CFR 172.101, 173.266, 175.3	To comingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, and 5.)
8870–P	DOT–E 8870	Hazitech Systems, Inc., Mountain View, CA.	49 CFR 172.101, 173.266, 175.3	To become a party to exemption 8870. (Modes 1, 2, 3, 4, and 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8871–X	DOT–E 8871	Chase Packaging Corp., Greenwich, CT.	49 CFR 173.182, 173.217, 173.245(b), and 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags, having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solid, nitrates and poisons. (Modes 1, 2, and 3.)
8917–X	DOT–E 8917	Morrison-Knudsen Co., Inc., Boise, ID.	49 CFR 173.182, 176.400	To authorize transportation of ammonium nitrate prills in a large lined steel container. (Modes 1, 2, and 3.)
8938–X	DOT–E 8938	Cryogenic Services, Inc., Canton, GA.	49 CFR 173.304(a), 175.3	To authorize two (2) additional models of non-DOT specification cylinders, similar to DOT–4L cylinders, for shipment of Carbon Dioxide refrigerated liquid. (Modes 1, 2, 3, and 4.)
8971–P	DOT–E 8971	NL Petroleum Services, Inc., Houston, TX.	49 CFR 172.101, Column 4, 173.246, 175.3.	To become a party to exemption 8971. (Modes 1, 2, 3, and 4.)
8976–X	DOT–E 8976	Henkel Corp., Morristown, NJ	49 CFR 173.204(a)(3), 173.28(m)	To authorize a one time reuse of DOT Specification 17H steel drums, having a liner of polyethylene film and deviating from retest requirements, for shipment of sodium hydrosulfite. (Modes 1, 2, and 3.)
8978–P	DOT–E 8978	SAFT America, Inc., Cockeysville, MD.	49 CFR 172.101, 175.3	To become a party to exemption 8978. (Modes 1, 2, 3, and 4.)
9008–X	DOT–E 9008	General Electric Co., San Jose, CA	49 CFR 173.206, 178.245	To authorize renewal and an additional non-DOT specification portable steel tank for shipment of Sodium, metal, classed as flammable solid. (Mode 1.)
9070–X	DOT–E 9070	Warner Brothers, Inc., Sunderland, MA.	49 CFR 173.119, 173.32(a)(1)	To authorize the filling and discharge of two non-DOT specification portable tanks while remaining securely mounted on a truck chassis. (Mode 1.)
9092–X	DOT–E 9092	West-Tex Equipment Co., Midland, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
9118–X	DOT–E 9118	ICI Americas, Inc., Wilmington, DE	49 CFR 173.245(a)(38)	To authorize shipment of 1,2-benzisothiazolin-3-one in aqueous solution or dispersion, either by itself or in combination with ethylenediamine or sodium hydroxide, in DOT Specification 57 steel portable tanks. (Modes 1, 2, and 3.)
9130–P	DOT–E 9130	Olin Corp., Stamford, CT	49 CFR 173.154	To become a party to exemption 9130. (Modes 1 and 2.)
9133–X	DOT–E 9133	American Cyanamid Co., Wayne, NJ.	49 CFR 173.377(a)	To authorize shipment of a formulated dry organophosphorous pesticide in a DOT Specification 56 metal portable tank. (Mode 1.)
9145–X	DOT–E 9145	Exxon Pipeline Co., Houston, TX	49 CFR 173.119,173.304, 173.315	To authorize use of a non-DOT specification container, for shipment of flammable liquids and gases. (Mode 1.)
9146–X	DOT–E 9146	Bleta-Feiser GmbH, Postfach, West Germany.	49 CFR 171.12(c), 178.116–6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55–gallon capacity, DOT Specification 17E drums. (Modes 1, 2, and 3).
9157–X	DOT–E 9157	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.314(c), 179.300–7	To authorize use of a non-DOT specification multi-unit tank car tank, for transportation of a flammable gas. (Mode 1).
9168–X	DOT–E 9168	All-Pak, Inc., Pittsburgh, PA	49 CFR 172.172.504, 173.118, 173.244, 173.3, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33, Part 172, Subpart E.	To authorize manufacture, marking and sale of specially designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids without affixing POISON, CORROSIVE, or FLAMMABLE labels. (Modes 1, 2, and 4).
9181–X	DOT–E 9181	U.S. Dept. of Energy, Washington, DC.	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.)
9230–X	DOT–E 9230	Nuclear Metals, Inc., Concord, MA	49 CFR 173.206, 175.30	To authorize transport of titanium metal powder, dry, in a apun aluminum inner packaging, placed in a DOT Specification 17H or 17C steel drum. (Modes 1, 2, 3, and 4.)
9266–P	DOT–E 9266	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315, 178.245	To become a party to exemption 9266 (Modes 1, 2, and 3).
9275–P	DOT–E 9275	Scentura Creations, Atlanta, GA	49 CFR Parts 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, and 5.)
9281–X	DOT–E 9281	Jet Research Center, Inc., Mansfield, TX.	49 CFR 172.101, 173.100	To authorize transport of cylindrical pellets of desensitized RDX, HMX, HNS and PYX in DOT Specification 12B65 fiberboard boxes. (Modes 1, 2, 3, and 4.)
9372–X	DOT–E 9372	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 173.110(c)(1), 173.80(b), and 173.80(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1 and 3.)
9441–X	DOT–E 9441	Amtrol, Inc., West Warwick, RI	49 CFR 173.306(g)(1), Part 173, Subpart D, E.	To authorize manufacture, marking and sale of non-DOT specification steel water pump system tanks with outside diameter not exceeding 26 inches, for transportation of nonflammable gases. (Modes 1, 2, and 3.)
9469–X	DOT–E 9469	Custom Air Service, Howell, MI	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9507–P	DOT–E 9507	Liquid Air Corp., Walnut Creek,	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, and 173.346.	To become a party to exemption 9507 (Mode 1.)
9514–X	DOT–E 9514	Control Data Corp., Minneapolis, MN.	49 CFR 173.306(e)	To authorize shipment of fully charged, used refrigerating units containing dichlorodifluoromethane in padded van motor vehicles. (Mode 1.)
9519–X	DOT–E 9519	Transchem, Inc., South Bend, IN	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked polyethylene or linear medium density polyethylene portable tank, enclosed within a protective steel frame for shipment of corroeive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
9549–X	DOT–E 9549	Jet Research Center, Inc., Mansfield, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard Box. (Modes 1, 3, and 4.)
9549–X	DOT–E 9549	GOEX, Inc., Cleburne, TX	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard box. (Modes 1, 3, and 4.)
9568–X	DOT–E 9568	AZTRON Chemical Services, Inc., South Houston, TX.	49 CFR 173.249	To authorize use of a DOT Specification MC–306 tank motor vehicle for transportation of sodium hydroxide, liquid. (Mode 1.)
9571–X	DOT–E 9571	Central Intelligence Agency, Washington, DC.	49 CFR Parts 100–177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 3, 4, and 5.)
9603–X	DOT–E 9603	Tennessee Eastman Co., Kingsport, TN.	49 CFR 171.2, 173.119, 173.125, and 179.201–1.	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for a thinner shell thickness in certain areas and for deviations in length of welds used in attaching bar pads. (Mode 2.)
9607–P	DOT–E 9607	Hilo Products Inc., North Canton, OH.	49 CFR Parts 100–199	To become a party to exemption 9607 (Modes 1, 4, and 5.)
9708–P	DOT–E 9708	Metals Selling Corp., Putnam, CT	49 CFR 173.220(b)	To become a party to exemption 9708 (Mode 1.)
9723–P	DOT–E 9723	Aptus, Lakeville, MN	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1.)
9732–P	DOT–E 9732	Wedge CRC, Inc., Arlington, TX	49 CFR 173.115	To become a party to exemption 9732 (Mode 1.)
9837–P	DOT–E 9837	Larson Tool and Stamping Co., Attsboro, MA.	49 CFR 175.3, 178.50–19(a)(2), Part 107, Appendix B(1).	To become a party to exemption 9837 (Modes 1, 2, and 5.)
9860–X	DOT–E 9860	G.E. Reuter-Stokes, Twinsburg, OH	49 CFR 173.302, 175.3	To renew exemption originally issued on an emergency basis to authorize manufacture, marking and sale of non-DOT containers, hermetically sealed electron tubes, containing nonflammable gas. (Modes 1, 4, and 5.)
9861–X	DOT–E 9861	G.E. Reuter-Stokes, Twinsburg, OH	49 CFR 173.302, 175.3	To renew exemption originally issued on an emergency basis to authorize manufacture, marking and sale of non-DOT metal, single-trip, inside container described as hermetically sealed electron tube devices, for transportation of nonliquefied nonflammable gases. (Modes 1, 4, and 5.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9786–N	DOT–E 9786	E.I. du Pont de Nemours Co., Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize shipment of flammable liquid, corroeive, n.o.s. in DOT Specification 57 portable tanks. (Modes 1 and 2.)
9805–N	DOT–E 9805	Assmann Corp. of America, Garrett, IN.	49 CFR 173.119, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, mark and sale of non-DOT specification rotationally molded, crosslinked polyethylene portable tank for the shipment of corroeive liquids, flammable liquids or an oxidizer. (Modes 1 and 2.)
9829–N	DOT–E 9829	Tora Express, Inc., Monroe, LA	49 CFR 172.101, 173.204(c)(3), 173.27, 173.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9833–N	DOT–E 9833	Wacker Chemicals (USA), Inc., Canaan, CT.	49 CFR 173.384	To authorize shipment of monochloroacetone, stabilized classed as an irritating material, in a DOT Specification 51 portable tank. (Modes 1 and 3.)
9836–N	DOT–E 9836	Marko Foam Products, Inc., Hayward, CA.	49 CFR 177.839(a), (b), 178.150, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-reusable expanded polystyrene case similar to a DOT–33A, except that it will incorporate six cavities to contain not more than six five-pint bottles, for shipment of those commodities authorized by Part 173 to be shipped in a DOT–33A case. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9837–N	DOT–E 9837	Interstate Industries of N.J., Clark, NJ.	49 CFR 175.3, 178.50–19(a)(2), Part 107, Appendix B(1).	To authorize manufacture, marking and sale of DOT Specification 4B cylinders using the lot number in lieu of the serial number. (Modes 1, 2, and 5.)
9842–N	DOT–E 9842	Sunbird Airlines, Inc., Murray, KY	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9885–N	DOT–E 9885	Astro Containers, Inc., Evendale, OH.	49 CFR 173.188	To authorize manufacture, marking and sale of non-DOT specification removable head metal drums, having net weight not over 600 pounds each, for transportation of corroeive materials. (Modes 1 and 2.)

EMERGENCY EXEMPTIONS

Application	Exemption	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6563–X	DOT–E 6563	S.L.O. Health Products, Inc., Los Osos, CA.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made generally in compliance with DOT Specification 3E with certain exceptions. (Modes 1, 2, 3, 4, and 5.)
EE 7052–X	DOT–E 7052	General Motors Corp., Warren, MI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 8858–X	DOT–E 8858	AVM Corp., Marion, SC	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To authorize shipment of a compressed gas in accumulators which deviate from required test criteria. (Modes 1, 4, and 5.)
EE 9907–N	DOT–E 9907	General Defense Corp., York, PA	49 CFR 173.56(1), (c)(1)	To authorize transport of unfuzed explosive projectiles, Class A explosive, in non-DOT specification packagings. (Modes 1, 2, and 3.)
EE 9927–N	DOT–E 9927	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.304(a)(2)	To authorize shipment of a nonrefillable, non-DOT specification container containing a nonflammable gas. (Mode 1.)
EE 9927–P	DOT–E 9927	National Aeronautics and Space Administration, Marshall Special Flight Center, AL.	49 CFR 173.304(a)(2)	To become a party to exemption 9927 (Mode 1.)
EE 9930–N	DOT–E 9930	Norfolk Southern Corp., Roanoke, VA.	49 CFR 173.29(c)(2), Part 107, Appendix B(1).	To authorize a one-time shipment of a residual amount of sulfur dioxide in a DOT Specification 105A500W tank car tank with a defective liquid eduction valve equipped with a chlorine "C" kit. (Mode 2.)
EE 9931–R	DOT–E 9931	American Cyanamid Co., Wayne, NJ.	49 CFR 179.201–1	To authorize shipment of nitric acid in a DOT Specification 111A50W7 tank car tank which is equipped with a 45 psi safety valve. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9859–N	Container Products, Inc., Newnan, GA	49 CFR 173.346, 173.358, 173.359	To authorize shipment of ethyl parathion and methyl parathion, classed as poison B, and other materials, once identified, classed as flammable liquid or corroeive material, in DOT Specification 34 polyethylene drums. (Modes 1, 2, and 3.)

Denials

5604–P Request by Airco Industrial Gases Div. of BOC Group, Inc. Murray Hill, NJ to authorize shipment of liquefied helium, classed as a nonflammable compressed gas denied February 25, 1988.

9767–N Request by Tri-Wall, Division of Weyerhaeuser Company Louisville, KY to authorize shipment of certain Class A and B explosives in non-DOT specification triple-wall corrugated boxes containing a anti-static plastic bag denied February 19, 1988.

9786–N Request by S. L. Cowley & Son's Mfg. Company Hugo, OK to authorize shipment of a package bearing a poison label in DOT specification packaging in the same lading with materials marked as or known to be foodstuff without the required overpack denied February 19, 1988.

9925–N Request by G. C. Industries, Incorporated Chatsworth, CA to authorize shipment of various hazardous materials in an non-DOT specification permeation device denied February 22, 1988.

Issued in Washington, DC, on April 18, 1988.

J. Suzanne Hedgspeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–10280 Filed 5–6–88; 8:45 am]

BILLING CODE 4910–60–M

VOL 53 ISS 89 MY 9 1988 UMI

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 3, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0016
Form Number: 709–A
Type of Review: Resubmission
Title: United States Additional Estate (and Generation-Skipping Transfer) Tax Return
Description: Form 706–A is used by individuals to compute and pay the additional estate (and GST) taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1)
Respondents: Individuals or households
Estimated Burden: 814 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88–10254 Filed 5–6–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB NUMBER: 1545–0049
Form Numbers: 990–BL, Schedule A (Form 990–BL), Form 6069
Type of Review: Extension
Title: Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons; Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction
Description: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to the 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Burden: 104 hours

OMB Number: 1545–0058
Form Number: 1028
Type of Review: Extension
Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code
Description: Farmers' cooperative must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on the Form 1028 provides the basis for determining whether applicants are exempt
Respondents: Businesses or other for-profit
Estimated Burden: 2,423 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88–10255 Filed 5–6–88; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service

Income Taxes; 1989 Electronic Filing Program: Forms 1040, 1040A and 1040 EZ Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of Electronic Filing Program notice.

SUMMARY: This document contains corrections to the notice of the Electronic Filing Program. The notice was published in the **Federal Register** on Thursday, April 28, 1988 (53 FR 15331).

FOR FURTHER INFORMATION CONTACT: Electronic Filing Program, 1–800–424–1040 (a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Service plans to continue the program to file individual income tax returns electronically in 1989. The Assistant Project Officer, Marketing and Operations, Internal Revenue Service published a notice to this effect on April 28, 1988 (53 FR 15331).

Need For Correction

As published, the April 28, 1988, notice inadvertently included the State of Virginia.

Correction of Publication

Accordingly, the publication of the notice which was the subject of FR. Doc. 88–9436 is corrected as follows:

The above districts represent the following states:

Alabama	New Hampshire
Alaska	New York
Arizona	North Carolina
California	North Dakota
Colorado	Ohio
Connecticut	Oregon
Florida	Rhode Island
Idaho	South Carolina
Illinois	South Dakota
Indiana	Tennessee
Kentucky	Texas
Maine	Utah
Maryland	Vermont
Massachusetts	Virginia
Michigan	Washington
Montana	West Virginia
Nebraska	Wisconsin
Nevada	Wyoming

Leonard Holt,
Assistant Project Officer, Marketing and Operations.

[FR Doc. 88–10239 Filed 5–6–88; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Tenth Anniversary of the East Building

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Tenth Anniversary of the East Building" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, beginning on or about December 1, 1988, to on or about December 31, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,
Acting General Counsel.

Date: May 4, 1988.

[FR Doc. 88–10196 Filed 5–6–88; 8:45 am]
BILLING CODE 8230–01–M

Cultural Property Advisory Committee; Closed Meeting

The Cultural Property Advisory Committee will conduct a meeting in Room 840, 301 4th Street SW., Washington, DC on May 19, and in Room 256 on May 20.

The meeting will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App.), the Government in the Sunshine Act (5 U.S.C. 552b), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) The session will be closed because the discussion will involve investigative techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the possible imposition of import restrictions on such property. For this reason, the Government of Canada has requested that the information be held in confidence. Also, the Committee will discuss recommendations to the President as to appropriate U.S. action regarding a request from the Government of Canada for a U.S. cultural property agreement with Canada under the terms of the Cultural Property Implementation Act. For the foregoing reasons the closing of the meeting is authorized under 5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(2), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605.

Date: May 3, 1988.

Marvin L. Stone,
Acting Director, United States Information Agency.

[FR Doc. 88–10228 Filed 5–6–88; 8:45 am]
BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: April 28, 1988.

By direction of the Administrator.

Frank E. Lalley,
Director, Information Management and Statistics.

New Collection

1. Department of Veterans Benefits.
2. Employee Wage Data Sheet.
3. VA Form 21–8096.
4. This form secures information from employers of individuals who may be receiving benefits improperly.
5. On occasion.
6. State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
7. 12,000.
8. 6,000.
9. Not applicable.

[FR Doc. 88–10132 Filed 5–6–88; 8:45 am]
BILLING CODE 8320–01–M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 53, No. 89
Monday, May 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 15771, Tuesday, May 3, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, May 10, 1988.

CHANGE IN THE MEETING: The Meeting has been Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634-6748.

Date: May 4, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued May 4, 1988.

[FR Doc. 88-10260 Filed 5-5-88; 9:38 am]

BILLING CODE 6570-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Wednesday, May 11, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Yankee Bank for Finance and Savings, FSB Boston, Massachusetts (5013) (Memo dated April 15, 1988)
Audit Report re:
Stockmen's Bank and Trust Company, Gillette, Wyoming (5905) (Memo dated April 6, 1988)
Audit Report re:
Midland Consolidated Office, Cost Center—402 (Memo dated April 13, 1988)
EDP Report re:
Addition consolidated Office (Memo dated March 25, 1988)
EDP Audit Report re:
Chicago Regional Office (Memo dated March 31, 1988)
EDP Audit Report re:
Houston Consolidated Office, Cost Center—405 (Memo dated March 31, 1988)
EDP Audit Report re:
Kansas City Consolidated Office, Cost Center—301 (Memo dated March 31, 1988)
EDP Audit Report re:
Oak Lawn Consolidated Office, Cost Center—201 (Memo dated March 31, 1988)
EDP Audit Report re:
San Jose Consolidated Office, Cost Center—604 (Memo dated April 12, 1988)
EDP Audit Report re:
Assessment Subsystem (Memo dated March 30, 1988)
Audit Report re:
Contracting and Acquisition Function (Memo dated April 11, 1988)
Audit Report re:
Review of Cash Management Practices (Memo dated April 12, 1988)

Discussion Agenda:

Memorandum regarding the Corporation's corporate activities.

Report of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
American Exchange Bank & Trust Company, Norman, Oklahoma (2720) (Memo dated April 15, 1988)

Personel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 4, 1988

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-10282 Filed 5-5-88; 9:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Wednesday, May 11, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and establish six branches:

First-Citizens Bank & Trust Company, Raleigh, North Carolina, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Ahoskie, Bayboro, Clinton, Rockingham, Tarboro, and Windsor Branches of Barclays Bank of North Carolina, Charlotte, North Carolina, and for consent to establish those six offices of Barclays Bank of North Carolina as branches of First-Citizens Bank & Trust Company.

Memorandum regarding the extension of a contract for the Liquidation Asset Management Information System Project.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Report on 1987 Liquidation Operations.

Memorandum and resolution re: Final amendments to Part 326 of the Corporation's rules and regulations, entitled "Minimum Security Devices and Procedures and Bank Secrecy Act Compliance for Insured Nonmember Banks," which amendments (i) clarify that Part 326 applies to FDIC-insured state-licensed branches of foreign banks ("insured State branches"); and (ii) eliminate a recordkeeping requirement.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 4, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-10281 Filed 5-5-88; 9:43 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:44 a.m. on Wednesday, May 4, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr., (Appointive), seconded by Director Robert L. Clarke (Comptoller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC

Dated: May 4, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-10324 Filed 5-5-88; 12:04 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

May 3, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., May 11, 1988.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary. Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 877th Meeting—May 11, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 5251-002, City of Fort Smith, Arkansas
CAP-2.
Project Nos. 4682-002 and 4685-004, Long Lake Energy Corporation
CAP-3.
Project No. 2912-002, Alabama Electric Cooperative, Inc.
CAP-4.
Project No. 9704-004, Wyeth Hydro Electric Corporation
CAP-5.
Project No. 7490-002, Commonwealth Hydroelectric, Inc.
CAP-6.
Project No. 8662-001, Nockamixon Hydro Associates
CAP-7.
Project No. 5776-004, Dr. Daniel C. Merrill
CAP-8.
Project No. 2827-003, City of Redding, California
CAP-9.
Project No. 96-011, Pacific Gas & Electric Company
CAP-10.
Docket No. ER88-177-001, Southwestern Electric Power Company
CAP-11.
Docket No. EC88-1-001, Duke Power Company and Nantahala Power and Light Company
CAP-12.
Docket No. ER88-229-001, Commonwealth Edison Company
CAP-13.
Docket Nos. ER85-646-002 and ER85-647-002 (Phase I), New England Power Company
Docket Nos. ER85-646-006 and ER85-647-004 (Phase II), New England Power Company
CAP-14.
Docket No. ER86-354-003, Niagara Mohawk Power Corporation
CAP-15.
Docket No. ER79-67-013, Alamito Company
CAP-16.
Docket Nos. ER86-558-002, ER86-558-011, and ER86-558-013, Gulf States Utilities Company
CAP-17.
Docket No. EF87-5091-000, Boulder Canyon Project—Western Area Power Administration
CAP-18.
Docket No. ER88-204-001, Public Service Company of Oklahoma
CAP-19.
Docket Nos. E-7777-001 (Phase II), Project No. 2735-001, Project No. 1988-003, and Project No. 233-006, Pacific Gas and Electric Company
CAP-20.
Docket No. ER85-720-009, Northeast Utilities Service Company
CAP-21.
Docket Nos. ER83-418-007, ER83-418-008, ER83-418-009, and ER84-186-003, The Kansas Power and Light Company
CAP-22.
Docket No. QF84-256-002, Oxbox Geothermal Corporation
CAP-23.
Docket No. QF85-736-003, James River Cogeneration Company and Cogentrix of Virginia, Inc.
CAP-24.
Docket No. QF86-171-001, Hydro Corporation of Pennsylvania

Consent Miscellaneous Agenda

CAM-1.
Omitted
CAM-2.
Docket No. GP87-62-000, Ohio Department of Natural Resources
CAM-3.
Docket No. GP87-41-000, Exxon Corporation, State-Hunton "B" No. 2 Well
CAM-4.
Docket No. GP87-73-000, State of Louisiana, Department of Natural Resources
CAM-5.
Docket No. GP87-33-000, Exxon Corporation, Lowry Gas Unit No. 1 Well
CAM-6.
Docket No. GP86-60-000, Tenneco Oil Company, Hughes LS No. 19 Well
CAM-7.

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Docket No. GP88-2-000, Forest Oil Corporation

CAM-8.
Docket No. SA87-36-001, Weaver 1979-II Drilling Program

Consent Gas Agenda

CAG-1.
Docket No. TA88-7-20-000, Algonquin Gas Transmission Company

CAG-2.
Docket No. TA88-2-4-000, Granite State Gas Transmission, Inc.

CAG-3.
Docket No. RP88-47-002, Northwest Pipeline Corporation

CAG-4.
Docket Nos. RP85-58-017 and RP88-44-000, El Paso Natural Gas Company

CAG-5.
Omitted

CAG-6.
Docket Nos. RP86-27-005 and RP85-209-002, United Gas Pipe Line Company

CAG-7.
Docket No. RP87-152-000, Southwest Gas Corporation

CAG-8.
Omitted

CAG-9.
Docket No. RP88-105-000, Lawrenceburg Gas Transmission Corporation

CAG-10.
Docket Nos. TA87-5-21-001 and TA82-2-21-024, Columbia Gas Transmission Corporation

CAG-11.
Docket Nos. TA88-1-51-000 and TA88-4-51-000, Great Lakes Gas Transmission Company

CAG-12.
Docket No. TA88-2-26-000, Natural Gas Pipeline Company of America

CAG-13.
Docket Nos. RP86-128-005 and RP88-60-001, Transwestern Pipeline Company

CAG-14.
Docket No. RP88-67-001, Texas Eastern Transmission Corporation

CAG-15.
Docket Nos. RP88-27-004 and RP85-209-013, United Gas Pipe Line Company

CAG-16.
Docket No. RP88-58-001, Williams Natural Gas Company

CAG-17.
Docket Nos. RP84-42-001, RP72-133-024, TA80-1-11-002, TA80-2-11-002, TA81-1-11-002, TA81-2-11-005, TA82-1-11-005, TA82-2-11-006, TA83-1-11-004, TA83-2-11-004, TA84-1-11-003, TA84-2-11-003, and TA84-2-11-002 (Phase III), United Gas Pipe Line Company

CAG-18.
Docket No. RP85-169-036, Consolidated Gas Transmission Corporation

CAG-19.
Docket Nos. RP88-88-003 and RP87-7-033, Transcontinental Gas Pipe Line Corporation

CAG-20.
Docket No. RP79-57-000, Northwest Pipeline Corporation

CAG-21.
Docket No. RP88-27-003, United Gas Pipe Line Company

CAG-22.
Docket No. RP85-58-016, El Paso Natural Gas Company

CAG-23.
Docket Nos. RP88-45-002 and RP88-46-001, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-24.
Docket Nos. RP88-44-001 and CP88-203-001, El Paso Natural Gas Company

CAG-25.
Docket No. RP88-47-001, Northwest Pipeline Corporation

CAG-26.
Docket No. TA88-2-25-001, Mississippi River Transmission Corporation

CAG-27.
Docket Nos. ST85-956-002, ST85-1572-002, and ST86-6-002, Acadian Gas Pipeline System

CAG-28.
Docket Nos. ST86-2368-001, ST85-1000-001 and ST85-1001-001, Somerset Gas Service

CAG-29.
Docket Nos. CP82-361-009 and ST82-319-009, East Tennessee Natural Gas Company and Tennessee Gas Pipeline Company

CAG-30.
Docket Nos. TA85-1-33-004, TA84-1-33-011 and TA84-2-33-013, El Paso Natural Gas Company

CAG-31.
Docket No. ST86-1421-000, Transok, Inc.

CAG-32.
Docket No. RP87-47-000, Phillips Gas Pipeline Company

CAG-33.
Omitted

CAG-34.
Omitted

CAG-35.
Docket No. CP87-451-005, Northeast U.S. Pipeline Projects

CAG-36.
Docket No. CP85-437-007 (Phase II), Mojave Pipeline Company
Docket No. CP85-552-000, Kern River Gas Transmission Company
Docket No. CP85-625-000, Northwest Pipeline Company
Docket No. CP86-197-000, El Paso Natural Gas Company
Docket No. CP86-212-001, Transwestern Pipeline Company
Docket Nos. CP87-479-000 and CP87-480-000, Wyoming-California Pipeline Company

CAG-37.
Docket No. CP83-254-303, Williston Basin Interstate Pipeline Company

CAG-38.
Docket Nos. CP88-160-001 and CP88-161-001, Distrigas of Massachusetts Corporation

CAG-39.
Docket No. CP84-252-001, Trans-Appalachian Pipeline, Inc.

CAG-40.
Docket No. CP84-441-024, Tennessee Gas Pipeline Company

CAG-41.
Docket No. CP84-441-021, Tennessee Gas Pipeline Company

CAG-42.
Docket No. CP88-93-000, Texas Gas Transmission Corporation

CAG-43.
Docket No. CP87-214-000, United Gas Pipe Line Company

CAG-44.
Docket No. CP88-199-000, Northern Natural Gas Company, a Division of Enron Corporation

CAG-45.
Docket No. CP88-212-000, West Texas Gathering Company

CAG-46.
Docket No. RP88-98-000, National Fuel Gas Supply Corporation

CAG-47.
Docket No. TA88-2-25-002, Mississippi River Transmission Corporation

CAG-48.
Docket No. CP88-247-000, Williams Natural Gas Company

CAG-49.
Docket No. RI88-30-001, Phillips 66 Natural Gas Company

CAG-50.
Docket No. RP88-17-006, Southern Natural Gas Company

CAG-51.
Docket No. RP88-13-001, James River Corporation of Nevada v. Northwest Pipeline Corporation
Docket No. CP88-111-001, Northwest Pipeline Corporation
Docket No. CP88-328-002, Northwest Pipeline Corporation

I. Licensed Project Matters

P-1.
Project Nos. 2545-005, 009, 011, and 012, The Washington Power Company. Order on remand concerning question of "reservation" under section 3(2) of the Federal Power Act.

II. Electric Rate Matters

ER-1.
Docket No. ER84-177-000, Duke Power Company. Opinion and Order on initial decision concerning just and reasonable proposed standby charge.

ER-2.
Omitted

Miscellaneous Agenda

M-1.
Docket No. RM87-33-000, Hydroelectric Relicensing Regulations Under the Federal Power Act. Notice of Proposed Rulemaking.

M-2.
Reserved

I. Pipeline Rate Matters

RP-1.
Docket Nos. CP88-99-000, CP88-100-000, and CP88-143-000, Transwestern Pipeline Company. Order concerning gas inventory charge, off-system sales application, and pregranted abandonment application.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP87-309-000, Paiute Pipeline Company and Southwest Gas Corporation. Order on certificate and abandonment authority to implement a reorganization of gas pipeline facilities and services.

CP-2.
Docket No. CP87-17-000, United Gas Pipe Line Company.
Docket No. CP88-124-000, Mississippi River Transmission Corporation. Order on extension of certificate authority for a gas sales service and abandonment of gas purchases.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-10358 Filed 5-5-88; 4:02 pm]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, May 13, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 5, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-10357 Filed 5-5-88; 3:52 pm]
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Part II

Department of Labor

Benefits Review Board

20 CFR Part 802

Organization of the Benefits Review Board and Rules of Practice and Procedure; Final Rule

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DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Part 802

Organization of the Benefits Review Board and Rules of Practice and Procedure

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor amends three sections of the Rules of Practice and Procedure of the Benefits Review Board as set forth in Part 802 of Title 20. The amendments establish procedures for eliminating certain procedural issues that have arisen in responding to requests for a stay of payments filed under section 21(b)(3) of the Longshore and Harbor Workers' Compensation Act, and resolve jurisdictional problems that arise when a party to a claim pending on appeal to the Board desires to seek modification of the underlying decision. Further, these regulations establish a procedure for disqualifying persons from participation in a representative capacity in appeals filed with the Board.

These amendments, more fully discussed below, establish procedures for resolving issues that have been raised in appeals filed with the Board during the past several years. These issues have been resolved on a case-by-case approach. The Department believes, however, that the establishment of these new procedures should result in fewer appeals to the courts of appeals based on the lack of regulatory guidelines.

EFFECTIVE DATE: These final regulations shall become effective June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robert S. Habermann, Chief Counsel, Suite 757, 1111 20th Street NW., Washington, DC 20036, (202) 653-5060.

SUPPLEMENTARY INFORMATION:

Background

This rule was originally published for public comment as a proposed rule in the **Federal Register** on July 20, 1987 in 52 FR 27300. Comments were to be submitted until August 20, 1987. No comments were received. Inasmuch as no comments have been received, the proposed rule is adopted as the final rule. No changes have been made.

Specifically, the changes in Part 802 are as follows:

1. New subsection 802.105(b) addresses the apparent conflict between section 14(f) of the Longshore Act, which requires an employer to pay compensation within 10 days of an award unless a stay of payment has been ordered by the Benefits Review Board, and the 10-day response time within which other parties may respond to motions filed with the Board, including a motion for a stay of payment, provided by § 802.219(e) of this chapter. Under current regulations employers must choose between making the payment within 10 days or not making the payment and incurring section 14(f) penalties. Pursuant to new § 802.105(b), the Board will have the discretion to issue, within the 10-day period set forth in section 14(f), a temporary stay not to exceed 30 days. This allows the claimant or other parties to file a response to the request for a stay before the Board issues a final order. Upon receipt of the response(s) or the expiration of the 10-day response period, an order granting or denying the stay of payment will be issued. If no order is issued within the 30-day temporary stay period, the stay will lapse.

No amendment to § 802.105(a) is being proposed at this time. Note that the Benefits Review Board has held that certain criteria required by § 802.105(a) do not have to be stated in their stay orders. *Rivera* v. *Raymond Fabricator Inc.*, 18 BRBS 6 (1985). The correctness of this ruling is being challenged and should be resolved by the courts.

2. New paragraph 802.202(d) sets forth the qualifications for attorneys and lay representatives; subsection (d)(2) further requires that a lay representative file an application for permission to appear before the Board in each case, stating the person's qualifications to appear. These new provisions are intended to ensure that parties are ably represented on appeal to the Board by their lay representatives. New paragraph (e) establishes a procedure for denial of authority to appear before the Board for both attorneys and lay representatives and sets forth the circumstances which may result in such denial of authority to appear. This section addresses questions of the competence or misconduct of attorneys or lay representatives which are not covered by 33 U.S.C. 931(b)(2)(C).

3. A new paragraph (c) is added to § 802.301 to state what effect the filing of a request for modification (see Longshore Act section 22) will have on appeals pending before the Board for review. Under this subsection, the Board will dismiss the appeal without prejudice, subject to being reinstated should the request for modification be denied. If the request is granted, any party adversely affected by the decision or order may file a new appeal with the Board within the 30-day period set forth in section 21(a) of the Longshore Act.

Classification—Executive Order 12291

The Department has determined that this rule is not a major rule under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No regulatory impact analysis is therefore required.

Regulatory Flexibility Act

The Department believes that these rules will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the amendments will only establish procedures to be followed in resolving issues arising under the Longshore Act and they do not, other than the provisions relating to representation (§ 802.202), in themselves, impose any additional requirements upon small entities. The amendments to § 802.202 will permit the Board to determine the qualifications of those persons who should participate in the appellate process. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 20 CFR Part 802

Workers' compensation, Administrative practice and procedure.

Accordingly, 20 CFR Part 802 is amended as set forth below.

PART 802—[AMENDED]

1. The authority citation for Part 802 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 33 U.S.C. 901 et seq., 30 U.S.C. 901 et seq.

2. By adding paragraph (b) to § 802.105 to read as follows:

§ 802.105 Stay of payment pending appeal.

* * * * *

(b) When circumstances require, the Board, in its discretion, may issue a temporary order not to exceed 30 days granting a motion for stay of payment prior to the expiration of the ten-day period allowed for filing responses to motions pursuant to § 802.219(e). Following receipt of a response to the motion or expiration of the response time provided in § 802.219(e), the Board will issue a subsequent order ruling on the motion for stay of payment.

3. By revising the section heading and adding paragraphs (d) and (e) to § 802.202 to read as follows:

§ 802.202 Appearances by attorneys and other authorized persons; denial or authority to appear.

* * * * *

(d) *Qualifications*—(1) *Attorneys.* An attorney at law who is admitted to practice before the Federal courts or before the highest court of any State, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Board unless he or she has been disqualified from representing claimants under the Act pursuant to 33 U.S.C. 931(b)(2)(C), or unless authority to appear has been denied pursuant to § 802.202(e)(1) and (3). An attorney's own representation that he or she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Board.

(2) *Persons not attorneys.* Any person who is not an attorney at law may be admitted to appear in a representative capacity unless he or she has been disqualified from representing claimants under the Act pursuant to 33 U.S.C. 931(b)(2)(C). An application by a person not an attorney at law for admission to appear in a proceeding shall be submitted in writing to the Board at the time such person's appearance is entered. The application shall state such person's name, address, telephone number, general education, any special training or experience in claims representation, and such person's relationship, if any, to the party being represented. The Board may, at any time, make further inquiry as to the qualification or ability of such person to render assistance. In the event of a failure to make application for admission to appear, the Board shall issue an order to show cause why admission to appear should not be denied. Admission to appear in a particular case shall not be deemed a blanket authorization to appear in other cases.

(e) *Denial of authority to appear.*—(1) *Attorneys.* The Board may deny the privilege of appearing to any attorney, within applicable statutory constraints, e.g., 5 U.S.C. 555, who has been disbarred or suspended from the practice of law; who has surrendered his or her license while under investigation or under threat of disciplinary action; or who, after notice of an opportunity for hearing in the matter is found by the Board to have engaged in any conduct which would result in the loss of his or her license. No provision hereof shall apply to any attorney who appears on his or her own behalf.

(2) *Persons not attorneys.* The Board may deny the privilege of appearing to any person who, in the Board's judgment, lacks sufficient qualification or ability to render assistance. No provision hereof shall apply to any person who appears on his or her own behalf.

(3) Denial of authority to appear may be considered, after notice of and opportunity for a hearing, by the panel (constituted pursuant to § 801.301) which is assigned to decide the appeal in which the attorney or other person has entered an appearance. If such proceeding reveals facts suggesting that one of the circumstances described in 33 U.S.C. 931(b)(2)(C) exists, the Board shall refer that information to the Director, OWCP, for further proceedings pursuant to 33 U.S.C. 931(b)(2)(C) and 907(j). An attorney or other person may appeal a panel's decision to deny authority to appear to the entire permanent Board sitting en banc.

4. By adding paragraph (c) to § 802.301 to read as follows:

§ 802.301 Scope of review.

* * * * *

(c) Any party who considers new evidence necessary to the adjudication of the claim may apply for modification pursuant to section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 922. A party who files a petition for modification shall promptly notify the Board of such filing. Upon receipt of such notification, the Board shall dismiss the case without prejudice. Should the petition for modification be declined, the petitioner may file a request for reinstatement of his or her appeal with the Board within 30 days of the date the petition is declined. Should the petition for modification be accepted, any party adversely affected by the decision or order granting or denying modification may file a new appeal with the Board within 30 days of the date the decision or order on modification is filed.

Signed at Washington, DC, this 2nd day of May, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-10138 Filed 5-6-88; 8:45 am]

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Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Miscellaneous Charges in Patent Practice; Notice of Proposed Rulemaking

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 80108–8008]

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend its regulations to: (1) Correct certain rules to conform to previous changes in other rules, (2) require all correspondence directed to the Patent and Trademark Office concerning a patent application to include the serial number after the Office has assigned and informed the applicant of the serial number of the application, (3) provide for the indication of copyright and mask work protection in patent applications, (4) require that any necessary corrections to drawings be made only by submission of new or replacement drawings, (5) provide in limited situations for the use of color drawings in utility patent applications, (6) prohibit the use of broken lines in design patent application drawings to show hidden planes and surfaces, and (7) provide for a refund of a portion of the preliminary examination fee where the Demand is withdrawn. The change pertaining to the drawings would remove any need for patent applicants or their representatives to borrow drawings filed in patent applications from the Office after the effective date of the rule change for purposes of making corrections.

DATES: Comments must be submitted on or before July 21, 1988; a public hearing will be held on July 21, 1988 at 9:00 a.m. Requests to present oral testimony should be received on or before July 14, 1988.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Louis O. Maassel. The hearing will be held in Room 912, on the 9th floor of Crystal Park Building 2, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11A13 of Crystal Plaza Building 3, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Louis O. Maassel by telephone at (703) 557–3070 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Discussion of Specific Rules

Section 1.4, if amended as proposed, would correct the listing of rules in paragraph (a)(2).

Section 1.5, if amended as proposed, would provide that all correspondence related to a U.S. national patent application already filed with the Patent and Trademark Office must include the identification of the serial number assigned to that application by the Patent and Trademark Office. Any correspondence not containing such identification will be returned to the sender where a return address is available. Given there are over 30,000 documents to be routed each day, this requirement will greatly facilitate the matching of correspondence received with the relevant patent application file. Without serial number identification, documents are either significantly delayed or never matched with the relevant application file. The proposed amendments to paragraph (b) draw attention to the different requirements for identification in correspondence relating to the payment of maintenance fees.

Section 1.53(c) and (d), if amended as proposed, would require that a copy of the "Notice of Incomplete Application" or "Notice to File Missing Part" form sent to the applicant by the Office should accompany any response submitted to the Office in order for the response to be accepted. This will prevent the inadvertent assignment of a new serial number to correspondence sent in response to such notices or the misrouting of the correspondence.

Section 1.56(e), if amended as proposed, would correct the reference to the "Board of Appeals" to read "Board of Patent Appeals and Interferences".

Section 1.71, if amended as proposed, would contain new paragraphs (d) and (e) relating to the inclusion of copyright and mask work notices in patent applications. The provisions proposed are similar to those set forth in the Official Gazette notice dated March 20, 1987 titled "Inclusion of Copyright or Mask Work Notice in Patents" appearing on April 21, 1987 at 1077 O.G. 22. Under current intellectual property laws, it is possible to obtain copyright protection or mask work protection as well as patent protection for certain designs and technologies. On occasion, an author or inventor considers it desirable to include a notice of copyright or mask work in a design or utility patent which discloses material on which copyright or mask work protection has previously been established.

The inclusion of a copyright or mask work notice in a patent that discloses material on which copyright or mask work protection has previously been established, would serve to publicize and thereby protect the various intellectual property rights of the author or inventor. Further, this publication would tend to protect the public by militating against an unintentional encroachment into the rights. The presence of an unrestricted copyright or mask work notice in a patent could have an inhibiting effect on public dissemination of the patent disclosure to the extent it discourages the facsimile reproduction of the patent. The possible effect would be contrary to the mission of the Patent and Trademark Office to disseminate knowledge and information publicly by way of patent issuance, publication, and distribution. To avoid this effect, it is considered necessary to include an appropriate authorization by the author or inventor for copying of the patent itself with any copyright or mask work notice appearing in the patent. Inclusion of a copyright or mask work notice after a Notice of Allowance has been mailed will be permitted only if the criteria of 37 CFR 1.312 have been fulfilled. If the authorization required by proposed § 1.71(e) is not included, the notice will be objected to as improper by the examiner. If the examiner maintains the objection upon reconsideration, further review must be by way of a petition filed in accordance with 37 CFR 1.181.

Section 1.81, if amended as proposed, would clarify that high quality copies of drawings should be submitted in patent applications. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for future correction, if necessary.

Section 1.84(a), if amended as proposed, would be reworded to recommend that two-ply or three-ply bristol board be used by applicants to prepare drawings so that erasure and correction by India ink is possible. Proposed amended paragraph (a) would also indicate that photolithographs are not accepted as drawings and add a reference to § 1.84(p) relating to color drawings in utility patent applications.

High quality copies of drawings should be supplied to the Patent and Trademark Office when filing a patent application. Whether or not bristol board is used for drawings is applicant's choice. However, the drawings that are submitted to the Office must be on strong, white, smooth, and non-shiny paper and meet the standards according to § 1.84. If corrections to the drawings are necessary, they should be made to the original drawings and high-quality copies of the corrected original drawings then submitted to the Office.

Only one copy is required or desired. The Office had attempted to encourage the submission of three copies, but compliance was very low. It was determined that it is more efficient for the Office to rely on consistency and only one copy.

The Patent and Trademark Office will no longer release to applicants, bonded drafting companies or other drawings from patent applications filed after the effective date of these proposed rule changes. See proposed § 1.85(b). If corrections to the drawings are necessary, new corrected drawings must be prepared and filed in the Patent and Trademark Office. Therefore, the applicant, attorney or agent should retain the original drawing.

The Office will continue to allow applicants to borrow for correction drawings which have been filed prior to the effective date of these rule changes.

Section 1.84(b), if amended as proposed, would provide for applicants using drawing sheets which are 8½ by 13 inches in size.

Section 1.84(i), if amended as proposed, would make grammatical corrections in the text of the rules and clarify Office drawing requirements as to exploded views, enlarged views and views which require several sheets.

Section 1.84(j), if amended as proposed, would clarify how views should be arranged when they are placed sideways on the drawing sheet.

Section 1.84(l) if amended as proposed, would indicate that drawings may be identified by lightly writing identifying information on the drawings in the top margin. For identification by serial number, the Office prefers that the information be placed on the front of the drawing. When the applicant forwards drawings separate from the original application papers, a cover letter identifying the application by serial number must accompany the drawings. The application serial number must also be placed on drawings filed after the serial number has been indicated in correspondence to the applicant, in accordance with §1.84(l)

Section 1.84(n), if added as proposed, would permit numbering of the drawing sheets. However, such numbering would not appear on the drawings of the printed patent.

Section 1.84(o), if added as proposed, would provide for the indication of copyright or mask work protection notice on patent application drawings. This procedure is the same as that established by the Official Gazette notice dated March 20, 1987 published on April 21, 1987 at 1077 O.G. 22.

Section 1.84(p), if added as proposed, would provide in the rules for the filing of color drawings in a very limited number of utility patent applications. An Official Gazette notice relating to this topic dated August 6, 1986, titled "Use of Color Drawings in Utility Patents" was published on September 9, 1986 at 1070 O.G. 10. In light of the substantial administrative and economic burden associated with printing a utility patent with color drawings, the letters patent and the patent copies which are printed at the issuance of the patent will be only in black and white. However, copies of the patent with the color drawings may be purchased separately from the Patent and Trademark Office upon special request and payment of the fee.

It is anticipated that color drawings will only be permitted when color drawings are the only practical method in a utility patent application in which to disclose the subject matter sought to be patented. In order to avoid issues of lack of description or enablement under 35 U.S.C. 112 or new matter under 35 U.S.C 132, applicants are advised to file the desired color drawings as part of the original application papers. The petition should be directed to the attention of the Deputy Assistant Commissioner for Patents.

Section 1.85, if amended as proposed, would indicate that drawings not complying with § 1.84 will be accepted in some instances for purposes of examination and that drawings which do comply with all the rules relating to drawings be required later, and that no corrections are permitted to drawings filed in the Patent and Trademark Office after the effective date of the rule change.

When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit *acceptable* drawings within three months from the mailing of the "Notice of Allowance". Within the three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowance.

Section 1.152, if amended as proposed, would permit broken lines on drawings to show visible environmental structure but not hidden planes and surfaces in design patent application drawings.

Section 1.378, if amended as proposed, would amend the rules to conform with section 404 of Public Law 98–622 which states:

(a) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97–247 (96 Stat. 317), the Commissioner of Patents and Trademarks may accept after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.

The proposed rule wording would include reference to maintenance fees due on Patents based on applications filed in the patent and Trademark Office on or after December 12, 1980 and before August 27, 1982.

Section 1.421(f), if amended as proposed, would delete reference to a canceled PCT Rule and add reference to the current PCT Rule provision.

Section 1.480(d) if amended as proposed, would provide for a refund of a portion of the international preliminary examination fee where the applicant withdraws the demand before the examiner has begun the international preliminary examination. An amount equal to the transmittal fee would be retained by the Patent and Trademark Office to cover the cost of the clerical work involved.

Environmental, Energy, and Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because the proposed rule change corrects some rules so that they correspond to earlier changes, relate to

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identification of applications on correspondence, allow greater flexibility in patent drawing content and handling, and provide for a refund where a proper demand for international preliminary examination has been filed but withdrawn later.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the national government and the States as outlined in Executive Order 12612.

The rule change involves correction of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and are cleared under OMB Control No. 0651-0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 41, and Patent and Trademark Office is proposing to amend Title 37 of the Code of Federal Regulations as set forth below.

It is proposed to amend 37 CFR, Part 1, as follows with deletions of portions of the rules indicated by brackets ([ ]) and additions by arrows (►◄).

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.4 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to [1.352] ►1.378◄; of international applications in Subpart C, §§ 1.401 to [1.482] ►1.499◄; of reexamination of patents in Subpart D, §§ 1.501 to 1.570; of interferences in Subpart E, §§ 1.601 to [1.688] ►1.690; of extension of patent term in Subpart F, §§ 1.710 to 1.785◄; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.5 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) When a letter ►directed to the Patent and Trademark Office◄ concerns [an] ►a previously filed◄ application for patent, it ►must identify on the top page in a conspicuous location, the serial number, including the series code, which was assigned to that application and indicated in correspondence to the applicant by the Patent and Trademark Office or the international application number of the application. Any correspondence not containing such identification will be returned to the sender where a return address is available. In addition, all letters directed to the Patent and Trademark Office concerning applications for patent◄ should ►also◄ state ►"PATENT APPLICATION",◄ the name of the applicant, the title of the invention, [the serial number or international application number of the application,] the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

(b) When the letter concerns a patent ►other than for purposes of paying a maintenance fee◄, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention. ►For letters concerning payment of a maintenance fee in a patent, see the requirements of § 1.366(c).◄

* * * * *

4. Section 1.53 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 1.53 Serial number, filing date, and completion of application.

* * * * *

(c) If any application is filed without the specification or drawing required by paragraph (b) of this section, applicant will be so notified and given a time period within which to submit the omitted specification or drawing in order to obtain a filing date as of the date of filing of such submission. ►A copy of the "Notice of Incomplete Application" form notifying the applicant should accompany any response thereto submitted to the Office.◄ If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less a $15.00 handling fee.

(d) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the appropriate filing fee or an oath or declaration by the applicant, applicant will be so notified. if a correspondence address has been provided and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. ►A copy of the "Notice to File Missing Parts" form mailed to applicant should accompany any response thereto submitted to the Office.◄ If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the ►basic filing◄ fee, oath or declaration and to pay the surcharge as set forth § 1.16(e) in order to prevent abandonment of the application or►, if no basic filing fee has been paid,◄ one year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

5. Section 1.56 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking on rejection of applications.

* * * * *

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of ►Patent◄ Appeals ►and Interferences◄, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.193(c).

* * * * *

6. Section 1.71 is proposed to be amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

►(d) A copyright or mask work notice may be placed in a design or utility patent application adjacent to copyright and mask work material contained therein. The notice may appear at any appropriate portion of the patent application disclosure. For notices in drawings, see § 1.84(o). The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in paragraph (e) of this section is included at the beginning (preferably as the first paragraph) of the specification.

(e) The authorization shall read as follows:

A portion of the disclosure of this patent document contains material which is subject to [copyright or mask work] protection. The [copyright or mask work] owner has no objection to the facsimile reproduction by anyone of the patent document or the patent disclosure, as it appears in the Patent and Trademark Office patent file or records, but otherwise reserves all [copyright or mask work] rights whatsoever.◄

7. Section 1.81 is proposed to be amended by revising the title and paragraph (a) to read as follows:

§ 1.81 Drawings required ►in patent application◄.

(a) The applicant for a patent is required to furnish a drawing of his ►or her◄ invention where necessary for the understanding of the subject matter sought to be patented; this drawing ►, or a high quality copy thereof,◄ must be filed with the application. ►Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for any necessary future correction.◄

* * * * *

8. Section 1.84 is proposed to be amended by revising paragraphs (a), (b) introductory text, (i), (j) and (l) redesignating and revising (b)(2) as (b)(3), and by adding new paragraphs (b)(2) (n), (o), and (p), to read as follows:

§ 1.84 Standards for drawings.

(a) *Paper and ink.* Drawings ►or high quality copies thereof which are submitted to the Office◄ must be made upon paper which is flexible, strong, white, smooth, non-shiny and durable. [Two-ply or three-ply bristol board is preferred. The surface of the paper should be calendered and of a quality which will permit erasure and correction with India ink.] ►It is recommended that two-ply or three-ply bristol board or paper of sufficient quality to permit erasure and correction with India ink be used for original drawings to facilitate any future corrections by the applicant.◄ India ink, or its equivalent in quality, is preferred for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not normally acceptable.

►Photolithographs are not acceptable. See paragraph (p) of this section for use of color drawings in utility patent applications.◄

(b) *Size of sheet and margins.* The size of the sheets on which drawings are made may [either] be exactly 8½ by 14 inches (21.6 by 35.6 cm.) ►, exactly 8½ by 13 inches (21.6 by 33.1 cm.),◄ or exactly 21.0 by 29.7 cm. (DIN size A4). All drawing sheets in a particular application must be the same size. One of the shorter sides of the sheet is regarded as its top.

* * * * *

►(2) On 8½ by 13 inch drawing sheets, the drawing must include a top margin of 1 inch (2.5 cm.) and bottom and side margins of ¼ inch (6.4 mm.) from the edges, thereby leaving a "sight" precisely 8 by 11¾ inches (20.3 by 29.8 cm.). Margin border lines are not permitted. All work must be included within the "sight". The sheets may be provided with two ⅛ inch (3.4 mm.) diameter holes having their centerlines spaced 1 ⅛s inch (17.5 mm.) below the top edge and 2¾ inches (7.0 cm.) apart, said holes being equally spaced from the respective side edges.◄

[(2)] ►(3)◄ On 21.0 by 29.7 cm. drawing sheets, the drawing must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm. Margin border lines are not permitted. All work must be contained within a sight size not to exceed 17 by 26.2 cm.

* * * * *

(i) *Views.* The drawing must contain as many figures as may be necessary to show the invention; the figures should be consecutively numbered if possible in the order in which they appear. The figures may be ►plan◄ [plain], elevation, section, or ►perspective◄ [prespective] views, and detail views of portions or elements, on a larger scale if necessary, may also be used. Exploded views, with the separated parts of the same figure embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. ►When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets.◄ When necessary, a view of a large machine or device in its entirety may be broken and extended over several sheets if there is no loss in facility of understanding the view. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets should be so arranged that the complete figure can be understood by laying the drawing sheets adjacent to one another. ►The figures, even though on separate sheets, should be labeled as separate figures, for example as Fig. 1a, Fig. 1b, etc., so that it would be apparent that the views actually comprise one figure.◄ The arrangement should be such that no part of any of the figures appearing on the various sheets [are] ►is◄ concealed and that the complete figure can be understood even though spaces will occur in the complete figure because of the margins on the drawing sheets. The plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken. A moved position may be shown by a broken line superimposed upon a suitable figure if this can be done without crowding, otherwise a separate figure must be used for this purpose.

Modified forms of construction can only be shown in separate figures. Views should not be connected by projection lines nor should centerlines be used. ►When a portion of a figure is enlarged for magnification purposes, the figure and the enlarged figure must each be labeled as a separate figure.◄

(j) *Arrangement of views.* All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet with the appropriate top margin ►to be used as the heading space◄ is on the right-hand side. One figure must not be placed upon another or within the outline of another.

* * * * *

(l) [*Extraneous matter.*] ►*Identification of drawings.*◄ Identifying indicia (such as the ►serial number, group art unit, title of the invention,◄ attorney's docket number, inventor's name, number of sheets, etc.) not to exceed 2¾ inches (7.0 cm.) in width may be placed in a centered location between the side edges within three-fourths inch (19.1 mm.) of the top edge. ►Either this marking technique on the front of the drawing or the placement, although not preferred, of this information and the title of the invention on the back of the drawings is acceptable.◄ Authorized security markings may be placed on the drawings provided they [be] ►are◄ outside the illustrations and are removed when the material is declassified. Other extraneous matter will not be permitted upon the face of a drawing.

* * * * *

►(n) *Numbering of drawing sheets.* The drawing sheets may be numbered in consecutive arabic numbers at the top of the sheets, in the middle, but not in the margin. Such numbering will be deleted for printing purposes since page numbers are added at the time of printing the patent by the Office.◄

►(o) *Copyright or Mask Work Notice.* A copyright or mask work notice may appear in the drawing but must be placed within the "sight" of the drawing immediately below the figure representing the copyright or mask work material and be limited to letters having a print size of ⅛ to ¼ inches high. The content of the notice must be limited to only those elements required by law. For example, "©1983 John Doe" (17 U.S.C. 401) and "*M* John Doe" (17 U.S.C. 909) would be properly limited and, under current statutes, legally sufficient notices of copyright and mask work, respectively. Inclusion of a copyright or mask work notice will be permitted only if the authorization language set forth in § 1.71(e) is included at the beginning (preferably as the first paragraph) of the specification.◄

►(p) *Limited use of color drawings in utility patent applications.* Paragraph (a) of this section requires that drawings in utility patent applications must be in black on white paper. However, on rare occasion, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility patent application. The Patent and Trademark Office will accept color drawings in utility patent applications only after granting of a petition by the applicant under § 1.183 of this part which requests waiver of the requirements of paragraph (a) of this section. Any such petition should be directed to the Office of the Deputy Assistant Commissioner for Patents and must include the following:

(1) The appropriate fee set forth in § 1.17(h).

(2) Five (5) sets of color drawings on DIN size A4 (21.0 by 29.7 cm.) sheets.

(3) A proposed amendment to insert in the specification the following language as the first paragraph in the portion of the specification relating to the brief description of the drawing:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."◄

9. Section 1.85 is proposed to be revised to read as follows:

§ 1.85 [Informal] ►Corrections to◄ drawings.

►(a)◄ The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted ►for examination◄ but in such case [the drawing must be corrected or] a new [one] ►drawing must be◄ furnished [, as required].

►(b) The Patent and Trademark Office will not release drawings for purposes of correction. If corrections are necessary, new corrected drawings must be submitted within the time set by the Office.◄

►(c) When corrected drawings are required to be submitted at the time of allowance, the applicant is required to submit *acceptable* drawings within three months from the mailing of the "Notice of Allowance". Within that three-month period, two weeks should be allowed for review of the drawings by the Drafting Branch. If the Office finds that correction is necessary, the applicant must submit a new corrected drawing to the Office within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, the applicant should file corrected drawings as soon as possible following the receipt of the Notice of Allowance.◄

10. Section 1.152 is proposed to be revised to read as follows:

§ 1.152 Drawing.

The design must be represented by a drawing made in conformity with the rules laid down for drawings of mechanical inventions and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented. ►Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials.◄

11. Section 1.378 is proposed to be amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(b) * * *

(1) The required maintenance fee set forth in § 1.20[(h)] ►(e)◄—(j),

* * * * *

(c) * * *

(1) The required maintenance fee set forth in § 1.20[(h)] ►(e)◄—(j),

* * * * *

12. Section 1.421 is proposed to be amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1.421 Applicant for international application.

* * * * *

(f) Changes in the person, name, or address of the applicant of an international application shall be made in accordance with PCT Rule [16.5] ►92bis◄.

(g) The wording of PCT Rule 92bis is as follows:

PCT Rule 92bis—Recording of Changes in Certain Indications in the Request or the Demand

92bis Recording of Changes by the International Bureau

(a) The International Bureau shall, on the request of the applicant or the receiving Office, record changes in the following indications appearing in the request or demand:

(i) person name, residence, nationality or address of the applicant,

(ii) person, name or address of the agent, the common representative or the inventor.

(b) The International Bureau shall not record the requested change if the request for recording is received by it after the expiration:

(i) of the time limit referred to in Article 22(1), where Article 39(1) is not applicable with respect to any Contracting State;

(ii) of the time limit referred to in Article 39(1)(a), where Article 39(1) is applicable with respect to at least one Contracting State.◄

13. Section 1.480 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1.480 Demand for international preliminary examination.

* * * * *

(d) Withdrawal of a proper Demand ►prior to the start of the international preliminary examination◄ will [not] entitle applicant to a refund of the preliminary examination fee [or handling fee] ►minus the amount of the transmittal fee set forth in § 1.445(a)(1)◄.

Dated: March 9, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-10089 Filed 5-6-88; 8:45 am]

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Part IV

The President

Proclamation 5812—National Older Americans Abuse Prevention Week, 1988

Proclamation 5813—Public Service Recognition Week, 1988

Proclamation 5814—World Trade Week, 1988

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Title 3—

The President

Proclamation 5812 of May 5, 1988

National Older Americans Abuse Prevention Week, 1988

By the President of the United States of America

A Proclamation

Each year during May, through the vehicle of Older Americans Month, our Nation honors its senior citizens for their many contributions to our country, its communities, and its families. The vast majority of older Americans are active members of society—working, creating, volunteering, or simply enjoying the fruits of long years of service to others. As parents and grandparents, they extend their contributions through formation of coming generations of our citizens—their children and grandchildren. The commerce of love between generations—fulfillment of a duty and recognition of a debt—is a ballast that steadies our national enterprise on its voyage from past to future.

Not every older American leads an ideal life, however. Regrettably, some suffer from abuse and neglect, wounds all the more grievous for everything these citizens have done to build and strengthen this land of liberty. For these men and women, years that should be full of satisfaction and appreciation become instead manacles of torment and disrespect from which they cannot escape.

Abuse can take many forms—physical, mental, or emotional. It can come from family members, friends, or professionals; it can even be self-inflicted. Neglect is also a form of abuse, a manifestation of carelessness that can be seen even in situations where an elderly person's basic needs for food and shelter are being met. Loneliness, of course, is its most obvious sign, and fortunately the most easily cured by others.

Abuse and neglect reach their ultimate expression, of course, in occasional cases of—and even organized calls for—euthanasia of the elderly infirm. Older Americans have done their duty. In their twilight years, especially, it is our duty to them that matters. No elderly person should live in fear that he or she is a burden to others or that his or her life will be cut short for reasons of utility or convenience. We can never have too many reminders that the gift of life is ours to cherish and preserve from malice and harm until natural death.

Across our country, State and Area Agencies on Aging, social service, and law enforcement agencies are supporting programs to deal effectively with the difficult problems posed by abuse of the elderly. I urge every concerned American to help ensure that local programs are available to educate people about these problems and to assist both the older person and the abuser to get the help they need.

The Congress, by Senate Joint Resolution 222, has designated the week of May 1 through May 7, 1988, as "National Older Americans Abuse Prevention Week" and has authorized and requested the President to issue a proclamation in observance of the week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 1, 1988, through May 7, 1988, as National Older Americans Abuse Prevention Week. I urge all government agencies, every community, and every American to observe this period with appropriate activities and to strive to assure that every older American can

enjoy what the poet called that honor, love, and obedience "that should accompany old age."

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10423
Filed 5-6-88; 12:05 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5813 of May 5, 1988

Public Service Recognition Week, 1988

By the President of the United States of America

A Proclamation

Government employees, with their commitment to excellence and diversity of skills, contribute significantly to the leadership of the United States in the world. These dedicated men and women are a valuable national resource, serving in the Executive, Legislative, and Judicial branches at all levels of government, and dealing with nearly every aspect of national life.

Government employees provide such a broad range of services that few citizens remain unaffected by their work. They defend our Nation, enforce the laws, help protect the environment, maintain vital transportation systems, work to prevent the entry and abuse of illegal drugs, administer the Social Security system, conduct health research, help parents teach their children, and perform countless other vital tasks for society. These public servants have also helped develop innovative technologies to show the way in the critical fields of defense, health care, agriculture, and industry.

In recognition of the indispensable contributions made by government employees, the Congress, by Senate Joint Resolution 242, has designated the period commencing May 2, 1988, and ending May 8, 1988, as "Public Service Recognition Week" and has authorized and requested the President to issue a proclamation calling for observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 2, 1988, through May 8, 1988, as Public Service Recognition Week. I urge the people of the United States and all levels of government to participate in appropriate ceremonies to recognize the vital role of government employees.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10424
Filed 5-6-88; 12:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5814 of May 5, 1988

World Trade Week, 1988

By the President of the United States of America

A Proclamation

Setting aside a week in celebration of international trade is a fitting way to remind ourselves of the countless benefits of world trade for Americans and for people around the globe, and to remember that freedom is, and must be, an essential element in economic life—individual, national, and international

International trade can link individuals and nations alike by providing opportunities for the interchange of goods and services, the fruit of human talents that transcend boundaries of geography and culture. The key ingredient in every act of trade is freedom. Only freedom respects the inherent rights, dignity, conscience, and worth of individuals; only freedom encourages individuals to develop their creative abilities to the fullest and to command fair return for their labor; and only freedom provides a rational and humane basis for economic decision-making. The freedom of exchange that is at the heart of every genuine economic transaction benefits all parties and builds competition, enterprise, prosperity, justice, cooperation, and social well-being as people achieve economic success by finding their fellowman's unmet needs and filling them well.

Our country's prosperity likewise depends on our ability to identify needs and markets for goods and services and to meet them well. Our free market economy, our belief in free but fair trade on a global basis, and the American people's ingenuity and ability all make our products among the world's most competitive—and we intend to keep it that way.

My Administration has worked to improve the climate for international trade by seeking a renaissance in American competitiveness. Last year, as American goods regained price competitiveness overseas, exports hit a record level; more than 407,000 manufacturing jobs were created; and employment surged, with more Americans in the labor force than ever before. Exports spell opportunity for American business; thousands of U.S. firms have increased their profit margins by exporting, and thousands are beginning to discover their untapped potential to succeed in export markets. This year's World Trade Week theme, "Export Now," champions the message that I have joined the Secretary of Commerce in sending and exemplifies America's winning spirit.

Foreign markets are now more open to American goods than in the past, but we have far to go in the quest to undo unfair restrictions on trade. We seek to encourage removal of foreign barriers to free trade, but we simultaneously work to discourage domestic protectionism—more accurately described as "destructionism," because it stifles progress and prosperity by preventing competition and economic transactions that people everywhere desire and need. We also reiterate the intention of the United States Government to ensure that our trade policies serve to reinforce our national security interests around the world. International trade policies and practices must promote the causes of freedom, human rights, and economic growth everywhere.

World Trade Week is a truly appropriate time to remember the many benefits international trade has conferred on our country and to reflect on the many

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blessings the spread of economic freedom has brought, and can bring, to people in every nation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning May 22, 1988, as World Trade Week. I invite the people of the United States to join in appropriate observances to reaffirm the great promise of international trade for creating jobs and stimulating economic activity in our country and for generating prosperity everywhere freedom reigns.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10425
Filed 5-6-88; 12:07 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 841 and 843

Federal Employees Retirement System; Annual Pay Computation for Less Than Full-Time Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules to provide a methodology for computing the amount of the basic employee death benefit under the Federal Employees Retirement System (FERS) Act of 1986 for employees whose tour of duty is less than full time. These rules define "final annual rate of pay" as used in computing the basic employee death benefit and require agencies to certify sufficient information to permit OPM to compute the "final annual rate of pay" for employees whose tour of duty is less than full time.

DATE: Interim rules effective May 10, 1988; comments must be received on or before July 11, 1988.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director of Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4682.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for Federal employees. On June 17, 1987, OPM published (52 FR 23013) final rules implementing the death benefits and employee refund provisions of FERS.

Section 8442(b) of title 5, United States Code, provides for payment of a lump-sum benefit to the widow or widower of a deceased employee. The rules refer to this benefit as the basic employee death benefit. The benefit is equal to 50 percent of the employee's final annual rate of basic pay (or of average pay, if higher), plus $15,000, which is increased by cost-of-living adjustments. This amendment clarifies the computation of the final annual rate of basic pay for the purpose in the case of an employee with a less than full-time tour of duty.

For a part-time (regularly scheduled) employee, the final annual rate of pay will be the basic pay, at the rate in effect immediately before the employee's death, that is applicable to the employee's tour of duty (or, if higher, the hours in a basic pay status) in a 52-week work year. For example, a part-time employee who, at the time of his death, was being paid at the annual rate of $30,000, but whose tour of duty was 20 hours a week, would have a final annual pay rate of $15,000 for purposes of the lump-sum survivor benefit. However, if the same employee actually earned basic pay during 1144 hours (averaging 22 hours per week) in the 52-week work year, the final annual rate of basic pay would be $16,500.

To determine the final annual pay rate of an intermittent (not regularly scheduled) employee, the employee's final hourly rate of pay will be multiplied by the number of hours he or she worked at basic pay rates (up to full time) in the 52-week work year immediately preceding the end of the last pay period the employee was in a pay status. Intermittent employees do not have a regularly scheduled tour of duty and normally work fewer hours than full-time employees. However, these employees have a reasonable expectation that they would have received some level of income if they could have continued in Federal service. Therefore, we have arrived at this method of looking back at the preceding 52-week period to equitably calculate the individual's final annual rate of pay for the purposes of lump-sum survivor benefit.

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and to make these amendments effective in less than 30 days. These rules are effective immediately to prevent harm to persons entitled to benefits under this part. Delaying rulemaking would be contrary to the public interest as expressed in FERS because such a delay could require delayed payments to survivors of employees who die while covered by FERS.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 841 and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for Part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a.

2. In § 841.504 by adding paragraph (i) to read as follows:

Subpart E—Employee Deductions and Government Contributions

* * * * *

§ 841.504 Agency responsibilities.

* * * * *

(i) Upon the death of an employee whose tour of duty is less than full time, the employing agency must certify to OPM—

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(1) The number of hours that the employee was entitled to basic pay (whether in a duty or paid-leave status) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status; and

(2) If the employee's tour of duty was part time (regularly scheduled), the number of hours of work in the employee's tour of duty.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

3. The authority citation for Part 843 continues to read as Follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

4. In § 843.102, by adding a definition of "final annual rate of basic pay" to read as follows:

Subpart A—General Provisions

* * * * *

§ 843.102 Definitions.

* * * * *

"Final annual rate of basic pay" means the basic pay that an employee or Member would receive in a year at the current rate of pay. A pay rate other than an annual salary is converted to an annual rate by multiplying the prescribed rate by the number of pay units in a 52-week work year.

(a) The annual pay of a part-time (regularly scheduled) employee is the product of the employee's final hourly rate of pay and the higher of—

(1) The number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status; or

(2) The number of hours in the employee's regularly scheduled tour of duty in a 52-week work year.

(b) The annual pay of an intermittent (not regularly scheduled) employee is the product of the employee's final hourly rate of pay and the number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-Postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status.

(c) If the part-time or intermittent employee's current appointment began less than 52 weeks prior to the end of the last pay period in which the employee was in a pay status, the number of hours that the employee was entitled to basic pay is computed by multiplying the number of hours that the employee was paid basic pay by a fraction whose numerator is 52 and whose denominator is the number of weeks between the date of appointment and the end of the last pay period in which the employee was in a pay status.

* * * * *

[FR Doc. 88-10388 Filed 5-9-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-082]

Revocation of Varroa Mite Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the "Domestic Quarantine Notices" by removing the regulations issued in the "Varroa mite" interim rule on April 6, 1988. This action rescinds the federal quarantine of areas in which Varroa mites have been found and the restrictions on interstate movements of various articles (including honeybees, hives, and associated articles and means of conveyance) from those areas. We are taking this action because the Varroa mite quarantine is not effectively preventing interstate spread of Varroa mite and is causing economics dislocations.

DATES: Interim rule effective May 6, 1988. Consideration will be given only to comments postmarked or received on or before July 11, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-082. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th Street at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees in the colonies they infest and reducing their ability to pollinate plants or produce honey. Varroa mites can multiply quickly without attracting a beekeeper's attention until serious damage has been done.

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been confirmed in 12 additional states: Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, and Washington.

In an interim rule effective on April 6, 1988, and published in the **Federal Register** on April 11, 1988 (53 FR 11825-11830, Docket No. 87-140), the Animal and Plant Health Inspection Service (APHIS) established "Subpart—Varroa Mite" (§§ 301.92 through 301.92-10, referred to below as the regulations) in 7 CFR Part 301. These regulations quarantine the 13 states in which Varroa mite infestations have been found and restrict the interstate movement of regulated articles from quarantined areas. (Effective April 27, 1988, the quarantined areas in two of these states, Mississippi and Washington, were reduced to include only specified parts of these states rather than the entire states (53 FR 15854-15856, May 3, 1988).)

Regulated articles include, among other things, live honeybees, combs with brood cells, and hives and the hive equipment, storage and shipping containers, and vehicles used in apiaries. With very limited exceptions (§§ 301.92-4 (b) and (c)), a regulated article may be moved interstate from a quarantined area only if a certificate, for a regulated article other than a hive, or a limited permit, for a hive, is issued in accordance with § 301.92-5 by an inspector or a "complier" (a person who has entered into a compliance agreement with Plant Protection and Quarantine in which that person agrees to comply with the regulations) (§ 301.92-4(a)). Under § 301.92-5, an inspector or a complier may only issue a certificate or a limited permit upon determining that the regulated article has been treated in accordance with § 301.92-10, which requires fluvalinate treatments for queen honeybee cages, packaged honeybees, and hives, and the application of steam to the surface areas of other regulated articles.

When we developed the interim rule, we believed that a regulatory program based on issuance of certificates and limited permits for interstate movements of treated regulated articles would be effective in containing the interstate spread of Varroa mites without needlessly preventing honeybees and other regulated articles from being moved out of quarantined areas. However, since that time we have received information from APHIS personnel administering the interim rule, state governments, beekeepers, growers, and researchers that has caused us to conclude that the regulatory program established by the interim rule is not the appropriate mechanism for achieving this goal. Instead we have determined that by rescinding the Varroa mite interim rule and working with state governments and with beekeepers and other affected persons, we are more likely to prevent the serious economic losses in the agricultural sector that could result if adequate honeybee populations are not available on a timely basis. The reasons for this action are discussed below.

State Needs and Nature of Affected Persons

There is great variety in the roles honeybees play in the agricultural economy of various states. Some states have large and relatively stable populations of commercial honeybees maintained year-round for honey production, with little commercial movement of honeybees to and from the state. In some states, large numbers of honeybees are brought in for short periods each year for the purpose of pollinating crops. Some states maintain large numbers of hives that are shipped to other states for pollination purposes during spring. Large numbers of beehives are shipped to several southern states each winter from states where honeybees could not survive the winter.

The role honeybees play in the agriculture of a state, and particularly the type and number of honeybee movements to and from the state, determines the nature and scope of any risk the state faces from Varroa mite infestation and the procedures best suited for controlling potential harm to agricultural production as a result of Varroa mite in that state. The uniform federal regulatory program established by the Varroa mite interim rule is not responsive to these differences between states and can supersede attempts by state governments to tailor regulatory controls to meet their needs. We believe that it is limiting the policymaking discretion of the states to deal with a problem for which uniform federal requirements are proving to be inappropriate.

The beekeeping industry is an unusual sector of the agricultural economy, due in part to the commercial movement patterns of beehives and packaged bees. The movement of beehives presents the greatest risk of spreading Varroa mite, followed by movement of packaged honeybees. (The majority of honeybees moved interstate are in hives and, as indicated in the Varroa mite interim rule (53 FR 11827), research has not confirmed 100 percent effectiveness of treatment of hives. Thousands of honeybees are also moved in packages and, as indicated below, the material required to treat packaged bees is not available.) A beehive may be moved interstate several times a year, with short stays in some states and longer stays in other states, for reasons relating to honey production, pollination, and survival of the bees through the winter season.

Depending on the states involved, the Varroa mite interim rule could require issuance of a limited permit, based on treatment, prior to each of these interstate movements. Treating a beehive takes 21 days, which is longer than most beehives are scheduled to stay in a state where they are moved for pollination purposes. Also, each treatment disrupts normal hive operations, which may reduce honey production and may cause the bees in the hive to swarm and leave the hive.

Survey Data on Presence of Varroa Mites

A regulatory program to prevent the interstate spread of Varroa mites requires that accurate and complete surveys be conducted to identify areas in which Varroa mites are present. When we developed the interim rule, we anticipated that adequate resources to conduct the necessary surveys would be available during the initial implementation period. However, the necessary resources have not been available, in part because APHIS and state personnel must devote a significant portion of their time to carrying out provisions of the interim rule, as explained below. Therefore, accurate and complete surveys have not been conducted in many states, and APHIS does not currently have sufficient information to identify all states or areas in which Varroa mites are present.

Limited APHIS and State Resources

APHIS and state resources are not sufficient to fully administer the requirements of the Varroa mite interim rule. As described above, the commercial movement patterns of beehives are such that they frequently are moved interstate several times a year. The mechanism the Varroa mite interim rule provides for regulation of interstate movement, relying as it does on issuance of certificates and limited permits based on treatment, is more suited to agricultural products that are only moved interstate once or infrequently. In particular, the limited permit procedure has proven to be inappropriate for movements of hives with honeybees from a southern state through multiple northeastern states in succession, with a one- to two-week stay in each state, followed by movement to a second southern state. This is a realistic pattern of movement for many beehives, especially during the spring season. Notwithstanding compliance agreements which allow persons other than inspectors to issue certificates and limited permits, this represents a huge commitment of the services of inspectors, due to the hundreds of thousands of hives and other regulated articles that move interstate. Also, the majority of movements occur during short periods in the spring and fall, rather than evenly throughout the year, and this intensifies the demand for inspector services at these times beyond the limits of APHIS and state resources.

Moreover, we have concluded that the APHIS and state resources which are available can be more effectively expended on other approaches to Varroa mite control. State resources may be better expended on the application of Varroa mite controls that are tailored to the honeybee movement needs and patterns of the particular state, and APHIS resources may be better expended to coordinate state and industry containment activities.

Problems with Treatment for Packaged Honeybees

Another problem that has developed since issuance of the Varroa mite interim rule is the lack of adequate materials for performing certain treatments required by the rule. In particular, the manufacturer of the 2½ percent fluvalinate strips required for treatment of packaged honeybees has not yet placed these strips on the market and apparently will not be able to do so in the near future. Nor is there any alternative source of these strips. Lack of these fluvalinate strips has made it impossible to comply with the requirement for treatment of packaged honeybees prior to interstate movement from quarantined areas. The result is an

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incentive to ship honeybees without any controls because beekeepers cannot meet the federal requirements; whereas if the Varroa mite interim rule is revoked, they could be moved under alternative state controls that would provide some protection against spread of Varroa mite. In addition, recent test results have prompted the Agricultural Research Service to question its recommendation of fluvalinate as an effective treatment for certification of packaged honeybees as free of Varroa mite.

Summary

In summary, we have determined that the requirements of the Varroa mite interim rule are counterproductive because it may result in serious losses through reduced crop and honey yields—the very damage that this regulatory program was designed to prevent. We have also determined that in view of the time frames and other agricultural practices involved in the utilization of migratory honeybees, the Varroa mite interm rule is not appropriate or workable. Therefore, we are amending 7 CFR Part 301 by removing "Subpart—Varroa Mite", §§ 301.92 through 301.92–10.

Interim Rule

The Administrator of the Animal and Plant Health Inspection Service determined that an emergency situation existed and, therefore, quarantined 13 states and restricted the interstate movement of regulated articles from quarantined areas, without prior notice and opportunity for public comment, based on the presence of Varroa mites in those states (i.e., infestations) in order to contain the interstate spread of Varroa mite infestation to states which have not been found to be infested. As discussed above, this regulatory program has not proven to be an effective and enforceable approach to addressing the problem that prompted its establishment. Moreover, issuing a proposal to rescind the Varroa mite interim rule of April 6, 1988, would delay final action until well past spring, the period during which interstate movement of hives for crop pollination is greatest, and present a continuing incentive for noncompliance, with attendant harm to agriculture and dislocations in the marketplace and in government programs.

For these reasons and because this rule relieves regulatory restrictions, we find that giving advance notice and public procedure is impracticable, contrary to the public interest, and unnecessary. Therefore, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

An emergency situation has made it impracticable for the Animal and Plant Health Inspection Service to follow the procedures of Executive Order 12291 for this interim rule and also has made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. We need to take immediate action to rescind the Varroa mite interim rule so that APHIS and state resources can be employed in other, more productive efforts to contain the spread of Varroa mite. If we determine that rescinding the Varroa mite interim rule has a significant economic impact on a substantial number of small entities, we will issue a Final Regulatory Impact Analysis pursuant to section 604 of the Act.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Varroa mite.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167, and 2260; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.92—301.92–10 (Subpart) [Removed]

2. Part 301 is amended by removing "Subpart—Varroa Mite", §§ 301.92 through 301.92–10.

Done in Washington, DC, this 6th day of May, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–10405 Filed 5–9–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 319

[Docket No. 88–024]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the fruits and vegetables regulations by removing provisions that allowed mangoes to be fumigated with ethylene dibromide as a condition-of-entry treatment before being imported into the United States. Because of action taken by the Environmental Protection Agency, ethylene dibromide may no longer be used to treat mangoes.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. F.E. Cooper, Senior Operations Officer, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8248.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56, entitled "Subpart—Fruits and Vegetables" (and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

In an interim rule published in the **Federal Register** and effective December 14, 1987 (52 FR 47372–47373, Docket Number 87–141), we amended the regulations by removing provisions in §§ 319.56–2h and 319.56–2i that allowed mangoes to be fumigated with ethylene dibromide as a condition-of-entry treatment before being imported into the United States. This was done because the Environmental Protection Agency banned ethylene dibromide as a condition-of-entry treatment for mangoes imported into the United States.

We did not receive any comments, which were required to be postmarked or received on or before February 12, 1988. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This document merely reflects that because of action taken by the Environmental Protection Agency, ethylene dibromide may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States. For this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 319 and that was published at 52 FR 47372–47373 on December 14, 1987.

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 4th day of May 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–10380 Filed 5–9–88; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 24; Doc. No. 55728]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by clarifying the intent of FCIC with respect to not insuring any acreage upon which a second crop is harvested within the same crop year. The intent of this rule is to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, producers infer that a restriction is imposed on insurance for the second crop.

DATES: *Effective date:* May 10, 1988.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than July 11, 1988, to be sure of consideration.

ADDRESS: Written comments should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, providing the regulations for insuring crops under the General Crop Insurance Policy.

Section 2.e.(9) of the General Crop Insurance Policy (7 CFR 401.8.2.e.(9)) provides that FCIC will not insure any acreage " " " "(O)f a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table."

The intent of this section was to disallow insurance on a second crop of the same crop from the same acreage within the same crop year because of lowered yields and other problems inherent in this type of farming, unless that practice was specifically permitted by the endorsement or the actuarial table. This type of double cropping is allowed on a limited number of certain crops.

The language in this section is perceived by some as not permitting (for example) grain sorghum following wheat on the same acreage in the same crop year, when this type of farming is an accepted and successful practice in the country. However, it is an accepted

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practice in certain sections of the country for a producer to plant two different crops on the same acreage within the same crop year especially in those areas where fall-planted crops are customary.

In order to clarify this section, FCIC has determined that the word "any" in the first line of this section should be removed and the words "the same" should be substituted therefor. This constitutes the only change necessary.

John Marshall, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without the customary public comment period before publication because crop insurance is presently being sold, and those who perceived this section as precluding insurance coverage on a second and different crop on the same acreage in the same crop year need to be advised that such insurance is permitted and available as quickly as possible.

Written comments are solicited by FCIC for 60 days following publication of this rule in the Federal Register. Written comments, data, and opinions on the rule should be sent to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All comments received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendment made necessary by public comment may be published in the Federal Register as quickly as possible.

List of Subjects in 7 CFR Part 400

Crop insurance, Reinsurance agreement, Standards for approval.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 400), effective for the 1988 and succeeding contract years, in the following instances:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 508, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401, General Crop Insurance Regulations, is amended in the policy in § 401.8(d) under "Terms and Conditions" by revising paragraph 2.e.(9) to read as follows:

* * * * *

§ 401.8 The application and policy.

* * * * *

2. Crop acreage, and share insured.

* * * * *

e. We do not insure any acreage:

* * * * *

(9) Of a second crop following the same crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table;

* * * * *

Done in Washington, DC, on May 2, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-10276 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-08-M

Office of Inspector General

7 CFR Part 2620

Availability of Information to the Public

AGENCY: Office of Inspector General, USDA.

ACTION: Final rule.

SUMMARY: The Office of Inspector General amends its regulations relating to the availability of information to the public to reflect revisions in the Department of Agriculture's regulations (7 CFR Part 1) implementing the Freedom of Information Act. Revisions to those regulations are the result of public and other comments and are intended to clarify the guidelines for assisting the public in obtaining access to Department records and for accessing fees. The Department's revised regulations were published in the Federal Register on December 31, 1987, at 52 FR 49383.

EFFECTIVE DATE: May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, U.S. Department of Agriculture, Washington DC 20250 (202-447-6915).

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are unnecessary and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined in Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2620

Freedom of Information.

Accordingly, Part 2620 is revised as follows:

PART 2620—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2620.1 General statement.
2620.2 Public inspection and copying.
2620.3 Requests.
2620.4 Denials.
2620.5 Appeals.

Authority: 5 U.S.C. 301 and 552, 5 U.S.C. app.

§ 2620.1 General statement.

This part is issued in accordance with, and subject to, the regulations of the Secretary of Agriculture § 1.1 through § 1.23 (and Appendix A thereto) of this title, implementing the Freedom of Information Act, 5 U.S.C. 552, and governs the availability of records of the Office of Inspector General (OIG) to the public upon request.

§ 2620.2 Public inspection and copying.

5 U.S.C. 522(a)(2) requires that certain materials be made available for public inspection and copying, and that a current index of these materials be published quarterly or otherwise made available. OIG does not maintain any materials within the scope of these requirements.

§ 2620.3 Requests.

(a) Requests for OIG records should be in writing in accordance with § 1.6(a) of this title and addressed to the Assistant Inspector General for Administration (AIG/AD), Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250. The above official is hereby delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

(b) Requests should be reasonably specific in identifying the record requested and should include the name, address, and telephone number of the requester.

(c) Available records may be inspected and copied in the office of the AIG/AD, from 8:00 a.m. to 4:30 p.m., local time on regular working days or may be obtained by mail. Copies will be provided upon payment of applicable fees, unless waived or reduced, in accordance with the Department's fee schedule as set forth in Appendix A to Part 1 of this title.

§ 2620.4 Denials.

If the AIG/AD determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the AIG/AD shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 2620.5 Appeals.

The denial of a requested record may be appealed in accordance with § 1.6(e) of this title. Appeals shall be addressed to the Inspector General, U.S. Department of Agriculture, Washington, DC 20250. The Inspector General will give prompt notice of the determination concerning an appeal in accordance with § 1.8(d) of this title.

Robert W. Bouley,

Inspector General.

Date: April 29, 1988.

[FR Doc. 88-10302 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-23-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of May, June, and July, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357-8500.

Order of the Director, OPPR

Issued April 29, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the begining of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of May, June, and July, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February, 1988 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by inserting the maximum lawful prices for May, June, and July, 1988, in Tables I and II as follows:

TABLE I.—NATURAL GAS CEILING PRICES

[Other Than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in— May 1988	June 1988	July 1988
B	102	New natural gas, certain OCS Gas [1]	$4.872	$4.898	$4.924
C	103(b)(1)	New onshore production wells [2]	3.283	3.290	3.297
E	105(b)(3)	Intrastate existing contracts	4.722	4.743	4.765
F	106(b), 1(B)	Alternative maximum lawful price for certain intrastate rollover gas [3]	1.677	1.681	1.685
G	107(c)(5)	Gas produced from tight formations stripper gas	6.566	6.580	6.594
H	108	Stripper gas	5.217	5.245	5.273
I	109	Not otherwise covered [4]	2.719	2.725	2.731

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas in the lesser of the negotiated contract price of 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

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TABLE II—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in— May 1988	June 1988	July 1988
Post-1974 gas	All producers	$2.719	$2.725	$2.731
1973–1974 Biennium gas	Small producer	2.296	2.301	2.306
	Large producer	1.757	1.761	1.765
Interstate Rollover gas	All producers	1.008	1.010	1.012
Replacement contract gas or recompletion gas	Small producer	1.289	1.292	1.295
	Large producer	.989	.991	.993
Flowing gas	Small producer	.854	.855	.856
	Large producer	.551	.552	.553
Certain Permian Basin gas	Small producer	.768	.770	.772
	Large producer	.880	.881	.882
Certain Rocky Mountain gas	Small producer	.768	.770	.772
	Large producer	.854	.855	.856
Certain Appalachian Basin gas	North subarea contracts dated after 10–7–69.	.620	.621	.622
	Other contracts	.575	.576	.577
Minimum rate gas [1]	All producers	.341	.342	.343

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBTu.

3. Section 271.102(c) is amended by inserting the inflation adjustment for the months of May, June, and July, 1988, in Table III as follows:

§ 271.102 [Amended]

* * * * *

(c) * * *

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1988	Factor by which price in preceding month is multiplied
May	1.00214
June	1.00214
July	1.00214

[FR Doc. 88–10162 Filed 5–9–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Adjustment of Recovery—Excess Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these regulations, we are implementing section 2613 of Pub. L. 98–369, the Deficit Reduction Act of 1984, which amended section 1631(b) of the Social Security Act (the Act) by providing that if any overpayment to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable resource limits specified in section 1611(a) of the Act by $50.00 or less, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment and no adjustment or recovery shall be made, unless such individual (and spouse if any) knowingly and willfully failed to report the value of the resources accurately and timely. Section 2613 was effective October 1, 1984.

EFFECTIVE DATE: These rules are effective May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dadar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 594–7458.

SUPPLEMENTARY INFORMATION: Section 1631(b)(1) of the Act specifies that when more than the correct amount of supplemental security income (SSI) benefits has been paid with respect to any individual, proper adjustment or recovery shall be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his or her eligible spouse (or by recovery from the estate of either). This section also mandates that the Secretary shall make such provision as is appropriate for waiver of overpayments.

Present regulations implementing section 1631(b)(1) permit waiver of recovery of an overpayment, but only if the requirements of § 416.550 (Waiver of adjustment or recovery—when applicable) are met. Section 416.550 requires a determination that:

(a) The overpaid individual was without fault in connection with an overpayment, and

(b) Adjustment or recovery of such overpayment would either:

(1) Defeat the purpose of title XVI, or

(2) Be against equity or good conscience, or

(3) Impede efficient or effective administration of title XVI due to the small amount involved.

Section 2613 of Pub. L. 98–369, enacted July 18, 1984 and effective October 1, 1984, amends section 1631(b) of the Act by providing that if any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by the individual (and spouse if any), of resources having a value which exceeds the applicable dollar figure specified in section 1611(a) of the Act by $50.00 or less, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made, unless the Secretary determines that the failure of such individual (and spouse if any) to report the value of his/her resources accurately and timely was knowing and willful.

For purposes of this final rule "ownership or possession of resources" would include any resources deemed to the individual in accordance with 20 CFR 416.1202. The purpose of this statutory provision is to waive recovery of overpayments resulting from small, inadvertent excesses in resources. It is consistent with the legislative purpose to apply the provision to resources deemed to the claimant. When resources are "deemed", the claimant is in effect, considered to possess them for eligibility purposes, and suffers the same adverse consequences if they rise slightly over the limit.

We will consider the failure to report to be knowing and willful and the overpaid recipient therefore to be at fault if the evidence clearly shows that the overpaid recipient was fully aware of the requirements of the law and of the excess resources and chose to conceal them. A finding of fault will preclude application of the waiver. Generally, we will consider the recipient to be at fault if he/she is overpaid because of excess resources of $50 or less more than once.

This final rule adds a new § 416.556 to incorporate the statutory requirements of section 2613 of Pub. L. 98–369.

This final rule also revises §§ 416.550(b)(2) and 416.554 to reflect a technical correction in the statutory language made by section 2663(g)(11)(A) of Pub. L. 98–369. This technical correction revised the phrase in section 1631(b)(1) of the Act—"equity or good conscience" to "equity and good conscience." This technical change does not change the way we apply this waiver rule.

Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 51 FR 26026 on July 18, 1986. We received a total of 11 comments. Two comments endorsed the proposed rules but took issue with a matter not pertinent to the NPRM. The other nine comments objected to the definition of "willful and knowing" in the proposed § 416.556(b) (1) and (2). Several comments also noted exception to the proposed rule in § 416.556(b)(3) that an individual will be found to be at fault if the individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the overpayment.

After careful consideration, we have revised the definition of "willful and knowing" in § 416.556(b) and have removed the phrase "should have known." We have also revised the rule formerly proposed for § 416.556(b)(3) which now provides that an individual will generally be found to be at fault when the evidence shows the individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment. Such a situation would occur when adjustment or recovery was waived under the section 2613 provision and the individual subsequently incurred another overpayment due to resources that exceed the limit by $50 or less. The legislative history of section 2613 of Pub. L. 98–369, H. Rep. No. 98–861, 98th Cong., 2d Sess. 1388, 1390 (1984), could be interpreted to indicate that an individual should not benefit from section 2613 in more than one instance. However, the statute does not automatically limit its applicability to the first overpayment. Therefore, while we expect that in most cases the application of the waiver to subsequent overpayments will be limited because we will clearly explain the individual's reporting responsibility and consequences of not reporting at the time of the first overpayment, this regulation does allow for some situations where a waiver could be granted more than once. In determining whether we will waive adjustment of recovery under this provision for subsequent overpayments, we will consider all aspects of the case. We have modified the rule in response to the comments to make this clear.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. The cost of implementing these regulations will be negligible. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: March 9, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 4, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart E of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g); sec. 12113(b) of Pub. L. 99–272, 100 Stat. 286.

2. In Part 416, Subpart E. § 416.550(b)(2) is revised to read as follows:

§ 416.550 Waiver of adjustment or recovery—when applicable.

* * * * *

(b) * * *

(2) Be against equity and good conscience, or

* * * * *

3. In Part 416, subpart E, § 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

Waiver of adjustment or recovery of an overpayment is proper when the person on whose behalf waiver is being considered is without fault, as defined in § 416.552, and adjustment or recovery would be against equity and good conscience. Adjustment or recovery is considered to be inequitable and contrary to good conscience when such person, in reliance on such payments or no notice that such payment would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's financial circumstances are not considered.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case recovery would be considered against equity and good conscience.

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid.

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Recovery would be considered against equity and good conscience.

4. In Part 416, Subpart E, a new § 416.556 is added to read as follows:

§ 416.556 Waiver of adjustment or recovery—countable resources in excess of the limits prescribed in § 416.1205 by $50 or less.

(a) If any overpayment with respect to an individual (or an individual and his or her spouse if any) is attributable solely to the ownership or possession by the individual (and spouse if any) of countable resources having a value which exceeds the applicable dollar figure specified in § 416.1205 by an amount of $50.00 or less, including those resources deemed to an individual in accordance with § 416.1202, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment, and waiver of adjustment or recovery will be made, unless the failure to report the value of the excess resources correctly and in a timely manner was willful and knowing.

(b) Failure to report the excess resources correctly and in a timely manner will be considered to be willful and knowing and the individual will be found to be at fault when the evidence clearly shows the individual (and spouse if any) was fully aware of the requirements of the law and of the excess resources and chose to conceal these resources. When an individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment, we will generally find the individual to be at fault. However, in determining whether the individual is at fault, we will consider all aspects of the current and prior overpayment situations, and where we determine the individual is not at fault, we will waive adjustment or recovery of the subsequent overpayment.

[FR Doc. 88-10353 Filed 5-9-88; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N-0060]

Eligibility for Classification of Food Substances as Generally Recognized as Safe

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to recognize that a substance that was used in food prior to 1958 can be shown to be generally recognized as safe (GRAS) through experience based on its common use in food outside, as well as in, the United States. This action responds to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for general recognition of safety to experience in the United States. This action also delineates the proof needed to establish that a substance is GRAS on the basis of its foreign use.

DATE: Effective June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, 1985 (50 FR 27294), FDA published a proposal to revise its procedural regulations to establish that a substance in use before 1958 may be eligible for GRAS status based upon its history of use in food outside of the United States. The agency proposed to revise the definitions of "common use in food" in § 170.3(f)) (21 CFR 170.3(f)) so that it would no longer stipulate that the history of consumption of the substance must have occurred only in the United States. The agency also proposed to add a new paragraph (c)(2) to § 170.30 that specifies the information that would be required to establish that a substance is GRAS based upon a history of common use in food when that use has occurred outside of the United States. Proposed § 170.30(c)(2) would require verification of the history of common use in food and sufficient information about the use to determine the context in which the use occurred and to establish that use of the substance is safe within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act). The proposed regulation also suggested that persons claiming GRAS status for a substance on the basis of its common use in food outside the United States obtain FDA concurrence that the substance is GRAS.

FDA also proposed to revise the procedures for GRAS affirmation petitions in § 170.35 to make clear that a request for GRAS affirmation may be based upon either scientific procedures or a history of common use in food. The regulation currently stipulates that the petition be based upon scientific procedures.

The proposal responded to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for a general recognition of safety to experience in the United States.

In § 170.3(f), the agency had defined "common use in food" to mean "a substantial history of consumption of a substance by a significant number of consumers in the United States." On September 15, 1983, however, the United States Court of Appeals for the Ninth Circuit declared § 170.3(f) to be invalid. *Fmali Herb, Inc.* v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983). The court ruled that by restricting "common use in food" to mean use only in the United States, FDA had imposed a restriction that did not comport with either the literal terms of the act or with the purpose of the common use in food exception, as articulated by the legislators (715 F.2d at 1390).

The agency initially provided 60 days for interested persons to submit written comments on the proposal, but in response to a request from a trade association, the agency extended the period for comment on the proposal for an additional 60 days to November 4, 1985 (50 FR 35571; September 3, 1985).

The agency received 16 comments in response to the proposed regulation. Three comments urged FDA to promulgate the regulation without modification. Two comments noted that the date "January 1, 1985," that appeared in the second colum of the **Federal Register** of July 2, 1985 (50 FR 27297) of the proposed rule should be changed to "January 1, 1958." The agency has already corrected this error in the **Federal Register** of July 16, 1985 (50 FR 29235). The remaining comments raised the issues that are discussed below.

II. Response to Comments

1. Seven comments objected to the word "solely" in the proposed wording of § 170.3(f), which read: "Common use in food means a substantial history of consumption of a substance solely for food use by a significant number of consumers." These comments stated that the word "solely" in the definition could be interpreted as not allowing GRAS status for food substances that have uses in addition to food uses. One comment stated that FDA is imposing a limitation that is not relevant. The comment stated that the only rationale FDA provided for this limitation is the statement in the preamble that "the information must demonstrate that the substance has in fact been used as a food ingredient and not as a drug, tonic, or folk remedy." Another comment added that in many parts of the world

there is no sharp distinction between the use of substance as a food and as a "folk remedy." It suggested that the definition should be: "Common use in food means a substantial history of concumption of a substance for food or other use by a significant number of consumers." Another comment agreed with this view and stated that "since FDA's concern is whether substances are safe, all safety data from whatever source should be examined."

The agency has reviewed these comments and believes that the respondents misinterpreted the agency's intent in including the work "solely" in the proposed definition of "common use in food." The agency does not intend to exclude from GRAS eligibility food substances that also have nonfood uses. However, GRAS determination based upon common use in food depends, by definition, upon food use. The agency used the words "solely for food use" to emphasize this important point. Sufficient data must exist that document the safe use of the substance in food. Data on the use of a substance as a drug, for example, cannot substitute for data on food use.

However, the agency recognizes that inclusion of the word "solely" in § 170.3(f) may cause confusion. Therefore, the agency has removed that word from § 170.3(f).

The agency still considers it necessary to emphasize the concept that eligibility for GRAS status through experience based on common use in food prior to January 1, 1958, must be based solely on use of the substance in food. Consequently, the agency has included language to this effect in new § 170.30(c)(1). Because this revision merely clarifies the agency's intent expressed in the proposal, further opportunity for comment is not necessary.

2. One comment requested modifications in the safety standards for food and food ingredients.

The agency advises that this issue is outside the scope of this rulemaking. The agency further advises that it has no authority to modify the safety standards that are prescribed by the act.

3. Six comments objected to the last sentence of proposed § 170.30(c)(2), which reads: "Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS." Five comments asserted that the requirement for FDA concurrence imposes more stringent requirements upon foods that are GRAS based upon foreign experience than upon those claimed to be GRAS based upon U.S. experience. Specifically, the comments asserted that: (a) Such stringent restrictions are not required by statute and exceed FDA authority; (b) products that are not food additives within the meaning of the act are exempt from premarket approval; (c) the requirement is not in agreement with the act or with the ruling of the court in Fmali Hert, Inc. v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983); and (d) FDA should reconsider its reasons for justifying the need for concurrence.

FDA has considered these comments and acknowledges that persons have the right to make independent GRAS determinations on food substances. Indeed, the preamble to the proposal stated that "persons normally are free to make their own determination about whether a substance is GRAS."

However, FDA is charged with the responsibility of protecting interstate commerce from adulterated foods. When a food substance is offered for import, FDA must judge whether that substance is adulterated on the basis of the information known about it. If, in advance of offering the substance for import, the importer has petitioned FDA and obtained agency concurrence that the substance is GRAS, the substance will enter the United States with little or no problem.

On the other hand, if the importer has failed to seek FDA concurrence that the use of the substance is GRAS, and if the substance has no history of use in the United States, the agency cannot simply assume that the substance is GRAS. Therefore, it has little choice but to find that the substance appears to be adulterated. Under section 801(a) of the act (21 U.S.C. 381(a)), FDA is authorized to detain articles that appear to be adulterated and to refuse admission to those articles.

A person whose product has been detained has a right to request a hearing to review the initial determination that the substance appears to be adulterated, and FDA will listen to relevant evidence presented at such a hearing. While the agency will consider the evidence on this question at the hearing, determinations on GRAS status are not usually the type of simple and straightforward decisions that are appropriately made in the context of a detention hearing. Therefore, it seems likely that such hearings will rarely result in a finding that a substance is GRAS.

Furthermore, detention hearings are high pressure situations in which a decision must be made as quickly as possible because the goods are either waiting on the docks or being held under bond. Thus, detention hearings are ill-suited to consideration of whether the use of a food ingredient is GRAS based on its history of use outside the United States.

Evidence on the effects of the use of a substance usually must be evaluated by FDA scientists trained in such disciplines as toxicology, chemistry, and epidemiology before the agency can make a determination as to whether the history of use of the substance provides an assurance of safety. Thus, except in rare cases in which the evidence of pre-1958 use of a substance provides overwhelming evidence of its safety (e.g., when there was specific approval granted for its use before 1958 by a foreign government), questions about whether use of the substance is GRAS are likely to remain unresolved at the detention hearing. If such questions persist, the hearing officer will likely affirm the finding that the substance appears to be an unapproved, and therefore unsafe, food additive.

For these reasons, prudence suggests that an importer who has made an independent determination that a substance is GRAS on the basis of its history of use outside the United States seek FDA concurrence in that judgment, by means of a GRAS affirmation petition, before seeking to bring the product into this country. The last sentence in § 170.30(c)(2) incorporates this suggestion into FDA's regulations. It does not require that such concurrence be obtained, establish a premarket approval requirement, or establish more stringent requirements for foods that allegedly are GRAS based on foreign experience than for those that allegedly are GRAS based on experience in the United States. It merely reflects the fact that, to protect the safety of the food supply, section 801(a) of the act requires that FDA deny entry into this country to foods that even appear to be adulterated, and that it is to the advantage of the importer to have questions about possible adulteration resolved before the food is offered for entry.

Finally, the last sentence in § 170.30(c)(2) is fully consistent with *Fmali Herb, Inc.* v. *Heckler*. That decision states that FDA cannot refuse to consider evidence of safety based on use of a substance outside the United States before 1958. The last sentence in § 170.30(c)(2) does not purport to do so. The agency is fully prepared to consider such evidence. The sentence in question makes clear, however, that the agency prefers to be given such evidence before a product is offered for import and in a context other than a detention hearing.

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For the foregoing reasons, FDA has not made any changes in the last sentence in § 170.30(c)(2) in response to the comments.

4. One comment contended that FDA should not deny an exemption from premarket approval simply because information supporting the safety of a substance is not readily available in this country, and that FDA's ability to obtain data is no reflection upon the validity of data.

Given its long history of regulating the food supply in the United States, FDA generally has some information relating to the safety of substances used in food in the United States. The same is not necessarily true for substances used in foreign countries. FDA's ability to obtain comparable information on the use of substances in foreign countries may be no reflection on the validity of the information, but it does affect the agency's ability, and the ability of qualified experts in this country, to assess the safety of the food substance.

5. One comment noted that in deciding whether to allow imports into the United States the agency is not entitled to create legal requirements (i.e., the imports are on an FDA approved substances list) because it is convenient to have a list of approved substances.

It is to the advantage of an importer to have the substances of its product on an FDA-approved list, which would occur if FDA concurred in the GRAS determination. This listing would eliminate delays and uncertainties regarding the food product's entry into the United States. However, FDA has not created any legal requirements to this effect.

6. Three comments stated that a requirement for FDA concurrence would have a catastrophic economic impact upon importers.

The agency does not agree with the assertion that a requirement for FDA concurrence in a foreign determination of GRAS would have a catastrophic economic impact upon importers. This rule serves to open U.S. markets to products not previously sold in this country. Any expense associated with the submission of a petition seeking FDA concurrence should be minimal because an individual or firm making an independent GRAS determination should already have the information needed to support a general recongnition of safety.

Due to these considerations, the agency has not modified its regulation in response to these comments.

7. One comment was concerned that FDA might exclude data on foreign usage after January 1, 1958, in making GRAS determinations.

The agency emphasizes that it regulates substances used outside of the United States after 1958 in the same manner as those used in the United States after 1958. The act allows substances that were used in food prior to January 1, 1958, to be GRAS either through experience based on common use in food or through scientific procedures (21 U.S.C. 321(s) and 21 CFR 170.30(a)). All substances first used in food after this date can be GRAS only on the basis of scientific procedures (21 CFR 170.30(b)).

8. Two comments recommended that the GRAS provisions on animal food substances also be revised to be consistent with the *Fmali* court decision.

The agency agrees that the court decision affects the GRAS provisions on animal food substances and has decided to initiate a rulemaking for the GRAS provisions on animal food substances. A notice of proposed rulemaking will be published in a future issue of the **Federal Register**.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (July 2, 1985; 50 FR 27294 at 27296). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency previously considered the potential economic effects of this rule including its potential effect on small entities, including small businesses. In accordance with Executive Order 12291 and section 605(b) of the Regulatory Flexibility Act, the agency has determined that this rule would not be a major rule, and that no significant impact on a substantial number of small entities would derive from this action. As previously mentioned, the agency received three comments that claimed that this rule would have adverse economic effects on businesses. However, the agency did not receive any new information upon which to base a reconsideration of its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment that was prepared in conjunction with the notice of proposed rulemaking and which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

V. Paperwork Reduction Requirements

Section 170.35(c)(i) of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0132.

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 170 is amended as follows:

PART 170—FOOD ADDITIVES

1. The authority citation for 21 CFR Part 170 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a) (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.10.

2. Section 170.3 is amended by revising paragraph (f) to read as follows:

§ 170.3 Definitions.

* * * * *

(f) "Common use in food" means a substantial history of consumption of a substance for food use by a significant number of consumers.

* * * * *

3. Section 170.30 is amended by redesignating paragraph (c) as paragraph (c)(1), by revising the second sentence in paragraph (c)(1), and by adding a new paragraph (c)(2) to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c)(1) * * * General recognition of safety through experience based on common use in food prior to January 1, 1958, shall be based solely on food use of the substance prior to January 1, 1958, and shall ordinarily be based upon generally available data and information. * * *

(2) A substance used in food prior to January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the use of the substance

is safe within the meaning of the act (see § 170.3(i)). Common use in food prior to January 1, 1958, that occurred outside of the United States shall be documented by published or other information and shall be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in this country. Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS.

* * * * *

4. Section 170.35 is amended by revising the introductory text of paragraph (c)(1), and by adding a parenthetical phrase at the end of the section to read as follows:

§ 170.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided in § 170.30(e), except those subject to the NAS/NRC GRAS list survey (36 FR 20546; October 23, 1971), shall submit a petition for GRAS affirmation pursuant to Part 10 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 170.30 (b) or (c) have been met, in the following form:

* * * * *

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0132.)

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10314 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDS-87-063]

Drawbridge Operation Regulations; Pocomoke River, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the requests of the Maryland Department of Transportation and Conrail, the Coast Guard is changing the regulations governing the operation of the Route 675 highway drawbridge across the Pocomoke River, mile 15.6, and adding new regulations for the railroad swing bridge across the Pocomoke River, mile 15.2, at Pocomoke City, Maryland. This action will require five hours advance notice for bridge openings from November 1 to March 31.

EFFECTIVE DATE: These regulations become effective on June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On August 18, 1987, the Coast Guard issued a notice of proposed rulemaking concerning this amendment, which was published in the **Federal Register** on September 4, 1987 (52 FR 34686). Interested persons were given until October 29, 1987, to submit comments on the proposed rule.

The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on November 9, 1987, which gave interested persons until December 18, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Rule and Comments

The notice of proposed rulemaking would have required vessels to give five hours advance notice for openings between October 1 to March 31 for openings of the railroad swing bridge at mile 15.2 and the Route 675 drawbridge at mile 15.6 across the Pocomoke River. The proposal was intended to eliminate the need to have individuals constantly available to open the draws during a time of year when few vessels transit the river. After the notice of proposed rulemaking was issued, a letter was received from the Mayor of Pocomoke City, dated August 31, 1987. The mayor requested that the proposal be changed to require the Conrail bridge to open on signal from March 1 through October 31. The mayor also stated a general preference for having the bridge open on signal throughout the year.

In addition, in September, 1987, a member of the Fifth Coast Guard District bridge staff was contacted by the DELMARVA Water Transport Committee (DWTC), who stated that they had discussed the issue of manning the bridge during March and October with Conrail. They reported that Conrail did not believe it was feasible to keep the bridge manned during March, but that Conrail had agreed to leave the railroad bridge manned through the month of October. DWTC, therefore, requested that the proposal be changed to require the bridge to open on signal during a seven month period (April 1 through October 31), rather than the six month period published in the notice of proposed rulemaking (April 1 through September 30).

A member of the Fifth Coast Guard District bridge staff then contacted both Conrail and the Maryland State Highway Administration to obtain their views on the subject. Conrail stated that they had no objections to manning the bridges during the month of October, but they insisted that there was insufficient traffic to keep the bridge manned during the month of March. They requested that they be permitted to only open the draw on five hours notice during March.

On March 18, 1988, the Maryland Department of Transportation stated that they had no objections to the changes proposed by the City for the Route 675 bridge at mile 15.6. No comments were received in response to the notice of proposed rulemaking published in the **Federal Register**. Only two comments were received as a result of the public notice. One, from a private citizen, favored the proposed regulations. The other, from the U.S. Environmental Protection Agency, Philadelphia, Pennsylvania, stated they had no comments regarding the proposed regulation.

Based on the discussions with Conrail, DWTC, and the Maryland State Highway Administration, we have determined that there is a need to maintain the unrestricted openings of the draws from April 1 through October 31, in order to provide for the reasonable needs of navigation. Therefore, the rule that was originally proposed has been amended to extend the open period from September 30 to October 31.

Good cause exists to issue this final rule without an additional notice of proposed rulemaking, since all the affected interests have been afforded an opportunity to comment on the proposed change and have made their positions known to the Coast Guard. Publication of an additional notice of proposed rulemaking or other public procedures are unnecessary.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and

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procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authorty citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05-01(g).

2. Section 117.569 is revised to read as follows:

§ 117.569 Pocomoke River.

(a) The Conrail railroad bridge, mile 15.2, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(b) The draw of the Route 675 bridge, mile 15.6, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(c) The draw of the S12 bridge, mile 29.9, at Snow Hill, shall open on signal if at least five hours advance notice is given.

Dated: April 27, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 88-10286 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

Land Uses and Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule would revise the existing regulations governing special uses of National Forest System lands and resources to remove ambiguities regarding First Amendment rights of assembly and free speech within the National Forest System.

DATE: This rule effective May 10, 1988. Comments must be received in writing by July 11, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this interim rule in the Office of the Director, Recreation Management Staff, Room 4225, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: W.T. Svensen Recreation Staff, (202) 382-9407.

SUPPLEMENTARY INFORMATION: The rules at 36 CFR Part 251, Subpart B, govern the authorization of all uses of National Forest System lands, improvements, and resources, except the disposal of timber (Part 223) and minerals (Part 228) and the grazing of livestock (Part 222).

The existing rule establishes two types of group events, differentiating between recreation events and special events, both of which involve groups of 10 or more participants and/or spectators. The existing rule also contains different standards for the denial of special use authorizations for each type of group event. A Federal District Court recently held that it is unconstitutional to require a group to obtain a special use authorization simply because they gather to exercise their constitutional right of free speech. The Court explained that the Forest Service has every right to regulate large group use of government land, but only if the regulation is content-neutral and applies to all large groups. *United States v. Israel*, No. CR-86-027-TUC-RMB (May 10, 1988).

In response, the Department is revising 36 CFR 251.50 through .54 to refine the definitions of special uses, eliminate the terms "recreation event" and "special event", to add a new term "group event", and to add proper safeguards for protecting all First Amendment activities.

Paragraph (c) of § 251.50 is being revised to more clearly articulate that a special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for most recreational activities, unless authorization of such use is required by an order issued pursuant to 36 CFR 261.50, or required by a regulation issued pursuant to 36 CFR 261.70, or unless the use is for a group event. The major change in this paragraph is that special use authorizations are required for all organized or publicized events involving groups of 25 or more persons. The interim rule classifies every organized or publicized group of 25 or more persons as a "group event" irrespective of the purpose of the gathering.

Section 251.51 of the existing rule contains definitions used in Part 251, Subpart B. The interim rule removes the terms and definitions for "recreation event" and "special event", which will no longer be used in this Subpart, and adds new terms and definitions for "group event", "distributing noncommercial printed material", and "noncommercial printed material". The term "group event" covers all organized or publicized gatherings of 25 or more people, and thus includes groups currently included in the "special events" or "recreation events" categories, as well as groups currently not subject to the special use authorization requirement. "Distributing noncommercial printed material" and "noncommercial printed material" are new terms which are defined in the interim rule. These terms and definitions are added to clarify that special use authorization for this First Amendment activity will be granted unless certain conditions specified in § 251.54 are not met.

Section 251.53 of the existing rule contains the authorities under which special use authorizations may be issued. In this interim rule, paragraph (a) is changed to reflect new terms which are now used in this subpart.

Existing § 251.54 prescribes procedures and requirements of special use applications. Paragraphs (h) and (i) of this section describe reasons that an authorized officer may deny special use applications. In the interim rule, existing paragraph (i) is redesignated as paragraph (h) and revised to provide that applications for a special use authorization for the distribution of noncommercial printed material or for a group event for the purpose of public expression of views shall be granted, unless the authorized officer determines that the planned event or use would conflict with another use which has been previously authorized, the planned event or use would present a clear and present danger to public health or safety, or the planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place

and time applied for considering such things as damage to resources or facilities, interference with ongoing resource program activities, or impairment of other public uses authorized for the area, or the application proposes activities that are prohibited by the rules at Part 261 of this chapter or that violate the provisions of Federal or State criminal law.

Existing paragraph (h) is redesignated as paragraph (i) and changes the introductory text to read that an authorized officer may deny issuance of an authorization for various reasons. These reasons are the same as those listed in the current rule in paragraph (h), with one exception. An authorized officer may now deny an authorization if there is no person or entity authorized to sign a special use authorization on behalf of the group, or if there is no person or entity willing to accept responsibility for the group's compliance with the terms and conditions of the authorization. This condition of denial will also apply to applications for all other special use authorizations. This requirement has been in the Forest Service Manual for some time, but inadvertently has not been incorporated in the rules. These changes are made to more clearly articulate that applications for authorization for the distribution of noncommercial printed material or for a group event for the public expression of views may only be denied for very limited and nondiscretionary reasons. It should be noted that applications for, and processing of, special use authorizations for all other types of group events are subject to the same rules applicable to all other special uses.

Existing § 251.62 defines acceptance of a special use authorization. In the interim rule, particular reference to term permits is removed, as a term permit is only one type of permit used to authorize special uses. The Forest Service also issues other permits, and these permits should also be subject to the rules of acceptance. In the interim rule, this section is also changed to show that refusal of an applicant to sign and accept a lease or a permit within the time allowed, and before its final approval and signature by an authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

In addition to the changes at 36 CFR Part 251, the interim rule makes corollary amendments to the rules at 36 CFR Part 261, Subpart A, which contain general prohibitions in effect on the National Forest System. The interim rule revises the authority citation for Part 261 to delete obsolete references and amends paragraph (g) of § 261.10 to make this paragraph consistent with the definition of "noncommercial printed material" as defined in 36 CFR 251.51.

With the changes in definitions and establishment of very limited circumstances under which an authorized officer can deny a special use authorization for the public expression of views, the Department believes it preserves the fundamental constitutional rights of speech and assembly while providing reasonable administrative mechanisms to control or prevent impacts on resources and public health and safety.

In accordance with exceptions to rulemaking procedures in 5 U.S.C. 533 and Department of Agriculture policy (36 FR 13804), it has been found and determined that advance notice and request for comments would be impracticable and contrary to the public interest. Because of the decision in *United States v. Israel*, the current rule pertaining to special use authorizations for large group gatherings on the National Forest System is unenforceable. The summer field season is close at hand, and large groups will soon be gathering on the National Forests. It is, therefore, imperative that an enforceable rule be in place so that forest officers have a mechanism, where necessary, to control the impacts of these groups and prevent unnecessary damage or risk to National Forest resources and facilities, and public health and safety. Written comments are invited on the interim rule and will be considered in promulgation of a final rule.

This interim rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this rule, since this action consists primarily of technical and administrative changes to the rule.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities because it imposes no record keeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and, it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects

36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, Title 36 Chapter II, of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

1. The authority citation for Subpart B continues to read:

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

Subpart B—Special Uses

2. In § 251.50, revise paragraph (c) to read as follows:

§ 251.50 Special uses.

* * * * *

(c) A special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreational activity, unless one or more of the following circumstances exists:

(1) Authorization of such use is required by an order issued pursuant to 36 CFR 261.50;

(2) Authorization of such use is required by a regulation issued pursuant to 36 CFR 261.70;

(3) The use is for a group event as defined in § 251.51 of this subpart.

* * * * *

3. At 36 CFR 251.51, remove the paragraph designations for each definition (a)-(n), remove the terms and

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definitions for "recreation event" and "special event", and add the following new terms and definitions in the appropriate alphabetical sequence:

§ 251.51 Definitions.

* * * * *

"Distributing noncommercial printed material"—disseminating, posting, placing, or erecting any notice, sign, handbill, petition, or other written and/or graphic material for noncommercial purposes.

* * * * *

"Group event"—an organized or publicized activity involving, or expected to attract, 25 or more persons and the use of National Forest System lands, resources, or facilities.

* * * * *

"Noncommercial printed material"—written and/or graphic material that does not advertise, offer, or otherwise attempt to buy, sell, or exchange a commodity, product, or service.

* * * * *

4. At § 251.53, revise paragraph (a) to read as follows:

§ 251.53 Authorities.

* * * * *

(a) Permits governing occupancy and use, including group events and distribution of noncommercial printed materials, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

* * * * *

5. In § 251.54, redesignate paragraphs (h) and (i) as (i) and (h) respectively, revise new paragraphs (h) and (i) introductory text, and add a new paragraph (i)(6) to read as follows:

§ 251.54 Special use applications.

* * * * *

(h) *Response to applications for the distribution of noncommercial printed material or for a group event for the public expression of views.* An authorized officer shall grant an application for authorization of distribution of noncommercial printed material or for a group event for the purposes of public expression of views, unless the officer determines that:

(1) The planned event or use would conflict with another use which has been previously approved by special use authorization, contract, or approved operating plan, under this part or Parts 222, 223, or 228 of this chapter; or

(2) The planned event or use would present a clear and present danger to public health or safety; or,

(3) The planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place and time applied for, considering such factors as damage to resources or facilities, interference with ongoing resource program activities, or impairment of other public uses authorized for the area; or

(4) The application proposes activities that are prohibited by the rules at Part 261 of this chapter or that violate the provisions of Federal or State criminal law.

(5) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is not person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

(i) *Response to applications for all other special uses.* An authorized officer may deny issuance of an authorization for all other special uses, including group events not subject to paragraph (h) of this section, if that officer determines that:

* * * * *

(6) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

6. Revise § 251.62 to read as follows:

§ 251.62 Acceptance.

Except for an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 60 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by an authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

PART 261—PROHIBITIONS

7. Revise the authority citation for Part 261 to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)–(d)(1)).

Subpart A—General Prohibitions

8. In § 261.10, revise paragraph (g) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic matter without a special use authorization.

* * * * *

Date: April 19, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-10316 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC-07-N]

Medicaid Program; Treatment of Social Security Cost of Living Increases for Individuals Who Lose SSI Eligibility

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notification.

SUMMARY: This document provides public notice that we did not seek further review of the court decision which ordered us to require States to deduct certain cost of living increases (COLAs) in Title II (Social Security) benefits in determining an individual's eligibility for coverage under what is commonly known as the Pickle Amendment. (Section 503 of Pub. L. 94-566, 42 U.S.C. 1396a (note).) These COLAs include the increases received by the individual or his or her financially responsible spouse or other family member (e.g., a parent) as specified in current regulation.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (301) 966-4457.

SUPPLEMENTARY INFORMATION: On April 10, 1986 we published in the **Federal Register** (51 FR 12325) a final rule that revised regulations to conform with a decision in *Lynch v. Rank*, 604 F. Supp. 30 (N.D. Cal. 1984), involving the Pickle amendment. That amendment provides that certain aged, blind, or disabled individuals who lost Supplemental Security Income (SSI) eligibility will be considered to be receiving SSI for purposes of Medicaid eligibility, if they would be eligible for SSI except for certain Title II COLAs which they have received. That regulation was published after notice and public comment. However, it included a change to paragraph (b) of 42 CFR 435.135, "Individuals who become ineligible for cash assistance as a result of OASDI cost-of-living increases received after April 1977". This change was dictated by the *Lynch* decision, which was on appeal at the time the regulation was published. The issue on appeal was the requirement that States deduct COLAs received by an ineligible spouse or other financially responsible relatives of the individual from the income attributed to the individual in determining the individual's eligibility for protection under the Pickle amendment. We disagreed with the District Court's order, and in the preamble to the rule advised the public that we would change the rule if we prevailed on appeal.

In *Lynch v. Dawson*, 830 F.2d 1014 (9th Cir. 1987), the Court of Appeals subsequently affirmed the District Court's order. We did not appeal this decision and therefore will not change the rule as adopted.

The regulation also contained two other changes which were not in the original rule and with respect to which we solicited comments. Although we received two comments in response to the final rule, neither of them dealt with the revised provisions to the regulation, and accordingly we are not responding to them.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: April 5, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-10241 Filed 5-9-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-501; RM-6051]

Radio Broadcasting Services; Old Forge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of George W. Kimble, allocates Channel 259A to Old Forge, New York, as the community's first local FM service. Channel 259A can be allocated to Old Forge in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) southwest to avoid a short-spacing to the construction permit of Station WGFB, Channel 260C, Plattsburgh, New York. The coordinates for this allotment are North Latitude 43-39-35 and West Longitude 75-03-29. Canadian concurrence has been received since Old Forge is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective June 13, 1988. The window period for filing applications will open on June 14, 1988, and close on July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-501, adopted April 7, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 3

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York, is amended by adding Old Forge, Channel 259A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10307 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-206; RM-5702]

Radio Broadcasting Services; Etowah and Jamestown, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C2 for Channel 276A at Etowah, Tennessee, and modifies the license of Station WVKS(FM) to specify operation on the higher class co-channel, at the request of Bvack Broadcasting, Inc., as that community's first wide coverage area FM service. This action also substitutes Channel 288A for Channel 276A at Jamestown, Tennessee and modifies the license of Station WCLC-FM at Jamestown, Tennessee. Channel 276C2 at Etowah requires a site restriction of 13.5 kilometers (8.4 miles) north of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-206, adopted April 6, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee by deleting Channel 276A and adding Channel 276C2 for Etowah; and deleting Channel 276A and adding Channel 288A for Jamestown.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10311 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-442; RM-4999 et al.]

Radio Broadcasting Services; Brenham, Round Rock, Austin, Caldwell, Belton, Killeen, Brownwood, West Lake Hills and Temple, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C2 to Round Rock, Texas, as that community's first local FM service, at the request of Round Rock Radio Group. Additionally, this action substitutes Channel 291C2 for Channel 292A at

Brenham, Texas, and Channel 282C2 for Channel 285A at Temple, Texas, at the request of Tom S. Whitehead, Inc. and KTEM Radio, Inc., respectively. The licenses of Stations KWHI(FM) at Brenham and KPLE(FM) at Temple are modified to reflect the higher class frequencies, providing both communities with a first wide coverage area FM station. Channel 290C2 at Round Rock requires a site restriction of 17.9 kilometers (11.1 miles) west of the city (30–24–05 and 97–51–09). Mexican concurrence has been obtained for the Round Rock allotment. A site restriction of 17.4 kilometers (10.8 miles) west of the community is required for Channel 291C2 at Brenham (30–11–24 and 96–34–19). The site for Channel 282C2 at Temple is restricted to 20.4 kilometers (12.7 miles) southwest of the city (30–56–56 and 97–28–17). This action further dismisses petitions of James Duff McClish, Sr. (RM–5069) for Round Rock, Texas; Call FM Radio (RM–5397) for Caldwell, Texas; and Alvin O. Kriegel, Jr., (RM–5420) for West Lake Hills, Texas; and denies the petitions of Grass Roots Radio (RM–5199) for Austin, Texas, and Heart of Texas Communications, Ltd. (RM–5497) for Belton, Texas. With this action, this proceeding is terminated.

DATES: Effective June 13, 1988. The window period for filing applications for Channel 290C2 at Round Rock, Texas, will open on June 14, 1988, and close on July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–442, RM–4999, –5069, –5199, –5397, –5497, –5498, –5420, and –5722, adopted March 30, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas by adding Channel 290C2 at Round Rock; by deleting Channel 292A and adding Channel 291C2 at Brenham; and deleting Channel 285A and adding Channel 282C2 at Temple.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10306 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 68)]

Revised Procedures for Obtaining Copies of Motor Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule, correction.

SUMMARY: This final rule was published on April 29, 1988 at 53 FR 15399. The name of the Commission-designated contractor should have been omitted from the rule. The purpose of this notice is to make that correction.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275–7292 or Richard B. Felder, (202) 275–7691. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Under the reivsed rule set forth below, a Commission-designated contracting agent—presently, Dynamic Concepts, Inc.—will process all requests for copies of applications in motor carrier, water carrier, property broker, and household goods freight forwarder licensing proceedings.

List of Subjects in 49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for 49 CFR Part 1160 continues to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

2. Part 1160 is amended by correctly revising § 1160.13 to read as follows:

§ 1160.13 Furnishing a copy of the application package to interested persons.

After publication, interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and must be accompanied by a check or money order for $10 made payable to such contract agent; or by contacting the contract agent at (202) 289–4357 [TDD for hearing impaired: (202) 275–1721] and arranging billing as acceptable to the agent.

[FR Doc. 88–10334 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing domestic fisheries to proceed without interruption.

DATES: May 5, 1988. Comments will be accepted through May 20, 1988.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catch (TAC) for various groundfish species are apportioned initially among DAH, reserves, and the total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(c) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of domestic annual processing (DAP) for 1988 were based on the projected needs of the U.S. processing industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in October 1987. After fifteen percent of the Bering Sea and Aleutian Islands (BSA) total allowable catch (TAC) for each target species was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements and the reserve equaled the optimum yield.

On January 14, JVP was supplemented by 804 mt of the non-specific reserve to provide necessary bycatch of Greenland turbot, Pacific ocean perch, rockfish, sablefish, and squid. On April 19, (53 FR 12772), JVP was supplemented by 24,000 mt of the nonspecific reserve to provide additional amounts of yellowfin sole, "other flatfish" and Pacific cod in order to allow joint venture operations to continue without interruption.

Reapportionment (Table 1)

The following actions are taken by this notice to reapportion groundfish from the non-specific reserve to BSA fisheries.

To the BSA JVP

In the Bering Sea, about sixty U.S. catcher boats delivering fish to about thirty foreign processors are conducting directed fisheries on pollock; another 40 U.S. catcher boats delivering fish to about 40 foreign processors are continuing directed fisheries on yellowfin sole and "other flatfish". At its April meeting, the Council voted to recommend to the Regional Director that 100,000 mt of the nonspecific reserve be transferred to the Bering Sea subarea JVP quota for pollock in order to facilitate planning of JVP operations and to allow them to continue without interruption.

The Regional Director has found, based on catch-to-date, and preliminary returns from the second, April 1988, DAP survey, that the DAP for Bering Sea subarea pollock will not require supplementation by 100,000 mt of pollock in 1988; therefore, that amount is transferred to JVP.

In order to provide necessary bycatch, the following amounts are transferred from the nonspecific reserve to JVP: 30 mt of Greenland turbot; 18,000 mt of "other flatfish"; 12,000 mt of Pacific cod; and 5,000 mt of "other species".

These apportionments do not result in overfishing of the Bering Sea pollock, Greenland turbot, Pacific cod or "other species" stocks, as in each case the resulting species TAC is less than its Acceptable Biological Catch (ABC).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or delay the effective date of this action. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 5, 1988.

Richard H. Schaefer,

Director, Office of Fishery Conservation and Management.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons.]

		Current	This action	Revised
Pollock (Bering Sea)	DAP	614,162		614,162
TAC = 1,300,000; ABC=1,500,000	JVP	490,838	+100,000	590,838
Greenland Turbot	DAP	9,520		9,520
TAC = 11,290; ABC=14,000	JVP	31	+30	61
Other Flatfish	DAP	26,403		26,403
TAC = 131,369; ABC=331,900	JVP	95,261	+18,000	113,261
Pacific cod	DAP	87,416		87,416
TAC=200,000; ABC=385,300	JVP	88,584	+12,000	100,584
Other Species	DAP	2,000		2,000
TAC=10,000; ABC=54,000	JVP	6,500	+5,000	11,500
TOTAL (TAC = 2,000,000)	DAP	792,520		792,520
	JVP	932,284	+135,030	1,067,314
Reserves		275,196	−135,030	140,166

[FR Doc. 88–10349 Filed 5–5–88; 4:14 pm]

BILLING CODE 3510–22–M

VOL 53 ISS 90 MY 10 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management proposes to amend its regulations concerning the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave. These regulations are being proposed as part of a continuing effort to simplify and deregulate the Federal personnel system.

DATES: Comments must be received on or before july 11, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James E. Matteson, (202) 632–5056.

SUPPLEMENTARY INFORMATION: The Federal Personnel Director's Productivity Task Force was charged with identifying regulations that inhibit effective human resources management and recommending appropriate remedies. One regulation identified by the Task Force is 5 CFR 630.305, which regulates the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave under 5 U.S.C. 6304. The proposed rule would remove this regulatory restriction and permit the head of an agency to designate the administrative level at which exigencies of the public business may be declared for this purpose.

The Office of Personnel Management (OPM) agrees that the existing limits on the delegation of approval authority require unnecessary levels of review. In proposing delegation of approval authority below the levels permitted by the current regulation (no more than two organizational levels below the head of the agency at its central headquarters level, or more than one organizational level below the head of a major field headquarters or major field installation), OPM does not intend any change in policy. Before approval at any level, all requests must continue to be reviewed carefully to ensure that the exigency cited is of major importance and that annual leave could not be used by the employee to avoid forfeiture.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend Part 630 of Title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under of E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–102.

2. Section 630.305 is revised to read as follows:

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[FR Doc. 88–10369 Filed 5–9–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 22; Doc. No. 4941S]

General Crop Insurance Regulations; Certified Seed Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.131, to be known as the Certified Seed Potato Option. The intended effect of this rule is to provide the regulations containing the provisions of the certified seed crop insurance protection on potatoes as an option to the proposed Northern Potato Endorsement (7 CFR 401.128).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 9, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the ecnomy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis as prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.131, the Certified Seed Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring certified seed.

Upon publication of 7 CFR 401.131 as a final rule, the provisions for insuring certified seed potatoes contained therein will be applicable to the Northern Potato Endorsement proposed to be issued as a separate document amending the General Crop Insurance provisions as 7 CFR 401.128. The provisions of the Certified Seed Potato Option contained herein do not supersede those provisions contained in 7 CFR Part 422, the Potato Crop Insurance Regulations, as they relate to potato crop insurance coverage in all other states.

The present Certified Seed Option contained in 7 CFR Part 422 will be maintained for all other states and counties wherein potato crop insurance is authorized to be offered.

Minor edjtorial changes have been made to improve compatibility with the proposed potato crop insurance endorsement. These changes do not affect meaning or intent of the provisions.

One additional change is proposed to the Certified Seed Potato Option; the rate paid for potatoes which, because of insurable causes fail to qualify as certified seed potatoes, is established as one dollar and fifty cents ($1.50) per cwt.

This increase in the dollar rate reflects changes in the market where the demand for table grades has dropped and demand for certified seed potatoes has risen, That dictates a wider spread between the basic return for table grades and that of certified seed potatoes.

Under the certified seed option, a grower producing certified seed may lose a portion of the crop because the seed potatoes fail to meet specifications. In that event, the insured producer now is paid $1.00 per cwt. for such failed seed potatoes, which are then sold at a lower price as table stock. The increase from $1.00 to $1.50 per cwt. represents a recognition of the loss suffered by the insured certified seed producer.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Certified Seed Potato Option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR § 401.131 Certified Seed Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.131 Certified Seed Potato Option.

The provisions of the Certified Seed Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Certified Seed Potato Option

Insured's Name _____
Address _____
_____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

When you submit this Option each crop year on or before the final date for accepting applications and we approve the Option, your insurable acreage of potatoes grown for certified seed will be insured, if:

1. You are currently insured under the Northern potato insurance program;
2. All potatoes which are grown for certified seed on insurable acreage are insured;
3. You are a person whose potatoes have qualified for entry into the Certified Seed program for the previous 3 years, (After initial approval, you will be exempt from this requirement provided you have discontinued participation in the program for not more than one crop year out of any three consecutive crop years);
4. You provide acceptable records of your certified seed potato acreage and production for at least the previous 3 years;
5. Potatoes for seed are not grown on the same land on which potatoes of the same variety as the seed potatoes have been grown more than 2 years out of the preceeding 4 years;
6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and
7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatoes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you one dollar and fifty cents ($1.50) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit.

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

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All provisions of the potato endorsement not in conflict with this amendment are applicable.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the ——— crop year will be ———.

Insured's Signature ———
Date ———

Corporation Representative's Signature and Code Number ———
Date ———

Field Actuarial Office Approval ———
Date ———

Done in Washington, DC on April 8, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-10275 Filed 5-9-88; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and To Order; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The decision on proposed amendments to the Upper Midwest milk marketing order, published in the Federal Register on Tuesday, May 3, 1988 (53 FR 15690) omitted certain material pertaining to the proposed amendatory language for 7 CFR Part 1068. The missing material, as indicated below, should have followed immediately after the signature of the Deputy Assistant Secretary for Marketing and Inspection Services, on page 15700 of the described Federal Register.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The following material was omitted from the decision on proposed amendments to the Upper Midwest milk order that was issued on April 27, 1988, and published in the Federal Register on May 3, 1988 (53 FR 15690). This missing material, as follows, should have appeared immediately after the signature of the Deputy Assistant Secretary for Marketing and Inspection Services, on page 15700.

Order Amending the Order Regulating the Handling of Milk In the Upper Midwest Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for CFR Part 1068 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 1068.7 Pool plant, amend paragraph (d) by revising (d)(3), revising and redesignating (d)(4) as (d)(5) and adding a new (d)(4), revising and redesignating (d)(5) as (d)(7) and replacing (d)(6), as follows:

§ 1068.7 Pool plant.

* * * * *

(d) * * *

(3) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than July 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for August and continue through the following July unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants during each of the months of August and December is 5 percent or more and during each of the months of September, October, and November is 8 percent or more of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant), subject to the following conditions:

(i) These shipping percentages may be decreased by up to five percentage points during the months of August and December, and by up to eight percentage points during the months of September, October and November, by the Director of the Dairy Division if he finds that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either on his own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, he shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(ii) A cooperative association that operates a reserve supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(5) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(A) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1068.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipments to another order plant may not be classified pursuant to § 1068.42(b)(3); and

(iii) Failure of a handler to compy with any announced shipping requirement pursuant to § 1068.7(d)(5), including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to § 1068.7(d). A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to § 1068.7(d) until the following August;

(6) In order to meet the requriements of paragraphs (d)(4) and (d)(5) of this section, two or more reserve supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which the plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of § 1068.7(d) (4) and (5). Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating reserve supply plant(s) for which the shipping percentages in § 1068.7(d)(4) are met as part of a unit described in § 1068.7(d)(6) must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler's plant(s) from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plants in one of the months of August through December in order for the handler's plant(s) to be a reserve supply plant(s) for the month of December.

(7) A plant must have been a pool plant under this order pursuant to § 1068.7 (a), (b), or (d) during each of the preceding months of August through December to be a pool reserve supply plant during the following months of January through July:

United States Department of Agriculture,
Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1068.1 to 1068.86, all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area 7 CFR Part 1068 which is annexed hereto; and

II. The following provisions:

§ 1068.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of January 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1068.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)
By ———
(Name)

(Title)

(Address)
Attest ———
Date ———

Signed at Washington, DC, on: May 5, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88-10383 Filed 5-9-88; 8:45 am]
BILLING CODE 3410-02-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0202]

Indirect Food Additives; Adjuvants, Production Aids and Sanitizers; Antioxidants and Stabilizers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: FDA is issuing this proposed rule to correct an error in nomenclature that appeared in a final rule that FDA issued in the Federal Register of August 18, 1986 (51 FR 29460). This final rule responded to a food additive petition from American Enka Co. The correction removes the chemical name "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" from the list of stabilizers for use in polyethylene phthalate polymers set forth in the table in 21 CFR 178.2010(b) and replaces it with "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)". The new nomenclature more accurately represents the chemical identity of the additive. The American Enka Co. agrees with this correction.

DATE: Comments by June 9, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of August 18, 1986 (51 FR 29460) FDA published a regulation listing tris(triethylene glycol)-phosphate in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) as a stabilizer in polyethylene phthalate polymers (also referred to as "ethylene terephthalate polymers") intended for use in contact with food. The regulation responded to a petition filed by American Enka Co.

In recent review, however, the agency discovered that it has assigned the additive an inappropriate chemical name and CAS Reg. No. The agency has determined that the correct structural formula for the petitioned additive is:

$$[HO(CH_2CH_2O)_x]_yP(OH)_{3-y}$$

where y=3 and x=3, on an average.

This general formula reveals that this additive is a mixture of ethylene glycol phosphates and is not a single chemical compound as identified in the August 18, 1986, final rule. The agency, therefore, tentatively concludes that "tris(triethylene glycol)phosphate" is the name of only one of the numerous compounds represented by this chemical formula, and that the chemical identity of the additive is more accurately represented by the nomenclature "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)".

FDA consequently is proposing to remove the entry "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" from the table in 21 CFR 178.2010(b) and to alphabetically insert "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)" in the table in 21 CFR 178.2010(b) in its place. The petitioner, American Enka Co., has not objected to this correction.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposal would have on small entities including small businesses. The agency has determined that the substitution of the correct name and CAS Reg. No. for the regulated additive will have no effect on small entities. The agency certifies that the publication of this proposal will not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before, June 9, 1988 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Foods and Drugs and redelegated to the Director, Center for Food and Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by removing the entry for "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" and alphabetically inserting a new entry in the table to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2).	At levels not to exceed 0.1 percent by weight of polyethylene phthalate polymers complying with § 177.1630 of this chapter, such that the polymers contact foods only of Type VI-B described in Table 1 of § 176.170(c) of this chapter.
* * *	* * *

Dated: April 29, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-10167 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 206

Testimony by Employees and the Production of Documents in Proceedings Where A.I.D. Is Not Party

AGENCY: Agency for International Development IDCA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Part 206 to Title 22 of the Code of Federal Regulations. It generally provides that A.I.D. employees may not give testimony or provide documents as part of their official duties without the approval of A.I.D.'s General Counsel or his designee in litigation where A.I.D. is not a party. The purpose of this regulation is to maintain the A.I.D. policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties.

DATES: Public comments on the proposed rule should be submitted no later than June 9, 1988. But late comments will be considered to the extent practicable. The rule is proposed to become effective 30 days after it is published in final form in the Federal Register.

ADDRESS: Comments should be submitted to the Office of the General Counsel, Agency for International Development, Washington, DC 20523. Received comments may be seen in the Office of the General Counsel, during normal working hours, in room 6895, 320 21st Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary M. Winter, Assistant General Counsel for Litigation and Enforcement, Agency for International Development, Washington, DC 20523, (202) 647-8674.

SUPPLEMENTARY INFORMATION: From time to time, A.I.D. employees are requested or subpoenaed to give testimony or provide documents in litigation in which A.I.D. is not a party. This regulation is intended to address this problem by prohibiting both voluntary appearances and compliance by employees with subpoenas for testimony or for the production of documents as part of their official duties except where the General Counsel determines that compliance would promote the objectives of A.I.D.

Subpoenas to testify concerning information which employees have acquired in the course of performing their official duties, or to produce documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951); *Swett v. Schenk*, 792 F. 2d 1447 (9th Cir. 1986); *Giza v. Secretary of HEW*, 628 F. 2d 748 (1st Cir. 1980); *Reynolds Metals Co. v. Crowther*, 572 F. Supp. 288 (D. Mass. 1982).

Accordingly, this regulation prohibits A.I.D. employees from complying with requests or subpoenas for testimony in private litigation or other proceedings without the approval of the General Counsel.

This regulation does not apply to situations where an employee makes an appearance in a legal or administrative proceeding (such as cases arising out of traffic accidents, domestic relations, etc.) that does not relate to A.I.D. Also, this regulation is not applicable to Congressional subpoenas or requests for information.

List of Subjects in 22 CFR Part 206

Administrative practice and procedure, Courts, Government employees.

Accordingly, A.I.D. proposes to amend Title 22 of the Code of Federal Regulations by adding a new Part 206 as follows:

PART 206—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE A.I.D. IS NOT A PARTY

Sec.

206.1 Purpose and scope.
206.2 Production or disclosure prohibited unless approved by the General Counsel.
206.3 Procedure in the event of a demand for production or disclosure.
206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.
206.5 Procedure in the event of an adverse ruling.
206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 424 (22 U.S.C. 2381).

§ 206.1 Purpose and scope.

(a) This part sets forth the procedures to be followed in proceedings in which the U.S. Agency for International Development (the "Agency") is not a party, whenever a subpoena, order or other demand (collectively referred to as a "demand") of a court or other authority set forth in § 206.1(d) of this part is issued for the production or disclosure of:

(1) Any material contained in the files of the Agency,

(2) Any information relating to material contained in the files of the Agency, or

(3) Any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status.

(b) For purposes of this part, the term "employee of the Agency" includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the Administrator of the Agency, including personal services contractors.

(c) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(d) This part applies to:

(1) State and local court, administrative and legislative proceedings.

(2) Federal court and administrative proceedings.

(e) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or documents.

(2) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.). Any question whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the General Counsel or his designee

(f) Nothing in this part affects disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C 552a, the Sunshine Act, 5 U.S.C. 552b, or the Agency's implementing regulations. Nothing in this part otherwise permits disclosure of information by the Agency except as is provide by statute or other applicable law.

§ 206.2 Production or disclosure prohibited unless approved by the General Counsel.

No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in § 206.1(d), produce any material or disclose any information described in § 206.1 without the approval of the General Counsel or his designee.

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§ 206.3 Procedure in the event of a demand for production or disclosure.

(a) Whenever an employee or former employee of the Agency receives a demand for the production of material or the disclosure of information described in § 206.1(a), he shall immediately notify and provide a copy of the demand to the General Counsel or his designee. The General Counsel, or his designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served and why the information sought is unavailable by any other means or from any other sources.

(b) The General Counsel, or his designee, in consultation with appropriate Agency officials, and in light of the considerations listed in § 206.6, will determine whether the person on whom the demand was served should respond to the demand.

(c) To the extent he deems it necessary or appropriate, the General Counsel, or his designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

§ 206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the General Counsel, or his designee, are received, an attorney designated by the Department of Justice for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the General Counsel and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§ 206.5 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 206.4 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the informations sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this part and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosure pursuant to a demand, the General Counsel, or his designee, may consider, among things:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a stature or a rule or procedure,

(2) Disclosure would violate a specific regulation,

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal trade secrets or proprietary information without the owner's consent,

(5) Disclosure would otherwise adversely affect the foreign policy interests of the United States or impair the foreign assistance program of the United States, or

(6) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

Dated: April 14, 1988.

Alan Woods,

Administrator.

[FR Doc. 88-10134 Filed 5-9-88; 8:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern 1988 legislative changes to the Indiana Surface Mining Law which address: filing of conflict of interest statements, and providing for the seeking of injunctions against all violators of the Surface Mining Law; archaeological and historic preservation; and self bonding and establishment of a bond pool.

This notice sets forth the times and locations that the Indiana program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on June 9, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 6, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 25, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269-2609

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492

Indiana Department of Natural Resources, Division of Reclamation, 309 West Washington Street, Indianapolis, Indiana 46204, Telephone: (317) 232-1555

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Information regarding general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions taken with regard to the Indiana program and program amendments can be found in 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

The proposed amendments are the result of several Senate Bills passed by the 1988 General Assembly of the State of Indiana. The amendments are summarized below:

1. Senate Enrolled Act 45

This Act is the result of a State initiated bill. The Act requires filing of conflict of interest statements by members of the Natural Resources Commission, provides for the seeking of injunctions against all violators of IC 13-4.1 (the Indiana Surface Mining Law) not just permittees, and repeals a section of the law rendered redundant by enactments of the 1987 General Assembly.

2. Senate Enrolled Act 121

This Act is the result of an industry sponsored bill intended to provide the Indiana program with the authority to promulgate needed archaeology and historic preservation regulations. The Act addresses the impact of archaeology and historic preservation on surface coal mines, adds new definitions, requires that petitions for rule changes be specific, makes major changes in the restrictions on surface mining in or near archaeological and historic sites, and places restrictions on the filing of objections. The amendment includes:

(1) Under Section IC 13-4.1-1-3 the addition of two definitions to the Indiana law;

(2) Under Section IC 13-4.1-2-4 the addition of limitations to filing petitions for adoption, amendment, or repeal of a rule and inclusion of an option to not hold a public hearing if the petition is incomplete;

(3) Under Section IC 13-4.1-3-3(a)(13) the addition of the clarification that MAPS submitted with a permit application shall include historic and archaeological data is that known by the Division of Historic Preservation and Department of Natural Resources to exist on the date of application;

(4) Addition of a new section, IC 13-4.1-3-3.1, which allows optional requirement of additional archaeological and historic site descriptive data for sites within 1000 feet of the permit area. This section also allows the option for the State Director to require various investigative procedures to identify and evaluate sites. Also included is a requirement that future State rules be consistent with principles set forth in the proposed amendment at IC 13-4.1-4-3.1(c);

(5) Additions to Section IC 13-4.1-4-2 that require any person requesting an informal conference to specifically state their objections, and to state the interest of the person who is or may be affected by the proposed operation if the requester is not the head of a Federal, State or local governmental agency or authority. Also added are conditions under which the commission may not hold a conference;

(6) A new Section IC 13-4.1-4-3.1 is added that establishes limitations on the development of future State rules; and

(7) Section IC 13-4.1-4-5(c) is amended by requiring any person requesting a hearing to identify the person's interest that is or may be affected.

3. Senate Enrolled Act 231

This Act is the result of an industry sponsored bill which adds self-bonding provisions and creates a bond pool funded by mine operators and administered by the Indiana Department of Natural Resources and an independent committee controlled by operators.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other that the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. on May 25, 1988. If two or more people do not request an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statments in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88-10378 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

Big Cypress National Preserve, Florida; Indian Use and Occupancy Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulations set forth below are necessary to define adequately the statutory rights of the

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members of the Miccosukee Tribe of Indians of Florida and the members of the Seminole Tribe of Indians of Florida granted in the Big Cypress Act of 1974 which established the Preserve. This Act provides that the Indians shall be allowed to continue their usual and customary use and occupancy of Federal lands and waters within the Preserve, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials; and provides for maximum Indian participation in any authorized future revenue-producing visitor services within the Preserve.

DATES: Written comments, suggestions, or objections will be accepted until July 11, 1988.

ADDRESS: Comments should be directed to: Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943.

FOR FURTHER INFORMATION CONTACT: Fred J. Fagergren, Superintendent, Big Cypress National Preserve, Telephone: (813) 695–2000.

SUPPLEMENTARY INFORMATION:

Background

These regulations are being proposed by the National Park Service (Service) to define the statutory rights granted to the members of the Miccosukee and Seminole Tribe of Indians of Florida in Pub. L. 93–440, (88 Stat. 1258; 16 U.S.C. 687f *et seq.*).

On October 11, 1974, the Congress established Big Cypress National Preserve "to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof * * *."

In Section 5 of Pub. L. 93–440 the Congress provided that:

"Notwithstanding this section or any other provision of this act, members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida shall be permitted, *subject to reasonable regulations established by the Secretary* (emphasis added) to continue their usual and customary use and occupancy of Federal or Federally acquired lands and waters within the Preserve, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials." Section 6 provides for maximum Indian participation in authorized revenue-producing visitor services within the Preserve.

A Draft Environmental Impact Statement for the proposed Big Cypress National Preserve was made available for public comment on February 5, 1972, with a Final Environmental Impact Statement (FES 75–39) completed and approved on April 11, 1975. This FES dealt with the impacts of the Federal legislation establishing Big Cypress, including the continuation of customary use and occupancy of the Preserve by the Seminoles and Miccosukees, and their preferential rights to future revenue-producing services. Copies of this document are available at the address noted above.

Since the Indians' statutory right to remain within the Big Cypress National Preserve is "subject to reasonable regulations established by the Secretary," it is contingent upon the Service to interpret and define that statutory right through the promulgation of regulations which are consistent with Congressional intent in establishing the Preserve and which meet the needs of the Indians and the Service.

A formal opinion was requested from the Office of the Solicitor, Washington, DC to define the legal parameters of the Seminole and Miccosukee right of usual and customary use and occupancy of the Preserve as granted in Pub. L. 93–440. The Solicitor's opinion of April 25, 1979 has provided a basis for subsequent development of regulations consistent with Congressional intent and existing case law. Copies of that opinion are available at the address noted above.

Several preliminary meetings were held with individual Indians, Tribal representatives and the Tribal legal counsels. These meetings assisted the Service in identifying what constitutes "usual and customary use and occupancy" and "traditional," and to insure that Indian needs are reflected in the proposed regulations to the maximum extent possible.

On November 12, 1981 (46 FR 55709) the Service published proposed regulations in the **Federal Register**. Input received during the official review period for those proposed regulations, comments received thereafter, continued government review of these issues, and the revision of the general regulations for the Service all prompted changes in the original proposal. These changes resulted in this proposed rule.

Existing Conditions

Residential Use

There are an estimated 100 to 150 Miccosukee and Seminole Indians residing within the Preserve. Some of these Indians are carried on the tribal rolls of their respective tribes and others are eligible for tribal membership but are unaffiliated by personal choice. They reside in 11 camps, villages, or individual homes within the Preserve. The majority of these camps are on Federaly acquired lands.

Historically (pre–1900), Indians in the Preseve relocated frequently in search of better hunting and agricultural lands. In the 1930's and 1940's, after the construction of U.S. Highway 41, the Indian lifestyle changed gradually. Camps were located more and more frequently beside the highway and the Indians came to rely heavily on income from the tourist trade or from jobs in local commnities and thus, became less dependent on a subsistence lifestyle. In recent years, these camps have been relatively stable in population and location. Expansion of existing camps or establishment of new camps has been due primarily to marriage and family growth, with some in and out migration from other areas.

Camps are generaly one acre or less in size and consist of six to ten structures, most of which are traditional chickees—a roofed, opensided shelter constructed of cypress poles and thatched with a palm frond roof. Cleared and filled ground generally does not extend much beyond the actual living area.

Subsistence Use

Subsistence use within the Preserve by Indians has declined substantially in recent years. Only a few camps within the Preserve have lands that are cleared specifically for agriculture. Several camps do contain small orchards of fruit-bearing trees. Some corn is grown by Indians on hammocks within the Preserve. Gathering of native plants for food, medicine, and ceremonial purposes also continues on a limited scale. Back-country use by Indians for hunting and gathering activities is limited. This is evidence by the general lack of off-road vehicle trails near Indian camps. The low level of use is perhaps due in part to low population levels of game species. The primary species taken by Indians are garfish, mudfish, deer, hog and turtles.

Commercial Use

The number of camps open for commercial tourist trade is variable. At present, four camps within the Preserve are known to be open to tourists, but at least three other camps have been open in the past. Commercial activity at these camps usually consists of a small curio shop where various handmade articles can be purchased. A self-guided walking tour of the village is sometimes available, allowing observation of Indian lifestyles.

Commercial guiding of hunting parties by Indians is at present infrequent. However, there is a potential for expansion of this activity.

The most significant Indian commercial activity within the Preserve is the collection of native materials for curio and for chickee construction. The natural resource most actively sought is cypress. Small diameter cypress poles are carved into toy canoes, knives and tomahawks, Cypress knees and slabs from larger cypress trunks are also harvested for sale as souvenirs. Most cypress taken, however, are for use as building materials in the construction of chickees, both at a subsistence and commercial level.

Since chickees have become popular as decorative shelters in nearby urban areas, their construction has become a commercial enterprise. During previous discussions with the tribes, the Service was informed that no more than seven Indian families within the Preserve had indicated an interest in taking Preserve cypress for commercial chickee construction. Local staff believes as many as nine families are now engaged in commercial chickee construction. Since south Florida has one of the highest rates of urban growth in the nation and chickee construction provides a unique opportunity of commercial gain through the use of a traditional skill, the number of families or individuals engaged in commercial chickee construction will no doubt increase.

Depending upon its size, a chickee requires 25–40 poles (trees) of various sizes down to two inches in diameter. Since only straight trees of certain diameters are desirable, cypress stands are generally selectively cut rather than clear cut. Due to access and transportation problems, suitable cypress stands near existing camps and roads are most favored for pole-cutting, thus visually impacting the natural scene of the scenic corridors (one-half mile) along highways within the Preserve.

Cabbage palm fronds for thatching of chickee roofs are also commercially collected from the Preserve. Since there are relatively few conveniently located large stands of palms, this activity may be minimal.

The quantity of cypress harvesting for chickee construction, whether subsistence of commercial, is extensive. Since the number of villages is known an the rate of population growth can be projected, the impact of cypress harvest for subsistence use can be managed. The Preserve may be able to sustain such use, if monitored and controlled. This activity, at this level, is consistent with Pub. L. 93–440 and Service general regulations.

However, the authorization of commercial harvesting of cypress is not an activity directly and specifically provided by Congress. Economic uses of timber were therefore not granted to the Indians unless any such use was "usual and custmary" in 1974. While commercial harvest could have occurred within the Preserve at an infrequent or sporadic level, only limited anecdotal information is available on any level of occurrence of this activity. Notwithstanding the question of the level of this activity in 1974, the authorization of commercial harvesting of cypress would result in the derogation of the values and purposes for which the Preserve was established.

The legislative history of the Preserve is clear; the commercial use of resources was not within the intent of Congress. Quoting House Report 93–502 and Senate Report 93–1128; pages 6 and 5, respectively:

> The committee chose to call the area a preserve rather than a reserve, feeling that such a distinction may be important. Reserve refers to stock—a commodity held for future use. Preserve refers more definitely to the keeping or safeguarding of something basically protected and perpetuated for an intended or stated purpose, as with the specific objectives for Big Cypress provided by this legislation.

Service statutes and general regulations also clearly prohibit the use of natural resources for commercial activities unless in support of visitor activities or specifically mandated by legislation. Neither of these two situations exist with cypress harvesting or palm frond removal for commercial chickee construction.

In addition, the commercial harvesting of cypress poles interferes with the Service's ability to preserve the resources for which the area was established; i.e. it creates incompatible impacts upon the natural resources.

Title 16 of the United States Code (Section 1a–1) places affirmative obligations on the Service to exercise its authority in a manner which will protect against derogation of park values. The following brief analysis supports the Service's determination that authorizing commercial harvest of cypress would result in derogation of park values:

A 1986 vegetation map of the Preserve documents, that of the fourteen (14) vegetation types, harvestable cypress would come from only two vegetation types, cypress strands and domes. These constitute approximately 10% of the Preserve or 58,000 acres. This available acreage would be further reduced since the Service wants to protect a one-half mile scenic corridor along all established roads. In addition, Indian use of off-road vehicles is limited and therefore harvest would be concentrated within perhaps a one-mile strip, one-half mile off the established roads; approximately 22,000 acres of cypress strands and domes occur within that strip. While 300–750 cypress trees may occur per acre, a much smaller number would meet size and straightness requirements.

A family can construct up to 26 chickees per year and in the process require 25–40 poles (trees) per chickee. If current estimates of seven to nine families are correct, the Preserve would lose 5,000–10,000 trees per year. Growth rates in this area would provide two inch trees in perhaps 50 years and four inch trees in 100 years. The Service notes that the loss of cypress at the current estimate (5,000–10,000 per year) would result in the removal of 250,000–500,000 trees before the first tree harvested was replaced (5,000 or 10,000 X 50 years).

Notwithstanding the current estimate of the number of families involved, the Service would expect that number to increase if commercial harvesting were authorized. Given the high rate of urban growth in south Florida, the number of families involved in harvesting would be expected to increase steadily; in a 50 year period, the number could reach 25 families or more. The annual impact to the Preserve at that level is estimated to be a loss of 26,000 trees per year.

Religious Use

The Miccosukee Indians currently utilize two sites which are in Federal ownership for their major religious ceremony, the Green Corn Dance, a celebration of tribal purification and renewal. The ceremony is normally held in June or July, and runs several days.

Ceremonial sites are usually located in hardwood hammocks. The development associated with the ceremonial site is normally limited to some clearing of vegetation and construction of ceremonial chickees and the overall impact should be minimal. The Indians normally utilize a site for several years. As Federal acquisition of land proceeds, other ceremonial sites will become potentially available to the Indians.

The extent of Miccosukee and Seminole use of native plant and animal life for religious purposes is not well known. Egret, turkey, and anhinga feathers and box turtle shells are reported to be used. Statements by the Chairman of the Miccosukee Tribal Council (Mr. Buffalo Tiger) call for the

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opportunity for Indians to collect, maintain, and use all plant and animal species traditionally employed in Indian medicine, religious, or cultural practices, unless protected by State or Federal law as threatened or endangered species.

Discussion of Major Issues

Paragraph (d)(2) Indian Residential Use

Subparagraph (i) clarifies that Indian owners of lands and improved properties are subject to the same acquisition authorities, rights of retention, and use and occupancy as applied under the Act of any other landowner. It also ensures that acquisition of private property from Indian owners, with or without a retention of use and occupancy would not affect the statutory rights granted to Indians as members of the Seminole or Miccosukee Tribes of Florida.

Subparagraph (ii) provides that Indians would be able to continue their usual and customary occupancy of camps existing at the time of Preserve establishment and not more than four abandoned residential sites which are located on Federally acquired lands. The Service arrived at the quantity of four abandoned sites for reoccupation after discussions with Indian leaders.

Subparagraphs (ii)(A) and (ii)(B) provide for the maintenance of existing structures and construction of new structures in existing camps. They also provide for Service review and permitting of any new development to ensure that these activities meet appropriate zoning requirements and construction codes, and that any new developments would be environmentally compatible.

Subparagraph (ii)(C) would provide for limited expansion of existing camps and limited resettlement of abandoned camps as consistent with recent Indian living patterns.

Subparagraph (ii)(D) would provide for continuance of subsistence, non-mechanized agriculture adjacent to existing camps. Since this activity will be restricted in location and scope to existing disturbed sites, it has little effect on the Preserve environment. The superintendent, through written notice, would have the opportunity to analyze agricultural activities and their potential impacts.

Subparagraph (ii)(E) would provide for continuance or establishment of subsistence, non-mechanized agricultural plots elsewhere within the preserve. Through the permitting process, opportunity would be provided the superintendent to analyze expansion of agricultural activities, to regulate location, to minimize environmental impacts and environmental compatibility. Compatibility will consider but not be limited to concerns such as threatened or endangered plants or animals, impacts to water quality or quantity or to soils or archeological sites.

Subparagraph (iii) would prohibit refuse disposal within the Preserve. Open garbage dumps, refuse pits, and open burning are common practices at some camps within the Preserve. Open dumps and ptis are not in keeping with Preserve purposes to protect the watershed and other resource values and should be terminated. Open burning without a permit is in violation of both existing State law and Federal regulations. This regulation would require some camp residents to seek new means for waste disposal.

Paragraph (d)(3) Indian Subsistence Activities and Access

Subparagraph (i) states that Indians would be able to continue their subsistence activities on a year-round basis. Year-round subsistence activities are already permitted under Florida Statute 380.055 and by the Act. Regulation of these activities is a joint State/Federal responsibility.

Subparagraph (i)(A) requires that Tribal members carry their tribal identification card while engaged in subsistence activities. This card is issued by the Tribes for purpose of Tribal member identification. Since some "traditional Seminoles" do not belong to either tribe, the following procedure will apply when the superintendent has reason to believe that a person claiming to be a "traditional Seminole" may not be an Indian within the meaning of these regulations. The superintendent or his representative shall contact a representative of the traditional Seminoles to verify the status of such person. The traditional Seminoles shall furnish the superintendent with the names of three persons authorized to be contacted for this purpose. This would preclude non-eligibles from claiming they are Indians hunting on a subsistence basis.

Subparagraph (i) (B) requires Indians to obtain any licenses or other permits as may be required by the State of Florida.

Subparagraph (i) (C) requires Indians accompanying hunting parties to observe regular season, possession, and bag limits, eliminating the possible claim that animals were taken under subsistence hunting rights.

Subparagraph (ii) provides for the taking of renewable and non-renewable resources for religious purposes yet provides that all species protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or protected from taking by Florida State law are protected from taking under subsistence rights. Congressional intent is clear on the protection of endangered and rare species within the Preserve; therefore, establishment of reasonable regulations to preclude their taking on a subsistence basis is appropriate. Statements from the Miccosukee Tribal Chairman indicate Indian support of this concept. The statutory authority for Indian taking of resources necessary for religious purposes has been granted by section 5 of the Act which provides for usual and customary Indian uses. This regulation recognizes this statute and provides for continuation of existing conditions but does not include species protected under State or Federal statutes as threatened or endangered. Known Indian ceremonial use of resources is restricted to common species in the Preserve.

Subparagraph (iii) provides that Indians would be subject to public-wide closures of Preserve areas to hunting, fishing, trapping, and entry. This regulation ensures inclusion of the Indians wherever or whenever the superintendent identifies the need to close portions of the Preserve for resource protection or emergency conditions.

Subparagraph (iv) provides for the harvest of cypress or palm fronds for chickee construction at the subsistence level. Through the permitting process, the superintendent can regulate location and minimize environmental impacts.

Subparagraph (iv)(A) limits subsistence level harvest of cypress or palm fronds to Indians residing within the Preserve or within that portion of the Miccosukee Reservation within Everglades National Park. The intent of Congress, reflected in the legislative history, emphasizes protection of the rights of Indians living within the Preserve or Park. Harvest of natural resources for use by persons other than these groups would not be in keeping with the legislative history and would open this removal of natural products beyond that reasonable for protection of Preserve resources.

Subparagraph (iv)(B) assures that individual trees, from which fronds are harvested, are left with sufficient fronds to survive.

Subparagraph (iv)(C) allows the superintendent to rotate areas for pole cutting, thus allowing selection of areas based upon other resource concerns and assuring areas are not overharvested or clearcut.

Paragraph (d)(4) Commercial Activities

Subparagraph (i) prohibits the taking of natural resource products for the commercial construction of chickees and other structures. Previous discussions with the tribes revealed that perhaps seven Indian families within the Preserve had an interest in this activity. The extent of cypress harvesting for chickee construction, whether subsistence or commercial, is substantial. Preserve staff have documented past incidents of in excess of 200 cypress trees being taken at one time and in one location. Since the number of villages is known and the rate of population growth can be projected, the impact of harvesting for subsistence use can be managed. The Preserve may be able to sustain that level if monitored and controlled. However, the authorization of commercial harvesting of cypress would result in derogation of park values and is not an activity directly and specifically authorized by Congress. Significant harvesting of cypress by Indians now occurs outside the Preserve on other public or private lands. This regulation would impact Indians now commercially harvesting cypress within the Preserve and require them to seek other locations.

Subparagraph (ii) provides for the continuance of curio sales outlets at existing camps. The Preserve's legislative history documents Congressional intent that there be a continuance of these small outlets. Currently, there are four to seven Indian camps within the Preserve which have curio sales outlets.

Subparagraph (iii) limits the commercial taking of natural resource products by Indians to that needed for small curio and handicraft items which will be sold at curio outlets within the Preserve. It prohibits the taking of cypress knees and trees larger than six (6) inches in diameter for sale as souvenirs. It provides authority to the superintendent to issue permits for this commercial taking to protect resources where harvest is creating adverse impacts. The legislative history emphasizes protection of the curio outlets within the Preserve. Commercial use beyond this level would conflict with resource protection, the legislative history of Pub. L. 93-440, and the general regulations for the Service. This regulation will provide the availability of natural resource materials for small handicraft items but will assure protection of Preserve resources at locations or times when the taking endangers park values.

Subparagraph (iv) allows the Service to enforce Federal and Florida statutes on signing. This regulation would limit certain Indian advertising practices, but the visual quality along highway corridors would be improved following the elimination of non-conforming signs.

Paragraph (d)(5) Indian Religious Use

Subparagraph (i) provides protection to the two Green Corn Dance sites currently used by precluding general public use and access during those times that the areas are used for a religious ceremony. The regulation would require Indians to inform the superintendent at least 48 hours in advance if they desire privacy. The regulation could intermittently close two areas comprising a total of 320 acres (about .06 percent of the Preserve) to public access. It would provide Indians the opportunity to conduct their religious ceremonies with customary privacy.

Subpargraph (ii) would allow access to ceremonial sites but clarify that Indians, even for religious purposes, are subject to the same vehicular (street or off-road) regulations applicable to any Preserve user. Both ceremonial sites now in use have lime-rock graded roads and are accessible along those corridors in street-legal vehicles.

Subparagraph (iii) provides for construction and maintenance of traditional facilities used by Indians to exercise their religious beliefs. Other activities would require a permit from the superintendent. Issuance of the permit would consider the environmental constraints and criteria utilized before approval of similar non-Indian activities.

Subparagraph (iv) provides for review by the superintendent during new site selection. Knowledge of needed ceremonial site location changes would ensure the Service could better aid the Indians in pursuit of their religious rights by providing needed closures of areas on a temporary basis. The superintendent would also be able to ensure that sensitive natural or cultural resources are not disturbed during selection of new ceremonial sites.

Paragraph (g)(1) provides that failure to obtain a permit required pursuant to this section or failure to comply with the terms of a permit issued pursuant to this section are prohibited acts and therefore subject to the pena'ties set forth in 36 CFR. The Service has determined that the imposition of criminal sanctions for permit violations is fair and equitable and allows the Service to take a less severe form of corrective action for certain activities conducted outside the scope of the permit or in violation of the permit terms and conditions. In some instances the total loss of the privilege, through permit revocation, is a more severe penalty than the imposition of Section 1.3 penalties. Paragraph (g)(2) provides the superintendent with general authority to revoke or suspend a permit for violation of its terms or conditions.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of the rulemaking.

Drafting Information

The principal author of this proposed rulemaking is Fred J. Fagergren, Big Cypress National Preserve, Ochopee, Florida guided by past counsel from former staff of the Office of the Solicitor, Atlanta, Georgia.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0026.

Compliance With Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332) the Service prepared a draft Environmental Impact Statement for the proposed Big Cypress National Preserve and circulated it for public comment on February 5, 1972, with a final EIS (FES 75-39) completed and approved April 11, 1975. This FES dealt with the impacts of the Federal legislation establishing Big Cypress, including the continuation of customary use and occupancy of the preserve by the Miccosukee and Seminole Indians, and their preferential right to future revenue producing services.

Further, the Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety, because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

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Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 [(46 FR 13193); February 19, 1981]. The planned rulemaking would serve no more than to continue the "usual and customary use and occupancy" of Federal lands. A small number of Indians would be required to expend funds for solid waste disposal. Also a small number of Indians may have to harvest cypress, and other natural resources, for commercial construction, from outside the Preserve. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. Indian tribal members would generally benefit and their rights would be more clearly defined.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.88, by adding new paragraph (d), (g) and (h) to read as follows:

§ 7.88 Big Cypress National Preserve.

* * * * *

(d) *Indian Use and Occupancy*—(1) *Definitions*: As used in this section,

(i) The term "Act" means Pub. L. 93–440 (88 Stat. 1258; 16 U.S.C. 698f *et seq.*).

(ii) The term "Commission" means the State agency having jurisdiction over hunting, fishing and trapping activities.

(iii) The term "existing camp" means any of those residential and/or commercial structures occupied by Indians on October 11, 1974, and not more than four (4) designated abandoned residential sites previously occupied by Indians on Federal or Federally-acquired lands; all of which are shown on a map available for public inspection in the office of the superintendent.

(iv) The term "Indian" or "Indians" means those persons who are members of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida or those persons who are Miccosukee or Seminole Indians who are known as the "traditional Seminoles," as determined by the authorized representatives of the traditional Seminoles.

(v) The term "subsistence" means customary and traditional use by Indians of fish, wildlife, and plants for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, and for the making of small handicraft articles out of the non-edible byproducts of plant, fish, and wildlife resources taken for personal or family consumption.

(vi) The term "tribe" or "tribes" means the Seminole Tribe of Florida and/or the Miccosukee Tribe of Indians of Florida.

(2) *Indian residential use.* (i) Indians who own lands and improved property within the exterior boundaries of the Preserve are subject to the same acquisition authorities, retention rights and use and occupancy as set out in the Act. The acquisition of private property from Indian owners, with or without a retention of use and occupancy pursuant to section 1(c) of the Act, does not deny or restrict Indian owners or former owners within the Preserve from enjoying the rights of usual and customary use and occupancy of Federal lands within the Preserve as members of the Seminole or Miccosukee Tribes of Florida under section 5 of the Act and as defined in this section.

(ii) Indian residential use at existing camps may continue at the October 11, 1974, levels of use, occupancy and size under the following conditions:

(A) Existing camps may be maintained, repaired and replaced only with like type of construction and materials.

(B) Any new development or new structure other than the traditional Indian chickee, any dredge or fill activity, or sewage or water system may occur only pursuant to the terms of a permit issued by the superintendent authorizing such development. Issuance of a permit is conditioned upon a written determination that such development will comply with all State and county, zoning requirements, construction codes, State and Federal dredge or fill regulations, and sanitation, health, and safety standards and be compatible with protection of Preserve resources.

(C) Expansion of an existing camp, or the resettlement of a designated abandoned residential site due to marriage and family growth may occur only pursuant to the terms of a permit issued by the superintendent. Issuance of a permit is conditioned upon receipt of an application stating the proposed location, the reason for the camp expansion, the type and number of chickees and other structures to be built, and describing the provisions to be made for sewage disposal.

(D) Indians may continue or re-establish a subsistence, non-mechanized agricultural plot adjacent to an existing camp by providing written notice to the superintendent stating the location, size of plot, type of crops being grown and expected periods of use. Such plots will be restricted to existing disturbed areas and will not require the removal of trees.

(E) Indians may continue or establish a subsistence non-mechanized agricultural plot that is not adjacent to an existing camp only pursuant to the terms of a permit issued by the superintendent. Issuance of a permit is conditioned upon a written determination that existence of the plot would be compatible with protection of Preserve resources.

(iii) The following are prohibited:

(A) Burning refuse;

(B) Using or maintaining a refuse dump; or

(C) Using or maintaining an open garbage pit.

(3) *Indian subsistence activities and access.* (i) Indians have year-around subsistence hunting, fishing, trapping and gathering privileges. In order to exercise such privileges, and Indian shall:

(A) If a tribal member, carry a tribal identification card. However, when the superintendent has reason to believe that a person claiming to be a "traditional Seminole" may not be an Indian as defined in this section, the superintendent shall contact a representative of the traditional Seminoles for the purpose of verifying the status of the person in question. The traditional Seminoles shall furnish the superintendent with the names of three persons authorized to be contacted as a Seminole representative.

(B) Possess all licenses, permits, tags, and stamps required by the Commission; and

(C) If accompanying a non-Indian hunting party, observe the hunting seasons, possession rules, and bag limits established by the Commission for the Preserve.

(ii) Except for an animal or plant that is identified by the U.S. Fish and Wildlife Service as an endangered or threatened species or whose taking or possession is prohibited by the State of Florida, the taking or possession of plants, animals or minerals for use in Indian religious ceremonials is allowed.

(iii) Unless specifically exempted elsewhere in this section, Indians are subject to all closures related to hunting, fishing, trapping, or entry, established for reasons of public safety, floral and faunal protection, or administrative activities of the Preserve.

(iv) The taking of cypress or palm fronds for chickee construction for subsistence use is permitted pursuant to the terms of a permit issued by the superintendent and subject to the following conditions:

(A) Subsistence taking within the Preserve is limited to Indians residing within the Preserve or within that portion of the Miccosukee Reservation within Everglades National Park;

(B) The taking of palm fronds for thatching may result in the removal of no more than half the palm fronds from any one tree; and

(C) The superintendent may rotate areas for pole cutting every two years, with the areas allocated for pole cutting described in the permit for each permittee.

(4) *Commercial activities.* (i) The taking of natural resource products by Indians for commercial construction of chickees or other structures for use inside or outside the Perserve is prohibited.

(ii) Indians residing in an existing camp have the right of continuing or establishing the sale of small Indian curio and handicraft items from present structures of existing camps or at resettled camp locations in chickee-type structures as approved by the superintendent.

(iii) The commercial taking of natural resource products by Indians is limited to those used in the making of small curio and handicraft items for sale at existing camps within the Preserve. Provided, however, the superintendent may require a permit, designate harvest sites or areas and establish conditions for taking of natural resources for small curio and handicraft items. The taking of cypress knees or trees larger than six (6) inches in diameter for sale as souvenirs is prohibited.

(iv) The erection and maintenance of roadside advertising signs by Indians shall be conducted in accordance with Federal and Florida State laws regarding roadside signs.

(v) The superintendent shall consult with the tribes in a timely manner on matters pertaining to plans for the development of the Preserve. Tribes are provided the right of first refusal to provide or develop any new revenue-producing visitor services within the Preserve but may exercise that right only within 90 days after notification by the superintendent.

(5) *Indian Religious Activities* (i) The two Corn Dance sites currently used by Indians may be reserved exclusively for Indian use and be closed to non-Indian public use and access. Indians shall inform the superintendent at least 48 hours in advance if they desire privacy at these locations. These sites are identified on a map available for public inspection in the superintendent's office and, when closed, are posted with signs indicating the closure.

(ii) Indians are allowed motorized access to ceremonial sites subject to the provisions of this section pertaining to off-road travel and except where sites are within areas closed to motorized access. Maintenance or improvement of access to the two current sites may occur only with appropriate State and Federal permits and after review and approval by the superintendent.

(iii) Indians are allowed to construct and maintain chickees or other traditional structures needed for the exercise of their religious beliefs on the ceremonial sites. However, other maintenance, improvement, or dredge or fill activities may occur only after review and approval by permit from the superintendent. Approval would be based upon the same environmental constraints and criteria utilized before approval of similar non-Indian activities.

(iv) A ceremonial site may be abandoned, relocated or reestablished pursuant to the terms of a permit issued by the superintendent who may effect a temporary closure as required at the new site and release the former ceremonial site from closure.

* * * * *

(g) *Permits.* (1) The following are prohibited:

(i) Failure to obtain a permit required pursuant to this section.

(ii) Failure to comply with the terms or conditions of a permit issued pursuant to this section.

(2) The superintendent may suspend or revoke a permit for violation of any of its terms or conditions.

(h) *Information collection.* (1) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the superintendent to issue permits. The information will be used to grant administrative and statutory benefits. Response is required to obtain a benefit.

Date: April 6, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–10377 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–70–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88–2]

Assessment of Interest on Underpaid Cable Royalties; Notice of Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to inform the public that it is considering assessing interest on underpaid cable royalties in the wake of the decision of the United States Court of Appeals for the District of Columbia in *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir. 1988). In that case, the Court of Appeals upheld the Copyright Office's interpretation of "gross receipts" found in 37 CFR 201.17(b)(1) for purposes of the cable compulsory license. The Copyright Office is aware that a number of cable systems applied interpretations of "gross receipts" different than that of the Copyright Office, for accounting periods prior to the decision of the Court of Appeals, resulting in an underpayment of royalties. The Copyright Office seeks public comment as to whether it should assess interest charges on those overdue royalties which now must be paid by cable systems pursuant to the cable compulsory license.

DATES: Comments should be received on or before June 9, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Building, Room 407, First and Independence Avenue, SE., Washington, DC.

BEST COPY AVAILABLE

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FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC 20559, Telephone: (202) 287–8380.

SUPPLEMENTARY INFORMATION:

1. Background.

Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, creates a compulsory licensing system by which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems comply with provisions regarding the filing of Statements of Account and the deposit of statutory royalty fees pursuant to section 111(d) of the Act.

In order to implement and administer the compulsory licensing system, the Copyright Office issued a definition of "gross receipts for the 'basic service of providing secondary transmission of primary broadcast transmitters.'" [37 CFR 201.17(b)(1)]. The definition confirmed the Copyright Office's interpretation that the Copyright Act does not allow cable systems to allocate gross receipts or the distant signal equivalent value where any secondary transmission service is combined with nonbroadcast service and is offered to cable subscribers for a single fee. Cablevision Company and the National Cable Television Association challenged that interpretation in the United States District Court for the District of Columbia and, on July 31, 1986, that court held the Copyright Office's regulations defining "gross receipts" invalid. *Cablevision Company v. Motion Picture Association of America, Inc.*, 641 F. Supp. 1154 (D.D.C. 1986). However, on January 5, 1988, the United States Court of Appeals for the District of Columbia reversed, holding that the Copyright Office's regulation interpreting the statutory language of section 111 of the Copyright Act was reasonable, and that the district court erred in declining to defer to the Copyright Office's regulation as to what revenues make up gross receipts. *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir. 1988).

The Copyright Office has already notified cable systems that it will require corrected filings for accounting periods in which the proper interpretation of gross receipts was not followed. [53 FR 2493]. Now the Copyright Office has before it a request for rulemaking, filed by the Motion Picture Association of America, ("MPAA") asking that interest be assessed on those overdue sums, accuring from the dates on which they should have been paid. The MPAA petition is supported by Major League Baseball, the National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association ("Joint Sports Claimants"), and by three performing rights societies, the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc.

2. Assessment of Interest.

The Copyright Office has not publicly addressed the question of interest in the administration of the cable compulsory license, and the issue is therefore one of first impression. In its Petition for Rulemaking, the MPAA argues that interest should be assessed on underpaid royalty sums essentially because (1) the Copyright Office has authority to assess interest, and (2) if interest is not required on the overdue sums, cable systems will be unjustly enriched and copyright owners will be deprived of the full compensation envisioned by section 111 of the Copyright Act.

Numerous judicial decisions have approved an agency's imposition of interest on overdue sums of money even where the statute creating the monetary obligation is silent as to interest. *See, e.g., City of Chicago v. Department of Labor*, 753 F.2d 606 (7th Cir. 1985); *EEOC v. County of Erie*, 751 F.2d (2d Cir. 1984); *Myron v. Chicoine*, 678 F.2d 727 (7th Cir. 1982); *United States v. Philmac Mfg. Co.*, 192 F.2d 517 (3d Cir. 1951). In *United States v. United Drill and Tool Corp.*, 183 F.2d 998, 999 (D.C. Cir. 1950), the court held that "statutory obligation[s] in the nature of debt bear interest even though the statute creating the obligation fails to provide for it." It also does not appear to matter whether the monetary obligation is due the United States or is only collected by the Government for later disbursal to third parties. *Compare, United States v. Goodman*, 572 F. Supp. 1284 (Ct. of Int'l Trade 1983) (customs duty due the United States) *with, Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962), *rev'd on other grounds sub. nom. NLRB v. Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963) (employers having obligations to compensate former employees remit monies to the Government for later disbursal to the employees).

The Copyright Office is inclined to find it has authority under sections 702 and 111(d) of the Copyright Act to issue a regulation assessing interest upon underpaid cable royalty sums for future accounting periods. However, the Office seeks public comment regarding its authority to impose interest upon sums due and owning from prior accounting periods. Moreover, the Office is aware that the Copyright Royalty Tribunal (CRT) has declined to find it has authority to assess interest on payments withheld pending judicial review of new royalty rates, [47 FR 4478 (1982)]. Comment is requested therefore on the general and specific rulemaking authority of the Copyright Office in contrast to the *rulemaking* authority granted to the CRT.

The MPAA argues for application of an interest charge to prior accounting periods, announcing that the "relative equities" of the situation weigh heavily in favor of the copyright owners. They state that if interest is not now imposed upon overdue payments from prior accounting periods, copyright owners will be deprived of the full compensation for use of their works envisioned by section 111 of the Copyright Act. Under the "time value of money" theory, cable systems will garner the value of the interest accumulated on the underpaid royalties. Had the correct sums been paid on time, it would have been the copyright owners who would have benefitted from the interest accruing upon those sums. Thus, a denial of interest on underpaid royalties is tantamount to forcing copyright owners to make an interest free loan to cable systems. Furthermore, it is argued that denial of interest will encourage cable systems to withhold royalty sums in the future, thereby obtaining the benefit of the accruing interest. To make the copyright owners whole and put them in the same position they would have been had the proper account of royalties been paid on time, interest must now be assessed on the overdue sums.

The Copyright Office requests public comment on the propriety of adopting a regulation requiring that interest be paid upon overdue royalty sums from prior accounting periods, as well as future accounting periods. In particular, we seek comment on the following questions:

Questions

1. Is a rule retroactively assessing interest charges on overdue royalty sums from prior accounting periods legally permissible?

2. If the Copyright Office does adopt a rule requiring interest for past and/or future accounting periods, how should the interest rate be determined?

3. If the Copyright Office charges interest on overdue royalty sums, the Office is initially inclined to find that it must, within certain limitations, also pay interest to cable systems on any over-payments they may make pursuant to the cable compulsory license, or are there countervailing considerations that would render interest on refunds unnecessary?

4. If interest is assessed on overdue royalty sums from past and/or future accounting periods, should the interest begin to accrue from the last filing day of the relevant accounting period in which the underpayment occurs, or some other date?

Dated: April 15, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 88–10346 Filed 5–9–88; 8:45 am]

BILLING CODE 1410–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–175, RM–6248]

Radio Broadcasting Services; Lawrenceburg, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roger W. Wright proposing the allocation of Channel 248A to Lawrenceburg, Tennessee, as that community's second local FM service. A site restriction of 5.4 kilometers (3.4 miles) southwest of the community is required. The coordinates for the proposed site are 35–12–30 and 87–22–30.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Law Office of Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, MD 21701 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–175, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10309 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–173, RM–6249]

Radio Broadcasting Services; Brandon, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James G. Kirkpatrick proposing the allocation of Channel 270A to Brandon, Vermont, as that community's first local FM service. The proposal requires concurrence by the Canadian government. The coordinates are 43–47–54 and 73–05–30.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard A. Topel, Esquire, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–173, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Propose Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10310 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–174, RB–6283]

Radio Broadcasting Services; Waunakee, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WIBU, Inc., proposing the allocation of Channel 288A to Waunakee, Wisconsin, as that community's first local FM service. A site restriction of 5.7 kilometers (3.5 miles) northeast of the community is required. The coordinates for the proposal are 43–12–34 and 89–23–28.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James L. Oyster, Esquire, Law Offices of James L. Oyster, 8215 Tobin Road, Annandale, VA 22003–1101 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–174, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10308 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–176; RM–6218]

Radio Broadcasting Services; Albin, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alton Lewis proposing the allocation of Channel 298C2 to Albin, Wyoming, as that community's first local FM service. A site restriction of 28.5 kilometers (17.7 miles) north of the community is required. The coordinates for the proposed site are 41–40–00 and 104–11–38.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Daniel F. Van Horn, Esquire, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036–5339 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–176, adopted March 30, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10305 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of the Record of Decision and Final Environmental Impact Statement for Oil and Gas Leasing in the Escalante Known Geological Structure (KGS)

AGENCY: Forest Service, USDA.

ACTION: Notice is hereby given of the availability of the record of Decision and Final Environmental Impact Statement (FEIS) for Oil and Gas Leasing Within the Escalante Known Geological Structure (KGS), Garfield County, Utah.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service (FS) has prepared a FEIS for oil and gas and carbon dioxide (C02) leasing in the Escalante Known Geological Structure (KGS). The bureau of Land Management (BLM) was a cooperating agency. The 80,000-acre KGS is located in Garfield County, southcentral Utah, near the town of Escalante. The Box-Death Hollow Wilderness and Phipps Death Hollow Instant Study Area (ISA) are located within the KGS. Approximately 12,355 acres are under Oil and gas lease within the KGS. Lands within the KGS, exclusive of the Wilderness and ISA, were designated as available for oil and gas leasing in existing planning documents; the Land and Resource Management Plan for the Dixie National Forest (FS) and the Escalante Management Framework Plan (BLM).

The FEIS analyzes six alternatives related to offering lands within the Escalante KGS for oil and gas lease. In so doing, it reexamines current planning decisions made in FS and BLM planning documents regarding where to offer leases and under what conditions. Lands within the Wilderness and ISA were not considered for leasing and development except for existing leases that constitute valid existing rights. The six alternatives are:

I. Offer No New Leases but Recognize the Potential Development of Existing Oil and Gas Leases in the KGS. (No Action Alternative)

II. Offer New Leases for CO2 Only Within Antone Bench and Areas 2, 3, 4, and 5 and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

III. Offer New Leases for Oil and Gas and C02 Within the Area of Greatest Potential for Development and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

IV. Offer New Leases for Oil and Gas Within those Areas Available for Oil and Gas Leasing and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

V. Offer New Leases for Oil and Gas and CO2 for All Lands Available for Leasing and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS. (Selected Alternative)

VI. Offer No New Leases and Seek Congressional Authority to Acquire All Existing Oil and Gas Leases in the KGS. (Environmentally Preferred Alternative)

The Decision is to select and implement Alternative V. The Selected Alternative allows the offering for oil and gas or CO2 leases on all lands available for leasing within the KGS. Antone Bench and Areas 2, 3, 4, and 5, also within the KGS, were withdrawn from oil and gas leasing by the Utah Wilderness Act of 1984, but are available for CO2 leasing until September 28, 1989.

The Decision does not require a planning amendment to the BLM's Management Framework Plan. The FS Land and Resource Management Plan for the Dixie National Forest will be amended to incorporate additional special stipulations identified in the FEIS.

The Decisions is subject to appeal under Secretary of Agriculture Appeal Regulations, 36 CFR 211.18. The Notice of Appeal, a statement of reasons to support the appeal, and any request for oral presentation must be writing and must be filed with the Deciding Official: J.S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, 324 25th Street, Ogden, UT 84401, within 45 days of the date of the Decision. The appeal period cannot expire prior to 30 days after publication by the Environmental Protection Agency of the Notice of Availability of the Fial EIS in the **Federal Register**. The Record of Decision constitutes the Proposed Decision of the BLM. Proposed Decisions pertaining to lands within the KGS administered by the BLM are subject to protest by any adversely affected party who participated in the review and comment process.

Protests must be made in accordance with provisions of 43 CFR 1610.5–2 and submitted to: Director, Bureau of Land Management, 18th and C Streets NW, Washington DC 20240. Protests must be received by the Director, Bureau of Land Management, within 30 days after the date of publication of the Notice of Availability of the Final EIS in the **Federal Register** by the Environmental Protection Agency. the protest must contain the name and address of the protestor, his/her interests in the action being protested, a statement of issues being protested, an indication of which part of the FEIS is being protested, a copy of the document addressing the issues submitted during the Draft EIS review period, and a concise statement explaining why the Acting State Director's Decision is believed to be wrong.

ADDRESSES: The Record of Decision and FEIS are available for review at the FS Regional Office, 324 25th Street, Ogden, Utah; Dixie National Forest Supervisor's Office, 82 North 100 East, Cedar City, Utah; Escalante Ranger District Office, Escalante, Utah. It is also available at the BLM Utah Office, 324 South State Street, Salt Lake City, Utah; and at the Cedar City District Office, 1579 North Main, Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: Calvin Bird, Planner, Dixie National Forest, P.O. Box 580, Cedar City, UT 84720; (801) 586–2421.

Date: May 4, 1988.

J. S. Tixier,

Regional Forester.

[FR Doc. 88–10320 Filed 5–9–88; 8:45 am]

BILLING CODE 3410–11–M

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COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. on May 23, 1988, at the Burbank Hilton Hotel, 2500 Hollywood Way, Burbank, California 91505. The purpose of the meeting is program planning and discussion of projects submitted to the Chair.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–10303 Filed 5–9–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB); Bureau of the Census

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census; Commerce.
Title: Survey of Manufacturing Technology.
Form Number: Agency—SMT–1; OMB–NA.
Type of Request: New collection.
Burden: 12,000 respondents; 4,000 reporting hours.
Needs and uses: This supplement to the 1987 Economic Censuses will collect information to measure the prevalence of selected manufacturing technologies. ITA and NBS within the Department, logistical offices within DOD, and BLS have requested this information to be used in determining the international competitiveness of the U.S. manufacturing sector. This survey will be the only comprehensive measure of advanced technology used in manufacturing.
Frequency: Quinquennially.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10346 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Information Collections Under Review by the Office of Management and Budget (OMB); National Oceanic and Atmospheric Administration

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Cooperative Agreements Under Fish and Seafood Promotion Act of 1986.
Form Number: Agency–N/A; OMB–N/A.
Type of Request: New Collection.
Burden: 20 respondents; 280 reporting hours
Needs and uses: The Fish and Seafood Promotion Act of 1986 established a National Fish and Seafood Promotion Council. The mission of the Council is to promote fish and fish products, improve marketing and utilization of fish, and provide consumer education on the value of fish products. The tasks of the Council will be accomplished primarily through cooperative agreements with experts in these areas. Applications for cooperative agreements will be solicited. The information provided will be used to evaluate applications and make the awards.
Affected Public: Individuals; states or local governments; businesses or other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB desk Officer: John Griffen, 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Fishing Vessel Capital Construction Fund Preliminary Deposit/Withdrawal Report.
Form Number: Agency–N/A; OMB–N/A.
Type of Request: New Collection.
Burden: 2,000 respondents; 166 reporting hours
Needs and uses: The Fishing Vessel Capital Construction Fund program defers Federal tax on fishing vessel income deposited into a fund for the purpose of constructing, acquiring, or reconstructing a fishing vessel. The Tax Reform Act of 1986 requires the Secretary of Commerce to provide the Secretary of Treasury with a written report on participants withdrawals and deposits from the fund during the previous tax year. This report will collect this information.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 29, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10347 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–201–003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty, Administrative Review: Correction

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review, correction.

In **Federal Register** document 88–9269 beginning on page 15090 in the issue of Wednesday, April 27, 1988, the company-specific assessment and cash deposit rates for Ceramica y Pisos Industriales de Culiacan ("Culiacan") were incorrectly stated. Please make the following corrections:

1. On page 15090 in the second column, first paragraph, fourteenth line, 18.98 is corrected to read 18.20.
2. On page 15092 in the second column, third paragraph, ninth line, 18.98 is corrected to read 18.20.
3. On page 15092 in the third column, third paragraph, eighth line, 18.98 is corrected to read 18.20.

All other assessment and cash deposit rates cited remain unchanged.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 4, 1988.

[FR Doc. 88–10359 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DS–M

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Import Adminsitration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Article 10 of the Arrangement Between the Coordiantion Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than May 20, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Administration, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3878, Washington, DC, 20230, (202) 377–3984.

SUPPLEMENTARY INFORMATION: Paragraph 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses for the importation of machine tools covered by the Arrangement. Such licenses may be issued when it is determined "that the attainment of the objectives of this Arrangement requires the importation * * * of arrangement products in excess of the applicable export limit." Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 60 turning centers from Taiwan over the next year. The turning centers meet the following specifications:

Capacity: maximum turning length 23.62", distance between center and spindle nose 36.22", maximum swing over bed 24.41", maximum turning diameter 14.57";

Headstock: spindle taper A2–8/MT #7, spindle hole 3.03", chuck diameter 12", bar capacity 2.56", spindle speed 0–2200 rpm, spindle motor 25/30 hp;

Turret: number of stations 12, tool select, bidirectional

x-axis: travel 9.65", traverse 177" per minute;

z-axis: travel 24.80", traverse 354" per minute;

Tailstock: quill diameter 4.33", quill travel 3.94", quill taper MT #4.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than May 20, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address, (202) 377–1248.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88–10360 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Receipt of Petition for Rulemaking; Radio-Television News Directors Association et. al.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt.

NOAA announces receipt of a Petition for Rulemaking to amend its regulations for the licensing of private remote sensing space systems, 15 CFR Part 960, issued under title IV of the Land Remote-Sensing Commercialization Act of 1984, 15 CFR Parts 4241–4246.

The Radio-Television News Directors Association, American Society of Newspaper Editors, Media Institute, National Association of Broadcasters, National Broadcasting Company, Inc., Reporters Committee for Freedom of the Press, and Turner Broadcasting System, Inc. have petitioned NOAA to amend its regulations to incorporate proposed standards by which the Government will determine whether restrictions must be placed on the license of an operator of a remote sensing space system to protect national security and international obligations.

Similar standards were proposed during the rulemaking which was completed on July 10, 1987 by the adoption of 15 CFR Part 960. Petitioners request further review of the issue at this time in light of the President's National Security Decision Directive of January 5, 1988 which was intended to "encourage the development of commercial systems which image the Earth from space competitive with or superior to foreign-operated civil or commercial systems." *See* Fact sheet released by the Press Secretary of the White House, at 3 (Feb. 11, 1988).

The essence of the Petition is stated on page 4.

* * * the continuing uncertainty over the nature of the restrictions that in the future might be imposed on remote-sensing licensees in the name of "national security" and "international obligations" is itself a significant impediment to the development of a competitive remote-sensing capability by the private sector. It is not enough for NOAA merely to state that such restrictions will be imposed, if at all, only on a case-by-case basis after applications have been filed. The press must be able to know with a reasonable degree of certainty at the present time—before applications have been filed—whether, when and how content-based restrictions will be imposed.

NOAA's current rules do not remove or even mitigate the specter that the government might seek to impose restrictions on licensees that undermine the economic viability of a remote-sensing system dedicated to news gathering. Consequently, NOAA's rules will inevitably "chill" the willingness of mass media organizations and other parties to invest substantial sums in developing such systems and applying for a license to operate them. By simply

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specifying the standards it will use when determining whether to impose restrictions. NOAA will transform the business environment from one where only a few companies are even exploring the concept of high-resolution civilian remote sensing, to one where a number of parties will seriously consider establishing a competitive remote-sensing marketplace in outer space without the need for government subsidies.

Copies of the Petition may be obtained by contacting Peggy Harwood, National Environmental Satellite, Data, and Information Service, FB-4, Room 2051, Washington, DC 20233; (301) 763-4522. Comments on the need for proposed amendments, alternative approaches as well as other comments will be accepted for 60 days and will be considered by NOAA in determining whether to undertake rulemaking. Comments should be sent to Peggy Harwood at the above adress.

Dated: April 26, 1988.

Thomas N. Pyke, Jr.,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 88-10297 Filed 5-9-88; 8:45 am]

BILLING CODE 3510-12-M

[Docket No. 80485-8085]

Information Relating to Bowhead Whales

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of documents and request for public comment.

SUMMARY: Information is published by NOAA that is used in the development of the U.S. position to be presented before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice NOAA is advising the public of the availability of and soliciting public comment on the Administrator's initial discretionary views on the U.S. request for aboriginal harvest of bowhead whales for 1989-1991. This position includes: (1) The current population level and annual net recruitment rate of the bowhead whale, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, and (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme. Also available upon request is the list of documents reviewed and used in formulating these initial views.

DATE: Written comments on the Administrator's initial views must be submitted by May 11, 1988.

ADDRESS: The Administrator's initial views and the list of documents reviewed and used in formulating these initial views are available from Becky Rootes, Office of International Fisheries, National Marine Fisheries Service, Room 919, Universal South Building, 1825 Connecticut Avenue, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, (202) 673-5281.

SUPPLEMENTARY INFORMATION: (16 U.S.C. 1361-1407, 1531-1543, 916).

Dated: May 5, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-10350 Filed 5-9-88; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Stanford University

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Stanford University, joint owner of the invention, having a place of business at Palo Alto, California, an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products embodying the invention entitled "External Laser Frequency Stabilizer," U.S. Patent No. 4,700,150, Application S.N. 6-745,309. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Stanford University.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-10301 Filed 5-9-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Officials Authorized To Issue Export Visas for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From the Arab Republic of Egypt

May 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUMMARY: The Government of the Arab Republic of Egypt has notified the United States Government that Messrs. Adel Orabi, Abed Shoukry, Essam Mahmoud and Tawfik Messiha of the Cotton Textile Consolidation Fund have been authorized to issue export visas for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products exported from Egypt.

SUPPLEMENTARY INFORMATION: See 52 FR 48857 published in the **Federal Register** on December 28, 1987.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10344 Filed 5-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 11, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of the current limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for categories 313, 314, 350 and 613/614/615 are being increased for carryover from the period which began on July 1, 1987 and extended through December 31, 1987. The limits for the July 1, 1987 through December 31, 1987 period for Categories 313, 320-P, 350 and 613 are being reduced for carryover applied to the foregoing limits.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 51 FR 49465 and 52 FR 49468, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 5, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began, in the case of Categories 313, 320-P, 350 and 613, on July 1, 1987 and extended through December 31, 1987; and, in the case of Categories 313, 314, 350 and 613/614/615, on January 1, 1988 and extends through June 30, 1988.

Effective on May 11, 1988, the directives of December 28, 1987 are hereby amended to adjust the limits for the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

Category	Adjusted 6-mo. limit [1] (July 1, 1987-Dec. 31, 1987)
313	7,262,022 square yards.
320-P [2]	4,348,832 square yards.
350	9,352 dozen.
613	7,043,150 square yards.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1987.

[2] In Category 320-P, only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

Category	Adjusted 6-mo. limit [1] (Jan. 1, 1988-June 30, 1988)
313	6,937,412 square yards.
314	19,856,657 square yards.
350	55,202 dozen.
613/614/615	8,569,249 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Goods exported in excess of the adjusted limits for the July 1, 1987 through December 31, 1987 period shall be charged to the corresponding limits for the January 1, 1988 through June 30, 1988 period.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10345 Filed 5-9-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Altered System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of an altered system of records.

SUMMARY: The Army is publishing a notice for public comment on an altered system of records included in its existing inventory of system of records subject to the Privacy Act of 1974.

DATE: This proposed action will be effective without further notice June 9, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Commander, U.S. Army Information Systems Command, ATTN: AS-OPS-MR (Mr. Cliff Jones), Fort Huachuca, Arizona 85613-5000. Telephone (602) 538-6568, AUTOVON: 879-6568.

SUPPLEMENTARY INFORMATION: The Army's system of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 23576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 18798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987
FR Doc. 87-19686 (52 FR 32329) August 27, 1987
FR Doc. 87-26438 (52 FR 43932) November 17, 1987
FR Doc. 88-8671 (53 FR 12972) April 20, 1988

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on May 2, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. System name has been changed from Medical Research Volunteer Register to Research Volunteer Register. Changes have been made to the following captions of the attached system notice: System location—Primary, Categories of individuals covered by the system, Categories of records in the system, Purpose(s), Routine uses of records maintained in the system, including categories of users and the purpose of such uses, Storage, Safeguards, and Notification procedure. The system was previously published at 51 FR 40479, November 7, 1986.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 5, 1988.

A1304.22aDASG

SYSTEM NAME:

Research Volunteer Registry.

SYSTEM LOCATION:

Primary

U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, MD 21701-5012 and U.S. Army Chemical Research, Development and Engineering Center (CRDEC), Aberdeen Proving Ground, MD 21010-5423.

Alternates

Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800
Walter Reed Army Institute of Research, Washington, DC 20307–5100
U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000
U.S. Army Institute of Dental Research, Washington, DC 20307–5300
U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200
U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010
U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425
U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011
U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of military members, civilian employees, and non-DOD civilian volunteers participating in current and future research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Development and Engineering Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, and other such information as necessary to locate the individual. Individual consent agreements, test protocols, challenge materials, inspection/afteraction reports, standard operating procedures, medical support plans, and summaries of pre-test and post-test physical examination parameters measured before and after testing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., sections 1071–1090 and section 3012; 44 U.S.C, section 3101; E.O. 9397.

PURPOSE(S):

To assure that the U.S. Army Medical Research and Development Command (USAMRDC) and the U.S. Army Chemical Research, Development and Engineering Center (CRDEC) can contact individuals who participated in research conducted/sponsored by the Command and Center in order to provide them with newly acquired information, which may have an impact on their health. To answer inquiries concerning an individual's participation in research sponsored/conducted by USAMRDC and CRDEC. To facilitate retrospective medical and/or scientific evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information may be disclosed to:

1. HQDA: To contact volunteer human subjects later should it be in their best interests; to document and assist in determining the need for medical treatment at any future time for a condition proximately resulting from participation in a test; to adjudicate claims and determine benefits; to report medical conditions required by law to other Federal, State, and local agencies; for retrospective medical/scientific evaluation; and for future scientific and legal significance.

2. Veterans Administration: To assist in making determinations relative to claims for service-connected disabilities; and other such benefits.

3. See also the "Blanket Routine Uses" set forth at the beginning of the Army's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

a. Paper records in file folders; computer magnetic tapes, disks, and printouts.

b. Laboratory-conducted research. Computer tapes are filed in the laboratory.

c. Contractor-conducted research. Upon completion of research, files are turned over to the U.S. Army Medical Research and Development Command. Computer tapes are filed at the U.S. Army Medical Research and Development Command.

RETRIEVABILITY:

By name, SSN.

Safeguards:

a. USAMRDC: Computerized records are accessed by the custodian of the records system, and by persons responsible for servicing the record system in the performance of their duties. Computer equipment and files are located in separate, secured area.

b. CRDEC: Paper records and data disks are kept in locked compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site identification number assigned to an individual terminal and by valid site identification number assigned to an individual terminal and by a valid user identification and password code assigned to an authorized user, changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to personnel assigned to work on the data base. Data base output is available only to designated computer operators. Computer facility has double barrier physical protection. The remote is in a room which is locked when vacated and the building is secured when unoccupied.

RETENTION AND DISPOSAL:

Records are destroyed after 65 years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RDZ (SGRD–HR), 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should submit a written request to Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RDZ (SGRD–HR), 5109 Leesburg Pike, Falls Church, VA 22041–3258 or to Commander, U.S. Army Chemical Research, Development and Engineering Center, ATTN: SMCCR–HV, Aberdeen Proving Ground, MD 21010–5423. Written requests should include full name, social security number, current address, and telephone number of the requester. For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, building pass, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure", and furnish information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, medical authorities, Test Director reports, documents prepared by staff supporting the test/research, and records/documents from records custodians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–10355 Filed 5–9–88; 8:45 am]
BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Notice of a Proposed New Ongoing Computer Matching Program Between the Department of Defense and Financial Institutions To Preclude Escheatment of Individual Accounts Under State Laws

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Public notice of a proposed new ongoing computer matching program between the DoD and financial institutions for any public comment.

SUMMARY: The Department of Defense is offering to assist financial institutions in locating individuals connected with the Department of Defense who are in peril of losing dormant, abandoned or unclaimed accounts under State laws by locating affected personnel and precluding financial institutions from turning over any such monies or funds in individual accounts to the State in which the banking or financial organization or business association has its principal place of business. States, under their own laws, may automatically claim and take custody of such abandoned or unclaimed accounts by escheatment after a certain number of years of account inactivity by operation of law. States and financial institutions make earnest efforts by limited due process of public notice in newspapers and writing to the account owner's address of record, but if an individual has moved or been reassigned from the physical area, the chances of contact are reduced considerably. By offering to assist financial institutions to confer a benefit to the lost record account owner, the Department of Defense is serving a public policy and interest.

DATE: The matching program will be effective and begin without further notice on June 9, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments or inquiries to: Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, 550 Camino El Estero, Suite 200, Monterey, CA 93940–3231, Commercial phone number: (408) 646–2951; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD, is willing under written agreement to assist individual financial institutions, to be a matching agency for the purpose of providing up-to-date home or work addresses of persons of record of abandoned money or other personal property subject to escheatment laws. The computer matching will be performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using records supplied on computer tape by the financial institutions and the DoD employment records of both military and civilian personnel, active and retired. The match will be accomplished using the social security number. Matching records will be returned to the financial institution, the activity responsible for reviewing the matching data and for assuring that the account owner receives proper notification and due process before any adverse action is taken on the abandoned property.

Set forth below is the information required by paragraph 5.f. (1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget (OMB) dated May 11, 1982 (47 FR 21656, May 19, 1982). A copy of this proposed notice has been provided to the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on May 2, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
May 5, 1988.

REPORT OF A NEW ONGOING COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF DEFENSE AND DESIGNATED FINANCIAL INSTITUTIONS TO PRECLUDE ESCHEATMENT OF INDIVIDUAL ACCOUNTS UNDER STATE LAWS

a. *Authority.* The legal authority under which this computer matching program is conducted is 5 U.S.C. 552, Freedom of Information Act; 5 U.S.C. 552a, Privacy Act of 1974; 10 U.S.C. 136, Assistant Secretaries of Defense; appointment; powers and duties; precedence; 12 U.S.C. 484(B), Limitation on visitorial powers; 12 U.S.C. 2053, State entitlement to escheat or custody; Uniform Disposition of Abandoned or Unclaimed Property Act of the various States; Section 106 of the Federal Credit Union Act (12 U.S.C. 1756); National Credit Union Administration (NCUA) Final Interpretive and and Policy Statement (IRPS) 82–4 (47 FR 53325, November 26, 1982); E.O. 9397, Numbering System for Federal Accounts; 32 CFR Part 231—Financial Institutions on DoD Installations; Office of Management and Budget Memorandum M–82–5, dated May 11, 1982 entitled: Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982); Defense Privacy Board Advisory Opinions Memorandum 88–2, dated October 15, 1988, Opinion Nr. 28, "Requests for home addresses of Department of Defense personnel who stand to benefit from the disclosure."

b. *Program Description.* On a case by case basis under written agreement, individual financial institutions may voluntary participate as a source agency in a computer matching program with the Department of Defense (DoD) to locate individuals with dormant accounts with the financial institution that are indanger of escheating to various states under existing state laws. The computer matching programw will identify DoD active, retired or separated Federal employees and members whose accounts are about to escheat to a state government due to account inactivity. The purpose of the match is to provide up-to-date home or work addresses at which the financial institution can contact the account holder to withdraw funds or activate accounts which have been inactive for several years. If account activity is not instituted, the balance escheats to the state having jurisdiction over the financial institution.

Upon receipt of a computer file of inactive accounts, the Defense Manpower Data Center (DMDC) of the Defense Logistics Agency (DLA), of the Defense Department will perform, as a matching agency, a computer match using all nine digits of the social security numbers furnished. Upon completion of the computer match, DMDC will send the financial institution a record of the matched records (hits) containing the DoD employee or member's name, service, or agency, category of employee, and current work or home address.

The financial institution is responsible for reviewing the matched records to assure that the individual identified in the match is the account holder. The DoD record will not be used for any purpose by the financial institution other than to confer a benefit to the account holder to prevent escheatment and the written agreement between the financial institution and DMDC must attest to this fact as public interest dictates in those cases where disclosure of an individual's last known home address is released in order to confer a benefit.

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DMDC will make resonable efforts, pursuant to subsection (e)(6) of the Privacy Act (5 U.S.C. 552a), to assure that records are accurate, complete, timely, and relevant for agency purposes prior to disclosure. Further, it will insure that an accounting of disclosures pursuant to subsection (c) of the Privacy Act is maintained.

c. *Records to be Matched.* The DMDC system of records contains a routine use permitting disclosures for this match.

Financial Institutions (Source Agencies)

(1) Individual account records subject to escheatment. (Not a Federal system of records)

Department of Defense (Matching Agency)

(1) DoD component: Defense Logistics Agency (DLA) System identification: S322.10 DLA–LZ System name: Defense Manpower Data Center Data Base **Federal Register** citation: 53 FR 4442, February 16, 1988

d. *Period of the Match.* Matching may begin as soon as possible after publication of this notice in the **Federal Register** and will continue on a case by case basis at the request of financial institutions.

e. *Security Safeguards.* Automated records are accessible only by password and access to the DMDC computer center is by key or picture identification. Hard copy records are maintained in Federal Office Buildings in lockable file cabinets and are accessed only by authorized Federal employees or are maintained at financial institutions or their contractors.

Disposition of Records. Tapes received by DMDC will be returned to the financial institution upon successful completion of the match. Hard copy match records will be funished to the financial institution and used to contact the account holder if necessary. Non-hit records will not be used for any purpose by DMDC.

[FR Doc 88–10354 Filed 5–9–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117R]

Notice Inviting Applications for New Awards Under the Research and Development Centers Program for Fiscal Year 1989

Purpose: To fund a research and development center to conduct research and related activities for the study of effective schooling of disadvantaged students.

Deadline for Transmittal of Applications: September 16, 1988.

Applications Available: May 13, 1988.

Available Funds: The Department estimates that $1,620,000 will be available for this competition in fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated Size of Award: $1,620,000.

Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in the **Federal Register** on March 22, 1988 (53 FR 9408). If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resumbit their applications. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantive changes affecting the priority chosen for this competition are made in the final biennial research priorities, applicants will be given an opportunity to revise or resumbit their applications. (c) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625) the following as an absolute priority: improvement of educational outcomes for students-at-risk, including identifying what makes some schools and certain educational strategies successful in lowering dropout rates and raising achievement levels of those students having the greatest difficulty in terms of learning and motivation.

Within this absolute priority, the Secretary particularly invites applications emphasizing the study of effective schooling of disadvantaged students in public and private schools. However, applications that meet this invitational priority will not receive an absolute or competitive advantage over applications within the absolute priority that do not meet this invitational priority.

Weighting for Selection Criteria: The proposed program regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at 34 CFR 708.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 10 points as follows: 5 additional points to the criterion at § 708.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 708.11(d) (Technical soundness), bringing the total for this criterion to 25 points.

For Applications or Information Contact: Dr. John Ralph, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, Room 617, 555 New Jersey Avenue, N.W., Washington, DC 20208–1606. Telephone Number (202) 357–6223. There will be a briefing for prospective applicants on June 13, 1988 from 1:00 p.m. to 4:30 p.m. in Room 326, 555 New Jersey Avenue, NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: May 5, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–10426 Filed 5–9–88; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetland Statement of Findings; University of South Carolina John E. Swearingen Center for Engineering Phase II Project

ACTION: Floodplain/Wetland Statement of Findings.

SUMMARY: The U.S. Department of Energy (DOE), has prepared a floodplain/wetland assessment for the proposed University of South Carolina John E. Swearingen Center for Engineering Phase II Project pursuant to 10 CFR 1022.16. A portion of the proposed action will take place within the Rocky Branch River 100 year floodplain. Following publication of a notice of floodplain involvement (53 FR 13437), DOE completed a floodplain/wetland assessment. The proposed action was identified, environmental impacts examined, and mitigative measures identified. DOE has determined that there are no practicable alternatives to the proposed action and that it has been designed to minimize potential harm to and within the floodplain.

SUPPLEMENTARY INFORMATION: A portion of the proposed site is affected by the Rocky Branch River 100 year floodplain. According to Executive Order 11988 (Floodplain Management, May 24, 1977), Federal agencies "shall consider alternatives to avoid adverse effects and incompatible development in the floodplain." If there is no "practicable alternative" to locating a project in a floodplain, an agency is to "design or modify its action in order to minimize potential harm to or within the floodplain." Natural and beneficial floodplain values to be protected include natural moderation of floods, water quality maintenance, groundwater recharge, support of living resources (marshes, fish, and wildlife), cultural richness (archaeological, historical, recreational, scientific), and agricultural, aquacultural, and forestry production.

The construction effects of this project on the 100 year floodplain will be minor and short-term. First of all, the construction site consists of a previously disturbed, urban landscape. No threatened or endangered species, critical habitats, or cultural resources exist on or near the affected area. During the construction, silt control practices will minimize erosion of soil and control of soil runoff into city streets, storm sewers, and the Rocky Branch River. Secondly, the footprint of the proposed construction would follow the footprint of the existing structure allowing the floodplain to be unaffected. Therefore, the project will not negatively affect the natural and beneficial floodplain values listed above.

Mitigation

Mitigative measures to reduce the risks of adverse consequences during construction and future adverse environmental consequences will be those recommended in the FEMA Document *National Flood Insurance Program and Related Regulations* 44 CFR Ch. 1 (10–1–85 Edition), Paragraph 60.32(d). The affected portions of the complex will utilize certified "floodproof" construction to a minimum elevation of one foot above the 100 year flood elevation (as outlined in the Flood Insurance Rate Map). Construction will utilize floodproofing techniques as outlined in *Floodproofing Non-residential Structures*, FEMA 102, May 1986. Construction configuration will not result in any increase in flood levels within the community during the occurrence of the base flood discharge (44 CFR Ch. 1 (10–1–85 edition)).

Alternatives: Since the purpose of the project is to replace an existing wing of a building, there are no alternative locations for the proposed project. Therefore, the only alternative would be the no action alternative. The no action alternative is unacceptable in this case because the existing buildings, in their present state, are unsafe, congested, and unsuitable for state-of-the-art mechanical and civil engineering research and instructional activities.

Benefits derived from the proposed action have been determined to outweigh the potential environmental impacts. As a result of its review of the environmental impacts, DOE has determined there is no practicable alternative to the proposed action in the floodplain and that the proposed action has been designed to minimize harm to and within the floodplain.

A copy of the floodplain assessment is available from Linda Freeman, Environment, Safety, and Health Division, U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Illinois 60439, (312) 972–2240.

Hilary J. Rauch,

Manager.

[FR Doc. 88–10322 Filed 5–9–88; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. EL88–20–000, et al.]

Kentucky Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. EL88–20–000]

Take notice that on May 2, 1988, Kentucky Utilities Company (Company) tendered for filing a request for a declaratory order or for waiver from the fuel clause regulations allowing it to recover, over time, $14.5 million in payment of release from a coal supply agreement. The $14.5 million on a jurisdictional basis is represented by $2.25 million being FERC wholesale jurisdiction and $12.25 million Kentucky retail jurisdiction. Company states that purchase of coal from the open market is now less expensive and a coal cost net savings determined to be approximately $12.9 million will result to the customers. A request for waiver of prior notice with the effective date of the accounting month of May, 1988 was included.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Snow Mountain Pine Company

[Docket No. EL88–23–000]

Take notice that on May 2, 1988, Snow Mountain Pine Company (Snow Mountain) tendered for filing, pursuant to Section 210(h) of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. 824a–3(h), a petition to the Commission to enforce the requirements of section 210(f) of PURPA, 16 U.S.C. 824a.–3(f) and 18 CFR Part 292 against the Oregon Public Utility Commission.

Snow Mountain alleges that the Oregon Public Utility Commission (OPUC) is not implementing and has not implemented the requirements of section 210 of PURPA and 18 CFR Part 292. Snow Mountain states that on February 8, 1988, by Order No. 88–153 the OPUC failed to implement the aforesaid satute and rules in that the OPUC ordered that avoided cost data, which was filed in accordance with federal law, *not be used* to establish avoided costs to be paid for purchases from a qualifying facility when such utility purchases are involuntary.

Comment date: June 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Edison Sault Electric Company

[Docket No. EC88–18–000]

Take notice that on April 29, 1988, Edison Sault Electric Company (Edison Sault) tendered for filing an application for an order granting any authorization needed to permit a planned corporate reorganization.

Edison Sault conducts an electric generation, transmission and distribution business in the State of Michigan. Under the proposed corporate reorganization, Edison Sault would become a wholly owned subsidiary of a new company which was recently formed for the purpose of becoming the parent of Edison Sault.

Edison Sault states that the proposed corporate reorganization is consistent with the public interest.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Edison Sault Electric Company

[Docket No. ES88–36–000]

Take notice that on April 28, 1988, Edison Sault Electric Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $10,000,000 principal amount of short-term debt on or before December 31, 1989, with final maturity no later than December 31, 1990.

Comment date: May 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

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5. Pennsylvania Power & Light Company

[Docket No. ER88-172-001]

Take notice that on April 27, 1988, Pennsylvania Power & Light Company tendered for filing a compliance report.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc. d/b/a, Missouri Public Service

[Docket No. ER88-371-000]

Take notice that on April 28, 1988, UtiliCorp United Inc. d/b/a Missouri Public Service tendered for filing a proposed change in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace the contract rate schedule presently in effect and on file with the Commission which relates to the City of Liberal located in the State of Missouri. The proposed contract would supersede and replace Supplement No. 2 to FPC Rate Schedule Number 36. The proposed contract reflects a change in contract capacity and a change in the expiration date of the contract. The new contract does not change anticipated annual revenues.

The proposed contract capacity change is in compliance with a request received from the City of Liberal. The extension in the term of the contract is to assure a long-term source of power to the City of Liberal and to justify recent and any additional expenditures required by the Company to maintain and improve the capacity of facilities used to serve the City of Liberal.

Copies of the filing were served upon the City of Liberal whose contract would be affected thereby, and upon the Public Service Commission of Missouri. The rates and charges would not be affected.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ES88-370-000]

Take notice that on April 28, 1988, The Montana Power Company (Montana Power) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC-88, applicable for sales of electricity by MPC for resale to Central Montana Generation and Transmission Cooperative, Inc., (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc., (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC-88 will provide it with an increase in revenues from sales to these customers of $2,678,085 (18%) during the year ending June 30, 1989, and implements the third annual rate increase pursuant to a Settlement Agreement approved in Docket No. ER84-359-000, 31 FERC ¶ 61,060 (1985).

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER88-372-000]

Take notice that on April 29, 1988, Florida Power & Light Company (FPL) tendered for filing as an initial rate schedule a Special Short Term Agreement to Provide Capacity and Scheduled Incremental Energy By Florida Power & Light Company To Florida Municipal Power Agency During Outage of Indian River Unit No. 3 and Cost Support Schedules C-S, D, F-S and G-S (together with Cost Support Schedule F-S Supplements) which support the rates for sales under the Special Short Term Agreement.

The new rate schedule provides for the sale of power and energy from FPL to the Florida Municipal Power Agency for a specified term commencing on May 1, 1988 and estimated to end the earlier of: (1) The return of Indian River Unit No. 3 or (2) August 31, 1988. FPL respectfully requests that the proposed Special Short Term Agreement and Cost Support Schedules C-S, D, F-S and G-S (together with Cost Support Schedule F-S Supplements) be made effective on May 1, 1988. According to FPL, a copy of this filing was served upon the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER88-373-000]

Take notice that on April 29, 1988, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing changes in the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreement to provide qualifying facility transmission service for Royster Company (Royster), designated as Tampa Electric's Rate Schedule FERC No. 28. Tampa Electric states that the revised transmission service rates are based on 1987 Form No. 1 data, and are developed by the same method that was utilized in the cost support schedules accompanying the initial filing of the transmission service agreement and in prior annual revisions.

Tampa Electric proposes that the revised transmission service rates be made effective as of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Royster and the Florida Public Service Commission.

Comment date: May 19, 1988, in accordance with Standard Pargraph E at the end of this notice.

10. Gulf States Utilities Company

[Docket No. ER88-374-000]

Take notice that on April 29, 1988, Gulf States Utilities Company (GSU) tendered for filing proposed changes in its Agreement for Wholesale Electric Service to Municipalities (Agreement) with the City of Kaplan, City of Gueydan, and Town of Erath (Customers). The rate schedule changes defer the Customers' obligation to pay GSU a monthly facilities charge set forth in "Rider A" to the Agreement under certain enumerated circumstances. The rate schedule changes do not constitute a rate increase. The rate schedule changes were agreed to by GSU and the Customers.

GSU requests an effective date of June 28, 1988, for the contract amendments. Copies of this filing were served upon the Customers.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this document.

11. Mecklenburg County, North Carolina, Board of County Commissioners

[Docket No. QF88-196-000]

On April 15, 1988, Mecklenburg County, North Carolina, Board of County Commissioners (Applicant), of 720 East Fourth Street, Charlotte, North Carolina 28231 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. An amendment was filed on April 26, 1988. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Mecklenburg County, North Carolina. The facility will consist of two 115 ton per day mass burn combustors and associated steam generators and an extraction/condensing steam turbine generator. The maximum electric power production capacity will be 4,015 kilowatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for start-up and shut-down, however, such fossil fuel usage will not exceed 2.5% of the total energy input to the facility during any calendar year period. Installation of the facility is scheduled to begin July 1987.

Comment date: June 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Indeck Energy Services of Baldwin, Inc.

[Docket No. QF88-350-000]

On April 22, 1988, Indeck Energy Services of Baldwin, Inc. (Applicant), of 1111 S. Willis Avenue, Wheeling, Illinois 60090 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pleasant Plain Township, Michigan. The facility will consist of a wood-fired stoker type steam generator and a condensing steam turbine generator. The net electric power production capacity will be 12 megawatts. The primary energy source will be biomass in the form of wood waste. The facility has no planned usage for natural gas, coal, or oil. Construction of the facility will begin in July 1989.

Comment date: June 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10361 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-352-000, et al.]

Panda Energy Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 4, 1988.

Take notice that the following filings have been made with the Commission:

1. Panda Energy Corporation

[Docket No. QF88-352-000]

On April 25, 1988 Panda Energy Corporation (Applicant) of 4100 Spring Valley, Suite 1001, Dallas, Texas 75244 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the grounds of the Rock-Tenn Company in Dallas, Texas. The facility will consist of three independent combustion turbine-generators and three heat recovery steam generators. The primary energy source of the facility will be natural gas. The useful thermal energy output of the facility, in the form of process steam, will be used in pulpers and dryers for the manufacture of recycled paper board. The net electric power production capacity of the facility will be 11.046 megawatts.

Comment date: June 9, 1988 in accordance with Standard Paragraph E at the end of this notice.

2. Encogen Two Partners, Ltd.

[Docket No. QF88-344-000]

On April 14, 1988, Encogen Two Partners, Ltd. (Applicant), c/o Enserch Development Corporation, Two World Trade Center, New York, New York 10048-0752, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Nestle Foods Corporation Plant in Freehold, New Jersey. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, and an automatic extraction steam turbine generator. Thermal energy recovered from the facility will be used for food processing in the plant. The net electric power production capacity of the facility will be 99,562 KW. The primary source of energy will be natural gas. Construction of the facility will begin in the first quarter of 1989.

Comment date: June 9, 1988 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10362 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 619-005; Project No. 619-006]

Pacific Gas & Electric Co.; Availability of Environmental Assessment

April 27, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of major license for the proposed Grizzly Development of the Bucks Creek Project No. 619 and has prepared an Environmental Assessment (EA) for the proposed development. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed development and has concluded that approval of the proposed development, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's office at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10373 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 9730-001]

Summit Hydropower; Surrender of Preliminary Permit

May 4, 1988.

Take notice that Summit Hydropower, Permittee for the proposed Whitman River Water Power Project No. 9730, has requested that its preliminary permit be terminated. The permit was issued on April 18, 1986, and would have expired March 31, 1989. The project would have been located on the Whitman River in Worcester County, Massachusetts. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on March 31, 1988, and the preliminary permit for Project No. 9730 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10374 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9175-001; Project No. 2756-000]

Rivers Electric Co., Inc., the Burlington Electric Light Department & Winooski One Partnership; Availability of Environmental Assessment and Finding of No Significant Impact

May 6, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses listed below and has assessed the environmental impacts of the proposed developments.

LICENSES

Project No.	Project name	State	Water body	Nearest town or county	Applicant
9175-001	Eddyville Falls	NY	Rondout Creek	Kingston	Rivers Electric Co., Inc.
2756.000	Chase Mill	VT	Winooski River	Winooski	Burlington Electric Lt Dept & Winooski One Partnership.

Environmental Assessments (EA's) were prepared for the above-proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Public Reference Room, Room 1000, 825 N. Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10375 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-126-000]

Colorado Interstate Gas Co.; Filing of Compliance Purchased Gas Adjustment Clause Provision Pursuant to Order Nos. 483 and 483-A

May 4, 1988.

Take notice that Colorado Interstate Gas Company (CIG) on April 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement the provisions of Order Nos. 483 and 483-A. The tariff sheets listed in Appendix A to the filing are to be effective June 1, 1988.

CIG states that such tariff sheets revise its existing PGA Clause where required to implement the provisions of Order Nos. 483 and 483-A.

CIG further states that on April 12, 1988, the Commission issued an order in Docket No. RP88-44-000 granting CIG's request for waiver of the transitional May 1, 1988 PGA filing and CIG's regular June 1, 1988 quarterly PGA filing under Order Nos. 483 and 483-A. Thus, CIG states it has reflected no change in currently effective rates on Thirty-Fourth Revised Sheet Nos. 7 and 8, but has conformed its Statement of Rates effective January 1, 1988 to the new format specified in § 154.305(a)(1) of the Commission's Regulations implementing Order 483.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10363 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-33-000]

El Paso Natural Gas Co.; Proposed Changes in FERS Gas Tariff

May 4, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on April 29, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A. The proposed changes would decrease rates for

jurisdictional gas service rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's First Revised Volume No. 1 Tariff.

El Paso states that by Order No. 483, *et seq.*, issued at Docket No. RM86-14-000, the Federal Energy Regulatory Commission ("Commission") amended its regulations governing the procedures by which a pipeline company, using the PGA clause option, may pass through changes in the cost of purchased gas to its jurisdictional customers. Among other things, the amended Regulations require companies to make comprehensive annual filings, comprised of a Surcharge Adjustment, and a projected gas costs or "Current Adjustment" which is to be updated on a quarterly basis. El Paso's annual filings are to be effective each July 1, with quarterly adjustments on October 1, January 1 and April 1. El Paso states that the tendered tariff sheets, submitted in compliance with the Commission's Regulations, provide for a decrease attributable to the PGA of $0.3989 per dth in El Paso's currently effective rates.

El Paso requested that the Commission grant such waiver of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1988, as provided for in the Commission's Regulations.

Copies of the filing were served upon El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10364 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-121-000 and TQ88-1-26-000]

Natural Gas Pipeline Co. of America; Changes in Rates

May 4, 1988.

Take notice that on April 29, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, (Tariff) the tariff sheets listed on attached Appendix A to be effective June 1, 1988.

Natural states the purpose of the filing is to implement a revised Section 18 Purchased Gas Cost Adjustment (PGA) of the General Terms and Conditions of its Tariff. The revised Procedures incorporate §§ 154.301 through 154.310 of the Commission's Regulations. The filing also reflects Natural's regular Quarterly Adjustment under the revised procedures.

Natural states that the overall effect of the Quarterly adjustments when compared to its last semi-annual PGA filing effective March 1, 1988, is an increase in the DMQ-1 demand rate of $0.47 and decreases in the DMQ-1 entitlement and commodity rates of $(.0211) and (31.66)¢, respectively. The annual effect of these rate changes is a net decrease of $(81.3) million.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with of §§ 385.214 and 385.211. All such motions or protests must be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

Seventy-fourth Revised Sheet No. 5
Thirty-ninth Revised Sheet No. 5A
Ninth Revised Sheet No. 116
Sixth Revised Sheet No. 117
Ninth Revised Sheet No. 118
Fifteenth Revised Sheet No. 119
Thirteenth Revised Sheet No. 120
Thirteenth Revised Sheet No. 120A
Tenth Revised Sheet No. 121
Third Revised Sheet No. 121A
Second Revised Sheet No. 121B
Second Revised Sheet No. 121C
Second Revised Sheet No. 121D
Original Sheet No. 121E
Original Sheet No. 121F

[FR Doc. 88-10365 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM88-1-59-000]

Northern Natural Gas Co. Alaskan Natural Gas Transportation System (ANGTS); Semi-Annual Rate Adjustment

May 4, 1988.

Take notice that on April 29, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Federal Energy Regulatory Commission (Commission) its regularly scheduled semi-annual ANGTS rate adjustment, including the following tariff sheets, to be effective July 1, 1988 pursuant to Northern's F.E.R.C. Gas Tariff:

Third Revised Volume No. 1

Forty-Seventh Revised Sheet No. 4a
Fifty-Seventh Revised Sheet No. 4b
Twenty-Fifth Revised Sheet No. 4b.1
Fourth Revised Sheet No. 4g.2

Original Volume No. 2

Sixty-Fourth Revised Sheet No. 1c

In this filing, it is stated that, Northern Border Pipeline's estimated transportation costs for Northern Natural for 1988 have increased causing an increase in Northern's rates. Therefore, Northern is required to change its rates pursuant to paragraph 21.4 of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Paragraph 4.4 of its F.E.R.C. Gas Tariff, Original Volume No. 2.

The Company states that copies of the filing have been mailed to each of its Gas Utility customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

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of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10366 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-117-000 and TQ88-1-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on April 29, 1988, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to conform to the requirements of Commission Order Nos. 483 and 483-A. Northern is establishing a base average gas purchase rate of $2.2480 per MMBtu and a surcharge adjustment rate of $.0102 per MMBtu. Northern further intends to use its Flexible PGA to reflect the current market conditions on June 1, 1988 as necessary. Northern does not propose any changes to its D1 or D2 demand rates in this filing.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10367 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-63-002]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

May 4, 1988.

Take notice that on April 28, 1988, Northwest Pipeline Corporation ("Northwest") in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on March 25, 1988 in Docket No. RP88-63, submitted the following tariff sheets to be a part of its FERC Gas Tariff:

First Revised Volume No. 1

Substitute First Revised Sheet No. 119

Original Volume No. 1-A

Substitute First Amended First Revised Sheet No. 342
Substitute Original Sheet No. 414-B
Substitute Second Revised Sheet No. 415
Substitute First Revised Sheet No. 418

Northwest states the purpose of this filing is to revise the above listed tariff sheets to comply with the following conditions set forth in the March 25, 1988 order, and to otherwise conform its tariff to the Commission's January 19, 1988 order in Docket No. CP86-578-000.

(A) All tendered tariff sheets will be effective as of February 10, 1988. Northwest will refund all excess revenues collected for the period beginning February 10, 1988 to the date it reflects the lower sales rate in its customer's bills.

(B) Any language relating to capacity brokering has been deleted.

(C) Rate Schedule T-7 has been revised to indicate Northwest will offer alternate receipt points if capacity for firm transportation is not available at the receipt and delivery points requested.

(D) A take-or-pay affidavit will not be required as part of a shipper's transportation request; such affidavit will only be required at the time the contract is executed.

(E) Northwest has added operating conditions for storage service.

(F) Northwest shall bill all shippers on the basis of actual volumes delivered.

A copy of this filing is being served on all parties of record in this Docket and on all jurisdictional customers and affected state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10368 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

Docket Nos. RP88-114-000 and TQ88-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on April 29, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Eleventh Revised Sheet No. 10
Second Substitute Eleventh Revised Sheet No. 10A
First Revised Sheet No. 106
Second Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute First Revised Sheet No. 109
Substitute First Revised Sheet No. 110
Second Revised Sheet No. 111
Third Revised Sheet No. 112
Fourth Revised Sheet No. 113
Original Sheet No. 113A
Original Sheet No. 113B
Original Sheet No. 113C
Original Sheet No. 113D
Second Revised Sheet No. 114

Second Substitute Eleventh Revised Sheet Nos. 10 and 10A are being filed to reflect changes in purchased gas costs pursuant to the revised Purchased Gas Cost Adjustment clause of Texas Gas's FERC Gas Tariff. The remaining sheets are being filed to reflect revisions to Texas Gas's Purchased Gas Cost Adjustment clause to conform to FERC Order Nos. 483 and 483-A, issued November 10, 1987, and March 2, 1988, respectively, codified in §§ 154.301 through 154.310 of the Commission's Regulations. The sheets are proposed to be effective June 1, 1988.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such protests or motions should be filed on or before May 11, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc.88-10369 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-24-002]

U-T Offshore System; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, U-T Offshore System ("U-TOS") tendered for filing, pursuant to Section 4 of the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 2
Ninth Revised Sheet No. 4
Original Sheet Nos. 8 through 28; and, 70 through 75

U-TOS states that this filing is made in accordance with the Commission's Order issued on April 6, 1988 approving, with modifications, the Stipulation and Agreement filed by U-TOS on January 13, 1988, in Docket No. RP87-24-000. In addition to reflecting the agreed upon reduction in rates, the filed sheets establish an Interruptible Transporation Service under Rate Schedule IT.

U-TOS requests that the above-described tariff sheets be made effective on May 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on, or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10370 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-135-000]

Valley Gas Transmission, Inc.; Filing of Revised Tariff Sheets

May 4, 1988.

Take notice that on April 29, 1988, Valley Gas Transmission, Inc. (Valley), 9311 San Pedro Avenue, Suite 1200, P.O. Box 795099, San Antonio, TX 78279-5099, tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff.

Original Volume No. 1

Second Revised Sheet Nos. 177-180
First Revised Sheet Nos. 180A and 180B

Valley states that these tariff sheets, which are proposed to become effective on June 1, 1988, are being filed as a result of the Commission's letter order of April 12, 1988 in Docket No. RP88-79-000, which directed Valley to implement a revised PGA clause pursuant to Order No. 483. Valley states that these sheets comply with that directive. Valley further states that this filing has been served on all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10371 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-130-000]

Western Transmission Corp.; Proposed Changes

May 4, 1988.

Take notice that Western Transmission Corporation (Western) on April 29, 1988, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Thirty-first Revised Sheet No. 3-A, superseding
Second Substitute Thirtieth Revised Sheet No. 3-A.

Western proposes no increase in the monthly charges for purchased gas to Colorado Interstate Gas Company (CIG), Western's sole jurisdictional customer, in accordance with the provisions of Section 18 of the General Terms and Conditions of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is June 1, 1988.

Copies of this filing have been served on CIG.

For reasons set forth in its filing, Western also requests a waiver of the Commission's new Purchased Gas Cost Adjustment (PGA) regulations, as set forth in Order Nos. 483, *et seq.*

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 11 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10372 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL 3378-3]

Science Advisory Board, Steering Committee of the Research Strategies Subcommittee; Open Meeting—May 16, 1988

Under Pub. L. 92-463, notice is hereby given that an emergency meeting has been scheduled of the Steering Committee of the Research Strategies Subcommittee of the Science Advisory Board. They will meet from 8:00 a.m. to 5:00 p.m. on May 16th at the Quality Inn Capitol Hill, 415 New Jersey Avenue, Washington, DC 20001 in the Executive Conference Room.

The purpose of the meeting is to enable top level EPA staff to meet with the Subcommittee members to complete their work from the April 25th meeting to further review the five workgroup draft reports including: Ecological Effects, Risk Reduction, Exposure Assessment, Health Effects and Sources, Transport and Fate.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 or Joanna Foellmer by May 13, 1988.

Date: May 5, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-10470 Filed 5-9-88; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before June 24, 1988. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, Room 386, 2401 E Street, NW., Washington, DC 20507; Telephone (202) 634-1932.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-6880.

Type of Request: Extension (No change).

Title: Local Union Report EEO-3.

Form Number: EEOC Form 274.

Frequency of Report: Annually.

Type of Respondent: Business/other institutions.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Referral Unions with 100 or more members.

Responses: 3,000.

Reporting Hours: 4,500.

Federal Cost: $21,600.

Applicable under section 3504(h) of Pub. L. 96-511: Not applicable.

Number of Forms: 1.

Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 88-10343 Filed 5-9-88; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Jay Daugherty et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Jay Daugherty, David Frantze, Douglas Linder, Stephen Martin, Roger Potter; Kirksville, MO.	BPH-870611MA	88-162
B. Irvin Davis; Kirksville, MO.	BPH-870615MF	
C. Dr. Irene Hickman; Kirksville, MO.	BPH-870615MS	
D. Northern Missouri Christian Broadcasting, Inc.; Kirksville, MO.	BPH-870615MX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Air Hazard, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services, Division, Mass Media Bureau.

[FR Doc. 88-10312 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200115.

Title: Port of Salem Lease Agreement.

Parties:

City of Salem Municipal Port Authority

Salem Marine Terminal Corporation (Salem)

Synopsis: The proposed agreement provides that the City shall lease to Salem certain real property and improvements situated in the boundaries of the City of Salem and State of New Jersey.

Agreement No.: 224-002758-004.

Title: Port of Oakland Preferential Assignment Agreement.

Parties:

City of Oakland

American President Lines, Ltd. (APL)

Synopsis: The proposed agreement amend the basic agreement to provide for APL's payment to the Port of additional compensation equal to one-half of certain facility improvement payments.

Agreement No.: 224-002758-004.

Title: Port of Oakland Preferential Assignment Agreement.

Parties:

City of Oakland

American President Lines, Ltd. (APL)

Synopsis: The proposed agreement amends the basic agreement to provide for APL's payment to the Port of additional compensation equal to one-half of certain improvement payments.

Agreement No.: 224-010946-004.

Title: Brazos River Navigation District Terminal Agreement.

Parties:

Brazos River Harbor Navigation District

American Rice, Inc.

Synopsis: The agreement amendment changes American Rice, Inc. from an agricultural cooperative to a publicly-held corporation and releases American Rice, Inc., the agricultural cooperative, from obligations under the agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10337 Filed 5-9-88; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. 4-88]

Puget Sound Tug & Barge Co.; Application for Section 35 Exemption

Notice is hereby given that Puget Sound Tug & Barge Company ("Puget") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, Puget seeks an order from the Federal Maritime Commission exempting from the tariff filing and rate regulatory requirements of sections 2, 3 and 4, of the Intercoastal Shipping Act of 1933, 46 U.S.C. app. 844, 845 and 845a, and sections 16, 17 and 18 of the Shipping Act, 1916, 46 U.S.C. app. 815, 816 and 817, all "transportation service performed by it during 1988 and 1989 for the carriage of general cargo in non-self-propelled barges in tow of towing vessels on approximately six one-way voyages annually from Seattle, Washington on the one hand to, on the other, the coast of Alaska above the Arctic Circle at a point * * * near the village of Kivalina, via the Gulf of Alaska, the Bering Sea, and the Chuckchi Sea."

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than May 23, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on counsel for Puget: William H. Fort, Esq., Kominers, Fort & Schlefer, 1401 New York Avenue NW., Suite 1200, Washington, DC 20005.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW. Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 88-10338 Filed 5-9-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

May 3, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations recieved, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OBM number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into

BEST COPY AVAILABLE

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OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. *Report title:* Quarterly Report of Condition for a New York State Investment Company and its Domestic Subsidiaries
Agency form number: FR 2886A.
OMB Docket number: 7100–0207.
Frequency: Quarterly.
Reporters: New York State Investment Companies.
Annual reporting hours: 864.
Small businesses are not affected.

General Description of Report

This report is authorized by Federal law (12 U.S.C. 3106(b)(1) and 353 *et seq.)* and by state law [New York State Banking law 513]. Data from Schedule M are given confidential treatment (5 U.S.C. 552(b)(8)).

This report provides data used by the New York State Banking Department for supervisory purposes, and by the Federal Reserve in constructing various statistical series, including money stock, bank credit, assets and liabilities of domestically chartered and foreign related banking institutions, nondeposit sources of funds for commercial banks, and flow of funds accounts.

Board of Governors of the Federal Reserve System, May 3, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–10287 Filed 5–9–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Britton & Koontz Capital Corp.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Britton & Koontz Capital Corporation Employee Stock Ownership Stock Bonus Plan,* Natchez, Mississippi; to acquire an additional 4.47 percent of the voting shares of Britton & Koontz Capital Corporation, Natchez, Mississippi, and thereby indirectly acquire Britton & Koontz First National Bank, Natchez, Mississippi.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Bank Holding Company Employee Stock Ownership Trust,* Coos Bay, Oregon; to acquire an additional 7.6 percent of the voting shares of Security Bank Holding Company, Coos Bay, Oregon, and thereby indirectly acquire Security Bank, Coos Bay, Oregon.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–10288 Filed 5–9–88; 8:45 am]

BILLING CODE 6210–01–M

Canadian Imperial Bank of Commerce, Toronto, Canada; Application To Engage in Various Financial Advisory and Securities Activities

Canadian Imperial Bank of Commerce, Toronto, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and §§ 225.23(a) (2) and (3) of the Board's Regulation Y (12 CFR § 225.23(a) (2) and (3)), to acquire Wood Gundy Corp., New York, New York ("Company"), and thereby engage in:

(1) Providing brokerage and investment advisory services to institutional customers and Company's affiliates on a combined basis;

(2) Providing advice in connection with merger, acquisition, divestiture and finanical transactions, including public and private financings, loan syndications, interest rate swaps, interest rate caps and similar transactions to affiliated and unaffiliated financial and nonfinancial institutions; and

(3) Providing financial advice to the Canadian federal, provincial and municipal governments and their agents, such as with respect to the issuance of their securities in the U.S.

Applicant has also applied to engage in providing discount brokerage services together with related securities credit services pursuant to the Board's Regulation T (12 CFR Part 221) and incidental activities such as offering custodial accounts and cash management services and securities borrowing and lending for affiliates and institutional customers; providing portfolio investment advice and research to affiliates and institutional customers; furnishing general economic information and advice, general economic statistical forecasting services and industry studies to affiliates and institutional customers; and underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("bank-eligible securities"). The Board has previously found these latter activities to be generally permissible for bank holding companies. 12 CFR 225.25(b)(15), (4)(iii), (4)(iv) and (16) respectively. Applicant has also proposed to engage in futures, forward and options contracts on bank-eligible securities for hedging purposes in accordance with 12 CFR 225.142.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC,* 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); and Bank of Nova Scotia, 74 Federal Reserve Bulletin 249 (1988). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n* v. *Board of Governors,* 821 F.2d 810 (D.C. Cir. 1987), *cert. denied,* 108 S. Ct. 697 (1988).

Applicant has applied to conduct its brokerage activity in accordance with substantially all of the limitations approved by the Board in *Bank of Nova Scotia.* Unlike *Bank of Nova Scotia,* Applicant has proposed that Company be permitted to exchange confidential information with Applicant and its bank affiliates regarding their customers with such customers' consent. In addition, Applicant has committed that Company will not transmit advisory or research recommendations *which are not generally available to its customers* to the commercial lending department of any affiliate. In *Bank of Nova Scotia,* this commitment was extended to all advisory or research recommendations. In the case of any office established in a building in which Applicant or any affiliated bank of Applicant also has offices, *only areas to which the public has access,* rather than all areas as in *Bank of Nova Scotia,* will be separate from the areas utilized by Applicant or any affiliated bank of Applicant. Finally, Applicant has committed that no officer or employee of Company will serve as an officer or employee of Applicant or any affiliated U.S. bank of Applicant and no director of Company will also be a director of Applicant or any affiliated U.S. bank of Applicant. Applicant further commits that no officer or employee of Applicant that serves as a director of Company will at the same time serve as an officer, employee or director of any "insured bank" subsidiary of Applicant (as defined in section 3(h) of the Federal Deposit Insurance Act) or as an officer or employee of a U.S. branch or agency of Applicant. In *Bank of Nova Scotia,* Applicant committed that Company would not have officer or director interlocks with its U.S. bank subsidiaries, branches or agencies.

Applicant has also proposed to engage in providing advice in connection with financing transactions for affiliated and unaffiliated financial and nonfinancial institutions. The Board has previously approved the provision of such advice to unaffiliated financial and nonfinancial institutions. *Signet Banking Corporation,* 73 Federal Reserve Bulletin 59 (1987).

With regard to Applicant's proposed activity of providing financial advice to Canadian federal, provincial and municipal governments and their agents, the Board has previously approved providing financial advice to Canadian federal, provincial and municipal governments. *The Royal Bank of Canada,* 74 Federal Reserve Bulletin 334 (1988).

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 26, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–10291 Filed 5–9–88; 8:45 am]

BILLING CODE 6210–01–M

E.N.B. Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Cos.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *E.N.B. Holding Company, Inc.,* Ellenville, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Ellenville National Bank, Ellenville, New York. Comments on this application must be received by May 25, 1988.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Hancock Bancorp, Inc.,* Hawesville, Kentucky; to acquire 100 percent of the voting shares of Breckinridge Bank, Cloverport, Kentucky.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–10289 Filed 5–9–88; 8:45 am]

BILLING CODE 6210–01–M

Heritage Financial Services; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

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1. *Heritage Financial Services*, Blue Island, Illinois; to engage *de novo* through its subsidiary, Heritage Trust Company, Blue Island, Illinois, in trust company functions including those of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10290 Filed 5-9-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vital and Health Statistics National Committee; Open Meeting

Action: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics.

Time and Date: 1:00 p.m.-4:30 p.m.—June 1, 1988; 9:00 a.m.-5:00 p.m.—June 2, 1988; 9:00 a.m.-1:30 p.m.—June 3, 1988.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Committee to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: May 4, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-10319 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement for Nurse Practitioner and Nurse Midwifery Grants Section 822(a), Public Health Service Act

In **Federal Register** Document 88-6522, page 9813, issue of Friday, March 25, 1988, the incorrect review criteria appear on page 9814. Column 1, Review Criteria, Items 1-3.

Correction

The following criteria will be used in the review of applications for section 822(a), PHS Act:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in Section 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;

3. The capability of the applicant to carry out the proposed project;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the project period.

Dated: May 4, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-10315 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Birch Creek Draft Environmental Impact Statement

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102 (2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions of the Birch Creek wastershed which drains into Birch Creek National Wild River.

The Birch Creek watershed is located approximately 70 miles northeast of Fairbanks, Alaska and covers nearly 1.4 million acres of land. Much of the study area is located within the Steese National Conservation Area in the Yukon-Tanana upland physiographic province. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, water quality and subsistence uses.

A proposed action and four alternatives incorporating management options ranging from emphasizing regulations under 43 CFR Part 3809 to a "no action" alternative are presented. The proposed action evaluates BLM's surface management practices in the affected wastershed.

Environmental consequences of all the alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from approximately May 16, 1988 to July 11, 1988. Comments received after July 11, 1988 may be too late to be integrated into the Final EIS (FEIS). Public meetings will be held to take comments on both the Birch Creek DEIS and the Beaver Creek DEIS. In compliance with section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), subsistence hearings for the Birch Creek DEIS will immediately follow the public meetings. The meetings will be held June 1, 1988 at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska; June 2, 1988 at Ryan Junior High School, 915 Airport Way, Fairbanks, Alaska; June 13, 1988 at the Tribal Hall, Beaver Village, Alaska; June 14, 1988 at the Cultural Center, Fort Yukon, Alaska; June 20, 1988 at the Community Office, Birch Creek Village, Alaska; and June 21, 1988 at Central School, Central, Alaska. All meetings will run from 7:00 p.m. to 9:00 p.m.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworksy—Project Manager, or Page Spencer—Technical Coordinator, at (907) 271-3114.

Lester K. Rosenkrance,

Acting State Director.

[FR Doc. 88-10317 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-930-08-4322-15; ID-930-08-4830-12]

Idaho Falls District Grazing Advisory Board and Idaho Falls District Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls Grazing Advisory Board and Advisory Council.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Tuesday, June 14, 1988. The Idaho Falls District Advisory Council will meet Tuesday, June 21, 1988. Notice of these meetings are in accordance with Pub. L. 92-463. The meetings will begin at 8:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meetings are open to the public; public comments will be accepted at each meeting from 8:00 a.m. to 8:30 a.m.

The agenda for the Grazing Advisory Board includes a float along a portion of the South Fork of the Snake River. During the float, various issues associated with public land management along the Snake River corridor will be discussed. Specific agenda items include: Livestock grazing, Bald Eagle management, the Snake River Activity/Operations Plan, erosion and watershed problems and water rights.

The agenda for the Advisory Council includes a field tour of the St. Anthony sand dune complex and of the Burnside Butte prescribed burn. Specific agenda items include: Egin-Hamer Road, ORV easement acquisition, the Dunes Tiger Beetle and interim management on the St. Anthony sand dunes WSA. There will also be a discussion on the Crystal Ice Caves and prescribed burning practices.

Persons interested in attending either of these meetings are welcome but must provide their own transportation. Detailed minutes of the Board and Council meetings will be maintained in the District office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Public Affairs Specialist, Telephone (208) 529-1020

Dated: May 2, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-10289 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-GG-M

[WY-920-08-4111-15; W-84956]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-84956 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16-23 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-84956 effective August 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88-10298 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-22-M

[ES-070-08-4111-11-2411; ALES 30353]

Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of terminated oil and gas lease ALES 30353.

SUMMARY: Terminated oil and gas lease ALES 30353 located in Escambia County, Alabama T. 34 N., R. 4 W., containing 119.76 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Hale at (703) 274-0153.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease ALES 30353 terminated automatically by operation of law on May 1, 1987 (30 U.S.C. 188).

A petition for reinstatement of ALES 30353 was filed by William L. White (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all the following requirements for reinstatement:

(a) $500, Reimbursement of Departmental Administrative Cost

(b) $160, Back Rental Payments

(c) $136, Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent beginning June 1, 1987.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 88-10300 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-GJ-M

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Chukchi Sea
Oil and Gas Lease Sale 109

AGENCY: Minerals Management Service

ACTION: Technical Correction Notice

On Wednesday, April 20, 1988, at 53 FR 13080, the Notice for the Chukchi Sea Outer Continental Shelf Oil and Gas Lease Sale 109 was published in the Federal Register.

A typing error occurred on page 13088 of the Notice in the block list for Stipulation No. 7-Density Restriction for Protection of Bowhead Whales from Potential Effects of Noise.

The revised block listing for Official Protraction Diagram NR 3-4 is provided below with the technical correction underlined:

Official Protraction Diagram	Blocks
NR 3-4	243-244, 284, 327-328, 370-372, 412-416, 454-455, 497-499, 539-543, 581-587, 624-631, 667-675, 710-719, 753-763, 796-807, 839-851, 882-895, 925-939, 969-982

All other terms and conditions in the April 20, 1988, Notice remain unchanged.

Wm D. Bettenberg

Director, Minerals Management Service
William D. Bettenberg

5/5/88
Date

[FR Doc. 88-10422 Filed 5-9-88; 8:45 am]
BILLING CODE 4310-MR-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5391, Block 299, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located as Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 29, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 2, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10292 Filed 5-9-88; 8:45 am]
BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Federal Unit Agreement No. 14-08-0001-8850, has submitted a DOCD describing the activities it proposes to conduct on the Main Pass Block 299 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Bongiovanni; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2850.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 2, 1988

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10923 Filed 5-9-88; 8:45 am]
BILLING CODE 4310-MR-M

Other Continental Shelf Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc., Unit Operator of the West Delta—Grand Isle Federal Unit Agreement No. 14-08-001-2454, has submitted a DOCD describing the activities it proposes to conduct on the West Delta—Grand Isle Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the

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Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: May 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10294 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6573, Block 188, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 21, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: W. Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 21, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10295 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4739, Block 119, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on April 29, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: May 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10296 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 30, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 25, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALABAMA

Mobile County

Mt. Vernon vicinity, *Mount Vernon Arsenal—Searcy Hospital Complex*, Coy Smith Hwy. ½ mi. W of AL 43

ARKANSAS

Faulkner County

Springfield vicinity, *Springfield Bridge*, CR 222 at Cadron Creek

CONNECTICUT

Fairfield County

Norwalk, *Haviland and Elizabeth Streets—Hanford Place Historic District*, Roughly bounded by Haviland St., Day St., Hanford Pl., and S. Main St.

New Haven County

Waterbury, *Overlook Historic District*, Roughly bounded by Hecla St., Farmington and Columbia Blvd., Cables Ave. and Clowes Terr., Lincoln and Fiske Sts.

New London County

Stonington, *Mechanic Street Historic District*, Roughly bounded by W. Broad St., Pawcatuck River, Cedar St., and Courtland St.

HAWAII

Honolulu County

Nihoa Island Archeological District

Necker Island Archeological District

KENTUCKY

Franklin County

Bridgeport vicinity, *Julian Farm*, S side US 60

Nelson County

Bardstown vicinity, *Culpeper*, N side of Springfield Rd./US 150

MINNESOTA

Beltrami County

Bemidji, *Beltrami County Courthouse*, Beltrami Ave. and Sixth St.

Bemidji, *Great Northern Depot*, Minnesota Ave.

NEW JERSEY

Atlantic County

Folsom Borough, *Jacobus Evangelical Lutheran Church*, Mays Landing Rd. and NJ 54

Burlington County

Pemberton Borough, *Pemberton Historic District*, Roughly bounded by Budd Ave., Budd's Run, Egbert and Cedar Rd., and Rancocas Creek and NJ Centeral Power and Light Co.

Middle County

New Brunswick, *King Block*, 316–324 Memorial Pkwy.

Ulster County

Stone Ridge, *Main Street Historic District*, US 209

OHIO

Cuyahoga County

Cleveland, *East Eighty-Ninth Street Historic District*, E. Eighty-Ninth St. roughly between Chester and Hough Aves.

Cleveland, *Notre Dame Academy*, 1325 Ansel Rd.

Cleveland, *Olney, Charles, House and Gallery*, 2241–2255 W. Fourteenth St.

Cleveland, *Quad Hill*, 7800 Euclid Ave.

Franklin County

Hilliard, *Hilliard Methodist Episcopal Church*, 4066 Main St.

Hilliard, *Merryman, Dr. James, House*, 5232 Norwich St.

Hilliard, *Odd Fellows Hall*, 4065 Main St.

Montgomery County

Dayton, *Schriber, Hyman, Building*, 306–308 Washington St.

Stark County

Canton, *Frances Apartment Building*, 534 Cleveland Ave., S.W.

PUERTO RICO

Arecibo County

Arecibo, *Calle Gonzalo Marin No. 61*, Calle Gonzalo Marin No. 61

Bayamon County

Bayamon, *Edifio Vela*, Dr. Veve and Palmer Sts.

Bayamon, *Farmacia Serra*, Degetau No. 11

Mayaguez County

Mayaguez, *Rivera, Nazario, Residencia*, Post St. No. 105

Mayaguez, *Bounin, Baldomero, Residence*, Calle Ramos Antonini No. 62

Ponce County

Ponce, *Nebot, Zaldo de, Residencia*, Calle Marina No. 27

Ponce, *Salazar—Candal House*, Calle Isabel No. 53

Yauco County

Yauco, *Casa Agostini*, Calle San Rafel

Yauco, *Logia Masonica Hijos de la Luz*, Avenida Jose C. Barbosa

Yauco, *Teatro Ideal*, Calle Comerio

SOUTH CAROLINA

Lancaster County

Lancaster vicinity, *Wade—Beckham House*, SC 200

WEST VIRGINIA

Kanawha County

Charleston, *Charleston City Hall*, Court and Virginia Sts.

Randolph County

Mill Creek vicinity, *See—Ward House*, US 219/250

Wetzel County

New Martinsville, *New Martinsville Downtown Historic District*, Main St., Washington St., and Monroe Alley

New Martinsville, *North Street Historic District*, North St. between Florida and the railroad tracks.

[FR Doc. 88-10376 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-98 (Sub-No. 1X)]

Exemption; Claremont & Concord Railway Co.—Exemption—Abandonment in the City of Claremont, NH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.5-mile line of railroad in or near the City of Claremont, NH, (1) from a point of switch on Tyler Street to the end of tracks just west of Plains Road, and (2) from a point just east of Pleasant Street and to the end of track along Washington Street.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State Agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 4, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been received). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ——— I.C.C. 2d ———, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

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15, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 25, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert L. Calhoun, 1025 Connecticut Ave., NW., Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 10, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 4, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10336 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31255]

Exemption; Southern Railway Co.—Merger Exemption—Carolina and Northwestern Railway Co.

The Southern Railway Company (Southern) and the Carolina and Northwestern Railway Company (Carolina) have filed a notice of exemption to merge Carolina into Southern on or about May 15, 1988.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). Southern controls Carolina through 100 percent stock ownership. Caroline owns 14.29 and 15.09 percent, respectively, of the Norfolk and Portsmouth Belt Line Railroad Company and the Atlantic and North Carolina Railroad Company. Carolina also leases the properties of several companies including the High Point, Randleman, Ashboro and Southern Railroad Company (HPRAS) and the Yadkin Railroad Company (Yadkin). The Norfolk and Western Railway Company (NW) is also an affiliate of Southern and Carolina. The proposed transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction will be effected by merger of Carolina into Southern, with Southern, which is incorporated under the laws of the Commonwealth of Virginia, being the survivor. Southern will become the successor to Carolina as lessee of the properties of HPRAS and Yadkin, and as lessor of the former Danville and Western Railway Company properties now leased to NW.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, One Commercial Place, Norfolk, VA 23510.

Decided: April 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10335 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

JUSTICE DEPARTMENT

Federal Bureau of Investigation

Advisory Policy Board; National Crime Information Center

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on May 25–26, 1988, from 9 a.m. until 5 p.m. at the Palm Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401.

The major topic to be discussed will be the architecture of the future NCIC System as proposed in the NCIC 2000 Study. Other topics to be discussed include the proposed automated interfaces between the Canadian Police Information Center and NCIC and the SENTRY System and NCIC and the status of the FBI's Automated Identification System.

Approximately 90 percent of this meeting will be devoted to discussions related to a presentation by the MITRE Corporation which will include information of a procurement sensitive nature which is necessary for prudent decision making. Vendor specific data will be presented in proposed solution scenarios. Information that MITRE will be presenting will be the proprietary information of MITRE and the Federal Bureau of Investigation. Releasing vendor specific data in a public forum would be prejudicial to those companies cited in the scenarios. Due to the nature and content of the discussions and MITRE's presentation, that portion of the meeting will be closed to the public pursuant to Title 5 U.S.C. 552b subsections (c)(4) and (c)(9)(B).

The remaining portion of the meeting will be open to the public, with approximately 25 seats available for the seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–342–2606.

Date: May 3, 1988.

William S. Sessions,

Director.

[FR Doc. 88–10304 Filed 5–9–88; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Pension and Welfare Benefits Administration

August 1988 CPS Retiree Health Insurance Benefits Supplement

On occasion

Individuals and households

57,000 responses, 2,300 hours, 1 form

The information collected by the survey will measure the extent to which employers provide health insurance coverage to persons over 39 years of age, with particular emphasis on continued coverage for retirees and their spouses.

Revision

Employment and Training Administration

JTPA Financial Status Report and JTPA Summer Performance Report 1205–0200; ETA 9009, ETA 9010

Quarterly; Annual

State or local governments

59 respondents; 1,917 burden hours; 2 forms

The information collected will be used to assess JTPA statewide programs and learn who is served by Title II–B Summer programs.

Participant and financial data will be used to respond to congressional oversight, to prepare budget requests based on more current data, and make annual reports to Congress per statute.

Extension

Occupational Safety and Health Administration

Ionizing Radiation

Businesses and other for-profit; Federal agencies or employees; Small businesses or organizations

210,000 respondents; 133,756 burden hours; 0 forms

This standard sets limits for employee exposure to ionizing radiation and requires employers to conduct monitoring and maintain records regarding employee exposure in the workplace.

Signed at Washington, DC, this 5th day of May, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–10385 Filed 5–9–88; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; American Silk Mill et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Silk Mill (Workers)	Orange, VA	5/2/88	2/26/88	20,634	Yarn & Fabric.
Bethlehem Steel Corp. (USWA)	Bethlehem, PA	5/2/88	4/18/88	20,635	Steel & Steel Products.
Cambridge Instruments, Inc. (ABGW)	Buffalo, NY	5/2/88	4/18/88	20,636	Scientific and Ophthalmic Instruments.
Durex (Company)	Union, NJ	5/2/88	4/21/88	20,637	Metal Stampings.

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APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Edison Battery Products (Workers)	Belleville, NJ	5/2/88	3/21/88	20,638	Batteries.
Elite Wireline, Inc. (Company)	Skiatook, OK	5/2/88	3/18/88	20,639	Oil Well Services.
Forest Enterprises, Inc. (Workers)	USK, WA	5/2/88	4/11/88	20,640	Wood chips.
Gem Products, Inc. (Workers)	Rib Lake, WI	5/2/88	4/18/88	20,641	Women Shoes.
International Shoe Co. (UFCW)	Perryville, MO	5/2/88	4/11/88	20,642	Men's & Women's Footwear.
Jacobson Mfg. Co. Inc. (UAW)	Kenilworth, NJ	5/2/88	4/20/88	20,643	Industrial Fasteners.
Jacobson Mfg. Co. Inc. (UAW)	Union, NJ	5/2/88	4/20/88	20,644	Industrial Fasteners.
MKS Co., Inc. (Workers)	Elizabethton, TN	5/2/88	4/19/88	20,645	Synthetic Fiber.
Madison Garment Co. (Workers)	Madison Heights, VA	5/2/88	3/29/88	20,646	Nurses' Uniforms.
Mattel Toy, Co. (Workers)	Edison, NJ	5/2/88	4/18/88	20,647	Toys.
Morris Maier Shirt, Mfg. Co., Inc. (Workers)	Prescott, AZ	5/2/88	4/19/88	20,648	Ladies Blouses.
Pathfinder Mines Corp., Lucky McMine & Mill (USWA).	Riverton, WY	5/2/88	4/17/88	20,649	Uranium Oxide.
Pathfinder Mines Corp., Shirley Basin Mine & Mill (USWA).	Shirley Basin, WY	5/2/88	4/17/88	20,650	Uranium Oxide.
Pathfinder Mines Corp., Big Eagle Mine (USWA)	Jefferson City, WY	5/2/88	4/17/88	20,651	Uranium Oxide.
Westland Oil Development Corp. (Workers)	Montgomery, TX	5/2/88	4/21/88	20,652	Crude Oil & Gas.

[FR Doc. 88-10386 Filed 5-9-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20,339]

Beaumont Co. Morgantown, WV; Revised Determination on Reconsideration

The Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Beaumont Company, Morgantown, West Virginia. The notice was published in the **Federal Register** on April 4, 1988 (53 FR 10956).

The company claims, among other things, that the Department's survey was inadequate and submitted a new list of customers to be surveyed. The company provided new information showing that it met the decreased sales criterion in 1987.

On reconsideration, the Department found that the company had met the decreased sales criterion, in constant dollars, in 1987. The Department conducted a new survey of Beaumont's customers and found that customers accounting for over 100 percent of Beaumont's 1987 sales decline substantially increased their import purchases of glassware in 1987.

U.S. imports of glassware increased absolutely and relative to domestic shipments in 1986 compared to 1985 and absolutely in the first six months of 1987 compared to the same period in 1986.

The Morgantown plant experienced substantial worker separations in 1987 as well as reductions in hours worked per worker in 1987 compared to 1986.

Also, the Department of Commerce issued a certification to the Beaumont Company for firm adjustment assistance on August 4, 1986, F-WV-3493.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of glassware like or directly competitive with that produced at the Morgantown facility of the Beaumont Company contributed importantly to the decline in production and sales and to the total or partial separation of workers and former workers at the Morgantown plant of the Beaumont Company. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Beaumont Company, Morgantown, West Virginia who became totally or partially separated from employment on or after December 4, 1986, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of May 1988.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-10387 Filed 5-9-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Oakwood/Sabine Corp., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 25, 1988–April 29, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,517; Oakwood/Sabine Corp., Salyersville, KY

TA-W-20,488; Holley Automotive Div., Colt Industries, Inc., Bowling Green, KY

TA-W-20,515; DNE Corp., Brentwood, TN

TA-W-20,544; Windsor Records, Inc., Patterson, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,496; Varity International Services, Racine, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,527; U.S. Steel Mining Co., Inc., Decota Mining District Number Nine Preparation Plant, Decota, WV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,512; H.J. Jeffries Truck Line, Inc., Lone Star Terminal, Lone Star, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,511; Fun Footwear Co., West Hazelton, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,499; B.F. Goodrich Co., Aerospace & Defense Div., Akron, OH

U.S. imports of aircraft tires declined absolutely in 1987 compared to 1986.

TA-W-20,496; Anchor Hocking Corp., Consumer Products Div., Bremen, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,498A; Anchor Hocking Corp., Consumer Products Div., Canal Winchester, OH

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,474; Brownsville Mfg Co., Brownsville, KY

A certification was issued covering all workers of the firm separated on or after February 10, 1987 and before March 1, 1987.

TA-W-20,514; Mont-Hard (USA), Inc., New Braunfels, TX

A certification was issued covering all workers of the firm separated on or after February 22, 1987.

TA-W-20,537; Parsons Footwear, Inc., Parsons, WV

A certification was issued covering all workers in the Stitching Department engaged in production of fabric footwear separated on or after June 1, 1987.

TA-W-20,528; U.S. Steel Mining Co., Inc., Decota Mining District, Carbon Miscellaneous Unit, Decota, WV

A certification was issued covering all workers of the firm separated on or after March 4, 1987 and before October 15, 1988.

TA-W-20,515; DNE Corp., Brentwood, TN

A certification was issued covering all workers of the firm separated on or after February 24, 1987.

I hereby certify that the aforementioned determinations were issued during the period April 25, 1988–April 29, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 3, 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-10404 Filed 5-9-88; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Young Scholars Projects for High Ability and High Potential Secondary School Students; Guidelines for Proposal Submission—FY 1989

Introduction

The Research Career Development Division of the Directorate for Science and Engineering Education (SEE) manages and coordinates a variety of programmatic efforts that aid young men and women in their development toward productive research and teaching careers in science, mathematics and engineering. Each effort, in its own way, focuses on a period in the lives of such students during which important career options must be analyzed and critical choices made. The designation of a field of specialization, selection of a graduate school, and choice of first employing organization are decisions made during periods targeted by current Division activities—periods when a modest amount of individual support can stimulate the development of careers that will strengthen the academic base and economic competitiveness of the United States.

One of the first decisions for young men and women is the choice of a career. For many of them the commitment to a career in the science, mathematics or engineering occurs during their secondary school years. In order to assist students in reaching an informed decision the National Science Foundation initiated in Fiscal Year 1988 the NSF Young Scholars Program, and announced the first awards in March, 1988. The National Science Foundation supported 68 projects which will provide enrichment experiences in science, mathematics and engineering for more than 2,500 high ability or high potential secondary school students each year. These awards were for one year with a second year of support contingent on NSF review of project activities and the availability of funds. We expect similar results in the 1989 competition.

The underrepresentation of women, minorities and the disabled at the advanced levels of science, mathematics and engineering deprives the Nation of much potential talent. Consequently the Foundation strongly encourages the full participation in this program by proposers and students from these groups.

Scope

Young Scholars projects should be designed to enhance participant knowledge of and exposure to science, mathematics and/or engineering as careers in order to facilitate their making realistic decisions based on the full range of career options available. Specifically, projects should provide participants with enrichment experiences in science and related fields which are not usually available to young students. Proposed activities should: (1) Enhance participant interest in science disciplines as possible career choices, (2) enable students to assess their potential skills and abilities in scientific disciplines, (3) increase their awareness of the academic preparation necessary for such careers, and (4) enhance their understanding of the career planning process and promote their confidence in career selection decisions.

Eligibility

There are three categories of eligibility for the Young Scholars program: submitting organization, activities and discipline focus. Proposals must meet the requirements in *all three categories* as outlined below to be eligible for consideration for funding.

Submitting Organization

Proposals may be submitted by colleges or universities, their associations or consortiums, scientific or professional societies whose members are primarily university faculty or researchers, and for-profit industries or other organizations which are engaged in significant advanced research efforts and have experience in interacting with students. Academic institutions are encouraged to combine efforts with industries with appropriate research facilities.

Secondary schools and school districts and other organizations with programs focused on secondary level education are not eligible to apply as submitting organizations.

Of course, any organization is welcome to collaborate in a project proposal developed and submitted by an eligible institution.

Activities

Required and eligible activities are discussed under Project Design. Tutorial or advanced placement courses are not eligible for support under these guidelines. Nor are activities which substantially duplicate secondary level education activities.

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Discipline Focus

The *Grants for Research and Education in Science and Engineering* (NSF 83–57, rev. 11/87, p.1), specifies the fields of science and engineering which are eligible for support. Consistent with these guidelines, the Young Scholars program will not support activities focused on clinical or health science disciplines.

Any questions regarding a proposed project's eligibility under these categories should be referred to the program staff. Proposers may be asked to submit additional information regarding organizational or project characteristics. In some cases it may be necessary for NSF staff to review a formal proposal before a final and fair determination of eligibility can be made.

Project Design

Except where otherwise indicated, the Foundation intends to allow project directors maximum flexibility in designing their projects to address specific discipline areas and target groups. Particular attention should be paid to the following areas in the proposal:

Environment

The project should create a learning environment which challenges the students' intellectual abilities and encourages the development of the requisite skills for the use of these abilities. The environment also should foster close interaction among the participants and between the participants and science, mathematics, and engineering practitioners, including the project director and staff. The opportunities for interaction should be both formal and informal and the identification of mentors is strongly encouraged.

Activities

Proposers should keep in mind that students learn science best by *practicing science;* that is, by exercising their natural curiosity and engaging in scientific discovery. Projects may consist of any combination of activities involving instruction, problem solving, and exposure to the research environment and research methods that are appropriate for the targeted age group and the discipline focus. However, proposers should strive for balance between lecture, laboratory and field experiences. Activities should be strongly participatory, be intellectually challenging, and promote positive interaction among students and staff.

The Young Scholars program actively seeks innovative approaches to cost-effective enrichment activities for young students in all aspects. These include off-campus sites where scientific inquiry is especially intense, unusual designs for instruction and demonstration, and creative techniques for academic-year follow-up.

Young Scholars project activities are not intented to duplicate or replace the secondary school curriculum or offer tutorial services. Nor should the project provide course work primarily designed to prepare students for advanced placement, or to duplicate regular college courses. Further, college credit for the successful completion of project activities is neither required nor encouraged. Exceptions may be made when the institution involved requires that credit be given. However, grant funds cannot be used to pay per credit fees.

Required Activities—The following components must be included in all proposed projects:

Career Exploration—Since a major objective of this program is to heighten student awareness of science, mathematics and engineering as possible careers, each project must include career exploration activities which offer information and guidance regarding the opportunities of science as a profession, particularly in the discipline area of the project. These activities also should include attention to precollege science teaching as a career choice. Specific attention should be given to the secondary school and college academic requirements for a science degree in the selected discipline. The participation of female, minority and disabled scientists in this activity is especially encouraged.

Philosophy and Ethics of Science—The development of a mature and participating citizen, scientist or not, requires an appreciation of the role of science in society. Therefore, all projects must include some activity that focuses on the philosophy of science and scientific ethics *specific to the discipline focus of the project.* Examples of appropriate topics might be guidelines for the collection and use of scientific data, research ethics or the need for a "Hippocratic oath" for scientists.

Research Methodology—The specific methods and techniques of scientific research differ by field, but the scientific method serves as the basis for the discovery of knowledge across disciplines. Projects should include a general discussion of research methodology, with specific attention to the techniques and methods utilized in the disciplines which serve as the focus of the project. Hands-on activities in the laboratory and field could be included where appropriate along with interaction with scientists.

Follow-up Activities—An academic-year follow-up for summer programs to sustain the intensity of the experience is also required. Proposed activities should reinforce and expand the knowledge and skills learned during the summer by helping students utilize these skills in classroom activities. To this end, the follow-up academic-year component need not be limited to summer participants, but may also involve their classmates and teachers. A summer follow-up component may be proposed for academic-year programs.

Project Outcomes—Proposers must specify project goals and objectives and how they plan to measure the success of the project. Established programs should include a discussion of previous program outcomes. There will be additional data collection requirement specified by the NSF as part of its overall assessment of the Young Scholars program.

Setting

Residential or commuter projects during the summer are recommended as the principal mechanism for creating an enrichment experience. Project duration can vary from 2–8 weeks. However, projects offering an after school/weekend academic-year program as the principal mechanism are also eligible for funding.

Participants

Junior/Senior High Focus—Proposers are expected to design programs which target students entering grades 8–12. Skill development and skill application, including hands-on activities and exposure to research methods and techniques, are required for all students, regardless of grade level. (Established programs seeking support to augment program activities or expand participant groups are also eligible if the *majority* of current participants are within this grade range.)

Participants should be students of high ability or high potential, with interest in science, mathematics or engineering. The Foundation leaves the interpretation of high ability and high potential to the proposer, but encourages consideration of students previously identified as underachievers as well as those with limited prior opportunities to explore science as a career. Particular attention should be given to including women, minorities and disabled students.

The number of project participants will depend on the proposed activities and staff but should allow for substantial one-on-one or small group interaction among students and between students and senior staff.

Participant Selection

Proposals must specify how participants will be identified, recruited and selected. Admission decisions regarding participants should be made on the basis of materials submitted by applicants. This information might include (a) recommendations from current or recent science or mathematics teachers and counselors, (b) a short essay by the student on why he or she would like to participate or some other appropriate topic and (c) selected background and biographical information. Other mechanisms such as examinations and interviews can also be considered.

The Foundation expects broad-based participation in these programs. For this reason participants should be selected from a variety of secondary schools and excessive representation from any one school is discouraged. In addition, geographic distribution of participants is also an important factor for consideration. Projects should be designed, where possible, to attract student participants on a regional or national basis, rather than only locally.

Participant Costs

Lack of personal or family financial resources should not be a barrier to participation by any eligible student. Therefore proposers may request NSF funding for all or a portion of student expenses, including room and board for residential projects, travel and a small stipend (not to exceed $100/week) for students whose participation will preclude needed employment income. However, proposers can require payment for room and board from participants whom they determine are able to assume responsibility for these expenses.

The narrative should detail per student costs for room and board if applicable, travel and any stipends proposed, as well as the percentage of any or all of these costs NSF is being asked to assume. Proposers who plan to charge room and board fees that will vary among NSF-supported participants should outline how applicant financial need will be determined. Ability to pay may be assessed on an individual or group basis. *Stipends for participants must be justified in terms of their use in attracting the target population. Further, the age of participants in terms of earning potential should be taken into consideration in requesting stipends.*

Staff

Project staffing requirements will depend on the design of the project and the target population. Senior staff, defined as those who will have primary responsibility for the selection of participants, the supervision of intellectual activity and the demonstration of research techniques and field instruction, should be academic faculty or active research scientists, mathematicians and engineers in industry. We also encourage the participation as support staff of precollege science and mathematics teachers, counselors, undergraduate and graduate students, and in projects involving junior high school students, older precollege students. The selection of women, minority and disabled scientists is encouraged. Staffing levels should be adequate to allow for substantive one-on-one interaction between participants and senior staff. Proposers are encouraged to solicit volunteers and to utilize part-time as well as full-time staff in order to reduce costs. Skill in teaching and the ability to interact with young students should be a prerequisite for the selection of all staff.

Sites

Since a major objective of this program is to acquaint students with the environment and resources of universities, colleges and research organizations, projects should be located at facilities where higher education or advanced research takes place.

Established Programs

The Foundation is aware that a number of activities similar to Young Scholars Projects, sometimes known at Secondary School Student Science Training Projects (SST), have been offered at various campuses in recent years, and have reached funding stability. The Foundation strongly encourages the continuation of such programs, and will not normally award support for such projects where NSF support would serve mainly to replace established funding. The Foundation, however, does invite proposals from institutions that organized such activities in the summer of 1988 or regularly in the last few years, where NSF support would serve to strengthen such projects, by funding new key components, or to expand such projects, by funding the participation of individuals previously unreachable. Twenty-seven such projects were supported in 1988.

Established projects for which supplementary support is proposed must in their entirety be eligible for Young Scholar support, and thus must include all the required Young Scholar components, and must be described fully in the proposal.

Program Assessment Activities

The Foundation has established a plan to facilitate early and regular assessment of program impact. This includes data collection instruments for project applicants, participants, staffing and operations. As a part of these activities NSF will provide guidance on the format and content of participant application materials at the time of the award. The cooperation of project directors will be an important factor in assuring the success of this effort.

Budget

Proposers may request from the Foundation appropriate direct, indirect and participant costs. Separate budgets should be prepared for year one and year two of project activities. Normally awards will be made for the first year only at this time; support for the second year will be contingent on the availability of funds and after review of the activities of the first year.

NSF has specific provisions regarding allowable costs for salaries and wages, indirect costs, fringe benefits, equipment purchases, participant support costs, tuition remission, consultant services and subcontracts. In general the Young Scholars Program is subject to these provisions as stated in the GRESE referenced below and proposers must follow these provisions in preparing the budget for a Young Scholars project.

General NSF provisions of special relevance to this program as well as additional *program specific regulations* are summarized below:

- The Foundation will consider requests for extra compensation (overload). Such requests should be clearly outlined in the budget justification section and will be reviewed on an individual basis with attention to the nature of the project as well as institutional and current NSF policies.
- Support will not be provided for general purposes office equipment such as typewriters or furniture, nor for permanent scientific equipment. Permanent equipment is defined as any item with a unit cost of $500 or more and an expected service life of two or more years. Where such equipment is deemed necessary, proposals should consider borrowing or renting. Rental costs are allowable under this program.

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• Indirect costs will not be paid on participant costs.

• Funds should be included for the project director (one person only) to attend the annual two-day project directors meeting in the Spring in Washington, DC. Proposers should use their institutional guidelines regarding per diem allowances.

• Support may not be requested for social activities, attendance at any conference except the project directors meeting, or for teacher training components.

• Proposers are advised to determine whether coverage normally available to students and faculty on campus applies to participants in these, projects. The budget may request funds to purchase health and accident insurance for participants not covered by the usual student health plans. Insurance costs should be specifically justified, and will be reviewed on a case-by-case basis.

• The Young Scholars Program requires a reasonable degree of cost-sharing in all proposals. Arrangements for cost-sharing should be clearly detailed in the proposal's budget justification section, and will be taken into consideration in decisions on the extent of NSF support. *Fees assessed of participants are not considered cost-sharing.*

Proposal Preparation and Submission

Reference Documents

A formal proposal should be prepared following the guidelines contained in the NSF document *Grants for Research and Education in Science and Engineering* [GRESE] NSF 83–57, rev. 11/87 and the instructions contained in this solicitation. Additional information may be obtained from the NSF *Grants Policy Manual, Revised, NSF 77–47.*

Intergovernmental Review

This program is subject to intergovernmental review under the provisions of E.O. 12372 and NSF regulations. Appendix C lists those states that require review of proposals submitted to this program. Request for state review of proposals, where required, can be made simultaneously with the submission of this proposal. However it is the responsibility of the submitting organization to forward the state approval number to the Young Scholars program office when received. *For those states which require such review, a grant award cannot be made until the state review process is completed.*

Required Forms

There are several NSF and Young Scholars program forms which are required as part of the submission of a proposal to this program. These include a *Young Scholars Program Data Sheet* (Appendix B) which will be used in the assignment of proposals to appropriate review panels. All required forms and a checklist for proposal preparation can be found in the appendices to this solicitation. Please check that all forms are filled out completely and signed, where necessary. Forms may be photocopied.

Narrative Content and Format

The narrative is limited to *30 double-spaced pages* (15 single-spaced pages). There is no set limit on the length of the appendices. However, proposers should be judicious in this regard as NSF leaves to individual reviewer discretion what part of the appendices, if any, should be read. The narrative should discuss each of the following areas (in the order given) in sufficient detail to allow the proposal to be evaluated in accordance with the goals of this program:

• Project Goals and Objectives.
• Disciplinary Focus.
• Project Design.
—Disciplinary Focused Activities (must include a schedule of activities)
—Activities Focused on Research Methodology
—Career Awareness Activities
—Philosophy and Ehtics of Science Activities
—Follow-up Activities
—Project Setting
• Target Population.
• Participant Identification, Recruitment & Selection (including number of students, grade level, geographic area, procedures and rationale).
• Project Staff.
• Project Site (resources and equipment).
• Budget Explanation (including cost sharing arrangement and participant costs).
• Project Outcomes.

(A checklist for proposal preparation specifiying the order of presentation can be found in Appendix A)

The deadline for receipt of proposals for the Young Scholars Program is August 8, 1988.

Fifteen (15) complete copies of the formal proposal and (3) additional copies of the Cover Sheet and Project Summary should be prepared and sent to: Data Support Section, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Evaluation and Selection of Proposals

General critieria used in the evaluation of proposals are described in the NSF GRESE referenced above. The major criteria for the evaluation and selection of Young Scholars projects will be the ability of the proposed activities to achieve program objectives as stated in this solicitation.

Within the context of the Young Scholars Program specific evaluation criteria will include the appropriateness and quality of the following program elements for the target population: (1) Research, laboratory, field and classroom activities focused on the science discipline chosen, including hands-on projects and planned interaction between students and scientists and mathematicians; (2) follow-up activities; (3) scientific ethics and career awareness activities; (4) participant recruitment and selection procdures and demographics, including the representation of women, minorities and the disabled; (5) project design including time frame for implementation, discipline focus and type of project (commuter/residential; summer/academic year); (6) project staff qualifications and mix; (7) project site and resources; (8) budget including total costs, proposed cost sharing and participant costs; and (9) for established programs, the proposed use of NSF funds and the success of current program activities.

Proposals will be reviewed for scientific and educational merit by scientists, mathematicians, engineers, science educators including precollege teachers, and experts in other fields represented by the proposals.

Awards

The announcement of Young Scholars Project awards should be made in February, 1989. Notification of awards is made in writing by the Foundation. As soon as possible thereafter the Foundation will publish and distribute a project directory as a reference guide for potential applicants.

Awards will nomrally provide for one year of support, with a second year of support contingent upon acceptable progress in implementing program objectives and availability of funding.

Participants admitted and successfully completing these projects will be identified in NSF records as National Science Foundation Young Scholars. Project Directors may use this terminology in any presentations made in closing ceremonies and any reference to the participants thereafter. The terms "Science", "Mathematics" and "Engineering" may be inserted as appropriate.

Grant Administration

NSF grants are administered in accord with the terms and conditions of NSF F.L. 200 (10–87), Grant General Conditions, copies of which may be requested from the NSF Forms and Publication Unit.

NOTE: PROPOSALS MUST INCLUDE ALL REQUIRED FORMS WHICH ARE AVAILABLE IN THE PRINTED PROGRAM ANNOUNCEMENT. COPIES OF THE PROGRAM CAN BE REQUESTED FROM THE ADDRESS LISTED BELOW: Young Scholars Program, Division of Research Career Development, Directorate for Science and Engineering Education, National Science Foundation, Room 630, Washington, DC 20550 (202) 357–7530.

Questions not addressed in this publication may be directed to Dr. Elmima C. Johnson at the address and phone number listed above.

Formal proposals should be prepared in accordance with the guidelines contained in the Grants for Research & Education in Science and Engineering [GRESE], pp. 1–8 and the instructions contained in this Program Announcement. Single copies of the GRESE (NSF 83–57, rev. 11/87) may be ordered from the: Forms and Publication Unit, Room 232, National Science Foundation, Washington, DC 20550.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment or general information. This number is (202) 357–7492.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and persons with disabilities to compete fully in the program described in this document.

Facilitation Awards for Handicapped Scientists and Engineers (FAH) provides funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to work on an NSF project. See the FAH program announcement, or contact the FAH Coordinator in the Directorate for Scientific, Technological, and International Affairs.

(Catalog of Federal Domestic Assistance Number 47.072—Young Scholars Program)

Elmima C. Johnson

Associate Program Director, Young Scholars Program.

May 5, 1988.

[FR Doc. 88–10828 Filed 5–9–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Environmental Assessment and Finding of No Significant Impact; Georgia Power Co. et al.

In the matter of Georgia Power, Oglethorpe Power Corp., Municipal Electric Authority of Georgia and the city of Dalton, Georgia.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) to: (1) Lower the minimum water level required for continued plant operation and change the point of measurement of water level from the river gauge to the pump intake structure; (2) provide an alternate requirement for determination of equivalent river level when a temporary weir is in place; (3) change the water level at which an increased frequency of level surveillance is required; (4) change the plant service water pump throttling requirement for Unit 1 and add a corresponding pump throttling requirement for Unit 2; and (5) amend the Technical Specification Bases to reflect the above changes.

The proposed action is in accordance with the licensee's application for amendment dated September 9, 1986, as supplemented by letter dated May 8, 1987, and partially revised on December 15, 1987.

The Need for the Proposed Action

The proposed change to the TS is required to enable the licensee to operate the plant at power during periods of low river water level while maintaining the capability for safe plant shutdown if required.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed changes would allow the licensee to adjust downward the water levels at which plant service water pump throttling and plant shutdown are required. However, the proposed adjusted water levels are still sufficient to assure protection of the pumps and to provide for adequate cooling to meet a plant shutdown requirements. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of an effluents that may be released offsite, and there is no change in the allowable or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on November 12, 1986 (51 FR 41036). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered

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in the Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, dated October 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 9, 1986, as supplemented by letter dated May 6, 1987, and partially revised by letter dated December 15, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 4th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10327 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Issuance of Amendments to Facility Operating Licenses; Pennsylvania Power and Light Co.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 79 to Facility Operating License No. NPF–14 and Amendment No. 44 to Facility Operating License No. NPF–22, issued to Pennsylvania Power and Light Company, which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The amendments were effective as of the date of issuance, to be implemented prior to May 3, 1988 startup of Unit 2 following its refueling outage.

The amendments modified the Technical Specifications to revise the load profiles for 125V dc battery banks 2D612, 2D622, 2D632, and 2D642.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating license and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 22, 1988 (53 FR 9367). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1981.

For further details with respect to the action see: (1) The application for amendments dated January 8, 1988, (2) Amendment No. 79 to License No. NPF–14, (3) Amendment No. 44 to License No. NPF–22, and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10328 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated November 19, 1987 (Reference GOL–87–275).

The proposed amendment would change the statement of the number of channels per trip system for main steam line flow, main steam line tunnel temperature, and temperature gradient in Table 3.3.2–1, "Isolation Actuation Instrumentation." This action if approved would correct inconsistencies between the FSAR and the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the Request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intevene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who had filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examination witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005–3502 and Mr. G.E. Doupe, Esq., Washington, Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–10329 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (the licensee), for operation of the Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated March 7, 1988 (Reference GOL–88–053).

The amendment would allow the operation of WNP–2 up to a power level of 75% with one recirculation loop operating to the design burnup of the reload fuel of 35,000 MWD/MT bundle average.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition, without requesting leave of the Board, up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

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the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005–3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of this proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 7, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland this 5th day of April 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects — III, IV, V & Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-10330 Filed 5-9-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Annual Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of Annual Selection Meeting of the President's Commission on White House Fellowships; closed to the public.

SUMMARY: Notice is hereby given that the annual Selection Meeting of the President's Commission on White House Fellowships will be held at the Airlie House, Airlie, Virginia, June 2 through June 5, 1988, beginning at 5:00 p.m.

The Annual Selection Meeting is part of the screening process of the White House Fellowships program. During this three-day meeting the applications will be discussed and the applicants will be interviewed by members of the Presidential Commission. At the conclusion of this meeting the Commissioners will recommend to the President those they propose be selected to serve as White House Fellows.

It has been determined by the Director of the Office of Personnel Management that because of the nature of the screening process, wherein personnel records and confidential character references must be used, which if revealed to the public would constitute a clear invasion of the individuals' privacy, the content of this meeting falls within the provisions of section 552b(c) of Title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATE: The date of the Annual Selection Meeting of the President's Commission on White House Fellowships, which is closed to the public, is June 2–5, 1988.

FOR FURTHER INFORMATION CONTACT: President's Commission on White House Fellowships, 712 Jackson Place NW., Washington, DC 20503, (202) 395–4522.

Marcy L. Head,

Director, President's Commission on White House Fellowships.

[FR Doc. 88-10360 Filed 5-9-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25648; File No. SR-AMEX-88-12]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Margin Requirements for Equity and Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1) ("Act"), notice is hereby given that on April 25, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 462 as set forth below. *Italics* indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 462

(a)–(c) No change.

(d) 1. No change.

2. (A)–(C) No change.

(D) Subject to the exceptions set forth in subparagraphs (F) through (K) of this paragraph (d)(2) the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) No change.

(ii) In the case of a put or call dealt in on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on equity securities, 100% of the option premium plus [15%] *20%* of the market value of the equivalent number of shares of the underlying security, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put.

(iii) In the case of *a* put[s] *or* [and] call listed or traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on a broad stock index group, 100% of the option premium plus [10%] *15%* of the product of the current index group value and the index multiplier applicable to the option contract. In each case, the amount shall decrease by any excess of the aggregate exercise price of the option over the product of the current index group value and the applicable index multiplier in the case of a call, or any excess of the product of the current index group value and the applicable index multiplier over the aggregate exercise price of the option in the case of a put.

(iv) In the case of *a* put[s] *or* [and] call[s] listed or traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on a stock index industry group, 100% of the option premium plus [15%] *20%* of the product of the current index group value and the index multiplier applicable to the option contract, reduced by any excess of the aggregate exercise price of the option over the product of the current index group value and the applicable index multiplier in the case of a call, or any excess of the product of the current index group value and the applicable index multiplier over the aggregate exercise price of the option in the case of a put.

(v) No change. Notwithstanding the foregoing:

(a) No change:

(b) The minimum margin or any and each put or call issued, guaranteed or carried "short" in a customer's account shall be not less than 100% of the option premium plus:

(1) No change.

(2) [5%] *10%* of the current market value of the equivalent number of shares of the underlying security in the case of an option on equity securities that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(3) [5%] *10%* of the product of the current index group value and the applicable index multiplier in the case of an option on a broad stock index group that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(4) [5%] *10%* of the product of the current index group value and the applicable index multiplier in the case of an option on a stock index industry group that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(5)–(7) No change.

(E) No change.

(F) If both a put and a call for the same number of shares of the same equity security *or the same underlying index with the same index multiplier* or the same principal amount of the same United States Government obligation are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or the call whichever is greater, as required pursuant to subparagraph (*D*) [(d)] of this paragraph (d)(2) [increased by the amount of any unrealized loss on] *plus 100% of the premium of* the other option. The minimum margin requirements, however, shall not apply to the other option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes, due to the increase in market volatility experienced during the past six months, to raise margin requirements for both equity and index options.

Adopted in 1986, the formula for determining margin requirements for all short option positions is premium plus a fixed percentage "add on" of the market value of the underlying contract, reduced by any out-of-the-money amount to not less than the option premium plus a minimum add-on percentage. Currently, the initial fixed percentage "add-on" for equity and narrow-based index options is 15% and for broad-based index options is 10%.[1] In each case, margin is reduced by any out-of-the-money amount to a minimum of premium plus 5% of the current value of the underlying contract. These percentage levels were established to give coverage for 95% of the price movements in the underlying product which could be anticipated, based upon underlying market volatility, during any seven day period.

The Exchange also proposes to amend the straddle/combination margin requirements to include the premiums for both option components. This proposed change seeks to reflect, more accurately, the potential risk of the straddle/combination position.

Based on recently experienced market volatility, the Exchange believes it is appropriate to increase margin requirements for a six month period. Therefore, the Exchange proposes to increase the percentage "add-on" for equity and narrow-based index options to 20% and for broad-based index options to 15%, while the minimum for all options will be increased to premium plus 10%. At the end of the six month period, the new percentages will revert to the previous levels unless other percentages proposed by the Exchange are deemed appropriate in light of experienced market volatility. During this initial period, the Exchange, in conjunction with other securities regulators, plans to develop procedures to routinely monitor and adjust margin requirements so that both the investor and the firms are adequately protected based upon current market volatilities.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the rule change is designed to provide adequate levels of protection in line with the current increase in market volatility.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

[1] In November 1987, the Exchange increased margin requirements for broad-based index options from 5% to 10% for the fixed add-on and from 2% to 5% for the minimum add-on (*see:* SR–AMEX–87–29).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10331 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25652; File No. SR-NASD-87-43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 23, 1987, and amended on March 11, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends the Resolution of the NASD Board of Governors concerning Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions, to give the Board of Governors discretion in extraordinary circumstances to waive publication of disciplinary actions involving imposition of monetary sanctions of $10,000 or more.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25520, March 25, 1988) and by publication in the **Federal Register** (53 FR 10984, April 4, 1988).

One letter of comment was received, objecting to the proposed rule change.[1] The letter expressed the opinion of the Municipal Securities Rulemaking Board (MSRB) that the amendment would reduce the effectiveness of the Resolution and have a negative impact on compliance with MSRB rules, which the NASD is responsible for enforcing. The letter suggests that at a minimum the NASD should develop guidelines as to when its discretion should be exercised under this amendment.

The Commission has carefully considered the comment letter, but believes that the NASD, in limiting the Board's discretion to extraordinary circumstances, has sufficiently narrowed application of the amendment without unduly restricting the Board's ability to exercise such discretion in unusual instances.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Sections 15A and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 4, 1988.

[FR Doc. 88-10332 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Terrence E. Comerford, Vice Chairman, Municipal Securities Rulemaking Board, to Jonathan G. Katz, Secretary, SEC, April 21, 1988.

[Release No. 34-25645; File No. SR-NYSE-88-13]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Increasing Margin Requirements for Equity, Industry Index and Broad Index Stock Group Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1988 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("Exchange") is proposing to raise the margin requirements applicable to equity, industry index and broad index stock group options. The increased requirements raise the percentage levels to premium plus 20% for equity and industry index stock group options and to premium plus 15% for broad index stock group options. The "out-of-the-money" minimum would be raised to 10%.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change raises the margin requirements for equity, industry index and broad index stock group options. The margin required for such options is based on a premium plus formula which calls for 100% of the current market value of the option plus a percentage of the current market value of the underlying product. This margin may be reduced by any "out-of-the-money" amount attributable to the option, as long as a minimum percentage is maintained. The current percentage levels set in the rule are 15% for equity and industry index stock group options and 10% for broad index options. The minimum percentage is 5% for all such options. These percentage levels were established to cover 95% of all historical seven business day percentage price movements in the underlying product (confidence level) during the recent twelve month review period.

The Exchange proposes to raise the percentage levels to premium plus 20% for equity and industry index stock group options and to premium plus 15% for broad index stock group options. The "out-of-the-money" minimum would be raised to 10%. As a result of these increases the confidence level will remain at 95%, however, the applicable review period will be reduced from twelve to six months to be more responsive to recent market volatility. The proposed requirements are based on the six month review period and reflect the market volatility of the last quarter of 1987.

The Exchange will work with the other options self-regulators to develop procedures for monitoring the adequacy of option margin requirements on an ongoing basis and a system for adjusting requirements more expeditiously based on volatility data.

An additional change in the rule for margin on straddles will more accurately reflect the potential risk of such positions by requiring deposit of the current market value of the option rather than any unrealized loss.

It is expected that the other options self-regulatory organizations will be making substantially the same changes to their respective margin requirements for equity, industry index and broad index group options. However, the Exchange understands that some of the options self-regulatory organizations will include a six month "sunset" provision after which the new requirements would revert to their previous levels unless other percentages are deemed appropriate by those exchanges. The Exchange is not providing for such a sunset provision, but will continue to monitor market volatility data to determine if requirements should be adjusted.[1]

(b) The proposed rule change is consistent with the requirements of section (6)(b)(5) of the Securities Exchange Act of 1934 (the "Act") which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public by setting margin levels that provide adequate financial protection within the securities industry. The proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to section 7(a) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10333 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission notes that the Chicago Board Options Exchange has filed a proposed rule change to increase margin requirements that contains such a sunset provision. *See* Files No. SR-CBOE-88-06 and SR-CBOE-88-08.

DEPARTMENT OF TRANSPORTATION

[Docket 45813]

Order Regarding Brazil Cargo Charter Authorizations

AGENCY: Department of Transportation.

ACTION: Allocation Procedures for Brazil Cargo Charter Flights Order 88-5-9. Docket 45613.

SUMMARY: The operation of charter flights between the United States and Brazil is not currently encompassed by a formal aviation agreement. Since termination of the last Memorandum of Understanding with Brazil in late 1984, Brazil charters have been operated under informal arrangements between the two governments. For the past several years the carriers of each country have been able to operate a total of four (one-way or roundtrip) cargo charters per month. The current arrangement provides that each nation's carriers may operate a total of thirteen charters per three-month period, provided that no more than five flights are operated in any one month. The three-month periods commenced in November 1987. Until March 1988, demand to operate Brazil cargo charters was low and the flights were operated

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on a first-come, first-served basis. The Department is now faced with competing applications for the limited available flights and is tentatively establishing the procedural framework and criteria for allocating Brazil cargo charters. The Department is also inviting interested carriers to file applications to operate Brazil cargo charters for the June-October 1988 period. In addition, the Department confirmed its April 20, 1988 oral allocation of four flights to Rosenbalm Aviation for the month of May 1988.

DATES: Objections to the Department's proposed procedures and criteria are due May 11, 1988. Answers are due not later than May 16, 1988. Applications to operate Brazil cargo charters during the June-October period are due no later than May 11, 1988. Interested parties may obtain a service copy of the order by calling the Documentary Services Division (202) 366-9327 or by writing to the address below.

ADDRESS: Objections, comments, supporting information and applications should be filed in Docket 45613, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45613.

Dated: May 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10383 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43446, Order 88-5-10]

Reallocation Phase; Japan Charter Authorization Proceeding

AGENCY: Department of Transporation.

ACTION: Finalization of show-cause Order 88-3-66[1] and the institution of the *Reallocation Phase—Japan Charter Authorization Proceeding*, Docket 43446 (Order 88-5-10).

SUMMARY: U.S. air carriers can operate only 300 one-way charter flights per year between the United States and Japan under the terms of an Interim Aviation Agreement. The Department awarded these flights to 13 U.S. carriers for the year ending September 30, 1988. These authorizations are subject to forfeiture after 7 month depending on flight usage. The Department is finalizing the procedures and decisional criteria proposed in Order 88-3-66 for reallocation of the forfeited flights for the remainder of the charter year. We will announce the number of flights available for reallocation by May 9, 1988 and invite applications by interested carriers.

DATES: Applications and supporting information are due not later than May 13, 1988. The Department's decisionmaker will issue a show-cause order tentatively reallocating the available charters and establishing a waiting list for subsequently returned flights by May 27, 1988. He will issue the final decision by June 16, 1988.

ADDRESS: Applications and supporting information should be filed in Docket 43446 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 43446.

Dated: May 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10384 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-034]

Great Lakes Pilotage Review; Availability of Report

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of the draft study report and request for public comment.

SUMMARY: A number of issues have been raised the past several years concerning Great Lakes pilotage, last studied in depth during 1972. In view of the concerns expressed and the fact that the last study is over 15 years old, the Department of Transportation initiated a review, conducted by a multi-agency study group chaired by the Coast Guard. Early in the review process, the study group held a public meeting in Cleveland, Ohio (June 24, 1987). A meeting notice was published in the Federal Register (52 FR 19955) on May 28, 1987. A transcript of that meeting may be purchased from the transcriber, Fincum-Mancini, 601 Rockwell Ave., Cleveland, Ohio 44114, (216) 696-2272. Comments received at that meeting and since that meeting were considered in the review process.

The current Great Lakes pilotage review has been completed, and a copy of the draft report is available for public comment.

DATES: To insure full consideration, comments must be received by May 20, 1988. Comments received after that date will be considred to the extent possible.

ADDRESSES: Copies of the Great Lakes Pilotage Study Draft Report are available from, and comments should be mailed to: Commandant (G-LRA-2/21), CGD 87-034, U.S. Coast Guard, Washington, DC 20593-0001.

Between 7:30 a.m. and 3:30 p.m., Monday through Friday, the draft report and comments on it will be available for inspection or copying at the Marine Safety Council (G-LRA-2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477. Comments on the draft report may also be delivered to this location during the times stated.

FOR FURTHER INFORMATION CONTACT: The Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

Dated: May 5, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-10384 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

Change of Name of Approved Trustee; BT Trust Co. of California

Notice is hereby given that effective March 16, 1987, BT Trust Company of California, N.A., San Francisco, California, changed its name to Bankers Trust Company of California, N.A.

Dated: May 5, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-10391 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; Correction.

SUMMARY: NHTSA is correcting errors in the Conforming Products List of Evidential Breath Measurement Devices which appeared in a notice in the Federal Register on March 2, 1988 (52 FR 6727).

FOR FURTHER INFORMATION CONTACT: Ms. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone (202) 366-9825.

SUPPLEMENTARY INFORMATION: On March 2, 1988, NHTSA published a notice in the Federal Register (52 FR 6727) which contained a Conforming Products List (CPL) of Evidential Breath Measurement Devices which have been found to conform to the Model Specifications for these instruments. The CPL contained errors, under the headings CMI, Inc. and Smith and Wesson Electronics, which are discussed briefly below and corrected by this notice.

On page 6726, second column: CMI, Inc.'s Intoxilyzer 4011 (which is both Mobile and Non-Mobile) was omitted from the CPL; CMI, Inc.'s 4011AQ-A and 4011AQ-2 models should have read 4011AS-A and 4011AS-AQ, respectively; and Smith and Wesson Electronics' Breathalyzer 200 (Non-Humidity Sensor) should have read 2000 (Non-Humidity Sensor). For the public's convenience, in this notice, all models under these two headings are being published in their corrected form, as follows:

Manufacturer and model	Mobile	Non-mobile
CMI, Inc. Minturn, Co:		
Intoxilyzer 4011	X	X
4011A	X	X
4011AS	X	X
4011AS-A	X	X
4011AS-AQ	X	X
4011AW	X	X
4011A27-10100	X	X
4011A27-10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.).	X	X
5000 (w/3/8" ID hose option).	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer 900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (Non-Humidity Sensor)	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Robert Nicholson,

Deputy Associate Administrator for Traffic Safety Programs.

[FR Doc. 88-10341 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-59-M

Rulemaking, Research, and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on June, 22, 1988, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by June 8, 1988. If sufficient time is available, questions received after June 8 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 8, and the issues to be discussed, will be mailed to interested persons on June 17, 1988, and will be available at the meeting.

ADDRESS: Questions for the June 22 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on June 22, 1988. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on May 4, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-10342 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: May 5, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0071.
Form Number: IRS Form 2120.
Type of Review: Extension.
Title: Multiple Support Declaration.
Description: A taxpayer who pays more than 10%, but not more than 50%, of the support of an individual may claim that individual as a dependent provided the taxpayer attaches declarations from the other contributors indicating that they will not claim the individual. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.
Respondents: Individuals or households.
Estimated Burden: 990 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-10379 Filed 5-9-88; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

PLACE: Auditorium, HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201.

DATE AND TIME: Wednesday, May 18, 1988, 4:00 p.m.–6:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report.
  A. Status of Earmarks.
  B. Personnel Report.
  C. Activity Report.
IV. Resolution: Chairman Pendleton.
V. Resolution: Commissioner Allen.
VI. Regional Forums: Update.
VII. SAC Report: "Minority Political Participation in Selected Alabama Jurisdictions".
VIII. SAC Report: "Bigotry and Violence in Illinois".
IX. SAC Recharters.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, *Press and Communications Division.* (202) 376–8312.

William H. Gillers,
Solicitor.
[FR Doc. 88–10461 Filed 5–6–88; 1:40 pm]
BILLING CODE 6335–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, May 16, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Reassessment of November 10, 1988 Decision to Terminate Pension Accrual Rulemaking Under section 4(f)(2) of the ADEA.

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda Rodriguez, Executive Officer (Acting) on (202) 634–6748.

Dated: May 5, 1988.
Hilda D. Rodriguez,
Executive Officer (Acting), Executive Secretariat.
[FR Doc. 88–10421 Filed 5–6–88; 11:41 am]
BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on April 29, 1988 (53 FR 15492) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for May 3, 1988. This notice is to revise the agenda for that meeting to include additional items of discussion.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, May 3, is revised as follows:

Open Session

1. CEO Salary Proposals—
  - Central Bank for Cooperatives;
  - Federal Farm Credit Banks Funding Corporation; and
  - Farm Credit Bank of Springfield;
2. Salary Changes for the Springfield District;
3. Implementation of the Agricultural Credit Act of 1987—
  - Final Rule on Disclosure to Shareholders, 12 CFR Part 620;
  - Proposed Regulation on Mergers/Consolidations, 12 CFR Parts 611, 618 and 620;
  - Proposed Regulation on Secondary Market, 12 CFR Parts 611, 612, 614, and 617–623;
  - Proposed Regulation on Insurance to System Members and Borrowers, 12 CFR Part 618, Subpart B;
  - Final Regulation on FCA Organization, 12 CFR Part 600;
4. Delegation of Authority Concerning Disapproval of Association Consolidations and Other Proposed Restructurings;

*Closed Session

5. CEO Salary Proposals—
  - Farm Credit Banks of Wichita; and
  - Farm Credit Banks of Sacramento;
6. Salary Changes for the Sacramento District;
7. Examination and Enforcement Matters.

Dated: May 5, 1988.
David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 88–10433 Filed 5–6–88; 12:57 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:33 p.m. on Thursday, May 5, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (6), (8) and (9).

considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 6, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Assistant Executive Secretary (Operations).
[FR Doc. 88–10492 Filed 5–6–88; 3:24 p.m.
BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 5, 1988.

TIME AND DATE: 10:00 a.m., Thursday, May 12, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Quinland Coals, Inc.*, Docket No. WEVA 85–169. (Issues include whether substantial evidence supports the judge's finding of unwarrantable failure.)
2. *Local Union No. 5817, Dist. 17, UMWA v. Monument Mining Corp., and Island Creek Coal Co.*, Docket No. WEVA 85–21–C. (Issues include consideration of matter remanded from the Court of Appeals.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a) (3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 88–10441 Filed 5–6–88; 1:44 pm]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, May 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–10487 Filed 5–6–88; 3:08 pm]
BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 17, 1988.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 27590 (Sub No. 1), *Trailer Train Company, et al.—Pooling of Car Service With Respect to Flatcars* and MCF–18505; *GLI Acquisition Company—Purchase—Trailways Lines, Inc., GLI Acquisition Company—Control—Continental Panhandle Lines, Inc.*

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs. Telephone: (202) 275–7252.

Noreta R. McGee,
Secretary.
[FR Doc. 88–10486 Filed 5–6–88; 3:07 pm]
BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 9, 16, 23, and 30, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 9

Thursday, May 12

10:00 a.m.
  Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting).
2:00 p.m.
  Briefing on Efforts to License a HLW Repository and Status of Center for Nuclear Waste Repository Analysis (Public Meeting).
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting).
  a. Final Station Blackout Rule, USI A–44 (Tentative).

Week of May 16—Tentative

Tuesday, May 17

2:00 p.m.
  Briefing by DOE on High Level Waste Program (Public Meeting).

Wednesday, May 18

10:00 a.m.
  Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting).
2:00 p.m.
  Annual Briefing by INPO (Public Meeting).

Thursday, May 19

2:00 p.m.
  Briefing on NAS Human Factor Recommendations (Public Meeting).
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May [illegible]—Tentative

Thursday, May 26

3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 30—Tentative

Tuesday, May 31

2:00 p.m.
  Briefing on Human Factors Program and NRC Views of NAS Recommendations (Public Meeting).

Wednesday, June 1

2:00 p.m.
  Briefing on Technical Specification Revisions (Public Meeting).
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, June 3

10:00 a.m.
  DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (Public Meeting).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

BEST COPY AVAILABLE

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CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

May 5, 1988.

[FR Doc. 88–10491 Filed 5–6–88; 3:23 pm]

BILLING CODE 7980-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 9, 1988:

An open meeting will be held on Wednesday, May 11, 1988, at 1:00 p.m. A closed meeting will be held on Wednesday, May 11, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, May 11, 1988, at 1:00 p.m., will be:

Consideration of whether to issue a Memorandum Opinion and Order with respect to an application-declaration filed by Eastern Utilities Associates ("EUA"), a registered holding company under the Public Utility Holding Company Act of 1935 ("Act"), and its wholly owned electric utility subsidiary, EUA Power Corporation ("EUA Power"). EUA Power proposes to: (1) Issue up to $180 million of 17½% Series B Secured Notes due 1993 ("Series B Notes"), only in exchange for up to $180 million of 17½% Series A Secured Notes ("Series A Notes") now outstanding, and up to 180,000 Contingent Interest Certificates ("CICs"), one of which will be issued with each $1,000 principal amount of Series B Notes in exchange for Series A Notes; (2) issue up to $100 million of 17½% Series C Notes ("Series C Notes") to the Series B Noteholders and the Series C Noteholders in lieu of the payment of cash interest on the Series B and Series C Notes; and (3) issue and sell up to $25 million additional shares of Preferred Stock to EUA. EUA proposes to acquire EUA Power's Preferred Stock and, in connection therewith, to issue $25 million of short-term notes under its existing bank lines of credit. Consideration will also be given to whether to issue an order for a hearing in response to a request for a hearing pending in this matter. For further information, please contact Robert P. Wason at (202) 272–7684.

The subject matter of the closed meeting for Wednesday, May 11, 1988, at 2:30 p.m., will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

May 5, 1988.

[FR Doc. 88–10444 Filed 5–6–88; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1900

Farmers Home Administration Appeal Procedure

Correction

In proposed rule document 88-8430 beginning on page 12695 in the issue of Monday, April 18, 1988, make the following corrections:

§ 1900.57 [Corrected]

1. On page 12700, in the second column, in § 1900.57, paragraph (d)(1)(i) should read as follows:

"(i) Appellants may tape record the proceedings at their own expense. Appellants must state when the taping begins."

2. On page 12702, in the second column, in the parenthetical instruction following the first heading, insert "not" between "is" and "required".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Medicaid Eligibility Determinations

Correction

In rule document 88-8679 beginning on page 12938 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 12939, in the first column, in the seventh line from the bottom, "use" should read "us".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 87N-0363]

Irradiation in the Production, Processing, and Handling of Food; Labeling

Correction

In rule document 88-8597 beginning on page 12756 in the issue of Monday, April 18, 1988, make the following correction:

On page 12756, in the first column, under DATE, in the first line, the effective date should read "April 18, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 79N–0155]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Compounding Oral Products

Correction

In rule document 88-8189 beginning on page 12644 in the issue of Friday, April 15, 1988, make the following corrections:

1. On page 12647, in the first column, the heading for F. should read "*F. Conclusions: Risk Versus Benefit*".

2. On page 12648, in the third column, in the first complete paragraph, in the first line, "empyema" was misspelled.

3. On page 12650, in the first column, in the fifth line, "place" should read "space".

4. Also in the same column, in the same paragraph, in the third line from the bottom, "neutral" should read "neural".

5. On page 12658, in the first column, "PART 44" should read "PART 444".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0131]

Determination of Regulatory Review Period for Purposes of Patent Extension; Prozac™

Correction

In notice document 88-8313 beginning on page 12601 in the issue of Friday, April 15, 1988, make the following corrections:

1. On page 12601, in the third column, under SUMMARY, in the eighth line, "Commission" should read "Commissioner".

2. On page 12602, in the first column, under SUPPLEMENTARY INFORMATION, in the eighth line, "as" should read "was".

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5 CFR Part 1320

Control of Paperwork Burdens on the Public; Regulatory Changes Reflecting Amendments to the Paperwork Reduction Act; Final Rule

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OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Control of Paperwork Burdens on the Public; Regulatory Changes Reflecting Amendments to the Paperwork Reduction Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final rule.

SUMMARY: This rule implements the amendments to the Paperwork Reduction Act of 1980 made by the Paperwork Reduction Reauthorization Act of 1986. In amendments to 44 U.S.C. 3507, Congress sought to enable the public to participate more fully and meaningfully in the Federal paperwork review process. Consistent with the purpose of these legislative amendments, this rule requires agencies (1) to include, in the **Federal Register** notice that indicates submission to the Office of Management and Budget of an information collection clearance package, an estimate of the average burden hours per response and—when seeking expedited OMB review—a copy of the collection of information; and (2) to indicate on each collection of information (or any related instructions) the estimated average burden hours per response, together with a request that respondents direct to the agency and OMB any comments on the accuracy of the estimate and suggestions for reducing the burden. In an amendment to 44 U.S.C. 3502(11), Congress also clarified the applicability of the Paperwork Reduction Act to collections of information contained in proposed and current regulations.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jefferson B. Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (202/395–3176).

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) issued 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—on March 31, 1983 (48 FR 13666). This rule implemented provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35) concerning agency responsibilities for obtaining OMB approval of their collections of information, and other paperwork control functions.

The Paperwork Reduction Reauthorization Act of 1986 (section 101(m) [Title VIII, Part A] of Pub. L. 99–500 (October 18, 1986) and 99–591 (October 30, 1986), 100 Stat. 1783–335, 3341–335) amended the Paperwork Reduction Act of 1980, effective October 30, 1986. As a result of these legislative amendments, OMB published proposed changes to 5 CFR Part 1320 in a Notice of Proposed Rulemaking (NPRM) on July 23, 1987 (52 FR 27768).

In response to this NPRM, OMB has received comments from 19 Federal agencies and 49 members of the public. Each comment has been considered in preparing this final rule. In developing these amendments to 5 CFR Part 1320, OMB has also relied upon its seven years of practical experience in administering the Paperwork Reduction Act of 1980, and upon its four and a half years of implementing 5 CFR Part 1320. Significant comments received in response to the NPRM, and significant changes made in the amendments proposed therein, are discussed in detail below.

As a convenience to those wishing to use 5 CFR Part 1320, OMB is reprinting the entire Part as it is now amended.

B. New Section 1320.21—Agency Disclosure of Estimated Burden

In the NPRM, OMB proposed adding a new § 1320.21—"Agency Display of Estimated Burden." (*See* proposed amendment 24, 52 FR at 27772.) This section requires agencies to indicate on each instrument for the collection of information the estimated average burden hours per response, together with a request that the public direct any comments concerning the accuracy of this burden estimate to the agency and to OMB's Office of Information and Regulatory Affairs (OIRA). This proposal is intended to facilitate agency management of its collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the paperwork reduction process. As discussed below, the final regulation retains this provision with some modification.

This section drew many comments. The majority of the public comments supported this proposal, citing the reasons given in the preamble to the proposed rule (52 FR at 27769–27770). However, several public comments and agency comments expressed concerns that biased or skewed responses would be received from the public (e.g., only those taking longer than average would respond), that benefits of collections of information were being ignored (e.g., beneficiaries of collections of information are not always the respondents), and that the costs to implement this section were too high.

OMB does not find these arguments persuasive. First, since the Act's goal is to minimize the paperwork burden on the public, it is only logical that agencies and OMB, in implementing the Act, need the input of those respondents who are most burdened by a collection of information. As one comment stated, "[s]uch complaints are not intended to provide a statistically valid sample of the burden, but should provide a warning of paperwork burden that may not be justified in light of the perceived benefits" (Comment of National Security Industrial Association).

Second, this proposal does not ignore the benefits of collections of information. Agencies are already required, as part of the paperwork clearance process, to justify the uses and explain the benefits of proposed collections of information to OMB. The affected public has the opportunity to supplement agency statements of need and benefit, as well as to point out the reporting burdens involved. Moreover, these descriptions of need and benefit are typically in instructions, in regulatory preambles, and in the required **Federal Register** notices.[1]

Third, the cost of this new procedure has not been found to be high by the one Department (Interior) currently testing this procedure on a trial basis. A legitimate cost issue, however, does arise with the possible redesign of forms. For many forms, inclusion of this notice should require only a modest rearrangement of the requested data items; for those forms that cannot be easily reformatted, agencies may include this notice on the instruction sheet or on a separate, attached piece of paper. To allow adequate time to carry this out, OMB amends § 1320.21(c) to make this requirement applicable only to collections of information and their instructions printed or otherwise reproduced (or newly communicated or transmitted to the public by electronic or other means) after July 1, 1988.

[1] OMB believes that the American Bar Association (ABA) Section of Administrative Law excellently captured these points when it stated that:

"We are aware of the arguments that this display would emphasize only the burden of the collection, not its benefits, and that the responses and complaints that the agency or OMB might receive from the public as a result might be skewed.

"While there is some merit to this argument, we believe that the benefits to be derived from the display of the burden outweigh any negative effects. Accurate burden estimates for collections of information are critical to the calculus to be applied under the Paperwork Reduction Act. At the same time, agencies have a natural tendency to underrate the burden they impose on their respondents. Those who must comply with the collections are in the best position to determine the burden associated with them, but no one wants to impose another reporting requirement on these respondents to collect the burden information. A display of the estimated burden on the collection itself is a good compromise solution, because it is reasonable to expect that if the estimate is significantly awry, respondents will bring this to the agency's or OMB's attention. In this way, over time, the burden estimates can be refined."

There were a number of other comments on this proposed disclosure notice. Several requested clarification on whether this notice requirement applies to collections of information contained in or imposed by regulations submitted for review under §§ 1320.12 (e.g., those "interim final" rules) and 1320.13. Section 1320.21 *does* apply to such collections of information because they are among the most burdensome imposed by the Federal government.

Section 1320.21, however, does *not* apply to collections of information in current regulations that are only submitted for OMB review under § 1320.14. When an agency submits an information collection contained in a current regulation for review under § 1320.14, the agency does not propose changes to the current regulation, and therefore does not, as part of the clearance process, include the disclosure notice in either the text or preamble to the regulation. Instead, the agency provides the burden hour estimate and request for public comments as part of the **Federal Register** notice that indicates submission to OMB of the information collection clearance package. An agency need not engage in rulemaking solely to include the burden estimate and request for comments required by § 1320.21, nor need an agency engage in rulemaking every time it revises burden estimates for collections of information contained in a current regulation, *unless* the regulation itself otherwise undergoes regulatory amendment.

A comment requested clarification on whether the notice should be placed in the regulation's preamble or text. As proposed, § 1320.21(b) provides that "the agency may display the burden estimate and request for comments * * * at the beginning of the preamble to the proposed or final rule that contains the collection of information." On the other hand, in the existing rule, § 1320.7(f) already defines "display," as that term is used in this rule, to require that the OMB control number be published as part of the regulation's text, both when submitted for OMB review under § 1320.13 and when issued in final.[2] To eliminate this inconsistency between these two provisions, and to clarify the meaning of § 1320.21(b), OMB is replacing the references to "display" in § 1320.21 with the words "disclose" and "place." By "beginning of the preamble", OMB means at or near the beginning of the "**SUPPLEMENTARY INFORMATION**" section of the proposed or final rule containing the collection of information.

One comment recommended that the burden estimate and the request for comments be placed both in the text or preamble of the regulation containing the collection of information and also on the forms or other information collection instruments developed or relied upon to implement the regulatory collection of information. OMB agrees, and amends § 1320.21(b) accordingly.

In the "**SUPPLEMENTARY INFORMATION**" section of the NPRM, OMB also set forth two possible standard formats for the disclosure notice, and asked whether a standard format should be required by regulation (52 FR at 27770). Responses were received both supporting and opposing inclusion of the standard format in the rule. One comment, with which OMB agrees, recommended placing one particular provision of the standard format into the rule. This change to § 1320.21(a)(2) requires agencies to request from the public not only comments concerning the accuracy of the burden estimates, but also suggestions for reducing the burden itself.

To maintain needed agency flexibility, OMB has decided not to set forth a specific standard format in the rule. Based on public comment, however, OMB recommends that agencies adopt the standard formats, as set forth below. This agency disclosure notice should be included as part of each collection of information submitted for OMB review under the Act. Any change from the alternative formats set forth below should be explained in the information collection clearance package:

> Public reporting burden for this collection of information is estimated to average ____ hours [or minutes] per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to [title and address of agency component]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.
>
> Or
>
> Public reporting burden for this collection of information is estimated to vary from ____ to ____ hours [or minutes] per response, with an average of ____ hours [or minutes] per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to [title and address of agency component]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. 44 U.S.C. 3507—Public Notice

1. In new § 1320.15(b), OMB proposed a new procedure for agencies to follow when requesting an expedited review (faster than 60 days from the date of submission). (*See* proposed amendment 20, 52 FR at 27772.) This proposal was designed to ensure maximum public participation in the paperwork review process. New § 1320.25(b) would require an agency seeking expedited review to include, as part of its **Federal Register** notice, a copy of the collection of information, together with any related instructions, for which it seeks OMB approval. An agency would also have to indicate the time period within which it is asking OMB to take action. As described below, the final regulation retains this requirement with some modification.

Proposed new § 1320.15(b) generated much comment, with almost all of the public comments supporting it and most agency comments opposing it. The agencies' major concern was the potential cost and burden it would impose on them. While there will be a cost (and administrative burden) to the agencies, OMB believes that this is more than offset by the requirement's enhancement of public participation in the paperwork process. Moreover, because this additional cost or burden in § 1320.15(b) is imposed only when agencies seek expedited review, agencies may avoid the cost or burden entirely merely by allotting sufficient time for nonexpedited review.

Several comments expressed concern about how this new § 1320.15(b) would affect collections of information contained in proposed regulations (i.e., those submitted for OMB review under § 1320.13). Such collections of information are not subject to § 1320.15(b). Section 1320.13 applies to collections of information contained in proposed rules published for public comment in the **Federal Register**. Such publication itself offers the public the

[2] With the deletion of the definition of "collection of information requirement," the definition of "display" is now found in § 1320.7(e). *See* proposed amendment 8, 52 FR at 27771.

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opportunity to comment. To impose a second publication requirement in § 1320.15(b) would be duplicative. OMB amends § 1320.15 by stating more clearly that only subsection (a), and not subsection (b), is applicable to § 1320.13.

Other comments raised concerns about implementation, such as informal requests for quick review action. This concern is best handled on a case-by-case basis.[3] If agencies know, in advance of the submission to OMB, that they will be requesting a quick review of a proposed collection of information, they should assume it will be treated like a request for expedited OMB review under § 1320.18(g), and they should prepare the required **Federal Register** notice and comply with new § 1320.15(b).

Agencies may also utilize the current emergency review procedures in § 1320.18(a)-(f).

Several public comments suggested procedural changes to the required **Federal Register** notice. First, they suggested delaying the start of the OMB review period until the notice is published. In order to prevent excessive delay in an agency's collection of needed information, however, the Paperwork Reduction Act generally requires OMB review to be concluded within sixty (and in some cases, ninety) days "of receipt" of a collection of information (44 U.S.C. 3507(b)).

Second, the public comments suggested that OMB establish a minimum review period. In contrast, several agencies raised a concern that the standard OMB review period would now become 60 days from receipt of the agency submission. As a general matter, this is OMB's goal, mainly to provide adequate time for public participation in the review process. Agencies should take this time period into consideration when setting internal agency timetables for the preparation of OMB review submissions. To ensure that the public does receive adequate notice, agencies should also take special care to comply with the provisions in §§ 1320.12(a), 1320.13(b), and 1320.14(b), which require agencies to forward to the **Federal Register** and to OMB, on or before the day of actual submission to OMB, the public notice indicating submission of an agency's information collection clearance package.

Of course, emergency and expedited review procedures remain in place to handle special, and uncontrollable, circumstances. For example, OMB takes note of the fact that for certain types of information collections, such as biomedical research studies, normal review periods may be far less than 60 days.

One concern that was raised involves requests for expedited review of collections of information contained in "interim final" regulations, referred to in one comment as "non-notice" regulations. In some instances, these regulations are tied to agency enforcement actions. Depending on the nature of the enforcement action involved, pre-action disclosure of the underlying collection of information may enable individuals to respond in a way to defeat the purpose of the action. Thus, OMB recognizes the need for exemptions to the requirement for advance publication, and is amending new § 1320.15(b) accordingly. If an agency demonstrates that advance publication would defeat the purpose of the collection of information, OMB will consider the agency's request for exemption.

2. In new § 1320.15(a), "**Federal Register** notice of OMB review," OMB proposed to establish by regulation the content of the **Federal Register** notice that each agency is required to publish when submitting a paperwork clearance package to OMB for review under the Act. (*See* proposed amendment 20, 52 FR at 27772.) The notice would be required to contain, at a minimum, a title for the collection; a brief description of the need, use, likely respondents, frequency of response, and burden estimates disaggregated into discrete components applicable to each separate information collection instrument; the average hours per response; the frequency of response; and the likely number of respondents. Furthermore, OMB encouraged agencies to state the basis for their burden estimates. As described below, the final regulation adopts this proposed amendment.

Comments on this new § 1320.15(a) both supported and opposed disaggregating burden estimates. Those in opposition (primarily agencies) expressed concerns about the additional cost and administrative burden imposed on them by this proposal, and asserted that it would duplicate information provided to OMB in the agency information collection clearance packages. Public comments, however, clearly supported this section. Unless potential respondents receive notice in the **Federal Register** of the estimated burden to be imposed upon them, they will probably lack the incentive to contact the agency to request a copy of the information collection clearance package, and thus be unable to provide the agency and OMB with timely and meaningful comments. Indeed, many public comments expressed a desire for additional information in the **Federal Register** notice, including the inclusion of OMB approval numbers, agency form numbers, more extensive discussions of major changes to collections or summaries of new collections, bases for burden estimates, and requested expiration dates.

OMB believes the public's need for the information proposed to be included in the **Federal Register** notice outweighs the potential increase in agency burdens and costs. The need for the additional information that the public comments recommended, however, is not so clear. OMB, therefore, is not adopting any expansion of this proposal.[4]

3. The proposed addition to § 1320.4(b)(3) would require agencies to indicate in their collection of information clearance packages what practicable steps they have taken to consult with interested agencies and members of the public in order to minimize the burden of the collection of information. (*See* proposed amendment 3, 52 FR at 27771.) The final regulation adopts this section as proposed.

Public comments supported this amendment, with several suggesting that additional information be included in the clearance packages. These suggestions included required discussions of why sampling or other less burdensome collection procedures were not undertaken, and discussions of the potential uses of comparable (not just duplicative) data. OMB has not adopted these suggestions. OMB is now able to raise these and other appropriate concerns with the agency as part of its review of each agency's information collection clearance package.

4. The NPRM's Supplementary Information section discussed 44 U.S.C. 3507(h), which requires, with one exception, that any written communication between OIRA and an agency or a member of the public concerning a proposed collection of information be made available to the public (52 FR at 27769). OMB emphasized its support for this provision. However, OMB also raised in the NPRM a concern that complaints from possible whistleblowers about a collection of information might be hindered if these complainants believe that the sponsoring agency reviewing a substantive complaint will be able to identify them and institute possible actions of reprisal, such as more intensified regulatory enforcement, or a denial of a grant or other benefits.

OMB received a number of comments on this discussion, several supporting it, others expressing concerns about it, and still others requesting clarification. For the purposes of clarification, OMB reiterates that it will follow the legal requirements set forth in 44 U.S.C. 3507(h), notwithstanding the discussion of the Privacy Act in the NPRM. Thus, those who provide OMB with any communications concerning a proposed collection of information, regardless of whether they request confidentiality, should recognize that written communications concerning such collections of information will be made available to the public and also, as a general matter, to the sponsoring agency, except for those involving classified information.

OMB remains concerned about the potential discouragement of possible whistleblowers. As such, those who wish to submit comments on proposed collections of information, but who do not wish to be identified to the sponsoring agency, may need to consider in advance how best to do so. A comment from the ABA Section of Administrative Law suggested submission of anonymous comments, but questioned whether OMB would "discount comments submitted anonymously." OMB wants to assure the public that any substantive comment received on proposed collections of information, whether or not submitted anonymously, through an intermediary (e.g., a public interest group or a trade association), or with full disclosure of source, will be considered as part of any paperwork review and brought to the attention of the appropriate agency.

The paperwork clearance file will contain all written, nonclassified communications, including those submitted anonymously or through intermediaries, and will be publicly available in OMB's docket library. Moreover, and as required by 44 U.S.C. 3507(b), any determination to approve, modify, or disapprove a proposed collection of information and explanation thereof shall be publicly available.

D. 44 U.S.C. 3502(11)—OMB Clearance Procedures

Several comments discussed proposed amendments to clarify the applicability of the public protection provisions in 44 U.S.C. 3512 (*see* proposed amendments 4 and 5, 52 FR at 27771) and, more generally, numerous technical amendments replacing the terms "information collection request" and "collection of information requirement" with the term "collection of information." [5] The purpose of this action was, consistent with the 1986 amendment to 44 U.S.C. 3502(11), to make clear (unless circumscribed by the clearance procedures in 44 U.S.C. 3504(h), involving collections of information contained in proposed regulations) that all of the provisions of the Act apply to any collection of information, whether called for by a printed form, oral question, or a proposed or current rule. These provisions include, among many, the public protection provisions of the Act, the required **Federal Register** notices, and the three-year limit on the duration of an OMB approval of a collection of information. (*See* 52 FR at 27766–69.)

Several comments expressed concern with the statutory, three-year limit, namely, that an agency might try to nullify regulatory provisions for reporting or recordkeeping simply by allowing OMB approval for a collection of information contained in a current regulation to expire. OMB believes that this fear is unfounded. Congress debated and agreed to the three-year limit to OMB approvals when it enacted the Paperwork Reduction Act in 1980.[6]

More recently, when recommending passage of the 1986 Amendments, the Senate Committee on Governmental Affairs explicitly discounted the danger that an agency might nullify these regulatory provisions simply by allowing OMB approval to expire:

> If an agency fails to resubmit a collection of information requirement after its clearance expires, the public protection clause of the Act would preclude the agency from penalizing persons who fail to respond to the collection of information requirement. However, the rule requiring the collection of information would remain in effect, and in the committee's view the agency could be sued successfully for failing to enforce its own rules ["Federal Management Reorganization and Cost Control Act of 1986," Report to accompany S. 2230, Senate Committee on Governmental Affairs, July 31, 1986, Report 99–347].

In addition to these protections, OMB requires all agencies to submit collections of information contained in rules for review 90 days prior to the current expiration dates (§ 2320.14(a)). Every month, OMB routinely sends agency information collection clearance offices chronological listings of every collection of information that is going to expire within 120 days. Thus, agencies that do not seek to renew a collection of information in an existing rule are in violation of the OMB rule. To prevent inadvertent noncompliance with 5 CFR Part 1320, agencies should establish information collection management tracking systems. In response to comments from the ABA Section of Administrative Law, OMB is amending 5 CFR 1320.14(a) to stress the importance of agency compliance with this rule.

E. Other Amendments

The NPRM proposed a number of other amendments, including having agencies consider reducing burden through the use of automated collection techniques or other forms of information technology (§ 1320.6(k); *see* proposed amendment 7, 52 FR at 27771), having OMB make publicly available any OMB decision to approve or disapprove a collection of information and explanation thereof (§ 1320.11(d); *see* proposed amendment 9, 52 FR at 27771), and emergency processing requirements (§ 1320.18; *see* proposed amendment 22, 52 FR at 27772). These amendments proposed in the NPRM received few substantive comments, and are adopted as proposed.[7]

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[3] One comment asked how to handle irregularly shaped forms. Such issues should also be discussed with OMB and handled on a case-by-case basis.

[4] Several agencies raised concerns about specific situations in which they asserted that disaggregating burden estimates in particular ways would impose substantial burden without commensurate benefits to the public, e.g., in those cases in which different categories of respondents fill out different portions of a form, or fill out the form at different intervals. These cases should be discussed individually with OMB and handled on a case-by-case basis.

[5] For example, in response to one comment, OMB amends section 1320.14(i) to state more clearly which collections of information would no longer be valid upon receiving a disapproval from OMB pursuant to that section.

[6] OMB stated the underlying rationale for this three-year limit in the NPRM:

> "[T]he three-year limit to paperwork approval, combined with the notice provisions in the Act, gives the public the opportunity to comment on any collection of information (including any recordkeeping requirement) contained in a current rule every three years, not just when the rule was first issued. After a respondent has complied with a collection of information (including a recordkeeping requirement) contained in a current rule for several years, the respondent should have clearer knowledge of the burdens involved, and the agency more concrete experience with the practical utility of the information obtained. Through this iterative review process, the agency is able on a continuing basis to improve and reduce the burden of its collection of information." (52 FR at 27768.)

[7] Upon further review of 5 CFR Part 1320, OMB has also decided to make the following technical amendments:

(1) Various provisions in 5 CFR Part 1320 have taken effect on different dates. For example, OMB published amendments to this Part on May 10, 1984 (49 FR 20792). As a result, the last sentence of § 1320.2, which made this regulation effective on May 2, 1983, is obsolete and is therefore deleted.

(2) OMB amends § 1320.6(e) to clarify that it applies to collections of information that provide for any payment or gift to respondents or potential respondents, including but not limited to compensation of respondents for their time or other costs incurred in providing the information requested.

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F. Additional Public Comments

In response to the NPRM, OMB also received a number of comments which, although they concern OMB's paperwork review practices, neither address particular proposed amendments in the NPRM nor suggest alternative amendments. Although OMB is not obligated to respond to such comments, a few of them raise issues of widespread concern or interest. OMB therefore believes that a short discussion of these is worthwhile.

1. Several comments expressed a desire for OMB to explain how it reviews collections of information. OMB is now drafting an "Information Collection Review Handbook" for use by OMB staff. When it is completed, the Handbook will be provided to agencies and to interested members of the public. This Handbook will describe agency and OMB responsibilities under the Paperwork Reduction Act, the scope of the information collection review program, the information collection review process, the types of information collections that are and are not covered by the Act, the criteria for obtaining OMB approval, and public involvement in OMB reviews.

Some comments raised the kinds of issues that will be discussed in the Handbook. For example, the ABA Section of Administrative Law questioned whether it was OMB's intent to approve collections of information in an existing rule during the time agencies may seek to amend or repeal those collections of information through a regulatory amendment. Similarly, an agency asked OMB to clarify, when OMB approves a collection of information contained in a proposed regulation, whether an existing, related regulatory information collection remains in force until the new regulatory information collection can take effect through completion of the amendatory rulemaking.[*]

2. Several comments questioned whether financial monitoring, audit requirements, and audit guides are covered by the Act. The answer varies from case to case, depending on whether the audit guide contains "identical" reporting or recordkeeping requirements (see the amendment to § 1320.7(c)), and on whether the collection of information has been previously approved as part of another paperwork clearance (see 48 FR 13675, March 31, 1983).

3. Comments also expressed a concern about the Information Collection Budget (ICB). While the ICB was not the subject of the rulemaking, it is important to clarify an apparent misperception concerning the ICB and how it is used. The ICB is a management tool and it is an adjunct to the individual case-by-case review required by the Paperwork Reduction Act and OMB's paperwork clearance procedures. It is used by agency officials in their planning and control processes to review the totality of the collections of information their staff plans to keep, or put, in place during the forthcoming year. OMB uses the ICB in conjunction with its management reviews of agencies, to assure that they comply with the Act's direction to manage information needs and uses carefully. Some comments suggested that, through the ICB, OMB may disapprove a collection of information. This is inaccurate; disapprovals of collections of information may occur only as part of OMB's case-by-case review of each information collection clearance package, in accordance with the procedures and policies of the Act.

4. Several members of the public asserted that OMB, in implementing the Paperwork Reduction Act, spends too much time and effort in reviewing collections of information imposed on businesses. OMB believes that this criticism is unwarranted, and that it may arise due to a lack of public awareness of how the Federal government's paperwork burden weighs upon the various segments of our society. OMB records indicate that as of September 30, 1987, agencies estimated that approximately 63 percent of all Federal reporting burden fell on businesses and other institutions (including hospitals and universities), while 32 percent of the total fell on individuals and households, 4 percent on State and local governments, and 1 percent on farms. Broken down by major Federal agency, the imposition of reporting and recordkeeping burden by respondent category is, as follows:

ACTIVE INFORMATION COLLECTIONS, THE AFFECTED PUBLIC, PERCENT OF BURDEN HOURS BY AGENCY

Agency [a]	Individuals/ households (percent)	State/local government (percent)	Farms (percent)	Business and other institutions (percent)
Agriculture	22	64	10	4
Commerce	16	9	0	75
Defense	3	0	0	97
Education	30	10	0	60
Energy	0	0	1	99
HHS	15	9	0	76
HUD	2	53	0	45
Interior	10	18	0	72
Justice	83	0	0	17
Labor	1	6	0	93
State	99	0	0	1
DOT	2	4	0	94
Treasury	51	0	0	49

(3) The Civil Aeronautics Board no longer exists. The reference to it in § 1320.7(h) is therefore deleted.

(4) OMB amends § 1320.16(c) to state clearly that the new amendments to 5 CFR Part 1320 also apply to Standard and Optional Forms, and to any other collections of information prescribed by another agency.

(5) OMB amends section 1(e) of Appendix A to correct two cross-references (the prior references to §§ 1320.17 and 1320.19 are changed, respectively, to §§ 1320.18 and 1320.20).

[a] To answer these questions: A proposed regulatory information collection is reviewed under § 1320.13. A current regulatory information collection is reviewed under § 1320.14. As a basic matter, if an information collection in a proposed rule is going to change an information collection in a current rule, the agency should take care to assure that the existing regulatory information collection continues to be approved by OMB while the agency is conducting the regulatory amendment.

In addition, it is OMB practice to assure that this happens. When OMB approves a proposed regulatory information collection under § 1320.13, OMB allows the related current regulatory information collection to remain in effect until the approved, new or revised regulatory information collection takes effect, unless otherwise noted—in particular circumstances—in the conditions of clearance. Similarly, even when OMB fails to approve a proposed regulatory information collection submitted for review under § 1320.13, but instead files public comments, OMB approves the related current regulatory information collection for at least as long as it takes to resolve the dispute.

ACTIVE INFORMATION COLLECTIONS, THE AFFECTED PUBLIC, PERCENT OF BURDEN HOURS BY AGENCY—Continued

Agency [a]	Individuals/ households (percent)	State/local government (percent)	Farms (percent)	Business and other institutions (percent)
CFTC	0	0	0	100
CPSC	2	0	0	98
EEOC	0	98	0	2
EPA	1	3	0	96
FCC	1	2	0	97
FDIC	0	0	0	100
FEMA	13	87	0	0
FERC	0	0	0	100
FHLBB	0	0	0	100
FRS	0	0	0	100
FTC	0	0	0	100
GSA	4	0	0	96
ICC	3	0	0	97
NASA	0	0	0	100
NCUA	0	0	0	100
NSF	15	0	0	85
NRC	0	0	0	100
OPM	96	0	0	4
SEC	0	0	0	100
SBA	10	1	0	89
VA	83	2	0	15
All Government	32	4	1	63

[a] The abbreviated agencies are as follows: HHS=Health and Human Services; HUD=Housing and Urban Development; DOT=Transportation; CFTC=Commodity Futures Trading Commission; CPSC=Consumer Product Safety Commission; EEOC=Equal Employment Opportunity Commission; EPA=Environmental Protection Agency; FCC=Federal Communications Commission; FDIC=Federal Deposit Insurance Corporation; FEMA=Federal Emergency Management Agency; FERC=Federal Energy Regulatory Commission; FHLBB=Federal Home Loan Bank Board; FRS=Federal Reserve System; FTC=Federal Trade Commission; GSA=General Services Administration; ICC=Interstate Commerce Commission; NASA=National Aeronautics and Space Administration; NCUA=National Credit Union Administration; NSF=National Science Foundation; NRC=Nuclear Regulatory Commission; OPM=Office of Personnel Management; SEC=Securities and Exchange Commission; SBA=Small Business Administration; VA=Veterans' Administration.

Regulatory Impact and Regulatory Flexibility Act Analysis

OMB has analyzed the effects of this rule under both Executive Order No. 12291 and the Regulatory Flexibility Act. Copies of this analysis are available upon request. In summary, OMB has concluded that these amendments will have a salutary impact on small entities through the reduction of unnecessary paperwork and that, while the costs and benefits of procedural amendments such as these are largely unquantifiable, the amendments meet all the requirements of the Executive Order.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork, Collections of information.

Issued in Washington, DC, May 4, 1988.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

5 CFR Part 1320 is revised to read as follows:

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

1320.1 Purpose.
1320.2 Effect.
1320.3 Coverage.
1320.4 General requirements.
1320.5 Public protection.
1320.6 General information collection guidelines.
1320.7 Definitions.
1320.8 Agency head and senior official responsibilities.
1320.9 Delegation of approval authority.
1320.10 Information Collection Budget.
1320.11 Agency submissions of collections of information.
1320.12 Clearance of collections of information.
1320.13 Clearance of collections of information in proposed rules.
1320.14 Clearance of collections of information in current rules.
1320.15 Federal Register notice of OMB review.
1320.16 Collections of information prescribed by another agency.
1320.17 Interagency reporting.
1320.18 Emergency and expedited processing.
1320.19 Public access.
1320.20 Independent regulatory agency override authority.
1320.21 Agency disclosure of estimated burden.
1320.22 Other authority.

Appendix A—Agencies With Delegated Review and Approval Authority

Authority: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

§ 1320.1 Purpose.

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and State and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to ensure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (44 U.S.C. Chapters 21, 25, 27, 29, 31) and section 104 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1111) as well as the Act.

§ 1320.2 Effect.

This Part supersedes and rescinds Circular No. A-40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976.

§ 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in § 1320.7(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.7(c),

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wherever conducted or sponsored, except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or section 13 of the Federal Trade Commission Improvements Act or section 13 of the Federal Trade Commission Improvements Act of 1980;

(b) During the conduct of intelligence activities, as defined in Section 4–206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities; or

(c) During the conduct of a Federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or its equivalent is opened with respect to a particular party. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date. An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension. Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set out in § 1320.6, where applicable, and shall indicate, in its submission of a collection of information for OMB review, what practicable steps it has taken to consult with interested agencies and members of the public in order to minimize the burden of that collection of information.

(c) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB pursuant to §§ 1320.13 or 1320.14, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(d) Except as provided in § 1320.20, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.

§ 1320.5 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information:

(1) That does not display a currently valid OMB control number; or

(2) In the case of a collection of information required by law or to obtain a benefit which is submitted to nine or fewer persons, that fails to state, as prescribed by § 1320.4(a), that it is not subject to OMB review under the Act. The failure to display a currently valid OMB control number for a collection of information contained in a current rule does not, as a legal matter, rescind or amend the rule; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(b) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition to the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or statement, as prescribed in § 1320.4(a), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If such a collection of information is disapproved in whole by OMB (and the disapproval is not overridden pursuant to § 1320.20), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If such a collection of information is ordered modified by OMB (and the order is not overridden pursuant to § 1320.20) the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so modified.

(c) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.

§ 1320.6 General information collection guidelines.

Unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information:

(a) Requiring respondents to report information to the agency more often than quarterly;

(b) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(c) Requiring respondents to submit more than an original and two copies of any document;

(d) Requiring grantees to submit or maintain information other than that required under OMB Circular A–102 or A–110;

(e) Providing for any payment of gift to respondents, other than remuneration of contractors or grantees;

(f) Requiring respondents to retain records, other than health, medical, or tax records, for more than three years;

(g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;

(h) Unless the agency has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities;

(i) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect its confidentiality to the extent permitted by law;

(j) Requiring respondents to maintain or provide information in a format other than that in which the information is customarily maintained;

(k) Unless the agency has considered reducing the burden on respondents by use of automated collection techniques or other forms of information technology.

§ 1320.7 Definitions.

For purposes of implementing the Paperwork Reduction Act and this Part, the following terms are defined as follows:

(a) "Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, and governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities.

(b) "Burden" means the total time, effort, or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the information into the requested format; to review its accuracy and the appropriateness of its manner of presentation; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

(2) A collection of information sponsored by a Federal agency that is also sponsored by a unit of state or local government is presumed to impose a Federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a Federal requirement.

(c) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, or identical reporting or recordkeeping requirements, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. In the Act, a "collection of information requirement" is a type of "information collection request." As used in this Part, a "collection of information" refers to the act of collecting information, to the information to be collected, to a plan and/or an instrument calling for the collection of information, or any of these, as appropriate.

(1) A "collection of information" includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, information collection requests, collection of information requirements, rules or regulations, information collection requests or collection of information requirements contained in, derived from, or authorized by such rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, interview guides, oral communications, disclosure requirements, labeling requirements, telegraphic or telephonic requests, automated collection techniques, and standard questionnaires used to monitor compliance with agency requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or to the public at large, through posting, notification, labeling, or similar disclosure requirements, constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) A "collection of information" includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(d) "Director" means the Director of OMB or his designee.

(e) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written collections of information, individually distributed to potential respondents, to print the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date) in the upper right hand corner of the front page of the collection of information;

(2) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, to publish the OMB control number in the **Federal Register** (as part of the regulatory text or as a technical amendment) and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances exist, to use other means to inform potential respondents of the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date).

(f) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(g) "A Federal education program" means any Federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(h) "Independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the

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Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Credit Union Administration, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(i) "General purpose statistics" are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(j) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, magnetic tapes, or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument;

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observation;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register or other publications, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information;

(10) *Like* items so designated by the Director.

(k) "Interagency reporting requirement" means any requirement that an agency report information to another agency or agencies.

(l) "Modify" means to approve in part and disapprove in part.

(m) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(n) "Person" means an individual, partnership, association, corporation, (including operations of government-owned contractor-operated facilities), business trust, legal representative, organized group of individuals, state, territory, or local government or component thereof. Current employees of the *Federal government* are excluded from this definition for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former Federal employees are included entirely within the definition of "person."

(o) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, "practical utility" means that actual uses can be demonstrated.

(p) "Recordkeeping requirement" means a requirement imposed by an agency on persons *to* maintain specified records and includes requirements that information be maintained or retained by persons *but* not necessarily provided to an agency.

(q) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(r) "Sponsor." A Federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person. A collection of information undertaken by a recipient of a Federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

(s) "Ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the collection of information.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(2) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

§ 1320.8 Agency head and senior official responsibilities.

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Reduction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

§ 1320.9 Delegation of approval authority.

(a) The Director may, after complying with the notice and comment procedures of 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved, and

(2) Has sufficient resources to carry out this responsibility effectively.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accord with the terms and conditions of each delegation as specified in Appendix A to this part, the Director delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System.

§ 1320.10 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted or sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

§ 1320.11 Agency submissions of collections of information.

(a) Agency submissions of collections of information for OMB review may be made only by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe. Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calculated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) OMB shall review all agency submissions in accordance with the standards set forth in §§ 1320.4 (b) and (c).

(d) In determining whether to approve, disapprove, modify, review, initiate proposals for changes in or stay the effectiveness of its approval of, any collection of information, OMB shall consider any public comments received, and may provide the agency and interested persons additional opportunities to be heard or to submit statements in writing. Any such determination and explanation thereof shall be publicly available.

(e) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements set forth in § 1320.14. Agencies shall submit collections of information other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements set forth in § 2320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.16. Special rules for emergency processing of collections of information are set forth in § 1320.18.

(f) Prior to the expiration date assigned to a collection of information, after consultation with the agency, OMB may decide to review the collection of information, and shall so notify the agency. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error. Upon such notification, the agency shall submit the collection of information for review under the procedures outlined in §§ 1320.12 or 1320.14, as appropriate. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, after consultation with the agency, OMB may stay the effectiveness of its approval of any collection of information not specifically required by agency rule, whereupon the agency shall cease sponsoring such collection of information while the submission is pending, and shall publish a notice in the **Federal Register** to that effect.

(g) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to Federal education programs, or research or evaluation studies related to

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implementation of Federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC), or organizational unit fulfilling the same statutory function within the Department of Education, prior to approval or disapproval by OMB. Collections of information addressed to educational agencies or institutions and submitted to the Secretary of Education under the provisions of 20 U.S.C. 1221–3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the February 15 preceding the school year in which the information is to be collected.

(h) No substantive or material modification may be made by an agency in a collection of information after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(i) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(j) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

§ 1320.12 Clearance of collections of information.

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the Federal Register or in current rules that were published as final rules in the Federal Register, in accordance with the following requirements:

(a) On or before the day of submission to OMB, the agency shall, in accordance with the requirements set forth in § 1320.15, forward a notice to the Federal Register stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days of its receipt of a proposed collection of information, OMB shall notify the agency involved of its decision to approve, modify, or disapprove the collection of information and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number that shall be valid for not more than one year.

(d) A collection of information may not become effective until the agency has displayed a valid OMB control number (and, unless OMB determines it to be inappropriate, an expiration date).

§ 1320.13 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements set forth in § 1320.15, in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the rule, and identified as such, have been submitted to OMB for review under section 3504(h) of the Act. The statement shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the Federal Register, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, OMB may file public comments on collection of information provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (a) of this section, OMB may disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may disapprove it at any time.

(e) When the final rule is published in the Federal Register, the agency shall explain how the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(f) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the collection of information contained in a rule before the final rule is published in the Federal Register, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

(g) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved pursuant to § 1320.13(f) (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication OMB shall approve, modify, or disapprove the collection of information contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB:

(1) The agency failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change of sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(h) After making such decision to approve, modify, or disapprove a collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, OMB shall assign a control number. If OMB disapproves the collection of information, it shall make the reasons for its decision publicly available.

(i) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(j) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the Federal Register to inform the public of OMB's decision. If OMB has approved or failed to act upon the collection of information, the agency shall include the OMB control number in such notice. A collection of information may not become effective until OMB has assigned a control number, and such number is displayed.

§ 1320.14 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current regulations that were published as final rules in the Federal Register in accordance with the following procedures:

(a) In order to prevent the control number and OMB approval for a collection of information subject to this section from expiring without the agency first having complied with all applicable procedures attendant to the amendment or repeal of the rule containing the collection of information, agencies shall submit to OMB all previously approved collections of information subject to this section not later than 90 days before the expiration date of the OMB control number assigned to the collection.

(b) On or before the day of submission to OMB, the agency shall, in accordance with the requirements set forth in § 1320.15, forward a notice to the Federal Register stating that OMB review is being sought. The notice shall direct requests for information, including copies of the collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) Within 60 days of its receipt of a collection of information submission, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the collection and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date.

(d) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number that shall be valid for not more than one year. Upon assignment of a control number by OMB, the agency shall display such number in accordance with § 1320.7(e)(2).

(f) If OMB has notified the agency of a decision to initiate proposals for change in the collection of information, it shall extend the existing approval of the collection for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.12(b) or § 1320.13(g), as appropriate. In the case of a collection of information not previously approved, a control number shall be granted for such period. The agency shall publish a notice on the agency's next practicable publication date in the Federal Register to inform the public that OMB has initiated proposals for change in the collection, and has granted or extended its approval of the collection of information.

(g) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the Federal Register. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, modification, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the Federal Register and submission to OMB shall initiate OMB clearance procedures under section 3504(h) of the Act and § 1320.13. If the agency does not employ notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of such notice and submission to OMB shall initiate OMB clearance procedures under section 3507 of the Act and § 1320.12. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(h) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB directive to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(i) Upon disapproval by OMB of a collection of information subject to this section, the OMB control number assigned to such collection shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

§ 1320.15 Federal Register notice of OMB review.

(a) In each notice prescribed by §§ 1320.12(a) and 1320.14(b), and the statement prescribed by § 1320.13(a), agencies shall set forth, at a minimum:

(1) The title for the collection of information;

(2) A brief description of the agency's need for the information to be collected, including the use to which it is planned to be put;

(3) A description of the likely respondents; and

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(4) An estimate of the total annual reporting and recordkeeping burden that will result from each collection of information. This total burden for each collection of information shall also be disaggregated and set forth in terms of the estimated average burden hours per response, the proposed frequency of response, and the estimated number of likely respondents.

(b)(1) If, at the time of submittal of a collection of information for OMB review in accordance with the requirements set forth in § 1320.12 or 1320.14, an agency plans to request, or has requested OMB to conduct its review on an expedited schedule (a review faster than 90 days from the date of receipt by OMB), the agency shall publish as part of this Federal Register notice the time period within which it is requesting OMB to approve or disapprove the collection of information, and a copy of the collection of information, together with any related instructions, for which OMB approval is being sought.

(2) If advance publication of the collection of information and any related instructions would defeat the purpose of the collection of information, OMB may, in consultation with the agency, exempt from the requirements of this subsection specific collections of information or categories thereof.

§ 1320.16 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms in use during that year for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the information.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this section shall be treated under the standards and procedures of §§ 1320.11–1320.15, and 1320.21, as appropriate.

§ 1320.17 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, as amended, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees, and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

§ 1320.18 Emergency and expedited processing.

An agency head or the Senior Official may request emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency, and that public harm will result if normal clearance procedures are followed, or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory or judicial deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the Federal Register notice prescribed by § 1320.15 a statement that it is requesting emergency processing, and the time period stated under § 1320.18(b).

(e) OMB shall approve or disapprove each such submission within the time period stated under § 1320.18(b), provided such time period is consistent with the purposes of the Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

(g) Upon request by an agency, OMB may agree to act on a collection of information submission on an expedited schedule, even though such submission may not qualify for emergency processing under this section.

§ 1320.19 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this rule, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations. Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified.

(b) Agencies conducting or sponsoring a collection of information shall take reasonable steps to inform potential respondents of the identity of the Federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, the average burden hours per response, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any (citing authority).

§ 1320.20 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a collection of information by majority vote of its members or commissioners. The agency shall certify any such override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall promptly assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this authority is exercised. No override shall become effective until the independent regulatory agency has displayed the OMB control number.

§ 1320.21 Agency disclosure of estimated burden.

(a)(1) Agencies shall disclose on each collection of information, as close to the current OMB control number as practicable, the agency estimate of the average burden hours per response.

(2) Agencies shall include with this estimate of burden a request that the public direct to the agency and the Office of Information and Regulatory Affairs any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

(b) If it is not practicable to place the burden estimate and request for comments on the front page, or otherwise at the beginning of the collection of information or in the regulatory text, the agency may place the burden estimate and request for comments at the beginning of the instructions that accompany the collection of information, or at the beginning of the preamble of a proposed or final rule that contains the collection of information. If an agency develops or relies upon forms or other instruments in order to implement a collection of information in a proposed or final rule, the agency shall place the applicable burden estimate and the request for comments on both the rule and the forms or other information collection instruments.

(c) An agency need place the burden estimate and request for comments only on copies of the collection of information, or on its instructions, printed or otherwise reproduced (or newly communicated) after July 1, 1988.

(d) If special circumstances exist, OMB may, in consultation with the agency, exempt from the requirements of this section specific collections of information or categories thereof.

§ 1320.22 Other authority.

(a) The Director shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of the Director under the Paperwork Reduction Act of 1980, the Paperwork Reduction Reauthorization Act of 1986, or any other law. Nothing in this Part, the Paperwork Reduction Act of 1980, or the Paperwork Reduction Reauthorization Act of 1986 shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

Appendix A—Agencies With Delegated Review and Approval Authority

1. The Board of Governors of the Federal Reserve System.

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program, provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the Federal Register notices specified in (3)(i) below.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the Federal Register informing the public of the proposed collection of information, notifying the public of the availability of copies of the "clearance package," and providing the public with the opportunity to comment. Such Federal Register notices shall also advise the public that they may also send a copy of their comments to the OMB/OIRA Desk Officer for the Federal Reserve Board.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may approve of the collection of information without providing opportunity for public comment. At the earliest practical date after approving the collection of information, the Board will publish a Federal Register notice informing the public of its approval of the collection of information and indicating why immediate action was necessary.

(B) In such cases, before taking final action to reauthorize the collection of information for an additional period, the Board will take into account any comments received after the institution of the collection.

(ii) Provide the OMB/OIRA Desk Officer for the Federal Reserve Board with a copy of the Board's Federal Register notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

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(iv) Take every reasonable step to ensure that the collection of information conforms to the requirements of 5 CFR 1320.4(b). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.6, unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v) Assure that each approved collection of information displays an OMB control number and that all collections of information, except those contained in regulations, display the expiration date of the approval.

(vi) Assure that each approved collection of information, together with a completed SF83, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's **Federal Register** notice or a summary of these comments, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board receives written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to, and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that Board approvals of collections of information have been received by OMB and incorporated into OMB's public docket files and inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this Appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notices and generally only if:

(1) Prior to the commencement of a Board review (e.g., during the ICB review), OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed. When OMB exercises this authority it will consider that the period of its review began the day that OMB received the **Federal Register** notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.18 and 5 CFR 1320.20 continue to apply.

(31 U.S.C. Sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35)

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Tuesday
May 10, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Neighborhood Development Demonstration Program; Notice of Fund Availability For Fiscal Year 1988

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-88-1801; FR-2492]

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Funds have been appropriated for Fiscal Year 1988 for HUD to carry out, for a third round, the Neighborhood Development Demonstration program under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The purpose of this program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of the 1988 awards may be to previous grantees in the program; the remaining 70 percent of the awards will be made to those organizations selected from among new applicants. All applicants, including previous participants, are to compete through the same selection process.

EFFECTIVE DATE: May 10, 1988.

Application due date: Applications are due by August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Karen McMillan, Office of Procurement and Contracts, Community Services Division (ACC–KM), Department of Housing and Urban Development, Room 5252, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–5662. (This is not a toll-free number.) (Use this mailing address to obtain copies of the Request for Grant Applications, which provides further information on the Demonstration. See Part IV of this Notice.)

SUPPLEMENTARY INFORMATION:

This document (1) notifies the public of the availability of funds for the Demonstration; (2) identifies the objectives of the program; (3) describes the method of allocation and distribution of funds; (4) defines eligible neighborhood development organizations; (5) sets forth eligible neighborhood development activities; (6) sets forth application requirements for the funds; (7) identifies the selection criteria for the award of funds; and (8) specifies grantee reporting requirements.

Before requesting a grant application package as provided for under Part IV, organizations should carefully review this notice, particularly the eligibility factors under Part III. Many organizations that spent time and effort preparing applications for first round assistance were determined to be ineligible under the statutory requirements.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seveth Street, SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been approved by OMB and the assigned OMB control number is 2535–0084.

Notice of Fund Availability

I. Background

A. Legislation

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181) authorized the Neighborhood Development Demonstration program. The report of the Senate Committee on Banking, Housing, and Urbar Affairs referred to the new authority as a:

> Demonstration Program to assist neighborhood organizations to carry out community development activities through an innovative matching grant mechanism. Designed to encourage greater financial self-sufficiency on the part of non-profit neighborhood development groups, the program would provide federal matching funds of up to $50,000 per organization on the basis of charitable contributions which organizations raise from individuals, businesses, and religious institutions in their areas. Different matchnig ratios would be established for participating organizations based upon the size and economic condition of the community in which those organizations operate, although the ratio could not be lower than 50/50. [S. Rep. No. 142, 98th Cong., 1st Sess. 29 (1983).]

Under the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) $2 million was authorized for the program for FY 1988; however, only $1 million was actually appropriated to fund the program. See section 101(f) of Pub. L. 100–202. (In the interest of ensuring an efficient and timely distribution of funds, HUD will hold only one competition, but selected enough applications so that in the event additional funds are appropriated in FY 1989, some of the applicants not assisted from the original appropriation of $1 million may be assisted from the FY 1989 appropriation.) Under section 123(e)(8)(E), HUD may use no more than five percent of the appropriation for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. Federal payments will be made on a quarterly basis, beginning with the first quarter of the one-year period, as neighborhood organizations report and verify the amount of funds raised from private sector sources during the previous quarter.

B. Program Objectives

The Neighborhood Development Demonstration program is designed to determine the ability of neighborhood organizations to fund and implement neighborhood development activities, using cooperative efforts and monetary support from individuals, businesses and non-profit and other organizations located within the neighborhood boundaries. The Federal matching funds are incentive funds to promote the development of this concept and to encourage neighborhood organizations to become more self-sufficient in their development activities.

The Neighborhood Development Demonstration program has the following objectives:

—To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities undertaken at the neighborhood level through Federal incentive funding;

—To determine the correlation, if any, between the demographics of a neighborhood (*i.e.*, the income level of its occupants, the amount of non-residential development, the percent of persons employed, the tenant/homeowner breakdown, the racial/ethnic makeup of the neighborhood, etc.) and the neighborhood organization's ability to raise funds within the neighborhood boundaries;

—To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and

—To determine the correlation, if any, between the characteristics of an organization and the success of its fund-raising efforts.

II. Allocation and Distribution of Funds

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), grantee organizations may receive no more than $50,000 in Federal matching funds in a single program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. *Funds raised from organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities.* The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are to be established in accordance with the statutorily required " smallest number of households or greatest degree of economic distress" criteria. Subject to the statutory maximum of $50,000.00, with Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria. Applications will be ranked on *each* of the two criteria. Applications best satisfying *either* criterion will be placed in the matching ratio category eligible to receive six Federal dollars for each neighborhood dollar. Applications placed in the other matching ratio categories will receive proportionally less, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching funds ratio *in excess* of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match *below* the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

III. Eligibility

NOTE: ORGANIZATIONS ARE CAUTIONED THAT, TO AVOID WASTED EFFORT, THEY SHOULD CAREFULLY REVIEW THE FOLLOWING REQUIREMENTS. OVER 39 PERCENT OF THE 281 APPLICATIONS RECEIVED IN 1984 WERE INELIGIBLE UNDER THESE STATUTORY REQUIREMENTS.

A. Eligible neighborhood development organizations

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. It must meet all of the following statutory requirements:

(1) The organization must carry out its activities in an area that meets the Urban Development Action Grant Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing regulation at 24 CFR Part 570, Subpart G. These provisions require, among other things, that a neighborhood must be located in a governmental jurisdiction or pocket of poverty that is found to be a distressed area and secondly, that the governmental jurisdiction in which an area is located must have demonstrated results in providing housing and employment for low- and moderate-income persons and members of minority groups. The neighborhood organization must be located in an area currently meeting the following distress criteria in order for the neighborhood organization to be able to apply:

(i) A city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; OR

(ii) An area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

The second test of UDAG eligibility, which assesses the localities' demonstrated progress in providing housing and equal opportunity in employment, must be met by the deadline for receipt of applications by HUD, *i.e.*, August 1, 1988. In order to meet this deadline, the local unit of government, if not previously certified as UDAG-eligible, must submit a "Request for Determination of UDAG Eligibility" by July 1, 1988. The nonprofit applicant should contact the community development department of its local unit of government by June 1, 1988, notifying it of the applicant's intent to apply. The applicant should inform the locality of the need (if the locality is not already certified as eligible to participate in the UDAG Program) for the local government to submit to HUD a "Request for Determination of UDAG Eligibility" to allow the applicant to partcipate in the demonstration. The UDAG eligibility requirements are set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

(2) The organization must be incorporated as a private, voluntary, non-profit corporation under the laws of the State in which it operates.

(3) The organization must have conducted business for at least three years before the date of its application.

(4) The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

(5) The organization must have conducted one or more eligible neighborhood development activities, as defined in Section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For purposes of the preceding sentence, "low- and moderate-income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as

determined by HUD, with adjustments for smaller and larger families.

B. Eligible neighborhood development activities.

Funds may be used by eligible neighborhood development organizations to develop or carry out a project designed to achieve the following:

(1) Create permanent jobs in the neighborhood;

(2) Establish or expand businesses within the neighborhood;

(3) Develop new housing, rehabilitate existing housing, or manage housing stock within the neighborhood;

(4) Develop delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as Fair Housing counseling services, child care centers, youth training, or health services; or

(5) Plan, promote, or finance voluntary neighborhood improvement efforts, such as establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup program.

C. Equal Opportunity Requirements

The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(1) The requirements of Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. 3601–3619) (Fair Housing Act) and implementing regulations at 24 CFR Parts 105, 108, 109, 110, and 115; Part 200, Subpart M; Executive Order 11063 (Equal Opportunity Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(3) The requirements of section 3 of the Housing and Urban Development Act 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter); and

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

D. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

(1) Ineligible contractors. The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) Flood insurance. No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency [FEMA] as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

(3) Lead-based paint. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35.

(4) Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122, with respect to the acceptance and use of assistance by private nonprofit organizations.

IV. Application Process

A. Application requirements

(1) There are three steps in the application submission process:

(i) Organizations must determine first whether they are in an area or pocket of poverty currently eligible for assistance under the Urban Development Action Grant (UDAG) program. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress which are used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant program are advised to consult two notices published by the Department in the Federal Register entitled, "Urban Development Action Grant; Revised Minimum Standards for Small Cities" (52 FR 37676, October 9, 1987) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

These notices identify, among other things, (1) the most current minimum standards of physical and economic distress for cities and urban counties, and (2) those cities and urban counties that currently meet the minimum standards. In addition, it is possible for an applicant to be eligible on the basis of its neighborhood's being located in a "pocket of poverty." See 24 CFR 570.466. Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for the Neighborhood Development Demonstration programmatic information is Mrs. Joyce Walther, telephone number (202) 755–6186. (This is not a toll-free number.)

(ii) Organizations in an area that is eligible for funding under the UDAG progarm that wish to apply must send a request in writing, with two self-addressed labels, for a "Request for Grant Application" (RFGA) package from Ms. Karen McMillan in the HUD Office of Procurement and Contracts, as identified under "FOR FURTHER INFORMATION CONTACT". The RFGA contains the forms and other information regarding the application process and the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122. (This Notice of Fund Availability summarizes major provisions of the RFGA.)

(iii) An original and three copies of an application must be submitted to the address stated under "FOR FURTHER INFORMATION CONTACT" earlier in this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

(2) Each application must contain the following, as required by the Request for Grant Application:

(i) A transmittal letter, a table of contents referenced to numbered pages, and Standard Form SF–424;

(ii) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(iii) A completed fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

(iv) Evidence that the applicant meets eligibility and other criteria, including the following:

—A legible map, with street names, prepared by the city community development or planning office delineating the applicant's neighborhood. Census tract, block or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

—A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

—The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition.

—A list of the names of the neighborhood organization's governing body members and their addresses (with zip codes), noting those who reside and (separately) those who conduct business, in the neighborhood.

—A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

—Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph III B;

—A description of the means by which the governing body members account to the residents of the neighborhood, including the method and frequency of selection of members of the governing body, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.*, a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

—Evidence of the applicant's sound financial management, determined from its financial statements or audits;

—A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter); and

—A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(v) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(vi) A project management plan, including a schedule of tasks for both fund raising and project implementation; and

(vii) A project budget and budget narrative.

V. Selection Criteria for Award Funds

Applications will be evaluated on the basis of the Factors for Award outlined below (the maximum possible points that may be awarded are shown under each Factor):

A. Neighborhood/Organizational Qualifications

(1) The degree of economic distress within the neighborhood; (15 points)

(2) The extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization; (5 points)

(3) The record of demonstrated measureable achievements in one or more of the activities specified under III B, including benefits to low- and Moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously sponsored projects involving housing; (15 points) and

(4) The extent to which the governing body of the organization reflects the demographics of the neighborhood (education, age, sex, race, income level, types of employment, etc.). (5 points)

B. Project qualifications

(1) The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low income neighborhood or an application that is especially meritorious); (5 points)

(2) The extent to which a strategy has been developed for achieving greater long-term private sector support for this demonstration and future funding; (10 points)

(3) The extent to which the proposed activities will benefit persons of low and moderate income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low and moderate income relationships should be described; (15 points) and

(4) The quality of the management plan submitted for accomplishing one or more of the activities specified under III B, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff, and coordination efforts involved, including working relationships with local governments when applicable. (30 points)

VI. Reporting Requirements

In addition to complying with relevant provisions of OMB circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in any of the following—the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on

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successful projects that will be distributed to other neighborhood organizations.

VII. Environmental Reviews

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4 The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983, (Pub. L. 98-181) sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 2, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 219

Railroad Operating Rules; Random Drug Testing Program; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 219

[FRA Docket No. RSOR-6, Notice No. 18]

Railroad Operating Rules; Random Drug Testing Program

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes a rule to: (1) Prohibit the abuse of controlled substances, whether on duty or off duty, by railroad employees who perform covered service, and (2) require that railroads implement random drug urine testing programs approved by the FRA. These measures are designed to facilitate the control of drug use in railroad operations and thereby prevent accidents, injuries and property damage.

DATES: (1) FRA will hold informal hearings on this proposal at times and places to be announced in a subsequent notice.

(2) Written comments must be received no later than August 8, 1988. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) Hearing locations will be announced in a subsequent notice.

(2) Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC–30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Special Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Grady Cothen, Special Counsel (Telephone: (202) 366–0628).

SUPPLEMENTARY INFORMATION:

Introduction

On February 10, 1986, the final rule on Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219) became effective. (*See* 51 FR 3973; January 31, 1986.) On and after that date, railroad employees subject to the Hours of Service Act were prohibited from using, possessing, or being impaired by alcohol or any controlled substance while on duty. The railroads were required to exercise due diligence to prevent such conduct. Railroads were also authorized to comply with requirements for post-accident testing. Additional provisions of the rule became effective on February 10, 1986, including an authorization to require breath or urine samples for testing under conditions constituting "reasonable cause," improved accident/incident reporting requirements (49 CFR 225.17, as amended), requirements that the railroads adopt and implement policies to identify employees troubled by alcohol and drug abuse problems and provide them the opportunity to obtain counseling or treatment, and more detailed specifications for reporting the results of operational tests and inspections related to alcohol and drug use (49 CFR 217.13, as amended).

On March 10, 1986, compliance with post-accident testing provisions became mandatory. Requirements for pre-employment drug screens became mandatory on May 1, 1986; and, as of that date, the current alcohol and drug regulations were fully effective in all respects.

In the preamble to its current rule, FRA stated its intention to monitor the experience of the railroads under this rule, including the success of complementary efforts in the private sector to address alcohol and drug use in railroad operations (50 FR 31508, 31567; August 2, 1985). On February 18, 1987 FRA held a public hearing to review experience during the first year of the rule's application (52 FR 2116; January 20, 1987). The purpose of the inquiry was to solicit and review data on the first year of the rule's implementation and, on the basis of that information, determine whether any revisions to the final rule should be considered.

In the near future FRA will issue a separate notice of proposed rulemaking (NPRM) dealing with relatively narrow issues developed in the safety inquiry regarding the operation of the current rule. The present notice proposes significant additions to the current rule which are beyond the scope of that inquiry, but which derive from experience in administration of the current rule since February of 1986.

For reasons set forth in the preamble, FRA elected not to incorporate a random testing requirement in its current rule. However, our experience over the past two years has convinced us that the current reasonable cause testing program should be supplemented by a random testing mandate.

Even as FRA has worked to implement and refine its current program, it has become apparent that a significant portion of the substance abuse problem remains unaddressed. As a consequence, FRA is proposing to forbid any use of controlled substances by covered employees that is not medically authorized and to add a random testing program for controlled substances to the existing regulatory program.

The success of a reasonable cause testing program—both in detection and deterrence—depends on the extent to which the drug choice produces noticeable manifestations of impairment or results in an on-the-job event that falls squarely within the regulatory criteria for testing. Unfortunately, the symptoms of drug use are often undetectable by even a reasonably trained supervisor. Further, some "functional" drug users seem able to avoid job-related problems until their problems reach a crisis stage. There is, in short, a category of cases in which drug use in violation of the Federal rule will not trigger the testing mechanism provided in current law short of a major compromise in safety that could have catastrophic consequences.

More serious is the fact that some drug users understand the difficulty in perceiving symptoms and remain confident (rightly or wrongly) that their actions will never trigger testing under the current reasonable cause testing authority. In fact, one hallmark of chronic drug use is the user's confidence that he/she can operate normally despite consumption or impairment, a confidence that limits the otherwise significant deterrent value of a reasonable cause testing program.

Finally, a reasonable suspicion rule can be defeated by procedures as simple as reporting for work unimpaired, then consuming controlled substances in the workplace. The engineer of the Conrail movement at fault in the Chase, Maryland, accident recently testified that use of the reasonable suspicion standard would not have detected any problem with his behavior on reporting for duty. In that case, the engineer and front brakeman used marijuana after departing the terminal.

Random testing addresses these problems by ensuring that any member of the safety-critical workforce is subject to testing at any time, regardless of the ability of the individual drug user to cloak the symptoms of use or impairment. Detection is accomplished

prior to the time when the safety risk associated with drug use becomes manifest in a potentially life-threatening event.

This not to suggest that random testing is a substitute for reasonable cause authority. They are not mutually exclusive, but are in fact complementary.

Random testing is both broader and narrower than reasonable cause testing. It is broader because random testing ensures that all carriers must conduct a minimum level of testing activity in any given time period. Reasonable cause testing, in contrast, is an authority, not a mandate. The carrier can elect not to exercise that authority or to exercise it at a lesser degree of intensity than other railroads. In the rail mode, mandating reasonable cause testing for a broad range of individually unpredictable events would create major logistical problems. By contrast, in the railroad industry mandatory random testing can be centrally planned and administered on a more cost effective basis.

Conversely, however, random testing is narrower than reasonable cause testing because it does not empower the supervisor to test an employee unless that employee's name appears on the random selection list for that test period.

Extent of Drug Use Problem

In previous rulemaking documents FRA has described the extent of drug use prevalence in society at large and in the railroad industry. Prevalence varies by a number of demographic factors, but no railroad or part of the country is free from this common problem.

A recently issued Special Report from the Comptroller General of the United States entitled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states as follows:

> Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society.

Drug use in the railroad workplace is a matter of particular concern because it affects the public safety, as well as the health and safety of drug using and non-drug using employees.

Experience under FRA's current rule has confirmed the existence of a residual problem that persists despite the deterrent effect of the current regulatory program, voluntary alcohol/drug prevention activities, and a long history of substance abuse treatment programs targeted at the railroad employee population.

During the period February 10, 1986, through December 31, 1987, mandatory post-accident testing was conducted after 349 qualifying events. A total of 1508 employees were tested. Of the 1508, 76 employees (5.0%) tested positive for alcohol or a controlled substance used without medical authorization (illicit drug use or self-medication). Of the 76 employees, 10 (.7%) tested positive for alcohol and 66 (4.4%) for a controlled substance. An additional 12 employees (.8%) tested positive for prescription drugs.

The 4.4 percent positive rate for illicit drugs (and non-authorized use of prescription drugs) is encouraging to a degree, since it is below many previous estimates of drug use prevalence, notwithstanding the fact that drug users would be expected to be overrepresented in the population sampled (employees involved in accidents). On the other hand, it is also possible that the statistic understates general drug use prevalence among railroad employees, since any single-event testing program will capture drug use only in a very discrete time frame (*e.g.*, a non-dependent user may bring drugs into the workplace only on certain occasions).

Post-accident data indicate that behavior modification has taken place in response to the current rule. However, a 4.4 percent positive figure is not an acceptable figure, as evidenced by the fact that drug use may have contributed to the probable cause of several significant accidents since issuance of the current rule and presents a continuing threat to public safety.

The National Transportation Safety Board recently concluded that the Chase, Maryland, accident of January 4, 1987, was caused by impairment of the Conrail engineer by marijuana. The engineer and front brakeman of the Conrail movement have acknowledged smoking marijuana immediately prior to the accident. Sixteen persons were killed and 174 injured in that accident, which illustrates the catastrophic consequences that can occur when railroad employees responsible for passengers or hazardous materials are under the influence of drugs.

During the thirteen-month period January 1987 through January 1988, the nation's railroads experienced 41 accidents (including Chase, Maryland) in which one or more employees tested positive for alcohol or illegal drugs. Alcohol or drug use by one or more employees was detected in over 20% of qualifying events for post-accident testing. FRA believes that there are significant indications that alcohol or drug use played a causal or contributory role in 13 of these events, accounting for 19 fatalities, 220 injuries and $19,956,000 in property damage. Of the 13 events, illicit drug use was present in 10 and alcohol use in only 3, despite estimates at the time the current rule was issued that alcohol prevalence and drug use prevalence were roughly equal. The 10 accidents involving drug positives accounted for 18 fatalities, 220 injuries, and $18,725,628 in property damage. These data present a stark contrast to the preponderance of alcohol involvement over drug involvement in accident statistics assembled before routine post-accident toxicological test results became available.

The tentative lessons from the above are twofold: (1) The current rule has been more effective in limiting alcohol use than drug use; and (2) the drug use problem affecting railroad safety is, as projected at the time of the issuance of the current rule, a more significant problem than previously documented.

Support for New Initiatives

Several commenters on the NPRM which preceded the current rule on the Control of Alcohol and Drug Use in Railroad Operations also advocated the grant of authority for random testing (50 FR 31547; August 2, 1985). These commenters include the Association of American Railroads and several major railroads. The Washington Legal Foundation agreed that there was justification for deferring a decision on random testing when it commented on the NPRM for the current rule and advocated that the FRA should review the effectiveness of the current rule for one year and reconsider random testing in light of the results. At the safety inquiry hearing called for first-year review of the current rule, several commenters reiterated their support for random testing.

Effects of Drug Use on Safety

This NPRM proposes to prohibit railroad employees in covered service from using controlled substances without medical authorization, whether on duty or off duty. The premise of this proposal is very simple: Use of any controlled substance has the potential to degrade safety performance. In order to understand this premise, it is necessary to review what controlled substances are and what effects they have on individual persons.

Drugs are chemicals that affect the body (physiological or function-altering effects) and often the mind (pharmacological or mind-altering effects). In broad summary, controlled substances are certain drugs identified by the government as having mind- or function-altering effects of a kind that

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create a potential for abuse and/or dependency. In comments before the Federal Railroad Administration, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

Most controlled substances have at least some accepted medical applications, but those classified in Schedule I of the controlled substances list do not. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal ("illicit") drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal ("licit") drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified by pharmacological properties as—

- Narcotics, such as the opiate-based drugs;
- Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, and methaqualone;
- CNS stimulants, such as cocaine and amphetamines;
- Hallucinogens, such as LSD and PCP; and
- Cannabis (marijuana derivatives).

All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experienced by the user. Instead, drug effects are complex and, in many cases, long-lived. They include—

- *Acute* effects, including the often sought-after change of mental state and physiological changes;
- *After*-effects from individual doses or series of doses;
- *Chronic* effects from prolonged use, which may include profound biochemical changes and changes in cognitive functions; and
- *Withdrawal* effects when a drug-dependent individual ceases use of the drug.

All of these potential effects are of concern with respect to transportation safety, yet only the acute effects correlate in time with body fluid concentrations of the impairing substance; and for some drugs that correlation is imperfect.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are coming to realize that "off-duty use" and "on-duty use" are not completely distinct categories warranting entirely separate consideration, but are instead facets of an overall picture—*i.e.*, fitness for duty involving safety-sensitive functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

Developing opinion in the transportation industries is informed by a growing body of information related to drug effects on safety. Numerous behavioral studies and extensive clincial experience have established the fact that controlled substances can powerfully alter the capacity of human beings to respond appropriately to their environment.

The following discussion will endeavor to explain in summary how drugs can and do adversely affect safety. Since each human being is, from the scientific point of view, a unique and whole organism, any such discussion will suffer from incompleteness, on the one hand, and an absence of total analytical integration, on the other. However, the available literature does offer useful information that can be placed in appropriate context and that can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Sussman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1987) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are of greatest concern for transportation employees. "Motor performance" concerns the ability to make timely, accurate, and steady control movements. Both simple and complex reaction time, as well as tracking and steadiness, are skills of concern to transporation. "Vigilance" is a term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. "Cognitive functions" refers to the ability to classify, store, integrate, and recall information. Judgment, memory, proclivity for risk-taking, and ability to manage multiple tasks are areas of particular concern for transportation.

The clear message from available evidence is that all controlled substances tend, to a greater or lesser degree, to affect adversely one or more of the faculties critical to safe conduct of transportation and transportation-related duties. In some cases, acute effects may be of greatest concern, while with other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy equipment operators except where side-effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention.

Behavorial studies of the acute effects of CNS depressants have demonstrated decrements to motor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after-effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high dependency potential, and severe withdrawal symptoms can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transporation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context; and withdrawal from other CNS Depressants presents risks of equal gravity.

CNS stimulants such as cocaine and the amphetamines tend to increase mental activity, responsiveness to external stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamine) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called "recreational drugs". The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity.

Side-effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures after a single dose, and its ability to produce psychosis after chronic use. *See, e.g., Cocaine: Pharmacology, Effects, and Treatment of Abuse*, Research Monograph Series, No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences suggest strongly that cocaine use may promote risk-taking and cause the user to over-estimate his degree of control. Cocaine is not an attractive "operational" drug because of it short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting effects of stimulants over an extended time period have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space. These drugs generally produce relaxation and shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may trigger mental disturbances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as an hallucinogen but has properties that warrant its separate treatment. As the most popular illicit drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available on the illicit market increased and a large segment of the population gained experience in its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980*, Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Motor performance on flight simulator tasks was adversely affected, as were tracking tasks and pursuit rotor tracking. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as car handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal detection tasks. Studies evaluating cognitive functions indicated that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex divided attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142:1325–1329 (1985)). Some experts also believe that the accumulation of cannabinoids in the body through chronic use may produce adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. *See* Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:572–576 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the

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human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM)85-1336 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.*, examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular effects and performances in individual phases of the study. However, when the data were combined the authors concluded as follows:

> Secobarbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses; the marijuana doses were considered moderate to strong by the subject population used; the alcohol effects were reported for levels up to and slightly above the legal limit. *No clear-cut differences in the pattern of effects were found among the drugs tested.* All drugs impaired perceptual-motor skills *(e.g.*, tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decisionmaking tasks.

Id. 19 (emphasis supplied). This research suggests that the subtle differences in the way that certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment. Those effects may be exacerbated by use of two or more drugs in combination.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high concentrations in the blood stream, but rather to the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood, but what is known is a source of concern.

Conclusions

The full extent of drug effects and the dose-response characteristics of individual drugs on particular subjects is the subject of continuing study. Such study could be expected to continue indefinitely, even if the pharmacopoeia were a closed class and a steady stream of new compounds were not being introduced into licit and illicit marketplaces on a daily basis. But the fact that continuing study is warranted does not mean that no other action is appropriate. It is important to draw reasonable conclusions from the available data that can help to protect the public safety.

The only responsible conclusion that can be drawn from available evidence is that the non-medical use of controlled substances among transportation employees in safety-sensitive functions constitutes a clear threat to the public safety. The threat flows from the after-effects, chronic effects, and withdrawal effects of these substances, as well as the more heavily-researched acute effects. Any set of countermeasures must therefore encourage drug abusers in the subject populations to abate their habits or seek treatment for their chemical dependencies, as appropriate.

FRA Conclusions and Proposals (With Section-by-Section Analysis)

FRA proposes to amend Part 219 of Title 49, Code of Federal Regulations, Control of Alcohol and Drug Use in Railroad Operations, by adding a prohibition on non-authorized use of controlled substances by a covered employee at any time and by mandating a program of random testing. Commenters are requested to address the interrelationships among the proposed provisions and existing regulatory provisions.

General Provisions

Responsibility for Compliance

Section 219.9 would be amended to include reference to the responsibility of a railroad to comply with the new § 219.102 and the random testing provisions of subpart G, and the testing safeguards of subpart H. This provision specifies when a railroad will be liable for a civil penalty.

Implied Consent

Section 219.11 would be amended to require that covered employees consent to random testing under the circumstances specified in the proposed rule. Under the current rule, consent to the tests is required and is implied as a matter of law. However, the regulations do not authorize physical coercion.

Prohibition on Use of Controlled Substances

FRA proposes to add a new § 219.102 to the current rule prohibiting an employee who performs covered service from using a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103. Section 219.103 of the current rule permits use of a therapeutic controlled substance as approved by a medical practitioner and at the prescribed or authorized dosage. It is important to include licit drugs in the general prescription of use, since certain therapeutic drugs can have effects many hours or even days subsequent to last ingestion, making a uniform pre-duty abstinence period impractical.

Random Testing Program

Random Testing Issues

FRA proposes to amend 49 CFR Part 219 by adding a new subpart G mandating a program of random testing for railroad employees subject to the current alcohol and drug rule. Commenters are asked to address the following general issues in light of the specific discussion that follows:

1. What additional data is available concerning the prevalence of drug use by railroad employees? How do data collected by individual railroads compare with mandatory post-accident testing statistics set forth above?

2. If FRA adopts a random testing mandate, what level of detail should be specified? Should the FRA dictate the method of random selection or merely review proposed methodologies? If FRA dictates a method, what method would be suitable for all railroads, given their diversity in size, resource and operations?

3. Should FRA exclude small employers? What should the cutoff point be? What special problems would small railroads face in implementing random testing? Should the random testing requirement exclude railroads with 15 or fewer Hours of Service employees, as is currently the case for certain elements of the existing rule? (See further discussion below.)

4. Would it be possible to make multi-employer arrangements for selection and/or testing of employees, particularly with respect to smaller railroads? What facilitating role should FRA play in this process, if any?

5. What problems do the railroads foresee with respect to administration of a random selection program and the availability of employees for regular or unscheduled assignments? Will hours of service restrictions pose problems? What design elements could be included in a random testing program to alleviate or avoid these problems?

6. As a matter of cost-effectiveness, would it make sense to focus the random testing program on employees with particularly critical functions, such as locomotive engineers, dispatchers or operators? Should the program be phased in by craft or function? Should the random testing rule be extended to apply to other safety-sensitive employees, particularly maintenance-of-way personnel; or, conversely, should it be limited to certain categories of Hours of Service employees? Does the Hours of Service Act establish the appropriate distinction between those railroad employees who should be subject to random testing and those for whom such tests are not necessary? Where should the line be drawn? (In this, as in other areas, FRA reserves the right to broaden or constrict the final rule based on analysis of comments received.)

7. What would be the cost of a random testing program in employee/supervisory time, expenses of collection and shipping, laboratory analysis, and follow-up steps?

8. What level of effort would provide the greatest level of benefit given cost and other considerations? FRA proposes to use an annual sampling rate ("level of effort") of *up to* 125 percent of covered employees. Comments are invited on how much lower this potential maximum level of effort could be set while still maintaining a credible deterrent. Comments on the optimum level of effort, as well as FRA's suggestion below regarding the adjustment of level based on effectiveness of the program, are encouraged. Please relate recommendations concerning level of effort to effectiveness in reducing or eliminating drug use incidence. Will the relationship between level of effort and effectiveness be linear? Is it possible to pre-identify an optimum level of effort from a cost-benefit standpoint? Is any level of risk acceptable? Will the nature of the sanction applied (*e.g.*, dismissal or suspension and requirement for treatment) impact effectiveness at a constant level of effort?

9. Should employers be allowed or required to limit the size of the population subject to a full range of testing strategies (*e.g.*, pre-employment, reasonable cause, post-accident, random) to those sub-groups of employees for whom an initial round of testing has revealed a more serious drug-use problem? (In such a case, the employers might be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems remain risk free.) In addition, are there ways employers may avail themselves of less costly and less intrusive technologies as such advances are made while ensuring an appropriate level of safety? Commenters are requested to submit any empirical data that support their views.

10. Would a high level of effort add sufficient deterrence to reduce the costs of and need for rehabilitation over a period of time? What would the impact of a low level of effort (*e.g.*, 12.5%) or a high level of effort (125%) be on voluntary EAP referrals? (Please state assumption with respect to consequence from a positive test.)

11. Should additional drugs or drug groups be included in the testing requirement? If so, which drugs?

12. For what maximum period is it reasonable to follow up employees who test positive and are referred for rehabilitation? To what extent should aftercare be dictated by individual clinical decisions, rather than by regulation?

13. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in more flexible approach?

Commenters should include available supporting information, including empirical and cost/benefit data, with comments submitted in response to these questions.

Commenters should note, however, that it is not necessary to respond to all questions posed in order to have individual responses considered.

Specific Provisions

Section 219.601(a) would require each railroad to submit to FRA a random testing program that complies with the requirements of subpart G. Programs developed by railroads would be submitted to FRA for approval 120 days after the effective date of the rule. FRA would review each railroad program to ensure that it complies with the criteria set forth in the rule. If, after implementation, a railroad wishes to amend its program, the railroad would be required to file notice of the amendment with FRA at least 30 days prior to intended implementation. This section expressly prohibits the implementation of random testing programs under this subpart prior to their approval by FRA.

Paragraph (b) sets forth criteria for the form of the random testing programs. It requires each railroad to develop a testing program that selects employees on a basis that is random, *i.e.*, where every covered employee has an equal statistical chance of being selected on any selection date or within a given time frame. The section specifically states that the method may not permit subjective factors to play any role in selection. This requirement is for the purpose of eliminating the possibility that railroads will have any discretion in the selection of employees to be tested.

FRA is not proposing to mandate a specific industry-wide random selection system at this time. That is, prior to hearings and comments that may be received in response to this proposal, FRA is not prepared to impose a single, uniform random testing scheme. Such a plan would have to take into account differences in the industry. Size, geographic diversity, and computer capability or expertise are factors which may dictate differing methodologies. On the basis of comments received, FRA may consider developing a selection of random schemes which take into account these differences, yet comply with the criteria set forth above. FRA may also consider imposing a random selection method of its own design for all carriers.

Mode of selection is an important design element for a random testing program. Three generic models of "random" testing programs are suggested for comment. First, a system could be devised that would ensure that each employee would be tested at least once during a particular period, with the date for testing to be determined on a random basis. Retests could be required of a certain proportion of employees on a strictly random selection basis. Second, a strict random selection program could be devised that would select a certain number of employees based on the target population. Such a system would result in some employees not being tested during the subject period and others being tested more than once. This is the concept contained in the rule draft, but is only one of the alternatives under consideration. Third, it would be possible to do unweighted random selection in the first instance, but employ a statistical bias against re-selection, and a much greater (or even absolute) bias against a second or third re-selection. Under such a system, only a few employees would not be tested in a given period, the possibility of selection would be real at all times, and all employees would be protected from an excessive number of repeated negative tests. Additionally, a bias against re-selection would work to increase the probability that all employees are tested.

Level of effort is also a crucial element in the design of any random testing program. Comment is solicited regarding the effectiveness, cost and

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feasibility of levels of effort ranging up to 125 percent of the total number of covered employees employed by the railroad at the beginning of a given year. The level selected would be a minimum requirement for random testing, with individual railroads free to increase their level of testing subject to FRA approval.

FRA is considering whether programs should provide for adjustment of the minimum level based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experience, the results of random testing would provide the most useful gauge of the need. FRA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or on individual railroad application and specifically requests comments on this issue. FRA also solicits comments on whether railroads that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, FRA reserves the right to make appropriate adjustments in the rule in response to public comments.

Although we propose at this time to leave the methodology for random selection to the employer to devise, several components of the program are set forth in the proposed rule. An essential feature of a random testing scheme is that the employee selected for testing not have notice of his selection until the day of testing, and then only such notice as is reasonably necessary to ensure the employee's presence for testing. The absence of advance warning is critical to avoiding the artificial effects of deliberate temporary abstinence designed to avoid detection. (Of course, it will be necessary for certain other railroad personnel to have some advance warning of selection in order to ensure job assignments are protected.)

The proposal states that the employee is subject to random testing on any day that the employee is on duty, scheduled for duty, or rested under the Hours of Service Act and subject to call. The intent of the proposal is that the railroad would either test employees already on duty to perform covered service or would, in fact, call employees to duty for the purpose of testing (*i.e.*, employees would be compensated for making themselves available for testing under circumstances where they are required to be available for covered service). This approach is designed to balance the practical concerns that the railroad may have about delaying operations for the purpose of testing and the need to give notice to employees of the times they may be called upon to cooperate in random testing. The requirement gives the railroad some flexibility in developing a program that will not unduly interfere with its operations (as long as that program meets the randomness requirements of this subpart). In addition, because the employee may be chosen for testing only when on duty or subject to call, selection for testing will not interfere with the employee's off-duty rest time, sick leave, or vacation.

Paragraph (c) would require FRA approval in writing of random testing programs submitted under paragraph (a). Should the FRA find any portion of the random testing program submitted by the railroad to be inconsistent with the FRA criteria, FRA will inform the railroad with a specific explanation regarding the necessary revisions. The railroad must resubmit its program within 30 days or be considered in violation of the requirement to implement a random testing program.

Paragraph (d) would require implementation by the railroads of random testing programs approved by the FRA within 90 days of the railroad's receipt of FRA approval. It sets forth the requirement that a railroad shall require covered employees selected through an approved random testing program to cooperate in urine testing, and that such testing shall comply with the conditions and procedures set forth in subparts G and H. This paragraph states that the purpose of testing is to determine compliance with the prohibition against the misuse of controlled substances contained in the new section 219.102.

Section 219.603 would outline the procedures to be followed when a laboratory reports that controlled substances have been detected in the employee's sample.

Paragraph (a) provides that a test will be deemed positive only after it has been confirmed as required by subpart H and then only after review by a Medical Review Officer (MRO), to whom all laboratory test results would be sent. Interposition of the MRO between the laboratory and railroad supervision will help ensure that information concerning authorized use of therapeutic drugs will not be disclosed to a wider circle of persons than is necessary and that laboratory data requiring interpretation is properly explicated before it is reported. The MRO would not be required to discuss the test results with the employee prior to declaring them positive, but would be free to do so if it appeared appropriate under the circumstances. The MRO would be required to request and review all relevant information concerning use of drugs detected by the laboratory that have therapeutic uses.

The MRO must be a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results, together with the employee's medical history and any other relevant biomedical information. A railroad could utilize salaried medical officers on its staff or contract physicians with appropriate training to perform this function.

Paragraph (b) would require that the employee receive a copy of the laboratory report if the MRO declares the test to be positive. Like other phases of the testing process, the laboratory report would be required to meet the requirements of subpart H. The MRO would issue all negative results (those not constituting evidence of non-authorized use of a controlled substance) over his own signature, since otherwise it would be possible to distinguish those tests involving "positive" laboratory findings that are declared negative by the MRO.

Paragraph (c) permits the railroad to immediately suspend an employee from covered service on the basis of a test result declared positive by the MRO. This is consistent with practice in the railroad industry and other transportation modes where there is a firm basis for belief that the employee presents a threat to his own safety or that of the public.

Paragraph (d) sets forth the procedural requirements for employees who elect to claim the right to investigation of the rule charge. The provision requires notice and an opportunity for a prompt hearing. Where the provisions of a collective bargaining agreement govern, compliance with the collective bargaining agreement satisfies the requirements of the rule. These agreements have consistently been construed to require adequate notice of the charges and a full hearing on all factual issues. An employee who has such an agreement also enjoys the right to have an unresolved dispute adjusted by a neutral arbitrator (under section 3 of the Railway Labor Act). No purpose would be served by requiring a separate "Federal" hearing.

Section 219.605 would require maintenance of records relating to random testing for 5 years and impose restrictions on use of those records. (See discussion below regarding confidentiality of this data.)

Consequences of Drug Use Detection: Discipline, Abatement and Rehabilitation

We join with the other Modal Administrations now engaged in drug prevention rulemakings in soliciting specific comment on three generic options for dealing with the issue of rehabilitation as a matter of right. Under those options, an opportunity for rehabilitation would be required (and disciplinary sanctions barred) for—

Option 1. Those who test positive on any required test or who come forward voluntarily;

Option 2. Those who test positive on a random or periodic test, or who come forward voluntarily; or

Option 3. Only those who come forward voluntarily.

These options are presented against the background of the policy of FRA's current rule, which gives management the latitude to determine whether on-the-job drug use or impairment should lead to a disciplinary sanction.

The options may be further refined to an almost infinite degree and could also be varied by including sources of drug use information other than chemical tests.

For instance, FRA's reasonable cause testing rule is presently designed to identify and document alcohol drug use and impairment in the workplace. A positive urine test creates a rebuttable presumption of impairment, unless the employee claims the optional right to a blood test. If a blood test result is available, then the factfinder proceeds on the basis of the two chemical tests (particularly the blood test) and other information available concerning the demeanor or performance of the employee. The railroad currently remains free, however, to apply a more stringent drug-free rule, barring unauthorized use of drugs at any time; and many railroads do so. If the FRA rule is changed to bar unauthorized drug use at any time (as proposed herein), it would be possible to retain the current structure for cases of on-the-job use or impairment, while either leaving the railroads free to apply their own policies or requiring that employees who have not been demonstrated to have used drugs on the job be given the opportunity for rehabilitation. Similar options would be pertinent to results of mandatory post-accident tests, where blood tests and performance information are routinely available. Although these issues are beyond the scope of this rulemaking, they form a necessary backdrop for issues presented here.

Random testing and consequences. The present proposal raises the issue of what consequences should flow from a confirmed and fully reviewed positive following a random drug test. It is clear, in the first instance, that the employee should have the right to a hearing on the question of drug use if he or she wishes to claim it. The proposed rule text described above provides for that right. The next obvious question is whether the railroad should be free to apply disciplinary sanctions or should be required to provide the employee a one-time opportunity for rehabilitation. Further, if this right is recognized, should it be available to employees who have previously taken advantage of a similar option under existing rules (*e.g.*, the co-worker report provision of 219.405) or railroad corporate policies?

Advantages of discipline. Leaving employers free to take disciplinary action when illicit drug use is detected, or requiring that such action be taken, has obvious advantages. First and most important, it permits employers to impose strict sanctions. The threat that such sanctions will be imposed can create a high degree of deterrence against occasional use. Further, the threat of sanctions will create powerful incentives for early self-referral, since the consequences of accepting rehabilitation early will be materially more favorable than the consequences of being detected later. In this sense, allowing employer latitude to sanction emphasizes prevention.

Second, testing with stiff sanctions on positives need not be as extensive as testing that does not produce an equal level of deterrence, since the threat of detection will modify behaviors in many cases before individual drug users are actually required to provide a specimen.

Third, allowing flexibility in the random testing context may be more consistent with sound practice for other forms of testing. In those cases where drug use has characteristics that are clearly job-related in an immediate sense (*e.g.*, where an employee tests positive after causing a personal injury to a co-worker, or where an employee tests positive for a drug after being identified for reasonable suspicion testing on the job), permitting the employer to apply disciplinary sanctions is more clearly proportional to the harm that the employee has caused in the workplace (whether it be the personal injury or disruption of the railroad's operations associated with removing the employee from service and obtaining a replacement). Further, no sound regulatory policy could insulate employees engaged in unsafe practices from the discipline applicable to those practices, independent of any detected alcohol or drug use. Treatment professionals and recovering substance abusers often point out that the chemically dependent should face the consequences of their actions, although they should not be penalized for the status of being dependent. Mandating rehabilitation after positive random tests may raise expectations regarding what is reasonable after tests in connection with accidents and unsafe practices.

Fourth, mandating the opportunity for rehabilitation after detection could be characterized as a form of "enabling" behavior that facilitates, rather than discourages, further abuse. The literature of substance abuse counseling is replete with discussions of such behavior.

Advantages of rehabilitation in lieu of discipline. However, arguments can also be made for requiring that employers should provide opportunities for rehabilitation in appropriate instances. Although testing with the option of rehabilitation creates only a limited deterrent effect, the fact that rehabilitation is available can reassure those subject to testing that the program has remedial, rather than punitive objectives. Providing this reassurance can help enlist the support of the workforce for the testing program and an overall prevention effort.

Second, in those cases where drug use is not yet accompanied by a clear deterioration in performance, rehabilitation may be viewed as a more appropriate response.

Third, the opportunity for rehabilitation can salvage the employer's investment in the training the employee has received and the experience that the employee has accumulated, while reducing the possibility that the employee will continue a drug abuse habit to the detriment of the employee and society at large. FRA notes that it has long encouraged railroads to test employees in the context of its medical qualification programs, with the test results to be used exclusively in the context of those programs. Railroads have responded with a variety of approaches, all of which include

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confidential handling and an opportunity for rehabilitation of employees testing positive.

Hybrid models. It should be noted that discipline and rehabilitation are not necessarily incompatible. On certain railroads, alcohol an drug violations lead to immediate dismissal; however, the relevant collective bargaining provisions require probationary reinstatement if the offender agrees to participate in the EAP program and thereafter remains alcohol and/or drug-free during the probationary period. (These are known as "companion agreements" and form an optional element of Operation Red Block, the joint labor/railroad/FRA prevention program.) This hybrid approach is viewed as having significant value, since it provides incentives for the alcohol or drug user to resolve his or her problem and makes it clear that no arbitrator or grievance settlement will rescue that employee from making an important change in his or her life.

Alcohol. FRA notes that any abatement/rehabilitation requirements applying to use of drugs will need to be sufficiently precise to address use of alcohol as a significant subset. Railroads have a strong tradition of prohibiting any alcohol use or the presence of any amount of alcohol in the blood while an employee is on duty. Although the present rulemaking does not address random testing for alcohol, that subject presents a discrete and complex problem, since alcohol can remain in urine long after it falls to nondetectable levels in the blood; and alcohol use off duty could not be subject to blanket prohibition.

Form of rehabilitation. Any Federal requirement that rehabilitation be provided should be consistent with existing regulations applicable to railroad employees. Those regulations recognize that some casual drug users can simply abate (discontinue) their drug use habits given sufficient incentive, while others will require counseling and treatment. Those requiring counseling and treatment for chronic drug abuse problems and chemical dependencies will typically require secondary care involving outpatient attention and/or participation in self-help groups, as well as careful monitoring by the EAP counselor.

One-time right. As a general rule, it is important that any opportunity for rehabilitation be a one-time right, rather than an open invitation to the continued misuse of drugs. However, the passage of an extended period of time may warrant a revival of this right. FRA requests comments on whether any right to rehabilitation should include a revival of the opportunity after a set period (e.g., 5 years, 10 years).

Comments solicited. FRA solicits comments on all options for response to drug use detected through a positive random drug test—from mandatory rehabilitation, on the one hand, to mandatory discipline, on the other, including allowing latitude for individual employers to establish and publish policies of their own design. Specifically, FRA seeks comments on the three rehabilitation options discussed above that are under consideration by DOT modal administrations and their applicability in the railroad context.

Follow-Up Testing

Depending on the regulatory determinations made with respect to options for rehabilitation and the decisions of railroads consistent therewith, a range of situations will arise involving the return to service of employees who have tested positive, indicating past drug use. It may then be necessary to conduct additional tests to ensure continued disassociation from drugs, particularly for those who are not participating in a formal, structured program of aftercare. Should a final rule be adopted in this proceeding, FRA will provide procedures for the conduct of such tests. Public comment is invited regarding those procedures.

For example, should there be a uniform testing period after primary abatement/treatment, or should this be determined on a case-by-case basis? Who should make such a determination (*i.e.*, the EAP counselor, the MRO, both, or a third party)? Should the employee be involved? How could employee involvement be accomplished? If a uniform post-treatment period is adopted, how long should it be? Should the length of the follow-up period depend on the drug or drug class detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? Could follow-up testing be excused where aftercare is highly structured or itself includes chemical monitoring?

During the period after primary abatement or treatment, should FRA prescribe the minimum and/or maximum number of tests to be administered? Tests should be given with sufficient frequency to ensure that the employee is free of drugs. However, testing should not become an instrument of harassment.

One alternative, on which comment is also invited, would be a specified post-treatment testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following primary abatement/treatment. A drawback of this alternative might be the reluctance of the EAP counselor to insist on appropriate follow-up testing, either because of an excess of confidence in his clinical judgment or because imposing such a requirement might be seen as interfering with the professional/client relationship (*i.e.*, by seeming to suggest a lack of confidence in the client). On the other hand, there is significant evidence of an anecdotal nature to repose trust in substance abuse professionals who perform EAP functions, based on their handling of the very diverse current case load.

Confidentiality

FRA solicits comments on the extent to which the random drug test result and matters related to subsequent disposition of the employee, whether through discipline or treatment, should be required to be held in confidence. Section 219.605 of the proposed rule text contains certain general rules.

The issue of confidentiality involves handling of data within the company, as between the company and collective bargaining representatives (who have a duty of representation under the agreement and the Railway Labor Act), as between the company and government agencies, and as between the company and other parties.

One approach would require that confidentiality be maintained regarding the random test result, any referral for evaluation and treatment and subsequent handling, and follow-up testing. However, test results would have to be available for purposes of a railroad investigation under the collective bargaining agreement, if discipline were contemplated or if the employee demanded the right to a hearing. Confidentiality might be totally or partially waived if the employee failed to cooperate in treatment or abate the use of controlled substances or if the employee was later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

It should be noted that confidentiality would not be required in aid of any constitutional right to privacy. The courts have not recognized a privacy right with respect to illicit drug use (by contrast to medical use of drugs, where a qualified right of privacy has been recognized). However, no public purpose is served by publication of information concerning drug use of individual railroad employees, except as may be necessary to conduct accident investigations and similar inquiries directly affecting public safety. Imposing a duty of confidentiality could reduce the perceived intrusiveness of the test procedure.

We expressly invite comment on the desirability of adopting confidentiality requirements. Comments should address handling of drug testing and referral information within the corporate structure of the employer, as well as release of the information to persons outside the enterprise. With respect to dissemination outside the corporate structure, four basic options include (i) release of data only at the specific request of a future employer with a need to know, (ii) release at the discretion of the employer conducting the test, and (iii) release only at the request of the employee. Under the third option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A fourth option (see section 219.605 of the proposed rule text) would be to authorize release of test results to future employers only in specified circumstances. This could be done under defined circumstances or only at the request of the employee (in a manner similar to release of National Driver Register information to motor carriers).

An additional complicating factor is enforcement of redisclosure restrictions. For instance, it would be important for a railroad hiring a former employee of another railroad to know of any substance abuse history, whether or not rehabilitation appeared successful as of the date of application. The new employer would need to retain a confidential record of this information since, in the event the employee became involved in drug abusing behavior again, prior history would be relevant to the employee's right to an opportunity for rehabilitation. Such information might also be pertinent to the individual's prospects for recovery should a further opportunity be provided. However, by what means would redisclosure restrictions be enforceable against a future employer not subject to FRA jurisdiction (e.g., a local bus company)? To what extent could such a problem be controlled by establishing a contractual relationship between the applicant/employee and the new employer (*i.e.*, enforceable at common law)?

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. The proposed provision provides that no record of tests shall be used or disseminated for any purpose other than providing for compliance with the FRA alcohol/drug rule, including assessing disciplinary sanctions (where appropriate), except with the voluntary written consent of the employee. It also would require each railroad to institute procedures to prevent inappropriate disclosure. The FRA requests comment on whether we can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee, such as the general public, or the news media. To what extent should access be available to other government agencies that may want the data for statistical, regulatory, or law enforcement purposes?

This raises the related issue of whether the FRA should distinguish between general statistical data (the total number of positive tests at a company in a month or year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed random testing program. Since small operators will have fewer individuals to test in any given time period, even seemingly neutral statistical data might result in identification of an individual employee who was dismissed or referred for treatment as a result of a confirmed positive test result. This potential problem could be exacerbated if the FRA requires that only a small percentage of employees be tested each year. However, anonymity would be protected if only larger railroads were required to report aggregated data. This may suggest that the reporting requirements, as distinct from testing requirements, should be limited to larger railroads, with monitoring of smaller railroads being accomplished by FRA's examination of records maintained by the railroad.

FRA reserves the right to apply any confidentiality provisions that may be crafted in response to this notice to the existing provisions of the alcohol/drug rule, without further notice. FRA notes that its previous attempt to elicit public comment regarding any need for the addition of confidentiality provisions to the current rule failed to elicit response as commenters, almost without exception, focused on other issues of interest. (*See* 52 FR 2118, 2120; Jan. 20, 1987.)

Small Railroads

Under the existing FRA rule, railroads with 15 or fewer Hours of Service employees are not required to conduct pre-employment drug screens. Those railroads do not enjoy the authority to test for reasonable cause and are not subject to the requirements for voluntary referral and co-worker report policies. However, these same railroads are required to conduct mandatory post-accident testing.

This proposal for random testing does not provide an exclusion for small railroads, and FRA specifically solicits comments on the following issues:

—Is this approach (*i.e.*, no exclusion) appropriate, or should the random testing rule contain an exclusion similar to that contained in the current rule? What are the economic cost/benefit considerations supporting the commenter's position?

—If a final random testing rule includes the right to rehabilitation, should small railroads be required to institute voluntary referral and co-worker report policies?

—Since a random testing mandate would require small railroads to make some of the logistical arrangements necessary for pre-employment testing and some of the arrangements for authorized reasonable cause testing, as well, should these provisions be made applicable to small railroads?

(*See*, also, "Regulatory Impact" discussion below.)

Procedures and Safeguards for Urine Drug Testing

FRA proposes to further amend Part 219 by adding a new subpart H, which would mandate procedures and safeguards for urine drug testing under the existing subparts D (reasonable cause testing) and F (pre-employment drug screens), as well as the proposed subpart G (random testing). Although the existing rules contain adequate safeguards and procedures, FRA believes that making procedures uniform for all testing events will further ensure the quality of urinalysis, promote uniformity with the practices of other transportation companies, and permit all collection, testing and reporting to be done in a single manner regardless of the triggering event.

Subpart H would not apply to collection of urines during mandatory post-accident testing (subpart C), since special procedures are required to provide for collection and handling of the blood and urine specimens collected in that context. However, comment is solicited regarding what elements of the

subpart H procedures and safeguards might be separately incorporated in post-accident testing. Comment is also solicited on what special problems may be created by an attempt to impose detailed, uniform sample collection procedures in any case where the employee to be tested is injured and has been transported to a medical facility where pre-arrangements have not been made for an FRA-mandated or authorized collection. Such an occasion could arise either in relation to a mandatory post-accident test, involving blood and urine collection, or a reasonable cause test.

Subpart H incorporates by reference the Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines). Those Guidelines were published in final form in the **Federal Register** of April 11, 1988 (53 FR 11970), following notice and comment. Individual copies are available from the Docket Clerk at the address set forth above. Although FRA proposes that standards for the collection of specimens and laboratory analysis, etc., shall not be less stringent than those contained in the HHS Guidelines, FRA solicits comments on the extent to which differences in practice may be required in order to accomplish collection at independent medical facilities (a practice firmly established in FRA's current rule) and in order to recognize that private transportation companies, rather than government agencies, must administer the urine testing program.

Section 219.701 would require each railroad to submit its comprehensive program for implementation of urine drug testing for FRA review and approval. FRA believes that the wide variety of railroad operating environments and internal railroad organizations may necessitate specialized procedures and assignments of responsibility consistent with the minimum standards proposed for the new subpart. The section would also require publication of notice to employees regarding the railroad's program.

Section 219.703 provides generally for what controlled substances are to be detected, at what levels, and by what methods. Tests would be conducted for marijuana, cocaine, opiates, amphetamines and PCP. Testing of a specimen taken under this part for other biomedical purposes would not be permitted. Certain drugs normally obtained by prescription, the barbiturates and benzodiazepines, are also under consideration for mandatory inclusion in the testing program. Comments are solicited regarding the compounds to be included in the analysis.

Detection limits for the drugs to be tested will be those specified in the HHS Guidelines.

Although the section restricts analysis of urine specimens to certain controlled substances, it incorporates an approval procedure to permit supplementary testing under two general conditions. First, the railroad must explain why testing for the additional drug is requested. For example, a new drug might come into wide usage due to easy street availability in a particular region. Second, the railroad must establish that the drug can be reliably detected and specifically confirmed by a laboratory certified by the Department of Health and Human Services to perform the necessary assays. FRA regards this proposal as creating a "standby" capability to address changing drug use patterns and would not contemplate granting approvals under this section in the immediate future.

Use of alternative analytical methods would also be permitted upon an adequate showing, consistent with the HHS Guidelines.

Section 219.705 would provide for review of positive reports by a Medical Review Officer (MRO), who would transmit the laboratory reports to railroad supervision and the employee only after being satisfied that the report was evidence of unauthorized drug use. Negative reports would also issue from the MRO over the MRO's signature (and without the accompanying laboratory report) in order to avoid identification of employees using therapeutic drugs or for whom the laboratory reported results insufficient in the judgment of the MRO to establish unauthorized use of a controlled substance.

Section 219.707 addresses retention and retesting of specimens. Positive specimens would be required to be retained for at least 365 days. The specimen would be automatically discarded unless a request for longer retention was made within that period. FRA encourages comments regarding the retention period.

The employee could make one request for a retest (reconfirmation), either by the original laboratory or by a second laboratory certified to perform the particular test.

Responsibility for Compliance

FRA proposes to add to the penalty schedule found in Appendix A, 49 CFR Part 219, to provide penalties for violations of the proposed Subpart G on random testing. Comments are requested on the proposed penalty schedule, which will constitute an integral part of any final rule.

Reporting Requirements

Finally, FRA proposes to amend 49 CFR Part 217 to require annual reporting of random testing, including results by drug, follow-up action by the railroad, and refusals to be tested. FRA specifically solicits comments regarding whether more frequent reporting intervals may be appropriate.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

The proposed rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it would initiate a substantial regulatory program.

Consequently, FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the proposed rule. It may be inspected and copied at Room 8201, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation examines a range of options involving the conduct in any year of random tests equal in number to 12.5 to 125 percent of the affected employee population. The options also consider varying assumptions for the rate of positive tests at the inception of the program (5% vs. 7.5%). The analysis identifies total estimated first year costs in the range of $2,207,395 to $22,828,300, including rehabilitation costs. Costs would decrease in successive years, as drug abuse is deterred and/or detected and as rehabilitated former drug users begin to equal and then exceed the population of employees who continue to use impairing drugs. The first year cost range not including rehabilitation is $1,337,219 to $9,775,656. The range of estimated costs for a ten-year period (discounted to current value) is from $8,519,856 to $98,236,418 with rehabilitation costs included and from $4,974,005 to $49,062,465 excluding rehabilitation costs.

FRA has not been able to prepare an adequate quantitative estimate of benefits from the proposed program. However, it is believed that the benefits of the proposed rule would substantially exceed its costs. Benefits would fall into at least three categories. First, consistent with the purpose of the program, railroad safety would be enhanced. Accidents and injuries would be avoided. The extent of these direct benefits is difficult to estimate. Pre-1986 data for drug involvements in railroad accidents/injuries is extremely fragmentary. Data developed under FRA's post-accident testing program is still under review, but does indicate that drug use continues to have significant adverse effects on the safety of rail transportation. Over a period of years, a random testing rule would reduce this remaining risk materially.

Second, employing railroads would benefit from certain indirect benefits from the program. It is widely accepted by major United States corporations, including the railroads, that investments in substance abuse prevention and treatment programs are more than offset by avoidance of lost productivity, absenteeism, health costs, and other problems associated with substance abusing employees. Random testing will create important incentives for early self-referrals and/or provide an effective means of identifying those who are abusing drugs, supplementing voluntary referrals, supervisory referrals, medical evaluations, and other sources of referrals presently available.

Third, society as a whole would realize indirect benefits from the program, as other public and private resources now devoted to dealing with the consequences of drug abuse are turned to productive use.

The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness", which estimated that the economic cost of drug abuse to the United States during 1983 was $59.7 billion. This study, prepared by the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime * * * reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As the FRA obtains other data on drug use, it will place that data in the docket.

FRA welcomes comments on the methodology of the analysis and unit costs employed in the analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires a review of proposed rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA concluded that the rule could have a significant impact on a substantial number of small entities. FRA knows of no practicable alternatives for small employers to adopt that would reduce the cost of compliance yet achieve the levels of protection sought by these proposals. However, FRA also notes that in prior rulemakings significant differences in safety risk factors have been identified that may apply to certain small railroads (e.g., 50 FR 31529, Aug. 2, 1985). A regulatory flexibility analysis discussing this issue in more detail has been placed in the docket.

FRA specifically requests comment on the impact that this proposal would have for the very small railroads in addition to comment on the impact of the proposal on small railroads in general.

Paperwork Reduction Act

The rules proposed in this notice contain information collection requirements in the following sections: 219.601, 219.603, 219.605, 219.701, 219.703, 219.705, 219.707. Revised information collection requirements are also contained in the amendment to § 217.13. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Any comments on the revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

The regulations proposed herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Public Comment

FRA proposes to amend Parts 219 and 217 of Title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rules and the data and analysis advanced in explanation of the proposed rules, whether through written submissions, or participation at the public hearings, or both. FRA may make changes in the final rules based on comments received in response to this notice.

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

Authority: Sections 202, 208 and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, 438) and section 1.49 of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49).

Issued in Washington, DC, on May 5, 1988.

John H. Riley,

Federal Railroad Administrator.

PART 219—[AMENDED]

In consideration of the foregoing FRA proposes to amend Chapter II, Subtitle B, of Title 49, Code of Federal Regulations as follows:

The authority citation for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

1. By amending Part 219 as follows:

a. Amend the table of contents to add new entries as follows:

* * * * *

Subpart G—Random Drug Testing Program

Sec.

219.601 Railroad random testing programs.
219.603 Positive test results: consequences.
219.605 Reports; FRA access to records; confidentiality.

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Railroad programs.
219.703 Drugs tested.
219.705 Review by MRO.
219.707 Retest.

* * * * *

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b. Amend § 219.9(a) by revising paragraph (a)(1), redesignating paragraph (a)(5) as (a)(7) and republishing it, and by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 219.9 Responsibility for compliance.

(a) A railroad that—

(1) Having actual knowledge, requires or permits an employee to go or remain on duty in covered service while in violation of § 219.101 or § 219.102;

* * * * *

(5) Fails to adopt or publish, or willfully and with actual knowledge fails to implement, a policy required by Subpart G of this part;

(6) Willfully and with actual knowledge, requires an employee to submit to testing under a program required by subpart G without observance of the procedures and safeguards contained in subpart G or subpart H of this part; or

(7) Fails to comply with any other requirement of this part; shall be deemed to have violated this part and shall be subject to a civil penalty as provided for in Appendix A.

* * * * *

c. Revise § 219.11(a) to read as follows:

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after the effective date of the relevant subpart shall be deemed to have consented to testing as required in Subparts C, D, and G of this part; and consent is implied by the performance of such service.

* * * * *

d. Add a new § 219.102 to read as follows:

§ 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103 of this subpart.

e. Add a new Subpart G to read as follows:

Subpart G—Random Testing

§ 219.601 Railroad random testing programs.

(a) *Submission.* No later than 120 days after the effective date of this subpart, each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. The program shall be submitted to the Associate Administrator for Safety, FRA. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs prepared by each railroad under this subpart shall meet the following criteria:

(1) Selection of covered employees for testing shall be made by a method based on objective, neutral criteria which ensure that every covered employee has an equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document the process shall be retained for not less than one year from the date upon which the particular tests were conducted.

(2) The program shall select for testing in any given year a number of covered employees equal to (a percentage to be determined not to exceed 125 percent) of the total number of covered employees employed by the railroad at the beginning of that year. A railroad may propose or FRA may require, after investigation and consultation, a higher level of testing.

(3) Notice of an employee's selection shall not be provided until the day of testing, and then only such notice as is reasonably necessary to ensure the employee's presence at the time and place set for testing on a basis reasonably convenient to the employee and the railroad.

(4) A covered employee is subject to random testing under this subpart on any day that the employee is on duty, scheduled for duty, or is rested under the Hours of Service Act and subject to call.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(c) *Approval.* The Associate Administrator notifies the railroad in writing whether the program is approved as consistent with the criteria set forth in this subpart. If the Associate Administrator determines that the program does not conform to these criteria, the Associate Administrator informs the railroad of any matters preventing approval of the program, with specific explanation as to revisions that are necessary. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* Within 60 days of receipt of approval of its testing program from FRA, the railroad shall implement that program. A railroad shall, under the conditions specified in this subpart and subpart H, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102.

§ 219.603 Positive test results; procedures.

(a) *Medical review.* A result of a test required under this subpart shall be deemed positive only after it has been (i) properly confirmed as required in Subpart H of this part and (ii) reviewed by a Medical Review Officer (MRO) to determine if it is evidence of prohibited drug use under section 219.102, as provided in subpart H. No information concerning any unconfirmed screening test indicating presence of an analyte shall be reported or otherwise communicated by a laboratory to any person at any time. This section establishes procedures for administrative handling by the railroad in the event a specimen provided under this subpart is reported as positive by the MRO.

(b) *Notification.* Within the period specified in § 219.705(e) of this part, the railroad shall notify an employee of the results of any test that is (i) positive, by providing a copy of a laboratory report meeting the requirements of subpart H or (ii) negative, by providing a written notice issued by the MRO.

(c) *Suspension.* If the railroad representative determines that there is reason to believe that an employee is in violation of 219.102, as evidenced by a positive test result, the railroad may immediately remove the employee from covered service. In each case, the employee shall be provided with the report of the test results and notice of the basis for the removal.

(d) *Hearing procedures.* If an employee testing positive under this section elects to claim the right of investigation of the rule charge the following procedures shall apply:

(1) The railroad shall provide written notice to the employee of the disciplinary charges growing out of the test and an opportunity for hearing before a presiding officer.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within ten calendar days of any suspension arising from positive testing results or, in the case of an employee who is unavailable due to injury, illness or other sufficient cause, within ten days of the date the charged employee becomes available for hearing.

(3) A proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the requirements of this paragraph.

§ 219.605 Reports; FRA access to records; confidentiality.

(a) Each railroad shall retain records of each test conducted under this section for at least 5 years and make them available to FRA for review.

(b) No record of tests conducted under this section or information drawn therefrom shall be used or disseminated for any purpose other than providing for compliance with this part (and carrier rules consistent herewith), unless with the voluntary written consent of the employee. Each railroad shall institute procedures to guard this information against inappropriate disclosure.

(c) A railroad may advise another transportation operator to which an employee has applied for employment (or with which an employee has obtained employment) in a safety-sensitive position of the nature of any disciplinary action that grows out of a positive test under this subpart. Reasonable effort shall be made to notify the employee of the provision of such information, and the employee shall be entitled to a copy of any writing describing such disciplinary disposition or positive test result.

f. Add a new Subpart H to read as follows:

Subpart H—Procedures and Safeguards for Urine Drug Testing

§ 219.701 Railroad programs.

(a) The conduct of urine drug testing under subparts D, F, and G of this part shall be governed by the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970 (April 11, 1988) and this subpart. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under those guidelines. Where the Guidelines refer to "Federal agencies" or "the agency," this shall mean "the railroad" for purposes of this regulation.

(b) Within 120 days after the effective date of this subpart, each railroad shall submit for approval of the Associate Administrator for Safety a program of procedures and safeguards for the conduct of urine drug testing under this subpart.

(c) Each testing program shall be effectively published to all subject employees, who shall be provided actual notice in advance of being required to provide any specimen that they are subject to testing under this part, a detailed description of the circumstances under which testing may be required, and at least summary information regarding the procedures and safeguards contained in this subpart, specifically including the right of an employee to receive a copy of test results on any specimen provided by the employee.

§ 219.703 Drugs tested.

(a) Urine specimens collected under subparts D, F, and G of this part shall be analyzed only for the presence of designated controlled substances and, as necessary, to ascertain the degree of concentration of the urine or the presence of adulterants.

(b) Each specimen submitted shall be analyzed for marijuana, cocaine, PCP, opiates, and amphetamines, as provided in the HHS Guidelines.

(c) A railroad may request approval of the Associate Administrator for Safety to test for additional controlled substances or by alternate methods. Such request shall—

(1) Specify the proposed methods to be employed, the proposed detection limits, and the reason(s) why supplementary or alternative testing is deemed appropriate;

(2) Provide information sufficient to establish the reliability of the screening technique proposed and the reliability, accuracy, precision and specificity of the confirmatory technique, as applicable; and

(3) Certify that the laboratory is currently certified by the Department of Health and Human Services to perform the proposed assays.

§ 219.705 Review by MRO.

(a) Test results reported positive by the laboratory as provided in the HHS Guidelines shall not be deemed positive or disseminated to any person (other than to the employee tested, if an interview is deemed appropriate) until they are reviewed by a Medical Review Officer (MRO) of the railroad.

(b) The MRO or an attorney employed by the railroad shall also review the chain-of-custody record to determine that it contains no material variance from the requirements of the railroad program and this part. A material variance means any entry or omission that could reasonably lead to an error in the collection, handling or testing of a covered employee's specimen. If a material variance is detected and the MRO deems the result positive after the medical review contemplated by this paragraph, then the result shall nevertheless be reported as negative unless adequate and valid supplementary documentation has been obtained to remedy any variance in the chain-of-custody record for the specimen.

(c) The MRO shall complete review of test results within not more than 10 days or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10 day period shall be extended by a period equal to the period attributed to the employee's delay.

(d) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances under circumstances indicating non-medical use, the MRO will report the results to a designated railroad officer for action in keeping with the requirements of this part. The employee shall be provided a copy of the approved test results within 48 hours of delivery to the railroad officer, or immediately upon the railroad's taking any action adverse to the employee, whichever first occurs.

(e) Test results reported as negative by the laboratory shall also be communicated to the employee through the MRO. The MRO shall immediately transmit the negative finding to the employee (and, as the railroad may provide, to the appropriate railroad officer) over the MRO's signature.

§ 219.707 Retest.

(a) Specimens that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days. Within this 365-day period, the employee or his representative, the railroad, or the FRA may request that the laboratory retain the specimen for an additional period. If the laboratory does not receive a request to retain the specimen during the 365-day period, the specimen may be discarded.

(b) In the case of a test declared positive by the MRO, the original specimen shall be retested at the written

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request of the employee. The employee may specify retesting by the original laboratory, or by a second laboratory designated or accepted by the employee that is certified by the Department of Health and Human Services to perform the relevant confirmatory test.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample. Unless the test by the second laboratory fails to confirm the analysis provided by the first, the employee shall be responsible for all costs associated with the retest.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the HHS Guidelines, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

9. Amend Appendix A to add the following:

APPENDIX A.—SCHEDULE OF CIVIL PENALTIES [1]

Section		Violation	Intentional violation [2]
	Subpart G—Random Drug Testing		
219.601	Failure to implement and/or submit to FRA for approval a random drug testing program that satisfies the requirements of this subpart and subpart H		2,500
	Failure to facilitate conduct of required random drug testing by failing to take all practical steps to require employee participation or by otherwise failing to comply with Subpart G such that test cannot be conducted	1,000	2,500
	Required employee to provide samples in reliance on Subpart G where not required	750	2,500
219.603	Required employee to submit to testing without observance of procedures and safeguards contained in Subparts G and H		2,000
219.605	Failure to provide notice of positive test result or failure to provide opportunity for hearing meeting procedural requirements	1,000	2,000
	Failure to comply with other Subpart G requirement	500	1,250

[1] Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) requires the Secretary of Transportation to "include in or make applicable to, any railroad safety rule, regulation, order or standard issued under this title a civil penalty for violation thereof * * * in such amount, not less than $250 nor more than $2,500, as he deems reasonable." The Administrator reserves the authority to assess the maximum penalty of $2,500 for a violation of any requirement of Part 219. Each day of violation constitutes a separate offense. Section 219.605 sets forth the standards of liability applicable to the various requirements of this part.

[2] For purposes of this schedule, an intentional violation is a failure to comply in which the railroad has acted willfully and with actual knowledge of the facts constituting the violation. Knowledge of the regulations is presumed by law.]

PART 217—[AMENDED]

1. The authority citation for Part 217 continues to read as follows:

Authority: Secs. 202 and 209, 84 Stat. 971 and 975 (45 U.S.C. 431 and 438), and sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

2. Part 217 is amended by amending § 217.13 to add a new paragraph (d)(5) as follows:

§ 217.13 Annual report.

* * * * *

(d) * * *

(4) * * *

(5) Number and results of random drug tests conducted under the authority of § 219.601 of this title. For positive tests indicate the number for each controlled substance by drug group, and the following information by drug group: number and type of disciplinary actions taken, number of employees referred for abatement or rehabilitation, number of employees referred for abatement/rehabilitation evaluated as requiring rehabilitation, number of employees receiving outpatient rehabilitation exclusively, number of employees receiving inpatient rehabilitation, number of employees failing to complete abatement and rehabilitation, number of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group. Also indicate the number of refusals to cooperate in random testing.

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Part V

Department of Transportation

Federal Highway Administration

49 CFR Parts 383, 391, and 392
Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Notice of Proposed Rulemaking and Public Information Forum

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 391, and 392

[FHWA Docket No. MC-128]

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Notice of Proposed Rulemaking and Public Information Forum

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking and public information forum.

SUMMARY: The FHWA is requesting comments on proposed revisions to §§ 383.5, 383.51, 391.15, 391.3, and 392.5 of the Federal Motor Carrier Safety Regulations (FMCSRs) that respond to the Commercial Motor Vehicle Safety Act of 1986 (the Act). The revisions would define 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV under section 12006 of the Act. As used in this document, BAC means alcohol concentration as may be determined from either blood or breath samples. The proposal would also require CMV operators with any measured positive BAC to be placed out-of-service for a 24-hour period in accordance with Section 392.5 of the FMCSRs. Sections 12009 and 12011 of the Act require States to adopt similar licensing sanctions for CMV operators to avoid a withholding of Federal-aid highway funds.

The proposal is based on comments received to an advance notice of proposed rulemaking (ANPRM) published in the Federal Register on March 23, 1987 (52 FR 9192), and findings of a study by the National Academy of Sciences (NAS), 1987, Special Report No. 216, "Zero Alcohol and Other Options: Limits for Truck and Bus Drivers" (the NAS Study).

DATES: Comments must be received on or before June 29, 1988. Public forums will be held to obtain comments on this proposal. Dates, times, and locations for the forums will be announced in a future Federal Register notice.

ADDRESS: All written comments must be signed and should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Viner, Office of Safety and Traffic Operations, Research and Development, (703) 285-2419, Ms. Jill L. Hochman, Office of Motor Carriers, (202) 366-4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Pub. L. 99-570, Title XII, 100 Stat. 3207, 3207-170) was signed into law by the President. This supplementary information section contains: background information on relevant provisions of the Act and comments obtained from the ANPRM; a summary of the NAS study; and a discussion of the proposed rule and its relation to current out-of-service requirements.

Background

Summary of the BAC Level Provisions of the Act

Section 12006(f) of the Act requires the Secretary of Transportation (Secretary) to establish the BAC level, not to exceed 0.10 percent, at or above which a person when operating a CMV shall be deemed to be driving under the influence (DUI) of alcohol and subject to the licensing sanctions described in the Act in section 12006 (discussed below). Failure to issue such a rule by October 27, 1988, will result in this level being set at 0.04 percent.

Under section 12009(a)(3) of the Act, each State must adopt and enforce laws consistent with the Federal requirement, and consistent with any out-of-service regulations issued by the Secretary under section 12006(d)(1) of the Act, in order to avoid having Federal-aid highway construction funds withheld.

Also under section 12009, States must adopt disqualification provisions for CMV operators described in the Act. These disqualification provisions became effective on July 1, 1987 (52 FR 20574), and are contained in § 383.51 of the FMCSRs (49 CFR 383.51). Disqualifications under the Act apply to operators of "commercial motor vehicles" as defined in the Act and occur for offenses which were committed after July 1, 1987. Certain of these disqualifications, or licensing sanctions, would apply to CMV drivers who are "deemed to be under the influence of alcohol."

Section 12006 of the Act provides that CMV operators who are found to have committed a first violation of driving a CMV under the influence of alcohol shall be disqualified for at least 1 year. For a CMV operator carrying hazardous materials, this disqualification shall be for at least 3 years. Any CMV operator found to have committed a second such offense (at any time without regard to a time limit for the second offense) shall receive a lifetime disqualification or a disqualification for a period of not less than 10 years, as may be prescribed by the Secretary.

The FHWA recognizes that the terms "deemed to be under the influence" and other similar phrases are accepted terms of art in State statutes—particularly State criminal statutes—and, as such, have important related criminal sanctions and penalties for *all* drivers. Section 12009(b), however, provides that a State may satisfy the requirements of section 12009, in part, by implementing a commercial driver's licensing program which includes penalties and disqualifications for CMV drivers that result in license suspensions, revocations, or cancellations. In other words, the Act does not require that any other State sanctions, particularly criminal sanctions, apply to CMV drivers who violate the BAC levels established by this rule. The FHWA believes that States can meet the intent of the Act by adopting standards which would result in CMV operators being disqualified from driving CMVs, i.e., subject to administrative sanctions, when they are found to have committed certain offenses. Therefore, the FHWA proposes to establish a series of licensing sanctions related to driving a CMV while impaired by alcohol that would be separate from the administrative and criminal penalties currently embodied in State law. These administrative sanctions would augment but not replace those criminal sanctions.

In order to avoid a withholding of Federal-aid highway funds under section 12011 of the Act, States would be required, pursuant to section 12009 of the Act, to adopt the BAC level proposed by the FHWA for purposes of disqualifying drivers from operating CMVs in accordance with § 383.51 of the FMCSRs (52 FR 20574). These proposed administrative sanctions are not intended to supersede or preempt the criminal or administrative penalties which a State may invoke at established or other BAC levels.

Section 391.15 of the FMCSRs also contains disqualification provisions for drivers of motor vehicles engaged in interstate or foreign commerce if they are convicted of certain offenses. Interstate drivers of motor vehicles with gross vehicle weight ratings of 10,001 pounds or more are covered by § 391.15. The disqualification provisions for drivers who are subject to § 391.15 are administrative sanctions which augment currently used criminal sanctions.

The requirement in the Act for the Secretary to commence rulemaking to determine the appropriate BAC level by October 27, 1987, was fulfilled by publication of the ANPRM of March 23, 1987 (52 FR 9192). Also as required by the Act, the FHWA contracted with the NAS to conduct a study of the appropriateness of reducing the BAC level at or above which a person, when operating a CMV, is deemed to be driving while under the influence of alcohol from 0.10 to 0.04 percent. The findings of the NAS study and comments received on the ANPRM form the basis of this proposal and are discussed in the following sections.

Comments on the ANPRM

The ANPRM solicited comments on the appropriate BAC level required to be established under the Act. In particular, detailed information and supporting data for particular positions were sought and made available to the NAS for its study.

A total of 31 responses were received. Of these, two favored retention of 0.10 percent BAC as the appropriate level. Twenty-three favored a lower level, including six who supported the 0.04 level specified in the legislation and 11 favored even lower levels. The remaining six did not state a preference.

Of the six respondents that did not state a preference for a BAC level for the purpose of this Act, two, the Arizona Department of Public Safety and the International Association of Chiefs of Police, favored a change to Section 12006(f) of the Act. These two respondents believed that setting the BAC level at 0.04 percent would create an apparent double standard between CMV drivers and other drivers. These respondents, thus favored a legislative change to permit States to adopt administrative regulations which would allow them to place a CMV driver out-of-service with *any* measurable BAC level. Proposed changes to the Act itself are beyond the scope of this rulemaking action.

The International Brotherhood of Teamsters (IBT) was among the six respondents that did not state a preference for a BAC level. The IBT was opposed, however, to a double standard. The IBT noted that alcohol related fatalities are a larger problem on a national basis among other drivers than among CMV drivers. It noted that the Fatal Accident Reporting System (FARS) data indicate twice as many passenger car drivers with BAC levels above 0.10 percent are involved in fatal accidents as all heavy truck fatal accidents with or without alcohol involvement. The IBT favored the identification of an appropriate BAC level at which a driver can reasonably be judged to be driving under the influence, and which can be reasonably and fairly enforced and applied by Federal regulation to all drivers. The authority in the Act, however, is limited to operators of CMVs. This proposal does not, therefore, address BAC levels for non-CMV drivers.

The problem of CMV drivers called to work on short notice is a concern of the IBT. The IBT urged that the FHWA incorporate a provision, as part of this regulation, which would prohibit an employer from discharging, disciplining, or discriminating against a driver who, when called for dispatch, informs the employer that he/she has consumed alcohol recently and may be in violation of the established BAC level.

Roadway Express, Inc., was also among the respondents who did not state a preference for a BAC level. Roadway Express stated that "Congress recognized the inherent difficulty in identifying this level and correctly sought assistance from those best able to provide it—the National Academy of Sciences." Roadway Express called for a careful evaluation of costs and benefits of the suggestion to lower the BAC level to 0.04 percent, noting that difficulties exist with the 2-hour call period which is common in the industry. They noted that costs are involved with the extension of the call period to protect drivers who report consuming alcohol, and believe that some drivers would use an extended call period to avoid working at inconvenient times. Roadway Express also noted that current rules and practices have had good results in deterring driving while impaired, and that setting a Federal BAC level implies that levels below that are acceptable, a situation that should not in its view be encouraged.

The American Trucking Associations, Inc. (ATA), was also among the respondents who did not state a preference for a BAC level. It stated that the multiple constraints of State laws, Federal regulations, company policy, and the manner in which violations can jeopardize a driver's livelihood have resulted in an environment in which the incidence of DUI of alcohol for CMV drivers is much lower than the rest of the driving public. The ATA believes that it is vitally important that no action be taken that will be interpreted by drivers as allowing them to consume alcoholic beverages, as long as their BAC is below a designated level.

Of the seven responses received from States, five expressed concern over enforcement issues relating to a BAC level less than 0.10 percent. Responses included comments that it will add further confusion to a burdensome problem, will create an apparent double standard, and will be difficult to detect and enforce. However, all seven States favored a tightening of Federal BAC level requirements in one form or another.

The Pennsylvania DOT, one of the two respondents that favored retention of the 0.10 percent level, suggested extending the time prior to driving in which alcohol consumption is not permitted from 4 to 6 hours. The California Highway Patrol favored placing a driver out-of-service for a minimum of 4 hours on evidence of alcohol consumption. As stated earlier, the Department of Public Safety expressed a somewhat similar position. The Michigan Department of State supports a level below 0.10 percent based on sound data as may be developed by the NAS study. The Hawaii DOT Motor Vehicle Safety Office favored a level of 0.04 percent or lower. The Ohio Department of Public Safety took the position that any amount of alcohol in the system of a CMV driver is a cause for concern. The Colorado Department of Health favored a zero alcohol policy for CMV operators at the time of driving as it believes that such a position would avoid creation of confusion in what they perceive is an overburdened judicial system.

The Amalgamated Transit Union favored no reduction in legislated BAC levels. It noted that bus accident rates are low and stated that the proposed 0.04 percent BAC level is neither scientifically nor statistically justifiable.

Safety was the dominant issue for the 23 respondents supporting a lower BAC standard. Comments included: a need exists to demand more stringent requirements of CMV drivers; a double standard between commercial and non-commercial drivers is acceptable as this was the intent of the Act, because there is a greater potential for severe accidents with heavy vehicles; most deaths in accidents with these vehicles are suffered by other road users; the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) have adopted 0.04 percent standards; and scientific evidence of impairment at low BAC levels exists.

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The NAS Study

Approach—This study was conducted by the Committee on the Benefits and Costs of Alternate Federal Blood Alcohol Concentration Standards for Commercial Vehicle Operators. The committee was established by the NAS for the express purposes of producing the study mandated by the Act. Time constraints dictated that the study be largely limited to a critical review of existing literature. The study also included available findings from other research studies underway, analyses using existing accident data bases, and consultations with other professionals in the field. As part of the internal NAS review of the draft study report, a peer review was conducted using experts outside the committee.

Findings—Alcohol impairment related to the driving task has been studied through three different techniques; laboratory studies, closed course driving studies, and accident studies. Hundreds of laboratory studies have examined at least one facet of driver related performance at one or more BAC levels. The findings of such studies conducted at low BAC levels were reviewed by the NAS panel. Response to an emergency driving situation requires the ability to see the situation developing (visual performance); to recognize it (cognitive performance); to decide how to respond (cognitive performance); and to physically react e.g., brake or steer (motor response).

Studies of visual performance have found glare response is degraded at BAC levels as low as 0.01 percent, and focus for depth perception is degraded at the 0.04–0.05 percent BAC level. In the area of cognitive performance, a study of single task and divided attention tasks at BACs of 0.06 and 0.09 percent found performance degradation for the divided attention tasks but not for single task performance. (In the driving situation, steering is a single task and steering and avoiding crossing traffic is an example of a divided attention task.) A divided attention study conducted at BAC levels of 0.015, 0.03, 0.045, and 0.06 percent found a significant increase in errors at a BAC level at 0.015 percent compared to a zero BAC level, and that the error rate increased linearly with an increase in BAC level. Similar results were found in two other studies with BAC levels ranging from 0.23 to 0.089 percent.

A motor response study at zero, 0.021, 0.050, and 0.073 percent BAC found improvement in simple reaction time with positive BAC; however, errors in task performance were significant at all positive BAC levels, and increased with BAC.

In summary, laboratory studies have shown significant degradation in the first three steps at low BAC levels, while the fourth step, reaction time, is unaffected or may even improve slightly.

A closed course driving study found degraded performance at a mean test BAC level of 0.036 to 0.037 percent. (In this study more pylons were hit, greater stopping distances occurred, and there were more collisions with a dummy suddenly appearing in the path for drivers at these BAC levels than for drivers with zero BAC.) Emergency braking and steering in another closed course driving study were found to be significantly degraded when drivers were in a hangover condition, i.e., zero BAC, 8 hours after obtaining a mean BAC of 0.147 and allowed to sleep.

The largest and perhaps most cited case-control accident study of alcohol impairment is the Grand Rapids study discussed in the NAS report. When the data from these 5,985 crashes are sorted by overall drinking habits, the risk of crash involvement is found to increase with BAC without evidence of a threshold effect as shown in Figure 3–3 of NAS report. That is, risk increases at any positive BAC. When the data are not controlled (sorted) by general drinking behavior or other important variables (age, sex, etc.), the picture is not so clear. In any case, accident studies still show a rapid increase in responsibility for a crash at a BAC above about 0.04 percent. Also, accident frequencies increase above a BAC of about 0.08.

The NAS study noted factors affecting CMV drivers that may differ from the general driving population. Skilled drivers may be less affected at low BAC levels than unskilled drivers in relatively routine driving tasks. However, even skilled drivers show a decrease in performance under the complex demands of a potential accident situation. Truck driving is much more demanding than car driving as indicated by such factors as: more information displays (about 34 vs. 17 in a car); more vehicle controls (about 52 vs. 33); greater braking distances required; overturn and jackknife risks not present in car driving; and certain heavy vehicles operate close to the design limits of the highway. Also, alcohol as a central nervous system depressant interacts adversely with driver fatigue. Most CMV drivers work a 9 to 10 hour-day and crash frequency tends to increase after about 7 hours on the road.

In summary, the NAS study concluded that, at any BAC above zero, most commercial drivers would experience a degradation in skill that would increase the risk of crash involvement. The NAS study further estimated that each year there are about 750 fatal accidents, 7,700 injury accidents, and another 4,750 property damage only accidents involving a CMV driver with a positive BAC.

Estimates of drivers with a positive BAC in fatal accidents were: all drivers, 45 percent; all CMV drivers, 15 percent; all heavy truck drivers, 14 percent; all medium truck drivers, 24 percent; and all bus drivers—limited data to estimate, likely to be much lower than heavy truck drivers. (Only 20 percent of the victims in fatal accidents involving a CMV are CMV drivers.)

The NAS study noted that the benefits of a BAC standard for CMV operators will depend on the BAC level established and the amount of enforcement. According to the NAS study, and that estimates of these benefits require extrapolating from a small and imperfect data base. Two basic enforcement scenarios and three BAC levels (zero, 0.04, and 0.10 percent) were used in the study's cost-benefit evaluations. In these scenarios, ranges in annual benefits were estimated as follows:

a. Fatalities reduced by 80 to 250 per year;

b. Injuries reduced by 1,100 to 3,300 per year; and

c. Property damage only accidents reduced by 700 to 2,200 per year.

Costs, like benefits, will vary with BAC level selected and amount of enforcement. According to the NAS study, annual costs associated with the above benefits are estimated to range from $27 million to $54 million. All BAC and enforcement level combinations studied showed benefits exceeding costs. Larger annual reductions in lives lost and injury and property damage accidents avoided were associated with setting BAC limits at the lowest (zero) level and greater enforcement.

In the area of enforcement, the study noted that field behavioral sobriety tests are widely used in establishing a reason to believe a driver had been drinking in order to justify further investigation of the extent of any impairment. These tests, however, typically do not detect instances when a driver's BAC level is lower than 0.10 percent. The study noted that the agency may be able to use its regulatory authority to require CMV drivers to submit to BAC tests in accident or field check point stops.

In practice, BAC limits enforced are higher than those specified by law. Average BAC at arrest is 0.18 percent although most States have a 0.10 percent limit.

Recommendations—The recommendations section of the NAS study is reproduced in its entirety in Appendix A. Briefly, the NAS study concludes that at any BAC level above zero, most commercial drivers would experience a degradation in skill that would increase the risk of crash involvement. The majority (three-fourths) of the committee recommended that penalties required by the Act be applied to violations of 0.04 percent BAC. The majority also recommended reducing the BAC limit for commercial driver to zero, but with a lesser penalty (license revocation for 24 hours to 30 days) for violations below 0.04 percent. A minority (one-fourth) of the committee recommended that existing State per se limits (perhaps reduced to 0.08 percent BAC) are appropriate when the penalties associated with violation are those mandated by the Act.

The complete report, "Zero Alcohol and Other Options—Limits for Truck and Bus Drivers," Transportation Research Board Special Report 216, 1987, may be purchased from the Transportation Research Board, 2101 Constitution Avenue NW., Washington, DC 20418. There is a $20.00 fee for this report. A copy of the complete report is available for examination in the docket.

Discussion of Proposed Rule

Based on both the findings and evidence presented in the NAS report and the comments received in response to the ANPRM, the FHWA proposes to amend Parts 383, 391, and 392 of the FMCSRs. The proposed rule would also establish 0.04 percent or above as the level of BAC at which a CMV operator would be deemed impaired by alcohol and subject to disqualification. The proposed rule would also establish 0.10 percent BAC, or such lesser amount as established by a State, as the level a commercial driver is "under the influence" of alcohol and subject to State sanction for such a violation.

The proposed changes to Parts 383 and 391 also include a definition of "conviction." On June 1, 1987, the FHWA published a final rule implementing the Act in part (52 FR 20574). This final rule defined "conviction" to mean:

> • • • the final judgment on a verdict [or] finding of guilty, a plea of guilty, or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirements in this part, or an implied admission of guilt in States with implied consent laws.
> (52 FR at 20587).

The term "conviction" is used in § 383.51 pertaining to the disqualification of drivers. Drivers who are convicted of certain criminal offenses will be disqualified from driving a CMV. Similarly, § 391.15 of the FMCSRs provides that convictions for certain offenses will result in disqualification. Part 391, however, does not include a definition of conviction. In the past, the FHWA has looked to State laws to determine whether a person was "convicted" of an offense, thus triggering a disqualification. Because of the stringent penalties contained in the 1986 Act, the FHWA determined that it would be necessary to ensure that interstate drivers be treated equitably. Thus, the FHWA decided to develop a uniform definition of "conviction" for purposes of the Federal disqualification provisions. The agency also believes that a uniform definition will promote the purposes of the Act, i.e., to remove unsafe commercial drivers from the road.

The responses received by the FHWA to the series of questions raised about the definition of "conviction" in the June 1, 1987, final rule clearly indicated support for the definition of conviction used in the Uniform Vehicle Code and Model Traffic Ordinance (UVC). Thirty-five States already use definitions which closely follow the UVC. Of these thirty-five, almost all include forfeiture of bond or collateral and certain administrative findings, and thirteen include pleas of "no contest."

Accordingly, the FHWA now proposes to amend the definition of "conviction" in 49 CFR 383.5 and to define "conviction" in 49 CFR 391.3. The proposed definition is based, in part, on the comments received in response to the June 1, 1987, final rule and is drawn from the UVC. The proposed definition includes pleas of nolo contendere and would also include an administrative finding by the State that a violation was committed.

Finally, the proposed change to Part 392 would result in any measured positive BAC of an in-service driver being considered as a violation of the prohibition on alcohol impairment within 4 hours of going on-duty.

BAC Levels for Driving Under the Influence

The FHWA believes that the NAS report presents convincing evidence that significant driving impairment occurs at BAC levels below 0.10 percent, the standard found in most State laws. The findings from three research approaches of alcohol impairment laboratory studies, closed course driving studies, and accident studies are consistent both within the general research approach type, and between research approach types in support of this conclusion.

As outlined in the NAS report, truck driving is much more demanding than car driving. Fatigue is a significant factor in truck accidents and alcohol interacts adversely with fatigue. Thus, the FHWA is proposing that 0.04 percent BAC be set as the BAC level at which a person when operating a CMV shall be subject to the disqualification provisions of Parts 383 and 391.

The FHWA believes that, in enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress intended the FHWA and the States to work together to remove unsafe operators of CMVs from the road. In specifically enacting sections 12006, 12009, and 12011, the FHWA believes that the Congress intended that the FHWA and the States take actions necessary to remove operators of CMVs from the road when those operators drink and drive. The FHWA views the disqualification provisions of the Act as supplementing existing State drunk driving laws and programs, and as being targeted to a specific group of regulated drivers who pose an extraordinary risk to public safety by reason of sizes of the vehicles they drive, the nature of the cargos they transport, and the typical mileage they drive in any given period of time. To comply with the Act, the FHWA expects States to adopt laws and/or regulations necessary to disqualify CMV drivers from operating CMVs when they have been found to have operated CMVs at a BAC level in excess of the level established by this rulemaking action. The FHWA views this as the minimum State action necessary to avoid the loss of Federal-aid highway funds. The FHWA does not intend to require the States to impose additional sanctions against CMV drivers with such BAC levels; nor does not FHWA intend to preclude the States from going beyond these minimum requirements.

The FHWA envisions its current proposal as establishing three progressively more stringent penalties to address drunk driving by CMV operators. The first step would place a CMV operator immediately out-of-service for 24 hours, if found to have a measurable positive BAC level, even below 0.04 percent. The FHWA is proposing to revise 49 CFR 392.5 accordingly. The second step would be to impose the disqualifications set forth in section 12006 on those drivers found to have operated a CMV with a BAC

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level at or above 0.04 percent. The third step would be to impose a disqualification in accordance with section 12008 coupled with any other State penalty required by State law (e.g., mandatory imprisonment, fines, rehabilitation programs, etc.) for those CMV operators found to have operated a CMV with a BAC level at or above the level adopted by the State to define operating a motor vehicle "under the influence of alcohol" by any driver in the State (this level is 0.10 percent BAC in most States).

The FHWA recognizes that disqualifications for drivers with low BAC levels would not occur unless States adopt the 0.04 percent BAC standard for CMV operators. For drivers subject to Part 383 and its disqualifications, the States would need to adopt the 0.04 percent standard to avoid a loss of Federal-aid highway funds beginning in FY 1994.

Out-of-Service Violations

The NAS panel and several respondents to the ANPRM were concerned that no action be taken that could be interpreted as implying that it is acceptable to operate a CMV with some alcohol in the operator's system. These groups recommended that a zero BAC standard with some out-of-service sanctions be established to address this concern. A majority of the NAS suggested that the penalty for a positive BAC below 0.04 percent be 24 hours to 30 days license revocation for the first offense and 30 days to 1 year for second and subsequent offenses. By contrast, the California Highway Patrol believes that there should be a penalty on evidence of alcohol consumption, but the penalty should be a minimum of 4 hours out-of-service.

Motor vehicle operators subject to the current § 392.5 of the FMCSRs are prohibited from consuming an intoxicating beverage or being under the influence of alcohol within 4 hours of going on duty or operating or having physical control of a motor vehicle. As shown in Figure 3–1 of the NAS report (page 42), alcohol is metabolized in the body at a rate of about 0.015 percent BAC per hour. In 4 hours, therefore, approximately 0.06 percent BAC would be metabolized by the average person. Consequently, a BAC level of 0.00 percent, or lower, 4 hours before going on duty would, in effect, result in a zero BAC level by the time the average driver goes on duty.

Thus, the FHWA proposes to amend Part 392 to clarify these rules based on the proposed selection of 0.04 percent BAC for the sanctions of the Act and available information on alcohol metabolism rates. Any CMV driver with a measured positive BAC level while he/she is in-service would be subject to the 24-hour out-of-service sanction.

In summary, the FHWA proposes to amend Parts 383, 391, and 392 to establish a set of sanctions for operators of CMVs found to be driving commercial motor vehicles while at positive BAC levels as follows:

(1) Any measured positive BAC level—immediate 24 hour out-of-service sanction;

(2) At or above 0.04 percent BAC—the disqualification sanctions of the Act; and

(3) At or above 0.100 percent BAC or any lesser level set by State law for "driving under the influence"—existing State sanctions.

The BAC levels of drivers of CMVs are generally determined by tests administered by the police officers or other law enforcement agents during lawful stops and investigations on the highways. Nothing contained in the proposed rule or in the discussion is intended to alter in any way the conditions under which highway stops and investigations are currently authorized, the method by which tests are administered or the frequency of such testing.

State Compliance

Three levels of penalties would be established by this proposal for CMV operators who drink and drive. States would need to adopt and implement these penalties or face a loss of Federal-aid highway funds. The first level would require that any CMV operator with a positive level of alcohol concentration be placed out-of-service for 24 hours. This penalty would be consistent with section 12009 (a)(21) of the Act and the full NAS committee recommendation that any alcohol consumption on the job is inappropriate for CMV operators and incompatible with safety. The second level, which would trigger the disqualification sanctions of the Act when a CMV driver has an alcohol concentration of 0.04 or higher, results from the requirements of sections 12009 (a)(15) and (16) as they pertain to penalties for drinking and operating a CMV. This penalty would reflect the recommendation of the majority of the NAS committee. The third level would trigger existing State penalties for convictions for driving while under the influence that result from current State laws as well as the disqualification sanctions. This penalty relates to the requirements of sections 12008(f) and 12009(a)(3).

All States have illegal per se laws have with BAC limits of 0.10 percent or lower, except for one. This State, however, has a presumptive law with a BAC level of 0.10. The FHWA's assessment, therefore, is that States would substantially comply with the Act if they have adopted the 0.04 percent threshold for disqualification, and if they have either per se or presumptive BAC limits of 0.10 percent or lower. The FHWA requests comment on whether States would be in substantial compliance with the Act based on their adoption and implementation of the penalties as described above.

Other Issues

A minority of the NAS committee members believes that existing State per se limits (perhaps reduced to 0.08 BAC) are appropriate when the penalties associated with violations are those mandated by the Act. Two reasons were stated for this minority position: the severity of the penalties mandated by the Act, and perceived problems enforcing lower BAC standards, including possible challenges under the Fourth Amendment to the United States Constitution (i.e., prohibition against unreasonable searches and seizures) or under State law.

The FHWA believes that the convincing evidence presented in the NAS report that significant driving impairment occurs at low BAC levels, including the 0.04 percent level recommended in that report, coupled with the serious risks posed to public safety by drivers whose abilities to control CMVs are impaired by alcohol use, warrant the imposition of these severe sanctions. The FHWA believes that most drivers faced with the possibility of disqualification will avoid it by complying with the law. The FHWA further believes that those who cannot or will not comply with the law should be removed from the road so as to eliminate the public safety risk they present.

The FHWA recognizes the seriousness of the legal issues, including possible constitutional issues, raised by those concerned with enforcement of low BAC standards. The FHWA proposes to rely primarily on the States to enforce the disqualification requirements for drivers with the BAC levels specified by this action. In accordance with the President's Executive Order on Federalism (E.O. 12612, October 26, 1987), the FHWA believes that it should allow States the maximum administrative discretion possible to achieve the objectives of the Act. The FHWA encourages the States to develop their own policies to achieve these objectives.

The FHWA believes that the evidence of the NAS study justifies these proposals as cost-effective, appropriate safety measures in the public interest. The FHWA proposal would result in a more stringent standard for CMV drivers than other motor vehicle operators. However, improving safety is the purpose of the Act and the FHWA believes that Congress intended that a stricter standard for CMV drivers be applied if justified by an evaluation of related costs and benefits. The 0.04 percent BAC standard recommended by NAS and included in the FHWA proposal for purposes of disqualification would also treat CMV operators in a way which is comparable to the way that aviation, commercial maritime, and railroad operators are treated with respect to driving under the influence of alcohol. Federal rules currently establish a 0.04 percentge BAC level as defining "under the influence" for railroad employees (49 CFR 219.101), any crew member on a civil aircraft (14 CFR 91.11), and any commercial vessel operator (49 CFR 95.020).

The FHWA believes that such a standard can be reasonably and fairly enforced. Devices to measure BAC are currently required to satisfy standards for precision and accuracy at zero, 0.05, 0.10, and 0.15 percents BAC (Federal Register December 14, 1984 (49 FR 48854)).

Concern was expressed by the IBT on issues relating to drivers called to work on short notice. The IBT urged that motor carriers be prohibited from penalizing drivers who inform their employers that the have recently consumed alcohol and may be in violation of BAC requirements. Roadway Express noted costs associated with some drivers using an extended call period to avoid working at inconvenient times. The FHWA believes that such issues are best handled by management-labor negotiations and that the time required for the States to adopt needed revisions in their laws will provide an opportunity for such negotiations.

A majority of the NAS proposed that second violations in a BAC range from any measured positive BAC to 0.04 percent be met with some intermediate level sanction. Drivers subject to Part 392 are currently required to report out-of-service sanctions to the licensing State and employer (49 CFR 392.5(d)). Some States currently place these violations on their records. Private enforcement of such repeat violations is another option. The FHWA is requesting comments on whether some intermediate level sanctions for second offenses below 0.04 percent BAC are appropriate.

The NAS panel recommended that drivers detected with positive BACs less than 0.04 percent be referred to a competent authority to determine whether they have an alcohol problem and, if so, be referred for treatment. The FHWA supports voluntary rehabilitation programs. However, the FHWA believes that it would be inappropriate to mandate such referrals in this Federal regulation.

As noted in the NAS study recommendations, States would be required to adopt the Federal BAC standard of 0.04 percent as the level at which CMV drivers would be subject to the mandated disqualifications to avoid a loss of Federal-aid highway funds. To implement this standard, some States may need to repeal or at least amend (i.e., to exempt CMV drivers from) that section of their presumptive laws under which a person testing below 0.05 percent BAC is presumed not to be under the influence of alcohol. The FHWA is seeking to determine if practical alternatives exist to such requirements.

Questions

In conjunction with the proposed rulemaking actions, comments are requested on the following questions:

(1) Are some intermediate Federal sanctions for second offenses below 0.04 percent BAC appropriate?

(2) What are the practical alternatives to the repeal or amendment with respect to CMV drivers of those sections of State laws under which persons testing below 0.05 percent BAC are presumed not to be under the influence of alcohol?

(3) As discussed earlier, a minority of the NAS panel members believes that the current State BAC limits (generally 0.10 percent) are appropriate for commercial drivers given the severity of the sanctions mandated in the Act. Some States and industry representatives have expressed the concern that the severity of these sanctions could serve to inhibit either enforcement of the standard or convictions based on the standard. Therefore, the FHWA is interested in whether there are ways to resolve these concerns. One alternative may be to create a set of sanctions with lesser penalities than the FHWA proposal for first-time violators. Under such an alternative, drivers with a first or subsequent violation consisting of a positive BAC level less than 0.04 percent would be placed out-of-service for 24 hours. The first-time violator who has a BAC level while on-duty at an "intermediate level" of between 0.04 percent and 0.10 percent would be disqualified from operating a CMV for a period less than 1 year. For example, 120 days, which is the current sanction for three serious traffic violations in a 3-year period (49 CFR 383.51(c)(3)(ii)) could be used as the disqualification period. The first-time violator with a BAC level of 0.10 percent or more, while on-duty would be subject to the 1-year or 3-year sanctions of the Act. Drivers with subsequent violations with BAC levels at or above 0.04 percent would be subject to lifetime disqualification as included in the Act. The FHWA solicits comments on ways, such as the example discussed above, which might resolve the enforcement and conviction concerns. Also, the FHWA is interested in the details of such alternatives, including what the appropriate sanction imposed would be for the "intermediate level" violations and whether or not drivers carrying hazardous materials should be subject to more severe sanctions for violations at BAC levels of less than 0.10 percent.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The proposed rule is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of CMV safety and alcohol use and the expected benefit in transportation safety, this proposed rule is considered significant under the regulatory policies and procedures of the DOT. For this reason, and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. The FHWA has prepared an overall regulatory evaluation for the various motor vehicle rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987 (52 FR 20574), and the proposed testing and licensing standards published on December 11, 1987 (52 FR 47326), is in the public docket and available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590, Room 4205. Specific impacts associated with this NPRM were

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analyzed in the NAS study and are summarized below.

The NAS study examined the costs and benefits of a scenario which involved increased enforcement at three BAC levels, 0.10, 0.04, and zero percent. In this enforcement scenario passive sensors and/or portable breath testers were assumed to be used. Using $1 million as the value of a life, the specified minimum value for DOT regulatory purposes, the NAS study found the benefit to cost ratio for the 0.10 percent BAC option to be 6.6. For both the 0.04 percent and zero BAC options the benefit cost ratio was found to be 6.7.

Using the same increased enforcement strategy assumptions, but assuming that the use of passive sensors and or portable breath testers would not be legally permitted resulted in benefit to cost ratio ranging from 4.1 to 4.9 for the three BAC levels studied.

As noted in the NAS report, the estimated benefits and costs are based on extrapolation from a limited and imperfect data base. Nonetheless, the benefits would have to be overestimated by in excess of 650 percent, relative to cost, before any of the stated increased enforcement levels and/or lower BAC levels would not be cost-effective when the above devices are used to determine probable cause. Greatest absolute benefits were with the zero BAC option with the least being at 0.10 percent BAC.

A significant part of the motor carrier industries covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the NAS study and the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and have had opportunities to submit comments to the public docket established in conjunction with FHWA's ANPRM of March 23, 1987, (52 FR 9192). The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal.

Federalism Assessment

This action proposes to amend portions of the FMCSRs primarily to include driving at BAC levels of 0.04 percent or higher as a disqualifying offense for CMV operators. Section 12006(f) of the Act directs the Secretary to take this action pursuant to notice and comment rulemaking. Failure to establish a BAC level will result in the adoption of a 0.04 level by operation of law.

State laws and regulations are not preempted by this action. However, in order to avoid a withholding of Federal-aid highway funds, States are required to adopt the BAC level established pursuant to this rulemaking or that level which is established by section 12006 if the agency does not set the level.

The statutory basis for this proposed action is expressly set forth in the Act. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. This proposed action limits the policymaking discretion of the States only in narrow ways, and does so only to achieve the national safety goals of the Act. This action would impose only minimal additional costs and burdens on the States as outlined above. The FHWA does not believe that this proposed action would materially affect the States' ability to discharge traditional State governmental functions or other aspects of State sovereignty. Accordingly, the FHWA further believes that this proposed action would be consistent with the President's Executive Order on Federalism.

Appendix A—Recommendations of the NAS Study

The Commercial Motor Vehicle Safety Act of 1986 requires the Secretary of Transportation to establish a BAC standard for commercial vehicle drivers and mandates a penalty for violating the newly established BAC limit as license revocation for one year on the first offense and permanent loss of the commercial license on the second offense.

The study committee believes that any consumption of alcohol on the job by commercial vehicle drivers is inappropriate for the work place and incompatible with traffic safety. The majority of the committee (three-fourths) recommends that the penalities required by the Act be applied to violations of 0.04 percent BAC. Moreover, consistent with the principle that alcohol consumption is inappropriate for the work place, the majority favors reducing the BAC limit for commercial vehicle drivers to zero, but also recommends that a lesser penalty than that required by the Act be applied to DUI violations below 0.04 percent. A penalty of license revocation for 24 hours to 30 days is recommended for drivers detected with BACs greater than 0.01 but less than 0.04 percent (use of 0.01 for the lower end of the range would account for measurement error). The driver should also be referred to a competent authority to determine whether he has an alcohol problem, and if so, should receive treatment. In addition, the violation should be placed on the driver's record. This recommendation parallels the current Federal regulation that prohibits interstate commercial vehicle drivers from drinking on the job and within 4 hours of reporting to work. The penalty for violating the current Federal regulation is for the driver to be placed out-of-service for 24 hours. In contrast to this penalty, the majority of the committee recommends that some action on the license be taken to ensure that a record is made of the violation and that the driver is referred for screening and subsequent treatment. On the second and subsequent offense of driving with a BAC greater than zero but less than 0.04 percent, the period for loss of license should range from 30 days to 1 year. Through the broad regulatory power of the office, the Secretary of Transportation could set the BAC standard at zero with these lower penalties and still require the States to adopt the penalties mandated by the Act for violations of 0.04 percent BAC.

The majority of the committee favors setting an explicit policy of zero BAC because it provides an unequivocally clear message to driver that alcohol in the bloodstream—whether from a beer with lunch or because of a hangover—is incompatible with the safe operation of commercial vehicles. A zero limit enforced by the public sector would also strengthen the policies of many private companies that strictly prohibit alcohol consumption on the job or before reporting to work.

A minority of the committee members believes that the existing state per se limits (perhaps reduced to 0.08 percent BAC) are appropriate when the penalties associated with violation are those mandated by the Act. These members also believe that it will be very difficult to establish probable cause at low BACs. The steps needed to establish probable cause at low BACs, facilitated by use of portable breath testers to screen drivers, could be interpreted as a search under the Fourth Amendment and could therefore be ruled unconstitutional. Without the use of portable breath testers and passive sensors, few drivers with BACs below 0.08 would be detected and the deterrent effect would be small. The majority of the committee, however, believes that the courts will recognize the government's interest in protecting innocent drivers and permit use of portable breath testers for screening.

The entire committee recommends that the BAC standard decided on by the Secretary of Transportation apply to drivers of CMVs weighing 26,000 pounds or more, drivers of passenger buses, and drivers of vehicles hauling hazardous materials. The estimated benefits and costs of the zero BAC policy for drivers of buses and trucks weighing 26,000 pounds or more are summarized in Table 7–3. The Federal Highway Administration has already ruled that the uniform license provisions of the Act will not apply to drivers of CMVs weighing between 10,000 and 26,000 pounds. The Federal Government and the States have a considerable task ahead of them to develop and coordinate the application of these new regulations to drivers of heavy trucks and passenger buses. Once that process is well under way, the committee recommends reducing the BAC limit, as suggested earlier, for drivers of CMVs weighing less than 26,000 pounds.

If the Secretary adopts a lower BAC standard, some additional steps are necessary to ensure a successful policy. The U.S. Department of Transportation should develop support for enforcing a lower BAC limit from State and local authorities and develop a public information campaign to communicate the new policy to CMV drivers. To assist in deterrence, the States should handle violations of the adopted BAC limit by revoking driver licenses through an administrative process with appropriate protection of due process. If the Secretary adopts a BAC limit below 0.05 percent, the States will also need to repeal that section of their presumptive laws under which a person testing below 0.05 percent BAC is presumed not to be under the influence of alcohol.

TABLE 7–3.—ESTIMATED BENEFITS AND COSTS OF ZERO BAC STANDARD (EXCLUDING MEDIUM TRUCKS)

Category	Annual effect
Lives saved	120–220
Nonfatal injuries averted	1,400–2,500
Medical savings (in thousands of dollars)	9,000–16,000
Property damage savings (in thousands of dollars)	7,000–12,000
Delay savings (in thousands of dollars)	3,000–6,000
Public and private enforcement costs (in thousands of dollars)	34,000–36,000

Those States that have not already adopted the language recommended in the Uniform Code that defines per se limits in terms of both alcohol concentration and breath alcohol concentration should be urged to do so.

The Secretary should also consider adopting additional steps to facilitate enforcement. For example, it could be required, by regulation, that as a condition of licensure, drivers consent to being screened with hand-held breath-testing devices to assist in establishing reasonable suspicion and probable cause. Such a requirement would assist officers in those cases when a driver refuses to cooperate in the screening phase. The refusal of a driver to submit to screening would be permitted as evidence in establishing probable cause. Drivers might also be required to consent to an evidential test once probable cause has been established. In addition, in order to maximize the deterrence benefits, the Secretary could urge the 25 States not currently allowing the use of portable breath testers in the screening phase to pass enabling legislation.

Adoption of lower BAC limits and experimentation with different enforcement strategies and sanctions should be carefully evaluated. This evaluation should be carried out by independent researchers. To improve quality of data for such an evaluation, the DOT should continue to emphasize the importance of reporting BACs of commercial vehicle drivers involved in crashes and should support research to determine the incidence of drinking and driving by commercial vehicle drivers. Experience with the costs of alternative BAC limits and estimates of their deterrent effects will provide the best basis for deciding whether the BAC limits and sanctioning patterns recommended in this report are appropriate or should be adjusted.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as follows:

List of Subjects in 49 CFR Parts 383, 391, and 392

Highway safety driver requirements, Highways and roads, Licensing, Motor carriers—driver qualification, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 5, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.5 is amended by adding two definitions and revising the definition entitled "conviction," placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"Alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

* * * * *

"Conviction" means a final conviction, or an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine, a plea of guilty or a finding of guilt on a traffic violation charge, regardless of whether the penalty is rebated, suspended, or probated.

* * * * *

"Under the influence of alcohol" means at or exceeding an alcohol concentration level of 0.10 percent or such lesser amount as prescribed by State law.

3. Section 383.51(b)(2) is amended to add paragraph (b)(2)(v) as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

(2) * * *

(v) Driving a commercial motor vehicle with an alcohol concentration of 0.04 percent or more.

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

5. Section 391.3 is amended by adding three definitions as paragraphs (e), (f), and (g) as follows:

§ 391.3 Definitions.

* * * * *

(e) The term "alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(f) The term "conviction" means a final conviction, or an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine, a plea of guilty or a finding of guilt on a traffic violation charge, regardless of whether the penalty is rebated, suspended, or probated.

(g) "Under the influence of alcohol" means that a driver's alcohol concentration (AC) level has been determined to be 0.10 percent, or such lesser amount as prescribed by State law.

6. Section 391.15(c)(2) is amended by adding a new paragraph (c)(2)(v) as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(v) Driving a commercial motor vehicle with an alcohol concentration of 0.04 percent or more.

PART 392—DRIVING OF MOTOR VEHICLES

7. The authority citation for Part 392 continues to read as follows:

Authority: 49 App. U.S.C. 2505; 49 U.S.C. 3102; sec. 12006, Pub. L. 99–570; 49 CFR 1.48.

8. Section 392. § 392.5(a)(2) is revised to read as follows:

§ 392.5 Intoxicating beverages.

(a) * * *

(2) Consume an intoxicating beverage regardless of its alcohol content, be under the influence of an intoxicating beverage, or have any measured positive alcohol concentration, while on

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(2) Consume an intoxicating beverage regardless of its alcohol content, be under the influence of an intoxicating beverage, or have any measured positive alcohol concentration, while on duty, or operating, or in physical control of a motor vehicle.

* * * * *

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Part VI

Department of Education

School Dropout Demonstration Assistance Program for Fiscal Year 1988; Notice Inviting New or Amended Applications

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DEPARTMENT OF EDUCATION

[CFDA No. 84.201]

Revised Notice Inviting New Applications or Amended Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

SUMMARY: This notice is being published to invite new applications or amended applications for the School Dropout Demonstration Assistance Program for fiscal year 1988. A notice inviting new applications for this program was originally published in the Federal Register on March 14, 1988 (53 FR 8400), establishing a deadline of April 25, 1988 for transmittal of applications. Subsequent to that deadline, the "Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988" (Pub. L. 100-297) was enacted. Section 1004 of Pub. L. 100-297 provides that the priority provisions of section 6005(c) of Pub. L. 100-297 shall apply to funds appropriated for fiscal year 1988. As a result, the Secretary revises the priorities that must be addressed before an application will be considered for funding. To be considered, applications must address projects that BOTH: (1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency and (2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

An applicant that has previously submitted an application addressing only one of these priorities must submit an amended application addressing both priorities no later than June 10, 1988 in order to be considered for funding. An applicant that has previously submitted an application addressing both of these priorities need not (but may if it chooses) submit an amended application. New applicants are invited to submit applications that address both priorities by the June 10, 1988 deadline.

In addition, the Secretary notifies applicants that the Intergovernmental Review requirements of Executive Order 12372 and of 34 CFR Part 79 apply to this program. The Intergovernmental Review deadline was inadvertently omitted in the March 14, 1988 Notice. All applicants are required to comply with the Intergovernmental Review requirements by the deadline stated in this notice.

The following changes are made to the original Notice Inviting Applications and are reflected in this Revised Notice: (1) The priorities sections and corresponding portion of the application form are revised; (2) the Intergovernmental Review deadline and a discussion of the Intergovernmental Review requirements is added; (3) the deadline for transmittal of applications is changed; (4) applicants are encouraged to submit applications for a two-year period, to the extent possible, and are notified that the relevant provisions of Pub. L. 100-297 govern the fiscal year 1989 grant awards; and (5) the Department of Education contact person for this program is changed.

Purpose: To provide Federal financial assistance to local educational agencies, community-based organizations, and educational partnerships to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Deadline for Transmittal of Applications: June 10, 1988.

Deadline for Intergovernmental Review: July 11, 1988.

Available Funds: $23,935,000.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 125.

Budget Period: 12 months.

Project Period: Up to 24 months.

Important Notes to Applicants: To the extent possible, applicants should submit applications for a two-year period. Applicants are notified that the relevant provisions of Pub. L. 100-297 govern the fiscal year 1989 grant awards.

Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department of Education is not bound by these estimates. This notice is a complete application package containing the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application materials are necessary.

Applicable Regulations: The following regulations apply to the School Dropout Demonstration Assistance Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review).

Intergovernmental Review Requirements: The March 14, 1988 Notice Inviting New Applications for the School Dropout Demonstration Program for Fiscal Year 1988 inadvertently omitted the deadline for Intergovernmental Review. This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In States that have established a State Review Process, applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. The names and addresses of the State Single Points of Contact were published in 52 FR 44338 on November 18, 1987.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the deadline for Intergovernmental Review indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.201, U.S. Department of Education, MS 6355, 400 Maryland Avenue, SW., Washington, DC 20202. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education. If an applicant has submitted an application prior to the publication of this notice in the Federal Register, and the applicant did not also submit the application to the State Review Process, the applicant must immediately submit the application to the State Review Process.

Proof of mailing to the State Review Process will be determined on the same basis as the mailing of applications to the Department of Education.

Supplemental Information and Requirements: References to the authorizing statute refer to section 137(c) of Pub. L. 100-202 (Continuing Appropriations for Fiscal Year 1988) as referenced to parts A and C of Title VIII of the Senate amendment to H.R. 5.

(a) *Selection criteria.*

(1) The Secretary uses the following criteria under 34 CFR 75.210(b) as adjusted in accordance with 34 CFR 75.210(c), to evaluate an application.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*

(1) *Meeting the purposes of the authorizing statute.* (40 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) above will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications, under paragraphs (b)(4)(i) (A) and (B) above the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) *Evaluation.* Among other requirements that apply in Part 75 of Title 34 of the Code of Federal Regulations, applicants should be aware of the following requirements. A grantee shall evaluate at least annually—

(1) The grantee's progress in achieving the objectives in its approved application;

(2) The effectiveness of the project in meeting the purposes of the program; and

(3) The effect of the project on persons being served by the project, including, any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

(d) *Federal evaluation.* A grantee shall cooperate in any evaluation of the program by the Secretary. (1) The Secretary announces that the Department intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. All grantees will be asked to provide descriptive information and outcome data on their projects. A smaller number of grantees will be selected to participate in a more in-depth evaluation. This evaluation will involve use of control or comparison groups and collection of data on student retention, attendance, achievement, and attitudes. Projects selected for in-depth evaluation will receive assistance in conducting activities associated with the evaluation.

(2) Applicants should note that 34 CFR 75.591 requires the cooperation of grantees in any evaluation of the program by the Secretary, and that 34 CFR 75.592 states that if a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee has met the evaluation requirements of the program, including those in 34 CFR 75.590.

(e) *Definition of dropout.* (1) For the purpose of this program, the Secretary makes a general statement of policy that the term "dropout," means a student who—

(i) Was enrolled in the district at some time during the previous regular school year;

(ii) Was not enrolled at the beginning of the current regular school year;

(iii) Has not graduated or completed a program of studies by the maximum age established by a State;

(iv) Has not transferred to another public school district or to a nonpublic school or to a State-approved educational program; and

(v) Has not left school because of illness or a school-approved absence.

(2) For the purpose of paragraph (e)(1)—"completed a program of studies" means received a certificate of completion—or similar designation—conferred by a public or nonpublic educational institution to indicate that the student has completed his or her program of studies, e.g., a certificate of attendance, completion of an individualized educational program (IEP) by a special education student, or completion of a State-approved, full-time alternative secondary school, including the general education development (GED) certification.

(3) Applicants are encouraged to use this definition. If an applicant plans to use another definition in the design or evaluation of its project, the applicant should describe the definition in its application.

Authority and Program Description: For fiscal year 1988, a program titled "School Dropout Demonstration Assistance Program" (School Dropout Program) is authorized under Pub. L. 100-202 (Continuing Appropriations for Fiscal Year 1988). Section 137(c) of Pub. L. 100-202 states that, subject to certain qualifications, the School Dropout Program is to be carried out in

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accordance with parts A and C of Title VIII of the Senate Amendment to H.R. 5. While your attention is called to the text of these provisions, the following is a summary of some of the pertinent parts of that legislation. Unless otherwise noted, section numbers in parentheses after each paragraph refer to sections in Title VIII of the State Amendment to H.R. 5.

Section 1004 of Pub. L. 100-297 provides that the fiscal year 1988 appropriation under the School Dropout Program will be governed by the priority provisions of section 6005(c) of Pub. L. 100-297. The priority sections of this notice reflect the Congressional intent of sections 1004 and 6005(c) of Pub. L. 100-297.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate (1) effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

(Section 8002)

Funding Categories

The Secretary will allot the fiscal year (FY) 1988 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, $5,963,750 for FY 1988); (2) LEAs administering schools with a total enrollment of at least 20,000 but less than 100,000 (40 percent of the amount appropriated, $9,574,000 for FY 1988), (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, $7,180,500 for FY 1988); and (4) community-based organizations (5 percent of the amount appropriated, $1,196,750 for FY 1988). For category (3), grants may be made to intermediate educational units and consortia of not more than 5 LEAs if the total enrollment of the largest such LEA is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(Section 8004 as amended by section 137(c) of Pub. L. 100-202)

Educational Partnerships

In each of the first three categories mentioned under *Funding Categories*, the Secretary will allot 25 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; (2) a business concern, business organization, or community-based organization; and (3) one of the following: a private nonprofit organization, an institution of higher education, a State educational agency, a State or local public agency, a private industry council (established under the Job Training Partnership Act), a museum, a library, an educational television or broadcasting station, or a community-based organization.

(Section 8004)

Distribution of Funds

The Secretary will ensure that, to the extent practicable, in approving grant applications: grants will be equitably distributed on a geographic basis within each enrollment size category; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

(Section 8007)

Limitation on Costs

Not more than 10 percent of any grant may be used for administrative costs.

(Section 8007)

Federal Funds

The Federal share of grants under this program shall not exceed 90 percent of the total cost of a project for the first year and 70 percent of such cost for the second year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be in cash or in kind.

(Section 8004)

Applications

Grants may be made only to an LEA, an educational partnership, or a community-based organization that submits an application to the Secretary.

Applications must contain (1) documentation of the number of children who were enrolled in the schools of the applicant for five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as dropouts; (2) documentation of the percentage that such number of children is of the total school-age population in the applicant's schools; (3) a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the problem; and (4) a plan for the development and implementation of a project that will include activities designed to carry out the purpose of the program.

(Section 8005)

Allowable Activities

The plan referred to in paragraph (4) of the *Applications* section may include activities that: (1) Implement identification, prevention, outreach, or reentry projects for dropouts and potential dropouts; (2) address the special needs of school-age parents; (3) disseminate information to students, parents, and the community related to the dropout problem; (4) include coordinated activities involving at least one high school and its feeder junior or middle schools and elementary schools for those local educational agencies having such feeder systems; (5) as appropriate, include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act; (6) involve the use of educational telecommunications and broadcasting technologies, and educational materials for dropout prevention, outreach, and reentry; (7) focus on developing occupational competencies that link job skill preparation and training with genuine job opportunities; (8) establish annual procedures for (i) evaluating the effectiveness of the project, and (ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country; (9) coordinate, to the extent practicable, with other student dropout activities in the community; or (10) use the resources of the community and parents to help develop and implement solutions to the local dropout problem.

(Section 8005)

Authorized Activities

In addition to the activities mentioned under *Allowable Activities*, grants may also be used for educational, occupational, and basic skills testing services and activities, including, but not limited to: (1) The establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry; (2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school; (3) the establishment or expansion of work-study, apprentice, or internship programs; (4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population; (5) the evaluation and revision of program placement of students at risk; (6) the evaluation of program effectiveness of dropout programs; (7) the development and implementation of programs for traditionally underserved groups of students; (8) the implementation of activities which will improve student motivation and the school learning environment; (9) the provision of training for school staff on strategies and techniques designed to identify children at risk of dropping out, intervene in the instructional program with support and remedial services, develop realistic expectations for student performance, and improve student-staff interactions; (10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and youth gang prevention community organizations; (11) the study of the relationship between handicapping conditions and student dropouts; (12) the study of the relationship between the ratio of dropouts among gifted and talented students compared to the ratio of dropouts among the general student enrollment; (13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and (14) the provision of other educational, occupational, and testing services and activities that directly relate to the purpose of the program.

(Section 8006)

Activities for Educational Partnerships

Grants under this program may be used by educational partnerships for: (1) Activities that offer jobs and college admissions for successful completion of the program for which assistance is sought; (2) internship, work study or apprenticeship programs; (3) summer employment programs; (4) occupational training programs; (5) career opportunity and skills counseling; (6) job placement services; (7) the development of skill employment competency testing programs; (8) special school staff training projects; and (9) any other activity described under *Authorized Activities*.

(Section 8006)

Priorities

In approving applications, the Secretary will give priority to applications that both: (1) Show the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA and (2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(Sections 1004 and 6005(c) of Pub. L. 100-297)

Special Considerations

The Secretary will give special consideration to: (1) Applications that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; and (2) applications which contain provisions for significant parental involvement in the design and conduct of the program for which the assistance is sought.

(Section 8005)

Continuation

In any application from a local educational agency for a grant to continue a project for a second year, the Secretary reviews the progress being made toward meeting the objectives of the project. The Secretary may refuse to award a grant if the Secretary finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(Section 8005)

Supplement, not Supplant

LEAs must use Federal funds received under this program only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the activities described above.

(Section 8201)

Coordination and Dissemination

LEAs receiving funds under this program must cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(Section 8201)

Definition

As used in this program, the term "community-based organization" means a private nonprofit organization that is representative of a community or significant segments of a community, and that provides educational or related services to individuals in the community.

(Section 8202)

Priorities and Special Considerations:

(a) *Priorities:* In accordance with EDGAR, 34 CFR 75.105(c)(3), applications that meet both of the priorities in paragraphs (1) and (2) below will receive from the Secretary absolute preference over applications that do not. Applications that do not address both of the priorities will not be considered. Applications must propose projects that both:

(1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency; and

(2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(b) *Special Considerations:* (1) In accordance with EDGAR, 34 CFR 75.105(c)(2), the Secretary will give special consideration to applications that:

(i) Emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; or

(ii) Contain provisions for significant parental involvement in the design and conduct of the program for which assistance is sought.

(2) An application that meets either of these two conditions will receive a competitive preference over an application of comparable merit that does not.

(c) *Invitation Priority:* (1) In accordance with EDGAR, 34 CFR 75.105(c)(1), the Secretary invites applicants to propose projects that

include activities designed to promote and foster—

(i) Strong instructional leadership;

(ii) A safe and orderly climate in schools and related facilities;

(iii) An emphasis on basic skills;

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202

or

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF [ ] NOTICE OF INTENT (OPTIONAL)	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
		b. DATE		b. DATE

include activities designed to promote and foster—

(i) Strong instructional leadership;

(ii) A safe and orderly climate in schools and related facilities;

(iii) An emphasis on basic skills;

(iv) Frequent assessment of pupil progress;

(v) High teacher expectations for student achievement;

(iv) Opportunities for parents to enroll their children in a school of their choice within the project area;

(vii) Cost-effectiveness for ease of replication or continuation without Federal funding; and

(viii) A positive impact on the family.

(2) An application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.201), Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and the title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number of this program.

Application instructions and forms: This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF–424 and instructions).

Part II: Budget information (form and instructions).

Part III: Application Narrative.

No grants may be awarded unless a completed application form has been received.

BILLING CODE 4000-01-M

OMB Approval No 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box) — ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION
2. APPLICANT'S APPLICATION IDENTIFIER — a. NUMBER — b. DATE (Year month day) 19
3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE) — a. NUMBER — b. DATE ASSIGNED (Year month day) 19
Leave Blank

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City — e. County
f. State — g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) — a. NUMBER 84.201 — MULTIPLE ☐ — b. TITLE Dropout Demonstration Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT (A—State; B—Municipal; C—Substate Organization; D—County; E—City; F—Federal Agency; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify:) — Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE (A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other) — Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT — b. PROJECT

14. TYPE OF APPLICATION (A—New; B—Revision; C—Renewal; D—Continuation; E—Augmentation) — Enter appropriate letter A

15. PROJECT START DATE (Year month day) 19 — 16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e) (A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify:)) — Enter appropriate letter(s)

18. DATE DUE TO FEDERAL AGENCY ▶ (Year month day) 19

19. FEDERAL AGENCY TO RECEIVE REQUEST: U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE): Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS: Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE — b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED (Year month day) 19 — 25. FEDERAL APPLICATION IDENTIFICATION NUMBER — 26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE▶ (Year month day) 19 — 30. STARTING DATE (Year month day) 19 — 31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) — 32. ENDING DATE (Year month day) 19 — 33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-009-8162 — 424-103 — STANDARD FORM 424 PAGE 1 (Rev 4-84)
PREVIOUS EDITION IS NOT USABLE — Prescribed by OMB Circular A-102
BILLING CODE 4000-01-C

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Instructions for Part I Federal Assistance Face Sheet (SF–424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option)

4a–h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED–CRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION
Section A - Budget Categories for Program Year 1988-89

1. Salary and Wages	$
2. Fringe Benefits	
3. Travel	
4. Equipment	
5. Supplies	
6. Contractual Services	
7. Other (itemize)	
8. Total Direct Costs (lines 1 to 7)	
9. Total Indirect Costs	
10. Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1. Program Income	$
2. Non-Federal Funds (State, local, etc.)	
3. In-Kind Contributions	

Section C - Estimate of Funding Needs

1. First Fiscal Year	$
2. Second Fiscal Year	
3. Third Fiscal Year	N/A

Section D - Estimate of Unobligated Funds

1. Unobligated Federal Funds from Preceding Fiscal Year	$ N/A
2. Unobligated Non-Federal Funds from Preceding Fiscal Year	N/A
3. Total Unobligated Funds from Preceding Fiscal Years (lines 2 + 3)	N/A

Section E - Budget Narrative (see instructions)

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Instructions for Part II—Budget Information

Section A—Budget Summary

Enter the total fund (Federal) requirements by budget categories

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. Contractual Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1–6 above.

8. Total Direct Costs: Show total for lines 1–7.

9. Total Indirect Costs: Indicate the amount of indirect cost to be charged to the program or projects. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

1. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year.

2. Unobligated Non-Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year that are from non-Federal sources.

3. Total: Show total for lines 1 and 2.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for indivuidal direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

BILLING CODE 4000-01-M

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Absolute Priorities

Indicate whether you are submitting an application addressing both of the priorities below by marking the appropriate boxes. Only those applications that address both of these priorities will be considered.

|___| Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA, and

|___| Application reflects very high numbers or very high percentages of school dropouts in the applicant's schools.

Competitive Priorities: Special Considerations

Identify the special consideration under which you are submitting the application by marking the appropriate box.

|___| Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.

|___| Application contains provisions for significant parental involvement in the design and conduct of the program.

Invitational Priorities

Identify each invitational priority under which you are submitting the application, if applicable.

|___| _____

|___| _____

|___| _____

|___| _____

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SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM
Data Sheet

Please check the appropriate box.

☐ Total enrollment of 100,000 or more elementary and secondary school students.

☐ Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.

☐ Total enrollment of less than 20,000 elementary and secondary school students, intermediate educational unit, or consortium. Check here if enrollment is less than 2,000 ____.

*Please check the box below if the applicant is a community-based organization.

☐

**Please check the box below if the applicant is submitting the application as an educational partnership. Then list the three members of the partnership and circle the type of organization

☐

(A) _____
LEA

(B) _____
business concern, business organization, or community-based organization

(C) _____
any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization.

*Evidence of the applicant's non-profit status should be attached.

**Evidence of the applicant's non-profit status should be attached if the educational partnership includes a nonprofit private organization.

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please provide the information set forth below on the number and percentage of children who were enrolled in the applicants' schools for 5 academic years prior to the date of this application who have not completed their elementary or secondary education and who are classified as dropout students.

School Year	No. Dropout Students	Total Enrollment	Percentage of Dropouts
1986-87			
1985-86			
1984-85			
1983-84			
1982-83			

Applicant's Definition of a Dropout:

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Instructions For Part III—Application Narrative

Before preparing the Application Narrative, applicants should read carefully the programmatic requirements, the information regarding priorities, and the selection criteria for the School Dropout Demonstration Assistance Act. The information is included in this application notice. In addition, applicants should read the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 Administration of Grants and Part 75 Direct Grant Programs.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract—that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice; and

3. Supply necessary data on the data sheets provided. Applicants should record the appropriate priorities, enrollment data, number and percent of dropouts and potential dropouts. Applicants should include the definition of a dropout that they use in collecting data.

Please limit the Application Narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

(Approved by the Office of Management and Budget under control number 1810-0535)

Assessment of Educational Impact: The Secretary requests comments on whether the information collection requirements in this notice would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

FOR INFORMATION CONTACT: John Fiegel, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-4342.

Program Authority: Pub. L. 100-202.

Dated: May 6, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-10427 Filed 5-9-88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
May 10, 1988

Part VII

Department of Transportation

Maritime Administration

Notice of Application to Effect Proposed Sale of Certain Vessels and Proposed Assignment of ODSAs; Apex Resources, Inc. et al.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-828]

Apex Resources, Inc. et al.; Application To Effect Proposed Sale of Certain Vessels and Proposed Assignment of ODSAs

AGENCY: Maritime Administration, DOT.

ACTION: Correction of Docket No. S-828.

SUMMARY: The subject notice was published in the Federal Register on May 6, 1988 (53 FR 16334-16335). The signature date shown on 53 FR 16335 of April 4, 1988 is incorrect. The correct signature date is May 4, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: May 6, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-10556 Filed 5-9-88; 9:50 am]

BILLING CODE 4910-81-M

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federal register

Tuesday
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Part VIII

International Development Cooperation Agency

Agency for International Development

Housing Guaranty Programs; Kenya; Notice of Investment Opportunity

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity; Kenya

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Kenya as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Kenya. The Government of Kenya has authorized A.I.D. to request proposals from eligible investors.

Note: This is one of two investment opportunities for the Government of Kenya advertised separately on the same date of publication.

The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Kenya

Loan Number: 615–HG–007A—$11.45 Million.

Attention: Mr. J.A.K. Kipsanai, Managing Director, National Housing Corporation, P.O. Box 30257, Nairobi, Kenya, Telegram Housing.

Interested investors should telegram their bids to the Borrower's representatives on May 25, 1988, but no later than 5:00 p.m. New York time. Bids should be open until 5:00 p.m. New York time on May 27, 1988. Copies of all bids should be simultaneously sent to the following addresses.

Mr. Fredrick A. Hansen, Assistant Director/East & Southern Africa, RHUDO/Nairobi, USAID/Nairobi, Box 241, APO New York, NY 09675, *Telex No.:* 22964 AMEMB, *Telephone No.:* 254–2–331–160;

Michael G. Kitay, Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, *Telex No.:* 892703 AID WSA, *Telefax No.:* 202/647–4958 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $11.45 Million

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate with Borrowers option to convert to fixed rate starting three years after loan closing).

(e) *Draw Down:* $1.45 Million from borrowing will be disbursed to Borrower upon signing after payment of fees. Balance of $10 Million will be delayed and disbursed within twelve months of closing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg), SA–18, Washington, DC 20523, Telephone No.: 703/875–4877.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Dated: May 6, 1988.

[FR Doc. 88–10575 Filed 5–9–88; 10:03 am]

BILLING CODE 6116–01–M

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Kenya as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Kenya. The Government of Kenya has authorized A.I.D. to request proposals from eligible investors.

Note: This is one of two investment opportunities for the Government of Kenya advertised separately on the same date of publication.

The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Kenya

Loan Number: 615–HG–008C—$9.550 Million.

Attention: Mr. C. Mbindyo, Permanent Secretary, Ministry of Finance, P.O. Box 30007, Nairobi, Kenya, *Telex No.:* 22696. *Telepone No.:* 336128.

Interested investors should telegram their bids to the Borrower's representative on May 25, 1988, but no later than 5:00 p.m. New York Time. Bids should be open until 5:00 p.m. New York time on May 27, 1988. Copies of all bids should be simultaneously sent to the following addresses:

Mr. Frederick A. Hansen, Assistant Director/East & Southern Africa, RHUDO/Nairobi, USAID/Nairobi, Box 241, APO New York, NY 09675. *Telex No.:* 22964 AMEMB. *Telephone No.:* 254–2–331–160.

Michael G. Kitay, Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523. *Telex No.:* 892703 AID WSA. *Telefax No.:* 202/647–4958 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $9.550 Million

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of three rates: (fixed, variable, or variable rate with Borrowers option to convert to fixed rate starting three years after loan closing).

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subjected to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount therof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg), SA–18, Washington, DC 20523. *Telephone No.:* 703/875–4877.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Dated: May 6, 1988.

[FR Doc. 88–10576 Filed 5–9–88; 10:03 am]

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federal register

Tuesday
May 10, 1988

Part IX

The President

Proclamation 5815—National Safe Boating Week, 1988

Executive Order 12639—Administration of Foreign Relations and Related Functions

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Federal Register
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Tuesday, May 10, 1988

Presidential Documents

Title 3—
The President

Proclamation 5815 of May 6, 1988

National Safe Boating Week, 1988

By the President of the United States of America

A Proclamation

As a people whose land is blessed with a bounty of rivers, lakes, and streams, Americans have always prized the relaxation and pleasure of the open water. "You feel mighty free and easy," Twain's Huck Finn said, "and comfortable on a raft." This quality of the American spirit has made recreational boating one of the most steadily popular and rapidly growing leisure-time activities in the United States.

Each year, however, our Nation's waterways become more crowded with new and faster watercraft as well as an increasing number of traditional vessels. Despite this fact, boating remains one of the least regulated transportation activities. It is essential, therefore, that all operators be familiar with the rules and courtesies of safe boating. National Safe Boating Week reminds all Americans who use the Nation's waterways to educate themselves about and to respect the dangers of the marine environment and to learn how to operate watercraft in a safe and prudent manner.

Boating has its very own "rules of the road." An operator needs to know a great deal before going out on the water. For this reason, the theme of this year's National Safe Boating Week is "Know Before You Go." Those who operate small boats for fishing, hunting, and other sporting activities should have detailed knowledge of the boats they are using, their handling characteristics, how to safely load them, how to prevent them from capsizing, and how to operate and maintain their equipment. In case of an emergency, all boat operators and riders should know how to use their craft's safety devices and be certain they will work as intended; for example, life jackets should be checked, tested, and properly fitted. In addition, boaters need to be watchful for potentially dangerous situations. They must have a thorough knowledge of the waters they are using, the particular hazards they may encounter, and the prospects for environmental conditions such as tides, currents, temperature, and weather that may be dangerous. To avoid collisions and keep traffic moving, all boaters should know the Navigation Rules and the courtesies of safe boating. Most of all, boaters should know their own limitations so that they do not involve themselves and others in situations beyond their skill or physical endurance.

One especially dangerous problem for boaters is the use of alcohol or drugs. Wise boaters will avoid the use of alcohol and drugs while operating a vessel. That wisdom is backed by the law: Operation of a vessel while intoxicated is a major impediment to safety and is now a Federal offense punishable by hefty civil and criminal penalties.

Boating safety is the responsibility of all who use America's waterways. Let National Safe Boating Week be the start of a major campaign to educate boaters to "know before they go."

To promote boating safety, the Congress enacted the Joint Resolution of June 4, 1958 (36 U.S.C. 161), as amended, authorizing and requesting the President to proclaim annually the week commencing on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 5, 1988, as National Safe Boating Week. I invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia, to provide for the observance of this week.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10568
Filed 5-9-88; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12639 of May 6, 1988

Administration of Foreign Relations and Related Functions

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning foreign assistance to the Secretary of State, the Secretary of Defense, and the Director of the International Development Cooperation Agency, it is hereby ordered as follows:

Section 1. Section 1-102(a) of Executive Order No. 12163, as amended, is further amended by amending paragraphs (9) and (10) to read as follows:

"(9) section 538 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202), to be exercised by the Administrator of the Agency for International Development within IDCA; and

"(10) the first proviso under the heading "Population, Development Assistance" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202), to be exercised by the Administrator of the Agency for International Development within IDCA.".

Sec. 2. Section 1-201(a)(11) of Executive Order No. 12163, as amended, is further amended by inserting "and (e)" after "620C(d)".

Sec. 3. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by amending paragraph (22) to read as follows:

"(22) Section 402(b)(2) of Title 10 of the United States Code, which shall be exercised in consultation with the Secretary of Defense;".

Sec. 4. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by deleting "and" at the end of paragraph (25) and by amending paragraph (26) to read as follows:

"(26) sections 513, 527, 528, 542, 561, 570, 571, 586(c), and 590 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202);".

Sec. 5. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by inserting the following new paragraphs at the end thereof:

"(27) the fourth proviso under the heading "Southern Africa, Development Assistance" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202);

"(28) the proviso relating to tied aid credits under the heading "Economic Support Fund" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202), which shall be exercised in consultation with the Administrator of the Agency for International Development;

"(29) subsection (c)(2) under the heading "Foreign Military Sales Debt Reform" contained in Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100-202), and section 572 and section 573(c) of that Act, each of which shall be exercised in

consultation with the Secretary of Defense. In addition, section 573(c) shall be exercised in consultation with the Director of the United States Arms Control and Disarmament Agency.

Sec. 6. Section 1–301 of Executive Order No. 12163, as amended, is further amended to add the following section:

"(f) The functions conferred upon the President under section 573(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202)."

Sec. 7. Section 1–701 of Executive Order No. 12163, as amended, is further amended:

(1) in subsection (d) by deleting "670(a)(2)" and inserting in lieu thereof "670(a)"; and

(2) by amending subsection (g) to read as follows:

"(g) Those under sections 130, 131, 504 and 505 of the ISDCA of 1985".

Ronald Reagan

THE WHITE HOUSE,
May 6, 1988.

[FR Doc. 88-10567
Filed 5-9-88; 11:13 am]
Billing code 3195-01-M

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The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S. 1378/Pub. L. 100–307
To provide for setting aside the first Thursday in May as the date on which the National Day of Prayer is celebrated. (May 5, 1988; 102 Stat. 458; 1 page) Price: $1.00

S.J. Res. 222/Pub. L. 100–308
To designate the period commencing on May 1, 1988, and ending on May 7, 1988, as "National Older Americans Abuse Prevention Week." (May 5, 1988; 102 Stat. 457; 1 page) Price: $1.00

S.J. Res. 242/Pub. L. 100–309
Designating the period commencing May 2, 1988, and ending on May 8, 1988, as "Public Service Recognition Week." (May 5, 1988; 102 Stat. 458; 1 page) Price: $1.00

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Wednesday
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federal register

Wednesday
May 11, 1988

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4. An introduction to the finding aids of the FR/CFR system.

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WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
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KANSAS CITY, MO

WHEN: June 10; at 9:00 a.m.
WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
RESERVATIONS: Call the St. Louis Federal Information Center;
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Kansas: 1–800–432–2934

NEW YORK, NY

WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 600

Organization and Functions

AGENCY: Farm Credit Administration.

ACTION: Final Rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts technical amendments to the regulations relating to the organization and functions of the Farm Credit Administration (FCA). The regulations implement certain statutory changes to the operations of the FCA and the FCA Board resulting from the enactment of the Agricultural Credit Act of 1987 (1987 Act) and contain certain technical changes.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles R. Row, Chief, Human Resources Division, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4135, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1987 Act amended some sections of the Farm Credit Act of 1971 (Act) relating to the authorities of the FCA Board and the Chairman and their respective authorities concerning the appointment of personnel. Among other things, the 1987 Act provided for the appointment of the personal staff of FCA Board Members by the Members, made Office Director appointments by the Chairman subject to the approval of the FCA Board, and clarified the authority of the Chairman to delegate certain powers. These amendments to the FCA regulations in 12 CFR Part 600 implement these statutory changes and include a revised description of the organization of the FCA.

The amendments contained in these regulations relate to the following matters:

(1) Provide for the appointment of an FCA Board Member's personal staff by the Board Member.

(2) Provide for the appointment by the Chairman of FCA Office Directors to be subject to the approval of the FCA Board.

(3) Require FCA Board approval for the Chairman to delegate powers specifically reserved to the Chairman by the Act.

(4) Redescribe the organization and the functions of the Offices of the FCA.

In acting on the regulations, the Board determined that the amendments conform the regulations to statutory changes and relate to agency management and personnel and, therefore, do not involve rulemaking as defined in 5 U.S.C. 553(a)(2). The purpose of the rulemaking requirements of the Administrative Procedure Act is to allow public participation in the promulgation of rules which have a substantial impact on those regulated. Since these regulations contain nondiscretionary implementations of statutory changes or relate to agency management and personnel, no public participation is required under the Administrative Procedure Act nor would such participation serve a useful purpose.

Even if these regulations did involve rules for purposes of 5 U.S.C. 553(a), the Board finds that notice and public comment are unnecessary and contrary to the public interest. 5 U.S.C. 553(b) (A) and (B) provide that when regulations involve matters of agency organization, or where the agency finds good cause that the notice and public comment are unnecessary or contrary to the public interest, the agency may publish regulations in final form. As discussed above, these regulations involve technical amendments or conforming changes required by the 1987 Act. It would be contrary to the public interest to delay these changes since they are necessary to the public's awareness and understanding of the changes to the FCA's operations which resulted from the 1987 Act. Without these amendments, the existing regulations are inaccurate and may be confusing to the public.

For the same reasons, the Board has determined, in accordance with 5 U.S.C. 553(d), that these regulations will be effective immediately upon publication.

The Board has determined also, for the same reasons, that a delay in the effective date in accordance with section 5.17(c)(2) of the Act is unnecessary and would be contrary to the intent of Congress.

Accordingly, the Board directs that the regulations are effective immediately upon publication.

List of Subjects in 12 CFR Part 600

Organization and functions (Government agencies).

As stated in the preamble, Part 600 of Chapter VI, Title 12, of the Code of Federal Regulations is revised as follows:

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

Sec.
600.1 The Farm Credit Act.
600.2 Farm Credit Administration.
600.3 Farm Credit Administration Board.
600.4 Chairman of the Farm Credit Administration Board.
600.5 Organization of the Farm Credit Administration.

Subpart B—[Reserved]

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart A—Farm Credit Administration

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Pub. L. 92–181 recodified and replaced the prior laws under which the Farm Credit Administration and the institutions of the Farm Credit System were organized and operated. The prior laws, which were repealed and superseded by the Act, are identified in section 5.10(a) of the Act. Subsequent amendments to the Act and enactment dates are as follows: Pub. L. 94–184, December 31, 1975; Pub. L. 95–443, October 10, 1978; Pub. L. 96–592, December 24, 1980; Pub. L. 99–190, December 19, 1985; Pub. L. 99–198, December 23, 1985; Pub. L. 99–205, December 23, 1985; Pub. L. 99–509, October 21, 1986; Pub. L. 100–233, January 1988. The law is codified at 12 U.S.C. 2000, *et. seq.*

§ 600.2 Farm Credit Administration.

The Farm Credit Administration is an independent, non-appropriated fund agency in the executive branch of the Federal Government. It is composed of

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the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration. The mailing address of the central offices of the Farm Credit Administration is McLean, Virginia 22102–5090. The hours of business in the central offices are 8:30 a.m.–5:00 p.m. (eastern time), Monday through Friday, excluding Federal holidays.

§ 600.3 Farm Credit Administration Board.

(a) *Organization.* The Farm Credit Administration Board (Board) is a full-time, three-member board entrusted with the responsibility to manage the Farm Credit Administration. The Board consists of three members appointed by the President with the advice and consent of the Senate. The Board may not contain more than two members of the same political party. One member is designated by the President as Chairman of the Board for the duration of such member's term. Each member of the Board shall serve a single 6-year term and cannot be reappointed except in the case of such members who are initially appointed for less than a 6-year term on initial formation of the Board or any member who is appointed to fill an unexpired term of less than 3 years. A member of the Board shall continue to serve subsequent to the expiration of that member's term until the point in time at which an eligible successor has taken his or her oath of office. A person appointed to the Board shall subscribe to the oath of office within 15 days after having received notice of appointment. Each Board member is assisted by a staff.

(b) *Functions and responsibilities.* The Board manages, administers, and establishes policies for the Farm Credit Administration. Specifically, the Board prescribes the rules and regulations necessary for the implementation of the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions and for the performance of all the powers and duties vested in the Farm Credit Administration.

§ 600.4 Chairman of the Farm Credit Administration Board.

(a) The Chairman of the Board is the Chief Executive Officer of the Farm Credit Administration. The Chairman is responsible for directing the implementation of the policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration. In carrying out policies as directed by the Board, the Chairman acts as the spokesperson for the Board and represents the Board and the Farm Credit Administration in their official relations within the Federal Government. Under policies adopted by the Board, the Chairman consults with the Secretary of Treasury, Board of Governors of the Federal Reserve System, and the Secretary of Agriculture on specific matters.

(b) The Chairman appoints such personnel as may be necessary to carry out the functions of the Farm Credit Administration except that the appointment of Office Directors by the Chairman shall be subject to the approval of the Board, and regular, full-time personnel employed in the immediate office of each Board member shall be appointed by each such Board member. The powers of the Chairman as Chief Executive Officer necessary for day-to-day management may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman may designate except that the Chairman may not delegate powers specifically reserved to the Chairman by the Act without the approval of the Board.

§ 600.5 Organization of the Farm Credit Administration.

(a) *Office Directors.* Each Office of the Farm Credit Administration is headed by a Director who may, with the approval of the Chairman, establish and fix the responsibilities of the divisions and such other units as the Director deems necessary for the efficient functioning of the Office.

(b) *Offices and Functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of Farm Credit System institutions and other institutions as required by law and prepares and issues reports of examination which summarize examination findings and recommends corrective action as appropriate. The Office recommends formal administrative action by the agency to correct conditions when an institution of the Farm Credit System is found to be operating in an unsafe or unsound manner or is in violation of law or regulation. The Office Director prepares examination schedules for approval by the Board and advises the Board on matters affecting policy, regulation, and legislation relating to examination activities. The Director, Office of Examination, is the Chief Examiner of the Farm Credit Administration.

(2) *Office of Analysis and Supervision.* The Office of Analysis and Supervision issues or recommends to the Board, as appropriate, banking and prudential standards for the operation Farm Credit System institutions, changes in System charters and other actions of the institutions as required by law or regulation, and exercises statutory enforcement powers where unsafe and unsound System practices are found or where the rules, regulations, or orders of the Board are violated. The Office collects financial data from System institutions and conducts ongoing financial and economic analyses.

(3) *Office of Administration.* The Office of Administration provides agency administrative management for the agency budget, accounting, human resources, equal opportunity programs, training, procurement, electronic data processing, document processing, property, supply, facilities, records and other administrative services.

(4) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the Board, the Chairman, and the agency staff. The Office interprets the Farm Credit Act of 1971, as amended, and other applicable laws, coordinates the preparation of agency rules and regulations, and represents the agency in litigation, in enforcement proceedings brought by the agency, and in proceedings before other administrative bodies. The Director, Office of General Counsel, is the General Counsel of the Farm Credit Administration.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs coordinates and disseminates all communication by the agency with the Congress and plans and implements all public communications. The Office is the first source of information to the Farm Credit System and borrowers concerning the Farm Credit Administration and provides other representational services for the Board and the agency to the public.

(6) *Office of Internal Audit.* The Office of Internal Audit reviews and evaluates the adequacy and effectiveness of the controls and procedures of all operating and administrative offices of the agency.

(c) *Additional Information.* Current information on the organization of the Farm Credit Administration may be obtained from the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virgnia, 22102–5090.

Subpart B—[Reserved]

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–10435 Filed 5–10–88; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 611

Farm Credit System; Merger and Reorganization Proposals

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA) Board adopts interim regulations and requests public comments thereon, which implement the provisions of section 412 of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233. The interim regulations provide for the establishment of a Special Committee on the Merger of Farm Credit Banks, the procedures for the selection of members to the Committee and the timeframes for obtaining required approvals and conducting stockholder votes on merger plans.

DATES: This regulation is effective May 11, 1988.

Written comments must be received on or before June 10, 1988.

ADDRESSES: Submit comments (in triplicate) in writing to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4475

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking (53 FR 4416) seeking public comments on the implementation of the provisions of the 1987 Act relating to the reorganization of Farm Credit System institutions. Among the provisions upon which comments were requested was section 412 of the 1987 Act which provides for the creation of a committee to develop a proposal for the merger of the district Farm Credit Banks.

The FCA received comments from the Farm Credit Corporation of America (FCCA) and the banks in one Farm Credit district regarding section 412 of the 1987 Act. Both commentators recommended that the regulations include a provision for the selection of Special Committee members by current members of the district board, if the Farm Credit Bank is not established in the district prior to the expiration of the six-month period. Both commentators also suggested that the regulations address required procedures relating to the timeframes for the submission of the Committee's proposal to the FCA and the stockholders. In addition, the commentators suggested that the FCA authorize the Special Committee members to elect a chairman from among their members and provide for the election by each Farm Credit Bank Board of an alternate Special Committee member.

The FCA Board adopts an interim regulation at 12 CFR 611.1140 which sets forth certain requirements governing the organization of the Special Committee and timetables for the submission of its report to the FCA and to stockholders. The regulation clarifies that the proposal of the Special Committee may include individual merger plans involving one or more Farm Credit Banks. The regulation provides that in a district where the board of directors of the Farm Credit Bank will not have its first meeting prior to July 5, 1988, the Special Committee member and alternate shall be elected prior to such date by the members of the District Board elected by the Federal land bank associations, production credit associations, and borrowers at large. Finally, the regulation provides that the Special Committee proposal and each individual merger plan, together with disclosure material, shall be submitted to the FCA not later than 90 days prior to the scheduled stockholder votes. In addition, the stockholder votes shall be scheduled to occur not later than 90 days prior to the effective date of the merger, which, in any event, shall not be later than July 5, 1988.

In accordance with 5 U.S.C. 553 (b) and (c), the FCA finds that additional public comments prior to the effective date of this regulation would be impracticable and contrary to the public interest. The FCA Board considered all of the public comments received in response to the Advance Notice of Proposed Rulemaking relating to the implementation of section 412 of the 1987 Act. In light of the statutory requirement for the formation of the Special Committee, any delay in the effective date of the regulation would delay the selection of directors to the Special Committee and prevent the committee from commencing its work in a timely fashion. For the same reasons, the FCA Board finds, in accordance with section 5.17(c)(2) of the Farm Credit Act of 1971, as amended, that an emergency exists which requires that these regulations be effective prior to the expiration of the 30-day congressional review period.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organizations and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; Sec. 412 of Pub. L. 100–233.

2. Part 611, Subpart J is revised to read as follows:

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

§ 611.1140 Consolidation of Farm Credit Banks.

(a) In accordance with section 412 of the Agricultural Credit Act of 1987, representatives of each Farm Credit Bank Board are required to participate in the development of a proposal under which the stockholders of each or some of such banks will vote on merger plans. The proposal may provide for mergers of Farm Credit Banks that will result in the reduction in the number of Farm Credit Banks to no less than six such banks.

(b)(1) For the purpose of developing the merger proposal for the Farm Credit Banks and the individual merger plans, there will be established not later than July 5, 1988, a Special Committee on the Merger of Farm Credit Banks. The Special Committee shall be composed of one director from the board of directors of each Farm Credit Bank and the members of the Farm Credit System Assistance Board. The Special Committee shall elect a chairman from among its members.

(2) The Board of Directors of each Farm Credit Bank shall elect its representative to the Special Committee by majority vote from among its members. In those districts where the

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Farm Credit Bank will not have its first board of directors' meeting prior to July 5, 1988, the Special Committee member shall be elected prior to such date by the members of the District Board elected by the Federal land bank associations, production credit associations and borrowers at large. Each board of directors shall also elect an alternate member of the Special Committee who shall attend meetings and vote on matters when the principal representative is unable to attend.

(c) The proposal developed by the Special Committee may include one or more merger plans involving two or more Farm Credit Banks. Upon approval of the entire proposal by a majority of the members of the Farm Credit System Assistance Board and approval of any merger plan contained in the proposal by the Special Committee representatives of the banks involved in such merger, the merger plans shall be submitted to the stockholders of the banks involved.

(d) The proposal of the Special Committee and each merger plan, together with the disclosure materials, shall be submitted to the Farm Credit Administration for approval not later than 90 days prior to the scheduled date for the stockholder votes for each merger involved. The stockholder votes shall be scheduled to occur not later than 90 days prior to the effective date of the merger, which shall not be later than July 5, 1989.

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10437 Filed 5-10-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 620

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts in final form, with a minor clarifying change, the interim rule amending Part 620 that was published with request for comment on February 5, 1988. 53 FR 3334. The rule relates to disclosure of loans involving a greater than normal risk of collectibility to senior officers and directors and their immediate families and affiliated organizations. The rule implements a provision of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act), which amends section 5.17(a)(9) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2252(a)(9), by placing limitations on the disclosure the FCA can require in shareholder reports of the condition or classification of loans to senior officers and directors and their immediate families.

DATES: This regulation shall become effective after the expiration of 30 days from publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020

or

James, Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4483, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On February 5, 1988, the FCA published an interim rule with request for comment that implements a provision of the 1987 Act. Section 424 of the 1987 Act amended section 5.17(a)(19) of the 1971 Act, 12 U.S.C. 2252(a)(9), to prohibit the FCA from requiring in each institution's shareholder reports, disclosure of the condition or classification of a loan to a director who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the shareholder meeting to which the statement relates. In addition, the statutory amendment limits the family members from whom disclosure can be required to those who reside with directors or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress intended the limitations on disclosure to apply to senior officers as well. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 288.) The FCA stated in the preamble to the interim rule that the term "resign" will be interpreted to mean that the officer or director has actually vacated the office.

The FCA received three comments on the interim rule, one from the Farm Credit Corporation of America (FCCA), on behalf of its member banks, and one from each of two Farm Credit Districts, concurring with the FCCA comments. The FCCA supported the rule but requested several clarifications.

First, the FCCA requested clarification that the formal resignation can occur at any time up to the actual time of filing of the applicable report with the FCA. The FCA confirms the FCCA's interpretation, with the understanding that the actual filing will occur no later than the time for filing required by the regulation. Section 620.3(j)(3)(ii) of the interim rule has been changed in the final rule to clarify this point, by inserting the parenthetical phrase "(but in no case later than the date of actual filing)" after "Farm Credit Administration." The FCA also emphasizes that the officer or director must also have actually left office prior to the required time for filing of the applicable report, but in no case later than the date of the actual filing of the report. The FCA will monitor any such resignations through its examination process to assure that they have been accomplished in good faith and not merely to circumvent the regulation.

Second, the FCCA requested confirmation of its understanding that where the term of office will expire at an annual meeting of the stockholders and the director is not standing for re-election, a resignation prior to the date of the stockholder meeting would not be necessary in order to avoid disclosure. The FCA confirms that it intends the regulation to be so understood.

Third, the FCCA requested confirmation that if there are no loans to senior officers or directors or their immediate families requiring disclosure because they involve a greater than normal risk of collectibility, the separate statement required by the interim rule should be a general statement that there are no loans to senior officers and directors. The FCCA further stated its understanding that if there were such loans, they would be disclosed unless there were a timely resignation by the senior officer or director involved or an expiration of the term of office of the director. The FCA intends the regulation to operate as follows: If there are no loans to senior officers and directors, their affiliated organizations, or their immediate family members, requiring disclosure because they involve a greater than normal risk of collectibility (except for any loans to persons who have resigned in a timely manner or who do not seek re-election at the annual meeting), the institution should state that there are no loans to senior officers or directors, their affiliated organizations, or immediate family members who reside in the same household or in whose loan or business operation the officer or director has a material financial or legal interest, that require disclosure because they involve a greater than normal risk of collectibility. If there are such loans requiring disclosure because they require a greater than normal risk of collectibility, the institution should make such disclosure and state that except as disclosed in the report, there are no such loans requiring disclosure because they involve a greater than normal risk of collectibility.

List of Subjects in 12 CFR Part 620

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements.

Accordingly, the interim rule amending 12 CFR Part 620 that was published at 53 FR 3334 on February 5, 1988 is adopted as a final rule with the following change:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 is revised to read as follows:

. **Authority:** Secs. 5.17; 12 U.S.C. 2252; sec. 424 of Pub. L. 100-233.

2. Section 620.3(j)(3)(ii) is revised to read as follows:

§ 620.3 Contents of the Annual Report to Shareholders.

* * * * *

(j) * * *

(3) *Loans to senior officers and directors.* * * *

(ii) To the extent applicable, state that no loan to a senior officers or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectibility; provided that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10436 Filed 5-10-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-23; Amendment 39-5911]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222, 222B and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters by individual letters. The AD requires revising the FAA-approved Rotocraft Flight Manual Emergency/Malfunction Procedures and installing a red engine chip light lens. The AD was needed to detect and prevent a possible impending engine power turbine wheel burst which could result in failure of the adjacent engine, severance of the tail rotor driveshaft, and subsequent loss of the helicopter.

EFFECTIVE DATE: May 27, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87-13-01, issued June 19, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: On June 19, 1987, priority letter AD No. 87-13-01 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters. The AD required engine shutdown in the event of a chip light due to a possible No. 3 bearing problem. AD action was necessary to detect and prevent a possible impending power turbine wheel burst.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued June 19, 1987, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Model 222, 222B, and 222U helicopters (LTS 101 series engines installed) certificated in any category. (Airworthiness Docket No. 87-ASW-23)

Compliance is required as indicated, unless already accomplished.

To detect and prevent a possible impending engine power turbine wheel burst which could result in failure of the adjacent engine, severance of the tail rotor driveshaft, and subsequent loss of the helicopter, accomplish the following:

(a) If the scavenge debris monitor *is* installed on each engine and *is* wired to a separate red engine chip light which incorporates a light test feature (as previously required by AD 86-17-12, R1, on Bell 222B and 222U helicopters), accomplish the following before further flight:

(1) Revise the FAA-approved Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, by adding the following red engine chip light warning procedure to Table 3-1 (warning lights):

Eng 1—Chip (Red) or Eng 2—Chip (Red)

Shut down affected engine. Land as soon as practical.

And add the following warning information:

WARNING

"IN THE EVENT OF FLUCTUATING OR LOSS OF POWER TURBINE (N_P) SPEED INDICATION, SHUT DOWN THE AFFECTED ENGINE AS SOON AS POSSIBLE. LAND AS SOON AS PRACTICAL."

(2) Revise the FAA-approved Rotorcraft Flight Manual Normal Procedures—Interior and Prestart Check by adding the following:

Eng 1—Chip (Red), Eng 2—Chip (Red)

Activate light test feature and check illumination.

Note: The FAA approved Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, Table 3-2 (caution lights), Eng 1—Chip (Amber), Eng 2—Chip (Amber), does not specify engine shutdown on the basis of the amber chip light alone and should remain unchanged.

(b) If the scavenge debris monitor *is not* installed or *is not* separately wired, revise the FAA-approved Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, Table 3-2 (caution lights), before further flight, by changing the current engine chip light procedure to read as follows:

Eng 1—Chip (Amber), Eng 2—Chip (Amber)

Shut down affected engine. Land as soon as practical.

And add the following information:

WARNING

"IN THE EVENT OF FLUCTUATING OR LOSS OF POWER TURBINE (N_P) SPEED INDICATION, SHUT DOWN THE AFFECTED ENGINE AS SOON AS POSSIBLE. LAND AS SOON AS PRACTICAL."

Note: The scavenge debris monitor may be installed and wired to a separate red engine chip light so that the less stringent requirements of paragraph (a) of this AD apply provided that the details of the chip light wiring modification are approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193-0170.

(c) If the scavenge debris monitor is not installed or not separately wired, replace each amber engine chip segment lens no later than December 31, 1987, with a red engine chip segment lens or by an equivalent red light indication which is suitably identified. Once this has been accomplished, remove the flight manual changes prescribed in paragraph (b) of this AD and add the flight manual changes prescribed in paragraph (a)(1) of this AD.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193-0170.

This amendment becomes effective May 27, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD NO. 87-13-01, issued June 19, 1987, which contained this amendment.

Issued in Fort Worth, Texas, April 18, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-10410 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-37-AD; Amdt. 39-5918]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which requires inspection for chafing and leaks on the variable stator vane control system fuel manifold, inspection for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and relocation of the left fan cowl hold open rod and brackets. This amendment is prompted by reports of damage to variable stator vane control system fuel manifolds and chafing on the fuel supply tube lower clamp. This condition, if not corrected, could result in fuel leakage causing a potential fire hazard and subsequent engine shutdown.

DATE: Effective May 27, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the course of an investigation, three separate incidents of chafing and fuel leaks on Boeing Model 737-300 airplanes were found. It was determined that the fifth/ninth stage pneumatic duct coupling clamps caused chafing on the variable stator vane control system fuel manifolds, which resulted in two fuel leaks. Airplanes also showed chafing of the fuel supply lower tubing clamp, caused by interference with the left fan cowl hold open rod. This condition, if not corrected, could result in fuel leakage causing a potential fire hazard and subsequent engine shutdown.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-71A1208, dated December 10, 1987, which describes the inspection for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and relocation of left fan cowl hold open rod assembly.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection, modification, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-300 series airplanes listed in Boeing Alert Service Bulletin 737-71A1208, dated December 10, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fuel leaks caused by chafing of the engines fuel tube and variable stator vane manifolds, accomplish the following:

A. Within the next 30 days after the effective date of this AD, inspect the variable stator vane fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with Boeing Alert Service Bulletin 737-71A1208, dated December 10, 1987. Repair or replace chafed components and relocate components, as necessary, before further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 27, 1988.

Issued in Seattle, Washington, on April 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10411 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-38-AD; Amdt 39-5921]

Airworthiness Directives; SAAB Fairchild Model SF-340A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB Fairchild Model SF-340A series airplanes, which currently requires limitations to the operation of the cabin lighting system in order to eliminate an unsafe condition created by electrical arcing. This amendment requires the deactivation of the circuits providing power to the cabin fluorescent lighting system (overhead and windows lights) during ground and flight operations until the cabin lighting inverter assemblies have been modified. This amendment is prompted by two recent reports of the loss of the braking system caused by the fluorescent lighting inverter internal failure. This condition, if not corrected, could lead to the loss of the wheel brake system and cause electromagnetic interference with other systems.

DATE: Effective June 3, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB Aircraft, Product Support S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft certification office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 22, 1987, FAA issued AD 85-25-54-R1, Amendment 39-5760 (52 FR 41975; November 2, 1987), to require certain limitations to the operation of the cabin lighting system. That action was prompted by a report of electrical arcing caused by a short circuit in the overhead lighting system wiring, which resulted in smoke entering the cabin during flight.

Subsequent to the issuance of that AD, the FAA approved, as an alternate means of compliance, the activation and continued use of the fluorescent lighting system under certain conditions.

Since the time that this approval was granted, there have been two reports of brake system loss caused by cabin fluorescent lighting inverter internal solder connection failure. Electromagnetic interference was also noted with the audio system and the stick pusher. This condition, if not corrected, could lead to loss of the wheel brake system and cause electromagnetic interference with other systems.

SAAB has developed an inverter modification kit with improved solder connections, and has issued SAAB Service Bulletin SF340-33-021, dated June 12, 1987, which provides instructions to install these kits. The Swedish Airworthiness Authority (LFV), has classified this service bulletin as mandatory.

This airplane model is manufactured in Sweden and type certification in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., this AD requires the deactivation of the circuits providing power to the cabin fluorescent lighting system (overhead and window lights) during ground and flight operations, until the fluorescent lighting inverter is modified, in accordance with SAAB Service Bulletin

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SF340–33–021, dated June 12, 1987. As noted in AD 85–25–54–R1, installation of the modification described in SAAB-Scania Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, is retained as an optional terminating action for the requirements of this AD.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85–25–54–R1, Amendment 39–5760 (52 FR 41975; November 2, 1987), with the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF–340 series airplanes, listed in SAAB-SCANIA Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent electromagnetic interference with navigation and other systems, and the loss of the wheel brake system, accomplish the following:

A. Within 5 days following the effective date of this AD, incorporate the following, as applicable, into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the airplane flight manual:

1. For airplanes that do not have the fluorescent lighting inverters modified in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987:

a. During all flight operations and ground operations with the engines running, deactivate the circuits providing power to the cabin internal overhead and window lights by first switching off these lights, and then opening circuits breakers numbers F24 and F25.

b. During operation with the cabin overhead and window lights deactivated, one reading light in each row must be turned on; or for those airplanes so configured, Row B on the flight attendant's panel must be selected "on".

2. For airplanes that have the fluorescent lighting inverters modified in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987: Prior to the first flight of the day, a crew member must inspect the cabin internal overhead and window lights to ensure that all fluorescent lamps are lit. If a lamp is not lit, it must be replaced prior to further flight, or the circuits which power the lamp must be deactivated.

B. Modification of the fluorescent lighting inverter assembly, P/N 18–994, S/N 650–1982 without blue dot, and inverter assembly P/N 18–990, S/N 1100–3420 without blue dot, in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987, constitutes terminating action for the requirements of paragraph A.1., above.

C. Installation of Modification 1422, as described in SAAB-SCANIA Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, constitutes terminating action for the requirements of paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Fairchild, Product Support, S–58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 3, 1988.

Issued in Seattle, Washington, on May 3, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10409 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 302

[Docket No. 45614; Amdt. 302–73]

Documentary Services; Operating Hours

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department hereby changes the operating hours for its Documentary Services Division from 9:00 a.m.–5:30 p.m. to 9:00 a.m.–5:00 p.m. (All times are Eastern Standard or Daylight Saving Time, whichever is in effect in the District of Columbia). All persons wishing to file documents with the Division must now do so between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. This correction will continue to provide persons that wish to file documents with the Department more than ample time to do so.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C–50, (202) 366–9307, Department of Transportation, 400 Seventh Street, SW, Washington, DC. 20590.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

Under the 49 CFR 1.57(1) the General Counsel has authority to make corrections to regulations of the Office of the Secretary. In accordance with that authority, the following correction is made.

List of Subjects in 14 CFR Part 302

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part I of Title 14, Code of Federal Regulations, is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85–726, as amended, 72 Stat. 737, 742, 743, 754, 758, 760, 768, 770, 788, 789, 794, 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485, Re-organization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91–90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted; 49 U.S.C. Subtitle I; Administrative Procedure Act (5 U.S.C. 551 et seq.).

2. Section 302.3 (a) is revised to read as follows:

§ 302.3 [Amended]

(a) Filing address, date of filing, hours. Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of DOT, Washington, DC 20590.

Such documents shall be deemed to be filed on the date on which they are actually received by DOT. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

* * * * *

Issued in Washington, DC, May 4, 1988.

B. Wayne Vance,

General Counsel.

[FR Doc. 88–10340 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80405–8085]

Revision of Validated License Controls on Nd:YAG Surgical Lasers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain Nd:YAG surgical lasers described in paragraph (b) of the "List of 'Lasers' and 'Equipment Containing Lasers' Controlled by ECCN 1522A" in ECCN 1522A on the CCL (Supplement No. 1 to 15 CFR 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Nd:YAG surgical lasers with a continuous wave multimode output power not exceeding 175 watts now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons.

Notice of the foreign availability determination on this equipment is published in the Notices section of this **Federal Register**.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. Lerner, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act of 1979, as amended, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the *Validated License Required* paragraph (under the heading "Controls for ECCN 1522A") to read "Country Groups QSTVWYZ, *except Nd:YAG surgical lasers with a rated continuous wave multimode output power not exceeding 175 watts require a*

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validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan."

Dated: May 6, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-10474 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

31 CFR Part 5

Debt Collection Act of 1982; Administrative Offset

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is issuing final regulations to govern the collection of debts owed to the United States which arise from transactions with the Department, or which are to be collected by withholding from payments made by the Department. These regulations implement debt collection procedures provided under section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), which is codified in 31 U.S.C. 3716. The Act authorizes the Federal Government to use administrative offset to collect debts. If the debtor is properly notified and given the opportunity to exercise certain due process rights, and the debtor is owed monies by the United States as a result of other transactions, then the debt can be administratively offset from monies owed by the United States without the debtor's consent.

EFFECTIVE DATE: These regulations are effective June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Randolph B. Sim, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1410 Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect debts.

Under the Act, administrative offset may be initiated when the head of an agency determines that a debtor is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States, and the the debtor is owed monies by the United States as a result of transactions with a Federal agency.

The debt may then be collected by administratively off-setting the debt against the amount due.

Analysis and Comment

The temporary rule was published in the **Federal Register** on January 2, 1987 (52 FR 51). The comment period closed on February 2, 1987. One comment was submitted during the comment period. The Department has fully considered this comment.

An association of customs brokers and forwarders filed a comment relating to the use of the administrative offset procedure when entry duties above the duty amount deposited upon entry of goods into the United States are assessed by the United States Customs Service. The association points out that 19 U.S.C. 1505(c) provides that:

> Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate Customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.

The association requests that the Department determine that the offset provisions should not be applied to unpaid increased entry duties determined to be due upon liquidation or reliquidation until the Customs Service has disposed of any protest filed in connection with the liquidation or reliquidation. The association states that: (1) An increased duty amount determined at liquidation or reliquidation is not "certain in amount" within the meaning of 31 CFR 5.33(a)(1) until any protest is disposed of; and (2) the protest procedures set forth in 19 U.S.C. 1514 should be considered to constitute the "review of the existence and amount" of the debt provided for by 31 CFR 5.34(c) and 31 CFR 5.35(a). The association notes that in a report on the bill which became the quoted statute, the House Committee on Ways and Means stated:

> The Committee understands that Customs will take no disciplinary action against importers solely on the grounds of failure to pay increased or additional duties on liquidation or reliquidation until a decision is reached on a protest filed under section 514. H.R. Rep. No. 1015, 98th Cong., 2d Sess. 67; *reprinted in* 1984 U.S. Code Cong. and Admin. News 4980, 5026.

The Department does not believe that the factors discussed in the comment provide a basis for modifying the administrative offset regulations. 19 U.S.C. 1505(c) states that "[d]uties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation," and such duties shall be considered delinquent "unless payment of the duties is received by the appropriate Customs officer within 30 days after that date."

Clearly the amount of the duty owed is fixed and due on the date 15 days after the date of liquidation or reliquidation, and delinquent if not paid within 30 days after that date. Such a debt is not merely speculative in amount at this latter point. Therefore, it is consistent with 29 U.S.C. 1505(c) for the Customs Service to initiate proceedings to collect the debt at this latter point. However, the statutory scheme, as evidenced by the quoted text from the House Committee report, does contemplate that an importer generally will be permitted to withhold payment of the duty owed until issuance of a decision on any protest, and the importer must pay interest accruing as a result of this delay if the filed protest is subsequently denied.

The institution of administrative offset under these regulations is a matter of discretion. In view of the considerations discussed above, the Department does not anticipate that administrative offset ordinarily will be used to collect an increased duty due after liquidation or reliquidation until after any protest is decided. However, it is essential that the Customs Service retain the authority to use administrative offset, in the Service's discretion, at any time when, absent such use, the Service's ability to eventually collect the duty may be prejudiced or in jeopardy.

The final regulations incorporate one change from the temporary regulations. The first sentence of 31 CFR 5.30 in the temporary regulations states that the regulations "apply to the collection of debt owed to the United States arising from transactions with the Department." This statement may give the erroneous impression that the regulations apply only if the debt was incurred only through a transaction with the Department. In fact, the regulations apply, to the extent stated in 31 CFR 5.37(c) and the remaining regulations, to offsets made by the Department of the Treasury, regardless of the origins of the debt to the United States; and the regulations also apply, to the extent stated in 5 CFR 5.37(b), to offsets made by other agencies at the behest of the Department. The first sentence of 31 CFR 5.30 has therefore been amended to clarify this.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collections, Administrative offset.

PART 5—[AMENDED]

Accordingly, for the reasons set out in the preamble, the temporary rule which appeared at 52 FR 51 (January 2, 1987), and which added Subpart D to Part 5 of Title 31, Code of Federal Regulations, is adopted as a final rule with the following change:

Subpart D—Administrative Offset

1. The authority citation for Subpart D of Part 5 continues to read as follows:

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

2. In § 5.30, the first sentence is revised to read as follows:

§ 5.30 [Amended]

These regulations apply to the collection of debts owed to the United States arising from transactions with the Department, or where a request for an offset is received by the Department from another agency. * * *

Date: April 29, 1988.

Jill E. Kent,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 88-10538 Filed 5-10-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay CA Regulation SF-88-03]

Safety Zone Regulations; Closing of Carquinez Strait Anchorage 25

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard established a safety zone in Carquinez Strait, CA. The zone is needed to close existing anchorage 25 and establish alternative anchorages 22 and 23; the zone encompasses the area of these three anchorages. Shoaling has forced the Coast Guard to reposition Carquinez Strait lighted buoy number 25, Coast Guard light list number 6760, to allow greater water depth for deep draft vessels transiting the channel. This action routes transiting deep draft vessels further south into anchorage 25. Being in the outside of a bend in the strait, vessels in anchorage 25 posed extra risks to transiting deep draft vessels even prior to moving buoy 25. Therefore, closing anchorage 25 and creating anchorages 22 and 23 has been the subject of a current rulemaking project. However, this emergency safety zone implements anchorage ground changes immediately due to the extra risk posed by shoaling moving the channel further toward anchorage 25.

EFFECTIVE DATES: This regulation became effective on 27 April 1988. It terminates when the Commander, Eleventh Coast Guard District, issues final regulations.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Steven J. Danielczyk, Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501. Phone 415-437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553 a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels transiting the area.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Steven J. Danielczyk, project officer for the Captain of the Port, and Commander S.E. Burton, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The hazard requiring this regulation resulted from shoaling near the charted position of Carquinez Strait lighted buoy number 25. This shoaling forced the Coast Guard to reposition buoy 25 to position 38°01'59.6" N, 122°09'38.7" W marking the edge of the deeper channel, but encroaching on anchorage 25. Anchorage 25 is located in the outside of a difficult bend in the river with strong currents, frequent high winds and seasonal fog. Vessels anchoring within anchorage 25 pose extra risk to passing deep draft traffic, especially since shoaling has moved the deep channel south into the anchorage. Therefore the Captain of the Port prohibits any vessel to anchor in anchorage 25 and creates two new anchorages to serve vessels in this area. The new anchorages numbered 22 and 23 are located nearby, just north of the established channel; they will not adversely affect transiting deep draft vessels.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new §165.T1163 is added to read as follows:

§ 165.T1163 Safety zone: Carquinez Straits, CA.

(a) *Location.* The following areas are a safety zone:

(1) Anchorage 25 is described in 33 CFR 110.224 with boundaries printed on government charts.

(2) Anchorage 22 is bounded by a line connecting the following coordinates:

Latitude and Longitude	
38°02'36.8" N	122°09'59" W; to
38°02'06.6" N	122°09'46.7" W; to
38°01'53.8" N	122°09'00" W; to
38°02'33.8" N	122°08'00" W; then back to
38°02'36.8" N	122°08'59" W

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(3) Anchorage 23 is bounded by a line connecting the following coordinates:

Latitude and Longitude	
38°02'33.9" N	122°09'00" W; to
38°01'53.8" N	122°09'00" W; to
38°01'57.4" N	122°06'19.3" W; to
38°02'33" N	122°06'18.6" W; then back to
38°02'33.9" N	122°09'00" W

(b) *Effective date.* This regulation becomes effective on 27 April 1988. It terminates once final regulations eliminating anchorage 25 and permanently establishing anchorages 22 and 23 are released by the Commander of the Eleventh Coast Guard District.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, the Captain of the Port authorizes entry into the areas of this safety zone except that anchoring is limited as follows:

(1) No vessel may anchor in anchorage 25 unless authorized by the Captain of the Port.

(2) Vessels anchoring in the new anchorage 22 shall immediately report their arrival time, position, and departure time to the San Francisco Vessel Traffic Service and comply with the general anchorage regulations in 33 CFR 110.224(a).

(3) Vessels anchoring in the new anchorage 23 shall immediately report their arrival time, position, and departure time to the San Francisco Vessel Traffic Service. Vessels using this anchorage must comply with: the general anchorage regulations in 33 CFR 110.224(a); notes b, c, d, and e of table 110.224(d)(1); and must exceed 15 feet draft, have engines on standby, and a pilot on board.

Dated: April 28, 1988.

David Zawadzki,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 88-10285 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 42

Standards Implementing the Program Fraud Civil Remedies Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is issuing regulations implementing the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509) for the VA. As required by the Act, the regulations permit the VA to bring administrative proceedings against persons who knowingly make, present, or submit a false claim or statement against the Agency.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Audley Hendricks, Assistant General Counsel, Office of General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3671.

SUPPLEMENTARY INFORMATION: VA published proposed regulations in the **Federal Register** on May 5, 1987 (52 FR 16409). Interested persons were provided 30 days to offer comments, suggestions, or recommendations.

One set of comments from the Section of Public Contract Law, American Bar Association, was received. The following summarizes those comments and addresses them *in seriatim.*

A. General

1. *Comment:* The commenter found the proposed regulations too detailed and technical in view of Congress' intent that they simply encompass the safeguards afforded by the Administrative Procedure Act (APA). For example, the commenter regarded the filing of post-hearing briefs as unnecessary and wasteful. Believing that the proposed rules would make the proceedings too involved and costly, the commenter suggested that the Agency adopt general guidelines and allow the parties to work out procedures for their individual cases. Alternatively, the Agency was urged to create two sets of procedures, one incorporating the Federal Rules of Civil Procedure, and another less formal set.

Response: The commenter is correct that Congress intended authorities already bound by the Administrative Procedure Act (APA) to conform to its requirements in conducting hearings under the Program Fraud Civil Remedies Act (PFCRA, or the Act) and for authorities not so bound to issue regulations under the Act incorporating the APA requirements (31 U.S.C. 3803(g)). However, Congress required *all* authorities covered by the statute to promulgate rules and regulations implementing the Act (31 U.S.C. 3809), and Congress intended such regulations to "be substantially uniform throughout the government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Furthermore, Congress provided that the Administrative Law Judge (ALJ) would send to each person found liable under the Act a description of the procedures that would govern the proceeding (31 U.S.C. 3803(g)(3)(B)(i)).

Congress clearly intended the affected agencies to develop comprehensive procedures for the conduct of hearings under PFCRA through notice and comment rulemaking. It did not envision that each agency would develop general guidelines and leave procedures to be negotiated among the parties and the ALJ in every particular case as suggested by the commenter. Nor is there any indication that Congress intended the agencies to develop two sets of procedures—one for experienced litigants and another for the less sophisticated.

As the APA provides only general guidelines, which cover the broad range of agency adjudications, the implementing regulations make these requirements specific to proceedings under this Act. Moreover, the Act itself imposes a number of detailed procedural measures that go beyond those mandated by the APA, such as provisions for prehearing discovery, the disclosure to the defendant of exculpatory information, limiting the venue of the hearing, internal review by a neutral reviewing official, and appeal of an ALJ's initial decision to the authority head. The regulations must implement these provisions, as well.

First, we disagree with the commenter's premise—that a lack of specificity and detail would make proceedings more expeditious or less costly. To the contrary, an agency's failure to anticipate problems and to establish mechanisms for resolving them in regulations often leads to delays in litigation while solutions are created ad hoc. This delay may be not only costly to litigants, but may also be less fair than informing them in advance of the rules of play.

We disagree that the procedures prescribed in these regulations are too detailed or too technical. We believe that the proposed regulations and those here adopted closely track the prescriptions of the statute and the provisions of the APA, which are only augmented to the extent necessary to fill in gaps left by the statute. For example, the regulations provide a mechanism for the ALJ to enter a default judgment if a defendant fails to respond to the complaint within the time allowed by the statute, an event not anticipated in the text of the Act.

Finally, we think the regulation is sufficiently flexible to permit the ALJ and parties to tailor the process to their needs and the circumstances of each case. For example, prehearing conferences are optional with the parties and may be conducted by telephone (§§ 42.18; 42.18(b)(13)). The parties may agree to submit the case for decision on a stipulated record or on written statements (§ 42.19(c) (4) and (5)). Contrary to the commenter's remark, post-hearing briefs are optional with the parties unless required by the ALJ (§ 42.36), and if the ALJ should find them unnecessary, the ALJ can dissuade the parties from submitting them.

In sum, we believe that the regulation, which will be sent to all defendants, will give them a clear and comprehensive roadmap of all the procedures.

B. Specific

1. *Comment:* The proposed regulation expands the term "benefit" to include anything of value; whereas, Congress used the term as a subset of "money."

Response: The statute uses the term "benefit" or "benefits" in three different places—in the definition of "claim," in the definition of "statement," and in section 3803(c)(2)(C), where it is defined narrowly to refer to benefits to individuals under specific governmental assistance programs. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such limitation applies when "benefits" is used in the definition of "statement." In that context, we believe the term as defined in the regulation suits the remedial purposes of the statute.

The Agency dispenses things of value other than money, property, or services—such as loan guarantees and employment. We believe that by providing a remedy against false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining these items of value, as well. To make our intention clear, we have amended the definition of "benefit" in § 42.2 to restrict it to application within the context of "statement."

2. *Comment:* The commenter found the proposed definition of "reviewing official" deficient by asserting that it permits redelegation of authority to a designee of the General Counsel, allegedly in violation of section 3801(a)(8) of the Act requiring the authority head to designate the reviewing official. Moreover, it omits the statutory requirement that the reviewing official be serving in a position for which the rate of basic pay is not less than that for grade GS-16.

Response: We disagree with commenter's reading of the statute. It neither explicitly nor implicitly limits the reviewing official designated by the authority head in the regulations from redelegating that authority. Contrast section 3801(a)(8) of the Act with section 3812, which expressly prohibits the Attorney General or Assistant Attorney General designated by the Attorney General from redelegating to others the duties assigned to them by the statute. Especially as the statute provides for the disqualification of a particular reviewing official in a given case, the General Counsel must have the flexibility to reassign responsibility for reviewing such a case to another reviewing official. Of course, as the commenter correctly notes, whoever is designated as a reviewing official in a particular case must serve in a position for which compensation is at grade GS-16 or above. This statutory limitation was inadvertently omitted from the proposed regulations and has been inserted into the definition.

3. *Comment:* The definition of "statement" was questioned because it appears to permit VA to impose civil penalties and assessments under the Act on the basis of a false statement made to a State or intermediary in a program administered by *any* agency of the United States. The commenter suggests the definition be clarified to state that VA's jurisdiction extends only to programs administered by the Agency.

Response: The definition of "statement" is taken directly from section 3801(a)(9) of the Act. We believe that the commenter's concern that VA's jurisdiction under the Act is made impermissibly broad is answered when the definition of "statement" is read in conjunction with section 3801(c)(2) of the Act, which provides that statements are considered *made to the authority* when they are made to an agent, fiscal intermediary, or other entity, including a State or political subdivision thereof, acting for or on behalf of the authority. It is our view that a statement of claim made to a State with respect to an Agency program is also made to the Agency as well.

4. *Comment:* The commenter criticized § 42.3(b)(2) of the proposed regulation for leaving open the possibility that the Agency will seek dual penalties, one based on a false statement and another based on a false certification accompanying it.

Response: The regulation at issue quotes verbatim section 3801(c)(1) of the Act. However, we agree with the commenter that Congress did not intend that an authority could impose penalties against both the false statement and the certification accompanying it, even though the language of the statute and the proposed regulation appear to permit it, and have accordingly clarified the definition.

The statute and regulation broadly define "statement" as "any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made." (See section 3801(a)(9) of the Act; § 42.2 of the regulations.) The statute then clarifies that definition by stating that each written "representation, certification or affirmation" is a separate statement (section 3801(c)(1) of the Act). Because the latter provision is relevant primarily in calculating the number of civil penalties for which a defendant may be liable, we incorporated it into § 42.3 of the regulation, "Basis for civil money penalties and assessments."

The ambiguity arises from the fact that to be actionable under the statute, any of the types of statements defined in section 3801(a)(9) must either contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement (section 3802(a)(2)(C) of the Act). We conclude that Congress intended that where a certification independently asserts a material fact, rather than affirming the truth of facts asserted elsewhere, such certification may be a statement for purposes of section 3802(a)(2) of the Act. On the other hand, where a statement in the form of a representation or a bookkeeping entry, for example, is "accompanied" by a certification as to the truthfulness and accuracy of the representation or entry, the certification is an integral element in making actionable the underlying representation or bookkeeping entry. Hence, only a representation *or* an entry may be counted as a statement subject to liability, not *both* the representation and the accompanying certification.

5. *Comment:* There is no statutory basis for proposed § 42.3(e), which would permit the Agency to hold each person found liable for making a claim or statement in contravention of the statute liable for a civil penalty.

Response: We disagree and have retained § 42.3(e) as proposed. Congress stated in section 6102(b) of the Act that in addition to recompensing agencies for losses they have sustained as a result of false, fictitious, or fraudulent claims and statements, the statute would serve to deter the making of such claims and statements. That deterrent purpose is clearly better served if each person found liable under the statute may be held liable for a civil penalty without regard to contribution by others also liable for the claim or statement. As to the commenter's claim that this proposal is without precendent, we note that this section follows the precedent set in the regulations implementing the first Civil Monetary Penalties Act enacted as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 789-792 (1981), codified at 42 U.S.C.

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1320a–7(c) and § 1320a–7a. *See* 42 CFR 1003.102(c)(1) (1988). Congress used this statute as a model in devising the PFCRA. S. Rep. No. 99–212, 99th Cong., 1st Sess. 3–4, 8–9 (1985).

6. *Comment:* Section 42.4 of the proposed regulations should incorporate the limitations on the investigating official's subpoena authority stated in section 3804(a) of the Act, *viz.*, that a subpoena may be issued only for materials "not otherwise reasonably available to the authority," and only for the purpose of conducting an investigation under the Act.

Response: The statutory limitations are incorporated by reference. However, we disagree that the statute permits the investigation official to issue subpoenas *only* for the purposes of an investigation under the Act. Section 3804(a) of the Act states prefatorily, "For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized" to issue a subpoena. Compare it with section 3804(b) of the Act, which begins, "For the purposes of conducting a hearing under section 3803(f) of this title," in authorizing ALJs to issue subpoenas. At the outset of an investigation into allegations of false claims or statements, an investigating official is not in a position to elect from among all remedies and sanctions available to the Government. Furthermore, an agency's authority to compel the production of documents by subpoena has been given wide scope by the courts if the subpoena serves a legitimate statutory purpose; the agency's inquiry need not be focused on the forecast of a probable outcome. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48 (1964).

7. *Comment:* By requiring the person producing subpoenaed documents to make the certifications required by § 42.4(a)(3), the proposed regulation purports to authorize the investigating official to compel testimony, which Congress considered and rejected.

Response: While it is true that Congress ultimately declined to grant the investigating official testimonial subpoena authority, the certifications required by § 42.4(a)(3) of the proposed regulations are auxiliary to the production of documents pursuant to a subpoena *duces tecum*. With some exceptions, a custodian of records can be compelled, either in the administrative hearing or in a civil action to enforce the subpoena, to identify and authenticate the documents produced or to claim that he or she does not have possession of the records sought. *See Curcio v. United States*, 354 U.S. 118 (1957); *McPhaul v. United States*, 364 U.S. 372 (1960); *United States v. O'Henry's Film Works, Inc.*, 598 F.2d 313 (2d Cir. 1979); *United States v. Austin-Bagley Corp.*, 31 F.2d 229, 234 (2d Cir. 1929). Hence, to ensure compliance with the subpoenas *duces tecum* short of resorting to an enforcement proceeding in Federal court in every instance, we have required custodians to attest to their compliance. Likewise, with respect to documents protected by privilege, the regulation provides for the assertion of such privileges in advance of enforcement proceedings. We believe this will help expedite investigations under the Act and will result in fewer expensive trips to the Federal courthouse simply to ensure compliance with the terms of documentary subpoenas.

8. *Comment:* Section 42.4(b) is contrary to section 3803(a)(1) of the Act. The statute states that the investigating official shall report the findings and conclusions of an investigation, while the proposed regulation requires the investigating official to report such findings and conclusions to the reviewing official only if he or she believes an action under the PFCFA to be warranted.

Response: We disagree with the commenter. The language of the statute is not mandatory in the context of section 3803(a)(1), which gives the investigating official discretion to begin an investigation of allegations of liability under PFCRA. By requiring the investigating official to report the findings and conclusions of his or her investigations to the reviewing official, Congress sought to ensure that a case considered meritorious by the investigating official was subjected to "independent prosecutorial review" by an official free from any possible "prosecutorial bias." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Congress cannot reasonably have intended a highly-paid investigating official to spend time writing, and a highly-paid reviewing official to spend time reviewing, investigation reports on cases that do not warrant further expenditure of the agency's enforcement resources.

Moreover, the decision of the investigating official not to report to the reviewing official on a given case precludes further action under the statute against the person whose claim or statement has been investigated. Thus, there is clearly no harm to his or her interests from the absence of a requirement for findings and conclusions in all cases. We therefore decline to adopt the commenter's reading of the statutory provision.

9. *Comment:* Section 42.4(c) conflicts with the investigating official's responsibility to report his or her findings and conclusions to the reviewing official: Only the Attorney General or a designated Assistant Attorney General can delay a proceeding under PFCRA because it may interfere with a criminal investigation.

Response: We likewise reject the commenter's conclusion here. Section 3803(a)(1) of the Act itself explicitly states that the investigating official's responsibility to report on PFCRA investigations "does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General." Under the Inspector General Act of 1978, the Inspector General, who is VA's investigating official under PFCRA, is obligated to report violations of Federal criminal law expeditiously to the Attorney General (5 U.S.C. App. § 4(d)). Also, by law, the head of an agency has a similar reporting obligation (28 U.S.C. 535(b)). Congress intended that the Inspector General "would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in the agency." S. Rep. No. 95–1071, 95th Cong., 2d Sess. 30 (1978).

Clearly, conduct that could subject a person to liability under the PFCRA also might subject the person to liability under a number of criminal statutes, such as 18 U.S.C. 286, 287, 1001, or 1341. Also, at a particular point in an investigation, it may become clear that an agent of a corporation is personally liable under the PFCRA. However, the investigating official may believe that further investigation would show that the corporation, corporate officers, and perhaps the government contract officer are criminally liable. Premature disclosure to the reviewing official of the agent's liability under PFCRA might jeopardize that ongoing investigation.

Sections 42.4 (c) and (d) of the regulations make it clear that the investigating official is not obliged to report to the reviewing officer under section 3803(a)(1) just because he or she has evidence that a person's conduct may fall within the scope of the PFCRA. As a highly-placed government official, the Inspector General is expected to exercise discretion to balance the competing interests at stake in determining if and when to report findings to the reviewing official.

That the Attorney General or Assistant Attorney General has authority to cause a stay of a hearing under the Act, as provided in section 3803(b)(3), does not imply that the investigating official *lacks* the authority to prevent interference with similar interests *before* such a hearing has been commenced. Moreover, the intent of the Act is to convey additional flexibility to agencies, not to restrain them in cases where they are victims of a false claim or statement.

10. *Comment:* Section 42.5(c)(6) does not satisfy the statutory requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable.

Response: We have concluded that the sufficiency of the basis for the reviewing official's statement concerning the financial condition of possible defendants is a matter best left to VA and the Department of Justice. Hence, without agreeing with the commenter's position, we have deleted the final sentence in § 42.5(c)(6).

Section 3809(2) of the Act directs the authority to promulgate regulations requiring the reviewing official to include in his or her notice to the Attorney General a statement that there is a reasonable prospect of collecting the amount for which the person may be held liable. Congress thus sought to ensure that in each case the authority and the Department of Justice would weigh the benefits and costs of pursuing remedies under the Act or others. The reviewing official's statement is obviously intended to assist the authority and the Attorney General in determining how best to deploy their limited enforcement resources, not to confer a right upon potential defendants. This intent is underscored by the fact that a defendant cannot obtain the reviewing official's notice to the Attorney General (section 3803(g)(3)(B)(ii) of the Act). Also, Congress included the requirement that the reviewing official make such a statement in section 3809(2) rather than list it among the criteria related to the merits of a proposed action, which it specified in section 3803(a)(2) of the Act.

Congress recognized that obtaining financial information is a difficult and uncertain process. The Fair Credit Reporting Act, 15 U.S.C. 168lb, the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401–3422, and the Tax Reform Act of 1976, 26 U.S.C. 6103, for example, limit or prohibit easy access to the kinds of records which typically would illuminate the financial circumstances of a potential defendant. Consequently, judgments about collectability are particularly difficult to make, especially before formal proceedings have been commenced.

Under the circumstances, we believe that § 42.5(b)(6) as currently worded satisfies the statutory requirement and properly leaves for the authority and the Department of Justice the determination as to what will constitute sufficient support for the reviewing official's statement.

11. *Comment:* The commenter suggests that the regulation appears to circumvent the $150,000 jurisdictional ceiling on agency adjudications under PFCRA by defining "related" claims under section 3803(c)(1) of the Act too narrowly.

Response: Congress provided in section 3803(c)(1) of the Act that no allegations of liability could be referred to an ALJ if the reviewing official determines that an amount of money, or property or services with a value, of more than $150,000 was requested or demanded in a claim or "in a group of related claims which are submitted at the time such claim is submitted." By imposing the cap, Congress sought to ensure that a group of related false claims submitted together that could result in hundreds of thousands or millions of dollars in penalties should be prosecuted jointly in court, not separately in an administrative proceeding. S. Rep. No. 99–212, 99th Cong., 1st Sess. 24–25 (1985).

Claims must satisfy two statutory requirements if they are to be aggregated for purposes of computing the jurisdictional amount: they must be "related," and they must be "submitted at the same time." Claims submitted at the same time must also be "related." That is, the mere fact that a contractor chooses to "batch" claims under several contracts together for submission to the agency does not make them "related." Also, claims aggregating more than $150,000, but submitted at different times, would not be over the statutory maximum even though they might be related.

Congress gave little clue as to what it meant by "related," but it did remark that claims for progress payments under the *same* contract would be related. S. Rep. No. 99–212, 99th Cong., 1st Sess. 25 (1985). Section 42.6(b) of the regulations thus defines "a related group of claims submitted at the same time" as "claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission." This definition is both reasonable and fully consistent with the language of the statute and the intent of Congress.

12. *Comment:* The commenter took exception to the incorporation of Rule 4(d) of the Federal Rules of Civil Procedure into § 42.8 of the proposed regulation, noting that section 3803(d)(1) specifies that service of a complaint must be by registered or certified mail or by delivery.

Response: The regulation implements the statute by providing that if the complaint is delivered, delivery of the complaint may be made as permitted under Rule 4(d) of the Federal Rules of Civil Procedure.

13. *Comment:* Section 42.9 of the proposed regulation is inconsistent with the statute, in that the former would require a defendant to request a hearing within 30 days of service, whereas the statute measures the 30 days from receipt.

Response: We have modified § 42.8(b) to clarify that service under § 42.8 is complete upon receipt, either through the mail, as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Section 42.9(a), by allowing the defendant 30 days from service (receipt) to request a hearing, is fully consonant with section 3803(d)(2) of the Act.

14. *Comment:* The commenter does not believe that the statute permits the Agency to require an answer and recommended deleting § 42.9.

Response: We disagree. The statute provides that a person receiving a notice of allegations of liability (section 3803(d)(1) of the Act) may get a hearing before an ALJ if such person requests a hearing within 30 days of receipt. Congress conceived of the notice of allegations of liability as a "complaint" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 14 (1985)), and we have adopted that concept in these regulations (*See* §§ 42.7 and 42.8). Consistent with that approach, we have denominated a defendant's request for a hearing as an "answer" and have specified that the defendant shall admit or deny the allegations in the complaint and shall state any defenses on which the defendant intends to rely. This requirement will expedite the proceeding by focusing the issues for the parties and the ALJ, as well as giving the ALJ important information about the complexity of the case that will be helpful to the ALJ in scheduling a hearing, as the ALJ is required to do by statute and § 42.12 upon receiving the answer.

To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to

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answer a summons and complaint within 20 days under Fed. R. Civ. P. 12(a). However, we have amended the regulation to provide that a defendant may file within 30 days of receipt of the complaint a request for hearing and a request for an additional 30 days to file a complete answer in accordance with § 42.9. Cf. 42 CFR 1003.109(b) (1988).

15. *Comment:* It is recommended that we delete § 42.10 of the proposed regulation allowing for the entry of an order of default upon failure to answer because the statute does not expressly provide for it.

Response: Although the statute does not expressly provide for default upon a defendant's failure to request a hearing, this regulation is necessary to implement the Act. *See* section 3809 of the Act. Were there no such provision, a defendant's failure or refusal to answer the complaint alone would in itself prevent agencies from exercising powers Congress intended agencies to have for the administrative adjudication of false claims and statements (Pub. L. 99–509, Sec. 6102(b)).

16. *Comment:* The commenter challenged proposed § 42.18(c) as an unauthorized limitation on an ALJ's inherent powers.

Response: Section 42.18(c) has been revised slightly to state that "the ALJ does not have the authority to find Federal statutes or regulations invalid." This proposition follows from the fact that administrative agencies themselves have no jurisdiction to pass upon the constitutionality of legislative or administrative action. *See, e.g., Motor and Equipment Manufacturer's Ass'n., Inc. v. EPA*, 627 F.2d 1095, 1114–15 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980); *Spiegel v. FTC*, 540 F.2d 287, 294 (7th Cir. 1976); *Finnerty v. Cowen*, 508 F.2d 978, 982 (2d Cir. 1974). *See also Buckeye Industries, Inc. v. Secretary of Labor*, 587 F.2d 231, *reh'g denied*, 591 F.2d 1343 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act it is called upon to administer."). *Cf. Public Utilities Commission v. United States*, 355 U.S. 534, 539–40 (1958). The ALJ making an initial decision on behalf of the authority head obviously has no greater authority than the authority head to declare Federal statutes and regulations invalid, and the regulation simply articulates that principle.

Moreover, "[o]n matters of law and policy," the ALJ is "entirely subject to the agency." *Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984). *See also* Scalia, *The ALJ Fiasco—A Reprise*, 47 U. Chi. L. Rev. 57, 62 (1980). As the agency is given rulemaking authority under 5 U.S.C. 553 and many substantive statutes, the ALJ is powerless to usurp that authority by declaring duly promulgated regulations invalid. The ALJ's role is interpretation not legislation.

17. *Comment:* The Agency is obligated to disclose to the defendant any exculpatory evidence contained in the reviewing official's report to the Attorney General, contrary to proposed § 42.20(c).

Response: Section 3803(g)(3)(B)(ii) of the Act directly prohibits the disclosure of the reviewing official's report, and § 42.20(c) implements that provision. However, the reviewing official is to include exculpatory circumstances in his or her report to the Attorney General (§ 42.5(b)(5)), and the Agency is obligated to disclose exculpatory information in the possession of the investigating or reviewing official. Hence, the information that goes into the notice may be disclosed to the defendant although the notice itself is not disclosed.

18. *Comment:* Section 42.31 of the proposed regulations would create a presumption that the maximum amount of the penalties and assessments should be imposed. The commenter noted that the statute vested broad discretion in the ALJ to determine the appropriate amount of penalties and assessments and recommended that the last sentence of proposed § 42.31 be deleted as inappropriate.

Response: The commenter is correct in noting that the ALJ and the authority head on appeal have broad discretion under the statute in fixing the amount of penalties and assessments. Without agreeing that the last sentence of § 42.31 is inappropriate, we have deleted it.

19. *Comment:* Section 42.32 of the proposed regulation fails to create a presumption that the hearing would be held where the defendant resides.

Response: The proposed regulation tracks the statute. Section 3803(g)(4) of the Act specifies three alternative sites for the hearing: (1) Where the defendant resides or transacts business; (2) where the claim or statement was made; or (3) in some place agreed upon by the defendant and the ALJ. It does not create a presumptive venue, nor should it. That determination is best left to the ALJ and the parties framing the case.

20. *Comment:* Considering the gravity of allegations of false claims or statements and the amounts at stake, evidence generally should be limited to what is admissible in court. In particular, § 42.34 should be revised to exclude hearsay evidence or at least to create a presumption against the admission of hearsay.

Response: We decline to accept the commenter's suggestions. First, it is well-established that technical rules of evidence—such as the Federal Rules of Evidence—do not apply in an administrative proceeding absent a regulation expressly making them applicable. *See* 5 U.S.C. 556(d); *Richardson v. Perales*, 402 U.S. 389 (1971). That Congress chose to provide for the adjudication of allegations of false claims and statements against the Government in an administrative forum under the APA strongly suggests that Congress also intended the less restrictive evidentiary standards of the APA to apply. The very advantages of expediency and lower cost that Congress sought by providing this administrative remedy would be lost if the Federal Rules of Evidence and the Federal Rules of Civil Procedure were imported into it from the judicial context. Moreover, the reasons for the more rigorous exclusionary rules of the Federal Rules of Evidence, such as those against hearsay, do not obtain where no jury can be misled. *See*, e.g., 3 K.C. Davis, *Administrative Law Treatise*, § 16.4 (2d ed. 1980); *An Approach to Rules of Evidence for Nonjury Cases*, 50 A.B.A.J. 723 (1964); Davis, *Hearsay in Administrative Proceedings*, 32 Geo. Wash. L. Rev. 689 (1964); Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings*, 1971 Duke L.J. 1.

Instead, the provisions of §§ 42.34 (a) through (d) are based on Recommendation 86–2 of the Administrative Conference of the United States, 1 CFR 305.86–2, published at 51 FR 25642 (July 16, 1986). They provide that an ALJ shall exclude evidence that is irrelevant and immaterial and may exclude relevant evidence that is unreliable or if its probative value is substantially outweighed by other factors, such as an unfair prejudice or the undue consumption of time.

With respect to a defendant's right to confront adverse witnesses, § 42.33(b) provides that an ALJ may permit testimony to be admitted in the form of a written statement or deposition. If the ALJ chooses to allow such testimony, the party seeking to introduce it must provide it to all other parties with the declarant's last known address in a manner which affords other parties sufficient time to subpoena the witness for cross-examination at the hearing. This satisfies due process. *Richardson V. Perales, supra.*

21. *Comment:* The commenter objects that § 42.38 of the proposed regulations conflicts with section 3803(i)(1) of the Act, which provides that the decision of an ALJ is final unless it is appealed by the defendant.

Response: We do not believe that § 42.38 conflicts with the statute. By providing for reconsideration of the initial decision, the regulation allows for the expeditious resolution of errors of law and fact by the trier of fact, who can most expeditiously resolve these matters, perhaps without resort to an appeal to the authority head.

An ALJ's decision becomes the final decision of the Agency unless it is appealed within 30 days by a person determined to be liable for penalties and assessments. This is a departure from adjudications under the APA. Under 5 U.S.C. 557(b), an ALJ makes an initial or recommended decision, while the agency retains full authority to make a *de novo* determination as to issues of law and fact on the record either on appeal or by review on its own motion. The agency thus can ensure consistency in its decisions and adherence to agency policy—including uniform interpretations of the statutes it administers and its own regulations. Moreover, where novel issues of law arise in the context of adjudications, the agency may articulate its policy in the first instance, subject, of course, to judicial review.

It is difficult to conceive that Congress intended to eliminate the authority's prerogative of speaking the final word on statutes and regulations within its purview. Without a process of reconsideration, the agency would be powerless even to seek, let alone make, corrections of misstatements of law and fact in ALJ decisions unless a defendant were found liable and chose to appeal. We do not believe Congress intended to sacrifice uniformity and consistency in decisions under this Act and other substantive statutes that will be subject to interpretation in adjudications thereunder. Hence, we have provided an opportunity for both parties to seek reconsideration of the ALJ's initial decision as necessary for the effective implementation of this statute.

22. *Comment:* The commenter argued that § 42.39 of the proposed regulation eliminated for 25 days a defendant's right to appeal to the authority head, as provided in section 3803(i)(2)(A) of the Act. The commenter also took exception to the requirement that the defendant must file a legal brief on appeal specifying exceptions, stating that a brief letter ought to suffice in some cases.

Response: With regard to the first comment, we have amended § 42.39(b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 42.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration.

With regard to the second concern, insofar as Congress provided that an ALJ's decision would stand as the authority's own, absent an appeal by the defendant, Congress clearly did not intend for the authority to rout through the decision in search of error or to redetermine all issues *de novo* without any guidance from the aggrieved party. The Agency's discretion to limit its consideration on appeal to specific exceptions pointing out error is both well-established and of obvious practical value. *See Marshall Field & Co. v. National Labor Relations Board*, 318 U.S. 253, 255 (1943); *National Labor Relations Board v. Cheney California Lumber Co.*, 327 U.S. 385, 387–88 (1946). The Attorney General's Committee on Administrative Procedure long ago urged agencies to insist upon "meaningful content and exactness in [an] appeal from the [ALJ's] decision * * *" and to cease from shouldering "the burden of complete reexamination. Review of the [ALJ's] decision should in general and in the absence of clear error be limited to grounds specified in the appeal." *Administrative Procedure in Government Agencies*, S. Doc. No. 8, 77th Cong., 1st Sess. 52 (1941) (Final Report of the Attorney General's Committee on Administrative Procedure). We agree.

23. *Comment:* Section 42.43 should be revised to reflect the fact that investigating and reviewing officials may not make collections under section 3806 of the Act, as provided in section 3809(1) of the Act.

Response: This limitation is already contained in § 42.14, pertaining to separation of functions.

24. *Comment:* Section 42.44 should be revised to indicate that only a final decision imposing penalties or assessments may constitute the basis for an administrative offset under section 3807 of the Act.

Response: Section 42.44 of the regulation reiterates the statutory language. A final decision is defined in §§ 42.10 (d) and (l), 41.37(d), 42.38(g), and 42.39(l).

In addition to the comments from the American Bar Association Section, the Departments of Health and Human Services and Education received comments on their proposed regulations on the definition of "Person" (*i.e.* those liable for violations under the Act). The commenter challenged the inclusion of States and their political subdivisions in that definition. We agree with the commenter and have amended our regulations to exclude States and their political subdivisions from the definition in § 42.2, thus reiterating the definition in section 3801(a)(6) of the Act.

In addition, a number of minor, technical changes to the proposed regulations were made pursuant to comments received from within the Agency. Based on internal comments, § 42.1(b) was amended to clarify that the only administrative procedures and actions for imposing penalties and assessments for violations of the PFCRA are contained in the proposed new Part 42 to Title 38, Code of Federal Regulations. Section 42.3(c) is also amended to clarify that the exemption from liability for violations of the Act to certain persons receiving specified VA benefits does not extend to a fiduciary for the beneficiary.

The final regulations address the requirements of the Program Fraud Civil Remedies Act, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874. Basically, this law permits agencies to bring administrative proceedings against persons who knowingly make, present, or submit a false claim or statement against the agency. From the false claimant, an agency may recover up to twice the amount falsely claimed and impose a civil penalty of up to $5,000 for each separate false statement. Any penalty or assessment may be collected by the Attorney General through the filing of a civil action, or by offsetting from the penalty or assessment amounts, other than tax refunds, owed the particular party by the Government, including VA benefits. All recoveries would be deposited in the United States Treasury.

These final regulations are based on model regulations drafted by a committee composed of representatives of nine major agencies and chaired by the Department of Health and Human Services at the request of the President's Council on Integrity and Efficiency. The chairman of the Council urged that all agencies required to promulgate regulations adopt the model regulations. (VA employed the model regulations in drafting its version to be contained in 38 CFR Part 42.)

In accord with the Act's requirements, these final regulations prescribe the following procedures for VA when it receives allegations of a false claim:

(a) Investigation by the VA Inspector General, who will report the findings and conclusions to the reviewing official

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if an action under the Act may be warranted;

(b) Review of the investigation by a reviewing official from the Office of the VA General Counsel to determine whether the evidence supports a belief of potential liability;

(c) Referral by the reviewing official to the Department of Justice. If the Attorney General approves, the reviewing official will notify the person of the allegations and of the right to a hearing. The reviewing official can compromise or settle any case up until the time a decision is rendered by a hearing examiner;

(d) A hearing, if requested, administered by an examiner who is an Administrative Law Judge (ALJ), with all the due process protections under the Administrative Procedure Act. The ALJ would also determine liability and the amount of the penalty and assessment;

(e) If found liable, an appeal to the Agency head and then the United States District Court.

While the Act generally permits VA to take action against anyone who makes a false claim or statement to the Agency, such as contractors, employees, veterans' guardians, loan appraisers, and private insurers and hospitals, the remedies under this law may *not* be asserted for overpayment frauds against individual recipients of specified benefits, such as VA pension, compensation, or health-care benefits. But, actions could still be brought against individuals for fraud involving their *basic* eligibility to receive these benefits.

The Administrator hereby certifies that the final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Based on investigations and other past experience, VA anticipates that less than a significant number of false claims or statements, as defined in these regulations, would be submitted or made to the Agency by small entities. In addition, these regulations simply address administrative proceedings to be used by VA in complying with the requirements of the Program Fraud Civil Remedies Act. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

These final regulations have also been reviewed under E.O. 12291, Federal Regulation, and have been determined to be non-major because they would not increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 42

False claims, False statements, Fraud, Veterans.

Approved: April 20, 1988.

Thomas K. Turnage,

Administrator.

38 CFR is amended by adding Part 42, Standards Implementing the Program Fraud Civil Remedies Act, to read as follows:

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

42.1 Basis and purpose.
42.2 Definitions.
42.3 Basis for civil penalties and assessments.
42.4 Investigation.
42.5 Review by the reviewing official.
42.6 Prerequisites for issuing a complaint.
42.7 Complaint.
42.8 Service of complaint.
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42.10 Default upon failure to file an answer.
42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).
42.12 Notice of hearing.
42.13 Parties to the hearing.
42.14 Separation of functions.
42.15 Ex parte contacts.
42.16 Disqualification of reviewing official or ALJ.
42.17 Rights of parties.
42.18 Authority of the ALJ.
42.19 Prehearing conferences.
42.20 Disclosure of documents.
42.21 Discovery.
42.22 Exchange of witness lists, statements, and exhibits.
42.23 Subpoenas for attendance at hearing.
42.24 Protective order.
42.25 Fees.
42.26 Form, filing and service of papers.
42.27 Computation of time.
42.28 Motions.
42.29 Sanctions.
42.30 The hearing and burden of proof.
42.31 Determining the amount of penalties and assessments.
42.32 Location of hearing.
42.33 Witnesses.
42.34 Evidence.
42.35 The record.
42.36 Post-hearing briefs.
42.37 Initial decision.
42.38 Reconsideration of initial decision.
42.39 Appeal to the Administrator of Veterans Affairs.
42.40 Stays ordered by the Department of Justice.
42.41 Stay pending apeal.
42.42 Judicial review.
42.43 Collection of civil penalties and assessments.
42.44 Right to administrative offset.
42.45 Deposit in Treasury of United States.
42.46 Compromise and settlement.
42.47 Limitations.

Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1674, to be codified at 31 U.S.C. 3801–3812.

§ 42.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, 6101–6104, 100 Stat. 1674 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. Section 3809 of title 31, United States Code, requires each authority head, such as the Administrator of Veterans Affairs, to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes and provides the only administrative procedures and actions for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 42.2 Definitions.

For the purposes of this part, the following definitions apply:

"Administrator" means the Administrator of Veterans Affairs.

"ALJ" means an Administrative Law Judge in the Veterans Administration pursuant to 5 U.S.C. 3105 or detailed to the Veterans Administration pursuant to 5 U.S.C. 3344.

"Benefit" means, in the context of statement, anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

"Claim" means any request, demand, or submission—

(a) Made to the Veterans Administration for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Veterans Administration or to a party to a contract with the Veterans Administration—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse the recipient or party for any portion of the money paid on the request or demand; or

(iii) Made to the Veterans Administration which has the effect of decreasing an obligation to pay or account for property, services, or money.

"Complaint" means the administrative complaint served by the reviewing official on the defendant under § 42.7 of this part.

"Defendant" means any person alleged in a complaint under § 42.7 of this part to be liable for a civil penalty or assessment under § 42.3 of this part.

"Government" means the United States Government.

"Individual" means a natural person.

"Initial Decision" means the written decision of the ALJ required by § 42.10 or § 42.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

"Investigating official" means the Inspector General of the Veterans Administration or an officer or employee of the Office of the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

"Knows or has reason to know" means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

"Makes", wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

"Person" means any individual, partnership, corporation, association or private organization and includes the plural of that term.

"Representative" means any person designated by a party in writing.

"Reviewing official" means the General Counsel of the Veterans Administration or designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organization unit of the Veterans Administration in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

"Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Veterans Administration, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under the contract or for the grant, loan, or benefit.

§ 42.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Veterans Administration, or to a recipient or party when such claim is actually made to an agency, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Veterans Administration, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of the claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages by the Government because of the claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement, except that a certification or affirmation of the truthfulness and accuracy of the contents of a statement is not a separate statement.

(3) A statement shall be considered made to the Veterans Administration when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Veterans Administration.

(c) *Applications for certain benefits.* (1) In the case of any claim or statement made by an individual relating to any of the benefits listed in paragraph (c)(2) of this section received by the individual, the individual may be held liable for penalties and assessments under this section only if such claim or statement is made by the individual in making application for such benefits with

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respect to any element required to establish the individual's initial eligibility to receive or continue to receive the benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means benefits under chapters 11, 13, 15, 17, and 21 of title 38 which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(3) For purposes of this paragraph, the term "application" shall include, but is not limited to, any report or statement made or submitted by or for applicant or recipient of a benefit under chapters 11, 13, or 15 of title 38, United States Code, to establish eligibility or to remain eligible for the benefit.

(4) This paragraph is not applicable to an individual receiving benefits in a fiduciary capacity in behalf of an individual eligible for any of the benefits listed in paragraph (c)(2) of this section.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person making the claim or statement may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made a payment (including transferred property or provided services), an assessment may be imposed against any of these persons or jointly and severally against any combination of these persons.

§ 42.4 Investigation.

(a) All allegations of liability under § 42.3 shall be promptly referred to the investigating official.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons therefor, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(d) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(e) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 42.5 Review by the reviewing official.

(a) The report of the investigating official will be examined by the reviewing official to determine if there is adequate evidence to believe a person is liable under § 42.3 of this part. The review will be completed within 90 days.

(b) If, based on the report of the investigating official under § 42.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 42.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 42.7 of this part.

(c) The notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 42.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(d) If the reviewing official finds that there is not adequate evidence that a person is liable, the reviewing official will inform the department or office of the Veterans Administration concerned with the claim or statement and the investigating official.

§ 42.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 42.7 of this part only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 42.3 of this part with respect to a claim, the reviewing official determines that, with respect to the claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services, or both, demanded or requested in violation of § 42.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneouly as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 42.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 42.8 of this part.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from the claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 42.10 of this part.

(c) The reviewing official shall serve the defendant with a copy of these regulations at the same time as service of the complaint.

§ 42.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 42.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 42.11 of this part. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 42.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 42.9(a) of this part, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 42.8 of this part, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 42.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before the initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if the decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 42.38 of this part.

(h) The defendant may appeal to the Administrator the decision denying a motion to reopen by filing a notice of appeal with the Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(j) The Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Administrator decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Administrator decides that the defendant's failure to file a timely answer is not excused, the Administrator shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 42.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 42.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) The notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and the defendant, if any; and

(6) Other matters the ALJ deems appropriate.

§ 42.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Veterans Administration.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 42.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Veterans Administration who takes part in investigating, preparing, or presenting a particular case may not, in the case or a factually related case—

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(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Veterans Administration, including in the offices of either the investigating official or the reviewing official.

§ 42.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 42.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. The motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) The affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of the facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall proceed no further in the case until the ALJ resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Administrator may determine the matter only as part of the review of the initial decision upon appeal, if any.

§ 42.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issue at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 42.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conference to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at deposition or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise any other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find invalid Federal statutes or regulations.

§ 42.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Other matters that may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 42.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 42.4(b) of this part are based, unless the documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 42.5 of this part is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provision of this section. The motion may only be filed with the ALJ following the filing of an answer pursuant to § 42.9 of this part.

§ 42.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 42.22 and 42.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. The motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 42.24 of this part.

(3) The ALJ may grant a motion for discovery only if the ALJ finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 42.24 of this part.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 42.8 of this part.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 42.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 42.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 42.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit the witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 42.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 42.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation,

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proceeding, or other administrative investigation only be disclosed in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 42.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witnesses subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Veterans Administration, a check for witness fees and mileage need not accompany the subpoena.

§ 42.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g. motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 42.8 of this part shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon the representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 42.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the date following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 42.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any part may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 42.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 42.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 42.3 of this part and, if so, the appropriate amount of any civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Veterans Administration shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 42.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Administrator of Veterans Affairs, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating the conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Administrator or Veterans Affairs in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious,

or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which the claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of the programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying or prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

§ 42.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) Any place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at a place and time orderd by the ALJ.

§ 42.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 42.22(a) of this part.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of the direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 42.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.

§ 42.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcription of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Administrator of Veterans Affairs.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.

§ 42.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing the briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated

record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 42.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 42.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of the penalties or assessments considering any mitigating or aggravating factors that the ALJ finds in the case, such as those described in § 42.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 42.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the mailing in the absence of contrary proof.

(b) Every motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion shall be accompanied by a supporting brief.

(c) Responses to the motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 42.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Administrator in accordance with § 42.39 of this part.

§ 42.39 Appeal to the Administrator of Veterans Affairs.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the decision to the Administrator of Veterans Affairs by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 42.8 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Administrator may extend the initial 30 day period for an additional 30 days if the defendant files with the Administrator a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator, and the time for filing motions for reconsideration under § 42.38 of this part has expired, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present the evidence at the hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Administrator shall promptly serve each party to the appeal with a copy of the decision of the Administrator and a statement describing the right of any person to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 42.3 of this part is final and is not subject to judicial review.

§ 42.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or Assistant Attorney General designated by the Attorney General transmits to the Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to the claim or statement, the Administrator shall stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 42.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

(b) No administrative stay is available following a final decision of the Administrator.

§ 42.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Administrator imposing penalties or assessments under this part and specifies the procedures for the review.

§ 42.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorizes actions for collection of civil penalties and assessments imposed under this part and specify the procedures for the action.

§ 42.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 42.42 or § 42.43 of this part, or any amount agreed upon in a compromise or settlement under § 42.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 42.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(b).

§ 42.46 Compromise and settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 42.42 of this part or during the pendency of any action to collect penalties and assessments under § 42.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 42.42 of this part, or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 42.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 42.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 42.10(b) of this part shall be deemed a notice of hearing of purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 88-10356 Filed 5-10-88; 8:45am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3431/R958; FRL 3376-6]

Pesticide Tolerance for Methyl-3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-YL)amino]carbonyl]amino]sulfonyl]-2-Thiophenecarboxylate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene-carboxylate in or on the raw agricultural commodities (RACs) wheat and barley grain at 0.05 part per million (ppm) and wheat and barley straw at 0.1 ppm. This regulation was requested by E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: May 11, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 8, 1986 (51 FR 36063), which announced that E.I. du Pont de Nemours & Co., Inc., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, had filed PP 6F3431 proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl] amino]sulfonyl]-2-thiophenecarboxylate in or on the RACs barley grain and wheat grain at 0.05 ppm.

In the **Federal Register** of March 9, 1988 (53 FR 7570), EPA issued a notice that announced that PP 6F3431 had been amended to include establishment of tolerances on wheat and barley straw at 0.1 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies, a 90-day feeding study with rats fed dosages of 0, 5, 125, and 375 milligrams/kilograms/day (mg/kg/day) with a no-observable-effect level (NOEL) of 5 mg/kg/day; a 13-week feeding study with dogs fed dosages of 0, 1.875, 37.5, and 187.5 mg./kg/day with a NOEL of 37.5 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 3.75, 112.5, and 1,125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 1, 125 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 3.75 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 125 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day; a 1-year feeding study with dogs fed dose levels of 0, 1.25, 18.75, and 187.5 mg/kg/day with a NOEL of 18.75 mg/kg/day; a two-generation reproduction study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no reproductive effects observed at 125 mg/kg/day (HDT) and a NOEL of 125 mg/kg/day (HDT); a teratology study in rabbits fed dosages of 0, 30, 158, and 511 mg/kg/day with no teratogenic effects occurring at 511 mg/kg/day and a maternal NOEL of 158 mg/kg/day; a teratology study in rats fed dosages of 0, 30, 159, and 725 mg/kg/day with a teratogenic NOEL of 159 mg/kg, a fetotoxic NOEL of 159 mg/kg/day, and a maternal NOEL greater then 725 mg/kg/day (HDT); and mutagenic studies including a reverse mutation assay (not mutagenic in *Salmonella typhimurium* strains with and without activation),

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gene mutation (no increase in mutation frequency seen at HDT of 7 mM, the limit of solubility), and DNA synthesis/ rat hepatocytes *in vitro* (material did not induce significant increase in unscheduled synthesis [UDS] in primary cultures).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.25 mg/kg/day and using a hundredfold safety factor) is calculated to be 0.013 mg/kg/day. The theoretical maximum residue contribution for these tolerances is calculated to be 0.000073 mg/kg body weight/day, which occupies approximately 0.6 percent of the ADI. There are no published tolerances for this chemical.

No desirable data are lacking.

The pesticide is useful for the purposes of this tolerance rule. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology, high-pressure liquid chromatography with HPLC and TLC, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: RM. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There are currently no actions pending against the registration of the chemical. There are no expectations of residue occurring in meat, milk, poultry, and eggs from these tolerances.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M Street SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950). (Sec. 406(d)(2), 68 Stat. 512 (21 U.S.C. 346(a)(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Date: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346(a).

2. By adding new § 180.439, to read as follows:

§ 180.439 Methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl) amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; Tolerances for Residues.

Tolerances are established for residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, straw	0.1
Wheat, grain	0.05
Wheat, straw	0.1

[FR Doc. 88–10216 Filed 5–10–88; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 725

Farm Marketing Quotas, Acreage Allotments; Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule and request for comments.

SUMMARY: This proposed rule would amend the regulations found at 7 CFR Part 725 effective for the 1988 and subsequent crops of flue-cured tobacco. These changes are necessary to implement provisions of the Agricultural Reconciliation Act of 1987, as included in the Omnibus Budget Reconciliation Act of 1987, with respect to: (1) The lease and transfer of tobacco marketing quotas from a farm that has suffered a loss as the result of a natural disaster condition; and (2) the periodic adjustment of yield factors for acreage and poundage quotas.

DATE: Comments must be received on or before June 10, 1988, in order to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Written comments must be received by June 10, 1988, to be assured consideration. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA's procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

Discussion of Proposed Changes

Section 316 of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), prohibited the lease and transfer before planting of acreage allotment and marketing quota which were established for the 1987 and subsequent crops of flue-cured tobacco. The Agricultural Reconciliation Act of 1987, as included in the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act"), amended section 316 of the 1938 Act to allow the lease and transfer of flue-cured tobacco quota under certain disaster conditions. This proposed rule would amend the regulations at 7 CFR Part 725 to implement the provisions of the 1987 Act which amended Section 316 of the 1938 Act to authorize, with respect to the 1988 and subsequent years' crops of flue-cured tobacco, the lease and transfer after June 30 of the flue-cured tobacco marketing quota which is assigned to a farm if: (1) The planted acreage is equal to or greater than 90 percent of the farm's acreage allotment, or the planted acreage is determined to be sufficient to produce a quantity of tobacco equal to the farm marketing quota under average conditions; and (2) the farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster. Any such lease and transfer of a flue-cured tobacco marketing quota could be made to any other farm within the same State where the transferring farm is located. The quantity of a flue-cured tobacco marketing quota which could be leased or transferred under this proposed rule would be limited to an amount which is required to market the current year's crop of flue-cured tobacco on the receiving farm.

This proposed rule would amend also the regulations at 7 CFR Part 725 to implement the provisions of the 1987 Act which amended section 317 of the 1938 Act to eliminate the periodic adjustment of preliminary acreage allotments and preliminary farm yields.

List of Subjects in 7 CFR Part 725

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

PART 725—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 725 be amended as follows:

1. The authority citation for Part 725 continues to read as follows:

Authority: Secs. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended 98 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

2. Section 725.56 is amended by revising paragraph (b) to read as follows:

§ 725.56 Determination of preliminary farm acreage allotments.

* * * * *

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

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3. Section 725.57 is amended by revising paragraph (a)(1) to read as follows:

§ 725.57 Determination of preliminary farm yields.

(a) * * *

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

* * * * *

4. Section 725.72 is amended by: Revising paragraph (a); by removing paragraphs (d) (1) and (2) and redesignating paragraphs (d) (3), (4), (5), and (6) as paragraphs (d) (1), (2), (3), and (4), respectively; by revising newly redesignated paragraphs (d) (1) and (2); by revising paragraph (e)(4)(i); by removing and reserving paragraphs (f), (g), (l), (n), and (o); and by deleting the last sentence in paragraph (q) to read as follows:

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) *General.* Effective for the 1983 and subsequent crop years a flue-cured tobacco marketing quota, including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter, may be transferred between farms by sale. A flue-cured tobacco marketing quota transfer by sale must be within the same county. For the 1988 and subsequent crop years, a flue-cured tobacco marketing quota also may be transferred after June 30 by lease to a farm in any county within the same State when the county committee determines that:

(1) The lessor has planted at least 90 percent of the farm's effective acreage allotment, or

(2) The planted acreage is determined to be sufficient to produce the effective farm marketing quota under average conditions, and

(3) The farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator. Only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transaction unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease.

* * * * *

(d) *Transfer provisions*—(1) *Lessor farm.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county committee in the county in which the farm is located from administrative purposes determines that the:

(A)(1) Farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or (2) Planted acreage is sufficient to produce the effective farm marketing quota under average conditions;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(2) *Lessee farm.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of Part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

* * * * *

(e) * * *

(4) * * *

(i) *Lease.* November 15.

* * * * * *

Signed in Washington, DC on April 28, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-10563 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-35-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas DC-9-30 series airplanes, which currently requires structural inspections and repair or replacement, as necessary, to assure continued airworthiness. This action would expand the applicability of that AD to include certain DC-9-10, -20, -40, and -50 series airplanes. This proposal is prompted by a structural reevaluation which has identified certain principal structural elements likely to develop fatigue cracks, as these airplanes approach and exceed the manufacturer's original design life estimates. Fatigue cracks in these areas, if not detected and corrected, could compromise the structural integrity of these airplanes.

DATE: Comments must be received no later than July 1, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach California 90846, Attention: Director, Publications and Training, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerns with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request the FAA, Northwest Mountain Region, Office of Regional Counsel, (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 19, 1987, FAA issued AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), applicable to McDonnell Douglas Model DC-9-30 series airplanes, to require structural inspections, and repair or replacement, as necessary, of the Principal Structural Elements (PSE) listed in McDonnell Douglas Report Number L28-008, DC-9 Supplemental Inspection Document (SID).

Since issuance of AD 87-14-07, DC-9 operators, FAA Engineers, and Flight Standards Inspectors, together with McDonnell Douglas, have participated in revising the original Supplemental Inspection Document to include the Model DC-9-10, -20, -40, and -50 series airplanes.

In order to evaluate the impact of increased fatigue cracks with respect to maintaining the fail-safe design and damage tolerance of the Model DC-9-10, -20, -40, and -50 airplane structure, the manufacturer conducted a structural reassessment of their airplanes using modern damage tolerance evaluation techniques. The criteria for this reassessment is contained in FAA Advisory Circular AC 91-56, dated May 6, 1981, 'Supplemental Structural Inspection Program for Large Transport Category Airplanes," and Federal Aviation Regulations (FAR) 25.571 (Amendment 25-45).

In developing the SID, a working group reviewed the existing DC-9-30 SID program with respect to the structural differences in airplane model, and the basic requirements of AD-14-07. As a result, the DC-9 SID (L28-008), Volumes I, II, and III, were revised to include those inspection considerations and methods associated with the DC-9-10, -20 -40, or -50 series airplanes.

It is estimated that 136 additional airplanes of U.S. registry and 14 U.S. operators would be affected by this AD, that it would take approximately 1,000 manhours to incorporate the Supplemental Inspection program for a typical operator. The average labor charge is considered to be $40 per manhour. Based on these figures, the total cost impact on U.S. operators to incorporate the SID program is estimated to be $560,000.

The recurring inspection impact on the affected operator is estimated to be 341 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be approximately $1,855,040.

Based on the above figures, the total cost impact of this AD revision is estimated to be approximately $2,415,040 for the first year, and $1,855,040 per year thereafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, it any, Model DC-9 series airplanes are operated by small entities.

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows: Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the applicability statement and paragraph A. of AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), to read as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 2 of Volume I (All Series) of McDonnell Douglas Report No. L26-008, R1, DC-9 Supplemental Inspection Document (SID), dated November 1987, or later FAA-approved revisions, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III-87 of the SID.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced before further flight in accordance with a FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The FAA has requested Federal Register approval to incorporate by reference the manufacturer's Supplemental Inspection Document

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identified and described in this directive.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on April 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10407 Filed 5-10-88; 8:45 am]

BILLING 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-162-AD]

Airworthiness Directives; Canadair Model CL-44D4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Canadair Model CL-44D4 series airplanes, which currently requires inspection of the left and right main landing gear bogie beam for cracks, and replacement, if necessary. This proposal would require that different techniques be used to perform this inspection. This action is prompted by reports that the inspection technique required by the existing AD has proven to be unsatisfactory in detecting cracks before failure occurs. Cracking in the bogie beam, if not detected and corrected, could result in a gear failure during landing or takeoff.

DATES: Comments must be received no later than June 28, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The Applicable service information may be obtained from Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Birkenholz, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rule Docket No. 87-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 68-01-06, Amendment 39-537 (33 FR 257; January 9, 1968), to require borescope inspections of the main landing gear bogie beam, as described in Canadair Service Information Circular (SIC) 341-CL44D4. That AD was prompted by reports of cracking in the main landing gear bogie beam. This condition, if not corrected, could lead to loss of the airframe as a result of a gear failure during landing or takeoff.

Since issuance of that AD, the FAA has received reports that the inspection techniques required by AD 68-01-06 have proven to be unsatisfactory in service, in that such inspections have not detected cracking of the beam before failure occurs.

Additionally, examination of failed parts has revealed that the failures originate under the steel axle bushings. The manufacturer has eliminated the shrink fit of the bushings on the latest configuration of this airplane model, in order to facilitate a more complete and thorough inspection. When the latest configuration of the bogie beam on this model of airplane is fitted, the borehole used for the borescope inspection no longer exists, making the presently-required inspection impossible to perform.

Canadair has issued Service Bulletin 493-CL44, dated February 29, 1988, which describes new procedures for visual and dye penetrant inspections to detect cracking in the main landing gear bogie beam, and replacement, if necessary.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., an AD is proposed which would revise AD 68-01-06 to require inspections of the main landing gear bogie beam, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,840.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 68-01-06, Amendment 39-537 (33 FR 257; January 9, 1968), as follows:

Canadair: Applies to all Model CL-44D4 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear during landing or takeoff due to cracks in the main landing gear bogie beam, accomplish the following:

A. Within the next 20 landings after the effective date of this AD, and thereafter at intervals not to exceed 20 landings, perform a visual inspection of the left and right main landing gear bogie beam, P/N 44-67574, for cracks, in accordance with paragraph 2.A.(1) of Canadair Service Bulletin 493-CL44, dated February 29, 1988.

B. At intervals not to exceed 500 landings or 12 months, whichever occurs first, perform the inspection and modification, if necessary, in accordance with paragraphs 2.A.(2), 2.A.(3), 2.A.(4) and 2.A.(5) of Canadair Service Bulletin 493-CL44, dated February 29, 1988.

C. Any structure found to be cracked as a result of the inspections required by paragraph A. or B., above, must be replaced, prior to further flight, with an airworthy part or an FAA-approved equivalent part.

1. Replacement parts must be inspected prior to installation, in accordance with paragraph 2.A.(3) of Canadair Service Bulletin 493-CL44, dated February 29, 1988.

2. Replacement parts must be repetitively inspected in accordance with paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on April 25, 1988.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 88-10408 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9265]

Occidental Petroleum Corp. et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Tenneco Inc., a Houston, TX. corporation, that manufactures and sells polyvinyl chloride (PVC), reacquire a PVC plant in Burlington, N.J., if a divestiture is ordered by the Commission. The consent order would require Tenneco to reacquire the plant "in a manner that is consistent with the purposes of the Commission's final order against Occidental," the acquiring company.

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Polyvinyl chloride resin, Thermoplastic, Trade practices.

Agreement Containing Consent Order

In the Matter of Occidental Petroleum Corp., a corporation, Occidental Chemical Corp., a corporation, Tenneco, Inc., a corporation and Tenneco Polymers, Inc., a corporation.

The Agreement herein, by and between the corporations Tenneco Inc. and Tenneco Polymers, Inc. (hereinafter referred to collectively as "Tenneco"), by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission (the "Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondents Tenneco Inc. and Tenneco Polymers, Inc. are corporations organized under the laws of Delaware with principal offices at 1010 Milam, Houston, Texas, 77001.

2. The Commission has issued and served upon Occidental Petroleum Corporation, Occidental Chemical Corporation (hereinafter referred to collectively as "Occidental"), and Tenneco a complaint charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Tenneco has filed an answer to the complaint denying said charges.

3. Tenneco admits all jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Tenneco waives:

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(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of this proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days for the receipt and consideration of comments or views from any interested person and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Tenneco, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding with respect to respondent Tenneco.

6. This agreement is for settlement purposes only and does not constitute an admission by Tenneco that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to Tenneco, (1) issue its decision containing the following order in disposition of the proceeding with respect to respondent Tenneco, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Tenneco's address as stated in this agreement shall constitute service. Tenneco waives any right it might have to any other manner of service. The Complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in this agreement may be used to vary or to contradict the terms of the order.

8. Tenneco has read the complaint and the order contemplated hereby. Tenneco understands that once the order has been issued, Tenneco will be required to file one or more compliance reports showing that it has fully complied with the order. Tenneco further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

Definitions

For purposes of this Order the following definitions shall apply:

A. "Tenneco" means Tenneco Inc. and Tenneco Polymers, Inc., two corporations organized under the laws of Delaware with their principal places of business in Houston, Texas, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates, successors, and assigns;

B. "Occidental" means Occidental Petroleum Corporation and Occidental Chemical Corporation, two corporations organized under the laws of California with their principal places of business in Los Angeles, California, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates successors, and assigns:

C. "PVC" means any vinyl chloride homopolymer with the repeating unit $CH_2=CHCl$, and any copolymer of vinyl chloride with varying amounts of other chemicals, inlcuding vinyl acetate, ethylene, propylene, vingylidene chloride, or acrylates;

D. "Suspension PVC copolymer" means any copolymer of vinyl chloride and vinyl acetate, that is produced by the suspension process and contains over 50 percent by weight vinyl chloride;

E. "Dispersion PVC" means PVC produced by the emulsion or dispersion process.

II.

It is ordered that, in the event any divestiture order is entered by the Commission against Occidental in this proceeding, Tenneco shall consent to the assignment by Occidental, in a manner that has received the prior approval of the Federal Trade Commission and on conditions (other than consideration paid by Occidental to Tenneco) identical to those imposed on Occidental in the Sale Agreement, to the successor(s) or acquirer(s) of any PVC assets or business divested by Occidental pursuant to that Order, of all benefits, rights and privileges extended to Occidental under the terms of the Sale Agreement and attached exhibits (including, but not limited to the option rights, if any then exist, under § 9.05 of that agreement), except for the option described in Exhibit V of the Sale Agreement which shall not be assigned.

III.

It is further ordered that Tenneco shall take no action that interferes with the accomplishment of any relief ordered by the Commission in this proceeding. Tenneco shall cooperate in the transfer to a third party of any PVC assets or business divested by Occidental pursuant to an order of the Commission.

IV.

Tenneco acknowledges that the final Order of the Federal Trade Commission against Occidental in this proceeding may prohibit Occidental from exercising the option granted in Exhibit V of the Sale Agreement or may provide that Tenneco's reacquisition of the Burlington, New Jersey, PVC plant from Occidental pursuant to Exhibit V of the Sale Agreement shall only be made in a manner that has received the prior approval of the Commission. Any reacquisition by Tenneco of the Burlington, New Jersey, PVC plant from Occidental pursuant to Exhibt V of the Sale Agreement shall only be made in a manner that is consistent with the purposes of the Commission's final Order against Occidental in this proceeding.

V.

It is further ordered that for a period of ten years following the date of this Order, for the purposes of determining compliance with this Order, upon written request of the Federal Trade Commission or the Director or any Assistant Director of the Bureau of Competition of the Federal Trade Commission made to Tenneco at its principal offices and subject to any legally recognized privilege, Tenneco shall permit duly authorized representatives of the Federal Trade Commission or of the Bureau of Competition:

A. Reasonable access during the office hours of Tenneco, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and document in Tenneco's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to the reasonable convenience of Tenneco, to interview officers or employees of Tenneco, who may have counsel present, regarding such matters.

VI.

It is further ordered that, while Paragraph V of this Order is effective, Tenneco shall notify the Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligation arising out of this Order.

VII.

It is further ordered that, within sixty (60) days after service upon Tenneco of the Commission's final Order against Occidental in this proceeding, Tenneco shall file with the Commission a written report setting forth in detail the manner and form in which Tenneco has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed consent order with Tenneco Inc. and its wholly-owned subsidiary, Tenneco Polymers, Inc., (collectively, "Tenneco"), in partial settlement of a Complaint challenging the acquisition of the polyvinyl chloride ("PVC")[1] assets and business of Tenneco by Occidental Petroleum Corporation through its wholly-owned subsidiary, Occidental Chemical Corporation (collectively, "Occidental"). The Commission's Complaint against Occidental is still pending and is currently in adjudication in an administrative proceeding.

The proposed consent order with Tenneco has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint, which was issued on April 11, 1988, challenges the acquisition and the acquisition agreement between Occidental and Tenneco as violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that, at the time of the acquisition, Occidental and Tenneco were substantial, direct competitors in three concentrated, United States markets: mass and suspension PVC resin, suspension PVC copolymer resin, and dispersion PVC resin. The Complaint also alleges that entry into each of the relevant markets is difficult. The Complaint further alleges that the acquisition and acquisition agreement have the effect of eliminating actual competition between Occidental and Tenneco in each of the relevant markets; eliminating Tenneco as a significant competitor in each of the relevant markets; significantly increasing the levels of concentration in each of the relevant markets; significantly enhancing the likelihood of collusion or interdependent coordination among the remaining firms in each of the relevant markets; and significantly enhancing the likelihood of dominant firm behavior to increase price in the suspension PVC copolymer resin market.

The proposed consent order with Tenneco, accepted subject to final approval, preserves the Commission's remedial options with respect to the ongoing administrative proceeding. The proposed consent order provides that, in the event a divestiture order is entered by the Commission against Occidental in this proceeding, Tenneco shall consent to the assignment by Occidental, to the acquirer(s) of any PVC assets or business divested by Occidental pursuant to that order, in a manner that has received the prior approval of the Federal Trade Commission, of all benefits, rights, and privileges extended to Occidental under the terms of the sale agreement, with certain exclusions; that Tenneco will cooperate in the transfer of any PVC assets or business divested by Occidental to a third party pursuant to Commission order, and will take no action that interferes with any Commission-ordered relief; that the final order of the Commission against Occidental may prohibit Occidental from exercising an option granted under the acquisition agreement to compel Tenneco to repurchase Tenneco's former Burlington, New Jersey, PVC facility, or may require that any reacquisition by Tenneco of the Burlington, New Jersey, PVC facility be made only in a manner that has received the Commission's prior approval; and that any reacquisition by Tenneco of the Burlington, New Jersey, PVC plant shall only be made in a manner that is consistent with the purposes of the Commission's final order against Occidental.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the Complaint or the agreement containing the proposed consent order, or to modify their terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 88-10534 Filed 5-10-88; 8:45 am]

BILLING CODE 6750-01-M

[1] PVC resin is a "thermoplastic" material, i.e., a type of plastic that becomes soft and malleable when heated.

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16 CFR Part 13

[File No. 861-0004]

Robert E. Harvey, M.D., P.A., d.b.a. Victoria Allergy and Asthma Clinic; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Victoria, Tx. allergists from impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health facility in order to restrict competition from physicians who are not allergists.

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. and Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

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List of Subjects in 16 CFR Part 13

Allergists, Physicians, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the matter of Robert E. Harvey, M.D., P.A., doing business as Victoria Allergy and Asthma Clinic; Robert E. Harvey, M.D., and individual; and Gullapali K. Rao, M.D., an individual.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Robert E. Harvey, M.D., P.A., a professional association doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D., and Gullapali K. Rao, M.D., individuals ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, by their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Robert E. Harvey, M.D., P.A., is a professional association, existing and doing business under the laws of the State of Texas as Victoria Allergy and Asthma Clinic. Proposed respondents Robert E. Harvey, M.D. and Gullapali K. Rao, M.D. are physicians licensed and doing business under the laws of the state of Texas. Proposed respondents' principal place of business is located at 3901 North Navarro, Victoria, Texas 77901.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint attached may be sued in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that for purposes of this Order, the following definitions apply:

A. "Respondents" means Robert E. Harvey, M.D., a professional association doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D. and Gullapali K. Rao, M.D., individually or under any other name or names, and their representatives, agents and employees.

B. "Allergy testing product" means any product or device that has been approved by the Food and Drug Administration of the United States Department of Health and Human Services ("FDA") for the use in the diagnosis or treatment or allergic disease in human patients. This definition includes but is not limited to, products or devices used for *in vitro* allergy tests, as hereinafter defined.

C. "*In vitro* allergy test" means any test, approved by the FDA, that is conducted on blood or blood serum samples to diagnose or treat allergic disease. This definition includes, but is not limited to, tests that are known by the trade names "Radio-allergosorbent tests," "Multiple Antigen Simultaneous tests," "Fluoroallergosorbent tests," and "Immunoperoxidase tests."

II.

It is ordered that respondents, their successors and assigns shall cease and desist from, directly or through any devices, entering into, threatening or attempting to enter into, organizing, continuing or participating in any agreement or combination to refuse or threaten to refuse to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health care facility. This includes but is not limited to any agreement or combination to refuse or threaten to refuse to deal with any manufacturer or distributor of any allergy testing product because that manfuacturer of distributor offers to sell or sells allergy testing products to any physician who is not certified or eligible for certification by the American Board of Allergists, or to any clinic, hospital, ambulatory care center or other health care facility.

Provided that nothing in this order shall prohibit a respondent from entering into any agreement with any physician with whom that respondent practices medicine in partnership or as a professional corporation or association, or who is employed by the same person as that respondent or whom that respondent employs.

III.

It is further ordered that respondents shall:

A. Within thirty (30) days after this Order becomes final, mail a copy of this Order and of the Complaint in this proceeding to each and every physician or facility to whom respondents sent correspondence referred to in Paragraphs 13(a), 13(b), and 13(d) of the Commission's complaint in this matter.

B. Within sixty (60) days after this Order becomes final, and at such other times as the Commission may by written notice to respondents require, file or cause to be filed with the Office of the Secretary of the Commission, Washington, DC 20580, or such other office as the Commission shall designate in writing, a verified written report setting forth in detail the manner and form in which they have complied with this Order.

IV.

It is further order that the respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affilitiation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondents are newly engaged as well as a description of respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

Analysis of Proposed Consent Order to Aid Public Comment: Robert E. Harvey, M.D., doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D. and Gullapali K. Rao, M.D., Individuals

The Federal Trade Commission has accepted an agreement to a proposed consent order from Robert E. Harvey, M.D., ("Harvey"), individually and doing business as Victoria Allergy and Asthma Clinic ("Victoria Allergy"), and Gullapali K. Rao, M.D. ("Rao").

The Commission has placed the proposed consent order on the public record for sixty (60) days to obtain comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that Victoria Allergy, Harvey, and Rao have conbined or conspired with physicians in the State of Texas who specialize in the diagnosis and treatment of allergic disease ("allergists") to restrict competition from non-allergist physicians. The alleged purpose and effect of the conspiracy was to coerce and boycott two manufacturers of allergy testing systems to induce these manufacturers to discontinue their sales of the testing systems to non-allergist physicians.

According to the complaint, both allergists and some physicians who are not allergists compete in the diagnosis and treatment of allergic disease. The complaint asserts that certain diagnostic testing methods, known as *in vitro* allergy tests, have been developed that permit non-allergist physicians to compete more easily with allergists. Prior to the development of *in vitro* allergy tests, the complaint alleges, allergists largely competed only among themselves; after the development of these tests, allergists began to face substantial competition from non-allergist physicians.

According to the complaint, Drs. Harvey and Rao sent letters to all or nearly all allergists in the State of Texas in April, 1984, urging them to "join forces" against the marketing of *in vitro* allergy tests to non-allergist physicians. In particular, the complaint alleges, their letters urged these allergists not to deal with Pharmacia Diagnostics, a diversified manufacturer of medical diagnostic products, because that company had marketed its *in vitro* allergy tests to non-allergist physicians. The complaint also alleges that Drs. Harvey and Rao wrote to allergists in the State of Texas again in April, 1985, urging them to take concerted action to deter another manufacturer of *in vitro* allergy tests, MAST Immunosystems, Inc., from marketing its products to non-allergist physicians. The complaint alleges that some allergists in Texas joined Drs. Harvey and Rao in attempting to coerce Pharmacia Diagnostics and MAST Immunosystems to stop selling allergy tests to non-allergist physicians.

The complaint alleges that the actions of Dr. Harvey, Dr. Rao, and other allergists has several anticompetitive effects. First, by limiting the ability of non-allergists to obtain materials necessary to diagnose allergies, the conspiracy restricted the ability of patients to choose among a variety of alternative health care providers on the basis of price, service, quality, and other factors. Second, the conspiracy limited the ability of non-allergist physicians, hospitals, clinics, and ambulatory care centers to compete with allergists. Third, the conspiracy hindered the development of competitive, convenient, cost-effective and innovative forms of allergy testing.

The Proposed Consent Order

The proposed order is intended to eliminate the effects of the alleged boycotts. It prohibits Dr. Harvey and Dr. Rao from entering into, or participating in any joint action with the purpose or effect of impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center, or other health care facility. The order specifically prohibits Dr. Harvey and Dr. Rao from engaging in any joint action to refuse to deal with any manufacturer or distributor of any allergy testing products because that manufacturer or distributor markets its products to non-allergist physicians. The order does not prohibit Dr. Harvey or Dr. Rao from entering into agreements with physicians with whom they practice in a partnership, or physicians they employ, or by whom they are employed.

The order requires Drs. Harvey and Rao to send a copy of the Order and Complaint in this matter to every physician and health care facility to whom they had sent their letters concerning Pharmacia Diagnostics and MAST Immunosystems, Inc. Mailing of the Order and Complaint to the recipients of the alleged solicitation to refuse to deal is expected to provide notice to those physicians that collective action to restrict the ability of non-allergist competitors to compete may constitute a violation of law.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 88-10535 Filed 5-10-88; 8:45 am]

BILLING CODE 6750-01-M

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

Reconsideration of Interpretation of Exportation for Purposes of Foreign Trade Zones Act; Extension of Time for Comments

AGENCY: Customs Service, Treasury.

ACTION: Extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning Customs interpretation of the meaning of "exportation" for purposes of the Foreign Trade Zones Act. A notice inviting the public to comment on Customs reconsideration of its interpretation of "exportation" was published in the Federal Register on March 4, 1988 (53 FR 6966), and comments were to have been received on or before May 3, 1988. Customs has received several requests to extend the period of time for comments. The requesters state additional time is required to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended 45 days.

DATE: Comments are requested on or before June 17, 1988.

ADDRESS: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch (202–566–5856).

Dated: May 6, 1988.

Edward F. Kwas,

Acting Commissioner of Customs.

[FR Doc. 88–10808 Filed 5–10–88; 8:45 am]

BILLING CODE 4820–17–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 20–88]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Immigration and Naturalization Service (INS), proposes to identify as a separate system of records its "Centralized Index," currently identified in 28 CFR 16.99 as "Subsystem (3)" of its Immigration and Naturalization Service Index System, JUSTICE/INS–001 (hereinafter referred to as the 001 system). INS is naming the new system "The Immigration and Naturalization Service Alien File (A–File) and Central Index System (CIS), JUSTICE/INS–001A" (hereinafter referred to as the 001A system), and is promulgating this rule to exempt it from certain Privacy Act provisions; conversely, it is removing certain exemptions from the 001 system.

Specifically, the 001A system will be exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. Information in the system relates to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order, the privacy of third parties, and the identities of confidential sources involved in such investigations. Exemptions from subsections (e)(4)(I), (f) and (h) for the 001 system will be removed because INS complies with the requirements thereof.

DATES: All comments must be received by June 10, 1988.

ADDRESS: Address any comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, 202 272–6474.

SUPPLEMENTARY INFORMATION: In the Notices section of today's Federal Register INS proposes to alter and identify as a separate system of records Subsystem E. of the 001 system. Subsystem E. is identified in 28 CFR 16.99 as "Subsystem (3)." The reestablishment of the subsystem as a new and separate system (the 001A system) and the promulgation of this rule are the first steps of a major INS effort to revise and ultimately eliminate the 001 system as it is now described. The remaining subsystems of 001 are being reviewed to determine how they too can be most accurately described and reported. (The 001 system was published in its entirety in the Federal Register on October 31, 1984 (49 FR 43812).)

In the process of extracting and redescribing the subsystem, INS determined that exemption from subsections (e)(4)(I), (f) and (h) are unnecessary for both the 001 and 001A systems because INS does comply with the requirements thereof. Accordingly, these exemptions will be removed from the 001 system. INS is complying with subsection (e)(4)(I) by providing the information relating to its record source categories in its Federal Register notice published October 31, 1984. Similarly, INS is in compliance with subsection (f) by virtue of the Department's published regulations in 28 CFR Part 16. INS complies with subsection (h) by allowing persons described by subsection (h) to act on behalf of the individual as required by the subsection. Where appropriate, access to the records is protected by virtue of the system's exemption from subsection (d); i.e., records not available to the individual covered by the system, likewise, would not be available to persons acting on that individual's behalf under subsection (h). For these reasons, the removal of these exemptions has no real effect on the public.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend Title 28 of the Code of Federal Regulations as set forth below.

Dated: April 26, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR 16.99 by revising paragraph (a), by removing paragraphs (b)(8), (11) and (13), by redesignating paragraphs (b) (9), (10), (12) and (14) as paragraphs (b)(8), (b)(9), (b)(10) and (b)(11) respectively, and by revising the newly redesignated paragraph (b)(11).

§ 16.99 Exemption of Immigration and Naturalization Service Systems—Limited access.

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS–001 which consists of the following subsystems:

(i) Agency Information Control Record Index.
(ii) Alien Enemy Index.
(iii) Congressional Mail Unit Index.
(iv) Air Detail Office Index.
(v) Anti-smuggling Index (general).
(vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.
(vii) Border Patrol Sectors General Index System.
(viii) Contact Index.
(ix) Criminal, Immoral, Narcotic, Racketeer and Subversive Indexes.
(x) Enforcement Correspondence Control Index System.
(xi) Document Vendors and Alterers Index.
(xii) Informant Index.
(xiii) Suspect Third Party Index.
(xiv) Examination Correspondence Control Index.
(xv) Extension Training Enrollee Index.
(xvi) Intelligence Index.
(xvii) Naturalization and Citizenship Indexes.
(xviii) Personnel Investigations Unit Indexes.
(xix) Service Look-Out Subsystem.
(xx) White House and Attorney General Correspondence Control Index.
(xxi) Fraudulent Document Center Index.
(xxii) Emergency Reassignment Index.
(xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) * * *

(11) In addition, these systems of records are exempt from subsections (c)(3),(d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified pursuant to Executive Order would violate the Executive Order protecting classified information.

* * * * *

[FR Doc. 88–10398 Filed 5–10–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917 and 1918

[Docket No. H–004J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the public comment period in the current rulemaking on the OSHA lead standard. This rulemaking concerns the feasibility of meeting the permissible exposure limit specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in nine remand industry sectors.

DATE: Written comments must be received by May 23, 1988.

ADDRESSES: Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–004J, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–8148.

SUPPLEMENTARY INFORMATION:

I. Background and Judicial History

On November 14, 1978, OSHA promulgated the lead standard (29 CFR 1910.1025), which, in part, limited occupational exposure to airborne concentrations of lead to 50 micrograms per cubic meter of air ($\mu g/m^3$), based on an 8-hour, time-weighted average (TWA) (43 FR 52952 and 43 FR 54354, November 21, 1978). On August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of the lead standard in most respects. However, it remanded the record to OSHA for reconsideration of the question of the technological and economic feasibility of implementing the permissible exposure limit (PEL) exclusively by means of engineering and work practice controls for 38 industry sectors. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981).

OSHA is now in the process of completing a rulemaking to determine feasibility for the last nine lead industry sectors. The Agency has already held public hearings and received post hearing comments in this proceeding. On April 7, 1988, OSHA reopened the record until May 9, 1988 to receive comments on a final set of documents OSHA placed into the docket. The documents primarily consist of plant site visit reports, related exposure data, and updates of feasibility assessments on each of the nine industry sectors performed by OSHA's contractor, Meridian Research, Inc.

The Agency is currently under order of the United States Court of Appeals for the District of Columbia Circuit to make its determinations of feasibility for the nine remand industries and to return the record to the court by July 15, 1988. (A fuller explanation of the background and legal history surrounding this proceeding and the lead standard can be found at 53 FR 11511, April 7, 1988; and 52 FR 28727, August 3, 1987).

II. Request for Extension of the Comment Period

On April 27, 1988 the American Cast Metals Association (ACMA) requested an extension of the comment period for at least 60 days beyond the current May 9 deadline. Basically two reasons for the request were given. First, several important and complex documents were not entered into the docket by OSHA until April 19 and April 21, 1988. Second, the time between those dates and the May 9 date for the close of the comment period is insufficient to allow industry to make meaningful comments. This

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request for an extension was supported by a number of other trade associations in allied sectors, including the Association of Brass and Bronze Ingot Manufacturers, which also sent a supporting letter. In addition, and for essentially the same reasons, the Lead Industries Association, Inc. (LIA) by letter of April 29, 1988 also requested an extension of the comment period, in this case for approximately four weeks.

III. OSHA Grants Extension

OSHA regrets the delay in entering the documents referred to into the record. The Agency agrees that industries' opportunity to comment should not be adversely affected because of that delay. By this notice OSHA is extending the comment period to May 23, 1988. This will provide the several industries involved more than 30 days from the insertion of these documents into the record to submit their comments. The Agency believes that 30 days is reasonable under all the circumstances. First, for each of the relevant industries only one or two documents were belatedly placed in the record. Industry already has been granted sufficient time to comment on other documents in the record. Second, OSHA is operating under a court-imposed deadline to make its feasibility determinations and return the rulemaking record to the court by July 15, 1988. If OSHA extended the comment period substantially beyond May 23, 1988, it would preclude compliance with the July 15 deadline.

Therefore OSHA hereby extends the closing date for the public comment period in this proceeding from May 9 to May 23, 1988.

IV. Public Comment Procedures

Written comments must be received by May 23, 1988. Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-004], Room N-3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202-523-7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

V. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for the Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, DC, this 6th day of May 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88-10519 Filed 5-10-88; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3378-7]

Approval and Promulgation of Implementation Plans; Disapproval of Three Architectural Coatings Rules in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to disapprove three volatile organic compound (VOC) control rules which were submitted by the California Air Resources Board (CARB) as revisions to the California State Implementation Plan (SIP). The rules concern architectural coatings requirements in Placer County, Sutter County, and the South Coast Air Quality Management District and were submitted to EPA on February 10, 1988 and November 12, 1985. EPA is proposing to disapprove the rules because they are unjustified relaxations from existing SIP requirements in nonattainment areas. The rules are inconsistent with the Clean Air Act (CAA), 40 CFR Part 51 and EPA policy. Public comment is invited on today's proposed action.

DATE: Comments will be considered by EPA if they are submitted on or before June 27, 1988.

ADDRESSES: Send any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. ATTN: State Implementation Plan Section (A-2-3), Air Management Division.

Copies of the submitted rules and EPA's evaluation of the submittal are available at the above address for public inspection during normal business hours.

Copies of the submitted rules are also available at the following locations:

General Projects Section, Technical Support Division, California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

Placer County Air Pollution Control District, 11484 B Avenue, Auburn, CA 95603

Sutter County Air Pollution Control District, 142 Garden Way, Yuba City, CA 95991

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7639; (FTS) 454-7839.

SUPPLEMENTARY INFORMATION:

Background

CARB submitted the following rules for the control of VOC emissions on the dates indicated:

November 12, 1985.

South Coast Air Quality Management District

Rule 1113—Architectural Coatings

February 10, 1988.

Placer County Air Pollution Control District

Rule 218—Architectural Coatings

Sutter County Air Pollution Control District

Rule 3.15—Architectural Coatings

EPA Evaluation

EPA has evaluated the revised architectural coatings rules for consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy. EPA has also evaluated them to determine whether they weaken or strengthen the existing federally approved SIP.

Revised South Coast Rule 1113 (1) extends the final limit compliance date for non-flat, non-specialty coatings to September 2, 1989, (2) adds interim VOC content limits for certain types of industrial maintenance primers and topcoats, and (3) effects labeling requirements for industrial maintenance coatings on January 1, 1988. Overall, and individually, the revisions to Rule 1113 represents a significant relaxation of the existing SIP in an area which cannot attain the NAAQS by December 31, 1987. EPA proposes to disapprove the rule because it is inconsistent with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

Revised Placer County Rule 218 and revised Sutter County Rule 3.15 have been revised and restructured to (1) establish interim and final VOC content limits for a number of specialty coatings, and (2) extend the final limit compliance date for non-flat, non-specialty coatings to September 1, 1989. Overall and individually, the revisions to Placer Rule 218 and Sutter Rule 3.15 represent significant relaxations of the existing SIP. They cannot be approved because they are inconsistent with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

Copies of EPA's detailed evaluations, including policy memoranda, are available for public inspection at EPA's San Francisco office.

EPA Requirements

EPA's requirements governing proposed SIP revisions are contained in the Clean Air Act, section 110 and Part D, 40 CFR Part 51 and various EPA policy memoranda.

Sections 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR Part 51.10, and EPA policy require that SIPs provide for the attainment of the National Ambient Air Quality Standards (NAAQS) "as expeditiously as practicable." Section 110(a)(2)(B) of the CAA, 40 CFR Parts 51.12 and 51.13, and EPA policy require that SIPs also insure maintenance of the NAAQS. Section 110(a)(3(A) of the CAA and 40 CFR Part 51.6 extend the SIP requirements in section 110 and 40 CFR Part 51 to SIP revisions.

EPA cannot approve a SIP or SIP revisions without a demonstration that the SIP or SIP revisions is adequate to attain and maintain the standards. EPA's policy is that the burden of proof is on the State to provide an adequate demonstration. If the state fails to provide an adequate demonstration, EPA must disapprove the submission for failure to satify the requirements of the Act.

Section 172 of the Clean Air Act requires states to adopt regulations which reflect reasonably available control technology (RACT) at a minimum in order to attain and maintain the NAAQS. Although the EPA approved rules may require controls more stringent than RACT, these controls are necessary for the attainment and maintenance of the ozone standard. The revised rules would allow increased emissions in areas which have not demonstrated attainment of the ozone standard. EPA is therefore proposing to disapprove the revisions because they fail to satisfy the requirements of section 172 of the Act.

In this case, the State of California has failed to demonstrate that the submitted architectural coatings SIP revisions will provide for attainment and maintenance of the NAAQS as expeditiously as practicable. The State has also not demonstrated that it would be unreasonable to continue to impose the existing SIP limits.

EPA has evidence which indicates that at least forty companies have certified compliance with the limits for non-flat, non-specialty coatings which these revisions would relax. In an additional survey, fourteen out of fifteen companies indicated having a compliant oil-based coating. Therefore, both water-based and oil-based coatings are available which meet the limits currently in the SIP.

EPA will continue to accept additional information regarding quality, price, and performance of the non-flat architectural coatings affected by this rule.

EPA Action

Under section 110 and Part D of the CAA, EPA is proposing to disapprove as SIP revisions South Coast Rule 1113, Placer County Rule 218 and Sutter County Rule 3.15 because they weaken the existing California SIP. These architectural coatings rules are inconsistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

Regulatory Process

Today's action imposes no additional requirements on small entities. Therefore, under 5 U.S.C. section 605(b), I certify that today's action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: May 30, 1988

John Wise,

Acting Regional Administrator.

Note.—This document was received by the Office of the Federal Register on May 6, 1988.

[FR Doc. 88-10471 Filed 5-10-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

Certification of Non-Delinquency by Applicants for Federal Financial Assistance

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes a regulation which requires that a certification of non-delinquency be included in applications for Federal financial assistance. This action will implement Paragraph 6 of Office of Management and Budget (OMB) Circular A-129, "Managing Federal Credit Programs."

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, telephone (202) 343-3433.

SUPPLEMENTARY INFORMATION: In a September 29, 1987, memorandum for the Heads of Departments and Agencies, the Deputy Director of OMB directed each agency to take appropriate steps to ensure that those receiving Federal financial assistance were not delinquent on loans or other accounts to the Federal Government. Paragraph 6 of OMB Circular A-129 prohibits award of Federal funds to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. This requirement was to be implemented, in part, by amending application forms for Federal financial assistance to include certification of non-delinquency.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 since it will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 et seq.) since the certification requirement does not concern information not normally available to small entities in the ordinary course of business.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* since the type of certification proposed under this rule is not considered as an information collection requirement.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Date: April 7, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-102; Executive Order 12549 of February 18, 1986; OMB Circular A-110; OMB Circular A-129.

2. Part 12 is amanded by adding a new Subpart E to read as set forth below:

Subpart E—Certification of Non-Delinquency

Sec.
12.100 Purpose.
12.101 Definitions.
12.102 Authority.
12.103 Applicability.
12.104 Policy.
12.105 Procedures.

Subpart E—Certification of Non-Delinquency

§ 12.100 Purpose.

(a) These regulations implement the requirements of paragraph 6 of OMB Circular A-129, "Managing Federal Credit Programs," which provide, "Except where required by law or approved by the head of the agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor."

(b) The requirement in paragraph (a) of this section is implemented by:

(1) Identifying the programs and applicants within the Department of the Interior that are covered by the Circular; and

(2) Prescribing the procedures that the Department of the Interior shall use in requiring a non-deliquency certification to be completed by financial assistance applicants.

§ 12.101 Definitions.

"Cooperative agreement" means an agreement used when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute, and "substantial" involvement is anticipated between the executive agency and the recipient during the contemplated activity.

"Debt" means an amount of money or property that has been determined by an appropriate agency official to be owed to the United States from any person, organization or entity except another Federal agency.

"Direct loan" means (a) disbursement of funds to an individual or non-federal entity that is contracted to be repaid, with or without interest; (b) a purchase of private loans through secondary market operations; (c) an acquisition of guaranteed private loans in satisfaction of default or other loan guarantee claims; (d) a sale of agency assets on credit terms of more than 90 days duration.

"Loan guarantee" means (a) any debt obligation on which the agency pledges to pay part of all of the amount due to a lender or holder in the event of default by the borrower; and (b) a direct Federal loan that an agency sold under a guarantee or agreement to repurchase.

"Loan insurance" means a type of guarantee in which any agency pledges the use of accumulated insurance premiums to secure lenders against default on the part of borrowers. For the purposes of OMB Circular A-129, loan insurance is considered to be a "loan guarantee" and the term "insured loan" is considered to be a "guaranteed loan."

"Grant" means an agreement used when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

§ 12.102 Authority.

These regulations are issued pursuant to OMB Circular A-129, dated May 9, 1985.

§ 12.103 Applicability.

(a) *Covered transactions.* These regulations apply to Department of the Interior domestic assistance transactions of direct loans, loan guarantees, loan insurance, debts arising from grants, and other administrative arrangements (including cooperative agreements) under the programs listed in Appendix A.

(b) *Excluded applicant.* Pursuant to paragraph 4 of OMB Circular A-129, these regulations do not apply to applicants which are State or local governments (including Indian tribal governments).

§ 12.104 Policy.

(a) In order to promote effective management of credit programs, it is the policy of the Department not to award funds to an applicant who is delinquent on a Federal debt until the delinquency is made current or a satisfactory agreement is made between the debtor and affected agencies.

(b) Exceptions to the policy in paragraph (a) of this section shall be made only where required by law or approved in accordance with the procedures in § 12.105(c).

§ 12.105 Procedures.

(a) Bureaus shall ensure tht all covered applicants for Federal financial assistance from the Department complete and submit the certification in Appendix B before further action is taken on the application. Bureaus may rely upon a seminannual certification by applicants with whom a continuing relationship has been established. The completed certification shall be included in the official file established for the transaction.

(b) For covered applicants who certify in accordance with paragraph (a) of this section that there is a delinquency on a Federal debt, and the delinquent account cannot be made current or satisfactory arrangements cannot be made between the affected agencies and the applicant, no award shall be made, except as authorized in paragraph (c) of this section.

(c) Bureau procedures shall require approval of the bureau head, or designee, to waive the policy in § 12.104(a) with respect to an applicant. Bureau procedures shall require that any waiver be made in writing and contain a full statement of facts supporting why such action is in the best interests of the Government. By November 15 of each year, bureaus shall submit an annual report to the Assistant Secretary—Policy, Budget, and Administration of any waivers made during the proceding fiscal year.

Appendix A to § 12.103

Department of the Interior Programs Covered by OMB Circular A-129, "Managing Federal Credit Programs"

15.106 Indian Employment Assistance
15.123 Indian Loans—Claims Assistance
15.124 Indian Loans—Economic Development
15.144 Indian Child Welfare Act—Title II Grant
15.145 Indian Grants—Economic Development (Indian Grant Program)
15.221 Cooperative Agreements for Research in Public Lands Management
15.250 Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining
15.308 Grants for Mining and Mineral Resources and Research Institutes
15.501 Distribution System Loans
15.502 Irrigation Systems Rehabilitation and Betterment
15.503 Small Reclamation Projects
15.600 Anadromous Fish Conservation
15.805 National Water Resources Research Program
15.806 Geological Survey—Regional and Data Acquisition
15.904 Historic Preservation Fund Grants-in-Aid

Appendix B to § 12.105

Certification of Non-Delinquency by Applicants for Federal Financial Assistance

1. The applicant certifies upon submission of this application that it is , is not in a defaulted status to any Federal agency or program on any loan, grant, cooperative agreement or other account to the Federal Government.

2. Any intentionally false statement in this certification is a violation of law punishable under 18 U.S.C. 1001.

Name of Applicant

Signature of Applicant

Date

[FR Doc. 88-10462 Filed 5-10-88; 8:45 am]
BILLING CODE 4310-RF-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 80483-8083]

Western Pacific Bottomfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 2 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), which creates a limited access program for the bottomfish fishery in certain waters of the Northwestern Hawaiian Islands (NWHI). The program would establish a control zone called the Ho'omalu Zone, in which a person must have a limited access permit to fish, and a qualifying zone called the Mau Zone, in which a person could earn points to qualify for future eligibility for a limited access permit. Persons who can demonstrate participation in, or substantial financial commitment to participate in the NWHI fishery, on or before August 7, 1985, would be eligible for initial permits to participate in the Ho'omalu Zone fishery. A landings requirement would be established to maintain eligibility for annual renewal of permits. No new permits to enter the fishery would be issued until stocks are sufficiently large to provide adequate catches. A point system would be established to control issuance of permits for future access to the fishery. The Western Pacific Fishery Management Council (Council), with the advice of an industry and government Advisory Review Board, would make recommendations to the Regional Director, Southwest Region, NMFS, regarding future access to the fishery. The objectives of the limited access program are to reduce the risk of overfishing, reduce the level of over-capitalization in the fishery, increase stability in the fishery, and increase profitability or net return to the fishery. The Council will undertake a full evaluation of the effectiveness of the program in five years. This rule would also make it a violation of Federal law to fail to report fishery data in accordance with State reporting requirements and would require vessel operators to notify the U.S. Coast Guard prior to anticipated arrival in port to unload bottomfish taken in the NWHI.

DATE: Written comments must be received or on before June 20, 1988.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the limited access program, the environmental assessment (EA), and the regulatory impact review (RIR) may be obtained by contacting the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1406, Honolulu, HA 96813, telephone 808-523-1368.

Comments on the collection of information requirement should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NOAA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner (Chief, Fisheries Management and Analysis Branch), 213-514-6660.

SUPPLEMENTARY INFORMATION: The domestic fisheries for bottomfish in the U.S. Exclusive Economic Zone (EEZ) adjacent to the State of Hawaii are managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented August 27, 1986 (51 FR 27413, July 31, 1986).

The Council explicitly considered, but did not adopt a limited access program in the FMP because further study was deemed necessary. In a separate notice action, the Council adopted a control data for access into the NWHI bottomfish fishery (51 FR 11462; April 3, 1986). This date (August 7, 1985) was set to provide a potential cutoff for eligibility based on past participation in the event the Council would choose prior participation as a criterion for eligibility for permits under the program. The intended effect of the cutoff date announcement was to discourage new access to the fishery based on speculation while further study and discussions were undertaken on whether, and if so how, access to the resource should be controlled. Such speculation frequently occurs and could have negated the effects of any limited access program. The notice also provided current and prospective fishermen a basis for making informed investment decisions knowing that limited access was a definite management possibility in the future.

It should be noted that the FMP, as approved, provided the option of instituting a limited access program through the framework process rather than as an amendment. The Council chose to use the FMP amendment process because of the significance of the action. The amendment process provides greater opportunity for broad public review as well as government agency reviews. The record will be far more complete as a result and will thus provide guidance to other Councils that may consider limited access for their fisheries.

The bottomfish fishery of the NWHI management area has grown greatly since vessels first began exploiting the resource in the 1980s. The fleet grew from 8 vessels in 1980 to 29 vessels in

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1986. Landings increased substantially from only 100,000 pounds in 1981 to about 784,000 pounds in 1986. However, catch rates have dropped sharply for the most abundant and highly priced spices (opakapaka), and fishermen have been able to maintain total revenues only by harvesting larger amounts of less abundant (onaga) or less valuable (hapu'upu' u, ulua) species. Vessels also have had to make longer trips in attempts to find areas with higher catch rates and larger fish. It is estimated that the average vessel in the fishery is losing $50,000 or more per year before depreciation and taxes, despite increased fishing effort in relatively lightly fished areas where catch rates have been favorable. In summary, the fishery has been overcapitalized. Although some vessels have recently left the fleet, there is far more capacity to harvest fish than there are fish to be harvested. Further, the possibility exists that new vessels will enter the fishery despite the present over-fishing of the stocks and economic prospects. This situation was first brought to the Council's attention in 1984 when several vessel owners proposed that the Council develop a limited access program. The Council concluded that further information and analysis was necessary and proceeded to contract for a study. In 1985, the Council established a "control date" of August 7, 1985, which could serve as a cutoff for eligibility for access into the fishery under a future limited access program using prior participation as a criterion for initial permits.

This control date was published in the Federal Register (51 FR 11462, April 3, 1986), and work proceeded on an assessment of limited access alternatives. This proposed rule would implement the program supported by that assessment.

The goal of the limited access program is to achieve a longterm balance between harvesting capacity and harvestable stocks of bottomfish in the NWHI management subarea, so that those in the fishery will make a profit while the stocks remain healthy. This would be accomplished by initially limiting the number of persons and vessels eligible to obtain permits to fish for bottomfish in a newly designated Ho'omalu Zone in the NWHI management subarea. The program requires continuing participation in the fishery to maintain eligibility for renewal of permits, preventing new access until it is demonstrated that the bottomfish stocks can support additional effort, and establishing a system by which persons can earn points for possible access to the fishery when new access is permitted. A section-by-section summary of the program follows:

(a) Vessel owners and captains who can demonstrate that, on or before August 7, 1985, they participated in, or made commitments to invest (e.g., by obtaining a loan, making an offer to buy a vessel, or having a vessel under construction) for future participation in the fishery, would be eligible to obtain permits initially. This assures that those who were in the fishery, either as owners of vessels or as captains of those vessels, will have a continuing opportunity to participate regardless of monetary or non-monetary motivations but prevents new access until the health of the bottomfish stocks and the fishery can support additional boats. An owner with more than one vessel in the fishery in the qualifying period would be eligible for one permit for each vessel that made at least one qualifying landing of bottomfish in 1986 and 1987. A person who owns two or more vessels which made landing on or before August 7, 1985, but either none or only one of those vessels made a qualifying landing in 1986 and 1987 would be eligible for only one permit. The permits will be area-specific; a person with a limited access permit for the Ho'omalu Zone may not fish for bottomfish in the Mau Zone; and a person with a permit for the Mau Zone may not fish for bottomfish in the Ho'omalu Zone.

(b) Permits would be awarded to vessel owners for specific vessels. This is to recognize that the owners are the persons who have the greatest stake in the fishery and who would be most directly affected by the program. The owners decide how to use their vessels and associated resources and should have control over the permits for the vessels.

(c) Eligible owners would have five years from the effective date of the program (January 1, 1989) in which to apply for their initial permit. This is intended to provide flexibility for a vessel owner to defer obtaining a permit until the owner concludes conditions are suitable to enter the fishery. This should prevent an initial rush to participate in the fishery. Such an increase in participation could have resulted in further reduction in stocks under the license renewal conditions (i.e., 3 trip minimum).

(d) Documentation of participation would include official landing records submitted to a State or Federal agency demonstrating that the vessel made at least one landing (regardless of weight) of bottomfish from the NWHI on or before August 7, 1985. For the purposes of this section the NWHI is the area defined in § 683.5(a)(2) and is that portion of the EEZ adjacent to Hawaii that is west of 161°20' W. longitude.

(e) A person who can document that he was captain of a vessel that made one or more qualifying landings from the NWHI bottomfish fishery on or before August 7, 1985, and who becomes owner of a 50 percent or greater share of a vessel within five years of the effective date of this program also would be eligible for an initial permit within that time. This is intended to recognize that these captains should have the option of entering the fishery on the normal progression from captain to owner or part-owner of a vessel. It ensures that no owners or non-owner captains of vessels that made qualifying landings on or before August 7, 1985, will be automatically excluded from the fishery.

(f) A vessel for which a permit has been obtained must make at least three qualifying landings from the Ho'omalu Zone in the calendar year in which the permit was issued to be eligible for permit renewal for the next year. A qualifying landing is a landing which contained at least 2,500 pounds of bottomfish from the Ho'omalu Zone or a landing totalling more than 2,500 pounds of fish from the Ho'omalu Zone, of which at least half of the fish by weight was bottomfish. This is intended to provide a performance standard for continuing eligibility. Only those who continue to fish up to a minimum level will remain in the fishery. This provision is expected to result in a gradual reduction in the fleet. Some owners will conclude that other fisheries offer better opportunities and will shift effort accordingly; others will be unable to meet the landing criterion and will be forced to withdraw from the fishery. Remaining vessel owners will have a better chance of covering costs with less risk of biological overfishing of the stocks. The choice of three landings as the minimum performance level was based on the conclusion that the fishery is intended to support those who derive a sizable portion of their fishing income from the fishery. Requiring fewer than three landings would allow occasional participants to maintain eligibility, while more than three landings could pose a hardship for those whose vessels operate in two or more fisheries, including bottomfish in the NWHI. The program includes a provision for a permit holder to apply for a waiver from the three-landing requirement when circumstances beyond the holder's control prevented the permit holder's vessel from making the requisite landings. General economic conditions or marketing difficulties will not qualify as sufficient reason for a waiver.

(g) An owner who obtains and then voluntarily surrenders a permit to the Regional Director in the first five years of the plan will have priority for a new permit when it is found the fishery can sustain new access. This is intended to encourage owners to withdraw from the fishery with minimal adverse impact in the long term. If successful, this step will provide better income opportunities for remaining participants and less risk of biological overfishing. If two or more owners voluntarily surrender permits and all apply to reenter at the same time, priority will be given to the person who first surrendered his permit. A permit holder may use this option only once.

(h) New permits may be issued in the future when the Regional Director, after consulting with the Council, finds that stocks are sufficient in the Ho'omalu Zone to generate catches high enough so that total fleet revenues with the added vessel(s) will equal or exceed total fleet costs (fixed plus variable). That is, the average vessel will have to exceed the break-even level of production before additional vessels will be permitted. This is intended to allow the fishery to become economically viable for the average vessel before new vessels will be allowed to compete for the resource. The Regional Director will place a notice in the Federal Register and use other means to notify prospective participants of the opportunity to apply for a permit under this program.

(i) Eligibility for new permits will be based on a point scale for prospective participants based on prior experience in fishing for bottomfish in the Hawaiian Archipelago. A vessel owner or captain would receive two eligibility points for each year for which he can document three or more qualifying landings of bottomfish caught in the NWHI. A qualifying landing for the point system is a landing which contained at least 2,500 pounds of bottomfish from the NHWI or which contained a total of at least 2,500 pounds of fish from the NWHI, at least half of which was bottomfish. One point would be awarded to an owner or captain for each year that the vessel landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands. Points may only be earned for one area in any given year. The applicant who has at least a 25 percent interest in a vessel and who has the highest number of points would get the first new permit issued under the program, provided that no person who voluntarily surrendered a permit wants to reenter. This is intended to give priority to those captains who have served longest in the fishery without owning a vessel and who become owners (25 percent or more) of vessels to be used in the fishery. Participation as a captain in the NWHI qualifies for more points than in the main Hawaiian Islands because of the familiarity gained for that area. This is important in terms of safety and knowledge about the special protected resources of the NWHI. The partial ownership requirement is set to ensure that the participant will have an ongoing stake in maintaining the viability of the fishery. If two or more persons are tied for the highest number of points and the number of permits is less than the number of applicants, the permit(s) will be awarded by the Regional Director by a lottery system.

(j) Permits may not be sold or otherwise transferred. If a permitted vessel is sold, the seller will retain the permit. The prohibition on the sale of permits is intended to ensure that no persons will have a windfall financial benefit by virtue of eligibility for initial permits under the program and to minimize the potential for one or a few interests to acquire a virtual monopoly or oligopoly in the fishery. The Council considered using an individual fisherman's quota system but concluded that it would be impossible to agree on cumulative bottomfish quotas or species quotas that could be allocated in such shares. The Council also preferred not to allow the cost of permits to become a significant barrier to future access to the fishery.

(k) Notwithstanding the general prohibition on permit transfers, a permit holder may replace his permitted vessel with another vessel of up to 60 feet in length without obtaining any approvals. This is intended to allow a vessel owner to increase the size of his vessel for safety purposes. This provision recognizes that adverse sea conditions often arise in the control zone.

(l) A permit holder also may apply to the Regional Director for permission to replace his permitted vessel with another vessel of equal catching power. The Regional Director will consult with the Council before acting on such a request. This would allow use of a vessel with greater safety or comfort but not greater catching power.

(m) A permit holder may apply to the Regional Director for permission to replace his vessel with one of greater fishing power in order to maintain fishing power comparability with other permitted vessels in the fishery. The Regional Director will consult with the Council and will review the application for consistency with the objectives of the limited access program before taking action on such applications.

(n) Permits may be held and renewed by partnerships or corporations. If 50 percent or more of their interest in the permitted vessel passes to persons other than those listed in the original application, however, the permit will lapse and be surrendered to the Regional Director. This is intended to ensure that a partnership or corporation ownership will not be used to circumvent the prohibition on sale or transfer of a permit.

(o) Designated captains and relief captains must attend a workshop on safety and endangered species concerns specific to the NWHI. The waters in the NWHI present unusual conditions which give rise to special safety concerns. In addition, there are several endangered and threatened species in the area, and special management regulations exist to protect them. The workshop is intended to minimize the risk of problems associated with these factors.

(p) The Council will establish an Advisory Review Board to assist the Council in developing recommendations for the Regional Director concerning whether and when new access to the Ho'omalu Zone is appropriate, catching power equivalency for replacement vessels, and other matters in implementing this program. The Board will consist of nine persons, including two limited access permit holders, two persons fishing for bottomfish in the Mau Zone or around the main Hawaiian Islands, one person engaged in marketing or processing of NWHI bottomfish, two technical State fishery staff, and two NMFS staff. The technical staff will include at least one biologist and one economist. The term of nongovernment members is limited to five years, and initial terms may be staggered. The intent of the panel is to provide both technical information and practical fishery information in carrying out the program. The composition of the panel is intended to ensure full representation of fishing interests and technical experts on the fishery.

(q) The program provides an appeal mechanism by which persons can request higher level review of a decision by the Regional Director. The Assistant Administrator for Fisheries would decide such appeals.

(r) The Council is aware of the potential that the limited access program will not have the intended effects. This is a new approach, and the responses of fishermen cannot be predicted with certainty. It is quite possible that program changes will be

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needed as experience is gained in the program. The effectiveness of the program will be assessed in the annual review of the fishery called for under the FMP. In addition, the Council will complete a special evaluation of the program after the initial five-year grace period during which historic participation is an automatic eligibility criterion. At that time, the Council and the NMFS will know how many persons are eligible for permits and can better predict future participation and problems.

(a) The proposed rule contains two provisions intended to facilitate monitoring of the fishery for future evaluation of its effectiveness and administration of the program. The first provision requires that fishermen with Federal permits to fish for bottomfish comply with State fishery reporting requirements. This will not add to the reporting burden but should strengthen the effectiveness of State reporting requirements. State-collected landings data will be important to determine changes in the fishery under this program and to assess whether the program is having the intended effects. The second provision requires vessel operators to notify the U.S. Coast Guard in advance of the anticipated arrival in port to unload bottomfish taken in the NWHI. This will support determination of participation by vessels in the fishery and occasional inspection of the catch to collect biological data with the cooperation of the vessel operators.

Nothing in the limited access program is intended to prevent or limit the authority of the Council to propose and the Secretary of Commerce (Secretary) to institute additional conservation and management measures necessary to protect the productivity of the bottomfish stocks of the NWHI. It is expected, however, that such measures will be far more likely to succeed after the limited access program is in effect. In addition, it is expected that, with limited access in effect, the participants in the fishery will ultimately have greater flexibility in their selection of fishing strategies to maximize economic returns or achieve non-monetary objectives with a reduced regulatory burden.

In developing this program, the Council considered the question of whether to make special provision for native Hawaiian fishing rights. No recommendations or proposals are made at this time. The Council is continuing to research this issue with the Native Hawaiian Legal Corporation and the Office of Hawaiian Affairs.

The proposed program will add slightly to the information collection burden under the FMP. Fishermen in the NWHI already are required to obtain permits under the current management regulations. Those who may be eligible for permits under the limited access program will have to provide additional information to document their prior participation or their financial commitment for anticipated participation in the fishery. This does not entail new catch or effort reporting requirements. However, the applicant will have to provide either copies of historic catch records filed with a State or Federal agency or a statement from a State or Federal agency confirming that the applicant was an owner or captain of a vessel that made qualifying landings from the fishery during the period in question.

The proposed rule does not require that catch, effort, or fishery operations data be submitted to the Secretary under this program. The FMP calls for an annual report to be prepared for Council consideration. The State and Territory governments and the NMFS provide information for this report, which is used to consider the need for changes in management of the fishery. The annual report includes an assessment of economic conditions as well as the status of the stocks. It is anticipated that existing State and Federal reporting requirements will be sufficient to make the determinations required under the limited access program. The provision making it a violation of Federal law to fail to report in conformance with State laws and regulations governing reporting landings should reinforce the effectiveness of state reporting requirements and enhance their enforcement.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of any amendment to an FMP. At this time, he has not determined whether the FMP amendment that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Southwest Region prepared an environmental assessment for this amendment and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment can be obtained from the Region or Council (see **ADDRESSES**).

The Council incorporated a regulatory impact review in the amendment, which concludes that this rule will have a long-term positive impact on the fishery and on related processing and marketing sectors. Preventing new access at this time will prevent additional effort, which would drive catch rates down to even lower levels than at present. The performance standard is expected to be sufficient to ensure that those dependent on the fishery will be able to maintain their participation without putting excessive pressure on the stocks, while those not dependent on the fishery will be less likely to maintain eligibility for future participation. The measure allowing those initially eligible to obtain permits to defer applying for permits for up to five years is expected to allow such persons flexibility to participate in other fisheries without losing eligibility; this would further reduce pressure on the stocks, while giving persons in the fishery a better chance to cover costs. The measure allowing voluntary surrender of a permit with priority for later access to the fishery is expected to encourage some producers to exit from the fishery. Again, this will reduce pressure on the stocks and remaining participants should achieve better returns. The fishery accounted for total catch of 784,000 pounds valued at $1.9 million in 1986. Without the proposed program, the fishery is expected to decline to a level substantially below the maximum sustainable yield (MSY) level (600,000 pounds for the portion of the NWHI within the range for deliveries for the fresh fish market) and ex-vessel revenue would likely be less than $1 million per year. With the limited access program, the fishery is expected to achieve production of 600,000 pounds per year (the MSY) valued at $1.4 million. In addition, the average vessel is expected to be able to cover all costs of operation, although some vessels will make more and some less. Furthermore, deliveries of fish to markets are expected to be more stable and level throughout the year, which will benefit both marketers and consumers. Finally, although there may be a one-time increase in administrative costs to implement the program initially, these costs will be reduced over time as the size of the harvest sector is reduced and fishery patterns become more stable.

The Under Secretary, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

This proposed rule is exempt from the review procedures of section 8(a)(2) of Executive Order 12291. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99-659, require the Secretary to publish this rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses. No person who participated in the fishery on or before the control date will be forced to exit the fishery. Only ten entered the fishery in 1986 and a few more in 1987, but all had had notice that they were entering subsequent to the cut-off date and could be excluded from the fishery if the limited access program were adopted. The program will provide an opportunity for fishermen to make the own decisions concerning whether to remain in the fishery. The reporting burden will be somewhat increased to obtain information needed to decide whether applicants are eligible for permits, but the added burden is slight. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. Permit application procedures will not change appreciably from those now in place, but applicants will have to obtain and submit certification of records of past participation or documentation of commitments intended to lead to future participation in the fishery in past years. In addition, it is proposed that permit holders be required to report in advance their anticipated arrival in a port to unload fish taken in the Ho'omalu zone of the NWHI. The new information collection request has been submitted to the Office of Management and Budget for clearance. Current reporting requirements are authorized by OMB number 0648-0097. Further, it is proposed that it be a violation of Federal law to fail to report fishery data in accordance with State reporting requirements. This is not a new reporting burden on fishermen; it merely facilitates enforcement of existing State reporting requirements.

The Council has initially determined that the measures established in this amendment are consistent to the maximum extent practicable with the approved Coastal Zone Management Program in Hawaii. A letter requesting the State of Hawaii's concurrence was forwarded by the Council.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Exectutive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Reporting and recordkeeping requirements.

Dated: April 29, 1988.

Rolland A. Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 683 is proposed to be amended as follows:

PART 683—[AMENDED]

1. The authority citation for 50 CFR Part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.2, a new definition for *Qualifying landing* is added to read as follows:

§ 683.2 Definitions.

* * * * *

Qualifying landing means a landing that meets a standard required for permit eligibility under § 683.25, as follows:

(a) Initial permit eligibility.

(1) A qualifying landing for initial permit eligibility under § 683.25(b)(1) and (3) is a landing that contained bottomfish from the NWHI, regardless of amount, and which was made on or before August 7, 1985;

(2) A qualifying landing for 1986 and 1987 under § 683.25(b)(2) is a landing which contained at least 2,500 pounds of bottomfish from the NWHI or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish;

(b) Permit renewal—a qualifying landing for permit renewal under § 683.25(e) is a landing which contained 2,500 pounds of bottomfish from the NWHI or a landing or at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(c) New access eligibility points—a qualifying landing for eligibility points under § 683.25(d) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985, a landing of at least 2,500 pounds of bottomfish from the NWHI, or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

* * * * *

3. In § 683.5, paragraph (a)(2) is amended by adding (a)(2)(i) and (ii) to read as follows:

§ 683.5 Management subareas.

(a) * * *

(2) * * *

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W longitude.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161° 20' and 165° W longitude.

* * * * *

4. § 683.6, paragraph (k) is redesignated (n) and new paragraphs (k), (1), and (m) are added, to read as follows:

§ 683.6 General prohibitions.

* * * * *

(k) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under § 683.25;

(1) Serve as captain or relief captain on a vessel fishing for bottomfish in the Ho'omalu Zone without first participating in a protected species seminar conducted by the National Marine Fisheries Service and U.S. Fish and Wildlife Service;

(m) Falsify or fail to make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner, required by the applicable State law as specified in § 683.25, provided that the person is required to do so by the applicable State law;

* * * * *

5. A new § 683.10 is added to read as follows:

§ 683.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any applicant for a permit or permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed and the reasons for the appeal, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

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(b) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder, as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set forth in 50 CFR Part 663 and the amendment to the bottomfish FMP, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in section 3 of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such a hearing will normally be held no later than 30 days following publication of the notice in the Federal Register unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer will recommend in writing a decision to the Assistant Administrator.

(d) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

6. A new § 663.11 is added to read as follows:

§ 663.11 Reports.

Any person who has a Federal permit to fish for bottomfish or seamount groundfish in the NWHI, and who is required to do so by the applicable State law, must make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner required by the applicable State law.

7. In § 663.21, paragraphs (a) and (f) are revised to read as follows:

§ 663.21 Permit requirement for the Northwestern Hawaiian Islands.

(a) *Permit areas.* (1) The owner of any vessel being used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel.

(2) The owner of any vessel fishing for bottomfish in the Ho'omalu Zone must have a permit issued under § 663.25 for that vessel.

(3) The owner of any vessel fishing for seamount groundfish in a given, fishery management area must have a permit issued under this section for that vessel.

(4) No vessel may be covered by a permit for both the Ho'omalu Zone and the Mau Zone at the same time.

* * * * *

(f) *Expiration.* Permits issued under this section expire on December 31 of the year covered by the permit.

* * * * *

8. Section 663.25 is redesignated § 663.26, and a new § 663.25 is added to read as follows:

§ 663.25 Limited access management program.

(a) *Limited access permits.* General requirements.

(1) The owner of any vessel engaged in fishing for bottomfish in the Ho'omalu Zone must have a permit issued under this section.

(2) Permits issued under this section expire on Decmeber 31 of the year covered by the permit.

(3) Each application for a permit must be submitted to the Regional Director by the vessel owner at least 30 days before the date on which the applicant wants the permit to be effective.

(4) Each application must be submitted on the form used to apply for a permit under § 663.21(b) and a supplementary information sheet to be provided by the Regional Director. Each application must be signed by the vessel owner and must contain, in addition to the information listed in § 663.21(b)(2), the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) Notarized copies of loan documents or other documents that would demonstrate financial commitments on or before August 7, 1985, to enter the NWHI bottomfish fisher; or

(iv) Written evidence indicating that an offer was made to purchase a vessel or that a vessel was under construction, on or before August 7, 1985, and that the vessel was to be used in the NWHI bottomfish fishery.

(v) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(5) Protected species seminar. Each designated captain and relief captain must participate in a seminar conducted by NMFS and U.S. Fish and Wildlife Service to ensure familiarity with protected species laws and regulations applicable to the NWHI and the species those laws and regulations are designed to protect.

(6) Sale or transfer of permits to new owners.

(i) A vessel permit may not be sold or otherwise transferred to a new owner.

(ii) A permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(7) Transfer of permits to new vessels.

(i) An owner of a permitted vessel may, without limitation, transfer his permit to another vessel owned by him, provided that the replacement vessel does not exceed 60 feet in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(ii) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 feet in length. The Regional Director may allow this change upon determining, after consulation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(iii) The Regional Director will consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(b) *Supplementary requirements for initial permits.* An application for an initial permit under this paragraph must be filed within five years of the effective date of this program. A permit for a vessel to be used for fishing for bottomfish in the Ho'omalu Zone may be issued to:

(1) Any owner who can document that a vessel owned by him made one or more qualifying landings of bottomfish from the NWHI on or before August 7, 1985.

(2) Any owner of two or more vessels that made at least one qualifying landing under (b)(1) of this section, or such owners may obtain a permit for each such vessel that made at least one qualifying landing of bottomfish under (b)(1) of this section and also in both 1986 and 1987.

(3) Any person who can document that on or before August 7, 1985, he or she had incurred substantial expenditures for or had received written approval of a loan to purchase or construct a vessel to be used in the NWHI bottomfish fishery.

(4) Any person who can document that on or before August 7, 1985, he or she made an offer to purchase a vessel for the NWHI bottomfish fishery or had such a vessel under construction.

(5) Any person who can document that he or she was captain of a vessel that made at least one qualifying landing of bottomfish from the NWHI on or before August 7, 1985, and who becomes an owner of 50 percent or more interest in a vessel within five years of the effective date of this program.

(c) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, he may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions such that the vessel operations would not be profitable.

(d) *Supplementary requirements for new access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This will be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination will be made and published annually in association with the annual report required under § 663.24 of this part.

(e) *Eligibility.* When the Regional Director has determined under paragraph (d) of this section that new permits may be issued, they will be issued to applicants based upon eligibility determined as follows:

(1) *Point system.* (i) Two points will be assigned each year in which the applicant was owner or captain of a vessel, which made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under (e)(1)(i) or under (e)(1)(ii) of this section for any one year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) New permits will be awarded to applicants in descending order starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits will be awarded by the Regional Director through a lottery.

(4) Notwithstanding (e)(3) of this section, a person who originally qualifies for and obtains a permit under § 663.25(a) and who voluntarily surrenders that permit to the Regional Director within the first five years of this program will have priority over applicants under the point scale system for a new permit under this section. If two or more persons qualify under this provision, the person surrendering his permit at the earliest date will have first priority. If two or more such persons are equally qualified under the date of surrender criterion, the permit will be awarded by the Regional Director by a lottery. A permit holder may qualify for this provision only one time.

(5) The Regional Director will place a notice in the Federal Register and will use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

9. A new § 663.27 is added to read as follows:

§ 663.27 Notification of landings.

The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

10. A new § 663.28 is added to read as follows:

§ 663.28 Native Hawaiian fishing rights [Reserved]

[FR Doc. 88-9862 Filed 5-6-88; 4:16 pm]
BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Valuation of Human Life in Regulatory Decisionmaking; Postponement of Meeting; Extension of Comment Period

AGENCY: Administrative Conference of the United States.

ACTION: Postponement of meeting; extension of comment period.

SUMMARY: The Administrative Conference of the United States announces that its Committee on Regulation will not meet on Thursday, May 12 as tentatively scheduled. The Committee was to discuss the draft recommendation "Valuation of Human Life in Regulatory Decisionmaking" based on a report by Professors Clayton P. Gillette and Thomas D. Hopkins. (See **Federal Register:** announcement of Friday, April 22, 1988.) The Committee, however, has decided to extend the deadline for receipt of public comments to Friday, June 24, 1988. Copies of the report may be obtained from the Conference.

DATE: Please submit comments by June 24, 1988.

ADDRESS: Send comments to Sara Gordon, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, 202/254–7020.

Dated: May 9, 1988.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 88–10804 Filed 5–10–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 6, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
- Sweet Cherries Grown in Designated Counties in Washington Marketing Order No. 923
- On occasion
- Farms; Businesses or other for-profit; 203 responses; 63 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057
- Agricultural Marketing Service
- Washington-Oregon Prunes Marketing Order No. 924
- On occasion; Biennially
- Farms; Businesses or other for-profit; 91 responses; 22 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057
- Agricultural Marketing Service
- Onions Grown in Idaho and Malheur County, Oregon Marketing Order No. 958
- On occasion; Biennially; Recordkeeping
- Farms; Businesses or other for-profit; 747 responses; 113 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057

Reinstatement

- Human Nutrition Information Service
- Continuing Survey of Food Intakes by Individuals (CSFII) 1989–92
- On occasion
- Individuals or households; 8,650 responses; 6,750 hours; not applicable under 3504(h)
- Robert L. Rizek, (301) 436–8457.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88–10562 Filed 5–10–88; 8:45 am]

BILLING CODE 3410–01–M

Office of Inspector General

Privacy Act of 1974; Public Notice of Computer Matching Programs; Rice Cooperative Loan Files and Agricultural Stabilization and Conservation Service Loan Files

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct a matching program for crop years 1986 and 1987 to detect and prevent fraud and abuse in USDA programs. The match will compare Agricultural Stabilization and Conservation Service (ASCS) records of rice producers who received price support loans from ASCS county offices against rice cooperative records of producers who received support loans through cooperatives, for the purpose of identifying producers who received duplicate price support benefits. The match will be made under written agreement between OIG and five rice cooperatives in Arkansas, California, and Texas. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, D.C., 20250, telephone (202) 447–6915.

Report of Matching Programs: Rice Cooperative Loan Files and Agricultural Stabilization and Conservation Service Loan Files

(a) *Authority:* Pub. L. No. 95–452, Inspector General Act of 1978, 5 U.S.C. App.

(b) *Program Description and Purpose:* One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95–452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to obtain from five rice cooperatives computer files showing all cooperative members who delivered rice to the cooperative for ASCS price support loans. The cooperative files will be matched against ASCS computer files showing all producers that received price support loans directly through an ASCS county office. The match will determine the extent to which rice producers received duplicate price support benefits for the same rice. A pilot matching program will be conducted for crop year 1986 rice. If the pilot indicates a significant number of producers received duplicate price support benefits, the match will be expanded to crop year 1987.

The match will be accomplished through the use of computer files and will identify producers receiving benefits both through cooperatives and directly from ASCS county offices. Common identifiers such as name, social security number, and farm code number will be used to identify the matches of common elements or "hits." OIG will follow up on the "hits" through review of USDA program records and cooperative records, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) *Files to be used in this matching program:* (1) Rice cooperative files of all members who delivered rice for ASCS price support loans; and

(2) ASCS producer payment reporting file containing Price Support Rice Loan information (USDA/ASCS–22).

(d) *Projected starting and ending dates:* The matching program for the 1986 crop year (and for crop year 1987 if the match is expanded) is scheduled to begin and end in fiscal year 1988.

(e) *Security safeguards:* Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals who have a legitimate need to handle the material in order to accomplish the match. The personal privacy of individuals identified in the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals may also be extracted for the purpose of verifying that they were in compliance with eligibility requirements to receive price support through the cooperative.

(f) *Disposition of source records and "hits":* All files received will be destroyed or returned to their source at the completion of the match. Resulting "hit" information may be retained in audit workpapers and referred to as noted above.

Dated: May 5, 1988.

Robert W. Bouley

Inspector General.

[FR Doc. 88–10477 Filed 5–10–88; 8:45 am]

BILLING CODE 3410–23–M

Privacy Act of 1974; Public Notice of Computer Matching Programs–State Agency Food Stamp Program Participant Files and Department of Justice, Immigration and Naturalization Service Alien Status Files

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct a matching program to detect and prevent fraud and abuse in USDA programs. The match will compare State agency Food Stamp Program (FSP) participant records against Immigration and Naturalization Service (INS) alien status records for the purpose of identifying ineligible aliens who are receiving FSP benefits. The match will be made under written agreement between USDA and INS. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, D.C., 20250, telephone (202) 447–6915.

Report of Matching Programs: State Agency Food Stamp Program Participant Files and Immigration and Naturalization Service Alien Status Files

(a) *Authority:* P.L. No. 95–452, Inspector General Act of 1978, 5 U.S.C. App.

(b) *Program Description and Purpose:* One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95–452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to provide INS with lists of State FSP participants to be matched against INS alien status records to determine whether ineligible aliens are receiving FSP benefits. A pilot program will match New Mexico FSP participant files against INS alien status files. If the pilot match indicates that a significant number of ineligible aliens are receiving FSP benefits, the match will be expanded to other States.

The match will be accomplished through the use of computer files and will identify aliens receiving FSP benefits. Common identifiers such as name, date of birth, alien number, social security number, and residence will be used to identify the common elements or "hits." INS will provide to OIG a list of matches of common elements or "hits." OIG will follow up on the "hits" through review of USDA program records and FSP records, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) *Files to be used in this matching program:* (1) State agency Food Stamp Program master files; and

(2) Department of Justice, Immigration and Naturalization Service alien status files.

(d) *Projected starting and ending dates:* The matching program for the

pilot match in New Mexico is scheduled to begin and end in fiscal year 1988. The matching program, if expanded to other States, will begin in fiscal year 1988 and end in fiscal year 1989.

(e) *Security safeguard:* Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals who have a legitimate need to handle the material in order to accomplish the match. The personal privacy of individuals identified in the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals will not be extracted for any purpose and the files will not be used for any match without specific written agreement between OIG and INS.

(f) *Disposition of source records and "hits":* All files received will be destroyed or returned to their source at the completion of the match. Resulting "hit" information may be retained in audit workpapers and referred as noted above.

Dated: May 5, 1988.

Robert W. Buley,

Inspector General.

[FR Doc. 88-10478 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-23-M

Forest Service

Suitability Analysis and Study Report of Two Rivers Being Considered for National Wild and Scenic River Status, as Part of Supplementation to the Final Environmental Impact Statement for the Ouachita National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: This Notice of Intent revised the Ouachita National Forest Notice of Intent dated August 5, 1987 [52 FR 31648, No. 162/Friday, August 21, 1987], to include the analysis of two rivers, and to change the dates for the release of the Draft Supplemental Environmental Impact Statement for amendment of the Ouachita National Forest Land and Resource Management Plan.

SUMMARY: As part of the supplemental analysis to the Final Environmental Impact Statement for the Ouachita National Forest Land and Resource Management Plan, the Department of Agriculture, Forest Service will study the suitability or non-suitability of two rivers on the Ouachita National Forest in Arkansas for inclusion in the National Wild and Scenic Rivers System.

The agency invites written comments and suggestions on the suitability of these two rivers. In addition, the agency gives notice of the environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the suitability of these two rivers should be received by June 15, 1988 to assure timely consideration.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Gary Pierson, Planning Team Leader, PO Box 255, Mount Ida, Arkansas 71957.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the environmental analysis to Gary Pierson, Planning Team Leader, PO Box 255, Mount Ida, Arkansas 71957.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest determined the eligibility of segments of four rivers which were initially identified in the 1982 Nationwide Rivers Inventory: Little Missouri; Cossatot; Ouachita; North, Alum, and Middle Fork of the Saline Rivers. All were found to be eligible. The suitability studies for two of the rivers will be prepared as part of the supplemental analysis of the Forest Plan:

Little Missouri River (head to Forest boundary), 12.2 miles

Cossatot River (from confluence with Mine Creek to Forest Boundary), 11.1 miles

Due to limited ownership and the limited amount of the segments being with Forest boundary, the Ouachita, North Fork, Alum Fork, and Middle Fork of the Saline Rivers were determined to be more appropriate for the State of Arkansas. The Forest Service has assigned potential classifications and standards to protect these rivers and their values until they are studied.

Public participation will be essentially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). Scoping for these rivers started in August of 1987 with public meetings and field trips on the eligibility determinations and has continued with the public involvement for the overall supplemental analysis to the forest plan. Open Houses were held during the week of March 12–19, at which time additional comments were received on the suitability of the individual river segments. This input will be used in preparation of the draft supplemental environmental impact statement. Other public participation activities have included presentations to various public groups, individual meetings, and contact with state, local and other federal agencies.

The range of alternatives will include the discussion of recommendations for:

—Designation of all eligible segments, with classifications as identified in the eligibility determinations.
—All eligible segments with designation under the state system
—No action, no designation of any eligible segments
—Designation of all eligible segments with classifications different from those identified during eligibility.
—Designation of all or parts of the eligible segments with classifications and corridor boundaries different from eligibility studies.

The draft supplemental environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) by October 1988. At that time, the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period will be 90 days from the date the notice appears in the **Federal Register.** It is very important that those interested in the suitability of these two rivers for inclusion in the National Wild and Scenic River System participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement.

After the comment period ends on the draft Environmental Impact Statement, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement. The final supplemental environmental impact statement is scheduled to be filed by April 1989. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the SEIS and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under Forest Service appeal regulations.

John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, GA 30367, is the responsible official for the Supplementary EIS.

The Wild and Scenic Rivers suitability study report will be included as an appendix to the Draft and Final Supplemental Environmental Impact Statement.

The Secretary of Agriculture will consider the comments, responses, environmental consequences discussed in the study report of the EIS in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

John E. Alcock,

Regional Forester.

Date: May 4, 1988.

[FR Doc. 88-10413 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m., on May 25, 1988, in Room 137 of the U.S. District Court, 141 Church Street, New Haven, Connecticut. The purpose of the meeting is to complete plans for a community forum on various proposed issues. The Advisory Committee will also formulate plans for limited circulation of Collection Data on Bias-Related Incidents in Connecticut, a summary report recently approved.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James H. Stewart (203/486–3417), or John Binkley, Director of the Eastern Regional Division 202/523–5264, (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10465 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

Louisiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m., on May 27, 1988 at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to discuss the nature and extent of issues and possible problems related to the administration of justice for homosexual persons in New Orleans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 4, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10466 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on June 2, 1988, at the Holiday Inn of Las Cruces, 201 East University, Las Cruces, New Mexico. The purpose of the meeting is to provide orientation to the membership, review the status of the agency and regional operations, and to discuss civil rights issues affecting the State, including immigration.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent J. Montoya, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10467 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 383]

Disapproval of Application of the Little Rock Port Authority for Subzone Status for Polar Stainless Products, Inc., Searcy, AR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Little Rock Port Authority, on behalf of the State of Arkansas, Grantee of Foreign-Trade Zone No. 14, has made application (filed December 9, 1985, FTZ Doc. 43–85, 50 FR 52350) to the Board for authority to establish a special-purpose subzone at the stainless steel sink manufacturing plant of Polar Stainless Products, Inc., in Searcy, Arkansas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board, having reviewed the proposal in the light of the Government's steel policy and the low level of imports of the product involved, has determined that its approval would not be in the public interest because it would tend to encourage the use of foreign steel material and result in a net negative economic impact;

Now, therefore, the Board hereby orders:

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That the application filed December 9, 1985 (FTZ Doc. 43–85) is disapproved.

Signed at Washington, DC, this 28th day of April, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–10524 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–16–88]

Foreign-Trade Zone 33, Pittsburgh, PA; Boundary Modification for Verosol USA, Inc.

Notice is hereby given that the Regional Industrial Development Corporation of Southwestern Pennsylvania (RIDC), grantee of Foreign-Trade Zone 33, Pittsburgh, Pennsylvania, has requested authority pursuant to the regulations of the Foreign-Trade Zones (FTZ) Board (the Board) (15 CFR 400.1301(j)), for a temporary modification until December 31, 1988, of the boundary of FTZ 33, within the Pittsburgh Customs port of entry.

RIDC has an application pending before the FTZ Board for a special-purpose subzone at a 7.6-acre site located at 215 Beacham Drive in Kennedy Township to be occupied by Verosol USA, Inc. (Doc. 11–88, 53 FR 7222, 3–7–88). A decision on the application is not expected until late-1988. Verosol is currently a tenant within FTZ 33 and is using zone procedures to inspect and process window shade fabric. Because Verosol is moving its operation to the new site in June 1988, RIDC has requested temporary approval under the FTZ boundary modification procedures for zone status within a 36,000 sq. ft. building at the new site to avoid an interruption in zone procedures while the subzone application is pending. The applicant and Verosol have acknowledged their understanding that a decision on the boundary modification would have no bearing on the outcome of the subzone proposal.

The activity does not involve a change in Customs classification or country of origin. Thus, the operation does not involve manufacturing, and no such authority is being requested as part of this proposal.

The request has been reviewed by the District Director of Customs (4–26–88) and the Army District Engineer (4–26–88). They concur in the request, subject to specific clearances or permits that might be required from these officials. The Customs letter indicates that an interruption in zone procedures followed by an activation of the subzone would result in an administrative burden.

The request has been reviewed by the FTZ Staff, and it appears that the request meets the criteria for temporary boundary modifications. Before issuing in final decision, however, the FTZ Staff invites comments from interested parties. They must be submitted to the office below in writing (in triplicate) by May 27, 1988.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 15th & Constitution Avenue NW., Washington, DC 20230.

Dated: May 6, 1988.

[FR Doc. 88–10525 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–802]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Canadian producer, c & f, delivered, duty paid. Petitioner deducted Canadian inland freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Canada, which was based on the U.S. industry's cost experience, adjusted to reflect Canadian labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 48.63 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled

appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptable) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will nofify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88–10526 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–582–801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Hong Kong

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Hong Kong producer, c & f, delivered, duty paid. Petitioner deducted Hong Kong inland freight, ocean freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Hong Kong, which was based on the U.S. industry's cost experience, adjusted to reflect Hong Kong's labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value,

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dumping margins of 23.07 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system for tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10527 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-805]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Japanese producer, c & f, delivered, duty paid. Petitioner deducted Japanese inland freight, ocean freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Japan, which was based on the U.S. industry's cost experience, adjusted to reflect Japanese labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 74.78 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Record Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings) and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9036.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10528 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-557-801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

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SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Malaysian producer, c & f, delivered. Petitioner deducted Malaysian inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Malaysia, which was based on the U.S. industry's cost experience, adjusted to reflect Malaysian labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 27.22 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necesssary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegation.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia and found that it meets the requirements of section 732(b) of the Act. Therefore in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbes and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small hearing apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88-10529 Filed 5-10-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten materially injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Taiwanese producer, c & f, delivered. Petitioner deducted Taiwanese inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated contructed value of thermostatically controlled appliance plugs from Taiwan, which was based on the U.S. industry's cost experience, adjusted to reflect Taiwanese labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 30.00 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe and internal probe thermostats therefor from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determinaton by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the termperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it al nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 5, 1988.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10530 Filed 5-10-88; 8:45 am]
BILLING CODE 3510-DS-M

VOL 53 ISS 91 MY 11 1988 UMI

[C-122-803]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If this determination is affirmative, we will make the preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(a) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada, and have found that it meets these requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Subsidies

The petition lists certain practices by the Government of Canada which allegedly confer subsidies on manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor. We are initiating on the following alleged programs:

- Program for Export Market Development (PEMD).
- Regional Development Incentive Program (RDIP).

Although not specifically alleged by the petitioner, we are also investigating whether the Canadian industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receive countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Canadian investigations:

- Promotional Projects Program (PPP).
- Community-Based Industrial Adjustment Program (CIAP).
- Industrial and Regional Development Program (IRDP).

- General Development Agreement (GDA).
- Investment Tax Credits (ITC).
- Export Credit Financing.
- Economic and Regional Development Agreements (ERDA).
- Agricultural and Rural Development Agreements (ARDA).
- Ontario Development Corporation (ODC).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988, whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c) (2) of the Act.

May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10531 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-802]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to

automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Bounties or Grants

The petition lists certain practices by the Government of Malaysia which allegedly confer bounties or grants on manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor. We are initiating an investigation of the following alleged programs:

- Export Tax Incentives.

—Abatement of Taxable Income Based on the Ratio of Export Sales to total Sales

—Abatement of Five Percent of the Value of Indigenous Materials Used in Exports

—Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products

—Double Deduction for Export Credit Insurance Payments

—Double Deduction for Export Promotion Expenses

- Pioneer Status Under the Investment Incentives Act of 1968.
- Pioneer Status Under the Promotion of Investments Act of 1986.

Although not specifically alleged by the petitioner, we are also investigating whether the Malaysian industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receives countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Malaysian investigations:

- Export Credit Refinancing.
- Export Tax Incentives.

—Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales Under Section 29 of the Investment Incentives Act of 1968, as Amended.

—Income Tax Deduction for a Percentage of the Value of Buildings Used as Warehouses to Store Goods for Export.

- Export Insurance Program.
- Medium- and Long-term Government Financing.
- Other Tax Incentives.

—Investment Tax Allowance Under the Promotion of Investment Act of 1968.

—Accelerated Depreciation Allowance of 40 Percent of Qualifying Expenditures Under the Income Tax Act of 1967, as Amended in 1979.

—Reinvestment Allowance of 25 Percent for Capital Expenditures on a Factory, Plant, or Machinery Under Section 133A of the Income Tax Act of 1967, as Amended in 1979.

- Reduction in the Cost of State Land for New Industry and Agriculture.
- Preferential Financing for Bumiputras.

We are not initiating an investigation of the following programs alleged by the petitioner:

- Export Tax Incentives.

—Abatement of Taxable Income of Five Percent of the Value of Malaysian-made Inputs Incorporated into Exports

—Abatement of Taxable Income Based on a Percentage of the Value-added of Exported Products

These programs were determined not to exist in *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Malaysia* (53 FR 13363, April 22, 1988) (*Wire Rod II*):

- Loans from the Malaysian Industrial Development Finance Corporation (MIDF); financing from the MIDF was determined to be not countervailable in *Wire Rod II*.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88-10532 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-602]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure or threaten material injury to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Since Taiwan is a "country under the agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Subsidies

The petition lists certain practices by the authorities in Taiwan which allegedly confer subsidies on manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor. We are initiating an investigation of the following alleged programs:

- Preferential Export Financing.
- Export Loss Reserves.
- Accelerated Depreciation and Tax Holidays.
- Preferential Income Tax Rate Ceiling of 25 percent for Big Trading Companies.
- Duty Exemptions and Deferrals on Imported Equipment. Although not specifically alleged by the petitioner, we are also investigating whether the Taiwanese industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receives countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Taiwanese investigations:
- Preferential Income Tax Rate Ceiling of 22 Percent.
- Overrebate of Duty Drawback on Imported Materials. Physically Incorporated in Export Merchandise.
- Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise.

We are not initiating an investigation of the following programs alleged by the petitioner:

- Business Tax Exemptions and Stamp Reductions for Export Sales (Tax Exemptions for Export Sales).
- Tax Credit for Investment in Production Equipment. These programs were determined to be not countervailable in *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan* (51 FR 19583, May 30, 1986).
- Preferential Long-Term Loans. This program was determined to be not countervailable in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan* (51 FR 42891, November 26, 1986).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988, whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88-10533 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 86-00006.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Abreu de la Mota & Associates International, Inc. (ADLM). Because the certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to ADLM.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export

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Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325. Pursuant to this authority, a certificate of review was issued on November 17, 1988 to ADLM (application No. 86–00008).

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (§ 325.10(a) and 325.14(c) of the Regulations).

On November 6, 1987, the Department of Commerce sent to ADLM a letter containing annal report questions with a reminder that its annual report was due on January 1, 1988. Additional reminders were sent on January 15 and on January 28, 1988. The Department has received no written response to any of these letters.

On May 4, 1988, and in accordance with § 325.10(c)(2) of the Regulations, a letter was sent by certified mail to notify ADLM that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regualtions, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the Federal Register of a revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the Regualtions). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§ 325.10(c)(4) and 325.11 of the Regualtions).

Date: May 1, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–10472 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-DR-M

[Docket No. 80465–8065]

Foreign Availability Assessment; Nd:YAG Surgical Lasers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

The OFA completed an assessment on Nd:YAG surgical lasers controlled under paragraph (b) of ECCN 1522A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). The equipment that is controlled by ECCN 1522A includes equipment containing Nd:YAG lasers having an output wavelength of 1.06 micrometers and a continuous wave multimode output power exceeding 50 watts. Based on this assessment and following consultation with the Department of Defense and other appropriate agencies, the Department of Commerce has found foreign availability for this commodity rated at a continuous wave multimode output power not exceeding 175 watts.

FOR FURTHER INFORMATION CONTACT: Robert M. Lerner, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) has completed an assessment, pursuant to Part 391 of the Export Administration Regulations (15 CFR Part 391), on the foreign availability of *Nd:YAG surgical lasers* and has recommended a finding of foreign availability as defined by law. Based on this assessment, the Under Secretary for Export Administration has determined that there exists foreign availability of such equipment, within the meaning of section 5(f) of the Export Administration Act of 1979, as amended. Based on this determination, Export Administration is publishing regulations elsewhere in today's **Federal Register** that amend the national security export controls on these Nd:YAG surgical lasers so that individual validated licenses to destinations other than controlled countries will no longer be required for Nd:YAG surgical lasers with a rated continuous wave multimode output not exceeding 175 watts. The Bureau of Export Administration also will begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls placed on such Nd:YAG surgical lasers when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: May 6, 1988.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 88–10473 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Committee will convene a public meeting in conjunction with the Technical Advisory Group, May 16, 1988, 10 a.m., at the Council's office (address below), to work on the final details of the limited entry framework proposals, review a draft of the final report, and discuss methods for disseminating the proposals to the public. The public meeting will adjourn May 18 at 3:30 p.m.

For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: May 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–10414 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Danvers, MA, on May 18, 1988, at 10 a.m., adjourn at approximately 11:30 a.m., prior to an informational hearing (discussed below), reconvene May 19 at 9 a.m., and adjourn upon completion of agenda items.

The Council will discuss reports of the Groundfish and Scallop Committees (relative to gear); updates on environmental affairs, surf clams and ocean quahogs, large pelagics, the fluke and bluefish fishery management plans, and the Uniform Standards. There will also be a report by the ad hoc committee on the United States/Canada Free Trade Agreement, and a review of other fishery management and administrative matters. On May 19 at 1 p.m., the Council will convene an informational hearing on an import certification program proposed for groundfish.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: May 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–10415 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

The Western Pacific Fishery Management Council's Crustacean Plan Monitoring Team will convene a public meeting, May 12, 1988, at 1:30 p.m., at the Council's Office (address below), to discuss the fishery management plan (FMP) for crustaceans in the Western Pacific region. The Team will: (1) Review the annual report of the Western Pacific lobster fishery for 1987; (2) review the year-to-date catch, effort, and activity data for the Northwestern Hawaiian Islands lobster fleet; (3) discuss frameworking the FMP, with particular reference to management options for emergency situations such as recruitment failure; (4) discuss local fleet activity in the fishery for deepwater shrimp, and (5) discuss data and research needs, as well as other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: May 6, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–10416 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Co-Exclusive Patent License; Dow Corning Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Dow Corning Corporation, having a place of business in Midland, Michigan, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Synthetic Pheromone and Its Use in Monitoring and Controlling the Sweetpotato Weevil," U.S. Patent Application Serial Number 879,696. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10438 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Magainin Sciences Inc., having a place of business in New York, NY, an exclusive license in the United States and certain foreign countries to practice the invention entitled, "New Anti Inflammatory Agents", U.S. Patent Application No. 7–122,379. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10396 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-04-M

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Intent To Grant Exclusive Patent license; Molecular Vaccines Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Vaccines Inc. having a place of business in New York, N.Y., an exclusive license in the United States and certain foreign countries to practice the invention entitled "Method to Predict Antigenic Sites Recognized by T-Lymphocytes Such as for Design of Vaccines", U.S. Patent Application No. 7–005,885. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10439 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Warner-Lambert Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Warner-Lambert Company of Morris-Plains, NJ 07950, an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–885,055 (U.S. Patent 4,694,007, "Use of Trimetrexate as an Antiparasitic Agent"). The patent rights in this invention have be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10440 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation having a place of business in Berkeley, CA, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Immunotoxins", U.S. Patent Application No. 7–105,172. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10397 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Silk Blend Textile Products Produced or Manufactured in the Republic of Korea

May 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 12, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: In conformity with the Interim Category System, the 1988 limits for Categories 345 and 645/646 in Group II and Category 846 in Group IV are being adjusted under the current bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 161 published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 6, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 12, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for cotton, wool, man-made fiber and silk blend textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit [1] (dozen)
Sublevel within Group II:	
345	69,053
645/646	3,382,457
Group IV:	
846	853,847

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–10475 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Products Produced or Manufactured in the Republic of Korea

May 6, 1988.

AGENCY: Committee for Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 12, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 342; 433/434, 636, 641, 642 and 647/648 in Group II; and Category 845 in Group IV are being reduced for carryforward applied during the previous agreement period.

In conformity with the Interim Category System, the current limits for Categories 442, 447, 448, 642, and 647/648 in Group II are being adjusted under the current bilateral agreement. In addition, the 1988 limits for Categories 333/334, 335, 640–0, 640–OY (a sublevel of Category 640–0) and 641 erroneously included adjustments based on migration to the new category system and the limits are now being readjusted.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 161 published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

May 6, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 12, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories, under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit [1]
Sublevels within Group II:	
333/334	72,976 dozen.
335	74,516 dozen.
342	74,967 dozen.
433/434	16,940 dozen of which not more than 12,933 dozen shall be in Category 433 and not more than 6,633 dozen shall be in Category 434.
442	45,202 dozen.
447	83,451 dozen.
448	31,803 dozen.
636	221,866 dozen.
640–0 [2]	[3] 2,561,715 dozen of which not more than 2,160,750 dozen shall be in Category 640–OY.
641	967,342 dozen.
642	60,642 dozen.
647/648	1,164,680 dozen.
Group IV:	
845	2,266,535 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 640–0, only TSUSA numbers 381.3142, 381.3144, 381.3152, 381.3154, 381.3333, 381.9305, 381.9400, 381.9547, 381.9549, 381.9550, 381.9644, 384.2306, 384.2313 and 384.9127.

[3] In Category 640–0Y, only TSUSA numbers 381.3142, 381.3152, 381.9547, 381.9550 and 384.2306.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–10476 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.029H]

Notice Reopening the Closing Date for Transmittal of Applications for New State Grant Awards Under the Training Personel for the Education of the Handicapped Program for Fiscal Year 1988

Purpose: To increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications for State grants may be submitted by State educational agencies (SEAs). SEAs that have applied for either a new or a continuation grant for fiscal year 1988 are not eligible to apply for an additional State grant under this notice.

A notice inviting applications for this program was published on September 1, 1987 at 52 FR 32960. This notice is being published because several SEAs were not aware of their eligibility to apply for a program grant under the original announcement.

Deadline for Transmittal of Applications: July 6, 1988.

Applications Available: May 16, 1988.

Estimated Range of Awards: $50,000 to $85,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 9.

Average Project Period: 36 months.

Applicable Regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 319, 52 FR 25830 *et seq.*; and (b) the

Education Department General Administration Regulations, 34 CFR Parts 74, 75, 77, and 78.

FOR APPLICATIONS OR INFORMATION CONTACT: Norman D. Howe, U.S. Department of Education, Office of Special Education Programs, Division of Personnel Preparation, 400 Maryland Avenue, SW., (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1088.

Program Authority: 20 U.S.C. 1432.

Dated: May 6, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–10550 Filed 5–10–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided.

A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 19, 1988, at the Centre des Conderences, 19 Avenue Kleber, 75116, Paris, France, beginning at 9:30 a.m. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry technical subgroup which has been established by the IEA for the preparation of the sixth IEA Allocation Systems Test (AST–6). The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

1. Adoption of the agenda.
2. Finalization of the draft AST–6 Test Guide.
3. ISAG staffing.
4. Briefing sessions.
5. Demonstration of the voluntary offer computer system.
6. Other issues.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee A of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, May 5, 1988.

Eric J. Fygi,

Acting General Counsel.

Cleary, Gottlieb, Steen & Hamilton

May 3, 1988.

By Hand

Secretary of Energy,

U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Dear Sir: You will find enclosed a notice of a meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA), to be held in Paris, France, on May 19, 1988. This notice is being given in order to permit representatives of members of Subcommittee A to participate at a meeting of a joint government/industry Technical Sub-Group that has been established by the IEA for the preparation of the sixth IEA Allocation Systems Test.

This notice is being provided to you, in accordance with Section 5(C)(2) of the Voluntary Agreement and Plan of Action to Implement the International Energy Program, on behalf of the following companies:

Amerada Hess Corporation
Caltex Petroleum Corporation
Chevron Corporation
Conoco Inc.
Exxon Corporation
Mobil Oil Corporation
Phillips Petroleum Company
Texaco Inc.

Each of these companies is a participant in the aforesaid Voluntary Agreement and Plan of Action.

Sincerely,

Eugene M. Goott

Enclosure

cc: Ms. Monika Baumanns, Commission of the European Communities; Samuel M. Bradley, Esq., U.S. Department of Energy; Mr. Wayne H. Ferris, U.S. General Accounting Office; Frank Lipson, Esq., Federal Trade Commission, Ms. Saundra Wright, U.S Department of Energy; Angela Hughes, Esq., U.S. Department of Justice; Richard F. Scott, Esq., International Energy Agency; Ms. Ann Hollick, U.S. Department of State; Mr. George W. Staples, Mobil Oil Corporation; Mr. Roger C. McGee, Chevron Corporation.

May 3, 1988.

Notice of Meeting of Subcommittee A of the Industry Advisory Board

A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 19, 1988, at the Centre des Conferences Internationales, 19, avenue Kleber, 75116 Paris, beginning at 9:30 a.m. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry Technical Sub-Group which has been established by the IEA for the preparation of the sixth IEA Allocation System Test. The expected participants at the meeting are representatives of the governments of some IEA participating countries, representatives of the IEA Secretariat, and representatives of the following members of Subcommittee A:

British Petroleum p.l.c.; Chevron Corporation; Japan Petroleum Development Association; Mobil Oil Corporation; Shell International Petroleum Company Limited

Representatives of other members of Subcommittee A may also participate. Representatives of the Directorate-General for Competition of the Commission of the European Communities may attend the meeting as observers. The meeting will be open to all members of Subcommittee A and to representatives of the Secretary of Energy, the Attorney General, and the Federal Trade Commission severally, to any United States Government employee designated by the Secretary of Energy, and to representatives of Committees of the Congress.

The Agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

Agenda

1. Adoption of the Agenda
2. Finalization of the Draft AST–6 Test Guide
3. ISAG Staffing
4. Briefing Sessions
5. Demonstration of the Voluntary Offer Computer System
6. Other Issues

[FR Doc. 88–10490 Filed 5–10–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Form EIA–714, "Annual Electric Power System Report" Survey

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments concerning the Department of Energy electric power survey Form EIA–714, "Annual Electric Power System Report."

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) solicits comments concerning proposed revisions to the electric power survey Form EIA–714 and 3-year clearance of the revised form. This data collection effort is jointly sponsored by the EIA and the Federal Energy Regulatory Commission (Commission).

DATE: Written comments must be submitted within 30 days of the publication of this notice.

ADDRESS: Send written comments to: Mr. Jorge Luna-Camara (EI–541), Energy Information Administration, Department of Energy, Mail Stop: 2G–090, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6553.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Jorge Luna-Camara at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

To fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to published, and otherwise make available to the public, high-quality statistical data that, as accurately as possible, reflect national and regional electric power supply and demand activity. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass every major electric power supply and demand activity in the United States. The Form EIA–714 collects information on system net generation, energy requirements, peak load, energy transfers, summer and winter peak load and energy forecasts, high voltage line data, and transmission maps.

The EIA sponsors 3 percent of this data collection effort, which is sponsored 97 percent by the Federal Energy Regulatory Commission. The EIA uses the data to provide the DOE and others with timely electric system data to facilitate analyses of electric power system reliability and adequacy; to prepare status reports on the electric utility industry; to monitor electric utility forecasts of loads and plans for expansion; and to obtain a comprehensive picture of energy generation transfers and load distribution. The information collected for the Commission is mandated by the Federal Power Act, which requires the Commission to analyze power system operation in the course of its regulatory functions which include general electric power and other licensing provisions; interconnection and coordination of facilities; disposition on property, etc. (merger provisions); rate and charges; furnishing of adequate service; and interconnection and wheeling.

II. Current Actions

In keeping with its mandated responsibilities, the EIA proposes that the Office of Management and Budget clear for 3 years the electric power data collection Form EIA–714. The EIA and the Commission are proposing the following changes for the Form EIA–714: (1) Replace the reporting of the net capability connected to load, net capability not connected to load, and integrated net demand on prime mover by plant at the time of the system peak with integrated net demand on each plant at the hour of the system peak; (2) report line load or load flow simulations reasonably representing system conditions for the summer and winter peak load periods only, eliminating the reporting of an off-peak period; (3) increase the threshold for the voltage levels that determine which transmission lines must be reported; and (4) permit substitution of existing general maps and single-line schematic diagrams used by the respondent instead of requiring new system maps and diagrams. Additional minor changes to the form have been made and instructions have been clarified to assist the respondent in completing the form.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed form within 30 days of the publication of this notice. The following guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, what instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will you require to complete and submit the form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in this survey.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of this survey; they also will become a matter of public record.

Statutory Authority

Sections 5 (a) and (b), 13 (a) and (b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974 as amended (15 U.S.C. 764 (a) and (b), 772 (a) and (b), and 790a).

Issued in Washington, DC, May 5, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–10489 Filed 5–10–88; 8:45 am]

BILLING CODE 6450–01–M

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are not included in these notices.

During the second quarter of fiscal year 1988 (January 1, 1988 through March 31, 1988), changes were made to the October 1, 1987 inventory of DOE information collections, which was published in the Federal Register, 52 FR 43787 (November 16, 1987). Changes during the first quarter of the fiscal year were published on February 10, 1988, 53 FR 3914.

The second quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control

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or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC, 20585, (202) 586–8800.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790a).

Issued in Washington, DC May 5, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.		Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission					
FERC–543*		Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	01/31/91	

*Does not utilize a structured form.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.		Title	OMB control No.	Expiration date	CFR citation
Economic Regulatory Administration					
ERA–750R *		Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19030070	04/30/91	10 CFR 463.
Energy Information Administration					
EIA–1		Weekly Coal Monitoring Report—General Industries (Standby Form)	19050167	03/31/89	
EIA–3		Quarterly Coal Consumption Report—Manufacturing Plants.	19050167	03/31/89	
EIA–4		Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/89	
EIA–5		Coke Plant Report—Quarterly	19050167	03/31/89	
EIA–6		Coal Distribution Report	19050167	03/31/89	
EIA–7A		Coal Production Report	19050167	03/31/89	
EIA–7A(Supp)		Coal Production Report (Supplement)	19050167	03/31/89	
EIA–20		Weekly Coal Monitoring Report—Coal-Burning Electric Utilities (Standby Form)	19050167	03/31/89	
EIA–191		Underground Natural Gas Storage Report	19050175	12/31/90	
EIA–254		Semiannual Report on Status of Reactor Construction	19050160	06/30/88	
EIA–400		Survey of Surplus Natural Gas Supplies	19050175	12/31/90	
EIA–627		Annual Quantity and Value of Natural Gas Report	19050175	12/31/90	
EIA–851		Domestic Uranium Mining Production Report	19050160	06/30/88	
EIA–858		Uranium Industry Annual Survey	19050160	06/30/88	10 CFR 761.8.
Federal Energy Regulatory Commission					
FERC–16AT*		Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/90	By FERC Order.
FERC–314A*		Application For Small Producer Exemption	19020008	02/28/91	18 CFR 157.40(b)(4), 250.10.
FERC–500*		Application for License for Hydropower Projects Greater Than 5MW.	19020058	03/31/91	18 CFR 4.30, 4.32, 4.33, 4.38, 4.40, 4.41, 4.50, 4.51, 4.200–.202.
FERC–505*		Application for License, Projects 5 Megawatts or less	19020115	10/31/90	18 CFR Part 4.
FERC–512*		Application for Preliminary Permit	19020073	07/31/88	18 CFR 4.31–.33, 4.81–.82.
FERC–532*		Gas Producer Rate: Filing	19020055	03/31/91	18 CFR 2.56(a); 154.91–.110; 157,301; 250.8–9, 250.14, 2.56a.
FERC–537*		Gas Pipeline Certificates: Open Access/Non-discriminatory Transportation.	19020060	07/31/88	18 CFR 2.79; 157.5–.21, .100, .201–.218; 159.1; 284.107, .127, .221.
FERC–538*		Gas Pipeline Certificate: Initial Service	19020061	12/31/90	18 CFR 156.3–.5.
FERC–539*		Gas Pipeline Certificate: Import/Export Related	19020062	03/31/91	18 CFR 153.
FERC–541*		Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/91	18 CFR 2.78, 281.
FERC–547*		Gas Pipeline Rates: Refund Obligations	19020084	06/30/88	18 CFR 154, 270, 273.
FERC–556*		Cogeneration and Small Power Production	19020075	06/31/88	18 CFR 292.
FERC–566*		Report of Utility's Twenty Largest Purchasers	19020114	06/30/88	18 CFR 46.3.
FERC–580*		Fuel Purchase Practices	19020137	03/31/90	
FERC–593*		Natural Gas Contract Summary Information	19020149	04/30/88	

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Energy Information Administration				
None	None.			

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
Energy Information Administration				
EIA–97	Boiler Order Report	19050167	03/31/88	
Federal Energy Regulatory Commission				
EIA–194	Monthly Alternate Fuel/Incremental Price Monitoring Report.	19020142	01/31/88	
EIA–714(1)	Annual Electric Power System Report	19020140	03/31/88	

DOE numbers as previously listed	Changes
Forms	Revisions
CE–63A/B	Minor modification to reflect that CE is form's sponsor. OMB number changed from 1905–0172 to 1901–0292. Approved through 12/31/89.
EIA–176	Minor modifications to form and approved through 12/31/90.
EIA–857	Minor modifications to form and approved through 12/31/90.
RW–859	Minor modifications to form and approved through 12/31/90.
FERC–1	Changes in regulations.
FERC–2	Do.
FERC–2A	Do.
FERC–534*	Do.
FERC–542*	Do.
FERC–577*	Do.
FERC–582*	Do.
FERC–583*	Do.

*Does not utilize a structured form.

[FR Doc. 88–10468 Filed 5–10–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF87–481–001 et al.]

T.E.S. Filer City Station et al. Limited Partnership; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. T.E.S. Filer City Station Limited Partnership

[Docket No. QF87–481–001]

May 6, 1988.

On April 19, 1988, T.E.S. Filer City Station Limited Partnership (Applicant), of One Allen Center, Suite 3445, 500 Dallas Street, Houston, Texas 77002 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal of April 19, 1988 constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Filer City, Michigan. The facility as originally proposed included a coal-fired fluidized bed boiler and condensing steam-turbine. The net electric power production capacity of the facility as originally proposed was to be 50 megawatts.

By order issued on August 25, 1987, the Commission granted certification of the previous facility as a qualifying cogeneration facility (40 FERC ¶ 62,222).

The current recertification is requested due to a change in name of the applicant from the Tondu Energy System Filer City Station Limited Partnership to the T.E.S. Filer City Station Limited Partnership and to a proposed 50% utility participation in the facility. In addition the configuration of the facility has changed from a single fluidized bed boiler to two spreader stoker boilers. The net electric power production capacity of the facility will increase to 54MW. Installation of the facility will begin in the summer of 1988. All other facilities' characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Western Area Power Administration v. Pacific Gas & Electric Company, The Northern California Power Agency, and the City of Alameda, Healdsburg, Ukiah, Santa Clara, Lodi, and Lompoc

[Docket No. EL88–22–000]

May 6, 1988.

Take notice that on April 28, 1988, Western Area Power Administration (Western) tendered for filing pursuant to Rules 206 and 207 of the Commission's Rules of Procedure a Complaint against Pacific Gas & Electric Company (PG&E), The Northern California Power Agency (NCPA), and the Cities of Alameda, Healdsburg, Ukiah, Santa Clara, Lodi, and Lompoc (Cities). Western petitions the Commission to issue a declaratory order resolving a controversy over a rate filed with the Commission. Western states that because of the controversy over the rate, Western has not received payment for surplus energy sold to the Cities and delivered to PG&E for transmission to the Cities during the months of May through September in 1982.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on or before June 6, 1988.

3. Kansas City Power & Light Company

[Docket No. ER88-379-000]

May 9, 1988.

Take notice that on May 2, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Slater, Missouri dated April 12, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term, a modified rate design for firm power service, and the termination of a Transmission Service Agreement.

KCPL requests an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 23, 1988, in accordance with Standard paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER88-377-000]

May 9, 1988.

Take notice that on May 2, 1988, Florida Power & Light Company (FPL) tendered for filing eight (8) revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach is May 29, 1988. The proposed effective date for the contract demands for the City of Jacksonville Beach, and the City of Green Cove Springs is June 1, 1988.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. UNITIL Power Corporation

[Docket No. ER88-375-000]

May 9, 1988.

Take notice that on April 29, 1988, UNITIL Power Corporation tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period October 1, 1986 through December 31, 1987 along with the actual costs incurred by Power Corp. by FERC account.

B. UNITIL Power Corp. rates billed from October 1, 1986 to December 31, 1987 and supporting rate development.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER88-380-000]

May 9, 1988.

Take notice that on May 2, 1988, Minnesota Power & Light Company (MP&L) tendered for filing a proposed Interchange Service Agreement with Superior Water, Light & Power Company, (SWL&P) and Supplement No. 1 thereto, both of which are dated March 31, 1988. MP&L states that this agreement supersedes the existing interconnection agreement between MP&L and SWL&P. In addition, it provides for reductions in MP&L's rate for firm power service to SWL&P, and for limitations on future increases in such rate between July 1, 1987 and December 31, 1999. MP&L has requested waiver of the Commission's regulations in order to make the Interchange Service Agreement and Supplement No. 1 thereto effective on July 1, 1987, the date on which the reduction in the rate for firm power service is intended to be implemented.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Yankee Atomic Power Company

[Docket No. ER88-202-002]

May 9, 1988.

Take notice that on April 14, 1988, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing a compliance filing pursuant to Ordering Paragraph (B) of the Commission's March 15, 1988 Order in the above-captioned docket. The compliance filing contains a revised rate schedule setting forth revised rates to reflect the recovery of decommissioning costs for the Maine Yankee plant over the plant's remaining NRC-licensed life. In its January 15, 1988 rate application, Maine Yankee proposed to collect decommissioning costs for the plant over a period shorter than the NRC-licensed life of the plant, and had filed a decommissioning cost rate schedule reflecting that proposal. In its March 15 Order, the Commission reflected that aspect of Maine Yankee's filing, and ordered Maine Yankee to refile within 30 days, revised rates "reflecting recovery of decommissioning costs over the nuclear unit's remaining life." Maine Yankee has petitioned the Commission for rehearing on this issue, but has made a compliance filing in accordance with the 30-day deadline stated in the Commission's March 15 Order. The revised rates in the compliance filing result in a total annual collection for decommissioning costs of $9,793,905, compared with $14,466,467 contained in the January 15 rate filing.

Copies of this filing were served upon Maine Yankee's jurisdictional customers and secondary purchasers of its power, as well as the utility regulatory authorities in each state having jurisdiction over such customers.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Public Service Company of New Mexico

[Docket No. ER88-376-000]

May 9, 1988.

Take notice that on May 2, 1988, Public Service Company of New Mexico (PNM) tendered for filing an Amended and Restated Contract for Electric Service between PNM and Texas-New Mexico Power company (TNP) and two related contract amendments, Amendment No. 1 to Service Schedule G and a new Service Schedule J to the PNM-TMP Interconnection Agreement. The Amended and Restated Contract for Electric Service implements on a permanent basis the provisions of Amendment No. 6 to the PNM-TNP Contract for Electric Service and the Principles for Modification to said Contract for Electric Service, which were accepted for filing by the Commission in Docket No. ER88-269-000, effective January 1, 1988. The Amended and Restated Contract for Electric Service allows TNP to reduce the amount of power for which TNP must pay and provides for a reduction in the energy rate charged for energy taken during off-peak periods. Under Amendment No. 1 to Service Schedule G, PNM will return to TNP a portion of the firm transmission capacity provided by TNP to PNM in certain of TNP's transmission facilities. Service Schedule J sets forth terms and conditions for economy energy transactions between PNM and TNP at prices which reflect current market conditions or the seller's fully embedded cost of generation.

PNM has requested that the notice requirements of 18 CFR 35.3 be waived as provided for in § 35.11, and that the Commission accept for filing the Amended and Restated Contract for Electric Service, Amendment No. 1 to Service Schedule G, and the new Service Schedule J, with an effective date of May 1, 1988.

Copies of the Amended and Restated Contract for Electric Service, Amendment No. 1 to Service Schedule G, and Service Schedule J have been served upon TNP and the New Mexico Public Service Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Louisville Gas and Electric Company

[Docket No. ER88-324-000]

May 9, 1988.

Take notice that on May 3, 1988, Louisville Gas and Electric Company (Louisville) tendered for filing an amended filing of the Interconnection Agreement between Louisville and Wabash Valley Power Association, Inc. (Wabash Valley) dated February 3, 1988.

The purpose of this filing is to provide the parties with a coordinated, interconnected operation that provides for the sale, purchase and interchange of electric power.

Copies of the filing were served on Wabash Valley and the Public Service Commission of Kentucky.

The Interconnection Agreement provides for service schedules that are designated:

I. Service Schedule A—Emergency Energy
II. Service Schedule B—Interchange Energy
III. Service Schedule C—Seasonal Power
IV. Service Schedule D—Short Term Power
V. Service Schedule E—Limited Term Power
VI. Service Schedule F—Diversity Power

Comment Date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER88-378-000]

May 9, 1988.

Take notice that on May 2, 1988, Florida Power & Light Company (FPL) tendered for filing revised Cost Support Schedules C, F and G (together with cost Support Schedule F Supplements) that: (1) Support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and (2) support the revised Capacity Reservation Charges for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach and City of Key West and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Schedule B and Service Schedule B-S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-10539 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-366-000 et al.]

Sabine Pipeline Co. et al.; Natural Gas Certificate Filings

May 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Sabine Pipe Line Company

[Docket No. CP88-366-000]

May 5, 1988.

Take notice that on April 27, 1988, Sabine Pipe Line Company (Sabine), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. CP88-366-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amax Oil & Gas, Inc. (Amax), under Sabine's blanket certificate issued in Docket No. CP86-522-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Sabine requests authority to transport up to 3,000 Mcf of natural gas on a peak day for Amax pursuant to a transportation agreement dated March 1, 1988 (Agreement). The Agreement provides for a receipt point at South Timbalier Block 200, offshore Louisiana, and a redelivery point at the interconnect with Trunkline Gas Company at South Timbalier Block 147, offshore Louisiana.

Sabine further states that the maximum daily and annual quantities would be 3,000 Mcf and 730,000 Mcf, respectively. Service under § 284.223(a) commenced on March 1, 1988, as reported in Docket No. ST88-2896-000.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-364-000]

May 6, 1988

Take notice that on April 26, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-364-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act

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(18 CFR 157.205) for authorization to provide transportation for CEPEX, Inc. (CEPEX), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 40,000 MMBtu of natural gas per day, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for CEPEX, and end-uses, from 40 receipt points located in Oklahoma, Texas, Kansas, and New Mexico to an interconnection with CEPEX in Gage County, Nebraska. Natural anticipates transporting, on an average day, 29,000 MMBtu. Natural states that based on that average day figure, the annual volume it anticipates transporting is 10,585,000 MMBtu.

Natural states that the transportation of natural gas for CEPEX commenced on March 1, 1988, as reported in Docket No. ST88–3129, for a 120-day period ending June 28, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP88–347–000]

May 6, 1988.

Take notice that on April 20, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–347–000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to upgrade the West Chandler Community Gin Tap located in Maricopa County, Arizona, to a meter station in order to permit the measurement and delivery of additional volumes of natural gas to Southwest Gas Corporation (Southwest) for resale to consumers in the City of Chandler, Arizona, and environs, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that Southwest requested additional volumes of natural gas that will be utilized to serve additional commercial space heating and firm industrial natural gas requirements of consumers in the City of Chandler, and environs, in Maricopa County, Arizona. Initial deliveries of natural gas are requested to begin by the third quarter of 1988.

El Paso also states that Southwest will install other minor related facilities as needed for ultimate distribution of the requested additional volumes of natural gas for industrial and commercial use in the City of Chandler and environs. The estimated cost of the metering facilities is $77,848. El Paso proposes to finance the cost of the facilities proposed herein through internally generated funds.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP88–349–000]

May 9, 1988.

Take notice that on April 21, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88–349–000 a request pursuant to Sections 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate 17 sales taps for the delivery of gas to end users under the certificates issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines as detailed in the appendix below. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Customer	Location	Approximate quantity to be sold (dkt)		End use	Estimated cost[1]
		Peak day	Annual		
RMS, Inc	Wallace Co., KS	29	957	Irrigation	$1,150
Ted Woodbury	Wichita Co., KS	18	609	....do	850
Vernon Dechert	Sheridan Co., KS	26	880	....do	850
Lee Buller	Hamilton Co., NE	140	1,200	Small commercial	3,200
Karl Berndt	Sheridan Co., KS	2	120	Domestic	850
J.V.M. Farms	....do	26	880	Irrigation	850
Floyd Jacobsen	Fillmore Co., NE	30	1,000	....do	1,150
Aetna Life Insurance Company	Thomas Co., KS	24	809	....do	850
Do	....do	24	809	....do	850
Do	....do	48	1,600	....do	1,150
Gregory L. Carter	Dawson Co., NE	2	120	Domestic	850
Donald Haldeen	Keith Co., NE	14	480	Irrigation	850
Ray Welsh	Wallace Co., KS	36	1,200	....do	1,150
Claude Brill	Edwards Co., KS	24	809	....do	850
Frank Whitham	Wichita Co., KS	14	480	....do	850
Do	....do	14	480	....do	850
Ralph Walker	Wallace Co., KS	24	809	....do	850

[1] Customers reimburse to K N a portion of these costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400, Colorado—$400 and Wyoming—$500.

5. Natural Gas Pipeline Company of America

[Docket No. CP88–365–000

May 9, 1988.

Take notice that on April 26, 1988, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88–365–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Tejas Power Corporation (Tejas), a marketer of natural gas, under the certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGPL proposes to transport on an interruptible basis up to 50,000 MMBtu per day and up to 10,950,000 MMBtu per year for Tejas, plus any additional volumes accepted pursuant to the overrun provisions of NGPL's Rate Schedule ITS. It is stated that NGPL would receive the gas at 13 receipt points located in Texas, offshore Texas, and offshore Louisiana. NGPL states that it would deliver the gas for Tejas' account to Columbia Gulf Transmission Company in Vermilion Parish, Louisiana who would then redeliver the gas to intrastate pipelines in Louisiana. It is indicated that the transportation service would have a primary term ending March 1, 1990, and would continue on a monthly basis thereafter.

NGPL states that it filed an initial report in Docket No. ST88–3133–000, reporting that the service commenced March 5, 1988, under the authomatic authorization provisions of § 284.223(a) of the Commission's Regulations. It is also stated that no construction of facilities would be required to effect the transportation service. NGPL proposes to charge Tejas the applicable rate under NGPL's currently effective Rate Schedule ITS.

Comment date: June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP88–358–000]

May 9, 1988.

Take notice that on April 22, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–358–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) and the Natural Gas Policy Act (NGPA) (18 CFR 284.223) for authorization to provide a transportation service for Hadson Gas Systems, Inc., (Hadson) a marketer, under its blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated March 18, 1988, it proposes to transport natural gas for Hadson from points of receipt located in Cameron Parish, Louisiana, and Alan Parish, Louisiana. The points of delivery are located in the states of Mississippi and Pennsylvania.

The Applicant further states that the peak day quantities would be 50,000 dekatherms, the average daily quantities would be 10,000 dekatherms, and that the annual quantities would be 3,650,000 dekatherms. Service under § 284.223(a) commenced March 19, 1988, as reported in Docket No. ST88–3227 (filed April 15, 1988).

Comment date: June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10540 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–152–000 and TQ88–1–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

May 6, 1988.

Take notice that on May 2, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 4
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 11
Fourth Revised Sheet No. 12
First Revised Sheet No. 14
Second Revised Sheet No. 17
First Revised Sheet No. 18
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 29
First Revised Sheet No. 44
First Revised Sheet No. 45
Second Revised Sheet No. 46
Third Revised Sheet No. 47
First Revised Sheet No. 47A
First Revised Sheet No. 48
First Revised Sheet No. 49
Third Revised Sheet No. 50
Second Revised Sheet No. 50A
First Revised Sheet No. 73

These tariff sheets are proposed to become effective June 1, 1988. Alabama-Tennessee states that the purpose of this filing in part is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee further states that the instant filing modifies Sections 20 and 21 of its tariff to conform with the requirements of Order No. 483. According to Alabama-Tennessee, it has also reflected the elimination of all references to incremental pricing and made other minor technical corrections to its tariff.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10495 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. C88-438-000]

Amoco Energy Trading Corp.; Application for a Blanket Certificate With Pregranted Abandonment

May 9, 1988.

Take notice that on May 2, 1988, Amoco Energy Trading Corporation (Applicant), of 200 East Randolph Drive, Chicago, Illinois 60680, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10496 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-144-000]

ANR Pipeline Co.; Tariff Filing

May 6, 1988.

Take notice that ANR Pipeline Company ("ANR") on April 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, implement the provisions of Order Nos. 483 and 483-A, related to the Commission's new PGA regulations. Further, the filing reflects Order No. 476, which revoked the Commission's incremental pricing regulations under the NGPA. Finally, the filing institutes a flexible PGA mechanism.

ANR states that on April 12, 1988, the Commission granted ANR's request for a waiver of certain filing requirements under Order No. 483. As a result of the April 12 Order, ANR received a waiver from filing an Initial Current Purchased Gas Cost Adjustment to be effective June 1, 1988 and its first scheduled Quarterly Current Purchased Gas Cost Adjustment to be effective August 1, 1988.

Copies of the filing have been served upon ANR's customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10497 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-147-000 and TQ88-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance With Order No. 483

May 6, 1988.

Take notice that on May 2, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule No. X-26, Originial Volume No. 3
2nd Revised 45th Revised Sheet No. 185
Rate Schedule No. G-2, First Revised Volume No. 1
2nd Revised 46th Revised Sheet No. 4

These tariff sheets reflect AER's initial PGA filing made under the Commission's transitional rules of Order No. 483.

The proposed changes would increase AER's system cost by $5,802 and its revenue from jurisdictional sales and service by $376 for the month of June, 1988 as adjusted.

In addition to the above tariff sheets AER also submits for filing the following tariff sheets to revise its PGA clause in accordance with Order No. 483 effective June 1, 1988.

Rate Schedule No. X-26, Origional Volume No. 3	Rate Schedule G-2, First Revised Volume No. 1
Revised PGA	
6th Revised Sheet No. 187.	6th Revised Sheet No. 12A
5th Revised Sheet No. 187A.	8th Revised Sheet No. 12B
5th Revised Sheet No. 187B.	9th Revised Sheet No. 12C
7th Revised Sheet No. 187C.	10th Revised Sheet No. 12D
4th Revised Sheet No. 187D.	6th Revised Sheet No. 12E
6th Revised Sheet No. 188.	5th Revised Sheet No. 12F
5th Revised Sheet No. 188A.	

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10498 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-157-000 and TQ88-1-61-000]

Bayou Interstate Pipeline System; Changes in Rates

May 6, 1988.

Take notice that on May 2, 1988, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) the tariff sheets listed on attached Appendix A to be effective June 1, 1988.

Bayou states the purpose of the filing is to implement a revised Section 15 Purchased Gas Cost Adjustment (PGA) of the General Terms and Conditions of its Tariff. The revised Procedures incorporate Sections 154.301 through 154.310 of the Commission's Regulations.

Bayou further states that it is filing to restate its existing rates effective June 1, 1988, consistent with Schedule Q1 of report Form No. 542-PGA.

A copy of the filing is being mailed to Bayou's jurisdictional sales customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Proposed Tariff Sheets

FERC Gas Volume No. 1

Second Revised Sheet No. 1
Fifth Revised Sheet No. 4
Third Revised Sheet No. 50
Second Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 73
First Revised Sheet No. 74
Second Revised Sheet No. 75
Third Revised Sheet No. 76
Second Revised Sheet No. 77
Fourth Revised Sheet No. 78
Second Revised Sheet No. 79
First Revised Sheet No. 80
Original Revised Sheet No. 81
Original Revised Sheet No. 82
Original Revised Sheet No. 83

[FR Doc. 88-10499 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-148-000 and TQ88-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 9, 1988.

Take notice that Equitrans, Inc. (Equitrans) on May 2, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1988.

First Revised Sheet No. 10
First Revised Sheet No. 14
First Revised Sheet No. 172
First Revised Sheet No. 173
First Revised Sheet No. 174
First Revised Sheet No. 175
First Revised Sheet No. 176
First Revised Sheet No. 177

Equitrans states that the filing is made pursuant to § 154.310 and § 154.308 of the Commission's Regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Original Volume No. 1, Section 19, of its General Terms and Conditions of its FERC Gas Tariff.

The current Purchase Gas Adjustment to Rate Schedule GS-1 is an increase of $0.6833 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $3.6201 per dth, to be effective June 1, 1988.

The current Purchase Gas Adjustment to Rate Schedule PLS is an increase of $0.1387 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $2.1943 per dth, to be effective June 1, 1988.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket CP86-676-000, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.221 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such motions or protests should be filed on or before May 16, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10541 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

May 6, 1988.

Take notice that on May 2, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Sixth Substitute Twenty-Fifth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness May 1, 1988.

According to Granite State, the proposed rate changes are applicable to the jurisdictional sales services rendered to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State further states that the rate changes are made to track changes in suppliers' rates that have occurred since it filed its out-of-cycle purchased gas cost adjustment, for effectiveness April 1, 1988. Granite State states that the proposed rates reflect a reduction in the prices for spot market purchases. According to Granite State its revised purchased gas costs and rates result in an annual reduction of approximately $1,900,000 in the rates for sales to Bay State and an annual reduction of $400,000 in the rates for sales to Northern Utilities.

Granite State further states that copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10500 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-158-000 and TQ88-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

May 6, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 2, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

First Revised Sheet No. 5
First Revised Sheet No. 8
Second Revised Sheet No. 11
Eighth Revised Sheet No. 52
Sixth Revised Sheet No. 53
Ninth Revised Sheet No. 54
Sixth Revised Sheet No. 54–A
First Revised Sheet No. 54–A1
Seventh Revised Sheet No. 55
Fourth Revised Sheet No. 56
Third Revised Sheet No. 56–A
Third Revised Sheet No. 56–A1
Fourteenth Revised Sheet No. 57(i)
Fourteenth Revised Sheet No. 57(ii)
First Revised Sheet No. 57(v)

Original Volume No. 2

Third Revised Sheet No. 53–A
Ninth Revised Sheet No. 53–B
Sixth Revised Sheet No. 53–C
Sixth Revised Sheet No. 53–D
Third Revised Sheet No. 53–E
Third Revised Sheet No. 53–E1
Original Sheet No. 53–E2
Second Revised Sheet No. 78–A
Fifth Revised Sheet No. 78–B
Sixth Revised Sheet No. 78–C
First Revised Sheet No. 78–C1
First Revised Sheet No. 78–D
Third Revised Sheet No. 78–E
Original Sheet No. 78–E1
First Revised Sheet No. 466
First Revised Sheet No. 467
First Revised Sheet No. 468
First Revised Sheet No. 469
First Revised Sheet No. 470
First Revised Sheet No. 471
First Revised Sheet No. 472
First Revised Sheet No. 473

The above referenced tariff sheets were filed pursuant to FERC Order No. 483—Revisions to the Purchased Gas Adjustment Regulations. In compliance with Section 154.310—Transitional Rules, Great Lakes revised the PGA language in First Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, to reflect the changes pertaining to the requirement to file a comprehensive annual PGA filing and three additional quarterly filings as opposed to the semiannual filings presently required. In addition, language has been incorporated addressing interim PGA filings, supplier refunds and assessment of past performance also required by Order 483.

Fourteenth Revised Sheet No. 57(i), Fourteenth Revised Sheet No. 57(ii) and First Revised Sheet No. 57(v) reflect projected changes in the price of natural gas purchased by Great Lakes from TransCanada PipeLines Limited for resale to certain customers and for volumes purchased for company use gas.

Any person desiring to be heard or to protect said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88–10501 Filed 5–10–88; 8:45 pm]

BILLING CODE 6717–01–M

[Docket Nos. RP88–153–000 and TQ88–1–53–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that K N Energy, Inc., on May 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 to be effective June 1, 1988. This filing revises K N's Purchased Gas Adjustment (PGA) Clause (Section 19) and is made pursuant to Order No. 483 and 483–A. The filing also proposes changes in K N's FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in accordance with the revised PGA clause. The proposed rate changes would increase the commodity rate under each of K N's jurisdictional rate schedules by .69¢ per Mcf.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10502 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–137–000 and TQ88–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

May 9, 1988.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on May 2, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective June 1, 1988.

First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 39
Third Revised Sheet No. 40
Third Revised Sheet No. 41

Kentucky West states that there is no change in rates and that this filing is made to conform to the Commission requirements included in FERC Orders No. 483 issued November 10, 1987, and No. 483–A issued March 2, 1988.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions and upon each party on the service list of Docket No. RP86–52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10542 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–143–000 and TQ88–1–47–000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

May 6, 1988

Take notice that on April 29, 1988, MIGC, Inc. (MIGC) tendered for filing revised Tariff Sheet Nos. 28 through 32 to its FERC Gas Tariff, Original Volume No. 1. MIGC states that the purpose of these proposed tariff changes is to revise the PGA provisions of its tariff to conform with the requirements of the Commission's new PGA regulations promulgated by Order No. 483, and to submit its first quarterly PGA filing pursuant to such revised tariff provisions and regulations. All of the revised tariff sheets are proposed to become effective June 1, 1988.

Forty-Seventh Revised Sheet No. 32 included in the filing reflects both a revised format in MIGC's "Statement of Rates" to conform with the Commission's new PGA rules, and a quarterly PGA decrease of ($.0063) per MMBtu. MIGC states that, in accordance with Section 154.310(c)(4) of the Commission's regulations, the surcharge adjustment included on Revised Sheet No. 32 reflects a continuation of the surcharge proposed by MIGC to become effective May 1, 1988, in its last semi-annual PGA filing at Docket No. TA88–2–47–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10504 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–140–000 and TQ88–1–5–000]

Midwestern Gas Transmission, Co.; Tariff Filing

May 6, 1988.

Take notice that on April 29, 1988, Midwestern Gas Transmission Company, (Midwestern) tendered for filing the following tariff sheets to Original Volume I of its FERC Gas Tariff to be effective June 1, 1988:

Original Volume No. 1

Second Revised Sheet No. 1
Thirty-Fourth Revised Sheet No. 5
Thirtieth Revised Sheet No. 6
First Revised Sheet No. 160
Third Revised Sheet No. 161
Third Revised Sheet No. 162
Fifth Revised Sheet No. 163
Fourth Revised Sheet No. 164
First Revised Sheet No. 164A
Third Revised Sheet No. 165
Second Revised Sheet No. 165A
First Revised Sheet No. 165B
Third Revised Sheet No. 166
Fourth Revised Sheet No. 167
Sixth Revised Sheet No. 168
Fourth Revised Sheet No. 169
Third Revised Sheet No. 169A
Second Revised Sheet No. 169B
First Revised Sheet No. 169C
First Revised Sheet No. 169D

Midwestern states that, pursuant to Order 483, it is revising the Purchased Gas Adjustment clause of its tariff, Article XXII and Article XXVIII of the General Terms and Conditions, to conform to §§ 154.301–154.310 of the Commission's Regulations. Midwestern is also restating its currently effective rates pursuant to § 154.310 of the Commission's regulations; however, the rates have not been changed.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88–10503 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–146–000 and TA88–3–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

May 6, 1988.

Take notice that on May 2, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed on the attached Appendix A to its FERC Gas Tariff, Second Revised Volume No. 1.

MRT states the filing is being submitted pursuant to its revised Purchased Gas Cost Adjustment (PGA) tariff provisions to track pipeline and producer cost changes. MRT states that the tariff sheets tendered reflect substantial changes to its currently effective PGA tariff provisions to comply with the requirements of Commission Order No. 483 issued November 10, 1987. In addition to the tariff sheets required by Order No. 483, the instant filing also contains certain other tariff revisions necessary to conform other sections of MRT's tariff to the new PGA section.

MRT states the impact of the filed changes upon MRT's Rate Schedule CD–1 is an increase of $.0521 per Mcf in the demand charge D–2 and a decrease in the commodity charge of $.2552 per Mcf. The filing reflects no change in demand charge D–1. The single part rate under Rate Schedule SGS–1 reflects a decrease of $.2031 per Mcf. The aggregate cost impact of such rate changes on MRT's jurisdictional customers, when applied to quarterly billing determinants, is a decrease of $3.2 million.

MRT states the filing also contains alternate tariff sheets reflecting the recovery of take-or-pay charges incurred from Natural Gas Pipeline Company of America (NGPL) in Docket No. RP88–94. MRT states that because NGPL's filing contained alternate tariff sheets reflecting two different methods of take-or-pay flow-through, MRT's filing also contains alternate tariff sheets reflecting take-or-pay flow-through. MRT indicates that one flow-through method utilized by NGPL is a form of the cumulative purchase deficiency method proposed in Order No. 500. MRT states the application of the cumulative deficiency method to MRT is inappropriate. Thus MRT has submitted a third tariff sheet reflecting its preferred D–1 flow-through

methodology of take-or-pay charges.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Mississippi River Transmission Corporation

FERC Gas Tariff, Second Revised Volume No. 1

Twenty-Third Revised Sheet No. 4
Original Sheet No. 4A.1
Alternate Original Sheet No. 4A.1
Substitute Alternate Original Sheet No. 4A.1
Fifth Revised Sheet No. 4B
Third Revised Sheet No. 4D
Third Revised Sheet No. 40
Fifth Revised Sheet No. 41
Ninth Revised Sheet No. 42
Fifth Revised Sheet No. 43
Fourth Revised Sheet No. 44
Third Revised Sheet No. 45
Fourth Revised Sheet No. 46
Third Revised Sheet No. 47
Third Revised Sheet No. 48
Fifth Revised Sheet No. 49
Sixth Revised Sheet No. 50
Fourth Revised Sheet No. 51
Fifth Revised Sheet No. 52
Third Revised Sheet No. 53
Fifth Revised Sheet No. 54
Fourth Revised Sheet No. 55
Fourth Revised Sheet No. 56
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Fourth Revised Sheet No. 59
Second Revised Sheet No. 60
Fourth Revised Sheet No. 61
Alternate Fourth Revised Sheet No. 61
Third Revised Sheet No. 62
Alternative Third Revised Sheet No. 62
Second Revised Sheet No. 63
Alternate Second Revised Sheet No. 63
Second Revised Sheet No. 64
Tenth Revised Sheet No. 74

[FR Doc. 88-10505 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-131-000 and TQ88-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

May 9, 1988.

Take notice that North Penn Gas Company (North Penn) on May 3, 1988, tendered for filing Sixth Revised Sheet No. 15C, Seventh Revised Sheet No. 15D, Seventh Revised Sheet No. 15E, Third Revised Sheet No. 15F and Fourth Revised Sheet No. 15G to its FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets are proposed to become effective June 1, 1988 and reflect a revised PGA Clause pursuant to the Federal Energy Regulatory Commission's Order Nos. 483 and 483-A at Docket No. RM86-14.

Additionally, North Penn is filing Eighty-Eight Revised Sheet No. PGA-1 to reflect changes in the cost of gas purchased. In support of the changes in rates contained in Eighty-Eighth Revised Sheet No. PGA-1 and pursuant to the Commission's Order Nos. 483 and 483-A, North Penn has submitted Schedule D1 and Schedule Q1.

North Penn proposes in sections 14.2 and 14.5 two subaccounts for Account 91 not required by the new PGA regulations. These subaccounts involve refunds and under or overcollections that would be associated with purchases by Corning Natural Gas Corp. (Corning). These amounts are not, however, earmarked for Corning. The special subaccounts are proposed by North Penn to avoid the situation in which Corning would receive benefits due to its status as a North Penn customer while not reimbursing North Penn for costs that North Penn has incurred and continues to incur in providing firm sales service to Corning. North Penn is requesting waiver of the Commission's regulations to the extent required for the Commission to accept sections 14.2 and 14.5 of its proposed PGA Clause.

North Penn respectfully requests waiver of any other of the Commission's Rules and Regulations as may be required to permit this filing to become effective June 1, 1988, as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10543 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-154-000 and TQ88-1-37-000]

Northwest Pipeline Corp; Proposed Change in FERC Gas Tariff

May 6, 1988.

Take notice that Northwest Pipeline Corporation ("Northwest"), on May 2, 1988, pursuant to the requirements of Commission Order No. 483 and 483-A, submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. The current PGA adjustment, to be effective from June 1 through June 30, 1988, aggregates to a decrease in Northwest's commodity rate of 43.31¢ per MMBtu as reflected on Fourth Amended Thirty-Ninth Revised Sheet No. 10. The proposed change in rates would decrease revenues from jurisdictional sales for the month of June by $1,375,093.

Northwest also tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Fourth Amended Thirty-Ninth Revised Sheet No. 10
Third Amended Twenty-First Revised Sheet No. 10-A
First Amended First Revised Sheet No. 15
First Amended First Revised Sheet No. 16
First Amended Original Sheet No. 17
First Amended Original Sheet No. 20
First Amended First Revised Sheet No. 21
First Amended Second Revised Sheet No. 26
First Amended Second Revised Sheet No. 27
First Amended First Revised Sheet No. 28
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
First Revised Sheet No. 36
First Revised Sheet No. 38
First Revised Sheet No. 39
Second Revised Sheet No. 40
First Revised Sheet No. 53
First Revised Sheet No. 58
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 69
Third Revised Sheet No. 101
First Revised Sheet No. 102
Second Revised Sheet No. 104
Third Revised Sheet No. 105
First Revised Sheet No. 111
First Revised Sheet No. 121
Sixth Revised Sheet No. 122
Seventh Revised Sheet No. 123
Seventh Revised Sheet No. 124
Eighth Revised Sheet No. 125
Tenth Revised Sheet No. 126
Fifth Revised Sheet No. 126A
Tenth Revised Sheet No. 127
Eighth Revised Sheet No. 127-A
Ninth Revised Sheet No. 128
Fourth Revised Sheet No. 128-A
Fifth Revised Sheet No. 129
Fifth Revised Sheet No. 130
First Amended, First Revised Sheet No. 300
First Amended, First Revised Sheet No. 301
First Amended, First Revised Sheet No. 302
First Amended, Original Sheet No. 303

Alternate Tariffs

Alternate Seventh Revised Sheet No. 124
Alternate Fifth Revised Sheet No. 126-A
Alternate Tenth Revised Sheet No. 127
Alternate Eighth Revised Sheet No. 127-A
Alternate Fourth Revised Sheet No. 128-A

Sheet Nos. 10-A through 121 and Sheet Nos. 300 through 302, as listed above, are filed for the purpose of converting Northwest's sales rates from a therm to an MMBtu basis. Sheet Nos. 122 through 130 are tendered to revise Section 16, PGA Provision, of the General Terms and Conditions of Northwest's tariff in compliance with Commission Order Nos. 483 and 483-A dated November 10, 1987 and March 2, 1988, respectively. Northwest also requests waiver of § 154.305(i)(3)(ii) of the Commission's regulations as more fully described in its filing. Northwest states and a copy of the filing has been mailed to its jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10506 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-133-000 and TQ88-1-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 29, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Fourth Revised Sheet No. 3-A
Forty-First Revised Sheet No. 3-B

Panhandle further states that it is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Tenth Revised Sheet No. 43-1
Sixteenth Revised Sheet No. 43-2
Sixth Revised Sheet No. 43-2.1
Sixteenth Revised Sheet No. 43-3
Seventeenth Revised Sheet No. 43-4
Fifth Revised Sheet No. 43-4.1
First Revised Sheet No. 43-4.2
First Revised Sheet No. 43-4.3

Panhandle states that the proposed effective date of these revised tariff sheets if June 1, 1988.

Panhandle states that the instant filing is being filed in accordance with Order Nos. 483 and 483-A and § 154.310 *Transition Rules* of the Commission's Regulations. Sixty-Fourth Revised Sheet No. 3-A and Forty-First Revised Sheet No. 3-B reflect Panhandle's initial Quarterly PGA Rate Adjustment Sheet No. 3-B reflect Panhandle's initial Quarterly PGA Rate Adjustment to be effective June 1, 1988. Pursuant to § 154.310(c)(4)(i) the proposed rates to be effective June 1, 1988 continue the existing surcharge rate approved by the Commission's Order issued February 26, 1988 in Docket No. TA88-3-28-000 (March 1, 1988 PGA). These revised tariff sheets reflect a commodity rate increase of 60.49 cents per Dt as a result of increases in the projected purchased gas cost component. The revised tariff sheets filed herewith reflect an increase of $0.12 for Panhandle's Demand (D1) and no change for Demand (D2), to reflect an increase in the section 16.4 pipeline supplier demand costs.

Panhandle states that these revised tariff sheets also reflects revisions to section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1 to implement the changes as set forth in the Commission's Order Nos. 483 and 483-A.

Copies of the filing were served upon Panhandle's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10507 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-45-002]

Placid Oil Co.; Request for Waiver of Refund Obligation

May 9, 1988.

Take notice that on April 26, 1988, Placid Oil Company (Placid) filed with the Commission a petition pursuant to Rule 207 of the Commission's rules of practice and procedure (18 CFR 385.207 (1987)) for a waiver of a portion of a refund obligation.

The Commission, by its orders dated December 12, 1986 (36 FERC ¶ 61,248) and March 25, 1988 (42 FERC ¶ 61,373), held that Placid was not entitled to receive the 1973-74 biennium rate under

Opinion Nos. 770 and 770-A for natural gas production from the Louisiana State Lease 2856 Well No. 11, and imposed a refund obligation for sales therefrom to Tennessee Gas Pipeline Company (Tennessee). Placid requests relief from the portion of its refund obligation attributable to the royalty payment to the State of Louisiana.

Placid states the following in support of the petition for relief. On October 9, 1985, the Louisiana State Meneral Board adopted a resolution stating that Louisiana would not authorize its leasees/payors to withhold or recoup from future royalties, the royalty portion of any overcharges arising from adjustments to the measurement of the Btu content of gas produced on state leases. The State Mineral Board further warned that it would take appropriate legal action against lessees/payors who attempted an unauthorized recoupment in an effort to collect refunds of royalty payments for any gas overcharges. If Placid attempted to make billing adjustments to recover the earlier excess royalty payments, the Mineral Board's threatened sanction could seriously jeopardize Placid's financial condition and its bankruptcy reorganization plan. This results in creating a special hardship to Placid.

Any person desiring to be heard or to make any protest with reference to said petition should, within 30 days after publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214 (1987)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10508 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-155-000]

Southern Natural Gas Co; Proposed Changes in Ferc Gas Tariff

(May 6, 1988).

Take notice that on May 2, 1988, Southern Natural Gas Company (Southern) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective June 1, 1988:

Sixth Revised Sheet No. 45A
Sixth Revised Sheet No. 45B
Fifth Revised Sheet No. 45C
Seventh Revised Sheet No. 45D
Eighth Revised Sheet No. 45E
First Revised Sheet No. 45E. 1
First Revised Sheet No. 45E. 2
First Revised Sheet No. 45E. 3
First Revised Sheet No. 45E. 4
Original Sheet No. 45E. 5
Original Sheet No. 45E. 6
Original Sheet No. 45E. 7

Southern states that the proposed tariff sheets reflect the restatement of the Purchased Gas Adjustment (PGA) clause of Southern's tariff in compliance with the Commission's Order Nos. 483 and 483-A and the revised PGA regulations promulgated thereunder.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with the Commission's Rules of Practice and Procedures (18 CFR 385.212 or 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such protests or motions are due on or before May 13, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10509 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-149-000 and TQ88-1-41-000]

Southwest Gas Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that on May 2, 1988, Southwest Gas Corporation (Southwest) filed a notice of change in rates for jurisdictional natural gas sales service rendered to customers under Rate Schedule G-1 of Southwest's FERC Gas Tariff, Original Volume No. 1, along with proposed revisions to its Purchased Gas Cost Adjustment (PGA) provision contained in section 9 of the General Terms and Conditions in Original Volume No. 1 of its tariff. Southwest states that the purpose of the filing is to revise its PGA clause and to change its rates to conform with the Commission's new PGA regulations adopted in Order Nos. 483 and 483-A.

To implement the necessary revisions to its PGA clause and the notice of change in rates, Southwest tendered for filing the following tariff sheets to be made a part of Original Volume No. 1 of its FERC Gas Tariff:

Thirty-Ninth Revised Sheet No. 10
Seventh Revised Sheet No. 27
Sixth Revised Sheet No. 28
Fourth Revised Sheet No. 29
Fifth Revised Sheet No. 30
Second Revised Sheet No. 30A
Third Revised Sheet No. 30B
Ninth Revised Sheet No. 31
Sixth Revised Sheet No. 32
Fourth Revised Sheet No. 33
Second Revised Sheet No. 34
Fourth Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
Original Sheet Nos. 38 through 49

Southwest states that the proposed tariff sheets reflect a change in rates occasioned by the computation of new rates under §§ 154.303 and 154.310 of the Commission's Regulations. Southwest requests that the proposed tariff sheets be permitted to become effective on June 1, 1988.

Southwest also requests that the Commission modify the effective dates for Southwest's PGA filings set forth in § 154.304(c) of the Commission's Regulations from January 1, April 1, July 1, and October 1 to February 1, May 1, August 1, and November 1, with November 1, being the effective date for Southwest's annual filing.

Southwest further requests a permanent waiver of the obligation under the new PGA regulations to submit PGA data on magnetic computer tape. Southwest states that in view of the fact that it typically reflects Northwest as its only supplier of gas in its PGA filings, it would be unduly burdensome and impractical to require Southwest to submit the required information on magnetic computer tape as well as in hard copy form.

Southwest states that copies of its filing have been served upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10510 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-10-M

[Docket Nos. RP88-142-000 and TQ88-1-9-000]

Tennessee Gas Pipeline Co.; Tariff Filing

May 6, 1988.

Take notice that on April 29, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Original Volumes 1 and 2 of its FERC Gas Tariff, to be effective June 1, 1988:

Original Volume No. 1

Summary Rate Sheets

Volume No. 1
Sixth Revised Sheet No. 20
Third Revised Sheet No. 20A
Sixth Revised Sheet No. 21
Volume No. 2
Seventh Revised Sheet No. 5
Sixth Revised Sheet No. 6

PGA Clause

First Revised Sheet No. 218
Second Revised Sheet No. 219
Third Revised Sheet No. 220
Third Revised Sheet No. 221
Third Revised Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
First Revised Sheet No. 225
First Revised Sheet No. 226
Original Sheet No. 226A

Tennessee states that, pursuant to Order 483, it is revising the Purchased Gas Adjustment clause of its tariff to conform to §§ 154.301-154.310 of the Commission's Regulations. Tennessee is also restating its currently effective rates pursuant to § 154.310 of the Commission's regulations; however, the rates have not been changed.

Tennessee states that the following changes to the PGA clause are reflected in the revised tariff sheets.

(1) Section 1 has been revised to provide for quarterly and annual gas rate adjustments. It also incorporates the new reporting requirements for the annual rate adjustment. New timing periods have been defined for the PGA Period and the Deferral Period.

(2) The base period references in the projection of gas costs under section 2 have been deleted. Prospective rates of suppliers based on known and measurable changes have been incorporated into the projection of gas costs.

(3) Section 2 has been revised to specify D_1/D_2 demand rate adjustments. Section 3 has been revised to provide for D_1/D_2 bifurcation in the Unrecovered Gas Cost Account and the Demand Surchage for Amortizing Unrecovered Gas Costs.

(4) A new section 6 establishes a refund subaccount in Account 191 to be credited with refunds, credits, past period credit billing adjustments and debited for past period debit billing adjustments. Section 6 provides for disbursement of the balance in the refund account when the threshold under § 154.305 of the Commission's Regulations is attained. The separate disbursement procedures for demand and commodity components follow the allocation procedure prescribed in § 154.305 of the Commisison's Regulations.

(5) The 103% assessment test has been removed from section 3, covering Interim Adjustments, and replaced by a new section 6 establishing an overall assessment test for test intervals throughout the year.

(6) Tennessee states that it has added a new section 1.5 to allow allocation of an annual basis of fixed gas costs that are determined on an annual or semi-annual basis and that are classified to commodity rates. It characterizes these types of costs, such as minimum bill charges, the portion of fixed transmission charges for imported gas classified to commodity rates and purchased gas demand costs included in single part rate schedules, as essentially annual fixed costs which should be allocated on a level basis to commodity rates. Tennessee proposes to calculate the allocation in the Annual Gas Rate Adjustment using the projected annual sales, and to attribute to billing determinants for that PGA Period. The quarterly and monthly costs derived through the annual allocation would be used for calculating the Current Adjustment, the Unrecovered Gas Costs and the Assessment Test.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commisison's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisison and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10511 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-145-000 and TQ88-1-58-000]

Texas Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that on May 2, 1988, Texas Gas Pipeline Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective June 1, 1988.

Twentieth Revised Sheet No. 4a
First Revised Sheet No. 19
Fourth Revised Sheet No. 20
First Revised Sheet No. 20a
Fourth Revised Sheet No. 21
Original Sheet No. 21a
Original Sheet No. 21b
Third Revised No. 22

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to Section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twentieth Revised Sheet No. 4a reflects a net increase in the rate after cumulative adjustment to 154.38¢/Mcf and a change in the rate Surcharge Adjustment to 3.49¢/Mcf yielding a proposed total rate of 187.34¢/Mcf (at 14.65 psia) to be effective June 1, 1988.

In addition, TGPL has submitted the additional tariff sheets above listed to revise section 12 (Purchased Gas Cost Adjustments) of the General Terms and Conditions of its Tariff to comply with the requirements of Order Nos. 483 and 483-A. Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10512 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-161-000 and TQ88-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 9, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 50
Fourth Revised Sheet No. 50A
Fourth Revised Sheet No. 50B
Fourth Revised Sheet No. 50C
Fourth Revised Sheet No. 50D
Third Revised Sheet No. 51
First Revised Sheet No. 51A
First Revised Sheet No. 51B
First Revised Sheet No. 51C
First Revised Sheet No. 51D
First Revised Sheet No. 447
Second Revised Sheet No. 448
Second Revised Sheet No. 449
First Revised Sheet No. 450
Second Revised Sheet No. 451
Second Revised Sheet No. 452
Second Revised Sheet No. 453
Second Revised Sheet No. 454
Second Revised Sheet No. 455
Second Revised Sheet No. 456
Second Revised Sheet No. 457
Third Revised Sheet No. 484

Texas Eastern states that it is making this instant filing pursuant to the transition rules under § 154.310 of the Commission's new PGA Regulations in order: (1) To set forth as part of Texas Eastern's FERC Gas Tariff revised PGA provisions which comply with the requirements of § 154.301 *et seq.*, and (2) to establish an initial current adjustment rate in compliance with §§ 154.302(n) and 154.305 (b) and (a) of the Commission's Regulations.

The proposed effective date for the subject tariff sheets is June 1, 1988.

Texas Eastern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10544 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP88-160-000 and TQ88-1-29-000]

May 9, 1988.

Take notice that on May 2, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Revised Volume No. 1

Revised Forty-Eighth Revised Sheet No. 15
Revised Eighth Revised Sheet No. 15-A
Sixth Revised Sheet No. 247
Sixth Revised Sheet No. 248
Eighth Revised Sheet No. 249
Sixth Revised Sheet No. 250
Sixth Revised Sheet No. 250-A
Third Revised Sheet No. 250-B
Third Revised Sheet No. 250-C
Second Revised Sheet No. 250-D

The proposed effective date for the subject tariff sheets is June 1, 1988.

Transco states that it is making the tariff filing in compliance with § 154.310 of the Commission's Regulations, which contain the Transition Rules applicable to the Commission's new Purchased Gas Adjustment (PGA) regulations adopted in Order Nos. 483 and 488-A. The filing includes tariff sheets containing (1) a PGA clause pursuant to § 154.303 of the Regulations; (2) an initial current adjustment rate computed under § 154.310(b) of the Regulations; and (3) the existing surcharge rate pursuant to § 154.310(c) of the Regulations.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10545 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-150-000 and TA88-5-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on April 29, 1988 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

44th Revised Sheet No. 5

The tariff sheet listed above is being filed pursuant to Transwestern's Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected herein represents an increase of $0.0004/dth as measured against Transwestern's Semi-Annual PGA filing in Docket No. TA88-4-42-000 (PGA88-4), which became effective on April 1, 1988.

The proposed effective date for the tariff sheet listed above is July 1, 1988.

Transwestern has also tendered for filing on April 29, 1988 the tariff sheets listed below pursuant to Order No. 483, § 154.303 (b)(1) of the Commission's regulations to establish a new Purchased Gas Adjustment (PGA) Clause to be effective July 1, 1988. These tariff sheets will appear in Transwestern's Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. Tendered for filing are:

1st Revised Sheet No. 72
6th Revised Sheet No. 73
11th Revised Sheet No. 74
7th Revised Sheet No. 75
1st Revised Sheet No. 75A
7th Revised Sheet No. 76
3rd Revised Sheet No. 76A
3rd Revised Sheet No. 76B
3rd Revised Sheet No. 76C

Copies of the filing were served on Transwestern's jurisdicational customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance in §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10513 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-134-000 and TQ88-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Trunkline Gas Company (Trunkline) on May 3, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volune No. 1:

Sixty-First Revised Sheet No. 3-A

Trunkline further states that it is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Seventh Revised Sheet No. 21-D
Seventh Revised Sheet No. 21-E
Twelfth Revised Sheet No. 21-F
Fourth Revised Sheet No. 21-F.1
Eighth Revised Sheet No. 21-G
Sixth Revised Sheet No. 21-I
Sixth Revised Sheet No. 21-J
First Revised Sheet No. 21-J.1
First Revised Sheet No. 21-J.2
Original Sheet No. 21-J.3
Original Sheet No. 21-J.4
Original Sheet No. 21-J.5

Trunkline states that the proposed effective date of these revised tariff sheets is June 1, 1988.

Trunkline states that the instant filing is being filed in accordance with Order Nos. 483 and 483-A and § 154.310 *Transition Rules* of the Commission's Regulations. Sixty-First Revised Sheet No. 3-A reflects Trunkline's initial Quarterly PGA Rate Adjustment to be effective June 1, 1988. Pursuant to § 154.310(c)(4)(i) the proposed rates to be effective June 1, 1988 continue the existing surcharge rate approved by the Commission's Letter Orders issued October 29, 1987 and November 9, 1987 in Docket No. TA87-2-30-001 (September 1, 1987 Compliance Filing). This revised tariff sheet reflects a commodity rate decrease of (0.66) cents per Dt as a result of decreases in the projected purchased gas cost component.

Trunkline states that these revised tariff sheets also reflect revisions to section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1 to implement the changes as set forth in the Commission's Order Nos. 483 and 483-A.

Trunkline is also filing herewith six (6) copies of the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 3-B
First Revised Sheet No. 21-O

The proposed effective date of these revised tariff sheets is June 1, 1988.

Trunkline states that these revised tariff sheets reflects the cancellation of section 21 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1 to eliminate all incremental pricing provisions effective June 1, 1988, pursuant to Congress' repeal of Title II of the NGPA and the Commission's Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000, *et al.*, which revoked Incremental Pricing regulations effective January 1, 1988 (40 FERC 61,095).

Copies of the filing were served upon Trunkline's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10514 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-27-006 and RP85-209-015]

United Gas Pipe Line Co.; Filing

May 9, 1988.

Take notice that on April 29, 1988, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Revised Substitute Revised Original Sheet No. 4-G1
Revised Substitute Revised Original Sheet No. 4-H
Revised Substitute Revised Original Sheet No. 4-I
Revised Substitute Revised Original Sheet No. 4-J
Revised Substitute Revised Original Sheet No. 4-K
Revised Alternate Substitute Revised Original Sheet No. 4-G1
Revised Alternate Substitute Revised Original Sheet No. 4-H
Revised Alternate Substitute Revised Original Sheet No. 4-I
Revised Alternate Substitute Revised Original Sheet No. 4-J
Revised Alternate Substitute Revised Original Sheet No. 4-K

United states that the revised tariff sheets reflect arithematical revisions to its April 15, 1988 compliance filing, which results in an additional absorption of approximately $450,000 in take-or-pay related costs. United states that this filing is made subject to the same conditions and reservations set forth in its April 15, 1988 compliance filing.

United states that copies are being served on all its jurisdictional customers, state commissions and the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214,

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385.211 (1987)). All such motions or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10540 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-123-000 and TA88-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on May 2, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in its Purchased Gas Adjustment Clause and changes in rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

7th Revised Sheet No. 14.2
1st Revised Sheet No. 21.7
2nd Revised Sheet No. 21.8
2nd Revised Sheet No. 21.9

FERC Gas Tariff, Original Volume No. 2

12th Revised Sheet No. 6
2nd Revised Sheet No. 8
2nd Revised Sheet No. 9
2nd Revised Sheet No. 10
2nd Revised Sheet No. 11
2nd Revised Sheet No. 12
Original Sheet No. 12.1
Original Sheet Nos. 12.2-12.49 Reserved

Vitco states that this filing reflects changes in its Purchased Gas Adjustment Clause and purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of $.5291 per MMBtu and a surcharge of $.2943 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.1561 per MMBtu and a negative surcharge of $1.1241 per MMBtu. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filing is June 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by June 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10515 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-139-000, and TQ88-1-43-000]

Williams Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Williams Natural Gas Company (WNG) on April 29, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised First Revised Sheet Nos. 73-75, 81-86, 88 and 89
Second Revised First Revised Sheet Nos. 87, 92 and 93
First Revised Second Revised Sheet Nos. 2, 76-80, 90 and 91
Third Revised Third Revised Sheet No. 7
Second Revised Fourth Revised Sheet No. 6

These tariff sheets are being filed in compliance with Order No. 483, issued November 10, 1987. A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in the revised Article 21 of its FERC Gas Tariff, which is being revised by this filing, it proposes to decrease its rates effective June 1, 1988, to reflect a $.0450 per Mcf decrease in the Cumulative Adjustment due to a decrease in WNG's projected gas purchase costs.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10516 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-134-000 and TQ88-1-36-000]

West Texas Gas, Inc.; Filing of PGA Tariff Sheets

May 9, 1988.

Take notice that on May 3, 1988, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Ninth Revised Sheet No. 3a
First Revised Sheet No. 21
First Revised Sheet No. 21a
Third Revised Sheet No. 21b
Second Revised Sheet No. 21c
First Revised Sheet No. 21d
First Revised Sheet No. 21e
Original Sheet Nos. 21f through 21j

Ninth Revised Sheet No. 3a and the accompanying explanatory tariff sheets were filed by WTG in accordance with the transmittal rules under the Commission's recently revised purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 625 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10547 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-156-000, and TQ88-1-49-000]

Williston Basin Interstate Pipeline Co.; Purchase Gas Cost Adjustment Filing

May 6, 1988.

Take notice that on May 2, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Tenth Revised Sheet No. 10
Third Revised Sheet No 91
Second Revised Sheet Nos. 92-95
Original Sheet No. 95A
Second Revised Sheet No. 96
Third Revised Sheet No. 97
Original Sheet No. 97A
Second Revised Sheet Nos. 98-98A

Original Volume No. 2

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 11

Williston Basin also submitted for filing as part of its FERC Gas Tariff the following alternate tariff sheet:

First Revised Volume No. 1

Alternate Tenth Revised Sheet No. 10

Williston Basin states that it has prepared the instant PGA filing without the benefit of a final Commission Order in Docket No. TA88-3-49-000 and as result submits both Alternate Tenth Revised Sheet No. 10 and Tenth Revised Sheet No. 10 consistent wth its request in Docket No. TA88-3-49-000.

The Company requests an effective date for the tariff sheets of June 1, 1988.

Both Alternate Tenth Revised Sheet No. 10, and Tenth Revised Sheet No. 10 (First Revised Volume No. 1), reflect a change in the Cumulative Gas Cost Adjustment for Rate Schedules G-1, SGS-1 and E-1 of a negative 17.380 cents per dkt from the Cumulative Gas Cost Adjustment contained in the Company's March 31, 1988 filing in Docket No. TA88-3-49-000. These changes reflect a cumulative gas cost adjustment from the average base cost of purchased gas of a negative 50.909 cents per dkt as supported in Schedule D-1.

Pursuant to the Commission's Final Rule (Order No. 483) and Order on Rehearing (Order No. 483-A) in Docket No. RM86-14 issued November 10, 1987 and March 2, 1988, respectively, Williston Basin also submitted Third Revised Sheet No. 91, Second Revised Sheet Nos. 92-95, Original Sheet No. 95A, Second Revised Sheet No. 96, Third Revised Sheet No. 97, Original Sheet No. 97A, and Second Revised Sheet Nos. 98 and 98A reflecting revision to its Purchased Gas Cost Adjustment Provision.

Williston Basin also submitted Twelfth Revised Sheet No. 10 (Original Volume No. 2) which would require a change to the cumulative gas cost adjustment for Rate Schedule X-1 of a negative 17.380 cents per dkt from the Cumulative Gas Cost Adjustment contained in the company's March 31, 1988 filing in Docket No. TA88-3-49-000, and Twelfth Revised Sheet No. 11 which was not included in the Company's March 17, 1988 filing in Docket No. RP87-115-003, but which was nonetheless accepted by Letter Order dated April 6, 1988.

Williston Basin states that by Letter Order dated April 12, 1988, it was granted waiver of the Form 542-PGA 9-track magnetic tape filing requirement. In lieu thereof the Company has submitted the instant filing on personal computer floppy diskette.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385-211). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate aciton to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10517 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Irrigation Efficiency Program; Cooperative Agreement

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Irrigation Efficiency Program, Notice of Proposed Cooperative Agreement.

SUMMARY: The Western Area Power Administration announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to design, develop, and implement an Irrigation Efficiency Program (Program) for the State of Colorado has been restricted to the Colorado State Soil Conservation Board (CSSCB).

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Plate, Conservation Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7227.

SUPPLEMENTARY INFORMATION: In 1981 the Western Area Power Administration (Western) initiated a Conservation and Renewable Energy (C&RE) Program. Among the various program activities is an Irrigation Pump Testing and Equipment Loan Program with Western's customers. The Loveland Area Office has been working with the Colorado State Soil Conservation Board to mutually benefit the State and the Federal Government by improving end-users' pump efficiencies and agricultural practices. Western's goals include the efficient utilization of energy resources. Western supports programs such as this through its C&RE Program. The CSSCB is committed to the economic success of Colorado agriculture and is in the best position to manage this Program. The CSSCB and the United States Department of Agriculture Soil Conservation Service, have worked with local soil conservation districts in irrigation and water efficiency programs and will provide expertise and training to CSSCB personnel hired to fulfill the objectives of this Program.

Solicitation Number: DE-RP65-88WJ05725

Scope of Project: The Program is designed to develop and implement irrigation efficiency activities within the State of Colorado. The Program will include an appropriate management plan for the program, data collection and reporting responsibilities, and coordination of those activities with other agencies involved in energy conservation such as utilities and Statewide organizations.

Issued in Golden, Colorado, April 29, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-10434 Filed 5-10-88; 8:45 am]

BILLING CODE 6450-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30267A; FRL-3377-2]

Miles Laboratories; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Miles Laboratories, to register four laser pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 16, 1986 (51 FR 12923), which announced that Miles Laboratories, Household Product Div., 7123 West 65th St., Chicago, IL 60638, had submitted applications to register the following Laser products (EPA File Symbols 121-GL, 121-GA, 121-GT, and 121-GI), containing the active ingredient cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate], an active ingredient not included in any previously registered products.

The applications were approved for general use on October 17, 1987, for the following products:

1. EPA Reg No. 121-35. Product name: Laser Flying Insect Killer. 0.04%. Use: For flying insects such as houseflies, stableflies, mosquitoes, roaches, moths, and hornets.

2. EPA Reg. No. 121-36. Product name: Laser Ant and Roach Killer. 0.1%. Use: control ants, roaches, and other insects around baseboards, cracks, and crevices.

EPA Reg. No. 121-37. Product name: Laser Flea Killer Spray. 0.1%. Use: As surface spray to kill fleas, roaches, crickers, ticks, spiders, and other household insects.

4. EPA Reg. No. 121-38. Product name: Laser House and Garden Multipurpose Insect Killer. 0.04%. To kill mosquitoes, roaches, houseflies, and other garden bugs and sucking insects.

The Agency has considered all required data on the risks associated with the proposed use of cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-)2,2-dicholoroethenyl)-2,2-dimethyl-cyclopropanecarboxylate] and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] when used in accordance with widespread and commonly recognized practice, wll not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate].

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the products' name and registation numbers and (2) specifiy the data or information desired.

Authority: 7 U.S.C. 136.

Dated: April 28, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-10351 Filed 5-10-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3465/T560; FRI-3377-1]

Clofentezine; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for clofentezine in or on certain raw agricultural commodities. These temporary tolerances were requested by Nor-Am Chemical Co.

DATE: These temporary tolerances expire March 30, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail:

Dennis Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2386.

SUPPLEMENTARY INFORMATION: Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 7G3465 the establishment of temporary tolerances for clofentezine [3,6-bis-(o-chlorophenyl) 1,2,4,5-tetrazine] in or on the raw agricultural commodities pears at 0.5 part per million (ppm), almond hulls at 15.0 ppm, almond nutmeat at 0.4 ppm, peaches at 1.0 ppm, nectarines at 1.0 ppm, meat and meat byproducts of cattle at 0.05 ppm, cattle kidney at 0.05 ppm, cattle liver at 0.20 ppm, and milk at 0.05 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 45639-EUP-33, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 30, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was pubslihed in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: April 29, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10352 Filed 5-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Filing Dates for Illinois Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Illinois special elections.

SUMMARY: Committees required to file reports in connection with the only Special Primary Election to be held in the 21st Congressional District of Illinois on July 12, 1988, should file a 12-day Pre-Primary Report by June 30, 1988. Committees required to file reports in connection with *both* the Special Primary and Special General Election to be held on August 9, 1988, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by July 28, 1988, and a 30-day Post-General Report by September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463. Telephone: (202) 376-3120; Toll Free (800) 424-9530.

Notice of Filing Dates for Special Elections 21st Congressional District, Illinois

All principal Campaign Committees of candidates in the Special Primary Election and all other political committees not filing monthly, which support candidates in the Special Primary shall file a 12-day Pre-Primary Report by June 30, 1988, with coverage dates from the last report filed through June 22, 1988. Committees must also file a July Quarterly Report, with coverage dates from June 23, 1988, through June 30, 1988, due on July 15, 1988.

All principal campaign committees of candidates in the Special General Election and all other political committees not filing monthly, which support candidates in this election shall file a 12-day Pre-General Election Report due on July 28, 1988, with coverage dates from July 1, 1988, through July 20, 1988, and a 30-day Post-General Report due on September 8, 1988, with coverage dates from July 21, 1988, through August 29, 1988. Committees must also file an October Quarterly Report due October 15, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

Dated: May 6, 1988.

[FR Doc. 88-10560 Filed 5-10-88; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-711]

Brehm Federal Savings Bank, Baltimore, MD; Final Action, Approval of Conversion Application

Date: May 4, 1988.

Notice is hereby given that on April 29, 1988, the Office of General Counsel ("OGC") and the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), or their respective designees, acting pursuant to delegated authority, approved the application of Brehm Federal Savings Bank, Baltimore, Maryland ("Brehm"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the Office of District Banks, with the concurrence of ORPOS and OGC, approved the application for Brehm to merge into Second National Federal Savings Bank, Salisbury, Maryland.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10522 Filed 5-10-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-710; FHLBB No. 2580]

First Federal Savings and Loan Association of Lenawee County, Adrian, MI; Final Action, Approval of Conversion Application

Date: May 4, 1988.

Notice is hereby given that on April 29, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Lenawee County, Adrian, Michigan for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10523 Filed 5-10-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011172–001
Title: United States Atlantic and Gulf Venezuela; Freight Conference Discussion Agreement
Parties: United States Atlantic and Gulf Venezuela Freight Conference; Marlago Line; King Ocean; Maritima Aragua, S.A.; Venezuelan Container Line
Synopsis: The proposed amendment would add Seaboard Marine, Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 232–011192
Title: The "K" Line-Hyundai Space Charter and Sailing Agreement in the Far East-U.S. Pacific Northwest Trades
Parties: Kawasaki Kisen Kaisha, Ltd.; Hyundai Merchant Marine Co., Ltd.
Synopsis: The proposed agreement would authorize the parties to charter space from one another and to coordinate sailings in the trade between ports in the Far East and U.S. Pacific Northwest ports, including inland points via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
Dated: May 6, 1988.
[FR Doc. 88–10463 Filed 5–10–88; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011039–001.
Title: Port of Seattle Equipment Lease Agreement.
Parties:
Port of Seattle
Stevedoring Service of America
Synopsis: The proposed agreement amends the basic lease by (1) deleting authority to use two rubber-tired gantry cranes at Port of Seattle Terminals 37 and 42; and (2) reflecting appropriate rental adjustment therefore.

Agreement No.: 224–200017–001.
Title: Philadelphia Port Corporation Terminal Agreement.
Parties:
Philadelphia Port Corporation
Delaware Operating Company
Synopsis: The proposed agreement extends the basic agreement term to July 2, 1988, and authorizes the right of the parties to extend the term for an additional 60 days.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
Dated: May 6, 1988.
[FR Doc. 88–10521 Filed 5–10–88; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Commission of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meet during the month of May 1988:

Name: Secretary's Commission on Nursing
Date: May 26, 1988
Time: 8:00 p.m.
Place: Capitol Hill Club, 300 First Street, SE., Washington, DC
and
Date: May 27, 1988
Time: 8:00 a.m.
Place: Room 703–727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda for May 26: The agenda for this meeting will consist of presentations on the issue of specialty certification for nurses. The presentations will commence at 8:00 p.m.; they will be preceeded by a dinner for Commission members which begins at 6:45 p.m.

Agenda for May 27: The agenda for this meeting will include: discussion of the Commission's draft interim report; a panel presenation or recruitment strategies for ADN and BSN programs; and preliminary consideration of recommendations for inclusion in the Commission's final report.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245–0409.

Lillian K. Gibbons,
Executive Director, Secretary's Commission on Nursing.
[FR Doc. 88–10555 Filed 5–10–88; 8:45 am]
BILLING CODE 4160–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.
Notice: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory councils in the month of June 1988. These committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in

accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH.
Date and Time: June 1–3: 8:30 a.m.
Place: Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Status of Meeting: Open—June 1: 8:30–9:30 a.m.; Closed—Otherwise.
Contact: Sally York, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.
Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neurosciences Research Review Committee, NIMH.
Date and Time: June 1–3: 8:30 a.m.
Place: Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Status of Meeting: Open—June 1: 8:30–9:30 a.m.; Closed—Otherwise.
Contact: Joyce Lamb, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.
Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.
Date and Time: June 1–3: 9:00 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Status of Meeting: Open—June 1: 9:00–10:00 a.m.; Closed—Otherwise.
Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.
Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.
Date and Time: June 2–3: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Status of Meeting: Open—June 2: 9:00–9:30 a.m.; Closed—Otherwise.
Contact: Naomi Lichtenberg, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.
Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.
Date and Time: June 2–3: 8:30 a.m.
Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Status of Meeting: Open—June 2: 8:30–9:30 a.m.; Closed—Otherwise.
Contact: Monica Woodfork, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.
Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.
Date and Time: June 2–3: 9:00 a.m.
Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Status of Meeting: Open—June 2: 9:00–10:00 a.m.; Closed—Otherwise.
Contact: Kimberly Crown, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843.
Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.
Date and Time: June 2–4: 9:00 a.m.
Place: The Bethesda Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—June 2: 9:00–10:00 a.m.; Closed—Otherwise.
Contact: Dorothy Tengood, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.
Date and Time: June 5–8: 5:00 p.m.
Place: Wild Dunes, Isle of Palms, South Carolina 29451.
Status of Meeting: Open—June 5: 5:00–7:00 p.m.; Closed—Otherwise.
Contact: Samir Zakhari, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.
Date and Time: June 6–8: 9:00 a.m.
Place: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.
Status of Meeting: Open—June 6: 9:00–9:30 a.m.; Closed—Otherwise.
Contact: Ronald F. Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: June 6–8: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—June 6: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: June 7–8: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 9, Bethesda, MD 20892.

Status of Meeting: Open—June 7: 9:00–12:00 Noon; June 8: 9:00 a.m.–5:00 p.m.; Closed—Otherwise.

Contact: Sheila H. Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research and research training.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: June 8–10: 9:15 a.m.

Place: The River Inn, 924 Twenty-Fifth Street NW., Washington, DC 20037.

Status of Meeting: Open—June 8: 9:15–10:00 a.m.; Closed—Otherwise.

Contact: Peg Lyons, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: June 8–10: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 8: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Maureen Eister, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: June 9–10: 8:30 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 9: 8:30–9:15 a.m.; Closed—Otherwise.

Contact: Irma Fisher, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuroimmunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 9–10: 9:00 a.m.

Place: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 9: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 9–10: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 9: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Frances Smith, Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment, development, and assessment and makes recommendations to the National Advisory Mental Council for final review.

Committee Name. National Advisory Mental Health Council, NIMH.

Date and Time: June 13: 9:00 a.m.

Place: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—June 13: 9:00–9:30 a.m.; closed—Otherwise.

Contact: Rachel Townson, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: June 13–15: 9:00 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 13: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Emile A. Embrey, Room 9C–06, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 16–17: 9:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 16: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and Time: June 16–18: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 16: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Cathy Oliver, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: June 20–21: 9:00 a.m.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Parklawn Building, Room 12C–05, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1910.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B & C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: June 20–22: 9:00 a.m.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—June 20: 9:00–10:30 a.m.; Closed—Otherwise.

Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 21–23: 8:30 a.m.

Place: Days Inn Congressional Park, Suite 331, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.

Contact: Kim Pham, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–5280.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: June 21–24: 9:00 a.m.

Place: Days Inn Congressional Park, Montrose Room, 1775 Rockville Pike, Rockville, MD 20857.

Status of Meeting: Open—June 21: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.

Date and Time: June 21–24: 8:30 a.m.

Place: The Bethesda Ramada, Embassy I, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.

Contact: Ron Gold, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 21–24: 8:30 a.m.

Place: Days Inn Congressional Park, Georgetown Room, 1775 Rockville Pike, Rockville, MD 20852.

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Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.
Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.
Date and Time: June 22–24: 9:00 a.m.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Status of Meeting: Open—June 22: 9:00–9:30 a.m.; Closed—Otherwise.
Contact: Lenore Radloff, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Small Business Research Review Committee, NIMH.
Date and Time: June 27–28: 9:00 a.m.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—June 27: 9:00–10:00 a.m.; Closed—Otherwise.
Contact: Bonnie Dwyer, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.
Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; Ms. Camillia Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: May 5, 1988.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 88–10480 Filed 5–10–88; 8:45 am]
BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88E–0104]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ucephan™

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ucephan™ and is publising this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension for a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug project, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ucephan™. Ucephan™ (10 percent sodium phenylacetate and 10 percent sodium benzoate) oral solution is indicated as adjunctive therapy for the prevention and treatment of hyperammonemia in the chronic management of patients with urea cycle enzymophathies involving partial or complete deficiencies of carbamylphosphate synthetase, ornithine transcarbamylase, or argininosuccinate synthetase. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ucephan™ (U.S. Patent No. 4,284,647) from the Johns Hopkins University, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 30, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that one of the active ingredients, sodium phenylacetate, represented the first permitted commercial marketing or use, and that the other active ingredient, sodium benzoate, did not represent the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ucephan™ is 2,871 days. Of this time, 2,058 days occurred during the testing phase of the regulatory review period, while 813 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 14, 1980. The applicant claims the letter date, January 10, 1980, as the effective date of the first investigational new drug application (IND 17–123) related to the approved product. However, FDA records indicate that

IND 17–123 became effective 30 days after receipt, on February 14, 1980.

2. *The date of the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 2, 1985. The applicant claims September 30, 1985, as the date that a new drug application (NDA 19–530) for Ucephan™ was initially submitted. However, FDA did not receive NDA 19–530 until October 2, 1985.

3. *The date the application was approved:* December 23, 1987. FDA has verified the applicant's claim that NDA 19–530 was approved on December 23, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In is application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, or or before July 11, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 11, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the handling of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 27, 1988.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 88–10481 Filed 5–10–88; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 88M–0107]

Allergan Optical; Premarket Approval of Duraclean™ Daily Cleaner

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Optical, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of Duraclean™ Daily Cleaner for use to clean rigid gas permeable contact lenses before rinsing and disinfection. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 9, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On May 21, 1987, Allergan Optical, Irvine, CA 92715, submitted to CDRH an application for premarket approval of Duraclean ™ Daily Cleaner for use to clean rigid gas permeable contact lenses before rinsing and disinfection.

On November 17, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 9, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of Duraclean ™ Daily Cleaner states that the solution is indicated for use to clean rigid gas permeable contact lenses before rinsing and disinfection. Manufacturers of rigid gas permeable contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the Federal Register of the approval of a new solution for use with an approved rigid gas permeable contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 29, 1988.
John C. Villforth,
Director Center for Devices and Radiological Health.
[FR Doc. 88-10483 Filed 5-10-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88M-0114]

Medtronic, Inc.; Premarket Approval of the Medtronic Synchromed Infusion System

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration [FDA] is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Medtronic SynchroMed Infusion System which is comprised of the following components: SynchroMed Pumps, Models 8610H and 8611H; Vascular Catheters, Models 8700, 8702, and 8710; Access Port Model 8500; Port Connectors, Models 8500-1 and 8500-10; and Catheter Accessories. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HEA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ronald Lipskin, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On August 1, 1986, Medtronic, Inc., 7600 Central Ave. NE., Minneapolis, MN, submitted to CDRH an application for premarket approval of the Medtronic SynchroMed Infusion System. The device is a programmable, implantable pump that is indicated for the chronic intravascular infusion of floxuridine (FUDR) or doxorubicin hydrochloride (adriamycin) and, when required, bacteriostatic water, physiological saline, and/or heparin.

On November 3, 1986, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 14, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Ronald Lipskin (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Heath (21 CFR 5.53).

Dated: April 29, 1988.
John C. Villforth,
Director, Center for Devices and Radiological Health.
[FR Doc. 88-10548 Filed 5-10-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88M-0091]

Zeus Scientific, Inc.; Premarket Approval of Fluoro-Cep® Estrogen

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Zeus Scientific, Inc., Raritan, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Clinical Chemistry and Clinical Toxicology Devices panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On March 9, 1987, Zeus Scientific, Inc., Raritan, NJ 08869, submitted on CDRH an application for premarket approval of the Fluoro-Cep® Estrogen. The device is an in vitro assay for fluorescent histochemical detection of estrogen binding cancer cells in human breast cancer. It is designed to assist pathologists in determining the proportion of breast cancer cells within a tumor containing high levels of estrogen binding proteins. Assay results provide clinicians with data that assist in the choice of individualized therapy for breast cancer patients. The use of Fluoro-Cep® Estrogen in vitro device provides information on one of several factors considered in the clinician's selection of individualized treatment of breast cancer patients. It is recommended that the Fluoro-Cep® Estrogen assay results be determined by a pathologist experienced in fluorescence microscopy and breast cancer morphology.

On September 21, 1987, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRF—contact Kaiser Aziz (HFZ-440), (address above).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs 515(d), 520(h), 909 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 28, 1988.
John C. Villforth,
Director Center for Devices and Radiological Health.
[FR Doc. 88-10484 Filed 5-10-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88M-0106]

Medtronic, Inc.; Premarket Approval of the Medtronic® Prime ™ Coronary Balloon Dilatation Catheter

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shang W. Hwang, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7371.

SUPPLEMENTARY INFORMATION: On May 5, 1987, Medtronic, Inc., Minneapolis, MN 55432, submitted to CDRH an application for premarket approval of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter. The catheter is indicated in patients with coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery, in addition to meeting one or more of the criteria listed below:

1. Single-vessel atherosclerotic coronary artery disease that is concentric, discrete, subtotal, noncalcified, and accessible to a dilatation catheter;

2. Multiple-vessel coronary artery disease under certain circumstances;

3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery, have recurrence of symptoms, and (a) progression of disease, or (b) stenosis and closure of the grafts.

On January 15, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition data and information showing that there is a genuine and substantial issue of material fact for resolution through

administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 29, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–10485 Filed 5–10–88; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Agreement on Social Security Between the United States and Spain; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the U.S. and Spanish social security programs entered into force on April 1, 1988. The agreement with Spain, which was signed on September 30, 1986, is similar to U.S. social security agreements already in force with eight other countries—Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Spanish agreement eliminates dual social security coverage—the situation that exists when a person from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker and his or her employer may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Spanish agreement, an employee who is sent by an employer in the U.S. to work in Spain for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminates dual U.S. and Spanish coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Spanish benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: May 2, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–10412 Filed 5–10–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–650–08–4121–09]

Green River-Hams Fork and Powder River Regional Coal Teams; Notice of Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is reestablishing the regional coal teams (RCTs) for the Green River-Hams Fork (Colorado and Wyoming) and Powder River (Wyoming and Montana) coal production regions. The RCTs are independent subcommittees of the Federal-State Coal Advisory Board chartered by the Secretary on October 3, 1988. As such, the RCTs will guide all phases of the coal activity planning process in the Green River-Hams Fork and Powder River coal production regions and will provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing matters, specifically those concerning leasing levels and on regional coal lease sale schedules and the tracts to be offered.

Further information regarding these committees may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Green River-Hams Fork and Powder River Regional Coal Teams is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0–3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: April 29, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88–10468 Filed 5–10–88; 8:45 am]

BILLING CODE 4310–10–M

[AA–650–08–4121–09]

San Juan River Regional Coal Team; Notice of Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is establishing a regional coal team (RCT) for the San Juan River (New Mexico and Colorado) coal production region. The RCT is an independent subcommittee of the Federal-State Coal Advisory Board chartered by the Secretary on October 3, 1988. As such, the RCT will guide all phases of the coal activity planning process in the San Juan River coal production region and will provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing matters, specifically those concerning leasing levels and on regional coal lease sale schedules and the tracts to be offered.

Further information regarding this committee may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby certify that establishing the San Juan River Regional Coal Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0–3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Date: April 29, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88–10469 Filed 5–10–88; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[CA–060–08–4410–4–ADVB]

Call for California Desert District Advisory Council Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for California Desert District Advisory Council.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill a vacant position on the California Desert District Advisory Council in the public-at-large category. The position became vacant upon the resignation of a member whose term would have expired December 31, 1988. Anyone selected from the nominations, and appointed by the Secretary of the Interior, would be eligible for re-appointment to a full three-year term beginning January 1, 1989.

Nominees must be qualified to provide advice in the specific public-at-large category. Nominations should be sent to District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507 and nominations will close June 15, 1988. Persons providing nominations should include the nominee's name, home and business addresses and telephone numbers, current employment and position, community or private affiliations, and qualifications for representing the general public on the Advisory Council.

The purpose of the Advisory Council is to provide informed advice to the District Manager on the management of the public lands. Members serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Council normally will meet at least twice annually. Additional meetings may be called by the District Manager, or his designee, in connection with special needs for advice.

All nominations must be received in the Riverside office listed above no later than Wednesday, June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, Bureau of Land Management California Desert District Office, 1695 Spruce Street, Riverside, CA 92507, (714) 351–6383.

H.W. Riecken,

Acting District Manager.

May 5, 1988.

[FR Doc. 88–10442 Filed 5–10–88; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–08–4212–13; A–22625]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange, public land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 31, lot 5, E½, E½W½.
Containing 500.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Walter E. Biewer of Prescott, Arizona:

Gila and Salt River Meridian

T. 14 N., R. 12 W.,
Sec. 5, S½;
Sec. 17, N½.
T. 18 N., R. 17 W.,
Sec. 9, N½SW¼, SW¼SW¼.
T. 21 N., R. 17 W.,
Sec. 21, lots 1–4, W½E½, W½;
Sec. 27, N½, SE¼.
T. 23 N., R. 13 W.,
Sec. 3, lots 1–4, SW¼NW¼, W½SW¼, SE¼SW¼.
T. 27 N., R. 16 W.,
Sec. 3, lots 1–4, S½N½, S½.
T. 28 N., R. 15 W.,
Sec. 17, west 1340 feet of lots 2, 3 and 4, W½.
T. 28 N., R. 16 W.,
Sec. 35, E½, E½NW¼, SW¼NW¼, SW¼.
Containing 3,866.55 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: a). right-of-way to the Southwest Gas Corporation (A–4545); b). right-of-way to the Mohave County Board of Supervisors (A–13877); c). reservation of all minerals to the Santa Fe Pacific Railroad Company; and d). restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984, as amended.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same.

2. Easement for electric transmission line.

3. Undefined easement for roads, trails and pipelines.

The purpose of the exchange is to consolidate federal land to facilitate resource management in range, wildlife and recreation and to dispose of land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the Federal Register or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

Date: April 29, 1988.

[FR Doc. 88–10443 Filed 5–10–88; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract

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authorizing the operation of restaurant and gift shop services and facilities at Ellis Island, Statue of Liberty National Monument, New York, for a period of approximately fifteen (15) years from the date the contract is signed. The Prospectus which describes this opportunity will be released to the public in the near future and ninety days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. Construction and improvement of Ellis Island was addressed in the Analysis of Alternatives (Environmental Assessment) for the General Management Plan, dated December 1980 which resulted in a Finding of No Significant Impact.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the ninetieth (90th) day following release date shown on the cover of the Prospectus to be considered and evaluated.

Interested parties should contact the Superintendent, Statue of Liberty National Monument for information as to the requirements of the proposed contract and for application materials.

Date: April 15, 1988.

Steven H. Lewis,

Deputy Regional Director, North Atlantic Region.

[FR Doc. 88-10419 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with H.S. Concessions, Inc., authorizing it to continue to provide food service and beach sundry merchandise sales facilities and services for the public at the Sandy Hook Unit of Gateway National Area, New York-New Jersey, for a period of no more than twenty (20) years.

The Fact Sheet describing this opportunity will be released to the public in the near future, and sixty days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. The construction and improvement program required is addressed in the revised Development Concept Plan for the Sandy Hook Unit of Gateway National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985; an extension was granted to allow time to complete the concession planning process for the beach locations. Therefore, pursuant to the Act of October 9, 1965, as cited above, an existing satisfactory concessioner is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following the release date shown on the cover of the Fact Sheet to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts, for information as to the requirements of the proposed contract.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

Date: April 11, 1988.

[FR Doc. 88-10420 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Dated Submitted: May 3, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0011.

Type of Submission: Reinstatement.

Title: Application for Assistance—American Schools and Hosptials Abroad.

Purpose: A.I.D. finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. In order to assure compliance and appropriate grant assistance, information is required of the grant applicants. Respondents will have a submission burden of one submission per year.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-10403 Filed 5-10-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Such Memories; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement; Certain Erasable Programmable Read Only Memories

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: International CMOS Technology, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its sevice upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 6, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202-252-1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 6, 1988.

[FR Doc. 88-10565 Filed 5-10-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Atlas Powder Co.

In accordance with Departmental policy, as set forth in 28 CFR 50.7, notice is hereby given that on May 3, 1988, a proposed consent decree in *United States v. Atlas Powder Co.*, Civil Action No. 86-6984, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decree resolves claims of the United States against Altas Powder Company for discharge of pollutants into two Pennsylvania streams in excess of limitations imposed by the permit issued to Atlas under the Clean Water Act. The consent decree requires Atlas to pay a civil penalty of $840,000 and to make modifications to its facilities and operations to bring the plant into compliance with the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Atlas Powder Co.*, D.J. Ref. 90-5-1-1-2761.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market St., Philadelphia, Pa. 19106, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pa., 19106, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $3.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-10399 Filed 5-10-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Complaint and Consent Decree Pursuant to Clean Water Act; Empire Sand & Gravel Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *April 5, 1988* a proposed Complaint and Consent Degree in *United States v. Empire Sand & Gravel Co., Inc.*, Civil Action No. CV-88-00-BLG-JFB, was lodged with the United States District Court for the District of Montana.

The Complaint filed by the United States alleged that the defendants had violated section 113(a) of the Clean Air Act (the "Act"), seeking injunctive relief and civil penalties. The company owns and operates a portable hot asphalt concrete plant for purposes of road construction. The plant was converted to burn pulverized coal as well as diesel fuel. Stack Emissions Tests showed the plant to be in violation of the NSPS limit for particulate matter and opacity. The proposed consent decree requires the defendants to pay a civil penalty of $30,000. If the requirements are not met a stipulated of $300.00 per day of noncompliance will be due and payable.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Empire Sand & Gravel Co., Inc.* DOJ# Ref. 90-5-2-1-987. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, District of Montana, 5043 Federal Building, 26th Street & 3rd Avenue North, Billings, Montana. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Complaint and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-10400 Filed 5-10-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act, McIntosh Mining Co. & Esperanza Resources

In accordance with Departmental policy 28 CFR 50.7, notice is hereby given that on April 20, 1988 a proposed consent decree in *United States* v. *Richard Lee McIntosh, d/b/a McIntosh Mining Company and Esperanza Resources Company*, Civil Action A86-353, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges of pollutants from defendants' placer gold mine. The consent decree provides for payment of a civil penalty in the amount of $15,000 and for injunctive relief to prevent defendants from operating a placer mine that discharges pollutants into waters of the United States, unless the mine is in compliance with a valid NPDES permit and the compliance plan contained in the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree.

Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Richard McIntosh, et al.*, D.J. Ref. No. 90–5–1–1–2626. The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 for reproduction costs, payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10401 Filed 5–10–88; 8:45 am]

BILLING CODE 4401–01–M

Lodging of Stipulation To Modify Consent Decree Pursuant to Clean Water Act; Trident Seafoods Corp.,

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 20, 1988 a proposed second stipulation to modify consent decree in *United States* v. *Trident Seafoods Corporation*, Civil Action A83–327, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges to Akutan Harbor of pollutants, including fish waste, scrap maetal and debris from its shore-based and floating plants. That action resulted in a consent decree under which Trident was required to comply with the terms and conditions of an NPDES permit, and the compliance schedule contained in the consent decree.

The proposed second stipulations to modify consent decree extends the compliance schedule in the consent decree until such time as EPA Region 10 renders a decision on Trident's request for a permit modification, but no later than November 7, 1988. The proposed stipulation also requires Trident to pay stipulated penalties of $30,000 for past violations of the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed second stipulation to modify consent degree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Trident Seafoods Corporation*, D.J. Ref. No. 90–5–1–1–2002A. The proposed stipulation to modify consent decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the stipulation may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Dapartment of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed stipulation may be obtained in person or by mail from the Environmental Enforcement Section Land and Natrual Resources Division of the Department of Justice. In requesting a copy please enclosed a check in the amount of $170 for reproduction cost, payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10402 Filed 5–10–88; 8:45 am]

BILLING CODE 4401–01–M

[AAG/A Order No. 17–88]

Privacy Act of 1974; Modified System

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Criminal Division, is modifying a system of records entitled "Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended, JUSTICE/CRM–017."

The Criminal Division is modifying its system notice to (1) reflect that certain summary data has been extracted from file folders and stored on magnetic disks, (2) describe the categories of records more clearly, and (3) revise the routine use section to more clearly and more accurately outline the disclosure policies authorized by the Foreign Agents Registration Act of 1938, as amended. These and other minor changes have been italized for public convenience.

You may submit written comments on the proposed changes to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division Department of Justice, Room 6402, 601 D Street, NW., Washington, DC 20530. All comments must be received by June 10, 1988.

The modified system description is reprinted below.

Dated: April 26, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/CRM–017

SYSTEM NAME:

Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended.

SYSTEM LOCATION:

U.S. Department of Justice; Criminal Division: *Bond Building, 1400 New York Avenue, NW,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons required to file under the Foreign Agents Registration Act of 1938, *as amended, (FARA),* 22 U.S.C. 611 *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) An automated alphabetical indices which includes summary data such as registrant names, file numbers, dates of registration, and a synopsis of activities performed for a given foreign principal; and (2) file folders which contain copies of all registration statements and statements concerning the distribution of political propaganda furnished under FARA. Other records related to subject matters described in this system will be maintained in the Central Criminal Division Index File and Associated Records (JUSTICE/CRM–001) System. Such other records may include related correspondence, inspection and/or investigative reports, and/or statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under FARA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 22 U.S.C. 611 et seq. The system is also maintained to implement the provisions of 28 CFR 5.1 through 5.801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As prescribed by 22 U.S.C. 616 (a), (b), and (c), records may be disclosed as follows:

These records are public records and are open to public examination and inspection and copies of the same shall be furnished to every applicant at fees prescribed by 28 CFR 5.601. The registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of FARA may be withdrawn from public examination. Any records withdrawn will be incorporated into the Central Criminal Division Index File and Associated Records (JUSTICE/CRM–001) System.

One copy of every registration statement filed under FARA and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed under FARA shall be forwarded to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States.

Information obtained under FARA, including the names of registrants, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under FARA, may be furnished to departments and agencies in the executive branch and committees of the Congress.

In addition, records may be disclosed to (1) a Member of Congress or a staff person acting upon the Member's behalf (a) as a public record or (b) when the Member or staff person requests the information on behalf of and at the request of the individual who is the subject of the record, and, (2) the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records contained in this system are stored manually on index cards and in file jackets; *selected summary data, e.g., name and address of registrant, name of foreign principal, description of activities, amount of money received, and promotional material disseminated, are stored on magnetic disks.*

RETRIEVABILITY:

Paper records and summary data are retrieved by name of registrant.

SAFEGUARDS:

These records have been designated as public records by 22 U.S.C. 616. However, to protect the integrity of the records, the file jackets are obtained for applicants by Registration Unit personnel who are present in the public office during duty hours, and the room is locked during non-duty hours.

RETENTION AND DISPOSAL:

Destroyed ten years after close of case (National Archives and Records Administration Job No. NC1–60–78–1 pending).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 10th Street and Constitution Avenue, NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made pursuant to the provisions of 28 CFR 5.600 and 5.601.I95 contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought

RECORD SOURCE CATEGORIES:

The source of information contained in this system is the registrant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR DOC. 88–10393 Filed 5–10–88; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 18–88]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.A. 552a), the Justice Management Division (JMD), Department of Justice, is modifying a system of records entitled, "Security Clearance Information System (SCIS), JUSTICE/JMD–008." The system, which was last published in the **Federal Register** on February 4, 1983 (48 FR 5357), is modified to (1) add two new "Categories of Individuals Covered by the System" (identified as C. and D.), (2) remove erroneous language which appears to exclude Department attorneys as individuals covered, (3) clarify the categories of records maintained and (4) amend the routine uses of information. These and minor changes have been made to clarify and more accurately describe the system. All changes have been italicized for public convenience.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system.

Therefore, please submit any comments by June 10, 1988. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street, NW., Washington, D.C. 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is reprinted below.

Dated: April 27, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD–008

SYSTEM NAME:

Security Clearance Information System (SCIS).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been investigated and cleared for employment and/or for access to data classified for national security reasons, i.e.,

A. *Current employees, excluding the Federal Bureau of Investigation (FBI), and the Drug Enforcement Administration (DEA),*

B. *Former employees, excluding the FBI and DEA (maintained for a maximum of one year from date of termination),*

C. *Contractors with whom contracts (or other agreements) are, have been, or are offered to be entered into by the Department of Justice, including the FBI and DEA, and*

D. *Persons associated with and/or acting for the defense or for the courts in a criminal proceeding which involves classified information.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains two subsystems: (a) a Clearance Index Reference Record which is an automated system for identifying the individuals in Categories of Individuals above listing the status and types of investigations, the dates of clearances *and* level of clearances and (b) a Character File *including one or more of the following:* (1) Standard form 86 (Office of Personnel Management), Security Investigation Data for Sensitive Position; (2) Copies of investigative reports from the Office of Personnel Management, *the FBI, and/or other Federal investigative agencies;* (3) Correspondence related to the request for the investigations, results of the investigation, and clearance approvals for access to classified national security information and waivers; and (4) Other information relating to the trustworthiness of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with Presidential Executive Orders 10450 (clearance for Federal employment) and 12356 (access to data classified for National Security reasons), *and the Classified Information Procedures Act of 1980.*

PURPOSE OF THE SYSTEM:

Records in this system are used to determine the suitability, eligibility and/or qualifications of employees for initial or continued employment in the Department of Justice (excluding the FBI and DEA), and for employment in sensitive positions involving access to classified information. The records are also used to make similar suitability determinations regarding the employment of contractors to perform a service for the Department (including the FBI and DEA), and to establish the trustworthiness for access to classified information of persons associated with an/or acting for the court or the defense during criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information in these records may be disclosed to:

(a) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office or establishment, that such agency, office or establishment has an interest in either the initial or continued employment of an individual, needs such records or information from this system in order to evaluate qualifications, suitability and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(b) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment needs records or information from this system either because it has conducted or is conducting an investigation of the individual in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(c) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office or establishment, that such agency, office or establishment having an interest in either the initial or continued employment of a contractor, needs such records or information from this system in order to evaluate qualifications, suitability, and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or the purpose of either granting, renewing, suspending, or revoking a security clearance.

(d) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia government, when it has been determined by the Department of Justice, or by such agency, office or establishment, that such agency, office or establishment needs records or information from this system either because it has conducted or is conducting an investigation of the contractor in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purposes of either granting, renewing, suspending or revoking a security clearance.

(e) Security officials and investigators of other U.S. Government Agencies or Departments for liaison purposes involving access to classified material during meetings, conferences or training courses.

(f) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(g) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(h) The National Archives and Records *Administration and the General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) *A court or adjudicative body before the Department of Justice is authorized to appear, when the Department of Justice or any subdivision thereof, or any employee of the Department of Justice in his or her official capacity, or any employee of the Department of Justice in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States where the Department of Justice determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Department of Justice to be arguably relevant to the litigation, or to the protection of such records which have been classified in the interest of national security.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated data is stored on a main frame computer in the Department of Justice Uniform Personnel System. Paper files are maintained in a secure file room.

RETRIEVABILITY:

All data is retrieved by searching under the employee's name *and social security account number.*

SAFEGUARDS:

Information contained in the system includes some classified National Security Information. It is safeguarded and protected in accordance with Departmental rules and procedures governing the protection of this material.

Safeguards include the assignment to authorized users of passwords to access the automated data, and of combination formulas to access manual records in locked safes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with items 23.a, 23.b, and 24 of the General Records Schedule as approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Security and Emergency Planning Staff,* Justice Management Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the System Manager with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name, title and organization of the employee, *a notarized signature,* and the general subject matter of the inquiry. The requestor will also provide a return address for transmitting a reply. Requests for copies of investigative reports must be directed to the Office of Personnel Management, the Federal Bureau of Investigation, *or other Federal investigative agencies, as* appropriate.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are (a) *individuals covered by the system* and (b) those individuals (informants) contacted by the *Federal investigators* who furnished information in the background investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from *subsection (d)* of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 533 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 88-10394 Filed 5-10-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 19-88]

Privacy Act of 1974; Privacy Act System of Records

This notice is provided pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service (INS), proposes to alter and establish as a separate system of records its "Centralized Index and Records (Master Index)." Notice thereof is currently published in the Federal Register at 49 FR 43612 as "Subsystem E." of the Immigration and Naturalization Service Index System, JUSTICE/INS-001. Because Subsystem E. is the primary index and records system for INS, it is being extracted and republished below as a separate system of records to achieve greater clarity and accuracy of the system description. The system will replace Subsystem E. in its entirety and will be known as "The Immigration and Naturalization Service Alien File (A File) and Central Index System (CIS), JUSTICE/INS-001A." In addition, the system is being altered to (1) add two new routine uses (identified as M and P) and (2) remove exemptions (e)(4)(I), (f) and (h) because they are unnecessary. A rule promulgating exemptions for the system appears in the Proposed Rules Section of today's Federal Register.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by June 10, 1988. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is reprinted below.

Dated: April 20, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Central, Regional, District, and other INS file control offices in the United States as detailed in JUSTICE/INS-999. Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informats having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized indexing system contains personal identification data such as A-File number, name, date and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the "A-file." Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the "A-file" which is described in B. below.

B. The hard copy A-file contains all the individual's official record material such as naturalization certificates; various forms, applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memorandums on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, and 8 U.S.C. 1360), and the regulations pursuant thereto.

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PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

D. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regualtory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

E. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction, or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

F. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

H. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

I. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

J. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

K. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

L. To a Federal, State, local or foreign government agency in response to its request for assistance in the collection or repayment of loans and fraudulently or erroneously secured benefits or grants, or other debts owed to the United States.

M. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work study program pursuant to 42 U.S.C. 2751 *et seq.*

N. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

O. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

P. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records which can be accessed electronically are stored in a data base on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by A-file number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the closing date or date of last action and then destroyed. Automated index records are retained only as long as they serve a useful purpose and then they are deleted from the system disk and/or tape.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Director, Records Management Branch, Records Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, published in the **Federal Register**.

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G–639, FOIA/PA Request, may be obtained from the nearest INS office and use to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals on Department of State and INS applications and forms. Other information comes from inquiries and/or complaints from members of the general public and members of Congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports to investigations, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other entities, including Federal, State, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g) of the Privacy Act. These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** and codified as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 88–10395 Filed 5–10–88; 8:45 am]
BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–46)]

NASA Advisory Council (NAC), Life Sciences Advisory Committee (LSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee.

DATE AND TIME: May 31, 1988, 8:30 a.m. to 9 p.m., June 1, 1988, 8 a.m. to 5 p.m.

ADDRESS: Holiday Inn-Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Griffiths, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1545).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice on the coordination of NASA's life sciences research program. It assists in the long-range planning of space life sciences research and coordinated ground-based research. The committee will meet to discuss the Office of Space Science and Applications (OSSA) budget status and projection, Life Sciences Fiscal Year 1990 budget and long-range programs. The group is chaired by Dr. Harry C. Holloway and is composed of 16 members. The meeting will be open to the public up to the capacity of the room (approximately 45 peopie including members of the committee).

Type of Meeting: Open.

Agenda:

May 31, 1988

8:30 a.m.—Chairman's Remarks.
9 a.m.—Fiscal Year (FY) 1989 Budget Status and FY–90 Projection.
10:30 a.m.—Life Science Advisory Committee (LSAC) Discussion.
1 p.m.—Space Biology Initiative.
3 p.m.—Committee Discussion.
3:30 p.m.—Space Station Issues/Update.
7 p.m.—Committee Discussion: Guidance to new Committees.
9 p.m.—Adjourn.

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8 a.m.—Committee Issues/Concerns.
9 a.m.—Comet Rendezvous-Asteroid Flyby/Cassini.
10 a.m.—Attached Payloads Announcement of Opportunity (AO), Earth observing System (EoS) Selection.
11 a.m.—FY–90 Life Sciences Budget.
3 p.m.—Committee Discussion/Position Statements.
5 p.m.—Adjourn.

May 5, 1988.

John F. Duggan,

Director, General Management Division.

[FR Doc. 88–10406 Filed 5–10–88; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–508]

Environmental Assessment and Finding of No Significant Impact; Washington Public Power Supply System et al.

In the matter of Washington Public Power Supply System, Pacific Power and Light Company, Portland General Electric Company, Puget Sound Power and Light Company, the Washington Water Power Company, and Washington Public Power Supply System Nuclear Project No. 3.

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR–154 issued to Washington Public Power Supply System (applicant or WPPSS) for Nuclear Project No. 3 (WNP–3). The facility is located on the applicant's site in southeastern Grays Harbor County, Washington, about 26 miles west of Olympia, Washington.

Environmental Assessment

Identification of Proposed Action: The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–154 to July 1, 1999. The proposed action is in response to the applicant's request dated November 2, 1984, as modified by letter dated March 10, 1988.

The Need for the Proposed Action: The proposed action is needed because the construction of the facility is not yet fully completed.

Environmental Impact of the Proposed Action: Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Based on the foregoing, the NRC staff concludes that the proposed extension

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of the construction permit would have no significant environmental impact.

Alternatives Considered: A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources: This action does not involve the use of resources other than those evaluated in the FES prepared as part of the NRC staff's review of the construction permit application, NUREG–1033, May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated November 2, 1984, as modified by letter dated March 10, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room, W.H. Memorial Liberty, 125 Main Street, South, Montesano, Washington 28523.

Dated at Rockville, Maryland, this 5th day of May 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10430 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses To Export Nuclear Facilities or Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows:

NRC EXPORT APPLICATIONS

Name of applicant, date received, application No.	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Transnuclear, Inc., 4–28–88, 5–2–88, XSNMO2144–04.	93.3% Enriched Uranium.	Add'l 43.115	Add'l 40.226	Fuel for BR–2 Reactor.	Belgium.
Transnuclear, Inc., 4–27–88, 5–2–88, SXNMO2315–02.	93.3% Enriched Uranium.	Add'l 76.0	Add'l 70.8	Fuel, for HFR Grenoble Research Reactor.	France.
Transnuclear, Inc., 4–28–88, 5–2–88, XSNMO2142	93.0% Enriched Uranium.	Increase to 44.024	Increase to 41.074	Irradiation Tubes for Four Research Reactors.	Belgium, France, Netherlands, and United Kingdom.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

Dated this 5th day of May 1988 at Rockville, Maryland.

[FR Doc. 88–10431 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Improved LWRs; Open Meeting

The ACRS Subcommittee on Improved LWRs will hold a meeting on May 25, 1988, Room 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 25, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will discuss Chapters 3, 4, and 5 of the EPRI ALWR Requirements document.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduling meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 5, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–10417 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Open Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on May 26, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 26, 1988—8:30 A.M. until the conclusion of business

The Subcommittee will discuss the quality of fasteners in nuclear power plants, BWR reactor pressure vessel in-service inspections, status of the piping erosion-corrosion program, and other matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414), between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 5, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–10418 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi–2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated March 10, 1988, and supplemented by a letter dated April 21, 1988, the amendment would revise the Fermi–2 Technical Specifications to delete the Non-regenerative Heat Exchanger Outlet Temperature-High signal from the listing of Reactor Water Cleanup (RCWU) system isolation signals.

Prior to issuance of the proposed license amenement, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 10, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene.

Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with partcularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a

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supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated march 10, 1988, as supplemented April 21, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of May, 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Project Directorate III–1, Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88-10429 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-13435-SC-2; ASLBP No. 88-572-02-SC (Revocation Order)]

May 5, 1988.

Finlay Testing Laboratories, Inc.; Notice of Hearing

Atomic Safety and Licensing Board Panel, Before Administrative Judges: Robert M. Lazo, Chairman, Glenn O. Bright, and Richard F. Cole.

On April 11, 1988, the Deputy Executive Director for Regional Operations issued against Finlay Testing Laboratories, Inc. (Licensee), an "Order Continuing Suspension of License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked." The Order recited that on September 21, 1987, Licensee's Byproduct Material License No. 53-17854-01 was suspended by Order entitled "Order Suspending License (Effective Immediately)" pending further investigation of the Licensee. Pursuant to 10 CFR 2.202(f), the September 21, 1987 Order was temporarily effective pending further order. The April 11, 1988 Order addresses the results of the further investigation and continues the suspension directed by the earlier Order.

The April 11, 1988 Order noted that pursuant to 10 CFR 2.202(b), the Licensee may file an answer showing cause why its license should not be suspended and should not be revoked and may also request a hearing on the Order. The issue to be considered at any such hearing is whether the Order continuing suspension of license and Order to show cause why license should not be revoked should be sustained.

On May 2, 1988, the Licensee filed an "Answer To Order Continuing Suspension of License (Effective Immediately) and Order To Show Cause why License Should Not Be Revoked; Demand for Hearing After Discovery."

Wherefore, it is Ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, and Please Take Notice that an evidentiary hearing is this proceeding shall convene at 10 a.m., local time, Wednesday, May 18, 1988 at Room, U.S Coast Guard Legal Office, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, HI 96850.

This "Revocation Order" proceeding shall be consolidated with the "Suspension Order" proceeding concerning the Deputy Director's Order of September 21, 1987.

Members of the public are invited to attend the hearing.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 5th day of May 1988.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 88-10493 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 53-17854-01; Docket No. 30-13435-SC-2; ASLBP No. 88-572-02-SC]

Finlay Testing Laboratories, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Finlay Testing Laboratories, Inc.,
Byproduct Material License No. 53-17854-01 (Revocation Order)

This Board is being designated pursuant to Licensee's request for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated April 11, 1988, entitled "ORDER CONTINUING SUSPENSION OF LICENSE (EFFECTIVE IMMEDIATELY) AND ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE REVOKED."

The Board is comprised of the following Administrative Judges:

Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 5th day of May 1988.

[FR Doc. 88-10494 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353]

Philadelphia Electric Co.; Limerick Generating Station, Unit No. 2; Order Extending Construction Completion Date

Philadelphia Electric Company is the holder of Construction Permit CPPR-107 issued by the Commission on June 19, 1974. This permit authorizes construction of the Limerick Generating Station, Unit No. 2, presently under construction at the Company's site on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

On August 13, 1987, Philadelphia Electric Company (Applicant) filed a request pursuant to the Code of Federal Regulations, Title 10, Part 50, § 50.55(b) for an extension of the construction completion dates for this unit. The specific request was that the earliest and latest completion dates specified in Construction Permit No. CPPR-107 for Limerick Unit 2 be extended to May 1, 1989 and January 1, 1992, respectively.

The change in the schedule for completion of the construction of Unit 2 results from suspension of construction by Applicant in accordance with the terms of an order issued by the Pennsylvania Public Utility Commission (PaPUC) on December 23, 1983. Such order directed the Applicant to: (1) Suspend construction of Unit 2 pending operation of Unit 1; or (2) cancel Unit 2 or (3) continue construction of Unit 2 solely with internally generated funding. Applicant advised the PaPUC on January 24, 1984 that of the choices available, it had suspended construction of Unit 2 pending operation of Unit 1. As a result of this action all activities at the Unit 2 construction site were suspended during the period from January 1, 1984 to February 1, 1988 except essential activities required to protect the site, the public and workers and actions required to allow a prompt resumption of construction.

The NRC staff has concluded that good cause has been shown for the delay, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated May 3, 1988.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the Federal Register on January 14, 1988 (53 FR 970). Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment.

The applicant's letter dated August 13, 1987, and the NRC staff's letter and safety evaluation on the request for extension of the construction permit, dated May 3, 1988, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and the local Public Document Room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

It is Hereby Ordered that the earliest and latest completion dates for CPPR-107 be extended to May 1, 1989 and January 1, 1992, respectively. Dated at Rockville, Maryland, this 3rd day of May 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10432 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

Extension

Rule 204-1
File No. 270-41
Rule 203-1
Form ADV
File No. 270-39

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 203-1 (17 CFR 275.203-1), Rule 204-1 (17 CFR 275.204-1) and Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940.

Rule 203-1 prescribes Form ADV as the form for application for registration of investment advisers under the Investment Advisers Act of 1940. The form takes each new registrant about 9 hours to fill out.

Rule 204-1 requires that a registered investment adviser file an amendment to its application for registration on Form ADV under certain circumstances. Each investment adviser spends approximately 1 hour a year complying with the rule.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

May 4, 1988.

[FR Doc. 88-10445 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25653; File No. SR-Amex-88-7]

Self-Regulatory Organizations; Partial Accelerated Approval of a Proposed Rule Change by American Stock Exchange, Inc., Extension of the Rule 126(g) Pilot Program Relating to Precedence Based on Size, and a Reduction to 25,000 Shares of Block Transactions Eligible for Size Precedence

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 126(g) precedence based on size pilot program set forth in SR-Amex-86-14 by reducing the size of block crosses eligible for size precedence from 50,000 shares to 25,000 shares. In addition, the Exchange proposes to extend the pilot program to November 1, 1988.[1]

[1] The Commission originally approved the Exchange's size precedence pilot program for a three month period in Securities Act Release No. 23693, October 9, 1986, 51 FR 37358. Subsequently the Commission approved two extensions of the Amex pilot: Securities Exchange Act Release No. 24240, March 20, 1987, 52 FR 10430, extending the pilot until May 1, 1987, and Securities Exchange Act Release No. 24856, August 27, 1987, 52 FR 33485, extending the pilot until May 1, 1988.

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The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In October 1986, the Amex implemented a three-month pilot program under Amex Rule 126(g), during which orders to cross blocks of 50,000 shares or more would be permitted to have precedence over other bids and offers. (*See* File No. SR–Amex–86–14 and Securities Exchange Act Release No. 23693, October 9, 1986, approving the pilot, for details of the program.) The Exchange has subsequently requested that the pilot program be extended, and it has been most recently extended by the Commission to May 1, 1988. (Securities Exchange Act Release No. 24858, August 27, 1987.) [2]

The Exchange initially limited to 50,000 shares the size of stocks eligible to establish precedence based on size in order to provide a controlled experiment in size precedence and to limit the effect of the pilot to orders to cross in very large size and primarily in active, liquid issues. In the course of the pilot, the Exchange has provided to the Commission specific data, including the number of occasions Amex specialists utilized the block precedence exemption under Rule 126(g); the nature of the stock accorded block precedence; and the total size of the bids and offers "sized out" by the block transactions, among other data.

Based on its experience under the pilot program to date, the Exchange is proposing a limited extension of the program to permit orders to cross blocks of 25,000 shares or more to establish size precedence pursuant to Rule 126(g). These parameters will continue to limit size precedence to blocks of very large size and in active, liquid issues. In addition, inclusion of blocks of 25,000 shares or more will provide the Exchange with a somewhat larger trading data base to assess the success of the pilot program in facilitating the execution of large blocks on the Amex and in reducing the incentive of member firms to route such orders to a regional exchange in order to avoid losing an excessive number of shares to other orders due to Amex's existing priority rules.

The Amex is proposing to extend the pilot program for six months, until November 1, 1988, in order to permit the Exchange sufficient time to monitor and review trading under the 25,000 share parameter and to submit this data to the Commission for its review and assessment of the revised pilot program.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–88–7 and should be submitted by June 1, 1988.

IV. Commission Findings and Order Granting Partial Accelerated Approval

In its filing, the Exchange requested accelerated approval for the proposed change in the size of block crosses eligible for size precedence under the Rule 126(g) pilot program from the current level of 50,000 shares to 25,000 shares together with an extension of the pilot until November 1, 1988. The Commission has determined that the proposed change in the size of blocks eleigible for precedence under the Amex Rule 126(g) precedence based on size pilot is a substantive change which should be published for notice and comment in the Federal Register prior to a determination by the Commission whether the proposed rule change should be approved.

In view of this determination by the Commission, the Amex has requested that the Rule 126(g) pilot program be extended at its current level of 50,000 shares, on an accelerated basis, until November 1, 1988.[3]

The Commission believes it is appropriate to extend the Amex Rule 126(g) precedence based on size pilot program, at the current level of 50,000 shares, until November 1, 1988. This extension will give the Commission time to evaluate the data on the operation of the pilot at the 50,000 share level provided by the Amex during the pilot to date in order to assess its impact on the routing of block orders from Amex to regional exchanges. Extension of the pilot at this time will permit the program to continue pending a determination by the Commission as to whether the pilot should be approved, ended, or increased in scope (*i.e.*, extended to blocks 25,000 shares).

The Commission finds good cause for approving that portion of the proposed rule change that would extend the Amex Rule 128(g) precedence based on size pilot program from cross blocks of 50,000 shares or greater prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex's pilot program may continue on an uninterrupted basis. In addition, the Commission has not received any negative comment on the pilot during its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, partially approved, nunc pro tunc as of May 1, 1988, and shall be in effect until November 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10446 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* note 1, *supra.*

[3] *See* letter from Delia McQuade Emmons, Vice President and Secretary, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, dated April 20, 1988.

[Release No. 34–25664; File No. SR–Amex–88–10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Equity Index Participations Based on the Major Market Index and the Institutional Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade Equity Index Participations based on the Amex Major Market Index ("MMI") and Institutional Index—Major Market Index Paticipations ("MMIPs") and Institutional Index Participations (IIPs). The Exchange proposes to establish a new section 14 (Equity Index Participations) under Exchange options rules, and new Rule 900F *et seq.* to accommodate trading of Equity Index Participations. All language in the proposed rules is new, unless otherwise indicated.

Section 14. Equity Index Participations

Rule 900F. (a) Applicabilty. The Rules in this Section are applicable only to Equity Index Participations. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 907, 908, 909, 921, 922, 923, 924, 925, 926, 930, 932, 950(b), 950(c), 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 981, 918C. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Equity Index Participations are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905, 906 shall be determined as set forth in Rules 905F, 906F, and 907F.

(b) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise indicate, have the meanings herein specified.

(1) *Equity Index Participation*—The term Equity Index Participation means a security based on the spot value of an index of stocks, of indeterminate duration, and paying its purchasers a proportionate share of dividends declared on the component stocks of the stock index underlying the Equity Index Participation.

(2) *Cash-Out Time*—The term "cash-out time" means the point in time each quarter of the year when a holder of an Equity Index Participation may obtain the closing index value upon exercise of the cash-out privilege. The cash-out time for each quarter will be determined and made public by the Exchange before the beginning of the quarter

(3) *Reporting Authority*—The term "reporting authority" in respect of a particular index means either the Exchange or the institution or reporting service designated by the Exchange as the official source for calculating and reporting the current index value or the closing index value and the proportionate share of dividends payable to Equity Index Participation holders.

Designation of an Index

Rule 901F. The stocks that are the basis for the calculation of an index on which the Equity Index Participation is based shall be selected by the Exchange and may be revised from time to time in the Exchange's discretion as necessary or appropriate to maintain the quality and character of the index.

Index Calculation

Rule 902F. (a) The current index value in respect of an index on which an Equity Index Participation is based shall be derived from the reported prices of the underlying securities that are the basis of the index, as reported by the primary market for such underlying securities.

(b) The closing index value in respect of a particular Equity Index Participation index shall be derived from the reported prices of the component stocks of the stock index at a time or times specified by the Exchange for determining the payment to which an Equity Index Participation holder is entitled upon exercise of the cash-out privilege.

Dissimination of Information

Rule 903F. (a) The Exchange shall cause to be reported at specified intervals the current index value of an index underlying an Equity Index Participation during each day the Exchange is open for trading, and shall cause to be disseminated the closing index value of such underlying index promptly after such calculation is available at the quarterly cash-out time.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks included in each index underlying an Equity Index Participation and the method used to determine the current index value.

Cash-Out Privilege

Rule 904F. The holder of an Equity Index Participation shall have the right to obtain on each cash-out time, in accordance with the rules of The Options Clearing Corporation, the closing index value of the specific Equity Index Participation. The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.

Position Limits

Rule 905F. In determining compliance with Rule 904, Equity Index Participations shall be subject to a position limit of 15 million Equity Index Participations with respect to any particular underlying index.

Exercise Limits

Rule 906F. In determining compliance with Rule 905, exercise limits applicable to Equity Index Participations shall be equivalent to the position limits set forth in Rule 905F.

Reporting of Equity Index Participation Positions

Rule 907F. In determining compliance with Rule 906, each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer,

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director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 Equity Index Participations (whether long or short) covering the same underlying index.

Exercise of Cash-Out Privilege

Rule 908F. (a) Notice of exercise of the Equity Index Participation cash-out privilege must be provided by a holder of an Equity Index Participation on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with the The Options Clearing Corporation the Equity Index Participation is carried. Members and member organizations shall establish fixed procedures not inconsistent with the rules and policies of the Exchange and The Options Clearing Corporation, as to the latest hour at which they will accept exercise notices from their customers.

(b) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an Equity Index Participation. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the cash-out time (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange Equity Index Participation transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Allocation of Equity Index Participation Exercise Notices

Rule 909F. (a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in Equity Index Participations in such member organization's customers' accounts. Such allocation shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for Equity Index Participations.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Bids and Offers

Rule 910F. All bids and offers made on the trading floor for Equity Index Participations shall be deemed to be for one unit of trading unless a specified greater number is expressed in the bid or offer. A bid or offer for more than a unit of trading of Equity Index Participations shall be deemed to be for the amount thereof or a smaller number of units of trading. The unit of trading in Equity Index Participation shall be 100 Equity Index Participations unless otherwise designated by the Exchange.

Commentary .01 Transactions in Equity Index Participations may be effected until 4:15 each business day.

Limitation of Exchange Liability

Rule 911F. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot, strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.

Reserved Authority

Rule 912F. The Exchange may, in its discretion, based on unsubstantial trading activity in Equity Index Participations or under exceptional circumstances, require the holders of and obligors on outstanding Equity Index Participations to settle their contracts at the closing index value determined by a designated cash-out time upon notice of at least one year.

[Note.—The following are proposed amendments of existing Amex rules; brackets indicate deletions; italics indicates additions.]

Margin Accounts

Rule 462 (a) through (d)7.—No change.

462(d)8. *Equity Index Participations. The margin which must be maintained in margin accounts of customers, whether members, partners of members, member firms, member corporations or stockholders therein or non-members, shall be as follows:*

1. 25% of the market value of all "long" Equity Index Participation positions in the account plus;

2. 30% of the market value, in cash, of each "short" Equity Index Participation position in the account;

3. No margin need be required in respect of an Equity Index Participation carried "short" in a customer's account when the customer has delivered to the member organization carrying the account a letter of guarantee meeting the requirements of Rule 610 of The Options Clearing Corporation certifying that the guarantor holds for the customer as security for the letter (1) cash, (2), cash equivalents, (3) one or more qualified securities, or (4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the Equity Index Participations, and that the guarantor will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Rule 462 Commentary .04.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex is proposing specific rules applicable to listing and trading of two cash-settled Equity Index Participation securities based on the Exchange's existing Major Market ("MMI") and Institutional Stock Indices, respectively. Equity Index Participations would permit holders to own a security designed to reflect the principal characteristics of ownership of the complement of stocks comprising the MMI and Institutional Indices, but that does not require the actual purchase or sale of shares of common stock of the issuers included in those indices. Unlike stock or index options, MMIPs and IIPs would not have a specific expiration date, but instead would have a perpetual life, subject to the right of the holder, once each quarter, to cash out at the then current index value, and subject further to the right of the Exchange and OCC, under certain circumstances (such as lack of trading activity), upon at least one year's prior notice, to terminate the Equity Index Participations.

It is anticipated that MMIPs and IIPs will be traded like other equity securities, and that transactions will be reported through facilities of the Consolidated Tape Association. MMIP and IIP holders would participate in any appreciation or decline in the MMI or Institutional Indices, as though holding a proportionate number of shares of the component stocks. Similarly, persons holding short positions in these securities would experience approximately the same economic results as that of holding short positions in the underlying stocks. In the event of a cash-out, settlement would be effected by cash payment to the holder from a person holding a short position, with no physical delivery of underlying stocks. Cash-outs, which would be permitted only once each quarter (to coincide with the "triple-witching" options expiration dates), would be assigned among holders of short positions in the same manner as assignment of stock and index option exercises.

Holders would be entitled to receive, and persons holding short positions would be required to pay, quarterly payments equivalent to the amount of dividends declared during such quarter by issuers of underlying index stocks. This would be accomplished by OCC crediting the accounts of holders, and debiting the accounts of persons who are short as of the day prior to cash-out time, a proportionate amount of any regular cash dividends declared on MMI or Institutional Index stocks. Holders would have no voting or other shareholder rights normally accorded to holders of the underlying stocks.

The Exchange proposes that Equity Index Participations be marginable substantially like common stock, with purchasers permitted to borrow up to 50% of the current market value of the MMIPs or IIPs, and sellers required to post margin of 150% of such current market value, as required by Regulation T of the Federal Reserve Board. Maintenance margin would also have to be maintained in accordance with the requirements applicable to equity holdings in an account. The securities would be book entry only. No certificates representing ownership would be issued; instead, records of the clearing corporation, clearing broker-dealers, customer confirmations and account statements would provide evidence of MMIP and IIP positions.

While long or short positions in the securities may always be closed out by offsetting purchase or sale transactions, as indicated above, the holder will also have a "cash-out privilege" exercisable once each quarter. In the event of a cash-out, the holder will be entitled to cash equal to the closing index value on the "cash-out" date times a multiplier established by the Exchange. For MMIPs and IIPs, it is anticipated that the closing index value will be derived from the closing reported prices of the component stocks of the MMI and Institutional Indices, because MMI and Institutional Index values are currently determined for settlement purposes at the close of trading on expiration date.

Because these securities have certain characteristics that are identifiable with options, the Exchange has determined to apply to them certain of its options rules, including rules related to options sales practices. Application of these rules will help assure that the characteristics and risks associated with the securities are adequately disclosed to investors. For the same reason, the Exchange has applied certain of its options trading rules to these securities.

MMI and Institutional Indices: The SEC has approved the Exchange's procedures and rules relating to the Major Market Index, and options traded thereon, in Securities Exchange Act Release No. 34–19709 (April 27, 1983) (File No. SR–Amex–82–22, Amendments No. 1 and No. 2). The SEC has approved procedures and rules relating to the Institutional Index in Securities Exchange Act Release No. 23573, August 28, 1986 (File No. SR–Amex–86–15).

Unit of Trading: Each MMI and Institutional Index security will represent 1/10—the index multiplier—times the MMI or Institutional Index value, respectively. The standard unit of trading in such securities will be 100 MMIPs or IIPs.

Cash-Out Cycle: The third Friday of March, June, September and December. The dealine for exercising the cash-out privilege will be 4:15 p.m. on the business day immediately prior to the cash-out time. Upon due exercise of the cash-out privilege, the holder of a MMIP or IIP will receive an amount equal to the MMI or Institutional Index value based on the closing index value of such Index.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objective(s) of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

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Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988

[FR Doc. 88-10447 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25662; File No. SR-MBS-88-9]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing of Proposed Rule change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes primarily revise and amend the Depository Rules reglating to pledges, application of Net Free Equity and Collateral, and processing of physical withdrawals of Securities. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) The first sentence of the last paragraph of Article II, Rule 2, Section 2 will be modified to reflect the fact that certain Account Transfers occur after Participants have been advised of and have settled their Cash Balances, for example, transfers from MBSCC Transfer Accounts.

(ii) Article II, Rule 3, Section 1 will be modified to clarify where the ownership interest in Securities resides during the course of Account Transfers. In the case of case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest, or, in the case of a pledge, a security interest. In the case of Account Transfers Versus payment, the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment. However, a provision is added to Article II, Rule 4, giving the Corporation a lien on pledge Securities in the event a court deems the Corporation not to have acquired the entire interest in the Securities.

(iii) Article II, Rule 3, Section 2, is amended to provide that if the Corporation does not transfer Securities from an MBSCC Transfer Account to the associated Depository Account of the Receiving Participant after the Receiving Participant has met all its cash settlement obligations to the Corporation because of legal impossibility or other reasons beyond the control of the Corporation, such Securities will be deemed held by the Corporation in trust for the benefit of the Receiving Participant.

(iv) Article II, Rule 3, Section 3, is amended to provide that, in the case of pledges, when the Corporation retransfers its interest in Securities in MBSCC Transfer Accounts, the lending Participant will acquire a security interest in the Securities and the borrowing Participant will reacquaire the ownership interest, subject to the lending Participant's security interest. This Section is also amended make it clear that no Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred.

(v) A new provision is added to Article II, Rule 3, Section 3 providing (consistently with existing Article III, Rule 2, Section 1) that a borrowing Participant is entitled to principal and interest on pledged Securities. The only exception will be that a lending Participant may, by submitting a Securities Access Command (the definition of which is added to Article I, Rule 1), cause the entitlement to principal and interest to shift to itself or its transferee. Under proposed changes to Article II, Rule 11, Section 1(a), a lending Participant which has submitted a Securities Access Command may transfer pledged Securities to the Corporation's Internal Control Account for withdrawal, to another Depository Account of the lending Participant, or to the Depository Account of another Participant.

(vi) Article III, Rule 2, Section 1 is amended to conform to the new provision in Article II, Rule 3, Section 3 noted in (iv) above. The general rule remains that principal and interest will be credited to the Depository Account from which Securities have been transferred to the Pledgee Account (i.e., the borrower's Account). The proposed Rule change provides an exception when the Participant maintaining the Pledgee Account has submitted a Securities Access Command.

(vii) The definition of Market Value in Article I, Rule 1, is amended to include accrued interest.

(viii) Article II, Rule 11, Section 1(c) is modified to allow the use of Proprietary Net Free Equity, to the extent not required to collateralize transactions in Proprietary Accounts, to offset negative Net Free Equity in Agency and Pledgee Accounts.

(ix) Article V, Rule 2, Section 1 is modified to substitute a single Participants Fund for the separate Proprietary, Agency and Pledgee Participants Funds previously established. To reflect this change, the definitions of Proprietary, Agency and Pledgee Participants Funds have been deleted from Article I, Rule 1. Under amended Article II, Rule 11, Section 1(c), Collateral in the Participants Fund will be available to offset negative Proprietary, Agency or Pledgee Net Free Equity. References throughout the Rules to multiple Participants Funds have been modified so they now refer to a single Participants Fund.

(x) Article II, Rule 10, Section 2, is amended generally to permit a Participant to withdraw Securities on any day it desires, subject to such conditions and fees as the Corporation may impose. An exception is made for Securities in MBSCC Transfer Accounts unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities.

(xi) Article V, Rule 2 Section 3, is amended to allow a Participant to deposit cash to the Participants Fund to prefund any Debit Balance. Article II, Rule 3, Section 3 is amended to make it clear that such prefunding does not constitute satisfaction of the Participant's cash settlement obligations until such obligations have been finally determined and charged against the Participants Fund. A provision specifically authorizing this charge against the Participants Fund is added to Article II, Rule 2, Section 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes primarily revise and amend the Depository Rules relating to pledges, operation of the Participants Fund and processing of Account Transfers and physical withdrawals of Securities. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Pledges

Currently, the Depository's Rules do not describe in detail where the ownership interest resides during the course of Account Transfers, particularly in the case of pledges. The proposed Rule changes will make it clear that, in the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest or, in the case of a pledge, a security interest. In the case of Account Transfers Versus Payment, the Rules will make it clear that the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment, although a provision will be added giving the Corporation a lien on pledged Securities in the event that a court deems the Corporation not to have acquired the entire interest in the Securities, given the borrowing Participant's ultimate intent only to part with a security interest.

At the end of the day, the Corporation will retransfer its interest in Securities in MBSCC Transfer Accounts to the Depository Accounts of Receiving Participants. Except in the case of pledges, the Receiving Participant will acquire the entire interest in the Securities. In the case of pledges, the lending Participant will acquire a security interest in the Securities and borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. No Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred. The Rules will also provide protection for Participants who have met all their cash settlement obligations to the Corporations in the event that Securities in an MBSCC Transfer Account are not transferred to the associated Depository Account of the Receiving Participant because of legal impossibility or other reasons beyond the control of the Corporation (e.g., if such transfer were prevented by a judicial stay). In the event the Corporation does not transfer the Securities they will be deemed to be held by the Corporation in trust for the benefit of the Receiving Participant.

The Rules currently provide that a borrowing Participant will continue to be entitled to principal and interest on pledged Securities. This will continue to be true under the proposed Rule changes, except that a lending Participant may, by submitting a Securities Access Command, cause the entitlement to principal and interest to shift to itself or its transferee. The Securities Access Command is equivalent to the lender's obtaining physical possession of its collateral pending disposition and does not itself constitute disposition. Having submitted a Securities Access Command, a lender may retransfer pledged Securities to its own Depository Account or the Depository Account of another Participant or withdraw them.

Application of Net Free Equity and Collateral

The proposed Rule changes will effect certain changes in the computation of Net Free Equity. First, in determining the Market Value of Securities includible in Net Free Equity, the Corporation will include accrued interest. Second, Proprietary Net Free Equity, which previously collateralized transactions only in Propietary Accounts, will now, to the extent not required to collateralize such transactions, be available to offset negative Net Free Equity in Agency and Pledgee Accounts. (To protect the property of customers and borrowers, excess Agency or Pledgee Net Free Equity will not similarly be available to offset deficiencies in Proprietary Net Free Equity.) Third, negative Proprietary, Agency or Pledgee Net Free Equity may be offset by any Collateral the Participant has deposited with the Depository, eliminating the need for separate Participants Funds for Proprietary, Agency and Pledgee Accounts. The proposed Rule changes, therefore, replace the separate Participants Funds with a single Participant Fund.

Processing of Physical Withdrawals

The Corporation has withdrawn a prior Rule filing which would have required a delay of up to seven days for withdrawal of physical Securities. The proposed Rule changes generally will permit a Participant to withdraw Securities on any day it desires, subject to such conditions (e.g., cut-off times) and fees as the Corporation may impose. An exception will be made for Securities in MBSCC Transfer Accounts, which may not be withdrawn unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities. This restriction will insure that, in the event the Participant defaults in

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[1] MBSCC filed an amendment to the proposal on April 19, 1988, to correct typographical errors.

[2] A proposed rule change (File No. SR-MBS-88-8) identical to the present proposal was simulataneously filed on April 11, 1988, by MBSCC. That proposal became effective upon filing and will remain in effect for a period of 120 days.

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payment of its Debit Balance, the Corporation will have cash to pay to Participants with corresponding Credit Balances.

Prefunding of Debit Balances

The Rules previously have not addressed the subject of prefunding of anticipated Debit Balances. Such prefundings have never been viewed as settlement payments, since it is not possible to ascertain a Participant's final settlement obligations until the end of the Business Day, after giving effect to any adjustments to its Cash Balances as a result of transactions with defaulting Participants. The proposed Rule changes make it clear that prefundings are merely contributions to the Participants Fund, which will be charged at the end of the Business Day when a Participant's final settlement obligations have been ascertained.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-88-8 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Date: May 4, 1988.

[FR Doc. 88-10452 Filed 5-10-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25863; File No. SR-MBS-88-8]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The changes will be in effect for a period of 120 days from the date of filing of the proposed rule change. The proposed rule changes primarily revise and amend the Depository Rules relating to pledges, application of Net Free Equity and Collateral, and processing of physical withdrawals of Securities. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) The first sentence of the last paragraph of Article II, Rule 2 Section 2 will be modified to reflect the fact that certain Account Transfers occur after Participants have been advised of and have settled their Cash Balances, for example, transfers from MBSCC Transfer Accounts.

(ii) Article II, Rule 3, Section 1 will be modified to clarify where the ownership interest in Securities resides during the course of Account Transfers. In the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest, or, in the case of a pledge, a security interest. In the case of Account Transfers Versus payment, the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment. However, a provision is added to Article II, Rule 4, giving the Corporation a lien on pledged Securities in the event a court deems the Corporation not to have acquired the entire interest in the Securities.

(iii) Article II, Rule 3, Section 2, is amended to provide that if the Corporation does not transfer Securities from an MBSCC Transfer Account to the associated Depository Account of the Receiving Participant after the Receiving Participant has met all its cash settlement obligations to the Corporation because of legal impossibility or other reasons beyond the control of the Corporation, such Securities will be deemed held by the Corporation in trust for the benefit of the Receiving Participant.

(iv) Article II, Rule 3, Section 3, is amended to provide that, in the case of pledges, when the Corporation retransfers its interest in Securities in MBSCC Transfer Accounts, the lending Participant will acquire a security interest in the Securities and the borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. This Section is also amended to make it clear that no Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred.

(v) A new provision is added to Article II, Rule 3, Section 3 providing (consistently with existing Article III, Rule 2, Section 1) that a borrowing Participant is entitled to principal and interest on pledged Securities. The only exception will be that a lending Participant may, by submitting a Securities Access Command (the definition of which is added to Article I, Rule 1), cause the entitlement to principal and interest to shift to itself or its transferee. Under proposed changes to Article II, Rule 11, Section 1(a), a lending Participant which has submitted a Securities Access Command may transfer pledged Securities to the Corporation's Internal Control Account for withdrawal, to another Depository Account of the lending Participant, or to the Depository Account of another Participant.

(vi) Article III, Rule 2, Section 1 is amended to conform to the new provision in Article II, Rule 3, Section 3 noted in (iv) above. The general rule remains that principal and interest will be credited to the Depository Account from which Securities have been transferred to the Pledgee Account (i.e., the borrower's Account). The proposed Rule change provides an exception when the Participant maintaining the Pledgee Account has submitted a Securities Access Command.

(vii) The definition of Market Value in Article I, Rule 1, is amended to include accrued interest.

(viii) Article II, Rule 11, Section 1(c) is modified to allow the use of Proprietary Net Free Equity, to the extent not required to collateralize transactions in Proprietary Accounts, to offset negative Net Free Equity in Agency and Pledgee Accounts.

(ix) Article V, Rule 2, Section 1 is modified to substitute a single Participants Fund for the separate Proprietary, Agency and Pledgee Participants Funds previosuly established. To reflect this change, the definitions of Propriety, Agency and Pledgee Participants Funds have been deleted from Article I, Rule 1. Under amended Article II, Rule 11, Section 1(c), Collateral in the Participants Fund will be available to offset negative Proprietary, Agency or Pledgee Net Free Equity. References throughout the Rules to multiple Participants Funds have been modified so they now refer to a single Participants Fund.

(x) Article II, Rule 10, Section 2, is amended generally to permit a Participant to withdraw Securities on any day it desires, subject to such conditions and fees as the Corporation may impose. An exception is made for Securities in MBSCC Transfer Accounts unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities.

(xi) Article V, Rule 2, Section 3, is amended to allow a Participant to deposit cash to the Participants Fund to prefund any Debit Balance. Article II, Rule 3, Section 3, is amended to make it clear that such prefunding does not constitute satisfaction of the Participant's cash settlement obligations until such obligations have been finally determined and charged against the Participants Fund. A provision specifically authorizing this charge against the Participants Fund is added to Article II, Rule 2, Section 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes primarily revised and amend the Depository Rules relating to pledges, operation of the Participants Fund and processing of Account Transfers and physical withdrawals of Securities. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Pledges

Currently, the Depository's Rules do not describe in detail where the ownership interest resides during the course of Account Transfers, particularly in the case of pledges. The proposed Rule changes will make it clear that, in the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest or, in the case of a pledge, a security interest. In the case of Account Transfers Versus Payment, the Rules will make it clear that the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment, although a provision will be added giving the Corporation a lien on pledged Securities in the event that a court deems the Corporation not to have acquired the entire interest in the Securities, given the borrowing Participant's ultimate intent only to part with a security interest.

At the end of the day, the Corporation will retransfer its interest in Securities in MBSCC Transfer Accounts to the Depository Accounts of Receiving Participants. Except in the case of pledges, the Receiving Participant will acquire the entire interest in the Securities. In the case of pledges, the lending Participant will acquire a security interest in the Securities and borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. No Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred. The Rules will also provide protection for Participants who have met all their cash settlement obligations to the Corporation in the event that Securities in an MBSCC Transfer Account are not transferred to the associated Depository Account of the Receiving Participant because of legal impossibility or other reasons beyond the control of the Corporation (e.g., if such transfer were prevented by a judicial stay). In the event the Corporation does not transfer the Securities they will be deemed to be held by the Corporation in trust for the benefit of the Receiving Participant.

The Rules currently provide that a borrowing Participant will continue to be entitled to principal and interest on pledged Securities. This will continue to be true under the proposed Rule changes, except that a lending Participant may, by submitted a Securities Access Command, cause the entitlement to principal and interest to shift to itself or its transferee. The Securities Access Command is equivalent to the lender's obtaining physical possession of its collateral pending disposition and does not itself constitute disposition. Having submitted a Securities Access Command, a lender may retransfer pledged Securities to its own Depository Account or the

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

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Depository Account of another Participant or withdraw them.

Application of Net Free Equity and Collateral

The proposed Rule changes will effect certain changes in the computation of Net Free Equity. First, in determining the Market Value of Securities includible in Net Free Equity, the Corporation will include accrued interest. Second, Proprietary Net Free Equity, which previously collateralized transactions only in Proprietary Accounts, will now, to the extent not required to collateralize such transactions, be available of offset negative Net Free Equity in Agency and Pledgee Accounts. (To protect the property of customers and borrowers, excess Agency or Pledgee Net Free Equity will not similarly be available to offset deficiencies in Proprietary Net Free Equity.) Third, negative Proprietary, Agency of Pledgee Net Free Equity may be offset by any Collateral the Participant has deposited with the Depository, eliminating the need for separate Participants Funds for Proprietary, Agency and Pledgee Accounts. The proposed Rule changes, therefore, replace the separate Participants Funds with a single Participants Fund.

Processing of Physical Withdrawals

The Corporation has withdrawn a prior Rule filing which would have required a delay of up to seven days for withdrawal of physical Securities. The proposed Rule changes generally will permit a Participant to withdraw Securities on any day it desires, subject to such conditions (e.g., cut-off times) and fees as the Corporation may impose. An exception will be made for Securities in MBSCC Transfer Accounts, which may not be withdrawn unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities. This restriction will insure that, in the event the Participant defaults in payment of its Debit Balance, the Corporation will have cash to pay to Participants with corresponding Credit Balances.

Prefunding of Debit Balances

The Rules previously have not addressed the subject of prefunding of anticipated Debit Balances. Such prefundings have never been viewed as settlement payments, since it is not possible to ascertain a Participant's final settlement obligations until the end of the Business Day, after giving effect to any adjustments to its Cash Balances as a result of transactions with defaulting Participants. The proposed Rule changes make it clear that prefundings are merely contributions to the Participants Fund, which will be charged at the end of the Business Day when a Participant's final settlement obligations have been ascertained.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed in competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing Rule changes will become effective on April 11, 1988 pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed Rule changes, the Commission may summarily abrogate such Rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MBS–88–6 and should be submitted by June 1, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 4, 1988.

[FR Doc. 88–10453 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25886; File No. SR–MBS–88–7]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes revise and amend provisions relating to the operation of Depository Accounts. The following is a summary of the material changes. Capitalized terms have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 1, Section 1, is modified to make it clear that there will be at least one Seg Account associated with each Propietary and Agency Account. Additional Seg Account may be offered upon a Participant's request as the Corporation's operational capability permits.

(ii) A new Section 5 is added to Article II, Rule 3, requiring that (A) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (B) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (C) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an agent's customer be transferred to an associated Seg Account.

(iii) Article II, Rule 4, is modified to grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account).

(iv) Article II, Rule 7, Section 1, is modified to include in the computation of Agency Net Free Equity the Applicable Percentage of Market Value of Securities in a Participant's Agency Account (with respect to which the Corporation will now have a lien).

(v) Former Article II, Rule 7, Section 2, relating to the transfer of Securities in Agency Accounts to the MBSCC Depository Pledgee Account has been eliminated. The definition of "MBSCC Depository Pledgee Account" and references to that account in the definition of "Applicable Percentage," and "Pledgee Account" previously appearing in Article I, Rule 1, have also been eliminated, as have references in Article II, Rule 4, and Article II, Rule 5, Section 1(b), to the Corporation's lien on Securities in that account.

(vi) A provision in Article II, Rule 3, Section 3, that permitted a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity, has also been eliminated.

(vii) Article II, Rule 1, Section 3, is modified to (a) make it clear that the representation regarding the ownership of Securities in Proprietary Accounts applies only at the time Securities are deposited into or transferred to such account (since such Securities may subsequently be resold to a customer) and at the time they are transferred out to another Account other than an associated Seg Account, (b) require a representation of conformity with applicable customer agreements for Securities deposited in or transferred to/from Seg Accounts, and (c) add a representation regarding compliance with the newly imposed segregation requirements.

(viii) Article II, Rule 10, Section 1, is modified to require deposits of Securities directly into Agency Seg Accounts, while Article II, Rule 11, Section 1(a), is modified to permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated. Because Securities may be transferred directly from Agency Seg Accounts, Article II, Rule 11, Section 2 (as well as the related definition in Article I, Rule 1) is modified to make Bind Instructions applicable to Agency Seg Accouts. Similarly, Article II, Rule 8, (and the related definition in Article I, Rule 1), is modified to make the Minimum Denomination Requirements applicable to Agency Seg Accounts.

(ix) Article II, Rule 2, Section 2, as well as related definitions in Article I, Rule 1, are modified to provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance (rather than the former Agency Transfer Cash Balance) and deliveries of Securities Versus Payment from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance (rather than the former Agency Cash Balance). Article II, Rule 7 includes in the computation of Agency Net Free Equity only the Participant's Agency Cash Balance, but under Article II, Rule 13, an agent is permitted to effect a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended primarily to protect customers who have fully paid their agents for their securities while assuring that all transactions Versus Payment in Agency Accounts are adequately collaterized. The changes will conform the Rules to the Corporation's actual practice, which in turn is based on the operation of the Depository's computer system. Capitalized terms used herein have the same meanings ascribed to them in the Depository's Rules. Currently, the Depository's Rules contemplate that all Securities held by an agent will be deposited into its Agency Account, with respect to which the Corporation has no lien. Receipts of Securities by an agent Versus Payment initially are credited to an MBSCC Agency Transfer Account associated with the Agency Account and, at the end of the Business Day, upon payment by the agent of its Agency Transfer Debit Balance, are transferred to the Agency Account. While Securities reside in the MBSCC Agency Transfer Account, the Applicable Percentage of their Market Value is included in the agent's Agency Net Free Equity. Once the Securities have been credited to the Agency's Account, the Rules currently state that they no longer are includible in Agency Net Free Equity unless the agent requests that the Securities remain in the Agency Transfer Account or transfers the Securities to the MBSCC Depository Pledgee Account (i.e., because the agent has financed the customer's purchase of the Securities and is entiled under its customer agreement to grant the Corporation a lien).

The Depository's computer system does not automatically subtract from Agency Net Free Equity the Applicable Percentage of the Market Value of Securities which have been transferred from the Agency Transfer Account to the Agency Account. To effect this subtraction, an agent must retransfer the Securities to an Agency Seg Account, and all agents have been informed of this requirement in the Depository's training program. If an agent fails to retransfer the Securities, the Depository's computer system will continue to give the agent Agency Net Free Equity credit for the Applicable Percentage of the Market Value of the Securities remaining in the Agency Account even though the Corporation has no lien on such Securities. As a

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[1] MBSCC filed an amendment to the proposal on April 19, 1988, to correct typographical errors.

[2] A proposed rule change (File No. SR–MBS–88–6) identical to the present proposal was simultaneously filed on April 1, 1988, by MBSCC. That proposed became effective upon filing and will remain in effect for a period of 120 days.

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result, the Corporation could be holding insufficient collateral to secure the agent's obligations to the Corporation.

The following is a summary of the material Rules changes the Depository proposes to make to eliminate this potential problem, as well as to make certain other clarifications in the operation of Depository Accounts:

Segregation Requirements. A new section will be added to the Depository Rules requiring that (a) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (b) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (c) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an Agent's customer be transferred to an associated Seg Account. To facilitate Participant's compliance with these segregation requirements, the Depository is introducing a bulk segregation capability in its computer system. Instead of transferring Securities on a pool-by-pool basis to Seg Accounts, Participants will be able to transfer quantities of Securities with a single Account Transfer instruction.

Lien on Securities in Agency Accounts. The proposed Rule changes grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account). Because the Corporation will have a lien on securities on Agency Accounts, the computation of Agency Net Free Equity will be modified to include the Applicable Percentage of Market Value of Securities in Agency Accounts. Given the Corporation's lien on Securities in Agency Accounts, the MBSCC Depository Pledgee Account will be eliminated as unnecessary, as will the provison which previously allowed a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity.

Deposits to and Withdrawals and Transfers From Agency Seg Accounts. To insure that the Corporation's lien does not attach to fully paid for customer Securities, the proposed Rule changes will require deposits of Securities directly into Agency Seg Accounts and will permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated.

Separate Computation of Agency Cash Balances and Agency Seg Cash Balances. The proposed Rule changes provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance, while deliveries of Securities from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance. To prevent proceeds from the sale of fully paid for customer Securities in Agency Seg Accounts from counting toward Agency Net Free Equity, the proposed Rule changes will include only Agency Cash Balances in the computation of Agency Net Free Equity. An agent entitled to use such proceeds may do so by effecting a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

The proposed Rule changes are consistent with Section 17A of the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–7 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10450 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25661; File No. SR–MBS–88–6]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The changes will be in effect for a period of 120 days from the date of filing of the proposed rule change.

The proposed Rule changes revise and amend provisions relating to the operation of Depository Accounts. The following is a summary of the material changes. Capitalized terms have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 1, Section 1, is modified to make it clear that there will be at least one Seg Account associated with each Proprietary and Agency Account. Additional Seg Accounts may be offered upon a Participant's request as the Corporation's operational capability permits.

(ii) A new section 5 is added to Article II, Rule 3, requiring that (A) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (B) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (C) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an agent's customer be transferred to an associated Seg Account.

(iii) Article II, Rule 4, is modified to grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account).

(iv) Article II, Rule 7, Section 1, is modified to include in the computation of Agency Net Free Equity the Applicable Percentage of Market Value of Securities in a Participant's Agency Account (with respect to which the Corporation will now have a lien).

(v) Former Article II, Rule 7, Section 2, relating to the transfer of Securities in Agency Accounts to the MBSCC Depository Pledgee Account has been eliminated. The definition of "MBSCC Depository Pledgee Account" and references to that account in the definition of "Applicable Percentage," and "Pledgee Account" previously appearing in Article I, Rule 1, have also been eliminated, as have references in Article II, Rule 4, and Article II, Rule 5, Section 1(b), to the Corporation's lien on Securities in that account.

(vi) A provision in Article II, Rule 3, Section 3, that permitted a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity, has also been eliminated.

(vii) Article II, Rule 1, Section 3, is modified to (a) make it clear that the representation regarding the ownership of Securities in Proprietary Accounts applies only at the time Securities are deposited into such account (since such Securities may subsequently be resold to a customer) and at the time they are transferred out to another Account other than an associated Seg Account, (b) require a representation of conformity with applicable customer agreements for Securities deposited in or transferred to/from Seg Accounts, and (c) add a representation regarding compliance with the newly imposed segregation requirements.

(viii) Article II, Rule 10, Section 1, is modified to require deposits of Securities directly into Agency Seg Accounts, while Article II, Rule 11, Section 1(a), is modified to permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated. Because Securities may be transferred directly from Agency Seg Accounts, Article II, Rule 11, Section 2 (as well as the related definition in Article I, Rule 1) is modified to make Bind Instructions applicable to Agency Seg Accounts. Similarly, Article II, Rule 8, (and the related definiton in Article I, Rule 1), is modified to make the Minimum Denomination Requirements applicable to Agency Seg Accounts.

(ix) Article II, Rule 2, Section 2, as well as related definitions in Article I, Rule 1, are modified to provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance (rather than the former Agency Transfer Cash Balance) and deliveries of Securities Versus Payment from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance (rather than the former Agency Cash Balance). Article II, Rule 7 includes in the computation of Agency Net Free Equity only the Participant's Agency Cash Balance, but under Article II, Rule 13, an agent is permitted to effect a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended primarily to protect customers who have fully paid their agents for their securities while assuring that all transactions Versus Payment in Agency Accounts are adequately collateralized. The changes will conform the Rules to the Corporation's actual practice, which in turn is based on the operation of the Depository's computer system. Capitalized terms used herein have the same meanings ascribed to them in the Depository's Rules. Currently, the Depository's Rules contemplate that all Securities held by an agent will be deposited into its Agency Account, with respect to which the Corporation has no lien. Receipts of Securities by an agent Versus Payment initially are credited to an MBSCC Agency Transfer Account associated with the Agency Account and, at the end of the Business Day, upon payment by the agent of its Agency Transfer Debit Balance, are transferred to the Agency Account. While Securities reside in the MBSCC Agency Transfer Account, the Applicable Percentage of their Market Value is included in the agent's Agency Net Free Equity. Once the Securities have been credited to the Agency Account, the Rules currently state that they no longer are includible in Agency Net Free Equity unless the agent requests that the Securities remain in the Agency Transfer Account or transfers the Securities to the MBSCC Depository Pledgee Account (i.e., because the agent has financed the customer's purchase of the Securities and is entitled under its customer agreement to grant the Corporation a lien).

The Depository's computer system does not automatically subtract from

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Agency Net Free Equity the Applicable Percentage of the Market Value of Securities which have been transferred from the Agency Transfer Account to the Agency Account. To effect this subtraction, an agent must retransfer the Securities to an Agency Seg Account, and all agents have been informed of this requirement in the Depository's training program. If an agent fails to retransfer the Securities, the Depository's computer system will continue to give the agent Agency Net Free Equity credit for the Applicable Percentage of the Market Value of the Securities remaining in the Agency Account even though the Corporation has no lien on such Securities. As a result, the Corporation could be holding insufficient collateral to secure the agent's obligations to the Corporation.

The following is a summary of the material Rules changes the Depository proposes to make to eliminate this potential problem, as well as to make certain other clarifications in the operation of Depository Accounts:

Segregation Requirements. A new section will be added to the Depository Rules requiring that (a) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (b) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (c) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an Agent's customer be transferred to an associated Seg Account. To facilitate Participants' compliance with these segregation requirements, the Depository is introducting a bulk segregation capability in its computer system. Instead of transferring Securities on a pool-by-pool basis to Seg Accounts, Participants will be able to transfer quantities of Securities with a single Account Transfer instruction.

Lien on Securities in Agency Accounts. The proposed Rule changes grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account). Because the Corporation will have a lien on securities in Agency Accounts, the computation of Agency Net Free Equity will be modified to include the Applicable Percentage of Market Value of Securities in Agency Accounts. Given the Corporation's lien on Securities in Agency Accounts, the MBSCC Depository Pledgee Account will be eliminated as unnecessary, as will the provision which previously allowed a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity.

Deposits to and Withdrawals and Transfers from Agency Seg Accounts. To insure that the Corporation's lien does not attach to fully paid for customer Securities, the proposed Rule changes will require deposits of Securities directly to Agency Seg Accounts and will permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated.

Separate Computation of Agency Cash Balances and Agency Seg Cash Balances. The proposed Rule changes provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance, while deliveries of Securities from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance. To prevent proceeds from the sale of fully paid for customer Securities in Agency Seq Accounts from counting toward Agency Net Free Equity, the proposed Rule changes will include only Agency Cash Balances in the computation of Agency Net Free Equity. An agent entitled to use such proceeds may do so by effecting a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

The proposed Rule changes are consistent with Section 17A of the Securities Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MBS–88–6 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: May 4, 1988.

[FR Doc. 88–10451 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25658; File No. SR–MBS–88–10]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes effect miscellaneous changes to the Depository Rules. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 11, section 3, and the related definition in Article I, Rule 1, are amended to make it clear that a Hold Par Instruction is available with respect to a specified principal amount of Securities having a designated CUSIP or pool number and not necessarily all Securities having such CUSIP or pool number.

(ii) A new section 7 is added to Rule 1 of Article III authorizing the Corporation to surrender the certificates representing deposited GNMA Securities to the issuer or transfer agent for cancellation upon or as a condition of receiving final payment of principal and interest on such GNMA Securities.

(iii) Article I, Rule 3, is amended to make it clear that all deposited Securities will be registered in the name of the Corporation or its nominee subject to the right of the Corporation to maintain Securities directly or through an intermediary in any Federal Reserve Bank. A similar provision in Article II, Rule 10, section 1 requiring use of nominees is deleted.

(iv) Article II, Rule 2, section 2(a) and 2(c) are amended to make it clear that the Cash Balance of a Participant's Proprietary, Agency or Pledgee Account may be charged for any amounts payable as a result of the maintenance of such Account.

(v) Article II, Rule 5, section 1, is amended to make it clear that the Corporation, in pledging Securities held in MBSCC Transfer Accounts and other Collateral to its bank lenders, may pledge such Securities and other Collateral to its bank lenders by book-entry on the books of the Corporation or otherwise or by physical delivery.

(vi) Article II, Rule 6, section 1, is amended to make it clear that assessments and payments of interest to compensate for settlement delays will be based only on Debit or Credit Balances resulting from receipt or delivery of Securities Versus Payment.

(vii) Article III, Rule 2, section 2, is amended to require Participants to pay the Corporation's financing costs for principal and interest advances, without any offset for earnings on prepayments of principal and interest.

(viii) Article V, Rule 2, section 2 is amended to increase the Minimum Deposit to the Participants Fund to $150,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Staement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes effect miscellaneous changes to the Depository Rules. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Surrender of GNMA Certificates Upon Final Payment. The Corporation is responsible for collecting principal and interest on deposited GNMA Securities for distribution to Participants. In order for the Corporation to collect the final principal and interest payment on GNMA Securities that have matured, the certificates representing those Securities must be surrendered to the issuer or transfer agent for cancellation. The Rules will make it clear that the Corporation may surrender the certificates for such Securities in accordance with applicable GNMA procedures.

Hold Par Instruction. The Rules will make it clear that the Hold Par Instruction is available with respect to a specified principal amount of Securities having a designated CUSIP or pool number and not necessarily all Securities having such CUSIP or pool number.

Use of Nominees. An inconsistency between provisions of the Rules mandating the use of nominees and making the use of nominees optional will be eliminated. It will be made clear that all deposited Securities will be registered in the name of the Corporation or its nominee, subject to the right of the Corporation to maintain Securities (e.g., FHLMC or FNMA Securities should they be designated as Eligible Securities) directly or through an intermediary in any Federal Reserve Bank.

Book-Entry Pledges by the Corporation. It will be made clear that the Corporation, in pledging Securities held in MBSCC Transfer Accounts and other Collateral to its bank lenders to obtain funds to cover a Participant default, may pledge such Securities or other Collateral by book-entry on the books of the Corporation or otherwise or by physical delivery.

Charges to Participants' Cash Balances. It will be made clear that the Corporation has the right to charge the Cash Balances of Participants' Proprietary, Agency or Pledgee Accounts for any amounts that are payable as a result of the maintenance of such Accounts and not merely fees. This would include, for example, repayment of principal and interest advanced to the Participant where the Corporation did not subsequently get payment from the issuer or paying agent pursuant to Article III, Rule 2, section 2, or principal and interest paid to a Participant on withdrawn Securities that are in that Participant's Repo In position pursuant to Article III, Rule 2, section 3.

Compensation for Settlement Delays. If the Corporation must delay settlements until a later day, the Rules currently give it the right to assess Participants with Debit Balances interest on the amount of such Debit Balances to the date settlement actually occurs and to pay such interest to Participants with Credit Balances. The proposed Rules will make it clear that such assessments and payments are based only on Debit or Credit Balances resulting from receipt or delivery of Securities Versus Payment. This will assure that no Participant is assessed interest on other items charged to its

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

Debit Balances (e.g., fees for the Depository's services).

Suspension of Processing of Account Transfers. The Rules presently give the Corporation the right to cease to act for a Participant either generally or with respect to particular transactions. A new provision in the Rules will make it clear that, pursuant to this right, the Corporation may suspend processing of Account Transfers in all Depository Accounts of a Participant which is unable to cure a deficiency in Net Free Equity in any of its Depository Accounts. Under such circumstances, the Corporation may conclude that there is some risk that the Participant will be unable to settle its obligations to the Corporation and therefore that the Participant should not be permitted to increase the amount of those obligations.

Elimination of Credit for Prepaid Principal and Interest. Currently, if the Corporation advances principal and interest to a Participant that it has not collected from the issuer or paying agent, the Corporation assesses the Participant for its borrowing costs. Such assessment is reduced by any income the Corporation earns as a result of prepayments of principal and interest. The proposed change will eliminate this reduction.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

Increase in Minimum Participants Fund Deposit. The Rules currently provide for a Minimum Deposit in cash to the Participants Fund of $10,000 or such higher amount as the Corporation may determine. The proposed Rule Changes will increase the Minimum Deposit in cash to $150,000.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-88-10 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: May 4, 1988.

[FR Doc. 88-10448 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25669; File No. SR-MBS-88-11]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes include addition of provisions for settlement on the basis of duplicate records made by the Corporation prior to a computer system failure, with subsequent interest adjustments when operations are restored; a specific exclusion from Participants' indemnification obligations of the costs of remedying computer systems problems; elimination of provisions making letters of credit eligible for deposit in the Participants Fund; addition of a provision for payment of interest on cash deposits to the Participants Fund and addition of provisions relating to participation of registered government securities brokers and dealers. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) A new Rule 6 is added to Article II providing for the settlement of transactions in the event of failure of the Corporation's computer system based on duplicate records made periodically during the Business Day. As a result of this addition, all subsequent Rules in Article II are renumbered, and cross-references throughout the Rules are changed. Renumbered Rule 7 (formerly Rule 6) is amended by the addition of a new section 3 which provides for assessment of interest against Participants whose cash Balances are decreased when the system is again operational and payment of such interest to Participants whose cash Balances are increased.

[1] MBSCC filed an amendment to the proposal on April 19, 1988.

(ii) Article IV. Rule 1, section 11, is amended to make it clear that Participants' indemnification obligations do not extend to the cost of remedying computer systems problems.

(iii) Article IV, Rule 1, section 11, is also amended to make it clear that when a Participant defaults on its indemnification obligations other Participants who dealt with the defaulting Participant are subject to assessment including those who received credits of Securities rather than cash as a result of transactions with the defaulting Participant.

(iv) Article III, Rule 2, section 4 is amended to extend the Corporation's right to reverse erroneous credits of principal and interest to Participant's Depository Accounts which occur for any reason not merely those resulting from issuer or paying agent error.

(v) Article V, Rule 2, section 3, is amended by the deletion of former clause (c) which allowed letters of credit to be deposited in the Participants Fund. Former section 6 of Article V, Rule 2, which contained special provisions relating to letters of credit, has been eliminated. Article I, Rule 1 is amended to delete reference to letters of credit in the definition of Collateral Value and to make it clear that Excess Market Margin Defferential will exclude any portion of Clearing Division Participants Fund deposits represented by letters of credit.

(vi) Article V, Rule 2, section 4, is amended by deletion of a provision entitling the Corporation to all income from the investment of cash deposits to the Participants Fund and substitution of a provision requiring the Corporation to pay interest on such deposits at a rate determined from time to time.

(vii) Article IV, Rule 1, section 1, is amended to provide for participation by brokers and dealers registered pursuant to section 15C of the Securities Exchange Act of 1934; and Article IV, Rule 1, section 8, is amended to permit such brokers and dealers to satisfy their financial reporting obligations by submitting copies of their Form G-405 Reports on Finances and Operations to the U.S. Department of Treasury.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes are intended to mitigate the impact of Participants of a computer systems failure, compensate Participants for cash deposits in the Participants Fund, improve the quality of Collateral in the Participants Fund and permit the participation of qualified registered government securities brokers and dealers. Capitalized terms herein have the same meanings ascribed to them in the Depository's Rules.

Settlement in the Event of System Failure. Currently, if the Depository's computer system fails, settlement of Depository transactions cannot occur, even though the Depository makes duplicate records of Securities in Participants' Depository Accounts and related Cash Balances periodically during the Business Day. The proposed Rule changes will permit the Corporation to transfer Securities, and require Participants to settle their Cash Balances, on the basis of the most recent duplicate record. The next day that the system is operational, the Corporation will process those Account Transfers that were not processed because of the system failure, and Participants' Cash Balances will be debited or credited appropriately. Participants whose cash Balances are thereby decreased will be assessed interest, which will be passed through to Participants whose cash Balances are thereby increased.

Indemnification. The proposed Rule changes will make it clear that Participants' indemnification obligations do not extend to the cost of remedying computer systems problems. The proposed Rule changes will also make it clear that when a Participant defaults on its indemnification obligations to the Corporation, the other Participants who dealt with the defaulting participant are subject to assessment, including explicitly those who received credits of Securities rather than cash as a result of their transactions with the defaulting Participant.

Adjustments to Principal and Interest Payments. The proposed Rule change will extend the Corporation's right to reverse erroneous credits of principal and interest to Participants' Depository Accounts which occur for any reason and not merely as a result of issuer or paying agent error. This would include reasons like data processing errors.

Letters of Credit. The proposed Rule changes will eliminate letters of credit as an acceptable form of deposit to the participants Fund. Currently, the Corporation may hold letters of credit issued by one bank Participant in favor of another Participant, thereby increasing the Corporation's risk exposure. The proposed change will eliminate this exposure. Cash and approved U.S. Government securities will continue as the only acceptable form of Participants Fund deposits.

Interest on Participants Fund Deposits. The proposed Rule changes will require the Corporation to pay interest on cash deposits to the Participants Fund at a rate announced from time to time. Currently, all earnings on cash deposits accrue to the benefit of the Corporation.

Participation of Government Securities Brokers and Dealers. Currently brokers and dealers registered under section 15 of the Securities Exchange Act of 1934 are eligible for participation. The proposed changes will also make eligible government securities brokers and dealers registered pursuant to section 15C. Just as brokers and dealers registered under section 15 may satisfy their financial reporting obligations by submitting Form X-17A-5 FOCUS Reports to the Commission, brokers and dealers registered under section 15C may satisfy their financial reporting obligations by submitting Form G-405 Reports on Finances and Operations to the U.S. Department of Treasury.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the

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Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Submissions should refer to the File No. SR–MBS–88–11 and should be submitted by June 1, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10449 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25668; File No. SR–MCC–88–06]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. Relating to ACAT's Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the fee schedule for MCC's Automated Customer Account Transfer Service (ACATS) as follows:

Service	Fee
Transfer Initiation Form, (TIF) Input	$1.00
TIF Adjustments	.12
Asset Adds, Deletes, Changes	.12
Settled Positions	.12
Rec/Del Instructions	.25

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filling with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed fee schedule establishes fees for the use of the Automated Customer Account Transfer Service. Generally, the fees were developed with a view to accurately reflect the actual costs of the service.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88–10557 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25669; File No. SR–NASD–87–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the National Association of Securities Dealers Amending the Rules of Fair Practice and Schedule D of the By-Laws To Provide Trading Halt Procedures

I. Introduction

On February 20, 1987, the National Association of Securities Dealers ("NASD") filed a proposed rule change (File No. SR–NASD–87–13) pursuant to section 19 of the Securities Exchange Act of 1934 ("Act") to provide procedures for the NASD to prohibit its members from trading in NASDAQ and exchange-listed securities pending dissemination of material information from the issuer.[1] Notice of the proposal

[1] The NASD solicited comments from its members on this proposal and submitted the proposal for a membership vote. NASD Notices to Members 88–13 (February 21, 1988) and 88–63 (December 31, 1986).

Continued

was published in the **Federal Register** on March 12, 1987.[2] The Commission received one comment in response.[3] This order approves the proposal.

II. Description of the Proposal

The proposal amends the NASD's Rules of Fair Practice by adding Article III, section 42 to prohibit any NASD member or associated person from effecting any transactions in the over-the-counter market in a security subject to an NASD-called trading halt.[4] The proposal also amends Schedule D of the NASD's By-Laws by adding procedures to be used by the NASD when it calls a trading halt. These procedures would replace the NASD's existing quotation halt procedures.[5]

The proposed trading halt procedures provide that the NASD may call a trading halt pending the dissemination of material news concerning a NASDAQ issue [6] and that the NASD may call a trading halt in the OTC market for a listed security whenever the primary market for that security calls a trading halt to permit dissemination of material news.[7]

The proposed Schedule D procedures provide that NASDAQ issuers should notify the NASD of the dissemination of material news at least simultaneously with notification of the press. After the NASD receives the information, and after consultation with the issuer, the NASD will evaluate the information, and its potential impact on the market, and determine whether a trading halt is appropriate. The NASD then will notify its members of the halt through their NASDAQ terminals' "News" frame. The halt will become effective simultaneously with that notification. Trading in halted securities may resume when the NASD notifies its members on their terminals.

Further, whenever an exchange informs the NASD that it has called a trading halt in one of its listed securities pending dissemination of material news, the procedures provide the NASD the authority to call a simultaneous trading halt in the OTC market for that listed security. Procedures for notifying members of the halt and resumption of trading are identical to the procedures proposed for trading halts in NASDAQ issues.

III. NASD's Views in Support of the Proposal

In its filing, the NASD states that the purpose of the proposed rule change is to: (1) Provide the NASD authority to halt its members' trading in NASDAQ and listed securities pending the dissemination of material news from the issuer; and (2) prohibit trading by NASD members in a security on which a trading halt is in effect. The NASD states that it believes the proposal is consistent with the Act, particularly section 15A(b)(6) of the Act, which provides that the rules of a registered securities association shall be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative practices, and in general, to protect public investors and the public interest.[8] The NASD's proposed trading halt procedures, like its current quote halt procedures, are intended to alert investors that dissemination of material news is imminent and to provide public investors the opportunity to evaluate the information in making investment decisions. The NASD explains that it is seeking trading halt authority because its quote halt procedures have become increasingly ineffective in halting trading and thus ineffective in promoting the investor protection objectives of those procedures.[9]

IV. Comments

The NASD received 18 comments in response to its solicitation of its members and the Commission received one comment in response to its notice of the proposed rule change. With three exceptions, the NASD commentators generally favored the trading halt proposal. Several of the commentators stated that they believe the proposal will benefit shareholders by ensuring equal access to material information and by providing shareholders the opportunity to evaluate it appropriately.[10] One commentator noted that investors may make ill-considered, or at least hurried, decisions on stocks whose issuers disseminate material information while trading is not halted.[11] Several of the commentators, however, raised some questions about the implementation of the NASD proposal. The NASD subsequently addressed those concerns in its filing with the Commission.[12]

The NASD received 18 comment letters from NASDAQ issuers, NASD members and investors. With three exceptions the commentators generally favored the proposal.

[2] Securities Exchange Act Release No. 24178 (March 4, 1987), 52 FR 7718.

[3] *See* letter from Jerry M. Gluck, Senior Vice President and General Counsel, Jefferies & Company, Inc., ("Jefferies") to Jonathan Katz, Secretary, Securities and Exchange Commission, dated April 10, 1987.

[4] The NASD stated that the proposal would not prohibit a member from effecting transactions in a market in which a trading halt is not currently in effect. *See* File No. SR–NASD–87–13, p. 9. In a letter dated May 5, 1988, the NASD reiterated its position that the NASD's authority extends to most securities activities of its member firms but does not extend to transactions executed on an exchange. *See* letter to Richard G. Ketchum, Director, SEC, from Dennis C. Hensley, Vice President and Deputy General Counsel, NASD, dated May 5, 1988.

[5] *See* Schedule D to the NASD By Laws (CCH) ("Schedule D"), p. 1754, "Notification to NASD of News Releases."

[6] The NASD proposes to retain the same guidelines for "material news" that it has applied in its quotation halt procedures. These may include, but are not limited to, the following:

1. A merger, acquisition or joint venture;
2. A stock split or stock dividend;
3. Earnings and dividends of an unusual nature;
4. The acquisition or loss of a significant contract;
5. A significant new product or discovery;
6. A change in control or a significant change in management;
7. A call of securities redemption;
8. The public or private sale of a significant amount of additional securities;
9. The purchase or sale of a significant asset;
10. A significant change in capital investment plans;
11. A significant labor dispute;
12. Establishment of a program to make purchases of the company's own shares;
13. A tender offer for another company's securities, and;
14. An event requiring the filing of a current report under the Securities Exchange Act.

See Schedule D, p. 1754.

[7] Trading halts called pending the dissemination of material news generally are referred to as "regulatory trading halts." The exchanges also may halt trading in listed securities because of order imbalances or operational problems. For example, during the October, 1987 market break the NYSE halted trading in several stocks because of huge order imbalances on October 19 and 20. *See* Division of Market Regulation, *The October 1987 Market Break* 2–13, 2–30 (February, 1988). The NASD is not proposing to extend its trading halt authority, however, to situations in which the primary market calls a non-regulatory trading halt.

[8] The NASD also states in its filing that it believes the proposed rule change is consistent with section 15A(h)(3) of the Act, which provides that a registered securities association may summarily "limit or prohibit any person with respect to access to services offered by the association * * * in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members or the association."

[9] One recent example involved the stock of Federated Department Stores. During an approximately one-hour long quote halt on February 29, 1988, one third-market firm traded 16,000 shares. In another recent example, the NASD reported that on June 25, 1987, 60,500 shares of Canadian Pacific traded during a quote halt that was under one hour in duration.

[10] *See, e.g.*, letter from Michael J. Monahan, Director, Financial Relations, Economics Laboratory, Inc., to James M. Cangiano, Secretary, NASD, dated March 27, 1988.

[11] *See* letter from David A. Lindsey, Senior Vice President, First Indiana Savings Bank, to James M. Cangiano, Secretary, NASD, dated March 20, 1988.

[12] Norwesco, Inc. questioned how the NASD would define what constitutes "material

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Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), which submitted a comment generally supporting the proposal,[13] expressed its concern that the proposal will not be sufficient to halt all trading of a listed security when the primary market for the security calls a regulatory trading halt. Merrill Lynch noted that neither the existing exchange trading halt practices, nor the NASD's proposed trading halt authority, would preclude the trading of listed securities on a regional exchange during a trading halt called by the primary market. Merrill Lynch believes that this can be remedied only by a Commission rule prohibiting trading in a security in all markets during a primary market-called trading halt.

Three commentators opposed the amendments. One stated that the proposed amendments would produce "discontinuous pricing" of securities and questioned the NASD's decision to adopt trading halt procedures when the New York Stock Exchange ("NYSE") is considering shortening the length of trading halts.[14] Another commentator opposing the proposal stated that he strongly believes that unless trading in all markets is halted simultaneously, neither trading on the exchanges nor in the OTC market should be halted.[15] Finally, Jefferies submitted comment letters in opposition to the NASD's proposal to the NASD and to the Commission.[16] Jefferies opposes the proposal, claiming that: (1) The NASD lacks the statutory authority to impose trading halts on its members; and (2) trading halts deprive investors of a liquid market and drive trading to markets beyond the scrutiny of regulatory authorities.

First, Jefferies argues that section 15A(b)(6) of the Act does not provide the NASD with adequate authority to impose trading halts on its members because the authority conferred on the NASD under section 15A(b)(6) is circumscribed by section 12(k) of the Act and the Supreme Court's decision in *SEC v. Sloan*, ("Sloan").[17] Section 12(k) sets out the Commission's authority to suspend trading summarily in any security (except exempted securities) for a period not exceeding ten days. Jefferies believes that the proposal would extend to the NASD summary suspension powers greater than those granted the Commission without any limitation on the duration of the halts and without procedural due process protection.[18] Jefferies cites in support of its argument the Supreme Court's decision in *Sloan*, which interpreted the Commission's authority under section 12(k) of the Act. Jefferies asserts that the same due process concerns that compelled the Court in *Sloan* to find that the Commission lacked the authority under section 12(k) to impose consecutive trading suspensions based on the same set of circumstances preclude the Commission's approval of the NASD's proposed trading halt procedures. Jefferies believes that authority to impose a trading halt must be clearly mandated by Congress and that no such clear mandate for the NASD can be found in the Act.

Jefferies further argues that the NASD's authority to impose trading halts also cannot be found under section 15A(h) of the Act, which provides for NASD summary denial of access to its services and review of that denial by the NASD, and by the Commission on its own motion or upon petition by "any person aggrieved by any such summary action."[19] Jefferies argues "that section 15A(h)(3) has nothing to do with trading halts of the type contemplated by the NASD rule and simply is not relevant."[20] Jefferies believes it unlikely that investors and members unable to trade during a halt are included in the class of "aggrieved persons" that may seek redress under that provision.

Finally, Jefferies offers several policy reasons for its opposition to the NASD's trading halt proposal. Jefferies believes that the trading halt proposal would, when implemented, deprive investors of a liquid market in which to trade and is an inappropriate intrusion into the legitimate decision-making process of investors who may appropriately decide to trade on speculation or whatever information is currently publicly available on the security. In addition, Jefferies believes that the NASD's proposal would encourage institutional customers to trade among themselves and would drive trading offshore during a halt, beyond the scrutiny of U.S. self-regulatory organizations and regulatory agencies.

V. Discussion

Currently, the NASD has authority under its rules only to halt quotations in NASDAQ and listed securities traded OTC pending the dissemination of material news by the issuer.[21] The purpose of the NASD's quotation halts is to alert investors to the imminent announcement of material news and to provide investors an opportunity to digest that news and factor it into investment decisions.[22] These are the same reasons that securities exchanges traditionally have halted trading pending the dissemination of material news. The NASD has determined, however, that because halts increasingly have failed to stop trading, they no longer provide investors an adequate opportunity to assess the import of the news disseminated by the issuer.[23] As a result, the NASD is concerned that its quotation halt mechanism is failing to provide adequate public protection. The NASD is seeking, therefore, the authority to halt trading under the same circumstances it previously halted quotations to assure that there will be a hiatus in trading to permit investors to be alerted to and assess the importance of material news. In filing this proposal, the NASD is requesting the same authority that the exchanges traditionally have exercised to halt trading in their markets pending dissemination of material news by an issuer.[24] Thus, this proposal would enable the NASD to provide the same protections to customers of its member firms that now are afforded to customers of exchange member firms.

1. Authority

The Commission believes that the NASD has ample authority under section 15A(b)(6) of the Act, which provides that the NASD's rules must be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * and to protect investors and the public interest," to halt trading to provide an opportunity for all investors to evaluate the material news in making investment decisions. As several of the NASD commentators noted, the NASD's trading halts proposal would protect investors by providing opportunities for the adequate disclosure of material news and by eliminating the potential of public customers trading without awareness that there is material news regarding the issue pending. The proposal, therefore, should result in increased orderliness and integrity for the over-the-counter market.

The Commission also believes the proposal is consistent with the Act because it would extend to customers of NASD member firms the same protections offered to customers of members of exchanges, which traditionally impose trading halts to permit the orderly dissemination of material news. Moreover, the Commission believes the exchanges' authority to initiate trading halts is derived from statutory language in section 6(b)(5)[25] that is identical to the relevant portions of section 15A(b)(6).[26]

The Commission does not believe that the NASD's authority to impose trading halts under section 15A(b)(6) of the Act is circumscribed in any way by the Commission's summary suspension authority in section 12(k) of the Act; nor does the Commission believe that the *Sloan* decision is dispositive of the issues presented by this proposed rule change. Section 12(k) of the Act authorizes the Commission to suspend trading summarily in any security (except an exempted security) for up to 10 days if required by the public interest or the protection of investors and makes it unlawful for any exchange member or broker-dealer to trade in a security subject to a suspension. Section 12(k) does not contain any limitation whatsoever on the ability of self-regulatory organizations to regulate effectively their marketplaces. In *Sloan* the Supreme Court found that section 12(k) did not empower the Commission to impose consecutive 10-day trading suspensions on a security based on the same set of circumstances.[27] Contrary to Jefferies' broad reading of the decision, the Commission believes that the *Sloan* Court's holding is limited to prohibiting the Commission from reading section 12(k)'s silence on repeated summary suspensions to affirmatively permit them.[28] The Commission also believes that the trading halts proposed in the NASD's filing are materially different in purpose and duration from summary suspensions imposed by the Commission pursuant to section 12(k). While the proposed trading halt authority is intended to permit the NASD to halt trading for material news dissemination for a relatively brief period, the Commission halts trading pursuant to its section 12(k) authority for up to 10 days to stem manipulative and fradulent activity.

The Commission further disagrees with Jefferies that the NASD's proposal is fatally flawed because it lacks an adequate limitation on the NASD's authority. The NASD's proposal provides that trading halts may be imposed only under certain specific circumstances: specifically, when a NASDAQ issuer has material news to disseminate or when the primary exhange market for a listed security halts trading in a security to allow for news dissemination.[29] Moreover, the procedures provide that, after the NASD receives notification that the issuer soon will issue a material news release, the NASD will consult with the issuer on the potential impact on the market to determine whether a trading halt is appropriate. Once the pending material news has been disseminated, or once the primary market for the security ends its trading halt, the NASD also will end its halt.[30] This is consistent with the

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information" in deciding whether to halt trading. *See* letter from David H. Baldwin, President, Norwesco, Inc. to James M. Cangiano, Secretary, NASD, dated February 27, 1986. In its filing, the NASD responded that the current "material news" guidelines in Schedule D would continue to apply. (*See, supra* note 5). Abrams Industries, Inc. questioned how an OTC trading halt could be enforced and what sanctions the NASD could impose for violations of the prohibitions. *See* letter from I.B. Schoenberg, Vice President, Corporate Development, Abrams Industries, Inc. to James M. Cangiano, Secretary, NASD, dated March 7, 1986. The NASD responded that members' compliance would be determined through inspection of firm books and records. (The Commisison also believes that the NASD has the authority to take action against a member for books and records violations and for violations of the trading halt provisions.) Mayer & Schweitzer, Inc., an OTC market-maker in approximately 2,500 securities, cautioned against extending the NASD's trading halt authority on listed securities to situations in which the primary market for the security calls a trading halt for non-regulatory reasons. *See* letter from Leonard Mayer, Vice President, Mayer & Schweitzer, Inc. to James M. Cangiano, Secretary, NASD, dated March 20, 1986. Finally, First Tennessee National Corporation ("First Tennessee") agreed with the proposal but stressed the importance of the NASD consulting with the issuer prior to any action under the trading halt procedures. First Tennessee believes that without consultation, the NASD cannot effectively evaluate material information. *See* letter from Sarah L. Meyerrose, Vice President and Treasurer, First Tennessee Corporation, to James M. Cangiano, Secretary, NASD, dated March 24, 1986.

[13] *See* letter from John B. Manning, Vice President, Equity Trading Division Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc. to James M. Cangiano, Secretary, NASD, dated April 8, 1986 ("Merrill Lynch letter").

[14] *See* letter from Charles Berk to James M. Cangiano, Secretary, NASD, dated March 4, 1986. The NYSE's policy is normally to reopen trading within 30 minutes after the halt was implemented if the news announcement has not been made. Recommencement of trading under these circumstances is preceded by an announcement that trading is resuming even though the material news announcement has not been released. *See* NYSE Listed Company Manual, p 202.07.

[15] *See* letter from Robert A. Podesta to James M. Cangiano, Secretary, NASD, dated February 28, 1986.

[16] *See* Letter from Jerry M. Gluck, Senior Vice President and Counsel, Jefferies, to Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated December 17, 1986 ("Jefferies December letter"); and letter from Jerry M. Gluck, Senior vice President and General Counsel, Jefferies, to Jonathan G. Katz, Secretary, SEC, dated April 10, 1987 ("Jefferies April letter").

[17] 436 U.S. 103 (1978).

[18] Jefferies maintains that because all registered broker-dealers are required to be members of the NASD, the NASD's trading halt proposal would have the same impact on NASD members as a Section 12(k) trading suspension or a section 12(j) deregistration. *See* Jefferies December letter, *supra* note 13 at 2.

[19] *See* Jefferies April Letter, *supra* note 13.

[20] *See id.*, p. 2.

[21] *See* Schedule D, Notification to NASD of News Releases.

[22] *See, e.g.*, NASD Notice to Members, 86-83, December 1, 1986.

[23] *See supra*, note 8.

[24] *See e.g.*, NYSE Listed Company Manual, p 202.07, Trading Halt Procedures.

[25] For example, in 1985, the Commission approved a New York Stock Exchange ("NYSE") proposed rule change under section 6(b)(5) that provided that the NYSE generally would re-open trading after 30 minutes if no news announcement was forthcoming. *See* Securities Exchange Act Release No. 22697 (December 10, 1985), 34 S.E.C. Doc. 1222.

[26] The exchanges have exercised the authority to halt trading in their markets since before Congress enacted the Securities Exchange Act of 1934. Further, the exchanges continuously and notoriously have exercised this authority, even during periods that Congress substantially amended the Act. Thus, by not prohibiting the exchanges from using the authority in Section 6 to halt trading, Congress acquiesced in the exchanges' interpretations that that Section provided an adequate source of authority for trading halts. Sutherland Stat. Const. Section 49.09 (4th Ed.). *See also* Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 1625, 1639 (1982).

It is clear that Congress' long-standing objective has been to ensure that the exchanges and the NASD have equivalent authority to regulate their respective markets. For example, when Congress passed the Maloney Act and added section 15A in 1938, it included a requirement that national associations authorized under the new Section have rules designed, among other things, to promote just and equitable principles of trade. That same standard applied to exchange rules under section 6. *See* S. Rep No. 94-75, 94th Cong., 1st Sess. 27, *reprinted in* 1975 U.S. Code Cong. and Ad. News 205. Again, in 1975 Congress considered the appropriate scope of self-regulatory organization rules and amended Sections 6 and 15A to give exchanges and national securities associations greatly similar regulatory mandates. *See generally* 1975 U.S. Code Cong. and Ad. News 205, 206. Thus, the Commission believes that section 15A(b)(6), like section 6(b)(5), provides ample authority for the NASD's proposal.

[27] 436 U.S. at 103.

[28] The Commission disagrees with Jefferies that the decision requires explicit statutory language to confer *any* summary suspension authority. Jefferies points to dictum in the opinion that "summary suspension is an awesome power with a potentially devastating impact * * * [and requires a] clear mandate from Congress * * * further to confer that authority." 436 U.S. 15 112. The Commission first notes that this is dictum and not controlling of the issue here. Furthermore, the Commission believes this quotation must be read in light of the issue before the Court: whether the clear language of 12(k) authorizing a single 10-day summary suspension could be interpreted broadly to authorize repeated summary suspensions, based on the same set of circumstances. The Court concluded that the Commission could not "interpret away" a clear limitation on its authority to exercise such a drastic remedy as its summary suspension authority.

[29] As noted above, the NASD will continue to define "material news" by the same standards it now uses to determine whether a quote halt is appropriate. *See supra*, note 5.

[30] The NASD stated that trading halts in NASDAQ securities generally will be lifted after 30 minutes even if no news has been disseminated; the

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NASD's practice when it has called quotation halts. Thus, NASD trading halts for both NASDAQ and listed securities likely will be of short duration.

Further, even though NASD trading halts generally will be of short duration and imposed only after consultation with the issuer or after the primary market has halted trading in a similar manner, NASD rules provide for review procedures for any person aggrieved by "the operations of the NASDAQ System." Thus, someone aggrieved by an NASD-called trading halt should be able to seek review of an NASD trading halt under the NASD's Code of Procedure.[31]

2. Effect on Trading

The Commission recognizes that the NASD's proposal raises the concern of increased trading, particularly in listed securities, during NASD trading halts in markets that may be beyond the scrutiny of U.S. regulatory agencies and self-regulatory organizations; for example, foreign markets. The Commission believes, nonetheless, that, if any off-shore trading were to occur, it will be primarily that of sophisticated institutional investors that have made the determination to trade on all available information and without the protections afforded by the U.S. regulatory system. Further, in light of the benefits NASD trading halts may provide less sophisticated investors, the Commission does not believe that the risk that some sophisticated investors may opt to trade in foreign markets compels the conclusion that the NASD proposal is inconsistent with the Act.

VI. Conclusion

The Commission believes the NASD's proposed rule change is consistent with the Act, particularly section 15A(b)(6). The proposal provides the NASD with the authority to provide an effective hiatus in trading to permit investors to evaluate material news and make an informed trading decision. The proposal further would extend to the NASD the same power the exchanges traditionally have exercised to ensure fair and orderly markets and would extend to public customers of NASD member firms the same protections that are available to exchange member firm customers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–NASD–87–13 be, and hereby is, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88–10454 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

same policy currently applies to NASD quotation halts. As noted above, the NASD will, as a general rule, reinstitute trading in exchange-listed securities no later than simultaneously with the primary exchange market for the securities. Because of stiff competition for order flow, the tendency recently among the exchanges has been to halt trading in listed securities for shorter and shorter periods. *See, e.g.*, NYSE Listed Company Manual p. 202.07, which sets out the NYSE's policy to reopen trading if no news has been disseminated within 30 minutes. The Commission notes that it has announced its willingness to grant unlisted trading privileges on NASDAQ/NMS securities, subject to certain conditions. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. Accordingly, market competition should have the same disciplining effect on the NASD in its exercise of its trading halt authority and should serve to compel the NASD to call trading halts judiciously and to end halts as quickly as possible.

[31] Those procedures specify that review may be had before a hearing panel designated by the NASD Board of Governors, with a right of appeal to the NASD Board of Governors. *See* NASD Code of Procedure, Article IX, Section 1.

[Release No. 34–25667; File No. SR–NYSE–88–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on April 19, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 460.20 to make permanent the deletion of restrictions that had prohibited an approved person of a specialist member organization that is entitled to the exemptions from Rule 460(a) and Rule 460.10 provided by Rule 98 from acting as a managing underwriter for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to make permanent the deletion of restrictions in Exchange Rule 460.20 which had prohibited an approved person of a specialist member organization entitled to the exemptions from Rule 460(a) and Rule 460.10 provided by Rule 98 from acting as a managing underwriter for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered.

In SR–NYSE–85–25, the Exchange submitted for Commission approval new Rule 98 and implementing Guidelines which provided, essentially, that an approved person of a specialist member organization which established a formal organizational separation between itself and the associated specialist member organization, adopted internal controls, and otherwise conducted its operations in conformity with the Guidelines would be entitled to an exemption from the restrictions in Rules 104, 104.13, and 105, and would be entitled to an exemption from Rules 113.20 and 460 to the extent indicated in those Rules.

As submitted by the Exchange, and as approved by the Commission, Rule 460.20 permits an approved person, who is entitled to the exemptions provided by Rule 98, to act as a member of an underwriting syndicate or selling group,

but not as a managing underwriter, for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered. (This restriction is hereinafter referred to as the "managing underwriter restriction".) When the approved person is acting as a syndicate or selling group member as permitted, the associated specialist member organization must "give up the book" to another specialist member organization, which is to act as a full-time relief specialist for the period during which SEC Rule 10b–6 of the Act is applicable to the regular specialist member organization. The full-time relief specialist member organization trades for its own account, not for the account of the regular specialist member organization, in meeting marketmaking responsibilities under Exchange rules during the applicable Rule 10b–6 period. The approved person may act as an underwriter, in any capacity, for a distribution of nonconvertible debt securities of an issuer in whose securities an associated specialist is registered, and the specialist member organization is not required to "give up the book" in such instances. In SR–NYSE–85–25 (at page 11), the Exchange expressed its view at that time that any possible public perception of a potential conflict of interest between an approved person, acting as underwriter, and its associated specialist member organization, acting as marketmaker, was likely to focus most particularly on instances where the approved person was acting as a managing underwriter, and thus has a greater financial stake in the successful outcome of the distribution than other syndicate or selling group members. Thus, to minimize any possible concerns that might arise in this area, the Exchange proposed at that time the managing underwriter restriction.

In Securities Exchange Act Release No. 23768 (November 3, 1986) approving the Exchange's Rule 98 exemptive program, the Commission noted that it was required "to balance the potential reduced risks of abuse resulting from the managing underwriter prohibition against the argument by integrated broker-dealers that the prohibition imposes an unnecessary competitive burden on their ability to enter the specialist business." The Commission concluded that the managing underwriter restriction was not "strictly necessary" under the Securities Exchange Act, but stated that "[T]he Act allows an SRO sufficient flexibility to proceed cautiously in implementing potentially significant structural changes in the marketplace." In the same Release, the Commission approved a proposal by the American Stock Exchange to provide exemptive relief comparable to the NYSE's Rule 98 proposal, but which did not contain any managing underwriter restriction.

In light of the highly volatile nature of the markets in October 1987, the Exchange questioned at that time whether it was appropriate to maintain the managing underwriter restriction. For the date of the Commission's approval of Rule 98 in November 1986 until October 1987, little interest has been shown in the rule as it was originally written.

It appeared that the managing underwriter restriction may have acted as a significant barrier to the entry of diversified broker-dealers to the specialist business on this Exchange, with the result that the Exchange market may have been denied the benefits which the Exchange sought to achieve by virtue of the Rule 98 proposal. In SR–NYSE–85–25, the Exchange noted that the Rule 98 proposal was intended to help strengthen the capital base of the auction market system. The Exchange pointed out that large diversified organizations have the capital to expand their business, and that if such organizations were to enter the specialist business, they could reasonably be expected to provide additional capital for marketmaking on the Exchange.

The Exchange also noted in SR–NYSE–85–25 (from the perspective of the marketplace of 1985), that the increasing "institutionalization" of the market and the increasing volatility of trading, would require specialists to commit greater capital, and be willing to assume some additional market risk in accommodating large-size orders and minimizing short-term price fluctuations, in the future. The Exchange observed in that filing that the specialist system would benefit significantly from the additional capital contributions of large diversified organizations which have the financial resources to devote to specializing and, because of their diversified nature, may have a greater ability to assume risk than an organization whose business consists exclusively of specializing.

On October 22, 1987, the Exchange's Board of Directors approved an amendment to Rule 460.20 to delete the managing underwriter restriction temporarily for a six-month period ending May 1, 1988. The Commission approved this rule change on an accelerated basis.[1]

Following this action by the Exchange's Board of Directors and the Commission, two major diversified firms, Merrill Lynch, Pierce, Fenner & Smith and Drexel Burnham Lambert sought and obtained Rule 98 exemptive relief and are now associated with specialist member organizations. In addition, two diversified firms that had already been in the specialist business on the Exchange (and were subject to specialist regulations in their other business lines), Bear, Stearne & Co. and Smith New Court, restructured their operations and sought and obtained exemptive relief under Rule 98.

It thus appears appropriate to the Exchange at this time to make permanent the elimination of the managing underwriter restriction. In addition, the Exchange requests that the Commission extend, on an accelerated basis, the temporary deletion of the managing underwriter restriction until such time as the Commission makes a decision regarding approval of this proposal on a permanent basis.

(2) *Basis Under the Act for Proposed Rule Change.* Since, as noted above, the entry into the specialist business of diversified organizations is expected to have beneficial effects on the overall Exchange market, the proposed rule change can be said to promote the purposes of section 6(b)(5) of the Act in that it "remove[s] impediments to and perfect[s] the mechanism of a free and open market * * * and, in general, protect[s] investors and the public interest."

By permitting diversified member organizations to enter a business as to which they may currently be effectively excluded by regulation, the proposed rule change promotes the purposes of section 6(b)(5) in that it is "not designated to permit unfair discrimination between * * * brokers or dealers * * * " In this regard as well, the proposed rule change promotes the purposes of section 6(b)(8) in that it removes a "burden on competition" as to specializing on the Exchange not necessary to further the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in

[1] SR–NYSE–87–37, Release No. 25055, 52 FR 41520 (October 28, 1987). No comments were received by the Commission regarding this accelerated approval.

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furtherance of the purposes of the Act. In fact, as discussed above, by facilitating the entry into the specialist business of diversified organizations, the proposed rule change can be said to enhance competition in marketmaking on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has determined that it is appropriate to grant accelerated approval to the Exchange's request that the Commission extend the effectiveness of the deletion of the managing underwriter restriction temporarily. As noted above, the Comission previously had approved, for a six-month period ending May 1, 1988, the deletion from Rule 460.20 of the managing underwriter restriction. Since that time the Comission has not received any negative comments on the proposal, and the removal of the restriction has facilitated the affiliation of specialist units with integrated firms. The Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after date of publication of notice of filing thereof in that this will extend the temporary deletion of the managing underwriter restrication until such time as the Commission makes a decision regarding permanent approval of this proposal.

The date of effectiveness and timing of Commission action, with respect to permanent delection of the managing underwriter restriction shall be within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, partially approved, nunc pro tunc as of May 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10558; Filed 5-10-88; 8:45 am]

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[Release No. 34-25666; File No. SR-PSE-88-4]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.; Increased Margin Requirements for Equity and Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on May 2, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule XI, sections 2(d)(2)(D)(i) and 2(d)(2)(F)(1), and Rule XXI, sections 16(b) (i) and (ii) and 16(c)(2), to raise the initial and maintenance margin requirements applicable to equity and index option contracts, and to increase the minimum margin for a straddle/combination position.

(Brackets indicate language to be deleted, italics indicate new language.)

Rule XI

Margins

Other Provisions

Sec. 2(d).

(1) No change.

(2) (A) (B) (C) No change.

(D) The margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation, 100% of the current market value of the underlying security or index specified in column II of this subsection (D)(i) below.

Notwithstanding the margin required below, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money amount" (as defined in this subparagraph (D)(i) below), but shall not be less than 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column III of this subsection D(i) below.

Security or index	Initial and/or maintenance margin required (percent)	Minimum margin required (percent)	Underlying component value
I	II	III	IV
(1) Stock	[15]*20*	[5]*10*	The equivalent number of shares at current market prices.
(2) Industry index stock group	[15]*20*	[5]*10*	The product of the current index group value and the applicable index multiplier.
(3) Broad index stock group	[10]*15*	[5]*10*	Do.
(4) U.S. Treasury bills—95 days or less to maturity	.35	1/10	The underlying principal amount.
(5) U.S. Treasury notes	3	1/8	Do.
(6) U.S. Treasury bonds	3.5	1/8	Do.
(7) Foreign currencies	2	1/8	The product of units per foreign currency contract and the closing spot price.

For the purposes of this subsection (D)(i), "out-of-the-money amounts" are determined as follows:

No change.

(ii) through Section (E). No change.

(F)(1) If both a put and call specifying the same number of shares of the same underlying security, the same principal amount of the same United States Government obligation or the same index multiplier for the same index stock group are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(i) above, [plus any unrealized loss on] *plus 100% of the current market value of* the other option. The minimum margin requirement, however, shall not apply to the other option.

(F)(2) through Section 3. No change.

Rule XXI

Index Options

Margins

Sec. 16(a) No change.

(b) The margin requirements shall be as follows:

(i) For option contracts on a broad based index: For each put or call option contract on a broad based index carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [10]*15*% of the index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the index value as multiplied by the index multiplier in the case of a call, or any excess of the index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5]*10*% of the index value times the index multiplier.

(ii) For all other index option contracts: For each put or call index option contract carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [15] *20*% of the product of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5] *10*% of the current index value times the index multiplier.

(c) through (c)(1)(B). No change.

(c)(2) Short put and short call. The subparagraph (c)(2) applies to accounts carrying positions in short put index options which are offset by positions in short call index options for the same underlying index with the same index multiplier. The margin required for such a position shall be the margin required for the short put option contract or the margin required for the short call option contract (pursuant to paragraph (b) of this Rule), whichever is greater, as determined by (b) above, [increased by the amount of any unrealized loss on] *plus 100% of the current market value of* the other option contract.

(d) through Sec. 17. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the purposed rule change is to increase the initial and maintenance margin requirements applicable to index and equity options, as well as increase the minimum margin for the straddle/combination position.

The increased margin requirements cover 95% of all historical seven business day percentage price moves during a six month review period. Previously, a twelve-month review period was used; however, the shorter review period reflects the substantial rise in market volatility stemming from the October 1987 market break. As a result of this six month review, the new initial and maintenance margin requirements are to be raised to 20% for equity and narrow based stock indexes and 15% for broad based stock indexes. The minimum margin requirement for all three will be 10%. Margin calculations will continue to utilize the premium plus methodology, as will the straddle/combination position margin calculations.

The increased margin requirements would be in effect for a period not to exceed six months commencing on the date margin increases become effective for positions established on or after that date. The PSE in conjunction with the other SROs will coordinate the commencement of the six month period as well as formal review of margin adequacy. Upon the completion of the six month period, the new margin requirements would revert to their previous levels unless other percentages would more accurately address the market volatility.

The Exchange believes that the proposed rule change is consistent with

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section 6(b)(5) of the Securities Exchange Act of 1934, in that the proposed rule change is intended to increase initial and maintenance index and equity option margins to a level where both firms and investors are assured of reasonable financial protection from uncharted levels of volatility.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10455 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25665; File No. Phlx-88-9]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Elimination of Odd-lot Differentials

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on March 7, 1988, copies of a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to eliminate the differential charged on the execution of odd-lot and partial round lot [3] market and limit orders. The proposal also details the pricing procedure for the odd-lot portion of partial round lot orders and clarifies how odd-lot orders are executed through the Phlx Automated Communication and Execution ("PACE") System.

Notice of the proposed rule change, together with its terms of substance, was given by the issuance of a Commission release (Securities Exchange Act Release No. 25473, March 16, 1988) and by publication in the **Federal Register** (53 FR 9397), March 22, 1988). No comments were received regarding the proposal.

The proposal explains the pricing of a variety of odd-lot orders, which, in most cases, includes the elimination of the odd-lot differential.[4] Proposed Rule 227(a)(i) provides that pre-opening odd-lot and PRL market orders will receive an execution at the opening price on the primary market, without a differential, and pre-opening limit orders will receive an execution at the limit price following a sale on the primary market through the limit price, also without a differential. The pricing of post-opening market and limit orders is substantially similar to the pre-opening pricing structure. Odd-lot market orders and PRL market orders of fewer than 600 shares will receive an execution at the PACE quote [5] and limit orders of fewer than 600 shares will receive an execution at the limit price following a trade through the limit price on the primary market. Again, neither of these orders will be charged a differential. The odd-lot portions of PRL market and limit orders in excess of 600 shares, whether or not they are routed through PACE, will receive the same execution price as the round lot, with the round lot price determined by the regular auction market process. Further, if the round lot portion of the PRL receives an execution at more than one price, the odd-lot portion will receive the same price as the last portion of the round lot. Finally, odd-lot stop orders will get an execution at the PACE quote; however, odd-lot stop limit orders will continue to be executed with a differential.[6]

The Commission believes that the proposal is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and specifically sections 6(b)(5) and 11A(a)(1)(C)(i) of the Act in that the amendments will add to the maintenance of a free and open market and will provide for more economically efficient executions of securities transactions. Specifically, the Commission finds that the proposed amendments to Phlx Rules 227 and 229 will simplify the pricing and execution of odd-lot orders, and that the elimination of the differential on most transactions will result in the execution of customer orders at prices more representative of market interests, and with lower transaction costs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

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[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1988).

[3] A partial round lot ("PRL") is an order in excess of a single round lot unit (usually 100 shares) that is not an even round lot.

[4] The differential is the charge, usually ¼ of a point, imposed on a customer odd-lot order. If, for example, a customer placed an odd-lot market order to buy a stock quoted at 20 by 20¼, the execution would occur at 20¾ (the 20¼ sell quote plus the ½ differential) if the market traditionally charged a differential on such orders.

[5] *See* Phlx Rule 229. The PACE quote is defined as "the best bid/ask quote among the American, Boston, Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges., or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate." Under the PACE Rules, market orders up to 599 shares are guaranteed an execution at the PACE quote. Orders from 600 shares to 1,099 shares may be routed to the appropriate specialist through PACE, but do not receive the execution guarantee.

[6] According to the Phlx, the differential was retained for this one type of transaction because of the extra handling and increased risk to the specialist involved in processing stop limit orders.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10559 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25644; File No. SR-PHLX-88-06]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc. Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 5, 1988, a proposed rule change to amend its position limit rule with regard to the Value Line Composite Index option contracts and the National Over-the-Counter Index option contracts.

The proposed rule change was published for comment in Securities Act Release No. 34-25397 (February 25, 1988), 53 FR 6903. No comments were received on the proposed rule change.

The Exchange proposes to establish a position limit of 25,000 option contracts on the same side of the market for the Value Line Composite Index ("Value Line Index") contracts,[3] with no more than 15,000 contracts in the nearest expiration month. For purposes of this rule, the PHLX shall aggregate positions in the American style option ("XVL") contracts and the European style option ("VLE") contracts on the Value Line Index.[4] The Exchange also proposes to establish a maximum position limit of 10,000 option contracts on he same side of the market for the National Over-the-Counter Index option contracts ("XOC").

Under existing Exchange rules, position limits for the XVL and XOC contracts are determined by the monetary value of the overall position,[5] rather than a specified number of contracts. Currently, both the XVL and the XOC have a $300 million position limit. Because the position limits are keyed to a specific dollar value, the number of contracts that can be held without violating the position limit varies with the price moves of the particular index. For example, when XVL trading first commenced in January 1985, the maximum XVL position limit was approximately 15,500 contracts.[6] Before the large market decline in October 1987, however, the number of contracts that equalled the XVL position limit had been reduced by approximately 32%, to 10,500 contracts, because of the higher Index value. The current index value of 230.06 would permit a maximum XVL position of 13,038 contracts. Similarly, the number of XOC contracts that would equate to the position limit has varied. Based on an April 27, 1988 index level of 247.10, the maximum number of XOC contracts permissible was 12,140, a decrease of approximately 30% from the maximum position limit of contracts in May 1985 when the XOC began trading.

The Exchange notes that because current PHLX index option position and exercise limits are expressed in terms of dollar equivalents rather than number of contracts, the maximum number of contracts allowed has declined and constantly is moving. The Exchange seeks to address this phenomenon by converting to a specified number of option contracts rather than a specified dollar value. This conversion will relieve market participants of having to calculate the value of their position constantly to determine compliance with the position limits.

The Exchange notes that the proposed limits result in an increase in permissible position limits for options on only the Value Line index contracts. The Exchange is seeking to increase the Value Line position limit to a level that is comparable to those the Commission has approved for other broad-based index options in order to remain competitive with other index option markets and to coincide with the introduction of European style options. Last year the Commission approved increases in position limits for the Chicago Board Options Exchange's S&P 100 and 500 Index options and the American Stock Exchange ("Amex") Institutional Index option to 25,000 contracts, with no more than 15,000 contracts in the nearest expiration and the Amex's Major Market Index option to 17,000 contracts, with no more than 10,000 contracts in the nearest expiration.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[8] The Commission believes that, besides the advantage of clarity, establishing limits based on a maximum number of option contracts avoids the potential problem of a market participant being forced to reduce the number of contracts held because of increases in the index value. The Commission believes the fluctuating limitation on the number of allowable contracts is an unnecessary trading and hedging complication. The Commission also notes that the Exchange has placed a restriction of no more than 15,000 XVL and VLE contracts combined can be in the nearest expiration month, where historically most of the trading occurs.

Additionally, the Commission notes that the proposed position limits are comparable to those approved by the Commission for other broad-based index options such as Standard & Poor's 100 and 500 Index options, the Major Market Index option, and the Institutional Index option.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10456 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25647; File No. PHLX-87-38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The XVL index has traded on the Exchange since January 11, 1985.

[4] An American style option may be exercised by its holder anytime before expiration. A European option, however, can be exercised only on the last trading day prior to its expiration. Although the Commission has approved the VLE for trading, at the present time the Phlx trades only American style XVL options. *See* Securities Exchange Act Release No. 24506 (May 23, 1987), 52 FR 20656.

[5] The overall position's value is determined by taking the closing index value and multiplying that value by the index multiplier (100 for both the XVL and XOC) and then multiplying that product by the number of contracts on the same side of the market.

[6] The XVL Index has traded on the Exchange since January 11, 1985.

[7] *See* Securities Exchange Act Release No. 24,556 (June 5, 1987) 52 FR 22805.

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78s(b) (1982).

[10] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

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the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on December 24, 1987, a proposed rule change to provide guidance to the PHLX Allocation, Evaluation and Securities Committee in allocating securities in new trading segments and additional types of options.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25336 (February 10, 1988), 53 FR 5066. No comments were received on the proposed rule change.

The proposed rule by the Exchange would establish a general policy of according existing specialist units an automatic right to trading privileges in securities for which they are the appointed specialist in any extended trading segment touching and contiguous to existing trading sessions.[3] In addition, the policy grants allocation priority to existing specialists in the securities for which they are appointed as specialists for any non-contiguous trading segment or if additional option types are listed for allocation.[4]

The Exchange believes this policy reflects the close nexus between European and American style option contracts on the same underlying instrument and the preference for continuity in the marketplace with the existing day specialist being the specialist in any extended or evening trading session.

The Exchange further believes the policy provides flexibility for those existing specialists who cannot or do not wish to take on added specialist responsibilities for additional time periods or additional option types. The rule change would also provide the Allocation, Evaluation and Securities Committee with flexibility to ensure that allocations continue to be in the best interest of the Exchange while preserving existing specialists' interests that a valuable privilege is not deprived them without a full and fair written record of why such action was taken.[5]

[3] At the present time on the PHLX there are no trading segments that are touching and contiguous to existing trading segments. Such segments would arise if current trading segments were extended.

[4] The PHLX's establishment of an evening trading session for foreign currency options is an example of a non-contiguous trading segment. Creation of a European style option, which can be exercised only on the trading day immediately preceding the option's expiration, for an existing option that trades only American style is an example of a new option type.

[5] If an existing specialist or other party is aggrieved by a Committee allocation decision, it can appeal that decision to the PHLX Board. *See* PHLX By-Law Section 11-1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[6] More specifically, the Commission believes it is logical for the Exchange to establish a policy that fosters continuity in the market making of the same options in additional trading sessions or practically identical options in the same trading session. According existing specialists an automatic right to trading privileges in products they currently trade for any extended trading session touching and contiguous to existing trading segments and priority for trading in their appointed securities in additional non-contiguous trading sessions, as well as for additional types of options for which they are the appointed specialist, will ensure continuity of the limit order book between trading segments and reduce investor confusion. In this regard, the Commission notes that many of the same investors can be expected to trade both European and American style options or the same security in additional trading sessions. Where the same specialist is handling the option or other security, investor confusion as to what entity or specialist has an order and whether the order will be filled if the option or other security trades at the designated limit in one trading session but not the other will be minimal.

The Commission also believes that the privileges and rights established by the proposed rule change will contribute to the maintenance of fair and orderly markets. Specialist market making may be enhanced by the ability to trade as a dealer in a particular option in all of the trading sessions. This ability would reduce the specialist's risk of establishing positions because the specialist would have access to the limit order book and could trade as a dealer on a continuous basis throughout the entire trading day. Moreover, under the proposed rule change, existing specialists will not be forced to assume the additional responsibility of trading in a contiguous or non-contiguous session if they so choose.

Finally, the commission notes that the PHLX will retain its ability to designate another entity as the specialist in any additional trading sessions where the Exchange believes such action is appropriate, provided the aggrieved specialist who applied for the appointment is notified in writing of the decision and provided a basis for that decision. In addition, any aggrieved specialist can appeal an adverse Allocation, Evaluation and Securities Committee's decision to the Exchange's Board of Governors.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10457 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. IC-16390; 812-6817]

Fidelity Capital Trust et al.; Notice of Application

May 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Fidelity Capital Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Growth Company Fund; Fidelity High Income Fund; Fidelity Income Fund; Fidelity Intermediate Bond Fund; Fidelity Puritan Trust; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Trend Fund; Income Portfolios (collectively, "Funds"); and Fidelity Brokerage Services, Inc. ("FBS") (FBS and Funds collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under Sections 6(c), 17(b) and 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order to permit the Funds to lend their portfolio securities to FBS.

Filing Date: The application was filed on August 7, 1987 and amended on March 3, 1988 and April 18, 1988.

Hearing or Notificaton of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. Each of the Funds is registered under the 1940 Act as an open-end management investment company, and is a member of an investment company complex ("Fidelity Funds"). The investment adviser and principal underwriter of each Fund are Fidelity Management & Research Company ("FMR") and Fidelity Distributors, Inc., respectively. FBS is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc.

2. FBS and FMR are wholly-owned subsidiaries of FMR Corp., and may be deemed to be persons under common control and thus affiliated persons of one another. Since FMR is an affiliated person of each Fund as investment adviser to each Fund, FBS may be deemed to be an affiliated person of an affiliated person of each Fund. As such, FBS may be deemed to be prohibited by the provisions of section 17(a)(3) of the 1940 Act from borrowing from the Fund, and by the provisions of section 17(d) of the 1940 Act and Rule 17d-1 thereunder, from participating in any joint enterprise with the Funds, such that the Funds may be prohibited by such provisions from lending portfolio securities to FBS.

3. The Funds currently lend securities to only six broker-dealers and one institutional investor ("Institutional Investor" pursuant to procedures adopted by each Fund's board of trustees. The term Institutional Investor includes only such universities, banks, thrift institutions, pension funds, employee benefit plans and other institutions with knowledge and experience in financial and business matters such that they are capable of evaluating the risks involved in borrowing securities from the Funds. The Funds believe that their portfolio securities lending programs provide a useful means to increase income at minimal risk, and that the benefits to shareholders resulting from the Funds' securities lending programs can be increased to the extent each Fund may engage in loan transactions with FBS. Each Fund proposes to amend and/or supplement its existing procedures as necessary to conform them with the procedures set forth in the application ("Procedures"), which are designed to ensure that any borrower, whether or not affiliated with a Fund, that participates in a portfolio securities lending program with a Fund will do so in accordance with the policy and provisions of the 1940 Act and on a basic which is fair to the Fund and its shareholders. Applicants request that this exemptive relief be extended to other registered investment companies for which FMR serves as investment adviser which have not established securities lending programs, and to registered investment companies which in the future may be created for which FMR will serve as investment adviser, provided: (1) the boards of trustees of such companies including a majority of the disinterested trustees, adopt portfolio securities lending programs, and (2) the procedures and conditions governing such programs are substantially identical to the Procedures and conditions applicable to the Funds.

4. The Funds will lend portfolio securities in accordance with their amended and/or supplemented procedures to borrowers, including FBS, on the same basis as they currently lend securities to unaffiliated borrowers. Under their current lending program, a schedule of rates ("Schedule of Rates") based on loan market values is established by FMR and applied uniformly. The Schedule of Rates, set forth in the application, establishes fair minimum annualized returns to the Funds, based upon FMR's assessment of market conditions and profitability experience, taking into account supply and demand considerations relative to the securities of issuers in a particular industry, in addition to the nature of the security loaned and measured by the type of collateral received, as set forth in the application. FMR will inform each Fund's board of trustees of the actual rates of returns to the Fund on loans with each borrower. Each Fund's board of trustees periodically will review the Schedule of Rates. All loans to FBS will provide for at least the return indicated in the Schedule of Rates. Loans of particular securities can be made at a rate of return higher than the minimum required by the Schedule of Rates, due to factors such as the relative scarcity of such security. All loans of securities meeting the same criteria, e.g., scarcity, will be made at the same rate of return regardless of the borrower. If a security is loaned at a rate of return higher than the minimum required by the Schedule of Rates, all comparable loans to FBS will be made at no less than the higher rate.

Applicants' Conditions:

If the requested order is granted, Applicants expressly consent to the following conditions:

1. The Funds will make at least 50% of their portfolio securities loans to borrowers other than FBS.

2. A Fund may not loan portfolio securities to FBS if, at the time such loan is made, more than 10% of its net assets would be loaned to FBS.

3. A Fund will not make any loan to FBS unless, at the time such loan is made, the income attributable to such loan is anticipated to cover the transaction costs incurred in making such loan. The Fund's board of trustees will review at least quarterly the actual income earned by the Fund in lending securities to FBS in relation to the actual transaction costs incurred by the Fund in making such loans.

4. A Fund will realize a minimum annualized return on loans (other than of Treasury obligations) to FBS equal to not less than 1/2% of the market value of cash collateral, or 1/2% of the market value of the securities lent; or (for Treasury obligations) not less than 1/4% of cash collateral or 1/4% of the face amount of the securities lent.

5. The boards of trustees of the Funds, including a majority of the trustees who are not interested persons, (a) will determine no less frequently than quarterly that all transactions with FBS effected during the preceding quarter were effected in compliance with the requirements of the Procedures and the conditions of any order permitting such transactions and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a witten copy of the

Procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned or the face amount of the securities loaned, the amount reallowed to the Fund, the identity of the borrower, the terms of the loan and the information or materials upon which the finding was made that each loan made to FBS was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth above.

7. The Funds will only accept cash or U.S. government securities as collateral for securities loaned to FBS.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10456 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16389; 812-6733]

Kidder, Peabody Acceptance Corporation I; Notice of Application

May 4, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Amendment to the Order of Exemption (the "Application") under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Kidder, Peabody Acceptance Corporation I (the ("Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks to amend a Section 6(c) exemptive order issued on February 24, 1987 (Investment Company Act Release No. IC-15584) ("Previous Order"), to permit the sale of certain beneficial interests in any Trust (as defined in the Application) to certain "accredited investors," as redefined in Rule 501(a) of the Securities Act of 1933, as amended (the "1933 Act") and the Application.

Filing Date: The Application was filed on May 21, 1987, and amended on February 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549; Applicant, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Special Counsel, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant requests that its Previous Order be amended to expand the category of investor to whom Applicant may sell beneficial interests in each Trust. In addition to the issuance and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors or, under this amended order, to other non-institutional investors who customarily engage in the purchase of mortgages or mortgage collateral in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under Section 4(2) thereof. A beneficial interest in a Trust will be offered and sold only to: (i) institutions; or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act and as further limited below ("Eligible Owners"). Institutional investors will have such knowledge and experience in financial and business matters as to be capable of evaluating the risks of purchasing such beneficial interests and understanding the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such beneficial interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risks of purchasing a beneficial interest in a Trust and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Owners will be limited to mortgage lenders, thrift instituitons, commercial and investment banks, savings and loan association, pension funds, employee benefit plans, insurance companies, mutual funds (which will continue to satisfy themselves that purchases of such obligations comply with the provisions of Section 12(d)(1) of the 1940 Act), real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities. The subsequent transfer of the beneficial interests in the Trusts will also be limited to private placements to such Eligible Owners. Each Eligible Owners will be required to represent that it is purchasing such beneficial interests for investment purposes. In additon, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

2. The relief requested by the Application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Condition

Applicant agrees that that all representations in the Application as regarding the beneficial interests, and their offering to Eligible Owners, will be express conditions to the requested amended order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10459 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24638]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 5, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 31, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70-7498)

Appalachian Power Company ("APCo"), 40 Franklin Road S.W., Roanoke, Virginia 24011, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application pursuant to Section 9(c)(3) of the Act.

APCo proposes to subscribe to and acquire 10,000 shares, at a total purchase price of $100,000, of Class B (non-voting) Common Stock of Roundtable Venture Fund, Inc. ("Roundtable"), a West Virginia capital company organized to encourage and assist in the creation, development or expansion of West Virginia businesses. Roundtable is subject to supervision and regulation by the West Virginia Industry and Jobs Development Corporation. Upon certification of an investment in Roundtable under the Capital Company Act, an investor is entitled to a credit in the amout of 50% of its investment against certain West Virginia taxes.

It is not anticipated that Roundtable will at any time be an "affiliate" of APCo, as that term is defined in Section 2(a)(11) of the Act, since APCo will own less than 5% of the outstanding common stock of Roundtable upon completion of the proposed transaction. In addition, APCo will not be represented on the Board of Directors of Roundtable or otherwise seek to exercise influence with respect to Roundtable.

Jersey Central Power and Light Company et al. (70-7514)

Jersey Central Power & Light Company ("JCP&L"), 161 Madison Avenue, Morristown, New Jersey 07960 and Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, both subsidiaries of General Public Utilities Corporation, a registered holding company, have filed an application pursuant to Sections 9(a) and 10 of the Act.

JCP&L and Met-Ed, together with five unaffiliated electric-utility companies, are co-owners as tenants-in-common, of the Merrill Creek Reservoir Project located in Harmony Township, New Jersey ("Merrill Creek"). JCP&L and Met-Ed each own an 8.37% undivided ownership interest ("Ownership Interest") in Merrill Creek. Merrill Creek generally consists of a 650 acre reservoir located on approximately 2,000 acres of real estate, a dam, dikes, a pumphouse, pumps, pipeline and related works and appurtenant equipment and facilities. Merrill Creek will provide make-up water to the Delaware River during times of drought to compensate for water consumed by the co-owners' electric generating stations situated in the Delaware River Basin, as required by the Delaware River Basin Commission.

In order to refinance their portions of the cost of construction of Merrill Creek, JCP&L and Met-Ed each propose to sell and lease back their respective Ownership Interests. JCP&L and Met-Ed would each enter into separate Participation Agreements generally providing for the sale of their Ownership Interests to a trustee acting on behalf of an equity investor or investors ("Owner Trustee/Lessor"), and the simultaneous lease of such Ownership Interests pursuant to separate net lease agreements ("Lease") to be entered into with the Owners Trustee/Lessor, which will not exceed a term of 45 years. The purchase price for each Ownership Interest will be equal to the fair market value thereof as determined by independent appraisal, and estimated to be about $25 million.

A portion of the purchase price for each Ownership Interest will be financed through the issuance by the Owner Trustee/Lessor of a separate series of non-recourse bonds by private placement to one or more institutional purchasers. Each series of bonds will be issued under and pursuant to a Trust Indenture, Mortgage and Security Agreement ("Indenture"). Under the Indenture, the Owner Trustee/Lessor will grant a first lien on security in all right, title and interest in and to its Ownership Interest in Merrill Creek, rental and other payments due under the Lease and all other rights acquired by the Owner Trustee/Lessor with respect to Merrill Creek as security for payment of principal of, and premium and interest on, the bonds. JCP&L and Met-Ed will not be the issuer of any bonds nor will they guarantee payment of any principal of, or premium or interest on, any bonds. The sole source of payments for each series of bonds will be the rental and other payments under the Lease which payments will be absolute and unconditional obligations of JCP&L and Met-Ed.

JCP&L and Met-Ed will also agree to provide indemnifications against certain liabilities, including certain state and federal income taxes liabilities in connection with the transaction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10460 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINSTRATION

[Declaration of Disaster Loan Area # 2313]

Florida; Declaration of Disaster Loan Area

Madison County in the State of Florida constitutes a disaster area because of damages from a tornado which occurred on April 19, 1988. Applications for loans for physical damage may be filed until the close of business on July 5, 1988 and for economic injury until the close of business on February 3, 1989 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Boulevard, 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates arent:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 231312 for physical damage and for economic injury the number is 662000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: May 3, 1988.

James Abdnor,
Administrator.

[FR Doc. 88-10479 Filed 5-10-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1193]

Overseas Schools Advisory Council; Notice of Meeting

The overseas Schools Advisory Council, Department of State, will hold its Annual meeting on Wednesday, June 1, 1988, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Educational Assistance.

(a) Final Reports of 1986 Program and Program Report on 1987 Program.

(b) Report on Meeting with Executive Directors of the Overseas Schools Regional Assiociation in San Diego, California on February 15, 1988.

(c) Progress Report of the Subcommittee to Increase the Participation of U.S. Corporations and Foundations in Council Programs.

(d) Recommendations of the Subcommittee To Explore New Formats and Ideas for Future Council Programs.

II. Highlights of Carnegie Report on Urban Education.

III. Overseas Schools Fund Raising Drives and Activities of Overseas Schools Regional Associations.

(a) Report of the Subcommittee to Increase U.S. Firms Participation in Local Activities of the American-Sponsored Overseas Schools.

IV. Council Communication with U.S. Corporations and Foundations.

V. Selection of Date of Council's Executive Committee Meeting.

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas School Advisory Council, Department of State, Room 234, SA-6, Washington, DC 20520 or telephone Ms. Joyce Bruce on area code 703-875-6220, prior to June 1. The public may participate in discussions at the Chairman's instructions.

Date: May 6, 1988.

Ernest N. Mansion,
Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 88-10561 Filed 5-10-88; 8:45 am]
BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 28093; Order 88-5-14]

Varig, S.A.; Order Disapproving Schedules

Issued by the Department of Transportation on the 28th day of April, 1988.

By Order 75-7-95, the Civil Aeronautics Board required Varig to file its schedules under Part 213 of the Economic Regulations (14 CFR Part 213). After Brazil denounced the U.S. bilateral aviation agreement in 1982, and subsequent negotiations failed to resolve the countries' aviation differences, the CAB in 1984 granted Varig exemption authorityh in lieu of its foreign air carrier permit and continued the Part 213 schedule-filing requirement. Order 84-4-104. This requirement has been maintained through all subsequent renewals of Varig's authority.

On April 14, 1988, Varig filed schedules, which it proposes become effective May 16, which would change its existing pattern of U.S. services significantly. Varig would, among other things, substitute B-747-400 passenger aircraft for certain "combi" equipment on which part of the main-deck capacity was configured for transportation of cargo.

As explained in more detail in Order 88-4-80, Varig's proposeds schedule change comes at a time when the Government of Brazil has frustrated U.S. efforts to secure additional capacity in the U.S.-Brazil market for U.S. air carriers. We have determined that it would not be in the public interest to allow Varig to improve its services to the United States while U.S. carriers services to Brazil continue to be limited. We have decided, therefore, to take such actions as are necessary to maintain the *status quo* in Brazilian carrier service to the United States. Order 88-4-80 at 3. In that order, we denied Varig's request for exemption authority to operate extra flights during the coming peak travel season and to operate the incremental frequency equivalent in its proposed schedule that would exceed the limitation formula applicable to Varig services.

For the same reasons, we conclude that operation by Varig of its proposed schedules would adversely affect the public interest. Varig may continue to operate its present schedule, operating the same number of flights, between the same points, at the same times, and with the same equipment. (Varig may, of course, file amended schedules to change flight times, nomenclature or routing that would be deemed not to significantly improve its services and thus not be adverse to the public interest.)

Accordingly, 1. We disapprove the schedules Varig, S.A., filed with this Department on April 14, 1988;

2. Unless disapproved by the President under 14 CFR 213.3(d), this order shall become effective on the eleventh day after its submission for review under that section, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this order under that section, whichever occurs earlier;[1]

3. This order shall remain in effect until further order of the Department; and

4. We shall serve this order on Varig, S.A., the Ambassador of Brazil in Washington, DC, and the U.S. Department of State (Office of Aviation).

We will publish this order in the Federal Register.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10554 Filed 5-10-88; 8:45 am]
BILLING CODE 4910-62-M

[1] This order was submitted for review on April 28, 1988. On May 5, 1988, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

DEPARTMENT OF TREASURY

Internal Revenue Service

[Delegation Order No. 11]

Delegation of Authority; Division Chiefs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Allows redelegation of authority from the District Director to accept or reject offers in compromise to the level of Division Chief. Distinctions between the level of authority required to approve or reject offers in compromise above or below $250,000 have also been eliminated. The text of the delegation order appears below.

EFFECTIVE DATE: May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Don Schumacher, CO:E, Room 7535, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone Number (202) 566-4471 (not a toll-free number).

Don Schumacher,
Section Chief, Special Procedures Section.

[Order No. 11 (Rev. 16)]

Effective Date: 5-10-88

Authority To Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Order Nos. 150-04 and 150-09, 26 CFR 301.7122-1 and 26 CFR 301.7701-9, and Treasury Order No. 150-13 is hereby delegated as follows:

1. The Deputy Assistant Commissioner (international), the Associate Chief Counsel (Technical and International), Assistant District Directors, Regional Counsel, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated to District Directors may not be redelegated lower than Division Chief; except that the authority with respect to the withdrawal of an offer in compromise based upon doubt as to collectibility may be redelegated to Chief, Special Procedures. The District Director in a streamlined district may not redelegate this authority. The authority delegated to Regional Counsel may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to District Counsel. Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority.

2. Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised, and to summarily reject without further investigation, offers based solely on doubt as to liability regardless of the amount of the liability sought to be compromised, limited to obvious offers that are frivol, groundless or dilatory, or where the liability has been finally determined by the Tax Court or other courts, or by a Commissioner's final closing agreement, or where the offer is based upon an agreed liability in which administrative appeal rights have been exercised or waived. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated only to the Chief, Compliance Division.

3. Delegation Order No. 11 (Rev. 17) effective October 31, 1967 is superseded.

Dated: March 25, 1988.

Approved.

Charles H. Brennan,
Deputy Commissioner (Operations).

[FR Doc. 88-10520 Filed 5-10-88; 8:45 am]
BILLING CODE 4830-01-M

VOL 53 ISS 91 MY 11 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-11]

TIME AND DATE: Tuesday, May 10, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitioners and Complaints.
5. Inv. 303-TA-19, -20 and 731-TA-391/399 (P) (Antifriction Bearings (other than tapered roller bearings) from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom—briefing and vote.
6. Inv. 731-TA-377 (Final) (Internal Combustion Fork-Lift Trucks from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*. (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-10566 Filed 5-6-88; 4:55 pm]

BILLING CODE 7020-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 7:30 a.m.—Monday, May 16, 1988.

PLACE: Federal Reserve System, 20th and Constitution NW., Private Dining Room, (Eccles Building, C Street Entrance), Washington, DC 20551.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-2023.

AGENDA:

I. Call to Order and Remarks of Chairman.
II. Consideration of May 12, 1988 Personnel Committee Meeting Report Regarding: (A) Performance Appraisal Policy for Corporate Officers; and (B) Officer Compensation Policy.

Carol J. McCabe,

Secretary.

[FR Doc. 88-10633 Filed 5-9-88; 3:09 pm]

BILLING CODE 7570-01-M

Corrections

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 75G-0265]

Nisin Preparation; Affirmation of GRAS Status as a Direct Human Food Ingredient

Correction

In rule document 88-7459 beginning on page 11247 in the issue of Wednesday, April 6, 1988, make the following correction:

On page 11249, in the first column, in the second complete paragraph, in the 10th line, "50" should read "40".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 88N-0048]

Antibiotic Drugs; Erythromycin Topical Gel

Correction

In rule document 88-8151 beginning on page 12414 in the issue of Thursday, April 14, 1988, make the following corrections:

1. On page 12414, in the third column, in the second paragraph, in the 20th line, "hearing" should read "heading".

2. On the same page, in the same column, in the third paragraph, in the 18th line, "fact" should read "face".

§ 452.510e [Corrected]

3. On page 12415, in the first column, in § 452.510e(a)(1), in the second line, "identify" should read "identity".

4. On the same page, in the second column, in § 452.510e(b), in the 14th line, "of" should read "to".

5. This document also corrects the heading which should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866, 876, 895 and 1002

[Docket No. 87N-0373]

Medical Devices and Radiological Health Regulations; Editorial Amendments

Correction

In rule document 88-7526 beginning on page 11251 in the issue of Wednesday, April 6, 1988, make the following corrections:

On page 11253, in the third column, the amendatory instructions that were incorrectly numbered as "35", "36" and "34" should read "38", "39" and "40" respectively. Also, on page 11254, in the first column, the amendatory instructions that were incorrectly numbered as "34" and "36" should read "42" and "43" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. 80N-0428]

Colorants for Polymers

Correction

In proposed rule document 88-7425 beginning on page 11402 in the issue of Wednesday, April 6, 1988, make the following corrections:

1. On page 11407, in the third column, in the last paragraph, in the third line, "§ 3279" should read "§ 178.3297".

2. On page 11408, in the table, in the entry for item 23, in the third column, in the fifth line, remove "green.".

3. Also in the table, in the same column, in the entry for item 25, in the second line, "additional" should read "other".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0103]

Determination of Regulatory Review Period for Purposes of Patent Extension; Deursil®

Correction

In notice document 88-8152 beginning on page 12463 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12464, in the first column, in the first complete paragraph, in the last line, "21 CFRA 10.30" should read "21 CFR 10.30".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0068]

Determination of Regulatory Review Period for Purposes of Patent Extension; Spectamine®

Correction

In notice document 88-8150 beginning on page 12464 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12464, in the second column, under **SUPPLEMENTARY INFORMATION**, in the third paragraph, in the second line, after "Spectamine®" insert "(Iofetamine HCl, I-123 injection), which is recommended".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

[Docket No. S-110]

Safety Testing or Certification of Certain Workplace Equipment and Materials: Deletion of Specific Testing Laboratory Names; Definition of Nationally Recognized Testing Laboratory; Determination of Eligible Testing Organizations

Correction

In rule document 88-7782 beginning on page 12102 in the issue of Tuesday, April 12, 1988, make the following correction:

§ 1910.7 [Corrected]

On page 12120, in the third column, in § 1910.7(b)(2)(i), in the first line, remove "of".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 80351-8051]

Pacific Halibut Fisheries

Correction

In rule document 88-7191 beginning on page 10536 in the issue of Friday, April 1, 1988, make the following correction:

§ 301.6 [Corrected]

On page 10539, in § 301.6, in paragraph (a), the table should read as follows:

TABLE 1.—Regulatory Area Fishing Periods

2A	2B	3C-3A-3B	4A	4B	4C	4D	4E
6/28–7/01	5/08–5/14	5/23–5/24	5/23–5/24	5/23–5/24	6/20–6/21	8/02–8/09	6/01–6/03
7/25–7/30	[1]–6/12	6/20–6/21	6/20–6/21	6/20–6/21	6/22–6/23	9/16–[1]	6/04–6/06
8/31–[1]	[1]–8/25	9/07–9/08	8/05–8/06	9/04–9/07	6/24–6/25		6/07–6/09
		10/03–10/04	9/07–9/08	9/07–9/08	6/26–6/27		6/10–6/12
		10/17–[1]	9/16–[1]	9/16–[1]	6/28–6/29		6/13–6/15
					6/30–7/01		6/16–6/18
					7/02–7/03		6/18–6/21
					7/04–7/05		6/22–6/24
					7/06–7/07		6/25–6/27
					7/08–7/09		6/28–6/30
					7/10–7/11		7/01–7/03
					7/12–7/13		7/04–7/06
					7/14–7/15		7/07–7/09
					7/16–7/17		7/10–7/12
					7/18–7/19		7/13–7/15
					7/20–7/21		7/16–7/18
					7/22–7/23		7/19–7/21
					7/24–7/25		7/22–7/24
					7/26–7/27		7/25–7/27
					7/28–7/29		7/28–7/30
					7/30–7/31		7/31–8/02
					8/01–8/02		8/03–8/05
					8/03–8/04		8/06–8/08
					8/05–8/06		8/09–8/11
					8/07–8/08		8/12–8/14
					8/09–8/10		8/15–8/17
					8/11–8/12		8/18–8/20
					8/13–8/14		8/21–8/23
					8/15–8/16		8/24–8/26
					8/17–8/18		8/27–8/29
					8/19–8/20		8/30–9/01
					8/21–8/22		9/02–9/04
					8/23–8/24		9/05–9/07
					8/25–8/26		9/08–9/10
					8/27–8/28		9/11–9/13
					8/29–8/30		9/14–9/16
					8/31–9/01		9/17–9/19
					9/02–9/03		9/20–9/22
					9/04–9/05		9/23–9/25
					9/06–9/07		9/26–9/28
					9/08–9/09		9/29–10/01
					9/10–9/11		10/02–10/04
					9/12–9/13		10/05–10/07
					9/14–9/15		10/08–10/10
					9/16–9/17		10/11–10/13
					9/18–9/19		10/14–10/16
					9/20–9/21		10/17–10/19
					9/22–9/23		10/20–10/22
					9/24–9/25		10/23–10/25
					9/26–9/27		10/26–10/28
					9/28–9/29		10/29–10/31
					9/30–10/01		
					10/02–10/03		
					10/04–10/05		
					10/06–10/07		
					10/08–10/09		
					10/10–10/11		
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					10/20–10/21		
					10/22–10/23		
					10/24–10/25		
					10/26–10/27		
					10/28–10/29		
					10/30–10/31		

[1] Date to be announced by the Commission.

BILLING CODE 1505-01-D

federal register

Wednesday
May 11, 1988

Part II

Department of Transportation

Research and Special Programs Administration

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials; Notice

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-22; Docket IRA-40B]

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials

Applicants: National Tank Truck Carriers, Inc. (NTTC) and American Trucking Associations, Inc. (ATA).

City Regulations Affected: City of New York Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle, Sections II, III, IV, and V.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Public Law 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Mode Affected: Highway.

Issue Date: May 5, 1988.

Ruling: Sections IIB, IIC, IID, III, IV, and VD of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Section VF of the City's Regulations is consistent with the HMTA and the HMR and, therefore, not preempted.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Sections II, III, IV, and V of the City of New York Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366-4362].

I. Background

A. Chronology

On April 13, 1987, the National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) applied for an administrative ruling to determine whether certain City of New York Fire Department hazardous materials routing and time of transit regulations are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA.

The applicants also requested a ruling concerning the consistency of certain hazardous materials routing regulations of the Port Authority of New York and New Jersey. On January 29, 1988, however, the applicants withdrew their application concerning the Port Authority regulations on the ground that the Port Authority had amended the regulations at issue.

On May 16, 1987, OHMT published a Public Notice and Invitation To Comment soliciting public comments on the ATA/NTCC application. Detailed comments were filed by the applicants (together with the National Paint & Coatings Association, Inc.) and by the City of New York (the City). Comments in support of the ATA/NTCC position were filed by the Union Carbide Corporation and the New Jersey Turnpike Authority.

The applicants' request for a similar ruling concerning Directives 3-76, 5-63, 6-76, and 7-74 of the City of New York Fire Department's Bureau of Fire Prevention is the subject of a separate docket (IRA-40B) and was addressed in a separate inconsistency ruling. IR-22, 52 FR 46574 (Dec. 8, 1987); correction, 52 FR 49107 (Dec. 29, 1987); notice of appeal, 53 FR 5538 (Feb. 24, 1988). Those directives require tank truck carriers to obtain City permits before transporting compressed gases, flammable and combustible liquids, and flammable and combustible mixtures in the City.

B. General Authority and Preemption under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93 Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions in preemption *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlanta Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to accomplishing and executing the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

II. Effect of Pending Litigation

The City requests that OHMT abstain from issuing an inconsistency ruling until the U.S. District Court for the Eastern District of New York reviews the record before the Court and makes findings in a pending court case, *National Paint & Coatings Assn., Inc. v. City of New York* (E.D. N.Y., 84 CV 4525), in which ATA is one of the plaintiffs. For the reasons discussed in detail in IR-22, *supra*, pp. 46575–6, OHMT will not abstain from issuing an inconsistency ruling concerning these issues. Thus, in light of OHMT's intent to preempt certain areas, the existence of the inconsistency ruling process for the issuance of advisory opinions concerning such issues, and the potential that an inconsistency ruling might assist in resolution of the pending judicial proceedings, OHMT will address the issues raised by the applicants.

III. City of New York's Time of Transit and Routing Regulations

A. Overview

This proceeding concerns Section III (Time of Transit) and Section IV (Routing) of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle, as well as related provisions in Section II and V of those Regulations. Section II (Scope) of those Regulations limits their application (Section II B) to shipments in interstate and intrastate commerce passing through the City without pickup or delivery and to deliveries to piers, airports and shipping terminals for transshipment out of the City. In addition, Section II A specifies that those regulations apply to certain defined "Hazardous cargoes" but not to numerous other "commodities" which constitute hazardous materials under 49 CFR Part 172, Subpart B. Finally, Section II D provides that motor vehicles meeting the Fire Department regulations at issue (and found inconsistent) in IR-22, *supra*, need not conform to the routing and time requirements at issue here.

Section III requires "hazardous cargo" shipments through the City to be transported on weekends or holidays, or during specified non-rush hours on non-holiday weekdays. Permissible weekday times are: (1) for explosives and prohibited materials for which specific fire Department permission has been obtained: 10 a.m.–3 p.m. and 7 p.m.–6 a.m.; (2) for all other "hazardous cargo": 9 a.m.–4p.m. and 6 p.m.–7 a.m. Weekend and holiday traffic is restricted "[a]s traffic conditions permit, consistent with the rules and regulations of government agencies and/or authorities having jurisdiction." In addition, Section III allows explosives shipments only during daylight hours, although exceptions may be obtained for escorted nighttime shipments.

Section IV contains 14 typewritten pages of detailed hazardous materials routing requirements specifying which particular highways must be used to go from one specified location to another (e.g., "FROM NEW JERSEY TO WESTERN PORTION OF WESTCHESTER COUNTY AND UPSTATE NEW YORK," "FROM NEW JERSEY TO EASTERN WESTCHESTER COUNTY, UPSTATE NEW YORK AND NEW ENGLAND," etc.).

Section V (General Rules Applicable to Hazardous Cargo Shipments Passing Through the City) contains two subsections which are challenged by the applicants. Subsection D provides: "Vehicles, when transporting hazardous cargo through the City, shall not be fueled in the City of New York, nor shall any stop be made within the City, except as required by traffic." Subsection F states: "Vehicles transporting Hazardous Cargo shall avoid congested areas so far as is practicable and use highway exists as close as possible to final destination."

B. Applicants' Arguments

NTTC and ATA contend that the City's rush-hour prohibitions effectively ban the vast majority of hazardous materials-carrying vehicles meeting Federal requirements and acceptable throughout the rest of the Nation from passing through New York City during a significant part of the commercial workday. They argue that these time restrictions cause delays just outside the City and diversions around the City. They state that these impacts occur outside of, rather than in, New York City.

The applicants assert that the City's time and routing restrictions reduce the City's exposure to the inherent risks of hazardous materials transportation by exporting that risk to other jurisdictions. They allege that this cannot be done, under prior inconsistency rulings, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, and that the City has neither consulted or coordinated with surrounding jurisdictions nor evaluated the effect of its regulations on those jurisdictions. Applicants allege that the City's routing regulations force traffic to go around the City, thereby significantly increasing driving mileage and causing delays. In addition, they advance arguments concerning the necessity of routing hazardous materials around the George Washington Bridge because of the combined effect of the City's and the Port Authority's regulations. They allege that the latter regulations bar transportation using the only exit route (Washington Expressway) authorized by the City. The applicants conclude that the City's routing regulations are inconsistent with the HMTA, 49 CFR 177.853 and prior inconsistency rulings.

The gist of applicant's position is set forth in the following paragraphs of their comments:

The City's ban on DOT-specification equipment for *all* interstate shipments involving pick-up or delivery in New York City *and* its discriminatory restraints even on through shipments in DOT-specification equipment (only during certain times-of-day,

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over specified, limited routes and subject to severe restraints on vehicle movement) are *per se* inconsistent with the HMTA. These restrictions are for all practical purposes local embargoes on interstate transportation of hazardous materials disguised as mere traffic controls.

* * * * *

The City does not prohibit the transportation of hazardous materials on *any* of its streets, nor does it impose any curfew restrictions if the vehicle used meets the City's technical specifications. *Assuming* that the City's special hazardous materials transportation regulations have a rational purpose, the City has clearly determined that hazardous materials can safely be transported at *all hours on all City streets* provided vehicles and drivers meet the level of safety required by New York City's regulations. As has been shown, however, City-specification equipment does not provide the level of safety achieved by DOT-specification equipment. Thus, the City's ban on pick-ups and deliveries in interstate commerce by DOT-specification equipment and the City's discriminatory restraints on routing, time-of-day and freedom of movement, applicable *only* to DOT-specification equipment, are clearly *not necessary* for safety.

But these bans and restraints do exert a serious re-routing impact and *resulting degradation of overall safety*. To avoid this adverse result on safety the City would have to engage in a thorough analysis of all relevant safety factors and a thorough coordination of routing and curfew restrictions *with* adjoining affected jurisdictions such as New Jersey DOT, Paramus, New Jersey, Westchester, Nassau and Suffolk Counties and upstate New York counties and municipalities. Therefore, even though local regulations dealing with traffic control may be appropriate, when, as in the case of New York City (and the Port Authority), local traffic regulations cause *significant re-routing* of traffic, *all relevant safety* factors must be considered *before* the regulations can be considered consistent with the HMTA.

C. City's Arguments

In response to the applicants' arguments, the City contends that its time and routing requirements are not inconsistent with Federal requirements, primarily because there are no conflicting Federal regulations on the routing of flammables, combustibles and compressed gases. The City points out that, although 49 App. U.S.C. 1804(a) authorizes the Department to issue routing rules, it has not done so for these particular hazardous materials.

The City cites the following two specific DOT regulations for the respective propositions that more stringent local requirements are permissible and that there is no intent to preempt state or local regulation in this area:

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of [DOT] which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint. [49 C.F.R. § 397.3.]

Except as otherwise specifically indicated, Parts 390–397 of this subchapter are not intended to preclude state or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the persons subject thereto. [49 C.F.R. § 390.30].

The City cites *Ray v. Atlantic Richfield,* 435 U.S. 151 (1978), for the proposition that a state may impose transportation restrictions when the Department of Transportation has neither promulgated such a requirement nor decided that such a requirement ought not be imposed. It argues that it is free to regulate the movement of flammable and combustible materials in the absence of any express inconsistent requirements in the HMTA or the HMR. The City further cites IR–1, 43 FR 10954 (Apr. 20, 1978) in support of this proposition.

The City provides the following summary of this argument:

The only federal HMTA regulations applicable to routing are those that require shippers to avoid densely populated areas, narrow streets and alleys, even if such routes would be more convenient for the shippers, 49 C.F.R. § 397.9(a), and that require hazardous materials to be transported without "unnecessary delay," 49 C.F.R. § 177.853(a). The New York City routing regulations allow a practicable alternative to travel through densely populated areas, narrow streets and alleys, and thus are consistent with these regulations. The City's curfew requirements, which restrict the transportation of flammables and combustibles to non-rush hours, impose only the amount of delay necessary to limit hazardous cargo to less heavily trafficked periods, when the risk of accidents is reduced and the ability of emergency response personnel to reach the scene in the event of an accident is improved.

In addition, the City contends that the application here is based on many of the same arguments raised—and lost—by NTTC in *City of New York v. Ritter Transportation, Inc.,* 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd sub nom National Tank Truck Carriers, Inc. v. City of New York,* 677 F.2d 270 (2d Cir. 1982). In that case, the Federal courts refused NTTC's request for a declaratory judgment that the City's regulations for the transportation of hazardous gases were preempted by the Commerce Clause, the NMTA and 49 CFR 177.853. In denying that request for a declaratory judgment and entering the preliminary injunction requested by the City, the District Court said:

the purpose of 49 CFR 177.853(a), in requiring expeditious movement, was not to speed transportation for its own sake, but to protect the environs from unduly prolonged exposure to risks of fire and explosion.

515 F. Supp. 671.

The City summarizes this argument as follows:

The spirit of the *Ritter* opinion is equally applicable to the City's regulations for the routing of flammable materials. Clearly, the *Ritter* court upheld the principle that local authorities are generally in the best position to evaluate the special safety needs of densely populated urban areas, and that local judgment must not be disturbed absent compelling evidence to the contrary. The inconsistency petition before this forum is devoted of any facts which would warrant upsetting this established precedent, and Docket 40–B should be dismissed as insufficient as a matter of law.

D. Applicants' Rebuttal Arguments

The response to the foregoing arguments of the City, the applicants submitted rebuttal comments.

They first quote IR–3, 46 FR 18918 (Mar. 26, 1981) for the proposition that, for a local routing regulation to be consistent with the HMTA, the local jurisdiction must "act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." 46 FR 18922. Therefore, the applicants argue, the City cannot unilaterally adopt time and routing restrictions consistent with the HMTA. They contend that the City has unilaterally adopted its regulations without evaluating their impact on surrounding communities, that those restrictions are discriminatory restraints on through-shipments in DOT-specification equipment and not *bona fide* traffic control measures, that they constitute a self-serving exportation of perceived risk to surrounding communities, and that they therefore are inconsistent with the HMTA.

ATA/NTTC further assert that the City's argument about the need "to limit hazardous cargo to less heavily trafficked periods" is undermined by the City's own determination that hazardous materials can safely be transported at all hours on all City streets so long as the vehicles and drivers meet the City's regulations. The following are the applicants' conclusions concerning this argument:

As has been shown in great detail in Applicants' comments, however, equipment designed to City's specifications does not provide as high a level of safety as does equipment designed to DOT specifications. Thus, the City's ban on pickup and deliveries in interstate commerce by DOT specification equipment and the City's discriminatory restraints on routing, time-of-day and freedom of movement applicable *only to* DOT specification equipment, are clearly not necessary for safety.

What these bans and restraints do is exert a serious rerouting impact and resulting degradation of overall safety. To attempt to avoid or mitigate this adverse safety impact, the City would have to engage in a thorough coordination of routing and curfew restrictions with adjoining affected jurisdictions such as the State of New Jersey, Paramus, New Jersey, Westchester, Nassau and Suffolk Counties and Upstate New York counties and municipalities. Therefore, even though local regulations dealing with traffic control may be appropriate when, as in the case of New York City, local traffic regulations cause significant rerouting of traffic, all relevant safety factors must be considered before the regulations can be considered consistent with the HMTA. The City has not, however, acted through a process that adequately weighs the external consequences of its regulations and, therefore, the City's routing and curfew restrictions are inconsistent with the HMTA.

Finally, the applicants argue that the *Ritter* decision relied upon by the City is distinguishable from this proceeding. They assert that the Court in *Ritter* considered only the City's virtually complete ban on tank truck transportation of compressed gases, a "ban" which applied to all vehicles carrying those gases, not just those meeting HMR requirements. In contrast, they point out, the flammable materials routing and time restrictions at issue here are only applicable to equipment meeting HMR requirements and that "City-specification vehicles can go into, out of and through the City for pickups, deliveries or through shipments *without the burden of any* of the City's routing and time-of-day restrictions." Thus, they argue, the Court conceivably could find some safety benefit for the virtually total "ban" at issue in *Ritter,* but such benefits are not present here where the City discriminates in favor of those vehicles which do not provide the level of safety afforded by vehicles and equipment meeting HMR requirements.

In addition, the applicants argue that there is a more fundamental reason to invalidate the City's *Ritter*-based argument. They assert that the *Ritter* Court did not consider the impact of the City's routing restrictions on other jurisdictions—a relevant inconsistency factor under IR–3, *supra.* Although this issue was raised on appeal in that case, the Court of Appeals declined to address the issue because of a question of the parties' "standing" to raise the issue. *National Tank Truck Carriers, Inc. v. City of New York, supra.*

In summary, the applicants conclude: "That part of the *Ritter* opinion that upheld the Fire Department's routing and time-of-day restrictions as applied to tank truck transportation of hazardous compressed gases, provides no authority as to the City's regulations for routing flammable materials."

E. Ruling

1. Equipment-related Requirements

Section II D of the City's regulations allows motor vehicles conforming to the City's Fire Department specifications and under Fire Department permit to transport hazardous materials in the City without conforming to the routing, time, escort and other restrictions in the City's regulations. Section II D also requires the use of such City-permitted vehicles for deliveries for storage or use or for pickups in the City; this provision conversely bans non-City-permitted vehicles from making such deliveries and pickups even though they meet all HMR requirements.

Those requirements, however, are inconsistent under the "obstacle" test because they are inextricably related to other City provisions which already have been determined to be inconsistent with the HMTA and the HMR. In IR–22, *supra,* OHMT, applying the "obstacle" test, found inconsistent with the HMTA and the HMR the City's Bureau of Fire Prevention Directives containing the vehicle and equipment specifications and permitting system referenced by Section II D. As indicated in IR–22, 52 FR at 46584, the City may not impose routing, time, escort and other restrictions on vehicles carrying hazardous materials and then exempt all Fire Department-permitted vehicles from those restrictions—as it has done in Section II D. Routing and time requirements which are based upon an inconsistent permitting system create an obstacle to the accomplishment and execution of the HMTA and the HMR and, therefore, are themselves inconsistent with the HMTA and the HMR. Therefore, the City's ban on hazardous materials deliveries and pickups by non-City-permitted vehicles is inconsistent with the HMTA and the HMR.

In addition, all other issues aside, to be consistent with the HMTA and the HMR with respect to routing and time issues, the City would have to eliminate either (1) the inconsistent Section II D exemption for City-approved motor vehicles or (2) its routing and time restrictions.

2. Mootness of Port Authority-Related Issues

As previously indicated, the applicants withdrew their request for an inconsistency ruling concerning certain routing regulations of the Port Authority of New York and New Jersey because the regulations at issue have been amended by the Port Authority.

Although the applicants withdrew their application only with respect to the Port Authority regulations and not with respect to any of the City's regulations, the withdrawal did have an effect on applicants' challenge of the City's regulations. This effect was caused by the fact that applicants had argued that the Port Authority regulations *prohibited* most hazardous materials-carrying vehicles from exiting the George Washington Bridge via the Washington Expressway, that the City's regulations *required* them to exit that Bridge via the Washington Expressway, and that the combined effect of the Port Authority and City regulations constituted a ban of bulk transportation of flammable materials and a great restriction of dry freight transportation of flammable materials over the George Washington Bridge. The applicants contended that the combined effect of these regulations thus forced a diversion of transportation around the City, thereby adding considerable driving time and mileage to all of those hazardous materials shipments.

Because the Port Authority has amended the regulations in question to eliminate the restrictions criticized by the applicants, the issues and arguments concerning the combined effects of the Port Authority's and City's regulations have become moot.

3. City's Routing Requirements

As indicated above, insofar as the City's Section II D purports to ban non-City-permitted motor vehicles from making hazardous materials deliveries and pickups in the City, it creates an obstacle to the accomplishment and execution of the HMTA and the HMR, constitutes an inconsistent cargo containment and related equipment requirement, and, therefore, is preempted by the HMTA. IR–22, *supra.* The ruling being issued herein, therefore, addresses the City's routing requirements for through-traffic.

Under Section II B of the City's regulations, the City's routing regulations *per se* (Section IV) do not apply to deliveries and pickups generally but instead apply only to shipments passing through the City and to deliveries to piers, airports and

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shipping terminals for transshipment out of the City. Therefore, the issue to be resolved here is the consistency with the HMTA and the HMR of the City's detailed through-shipment-only routing requirements. Those requirements (Section IV of the City's Regulations) specify in detail the exact routes required to be used for transporting many hazardous materials into, through and out of the City to and from New Jersey, Westchester County, Nassau County, Suffolk County, Upstate New York, New England, LaGuardia Airport, J.F.K. International Airport, Staten Island piers, Brooklyn piers, Manhattan piers, and to certain truck and railroad terminals.

(Those regulations and Section V H 2 contain statements that the Triborough Bridge and Tunnel Authority prohibits explosives transportation on the Verrazano Narrows Bridge, the Whitestone Bridge and the Triboro Bridge; that prohibition, however, was found inconsistent in IR–20, 52 FR 24396 (June 30, 1987).)

The City relies upon two Federal Highway Administration regulations, 49 CFR 397.3 and 390.30, as support for its routing restrictions. Because these regulations were not issued under the authority of the HMTA, they are not relevant to HMTA preemption issues unless specifically incorporated by reference in the HMR. Such a specific incorporation by reference has not occurred. In fact, § 177.804 of the HMR explicitly excludes § 397.3 from its general requirement for compliance with 49 CFR Parts 390 through 397. In addition, insofar as § 390.30 is concerned, the preamble to the final rule issuing § 177.804 stated that § 177.804 did not alter the preemptive effects of Parts 390 through 397 (including § 390.30); that is, the promulgation of § 177.804 did not *ipso facto* make those sections relevant to the scope of preemption under the HMTA.

In addition, the General Counsel of DOT in 1976 issued an opinion letter to the Nuclear Regulatory Commission explaining that § 397.3 is not as broad as the City reads it. In relevant part, § 397.3 states: "Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated * * * *." That General Counsel's Opinion concluded that, in light of the regulatory history and context of that section, it "cannot be read more broadly than to require compliance with State and local laws, ordinances, and regulations relating to the 'mechanics of driving and handling of vehicles' of the type contained in Part 397." ion or authorize the City's routing regulations at issue here.

As indicated above, the relevant regulation for comparison purposes is § 177.853(a), which was promulgated under the HMTA and provides:

(a) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.

IR–3, *supra*, and IR–3 (Appeal), 47 FR 18457 (Apr. 29, 1982) are the leading inconsistency decisions examining the meaning of "unnecessary delay." At issue in those decisions was a City of Boston ban on the use of City streets for hazardous materials through-traffic. The basic test for consistency was set forth in IR–3:

> For consistency with the HMTA, however, Boston must act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules.

46 FR 18922. This standard was expanded upon in the Decision on Appeal:

> Little information is provided on the City's administrative process or the State approval process, but neither appears to have been a functional substitute for active involvement of affected jurisdictions. The process used provided public notice, as well as resulting news articles, in Boston newspapers, and public hearings were held on both the ordinance and the regulations. However, from the information provided in the proceeding on IR–3 and this appeal, it appears that Boston did not identify affected jurisdictions outside Boston or contact those jurisdictions, in preparation of either the ordinance or the regulations. We also cannot tell whether a risk analysis, or any other clear statement identifying possible impacts of the proposed actions and where those impacts might occur, was available at the time the regulations were considered.

44 FR 18460.

Although IR–3's conclusions of inconsistency concerning Boston's routing requirements were withdrawn on appeal in the interest of fairness to Boston (since the standards had not been enunciated previously), the dual requirements for a safety analysis and consultation with other affected jurisdictions remained intact in IR–3 (Appeal):

> Boston's process was largely completed before DOT had addressed highway routing of hazardous materials in any detail and was not conducted with a view to evaluation in an inconsistency ruling. As discussed above, we are of the view that Boston's apparent failure to consult with, or to consider safety impacts on, other affected jurisdictions, makes it impossible for us to conclude that the routing requirements are consistent. However, we are sensitive to the argument that, since Boston could not have known our views at the time it adopted its requirements, those requirements should not be held invalid solely on procedural grounds if their net effect is an overall increase in public safety. Therefore, if there were substantive interjurisdictional consultation or agreement that the data presented in the appeal is both accurate and representative, we would find required use of the bypass route to be consistent with the HMTA and the HMR. Because no such consultation or agreement appears to have occurred, we consider the results of the analysis indeterminate.

47 FR 18462.

These same principles were reiterated in IR–6, 48 *Fed. Reg.* 780 (Jan. 6, 1983), where a Covington, KY prenotification requirement was found inconsistent:

> * * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risk inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0–31–80 impedes both purposes. By delaying hazardous materials shipments and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extent that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude.

48 FR 788.

It is significant to note that the courts which considered and sustained a different set of New York City routing regulations (for liquefied gases) (*City of New York v. Ritter Transportation, Inc., supra; National Tank Truck Carriers, Inc. v. City of New York, supra*) did *not* discuss the necessity to coordinate those regulations with, and consider the impact upon, other affected jurisdictions. Although OHMT gives great deference to relevant court decisions in issuing its inconsistency rulings, Courts in rendering legal decisions in inconsistency preemption cases are limited to deciding the controversies and issues placed before them by the parties to those cases. The issue of consultations with affected jurisdictions was not raised by the parties in the *Ritter* Case at the District Court level, and the National Tank Truck Carriers, Inc.'s effort to raise the issue on appeal was rejected because of its lack of standing. Those cases, therefore, did not discuss an issue critical here and thus have minimal precedential value for determining the consistency of the New York City regulations at issue in this proceeding.

In summary, without adequate safety justification and appropriate coordination with, and concern for the safety of the people in, adjoining affected jurisdictions, hazardous materials highway routing restrictions (including time restrictions) which result in increased transit times are inconsistent with § 177.853 of the HMR. They are inconsistent because they cause "unnecessary" delays and thereby create obstacles to the accomplishment and execution of the HMTA and the HMR. IR–1, *supra*; IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, *supra*; IR–3 (Appeal), *supra;* IR–10, 49 FR 46645 (Nov. 27, 1984), correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46647 (Nov. 27, 1984); IR–14, 49 FR 46656 (Nov. 27, 1984); IR–16, 50 FR 20872 (May 20, 1985); IR–20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7. 1987).

Therefore, based upon the record in this proceeding, I find that Section IV of the City's Regulations is inconsistent with § 177.853.

For the same reasons, Section V D of the City's Regulations is inconsistent with the HMR. That section prohibits hazardous materials through-traffic from being fueled in the City and from stopping in the City ("except as required by traffic"). These bans on fueling and stopping are sub-categories of general bans and constitute forms of routing restrictions.

Insofar as the Section V D provisions constitute bans, they are inconsistent because the power to ban is exclusively Federal and local bans generally are inconsistent. IR–3, *supra*; IR–3 (Appeal), *supra*; IR–10, *supra*; IR–16, *supra*; IR–20, *supra*. In essence, the City's prohibition of fueling and stopping is an inconsistent attempt to resolve its perceived problems by effectively exporting them to other jurisdictions. *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981); IR–3, *supra*; 49 FR 46633 (Nov. 27, 1984).

Insofar as the Section V D provisions constitute routing restrictions, they have the same deficiencies as the City's general hazardous materials routing rules. That is, they were not preceded by a determination of effect on overall public safety or consultations with other affected jurisdictions and, therefore, are inconsistent with § 177.853(a).

On the other hand, there is no indication in the record that Section V F of the City's Regulations, which requires hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination, has any effect on other jurisdictions or otherwise is inconsistent with the HMTA or the HMR. In addition, Section V F, as local traffic control regulation, is presumed to be valid, IR–20, *supra*. Therefore, Section V F is consistent with the HMTA and the HMR.

4. City's Time Restrictions

Time restrictions have been addressed in several inconsistency rulings. The HMR requirement against which those restrictions have been tested again is § 177.853(a) of the HMR, which requires that highway carriers transport hazardous materials without unnecessary delay. To determine consistency, therefore, it is necessary to determine whether state or local time restrictions on hazardous materials transportation create "necessary" or "unnecessary" delays.

Two statewide sets of time restrictions have been found inconsistent. In IR–2, *supra*, Rhode Island's ban on liquefied gas shipments between 7–9 a.m. and 4–6 p.m. on weekdays was determined to be inconsistent with the HMTA and § 177.853(a) because it would cause significant transportation delays. The Ruling stated:

> One aspect of these delays likely involves trucks waiting in Massachusetts or Connecticut to enter Rhode Island. The Rhode Island Rule quite probably requires some motor vehicles to remain in Rhode Island's neighboring States longer than they would were such a Rule not in effect. In its attempt to protect its own citizens, Rhode Island is increasing the risks incident to such transportation to be incurred by the citizens of Massachusetts and Connecticut.

44 FR 75571. The finding of inconsistency was affirmed on appeal. IR–2 (Appeal), 45 FR 71881 (Oct. 30, 1980); Correction, 45 FR 76838 (Nov. 20, 1980). Those Rhode Island time restrictions also were held inconsistent by a Federal court in *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F. 2d 559 (1st Cir. 1983).

The other statewide time restriction on hazardous materials transportation determined to be inconsistent was Connecticut's limitation of certain radioactive materials transportation to 9 a.m. to 4 p.m. on non-holiday weekdays. IR–21, 52 FR 37072 (Oct. 2, 1987). They were found to be "delay-inducing restraints" on transportation.

On the other hand, certain city-wide time restrictions on hazardous materials transportation have been found to be at least partially consistent with the HMTA and the HMR. In IR–3, *supra*, the City of Boston's prohibition of downtown hazardous materials transportation was found consistent insofar as it concerned service from or to points of origin or destination (pickups and deliveries) within Boston. In IR–3, time-of-day restrictions were described as a subset of general routing restrictions, which, therefore, must meet the above-described requirements (Section 3, *supra*) for routing restrictions in order to be found consistent. The determination that Boston's time restrictions on pickups and deliveries were consistent was based on the principles that pickup and delivery time restrictions are less likely to affect other local jurisdictions and are a more justifiable exercise of authority over local activities than time restrictions on through-traffic. Local governments, therefore, have greater flexibility in placing time restrictions on hazardous materials pickups and deliveries than on hazardous materials through-traffic.

Although Boston's time restrictions were found in IR–3 to be inconsistent insofar as they applied to through-traffic, that finding was withdrawn on appeal because Boston's process had been virtually completed before DOT had addressed the issue of highway routing. In IR–3 (Appeal), *supra*, therefore, no decision was rendered on the consistency of Boston's time restrictions insofar as they applied to through-traffic. As with routing requirements generally, that Decision on Appeal stands for the proposition that time restrictions on through-traffic hazardous materials transportation must be preceded by consultations with, and consideration of safety impacts on, other affected jurisdictions.

At about the same time as DOT was dealing with the Boston time restrictions in IR–3 and IR–3 (Appeal), the Federal courts were considering a City of New York time restriction. *City of New York* v. *Ritter, supra, aff'd sub nom. National Tank Truck Carriers, Inc.* v. *City of New York, supra.* Although the District Court found consistent the City's requirements for the routing of trucks carrying liquified gases, it did not specifically discuss time restrictions. On appeal, the Court of Appeals affirmed the District Court's decision and specifically mentioned a ban on such transportation between 6–10 a.m. and 3–7 p.m. As indicated in the preceding discussion of routing requirements, neither court considered whether coordination with other affected jurisdictions was required. In the course of rejecting a Commerce Clause argument, the Court

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of Appeals commented that "* * * it is not clear that out-of-state truckers asserting a commercial burden have standing to represent the interests of Westchester or New Jersey residents in avoiding increased risks to which New York City might have exposed them without their political participation."

In the case at hand, the City has not availed itself of the flexibility provided in IR–3, *supra*, and IR–3 (Appeal), *supra*, to impose time restrictions on in-city pickups and deliveries. Instead it has chosen to ban pickups and deliveries by non-City-permitted vehicles—a form of discrimination found inconsistent in IR–22, *supra*, and earlier in this ruling—and then to impose time restrictions on through-traffic. Such time restrictions must be based on a safety analysis and be preceded by substantive consultations with all affected jurisdictions. IR–2, *supra*; IR–3, *supra*; IR–3 (Appeal), *supra*; IR–20, *supra*; *National Tank Truck Carriers, Inc.* v. *Burke, supra*.

Applicants have made the unrebutted assertion that the City has failed to coordinate its time restrictions with such affected jurisdictions as the States of New Jersey and Connecticut and the Counties of Nassau, Westchester and Suffolk, as well as Upstate New York Counties. In addition, the New Jersey Turnpike Authority filed the following unrebutted comments:

> The New Jersey Turnpike Authority has constantly expressed concern that these regulations were promulgated without consultation with adjacent State and local agencies. The New Jersey Turnpike Authority, operating the New Jersey Turnpike, has the responsibility to maintain a safe and efficient roadway, which roadway represents the main transportation corridor between Philadelphia and New York and the Northeast Transportation Network. Thus, of course, there is a vital and important interest by the Turnpike Authority in maintaining its responsibility that transportation proceed efficiently and safely through its facilities.
>
> The promulgation of New York City and Port Authority regulations causes concern since the time periods, that vehicles carrying certain classes of hazardous and toxic materials may travel, are so restricted as to cause vehicles to queue up at facilities of the Turnpike while awaiting to enter New York through the various Port Authority facilities. There is concern by the Turnpike Authority that this situation can result in a congregation of vehicles, particularly trucks at Turnpike Authority service areas.
>
> The Turnpike Authority, of course, has always been willing to work with its sister public agencies in order to promote and maintain the efficient and safe movement of traffic. The Turnpike Authority has concern that the City of New York and the Port Authority have not followed the effect of the Federal Department of Transportation's position regarding the movement of radioactive materials through routes designated by appropriate State agencies. 46 FR 5298, 5306 (1981). This ruling specifically comments on the need for consultation between neighboring state and local jurisdictions when any state or local jurisdiction formulates routing restrictions for radioactive waste transport.
>
> "A safety analysis as described must be performed to ensure reliable results, and the designating State agency must consult with affected local or neighboring State jurisdictions." 46 FR 5298, 5306 (1981).
>
> The New Jersey Turnpike Authority respectfully requests that the effect of these regulations be reviewed in order that the potential safety considerations on local jurisdictions be considered. The New Jersey Turnpike Authority will be willing at any time to meet and discuss its concerns with the City of New York and Port Authority.

Although the language cited by the Turnpike Authority was in the context of radioactive transportation, as indicated above, it is equally applicable to time restrictions on all hazardous materials through-traffic.

The City's "safety analysis" consists of findings that rush-hour bans on hazardous materials transportation reduce the likelihood of, and the consequences of, hazardous materials incidents and facilitate prompt emergency response to such incidents. However, this rationale is completely undercut by the City's allowing City-permitted vehicles carrying hazardous materials to ignore the time restrictions. Such discriminatory time restrictions apparently were not involved in the earlier *Ritter/NTTC/NYC* litigation, in which the District Court did find the City's container-testing requirements inconsistent with the HMTA and the HMR.

The City has failed to demonstrate an adequate safety justification for, and substantive consultation with other affected jurisdictions concerning, its time restrictions on hazardous materials transportation. Therefore, its time restrictions create unnecessary delays in the movement of hazardous materials transportation and thus are inconsistent with § 177.853(a) of the HMR.

IV. Summary

The City's routing and time restrictions have not been shown to have been based on an adequate safety analysis or to have been preceded by substantive consultations with other affected jurisdictions. They have a propensity to cause unnecessary delay, create obstacles to the accomplishment and execution of the HMTA and the HMR, are thus inconsistent with the HMTA and the HMR, and, therefore, are preempted.

V. Ruling

For the foregoing reasons and on the basis of this record, I find that Sections II B, II C, II D, III, IV, and V D of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Section V F of the City's Regulations is consistent with the HMTA and the HMR and, therefore, not preempted.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on May 5, 1988.

[FR Doc. 88–10552 Filed 5–10–88; 8:45 am]
BILLING CODE 4910–60–M

federal register

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Part III

Department of Education

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending March 31, 1988.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Progam (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending March 31, 1988, the special allowance will be paid at the following rates:

[In percent]

Applicable interest rate	Annual special allowance rate	Special allowance rate for quarter ending Dec. 31, 1987
I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981:		
7	2.50	0.625
9	.50	.125
II. GSLP, SLS, or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:		
7	2.43	.6075
8	1.43	.3575
9	.43	.1075
12	0	0
14	0	0
III. GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986:		
7	2.18	.545
8	1.18	.295
9	.18	.045
10	0	0
11	0	0
12	0	0
13	0	0
14	0	0

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (5.93 percent for the quarter ending March 31, 1988);

(b) *Step 2.*

Subtract from the average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.25 percent in the case of (i) GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, or (iii) Consolidation loans made on or after November 16, 1986; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732–4242.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: April 19, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–10551 Filed 5–10–88; 8:45 am]

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Part IV

Department of the Interior

Minerals Management Service

Economic Feasibility of Developing Deposits of Phosphorites in the Outer Continental Shelf and Exclusive Economic Zone; Offshore North Carolina; Notice

VOL 53 ISS 91 MAY 11 1988 UMI

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Economic Feasibility of Developing Deposits of Phosphorites in the Outer Continental Shelf and Exclusive Economic Zone (OCS/EEZ); Offshore North Carolina

AGENCY: Minerals Management Service, Interior.

ACTION: Notice; Request for Comments and announcement of public meeting.

SUMMARY: The purpose of this Request for Comments (Request) is to obtain information and to solicit public comment on the overall economic feasibility of developing deposits of phosphorites located in Federal waters offshore North Carolina. This request is considered important to ensure that all parties, public and private, have the opportunity to submit data and information pertinent to the marine mineral deposits which exist in these offshore areas.

In addition, the joint State of North Carolina and the Department of the Interior OCS/EEZ Task Force (Task Force) will hold a public meeting to discuss all comments submitted. The public is invited to attend any or all parts of the meeting and submit oral comments at that time.

DATES: Written comments must be hand-delivered or postmarked on or before June 10, 1988. The public meeting of the Task Force will be held at 10 a.m. on June 15, 1988, in Raleigh, North Carolina.

ADDRESSES: Respondents are requested to submit all comments, opinions, data, and information to Mr. Evan Brunson, Task Force Coordinator, Division of Coastal Management, North Carolina NRCD, P.O. Box 27687, Raleigh, North Carolina 27611. A copy of "The Economic Feasibility of Mining Phosphorite Deposits of the Continental Shelf Adjacent to North Carolina" may be obtained from Mr. Brunson at the above address or requested by telephoning (919) 733–2293.

The public meeting of the Task Force will be held at the Archdale Building, located at 19 Salisbury Street, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Don Hill, Office of Strategic and International Minerals, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Telephone (703) 285–2220.

SUPPLEMENTARY INFORMATION: The data, informational submittals, and all comments received from all sources will be reviewed and analyzed by the existing Task Force.

Background Information

Subsequent to a formal exchange of letters between Governor James G. Martin and Secretary of the Interior Donald P. Hodel in early 1986, a joint cooperative agreement was signed establishing the Task Force. The Task Force was directed to study the phosphorite deposits located off the coast of North Carolina and to submit its findings upon conclusion of an economic feasibility study.

In late 1986, the Task Force developed a proposal to study the economics of recovering phosphate minerals from the offshore Onslow Bay area, and a contract to conduct an economic feasibility study was awarded after public notice in the **Federal Register** and a Department of the Interior news release.

In November 1987, the contractor, Development Planning and Research Associates, Inc., presented its findings and conclusions to the Task Force in a single volume study entitled "The Economic Feasibility of Mining Phosphorite Deposits of the Continental Shelf Adjacent to North Carolina" (EFS). After review, analysis, and discussion of that study by the Task Force at meetings held in Raleigh, North Carolina, in November 1987 and January 1988, and after a review of the mineral data available on those deposits, the Task Force submitted a report on its findings and recommendations to the Director, Minerals Management Service (MMS), U.S. Department of the Interior. After consultation between the MMS and officials of the North Carolina Department of Natural Resources and Community Development (NRCD), it was agreed to solicit comment from firms, organizations, public groups, and any individuals who may wish to comment on the EFS and on potential marine minerals development offshore North Carolina.

It is noted that during the present phase of data gathering there is no State or Federal action to lease, or offer for public lease sale, any marine minerals in any offshore area contiguous to North Carolina. Further, there are no present plans to prepare any Environmental Impact Statement or evaluation on this area. The current Request comprises only data gathering and solicitation of comment.

As cited in the EFS, that study and current data gathering tasks are being conducted in order to assist the State of North Carolina and the Department of the Interior in reaching a decision regarding whether to proceed with other activities related to mining offshore phosphorites on the OCS/EEZ.

Guidelines

Comments, data, opinions, and any supporting information are specifically requested on the following items:

1. The EFS indicates that current data suggest that approximately 98.9 million metric tons of phosphorite deposits are located offshore North Carolina of which 20.75 million metric tons are inplace concentrates averaging 7.3 percent P205 content. It is further stated that, in the United States, phosphate rock capacity is expected to decline especially if and/or when mines in Florida become depleted.

a. Given the above, please express your opinion on the current phosphate supply within the United States;

b. Given the above, please express your opinion on the current phosphate supply outside the United States which would affect the U.S. economy as presently imported into this country and therefore affect aggregate phosphate supplies; and

c. Given the above, please express your opinion on demand for phosphate within the United States both now and within the coming 5- and 10-year period.

2. In the EFS, certain economic assumptions were made concerning the future feasibility of mining offshore phosphate deposits. Given that current estimates indicate sufficient phosphate resources for a substantial reserve offshore, please express your opinion on the following economic assumptions. If you believe these assumptions are unrealistic or too optimistic, please give your opinion on future 5- and 10-year phosphate rock prices; estimated date(s) for startup; and necessary rates of return that would be required. Also express your opinion on the overall economic feasibility of undertaking extraction of marine phosphate within this century.

a. An optimistic mining scenario projects that the world price of phosphate rock, adjusted for inflation, will rise to around $27 per ton by 1992 and ⅛ of 1 percent per year thereafter in real dollars; and

b. At a minimum, a real after-tax internal rate of return of 8 to 9 percent (exclusive of inflation) for an offshore phosphate mining operation could provide an acceptable profit margin to justify necessary capital investment for offshore recovery.

3. The EFS stated that one assumption necessary for the analysis was that the sand and clay wastes generated from the beneficiation of the phosphate could be disposed of at sea, or alternatively on a landsite. Please express your opinion on both ocean and landsite disposal of sand and clay wastes after beneficiation, including the costs attendant thereto.

4. Please provide any additional comments which you feel should be taken into account by the Task Force, including (but not limited to):

a. Current and projected phosphate mineral resource market data;

b. Current and projected technology available for phosphate mineral extraction, either offshore or onshore;

c. Specific geological, environmental, biological, and/or socioeconomic conditions which may affect (either positively or adversely) marine mineral extraction of phosphates offshore North Carolina; and

d. The overall economic feasibility of offshore mining of marine phosphates.

Dated: May 5, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 88–10564 Filed 5–10–88; 8:45 am]

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Part V

The President

Proclamation 5816—National Maritime Day, 1988

Proclamation 5817—National Fishing Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5816 of May 9, 1988

National Maritime Day, 1988

By the President of the United States of America

A Proclamation

National Maritime Day reminds us that the American merchant marine has always been essential to our national security and economic growth—and reminds us as well that the men and women of the merchant marine deserve our gratitude every day. The importance of the merchant marine to our national defense was never more clear than in World War II, when, at a cost of more than 6,000 lives and with the loss of 733 ships, the American merchant marine never faltered in delivering cargo for our Armed Forces throughout the world. Earlier this year, these merchant seafarers received veteran status for their valiant service.

Today, the merchant marine continues its roles in trade and defense—and the sailors of our commercial fleets continue to exhibit the patriotism and the many skills that have ever characterized them and their predecessors. It is truly fitting that we pause to salute these seafarers and all other Americans who support them and guard the lifelines of the sea that sustain us all.

In recognition of the importance of the merchant marine, the Congress, by joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and authorized and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when SS SAVANNAH left Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 22, 1988, as National Maritime Day. I urge the people of the United States to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10883
Filed 5-10-88; 10:54 am]
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Presidential Documents

Proclamation 5817 of May 9, 1988

National Fishing Week, 1988

By the President of the United States of America

A Proclamation

This year we again observe a period of special recognition for the place of fishing, both commercial and recreational, in American life. The lore of fishing is, of course, part of American tradition, from Huck Finn to Ernest Hemingway's Nick Adams. Today fishing continues to provide enjoyment for some 60 million American sport fishermen and women and to enhance our economy in many ways.

Our natural resources offer us some of the world's most bountiful fishing. Commercial fishing supplies us with a tremendous amount of food and other products, and recreational fishing contributes some $25 billion to our economy each year and employs some 600,000 people. Fishermen know firsthand the joys of fishing—it is an ideal family activity, for instance—and realize the need for careful stewardship of our sport and commercial fishery resources. The private sector works closely with government at the Federal, State, and local levels to fund fishery conservation restoration projects throughout the States and Territories.

Fishing's countless additions to our economy, our way of life, and our attitude toward our natural resources are all excellent reasons for the American people to celebrate National Fishing Week in a spirit of appreciation for the hardworking members of the commercial and recreational fishing industries and of the place of fishing in our national history and heritage.

The Congress, by Senate Joint Resolution 190, has designated the week of June 6 through June 12, 1988, as "National Fishing Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 6 through June 12, 1988, as National Fishing Week. I call upon the people of the United States and government officials to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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H.J. Res. 508/Pub. L. 100–310

Designating May 1988 as "Older Americans Month." (May 6, 1988; 102 Stat. 459; 1 page) Price: $1.00

H.J. Res. 541/Pub. L. 100–311

Commending the State of Israel and its people on the occasion of the fortieth anniversary of the reestablishment of the independent State of Israel. (May 6, 1988; 102 Stat. 460; 2 pages) Price: $1.00

S.J. Res. 190/Pub. L. 100–312

To authorize and request the President to issue a proclamation designating June 6–12, 1988, as "National Fishing Week." (May 6, 1988; 102 Stat. 462; 1 page) Price: $1.00

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket Nos. RM87-34-055 and RM87-34-056; Order No. 500-E]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: May 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying requests for rehearing of Order Nos. 500-C and 500-D. The rehearing applicants generally contended that the Order No. 500 take-or-pay crediting regulations improperly reduce the take-or-pay relief afforded by the interim rule adopted in Order No. 500. The Commission finds that no further changes in the interim rule adopted in Order No. 500 are necessary. However, the Commission will treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTRACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, and Charles A. Trabandt.

Thirteen requests for rehearing of Order No. 500-C [1] and four requests for rehearing of Order No. 500-D [2] have been filed with the Commission. The rehearing applicants generally contend that the amendments to the Order No. 500 take-or-pay crediting regulations, adopted in Order No. 500-C and extended in Order No. 500-D, improperly reduce the take-or-pay relief afforded by the interim rule adopted in Order No. 500.

The Commission adopted the Order No. 500 interim rule to respond to the decision the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distribution* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), on an interim basis while the Commission develops a final rule responding to the Court's decision. The Commission believes that no further changes in the interim rule are necessary in order to address the Court's concerns on an interim basis. Accordingly, the Commission denies rehearing of Order Nos. 500-C and 500-D. The Commission will, however, treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule.

The Commission orders:

The requests for rehearing of Order Nos. 500-C and 500-D are denied.

By the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commissioner Charles A. Trabandt, Dissenting in Part

I dissent in part because of serious reservations about the status of the Commission's efforts under the Interim Rule adopted in Order No. 500 and the effect of this Order on those efforts.

Ostensibly, this order on rehearing of Order Nos. 500-C and 500-D is solely justified by the rationale that denial of rehearing here is necessary to avoid any question concerning the extent to which the interim rule adopted in Order No. 500 is ripe for judicial review. Previously, the Commission had tolled rehearing of Order Nos. 500-C and 500-D. Denial of rehearing now will permit judicial review of the interim rule as currently in effect to proceed without delay, according to that rationale. Some parties may have construed Order No. 500-D to be an order on rehearing and, as a result, the last day for filing a petition for review of that order would be May 9, 1988. So, in effect, this order is postulated as a largely procedural action to avoid unnecessary litigation over judicial reviewability issues related to the current form of the interim rule. Consequently, it is argued, the Commission merely is acting to facilitate prompt judicial review of the Interim Rule in its current form without the potential complication of the tolled rehearings of Order Nos. 500-C and 500-D.

Nevertheless, the Order, in paragraph two of the slip opinion states, "The Commission believes that no further changes in the interim rule are necessary in order to address the court's concerns on an interim basis" and indicates that "the Commission will, however, treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule." Those otherwise undistinguished sentences in the second paragraph raise several serious reservations which have precipitated this separate opinion. Those reservations include the legal status of the interim rule, the status of the take-or-pay survey under Order No. 500, and the Commission's course of action to arrive finally at a Final Rule. In my judgement, this order is an appropriate point to address those reservations in the hope of clarifying the Commission's direction and making any necessary adjustments or corrections.

Recent public statements by Commission officials have indicated for the first time that the Commission will act on the Final Rule sometime by the end of 1988, but not before September. Those statements raise both legal and policy concerns, which are exacerbated by this order. As a legal matter, the courts have established standards that an agency must meet when it seeks to invoke the "good cause" exception of the Administrative Procedure Act and adopt an Interim Rule effective immediately. Those standards were articulated by the courts in a long line of cases, notably *Mid-Tex Electric Co-op v. FERC*, 822 F. 2d 1123, 1131-1134 (D.C. Cir. 1987); *American Transfer & Storage Co. v. ICC* 719 F. 2d 1283, 1292-1297 (5th Cir. 1983); and a series of decisions

[1] 52 FR 48666 (Dec. 29, 1987).
[2] 53 FR 7993 (March 8, 1988).

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involving the Clean Air Act. The cases teach that the courts will " 'narrowly construe [,] [the good cause exception] and reluctantly countenance [ ]' " agency deviations from the usual procedures of issuing a Notice of Proposed Rulemaking and inviting comment before making a rule effective. *Mid-Tex*, 822 F. 2d at 1132. In addition, because "the interim status of the * * *. rule is a significant factor * * *", *Mid-Tex*, 822 F. 2d at 1132, the agency must prove that the rule will truly last for a short period.

The court previously has rejected prior challenges to Order No. 500 under the *Mid-Tex* reasoning in large part because the Commission repeatedly has argued that we were going to fashion promptly a final rule in this docket. Now, it appears that there is no intention to act promptly and the Interim Rule will remain effective without further change for the bulk of 1988. Inevitably, those stated intentions will cause questions to be raised about our past representations and the legal status of the Interim Rule, which will be in effect for a long time and for all practical purposes now has become *de facto* permanent for the immediate and foreseeable future. Also, I am concerned that the fact of any further judicial review of the Interim Rule in its current state may be argued by some for the conclusion that the Commission should await a decision by the court before any action on the Final Rule. That would have the consequence of further locking in the near-term permanency of the Interim Rule. Under any scenario, however, I believe the Commission should move immediately to complete action on a final rule.

As a matter of policy, several comments are relevant to this discussion. First, the Full Commission, upon adoption of this Order, will have lost the capability to take additional action on Order No. 500. Moreover, as discussed in my concurring opinion to the Notice of Proposed Rulemaking for Brokering of Interstate Natural Gas Pipeline Capacity (Docket No. RM88–13–000, issued April 4, 1988), at pages 8 and 9, the Commission cannot act to modify the effective Interim Rule unless a notational item or an agenda item are scheduled by the Chairman and the staff, even if a majority of the Full Commission has concluded that modification is necessary. As a result, there now exists a virtual procedural veto over any further modifications in the hands of the Chairman and the staff. Thus, the current form of the Interim Rule can remain unmodified for an indefinite period in the future. I do not support that inevitable procedural result of this order.

Second, Order No. 500–C was an admitted compromise intended only to prevent the most significant of the inadvertent and unintended negative aspects of the take-or-pay crediting mechanism which became effective on January 1, 1988. By its own terms, many of the modifications in Order No. 500–C were scheduled to expire on March 31, 1988, because the Commission was going to act on the Final Rule by that time. Order No. 500–C also sought specific comments on further modifications to the take-or-pay crediting mechanism, which I deemed of critical importance to correct other serious deficiencies in the crediting mechanism. I still believe we should consider these further modifications to the crediting mechanism, particularly if the Interim Rule is going to remain effective for the bulk of 1988. Consequently, I do not support the statement that the Commission believes no further changes in the Interim Rule are necessary.

The essential compromise in Order No. 500–C was the decision to allow the crediting mechanism to become effective on January 1, but to act to remedy a number of the identified problems in the operation of the mechanism. As I have often stated, my support for the crediting mechanism in Order No. 500 was based solely on the fact that it was intended to be a less offensive option than full blown conditioned access. Such conditioned access would have destroyed in large measure the open access transportation program under Order No. 436, by generally restoring unconstrained pipeline monopoly power in the name of take-or-pay relief.

Order Nos. 500–B and 500–C were efforts to reduce the enormous potential dislocation of transportation, interruption of services, and disruption of natural gas markets which otherwise would have been triggered by the crediting mechanism. Those orders decidedly do not stand for the proposition, then or now, that I unconditionally support any generic take-or-pay crediting mechanism. And, several of the concepts on which we sought comment in Order No. 500–C were intended clearly to signal that result. Order No. 500–D was adopted solely because the further passage of time without action on a Final Rule made necessary extension of the expiring exemptions by March 31 to prevent chaos in the market place. Order No. 500–D did not stand for the proposition of affirmative support for the form of the crediting mechanism in the Interim Rule, but rather was an effort again to preserve on-going open access transportation. Consequently, there still is the need to complete action on the other pending modifications to the Interim Rule, which this order apparently would foreclose.

Commission officials also have made public statements about the immediate need for action on the so-called "Title I" issue in the context of our continued consideration of the take-or-pay question. The "Title I" issue, of course, is the legal issue of whether payments related to take-or-pay made by pipelines to producers under take-or-pay clauses arguably result in total payments for the contracted natural gas which exceed the Maximum Lawful Price for that particular category of gas under Title I of the Natural Gas Policy Act. The Title I issue was raised in the comments on Order No. 500 and it also has been the subject of a number of complaints filed by parties with the Commission. Also, as many as eighteen separate pending cases, or more, include the Title I issue which awaits resolution.

One of the pending complaints filed by ANR Pipeline Company in Docket No. CP86–54–000 was discussed by the court in the *Wagner & Brown v. ANR Pipeline Co.*, 837 F. 2d 199 (5th Cir. 1988). The court in that case found Wagner & Brown's attack on the District Court's dismissal of its lawsuit there to be persuasive (the District Court dismissed on the grounds of the doctrine of primary jurisdiction, because of the pending complaint at FERC), and ordered the District Court simply to stay the proceedings for 180 days to afford FERC an opportunity to rule on the ANR complaint. After the 180 days, the District Court was directed to proceed to adjudicate the rights of the parties without further deference to the expertise of FERC, to ensure that Wagner & Brown's rights will not be unreasonably delayed or lost.

The comments of some officials apparently have placed great emphasis on an assertion (which I question seriously) that the 5th Circuit in *Wagner & Brown* effectively has ordered the Commission to rule on the Title I issue within the 180 days, which runs into August of this year. On that theory, there is a good deal of attention now on the ANR complaint proceedings and much speculation that the Commission will address the issue in some procedural manner with generic impact outside the context of the Order No. 500 rulemaking proceedings. I, of course, must await the presentation of the record in any particular complaint proceeding or other specific

adjudication, before considering the relevant legal and policy issues and the substantive merits of the individual cases.

Nevertheless, I would be concerned from a general procedural point of view if the Commission now, at this late date, were to begin addressing the various take-or-pay issues piecemeal outside the generic Order No. 500 proceedings, while at the same time apparently delaying indefinitely action on the Order No. 500 Final Rule. Order No. 500 has always been intended to be a comprehensive response to the court's remand in the *AGD* case calling for reasoned decisionmaking by the Commission on the general take-or-pay issue. The Commission has officially informed the courts in other cases of its intent to use Order No. 500 as the primary vehicle for addressing the take-or-pay issue. Without opining prematurely in any way on the substantive merits of the Title I issue in any pending adjudication, I believe the Commission is obligated to consider carefully any piecemeal approach to the interrelated take-or-pay issues. My concern is heightened considerably by the data problems with the Commission's take-or-pay survey discussed below.

The very pregnant question now becomes—where are we today and where are we going on Order No. 500 and the take-or-pay issue? On April 11 and 12, 1988, the Commission held public hearings on Order No. 500 and obtained oral and written comments from witnesses representing all segments of the natural gas industry and the consuming public.

The hearings highlighted for the Full Commission the central issue in Order No. 500, which is—simply stated—What is the exact nature of the take-or-pay problem today in mid-1988? As Commissioner Sousa observed, quoting Yogi Berra, it was "deja vu all over again." While there were many fine statements of testimony on open access transportation, the take-or-pay crediting mechanism, the take-or-pay direct billing mechanism, the Gas Inventory Charge, and other more specific aspects of Order No. 500, the major focus of all the testimony taken together was on the nature of the take-or-pay problem. In many respects, it was, so to speak, a "tale of two take-or-pay surveys."

First, the Interstate Natural Gas Association of America (INGAA) with a series of pipeline top executives presented the Commission with a summary of a new take-or-pay survey of its member pipelines. A formal report of the survey was submitted to the Commission after the hearings. The INGAA survey, supported by each of the top pipeline executives in succession, concludes that there still is a major and broad-based take-or-pay problem in the interstate pipeline industry which will continue into the future. The testimony indicated that there was post-settlement take-or-pay exposure of $7.4 billion at the end of 1987 affecting 19 of the 26 major pipelines who were responsible for 90% of flowing gas. The survey report indicated that $8 billion in exposure was resolved by voluntary renegotiation of contracts in 1987. INGAA indicated that of the total $7.4 billion exposure at the end of 1987, $2.9 billion (39%) was under negotiation, $2.2 billion (30%) was in litigation or arbitration, and $2.3 billion (31%) had not advanced yet to active negotiation with producers. Also, INGAA stated that 62% of the exposure was associated with contracts involving jurisdictional natural gas. The testimony indicated that take-or-pay exposure will continue to build in 1988, because Order No. 500 and the crediting mechanism have been largely ineffective in mitigating accrual of additional exposure under open access transportation. Consequently, it was argued, the only option for the Commission at this time is to invoke its authority under section 5 of the NGA on a generic basis to strike down prospectively the offending take-or-pay clauses in existing contracts, for which it is argued further we have clear and unambiguous authority in the face of these survey results.

Second, the Natural Gas Supply Association (NGSA) with a series of major and independent producers testified to an entirely different take-or-pay situation. A new NGSA survey submitted to the Commission at the hearing provides dramatically different results than the INGAA report and testimony. NGSA states that $14.5 billion of $17.2 billion in total take-or-pay exposure accrued by interstate pipelines was resolved by the end of 1987, or 84% of the total resolved, leaving $2.7 billion outstanding. Compare that figure to the INGAA figure of $7.4 billion. Further, according to NGSA, $3.1 billion of otherwise accruing new 1988 potential take-or-pay exposure already has been resolved in contract negotiations. NGSA argues that only four pipelines have 54% of the liabilities in the current survey and 80% is accounted for by eight pipelines. Purchases from those eight pipelines, according to NGSA, represent only 46% of pipeline gas purchases from producers.

The 84% resolution figure in the most recent survey compares favorably to the 71% in the 1987 NGSA survey and the 59% in the 1986 NGSA survey, argues NGSA, supporting the conclusion that the process of voluntary renegotiation has been successful. Finally, NGSA's survey indicates that 93% of gas released by pipelines and sold to non-pipeline parties provided volumetric take-or-pay relief, supporting the assertion that open access transportation should not cause substantial new take-or-pay liabilities. NGSA concludes. Consequently, NGSA concludes that there is no demonstrated need for a generic section 5 action and, further, the Commission should abandon the generic take-or-pay crediting mechanism, particularly the cross-crediting feature.

Other producer witnesses representing the large majority of the producer segment of the industry testified that there has been substantial renegotiation over the last year, particularly in the second half of 1987. Almost every producer reported that the large percentage of outstanding take-or-pay claims had been resolved in contract renegotiations, with the individual totals in the hundreds of millions and some close to or in excess of a billion dollars. Most had outstanding claims with only one or two pipelines, according to the witnesses, and in several cases future exposure, as well as past exposure, had been resolved through voluntary renegotiation. The message echoed repeatedly by the individual producers, major and independent, was that the voluntary renegotiations had resolved all but a relatively small portion of outstanding claims, as reflected more generally in the NGSA survey. Additionally, many producer witnesses challenged directly the assertion that the Commission had the legal authority to invoke section 5 on any generic basis under these facts in this rulemaking docket.

Last August, the Commission in Order No. 500 initiated a take-or-pay data survey as part of our discussion about "Commission Action under NGA Section 5." We stated then,

The Commission will aggregate the data submitted and analyze it promptly. If the information demonstrates that action under NGA section 5, or any other action (such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems, the Commission will then consider action.

Since August, the Commission repeatedly has argued in subsequent cases and generic rulemakings, such as Order No. 490 Abandonment Policy, that

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Order No. 500 was where we ultimately would determine the nature and address the take-or-pay issue. Now, some nine months later, the Full Commission has not received a single report of any kind from our own survey commissioned in Order No. 500. In fact, to date, the Full Commission has not even been provided access to the unaggregated data submitted by the individual interstate pipelines and individual producers. Unfortunately, as a result, the Full Commission, at this point, still is proceeding in a total analytical vacuum to consider the testimony received in April.

Furthermore, the Commission survey required the submission of take-or-pay data as of July 1, 1987. Much of the data submitted apparently reflects take-or-pay exposure, payments and resolution as of the end of 1986. Clearly, after the April testimony, our own survey is now woefully stale and largely out of date. And, whenever the Full Commission is finally presented a report of the data filed as of the first half of last year, any analytical results and conclusions will be of highly questionable value in the context of forming the basis for considering action under section 5, or any other authorities for that matter, in a final rule. Consequently, it appears inevitable that the Full Commission must act promptly to develop a revised approach to our take-or-pay data survey and subsequent consideration of action. At a minimum, it appears intuitively obvious that we should seek another round of take-or-pay data, which is as current and accurate as possible to reflect the take-or-pay realities in mid-1988. Put another way, it is now obvious that we must resolve the apparent tale of two take-or-pay surveys, before we attempt to fashion a Final Rule.

Chairman Jim Nugent of the Texas Railroad Commission perhaps put it best in his testimony. He stated that Commission's view that the *AGD* Court had vacated and remanded Order No. 436 to this Commission for reasoned decisionmaking on the take-or-pay issue. That reasoned decisionmaking, in the judgment of the Railroad Commission, requires this Commission to take the following analytical steps:

1. What is a clear definition of the magnitude and parameters of any existing contract problem?
2. Is the problem generic or quite specific to certain pipelines?
3. What is the *appropriate* remedy tailored to the *specific* problem?
4. Do the costs of the remedy exceed the perceived benefits?
5. Develop some form of streamlined regulatory approach to avoid unnecessary regulation of the industry.

In the context of that testimony from the Chairman of the Texas Railroad Commission, we now are faced with the serious dilemma that we are still locked in step 1. We are still trying to determine in some analytically acceptable fashion what the exact nature of the problem really is at this time.

Unless and until we can resolve that threshold issue, it is premature in my judgment to be debating the legality or the advisability of a generic section 5 action, just as we concluded last August. The exact nature of the take-or-pay problem in mid-1988 must be the analytical foundation on which the Full Commission must construct *any* Final Rule in the Order No. 500 docket. If voluntary renegotiation, which has been the centerpiece of our natural gas policies for the past four years, is as successful as claimed by NGSA and producers, we may get one analytical result and one related conclusion for action. If, in the alternative, the INGAA and interstate pipeline survey is persuasive, we may get a different analytical result and a related different conclusion as to necessary action. I, therefore, urge the Full Commission to resolve the "tale of two take-or-pay surveys" in the testimony received in April as the absolutely necessary first step in our prompt, future consideration of Order No. 500.

To that end, I have requested that the Full Commission receive a status report on the survey and a brief summary of the data submitted on a pipeline and producer specific basis. In any event, in light of the extended passage of time, the staff also should arrange for direct access to the individual pipeline and producer submissions for each Commissioner and his staff, in order that we may review the data directly if we choose to do so. For instance, I would plan to review the submissions of selected pipelines and producers under appropriate procedures respecting confidentiality, as we always do.

Additionally, I have recommended that the Commission require updated data from all participants to the take-or-pay survey.

The data should be updated to include (1) supplemental information on accrued take-or-pay exposure and liability and (2) any further resolution since July 1, 1987, of take-or-pay matters as of this time. The additional data should be submitted by June 15, 1988. Consequently, I also have requested that the Commission, as soon as possible, consider an order which would require all participants in the take-or-pay survey to make such a supplemental filing to update their original submissions.

I would conclude by expressing the serious concern that the Commission at this time appears to be adrift in a hostile sea of analytical ignorance and uncertainty, without a clear and certain course to resolution of the take-or-pay issue and a Final Rule under Order No. 500. Additionally, our action in this Order appears to lock in place the Interim Rule in its current form for the foreseeable future, without the direction to reach a Final Rule at a particular point on our regulatory chart. As Gibran stated in *The Prophet*, "If either your sails or your rudder be broken, you can but toss and drift, or else be held at a standstill in mid-sea." It is long since past time, in my judgment, that the Commission develop a course of action to obtain promptly the necessary data and analysis to define the actual take-or-pay problem, be it largely generic to most pipelines or quite specific to a few pipelines and be it largely resolved by voluntary renegotiation or continuing to grow despite the Interim Rule in Order No. 500.

As soon as that definition is complete, the Commission then must proceed promptly to complete action on the Final Rule with full consideration of all comments in the extensive record adduced from public comments, including the April hearings. The Commission has an obligation to the natural gas industry and the American consumer to complete action as soon as the required analysis is available. That obligation quite simply is not satisfied by continuing to "toss and drift or else be held at a standstill in mid-sea", as now, and allow the Interim Rule to remain in effect unmodified for the foreseeable future, as this Order would suggest.

Charles A. Trabandt,
Commissioner.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 79N-0269]

Iron and Iron Salts; Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are generally recognized as safe (GRAS) as direct human food ingredients. However, the agency is not taking any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA is also affirming that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. FDA is not affirming that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of the lack of data on their safety and use. Additionally, FDA is not taking any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATES: Effective June 13, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1296, 184.1301, 184.1304, 184.1307d, 184.1308, 184.1315, and 184.1375 effective on June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 21, 1987 (52 FR 13086), FDA published a proposal to affirm that elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are GRAS for use as direct human food ingredients in conventional food and in infant formula. (FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in 21 CFR 170.3(n).) However, the agency did not propose to take any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA also proposed to affirm that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. Also in this proposal, FDA proposed not to take any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging material. Additionally, FDA proposed not to affirm that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of a lack of safety and use data. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with 21 CFR 170.35, copies of the scientific literature review and of the report of the Select Committee on GRAS Substances (the Select Committee) on iron and iron salts are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of iron and iron salts, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Specific Prior-Sanctioned Food Ingredients (21 CFR Part 181), or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for iron and iron salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received three comments in response to the agency's proposal on iron and iron salts. Two comments were from distributors and suppliers of iron and iron salts. The other comment was submitted on behalf of a chemical laboratory. A summary of each of these comments and the agency s responses follow:

1. One comment from a distributor and supplier expressed its support of the proposal.

The agency acknowledges this comment. Because this comment agrees with the proposal, the agency has not made any changes in the regulations as a result of this comment.

2. Another comment from a chemical laboratory addressed the description for the preparation of ferrous lactate in proposed § 184.1311. This comment asserted that ferrous lactate can also be prepared by reacting sodium lactate with ferrous sulfate. Additionally, this comment recommended that the Japanese Standards of Food additives (JSFA-V; 1986) be consulted in developing specifications for ferrous lactate.

The agency has carefully evaluated this comment. The agency agrees that the comment describes a reaction that is used to produce food-grade ferrous lactate. Therefore, the agency has modified the regulation on ferrous lactate to include the reaction of sodium lactate plus ferrous sulfate in the manufacture of this substance. The agency will consider the specifications listed in the Japanese Standards of Food Additives in developing specifications for ferrous lactate.

3. One comment from a distributor objected to the agency's decision not to affirm as GRAS iron peptonate because of a lack of consumer exposure data and safety information. The company that submitted this comment stated that it has been importing iron peptonate and selling it in this country. The company stated that "during the last 1½ years [it had] sold a total of approximately 30,000 pounds." The company also stated that "the material is being used by our customers in dietary supplements, veterinary and possibly other uses." However, the comment provided no documentation to substantiate these claims.

In the preamble to the proposal, the agency stated that consumer exposure data and relevant safety information are necessary to evaluate the safety of a food ingredient. Unless such data and information are forthcoming the agency has no basis on which to affirm that the use of a substance is GRAS. No safety information has been provided for iron peptonate, nor has documented evidence been submitted to show that this substance is being used as a food

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ingredient and to provide a basis for developing consumer exposure data. In the absence of such information and evidence, the agency cannot affirm that the use of iron peptonate as a food ingredient is GRAS.

Persons seeking FDA approval for the direct food use of iron peptonate may submit a food additive or GRAS affirmation petition in accordance with 21 CFR 170.35 or 171.1.

In several of the regulations listed in the proposal, the agency inadvertently omitted the oxidation state for iron in the more formalized nomenclature for iron compounds. For example, in proposed § 184.1298 *Ferric citrate*, the term "iron citrate" should have been listed as "iron (III) citrate" in paragraph (a). Therefore, the agency is making this minor correction in this regulation, and in several others, to reflect the more formalized nomenclature. Additionally, FDA has edited paragraph (c) of the regulations to clarify it and to eliminate redundancies. Also, the agency has corrected the molecular formula in § 184.1304.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for several of the iron compounds being affirmed as GRAS for use as direct human food ingredients and would incorporate these specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, those iron compounds for direct food use must comply with the description in the regulations and be of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of April 21, 1987 (52 FR 13086). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Docket Management Branch (address above).

List of Subjects

21 CFR Part 182

Food ingredients, Spices and flavorings.

21 CFR Part 184

Food ingredients, Incorporation by reference.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 182, 184, and 186 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.90 [Amended]

2. Section 182.90 *Substances migrating to food from paper and paperboard products* is amended by removing the entries for "Ferric sulfate," "Ferrous sulfate," "Iron reduced," and "Oxides of iron."

§§ 182.8301, 182.8304, 182.8306, 182.8308, 182.8311, 182.8315, and 182.8375 [Removed]

3. Sections 182.8301 *Ferric phosphate*, § 182.8304 *Ferric pyrophosphate*, § 182.8306 *Ferric sodium pyrophosphate*, § 182.8308 *Ferrous gluconate*, § 182.8311 *Ferrous lactate*, § 182.8315 *Ferrous sulfate*, and § 182.8375 *Iron reduced* are removed.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

5. A new § 184.1298 is added to read as follows:

§ 184.1298 Ferric ammonium citrate.

(a) Ferric ammonium citrate (iron (III) ammonium citrate) is prepared by the reaction of ferric hydroxide with citric acid, followed by treatment with ammonium hydroxide, evaporating, and drying. The resulting product occurs in two forms depending on the stoichiometry of the initial reactants.

(1) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1332–98–5) is a complex salt of undetermined structure composed of 16.5 to 18.5 percent iron, approximately 9 percent ammonia, and 65 percent citric acid and occurs as reddish brown or garnet red scales or granules or as a brownish-yellowish powder.

(2) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1333–00–2) is a complex salt of undetermined structure composed of 14.5 to 16 percent iron, approximately 7.5 percent ammonia, and 75 percent citric acid and occurs as thin transparent green scales, as granules, as a powder, or as transparent green crystals.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 116–117 (Ferric ammonium citrate, brown) and p. 117 (Ferric ammonium citrate, green), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

6. A new § 184.1297 is added to read as follows:

§ 184.1297 Ferric chloride.

(a) Ferric chloride (iron (III) chloride, $FeCl_3$, CAS Reg. No. 7705–08–0) may be prepared from iron and chlorine or from ferric oxide and hydrogen chloride. The pure material occurs as hydroscopic, hexagonal, dark crystals. Ferric chloride hexahydrate (iron (III) chloride hexahydrate, $FeCl_3 \cdot 6H_2O$, CAS Reg. No. 10025–77–1) is readily formed when ferric chloride is exposed to moisture.

(b) The Food and Drug Administration is developing food-grade specifications for ferric chloride in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. A new § 184.1298 is added to read as follows:

§ 184.1298 Ferric citrate.

(a) Ferric citrate (iron (III) citrate, $C_6H_5FeO_7$, CAS Reg. No. 2338–05–8) is prepared from reaction of citric acid with ferric hydroxide. It is a compound of indefinite ratio of citric acid and iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferric citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

8) A new § 184.1301 is added to read as follows:

§ 184.1301 Ferric phosphate.

(a) Ferric phosphate (ferric orthophosphate, iron (III) phosphate, $FePO_4 \cdot xH_2O$, CAS Reg. No. 10045–86–0) is an odorless, yellowish-white to buff-colored powder and contains from one to four molecules of water of hydration. It is prepared by reaction of sodium phosphate with ferric chloride or ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 118–120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

9. A new § 184.1304 is added to read as follows:

§ 184.1304 Ferric pyrophosphate.

(a) Ferric pyrophosphate (iron (III) pyrophosphate, $Fe_4(P_2O_7)_3 \cdot xH_2O$, CAS Reg. No. 10058–44–3) is a tan or yellowish white colorless powder. It is prepared by reacting sodium pyrophosphate with ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been wavied.

10. A new § 184.1307 is added to read as follows:

§ 184.1307 Ferric sulfate.

(a) Ferric sulfate (iron (III) sulfate, $Fe_2(SO_4)_3$, CAS Reg. No. 10028–22–5) is a yellow substance that may be prepared by oxidizing iron (II) sulfate or by treating ferric oxide or ferric hydroxide with sulfuric acid.

(b) The Food and Drug Administration is developing food-grade specifications for ferric sulfate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

11. A new § 184.1307a is added to read as follows:

§ 184.1307a Ferrous ascorbate.

(a) Ferrous ascorbate (CAS Reg. No. 14536–17–5) is a reaction product of ferrous hydroxide and ascorbic acid. It is a blue-violet product containing 16 percent iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous ascorbate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2))

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

12. A new § 184.1307b is added to read as follows:

§ 184.1307b Ferrous carbonate.

(a) Ferrous carbonate (iron (II) carbonate, $FeCO_3$, CAS Reg. No. 563–71–3) is an odorless, white solid prepared by treating solutions of iron (II) salts with alkali carbonate salts.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous carbonate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Foods, Drug, and Cosmetic Act

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(the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

13. A new § 184.1307c is added to read as follows:

§ 184.1307c Ferrous citrate.

(a) Ferrous citrate (iron (II) citrate, $(C_6H_6FeO_7)$, CAS Reg. No. 23383–11–1) is a slightly colored powder or white crystals. It is prepared from the reaction of sodium citrate with ferrous sulfate or by direct action of citric acid on iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

14. A new § 184.1307d is added to read as follows:

§ 184.1307d Ferrous fumarate.

(a) Ferrous fumarate (iron (II) fumarate, $(C_4H_2FeO_4)$, CAS Reg. No. 141–01–5) is an odorless, reddish-orange to reddish-brown powder. It may contain soft lumps that produce a yellow streak when crushed. It is prepared by admixing hot solutions of ferrous sulfate and sodium fumarate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 120–122, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

15. A new § 184.1308 is added to read as follows:

§ 184.1308 Ferrous gluconate.

(a) Ferrous gluconate (iron (II) gluconate dihydrate, $C_{12}H_{22}FeO_{14}.2H_2O$, CAS Reg. No. 6047-12-7) is a fine yellowish-gray or pale greenish-yellow powder or granules. It is prepared by reacting hot solutions of barium or calcium gluconate with ferrous sulfate or by heating freshly prepared ferrous carbonate with gluconic acid in aqueous solution.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 122–123, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1200 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

16. A new § 184.1311 is added to read as follows:

§ 184.1311 Ferrous lactate.

(a) Ferrous lactate (iron (II) lactate, $C_6H_{10}FeO_6$, CAS Reg. No. 5905–52–2) in the trihydrate form is a greenish-white powder of crystalline mass. It is prepared by reacting calcium lactate or sodium lactate with ferrous sulfate or by direct reaction of lactic acid with iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

17. A new § 184.1315 is added to read as follows:

§ 184.1315 Ferrous sulfate.

(a) Ferrous sulfate heptahydrate (iron (II) sulfate heptahydrate, $FeSO_4.7H_2O$, CAS Reg. No. 7782–63–0) is prepared by the action of sulfuric acid on iron. It occurs as pale, bluish-green crystals or granules. Progressive heating of ferrous sulfate heptahydrate produces ferrous sulfate (dried). Ferrous sulfate (dried) consists primarily of ferrous sulfate monohydrate (CAS Reg. No. 17375–41–6) with varying amounts of ferrous sulfate tetrahydrate (CAS Reg. No. 20906–72–9) and occurs as a grayish-white to buff-colored powder.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 123 (Ferrous sulfate heptahydrate) and p. 124 (ferrous sulfate, dried), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or available for inspection at the Office of Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter and as a processing aid as defined in § 170.3(o)(24) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

18. A new § 184.1375 is added to read as follows:

§ 184.1375 Iron, elemental.

(a) Iron, elemental (CAS Reg. No. 7439–89–6) is metallic iron obtained by any of the following processes: reduced iron, electrolytic iron, and carbonyl iron.

(1) Reduced iron is prepared by reacting ground ferric oxide with hydrogen or carbon monoxide at an elevated temperature. The process results in a grayish-black powder, all of which should pass through a 100-mesh sieve. It is lusterless or has not more than a slight luster. When viewed under a microscope, it appears as an amorphous powder free from particles having a crystalline structure. It is stable in dry air.

(2) Electrolytic iron is prepared by electrodeposition. It is an amorphous, lusterless, grayish-black powder. It is stable in dry air.

(3) Carbonyl iron is prepared by the decomposition of iron pentacarbonyl. It occurs as a dark gray powder. When viewed under a microscope, it appears as spheres built up with concentric shells. It is stable in dry air.

(b) Iron, elemental (carbonyl, electrolytic, or reduced) meets the specifications of the Food Chemicals Codex, 3d Ed. (1981) (iron, carbonyl, p. 151; iron, electrolytic, pp. 151–152; iron, reduced; pp. 152–153), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C. 350a(g)] or with regulations promulgated under section 412(a)(2) of the act [21 U.S.C. 350a(a)(2)].

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

19. The authority citation for 21 CFR Part 186 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1786 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

20. A new § 186.1300 is added to read as follows:

§ 186.1300 Ferric oxide.

(a) Ferric oxide (iron (III) oxide, Fe_2O_3, CAS Reg. No. 1309–37–1) occurs naturally as the mineral hematite. It may be prepared synthetically by heating brown iron hydroxide oxide. The product is red-brown to black trigonal crystals.

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

21. A new § 186.1374 is added to read as follows:

§ 186.1374 Iron oxides.

(a) Iron oxides (oxides of iron, CAS Reg. No. 97705–33–85) are undefined mixtures of iron (II) oxide (CAS Reg. No. 1345–25–1, black cubic crystals) and iron (III) oxide (CAS Reg. No. 1309–37–1, red-brown to black trigonal crystals).

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10562 Filed 5–11–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 145

[T.D. 8200]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987). These regulations affect manufacturers, producers, importers, dealers, and lessors of these articles and will provide them with the guidance needed to comply with the law. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATE: Generally, these regulations apply to heavy trucks, truck trailers and semitrailers, and tractors sold on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:LR:T (LR–1–86). Telephone (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1986 (Code), as amended by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 100–17, 101 Stat. 256, 258–59) ("the Act"), relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. The amendments modify temporary regulations previously promulgated under section 512 of the Highway Revenue Act of 1982 (Title V of the

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Surface Transportation Assistance Act). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Section 4051(a) of the Code imposes a 12 percent tax on the first retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Section 505(a) of the Act amended section 4052(a)(1) to provide that the term "first retail sale" means "the first sale, for a purpose other than for resale or leasing in a long-term lease, after manufacture, production, or importation".

Under section 4052(a)(1), the leasing of an article on a long-term basis is treated as the first retail sale, and the tax under section 4051 is imposed on such article at the time the article is leased, rather than at the time the manufacturer, producer, or importer sells the article to the lessor. Section 4052(f) provides that the term "long-term lease" means any lease with a term of 1 year or more. The leasing of an article on a short-term basis (*i.e.*, less than one year) before the first retail sale of such article is treated as a taxable use under section 4052(a)(3), and the tax under section 4051 is imposed at the time of that lease.

The tax imposed on either a long-term or short-term lease is computed on a price established by the Commissioner that is based on the retail sales price of similar articles (a constructive sales price). See discussion of "Presumptive retail sales price" below.

Definition of First Retail Sale

Temporary regulations § 145.4052–1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, were revised by temporary regulations published in the **Federal Register** on September 13, 1985 (T.D. 8050) (50 FR 37350). Those revised regulations provided that a sale by a manufacturer, producer, or importer is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the article, or (b) the seller and the purchaser are registered under section 4222 (prescribing rules relating to the registration required to make tax-free sales), and the seller receives a certificate indicating the purchaser's intent to resell the articles.

Section 4052, as amended by the Act, treats a long-term lease as a first retail sale. Sections 145.4052–1 (a)(1), (a)(2), and (a)(3) of these temporary regulations set forth certification requirements that determine when the first retail sale of an article occurs.

Certification Requirements

Section 145.4052–1(a)(2) of these temporary regulations provides that the sale of an article will be taxable as the first retail sale unless (a) the sale is a tax-free sale under section 4221, (b) the purchaser and seller are registered under § 48.4222(a)–1 and the seller in good faith accepts a proper certification from the purchaser that the purchaser intends either to lease the article on a long-term basis or to resell the article, or (c) there has been a prior taxable sale of the article. "Taxable sale" for these purposes includes a long-term lease or a taxable use, such as a short-term lease. If the purchaser does not meet one of the exceptions in § 1.4052–1(a)(2), the seller will be liable for the tax imposed on the sale.

Thus, § 145.4052–1(a)(2) allows a purchaser who intends either to lease on a long-term basis or to resell an article to purchase such article tax-free. In such cases the tax under section 4051 will be imposed on a subsequent taxable sale or use of the article.

Paragraphs (a)(4) and (d)(3)(ii) of § 145.4052–1 set forth special rules regarding imposition of the tax. Section 145.4052–1(a)(4) provides that in certain circumstances tax will be imposed on the resale or long-term lease of a tax-paid trailer or semitrailer and the seller of such trailer or semitrailer shall be liable for such tax. Under § 145.4052–1(a)(4) the seller may in such cases reduce the tax liability by the amount of tax previously paid with respect to the article.

Section 145.4052–1(d)(3)(ii) provides that the tax under section 4051 shall be computed on a price that includes a presumed markup when a person other than a manufacturer, producer, or importer is designated as the seller of an article but (a) such person does not perform significant activities relating to the processing of the sale of the article and (b) the principal purpose of processing the sale through such person is to avoid or evade the presumed markup imposed under section 4052(b)(4)(A)(ii).

Presumptive Retail Sales Price

In order to achieve comparable tax treatment among long-term leases, sales by manufacturers, producers, or importers, and retail sales by other persons, sections 505(b) and 506(a) of the Act amended section 4052(b) by adding new paragraphs (b)-(3) and (4). These paragraphs were added to ensure that the tax base of most transactions considered to be taxable sales subject to section 4051 includes either an actual or a presumptive retail markup. As a result, sections 4052(b) (3) and (4) provide that the tax imposed by section 4051 shall, under certain circumstances, be computed on a presumptive retail sales price (*i.e.*, a tax base that includes a presumed markup).

Section 4052(b)(3) provides that the tax imposed on any long-term lease that is treated as the first retail sale of an article shall be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to a presumed markup. Section 145.4052–1(c)(5) of the regulations is amended to provide that the tax imposed on a short-term lease by a person other than a manufacturer, producer or importer shall also be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to the presumed markup. However, the leasing of an article by a person other than a manufacturer, producer, or importer will not be subject to tax under section 4051 if such article was previously subject to tax under that section.

Similarly, section 4052(b)(4) provides that the tax imposed on a sale by a manufacturer, producer, or importer shall be computed on a tax base that includes an actual or constructive sales price of the article and an amount equal to a presumed markup.

For purposes of these temporary regulations, a single presumed markup percentage of four percent has been established for most articles subject to section 4051. However, truck trailers, semitrailers, and remanufactured trucks and tractors are subject to a zero percent markup. The imposition of a presumed markup percentage greater than zero percent on these articles is not necessary to carry out the purpose of the section 4051 retail tax because retail sales of trailers and semitrailers are generally made by trailer manufacturers. Similarly, remanufactured trucks and tractors generally are not sold through an established retail distribution network.

The presumed markup percentage is defined under section 4052(b)(3)(B) as "the average markup percentage of retailers of articles of the type involved." The Internal Revenue Service is currently examining whether it is appropriate to exercise its regulatory authority to establish additional markup percentages for different categories of articles. A tax system involving different markups raises a variety of problems relating to administration and enforcement. Therefore, the Service is requesting comments and suggestions relating to this particular issue in order to administer this tax fairly and efficiently.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Drafting Information

The principal author of these regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 145

Extended due date for payment of certain fuel taxes, Floor stocks refunds, Floor stocks tax, Highway Revenue Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 145 is amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1987 (PUB. L. 100–17)

Paragraph 1. The authority for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052–1 also issued under 26 U.S.C. 4052 (d).

Par. 2. Section 145.4052–1 is amended as follows:

1. Paragraph (a) is revised to read as set forth below.

2. The heading and text for paragraph (b) are revised to read as set forth below.

3. Paragraph (c)(1) is amended by deleting the first sentence and inserting in its place "For purposes of this section and § 145.4051–1, the use of an article will be deemed to be a sale of the article." and by removing from the second sentence the words "unless such article is thereafter sold for resale".

4. Paragraph (c)(5) is amended by deleting the first sentence from paragraph (c)(5)(i) and inserting in its place "Except as provided in paragraphs (c)(5)(ii) and (c)(5)(iii) of this section," and by adding a new paragraph (c)(5)(iii) as set forth below.

5. Paragraph (d) is amended by redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(8), (d)(9), and (d)(10), respectively, and by adding new paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7) to read as set forth below.

6. Paragraph (d)(2) is amended by removing the words "paragraph (d)(2)(iii)" from the second sentence of paragraph (d)(2)(iii) and by inserting, in their place, the words "paragraph (d)(8)(iii)".

7. Paragraph (f) is removed.

8. Paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as set forth below.

9. A new paragraph (g) is added to read as set forth below.

§ 145.4052–1 Special rules and definitions.

(a) *First retail sale*—(1) *General rule.* For purposes of section 4051(a)(1) and § 145.4051–1, the term "first retail sale" means a taxable sale described in paragraph (a)(2) of this seciton.

(2) *Taxable sale.* The sale of an article is a taxable sale unless—

(i) The sale is a tax-free sale under section 4221,

(ii) Both the purchaser and the seller are registered under section 4222 and § 48.4222(a)–1 and the seller has in good faith accepted from the purchaser a proper certification, as provided in paragraph (a)(6) of this section, executed in good faith, that the purchaser intends to lease such article on a long-term basis or resell such articles, or

(iii) There has been a prior taxable sale of the article. Notwithstanding the preceding clause, the sale of a chassis or body of a trailer or semitrailer ("trailer or semitrailer") less than six months after a taxable sale of the article shall be treated as a taxable sale.

(3) *Computation of tax*—(i) *In general.* If the sale of an article is a taxable sale under paragraph (a)(2) of this section, the tax shall be computed on the price as determined under paragraph (d) of this section.

(ii) *Exception.* If the taxable sale of an article is a taxable use of such article under paragraph (c) of this section, the tax shall be computed on the price as determined under paragraph (c) of this section.

(4) *Special rule for tax-paid trailer and semitrailer.* In the case of a taxable sale of a trailer or semitrailer less than six months after a taxable sale of the article, the seller in the subsequent sale ("the subsequent seller") may claim a credit equal to the amount of tax previously paid by another person ("the previous taxpayer") under section 4051(a)(1) with respect to the prior taxable sale of the article. The credit for such tax will be allowed to the subsequent seller only if the form on which the credit is claimed is accompanied by a statement, signed by the subsequent seller, indicating the amount of the credit being claimed under this paragraph (a)(4) and stating that—

(i) The subsequent seller has not been repaid any portion of such tax by the previous taxpayer,

(ii) The subsequent seller has not provided the previous taxpayer with written consent to allow the previous taxpayer to claim a credit or refund of such tax under section 6416 (a), and

(iii) The subsequent seller has records (*e.g.* invoices) substantiating the amount of tax paid by the previous taxpayer with respect to the prior taxable sale of such article.

In no case shall the amount of the credit allowable under this paragraph (a)(4) with respect to an article exceed the tax liability of the subsequent seller with respect to the sale of such article.

(5) *No installment payments of tax.* If a lease or an installment sale (or another form of sale under which the sales price is paid in installments) is, or is deemed to be, a taxable sale under this section, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax is deferred by reason of the fact that the sales price is paid in installments.

(6) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a nontaxable sale to the purchaser. If it is impracticable to furnish a separate certificate for each sale because of the frequency of sales to such purchaser, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The purchaser may revoke the certificate by sending a written revocation to the seller. The certificate and proper records of invoices, orders, etc., relating to sales made pursuant to such certificate, must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificate shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am _____ (Title) of _____, (Name of purchaser) that I am authorized to execute this certificate, and that:

(Check appropriate line)

_____the article or articles specified in the accompanying order, or on the reverse side hereof, (or)

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_____all orders placed by the purchaser for the period commencing _____ (Date) (period not to exceed 12 calendar quarters), are purchased either for resale or for lease on a long-term basis.

I have filed Form 637 and have received registration number _____.

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

_____

(Signature)

_____

(Address)

(7) *Registration.* Section 4222 and the regulations thereunder shall apply to persons making sales which are not treated as taxable sales pursuant to paragraph (a)(2)(ii) of this section.

(b) *Tax treatment of leases*—(1) *Long-term lease.* For purposes of this section and § 145.4051–1, the leasing of an article on a long-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a sale of the article and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies. Thus, if a dealer purchases an article tax-free under an exception contained in paragraph (a)(2) of this section and then leases the article on a long-term basis, the leasing of the article will be treated as a taxable sale.

(2) *Short-term lease.* For purposes of this section and § 145.4051–1, the leasing of an article on a short-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a taxable use of such article under paragraph (c) of this section and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies.

(3) *Computation of tax*—(i) *Long-term lease by manufacturer, producer, or importer.* When a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(4)(i) of this section. The manufacturer, producer, or importer shall be liable for the tax as if the article were sold at retail by such manufacturer, importer, or retailer.

(ii) *Long-term lease by persons other than manufacturer, producer, or importer.* When a person other than a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(5)(i) of this section. Such person shall be liable for the tax as if the article were sold at retail by such person.

* * * * *

(c) *Use treated as a sale.* * * *

(5) *Computation of tax*—(i) * * *

(iii) In the case of any short-term lease (as defined in paragraph (d)(6) of this section) by any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable use of such article under paragraph (b)(2) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(A) The price (as determined under paragraph (d) of this section) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use or lease by the lessor, plus

(B) The product of the sum described in paragraph (c)(5)(iii)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

* * * * *

(d) *Determination of price*—(1) *In general.* * * *

(2) *Presumptive retail sales price where tax paid by manufacturer, producer, or importer*—(i) *In general.* In the case of a taxable sale (other than a taxable sale described in paragraph (b)(1) of this section) where a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price equal to the sum of—

(A) The price that would (but for this paragraph (d)(2)) be determined under this paragraph (d), and

(B) The product of the price determined under paragraph (d)(2)(i)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(ii) *Related person defined*—(A) *In general.* Except as provided in paragraph (d)(2)(ii)(B) of this section, the term "related person" means any person that is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

(B) *Exception for permanent retail establishment.* A person shall not be treated as a related person with respect to the sale of any article if—

(*1*) Such person sells the article through a permanent retail establishment in the normal course of business of being a retailer, and

(*2*) Such person has records (*e.g.,* invoices) that substantiate that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(3) *Retail sales price where tax paid by person other than a manufacturer, producer, importer, or related person.*—(i) *In general.* In the case of a taxable sale (other than a taxable sale defined in paragraph (b)(1) of this section) where a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(1) of this section.

(ii) *Exception.* When a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(2)(i) of this section if—

(A) Such person does not perform any significant activities relating to the processing of the sale of an article,

(B) The principal purpose for processing the sale through such person is to avoid or evade the presumed markup under paragraph (d)(2)(i)(B) of this section, and

(C) Such person does not have records (*e.g.,* invoices) substantiating that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage as defined in paragraph (d)(7) of this section.

(4) *Presumptive retail sales price in the case of a lease by a manufacturer, producer, or importer.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) by a manufacturer, producer, importer, or a related person (as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) A constructive sales price established by the Commissioner based on the price at which such article would be sold by a manufacturer, producer, or importer in a sale other than a taxable sale (*e.g.,* a sale to which the exceptions contained in paragraph (a)(2)(ii) of this section applies) on the date the lease is made, and

(ii) The product of the constructive sales price referred to in paragraph (d)(4)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(5) *Presumptive retail sales price in the case of a long-term lease by any other person.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) of an article in which any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) is the lessor and the long-term lease is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) The price (as determined under this paragraph (d)) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use by the lessee or leased in connection with such long-term lease, and

(ii) The product of the sum described in paragraph (d)(5)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(6) *Long-term and short-term lease defined.* For purposes of this section, the term "long-term lease" means any lease with a term of one year or more. The term "short-term lease" means any lease with a term of less than one year. In determining a lease term, options to renew shall be taken into account. In addition, two or more successive leases that are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar article, shall be treated as one lease.

(7) *Presumed markup percentage*—(i) *In general.* Except as provided in paragraph (d)(7)(ii) of this section, for purposes of this section the term "presumed markup percentage" shall be four percent.

(ii) *Exceptions.* For purposes of this section the "presumed markup percentage" for trailers, semitrailers, and remanufactured automobile truck chassis and bodies and tractors shall be zero percent. For purposes of this section an article is a remanufactured article if—

(A) The refurbishing, renovation, or repair of the article causes it to be subject to the tax imposed by section 4051, and

(B) Before remanufacture, such article was previously subject to the tax imposed by section 4051 (or section 4061 prior to its repeal).

* * * * *

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). M manufactures trucks that are taxable under section 4051. On July 11, 1988, D, a corporation that is a dealer, purchases one truck from M for $50,000. M does not own any stock in D. Prior to this transaction, D gave M a certificate that meets the specifications detailed in paragraph (a)(6) of this section. The certificate states that the truck will be resold or leased on a long-term basis. M's sale to D is not a taxable sale of the truck (within the meaning of paragraph (a)(2) of this section). On July 20, 1988, D resells the truck to a purchaser, P, for $52,000. The additional $2,000 includes the dealer's mark-up, costs of transporting the truck from M to D, and overhead. No parts or accessories were added to the truck. P did not give D a certificate and did not have an agreement with D under which all vehicles purchased were to be resold. The sale of the truck by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of $6,240 (12%×$52,000).

Example (2). Assume the same facts as in example (1) except that M owns 80 percent of D's stock. D and M are members of the same controlled group (within the meaning of section 5061(e)(3)). Therefore, D is a related person under paragraph (d)(2)(ii)(A) of this section. On July 20, 1988, D sells the truck to P for $51,000. D does not have records substantiating that the truck was sold for a price that included a markup equal to or greater than the presumed markup percentage. The tax on the sale of the truck to P is determined under paragraph (d)(2)(i) of this section. Therefore, D has a tax liability of $6,240 (12%×($50,000+($50,000×4%))).

Example (3). Assume the same facts as in example (1) except that D does not perform any significant activities relating to the sale. Assume further that the principal purpose for processing the sale through D is to avoid the presumed markup and that D did not sell the truck for a price that included a markup equal to or greater than the presumed markup percentage. D, however, is designated the seller of the truck on the invoice. Pursuant to paragraph (d)(3)(ii) of this section, the price of the truck shall be computed on a price determined under paragraph (d)(2)(i). Therefore, D, the taxpayer, has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (4). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck for a two-year period (*i.e.,* on a long-term basis) to L, a lessee. D's leasing of the truck to L is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(5)(i) of this section. D has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (5). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck to L for a six-month period (*i.e.,* a short-term lease). The lease is treated as a use under paragraph (b)(2) of this section. The tax is computed on the price as determined under paragraph (c)(5) of this section. D has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (6). Assume the same facts as in example (1) except that D does not give M a certificate. The sale by M to D is a taxable sale of the truck under paragraph (a)(2) of this section. M's tax liability is $6,240 [12%×($50,000+($50,000×4%))]. On July 20, 1988, D leases the truck to L, a lessee. The lease has a two-year term. Since the lease to L occurred after a taxable sale of the truck, paragraph (b)(1) of this section does not apply, and the lease is not treated as a taxable sale under this section.

Example (7). M manufactures trucks that are taxable under section 4051. On July 11, 1988, M leases a truck to a lessee, L. The lease has a two-year term. The lease is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(4)(i) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (d)(4)(i) of this section, is $50,000. M has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (8). Assume the same facts as in example (7) except that the lease has a six-month term. The lease is treated as a taxable use under paragraph (b)(2) of this section and the tax is computed under paragraph (c)(5) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (c)(5)(i) of this section, is $52,000. M has a tax liability of $6,240(12%×$52,000).

Example (9). M manufactures truck trailers and semitrailers that are taxable under section 4051. On July 5, 1988, D, a dealer, purchases a trailer from M for $10,000. Prior to this transaction, D did not give M a certificate and D did not have an agreement with M to resell all articles purchased. The sale by M to D is a taxable sale of the trailer under paragraph (a)(2) of this section. M has a tax liability of $1,200(12%×$10,000+($10,000×0%)].

Example (10). Assume the same facts as in example (9) except that on July 12, 1988, D resells the trailer to P, a purchaser, for $10,500 (the additional $500 includes the dealer's markup, costs of transporting the trailer from M to D, and overhead). P did not give D a certificate and P did not have an agreement with D that stipulates that all articles purchased were to be leased on a long-term basis or resold. The sale of the trailer by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of $1,260(12%×$10,500). D, however, may file for a credit of $1,200 under section 6402 provided that the requirements of paragraph (a)(4) of this section are met.

* * * * *

(g) *Effective date*—(1) *In general.* Except as provided below, the provisions of this section shall be effective for articles sold or leased on or after April 1, 1983.

(2) *Certain sales made prior to November 12, 1985.* If a sale to a lessor before November 12, 1985, was not taxable under § 145.4052–1 of the temporary regulations contained in 26 CFR Part 145 revised as of April 1, 1983, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the prior regulations will be treated as a taxable sale for purposes

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of this section. The tax on such subsequent sale will be based on a price determined under paragraph (d) of this section. For example, if an article was sold to a purchaser who intended to lease such article long-term, the sale would not have been taxable under the prior regulations even though the seller did not receive a certificate of the purchaser's intent to lease the vehicle. If such a sale was treated as nontaxable by the parties, and the purchaser leases it long-term on or after October 1, 1987, the lease will be treated as a taxable sale of the article. The tax is to be computed under paragraph (b)(3)(ii) of this section and the price will be computed under paragraph (d)(5).

(3) *Certain sales made after November 11, 1985, and before October 1, 1987*—(i) *Sales not treated as taxable by purchaser and seller.* If a sale to a purchaser after November 11, 1985, and before October 1, 1987, was not treated as taxable by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the temporary regulations published in the September 13, 1985, issue of the Federal Register (50 FR 37350) ("the interim regulations") will be treated as a taxable sale for purposes of this section. The tax on a sale or lease after September 30, 1987, will be based on a price determined under paragraph (d) of this section. For example, if a vehicle was sold on January 3, 1987, to a purchaser who intended to resell the article and who was not in the business of leasing to any extent, the sale would not have been taxable under the interim regulations even though the seller did not receive a certificate indicating the purchaser's intent to resell the article. If such a sale was not treated as a taxable sale by the parties, and the purchaser resells the article, the resale will be treated as a taxable sale of the article under paragraph (a)(2) of this section.

(ii) *Sales treated as first retail sale by purchaser and seller.* If the sale of an article after November 11, 1985, and before October 1, 1987, was treated as a taxable sale by the parties and tax was paid with respect to the article under the interim regulations, the subsequent sale of the article by the purchaser will not be treated as a taxable sale under paragraph (a)(2) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 19, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-10635 Filed 5-11-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Standards for Underground Coal Mines; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for ventilation at underground coal mines. The hearings will be held in Pittsburgh, Pennsylvania; Lexington, Kentucky; Birmingham, Alabama; Evansville, Indiana; grand Junction, Colorado; and Charleston, West Virginia. Each hearing will cover the major issues raised by comments submitted in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. Immediately before each hearing, and unallotted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

June 6, 1988, Pittsburgh, Pennsylvania.
June 7, 1988, Lexington, Kentucky.
June 9, 1988, Birmingham, Alabama.
June 16, 1988, Evansville, Indiana.
June 20, 1988, Grand Junction, Colorado.
June 22, 1988, Charleston, West Virginia.

ADDRESSES: The hearings will be held at the following locations:

June 6, 1988, Ramada Inn, Airport, Ballrooms A&B, 1412 Beers School Road, Coraopolis, Pennsylvania 15108.
June 7, 1988, Lexington Hilton Inn, Keeneland Hall, 1938 Stanton Way, Lexington, Kentucky 40511.
June 9, 1988, Birmingham–Jefferson Civic Center, No. 1 Civic Center Plaza, 21st Street and 10th Avenue North, Birmingham, Alabama 35203.
June 16, 1988, Evansville Executive Inn, Green Convention Center, Indiana C Room, 600 Walnut Street, Evansville, Indiana 47708.
June 20, 1988, Grand Junction Holiday Inn, Grand Mesa Room, 755 Horizon Drive, Grand Junction, Colorado 81506.
June 22, 1988, Holiday Inn, Heart of Town-House Room, Corner of Washington and Broad Streets, Charleston, West Virginia 25301.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 75 for ventilation in underground coal mines (53 FR 2382). The written comment period for this proposed rule will end on May 27, 1988. In the comments to the proposed rule, MSHA received requests for public hearings.

The purpose of the public hearings is to receive relevant comment and respond to questions about the proposed rule. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until July 22, 1988.

Issues

Commenters questioned many specific provisions contained in the proposal. However, some of the provisions raised issues of particular concern and are discussed below. MSHA will specifically address these issues at the public hearings and solicits comments on them in addition to any other aspects of the proposed rule.

A. Use of Belt Haulage Entry as Intake Air Course.

In the proposal, § 75.350 would allow belt haulage entires to be used as intake air courses to ventilate working faces, provided that an early warning fire detection system is used. The existing regulation allows MSHA's district manager to approve belt haulage entries to be used as intake air courses to ventilate a working face in mines opened prior to 1970. The proposal would allow such use of belt haulage entries at any mine, provided certain precautions are taken. MSHA solicits comments on the overall impact of this proposal.

B. Ventilation in Anthracite Mines.

Since publication of the proposed rule, MSHA has re-evaluated certain provisions in light of the Agency's field experience, and believes that the proposal may not appropriately address mining practices and conditions in anthracite mines. Due to the pitch of the coal seam, the mining conditions, mining equipment, and mining methods in anthracite coal mines vary dramatically from bituminous coal mines. The differences may, therefore, require that anthracite mines be addressed in a different manner than bituminous mines. Accordingly, MSHA solicits comments on whether certain provisions of the ventilation proposal, for example, escapeways, main mine fans, and weekly examinations, are appropriate for anthracite mines and, if not, what changes should be made. The Agency also solicits comment on whether there are additional issues which should be considered concerning ventilation in anthracite mines. The Agency intends to articulate a refinement of its position with respect to anthracite mines at the public hearings.

C. Travelway On Tailgate Side For Longwall Face.

The proposal includes a provision in § 75.383 which would generally require a travelway off the tailgate side of a longwall face for use by miners in the event of an emergency. At this stage in the rulemaking process, the Agency is particularly interested in comments concerning procedures that should be followed if a roof fall or other blockage in the tailgate impedes travel. The Agency is considering including a provision in the final rule which would require mining to cease until MSHA has been notified, appropriate evaluation of the area involved has occurred, and the operator has proposed a course of action that addresses either clean-up or mining past the fall. MSHA solicits comments on whether such procedures should include consultation with the miners' representatives and whether the procedures should be approved by the Agency. Comments are particularly invited on (1) procedures for addressing a roof fall in the tailgate; (2) how best to implement such procedures; and (3) the impact of these procedures.

D. Other Issues.

The proposal revises existing rules for escapeways and generally requires two escapeways ventilated with separate splits of intake air from each working section. As under the existing provisions, MSHA intends that the proposal would apply not only to areas where coal is being produced, but to all areas where miners are working underground. Specifically, this would include sections where face equipment is being installed or removed. MSHA solicits comments on this issue.

MSHA also requests comments on the presence and impact of silicone bearing products used in underground coal mines. The Agency is particularly interested in the poisoning effect of silicone bearing products on methane detection equipment or other instrumentation.

Date: May 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-10641 Filed 5-11-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS JUNEAU (LPD–10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JUNEAU (LPD–10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead lights less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(i)	Vertical separation of masthead lights used when towing less than required by Annex I, Sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, Sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, Sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS JUNEAU	LPD-10							X	55

Date: April 22, 1988.

Approved:

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 88-10601 Filed 5-11-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 88-015]

Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of Special Local Regulation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.304, for the annual Harvard-Yale rowing regatta for specific time periods between June 4, 1988 and June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

Drafting Information

The drafters of this notice are LT L. BROWN, project officer, First Coast Guard District Boating Safety Division, and CDR M.A. LEONE, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulations governing the 1988 running of the Harvard-Yale Regatta on the Thames River, New London, CT. The regulations, 33 CFR 100.304, will be in effect from 6:00 p.m. to 7:00 p.m. on June 4, 1988 and again from 10:00 a.m. to 1:00 p.m. on June 5, 1988. Combination crew races will occur on June 4, 1988 and the featured spectator event of freshman, junior varsity, and varsity races will be held during the above times on June 5, 1988. If inclement weather causes postponement of the crew races, the regulations will be in effect from 10:00 a.m. to 1:00 p.m. on June 6, 1988.

Dated: May 2, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-10621 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD1-87-087]

Special Anchorage Area; Keansburg, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in the waters adjacent to the Town of Keansburg, New Jersey. This area will provide an anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. Raritan Bay is currently experiencing a resurgence of recreational boating during the summer months. There are no such anchorages currently available in the immediate area.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) A.J. DiNinno, Vessel Movement Officer, Captain of the Port, New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: On February 16, 1988 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 4422). Interested persons were requested to submit written comments and no comments were received.

Drafting Information

The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of Comments

As previously stated, no comments regarding the NPRM were received. The area being designated as a special anchorage lies wholly within Federal Anchorage 28 and as such does not change the use of the area. The creation of a separate area for smaller vessels to anchor provides an added measure of safety. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Environmental Impact

These proposed regulations do not alter the use of this area in any way. It has been and will continue to be a place for vessels to anchor.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, thus a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In Section 110.60, one new paragraph (z) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(z) *Point Comfort at Keansburg, New Jersey.* This special anchorage is adjacent to the amusement pier at Point Comfort on Raritan Bay and is bounded as follows: beginning on the Keansburg shore at latitude 40°27'19" North longitude 74°08'25" West; to latitude 40°27'38" North longitude 74°08'52" West; to latitude 40°27'52" North longitude 74°08'32" West; to latitude 40°27'50" North longitude 74°07'45" West; to latitude 40°27'14" North longtitude 74°07'46" West; and thence returning westward along the shoreline to the point of origin.

Dated: April 18, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-10618 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 1-88-009]

Temporary Drawbridge Operation Regulations; Shark River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of New Jersey Department of Transportation with the concurrence of New Jersey Transit Railroad Operations, the Coast Guard is issuing temporary regulations governing the draws of Route 71 bridge, mile 0.8, the railroad bridge, mile 0.9, and the Route 35 bridge, mile 0.9, all at Avon, New Jersey, by permitting the number of openings to be limited from 7 a.m. to 9 a.m. and from 3 p.m. to 7 p.m. Monday through Friday, and from 9 a.m. to 9 p.m. on Saturdays, Sundays and federal holidays. The opening of the bridges may be delayed not more than 10 minutes after the signal to open is given for the passing of a scheduled train or bunching of commercial vessels. This temporary change is being made because periods of peak vehicular traffic have increased due to the Ocean Avenue bridge reconstruction and diversion of same to the Route 71 and Route 35 bridges. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations are effective for the period April 15, 1988 through October 31, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District at (212) 668-7994.

SUPPLEMENTARY INFORMATION: On April 15, 1988, the Coast Guard published a proposed temporary rule (53 FR 12535) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1-666 dated April 5, 1988. In each notice interested persons were given until April 18 and April 14, 1988, respectively, to submit comments.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and Cdr. R. B. Ellard, project attorney.

Discussion of Comments

No comments were received in response to the Notice of Proposed Rulemaking or Public Notice 1-666 and no changes have been made to the proposed rule.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These temporary changes in the regulations will not prevent mariners from transiting the bridges when needed but only require advance planning. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations (CFR) is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.751 is amended by suspending for the period April 15 through October 31, 1988, paragraph (b) and adding a new paragraph (d) effective for the period April 15 through October 31, 1988, to read as follows:

§ 117.751 Shark River.

* * * * *

(d) From April 15 through October 31, 1988, the draws shall open on signal; except that from 7 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Mondays through Fridays, except federal holidays and from 9 a.m. to 9 p.m. on Saturdays, Sundays and federal holidays, the draws need be opened only on the hour and half hour for waiting vessels. The opening of the draws may be delayed not more than 10 minutes after the signal to open is given to facilitate passage of scheduled trains or bunching of commercial vessels.

* * * * *

Dated: May 5, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-10619 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Active Military Service Certified as Such Under Section 401 of Pub. L. 95-202

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from a recent decision of the Secretary of the Air Force that the service of members of the group known as the American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941 to August 15, 1945, constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by the VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of that group who were discharged under honorable conditions.

EFFECTIVE DATE: This amendment is effective January 19, 1988, the date that the Secretary of the Air Force held that such service constitutes active duty.

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FOR FURTHER INFORMATION CONTACT: Robert M. White (211B), Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Pursuant to 38 CFR 1.12(b) the VA finds that prior publication of this change for public notice and comment is impracticable and unnecessary. The VA has no discretion in this matter. The decision of the Secretary of the Air Force concerning active duty status is binding on the VA. Consequently, a proposed notice will not be published. For this reason, this change is also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it does not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this final regulatory amendment change is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is not affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 15, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, *Adjudication,* is amended by adding paragraph § 3.7(x)(15) to read as follows:

§ 3.7 Persons included.

* * * * *

(x) * * *

(15) American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945.

(Authority: Pub. L. 95–202, sec. 401.)

[FR Doc. 88–10628 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–85]

Submission of Paid Freight Bills/Invoices, Commercial Bills of Lading, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) amends the Federal Property Management Regulations by requiring agencies to ensure that contractors, doing business with the United States Government under a cost-reimbursement contract (CRC), submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit. Some certifying and paying offices are unaware that contractors under a CRC are required to submit commercial bills of lading to GSA for audit. This rule clarifies GSA's audit function and establishes uniform procedures for submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation by contractors under a CRC.

EFFECTIVE DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (commercial 202–786–3065) or (FTS 786–3065).

SUPPLEMENTARY INFORMATION: A proposed rulemaking was published in the **Federal Register** on July 5, 1985 (50 FR 27625), inviting comments for 30 days ending August 5, 1985. The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

Discussion of Major Comments, Suggestions, and Our Determinations and Actions Taken

There were three respondents contended that requiring contractors under a cost-reimbursement contract (CRC) to submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit would increase administrative costs and duplicate the audit and review already done by contracting officers. However, contracting officers have neither the authority nor the resources to perform the technical audit of transportation bills, a function which has resided with the Office of Transportation Audits since it was transferred from the General Accounting Office to GSA in 1975. For that reason, this rule will not duplicate nor increase any administrative costs.

The Federal agency noted that the Federal Acquisition Regulations (FAR) do not require contractors under a CRC to submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit. GSA's Office of Federal Acquisition and Regulatory Policy has confirmed that this is true. We have, therefore, withheld publication of this final rule until now so that a companion revision to the FAR, requiring submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit, can be prepared and staffed. Those actions have been completed, and a companion revision to the FAR will be published shortly.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding the following entry:

101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

Subpart 101–41.8—Transportation Disbursement Procedures

3. Section 101–41.807–4 is added to read as follows:

§ 101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

(a) Agencies shall ensure that legible copies of paid freight bills/invoices, commercial bills of lading (CBL's), and supporting documentation for transportation services, for the account of and on which the United States will assume freight charges that were paid by a Federal agency's contractors under a cost-reimbursement contract and their first-tier subcontractors, under a cost-reimbursement contract, are submitted to GSA for audit.

(b) Agencies shall ensure that each prime contractor forwards legible copies of paid freight bills/invoices, CBL's, and supporting documentation as soon as possible following the end of the month, in one package to the General Services Administration, (FWAA/C), 18th and F Streets NW., Washington, DC 20405. The shipment shall include the required documents for all first-tier subcontractors under a cost-reimbursement subcontract. If, however, the inclusion of the transportation documents for any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

(c) Agencies shall ensure that any original transportation bills or other documents requested by GSA be forwarded promptly by the contractor to GSA. The agency shall ensure that the contractor stamp or write the name of the contracting agency on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the sender shall accompany each shipment of transportation documents. The copy, duly signed and acknowledging receipt of the shipment, will be returned by GSA. The statement should show:

(1) The name and address of the prime contractor;

(2) The contract symbol and number;

(3) The name and address of the field office or headquarters office administering the contract;

(4) The total number of bills submitted; and

(5) A listing of the respective amounts paid, or in lieu of such listing, an adding machine tape of the amounts paid showing the contractor's voucher or check numbers.

Dated: March 2, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–10652 Filed 5–11–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Policy Regarding Harvest of Migratory Birds in Alaska During the Closed Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final policy statement.

SUMMARY: The Fish and Wildlife Service published in the December 31, 1987, **Federal Register** (52 FR 49449) a proposal on policies and actions with regard to subsistence taking of migratory birds in Alaska. Attention was focused on taking during the closed season provided by the 1916 Migratory Bird Treaty Act (Treaty Act). The public comment period on the proposal closed on March 31, 1988. The Service received approximately 100 written comments and held numerous meetings with subsistence users and conservation groups throughout the state.

After carefully considering public response, the Service has adopted a final policy. The policy is a statement about the priorities the Service will follow in Alaska to protect waterfowl during the closed season. It concentrates enforcement efforts on violations that have the most serious impacts on the resource and focuses special attention on the protection of four diminished populations of geese: Cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. It also seeks to prevent the use of private and charter aircraft to assist in hunting. As a second level of priority, the policy gives attention to protecting other species of waterfowl during nesting, brood-rearing, and flightless periods. The policy states that limited harvest of migratory birds for food in unforeseen emergency situations will not be prosecuted.

DATES: The Service's policy in Alaska for enforcement of the closed season under the Treaty Act became effective on April 22, 1988. The policy will remain in force until modified or rescinded.

ADDRESSES: Address correspondence to: Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telephone: (907) 786–3545.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Assistant Regional Director, Refuges and Wildlife, (907) 786–3545; or R. David Purinton, Assistant Regional Director, Division of Law Enforcement, (907) 786–3311.

SUPPLEMENTARY INFORMATION: In the December 31, 1987, **Federal Register**, the Service gave notice of, and invited public comments on, a proposed policy statement regarding subsistence taking of migratory birds in Alaska during the closed season as provided by the 1918 Treaty Act and implemented by regulations. The notice also terminated a proposed rulemaking announced to the public on May 19, 1986, (51 FR 18340) to permit and regulate subsistence hunting for migratory birds in Alaska. The rulemaking was halted by an October 9, 1987, opinion from the U.S. Court of Appeals for the Ninth Circuit that any regulations for subsistence hunting promulgated pursuant to the 1978 Fish and Wildlife Improvement Act must be in accordance with the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Canadian Treaty) implemented by the Treaty Act. The Canadian Treaty specifically prohibits hunting for most migratory birds between March 10 and September 1. Finally, the notice indicated Service support for continuation of a Yukon-Kuskokwim Delta Goose Management Plan, a cooperative management agreement for the conservation of geese that nest primarily in western Alaska.

The December 31, 1987, notice stated that comments on the proposed policy should be received on or before February 29, 1988. Many requests were received to extend the comment period. Both written and verbal comments indicated a lack of understanding by much of the general public of the reasons for the policy and the manner in which it would be implemented. The comment period therefore was extended to March 31, 1988 (53 FR 6853). The Service used the extended comment period to provide additional information on the proposed policy and to obtain additional comments from the public, particularly from those residents of rural

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Alaska who will be most affected by the policy.

Issuance by the Service of a law enforcement policy is not subject to the normal notice and comment procedures of the Administrative Procedures Act. However, the legal status of subsistence hunting in Alaska has for four years been the subject of litigation that has been confusing to the public. In light of this, and because of the great interest in the issue and need for understanding of the policy throughout the state, the Service believed that it would be beneficial in this instance to provide for public review of the proposed policy. Comments received are evaluated below.

Review of Public Comments

During the public comment period, the Service conducted over 50 meetings with subsistence users and conservation organizations throughout Alaska. Most of these meetings were in rural communities. Service personnel also participated in several radio and television interview programs on the proposed policy and newspaper coverage of the issue was widespread. Approximately 100 written comments were received, about 80 of which originated from within Alaska. Following are summaries of major areas of concern identified by the public and Service responses to those concerns.

1. *Statewide application of the policy to all waterfowl.* A number of comments concerned the broad application of the policy statewide, including waterfowl (ducks, geese, and swans) other than the four species of Arctic nesting geese covered by the Yukon-Kuskokwim Delta Goose Management Plan. "Statewide policy * * * should be focused on specific bird populations where biological problems can be documented (e.g., Yukon-Kuskokwim Delta), hunting incidents which are abusive or blatant deviations from normal hunting practices in an area, and cases where large, wasteful harvests are found." "* * * the Service must recognize that in regions other than the Yukon-Kuskokwim Delta, subsistence hunters do not perceive any decline in the availability of waterfowl resources."

There were, however, some comments that the emphasis of the proposed policy on the four Arctic nesting geese with identified population declines could lead to overlooking problems with other waterfowl. "We are concerned that emphasis on geese may imply that other regulations will be disregarded when a comprehensive policy on migratory bird hunting for all of Alaska is needed. The policy should be carefully redrafted to make this clear."

Response. The final policy applies throughout Alaska and retains a provision that gives attention to the protection of waterfowl in general during the nesting, brood-rearing, and flightless periods. The Service believes that this is necessary for responsible management not only of low populations of geese, but of other waterfowl during the most vulnerable period of their life cycle. This emphasizes preventative maintenance so that other populations will not decline like the four species of Arctic nesting geese. The policy is clear that primary law enforcement emphasis will be directed toward the four species of geese, and will only secondarily be directed toward waterfowl in general.

2. *Policy lacks clear definitions on levels of enforcement and emergency situations.* There were many comments stating that the proposed enforcement policy was ambiguous, particularly in regard to the anticipated level and type of enforcement and emergency situations. "The policy document should contain a realistic description of the general level of enforcement that is intended in different areas of the state." "The FWS enforcement policy should also be more specific about the measures it proposes to use." "We would like for the Service to clearly spell out what 'emergency food' means." "Does the FWS policy mean that all the Hostess twinkies and wheat thins and canned milk have to empty before villagers can legally go out and hunt?"

Response. The Service intends to place its primary focus on protection of the four diminished populations of geese. On the Yukon-Kuskokwim Delta, attention will be directed to seeking compliance with the management principles identified in the Yukon-Kuskokwim Delta Goose Management Plan. In areas outside the Yukon-Kuskokwim Delta, the Service also will devote its efforts to protecting the four species of geese and to identifying other species and circumstances where additional protection is needed. In 1988, the focus of Service activities in regard to the policy will be on providing information to affected parties, not on mounting a greatly expanded enforcement effort.

Regarding "emergency situations," it is the Service's intent that this provision equate to the provision in Alaska's game regulations allowing an individual to take game for food during the closed season in case of "dire emergency." It is not intended to apply broadly to entire communities or regions.

3. *Increased educational efforts, community involvement, and cooperative management.* The need for more community involvement in management activities was stressed in a large number of comments on the proposed policy. Several people expressed the need for an increased educational program. "We encourage the Service to do all it can to educate the Alaskan Natives about the deleterious effects of harvesting the 'principal,' rather than the 'interest,' that can occur when the taking occurs in the spring." "Go to the village; tell the people what you are trying to accomplish."

Other comments expressed a need for development of cooperative management plans. It was felt that such plans would result in a more coordinated effort to rectify resource management concerns. The Alaska Federation of Natives "strongly recommends that a cooperative management agreement between FWS and the Native community or communities in a regional geographic area precede * * * developing an enforcement policy. Native egg-gatherers and hunters have a strong interest in ensuring the long-term conservation of migratory waterfowl." "Without such a cooperative effort, it will be difficult to gain cooperation in efforts to enhance populations of identified species."

Response. The Service concurs that there is a need for expanded informational efforts in rural Alaska regarding the status and management of waterfowl populations in general and of diminished populations of geese in particular. The Service has expanded its educational program both on and outside of the Yukon-Kuskokwim Delta and will continue to stress communication and information in the future to achieve compliance with the policy. The Service continues to view the Yukon-Kuskokwim Delta Goose Management Plan as an essential element in the conservation of the four geese. Similar cooperative efforts may be of benefit in other areas and circumstances. The Service does not believe that all such efforts need to result in formal, written agreements, but agrees that improved communications and common understanding are necessary for management of waterfowl resources in a manner that is supported by local rural residents.

4. *Ban on use of charter or private aircraft for hunting migratory birds.* Several comments were received relative to this provision of the proposed policy. Most of these comments supported the ban and, in several instances, recommended placing additional restrictions on aircraft and other methods of transportation. "The Kwethluk IRA is very much opposed to use of chartered or private aircraft for the purpose of hunting, shipping or transportation of illegally caught migratory birds." "Using aircraft and ATVs to harvest in the closed season should be strictly prohibited." "Add a sentence which will make it clear that this policy does not apply to regular commercial flights to and from villages."

Two letters specifically opposed the ban on aircraft use. "Your proposal to prohibit the use of private or charter aircraft for purposes of hunting or transporting migratory birds during the closed season is perplexing. I am not aware of any particular abuse of spring and summer hunting with aircraft." "If the FWS wants to limit or restrict aircraft use, it should not use a 'subsistence' argument."

Response. Preventing use of private or charter aircraft for purposes of hunting migratory birds during the closed season is retained as a provision of the final policy. The Service does not believe that use of such aircraft constitutes a legitimate mode of access for subsistence hunting. Aircraft are known to be used for closed season hunting by residents of some urban areas and large regional service communities where sources of food are plentiful. In addition, use of aircraft in spring provides access to hunting areas that otherwise would be left undisturbed. The enforcement emphasis on preventing use of aircraft does not apply to the use of commercial flights that rural residents now use routinely to travel to and from their villages.

5. *Full enforcement of Migratory Bird Treaty Act closed season.* Several comments stated that the Service should strictly enforce the closed season provisions of the Treaty Act, allowing no hunting during the closed season. One group stated that it "is unconditionally opposed to all hunting (and/or trapping) of all species of migratory birds, or the taking of their eggs, during spring and summer." "To be complete, the policy must state clearly that the taking of migratory birds in Alaska during the period March 10 to September 1 is unlawful, and that customary and traditional uses of migratory birds during that period will not, without more, constitute an 'unforeseen emergency situation.' "

Response. With very limited exceptions, the hunting of migratory birds between March 10 and September 1 is illegal. However, the Service has discretion to apply the law in a reasonable way in consideration of resource needs and priorities. It is not required to act in a strict or inflexible manner. It is the Service's intent to provide protection to migratory birds by directing attention to the highest priority needs for protection. Under the Canadian Treaty, Indians can take scoters at any time for food and Eskimos and Indians can take auks, auklets, guillemots, murres, puffins, and their eggs at any time for food and clothing. In addition, federal regulations permit any person in Alaska to take snowy owls and cormorants at any time for food and clothing.

6. *Inadequate public involvement in developing the policy.* One of the most commonly expressed concerns about the proposed enforcement policy was the perceived lack of public involvement in the formulation of the policy and concerns about the notification process involved in soliciting comments on it. Examples of comments include: "In its headlong rush to promulgate the proposed policy by this spring, the Service has woefully neglected to work with the Native community." "It was only by accident that I heard a radio blurb in early February regarding this policy publication." "Many of our elders, not only from Toksook Bay, have made their concerns and comments before and none of them was incorporated into the plan."

Response. These comments reflect some of the early reaction to the proposed policy based on limited information and a fear that the initial February 29, 1988, closure of the public comment period would not allow adequate presentation of concerns. Subsequent to extending the comment period to March 31, 1988, the Service conducted numerous public meetings which appeared to greatly ameliorate this situation. The Service's mailing list for notices and information relating to development of the policy includes over 900 addresses, including three governmental and Native corporate entities in most villages in Alaska.

7. *Lack of data.* A number of respondents expressed concern about development of a closed season enforcement policy without adequate information on past and present levels of subsistence waterfowl hunting, regional differences in the relative health of specific waterfowl populations, and the effects of subsistence hunting on these populations. "We felt that there should be biological studies on numerical numbers and usage statewide." "To be consistent with our understanding of ANILCA, the FWS should first collect detailed biological data as a basis for decisions."

Response. The Service agrees with the need for improved information on the status and harvest of waterfowl populations throughout Alaska, but does not believe that lack of such data should preclude application of the policy on a statewide basis. Excellent data exist for some species and some areas. The Service will continue to obtain information needed for management of other species and other areas as funding and priorities allow.

8. *Impacts of the proposed policy on "traditional lifestyles."* Numerous comments were made related to the impact of the proposed closed season enforcement policy on the lives of rural residents. These comments were usually pointed to one of three areas: The cultural significance of spring and summer hunting and egg-gathering, the nutritional significance of these activities, or the economic impacts of curtailing such activities. "Waterfowl harvest has been an important nutritional and cultural resource to the Yup'ik people and other Alaska Native cultures for thousands of years." "Rural areas, and especially the Yukon-Kuskokwim Delta, have some of the lowest incomes in the state, and rely on subsistence-caught fish, game, marine mammals, and birds for a large part of their protein needs." Migratory birds provide an important food source for local residents throughout the entire March to September closed season, but especially during the spring months."

Response. The Service has recognized for many years that residents of certain remote areas in Alaska depend on waterfowl as an important source of food, especially in spring and early summer. Because of this, prohibitions on taking during the closed season generally have not been strictly enforced provided that the birds were taken in a non-wasteful manner and were used as food. Although the Service cannot legally permit the hunting of migratory birds during the closed season even for subsistence, the policy stresses protection of four populations of geese as a first priority and addresses the taking of other waterfowl as a second level priority during the nesting, brood rearing, and flightless periods. The Service does not believe that this will result in dramatic changes to traditional lifestyles in rural Alaska.

9. *Protocol to the United States/Canada migratory bird treaty.* A number of respondents identified the need to proceed with a protocol to amend the Canadian Treaty to allow for subsistence taking of waterfowl during the closed season. "A protocol amendment to the Canadian treaty to acknowledge Alaska Native traditional use of migratory birds is needed." "Why no mention of the intent to amend the restrictive Canadian Treaty to agree

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with later treaties with USSR, Japan, and Mexico, to show that the US is trying to correct its mistake?"

Response. The Service supports a protocol amendment to the Canadian Treaty that contains provisions for subsistence hunting similar to those in the migratory bird treaty with the Soviet Union and the 1978 Fish and Wildlife Improvement Act. A protocol was signed in January 1979 but has not been ratified in the United States because of concerns raised about its effects. The Service began work with the Canadian Wildlife Service in 1983 to develop a joint United States/Canada agreement that would explain how each country would interpret and implement the protocol. A draft agreement has been developed but has not yet been approved by Canadian officials.

10. *Impacts to waterfowl populations not related to subsistence harvest.* Several letters identified factors other than subsistence harvest which are affecting the populations of migratory waterfowl, including sport hunting, loss of wintering habitat, and predation. These comments often suggested that the Service was doing little to evaluate the impact of these activities on bird populations and that control of these factors should be considered prior to (or in conjunction with) enforcement of the closed season in areas of subsistence harvest. "Other elements of this program such as habitat management and protection, predator control and management of sport harvest must also be considered. This cannot be limited to the breeding grounds and will require a comprehensive year-round plan for management of affected species." "One positive action you can do is raise the white fox pelts and lower the gulls population. Kill them off. The second is the growing number of farms which is robbing these birds of their food and resting grounds."

Response. The Service has for years been aware of factors other than subsistence harvest that affect populations of waterfowl throughout their ranges. Preservation and enhancement of habitat and control of sport hunting are major activities of the Service both in Alaska and in wintering areas. Study and control of contaminants and diseases receive particular attention in wintering areas. Comprehensive plans currently being developed for the four species of geese are scheduled for completion by December 1988. The effect of predation on geese is being actively studied on the Yukon-Kuskokwim Delta. This includes evaluation of experimental fox control programs on nesting success and production. The current effort to address subsistence harvest in Alaska is not occurring in isolation, but is part of an overall program to restore diminished populations of geese and to help prevent declines in other populations of waterfowl that nest in and migrate through the state.

11. *Nesting sanctuaries.* Several respondents identified the need to establish nesting sanctuaries in order to fully protect migratory birds. "We have continually advocated the identification of 'inviolate sanctuaries' carefully located to protect core populations of the four species of geese involved where violations of trespass by anyone during the critical nesting, resting, and molting period would be strictly enforced."

Response. The Service will begin discussions soon with local residents near selected goose nesting areas on the Yukon-Kuskokwim Delta to maximize production within zones established to minimize disturbance to geese. These zones could include any combination of elements such as experimental predator control, limited human access, and no harvest. The Service also is considering the reestablishment of geese on underutilized nesting habitats. Many of the potentially best management areas are private lands owned in whole or in part by Native village corporations. Establishment of the management areas generally will require cooperative agreements with local residents to assure the highest degree of compliance possible with the Yukon-Kuskokwim Delta Goose Management Plan. The Service does not believe that unilateral establishment of sanctuaries is feasible.

Need for Policy and Relation to Yukon-Kuskokwim Delta Goose Management Plan

The Treaty Act prohibits the taking of migratory birds except as permitted by regulations published by the Service. The Treaty Act further requires that the regulations must be consistent with the provision of the 1916 Canadian Treaty. Accordingly, the Service publishes regulations annually that establish open seasons and bag limits for migratory game birds within the September 1 to March 10 period provided by that treaty. Except in Alaska, the Service has always strictly enforced the prohibitions against taking migratory birds during closed seasons; that is, during those times of year outside the hunting seasons established in the annual hunting regulations.

The Service has recognized for many years that residents of certain rural areas in Alaska depend on waterfowl and some other migratory birds as customary and traditional sources of food, primarily in spring and early summer. Because of this long established dependence, the Service generally has exercised its discretion to not strictly enforce the closed season in these areas provided that any birds taken are taken in a non-wasteful manner and are used for food.

Historically, the taking of waterfowl and other migratory birds for subsistence purposes in Alaska does not appear to have had a significant adverse impact on the populations from which the birds were taken. In recent years, however, the levels of taking in Alaska and elsewhere, in combination with other factors such as nest predation by foxes, have caused drastic declines in some populations of birds. This has been particularly apparent in populations of four species of geese that nest primarily on the Yukon-Kuskokwim Delta: Cackling Canada Geese, emperor geese, Pacific white-fronted, geese, and black brant.

Since 1984, efforts to halt declines of the four populations of geese have been undertaken pursuant to a Yukon-Kuskokwim Delta Goose Management Plan renewed annually. The Service has viewed the plan as an effective mechanism in providing a basis for cooperative management of geese on the Yukon-Kuskokwim Delta and elsewhere. This cooperative management includes provisions to reduce sport harvest of these species and to reduce or minimize subsistence harvest that is not in accordance with the Treaty Act. In the future, the Service intends to enforce the Treaty Act with respect to closed season subsistence hunting in accordance with the enforcement policy described below. On the Yukon-Kuskokwim Delta, the Service's enforcement policy will be supported by a revised goose management plan. The annual renewal of the plan is an essential element in the conservation of the geese on their nesting grounds. It retains an established mechanism for communication with the subsistence hunters most affected by the policy and will encourage the cooperation needed to achieve population objectives incorporated into previous plans.

The Service recognizes that among subsistence users there is a wide range in the level of understanding of the impacts of spring and summer harvest of waterfowl and the need to reduce mortality, especially when populations become depressed. The Service will continue educational efforts to expand the understanding of this problem and will consider this factor in carrying out enforcement efforts on a statewide basis.

Closed Season Enforcement Policy in Alaska

Service enforcement efforts in Alaska during the closed season will be concentrated on violations that have the most serious impact on the resource. Special attention will be given to the protection of cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. These species have suffered severe population declines in recent years and need special protection. In order to protect these geese, priority will be given to enforcement designed to support the following principles:

—No taking of cackling Canada or emperor geese at any time;

—No taking of Pacific white-fronted geese or black brant during the nesting, brood-rearing, and flightless periods;

—No taking the eggs of any of the above four species of geese; and

—No use of charter or private aircraft to assist in hunting.

As a second level of priority, the Service also will give attention to protecting other species of waterfowl from taking during nesting, brood-rearing, and flightless periods, including the taking of their eggs. Identification of circumstances warranting additional protection for migratory birds during the closed season will be based on the status of populations and will involve consultation with affected interests. Of greatest concern will be situations involving waste or harvest exceeding reasonable levels of need under existing circumstances.

The Service recognizes that unforeseen emergency situations can occur in rural Alaska where food is unavailable and no means of transportation or other opportunities exist to obtain food. Regardless of the prohibitions outlined above, the taking of migratory birds in such situations in limited numbers to provide emergency food will not be referred to the United States Attorney for prosecution.

Date: May 5, 1988.

Walter O. Stieglitz,

Regional Director, Alaska.

[FR Doc. 88-10625 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-55-M

VOL 53 ISS 92 MAY 12 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 38, 292, 293, and 382

[Docket Nos. RM88-4-000, RM88-5-000, and RM88-6-000]

Regulations Governing Independent Power Producers; Regulations Governing Bidding Programs; Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities

Issued May 6, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notices of proposed rulemakings; Notice of change in procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is changing the dates for written comments, the public hearing, and replies to written comments for the Notices of Proposed Rulemaking (NOPRs) in the three captioned dockets, published in the Federal Register on March 22, 1988 (53 FR 9324, 9327, and 9331). The proposed rules are: (1) Regulations Governing Independent Power Producers, Docket No. RM88-4-000; (2) Regulations Governing Bidding Programs, Docket No. RM88-5-000; and (3) Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities, Docket No. RM88-6-000.

DATES: The date for filing written comments in Docket No. RM88-6-000 is changed to June 16, 1988. The date for filing written comments in Docket Nos. RM88-4-000 and RM88-5-000 is changed to July 18, 1988. The date for the public hearing on all three NOPRs is changed to July 21 and 22, 1988. Requests to participate in the public hearing must be submitted by July 8, 1988. The date for replies to written comments on all three NOPRs is changed to August 15, 1988.

ADDRESS: All filings should be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Notice of Change in Procedural Schedule

The Commission is changing the dates for written comments, the public hearing, and replies to written comments for the Notices of Proposed Rulemaking in the three captioned dockets, published in the Federal Register on March 22, 1988 (53 FR 3324, 9327, and 9331). The procedural schedule for the three Notices of Proposed Rulemaking is revised as follows:

—Written comments on Administrative Determination of Full Avoided Costs (Docket No. RM88-6-000) must be filed by June 16, 1988.
—Written comments on Independent Power Producers (Docket No. RM88-4-000) and Bidding (Docket No. RM88-5-000) must be filed by July 18, 1988.
—A public hearing on all three proposed rulemakings will be held on July 21 and 22, 1988.
—Requests to participate in the public hearing must be submitted by July 8, 1988.
—Replies to written comments in all three dockets must be filed by August 15, 1988.

By direction of the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commissioner Charles A. Trabandt, Dissenting in Part

I dissent in part because this order does not grant fully the joint motion. Numerous parties, including state PUCs, consumer groups, environmental groups, public power groups, and individual utilities, have joined to file on April 29, 1988, a petition styled as a Joint Motion for Enlargement of Time and Request for Notational Voting in the electric NOPR Docket Nos. RM88-4-000, RM88-5-000 and RM88-6-000. The joint petitioners request an additional thirty (30) days to respond to Docket No. RM88-6 (Avoided Cost), an extension until August 31, 1988, for comments on Docket Nos. RM88-5 (Bidding) and RM88-4 (IPP), and a rescheduling of the July 5, 1988, public conference. The additional time for Avoided Cost is needed, because of its complexity. The additional time for Bidding and IPP would parallel the time for comments on the Draft EIS, which will be issued on June 16 at the earliest. The July 5 public conference would require participants to travel on the Fourth of July Holiday.

Consistent with the position I took in my separate opinion in those dockets on the issues of administrative procedures for public comment and participation and compliance with NEPA, I want to record my support for the Joint Motion. I believe that the joint Motion makes a persuasive case in the context of NEPA and well accepted notions of due process fairness for the modest extensions and rescheduling sought by the joint petitioners. Consequently, I would have preferred strongly that the Commission grant the Joint Motion without modification. The Commission's failure again to be responsive fully to the reasonable request of a broad spectrum of interested parties compounds further the mistakes made on the administrative procedures for public comment and participation in the original NOPRs.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88-10594 Filed 5-11-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[LR-17-86]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to the excise tax imposed on the first retail sale of heavy trucks, truck trailers and semitrailers, and tractors. The text of the temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed on or before July 11, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-17-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR-17-86). Telephone 202-566-4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend Part 145, Title 26 of the Code of Federal Regulations. The final regulations which are proposed to be based on the temporary regulations would amend Part 48 of Title 26 of the Code of Federal Regulations. The regulations provide guidance relating to the definition of the term "first retail sale" under section 4052(a)(1) of the Internal Revenue Code of 1986 (Code) as amended by section 505 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 97-424, 101 Stat. 258). The regulations also provide rules relating to the determination of the price of an article in the case of (1) a long-term lease and (2) a retail sale by a manufacturer, producer, or importer under section 4052(b) (3) and (4) of the Code as added by sections 505 and 506, respectively, of the Highway Revenue Act of 1987 (Title 5 of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 97-424, 101 Stat. 258). For the text of the temporary regulations see T.D. 8200 published in the Rules and Regulations portions of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-10634 Filed 5-11-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 88-010]

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a permanant safety zone in Rhode Island Sound, Narragansett Bay and the Providence River. This permanant safety zone will be in effect only while Liquefied Petroleum Gas (LPG) Vessels are anchored, transiting, transfering or moored in Rhode Island Sound, Narragansett Bay, or the Providence River and will alleviate the necessity of establishing Emergency Rules for each LPG Tank Vessel which enters these waters. This action is necessary to protect the public from potential hazards associated with the transport and transfer of Liquefied Petroleum Gas. The intended effect of this regulation is to protect the port and the resources therein from harm resulting from destruction or loss of an LPG vessel. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments on this regulation must be received on or before June 27, 1988.

ADDRESS: Comments should be mailed to Captain Of The Port U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, R.I. 02903-1790.

The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt. J.A. Gabrielson, USCG, C/O Captain Of The Port U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg, Providence, R.I. 02903-1790, telephone (401) 528-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice by (CGD1 88-010) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant J.A. Gabrielson, project officer for the Captain of the Port and Commander M.A. Leone, project attorney for the First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Captain of the Port Providence, R.I. is considering establishing a permanent safety zone in the vicinity of the Brenton Reef Light Tower, Narragansett Bay and the Providence River. This permanent safety zone will be in effect only while Liquefied Petroleum Gas Vessels are anchored, transiting, transfering or moored in Rhode Island Sound, Narragansett Bay, and the Providence River and will alleviate the necessity of continuously

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establishing Emergency Rules for each Liquefied Petroleum Gas (LPG) Vessel which enters these waters. In 1987, twelve of these emergency Safety Zones were established. These safety zones are intended to protect the public from the potential hazards associated with the transport and transfer of Liquefied Petroleum Gas. The zones are in effect while the LPG vessels are: (1) At anchor at Brenton Reef; (2) Transiting Narragansett Bay and the Providence River; and (3) While moored to the LPG facility. This regulation is intended to protect the port and the resources therein from harm resulting from damage, destruction or loss of an LPG vessel. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be minimal, therefore, a full regulatory evaluation is unnecessary. The requirements of the proposed permanent safety zone are presently being implemented utilizing emergency rules which effect larger commercial vessel traffic.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.121 is added to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) *Location.* The following areas are established as safety zones:

(1) For Liquefied Petroleum Gas (LPG) vessels while at anchor in the waters of Rhode Island Sound; in position Latitude 41°25 N., Longitude 71°25 W., and position Latitude 41°25 N., Longitude 71°23 W., a Safety Zone with a radius of one-half mile around the LPG vessel.

(2) For Liquefied Petroleum Gas (LPG) vessels while transiting Narragansett Bay and the Providence River; a moving safety zone from a distance of two (2) miles ahead to one (1) mile astern to the limits of the navigable channel around the LPG vessel.

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG Facility, Port of Providence; a Safety Zone within 50 feet around the vessel. No vessel shall moor within 400 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

(4) For Liquefied Petroleum Gas (LPG) vessels while moored with manifolds connected at the LPG Facility Port of Providence; a Safety Zone within a 100 foot radius around the shoreside manifold while connected. This is in addition to the requirements for LPG vessels while moored at the LPG Facility Port of Providence.

(b) The Captain of the Port Providence will notify the maritime community of periods during which this Safety Zone will be in effect by providing advance notice of scheduled arrivals and departures of LPG vessels via Marine Safety Information Radio Broadcast.

(c) *Regulations.* The general regulations governing Safety Zones contained in § 165.23 apply.

Dated: May 6, 1988.

D.S. Jensen,

Captain, U.S. Coast Guard, Captain of the Port Providence, R.I.

[FR Doc. 88-10823 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed Regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before June 10, 1988. Comments will be available for public inspection until June 24, 1988. It is proposed to make this rate increase retroactively effective on October 1, 1987.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until June 24, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1654, and monthly payment of subsistence allowance for full-time students of $412.

It is proposed to make these increases effective October 1, 1987. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1987. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The Veterans Administration (VA) and the Department of Defense have determined that these proposed amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these proposed amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only rates payable to individuals. No regulatory, administrative, or paper-work burdens are imposed on any type of small entities.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 4, 1988.

Thomas K. Turnage,

Administrator.

Approved: April 13, 1988.

A. Lukeman,

Lieutenant General, USMC Deputy Assistant Secretary (Military Manpower and Personnel Policy).

38 CFR Part 21, *Vocational Rehabilitation and Education*, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), paragraphs (b)(1)(ii) (A), (B), and (C), and paragraphs (b)(2)(ii) (A), (B), and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * * *

(b) *Amount of educaton assistance.* The amount of educational assistance may not exceed $1654 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

2. § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2)(i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $412 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $206 per month.

(Authority: 10 U.S.C. 2144)

* * * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $412 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistance allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $206 per month by the number of the deceased veterans' dependents pursuing a course of instruction on that day.

(Authority: U.S.C. 2144)

* * * * * *

[FR Doc. 88-10629 Filed 5-11-88; 8:45 am]

BILLING CODE 8320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88-2; Order No. 784]

Petition of Postal Service for Express Mail Rulemaking, 1988

AGENCY: Postal Rate Commission.

ACTION: Petition for rulemaking.

SUMMARY: On April 29, 1988, the Postal Service filed a petition requesting the Commission to initiate a rulemaking to amend the Commission's filing and procedural requirements as they relate to requests for Express Mail rate changes under circumstances specified in the Postal Service's filing. We have labeled this filing Docket No. RM88–2 for reference. In its filing the Postal Service proposes rule changes permitting expedited procedures for consideration of Postal Service requests for Express Mail rate changes between omnibus rate proceedings "only where the Postal Service is proposing the changes in response to changes in the expedited delivery market."

The Postal Service says the new procedures are for those situations in which the Postal Service wants to respond to a change initiated by competitors in the expedited delivery market. It proposes filing requirements including a description of the specific change in the market which it is seeking to meet, cost data showing that the proposed rates will recover at least Express Mail average per-piece attributable costs, and will not exceed the Express Mail rates set in the last omnibus rate proceeding.

The Postal Service proposes that such rate-change filings would be served on interested persons at the same time they are submitted to the Commission. The Postal Service proposes automatic intervention be afforded these persons. The proposal also calls for accelerated hearings under an expedited schedule. The Postal Service filed the text of its proposed procedural rules and supporting testimony with its petition.

DATES: Any person wishing to comment on the desirability of instituting a rulemaking in response to the Postal Service's April 29, 1988, petition may do so within 30 days of the publication of this Notice and Order in the Federal Register. The Commission has scheduled a conference on June 21, 1988, to discuss further proceedings with regard to the Postal Service's petition.

ADDRESSES: Persons wishing a copy of the Postal Service's filing can contact Grayson Poats, Assistant General Counsel, Postal Service 475 L'Enfant Plaza, SW., Room 6436, Washington, DC 20260–1141 (telephone: 202/268–2981). The filing is also available for public inspection at the Commission offices, 1333 H Street, NW., Suite 300, Washington, DC.

The Secretary of the Commission is perparing a service list for this filing. Any person wishing to be included on it should contact Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268.

FOR FURTHER INFORMATION CONTACT: Charles L. Clapp, (202) 789–6840.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

Commission Notice and Order Concerning Filing of Petition of Postal Service for Initiation of Rulemaking to Amend Procedural Requirements for Changes in Express Mail Rates

Issued: May 6, 1988.

The Commission orders:

(A) Comments to the Postal Service's petition are due 30 days after the publication of this Notice and Order in the Federal Register.

(B) A conference regarding the Postal Service's petition will be held on June 21, 1988, at 10:00 a.m. in the Commission's hearing room.

(C) Persons wishing to have their names on the Commission's service list are to notify the Secretary of the Commission.

(D) The Secretary shall publish this Notice and Order in the Federal Register.

Charles L. Clapp,

Secretary.

By the Commission.

[FR Doc. 88–10464 Filed 5–11–88; 8:45 am]

BILLING CODE 7715–01–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rulemaking.

SUMMARY: Because of recommendations adopted at consultative meetings, NSF is proposing to amend its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additional specially protected areas and sites of special scientific interest in Antarctica.

DATE: Written comments will be considered which are received on or before July 11, 1988.

ADDRESSES: Comments should be sent to Dr. Anton L. Inderbitzen, Polar Coordination and Information Section Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Anton L. Inderbitzen at the address above or on 202–357–7817.

SUPPLEMENTARY INFORMATION: Since these regulations were issued in 1979, several consultative meetinga have been held in accordance with Article IX of the Antarctic Treaty. Recommendations have been adopted which modified and/or extended the management plans and duration of earlier recommendations for the establishment of various sites of special scientific interest. New sites of special scientific interest were also recommended. In addition, Recommendations XIII–10, 11, and 12 identified three new specially protected areas and Recommendation XIII–13 provided for extensions of boundaries for the specially protected area of Cape Hallett, Victoria Land.

The United States representatives to the meeting supported these recommendations of which not all are in force but all have been approved by the United States. The purpose of this regulation is to implement them with respect to the activities of United States citizens and nationals in Antarctica as authorized by section 6 of the Antarctic Conservation Act of 1978. The amendments of 45 CFR 670.30 and 670.34 thus reflect the original Agreed Measures and Recommendation VIII–3 as well as subsequent recommendations pertaining to specially protected areas and sites of special scientific interest. In addition to revisions listing new areas and sites, it is proposed to revise the introductory sections of sections 45 CFR 670.30 and 670.34 to reflect the broader basis of the designations.

Section 670.34(d) is proposed as the management plans contained in the recommendations identifying sites of special scientific interest contain expiration dates which are frequently extended by the Consultative Parties. For the purposes of these regulations a site of special scientific interest and its accompanying management plan shall remain in effect until deleted from the regulations. In general, designation of a site of special scientific interest pursuant to these regulations shall comport with the expiration date contained in the management plan adopted with it, as extended by the Consultative Parties.

This notice has been coordinated with the Department of State.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, it is proposed that 45 CFR part 670 be amended as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81–507, 64 Stat. 149 (42 U.S.C. 1670) as amended; Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.30 is amended by adding paragraphs (o), (p), and (q) as follows:

§ 670.30 Designation of specially protected areas.

* * * * *

(o) North Coronation Island, South Orkney Islands.

(p) Lagotellerie Island, Marguerite Bay.

(q) New College Valley, Caughley Beach, Cape Bird, Ross Island.

* * * * *

3. Section 670.34 is amended by revising paragraphs (a) (1) and (4) and by adding paragraphs (a)(5), (6), (7), (8), (9), (10), and (11) and (d) to read as follows:

§ 670.34 Designation of sites of specific scientific interest and management plans for those sites.

* * * * *

(a) Sites of Special Scientific Interest Requiring a Permit for Entry. (1) Cape Royds on Ross Island; Cape Crozier on Ross Island; Hasewell Island; Admiralty Bay, King George Island; Caughley Beach, Cape Bird, Ross Island; and Cierva Point and offshore Islands, Danco Coast. Management Plan: Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds or mammals except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird or mammal from these sites.

* * * * *

(4) Barwick Valley in Victoria Land and Harmony Point, West Coast of Nelson Island, South Shetland Islands. Management Plan: Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(5) Rothera Point, Adelaide Island; Biscoe Point, Anvers Island; and part of Deception Island, South Shetland Islands. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians will be allowed to enter the Site only in connection with approved monitoring or sampling activities.

(6) Tramway Ridge, Mt. Erebus, Ross Island. Management Plan: Entry by foot only for scientific purposes wil be authorized. Vehicles and helicopters are excluded. Pedestrians should avoid walking on visible vegetation and areas of heated ground. Sterile protective overclothing should be worn and footwear sterilized before entering the Site. Human wastes must not be deposited within the Site.

(7) Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrian movement within the Site is restricted to designated paths and shortest routes consistent with scientific activity.

(8) Potter Peninsula, King George Island, South Shetland Islands. Management Plan: Access is restricted to the northern end in the vicinity of Mirounga Point. Pedestrians and vehicles must use established routes particularly during breeding season. No vehicles or helicopters are allowed near any breeding sites.

(9) North-East Bailey Peninsula and Clarke Peninsula, Budd Coast, Wilkes Land. Management Plan: Vehicles and pedestrians are restricted to existing access routes which are clearly demarcated. No helicopter landings are permitted within the Site. Particular care should be taken to avoid damaging any vegetation, disrupting of soils or morphological features or changing water quality or drainage.

(10) Northwest White Island, McMurdo Sound. Management Plan: Vehicles are not permitted closer than 50 m to the seal population and helicopters are prohibited within the Site. Overflights must be altitudes of 250 m or more.

(11) Linnaeus Terrace, Asgaard Range, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Helicopters are allowed at the designated and marked landing site only. Rocks may not be moved from their natural position and great care should be exercised to avoid accidental breakage of fragile rock formations and disturbing periglacial features.

* * * * *

(d) *Expiration dates.* For purposes of these regulations the sites of special scientific interest and accompanying management plans shall remain in effect until deleted from the regulations.

Date: May 4, 1988.

Charles H. Herz,

General Counsel.

[FR Doc. 88–10325 Filed 5–11–88; 8:45 am]

BILLING CODE 7555–01–M

VOL 53 ISS 92 MY 12 1988 UMI

Notices

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1988 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of Determination of 1988 Price Support Levels for Six Kinds of Tobacco.

SUMMARY: This notice sets forth the levels of price support for fire-cured (type 21), (2) fire-cured (types 22–23), (3) dark air-cured (types 35–36), (4) Virginia sun-cured (type 37), (5) cigar-filler and binder (types 42–44; 53–55), and (6) cigar-filler (type 46) kinds of tobacco for the 1988 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202 447–8839 or Kenneth Robison, (202) 447–5188. A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environent, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1988 crop of the six kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1988 crop of a kind of tobacco shall be the level in cents per pound at which the 1987 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1988 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1987 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1988 crop of such kind of tobacco will be the 1987 level, adjusted by the difference between (plus or minus) the 1988 "basic support level" and the 1987 "basic support level".

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support levels for a kind of tobacco which are set forth in this notice could be reduced if such a request is made.

Additionally, section 106(f)(8)(A) of the Act provides that for the 1988 crop of a kind of tobacco the support level shall be reduced by 1.4 percent of the level otherwise established. Any such reduction under this subsection shall not be taken into consideration in determining the support level for the subsequent crop of tobacco. Also, section 106(f)(8)(B) provides that in lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under section 106(f)(8)(A).

The levels of price support for the 1987 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	119.6
KY–TN fire-cured, types 22–23	123.8
Dark air-cured, types 35–36	105.4
Virginia sun-cured, type 37	105.6
Cigar-filler and binder, types 42–44, 53–55	91.4
Puerto Rican filler, type 46	74.7

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1988-crop year, the average parity indexes for the three previous years are: 1985–1120; 1986–1096; and 1987–1115. The average of the parity indexes for these years is 1110 and the ratio of the 1985–87 index to the 1959 index is 3.72. For the 1987–crop year, the average parity indexes used to calculate the 1987 "basic support level" were: 1984–1130; 1985–1120; 1986–1097. The ratio of the 1984–86 index to the 1959 index equaled 3.74. Thus, the "basic support level" for the 1987 and 1988 crops of the various kinds of tobaccos and the annual decrease are as shown in the following table:

Kind and type	Basic support Level		Decrease in 1988 from 1987
	1987	1988	
	Cents per pound		
Virginia fire-cured type 21	145.1	144.3	.8
Kentucky-Tennessee fire-cured types 22–23	145.1	144.3	.8
Dark air-cured, types 35–36	129.0	128.3	.7
Virginia sun-cured, types 37	129.0	128.3	.7
Cigar filler and binder, types 42–44, 54–55	107.0	106.4	.6
Puerto Rican filler, type 46	111.1	110.5	.6

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, an anticiapted domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco. Since the 1988 "basic support level" is below the 1987 "basic support level", section 106(d) is not applicable for the 1988 crop.

As noted in the following table, the supplies of all these kinds of tobacco for which price support is made available are currently at, or in excess of, he supply deemed adequate to meet domestic use and export needs. As a result of these increased supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans remains ample to excessive.

Kind and type	1987/88 Production	1987/88 Total Supply	1987/88 Reserve Supply	1987-Crop CCC Loan Collateral	1987/88 CCC Loans as % of production
	Million Pounds				
Virginia fire-cured, type 21	2.6	9.7	8.3	.3	11.5
Kentucky-Tennessee fire-cured types, 22–23	23.3	119.4	116.7	4.5	19.3
Dark air-cured types 35–36	7.0	55.7	54.9	1.1	15.7
Virginia sun-cured, type 37	.1	1.1	1.0	[1]	22.7
Cigar-filler, and binder, types 42–44, 53–55	7.9	61.5	63.8	[1]	0.5
Puerto Rican filler, type 46	.2	5.3	[2] 3.9	.2	100

[1] Less than 50,000 pounds.
[2] Three times annual disappearance past 3 marketing years.

Because of the oversupply situation for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), Puerto Rican filler (type 46), and cigar-filler and binder (types 42–44; 53–55) tobaccos, the 1988 support level for each kind consists of the 1987 level of support decreased by the difference beween the 1988 "basic support level" and the 1987 "basic support level".

For the 1988 crops, the 1.4 percent decrease provided by section 106(f)(8)(A) of the Act would require reductions to the support level of 1.7 cents to 1.0 cents per pound, depending on the kind of tobacco. Alternatively, the assessments for the various kinds of tobacco which would be required for the 1988 crops to achieve the estimated budget reduction obtained from the support reduction range from 0.8 cents to 0.5 cents per pound. The determination with respect to the manner in which this reduction will be made will be announced at a later date.

Proposed Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with section 106(f)(6)(A) of the 1949 Act, the following price support levels for the 1988 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44, 53–55), and Puerto Rican filler (type 46) tobaccos:

Kind and type	Amount (cents per pound)
Virginia fire-cured, type 21	118.8
Kentucky-Tennessee fire-cured, types 22–23	123.0
Dark air-cured, types 35–36	104.7
Virginia sun-cured, type 37	104.9
Cigar-filler and binder, types 42–44, 53–55	90.8
Puerto Rican filler, (type 46)	74.1

Authority: Secs. 4 and 5, Stat. 1070, 1072, as amended, (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as

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amended, 1986, (7 U.S.C. 1441, 1445, 1421, 1423, 1428).

Signed at Washington, DC, on May 6, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-10805 Filed 5-11-88; 8:45 am]

BILLING CODE 3410-05-M

CIVIL RIGHTS COMMISSION

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 3:00 p.m., on May 25, 1988 at the Eldridge Hotel, 7th and Massachusetts, Lawrence, Kansas. The purpose of the meeting is to provide orientation for the rechartered SAC and discuss plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett A. Loomis, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10588 Filed 5-11-88; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 3:00 p.m., on May 23, 1988, at the Providence Marriott Hotel, the Enterprise Room, Charles & Orms Streets, Providence, R.I. 02904. The purpose of the meeting is: (1) To plan a community forum on bigotry and violence, and (2) to discuss the current status of the R.I. SAC report "The Immigration Reform and Control Act of 1986: Civil Rights Issues in Implementing its Legalization and Employer-sanctions Programs."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David Sholes (401-463-5600) or John I. Binkley, Director of the Eastern Regional Division at (202-523-5264) (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10589 Filed 5-11-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office
Title: Trademark Processing
Form Numbers: Agency—Numerous; OMB—0651-0009
Type of Request: Reinstatement of a previously approved collection
Burden: 72,800 respondents; 31,631 reporting hours
Needs and Uses: Trademarks and service marks which are used in interstate or foreign commerce may be registered in the Patent and Trademark Office. Information provided by individuals and businesses is used by PTO to determine eligibility for trademark/service mark registration.
Affected Public: Individuals; businesses or for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Frank Reeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10636 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Western Pacific Bottomfish Fishery Limited Entry Permit
Form Numbers: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 25 respondents; 40 burden hours
Needs and Uses: The Western Pacific Fishery Management Council is proposing to limit fishing for bottomfish in the northwestern Hawaiian Islands area. The Council is planning to limit fishing in certain areas by only issuing permits to those vessels that participated in this fishery prior to August 8, 1985. Vessel owners will be required to submit with permit applications data verifying their eligibility for a permit. In addition, vessel operators must give notice to the U.S. Coast Guard of their anticipated arrival in port to unload fish taken in restricted areas. This notice will allow time to plan for the inspection of the catch to determine the condition of the stocks.
Affected Public: Individuals; businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10637 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: U.S., and Foreign Commercial Service (US&FCS) District Office Client Counseling Survey
Form Numbers: Agency—ITA-735P; OMB—N/A
Type of Request: New Collection
Burden: 960 respondents; 240 reporting hours
Needs and Uses: The mission of the District Offices of the U.S.&FCS is to promote exports. Their primary goal is to influence small- and medium-size firms to fully develop their export potential by providing information and advice to assist companies to successfully begin exporting or, if already exporting, to enter new markets. The proposed survey will gather information from businesses that have received counseling and will be used by U.S.&FCS to evaluate the quality of services provided by field personnel.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10639 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Foreign Fishing Regulations
Form Number: Agency—N/A; OMB—0648-0075
Type of Request: Revision of a currently approved collection
Burden: 500 respondents; 14,631 reporting/recordkeeping hours
Needs and Uses: NOAA's regulations govern foreign fishing within the U.S. exclusive economic zone (EEZ). Approximately 500 foreign vessels receive permits to fish in the EEZ. Foreign fishing vessels entering the EEZ are required to make a number of reports concerning their entry or leaving of the zone, fish caught or received from other vessels, and similar activities. The information is used for fishery management and enforcement purposes.
Affected Public: Businesses or other for-profit institutions
Frequency: On occasion, weekly, quarterly, annually, recordkeeping
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Office, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10638 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Office of the Secretary

Federal Coal Export Commission; Committee Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Federal Coal Export Commission will hold its final meeting to consider its Report to the President and the Congress. Less than fourteen days' notice is being provided in order to allow the Commission to complete its work without further extension of its charter as an advisory committee.

The meeting will be held:

Tuesday, May 17, 1988, beginning at 10:30 a.m., in the Secretary's conference room, Room 5859 of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Ave. NW., Washington, DC.

At the meeting, the Commission will discuss the final draft of its Report to the President and the Congress and will consider approval of that document for printing and for transmittal by the Secretary of Commerce as Chairman of the Federal Coal Export Commission.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Public comments are welcome, and persons wishing to make formal statements should notify the Chairman *Pro Tem* of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of public comments. Written statements may be submitted before or after the meeting.

For further information, contact Robert H. Brumley, Chairman *Pro Tem* of the Commission, at (202) 377-4772.

Signed in Washington, DC, this 9th day of May, 1988.

Robert H. Brumley,

Chairman Pro Tem.

[FR Doc. 88-10792 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DW-M

International Trade Administration

University of Alabama at Birmingham, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30

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a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-288. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294. *Instrument:* Nuclear Magnetic Resonance Spectrometer System, Biospec 4.2/400. *Manufacturer:* Bruker, West Germany. *Intended Use:* See notice at 52 FR 37357, October 6, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (May 2, 1985)

Reasons For This Decision: The foreign instrument provides a 40-centimeter bore size magnet for in vivo studies of large animals such as dogs. The National Institutes of Health advises in its memorandum dated March 8, 1988, that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10643 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DS-M

Lawrence Berkeley Laboratory, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-304R-2. *Applicant:* Lawrence Berkeley Laboratory, Berkeley, CA 94720. *Instrument:* Circular Dichroism Spectropolarimeter, Model J-600A. *Manufacturer:* JASCO, Japan. *Intended Use:* See notice at 51 FR 33282, September 19, 1986.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (July 10, 1986).

Reasons: The foreign instrument provides demonstrated sensitivity to 175 nanometers and fluorescence detected circular dichroism capability.

The National Institutes of Health advises in its memorandum dated February 18, 1988 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10644 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Miami et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-061. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Mass Sepctrometer, Model PRISM. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 4307, February 18, 1988. *Reasons For This Decision:* The foreign instrument can automatically test small (milligram) samples of carbonate for direct introduction of carbon dioxide to spectrometer inlet.

Docket Number: 88-90. *Applicant:* Appalachian State University, Boone, NC 28608. *Instrument:* Ground Conductivity Meter, Model EM31-DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* See notice at 53 FR 6028, February 29, 1988. *Reasons For This Decision:* The foreign instrument provides for in situ measurement of ground conductivity in milli-ohm per meter.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 10645 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DS-M

Robert Packer Hospital; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-284.

Applicant: Robert Packer Hospital, Sayre, PA 18840.

Instrument: Extracorporeal Shock Wave Lithotripter (ESWL).

Manufacturer: Dornier Medizintechnik GmbH, West Germany.

Intended Use: See notice at 52 FR 32824, August 31, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: There is no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to the foreign instrument for the purposes for which the instrument is intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10646 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 87-155. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* Electromechanical (Piezoelectric) Measurement Device. *Manufacturer:* Toyo Seiki Seisaku-Sho Ltd., Japan. *Intended Use:* See notice at 52 FR 18261, May 14, 1987. *Reasons for This Decision:* The foreign instrument provides capability for simultaneous measurements of elastic, dielectric and piezoelectric constants at temperatures ranging from −150° to 250°C. *Advice Submitted By:* National Bureau of Standards, March 31, 1988.

Docket Number: 87-281. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104. *Instrument:* Room Temperature Bore Cargo Magnet System. *Manufacturer:* Magnex Scientific Ltd., United Kingdom. *Intended Use:* See notice at 52 FR 37356, October 6, 1987. *Reasons for This Decision:* The foreign instrument provides a field strength of 5 tesla, uniform within 0.1% over a 10.0 liter volume. *Advice Submitted By:* National Institutes of Health, March 15, 1988.

Docket Number: 88-049. *Applicant:* University of Rochester, Rochester, NY 14620. *Instrument:* Mass Spectrometer, Model VG Sector. *Manufacturer:* VG Isotopes, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 1610, January 22, 1988. *Reasons for This Decision:* The foreign instrument provides automated multiple collection for simultaneous measurement of up to 5 ion beams, a Daly scintillation detector and a guaranteed external reproducibility for strontium of 0.003%. *Advice Submitted by:* National Bureau of Standards, February 25, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Bureau of Standards advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or appartus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10647 Filed 5-11-88; 8:45 pm]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Texaco, Inc. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On March 23, 1988, the Secretary of Commerce received a notice of appeal and supporting data and information from Texaco, Inc. Texaco, Inc. is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the California Coastal Commission to Texaco Inc.'s consistency certification for a Plan of Exploration permit and a National Pollutant Discharge Elimination System permit for OCS-P Lease 0512. OCS-P Lease 0512 is located offshore of Santa Barbara County, approximately three miles west-southwest of Point Conception.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 (1987) or 930.122 (1987).

Texaco, Inc. requests that the Secretary override the California Coastal Commission's consistency objection based on Grounds I and II. To make the determination that proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with California's coastal management program. *See* 15 CFR 930.121 (1987). To make the determination that the proposed activity is "necessary in the interest of national security", the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 (1987) and 15 CFR 930.122 (1987). Comments are due within thirty days of the publication of this notice and should be sent to Cynthia L. Mackey, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Dorothy Dickey, Esquire, California Coastal Commission, 631 Howard Street, San Francisco, California, 94105 and G.F. Clarke, Division Vice President, Texaco USA, 10 Universal City Plaza, Universal City, California, 91608-1087.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the California Coastal Commission, Texaco USA and the Office of General Counsel, NOAA.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

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(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 6, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-10851 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Proposed Permit Modification: Northwest and Alaska Fisheries Center, National Marine Fisheries Service (P77#28)

On February 25, 1988 (53 FR 5615) notice was published that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, NE., Seattle, Washington 98115 had requested a modification to Permit No. 598 issued on July 17, 1987 (52 FR 27097), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder requested authorization to capture, handle, mark, tag and release up to 3,260 additional northern fur seals (*Callorhinus ursinus*) during studies of survival, reproduction, feeding and physiological condition of the fur seal population in the eastern North Pacific Ocean; harass an unspecified number of fur seals during the course of on land observations, aerial and vessel surveys; and to modify section A.3 to allow seals to be killed or injured during research activities.

The Office of Protected Resources has received supplemental information concerning this modification request and is extending the comment period until May 27, 1988.

Documents are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC.;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Dated: May 5, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-10583 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Molecular Oncology Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Oncology Inc. having a place of business in New York, N.Y., an exclusive license in the United States and certain foreign countries to practice the invention entitled "A Kit for Diagnosing Cancer Metastatic Potential", U.S. Patent Application No. 7-107,086. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-10600 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Copies of patent cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $8.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,495,511: PERMEABLE BASE TRANSISTOR; filed 23 August 1982; patented 22 January 1985.

Patent 4,498,218: HYDRAULIC AUTOMATIC LIGHT; filed 24 June 1982; patented 29 January 1985.

Patent 4,498,368: FRANGIBLE FLY THROUGH DIAPHRAGM FOR MISSILE LAUNCH CANISTER; filed 6 October 1983; patented 12 February 1985.

Patent 4,504,230: PREFABRICATED DENTAL ONLAYS AND METHOD THEREFOR; filed 23 March 1983; patented 12 March 1985.

Patent 4,504,232: BATTLEFIELD FRIEND OR FOE INDENTIFICATION TRAINER; filed 3 March 1983; patented 12 March 1985.

Patent 4,509,431: BRIDGE CRANE HOIST STOP SYSTEM; filed 5 July 1983; patented 9 April 1985.

Patent 4,509,549: HYDRAULIC POWERED GATE VALVE; filed 12 October 1982; patented 9 April 1985.

Patent 4,518,082: COLOR CENTER LASER, MATERIAL, AND METHOD OF LASING; filed 10 March 1982; patented 21 May 1985.

Patent 4,525,843: RING LASER WITH WAVEFRONT CONJUGATING BEAMS; filed 29 April 1982; patented 25 June 1985.

Patent 4,526,858: METHOD FOR FABRICATING SUPERCONDUCTING WEAK-LINKS USING ELECTRON BEAM LITHOGRAPHY; filed 11 January 1982; patented 2 July 1985.

Patent 4,527,040: METHOD OF LASER WELDING; filed 16 June 1983; patented 2 July 1985.

Patent 4,527,749: INTERFEROMETRIC FIBER OPTIC HYDROPHONE WINDING MACHINE; filed 9 February 1984; patented 9 July 1985.

Patent 4,528,253: HIGH PERFORMANCE MOLTEN NITRATE CELL; filed 21 September 1984; patented 9 July 1985.

Patent 4,529,966: HIGH-SPEED BIPOLAR LOGARITHMIC ANALOG-TO-DIGITAL CONVERTER; filed 11 October 1983; patented 16 July 1985.

Patent 4,530,096: LOWBITRON—A SOURCE OF COHERENT ELECTROMAGNETIC RADIATION; filed 15 November 1982; patented 16 July 1985.

Patent 4,531,128: BUOYANT RADAR REFLECTOR; filed 26 July 1982; patented 23 July 1985.

Patent 4,534,009: PIPELINED FET PROCESSOR; filed 10 May 1982; patented 6 August 1985.

Patent 4,535,011: MON (PENTAFLUOROSULFUR) DIACTYLENE, POLYMER THEREFROM, AND PREPARATIONS THEREOF; filed 16 December 1983; patented 13 August 1985.

Patent 4,535,037: LITHIUM-BORON ANODES IN NITRATE THERMAL BATTERY CELLS; filed 23 November 1984; patented 13 August 1985.

Patent 4,540,145: REEFING SYSTEM; filed 27 August 1984; patented 10 September 1985.

Patent 4,548,506: NONDESTRUCTIVE ANALYSIS OF MULTILAYER ROUGHNESS CORRELATION; filed 26 December 1979; patented 22 October 1985.

Patent 4,549,177: PRECISION FATHOMETER INTERFACE ADAPTOR; filed 6 April 1983; patented 22 October 1985.

Patent 4,549,294: TIME-OF-ARRIVAL PULSED WAVEFORM MULTIPLEXER; filed 12 March 1984; patented 22 October 1985.

Patent 4,555,726: VIDEO TARGET TRACK VALID INDICATOR; filed 5 March 1984; patented 26 November 1985.

Patent 4,557,197: PYROGEN IGNITER; filed 30 March 1984; patented 10 December 1985.

Patent 4,561,272: PADLOCK SHACKLE; filed 5 July 1984; patented 31 December 1985.

Patent 4,562,554: UNIVERSAL MICROCOMPUTER FOR INDIVIDUAL SENSORS; filed 9 June 1983; patented 31 December 1985.

Patent 4,562,580: PHOTOLYTIC IMPROVEMENT OF DYE LASER LIFETIMES; filed 27 July 1984; patented 31 December 1985.

Patent 4,570,658: PYROTECHNIC-ACTUATED DUAL AIR VALVE; filed 15 August 1983; patented 18 February 1986.

Patent 4,574,259: HIGH SWITCHING SPEED ELECTRICALLY TUNED MICROWAVE MAGNETIC RESONANCE DEVICES; filed 20 December 1984; patented 4 March 1986.

Patent 4,575,723: FOLIAGE CLUTTER REJECTOR; filed 16 February 1982; patented 16 February 1986.

Patent 4,588,149: LOWERED OPENING SHOCK PARACHUTE CANOPY; filed 20 September 1984; patented 13 May 1986.

Patent 4,589,772: PULSED REMOTE GAUGE; filed 25 May 1972; patented 20 May 1986.

Patent 4,592,004: ELECTROOPTICAL MATRIX MULTIPLICATION USING THE TWOS COMPLEMENT ARITHMETIC FOR IMPROVED ACCURACY; filed 21 May 1984; patented 27 May 1986.

Patent 4,595,909: N-BIT PROPAGATORY ANALOG-TO-DIGITAL CONVERTER SYSTEM; filed 25 November 1981; patented 17 June 1986.

Patent 4,596,412: TACTILE BUMPER FOR A MOBILE ROBOT OR PLATFORM; filed 21 February 1985; patented 24 June 1986.

Patent 4,597,639: DIELECTRIC AIR-INTERFACE PLASMA OPTICAL POWER LIMITER; filed 7 May 1984; patented 1 July 1986.

Patent 4,598,294: TEST SIGNAL GENERATOR FOR COHERENT AIR-TO-GROUND RADARS; filed 23 December 1983; patented 1 July 1986.

Patent 4,598,595: TORQUE GAUGE FOR APPLICATIONS INCLUDING ROBOTICS; filed 18 April 1985; patented 8 July 1986.

Patent 4,599,030: MARGINAL TERRAIN STRADDLE-LIFT CONTAINER HANDLER; filed 1 April 1985; patented 8 July 1986.

Patent 4,599,044: ELECTRONIC FEEDBACK AREA CONTROL SYSTEM FOR TVC GAS GENERATOR; filed 7 January 1985; patented 8 July 1986.

Patent 4,599,505: FLEXIBLE TRAILING SHIELD FOR WELDING REACTIVE METALS; filed 31 March 1983; patented 8 July 1986.

Patent 4,599,620: METHOD FOR DETERMINING THE ORIENTATION OF A MOVING PLATFORM; filed 4 December 1984; patented 8 July 1986.

Patent 4,599,730: VISIBLE AND ULTRAVIOLET LASER BASED ON EXCIMER TRANSITIONS IN THE HOMONUCLEAR HALOGENS; filed 1 October 1984; patented 8 July 1986.

Patent 4,599,745: HYBRID FIBER OPTICS AND RADIO FREQUENCY TELEMETRY APPARATUS FOR ACQUIRING DATA FROM AN UNDERWATER ENVIRONMENT; filed 21 May 1984; patented 8 July 1986.

Patent 4,608,537: LOW PERTURBATION ELECTRON INJECTOR FOR CYCLIC ACCELERATORS; filed 14 June 1984; patented 26 August 1986.

Patent 4,609,888: DIRECTIONAL FINDING ANTENNA INTERFACE; filed 2 October 1980; patented 2 September 1986.

Patent 4,611,929: SATELLITE METHOD FOR MEASURING SEA SURFACE TEMPERATURE; filed 21 March 1983; patented 16 September 1986.

Patent 4,612,208: POLARIZATION-PRESERVING SINGLE MODE FIBER COUPLER; filed 7 October 1985; patented 16 September 1986.

Patent 4,612,213: NICKEL OXIDE BATTERY CATHODE PREPARED BY OZONATION; filed 25 August 1982; patented 16 September 1986.

Patent 4,612,543: INTEGRATED HIGH-GAIN ACTIVE RADAR AUGMENTOR; filed 5 May 1983; patented 16 September 1986.

Patent 4,624,573: TOTAL OPTICAL LOSS MEASUREMENT DEVICE; filed 14 May 1984; patented 25 November 1986.

Patent 4,624,755: PREPARATION OF IONIC LIQUIDS FOR ELECTRODEPOSITION; filed 5 June 1985; patented 25 November 1986

Patent 4,644,273: FIVE-AXIS OPTICAL FIBER GRADIOMETER; filed 2 July 1985; patented 17 February 1987.

Patent 4,654,231: REACTIVE EVAPORATION OF VANADIUM DIOXIDE THIN FILMS; filed 21 May 1985; patented 31 March 1987.

Patent 4,661,819: DOPPLER TOLERANT BINARY PHASE CODED PULSE COMPRESSION SYSTEM; filed 12 May 1983; patented 28 April 1987.

Patent 4,662,998: ELECTRODEPOSITION OF REFRACTORY METAL SILICIDES; filed 12 december 1985; patented 5 May 1987.

Patent 4,667,902: PASSIVE ARM RETENTION CURTAIN; filed 2 November 1984; patented 26 May 1987.

Patent Application 043,267: 2,2,2-TRINITROETHYL 2-NITROXYETHYL ETHER AND A METHOD OF PREPARATION; filed 27 April 1987.

Patent Application 043,269: 4,4,10,10-TETRANITRO-6, 6-DIOXATRIDECANE-1, 13-DIOL POLYFORMAL AND METHOD OF PREPARATION; filed 27 April 1987.

Date May 9, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-10802 Filed 5-11-88; 8:45 am]

BILLING CODE 3810-AE-M

VOL 53 ISS 92 MAY 12 1988 UMI

DEPARTMENT OF EDUCATION

Vocational Education National Council; Open Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE:

May 22, 1988—5:00 P.M. to 7:00 P.M.
May 23, 1988—9:00 A.M. to 4:00 P.M.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004. (202) 638–5900.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Annual Report, Committee Reports, Council Initiatives, Future Activities.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., Suite 4080, Washington, DC 20202. (202) 732–1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 A.M. to 4:30 P.M.

Signed at Washington, DC, May 6, 1988.

Joyce Winterton,
Executive Director.

[FR Doc. 88–10599 Filed 5–11–88; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Texaco Inc.; Correction

In the **Federal Register** of April 27, 1988 (53 FR 15106), the Economic Regulatory Administration published a proposed Consent Order with Texaco Inc. The following correction is made to correct an editorial error in that document. On page 15109, in the eighteenth line of the third column, "198 million", should read, "190 million".

Chandler L. van Orman,
Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88–10603 Filed 5–11–88; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 7693–001]

Saylorville Hydro Partners; Availability of Environmental Assessment and Finding of No Significant Impact

May 10, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license listed below and has assessed the environmental impacts of the proposed development.

LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
7693–001	Saylorville	Iowa	Des Moines River	Polk Co	Saylorville Hydro Partners.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88–10601 Filed 5–11–88; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 2998]

Massachusetts Bay Power Co., Intent To Hold a Public Meeting Concerning the Centennial Island Project

May 9, 1988.

Massachusetts Bay Power Company, exemptee for the Centennial Island Project, FERC No. 2998, has requested a fourth extension of time to complete construction of the project. The project is located on the Concord River and the Wamesit Canal, in the City of Lowell, Middlesex County, Massachusetts.

Staff of the Federal Energy Regulatory Commission has reviewed the record in this case and has determined that a public meeting is necessary to evaluate the merits of the request.

Members of the public and interested officials are invited to express their views about the project and the requested extension of time in a public meeting to be held on May 23, 1988, from 6 p.m. to 8 p.m., at the Mayor's Reception Room, Lowell City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852.

The meeting will be used by the Commission staff to (1) receive input from the public and from the experts on the project's safety and environmental issues; (2) clarify the significance of the issues; and (3) identify additional issues for consideration. Agencies and individuals with safety and environmental expertise and concerns are encouraged to attend the meeting to assist the Commission's staff on these matters. The town meeting in no way excuses the exemptee from its obligations as described in the order for compliance issued by the Commission on April 27, 1988.

The Commission's staff will conduct the meeting. At the meeting, persons may make statements orally or in writing. The meeting will be recorded by a stenographer, and all oral and written statements will become part of the public record. In addition, the public meeting record will remain open until June 13, 1988, and anyone may submit written comments on the extension request until that time. All written comments must be in one original and five copies and addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The comments should clearly show, on the first page, the Caption, Centennial Island Project, FERC No. 2998.

For further information, please contact Hossein Ildari, staff engineer, at (202) 376–9080 or Demetra Anas, staff attorney, at (202) 357–5228.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88–10602 Filed 5–11–88; 8:45 am]
BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–005200–050.
Title: Pacific Coast European Conference.
Parties:
Compagnie Generale-Maritime
Hapag-Lloyd AG
Incotrans B.V.
Johnson Scanstar
Sea-Land Service, Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 208–010715–003.
Title: Eurospan.
Parties:
North Europe-U.S. Gulf Freight Association
Gulf-European Freight Conference

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 203–011178–001.
Title: APL/Waterman Cooperative Agreement for Charter of S.S. PRESIDENT TAYLOR.
Parties:
American President Lines, Ltd.
Waterman Steamship Corporation

Synopsis: The proposed amendment would clarify that the Agreement applies to that component of the charter-hire determined by voyage profits, and that no agreement provisions relating to the sharing of profits and losses may be implemented until they are filed and permitted to become effective in accordance with the Commission's regulations.

By Order of the Federal Maritime Commission.

Dated: May 9, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88–10614 Filed 5–11–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 5, 1988.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340).

Board of Governors of the Federal Reserve System, *Request for OMB approval to revise the following report:*

Report title: Reports of Condition and Income.
Agency form number: FFIEC 031–034.
OMB Docket number: 7100–0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual reporting hours: 149,178.
Small businesses are affected.
General description of report:

This information collection is mandatory [12 U.S.C. 324] and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revision for June 1988 consists of the addition of an item asking whether the respondent bank has had an external audit in the previous calendar year, and of what scope. The item would be collected on the June 1988 reports and annually thereafter only on the March report date.

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Board of Governors of the Federal Reserve System, May 5, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-10577 Filed 5-11-88; 8:45 am]
BILLING CODE 6210-01-M

Bank of Montreal et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless othewise noted, such activities will be conducted throughout the Unites States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effedts, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 1, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal,* Montreal, Quebec, Canada, and Bankmont Financial Corporation, Wilmington, Delaware, to acquire Harris Government Securities, Inc., Chicago, Illinois, and thereby engage, through company, in the activities of underwriting, dealing in, brokering, purchasing, and selling of obligations of the U.S. Government and its various agencies pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10578 Filed 5-11-88; 8:45 am]
BILLING CODE 6210-01-M

First Litchfield Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than June 1, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Litchfield Financial Corporation,* Litchfield, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Litchfield, Litchfield, Connecticut.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pikeville National Corporation,* Pikeville, Kentucky; to acquire 100 percent of the voting shares of Whitley-Williamsburg Financial Corp., Williamsburg, Kentucky, and thereby indirectly acquire Farmers National Bank, Williamsburg, Kentucky. Comments on this applicatico must be received by June 3, 1988.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Volunteer State Bancshares, Inc.,* Portland, Tennessee; to merge with BOC Bancorp, Inc., Woodbury, Tennessee, and thereby indirectly acquire Bank of Commerce, Woodbury, Tennessee.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation,* Zeeland, Michigan; to merge with CSB Financial Corporation, Greenville, Michigan, and thereby indirectly acquire Commercial Bank, Greenville, Michigan. Comments on this application must be received by June 3, 1988.

2. *Fort Madison Financial Company,* Fort Madison, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Madison Bank & Trust Company, Fort Madison, Iowa.

3. *Suburbank Bancorp, Inc.,* Palatine, Illinois; to acquire 100 percent of the voting shares of Continental Bank of Oakbrook Terrace, Oakbrook Terrace, Illinois.

Board of Governors of the Federal Reserve System, May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10580 Filed 5-11-88; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Terry M. Keathley

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received no later than May 27, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street N.W., Atlanta, Georgia 30303:

1. *Terry M. Keathley,* Stuart, Florida; to retain 6.54 percent of the voting shares of American Bank Capital Corporation of Florida, and thereby indirectly acquire American Bank of Martin County, Stuart, Florida.

2. *Joseph W. Stephens,* Montevallo, Alabama, and Kermit Stephens, Brierfield, Alabama; to acquire an additional 20.7 percent of the voting shares of First State Corp., West Blocton, Alabama, and thereby indirectly acquire First State Bank of Bibb County, West Blocton, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Peter D. Jaffe,* Brooklyn, New York; to acquire 61.59 percent of the voting shares of First Fordyce Bancshares, Inc., Fordyce, Arkansas, and thereby indirectly acquire First National Bank of Fordyce, Fordyce, Arkansas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Frank E. O'Bryan,* Newport Beach, California, to acquire an additional 9.55 percent; Eldon R. Eakin, Gardena, California, to acquire an additional 4.19 percent; Wilbur R. Hunter, Lawndale, California, to acquire an additional 1.77 percent; Robert J. Jones, Lawndale, California, to acquire an additional 4.6 percent; and Roy W. Murdock, Gardena, California, to acquire an additional 3.97 percent of the voting shares of American Republic Bancorp, Torrance, California, and thereby indirectly acquire Republic Bank, Gardena, California.

Board of Governors of the Federal Reserve System, May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10579 Filed 5-11-88; 8:45 am]
BILLING CODE 6210-01-M

The Mitsubishi Bank, Ltd.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted througout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Ltd.,* Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsubishi Capital, Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) as would be made by a commerical finance company, for MCI's account or the account of others pursuant to § 225.25(b)(1); acting as an investment or financial adviser to the extent of providing portfolio investment advice to other persons pursuant to § 225.5(b)(4)(iii); and leasing personal and real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10581 Filed 5-11-88; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 27]

Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to the Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 27, to transmit a change to the Federal Travel Regulations (FTR), FPMR 101-7, to include tax tables for computing the 1988 relocation income tax (RIT) allowance and refine certain language and examples.

EFFECTIVE DATE: The provisions transmitted by Supplement 27 are effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulations and Policy Division, FTS 557-1256 (for non FTS use AC 703).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

Background Information: Section 5724b of Subchapter II of Chapter 57, title 5, United States Code, authorizes agencies to reimburse transferred employees for the additional income tax liability they incur as a result of certain moving expense reimbursements. Policies and procedures for the calculation and payment of a relocation income tax (RIT) allowance are contained in the FTR, Chapter 2, Part 11. This supplement contains the tax tables generated by the Internal Revenue Service (IRS) specifically for use in calculating 1988 RIT allowance payments and clarifications in policy necessitated by the phased implementation of the Tax Reform Act of 1986. The basic procedures and formulas have not changed from those issued for the 1987 RIT allowance payments.

Advice to agencies: a. The Tax Reform Act of 1986 changed the moving

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expense deduction from an above-the-line deduction to an itemized deduction. Employees will no longer be able to deduct moving expenses if they elect to take the standard deduction. However, the General Services Administration and the IRS have determined that for calculating taxable reimbursements subject to the RIT allowance it is reasonable to assume that employees receive the benefit of offsetting deductions either through itemizing deductions or the increased standard deduction. Therefore, the RIT allowance shall be calculated as if the employee had itemized and claimed all allowable moving expense deductions.

b. In addition, the 80 percent limitation on meal expense deductions does not affect the RIT allowance calculations.

Explanation of changes: This supplement amends the FTR to include a Federal Tax Table for 1988, and Federal and State Tax Tables for 1987, and to update the examples shown for calculating the RIT allowance. A provision is added to indicate that calculation of the RIT allowance is not affected by an employee's choice between itemizing deductions or taking the standard deduction. A new provision allows the entire WTA payment to be treated as an excess payment if the employee fails to file a RIT allowance claim in a timely manner. The certification provisions are revised to require the spouse to sign the tax information statement if joint filing status and spouse's income are claimed. Further, the examples in the regulation have been updated to reflect the new tax rates. Examples of IRS forms 3903 and 4782 contained in Figures 2–11.8b and 2–11.8c are deleted. Agencies and employees should refer to IRS publication 521, "Moving Expenses," for guidance in using the new forms for the 1987 tax year. The entire text of Part 2–11 is reprinted for user convenience along with revised examples and Federal and State tax tables for 1987 and 1988. Tax tables previously issued for prior tax years are not reprinted but should be retained in the regulations.

Accordingly, the Federal Travel Regulations are amended as indicated in the changes that follow.

Dated: April 26, 1988.

John Anderson,

Acting Administrator.

For the reasons stated above, the Federal Travel Regulations are amended as follows:

CHAPTER 2. RELOCATION ALLOWANCES

1. **Authority:** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Order No. 11609, July 22, 1971 as amended by Executive Order No. 12466, February 27, 1984.)

Part 11. Relocation Income Tax (RIT) Allowance

2. Part 2–11 is amended by revising the text of Part 2–11 and the footnotes in Example 1 in Figure 2–11.8a, deleting Examples 2 and 3 in Figures 2–11.8b and 2–11.8c and revising Example 4 in Figure 2–11.8d and redesignating it as Example 2, Figure 2–11.8b, to read as follows:

Part 11. Relocation Income Tax (RIT) Allowance

2–11.1. Authority.

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expenses and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government (5 U.S.C. 5724b, as amended). The RIT allowance shall be calculated and paid as provided in this Part 11.

2–11.2. Coverage.

a. *Eligible employees.* Payment of a RIT allowance is authorized for employees transferred on or after November 14, 1983, in the interest of the Government from one official station to another for permanent duty. The effective date of an employee's transfer is the date the employee reports for duty at the new official station as provided in paragraph 2–1.4j.

b. *Individuals not covered.* The provisions of this Part 11 are not applicable to the following individuals or employees:

(1) New appointees as defined in 2–1.5e, including those covered under 2–1.5f (i.e., new appointees to shortage category or Senior Executive Service positions, and new Presidential appointees) and 2–1.5g(2) (i.e., new appointees to overseas posts of duty);

(2) Employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109); or

(3) Employees returning from overseas assignments for the purpose of separation.

2–11.3. Types of Moving Expenses or Allowances Covered and General Limitations

The RLT allowance is by law limited as to the types of moving expenses that can be covered. The law authorizes reimbursement of additional income taxes resulting from certain moving expenses furnished in kind or for which reimbursement or an allowance is provided to the transferred employee by the Government. However, such moving expenses are covered by the RIT allowance only to the extent that they are (1) actually. paid or incurred, and (2) are not allowable as a moving expense deduction for tax purposes. The types of expenses or allowances listed in a through i, below, are covered by the RIT allowance within the limitations discussed.

a. *En route travel.* Travel (including per diem) and transportation expenses of the transferred employee and immediate family for en route travel from the old official station to the new official station. (See FTR Part 2–2.)

b. *Household goods shipment.* Transportation (including temporary storage) expenses for movement of household goods from the old official station to the new official station. (See FTR Part 2–6.)

c. *Nontemporary storage expenses.* Allowable expenses for nontemporary storage of household goods belonging to an employee transferred on or after November 14, 1983, through October 11, 1984, to an isolated location in the conterminous United States. (See FTR 2–9.1.) Nontemporary storage expenses are not covered by the RIT allowance for transfers on or after October 12, 1984. (See 2–11.4c.)

d. *Mobile home movement.* Expenses for the movement of a mobile home for use as a residence when movement is authorized instead of shipment and temporary storage of household goods. (See FTR Part 2–7.)

e. *Househunting trip.* Travel (including per diem) and transportation expenses of the employee and spouse for one round trip to the new official station to seek permanent residence quarters. (See FTR Part 2–4.)

f. *Temporary quarters.* Subsistence expenses of the employee and immediate family during occupancy of temporary quarters. (See FTR Part 2–5.)

g. *Real estate expenses.* Allowable expenses for the sale of the residence (or expenses of settlement of an unexpired lease) at the old official station and for purchase of a home at the new official station for which reimbursement is received by the employee. (See FTR Part 2–6.)

h. *Miscellaneous expense allowance.* A miscellaneous expense allowance for the purpose of defraying certain expenses associated with discontinuing a residence at one location and establishing a residence at the new location in connection with an authorized or approved permanent change of station. (See FTR 2–3.)

i. *Relocation services.* Payments, or portions thereof, made to a relocation service company for services provided to a transferred employee (see FTR Part 2–12), subject to the conditions stated below and within the general limitations of this paragraph applicable to other covered expenses.

(1) *For employees transferred on or after November 14, 1983, through October 11, 1984.* The amount of a broker's fee or real estate commission, or other real estate sales transaction expenses which normally are reimbursable to the employee under FTR 2–6.2 but have been paid by a relocation service company incident to an assigned sale from the employee, provided that such payments constitute income to the employee. For the purposes of this regulation, an assigned sale occurs when an employee obtains a binding agreement for the sale of his/her residence and assigns the inherent rights and obligations of that agreement to a relocation company that is providing services under contract with the employing agency. For example, if the employee incurs an obligation to pay a specified broker's fee or real estate commission under the terms of the sales agreement, this obligation along with the sales agreement is assigned to the relocation company and may, upon payment of the obligation by the relocation company, constitute income to the employee. (See FTR 2–12.7 entitled "Income tax consequences of using relocation companies.")

(2) *For employees transferred on or after October 12, 1984.* Expenses paid by a relocation company providing relocation services to the transferred employee pursuant to a contract with the employing agency to the extent such payments constitute income to the employee. (See FTR 2–12.7.)

Note.—See FTR reference shown in parentheses for reimbursement provisions for each allowance listed in a through i, above. See Section 217 of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) Publication 521 entitled "Moving Expenses" and appropriate State and local tax authority publications for additional information on the taxability of moving expense reimbursements and the allowable tax deductions for moving expenses.

2–11.4. Exclusions From Coverage

The provisions of this Part 11 are not applicable to the following:

a. Any tax liability that may result from payments by the Government to relocation companies on behalf of employees transferred on or after November 14, 1983, through October 11, 1984, other than the payments for those expenses specified in 2–11.3i(1).

b. Any tax liability incurred for local income taxes other than city income tax as a result of moving expense reimbursements for employees transferred on or after November 14, 1983, through October 11, 1984. (See definition in 2–11.5b.)

c. Any tax liability resulting from reimbursed expenses for any nontemporary storage of household goods except as specifically provided for in 2–11.3c.

d. Any tax liability resulting from paid or reimbursed expenses for shipment of a privately owned automobile.

e. Any tax liability resulting from an excess of reimbursed amounts over the actual expense paid or incurred. For instance, if an employee's reimbursement for the movement of household goods is based on the commuted rate schedule and his/her actual moving expenses are less than the reimbursement, the tax liability resulting from the difference is not covered by the RIT allowance. (See 2–11.8c(2)(a).)

f. Any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code or appropriate State and local tax codes. (See 2–11.8b(1) and 2–11.8c(2).)

2–11.5. Definitions and discussion of terms

For purposes of this part, the following definitions will apply:

a. *State income tax.* A tax, imposed by a State tax authority, that is deductible for Federal income tax purposes as a State income tax under section 164(a)(3) of the IRC. "State" means any one of the several States of the United States and the District of Columbia.

b. *Local income tax.* A tax, imposed by a recognized city or county tax authority, that is deductible for Federal income tax purposes as a local (city or county) income tax under section 164(a)(3) of the IRC; except, that for employees transferred on or after November 14, 1983, through October 11, 1984, local income tax shall be construed to mean only city income tax. For purposes of this regulation:

(1) "City" means any unit of general local government which is classified as a municipality by the Bureau of the Census, or which is a town or township that in the determination of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places as defined by the Bureau of the Census (31 CFR 215.2(b)(1)).

(2) "County" means any unit of local general government which is classified as a county by the Bureau of the Census (31 CFR 215.2(e)).

c. *Covered moving expense reimbursements or covered reimbursements.* As used herein, these terms include those moving expenses listed in 2–11.3 as being covered by the RIT allowance and which may be furnished in kind, or for which reimbursement or an allowance is provided by the Government.

d. *Covered taxable reimbursements.* Covered moving expense reimbursements minus the tax deductions allowable under the IRC and IRS regulations for moving expenses. (See determination in 2–11.8c.)

e. *Year 1 or reimbursement year.* The calendar year in which reimbursement or payment for moving expenses is made to, or for, the employee under the provisions of the FTR, Chapter 2. All or part of these reimbursements (see 2–11.6) are reported to the IRS as income (wages, salary, or other compensation) to the employee for that tax year under the provisions of the IRC and IRS regulations, and are subject to Federal tax withholding. The withholding tax allowance (WTA) (see 1, below) is calculated in Year 1, to cover the employee's Federal tax withholding obligations each time covered moving expense reimbursements are made that result in a Federal tax withholding obligation. For purposes of this regulation, an advance of funds for any of the covered moving expenses is not considered to be a reimbursement or a payment until the travel voucher settlement for such expenses takes place. If an employee's reimbursement for moving expenses is spread over more than one year, he/she will have more than one Year 1.

f. *Year 2.* The calendar year in which a claim for the RIT allowance is paid.

(1) Generally, Year 2 will be the calendar year immediately following Year 1 and in which the employee files a tax return reflecting his/her tax liability for income received in Year 1. However, there may be instances where the

employee's claims submission and/or payment of the RIT allowance is delayed beyond the calendar year immediately following Year 1. (Year 1 will always be the calendar year that reimbursements are received; see e, above.) Year 2 will be the calendar year in which the RIT allowance is actually paid.

(2) The RIT allowance is calculated in Year 2 and paid to cover the additional tax liability (resulting from moving expense reimbursements received in Year 1) not covered by the WTA paid in Year 1. If an employee's covered taxable reimbursements are spread over more than one year, he/she will have more than one Year 2.

g. *Federal withholding tax rate (FWTR).* The tax rate applied to incremental income to determine the amount to be withheld for Federal income tax from salary or other compensation such as moving expense reimbursements. Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to such reimbursements. (See 2–11.7c.) Agencies should refer to the Treasury Fiscal Requirements Manual, ITFRM 3–5000, and applicable IRS regulations for complete and up-to-date information on this subject.

h. *Earned income.* For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA (see n, below) and any RIT allowance (see m, below) paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W–2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040. Earned income may be from more than one source. (See 2–11.8d.)

i. *Marginal tax rate (MTR).* The tax rate (for example 35 percent) applicable to a specific increment of income. The Federal and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices 2–11.A, B, and C. See 2–11.6e(3) for instructions on local marginal tax rate determinations.

j. *Combined marginal tax rate (CMTR).* A single rate determined by combining the applicable marginal tax rates for Federal, State, and local income taxes, using the formulas provided in 2–11.8e(4).

k. *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expense reimbursements listed in 2–11.3.

l. *Gross-up formulas.* The formulas used to determine the amount of the gross-up for the WTA and the RIT allowance. The formulas used herein (see 2–11.7d and 2–11.8f) compensate the employee for the initial tax, the tax on tax, etc. Note that the WTA gross-up formula in 2–11.7d is different than the RIT gross-up formula prescribed in 2–11.8f.

m. *RIT allowance.* The amount of payment computed and paid in Year 2 to cover substantially all of the estimated additional tax liability incurred as a result of the covered moving expense reimbursements received in Year 1.

n. *Withholding tax allowance (WTA).* The withholding tax allowance (WTA), paid in Year 1, covers the employee's Federal income tax withholding liability on covered taxable reimbursements received in Year 1. The amount is computed by applying the withholding gross-up formula prescribed in 2–11.7d (using the Federal withholding tax rate) each time that a Federal withholding obligation is incurred on covered moving expense reimbursements received in Year 1. Grossing-up the Federal withholding amount protects the employee from having to use part of his/her moving expense reimbursement to pay Federal withholding taxes. (See 2–11.7.)

2–11.6. Procedures in general.

a. This regulation sets forth procedures for the computation and payment of the RIT allowance and defines agency and employee responsibilities. This regulation does not require changes to those internal fiscal procedures established by the individual agencies pursuant to IRS regulations, or the Treasury Fiscal Requirements Manual, provided that the intents of the statute authorizing the RIT allowance and this regulation are not disturbed.

b. The total amount reimbursed or paid to the employee, or on his/her behalf, for travel, transportation, and other relocation expenses and allowances is includable in the employee's gross income pursuant to the IRC and certain State or local government tax codes. Some moving expenses for which reimbursements are received may be deducted from income by the employee as moving expense deductions, subject to certain limitations prescribed by the IRS or pertinent State or local tax authorities. Reimbursements for nondeductible moving expenses are subject to income tax. (See IRS Publication 521 entitled "Moving Expenses" and the appropriate State and local tax codes for detailed information.)

c. Usually, if the employee is reimbursed for nondeductible moving expenses, the amount of these reimbursements is subject to withholding of Federal income tax in accordance with IRS regulations at the time of reimbursement. Under existing fiscal procedures, the amount of the employee's withholding obligation is usually deducted either from reimbursements for the moving expenses at the time of reimbursement or from the employee's salary. (See Treasury Fiscal Requirements Manual for Federal Agencies.)

d. Payment of a WTA established herein will offset deductions for the Federal income tax withholding on moving expense reimbursements and on the WTA itself, from the employee's moving expense reimbursements or from salary.

e. The total amount of the RIT allowance can be computed after the end of Year 1 as soon as the earned income level, income tax filing status, total covered taxable reimbursements, and the applicable marginal tax rates can be determined. Employee claims for the RIT allowance should be submitted in accordance with this regulation and the employing agency's procedures.

f. Procedures are prescribed in 2–11.7 and 2–11.8 for computation and payment of the WTA and the RIT allowance. These procedures are built on existing fiscal procedures and IRS regulations regarding reporting of employee income from reimbursements and withholding of taxes on supplemental wages.

2–11.7. Procedures for determining the WTA in Year 1.

a. *General rules.* The WTA is designed to cover only the employee's withholding tax obligation for Federal income taxes on income resulting from covered moving expense reimbursements. (See definition in 2–11.5c.) Other withholding tax obligations, if any, such as for social security taxes or for State and/or local income taxes on income resulting from moving expense reimbursements shall not be included in the calculation of the WTA payment. The amount of the WTA is equal to the Federal income tax withholding obligation incurred by the employee on covered moving expense reimbursements (which are not offset by deductible moving expenses) and on the WTA itself. Each time covered moving expense reimbursements are paid to or on behalf of the employee, the WTA shall be calculated, accounted for, and reported as provided in b through g, below.

b. *Determination of amount of reimbursement subject to withholding.* Under IRS regulations, income resulting from reimbursements for nondeductible moving expenses is subject to withholding of Federal income taxes. (See IRS Publication 521, "Moving Expenses.") There are some moving expenses which may be reimbursed but are not covered taxable reimbursements (see definition in 2–11.5d) for purposes of the WTA and RIT allowance calculations, such as nontemporary storage of household goods. (See exclusions in 2–11.4.) Therefore, the actual amount of the covered taxable reimbursements may be different than the amount of nondeductible moving expenses subject to Federal income tax withholding. Because the difference in these amounts should not be substantial, the amount of nondeductible moving expenses subject to Federal income tax withholding, as determined by the agency pursuant to IRS regulations, may be used in calculating the WTA. (Note that the RIT calculation procedure in 2–11.8 requires determination of covered taxable reimbursements.)

c. *Determination of Federal withholding tax rate (FWTR).* Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to income generated by such reimbursements. The 20 percent rate should be used in calculating the WTA unless under an agency's internal fiscal (withholding) procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the 20 percent rate in the calculation shown in d, below.

d. *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in 2–11.7b and c, above, into the WTA gross-up formula shown below:

$$\text{Formula: } \frac{Y}{} = \frac{X}{1-X} \text{ (N)}$$

where:
Y=WTA
X=FWTR (generally, 20 percent)
N=nondeductible moving expenses/ covered taxable reimbursements

Example:
If X=20 percent
N=$21,800

$$\text{Then } \frac{Y}{} = \frac{.20}{1.00-.20} \text{ ($21,800)}$$

Y=.25 ($21,800)
Y=$5,450

e. *WTA payment and employee agreement for repayment.* (1) The WTA may be calculated several times within Year 1 if reimbursements for moving expenses are made on more than one travel voucher. Each time an employee is reimbursed for moving expenses which are subject to Federal tax withholding in accordance with the IRS regulations, the WTA will be calculated and paid unless the employee fails to comply with the requirements in (2), below.

(2) The employee shall be required to agree in writing to (a) repay any excess amount paid to him/her in Year 1 (see 2–11.8f(4) and 2–11.9b(3)), and (b) submit the required certified tax information and claim for his/her RIT allowance within a reasonable length of time (as determined by the agency) after the close of Year 1. Failure of the employee to comply with this requirement will preclude the agency's payment of the WTA. The entire WTA will be considered an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

f. *Determination of employee's withholding tax on WTA.* Since the amount of the WTA is considered income to the employee, it is subject to the same tax withholding requirements as all other moving expense reimbursements. See Treasury Fiscal Requirements Manual for Federal Agencies, Section 4080, Moving Expense Requirements, for withholding requirements.

g. *End of year reporting.* At the end of the year, agencies generally are required to issue IRS Form(s) W–2 for each employee showing total gross compensation (including moving expense reimbursements) and the applicable amount of Federal taxes withheld. For tax reporting purposes, the WTA is to be treated as a moving expense reimbursement. The total amount of the employee's WTA's paid during the year as well as the amount of moving expense reimbursements should be included as income on the employee's Form W–2. The Federal tax withhholding amount applicable to the moving expense reimbursements and the WTA should also be included on the employee's Form W–2. The amount of the WTA's also will be furnished to the employee along with the amount of moving expenses reimbursements on IRS Form 47892 or another itemized listing provided for the employee's use in preparing his/her tax return. (see IRS regulations for further guidance) and in claiming the RIT allowance as provided in 2–11.8.

2–11.8. Rules and procedures for determining the RIT allowance in Year 2.

a. *Summary/overview of procedures.* The RIT allowance will be calculated and claimed in Year 2. (See definition in 2–11.5f.) This can be accomplished, as soon as the employee can determine earned income (as defined herein), income tax filing status, covered taxable reimbursements for year 1 (see definition in 2–11.5e) and the applicable marginal tax rates. The RIT allowance is then calculated using the gross-up formular under procedures prescribed herein. Since the RIT allowance is considered income, appropriate withholding taxes on the RIT allowance are deducted and the balance constitutes the net payment to the employee. Rules, procedures, examples, and prescribed tax tables for these calculations are provided in b through h, below, and in the figures and appendices to this Part 11.

b. *General rules and assumptions.* (1) The procedures prescribed herein for calculations and payment of the RIT allowance are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. This approach avoides a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment. Specifically the following assumptions have been made:

(a) The employee will claim allowable moving expense deductions for the same tax year in which the corresponding moving expense reimbursements are included in income;

(b) Changes to the IRC, applicable to the 1987 and subsequent tax years, require that allowable moving expense deductions must be taken as an itemized deduction from gross income rather than as an adjustment to gross income as in previous tax years. It is assumed that employees will receive the benefit of allowable moving expense deductions to offset income either by itemizing their moving expense deductions or through the increased standard deductions.

(c) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1

(and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform act of 1986 substantially changed the Federal tax rates. Until the transition to the new tax rates is completed, it is necessary to compute a separate CMTR for Year 1 and for Year 2. (See e, below.) The formula for calculating any RIT allowances to be paid in 1988, which is unchanged from 1987, is shown in f, below. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2.

(2) The prescribed procedures which yield an estimate of an employee's additional tax liability due to moving expense reimbursements are to be used uniformly. They are not to be adjusted to accomodate an employee's unique circumstance which may differ from the assumed circumstances stated in (1), above.

(3) An adjustment of the RIT allowance paid in Year 2 for the covered taxable reimbursements received in Year 1 is required if the tax information certified to on the RIT allowance claim is different than that shown on the actual Federal tax return filed with IRS for Year 1 or changed for any reason after filing of the tax return, so as to affect the CMTR's used in the RIT allowance calculation. (See 2-11.10 for claims procedures.

c. *Determination of covered taxable reimbursements.* (1) Generally, the amount of the covered taxable reimbursements is the difference between (a) the amount of covered moving expense reimbursements for the allowances listed in 2-11.3 that was included in the employee's income in Year 1, and (b) the maximum amount of allowable moving expenses that may be claimed as a moving expense deduction by the employee on his/her Federal tax return under IRS tax regulations to offset the income resulting from moving expense reimbursements for Year 1. The covered taxable reimbursements will be determined as if the employee had itemized and deducted all allowable moving expense deductions. (See assumption made in 2-11.8b(1)(b).) If the employee is precluded from claiming moving expense deductions because he/she does not meet IRS requirements for the distance test, then the amount of covered taxable reimbursements is the same as the amount of covered moving expense reimbursements. (See 2-11.5d.)

(2) For purposes of calculating the RIT allowance, the following special rules apply to the determination of moving expense deductions to offset moving expenses reimbursements reported as income:

(a) The total amount of reimbursement (which was reported as income) for the expenses of en route travel for the employee and family (see 2-11.3a) and transportation (including up to 30 days temporary storage) of household goods (see 2-11.3b) to the new official station shall be used as a moving expense deduction. (See also 2-11.4a and f.)

(b) The total amount of reimbursement for a househunting trip, temporary quarters (up to 30 days at new station) and real estate transaction expenses (see 2-11.3c, f, g, and i), up to the maximum allowable deduction under IRS tax regulations, shall be used as a moving expense deduction. For example, an employee and spouse filing a joint return and residing in the same household at the end of the tax year may deduct up to $3,000 for these expenses. (No more than $1,500 of the $3,000 may be claimed for a househunting trip and temporary quarters expenses combined.) If the employee was reimbursed $1,350 for a househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,350 for the househunting trip and temporary quarters expenses and $1,650 for real estate expenses. If the employee's reimbursement was $1,650 for the househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,500 for the househunting trip and temporary quarters expenses and $1,500 for real estate expenses. If the employee had no reimbursement for a househunting trip and temporary quarters, the full $3,000 would be applied to the $9,000 reimbursement for real estate expenses. (See IRS Publication 521, "Moving Expenses," for these and other maximums which vary by situation and filing status.)

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbursement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1986 and an additional $1,000 for temporary quarters in 1987, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1986, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1986 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1986. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1986) will be used to offset the $1,000 temporary quarters reimbursement in 1987 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1987.

(4) Although the WTA amount is included in income (see 2-11.7), it shall not be included in the amount of covered taxable reimbursements. Under the procedures and formulas established herein, the proper amount of the RIT allowance is calculated using the RIT gross-up formula with the WTA and any prior RIT allowance payments excluded from covered taxable reimbursements.

(5) Agencies are cautioned that there may be moving expenses reimbursed to the employee that are not covered by the RIT allowance. (See exclusions in 2-11.4; also see discussion in 2-11.7 regarding covered taxable reimbursements versus nondeductible expenses.)

(6) An example showing how to calculate covered taxable reimbursements is illustrated in Figure 2-11.8a.

d. *Determination of income level and filing status.* In order to determine the CMTR's needed to calculate the RIT allowance, the employee must determine the appropriate amount of earned income (as prescribed herein) that was or will be reported on his/her Federal tax return for the tax year in which the covered taxable reimbursements were received (Year 1).

Such amount will also include the spouse's earned income if a joint filing status is claimed. For purposes of this regulation, appropriate earned income shall include only the amount of gross compensation reported on IRS Form(s) W-2, and, if applicable, the net earnings (or loss) from self-employment income as shown on Schedule SE of IRS Form 1040. (See 2-11.5h.) (Note that moving expense reimbursements including the WTA amounts and any RIT allowance paid for a prior Year 1 are to be included in earned income and should be shown as income on the Form W-2; if they are not, other appropriate documentation shall be furnished by the agency.) (See 2-11.7g.) the amount of earned income as determined under this paragraph and the tax filing status (for example, from lines 1 through 5 on the 1987 IRS Form 1040) shall be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance. (See 2-11.10.) If a joint filing status is claimed and the spouse's earned income is included, the spouse must sign the certified statement. If the spouse does not sign the statement, earned income will include only the employee's earned income and the RIT allowance will be calculated on that basis. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

e. *Determination of the CMTR's.* The gross-up formula used to calculate the RIT allowance in f, below, requires the use of two CMTR's—one for Year 1 in which reimbursements were received and the other for Year 2 in which the RIT allowance is paid. CMTR's are single tax rates calculated to represent the Federal, State, and/or local income tax rates applicable to the earned income determined in d, above, for Year 1. The CMTR's will be determined as provided in (1) through (4), below.

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under 2-11.8d and contained in the certified statement by the employee (or employee and spouse) on the RIT allowance claim, and applying the prescribed Federal tax table contained in appendices 2-11.A and C. For example, if the income level for the 1987 tax year (Year 1) was $65,000 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 35 percent for Year 1 (1987) (see appendix 2-11.A) and 28 percent for Year 2 (1988) (see appendix 2-11.C). These rates would be used regardless of how much of the $65,000 was attributable to reimbursement for the employee's relocation expenses. (Note that these marginal rates are different from the withholding tax rate used for the WTA.) If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices 2-11.A and C are the CMTR's to be used in the RIT gross-up formula provided in 2-11.8f. In such cases, the provisions of (2) and (3), below, do not apply.

(2) *State marginal tax rate.* (a) If the employee incurs an additional State income tax (see definition in 2-11.5a) liability as a result of moving expense reimbursements, the appropriate State tax table in appendix 2-11.B is to be used to determine the applicable State marginal tax rate that will be substituted into the formula for determining the CMTR for both Year 1 and Year 2. The appropriate State tax table will be the one that corresponds to the tax year in which the reimbursements are paid to the employee (Year 1). The income level determined in 2-11.8d for Federal taxes shall be used to identify the appropriate income bracket in the State tax table. The applicable State marginal tax rate is obtained from the selected income bracket column for the State where the employee is required to pay State income tax on moving expense reimbursements. the tax rates shown in the table apply to all employees regardless of their filing status, except where a separate rate is shown for a single filing status.

(b) The lowest income bracket shown in the State tax tables in appendix 2-11.B is $20,000–$24,999. In cases where the employee's (employee's and spouse's, if filing jointly) earned income as determined under 2-11.8d is less than this income bracket, an appropriate State marginal tax rate shall be established by the employing agency from the applicable State tax code or regulations issued pursuant thereto. Such State marginal tax rate shall be representative of the earned income level in question but in no case more than the marginal tax rate established in appendix 2-11.B for the $20,000–$24,999 income bracket for the particular State in which an additional tax obligation has been incurred.

(c) The prescribed State marginal tax rates generally are expressed as a *percent of taxable income.* However, if the applicable State marginal tax rate is stated as a *percentage* of the *Federal income tax liability,* the State tax rate must be converted to a *percent of taxable income* to be used in the CMTR formulas in 2-11.8e(4). This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 35 percent for Year 1 and the State tax rate is 25 percent of the *Federal income tax liability,* the State tax rate stated as a *percent of taxable income* would be 8.75 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(d) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates. Nevertheless, a single State marginal tax rate must be determined for use in the CMTR formulas in 2-11.8e(4). The following general rules shall apply in determining the applicable single rate.

(i) In the tax year during which the transfer actually takes place, the employee may incur a State income tax obligation at both the old and new location. However, most moving expense reimbursements will be taxed at the new location. However, most moving expense reimbursements will be taxed at the new location. Although the employee may receive some reimbursements (e.g., for a househunting trip) prior to the actual transfer which would be credited as income at the old location, these types of expenses generally are tax deductible and would not generate an additional State tax liability for the employee. In addition, procedures inherent in the travel voucher reimbursement system tend to cause most reimbursements which may be taxable to occur after the actual transfer. Therefore, the State marginal tax rate determined under 2-11.8e(2) (a) through (c) for the new location will be used in the CMTR formulas.

(ii) There may be other situations where the employee is subject to taxes on moving expense reimbursements in two States, for instance, in one State because State residency and in another because a particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. If the two States involved recognize such situations by allowing an adjustment or credit for taxes paid to the other State, the employee's State marginal tax rate for the State where income tax on moving expense reimbursements is actually paid will be determined and used in the CMTR formulas. However, in those situations where there is in fact double taxation on income from moving expense reimbursements and the taxes imposed by both States qualify as a State income

tax (as defined in 2-11.5a), the sum of the State marginal tax rates for the two States as determined under 2-11.8e(2)(a) through (c) shall be used in the CMTR formulas.

(3) *Local marginal tax rate.* Because of the impracticality of establishing a single marginal tax rate table for local income taxes that could be applied uniformly on a nationwide basis, appropriate local marginal tax rates shall be determined as provided in (a) through (c), below.

(a) If the employee incurs an additional local income tax (see definition 2-11.5b) liability as a result of moving expense reimbursements, he/she shall certify to such fact when claiming the RIT allowance (see certification statement in 2-11.10) by specifying the name of the locality imposing the income tax and the applicable marginal tax rate determined from the actual marginal tax rate table or schedule prescribed by the taxing locality. The marginal tax rate shall be the one applicable to the taxable income portion of the amount of earned income determined under 2-11.8d for the employee (and spouse, if filing jointly). The same tax rate shall be used in calculating the CMTR for both Year 1 and Year 2. The employing agency shall establish procedures to determine whether the employee certified local marginal tax rate is appropriate for the employee's income level and filing status and approve its use in the CMTR formulas. (See also 2-11.10b(2).)

(b) If the local marginal tax rate is stated as a percentage of Federal or State income tax liability, such rate must be converted to a percent of taxable income for use in the CMTR formulas. This is accomplished by multiplying the applicable Federal or State tax rate for Year 1 as determined in 2-11.8e (1) or (2) by the applicable local tax rate. For example, if the State tax rate for Year 1 is 6 percent and the local tax rate is 50 percent of State income tax liability, the local tax rate stated as a percentage of taxable income would be 3 percent. The local tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(c) The situations described in 2-11.8e(2)(d) with respect to State income taxes may also be encountered with local income taxes. If such situations do occur, the rules prescribed for determining the single State marginal tax rate shall also be applied to determine the single local marginal tax rate for use in the CMTR formulas.

(4) *Calculation of the CMTR's.* As stated above, the gross-up formula for calculating the RIT allowance requires the use of two CMTR's. However, the required CMTR's cannot be calculated by merely adding the Federal, State, and local marginal tax rates together because of the deductibility of State and local income taxes from income for Federal income tax purposes. The State tax tables prescribed in appendix 2-11.B are designed to use the same income amount as that determined for the Federal taxes, which reflects, among other things, State and local tax deductions. The formulas prescribed below for calculating the CMTR's are designed to adjust the State and local tax rates to compensate for their deductibility from income for Federal tax purposes.

(a) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X=F+(1-F)S+(1-F)L$

where:
X = CMTR for Year 1
F = Federal tax rate for Year 1
S = State tax rate for Year 1
L = local tax rate for Year 1

(i) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formula may be solved as follows:

Example:
If:
F = 35 percent of income
S = 6 percent of income
L = 2 percent of income
Then:
$X=.35+(1.00-.35).06+(1.00-.35).02$
$X=.4020$

(ii) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:
If:
F = 35 percent of income
S = 6 percent of income
L = Zero
Then:
$X=.35+(1.00-.35).06$
$X=.3890$

(iii) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:
If:
F = 35 percent of income
S = Zero
L = 2 percent of income
Then:
$X=.35+(1.00-.35).02$
$X=.3630$

(b) *Calculation of the CMTR for Year 2.* The calculation of the CMTR for Year 2 is the same as described in (a), above, for Year 1 except that the Federal tax rate for Year 2 is used in place of the Federal tax rate for Year 1. State and local tax rates remain the same as for Year 1. The following formula shall be used to determine the CMTR for Year 2:

CMTR Formula: $W=F+(1-F)S+(1-F)L$

where:
W = CMTR for Year 2
F = Federal tax rate for Year 2
S = State tax rate for Year 1
L = local tax rate for Year 1

f. *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1 (see 2-11.8c), the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as follows:

Formula:

$$Z=\frac{X}{1-W}(R)-\frac{1-X}{1-W}(Y)$$

where:
Z = RIT allowance payable in Year 2
X = CMTR for Year 1
W = CMTR for Year 2
R = covered taxable reimbursements
Y = total WTA's paid in Year 1

Example:
If:
X = .4020
W = .3376
R = $21,800
Y = $5,450
Then:

$$Z=\frac{.4020}{1.00-.3376}(\$21,800)-\frac{1.00-.4020}{1.00-.3376}(\$5,450)$$

$Z=.6069\ (\$21,800)-.9026(\$5,450)$
$Z=\$13,230.42-\$4,920.28$
$Z=\$8,310.16$

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in (1), above, for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example:
If:
X = .4020
W = .3376
R = $21,800
Y = Zero
Then:

$$Z=\frac{.4020}{1.00-.3376}(\$21,800)$$

$Z=.6069\ (\$21,800)$
$Z=\$13,230.42$

(3) If the amount of the RIT allowance is greater than zero, it is payable to the employee on the travel voucher as a relocation or moving expense allowance. The RIT allowance amount is included in the employee's gross income for Year 2 and, therefore, subject to appropriate withholding taxes. (See net payment to employee in 2-11.8g.) The RIT allowance amount will be reported on IRS Form W-2 for Year 2 (including applicable income tax withholding amounts) and on IRS Form 4782 for the employee's information.

(4) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See 2-11.7e(2) and 2-11.9b).

(5) Any changes to the employee's income level or filing status for Year 1 that would affect the marginal tax rates (Federal, State, or local) used in calculating the RIT allowance must be reported to the agency by the employee as provided in 2-11.9b(2). (See also 2-11.10 for certified statement regarding these changes.)

g. *Determination of the net payment due employee in Year 2.* Since the amount of the RIT allowance is income to the employee in Year 2, it is subject to the same tax withholding requirements as all other moving expense reimbursements. Agencies should determine the appropriate amounts for withholding taxes under their internal tax withholding procedures. The amount of withholding taxes is deducted from the RIT allowance to arrive at the net payment to the employee.

h. *Summary example.* The procedures provided in a through f, above, for calculating the RIT allowance and in 2-11.7 for calculating the WTA are summarized and illustrated for a hypothetical situation in Figure 2-11.8b.

2-11.9. Responsibilities.

a. *Agency.* Finance offices will calculate the amount of the gross-up for the WTA in Year 1 in accordance with procedures outlined herein and credit this amount to the employee at the time of reimbursement as provided in 2-11.7e. The WTA will be reflected on the employee's Form W-2 for Year 1. The RIT allowance may be calculated in Year 2 either by the employee or by the agency finance office based on information provided by the employee on the voucher, as directed by the agency's implementing policies and procedures. In addition, agencies shall prescribe appropriate and necessary implementing procedures as provided elsewhere in this Part 11.

b. *Employee.* (1) The employee is required to submit a claim for the RIT allowance and to file the tax information for Year 1 specified in 2-11.10 with his/her agency in Year 2, regardless of whether any additional reimbursement for the RIT allowance is owed the employee. (See 2-11.7e for employee agreement.)

(2) If any action occurs (i.e., amended tax return, tax audit, etc.) that would change the information provided in Year 2 by the employee to his/her agency for use in calculating the RIT allowance due the employee for Year 1 taxes, this information must be provided by the employee to his/her agency under procedures prescribed by the agency. (See 2-11.10.)

(3) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See 2-11.7e(2) and 2-11.8f(4).)

2-11.10 Claims for payment and supporting documentation and verification.

a. *Claims forms.* Claims for payment of the RIT allowance shall be submitted by the employee in Year 2 on SF 1012 (Travel Voucher) or other authorized travel voucher form. When claiming payment for the RIT allowance, the employee shall furnish and certify to certain tax information that has been or will be shown on his/her actually prepared tax returns. The spouse must also sign statement if joint filing status is claimed and spouse's income is included on statement. This information shall be contained in a certified statement on, or attached to, the SF 1012 reading essentially as follows:

I certify that the following information, which is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State, and local (specify which) tax authorities for the 198__ tax year.

—Gross compensation as shown on attached IRS Form(s) W-2 and, if applicable, net earnings (or loss) from self-employment income shown on attached Schedule SE (Form 1040):

	Form(s) W-2	Schedule SE
Employee	$_____	$_____
Spouse (if filing jointly)	$_____	$_____
Total (Both columns)	$_____	$_____

—Filing status: _____

(Specify one of the filing status items that was (or will be) claimed on IRS Form 1040.)

—Marginal tax rates from FTR appendices 2-11.A, B, C and local tax tables derived under procedures prescribed in FTR Part 2-11:

Federal for Year 1 _____
Federal for Year 2 _____
State (specify which): _____
Local (specify which): _____

The above information is true and accurate to the best of my knowledge. I (we) agree to notify the appropriate agency official of any changes to the above (i.e., from amended tax returns, tax audit, etc.) so that appropriate adjustments to the RIT allowance can be made. The required supporting documents are attached. Additional documentation will be furnished if requested.

I (we) further agree that if the 12-month service agreement required by 2-1.5a(1) is violated, the total amount of the RIT allowance will become a debt due the United States Government and will be repaid according to agency procedures pursuant to FTR 2-11.11.

Employee's signature Date

Spouse's signature Date
(if filing jointly)

Note: If a joint filing status is claimed and spouse's income is included, the spouse must sign the statement. If the spouse does not sign the document, earned income will include only the employee's earned income. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse. (See FTR 2-11.8d.)

b. *Supporting documentation/verification.* The claim for the RIT allowance shall be supported by documentation attached to the voucher and by verification of State and local tax obligations as provided below:

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(1) Copies of the appropriate IRS Forms W–2 and, if applicable, the completed IRS Schedule SE (Form 1040) shall be attached to the voucher to substantiate the income amounts shown in the certified statement. Employee (and spouse, if filing jointly) must agree to provide additional documentation to verify income amounts, filing status, and State and local income tax obligations if requested by the agency.

(2) In order to determine or verify whether a particular State or local tax authority imposes a tax on moving expense reimbursements, it is incumbent upon the appropriate agency officials to become familiar with the State and local tax laws that affect their transferring employees. In cases where the taxability of moving expense reimbursements is not clear, an agency may pay a RIT allowance which reflects only those State and local tax obligations that are clearly imposed under State and local tax law. Once the questionable State or local tax obligations are resolved, agencies may recompute the RIT allowance and make appropriate payment adjustments.

c. *Fraudulent claims.* A claim against the United States is forfeited if the claimant defrauds or attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on an employee who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001). The employee's claim for payment of the RIT allowance shall accurately reflect the facts involved in every instance so that any violation of these provisions will be avoided.

2–11.11. Violation of service agreement.

In the event the employee violates the terms of the service agreement required under 2–1.5a(1), no part of the RIT allowance or the WTA will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are repaid by the employee.

2–11.12. Advance of funds.

No advance of funds is authorized in connection with the allowance provided in this part.

2–11.13. Source references.

The following references or publications have been used as source material for this Part 11.

a. Internal Revenue Code (IRC), section 164(a)(3) (26 U.S.C. 164(a)(3)) pertaining to the deductibility of State and local income taxes, and section 217 (26 U.S.C. 217), pertaining to moving expenses.

b. Internal Revenue Service Publication 521, "Moving Expenses."

c. Internal Revenue Service, Circular E, "Employer's Tax Guide."

d. Department of the Treasury Fiscal Requirements Manual for Federal Agencies, ITFRM 3–5000.

e. 31 CFR 215.2 (5 U.S.C. 5516, 5517, and 5520).

EXAMPLE 1.—CALCULATION OF COVERED TAXABLE REIMBURSEMENTS

[The following example shows how to calculate covered taxable reimbursements as provided in FTR 2–11.8. Column (a) shows hypothetical moving expense reimbursements. Column (b) shows Federal moving expense deductions for employee and spouse filing a joint return and residing together at the end of the tax year (see footnote [6] below). Column (c) shows the balance of the covered reimbursements in column (a) which have not been offset by moving expense deductions in column (b). Amounts shown are for illustration purposes only and should not be construed in any way to represent actual, average, or typical moving costs.]

Covered allowances (FTR 2–11.3)			Amount paid/ reimbursed (a) [1]	Maximum moving expense deduction (b) [2]	Amount of covered taxable reimbursements (c)=(a)−(b) [3]
1. Travel and transportation expenses between duty stations			[4] $1,150	[4] $1,150	[4] $0
2. Transportation and 30 days temporary storage of household goods (HHG's)			[4] 5,100	[4] 5,100	[4] 0
3. Temporary storage of HHG's not included on line 2, and/or nontemporary storage (see 2–11.3c)			1,100	0	1,100
4. Mobile home movement instead of HHG's			0	0	0
5. Miscellaneous expense allowance			700	0	700
6. Househunting trip		$1,500			
7. Temporary quarters, 30 days, new station		2,550			
8. Total lines 6 and 7			4,100		
9. Enter lesser of line 8 or $1,500 as deductible amount in col. b; [5]				1,500	
10. Enter balance of line 8 minus line 9					2,600
11. Temporary quarters in excess of line 7			1,900	0	1,900
12. Real estate transactions resulting from:					
(a) Sale expenses	$13,500				
(b) Purchase expenses	3,500				
(c) Unexpired lease	0				
(d) Relocation services [6]	0				
13. Total of items (a) through (d), line 12			17,000		
14. Enter lesser of line 13 or $3,000 less deductible amount used on line 9 [5]				1,500	
15. Balance of line 13 minus line 14					15,500
16. Relocation services not included on line 12(d) [6]			[6] 0	[6] 0	[6] 0
17. Total column (a), (b), and (c)			31,050	[7] 9,250	[8] 21,800
18. Total amount of WTA's paid in Year 1			[9] 5,450		
19. Total lines 17 and 18, column (a)			[10] 36,500		

Figure 2–11.8a (Part 1 of 2). Illustration of Example for Calculation of Covered Taxable Reimbursements in Year 2.

[1] Enter in column (a) the amounts of reimbursed expenses for the allowances listed in FTR 2–11.3.
[2] Enter in column (b) the maximum amounts of the reimbursed expenses in column (a) which are deductible moving expenses. (See FTR 2–11.8c(2); also see footnote [4].)
[3] Enter in column (c) the balance of column (a) minus column (b). (See FTR 2–11.8c).
[4] The amount entered in column (b) for lines 1 and 2 should be the same as that entered in column (a). (See FTR 2–11.8c(2)(a).) Column (c) will be zero.
[5] Limits may vary according to filing status, etc. See page 5 of IRS Publication 521, Moving Expenses.
[6] In this example, relocation services were not used—employee declined (see FTR 2–12 and employing agency policy). However, if relocation services were used, any amounts paid to the relocation service company that are determined to be income to the employee (see FTR 2–11.3i, 2–11.4a, and 2–12.7) and covered by the RIT allowance would be entered on lines 12(d) and 16, column (a), as appropriate. In such cases, the amount shown in column (c) as a covered taxable reimbursement would depend on whether any part of the amount in column (a) is a moving expense deduction in column (b). All amounts included in column (a) may not be deductible and there are limitations as to what can be included as a covered reimbursement under 2–11.3i.
[7] In an actual situation, the total moving expense deductions calculated for purposes of the RIT allowance may differ from the total moving expense deductions shown on the employee's IRS Form 3903 because of relocation expenses incurred which are not paid for or reimbursed by the Government but which may be claimed as a moving expense deduction for Federal tax purposes (e.g., extra valuation insurance for household goods shipments).
[8] The amount on line 17, column (c), is the amount of covered taxable reimbursements to be used in the gross-up formula for the RIT allowance.
[9] Enter total amount of all WTA's paid in Year 1 on line 18, column (a) only. This amount is an estimated partial payment of the RIT allowance. It is not included in the amount of covered taxable reimbursements determined for calculation of the RIT allowance. (See FTR 2–11.8c(4).)
[10] The total amount of moving expenses paid or reimbursed determined for the RIT allowance procedures may differ from the amount shown on the IRS Form 4782 because of moving expenses paid or reimbursed which are not covered by the RIT allowance (see exclusions in FTR 2–11.4).

Figure 2–11.8a (Part 2 of 2). Illustration of Example for Calculation of Covered Taxable Reimbursements in Year 2. (Footnotes)

Example 2.—Summary of RIT Allowance Procedures

Year 1: In 1987, the employee received $31,050 in covered moving expense reimbursements. After subtracting $9,250 of deductible moving expenses, $21,800 of the reimbursements (nondeductible moving expenses) were subject to Federal tax withholding. This example assumes that all reimbursements were paid on one voucher.

Apply WTA formula:

$$Y = \frac{X}{1-X} (N)$$

Where:
Y=WTA
X=Federal withholding tax rate (.20)
N=nondeductible moving expenses/covered taxable reimbursements ($21,800)
Then:

$$Y = \frac{.20}{21.00-.20} ($21,800)$$

Y=$5,450

Compute net payment to employee in Year 1:

Total covered moving expense reimbursement in Year 1	$31,050
Less deductible moving expenses	−9,250
Nondeductible covered moving expenses subject to withholding	21,800
Plus WTA on $21,800	+ 5,450
Amount subject to withholding	[1] 27,250

[1] The WTA allowance is treated as a moving expense reimbursement for tax withholding purposes. After subtracting the applicable withholding amounts the balance is the net payment due the employee.

Year 2: In 1988, the amount of the RIT allowance is determined on the basis of covered reimbursements in Year 1. Assume that $21,800 of nondeductible moving expenses is the same as the covered taxable reimbursements. Also, assume that employee and spouse (married, filing jointly) have combined earned income of $85,000. Thus, Federal marginal tax rates would be 35% for Year 1 (from app. 2–11.A) and 28% for Year 2 (from app. 2–11.C). Also assume the applicable State and local marginal tax rates are 6% and 2%, respectively, of taxable income.

Apply CMTR formula for Year 1:
X=F+(1−F)S+(1−F)L
Where:
X=CMTR for Year 1
F=Federal tax rate for Year 1 (.35)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)
Then:
X=.35+(1.00−.35).06+(1.00−.35).02
X=.35+.0390+.0130
X=.4020

Apply CMTR formula for Year 2:
W=F+(1−F)S+(1−F)L
Where:
W=CMTR for Year 2
F=Federal tax rate for Year 2 (.28)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)
Then:
W=.28+(1.00−.28).06+(1.00−.28).02
W=.28+.0432+.0144
W=.3376

Apply RIT gross-up formula:

$$Z = \frac{X}{1-W} (R) - \frac{1-X}{1-W} (Y)$$

Where:
Z=RIT allowance payable in Year 2
X=CMTR for Year 1 (.4020)
W=CMTR for Year 2 (.3376)
R=covered taxable reimbursements for Year 1 ($21,800)
Y=WTA paid in Year 1 ($5,450)
Then:

$$Z = \frac{.4020}{1.00-.3376} ($21,800) - \frac{1.00-.4020}{1.00-.3376} ($5,450)$$

Z=.6069 ($21,800)−.9028 ($5,450)
Z=$13,230.42−$4,920.26
Z=$8,310.16 [1] [2]

[1] See FTR 2–11.8f(2) if no WTA is involved.
[2] The RIT allowance is treated as a moving expense reimbursement for tax withholding purposes. After subtracting the applicable withholding amounts the balance is the net payment due the employee.

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1987

[The following table is to used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in FTR 2–11.8a(1). This table is to be used for employees whose Year 1 occurred during calendar year 1987.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
11%	$4,850	$6,481	$7,763	$10,309	$10,400	$13,719	$5,811	$7,081
15%	6,481	21,979	10,309	31,379	13,719	40,020	7,081	19,602
28%	21,979	33,433	31,379	47,903	40,020	58,705	19,602	31,572
35%	33,433	58,810	47,903	88,015	58,705	101,432	31,572	54,120
38.5%	58,810		88,015		101,432		54,120	

Appendix 2–11.A Federal Tax Table for RIT Allowance.

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State Marginal Tax Rates by Earned Income Level—Tax Year 1987

[The following table (pages 13 thru 16) is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed IN FTR 2-11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1987.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000–24,999	$25,000–49,999	$50,000–74,999	$75,000 & OVER
1. Alabama	5%	5%	5%	5%
2. Alaska	0	0	0	0
3. Arizona	7	8	8	8
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	9.3	9.3	9.3
If single status [3]	8	9.3	9.3	9.3
6. Colorado	5	5	5	5
7. Connecticut	0	0	0	0
8. Delaware	6.1	8.2	8.8	8.8
9. District of Columbia	8	10	10	10
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8.25	9.75	10	10
If single status [3]	9.75	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	2.5	2.5	2.5	2.5
15. Indiana	3.2	3.2	3.2	3.2
16. Iowa	7	11	12	13
17. Kansas	7.5	9	9	9
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	3	9.2	10	10
If single status [3]	9.2	10	10	10
21. Maryland	5	5	5	5
22. Massachusetts	5	5	5	5
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	8	9	9	9
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	7	10	11	11
If single status [3]	9	10	11	11
28. Nebraska	3.2	5	5.9	5.9
If single status [3]	5	5.9	5.9	5.9
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.8	5.9	7.7	8.5
If single status [3]	5.8	7.7	8.5	8.5
33. New York	7	8.75	8.75	8.75
If single status [3]	8.75	8.75	8.75	8.75
34. North Carolina	7	7	7	7
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	3.004	4.506	5.257	6.008
37. Oklahoma	4	6	6	6
If single status [3]	6	6	6	6
38. Oregon	9	9	9	9
39. Pennsylvania	2.1	2.1	2.1	2.1
40. Rhode Island	*Tax 23.46% of Federal income tax liability [4]			
41. South Caroline	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.75	7.75	7.75	7.75
46. Vermont	*Tax 25.8% of Federal income tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
If single status [3]	4	6	6.5	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2-11.8e(2)(b).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).

Appendix 2-11.B. State Tax Table for RIT Allowance.

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1988

[The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, 1986, and 1987.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15%	$5,260	$23,920	$9,440	$34,215	$12,500	$43,410	$6,200	$21,880
28%	23,920	52,310	34,215	77,300	43,410	88,740	21,880	47,475
33%	52,310	113,370	77,300	166,910	88,740	197,820	47,475	133,415
28%	113,370		166,910		197,820		133,415	

Appendix 2-11.C. Federal Tax Table for RIT Allowance—Year 2.

[FR Doc. 88-10807 Filed 5-11-88; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Application Announcement for a Cooperative Agreement With an Organization for Promoting Perinatal Health.

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: This Health Resources and Services Administration (HRSA) is announcing that applications are being accepted from public or private nonprofit organizations for a cooperative agreement to promote and give national visibility to perinatal health and to the continued development and implementation of coordinated systems of perinatal care. It is expected that approximately $225,000 will be available for Fiscal Years 1988, 1989, and 1990 for a cooperative agreement to promote perinatal health, which will be entered into under the authority of section 502(a) of the Social Security Act (42 U.S.C. 702 (a)). Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds and will fund the one which, in the Department's view, best promotes improvement for the delivery and organization of perinatal care systems.

DATE: To receive consideration, applications for this cooperative agreement must be received by the Grants Management Officer by July 11, 1988. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commerical carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

ADDRESS: Application kits (Forms PHS-5161-1 with revised facesheet DHHS Form 424 approved by OMB under control number 0348-0006) and additional guidance may be obtained from, and completed applications should be sent to Waddell Avery, Grants Management Officer, Office of Maternal and Child Health, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration, Parklawn Building, Room 11-A-18, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-1440.

FOR FURTHER INFORMATION CONTACT: Ann M. Koontz, Dr. P.H., Maternal and Infant Health Branch, 301 443-5720.

SUPPLEMENTARY INFORMATION: In order to qualify for the single cooperative agreement to be awarded under this announcement, an applicant must be a public or private nonprofit entity, and must satisfy the Secretary that it is able to perform each of the following functions:

(a) Develop a consultative resource group composed of representatives from public agencies, private agencies, professional and voluntary organizations, and Federal and State programs to: Examine the critical issues affecting the organization and delivery of perinatal health care and systems; develop approaches to address problems or barriers; and identify selected strategies for implementation by the project over the course of the cooperative agreement;

(b) Develop a mechanism to convene national and/or regional meetings to bring together professional and administrative leaders in perinatal care at the State level to share expertise, information, and strategies for strengthening perinatal care systems; and

(c) Participate in the development and dissemination of information and resource materials related to the activities of the project.

Review and Evaluation Criteria

Applicants will be evaluated on the basis of their relative ability, as determined by the Secretary, to perform the functions listed above, as well as additional criteria specified in the application guidance.

Federal Responsibilities

In addition to the usual monitoring and technical assistance provided when grants are awarded, under this cooperative agreement experienced Federal personnel will participate in the planning and development of all phases of this activity, including:

(a) Identification of the issues and approaches related to comprehensive, risk appropriate perinatal systems and services;

(b) Indentification of key leaders for inclusion on the resource group and for the network of State programs;

(c) Establishment of Federal contacts necessary in carrying out the project;

(d) Preparation of articles and materials for publication to assist States and communities to promote and improve perinatal systems; and

(e) Assuming the major role for technical assistance and dissemination of materials based on project activities and outcomes.

A competitive review of applications will be the basis for selecting the successful applicant for this cooperative agreement. Consideration will be given to those applicants who indicate that they can achieve the objectives of the cooperative agreement with a cost effective expenditure of funds.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45

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CFR Part 74, subpart Q. The cost principles prescribed for grant recipients are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations. PHS has elected the option provided in 48 CFR 1–31.2 of not authorizing independent research and development costs.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 13.110.

Date: April 14, 1988.

David N. Sundwall,

Administrator.

FR Doc. 88–10632 Filed 5–11–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, June 9–10, 1988, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on June 9 from 8:30 a.m. to approximately 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 9 from approximately 9 a.m. to recess and on June 10 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, National Institutes of Health, Building 31, Room 10A06, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, Westwood Building, Room 838, 5333 Westbard Avenue, Bethesda, Maryland 20892 (301/496–7721) will provide substantive program information, upon request.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10568 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 23–24, 1988, at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on June 23, 1988, from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from 10 a.m. to recess; and on June 24 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: April 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10569 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Division of Cancer Treatment Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 6–7, 1988, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 6 from 8:30 a.m. to approximately 6 p.m., and again on June 7 from 10 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 7 from 8 a.m. to approximately 10 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

FR Doc. 88–10567 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Board of Scientific Counselors, NEI; Meeting.

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 27–28, 1988, Building 31, NIE conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 27 from 8:30 a.m. until approximately 4 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 27 from approximately 4 p.m. until recess and on June 28 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Acting Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

FR Doc. 88–10570 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, June 3, 1988, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until approximately 11:30 a.m. on Friday, June 3. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 11:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will also be an open meeting of the Vision Research Program Planning Subcommittee on Thursday, June 2, from 3 p.m. until completion to discuss further the plans for *Vision Research: A National Plan 1989–90.* The meeting will be held at the National Eye Institute, Conference Room 31/6A35, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10571 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, June 23–24, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 23 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on June 23 until recess and on June 24 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: April 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10572 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Nongame Bird Strategies; Draft Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of Draft Migratory Nongame Bird Strategies.

SUMMARY: This notice advises the public that a draft document, "Migratory Nongame Bird Strategies," outlining new and continuing Service activities related to migratory nongame birds, is available for public review and comment. This document was prepared in response to public concerns about the welfare of migratory nongame birds and to interest expressed in the strategies to be employed by the Service in managing this resource. This document will be amended periodically to reflect changes in Service efforts related to migratory nongame birds.

ADDRESSES: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, Washington, DC 20240 (202–254–3207). Copies are available in Room 536, 1717 H Street, NW., Washington, DC. Comments should be addressed to: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Federal Government has been assigned specific responsibility for the protection of migratory birds, including approximately 770 species that are not hunted. Legislation protecting these species includes the Fish and Wildlife Conservation Act of 1966, Migratory Bird Treaty Act of 1918, Migratory Bird Conservation Act, Migratory Bird Hunting and Conservation Stamp Act, Lea Act, and Federal Aid in Wildlife Restoration Act. International treaties, including the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and treaties with individual countries sharing migratory bird resources with the United States, also provide for international cooperation in the protection of migratory birds, including nongame species. The provisions of the laws and treaties related to migratory birds are carried out primarily by the Service.

Service actions related to migratory game birds have been published regularly in the Federal Register for public review and comment, as have Service actions related to endangered or threatened migratory nongame bird species. This is the first time a document describing Service actions to nongame migratory birds, that are not threatened or endangered species, has been available for public review and comment. This document is designed to focus new and continuing Service actions directed toward nongame migratory bird species and to respond to the evident public interest in these species. Public comments or suggestions may be submitted to the ADDRESS above.

Dated: April 20, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–10585 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–964–4213–15]

Notice for Publication; Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Flat, Alaska.

Serial No.	Land description	Approximate acreage
AA–8103–14	T. 26 N., T. 46 W., Seward Meridian.	22,629
AA–8103–15	T. 26 N., T. 47 W., Seward Meridian.	21,440
AA–8103–16	T. 27 N., T. 46 W., Seward Meridian.	22,632
AA–8103–17	T. 27 N., T. 47 W., Seward Meridian.	18,233

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until June 13, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bromaysk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 88–10586 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–JA–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that the Canon City District Advisory Council (DAC) Meeting will be held Wednesday, June 15, 1988, 9:30 a.m. to 4:30 p.m. and Thursday, June 16, 1988, 8 a.m. to 4 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Orientation for New DAC Members;
2. Tour of Public recreation sites along the Arkansas River from Texas Creek to Parkdale;
3. Arkansas River Recreation Area Management Plan workshop;
4. Session on improving the Canon City DAC;
5. Quail Mountain update;
6. San Luis Valley Resource Management Plan update;
7. Reports from Area Managers on current programs;
8. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 2 p.m. on Thursday or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 275–0831.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office

approximately 30 days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88–10583 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–020–08–4213–01]

Phoenix District Advisory Council; Open Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Phoenix District Advisory Council.

DATE: June 15, 1988.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets June 15 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix at 9:00 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976 and the Public Rangelands Improvements Act of 1978.

The agenda for the meeting includes:

—Empire and Cienega Ranches
—Council Organization
—Superconducting Super Collider
—Goldwater Range
—Red Mountain Land Exchange
—BLM Management Updates
—Business from the Floor
—Public Comments and Statements
—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: May 3, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–10591 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–08–4111–13; NM NM 56263]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2–3, Sun Operating Limited Partnership petitioned for reinstatement of oil and gas lease NM NM 56263 covering the following described lands located in:

Lea County, New Mexico

T. 19 S., R. 34 E., NMPM,
Sec. 26: NE¼, N½S½.
Containing 320.00 acres, more or less.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, June 1, 1987.

Date: May 5, 1988.

Martha R. Rivera,

Acting Chief, Adjudication Section.

[FR Doc. 88–10654 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–020–08–4212–12]

Realty Actions; Sales, Leases, etc.; Arizona

Realty Action: Exchange of Public Lands.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 5N., R. 3 E.,
Sec. 1.
T. 5N., R. 4 E.,
Sec. 6.
T. 6 N., R. 3 E.,
Sec. 35.
T. 6 N., R. 4 E.,
Secs. 1, 11 and 12.
Containing 399.83 acres.

Pinal County

T. 4 S., R. 8 E.,
Sec. 13.
T. 4 S., R. 9 E.,
Secs. 11, 25 and 27.
T. 5 S., R. 8 E.,
Sec. 36.
T. 5 S., R. 9 E.,
Sec. 8.
T. 6 S., R. 8 E.,
Secs. 25, 26 and 36.
T. 7 S., R. 4 E.,
Secs. 10, 15 and 21.
T. 7 S., R. 10 E.,
Secs. 5–8, 14, 17 and 18.
T. 10 S., R. 7 E.,
Secs. 12, 13 and 24.
T. 10 S., R. 9 E.,
Secs. 17, 29, 30 and 31.
Containing 8946.60 acres.

Pima County

T. 12 S., R. 11 E.,
Secs. 28 and 33.
T. 13 S., R. 12 E.,
Secs. 5 and 29.
T. 13 S., R. 12 E.,
Secs. 9, 26, 33 and 34.
Containing 746.85 acres.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 4, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–10590 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–060–08–4212–13; CA–21600]

Realty Action; Exchange of Public and Private Lands; San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, CA–21600.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy

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and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 11 S., R. 2 W.,
Sec. 23: NW¼SE¼;
Sec. 25: Lots 11, 12, 13, and 14;
Sec. 26: W½NE¼, E½NW¼.
Containing 217.84 acres, more or less.
San Diego County, California.

In exchange for these lands, the United States will acquire the following described lands in San Diego County from Mr. Roque de la Fuente II, 8398 Vickers Street, San Diego, California 92111:

San Bernardino Meridian, California

T. 18 S., R. 1 E.
Sec. 20: SW¼NW¼;
Sec. 21: N½NE¼;
Sec. 35: Lots 2, 3, and 4, SE¼NW¼.
Containing 236.90 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-federal lands abuting the Otay Mountain National Cooperative Land and Wildlife Management Area.

This Area is important as habitat for certain unique and sensitive flora and fauna and the acquired lands will be added to and included in this Area. The public interest will be well served by completing the exchange.

Publication of this Notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, including the mineral leasing laws. The segregative effect will end upon issuance of a patent or 2 years from the date of publication, whichever occurs first.

The values of the land to be exchanged are approximately equal. Full equalization of values will be achieved by acreage adjustments or by a payment to the United States by Mr. de la Fuente II of funds in an amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. Those rights for access road purposes across lots 13 and 14 in said section 25 granted to Sager Management Corporation, its successors or assigns, by right-of-way grant CA–8914, under the Act of October 21, 1976 (43 U.S.C. 1761).

2. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. A right-of-way for a water tank, helicopter pads, and all appurtenances thereto, constructed by the authority of the United States upon the SW¼NW¼ SE¼ of said sections 23, and the SW¼ SE¼NW¼ said section 26, under reservation R–490.

FOR FURTHER INFORMATION CONTACT: Mike Selman, Indio Resource Area, (619) 323–4421. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: May 6, 1988.

H.W. Riecken,
Acting District Manager.

[FR Doc. 88–10655 Filed 5–11–88; 8:45 am]
BILLING CODE 4310–40–M

[NV–930–08–4212–24; N–48351]

Realty Action; Land Use Permit in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: FLPMA, section 302 Land Use Permit.

SUMMARY: The Bureau of Land Management (BLM) is proposing to issue a land use permit under the authority of section 302 of the Federal Land Policy and Management Act of 1976. The permit would authorize an agricultural trespass pending a decision on the land's ultimate disposition. This may include sale, exchange, lease or termintion of the unauthorized use. The non-competitive land use permit would be issued for a 3–year period for the following public lands:

Mount Diablo Meridian, Nevada

T. 47 N., R. 65 E.,
Sec. 18, N½N½SW¼SE¼.
Aggregating 10 acres.

The land use permit would be offered to the Y–3–II Ranch at not less than the appraised fair market value as determined through a BLM appraisal. The permit may be renewed at the discretion of the Authorized Officer. The proposal is consistent with the Wells Resource Management Plan and does not conflict with any other Federal uses for the parcel.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be reviewed by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of Interior.

Rodney Harris,
District Manager.

[FR Doc. 88–10658 Filed 5–11–88; 8:45 am]
BILLING CODE 4310–HC–M

[NDM63929; MT–030–08–4212–14]

Realty Action—Competitive sale; Morton County, ND

AGENCY: Bureau of land Management, Dickinson District, Interior.

ACTION: Notice of Realty Action NDM63929, competitive sale of public land in Morton County, North Dakota.

SUMMARY: The following described land is determined to be suitable for disposal under section 203 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713 at no less than the appraised fair market value of $5,600.00.

Fifth Principal Meridian, North Dakota,

T. 135 N., R. 81 W.,
Sec. 6, Lot 6, NE1/4SW1/4.
Containing 74.84 acres.

The land will be offered for sale by sealed bid utilizing competitive bidding procedures. The sale will be held at 10:00 AM MDT on July 20, 1988 at the Dickinson District Office, 202 East Villard, Dickinson, North Dakota.

The subject land is located approximately 20 miles south of Mandan, North, Dakota. The tract has legal and physical access. The tract is isolated and generally unused by the public. It does not contain significant resource values that would justify retention. It is difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency. Transfer of the land to private ownership will benefit public interest and provide for more efficient land management.

The proposed land sale is consistent with the North Dakota Resource Management Plan.

SUPPLEMENTARY INFORMATION: Publication of this Notice segregates

public land described above from settlement, exchange, location, and entry under public land laws, including mining laws, but not sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 for a period of two years from date of publication. The sale will be made subject to the following:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights (e.g., rights-of-way and leases of record).

Bidding Information

The land will be sold by sealed bids. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, 202 East Villard, Box 1229, Dickinson, ND 58602 prior to 10:00 AM MDT on July 20, 1988. Each sealed bid must be accompanied by a certified check, postal money order, draft, or cashier's check make payable to the Department of the Interior, Bureau of Land Management for not less than one-fifth of the amount of the sealed bid. The sealed envelope must be marked with the sale date and case number as follows:

Sealed Bid;
Public land sale NDM63929;
July 20, 1988

Oral bidding will be used when two or more valid high sealed bids of equal amounts are received. Oral bidding will involve only those parties submitting the high bids.

The highest qualifying bid shall be publicly declared.

If the land is not sold at this sale, it will be offered over the counter until sold or until the sale is cancelled. Offers to purchase the land in an over-the-counter transaction, if one is necessary, shall be by sealed bid. The bids will be opened 10:00 AM MDT/MST the second Friday of each month. Bids must be received no later than 4:00 PM the day before the sale to be considered. Other bidding information given in this Notice applies.

Comment Period

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comment will be evaluated by the Bureau of Land Management Montana Sate Director, who may sustain, vacate, or modify this realty action. In absence of any objection, this realty action will become the final determination of the Department of the Interior.

Further Information

Information related to the sale, including the environmental assessment and land report, is available for review at the Dickinson District Office, 202 East Villard, Box 1229, Dickinson, North Dakota 58602.

Bidder Information

The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality, or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of North Dakota.

Bids must be submitted by the principal or his agent.

Final Details

Once the high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days from the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale, and the deposit will be forfeited.

The successful bidder, if other than the grazing lessees, shall allow 180 days from the time patent is issued for the grazing lessees to salvage materials used to construct authorized range improvement projects and to perform reclamation measures. The owners of the improvements are as follows: Anton Gangl—fence 1,320 feet long; Robert Gangl—fence 1,536 feet long; Regina Gangl—fence 1,320 feet long.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: May 5, 1988.

William P. Kruch,
District Manager.

[FR Doc. 88–10659 Filed 5–11–88; 8:45 am]
BILLING CODE 4310–DN–M

[OR–943–08–4220–11; GP–08–130; OR–2167; ORE–013982, ORE–015246–A, ORE–012702; OR–011648–A]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all of portions of 5 separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Rogue River National Forest

OR 2187, Public Land Order No. 4572 of January 16, 1969.

Imnaha and Lodgepole Administrative Sites, 155 acres.

Located in Jackson County, approx. 35 miles Northeast of Medford.

T. 33 S., R. 4 E., W.M., secs. 15 and 32.

2. ORE 015246–A, Public Land Order No. 3650 of April 15, 1965.

Mount Ashland Winter Sports Area, 390 acres.

Located in Jackson County, approx. 20 miles Southeast of Medford.

T. 40 S., R. 1 E., W.M., secs. 16 and 2

Malheur National Forest

3. ORE 013982, Public Land Order No. 3496 of December 2, 1964.

Magone Lake Forest Campground Site, 233.55 acres.

Located in Grant County, approx. 12 miles Northeast of John Day.

T. 12 S., R. 32 E., W.M., secs. 6 and 7.

4. ORE 012702, Public Land Order No. 2983 of March 18, 1963.

Blue Mountain Administrative Site, 20 acres.

Located in Grant County, 24 miles Northeast of John Day.

T. 11 S., R. 35 E., W.M., secs. 33 and 34.

Siskiyou National Forest

5. ORE 011648–A, Public Land Order No. 2775 of September 27, 1962.

Wildhorse, Huntley Springs, Butler Bar & Elko Springs Campgrounds, 310 acres.

Located in Curry County, Southeast of Port Orford.

T. 36 S., R. 12 W., W.M., sec. 16; T. 37 S., R. 12 W., W.M., sec. 20; T. 33 S., R. 13 W., W.M., sec. 17; and T. 37 S., R. 13 W., W.M., sec. 10.

The withdrawals currently segregate the lands from operation of the mining

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laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: May 4, 1988.

[FR Doc. 88-10656 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5372, Block 151, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 6, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 6, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10663 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil and Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0593C, Block 198, portion, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 4, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 4, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10592 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA; Pollution Control; Consent Judgements: USX Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 18, 1988, a proposed consent decree in *United States* v. *USX Corporation*, Civil Action No. H 78-494 was lodged with the United States District Court for the Northern District of Indiana. The proposed consent decree resolves a judicial enforcement action brought by the United States against USX Corporation for the violation of a prior consent decree entered into on April 26, 1983 pursuant to the Clean Air Act.

The proposed consent decree requires the defendant to meet certain limitations on emissions from its No. 2 Q-BOP Shop, to engage in self-monitoring of air emissions, and to pay the sum of one hundred, fifty thousand dollars ($150,000.00) to the United States Government as a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, D.J. Ref. 90-5-2-3-892C.

The proposed consent decree may be examined at the office of the United States Attorney, 312 Federal Building 507 State Street, Hammond, Indiana 46320.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-10664 Filed 5-11-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to National Cooperative Research act Of 1984 Biotechnology Research and Development Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notification has been filed by Agricultural Research and Development Corporation ("ARDC") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to Biotechnology Research and Development Corporation ("BRDC") and (2) the nature and objectives of BRDC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to BRDC and its general areas of planned activity are given below.

The parties to BRDC are ARDC, American Cyanamid Company, Amoco Technology Company, The Dow Chemical Company, Ecogen Inc., Hewlett-Packard Company and International Minerals & Chemical Corporation. The objective of BRDC is to undertake research and development in the biotechnology area, including research in the area of fermentation, in part through cooperative research and development agreements with Federal laboratories under the authority granted to those laboratories by the Federal Technology Transfer Act of 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-10593 Filed 5-11-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 13, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786 0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 728 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: Instructions for Applicants with Projects Requiring the Use of Automation Technology.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions applying for funding whose projects require the use of automation technology.

Use: To justify the use and cost of equipment and the methodology involving automation technology that will be employed on proposed projects so that competing applications for funding can be evaluated in the peer review process.

Estimated Number of Respondents: 445.

Estimated Hours for Respondents to Provide Information: 8 per respondent.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-10666 Filed 5-11-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on National Optical Astronomy Observatories; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on National Optical Astronomy Observatories.

Date & Time: May 25, 26, and 27, 1988, 9:00 am—5:00 pm.

Place: National Science Foundation, Room 536.

Type of Meeting:

May 25, 1988, 9:00 am—5:00 pm Open.
May 26 and 27 1988, 9:00 am—5:00 pm Closed.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To review the plans of the National Optical Astronomy Observatories (NOAO) for restructuring their program and to advise NSF on their appropriateness.

Agenda:

Wednesday, May 25

9:00 am—5:00 pm, NOAO programs, options for the future.

Thursday and Friday, May 26 and 27

Closed. Discussion of project under review for funding.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4), and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Decision to hold meeting was not made until today. Date of meeting was the first available date committee could meet.

M. Rebecca Winkler,
Committee Management Officer.
May 6, 1988.

[FR Doc. 88–10615 Filed 5–11–88; 8:45 am]
BILLING CODE 7555–01–M

Notice of Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biological Facilities Center Progam.

Date and Time: Monday, June 6, 1988 from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Washington, DC Room 540, Telephone: 202–357–7852.

Type of Meeting: Closed.

Contact Person: Dr. Sonja Sperlich, Associate Program Director Biological Facilities Center, National Science Foundation, Room 325C, Washington, DC Telephone: 202–357–7652.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 88–10612 Filed 5–11–88; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Withdrawal of Portion of Application for Amendments to Facility Operating Licenses; Florida Power and Light Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw a portion of their application dated February 19, 1988, as supplemented April 22, 1988, for the Turkey Point Plant Unit Nos. 3 and 4, located in Dade County, Florida.

The proposed amendments were to revise Section 6 (Administrative Controls) of the Turkey Point Technical Specifications. In particular, a portion of the proposed amendments requested deletion of the requirement for the Operations Superintendent to hold a current Senior Reactor Operator's (SRO) license at Turkey Point. The Commission issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on March 23, 1988 (53 FR 9504). By letter dated April 22, 1988, the licensee requested the NRC to defer action on that portion of their application related to deleting the SRO requirement for the Operations Superintendent. The basis for withdrawal of that portion of the application was to avoid delays in processing the rest of the amendment while the NRC staff further considered alternatives to the SRO requirement. The Commission has considered the licensee's April 22, 1988 request and has determined that permission to withdraw that portion of the February 19, 1988 application should be granted.

For further details with respect to this action, see (1) the application for amendment dated February 19, 1988, (2) the licensee's letter dated April 22, 1988, withdrawing the application for amendments, and (3) our letter dated May 5, 1988.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 5th day of May, 1988.

For the Nuclear Regulatory Commission.
Gordon E. Edison, Sr.
Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10609 Filed 5–11–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Safety System Instrumentation.

The proposed amendment, specifically, would revise Table 3.3–11, TS 3.3.2.2, Steam and Feedwater Rupture Control System Instrumentation, to permit bypass of Functional Unit 1, Main Steam Pressure Low Instrument Channel, when steam pressure is below 700 psig vice 650 psig. The revision would also require automatic removal of the bypass when the steam pressure exceeds 750 psig vice 650 psig.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 29, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 6th day of May, 1988.

For the Nuclear Regulatory Commission.
Kenneth E. Perkins,
Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–10610 Filed 5–11–88; 8:45 am]
BILLING CODE 7590–01–M

Virginia Electric & Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to the Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units Nos. 1 & 2 (NA–1&2) located in Louisa County, Virginia

The amendments would revise the NA–1&2 Technical Specification (TS) containment air temperature upper limit from 105°F to 120°F. NA–1&2 currently operate within an allowable air temperature range of 86°F to 105°F. The upper temperature limit is approached during the summer months because of high ambient and service water temperatures. This has required implementation of specialized manpower-intensive procedures to prevent violation of the NA–1&2 TS limits. This condition exists because there is no practical way to reduce the temperature in a large, enclosed volume or a large body of water in short periods of time. The NA–1&2 TS action statements specified in Limiting Conditions For Operations (LCO) 6.15 (Primary Containment Average Air Temperature shall be maintained at equal to or less than 105°F) and LCO 7.5.1 (Service Water Reservoir and North Anna Reservoir shall be maintained equal to or less than 95°F) provide 8 or 6 hours, respectively, to restore the respective temperature to within its limit or be in at least Hot Standby in 6 hours and in Cold Shutdown within the following 30 hours. For these reasons, the licensee has submitted the proposed change with a Safety Evaluation (SE) to justify

increasing the upper containment temperature limit to a value of 120°F.

The containment temperature limit is determined by performing the necessary transient analyses to ensure that the containment design criteria are met following a design basis accident. Temperature is a significant intitial condition for these analyses. Another important analysis input is the volume of water from the Refueling Water Storage Tank (RWST) available for the quench spray system. This volume has been defined in such a way as to permit the minimum TS volume to be reduced. This approach was chosen to permit the use of wide range level instrumentation for TS surveillance.

The plant design basis was reviewed to determine which transients are impacted by the increased service water temperature and containment bulk temperature. The containment design is based on two Condition IV transients; the Loss of Coolant Accidtn (LOCA) and the Main Steam Line Break (MSLB). As a result of the worst LOCA or worst MSLB, containment integrity is assured if the following three conditions are satisfied: (1) The peak calculated containment pressure is less than the pounds per square inch guage (psig) design pressure of 45 psig, (2) the containment is depressurized to subatmospheric within 1 hour (3600 seconds) of the accident, and (3) once depressurized, the containment is maintained at a pressure less than atmospheric for the duration of the accident.

In support of the proposed change, the LOCA analysis considered a spectrum of break sizes and locations. Several different single-failure scenarios were also considered. The LOCA analysis actually consists of a peak pressure analysis, a depressurization and a third peak analysis as well as net positive suctionhead available (NPSHA) analyses for the recirculation spray pumps and the low head safety injection (LHSI) pumps. The intial conditions were determined for each of these analyses to provide the most conservative result. The peak containment pressure was found to be 44.1 psig. The length of time to subatmospheric conditions was found to be 3310 seconds.

The MSLB scenarios involved several combinations of break size, break type and power level. In all, 20 cases were run for the peak temperature cases and then repeated for the peak pressure cases. The peak pressure was found to be 44.9 psig.

The above results indicate that the containment design criteria are not violated at the initial conditions of 120°F containment temperature, 97°F service water temperature and the lower volume of RWST water.

In addition, operability of the electrical and mechanical eq' ipment within the containment at temperatures up to 120°F has also been considered and found to be acceptable provided procedural changes are implemented. Therefore, the licensee proposes that the appropriate TS can be changed to permit the higher containment air temperature and the lower minimum RWST vlume. Finally, the maximum service water temperature, while analyzed at 97°F, would not be changed at this time, since the service water system modifications recently put into place at NA–1&2 can maintain the reservoir temperature below the currently allowable 95°F.

The proposed TS would increase the required containment test pressure for the integrated (Type A) and local (Types B and C) leak rate tests (NA–1&2 TS 3.6.1.2) from the current value of 40.6 psig to 44.1 psig. The licensee has reviewed the results of the most recent leak rate tests for NA–1&2 to determine if the tests were conducted at pressures equal to or in excess of that required by the proposed TS discussed above. An evaluation by the licensee has been performed to compare the measured leak rates from the most recent local and integrated leak rate tests with the projected leak rates had the tests been performed at the higher pressure required by the proposed TS. The licensee states that the leak rates which would have been observed had the tests been run at 44.1 psig would be well within the NA–1&2 TS limit for each type of test. Therefore, the licensee proposes that the intent of the proposed NA–1&2 TS for integrated and local leak rate testing have been satisfied by most recent tests. However, in order to comply with the proposed NA–1&2 TS, it will be necessary for the licensee to perform the subject containment leak rate tests prior to implementation of the proposed TS changes for revising the containment air temperature upper limit from 105°F to 120°F.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virignia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 2, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 4th day of May 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10611 Filed 5–11–88; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Lag Service Reports.

(2) *Form(s) submitted:* AA–12, G–88a.

(3) *Type of Request:* Revision of a currently approved collection.

(4) *Frequency of use:* On occasion.

(5) *Respondents:* Businesses of other for-profit.

(6) *Annual responses:* 4,200.

(7) *Annual reporting hours:* 437.

(8) *Collection description:* The reports obtain the current service and compensation of an employee not yet reported to the Board. This lag information is used to determine eligibility for and amount of annuity applied for and to pay benefits due on a deceased employee's earnings records.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–10584 Filed 5–11–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25570; File No. SR–DTC–88–3]

Self-Regulatory Organizations; Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 5, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposal regards the disposition of negotiable certificates of deposit which are issued by institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") and which are eligible for deposit at DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

The proposal authorizes DTC to assign to the FSLIC, on the closing of an FSLIC-insured institution, all of the rights, title and interest of DTC's nominee, Cede & Co., in negotiable certificates of deposit issued by the institution to the extent of insurance paid by the FSLIC. The proposal also clarifies that any claims by the FSLIC against DTC and participants for the recovery of insurance payments are subject to the indemnification provision contained in DTC Rule 2.

If the FSLIC closes an FSLIC-insured institution which has issued DTC-eligible certificates of deposit, DTC would be required under FSLIC procedures to assign all of the rights, title and interest of Cede & Co. in the certificates of deposit to the extent of insurance paid by the FSLIC. DTC will pass on to participants any insurance payments made by the FSLIC with respect to the certificates of deposit. Thereafter, DTC and participants may be required to repay to the FSLIC any insurance payments made in error or in excess of the statutory insurance limit.

DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will promote the immobilization of negotiable certificates of deposit. DTC states that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change provides for negotiable certificates of deposit to be treated in a

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manner similar to other types of DTC-eligible securities.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-88-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR-DTC-88-3) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

May 6, 1988.

[FR Doc. 88-10650 Filed 5-11-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American Capital Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3305)
American Government Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3306)
First Boston Strategic Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-3307)
Kemper High Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3308)
Bank of New England Corp.
Common Stock, $5.00 Par Value (File No. 7-3309)
Putnam Master Intermediate Income Trust
Shares of Beneficial Interest (File No. 7-3310)
Universal Medical Buildings, L.P.
Common Limited Partnership Units (File No. 7-3311)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10598 Filed 5-11-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ACM Government Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3312)
ACM Government Securities Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3313)
Angell Real Estate Company
Common Stock, $0.01 Par Value (File No. 7-3314)
BancTexas Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-3315)
Blue Chip Value Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3316)
Cal Fed Income Partners L.P.
Depositary Units (File No. 7-3317)
Cameron Iron Works, Inc.
Common Stock, $0.2083 Par Value (File No. 7-3318)
CoastAmerica Corporation
Common Shares, $0.01 Par Value (File No. 7-3319)
Colonial Municipal Income Trust
Shares of Beneficial Interest (File No. 7-3320)
Countrywide Mortgage Investments, Inc.
Common Stock, $0.01 Par Value (File No. 7-3321)
Financial Corp. of Santa Barbara
Common Stock, $1.00 Par Value (File No. 7-3322)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10597 Filed 5-11-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

The Vendo Company
Common Stock, $1.25 Par Value (File No. 7-3302)
WPL Holdings, Inc.
Common Stock, $5.00 Par Value (File No. 7-3303)
Wisconsin Public Service Corporation
Common Stock, $4.00 Par Value (File No. 7-3304)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10598 Filed 5-11-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16301; 812-6949]

International Cash Portfolios; Application

May 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: International Cash Portfolios (the "Applicant").

Relevant 1940 Act Sections: Order requested under section 11(a).

Summary of Application: Applicant seeks an Order approving certain exchange offers which may be made between separate existing portfolios of the Applicant, and which may be made between future portfolios of the Applicant or future investment companies (or portfolios thereof) for which Huntington Advisers or any affiliate thereof may serve as manager, investment adviser, distributor or principal underwriter, on a basis other than the relative net asset values of the shares to be exchanged.

Filing Date: The application was filed on December 30, 1987 and amended on April 20, and May 5, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 31, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 251 South Lake Avenue, Suite 600, Pasadena, California 91101.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is registered as an open-end, non-diversified management investment company under the 1940 Act. The Applicant is currently comprised of eight separate portfolios: The U.S. Cash Portfolio and seven international currency portfolios, the Australian Cash Portfolio, Canadian Cash Portfolio, D-Mark Cash Portfolio, Sterling Cash Portfolio, Swiss Franc Cash Portfolio, Yen Cash Portfolio, and the Global Cash Portfolio (the "International Currency Portfolios"). Each portfolio of the Applicant has its own investment objectives and policies.

2. Huntington Advisers is the manager, Bankers Trust Investment Management Limited is the investment adviser, and Huntington Investments, Inc., an affiliate of the manager ("Distributor"), is the distributor and principal underwriter.

3. The U.S. Cash Portfolio is currently offered at net asset value with no sales load. Shares of the seven other portfolios, the International Currency Portfolios, are offered at their net asset value plus a sales load of up to 1.25% of the offering price; this sales load is subject to reductions depending on the size of investment. There is no charge imposed on reinvestment of dividends and capital gains from shares of any portfolio of the Applicant.

4. Applicant proposes to make offers of exchange between the U.S. Cash Portfolio and the International Currency Portfolios at a price other than net asset value pursuant to the following exchange plan. Shares of the U.S. Cash Portfolio (which are offered to the public at their net asset value) may be exchanged for shares of any of the International Currency Portfolios (which are offered to the public at the varying sales load) based on relative net asset value plus the applicable sales load, calculated as if the amount of the exchange was a purchase of shares of one of the International Currency Portfolios, provided that such sales load will be charged only on the exchange of U.S. Cash Portfolio shares that were purchased with no sales load and that were not acquired by way of an exchange from one of the International Currency Portfolios. Exchange orders involving shares of the U.S. Cash Portfolio that were acquired by way of an exchange from one of the International Currency Portfolios will be based on relative net asset value with no additional sales load. Any exchange order must have a current value of at least $1,000.

5. Each of the foregoing transactions will not be subject to any other service charge or administrative handling fee in excess of $5.00 per exchange transaction.

6. Shareholders will be notified of the exchange privilege, including the possibility of a sales load being applicable, through the Applicant's prospectus and by means of other communications, including sales literature and other advertising.

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Applicant's current prospectus states that Applicant reserves the right to modify or terminate the proposed exchange privilege. In addition, any sales literature or advertisements which promotes Applicant's proposed exchange privilege will disclose that Applicant has reserved the right to modify or terminate the exchange privilege. Because all portfolios of the Applicant are offered pursuant to a joint prospectus, the Applicant does not believe it is required to deliver to shareholders who execute exchanges, a new prospectus at the time an exchange offer is effected.

7. Currently, the Distributor does not receive a commission on exchange transactions which are limited to investors who have invested initially in the International Currency Portfolios. If the requested Order is entered, investors who have invested initially in the U.S. Cash Portfolio, which is sold at no load, will also be able to effect exchanges upon payments of the appropriate sales load differential. However, upon an initial exchange of shares of the U.S. Cash Portfolio for shares of an International Currency Portfolio, the Distributor will receive the same commission as it would for distributing shares of an International Currency Portfolio directly. Applicant does not believe that the payment of the sales commission to the Distributor in the exchange of shares of the U.S. Cash Portfolio for shares of an International Currency Portfolio will provide sufficient economic incentive for the Distributor to initiate such exchanges for its own benefit. In addition, while the Distributor will be notified of the exchange program, Applicant will not promote to the Distributor one portfolio over another and, in particular, the International Currency Portfolios over the U.S. Cash Portfolio. The Distributor will not receive advice from Applicant as to the suitability of an investment in the separate portfolios. Applicant will not solicit or promote exchange offers and will establish internal monitoring and review procedures to ensure that such exchanges are made at the request of the shareholder and not for the personal gain of the Distributor or any sales representative. Applicant further agrees to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction.

8. Applicant is requesting that any Order issued by the Commission also extend to all open-end investment companies, or series of the Applicant, which may be organized in the future and which are managed, advised, or distributed by Huntington Advisers or an affiliate, provided that the shares of such investment companies are subject to exchange offers and have load characteristics as described herein.

9. Applicant submits that the proposed exchange plan is fair and equitable to shareholders of all of the portfolios of the Applicant while at the same time giving shareholders flexibility in their financial planning and is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant also submits that the proposed order is consistent with the provisions of Rule 11a–3 proposed by the Commission.

Applicant's Condition

If the requested order is granted, Applicant undertakes to:

1. Request an amendment to the Order permitting such exchange privilege if, subsequent to the issuance of the Order, Applicant seeks to modify the exchange privilege;

2. Provide sixty (60) days prior written notice to shareholders if the Applicant subsequently seeks to modify or terminate the exchange privilege; and

3. Comply with the provisions of proposed Rule 11a–3, as such Rule may be amended in the future, upon its adoption by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10648 Filed 5–11–88 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6011]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Leisure Technology, Inc., Common Stock, Par Value $.10; $2.25 Cumulative Convertible Exchangeable Preferred Stock, $.10 Par Value)

May 6, 1988.

Leisure Technology, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw the Common Stock and Preferred Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Common Stock and Preferred Stock on the New York Stock Exchange, Inc. ("NYSE") and the Amex. The Company does not see any particular advantage in the dual trading of the Common Stock and Preferred Stock and believes that dual listing would fragment the market for such securities.

Any interested person may, on or before May 31, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10649 Filed 5–11–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88–5–19; Docket 41441]

Application of Denham Aircraft Services Corp. II; Redetermination of Fitness

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 88–5–19), Docket 41441.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Denham Aircraft Services Corp. II continues to be fit and reissuing it a section 401 certificate authorizing it to engage in the foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so not later than May 24, 1988.

ADDRESSES: Responses should be filed in Docket 41441 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2343.

Dated: May 6, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–10640 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 88–035]

Towing Safety Advisory Committee; Meeting of Subcommittee on Tug-Barge Construction, Certification and Operations

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) Subcommittee on Tug-Barge Construction, Certification and Operations. The Subcommittee will study non-destructive testing of pressure vessel type cargo tanks on barges. The meeting is being held to discuss various non-destructive testing methods and their application to pressure vessel type cargo tanks. The purpose of the Subcommittee is to develop a recommendation for a non-destructive test plan to be used during periodic cargo tank inspections. The meeting will be held on Monday, June 6, 1988, in Room 435–437, Federal Office Building, 167 North Main Street, Memphis, TN. The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Discussion and development of non-destructive testing requirements of pressure vessel type cargo tanks on barges.
4. Adjournment.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–0391.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Stegbauer, Chairman, TSAC Subcommittee on Tug-Barge Construction, Certification and Operations, (901) 525–6517; Mr. Howard Hime, U.S. Coast Guard Headquarters (G–MTH–2), (202) 267–2206; or LCDR Geoffrey Powers, U.S. Coast Guard Headquarters (G–MVI–2), (202) 267–1181, 2100 Second Street SW., Washington, DC 20593–0001.

Dated: May 5, 1988.

P.G. Lauridsen,

Captain, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–10624 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Town of Milford, Town of Amherst, Town of Hollis, Town of Merrimack, City of Nashua, NH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Towns of Milford, Amherst, Hollis and Merrimack, and the City of Nashua, Hillsborough County, New Hampshire.

FOR FURTHER INFORMATION CONTACT: William F. O'Donnell, Area Engineer, Federal Highway Administration, Federal Building, Concord NH 03301, Telephone: (603) 225–1608 or William R. Hauser, Supervisor, Environmental Services Section, New Hampshire Department of Transportation, J.O. Morton Building, Concord, NH 03301, Telephone (603) 271–3228.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the New Hampshire Department of Transportation (NHDOT) and the Nashua Regional Planning Commission (NRPC), will prepare an environmental impact statement (EIS) on a proposal to construct a bypass of a section of N.H. Route 101–A between N.H. Route 101 in Milford, NH and the F.E. Everett Turnpike in Nashua, NH. The proposed bypass would relieve traffic congestion on existing NH Route 101–A and provide an alternative route to accommodate project increases in traffic demand.

Alternatives under consideration include (1) taking no action; (2) upgrading existing N.H. Route 101–A; (3) using alternate travel modes (mass transit); (4) employing transportation system management (TSM's); and (5) constructing on new location. A new location route will be a limited (fully controlled) access facility about 6 miles in length. Various design variations of grade and alignment will be studied.

Letters describing the proposed action and soliciting comments/ input will be sent to appropriate federal, state and local agencies, and to private organizations and citizens. A series of public informational meetings will be held in the project area between April, 1988 and June, 1989. A Steering Committee has been established to review the corridor selection process and resolve issues. This committee includes representatives from FHWA, NHDOT, NRPC and the five communities. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of all meetings and the hearing. The DEIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time, but meetings will be held with various agencies believed to have an interest in the study area and the potential social, economic and environmental factors affected by the proposed action. Agencies to be invited to be cooperating agencies are the Environmental Protection Agency and the U.S. Army Corps of Engineers.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 3, 1988.

Larry R. Dreihaup,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 88–10665 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petitions for Exemption or Waiver; Pend Oreille Valley Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Pend Oreille Valley Railroad (POVA)

FRA Waiver Petition Docket No. HS–88–8

The POVA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The POVA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The POVA provides service on over 61 miles of track between Newport and Metaline Falls, Washington.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Pioneer Valley Railroad (PVRR)

FRA Waiver Petition Docket No. HS–88–9

The PVRR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the PVRR's operation if it encountered unusual operating conditions or circumstances. The PVRR provides freight service between Westfield and Holyoke, and between Westfield and Easthampton, all within the State of Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Fore River Railway (FRRY)

FRA Waiver Petition Docket No. HS–88–10

The FRRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The FRRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The FRRY provides service on over 2 miles of track between East Braintree, Massachusetts and Quincy Point, Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Eureka Southern Railroad Company Inc. (EUKA)

FRA Waiver Petition Docket No. HS–88–11

The EUKA seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The EUKA states that because of the unusual operating conditions under which it operates that an exemption from the 12-hour limitation is a necessity. The EUKA provides service between Willits and Eureka, California, a distance of 145 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before June 28, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on May 6, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–10627 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–06–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 5, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

New Collection

1. Department of Veterans and Benefits
2. VA Matic Authorization
3. VA Forms 29–0532 & 29–0532–1
4. The form is used by an insured to authorize the VA to make deductions from the insured's bank account.
5. On occasion.
6. Individuals or households.
7. 32,000
8. 5,333
9. Not applicable

[FR Doc. 88–10573 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233–2282.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 5, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Medicine and Surgery
2. Application for Adaptive Equipment—Motor Vehicle
3. VA Form 10–1394
4. This form is used to collect information which is used by the Prosthetic Service of the Department of Medicine and Surgery and Fiscal Service of the Department Veterans Benefits, in determining eligibility/entitlement and reimbursement of individual claimants
5. Nonrecurring
6. Individuals or households
7. 10,844
8. 2,711
9. Not applicable

[FR Doc. 88–10574 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

VOL 53 ISS 92 MY 12 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Monday, May 9, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible failure of certain insured banks; and (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director of C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 9, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-10748 Filed 5-10-88; 1:49 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

Nectarines Grown in the State of California; Amendments to the Size Requirements and Clarification of the Maturity Regulations for Nectarines

Correction

In proposed rule document 88-8431 beginning on page 12687 in the issue of Monday, April 18, 1988, make the following correction:

§ 916.356 [Corrected]

On page 12691, in the first column, in § 916.356(a)(6), the first line should read "(6) During January 1 through May 31, of".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Texaco Inc.

Correction

In notice document 88-9288 beginning on page 15106 in the issue of Wednesday, April 27, 1988, make the following corrections:

1. On page 15107, in the third column, in the first complete paragraph, in the fifth line, "shall" should read "should".

2. On page 15108, in the first column, in the first complete paragraph, in the fifth line, "No. R086-000" should read "No. R086-31-000".

3. On the same page, in the second column, in paragraph "a", in the 14th line, "of" should read "to"; in the 17th line, "KCS-0015" should read "KCX-0015".

4. On page 15110, in the third column, in the last paragraph, in the first line, after "data" insert "considered".

5. On page 15111, in the first column, in paragraph "202", in the ninth line, "EAR" should read "ERA".

6. On page 15114, in the third column, in paragraph "1002", in the 12th line, "notice" was misspelled.

7. On page 15115, in the first column, the paragraph in small type between paragraphs "1" and "2" should be removed and inserted on page 15114, in the third column, following the heading "Exhibit A".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0110]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefmax

Correction

In notice document 88-8452 appearing on page 12823 in the issue of Tuesday, April 19, 1988, make the following correction:

In the first column, in the last paragraph, in the eighth line "being" should read "begins".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0093]

Armstrong Laboratories, Inc.; Premarket Approval of Armstrong Sterile Saline Solution

Correction

In notice document 88-8862 beginning on page 12993 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 12994, in the first column, in the first complete paragraph, in the second line, "May 30, 1988" should read "May 20, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year (FY) 1988 Research Demonstration Program (RDP); Availability of Grant Funds and Request for Applications

Correction

In notice document 88-9924 beginning on page 16020 in the issue of Wednesday, May 4, 1988, make the following corrections:

1. On page 16020, in the second column, in the seventh line, "to the" should read "other".

2. On page 16021, in the first column, in the first line, "area" should read "areas".

3. On the same page, in the same column, in the second complete paragraph, in the 5th line, "12101" should read 12102"; in the 15th line, "benefits" should read "benefit".

4. On the same page, in the third column, in the third paragraph under "1. Definition of Disability", in the first line, "this" should read "his".

5. On page 16022, in the third column, in the 25th line from the bottom, after "cost of" insert "certain".

6. On page 16024, in the third column, in the last paragraph, in the fifth and sixth lines remove, "programs should target DI SSI beneficiaries and be".

7. On page 16025, in the first column, in the first complete paragraph, in the second line, "*Risl*" should read "*Risk*".

8. On the same page, in the second column, in the ninth line, "is" should read "if".

9. On page 16029, in the first column, in the second complete paragraph, in the second line and in the second column, in the second complete paragraph, in the fourth line, "SAA" should read "SSA".

10. On page 16031, in the first column, in the last paragraph, in the fourth line, "SSP" should read "SSA".

11. On the same page, in the second column, in the first paragraph, in the fifth line, "conforming" was misspelled.

12. On page 16033, in the second column, the first three lines of *Item 4a* should read "*Item 4a Thru 4h*. Legal name of applicant, name of primary organizational unit which".

13. On page 16034, in the second column, under "Part III", in the second

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complete paragraph, in the last line, "allowance" should read "allowable".

14. On page 16035, in the first column, in the fourth complete paragraph, "Link 6k" should read "Line 6k".

15. On the same page, in the second column, under the fourth complete paragraph, the formula should read:

$$\text{Annual Salary (col. 1)} \times \frac{\text{No. of Months (col. 2)}}{12} \times \text{Percent of Effort (col. 3)} = \text{Total Amount Required (col. 4)}$$

16. On page 16036, in the second column, in the fifth complete paragraph, in the first line, "project(s)" should read "product(s)".

BILLING CODE 1505-01-D

register

Thursday
May 12, 1988

Part II

Farm Credit Administration

12 CFR Part 611 et al.
Farm Credit System; Proposed Rules

federal

VOL 53 ISS 92 MY 12 1988 UMI

VOL 53 ISS 92 MY 12 1988 UMI

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 enacted on January 6, 1988, amended the provisions of the Farm Credit Act relating to conservatorships and receiverships. The Farm Credit Administration (FCA) Board proposes, for public comment, revisions to its regulations governing receiverships and conservatorships to conform the regulations to changes made by the 1987 Act, which require that the power specified therein be exercised by the FCA Board as opposed to the FCA or the Chairman, and to make other technical corrections.

DATE: Comments must be received by June 13, 1988.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4251, TDD (703) 883–4444,
or
Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Sections 101, 110, 201, 306, 401, and 431 of the Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended certain provisions of the Farm Credit Act of 1971 (Act) relating to the appointment and conduct of conservatorships and receiverships. The FCA proposes revisions to 12 CFR Part 611, Subparts K, L, M, and N to conform these regulations to the amended statutory requirements.

The FCA Board proposes to amend 12 CFR Part 611 Subparts K, L, M, and N to conform these regulations to changes made by the 1987 Act which require that the powers specified therein be exercised by the FCA Board, as opposed to FCA or the Chairman. These changes are incorporated in the Act as amendments to sections 1.3(b) and 4.12.

Section 201 of the 1987 Act amended the Act by adding a new Title VI which provides for the establishment of the Farm Credit System Assistance Board. New section 6.6 provides that if FCA determines a condition(s) set forth in section 4.12(b) of the Act is met, the Farm Credit System Assistance Board may direct FCA to appoint a conservator, or may request the FCA Board to initiate action to appoint a receiver. The FCA proposes revising § 611.1156(a) to reflect this authority.

The proposed regulations will amend the second sentence in §§ 611.1167(b), 611.1175(b), and 611.1182(b) to delete the provision under which the Farm Credit Administration, as opposed to a certified public accountant, would conduct an audit of an institution in receivership. Prior amendments to the Act have deleted the FCA's express authority to audit institutions.

Section 306 of the 1987 Act amends § 4.12(b) of the Act by adding a sixth ground for appointment of a conservator or receiver for a Farm Credit System (System) institution. Under this provision, a receiver or conservator can be appointed by the FCA if the institution defaults on the payment of principal or interest on an insured obligation as defined in § 5.51(3) of the Act. The proposed regulations will amend § 611.1156 by adding a new paragraph (b)(6) which sets forth this additional ground.

The 1987 Act repealed the provisions under which the Farm Credit System Capital Corporation was chartered and operated. Therefore; §§ 611.1165(a), 611.1170(h); and 611.1180(f) are amended by deleting reference to the Farm Credit System Capital Corporation.

The FCA Board proposes adding §§ 611.1162(c), 611.1167(d), 611.1172(c), and 611.1174(f) to address the retirement of "eligible borrower stock" in an institution in liquidation. The proposed amendments will implement the provisions of § 4.9A(c), as added by the 1987 Act, which provide for the protection of "eligible borrower stock" (as defined in section 4.9A(d)) at par value during a liquidation.

The FCA Board proposes an amendment to §§ 611.1162 and 611.1172 to implement the provisions of the 1987 Act which authorize System institutions to issue preferred stock to the Farm Credit System Financial Assistance Corporation. The proposed amendments will clarify that those authorities can be exercised notwithstanding the general prohibition against the issuance of stock by the System institution in receivership.

New section 4.37 of the 1971 Act contains requirements related to the disposition of certain borrower accounts in a System institution during the liquidation of an institution. Prior to enactment of section 4.37, the possibility existed that funds which a borrower had deposited with a Farm Credit System institution as a prepayment on a loan or otherwise, may not have been recoverable by the borrower if the System institution was placed in liquidation. Section 4.37 requires the funds deposited in uninsured voluntary or involuntary accounts to be applied as payment of or against the borrower's loan. The FCA Board proposes a new regulation § 611.1166 to implement this statutory requirement. The proposed regulation requires the receiver to apply funds that are held in an uninsured account against the indebtedness of the borrower, unless the borrower directs the receiver to otherwise apply such funds in the manner provided for in the existing loan documents. Conforming and renumbering changes are made to §§ 611.1166, 611.1167, 611.1168 and 611.1169.

The FCA Board is also proposing in a separate document published, elsewhere in this issue of the **Federal Register** amendments to the borrower rights regulations at 12 CFR 614.4513 which further explain the authority of institutions to have uninsured voluntary and involuntary accounts.

The FCA Board proposes the deletion of § 611.1174(c) which contains a procedure for the assignment of joint and several liability on bonds when a System bank is placed in receivership. The FCA Board determined that this process is adequately outlined in section 4.4 of the Act, and that this regulation should be deleted since it does not effectively implement the requirements of joint and several liability. In addition, the new provisions of Title V of the Act provide for the insurance of System obligations. Conforming and renumbering changes are also made to § 611.1174 (d), (e), and (f). The redesignated paragraph (d) is amended to incorporate this change by including a reference to section 4.4 of the Act.

The FCA Board proposes a technical amendment to eliminate reference to § 617.7090 which relates to the examination of institutions in liquidation. That section would be eliminated under proposed amendments to FCA examination regulations, to be published in the near future.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority 12 U.S.C. 2031, 2091, 2182, 2183, 2243, 2244, 2250, 2252.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

2. Section 611.1155 is amended by adding the word "Board" after "Farm Credit Administration" in the first sentence.

3. Section 611.1156 is amended by revising paragraph (a) to read as follows:

§ 611.1156 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, at its discretion, appoint a conservator or receiver for such institution. Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, the Farm Credit System Assistance Board may direct the Farm Credit Administration Board to appoint a conservator and may request the Farm Credit Administration Board to appoint a receiver.

* * * * *

4. Section 611.1156 (b)(4) and (b)(5) are amended by adding the word "Board" after "Farm Credit Administration" each place it appears.

5. Section 611.1156 is amended by adding a new paragraph (b)(6) to read as follows:

(b) * * *

(6) The institution is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Act) issued by the institution individually, or on which it is primarily liable.

§ 611.1157 [Amended]

6. Section 611.1157(a) is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second, third, fourth, and fifth place it appears.

7. Section 611.1157(b) is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second place it appears.

§ 611.1158 [Amended]

8. Section 611.1158 is amended by adding the word "Board" after "Farm Credit Administration" each place it appears.

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

9. Section 611.1160(a) is amended by adding the word "Board" after "Farm Credit Administration" and removing the word "Chairman" and adding in its place the word "Board".

10. Section 611.1160(b) is amended by adding the word "Board" after "Farm Credit Administration".

11. Section 611.1160(e) is amended by adding the word "Board" after "Farm Credit Administration" the second place it appears and by removing the word "Chairman" and adding in its place the word "Board".

12. Section 611.1160 (f) and (g) is amended by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

§ 611.1161 [Amended]

13. Section 611.1161 is amended by adding the word "Board" after "Farm Credit Administration" the first place it appears in the introductory paragraph.

14. Section 611.1161(s) is amended by adding the word "Board" after "Farm Credit Administration".

15. Section 611.1162(b) is amended by adding the word "Board" after "Farm Credit Administration"; and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1162 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing above shall affect the authority of an association in receivership to issue preferred stock in accordance with Title VI of the Act.

16. Section 611.1165(a) is revised to read as follows:

§ 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans, including any amount outstanding that was used to purchase stock or participation certificates of the association, to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the association).

* * * * *

§§ 611.1166, 611.1167 and 611.1168 [Redesignated as §§ 611.1167, 611.1168 and 611.1169]

17. Sections 611.1166, 611.1167 and 611.1168 are redesignated as §§ 611.1167, 611.1168, and 611.1169, and a new § 611.1166 is added to read as follows:

§ 611.1166 Uninsured accounts

Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

18. Newly redesignated § 611.1167(a)(4) is amended by adding the word "Board" after "Farm Credit Administration" and by adding a new paragraph (d) to read as follows:

§ 611.1167 Priority of claims.

* * * * *

(d) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

19. Newly redesignated § 611.1168(a) is amended by adding the word "Board" after "Farm Credit Administration"; and by revising paragraph (b) to read as follows:

§ 611.1168 Inventory, examination, audit and reports to stockholders.

* * * * *

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

* * * * *

§ 611.1169 [Amended]

20. Newly redesignated § 611.1169 is amended by removing the words "Chairman of the" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the first and second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

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Subpart M—Liquidation of Banks

21. Section 611.1170 is amended in paragraphs (a) and (b) by adding the word "Board" after "Farm Credit Administration" and in paragraphs (a), (e), (f), and (g) by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

22. Section 611.1170 is amended by revising paragraph (h) to read as follows:

§ 611.1170 Appointment of receiver.

* * * * *

(h) For purposes of this subpart the term "bank" will include all banks, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

23. Section 611.1172 is amended by adding "Board" after "Farm Credit Administration" in paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1172 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing in this section shall affect the authority of a bank in receivership to issue preferred stock in accordance with Title VI of the Act.

24. Section 611.1174 is amended by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively; newly redesignated paragraph (d) is amended by removing the references to "(d)" and adding in their place, "(c)"; by revising newly redesignated paragraph (c)(5); and by adding new paragraph (f) to read as follows:

§ 611.1174 Creditors' claims and priority of claims.

* * * * *

(c) * * *

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other System banks arising from their payments pursuant to section 4.4 of the Act.

* * * * *

(f) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of that Act.

25. Section 611.1175 is amended by revising paragraph (b) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

* * * * *

§ 611.1176 [Amended]

26. Section 611.1176 is amended by removing the word "Chairman" and adding in its place, the word "Board" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

Subpart N—Conservators and Conservatorships of Banks and Associations

27. Section 611.1180 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administration"; and in paragraphs (d) and (e) by removing the word "Chairman" and adding in its place the word "Board"; and paragraph (f) is revised to read as follows:

§ 611.1180 Appointment of a conservator.

* * * * *

(f) For purposes of this subpart "System institution" will mean all banks, associations, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

§ 611.1181 [Amended]

28. Section 611.1181 is amended in paragraphs (b) and (c)(1) by adding the word "Board" after "Farm Credit Administration".

29. Section 611.1182 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administration" the first place it occurs and by revising paragraph (b) to read as follows:

§ 611.1182 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10190 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Parts 611 and 617

Organization; Examinations and Investigations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration Board (Board) proposes amendments deleting 12 CFR Part 617, Subpart A, which governs Farm Credit Administration (FCA) examinations and investigations. The FCA also proposes certain related amendments to 12 CFR Part 611 as a result of the deletion. It is proposed that this Subpart of the regulations be deleted to eliminate duplicative or unnecessary regulations. The Board determined that this amendment to the regulations should be proposed for public comment.

DATE: Written comments are due on or before June 13, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Stephen Smith, Credit Examiner, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4180,

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: 12 CFR Part 617, Subpart A, contains regulations governing examinations and investigations conducted by Farm Credit Administration examiners. The Farm Credit Administration proposes to delete those provisions of Part 617, Subpart A, which are merely duplicative of provisions contained in the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 et seq., or which are more appropriately addressed in internal agency procedures, as described.

The provisions of § 617.7000 repeat section 5.19 of the Act, relating to the examination of Farm Credit System institutions, except insofar as the definition of "System institution" in § 617.7000 includes incorporated or unincorporated service organizations. In order to clarify that service organizations are subject to FCA examination, it is proposed to amend § 611.1136. It is then proposed to delete § 617.7000 in its entirety.

Section 617.7010 establishes procedures for the investigation of criminal violations. The Board proposes elimination of § 617.7010, in its entirety, because the instructions contained therein are outdated. Since June 1986, System institutions have reported possible criminal violations directly to the cognizant U.S. Attorney without involvement of the Farm Credit Administration. The proposed amendments would also delete § 617.7020, which merely repeats requirements contained in section 5.21 of the Act, relating to examination of other financing institutions. Section 617.7030 relates to the responsibilities of Farm Credit Administration examiners. Section 5.19(a) of the Act provides that examiners will have the same powers and privileges, and be subject to the same requirements, responsibilities and penalties as apply to examiners under the National Bank Act, the Federal Reserve Act, and the Federal Deposit Insurance Act. The proposed amendments eliminate § 617.7030 as duplicative of statutory requirements.

Section 617.7070 provides a non-exclusive listing of some of the elements of an examination. The scope of a particular examination is a matter of discretion with the Farm Credit Administration. However, the general scope of examinations is specified in the FCA Examination Manual and Examination Bulletins, which are publicly available. The proposed amendments therefore delete § 617.7070.

Sections 602.205 and 602.289 contain the requirements concerning disclosure which are currently contained in § 617.7080. The requirements of § 617.7080 concerning reporting to the banks are operational in nature and are covered by the Examination Manual and Examination Bulletins. Therefore, the FCA proposes to delete § 617.7080 in its entirety.

Section 617.7090 repeats §§ 611.1168 and 611.1176 concerning examination of institutions in receivership or liquidation and is accordingly deleted by the proposed amendments. Amendments to §§ 611.1168 and 611.1176 proposed in a separate document, published elsewhere in this issue of the Federal Register, delete the cross-references to § 617.7090 contained in those sections.

List of Subjects in 12 CFR Parts 611 and 617

Agriculture, Banks, Banking, Investigations, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2091, 2162, 2183, 2243, 2244, 2250, 2252.

2. Section 611.1136 is revised to read:

§ 611.1136 Incorporated and unincorporated service organizations—regulation and examination.

Incorporated and unincorporated service organizations shall be subject to regulations for the banks and associations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

PART 617—[AMENDED]

3. The authority citation for Part 617 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252(a)(10).

4. The heading for Part 617 is revised to read as follows:

PART 617—INVESTIGATIONS

Subpart A—[Removed and Reserved]

5. Subpart A consisting of §§ 617.7000, 617.7010, 617.7020, 617.7030, 617.7070, 617.7080, and 617.7090 is removed and reserved.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10186 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Parts 614, 615, and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) enacted on January 6, 1988, amended provisions of the Farm Credit Act of 1971 (Act) by establishing new borrower rights. These include, among other things, procedures for the restructuring of loans from certain Farm Credit System (System) institutions which have become "distressed loans" as defined in the Act, protection for certain borrower stock, certain protections for borrowers who have met all loan obligations, cooperation by System institutions with certified State agricultural loan mediation programs, and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions. On February 16, 1988, the Farm Credit Administration (FCA) published an Advance Notice of Proposed Rulemaking (53 FR 4417) requesting comments on the manner and process for implementing the new requirements of the Act. The FCA publishes proposed rules on these and related topics.

DATES: Comments must be received on or before June 13, 1988. A public hearing will be held on June 8, 1988. For information on the hearing, see the "Final Notice of Hearing" published elsewhere in today's Federal Register.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Title I of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding several new sections to Title IV of the Act relating to the rights of those borrowing from System institutions. In particular, System institutions which are qualified lenders are directed to develop policies governing the restructuring of distressed loans, as those terms are

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defined in the Act, and to submit such policies to FCA. Other revised provisions specify the review available to applicants and/or borrowers who are denied credit or restructuring of their loans, provide protection for borrower stock and voluntary or involuntary advance payment accounts, clarify procedures to be used in informing borrowers about qualifying for differential interest rate programs, establish certain protections for borrowers who have met all loan obligations, and provide a right of first refusal to certain borrowers to repurchase or lease certain property acquired by System institutions through foreclosure or voluntary conveyance. In addition, section 503(b) of the 1987 Act requires the FCA to prescribe rules requiring System institutions to cooperate in good faith with requests for and analysis of information made in the course of mediation under any State agricultural loan mediation program certified by the Secretary of Agriculture in accordance with section 501 of the 1987 Act.

On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking (53 FR 4417) inviting public comment on how to revise FCA's current regulations to address the new provisions of the Act. In response to the notice, comments were received from the Farm Credit Corporation of America on behalf of its 37 member banks. Supplemental comments were received from four individual districts. Five System associations, one State Attorney General, two groups representing family farmers, and three individuals also submitted comments. All comments received have been considered in drafting the proposed regulations which are published today. However, comments on sections of the Act concerning areas other than borrower rights, and opinions concerning enforcement of any adopted regulations have not been individually addressed in this proposal. The proposed amendments to the regulations are explained below by section within the affected part of title 12, including any comments received on the subject matter contained in that section. Comments which merely addressed the need to delete sections of the existing regulations have not been referenced.

Part 614—Loan Policies and Operations

Subpart K—Disclosure of Loan Information

A technical amendment is proposed to be made to § 614.4365 to refer to "qualified lender" rather than System institution and to add a citation for the Truth in Lending Act.

The existing definitions in § 614.4366 are proposed to be amended to incorporate statutory language. Definitions of "loan," "loan origination charges," and "qualified lender" are proposed to be added. The definitions of loan and qualified lender are provided by the Act. Comments received indicated a need for clarification of the term "loan origination charges" since that term is used, but not defined in the Act. The definition proposed in the regulation is based on similar terms used in the implementing regulations and the commentary for the Truth in Lending Act. *See* 12 CFR Part 226.

Section 614.4367 is proposed to be revised to reflect the new language in section 4.13 of the Act, including references to the qualified lender, the effect of loan origination charges on the effective interest rate, disclosure of the at-risk nature of borrower stock (except stock guaranteed under section 4.9A of the Act), as well as the new disclosures required for loans that will or may be pooled pursuant to section 8.9 of the Act. A minor change to Model Form 1 is proposed to reflect the new disclosure requirements. One commenter questioned the usefulness of representative examples and sought borrower-specific loan disclosures. Given the clear statutory language in this area, FCA does not believe it would be appropriate to require such disclosures. This commenter also requested that FCA develop model disclosure forms for all the loan options available to borrowers, as well as for waiver of rights for loans sold in the secondary market. Considering the wide range of options which could be made available, FCA believes a model form in this area would be of little value. Another commenter requested clarification of what "loan options" meant, indicating an assumption that such options mean the various interest rate programs available to borrowers. While FCA believes interest rate programs would be considered loan options, individual lenders may have other types of programs which should also be disclosed. Therefore, FCA has not proposed a definition of that term. With respect to loans sold in the secondary market, the disclosures required by the statute and the regulations are explicit, obviating the need for the requested model form. FCA has adopted a suggestion from this commenter and has included a requirement in § 614.4367(b)(2) that qualified lenders inform borrowers that rights, if any, under applicable State laws are not waived. A comment was received from one System institution on the difficulty of timely compliance with the provisions of existing § 614.4367(c), especially where rate changes were tied to another institution's rate changes or some other readily identifiable index. This commenter recommended eliminating the requirement for advance notice of a rate change in these cases. Although the time limit has not been changed in the proposed regulation, FCA requests comment on the extent of such compliance difficulties and suggestions for a revised timeframe if appropriate. Depending on the comments received, FCA will consider revising the timeframe in the final regulation. The FCA disagrees with the commenter's assertion that advance notice of rate changes is of little value to a borrower whose only option may be to refinance the obligation. In fact, the advance notice is particularly relevant for such borrowers. It is also proposed to delete existing § 614.4367(b) as the required disclosure has already been made. It is proposed to delete § 614.4367 (e) and (f) and Model Forms 2 and 4 in their entirety as Banks for Cooperatives are no longer subject to the requirements. Deletion of § 614.4367(g) is proposed as the Farm Credit System Capital Corporation was dissolved on January 21, 1988 (53 FR 4072, February 11, 1988) pursuant to the 1987 Act.

A new § 614.4368 is proposed to address the disclosure of differential interest rates required by new section 4.13(b) of the Act. The language of the proposed regulation tracks the statutory language.

Subpart L—Notice of Action and Review

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart L to read as follows: *"Subpart L—Actions on Applications; Review of Credit Decisions"*.

In § 614.4440, the definitions of "adverse credit decision" and "applicant" are proposed to be revised. One commenter requested that FCA consider a denial of a formal application for a lower interest rate to be an adverse credit decision subject to credit review committe action. FCA believes the responsibilities of the credit review committee are clearly established in the Act and therefore, has not adopted this suggestion. Definitions of "application for restructuring," "loan," "qualified lender," and "restructure" or "restructuring" are proposed to be added to this section based on the definitions of those terms in the Act.

Section 614.4441 is proposed to be changed to delete references to "System institutions" and to substitute "qualified lender" as provided by the Act.

Section 614.4442 is proposed to be changed to refer to qualified lenders and to provide that a loan officer who was involved in the adverse credit decision on a loan may not participate in the credit review committee consideration of that loan, as provided by new section 4.14(a)(2) of the Act. One commenter indicated that, with the advent of the Farm Credit Banks as of July 5, 1988, if a Federal Land Bank Association (FLBA) did not merge with a Production Credit Association (PCA), the Farm Credit Bank might be required to perform all credit reviews at the bank level. The commenter suggested that Congress had not intended this result. The FCA believes the definition of qualified lender in the statute is clear in that only direct lenders are affected. Therefore, FCA must assume that the result was intended. The make-up of the Farm Credit Bank's credit review committee is a matter for its discretion, provided, however, that a District board member serves on the committee. Other comments received on this section concerned providing for election of the "farmer" on the board and the delegation of the duties of board members on these credit review committees. The FCA thoroughly addressed similar concerns in adopting the existing regulations. The FCA finds nothing in the 1987 Act or its legislative history to support adopting a different approach at this time.

Section 614.4443 is proposed to be revised to provide for the personal appearance of the borrower, accompanied by counsel and/or another representative of choice, submission of documentation to the credit review committee, and the request for independent appraisals as provided in new section 4.14 of the Act.

Section 614.4444 is proposed to be revised to refer to qualified lenders and the maintenance of credit review committee records, and records, if appropriate, on restructuring and participation in state mediation programs. One commenter suggested that FCA should clarify the purpose of such records and identify the class of persons intended to have access to such records. FCA establishes recordkeeping requirements such as these for System institutions as part of its regulatory and examination responsibilities, in order to enable FCA to perform its examination functions properly. The circumstances under which other persons might obtain access to institution records are varied and FCA believes it is inappropriate to specify them in this regulation.

Subpart N—Loan Servicing Requirements

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart N to read as follows: *"Subpart N—Loan Servicing Requirements; Restructuring; State Agricultural Loan Mediation Programs; Right of First Refusal"*.

One commenter requested that FCA continue the requirement in § 614.4510 that originating lenders "*shall* be responsible for servicing the loans which they make," in light of the provision in new section 8.9(d)(3) of the Act which provides that originating lenders *may* retain servicing on loans which are pooled for sale in the secondary market. (Emphasis added.) FCA believes the intent of the new provision of the Act was to provide flexibility in this area to the lenders. However, no changes are proposed to the language of § 614.4510 will be proposed in a separate Federal Register document. This commenter also requested FCA to clarify the language of § 614.4510(d) to provide that loan servicing policies must be approved by FCA rather than "furnished" to FCA. The title "Approved policies" refers to those policies approved by the bank not by FCA. The policies are, of course, subject to review for compliance with the regulatory requirements and adequacy of direction to management. However, no specific FCA approval is required prior to implementation. As indicated above, FCA will propose amendments to § 614.4510 in a separate Federal Register document.

A new § 614.4512 is proposed to provide definitions, for use in the subpart, of "Application for restructuring," "Cost of foreclosure," "distressed loan," "foreclosure proceeding," "loan," "qualified lender," and "restructure" or "restructuring." The definitions track the statutory language concerning these terms. Several commenters expressed concern that the elements of the cost of foreclosure be clearly defined. While FCA appreciates the need to have all costs considered, it believes a regulation cannot exhaustively list what all such costs are, as they may vary from State to State and possibly even loan to loan. Therefore, the definition includes item (5) which is intended to address any cost not specified but which nonetheless must be considered. One commenter was concerned that the definition of restructuring in section 4.14A(a)(7) of the Act be clarified so as not to apply in situations where routine extensions and other changes in loan contracts were made, as a result of product marketing plans or other changes in operational plans where distress is not involved. FCA believes this commenter may have misinterpreted the scope of section 4.14A of the Act as the definition of restructuring only applies to loans which are distressed. Furthermore, institutions may consider restructuring on loans at any time if it is determined to be in the best interest of the lender.

It is proposed to delete existing § 614.4518 "Forbearance," in its entirety as the Act's provisions concerning restructuring are now applicable. To implement the provisions of new section 4.37 of the Act, "Application of Uninsured Accounts," a new § 614.4513 is proposed to be added providing for the establishment of advance payment accounts by all qualified lenders. Necessary revisions to the regulations in 12 CFR Part 611 concerning the disposition of these accounts by receivers, and revisions to § 614.4090 concerning Federal land bank lending authorities, will be proposed in separate Federal Register documents.

A new § 614.4514, "Protection of Borrowers Who Meet All Loan Obligations," is proposed to address the prohibitions contained in new section 4.14D of the Act. The language of this section tracks the statutory language. One commenter requested clarification that advanced taxes, insurance premiums, attorneys' fees, and advertising costs must be collected before a loan is considered current. FCA believes that the loan documents specifically identify that money must be collected before a loan is considered current and that to specify a list in the regulation would be inappropriate. Another commenter stated that FCA should require that an agreement to alter the prohibition against required principal reduction in section 4.14D(b)(2) of the Act be a separately negotiated document from the original loan contract. The FCA has not adopted this suggestion as it believes the form of the agreement is a matter to be decided by the parties.

The proposed new §§ 614.4515 through 614.4520 address the qualified lenders' obligations under the restructuring provisions of the Act, including the procedures to be followed in determining when to restructure, the borrower's right to a review of a denial of restructuring by the credit review committee of the lender, the notice required before foreclosure, and when foreclosure proceedings must be terminated. Although FCA is proposing

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regulations addressing these areas, the requirements were applicable to all distressed loans of qualified lenders, as those terms are defined in the Act, on the date of enactment of the 1987 Act. A commenter expressed concern that the qualified lender's policies concerning restructuring issued pursuant to section 4.14A(g) of the Act were not informative enough as they merely echoed the statutory provisions. This commenter requested FCA to specify the contents of the policies. FCA will review the policies submitted pursuant to section 4.14A(g)(3) of the Act to determine compliance with the statutory provisions but has not included specific requirements for such policies as they were required to be adopted prior to the promulgation of these regulations. FCA anticipates that lenders will update their policies as they gain experience in implementing the provisions of the Act. While the language of these sections generally tracks the statutory provisions, new § 614.4514(d) includes an example of an adverse action in connection with placing a loan in nonaccrual status. FCA invites comments on whether further examples, or a definition of "adverse action," should be included in the subsection.

One commenter requested that the notice of denial of restructuring, required by § 615.4518, include the calculations used by the lender to determine the cost of restructuring and foreclosure, and any other evidence used by the institution in considering the application. While FCA does not agree that this information should be required as part of the notice, it acknowledges that access to some of the critical assumptions and calculations used by the lender in reaching its determinations could be helpful to the borrower in deciding whether to appeal. Therefore, in § 615.4518(d), the FCA has included a requirement for notice of whom to contact at the lender to obtain access to this information. FCA has not specified what information the lender must make available but invites comment on whether such a listing is required, and if so, the type of information that should be included.

One commenter indicated that FCA's authority to issue a directive requiring compliance with the restructuring provisions in new section 4.14A of the Act requires additional regulations. FCA has not proposed any new regulations specifically concerning its enforcement authority in this area as it believes regulations are not warranted given the clear statutory language. This commenter also requested that FCA monitor credit review committee activity in districts where no Special Asset group existed and othewise ensure that institutions were complying with the applicable provisions of these sections. FCA is, of course, required to do so by statute and is committed to doing so. Another commenter requested that § 614.4519 provide that the required 45-day notice period runs prior to the time the lender issues a summons and complaint in a foreclosure proceeding, as that term is defined in section 4.14A(a)(4) of the Act and proposed § 614.4512(e) of the regulations. This would allow the notice of intent to foreclose period to run concurrently with the 45-day distressed loan restructure period. FCA has not adopted this suggestion but invites comment on whether the regulation should specify when a foreclosure proceeding begins, e.g., when a loan is accelerated, issuance of a summons and complaint, etc. This commenter also requested that FCA specify that debtors' rights under bankruptcy laws substitute for the rights provided under the Act when a borrower files bankruptcy. FCA believes this is a determination for the Courts to make and has not included such a provision in the proposed regulations. Section 614.4519(c) provides that a certified lender may commence foreclosure proceedings after any applicable credit review committee consideration has been completed. However, since the restructuring decisions of certified lenders are subject to review by the District Special Asset Group, foreclosure proceedings would have to be terminated if that group prescribed a restructuring plan acceptable to the borrower. FCA believes this balances the borrower's right to review of the denial of restructuring against the certified lender's right to timely foreclosure action where it is warranted.

A new § 614.4520 is proposed to address the review of restructuring decisions required for institutions which are certified eligible to receive assistance under new section 6.4 of the Act.

A new § 614.4521 is proposed to address the requirement for cooperation with certified State agricultural loan mediation programs and provides that such participation may occur concurrently with the required restructuring under new section 4.14A of the Act. Comments received supported the provision that the processes could occur simultaneously. Given the requirement for certification by the Secretary of Agriculture and the possibility of wide variations in State programs, the FCA does not currently anticipate a need to specify more detailed processes for cooperation. However, FCA will consider doing so if experience with the programs demonstrates it is necessary. One commenter sought to have FCA mandate participation in mediation programs even if the mediation is initiated by another creditor of the borrower. FCA believes that participation in State mediation programs, other than those specified in section 503(b) of the 1987 Act, is governed by the applicable State law and has not adopted this suggestion. Section 614.4521 would also implement the provisions of new section 4.14E of the Act by prohibiting conditioning of a loan from a System institution on the waiver of rights under a State mediation program. One commenter expressed concern that such a general prohibition be included in the regulations. One non-System commenter expressed support for the mediation process in general, based on experience in that commenter's State, and commended the process for use by System institutions. This commenter also supported disclosure of lender information to the borrower in the process of the mediation to ensure meaningful negotiations. This issue was addressed more fully above in connection with proposed § 614.4518.

A new § 614.4522 is proposed to address the right of first refusal provided in new section 4.36 of the Act. One commenter requested that FCA specify that all acquired property be sold through public auction as it was asserted that this process would assure the highest price for the property. This commenter also wanted to assure competition between auctioneers for the right to sell the property. FCA believes the decision concerning the manner of disposing of acquired property, if consistent with sound business practices, is a matter of discretion for the lender and, therefore, has not adopted this commenter's suggestions. Another commenter indicated that sale by public auction has become more commonplace since enactment of the 1987 Act. This commenter requested FCA to require notification to the borrower of the fair market value of the property even if it is to be sold at public auction, and to require that a minimum bid must always be specified. FCA believes such requirements go beyond those in the statute and has not adopted these suggestions.

Part 615—Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

Subpart J—Prescription, Subscription and Retirement of Stock

In order to implement the provisions of new section 4.14B of the Act, it is proposed to add three new paragraphs, (e), (f), and (g) to § 615 5255. Paragraphs (e) and (f) address the cancellation of stock by an FLB and FLBA, or by a PCA in the event principal is forgiven in the course of a restructuring under new § 614.4516. Paragraph (g) provides that a borrower shall be entitled to retain at least one share of stock to maintain membership and voting rights in the association.

Part 618—General Provisions

Subpart C—Releasing Information

In order to implement the provisions of new section 4.12A of the Act, "Communications with Stockholders", it is proposed to revise § 618.8310(b)(1) to provide that System institutions will make stockholder lists available within 7 days of receipt of a request from a stockholder. No other changes are proposed to the language of that section.

It is also proposed to amend § 618.8320(b) to add a new paragraph numbered (9) which would authorize release of data concerning borrowers and loan applicants to the appropriate District Special Asset Group, if any, and the National Special Asset Council upon the request of either of these entities.

To implement the new provisions of section 4.13A of the Act, "Access to Documents and Information," it is proposed to revise § 618.8325(a) to add new definitions of "loan" and "qualified lender." Paragraph (b) is revised to substitute qualified lender wherever "bank or association" is used in the existing regulation. Paragraph (b) is further revised to include the requirement to furnish a copy of each appraisal of the borrower's assets made or used by the qualified lender. In response to comments received, the FCA also proposes to add language that one copy of the documents shall be furnished free of charge to the borrower but that the lender may assess reasonable copying charges for any additional copies requested by the borrower. One commenter suggested that appraisal documents only need be provided to one primary obligor. However, FCA believes it is appropriate to furnish each borrower, as that term is defined in this section, with a copy of any appraisal of that borrower's assets. Another commenter suggested that a request from a borrower for a copy of "my appraisal" should be interpreted to mean only the most recent appraisal. Since the statute provides that copies of documents shall be provided at the request of the borrower, FCA believes the language of the borrower's request would control what documents would be responsive to that request. Since the statute also clearly says "copies of each appraisal," FCA believes it would be contrary to legislative intent to narrowly interpret the language of a request to mean only the most recent appraisal, unless such an interpretation is clearly intended by the borrower. FCA acknowledges the time and expense to the qualified lender in order to comply with this statutory provision but believes these expenses must be construed as business expenses pursuant to the Act. Finally, comments were received on the need to protect confidential information used by the lender in the appraisal process, such as information on the value of other borrowers' property, private sales of acquired property, and benchmark comparables obtained under a pledge of confidentiality. The FCA invites comments on whether and how to limit disclosure of such information in the regulation or whether this issue can more appropriately be addressed on an individual basis.

Finally, the notice published on February 16, 1988 (53 FR 4417) requested comment on whether a public hearing would contribute to the FCA's consideration of these topics. Three comments were received, two in support of such a hearing and one which indicated a hearing was not necessary. It is anticipated that a hearing will be scheduled.

List of Subjects in 12 CFR Parts 614, 615, and 618

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas, Accounting, Government securities, Investments, Archives and records, Insurance, Technical assistance.

For the reasons stated in the preamble, Parts 614, 615, and 618 of Chapter VI of Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Subparts K and L, consisting of §§ 614.4365 through 614.4368 and 614.4440 through 614.4444, are revised to read as follows:

Subpart K—Disclosure of Loan Information

Sec.
614.4365 Applicability.
614.4366 Definitions.
614.4367 Required disclosures—in general.
614.4368 Disclosure of differential interest rates.

Subpart K—Disclosure of Loan Information

§ 614.4365 Applicability.

This subpart applies only to loans from qualified lenders if the loans are not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

§ 614.4366 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a qualified lender. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time, adjusted to take into consideration the amount, as a percentage of the initial net proceeds of the loan, of any stock or participation certificates which the borrower must purchase pursuant to bylaw, policy or regulation in order to obtain the loan, and any loan origination charges.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated contract rate of interest applicable to the loan at a point in time, excluding any charges payable by the borrower in obtaining the loan.

(e) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) "Loan origination charges" mean initial one-time transaction charges or fees, which may or may not be computed as a percentage of the transaction amount, and which are imposed on a borrower by a qualified lender to obtain a loan, but do not include charges imposed by someone other than the lender for services that are not required by the lender.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

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(h) "Standard adjustments factors" means those financial elements, including but not limited to, a qualified lender's cost of funds, operating expenses, provision for loan losses, and changes in retained earnings, which are typically taken into consideration by a qualified lender in adjusting the interest rate on loans.

§ 614.4367 Required disclosures—in general.

(a) Each qualified lender shall furnish the following information in writing to a prospective borrower not later than the time of the loan closing:

(1) The current rate of interest on the loan;

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan;

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership and applicable loan origination charges on the current interest rate computed on an annualized basis;

(4) Except with respect to stock guaranteed under section 4.9A of the Act, a statement indicating that stock that is purchased is at risk;

(5) A statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrower's rights that apply to each type of loan.

(b) For loans that will or may be pooled for sale on the secondary market created under section 8.9 of the Act, in addition to the loan disclosure in paragraph (a) of this section, at the time of application for a loan, a qualified lender shall provide the following:

(1) Notification that the loan will or may be pooled;

(2) Notification that, if the loan will be pooled, the borrower will be required to execute at closing a waiver of his right to have the loan considered for restructuring under Title IV of the Act and 12 CFR Part 614, with a statement that rights, if any, under applicable State laws are not waived;

(3) Notification that the borrower has the right not to have his loan pooled;

(4) Notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to his loan; and

(5) Notification of any other terms and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(c) Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each qualified lender that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(e) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (d) of this section will be satisfied by providing the disclosure to any one of such parties.

Appendix to 12 CFR 614.4367—Required Disclosure

Model Disclosure Forms

General

The following are model disclosure forms which System institutions may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give System institutions an idea of the type and extent of information that should be contained therein. System institutions are not required to follow the format of the sample forms. System institutions may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

Form 1

This loan it *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Interest Rate Disclosure

Date: _____
Lender: _____
(Name)

Stated Interest Rate

The rate of interest currently applicable to your loan
(Percentage) _____
Borrower: _____
(Name)

Effective Interest Rate [1]

The stated rate of interest adjusted to take into account loan origination charges and purchase of stock
(Percentage) _____

Check Applicable Box

☐ This is a FIXED RATE LOAN—the stated rate of interest is not subject to change during the life of the loan.

☐ This is an ADJUSTABLE RATE LOAN—the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan—

The interest rate on the loan may be changed (*Period*).

The interest rate may be changed a maximum ± (*Percentage*).

The Standard Adjustment Factors may ☐ or may not ☐ be changed during the life of the loan.

Except with respect to stock guaranteed under section 4.9A of the Farm Credit Act of 1971, stock that is purchased in this institution is at risk.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

Form 2

This loan is not subjected to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Disclosure of a Change in the Effective Interest Rate

Date: _____
Lender: _____
(Name)
Borrower: _____
(Name)

This is to inform you that on *(loan and loan number).*

☐ The effective rate of interest will be adjusted effective *(Date).*

The effective rate of interest on your loan is changed to *(Percentage)* from *(Percentage).*

This change resulted from a:

☐ 1. Change in the amount of stock borrowers are required to hold in the lender to *(Percentage)* from *(Percentage).*

☐ 2. Change in the stated rate of interest on your loan effective *(Date).*

[1] This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment.

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate. The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (*list the factors*).

The stated rate of interest on your loan changed to *(Percentage)* from *(Percentage).*

The change was computed based on the:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

☐ 3. Change for other reasons—describe.

Should you have any questions concerning the information contained herein, please contact us at *(Telephone Number).*

§ 614.4368 Disclosure of differential interest rates.

A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Subpart L—Actions on Applications; Review of Credit Decisions

Sec.

614.4440 Definitions.
614.4441 Notice of action on loan application.
614.4442 Credit review committee.
614.4443 Review process.
614.4444 Records.

Subpart L—Actions on Applications; Review of Credit Decisions

§ 614.4440 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Adverse credit decision" means a decision to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for; to deny an application for restructuring; or to deny a request to return a nonaccrual loan to accrual status.

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring or who requests return of a nonaccrual loan to accrual status.

(c) "Application for restructuring" means a written request—

(1) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as normally required by the qualified lender to support a sound credit decision.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives;

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) (as of July 5, 1988).

(g) "Restructure" and "restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

§ 614.4441 Notice of action on loan application.

Each qualified lender shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the qualified lender shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the qualified lender makes an adverse credit decision, the notice shall include:

(a) The reasons for the qualified lender's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the right to appear before the credit review committee.

§ 614.4442 Credit review committee.

The board of directors of each qualified lender shall establish one or more credit review committees to review adverse credit decisions made by the lender. The membership of each committee shall include at least one member from the lender's board. In no case shall a loan officer involved in the adverse credit decision on the loan being reviewed serve on the credit review committee when the committee reviews such loan. The duties of the members of the credit review committee may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an alternate designated by the board who shall also be a board member.

§ 614.4443 Review process.

(a) *Personal appearance.* Each applicant or borrower who is entitled to and has requested a review may appear in person before the credit review committee. The applicant or borrower may be accompanied by counsel and/or by any other representative of choice, to seek a reversal of the decision on the application under review.

(b) *Documentation.* An applicant may submit any documents or other evidence to support the information contained in the unsuccessful loan application which the applicant believes will demonstrate that the loan applied for is an eligible loan that satisfies the credit standards of the lender.

(c) *Independent appraisals.* An applicant for a loan or a borrower who has applied for a restructuring and for which additional collateral was demanded by the lender when determining whether to restructure the loan may, as a part of the request for a review, request an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for an appraisal, the credit review committee shall—

(1) Present the applicant or borrower with a list of three accredited appraisers approved by the qualified lender from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the applicant or borrower;

(2) Provide a copy of the appraisal to the applicant or borrower;

(3) Consider the results of any such appraisal in any final determination with respect to the loan or restructuring.

(d) *Decision.* The credit review committee shall reach a decision on the

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application in its sole discretion, and such decision shall be the final decision of the lender. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower in writing of the decision of the committee and the reasons for the decision.

§ 614.4444 Records.

A qualified lender shall maintain a complete file of all requests for reviews by the credit review committee, including participation in State mediation programs, and the disposition of each review by the committee. A qualified lender shall also maintain sufficient materials to permit the Special Asset Group in its district, if any, under § 614.4520 to review each determination not to restructure a loan and to permit the National Special Asset Council to review any loan for which it requests information.

3. The heading of Subpart N is revised to read as follows:

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

4. Subpart N is amended by adding a new § 614.4512 to read as follows:

§ 614.4512 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) "Application for restructuring" means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified leader; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as normally required by the qualified lender to support a sound credit decision.

(b) "Certified lender" means a qualified lender that has been certified for financial assistance under section 6.4 of the Act.

(c) "Cost of foreclosure" means:

(1) The difference between the outstanding balance due as provided by the loan documents on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan as a nonperforming asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose of liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d)(1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Foreclosure proceeding" means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I or II of the Act to effect collection of a nonaccrual of distressed loan.

(f) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988), but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(h) "Restructure" or "restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

5. Section 614.4513 is revised to read as follows:

§ 614.4513 Advance payment accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a qualified lender, may make voluntary advance conditional payments to be applied to future maturities or to be available for return to the borrower for purposes for which the lender would increase their existing loans. Lenders may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). Qualified lenders shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) Qualified lenders may establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

§ 614.4520 [Redesignated as § 614.4525]

6. Subpart O is amended by redesignating § 614.4520 as § 614.4525.

7. Subpart N is amended by adding new §§ 614.4514–4522 to read as follows:

§ 614.4514 Protection of borrowers who meet all loan obligations.

(a) A qualified lender may not foreclose on any loan because of the failure of the borrower to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless:

(1) The borrower sells or otherwise disposes of part or all of the collateral; or

(2) The parties agree otherwise in a written agreement entered into by the parties.

(c) After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal and/or interest payments.

(d) If a qualified lender places any loan in nonaccrual status and such action results in an adverse action being taken against the borrower, such as revocation of any undisbursed loan commitment, the lender shall document such change of status and promptly notify the borrower in writing of such action and the reasons therefor. If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee under § 614.4443.

§ 614.4515 Restructuring policy and reporting.

(a) Loan restructurings are to be accomplished in accordance with:

(1) The policy adopted by the district board of directors under section 4.14A(g) of the Act;

(2) Any restructuring plan required by the District Special Asset Group under section 4.14C(b)(2) of the Act, if applicable.

(b) Beginning on July 6, 1988, and every 6 months thereafter until January 6, 1993, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing:

(1) The results of its review of its distressed loans, conducted in order to determine which loans are suitable for restructuring; and

(2) The financial effect of loan restructurings and liquidations on the lender.

§ 614.4516 Restructuring procedures.

(a) *Notice.* On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice:

(1) A copy of the policy of the lender established under section 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) *Opportunity for meeting.* The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; and

(2) With respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) *Voluntary consideration of restructuring.* A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an indivudual borrower.

§ 614.4517 Restructuring decision.

(a) *Consideration of application.* When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(b) *Required restructuring.* If a qualified lender determines that the potential cost to the lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(c) *Evaluation of cost restructuring.* In determining whether the potential cost to a qualified lender of a restructuring plan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including:

(1) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(2) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(3) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(4) Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

§ 614.4518 Notice of denial of restructuring and right to review.

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice of its decision to the borrower. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

(a) The reason(s) for the denial;

(b) Notification that the borrower may request a review of the denial;

(c) Notification that any request for such review must be made in writing within 7 days after receiving such notice;

(d) A brief explanation of the process for seeking review of the denial, including whom to contact at the lender for access to information; and the right to appear before the credit review committee, established pursuant to § 614.4442, accompanied by counsel and/or by any other representative, if the borrower so chooses.

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§ 614.4518 Notice before foreclosure; limitation on foreclosure.

(a) Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for possible restructuring, and shall include with such notice a copy of the policy and the materials described in § 614.4516(a)(2).

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this subpart, and completion of credit review committee consideration, if applicable. This section shall not prevent a lender from taking any action necessary to avoid the dissipation of assets, or the destruction, diversion or deterioration of collateral.

(c) Any foreclosure proceeding which is commenced by a certified lender after the lender's credit review committee has rejected a borrower's appeal on a restructuring application must be terminated if the Special Asset Group in its district prescribes a restructuring plan to the lender which the borrower accepts.

§ 614.4520 Review of restructurings for certified institutions; reporting.

(a) Within 9 months after a qualified lender is certified under section 6.4 of the Act, such lender shall review each loan that has not been previously restructured and that is in nonaccrual status on the date the lender is certified, and shall determine whether to restructure the loan. Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Within 30 days after a qualified lender in a district is certified to issue preferred stock under section 6.27 of the Act, the district board of such district or the board of directors of the Farm Credit Bank, as the case may be, shall establish a special asset group that shall review each determination by the lender not to restructure a loan. If a Special Asset Group determines that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement if the borrower agrees.

(c) The National Special Asset Council, established by the Farm Credit System Assistance Board, will:

(1) Under section 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under section 6.27 of the Act, and by Special Asset Groups established under paragraph (b) of this section; and

(2) Review a sample of determinations made by each special asset group that a loan will not be restructured.

(d) With respect to determinations by a Special Asset Group that a loan will not be restructured, the Special Asset Group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) The National Special Asset Council will review a sufficient number of determinations made by each Special Asset Group to foreclose on any loan to assure the Council that such group is complying with this subpart. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(f) If the National Special Asset Council determines that any Special Asset Group is not in substantial compliance with this subpart, the Council will notify the group of the determination, and take such other action as the Council considers necessary to ensure that such group complies with this subpart.

(g) In determining whether a loan is to be restructured, each qualified lender certified under section 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in § 614.4517. The National Special Asset Council is required by statute to consider these same factors.

§ 614.4521 Participation in State agricultural loan mediation programs.

(a) If initiated by a borrower, System institutions shall, either concurrently with loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 503(a) of the Agricultural Credit Act of 1987, and shall present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.

§ 614.4522 Right of first refusal.

(a) For purposes of this section, in addition to the definitions in § 614.4512, the following definitions shall apply:

(1) "Acquired property" means agricultural real estate acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower when, as determined by the institution does not have the financial resources to avoid foreclosure.

(2) "Previous owner" means a borrower from a System institution who did not have the financial resources, as determined by the institution, to avoid foreclosure on agricultural real estate.

(b) Upon acquiring agricultural real estate as a result of a loan foreclosure or voluntary conveyance by a borrower, the System institution shall determine whether the borrower had the financial resources to avoid foreclosure and document this determination in the file for the acquired property.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired property of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

(i) To purchase the property at the appraised fair market value, or

(ii) To offer to purchase the property at a price less than the appraised value.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 30 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired property at a price less than the appraised value, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those that were extended to the previous owner, without first notifying the previous owner by certified mail and providing an opportunity to purchase the property at such price or under such terms and conditions.

The previous owner shall have 15 days from receipt of the notification to submit an offer to purchase at such price or under such terms and conditions.

(4) For purposes of this section, financing by the System institution shall not be considered a term or condition of the sale of acquired real estate. A System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(d) Except as provided in paragraph (e) of this section, System institutions electing to lease acquired property, or any portion of such real estate, of a previous owner, as defined in this section:

(1) shall notify the previous owner by certified mail, within 15 days of the decision to lease, of the appraised rental value of the property, as established by an accredited appraiser, and of the right to

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from a previous owner to lease the property at the appraised value, within 15 days after the receipt of such offer, and lease the property to the previous owner, unless the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all of the payments, terms and conditions of such lease.

(3) Shall consider an offer from a previous owner to lease the property at a rate that is less than the appraised rental value of the property. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner, without first notifying the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

The previous owner shall have 15 days after receipt of the notification in which to agree to lease the property at such rate or under such terms and conditions.

(e) System institutions electing to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering:

(1) Shall notify the previous owner, by certified mail, of the availability of such property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(2) If two or more qualified bids in the same amount are received by the institution, such bids are the highest received, and one of the qualified bids is from the previous owner, the institution shall accept the offer by the previous owner; and

(3) Shall not discriminate against a previous owner.

(f) Each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

(g) The rights provided under section 4.36 of the Act, and this section, shall not diminish any right of first refusal under the law of the State in which the property is located.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

8. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2202(b), 2243, 2252.

Subpart J—Prescription, Subscription and Retirement of Stock

9. Section 615.5255 is amended by adding new paragraphs (e), (f) and (g) to read as follows:

§ 615.5255 Notice of retirement of capital stock and participation certificates.

* * * * *

(e) If a Federal land bank forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and the Federal land bank shall retire an equal amount of stock owned by the Federal land bank association.

(f) If a production credit association forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(g) Notwithstanding paragraphs (e) and (f) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

PART 618—GENERAL PROVISIONS

10. The authority citation for Part 618 is revised to read as follows:

Authority: 12 U.S.C. 2183, 2200, 2243, 2244, 2252.

Subpart G—Releasing Information

11. Section 618.8310 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 618.8310 Lists of borrowers and stockholders.

* * * * *

(b)(1) Within 7 days after receipt of a written request by a stockholder, each bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit Bank shall provide a current list of its stockholders to such requesting stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that the stockholder will:

* * * * *

12. Section 618.8320 is amended by adding a new paragraph (b)(9) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

* * * * *

(b) * * *

(9) Any information relating to a loan to a borrower which has been considered for restructuring under § 614.4517 may be provided to the District Special Asset Group, if any, and the National Special Asset Council, upon the request of either of these entities.

* * * * *

13. Section 618.8325 is amended by revising paragraphs (a) and (b) to read as follows:

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§ 618.8325 Disclosure of loan documents.

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the qualified lender have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(4) "Loan contract" means any written agreement under which a qualified lender lends or agrees to lend funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(5) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his or her signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(6) "Qualified lender" means:

(i) a System institution that makes loans (as defined in paragraph (a)(3) of this section) except a bank for cooperatives; and

(ii) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(b) Each qualified lender shall provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a qualified lender shall provide, as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by such borrower to that qualified lender, and a copy of each appraisal of the borrower's assets made or used by the qualified lender. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR. Doc. 88-10192 Filed 5-11-88; 8:45 am]

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12 CFR Parts 615 and 618

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes for comment an amendment to 12 CFR Part 615, Subpart H that establishes minimum permanent capital standards for Farm Credit System (System) institutions. The amendment implements section 301(a) of the Agricultural Credit Act of 1987, which directs the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971, establishing minimum permanent capital standards expressed as a ratio of capital to assets that takes into account relative risk factors. The regulation provides for a relative weighting of assets on the basis of risk and establishes a minimum ratio of permanent capital to weighted assets that would be phased in over 5 years. The proposed regulation also sets forth the factors that should be considered in developing plans to achieve capital adequacy for each Farm Credit System institution. The FCA proposes to remove existing § 615.5210 and add it to Part 618 as § 618.8440. The FCA also proposes to remove and reserve §§ 615.5220 and 615.5240 of Subpart I, which set forth debt to capital ratios required under prior law. The FCA withdraws capital adequacy regulations that were published for comment on July 23, 1986 (51 FR 26402), prior to the enactment of the 1987 Act. These proposed regulations would have the effect of requiring System institutions to meet the minimum permanent capital adequacy levels specified in the regulations.

DATES: Comments must be submitted on or before June 10, 1988. A public hearing is scheduled for June 9, 1988. See the "Final Notice of Hearings" published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Comments and requests to testify may be mailed (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration. For address of public hearings see the "Final Notice of Hearings" published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402,

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Farm Credit Administration (FCA) published for comment proposed regulations (51 FR 26402) relating to capital adequacy and minimum capital for Farm Credit System (System) institutions pursuant to section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2154. The proposed regulation would have established regulatory zones based on capital levels, within which System institutions would have been authorized to take a number of actions that previously required FCA approval. Such actions included the establishment of interest rates, payment of dividends and distribution of earnings. On October 16, 1986, the FCA published for comment proposed conforming amendments to Parts 614 and 615 (capital adequacy related regulations) (51 FR 36824).

On January 6, 1988, the Agricultural Credit Act of 1987, Pub. L. 100-233 (1987 Act) was enacted, amending the 1971 Act to alter significantly the capital structure of Farm Credit banks and associations and to delete many previously required prior approvals by the FCA. System banks and associations have greater flexibility to determine their capital structure and develop sources of "at-risk" capital than they previously had. In addition, the 1987 Act makes significant structural changes in the System, requiring mergers among the Federal land banks (FLBs) and the Federal intermediate credit banks (FICBs) in each district and permitting mergers among all banks within a district, among banks for cooperatives (BCs), among production credit associations (PCAs), and Federal land bank associations (FLBAs) within a district, and between certain institutions in different districts. In addition, Federal land bank associations may become direct lenders.

As a result of these statutory changes, described more fully below, the FCA has determined that the capital adequacy regulations proposed for comment on July 23, 1986, are no longer appropriate and hereby withdraws them. The capital adequacy related regulations are similarly affected and the FCA will determine in the near future what adjustments need to be made in the current regulations and the proposed amendments.

I. Agricultural Credit Act of 1987 (1987 Act)

The 1987 Act makes significant changes in the capital structure of Farm Credit banks and associations (collectively "institutions"). New capitalization bylaws are required to be developed implementing the statutory changes. See section 301(b) of the 1987 Act. The bylaws do not require FCA prior approval, but must enable the institution to meet the minimum capital adequacy standards established by the FCA and must have majority stockholder approval.

The statutory requirement to purchase stock is reduced from 5 percent to 2 percent of $1,000, whichever is less, although the institution may require more under its bylaws. Such stock need not be retired upon repayment of the loan or otherwise at the option of the borrower; retirement must be solely at the discretion of the board of directors. No retirement can be made unless the institution meets the minimum capital adequacy standards established by the FCA under section 4.3(a) of the 1971 Act. Voting stock may only be held by borrowers who are farmers, ranchers, producers or harvesters of aquatic products, and eligible cooperatives; non-voting stock may be issued to non-borrowers. Voting stock must be converted to non-voting stock within 2 years of loan repayment. All stock is freely transferable.

A distinction is made between the new "at-risk" stock and "eligible borrower stock," which is protected from impairment. Section 201 of the 1987 Act amends the 1971 Act to add a new section 4.9A, which requires the institution to retire such protected "eligible borrower stock" at par value upon repayment of the loan, whether or not such stock is impaired. Section 201 also provides for such impairments to be cured with Federal financial assistance, which is exchanged for preferred stock issued to the Farm Credit System Assistance Corporation, an entity created by the 1987 Act. "Eligible borrower stock" is defined as stock, participation certificates and allocated equities, issued or allocated to persons other than Farm Credit System institutions, and which was outstanding on the date of enactment or issued after enactment as a condition of obtaining a loan but before the earlier of 9 months from enactment or the date the institution adopts capitalization bylaws under the 1987 Act. The bylaws must require holders of eligible borrower stock to exchange a portion of it for new, at-risk stock.

Section 4.3(a) of the 1971 Act, added in 1985, requires the FCA to adopt minimum capital standards for Farm Credit System institutions and empowers the FCA to issue directives to institutions that fail to maintain capital at or above the minimum standard, in addition to any other enforcement powers available to the FCA. Such directives may require the institution to develop and adhere to a plan that would enable the minimum capital standard to be met. In addition, the FCA is allowed, in its discretion, to consider such a failure an unsafe and unsound condition and to consider the institution's progress toward meeting the standard when considering whether to give prior approvals required under the 1971 Act to any proposal to divert earnings or otherwise impede the institution's progress in meeting its minimum capital level. Section 4.3(b)(3); 12 U.S.C. 2154.

While the 1987 Act eliminated many required prior approvals by the FCA, the provisions of section 4.3(a) of the 1971 Act were not changed. However, section 301(a) of the 1987 Act directs the FCA to issue regulations under section 4.3(a) establishing for Farm Credit System institutions minimum "permanent capital" standards that specify fixed percentages representing the ratio of permanent capital of the institution to the assets of the institution, taking into consideration relative risk factors, as determined by the FCA. Minimum permanent capital standards are required to be phased in over a 5-year period and must be based on financial statements of the institutions prepared in accordance with generally accepted accounting principles (GAAP).

"Permanent capital" is defined as "current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that—

(A) May be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or

(B) Is protected under section 4.9A or is otherwise not at risk."

Section 4.3A(a)(1) of the 1971 Act, added by section 301(b) of the 1987 Act. "Stock" is defined to mean "voting and nonvoting stock (including preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities." Section 4.3A(a)(2) of the 1971 Act, as amended.

The effect of these definitions is to include within permanent capital all capital in System institutions except that which is protected under section 4.9A of the 1971 Act, as amended, or is otherwise not at risk, and that which must be retired upon repayment of the loan or otherwise at the option of the borrower.

In response to the statutory directive to issue regulations under section 4.3(a) of the 1971 Act establishing minimum permanent capital standards, the FCA issued an Advance Notice of Proposed Rulemaking (ANPRM) on February 17, 1988 (53 FR 4642), requesting comment on a proposed approach that would be similar to the risk-adjusted capital proposals of other Federal bank regulatory agencies and on a number of related issues. The comment period closed on March 1, 1988.

Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of the 37 Farm Credit banks, several individual Farm Credit districts, a number of production credit associations and Federal land bank associations, the American Bankers Association, the United States League of Savings Institutions, and the National Farmers Union. A summary of the issues raised in the ANPRM and the comments received follows.

II. Summary of Comments

A. Level of Required Minimum Permanent Capital

The FCA stated in the ANPRM that capital must be sufficient to protect investors, minimize the risk of insolvency and provide for current and future needs, including protection against risks inherent in concentrated, single-industry lending in fixed geographic territories, and that minimum capital ratios should generally be higher than those set or proposed for more diversified financial institutions.

Two Farm Credit districts, the American Bankers Association and the United States League of Savings Institutions supported the FCA's contention that capital levels should be generally higher for single-industry lenders with a lack of geographic diversification. One Farm Credit district asserted that capital levels even far in

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excess of those now proposed for diversified financial institutions would not have been adequate to allow a number of System institutions to survive without assistance from inside and outside the System.

The National Farmers Union agreed that single-industry lending in fixed geographical territories poses greater risk that those faced by diversified financial institutions, but voiced concern that higher capital standards would result in higher interest rates to borrowers, which would result in borrower flight from the System.

The FCCA did not agree that capital standards for Farm Credit institutions should be higher than for commercial banks. The FCCA argued that System institutions have less liquidity risk than commercial banks because of the System's status as a "sponsored" agency with access to the financial markets not available to commercial banks, the protection afforded debtholders by joint and several liability, the active secondary market in System debt issues, the easier access to liquidity through Federal Reserve purchase of debt issues, and the absence of demand deposits. In addition, the FCCA argued that commercial banks have more payment system risk, more country risk, more single borrower lending concentrations and a lower percentage of collateralized loans. The FCCA pointed out that other "sponsored" agencies, such as the Federal National Mortgage Association, are capitalized at lower rates than commercial banks because of their limited liquidity risks and that the Farm Credit System Insurance Corporation (created by section 302 of the 1987 Act) will provide greater protection for "insured" System liabilities than do Federal Deposit Insurance Corporation assets for insured commercial deposits. (After January 6, 1989, System debt issuances will be considered "insured" pursuant to section 302 of the 1987 Act.)

The FCCA also argued that the need to be competitive imposes a practical limit on the amount of permanent capital that can be accumulated, inasmuch as the cost of accumulating new capital would either be passed on to borrowers in the form of higher interest rates or would reduce capital that could otherwise be accumulated, or both. Finally, the FCCA asserted that the agricultural industry is extremely diversified with a broad variety of products, market factors and economic conditions. Several commenters stated that the mergers of the Federal land banks and the Federal intermediate credit banks would result in wider diversification in the resulting Farm Credit banks than has existed heretofore.

The FCCA suggested that a minimum permanent capital standard in the range of 3 to 4 percent be established for all System banks and associations. One Farm Credit district suggested that institutions be expected to achieve a 3 percent ratio by the end of the second year of the phase-in period and 4 percent by the fifth year. Another believed that the rate should be higher than the 4 percent core capital ratio proposed by the other regulators. An association suggested that 5½ percent would be an appropriate ratio.

Several commenters urged the FCA not to respond to the System's single-industry lending status and the adversity of the last 4 years with excessive capital requirements in the belief that the System could have weathered the recent adversity had its capital levels been high enough. To do so, it was argued, would be self-defeating to the System in its attempt to obtain new capital, in that institutions would be unable to pay a return to providers of capital and would be forced to charge uncompetitive rates to borrowers.

Several commenters stated that the FCA must take into account the fact that the allowance for losses is excluded from the statutory definition of permanent capital in the 1987 Act, while other regulators include the general portion of the allowance in the capital base. One commenter stated that Farm Credit System institutions should be allowed to do the same in order to be competitive with commercial banks. One commenter asserted that, if the risks in the loan portfolio are properly identified and the allowance for losses is adequate, System institutions carry proportionately fewer risk assets on their balance sheets than do more diversified institutions, since the remainder of the PCA's assets are invested in the FICB and in facilities and equipment used in the operation of the business.

One commenter opined that there should be local participation in establishing minimum permanent capital ratios. The commenter believed that local markets and the risk associated with specific commodities should be considered.

B. Single or Multiple Standards

In the ANPRM, the FCA invited comment on whether there should be a single standard for all System institutions or different standards that reflect the different levels of risk inherent in the operations of different types of institutions.

The FCCA favored a single standard in view of the potential complexity of the prospective System structure. The FCCA believed that the differences in risk could be addressed by risk-adjusting the assets and establishing the allowance for losses at an appropriate level.

Several other commenters supported the idea of using one standard for all institutions and accounting for the differences in the risk-weighting of the assets. One commenter suggested developing extensive and sophisticated asset risk-weighting categories that are reflective of the structural nature of the System as it evolves under the provisions of the 1987 Act and the collateral type and quality of the loan.

On the other hand, some commenters believed that the risk-weighting of assets would not adequately address the differences in risk evidenced by the historical loss records of the various institutions. One commenter noted that the recent stress in the agricultural sector impacted different institutions in the same district differently and that differential minimum permanent capital standards should be established after the differences have been quantified and studied.

A number of associations urged the FCA to consider the relationship between the associations and their district banks in setting capital standards. Several commenters noted that the association's ability to meet capitalization requirements depends on the actions of the district banks in setting interest rates, passing operating and other costs to the association, establishing the required investment in the bank and approving interest rates and operating budgets. These commenters urged the FCA to issue regulations that would insure that the associations have the same opportunity to meet capitalization standards as do district banks.

Another commenter suggested that the regulations impose restrictions on the transfer of capital between a Farm Credit bank and its associations, which would have the effect of requiring the bank to raise capital from outside sources rather than through raising the cost of funds to the associations. The commenter also urged that FCA merger regulations require the merged association to meet a specific capital adequacy standard upon chartering, to prevent non-viable associations from merging and utilizing capital which would be better utilized by viable associations, and that Farm Credit banks be prohibited from distributing capital to merging associations that cannot meet the capital adequacy standards.

One commenter noted that the capital adequacy ratios should logically depend in large part upon what the FCA and System institutions envision the future functions of bank and associations to be. The commenter stated that the Congressional intent evident in the new legislation to decentralize more responsibility to associations is likely to result in System institutions that are not as closedly tied together as vertically integrated financial intermediaries as they have been in the past. The commenter, therefore, suggested that a flexible treatment of capital necessary to offset risks involved in asset liability management may be needed, as well as higher levels of capital to compensate for the loss of the protective supervision of Farm Credit banks. These changes, the commenter suggested, argue for differential capital levels. An association that if fully involved in asset liability management may need more stringent liquidity policies and procedures, and also more capital, than the association that simply discounts most of its assets with an intermediary wholesaler such as a Farm Credit bank.

One commenter urged the FCA to require disclosure of the current year's ratio of income to capital as well as the three previous year's ratios and projections for the next 3 years.

3. Risk-Based Capital Approach

In the ANPRM, the FCA stated its intention to consider the adoption of a risk-based approach similar to the proposed Interagency Guidelines published on March 15, 1988, by the Board of Governors of the Federal Reserve System (Federal Reserve), the Comptroller of the Currency (Comptroller) and the Federal Deposit Insurance Corporation (FDIC), (53 FR 8550) modified to reflect the relative risk factors inherent in the System institutions and the unique nature of permanent capital, as defined by the 1987 Act. The Interagency Guidelines are based on several years of study and are intended to promote the stability of the banking system and bring some degree of uniformity to capital standards so that there is competitive equity among institutions subject to the oversight of different regulaters.

Under the Interagency Guidelines, assets would be assigned to categories ranging from 0 to 100 prcent according to the risk inherent in the particular type of asset. Assets assigned to the 0 percent category would be deemed to present no risk and would be excluded from the asset base altogether for the purpose of determining the institution's permanent capital ratio. Assets having the greatest risk would be assigned to the 100 percent category and the full face amount of the asset would be included in the asset base. Assets having intermediate degrees of inherent risk would be assigned to intermediate percentage risk categories and the face amount of the asset included in the asset base to the extent of the assigned percentage. The institution's permanent capital would then be divided by the institution's risk-adjusted asset base to arrive at the permanent capital ratio, which would be expressed as a percentage.

The Interagency Guidelines utilize two measures for commercial banks: (1) "tier one," core capital; and (2) "tier two," total capital, which includes core capital plus certain elements of supplementary capital. Core capital consists of stockholder's equity (common stock, surplus, and retained earnings—including disclosed capital reserves that represent an appropriation of retained earnings, net of Treasury stock and foreign currency translation adjustments); minority interest in common stockholder's equity accounts of unconsolidated subsidiaries; and, during the transition period, certain supplementary capital elements. Supplementary capital consists of the general allowance for losses on loans and leases; perpetual and long-term preferred stock (original maturity of at least 20 years); hybrid capital instruments—including perpetual debt, mandatory convertible securities and subordinated debt; and intermediate term preferred stock (original maturity of 7 years or more).

Many commenters supported the use of risk-adjusted capital standards similar to those used by other regulators. The FCCA noted that the substantive research, discussion, and agreement among Federal banking regulators make it an appropriate model for the System and that such an approach is consistent with the Congressional intent underlying section 301. The FCCA propoosed a risk-weighting of assets that is similar to that used in the Interagency Guidelines, with some modifications for assets unique to the System. For example, the FCCA proposed that investments in System institutions be risk-weighted at 0 percent and that loans to System be risk-weighted at 75 percent. The FCCA argued that such assets have less exposure to loss than loans and assets generally by reason of the unique protective devices available currently and prospectively to System institutions, such as joint and several liability, the availability of financial assistance through the Farm Credit System Assistance Board, and the protection to be provided through the Farm Credit System Insurance Corporation.

The FCCA favored a single measure of minimum capital over the two-tier approach of the Interagency Guideline. One Farm Credit district urged the FCA not to use a standard based on a ratio of unallocated surplus to assets. However, several commenters suggested that the regulatory standards developed by the FCA be treated as minimum guidelines and that the institution be held accountable for maintaining "appropriate levels" of capitala, which may be in excess of the regulatory minimum.

The American Bankers Association (ABA) urged the FCA to monitor the progress of the risk-based capital proposals of the other regulators to ensure that the regulations adopted by FCA at least meet the standards for commercial banks and included its comments on the risk-based capital proposals of the other regulators. The ABA's comments were generally critical of the proposals of the other regulators as a mandatory approach and urged the other regulators to allow the industry to develop risk-based capital guidelines.

D. Off-Balance-Sheet Items

In the ANPRM, the FCA stated its intention to require capital support for certain off-balance-sheet items, such as undisbursed commitments, letters of credit, and similar obligations that have some risk, by assigning them some weight for inclusion in the risk-adjusted asset base.

Comments received on weighting off-balance-sheet items were generally supportive. One commenter favored including undisbursed commitments only if they cannot be withdrawn. The FCCA stated that the weighting of off-balance-sheet items should be consistent with the Interagency Guidelines, but that only amount-specific commitments should be risk-weighted. For example, commitments under joint and several liability and loss sharing agreements or guarantees should be specifically excluded until such time as events occur that define the amount, as determined under GAAP, of the commitments.

E. Phase-In Period

In the ANPRM, the FCA stated its intention to propose interim target ratios which would be greater each year until the fifth year when the minimum permanent capital standard must be met

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and to prohibit the payment of dividends and patronage until the fifth year standard is met.

The FCCA noted that during the first 5 years certain System banks and associations may need to rely upon retained earnings as the primary method of accumulating permanent capital to meet minimum capital adequacy standards and that a number of institutions may be unable to accumulate sufficient permanent capital within the next 5 years to meet the standard, even if they are well managed. The FCCA suggested that the FCA periodically conduct an institution-by-institution evaluation of progress in meeting the capital adequacy standard and establish regulatory oversight accordingly, giving considerable weight to the trend in accumulation of capital in addition to the absolute level attained. The FCCA recognized that regulatory enforcement action is both necessary and appropriate where the standard has not been met during the phase-in period and cannot be realistically projected in a sound business plan, but suggested that no regulatory action be taken against an institution that is effectively managed and has a total capital (including protected stock) of greater than 3 percent of weighted risk assets and a positive trend in the accumulation of permanent capital, even though the minimum permanent capital standard has not yet been met. This approach contemplates that the FCA and each institution would negotiate a trend line (not necessarily linear) with the objective of meeting the capital adequacy standard, even if doing so requires longer than a 5-year period.

The FCCA and a number of other commenters urged the FCA to reconsider its intention to prohibit the payment of patronage refunds or dividends until the final minimum standard is met. It was argued that such a prohibition will make it difficult for Farm Credit System institutions to develop sources of capital other than required borrower capital and, to the extent borrowers have anticipated such distributions as a reduction of their borrowing costs, may cause borrower flight from System institutions. The FCCA proposed an alternative by which a System institution is allowed to pay patronage refunds and dividends as long as the interim targets negotiated between the institution and the FCA are met. Several commenters agreed with this proposal. One commenter noted that the association might be able to get borrowers to convert protected stock to new, at-risk stock if the customers were assured of getting a return on their investment.

One Farm Credit district urged that phase-in regulations be specific enough to avoid subjective judgments by the FCA, with quantifiable measures and standards established through regulation, and that the institution's capital management not be hampered by an "all or none" philosophy for payment of dividends and patronage except in circumstances where there is a safety and soundness issue.

Several associations requested that the FCA, in establishing interim standards, take into account non-recurring events that temporarily distort the capital on an institution, such as the significant adverse impact of the Tax Reform Act of 1986 on production credit associations that had substantial loan loss reserves.

Commenters were generally supportive of requiring a plan during the phase-in period to achieve the minimum permanent capital standard. One commenter noted that such plans should address dividends and endorsed the components of the financial plan that was required in the capital adequacy regulations proposed by the FCA on July 23, 1986. One commenter believed that plans would be particularly helpful "during the interim period in which FCA prohibited from taking certain regulatory actions solely because of the failure of institutions to meet minimum adequacy standards." This commenter believed that the requirement should be lifted when the minimum capital requirement is met and as long as it is maintained.

F. Treatment of Equities

In the ANPRM, the FCA stated its intention to eliminate "double duty dollars" in the computation of the permanent capital ratio. "Double duty dollars" is a term that refers to the use of one dollar of real capital to support two credit risks.

The FCCA encouraged the continued use of "double duty dollars," stating that such continuation would be consistent with the requirements under section 301(a)(1)(b) of the 1987 Act and GAAP. The FCCA stated that the use of double duty capital encourages the generation of earnings at the discount lenders level, with benefits passed to the direct lenders through the cooperative patronage refund process, thus providing an equity base at the bank level to support its potential obligations under joint and several liability, as well as any secondary risk in its discount lending operation. The FCCA stated, however, that if there were to be an adjustment for double duty dollars to the extent that capital is counted only once, the capital should support those assets to which the primary risk applies and that the assets to which a secondary risk applies (i.e. the bank's loan to the association) should be risk-weighted at 0 percent.

Two districts and one association favored eliminating the double duty dollar. One district cited analogies to the treatment of unconsolidated subsidiaries and reciprocal holdings by the Interagency Group. Another district suggested that elimination of the double duty dollar might be accomplished by looking at a Farm Credit bank and its related associations as a combined entity for the purpose of determining the capital requirements, since it may be difficult to allocate the capital between the bank and association. An association suggested that the Farm Credit banks pay out any future earnings distribution in cash, noting the tax consequences of such a change, but also noting that such a method would eliminate the current complicated accounting practice. All of the commenters who commented on the issue favored concentrating the capital at the direct lender level where the primary risk resides.

In the ANPRM, the FCA also stated that equities that will be paid to borrowers in accordance with revolvement policies that entitle the shareholder to a specific payout at a specific time should not be considered as permanent capital.

The FCCA stated its belief that the only allocated equities that should be excluded from the determination of permanent capital are "allocated equities that were outstanding of the date of enactment of the 1987 Act and 'protected' under section 4.9A of the 1971 Act, as amended by the 1987 Act, and allocated equities (in a specific dollar amount) that will be retired on a date certain by reason of a specific action of the board of directors of the System institution authorizing such specific retirement." The FCCA stated that until such time as a board of directors establishes a date certain claim against allocated equities, such equities are at risk and should be considered permanent capital.

One Farm Credit district opined that the statute means for certain allocated equities that were revolved only by unilateral action of the System institution's board of directors to be considered at risk and therefore "permanent capital."

Several commenters, including the FCCA, urged the FCA to allow institutions to count certain elements that are not considered permanent capital under the 1987 Act, such as the allowance for losses and protected equities, in computing their permanent capital ratios, at least during the phase-in period. One commenter suggested that protected equities might be discounted in some manner to reflect their "demand character."

G. Average Daily Balances

In the ANPRM, the FCA stated its expectation that the standards would be applied on the basis of daily average balances of the relevant accounts for each calendar quarter.

Most commenters believed that it would be difficult and costly for many institutions to close their books on a daily basis in order to comply, and that the cost would outweigh the benefits to be achieved. The FCCA noted that the seasonal variation and other loan volume trends of System institutions may cause a significant distortion in the amount of capital required, even on a quarterly basis, and that such distortions may cause overstatements in some cases and understatements in others of capital required against risk-adjusted assets. The FCCA proposed that the permanent capital ratios of System institutions be calculated as of the last day of each calendar quarter.

One district suggested that the standards be applied on the basis of a 12-month rolling average of month-end figures if 12-month daily averages are not considered feasible. One association indicated that daily averages would presently be a burdensome requirement, but that if given sufficient time, the capacity to obtain daily average balances could be acquired.

H. Public Hearing

The FCA invited comment on whether a public hearing would contribute to the thorough airing of issues related to capital adequacy. The response to this invitation was positive. One commenter suggested that hearings should be held in different parts of the country. Another suggested that a two-way discussion format be used for the hearing. Another requested that the full range of capital-adequacy-related issues be addressed.

I. Other Comments

The FCCA noted that section 6.9(e)(3)(D) [probably intended to be (B)] of the 1971 Act, added by section 201 of the 1987 Act, requires a treatment of the third quarter 1986 capital preservation assistance liabilities that is inconsistent with GAAP and requested a clarification that the term "GAAP" as used in section 301(a)(1)(B) means GAAP as adjusted for many exceptions in accordance with section 6.9(e)(3)(D) [probably B].

III. Response To Comments

A. Capital Adequacy

After careful consideration of the comments, the FCA proposes for comment a capital adequacy regulation that establishes a single risk-adjusted minimum permanent capital standard as a baseline for capital adequacy for all Farm Credit System institutions engaged in lending or leasing. The proposed regulation is modeled after the Interagency Guidelines proposed by the other Federal regulators. The FCA believes the Interagency Guidelines are an appropriate model for risk-weighting assets, even though Farm Credit System institutions are cooperatively organized, inasmuch as the risks associated with various types of assets are the same regardless of the organizational form of the institution that holds them (although rates should generally be higher for single-industry lenders).

The proposed minimum permanent capital standard is primarily designed to protect against credit or counterparty risk that is interent in the investment, servicing, lending, and leasing operations of System institutions, and which is not accounted for by the allowance for losses. Other types of risk, such as interest rate, liquidity, funding, and operational risks are not fully taken into account by the minimum standard. Such risks arising from management decisions made in the normal course of operations vary significantly among institutions and will require capital levels greater than those required by the proposed minimum permanent capital standard.

Establishment of a minimum permanent capital standard does not relieve the boards of directors and managements of System institutions from their obligation to evaluate and determine an adequate level of total capital. Overall capital adequacy should be set at a level to provide a base for required growth and a buffer to protect the institution's owners and creditors from future adversity. It should also provide for risks not taken into account by the minimum standard. An institution's overall capital requirements can only be determined after careful review of specific circumstances in each individual institution, such as: quality of policies, procedures, and internal controls; capability and experience of management, quantity and quality of earnings; adequacy of the allowance for credit losses; adequacy of liquid funds; needs of the institution's customer base; and any other risk-oriented activities requiring additional capital.

A final assessment of overall capital adequacy must take into account each of these conditions including, in particular, the level and severity of problem and classified assets. The minimum permanent capital ratio proposed by the FCA is but one element in the determination of overall capital adequacy, which determination may differ significantly from conclusions that might be drawn solely from the institution's risk-based capital ratio.

B. Single Standard for All Institutions

The proposed regulation adopts a single standard for all System institutions rather than multiple rates reflective of the different levels of risk inherent in the lending and leasing operations of the various Farm Credit System institutions. The FCA is well aware that the historical loss experience of different types of Farm Credit System institutions varies widely and that capital needs among institutions of the same type may differ greatly from institution to institution. However, the minimum standard is intended to provide for risks inherent in and common to lending institutions whether or not they are organized as cooperatives. In this regard, the risk-weighting of assets allows for the single rate to have a differential impact on an institution-by-institution basis, inasmuch as institutions with proportionately more high risk assets would be required to have more capital even though the rate is the same.

The FCA does not propose to weight assets on the basis of the condition or classification of the loan. These differences will be reflected in the allowance for losses, which, though not included in the computation of the permanent capital ratio, will affect the determination of the overall capital adequacy of an institution. Nor does the FCA propose to attempt to weight assets on the basis of type of commodity or geographic area or local markets. The difficulty of making such numerous, sophisticated judgment on these dynamic relative risk factors makes this an impracticable approach. Differences in risk exposure resulting from these factors, as well as other risks which may vary from institution to institution, such as interest rate, liquidity, and operational risks, must be determined and provided for by the board of directors in determining the overall capital requirements for each institution. The adoption of a single minimum standard for all System institutions would be consistent with Interagency

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Guidelines on risk-adjusted capital proposed by the Federal Reserve, the Comptroller, and the FDIC (collectively, the Interagency Group).

The FCA proposes to make the Farm Credit Leasing Corporation (Leasing Corporation) subject to the proposed minimum permanent capital standards. The Leasing Corporation is exposed to risks similar to those encountered by Farm Credit banks and associations, inasmuch as leasing is a functional equivalent of lending. If lessees fail to perform in accordance with their lease terms, the Leasing Corporation may be left holding depreciated assets of little or no value. Because the risks are similar, the FCA proposes that the Leasing Corporation be subject to the same minimum permanent capital standards as System banks and associations.

The proposed regulation does not establish a minimum permanent capital standard for the Federal Farm Credit Funding Corporation, the FCCA, the Federal Agricultural Mortgage Corporation, or the Financial Assistance Corporation, all of which are Farm Credit System institutions. Capital standards for these institutions must be approached differently since they are not primarily engaged in lending and leasing operations. The FCA is considering what standards are appropriate for such institutions.

C. Asset Risk Weights

After a careful review of the asset risk-weights proposed by the Interagency Group and comments received on the ANPRM, the FCA has determined to propose for comment the asset risk-weight categories developed by the Interagency Group of 0, 10, 20, 50 and 100 percent. The proposed weight categories for risk assets are determined primarily on the basis of the type of instrument and the type of obligor. The only forms of collateral that are formally considered by the risk asset framework are obligations of the U.S. Government and its agencies and obligations of U.S. Government-sponsored agencies. The only guarantees that are recognized for weighting purposes are guarantees of the U.S Government, U.S. Government-sponsored agencies, and domestic State and local governments. However, other forms of collateral or guarantees would be taken into account in evaluating the adequacy of an institution's allowance for losses to properly value the credit portfolio. The allowance for losses is expressly excluded from the statutory definition of permanent capital in the 1987 Act. However, the adequacy of the allowance for losses must be addressed by the board, and management of each institution (and examined by the FCA for adequacy) in determining the overall capital requirements of the institution.

The FCA does not agree with the FCCA that System loans and investments should carry a lower risk-weight because of unique System protective devices, especially Federal financial assistance. The FCA believes that the System and the FCA have an obligation to make every effort to minimize the reliance on Federal assistance. Furthermore, the proposed regulation would establish a standard that the FCA believes, based on the information currently available, would be appropriate when financial assistance is terminated. Also, while "unique System protective devices" such as joint and several liability may provide risk protection to outside investors, for Farm Credit institutions, joint and several liability is an additional risk as well as a protective device. For the purpose of establishing internal capital standards, the proposed regulation considers Farm Credit System institutions as independent, stand-alone, but related entities. Accordingly, the FCA did not accept the FCCA's suggestion to weight investments in System institutions at 0 and loans to System institutions at 75. If the FCA were to accept the FCCA's suggestion to continue to double-count capital, the FCA would propose to risk-weight intra-System loans at 100 percent.

The FCA also did not accept the FCCA's suggestion that, if double counting of capital were to be eliminated, the direct loan from banks to associations should be risk-weighted at 0. Such a risk-weighting would undermine the effect of eliminating double counting of capital, since the objectionable feature of double-counted capital is that one dollar of real capital supports two units of risk. While the FCA recognizes that to some extent the risk of default on the direct loan and the risk of default by borrowers are the same risk, the FCA also believes that there is a secondary level of risk posed by the possibility that some associations may default for reasons other than or in addition to the direct passthrough of loan losses and that some cushion is needed to provide for the possibility that not all associations will be adequately capitalized. To provide for these risks, the FCA proposes to risk-weight direct loans to and investments in other Farm Credit System institutions at 20 percent.

The treatment of off-balance-sheet items in the proposed regulation is consistent with the Interagency Guidelines. Off-balance-sheet items would first be converted to a credit equivalent by the application of credit conversion factors that are also risk-based. For example, off-balance-sheet items that are direct credit substitutes have a credit conversion factor of 100 percent, because the institution is subject to essentially the same credit risk as if it had made a direct loan to the obligor or account party. Transaction-related contingencies, i.e., instruments backing the performance of nonfinancial or commercial contracts or undertakings and undisbursed commitments with original maturity exceeding 1 year, are subject to a 50-percent conversion factor. Short-term, self-liquidating, trade-related contingencies that arise from the movement of goods, such as commercial and documentary letters of credit collateralized by the underlying shipments, are subject to a credit conversion factor of 20 percent. Unused commitments with an original maturity of 1 year or less are deemed to involve little risk and are subject to a 0-percent credit conversion factor, which results in their requiring no capitalization at all. After applying the credit equivalent factor, the resulting amount is assigned to a risk-weight category or the same bases as the balance sheet assets-type of obligor or guarantor or type of collateral.

The treatment of goodwill is also consistent with the Interagency Guidelines. Goodwill acquired after the date of publication of this proposed regulation and all goodwill on the books of the institution after January 1, 1993, would be deducted from permanent capital (and the asset base) before computing the permanent capital ratio. This treatment is proposed because of the uncertainty of the future benefits of such an intangible asset, inasmuch as it does not involve a contractual right to receive a definite income stream for a specified or certain period. In the event an institution experiences financial difficulties, goodwill may not provide the degree of support provided by other assets because goodwill cannot be sold separately and because the entity whose acquisition gave rise to the goodwill may not be readily marketable. However, goodwill acquired before the date of publication of the proposed regulation would be "grandfathered." Until 1993, such goodwill would not be deducted from permanent capital, but would be risk-weighted in the asset base at 100 percent.

The proposed rule does not make any adjustments for intangible assets other than goodwill. Except for goodwill, there is no uniformity among the Interagency Group on the treatment of intangible assets. The Federal Reserve generally evaluates intangible assets on a case-by-case basis and makes appropriate adjustments when the level or recorded value of these intangibles is inconsistent with the organization's overall financial condition. The FDIC and the Comptroller permit purchased mortgage servicing rights to be considered in the computation but allow other intangibles only on a case-by-case basis. The FCA invites comment on the appropriate treatment of intangible assets in the computation of the permanent capital ratio.

Differences from Interagency Guidelines: There are, however, several differences between the proposed regulation and the Interagency Group's proposed asset-risk weights:

(1) The Interagency Group weights cash items in process of collection in the 20-percent category; the proposed regulation assigns them to the 10-percent category. System institutions with these items have very low loss experience.

(2) The proposed regulation makes no distinction between the U.S. Government or U.S. Government-agency securities with less than 90 days to maturity and those with longer maturities, as the Interagency Group does. The FCA assigns all such securities to the 10-percent category rather than the 0-percent category, because short-term securities remain subject to some degree of interest rate and market risk.

D. Single Measure of Permanent Capital Adequacy

The proposed regulation does not incorporate a two-tier approach similar to the Interagency Group proposal. The Interagency Guidelines include in tier two, or total capital, elements that would not fall within the statutory definition of permanent capital, such as the general allowance for losses, hybrid debt-equity instruments and subordinated debt. The Interagency Guidelines also limit such supplementary capital that can be counted toward the capital ratio to 100 percent of the core capital. Although the proposed regulation does not adopt a similar two-tier approach, the FCA emphasizes that the minimum permanent capital standard is a minimum and does not fully take into account all of the risks a particular institution may need to provide for in determining an overall adequate level of capital. Also, while the proposed rule does not distinguish between various elements of permanent capital, the FCA encourages the accumulation of capital that is not subject to revolvement.

E. Treatment of Certain Equities

1. *Allocated equities:* The FCA regards all allocated equities that can be retired only in the discretion of the board (provided minimum standards are met) as permanent capital, as defined in the statute. However, the FCA wishes to encourage the accumulation of capital which both the institution and the holder understand at the outset is not subject to revolvement (except in the absolute discretion of the board), as the FCA understands this to be the intent of Congress in enacting the new capitalization provisions of the 1987 Act. Therefore, the proposed regulation would not count capital subject to revolvement as permanent capital unless (1) the bylaws state that such capital can be retired only at the discretion of the board and that there is no express or implied right granted to the borrower to have the capital retired at the end of the revolvement cycle or at any other time; and (2) the notice of allocation contains a similar statement.

The effect of this treatment would be to exclude from permanent capital all allocated equities presently outstanding, since they would not have been issued under such a bylaw, with such notice to the borrower. However, all of these equities are already excluded from permanent capital under section 4.9A of the 1971 Act, as amended by the 1987 Act.

2. *FLB passthrough equities:* The proposed rule would also exclude from the definition of permanent capital equities of the Federal land banks (FLBs) held by the Federal land bank associations (FLBAs) that were purchased in connection with loans supported by stock that is retireable upon repayment of the borrower's loan. The FCA believes that Congress intended such equities to be considered retireable upon repayment of the borrower's loan and therefore excluded from the statutory definition of "permanent capital." Such equities represent a direct, dollar-for-dollar passthrough of capital purchased by the borrower in the FLBA required by the 1971 Act prior to its amendment in 1987. Title I of the 1971 Act, prior to its replacement by the new Title I in the 1987 Act (which takes effect July 5, 1988), requires FLBA stock to be retired upon repayment of the loan. Section 1.16 of the 1971 Act, 12 U.S.C. 2033. It has long been the practice of FLBs to retire its FLBA-owned equities issued in connection with a particular loan when the loan is paid off, in order to permit the FLBA to fulfill its statutory obligation to retire its borrower-owned equities. Indeed, most FLBAs would be unable to retire their protected stock without stock impairment if the FLB did not retire the corresponding FLB stock, as most FLBAs have few earning assets and little earned net worth. If such FLB equities were to be treated as permanent capital, the statutory prohibition against the reduction of permanent capital through the payment of dividends or patronage or the retirement of stock if minimum permanent capital standards are not met (see new section 4.3A(d), added by section 301(b) of the 1987 Act) would effectively preclude the retirement of protected stock if the FLB did not meet the minimum permanent capital standards. This could lead to the anomalous result of FLBAs in relatively healthy districts seeking Federal Financial assistance, and facing insolvency if it were denied, while the FLB materially improves its capital position (since it no longer has the asset to support by retains the supporting capital).

The FCA believes the 1987 Act need not and should not be interpreted to yield such an unintended result. The 1987 Act excluded from the definition of permanent capital two categories of equities: (1) Equities protected under section 4.9A of the Act or otherwise not at risk; and (2) stock that must be retired upon repayment of the loan or otherwise at the option of the borrower. All borrower stock outstanding on the date of enactment and all stock issued as a condition for obtaining a loan until the earlier of the adoption of the new capitalization bylaws or 9 months from enactment is protected and included in Category 1. Under the new bylaws, no stock will be retireable at the option of the holder. Therefore, there are no FLBA equities that could fall into Category 2 that are not protected and, therefore, included in Category 1. The FCA has concluded that Congress must have considered FLB equities issued to FLBAs in connection with loans supported by protected stock to be retireable upon repayment of the loan or otherwise at the request of the holder and, therefore, excluded from the definition of "permanent capital." To treat such equities as permanent capital would render Category 2 a nullity and would produce a result inconsistent with the Federal financial assistance framework set forth in the 1987 Act.

3. *Preferred Stock:* Preferred stock is included within the statutory definition of permanent capital. However, the proposed rule would consider preferred stock issued to the Financial Assistance Corporation to be permanent capital only to the extent it is not used to offset

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impairment of protected equities. To the extent it offsets such an impairment (so that all protected equities can be retired at par in accordance with the 1987 Act), it is not available to absorb risk. To treat such stock as permanent capital would undermine the clear intent of Congress to include in permanent capital only that capital which is available to absorb risk.

F. Double Duty Dollars

The proposed regulation would eliminate "double duty dollars" for the purpose of computing the permanent capital ratio. Double counting of capital in related institutions having a direct lending or discount relationship would be eliminated by excluding from permanent capital of the funding institution the direct lender's stock investment in the funding institution. Double counting of capital between institutions having a participation relationship would be eliminated in the following manner: Where an institution is required to invest in another institution in order to capitalize the participation interest of such other institution, the amount of such investment would be deducted from the permanent capital of the investing institution. For the purpose of eliminating double counting of capital only, the FLB and the FLBA would be considered to have a participation relationship. That is, the FLB would be considered to be the participating institution and the FLBA the investing institution. Double counting of capital between the Leasing Corporation and its owners would be eliminated by reducing the permanent capital of the owners of the Leasing Corporation by an amount equal to their investment in the Leasing Corporation.

The proposed regulation would also disregard any reciprocal or cross-holdings of stock or participation certificates in the computation of permanent capital in both institutions. These holdings are relatively rare, occurring primarily because of FICB financial assistance to PCAs in the form of capital investment. In some cases, such capital may not satisfy the definition of permanent capital because it can be retired at the option of the holder or because it was issued with a definite retirement date. Where these holdings do qualify as permanent capital, they would be deducted from both the permanent capital and the asset base of each institution prior to the computation of the permanent capital ratio and prior to the deductions required to eliminate "double duty dollars."

The proposed approach to "double duty dollars" is consistent with the Interagency Guidelines. While the concept of "double duty dollars" has no direct application in commercial banks, their proposed elimination would be analogous to the practice of the Interagency Group of eliminating related company transactions and reciprocal equity holdings between commercial banks prior to computing risk-adjusted capital ratios. The Interagency Guidelines eliminate related company transactions either through consolidation or by deducting investments in unconsolidated subsidiaries from the institution's capital before computing the minimum capital ratio. The rationale for such treatment of unconsolidated subsidiaries is that the assets of an unconsolidated subsidiary are not fully reflected in the parent's assets and "may be viewed as the equivalent of off-balance-sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization * * * to considerable risk." The Interagency Group views the capital invested in these entities as primarily supporting the risk inherent in the off-balance-sheet assets and not generally available to support risks or additional leverage elsewhere in the organization.

Reciprocal holdings are also deducted from the capital bases of both institutions under the Interagency Guidelines. In addition, the Interagency Group further considered whether to require the deduction of all holdings in other banks since these do not represent additional capital to the banking system as a whole and could increase the possibility that problems could be transmitted from one institution to another. While the Interagency Group decided not to restrict non-reciprocal holdings of capital, it was not addressing relationships between related entities. Based on these actions and comments, it is clear that the Interagency Group would not permit the use of the same capital twice in two related entities.

The FCA shares the concerns of the Interagency Group as they apply to System institutions and believes it is necessary to eliminate "double duty dollars" in order to obtain an accurate picture of the System's capital position and to assure that capital levels of all System institutions are adequate. Were "double duty dollars" not to be eliminated, the minimum standard would need to be established at higher levels to compensate for the double counting, since one dollar of capital supports both the primary and secondary lending risk. Also, loans to System institutions would then be risk-weighted at 100 percent.

The FCA believes that eliminating "double duty dollars" is not inconsistent with section 301 of the 1987 Act or GAAP. The proposed elimination would not reduce or not count permanent capital; it would merely avoid double counting the real capital that is there. Furthermore, eliminating the "double duty dollars" by treating the bank and the association as a combined entity, as suggested by one Farm Credit district, would be consistent with GAAP. Financial Accounting Standards Board Statement 12 states:

> There are circumstances, however, where combined financial statements (as distinguished from consolidated statements) of commonly controlled enterprises are likely to be more meaningful than their separate statements. For example, combined financial statements would be useful if one individual owns a controlling interest in several enterprises that are related in their operations. Combined statements also would be used to present the financial position and the results of operations of a group of unconsolidated subsidiaries. They also might be used to combine the financial statements of enterprises under common management. If combined statements are prepared for a group of related enterprises, such as a group of unconsolidated subsidiaries or a group of commonly controlled enterprises, intercompany transactions and profits or losses shall be eliminated, and if there are problems in connection with such matters as minority interests, foreign operations, different fiscal periods or income taxes, they shall be treated in the same manner as in consolidated statements.

While the ownership structure is inverted in the Farm Credit System, the same principles apply. Combined statements of the bank and the association are required in reports to shareholders by 12 CFR Part 620 and are used in Reports to Investors, both of which are required to be prepared in accordance with GAAP. Furthermore, the FCA believes that the primary purpose of the Congressional directive to base the minimum permanent capital standards on financial statements prepared in accordance with GAAP was to assure that capital standards would not be based on the regulatory accounting procedures permitted under section 5.9 of the 1971 Act, 12 U.S.C. 2254.

While using a combined balance sheet as a basis for computing permanent capital ratios would eliminate "double duty dollars," the FCA does not want to obscure the fact that the institutions are independent entities. Therefore, the proposed regulation is drafted to accomplish the elimination directly and to count the capital at the direct lender level, where the primary risk resides.

The FCA considered other methods of eliminating (for the purpose of computing permanent capital ratios) the double counting of capital and/or assets between institutions having a lending/investing relationship. Among the methods considered were the following:

One method considered would have eliminated double-counted assets and capital and apportioned them 75 percent to the direct lender and 25 percent to the funding institution (the "75/25" approach). The assets of the funding institution would be reduced by an amount equal to 75 percent of the loan (or discount) to the direct lender and the assets of the direct lender would be reduced by 25 percent of its indebtedness to the funding institution. Similarly, when counting capital, the funding institution would reduce its permanent capital by an amount equal to 75 percent of the direct lender's investment in the funding institution and the direct lender would reduce its permanent capital and assets by an amount equal to 25 percent of its investment in the funding institution. Adjustments having a similar effect would be made for the BC/CBC system and for the Leasing Corporation.

A second method considered would have eliminated double-counted capital and assets by excluding them from consideration by the investing institution (the "owned funds" approach). The investing institution, when computing its permanent capital ratio, would have been required to exclude from its assets and its capital an amount equal to its investment in its funding institution. The funding institution would be permitted to include all its otherwise eligible capital.

The FCA invites comments on these alternatives to the proposed approach, or others, that would eliminate double-counted dollars between institutions having a lending/investing relationship.

G. The Minimum Permanent Capital Standard

The FCA proposes to require that System institutions maintain at all times permanent capital that is adequate for their institution, but in no case less than 7 percent of their risk-adjusted assets. After reviewing the comments submitted, the FCA continues to believe that concentrated, single-industry lending within limited geographic areas is inherently riskier than is the more diversified multi-industry lending that is typical of many commercial banks. The FCA rejects the FCCA's argument that System institutions have less risk from single borrower lending concentrations than commercial banks; few commercial banks are as dependent on the well-being of a few borrowers as are many Farm Credit System institutions.

Historically, the Farm Credit System has maintained high levels of capital relative to commercial lending institutions. For instance, until 1971, the BCs were prohibited from exceeding debt-to-capital ratios of 13 to 1 (7.1 percent). In 1982, before the magnitude of the current crisis was fully understood, the Farm Credit System developed monitoring standards in support of capital preservation and other loss-sharing agreements, which set capital as a percent of total assets for Farm Credit System institutions at levels of about 1.5 percent for FICBs, 4 percent for FLBs, 7 percent for PCAs, and 7 percent for BCs. After risk-adjusting total assets and eliminating "double duty dollars" in these institutions, the proposed standards are not substantially different.

The Interagency Group has proposed a 1992 minimum capital standard with two components—a core capital (essentially, common stockholders' equity) standard of 4 percent, and a "second-tier" standard, which considers other forms of capital (including the allowance for losses) in addition to core capital, of 8 percent. These standards are intended to apply to all financial institutions in the United States and, basically, represent the minimum standards agreed to by 10 Western industrialized countries. (The United Kingdom, for comparison, has proposed minimum standards for core capital of 8 percent for its institutions.)

The FCA estimated the levels of permanent capital that would have been required by various System institutions in order to have survived the stress of the last 5 years without Federal assistance and still be able to generate positive earnings in 1992. The studies showed that the combined FLB/FLBA system would have needed permanent capital of about 10 percent of weighted assets—with some districts needing up to 16 percent. The FICB/PCA and BC systems were estimated to need somewhat less, while many individual PCAs appear to need substantially more.

The FCA also computed the yearend 1987 permanent capital ratios for several districts with the best operating results. After combining the FLB and FICB in each district, the resulting total capital ratios ranged from 9.2 percent to 15.5 percent, averaging about 12.5 percent. After double-counted capital was eliminated, the combined banks' total capital ratios ranged from 6.3 percent to 9.6 percent, averaging about 8 percent. The FCA concluded that very few, if any, institutions desiring to generate consistent net positive earnings could operate with much less than 8 percent risk-adjusted capital. While these calculations included stock that is now protected under the 1987 Act and is not permanent, eventually permanent capital will comprise all of the institution's capital, as protected stock is replaced by new at-risk stock.

After considering the proposals of the other financial regulators and the experience of Farm Credit System institutions over the last 5 years, the FCA has concluded that 7 percent is an appropriate minimum level for all Farm Credit lending and leasing institutions. The elimination of "double duty dollars" and the risk adjusting of the assets will, of course, cause the rate to have a differential impact on the various types of institutions.

The FCA believes that even with levels of permanent capital at 7 percent of weighted assets, many institutions may be undercapitalized if there are substantial weaknesses, in their management, the terms and conditions of their existing loans, or in the general economic condition of their service area. Without significant changes in their operating practices, these institutions may not be viable independent entities and may need to consider merger with stronger entities in order to continue to service their territory and minimize the need for financial assistance.

H. Phase-In

While many institutions do not presently meet the proposed standard, the FCA believes that standards should be set, on a normative basis, at a level appropriate to provide for the risks, with reasonable provision for a gradual phase-in.

The proposed regulation would provide, for institutions that are unable to meet the standard in the first year, for the standard to be phased in over a 5-year period, as required by the 1987 Act. This would be achieved through a series of annual interim minimum permanent capital standards (interim standards) that are determined by reference to the existing permanent capital ratio in the institution on December 31, 1987, and to the 1993 standard of 7 percent. That is, the difference between the institution's ratio on December 31, 1987, and 7 percent would be divided by five to determine the annual increments by which the interim permanent capital standard for that institution would increase each year. This approach provides for a measure of customization

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of the interim standards to the circumstances of a particular institution. The FCA invites comment on alternative methods for determining appropriate increments for the annual interim minimum capital standards.

The FCA rejects the FCCA suggestion to negotiate trend lines with each institution as a substitute for interim standards, but anticipates that such a process may in fact occur in the process of determining what regulatory enforcement actions are appropriate. The FCA believes that the institution's good faith efforts to meet the standard and reasonable progress in doing so should be factors in determining whether regulatory enforcement action is appropriate for an institution that does not meet the standard. The FCA will not be inclined to bring enforcement actions against institutions that are making a good faith effort to meet minimum standards and are making reasonable progress in doing so. What constitutes reasonable progress and good faith efforts must be determined on an institution-by-institution basis during the course of the examination process and may in fact amount to a negotiated trend line.

On the other hand, meeting the minimum capital standard does not necessarily ensure that an institution has adequate overall capital for safe and sound operation. Where safety and soundness considerations require, enforcement actions may be appropriate even though the minimum permanent capital standard is met.

The FCA wishes to clarify the statutory constraints under which the FCA may take enforcement actions during the phase-in period, since some comments reflect an apparent misunderstanding of these provisions. The statute does not prohibit enforcement actions against institutions based solely on capital adequacy during the phase-in period. It merely requires the concurrence of the Farm Credit System Assistance Board for such enforcement actions against institutions authorized to issue preferred stock to the Assistance Board (i.e., institutions authorized to receive Federal financial assistance).

I. Distribution of Earnings

The comments received on the distribution of earnings during the phase-in period were also carefully considered. A majority of the commenters urged the FCA to reconsider its announced intention to prohibit the payment of dividends and patronage refunds until the fifth year minimum permanent capital standard is met.

The FCA is sympathetic with the need to offer some incentive to providers of capital in order to attract new permanent capital. On the other hand, the FCA feels an obligations to discourage the dissipation of capital if the effect would be to increase the need for Federal financial assistance. The FCA believes that the System has a similar obligation to minimize the need for Federal financial assistance. However, the need to accumulate sufficient permanent capital in Farm Credit System institutions at the end of the 5-year Federal financial assistance period and the need to develop sources of permanent capital (other than borrower stock required to be purchased as a condition for the loan) have caused the FCA to reconsider its initial position on the distribution of earnings during the phase-in period. Therefore, the proposed regulation would permit the payment of dividends and patronage in any year in which the interim standard is met, provided such distribution is consistent with the capital adequacy plan developed by the institution. However, even if the interim standard is met, no distributions should be made (except those permitted under section 4.3A(d)(2) of the 1971 Act, as amended by section 301(b) of the 1987 Act) unless it appears reasonably probable that the institution will be able to meet its interim standard for the next year after the distribution is made. The FCA expects institutions to balance carefully the need to attract new capital and prevent borrower flight against the impact of the distribution upon the institution's capital levels, to assure that the net effect of the action on the institution's capital levels will be positive.

J. Average Daily Balance

The proposed regulation adopts the suggestion of one Farm Credit district that the standard be applied on the basis of a 12-month rolling average of month-end figures during the phase-in period, but applies the standard on an average daily balance after December 31, 1989. This would give institutions a reasonable time to develop the capacity to close their books on a daily basis, as do commercial banks.

K. Clarifications

The FCCA requested two clarifications. First, the FCCA requested that the FCA clarify that the reference to "surplus (less the allowance for losses)" in the definition of permanent capital in the 1987 Act is intended to exclude the allowance for losses from the definition of permanent capital, not require it to be subtracted from the surplus. The confusion arises because, under GAAP, the allowance for losses is not included in the surplus account, as the statutory language would suggest, but is shown as an offset to asset accounts. The FCA believes that the phrase "surplus (less the allowance for losses) should be read as "surplus (exclusive of the allowance for losses)."

Second, the FCCA requested that the section 301(a)(1)(B) requirement to establish minimum permanent standards based on GAAP be interpreted to mean "GAAP as adjusted by any exception in accordance with section 6.9(e)(3)(D)" [probably intended by FCCA to be B], which requires a treatment of third quarter 1986 capital preservation assistance liabilities that is inconsistent with GAAP. Since there is no provision in the 1987 Act indicating that section 6.9(e)(3)(B) overrides section 301, a strict interpretation of section 301(a)(1)(B) would preclude the clarification sought by the FCCA. However, as noted above, the FCA believes that section 301(a)(1)(B) was primarily intended to assure that minimum permanent capital standards would not be based on regulatory accounting procedures established by the 1986 Act, Pub. L. 99–509, codified at 12 U.S.C. 2159, and in the absence of an express override provision in section 301, will not interpret section 301(a)(1)(B) so strictly as to yield unintended results.

L. Public Hearing

The FCA invited comment on whether a public hearing would be a useful means of assuring that the issues related to capital adequacy are thoroughly aired. The commenters who responded to this invitation agreed that it would. Accordingly, it is expected that a public hearing will be scheduled for June 9, 1988, in the Washington, DC, area.

IV. Proposed Regulation.

The FCA proposes to amend Subpart H of 12 CFR Part 615 by removing § 615.5210 and adding it to Subpart J of Part 618 as § 618.8440, and removing the remaining sections (615.5200 and 615.5215) in Subpart H and all sections of Subpart I in their entirety. The deleted sections of Subpart H, except § 615.5210, are inconsistent with the proposed regulation. The deleted sections of Subpart I set forth debt-to-equity ratios required of Farm Credit System institutions under prior law. The FCA invites comment on whether some debt-to-equity standard should be required during the phase-in period or until experience with the risk-adjusted capital approach demonstrates that it will provide an adequate control on leverage.

The following new sections would be added to Subpart H:

A. Proposed § 615.5200 would require a Farm Credit System institution to determine the level of capital needed to assure its continued financial viability and to provide for growth necessary to meet the needs of its borrowers. Each institution would be required to establish a formal, written capital adequacy plan that, if followed, would enable the institution to achieve its operating goals as well as the minimum permanent capital standard. The plan would be required to address projected earnings distributions and stock retirements and to take into account the capability of management, the quality and quantity of earnings, the quality of its assets and the adequacy of the allowance for losses, the sufficiency of liquid funds, the needs of an institution's customer base, and any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance-sheet liabilities, and other conditions warranting additional capital.

B. Proposed § 615.5201 sets forth definitions of terms used in the subpart. "Institution" is defined to include all Farm Credit banks and associations and the Farm Credit Leasing Corporation. "Permanent capital" is defined to include all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder or are protected under section 4.9A of the 1971 Act, as amended, or are otherwise not at risk. Excluded under this definition of permanent capital would be: (1) Preferred stock issued to the Financial Assistance Corporation to the extent it offsets an impairment of protected equities; (2) FLB equities required to be purchased by the FLBA in connection with a loan supported by stock protected under section 4.9A of the Act; and (3) capital subject to revolvement unless the institution's bylaws clearly provide that such capital can be retired at the sole discretion of the board and that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time, and the notice of allocation includes a similar statement. The section also defines other terms used in the computation of permanent capital ratios.

C. Proposed § 615.5205 requires System institutions, beginning in 1993, to maintain at all times permanent capital at a level of at least 7 percent of its risk-adjusted assets. The section also sets forth the method for determining the annual interim minimum permanent capital standard for each institution. The difference between the institution's permanent capital ratio on December 31, 1987, and the 7 percent standard applicable in 1993 is divided by 5 to arrive at the annual increment by which the beginning capital ratio must increase each year in order to reach 7 percent by 1993. The interim minimum permanent capital standard for 1989 is determined by adding the increment to the beginning permanent capital ratio. The interim minimum permanent capital standard for each year between 1989 and 1993 is determined by adding the annual increment to the prior year's interim standard.

D. Proposed § 615.5210 sets forth the proposed method for computing an institution's permanent capital ratio. The institution's permanent capital, (adjusted to eliminate reciprocal equity holdings between institutions, double counting of capital, and goodwill) is divided by its assets, (also adjusted to eliminate reciprocal holdings between institutions, and goodwill).

Adjustments to permanent capital. Before the ratio is computed, certain adjustments to the permanent capital and the asset base would be required. First, reciprocal holdings of equities between institutions would be eliminated to the extent of the offset in both institutions. If the investments are equal in amount, the elimination would be accomplished in each institution by deducting from permanent capital issued to another Farm Credit System institution an amount equal to any investment in such institution and reducing assets by an equal amount. If the investments are not equal in amount, the permanent capital and assets of each institution would be reduced by an amount equal to the smaller investment.

Second, double counting of capital between institutions having a direct loan or discount lending relationship would be eliminated by reducing the permanent capital of the funding institution by an amount equal to the direct lender's investment remaining after the elimination or reciprocal holdings, if any.

Third, double counting of capital between institutions having a participation relationship would be eliminated by deducting the investment required to capitalize the participation from the permanent capital of the investing institution.

Fourth, double counting of capital would be eliminated between the Leasing Corporation and its owners by reducing the permanent capital of the owner institutions by an amount equal to their investment in the Leasing Corporation.

Fifth, the section would require institutions to reduce their permanent capital by the amount of any goodwill reflected on the balance sheet, but would "grandfather" until 1993 goodwill acquired before the date of publication of the proposed regulation. That is, goodwill acquired before the date of publication of the proposed regulation would be considered as an asset weighted in the 100 percent category until 1933, after which it would be deducted from permanent capital. Goodwill acquired after the date of publication of the proposed regulation would be deducted from permanent capital (and assets).

Risk-weight categories. Risk-weight categories would be defined primarily on the basis of the type of asset and type of obligor or guarantor. Cash and claims on Federal Reserve banks would be assigned to Category 1, which is risk-weighted at 0 percent. Securities of the United States Government and explicitly guaranteed United States agency securities, cash items in process of collection, portions of loans and other assets collateralized by securities of the United States Government or its agencies, and securities and other claims guaranteed by the United States Government or its agencies (including portions of claims guaranteed) are assigned to Category 2, which is risk-weighted at 10 percent. Loans and other assets collateralized by United States Government-sponsored agency securities, investments in foreign banks with an original maturity of 1 year or less, all investments in domestic banks, investments in general obligations of State and local government, claims on official mutinational lending institutions, or regional development institutions in which the United States Government is a shareholder or contributor are assigned to Category 3, which is risk-weighted at 20 percent. All other investment securities with maturities under 1 year are assigned to Category 4, which is risk-weighted at 50 percent. All other claims on private obligors, claims on foreign banks with an original maturity exceeding 1 year, loans and investments in Farm Credit institutions, and all other assets, including but not limited to fixed assets and receivables, are assigned to Category 5, which is risk-weighted at 100 percent. "Goodwill" grandfathered under § 615.5201 is risk-weighted in the 100-percent category until 1993, at which time it would be deducted from permanent capital and risk-weighted in the 0-percent category.

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Off-balance-sheet items. Off-balance-sheet items would be risk-weighted in a two-step process. First, a credit equivalent would be obtained by multiplying the face amount of the item by the appropriate credit conversion factor set forth in the regulation. The resulting amount would then be risk-weighted in the same manner as balance sheet assets.

Proposed credit conversion factors are set forth in the regulation. A credit conversion factor of 0 percent would be applied to unused commitments with an original maturity of 1 year or less. A credit conversion factor of 20 percent would be applied to commercial letters of credit. A credit conversion factor of 50 percent would be applied to transaction-related contingencies (i.e. bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction), commitments with an original maturity exceeding 1 year, revolving underwriting facilities, note issuance facilities and other similar arrangements. A credit coversion factor of 100 percent would be applied to direct credit substitutes (general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities); acquisitions of risk participations in bankers acceptance, and participations in direct credit substitutes; sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet; and forward agreements to purchase assets.

Interest rate contracts and foreign exchange contracts would require special treatment to arrive at a credit equivalent amount. The institution would add the current exposure, i.e. total replacement cost (obtained by marking to market) of all its contracts with a positive value and an estimate of the potential future credit exposure, determined by multiplying the notional principal amount by one of the following credit coversion factors, as appropriate:

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less that 1 year	0	1.0
One year and over	0.5	5.0

No potential credit exposure would be calculated for single currency floating/floating interest rate swaps. The credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value.

List of Subjects in 12 CFR Parts 615 and 618

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Archives and records, Insurance, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, Parts 615 and 618 of Chapter VI, Title 12, of the Code of Federal Regulations are proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2243, 2252, Section 301(a) of Pub. L. 100-233.

2. Subpart H is revised to read as follows:

Subpart H—Capital Adequacy

Sec.
615.5200 General.
615.5201 Definitions.
615.5205 Minimum permanent capital standards.
615.5210 Computation of the permanent capital ratio.
615.5215 Distribution of earnings.

Subpart H—Capital Adequacy

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of capital needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum permanent capital standard prescribed in § 615.5205 is not meant to be adopted as the optimum capital level in the institution's capital adequacy plan. Rather, the standard is intended to serve as a minimum level of permanent capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) The Board of Directors shall establish and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's permanent capital. In addition to factors that must be considered in meeting the minimum standards, the Board of Directors shall also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management;

(2) Quality of operating policies, procedures, and internal controls;

(3) Quality and quantity of earnings;

(4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;

(5) Sufficiency of liquid funds;

(6) Needs of an institution's customer base; and

(7) Any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance-sheet liabilities or other conditions warranting additional capital.

§ 615.5201 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Commitment" means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions. Lending or leasing arrangements that are unconditionally cancellable at any time at the option of the institution shall not be considered to be commitments, provided the institution makes a separate credit decision based upon the borrower's current financial conditions before each advance of funds or other credit under the arrangement.

(b) "Credit conversion factor" means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(c) "Direct lender institution" means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan or lease assets on its books.

(d) "Government agency" means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(e) "Government-sponsored agency" means agencies or instrumentalities charted by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(f) "Institution" means a Farm Credit bank, Federal land bank association, production credit association, Farm Credit association, Farm Credit Leasing Corporation, bank for cooperatives, and Central Bank for Cooperatives, and their successors.

(g) "Permanent capital" means all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder, or is protected under section 4.9A of the Act, or is otherwise not at risk. For the purpose of computing the permanent capital ratio, permanent capital shall not include:

(1) Preferred stock issued to the Financial Assistance Corporation to the extent it is used to offset an impairment of equities protected under section 40.9A or the Act;

(2) FLB equities required to be purchased by FLBAs in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(3) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted.

(h) "Risk-adjusted asset base" means the total dollar amount of the institution's assets adjusted in accordance with § 615.5210(d) weighted on the basis of risk in accordance with § 615.5210(e).

(i) "Stock" means stock and participation certificates.

§ 615.5205 Minimum permanent capital standards.

(a) Beginning on January 1, 1993, each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

(b)(1) During each year beginning on January 1, 1988, through January 1, 1993, each institution that does not meet the minimum permanent capital standard established in paragraph (a) of this section shall maintain a level of permanent capital at all times during such year at a level that is not less than the interim minimum capital standard for such year:

(2) The annual interim minimum permanent capital standards shall be determined for each institution in the following manner: A beginning permanent capital ratio shall be determined as of December 31, 1987. The difference between the institution's beginning ratio expressed as a percentage and 7 percent shall be divided by five. The resulting number shall be the annual increment to be used to determine the interim minimum permanent capital standard for each of the years between 1988 and 1993. The interim minimum permanent capital standard for each of the following years shall be equal to:

For 1988—the beginning capital ratio;
1989—the beginning capital ratio plus the increment;
1990—the beginning capital ratio plus (2 times the increment);
1991—the beginning capital ratio plus (3 times the increment);
1992—the beginning capital ratio plus (4 times the increment);
1993—7 percent.

§ 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles.

(b) Through December 31, 1989, the institution's assets may be computed using the average of the most recent 12 months' balances. Thereafter, the institution's asset base shall be computed using currently daily balances.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted in accordance with paragraph (d) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its permanent capital an amount equal to the investment. If the investment are not equal in amount, each institution shall deduct from its permanent capital and its assets an amount equal to the smaller investment.

(2) Where an institution (except the Leasing Corporation or the Central Bank for Cooperatives) is owned by another Farm Credit System institution that is a direct lender, the double counting of capital shall be eliminated by deducting from the permanent capital of the owned institution any investment of the direct lender not eliminated pursuant to paragraph (d)(1) of this section.

(3) Where an institution invests in another institution to capitalize a participation interest purchased by such other institution, the investing institution shall deduct from its permanent capital an amount equal to its investment in the participating institution. For the purpose of computing the minimum permanent capital ratio, the FLB shall be considered a participating institution and the FLBA shall be considered an investing institution.

(4) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by reducing the permanent capital of the owner institutions by 100 percent of their investment in the Leasing Corporation.

(5) Each institution shall deduct from its permanent capital an amount equal to any goodwill acquired after May 12, 1988. Beginning on January 1, 1993, each institution shall deduct from its permanent capital all goodwill, whenever acquired.

(e) The risk-adjusted assets base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (e)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent.* (A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill acquired after May 12, 1988.

(D) Beginning 1993, all goodwill, whenever acquired.

(ii) *Category 2: 10 percent.* (A) All securities issued by the U.S. Government and Government agencies.

(B) Cash items in the process of collection.

(C) Portions of loans and other assets collateralized by securities of the U.S Government or Government agencies.

(D) Securities and other claims guaranteed by the U.S. Government or

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Government agencies (including portions of claims guaranteed).

(iii) *Category 3: 20 percent.* (A) Loans and other assets collateralized by U.S. Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the "full faith and credit of State or local government."

(E) Claims on official multinational lending institutions or regional development institutions in which the U.S. Government is a shareholder or contributor.

(F) Obligations of and investments in Farm Credit institutions.

(iv) *Category 4: 50 percent.* (A) All other investment securities with maturities under 1 year.

(v) *Category 5: 100 percent.* (A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) Until 1993, goodwill acquired before May 12, 1988.

(3) Off-Balance-Sheet Items.

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (b) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (e)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent.* (*1*) Unused commitments with an original maturity of 1 year or less.

(B) *20 Percent.* (*1*) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(c) *50 Percent.* (*1*) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).

(*2*) Unused commitments with an original maturity exceeding 1 year, including underwriting commitments and commercial credit lines.

(*3*) revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

(D) *100 Percent.* (*1*) Direct credit substitutes (general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities).

(*2*) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes (e.g. standby letters of credit).

(*3*) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(*4*) Forward agreements (i.e., contractual obligations) to purchase assests, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the national principal amount by the following credit conversion factors as appropriate.

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 Year and over	0.5	5.0

(iv) Credit equivalents of single currency floating/floating interest rate swaps shall be determined by their replacement cost (mark-to-market).

§ 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under regulation § 615.5210 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

Subpart I—[Removed and Reserved]

3. Subpart I, §§ 615.5220 to 615.5240, is removed and reserved.

PART 618—GENERAL PROVISIONS

4. The authority citation for Part 618 continues to read as follows:

Authority: 12 U.S.C. 2183, 2243, 2244, 2252.

Subpart J—Internal Controls

5. Subpart J is amended by adding a new § 618.8440 to read as follows:

§ 618.8440 Annual budgets and projections.

(a) The board of directors of each Farm Credit System insitution shall adopt and approve an operational and strategic business plan, completed not later than 30 days after the commncement of each calendar year.

(b) The plan, at a minimum, shall address the operations of the institution for a minimum of 3 years and shall cover a minimum of the following areas:

(1) A mission statement, which describes how the institution intends to meet the long-term needs of its customers, creditors, stockholders, and employees.

(2) A review of the internal and extenal factors which are likely to effect the institution during the planning horizon.

(3) The establishment of quantifiable goals and objectives which must address, at a minimum, the areas of capitalization, asset quality, loan volume, profitability, operating expenses, marketing, human resources, liquidity, and, where applicable, interest rate risk.

(4) Action plans which evidence how goals are planned to be acheived. These action plans must include, at a minimum, a description of the proposed actions, a cost/benefit analysis, specific implementation schedules, and an assignment of individual responsibilities.

(c) Each plan will include pro forma financial statements for each year of the plan and a detailed monthly operating budget for the first year of the plan.

(d) Each System institution shall have a board of directors approved policy which outlines the steps and process for completing the plan. This policy must include, at a minimum, the establishing of overall timetables for developing the plan, the assignment of accountability for the overall planning process, and the establishment of monitoring, control, and reporting processes for measuring performance under the plan.

Dated: May 4, 1988.

David A. Hill,

Secretary Farm Credit Administration Board

[FR Doc. 88-10185 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 614, 615 and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Public Hearings

AGENCY: Farm Credit Administration.

ACTION: Final notice of hearings on proposed regulations.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed regulations governing borrower rights and establishing minimum permanent capital standards for Farm Credit System (System) institutions. These proposed regulations are published in two separate documents elsewhere in this issue of the **Federal Register**. The FCA Board has decided to hold public hearings because of the continuing interest expressed to the FCA by those impacted by the regulations.

DATES: The public hearings on borrower rights will be held beginning at 10:00 a.m. on June 8, 1988. The public hearing on minimum permanent capital standards will be held beginning at 10:00 a.m. on June 9, 1988. Requests to appear and present testimony for the public hearings must be submitted by June 1, 1988.

ADDRESS: Public hearings will be held at Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Submit requests to appear and present testimony for the public hearing in writing (in triplicate) to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102-5090.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 8, 1988 concerning proposed regulations implementing the provisions of the Agricultural Credit Act of 1987 concerning new borrower rights.

A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 9, 1988 concerning proposed regulations establishing a minimum permanent capital standard for System institutions.

A person who wishes to present testimony at a session of either or both hearings must request that their name be placed on the calendar by June 1, 1988. Requests will be honored in the order received. The request should state the name, address and telephone number of the person wishing to testify and the general nature of the testimony which they will offer.

Formal presentation will be restricted to 5 minutes per person. In order to facilitate discussion on the record, witnesses must submit a detailed or summary statement of the text of their comments prior to the hearing. Submission deadline for statements or detailed summaries is also June 1. Persons will be notified by the FCA of acceptance of their requests. All documents and testimony received by the FCA as part of the public hearing process will be made part of the public record and will be available for public inspection at the FCA's offices in McLean, Virginia.

The FCA notes that the hearing is to solicit the views of interested parties concerning the content of the regulations and their application to System institutions. The FCA will not accept testimony or written statements in connection with the hearing which are not confined to this subject.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10191 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration Board (Board) proposes amendments to Subparts A, B, C, and O of Part 615, which govern the funding of Farm Credit System (System) institutions by means of issuance of securities. The proposed amendments are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which was enacted on January 6, 1988. The 1987 Act anticipates that certain powers previously exercised by the System finance committees will be transferred to the Federal Farm Credit Banks Funding Corporation upon the election of its new board of directors. The proposed regulations also contain conforming changes to reflect certain statutory reorganization requirements for System institutions. The Board determined that this amendment to the regulations should be proposed for public comment.

DATE: Written comments are due on or before June 13, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Alan Glenn, Special Examination Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4225, TDD (703) 883-4444,

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The proposed amendments are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100-233, which was enacted on January 6, 1988.

Subpart A of Part 615 contains regulations that define the funding activities of the System and the role of the Federal Farm Credit Banks Funding Corporation (Funding Corporation). Sections 615.5000 and 615.5010 are amended to delete references to the finance committees or their subcommittees and replace them with references to the Funding Corporation, which, under the 1987 Act amendments, has statutory authority to, acting for the banks, approve the amount, maturities, rates of interest, and participations by the several banks in each issue of joint, consolidated, or Systemwide obligations.

References to the role of district boards of directors are also deleted from § 615.5010 to reflect the elimination of such boards by the 1987 Act. Reference to "supervision" in § 615.5010 is deleted and replaced by the word "regulation" to more closely reflect the language contained in section 1.2 of the Act.

Section 615.5030, which sets forth authority of System institutions to borrow from commercial banks is amended by adding a new § 615.5030(b),

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which provides that the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) may borrow from commercial banks with the approval of the Farm Credit Administration as provided in section 6.24(a)(11) of the Act.

Subpart B of Part 615 contains regulations concerning the collateral required for issuance of obligations by System institutions. Section 615.5050(a) is amended by deleting reference to "long term" in describing maturities of notes, bonds, debentures, and similar obligations requiring collateralization consistent with section 4.3(c) of the Act. Sections 615.5050 and 615.5060 are amended to reflect the mergers required by the 1987 Act.

Section 615.5050 is amended to limit the collateral value of any loan to the maximum amount authorized by the Act or Part 614 of these regulations.

Section 615.5060(b) is deleted. The bonds issued under the superseded Federal Farm Loan Acts, which required separate accounting for collateral purposes, have been retired.

Subpart C of Part 615 contains regulations governing the issuance of notes, bonds, debentures, and similar obligations by System institutions. Subpart C is revised to reflect the new responsibilities of the Funding Corporation which were previously exercised by the finance committees. Section 615.5100 authorizes the System banks to issue individual, consolidated and Systemwide obligations. The requirement that each issuance be authorized by resolution of each issuing bank is now placed in § 615.5101(b). In addition to prescribing the content of the resolution of the issuer's board of directors, § 615.5101 is revised to set forth required Farm Credit Administration approval, Farm Credit Administration consultation with the Secretary of the Treasury, required consultation by System representatives with the Secretary of the Treasury and a cross-reference to the requirements of Subpart B of Part 615 concerning collateral for the issuance of obligations.

Section 615.5102, prescribes that the Funding Corporation shall have the responsibility, acting for the banks, for determining the amount, maturities, rates of interest, terms and conditions of participation by the System banks in conjunction with each issue. The Funding Corporation is also given responsibility for developing funding guidelines, priorities and objectives in conjunction with the asset/liability management policies of the banks.

Section 615.5103, which required the finance committees devise debt maturity guidelines, funding priorities, and objectives, is deleted, since these guidelines, priorities, and objectives have in practice been replaced by the asset/liability management policies referred to by § 615.5102(b).

Subpart O of Part 615 contains regulations governing the form in which Farm Credit securities may be issued. Section 615.5450 provides for the issuance of consolidated bonds, consolidated Systemwide notes, and consolidated Systemwide bonds in book-entry form. The consolidated bonds of the 12 Federal intermediate credit banks and the 13 banks for cooperatives dated before January 1, 1978 are no longer outstanding so the reference to these bonds is deleted from § 615.5450 (b) and (c).

Section 615.5450 also reflects the repeal of the authority of the Finance Committee and the new authority given to the Funding Corporation to determine whether bonds should be issued in definitive form. Section 615.5460 is amended to reflect the mergers of banks authorized by the Agricultural Credit Act in 1987.

Section 615.5497 concerning loss from payment of spurious consolidated bonds is deleted because the bonds discussed therein are no longer outstanding.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2160, 2202(b), 2243, 2252, 2278b–6; Sec. 301(a) of Pub. L. 100–233.

Subpart A—Funding

2. Sections 615.5000, 615.5010, and 615.5030 of Part 615 are revised to read as follows:

§ 615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

§ 615.5010 Funding Corporation.

(a) The Funding Corporation is authorized to issue, market, and handle System obligations and, handle, upon request of the banks, interbank or intersystem flows of funds and investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of obligations through the Funding Corporation by negotiation, offer, bid, syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

§ 615.5030 Borrowings from commercial banks.

(a) The System bank boards, by resolution, shall authorize all commercial bank borrowings.

(b) The Financial Assistance Corporation may borrow from commercial banks only with the approval of the Farm Credit Administration.

3. Subpart B of Part 615 is revised to read as follows:

Subpart B—Collateral.

Sec.
615.5050 Collateral requirements.
615.5060 Special collateral requirement.
615.5090 Reduction in carrying value of collateral.

Subpart B—Collateral

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, or real or personal property acquired in connection with loans made under this Act, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents in an aggregate amount equal to the sum of consolidated and Systemwide bonds, Farm Credit investment bonds, consolidated Systemwide notes, other notes and similar obligations, and all other known and recorded liabilities outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as provided in this subsection, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid principal of loans (except as provided for in § 615.5090), excluding undisbursed loan funds held by the bank or the association and funds held for account of borrowers and purchasers.

(2) The collateral value of loans in process of liquidation, foreclosures, judgments, property acquired in the liquidation of loans, and real estate sales contracts shall be the lesser of recovery value or investment value.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loan.

(4) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or Part 614 of these regulations.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A certified report by a bank officer at each regular meeting of the board of directors. The report should certify to the eligiblity and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§ 615.5060 Special collateral requirement.

(a) If the chief counsel for a System bank or association has determined, in writing, that bank procedures provide sufficient safeguards to assure that a real estate mortgage loan made by the bank will be secured by a first lien or its equivalent on interest in the primary real estate security, an attorney lien certification need not be obtained at the time a note is accepted for collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of loan closing, unless before the end of each period, an attorney has certified that the interest of the bank in the primary real estate security for the loan is a first lien on the borrower's interest or its equivalent from a security standpoint.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

§ 615.5090 Reduction of carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures, and Similar Obligations

4. Sections 615.5100, 615.5101, and 615.5102 are revised to read as follows:

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations, to members of the general public;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act, to members of the general public;

(c) Systemwide obligations, together with other banks of the System, to members of the general public; and

(d) Investment bonds to the authorized purchasers subject to the limitations contained in the regulations set forth in Subpart D.

§ 615.5101 Requirements for issuance.

Each issuance of debt obligations shall meet the following requirements:

(a) Each obligation except investment bonds shall be issued through the Federal Farm Credit Banks Funding Corporation as agent for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefore is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in Subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration in accordance with § 615.5102.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act, as amended.

§ 615.5102 Issuance of debt obligations through the funding corporation.

(a) The amount, maturities, rates of interest, terms and conditions of participation by the System banks in each issue shall be determined by the Funding Corporation acting for the banks of the System established pursuant to section 4.9 of the Act, subject to the approval of the Farm Credit Administration in accordance with this section.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

5. Section 615.5105 is amended by revising paragraph (b) to read as follows:

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§ 615.5105 Consolidated systemwide notes.

* * * * *

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

* * * * *

Subpart 0—Issuance of Farm Credit Securities

6. Section 615.5450 is revised to read as follows:

§ 615.5450 Book entry and definitive notes and bonds.

(a) The System banks operating under the same title of the Act may issue consolidated bonds, dated on or after January 1, 1978, in bookentry form, in denominations of $1,000 or multiples thereof. There are still outstanding consolidated bonds of the Federal land banks dated before January 1, 1978, in definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000.

(b) The System banks may issue consolidated Systemwide notes in book-entry form, in denominations of $5,000, $10,000, $50,000, $100,000, $500,000, $1,000,000, and $5,000,000.

(c) The System banks may issue consolidated Systemwide bonds in book-entry form, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

(d) Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Funding Corporation and as approved by the Chairman of the Farm Credit Administration.

§§ 615.5451—615.5453 [Removed and Reserved]

7. Sections 615.5451 through 615.5453 are removed and reserved.

8. Section 615.5460 is amended by revising paragraphs (b) and (c) to read as follows:

§ 615.5460 Definition of terms for book-entry issuance of Farm Credit securities.

* * * * *

(b) "Banks of the Farm Credit System" means all of the Farm Credit Banks or all of the banks for cooperatives, or all of the banks of the System.

(c) "Farm Credit securities" means consolidated notes, bonds, debentures, or other similar obligations of the System banks and Systemwide notes, bonds, debentures, or similar obligations issued under the Farm Credit Act of 1971, or laws repealed thereby, the completion and delivery of which is or has been undertaken by a Reserve Bank as agent of the banks of the System.

* * * * *

§ 615.5497 [Removed and Reserved]

6. Section 615.5497 is removed and reserved.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10189 Filed 5-11-88; 8:45 am]

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12 CFR Parts 622 and 623

Rules of Practice and Procedure; Practice Before the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100-233) enacted on January 6, 1988, amended the provisions of the Farm Credit Act relating to the definition of a Farm Credit System (System) institution and to the imposition of civil money penalties. Accordingly, the Farm Credit Administration (FCA) proposes revisions to its implementing regulations. The FCA seeks comments on its proposal.

DATE: Comments are due on or before June 13, 1988.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455, TDD (703) 883-4444, or

Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Section 423 of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act (Act). Title VI, Subtitle A, section 6.0 and section 207(d) of the 1987 Act, statutorily direct the revocation of the charter of the Farm Credit System Capital Corporation (FCSCC) by the Farm Credit Administration (FCA), thereby amending section 5.35(3) of the Act. In addition, section 207(d) of the 1987 Act provides for the amendment of section 5.35(3) of the Act to include the Farm Credit System Financial Assistance Corporation (FCSFAC). Section 811(a)(1)(B) of the 1987 Act added the Federal Agricultural Mortgage Corporation (FAMC), and section 204 of the 1987 Act amended section 4.9 of the Act establishing the Federal Farm Credit Banks Funding Corporation (FFCBFC) as Farm Credit System institutions.

It is proposed that the definition of "institution in the System", "System institution" and "institution" as defined in Subpart A of 12 CFR Part 622 relating to rules applicable to the formal hearings and in 12 CFR Part 623 relating to practice before the FCA, be changed to remove FCSCC and to add FCFAC, FAMC and FFCBFC. In order to avoid amending the definition any time a new System institution is statutorily created, the proposed definition excludes the Farm Credit System Assistance Board, and the Farm Credit System Insurance Corporation which are not identified as System institutions in the 1987 Act, although they are institutions established by the 1987 Act.

To comply with a technical change set forth in section 805 of the 1987 Act, Part D of Title IV has been redesignated as Part E of Title IV. Therefore, to be consistent with the 1987 Act, and specifically, section 5.35, it is proposed that Subpart A, § 622.2 of 12 CFR and § 623.2 of 12 CFR are amended to include System institutions enumerated in section 1.2 of the Act, any System institution chartered pursuant to or established by the Act except for the FCSAB and FCSIC, and any service organization chartered under Part E of Title IV of the Act.

The 1987 Act, section 423, also expands the basis upon which the FCA can assess a civil money penalty and requires the agency to solicit the views of the institution or person to be assessed before imposing a civil money penalty assessment. The FCA, therefore, proposes revisions to Subpart B of its rules of practice, 12 CFR Part 622, relating to civil money penalties.

In addition to assessment for violation of a final cease and desist order, section 5.32(a), as amended by section 423(a) of the 1987 Act, authorizes the agency to impose assessments for violation of any provision of the Farm Credit Act or any regulation issued thereunder. Therefore, the agency proposes to make a technical amendment to § 622.52 to reflect this new authority. The maximum amount of civil penalty for violation of a final cease and desist order is a maximum of $1,000 per day for each day the violation continues. The maximum amount of civil penalty for violation of the Act, as amended, or any regulation issued thereunder is $500 per day for each day the violation continues. Since there is a range of possible amounts that can be assessed, the proposed regulation does not address amounts.

Section 423(b) of the 1987 Act requires the agency to notify an institution or person to be assessed a civil money penalty of the violation or violations alleged to have occurred or to be occurring in order to solicit the views of the institution or person regarding the imposition of such penalty, before the agency determines whether to assess a penalty or determine an appropriate amount. The FCA proposes to add a new section, designated as § 622.53 (Notification of Alleged Violations), which restates this requirement. No time requirements are set forth in this proposed section since the FCA will notify the institution or person of the amount of time permissible for a response upon solicitation of their views.

The FCA also proposes to make two technical revisions to Subpart B. In order to clarify that the factors contained in section 5.32(b) of the Farm Credit Act ("financial resources and good faith of the institution or person charged, gravity of the violations, any previous violations, and such other matters as justice may require") are to be taken into account in determining the amount of any penalty assessed, the FCA proposes to move those factors from § 622.59 to § 622.54.

Because of the addition of new sections, the FCA proposes to redesignate § 622.53 (Notice of Assessment) as § 622.55 and to revise that section to require the FCA Board to take into account any views submitted by an institution or person and to taken into account the statutory factors contained in § 622.54, as redesignated.

Section 622.54, which currently permits the General Counsel to solicit the views of an individual or institution to be assessed, prior to the issuance by the agency of a notice of assessment, would be deleted in its entirety, as being duplicative of the new requirement to be added at § 622.53.

Due to the changes noted above, §§ 622.55 through 622.58 are redesignated as §§ 622.56 through 622.60, respectively. Section 622.51 (Definitions) is revised to correct two typographical errors. For the sake of convenience, Subpart B of Part 622 is restated in its entirety. Unless noted above, Part 622 of 12 CFR remains unchanged.

List of Subjects in 12 CFR Parts 622 and 623

Accountants, Administrative practice and procedure, Crime, Investigations, Lawyers, Penalties.

As stated in the preamble, Part 622, Subparts A and B, and Part 623, of Chapter VI, Title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 622 is revised to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37, Pub. L. 99-205, 99 Stat. 1678, Pub. L. 100-233, 101 Stat. 1568, 12 U.S.C. 2243, 2244, 2252, 2261-2273.

2. Section 622.2 is amended by revising paragraph (d) to read as follows:

Subpart A—Rules Applicable to Formal Hearings

§ 622.2 Definitions.

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation, and any service organization chartered under Part E of Title IV of the Act.

* * * * *

3. Subpart B, §§ 622.51 through 622.75, is revised to read as follows:

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

Sec.

622.51 Definitions.
622.52 Purpose and scope.
622.53 Notification of alleged violations.
622.54 Relevant considerations.
622.55 Notice of assessment of civil money penalty.
622.56 Request for formal hearing on assessment.
622.57 Waiver of hearing; consent.
622.58 Hearing on assessment.
622.59 Assessment order.
622.60 Payment of civil money penalty.
622.61-622.75 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in §622.2 of Subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

(1) For a violation of the terms of a final cease and desist order issued under sections 5.25 or 5.26 of the Act, or

(2) For violation of any provision of the Act or any regulation issued under the Act.

§ 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

§ 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with § 622.53 and the factors stated in §622.54, the FCA commences a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment; and

(6) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal

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service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity of a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and Subpart A of these Rules shall apply to the hearing.

§ 622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§ 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the "Farm Credit Administration". Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

§§ 622.61–622.75 [Reserved]

PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

4. The authority citation for Part 623 is revised to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37, Pub. L. 99–205, 99 Stat. 1678, Pub. L. 100–233, 101 Stat. 1568, 12 U.S.C. 2243, 2244, 2252, 2261–2273.

5. Section 623.2 is amended by revising paragraph (d) to read as follows:

§ 623.2 Definitions.

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under Part E of Title IV of the Act.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–10187 Filed 5–11–88; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 624

Regulatory Accounting Practices

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), publishes for comment proposed amendments to Part 624 relating to regulatory accounting practices (RAP). These proposed regulations implement amendments to the Farm Credit Act of 1971 (1971 Act) (12 U.S.C. 2001, et seq.), made by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100–233). The proposed regulations extend the authority for Farm Credit System (System) institutions to use RAP until 1992 and provide that RAP may only be used for certain interest rate evaluations.

DATE: Written comments are due on or before June 13, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Tom Dalton, Office of Analysis and Supervision, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475, TDD (703) 883–4444

or

Gary Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 5.19(b) of the 1971 Act, as amended by the Farm Credit Act Amendments of 1986 (Pub. L. 99–509), required the FCA to issue regulations under which System institutions would be authorized to use RAP. FCA promulgated regulations in 1986 (12 CFR 624.100, et seq.) which implemented the RAP authorities by authorizing institutions to use RAP for two purposes. An institution could use RAP to defer certain interest costs and portions of the provision for loan losses for the purpose of evaluating its costs of doing business in order to adjust the rates charged to its borrowers as necessary to meet competitive interest rates. In addition, an institution could use RAP to maintain the value of its stock and participation certificates at par and thus enable it to retire stock at par value (based on a RAP determination) even though the stock was worth less than par value based on generally accepted accounting principles (GAAP).

The FCA Board now proposes amendments to these regulations to reflect the recently enacted amendments to the 1971 Act. The 1987 Act amends the 1971 Act by extending, until 1992, the authorized period during which System institutions can use RAP. In addition, the enactment of several other amendments to the 1971 Act requires that FCA regulations restrict the purposes for which RAP can be used. For the reasons stated herein, the FCA Board has proposed amendments to its regulations which would delete the authority for System institutions to use RAP to determine the value of stock for retirement purposes.

When the RAP authorities were originally enacted in 1986, their purpose was primarily to enable institutions to continue to operate in the normal course of business and retire their stock at par value even though it was worth less than par value under GAAP. That purpose has been fundamentally changed by the 1987 Act.

Under section 4.9A of the 1987 Act, institutions are required to retire "eligible borrower stock" at par value regardless of the book value of such stock. Eligible borrower stock is defined to include all stock, participation certificates, and allocted equities owned by borrowers and other financing institutions (OFIs) on the date of enactment of the 1987 Act, or issued within the earlier of 9 months after such date of enactment or the implementation of a new capitalization plan by the institution involved. Eligible borrower stock also includes certain stock previously retired at less than par value or currently frozen in institutions during liquidations. The requirements of section 4.9A must be exercised by institutions without regard to the book value of the stock or any FCA approval or regulatory authority. If institutions do not have the resources to retire such stock at par value, they can apply for assistance from the Farm Credit System Assistance Board (Assistance Board) through the Farm Credit System Financial Assistance Corporation (FAC) for that purpose.

Section 4.3A, as added by the 1987 Act, requires System institutions to begin issuing new types of securities that will be included within its "permanent capital" and which are not categorized as "eligible borrower stock". This section requires that such securities be issued and retired in accordance with the bylaws of the institution subject to a few statutory requirements. Securities that are included in permanent capital may only be retired at the discretion of the board of directors of the institution. In addition, such securities are required to be considered as an "at risk" investment. In addition, section 4.3A(g) provides that to the extent any of the new capitalization provisions are inconsistent with other provisions of the Act, the new provisions shall control.

Section 6.4, as added by the 1987 Act, authorizes each System institution to request assistance from the Assistance Board when the book value of its stock falls below 100% of par value, on a GAAP basis, and requires each System institution to seek assistance from the Assistance Board when the book value falls below 75% of par value, on a GAAP basis. While the Assistance Board may provide assistance to an institution to enable it to continue operations, the Assistance Board can deny a request for assistance if it determines that the entity cannot be returned to viability. In that event, further financial liability of the Assistance Board will be limited to ensuring that the institution will have sufficient funds to retire, at par value, its "eligible borrower stock," not securities in its permanent capital.

In accordance with the 1987 Act, the proposed regulations delete those regulations which authorize institutions to retire stock on the basis of a RAP determination of its book value. The retirement of "eligible borrower stock" must be carried out in accordance with sections 4.9A and 4.3A(c). Securities included in permanent capital shall be held as risk investments and may only be retired at a value determined under GAAP, in accordance with section 4.3A and bylaws issued thereunder.

The proposed regulations continue to reflect the statement of policy contained in section 1.1 of the 1971 Act that institutions be able to use RAP to evaluate the interest rates charged on loans. In accordance with that statement of policy, the proposed regulations authorize institutions to take into consideration the use of RAP, among other factors, in evaluating the interest rates charged on loans. However, in no event shall an institution charge a rate of interest below the competitive interest rates charged by other lending institutions.

The FCA recognizes that System banks and associations are subject to competitive pressures from other financial institutions in their lending environment. System banks and associations must manage their business affairs and control their costs in order to price competitively, earn a profit, and remain viable over the long run.

The FCA has been critical of some System banks and associations during the past several years for failing to properly consider their costs when determining interest rates. Such indiscriminate loan pricing can have the effect of minimizing or eliminating an institution's earnings thus dissipating its capital to the detriment of its continued operations and ability to serve its borrowers and stockholders. For these reasons, the proposed regulations clarify that there are prudent limits to the use of RAP in determining how loans should be priced. Interest rates should be established based on a consideration of the institution's overall cost structure including, cost of funds, overhead costs, expected loan losses, provisions for adequate capital, and the desired return to stockholders.

The proposed regulations also delete references to the Farm Credit System Capital Corporation, whose charter was revoked on February 11, 1988 (53 FR 4072). In accordance with section 6.6 of the 1987 Act, the proposed regulations provide that any System institutions requesting certification to receive financial assistance from the Assistance Board may need to obtain Assistance Board approval for the continued use of RAP.

List of Subjects in 12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Part 624, Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 624—REGULATORY ACCOUNTING PRACTICES

Sec.
624.100 General.
624.101 Definitions.
624.102 Deferral of interest costs on debt.
624.103 Deferral of the provisions for loan losses.
624.104 Interest rate evaluation.
624.105 Financial reporting and disclosure.

Authority: 12 U.S.C. 2001, 2013, 2073, 2093, 2122, 2159, 2252, 2254, Pub. L. 99–509, Pub. L. 100–233.

§ 624.100 General.

(a) The regulations contained in this part implement the provisions of the Act relating to the authorities, terms, conditions, and restrictions pursuant to which a Farm Credit System (System) institution may use regulatory accounting practices to defer and capitalize a portion of its interest costs, provisions for loan losses, and

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premiums paid to retire debt instruments, and to amortize such amounts.

(b) Notwithstanding the provisions of this part, if an institution requests that the Farm Credit System Assistance Board (Assistance Board) certify the institution to issue preferred stock in accordance with Title VI of the Act, the Assistance Board may further restrict the continued use of regulatory accounting practices by the institution as provided in section 6.6 of the Act.

(c) The authority to defer and capitalize costs is effective until December 31, 1992. Amounts capitalized through December 31, 1992 may be amortized over the full amortization period of 20 years, but in no instance beyond December 31, 2012.

§ 624.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Generally accepted accounting principles (GAAP)" means that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(b) "Institution" means any bank or association chartered under the Act.

(c) "Loans outstanding" means gross loans outstanding net of any participations sold at the end of each reporting period. The term "loan" includes loans, participations purchased, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interest in loans purchased from another lender that are recorded as assets of a reporting institution.

(d) "Regulatory accounting practices (RAP)" means those accounting methods and practices directed by statutory and regulatory requirements provided for in the Act and in this part and that are not in accordance with GAAP.

§ 624.102 Deferral of interest costs on debt.

(a) A bank may capitalize any premium paid to repurchase the bank's obligations on consolidated Systemwide notes and bonds issued on or before January 1, 1985, and may contract with a third party, including a service corporation chartered by the Farm Credit Administration, in order to perform a defeasance of these same obligations. The premium paid shall be the excess of the cost to repurchase or redeem an obligation over the recorded net book value for such obligation.

(b) A bank may capitalize a portion of its interest expenses which have been paid or will be paid during the period July 1, 1986 through December 31, 1992 on Systemwide consolidated notes and bonds issued on or before January 1, 1985. The amount of a bank's interest expense on an obligation that may be capitalized shall be limited to the excess of the bank's cost on the obligation over the market price for the obligation on October 21, 1986.

(c) An institution that defers any expenses associated with actions taken in accordance with this section shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related costs that are deferred or are eligible to be deferred shall not be considered as capital of the institution.

§ 624.103 Deferral of the provisions for loan losses.

A System institution is authorized during the period July 1, 1986 through December 31, 1992, to capitalize the amount of its provision for loan losses made on an annual basis in excess of ½ of 1 percent of loans outstanding. An institution that defers a portion of its provision for loan losses in accordance with this section shall amortize such amount over a period to not exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.104 Interest rate evaluation.

An institution may take into consideration the use of RAP, among other factors, for purposes of evaluating the interest rates charged on loans. Such other factors include the institution's cost of funds, overhead, expected losses, margin to provide for adequate capital, return to stockholders, and any other relevant factors. In no event shall such an institution charge a rate of interest which is less than the competitive interest rates charged by other lending institutions in the same area, for a loan with similar terms, to a borrower of equivalent creditworthiness and access to alternative credit.

§ 624.105 Financial reporting and disclosure.

Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in accordance with Part 620 of this chapter. In addition, each such institution shall disclose clearly in the management commentary to its financial statements the purpose and use of the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10186 Filed 5-11-88; 8:45 am]

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federal register

Thursday
May 12, 1988

Part III

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

Visa Waiver Pilot Program; Proposed Rule

22 CFR Part 41

Visas; Passports and Visas Not Required for Certain Nonimmigrants; Notice of Proposed Rulemaking

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

[INS Number 1109-88]

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Visa Waiver Pilot Program provided at section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) which added the pilot program as section 217 of the Immigration and Nationality Act [8 U.S.C. 1187]. Under this program, the nonimmigrant visa requirement can be waived for certain aliens applying for admission as nonimmigrant visitors for a period not to exceed ninety days.

DATE: Comments must be received no later than June 13, 1988.

ADDRESS: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 7123, Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel and promote the more effective use of the resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. In furtherance of this aim, this rule contains provisions designed to facilitate travel, facilitate or reduce the work of affected agencies, and ensure that vital national interests are protected. The Department of State concurs only in 8 CFR 212.1(i) of this rule.

This rule adds a new Part 217 of 8 CFR, and amends existing Parts 212, 214, 236, 242, 245, 248, and 299, to conform with new section 217 of the Immigration and Nationality Act (Act).

Section 217.2 sets forth the eligibility criteria for individual participation in the program based on the provisions of section 217 of the Act and other applicable provisions of the Act.

Section 217.3 provides the limits on eligibility for immigration benefits which are provided in the Act, but makes provision for a brief period of satisfactory departure under emergent circumstances and for readmission to the United States after brief departures to foreign contiguous territory.

Section 217.4(a) provides that persons who are excludable from the United States may not be admitted as Visa Waiver Pilot Program visitors regardless of whether or not they have secured a waiver of grounds of excludability or consent to reapply for admission. It is consistent with the provisions of section 217(a)(5) of the Act that persons who are known to be excludable be required to secure a visa in order to apply for admission to the United States.

Section 217.4(b) provides that applicants for admission under section 217 of the Act who are found to be excludable from the United States or inadmissible as visitors shall be excluded and removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum in the United States.

Section 217.4(c) provides that aliens who have been admitted under Part 217 who are found to be deportable from the United States shall be removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum. Section 217.4 (b) and (c) implement section 217(b)(4) of the Act which requires that persons who wish to utilize the visa waiver provisions of section 217 of the Act must waive their rights to normal procedures of inquiry, review, and appeal regarding admissibility and deportability.

Section 217.5 lists designated countries for the Visa Waiver Pilot Program. The United Kingdom has been designated as the initial Visa Waiver Pilot Program country in that it meets the criteria set forth in section 217(c)(2) of the Act, and in that it generates a significant portion of the total number of nonimmigrant visitors to the Untied States. The selection of the United Kingdom as a Visa Waiver Pilot Program country is designed to mitigate the demand for nonimmigrant visas at United States consular facilities in Great Britain. For this reason, a distinction is made concerning various categories of British residents, nationals or citizens based on the British nationality laws. Citizens of British Commonwealth countries or British dependent territories are not eligible for the visa waiver. This rule provides that only British citizens who have full and unrestricted permission to reside in the United Kingdom will be eligible to apply for admission as Visa Waiver Pilot Program applicants.

Section 217.6 provides the criteria for carrier agreements under section 217 of the Act. These criteria are based on the provisions of section 217(a)(4) and 217(d) of the Act.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act.

List of Subjects

8 CFR Parts 212, 214, 236, 242, 245, 248

Administrative practice and procedures, Aliens, Passports and visas.

8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. In § 212.1, paragraph (i) is added to read as follows:

§ 212.1 Documentary requirements for nonimmigrant.

* * * * *

(i) *Visa Waiver Pilot Program.* A visa is not required of any alien who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act and Part 217 of this chapter if such alien is a national of a country designated under the Visa Waiver Pilot Program, who seeks admission to the United States for

a period of 90 days or less as a visitor for business or pleasure.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187.

4. In § 214.2 existing paragraph (b)(3) is redesignated as paragraph (b)(4) and a new paragraph (b)(3) is added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(3) *Visa Waiver Pilot Program.* Special requirements for admission and maintenance of status for visitors admitted to the United States under the Visa Waiver Pilot Program are set forth in section 217 of the Act and Part 217 of this chapter.

* * * * *

5. A new Part 217 is added to read as follows:

PART 217—VISA WAIVER PILOT PROGRAM

Sec.
217.1 Scope.
217.2 Eligibility.
217.3 Maintenance of status.
217.4 Excludability and deportability.
217.5 Designated countries.
217.6 Carrier agreements.

Authority: 8 U.S.C. 1187.

§ 217.1 Scope.

The Visa Waiver Pilot Program is established solely pursuant to the provisions of section 217 of the Act and subject to all conditions and restrictions stipulated in that section, including those relating to the length of the program and the number of countries which may be designated as Visa Waiver Pilot Program countries.

§ 217.2 Eligibility.

(a) *General.* Notwithstanding the provisions of section 212(a)(26)(B) of the Act, nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.4 of this part who:

(1) Is classifiable as a visitor as defined in section 101(a)(15)(B) of the Act;

(2) Seeks admission to the United States for a period not to exceed ninety days;

(3) Is in possession of a round-trip, nontransferable transportation ticket valid for a period of not less than one year, which is nonrefundable other than in the country in which issued or in the country of the alien's nationality or residence, and which was issued by a carrier which has entered into an agreemnt as provided in § 217.6 of this part;

(4) Is in possession of a completed and signed Form I-791, Visa Waiver Pilot Program Information Form;

(5) Arrives in the United States on a carrier which has entered into an agreement as provided in § 217.6 of this part;

(6) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to his or her admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

(7) Waives any right to contest any action for deportation, other than on the basis of an application for asylum in the United States as provided in section 208 of the Act.

(b) *Round-trip transportation ticket.* The term "round-trip ticket" as used in this part means a return ticket which will return the traveler to the point of origin, regardless of the number of places visited.

(c) *Comprehensive nature of Visa Waiver Pilot Program criteria.* An alien is eligible for a visa waiver under this part only if he or she meets all of the eligibility criteria set forth in paragraph (a) of this section.

§ 217.3 Maintenance of status.

(a) *Eligibility for immigration benefits.* An alien admitted to the United States under this part may be admitted as a visitor for business or pleasure for a period not to exceed ninety days. An alien admitted under this part must maintain his or her status as a visitor as defined in section 101(a)(15)(B) of the Act and must not engage in activities in the United States which are inconsistent with that status. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States; is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than as an immediate relative as defined in section 201(b) of the Act; and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act.

(b) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed thirty days. During this period, the alien's departure from the United States may be regarded as having been accomplished satisfactorily and without violation of status.

(c) *Readmission after departure to contiguous territory.* An alien admitted to the United States under this part may be readmitted to the United States in the status of a Visa Waiver Pilot Program visitor after a departure to foreign contiguous territory provided that:

(1) His or her authorized period of temporary stay has not expired,

(2) He or she intends to depart the United States prior to the expiration of his or her authorized period of temporary stay,

(3) He or she presents a valid, unexpired passport which reflects his or her admission to the United States as a Visa Waiver Pilot Program visitor, and

(4) He or she continues to meet all criteria set forth in § 217.2(a) of this part with the exception of arrival on a signatory carrier.

An alien who applies for admission under the provisions of this section may be admitted to the United States only for the remainder of the authorized period of temporary stay which he or she was granted upon arrival in the United States in accordance with the provisions of § 217.2(a) of this part. A Visa Waiver Pilot Program visitor who applies for admission under the provisions of this section is subject to exclusion from the United States pursuant to section 212 of the Act and this part. Departure from and readmission to the United States of an alien under this subsection does not relieve any obligations and responsibilities of the carrier which initially transported such alien to the United States for admission under the provisions of this part.

§ 217.4 Excludability and deportability.

(a) *Waivers of grounds of excludability and consent to apply for admission.* Aliens who are excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act, and aliens who require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(17) of the Act may not be admitted to the United States under the provisions of this part notwithstanding the fact that the applicable ground(s) of excludability may have been waived under the provisions of section 212(d)(3) of the Act, or that the required consent of the Attorney General may have been

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secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants. Under no circumstances may an application for waiver of grounds of excludability or for consent to apply for admission be accepted at a port of entry in connection with an application for admission under this part.

(b) *Determinations of excludability and inadmissibility.* An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act (other than section 212(a)(28)(B)) shall be excluded from the United States and removed. Such exclusion and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be referred to an immigration judge for further inquiry. The removal of an alien under this section may be deferred if the alien is paroled into the custody of Federal, state, or local law enforcement agency for criminal prosecution or punishment.

(c) *Determination of deportability.* An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the deportation grounds listed in section 241 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be referred to an immigration judge for a determination of deportability.

(d) *Removal of excludable and deportable aliens.* The carrier which transported to the United States an alien who is to be removed pursuant to this section shall be immediately notified of the determination to remove such alien. Removal from the United States under this section is to be effected through use of the return portion of the round-trip ticket presented by the alien at the time of entry to the U.S. as required in § 217.2(a)(3) of this part. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States.

§ 217.5 Designated countries.

(a) *Countries.* The United Kingdom has been designated as a Visa Waiver Pilot Program country based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

(b) *Definitions.* For the purposes of this part the term "national of a Visa Waiver Pilot Program country" as used in section 217(a)(2) of the Act when applied to the United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories citizens, or citizens of British Commonwealth countries.

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(d) of the Act shall be made by the Commissioner in behalf of the Attorney General and shall be on Form I–775, Agreement Between a Transportation Line and the United States under the Visa Waiver Pilot Program. The term "carrier" as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in the transportation of passengers to the United States from a foreign place.

(b) *Agreement provisions.* To be authorized to transport an alien to the United States pursuant to section 217 of the Act and this part, a carrier must enter into an agreement on Form I–775 to:

(1) Transport as an applicant for admission under section 217 of the Act and this part only an alien who is a national of a Visa Waiver Pilot Program country as designated in § 217.5 of this part;

(2) Transport such an alien only if he or she is in possession of a round-trip, nontransferable transportation ticket valid for a period of not less than one year, which is nonrefundable other than in the country in which issued or in the country of the alien's nationality or residence, and which was issued by a carrier signatory to an agreement under this part;

(3) Transport such an alien only if he or she has agreed that the return portion of such ticket may be used to effect his or her removal from the United States based on a finding of excludability or deportability under § 217.4 of this part;

(4) Accept such a transportation ticket as full payment for return passage of such an alien;

(5) Transport only such an alien who has completed and signed Form I–791, Visa Waiver Pilot Program Information Form;

(6) Indemnify the United States against any costs for the transportation of such an alien if the alien is refused admission to the United States, remains in the United States unlawfully after the expiration of his or her authorized period of temporary stay, or is removed or deported from the United States; and

(7) Submit daily to immigration officers any and all departure copies of Form I–94 received with respect to the departure from the United States of an alien admitted under section 217 of the Act and this part.

(c) *Termination of agreements.* The Commissioner, in behalf of the Attorney General, may terminate any carrier agreement under this part with five days notice to a carrier for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed fifteen days within which the carrier may bring itself into compliance with the terms of the carrier agreement.

PART 236—EXCLUSION OF ALIENS

6. The authority citation for Part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1224, 1225, 1226, 1252, 1255, 1362.

7. In Part 236 a new § 236.9 is added to read as follow:

§ 236.9 Visa Waiver Pilot Program.

Pursuant to section 217 of the Act, an alien who applies for admission to the United States under the provisions of that section must waive any right to review or appeal an immigration officer's determination as to the admissibility of the alien at a port of entry, other than on the basis of an application for asylum. An alien applicant for admission under section 217 of the Act shall be removed from the United States upon a determination by an immigration officer that the alien is inadmissible, except that such an alien who applies for asylum in the United States shall be referred to an immigration judge for further inquiry as provided in section 235 of the Act and § 236.3 of this part.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES; APPREHENSION, CUSTODY, HEARING, AND APPEAL

8. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1252, 1254, 1362.

9. Section 242.1(a) is amended by inserting before the period at the end of the first sentence the following: ", except an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States."

10. In § 242.1 a new paragraph (d) is added to read as follows:

§ 242.1 Order to show cause and notice of hearing.

* * * * *

(d) *Visa Waiver Pilot Program.* Pursuant to section 217 of the Act, an alien who has been admitted to the United States under the provisions of that section has waived any right to contest any action against him or her for deportation, other than on the basis of an application for asylum. An alien admitted to the United States under section 217 of the Act shall be taken into custody and removed from the United States upon a determination by an immigration officer that the alien is deportable, and without commencement of a proceeding under this part, except that such an alien who applies for asylum in the United States shall be brought into proceedings as otherwise provided in this part.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1159, 1182, 1187, 1255.

12. In § 245.1 a new paragraph (b)(12) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(12) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

13. The authority citation for Part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258.

14. In § 248.2 a new paragraph (f) is added to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(f) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter.

PART 299—IMMIGRATION FORMS

15. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103.

16. Section 299.1 is amended by adding the following immediately before the entry "ICAO" in numerical sequence:

§ 299.1 Prescribed forms.

* * * * *

I–775	( )	Agreement Between the Transportation Line and the United States under the Visa Waiver Pilot Program.
I–791	( )	Visa Waiver Pilot Program Information Form.

Dated: May 4, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

Concurred in only 8 CFR 212.1(i).

Dated: May 4, 1988.

Joan M. Clark,

Assistant Secretary for Consular Affairs Department of State.

[FR Doc. 88–10536 Filed 5–11–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[SD–214]

VISAS; Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule establishes the United States Visa Waiver Pilot Program provided by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, which added the pilot program as new section 217 of the Immigration and Nationality Act (hereinafter referred to as the Act). Under this program, the nonimmigrant visa requirement is waived for certain aliens applying for admission as nonimmigrant visitors for a period not to exceed ninety days.

DATE: Comments must be received no later than June 13, 1988.

ADDRESS: Written comments may be submitted in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Room 1330, SA–1, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20520 (202) 663–1205.

SUPPLEMENTARY INFORMATION: The United States Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel to the United States and promote the more effective use of the resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. In furtherance of this aim this rule contains provisions designed to provide the basic authorization to facilitate travel, facilitate or reduce the work of affected agencies, and ensure that vital national interests are protected.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, § 41.2 in Part 41 would be amended as follows:

PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. A new paragraph (1) would be added at the end of § 41.2, to read:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

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(l) *Visa Waiver Pilot Program.* Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act, if such a person is a citizen of a country designated as a participant in the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure.

Date: April 27, 1988

Joan M. Clark,

Assistant Secretary for Consular Affairs.

Concurrence:

Date: May 4, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-10482 Filed 5-11-88; 8:45 am]

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federal register

Thursday
May 12, 1988

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 361

The State Rehabilitation Services Program; Final Regulations

VOL 53 ISS 92 MY 12 1988 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 361

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Vocational Rehabilitation Services Program. These amendments are needed to implement certain changes in Title I of the Rehabilitation Act of 1973, made by the Rehabilitation Act Amendments of 1986. The final regulations include revisions to existing State plan requirements, add new State plan requirements, and reflect changes in the fiscal administration of this program. In addition, the regulations include new or revised definitions, implement new requirements for client appeal procedures, and expand the services to be provided to individuals with handicaps.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48. Sections 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mark E. Shoob, Associate Commissioner, Office of Program Operations, Rehabilitation Services Administration, Room 3211, Mail Stop 2312, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202. Telephone (202) 732–1415 or TTY (202) 732–2848.

SUPPLEMENTARY INFORMATION: On November 18, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 44366). A summary of the major provisions along with explanatory statements was included in the NPRM.

In addition to minor editorial and technical revisions, there are some major differences between the NPRM and these final regulations. The major differences are:

- The definition of an "impartial hearing officer" has been revised to require that the individual not have a personal or financial interest that would affect the individual's objectivity.
- The grounds for granting extensions of time during the formal appeals process are limited to two circumstances: joint request of the parties or good cause shown by a party.
- The definition of "initial expenditure" has been changed to require that reallotted funds be obligated by November 15 of the subsequent fiscal year.
- To be eligible to receive realloted funds a State must assure that it will be able to obligate fully all of its original allotment of funds by the end of the fiscal year for which the funds were appropriated.
- The definition of "extreme medical risk" has been revised to indicate that functional impairment may be increased, rather than caused, by delay in providing services.
- Determinations of "extreme medical risk" must be based upon medical evidence provided by an appropriate licensed medical professional.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 61 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the sections of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. Comments that discussed provisions of Part 361 that were not included in the NPRM also have not been addressed.

Appeals Procedures, Section 361.48

Comments: The Secretary received a number of comments on the procedures in § 361.48 that revise the requirements for State appeals procedures if applicants or recipients request a review of State determinations regarding the furnishing or denial of services.

Some commenters stated that the length of time permitted for the appeals process is too long. Some commenters recommended shortening the time allowed for specific steps in the appeal process or including an expedited procedure for certain types of appeals. Some commenters also recommended that a provision be added requiring States to continue to provide disputed services during the appeal process. Some commenters were concerned that proposed § 361.48(b), which permits extensions of time at the request of a party, could result in lengthy delays in the appeals process. Some commenters recommended limiting the circumstances under which an extension would be granted. One commenter was concerned that the 45-day time period for a due process hearing would adversely affect a State's ability to resolve disagreements informally. Some commenters also felt that applicants and recipients should be given notice of the procedures in § 361.48.

Discussion: While the Secretary recognizes the concerns about the length of time for the appeals procedure, no change has been made in the specific timeframes included in § 361.48. These timeframes are either statutorily required or are based upon timeframes similar to those in effect in the State special education program. The Secretary agrees that a change should be made to the provision concerning extensions of time, which has been revised to permit extensions for good cause shown or at the request of both parties. The final regulations make clear that extensions of time can only occur in these two circumstances. Because extensions of time can only be granted at the request of a party, the hearing officer cannot unilaterally delay the formal appeal process.

The Secretary agrees that the regulations should be changed to inform applicants and clients of the rights and procedures available to them. He also agrees that the regulation should be revised to clarify that the informal review may not be used to delay any of the timeframes in § 361.48(c)(2). Of course, if the applicant or the client and the agency are involved in informal negotiations during any stage of a formal appeal under § 361.48(c), they can jointly request an extension of time, if they believe this is in their best interest.

Changes: Section 361.48 has been restructured to require in a new subsection (a) that applicants and clients be informed of their opportunities for appeal. The use of informal reviews, previously authorized in subsection (d), has been relocated to a new subsection (b), which makes it clear that such reviews cannot delay the formal appeal process unless both parties jointly agree to the delay. Formal appeal procedures are now contained in subsection (c). The extension of time provisions are now located at subsection (d). The final regulations permit time extensions on two grounds only: At joint request of both parties or for good cause shown by a party. Regulatory provisions relating to the State fair hearing board and mandatory data collections are in subsections (e) and (f).

Definition of Impartial Hearing Officer, Section 361.1(c)(2)

Comments: A number of comments were received on the proposed definition of "impartial hearing officer." Most of the comments concerned the provision that precludes an employee of an agency involved in any decision regarding the furnishing or denial of rehabilitation services to a rehabilitation applicant or recipient from serving as a hearing officer. A number of commenters opposed the provision because they believed it would be difficult to find qualified individuals to serve as hearing officers if agency employees were excluded from consideration. Recognizing that this is a concern, some commenters made suggestions about how to recruit people with the knowledge and skills to serve as hearing officers who were not agency employees. A number of other commenters strongly supported excluding agency employees from serving as hearing officers. Several of these commenters were concerned that the proposed definition might permit agency contractors to serve as hearing officers. Some commenters were also concerned that former agency employees, particularly former agency directors, might be appointed as hearing officers. They expressed concern about whether former employees would be biased toward the position of the agency. Some commenters asked for further clarification of the provision that a hearing officer is not an employee solely because the hearing officer is paid by the agency for the purpose of conducting hearings.

Discussion: The Secretary believes the regulatory provision prohibiting agency employees from serving as hearing officers is a reasonable interpretation of the statutory requirement for impartiality and is consistent with the Rehabilitation Act Amendments of 1986 and the accompanying legislative history. Based upon the experience in the State special education programs, the Secretary also believes that a sufficient number of appropriately trained individuals who are not agency employees will be available to serve as hearing officers; therefore, no change has been made in this provision of the regulations. The Secretary also does not believe that further guidance is necessary on the provision that states that an individual is not an employee solely because the individual is paid by the agency to serve as a hearing officer. The Secretary agrees that agency contractors and, under certain circumstances, former employees may have a potential conflict of interest that could affect their ability to serve as an impartial hearing officer. Generally, contractors will have a personal or financial interest that will preclude them from serving as hearing officers.

Changes: The Secretary has changed subparagraph (iv) of the definition to clarify that individuals with a personal or financial interest that would conflict with their objectivity may not serve as a hearing officer.

"Rehabilitation Engineering", Sections 361.1, 361.32(c)

Comments: A number of commenters recommended that the Secretary expand the definition of rehabilitation engineering in § 361.1. A number of commenters recommended that the definition include lists of specific services. One commenter asked the Secretary to clarify what, if any, difference there is between "rehabilitation engineering" and "rehabilitation engineering services."

Some commenters requested that the Secretary specify that other professionals besides rehabilitation engineers could make appropriate assessments of the need for rehabilitation engineering services. They pointed out that, in some instances, these determinations are also made by occupational therapists. Some commenters also suggested that the evaluation requirements of § 361.32(c) specify that the evaluation is of the potential to benefit from rehabilitation engineering services.

Discussion: Although the Secretary believes that the definition of rehabilitation engineering provides sufficient guidance, the Secretary believes further guidance on the nature and purpose of the evaluation would add clarity to this requirement.

Changes: A change has been made to § 361.32(c) to require evaluations by "qualified personnel of the potential to benefit from rehabilitation engineering services."

Definitions, Section 361.1

Comments: Several commenters recommended changes in the definitions of "supported employment," "competitive work," and "on-going support services." To ensure consistency in the provision of supported employment services under the Title I program and the new State Supported Employment Services program under Title VI, Part C (final regulations for this program were published as 34 CFR Part 363 in the **Federal Register** on August 14, 1987, at 52 FR 30546), the proposed regulations incorporated in § 361.1(c)(2) the same definitions that were adopted in the supported employment program. The comments received in response to this regulation were very similar to the comments that were received in response to the Supported Employment NPRM and were discussed in the preamble to the final regulations for that program. Two commenters also asked what standards will be used to interpret "other gainful work" which is included in the definition of employability.

Discussion: The Secretary believes that it is essential to ensure consistency between the Title I program and the State Supported Employment Services program in interpreting these terms. Determinations of whether an activity is "other gainful work" will be made on a case-by-case basis.

Changes: No change has been made.

Public Participation in Formulation of State Plans, Section 361.18

Comments: Several commenters noted that sec. 101(a)(23)(A) of the Act requires the State plan to provide satisfactory assurances that "in the formulation of policies governing the provision of rehabilitation services," the State agency will conduct public meetings to allow interested groups and individuals to comment on the State plan. They recommended that § 361.18(a)(1) be revised to make clear that consultation must occur during policy development. Comments were also received recommending that § 361.18(a)(3) require a written description of other procedures for receiving comment and that this provision specifically require consultation with Client Assistance Programs (CAPs).

Discussion: The Secretary agrees that Congress intended to require public participation in the formulation of policy at the State plan stage and at subsequent stages. The Secretary also believes the regulations should require a written description of other procedures the State agency will use in obtaining and considering public comment on State plan and policy development. Because CAPs are clearly included as "others interested in vocational rehabilitation," the Secretary believes that they are already covered by

§ 361.18(c)(1)(iii); therefore, there is no need to include a specific requirement in the regulations to consult with the CAPs.

Changes: A change has been made to § 361.18(a)(1) specifically to include "formulation of" policies. In § 361.18(a)(3) "other methods" has been changed to "procedures."

Individualized Written Rehabilitation Program, Sections 361.40–361.41

Comments: A number of comments were received recommending changes to or clarification of the requirements for an individualized written rehabilitation program (IWRP). One commenter recommended that States be required to make the IWRPs available in taped form or in braille. Some commenters felt that a number of provisions concerning the need for post-employment services were unnecessary. The commenters recommended that only a post-employment assessment be completed and appropriate services be provided. One commenter recommended deleting the provision in § 361.40(a) requiring that suitable professional or informed advisors be included in the preparation of the IWRP. Some commenters asked for clarification on who designates these individuals. Apparently these commenters were concerned that this provision might be interpreted to permit the VR agency to select these individuals. Clarification was also requested by a number of commenters on the relationship between § 361.41(b)(1), which conditions time-limited supported employment services to no more than 18 months, and § 361.41(a)(13), which provides for post-employment services. One commenter recommended clarification in § 361.40(a) that the designated State unit staff member is the vocational rehabilitation counselor or coordinator. Some commenters also felt an absolute 18-month limitation on time-limited supported employment services and the 20 hour requirement in the definition of competitive work were inconsistent with the requirements of section 504 of the Rehabilitation Act which prohibits discrimination against persons with handicaps by the Federal Government and in programs or activities receiving Federal financial assistance.

Discussion: The provisions concerning post-employment services are based upon the statutory requirements and are necessary to implement those requirements. The provision requiring that suitable advisors or professionals be included in the development of the IWRP is clearly intended to permit the individual with handicaps, or the individual and a parent or guardian, to include suitable professionals or informed advisors that they have chosen.

The Secretary believes that the regulations provide sufficient guidance on the relationship of time-limited services and post-employment services. Individuals in supported employment will need post-employment services throughout the period of their employment. The use of time-limited services is intended to distinguish those short term services that are the responsibility of the VR agency from those on-going long term services that are the responsibility of other service systems. Post-employment services are intended to be occasional services needed by an individual with handicaps but are not intended to be of the intensity or duration of on-going supported employment services.

The Secretary believes that the definition of competitive work and the 18-month limitation on time-limited supported employment services are consistent with section 504 and that changes to these provisions are not required. In developing both the definition of competitive work and the 18-month limitation, the Secretary has provided considerable flexibility for adapting rehabilitation programs to meet the needs of eligible individuals. In addition, these requirements are consistent with the Rehabilitation Act Amendments of 1986 and the legislative history and were based upon available data from discretionary grant supported employment projects.

The Secretary agrees that § 361.40(a) should be clarified to make clear that the vocational rehabilitation counselor or coordinator is involved in the development of the IWRP.

Changes: Section 361.40(a) has been revised to specifically provide that the vocational rehabilitation counselor or coordinator must be involved in the development of the IWRP.

Comparable Services, Section 361.47

Comments: A number of comments were received recommending changes in § 361.47(b), which requires States to assure that, before vocational rehabilitation services are provided, a determination is made whether comparable benefits and services are available under any other programs. The proposed regulations provide for a number of exceptions to this requirement.

Some commenters asked for clarification of the effect of student aid programs on the comparable benefits provisions. One commenter asked if failure to file for student aid in a timely manner would result in a denial of rehabilitation services under the comparable benefits requirement.

Several commenters recommended changes in proposed § 361.47(b)(3), which provides that a determination of the availability of comparable benefits need not be made before services are provided, if a licensed medical professional decides that a delay in services resulting from the determination of the availability of comparable services would cause an individual with handicaps to be at extreme medical risk. Commenters recommended changes such as not requiring a determination prior to providing services if this would result in a delay in services. Another commenter recommended that the provision be revised to conform more closely to the statutory provision in the Rehabilitation Act Amendments. The commenter noted that the proposed provision appears to require that the delay in services be the cause of an extreme medical risk.

Discussion: The Secretary believes that the statutory standard should be followed in deciding whether services should be provided before a determination of the availability of comparable benefits has been made. The Secretary believes that the proposed regulations did not provide sufficient clarity about the "extreme medical risk" exception. The Secretary has determined that further guidance on the issues concerning student aid need not be included in the regulations. The Secretary will determine whether further policy guidance should be provided by the Department.

Changes: A change has been made in § 361.47(b)(3) to eliminate the apparent cause-and-effect relationship between delay in providing services and the individual being at extreme medical risk.

Reallotments, Section 361.87

Comments: Section 361.87 established procedures for the Secretary to reallot funds when a determination is made that one or more States will be unable to use all of the rehabilitation funds that have been allotted to them. A commenter recommended States be required to assure that they will be able to use additional funds to be eligible to receive reallotted funds.

Discussion: The Secretary believes that a requirement that States assure that they will be able to obligate all of their original allotment by the end of the fiscal year will help to ensure more effective distribution of reallotted funds. States that are unable to provide this assurance will not be eligible to receive reallotted funds.

Changes: A change has been made to § 361.87 to require that, to receive reallotted funds, States must assure that they will be able to obligate fully all of their initial allotment by the end of the fiscal year for which the funds were appropriated.

Order of Selection for Services, Section 361.2(b)(2)(iv)

Comments: Several commenters requested further clarification of § 361.2(b)(2)(iv) which requires the State Plan to include a description of and justification for the order to be used in selecting groups of individuals with handicaps to be provided vocational rehabilitation services if services cannot be provided to all eligible individuals. Section 361.36(b) also requires that individuals with the most severe handicaps be selected for services before other eligible individuals. Commenters were concerned that § 361.2(b)(2)(iv) might be interpreted to mean that individuals with certain types of handicapping conditions would be given priority, as a group, over individuals with other types of handicapping conditions.

Discussion: The Secretary agrees that the phrase "groups of" should be omitted for the reasons given by the commenters.

Changes: The phrase "groups of" has been omitted from § 361.2(b)(2)(iv).

Initial Expenditure, Section 361.1 (Section 361.87)

Comments: Several commenters expressed concern that the definition of an initial expenditure was unclear. Commenters expressed concern about the use of the term "first cash outlay" which they felt was not a commonly used term. Commenters also recommended that the definition use the term "obligation" because it is a more commonly used term.

Discussion: The Secretary agrees the term "initial expenditure" should be clarified and that the term "obligation" should be used instead of "first cash outlay". The definition of initial expenditure has been revised to require that reallotted funds be obligated no later than November 15 of the subsequent fiscal year.

Changes: Section 361.1 has been revised to define initial expenditures as obligations of reallocated funds made by November 15 of the subsequent fiscal year.

Extreme Medical Risk, Section 361.1 (Section 361.47(b)(3))

Comments: Several commenters expressed concern about the definition of extreme medical risk. Commenters were also concerned about the procedures for determining whether an individual is at extreme medical risk. Commenters expressed concern that the definition in the NPRM was much more restrictive than the statutory standard because it appears to require a causal relationship between delay in providing services and the adverse effects on the individual. A commenter was also concerned about whether all licensed medical professionals were the appropriate individuals to make assessments of extreme medical risk.

Discussion: The Secretary agrees that the definition of extreme medical risk in the NPRM is misleading and should be clarified.

Changes: Section 361.47(b)(3) has been revised to provide that a determination of extreme medical risk is based upon medical evidence provided by an appropriate licensed medical professional. The definition of "extreme medical risk" in § 361.1 has also been revised to reflect that functional impairment may be increased, rather than caused, by delay in providing services.

Reassessment, Section 361.41(a)(7)

Comments: Some commenters recommended changing § 361.41(a)(7) to require that a reassessment of the need for post-employment services be completed prior to case closure. They consider § 361.41(a)(7) as proposed, which requires a schedule and procedure for reassessment, to be unnecessarily burdensome.

Discussion: The Secretary agrees that the changes proposed by the commenters clearly establish the obligation to perform an assessment prior to case closure without imposing unnecessarily burdensome requirements upon rehabilitation agencies.

Changes: Section 361.41(a)(7) has been changed to require a reassessment of the need for post-employment services prior to case closure rather than a procedure and schedule for reassessment.

Other Comments

Comments: Comments were received recommending that references in the NPRM to "recipients" be changed to "clients" because "client" is the term that is generally used in rehabilitation programs. Comments were also received recommending that references to "ANSI" and the "Developmental Disabilities Act of 1984" be revised to reflect that the ANSI standards have been superseded and the Developmental Disabilities Act was amended in 1987. Commenters also asked why the regulations did not include any provisions concerning the statement in the Conference Report that "Nothing in the Conference Report prohibits any individual from pursuing a private right of action". The same commenters asked why the data collection requirements concerning review of rehabilitation counselor or coordinator determinations had not been included.

Discussion: The Secretary agrees that the term client rather than recipient should be used in the regulations. The term client appears in other sections of the regulations and is generally used in rehabilitation programs. The Secretary also agrees that the changes should be made to the references to ANSI and the Developmental Disabilities Act of 1984, as amended. The Secretary believes that issues concerning the existence of a private action are issues that must be addressed by the courts and are not an appropriate subject for inclusion in these regulations. The data collection requirements are included in § 361.48(f).

Changes: The term recipient has been replaced by the term client in § 361.48 and references to ANSI have been revised to refer to the Uniform Accessibility Standards. The citations to the Developmental Disabilities Act of 1984, as amended, have also been revised.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 361

Administrative practice and procedure, Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income, Vocational rehabilitation.

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VOL 53 ISS 92 MAY 12 1988 UMI

Dated: March 18, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126, State Vocational Rehabilitation Services Program)

The Secretary amends Part 361 of Title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for Part 361 is revised to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. In the table of contents and section headings for Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 361.15;

(b) Section 361.53; and

(c) Section 361.75.

3. In the table of contents and section headings for Part 361, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 361.50; and

(b) Section 361.72.

4. In Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Designated State unit", paragraph (i);

(b) Section 361.5(b)(1);

(c) Section 361.6(b)(1);

(d) Section 361.9(a)(5);

(e) Section 361.11(a);

(f) Section 361.12(a);

(g) Section 361.15(b);

(h) Section 361.19 (a) and (b);

(i) Section 361.22;

(j) Section 361.36(c);

(k) Section 361.37;

(l) Section 361.42(a)(6);

(m) Section 361.47(a)(2);

(n) Section 361.51 (c) and (e);

(o) Section 361.52 (c) and (g);

(p) Section 361.54;

(q) Section 361.55;

(r) Section 361.57;

(s) Section 361.58;

(t) Section 361.71 (a) and (c);

(u) Section 361.75;

(v) Section 361.150(b); and

(w) Section 361.151 (c) and (h).

5. In Part 361, remove the words "handicapped individual" and add, in their place, the words "individual with handicaps" in the following places:

(a) Section 361.1(c)(2), definitions of "Family member" following the phrase "with whom the"; and "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (iv);

(b) Section 361.13(a)(3);

(c) Section 361.31(a)(1);

(d) Section 361.39 (f), (h), and (j);

(e) Section 361.40(d), the first time it appears;

(f) Section 361.42(a)(7);

(g) Section 361.53;

(h) Section 361.71(c); and

(i) Section 361.75.

6. In Part 361, remove the words "a handicapped individual" and add, in their place, the words "an individual with handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Family member;"

(b) Section 361.34(b);

(c) Section 361.35(a);

(d) Section 361.40(d);

(e) Section 361.47(a); and

(f) Section 361.71(a).

7. In Part 361, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (i);

(b) Section 361.14(a);

(c) Section 361.50 (a) and (b)(5);

(d) Section 361.72(a); and

(e) Section 361.155.

8. In Part 361, remove the words "his or her" and add, in their place, the words "the individual's" in the following places:

(a) Section 361.40 (d)(1) and (d)(3); and

(b) Section 361.71(a).

9. In § 361.1, paragraphs (b)(1) and (c)(2) introductory text are revised and the definitions in paragraph (c)(2) are amended by adding definitions of "Competitive work," "Extreme medical risk," "Impartial hearing officer," "Indian tribe," two definitions of "Individual with handicaps," "Individual with severe handicaps," "Initial expenditure," "Integrated work setting," "On-going support services," "Rehabilitation engineering," "Supported employment," and "Transitional employment for individuals with chronic mental illness" in alphabetical order; removing the definitions of "Secretary," both definitions of "Handicapped individual," and "Severely handicapped individual"; and revising the definitions of "Employability," "Evaluation of vocational rehabilitation potential," paragraphs (iii) and (v), "Local agency," "Rehabilitation facility," introductory text and paragraphs (vi) and (xi)–(xiv), and "Substantial handicap to employment," to read as follows:

§ 361.1 The State vocational rehabilitation services program.

* * * * *

(b) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(c) * * *

(2) The following definitions also apply to this Part 361:

* * * * *

"Competitive work," as used in the definition of "Supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

"Employability" means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or if appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; home-based employment; supported employment; or other gainful work.

(Authority: Sec. 7(6) of the Act; 29 U.S.C. 706(6))

* * * * *

"Evaluation of vocational rehabilitation potential."

* * * * *

(iii) Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

* * * * *

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a vocational goal is feasible.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditously.

(Authority: Sec. 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

* * * * *

"Impartial hearing officer" means an individual—

(i) Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;

(ii) Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or client;

(iii) Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and

(iv) Who has no personal or financial interest that would be in conflict with the individual's objectivity.

(Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d))

"Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Sec. 7(21) of the Act; 29 U.S.C. 706(21))

"Individual with handicaps," except in §§ 361.15(b), 361.51(e), and 361.52(g) means an individual—

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

"Individual with handicaps," for purposes of §§ 361.15(b), 361.51(e), and 361.52(g), means an individual—

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Sec. 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

"Individual with severe handicaps" means an individual with handicaps—

(i) Who has a severe physical or mental disability that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, inter-personal skills, work tolerance, or work skills) in terms of employability;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(15) of the Act; 29 U.S.C. 706(15))

"Initial expenditure," as applied to the use of reallotted funds, means obligations incurred by November 15 of the fiscal year subsequent to the fiscal year from which the funds were reallotted.

(Authority: Sec. 110(c)(2) of the Act; 29 U.S.C. 730(c)(2))

"Integrated work setting," as used in the definition of "Supported employment," means job sites where—

(i)(A) Most co-workers are not handicapped; and

(B) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(ii)(A) Most co-workers are not handicapped; and

(B) If a job site described in paragraph (i)(B) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

(iii) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

"Local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of those units or tribes) that has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Authority: Sec. 7(9) of the Act; 29 U.S.C. 706(9))

"On-going support services," as used in the definition of "Supported employment," means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

(Authority: Sec. 7(12) of the Act; 29 U.S.C. 706(12))

"Rehabilitation facility" means a facility that is operated for the primary purpose of providing vocational

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rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services to individuals with handicaps:

* * * * *

(vi) Psychiatric, psychological and social services;

* * * * *

(xi) Orientation and mobility services and other adjustment services to blind individuals;

(xii) Transitional or extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market;

(xiii) Psychosocial rehabilitation services for individuals with chronic mental illness; and

(xiv) Rehabilitation engineering services.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

* * * * *

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

(Authority: Secs. 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Supported employment" means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness.

"Transitional employment for individuals with chronic mental illness," as used in the definition of "Supported employment," means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skills training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

10. In § 361.2, paragraphs (b)(1) and (b)(2)(ii)–(v) are revised and a new paragraph (b)(2)(vi) is added to read as follows:

§ 361.2 The State plan: General requirements.

* * * * *

(b) * * *

(1) A part providing detailed commitments specified by the Secretary that must be amended or reaffirmed every three years, including—

(i) A description of how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;

(ii) A summary of the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment; and

(iii) An acceptable plan under 34 CFR Part 363.

(2) * * *

(ii) Estimates of the number of individuals with handicaps who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who have the most severe handicaps, including individuals served under 34 CFR Part 363;

(iv) A justification for and description of the order of selection (§ 361.36) of individuals with handicaps to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible individuals with handicaps who apply);

(v) A description of the outcome and service goals to be achieved for individuals with handicaps in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, that are measurable in terms of service expansion or program improvement in specified program areas, and that the State unit plans to achieve during a specified period of time; and

(vi) A description of the plans, policies, and methods to be followed to assist in the transition from education to employment-related activities, including a summary of the previous year's activities and accomplishments.

* * * * *

11. In § 361.2(d), in the next-to-last sentence, remove ", and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act." and add, in its place, "and be administered in accordance with this Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended."

12. In § 361.17, paragraphs (a), (b) introductory text and (b)(1) are revised to read as follows:

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of individuals with handicaps within the State, including a full needs assessment for serving individuals with severe handicaps; the State's need for rehabilitation facilities; and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must—

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of individuals with handicaps, including utilizing data provided by State special education agencies under section 618(b)(3) of the Education of the Handicapped Act, with special reference to the need for expanding services to individuals with the most severe handicaps;

* * * * *

13. Section 361.18 is revised to read as follows:

§ 361.18 State plan and other policy development consultation.

(a) *Public participation in State plan development.* (1) The State plan must assure that the State unit conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups, organizations and individuals an opportunity to comment on the State plan and to participate in the formulation of policies governing the provision of vocational rehabilitation services within the State.

(2) The State plan must include a summary of the public comments and the State unit's response to those comments.

(3) The State plan must further assure that the State unit establishes and maintains a written description of procedures used to obtain and consider views on State plan development and policy development and implementation.

(b) *Consultation with Indian tribes.* The State plan must further assure that, as appropriate, the State unit actively consults in the development of the State plan with those Indian tribes and tribal organizations and native Hawaiian organizations that represent significant numbers of individuals with handicaps within the State.

(c) *Other consultations.* (1) The State plan must further assure that the State unit seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of—

(i) Current or former clients of vocational rehabilitation services or, as appropriate, their parents, guardians or other representatives;

(ii) Providers of vocational rehabilitation services; and

(iii) Others interested in vocational rehabilitation.

(2) Matters of general policy development and implementation include, but are not limited to—

(i) Program planning, development, and evaluation;

(ii) Development of legislative and budgetary proposals;

(iii) Assessing research and services proposals;

(iv) Affirmative action for employment of qualified individuals with handicaps; and

(v) Development of procedures for review of rehabilitation counselor or coordinator determinations.

(d) *Public access.* The State plan must further assure the State unit will make available to the public for review and inspection a report of activities undertaken in the area of State plan and policy development as well as a summary of comments submitted at the scheduled public meetings and the State unit's response to these comments.

(Authority: Secs. 101(a)(18) and 101(a)(23) of the Act; 29 U.S.C. 721(a)(18) and 721(a)(23))

14. In § 361.20, paragraph (a) is revised to read as follows:

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that individuals with handicaps within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs that assist individuals with handicaps, including client assistance programs. The State plan must also assure that the State unit will refer individuals with handicaps to other appropriate Federal and State programs that might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

* * * * *

15. A new § 361.25 is added to read as follows:

§ 361.25 State-imposed requirements.

The designated State unit shall identify as a State-imposed requirement any State rule or policy relating to its administration or operation of programs under the Act, including any rule or policy based on interpretation of any Federal law, regulation, or guideline.

(Authority: Sec. 17 of the Act; 29 U.S.C. 716)

16. The authority citation for § 361.30 is revised to read as follows:

(Authority: Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.32 [Amended]

17. Remove the period at the end of the first sentence of § 361.32(c) and add, in its place, ", and, as appropriate, evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services.".

§ 361.33 [Amended]

18. In the second sentence of § 361.33(a), add "recreational," after "educational,".

19. In the first sentence of § 361.33(b), add "employability," after "individual's".

20. At the end of the last sentence in § 361.33(b), remove the period, and add, in its place, ", and the need for rehabilitation engineering services.".

§ 361.34 [Amended]

21. In § 361.34, in paragraph (c)(1), remove the word "handicapped" in the third sentence, and in paragraph (e)(1) and paragraph (e)(2) remove the words "he or she" and add, in their place, the words "the individual".

§ 361.35 [Amended]

22. In § 361.35(c)(2), remove the words "his or her" wherever they appear and add, in their place, the words "the individual's"; in the second sentence remove the words "he or she" and add, in their place, the words "the individual"; at the end of the second sentence remove the words "administrative review and fair hearings" and add, in their place, "review of rehabilitation counselor or coordinator determinations"; and at the beginning of the third sentence remove the words "When appropriate, the" and add, in their place, the word "The".

23. In § 361.35(d), remove the words "he or she" and add, in their place, the words "the individual", and in § 361.35 (d) and (e) remove the words "his or her" wherever they appear and add, in their place, the words "the individual's".

24. Section 361.36 is amended by revising paragraphs (a) and (b) to read as follows:

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must include and explain the justification for the order to be followed in selecting individuals with handicaps to be provided vocational rehabilitation services if services cannot be provided to all eligible individuals who apply.

(b) *Priority for individuals with severe handicaps.* The State plan must assure that those individuals with the most severe handicaps are selected for service before other individuals with handicaps.

* * * * *

(Authority: Sec. 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

25. Section 361.38 is revised to read as follows:

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to American Indians with handicaps residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with handicaps on reservations eligible for services by a special tribal program under section 130 of the Act.

(Authority: Secs. 101(a)(20) and 130 of the Act; 29 U.S.C. 721(a)(20) and 750)

26. Section 361.39 is amended by revising paragraphs (c) and (m) to read as follows:

§ 361.39 The case record for the individual.

* * * * *

(c) Documentation supporting any determination that the individual's handicaps are severe;

* * * * *

(m) Documentation concerning any action and decision involving the request by the individual with handicaps for review of rehabilitation counselor or coordinator determinations under § 361.48; and

* * * * *

27. In § 361.40, paragraphs (a) and (c) and the authority citation are revised to read as follows:

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§ 361.40 The individualized written rehabilitation program: Procedures.

(a) *General provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the vocational rehabilitation counselor or coordinator and the individual with handicaps or, as appropriate, that individual and a parent, guardian or other representative, including other suitable professional and informed advisors. The State unit must provide a copy of the written program, and any amendments, to the individual with handicaps or, as appropriate, that individual and a parent, guardian, or other representative and must advise each individual with handicaps or that individual's representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

* * * * *

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each individual with handicaps or, as appropriate, that individual's parent, guardian, or other representative, must be given an opportunity to review the program and, if necessary, jointly redevelop and agree to its terms.

* * * * *

(Authority: Secs. 101(a)(9) and 102 of the Act; 29 U.S.C. 721(a)(9) and 722)

28. Section 361.41 is amended by revising paragraph (a) and the authority citation following the section, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that each individualized written rehabilitation program is based on a determination of employability designed to achieve the vocational objective of the individual and is developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program must, as appropriate, include but not be limited to, statements concerning—

(1) The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual based on an assessment determined through an evaluation of rehabilitation potential;

(3) The specific rehabilitation services to be provided to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;

(4) An assessment of the expected need for post-employment services;

(5) The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(6) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(7) A reassessment, prior to case closure, of the need for post-employment services;

(8) The views of the individual with handicaps, or as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors, concerning the individual's goals and objectives and the vocational rehabilitation services being provided;

(9) The terms and conditions for the provision of vocational rehabilitation services, including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services, if any, and the extent to which comparable services and benefits are available to the individual under any other program;

(10) An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.48;

(11) An assurance that the individual with handicaps has been provided a description of the availability of a client assistance program established under section 112 of the Act;

(12) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(13) The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed; and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged through cooperative agreements with other service providers.

(b) *Supported employment placements.* Each individualized written rehabilitation program must also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate—

(1) A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State unit; and

(2) A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available in accordance with 34 CFR 363.11(e)(2).

* * * * *

(Authority: Secs. 101 (a)(9), (a)(11), 102 and 634(a) of the Act; 29 U.S.C. 721 (a)(9), (a)(11), 722, and 795m)

29. Section 361.42 is amended by revising paragraphs (a)(2) and (a)(13), removing the words "a handicapped" from paragraph (a)(5) and adding, in their place, the word "that", removing "and" at the end of paragraph (a)(14), redesignating paragraph (a)(15) as (a)(16), adding a new paragraph (a)(15), and revising redesignated paragraph (a)(16) to read as follows:

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) * * *

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services for an individual with handicaps, referral necessary to help individuals with handicaps secure needed services from other agencies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.

* * * * *

(13) Post-employment services necessary to maintain or regain other suitable employment;

* * * * *

(15) Rehabilitation engineering services; and

(16) Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

* * * * *

30. In § 361.43, paragraph (b) and the authority citation are revised to read as follows:

§ 361.43 Individuals determined to be rehabilitated.

* * * * *

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services if necessary to assist an individual to maintain or regain other suitable employment.

(Authority: Secs. 12(c), 101(a)(6) and 103(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 723(a)(2))

31. Section 361.45 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 361.45 Standards for facilities and providers of services.

* * * * *

(b) * * * State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards, and their implementing standards in 41 CFR Part 101–19.6 *et seq.*, and the American National Standards Institute, No. A117.1–1986.

* * * * *

32. Section 361.47 is amended by revising the section heading and paragraph (b) to read as follows:

§ 361.47 Financial need; determination of the availability of comparable services and benefits.

* * * * *

(b) *Availability of comparable services and benefits.* (1) The State plan must assure that before the State unit provides any vocational rehabilitation services, except those services enumerated in paragraph (b)(2) of this section, to an individual with handicaps, or to members of that individual's family, it determines whether comparable services and benefits are available under any other program.

(2) The requirements of paragraph (b)(1) of this section do not apply to the following services:

(i) Evaluation of rehabilitation potential.

(ii) Counseling, guidance, and referral.

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, that are not provided in institutions of higher education (§ 361.42(a)(4)).

(iv) Placement.

(v) Rehabilitation engineering services.

(vi) Post-employment services consisting of the services listed under paragraphs (b)(2)(i)–(v) of this section.

(3) The requirements of paragraph (b)(1) of this section also do not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual with handicaps who is at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(4) The State plan must assure also that if comparable services and benefits are available, they must be utilized to meet, in whole or in part, the cost of vocational rehabilitation services.

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

33. Section 361.48 is revised to read as follows:

§ 361.48 Review of rehabilitation counselor or coordinator determinations.

(a) *Informing affected individuals.* All applicants and clients must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(b) *Informal reviews.* States may continue to use an informal administrative review process if it is likely to result in a timely resolution of disagreements in particular instances, but this process may not be used as a means to delay a more formal hearing before an impartial hearing officer unless the parties jointly agree to a delay.

(c) *Formal appeals procedures.* (1) Except as provided in paragraph (e) of this section, the State plan must assure that procedures are established by the Director of the designated State unit so that any applicant for or client of vocational rehabilitation services who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request a timely review of those determinations.

(2) At a minimum each State's formal review procedures must provide that—

(i) A hearing by an impartial hearing officer is held within 45 days of a request by the applicant or client;

(ii) The applicant or client or, if appropriate, the individual's parent, guardian, or other representative, is afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(iii) The impartial hearing officer makes a decision based on the provisions of the approved State plan and the Act and provides to the applicant or client or, if appropriate, the individual's parent, guardian, or other representative, and to the Director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

(iv) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the Director shall notify in writing the applicant or client or, if appropriate, the individual's parent, guardian, or other representative, of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(v) If the Director of the designated State unit fails to provide the notice required by paragraph (c)(2)(iv) of this section, the impartial hearing officer's decision becomes a final decision;

(vi) The decision of the Director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(vii) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative, is provided an opportunity for the submission of additional evidence and information relevant to the final decision;

(viii) Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the Director of the designated State unit makes a final decision and provides a full report in writing of the decision, and of the findings and grounds for the decision, to the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative; and

(ix) The Director of the designated State unit cannot delegate responsibility to make any final decision to any other officer or employee of the designated State unit.

(d) *Extensions of time.* Except for the time limitation established in paragraph (c)(2)(iv) of this section, each State's review procedures may provide for reasonable time extensions for good

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cause shown at the request of a party or at the request of both parties.

(e) *State fair hearing board.* The provisions of paragraphs (c) and (d) of this section are not applicable if there is in any State a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the Director of the designated State unit under this section.

(f) *Data collection.* The Director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) A description of State procedures for review of rehabilitation counselor or coordinator determinations.

(2) The number of appeals to impartial hearing officers and the State Director, including the type of complaints and the issues involved.

(3) The number of decisions by the State Director reversing in whole or in part a decision of the impartial hearing officer.

(4) The number of decisions affirming the position of the dissatisfied vocational rehabilitation applicant or client assisted through the client assistance program.

(Authority: Secs. 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

34. In § 361.49, remove "(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))" at the end of paragraph (e)(4), remove paragraph (f), and add an authority citation at the end of the section to read as follows:

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.71 [Amended]

35. In § 361.71(b), remove the words "a handicapped" and add, in their place, the word "the".

§ 361.72 [Amended]

36. In § 361.72(b), remove the words "most severely handicapped individuals" and add, in their place, the words "individuals with the most severe handicaps".

§ 361.73 [Amended]

37. In § 361.73(c), remove "80 percent" and add, in its place, "the applicable Federal share in accordance with § 361.86".

38. Section 361.85 is amended by removing paragraph (d); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by adding a new paragraph (b); and by revising the authority citation to read as follows:

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

* * * * *

(b) For fiscal year 1987 and for each subsequent fiscal year, the Secretary reserves, from the amount appropriated for grants under section 100(b)(1), not less than one quarter of one percent and not more than one percent to carry out Part D of Title I of the Act.

* * * * *

(Authority: Secs. 12(c) and 110 of the Act; 29 U.S.C. 711(c) and 730)

39. Section 361.86 is revised to read as follows:

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(d), the Secretary pays to each State an amount computed in accordance with the requirements of section 111 of the Act. For fiscal years 1987 and 1988, the Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities). Beginning in fiscal year 1989, the Federal share for each State decreases by one percent per year for five years for funds received in excess of the amount received in fiscal year 1988. The Federal share of these excess payments is 79 percent in fiscal year 1989; 78 percent in fiscal year 1990; 77 percent in fiscal year 1991; 76 percent in fiscal year 1992; and 75 percent in fiscal year 1993 (except for the cost of construction of rehabilitation facilities).

(b)(1) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part), for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the average of the total of those expenditures for the three preceding fiscal years.

(2) The Secretary may waive or modify any requirement or limitation in section 111(a)(2) (A) and (B) of the Act, if the Secretary determines that a waiver or modification of the State maintenance of effort requirement is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that cause significant unanticipated expenditures or reductions in revenue and result in a general reduction of programs within the State. A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(3) If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan for the average of the total of those expenditures for the three preceding fiscal years.

(Authority: Secs. 7(7), 12(c) and 111 of the Act; 29 U.S.C. 706(7), 711(c), and 731)

§§ 361.88 through 361.92 [Redesignated from §§ 361.87 through 361.91]

40. Sections 361.87 through 361.91 are redesignated as §§ 361.88 through 361.92, respectively, and a new § 361.87 is added to read as follows:

§ 361.87 Reallotment.

(a) The Secretary makes a determination as to what States (if any) will not use their full allotment not later than 45 days before the end of a fiscal year.

(b) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the fiscal year, or to pay for initial expenditures during the subsequent fiscal year. To receive reallotted funds, a State must assure that it will be able to obligate fully all of its original allotment within the fiscal year for which the funds were appropriated. Funds reallotted to another State are considered to be an increase to that State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sec. 110(c)(1) of the Act; 29 U.S.C. 730)

[FR Doc. 88-10553 Filed 5-11-88; 8:45 am]
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Thursday
May 12, 1988

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173 and 177

Radioactive Materials; State Designations of Alternative Routes and Route Plans; Final Rules

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 177

[Docket No. HM–164A]

State Designations of Alternative Routes for Radioactive Materials Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to amend 49 CFR 177.825 to provide that State designations, of alternative routes for the transportation of highway route controlled quantity (HRCQ) shipments of radioactive material, become effective only upon notice to RSPA of such designations and to clarify the methods that States are authorized to use in selecting preferred routes. The creation of a repository for route designations within RSPA will provide shippers, carriers, enforcement and emergency response personnel, State agencies, local governments, and RSPA with definitive information concerning the existence of those alternative routes.

EFFECTIVE DATE: September 9, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Gale, Office of Hazardous Materials Transportation, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590 (202–366–4488).

SUPPLEMENTARY INFORMATION: On July 16, 1987, RSPA published Notice No. 87–9 (52 FR 26928) under Docket HM–164A which proposed to amend 49 CFR 177.825 to provide that State designations of alternative routes for the transportation of HRCQ shipments of radioactive materials become effective upon written notice of such designations to RSPA. In addition, RSPA proposed to clarify the procedures that States are authorized to use in designating alternative routes. Presently, the definition of "State-designated route" in § 171.8 contains the statement "* * * or an equivalent routing analysis which adequately considers overall risk to the public." However, § 177.825(b)(1)(ii), in describing a State-designated route, fails to mention "an equivalent routing analysis." To clarify this incongruity, RSPA placed the language that currently exists in the definition of "State-designated route" into the proposed § 177.825(b)(1)(ii).

RSPA received twelve comments to HM–164A, all of which supported the proposed changes. However, six of these commenters requested that additional provisions be added to the rule. For the reasons disclosed in this document, RSPA denies these requests and adopts HM–164A essentially as proposed.

Two commenters requested that RSPA periodically publish in the **Federal Register** a listing of the States that have notified RSPA of alternative preferred route designations, the routes designated, the appropriate contact person in each such State, and any State modifications or revocations of alternative preferred routes since the last publication. RSPA understands the need for readily available and accurate information concerning route designations. However, periodic **Federal Register** publication will not ensure the immediate availability of accurate information. Instead, RSPA's Dockets Unit will respond to requests for information concerning precisely which alternative preferred route designations are in effect at any time. In summary, RSPA will be maintaining a "real-time" system and making the information therein available on a "real-time" basis.

One commenter suggested that States submit their designation on particular days of the year (e.g., first days of the month). RSPA believes it is the prerogative of each State to change its routes when a safety need arises and, therefore, States should not be required to submit their designations on particular days of the year.

The National Transportation Safety Board (NTSB) suggested that this rule should encompass routes that are designated for any hazardous material, not just HRCQ of radioactive materials. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Iowa Department of Transportation (IODOT) had two concerns about the proposed rule and the present regulations. First, IODOT stated that the regulations for routing designations should be "reworded to clarify" States' authority to designate preferred routes. IODOT expressed the belief that when two interstate highways of equal risk exist, the State is unable to designate one route in lieu of the other under the procedures for designating routes. RSPA disagrees with this interpretation of the current regulations. States have the authority under § 177.825(b)(1) to designate routes *in lieu of* an interstate highway as an alternative route. Therefore, so long as the requirements of § 177.825(b)(1)(ii) are met, States are authorized to designate one of two interstate routes of equal risk as an alternative route which must be used in lieu of the other. Consequently, RSPA deems unnecessary IODOT's request to reword this rule to provide clarification of States' authority to designate preferred routes.

In addition, IODOT contended that the system RSPA proposes for effecting State route designations is unresponsive to emergency situations (e.g., unforeseen road construction). RSPA believes that such situations should not present a problem because § 177.825(b)(2) authorizes deviations from preferred routes for emergency conditions that would make continued use of the preferred route unsafe.

The Yankee Atomic Electric Company recommended that RSPA require any State, which uses an approach other than the DOT Guidelines for selecting routes, to prove equivalency of its method to that of the DOT Guidelines. This comment relates to the proposal in the NPRM to amend § 177.825 to authorize States to use an "equivalent" routing analysis. That proposal constitutes a mere editorial change to the regulations. The language proposed for § 177.825 is equivalent to that which currently exists in the definition of a "State-designated route" in § 171.8. Thus, no substantive rule change is occurring. RSPA believes that the recommendation to require proof of equivalency for selection methods is beyond the scope of this rulemaking.

The Northeast Ohio Areawide Coordinating Agency (NOACA) recommended that RSPA spell out an "obligatory method of substantive State consultation with local jurisdictions." In the original HM–164 final rule published on January 19, 1981 (46 FR 5298), RSPA thoroughly addressed this issue. In fact, the regulations currently require consultations with affected local jurisdictions (and other affected States) as prerequisites to designations of alternative routes. RSPA does not believe that there is any need for it to specify procedures which must be used in consultations between States and local jurisdictions. The action described in the next paragraph may alleviate any perceived problems in this area.

Except for a minor editorial change to § 177.825, RSPA is adopting the proposed rule unchanged. The second sentence of the definition of "State-designated route" in § 171.8 contains the substantive consultation requirements described above; substantive requirements are inappropriate for a "definitions" section. Therefore, RSPA is removing the sentence from the "definitions" section and placing it in the new § 177.825(b)(1)(ii). RSPA believes that this will facilitate a better understanding of the requirements for State consultation with affected jurisdictions prior to designating alternative routes.

Administrative Notices

RSPA has determined that this final rule: (1) Is not a "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not adversely affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). Although this regulation requires State notification to RSPA as a prerequisite to designation of alternative preferred routes, it has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

Paperwork Reduction Act

Information collection requirements contained in § 177.825 herein, pertaining to requirements for designating alternative routes, have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned control number, OMB No. 2137–0510.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Alternative routes.

In consideration of the foregoing, 49 CFR Parts 171 and 177 are amended to read as follows:

PART 171—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1806; 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition "State-designated route" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantities of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

4. In § 177.825, paragraph (b)(1) is revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

* * * * *

(b) * * *

(1) A preferred route consists of either or both:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section; and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter), in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials", or an equivalent routing analysis which adequately considers overall risk to the public. Designations must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes. A State designated route is not effective until written notice has been given by the State, by certified mail, return receipt requested, to, and receipt acknowledged by, the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590 (Attention: Registry of State-designated Routes, Docket HM–164A).

* * * * *

Issued in Washington, DC on May 6, 1988, under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–10630 Filed 5–11–88; 8:45 am]

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49 CFR Parts 173 and 177

[Docket No. HM–164B]

Notification to RSPA of Route Plans for Radioactive Materials Transportation

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation by highway of highway route controlled quantities (HRCQ) of radioactive materials. This action is necessary to correct problems related to late and inaccurate information that is being received under the current system. More accurate and timely information will facilitate more effective enforcement of the routing requirements for HRCQ shipments of radioactive materials.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–4488, Office of Hazardous Materials Transportation, RSPA, Washington DC 20590.

EFFECTIVE DATE: July 11, 1988.

SUPPLEMENTARY INFORMATION: On July 16, 1987, RSPA published Notice No. 87–9 (52 FR 26932) under Docket HM–164B which proposed to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation of HRCQ of radioactive materials.

RSPA received seven comments to Docket HM–164B, all of which supported the proposed changes. In addition, three commenters requested that additional provisions be added to the rule. For the reasons discussed in this document, RSPA denies these requests and adopts HM–164B essentially as proposed.

The National Transportation Safety Board (NTSB) recommended that shippers be given the added responsibility of evaluating the

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adequacy of routes selected by the carriers. RSPA believes that carriers of HRCQ of radioactive materials should determine route plans utilizing State-designated alternative routes, interstate highways and beltways around cities. RSPA sees no benefit to the safety of the general public in requiring shippers to review these route plans and believes that shippers would have difficulty in exercising control over routes used by carriers. Therefore, no action is taken on this recommendation.

NTSB also recommended that the routing requirement for HRCQ quantities of radioactive materials be broadened to apply to any hazardous material that may pose a substantial threat to the general public when transported. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Electric Utilities Companies' Nuclear Transportation Group (the "Group") recommended that carriers provide shippers with an indication of the date of submission of information to RSPA and with copies of all information provided to RSPA. The Group stated that this information could be used by a shipper to verify that a carrier has complied with the applicable requirements and to obtain accurate information concerning the HRCQ shipment. RSPA agrees that the first part of this request, i.e., that a carrier inform the shipper of the date when the applicable reporting requirement has been satisfied, may be of interest to the shippers. However, RSPA believes that this should be a contractual matter between the two parties and not a regulatory requirement. RSPA believes that the second part of the request, i.e., that the carriers provide the shipper with all the information submitted to RSPA, is unnecessary because (1) § 177.825(c) already mandates that the information required under paragraph (f)(1) be given by the carrier to the shipper, and (2) the shipper already possesses the information and documents covered by paragraph (f)(2) and (f)(3). Consequently, no action is taken concerning the Group's recommendation.

The Department of Emergency Services of the Commonwealth of Virginia recommended that the routing agency of each State through which a HRCQ of radioactive material traverses also receive a copy of the route plan and all associated material from the carrier. This commenter said that this would help States ensure that shipments of HRCQ of radioactive material are transported over the safest possible routes. RSPA believes that adoption of this requirement is unnecessary. First, with the exception of national security shipments, the information requested already is available to the States through the Hazardous Materials Information System (HMIS) managed by RSPA. Second, Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 73, incorporated by reference at 49 CFR 173.22(c), already require that States be notified in advance of shipments of spent nuclear fuel. Although the NRC regulations do not apply to Department of Energy and Department of Defense shipments, those departments voluntarily provide prior notification to States except with respect to national security shipments.

With the exception of minor editorial revisions to § 177.825, RSPA is adopting the proposals contained in Notice No. 87-9 without change. In § 177.825(f), the reference to "§ 177.825(c) of this subchapter" has been changed to "paragraph (c) of this section"; the words "concerning the transportation of each such package" have been added for clarification; and the words "including all required amendments reflecting the routes actually used" have been substituted for a proposed (but unclear) parenthetical reference in paragraph (f)(1) to the requirements of § 177.825(c).

Administrative Notices

RSPA has determined that this rulemaking: (1) Is not "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

Paperwork Reduction Act

Information collection requirements contained in the current § 173.22(d) pertaining to providing RSPA with certain shipping information have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0510.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Shippers' responsibility.

49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Shippers, Carriers.

In consideration of the foregoing, 49 CFR Parts 173 and 177 are amended as follows:

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

§ 173.22 [Amended]

2. In § 173.22, paragraph (d) is removed.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

4. In § 177.825, a new paragraph (f) is added to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

* * * * *

(f) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73, each carrier who accepts for transportation a highway route controlled quantity of radioactive material (see § 173.401(1)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Director, Office of Hazardous Materials Transportation, RSPA:

(1) The route plan required under paragraph (c) of this section, including all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the radioactive material in the shipment required by §§ 172.202 and 172.203 of this subchapter.

(Approved by the Office of Management and Budget under Control number 2137-0510)

Issued in Washington, DC on May 6, 1988 under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-10631 Filed 5-11-88; 8:45 am]

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Part VI

The President

Executive Order 12640—The President's Committee on Employment of People With Disabilities

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Presidential Documents

Title 3—

The President

Executive Order 12640 of May 10, 1988

The President's Committee on Employment of People With Disabilities

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide for the carrying out of the provisions of the Joint Resolution approved July 11, 1949, ch. 302, 63 Stat. 409, as amended, and the provisions of the Rehabilitation Act of 1973, P.L. 93–112, Section 501 (a)–(f), as amended, it is ordered as follows:

Section 1. *Establishment and Composition of the President's Committee.* (a) There is hereby established the President's Committee on Employment of People with Disabilities (hereinafter referred to as the Committee or as the President's Committee).

(b) The Committee shall be composed of a Chairman and not more than four Vice Chairmen, who shall be appointed by and serve at the pleasure of the President, and of so many other members as may be appointed thereto from time to time by the Chairman of the President's Committee from among persons (including representatives of organizations) who can contribute to the achievement of the objectives of the Committee. Members appointed by the Chairman shall be appointed for a term of 3 years and may be reappointed. The Chairman of the President's Committee may at any time terminate the service of any member of the President's Committee, except any member appointed by the President.

(c) The Chairman of the President's Committee, upon the advice of the Executive Committee (hereinafter provided for), may designate as, or invite to be, associate members of the President's Committee any heads of Federal departments or agencies that have responsibility for training and rehabilitation services or advocate activities touching the field of interest of the Committee or that are leading employers of individuals with disabilities.

(d) Representatives of business, industry, labor, private organizations, public agencies, other concerned organizations, and individuals with disabilities who are not members may be invited to attend meetings of the Committee.

Sec. 2. *Functions of the Committee.* The President's Committee shall provide advice and information as to the development of maximum employment opportunities for people who are physically disabled, mentally retarded, and mentally ill. To this end the Committee shall advise the President as to information that can be used by employers, labor unions, and national and international organizations, suggest programs for public education, and suggest methods of enlisting cooperation among organizations and agencies, Federal, State, and local officials, Governors' and local Committees on Employment of People with Disabilities, professional organizations, organized labor, and appropriate international organizations. In carrying out these functions vested in it by the Rehabilitation Act, as amended, the Committee shall be guided by the general policies of the National Council on the Handicapped and shall work closely with the Department of Labor, the Department of Education, the Department of Health and Human Services, the Veterans' Administration, State employment security agencies, and State vocational rehabilitation agencies.

Sec. 3. *Executive Committee.* (a) There is hereby established the Executive Committee of the President's Committee on Employment of People with Disabilities. The Executive Committee shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Executive Committee, the Vice Chairman of the President's Committee, and so many additional members as will provide an Executive Committee of not less than 15 and not more than 30 members. The said additional members shall be appointed for a term of 3 years by the Chairman of the President's Committee from among the members of the President's Committee or otherwise. The Chairman of the President's Committee may at any time terminate the service of any member of the Executive Committee.

(b) The Executive Committee shall advise and assist the Chairman of the President's Committee in the conduct of the business of the President's Committee and, as authorized by the President's Committee or the Chairman thereof (with due regard for the responsibilities of other Federal agencies), shall study the problems of people with disabilities in obtaining and retaining suitable employment, invite authorities in the various professional, technical, and other pertinent fields to advise it in the exploration of those problems, and review plans and projects for advocating the employment of people with disabilities.

Sec. 4. *Advisory Council.* There is hereby established the Advisory Council on Employment of People with Disabilities, which shall advise the President's Committee with respect to the responsibilities of the Committee. The Council shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Council, and of the following-named officers, or their respective alternates: Secretary of State, Secretary of the Treasury; Secretary of Defense; The Attorney General; Secretary of the Interior; Secretary of Agriculture; Secretary of Commerce; Secretary of Labor; Secretary of Health and Human Services; Secretary of Housing and Urban Development; Secretary of Transportation; Secretary of Education; Chairman, Equal Employment Opportunity Commission; Administrator of General Services; Director, Office of Personnel Management; Director, United States Information Agency; Administrator of Veterans' Affairs; and the Postmaster General.

Sec. 5. *Administrative and Incidental Matters.* (a) The President's Committee, the Executive Committee, and the Advisory Council shall each meet on call of the Chairman of the President's Committee at a time and place designated by the Chairman. In the case of the President's Committee and the Executive Committee, the Chairman shall call at least one meeting and two meetings, respectively, to be held during each calendar year.

(b) In the absence of designation by the President, the Chairman of the President's Committee may from time to time designate a Vice Chairman of the President's Committee to be one or more of the following-named in the absence of the Chairman: Acting Chairman of the President's Committee, Acting Chairman of the Executive Committee, and Acting Chairman of the Advisory Council. The Chairman of the President's Committee shall from time to time assign other duties to the Vice Chairmen thereof.

(c) The Chairman of the President's Committee shall on behalf of the President direct the President's Committee and its functions.

(d) The Chairman may from time to time prescribe such necessary rules, procedures, and policies relating to the President's Committee, the Executive Committee, and the Advisory Council, and to their affairs, as are not inconsistent with law or with the provisions of this Order.

(e) The Vice Chairmen shall advise and counsel the Committee and shall represent the Committee on appropriate occasions.

(f) All members (including the Chairman and Vice Chairmen) of the President's Committee, the Executive Committee, and the Advisory Council shall serve without compensation. The Chairman and the Vice Chairmen of the President's Committee may receive transportation and per diem allowances as authorized by law for persons serving without compensation. Persons with

disabilities serving as Chairman or Vice Chairmen may be compensated for attendant expenses, consistent with government procedures and practices.

(g) Employees of the President's Committee shall be appointed, subject to law, and shall be directed by the Chairman of the Committee. To such extent as may be mutually arranged by the Chairman of the Committee and the Secretary of Labor, employees of the Committee shall be subject to the administrative rules, regulations, and procedures of the Department of Labor.

(h) The Department of Labor is requested to make available to the President's Committee necessary office space and to furnish the Committee, under such arrangements respecting financing as may be appropriate, necessary equipment, supplies, and services. The estimates of appropriations for the operations of the Committee shall be included within the framework of the appropriations structure of the Department of Labor, in such manner as the Director of the Office of Management and Budget may prescribe. The Chairman of the Committee, in cooperation with the Assistant Secretary for Administration and Management of the Department of Labor, shall be responsible for the preparation and justification of the estimates of appropriations for the Committee.

Sec. 6. *Reporting.* The President's Committee shall report annually to the President, who may apprise the Congress, and other interested organizations and individuals on the progress and problems of maximizing employment opportunities for people with disabilities.

Sec. 7. *Prior Orders; Transition.* (a) To the extent that this Order is inconsistent with any provision of any prior order, or with any provisions of any regulation or other measure or disposition, heretofore issued, made, or taken by the President or by any other officer of the Executive branch of the Government, this Order shall control. Executive Order No. 11480 of September 9, 1969, as amended, is hereby superseded.

(b) Without further action by the President or the Chairman of the Committee, all members, employees, records, property, funds, and pending business of the President's Committee on Employment of the Handicapped provided for in Executive Order No. 11480 of September 9, 1969, as amended, shall on the date of this Order become members, employees, records, property, funds, and pending business of the Committee established by this Order.

(c) The tenure of persons as members of the Committee in pursuance of the provisions of Section 7(b) of this Order, (i), in the case of persons appointed to the predecessor Committee by the President, shall be at the pleasure of the President, and (ii), in the case of other members, shall be for periods equal to their respective unexpired terms under Executive Order No. 11480, as amended, but shall also be subject to the provisions of the last sentence of Section 1(b) of this Order.

Ronald Reagan

THE WHITE HOUSE,
May 10, 1988.

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federal register

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Part VII

Veterans Administration

Veterans' Advisory Committee on Environmental Hazards; Meeting

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VETERANS ADMINISTRATION

Veterans' Advisory Committee on Environmental Hazards Notice of Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will be a Conference Call which is scheduled for May 27, 1988, at 3:00 p.m.—4:00 p.m., in room 815. The Dioxin Panel will be discussing their assessment of a report by Richard A. Albanese, M.D., "United States Air Force Personnel and Exposure to Herbicide Orange."

This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mr. Frederic Conway, Veterans Administration Central Office (phone 202-233-2115) prior to May 25, 1988.

Dated: May 9, 1988.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-10848 Filed 5-11-88; 11:22 am]

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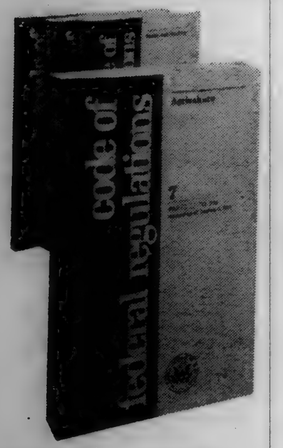
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Presidential Documents

Title 3—
The President

Proclamation 5818 of May 10, 1988

Just Say No Week, 1988

By the President of the United States of America

A Proclamation

This year again we observe a period of time to reflect on our efforts as individuals and as a Nation to create a drug-free society. We do so in the knowledge that we have both cause for hope and cause to redouble our efforts.

Dedicated law enforcement officers and government personnel continue to fight the drug traffickers here and abroad who make war on all of us. Families, churches, schools, and communities are fostering wholesome and healthy attitudes and behavior that are guiding young and old alike. Public opinion polls and other measures show an increasing awareness of the seriousness of illegal drug use and alcohol abuse. And more and more of us see in our American heritage of faith, freedom, spiritual values, and personal achievement a true, rewarding way of life that far outstrips the false, harmful, and joyless path of drug addiction.

America's young people are responding to education and prevention efforts, but continued and intensified work is needed—and at earlier ages. Positive peer pressure can significantly affect children and can create environments in which illegal drug use and alcohol abuse are unacceptable. The "Just Say No" movement, which grew out of great public concern and strong and effective encouragement by the First Lady, is now a rallying cry for youth who want to say "Yes" to life and to the future.

During Just Say No Week this year, on May 11, children across our land will take part in a national "Just Say No" walk against drugs. This week of observance is an excellent time for each of us to commend—and to assist—the young people of our country and all of the parents, educators, and so many other Americans who continue to develop and carry out efforts against illegal drug use and alcohol abuse.

The Congress, by House Joint Resolution 545, has designated the week of May 8 through May 14, 1988, as "Just Say No Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 8 through May 14, 1988, as Just Say No Week. I call upon the American people and officials at every level of government, the clergy, the private sector, civic groups, educators, and the communications media to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10862
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Presidential Documents

Proclamation 5819 of May 10, 1988

National Osteoporosis Prevention Week, 1988

By the President of the United States of America

A Proclamation

This year we again set aside a week to mark our concern over osteoporosis. This bone-weakening disease is the most common cause of bone fractures in the elderly and is a major health problem that afflicts millions of Americans. Osteoporosis can occur in men, but women are the majority of its victims. In fact, it affects half of American women over age 45 and 90 percent of women over age 75.

A fall, blow, or lifting action that would not injure the average person can easily cause one or more bones to break in a person with severe osteoporosis. Any bones may be affected, although fractures of the spine, wrists, and hips are the most common. Osteoporosis is the underlying reason for 1.3 million bone fractures a year, and its incidence will increase as our population ages.

Fortunately, scientific knowledge about this disease has grown, and there is reason for hope. Research is revealing that prevention may be achieved through estrogen replacement therapy for older women and through adequate calcium intake and regular weight-bearing exercise for people of all ages. New approaches to diagnosis and treatment are also under active investigation. For this work to continue and for us to take advantage of the knowledge we have already gained, public awareness of osteoporosis and of the importance of further scientific research is essential.

The Congress, by Senate Joint Resolution 250, has designated the week of May 8 through May 14, 1988, as "National Osteoporosis Prevention Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 8 through May 14, 1988, as National Osteoporosis Prevention Week. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10863
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Presidential Documents

Proclamation 5820 of May 10, 1988

National Foster Care Month, 1988

By the President of the United States of America

A Proclamation

The family is the indispensable foundation of society; at its best, it performs tasks that no other entity can hope to duplicate. The family has the primary responsibility for nurturing children, transmitting our culture, and building the character traits that make for healthy adults and good citizens. Upon the strength of the family rests the future of our Nation.

For a variety of reasons, however, some parents are unable to provide a minimally acceptable level of care for their children, and temporary or permanent alternative placement is necessary. National Foster Care Month presents an appropriate opportunity for all of us—public officials, business, religious, and community leaders, and parents alike—to reflect on the pressures facing families today and on the need for increased efforts to ensure that abandoned or abused children have the opportunity to live in healthy, loving homes.

The emphasis in foster care must be on the well-being of the child, and public policy must serve to promote alternative placement that represents actual care and not mere custody. Because the tasks facing foster parents often include special challenges, such as care of a child who is physically or mentally handicapped or who has been emotionally or physically abused, the mothers and fathers whom society qualifies to accept this added responsibility must be held to a high standard. To accomplish this goal, many more happy and successful families must be willing to step forward and to offer to share heart and home with children desperately longing for both. The aim of all foster care must be the establishment for the child of a sense of permanence and belonging.

National Foster Care Month also provides an opportunity to offer public thanks for the sacrifices and dedication of the many foster parents and concerned professionals working in the field of foster care. Their jobs require extraordinary patience and love, and their rewards are often reaped only years after their primary labor is done—when the child is grown and fully appreciates what has been done for him or her, or when society pauses from its hectic rush forward to recognize the good they have accomplished.

Finally, this month-long observance calls us to deeper thought on the role of values and ideas in the very formation of families. For if the goal of child care is the creation of a warm, stable environment, it is self-evident that the best place to start is in the pursuit of strong and stable marriages. If the need for foster care is not to outstrip our society's capacity for remedial action, it is critical to focus more efforts on policies that promote and protect the triad of mother, father, and child as the harmonious chord God intended for them to be.

To demonstrate our esteem and appreciation for those who devotedly and selflessly share their lives with foster children, the Congress, by Senate Joint Resolution 59, has designated the month of May 1988 as "National Foster Care Month" and has requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1988 as National Foster Care Month. I call upon all educators, churches, health care providers, the media, public and private organizations, and the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10884
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Presidential Documents

Proclamation 5821 of May 10, 1988

Older Americans Month, 1988

By the President of the United States of America

A Proclamation

Celebration of Older Americans Month summons us as individuals and as a Nation to careful reflection on our attitudes toward and treatment of those of us who are elderly.

If we answer this summons, the need for commensurate action will be apparent to us. Senior citizens merit our express appreciation for their countless, invaluable contributions, past and present, to our Nation. They deserve as well our best efforts to avoid and to dispel false ideas about aging. This requires all of us to become more willing to familiarize ourselves with the many ways older people continue to achieve in every area of endeavor as they begin second careers, further their educations, and voluntarily serve their neighbors both at home and abroad. We can also resolve to lend our support as the private sector and public agencies help senior citizens maintain independence and as State and Area Agencies on Aging work with community leaders and groups to create responsive service systems for older Americans.

By every indication, those systems are working well, as is the overall economy whose growth and vitality are necessary for these systems to function as they are designed. The Social Security system, which began the decade in desperate straits, has been rescued and is on solid ground as we near the end of the '80s. Reform of the tax code has brought relief to many elderly taxpayers, and up to a quarter of all of these citizens will pay no Federal income tax whatsover. The poverty rate among the elderly has been reduced to the lowest level in our history.

The true wealth of our older Americans—some 30 million men and women over the age of 65 whose life expectancy continues to grow—lies in the wisdom and experience they have to offer succeeding generations. We are wise ourselves to tap that accumulation of knowledge and good judgment and to pay the tribute of close attention to our venerable fellow citizens, the prime architects of the peace, freedom, and prosperity that are our present blessing and future hope.

The Congress, by House Joint Resolution 508, has recognized the month of May 1988 as "Older Americans Month" and has requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 1988 as Older Americans Month. I call upon the American people to observe this month with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10885
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Rules and Regulations

Federal Register
Vol. 53, No. 93
Friday, May 13, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 613]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 613 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 365,000 cartons during the period May 15 through May 21, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 613 (§ 910.913) is effective for the period May 15 through May 21, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on May 10, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been appraised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.913 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.913 Lemon Regulation 613.

The quantity of lemons grown in California and Arizona which may be handled during the period May 15, 1988, through May 21, 1988, is established at 365,000 cartons.

Dated: May 11, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-10910 Filed 5-12-88; 8:45 am]
BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 86-002F]

Imported Product; Change in Refused Entry Procedures; Elimination of Certain Sealing Requirement; Addition of Controlled Pre-Stamping Provision

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat inspection regulations to require that all consignments of product refused entry into the United States be permanently marked "U.S. Refused Entry." The final rule also amends the Federal meat inspection regulations and the poultry products inspection regulations by providing for "controlled pre-stamping" under certain conditions and by deleting a requirement that refused entry product moving within the United States be sealed with the official import seal. Permanent marking of refused entry product will facilitate keeping such product out of United States' commerce. Sealing will no longer

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be required once product is permanently marked refused entry. Addition of the controlled pre-stamping provision will ease congestion at loading docks, reduce the chance of product spoilage, and lessen inspection time.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Manis, Director, Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2953.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator of the Food Safety and Inspection Service has determined that this rule is not a major rule under Executive Order 12291. Permanent marking of product that has been refused entry and eliminating the sealing requirement for such product will enable the Agency to more effectively utilize its resources, because Agency personnel will no longer have to seal product or maintain visual control over such product until it has left the United States or has been delivered to an animal food manufacturer. Also, since only .51 percent of imported product was refused entry in fiscal year 1986, permanent marking of refused entry product is expected to have little or no impact on those entities who import product. Providing for controlled pre-stamping is expected to lessen inspection time for both the industry and the Agency because it will facilitate transportation of pre-stamped product from the establishment and should ease congestion at loading/unloading dock areas.

Effect on Small Entities

The Administrator of the Food Safety and Inspection Service has determined that this rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). Permanent marking of product that has been refused entry and eliminating the sealing requirement for such product will enable the Agency to more effectively utilize its resources, because Agency personnel will no longer have to seal product or maintain visual control over such product until it has left the United States or has been delivered to an animal food manufacturer. Also, since only .51 percent of imported product was refused entry in fiscal year 1986, permanent marking of refused enty product is expected to have little or no impact on small entities who import product. Providing for controlled pre-stamping is expected to lessen inspection time for both the industry and the Agency and ease congestion at loading/unloading dock areas. Product can be distributed from the establishment once reinspection is completed instead of being held there until an inspector can return to the establishment to supervise the stamping process.

Paperwork Requirements

This rule requires that import establishments desiring to operate under the controlled pre-stamping provision apply for initial approval to the appropriate Import Field Office supervisor. This application should be in the form of a letter and should include certain information. Once approved for the controlled pre-stamping provision, the establishment is required to maintain a daily log which contains information on the product(s) that is to be pre-stamped. Specific information requirements for the application and the log are outlined in the regulations. These application and recordkeeping requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) as control number 0583-0015.

Background

On June 17, 1987, FSIS published a proposed rule (52 FR 23041) to amend the Federal meat inspection regulations by requiring that all consignments of product refused entry into the United States be permanently marked "U.S. Refused Entry." FSIS also proposed to amend the Federal meat inspection regulations and the poultry products inspection regulations by providing for "controlled pre-stamping" under certain conditions and by deleting a requirement that refused entry product moving within the United States be sealed with the official import seal. These actions resulted from a reexamination of policies and procedures in effect for import inspection when authority and responsibility for import inspection activities were transferred from FSIS's Meat and Poultry Inspection Operations to its International Programs.

Previous Regulatory Actions

On August 19, 1982, FSIS published an interim rule (47 FR 36109), effective immediately, that established new procedures for handling imported product to decrease the likelihood that "refused entry" meat and meat food products and poultry products would enter into United States' commerce. Among the actions taken in the interim rule were prohibitions on (1) the application of the "U.S. Inspected and Passed" markings on meat and meat food products and poultry products prior to final import inspection, also known as controlled stamping or pre-stamping; and (2) the movement of any refused entry product within the United States except under seal. In addition, this interim rule also required that all consignments of meat and meat food products refused entry be marked "U.S. Refused Entry." This was consistent with a 1982 General Accounting Office (GAO) recommendation in its audit of FSIS's import inspection program that FSIS should take action by "Requiring the stamping of all rejected products on each carton or carcass as 'U.S. Refused Entry' * * *."

On April 13, 1983, FSIS published a final rule (48 FR 15887) confirming the interim rule, as published, with one exception. The final rule did not include the provision that required all consignments of meat and meat food products refused entry to be marked "U.S. Refused Entry." Prior to the August 1982, interim rule, containers of rejected product were identified by a temporary placard or label. Permanent marking of the individual product containers as "U.S. Refused Entry" was done at the discretion of the area supervisor. In the preamble to the final rule, the Agency stated that the interim rule unintentionally implied that marking of all refused entry consignments was required in addition to or instead of normal identification, which is usually by label or placard. The Agency then stated that, after reconsideration, it was determined that the change requiring permanent marking was not warranted.

Permanent Marking of Refused Entry Product

Currently, containers of refused entry product are identified with temporary placards placed on the product containers. These placards are removed once the product (1) has left the United States, (2) has been converted to animal food, or (3) has been destroyed. However, assuring proper disposition of refused entry product, which is identified with temporary placards, requires labor-intensive supervision and control by Program inspectors. A Program employee or employees must maintain control over the product until it is loaded on a vessel, has left the United States, is delivered to an animal food manufacturer, or is destroyed for human food purposes. Controlling the movement of refused entry product is also an activity that is performed on

demand. This means that inspectors generally have to interrupt normal inspection duties to meet an establishment's request to move refused entry product.

The Agency completed a study designed to compare, in terms of inspector hours expended, the costs of inspecting and passing lots of imported products to the costs of inspecting and controlling refused entry lots of imported products. In the 26 cases studied, the Agency found that the tasks involved in refusing entry take four times as long as the tasks required to inspect the lot. The study showed that, on the average, it takes approximately 1 hour to inspect and pass a lot, and approximately 4 hours to inspect and process a refused entry lot.

In August of 1985, 36 countries in the Western Hemisphere met at the Inter-American Conference on Food Protection and unanimously adopted one recommendation that pertained specifically to refused entry product:

> International food shipments rejected by an importing country because of noncompliance with safety requirements should not be reshipped to other countries, and a mechanism should be developed to quickly inform other countries of such shipments.

In addition, several Caribbean nations and Canada have asked the United States to ban the shipment of certain types of refused entry product to their countries. Permanent marking of refused entry product would alert importing countries of previously rejected product. FSIS is sympathetic to the needs of receiving countries for clear, unequivocal identification of United States refused entry product. Instances in which the previous history of such product has been concealed from the receiving country do not promote responsible trade in meat food products.

Therefore, on June 17, 1987, FSIS proposed to amend § 327.10(c) of the Federal meat inspection regulations (9 CFR 327.10(c)) (52 FR 23041) to require that each packing unit of all consignments of meat or meat food products refused entry or each carcass be marked "U.S. Refused Entry." This reflected FSIS's belief that Customs' control over the bonded carriers that transport refused entry product, coupled with permanent marking of refused entry product, will provide adquate safeguards to assure the proper disposition of such product. In addition, requiring the marking of refused entry meat products is consistent with the existing requirement that refused entry poultry products be so marked (9 CFR 381.204).

Elimination of Sealing Requirement

Currently, § 327.13(b) of the Federal meat inspection regulations (9 CFR 327.13(b)) and § 381.202(b) of the poultry products inspection regulations (9 CFR 381.202(b)) require that refused entry product be sealed before it is transported within the United States. This requirement was promulgated as part of the August 1982 interim rule and April 1983 final rule to assure that such refused entry product would not be diverted to human food channels.

On June 17, 1987, FSIS proposed to delete this product sealing requirement (52 FR 23041) because the proposed permanent marking of refused entry product would make sealing product containers to maintain their identity unnecessary. Documentation on the movement of all refused entry product would continue to be required by FSIS. This documentation, together with the permanent marking of the affected product containers or carcasses, and the fact that carriers must be bonded under Customs' regulations, is sufficient to assure that the product will be shipped from the United States, delivered to an animal food manufacturer, or destroyed for human food purposes.

Controlled Stamping Provision

This rule also reinstates the practice known as controlled pre-stamping, that is, placing the "U.S. Inspected and Passed" mark on imported product before import inspection has been completed. This practice has developed informally over the years as a convenience to importers to expedite the unloading of ships. However, in 1982 FSIS prohibited the practice of controlled pre-stamping imported products in the interim final rule referenced previously, because the USDA Office of the Inspector General (OIG) objected to the policy of controlled pre-stamping asserting that pre-stamping reduced FSIS's control of imported product found to be adulterated or misbranded.

USDA's decision in 1982 to end controlled pre-stamping was vigorously opposed by importers and was subsequently criticized by GAO. GAO noted in a June 1982 letter to the Agency that based on its observations and discussions with FSIS officials, importers, and cold storage facility firms "it appears that the elimination of pre-stamping is resulting in additional product handling by cold storage facility (service) employees, increased inspector time, congestion at cold storage facility loading docks, and, in some cases, may be adversely affecting the quality of the imported products." GAO also questioned whether FSIS, in tightening its controls over refused entry product, had considered marking refused entry products as "U.S. Refused Entry" and if it was so considered, why did FSIS not implement this procedure rather than eliminating pre-stamping. GAO did state that it was aware of problems in controlling product that was pre-stamped as "inspected and passed" and subsequently refused entry, but felt that proper precautionary measures could be instituted to eliminate or minimize these problems.

Because of the criticism of the decision to end controlled pre-stamping, an Agency task force reviewed the issue and suggested various controls under which controlled pre-stamping might be reinstituted. The following control measures were proposed at that time: (1) Limiting controlled pre-stamping to only those lots that will be inspected the same day, (2) requiring that all product which receives controlled pre-stamping remain at the establishment until import inspection occurs, (3) requiring inspection marks to be removed from containers refused entry on the day a refused entry determination is made (under FSIS' direct supervision and, if overtime, on a reimbursable fee basis), (4) denying controlled pre-stamping to those lots required to be held at the establishment pending the receipt of laboratory results, (5) requiring the establishment to apply for permission from the Import Field Office (application signed by company official, acknowledging intent to comply), (6) requiring the establishment to reapply each year, and (7) vesting local import inspection personnel with the authority to suspend controlled pre-stamping on the spot.

Subsequently, in the 1987 porposal, FSIS proposed to amend §§ 327.10 and 381.204 to reinstitute controlled pre-stamping subject to these controls (52 FR 23041). In addition, it was proposed that controlled pre-stamping be provided only at port of entry locations.

U.S. Customs Service personnel have reviewed the proposed controls and have agreed to pursue any violation of the control provisions by lifting the Customs' bond in effect of the product.

Comments on the Proposed Rule

FSIS received 3 comments in response to the proposed rule: 1 from a trade association, 1 from an industry member, and 1 from a representative of a New Zealand trade association. The following are the issues raised by the commenters and FSIS's response to each.

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Comment: Two of the commenters objected to permanent marking of product as "U.S. Refused Entry." One of these commenters stated that permanent marking was not within the authority of the Federal Meat Inspection Act (FMIA). The other commenter stated that product could be refused entry and, thus, so marked solely for "procedural defects" not related to the quality of the product. This commenter also stated that such permanent marking of product could be disproportionate to the kind of problem that caused the product to be rejected.

Response: The FMIA provides the Secretary of Agriculture with clear authority to regulate meat products offered for importation into the United States. Under section 20 of the FMIA, the Secretary is responsible for assuring that imported products do not enter United States commerce if they are found to be adulterated or misbranded or otherwise not in compliance with any provision of the FMIA or regulations thereunder applicable to such product in commerce within the United States, and is authorized to prescribe terms and conditions for the destruction of products refused entry unless they are exported. Permanent marking is a means to keep "refused entry" products out of United States commerce and, as discussed in the preamble, to inform foreign countries of rejected product shipments, regardless of cause. Indelible marking is the most effective and efficient means of providing clear, unequivocal identification of such product to third countries.

Imported product is not likely to be refused entry due solely to innocuous "procedural defects." Under current procedures, if a shipment of product is rejected because of missing or incomplete documentation, FSIS provides the exporting country an opportunity to correct the problem before the product is officially rejected. Also, when product undergoes re-inspection, noted defects are classified according to their severity and number. The types and number of defects determine whether a lot of product passes or fails reinspection. If product is refused entry and is intended for reexport to a third country, FSIS notifies the country of the specific cause of the rejection. In this way, one shipment can be distinguished from another and the foreign country can decide whether to accept or reject the shipment based on the reasons for rejection.

Comment: One commenter requested that FSIS provide a 24-hour period between the time product is pre-stamped and is then ultimately reinspected by FSIS. (The proposal stipulated that pre-stamping would only be provided for lots of product that would be reinspected on the same day.) The commenter stated that a 24-hour period would result in increased efficiency for both FSIS and the industry.

Response: FSIS intends to retain this provision as proposed—to provide controlled pre-stamping only to those lots that the inspector has determined will be reinspected later the same day. This limitation—that the inspector completes both facets of the reinspection the same day—ensures that the same import inspector and establishment employee are communicating about the same products. It minimizes the potential for misunderstandings that might result in the distribution of pre-stamped product from the establishment before completion of reinspection.

One change has been made in the language of §§ 327.10(d) and 381.204(f) to indicate specifically that the application for controlled pre-stamping will be approved by the Director, Import Inspection Division, not the Administrator, as was stated in the proposed rule.

Final Rule

After careful consideration of the comments received and all other available information, FSIS is amending Part 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations as set forth below.

List of Subjects

9 CFR Part 327

Imported product, Meat inspection.

9 CFR Part 381

Imported product, Poultry inspection.

PART 327—IMPORTED PRODUCT

1. The authority citation for Part 327 is revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), unless otherwise noted.

2. Paragraphs (b) and (c) of § 327.10 are revised and a new paragraph (d) is added to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(b) The outside containers of all products offered for importation from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon inspection by Program inspectors, are found not to be adulterated or misbranded and to be otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26. Such inspection legend shall be placed upon the containers or the products themselves only upon completion of official import inspection except as provided in paragraph (d) of this section.

(c) Product which is inspected and rejected shall be marked "U.S. Refused Entry" as shown in § 327.26(c). Such marks shall be applied to the shipping container or the product itself if not in a container.

(d) The inspection legend may be placed on containers of product before completion of official import inspection if the containers are being inspected by an import inspector who reports directly to an Import Field Office Supervisor; the product is not required to be held at the establishment pending the receipt of laboratory test results; and a written procedure for controlled stamping, submitted by the import establishment and approved by the Director, Import Inspection Division, is on file at the import inspection facility where the inspection is to be performed.

(1) The written procedure for controlled pre-stamping should be in the form of a letter and shall include the following:

(i) That stamping under this part will be limited to those lots of product which can be inspected on the day that certificates for the product are examined;

(ii) That all product which has been pre-stamped will be stored in the facility where the import inspection will occur;

(iii) That inspection marks applied under this part will be removed from any lot of product subsequently refused entry on the day the product is rejected; and

(iv) That the establishment will maintain a daily stamping log containing the following information for each lot of product: the date of inspection, the country of origin, the foreign establishment number, the product name, the number of units, the shipping container marks, and the MP-410 number covering the product to be inspected. The daily stamping log must be retained by the establishment in accordance with the requirements of § 320.3.

(2) An establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that the establishment has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision to the Administrator, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping privilege was wrongfully cancelled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. The cancellation of the controlled pre-stamping privilege will be in effect until there is a final determination of the proceeding.

(Approved by the Office of Management and Budget under control number 0583-0015)

3. Paragraph (b) of § 327.13 is revised to read as follows:

§ 327.13 Foreign products offered for importation; reporting of findings to customs; handling of articles refused entry.

* * * * *

(b) Upon the request of the Director of Customs at the port where a product is offered for clearance through the customs, the consignee of the product shall, at the consignee's own expense, immediately return to the Director any product which has been delivered to consignee under § 327.7 and subsequently designated "U.S. Refused Entry" or found in any respect not to comply with the requirements in this part.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

5. Paragraph (b) of § 381.202 is revised to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(b) Upon the request of the Director of Customs at the port where a product is offered for clearance through the customs, the consignee of the product shall, at the consignee's own expense, immediately return to the Director any product which has been delivered to consignee under this subpart and subsequently designated "U.S. Refused Entry" or found in any request not to comply with the requirements in this subpart.

* * * * *

6. Section 381.204 is amended by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

(a) The outside containers of all products offered for importation from any foreign country and accompanied with a foreign inspection certificate as required by this subpart, which, upon inspection by Program inspectors, are found not to be adulterated or misbranded and to be otherwise eligible for entry into the United States under this subpart, shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon the containers only upon completion of official import inspection except as provided in paragraph (f) of this section.

* * * * *

(f) The inspection legend may be placed on containers of product before completion of official import inspection if the containers are being inspected by an import inspector who reports to an Import Field Office Supervisor, the product is not required to be held at the establishment pending the receipt of laboratory test results; and a written procedure for controlled stamping, submitted by the import establishment and approved by the Director, Import Inspection Division, is on file at the import inspection facility where the inspection is to be performed.

(1) The written procedure for controlled pre-stamping should be in the form of a letter and shall include the following:

(i) That stamping under this subpart will be limited to those lots of product which can be inspected on the day that certificates for the product are examined;

(ii) That all products which have been pre-stamped will be stored in the facility where the import inspection will occur;

(iii) That inspection marks applied under this part will be removed from any lot of product subsequently refused entry on the day the product is rejected; and

(iv) That the establishment will maintain a daily stamping log containing the following information for each lot of product: the date of inspection, the country of origin, the foreign establishment number, the product name, the number of units, the shipping container marks, and the MP-410 number covering the product to be inspected. The daily stamping log must be retained by the establishment in accordance with the requirements of § 381.177.

(2) An establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that the establishment has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision to the Administrator, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping was wrongfully cancelled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. The cancellation of the controlled pre-stamping privilege will be in effect until there is a final determination in the proceeding.

(Approved by the Office of Management and Budget under control number 0583-0015)

Done at Washington, DC, on April 22, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-10694 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 335

[Docket No. 86-048F]

Meat and Poultry Inspection; Criminal Violations; Proceedings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; confirmation of interim rule.

SUMMARY: On April 27, 1987, the Department of Agriculture published an interim rule and solicited comments (52

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FR 13827) on an amendment to the Federal meat inspection regulations which provides that persons, firms, and corporations suspected of having violated the Federal Meat Inspection Act (FMIA) be provided reasonable notice that USDA intends to report such violations to the Department of Justice for prosecution in a criminal proceeding, and that they have an opportunity to present to USDA views with respect to such proceeding. The interim rule also designated five exceptions, outlining situations in which notice and an opportunity to present views would not be given to alleged violators. USDA is adopting the interim rule as a final rule without change.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert W. Ganter, Assistant Deputy Administrator, Compliance Program, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been designated a "non-major" rule under E.O. 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant effect on competition, employment, investment, productivity, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation concerns procedures to be followed by the Department prior to referral for prosecution of suspected violators of the FMIA. As such, it does not address the economic or marketing issues which are the subject of E.O. 12291.

Effect on Small Entities

The Administrator of FSIS has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA), Pub. L. 96-354 (5 U.S.C. 601 *et seq.*). This rule does not raise the economic considerations which are the subject of the RFA. Accordingly, the RFA is not applicable to this rulemaking.

Background

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary has responsibility to assure consumers that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. In this regard, the FMIA provides that certain violations of the Act will subject individuals and firms to criminal sanctions unless, as provided by section 406(b) of the FMIA (21 U.S.C. 676(b)), the violations are minor and the Secretary determines that the public interest would be adequately served by a suitable written notice of warning.

Section 403(c)(2) of the Processed Products Improvement Act (Title IV of the Futures Trading Act of 1986 (Pub. L. 99-641)) added a new section 406(c) to the FMIA. The new section requires that the Secretary give reasonable notice and an opportunity to present views to persons suspected of having violated the FMIA, prior to the Secretary's referral to the Department of Justice of charges for criminal prosecution. The new section also authorizes the Secretary to make exceptions to the requirement of prior notice by promulgation of regulations. Because section 406(c) of the FMIA went into effect upon enactment of the Processed Products Improvement Act of 1986, the Administrator of FSIS determined it was essential to issue regulations to implement it in order to protect certain ongoing and future criminal investigations and cases. Accordingly, an interim rule was published on April 27, 1987, to amend Title 9 of the Code of Federal Regulations by adding a new Subpart titled "Criminal Violations" (52 FR 13828). The Administrator determined that the ability of the Department to protect the public by investigating and prosecuting suspected violators of the FMIA could have been compromised without publication of the interim rule.

Description of Interim Rule on Notice of Proceedings and Opportunity for Presentation of Views

The interim rule provided that persons suspected of violating the FMIA will be provided reasonable notice that USDA intends to report such violations for prosecution in a criminal proceeding, and that, prior to reporting, such persons will have an opportunity to present to USDA views with respect to such proceeding. The notice will summarize the suspected violations and will inform the suspected violator that the violator has a specified number of days from receipt of the letter to respond, orally or in writing, to the Director, Evaluation and Enforcement Division, Compliance Program, FSIS. The notice will be sent by registered or certified mail. All views presented in response to and in accord with the notice will be considered before reporting the violations for prosecution, and all documentation of such views will be incorporated into the Department's official record in the matter.

The interim rule also identified the following five situations in which there are compelling public interests that preclude the giving of notice and an opportunity to present views prior to the reporting of suspected violations for criminal prosecution:

1. When there is the possibility for destruction or alteration of evidence, or where disclosure could result in injury to persons or property.

2. When there is the possibility of flight of a suspected violator to avoid prosecution.

3. When there is the possibility of the compromise of special investigative techniques, such as undercover or other covert operations.

4. When the impending referral involves suspicion of bribery and related offenses, or clandestine slaughtering and/or processing operations.

5. When the impending referral for prosecution is part of a broader investigation involving non-Act violations, and the Act and non-Act violations are jointly referred for prosecution.

These exceptions address situations where giving notice would compromise an investigation and negatively affect the Department's investigative and enforcement programs.

Summary of Comments

FSIS received two comments from trade associations in response to the interim rule. Both comments supported the general intent of the interim rule, but expressed reservations about various aspects of the exceptions. The following are the issues raised by the comments and FSIS's response to each:

1. *Comment:* One commenter asked that the "use of any exception * * * be scrutinized by judicial review before the exception may be exercised by the department." The commenter expressed concern that the absence of the "judicial reviews" in the interim rule represents a due process deficiency.

Response: The Processed Products Improvement Act of 1986 provided no mechanism for the type of "judicial review" requested by the commenter. Congress intended for the creation of exceptions by regulation and the exercise of the exceptions without an interim level of review. The conducting of such review would be contrary to that intent. Furthermore, the delay involved in requiring the Agency to go into court each time it intended to invoke one of the exceptions would effectively thwart the use of the exception and endanger investigations in the manner this rulemaking is intended to prevent.

2. *Comment:* The other commenter expressed concern that the exceptions to the prior notice requirement were overly broad. The commenter was especially concerned about the exception which referred to the joining of Act and non-Act violations, suggesting that the Department could subvert the prior notice requirement by deliberately joining non-Act violations.

Response: In situations where Act and non-Act violations would be jointly referred for prosecution, USDA personnel would be involved in the matter with persons from other government agencies. In many cases, the prior notice and an opportunity to present views would have a negative impact on the pursuit of non-Act violations by parties other than USDA. In many of the cases, the discovery of FMIA violations is incident to a broader investigation of another matter. Therefore, the rule affords the Secretary discretion to make exceptions to the prior notice requirement in such situations.

Final Rule

List of Subjects in 9 CFR Part 335

Meat inspection, Withdrawal of inspection, Administrative practice and procedure, Criminal violations, Criminal procedure.

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

Accordingly, we are adopting as a final rule, without change, the interim rule that added Subpart E and that was published at 52 FR 13827-28 on April 27, 1987.

Authority: Section 406, Pub. L. 99-641, 100 Stat. 3571; 21 U.S.C. 676.

Done at Washington, DC, on: April 27, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-10693 Filed 5-12-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-31-AD, Amdt. 39-5923]

Airworthiness Directives; Lockheed Aeronautical Systems Company Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Lockheed Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes by individual telegrams. This AD required deactivation of the AC electric motor-driven hydraulic pumps. This action is prompted by a report of smoke and fire damage resulting from a failed AC electric motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electrical components. This condition, if not corrected, could result in severe fire damage to the airplane on the ground or in flight.

DATES: Effective June 3, 1988. This AD was effective earlier to all recipients of telegraphic AD T88-07-51, dated March 31, 1988.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank California 91520, Attention: Commercial Order Administration, Dept. 65-33, Unit 33, Plant B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: On March 31, 1988, the FAA issued telegraphic AD T88-07-51, applicable to Lockheed Aeronautical Systems Company Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes, which requires deactivation of the AC electric motor-driven hydraulic pumps.

That action was prompted by a report where, during a walk-around inspection of a Lockheed Model L-1011-385 series airplane, smoke was observed in the left main landing gear wheel well and hydraulic fluid was leaking from the hydraulic service center. A visual inspection of the hydraulic service center revealed that the "C" system AC electric motor-driven hydraulic pump (Lockheed Control No. 671548-111, Vickers Part No. 428153) electrical connector shell was severely overheated and a hole was burned through the aircraft wiring connector shell and the pump half of the connector. There was fire damage from the resulting pattern of burning hydraulic fluid spray mist released from the burn-through on the electrical connector. Fire damaged the Direct Lift Control (DLC) servo, right hand spoiler No. 1 push-pull cable, servo wiring, the flap Power Drive Unit (PDU), flap PDU input bungees, aileron trim anti-backlash springs, and mid/aft lavatory waste duct assembly. This condition, if not corrected, could result in severe fire damage to the airplane on the ground or in flight.

Since issuance of the telegraphic AD, Lockheed has issued Lockheed TriStar L-1011 Alert Service Bulletin 093-29-A088, dated April 14, 1988, which describes procedures for deactivation of the AC electric motor-driven hydraulic pumps. The final rule has been revised to reflect this service bulletin as an acceptable means for accomplishing the requirements of this AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule

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since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Applies to Lockheed Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes, as listed in Lockheed TriStar L-1011 Alert Service Bulletin 093-29-A088, dated April 14, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire from a failed AC Electric Motor-Driven Hydraulic Pump electrical connector, in combination with leaking hydraulic fluid from the failed electrical components, accomplish the following:

A. Within 100 flight hours after the effective date of this AD, accomplish the following:

1. On the Flight Engineer/Second Officer's (FE/SO) overhead CB panel CB2, open and collar circuit breakers L12 "AC Pump B3" and L22 "AC Pump C3," using PACO plastic ring P/N S-4833959-503, or equivalent.

2. As a verification that power has been removed from affected pumps, on the FE/SO hydraulic system control panel, cycle the AC pumps switchlights and verify that the "ON" legends do not illuminate.

B. Accomplishment of the requirements of paragraph A., above, in accordance with Lockheed TriStar L-1011 Alert Service Bulletin 093-29-A088, dated April 14, 1988, is considered an acceptable means of compliance with this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, Unit 32, Plant B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 3, 1988.

It was effective earlier to all recipients of telegraphic AD T88-07-51, issued March 31, 1988.

Issued in Seattle, Washington, on May 3, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10712 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-45-AD; Amdt. 39-5922]

Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8-70 series airplanes, which requires inspection and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at all the engine pylons. This amendment is prompted by four recent reports of generator power feeder cable chafing against clamp and support bracket resulting in shorting to the clamp, bracket, and structure in the pylon area. This condition, if not corrected, could result in a fire on the ground if a fuel leak exists in the pylon.

DATES: Effective June 3, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: Two operators have recently reported four instances of electrical generator power feeder cable failure in the pylon area. This condition has been attributed to cables chafing against clamps and support brackets, resulting in shorting to the clamp, bracket, and structure. Subsequent investigation revealed that chafing can occur when cable movement within the clamps pulls the cushion from the clamp and exposes the metal of the clamp or when excessive droop exists in the cable. In addition, it has been determined that wire-to-wire chafing can occur in unsupported cable areas between stations YN = 292.800 and YN = 299.000. This chafing occurs in an area where fuel vapor can accumulate during certain conditions when the airplane is on the ground and a fuel leak exists. If nor corrected, generator power feeder cable arcing can ignite the fuel vapor.

The FAA has reviewed and approved McDonnell Douglas Model DC-8-70 Service Bulletin A24-72, dated April 6, 1988, which describes procedures for inspecting and repairing or replacing, if necessary, the generator power feeder cable, support brackets, and clamps in each of the pylons. The service bulletin also describes procedures for inspecting the cable for excessive droops and for modifying the cable to minimize droops, if necessary. Prior to the issuance of Service Bulletin A24-72, dated April 6, 1988, a telex copy of the service bulletin, which was approved by the FAA on March 31, 1988, was transmitted to all DC-8-70 operators by the manufacturer.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and repair, replacement or modification, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

Part 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-70 series airplanes, certificated in any category. Compliance required as indicated below.

To prevent the possibility of a fire that can be attributed to chafed generator feeder cable in a fuel contaminated pylon, accomplish the following:

A. Within 30 days after the effective date of this airworthiness directive (AD), unless previously accomplished within the last 3,500 flight hours, inspect the generator power feeder cables, support brackets, and clamps between bulkhead feed-through at Station YN = 278.500 and Terminal Strip S3-7000 at engine pylons 1, 2, 3, and 4, for evidence of arcing, burning, chafing, or damage and cable droop, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A24-72, dated April 6, 1988.

1. If no evidence of arcing, burning, chafing, damage, or drooping exists, proceed to paragraph A.3., below.

2. If evidence of arcing, burning, chafing, damage or drooping exists, repair or replace parts, as required, in accordance with the service bulletin.

3. Verify that nuts securing cable terminals to Terminal Strip S3-7000 are tightened to a torque of 120 to 130 inch-pounds.

B. Repeat the procedures specified in paragraph A., above, at intervals not to exceed 3,500 flight hours.

C. Alternate means of compliance of adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 3, 1988.

Issued in Seattle, Washington, on May 3, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10713 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-10]

Rock Springs, WY; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: During June 1987, the Rock Springs, Wyoming (FAA) Flight Service Station reached personnel staffing level sufficient to return to full-time operations. Therefore, the Control Zone at the Rock Springs Sweetwater County Airport has returned to full-time status.

DATES: Effective Date—0901 UTC, June 30, 1988. Comments must be received on or before June 20, 1988.

ADDRESSES: Send comments on the rule to: Federal Aviation Administration, Northwest Mountain Region, Air Traffic Division, ANM-530, 17900 Pacific Highway South, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel Office, Federal Aviation Administration, 17900 Pacific Highway South, Seattle, WA 98168.

An informal docket may also be examined during normal business hours at the Airspace and System Management Branch, ANM-530, Federal Aviation Administration, 17900 Pacific Highway South, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-10, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Request for Comment on the Rule

Although this action is in the form of a final rule, which involves the change of status of the Rock Springs, Wyoming Control Zone from part-time to full-time and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal

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Aviation Regulations (14 CFR Part 71) is to change the status of the Rock Springs, Wyoming Control Zone from part-time to full-time.

Section 81.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 1.60.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Rock Springs, Wyoming [Amended]

By deleting the words "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on April 25, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-10710 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-5]

Amendment to Transition Area; Elizabeth City, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the transition area, Elizabeth City, North Carolina, deletes an arrival area extension. This action will lessen the burden on the public by raising the floor of controlled airspace from 700 to 1200' above the surface in this particular area. The Weeksville RBN which previously supported an instrument approach procedure has been decommissioned. The associated NDB standard instrument approach procedure has been cancelled. Consequently, a need no longer exists for the arrival extension.

DATE: *Effective Date:* 0901 UTC, June 30, 1988.

ADDRESS: The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 763-7646.

The Rule

This amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to remove an arrival extension from the description of the Elizabeth City, North Carolina, transition area. The arrival extension was predicated on the Weeksville RBN and an associated standard instrument approach procedure (SIAP). The Weeksville RBN has been decommissioned and the NDB SIAP has been cancelled. Consequently, a need no longer exists for the arrival extension. Because this change reduces the burden on the public and is so minor, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Elizabeth City, NC [Amended]

By deleting the phrase, "within 3 miles each side of the 128° bearing from Weeksville RBN, extending from the 8.5-mile radius area to 8.5-miles southeast of the RBN;" from the present description.

Issued in East Point, Georgia, on April 28, 1988.

William D. Wood,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 88-10711 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 80464-8064]

Editorial Corrections and Clarifications Based on Amendments to the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which lists those commodities subject to Department of Commerce export controls. This rule, which neither expands nor limits the provisions of the Export Administration Regulations (15 CFR 368-399), makes editorial clarifications that conform certain regulatory provisions to recent regulatory amendments to the Commodity Control List, as outlined below:

(1) Supplement No. 1 to Part 373 of the Export Administration Regulations lists certain entries of the CCL that are excluded from certain special license procedures. CCL entry 4590B is removed from the Supplement because commodities previously controlled by that entry are now part of ECCN 1565A.

(2) Certain commodities previously controlled under ECCN 1529A are now listed in 1533A. At the time of the revision of 1533A, some language that should have been transferred from 1529A was inadvertently omitted. This rule adds the correct language to the latest 1533A revision.

(3) For the sake of clarity, a note is added for ECCN 5999B, and the *GFW Eligibility paragraph* for ECCN 1565A is amended.

(4) For the sake of clarity, a paragraph is amended for ECCNs 1354A and 1129A to remove incorrect terminology. In addition, certain language inadvertently omitted from ECCNs 1502A and 1702A is added.

EFFECTIVE DATE: This rule is effective May 13, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Parts 373 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Parts 373 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 373—[AMENDED]

2. In supplement No. 1 to Part 373, the entry 4590 is removed.

§ 399.1 Supplement No. 1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), paragraph (a) of ECCN 1129A is amended by removing the phrase "measured at atmospheric pressure".

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the term "digitally controlled" to read "stored program controlled" in the second Technical Note and in the Advisory Note for the People's Republic of China.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN, 1502A is amended by revising the Advisory Note for the People's Republic of China reading as follows:

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of thermal imaging cameras containing pyroelectric vidicons, designed for fire fighting and buried detection, with optimum sensitivity in the wavelength range from 8 to 14 microns.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the *GFW Eligibility* paragraph; by redesignating Note 6 as (Advisory) Note 8; by removing from the second Technical Note the last sentence, which reads "(For logic and network analyzers and transient records, see ECCN 1529A.)"; and by adding a paragraph (c) to (Advisory) Note 7 for

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the People's Republic of China, to read as follows:

1533A * * *

* * * * *

CFW Eligibility: Commodities that meet the technical specifications described in Advisory Notes 5 and 6 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c).

* * * * *

(Advisory) Note 7 for the People's Republic of China: * * *

* * * * *

(c) Spectrum analyzers employing time compression of the input signal for Fast Fourier Transform techniques not capable of:

(1) Analyzing signals with a frequency greater than 100 kHz if the instrument uses time compression, or

(2) Calculating 512 complex lines in less than 50 ms.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1585A is amended by revising in the *CFW Eligibility* paragraph the phrase "Advisory Notes 3, 5, 7, and 9" to read "Advisory Note 3, 5, 7, or 9".

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1702A is amended by adding a new (Technical) Note 3 and (Technical) Note 4, to read as follows:

1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons as described in this entry.

* * * * *

(Technical) Note 3: The higher test temperature of 700° F sustained for six hours is intended to simulate in a shorter time the long-term thermal effects at 650° F.

(Technical) Note 4: A schematic of the test apparatus is contained in Mil Spec MIL-H-27601A (USAF).

* * * * *

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous) ECCN 5999B is amended by adding a "Note" at the end of the entry to read as follows:

5999B Saps; specially designed implements of torture; straight jackets; plastic handcuffs; police helmets and shields; and parts and accessories, n.e.s.

* * * * *

Special Crime Controls: * * *

Note: See ECCN 1746A for controls on police helmets containing 50% or more aromatic polyamide fiber by value.

Dated: May 10, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-10750 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3225]

The Silver Group, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a San Francisco-based marketer of artificial tanning devices from misrepresenting that its devices do not pose for users a risk of any harmful side effect associated with sun exposure. Respondent is required to have reliable and competent scientific evidence for any health or safety claim it makes in any advertisement.

DATES: Complaint and Order issued April 13, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Cleveland Regional Office, Federal Trade Commission, Suite 500-Mall Bldg., 118 St. Clair Ave., Cleveland, OH 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Wednesday, January 27, 1988, there was published in the **Federal Register**, 53 FR 2230, a proposed consent agreement with analysis In the Matter of The Silver Group, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.195 Safety; § 13.195-60 Product; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-10 Corrective advertising; § 13.533-20 Disclosures; § 13.533-40 Furnishing information to media; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Suntanning devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 88-10829 Filed 5-12-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-272; Re: Notice No. 652]

Realignment of the Boundary Common to the Alexander Valley and Chalk Hill Viticultural Areas

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes a realignment of the boundary common to the Alexander Valley and Chalk Hill viticultural areas so that vineyards immediately within the north-central leg of the boundary of the Chalk Hill viticultural area would be relocated to the southeastern corner of the Alexander Valley viticultural area. This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on January 20, 1988, at 53 FR 1492, Notice No. 652. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of viticultural areas as appellations of origins will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Specialist, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas. Section 4.25a(e)(1) of Title 27, Code of Federal Regulations, Part 4, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petitition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked. Establishment of the Chalk Hill and Alexander Valley Viticultural Areas.

With the issuance of T.D. ATF-155 on October 21, 1983 and T.D. ATF-187 on October 24, 1984, ATF established, respectively, the Chalk Hill and the Alexander Valley viticultural areas in Sonoma County, California. On August 26, 1986, ATF issued T.D. ATF-233 which made several revisions to the boundary of the Alexander Valley viticultural area including the extension of the southern leg of the boundary to include the Digger Bend area east of Healdsburg.

Petition

By letter dated August 20, 1987, Ms. Willi Martin-Hilliard and Mr. Richard Godwin, owners and operators of separate vineyards sited on the south-facing slopes of Bell Mountain, filed a petition to extend the boundary of the Alexander Valley viticultural area approximately one mile south in order to include land on which is sited 76 acres of vineyards in the watershed of Martin Creek which flows into Barnes Creek to Brooks Creek and the Russian River. The petition, researched and prepared by William K. Crowley, a professor of geography at Sonoma State University in Santa Rosa, California, documented the name recognition, history and physical features of this area and includes declarations of support from neighbors, grape growers and local winemakers.

The petition included evidence that the land in the area enjoys name recognition and shares similar geological history, topographical features, soils, and climatic conditions as adjoining land within the boundary of the Alexander Valley viticultural area.

Name

The Alexander Valley viticultural area was established 30 days after the issuance of T.D. ATF-187 which was published in the **Federal Register** on October 24, 1984.

In early 1981, the Hilliards subdivided their property and sold the more northerly portion to Mr. Godwin. Also in 1981, the Hilliards planted 55 acres of wine grape vines on their portion of the subdivided property. In 1983, Mr. Godwin established a 21-acre vineyard on his property. The Hilliards and Mr. Godwin stated that these vineyards are in closer proximity to vineyards planted in the Alexander Valley viticultural area than vineyards planted in either the Chalk Hill viticultural area or in the Russian River viticultural area. In fact, a part of Mr. Godwin's property, on which no grapes are presently planted, lies within the existing boundary of the Alexander Valley viticultural area.

The Hilliards have advised ATF that they were unaware until the Spring of 1986 that their vineyards had been excluded from the boundary established in November 1984 for the Alexander Valley viticultural area. Although the Hilliards planted their vineyards in 1981, they did not establish permanent residence on their property until November 1983.

Consequently, when ATF held a public hearing in Sonoma County in February 1983 to air the petition filed by the Alexander Valley Appellation Committee in 1981 and a second group's petition to include land north of Geyserville to the Mendocino County line, the Hilliards saw no need to give testimony at the hearing or to file a written comment.

The petition included a declaration of support from Mr. Frederick P. Furth, the petitioner for the Chalk Hill viticultural area. Included in Mr. Furth's letter was the statement "I have no objection to this (petition) and frankly have always considered your vineyards were in the Alexander Valley Appellation originally."

The petition also included letters of support from Messrs. Hank Wetzel, Russell H. Green, Jr., and Robert A. Young, wine grape growers in the Alexander Valley viticultural area, and wine producer Michael G. Dacres Dixon, all of whom were members of the Appellation Committee which filed the June 18, 1981, petition to establish the Alexander Valley viticultural area. All have demonstrated great concern that the Alexander Valley viticultural area be carefully defined and all maintain that these properties should have been included in the originally petitioned area.

The declarations supported the petitioners' statement that the vineyards planted in 1981 on the Hilliard property and in 1983 on the Godwin property "are most closely associated with the Alexander Valley, both by people living in the area and by their proximity to other Alexander Valley vineyards."

Climate

Thermograph readings for the petitioned area were taken in 1981 on the Hilliard property. These readings suggested that the vineyards lie on the boundary between Region I and Region II. The petition stated that the reading of 2,475 heat summation units "is similar to locations in the southern end of Alexander Valley, though obviously cooler than the central and northern portions." The petition noted that "because the property is in the boundary area of regular summer fog intrusions, readings could vary considerably from one year to the next, with the best guess that the (1981) reading is a relatively cool year."

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Soils

The petition stated that the principal soils of the Martin Creek area, namely, Felta very gravelly loams, Spreckels loam, and Yolo silt loam, "represent soil series and associations common to the existing Alexander Valley (viticultural area)."

Topography

The southeastern leg of the boundary of the Alexander Valley viticultural area extends in an easterly direction from the summit of Chalk Hill to just south of the summit of Bell Mountain. The Martin Creek area lies on the south-facing slopes of Bell Mountain. The vineyards are planted on low hills ranging from 300 to 400 feet above sea level. Part of the petitioned area was within the Frans Creek drainage and part was within the Brooks Creek drainage. The points of confluence where the waters in these streams flow into the Russian River were within the boundary of the Alexander Valley viticultural area. The terrain of the Chalk Hill viticultural area to the south and west of the petitioned area was higher in elevation and more rugged than that of the petitioned area.

Chalk Hill Viticultural Area

The proposal to revise the boundary of the Alexander Valley viticultural area affected a portion of the boundary common to the Chalk Hill viticultural area. The petitioners requested that the common boundary between the two viticultural areas be realigned so as to extend the southern leg of the boundary for the Alexander Valley viticultural area and to curtail the north-central leg of the boundary for Chalk Hill viticultural area.

The statement from the petitioner for the Chalk Hill viticultural area, the letters of support from the original petitioners for the Alexander Valley appellation, and the physical proximity of the vineyards in the petitioned area to vineyards within the present boundary of the Alexander Valley viticultural area supported the criteria for history and recognition of name. The limited climatic data suggested that the petitioned area lies in a transitional space between the inland "coastal warm" Alexander Valley viticultural area and the Chalk Hill viticultural area. The latter encompasses the higher elevation "coastal warm" areas near Mark West Springs as well as the "coastal cool" basin of the Russian River south of Fitch Mountain.

Notice of Proposed Rulemaking

On January 20, 1988, Notice No. 652 was published in the **Federal Register** with a 30-day comment period. The notice was titled "Realignment of the Boundary Common to the Alexander Valley and Chalk Hill Viticultural Areas." In that notice ATF invited comments from all interested parties. Three comments were received during the comment period.

One commenter with a winery located in Alexander Valley claimed that it used the appellation "Alexander Valley" since the 1975 vintage. The commenter supported the proposed realignment of the boundary. A second commenter supported the realignment. The commenter said that the area to be added to the Alexander Valley viticultural area had very similar climate, soil and topography to that viticultural area. The commenter concurred with the proposal to realign the boundary. The third commenter also concurred with the proposal because the realignment increasing the Alexander Valley viticultural area acreage would more accurately describe vineyard land that had similar geological history, topographical features, soils and climatic conditions.

Realignment of Common Boundary

The description of the boundary of the established Alexander Valley viticultural area, as found in 27 CFR 9.53, is amended to include all of section 28 and portions of sections 27, 29, 33 and 34 in Township 9 N., Range 8 W. The description of the boundary of the established Chalk Hill viticultural area, as found in 27 CFR 9.52, is amended to exclude all of section 28 and portions of sections 27, 29, 33 and 34 in Township 9 N., Range 8 W. The amended boundary description appears in the regulation portion of this rulemaking.

Miscellaneous

ATF does not wish to give the impression by approving this realignment of the boundary common to the Alexander Valley and Chalk Hill viticultural areas that it is approving or endorsing the quality of the wine derived from these two viticultural areas. ATF is approving these viticultural areas as being distinct and not better than other areas. By approving these realignments, wine producers within these areas are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Alexander Valley" and "Chalk Hill."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of 100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. ATF is amending § 9.53 of Subpart C of Title 27, Code of Federal Regulations, Part 9, by removing existing paragraphs (c)(27) and (c)(28), redesignating paragraphs (c)(29) through (c)(40) as paragraphs (c)(35) through (c)(46), and adding new paragraphs (c)(27) through (c)(34) to read as follows:

§ 9.53 Alexander Valley.

* * * * *

(c) *Boundary.* * * *

(27) Then south from said peak, in a straight line, approximately 0.2 mile to the point where Chalk Hill Road crosses Brooks Creek (on the Healdsburg Quadrangle map);

(28) Then southeasterly, approximately 1.3 miles, along the roadbed of Chalk Hill Road to the point near the confluence of Brooks Creek and Barnes Creek where Chalk Hill Road intersects an unnamed unimproved road (known locally as Spurgeon Road) that parallels Barnes Creek in section 32, T. 9 N., R. 8 W.;

(29) Then easterly, approximately 0.45 mile, along said road (known locally as Spurgeon Road) to the point where the road is intersected by an unnamed unimproved road (known locally as the access to the Shurtleff Ranch) in section 33, T. 9 N., R. 8 W.;

(30) Then continuing along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch), approximately 1.33 miles, in a generally easterly direction, to the eastern terminus of said road at a small dwelling along the north fork of Barnes Creek in section 34, T. 9 N., R. 8 W. on the Mark West Springs, California, Quadrangle map;

(31) Then easterly along the north fork of Barnes Creek, approximately 0.5 mile, to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects the east line of section 34, T. 9 N., R. 8 W.;

(32) Then north, approximately 0.65 mile, along the east lines of sections 34 and 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the eastern border of section 27, T. 9 N., R. 8 W.;

(33) Then in a generally northwesterly direction, approximately 1.07 miles, along said road to the point at which the road is crossed by the west line of section 27, T. 9 N., R. 8 W.;

(34) Then north, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the southeast corner of section 21, T. 9 N., R. 8 W.;

* * * * *

Par. 3. ATF is amending § 9.52 of Subpart C of Title 27, Code of Federal Regulations, Part 9, by removing existing paragraphs (c)(13) and (c)(14), redesignating paragraphs (c)(15) through (c)(24) as paragraphs (c)(21) through (c)(30), and adding new paragraphs (c)(13) through (c)(20) to read as follows:

§ 9.52 Chalk Hill.

* * * * *

(c) *Boundary.* * * *

(13) Then southerly, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the west line of section 27, T. 9 N., R. 8 W.;

(14) Then southeasterly, approximately 1.07 miles, along said road to the point at which the road is crossed by the east line of section 27, T. 9 N., R. 8 W.;

(15) Then southerly, approximately 0.65 mile, along the east lines of sections 27 and 34, T. 9 N., R. 8 W., to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects such line in section 34, T. 9 N., R. 8 W.;

(16) Then continuing along the north fork of Barnes Creek, approximately 0.5 mile, in a generally westerly direction to a small dwelling at the eastern terminus of an unnamed unimproved road (known locally as the access to the Shurtleff Ranch) in section 34, T. 9 N., R. 8 W.;

(17) Then continuing in a generally westerly direction, approximately 1.4 miles, along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch) to its intersection with an unnamed unimproved road (known locally as Spurgeon Road) in section 33, T. 9 N., R. 8 W. on the Healdsburg, California, Quadrangle Map;

(18) Then westerly, approximately 0.45 mile, along the unnamed unimproved road (known locally as Spurgeon Road) to the point where the road intersects Chalk Hill Road in section 32, T. 9 N., R. 8 W.;

(19) Then in a generally northwesterly direction, approximately 1.3 miles, along Chalk Hill Road to the point where Chalk Hill Road crosses Brooks Creek in section 29, T. 9 N., R. 8 W.;

(20) Then north in a straight line, approximately 0.2 mile, to the top of a peak identified as Chalk Hill;

* * * * *

Signed: April 15, 1988.

Stephen E. Higgins,

Director.

Approved: April 27, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 88-10642 Filed 5-12-88; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning June 1, 1988. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1988, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22508, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8824 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination.

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These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1906 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1988 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since April 1, 1988 (53 FR 9454 (March 15, 1988)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1988, which set reflects an increase of ¼ percent in the immediate interest rate to 8 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after June 1, 1988, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11008, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 283–287 and by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Rate Set 73 of Appendix B is revised and Rate Set 74 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "C_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1 and n_2, are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or After	& Before		k_1	k_2	k_3	n_1	n_2
73	4–1–88	6–1–88	7.75	1.0700	1.0575	1.0400	7	8
74	6–1–88		8.00	1.0725	1.0600	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–10717 Filed 5–12–88; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of June 1988.

EFFECTIVE DATE: June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22560), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values of i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
June 1988	.08875	.085	.09	.085	.08	.07375	.07375	.07375	.07375	.07375	.0675	.0675	.0675	.0675	.0675	.06

Issued at Washington, DC, on this 6th day of May 1988.

Kathleen P. Utgoff,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–10718 Filed 5–12–88; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–88–03]

Anchorage Ground; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Shoaling off Benicia, California has forced the Coast Guard to reposition Carquinez Strait buoy number 25, Coast Guard light list number 6760, to allow adequate water depth for vessels transiting the channel. This action routes vessels into existing Anchorage 25. A temporary Safety Zone deleting Anchorage 25 and establishing two new anchorages has been created by the Captain of the Port, San Francisco to reduce the risk of collision.

As presently configured, Anchorage 25 poses a hazard to navigation. Vessels using Anchorage 25 are in an outside bend in the river and pose an excessive risk to navigation. Vessels using the two proposed anchorage areas would pose less threat to navigation.

DATES: This regulation becomes effective on 20 May 1988. Comments must be received on or before June 13, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm 702, 400 Oceangate, Long Beach, CA 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 701, 400 Oceangate, Long Beach, CA 90822–5399. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael J. Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822–5399. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to public interest. Immediate action is needed to prevent vessels from grounding in uncharted shoal areas and to ensure deep draft vessels' safe transit of the area.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, and identify the docket number for the regulation. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer; Lieutenant Commander James Spitzer, project officer; and Lieutenant G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Twelfth Coast Guard District, disestablished and combined with the Eleventh Coast Guard District on 1 July 1987 (FR 21 April 1987 pg. 13082), proposed changes to Anchorages Nos. 5 and 25 in San Francisco Bay and

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Carquinez Strait (CGD12–87–01, FR 3 March 1987 pg. 6347). Action had not been taken on this proposal prior to the District change. The proposal under docket CGD12–87–01 is withdrawn. However, under the authority of the Commander, Eleventh Coast Guard District, it is in part set forth in this new docket. The two comments received previously will be considered in this new docket.

Anchorage 25 is located in the outside of a difficult bend in the river with strong currents, frequent high winds and seasonal fog; vessels anchoring within Anchorage 25 can interfere with passing deep draft traffic. The movement of buoy 25 325 yards southeast to position 38°–01'–59.6" N, 122°–09'38.7" W further encroaches on the usefulness of Anchorage 25 by routing traffic into existing anchorage 25. Because of the hazard of anchoring vessels in Anchorage 25, due in part to the repositioning of buoy 25, the Coast Guard has deleted Anchorage 25 and created two new anchorages, numbers 22 and 23.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. Deletion of Anchorage 25 will not reduce the available anchorage areas due to the addition of Anchorages 22 and 23. The addition of Anchorages 22 and 23 are in areas outside the established channel, and will have no effect on the navigation of transiting vessels.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46(c) and 33 CFR 1.05–1(g).

2. Section 110.224 is amended by removing from table (d)(1) the entry for Anchorage No. "25" and adding to table (d)(1) Anchorage No. "22", location "Carquinez Strait", purpose "General", Anchorage No. "23", location "Benicia", purpose "General", specific regulations "Notes c,d,e,l". Additionally, note "l" is added at the end of table (d)(1) to read "l. Vessels using this anchorage must exceed 15 feet draft, have engines on standby, and have a pilot on board."

3. Section 110.224 is further amended by removing paragraph (e)(16); redesignating paragraphs (e)(15), and (e)(17) through (e)(20) as paragraphs (e)(17) through (e)(21); adding new paragraphs (e)(15) and (e)(16), and amending paragraph (e)(2) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(15) *Anchorage No. 22, Carquinez Strait.* In Carquinez Strait an area bounded by a line connecting the following coordinates:

Latitude	Longitude
38°02'36.8" N	122°09'59" W; to
38°02'00.6" N	122°09'46.7" W; to
38°01'53.8" N	122°09'00" W; to
38°02'33.9" N	122°09'00" W; thence back to
38°02'36.8" N	122°09'59" W.

(16) *Anchorage No. 23, Benicia.* In Carquinez Strait an area bounded by a line connecting the following coordinates:

Latitude	Longitude
38°02'33.9" N	122°09'00" W; to
38°01'53.8" N	122°09'00" W; to
38°01'57.4" N	122°08'19.3" W; to
38°02'33" N	122°08'18.6" W; thence back to
38°02'33.9" N	122°09'00" W.

* * * * * *

Dated: May 9, 1988.

A. B. Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88–10617 Filed 5–12–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Cleveland Regulation 88–01]

Safety Zone Regulations; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is re-establishing seven safety zones in the Cuyahoga River, and is establishing three others in the Old River, the Cuyahoga River and the adjoining shore area. The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitate safe navigation.

EFFECTIVE DATES: This regulation becomes effective on April 8, 1988. It terminates on August 1, 1988, unless sooner terminated by the Captain of the Port, Cleveland.

ADDRESS: Comments should be mailed to Commanding Officer, Marine Safety Office, 1055 East Ninth Street, Cleveland, OH 44114. The comments will be available for inspection and copying at the same location. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR John H. Distin, Captain of the Port, (216) 522–4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Although this regulation is published as an emergency final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are CDR JOHN H. DISTIN, the Captain of the Port, Cleveland, and LCDR CARL V. MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of four times a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road bridge, Alpha Precast Products (United Ready Mix), Upriver Marina and Shippers C&D. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

Seven safety zones were established on September 3, 1987. Those zones were located at specific bends in the Cuyahoga River at which a history of mishaps had developed, and were successful in preventing further mishaps at those designated areas. During the period in which the emergency rules were in effect, the Captain of the Port continued to study the river traffic situation, and determined that three other areas presented a severe hazard to life and property should small craft be allowed to moor there. These areas were incorporated into a proposed regulation which would make all ten areas permanent safety zones, and were published in the **Federal Register** on December 3, 1987.

The comments concerning these proposed regulations resulted in the Captain of the Port holding a public hearing on March 7, 1988, at which several witnesses expressed the desire to form a working group which would study the river situation, and present a mutually agreeable solution to the Captain of the Port within ninety days. The Captain of the Port has agreed to this.

These emergency regulations are being effected in order to safeguard life and property while that group is at work.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Safety zones; Cuyahoga River and Old River, Cleveland, Ohio.

(a) *Location.* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5" N, 81 degrees 42'33.5" W, which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and fifty (50) feet upriver from 41 degrees 29'48.4" N, 81 degrees 42'44" W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29'51.1" N, 81 degrees 42'32.0" W, which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1" N, 81 degrees 42'27.6" W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9" N, 81 degrees 42'10.7" W which is the knuckle toward the downriver corner of the Nautica stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5" N, 81 degrees 42'9.7" W which is the knuckle toward the upriver corner of the Nautica stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2" N, 81 degrees 42'10" W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8" N, 81 degrees 42'02.3" W) to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5" N, 81 degrees 41'57.2" W which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29'33.7" N, 81 degrees 41'57.5" W, which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41" N, 81 degrees 41'36.6" W, which is the end of the chain link fence between Jim's Steak House and Shipper's C&D.

(b) *Effective Date.* This regulation becomes effective on April 8, 1988. It terminates on August 1, 1988 unless sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exception.* Vessels may *transit*, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Waivers received under the previous emergency rule must be reinstated, as they expired on 31 December, 1987. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 gross tons (GT) or greater are not navigating in the proximate area.

Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GT or greater.

Dated: April 5, 1988.

John H. Distin,

CDR, U.S. Coast Guard, Captain of the Port, Cleveland, OH

[FR Doc. 88–10620 Filed 5–12–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

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SUMMARY: This rule provides separate and streamlined procedures by which persons may appeal resource recovery and rehabilitation decisions of Forest Service officials that result from natural catastrophes. The need for the rule arises from the agency's experience following the severe fire situation that occurred in the National Forests of California and Oregon in the late summer and fall of 1987. The intended effect is twofold: (1) To preserve a meaningful opportunity for the public to appeal resource recovery and rehabilitation-related decisions and (2) to preserve the agency's ability to rehabilitate lands and recover forest resources before such deterioration occurs that the resource is irretrievably lost or rendered useless. In order to preserve the Agency's ability to meet resource management objectives within the areas affected by the catastrophic events of the 1987 fire season in California and Oregon, it is necessary to make this rule effective upon publication. However, the Agency invites public comment on the interim rule, which will be considered in promulgating a final rule.

DATES: This rule is effective May 13, 1988.

Comments on this rule must be received by July 12, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this rule in the office of the Staff Assistant for Operations, National Forest System, Room 4211 South Agriculture Building, 12th and Independence Avenue SW., Washington, DC, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, Forest Service, USDA, (202) 382–9349.

SUPPLEMENTARY INFORMATION: While the procedures outlined in this rule speak primarily to future natural catastrophes, the agency also is faced with providing appeal procedures for recovery and rehabilitation activities, including salvage of timber and attendant roading, resulting from the severe fire situation during the summer of 1987. It is this situation which brought to the Agency's attention the need to consider developing appeal procedures that would be more consistent with the need to expeditiously manage and mitigate the effects of natural catastrophes, and recover, to the extent practicable, resources that might otherwise be lost to the economy.

The summer of 1987 was the most severe fire situation since 1929 on National Forest System lands. In the West, the fire complexes stretched from central California into southern Oregon, burning more than 837,000 acres of public and private land. Of that total, some 750,000 acres were within the boundaries of the National Forest System, administered by the Forest Service of the U.S. Department of Agriculture.

Wildfires create devastating effects on National Forest resources which require urgent attention. The loss to timber and vegetation present an immediate threat of flooding, landslides, and damage to water quality from stream siltation in many areas. Additionally, fires result in substantial losses of fish and wildlife and their habitat, trails, and recreation areas and facilities.

The greatest loss from the 1987 fire season was in the West. Approximately 2.2 billion board feet of National Forest System timber was destroyed or damaged: 1.8 billion board feet in California and 400 million in Oregon. This is about 25 percent of the total volume offered for sale from the entire National Forest System in an average year, about 40 percent of the volume offered for sale in California and Oregon in an average year, and more than 100 percent of the annual sale volume in California alone. Approximately 1.8 billion board feet of the destroyed or damaged timber is in non-wilderness areas (400 million is in 43 roadless areas). The Forest Service estimates about 75 percent (or 1.4 to 1.8 billion board feet timber) can be salvaged, if prompt action is taken. The timber is valued at nearly $400 million.

Because of the type of timber affected, mainly ponderosa pine, Douglas-fir, and the true firs, the salvageable volume must be offered for sale and removed as quickly as possible. The pine and true fir will not remain viable for lumber if not offered within 1 year and harvested within 2. Douglas fir will generally remain viable for lumber if harvested within 3 years.

Because of the urgent need to identify, study, prepare, and conduct recovery and rehabilitation work resulting from the 1987 fires and because it is likely that similar situations will occur in the future, the Secretary of Agriculture has decided that it is in the nation's best interest to provide a streamlined process for administrative appeals of Forest Service decisions concerning resource recovery and rehabilitation activities resulting from natural causes, such as wildfire, flooding, earthquakes, winds, and insect or disease epidemics.

The current rules set forth at 36 CFR 211.18 provide a process by which anyone who disputes a decision of a Forest officer may appeal that decision and have it reviewed by the next highest level. Two levels of appeal are available. The appeal process is lengthy and highly procedural. It may take up to a year to decide an appeal. In the case of current resource recovery and rehabilitation needs in California and Oregon, such a delay on fire-caused salvage sales and related rehabilitation activities would result in unacceptable losses of valuable natural resources—the loss of the salvageable timber itself as well as additional losses should the deteriorating timber become infested with insects and disease and spread to healthy timber in adjoining, unburned areas. Moreover, the economy of timber dependent communities in the burn areas could be adversely affected by delays in salvage and related rehabilitation work. The fires have created a major disruption in the timber sale programs of affected National Forests; for example, in Region 5 (California), the fires have reduced the normal green timber sales program by half. Salvage sales and activities necessary to support them will help the timber industry recover some of its planned harvesting and thus offset the otherwise severe economic effects on timber dependent communities, especially in California.

The Forest Service has an obligation to rehabilitate National forest lands and resources damaged in burned areas. With full consideration to be given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

1. Reforest burned-over areas to ensure watershed and soil quality and to provide for future timber needs;

2. Restore watershed and soil values damaged as a result of the fires;

3. Restore wildlife and fisheries habitat;

4. Salvage as much of the burned timber as possible;

5. Reduce the potential for insect infestation in adjacent unburned areas; and

6. Reduce accumulation of fuel in the burned areas to prevent future fire susceptibility.

The accomplishment of these objectives can involve not only harvest of the timber but also road construction and reconstruction, application of herbicides, and reconstruction of physical facilities installed for wildlife and fisheries habitat, range management, and recreation.

With respect to the California and Oregon fire situation of 1987, the urgent need to act to salvage as much timber as practicable does not relieve the Forest Service of its obligation to conduct environmental analyses pursuant to the National Environmental Policy Act (NEPA) and implementing regulations (40 CFR 1500–1508). In the initial scoping phase of the process, the Regions and National Forests involved will seek to give interested segments of the public an opportunity to participate in the analyses. Individuals and organizations interested in specific National Forest areas burned in the recent fires and in monitoring salvage and related decisions are encouraged and advised to contact the appropriate Forest Supervisor or District Ranger to make their interest known and to request participation in the analyses. The Agency will identify reasonable alternatives and will record its analyses in the appropriate environmental document. Notice will be given of the decisions made. The Forest Service is committed to conducting and documenting environmental analyses of activities associated with resource recovery and rehabilitation efforts in full compliance with applicable laws and regulations.

In promulgating this rule, the Department considered as alternatives exempting recovery and rehabilitation activities from administrative appeal; taking no action (allowing appeals under the current rules, 36 CFR 211.18); and exempting from appeal only sales of timber most susceptible to deterioration and infestation. If the recovery and rehabilitation activities in California and Oregon remained subject to the current lengthy and procedurally detailed administrative appeal process, the chance of salvaging the pines, true firs, and small diameter trees of all species would be significantly reduced. The mixed species composition of many timber stands in burned areas makes it impracticable to sell only the species that deteriorate most quickly. Moreover, some burned stands are intermixed with green, relatively undamaged timber. Thus, the alternative of exempting from appeal only salvage sales of fire damaged, fast deteriorating species is impracticable. Also, this alternative would likely not be acceptable to potential appellants, since sale appeals are normally not species specific, but rather relate to the potential impacts of the sale on the land. Finally, exempting all salvage sales in California and Oregon and other parts of the country from appeal would deny potentially affected individuals and groups an administrative process for resolving their concerns directly with the Agency and leave them remedy only in the courts—a time consuming and expensive process for appellants and the Agency.

The principal procedures contained in this rule are as follows:

1. Decisions on recovery and rehabilitation activities that result from natural catastrophes are entitled to a 1-level appeal process, to be completed within 90 days.

2. Notice of decisions on recovery and rehabilitation appealable under this section and made after May 13, 1988, are to be published in a local newspaper of general circulation. Any individual or organization has 30 days from publication of the notice of decision about a particular activity associated with recovery and rehabilitation efforts resulting from natural catastrophes to file a notice of appeal and request a stay.

3. Formal procedures for intervention are not included; however, interested persons may submit comments to the record for use by the Reviewing Officer.

4. Procedural appeals, such as appealing decisions to deny a stay, are not allowed.

5. A responsive statement from the initial Forest Officer who made the decision is not required.

6. No extensions of time will be allowed for appellants or the Forest Service.

In addition, paragraph (b) of 36 CFR 211.18, the current applicable appeal procedure, is being amended to exclude appeals of decisions arising from recovery and rehabilitation activities resulting from natural catastrophes under those rules. This is a corollary technical amendment necessary to avoid conflict and inconsistency between this interim rule and the existing administrative appeal process.

Public Comment

The Department of Agriculture is making the interim rule effective upon publication. This rule establishes agency policy and procedures on appeal of decisions concerning recovery and rehabilitation of National Forest System lands and resources affected by natural catastrophes, such as forest fires. Good cause exists for issuance of this policy and procedures effective upon publication because some associated activities are already prepared, and the delay that could be caused by appeal of these sales would result in unacceptable loss of raw material needed by the Nation. This rule contains the same procedures as those set forth at 36 CFR 211.17 governing appeal of decisions to reoffer returned or defaulted timber sales, which was promulgated as a final rule on April 22, 1988 (53 FR 13263). Those provisions were developed as a result of public comment on an interim rule published January 28, 1988 (53 FR 2490). While the circumstances driving the need for the two rules is quite different, the agency intends that the appeal process attendant to each be essentially the same.

Regulatory Impact

This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule itself will not substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Because of the need to implement these procedures immediately to facilitate orderly recovery and rehabilitation efforts, time has not permitted advance review by the Office of Management and Budget. However, as required by E.O. 12291, notice of this rule is being given to the Director of the Office of Management and Budget upon publication in the **Federal Register**.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

Environmental Impact

The interim rule establishes an administrative process to decide appeals. The process itself will have no significant effect on the human environment, individually or cumulatively. Although individual actions which may precipitate appeals under the rule require conformance with agency policy and regulations promulgated pursuant to the National Environmental Policy Act, this interim rule is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), National forests.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 211 of

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chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—[Amended]

2. Add a new § 211.16 to read as follows:

§ 211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions arising from recovery and rehabilitation efforts on National Forest System lands and resources damaged in natural catastrophes.

(b) *Matters subject to appeal.* The procedures established in this section apply only to initial written decisions concerning resource removal, recovery, and rehabilitation activities resulting from natural catastrophes, such as forest fires, insect and disease epidemics, floods, winds, and earthquakes, that result from documentation required by the National Environmental Policy Act and its implementing regulations, policies, and procedures. Notice of the decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation immediately following the documentation referenced above. Subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts, are not appealable under this section or 36 CFR 211.18.

(c) *Who may appeal.* The process set forth in this section is available to any individual or organization wishing to appeal a decision arising from resource removal, recovery, and rehabilitation activities resulting from natural catastrophe.

(d) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(e) *Levels of appeal.* One level of administrative appeal is available.

(1) Appeals of decisions subject to the procedures of this section made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions subject to the procedures of this section made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* (1) To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (i) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision.

(2) All notices of appeal must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision under this section must include the following information in the written notice of appeal:

(1) The specific activity being appealed;

(2) The date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision; and

(5) The relief desired.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the activity; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the stay decision shall be sent to the appellant and the Forest Officer who made the initial decision.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest Officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is available for public inspection.

(k) *Requests for additional information.* At any time during the appeal, the Reviewing Officer may request additional information from an appellant, the Forest Officer making the initial decision, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest Officer making the initial decision, appellants, or affected parties.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to anyone submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation.

(m) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision withdraws that decision.

(2) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(3) A Reviewing Officer shall give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(n) *Continuance.* Provisions of 36 CFR 211.18 will remain in effect for appeals of decisions concerning activities that result from natural catastrophes filed prior to May 13, 1988.

3. Amend § 211.18 by adding a new paragraph (b)(15) to read as follows:

§ 211.18 Appeal of decisions of Forest Officers.

* * * * *

(b) *Matters excluded from appeal under this section.* * * *

(15) Initial decisions arising from recovery and rehabilitation activities resulting from natural catastrophes appealable under § 211.16 of this subpart and subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts made pursuant to such decisions.

* * * * *

Date: May 6, 1988.

Peter Myers,

Acting Secretary, Department of Agriculture.

[FR Doc. 88-10606 Filed 5-12-88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3376-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On January 7, 1985, the Minnesota Pollution Control Agency (MPCA) submitted revised rules, including a Consolidated Permit Rule (CPR), as proposed revisions to the Minnesota State Implementation Plan (SIP). MPCA's submission is intended to satisfy the requirements of 40 CFR 51.160 through 51.164 [1] for a general New Source Review (NSR) program, as well as the Federal requirements for a lead (Pb) NSR program. In addition, on October 28, 1985, the MPCA submitted to USEPA a Memorandum of Agreement (MOA), and on October 1, 1986, and January 14, 1987, it submitted a commitment concerning stack height requirements.

MPCA's submittals include: 6 MCAR sections 4.0002 Parts A through C, which contain Definitions, Abbreviations, and Applicability of Standards; the CPR, which consists of subparts 6 MCAR sections 4.4001 through 4.4021, 6 MCAR sections 4.4301 through 4.4305, and 6 MCAR sections 4.4311 through 4.4321; and an MOA entitled Appendix A. USEPA has reviewed these submittals and is, with one exception, approving them as meeting the requirements of 40 CFR 51.160 through 51.164. The one exception involves certain small sources for which there are Standards of Performance in 40 CFR Part 60, but which are exempted from new source review under Minnesota's CPR. USEPA is disapproving this rule for these small sources.

Minnesota did not submit these regulations to meet the requirements of either Section 111, Part C, or Part D of the Clean Air Act (Act), and USEPA is not rulemaking on them as such. USEPA is approving these submittals as satisfying the one remaining deficiency in the Minnesota Pb Plan by meeting the Pb NSR requirements. Therefore, USEPA is also approving Minnesota's Pb plan as meeting the requirements of section 110(a) of the Act.

EFFECTIVE DATE: This final rulemaking becomes effective on June 13, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

A copy of today's revision to the Minnesota SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the MPCA submitted to USEPA a proposed revision to the Minnesota SIP in order to satisfy the requirements of 40 CFR 51.160 through 51.164 for a general NSR program, as well as the Federal requirements for a Pb NSR program. The CPR rule submission included provisions intended to replace the previously approved NSR rules in the Minnesota SIP. On October 28, 1985, the MPCA submitted to USEPA a MOA which satisfies certain deficiencies. On October 1, 1986, and January 14, 1987, Minnesota committed to use USEPA's July 8, 1985 (50 FR 27892), stack height regulations in all SIP matters, which would include reviewing its construction permits. This satisfies the requirements of 40 CFR 51.164.

The January 7, 1985, submittal contains the following rules:

1. 6 MCAR section 4.0002 Definitions, Abbreviations, Applicability of Standards, and Circumvention (formerly APC 2)
2. 6 MCAR sections 4.4001 through 4.4021 Air Permit Rules (formerly APC 3)
3. 6 MCAR sections 4.4301 through 4.4305 Supplements to Air Permit Rules
4. 6 MCAR sections 4.4311 through 4.4321 Indirect Source Air Permits (formerly APC 19).

The October 28, 1985, submittal contained Appendix A, which is the

[1] On November 7, 1986 (51 FR 40655), USEPA rewrote and recodified 40 CFR Part 51 (1986), including the NSR requirements in § 51.18. The NSR requirements to which USEPA is comparing Minnesota's program are those which were codified at 40 CFR 51.18 (a) through (h) and (l) and are now codified as 40 CFR 51.100 through 51.164.

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MOA between USEPA and the MPCA on implementing the NSR plan. This is an amended and signed version of the draft Appendix E MOA, submitted with the remainder of the plan on January 7, 1985.

In today's rulemaking action, USEPA is approving, with one exception, this revision to the Minnesota SIP, as requested by the State of Minnesota. Each rule and the exception are discussed in detail below. However, USEPA wishes to clarify that this final rulemaking action only pertains to the approvability of this SIP revision with respect to the general NSR requirements of 40 CFR 51.160 through 51.164, and the Pb NSR requirements.[2]

USEPA is not rulemaking on this submittal with respect to the requirements of Part D of the Act, which contains additional new source permitting requirements that apply in designated nonattainment areas. For this reason, the section 110(a)(2)(I) growth prohibition for major sources that is currently in effect in areas designated as primary nonattainment areas at 40 CFR 81.324 will not be affected by this rulemaking action. Additionally, USEPA is not approving the rules with respect to those portions of Minnesota's submittal which relate to Prevention of Significant Deterioration (PSD) permitting requirements as required in Part C of the Act,[3] New Source Performance Standards (NSPS) as required by section 111 of the Act,[4] and permit provisions applicable to other media (water, solid waste).

Finally, USEPA is not at this time rulemaking on 6 MCAR section 4.0002 Part D, Opacity Standard Adjustment.

If the State of Minnesota submits a SIP revision to satisfy the permitting requirements in Part C and/or Part D of the Act, the definitions and exemptions approved here today must be re-evaluated for approvability under those parts. For example, the definition of "fugitive emissions" in Rule 6 MCAR section 4.0002 A.13 is less stringent than the Federal requirements for sources subject to Part C or D of the Act. Additionally, MPCA has not demonstrated that the exemptions provided for in Rule 6 MCAR 4.4303 P1 are in conformance with Parts C or D of the Act. Finally, the definition of "modification" has been changed from that which USEPA previously approved in Minnesota's NSPS definitions. The definition of "modification" is discussed further below.

I. Definitions, Abbreviations, Applicability of Standards

Rule 6 MCAR section 4.40002 (formerly APC 2) includes sections on Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention. USEPA will rulemake on Minnesota's provisions for setting alternative opacity limits (6 MCAR section 4.0002 Part D) in a future **Federal Register** notice.

A. Definitions

The revision contains new and/or revised definitions that differ from those in APC 2, the similar rule in the current SIP, which USEPA approved in the May 6, 1982, **Federal Register** (47 FR 19520). Minor changes were made to the definitions for "new facility," "owner or operator," and "reconstruction." These revised definitions are generally consistent with the definitions which USEPA has previously approved in APC 2. These revised definitions are also consistent with the requirements of 40 CFR 51.160 through 51.164. Therefore, USEPA is approving them.

Minnesota has also revised and clarified the definition of "New Source Performance Standard" by directly referencing the Federal NSPS established under section 111 of the Clean Air Act. USEPA finds this revised definition acceptable and is approving it, but only as it relates to Minnesota's general NSR program. (As stated above, USEPA is not rulemaking on Minnesota's rules as they relate to the section 111 NSPS program.) The definition of "modification" has been revised at section 4.40002 (A)(15) to read as follows:

"Modification" means a physical change or a change in the operation of an emission facility that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

This revision differs from the definition of "modification" found in APC 2(c)(5)(aa), which USEPA approved as part of the Minnesota NSPS SIP on May 6, 1982, in that it exempts from the definition of "modification" any physical or operational changes if they are provided for by stipulation agreement, an applicable air pollution control rule, or a permit. It thereby exempts such changes from the State's new source rule.

The current SIP definition of "modification," at APC 2(c)(5), however, only applies to NSPS sources listed in APC 2(c) and not to the NSR program for general sources covered by today's regulations. There presently is no other definition of "modification" in the Minnesota SIP to which the new definition can be compared. Moreover, there is no USEPA requirement for a SIP definition of "modification." USEPA is approving Minnesota's new definition for general sources, because (1) there is no other definition of "modification" in the SIP for general sources and (2) its approval will not jeopardize the attainment and maintenance of the NAAQS. The USEPA' final approval of Minnesota's NSR program only applies to a limited range of sources. It does not apply to new major sources or major modifications of existing sources in nonattainment areas, new PSD sources or major modifications of PSD sources, or NSPS requirements for new sources or major modifications of existing sources. Further, USEPA notes that Appendix A, as discussed later, commits Minnesota to use the definition of "major modification," as defined at 40 CFR 51.18(j)(1)(v),[5] in determining whether anticipated construction at a source requires notification of the public and opportunity for public comment.

It should be noted that USEPA's NSPS regulations do not exempt physical or operational changes from the definition of "modification," just because they are provided for by permits, agreements, or State rules. Therefore, USEPA cannot approve the revised definition for purposes of the State's regulations for implementing the Federal NSPS and is not rulemaking on it, nor on the remainder of the State's submittals, for this purpose. USEPA notes that Minnesota has been delegated the Federal NSPS program and is implementing USEPA's rules at 40 CFR Part 60. Therefore, Minnesota's definition of "modification" at section 4.40002 should have no effect on its implementation of 40 CFR Part 60.

[2] On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. USEPA is approving Minnesota's NSR Pb plan, will satisfy the one remaining element of Minnesota's Pb plan.

[3] On September 20, 1977, March 20, 1979, and October 15, 1980, USEPA delegated to Minnesota the PSD program. Minnesota is implementing this program using USEPA regulations found at 40 CFR 52.21.

[4] On March 28, 1984, USEPA delegated to Minnesota the NSPS program. Minnesota is implementing this program using USEPA regulations found at 40 CFR Part 60.

However, in addition to meeting the emission limits and other requirements of Part 60 on which USEPA is not rulemaking, NSPS sources must also meet the requirements of Minnesota's general NSR plan. USEPA is rulemaking on Minnesota's general NSR plan today as it applies to sources covered by a NSPS.

Similarly, sources in nonattainment areas and PSD sources must also meet the requirements of Minnesota's general NSR plan. Although USEPA is not rulemaking on Minnesota's submittal in relationship to the requirements of Part C or D of the Act, USEPA is rulemaking today on Minnesota's general NSR plan as it applies to sources which are also subject to the PSD and/or Part D requirements.

[5] Title 40 CFR 51.18(j)(1)(v) (1986) is currently codified at 40 CFR 51.165(a)(1)(v) (1987).

USEPA periodically reviews all delegated NSPS programs, including Minnesota's, and will at the time of Minnesota's review determine whether Minnesota is properly implementing its delegation.

The following new terms have been added to revised Rule 6 MCAR section 4.0002:

1. "Fugitive Emissions" mean pollutant discharges to the atmosphere that do not pass through a stack, chimney or other functionally equivalent opening, at which a measurement of the emissions can be made using a reference method other than [40 CFR Part 60, Appendix A) Method 9.
2. "Reference Method" means the procedure for performance test in the Code of Federal Regulations, Title 40, Part 60, Appendix A (1982).
3. "Emission source" means a single source whereby an emission is caused to occur.
4. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.
5. "Potential emissions" means the emissions from an emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions.

USEPA finds these definitions acceptable.

USEPA has reviewed all the revised and new definitions discussed above, not only with respect to whether the definitions meet the Federal NSR requirements, but also with respect to their impact on the federally approved Total Suspended Particulates (TSP) and Sulfur Dioxide (SO_2) SIPs in Minnesota. These revisions are acceptable. Therefore, USEPA is approving the definitions as set forth at 6 MCAR section 4.0002(A) for the purposes of Minnesota's general NSR program.

B. Abbreviations, Applicability of Standards, and Circumvention

USEPA has reviewed 6 MCAR section 4.0002(B), Abbreviations; 6 MCAR section 4.0002(C) Applicability of Standards of Performance; and 6 MCAR section 4.0002(E), Circumvention. Parts B and E contain requirements similar to those previously approved in APC 2 (b) and (f), respectively, and USEPA is approving them. Part C has been changed and simplified from APC 2(c). USEPA finds it approvable and is approving Part C as well.

C. Opacity Standard Adjustments

Part D of Rule 6 MCAR section 4.0002 allows an emission facility to apply for an alternative opacity limit. USEPA will rulemake on this provision in future **Federal Register** notices.

II. Consolidated Permit Rule and Air Emission Facility Permits

The Consolidated Permit Rule is comprised of the following: Rule 6 MCAR sections 4.4001 through 4.4021, Permit Rule; Rule 6 MCAR sections 4.4301 through 4.4305, Supplement to Permit Rule; and Rule 6 MCAR sections 4.4311 through 4.4321, Indirect Source Air Permits. In addition, the MPCA submitted an MOA to USEPA on October 28, 1985. The rules submitted by MPCA are intended to replace the previously approved rules, APC 2 and APC 3. The State took several provisions from APC 3 (the State's former general NSR rule for air pollution sources), which are common to all other environmental media permit programs, and included them in a new multi-media CPR Rule.

Rule 6 MCAR section 4.4001 through 4.4021, Permit Rule

Rule 6 MCAR section 4.4001 through 4.4021 establishes MPCA's standard permitting procedures. The review procedures will enable MPCA to determine whether a proposed new or modified source will cause a violation of a SIP control strategy or interfere with attainment or maintenance of the NAAQS. Rule 6 MCAR section 4.4015 requires each permit to contain conditions necessary to achieve compliance with all applicable State and Federal rules. Rule 6 MCAR section 4.4014 B authorizes MPCA to deny a permit if the proposed source will not comply with all applicable State or Federal rules administered by MPCA. All SIP emission rules and the NAAQS are considered by the State to be rules administered by the MPCA.

Rule 6 MCAR sections 4.4301 through 4.4305, Supplements to Air Permit Rules

USEPA reviewed the provisions of this CPR rule to assure that the appropriate sizes and types of air pollution sources will be subject to review by MPCA, as required by 40 CFR 51.160 through 51.164. Section 4.4303 requires all air emission facilities to obtain a permit except for certain small sources. Exempted sources are those that emit less than specified *de minimus* levels for all criteria pollutants. For instance, 6 MCAR section 4.4303 B.1 and 2 exempt such sources with less than 25 tons per year of emissions (except for lead which is less than 0.5 tons per year), natural gas sources which are smaller than 50 million British Thermal Units (BTU) per hour, and wood sources which are smaller than 5 million BTUs per hour. These exemptions are approvable for all sources.[6] However, 6 MCAR section 4.4303 B.3 exempts certain NSPS sources from applying for a permit which may require a NAAQS review under sections 110(a)(2)(D) and 110(a)(4) of the Act. For instance, the NSPS for Nonmetalic Mineral Processing Plants exempts fixed sand and gravel operations with capacities of less than 25 tons per hour (40 CFR 60.670(c)(1)), while the Minnesota regulation exempts operations that produce less than 150,000 tons of product per year. Thus, a 70 tons per hour facility operating 2080 hours per year would be exempted under Minnesota's regulation. Additionally, the NSPS for Metal Coil Surface Coating does not exempt any facility constructed after January 5, 1981, regardless of size (40 CFR 60.460), while Minnesota's regulation exempts facilities that use less than 10,000 gallons of solvent-borne coatings per year. Because Minnesota's regulation may exempt certain NSPS sources from a NAAQS review, USEPA is disapproving Minnesota's CPR rule for those sources subject to an NSPS requirement (40 CFR Part 60), and otherwise exempted from review under 6 MCAR section 4.4303 B.3. For these sources, APC 3, as approved in the September 22, 1972, **Federal Register** (37 FR 19810), will continue to apply. (None of the exemptions in 6 MCAR section 4.4303 B.3 apply to Pb sources. Therefore, USEPA's final, limited disapproval does not affect its final approval of Minnesota's NSR plan for Pb discussed below.) For all other sources, USEPA is approving Minnesota's CPR, including 6 MCAR section 4.4303.

Lead NSR Rules

USEPA's criteria for approving Pb NSR programs are found in two documents. One is an April 8, 1980, memorandum from Richard G. Rhoads, then Director, Control Programs Development Division, to the Directors of the Regional Air and Hazardous Materials Divisions. The other is section

[6] With respect to particulate matter, the 25 tons per year exemption was intended to apply to TSP, which was the indicator at the time of the State's submittal of its CPR. USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 microns or less (PM_{10}) and establishes a 15 ton/year cut-off for NSR purposes. As part of Minnesota's PM_{10} plan, it must submit a revised NSR plan which requires review of all sources of PM_{10} which emit more than 15 tons per year. Although USEPA is approving Minnesota's general NSR plan at this time, Minnesota's obligation to submit a NSR plan for PM_{10}, in conformance with requirements for implementation of the PM_{10} standard, remains.

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4.5.3 of USEPA's Pb guidance document entitled "Updated Information on Approval and Promulgation of Pb Implementation Plans," dated July 1983.

Rule 6 MCAR section 4.4303 B.1.c exempts from review new or modified Pb sources that have the potential to emit less than 0.5 tons per year. This rule is consistent with USEPA's April 8, 1980, policy memorandum which requires review of all Pb point sources which have the potential to emit Pb in excess of 5 tons per year. This rule is also consistent with USEPA's policy on Pb plans which requires review of any modification to a source with actual emissions in excess of 5 tons per year of Pb, if the modification would result in a net increase of 0.6 or more tons of Pb per year of potential emissions. Since Rule 6 MCAR section 4.4303 of the permit rule subjects all Pb sources emitting 0.5 tons per year of Pb or more to State review, this rule is approvable as it pertains to new Pb sources and modifications to existing Pb sources.

The rules contain provisions which require all new or modified Pb sources above 0.5 tons per year to be reviewed against the ambient air quality standards.

The NAAQS for Pb has been approved for Minnesota as part of the SIP. Furthermore, Rule 6 MCAR section 4.4014 B requires the Agency to deny a permit if the proposed source would not comply with this Federal requirement, which is administered by the State.

On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. Approval of Minnesota's NSR Pb plan satisfies the one remaining element needed in Minnesota's Pb plan. Therefore, USEPA is also approving Minnesota's complete Pb plan as meeting all the requirements of the Act.

Rule 6 MCAR Sections 4.4311 Through 4.4321, Indirect Source Air Permits

Although there are no current Federal requirements that a State submit an indirect source review program, the State of Minnesota did submit such a program. This will replace the previous indirect source review program in Minnesota (codified at 40 CFR 52.1225 (a) and (b)—February 25, 1974, 39 FR 7282). USEPA has reviewed the indirect source rule and finds that it does not eliminate any requirement upon which the State depended to demonstrate attainment or maintenance of any NAAQS. USEPA is, therefore, approving this rule.

Memorandum of Agreement Between USEPA and MPCA

Appendix A, the MOA between Minnesota and USEPA, consists of an agreement signed by the USEPA on July 8, 1985, and by Minnesota on July 24, 1985. This MOA between the MPCA and USEPA satisfies certain remaining deficiencies for the NSR permitting requirements, as described below.

Section 4.4002 L exempts many air emission sources from public notice and comment provisions. Such exemption violates the requirements of 40 CFR 51.161. To address this deficiency, the State and USEPA executed a MOA which requires the MPCA to give notice and provide for a public comment period in accordance with 40 CFR 51.161. Title 40 CFR 51.161 requires that public comment procedures apply to all sources, both major and minor, that affect the attainment and maintenance of the air quality standards. The MOA provides that the public notice and comment requirements of 40 CFR 51.161 will be met in cases with the following types of permits:

1. A permit for a "major stationary source" and for a "major modification" as defined and applied by 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x);[7]
2. A permit for an emission facility with an actual Pb emission rate of 0.6 tons or more per year; or
3. A permit for a facility, building, structure or installation in accordance with 40 CFR 51.18(a) (recodified at 40 CFR 51.160(a)) which must be reviewed to assure that the source will not potentially violate a control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

The MOA provides an appropriate mechanism to satisfy the notice requirements for both a general source permitting program and a Pb NSR program. Therefore, USEPA is approving the MOA as part of the Minnesota SIP.

Stack Height Requirements

Section 123 of the Act limits credit in attainment demonstrations for stack height in excess of that which exceeds good engineering practice. On July 8, 1985, USEPA promulgated regulations implementing these provisions (50 FR 27892).[8] These regulations require that State and local agencies conform with Section 123 when implementing the SIP generally, including reviewing construction permits. See 40 CFR 51.118 and 51.164. In October 1, 1986, and January 14, 1987, letters, Minnesota committed to implement its SIP program using USEPA's July 8, 1985, regulations rather than develop its own regulations.

Public Comment

On February 17, 1987 (52 FR 4785), USEPA proposed to approve Minnesota's Consolidated Permit Rule 6 MCAR sec. 4.0002. One public comment was received by the Agency from the National Resources Defense Council (NRDC) which stated:

> We object to the proposed approval of Minnesota's commitments to implement its SIP in accordance with USEPA's July 1985 § 123 rules (SIC). Our comments to USEPA on the illegality of those rules and subsequent "guidance" and our petition for reconsideration of these rules are hereby incorporated by reference as our comments on the instant proposal.

USEPA published its final stack height regulations on July 8, 1985 (50 CFR 27982). In that rulemaking, USEPA responded to NRDC's comments on the proposed regulations (49 FR 44878, November 9, 1984), and such responses are hereby incorporated by reference. USEPA's proposed stack height rules are irrelevant because Minnesota's commitment is based on USEPA's July 8, 1985, adopted rule and on the stack height rules which USEPA proposed on November 9, 1984, which NRDC commented on.

NRDC filed a petition for review of the July 8, 1985, rules under Section 307 of the Act on August 5, 1985. *NRDC*. In its petition for review, NRDC raised

[7] 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x) was recodified on November 7, 1986, to 40 CFR 51.166(a)(1) (iv), (v), (vi), and (x). See Footnote 1 and 8.

[8] Certain provisions of these rules were overturned in *NRDC* v. *Thomas* (D.C. Cir. No. 85-1468 et al. [January 22, 1988]). Petitions for rehearing of its opinion have been filed with the D.C. Circuit, and are pending disposition by the court. The provisions potentially subject to remand are grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by good engineering practice formula height (40 CFR 51.100(kk)(2)), dispersion credit for sources originally designed and constructed with merged or multi-flue stacks. (40 CFR 51.100(hh)(2)(ii)(A)), and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100(ii)(2)).

Although USEPA today generally approves Minnesota's new source review plan on the grounds that it satisfies the applicable attainment area requirements of 40 CFR Part 51, USEPA also today provides notice that Minnesota's commitment to use USEPA's July 8, 1985, stack height rules in its new source review plan is subject to review and possible revision as a result of *NRDC*. If USEPA's response to *NRDC* modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Minnesota that its commitment must be changed to comport with USEPA's modified requirements. USEPA's approval of Minnesota's new source review plan today is intended to avoid delay in the establishment of a federally enforceable new source review plan for lead while awaiting resolution of the *NRDC* litigation.

essentially the same issues as in its comments on USEPA's guidance and in its petition for reconsideration. USEPA's, therefore, hereby incorporates by reference the briefs it filed in the above case for the purpose of responding to NRDC's comments on USEPA's guidance and NRDC's petition for reconsideration in reference to Minnesota's proposed CPR.

As was noted in Footnote 8, portions of USEPA's stack height rules were remanded to the Agency in *NRDC*. Although USEPA today generally approves Minnesota's new source review plan on the grounds that it satisfies the applicable attainment area requirements of 40 CFR Part 51, USEPA also today provides notice that Minnesota's commitment to use USEPA's July 8, 1985, stack height rules in its new source review plan is subject to review and possible revision as a result of *NRDC*. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Minnesota that its commitment must be changed to comport with USEPA's modified requirements. USEPA's approval of Minnesota's new source review plan today is intended to avoid delay in the establishment of a federally enforceable new source review plan for lead while awaiting resolution of the *NRDC* remand.

Conclusion

In conclusion, USEPA is approving 6 MCAR section 4.0002, except that it is not acting today on section 4.0002(D), Opacity Standard Adjustment. USEPA is approving the MPCA's Consolidated Permit Rule as meeting the new source permitting requirements of 40 CFR 51.160 through 51.164, including the MOA between the MPCA and USEPA, except as applicable to sources subject to an NSPS requirement and exempted from review by 6 MCAR section 4.4303 B.3. USEPA is disapproving the CPR for these sources, and for them SIP Rule APC 3 will continue to apply. USEPA has determined that the submitted NSR rules will meet the Pb NSR requirements and satisfy the one remaining deficiency in the Minnesota Pb Plan. USEPA is finally approving this one remaining element in Minnesota's Pb plan and approving Minnesota's Pb plan as meeting all the requirements of the Act. Finally, Minnesota did not submit these regulations to meet the requirements of either Section 111, Part C, or Part D of the Act, and USEPA is not rulemaking on them as such.

USEPA has yet to approve a Part D NSR plan, *inter alia*, for Minnesota, and, therefore, the section 110(a)(2)(1) growth restrictions have been in place in Minnesota's primary nonattainment areas since July 1, 1979. Because USEPA is not acting on (and could not approve) Minnesota's CPR in relationship to Part D, these restrictions remain in place.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 28, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart Y—Minnesota

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1220 is amended by adding paragraph (c)(24) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(24) On January 7, 1985, the State of Minnesota submitted a consolidated permit rule (CPR) to satisfy the requirements of 40 CFR 51.160 through 51.164 for a general new source review (NSR) program, including lead. On October 25, 1985, the State submitted a Memorandum of Agreement (MOA) which remedied certain deficiencies (40 CFR 52.1225(d)). On October 1, 1986, and January 14, 1987, the State committed to implement its NSR program using USEPA's July 8, 1985 (50 FR 27892), regulations for implementing the stack height requirements of Section 123 of the Clean Air Act (40 CFR 52.1225(e)). USEPA is approving the above for general NSR purposes for all sources, except it is disapproving them for those few sources subject to an NSPS requirement (40 CFR Part 60) and exempted from review under 6 MCAR section 4.4303 B.3. For these sources, NSR Rule APC 3 (40 CFR 52.1220(c)(5)), will continue to apply. Additionally, USEPA is taking no action on the CPR in relationship to the requirements of Section 111, Part C, and Part D of the Clean Air Act.

(i) Incorporation by Reference.

(A) Within Title 6 Environment, Minnesota Code of Administrative Rules, Part 4 Pollution Control Agency (6 MCAR 4), Rule 6 MCAR 4 section 4.0002, Parts A, B, C, and E—Definitions, Abbreviations, Applicability of Standards, and Circumvention (formerly APC 2) Proposed and Published in Volume 8 of the State of Minnesota STATE REGISTER (8 S.R.) on October 17, 1983, at 8 S.R. 682 and adopted as modified on April 16, 1984, at 8 S.R. 2275.

(B) Rules 6 MCAR section 4.4001 through section 4.4021—Permits (formerly APC 3)—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1420) and adopted as modified on April 16, 1984, at 8 S.R. 2276.

(C) Rules 6 MCAR section 4.4301 through section 4.4305—Air Emission Facility Permits—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1470) and adopted as proposed on April 16, 1984, at 8 S.R. 2276.

(D) Rules 6 MCAR section 4.4311 through section 4.4321—Indirect Source Permits (formerly APC 19)—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1472) and adopted as modified on April 16, 1984, at 8 S.R. 2277.

* * * * *

3. Section 52.1225 is amended by removing and reserving paragraphs (a) and (b) and adding paragraphs (c), (d), and (e) to read as follows:

§ 52.1225 Review of new sources and modifications.

(a)–(b) [Reserved]

(c) Minnesota's Consolidated Permit Rules (CPR) (40 CFR 52.1220(c)(24)), are disapproved for those sources to which an NSPS requirement applies (40 CFR Part 60) and which are also exempted from review under 6 MCAR section 4.4303 B.3. These are being disapproved because they do not meet the requirements of sections 110(a)(2)(D) and 110(a)(4) of the Clean Air Act (Act). For these sources, NSR Rule APC 3 (40 CFR 52.1220(c)(5)), will continue to apply.

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(d) The USEPA and the State of Minnesota signed a Memorandum of Agreement (MOA) on July 8, 1985, and July 24, 1985, respectively, for implementing Minnesota's CPR (40 CFR 52.1220(c)(24)). The MOA provides that Minnesota will meet the public notice and comment requirements of 40 CFR 51.161 in cases with the following types of permits:

(1) A permit for a "major stationary source" and for a "major modification" as defined and applied by 40 CFR 51.165(a)(1) (iv), (v), (vi), and (x).

(2) A permit for an emission facility with an actual Pb emission rate of 0.6 tons or more per year; or

(3) A permit for a facility, building, structure or installation in accordance with 40 CFR 51.160(a) which must be reviewed to assure that the source will not potentially violate a control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

(e) The State of Minnesota has committed to conform to the Stack Height Regulations, as set forth in 40 CFR Part 51. In a January 14, 1987, letter to David Kee, USEPA; Thomas J. Kalitowski, Executive Director, Minnesota Pollution Control Agency, stated:

Minnesota does not currently have a stack height rule, nor do we intend to adopt such a rule. Instead, we will conform with the Stack Height Regulations as set forth in the July 8, 1985, Federal Register in issuing permits for new or modified sources. In cases where that rule is not clear, we will contact USEPA Region V and conform to the current federal interpretation of the item in question.

[FR Doc. 88-10215 Filed 5-12-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3379-3]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (commonly known as New Source Performance Standards or NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61. The action which involved EPA and the state of Iowa added six (6) NSPS and one (1) NESHAP categories to the delegations of authority and modified two (2) previously-delegated NSPS categories. The NSPS delegation now includes all categories except for grain elevators (Subpart DD) for which federal standards have been promulgated by the EPA through June 4, 1987. The NESHAP delegation now includes all categories promulgated through March 19, 1987, except for those covering radon (Subparts B and W), radionuclides (Subparts H, I, and K), asbestos renovation and demolition (under Subpart M), and two inorganic arsenic source categories (Subparts N and O).

EFFECTIVE DATE: March 16, 1988.

ADDRESSES: All requests, reports, applications, submittals and such other communications required to be submitted under 40 CFR Part 60 or Part 61, including notifications required to be submitted under Subpart A of the regulations, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources (IDNR), Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Ayenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address or by calling 913/236-2896 (FTS: 757-2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and Part 61, respectively. EPA retains concurrent authority to implement and enforce the delegated standards. The delegation shifts the primary responsibility for implementation and enforcement of the standards from EPA to the state government.

On August 20, 1984, EPA and the state of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933.) Prior to August 20, 1984, EPA delegated to the state of Iowa authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. The action described below does not affect these previous delegation or extension of authority actions.

On January 19, 1988, Iowa revised its rules to adopt, by reference, the standards for six (6) additional NSPS and one (1) additional NESHAP regulations promulgated by EPA. Iowa also revised two previously-adopted NSPS categories to match the amended federal regulations. The adoption action and regulation changes became effective on March 16, 1988. The IDNR informed EPA of the adoption action in a letter dated January 22, 1988.

EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on April 5, 1988. The delegation occurred under the terms of the above-mentioned August 20, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective March 16, 1988, EPA delegates the authorization to implement and enforce the federally-established standards for the following additional or amended categories to the state of Iowa.

NSPS Adoptions

Subpart Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983;

Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

Subpart LLL—Onshore Natural Gas Processing; SO_2 Emissions;

Subpart OOO—Nonmetallic Mineral Processing Plants;

Subpart Db—Industrial-Commercial-Institutional Steam Generating Units; and

Subpart Kb—Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

NSPS Amendments

Subpart K—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.

Subpart Ka—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.

NESHAP Adoption

Subpart P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities. Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAP regulation for facilities or activities in Iowa affected by the amended delegations of authority should be sent to the Iowa Department of Natural Resources at the above address, except as noted below. A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or 61 also must be sent to the Director, Air and Toxics Division, at the above address. Each document and letter mentioned in this notice is available for public inspection at the EPA regional office. This notice is issued under the authority of sections 111 and 112 of the Clear Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: April 15, 1988.

William Rice,

Acting Regional Administrator.

[FR Doc. 88-10721 Filed 5-12-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 80-741; FCC-124]

World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit (Space-WARC), Second Session, Geneva 1988

AGENCY: Federal Communications Commission.

ACTION: Second report and order.

SUMMARY: The *Second Report and Order* contains Commission recommendations for United States proposals to the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (Space-WARC) convening in August 1988. These recommendations will be forwarded to the Department of State for coordination with those of the National Telecommunications and Information Administration (NTIA). The Department of State will, in turn, forward the final U.S. proposals to the International Telecommunication Union (ITU).

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Common Carrier Bureau, Domestic Facilities Division, (202) 634-1860; Steven D. Selwyn (Broadcasting Issues), Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION: This is a summary of the the Commission's *Second Report and Order* in General Docket No. 80-741, FCC 88-124, adopted March 24, 1988 and released March 30, 1988.

The full text of this document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1200 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Second Report and Order

The World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (Space-WARC) is being conducted in two sessions. The First Session of the Space-WARC was held in 1985 (WARC-ORB-85). It resulted in the adoption of the Final Acts incorporation the Region 2 Broadcasting Satellite Service (BSS) Plan into the international Radio Regulations and a Report to the Second Session that concerned planning of the Fixed-Satellite Service in certain frequency bands and several Broadcasting Satellite Service issues. The Second Session of the Conference will be held in Geneva in 1988 (WARC-ORB-88) and will attempt to conclude the work of the Space-WARC. The agenda for WARC-ORB-88 is comprised primarily of issues relating to the Fixed-Satellite Service (FSS) and the Broadcasting Satellite Service (BSS). This *Second Report and Order* presents recommendations for U.S. policy positions and proposals concerning the various agenda issues.

The primary FSS issues concern planning methods for designated portions of the 6/4 GHz, 14/11-12 GHz and 30/20 GHz bands. WARC-ORB-85 adopted basic principles and methods for a dual planning approach comprised of: (1) An *a priori* allotment plan for the expansion frequency bands, and (2) improved regulatory procedures, possibly including a multilateral planning meeting (MPM) mechanism, for the currently operational frequency bands. The Conference objective of these planning methods is to guarantee in practice equitable access to the geostationary-satellite orbit and spectrum. WARC-ORB-88 is to establish the allotment plan and associated regulatory procedures and to establish improved regulatory procedures, possibly with an MPM mechanism. This *Second Report and Order* includes proposals on both FSS planning methods.

With respect to an allotment plan, the Commission recommends that it be based on the concept of predetermined arcs and has developed a set of associated procedures to implement the plan. These procedures include the definition of an allotment, the status of existing systems, the modification or cancellation of an allotment and the formation of subregional systems. The Commission has also recommended the selection of 6725-7026 MHz as the band for the uplink portion of the plan at 6/4 GHz. The Commission stated that proposals for technical parameters as well as methods to determine systems affected by a plan modification will require further study by the U.S. delegation to the Conference.

The second component of the planning approach for the FSS is improved regulatory procedures to be applied to specific FSS bands that are currently used for U.S. domestic fixed-satellite services. The Commission recommends that the U.S. should not propose to include a formal multilateral planning meeting (MPM) mechanism in the Article 11 coordination process, as had been proposed at the First Session of Space-WARC in 1985. Rather, the Commission recommends that the U.S. propose the following modifications to the current procedures to ease the coordination process:

(a) Clarifying the advance publication and detailed coordination procedures in Article 11 to specify that all potentially affected administrations are to cooperate in mutually resolving any difficulties that may arise in accessing the geostationary-satellite orbit; and

(b) Increasing the threshold value of delta T/T in Appendix 29, which is used to identify affected administrations with whom coordination is required, from 4% to 6%. This would reduce the number of required coordination cases for FSS systems and allow systems to be coordinated in a more efficient and timely manner.

The Commission also recommends that the U.S. make several proposals regarding simplified regulatory procedures for other space services in the frequency bands not subject to allotment or improved procedures planning in order to address isolated

problems in using the current procedures.

First, the staff recommends that the Radio Regulations be modified so that the coordination and notification of satellite systems under Articles 11 and 13 can be done on a network, rather than a frequency assignment, basis. This change would reduce costs and procedural complexity without diminishing interference protection when additional earth stations are planned for a satellite system after that system has been coordinated.

Second, the staff recommends that Article 14 of the Radio Regulations be modified to ensure timely completion of coordination under those procedures and also to avoid application of duplicative coordination procedures under both Articles 11 and 14.

Third, the staff recommends certain minor modifications of Appendices 28 and 29 of the Radio Regulations concerning interference criteria.

The Commission also makes recommendations regarding Broadcasting-Satellite Service (BSS) issues. Recommended U.S. proposals are offered with respect to U.S. Region 3 feeder link requirements, technical parameters for planning purposes, and adoption of procedures for long-term use for implementing interim BSS systems. The Commission declines to recommend formal proposals at this time with respect to possible frequency allocations for Satellite Sound Broadcasting or High Definition Television but recommends further study on these issues.

Ordering Clauses

Pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, this *Second Report and Order* is adopted and it is ordered that the *Second Report and Order* and the attached recommended United States of America Proposals be transmitted to the Department of State. It is further ordered that this *Second Report and Order* be transmitted to the Chairman of the United States Delegation to the Conference for incorporation into the positions of the delegations.

It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 1

Inquiries.

Federal Communications Commission.

H. Walker Feaster III,

Secretary.

[FR Doc. 88-10757 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-144; FCC 88-152]

Broadcast Services; Reconsideration of Rule Amendments Affecting Grandfathered Short-Spaced FM Stations and Class A FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; memorandum opinion and order on reconsideration.

SUMMARY: The Commission denied a petition for reconsideration of its action that amended the rule governing modification and relocation of grandfathered short-spaced FM broadcast stations. The Commission determined that it would be inappropriate to amend the rule affecting all such stations solely to provide relief for one particular station with unique circumstances. Also, the Commission granted a petition for reconsideration of its action that established an exception to the minimum power requirements for FM broadcast stations. The Commission further amended its rules to allow Class A stations to use that exception. In the original action, Class A stations had been unnecessarily excluded.

EFFECTIVE DATE: May 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket 88-144, which was adopted on April 19, 1988 and released on April 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. Also, the complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. The Commission has before it two petitions for reconsideration of the *Second Report and Order* ("*Second Report*") (52 FR 37786, October 9, 1987) in this proceeding. One petition, filed by Brown Broadcasting Service, Inc. on November 5, 1987, requests that the Commission reconsider and modify its action that amended § 73.213 of the rules, which governs relocations and modifications of grandfathered short-spaced FM stations. The other petition, filed by Eric R. Hilding on November 6, 1987, requests that the Commission reconsider and modify its action that amended § 73.211 of the rules, which sets forth power and antenna height requirements for each of the six classes of FM stations. No comments were filed in response to either petition.

2. *Background.* The Commission initiated this proceeding with a *Notice of Proposed Rule Making* ("*Notice*") (51 FR 15927, April 29, 1986), that proposed minor adjustment to certain rules that were affected by the Commission's actions in BC Docket No. 80-90, (48 FR 29486, June 27, 1983; 49 FR 10280, March 20, 1984), but were not given detailed consideration in that proceeding. In January 1987, the Commission adopted a *First Report and Order* (52 FR 8259, March 17, 1987) resolving two of the issues in the *Notice*. In September 1987, the Commission adopted the Second Report which, among other things, set forth a definitive method for classifying FM stations according to their effective radiated power (ERP) and antenna height above average terrain (HAAT), and amended rules to limit relocations and modifications of grandfathered short-spaced FM stations, allowing only those that would not increase the potential for interference.

3. *The Brown Petition.* Brown Broadcasting Service, Inc. ("Brown") is the licensee of station WBRU, Channel 238B, Providence, Rhode Island. WBRU is a grandfathered short-spaced station, and thus is subject to § 73.213 of the Commission's rules. Brown claims that WBRU would be adversely affected by the Commission's revision of that rule.

4. Brown states it is in the middle of an extended process to obtain a new tower site. At the new site, Brown believes that WRBU would be able to operate with 50,000 watts effective radiated power. Brown fears that newly amended § 73.213 will prevent WBRU from moving to this new site because, in effect, the amended rule limits each grandfathered short-spaced station to the predicted coverage (in the direction of other grandfathered short-spaced stations) which that station actually had on the effective date of the *Second Report* (November 9, 1987). On this date, WBRU was operating with a lower power (20,000 watts) at what it considers to be a temporary site. (WBRU has been operating at this site for more than 10 years.) Brown does not want WBRU's coverage to be limited in the future to that provided by the lower power at the temporary site. As a remedy, Brown requests that the Commission's action that amended § 73.213 be modified to permit any grandfathered short-spaced station to be authorized for facilities that would produce predicted coverage equivalent to either: (1) The maximum predicted coverage that could have been authorized under the old rule; or alternatively, (2) the maximum predicted coverage from a site that is not short-spaced.

5. *Discussion.* Prior to the *Second Report*, § 73.213 allowed licensees to routinely modify or relocate grandfathered short-spaced stations, even if the potential for interference were increased as a result. In the *Second Report* the Commission affirmed its contention that licensees of grandfathered short-spaced stations have had sufficient time (22 years) to relocate and optimize their facilities under the relatively liberal provisions of the old rule. The Commission found that continuing to allow relocations and modifications that increase the risk of interference is not in the public interest and is counter to the objective of promoting efficiency in the use of the spectrum.

6. Brown did not present any evidence to demonstrate that any grandfathered short-spaced station other than WBRU has or anticipates a similar problem; that is, operation at an interim location on the effective date of our action. No comments were filed by other grandfathered short-spaced stations in support of Brown's petition. The Commission is not aware of any grandfathered short-spaced station other than WBRU that would be significantly affected by our action in the *Second Report*.

7. Tailoring § 73.213, which affects all grandfathered short-spaced stations, to fit circumstances peculiar to one particular grandfathered short-spaced station would not be good public policy. Because Brown's situation with regard to the site for WBRU appears to be an individual problem, any relief that may be necessary would be more appropriately considered in the context of a request for a waiver of § 73.213, rather than through any further amendment of that rule. The Commission does not here evaluate or rule on the merits of any future relocation of WBRU. Rather, the Commission's decision in this *Memorandum Opinion and Order* is based primarily on the inappropriateness of amending a rule affecting an entire group of licensees solely in reponse to the concerns of one licensee in that group.

8. *The Hilding Petition.* Eric R. Hilding ("Hilding"), in his petition, states that § 73.211, as amended by the *Second Report*, excludes Class A FM stations from "the benefit of certain reference distance considerations", and claims that this exclusion pervents Class A FM stations from utilizing relatively high (and therefore desirable) antenna locations. For relief, Hilding requests that the Commission expressly permit any Class A station, regardless of its HAAT, to operate with less than 100 watts, provided that the resulting reference distance equals or exceeds that of a Class A station operating with minimum facilities. The minimum facilities for a Class A FM station are considered to be 100 watts ERP with an antenna HAAT of 30 meters. This combination produces a reference distance of 6 kilometers.

9. *Discussion.* Section 73.211 does not preclude a Class A FM station from using any desired antenna site, regardless of the elevation or the resulting antenna HAAT. The rules permit operation of a Class A FM broadcast station with an antenna HAAT. However, with an antenna HAAT greater than the Class A reference HAAT (100 meters), the station's ERP must be lower than the 3,000 watt class maximum such that the resulting reference distance does not exceed 24 kilometers.

10. Hilding does raise a good point, however. Section 73.211 as it now stands does treat Class A stations differently than stations of the other classes in this respect—Class A stations at very high antenna sites must provide the full maximum Class A coverage, whereas Class B1, B, C2, C1 and C stations need only provide more coverage than the full maximum coverage of the *next lower class*. Before the *Second Report*, all FM stations at very high antenna sites were required to provide the full maximum coverage for their class. However, the Commission found it necessary to allow stations the option to provide less than full coverage in order to facilitate classification of FM stations and to provide a continuous range of permissible facilities. Class A stations were excluded because there is no lower class to establish a minimum coverage requirement for them.

11. The Commission finds that Hilding's suggestion to use Class A minimum facilities as the lower boundary for Class A coverage is reasonable and appropriate, and amends § 73.211 to permit any Class A station to have an ERP less than 100 watts, provided that the reference distance equals or exceeds 6 kilometers. The Commission is reorganizing and republishing the entire § 73.211 to avoid confusion that may have resulted from amendment of that section by a recent Order pertaining to Oversight of Radio and TV Rules (52 FR 47567, December 15, 1987). In that order, certain language already contained in § 73.210 was unnecessarily duplicated in § 73.211 as new paragraphs (a)(1) and (a)(2), and the remaining paragraphs were redesignated. The Commission is removing the redudant language, and restoring the remaining paragraphs to their former designations. The Commission is also restoring the former section heading to avoid confusion with § 73.210.

12. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and it will not increase or decrease burden hours imposed on the public.

13. Because the rule amendment adopted herein is a substantive rule which grants an exemption and relieves a restriction, the Commission is designating that it shall become effective immediately upon publication in the **Federal Register** (5 U.S.C. 553(d)). Applications pending or received on or after September 25, 1987 (the release date of the *Second Report*) may be processed in accordance with the newly amended rule.

14. Accordingly, *It is ordered*, That the Petition for Reconsideration filed by Brown Broadcasting Service, Inc. *is denied*, and That the Petition for Reconsideration filed by Eric R. Hilding *is granted*.

15. *It is further ordered* That Part 73 of the Commission's Rules and Regulations *is amended* as set forth below, effective upon publication in the **Federal Register**. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

H. Walker Feaster, III,

Acting Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.211 is revised in its entirety to read as follows:

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§ 73.211 Power and antenna height requirements.

(a) *Minimum requirements.* (1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, the minimum effective radiated power (ERP) for:

Class A stations must equal 0.1 kW (−10.0 dBk);

Class B1 stations must exceed 3 kW (4.8 dBk);

Class B stations must exceed 25 kW (14.0 dBk);

Class C2 stations must exceed 3 kW (4.8 dBk);

Class C1 stations must exceed 50 kW (17.0 dBk);

Class C stations must equal 100 kW (20.0 dBk).

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C2, or C1 stations.

(3) Stations of any class except Class A may have an ERP less than that specified in paragraph (a)(1) of this section, provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, exceeds the distance to the class contour for the next lower class. Class A stations may have an ERP less than 100 watts provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, equals or exceeds 6 kilometers.

(b) *Maximum limits.* (1) The maximum ERP in any direction, reference HAAT, and distance to this class contour for the various classes of stations are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft.)	Class contour distance in kilometers
A	3kW (4.8 dBk)	100 (328)	24
B1	25kW (14.0 dBk)	100 (328)	39
B	50kW (17.0 dBk)	150 (492)	52
C2	50kW (17.0 dBk)	150 (492)	52
C1	100kW (20.0 dBk)	299 (981)	72
C	100kW (20.0 dBk)	600 (1968)	92

(i) The reference distance of a station is obtained by finding the predicted distance to the 1mV/m contour using Figure 1 of § 73.333 and then rounding to the nearest kilometer. Antenna HAAT is determined using the procedure in § 73.313. If the HAAT so determined is less than 30 meters (100 feet), a HAAT of 30 meters must be used when finding the predicted distance to the 1 mV/m contour.

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 3 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 24 km in both cases.

(iii) Except as provided in paragraph (b)(3) of this section, no station will be authorized in Zone I or I–A with an ERP equal to 50 kW and a HAAT exceeding 150 meters. No station will be authorized in Zone II with an ERP equal to 100 kW and a HAAT exceeding 600 meters.

(2) If a station has an antenna HAAT greater than the reference HAAT for its class, its ERP must be lower than the class maximum such that the reference distance does not exceed the class contour distance. If the antenna HAAT is so great that the station's ERP must be lower than the minimum ERP for its class (specified in paragraphs (a)(1) and (a)(3) of this section), that lower ERP will become the minimum for that station.

(3) In Puerto Rico and the Virgin Islands:

(i) Class B stations may use antenna heights up to 600 meters (1968 feet) above average terrain with effective radiated powers up to 25.5 kW. For antenna heights above 600 meters (1968) feet), the power must be reduced so that the station's 1 mV/m contour (located pursuant to Figure 1 of § 73.333) will extend no farther from the station's transmitter than with the facilities of 25.5 kW and an antenna height of 600 meters (1968 feet). For powers above 25.5 kW (up to 50 kW) no antenna height will be authorized which results in greater coverage by the 1 mV/m contour (located pursuant to Figure 1 of § 73.333) than that obtained with the facilities of 25.5 kW ERP and an antenna height of 600 meters (1968 feet).

(ii) Class A stations may use antenna heights up to 335 meters (1100 feet) above average terrain with effective radiated powers up to 3 kW. For antenna heights above 335 meters (1100 feet), the power must be reduced so that the station's 1 mV/m contour (located pursuant to Figure 1 of § 73.333) will extend no farther from the stations transmitter than with the facilities of 3 kW ERP and an antenna height of 335 meters (1100 feet).

(iii) Class B1 stations may use antenna heights up to 335 meters (1100 feet) above average terrain with effective radiated powers up to 5 kW. For antenna heights above 335 meters (1100 feet), the power must be reduced so that the station's 1 mV/m contour (located pursuant to Figure 1 of § 73.333) will extend no farther from the station's transmitter than with the facilities of 5 kW and an antenna height of 335 meters (1100 feet). For powers above 5 kW (up to 25.0 kW) no antenna height will be authorized which results in greater coverage by the 1 mV/m contour than that obtained with the facilities of 5 kW ERP and an antenna height of 335 meters (1100 feet).

(c) *Existing stations.* Stations authorized prior to March 1, 1984 that do not conform to the requirements of this section may continue to operate as authorized. Stations operating with facilities in excess of those specified in paragraph (b) of this section may not increase their effective radiated powers or extend their 1 mV/m field strength contour beyond the location permitted by their present authorizations. The provisions of this section will not apply to applications to increase facilities for those stations operating with less than the minimum power specified in paragraph (a) of this section.

[FR Doc. 88–10759 Filed 5–12–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–216; RM–5486]

Radio Broadcasting Services; Booneville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 284C2 for Channel 221A at Booneville, Arkansas, and modifies the Class A license of Station KBSS(FM), accordingly, in response to a petition filed on behalf of Booneville Broadcasting Company. A counterproposal filed on behalf of Red, White and Blue Communications, Inc., licensee of Station KAJJ–FM, Greenwood, Arkansas, was withdrawn. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–216, adopted April 14, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas by removing Channel 221A and adding Channel 284C2 at Booneville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10760 Filed 5–12–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–392; RM–5890]

Radio Broadcasting Services; Fort Myers, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C1 for Channel 237A at Fort Myers, Florida, and modifies the Class A license for Station WSOR(FM) to specify the new channel at the request of the licensee Riverside Baptist Church of Fort Myers, Inc. The transmitter site for Channel 237C1 is 18.3 miles west of Fort Myers at coordinates 26–40–30 and 82–10–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (203) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–392, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Fort Myers, Florida, Channel 237C1 is added, and Channel 237A is removed.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10761 Filed 5–12–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–377; RM–5783]

Radio Broadcasting Services; Kekaha, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to Kekaha, Hawaii, as a first FM channel at the request of Timothy D. Martz. With this action, this proceeding is terminated.

DATES: *Effective* June 20, 1988. The window period for filing applications will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–377, adopted April 5, 1988, and released May 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), is amended by adding Kekaha, Hawaii, Channel 277A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10675 Filed 5–12–88; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–404; RM–5814]

Radio Broadcasting Services; McCall, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allotts Channel 252A to McCall, Idaho, as a third FM service, at the request of Mary C. Rhoads. With this action, this proceeding is terminated.

DATES: Effective June 23, 1988. The window period for filing applications will open on June 24, 1988, and close on July 24, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–404, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors,

International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments of the Rules is amended for McCall, Idaho, by adding Channel 252A.

Federal Communications Commission

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10762 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-37; RM-5595]

Radio Broadcasting Services; Brownsburg, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Brownsburg, Indiana, as that community's first local FM service, in response to a petition filed by Bruce Quinn. With this action, the proceeding is terminated.

DATES: Effective June 23, 1988; The window period for filing applications on Channel 270A at Brownsburg, Indiana, will open on June 24, 1988, and close on July 24, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-37, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Brownsburg, Channel 270A, under Indiana.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10763 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-364; RM-5683]

Radio Broadcasting Services; Wabash, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Wabash, Indiana, as that community's second local FM service, in response to a petition filed on behalf of Conaway Communications Corporation. With this action, the proceeding is terminated.

DATES: *Effective* June 23, 1988. The window period for filing applications on Channel 290A at Wabash, Indiana, will open on June 24, 1988, and close on July 24, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-364, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by amending the entry for Wabash, Indiana, to add Channel 290A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10764 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-361; RM-5852]

Radio Broadcasting Services; Dennysville, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 275A to Dennysville, Maine, as that community's first FM broadcast service, in response to a petition filed by Timothy D. Martz. Petitioner filed comments in response to the *Notice*. Concurrence of the Canadian government has been obtained for the allotment at Dennysville. The coordinates used for the allocation of Channel 275A at Dennysville are 44-54-13 and 67-13-45. With this action, this proceeding is terminated.

DATES: *Effective* June 20, 1988. The window period for filing applications will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-361, adopted April 6, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919, M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Maine is amended by adding Channel 275A at Dennysville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10765 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-381; RM-5934]

Radio Broadcasting Services; Slaton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C1 for Channel 225A at Slaton, Texas, and modifies the license of Station KJAK(FM) to specify the higher class adjacent channel, at the request of Williams Broadcast Group. The channel substitution can be made at the petitioner's current transmitter site (33-29-38 and 101-44-01). With this action, this proceeding is terminated.

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-381, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 225A and adding Channel 224C1 for Slaton.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10766 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-348; RM-5708]

Radio Broadcasting Services; Woodville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 234C2 to Woodville, Texas, as that community's first local FM service, as requested by Trinity Valley Broadcasting Company. A site restriction of 23.5 kilometers (14.6 miles) north of the city is required. The restricted site coordinates are 30-59-14 and 94-25-29. With this action, this proceeding is terminated.

DATES: *Effective* June 23, 1988; The window period for filing applications will open on June 24, 1988, and close on July 24, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-348, adopted April 13, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by adding Channel 234C2 to Woodville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10767 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-337; RM-5788]

Radio Broadcasting Services; Augusta, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document upgrades the facilities for Station WZNY(FM), Augusta, Georgia, from a Class C1 to a Class C facility on Channel 289, and modifies the station's license accordingly, at the request of the licensee, Sunny Communications, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-337, adopted April 5, 1988, and released May 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Augusta, Georgia, Channel 289C1 is removed and Channel 289C is added.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10680 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-300; RM-5704]

Radio Broadcasting Services; Coeur d' Alene, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C2 for Channel 276A at Coeur d' Alene, Idaho, and modifies the license for Station KCDA(FM) at the request of the licensee, Idaho Broadcasting Company, Inc., to provide for a wide coverage area station. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-300, adopted April 5, 1988, and released May 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Idaho by adding Channel 276C2 and removing Channel 276A at Coeur d' Alene.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10678 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-394; RM-5963]

Radio Broadcasting Services; Lancaster, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Maurice B. Polayes, allocates Channel 272A to Lancaster, New Hampshire, as the community's first local FM service. Channel 272A can be allocated to Lancaster in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.2 miles) northeast to avoid a short-spacing to Station WCVR-FM, Channel 272A, Randolph, Vermont. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective June 17, 1988. The window period for filing applications will open on June 20, 1988, and close on July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-394, adopted April 5, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continued to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New Hampshire is amended by adding an entry for Lancaster, Channel 272A.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Divison, Mass Media Bureau.
[FR Doc. 88-10686 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-100; RM-5821; FCC 88-96]

Radio Broadcasting Services; Record Retention Periods for Public File Materials

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission amends §§ 73.3526(e)(2) and 73.3527(e)(2) of its Rules to shorten the record retention periods for public file materials. This action is taken as a result of the Commission's determination that the periods were unnecessarily lengthy and imposed excessive administrative burdens on broadcast licensees.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-100, adopted March 8, 1988, and released April 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.

Part 73 of Title 47 of the CFR is amended as follows:

PART 73—RADIO BROADCAST SERVICE

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154,303.

2. Section 73.3526 is amended by revising paragraph (e)(2) introductory text and (e)(2)(i) as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *
(1) * * *
(2) The permittee or licensee shall maintain such a file so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this paragraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee.

Applications and related material placed in the file shall be retained for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five (5) years for television licensees or seven (7) years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later, with two exceptions:

(i) Engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and

* * * * *

3. Section 73.3527 is amended by revising paragraph (e)(2) introductory text and (e)(2)(i) as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *
(1) * * *
(2) The permittee or licensee shall maintain such a file so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this paragraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee.

Applications and related material placed in the file shall be retained for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five (5) years for television licensees or seven (7) years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later, with two exceptions:

(i) Engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and

* * * * *

[FR Doc. 88-10679 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-341; RM-5779]

Radio Broadcasting Services; Wichita Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C2 for Channel 292A at Wichita Falls, Texas, and modifies the license of Station KTLT(FM) to specify the higher class co-channel, at the request of Wichita Falls Communications. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-341, adopted April 4, 1988, and released May 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 292A and adding Channel 292C2 for Wichita Falls.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10677 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-292; RM-5771]

Radio Broadcasting Services; Buffalo, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C for Channel 224A at Buffalo, Wyoming, and modifies the license of Station KLGT(FM) to specify the higher class adjacent channel, at the request of Communications Systems III. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-292, adopted March 25, 1988, and released April 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wyoming, by removing Channel 224A and adding Channel 225C for Buffalo.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10676 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-436; RM-6024]

Radio Broadcasting Services; Eagle Nest and Angel Fire, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: The Commission, at the request of Francis O'Connell d/b/a Moreno Valley Broadcasting, Inc., allocates Channel 256C2 to Angel Fire, New Mexico, as the community's first local FM service. Channel 256C2 can be allocated to Angel Fire in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates are North Latitude 36–23–00 and West Longitude 105–18–00. The document also denies Moreno Valley Broadcasting's request that Channel 256C2 be allocated to Eagle Nest-Angel Fire, New Mexico, on a hyphenated basis. With this action, this proceeding is terminated.

DATES: Effective June 20, 1988. The window period for filing applications will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–436, adopted April 7, 1988, and released May 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New Mexico is amended by adding the following entry, Angel Fire, Channel 256C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10674 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–499; RM–6053]

Radio Broadcasting Services; Henderson, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tia A. Soliday, allocates Channel 264A to Henderson, New York, as the community's first local FM service. Channel 264A can be allocated to Henderson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43–50–49 and West Longitude 76–10–56. Canadian concurrence has been received since Henderson is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: *Effective* June 17, 1988. The window period for filing applications will open on June 20, 1988, and close on July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–499, adopted April 6, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is amended by adding Henderson, Channel 264A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10672 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Gen. Docket No. 86–285; MM Docket No. 86–286]

Low Power Television and Television Translator Filing Window From June 15, 1988 Through June 24, 1988

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of filing window.

SUMMARY: This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. This notice sets forth filing procedures including when and where to file and the applicable application form to be used, and information concerning application filing fees. This item is related to Commission actions in Gen. Docket 86–285, 2 FCC Rcd 947 (1987), and MM Docket 86–286 (1987).

EFFECTIVE DATE: June 15, 1988 through June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau (202) 632–3894.

SUPPLEMENTARY INFORMATION: Released May 6, 1988.

Commencing on June 15, 1988, and continuing to and including June 24, 1988, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations at the below specified locations only.

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the June 15–24, 1988 window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with § 73.3564 of the Commission's rules. As noted below, a fee of $375.00 must accompany each application. Further, applicants filing during this window period *MUST* use the February 1988 edition of FCC Form 346. See 53 FR 15225 (April 28, 1988). All applications filed on obsolete editions will be returned as defective and unacceptable for filing. FCC Form 346 can be obtained from the FCC's Operations Support Division, Services and Supply Branch, Room B–10, 1919 M Street NW., Washington, DC 20554, telephone number (202) 632–7272.

In this window application filing process, the Commission will utilize the facilities of a Treasury Department lockbox bank. Window application filings can be made, either by mail or by person, at the following locations *ONLY*:

If mailed—Federal Communications Commission, Low Power Television Window Filing, P.O. Box 371995M, Pittsburgh, PA 15250–7995.

If hand-delivered—Federal Communications Commission, Low Power Television Window Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Hand-carried or couriered applications can be delivered daily at the Strip Commerce Center location during normal business hours (8:30 a.m. to 5:00 p.m.). Detailed instructions to get to this location are included in this Public Notice as Attachment I. Submissions tendered after close of business (5:00 p.m.) on Friday, June 24th, 1988, will not be accepted. Mailed applications must be *actually received* no later than June 24th. *Window application filing WILL NOT be accepted at the offices of the Federal Communications Commission in Washington, DC.*

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted as such by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, for mailed window application filings, a "return copy" of the application can be furnished *provided* the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. For hand-carried or couriered applications delivered to the Strip Commerce Center location, bank personnel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requestor.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. A *separate* fee payment of $375.00, attached to each original application, must be submitted for *each* new station or major change application filed during this window; a single fee payment for multiple applications will *not* be accepted. Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission.

Applications submitted with insufficient payments or without any payments will be dismissed and returned, along with the insufficient payment, to the applicant without processing. See § 1.1107 of the Commission's rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of FCC Form 346 will be rejected and returned to the applicant.

Governmental entities are exempt from the $375.00 fee. As defined by § 1.1112(f) of the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their communities or programs." Also exempted from this fee are noncommercial educational FM and full service television broadcast station licensees seeking to make major changes in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. To avail itself of any fee exemption an applicant must indicate its eligibility by checking the appropriate box on page 1 of FCC Form 346 (February 1988 edition).

Applicants are advised that on April 21, 1988, the Commission adopted a *Policy Statement* deciding that terrain shielding will be given limited consideration in the evaluation of television translator and low power television applications. FCC 88–160, released April 25, 1988. In the *Policy Statement* the Commission described the limitations on its consideration of requests for waiver of its low power television service application acceptance requirements concerning interference protection standards and provided guidance for the submission of these waiver requests.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at telephone number (202) 632–3894.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Attachment I—Directions to Strip Commerce Center

From Greater Pittsburgh International Airport and Interstate 79:

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.
Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.
Take Liberty Avenue to 28th Street (28 blocks).
Turn right on 28th Street and follow FCC signs to parking lot.
Enter building at designated area and follow signs.

From Pennsylvania Turnpike:

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).
Proceed on Grant Street to Liberty Avenue (Approximately 6–7 blocks).
Bear right on to Liberty Avenue.
Take Liberty Avenue to 28th Street.
Turn right on 28th Street and follow FCC signs to parking lot.
Enter building at designated area and follow signs.

[FR Doc. 88–10682 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 84–1296; FCC 88–128]

Cable Television; Amendment to Implement the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The U.S. Court of Appeals for the District of Columbia Circuit decision in *American Civil Liberties Union* v. *FCC* remanded to the Commission the signal availability standard in the effective competition test for a reasoned explanation of the chosen standard or the development of a new standard. This *Second Report and Order* revises the signal availability standard in response to the court's concerns and in light of the record developed in this proceeding. In this regard, the *Second Report and Order* modifies these rules with respect to the measures of signal availability, the degree of signal coverage, and the waiver standards.

VOL 53 ISS 93 MY 13 1988 UMI

EFFECTIVE DATE: June 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* in MM Docket No. 84-1296, adopted March 24, 1988, and released April 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Second Report and Order

1. The Cable Communications Policy Act of 1984 (Cable Act) requires the Commission to define the circumstances and conditions under which franchising authorities are to regulate the rates charged by cable operators for "basic cable service." Specifically, section 623 of the Cable Act instructs the Commission to "prescribe and make effective regulations which authorize a franchising authority to regulate rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition." In the *Report and Order* in this proceeding (50 FR 18637 (1985)), the Commission determined that effective competition for a cable system would exist where any three "off-the-air" broadcast signals were available in the cable community. The Commission also ruled that a broadcast signal would be deemed available in either of the following circumstances: (1) The signal places a predicted Grade B contour over any portion of the cable community; or, (2) the signal is "significantly viewed."

2. Upon review, the U.S. Court of Appeals for the District of Columbia Circuit concluded that, for the most part, the rules adopted by the Commission are reasonable and consistent with the Cable Act. The court did, however, find several portions of the *Report and Order* to be arbitrary or inconsistent with the Cable Act and remanded these to the Commission for further action. One of these is the effective competition test used in determining whether local authorities will be permitted to regulate rates for basic cable service. The court remanded to the Commission, for a reasoned explanation of the chosen standard or the development of a new standard, the issue of how much of a community had to be covered by a broadcast signal for that signal to be considered available for purposes of meeting the effective competition test. The court found unacceptable the Commission's decision to count every signal that covers any portion of the cable community and also indicated that there are potential difficulties with the use of significant viewing determinations that are made on a county basis as part of the standard. In addition, it noted with concern the substantial barrier the current waiver system may place on franchising authorities.

3. In the *Further Notice of Proposed Rule Making (Further Notice)* the Commission proposed alternative solutions to the court's concerns with respect to the measures of signal availability, the degree of signal coverage, and the waiver standards. The Commission specifically proposed to use its Grade B contour and a modified version of the significant viewing test that would use data for the cable community as the measures of signal availability; to establish that a cable system faces effective competition if at least 75 percent of the cable community is covered by three or more off-the-air signals; and, to modify the field strength measurement requirements and use other factors, such as cable penetration, in the waiver procedure, to decrease the burden placed on both franchising authorities and cable operators.

4. Cable interests commenting in this proceeding favored continuing to measure signal availability using the Grade B contour and significant viewing determined on a county-wide basis. Franchising authorities opposed these measures of signal availability. They argued that the Grade B contour does not accurately reflect signal availability because it does not include terrain features. They stated, further, that while making significant viewing determinations on a community basis would accurately reflect viewing habits in the cable community, the data necessary to make such determinations are expensive to obtain. In light of the court's concern and the information provided in the record, the Commission decided to continue using the Grade B contour and the significant viewing concept as the measures of signal availability for determining whether a cable system faces effective competition. However, the Commission altered the basis upon which significant viewing is assessed to specify that such determinations are to use viewership data for the cable system rather than the county in which that cable system is located. The Commission found that this change will significantly increase the accuracy of the effective competition test.

5. Cable interests commenting in this proceeding favored limiting the degree of coverage required of the Grade B contour in order to meet the effective competition test. They supported the 75 percent proposal, although they argue that it is reasonable to assume that Grade B signals reaching any portion of a community are probably available for adequate viewing by most residents in that community. Franchising authorities favored a 100 percent coverage coverage measure, arguing that the 75 percent coverage requirement is insufficient to ensure that the cable system is subject to effective competition and is difficult to administer. The Commission modified its coverage standard to provide that a cable system will be deemed to face effective competition if 100 percent of the geographic area of the cable community has access to three or more off-the-air signals. It will not be necessary that the same three signals cover 100 percent of the community. The Commission found this standard to be preferable to the 75 percent approach in that it will be easier to adminster and will provide additional assurance of signal availability consistent with the court's concerns.

6. The parties commenting in this proceeding offered a variety of proposals to reduce the burden of the engineering studies. The Commission decided to permit the substitution of cluster measurements for the mobile runs requirement in the field strength measurements for purposes of demonstrating the availability of a signal for purposes of cable rate regulation determination. It noted that although this method may not provide as high degree of accuracy of the method specified in § 73.686(c) of the rules, it nonetheless will provide adequate information for judging waiver requests. The Commission also modified its policy concerning the responsibility for the cost of engineering studies of signal availability to provide that the cost of an engineering study to refute the predicted availability of Grade B service will fall on the party that loses in the waiver proceeding. Any party intending to obtain a study must first inform the other party and provide it opportunity to negotiate a resolution. Parties not taking this first step will be assigned full responsibility for the study. Finally, these new rules will become effective six months after the release of the *Second Report and Order* so that there will be sufficient time for preparation of any special studies prior to the implementation of these revised rules.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will have a significant impact on a substantial number of small entities because the rule changes herein will increase the number of cable systems that could be subject to rate regulation by franchising authorities, relative to the number of cable systems affected by our existing standard.

8. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget pursuant to that Act.

9. Pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and § 1.106 of the Commission's Rules, *It is Ordered That* Part 76 be amended, as shown below, effective June 20, 1988.

List of Subjects in 47 CFR Part 76

Cable television.

H. Walker Feaster, III,
Acting Secretary.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307–309.

2. Section 76.33 is revised to read as follows:

§ 76.33 Standards for rate regulation.

(a) Effective October 29, 1988, a franchising authority may regulate the rates of a cable system subject to the following conditions (cable systems that were subject to rate regulation prior to this date will remain subject to that regulation pending demonstation that they may not be regulated pursuant to this section):

(1) Only basic cable service as defined in § 76.5(ii) may be regulated;

(2) Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to be subject to effective competition whenever 100 percent of the cable community receives service from at least three unduplicated broadcast television signals. It is not necessary that the same three signals provide service to the entire community. Signals shall be counted on the basis of their predicted Grade B contour (as defined in § 73.683 of the rules) or whether they are significantly viewed within the cable community, as defined in § 76.54(b) and (c) of the rules. A signal that is significantly viewed shall be considered to be available to 100 percent of the cable community. A translator station authorized to serve the cable community is to be counted in the same manner as a full-service station, except that its coverage area shall be based on its protected contour as specified in § 74.707 of the rules, provided that the translator is not used to retransmit a station already providing a Grade B contour or significantly viewed signal within the cable community.

(3) The Commission may grant waivers of this standard where the filing party demonstrates with engineering studies in accordance with § 73.686 of the Commission's rules or by other showings what such Grade B level signals are (or are not) in fact available within the community. In performing the engineering studies noted above, cluster measurements, as provided in § 73.686(b)(2)(viii), may be taken in place of mobile runs as provided in § 73.686(b)(2)(v). Responsibility for the cost of engineering studies undertaken to refute the predicted availability of Grade B service will fall on the party that loses in the waiver proceeding. Any party intending to obtain this study must first inform the other party and provide it an opportunity to negotiate a resolution. Parties not taking this first step will be assigned full responsibility for the study costs.

(4) A cable system, once determined to be subject to effective competition after the effective date of this section, shall not be subject to regulation for one year after any change in market conditions which would cause it be determined not be to subject to effective competition.

(b) In establishing any rate for the provision of basic cable service by cable systems subject to paragraph (a) of this section, the franchising authority shall:

(1) Give formal notice to the public;

(2) Provide an opportunity for interested parties to make their views known, at least through written submissions; and,

(3) Make a formal statement (including summary explanation) when a decision on a rate matter is made.

(c) Any party may petition the Commission for relief of the provisions in this section in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

3. Section 76.54, paragraph (c) is revised to read as follows:

§ 76.54 Significantly viewed signals; method to be followed for special showings.

* * * * *

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees of permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least thirty (30) days prior to the initial survey period. Furthermore, if a survey is undertaken pursuant to the provisions of § 76.33(a)(2) of the rules, notice shall also be served on the franchising authority. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

* * * * *

[FR Doc. 88-10832 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 87-275; FCC 88-99]

Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The amended rules designate VHF marine channel 13 in lieu of channel 16 as the bridge-to-bridge channel on the Great Lakes. These rules resulted from informal coordination between the Canadian and U.S. Coast Guards and will relieve the increasing congestion on channel 16 which is currently being used for bridge-to-bridge communications.

DATE: These rules will not become effective until concurrence is obtained from Canada and the Chief, Private Radio Bureau issues and publishes an order in the Federal Register specifying the effective date.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Shaffer (202) 632-7197 or Maureen Cesaitis (202) 632-7175, Federal

Communications Commission, Private Radio Bureau, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 6, 1988 and released April 1, 1988. The complete text of the Commission decision including the rule amendments is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this report including the rule amendments may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Vessel Bridge-to-Bridge Radiotelephone Act requires that the Commission designate a specific frequency to be used in U.S. waters by approaching vessels to communicate their intentions to one another. VHF marine channel 13 has been designated for this purpose. However, the Great Lakes were exempted from the terms of the Bridge-to-Bridge Act because under the Great Lakes Radio Agreement, channel 16, the distress, safety and calling channel, is used for bridge-to-bridge communications. Increasing congestion on channel 16 prompted the Canadian Coast Guard and the U.S. Coast Guard to discuss designating channel 13 as the bridge-to-bridge frequency. As a result of these negotiations, the Commission and the Canadian Department of Communications prepared companion proposals. This Report and Order adopts channel 13 as the bridge-to-bridge frequency in the Great Lakes for the United States. The vessels transiting the St. Lawrence Seaway, however, would continue to use certain assigned frequencies required by Joint Regulations of the St. Lawrence Seaway Authority and the St. Lawrence Seaway Development Corporation for bridge-to-bridge communications. After concurrence from Canada, the Chief, Private Radio Bureau shall issue an order under delegated authority to specify the effective date of the new rules.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the amended rules will not have a significant impact on a substantial number of small entities. The only vessels affected by the rule change are those subject to the Great Lakes Radio Agreement.

3. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new information collection and record keeping requirement.

4. This Report and Order is issued under the authority of 47 U.S.C. 154(i) and 303(r). The authority citation for Part 80 continues to read as follows: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 4726, 12 UST 2377, unless otherwise noted.

5. A copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

6. It is ordered, that Party 80 is amended as set forth at the end of this document.

7. It is further ordered that after concurrence from Canada, the Chief, Private Radio Bureau acting under delegated authority shall issue an order establishing an effective date of the adopted rules.

8. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 80

Bridge-to-bridge, Canada, Great Lakes.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or appiy 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

2. Section 80.308 is revised to read as follows:

§ 80.308 Watch required by the Great Lakes Radio Agreement.

(a) Each ship of the United States that is equipped with a radiotelephone station for compliance with the Great Lakes Radio Agreement must when underway keep a watch on:

(1) 156.800 MHz on board a vessel 20 meters (65 feet) and over in length, a vessel engaged in towing (See § 80.951(b)), or a vessel carrying more than 6 passengers for hire. This watch must be maintained whenever the station is not being used for authorized traffic. However, a watch on 156.800 MHz need not be maintained by a vessel maintaining a watch on the bridge-to-bridge frequency 156.650 MHz *and* participating in a Vessel Traffic Services (VTS) system and maintaining a watch on the specified VTS frequency.

(2) 156.650 MHz on board a vessel 38 meters (124 feet) and over in length, a vessel engaged in towing (See § 80.951(b)), or a vessel carrying more than six passengers for hire. This watch must be maintained continuously and effectively. Sequential monitoring is not sufficient. Portable VHF equipment may be used to meet this requirement. Vessels are exempted from this requirement while transiting the St. Lawrence Seaway and complying with the Joint Regulations of the St. Lawrence Seaway Authority and St. Lawrence Seaway Development Corporation between the lower exit of St. Lambert Lock at Montreal and Crossover Island, New York and in the Welland Canal and approaches between Calling in Point No. 15 and No. 18.

(b) The watch must be maintained by the master, or person designated by the master, who may perform other duties provided they do not interfere with the effectiveness of the watch.

3. In § 80.373, footnote 6 of paragraph (f) is revised to delete the description of frequency usage in the Great Lakes, to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) * * *

* On the Great Lakes, in addition to bridge-to-bridge communications, 156.650 MHz is available for vessel control purposes in established vessel traffic systems. 156.650 MHz is not available for use in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Midchannel Lighted Whistle Buoy to mile 242.4 above Head of Passes near Baton Rouge. Additionally it is not available for use in the Mississippi River-Gulf Outlet, the Mississippi River-Gulf Outlet Canal, and the Inner Harbor Navigational Canal, except to aid the transition from these areas.

* * * * * *

4. In § 80.956, paragraph (b)(1) is amended by removing the words "Channel 13–156.650 MHz", (b)(2) and (3) are redesignated as (b)(3) and (4), a new paragraph (b)(2) is added (see below), to read as follows:

§ 80.956 Required frequencies and uses.

* * * * *

(b) * * *

(2) The navigational bridge-to-bridge frequency, 156.650 MHz (channel 13).

* * * * *

[FR Doc. 88-10758 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking by Koito Mfg. Co., Ltd., of Japan, for an amendment to Motor Vehicle Safety Standard No. 108 to replace the current requirement to minimize internal reflections from an interior center high-mounted stop lamp with a quantified specification of the amount of permissible light. The agency has concluded that, weighed against the benefit of a quantitative measurement, no safety need is shown for its adoption. Such a requirement and its associated test procedure would add to a manufacturer's costs without promoting a corresponding increase in safety.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: Koito Mfg. Co. of Japan has submitted a petition for rulemaking to amend Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment.* With reference to the center high-mounted stop lamp on passenger cars, paragraph S4.3.1.8 of Standard No. 108 requires, when the lamp is mounted in the interior, for means to be provided "to minimize reflections from the light of the lamp upon the rear window glazing that might be visible to the driver when viewed directly, or indirectly in the rearview mirror." Koito's petition requested an amendment that would delete the words "minimize reflections" and substitute "limit reflections to 35 nt max" (a nt, or nit, being a unit of luminance equal to one candela per square meter). In Koito's view, the present requirement is not a quantitative one. As a result, the company claims to be experiencing difficulty in designing and evaluating interior-mounted lamps.

In accordance with agency procedures, NHTSA has conducted a technical review to determine whether there is a reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. The petitioner has neither presented convincing quantitative data in support of the value it has chosen, nor provided any indication that reflections in current vehicles, if they exist at all, exceed 35 nt. Although the current requirement is not a quantitative one, its intent is clear, and manufacturers have met it by providing a shroud that is flush with, or within a millimeter of, the rear window. The agency has received no complaints about reflected light, and has instituted no compliance proceedings with respect to enforcement of the requirement. Thus, even though the requirement is not quantitative, Koito should have no difficulty in complying with it by providing the same type of shroud other manufacturers have. Further, to add a quantitative requirement would necessitate the addition of a test procedure to verify it, at an unknown cost.

Balancing the need for a quantitative value for minimal reflections and corresponding costs required to verify compliance against the lack of a showing that the current requirement does not meet the need for safety, the agency has concluded that the requested amendment would not be issued at the conclusion of a rulemaking proceeding, and is denying Koito's petition.

(15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on May 10, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

FR Doc. 88-10728 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-59-M

VOL
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Proposed Rules

Federal Register
Vol. 53, No. 93
Friday, May 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 780

Appeal Regulations

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 7 CFR Part 780, Appeal Regulations, to: (1) delete obsolete references, (2) clarify the administrative appeal procedure set forth in this Part; (3) delete restrictions with respect to the reviewability of certain State Agricultural Stabilization Conservation ("ASC") Committee determinations; (4) specify the persons to whom these regulations apply; and (5) state that these regulations are applicable to only individual determinations made with respect to specific persons.

DATE: Comments must be received on or before June 13, 1988 in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Appeals Staff, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be available for further inspection in Room 2741 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: H. E. Maynard, Director, Appeals Staff, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC Telephone: (202) 447-5533.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since Agricultural Stabilization and Conservation Service (ASCS) nor the the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)), provides for the establishment of "local and State committees" to be used in carrying out the provisions of that act. These local committees are commonly referred to as county committees. County and State committees have been used extensively in the past to implement various other programs that are conducted by CCC and the Department of Agriculture, including the price support and production adjustment programs of the CCC. The method for selecting these committees and their general duties are set forth at 7 CFR Part 7.

A major function of county and State committees is to serve as a reviewing authority with respect to the implementation and administration of the various conservation, price support, and production adjustment programs. Included in this function is the participation of county and State committees in the administrative appeal process that is made available to persons who believe that an erroneous determination concerning their participation in such a program has been made. The administrative appeal process is set forth at 7 CFR Part 780. These regulations provide that if a person is dissatisfied with the initial determination by either the county or State committee or the Deputy Administrator, State and County Operations (the "Deputy Administrator"), Agricultural Stabilization and Conservation Service ("ASCS") that such person may request that the determination be reconsidered by the authority which issued the initial determination. If the person is dissatisfied with this subsequent determination, an appeal may be filed with the next highest reviewing authority, with the final level of appeal being to the Deputy Administrator. Throughout this appeal procedure the person pursuing the appeal may request that an informal hearing be held. If such a hearing is deemed to be appropriate, the county or State committee or the Deputy Administrator will convene a hearing in which the appellant is provided the opportunity to present relevant facts and evidence.

This proposed rule would make several amendments to 7 CFR Part 780 for clarity and to delete obsolete references. In addition, the proposed rule would provide that any person who is not a program participate but receives a payment or other benefit that is made under a program administered by the county or State committee or the Deputy Administrator, such as an assignee, is subject to these regulations. This proposed rule also would make editorial changes to all sections of 7 CFR Part 780. The following is a summary of the major amendments which would be made by this proposed rule.

Section 780.1 would be amended to delete references to obsolete programs and provide that these regulations would be applicable to all programs that are administered by county and State committees and the Deputy Administrator, except as otherwise may be provided in individual program requirements. This section would also

be amended to state that this part is applicable to: (1) Persons denied participation in applicable programs, (2) persons participating in such programs; and (3) persons who are not participating in such programs but who receive payments or other benefits under one of these programs. Finally, this section would be amended to state more clearly that this administrative appeal procedure is available only with respect to individual determinations involving a person meeting the previously stated criteria Appeals are not available with respect to general program requirements that apply to all program participants. For example, appeals are not available concerning the level at which loans and purchases are established or the type of conservation uses that are suitable for use on acreage that is required to be removed from production in order for a person to be eligible for program benefits.

Section 780.2 would be amended to conform to the amendments to Section 780.1 concerning persons who receive program payments or other benefits and to remove unnecessary definitions.

Section 780.11 currently provides that nine specified determinations which are made by a State committee are not appealable to the Deputy Administrator. This proposed rule would delete this limitation but provide that certifications by a technician of Soil Conservation Service or the Forest Service or determinations, of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority. The proposed rule also provides that State committee determinations with respect to program payment yields or crop acreage bases are not appealable to the Deputy Administrator. Producers have been permitted to appeal State committee deteminations with respect to bases and yields to the Deputy Administrator since the enactment of the Food Security Act of 1985 (the Act). During the 12-month period ending in April 1987 approximately 425 appeals concerning program payment yields or crop acreage bases were filed with the Deputy Administrator. The vast majority of the appeals addressed the provisions of the Act or the regulations implementing the Act.

List of Subjects in 7 CFR Part 780

Administrative practice and procedure, Appeals.

Accordingly, this proposed rule would revise 7 CFR Part 780 to read as follows:

PART 780—APPEAL REGULATIONS

Sec.
780.1 Basis, purpose and applicability.
780.2 Definitions.
780.3 Request for reconsideration.
780.4 Appeal to the State committee.
780.5 Appeal to Deputy Administrator.
780.6 Time limitations for filing requests for reconsideration or appeals.
780.7 Form of request for reconsideration or appeal.
780.8 Nature of informal hearing.
780.9 Determination.
780.10 Reopening of hearing.
780.11 Requests for reconsideration and appeals requiring special handling.
780.12 Delegation of authority.
780.13 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); section 8 of the Soil Conservation and Domestic Allotment Act, as amended, 49 Stat. 1149 as amended (16 U.S.C. 590h).

§ 780.1 Basis, purpose and applicability.

(a) The regulations set forth in this Part are applicable to all programs administered by the county and State Agricultural Stabilization Conservation committees ("county committee" and "State committee," respectively) and The Deputy Administrator, State and County Operations ("Deputy Administrator") of the Agricultural Stabilization and Conservation Service ("ASCS"), except as otherwise may be provided in individual program requirements. These regulations prescribe the rules and procedure that must be followed by a person who seeks reconsideration or review of a determination made with respect to:

(1) Denial of participation in such a program;

(2) Compliance with program requirements; and

(3) The making of payments or other program benefits to a person who is not a participant in such a program.

(b) Reconsideration and review under this Part is limited to only individual determinations made with respect to those persons meeting the requirements of paragraph (a) of this section. Accordingly, there is no review under this Part with respect to general program requirements that are applicable to all program participants.

§ 780.2 Definitions.

(a) "Participant" means any person whose right to participate in, or receive payments or other benefits in accordance with, any of the programs to which these regulations apply who is affected by a determination of the county committee, State committee, State committee or Deputy Administrator.

(b) "Reviewing authority" means the county committee, State committee, or Deputy Administrator, as is appropriate.

(c) "State committee" means in Puerto Rico and the Virgin Islands, insofar as is practical, the Director of the Caribbean Area ASCS office.

§ 780.3 Request for reconsideration.

Any participant who believes that a proper determination has not been made in accordance with applicable program regulations or that all of the facts were considered with respect to any such determination initially made by the county committee, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing therewith by filing a request for reconsideration with the reviewing authority which initially made such determination.

§ 780.4 Appeal to the State committee.

Any participant who believes that a proper determination has not been made by the county committee upon its reconsideration of an initial determination may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an appeal with the State committee.

§ 780.5 Appeal to Deputy Administrator.

Except as provided in § 780.11, any participant who believes that a proper determination has not been made by the State committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator.

§ 780.6 Time limitations for filing requests for reconsideration or appeals.

(a) A request for reconsideration or appeal by a participant from any determination shall be filed within 15 days after written notice of the determination is mailed to or otherwise made available to the participant. A request for reconsideration or appeal shall be considered to have been "filed" when personally delivered to the appropriate office or when post-marked.

(b) Whenever the final date for filing a request for reconsideration or appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the close of business on the next working day.

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(c) A request for reconsideration or appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the reviewing authority with whom such request is made, the circumstances warrant such action.

§ 780.7 Form of request for reconsideration or appeal.

Each request for reconsideration or appeal shall be in writing and signed by the participant or by an authorized representative of the participant. Each request for reconsideration or appeal shall be supported by a written statement of facts, which may be submitted with or as a part of the request for reconsideration or appeal, or at any time prior to the hearing. The participant may request an informal hearing or may request a determination to be made by the reviewing authority without a hearing on the basis of the written statement submitted and other information available to the reviewing authority. If a request for an informal hearing is not made by the participant, the reviewing authority shall make its determination on the basis of the material that was made available in making the prior determination and the material submitted by the participant.

§ 780.8 Nature of informal hearing.

(a) The hearing shall be held at the time and place designated by the reviewing authority.

(b) The hearing shall be conducted by the reviewing authority, or a representative of the reviewing authority, in the manner deemed most likely to obtain the facts relevant to the matter in issue. The participant shall be advised of the issues involved. The reviewing authority may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(c) The participant, or an authorized representative of the participant, shall be given a full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. At its discretion, the reviewing authority may request or permit persons other than those appearing on behalf of the participant to present information or evidence at such hearing and, in such event, may permit the participant to question such persons.

(d) The reviwing authority shall have prepared a written record containing a clear, concise statement of the facts as asserted by the participant and material facts found by the reviewing authority. The names of interested persons appearing at the hearing shall be included. A verbatim transcript may be made if:

(1) The participant requests at a reasonable period prior to the time the hearing begins that the reviewing authority provide for such a transcript and agrees to pay the expense thereof, or

(2) The reviewing authority determines that such a transcript is appropriate.

(e) If, at the time scheduled for the hearing, the participant is absent and no appearance is made on behalf of the participant, the reviewing authority shall, after a reasonable time conclude the hearing, or may, in its discretion, accept information and evidence submitted by other persons present at the hearing.

§ 780.10 Reopening of hearing.

The reviewing authority may, upon its own motion or upon request of the participant, reopen any hearing for any reason it deems appropriate unless the matter has been appealed to or considered by a higher reviewing authority.

§ 780.11 Requests for reconsideration and appeals requiring special handling.

Notwithstanding any other provision at this Part, determinations:

(a) Made under a conservation program involving a finding or certification by a technician of the Soil Conservation Service, or Forest Service, or determinations of a technical nature by any Federal agency, other than a determination made by ASCS, shall be binding on the reviewing authority, and

(b) Made by a State committee with respect to program payment yields or crop acreage bases are not appealable.

§ 780.12 Delegation of authority.

Nothing contained in these regulations in this part shall preclude the Administrator, ASCS (Executive Vice President, CCC) or a designee from determining at any time any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determination made by a State or county committee or the Deputy Administrator.

§ 780.13 OMB Control numbers assigned pursuant to the paperwork reduction act.

The information collection requirements contained in these regulations (7 CFR Part 780) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Signed in Washington, DC this 9th day of May 1988.

Milton Hertz,

Administrator, Agricultural Stabilization, and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-10996 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 911, 915, 918, 921, 922, 923, 924 and 982

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 911, 915, 918, 921, 922, 923, 924, and 982 for the 1988–89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the cost for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by May 23, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 911 (7 CFR Part 911) regulating the handling of limes grown in Florida; 915 (7 CFR Part 915) regulating the handling of avocados grown in South Florida; 918 (7 CFR Part 918) regulating the handling of fresh peaches grown in Georgia; 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR Part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR Part 923) regulating the handling of sweet cherries grown in designated counties in Washington; 924 (7 CFR Part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon; and 982 (7 CFR Part 982) regulating the handling of filberts/hazelnuts grown in Oregon and Washington. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or dispropritionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes, 34 handlers of Florida avocados, 18 handlers of Georgia peaches, 85 handlers of Washington peaches, 60 handlers of Washington apricots, 65 handlers of Washington cherries, 40 handlers of Washington-Oregon prunes, and 30 handlers of Washington-Oregon filberts/hazelnuts subject to regulations under their respective orders, and approximately 280 Florida lime producers, 300 Florida avocado producers, 180 Georgia peach producers, 400 Washington peach producers, 200 Washington apricot producers, 1,200 Washington cherry producers, 350 Washington-Oregon prune producers, and 1,000 Washington-Oregon filbert/hazelnut producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988–89 marketing order expenditures of $233,500 and an assessment rate of $0.15 per bushel of fresh limes shipped under M.O. 911. In comparison, 1987–88 fiscal year budgeted expenditures were $259,000 and the assessment rate was $0.15 per bushel. Major expenditure categories in the 1988–89 budget are $108,000 for program administration, $25,000 for market development, and $100,500 for research. Assessment income for 1988–89 is expected to total $210,000, based on shipments of 1,400,000 bushels of limes. Interest income will amount to approximately $7,000. Committee reserve funds will be available to cover the aniticipated $16,500 deficit for 1988–89.

The Avocado Administrative Committee (Committee) met on April 13, 1988, and unanimously recommended 1988–89 marketing order expenditures of $193,500 and an assessement rate of $0.11 per bushel of fresh avocados. In comparison, 1987–88 fiscal year budgeted expendures were $200,000 and the assessment rate was $.011 per bushel. Major expenditure categories in the 1988–89 budget are $107,300 for program administration, $25,000 for market development, and $61,200 for research. Assessment income for 1988–89 is expected to total $132,000, based on shipments of 1,200,000 bushels of avocados. Interest income will amount to approximately $5,000. Committee reserve funds will be available to cover the anticipated $56,500 deficit for 1988–89.

The Georgia Peach Industry Committee met on April 7, 1988, and unanimously recommended 1988–89 marketing order expenditures of $14,306.08 and an assessment rate of $0.005 per bushel of fresh peaches. Assessment income for 1988–89 is expected to total $6,695 based on shipments of 1,339,000 bushels of peaches. Interest income will amount to approximately $5,020.08. Committee reserves and other available funds will be available to cover the anticipated $2,600 deficit for 1988–89.

The Stone Fruit Executive Marketing Committee met on April 14, 1988, and unanimously recommended 1988–89 marketing order expenditures for Marketing Order Nos. 921, 922, 923, and 924.

For Washington peaches, expenditures of $18,378 and an assessment rate of $2.25 per ton of peaches under M.O. 921 were recommended. In comparison, 1987–88 budgeted expenditures were $25,136 and the assessment rate was $2.00 per ton. Assessment income for 1988–89 is estimated at $25,875 based on a crop estimate of 11,500 tons of peaches.

For Washington apricots, expenditures of $6,970 and an assessment rate of $2.25 per ton of apricots under M.O. 922 were recommended. In comparison, 1987–88 budgeted expenditures were $5,802 and the assessment rate was $1.25 per ton. Assessment income for 1988–89 is

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estimated at $7,875 based on a crop estimate of 3,500 tons of apricots.

For Washington sweet cherries, expenditures of $97,210 and an assessment rate of $2.50 per ton of sweet cherries under M.O. 923 were recommended. In comparison, 1987–88 budgeted expenditures were $85,100 and the assessment rate was $2.00 per ton. Assessment income for 1988–89 is estimated at $112,500 based on a crop estimate of 45,000 tons of cherries.

For Washington-Oregon prunes, expenditures of $17,342 and an assessment rate of $2.25 per ton of prunes under M.O. 924 were recommended. In comparison, 1987–88 budgeted expenditures were $29,462 and the assessment rate was $3.00 per ton. Assessment income for 1988–89 is estimated at $20,250 based on a crop of 9,000 tons of prunes.

The Filbert/Hazelnut Marketing Board (Board) conducted a telephone vote on April 22, 1988, and unanimously recommended 1988–89 marketing order expenditures of $424,100 and an assessment rate of $14.00 per ton of filberts/hazelnuts. In comparison, 1987–88 marketing year budgeted expenditures were $386,590 and the assessment rate was $14.00 per ton. Major expenditure categories in the 1988–89 budget are $63,400 for administration, $245,000 for promotion, and $100,000 for the emergency reserve fund. Assessment income for 1988–89 is expected to total $280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at $31,000. The Board may expend operational reserve funds of $113,100 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budgets and assessment rate approvals for these programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 911, 915, 918, 921, 922, 923, 924, and 982

Apricots, Avocados, Cherries, Filberts, Florida, Georgia, Hazelnuts, Limes, Marketing agreements and orders, Oregon, Peaches, Prunes, Washington.

For the reasons set forth in the preamble, it is proposed that new §§ 911.227, 915.227, 918.225, 921.227, 922.227, 923.228, 924.228, and 982.333 be added as follows:

1. The authority citation for 7 CFR Parts 911, 915, 918, 921, 922, 923, 924, and 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 911.227, 915.227, 918.225, 921.227, 922.227, 923.228, 924.228, and 982.333 are added to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.227 Expenses and assessment rate.

Expenses of $233,500 by the Florida Lime Administrative Committee are authorized, and an assessment of $0.15 per bushel of assessable limes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.227 Expenses and assessment rate.

Expenses of $193,500 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of assessable avocados is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.225 Expenses and assessment rate.

Expenses of $14,306.06 by the Industry Committee are authorized, and an assessment rate of $0.005 per bushel of peaches is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.227 Expenses and assessment rate.

Expenses of $18,378 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $2.25 per ton of assessable peaches is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.227 Expenses and assessment rate.

Expenses of $6,970 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $2.25 per ton is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.228 Expenses and assessment rate.

Expenses of $97,210 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.50 per ton of assessable cherries is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

§ 924.228 Expenses and assessment rate.

Expenses of $17,342 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.25 per ton of assessable prunes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.333 Expenses and assessment rate.

Expenses of $424,100 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $0.07 per pound of assessable filbert/hazelnuts for the 1988–89 marketing year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 10, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–10796 Filed 5–12–88; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 325, 327, and 381

[Docket No. 86–031P]

Prohibition on Movement of Product Prior to Reinspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by removing current provisions that permit the transportation of imported products prior to reinspection by FSIS. Instead, FSIS is proposing to require that imported product be reinspected by FSIS at the port of first arrival. In addition, FSIS is proposing to eliminate the official import seal and current sealing requirements for imported product which is transported before reinspection. These actions will enable FSIS to maintain control over end to ensure reinspection of all meat and poultry products entering the United States.

DATE: Comments must be received on or before: July 12, 1988.

ADDRESS: Written comments should be sent to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Patricia Stolfa at (202) 447–3473. (See also "Comments" under Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Mark Manis, Director, Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250, (202) 447–2953.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

During calendar year 1985, FSIS conducted reinspection on over 2.4 billion pounds of imported products. Reinspection of imported products, which is directed by the Agency's Automated Import Information System (AIIS), checks the effectiveness of foreign inspection systems in assuring that only wholesome, not adulterated, and properly marked, labeled and packaged product enters the United States, and assuring that such products meet the same inspection, sanitary, quality, species verification, and residue standards that are applied to domestic producers and their products.

Information retrieved from the AIIS for the period January 1, 1985, through December 31, 1985, shows that over 2.4 billion pounds of product were offered for reinspection. Of that amount, 25.9 percent (641,331,144 pounds) was product coming from Canada, almost always via land, and no more than the remaining 74.1 percent (1,837,312,092) pounds) was product arriving via water. For calendar year 1986, these figures remain fairly constant with approximately 25.7 percent of product arriving from Canada and no more than 74.3 percent arriving over water.

An analysis of data maintained by the Bureau of the Census, which indicates in which Customs Service (Customs) districts product is unloaded and in which districts it is presented for reinspection, provides representative information concerning amounts of product that could be affected by this change. The data maintained by the Census Bureau is supplied by Customs which, in turn, receives the information from importers.

For the period May 1, 1985, to April 30, 1986, the total amount unloaded and presented for reinspection within districts of unloading *1,500,434,894* pounds (*80.5* percent of all waterborne meat and poultry imports). This amount of product is traveling only a short distance or not at all and would not be affected by the proposed change. The total amount of product moved after unloading in one district and presented for reinspection in another district was *361,473,786* pounds (*19.5* percent of all waterborne meat and pountry imports and 7 percent of total imports). This is the amount of product that, in 1985, could have been subject to the change proposed herein.

This proposal will have no affect on the volume of imported product. The proposal is expected to affect only the point at which product is reinspected. Therefore, there will be no overall loss of business associated with the reinspection of imported meat and poultry products. The business redistribution that could be generated by the proposed rule would be restricted to an affect on the 7 percent of total imports that are now presented for reinspection in a district other than the one in which they are unloaded. It is unlikely that even this affect will occur, since adjustments can be made in the waterborne destination, in which case there would be no change in the location of reinspection. Other adjustments to minimize this impact can be made by the importing industry (see the next section). In any case, there will be no overall loss of business as a result of this proposed rule, and significant benefits will accrue to the effectiveness and efficiency of import inspection.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The determination is based on several factors.

FSIS has undertaken an informal survey of the affected industry to determine the impact of the proposed rule. Information gathered shows that reinspection of waterborne product takes place in facilities that provide general storage and distribution services for various products. Storage, distribution and reinspection of meat and poultry products represent less than 30 percent of any firm's activities in the majority of cases, and in many cases less than 10 percent. FSIS found that the 30 percent or less of the firm's activity involving meat and poultry products is impacted by several factors. These factors include proximity of the firm's establishment to the end user, port of call patterns of shipping carriers, varying port charges and facilities, cost and availability of transport for redistribution, cost and availability of labor, firm maintenance costs, insurance, etc. Experience indicates that all of these factors are operating to some degree at all times and are more significant in their economic impacts on firms than the availability of FSIS personnel.

Following announcement in January 1987 of FSIS's plans to implement the recommendations of the OIG import audit, the Administrator of FSIS discussed the change outlined in this proposed rule with import industry officials. He explained the change and requested information concerning

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impacts of the change. Industry officials have not provided any data.

Some industry officials have taken various actions to comply with the proposal and thus minimize its effects. For example, a new facility has just been completed in California to handle the product that was transported overland to other ports for reinspection; another port is making considerable efforts to have ships unload product for reinspection at its docks; and several companies have diversified their activities to include a greater proportion of non-meat and poultry products. FSIS is also aware that practices, such as delaying payment of various fees, including certain handling costs in overall charges, and modernizing storage and handling facilities, are part of the industry strategy to minimize any impact of this proposed rule and, more generally, to increase business.

As noted above, although the Agency knows that the proposed rule could affect the distribution of the business associated with no more than 7 percent of total meat and poultry import reinspection, it cannot predict how much of this 7 percent will be redistributed. Not only can adjustments be made by shippers, but the import industry itself has open to it many options that would minimize the impact of the proposed rule. Further, the Agency has no reason to believe that this proposal would have a disproportionate effect on smaller firms.

This information supports the Agency determination that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Policy Office. Please include the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views should make such request to Ms. Stolfa so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Currently, §§ 327.7 and 381.200 of the Federal meat and poultry products inspection regulations permit imported product to be unloaded at the port of first arrival or, "if arriving by water, from the wharf where unloaded," and then transported, under official seal, to another location where import inspection is to be conducted (9 CFR 327.7 and 381.200). These regulations also provide specific, extensive sealing requirements for any transportation of imported product. Before product that has not been reinspected can be transported, the means of conveyance (car, truck, railcar) must be sealed with an official import seal. The seal must be affixed by either a Program or Customs employee. Sections 327.7 and 381.200 also allow, in lieu of sealing, for colored placards containing a warning notice to be affixed to the product containers by the importer. Labeling product containers or sealing the means of conveyance assures that the identity of the product is maintained until it arrives at its final destination and is presented for reinspection.

There is no practical way FSIS can ensure that such product once introduced to the United States will be presented to USDA for reinspection or ensure compliance with the sealing provisions. Given the volume of imported product (2.1 billion pounds per year) and FSIS's limited resources (90 import inspectors), it is physically impossible for FSIS personnel to seal each conveyance in which imported products might be transported or to break the seals, if affixed, once product arrives at its intended destination. Customs' regulations permit movement in-bond without further sealing (provided foreign country seals have been affixed), and Customs does not have the resources to provide special handling services regarding imported meat and poultry products. FSIS cannot in fact control the transportation under seal of such product prior to reinspection.

FSIS regulations which permit the movement of product after unloading prior to reinspection were intended only to parallel Customs' regulations (19 CFR 18.11), which permit the movement under bond of most imported goods from the port of first arrival before documents are filed and the duty is assessed. If requested by the importer, meat and poultry products may be transported in Customs' bonded carriers, from the port of unloading (the port where the product is first off-loaded from a vessel, truck or other conveyance onto United States soil) to another Customs' (port) location for declaration and examination by Customs' officers. However, Customs does not routinely monitor such transportation of imported meat and poultry products. In these cases, formal Customs entry for consumption or warehouse, involving the filing of forms and payment of applicable duty, if any, can be accomplished at the "port of destination." (19 CFR 18.11). Therefore, the physical arrival of product in the United States often takes place at one location and entry for Customs' purposes at another.

In April 1985, FSIS import reinspection activities became realigned under International Programs (IP), which is separately managed from the domestic inspection program. At the same time, in response to recommendations by the Department's Office of Inspector General (OIG) for better management and control of imported product, IP limited reinspection of imports to designated import inspection facilities located at various ports.

Restricting the Movement of Imported Product

FSIS is proposing to limit the transportation of imported product prior to reinspection by allowing imported product to be transported only to authorized places of inspection within the port of first arrival. This proposal is supported by OIG's final audit report entitled "Imported Meat Process" (January 14, 1987) which recommended that FSIS "require that foreign meat products entering the United States be inspected by the Import Inspection Division only at the point of first arrival." OIG stated that this action will enable FSIS to maintain control over meat products entering the United States. The report contained a discussion noting the physical and administrative control problems FSIS has had with products that are transported elsewhere before being reinspected. OIG found that neither FSIS nor Customs is able to ensure adequate physical or administrative controls when imported product is transported to and inspected at other than port-of-first-arrival locations. During the course of its audit, OIG cited instances in which product was shipped directly, without official seals or Program or direct Customs' supervision, to intermediary transportation facilities (stripping stations, where cargo is removed from large shipping containers). The product was then transferred to truck trailers or railcars for shipment to inland inspection sites or port facilities located several hundred miles away, again without USDA or Customs personnel present to supervise the transfer or to affix the official seal. As a consequence, FSIS could not be certain that all product entering the country was presented for reinspection.

In response to the report, FSIS stated that its regulations would be revised to require reinspection of all imported product at its initial port of first arrival into the United States. OIG stated that this action by FSIS would be sufficient to resolve the problem and that it would close out this recommendation once it is implemented.

Recent conversations with Customs Service personnel have confirmed that Customs will continue to permit the product to be transported elsewhere under bond, before it is officially presented for final Customs entry, regardless of its having been reinspected by FSIS at the port of first arrival. Importers will still be able to postpone payment of duty until official entry at a location closer to its final destination.

Therefore, for the reasons discussed in the preamble, FSIS is proposing to amend Parts 325 and 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations as set forth below.

List of Subjects

9 CFR Part 325

Meat inspection, Transportation.

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products, Transportation.

PART 325—TRANSPORTATION

1. The authority citation for Part 325 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et. seq.*).

2. Paragraph (b)(2) of § 325.1 would be revised to read as follows:

§ 325.1 Transactions in commerce prohibited without official inspection legend or certificate when required; exceptions; and vehicle sanitation requirements.

* * * * *

(b) (1) * * *

(2) Product imported into the United States may be transported and offered or received for transportation if such product is conveyed in railroad cars, trucks or other means of conveyance, prior to inspection, to an authorized place of inspection, as provided in § 327.6 of this part.

* * * * *

PART 327—IMPORTED PRODUCTS

3. The authority citation for Part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

4. The title of § 327.7 and paragraph (a)(1) would be revised to read as follows:

§ 327.7 Products for importation, handling, assistance.

(a)(1) No product required by this part to be inspected shall be moved, prior to inspection, from the port of first arrival in the United States, or, if arriving by water, from the wharf where unloaded, except as provided in § 325.1(b)(2).

* * * * *

§ 327.7 [Amended]

5. Paragraphs (a)(2), (a)(3), (b), (c), (f), and (h) of § 327.7 would be removed.

6. Paragraphs (d), (e), and (g) of § 327.7 would be redesignated as paragraphs (b), (c), and (d).

§ 327.22 [Removed and Reserved]

7. Section 327.22 would be removed and reserved.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

8. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

9. The title of § 381.200 would be revised to read as follows.

§ 381.200 Products for importation; handling; facilities and assistance.

* * * * *

§ 381.200 [Amended]

10. Paragraphs (a), (c), (d), (e), (f), and (h) of § 381.200 would be removed.

11. Paragraph (b) of § 381.200 would be redesignated as paragraph (a) and revised to read as follows.

(a) No product required by this subpart to be inspected shall be moved, prior to inspection, from the port of arrival where first unloaded, and if arriving by water, from the wharf where first unloaded at such port, to any place other than the place designated in accordance with this subpart as the place where the same shall be inspected.

* * * * *

12. Paragraph (g) of § 381.200 would be redesignated as paragraph (b).

Done at Washington, DC, on April 22, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-10797 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-0635]

Home Mortgage Disclosure; Proposed Amendments to Regulation C

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment a revised Regulation C (Home Mortgage Disclosure). The revised regulation incorporates recent amendments to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) contained in section 565 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, section 565, 101 Stat. 1815, 1945). These statutory amendments permanently extend the act and expand its coverage to mortgage banking subsidiaries of bank and savings and loan holding companies, and also to savings and loan service corporations that originate or purchase mortgage loans. Until now, the act's coverage has applied only to depository institutions and their majority-owned subsidiaries.

Other proposed changes to the regulation are based on a zero-based review undertaken in keeping with the Board's Regulatory Improvement Program (which calls for a periodic review of Board regulations). The changes have been made in the interest of facilitating compliance for covered institutions.

While the Board's proposal totally revises the existing regulation, the reporting requirements remain identical in substance for institutions that were covered before the Congress amended the law, with one exception. The exception relates to mortgage banking subsidiaries of depository institutions. These subsidiaries would be required, under the Board's proposal, to itemize loan data by census tract (or by county, in some instances) for property located in metropolitan statistical areas where the subsidiary has offices for taking loan applications from the public. Under current law, the subsidiary is required to itemize loan data only for an MSA where the parent institution has its home or branch offices, and reports data as an aggregate sum for loans on property located in other MSAs.

The Board proposes to retain the HMDA-1 form now used by depository institutions for reporting loan data. In addition, the Board proposes to issue a separate form, HMDA-2, for the use of the newly covered entities. A separate

form is necessary because the statutory amendments require the newly covered entities to exclude FHA loans from their data compilations, whereas depository institutions and their majority-owned subsidiaries will continue to report FHA loan data. Because some of the newly covered entities have expressed interest in making data about their FHA loan originations and purchases publicly available in some fashion, the Board is also publishing for comment on optional form, HMDA–2A, that could be used for this purpose.

DATE: Comments must be received on or before June 20, 1988.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the courtyard entrance on 20th Street, between C Street and Constitution Avenue NW., between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R–0635. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Senior Attorney, or Thomas J. Noto, Staff Attorney, Division of Consumer and Community Affairs, at 202–452–2412 or 202–452–3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A statement covering the data on a calendar year basis must be made available to the public and reported to the institution's Federal supervisory agency by March 31 following the calendar year for which the data are compiled.

When originally passed in 1975, HMDA contained a "sunset" provision under which the act was to expire in 1980. A number of temporary extensions were enacted, and recently, in the Housing and Community Development Act of 1987 (Pub. L. 100–242, section 565, 101 Stat. 1815, 1945), Congress permanently extended HMDA by striking the sunset provision from the act. The statutory amendments were signed into law on February 5, 1988.

In addition to the permanent extension, the amendments in the Housing Act expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations. The Board is now proposing amendments to Regulation C to implement these changes.

(2) Effective Date

With regard to the expanded coverage of HMDA, there is some uncertainty as to the legislative intent concerning the year in which service corporations and mortgage banking subsidiaries are to begin collecting data and reporting. While it is clear that the amendments brought these institutions within the coverage of the act in 1987, it is not evident that Congress intended that they should collect and report data for that calendar year.

The Board proposes to require that these institutions collect loan data beginning with calendar year 1988; their first report would be due on March 31, 1989. This approach is consistent with existing Regulations C, which requires institutions that become subject to the regulation within a given calendar year to compile loan data beginning with the following calendar year.

(3) Regulatory Review

The Board's Regulatory Improvement Program calls for periodic review of each of the Board's regulations to determine whether the regulation can be simplified. The Board has conducted such a review of Regulation C and has made a number of changes. The text of the regulation has been revised to improve clarity and readability. Obsolete provisions have been deleted, footnotes have been eliminated, and a detailed appendix regarding state exemptions has been replaced by a brief reference in the regulation. In addition, the instructions to the reporting forms have been significantly reworked and should be easier to follow.

(4) Availability of Aggregated Data

As required by the Home Mortgage Disclosure Act, the Federal Financial Institutions Examination Council (with support from the Federal Reserve Board and the other financial regulators) produces aggregated tables of the loan data received from all reporting institutions in each MSA. In addition, the Examination Council produces tables for each MSA showing lending patterns according to demographic characteristics (such as income level and age of housing stock). These tables, together with data on the individual institutions, are sent to central data depositories in each MSA. The act specifies that the aggregated data and related tables shall be available no later than December 31 following the calendar year to which they relate. Typically, the Examination Council has released these reports by late November or early December.

The conference report accompanying the HMDA amendments indicates Congressional interest in having the HMDA data available at the central data depositories earlier than is now the case. Member agencies of the Examination Council have identified and will implement changes to data processing procedures in order to facilitate the earlier availability of the data.

The Board believes the proposed revision of Regulation C (together with the expanded instructions for the reporting forms) will enhance compliance on the part of financial institutions. By reducing errors that require editing following the submission of reports on March 31, these changes should help ensure that the aggregated data is available earlier.

(5) Proposed Amendments to Regulation C

The comment period on the revised regulation ends on June 20, 1988. Because prompt implementation of the statutory amendments is in the public interest, the Board has set this comment period in place of the 60 days called for in the Board's policy statement on rulemaking (44 FR 3957). The Board believes an abbreviated comment period is necessary to ensure that a final rule is in place as quickly as possible to provide guidance to newly covered entities.

A discussion follows of the changes made to each section of the revised regulation.

Section 203.1 Authority, purpose, and scope.

Several changes would be made. Section 203.1(a) would be revised to reflect the deletion of section 2811 of the statute, the sunset date provision. A reference would be added to reflect the approval of information collection requirements under the Paperwork Reduction Act by the U.S. Office of Management and Budget. A reference to the act has been added to the purpose statement in § 203.1(b). Editorial changes have been made to § 203.1(c) on scope and § 203.1(d) on central data depositories (including the substitution of "depositories" for "repositories," now that the term "depository institution" is no longer used in the regulation).

Section 203.2 Definitions.

Section 203.2 contains definitions of terms used in the regulation. The definitions of "FHA, FmHA, and VA loans" and "state" contained in current § 203.2 (d) and (g) have not been revised, but are renumbered as § 203.2 (c) and (i) because of other changes to the section. The revisions to other definitions are as follows.

Act. The definition of "act" in § 203.2(a) has been updated.

Branch office. The definition of "branch office" in § 203.2(b) would be revised. What qualifies as a branch office has several consequences for an institution. First, institutions that do not have a home or branch office in an MSA or PMSA are exempt from HMDA. Second, HMDA data must be itemized by census tract for loans on property located in any MSA or PMSA in which the institution has a home or branch office. For loans on property located in other MSAs or PMSAs (or not located in an MSA or PMSA at all), the data may be reported as an aggregate sum, with no geographic itemization. Third, the data must be made available to the public at one branch office (or home office) in each MSA or PMSA where the institution has home or branch offices. Finally, the institution must post notices, such as those made available by the Board, in all branch offices located in MSAs or PMSAs to inform the public of the availability of the HMDA data.

The revised definition takes account of the difference between the branch office structure of the newly covered mortgage banking firms and that of depository institutions such as banks and thrift institutions. While depository institutions must obtain approval from Federal or state regulatory agencies to establish branch offices, mortgage banking firms generally are not required to obtain such approval.

Accordingly, the definition of branch office would differ for the two classes of institutions. The definition in revised § 203.2(b)(1)(i) applies to depository institutions; it remains the same as in the current provision and is based on the approval process. For other covered institutions, the Board proposes to define "branch office" in § 203.2(b)(1)(ii) as an office that receives applications from the public for home purchase or home improvement loans. This latter definition could also apply to mortgage banking subsidiaries of depository institutions, which are independently defined as financial institutions under § 203.2(e)(2).

Federally related mortgage loan. Banks and other depository institutions are subject to HMDA only if they make "federally related mortgage loans." The definition of that term, currently in footnote 1, has been simplified and incorporated in the text of the regulation as § 203.2(d).

Financial institution. The new definition of institutions covered by Regulation C is set forth in § 203.2(e), and replaces the definition of "depository institution" currently contained in § 203.2(c).

The existing term "depository institution" would be changed to "financial institution." This change is designed to avoid the confusion that might arise from the fact that, in ordinary usage, the term depository institution signifies entities such as banks and thrift institutions, not mortgage banking firms and other entities that do not take deposits. The definition would be revised to include both depository institutions and the new class of covered entities: Savings and loan service corporations and mortgage banking subsidiaries of bank holding companies and savings and loan holding companies.

As noted above, depository institutions are subject to HMDA only if they make federally related mortgage loans. The statutory amendment does not require, as a condition of coverage, that the newly covered entities make federally related mortgage loans. The regulatory definition of "financial institution" would parallel the statute, with the "federally related loan" limitation applying only to depository institutions.

The new definition also addresses the coverage of industrial banks. Industrial banks, which are also known by other terms such as industrial loan companies or industrial loan and thrift companies, are not among the types of institutions currently referred to in the definition of "depository institution." In recent years, however, industrial banks have taken on many of the characteristics of commercial and savings banks. Some industrial banks accept time and savings deposits and offer NOW accounts; and they often use other types of savings instruments (such as thrift certificates and investment certificates) that are defined as deposits by the Depository Institutions Act of 1982 and that are eligible for FDIC insurance. Industrial banks may also become members of the Federal Reserve System. Because of these similarities, the Board proposes to revise the definition of "financial institution" to include industrial banks.

The Board also proposes to treat majority-owned subsidiaries of depository institutions as independent financial institutions for purposes of the regulation. Doing so would increase their reporting burden somewhat. Given the revised branch office definition, these subsidiaries would be required to itemize loan data for every MSA in which they have an office for taking loan applications. Treating them as independent entities, however, would produce a consistent rule for all mortgage banking subsidiaries, whether the parent is a holding company or a depository institution. Consequently, the Board proposes to define any subsidiary of a financial institution as a financial institution in its own right, in § 203.2(e)(2). (Under § 203.4(a), a subsidiary could report on a consolidated basis with the parent institution or separately.) The Board requests comment regarding the impact of the increased itemization, including any additional costs.

Home improvement and home purchase loans. The definitions of "home improvement loan" and "home purchase loan," currently in § 203.2 (e) and (f), have been clarified and now appear as § 203.2 (f) and (g). Old footnotes 2 and 3 have been incorporated into the definition of "home improvement loan."

The parenthetical in the first sentence of existing § 203.2(f), regarding the types of dwellings to which the definition applies, has been revised to refer only to those types about which a question might arise. The second sentence, which expressly excludes from the definition temporary financing and the purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Farmers Home Administration) has been deleted. The exclusion of these particular arrangements now appears in § 203.4(c), with other excluded categories.

The current and the revised definitions of home purchase loan are limited to loans for the purchase of "residential real property." A home improvement loan, in contrast, is defined in terms of "residential dwelling," raising questions about differences in coverage since "dwelling" may include residential structures such as mobile homes that are not classified as real property in some states. The Board requests comment on whether, in

the final version of the regulation, dwelling units such as mobile or manufactured homes should be covered under either the home improvement or the home purchase loan definition, or both.

Metropolitan statistical area. The term "standard metropolitan statistical area," which is obsolete, has been replaced with the term "metropolitan statistical area" (MSA), defined in § 203.2(h). The meaning is unchanged, and includes primary metropolitan statistical areas (PMSAs).

Section 203.3 Exempt institutions.

Section 203.3 excludes from the coverage of the regulation small institutions, institutions without offices in MSAs, and those that are subject to a similar state law and have been granted an exemption from the Federal law.

The provisions of this section have been reorganized and the language clarified; the substantive rules remain unchanged. Material relating to state law exemptions has been grouped together in § 203.3(b). A new § 203.3(b)(2) has been added to indicate that a state or a financial institution may apply to the Board for an exemption from the regulation based on the existence of a similar state disclosure law. This reference replaces the detailed discussion in current Appendix B (which the Board proposes to delete) about the filing of applications for state exemptions.

Section 203.4 Compilation of loan data.

Section 203.4 specifies loan data that is to be included in or excluded from disclosure statements. It sets forth the requirements for itemization of loan data by census tract or county and by type of loan, and is the basis for the detailed instructions that accompany the reporting forms contained in the revised Appendix A.

The provisions of this section have been revised for clarification. Obsolete material in footnotes 4, 5, 6, and 7 has been deleted, and information that is still relevant has been moved to the instructions for the reporting forms.

A provision has been added in § 203.4(a)(2) to permit mortgage banking subsidiaries of depository institutions to report either separately or on a consolidated basis with their parent institution. Currently, they are required to file a consolidated report under existing § 203.2(c), which defines "depository institution."

Section 203.4(c) lists types of loan to be excluded from the disclosures. The first six, listed in paragraph (c)(1), apply both to depository institutions and to the newly covered entities. Three of them are the exclusions listed in existing § 203.4(c). Two of the three others (temporary financing and the purchase of an interest in a pool of loans) have been moved into revised § 203.4 from the definition of "home purchase loan" in existing § 203.2(f).

The sixth exclusion applicable to all institutions is set forth in § 203.4(c)(1)(vi) and relates to the purchase of loan servicing rights. The purchase of servicing rights in secondary market transactions is a practice common among mortgage bankers. When loans are sold, for example, the buyer may issue securities backed by a pool of loans that it has acquired. The right to service the loans, however, may be retained by the seller/originator of the mortgages. These servicing rights may later be transferred from one institution to another for a purchase price that is usually a small percentage (such as 1 or 2 percent) of the value of the underlying loans.

The act and regulation require institutions to report data on mortgage loans that they purchase. The Board believes that a covered institution's purchase of these servicing rights does not accurately reflect the extent to which an institution has made mortgage credit available in a community. Accordingly, the revised regulation would exclude from the reporting requirement the purchase of servicing rights to mortgage loans.

The final exclusion, contained in § 203.4(c)(2), applies only in the case of mortgage banking subsidiaries and savings and loan service corporations. That section excludes from the reporting requirement loans that are insured under Title I or II of the National Housing Act (that is, FHA-insured home improvement and home purchase loans); it implements new section 304(g) of HMDA, which expressly provides for their exclusion. (Under section 311 of HMDA, data on FHA-insured loans made by these types of lenders is to be collected by the U.S. Department of Housing and Urban Development.) As discussed under Appendix A, the Board proposes to provide an optional form that could be used by these institutions to disclose their FHA lending activity.

Section 203.5 Disclosure and reporting requirements.

Section 203.5 relates to making loan data available at offices of an institution and reporting the data to supervisory agencies. Changes, none of them substantive, have been made to the language and structure of this section to clarify its requirements. As under the existing provisions, disclosure statements for a given calendar year are due by the following March 31.

Section 203.6 Administrative enforcement; sanctions for violations.

Section 203.6 sets forth rules relating to administrative enforcement. Minor changes to the language and structure of this section have been made to clarify its provisions.

Appendix A—Forms and Instructions

Appendix A of the current regulation, which lists supervisory agencies, has been designated as Appendix B in the revised regulation; and the current Appendix C, containing the mortgage disclosure forms, is now Appendix A.

The revised Appendix A contains two reporting forms and accompanying instructions, plus an optional form. Institutions must use the prescribed format of the appropriate form, either HMDA–1 or new HMDA–2, but they are not required to use the form itself. An institution may, for example, choose to produce a computer printout of its disclosure statement instead.

The HMDA–1 reporting form continues to be the prescribed form for use by depository institutions and their majority-owned subsidiaries. The instructions for completing the form have been expanded significantly to facilitate compliance, but the form itself remains basically unchanged except for minor revisions that do not affect the data compilation. Column headings have been changed to read "total dollar amount" instead of "principal amount," but the data to be reported in these columns remains the same. Accordingly, institutions will not have to make changes in their data processing procedures. A signature line has been added, calling for an officer of the reporting institution to certify the accuracy of the report.

A new form HMDA–2 and accompanying instructions have been added for use by the newly covered institutions. This additional form is intended to avoid confusion since these institutions will not report FHA loans. The Board proposes to provide an optional form, HMDA–2A, that may be used by mortgage banking subsidiaries and service corporations that wish to maintain a public record of their FHA lending activity. Use of the form would be entirely optional; it would not be submitted to supervisory agencies, but instead could be made available to the public at the institution's own offices along with the required HMDA data.

Appendix B—Federal Supervisory Agencies

Appendix B of the current regulation contains detailed material relating to applications for state exemptions. The Board proposes deleting it to simplify the regulation. In its place, a reference to the availability of state exemptions has been added to § 203.3.

Current Appendix A, which lists enforcement agencies, has been designated as Appendix B. The Board proposes to amend the appendix by adding provisions to specify that mortgage banking subsidiaries of bank holding companies shall submit HMDA reports to the Federal Reserve System, and that savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies shall submit them to the Federal Home Loan Bank System. This reporting arrangement is appropriate in view of the Federal Reserve's general supervisory responsibility for non-bank subsidiaries of bank holding companies. The same is true, for savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies, as to the Federal Home Loan Bank System. Absent such specification, the supervisory agency for all of the newly covered institutions would be the Federal Deposit Insurance Corporation.

In addition, the revised appendix differentiates between federal and state savings banks, to reflect that state savings banks are under the FDIC's jurisdiction and federal savings banks under the FHLBB's jurisdiction.

(6) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home Mortgage Disclosure, Mortgages, Reporting and recordkeeping requirements.

(7) Text of Proposed Revisions

Pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board proposes to revise 12 CFR Part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.
203.1 Authority, purpose, and scope.
203.2 Definitions.
203.3 Exempt institutions.
203.4 Compilation of loan data.
203.5 Disclosure and reporting requirements.
203.6 Administrative enforcement; sanctions for violations.

Appendix A Forms and Instructions

Appendix B Federal Supervisory Agencies

Authority: 12 U.S.C. 2801–2810.

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act of 1975, as amended (12 U.S.C. 2801 *et seq.*). The information collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0099.

(b) *Purpose.* (1) This regulation carries out the purposes of the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities; and

(ii) To assist public officials in distributing public sector investments so as to attract private investment to areas where it is needed.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation requires financial institutions, as defined in § 203.2(e), to disclose loan data at certain of their offices, and to report the data to supervisory agencies.

(d) *Central data depositories.* Loan data is available to the public at central data depositories located in each metropolitan statistical area. The Federal Financial Institutions Examination Council aggregates loan data for all institutions in each metropolitan statistical area, showing lending patterns by location, age of housing stock, income level, and racial characteristics. A listing of central data depositories can be obtained from the U.S. Department of Housing and Urban Development, Washington, DC 20410, or from any of the agencies listed in Appendix B.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

(b) *Branch office* means: (1)(i) Any office of a financial institution that is approved as a branch by the Federal or state supervisory agency; or

(ii) For a financial institution not required to obtain approval for a branch office, any office that takes applications from the public for home purchase or home improvement loans.

(2) The term excludes free-standing automated teller machines and other electronic terminals.

(c) *Federal Housing Authority (FHA), Farmers Home Administration (FmHA), or Veterans Administration (VA) loans* means mortgage loans insured under Title II of the National Housing Act of Title V of the Housing Act of 1949 or guaranteed under Chapter 37 of Title 38 of the United States Code.

(d) *Federally related mortgage loan* means any loan (other than temporary financing such as a construction loan) secured by a first lien on a 1-to-4 family dwelling (including a condominium or a cooperative unit) that:

(1) Is made by a federally insured or regulated institution;

(2) Is insured, guaranteed, or supplemented by any Federal agency; or

(3) Will be sold to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(e) *Financial institution* means: (1)(i) a commercial bank, savings bank, saving and loan association, building and loan association, homestead association (including a cooperative bank), industrial bank, or credit union that makes federally related mortgage loans;

(ii) A savings and loan service corporation that originates or purchases mortgage loans, a mortgage banking subsidiary of a savings and loan holding company, or a mortgage banking subsidiary of a bank holding company; or

(2) A majority-owned subsidiary of any financial institution.

(f) *Home improvement loan* means: (1) Any loan, including a refinancing, that:

(i) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a residential dwelling located in a state; and

(ii) Is classified by the financial institution as a home improvement loan.

(2) In the case of a first-lien home improvement loan, an institution may categorize the loan as a home purchase loan if it normally classifies first-lien loans in this manner.

(g) *Home purchase loan* means any loan, including a refinancing, secured by and made for the purpose of purchasing

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residential real property (including condominiums or cooperatives) located in a state.

(h) *Metropolitan statistical area* or *MSA* means either a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

(i) *State* means any state of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* (1) A financial institution is exempt from all requirements of this regulation if on the preceding December 31:

(i) Its total assets are $10,000,000 or less; or

(ii) It has neither a home office nor a branch office in an MSA.

(2) An institution that subsequently becomes subject to this regulation shall compile loan data beginning with the calendar year following the year in which it becomes subject to the regulation.

(b) *Exemption based on state law.* (1) A state-chartered financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) For purposes of data aggregation, an institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency.

(4) An institution that subsequently loses its state law exemption shall compile loan data in compliance with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data to be included.* (1) A financial institution shall compile data on the number and total dollar amount of home purchase and home improvement loans that it originates or purchases at any time during the calendar year, whether or not the loans are subsequently sold. It shall compile the data in the format prescribed in Appendix A of this regulation.

(2) A financial institution defined in § 203.2(e)(2) may report data either on a consolidated basis with its parent institution or as a separate entity.

(b) *Itemization of data.* A financial institution shall set forth the loan data separately for originations and purchases, and shall itemize the data by census tract or county and by type of loan, as prescribed below. It shall use the MSA boundaries, defined by the U.S. Office of Management and Budget, as of January 1 of the calendar year for which the data are compiled, and shall use the census tract maps in the most recent census tract series prepared by the U.S. Bureau of the Census.

(1) *Geographic itemization.* (i) For each MSA in which the institution has a home or branch office, the institution shall itemize the loan data for the MSA by the census tract in which the property purchased or improved is located, except that it shall instead itemize by county if the property is located in an area that has not been assigned census tracts or is located in a county with a population of 30,000 or less. If a census tract number is duplicated within an MSA, the institution shall also identify the tract by county, city, or town name.

(ii) The institution shall list the loan data as an aggregate sum for property located outside an MSA, or located in and MSA where the institution has neither a home nor a branch office.

(2) *Type-of-loan itemization.* The financial institution shall further itemize the loan data within each geographic area by loan category as follows:

(i) FHA, FmHA, and VA home purchase loans on 1-to-4 family dwellings (subject to paragraph (c)(2) of this section);

(ii) Conventional home purchase loans on 1-to-4 family dwellings;

(iii) Home improvement loans on 1-to-4 family dwellings;

(iv) Loans on dwelling for 5 or more families (including both home purchase and home improvement loans); and

(v) Loans, reported in the 1-to-4 family categories, that are made to non-occupant borrowers, but only for loans that are itemized by census tract or country.

(c) *Data to be excluded.* (1) A financial institution shall exclude from its compilation of loan data:

(i) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(ii) Loans on unimproved land;

(iii) Refinancings in which there is no increase in the outstanding principal, if the institution and the borrower are the same parties on the loan being refinanced as on the existing loan;

(iv) Temporary financing (such as bridge or construction loans);

(v) The purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates); or

(vi) Purchases solely of the right to service loans.

(2) A financial institution defined in § 203.2(e)(1)(ii) shall exclude FHA loans insured under Title I or II of the National Housing Act from its compilation of loan data.

§ 203.5 Disclosure and reporting requirements.

(a) *Time requirements for disclosure statement.* By March 31 following the calendar year for which the data are compiled, a financial institution shall:

(1) Make its loan data disclosure statement available to the public, and shall continue to make it available for five years from that date; and

(2) Send two copies of its statement to the agency specified in Appendix B of this regulation.

(b) *Availability to the public.* (1) A financial institution shall make a complete disclosure statement available at its home office; and

(2) If it has branch offices in other MSAs, shall make a statement available in at least one branch office in each of those MSAs; the statement at a branch office need only contain data relating to property located in the MSA where the branch office is located.

(3) A financial institution shall make its disclosure statement available for inspection or copying during the hours the office is normally open to the public for business. A financial institution that provides photocopying facilities may impose a reasonable charge for this service.

(c) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any of its branch offices that are located in MSAs. Upon request, it shall promptly provide the location of the institution's offices where the disclosure statement is available.

§ 203.6 Administrative enforcement; sanctions for violations.

(a) *Administrative enforcement.* Compliance with the act and this regulation in enforced by the agencies listed in Appendix B of this regulation.

(b) *Sanctions for violations.* (1) A violation of the act or this regulation is subject to administrative sanctions as provided in section 305(c) of the act.

(2) An error in compiling or disclosing loan data is not a violation of the act or this regulation if the error was unintentional and resulted from a bona fide mistake despite the maintenance of procedures reasonably adapted to avoid such an error.

Appendix A—Forms and Instructions

Instructions to Depository Institutions and Their Subsidiaries for Completing Form HMDA–1, "Mortgage Loan Disclosure Statement"

Who Must Use This Form

1. A depository institution (and any majority-owned subsidiary of a depository institution) must complete this HMDA–1 form to disclose loan data for the current calendar year if on the preceding December 31 it:

a. Had assets of more than $10 million, and

b. Was located in a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

2. Example: If on December 31, 1987, your assets exceeded $10 million, you must compile data for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

3. Your institution need not complete this form—even though it meets the tests on asset size and location—if it makes no first-lien mortgage loans on 1-to-4 family dwellings during the current calendar year (the year for which the data are compiled).

4. A subsidiary of a depository institution may file a consolidated report with its parent or may file a separate report. (See "Consolidated Reporting" below.)

You must use the format of the HMDA–1 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead.

Who Must Use Other Forms

1. Mortgage banking subsidiaries of bank holding companies or savings and loan holding companies and savings and loan service corporations must use the form HMDA–2, instead of the HMDA–1.

2. Institutions exempted by the Federal Reserve Board because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

When and Where Statement is Due

1. You must send two copies of your disclosure statement to the regional office of your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branches in other MSAs, at one branch in each of these MSAs.

Data to Be Shown

1. Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the statement. Show the data on originations and purchases even if the loans were subsequently sold.

2. Show the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount."

3. Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

4. Report data in Part A for loans originated and in Part B for loans purchased. Complete both parts even if you have no loans to report in one of the two parts.

Data to Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity (for example by your trust department);

3. Loans on unimproved land;

4. Refinancing of loans you originated if they involve no increase in the outstanding principal (provided the borrowers remain the same);

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates; or

7. Purchases solely of the right to service loans.

Geographic Itemization (Breakdown of Loan Data for each MSA or PMSA by Census Tract or County and of Loan Data in the Outside-MSA/PMSA Category)

1. *MSA/PMSA.* Use a separate page for compiling loan data on each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside such MSAs/PMSAs). You must use the MSA/PMSA boundaries as defined by the U.S. Office of Management and Budget on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county instead of census tract when the property is located:

a. in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 4 below); or

b. in a county with a population of 30,000 or less. To determine population, use the Census Bureau's PC80–1–A population series.

3. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns as described in the instructions for "type-of-loan itemization" below. List the census tracts in numerical sequence. Do the same for loans made in a given county.

4. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York City PMSA, note that there are duplicate census tract numbers in New York City. There may also be duplicate numbers in other MSAs or PMSAs. When reporting loan data in these cases, you must indicate the county, city, or town name in addition to the tract number.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize these loans by census tract or county (but you will have to itemize the data by type of loan, as described in the next section).

Type-of-Loan Itemization (Breakdown of Each Geographic Grouping Into Loan Categories—Columns A–E)

Column A: FHA, FmHA, and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing residential real property for 1 to 4 families if the loans are secured by either first or junior liens and if they are insured or guaranteed by FHA, FmHA, or VA. Include refinancings (but see item 4 under "Data to be Excluded").

2. Do not include any FHA Title I (home improvement) loans in Column A; these loans are to be entered in Column C.

3. At your option, you may report in Column A any FHA, FmHA, or VA loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FHA, FmHA, and VA loans) made for the purpose of purchasing residential real property for 1-to-4 families if the loans are secured by either first or junior liens. Include refinancings (but see item 4 under "Data to be Excluded").

2. At your option, you may report in this column any conventional loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans, including refinancings, that:

a. are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. are recorded on your books as home improvement loans.

2. Include home equity loans or lines of credit in Column C only if they meet these two tests. Show the amount as recorded on your books.

3. Include both secured and unsecured loans.

4. You may include unpaid finance charges in the "total dollar amount."

Column D: Loans on multi-family dwellings (5 or more families).

1. Report in Column D loans on dwellings for 5 or more families.

2. Include loans for home purchase and loans for home improvement in the same column.

Column E: Non-occupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. Do not complete Column E for loans that you report under Section 2 (Loans on All Property Located Elsewhere), in either Part A (Originations) or Part B (Purchases).

3. In completing Part B, you may assume that a loan purchase does not fall within this non-occupant category, unless your records contain information to the contrary.

Consolidated Reporting

1. If you are the subsidiary of a depository institution, you may merge your loan data into a joint report with your parent or prepare a separate report.

2. Whether you prepare a joint or a separate report, you must give the geographic breakdown for loans on property within MSAs or PMSAs based on the location of the offices at which you take loan applications from the public, rather than based on where your parent has home or branch offices.

3. Example: If your parent has branches in the New York City PMSA but all your loan offices are in Philadelphia, you will itemize data by census tract (or county) only for the Philadelphia PMSA. You will show loan data as an aggregate sum for loans on property located outside the Philadelphia MSA—even if the property is in New York City.

BILLING CODE 6210-01-M

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MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY: • DEPOSITORY INSTITUTIONS
• SUBSIDIARIES OF DEPOSITORY INSTITUTIONS

OMB No. 7100-0060
Approval expires June 1990
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

Part A—Originations • Report for loans made in 19___

Control Number (agency use only)
|_|_|_|_|_|_|_|_|-|_|_|_|_|-|_|

Reporting Institution

Name

Address

Enforcement Agency for this Institution

Name

Address

MSA/PMSA (location of property)

Name

Number

Section 1—Loans on Property Located within those MSAs/PMSAs in which Institution has Home or Branch Offices

CENSUS TRACT (in numerical sequence) Where Property Located or COUNTY (name) Where Property Located	Loans on 1-to-4 Family Dwellings						Loans on Multi-family Dwellings for 5 or More Families (home purchases and home improvement)		Non-occupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on All Property Located Elsewhere

Name of Certifying Officer

Name of Person Completing Form

Telephone Number (include Area Code and Extension)

Public reporting burden for this collection of information is estimated to average 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0060), Washington, DC 20503.

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY: • DEPOSITORY INSTITUTIONS
• SUBSIDIARIES OF DEPOSITORY INSTITUTIONS

Part B—Purchases Report for loans made in 19___

Control Number (agency use only)

Reporting Institution

Name

Address

Enforcement Agency for this Institution

Name

Address

MSA/PMSA (location of property)

Name

Number

Section 1—Loans on Property Located within those MSAs/PMSAs in which Institution has Home or Branch Offices

CENSUS TRACT (in numerical sequence) Where Property Located or COUNTY (name) Where Property Located	Loans on 1-to-4 Family Dwellings						Loans on Multi-family Dwellings for 5 or More Families (home purchases and home improvement)		Non-occupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on All Property Located Elsewhere

Name of Certifying Officer

Name of Person Completing Form

Telephone Number (include Area Code and Extension)

BILLING CODE 6210-01-C

Instructions to Mortgage Banking Subsidiaries of Holding Companies and to Savings and Loans Service Corporations for Completing Form HMDA–2, "Mortgage Loan Disclosure Statement"

Who Must Use This Form

1. Mortgage banking subsidiaries of bank holding companies and of savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans, must complete this HMDA–2 form to disclose loan data for the current calendar year if on the preceding December 31, they:

a. had assets of more than $10 million,

b. were located in the metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

2. Example: If on December 31, 1987, your assets exceeded $10 million, you must compile data for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

You must use the format of the HMDA–2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead.

Who Must Use Other Forms

1. Depository institutions and their subsidiaries must use the form HMDA–1, instead of the HMDA–2.

2. Institutions exempted by the Federal Reserve Board because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

When and Where Statement is Due

1. You must send two copies of your disclosure statement to the regional office of your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branches in other MSAs, at one branch in each of these MSAs.

Data to Be Shown

1. Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the statement. Show the data on loan originations and purchases even if the loans were subsequently sold.

2. Show both the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount."

3. Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

4. Report data Part A for loans originated and in Part B for loans purchased. Complete both parts even if you have no loans to report in one of the two parts.

Data To Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity;

3. Loans on unimproved land;

4. Refinancings of loans you originated if they involve no increase in the outstanding principal (provided the borrowers remain the same);

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates;

7. Purchases solely of the right to service loans; or

8. FHA home purchase and home improvement loans. At your option, you may record FHA Loans on the form HMDA–2A, "Optional Record for FHA Loans."

Geographic Itemization (Breakdown of Loan Data for Each MSA or PMSA by Census Tract or County and of Loan Data in the Outside-MSA/PMSA Category)

1. *MSA/PMSA.* Use a separate page for compiling loan data on each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside such MSAs/PMSAs). You must use the MSA/PMSA boundaries as defined by the U.S. Office of Management and Budget on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county instead of census tract when the property is located:

a. in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 4 below); or

b. in a county with a population of 30,000 or less. To determine population, use the Census Bureau's PC80–1–A population series.

3. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns as described in the instructions for "type-of-loan itemization" below. List the census tracts in numerical sequence. Do the same for loans made in a given county.

4. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York City PMSA, note that there are duplicate census tract numbers in New York City. There may also be duplicate numbers in other MSAs or PMSAs. When reporting loan data in these cases, you must indicate the county, city, or town name in addition to the tract number.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize the loans by census tract or county; but you will have to itemize the data by type of loan, as described in the next section.

Type-of-Loan Itemizatin (Breakdown of Each Geographic Grounding Int. Loan Categories—Columns A–E)

Column A: FmHA and VA loans on 1-to-4 family dwellings.

1. Report of Column A loans made for the purpose of purchasing residential real property for 1-to-4 families if the loans are secured by either first or junior liens and if they are insured or guaranted by FmHA or VA. Include refinancings (but see item 4 under "Data to be Excluded").

2. At your option, you may report in Column A any FmHA or VA loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Do not report FHA loans in Column A. At your option, you may record FHA loans on the form HMDA–2A, "Optional Record of FHA loans."

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FmHA and VA loans) made for the purpose of purchasing residential real property for 1 to 4 families if the loans are secured by either first or junior liens. Include refinancing (but see item 4 under "Data to be Excluded").

2. At your option, you may report in this column any conventional loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans, including refinancings, that:

a. are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. are recorded on your books as home improvement loans.

2. Include home equity loans or lines of credit in Column C only if they meet these two tests. Show the amount as recorded on your books.

3. Include both secured and unsecured loans.

4. You may include unpaid finance charges in the "total dollar amount."

5. Do not report FHA loans in Column C. At your option, you may report FHA loans on the form HMDA–2A, "Optional Record of FHA Loans."

Column D: Loans on multi-family dwellings (5 or more families).

1. Report in Column D all loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report FHA loans in Column D. At your option, you may report FHA loans on

the form HMDA–2A, "Optional Record of FHA Loans."

Column E: Non-occupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling

2. Do not complete Column E for loans that you report under Section 2 (Loans on All Property Located Elsewhere), in either Part A (Originations) or Part B (Purchases).

3. In completing Part B, you may assume that a loan purchase does not fall within this non-occupant category, unless your records contain information to the contrary.

BILLING CODE 6210-01-M

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MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• SAVINGS AND LOAN SERVICE CORPORATIONS

Part A—Originations Report for loans made in 19___

OMB No. _____
Approval expires _____
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

Control Number (agency use only)
|_|_|_|_|_|_|_|_|_|-|_|_|_|_|-|_|

Reporting Institution

Name

Address

Name of Parent Company

Enforcement Agency for this Institution

Name

Address

MSA/PMSA (location of property)

Name

Number

Section 1—Loans on Property Located within those MSAs/PMSAs in which Institution has Home or Branch Offices

CENSUS TRACT (in numerical sequence) Where Property Located or COUNTY (name) Where Property Located	Loans on 1-to-4 Family Dwellings						Loans on Multi-family Dwellings for 5 or More Families (home purchases and home improvement)		Non-occupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on All Property Located Elsewhere

Name of Certifying Officer

Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• SAVINGS AND LOAN SERVICE CORPORATIONS

Part B—Purchases Report for loans made in 19___

Control Number (agency use only)

Reporting Institution

Name

Address

Name of Parent Company

Enforcement Agency for this Institution

Name

Address

MSA/PMSA (location of property)

Name

Number

Section 1—Loans on Property Located within those MSAs/PMSAs in which institution has Home or Branch Offices

CENSUS TRACT (in numerical sequence) Where Property Located or COUNTY (name) Where Property Located	Loans on 1-to-4 Family Dwellings						Loans on Multi-family Dwellings for 5 or More Families (home purchases and home improvement)		Non-occupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on All Property Located Elsewhere

Name of Certifying Officer

Name of Person Completing Form

Telephone Number (include Area Code and Extension)

BILLING CODE 6210-01-C

Instructions to Mortgage Banking Subsidiaries of Holding Companies and to Savings and Loan Service Corporations for Completing Form HMDA–2A, "Optional Record of FHA Loans"

Who May Use This Form

Mortgage banking subsidiaries of bank or saving and loan holding companies are not required to report data on FHA Title I (home improvement) or FHA Title II (home purchase) loans. At their option, however, they may record FHA loans on form HMDA–2A and make the form available to the public along with their HMDA–2 disclosure statement.

Data to be Shown

1. For loans that you originate, see the instructions that are provided for the form HMDA–2 under "Geographic Itemization." Report the number and total dollar amount of FHA home purchase loans in Column 1 and FHA home improvement loans in Column 2. Include loans on both 1-to-4 family dwellings and multi-family dwellings.

2. For loans that you purchase, see the instructions that are provided for the form HMDA–2 under "Geographic Itemization." Report the number and total dollar amount of FHA home purchase loans in Column 3 and FHA home improvement loans in Column 4. Include loans on both 1-to-4 family dwellings and multi-family dwellings.

BILLING CODE 6210-01-M

BEST COPY AVAILABLE

OPTIONAL MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2A

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• SAVINGS AND LOAN SERVICE CORPORATIONS

Record of FHA loans made in 19__

Institution

Name

Address

Name of Parent Company

Enforcement Agency for this Institution

Name

Address

MSA/PMSA (Location of property)

Name

Number

Section 1 — Loans on Property Located within those MSAs/PMSAs in which Institution has Home or Branch Offices

CENSUS TRACT (in numerical sequence) Where Property Located or COUNTY (name) Where Property Located	FHA Loans Originated				FHA Loans Purchased			
	Home Purchase Loans 1		Home Improvement Loans 2		Home Purchase Loans 3		Home Improvement Loans 4	
	# of Loans	Total Dollar Amount	# of Loans	Total Dollar Amount	# of Loans	Total Dollar Amount	# of Loans	Total Dollar Amount
MSA/PMSA Total								

Section 2 — Loans on All Property Located Elsewhere

//								

BILLING CODE 6210-01-C

Appendix B—Federal Supervisory Agencies

The following list indicates the federal agency responsible for compliance by classes of institutions. Questions should be directed to the appropriate agency.

National Banks

Comptroller of the Currency, Office of Customer and Community Programs, Washington, DC 20219

State Member Banks and Mortgage Banking Subsidiaries of Bank Holding Companies

Federal Reserve Bank serving the district in which the state member bank or mortgage banking subsidiary is located.

Nonmember Insured Banks (except for Federal Savings Banks)

Federal Deposit Insurance Corporation Regional Director for the region in which the bank is located.

Savings Institutions Insured by the FSLIC, Mortgage Banking Subsidiaries of Savings and Loan Holding Companies, Savings and Loan Service Corporations, and Members of the FHLB System (except for State Savings Banks insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Credit Unions

Office of Consumer Affairs, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

Other Financial Institutions

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

By order of the Board of Governors of the Federal Reserve System, May 9, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-10716 Filed 5-12-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-30-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes, Fuselage Numbers 1 Through 400

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, which currently requires a one-time inspection of the inboard and outboard flap vane primary (aft) attach bolts and nuts, and replacement, if necessary. This action would require more detailed repetitive inspections of the attach bolts and nuts, and would provide for an installation that would constitute terminating action for the repetitive inspection requirement of this AD. This proposal is prompted by the inflight loss of portions of the outboard flap vane due to a cracked and corroded nut and missing attach bolt make of H-11 steel. This condition, if not corrected could result in the separation of an inboard or outboard flap vane from the wing.

DATES: Comments must be received no later than July 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-30-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood, Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice Cook, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California, 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-30-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On December 16, 1987, FAA issued AD 88-01-05, Amendment 39-5816 (52 FR 48673; December 24, 1987), to require a one-time inspection of the inboard and outboard flap vane primary (aft) attach bolts and nuts, and replacement, if necessary, in accordance with Phase I, Accomplishment Instructions, of McDonnell Douglas DC-10 Alert Service Bulletin No. A57-107, dated June 22, 1987.

That action was prompted by an incident where an operator of a Model DC-10 series airplane lost sections of an outboard flap vane during flight. Investigation revealed that the nut for the primary (aft) bolt attaching the vane to the support at track 2 was severely corroded and split; the primary bolt was not found. The attach bolt and nut were fabricated from high strength steel. Analysis attributed the nut failure to corrosion. Corrosion in the attach bolt and nut assemblies, if not detected and corrected, could lead to loss of the inboard or outboard flaps vanes from the wing.

AD 88-01-05 was issued without public notice, due to its emergency status. Accordingly, long term inspection requirements were not included in the AD since public notice must be provided for such action.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A57-107, Revision 1, dated June 26, 1987, and Revision 2, dated September 3, 1987, which described procedures for inspection and replacement, if necessary, of corroded, cracked, or broken flap vane primary attach nuts and bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-01-05 to require repetitive inspections and replacement, if necessary, of these nuts and bolts, in accordance with Phase II of

the service bulletins previously mentioned. In addition, replacement of the bolts with Inconel bolts, and replacement of the nuts with A286 CRES nuts, in accordance with Phase III of the McDonnell Douglas service bulletins, would constitute terminating action for the repetitive inspection requirements of the proposed AD.

It is estimated that 213 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of replacements parts would be $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $434,520.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-10 series airplane are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-01-05, Amendment 39-5816 (52 FR 46873; December 24, 1987), as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, Fuselage Numbers 1 through 400, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inboard and outboard flap vane separation due to loose, broken or corroded primary (aft) attach bolts or nuts, accomplish the following:

A. Within 15 days after the effective date of Amendment 39-5816 (January 20, 1988), unless accomplished since June 6, 1987, inspect the flap vane primary (aft) attach bolts and nuts in accordance with the Phase I, Accomplishment Instructions, of McDonnell Douglas DC-10 Alert Service Bulletin No. A57-107, dated June 22, 1987.

B. Within 60 days after the effective date of this amendment, unless accomplished since June 6, 1987, and thereafter at intervals not to exceed two years, inspect the flap vane primary (aft) attach bolts and nuts in accordance with the Phase II, Accomplishment Instructions, of McDonnell Douglas DC-10 Alert Service Bulletin No. A57-107, Revision 1, dated June 26, 1987, or Revision 2, dated September 3, 1987.

C. If cracked, broken, or corroded bolts or nuts are found, during the inspections required by paragraphs A., or B., above, before further flight, replace with airworthy bolts and nuts in accordance with Phase I or II, Accomplishment Instructions of McDonnell Douglas DC-10 Alert Service Bulletin No. A57-107, Revision 1, dated June 26, 1987, or Revision 2, dated September 3, 1987.

D. Replacement of primary (aft) inboard and outboard flap vane attach bolts and nuts with Inconel bolts and A286 CRES nuts, in accordance with Phase III, Accomplishment Instructions of McDonnell Douglas DC-10 Alert Service Bulletin No. A57-107, Revision 1, dated June 26, 1987, or Revision 2, dated September 3, 1987, constitutes terminating action for the repetitive inspection requirement of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on May 3, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10706 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AEA-2]

Proposed Establishment of Transition Area, LeRoy, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at LeRoy, NY, to accommodate a new VOR-A Standard Instrument Approach Procedure to the LeRoy Airport. The proposed establishment of the transition area is to provide additional protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

DATE: Comments must be received on or before June 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket No. 88-AEA-2, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1230.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AEA-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at LeRoy, NY, to accommodate a new VOR-A Standard Instrument Approach Procedure that has been developed to the LeRoy Airport. On February 9, 1987, the FAA circularized a notice [Airspace Case No. 86-AEA-019-NR), advising the public of the new VOR-A approach. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The proposed establishment of the transition area is to provide protected airspace for aircraft arriving and departing under Instrument Flight Rules (IFR).

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 2, 1988.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

LeRoy, NY [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the center, lat. 42°58'52"N., long. 77°56'20"W., of the airport; and within 3 miles each side of the Geneseo VORTAC, lat. 42°50'04"N., long. 77°43'59"W., 323° radial, extending from the LeRoy Airport 5 mile radius area to eleven (11) miles southeast of the airport; excluding that portion within the Rochester, NY, Transition Area.

Issued in Jamaica, New York, on April 21, 1988.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 88-10707 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-5]

Proposed Transition Area Establishment; Salem, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Salem, OH, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Salem Airpark, Inc. Airport, Salem, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before June 6, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis

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supporting the views and suggestions presented are particularly helpful in developing reasoned regualtory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Salem, OH.

The development of this new VOR-A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight Rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Salem, OH [New]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Salem Airpark, Inc. Airport, Salem, OH, (lat. 40°56'55"N. long. 80°51'38"W.), and within 2 miles each side of the Akron, OH VOR/DME 128 radial, extending from the 6-mile radius area to 7 miles northwest of Salem Airpark, Inc. Airport, excluding that portion within the Youngstown, OH, Alliance, OH, and North Lima, OH transition areas.

Issued in Des Plaines, Illinois, on April 21, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-10708 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-6]

Proposed Transition Area Alteration; Ft. McCoy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing Ft. McCoy, WI, transition area to accommodate both military and civil aircraft utilizing the existing NDB RWY 29 Standard Instrument Approach Procedure (SIAP) to McCoy Army Airfield, Ft. McCoy, WI.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before June 9, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Ft. McCoy, WI.

The present transition area is being modified to accommodate aircraft utilizing the NDB RWY 29 SIAP. The modification consists of retaining the 11 mile radius and eliminating the existing transition area extension and returning that portion of the airspace to a non-controlled status.

McCoy Army Airfield requested the Federal Aviation Administration (FAA) to review a proposal to include the existing McCoy (CMY) Nondirectional Radio Beacon (NDB) into the National Airspace System (NAS). The intent of the action was to provide a dual use military/civil NDB RWY 29 SIAP to McCoy Army Airfield. This review was accomplished under a separate study to the public. The airspace case number was 87-AGL-149-NR.

The modification of the procedure required the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ft. McCoy, WI [Revised]

That airspace extending upward from 700 feet above the surface within an 11 mile radius of the McCoy Army Airfield (Lat. 43°57'36" N., Long. 90°44'12" W.) excluding that portion that overlies the La Crosse, WI, transition area.

Issued in Des Plaines, Illinois, on April 25, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-10709 Filed 5-12-88; 8:45am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 58

[AD-FRL-3379-5]

Proposed Decision Not To Revise the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public hearing announcement.

SUMMARY: On April 26, 1988, EPA proposed not to revise the national ambient air quality standards for sulfur oxides (sulfur dioxide) (53 FR 14926). In that same notice, EPA also solicited public comment on an alternative of adding a 1-hour primary standard of 0.4 ppm as well as other revisions to the remaining standards if EPA promulgated a 1-hour standard. In accordance with section 307(d)(5) of the Clean Air Act, today's notice is to announce a public hearing to be held in Washington, DC for the purpose of receiving public comment on the proposed decision as well as the alternative. EPA will also take public comment at the hearing on the proposed revisions to the significant harm levels and associated episode contingency plan guidance (40 CFR Part 51), the Pollutant Standards Index for SO_2 (40 CFR Part 58), and certain monitoring and reporting requirements (40 CFR Part 58) that were also announced on April 26, 1988 (53 FR 14926).

DATE: The hearing will be on June 10, 1988 beginning at 9:30 a.m.

ADDRESS: The hearing will be held at the Environmental Protection Agency, 401 M Street SW., Education Center Auditorium, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Drop 12, Research Triangle Park, NC 27711. Telephone (919) 541-5533 (FTS 629-5533).

SUPPLEMENTARY INFORMATION: Individuals planning to make oral presentations at the hearing should notify John H. Haines, at the above

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address, by June 7, 1988. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements (duplicate copies preferred) should be addressed to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–84–25, 401 M Street SW., Washington, DC 20460.

A verbatim transcript of the hearing and written statements will be available for inspection (Docket No. A–84–25) between 8:00 a.m. and 3:00 p.m. on weekdays at the Central Docket Section, Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC.

List of Subjects in 40 CFR Part 50

Intergovernmental relations, Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Date: May 9, 1988.

Eileen Claussen

Acting Assistant, Administrator for Air and Radiation.

[FR Doc. 88–10723 Filed 5–12–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 88–96]

Amendment of the Commission's Rules Relative to Allocation of the 849–851/894–896 Mhtz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Commission's Rules to permit use of four megahertz of reserve spectrum at 849–851/894–896 MHz for an air-to-ground service interconnected with the Public Switched Telephone Network (PSTN). This action also proposes licensing policies and technical guidelines for the air-to-ground service. The objective of this action is to satisfy demand for a high-quality, public radiotelephone service aboard commercial aircraft.

DATES: Comments are due July 1, 1988. Reply comments are due August 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Julius Knapp, telephone (202) 653–8108 or Rodney Small, telephone (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Proposed Rule in General Docket 88–96, FCC 88–86, Adopted February 25, 1988, and Released April 27, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commisson.

Summary of Proposed Rule

1. In the *Report and Order* adopted on July 24, 1986 in General Docket Nos. 84–1231, 84–1233, and 84–1234 (51 FR 37388; 10/22/86), the Commission allocated 28 megahertz of 800/900 MHz land mobile reserve spectrum to various services, but left the 849–851/894–896 MHz bands temporarily unallocated. The Commission stated that the 849–851/894–896 MHz bands would be considered for either a joint Canadian/United States mobile satellite system or a variety of other possible services. The two services specifically mentioned were Basic Exchange Telecommunications Radiotelephone Service (BETRS) and air-to-ground service interconnected with the PSTN.

2. The United States and Canadian Governments have held extensive discussions on possible use of the 849–851/894–896 MHz bands as an adjunct to a joint United States/Canadian mobile satellite system operating at L-band (1545–1558.5/1646.5–1660 MHz). At this time there appears to be little prospect of agreement on use of the four megahertz in a joint system. We remain convinced that a joint United States/Canadian mobile-satellite system can be implemented entirely in the L-band. We therefore conclude that the 849–851/894–896 MHz bands are better allocated for other purposes.

3. We are disinclined to allocate this spectrum for services that have already received an allocation from the land mobile reserve. Specifically, we have already allocated spectrum in the 800/900 MHz region for the cellular service and the private land mobile services, including public safety services. We have taken several actions to ensure that additional requirements for these services are satisfied first by implementing spectrum efficiency in the existing 800/900 MHz allocations rather than through allocation of additional spectrum. Further, we have recently allocated spectrum outside of the land mobile reserve for BETRS.

4. We therefore believe that an air-to-ground interconnected service may be the most appropriate allocation of the remaining four megahertz of reserve spectrum. GTE Airfone, Inc. has operated an experimental air-ground service that seems to demonstrate the technical and economic viability of such a service. Accordingly, we are proposing to allocate the 849–851/894–896 MHz bands for air-to-ground service. We also request comment on whether the public interest would be better served under a more general mobile service allocation. Such an allocation could permit air-to-ground or other types of mobile communications.

5. We are proposing to license two nationwide air-to-ground interconnected systems of two megahertz each. Two systems will foster competition that we believe will provide assurance of quality service at reasonable rates that are responsive to consumer demand. We request comment on whether the service should be regulated as common carriage or private telecommunications. In either case, we believe that the service would not be subject to state entry or rate regulation. We propose to establish only minimal technical standards to ensure that harmful interference is not caused to other services. We are also proposing to permit air-to-ground licensees to offer ancillary services. Finally, we are proposing criteria for selection of licensees.

6. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

9. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 2

Table of frequency allocations.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–10699 Filed 5–12–88; 8:45 am]

BILL CODE 6712–01–M

47 CFR Part 15

[General Docket No. 87–390]

Operation of Radio Frequency Devices Without an Individual License

AGENCY: Federal Communications Commission.

SUMMARY: This action extends the time for filing reply comments to the Notice of Proposed Rule Making (NPRM) in General Docket No. 87–390, Revision of Part 15 of the Commission's Rules regarding the operation of radio frequency devices without an individual license. (Published in the Federal Register at 52 FR 47615, December 15, 1987). This action is in response to Motions for Extension of Time filed by the Consumer Electronics Group of the Electronic Industries Association and for other parties. They requested additional time to prepare carefully analyzed and reasoned replies, particularly in light of the late-filed comments by the U.S. Department of Commerce. The Commission is extending for filing reply comments by 30 days.

DATE: Reply comments are due June 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, telephone (202) 653–7313.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to authority contained in 47 CFR 0.241(a)(1) and (a)(5).

Order Extending Time to File Reply Comments

Adopted: April 25, 1988.
Released: May 3, 1988.

In the Matter of Revision of Part 15 of the rules regarding the operation of radio frequency devices without an individual license; GEN Docket No. 87–389; RM–5166, RM–5258, and RM–5975.

By the Chief Engineer:

1. A Notice of Proposed Rule Making in the above entitled proceeding, FCC 87–300, was adopted by the Commission on September 17, 1987, and released on October 2, 1987. Comments in this proceeding were due March 7, 1988. Reply comments are due May 9, 1988.

2. Since release of the Notice, the Consumer Electronics Group of the Electronic Industries Association, the American Council of Independent Laboratories, the Boor Operator and Remote Controls Manufacturers Association, and the Chamberlain Group, Inc. have filed Motions for Extension of Time for the filing of reply comments with the Commission. These petitions expressed basically the same opinion. Due to the extremely complex technical issues involved in this proceeding, the large number of commenting parties and the late filed comments by the U.S. Department of Commerce/National Telecommunications and Information Administration (DOC/NTIA), 60 days additional time is needed to adequately analyze and reply to the comments filed in this proceeding.

3. In addition to the above four petitions, the Linear Corporation (Linear) has requested that the Commission issue a Further Notice of Proposed Rule Making in the above entitled proceeding. Alternatively, Linear requested that the Commission extend the period for filing reply comments until June 7, 1988.

4. The decision as to whether to release a Further Notice of Proposed Rule Making or a Report and Order cannot be made by the Commission until all of the comments and reply comments have been received and analyzed. Thus, the petition from Linear is premature and must be denied. However, because of the technical nature of this proceeding, our desire to have a fully developed record before us, and, in particular, the late filing by DOC/NTIA, it is believed that the concerns of the commenters can be resolved by extending the reply comment date by 30 days. Accordingly, *it is ordered*, pursuant to the authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing of reply comments *is extended* until June 6, 1988. *It is further ordered*, pursuant to the authority contained in 47 CFR 0.241(a)(1), that the request from Linear to issue a Further Notice of Proposed Rule Making *is denied*.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88–10673 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–179, RM–6634]

Radio Broadcasting Services; Eufaula, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Paul H. Reynolds and Virgie Leon Strickland, seeking the allotment of Channel 258A to Eufaula, Alabama, as that community's second local FM service.

DATES: Comments must be filed on or before June 24, 1988, and reply comments on or before July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Paul H. Reynolds, 425 N. College St., Greenville, AL 36037, and Virgie Leon Strickland, P.O. Box 116, Enterprise, AL 36331–0116.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–179, adopted April 4, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CF 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10665 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-176, RM-6118]

Radio Broadcasting Services; Kremmling, CO

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Grand Lake Broadcasting, Inc., licensee of Station KTLD-FM (Channel 292A), Kremmling, Colorado, seeking the substitution of Channel 292C2 for Channel 292A and modification of its license accordingly, to provide that community with its first wide coverage area RM service.

DATES: Comments must be filed on or before June 24, 1988, and reply comments on or before July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert L. Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-176, adopted April 4, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10667 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-124, RM-6073]

Radio Broadcasting Services; Moss Point, MS & Jackson, AL

AGENCY: Federal Communications Commission.
ACTION: Proposed rule and order to show cause.

SUMMARY: This document requests comments on a petition filed by Jackson County Broadcasters, Inc., proposing the substitution of FM Channel 285C2 for Channel 285A at Moss Point, Mississippi, and modification of the license of Station WKKY(FM) to reflect the higher class of channel. Channel 285C2 at Moss Point requires a site restriction 23.4 kilometers east of the community. The site restricted coordinates are 30-20-58 and 88-16-00. The substitution at Moss Point requires substitution of FM Channel 233A for Channel 285A at Jackson, Alabama, Station WHOD.

DATES: Comments must be filed on or before June 24, 1988, and reply comments on or before July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: C. Wayne Dowdy, President, Jackson County Broadcasters, Inc., P.O. Box 1789, Pascagoula, Mississippi 39567.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-124, adopted April 21, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10668 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-188, RM-6284]

Radio Broadcasting Services; Highlands, NC

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Mountain-High Broadcasters, Inc. to allocate Channel 283A to Highlands, North Carolina, as the community's first local FM service. Channel 283A can be allocated to Highlands in compliance with the Commission's minimum distance separation requirements with a site restriction of 1 kilometer (0.6 mile) northeast to avoid a short-spacing to Channel 281A at Clayton, Gerogia, which is unoccupied but for which applications are pending. The coordinates for this allotment are North Latitude 35-03-39 and West Longitude 83-11-18.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William C. Marett, Vice President, Mountain-High Boradcasters, Inc. P.O. Box 1420. Highlands, North Carolina 28741 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-189, adopted April 6, 1988, and released May 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10766 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-187, RM-6215]

Radio Broadcasting Services; Centerville, UT

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Property Ventures, licensee of Station KCGL(FM), Channel 289C2, Centerville, Utah, proposing the substitution of Channel 289C1 for Channel 289C2 and modification of its license to specify operation on the higher class co-channel. A site restriction of 14.7 kilometers (9.1 miles) southwest of the city is required.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard J. Braun, Esquire, Diane L. Mooney, Esquire, Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue NW., Washington, DC 20036 (Counsels for petitioner)

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-127, adopted April 4, 1988, and released May 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M. Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that form the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 88-10769 Filed 5-12-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-177, RM-6164]

Radio Broadcasting Services; Ellensburg, WA

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KXLE, Inc., licensee of Station KXLE-FM, Channel 237A, Ellensburg, Washington, proposing the substitution of Class C2 Channel 237 for Channel 237A at Ellensburg, and modification of the station license accordingly. Concurrence by the Canadian government must be obtained. The coordinates for the proposal are 47-00-00 and 120-31-40.

DATES: Comments must be filed on or before June 24, 1988, and reply comments on or before July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard M. Riehl, Esquire, Haley, Bader & Potts, 2000 M Street NW., Suite 600, Washington, DC 20036. (Counsel for petitioner)

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-177, adopted April 7, 1988, and released May 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding prior filing procedures for comments, see 47 CFR 1.415 and 1.420.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10669 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1401, 1403, 1415, and 1453

Procurement Ethics

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: Conflicts of interest for employees involved, directly or indirectly, in procurement are a serious matter which require a degree of control beyond that for other Department of the Interior employees. Even the appearance of a conflict of interest in a procurement may discourage potential contractors and invite protests or litigation.

Accordingly, we are proposing to strictly prohibit acceptance of any gift, gratuity, favor, entertainment, loan, or anything of monetary value from potential contractors by program and procurement employees who are appointed to perform especially sensitive duties such as evaluating proposals from potential contractors, signing contracts, and monitoring contractor performance; to prohibit acceptance of contractor help in developing specifications except through formal procurement channels; to further restrict contracts with Government employees; and to provide guidance on conflicts of interest for employees who evaluate or render advice on proposals.

DATE: To be considered, comments must be received by July 12, 1988.

ADDRESS: Comments concerning these proposed regulations should be sent to Chief, Division of Acquisition and Assistance, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Stop 5512, 18th & C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke on (202) 343-3433.

SUPPLEMENTARY INFORMATION: The proposed additions, deletions and changes are outlined below:

The Department of the Interior Acquisition Regulation would be changed at § 1401.670-2 to include a reference to the limitations in § 1403.101 which is changed to strictly prohibit solicitation or acceptance of any gift, gratuity, favor, entertainment, loan, or anything of monetary value from contractors by contracting officers, contracting officer representatives, or employees who evaluate proposals from potential contractors; to limit acceptance of gifts for the Department; and, to include requirements for notices to be provided affected employees.

Section 1403.602 would be added to restrict the waiver allowed by FAR 3.602 so that exceptions may not be granted to allow the Government to contract with an employee whose duties are directly involved with a particular contract action.

Part 1415 would be changed to add a section 1415.608-70 providing guidance on avoiding conflicts of interest.

Section 1453.215-72 would be added to provide a conflict of interest certificate format for employees who evaluate or render advice on proposals.

Primary Author

The primary author of this rule is Mr. Dale Helms, Office of Acquisition and Property Management, Department of the Interior, telephone (202) 343-3438.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291 since its primary effects are on the Department's employees and since it merely implements Departmental standards of conduct found in 43 CFR 20.735. Such action is necessary to ensure the integrity of procurement programs within the Department. The Department also certifies that this rule will not have a significant economic effect on a substantial number of small entities or other parties eligible to contract with the Department since it will only affect the Department's employees.

This rule does not contain any new information collection requirements.

List of Subjects in 48 CFR Parts 1401, 1403, 1415, and 1453

Government procurement, Conflicts of interest, Government employees.

Accordingly, 48 CFR Parts 1401, 1403, 1415, and 1453 are proposed to be amended as follows:

Date: April 19, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

1. The authority citation for 48 CFR Parts 1401, 1403, 1415, and 1453 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.6—Contracting Authority and Responsibilities

2. In section 1401.670-2, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

1401.670-2 Appointment.

* * * * *

(c) The appointment shall include the notice at 1403.101-70 regarding restrictions on acceptance of gifts and meals.

* * * * *

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

3. Section 1403.101-3 is revised to read as follows:

1403.101-3 Agency regulations.

(a)(1) *Policy.* Department of the Interior regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR 20. Authorized exceptions to FAR 3.101-2 are contained in 43 CFR 20.735-7 and 20.735-8. However, with regard to the provisions of 43 CFR 20-735-7, contracting officers, contracting officers' representatives, or employees appointed to evaluate proposals from potential contractors, may not solicit or accept any gift, gratuity, favor, entertainment, loan, or anything of monetary value from a contractor or potential contractor involved in procurements within the employee's responsibility except as authorized by (a)(2) below.

(2) *Exceptions.* Covered employees may:

(i) Accept obvious advertising items that are less than $5.00 in value;

(ii) With prior approval of the head of the contracting activity, attend widely attended public gatherings (including functions where lunch or dinner is served without separate charge) of mutual interest to Government and industry hosted by outside organizations, but not by individual contractors; and,

(iii) Accept, on an occasional basis only, coffee, donuts, and similar refreshments incidental to the performance of duty when the employee is at a contractor's facility.

(b)(1) Notwithstanding the provisions of 43 CFR 20.735-7 employees may not accept or solicit from any contractor or potential contractor any services which involve the development of specifications, statements of work, evaluation criteria, or formal cost estimates to be used in a procurement unless such services are formally contracted for in accordance with the Federal Acquisition Regulation (FAR), the Department of the Interior Acquisition Regulation (DIAR), and the Federal Information Resources Management Regulation (FIRMR); and until the organizational conflict of interest provisions in FAR Subpart 9.5 have been fully addressed. This does not preclude the issuance of formal Requests for Comment (RFC) by contracting officers.

(2) Automatic Data Processing (ADP) resources shall not be accepted, installed, or utilized by the Department on a no cost, free of charge basis (this includes donated equipment but not public domain software), except as permitted by law. Departmental regulations governing the use of ADP resources on a trial basis are set forth in Part 376, Chapter 4 of the Departmental Manual (376 DM 4).

4. New section 1403.101-70 is added to Subpart 1403.1 to read as follows:

1403.101-70 Notice.

Bureaus shall include a notice similar to the following in all correspondence notifying employees of appointments to serve as contracting officers or contracting officer representatives, or of assignment to evaluate proposals from potential contractors:

> Notwithstanding 43 CFR 20.735-7 and except as provided in 1403.101-3(a)(2), the appointee shall not solicit or accept any gift, gratuity, favor, entertainment, loan, or anything of monetary value from a contractor or potential contractor involved in any action for which the employee is responsible under this delegation of authority.

5. A new Subpart 1403.6 and a new section 1403.602 are added to read as follows:

Subpart 1403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1403.602 Exceptions.

The head of the contracting activity is authorized to except a contract from the policy in FAR 3.601. However, no exceptions shall be granted where the proposed contractor is owned or controlled by a Government employee or one or more members of the employee's immediate family and the employee or any subordinate is serving as a contracting officer or contracting officer's representative responsible for awarding or administering the proposed contract.

PART 1415—CONTRACTING BY NEGOTIATION

6. New section 1415.608-70 is added to Subpart 1415.6 to read as follows:

1415.608-70 Conflict of interest.

(a) Technical evaluators and advisors, including members of proposal evaluation committees, must render impartial, technically sound, and objective assistance and advice to protect the integrity of the evaluation and selection process. 18 U.S.C. 208 prohibits an employee from participating in his or her Government capacity in any matter in which the employee, his or her spouse, minor child, outside business associate, or a person with whom the employee is negotiating for employment, has a financial interest.

(b) Employee Responsibilities and Conduct Regulations of the Department of the Interior are contained in 43 CFR Part 20. Section 20.735-21 prohibits employees from having a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Section 20.735-21 also prohibits employees from engaging in, directly or indirectly, a financial transaction resulting from, or primarily relying on, information obtained through his or her Government employment. In addition, other regulations concerning conflicts of interest involving employees of specific bureaus and offices are contained in 43 CFR 20.735-22(c).

(c) With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Statement of Employment and Financial Interest (DI-212) unless they occupy positions identified in 43 CFR 20.735-30(b). Therefore, each evaluator and advisor must sign and return to the contracting officer a Conflict of Interest Certificate (or a bureau substitute approved by the head of the contracting activity) in the format prescribed in 1453.215-72 before evaluating or advising on a potential contractor's proposal.

(d) During the evaluation process, each evaluator and advisor is reponsible for assuring that there are no financial or employment interests which conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations which may be prohibited or represent a potential conflict of interest include:

(1) Financial interest, including stocks and bonds, in a firm which submits, or is expected to submit, an offer in response to the solicitation;

(2) Outstanding financial commitments to any offeror or potential offeror;

(3) Employment in any capacity, even if otherwise permissible, by an offeror or potential offeror;

(4) Employment within the last 12 months by any offeror or potential offeror;

(5) Any non-vested pension or reemployment rights, or interest in profit sharing or stock bonus plan, arising out of the previous employment by any offeror or potential offeror;

(6) Employment of any member of the immediate family by any offeror or potential offeror; and

(7) Negotiation for outside employment with any offeror or potential offeror.

(e) Each proposal evaluator and advisor shall notify the contracting officer as soon as it becomes known that a potential or actual conflict of interest exists. When there is doubt as to whether a conflict of interest exists, the bureau ethics counselor shall be consulted. The contracting officer, after a thorough examination of the facts, shall refer all potential conflict of interest cases to the bureau ethics counselor for advice. If the bureau ethics counselor determines that there is a violation of a conflict of interest provision, then the contracting officer shall attempt to obtain voluntary resolution of the conflict of interest violation from the employee. If the attempt to obtain voluntary resolution fails, then the bureau ethics counselor shall order a remedial action to eliminate the conflict of interest. Such action may include replacing the evaluator or advisor. Action taken on all conflict of interest situations shall be documented in the contract file by the contracting officer.

PART 1453—FORMS

7. New section 1453.215-72 is added to Subpart 1453.2 to read as follows:

1453.215-72 Conflict of interest certification

The format shown in 1453.303-72 shall be used as a conflict of interest certification as prescribed in 1415.608-70.

8. New section 1453.303-72 is added to Subpart 1453.3 to read as follows:

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1403.305-72 Format for conflict of interest certification.

United States Department of the Interior

Conflict of Interest Certificate

To: (Name).
Contracting Officer

I certify that I am not aware of any matter which might reduce my ability to participate in the proposal evaluation proceedings and activities in an objective and unbiased manner or which might place me in a position of conflict, *real or apparent*, between my responsibilities as an evaluator or advisor and other interests.

In making this certification, I have considered all my stocks, bonds, other financial interests, and employment arrangements (past, present, or under consideration) and, to the extent known by me, all the financial interests and employment arrangements of my spouse, my minor children, and other members of my immediate household.

If, after the date of this certification, any person, firm, or organization with which, to my knowledge, I (including my spouse, minor children, and other members of my immediate household) have a financial interest, or with which I have or am actually considering an employment arrangement, submits a proposal or otherwise becomes involved in the subject project, I will notify the contracting officer, and thereafter, until advised to the contrary, I will not participate further in any way (by rendering advice, making recommendations, scoring proposals, or otherwise) in the particular subject matter or project.

I have read and understand Department of the Interior Acquisition Regulation 1415.606-70.

(Signature)

(Date)

[FR Doc. 88-10752 Filed 5-12-88; 8:45 am]
BILLING CODE 4310-RF-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 571

[Docket No. 88-06; Notice 1]

Motor Vehicle Safety Standards; Vehicle Identification Number; Basic Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, NHTSA proposes to amend Federal motor vehicle safety standard 115 (Standard 115), *Vehicle Identification Number—Basic Requirements*, regarding the vehicle identification number (VIN) to be used for vehicles that were not originally manufactured for sale in this country and do not comply with the Federal motor vehicle safety standards but are imported into this country by businesses unaffiliated with the original manufacturers. Under the proposal, the importer of these vehicles, known as a direct importer, would be required to use one of the unique coding identifiers that the original manufacturer assigned to the vehicle in lieu of using the 17-character VIN required to be placed on vehicles originally manufactured for sale in this country. Currently, many direct importers assign a "homemade" 17-character VIN to their imports to meet Standard 115 requirements.

Under this proposal, the importer would have to place a statement in the vehicle passenger compartment informing interested persons that the vehicle was partially exempt from Standard 115, and directing them to the side door post. At the side door post, there would be a permanently affixed label stating where an interested person could find the original manufacturer's number that would be used in lieu of the VIN.

The agency is taking this action in response to a National Automobile Theft Bureau petition stating that "homemade" VINs pose a problem particularly with respect to vehicles of the same model that are imported both by the original manufacturer and by direct importers. The 17-character VINs added by direct importers are so dissimilar in appearance from VINs on similar vehicles manufactured for sale in the United States that law enforcement officers may mistake them for altered VINs; that these homemade VINs create problems for insurance investigators; and that encoding errors in these "homemade" VINs disrupt the integrity of the VIN system.

DATES: Comment closing date: June 27, 1988.

Proposed effective date: November 9, 1988.

ADDRESSES: Comments should refer to Docket No. 88-06; Notice 1, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Rutland, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5287).

SUPPLEMENTARY INFORMATION:

Introduction

Under section 108(b)(3) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(b)(3)), a vehicle that does not conform with applicable safety standards nonetheless may come into the United States under "such terms and conditions" as the Secretaries of Transportation and Treasury prescribe. Title 19 CFR 12.80 is a joint Transportation/Treasury regulation setting forth those terms and conditions. Subparagraph (b)(1)(iii) of that regulation requires that a person seeking to bring a nonconforming import (direct import vehicle) into the United States file a declaration (made by marking block 3 on the U.S. Customs form) that the vehicle will be modified so as to conform with applicable safety standards. Among those Standards is 115, *Vehicle Identification Number—Basic Requirements*.

The National Automobile Theft Bureau (NATB or petitioner) petitioned the agency to amend Standard 115 to address problems arising when these direct importers create a VIN and a VIN plate using an identification number and plate machining process other than the ones which the original vehicle manufacturer uses. First, there is an increased prospect of encoding errors in a homemade VIN because an importer may not record the proper chassis number or serial number when he creates the VIN plate. Second, because a homemade VIN plate frequently looks different from the plate that an original manufacturer puts on similar vehicles, law enforcement officials mistake the former as an altered plate. Apparently, machining a VIN plate is difficult for some importers. Further, petitioner states that an individual in lawful possession of a direct import vehicle may find himself subjected to criminal charges because of the appearance of these homemade VINs.

The petitioner recommended that NHTSA take actions to accomplish the following: first, the direct importer must not create its own "VIN." If the original manufacturer has placed any kind of identification number plate in the passenger compartment where Standard 115 would otherwise require a 17-character VIN plate or importer-created "VIN" plate, the original manufacturer's plate would serve as the vehicle's "VIN" plate. Among the original manufacturer numbers that one might use in place of the United States VIN are the European vehicle identification number (EuroVIN), the World Market vehicle identification number (WorldVIN), the chassis number, or the vehicle serial number.

NATB suggested a change to S4.1 to state a clear requirement that a direct import vehicle's VIN *must* be original manufacturer's "alpha-numeric identifier." Petitioner continued that because these coded numbers may not be called "VINs" in Europe, an amendment should "equate the chassis or serial number with the VIN." NATB suggested that the agency amend Standard 115, subparagraph S2, *Application*, by exempting direct import vehicles from the requirement in S4.8 regarding the type face to be used for a VIN. Direct import vehicles already are exempt from S4.2 [requiring a VIN to have 17 characters], S4.3 [requiring encoding a check digit in the VIN], and S4.7 [requiring VIN characters to be an Arabic or Roman letter set out in Table 1 of the Standard]. In support of this requested change, petitioner stated its uncertainty whether foreign chassis and serial numbers could meet S4.8.

Second, if the original manufacturer has not affixed a plate of the type and in the location described above, then the importer must affix a plate in that location stating that the vehicle is "partially exempt" from Standard 115. This plate must refer a person to the driver's door post.

Third, when the importer is required to affix the plate regarding partial exemption, then the importer must also affix a label to the driver's door post that:

(1) Cites the joint Transportation/Treasury regulation under which a person directly imports a noncomplying vehicle;

(2) Identifies the location on the vehicle of the original manufacturer's number to be used in lieu of the 17-character VIN;

(3) Gives the name and address of the person who brought the vehicle into compliance with Standard 115;

(4) States the date of importation;

(5) States the date of certification; and

(6) States the name and address of the person who made the certification.

The agency also received letters from eight insurance companies and from Michigan's Department of State Police, all endorsing the NATB petition. The insurance industry letters further expressed an interest in better identifying direct import vehicles, and thus reducing the risk of fraudulent theft losses.

Agency Response

NHTSA acknowledges that there are some problems with the VINs on direct import vehicles, and recognizes that an accurate and reliable vehicle identification system is essential to facilitate vehicle theft investigation, to discourage insurance fraud, and to maintain the integrity of notice-and-recall campaigns. In the preamble to the final rule adopting the Federal motor vehicle theft prevention standard (49 CFR Part 541), the agency set forth the following discussion:

> While the NCIC tracking system could more readily handle full 17-character VIN's, the usefulness of those VINs would be substantially diminished if they do not allow law enforcement personnel to trace the vehicle to its manufacturer. The Euro-VINs are more difficult for the NCIC to enter, but will serve to trace the vehicle to its manufacturer. Further, if the agency were to permit or require assigning U.S. VINs by direct importers, such "homemade" VINs would not be recorded by the manufacturer as assigned. This could result in a situation where a VIN was assigned to two different vehicles (once by the vehicle manufacturer and once by the direct importer). Duplicative VINs would completely fail to serve the purpose of providing a unique identifier for a vehicle for 30 years. Therefore, NHTSA has determined that vehicles imported by direct importers should be marked with the original Euro-VIN assigned to the vehicle by the original manufacturer. 50 FR 43186, at 43183; October 24, 1985.

For the reasons set forth in this previous discussion, NATB's petition, and the letters supporting it, the agency proposes to amend Standard 115 so that a direct importer needn't create a VIN or VIN plate in order to comply with United States vehicle identification requirements under 115.

NHTSA is proposing to adopt an amendment that substantially reflects the petitioner's suggestions. However, the agency cannot agree with the suggestion that *any* extant original manufacturer identifier in the S4.8 location should obviate the need for some notice that the vehicle is partially exempt from Standard 115. NHTSA declines to create a third category of plates or numbers for law enforcement officials to check in a theft investigation. Further, the agency does not find it desirable to add to the complexity of vehicle identifier location requirements by legitimizing this third kind of plate.

On the other hand, it is a relatively simple matter to require the affixing of a plate informing an interested person that a vehicle is partially exampt, and referring the person to another label on the door post that would specify the unique identifying number for the vehicle. Therefore, the agency proposes that the vehicle must have either the 17-character United States VIN, or plate informing an interested person of the vehicle's partial exemption.

NHTSA is not proposing to require that a direct importer remove a Euro-VIN or other foreign identifier plate from the vehicle if such a plate is in or near the S4.8 location. The proposal is that where there is no 17-character VIN plate complying with Standard 115, the additional statement proposed in this notice would be required. Because of this proposed approach, it is unnecessary to consider NATB's suggestion that a Euro-VIN, WorldVIN, chassis, or serial number be exempted from the readability and location requirements in S4.6.

There is a second matter on which NHTSA's proposal is at variance with the NATB petition. Petitioner asks that the agency require a lengthy new label the purpose of which is to certify compliance with Standard 115. NATB proposes that this label contain information such as a citation to 19 CFR 12.80, and information about the person who performed work bringing the vehicle into compliance with 115.

The agency can see no useful purpose in requiring the information NATB suggests. Requiring a lengthy label neither addresses the problem of mistaken arrests because of legitimate VIN plates that look altered, facilitates acquiring an identification number to check against the NCIC system in the course of a theft investigation, supplies a means to check insurance fraud, nor contributes to the integrity of the VIN system.

NHTSA believes it would suffice for all these concerns to include a label that states where an interested person can find the unique manufacturer identifying number that is used in lieu of the 17-character United States VIN, and proposes that simplified requirement in this notice. Further, for consistency, the agency proposes to include labeling requirements under Part 567.

While the agency believes this proposal will solve the petitioner's problems, NHTSA also seeks comment, particularly from law enforcement agencies, on whether the proposed changes could, in some circumstances, increase the fraudulent use of VINs or impede law enforcement actions. For example, in certain situations, vehicles with the proposed FMVSS 115 exemption label no longer will have a VIN visible through the glazing. NHTSA requests comment on whether this situation creates a law enforcement problem by precluding the inspection of VINs on parked and locked vehicles.

Also, the agency seeks comment on whether the proposal could lead to improper use of VIN exemption plates (e.g., replacing a legitimate VIN), since, the certain circumstances, it allows an exemption plate where the VIN currently is required. Comments are requested on the likelihood of this potential action.

Impact Assessments

A. Executive Order 12291

NHTSA has considered costs and other factors associated with this proposal, and concludes that this proposed rule is non-major under Executive Order 12291. The agency expects this rule to affect a small segment of the automotive community: those who import nonconforming vehicles into the United States under a promise to bring them into compliance. The amendment would require a plate on the dash in lieu of the 17-character VIN plate the Standard currently requires, and a statement on the door post informing an interested person where to look for the original manufacturer's unique identifying number that is used in place of the 17-character VIN. NHTSA estimates that the per vehicle cost of implementing this amendment would not be significant.

For the preceding reasons, the agency believes that the rule would impose only nominal costs on a small number of commercial importers and some individuals, and therefore would not have an annual effect on the economy of $100 million; would not result in a major increase either in motor vehicle production costs or prices; and would not have significant adverse impacts on competition or market incentives.

B. Department of Transportation Procedures for Improving Government Regulations

For the reasons set out in the preceding discussion, the agency has determined that this rule is not significant under DOT procedures. Further, the costs associated with this proposal, if adopted as a final rule, would be so minimal that preparation of a full regulatory evaluation is unwarranted.

C. Small Business Impact

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. A substantial number of direct importers are individuals importing cars for their own use. There are small entities in the direct import business. However, NHTSA anticipates that if this proposal goes into effect, it will not create a new net cost increase since importers already must create a plate with a vehicle identification number. Therefore, the proposal should not result in other than nominal costs either to small direct import business, or to small entities that may purchase vehicles from any such business.

For the preceding reasons, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Environmental Impact

Under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposed rule, and has determined that this proposal would not be a major Federal action significantly affecting the quality of the human environment.

E. Executive Order 12612

The agency has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that the proposed rule does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

F. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved the NHTSA regulations requiring VINs to appear on all new vehicles (OMB # 2127–0051). However, this proposal would add requirements for new information to appear on direct importers' vehicles. This proposed requirement is considered to be an additional information collection requirement, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, this proposed requirement will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 567

Labeling, Motor vehicle safety. Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend Title 49 CFR 567, *Certification*, and 49 CFR 571.115, *Vehicle Identification Number–Basic Requirements*, as follows

PART 567—[AMENDED]

1. The authority citation for Part 567 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1397, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2028; delegation of authority at 49 CFR 1.50.

2. The title of § 567.4 would be revised to read as follows:

§ 567.4 Basic requirements for manufacturers of motor vehicles.

§ 567.4 [Amended]

3. Paragraph (k) of § 567.4 would be removed.

§ § 567.5, 567.6, and 567.7 [Redesignated as § § 567.6, 567.7, and 567.8]

4. Sections 567.5, 567.6, and 567.7 would be redesignated as § § 567.7, and 567.8 respectively.

5. A new § 567.5 would be added to Part 567, to read as follows:

§ 567.5 Special requirements for motor vehicles admitted under 19 CFR 12.80.

(a) In the case of passenger cars admitted to the United States under 19 CFR 12.80(b)(1) to which the label required by § 567.4 has not been affixed by the original producer or assembler of the passenger car, a label meeting the requirements of this section shall be affixed by the importer before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of Part 541 of this chapter. The label shall be in addition to, and not in place of, the label required by § 567.4 of this part.

(1) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. "Line" is used as defined in § 541.4 of this chapter.

(ii) Name of the importer: The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents and the middle initial of individual's names may be used. The name of the importer shall be preceded by the words "Imported By."

(iii) The statement: "This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture.

(b)(1) For vehicles imported into the United States under 19 CFR 12.80(b)(1)(iii) which do not have the 17-character number that complies with paragraphs S4.2, S4.3, and S4.7 of Standard 115, the importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without destroying or defacing it. This label shall be in addition to, and not in place of, the label required by § 567.4 of this part.

This label shall be affixed to the vehicle at the location specified in paragraph (a)(2) of this section, and subject to the same location priority set forth in paragraph (a)(2) of this section.

(2) The label shall contain the following statement, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high: "Original Manufacturer's Identification Number Substituting for U.S. VIN is located," after which the importer shall state where on the vehicle the substitute vehicle identification number is located.

PART 571—[AMENDED]

§ 571.115 [Amended]

6. Paragraph S4.6 of § 571.115 would be revised to read as follows:

S4.6 For passenger cars, multipurpose passenger vehicles, and trucks of 10,000 pounds or less GVWR, the 17-character United States VIN, or the plate required under paragraph S4.9 of this section shall:

(a) Be located inside the passenger compartment;

(b) Be readable without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen), whose eye-point is located outside the vehicle adjacent to the left windshield pillar; and

(c) Have characters of a minimum height of 4mm.

§ 571.115 [Amended]

7. A new paragraph S4.9 would be added to § 571.115, to read as follows:

S4.9 (a) If the vehicle is imported into the United States under 19 CFR 12.80(b)(1)(iii) other than by a corporation responsible for the assembly of such vehicles, or by a subsidiary of such corporation, then the vehicle does not have to have the 17-character United States VIN otherwise required by this section.

(b) A vehicle exempt from the 17-character United States VIN requirements under S4.9(a) must have a plate subject to the requirements of S4.6, 4.7, and 4.8. The notice shall read as follows: FMVSS 115 EXEMPT VEHICLE. SEE DRIVER'S SIDE DOOR POST.

(c) At the driver's side door post, the vehicle must have a label as required by 49 CFR 567.5(b).

Issued on May 10, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–10801 Filed 5–12–88; 8:45 am]

BILLING CODE 4910–59–M

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Notices

Federal Register
Vol. 53, No. 93
Friday, May 13, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Advisory Committee on Futures and Options Marketing; Open Meeting

Pursuant to the Federal Advisory Committee (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Advisory Committee on Futures and Options Marketing will be held on May 18, 1988, from 9:00 a.m.–3:00 p.m. in room 3854–S of the Department of Agriculture South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

This meeting will be open to the public on May 18, 1988, from 9:00 a.m.–3:00 p.m. Members of the public may participate as time permits and file statements with the Committee before or after the meeting.

The Advisory Panel members will meet to review an initial draft of the pilot program operating procedures.

Questions regarding further information with reference to this meeting or the filing of public statements should be directed to Dr. William C. Bailey, Pilot Program Executive Secretary, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, or call 202/447-7583.

Date: May 9, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-10699 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Scientific Advisory Board Mount St. Helens National Volcanic Monument; Gifford Pinchot National Forest, Clark County, Vancouver, WA; Open Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., June 20, 1988, at the Cispus Environmental Center, 2332 Cispus Rd., Randle, Washington 98660, to receive information on and discuss the following:

1. Coldwater-Johnson Ridge Project.
2. The status of the NVM Wildlife Plan.
3. Annual report of the Monument Scientist.
4. Northwest science program/research cooperation.
5. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, Washington 98661, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Date: May 5, 1988.

Mary Jo Lavin,

Acting Regional Forester.

[FR Doc. 88-10740 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-703]

Postponement of Final Antidumping Duty Determination of Sales at Less than Fair Value; Granular Polytetrafluoroethylene Resin, Filled and Unfilled, From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of granular polytetrafluoroethylene (PTFE) resin, filled and unfilled, from Italy, have occurred at less than fair value until not later than July 5, 1988. We are also postponing our public hearing from June 6, 1988, to June 13, 1988.

EFFECTIVE DATE: May 13, 1988.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson (202-377-5332) or Michael J. Ready (202-377-2613), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 3, 1987, we published a notice in the **Federal Register** (52 FR 45982) that we were initiating an antidumping duty investigation to determine whether granular PTFE resin, filled and unfilled, from Italy is being, or is likely to be, sold at less than fair value. On December 21, 1987, the U.S. International Trade Commission determined that there is reasonable indication that a U.S. industry is materially injured by reason of imports of granular PTFE resin (52 FR 49209, December 30, 1987). On April 20, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 12967).

The notice stated that if the investigation proceeds normally, we would make our final determination by June 28, 1988.

On April 20, 1988, Montefluos S.p.A./Ausimont U.S.A., the respondent in this investigation, requested a postponement of the final determination until not later than July 5, 1988, pursuant to section 735(a)(2)(A) of the Act. This respondent accounts for all of the exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than July 5, 1988.

Public Comment

In accordance with 19 CFR 353.47, and at the request of the petitioner, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on June 13, 1988, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Acting Assistant Secretary by June 6, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 9, 1988.

[FR Doc. 88-10787 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DS-M

Carnegie-Mellon University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-302. *Applicant:* Carnegie-Mellon University, Pittsburgh, PA 15213. *Instrument:* Biomedical Nuclear Magnetic Resonance Spectrometer, Model A Biospec 4.2/400. *Manufacturer:* Bruker Physik AG, West Germany. *Intended Use:* See notice at FR 51 33282, September 19, 1986.

Comments: None received. *Decision:* Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered August 23, 1984. *Reasons:* The foreign instrument provides: (1) High field strength of 4.2 tesla, (2) a 40-centimeter bore, and (3) multinuclear imaging and spectroscopy of whole, live animals including large pigs and dogs.

These capabilities of the foreign instrument described above are pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no bid from the domestic manufacturer, it is apparent that it was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10788 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purpose for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-151. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Scanning Auger System and Accessories for Surface Analysis Instrument. *Manufacturer:* KRATOS, United Kingdom. *Intended Use:* The instrument will be used to measure surface composition of glass materials, (SiO_2, HMFG) ceramics (Si_3N_4, SiC, etc.) and superconducting materials ($Y_1Ba_2Cu_3O_7$). Experiments will consist of surface characterization in order to observe and understand phenomena associated with adsorption, corrosion, separation on surfaces. *Application Received by Commissioner of Customs:* March 29, 1988.

Docket Number: 88-152. *Applicant:* University of California, San Diego, Physchology Department, C-009, La Jolla, CA 92093-0109. *Instrument:* Two (2) Microelectrode Microdrives. *Manufacturer:* Narishige Scientific Instrument Lab, Japan. *Intended Use:* The instrument will be used for the study of the physiological basis of selective attention and memory in the primate. Experiments will be conducted to determine how diffierent parts of the temporal lobe of the brain are used in performing cognitive tasks requiring memory and selective attention in order to provide insight into disorders of memory and attention such as Alzheimer's Disease and amnesia in

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people. *Application Received by Commissioner of Customs:* March 29, 1988.

Docket Number: 88–153. *Applicant:* Massachusetts Institute of Technology, Center for Materials Science and Engineering, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Imaging, Magnetic Sector Secondary Ion Mass Spectrometer, Model IX70S. *Manufacturer:* VG Ionex, United Kingdom. *Intended Use:* The instrument will be used to develop a rational, physical-organic chemistry for organic surfaces and thin films to understand the relation between surface structure, surface chemisty and surface properties in order to be able to control such materials-related phenomena as wetting, adhesion, friction and surface conductivity. Other research involves synthesis and characterization of molecular aassemblies on surfaces with the objective of further developing the knowledge base necessary to evaluate molecular materials as active materials in microelectrochemical devices. *Application Received by Commissioner of Customs:* March 29, 1988.

Docket Number: 88–154. *Applicant:* University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School, 675 Hoes Lane, Piscataway, NJ 08854. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL, Ltd. Japan. *Intended Use:* The instrument will be used primarily to study the ultrastructure of various biological systems including the connective tissues of limbs and eyes, extracellular matrix proteins, muscle tissues, purified muscle proteins and kidney tissues. Most tissue samples will be derived from various experimental lab animals. *Application Received by Commissioner of Customs:* March 30, 1988.

Docket Number: 88–155. *Applicant:* University of Arizona, Department of Geosciences, Tucson, AZ 85721. *Instrument:* Scanning Electron Microscope, Model Stereoscan 120B. *Manufacturer:* Cambridge Instruments, United Kingdom. *Intended Use:* The instrument is intended to be used for analyzing microscopic properties of rock, mineral and fossil specimens in a wide range of disciplines where combined morphological/chemical data anaylsis is useful. Research programs will include the following:

(1) Detailed analyses of modern lake depositional and biotic systems as analogs for understanding ancient lake deposits and fossils.
(2) Research concerning rock-magnetism of sedimentary rocks.
(3) Reintegration of exsolved phases.
(4) Relationship between tectonics and sedimentation with provenance studies of sand and sandstone.
(5) Studies of the pollen flora of the American Southwest.
(6) Research involving comparative evolutionary studies of developmental and morphological variability in freshwater fishes.
(7) Research dealing with the microtextures of molluscan shell surfaces and their potential as indicators of sedimentary environment and postmortem history of shells.

In addition, the instrument will be used to teach theoretical and applied aspects of scanning electron microscopy imaging of geological and paleontological specimens in the course Scanning Electron Microscopy and Image Analysis. *Application Received by Commissioner of Customs:* March 31, 1988.

Docket Number: 88–156. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–650, Livermore, CA 94550. *Instrument:* Infrared Charged Sweep Device Camera System, Model IR–5120A. *Manufacturer:* Mitsubishi Electric Corporation, Japan. *Intended Use:* The instrument will be used for studies of stars, planets, comets, astroids, meteors, etc. Initial experiments include photometric and spectroscopic staring imaging of astronomical phenomena. *Application Received by Commissioner of Customs:* April 6, 1988.

Docket Number: 88–157. *Applicant:* Dana-Farber Cancer Institute, 44 Binney Street, Boston, MA 02115. *Instrument:* Electron Microscope, Model 100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to investigate a variety of cells and tissues depending on the demands of the research groups. The broad range of projects will include: effects of Adriamycin 32 on cardiac muscle and other tissues; cell cultured myoblasts treated with AD32 and other procedures; fibroblast cytokinetics; identification of histocompatibility sites; screening biochemical procedures for purification and breakage of sub-cellular organelles; screening and identifying functional structures associated with artificial membrane blebs; identifying new cell culture lines; virus counts; high resolution macromolecular preparations; drug-induced changes in smooth muscle structures; identification of blood platelet organelles; identification and study of tumor morphology; studies of intracellular matrices; screening cell cultures for virus particles; identification of promegakaryocytes; platelet morphology; granulocyte structure; variations in lymphocyte morphology; monitoring biochemical preparations; macromolecular biochemistry; surgical biopsies of pediatric tumors; autopsy material; studies of HIV or AIDS; and blood clotting. In addition, the instrument will be used in the course Biophysics 116 Electron Microscopy in Molecular Biophysics to teach students the techniques of high resolution electron microscopy. *Application Received by Commissioner of Customs:* April 6, 1988.

Docket Number: 88–158. *Applicant:* University of California, Santa Barbara, Purchasing Department, Building 451, Santa Barbara, CA 93106. *Instrument:* Electron Backscatter Pattern Imaging and Analysis System. *Manufacturer:* Custom Camera Designs Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of metal-ceramic interfaces and various modern engineering materials. Experiments will consist of the evaluation of unknown structure of fine grained engineering materials by examination of backscattered electron patterns in order to understand the fracture behavior of metal-ceramic interfaces as well as other systems. In addition, the instrument will be used for education purposes in the course Microstructural Characterization in which students will learn to determine crystal structure, orientational relationships and plastic deformation in samples. *Application Received by Commissioner of Customs:* April 6, 1988.

Docket Number: 88–159. *Applicant:* University of California, Santa Cruz, Purchasing Department, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* Dilution Refrigerator Unit with Accessories, Model MINIFRIDGE. *Manufacturer:* CryoVac, West Germany. *Intended Use:* Low temperature studies of phase transitions in crystals. *Application Received by Commissioner of Customs:* April 6, 1988.

Docket Number: 88–160. *Applicant:* University of New Orleans, Purchasing Department, Adm. Bldg., Room 1004, Lakefront, New Orleans, LA 70148. *Instrument:* Excimer Laser with Mechanical Pump, Model EX–510. *Manufacturer:* Lumonics, Inc., Canada. *Intended Use:* The instrument will be used for research involving the photo-generation of magnetic bubbles in a spin glass medium. The materials that will host the bubbles are compounds of the formula M_2SNTE_4. Planned experiments consist of cooling the specimen to approximately 4 Kelvin and then subjecting the specimen to a pulse of radiation while the sample is in a magnetic field. Magnetic bubbles will then be monitored with a SQUID detection system. The goal of this research is to produce new materials suitable for magnetic memory recording devices. *Application Received by Commissioner of Customs:* April 7, 1988.

Docket Number: 88–161. *Applicant:* Brown University, Department of Geological Sciences, Box 1846, Providence, RI 02912. *Instrument:* Thermal Ionization Isotope Ratio Mass Spectrometer, 261V. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* The instrument will be useil in isotopic geochemical research in the earth sciences and its subfields. This involves the study of the isotopic composition of natural and experimental materials to determine how their isotopic properties respond to a variety of geological phenomena. The phenomena include variations in isotopic compositions of certain elements in a variety of materials such as rocks, minerals, and aqueous solutions, and the processes that caused those variations. Isotope ratios will be measured to determine isotopic compositions and to determine elemental concentrations by the isotope dilution technique. In addition, the instrument will be used in undergraduate and graduate geochemistry courses to teach the theory, practice, and application of isotope geochemistry, to a variety of geological problems in the lithosphere, hydrosphere and atmosphere. *Application Received by Commissioner of Customs:* April 8, 1988.

Docket Number: 88–162. *Applicant:* University of Wisconsin-Madison, 430 Lincoln Drive, 336 Birge Hall, Madison, WI 53706. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for research involving studies on the development and structure of leaves of selected C3 and C4 plants, including economically important plants such as barley, maize, sugarcane, sugar beet, and potato. Other research will be conducted on the green alga *Coleochaete* and include:

1. A comparative, developmental study of meiosporogenesis in various *Coleochaete* species.
2. Comparative studies of various *Coleochaete* species that will elucidate the distribution of the unique and distinctive pyramidal scales, which may be of particular evolutionary importance.
3. Comparative studies of spermatozoid development in *Coleochaete*.
4. Ultrastructural autoradiographic techniques for the investigation of the physiological relationships between haploid and diploid cells of *Coleochaete*.

In addition, the instrument will be used in the training of both undergraduate students and graduate students in electron microscope techniques and in the M.S. and Ph.D. thesis research of the latter. *Application Received by Commissioner of Customs:* April 11, 1988.

Docket Number: 88–163. *Applicant:* Eastman Dental Center, 625 Elmwood Avenue, Rochester, NY 14620. *Instrument:* Dental Implant Components. *Manufacturer:* Nobelpharma, Sweden. *Intended Use:* The instrument will be used in a study which will combine clinical and histological findings in primates to determine the biologic capacity for osseointegration of pure titanium fixtures inserted immediately following extraction of selected teeth. The specific aim of this study is to evaluate titanium implants (Biotes®) that have been placed into extraction sockets immediately after the teeth are removed (experimental group). *Application Received by Commissioner of Customs:* April 8, 1988.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88–10789 Filed 5–12–88; 8:45 am]
BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Listing of Endangered and Threatened Species and Designating Critical Habitat; Petition for the Designation of Critical Habitat for the Right Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: On January 4, 1988, NMFS received a petition from GreenWorld requesting that areas along the outer arm of Cape Cod and off the southern Georgia/northern Florida coast be designated as critical habitat for the Western Atlantic population of the right whale (*Eubalaena glacialis*) (53 FR 9469). NMFS has denied the petition because it did not provide any new information on the biology or habitat requirements of the right whale nor adequate justification for designating critical habitat for the right whale.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673–5348).

Dated: May 6, 1988.
Rolland A. Schmitten,
Acting Assistant Administrator for Fisheries.
[FR Doc. 88–10749 Filed 5–12–88; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

May 10, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: May 16, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Categories 341/641 is being increased for carryforward applied to the previous limit but not used.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49185, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
May 10, 1988.
Commissioner of Customs,

BEST COPY AVAILABLE

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Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in Jamaica and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 16 , 1988, the directive of December 24, 1987 is hereby amended to increase the current limit for cotton and man-made fiber textile products in Categories 341/641 to 391,503 dozen, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10704 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton and Wool Textile Products From the Hungarian People's Republic

May 10, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 16, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On October 16, 1987 a notice was published in the **Federal Register** (52 FR 38507) which announced that the United States Government had requested the Government of the Hungarian People's Republic to enter into consultations concerning exports of wool skirts in Category 442, produced or manufactured in Hungary and exported to the United States.

A CITA directive dated December 30, 1987 was published in the **Federal Register** (53 FR 50) which established limits for certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

During consultations held January 21 and 22, 1988 between the Governments of the United States and the Hungarian People's Republic, agreement was reached to further amend their bilateral agreement to include specific limits for cotton and wool textile products in Categories 300/301, 410 and 442, produced or manufactured in Hungary and exported during the periods which began, in the case of Category 442, on November 1, 1987; and, in the case of Categories 300/301 and 410, on January 1, 1988 and extend through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 10, 1988.

Committee for the Implementation of Textile Agreements

May 10, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 concerning certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 16, 1988, the directive of December 30, 1987 is hereby amended to include restraint limits for cotton and wool textile products in the following categories, produced or manufactured in Hungary and exported during the periods which began, in the case of Category 442, on November 1, 1987; and, in the case of Categories 300/301 and 410, on January 1, 1988 and extend through December 31, 1988.

Category	New restraint limit [1]
300/301	2,500,000 pounds.
410	1,000,000 square yards.
442	21,000 dozen.

[1] These limits have not been adjusted to account for any imports exported after October 31, 1987 for Category 442 and December 31, 1987 for Categories 300/301 and 410.

Textile products in Categories 300/301, 410 and 442 which have been exported to the United States prior to November 1, 1987 (Category 442), and January 1, 1988 (Categories 300/301 and 410), shall not be subject to this directive.

Textile products in Categories 300/301, 410 and 442 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10702 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirement for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

May 10, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the export visa arrangement.

EFFECTIVE DATE: May 16, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Bilateral Textile Agreement between the Governments of the United States and the Hungarian Socialist Republic, agreement was reached to further amend the visa arrangement to require visas for the entry of cotton and wool textile products in Categories 300/301, 410 and 442.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 49 FR 8659, published in the **Federal Register** on March 8, 1984.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 10, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain wool textile products, produced or manufactured in Hungary which were not properly visaed by the Government of the Hungarian People's Republic.

Effective on May 16, 1988 you are directed to also prohibit entry of cotton and wool textile products in Categories 300/301, 410 and 442 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after May 16, 1988 which have been produced or manufactured in Hungary and exported on and after May 16, 1988 for which the Hungarian People's Republic has not issued an appropriate export visa.

Goods in Categories 300/301, 410 and 442 which were exported prior to May 16, 1988 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10703 Filed 5-12-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to attend.

DATES: June 1–3, 1988, 8:00 a.m. until conclusion of business each day.

ADDRESS: Holiday Inn—Pyramid, 5151 San Francisco Road, NE. Albuquerque, New Mexico 87109 (505/821–3333).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report
(2) Acting Executive Director's Report
(3) Action on previous minutes
(4) Old Council business
(5) Committee discussions and reports
(6) Review of NACIE's Charter, By Laws and the FY'88 and FY'89 Budgets
(7) Plans for future NACIE activities
(8) Public Testimonies
(9) Other Council Business

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202.

Dated: May 10, 1988.

Signed at Washington, DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-10613 Filed 5-12-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-382-000, et al.]

Arizona Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 10, 1988.

Take notice that the following filings have been made with the Commission.

1. Arizona Public Service Company

[Docket No. ER88-382-000]

Take notice that on May 5, 1988, Arizona Public Service Company (APS) tendered for filing an Economy Energy Interchange Agreement (Agreement) between APS and the Metropolitan Water District of Southern California (MWDSC) executed April 15, 1988.

APS requested that this Agreement become effective 60 days from the date of filing with FERC.

This Agreement provides that Economy Energy sales by APS to MWDSC shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the requried energy; (b) a "split-the-savings" concept; or (c) a selling price based on 120 percent of cost to produce such energy.

Copies of this filing are being served upon MWDSC and the Arizona Corporation Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER88-381-000]

Take notice that on May 5, 1988, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Five to St. Lucie Delivery Service Agreement between Florida Power & Light Company and Florida Municipal Power Agency (FMPA).

FPL states that Amendment Number Five revises the designation of delivery points and allocation of the FMPA St. Lucie Nuclear Power Resources.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment Number Two be made effective on June 1, 1988. FPL states that copies of the filing were served on Florida Municipal Power Agency and Florida Public Service Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10777 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application Filed With the Commission

May 10, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 3239-008.

c. Date filed: March 23, 1988.

d. Applicant: Puget Sound Power & Light Company and McMaster and Shroeder and Koma Kulshan Associates.

e. Name of Project: Koma Kulshan.

f. Location: On Rocky, Sulphur and Sandy Creeks in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:
David B. Ward, Flood & Ward, 1000 Potomac Street NW., Suite 402, Washington, DC 20007. (202) 298-6810.
Neil Macdonald, Koma Kulshan Associates, 4708 Aurora Avenue North, PO Box 31359, Seattle, WA 98103. (206) 547-3535.
W.J. Finnegan, Puget Sound Power & Light Company, Puget Power Building, Bellevue, WA 98009. (206) 454-6363.

i. FERC Contact: William Roy-Harrison, (202) 376-9830.

j. Comment Date: May 27, 1988.

k. Proposed Action: Puget Sound Power & Light Company and McMaster and Shroeder propose to transfer the license for Project No. 3239 to Koma Kulshan Associates to facilitate completion of the project. Transferee has proposed to construct, operate and utilize the full output of the project in accordance with the license. Koma Kulshan Associates is a limited partnership organized under the laws of the state of California.

l. This notice also consists of the following standard paragraph: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10778 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-348-000, et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

May 10, 1988.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP88-348-000]

Take notice that on April 20, 1988, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-348-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two new delivery points to Baltimore Gas and Electric Company (BG&E) and Washington Gas Light Company (WGL), its existing jurisdictional customers, under the authorization issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file and open to public inspection.

CNG Transmission states that by order issued September 12, 1986, in Docket No. CP85-758-000 *et al.*, as modified by order issued May 4, 1987, the Commission issued it a certificate to render firm sales service to BG&E and WGL up to a maximum daily quantity of 60,000 dekatherms per day each under its Rate Schedule CD. It is further stated that to enable delivery of the sales volumes, the Commission authorized Columbia Gas Transmission Corporation (Columbia) to transport the gas (for the account of CNG Transmission) from a CNG Transmission-Columbia interconnection at Loudoun County, Virginia to various interconnections between Columbia and BG&E and WGL. To date, it is indicated, the sales service authorized in Docket No. CP85-758-000 *et al.* has not commenced.

Although in the instant docket CNG Transmission proposes to add two new direct delivery points to WGL and BG&E, no abandonment of the delivery point to Columbia is intended. Such point, it is indicated, would be utilized as an alternate delivery point when necessary to render the authorized level of gas service. It is stated that one of the two additional delivery points would be located at the interconnection between CNG Transmission existing pipeline PL-1 and WGL's pipeline on Virginia Route 7, in Leesburg Magisterial District, Loudoun County, Virginia. CNG Transmission states that the other delivery point would be located at an interconnection between its existing pipeline No. PL-1 and the facilities to be constructed by BG&E at Tuscarora, Maryland.

CNG Transmission asserts that the proposed delivery points are not inconsistent with the intent of the original order in Docket No. CP85-758-000 and that the order did not preclude the possibility of direct delivery points. CNG Transmission notes that it has filed in Docket No. CP88-128-000 to increase the level of service of BG&E and WGL. CNG further notes that although it requested authority to construct and operate the instant proposed delivery points therein, it will soon amend the application to delete its request to add the subject delivery points.

Comment date: June 24, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Carnegie Natural Gas Company

[Docket No. CP88-363-000]

Take notice that on April 25, 1988, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236 filed in Docket No. CP88-363-000 an application pursuant to section 7 of the Natural Gas Act and Subpart G of Part 284 of the Commission's Regulations. Carnegie seeks authorization for the open-access transportation of natural gas for others with pregranted abandonment authorization of such transportation service, and also for the abandonment of sales service in the event of conversion of sales service to transportation service pursuant to 18 CFR 284.10, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Carnegie seeks authority under section 7 of the Natural Gas Act to provide, on a self-implementing basis, interruptible and firm transportation service on Carnegie's pipeline system on behalf of shippers other than interstate pipelines, pursuant to § 284.222 and 284.223 of the Commission's Regulations. Carnegie states that following issuance of certificate authorization pursuant to § 284.221, such service would be provided under the terms of its proposed ITS and FTS Rate Schedules of its FERC Gas Tariff.

Carnegie also requests pre-granted authorization to abandon transportation services upon the expiration of the contractual term of each individual transportation arrangement authorized under the blanket certificate requested herein. Carnegie also requests abandonment authorization for sales service in the event and at the time a sales customer converts to firm transportation service. Specifically, Carnegie requests, pursuant to section 7(b) of the Natural Gas Act and § 157.18 of the Commission's Regulations, abandonment authorization with respect to any Commission jurisdictional sales customer's conversion of firm sales entitlements to firm transportation on Carnegie's system under an FTS service agreement pursuant to § 284.10 the Commission's Regulations. Furthermore, Carnegie states that it would comply with the conditions specified in paragraph (c) of § 284.221 of the Commission's Regulations.

Comment date: May 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Carnegie Natural Gas Company

[Docket No. CP88-369-000]

Take notice that on April 29, 1988, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP88-369-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity for the construction and operation of a pipeline interconnection for the sale and delivery of natural gas to UGI Corporation—Gas Utility Division (UGI) for resale and for authorization for pre-granted abandonment of the proposed sale of gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Carnegie proposes to sell up to 10,000 dekatherms of natural gas per day (dt/d) to UGI on a firm basis pursuant to Carnegie's Rate Schedule CDS of the First Revised Volume No. 1 of its gas tariff for a primary term of ten years. Carnegie will deliver the gas to UGI at one of two alternative interconnections: (1) An interconnection to be constructed at a cost of $500,000 between Carnegie and the pipeline facilities of Columbia Gas Transmission (Columbia Gas) in Union Township, Washington County, Pennsylvania and (2) at Carnegie's existing delivery point with Texas Eastern Transmission Corporation (TETCO) at Waynesburg, Washington County, Pennsylvania. Carnegie also requests pregranted abandonment of the proposed sales service in the event that UGI exercises a price market-out clause in the sales service agreement or in the vent UGI is unable to arrange for the transportation of the gas volumes between the Carnegie delivery point and the UGI city gate receipt point.

Comment date: May 31, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10779 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-159-100, TM88-1-20-000, and TQ88-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 11, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 5, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Proposed to be effective March 1, 1988

Substitute Twenty-sixth Revised Sheet No. 203

Proposed to be effective June 1, 1988

Twenty-sixth Revised Sheet No. 201
Nineteenth Revised Sheet No. 205
Third Revised Sheet No. 629
Second Revised Sheet No. 630
Fifth Revised Sheet No. 631
Fourth Revised Sheet No. 631-A
Third Revised Sheet No. 632
Second Revised Sheet No. 633
Third Revised Sheet No. 634
Second Revised Sheet No. 635
Second Revised Sheet No. 636

Algonquin states that pursuant to section 7 of its Rate Schedules F-2 and F-4, it is filing Substitute Twenty-sixth Revised Sheet No. 203 and Nineteenth Revised Sheet No. 205 to track rate changes made by its suppliers, CNG Transmission Corporation and Texas Eastern Transmission Corporation, in the services underlying Rate Schedules F-2 and F-4. The proposed effective dates for Twenty-sixth Revised Sheet No. 203 and Nineteenth Revised Sheet No. 205 are March 1, 1988 and June 1, 1988, respectively.

Algonquin states that, pursuant to the Commission's Order Nos. 483 and 483A ("Orders"), dated November 10, 1987 and March 2, 1988, respectively, in Docket No. RM86-14 *et al* it has elected to use its Purchased Gas Adjustment ("PGA") mechanism to recover its purchased gas costs for Rate Schedules F-1, WS-1, I-1 and E-1. Algonquin further states that the rate sheet, Twenty-sixth Revised Sheet No. 201, and section 17, the PGA Provision of the General Terms and Conditions which is comprised of Third Revised Sheet No. 629, Second Revised Sheet No. 630, Fifth Revised Sheet No. 631, Fourth Revised Sheet No. 631-A, Third Revised Sheet No. 632, Second Revised Sheet No. 633, Third Revised Sheet No. 634, Second Revised Sheet No. 635 and Second Revised Sheet No. 636 are being filed to adopt and implement the new PGA regulations in §§ 154.301 through 154.310 of the Commission's Regulations as set forth in the Orders. The proposed effective date of Twenty-sixth Revised Sheet No. 201 and the revised section 17, the PGA Provision of the General Terms and Conditions is June 1, 1988.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10763 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-185-000 and TQ88-1-8-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

May 11, 1988.

Take notice that on May 5, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates and other tariff provisions for effectiveness on June 1, 1988:

Seventh Substitute Twenty-First Revised Sheet No. 7
Second Substitute Second Revised Sheet No. 67
Third Substitute Fifth Revised Sheet No. 68
Second Substitute Second Revised Sheet No. 69
Third Substitute Fourth Revised Sheet No. 70
Second Substitute Second Revised Sheet No. 70-A
Third Substitute Third Revised Sheet No. 71
Second Substitute Second Revised Sheet No. 71-A
Third Substitute Third Revised Sheet No. 72
Second Revised Sheet No. 73
Second Revised Sheet No. 74
Third Substitute Fourth Revised Sheet No. 75
Third Substitute Second Revised Sheet No. 75-A
Third Substitute First Revised Sheet No. 75-B
Fourth Substitute Original Sheet No. 75-C
Second Revised Sheet No. 76
First Revised Sheet No. 77
Original Sheet No. 77-A
First Revised Sheet No. 80
Fourth Substitute First Revised Sheet No. 82
Substitute Original Sheet No. 82-A
First Revised Sheet No. 82-B

According to Granite State, the purpose of the filing is to make changes in rates and in the purchased gas cost adjustment procedures in Section XIX of the General Terms and Conditions of its tariff to conform to the requirements of the Commission's Revisions to the Purchased Gas Cost Adjustment Regulations, Docket No. RM86-14-000 (Order Nos. 483 and 483-A).

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Norther Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts, and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10764 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-162-000]

Ringwood Gathering Co.; Filing of Revised Purchased Gas Adjustment Clause

May 11, 1988.

Take notice that on May 2, 1988, Ringwood Gathering Company (Ringwood), of 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Fourth Revised Sheet No. 58, Tenth Revised Sheet No. 59, Fifth Revised Sheet No. 60, Fifth Revised Sheet No. 61, Fourth Revised Sheet No. 62, Fouth Revised Sheet No. 63, and First Revised Sheet No. 64 to its FERC Gas Tariff. In addition, pursuant to the Commission's March 31, 1988 letter order in Docket No. TA88-1-38, Ringwood hereby withdraws its incremental pricing tariff sheet and removes said sheet from its tariff. Ringwood will continue to utilize a hybrid unit-of-sales/unit-of-purchase methodology until it elects either the unit-of-sales or the unit-of-purchase methodology in its next Natural Gas Act section 4 rate filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10785 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-138-000 and TQ88-1-6-000]

Sea Robin Pipeline Co.; Tariff Filing of Revised Tariff Sheets

May 10, 1988.

Take notice that on May 3, 1988, Sea Robin Pipeline Company (Sea Robin) tendered for filing to its FERC Gas Tariff:

Original Volume No. 1

Fiftieth Revised Sheet No. 4
Sixth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Sixth Revised Sheet No. 7
Third Revised Sheet No. 7-A
Third Revised Sheet No. 7-B
Fourth Revised Sheet No. 7-C
Original Sheet No. 7-C1
Original Sheet No. 7-C2
Second Revised Sheet No. 14
Second Revised Sheet No. 15
Second Revised Sheet No. 16
Third Revised Sheet No. 17
Third Revised Sheet No. 18
Fourth Revised Sheet No. 19
Original Sheet No. 19-A
Original Sheet No. 19-B

Original Volume No. 2

Thirty-third Revised Sheet No. 127-D
Thirty-third Revised Sheet No. 135-C

The proposed effective date for each of the preceding tariff sheets is June 1, 1988. These tariff sheets are being filed pursuant to § 154.310 of the Commissions regulations to reflect the changes in the purchase gas adjustment provisions contained in sections 1 and 4 of Sea Robin's FERC Gas Tariff, Original Volume No. 1. Tariff sheets 5 through 7C and 14 through 19 reflect the election under Section 154.303 of the Commission's regulations, as promulgated pursuant to Order 483 to recover changes in its cost of purchased gas through a PGA mechanism following the unit-of-sales methodology. Sea Robin proposed no changes to its Current Effective Rates at this time.

Sea Robin also tendered for filing the following tariff sheets:

Original Volume No. 1

Fifty-first Revised Sheet No. 4

Original Volume No. 2

Thirty-fourth Revised Sheet No. 127-D
Thirty-fourth Revised Sheet No. 135-C

These tariff sheets are being filed to reflect Surcharge Adjustments of $0.00 under Rate Schedules X-1, X-2, X-7 and X-8 to be effective July 1, 1988 as required by the transition rules of Section 154.310 of the Commission's regulations.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before May 17, 1988. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10780 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-8-000]

South Georgia Natural Gas Co.; Proposed Changes To FERC Gas Tariff

May 10, 1988.

Take notice that on May 3, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing, in the alternative, Forty-Seventh Revised Sheet No. 4 and Alternate Forty-Seventh Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of July 1, 1988. South Georgia states that the proposed tariff sheets reflect South Georgia's first annual PGA filing under the Commission's revised PGA Regulations.

South Georgia states that its proposed Current Adjustment is the same under both tariff sheets and reflects a commodity increase of 5.16¢ per MMBtu from South Georgia's transitional PGA filing in Docket No. TM88-1-8-000. The Surcharge Adjustment reflected on Forty-Seventh Revised Sheet No. 4, which is calculated in accordance with the Commission's Regulations, is 67.02¢ per MMBtu while the Surcharge Adjustment reflected in the alternate sheet is zero. South Georgia requests such waivers of the Commission's Regulations as may be required in order to implement the proposed alternate tariff sheet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10761 Filed 5-12-88; 8:45 am]

BILLING CODE 6717-01-M

VOL 53 ISS 93 MY 13 1988 UMI

[Docket No. RP88-80-001]

Texas Eastern Transmission Corp.; Compliance Filing

May 11, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 4, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Substitute First Revised Sheet No. 52
Substitute First Revised Sheet No. 53
Substitute First Revised Sheet No. 54
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet Nos. 56-99
First Revised Sheet No. 400
Substitute First Revised Sheet No. 482
Substitute First Revised Sheet No. 483.

Texas Eastern states that the purpose of this filing is to make the revisions to Texas Eastern's March 22, 1988 tariff filing in Docket No. RP88-80 as required by the Commission's April 21, 1988 "Order Accepting for Filing and Suspending Tariff Sheets, Subject to Refund and Conditions" (April 21 Order).

Texas Eastern states that its March 22, 1988 filing was accepted subject to refund and conditions imposed by the Commission's April 21 Order. In compliance with Ordering Paragraph (B) of the April 21 Order, Texas Eastern has made the following tariff changes:

(1) Sheet Nos. 52, 482, and 483 have been revised to eliminate references to suppliers Southern Natural and Texas Gas.

(2) Sheet No. 52 Page 1 of 4 through Sheet No. 52 Page 4 of 4 have been redesignated as Sheet Nos. 52, 53, 54, and 55.

(3) Sheet No. 483 has been revised to correct an incorrect reference to United's Docket No. RP88-27.

Texas Eastern states that Sheet No. 400 has not been revised because Texas Eastern submits that it correctly reflects the supersession of Second Substitute Original Sheet No. 400, which was accepted by the Commission's March 9, 1988 Letter Order in Docket No. RP85-177-000. Texas Eastern states that as required in Ordering Paragraph (C) of the April 21 Order, Texas Eastern affirms that within 30 days following the issuance of a Commission order in *United Gas Pipeline Company*, Docket No. RP88-27-000, establishing the appropriate amount of take-or-pay costs to be billed by Untied to its customers, Texas Eastern shall file revised tariff sheets to track any modifications to United's take-or-pay charges ordered in that proceeding. In addition to the above tariff changes, the April 21 Order requires Texas Eastern to file supporting workpapers clarifying whether or not it has allocated costs to non-jurisdictional customers. Texas Eastern states that no costs were allocated to non-jurisdictional sales since Texas Eastern does not purchase any gas for non-jurisdictional sales.

The proposed effective date of the tariff sheets listed above is April 1, 1988, the effective date of the initial tariff sheets filed in this proceeding.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-10786 Filed 5-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-124-000, TQ88-1-11-000, TM88-1-11-000]

United Gas Pipe Line Co.; Tariff Filing of Revised Tariff Sheets

May 10, 1988.

Take notice on May 3, 1988, United Gas Pipe Line Company (United) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1:

To Be Effective June 1, 1988

Revised Seventy-Ninth Revised Sheet No. 4
Revised Sixth Revised Sheet No. 74-B
Revised Sixth Revised Sheet No. 74-C
Revised Fifth Revised Sheet No. 74-D
Revised Sixth Revised Sheet No. 74-E
Revised Seventh Revised Sheet No. 74-F
Revised Second Revised Sheet No. 74-F1
Revised First Revised Sheet No. 74-F2
Original Sheet No. 74-F2a

To Be Effective July 1, 1988

Second Revised Seventy-Ninth Revised Sheet No. 4

These tariff sheets are being filed pursuant to § 154.310 of the Commission's regulations to reflect the changes in the purchase gas adjustment provisions contained in section 19 of United's FERC Gas Tariff, First Revised Volume No. 1. Tariff sheets 74-B through 74-F1 reflect the election under § 154.303 of the Commission's regulations, as promulgated pursuant to Order 483 to recover changes in its cost of purchased gas through a PGA mechanism following the unit-of-sales methodology. United proposes a Current Adjustment of $0.00 effective June 1, 1988. Second Revised Seventy-Ninth Revised Sheet No. 4 to be effective July 1, 1988 reflects the Current and Surcharge Adjustments attributable to the Alaskan Natural Gas Transportation System (ANGTS).

United states that these revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before May 17, 1988.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-10782 Filed 5-12-88; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Request for Applications for Long-Term Power From the Navajo Generating Station, AZ

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of request for applications.

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) is requesting applications for long-term power from the Navajo Generating Station (Navajo) which is in excess of the pumping requirements of the Central Arizona Project (CAP) and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 (Long-Term Navajo Surplus). The Long-Term Navajo Surplus is being marketed in accordance with the provisions of the Navajo Power Marketing Plan (Long-Term Plan) adopted by the Commissioner of the Bureau of Reclamation (Reclamation) on December 1, 1987, and published in the **Federal Register** on December 21, 1987 (52 FR 48328). Applications are being requested for the Long-Term Navajo Surplus available for sale and exchange after the date of initial operation of regulatory storage at New Waddell Dam through September 30, 2011. Capacity available for sale will be 400 megawatts (MW) less the capacity available for exchange. Up to 150 MW will be available for exchange. The capacity rate will be fixed for the term of the contract at $72 per kilowatt-year ($6 per kilowatt-month). The energy rate will be based on actual annual operating costs associated with the Navajo entitlement plus a charge for Western's costs associated with Navajo. Exchanges will be made at a one-kWh-for-one-kWh exchange rate plus the above-noted capacity rate and charge for Western's costs. Additional information regarding the resource and rates is provided in the "Request for Applications" section of this notice. The applications for Long-Term Navajo Surplus must include the applicant profile data described in this notice and also must include the amount(s) of power and type(s) of service (sale or exchange) requested.

Western will immediately begin accepting and reviewing the applications received pursuant to this notice. A proposed allocation will be published in a **Federal Register** notice upon completion of the review and analysis of all applications received. Western plans to have executed contracts for the Long-Term Navajo Surplus by December 31, 1988.

DATES: Applications for Long-Term Navajo Surplus will be accepted until June 13, 1988. Applications postmarked after that date will not be accepted.

ADDRESS: Applications should be submitted to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

SUPPLEMENTARY INFORMATION:

Contents

A. Background
B. Request for Applications
C. Applicant Profile Data
D. Regulatory Procedural Requirements

A. Background

The United States acquired an entitlement to 24.3 percent of the generation available at Navajo for use by CAP pursuant to the Colorado River Basin Project Act (32 U.S.C. 1501 *et seq.*). The CAP is a multipurpose water resource development and management project in Arizona. Section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333) provides that capacity and energy associated with the United States entitlement in Navajo, which is in excess of the pumping requirements of CAP and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, shall be marketed and exchanged by the Secretary of the Department of Energy pursuant to a plan adopted by the Secretary of the Interior after consultation with the Secretary of the Department of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (CAWCD). In accordance with the Hoover Power Plant Act of 1984, the Commissioner of Reclamation adopted the Long-Term Plan on December 1, 1987, on behalf of the Secretary of the Interior. Prior to the adoption of the Long-Term Plan, an Interim Navajo Power Marketing Plan (Interim Plan) was adopted and implemented to provide for the marketing of Navajo power until a long-term plan could be implemented. The Long-Term Plan provides that contracts entered into under the Interim Plan will expire upon 1-year notice given by Western subsequent to September 30, 1989, but no later than the date of initial operation of regulatory storage of New Waddell Dam. The New Waddell Dam is a regulatory storage feature of the CAP which will provide operating flexibility and will allow increased winter season pumping into regulatory storage for release in the summer season, and thereby reduce summer season pumping, providing an enhanced power resource during the peakload season of the Southwest.

The Long-Term Plan provides that Western, working closely with Reclamation and CAWCD, will be the primary marketing entity responsible for the sale and exchange of the Long-Term Navajo Surplus. By letter dated December 17, 1987, the Commissioner of Reclamation requested that Western begin the marketing process for the sales and exchanges provided in the Long-Term Plan upon the plan's effective date of January 20, 1988, and pursue the goal of having executed contracts within 12 months. As requested by Reclamation, Western is initiating the marketing process for the sales and exchanges of Long-Term Navajo Surplus and plans to have executed contracts by December 31, 1988.

B. Request for Applications

Western is requesting applications for sale and exchange of Long-Term Navajo Surplus for the contract period to commence upon initial operation of regulatory storage at New Waddell Dam through September 30, 2011. Contractors with long-term contracts terminating in 2011 shall be given the first opportunity for new long-term contracts for approximately the same amount of power contained in the terminated contracts with available capacity and energy distributed pro rata among contractors. Initial operation of the regulatory storage is scheduled to begin after 1992. Criteria for the sale and exchange of Long-Term Navajo Surplus are provided in the Long-Term Plan published in the **Federal Register** (52 FR 48328, December 21, 1987), a copy of which can be requested from Western's Boulder City Area Office.

The Long-Term Navajo Surplus to be sold or exchanged under the Long-Term Plan consists of capacity and energy for sale on a long-term basis generally during the summer season (May 1 through September 30 of any year), but will be available during the summer and winter seasons, onpeak and offpeak. Onpeak hours are the hours, except Sunday, that are between 9 a.m. to 9 p.m., mountain standard time during the summer season. Capacity available for sale will be 400 MW, less the capacity used for exchange purposes. A maximum of 150 MW of the 400 MW available for sale may be used for exchanges on a long-term basis. Energy scheduled from an exchange contractor will be returned to the exchange contractor on a one-kWh-for-one-kWh basis. There will be 760 kWh of energy per year available for sale or exchange to each contractor for each kilowatt of contract capacity. Delivery of capacity and energy will be subject to the availability of the Navajo Powerplant and the associated transmission system and capacity reductions will be on a pro rata basis among all the contractors and CAWCD. Energy will be affected if the energy produced by the Navajo entitlement is less than an average of 3,500 GWh per year in the current and immediately prior operating year.

Specific details of the contractor's rights under these circumstances are addressed in the Long-Term Plan.

Long-Term Navajo Surplus will be offered for sale in the following order of priority:

1. Preference entities within Arizona

the additional rate component established by CAWCD plus an amount which when added to the additional rate component shall total $72 per kW-year. The annual rate of $72 per kW-year shall be billed to each contractor in a

2. Loads

a. Maximum demand (kW) and energy use (KWh) for each month for each year of 1985, 1986, and 1987.

b. Daily peak demand for the peak week in the years 1985, 1986, and 1987.

Executive order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by the Office of Management and Budget (OMB) is required.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3379-2]

Agency Paperwork Reduction Act

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management

Specific details of the contractor's rights under these circumstances are addressed in the Long-Term Plan.

Long-Term Navajo Surplus will be offered for sale in the following order of priority:

1. Preference entities within Arizona.
2. Preference entities within the Boulder City marketing area.
3. Preference entities in adjacent Federal marketing areas.
4. Nonpreference entities in the Boulder City marketing area.

In the event that a potential contractor fails to place capacity and energy under contract within a reasonable period, as specified by Western and in accordance with the terms and conditions offered by Western, the amount of capacity and energy not placed under contract will be reoffered in accordance with the order of priority specified above.

Arizona entities, regardless of preference status, shall have first opportunity for electrical capacity and energy exchange rights as necessary to implement this plan in accordance with section 107 of the Hoover Power Plant Act of 1984.

Western, after consultation with Reclamation and CAWCD, shall enter into all power sales and exchange contracts on behalf of the Secretary of the Interior, consistent with the Long-Term Plan and the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50583, December 29, 1984). Contract entitlements will be measured or calculated at the 500-kV bus at Navajo. Capacity and energy, less losses, will be delivered at a voltage of 500 kV to contractors at either Westwing Switchyard or McCullough Switchyard or at such other points and voltages on the Navajo system as Western and the contractor shall agree. Any necessary transmission service beyond the contractor's point(s) of delivery will be the responsibility of the contractor. CAWCD will be a party to contracts for the sale or exchange of Long-Term Navajo Surplus for the limited purpose of establishing and collecting the additional rate component authorized by the Hoover Power Plant Act of 1984 to repay the advance of $175,000,000 (or more) to Reclamation by CAWCD for authorized features of CAP in accordance with the Plan Six Cost-Sharing Agreement dated April 15, 1988.

The rates for long-term Navajo capacity and energy are prescribed in the Long-Term Plan. The capacity rate for sales and exchanges will be fixed for the term of the long-term contracts at the additional rate component established by CAWCD plus an amount which when added to the additional rate component shall total $72 per kW-year. The annual rate of $72 per kW-year shall be billed to each contractor in a monthly amount of $6 per kW-month. The energy rate for sales will be a mills-per-kWh rate based on the actual annual operating costs associated with the Navajo entitlement in the prior operating year plus a charge for Western's costs associated with Navajo. Western's charge will be based on actual costs of services performed under the Long-Term Plan, including appropriate administrative expenses. Long-term exchanges will be at a one-kWh-for-one-kWh energy exchange rate plus the above described $72 per kW-year capacity rate and a charge for Western's costs associated with Navajo.

All applications for Long-Term Navajo Surplus must comply with the following applicant profile data (APD) as approved through June 30, 1989, by the Office of Management and Budget (OMB No. 1910–1200). If an item in the APD does not apply, please state the reason why it does not apply.

C. Applicant Profile Data

If an applicant is applying for power on behalf of another organization which is not a member or subsidiary of the applicant, the applicant should provide a statement to that effect, which includes the reason(s) why the other organization is not applying for power on its own behalf. All items of information in the APD should be answered as if prepared by the organization seeking the allocation of Federal power.

1. Applicant Organization

a. Organization name and address.

b. Name, address, title, and telephone number of person(s) who will represent the entity in dealing with Western.

c. Type of organization (municipality, rural electric cooperative, irrigation district, State agency, Federal agency, other). Parent organization, if applicable. Names of members, if applicable. Applicable law under which organization was established.

d. Organization's geographic service area. If readily available, submit a map of the service area and indicate the date the map was prepared.

e. Number and types of customers served and percentage of load: residential, commercial, industrial, agricultural, military base, etc.

2. Loads

a. Maximum demand (kW) and energy use (KWh) for each month for each year of 1985, 1986, and 1987.

b. Daily peak demand for the peak week in the years 1985, 1986, and 1987.

3. Resources

a. Operating generating resources, if any, including for each resource, rated capacity, plant factor by month for 1987 type of fuel, and location.

b. If the applicant's load is served wholly or partially by purchases from others, please provide for each purchase, the name of the power supplier, amounts of firm and nonfirm capacity and energy supplied under the contract, and the termination date.

4. Transmission

a. A brief description of the applicant's transmission and distribution system, including major interconnections.

b. Requested point(s) of delivery on the Navajo system, voltage of service required, and capacity desired at each of the points of delivery.

c. Description of the transmission arrangements necessary to deliver power from the requested point(s) of delivery to the applicant's load. (If transmission service by another entity will be necessary, please describe the arrangement necessary to obtain the service.) Please provide a single-line drawing of the applicant's service arrangements, if one is readily available.

5. Service Requested

a. The amount(s) and type(s) of service (sale or exchange) requested.

b. The date when the applicant can first use the service requested from Western.

c. Any other information the applicant wishes to include.

d. The signature and title of an appropriate official who is able to attest to the validity of the information submitted and who is authorized to submit the application.

D. Regulatory Procedural Requirements

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. This proposal is of a technical nature and considered to be a nonmajor rule within the meaning of the Executive order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by the Office of Management and Budget (OMB) is required.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations, and the Department of Energy guidelines for compliance with NEPA, republished and amended in the Federal Register on December 15, 1987 (52 FR 240), Western prepared an environmental assessment of the potential impacts of the marketing of Long-Term Navajo Surplus. The Department of Energy has determined that Western's proposed actions as described in the environmental assessment will not lead to any significant environmental impacts.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, this proposal relates to particular electric services and rates provided by Western. Under 5 U.S.C. 601(2), such rules and practices relating to services are not considered "rules" within the meaning of this Act. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Only those parties requesting Long-Term Navajo Surplus are requested to submit information. Nevertheless, this is at their sole election. There is no requirement that members of the public supply information about themselves to the Government. It follows that the request for applications for power from the Navajo Generating Station is exempt from the Paperwork Reduction Act.

Issued at Golden, Colorado, April 29, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–10695 Filed 5–12–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3379–2]

Agency Paperwork Reduction Act Requests Completed By OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces Office of Management and Budget (OMB) actions on the Information Collection Requests (ICRs) submitted by EPA.

Approved

EPA ICR #1444; Emissions Inventory for Regional Acid Disposition Model (RADM) Verification; OMB action date: 4/6/88; OMB #2080–0030; expires 6/30/90. New collection.

EPA ICR #1028; Pesticide Manufacturing Facility Census for 1986; OMB action date: 4/11/88; OMB #2040–0111; expires 4/30/90. New collection.

EPA ICR #1440; Technical Assistance Grants to Groups at National Priorities Sites; OMB action date: 4/15/88; expires 2/28/91. New collection.

EPA ICR #0938; 40 CFR Part 30. "General Regulation for Issuance Program" (Amendment); OMB action date: 4/21/88; expires 8/31/89. Revision of existing collection. No changes.

FOR FURTHER INFORMATION CONTACT:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460, Telephone No. (202) 382–2740

or

Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, Telephone No. (202) 395–3084.

Date: May 4, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–10725 Filed 5–12–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3379–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comment. The ICRs describe the nature of the information collection and its expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: PCB Disposal Permitting Regulation. (EPA ICR #1012).

Abstract: Applicants for PCB disposal permits must provide a sampling and quality assurance plan and an environmental impact assessment to EPA. The Agency will use these data to evaluate the facility's ability to safely dispose of PCBs. This is an extension of an existing collection.

Respondents: Applicants for PCB Disposal Permits.

Estimated Burden: 15,000 hours.

Frequency of Collection: Annually.

Title: Pesticides Report for Pesticide-Producing Establishments. (EPA ICR # 0160).

Abstract: FIFRA requires producers of pesticide products, active ingredients and devices to register their establishments with EPA and to submit an annual report on the types and amounts of products produced. EPA uses this information for compliance oversight and risk assessment. This is a reinstatement of an existing collection.

Respondents: Producers of Pesticide Products.

Estimated Burden: 13,985 hours.

Frequency of Collection: Annually.

Title: Reporting and Recordkeeping for Asbestos Abatement Worker Protection. (EPA ICR #1246).

Abstract: This rule covers state and local employees who perform asbestos abatement activities. It requires employers to report asbestos abatement projects, to train employees about the hazards of asbestos, to monitor employee exposure, and to provide medical surveillance. It also requires employers to maintain records of these activities. This is an extension of an existing collection.

Respondents: State and Local Governments.

Estimated Burdens: 71 hours.

Frequency of Collection: On occasion.

Office of Research and Development

Title: Laboratory Performance Evaluation of Water and Waste Laboratories. [EPA ICR # 0234].

Abstract: Laboratories which provide required monitoring data under the Clean Water Act of 1987 or the Safe Drinking Water Act must complete performance evaluations (PEs). EPA contractor or grantee laboratories also must submit PEs. These evaluations help ensure quality of data used in Agency decisions involving water quality standards.

Respondents: Agency, State, local and private water and waste laboratories.

Estimated Burdens: 56,770 hours.

Frequency of Collection: Annually.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503. (Telephone (202) 395–3084).

Date: May 4, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–10726 Filed 5–12–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3378–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 25, 1988 through April 29, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 [53 FR 13318].

DRAFT EISs

ERP No. D–AFS–L65123–ID, Rating EC1, Wing Creek-Twentymile Geographic Display Area Management Plan, Implementation, Nezperce National Forest, Elk City and Clearwater Ranger Districts, Idaho County, ID.

Summary:

EPA's concern is that sediment from road construction and timber harvest may reach the stream systems and affect fish habitat capability and water quality.

ERP No. D–AFS–L65124–AK, Rating EC2, North Sea Otter Sound Area Resources Management Plan, Implementation, Tongass National Foreign, AK.

Summary:

EPA's main concern is the effect of the action alternatives on water quality. Additional information is requested on compliance with Water Quality Standards, water quality and fish habitat monitoring, mitigation measures, and baseline data.

ERP No. D–BLM–J01090–CO, Rating LO, Northwest Colorado Coal Preference Right Lease Applications, Chapman-Riebold (C–0125966) and Jensen-Miller (C–4275), Leasing, Rio Blanco County, CO.

Summary:

EPA does not anticipate any significant adverse impacts from the preferred alternative.

ERP No. D–BLM–J20009–UT, Rating LO, Aptus Industrial and Hazardous Waste Treatment Facility Construction and Operation, Land Exchange, Right-of-Way Grants, Temporary Use Permits and Possible 404 Permit, Tooele County, UT.

Summary:

EPA has no objections to the project as proposed, but suggests that additional information be included in the final EIS.

ERP No. D–BLM–L65129–ID, Rating LO, Idaho Statewide Small Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Box Creek, Lower Salmon Falls Creek, Henry's Lake, Worm Creek, Goldbury, Borah Peak, Boulder Creek, Little Wood River and Black Butte WSAs', Valley, Twin Falls, Fremont, Bear Lake, Custer, Blaine and Lincoln Counties, ID.

Summary:

EPA has no objections to this document for the wilderness study areas. However, we recommend that the final EIS include water quality and fishery impacts as planning criteria for all WSAs.

ERP No. DS–COE–E35029–NC, Rating EU3, Wilmington Harbor, Northeast Cape Fear River Navigation Improvements, Fourth East Jetty Channel to near Hilton Railroad Bridge, Project Changes and Additional Information, Implementation, New Hanover and Brunswick Counties, NC.

Summary:

EPA feels the proposed project, without prior or concurrent implementation of the environmental conservation features, would result in a project which is environmentally unsatisfactory. This document does not contain adequate justification for reversing the conclusions reached through earlier environmental analyses and altering the overall environmental impacts of the project. EPA proposes that the Wilmington District prepare a supplemental EIS which adequately addresses concerns described above. Based upon these concerns the proposed action is presently a candidate for referral to the President's Council on Environmental Quality for resolution of issues of concern.

ERP No. D–UAF–E11020–NC, Rating EC2, Seymour Johnson AFB, F–4 to F–15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC. Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV.

Summary:

EPA has a number of questions regarding the noise impacts of this decision to locate the F–15E squadrons at Seymor Johnson in which EPA needs some clarification.

ERP No. D–USA–J10000–UT, Rating EC2, Dugway Proving Ground, Biological Aerosol Test Facility (BATF), Construction and Operation, Baker Laboratory, Tooele and Juab Counties, UT.

Summary:

EPA has concerns about the details of the analysis in the EIS rather than any specific environmental impact of the proposed project. EPA suggests that some programmatic options in facility operations be further considered to reduce the risk of release and that the EIS be improved.

Note: The above summary should have appeared in the 4–15–88 FR Notice.

FINAL EISs

ERP No. F–COE–C36058–NY, Saw Mill River Basin Flood Control Plan, Old Nepperan Avenue Bridge to near the former Tompkins Avenue Bridge, Nepara Park, City of Yonkers, Westchester County, NY.

Summary:

EPA's concerns on the draft EIS regarding the resuspension of trace pollutants and erosion on the city of Yonkers drinking water and to the surrounding environment have been addressed. Accordingly, EPA has no objections to the implementation of the project as proposed.

ERP No. FS–FAA–F51002–IN, Indianapolis International Airport Development, 4R–22L 10,000 Foot Runway Construction, Project Change, Approval and Funding, Marion County, IN.

Summary:

EPA provided comments on the final EIS, and had no further comments.

ERP No. F–FHW–F40143–MN, US 10/US MN Trunk Highway 10 Improvements, CSAH–77 near Bluffton to CSAH–53 south of Motley, Funding and 404 Permit, Otter Tail, Wadena, Todd and Morrison Counties, MN.

Summary:

EPA expressed concerns about the potential for adverse wetlands impacts and secondary impacts in the draft EIS. In general, EPA is satisfied with the way in which previous concerns were addressed in this document.

ERP No. F–UMT–E54006–FL, Miami Metromover Automated Transportation System, Construction and Improvement, Omni and Brickell Legs, Dade County, FL.

Summary:

EPA is satisfied that concerns have been adequately addressed. However, effective measures should be developed during final design to minimize adverse air, noise and water quality impacts from construction activities.

Amended Notice:

EO—Environmental Unsatisfactory should read EU—Environmental Unsatisfactory in 4–22–88 FR Notice.

Date: May 10, 1988.

William D. Franklin,

Acting Director, Office of Federal Activities.

[FR Doc. 88–10805 Filed 5–12–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3379–6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5075 or (202) 382–5074. Availability of Environmental Impact Statements Filed May 2, 1988 Through May 6, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880143, Draft, COE, ND, Devils Lake Basin, Flood Control and Related Purposes Project, Implementation, Benson, Eddy, Nelson, Walsh, Cavalier, Towner, Rolette, Pierce and Ramsey Counties, ND, Due: June 27, 1988, Contact: Gary Palesh (612) 220–0264.

EIS No. 880144, Draft, BLM, AK, Birch Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, Steese National Conservation Area, Yukon-Tanana, AK, Due: July 11, 1988, Contact: Richard Dworsky (907) 271–3114.

EIS No. 880145, Draft, BLM, UT, Pony Express Resource Management Plan, Implementation, Salt Lake District, Utah, Tooele and Salt Lake Countries, UT, Due: August 15, 1988, Contact: Dennis Oaks (801) 524–6767.

EIS No. 880146, Final, FHW, ND, Columbia Road Overpass Widening, Gateway Drive to 32nd Avenue South, Funding, Grand Forks County, ND, Due: June 13, 1988, Contact: John Kliethermes (701) 255–4011.

EIS No. 880147, Final, AFS, UT, Escalante Known Geological Structure (KGS), Oil and Gas Leasing and Development, Dixie National Forest, Due: June 13, 1988, Contact: Calvin Bird (801) 586–2421.

EIS No. 880148, Draft, FHW, VA, VA–642/Hoadly Road Improvements, VA–234 to VA–641, Funding, Prince William County, VA, Due: June 27, 1988, Contact: James Tumlin (804) 771–2371.

Amended Notices

EIS No. 880108, Draft, FHW, VA, US 288 Const., US 360/Hull Street to I–64, Funding, Section 10 and 404 and Coast Guard Permits, Chesterfield, Henrico, Goochland and Powhatan Counties, VA, Due: May 31, 1988, Contact: Robert L. Hundley (804) 786–4304. Published FR 4–15–88–Review period extended.

Dated: May 10, 1988.

William D. Franklin,

Acting Director, Office of Federal Activities.

[FR Doc. 88–10805 Filed 5–12–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3379–7]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) in Cape Arundel, Maine; Intent to Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA), Region I.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Cape Arundel dredged material disposal site in the Gulf of Maine.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), and with a voluntary policy to prepare EISs for all ocean disposal site designations, EPA issues this Notice of Intent pursuant to 40 CFR 1507.7.

For Further Information and to be Placed on the Project Mailing List Contact: Kymberlee Keckler, Chemical Engineer, U.S. EPA Region I, JFK Federal Building, WQE–1900, Boston, MA 02203. Telephone: (Commercial) (617) 565–4432 or (FTS) 835–4432.

SUMMARY: Since 1977, the existing site known as the Cape Arundel Disposal Site located approximately three (3) nautical miles south of Kennebunkport, Maine, has been operating under an interim designation status for dredged material disposal. EPA has identified a continuing need for use of the present interim site, and is therefore proposing to grant final designation to the site. Designation in itself does not result in disposal, it only serves to make an ocean disposal site option available for consideration in the alternatives analysis for each dredging project in the area.

Need For Action: On May 7, 1974, the EPA published a Statement of Policy on Environmental Impact Statements (EISs). Section (1)(d)(2) of that policy specifies that EISs must be prepared in connection with ocean disposal site designations under Section 102(d) of the Marine Protection, Research, and Sanctuaries Act. Final site designation will serve to clarify the site's status for the long term, including its availability as an ocean disposal alternative for consideration during the case-by-case permit reviews for future dredging projects in the region.

Alternatives: The EIS will consider various alternatives including alternative disposal methods, alternative ocean disposal sites, environmental evaluation of the existing interim site to determine if its use should be continued, and the no-action alternative.

Scoping: The Environmental Protection Agency (EPA), Region I, will hold a public scoping meeting on Tuesday, May 31, 1988 from 7:00 p.m. to 8:30 p.m. in the Community Room of the Ocean National Bank, 10 Elm Street, Kennebunkport, Maine. Details of the history of the project and the alternatives to be considered will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

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Estimated Date of Draft EIS Release: March 1, 1989.

Responsible Official: Michael R. Deland, Regional Administrator for Region I.

Dated: May 9, 1988.

William D. Franklin,

Acting Director, Office of Federal Activities.

[FR Doc. 88-10807 Filed 5-12-88; 8:45 am]

BILLING CODE 6560-50

[FRL-3379-4]

Sole Source Aquifer Designation for the Pawcatuck Basin Aquifer System, Rhode Island and Connecticut

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to a petition from the Audubon Society of Rhode Island, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Pawcatuck Basin Aquifer System satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The designation criteria include the following: The Pawcatuck Basin Aquifer System is the sole source of drinking water for the residents of that area; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the area's residents. As a result of this action, all Federal financially assisted projects proposed for construction or modification within the Pawcatuck Basin will be subject to EPA review to reduce the risk of ground water contamination from these projects.

DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time May 27, 1988.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP-2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Langworthy Public Library in Hope Valley, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP-2113, Boston, MA 02203, 617-565-3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On November 30, 1987, EPA received a petition from the Audubon Society of Rhode Island requesting designation of the Pawcatuck Basin Aquifer System as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on March 3, 1988, in Wood River Junction, Rhode Island, in accordance with all applicable notification and procedural requirements. A four week public comment period followed the hearing.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area, the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the Pawcatuck Basin Aquifer System as a sole source aquifer:

1. The Pawcatuck Basin Aquifer System is the sole source of drinking water to all of the residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the Audubon Society has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Basin's ground water is rated as good to excellent, it is highly vulnerable to contamination due to the Basin's geological characteristics.

Because of this, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Since all residents are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the service area's residents.

III. Description of the Pawcatuck Basin Aquifer System, Designated Area, and Project Review Area

The Pawcatuck Basin Aquifer System is a 295-square mile watershed located primarily in southwestern Rhode Island and partially in southeastern Connecticut. It encompasses part or all of ten towns in RI and portions of four towns in CT. It is comprised of ten hydrogeologically interconnected aquifers, nine in RI and one in CT. The aquifers consist of extensive deposits of stratified drift. They are generally located in the lowland areas of the basin. The recharge areas or highland portions of the basin consist of interfingered stratified drift and till deposits. Bedrock outcrops can also be found in these highland areas.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the Pawcatuck Basin Aquifer System, the boundary of the designated area coincides with the boundary of the watershed basin. The watershed boundary is a surface water divide based on topography, which generally corresponds to the ground water divide. The recharge areas are usually comprised of bedrock and/or till which may be interfingered with stratified drift materials. The lowland areas where the aquifers are located, generally consist of stratified drift. Activities occurring in the upland areas can have a direct impact on the ground water quality of the aquifers.

The project review area is the same as the designated area boundary. The project review area includes the entire Pawcatuck Basin watershed.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the Audubon Society of Rhode Island; additional information requested from and supplied by the petitioners; written and verbal comments submitted by the public; and the technical papers and maps submitted with the petition. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the Federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by Federal agencies to projects which could contaminate the Pawcatuck Basin Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any Federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Pawcatuck Basin Aquifer System.

VI. Summary and Discussion of Public Comments

The vast majority of comments received from the public supported designation of the Pawcatuck Basin Aquifer System as a sole source aquifer. Over seventy comments were received from the public; of these, only three expressed opposition to the designation.

One party raised questions about: (1) The availability of alternative sources of water supply for the Pawcatuck Basin and the information supplied in the petition; (2) the application of boundary definitions used in the petition; (3) the appropriateness of designating a whole watershed basin versus designating each aquifer separately; and (4) the possibility of overlap among Federal, State and local regulations. EPA has researched each of these issues and has found that the petition addresses them adequately.

Two other parties raised questions about alternative sources of water supply in Connecticut. Connecticut and Rhode Island identify their aquifers by different names. This created confusion about which aquifers had been researched by the petitioners. These misunderstandings have been resolved.

Notable letters of support were received from Federal, State and local governments, as well as letters from environmental organizations and residents. Reasons given for support include: (1) The total dependence of the residents on ground water for their drinking water supply; (2) the fact that there are no reasonably available alternative sources; (3) that growth and development in the Pawcatuck Basin threaten the continued purity of the resource; and (4) that the Pawcatuck Basin's designation as a sole source aquifer would heighten public awareness of the vulnerability of the resource, and would encourage further protective efforts.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-10722 Filed 5-12-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 4, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None

Title: Terrain Shielding Policy

Action: New collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 250 Responses, 2,500 Hours

Needs and Uses: The Commission adopted a Policy Statement regarding terrain shielding in the evaluation of television translator, television booster and low power television applications. In this policy statement, the Commission has relaxed its policy regarding consideration of terrain shielding in the LPTV service. This policy would require respondents to submit either a detailed terrain study, or to submit assent of all potentially affected parties and graphic depiction of the terrain. The data is used by FCC staff to determine if adequate interference protection can be provided by terrain shielding and if waiver of the Rules is warranted.

Federal Communication Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-10691 Filed 5-12-88; 8:45 am]

BILLING CODE 6712-01-M

Technical and Allocations Subgroups of Radio Advisory Committee; Meeting

The Technical and Allocations Subgroup of the Advisory Committee on Radio Broadcasting will reconvene at 1:30 p.m. on Wednesday, May 11, 1988 at the Headquarters of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

As decided and announced at the April 21, 1988 meeting of the subgroups, this next session will be a continuation of that meeting, and will address the same agenda, which is set out below. Please note, however, that it has become necessary to change the date of this

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resumed meeting to Wednesday, May 11, 1988.

At the forthcoming May 11, 1988 session, the Subgroups will continue their consideration of:

—Improvement of the AM radio broadcast service;
—Preparations for the Second Session of the Regional Administrative Radio Conference on Expansion of the AM Band (RARC-88); and
—Other business.

The Subgroups' meetings are continuing ones, and may be resumed after each session as decided by the participants. All meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824–5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254–3394.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–10692 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–204]

Application For Consolidated Hearing; AGH Communications, Inc. and Woodford County Radio Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. AGH Communications, Inc.; Eureka, ILL.	BPH–870430MX	88–204
B. Woodford County Radio, Inc.; Eureka, ILL.	BPH–870430MY	

2. Pursuant to section 309(e) of the Communication Act 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue 4 in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 867–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10770 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–206]

Applications For Consolidated Proceeding; Mary Faye Gilbert et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. Mary Faye Gilbert; Belle Chasse, LA.	BPH–870526MA	88–206
B. Belle Chasse Enterprises, Inc.; Belle Chasse, LA.	BPH–870526ME	
C. Sunsett Broadcasting Co. L.P.; Belle Chasse, LA.	BPH–870527MA	
D. Randolph J. Callender d/b/a, First Bell Chasse Media Group, A Partnership in Commendam; Belle Chasse, LA.	BPH–870527MB	
E. Area Belle Chasse Community Radio; Belle Chasse, LA.	BPH–870527MC	
F. Belle Chasse Radio, Limited Partnership; Belle Chasse, LA.	BPH–870527ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, B, E
2. Comparative, ALL
3. Ultimate, ALL

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10771 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–205]

Applications For Consolidated Hearing; Local Morgan Hill Radio Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and City/ State	File No.	MM Docket No.
A. LOCAL Morgan Hill Radio Associates; Morgan Hill, CA.	BPH–870625ML	88–205
B. Morgan Hill FM Limited Partnership; Morgan Hill, CA.	BPH–870629MX	
C. Ethnic Radio of Los Banos, Inc.; Morgan Hill, CA.	BPH–870629MZ	
D. Morgan Hill Broadcasting, A California Limited Partnership; Morgan Hill, CA.	BPH–870629NB	
E. Toro Broadcasting General Partnership; Morgan Hill, CA.	BPH–870629ND	
F. Eric R. Hilding; Morgan Hill, CA.	BPH–870629NH	
G. Laura W. Herron and Gregory S. Genetti d/b/a Herron & Genetti; Morgan Hill, CA.	BPH–870629NK	
H. Peter Meuli; Morgan Hill, CA.	BPH–870629NN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its

entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Financial Qualifications, F
2. Air Hazard, A, B
3. Comparative, A–H
4. Ultimate, A–H

3. If there are any non-standardized issues in this proceeding, the full text and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assisant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10772 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–201]

Applications for Consolidated Hearing; Charles E. Phillips et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. Charles E. Phillips; Oliver Springs, TN.	BPH–870105MC	88–201
B. Oliver Springs Radio FM Limited Partnership; Oliver Springs, TN.	BPH–870107MJ	
C. Randall K. Wells; Oliver Springs, TN.	BPH–870107MD (Dismissed).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicant(s)

1. Comparative, All applicants
2. Ultimate, All applicants

3. If there are any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10774 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–203]

Applications for Consolidated Hearing; Robin B. Thomas et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. Robin B. Thomas; Curwensville, PA.	BPH–860707MU	88–203
B. Raymark Broadcasting Co., Inc. Curwensville, PA.	BPH–860707NF	
C. Laurel Media, Inc.; Curwensville, PA.	BPH–860707NG	
D. Joseph "Don" Powers; Curwensville, PA.	BPH–860707NK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC 20037. (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10773 Filed 5–12–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–202]

Applications For Consolidated Hearing; WHMT Educational Telecommunications, Inc. and State University of New York

1. The Commission has before it the following mutually exclusive applications for a new noncommercial educational FM station:

Applicant, and city/ State	File No.	MM Docket No.
A. WMHT Educational Telecommunications, Inc.; Poughkeepsie, NY.	BPED–860908PD.	88–202
B. State University of New York; New Paltz, NY.	BPED 861124ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, A
2. Share-time, A, B
3. 307(b) A, B
4. Contingent Comparative, A, B
5. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete

HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10775 Filed 5–12–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–190]

Applications; New FM Stations; Robert Wilson et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM Docket No.
1. Robert Wilson and Patricia Phipps; Custer, SD.	BPH–860623MA	88–190
2. Custer Broadcasting Corporation; Custer, SD.	BPH–860623MB	

2. Pursuant to section 308(e) of the Communications Act of 1934, as amended, the above applications have been designated in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Misrepresentation, B
2. 315(b), B
3. Air Hazard, B
4. Comparative, A, B
5. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicant to which it applies are set forth below in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–10776 Filed 5–12–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEMA Advisory Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: May 31, 1988–June 1, 1988.

Time:

May 31, 1988—11:00 a.m.—5:30 p.m.

June 1, 1988—9:00 a.m.—12:30 p.m.

Place. Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the agency's budget and personnel. The status of a review of civil defense programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Session on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Dated: May 9, 1988.

Robert H. Morris,

Deputy Director.

[FR Doc. 88–10886 Filed 5–12–88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 88–14]

Direct Container Line, Inc., et al. v. Atlantic Container Line et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Direct Container Line, Inc., Liberty Intermodal Inc., Audnel America International, Votainer Consolidation Services (Southwest) Inc., Boston Consolidation Service, Inc., APA Transport Corp., and Sea Cargo International, Inc. ("Complainants") against Atlantic Container Line, Dart Containerline, Hapag-Lloyd, Puerto Rico Maritime Shipping Authority, Sea-Land Service, Inc., Trans Freight Lines, U.S. Lines, New York Shipping Association, Council of North Atlantic Shipping Associations, West Gulf Maritime Association, Mobile Steamship Association, Inc., and Southeast Florida Employers Port Association ("Respondents") was served May 10, 1988. Complainants allege that Respondents have violated certain sections of the Shipping Act, 1916, 46 U.S.C. app. section 421 *et seq.*, the Intercoastal Shipping Act, 1933, 46 U.S.C. app. section 843 *et seq.*, the Shipping Act of 1984, 46 U.S.C. app. section 1701 *et seq.*, through implementation of the "50-Mile Container Rules" at various East Coast and/or Gulf Coast ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by May 10, 1989, and the final decision of the Commission shall be issued by September 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88–10727 Filed 5–12–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an anaylysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. DATE: Comments must be received within fifteen working days of the date of publication in the Federal Register. ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in §261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below., Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposed to Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock

Agency form number: FR U–1

OMB Docket number: 7100–0115

Frequency: Recordkeeping requirement

Reporters: Commercial banks

Annual reporting hours: 94,637

Small businesses are affected.

This information collection is mandatory (15 U.S.C. 78g, 78w) and is not given confidential treatment.

A purpose statement is required to be completed by a bank and its borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding $100,000. The statement is not filed with the Federal Reserve, but is a "record-keeping" form retained for a specified period by the lending bank. It is used to determine the purpose of the loan proceeds, to serve as an evidentiary tool to ascertain the intention of the parties involved, and to document the securities serving as collateral.

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Report

1. *Report title:* National Survey of Small Business Finances

Agency form number: FR 3044

OMB Docket number: 7100–XXXX

Frequency: One-time survey

Reporters: Small businesses

Annual reporting hours: 2,125

Small businesses are affected.

This information collection is voluntary (12 U.S.C. 1817(j), 1828(c), and 1841 *et seq.*) and is given partial confidential treatment (5 U.S.C. 552(b)(4)).

This one-time telephone survey of small businesses will be conducted between June and September 1988 by employees of a private contractor. The purposes of the survey are to provide an empirical basis for the definition of banking markets and to provide information on sources of funds for small businesses.

Board of Governors of the Federal Reserve System, May 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–10670 Filed 5–12–88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

General Services Administration Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement will meet on May 24, 1988, from 9:00 a.m. to 3:30 p.m., in the board room of the MITRE Corporation, 7225 Colshire Drive, McLean, VA 22109, to review the plans to evaluate vendor proposals for the FTS2000 procurement and the current status of the project. The agenda will relate to (1) FTS2000 program requirements; (2) roles and responsibilities; (3) security and ethics; (4) structure, content, and main issues on the request for proposals; (5) evaluation scheme, evaluation process, and schedule, and (6) current status.

The entire meeting will be closed to the public because procurement sensitive matters, especially the pre-award evaluation scheme and methodology, will be discussed. The exemptions for closing the meeting are cited in 5 U.S.C. 552b(c)(9)(B) (Government in the Sunshine Act).

Less than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers (202) 523–5308.

Dated: May 6, 1988.

John J. Landers,

Director, Office of Administration Information Resources Management Service.

[FR Doc. 88–10741 Filed 5–12–88; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement To Improve the Preparation of Public Health Workers; Availability of Funds for Fiscal Year 1988

The Centers for Disease Control announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Association of

Schools of Public Health to improve the preparation of public health workers. The Catalog of Federal Domestic Assistance number is 13.283.

Program Objective

The objective of this agreement is to assist the Association of Schools of Public Health in improving the preparation of public health workers, thus improving the operation of programs leading to the prevention of disease and the promotion of health.

Collaborative Activities

To achieve the above objective, the following activities will be performed during a 1-year period:

1. ASPH Activities

a. Conduct research to produce information and procedures which will result in improved preparation of public health personnel and increased effectiveness and efficiency of public health programs.

b. Plan, develop evaluate and assist in the delivery of public health programs and interventions at the local, regional, State, national and international levels to meet needs identified jointly by CDC and ASPH and to incorporate the results into appropriate teaching and learning experiences in the schools of public health.

c. Develop and test more effective and efficient models of instruction, disease prevention, health promotion and health services delivery to advance the "state of the art" in public health and to incorporate the results into appropriate teaching and learning experience in the schools of public health.

d. Identify new approaches and opportunities for field experiences in which students can practice applying skills and knowledge learned in the classroom.

e. Conduct workshops and conferences of interested private, academic, and public organizations to exchange current information, opinions, and findings in specific fields of public health, preventive medicine and health promotion. Utilize the results of such workshops and conference to upgrade curricula.

2. CDC Activities.

a. Collaborate with ASPH in conducting research to produce information and procedures which will result improved preparation of public health personnel and increased effectiveness and efficiency of public health programs.

b. Collaborate with ASPH in identifying priority needs for public health programs at the local, regional, State, national and internation levels. Provide assistance to ASPH in planning, delivering and evaluating programs to meet identified needs.

c. Collaborate with ASPH in developing and testing more effective and efficient models of instruction, disease prevention, health promotion and health services delivery. Encourage the adoption of validated models by State, local, and international public health agencies and assist in incorporating the results into appropriate teaching and learning experiences in the schools of public health.

d. Collaborate with ASPH in identifying new approaches and opportunities for field experinces in which students can practice applying skills and knowledge learned in the classroom.

e. Participate in workshops and conferences to exchange current information, opinions and findings in specific fields of disease prevention and health promotion.

Authority

This program is authorized under section 301(a) of the Publich Health Service Act (42 U.S.C. 241(a)), as amended.

Eligibility Requirements

Assistance will be provided only to the Association of Schools of Public Health for this project.

Justification

The Association of Schools of Public Health (ASPH) represents the 24 accredited schools of public health in the United States. These schools represent the primary educational system that trains personnel needed to operate the Nation's public health, disease prevention and health promotion programs. It is critical that the schools of public health and the practitioners of public health in Federal, State and local Governments cooperate and share their experience and expertise to enable the theoretical and practical perspertives of public health to be melded into comprehensive curricula for teaching health promotion, health protection, preventive health service delivery and health education to future health workers. These interchanges must be developed and coordinated by a single organization to assure consistent approaches to the preparation of public health workers and their performance in controlling today's major health problems. It has long been recognized that the quality of public health personnel plays a critical role in the prevention and control of disease. The ASPH's principal purpose is to promote and improve the education and training of professional public health personnel. ASPH is the only organzation that can comprehensively affect the development and implementation of improved curriculums for teaching public health workers in all 24 schools of public health.

Availability of Funds

It is expected that approximately $1,000,000 will be available during Fiscal Year 1988 to support this project. It is anticipated that the cooperative agreement will be funded for a 12 month budget period. The funding estimate is subject to change.

Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission

The signed original and two copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before July 1, 1988. Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30305, Telephone 404-842-6575.

Technical assistance may be obtained from: Charles F. Bacon, Cooperative Agreements Coordinator, Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone 404-639-1886.

Dated: May 3, 1988.

Glenda S. Gewart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-10701 Filed 5-12-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Boston District Office, chaired by E. J. McDonnell, District Director. The topic to be discussed is health messages on food labeling.

DATE: Tuesday, May 24, 1988, 10 a.m. to 12 m.

ADDRESS: One Montvale Ave., 4th Floor, Stoneham, MA 02180.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 6, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10705 Filed 5-12-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-08-4410-08]

Salt Lake District; Draft Pony Express Resource Management Plan/ Environmental Statement, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment period.

SUMMARY: The Draft Pony Express Resource Management Plan (RMP) and Environmental Impact Statement (EIS) has been prepared by the Salt Lake District, Bureau of Land Management. The Draft RMP/EIS describes and analyzes four alternatives for management of public lands in Tooele, Utah, and Salt Lake Counties, Utah. They involve the issues of landownership adjustment, vegetation management and off-road vehicle use as well as other management concerns and resource management needs.

Three proposed areas of critical environmental concern are also analyzed. They are:

1. Horseshoe Springs..... 780 acres;
2. North Deep Creek Mountains... 28,260 acres;
3. North Stansbury Mountains.....10,000 acres.

Comments on the Draft Pony Express RMP/EIS will be accepted through August 15, 1988. Comments submitted after that date may not be responded to because of time constraints.

Three "open-house" meetings will be held during the comment period. The purposes of the meetings are to help interested public reviewers understand the contents of the draft document and to explain how to structure clear, specific comments. Meeting times and locations are:

June 28, 2-4 p.m., Commission Chambers, City Building, 359 West Center Street, Provo, Utah.

June 28, 7-9 p.m., North Auditorium, Tooele County Courthouse, Tooele, Utah.

June 29, 7-9 p.m., Wendover Air Force Base Fire Station (Bldg. 1800), Wendover, Utah.

Comments should be addressed to: Mr. Howard Hedrick, Pony Express Resource Area Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Copies of the Draft Pony Express RMP/EIS are available at the above address as long as supplies last. Business hours are 7:45 a.m. to 4:30 p.m. weekdays.

C. Kemp Conn,

Acting State Director.

[FR Doc. 88-10069 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-010-08-4113-04]

Meeting of The Elko District Advisory Council

In accordance with Pub. L. 92-463, the Federal Advisory Committee Act, and Pub. L. 94-579 the Federal Land Policy and Management Act, notice is hereby given that the BLM Elko District Advisory Council will meet at 9:00 a.m. on June 9, 1988 at the Elko District Office at 3900 East Idaho Street, Elko, Nevada, for a field tour to Elko District riparian areas. Discussion will focus on riparian area management.

The public may attend, but must provide their own transportation. Anyone wishing to make a statement to the Council may do so, however, they must contact Michele Good, BLM, Elko District, P.O. Box 831, Elko, Nevada 89801, or call (702) 738-4071 no later than June 6, 1988 so that arrangements for the time may be made.

Summary minutes of the meeting will be prepared and available for public inspection or reproduction during regular business hours within 30 days following the meeting.

Merle Good,

Acting District Manager.

[FR Doc. 88-10742 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-HC-M

[ID-050-4410-08-2411]

Meeting; Shoshone District Advisory Council

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Thursday, June 30, 1988.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K. Lynn Bennett, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 8860-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Updates on District activities, (2) the District's Volunteer Program, (3) Recreation and Public Purposes Application by the Jerome County Historical Society/ Jerome County Commissioners for a Centennial Agricultural Museum, (4) proposed hydroelectric projects in the District, (5) the District's Wilderness Program, and (6) American Diatoms mining operation and Princess Blue Ribbon cyanide leach operation.

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 *et seq.*) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of the Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 9:15 and 10:00 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the District Manager by June 27, 1988. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K. Lynn Bennett,

District Manager.

[FR Doc. 88-10743 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-GG-M

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[UT-020-07-4121-10]

Utah and Colorado; Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notce of regional coal team meeting.

SUMMARY: In accordance with the responsibility outlined in the Federal Coal Management Regulations (43 CFR Part 3400), the Regional Coal Team for the presently decertified Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to adopt Regional Coal Data Adequacy Standards and to review a coal lease application. The application was filed in February 1988 by Coastal States Energy under newly adopted "Leasing by Application" procedures.

Copies of the Final Draft Data Adequacy Standards for the region and more information on the coal lease application are available for the BLM State Office, Public Room in Utah (Salt Lake City) and Colorado (Denver).

DATE: The Regional Coal Team will meet on June 16, 1988, at 1:00 pm.

ADDRESS: The meeting will be held in the BLM, Utah State Office Conference Room, Salt Lake City Hall Building, 324 South State, 4th floor, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Project manager, Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303, telephone 801-524-3004.

SUPPLEMENTARY INFORMATION: The Reginoal Coal Team will make recommendations to the BLM on processing coal lease application U-63214 by Coastal States Energy Co. Of particular concern is the availability of existing data to meet Regional Data Adequacy Standards and the logical delineation of a lease tract to be considered.

O'dell Frandsen,

Acting State Director.

[FR Doc. 88-10751 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-935-08-6410-08; GP 8-133]

Salem, Eugene, Rosenburg, Medford/Lakeview and Coos Bay Districts, Oregon; Availability of Proposed State Director Guidance for Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed State Director Guidance to be used in preparing Resource Management Plans for the Salem, Eugene, Roseburg, Medford/Lakeview, and Coos Bay Districts, and invitation to participate in the development of common planning criteria.

SUMMARY: The Bureau of Land Management (BLM), Salem, Eugene, Roseburg, Medford/Lakeview, and Coos Bay Districts, Oregon, have initiated the preparation of simultaneous Resource Management Plans (RMPs) which will each include an Environmental Impact Statement (EIS). The five plans will guide and control future management actions on over 2,386,000 acres of BLM surface ownership throughout western Oregon. The Proposed State Director Guidance would provide common approaches in the RMPs for the analysis of the management situation, for the formulation of planning alternatives, and for analytical techniques to be used to estimate controversial or complex effects of all alternatives. The proposed guidance would also provide a common glossary of technical terms, standards for documenting conformance with other agency plans and policies, an outline for executive summaries of the plans, and standards for use (including monitoring and evaluation) of the completed plans.

DATES: Distribution of the proposed guidance will be made on or about May 13, 1988 to those individuals or agencies that requested copies in response to a January 29, 1988 mailer to all parties on the districts' mailing lists. Written public comments should be sent to Oregon State Director (935), by July 15, 1988. Additional copies will be available upon request at the BLM Oregon State Office, Portland, Oregon, and at the six district offices. Public meetings to explain the purpose of the guidance and answer questions have been scheduled in the following places: Portland, June 7; Roseburg, June 9; Eugene, June 15; Salem, June 16; Coos Bay, June 16; Medford, June 22, and Klamath Falls, June 23. Each District will announce, through the local media, any additional meetings or open houses scheduled during the review period. The public comments will be analyzed by inter-district, interdisciplinary teams and used to prepare final State Director Guidance which should be available to the public by January 1989.

Public scoping of issues to be addressed in the RMPs was initiated in September 1986. District summaries of issues were published in March 1987. Proposed State Director Guidance Topics were published in August 1987. Resource inventories are expected to be completed in 1988. The draft plans and EISs are scheduled to be published in the fall of 1989 and the proposed plans/final EISs in the spring of 1990, with implementation of the plans in the fall of 1990. The schedule is designed to enhance public involvement and promote a consistent inter-district approach to common issues and concerns. The Proposed State Director Guidance constitutes common planning criteria as authorized by the Bureau's planning regulations (43 CFR 1610.4-2) and is designed to facilitate this consistent approach. The proposed guidance will not commit BLM to any discretionary resource allocations or irreversible management actions. It does not prescribe guidance for the development of the preferred alternative or selection of the proposed action. It does not constitute rulemaking as envisioned by the Federal Land Policy and Management Act of 1976, section 309(E).

For Further Information or To Obtain Copies of the Proposed Guidance, Contact Any of the Following:

Oregon State Office: Philip Hamilton (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, Phone (503) 231-6256.

Salem District Office: Bureau of Land Management, 1717 Fabry Road SE, P.O. Box 3227, Salem, Oregon 97302, Phone (503) 399-5646.

Eugene District Office: Bureau of Land Management, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440, Phone (503) 683-6600.

Roseburg District Office: Bureau of Land Management, 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470, Phone (503) 672-4491.

Medford District Office: Bureau of Land Management, 3040 Biddle Road, Medord, Oregon 97504, Phone (503) 776-4174.

Coos Bay District Office: Bureau of Land Management, 333 S. Fourth Street, Coos Bay, Oregon 97420, Phone (503) 269-5880.

Klamath Falls Resource Area Office (Lakeview District): Bureau of Land Management, 1939 South Sixth Street, P.O. Box 369, Klamath Falls, Oregon 97601, Phone (503) 883-6916.

SUPPLEMENTARY INFORMATION: The six districts include public land and non-Federal surface/Federal minerals in 19 western Oregon counties. Maps of the BLM-managed surface areas are available from the district offices. The land use or resource allocation issues common to all western Oregon districts and subject to the proposed guidance include: Timber production practices, old-growth forests, habitat diversity, threatened and endangered species habitat, special areas (includiang Areas of Critical Environmental Concern), visual resources, watershed management, streams and riparian areas, recreation resources (including potential wild, scenic, or recreational rivers) and land tenure. Copies of previously published RMP scoping documents and public input records are available for inspection in the respective district offices during normal working hours.

Date: May 5, 1988.

Charles W. Luscher,

State Director, Oregon.

[FR Doc. 88-10744 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-08-4520-12: GP8-132]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 19 S., R. 1 W.
T. 31 S., R. 37 E.

The above listed plats were accepted April 1, 1988 and officially filed April 13, 1988.

T. 27 S., R. 3 W.
T. 3 N., R. 2 W.

The above listed plats were accepted April 7, 1988 and officially filed April 18, 1988.

T. 30 S., R. 10 W.
T. 20 S., R. 1 E.

The above listed plats were accepted April 15, 1988 and officially filed April 22, 1988.

Washington

T. 27 N., R. 2 W.
T. 28 N., R. 2 W.

The above listed plats were accepted March 23, 1988 and officially filed March 29, 1988.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: May 4, 1988.

[FR Doc. 88-10745 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-08-4220-11; WYW 28577, WYW 059320, WYW 094183]

Proposed Continuation of Forest Service Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to continue the existing withdrawals on 45 acres of national forest land in the Medicine Bow National Forest for an additional 20 years. The lands will remain closed in mining location, but have been and will remain open to surface entry and mineral leasing. The remaining acreage in the existing withdrawals will be relinquished.

DATE: Comments should be received by August 11, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that parts of existing Public Land Orders Nos. 3250, 2278, and 5140, of October 10, 1963, February 27, 1961, and October 18, 1971, respectively, be continue for a period of 20 years to protect the capital investments on the administrative sites and campgrounds. The continuation is pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

Sixth Principal Meridian

Medicine Bow National Forest Barrett Creek Campground

T. 16 N., R. 81 W.,
sec. 27, NE¼SW¼NW¼, N½SE¼SW¼NW¼.

Bow Administrative Site

T. 18 N., R. 80 W.,
sec. 21, NE¼NW¼NE¼, N½SE¼NW¼NE¼.

Jack Creek Administrative Site

T. 15 N., R. 86 W.,
sec. 18, E½SE¼SW¼NE¼.

Haskins Creek Campground

T. 14 N., R. 86 W.
sec. 27, S½NW¼NE¼SE¼, N½SW¼NE¼SE¼.

The area described aggregates 45 acres in Carbon County.

The purpose of the withdrawals is to protect the capital investments at the campgrounds and administrative site. The withdrawals segregate the land from the operation of the mining laws, but not from surface entry or mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Hillary A. Oden,

State Director.

May 6, 1988.

[FR Doc. 88-10071 Filed 5-12-88; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

Environmental Statements; Wind-Hydroelectric Project, WY, et al.

AGENCY: Bureau of Reclamation.

ACTION: Cancellation of notices of intent.

SUMMARY: The Bureau of Reclamation is canceling the following list of Notices of Intent which have either become inactive or a Finding of No Significant Impact has been prepared. The preparation of an Environmental Impact Statement will not be required in either case.

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Effective date	FEDERAL REGISTER citation	Inactive notices of intent
6/6/79	44 FR 32484	Wind-Hydroelectric Project, WY.
6/14/79	44 FR 34207	Meeker Dome Unit Salinity Control, CO.
6/27/79	44 FR 37561	Dominguez Project, CO.
7/18/79	44 FR 41989	Glen Canyon Dam Peaking Power, AZ.
8/3/79	44 FR 45769	North Platte Project R&B, WY/NE.
4/22/80	45 FR 27025	Versippi Unit, ND.
4/8/81	46 FR 21098	Dunham Point Unit Peaking Power, CO.
4/20/81	46 FR 22662	McElmo Creek Salinity Control, CO.
11/10/81	46 FR 55567	Auburn-Folsom South Unit, CA.
3/24/82	47 FR 12689	Glenwood-Dotsero Spring Unit, CO.
7/12/82	47 FR 30110	Ducheene River Canal Rehab. UT.
8/6/82	47 FR 34203	Big Sandy River Unit, WY.
11/2/82	47 FR 49749	CENDAK Water Supply System, SD.
11/30/82	47 FR 53951	Lower James-Ft Randall Water Diversion, SD.
4/13/83	48 FR 15962	Tualatin Project Phase II, OR.
4/14/83	48 FR 16122	San Luis Unit Suppl. CA.
4/14/83	48 FR 16123	Upper John Day Project, OR.
5/23/83	48 FR 22993	Colorado Coastal Plains Project, TX.
7/25/83	48 FR 33756	Las Vegas Wash Salinity Control, NV.
1/6/84	49 FR 947	Dirty Devil River Salinity Control, CO.
3/14/84	49 FR 9624	American Canal Extension, TX.
4/16/84	49 FR 15024	Bonneville Unit I & D/ Diamond Fork Power, UT
7/16/84	49 FR 28772	Rubi Mine Hydroelectric Project, CA.
4/15/85	50 FR 14776	Boise River Basin Project, ID/OR.
5/23/85	50 FR 21369	Payette River Basin, Boise Project, ID/ OR.
6/13/85	50 FR 24843	Carson Hill Gold Mine, CA.
8/20/85	50 FR 33849	Westlands Water District Long-Term Drainage, CA.
9/19/85	50 FR 38041	Upper Gila water Supply Study, AZ/ NM.

FOR FURTHER INFORMATION CONTACT: Stephen Specht, Bureau of Reclamation, Washington, Office, (202) 343–2840 or George Wallen, Bureau of Reclamation, Denver Office, (303) 236-6778.

Date: May 5, 1988.

G. Dale Duvall,

Commissioner, Bureau of Reclamation.

[FR Doc. 88–10857 Filed 5–12–88; 8:45am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–727375

Applicant: Thomas Torgerson, Willmar, MN

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the herd of F. W. M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–727417

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import two captive-hatched Cabot's tragopan pheasants (*Tragopan caboti*) from Glenn Howe, Ontario, Canada, for the purpose of enhancement of propagation.

PRT–727374

Applicant: American Museum of Natural History, New York, NY

The applicant requests a permit to import one Bahaman parrot (*Amazona leucocephala*) that was found dead in its nest at about three weeks of age. This chick is to be included in the museum's collection for scientific study.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: May 10, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–10809 Filed 5–12–88; 8:45 am]

BILLING CODE 4310-AN-M

National Park Service

Intention To Negotiate Concession Contract; Log Cabin Resort, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice the Department of the Interior, through the Director of the National Park Service proposes to negotiate a concession contract for the continued provision to the public of overnight lodging and trailer sites, camping and picnic facilities, general merchandise sales, meals and snacks, cocktail lounge, boat and motor rental, sale of gasoline and oil, laundromat and shower facilities at Olympic National Park in the state of Washington. The contract will be for a period of approximately fifteen (15) years from date of execution through December 31, 2002, and is conditioned upon completion of an improvement program.

An assessment of the environmental impact of this proposed action has been made, and it has been determined that it will not significantly affect the quality of the environment and that it is not a major federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed at Olympic National Park.

The existing concessioner, Log Cabin Resort, Inc., has performed its obligations to the satisfaction of the Secretary under a current contract. Therefore, pursuant to the Act of October 9, 1965, as cited above, the existing concessioner is entitled to be given a preference in the negotiation of a new contract as defined in 36 CFR, 51.5.

For a copy of the Statement of Requirements describing the opportunity offered, which includes the application requirements, interested parties should write to the Regional Director, Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle, Washington 98104.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

Date: February 11, 1988.

[FR Doc. 88–10790 Filed 5–12–88; 8:45 am]

BILLING CODE 4310-70-M

Blackstone River Valley National Heritage Corridor, Massachusetts and Rhode Island Blackstone River Valley National Heritage Corridor Commission; Meeting

Notice is hereby given in accordance with section 552b of Title 5, United states Code, that the first meeting of the Blackstone River Valley National Heritage Corridor Commission will be Wednesday, May 25, 1988.

The Commission was established pursuant to Pub. L. 99–674. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. on the second floor of the Slater Mill Historic Site, Roosevelt Avenue, Pawtucket, Rhode Island for the following reasons:

1. Swearing-in of nineteen newly appointed members;
2. Review of the purpose and goals of the Commission;
3. Discussion of the role of the National Park Service;
4. Discussion of the roles of the Rhode Island and Massachusetts Departments of Environmental Management and other state agencies;
5. Presentation by a Lowell Commission Staff Planner;
6. Discussion of Commission staff needs and hiring procedures;
7. Discussion of agenda for second meeting;
8. Election of Commission Chairperson.

It is anticipated that about fifty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least five days prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565–8867.

Steven H. Lewis,

Regional Director.

Date: May 6, 1988.

[FR Doc. 88–10791 Filed 5–12–88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: May 10, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the locations of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Northwest Agricultural, Cooperative Association, Inc., (N.A.C.A., Inc.)
(2) 920 Southeast Ninth Avenue, Ontario, Oregon 97914.
(3) 920 Southeast Ninth Avenue, Ontario, Oregon 97914.
(4) Ted Hoots, P.O. Box 1, Ontario, OR 97914.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10731 Filed 5–12–88; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(1) Parent Corporation: Real Estate Equities Corporation, Seafirst Financial Center, Suite 1800, Spokane, WA 99201.

(2) Wholly-Owned Subsidiaries:

i. Spokane Concrete Products, Inc., N. 2801 Dakota Street, Spokane, WA 99207.
ii. American Pre-Cast, N. 6624 Freya, Spokane, WA 99207.
iii. Western Re-Bar, 6721 E. Trent, Spokane, WA 99212.
iv. Western Shotcrete Corporation, 6624 N. Freya, Spokane, WA 99207.

Note.—Parent corporation and all subsidiaries are incorporated in the State of Washington

Noreta R. McGee,

Secretary.

[FR Doc 88–10732 Filed 5–12–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–290 (Sub-No. 17X)]

Southern Railway Co.—Exemption—Abandonment Between Brook Cove and Walnut Cove, NC, and at Greensboro, NC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.1-mile line of railroad between milepost CF–38.5 at Brook Cove, NC, and milepost CF–41.6 at Walnut Cove, NC, and its 1.9-mile line of railroad between milepost CF–63.7 and milepost CF–65.6 at Greensboro, NC.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

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The exemption will be effective June 12, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been received). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 23, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 2, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 18, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 2115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 6, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10780 Filed 5-12-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 6), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See* Ex Parte No. 274 (Sub-No. 18) *Exemption of Rail Line Abandonments or Discontinuances—Offers of Financial Assistance*, ___ I.C.C. 2d ___, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 [52 FR 48440-48446].

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Price et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on May 3, 1988, a proposed Consent Decree in United States v. *Price, et al.*, was lodged with the United States District Court for the District of New Jersey. The Consent Decree settles claims relating to the disposal of hazardous substances at the Price's Landfill site in Atlantic County, New Jersey.

The United States filed suit on behalf of the Environmental Protection Agency in 1980 and amended its Complaint in 1981, against the owners and operators of the Price's site and against generators of hazardous substances whose substances were sent to the Price's site, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and under other statutory authority. The State of New Jersey and the Atlantic County Municipal Utilities Authority intervened in the United States' action as plaintiffs. The action seeks cleanup of the Price's site and reimbursement of costs incurred by the United States for cleanup of the Site.

The Consent Decree provides that the settling parties shall pay to the United States, New Jersey and Atlantic County, $17,450,767, which amount is now in an escrow account with the Court, and an additional $83,000, after entry of the Consent Decree. This settlement amount is for reimbursement of costs incurred to date and costs to be incurred at the Price's site for performance of the final remedial action. The State of New Jersey will perform the necessary remedial action at the Site, which remedy includes pumping and treatment of contaminated groundwater from the Site and downgradient of the Site and disposal of the treated water at a sewage treatment plant, capping of the Site at the conclusion of the groundwater extraction process and monitoring of the groundwater for approximately twenty-five years.

The settlement amount is calculated to provide sufficient funds to implement the necessary remedial action. The United States reserves the right under the Consent Decree to pursue the settling parties to perform further work or to reimburse the United States for costs incurred if previously unknown or undetected conditions, or additional information not available prior to entry of the Decree, indicate that there may be an additional imminent and substantial endangerment to public health, welfare or the environment at or from the Site.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to United States v. Price, et al., D.J. Ref. 90-7-1-156.

The proposed Consent Decree may be examined at the office of the United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey 07102 and at the Region II office of the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1529, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the Consent Decree should be accompanied by a check in the amount of $8.40 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88-10746 Filed 5-12-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his/her functions under ERISA, and to submit to the Secretary or their designee recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Monday, November 14, 1988. The groups or fields represented are as follows: Employee organizations (multiemployers), actuarial counseling field, investment counseling, employers and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N-5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before July 15, 1988. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

David M. Walker,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

Signed at Washington, DC, this 10th day of May, 1988.

[FR Doc. 88-10668 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-29-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT88-1(Jan. 8, 1988) ..... pp. 62, 66.
New Jersey:
NJ88-2(Jan. 8, 1988) ..... pp. 614, 616-617.
NJ88-3 (Jan. 8, 1988) ..... pp. 634, 636-637.
NJ88-4 (Jan. 8, 1988) ..... pp. 658-660.
New York:
NY88-2 (Jan. 8, 1988) ..... p. 686.
NY88-5 (Jan. 8, 1988) ..... pp. 716-720.

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NY88-7 (Jan. 8, 1988)	pp. 736-740, pp. 745-746
NY88-8 (Jan. 8, 1988)	pp. 750-760.
NY88-9 (Jan. 8, 1988)	p. 780.
NY88-12 (Jan. 8, 1988)	p. 793.
NY88-13 (Jan. 8, 1988)	pp. 802-803, 805.

Volume II

Iowa:	
IA88-5 (Jan. 8, 1988)	pp. 45-46.
Illinois:	
IL88-19 (Jan. 8, 1988)	p. 232.
Indiana:	
IN88-1 (Jan. 8, 1988)	pp. 236-237.
IN88-2 (Jan. 8, 1988)	p. 251.
IN88-3 (Jan. 8, 1988)	p. 266.
IN88-4 (Jan. 8, 1988)	pp. 278-286a.
IN88-5 (Jan. 8, 1988)	pp. 296-306.
IN88-6 (Jan. 8, 1988)	pp. 308-316a.
Minnesota:	
MN88-7 (Jan. 8, 1988)	pp. 546-553, 555.
MN88-8 (Jan. 8, 1988)	pp. 568-572, pp. 574, 579.
MN88-12 (Jan. 8, 1988)	p. 580h.
MN88-15 (Jan. 8, 1988)	pp. 586p-580s.
Missouri:	
MO88-2 (Jan. 8, 1988)	pp. 602-603, 607.
Nebraska:	
NE88-3 (Jan. 8, 1988)	p. 678.
NE88-4 (Jan. 8, 1988)	p. 682.
Wisconsin:	
WI88-8 (Jan. 8, 1988)	p. 1112.
WI88-10 (Jan. 8, 1988)	p. 1134.
Volume III Colorado:	
CO88-4 (Jan. 8, 1988)	p. 128.
Montana:	
MT88-2 (Jan. 8, 1988)	pp. 186-188, 201.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 6th day of May 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-10518 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Job Corps Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee (formerly named the Job Corps Center Assessment Advisory Committee) will be held on June 1 and 2, 1988, commencing at 9:00 a.m., at the Silver King Hotel, 1485 Empire Avenue, Park City, Utah.

The purposes of the meeting are to:

1. Finalize the Committee's preliminary work on recommending improvements to the Job Corps Center Assessment system.

2. Consider the major contextual and systemic issues facing the Job Corps program in order to provide a foundation for long-range institutional planning.

3. Delineate the process and establish milestones for development of a long-range institutional plan.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210, telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1988.

Roberta T. Jones,

Acting Assistant Secretary of Labor.

Signed at Washington, DC, this 9th day of May 1988.

[FR Doc. 88-10753 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-55-C]

Pounding Mill Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pounding Mill Coal Co., Inc., P.O. Box 100, Carwood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.208 (conventional roof support) to its No. 1 Mine (I.D. No. 15-11404) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner proposes to use a 28-foot width in the belt entry, and a 24-foot width in the breaks or crosscuts.

3. In support of this request, petitioner states that the mine is using conventional roof control with the specified widths along with spot bolting and cribbing for adverse conditions. Full bolting is highly impractical in the mine's seam which averages 27 inches. In heights of 27 inches, it is difficult to transport miners and supplies. Bolting would take 1½ inches to 2 inches of the available clearance, creating an unsafe condition due to equipment snagging on protruding roof bolts.

4. Petitioner further states that the mining equipment used is an auger type continuous miner. This system is not designed to operate in 20-foot widths, which does not allow enough space to maneuver in the petitioner's mine. A 20-foot width would also restrict the mobility of the miners on a working section.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 13, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 6, 1988.

[FR Doc. 88-10755 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-33; Exemption Application No. D-6516 et al.]

Grant of Individual Exemptions; Craig Supply Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register: of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administatively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Craig Supply Company Inc. Employees' Profit Sharing Retirement Plan (the Plan) Located in Rochester, NH

[Prohibited Transaction Exemption 88-33; Exemption Application No. D-6516]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(a) (A) through (E) of the Code, shall not apply to the lease of real property located at 46 Main Street, Durham, New Hampshire by the Plan to Craig Supply Company, Inc., a party in interest with respect to the Plan, provided all of the terms of the lease were and remain at lease as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988 at 53 FR 5224.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Freeman Companies Savings and Investment Plan and Trust Agreement (the Plan) Located in Nashville, Tennessee

[Prohibited Transaction Exemption 88-34; Exemption Application No. D-7022]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchases by the Plan of units of certain real estate limited partnerships which are organized, underwritten, offered and operated by certain of the Freeman Companies, the sponsors of the Plan; provided that such purchases are on terms which are at least favorable to the Plan as the Plan could obtain in transactions with unrelated parties; and provided further that investments in any such units by the Plan shall not exceed twenty-five percent of the total assets of the Plan and total investments by the Plan in such units shall not exceed ten percent of the units of any one of such partnerships.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Friday, March 18, 1988 at 53 FR 9005.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Edgewater Associates Profit Sharing Plan and Trust (the Plan) Located in Chicago, IL

[Prohibited Transaction Exemption 88-35; Exemption Application No. D-7188]

Exemption

The restrictions of: (1) Section 406(b)(2) of the Act shall not apply to the loan (the Refinanced Loan) by the Plan to the Edgewater Physical Therapy Associates, Inc. Employees' Benefit Association Trust, and (2) section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the guaranty of the Refinanced Loan by the current sponsor of the Plan, provided that the terms and conditions of the Refinanced Loan are no less favorable to the Plan than similar terms negotiated at arm's length with an unrelated party.

Written Comments

The applicants informed the Department that they wished to correct certain information published in the notice of proposed exemption. Accordingly, as corrected:

(a) The Edgewater Rehabilitation Associates, Inc. (the Employer) is located at 5801 North Lincoln Avenue, Chicago, Illinois;

(b) Charles Kaplan owns 68.6% of the stock of the Employer. Terry Garbaciak owns .61% of the stock of the Employer. Donald Kravets owns .79% of the stock of the Employer; and

(c) As of March 15, 1988, the existing loan between a local third party bank and the Edgewater Physical Therapy Associates, Inc. Employees' Benefit Association Trust is $66,141.99.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

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proposed exemption published on March 8, 1988, at 53 FR 7441.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

The Boldt Holding Corporation Master Trust (Master Trust); The Boldt Holding Corporation Plan #1

[Prohibited Transaction Exemption 88-36; Exemption Application Nos. D-7206 & D-7211]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) from the Master Trust to Valley Medical Building Association Limited Partnership (Valley Medical), a party in interest with respect to one of several employee benefit plans whose assets are invested in the Master Trust; provided that the terms of such Loan are at least as favorable to the Master Trust as are those negotiated at arm's length with unrelated parties for similar transactions.

Written Comments

The applicants informed the Department that they wished to correct certain information published in the notice of proposed exemption. Accordingly, as corrected:

(a) The Boldt Group, Inc. has six wholly owned subsidiaries. Besides the four listed in the notice of proposed exemption, the additional subsidiaries are the Berg Corporation and BMC, Inc.;

(b) All of the stock of the Boldt Group, Inc. is owned equally by Charles Boldt and Thomas Boldt. Margaret Boldt Anderson is no longer a shareholder. Her stock was purchased, as of October 1, 1985; and

(c) All of the building (the Building) which will serve as part of the collateral for the Loan to Valley Medical is leased at $12.50 per square foot, except the third floor which is leased at $3.50 per square foot to Appleton Medical Center, an unrelated third party. It is represented that the actual rentals for the Building were considered in the calculations of the cash flow projections with respect to the rent from the Building.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1988, at 53 FR 7443.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Mark IV Industries, Inc. Master Defined Benefit Plan (the Plan) Located in Amherst, New York

[Prohibited Transaction Exemption 88-37; Exemption Application No. D-7223]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) The proposed purchase by the Plan from Mark IV Industries, Inc. (the Employer) of two promissory notes (the Notes) payable to wholly-owned subsidiaries of the Employer, provided the terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; and (b) the Employer's unconditional guarantee of repayment of the Notes.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988 at 53 FR 5226.

Written Comments

The Department received eight written comments to the notice of proposed exemption and one request for a public hearing (which was subsequently withdrawn). The commentators objected to the proposed exemption, but did not raise any specific or substantive issues regarding the subject transactions. In addition, the Employer has amended the facts set forth in the proposed exemption. The proposed exemption stated that Code-A-Phone (CAP) was the payee of the $700,000 Note dated December 28, 1984 and made by CMC-Hamden Limited Partnership. The applicant now represents that, in connection with the sale of CAP, the Employer became the owner by assignment of that Note of January 25, 1988.

After consideration of the entire record, the Department has determined to grant the proposed exemption.

FOR FURTHER INFORMATION CONTRACT: Mrs. Betsy Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Tru-Stone Defined Benefit Pension Plan for Vance Jola (the Jola Plan) and Tru-Stone Defined Benefit Pension Plan for Ed Ray (the Ray Plan; collectively the Plans) Located in Waite Park, MN

[Prohibited Transaction Exemption 88-38; Exemption Application Nos. D-7235 & D-7236]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sales of 11.6 and 5.8 shares of non-voting common stock (the Class B Stock) of Big Bear Farm Stores, Inc. by the Jola Plan and the Ray Plan, respectively, to Vance Jola and Ed Ray, who are parties in interest, respectively, to the Jola Plan and the Ray Plan; provided that the sales price of the Class B Stock is not less than the fair market value of such Class B Stock on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988 at 53 FR 9008.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-fee number.)

Concho Construction Company, Inc. Profit Sharing Plan (the Plan) Located in Garland, Texas

[Prohibited Transaction Exemption 88-39; Exemption Application No. D-7308]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property located in Garland, Texas to the Concho Construction Company, the sponsor of the Plan, provided that such sale is on terms no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, March 8, 1988 at 53 FR 7446.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.).

Nabors Chevrolet-Toyota, Inc. Employees Retirement Plan (the Plan) Located in Clarksdale, Mississippi

[Prohibited Transaction Exemption 88-40; Exemption Application No. D-7322]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of a certain parcel of improved real property (the Property) by the Plan to Nabors Chevrolet-Toyota, Inc., a party in interest with respect to the Plan; provided that the sales price is the greater of $249,250 or the fair market value of the Property on the date of the sale.

Written Comment

The Department received one written comment, and no requests for hearing. The Department reviewed the comment and determined that it did not relate to issues raised in the notice of proposed exemption. The Department referred the commenter to the administrator of the Plan to take such action as is warranted.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1988, at 53 FR 7446.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Sunset Machine, Inc. Profit Sharing Plan and Trust and Sunset Machine, Inc. Money Purchase Plan (the Plans) Located in Ann Arbor, Michigan

[Prohibited Transaction Exemption 88-41; Exemption Application Nos. D-7374 & D-7375]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Plans of certain real property (the Real Property) to James F. Walters, the trustee of the Plans, and therefore a disqualified person with respect to the Plans, provided that the amount received by the Plans is the greater of the fair market value of the Real Property as of the date of sale or the Plans' total outlay for the Real Property to the date of sale, including but not limited to the price originally paid by the Plans for the Real Property, property taxes, and any expenses to the Plans in connection with their acquisition and holding of the Real Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988 at 53 FR 9013.

FOR FUTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mardale, Inc. Profit Sharing Plan (the Plan) Located in Waukegan, Illinois

[Prohibited Transaction Exemption 88-42; Exemption Application No. D-7353]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $25,000 by the Plan to Mardale, Inc., under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1988 at 53 FR 9012.

FOR FUTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Henry R. Shaw, D.D.S Profit Sharing Plan (the Plan) Located in Owings Mills, MD

[Prohibited Transaction Exemption 88-43; Exemption Application No. D-7420]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of a computer system by the Plan to Dr. Harry R. Shaw, a party in interest with respect to the Plan, provided that the terms of the transaction are no less favorable to the Plan than those available in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1988 at 53 FR 7447.

FOR FUTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Brandlin & McAllister, APC Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 88-44; Exemption Application No. D-7428]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase of certain real property (the Property) by the Plan from J.J. Brandlin and Judith G. Brandlin, husband and wife, and disqualified persons with respect to the Plan, provided the Plan pays no more than the fair market value for the Property as of the date of purchase.

For a more complete statement of the fact and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1988 at 53 FR 11356.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/

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or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of May, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-10616 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Monday, June 13, 1988, Room S-4125C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General Business of the Advisory Council
2. Issues Relating to the Workforce 200 Report
3. Status of report of the Portability & Preservation of Pension Work Group
4. Status report of the Reporting & Disclosure Work Group
5. Status report of the Access to Health Work Group
6. Status report of the Retiree Health Work Group
7. Statements from the Public

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 8, 1988, to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Deputy Executive Secretary or telephone (202/523-8753). Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 8, 1988.

Signed at Washington, DC, this 10th day of May 1988.

David M. Walker, CPA,

Assistant Secretary for Pension and Welfare Benefit Administration.

[FR Doc. 88-10669 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for Hatch Act Publications

AGENCY: Office of the Special Counsel, MSPB.

ACTION: Notice of call for riders for the Office of the Special Counsel's Hatch Act Publications.

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the Office of the Special Counsel's publications will be available on riders to the Government Printing Office. Departments and agencies may order these publications by riding the Office of the Special Counsel's requisitions as follows: Political Activity and the Federal Employee, 11 Pages—8-20036, Political Activity and the State and Local Employee, 10 pages—8-20037, Hatch Act Facts About PACS, 7 pages—8-20038, Poster-Federal Employees-Know the Rules on Political Activity—8-20039, Poster-State and Local Employees in Federal Aided Programs—Know the Rules on Political Activity—8-20040.

Note: A separate SF-1 is required to "Ride" each separate title.

DATE: Agency requisitions must be received by GPO on or before June 1, 1988.

ADDRESS: Interested departments and agencies should send requisitions through their Washington, DC, headquarters office authorized to procure printing, to the Government Printing Office, Requisition Section, Room C-836, Washington, DC 20401. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT: Sarah V. Jones, Operations Management Division, Office of the Special Counsel, MSPB, 1120 Vermont Avenue NW., Suite 1100, Washington, DC 20005, 202/653-8946.

SUPPLEMENTARY INFORMATION: The Office of the Special Counsel (OSC) is the federal agency charged with responsibility for enforcing the provisions of the Hatch Act. By statute the office is authorized to investigate allegations of prohibited political activity. OSC Hatch Act enforcement efforts have focused heavily upon educating those covered by the law to encourage voluntary compliance. Federal, state and local government employees, members of Congress and their staffs, the press, members of the general public and others have been provided information on the Hatch Act through written and oral advisory opinions, speeches, and publications with Hatch Act guidance prepared and distributed by OSC. These Hatch Act publications are now being made available in bulk through the GPO rider system. The publications may also be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

Dated: May 9, 1988.

Erin McDonnell,

Acting Special Counsel.

[FR Doc. 88-10617 Filed 5-12-88; 8:45 am]

BILLING CODE 7400-02-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given of a public meeting and a closed executive session (pursuant to 5 U.S.C. APP. I, Section 10(d)) of the National Commission for Employment Policy at the Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037.

DATE: Thursday, June 9, 1988 9:00 a.m. to 5:00 p.m., Friday, June 10, 1988 9:00 a.m. to 5:00 p.m.

Status: The meeting is open to the public with the exception of the executive session.

Matters to be discussed: During the public meeting, the Commission members will discuss progress on the research agenda, budget and administrative matters, and legislative and governmental affairs. During the executive session, the Commission members will discuss matters solely related to the internal personnel rules and practices of the Commission. Such issues are considered routine administrative matters, of no significance to the public. In addition, the session is closed in order to protect information of a personel nature, which if disclosed could constitute an unwarranted invasion of personal privacy.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara McQuown, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, 202-724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed this 5th day of May, 1988.

Barbara McQuown,

Director.

[FR Doc. 88-10756 Filed 5-12-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Humanities Panel

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to dislose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* June 1, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications in Higher Education, submitted to the Division of Education Programs, for projects beginning after August 1988.

2. *Date:* June 3, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1988.

3. *Date:* June 6, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1988.

4. *Date:* June 13, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1988.

5. *Date:* June 17, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1988.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 88-10738 Filed 5-12-88; 8:45 am]

BILLING CODE 7536-01-M

Meeting of the Humanities Panel

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The Advisory group meeting on computer uses in the humanities will be held on June 1, 1988 from 9:30 a.m. to 3:30 p.m. in Room M-14. This meeting will be open to the public.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 88-10737 Filed 5-12-88; 8:45 am]

BILLING CODE 7536-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers' Fellowships Section) to the National Council on the Arts, will be held on June 3-4, 1988 from 9:00 a.m.-6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

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May 10, 1988.
Yvonne M. Sabine,
Director, Council and Panel Operations National Endowment for the Arts.
[FR Doc. 88-10614 Filed 5-12-88; 8:45 am]
BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts will be held on May 24, 1988 from 9:00 a.m.-5:30 p.m. in room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 24, 1988 from 9:00-9:15 a.m. and from 10:00 a.m.-5:30 p.m. The topics for discussion will include guidelines and policy issues.

The remaining session of this meeting on May 24, 1988 from 9:15-10:00 a.m. is for discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations National Endowment for the Arts.
[FR Doc. 88-10615 Filed 5-12-88; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Emerging Engineering Technologies, (formerly called the Emerging Engineering Systems Section).

Date and time: June 6, 1988, 8:30 am to 5:15 pm; June 7, 1988, 8:30 am to 12:30 pm.

Place: 1800 G Street NW., Washington, DC, Rm 543.

Type of Meeting: Open.

Contact Person: Frank L. Huband, Division Director, Emerging Engineering Technologies, 1800 G Street NW., Washington, DC 20550, (202) 357-7962.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To obtain advice from academia, industry, and other research-oriented sectors on the future direction of the research programs of the Division of Emerging Engineering Technologies (EET).

Agenda: June 6: Staff presentations on the following research topics supported by the Division: Biotechnology; Bioengineering & Research to Aid the Handicapped; Lightwave Technology; Computational Engineering; Neuroengineering; and Emerging Technology Initiation. Discussion with Advisory Committee members concerning program activities and plans.

June 7: Discussion with Advisory Committee members concerning emerging technology initiation activity; discussion with the Director of the National Science Foundation; discussion with Advisory Committee members concerning technology transfer of EET-supported research results; discussion among Advisory Committee members; recommendations from the Committee.

Rebecca Winkler,
Committee Management Officer.
[FR Doc. 88-10613 Filed 5-12-88; 8:45 am]
BILLING CODE 7555-01-M

Measurement Methods and Data Improvement Advisory Panel

The National Science Foundation announces the following meeting:

Name: Advisory Panel on Measurement Methods and Data Improvement.

Date/time: June 10, 1988: 9:00 a.m. to 5:00 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Improvement, Room 336, National Science Foundation, Washington, DC 20550; telephone (202) 357-7913.

Purpose of Panel: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Improvement.

Agenda: Review and evaluation of research and research-related proposals as part of the selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 88-10616 Filed 5-12-88; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6 for the Big Rock Point Plant, located in Charlevoix County, Michigan, and operated by Consumers Power Company (the licensee).

Environmental Assessment

Identification of Proposed Action

In accordance with the licensee's application dated November 9, 1987, the proposed amendment would revise the provisions in the Big Rock Point Plant Technical Specification (TSs) relating to the installation of new out-of-core power range instrumentation. Elimination of the intermediate power range instrumentation is proposed due to the greater range of the new power range instrumentation.

The Need for the Proposed Action

The proposed amendment is required to reflect the features and terminology used with new out-of-core power range instrumentation. The licensee is replacing the existing power range instrumentation with a newer design due to limited availability of replacement parts and high expenditure of maintenance hours to keep the existing equipment in operation.

Environmental Impacts of the Proposed Action

Based upon the analysis contained in the Safety Evaluation Report to be issued with the proposed amendment, the proposed action will not involve a significant change in the probability or consequences of any accident previously evaluated. Consequently, any radiological releases would not be significantly greater than previously determined, nor does the proposed amendment otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated November 9, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 9th day of May 1988.

For the Nuclear Regulatory Commission.
Wayne E. Scott, Jr.,
Project Manager, Project Directorate III-1, Division of Reactor Projects-III, IV, V & Special Projects.
[FR Doc. 88-10736 Filed 5-12-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2, GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on May 26, 1988, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation. Representatives of the U.S. Nuclear Regulatory Commission will summarize the recently issued supplement to the Programmatic Environmental Impact Statement dealing with post-defueling monitored storage and subsequent cleanup of TMI-2. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1373.

Dated: May 6, 1988.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Advisory Committee, Management Officer.
[FR Doc. 88-10667 Filed 5-12-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 25, issued to Commonwealth Edison Company (the licensee), for operation of the Dresden Nuclear Power Station, Unit 3 located in Grundy County, Illinois.

The amendment would revise: (1) The Technical Specifications changes specific to the Cycle 11 reload fuel and analyses which include; revision of the Minimum Critical Power Ratio (MCPR) operating limit for Cycle 11, reduction of the Single Loop Operation (SLO) MCPR adder to 0.01 (from 0.03), also, a reduction in the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor for SLO to 0.91 (from 0.70), deletion of the paragraph that requires a MCPR penalty based on scram time performance, incorporation of Transient Linear Heat Generation Rate (TLHGR) limits, and revision of reduced flow MCPR limits, (2) the Technical Specification changes resulting from analyses performed to allow equipment out-of-service which include; revision of the relief valve Technical Specifications to require action only after two relief valves are found to be inoperable, provided MAPLHGR reduction factors are implemented, and (3) the Technical Specification changes provided for clarification or as administrative changes which include; removal of all reference to GE fuel, except in spent fuel storage Technical Specifications, changing references to Exxon Nuclear Company (ENC) to Advanced Nuclear Fuels Corporation (ANF), except in titles of earlier documents and definitions of nuclear limits, and defining Transient LHGR (TLHGR), Steady State LHGR (SLHGR), LHGR, Fuel Design Limiting Ratio for Centerline melt (FDLRC) and Fuel Design Limiting Ratio for Exxon Fuel (FDLRX). The amendment would also revise the license to delete a condition requiring a Safety Evaluation for coastdown operation with off normal feedwater temperature from § 3.E.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 9, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 6th day of May 1988.

For the Nuclear Regulatory Commission.

Leif Norrholm,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-10733 Filed 5-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated March 28, 1988, the amendment would revise Technical Specifications 3/4.3.7.11, 3/4.3.7.12 and 6.9.1.8. The proposed changes would modify the action and table notations of the affected Technical Specifications to allow continued use of the release pathways for which effluent monitoring instruments may not be operable provided that grab samples and analyses and/or flow rate calculations are made at the specified frequencies. The proposed changes would also clarify the reporting requirements consistent with the changes requested in 3/4.3.7.11 and 3/4.3.7.12.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operater should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 28, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 10th day of May 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-1, Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88-10735 Filed 5-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment would revise the Technical Specification setpoints and limits associated with recirculation loop operation to allow single recirculation loop operation in accordance with the licensee's application for amendment dated April 6, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to invervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a pettion for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to particiapte fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the

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following message addressed to Jose A. Calvo: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a futher notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 6, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 5th day of May, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10734 Filed 5–12–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25679; File No. SR–PHLX–88–19]

Self-Regulatory Organizations; Proposed Rule Change By The Philadelphia Stock Exchange, Inc. Relating to Amendments to Rule 722 Regarding Margins

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)91) ("Act"), notice is hereby given that on May 6, 1988 the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

[Brackets] indicate deletion; *italics* indicate additions.

PHLX Rule 722

B (i). I, II, and III.

Underlying product or index	Initial and/or maintenance margin required	Minimum margin required
(1) Stock	[15%] *20%*	[5%] *10%*
(2) Industry Index Stock Group	[15%] *20%*	[5%] *10%*
(3) Broad Index Stock Group	[10%] *15%*	[5%] *10%*

(D) If both a put and a call for the same number of shares of the same underlying (in the case of options on a stock), the same index multiplier for the same index group (in the case of options on index stock group) or for the same number of units of the same underlying foreign currency (in the case of options on a foreign currency) are issued, guaranteed or carried "short" for a customer, the amount [of margin] required shall be the margin on the put or the call, whichever is greater, as required pursuant to subparagraph (B)(i) of this paragraph (c)(2), [plus any unrealized loss on] *plus 100% of the current market value of* the other option. The minimum margin requirement, however, shall not apply to the other option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to a Commission request, the PHLX has conducted an analysis of the level of protection provided by current margins. Historically, the exchanges have sought to assure that options margins are sufficient to cover 95% of all seven business day options price changes. Seven days is used because Regulaton T allows broker-dealers to give customers seven business days to post margins. The 95% figure is intended to assure substantial coverage but nevertheless recognizes that margins need not, and realistically can not, provide protection against every conceivable price move.

Based on a six month analysis, similar to analyses conducted by other options exchanges, the PHLX has determined that margins at premium plus 15% for broad-based stock index options, and premium plus 20% for individual stock options and narrow-based stock index options would be necessary to provide 95% confidence levels at this time.

Accordingly, the PHLX submits as a proposed rule change the following three provisos to its margin rule. The first two are proposed to be made effective for a six month pilot period, which is consistent with filings being submitted by other options exchanges. During this pilot period the PHLX in coordination with other options exchanges will explore methodologies for providing an ongoing periodic review of the adequacy of stock and index option margin requirements.

The third proviso is proposed as a permanent rule change respecting short straddle margin.

The Provisos

(i) The basic margin for uncovered short positions in individual stock options and narrow-based index options would be increased from the options premium plus 15% of the underlying security value to premium plus 20%; margins for broad-based index options would be increased from premium plus 10% to premium plus 15%;

(ii) Margins are reduced for out-of-the-money options by the difference between the strike price and current market value, subject to a minimum margin amount. The proposal would increase the minimum margin for individual stock options and all stock index options, whether narrow-based or broad-based, from premium plus 5% to premium plus 10%;

(iii) The margins for short straddle positions would be revised. Currently, the margin for short straddles is the required margin on the short put or short call position, whichever is greater, plus any unrealized loss on the other position. This margin treatment has enabled investors that have incurred losses on short straddle positions to avoid margin calls by writing additional straddles, using the premiums received on the new straddle positions to satisfy their margin obligations on the previously established positions. This allowed these investors to increase their exposure to the market dramatically without providing any new capital in their accounts. It is proposed to revise the short straddle margin to the required margin for the short put or short call position, whichever is greater, plus 100% of the current market value of the other option. This would prevent investors from pyramiding short straddle in the manner described.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of such submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C., will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 3, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 9, 1988.

[FR Doc. 88–10793 Filed 5–12–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of American International Resorts, Inc., d/b/a Air LA

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 88–5–25, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that American International Resorts, Inc., d/b/a Air LA is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Director, Office of Aviation Analysis, Room 5100, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce A. Snovitch, Service Analysis Division Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–1063.

Dated: May 9, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–10729 Filed 5–12–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 25–XX; Approval of Flight Management Systems in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 25–XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to approval of flight management systems. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before September 9, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Advisory Circular 25–XX provides guidance material for the airworthiness approval of flight management systems

installed in transport category airplanes. Although not limited to a specific technology or function, the guidance material is primarily directed toward systems which, through sensor data, compute and integrate real time performance and/or navigation information into output commands that direct the operation and flight path of the airplane.

Issued in Seattle, Washington, on April 26, 1988.

Steven B. Wallace,

Acting Manager, Aircraft Certification Division, ANM-100.

[FR Doc. 88-10714 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Florence, Marion and Horry Counties, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Florence, Marion and Horry Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. S. C. Gresham, District Engineer, Federal Highway Administration, Suite 758, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina, 29201, Telephone: (803) 253-3683.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the South Carolina Department of Highways and Public Transportation will prepare an environmental impact statement (EIS) on a proposal to provide improved traffic flow between I-95 near Florence and U.S. 501 near Conway, South Carolina. The proposed project would consist of construction of a 45-mile control of access divided highway, which would provide improved access to the South Carolina coastal resort areas in Horry and Georgetown Counties from I-95 near Florence, South Carolina. This highway would also provide improved access from coastal areas to other parts of the state through its connection with existing I-95 near Florence. The proposed highway is considered necessary to handle existing and projected traffic demand to the coastal resort areas in Horry and Georgetown Counties.

Alternatives under consideration include: (1) Taking no action (no build); (2) Transportation System Management (improvement of existing routes); and, (3) build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies and to private organizations and citizens who have previously expressed interest in this project. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment. A formal scoping meeting is scheduled for June 7, 1988 at 10:30 a.m., in Room 114 of the Cauthen Educational Media Center at Francis Marion College in Florence, South Carolina.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert J. Probst,

Division Administrator, Columbia, South Carolina.

[FR Doc. 88-10747 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-629]

Intent to Consider a Change in Policy Governing Proceedings Under Section 605(c) of the Merchant Marine Act, 1936, as Amended

The purpose of this Notice is to notify U.S.-flag liner operators operating in the foreign trade that the Maritime Subsidy Board (Board) intends to consider a change in its policy governing proceedings under section 605(c) of the Merchant Marine Act, 1936, as amended, on applications for operating-differential subsidy (ODS).

The Board has long held that for purposes of section 605(c) standing, liner operators who provide all-water service at a U.S. port or U.S. coastal range different from that proposed to be served by applicants for ODS with all-water service fail to have standing to be heard in a section 605(c) proceeding.

In the decision of the United States District Court for the District of Columbia in American Transport Lines, Inc., Plaintiff, v. James H. Burnley, IV., *et al.*, Defendants, decided on March 22, 1988, the court cited the Maritime Administration's final decision in Docket R-111, ordering consolidation of trade routes, which essentially eliminated all distinction between coastal ranges of the United States. This court decision reversed a determination of the Board that denies standing to be heard in a section 605(c) proceeding to an operator providing service between U.S. Atlantic ports and the East Coast of South America, with respect to applicants for ODS for service between U.S. Gulf ports and the East Coast of South America. The court said that in denying statutory standing to the operator serving the U.S. Atlantic, the Board gave no clear explanation for its departure from its long-standing policy of considering a service competing on the same route, in this case new Trade Route 3 (United States/East Coast Mexico and Central America, Caribbean and East Coast South America), as a subsidy applicant having a direct competitive interest for purposes of section 605(c) and that as a result, among other things, no finding was made as to adequacy of the existing service on new Trade Route 3.

As a result of this decision, and as a matter of policy, the Board is assessing the impact of intermodalism in the United States on the Board's policy governing standing for the purposes of section 605(c) proceedings. The Board believes that the tremendous growth of intermodal services which are available to liner operators engaged in U.S. foreign trade has significantly reduced the relative importance of direct vessel service to any specific range of U.S. ports; now operators are able to compete for cargo anywhere in the contiguous United States without regard to the actual U.S. ports which are served. Liner operators that serve the same foreign port ranges do not need to serve the same U.S. coastal area or port range in order to be competitive with each other.

Accordingly, the Board intends to consider ending its practice of requiring an intervenor to serve the same U.S. coastal area or range of U.S. ports as those involved in the application for ODS in order to obtain standing in a section 605(c) proceeding.

If adopted, this change in policy would be prospective and would only apply to pending or future proceedings. This would not apply to applications which have had hearings or been completed prior to the date of final action by the Board. Current pending applications under section 605(c) in which standing is an issue will be held in abeyance until this policy is resolved.

The Board invites written comments on the proposal. Interested parties are invited to submit comments (original and ten copies) to the Secretary, Maritime Subsidy Board, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 by close of business on June 10, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of Maritime Subsidy Board.

Dated: May 9, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-10700 Filed 5-12-88; 8:45 am]

BILLING CODE 4910-81-M

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy; Open Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held May 25, 1988, in Room 600, 301 4th Street SW., Washington, DC from 11:15 a.m. to 12:30 p.m.

The Commission will meet with Mr. Dell Pendergrast, Deputy Director, USSR, East and South Europe and Canada, USIA; Ms. Cynthia Miller, Deputy Director for West Europe and Canada, USIA; and Mr. Ted Siebert, Office of Security, USIA to discuss USIA's programs in Europe and the Soviet Union.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: May 10, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88-10724 Filed 5-12-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 5, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Request to Lender for Status of Loan Termination (LCS).
3. VA Form 26-8801.
4. Request to holders of guaranteed loans, on which holder has initially reported intent to foreclose or subsequent to initial report has initiated legal proceedings, for status of termination actions. The information collected permits VA surveillance to assure timely submission of claim and avoidance of unnecessary costs.
5. On occasion.
6. Businesses or other for-profit.
7. 300,000.
8. 25,000.
9. Not applicable.

1. Department of Veterans Benefits.
2. Verification of VA Benefit-Related Indebtedness.
3. VA Form 26-8937.
4. This form is used by lenders authorized to close VA-guaranteed loans on the automatic basis for submission to VA Finance Officers prior to loan closing as a means of obtaining information on any existing benefit-related indebtedness of veteran home loan applicants.
5. On occasion.
6. Individuals or households.
7. 240,000.
8. 20,000.
9. Not applicable.

New Collection

1. Department of Veterans Benefits.
2. Homeless Veterans Contact Form.
3. VA Form 27-0528.
4. This information is used to help determine the numbers of and basic information on homeless veterans who seek assistance from the VA Regional Offices.
5. On occasion.
6. Individuals or households.
7. 5,700 responses.
8. 228 hours.
9. Not applicable.

[FR Doc. 88-10715 Filed 5-12-88; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

VOL 53 ISS 93 MY 13 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 93
Friday, May 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 16612, Tuesday, May 10, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, May 16, 1988.

CHANGE IN THE MEETING: The Meeting has been Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634-6748.

This Notice Issued May 10, 1988.

Hilda D. Rodriguez,
Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-10812 Filed 5-10-88; 8:45 am]
BILLING CODE 6750-06-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, May 12, 1988

May 5, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 12, 1988, which is scheduled to commence at 11:00 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—*Title:* Policy and Rules Concerning Rates for Dominant Carriers, Further Notice of Proposed Rulemaking, CC Docket No. 87-313. *Subject:* The Commission will consider issues in this proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs telephone number (202) 632-5050.

Issued: May 5, 1988.
Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88-10835 Filed 5-11-88; 10:59 am]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 88-9502.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 5, 1988, 10:30 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Request for Extension of Time—Gephardt for President Committee, Inc.

* * * * *

DATE AND TIME: Tuesday, May 17, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, May 19, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-16—Michael A. Nemeroff on behalf of the American Medical Association and the American Medical Political Action Committee.
Draft AO 1988-17—Paul E. Sullivan on behalf of Election Concepts, Inc.
Draft AO 1988-18—James L. Singer on behalf of Local 36, Sheet Metal Workers International Association, AFL-CIO.
Status of Presidential Audits.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. Telephone: 202-376-3155.

Mary W. Dove,
Administrative Assistant.
[FR Doc. 88-10794 Filed 5-10-88; 4:15 pm]
BILLING CODE 6715-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, May 16, 1988, 2:00 p.m.

PLACE: 1776 G Street, NW., Board Room Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley 1759 Business Center Drive, P.O. Box 4115 Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

CLOSED—Minutes of April 19, 1988 Board of Directors' Meeting
CLOSED—President's Report
CLOSED—Quarterly Dividend

Date sent to Federal Register: May 10, 1988.

Maud Mater,
Secretary.

[FR Doc. 88-10811 Filed 5-10-88; 5:01 pm]
BILLING CODE 6710-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:00 p.m., Friday, May 20, 1988.

PLACE: Augusta Civic Center, Augusta, Maine 04330.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Interim Final Amendment to NCUA's Lending Regulation, Section 701.21.
6. Regulatory Review of NCUA's Rules and Regulations:
   a. Technical Amendments to Section 701.6(a), Fees Paid by Federal credit unions, and Section 701.35(c), Share, Share Draft, and Share Certificate Accounts.
   b. Final Amendment to Section 701.24, Refund of Interest.
   c. Proposed Amendment to Section 704, Corporate Credit Unions.
7. Legislative Update.

TIME AND DATE: 9:30 a.m., Wednesday, May 18, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456, (202) 357-1100.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Requests for Exemption from Section 701.21(h)(2)(ii), NCUA Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Appeal from a Federal Credit Union regarding Non-standard Bylaw Amendment. Closed pursuant to exemption (8).
4. Board Briefing. Closed pursuant to exemption (8).
5. Amendment to Delegations of Authority. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,
Secretary of the Board.
[FR Doc. 88-10913 Filed 5-11-88; 3:36 pm]
BILLING CODE 7535-01-M

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Corrections

Federal Register
Vol. 53, No. 93
Friday, May 13, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21-88]

Foreign-Trade Zone 50—Long Beach, CA; Application for Extension of Subzone Status at Toyota Auto/Truck Parts Plant (SZ 50A), Long Beach

Correction

In notice document 88-10017 appearing on page 16178 in the issue of Thursday, May 5, 1988, make the following corrections:

1. In the first column, in the second line, "TFZ" should read "FTZ".

2. In the second column, in the first complete paragraph, in the last line, "experts" should read "exports".

3. In the same column, in the third complete paragraph, in the third line, "investigate" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 88-8217 beginning on page 12446 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12446, in the second column, in the second paragraph, in the third line, "30 days" should read "20 days".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 88-10021 beginning on page 16178 in the issue of Thursday, May 5, 1988, make the following correction:

The tables appearing at the bottom of page 16178 and the top of page 16179 were incorrect. A table heading "Countervailing Duty Proceeding" should have appeared above the last five entries on page 16179. The tables are corrected to read as follows:

Antidumping duty proceeding	Period
Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan	05/01/87-04/30/88
Certain Welded Carbon Steel Standard Pipes and Tube Products from India	05/01/87-04/30/88
Certain Welded Carbon Steel Standard Pipe and Tube Products from Turkey	05/01/87-04/30/88
Frozen Concentration Orange Juice from Brazil	10/23/86-04/30/88
Iron Construction Castings from Brazil	05/01/87-04/30/88
Iron Construction Castings from India	05/01/87-04/30/88
Iron Construction Castings from the People's Republic of China	05/01/87-04/30/88
Impression Fabric of Man-Made Fiber from Japan	05/01/87-04/30/88
Malleable Cast Iron Pipe Fittings from Brazil	05/01/87-04/30/88
Malleable Cast Iron Pipe Fittings from South Korea	05/01/87-04/30/88
Malleable Cast Iron Pipe Fittings from Taiwan	05/01/87-04/30/88
Portable Electric Typewriters from Japan	05/01/87-04/30/88
Portland Cement, Other Than White, Nonstaining Portland Cement, from the Dominican Republic	05/01/87-04/30/88
Tubeless Steel Disc Wheels from Brazil	12/19/86-04/30/88

Countervailing duty proceeding	Period
Bricks from Mexico	01/01/87-12/31/87
Ceramic Tile from Mexico	01/01/87-12/31/87
Certain Heavy Iron Construction Castings from Brazil	01/01/87-12/31/87
Fresh Whole Atlantic Groundfish from Canada	01/01/87-12/31/87
Viscose Rayon Staple Fiber from Sweden	01/01/87-12/31/87

BILLING CODE 1505-01-D

federal register

Friday
May 13, 1988

Part II

Department of Education

34 CFR Part 363 et al.
Rehabilitation Services Administration Programs; Final Regulations

VOL 53 ISS 93 MY 13 1988 UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 363, 365, 366, 369, 370, 372, 374, 375, 378, 379, 385, 387, 388, 389 and 390

Rehabilitation Services Administration Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing a variety of programs administered by the Rehabilitation Services Administration (RSA). These regulations implement technical amendments to the Act made by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3222, M/S 2312, Washington, DC 20202, (202) 732-1397.

SUPPLEMENTARY INFORMATION: The Rehabilitation Act Amendments of 1986 included a number of changes to reinforce the involvement of individuals with handicaps in the development of policies and decisions that affect them.

The amendments also strengthen the involvement of the private sector in the delivery of services and placement of individuals with handicaps into competitive employment. Significant changes include:

—*State Independent Living Council.* Each State shall establish a State independent living council with a majority of members who are individuals with handicaps and their parents or guardians. The State must assure it will consider the Council's recommendations for expanding or modifying services.

—*Independent living centers.* Each independent living center shall have a governing board that is composed of a majority of individuals with handicaps and that is the principal governing body of the center.

—*Client Assistance Program (CAP).* The Governor is precluded from changing the designated CAP agency except for good cause and only after notice and opportunity for public comment.

—*Rehabilitation Training.* Grantees or contractors who provide rehabilitation training shall give due regard to the training of individuals with handicaps as part of their efforts to increase the number of qualified personnel available to provide rehabilitation services.

—*Projects with Industry.* Grantees are required to establish business advisory councils to identify available jobs within the community and to prescribe training programs to meet these employment needs.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Section 366.20(a) is a necessary interpretative rule under the Rehabilitation Act Amendments of 1986. Except for this section, these regulations incorporate statutory changes only, and public comment could have no effect on these changes. Therefore, the Secretary has determined that publication of a proposed rule is not required under 5 U.S.C. 553(b)(A) and is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations contain only technical amendments and an interpretative change and would not have a significant impact on any entities.

Intergovernmental Review

Parts 363 and 370 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects

34 CFR Part 363

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 365

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 366

Education, Grant programs—social programs, Reporting and recordkeeping requirement, Vocational rehabilitation.

34 CFR Part 369

Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 370

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 372

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 374

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 375

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 378

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 379

Business and industry, Education, Reporting and recordkeeping requirements, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 385

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 387

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 388

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 389

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 390

Education, Grant programs, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance No. 84.128, Special Projects; 84.129, Rehabilitation Training; 84.132, Centers for Independent Living; 84.158, Projects With Industry; 84.128G, Migratory Workers; 84.128, Client Assistance Program; and, 84.128J, Special Recreational Programs)

Dated: March 17, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 363, 365, 366, 369, 370, 372, 374, 375, 378, 379, 385, 387, 388, 389, and 390 of Title 34 of the Code of Federal Regulations as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

1. The authority citation for Part 363 continues to read as follows:

Authority: 29 U.S.C. 795 j-q, unless otherwise noted.

§ 363.7 [Amended]

1a. In § 363.7, paragraph (a) is amended by removing the word "and" at the end of (a)(2)(iv) and revising the subparagraph designations in (a)(2)(v), "(v)", "(v)(A)", "(v)(B)", and "(v)(C)" to read "(3)", "(3)(i)", "(3)(ii)", and "(3)(iii)", respectively.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICE PROGRAM

2. The authority citation for Part 365 is revised to read as follows:

Authority: 29 U.S.C. 796e-d-1, unless otherwise noted.

2a. In Part 365, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 365.2(a);
(b) Section 365.6 (a) and (b);
(c) Section 365.8 (a) and (b);
(d) Section 365.9(b);
(e) Section 365.11;
(f) Section 365.12 (b), (c), and (e);
(g) Section 365.34;
(h) Section 365.37 (a) and (a)(2)
(i) Section 365.40;
(j) Section 365.41;
(k) Section 365.42; and
(l) Section 365.43.

3. In Part 365, remove the words "a severely handicapped individual" and add, in their place, the words "an individual with severe handicaps" in the following places:

(a) Section 365.33(a);
(b) Section 365.37(a) (15), (16), and (b); and
(c) Section 365.38.

4. In Part 365, remove the words "severely handicapped individual" and add, in their place, the words "individual with severe handicaps" in the following places:

(a) Section 365.36 (a) and (c);
(b) Section 365.37(a); and
(c) Section 365.38.

5. In Part 365, remove the word "which" and add, in its place, "that" in the following places:

(a) Section 365.13;
(b) Section 365.37(a)(15);
(c) Section 365.42; and
(d) Section 365.43.

§ 365.1 [Amended]

6. In § 365.1, in paragraph (c)(3) the definitions of *"Attendant care," "Health maintenance,"* and the first definition of *"Independent living rehabilitation services,"* are amended by removing the words "a severely handicapped individual" and adding, in their place, the words "an individual with severe handicaps"; the second definition of *"Independent living rehabilitation services"* is amended by removing the words "severely handicapped individuals" and adding, in their place, the words "individuals with severe handicaps", and by removing the words "severely handicapped individual" in (ii) and adding, in their place, the words "individual with severe handicaps"; changing the heading of the definition *"Severely handicapped individual"* to *"Individual with severe handicaps"*; and the definition of *"Transportation"* is amended by removing the words "in connection with a severely handicapped individual's" and adding, in their place, the words "by an individual with severe handicaps in connection with".

7. In § 365.9, paragraph (a) is amended by revising the first two sentences and the authority citation to read as follows:

§ 365.9 State plan and policy development consultation.

(a) *Advisory committee.* The State plan must assure that the State unit organizes a committee of persons with severe handicaps, which may include their parents or guardians as necessary, to consult on a continuing basis in the initial development and periodic revision of the State plan. The members of the advisory committee must serve on a rotating basis after persons with severe handicaps in the State have been provided an opportunity to suggest those individuals considered by them to be best qualified to represent individuals with severe handicaps in need of independent living services. * * *

* * * * * *

(Authority: Secs. 12(c) and 705(a)(6) of the Act; 29 U.S.C. 711(c) and 796(a))

§ 365.10 [Amended]

8. The authority citation for § 365.10 is revised to read as follows:

(Authority: Sec. 705(a)(7) of the Act; 29 U.S.C. 796d(a)(7))

§ 365.12 [Amended]

9. The authority citation for § 365.12 is revised to read as follows:

(Authority: Secs. 12(c), 705(a)(9), and 705(a)(3)(A) of the Act; 29 U.S.C. 711(c), 796d(a)(9) and 796d(a)(3)(A))

10. A new § 365.16 is added under State Plan Content: Administration in Subpart B to read as follows:

§ 365.16 State independent living council.

(a) Each State must establish a State independent living council that meets the requirements of section 706 of the Act.

(b) The State plan must assure that the State unit considers the recommendations of the State independent living council in determining how independent living services provided under this part will be expanded or modified.

(Authority: Secs. 705(a)(5) and 706 of the Act; 29 U.S.C. 796d(a)(5) and 796d-1)

§ 365.30 [Amended]

11. In § 365.30, remove the words "severely handicapped persons" and add, in their place, the words "persons with severe handicaps".

§ 365.32 [Amended]

12. In § 365.32, paragraph (a) is amended by removing the words "severely handicapped person" and adding, in their place, the words "person with severe handicaps".

§ 365.34 [Amended]

13. In § 365.34, the first sentence is amended by removing the words "groups of" and by removing the word "when" and adding, in its place, the word "if".

§ 365.36 [Amended]

14. The authority citation for § 365.36 is revised to read as follows:

(Authority: Secs. 12(c), 705(a)(4), and 705(a)(5) of the Act; 29 U.S.C. 711(c), 796d(a)(4) and 796d(a)(6))

15. Section 365.37 is amended by revising paragraph (a) (8), (9), and (10) and in paragraph (b) removing "1361" and adding, in its place "361" to read as follows:

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

(a) * * *

(8) Recreational services;

(9) Services to family members of an individual with severe handicaps if necessary for improving the individual's

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ability to live and function more independently, or the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving the ability of an individual with severe handicaps to live and function more independently, or his or her ability to engage or continue in employment;

* * * * *

16. The heading for § 365.42 is revised to read as follows:

§ 365.42 Scope of State unit program: Facilities and services for groups of individuals with severe handicaps.

* * * * *

§ 365.44 [Amended]

17. In § 365.44, paragraph (b) is amended by removing the word "Where" and adding, in its place, the word "If".

PART 366—CENTERS FOR INDEPENDENT LIVING

18. The authority citation for Part 366 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 796(e), unless otherwise noted.

§ 366.2 [Amended]

19. In § 366.2, paragraph (b) is amended by removing the word "six" both times it appears and adding, in its place, the word "three".

20. In § 366.4, paragraph (b) is amended by revising the definitions to read as follows:

§ 366.4 What definitions apply to this program?

* * * * *

(b) The following definitions also apply to the Centers for Independent Living Program—

"Center for independent living" means a program of services or a facility that offers a combination of independent living services for individuals with severe handicaps or groups of individuals with severe handicaps such as:

(1) Intake counseling to determine the need of an individual with severe handicaps for specific independent living services; * * *

(7) Housing, recreation, and transportation referral and assistance;

(8) Surveys, directories, and other activities to identify appropriate housing, recreational opportunities, and accessible transportation and other support services; * * *

(12) Individual and group social and recreational services; * * *

(14) Other programs and services necessary to provide resources, training, counseling, services or other assistance of substantial benefit in promoting the independence, productivity, and quality of life for individuals with severe handicaps.

(Authority: Sec. 711(c) of the Act; 29 U.S.C. 796e(c))

"Designated State unit" or "designated State vocational rehabilitation unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

"Individual with severe handicaps" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment. Independent living rehabilitation services needed by an individual with severe handicaps are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR Part 361.

(Authority: Sec. 702(a) of the Act; 29 U.S.C. 796a(a))

21. Section 366.20 is amended by redesignating paragraph (a) as paragraph (b), paragraph (b) as paragraph (c), and paragraph (c) as paragraph (d) respectively, removing the words "handicapped individuals" from redesignated paragraphs (b), (c) and (d)(7) and adding, in their place, the words "individuals with handicaps", adding a new paragraph (a) and revising redesignated paragraphs (d), (d)(1), and (d)(6) to read as follows:

§ 366.20 What are the application requirements?

* * * * *

(a) An assurance that the center will have a board that is composed of a majority of individuals with handicaps and that is the principal governing body of the center;

* * * * *

(d) A description of an annual evaluation plan that contains, at a minimum, the following elements:

(1) The numbers and types of individuals with handicaps that were assisted.

* * * * *

(6) How services provided contributed to the maintenance of or the increased independence of individuals with handicaps that were assisted.

* * * * *

§366.31 [Amended]

22. Section 366.31 is amended by removing the words "severely handicapped individuals" in paragraph (a)(2) and adding, in their place, the words "individuals with severe handicaps", removing the words "Handicapped persons" in paragraphs (b)(2)(v)(C) and (d)(2)(iv)(C) and adding, in their place, the words "Persons with handicaps", and removing the words "severely handicapped persons" in paragraphs (e), (e)(1), and (e)(2) and adding, in their place, the words "persons with severe handicaps".

23. A new § 366.43 is added to read as follows:

§ 366.43 What are the reporting requirements?

Beginning in fiscal year 1989 each grantee shall report to the Secretary at the end of each project year the extent to which it is in compliance with program evaluation standards developed in accordance with sections 711(e)(1) and 711(f)(1) of the Act.

(Authority: Secs. 711(e) and 711(f) of the Act; 29 U.S.C. 796e(e) and 796e(f))

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

24. The authority citation for Part 369 is revised to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 777(a)(3), 777(b), 777f and 795g, unless otherwise noted.

25. In Part 369, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 369.1(a);
(b) Section 369.2 (c), (d), and (g);
(c) Section 369.43;
(d) Section 369.44(b); and
(e) Section 369.48.

26. In § 369.1, paragraph (b) is amended by revising (b)(1), (b)(3), (b)(4), (b)(5), and (b)(7) to read as follows:

§ 369.1 What are the Vocational Rehabilitation Service Projects?

* * * * *

(b) * * *

(1) Vocational Rehabilitation Service Projects for American Indians with Handicaps (34 CFR Part 371).

* * * * *

(3) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps (34 CFR Part 373).

(4) Special Projects and Demonstrations for Making Recreational Activities Accessible to Individuals with Handicaps (34 CFR Part 374).

(5) Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Handicaps (34 CFR Part 375).

* * * * *

(7) Projects for Initiating Special Recreation Programs for Individuals with Handicaps (34 CFR Part 378).

* * * * *

27. Section 369.2 is amended by revising paragraphs (a), (e) and (f) and the headings of paragraphs (c) and (d) to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

(a) *Vocational Rehabilitation Service Projects for American Indians with Handicaps.* Governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to American Indians with handicaps.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

* * * * *

(c) *Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps.* * * *

(d) *Special Projects and Demonstrations for Making Recreational Activities Accessible to Individuals with Handicaps.* * * *

(e) *Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Handicaps.* State vocational rehabilitation agencies or local agencies administering vocational rehabilitation programs under written agreements with State agencies are eligible for assistance to support projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with handicaps.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777(b))

(f) *Projects for Initiating Special Recreation Programs for Individuals with Handicaps.* State and other public agencies and private nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for individuals with handicaps.

* * * * *

28. In § 369.4, paragraph (b) is amended by removing the headings of the definitions for "*Handicapped individual*" and "*Severely handicapped individual*" and adding, in their place, the headings, "*Individual with handicaps*" and "*Individual with severe handicaps*", respectively, and placing the revised definitions in correct alphabetical order, removing the alphabetical designations (c) through (s) under the definition of "*Physical and mental restoration services*" and adding, in their place, the numerical designations (3) through (19), removing the numerical designations (i) through (xiv) under the first definition of "*Vocational rehabilitation services*" and adding, in their place, the numerical designations (1) through (14), removing the word "and" following redesignated (14), and revising the heading of the definition "*Act*", the introductory text of "*Individual with severe handicaps*", introductory text and paragraph (12) of "*Rehabilitation facility*", paragraph (1) of "*State unit*", and in the first definition of "*Vocational rehabilitation services*" by revising the introductory text and paragraphs (2), (7), (15) and (16), and in the second definition of "*Vocational rehabilitation services*", by revising the introductory text and paragraphs (1), and (4) to read as follows:

§ 369.4 What definitions apply to these programs.

* * * * *

(b) * * *

"*Act*" * * *

* * * * *

"*Individual with handicaps*" * * *

"*Individual with severe handicaps*" means an individual with handicaps: * * *

* * * * *

"*Rehabilitation facility*" means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps, and that provides singly or in combination one or more of the following services for individuals with handicaps:

* * * * *

(12) Transitional or extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market.

* * * * *

"*State unit,*" "*State vocational rehabilitation unit*" or "*designated State unit*" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

* * * * *

"*Vocational rehabilitation services*" when provided to an individual, means:

* * * * *

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a program of services for individuals with handicaps, and referral necessary to help individuals with handicaps secure needed services from other agencies;

* * * * *

(7) Services to family members of an individual with handicaps if necessary to the vocational rehabilitation of the individual with handicaps;

* * * * *

(15) Rehabilitation engineering services; and

(16) Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

* * * * *

"*Vocational rehabilitation services*" when provided for the benefit of groups of individuals, also means:

(1) In the case of any type of small business enterprise operated by individuals with severe handicaps under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

* * * * *

(4) The provision of other facilities and services, including services provided at rehabilitation facilities, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized written rehabilitation program of any one individual with handicaps;

* * * * *

29. In § 369.31, paragraphs (a) and (b) are amended by removing the words "Handicapped persons" in (a)(2)(v)(A) and (b)(2)(iv)(A) and adding, in their

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place, the words "Persons with handicaps".

30. The title of § 369.42 is revised to read as follows:

§ 369.42 What special requirements affect provision of services to individuals with handicaps?

§ 369.43 [Amended]

31. Section § 369.43 is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

§ 369.44 [Amended]

32. In § 369.44, paragraph (b) is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

§ 369.46 [Amended]

33. Section 369.46 is amended by removing the word "When" and adding, in its place, the word "If" and removing the words "handicapped persons or other representatives of handicapped individuals" and adding, in their place, the words "persons with handicaps or their representatives".

§ 369.48 [Amended]

34. Section 369.48 is amended by removing the word "When" and adding, in its place, the word "If" and removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

PART 370—CLIENT ASSISTANCE PROGRAM

35. The authority citation for Part 370 is revised to read as follows:

Authority: 29 U.S.C. 732, unless otherwise noted.

36. In Part 370, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:
(a) Section 370.2 (d) and (e);
(b) Section 370.10(e);
(c) Section 370.20(b)(1); and
(d) Section 370.46.

37. Section 370.1 is revised to read as follows:

§ 370.1 What is the Client Assistance Program?

The purpose of this program is—
(a) To provide assistance in informing and advising clients and client applicants of all available benefits under the Act;
(b) If requested by clients and client applicants, to assist them in their relationships with projects, programs, and facilities providing services to them under the Act; and
(c) To provide information on available services under the Act to any individual with handicaps in the State.

(Authority: Sec. 112(a) of the Act; 29 U.S.C. 732(a))

38. Section 370.2 is amended by revising paragraph (d), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 370.2 Who is eligible for an award under the Client Assistance Program?

* * * * *

(d) The Governor may, in the initial designation, designate an agency which provides treatment, * * *

* * * * *

(e) The Governor shall not change the designated agency without good cause, and only after providing notice and an opportunity for public comment on the proposed redesignation.

* * * * *

39. The note following § 370.4 is revised to read as follows:

(Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee as that term is defined in that section).

40. Section 370.10 is amended by removing the word "and" after the semicolon in paragraph (e), removing the period at the end of paragraph (f) and adding, in its place "; and", and adding a new paragraph (g) to read as follows:

§ 370.10 What kinds of activities does the Secretary assist under this program?

* * * * *

(g) Providing information on available services under the Act to any individual with disabilities in the State.

(Authority: Sec. 112 of the Act; 29 U.S.C. 732)

41. Section 370.30 is amended by revising paragraphs (a) and (b), removing paragraphs (c) and (d), adding a new paragraph (c), and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 370.30 How does the Secretary allocate funds?

(a)(1) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State. The Secretary allocates at least $50,000 to each State, unless the provisions of section 112(e)(1)(D) of the Act, which provide for increasing the minimum allotment, are applicable.

(b) The Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, unless the provisions of section 112(e)(1)(D) of the Act are applicable.

(c) Unless prohibited or otherwise provided by State law, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. In all cases, however, the State remains the grantee.

* * * * *

§ 370.41 [Amended]

42. In § 370.41, paragraph (a) is amended by removing the words ", or receive benefits of any kind directly or indirectly from,".

PART 372—COMPREHENSIVE REHABILITATION CENTERS

43. The authority citation for Part 372 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 775, unless otherwise noted.

44. In Part 372, remove the words "handicapped persons" and add, in their place, the words "persons with handicaps" in the following places:
(a) Section 372.1;
(b) Section 372.4(b)(1);
(c) Section 372.10; and
(d) Section 372.42 (b) and (d).

§ 372.2 [Amended]

45. In § 372.2, paragraph (b) is amended by removing the word "which" and adding, in its place, the word "that".

§ 372.4 [Amended]

46. In § 372.4, paragraph (b) is amended by removing the word "which" in (b)(1) and adding, in its place, the word "that", and removing the words "Handicapped person" in (b)(2) and adding, in their place, the words "Persons with handicaps".

47. The title of Part 374 is revised to read as follows:

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO INDIVIDUALS WITH HANDICAPS

48. The authority citation for Part 374 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(a)(3), unless otherwise noted.

49. In Part 374, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:
(a) Section 374.1;

(b) Section 374.10(a); and
(c) Section 374.30 (f)(1), (g)(1), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

50. In § 374.1, the section heading is revised to read as follows:

§ 374.1 What is the program of special projects and demonstrations for making recreational activities accessible to individuals with handicaps?

* * * * *

51. In § 374.10, paragraph (b) is amended by removing the word "recreation" and adding, in its place, the word "recreational" wherever it appears, and paragraph (c) is revised to read as follows:

§ 374.10 What types of projects are authorized under this program?

* * * * *

(c) Projects must demonstrate innovative ways in which recreational services and activities can be made fully accessible to individuals with handicaps, with special emphasis on those who have the most severe handicaps.

(Authority: Sec. 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.30 [Amended]

52. In § 374.30, paragraph (f) is amended by removing the word "Recreation" in (f)(2) and adding, in its place, the word "Recreational".

53. Section 374.42 is revised to read as follows:

§ 374.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The scheduling of recreational activities must be arranged so as not to interfere with attendance at work or school by an individual with handicaps.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

54. The title of Part 375 is revised to read as follows:

PART 375—VOCATIONAL REHABILITATION SERVICE PROJECTS PROGRAM FOR MIGRATORY AGRICULTURAL AND SEASONAL FARMWORKERS WITH HANDICAPS

55. The authority citation for Part 375 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 777b, unless otherwise noted.

56. Section 375.1 is revised to read as follows:

§ 375.1 What is the Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps?

This program is designed to provide financial assistance to projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with handicaps.

(Authority: Sec. 321 of Act; 29 U.S.C. 777b)

§ 375.4 [Amended]

57. In § 375.4, paragraph (b)(1) is amended by removing the word "handicapped" both times it appears, and by adding the words "with handicaps" after the word farmworker both times it appears.

§ 375.10 [Amended]

58. Section 375.10 is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps", removing the word "where", and adding, in its place, the word "if", and removing the words "handicapped migratory agricultural worker or seasonal farmworker" and adding, in their place, the words "migratory agricultural worker or seasonal farmworker with handicaps".

§ 375.41 [Amended]

59. In § 375.41, paragraph (a) is amended by removing the word "handicapped", adding the words "with handicaps" after the word "farmworkers", and removing the word "when" and adding, in its place, the word "if"; paragraph (b) is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

60. The title of Part 378 is revised to read as follows:

PART 378—PROJECTS FOR INITIATING SPECIAL RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH HANDICAPS

61. The authority citation for Part 378 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 777(f), unless otherwise noted.

62. Section 378.1 is revised to read as follows:

§ 378.1 What is the program of Projects for Initiating Special Recreational Programs for Individuals with Handicaps?

This program is designed to initiate special programs to provide individuals with handicaps with recreational activities and related experiences that can be expected to aid in their mobility, socialization, independence, and community integration.

(Authority: Sec. 316 of the Act; 29 U.S.C. 711(c) and 777(f))

63. Section 378.2 is revised to read as follows:

§ 378.2 Who is eligible for assistance under this program?

Applications may be made by State and other public agencies and private nonprofit agencies and organizations.

(Authority: Secs. 12(e) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

64. In § 378.10, paragraphs (a) and (b) are revised, the word "and" is removed at the end of paragraph (b)(4), the period is removed at the end of paragraph (b)(5) and the word "; and" added in its place, and a new paragraph (b)(6) is added to read as follows:

§ 378.10 What types of Projects are authorized under this program?

(a) This program supports projects that initiate programs of recreational services and related experiences for individuals with handicaps.

(b) Activities carried out under this program must include as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities; competitive, active, and quiet recreational activities; social activities; and recreational activities related to the fine arts. These activities may include, but are not limited to, arts, music, handicrafts, homemaking, camping, dance, drama, 4–H activities, fitness, scouting, physical education and sports, swimming, travel, leisure education, leisure networking, leisure resource development, and related recreational activities designed—

* * * * *

(6) To promote the independence and community integration of individuals with handicaps.

§ 378.31 [Amended]

65. Section 378.31 is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps" in the following places:
(a) Section 378.31(f)(2)(i); and
(b) Section 378.31(g)(1), (g)(2)(i), (g)(2)(ii), and (g)(2)(iv).

66. Section 378.42 is revised to read as follows:

§ 378.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with the attendance of an individual with handicaps at work or school.

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(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

PART 379—PROJECTS WITH INDUSTRY

67. The authority citation for Part 379 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 795g, unless otherwise noted.

68. In Part 379, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 379.2(g);

(b) Section 379.10 (a), (b), (c), (c)(1), and (c)(3);

(c) Section 379.30(f), (f)(2)(i), (f)(2)(iii), and (h)(1);

(d) Section 379.41(f);

(e) Section 379.42 undesignated introductory text, and (a); and

(f) Section 379.43 (f), (g), (m)(1), and (m)(5).

69. Section 379.1 is revised to read as follows:

§ 379.1 What is the Projects with Industry program?

This program is designed to—

(a) Promote opportunities for competitive employment of individuals with handicaps;

(b) Provide appropriate placement resources;

(c) Engage the talent and leadership of private industry as partners in the rehabilitation process;

(d) Create practical settings for job readiness and training programs; and

(e) Secure the participation of private industry in identifying and providing job opportunities, the necessary skills, and training to qualify persons with handicaps for competitive employment.

(Authority: Sec. 621(a) of the Act; 29 U.S.C. 795g(a))

70. Section 379.10 is amended by revising the section heading, removing the words "A handicapped individual" in paragraph (c)(2) and adding, in their place, the words "an individual with handicaps", revising paragraph (c)(4), and adding a new paragraph (d) to read as follows:

§ 379.10 What types of project activities are required under this program?

* * * * *

(c) * * *

(4) The establishment of appropriate job placement services; and

(d) Providing for business advisory councils comprised of representatives of private industry, business concerns, and organized labor who will identify available jobs within the community and the skills necessary to fill those jobs, and prescribe appropriate training programs.

(Authority: Sec. 621(a) of the Act; 29 U.S.C. 795g)

§ 379.30 [Amended]

71. In § 379.30, paragraph (f)(2)(ii) is amended by removing the words "Handicapped individuals" and adding, in their place, the words "Individuals with handicaps".

§ 379.41 [Amended]

72. In § 379.41, paragraph (g) is amended by removing the words "handicapped persons" and adding, in their place, the words "persons with handicaps".

73. Section 379.43 is amended by revising paragraph (h), removing the words "handicapped individual" and adding, in their place, the words "individual with handicaps" in paragraphs (i) and (j), removing the words "handicapped employees" and adding, in their place, the words "employees with handicaps" both times it appears in paragraph (k), removing the word "and" following paragraph (1), removing the period at the end of paragraph (m)(7) and adding, in its place, the word "; and", and adding a new paragraph (n) to read as follows:

§ 379.43 What general provisions are required in agreements?

* * * * *

(h) Specify the duration of the project, not to exceed five years;

* * * * *

(n) Provide assurance that an evaluation report containing the data specified in paragraph (m) of this section will be submitted to the Secretary.

* * * * *

74. A new § 379.46 is added to read as follows:

§ 379.46 What are the reporting requirements?

Beginning in fiscal year 1989, each grantee shall report to the Secretary at the end of each project year the extent to which it is in compliance with program evaluation standards developed in accordance with sections 621(d)(1) and 621(f)(1) of the Act.

(Authority: Secs. 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

PART 385—REHABILITATION TRAINING

75. The authority citation for Part 385 is revised to read as follows:

Authority: 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

§ 385.1 [Amended]

76. In § 385.1, paragraph (a)(1) is amended by removing the words "physically and mentally handicapped individuals" and adding in their place the words "individuals with handicaps", and removing the word "handicap" before the semicolon and adding, in its place, the word "handicaps".

§ 385.4 [Amended]

77. In § 385.4, paragraph (b) is amended by removing the words "*Handicapped individual*" preceding that definition and adding, in their place, the words "*Individual with handicaps*", and placing the definition in the correct alphabetical order, and revising the headings of the definitions for "*Act*" and "*Qualified personnel*", paragraphs (2), (8), (9), (10), (15), and (16) of the definition for "*Independent living rehabilitation services*", introductory text and paragraphs (1) and (2) of the definition for "*State unit*", and paragraphs (2), (7), (14), (15), and (16) of the definition for "Vocational rehabilitation services" to read as follows:

§ 385.4 What definitions apply to these programs?

* * * * *

(b) * * *

"*Act*" * * *

* * * * *

"*Independent living rehabilitation services*" or "*independent living services*" means:

* * * * *

(2) Housing incidental to the provision of any independent living rehabilitation services, and including appropriate accommodations to, and modifications of any space utilized to serve individuals with severe handicaps;

* * * * *

(8) Recreational services;

(9) Services to family members of an individual with handicaps if necessary for improving the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment if necessary for improving the ability of an individual with severe handicaps to live and function more independently, or to engage or continue in employment;

* * * * *

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services that are appropriate to the independent living rehabilitation needs of an individual with severe handicaps; and

(16) Any appropriate preventive services to decrease the future needs of an individual with severe handicaps.

(Authority: Sec. 702(b) of the Act; 29 U.S.C. 796(b))

"*Individual with handicaps*" * * *

* * * * *

"*Qualified personnel*" * * *

* * * * *

"*State unit*" or "*State vocational rehabilitation unit*" means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 711(c))

* * * * *

"*Vocational rehabilitation services*" means—

* * * * *

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a program of services for an individual with handicaps, and referral necessary to help individuals with handicaps secure needed services from other agencies;

* * * * *

(7) Services to family members of an individual with handicaps if necessary to the vocational rehabilitation of the individual with handicaps;

* * * * *

(14) Occupational licenses;

(15) Rehabilitation engineering services; and

(16) Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

§ 385.32 [Amended]

78. In § 385.32, paragraphs (a)(2)(v)(A) and (b)(2)(iv)(A) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Persons with handicaps".

79. Section 385.40 is revised to read as follows:

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

If a project funded under Parts 386 through 390 establishes an advisory committee, its membership must include individuals with handicaps or representatives of individuals with handicaps, trainees, and providers of vocational rehabilitation and independent living rehabilitation services.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

80. Section 385.41 is amended by removing the word "When" at the beginning of the section, and adding, in its place, the word "If", and removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

81. A new § 385.44 is added to read as follows:

§ 385.44 What requirement applies to the training of individuals with handicaps?

Any grantee or contractor who provides training under any of the programs in 34 CFR Parts 386 through 390 shall give due regard to the training of individuals with handicaps as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774.(a))

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

82. The authority citation for Part 387 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

83. Section 387.1 is amended by revising paragraph (a) to read as follows:

§ 387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe handicaps; and

* * * * *

§ 387.30 [Amended]

84. In § 387.30, paragraph (g)(2) is amended by removing the words "physically or mentally handicapped individuals" and adding, in their place, the words "individuals with handicaps", and paragraph (h)(2)(iii) is amended by removing the words "physically and mentally handicapped persons, especially those who are severely handicapped" and adding, in their place, the words "persons with handicaps, especially those who have severe handicaps".

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

85. The authority citation for Part 388 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 388.1 [Amended]

86. Section 388.1 is amended by removing the words "severely handicapped individuals" and adding, in their place, the words, "individuals with severe handicaps".

§ 388.10 [Amended]

87. Section 388.10 is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps".

§ 388.30 [Amended]

88. In § 388.30, paragraph (g)(2) is amended by removing the words "handicapped individuals" and adding, in their place, the words "individuals with handicaps", and paragraph (h)(2)(ii)(B) is amended by removing the words "severely handicapped persons" and adding, in their place, the words "persons with severe handicaps".

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

89. The authority citation for Part 389 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 389.30 [Amended]

90. In § 389.30, paragraph (g)(2) is amended by removing the words "severely physically and mentally disabled individuals" and adding, in their place, the words "individuals with severe handicaps".

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§ 389.41 [Amended]

91. In § 389.41, paragraph (d) is amended by removing the words "handicapped trainees" and adding, in their place, the words "trainees with handicaps".

PART 390—REHABILITATION SHORT-TERM TRAINING

92. The authority citation for Part 390 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 390.41 [Amended]

93. In § 390.41, paragraph (a)(4) is amended by removing the words "handicapped trainees" and adding, in their place, the words "trainees with handicaps".

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Friday
May 13, 1988

Part III

Department of Education

34 CFR Part 778
Strengthening Research Library Resources Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education is issuing final regulations for the Strengthening Research Library Resources Program. These final regulations implement changes legislated by Congress in the Higher Education Amendments of 1986. Additionally, these regulations change the point values assigned to various selection criteria.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of the regulations, write or call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Washington, DC 20208–1430. Telephone: (202) 357–6315.

SUPPLEMENTARY INFORMATION: Since fiscal year 1978, the Strengthening Research Library Resources Program, established by Title II, Part C of the Higher Education Act of 1965 (the Act), 20 U.S.C. 1041, 1042, has provided financial assistance to institutions with major research libraries. The awards promote research and education of high quality and encourage sharing of library resources.

On October 14, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 38192). In the proposed rulemaking, the Secretary proposed revisions to the regulations that were designed to implement a change in program operations required by the Higher Education Amendments of 1986. Prior to these Amendments, only an organization that qualified as a major research library under criteria established by the Secretary in the then existing program regulations was eligible to compete for a grant. These criteria generally favored organizations with considerable library holdings, as required under the then applicable legislation. An organization with smaller holdings, despite the significance of its library collections to scholars and researchers, could not generally qualify as a major research library.

In the Higher Education Amendments of 1986, Congress enacted a program change directing that the Secretary permit an organization otherwise found ineligible as a major research library under the Secretary's criteria to compete for a grant if additional information provided by the organization demonstrates "the national or international significance for scholarly research of the particular collection described in the grant proposal." These regulations implement this directive.

Aside from this legislative requirement, the Secretary is also making changes in the numerical values associated with certain criteria used to score applications for grants. These changes were recommended by the peer reviewers that the Secretary uses to evaluate applications for grants. The changes are intended to ensure better competition among applicants for grants by increasing the numerical value associated with a project's significance to scholarly research.

Based on public comments, the Secretary has decided not to adopt (1) a revision to the factors that the Secretary considers in ensuring an equitable distribution of awards and (2) regulatory authority to set priorities for awards under the program.

Finally, the regulations are revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eleven parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of regulations to which they pertain. Technical and other minor changes are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 778

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Networks, Reporting and recordkeeping requirements, Technology.

(Catalog of Federal Domestic Assistance Number 84.091, Strengthening Research Library Resources Program)

Dated: April 22, 1988.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 778 of Title 34 of the Code of Federal Regulations to read as follows:

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES

Subpart A—General

Sec.

778.1 What is the Strengthening Research Library Resources Program?
778.2 Who is eligible for an award?
778.3 What restrictions on eligibility apply?
778.4 What activities may the Secretary fund?
778.5 What are the objectives of the Strengthening Research Library Resources Program?
778.6 What regulations apply?
778.7 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

778.20 How does the Secretary evaluate an application?
778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?
778.22 What criteria does the Secretary use to evaluate the quality of a project?
778.23 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

778.30 What agencies must be informed of activities funded under this program?

Authority: 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

Subpart A—General

§ 778.1 What is the Strengthening Research Library Resources Program?

The Secretary awards grants under the Strengthening Research Library Resources Program for the purpose of promoting research and education of high quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strenghten their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.2 Who is eligible for an award?

(a) The Secretary awards grants under this program to institutions with major research libraries.

(b) An institution with a major research library is defined as a public or private nonprofit institution, an institution of higher education (including a branch campus), an independent research library, a State or other public library, or a consortium of the above entities, having a library collection available to qualified useres that—

(1) Makes a significant contribution to higher education and research;

(2) Is broadly based;

(3) Is recognized as having national or international significance for scholarly research;

(4) Is of a unique nature, containing material not widely available; and

(5) Is in substantial demand by researchers and scholars outside the institution.

(c) The Secretary evaluates an applicant's status as a major research library on the basis of the criteria in §§ 778.20 and 778.21. If the Secretary determines that an applicant meets the criteria of a major research library, the determination is effective for each of the four succeeding fiscal years.

(d) An institution that does not meet the criteria for a major research library in §§ 778.20 and 778.21 may still be eligible to receive a grant, if it demonstrates that the particular library collection proposed for grant assistance is of national or international significance for scholarly research.

(e) If an applicant is a consortium or a branch campus of an institution of higher education, the library collection of the consortium or the branch campus—rather than the separate library collections of each unit comprising the consortium or the institution of higher education—must satisfy the conditions of paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.3 What restrictions on eligibility apply?

The Secretary does not award a grant to an applicant otherwise eligible under this program if the applicant—

(a) Receives a grant under section 211 of the Act (College Library Resources Program) during the same fiscal year that it applies for a grant under this part; or

(b) Is eligible to receive a grant under other Federal programs, such as the Medical Library Assistance Act of 1965, for the project it proposes to receive assistance under this part, unless the applicant shows that—

(1) Payments under this part will not duplicate payments under those other Federal programs; and

(2) Special circumstances warrant assistance under this part.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.4 What activities may the Secretary fund?

Funds provided under this part may be used for one or both of the purposes in § 778.1. Authorized activities include, but are not limited to, the following:

(a) Acquiring books and other materials to be used for library purposes.

(b) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving these materials by making photocopies, treating paper or bindings to lengthen their life, or other means.

(c) Cataloging, abstracting, and making available lists and guides of the library collection.

(d) Distributing library materials and bibliographic information to users beyond the primary clientele by mail, or by electronic, photographic, magnetic, optical, or other means.

(e) Acquiring additional equipment and supplies that assist in making library materials available to users beyond the primary clientele.

(f) Hiring necessary additional staff to carry out activities funded under this part.

(g) Communicating with other institutions.

(h) Performing evaluations.

(i) Disseminating information.

(Authority: 20 U.S.C. 1021)

§ 778.5 What are the objectives of the Strengthening Research Library Resources Program?

Applicants are encouraged to design projects that will accomplish one or more of the following objectives:

(a) Adapt, convert, or create library records for unique research materials which expand or otherwise complement the national bibliographic database and which conform to highest national standards.

(b) Augment unique collections of specialized research materials.

(c) Preserve or maintain unique research materials in danger of deterioration.

(d) Promote the sharing of library resources.

(Authority: 20 U.S.C. 1021)

§ 778.6 What regulations apply?

The following regulations apply to the Strengthening Research Library Resources Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 778.

(Authority: 20 U.S.C. 1021)

§ 778.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Fiscal year
Grant
Nonprofit
Private
Project
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Branch campus" means a campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main campus, that is separately accredited.

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and that provides—through its own budgetary and hiring authority, and faculty and administrative staff—postsecondary educational programs for which library facilities, services, and materials are necessary.

"Consortium" means a nonprofit organization of library institutions established or operated for the purpose of sharing library resources, coordinating collection development, or engaging in similar cooperative activities.

"Institution of higher education" means a public or private nonprofit institution of higher education as defined in 34 CFR § 668.2.

"Primary clientele" means students, faculty, or other registered users of the library of the applicant or grantee.

"State agency" means the State agency designated under section 1203 of the Act.

(Authority: 20 U.S.C. 1021)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 778.20 How does the Secretary evaluate an application?

(a) In evaluating applications for new grants, the Secretary uses two sets of criteria.

(b)(1) The Secretary determines an applicant's status as a major research library on the basis of the criteria in § 778.21. An applicant that receives a score of 65 points or more under the criteria in § 778.21 is determined to be a major research library and qualifies to have its project evaluated for an award.

(2) The Secretary notifies an applicant that does not receive a score of 65 points or more under the criteria in § 778.21 that the application will still be considered for funding if additional information or documents are provided to demonstrate the national or international significance for scholarly research of the particular collection described in the grant application.

(c) The Secretary evaluates the quality of the applications from applicants that qualify under paragraphs (b)(1) and (b)(2) of this section, using the criteria in § 788.22.

(Authority: 20 U.S.C. 1021)

§ 778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?

The Secretary uses the criteria in this section to evaluate an applicant's status as a major research library. The maximum score is 100 points. The Secretary reviews each application to determine the extent to which the applicant's library collection—

(a) Makes a significant contribution to higher education and research as measured by factors such as—(20 points)

(1) The major research projects for which the library has made resources available in the past fiscal year;

(2) The amount the applicant expended in research funds from all sources and the number of projects conducted by the institution with these funds in the past fiscal year; and

(3) Evidence that the institution is established and recognized in the field of advanced research and scholarship;

(b) Is broadly based as measured by factors such as—(20 points)

(1) The number of subject areas covered or the comprehensiveness of special collections;

(2) The number of volumes and titles, manuscripts, microforms, and other types of materials;

(3) The number of volumes and titles and other materials added to the collection in the previous fiscal year; and

(4) The number of current periodical subscriptions;

(c) Is recognized as having national or international significance for scholarly research as measured by factors such as—(20 points)

(1) The number of percentage of interlibrary loans made or copies of materials provided by the applicant during the past year to libraries outside the geographical region in which the applicant is located;

(2) The number or percentage of interlibrary loans made or copies provided during the past year to libraries located outside the United States; and

(3) The extent to which loans of the applicant's materials described in paragraphs (c)(1) and (c)(2) of this section are made under formal, cooperative arrangements;

(d) Is of a unique nature, and contains material not widely available, as measured by factors such as—(20 points)

(1) The number and nature of special collections containing research materials not widely available;

(2) The availability of printed, computerized, or otherwise published catalogs or other guides to the special collections; and

(3) Evidence which demonstrates possession of uncommon library resources necessary to support advanced research and scholarship; and

(e) Is in substantial demand by researchers and scholars not connected with the applicant institution as measured by factors such as—(20 points)

(1) The number or percentage of loan requests coming from users outside the applicant's primary clientele;

(2) The extent to which the applicant lends more on interlibrary loan than it borrows;

(3) The number or percentage of researchers and scholars outside the applicant's primary clientele who use its collection;

(4) The number of institutions with which the applicant has formal cooperative agreements to provide library and information services for researchers and scholars outside the applicant's primary clientele; and

(5) Active membership in a major computer-based bibliographic database.

(Authority: 20 U.S.C. 1021, 1041)

(Approved by the Office of Management and Budget under control number 1850-0054)

§ 778.22 What criteria does the Secretary use to evaluate the quality of a project?

The Secretary uses the following criteria to evaluate the quality of the proposed project. The maximum score is 100 points.

(a) *Description of the project.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The purpose of the project is clearly stated;

(2) There is a concise description of the project; and

(3) There is a clear statement of the project objectives.

(b) *Significance of the project.* (45 points) The Secretary reviews each application to determine the importance of the project for scholarly research and inquiry by assessing—

(1) The uniqueness of the project;

(2) The size of the audience of the project is intended to serve;

(3) The need for the project;

(4) The extent to which the project will increase the availability of the applicant's research collections;

(5) The extent to which the proposed project will help the applicant maintain and strengthen its collections, particularly collections which have national or international significance for scholarship research;

(6) The extent to which the applicant intends to disseminate the project accomplishments to the scholarly and professional communities; and

(7) In the case of a joint application submitted by two or more institutions, the extent to which there will be significant project accomplishments as a result of the cooperative undertakings of the institutions.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Education, experience, and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent of the applicant's commitment to the project, its capability to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 1021, 1041)

(Approved by the Office of Management and Budget under control number 1850-0054)

§ 778.23 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 778.22, the Secretary determines whether the most highly rated projects are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of funded projects. Before selecting the most highly rated applications for funding, the Secretary considers—

(1) The geographical distribution of projects funded under this program during the preceding five fiscal years; and

(2) The impact of that distribution on the needs of the research community.

(Authority: 20 U.S.C. 1042)

Subpart D—What Conditions Must Be Met After an Award?

§ 778.30 What agencies must be informed of activities funded under this program?

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its activities under this part.

(Authority: 20 U.S.C. 1022)

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—ANALYSIS OF COMMENTS AND RESPONSES

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

Eligibility For an Award

Comment: One commenter sought clarification of § 778.2 (b) and (e) concerning the eligibility of a branch campus or consortium for a grant award and whether this new language will result in any new practice or procedure within the program.

Discussion: Consortia or branch campuses remain eligible as they have always been. No new practices or procedures have been implemented.

Change: None.

Comment: Several commenters suggested that the word "particular" be inserted in § 778.2(d) before the phrase "library collection proposed for grant assistance" which would be consistent with the wording of section 231(c) of the Act, as amended, and with § 778.20(b)(2) of the regulations.

Discussion: The omission of the term "particular" in the proposed regulations was inadvertent. The Secretary agrees that the law and regulations should be consistent.

Change: The word "particular" has been added to read "the particular library collection proposed for grant assistance" in accordance with the comments and the law.

Priorities the Secretary May Establish

Comment: Eight commenters were concerned with the regulatory authorization of § 778.5 for the Secretary to establish priorities for the program. The commenters believed that the exercise of priorities for awards under the program may not reflect the actual needs of the scholarly and research community. A number of commenters strongly suggested that the best method of determining how research libraries can be strengthened in the national interest is to rely on those very libraries to propose projects which serve national education and research efforts and to fund those projects which are the most meritorious.

Discussion: The intent of the proposed setting of priorities was to ensure that funded projects address areas of recognized national need. However, in light of the narrow range of activities authorized under the statute, the Secretary has decided that he can rely on suggesting certain project objectives to applicants. If there are considerable needs not sufficiently served, the Secretary will revisit the issue of whether priorities should be set for the program.

Change: The proposed language permitting the Secretary to establish priorities annually, if so desired, has been deleted, and the former "program objectives" section of the prior regulations will take its place.

Definitions Which Apply

Comment: Several commenters sought clarification of § 778.7(b) relating to the definition of "branch campus." They questioned the rationale for the addition of the word "permanent" and the requirement for separate accreditation and separate budgetary and hiring authority, as this would considerably narrow the definition.

Discussion: The addition of the word "permanent" was included to clarify the definition of "branch campus." It was not intended to narrow or change the definition in any manner.

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Change: In accordance with the comments, the word "permanent" preceding "branch campus" will be deleted.

Evaluation of an Application by the Secretary

Comment: One commenter suggested that in § 778.20(b)(2) it is unlikely that a library which does not score 65 points in the narrative of the application will be able to prove national or international significance of a collection and felt this was contradictory to the intent of Title II–C which is to serve major research libraries. However, a major national organization representing the research community commented favorably on this straightforward implementation of section 231(c) of the Act, as amended, as this would encourage smaller institutions with particular collections of significance to researchers and scholars to seek II–C funding.

Discussion: The revisions to eligibility criteria as provided in § 778.20(b)(2) are statutorily mandated by the Higher Education Amendments of 1986.

Change: None.

Criteria the Secretary Uses to Evaluate an Applicant as a Majof Research Library

Comment: Several commenters made note of the deletion in § 778.21(e)(5) of the word "active" in front of the phrase "membership in a major computer based bibliographic database." They argued that membership per se is of no consequence unless one is active and contributes to the greater bibliographical pool accessible to libraries throughout the nation and suggested that the word "active" be reinstated.

Discussion: In evaluating an applicant as a major research library, the criterion which establishes the applicant as a member of a major computer based bibliographic database is an important one since the program's intent is to disseminate information about unique resources nationwide. The distinction between "membership" and "active membership" is equally important, as one must not only belong to the database but must contribute as well. The Secretary agrees with this view.

Change: The word "active" will be included so that the language will read "active membership * * *"

Criteria the Secretary Uses to Evaluate the Quality of a Project

Comment: The Secretary received numerous comments on the proposed changes in the numerical values assigned to the criteria for evaluation of the quality of a project. Most commenters agreed with the reallocation of the 100 points to give greater weight to the *Significance of the Project* section as reflecting the program focus on research library resources and their significant. Only one commenter objected to the change, arguing that the new numerical rankings were better suited to the previous regulations than the reformatted wording.

Discussion: The majority of the commenters agreed that reallocation of point values assigned to the criteria for evaluation of a project appropriately gives greater weight to the aspects of the program which are the most significant, *Description of the Project* and *Plan of Operation.*

Change: None.

Comment: Several commenters were concerned that the deduction of points from the *Budget and Cost-effectiveness, Quality of Key Personnel,* and *Adequacy of Resources* sections would minimize critical assessment factors and cautioned against any further reduction in points for these sections. One commenter stated that because funding is so limited it is imperative that funding requests be appropriate and reasonable and feared that the reviewers may now disregard a carefully constructed budget and cost effectiveness section. The commenter suggested further requests for comments on § 778.22(e) be made.

Discussion: The point values assigned are sufficient to properly evaluate *Budget and Cost-effectiveness, Adequancy of Resources* and *Quality of Key Personnel,* all of which are addressed in one way or another in § 778.22(c), *Plan of Operation.* No further point reductions for these sections are planned.

Change: None.

Comment: In § 778.22(a) *Description of the Project,* several commenters felt that at least 10 of 100 points should be devoted to this section since a clear and concise statement of project objectives is one predictor of the likelihood that the project is well-organized and potentially successful. All commenters strongly supported the assignment of points to this section and stated that no further reduction in points assigned to the *Description of the Project* be made.

Discussion: A value of ten points is assigned to the *Description of the Project* section which the Secretary considers sufficient to evaluate project objectives. There was no intent on the part of the Department to make further reductions as this section is an important indicator by which the potential for a successful project is measured.

Change: None.

Comment: Numerous comments were received on § 778.22(b)(7) concerning the implication that there is a preference for joint applications as a criterion under *Significance of the Project.* Many commenters argued that encouragement of collaboration is not the purpose of Title II–C and that simply because some applications are joint does not make them superior to single institution projects. The commenters suggested that there should be no real or implied preference for joint applications in the regulations and that clarifying language be added.

Discussion: There was no intention to express or imply a preference for joint applications. The criterion is included to point out the need for a proper evaluation of the significance of a cooperative undertaking if one is submitted. Cooperative projects require that the applicant, in preparing the application, and the reviewer, in evaluating it, consider factors unique to joint projects. This criterion instructs the applicant and the reviewer that a case must be made for the validity of the project as a joint rather than an individual proposal. There are projects which can only be accomplished as collaborative efforts and this must be demonstrated when joint proposals are submitted. In light of these comments, however, a revision to § 778.22(b)(7) is made to avoid further confusion.

Change: The phrase has been altered to avoid ambiguity and promote clarity.

Comment: Numerous comments were received concerning the inclusion of the phrase "professional productivity" in § 778.22(d)(2)(i) as a criterion by which the quality of the key personnel will be judged. The commenters sought clarification of this phrase as they were uncertain what evidence would suffice to meet this criterion. They argued that productivity itself may be of much less importance in a project of national significance than professional quality and questioned the rationale for including such a nebulous phrase.

Discussion: With regard to the qualifications of the key personnel, the Secretary has decided that the commenters have made an important distinction between "productivity" and "experience." It is noted that, in certain arenas, the only method to measure quality is via "productivity," i.e., publication of articles and books. However, for purposes of this program, quality of key personnel can be evaluated in a number of ways. Education, training, and experience in the field are considerably easier to measure than is "productivity."

Change: In accordance with the comments, the phrase "professional productivity" is deleted. This sentence will now read "Education, experience, and training in fields related to the objectives of the project."

Comment: One commenter was concerned that § 778.22(g), *Adequacy of Resources,* now suggests as a criterion a willingness on the part of the institution to share costs. Clarification of this point was sought, along with the level at which the institution would need to show this willingness.

Discussion: There is no significant change in this criterion from the previous regulations except that two separate items were combined into one. There is no new requirement for any level of cost-sharing or matching funds. The application narrative should describe the resources available to the applicant and what will be utilized during the project. This is not a formal cost-sharing requirement.

Change: None.

Additional Factors the Secretary may Consider

Comment: The Secretary received numerous comments on § 778.23 concerning the provision to expand the Secretary's discretion in improving geographical distribution of awards. One commenter stated that equitable geographical distribution as a criterion constitutes unfair competition and that superior proposals from qualified research libraries should be the overriding criterion. They also stated that peer review becomes meaningless with this rule. Many commenters were concerned with the statement that the Secretary may consider the geographical distribution of projects funded during the preceding five years *or* the current competition only. The majority of the commenters were opposed to the provision to include review of the current year's proposals only as this would lead to support of weaker proposals simply for reasons of geographical distribution of awards. One commenter suggested that this change would leave the program vulnerable to political exigencies of particular States or regions of the country. Another commenter stated that this would inflict arbitrary and unacceptable restrictions on grants and has no basis in the statute.

Discussion: Section 232 of the Act directs the Secretary "to achieve broad and equitable geographical distribution throughout the Nation" regarding grants under this program. In light of this directive, the Secretary has no choice but to consider whether grants are broadly and equitably distributed. In prior years, this assessment was based primarily on the distribution of awards over the preceding five year period of time, and factors such as the current year's distribution were not considered. The Secretary had decided that the geographical distribution of projects during the preceding five fiscal years, and the impact of current awards on the needs of the research community should be sufficient factors for the Secretary to discharge his statutory responsibilities under section 232 of the Act.

Change: The Secretary has revised the proposed regulations by deleting § 778.23(b)(1) which permitted consideration of the current year's geographical distribution only in endeavoring to achieve broad and equitable distribution of projects and, instead, will consider the geographical distribution of the projects during the preceding five fiscal years and the impact of current awards on the needs of the research community.

Comment: Deletion of prior §§ 778.32(c)(2)(v) and 778.32(d)(2)(iv) concerning the employment of and project participation by members of traditionally underrepresented groups was a cause for concern by several commenters and they sought clarification of and rationale for the omission of this language.

Discussion: Sections 778.32(c)(2)(v) and 778.32(d)(2)(iv) of the prior regulations, formerly required by EDGAR as essential elements of the selection criteria, were dropped from the revised EDGAR regulations that appeared in the **Federal Register** on July 24, 1987, and, as a consequence, were not included in the proposed regulations. The Secretary believes that for purposes of the HEA II–C program, equal consideration of traditionally underrepresented groups is adequately covered by Part IV, Assurances, which is page G of the II–C application package, and is a required submission.

Change: None.

[FR Doc. 88–10795 Filed 5–12–88; 8:45 am]
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Friday,
May 13, 1988

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, and 177
Molten Sulfur; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, and 177

[Docket No. HM-198, Amdt. Nos. 172-112, 173-205, 174-84, 177-72]

Molten Sulfur

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–179) to regulate molten sulfur as an ORM–C material. This material would be subjected to the hazard communication, general packaging and incident reporting requirements contained in the HMR. These changes are necessary to provide emergency response personnel with sufficient hazard identification information to respond to transportation incidents, and to increase the overall safety in the transport of this material.

EFFECTIVE DATE: These amendments are effective on January 2, 1989. However, compliance with the regulations as amended herein is authorized as of June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Regulations Development Branch, DHM–11, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590, (202) 366–4488.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1986, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register**, under Docket HM–198, Notice No. 86–6 (51 FR 42114). In Notice 86–6, RSPA proposed to add molten sulfur to the § 172.101 Table, with a hazard class of "flammable solid" and a packaging reference to § 173.24. A "+" symbol appeared in Column 1 of the § 172.101 Table to indicate that this material would be regulated as a flammable solid even though it did not meet the definition for "flammable solid" in § 173.150. This action to regulate molten sulfur was based on RSPA's belief that molten sulfur may pose an unreasonable risk to health and safety or property when transported in commerce.

Several incidents involving the transport of molten sulfur, including three in the state of California since 1985, have emphasized the need for regulation of this material. Accidents involving spills near Barstow County and Culver City in 1986, and another in Benecia in 1985, demonstrated a lack of hazard communication. In each of these incidents, lack of swift and accurate identification of the material led to delays in handling the incidents and, in at least two instances, contributed to injuries sustained by persons on the scene. Molten sulfur will burn persons coming in contact with it and may present a toxic hazard due to the presence of limited quantities of hydrogen sulfide gas. If molten sulfur is ignited, it produces large quantities of toxic sulfur dioxide and may cause a fire to spread as a result of the burning liquid's tendency to flow quite readily. The Benecia, California incident resulted in two persons being killed and twenty-six persons being injured by the spill and closure of a major transportation artery for twenty-four hours. The interested reader is directed to Notice No. 86–6 for additional background information concerning the Benecia, California incident.

Notice No. 86–6 consisted of two parts: An NPRM addressed to molten sulfur and an advance notice of proposed rulemaking, consisting of a series of eleven questions, addressed to other molten materials, such as molten aluminum. This final rule addresses only molten sulfur. RSPA will address other molten materials in a future rulemaking action.

In response to the NPRM, RSPA received 36 comments addressed to molten sulfur. Five commenters supported the proposed actions, essentially as proposed, citing the need for hazard communication requirements and general packaging requirements. Several of these commenters stated that the flammable solid hazard class was appropriate for consistency with the classification of molten sulfur in the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations).

Ten commenters opposed any regulation of molten sulfur. These commenters contended that regulation was inappropriate, some on the basis that the hazards posed by the material do not justify regulation and others on the basis that the material does not meet the definition of a flammable solid.

Twenty-one commenters were in favor of regulating molten sulfur but opposed its classification as a flammable solid. Several commenters representing rail concerns stated that classification of molten sulfur as a flammable solid would subject rail cars transporting the material to train placement requirements. In addition, commenters contended that this would significantly increase the costs incurred by rail carriers and shippers of molten sulfur. Based on information provided by commenters, RSPA estimated that over 90,000 rail carloads of molten sulfur are transported each year.

Several commenters argued that, because molten sulfur does not meet the definition in § 173.150 for a flammable solid, it is inappropriate, and potentially confusing, to classify it as a flammable solid. Commenters suggested that molten sulfur be classed as an ORM–C, rather than a flammable solid.

RSPA's primary reason for initiating this rulemaking action was to extend the hazard communication requirements to molten sulfur. RSPA proposed to class the material as a flammable solid, rather than an ORM–C, because shipping papers and markings are normally required for shipments of flammable solids, but not for ORM–C materials in all instances. RSPA believes that the need for both shipping paper and markings is essential to communicate the hazards of molten sulfur.

RSPA agrees with the commenters that molten sulfur does not meet the definition in § 173.150 for a flammable solid, nor does it meet the defining criteria for flammable solids in the UN Recommendations. However, there are many hazardous materials which do not meet the defining criteria of the hazard class to which they are assigned. These materials appear in the § 172.101 Table with a "+" symbol in column 1.

After consideration of the merits of the comments submitted, RSPA agrees with the commenters that classing of molten sulfur as a flammable solid may be inappropriate. With regard to the hazards posed by molten sulfur, it appears that molten sulfur poses a lesser degree of hazard than other materials regulated as flammable solids. Also, it appears that any safety benefits that might be attributable to requiring FLAMMABLE SOLID placards on transport vehicles, and train placement requirements for tank cars of molten sulfur, would be outweighed by the costs of these regulatory requirements.

RSPA believes that an appropriate level of safety, with regard to the hazard communication requirements, can be achieved by placing molten sulfur in the ORM-C hazard class, by requiring shipping papers in all modes of transport, and by requiring bulk packagings to be marked with the proper shipping name "MOLTEN SULFUR" and with identification numbers as prescribed in § 172.332. Therefore, in this final rule, RSPA is amending the HMR as follows. A new

entry is added to the § 172.101 Table to provide for Sulfur, molten, classed as an ORM-C. Section 172.200(b) is revised to require shipping papers for ORM materials when transported in a regulated mode. Section 173.1080 is revised to provide for packaging of molten sulfur in conformance with § 173.510 and to require the marking of bulk packages containing the material. Sections 174.24(b) and 177.817(d) are amended for consistency with the changes made in § 172.200.

The revision to § 172.200(b) affects materials other than molten sulfur and clarifies the application of shipping paper requirements to ORM-A, B, and C materials. Most ORM-A, B, and C materials are regulated only for transportation by aircraft or vessel, or both, as indicated in the § 172.101 Table by the appearance of the symbols, "A" and "W" in Column 1. Under the language originally adopted in Docket HM–103/112 (41 FR 16044), ORM-A, B, and C materials were subject to shipping paper requirements only when transported in a regulated mode, i.e., in the air or water modes. Subsequent amendments to the HMR added ORM-B and C materials (e.g., gallium and asbestos, respectively) that are regulated in all modes of transportation. These subsequent amendments were intended to subject these materials to shipping paper requirements when transported in any mode when there is no "A" or "W" in Column 1 of the § 172.101 Table. In Docket HM-137 (41 FR 37114), wherein gallium metal, liquid, and gallium metal, solid, were subjected to regulation under the HMR, it was specifically stated that "* * * the provisions of 49 CFR Part 172, Subparts C and D (relating to shipping papers and markings) * * * are applicable to shipments of gallium metal * * *" Inadvertently, § 172.200(b) was not revised at that time to clarify that shipping papers are required any time an ORM-A, B, or C material is transported in a regulated mode. This error is corrected in this final rule. In addition, the language of §§ 174.24(b) and 177.817(d) is revised for consistency with the revised § 172.200(b).

Most commenters contended that specific packaging requirements are not needed for molten sulfur and that § 173.24 should be referenced for general packaging requirements. In this rule, RSPA specifies packaging in accordance with the general packaging requirements of § 173.510, which, in effect, requires conformance with § 173.24. RSPA believes that reference to general packaging requirements in §§ 173.510 and 173.24, instead of adoption of more specific packaging requirements, is acceptable for the present time. RSPA anticipates further consideration of the need for more specific packaging requirements as part of RSPA's consideration of the need for packaging standards for molten materials in general which, as previously mentioned, will be addressed in a future NPRM.

Several commenters contended that RSPA should create a distinct hazard class for molten sulfur and other molten materials. RSPA desires to avoid a proliferation of hazard classes to address materials with unique characteristics and believes that the actions taken in this final rule address the safety issues in a practicable manner. However, RSPA wishes to note that Docket HM–181 (Notice No. 87–4; 52 FR 42772) contains a proposal to eliminate the ORM-C hazard class in favor of the internationally recognized Class 9 for miscellaneous hazardous materials. Therefore, this issue will be given further consideration in future rulemaking action. Also, since molten sulfur is classed as a flammable solid (i.e., Division 4.1), rather than a Class 9 material, in the United Nations Recommendations on the Transport of Dangerous Goods and the International Maritime Dangerous Goods Code, RSPA may propose a change in this classification.

Administrative Notices

Executive Order 12291

The RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this final rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in the current § 172.200 pertaining to shipping papers have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned control number, OMB No. 2137–034 (expiration date 11–30–90).

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Shipping papers, Marking and labeling.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1806; 49 CFR Part 1, unless otherwise noted.

2. In § 172.101, the Hazardous Materials Table is amended by adding a new entry in appropriate alphabetical sequence, as follows:

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§ 172.101 Hazardous Materials Table.

+/E/A/W	Hazardous materials description and proper shipping names	Hazard class	Identification No.	Label(s) required (if not excepted)	Packaging: Exceptions	Packaging: Specific requirements	Maximum net quantity in one package: Passenger carrying aircraft or railcar	Maximum net quantity in one package: Cargo aircraft only	Water shipments: Cargo vessel	Water shipments: Passenger vessel	Water shipments: Other requirements
(1)	(2)	(3)	(3(a))	(4)	(5(a))	(5(b))	(6(a))	(6(b))	(7(a))	(7(b))	(7(c))
	(Add) Sulfur, molten	ORM-C	UN2448	None	173.505	173.1080	Forbidden	Forbidden	1	1	Stow away from oxidizers and living quarters.

3. In § 172.200, paragraph (b) is revised to read as follows:

§ 172.200 Applicability.

* * * * *

(b) This subpart does not apply to any material, other than a hazardous waste or a hazardous substance, that is—

(1) Identified by the letter "A" in Column 1 of the § 172.101 Table, except when the material is offered or intended for transportation by air; or

(2) Identified by the letter "W" in Column 1 of the § 172.101 Table, except when the material is offered or intended for transportation by water; or

(3) An ORM–D, except when the material is offered or intended for transportation by air.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR Part 1, unless otherwise noted.

5. Section 173.1080 is revised to read as follows:

§ 173.1080 Sulfur, molten or solid.

(a) *Solid sulfur.* When offered for transportation by water, solid sulfur, including flowers of sulfur (sulfur flower), must be packaged in conformance with § 173.510 in packagings as follows:

(1) Metal barrel or drum;
(2) Wooden barrel or keg;
(3) Wooden or fiberboard box;
(4) Sift-proof multi-wall paper bag;
(5) Sift-proof paper-lined burlap bag;
(6) Sift-proof rail car; or
(7) Sift-proof or lined freight container.

(b) *Molten sulfur.* Packagings for molten sulfur must—

(1) Conform to the requirements of § 173.510; and

(2) For bulk packagings, be marked "MOLTEN SULFUR" in the manner prescribed in Subpart D of Part 172 of this subchapter.

PART 174—CARRIAGE BY RAIL

6. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806; 49 CFR Part 1, unless otherwise noted.

7. In § 174.24, paragraph (b) is revised to read as follows:

§ 174.24 Shipping papers.

* * * * *

(b) This subpart does not apply to a material that is excepted from shipping paper requirements as specified in § 172.200 of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

8. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR Part 1, unless otherwise noted.

9. In § 177.817, paragraph (d) is revised to read as follows:

§ 177.817 Shipping papers.

* * * * *

(d) This subpart does not apply to a material that is excepted from shipping paper requirements as specified in § 172.200 of this subchapter.

* * * * *

Issued in Washington, DC, on May 10, 1988, under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–10802 Filed 5–12–88; 8:45 am]

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Friday
May 13, 1988

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Availability of Funding Under the Community Housing Resource Board Program; Competitive Solicitation; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-88-1797, FR-2485]

Availability of Funding Under the Community Housing Resource Board Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funds availability.

SUMMARY: HUD is soliciting applications from eligible Community Housing Resource Boards (CHRBs) for funding under the CHRB Program. CHRBs must meet certain eligibility criteria in order to qualify for consideration.

DATE: Applications are to be received not later than June 28, 1988, 3:00 p.m. Local time at the place designated for the receipt of applications in accordance with the CHRB Request for Grant Applications.

FOR FURTHER INFORMATION CONTACT: The appropriate Regional Director for Fair Housing and Equal Opportunity is also the Grant Officer (GO) and is located at the HUD Regional Office. Application kits are available to eligible CHRB applicants upon written (preferably certified mail) request from the office listed below which is responsible for serving the State in which the Resource Board is located. *Collect calls will not be accepted.* These kits are available from:

Region I:

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut
Department of Housing and Urban Development
Attention: Robert Laplante
Director, Regional Office of Fair Housing and Equal Opportunity, 1E
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 308
Boston, MA 02222-1092
Phone: 617/565-5304

Region II:

New York and New Jersey
Department of Housing and Urban Development
Attention: Stanley Seidenfeld
Director, Regional Office of Fair Housing and Equal Opportunity, 2E
26 Federal Plaza, Room 3532
New York, NY 10278-0068
Phone: 212/264-1290

Region III:

Pennsylvania, Delaware, Maryland, Virginia, West Virginia and Washington, DC
Department of Housing and Urban Development
Attention: Raymond J. Solecki
Director, Regional Office of Fair Housing and Equal Opportunity, 3E
Liberty Square Building
105 South 7th Street, 3rd floor
Philadelphia, PA 19106-3392
Phone: 215/597-2338

Region IV:

Georgia, North Carolina, South Carolina, Florida, Tennessee, Alabama, Mississippi and Kentucky
Department of Housing and Urban Development
Attention: Augustus L. Clay
Director, Regional Office of Fair Housing and Equal Opportunity, 4E
Richard B. Russell Federal Building, Room 524
75 Spring Street, SW.
Atlanta, GA 30303-3388
Phone: 404/331-5140

Region V:

Illinois, Ohio, Michigan, Minnesota, Indiana and Wisconsin
Department of Housing and Urban Development
Attention: Thomas Higginbothan
Director, Regional Office of Fair Housing and Equal Opportunity, 5E
Room 2110
300 South Wacker Drive
Chicago, IL 60606-6765
Phone: 312/353-7776

Region VI:

Texas, Oklahoma, Louisiana, Arkansas and New Mexico
Department of Housing and Urban Development
Attention: John E. Wright
Director, Regional Office of Fair Housing and Equal Opportunity, 6E
1600 Throckmorton Street, Room 501
P.O. Box 2905
Fort Worth, TX 76113-2905
Phone: 817/885-5491

Region VII:

Kansas, Iowa, Nebraska and Missouri
Department of Housing and Urban Development
Attention: J.B. Littlejohn
Director, Regional Office of Fair Housing and Equal Opportunity, 7E
Professional Building, Room 1102
1103 Grand Avenue
Kansas City, MO 64106-2496
Phone: 816/374-2685

Region VIII:

Colorado, Wyoming, North Dakota, South Dakota, Montana and Utah
Department of Housing and Urban Development
Attention: Lloyd Miller
Director, Regional Office of Fair Housing and Equal Opportunity, 8E
Executive Tower Building
1405 Curtis Street, 27th Floor
Denver, CO 80202-2349
Phone: 303/844-4751

Region IX:

California, Nevada, Arizona and Hawaii
Department of Housing and Urban Development
Attention: Lavera Gillespie
Director, Regional Office of Fair Housing and Equal Opportunity, 9E
Phillip Burton Federal Building, Room 8001
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, CA 94102-3448
Phone: 415/556-8626

Region X:

Washington, Oregon, Alaska and Idaho
Department of Housing and Urban Development
Attention: James Brown
Director, Regional Office of Fair Housing and Equal Opportunity, 10E
1321 Second Avenue, 8th Floor
Seattle, WA 98101-2054
Phone: 206/442-0228

SUPPLEMENTARY INFORMATION. This Notice of Funds Availability is issued under the regulations for the CHRB Program, codified at 24 CFR Part 120. Interested CHRBs are urged to review these regulations and the factors for award in the application kit to determine whether they should apply under this program.

The program has two categories of funding: (1) Maintenance, and (2) Improvement. A CHRB should apply for Maintenance funding when its activities have resulted in full implementation of the terms of the Voluntary Affirmative Marketing Agreement (VAMA). CHRBs in this category will be provided funds to maintain their efforts in promoting continued accomplishment of the goals of the VAMA.

A CHRB should apply for Improvement funding when the terms of the VAMA have not been fully implemented. CHRBs in this category will be provided funds to improve their capacity to help other housing industry groups to achieve the goals of the VAMA.

Eligible CHRBs may apply for funds under one category only.

Program Background

Section 808(e) (3) and (5) of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3608) requires the Secretary to "cooperate with and render technical assistance to Federal, State, local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices * * *" and to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title."

Section 809 of the Act requires that "the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title * * * shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement."

In order to promote the achievement of the goal of fair housing throughout the United States, the Department of Housing and Urban Development has developed the Voluntary Affirmative Marketing Agreement (VAMA) Program. This nationwide program focuses on local efforts to assure nondiscrimination in connection with the sale, rental and financing of housing and the provision of services and facilities in connection with those activities. The Program goal is to promote achievement of a condition in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing regardless of their race, color, religion, sex or national origin.

Consistent with its responsibilities under Title VIII, HUD has negotiated VAMAs with the National Association of Realtors, the National Association of Real Estate Brokers, the National Association of Real Estate License Law Officials and the National Association of the Home Builders. These agreements are intended to promote a broad equal opportunity program designed to assure that housing will be marketed on a nondiscriminatory basis. Signatories to a VAMA agree to conduct certain programs and activities to acquaint communities with equal housing opportunity, to establish office procedures to ensure that there is no denial of equal professional service and to make materials available which explain the commitment of signatories to the goal of fair housing.

The VAMAs, approved by housing industry associations at the national level, are implemented by member firms at the local level. In addition to providing a program to promote fair housing efforts, the VAMAs commit HUD to provide technical assistance to local housing industry groups that become signatories to the agreements. Assistance in implementing VAMA commitments is provided to the local housing industry groups through HUD-established Community Housing Resource Boards (CHRBs) composed of volunteer representatives of community organizations dedicated to equal housing opportunity.

Eligible Applicants

To be eligible for funding, each applicant must be a CHRB consisting of HUD appointed representatives from community organizations or agencies formed to fulfill HUD's obligation to provide technical assistance to local real estate boards in the implementation and monitoring of the VAMA; must have been in existence for at least six months before the publication of this notice; and must otherwise meet the criteria contained in 24 CFR Part 120.

Applicants that have been in existence for more than one year must have received a satisfactory performance rating in the most recent field office evaluation of the CHRB. (The evaluation methodology is explained in the application kit.)

A CHRB that received initial funding under the FY-1987 NOFA may be eligible for funding in FY-1988 if the CHRB's request under the 1987 NOFA was within the maximum funding limitation for FY-1987 and the amount awarded in FY-1987 was less than the amount requested. Under this NOFA, such applicants will be eligible to receive a grant equal to the amount requested in FY-1987 less the amount of the grant awarded in FY-1987. For example, a CHRB in a jurisdiction of over 50,000 persons that requested an award of $25,000 in FY-1987 and received $15,000 would be eligible for up to $10,000 under this NOFA. (CHRBs that received full funding during 1987 are not eligible for funding under this NOFA.)

CHRBs that received funding in fiscal years 1982, 1983, 1984 (including New Horizons CHRBs), 1985 and 1986 may apply for funding under this notice. In addition to the requirements stated above, to be eligible for funding such CHRBs:

—Must have successfully completed their previous grant; submitted a requisition for final payment of the grants; and received a notification from the Government Technical Representative by May 24, 1988 stating that their final payment voucher has been approved; and

—Must submit evidence demonstrating that during the grant year it completed at least two activities that specifically addressed the goals of the VAMA; engaged in the identification of local problems and issues that impeded equal housing opportunity; and assessed local housing industry group performance under the VAMA.

Method of Distribution

Maximum funding amounts, except as modified above for CHRBs funded in FY-1987 will be as follows:

(a) CHRBs in jurisdictions with populations under 50,000 may apply for grants of up to $15,000.

(b) CHRBs in jurisdictions with populations of 50,000 or more may apply for grants of up to $25,000.

Sixty percent of the funds to be awarded will be allocated to proposals from CHRBs seeking granting for improvement funding. Forty percent of the funds will be for proposals from CHRBs seeking maintenance funding. If funds remain in either category (improvement or maintenance) after all acceptable proposals have been funded, the remaining funds may be used for the other category.

Approximately $1,000,000 is available under this notice. Each of HUD's ten Regions has been assigned an allocation (see below) from these funds based on the number of CHRBs expected to apply weighed against our funding limitation. Both large and small jurisdictions are considered. A Headquarters reserve of $100,000 has been set aside.

The following are the Regional allocations:

Region and Allocation

I—$75,000
II—$85,000
III—$103,000
IV—$103,000
V—$103,000
VI—$103,000
VII—$75,000
VIII—$75,000
IX—$103,000
X—$75,000

Headquarters Reserve—$100,000

The reserve will be allocated by the Assistant Secretary to address such special circumstances as geographic distribution and minority concentration after all applications are rated and ranked. Any funds not utilized by a particular region will be returned to the Headquarters reserve.

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Application Information

Applicants for funding must submit all information required in the application kit, including letters of financial or in-kind support from the private sector, and/or from State or local governmental entities, a budget, all forms that are required, a one-page synopsis of the proposed projects and a recommendation letter from at least one of the housing industry groups that the CHRB works with in promoting the Voluntary Affirmative Marketing Agreement. *If an applicant does not submit all information required in the Request for Grant Applications (RFGA), the application will be considered non-responsive to the RFGA and will not be rated.*

Kits will be provided to each applicant CHRB by the servicing Regional Office upon written request. Each applicant will receive the same application kit. Where the factors for award differ for maintenance or improvement funding, the difference in the application requirements will be explained in the kit. Questions not addressed in the kit may be directed to the appropriate HUD Field or Regional Office, to the attention of the Director of Fair Housing and Equal Opportunity.

Since training is an essential part of this program, all proposed budgets must set aside 5% of grant funds for training purposes. Further information on training requirements will be provided by HUD Regional Offices during the funding year.

It is important to note that, although funds may be used for operating costs associated with the specific funded activities of the CHRB program, applicants should propose to use the major portion (greater than 50 percent) of funds for program costs (as opposed to administrative costs).

Each CHRB must submit a detailed 12-month schedule of events coordinated with the local housing industry group and HUD, showing how the CHRB intends to assess, assist, monitor and evaluate the implementation of the VAMA. In the event problems of coordination with the local housing industry group are encountered, the CHRB should describe the difficulty in the submission.

Applications for funding must be received by the appropriate Regional Office by 3:00 p.m. Regional Office time, June 28, 1988. (See Grant Application Kit Section C–2, Submission of Application, for further clarification.) See Further Information Section of this NOFA for addresses.

Section Criteria

Applications will be reviewed, scored and ranked by selected staff personnel from HUD Regional Offices. Each Regional Administrator has also been delegated the responsibility for making grant awards to selected CHRBs from the funds which he/she has been allocated. Projects will be evaluated for funding separately within each category, to avoid a disadvantage to less experienced or first-time applicant CHRBs.

Projects will be ranked on the basis of the following five criteria:

1. The relationship of the proposed project to the goals of the VAMA. The principal purposes of the CHRB are to monitor progress, provide technical assistance, and recommend and promote solutions to problems associated with the implementation of the VAMA. Prior year projects have consisted of much outreach and education activity. Although HUD has appreciated these fair housing initiatives, not enough attention has been given to the VAMA and the housing industry. CHRBs were created to work with the housing industry group, and to monitor, train and evaluate them in their efforts to carry out their VAMA commitments. Therefore, this notice places a priority on these later activities. Applications stressing outreach and education activities will receive fewer points under the selection criteria. HUD, therefore, gives greater weight to projects that emphasize VAMA implementation and monitoring activities.

Accordingly, eligible projects that can earn the maximum number of points under this first criterion are those that:

(a) Annually assess the effectiveness of the VAMA;

(b) Seek cooperative solutions to problems associated with implementation of the VAMA and provide assistance to the local housing industry group;

(c) Seek to expand minority involvement in some phase of the housing industry;

(d) Describe and identify the rental housing supply within the CHRB's jurisdiction, determine existing housing discrimination problems, and develop pertinent solutions. Eligible projects that will receive a lower priority (i.e., ones that less completely meet the goals of the VAMA) are those that:

(a) Inform the public regarding the goals of fair housing and the VAMA;

(b) Assess community fair housing needs and problems or successes;

(c) Expand public awareness of housing opportunities in the community.

Since the VAMA does not permit CHRBs to sponsor, conduct, or fund programs of real estate testing, projects relating to such programs are not acceptable.

2. The extent to which the proposed project will affect the groups the VAMA is designed to reach; e.g., the extent to which the project(s) will have significant positive impact in areas with substantial minority population or on a particular housing industry group.

3. The commitment of the CHRB members, as indicated through regular attendance at meetings (verified by copies of meeting minutes), by demonstrated results of activities, as described in correspondence, news reports, editorials, testimonials, etc. (for CHRBs requesting maintenance funding), and by expected results of activities, based upon a thoughtful and reasoned analysis of goals and problems and the related actions needed to address them (for CHRBs requesting improvement funding).

4. The amount of relevant professional or organizational experience, including experience in fair housing, available to the CHRB among its membership, its community contacts and working relationships, or staffing, to implement the proposed projects.

5. The extent to which the proposed project does not duplicate other community efforts.

Proposals must be specific and address each criterion. Any reports, documentation and correspondence included with the application must be clear and legible and will not be returned, as these *will be retained* for record purposes.

The relative weights of the criteria for selection will be:

Criteria	Points
Relationship of projects to VAMA goals	30
The extent to which the proposed project will affect the groups the VAMAs are designed to reach	25
Documentation of Resource Board Commitment	15
Experience available to implement projects	20
Extent to which projects do not duplicate other community efforts	10
Total	100

Notification of Applicants

HUD will notify all successful applicants upon selection. Unsuccessful applicants will be notified after the awards have been made. No information will be made available to applicants during the period of HUD review and evaluation, except for notification to those applicants that are declared ineligible or late.

This program is listed in the Catalog of Federal Domestic Assistance under program number 14.403, Community Housing Resource Board Program. The requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)) have been met, and the information collection requirements contained in this notice have been approved under OMB Control Number 2529–0022.

Authority: Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3619).

Date: April 20, 1988.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88–10804 Filed 5–12–88; 8:45 am]

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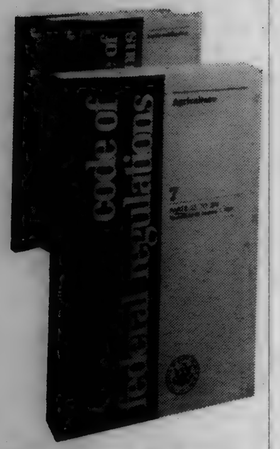
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Designating May 8–14, 1988, as "Just Say No Week." (May 10, 1988; 102 Stat. 463; 1 page) Price: $1.00

S.J. Res. 59/Pub. L. 100–314
To designate the month of May, 1988 as "National Foster Care Month." (May 10, 1988; 102 Stat. 464; 1 page) Price: $1.00

S.J. Res. 250/Pub. L. 100–315
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WHEN: June 13; at 1:00 p.m.
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Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

Presidential Documents

Title 3—

The President

Proclamation 5822 of May 12, 1988

National Tuberous Sclerosis Awareness Week, 1988

By the President of the United States of America

A Proclamation

Tuberous sclerosis is an inherited disease whose neurological symptoms can run the gamut from speech disorders, mental retardation, and behavioral problems to motor difficulties and seizures. Small benign tumors may grow on the face and eyes, as well as in the brain, kidneys, and other organs. In its most devastating form, tuberous sclerosis leaves patients completely helpless and dependent.

Approximately one in every 10,000 Americans has tuberous sclerosis, placing this malady among the more common genetic disorders. Yet it often goes unrecognized. White spots that generally appear on the skin early in life are one characteristic sign, but symptoms often take considerable time to develop and are easily misdiagnosed.

There is currently no cure for tuberous sclerosis, but some of its symptoms are treatable. Seizures may be controlled by new anticonvulsant drugs. Children with learning, speech, and language disabilities may benefit from sophisticated educational techniques. People with motor handicaps can learn skills to increase their mobility and enhance daily living.

The best hope for alleviating the suffering brought on by this disease lies in biomedical research. The National Institute of Neurological and Communicative Disorders and Stroke (NINCDS), the focal point within the Federal government for research on neurogenetic disorders, encourages studies on tuberous sclerosis. Some investigators are striving to develop improved methods of treatment; others search for the location of the responsible gene so that the defect that leads to tuberous sclerosis can one day be identified, analyzed, and corrected.

Two private, voluntary health agencies, the American Tuberous Sclerosis Association and the National Tuberous Sclerosis Association, share with the NINCDS the task of informing Americans about this disorder and stimulating more scientific research. All Americans can take heart in the success of this cooperative effort, which is fundamental to the conquest of this disorder.

To further enhance public awareness of tuberous sclerosis, the Congress, by Senate Joint Resolution 212, has designated the week of May 8 through May 14, 1988, as "National Tuberous Sclerosis Awareness Week" and has authorized and requested the President to issue a proclamation in observance of the week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 8 through May 14, 1988, as National Tuberous Sclerosis Awareness Week, and I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Rules and Regulations

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Handling Requirements for Remainder of 1987-88 Shipping Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter). In addition, the rule relaxes the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet. Also, the rule relaxes the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden. The grade, size, and maturity of the remaining 1987-88 season crop, and market demand conditions for these fruits warrant these relaxations.

DATES: The white seedless grapefruit size relaxation is effective for the period May 9, 1988 through August 21, 1988; and the pink and white seedless grapefruit grade relaxation is effective for the period June 1, 1988, through August 21, 1988. Effective August 22, 1988, tighter handling requirements will resume for seedless grapefruit. The Valencia orange grade relaxation is effective for the period July 1, 1988, through September 25, 1988. Effective September 26, 1988, tighter handling requirements will resume for Valencia and other late type oranges. Comments which are received by June 15, 1988, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order, approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (§ 905.306). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I. Paragraph (b) of § 905.306 provides that no handler shall ship fruit to any destination outside the continental United States, other than Canada or Mexico, unless the specified varieties meet the requirements prescribed in Table II.

The Citrus Administrative Committee, which administers the program locally, meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum size requirements applicable

to domestic and import shipments of white seedless grapefruit; the minimum grade requirement applicable to the domestic, export, and import shipments of pink and white seedless grapefruit; and the minimum grade requirement applicable to domestic shipments of Valencia oranges. This rule recognizes current and prospective supply and demand for these fruits and is necessary to permit handlers to ship such fruit to meet market needs. No problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule temporarily relaxes the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Also, the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit is temporarily relaxed from Improved No. 2 to U.S. No. 2 Russet. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges is temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden. The relaxations for grapefruit will remain in effect through August 21, 1988, and for Valencia oranges through September 25, 1988, by which times 1987–88 season shipments of these fruits will be finished.

The committee unanimously recommended relaxation of the size requirements for grapefruit and Valencia oranges at its May 3, 1988 meeting. It recommended that the size relaxation for white seedless grapefruit be made effective as soon as possible; that the grade relaxation for pink and white seedless grapefruit be made effective June 1, 1988; and that the grade relaxation for Valencia and other late type oranges be made effective July 1, 1988. The committee reports that only a small portion of the Florida 1987–88 season grapefruit crop remains to be harvested, and that the crop will not remain in a condition to ship fresh much longer. Also, much of the remaining grapefruit crop is not in a condition to be shipped to distant export markets, and very few processing plants are utilizing grapefruit this time of the season. The committee also estimates that most of the Valencia orange crop will have been shipped by July 1, 1988, and that much of the fruit remaining for shipment at that time will have increased amounts of external discoloration. The changes in grade and size requirements reflect the composition of the remaining crop and prospective supply conditions, and will tend to maximize shipments to fresh market channels.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum size requirement for domestically produced white seedless grapefruit and the minimum external grade requirement for domestically produced pink and white grapefruit, the relaxation would also be applicable to imported pink and white seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 was issued under Section 8e of the Act. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements.

The relaxation of the handling requirements for pink and white seedless grapefruit and Valencia and other late type oranges is only for the remainder of the 1987–88 shipping seasons for these fruits. The resumption of tighter requirements for 1988–89 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable handlers to provide grapefruit and Valencia oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and Valencia oranges, and to imported grapefruit over the past several years, has resulted in fruit of acceptable size being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements currently in effect for Florida grapefruit and Valencia and other late type oranges; (2) handlers of these fruits are aware of this action which was recommended unanimously by the committee at a public meeting and they will need no additional time to comply with the requirements; (3) shipment of the 1987–88 season Florida grapefruit crop is nearly finished, and shipment of the Florida Valencia orange crop will be nearly finished by July 1, 1988; (4) the grapefruit import requirements are mandatory under Section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 are amended by revising the following

entries in Table I of paragraph (a) applicable to domestic shipments, and Table II of paragraph (b) applicable to export shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 48.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
ORANGES			
Valencia and other late type	7/1/88—9/25/88	U.S. No. 1 Golden	2–8/16
	On and after 9/26/88	U.S. No. 1	2–8/16
* * *	* * *	* * *	* * *
GRAPEFRUIT			
Seedless, pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3–5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3–9/16
GRAPEFRUIT			
Seedless, except pink	5/9/88—5/31/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3–5/16
	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3–5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3–9/16
* * *	* * *	* * *	* * *

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
GRAPEFRUIT			
Seedless, pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3–5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3–5/16
GRAPEFRUIT			
Seedless, except pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3–5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3–5/16
* * *	* * *	* * *	* * *

Dated: May 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–10697 Filed 5–13–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–28; Special Conditions No. 25–ANM–16]

Special Conditions; Boeing Model 767 Series Airplanes With Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) for the Boeing Model 767 series airplanes with PW4000 series engines. The airplanes with these series engines will have novel or unusual design features associated with the installation of the digital electronic propulsion control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning, the susceptibility to external radio frequency (RF) energy sources, and the overall propulsion control system integrity. These special conditions contain the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are maintained.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM–110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–2114.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1986, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, applied for a change to Type Certificate No. A1NM to include the installation of Pratt & Whitney PW4000 engines in Boeing 767 series airplanes in lieu of the

currently approved Pratt & Whitney JT9D or General Electric CF6 series engines.

The Boeing 767 series are twin-engine transport category airplanes with a maximum passenger capacity of 290 and a maximum takeoff weight of 351,600 pounds. They are approved for operation to a maximum altitude of 43,100 feet. The 767–300 series airplanes differ from the 767–200 series airplanes primarily in that the fuselages of the former are 21 feet longer. Unlike the currently approved engine installations, the installation of PW4000 series engines incorporates a full authority digital electronic engine control system with no mechanical backup.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for the change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16 as necessary to provide a level of safety equal to that established by the regulations incorporated by reference.

The regulations incorporated by reference in Type Certificate No. A1NM for the Model 767 series airplanes are Part 25 of the FAR, as amended by Amendments 25–1 through 25–45, with certain exceptions and exemptions which are identified on Data Sheet No. A1NM. These exceptions and exemptions, as well as certain noise and environmental requirements and a Special Federal Aviation Regulation, are not pertinent to the installation of PW4000 series engines. Because neither the regulations incorporated by reference nor the regulations in effect on the date of the application include adequate standards, special conditions are adopted.

Novel or Unusual Design Features

The Model 767 with PW4000 series engines will incorporate the following novel or unusual design features:

1. Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic propulsion control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The Model 767 with PW4000 engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to the engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a Special Condition is needed to ensure that these components are designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the lightning protection special condition. It is based on SAE Report AE4L–87–3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including test on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke* (Severe Strike—Component A, or Restrike—Component D): This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation,

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown burst of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_o (e^{-at} - e^{-bt})$ where;

t = time in seconds,
i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:					
I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and:					
$(di/dt)_{max}$ (amp/$_{sec}$)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
(di/dt), (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	—
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

2. Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters, and adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–8 GHz	800	14,000
8 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	6,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

3. Propulsion Control System

The Propulsion Control System for the Boeing Model 767 with PW4000 series engines is made up of: (1) A dual channel Full Authority Digital Electronic Control (FADEC) mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation, and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. The electronic components of this array that are directly associated with setting and controlling the thrust of each engine, while meeting the requirements of §§ 25.901 and 25.903, may not necessarily exhibit a level of system integrity that was envisioned under the original B767 certification basis. Although the software function contained in the engine's FADEC has been validated to a "critical" level during the engine certification program, Part 25 contains no specific requirements for evaluating the design integrity of the FADEC and the overall control system, as installed in the airplane. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic, but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent design integrity as has been the case with mechanical systems evaluated in accordance with Part 33 of the FAR.

For the reasons discussed above, the applicable airworthiness requirements for the engine installation do not contain adequate standards with respect to a full authority digital electronic engine control system installed on a transport category airplane. A special condition was therefore proposed to provide a level of safety equal to that established by the regulations incorporated by reference in Type Certificate No. A1NM.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–88–2–NM for Boeing Model 767 series airplanes with PW4000 series engines was published in the Federal Register on February 3, 1988 (53 FR 3042). Comments were received from the Air Transport Association of America

(ATA), Pratt & Whitney, and the applicant.

Comments from ATA indicate that several members support the tests associated with the special conditions. Other members express no objection to the proposed special conditions.

Pratt & Whitney was concerned that the proposed special condition for RF protection seemed more restrictive than that applied to the Airbus A310-300 with engines of the same model. They indicate that the minimum RF threat level established for that airplane included the appendage: "* * * unless it can be demonstrated that other values are appropriate." The A310-300 was the first airplane for which RF protection requirements were included in the type certification basis. The final special condition published in the Federal Register on June 17, 1987 (52 FR 23024) for the Model A310-300 did not specify a protection level. Since that time, the FAA has determined that a specific minimum value must be established.

Extensive comments were made by Boeing on each of the special conditions; therefore, they will be discussed by topic.

Lightning Protection

Boeing does not concur that this special condition is required because, in their view, the existing regulations adequately cover lightning protection, and the certification of electronic propulsion control systems is neither novel or unusual.

The FAA does not consider that the existing lightning protection rules are adequate to provide the level of safety required for electrical and electronic systems that perform critical functions. Even though § 25.581(a) requires that the airplane structure must be protected against the catastrophic effects from lightning, and § 25.1309(a) states that the equipment must perform its intended function under any foreseeable operating condition, it is considered necessary to emphasize the need to prevent system degradation in light of the fact that airplanes may take multiple strikes. Under the provisions of § 21.101(b)(2), special conditions are prescribed if a level of safety equal to that established by the regulations incorporated by reference in the type certificate does not exist.

Boeing suggests that the SAE-AE4L committee's draft advisory circular on lightning protection could be used as an acceptable means for demonstrating that aircraft electrical/electronic systems are adequately protected against the effects of lightning, and that a special condition was not needed.

As indicated above, the existing standards were not considered adequate; therefore, the special conditions were proposed. The definition of the lightning environment contained in Notice No. SC-88-2-NM is based on SAE-AE4L Report AE4L-87-3. The FAA is currently preparing an advisory circular that will be based on that report; however, it would not be appropriate to use the advisory circular as a means of showing compliance with the special conditions until it is finalized.

An objection was expressed concerning the wording of the proposed special condition, "* * * operation and operational capabilities are not affected when the airplane is exposed to lightning." According to the commenter, the special condition should be constrained to apply only to operation and operational capabilities required for safe flight and landing.

The intent of the special condition was to require that critical functions not be adversely affected by lightning. The word "adversely" was not used in the proposed special condition because it is a difficult word to define explicitly. The determination of whether a critical function is adversely affected would be made on a case-by-case basis by the certification engineer or flight test pilot. If, for example, a system is designed to revert to a different mode of operation when it is upset by some disturbance such as lightning, it would not be considered adversely affected if it returns to its original mode before the system output is affected.

Boeing notes that the B767/PW4000 FADEC will be among the first systems to use the tenets of the draft advisory circular as the method of showing compliance. In this regard, Boeing expects that difficulties with the application of the draft advisory circular will be found, and agrees to cooperate with the FAA to amend and enhance the advisory circular, as applicable, for future programs.

FAA recognizes that tests for showing compliance with some of the requirements that came from the draft advisory circular have not been finalized by the SAE committee. Until this work has been completed, flexibility will be exercised in finding compliance.

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Boeing does not concur that a special condition is the appropriate means for ensuring that aircraft are adequately protected from the adverse effects of RF energy considering the unknowns and uncertainties of the threat environment. They feel that an issue paper is the appropriate means for assuring adequate protection.

Issue papers are developed to identify and record the resolution status of significant issues. They carry no regulatory authority and would therefore be inappropriate as the means of issuing aircraft RF protection requirements. The FAA agrees that the threat environment is not very well defined at this time. As an interim measure, a minimum constant field strength has been specified for equipment qualification, similar to military requirements, as an option.

Boeing does not concur that the wording of the proposed special condition is appropriate for either a special condition or as an Issue Paper statement of issue. The wording does not constrain the requirement to considerations of safe flight and landing. Boeing recommends the following words be used:

> Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities required for continued safe flight and landing are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

Boeing's proposed wording for the special condition would allow performance degradation or loss of an engine due to RF exposure as long as the airplane could continue to fly and land safely. The FAA does not agree that this is a satisfactory level of safety for airplanes operating in an environment where they may be exposed to high energy RF emissions.

Propulsion Control System

Boeing does not concur that a special condition is required for propulsion control systems incorporating a FADEC. Boeing argues that the intent of the proposed special condition can be achieved within the current rules by showing compliance with the "single failure" requirements of § 25.901(c) and the "isolation" requirements of § 25.903(b). In addition, § 25.901(b) requires that for each powerplant, the components of the installation must be constructed, arranged and installed so as to ensure their continued safe operation between normal inspections and overhauls.

Sections 25.901(c) and 25.903(b) define propulsion system design requirements without specifying a minimum system reliability. The FAA has no quantitative guidance on what constitutes adequate reliability for compliance with § 25.901(c). Such a number has been deemed unnecessary for conventional propulsion systems since sufficient experience and techniques are available to extrapolate limited time test results, such as those provided by the testing required by Part 33 of the FAR for engine type certification to longer term exposure. Whenever this proves false, the resultant in-service experience can be controlled through physical inspections, hard time replacement, etc. Today's electronic engine control systems have several unique characteristics that make this approach impractical. Among these is the tendency to fail hardware at random intervals and to be highly fault tolerant. The random failure characteristic makes it impractical to extrapolate reliability from limited test exposure, and fault tolerance requires that multiple failures be considered in order to fully evaluate the system design. While it may be true that the degree of safety achieved by compliance with §§ 25.901(c) and 25.903(b) may provide a level of reliability commensurate with the proposed special condition, it is not a guarantee. An electronic propulsion control system can be in total compliance with these two rules but fail so frequently so as to lower the overall level of safety below that which has been achieved by conventional hydromechanical type systems. The intent of the proposed special condition is to define an acceptable standard of control system reliability that is equivalent to that which has been achieved previously by Part 33 engine certification testing.

The Boeing reference to § 25.901(b) implies that there must exist a certain reliability in order to operate safely between normal inspections and overhauls. This assumption is true, and the process is valid for mechanical components whose wearout-to-failure characteristic can be controlled by inspections and overhauls at the proper intervals. Because electronic components do not exhibit a "wear out" characteristic like mechanical components, but instead fail at random intervals in a manner somewhat like a burned out light bulb, there is no practical inspection or overhaul period which could extend their operating life. Safety is achieved in electronic engine control systems by their inherent reliability, in combination with proper system design and the assessment of failure effects as provided by §§ 25.901(c) and 25.903(b). For these reasons, the FAA has determined that § 25.901(b) is inadequate for meeting the intent of the proposed special condition.

The remaining Boeing comments address specific aspects of compliance with the proposed special condition. Boeing references a similar notice of proposed special condition for the Airbus Model A320 airplane in which the FAA describes an acceptable method for demonstrating compliance with the special condition.

The FAA has defined to Boeing an acceptable means of compliance with this proposed special condition in an issue paper. It is substantively the same as that published in the Federal Register for the Model A320 in the "Discussion" section following proposed Special Condition No. 3a (52 FR 36781; October 19, 1987). It is quoted here for clarity.

> An acceptable method to demonstrate compliance with this special condition is to show that the control system associated with the PW4000 engine, when installed in the 767, has a level of design integrity equivalent to propulsion controls presently in commercial airline service. The inherent level of design integrity for present day propulsion controls is demonstrated by an inservice loss of thrust control approximately once per 100,000 hours of operation. A similar level of integrity need be demonstrated for a propulsion control system considering all dispatchable states. Appropriate sources of data to support compliance for the components of the control system necessary to set thrust and safely operate each engine are service experience on these components, service experience on similar systems, FAA approved reliability analysis and/or an FAA approved reliability life test. The minimum dispatch configuration will have to be taken into account.

Boeing generally agrees with the guidance given above for the PW4000 engine control system and agrees that guidelines for the management of non-fullup dispatch configurations are needed. Boeing agrees that the one per 100,000 hour loss-of-thrust-control number provides a reasonable guideline. However, the guidelines should allow an applicant to propose a target value for system integrity based on airplane configuration, propulsion system type and inservice experience of systems performing equivalent functions. The FAA selected the 100,000 hour number based on a determination of present day hydromechanical control system reliability that is intended to provide the applicant with a baseline indicator of electronic control system integrity for the purpose of meeting the objective of this special condition. This guidance is non-regulatory in nature and may change for future electronic control system installations based on an evaluation of specific installation design features and operating experience with previously certified electronic engine control systems. It is not intended that the outcome of a numerical probability analysis would be the sole basis for showing compliance with this special condition. The FAA is more concerned that there is enough operating experience, or its equivalent, on the control system hardware to provide high confidence in the associated system reliability. This confidence would not be obtained by merely calculating a failure rate that is less than once per 100,000 hours.

In regard to the management of FADEC dispatch configurations, Boeing believes the proper means for establishing these guidelines is an issue paper relative to the operation of these airplanes under Part 121 of the FAR in lieu of a special condition that amends the type certification basis for the airplane. The FAA disagrees with this position. The proposed special condition requires a minimum level of integrity and reliability for the electronic propulsion control system for each engine. The control system is designed such that it will continue to operate with various components of the system failed. In many cases, the pilot would not even be aware that a failure had occurred. Because of this fault tolerance, the overall control system reliability is based on a combination of many control configurations, whereas a conventional hydromechanical control reliability is based primarily on one configuration. As a result, the non-fullup dispatch configurations must be taken into account in order to adequately substantiate compliance with the special condition.

After careful review of the comments noted above, the FAA has determined that air safety and the public interest require adoption of the special conditions as proposed. Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.101.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the Federal Register. As the intended type certification date for the installation of PW4000 series engines in Boeing 787 series airplanes is April 29, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued for the Boeing Model 767 series airplanes with PW4000 series engines.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection, each electronic propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

4. *Propulsion Control System.* In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on April 29, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10818 Filed 5–13–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–32–AD; Amdt. 39–5925]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Aerospatiale Model ATR–42–200 and –300 series airplanes by individual telegrams. This AD requires modification of a cable in the fuel indicator panel. This action is prompted by a report of accumulation of moisture or water in the area of the fuel indicator panel causing corrosion of the cable. This condition, if not corrected, could result in inaccurate and unreliable fuel readings.

DATES: Effective June 4, 1988. This AD was effective earlier to all recipients of telegraphic AD T88–07–52, dated March 31, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113, telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 31, 1988, the FAA issued telegraphic AD T88–07–52, applicable to Aerospatiale Model ATR–42–200 and –300 series airplanes, which requires modification of the cable in the fuel indicator panel. That action was prompted by reports of inaccurate fuel quantity readings due to moisture collecting inside the fuel indicator panel. The modification involves putting a protective cover over the cable and relocating the cable away from the area where moisture accumulates. This modification is necessary to prevent inaccurate and unreliable fuel readings.

Since the issuance of the telegraphic AD, Aerospatiale has issued Service Bulletin ATR42–28A–0011, dated April 6, 1988, which describes procedures for installing the modification of the cable in the fuel indicator panel. This service bulletin has been declared mandatory by the French airworthiness authority. The FAA has revised the final rule to reflect this service bulletin as an acceptable means of accomplishing the required modification.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42–200 and –300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent erroneous fuel quantity readings in the fuel indication system, accomplish the following:

A. Within 7 days after the effective date of this AD, modify the cable in the fuel indicator panel, as follows:

1. Remove fuel quantity indicator 3 quart on the 4 VU panel [Ref: Airplane Maintenance Manual (AMM) 28–42–81–RAI 10000].

2. Disconnect cable 2842–0007 from plug 3 Qts pin R.

3. Insulate the cable from circuitry by means of heat shrinkable sleeve.

4. Attach cable to harness by suitable tie wrap.

5. Reinstall 3 Qts plug and 3 quart indicator (Ref: AMM 28–42–81–RAI 10000).

6. Perform a test of the fuel quantity indicator by pushing the test switch. Ensure that all digits indicate "eight," and that the "low level" lights illuminate.

B. Accomplishment of the modification of the cable in the fuel indicator panel and functional test in accordance with Aerospatiale Service Bulletin ATR42–28–0011, dated April 6, 1988, is considered an acceptable means of compliance with this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment become effective June 4, 1988.

It was effective earlier to all recipients of telegraphic AD T88–07–52, issued March 31, 1988.

Issued in Seattle, Washington, on May 5, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10819 Filed 5–13–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ASW–5; Amdt. 39–5920]

Airworthiness Directives; Enstrom Model F28 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Enstrom Model F28 series helicopters which supersedes an existing AD. The new AD requires repetitive inspection and repair or replacement, as necessary, of the horizontal stabilizer spar and attachment on these helicopters. The AD is needed to prevent progressive growth of spar tube fatigue cracks which could result in failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

DATE: *Effective date:* May 31, 1988. *Compliance:* As indicated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Joe McGarvey, Airframe Branch, ACE–120C, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, IL 60018, telephone: (312) 694–7136.

ADDRESSES: The applicable service bulletin, Enstrom Service Directive Bulletin 0076, may be obtained from Mr. Robert Jenny, The Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858, or may be examined in the Rules Docket, Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

SUPPLEMENTARY INFORMATION: AD 72–04–04, Amendment 39–1395 (37 FR 3986; February 25, 1972) as amended by Amendment 39–2884 (42 FR 23504; May 9, 1977) currently requires an inspection of the horizontal stabilizer attachment to the center (cross or carry thru) spar tube, Part Number (P/N) 28–11222, and replacement with an airworthy part if fatigue cracks are found on Enstrom Model F28 series helicopters. Repetitive inspections are required at 100-hour intervals for spar tubes having a wall thickness measuring 0.035 inch, whereas those measuring 0.049 inch are exempt from repetitive inspections.

The left and right horizontal stabilizers are installed on the helicopter by sliding them over the tubular center spar, P/N 28–11222, which is transversely oriented in the tailcone and extends approximately 8 inches outboard on each side. Using pilot holes in the stabilizer end fittings, such stabilizer and the mating center spar end are match-drilled and bolted together. The orientation of the match-drilled holes must also provide the necessary stabilizer incidence angle established for each model; therefore, this method of attachment may be prone to machining errors, surface defects, or corrosion in service. The most recent spar tube that failed reportedly had a 0.049-inch wall thickness and a surface defect at the fatigue crack origin. The failure which occurred on a Model F–28A helicoper began as a small fatigue crack in the spar attachment bolt hole that propagated under repeated loading cycles until the spar abruptly failed causing loss of control of the helicopter.

Therefore, the FAA is superseding AD–72–04–04 with a new AD which requires initial and repetitive inspections of the horizontal stabilizer for cracks and replacement, as necessary, on Enstom Model F28 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

The Enstrom Helicopter Corporation: Applies to Enstrom Model F28 series helicopters, certificated in any category, equipped with horizontal stabilizer center spar, P/N 28-11222 (Airworthiness Docket 88-ASW-5).

Compliance is required as indicated, unless already accomplished.

To detect cracks in the horizontal stabilizer attachments thereby preventing possible failure which could result in loss of control of the helicopter, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD, conduct the following—

(1) Check both the left and right stabilizer security by applying a light up and down load at the tip of the stabilizer (i.e., approximately 3 lbs.);

(2) Check for deflection and/or looseness; and

(3) If a stabilizer deflects or is loose, comply with paragraph (b)(1) through (b)(10) of this AD, before next flight.

Note.—The checks may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

(b) Within the next 10 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, accomplish the following:

(1) Remove the left and right stabilizer assemblies P/N 28-20100, from the center spar, P/N 28-11222. Remove the inspection panel on the left side of the tailcone. Remove the bolts securing the spar to the tailcone and remove the spar from the tailcone.

Note.—Mark spar position left, right, top, etc., prior to removel so that on reinstallation the spar will be repositioned correctly.

(2) Visually inspect the attachment fittings for burrs, fretting, or cracks.

Note.—Particular attention should be directed to the spar attachment area around all drilled holes.

(3) Replace cracked fittings before next flight. Repair cracked sheet metal per standard practice, or replace with airworthy parts before next flight.

(4) Measure the center spar wall thickness one time. Replace any center spar having a wall thickness less than 0.044 inch with an airworthy spar and comply with paragraph (b)(8) or this AD prior to the next flight.

(5) If the center spar thickness is 0.044 inch or greater, inspect the spar for cracks using a magnetic particle or dye penetrant inspection method and a 10-power or higher magnifying glass.

Note.—Particular attention should be directed to the spar area around all drilled holes and if a crack is found, replace the spar with an airworthy part before next flight.

(6) Inspect the stabilizer spar trailing edge attachment clips, P/N 28-20106, for cracks using a dye penetrant inspection or a visual inspection using a 10-power or higher magnifying glass. If a crack is found, replace the clip with an airworthy part before next flight.

(7) Inspect the center spar (particularly in areas of dissimilar metal contact) for corrosion. A spar with corrosion depth greater than 0.005 inch must be replaced before next flight. Surface corrosion may be removed with 320 grit emery paper. Protect bare areas using a light coat of epoxy primer (DeSoto 513X300 or equivalent).

(8) Install the center spar in its proper relative position to the tail cone. Whenever a new spar is installed, it must be match-drilled to the tailcone and stabilizers for proper incidence. Remove, deburr all holes, and protect all bare surfaces with epoxy primer prior to final assembly.

(9) Install the horizontal stabilizer using airworthy parts.

Note.—A light coat of lubricant (LPS 500 or equivalent) on the outside of the spar and the inside of the fittings will aid in assembly.

(10) Record the rotorcraft's weight and balance change as appropriate.

Note.—Changing from a 0.035-inch to a 0.049-inch nominal wall thickness center spar causes a weight increase of 0.37 lb. at longitudinal station 270.0.

(c) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 E. Devon Ave., Des Plaines, Il. 60018.

Note.—Enstrom Service Bulletin No. 0076, dated December 15, 1987, pertains to this AD.

This amendment supersedes AD 72-04-04, Amendment 39-1395, as amended by Amendment 39-2864.

This amendment becomes effective May 31, 1988.

Issued in Fort Worth, Texas, on May 2, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-10820 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-19; Amdt. 39-5924]

Airworthiness Directives; Schweizer Aircraft Corporation Models SGS 2-33, SGS 2-33A, and SGU 2-22C, CK, E, EK, Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends airworthiness directive (AD), 76-13-11, which requires the inspection, repair, or replacement as necessary of the forward and aft longerons on Schweizer sailplane models SGS 2-33, SGS 2-33A, S/N's 1 thru 200, and SGU 2-22C, CK, E, EK, S/N's 98 thru 258. The amendment is needed so that the AD will include Schweizer sailplane model SGS 2-33A, S/N's 210 thru 424. The AD is needed to prevent failure of the forward and aft fuselage tubular longerons due to internal corrosion which could result in the loss of the sailplane.

DATES: Effective: May 25, 1988. Compliance: As required in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902.

A copy of the Service Bulletin is contained in the Rules Docket, Docket Number 88-ANE-19, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Birkenholz, Airframe Branch, ANE-172, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-2859 (41 FR 27029; July 1, 1976), AD 76-13-11, which currently requires inspection, repair, and replacement of forward and aft lower longerons on Schweizer sailplane models SGS 2-33, SGS 2-33A, S/N's 1 thru 200, and SGU 2-22C, CK, E, EK, S/N's 98 thru 258. After issuing Amendment 39-2859, the FAA determined that corrosion in the forward and aft lower longerons has occurred on Schweizer sailplane model SGS 2-33A, S/N's 318, 373, and 374. After the investigation, it was found that on Schweizer sailplane models SGS 2-33A, S/N's 201 thru 424, the longerons were not treated with oil at the factory. In view of this, and the three service problems previously mentioned, the FAA has determined that it is necessary to include in the AD Schweizer sailplane models SGS 2-33A, S/N's 201 thru 424. In addition, this amendment makes some minor clarifying/editorial changes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalsim Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39-2859 (41 FR 27029; July 1, 1976), Airworthiness Directive (AD) 76-13-11, as follows:

(a) By revising the affected models statement to read as follows: "Applies to SGS 2-33, SGS 2-33A, S/N's 1 thru 424, and SGU 2-22C, CK, E, EK, S/N's 98 thru 258."

(b) By replacing the word "rusting" with "corrosion" in the introductory sentence and the word "entrapped" with "trapped".

(c) By revising paragraph (f) to read as follows: "Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, New England Region, Federal Aviation Adminstration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581."

(d) By revising paragraph (g) to read as follows: "Upon submission of substantiating data, by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD."

(e) By revising the parenthetical statement following paragraph (g) to read as follows: "(Schweizer Service Bulletin No. 102-33-1.1, covers this subject and is considered an approved equivalent inspection)."

This amendment becomes effective on May 25, 1988.

This amendment amends Amendment 39-2659 (41 FR 27029; July 1, 1976), AD 76-13-11.

Issued in Burlington, Massachusetts, on May 4, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-10821 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-1]

Establishment of Transition Area; Litchville, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Litchville, ND, transition area to accommodate air taxi operators requesting a direct route to Alexandria, MN from Jamestown, ND and the Minneapolis-St. Paul, MN area. The intended effect of this action is to ensure segregation of Instrument Flight Rule (IFR) aircraft from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 22, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Litchville, ND, transition area (53 FR 9323).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Litchville, ND, transition area to accommodate air taxi operators requesting a direct route to Alexandria, MN from Jamestown, ND and the Minneapolis-St. Paul, MN area. This transition area airspace is expected to eliminate an additional workload on controllers since the climb or descent will now be made in controlled airspace; provide better radar vectoring service for users going to and from Jamestown Municipal Airport; and, save the aviation users time and fuel.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Litchville, ND [New]

That airspace extending upward from 1200' AGL beginning at lat. 46° 30' 00"N., long. 98° 29' 30"W., to lat. 46° 30' 00"N., long. 97° 38' 00"W., to lat. 46° 32' 30"N., long. 97° 37' 00"W., to lat. 46° 40' 00"N., long. 97° 42' 00"W., to lat. 46° 45' 00"N., long. 97° 54' 00"W., to lat. 46° 49' 30"N., long. 98° 15' 00"W., to lat. 46° 46' 00"N., long. 98° 10' 00"W., to lat. 46° 37' 20"N., long. 98° 22' 00"W., to lat. 46° 41' 00"N., long. 98° 27' 00"W., to lat. 46° 39' 00"N., long. 98° 31' 00"W., to the point of beginning.

Issued in Des Plaines, Illinois, on May 5, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 88-10822 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25671; File No. S7-628]

Securities Transactions Exempt from Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising an amendment to its rule governing transaction fees, to continue for one year to exempt transactions in over-the-counter National Market System securities from the imposition of section 31 transaction fees.

The Commission still is considering whether it should seek legislation imposing transaction fees on the OTC market, and, thus, is extending for one year the effectiveness of the rule.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: William M. Harter, Jr., Esq., 202/272-2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Section 31 of the Securities Exchange Act of 1934 ("Act")[1] requires that every national securities exchange pay to the Commission a fee based on sales of securities transacted on that exchange.[2] In addition, Section 31 requires payment of similar fees from broker-dealers for over-the-counter ("OTC") transactions in securities "registered on a national securities exchange," including those admitted to unlisted trading privileges. The Section also gives the Commission authority to grant exemptions from the fee requirement. In 1986, the Commission amended Rule 31-1 by adopting subsection f, which exempts from Section 31 fees transactions in OTC securities that are also designated as National Market System ("NMS") securities.[3] Rule 31-1(f) was to be effective "for a period not to exceed two years to allow the Commission time to reach a conclusion regarding the applicability of section 31 fees to NMS Securities," *i.e.*, until May 6, 1988.[4] The Commission amended the rule again in June, 1987 when NMS designation effectively was extended to include listed securities reported pursuant to a transaction reporting plan, to limit the exemption to just NASDAQ/NMS securities.[5]

Rule 31-1 provides for a number of exemptions from Section 31 of the Act and subsection f thereof provides that such exemptions include:

> Transactions in NASDAQ securities as defined in 240.11Aa3-1 (Rule 11Aa3-1 under the Act) except for those NASDAQ securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1) under the Act, which plan was declared effective as of May 17, 1974. The terms and provisions of this paragraph shall remain effective until May 6, 1988.

The Commission still is considering whether it should seek legislation imposing transaction fees on the OTC market, and, thus, is extending for one year the effectiveness of the rule.

II. Discussion

In 1985, two Commission initiatives gave rise to potential conflicts in the application of section 31. The Commission indicated that it was prepared to grant to the exchanges unlisted trading privileges in a certain number of OTC securities, subject to certain conditions,[6] and permitted certain regionally-listed stocks to be traded both on an exchange and designated as NMS Securities.[7] Section 12(f)(6) of the Act [8] deems OTC securities traded on an exchange pursuant to unlisted trading privileges as "registered" on an exchange and, thus, subject to Section 31 fees. In addition, the over-the-counter trades in the securities that are also listed, and thus are registered securities, would be subject to section 31.

Hence, the Commission amended Rule 31-1 to exempt transactions in NASDAQ/NMS securities from section 31. The Commission believed that section 31 should not apply automatically to securities traded principally OTC simply because the Commission had granted unlisted trading privileges to NASDAQ/NMS Securities or provided for the concurrent exchange listing and NMS designation of a limited number of securities. In addition, confusion may have resulted if only those NASDAQ/NMS Securities traded on exchanges on an unlisted trading privileges basis were subject to section 31 fees. The Commission determined that the application of section 31 should not depend on decisions by exchanges on whether to request unlisted trading privileges, resulting in automatically subjecting even the OTC trading in such securities to payment of the fees, despite a possibly minimal amount of exchange trading. Similarly, the few regionally listed securities that also became eligible for NMS designation traded most actively in the OTC market. Absent an express statutory directive, the Commission believed that it would be inappropriate for exchanges and market makers to pay section 31 fees on transactions in those securities. For these reasons, the Commission amended Rule 31-1 and determined that granting the exemption would permit more orderly introduction of section 31 fees to the market in general for NASDAQ/NMS Securities.

The exemption is consistent with the public interest, equal regulation of markets and broker-dealers, and the development of a national market system. Rule 31-1(f) only affects transactions in those NASDAQ/NMS securities that are subject to either unlisted trading privileges or a concurrent exchange listing.

III. Effect on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act [9] requires the Commission, in adopting rules under the Act, to consider anti-competitive effects of such rules, if any, and to balance any anti-competitive effects of such rules, if any, and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. As noted above, the exemption in Rule 31-1(f) applies to both exchange and OTC transactions in the NASDAQ/NMS securities that are reported through the NASDAQ transaction reporting plan. The Commission believes that it is consistent with the purposes of sections 12(f)(6) and 31 of the Act for transactions in other exchange-traded securities to be subject to section 31 fees while transactions in NASDAQ/NMS securities are not, because NASDAQ/NMS securities, which trade chiefly in the OTC market, have much different trading characteristics. In particular, the Commission cannot predict that ultimately there will be substantial exchange trading in the subject NASDAQ/NMS securities.[10] The Commission has examined Rule 31-1(f) and concludes that its extension has at most a minimal competitive impact and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including in particular the purposes of sections 12(f)(6) and 31 of the Act.

The Regulatory Flexibility Act [11] is not applicable in the revision of Rule 31-1(f) to extend its effectiveness. The Regulatory Flexibility Act's flexibility analysis requirements are limited to rulemaking for which the Commission would be required by the Administrative Procedure Act ("APA") to publish general notice of proposed rulemaking.[12]

APA rulemaking procedures are not applicable to the Commission's revision of Rule 31-1(f).[13] Although the APA states that an agency must provide general notice of proposed rulemaking and an opportunity for comment, these requirements do not apply if such agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." [14] In addition, although the APA generally imposes a 30-day delayed effective date requirement, this requirement does not apply if a rule grants an exemption or relieves a restriction.[15]

The Commission finds for good cause that it is both unnecessary and impracticable to provide notice and opportunity for public comment. Notice and prior comment are unnecessary since extending the effectiveness of Rule 31-1(f) continues the status quo, and Rule 31-1(f) was subject to public comment at the time it was originally proposed.[16] Further, subsection (f) simply grants an exemption from section 31; extending its effectiveness imposes no regulatory or financial burden or obligation on anyone. Notice and prior comment are impracticable because the exemption is due to expire on May 6, 1988. Assessing fees for a short period between then and a subsequent adoption date would be unwarrantably confusing and burdensome for the persons affected.

Finally, the 30-day effective date requirement is not applicable in these circumstances. Because Rule 31-1(f) grants an exemption to broker-dealers from the payment of transaction fees on NASDAQ/NMS securities, the Commission is not required to publish the revision of Rule 31-1(f) 30 days before its effective date.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

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[1] 15 U.S.C. 78a *et seq.*, as amended.

[2] The current full text of Section 31, as amended in 1975, reads as follows:

> Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregated dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during such preceding calendar year: Provided, however, that no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

[3] *See* Securities Exchange Act Release No. 23229 (May 21, 1986), 51 FR 18578 ("Adopting Release").

[4] Adopting Release, 51 FR at 18579.

[5] Securities Exchange Act Release No. 24635 (June 23, 1987), 52 FR 24149 (adoption of amendments to Rules 11Aa2-1, 17Aa3-1, and 31-1 under the Act, resulting in the designation as NMS securities of all New York ("NYSE") and American ("Amex") Stock Exchange listed securities, regional exchange securities substantially meeting the Amex listing standards, and OTC securities that already had been designated as NMS securities, and changing the wording of Rule 31-1 to provide that an exemption from the payment of fees applied to just those NMS securities whose transactions were reported under the NASDAQ transaction reporting plan).

[6] *See* Securities Exchange Act Release No. 22412 (September 18, 1985), 50 FR 38235. The principal precondition to the grant of unlisted trading privileges in OTC stocks is the creation of a facility for the consolidated reporting of transactions and quotations in these stocks. On April 29, 1987, the Commission approved a joint Midwest Stock Exchange ("MSE") and NASD transaction and quotation reporting plan for securities traded on the MSE pursuant to unlisted trading privileges. Securities Exchange Act Release No. 24406 (April 29, 1987), 52 FR 17495. The NASD, the Amex and regional exchanges continue to negotiate the terms of a consolidated reporting plan.

[7] *See* Securities Exchange Act Release No. 22413 (September 18, 1985), 50 FR 38515.

[8] Section 12(f)(6), in pertinent part, provides that: "Any security for which unlisted trading privileges are continued or extended pursuant to [subsection f] shall be deemed to be registered on a national securities exchange * * *."

[9] 15 U.S.C. 78w(a)(2).

[10] The Commission is aware that on the Midwest Stock Exchange, the volume of trading pursuant to unlisted trading privileges of OTC securities has been only about 1% of the total NASDAQ total.

[11] 5 U.S.C. 601-612.

[12] 5 U.S.C. 603(a).

The Commission did prepare a Final Regulatory Flexibility Analysis ("FRFA") regarding subsection f of Rule 31-1 at the time of its original adoption. That FRFA noted that Rule 31-1(f) would exempt from section 31 of the Act exchanges and broker-dealers engaging in transactions in NASDAQ/NMS securities subject to unlisted trading privileges or to a concurrent exchange listing. The FRFA noted that the principal effect of the exemption would be to relieve exchanges and broker-dealers from payment of fees to which they otherwise would be subject. The FRFA stated that, in order to determine the amount of the fee owed under section 31 for transactions in NASDAQ/NMS securities, market participants would need to separately calculate dollar volume in NMS securities and dollar volume in non-NMS securities.

A copy of the prior FRFA may be obtained by contacting William M. Harter, Jr. 202/272-2414, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

[13] 5 U.S.C. 553.

[14] 5 U.S.C. 553(b)(B).

[15] The APA provides, in pertinent part:

> (d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—
>
> (1) a substantive rule which grants or recognizes an exemption or relieves a restriction[.]

5 U.S.C. 553.

[16] *See* Adopting Release, 51 FR at 18578.

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IV. Statutory Basis and Text of Proposed Amendments

The Commission revises an amendment under Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Section 23, 48 Stat. 901, as amended; 15 U.S.C. 78w.

* * * Section 240.31–1 is also authorized under section 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

§ 240.31–1 [Amended]

2. Section 240.31–1 is amended by revising the date in the last sentence of paragraph (f) to read: "May 6, 1990."

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 6, 1988.

[FR Doc. 88–10982 Filed 5–13–88; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 210, and 211

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations concerning the reporting requirements for railroad employers, the creditability of service, and the creditability of compensation. These amendments are necessary to comply with legislative changes in the Railroad Retirement Act.

EFFECTIVE DATE: May 16, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Abe T. Alden, Chief of Methods and Procedures, Bureau of Compensation and Certification, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–3360 (FTS 397–3360).

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Retirement Act are computed, in part, based on the individual's creditable railroad service and compensation and the Board is authorized by the Act to require railroad employers to furnish compensation and service records for their employees. The Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76) altered the manner in which railroad compensation and service months are reported to the Board and credited to an employee's account.

On January 23, 1987, the Board published Parts 209, 210 and 211 as a proposed rule and invited comments for 30 days ending February 22, 1987 (52 FR 2553–2557). The Board received three comments from the Association of American Railroads concerning the reporting requirements of the Board with respect to employers under the Railroad Retirement Act. Those recommendations, even if adopted, would not require any change in these regulations. Accordingly, the Board has decided to publish the regulations as a final rule and will continue to consider adoption of the comments of the Association of American Railroads.

Incorrect citations were also noted in section 10 of the proposed regulations with respect to its revisions of § 211.2(b)(11). These corrections were made.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with these amendments have been approved by the Office of Management and Budget.

List of Subjects

20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

20 CFR Part 210

Railroad employees, Railroad retirement.

20 CFR Part 211

Railroad employees, Railroad retirement.

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

1. The authority citation for Part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Part 209 is amended by adding § 209.13, to read as follows:

§ 209.13 Sick pay reports.

(a) Employers, insurance carriers or other parties paying sick pay subject to tax under the Railroad Retirement Tax Act (26 U.S.C. 3201 *et seq.*) are required to furnish the Board an annual report of creditable sick pay on or before the last day of February of the calendar year following the year in which the payment was made.

(b) Sick pay reports are to be filed in accordance with instructions issued by the Director of Compensation and Certification and are to be mailed directly to the Director. The reports may be made on magnetic tape, punch cards or the form described in § 209.2 of this chapter for employer's adjustment reports. The reports must be accompanied by a quarterly summary report of compensation adjustments as described in § 209.2 of this chapter. Adjustments to sick pay compensation should be included in the next annual sick pay report.

(Approved by the Office of Management and Budget under control number 3220–0009)

PART 210—CREDITABLE RAILROAD SERVICE

3. The authority citation for Part 210 is revised to read as follows:

Authority: 45 U.S.C. 231f.

4. Section 210.2 is revised to read as follows:

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in Part 212 of this chapter. Service shall also include deemed months of service as provided under § 210.3(b) of this chapter and any month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

5. Section 210.3 is revised to read as follows:

§ 210.3 Month of service.

(a) *Reported.* A reported month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

(b) *Deemed.* A deemed month of service is any additional month of service credited to an employee subject to paragraphs (b)(1) and (2) of this section.

(1) An employee who is credited with less than twelve reported months of service for a calendar year after 1984 may be "deemed" to have performed service for compensation in additional months, not to exceed twelve, providing:

(i) The employee's compensation for the calendar year in question exceeds an amont calculated by multiplying the number of reported months credited for that year by an amount equal to one-twelfth of the current annual maximum for non-tier I components as defined in § 211.15 of this chapter; and

(ii) The employee maintains an employment relation to one or more employers or serves as an employee representative in the month or months to be deemed. For purposes of this section, employment relation has the same meaning as defined in Part 204 of this chapter, disregarding the restrictions involving the establishment of such a relationship as of August 29, 1935. Employee representative has the same meaning as defined in Part 205 of this chapter.

(2) Employees satisfying the conditions in both paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall have their months of service for a calendar year calculated using the following formula:

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

The quotient obtained using this formula equals the employee's total months of service, reported and deemed, for the calendar year. Any fraction or remainder in the quotient is credited as an additional month of service.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section may be illustrated by the following examples.

Example (1): Employee B worked in the railroad industry in 1985 and was credited with nine reported months of service (January through September) and non-tier I compensation of $20,000. The 1985 annual maximum for non-tier I compensation is $29,700. B maintained an employment relation in the three months he was not employed in 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

(1) Enter the annual maximum for non-tier I compensation for the calendar year.....$29,700
(2) Divide line (1) by 12
$29,700 ÷ 12.....$2,475
(3) Enter the employee's reported months of service for the calendar year.....9
(4) Multiply line (2) by line (3)
$2,475 × 9.....$22,275
(5) Enter the employee's non-tier I compensation for the calendar year.....$20,000
(6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
$20,000 − $22,275.....0

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is zero, employee B does not have enough non-tier I compensation to be credited with deemed months of service. B is credited with only nine reported months of service for the year.

Example (2): Assume the same facts as in example (1), except that employee B was credited with non-tier I compensation of $25,000 for 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

(1) Enter the annual maximum for non-tier I compensation for the calendar year.....$29,700
(2) Divide line (1) by 12
$29,700 ÷ 12.....$2,475
(3) Enter the employee's reported months of service for the calendar year.....9
(4) Multiply line (2) by line (3)
$2,475 × 9.....$22,275
(5) Enter the employee's non-tier I compensation for the calendar year.....$25,000
(6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
$25,000 − $22,275.....$2,725

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is greater than zero, employee B has enought non-tier I compensation to be credited with deemed months of service. B now satisfies all the requirements for deeming, therefore his months of service for the calendar year are calculated using the formula in § 210.3(b)(2).

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

$$\text{(1) Months of service} = \frac{\$25{,}000}{\$29{,}700 \div 12} \text{ or } \frac{\$25{,}000}{\$2{,}475}$$

$$\text{(2) Months of service} = \frac{\$25{,}000}{\$2{,}475} \text{ or } \$25{,}000 \div \$2{,}475$$

(3) Months of service = 25,000 ÷ 2,475 or 10.10

(4) Round the result in line (3) to the next higher whole number. This is the employee's total months of service for the calendar year. 10.10 becomes.....11

Employee B is credited with 11 months of service for 1985; nine reported months (January through September) and two deemed months (October and November).

6. Section 210.4, paragraph (a) is revised to read as follows:

§ 210.4 Year of service.

(a) A year of service is twelve months of reported or deemed service, consecutive or not consecutive. A

fraction of a year of service is taken at its actual value.

* * * * *

7. Section 210.5, paragraph (f) is revised to read as follows:

§ 210.5 Creditability of service.

* * * * *

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as service performed for an employer.

* * * * *

8. Section 210.6 is revised to read as follows:

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in Part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.5, provided that the employee has not previously been credited with reported or deemed service for an employer for the same month(s).

PART 211—CREDITABLE RAILROAD COMPENSATION

9. The authority citation for Part 211 is revised to read as follows:

Authority: 45 U.S.C. 231f.

10. Section 211.2 is amended by revising paragraph (b)(9), by adding paragraphs (b)(11) and (b)(12), by removing paragraph (c)(2) and redesignating paragraphs (c)(3) through (c)(7) as (c)(2) through (c)(6), and by revising newly redesignated paragraph (c)(5) to read as follows:

§ 211.2 Definition of compensation.

* * * * *

(b) * * *

(9) Retroactive wage increases as provided for in § 211.11 of this part;

(10) * * *

(11) Payments paid to an employee or employee representative which are subject to tax under section 3201(a) or 3211(a) of the Internal Revenue Code of 1954 are creditable as compensation under the Railroad Retirement Act for purposes of computation of benefits under sections 3(a)(1), 3(f)(3), 4(a)(1) and 4(f)(1).

(12) Voluntary payments of any tax by an employer, without deducting such tax from the employee's salary.

(c) * * *

(5) Except as provided in § 211.2(b)(11), the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection with sickness or accident disability; and

* * * * *

11. Section 211.4 is revised to read as follows:

§ 211.4 Vacation pay.

(a) *Employee deceased or retired.* When an employee dies or ceases work for the purpose of retiring, the vacation pay due the employee shall be reported as compensation for the last day of service or as compensation for a period immediately after the last day of service and during the employee's life, depending on whether the vacation pay is intended to make the employee's termination date effective on or after the last day of service. Vacation pay shall not be reproted for a period after the date of death or date of termination.

(b) *Employee terminated.* When an employee resigns his or her position or is discharged by the employer, any vacation pay due the employee shall be reported as compensation for the period prior to the effective date of the resignation or discharge. Vacation pay shall not be reported for a period after the date of termination.

(c) *Employee takes vacation.* When an employee takes a vacation, the vacation pay shall be reported as compensation for the period during which the vacation is taken regardless of when the payment is made.

(d) *Employee does not take vacation.* When an employee receives pay for vacation but does not take the vacation, the vacation pay shall be reported as compensation for the period covered by the employer's payroll which includes the vacation pay, except for payments made in December of the vacation year or thereafter. Vacation payments made in the month of December of the vacation year or thereafter shall be reported as compensation for December of the vacation year.

12. Section 211.5 is revised to read as follows:

§ 211.5 Employee representative compensation.

All payments made by a railway labor organization to an individual who is an employee representative as a result of the position or office he occupies with such organization are creditable as compensation, including payments made for services not connected with the representation of employees, except that payments in excess of the annual maximum amount will not be credited.

13. Section 211.6 is revised to read as follows:

§ 211.6 Compensation based on waiver or refund of organization dues.

A waiver or refund or organization dues which was based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

14. Section 211.7 is revised to read as follows:

§ 211.7 Compensation credited for creditable military service.

In determining the creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the maximum creditable amount:

(a) $160 for each calendar month before 1968;

(b) $280 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the actual military earnings reported as wages under the Social Security Act.

15. Section 211.9 is revised to read as follows:

§ 211.9 Dismissal allowance.

Dismissal allowances paid to an employee under a protective labor agreement that covers the amounts paid for specific periods of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship. Subject to the proviso in the preceding sentence, dismissal allowances are to be reported as compensation in the month(s) for which the employee is paid the allowance.

16. Section 211.11 is revised to read as follows:

§ 211.11 Retroactive wage increase.

Employers may report retroactive wage increases as creditable compensation for the month in which the compensation is paid or for the period in which earned. If retroactive wage increases are reported as creditable to the month in which they are paid, the employee may, within the 4-year-period defined in § 211.14(b), request that the retroactive wage increases be allocated to the month(s) in which earned. The employer will submit the necessary adjustment giving the employee the proper credits.

17. Section 211.12 is revised to read as follows:

§ 211.12 Compensation credited for Title VII benefits.

Payments made to an employee under Title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed an application for benefits under that Act. The compensation to be credited cannot exceed the monthly creditable amounts defined in § 211.13(a) of this part for compensation earned prior to 1985 or the annual creditable amount defined in § 211.13(b) of this part for compensation earned after 1984.

18. Section 211.13 is revised to read as follows:

§ 211.13 Maximum creditable compensation.

The amount of compensation that may be creditable under the Railroad Retirement Act with respect to an employee's service is subject to maximum earnings limitations. The maximum is determined using the annual taxable wage base as defined in section 3121 of the Internal Revenue Code of 1954. The maximum annual taxable wage base is defined in section 3121 of the Internal Revenue Code of 1954 as the amount of contribution and benefit base determined under section 230 of the Social Security Act. Section 230(c) of the Social Security Act provides, with respect to the computation of annuities under the Railroad Retirement Act, for two separate annual maximum amounts for years beginning with 1979. For purposes of computing the amount of an annuity under the Railroad Retirement Act, except the Tier I annuity component provided by section 3(a), 4(a), or 4(f) of the Railroad Retirement Act or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act, the annual maximum wage base is determined without regard to the increases in the annual amounts specified in clause (2) of subsection (c) of section 230. Those increases are, however, applicable in computing the Tier I component of an annuity or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act.

(a) *Compensation earned before January 1, 1985.* (1) Compensation earned before January 1, 1985, is subject to monthly limits. The monthly maximum creditable for any month is one-twelfth of the maximum annual taxable wage base defined in section 3121 of the Internal Revenue Code of 1954 that could be applicable to the period which includes the month.

(2) The table below lists the maximum monthly creditable amounts beginning with 1937. The maximum monthly creditable amount for purposes of computing the Tier I annuity component and the social security guaranty amount is, for the years beginning with 1979, shown in parentheses.

Jan. 1937 through June 1954	$300
July 1954 through May 1959	350
June 1959 through Oct. 1963	400
Nov. 1963 through Dec. 1965	450
Jan. 1966 through Dec. 1967	550
Jan. 1968 through Dec. 1971	650
Jan. 1972 through Dec. 1972	750
Jan. 1973 through Dec. 1973	900
Jan. 1974 through Dec. 1974	1,100
Jan. 1975 through Dec. 1975	1,175
Jan. 1976 through Dec. 1976	1,275
Jan. 1977 through Dec. 1977	1,375
Jan. 1978 through Dec. 1978	1,475
Jan. 1979 through Dec. 1979	1,575 (1,908.33)
Jan. 1980 through Dec. 1980	1,700 (2,158.33)
Jan. 1981 through Dec. 1981	1,850 (2,475.00)
Jan. 1982 through Dec. 1982	2,025 (2,700.00)
Jan. 1983 through Dec. 1983	2,225 (2,975.00)
Jan. 1984 through Dec. 1984	2,350 (3,150.00)

(b) *Compensation earned after December 31, 1984.* (1) Compensation earned January 1, 1985, and later is subject to annual limits. The annual maximum creditable for any year is the maximum annual taxable wage base defined in section 3231(e)(2)(b) of the Internal Revenue Code of 1954 that could be applicable to the year in question.

(2) The table below lists the maximum annual creditable amounts beginning with 1985. The maximum annual creditable amount for purposes of computing the Tier I annual component and the social security guaranty amount is shown in parentheses.

Jan. 1985 through Dec. 1985	$29,700 ($39,600)
Jan. 1986 through Dec. 1986	31,500 (42,000)

19. Section 211.14, paragraph (a) is revised to read as follows:

§ 211.14 Verification of compensation claimed.

* * * * *

(a) If the compensation claimed is in excess of the maximum creditable amounts defined in § 211.13 of this Part, the Director of the Bureau of Compensation and Certification shall inform the employee that the compensation claimed is not creditable.

* * * * *

Dated: May 9, 1988.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 88-10892 Filed 5-13-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Medicated Feeds; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority in the Center for Veterinary Medicine (CVM) concerning approval of applications for animal feeds bearing or containing new animal drugs to designate that the Director and Deputy Director, Division of Animal Feeds, the Chief, Petition Review and Medicated Feeds Branch, and the Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, all have redelegated authority to approve medicated feed applications.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority to redelegate to the Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, the Chief, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, and the Director and Deputy Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, authority to approve medicated feed applications. The amended redelegation in 21 CFR 5.83(d) adds the Deputy Director, Division of Animal Feeds, provides for redesignation of Medicated Feeds Branch as the Petitions Review and Medicated Feeds Branch.

and adds the Medicated Feeds Specialist.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 2421, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.83 is amended by revising paragraphs (d) (1) and (2) and by adding a new paragraph (d)(3) to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

* * * * *

(d) * * *

(1) The Director and Deputy Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

(2) The Chief, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

(3) The Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10906 Filed 5–13–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Navajo Nation Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: In 1982, the Navajo Nation (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan entitled "Navajo Nation Reclamation Plan" (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt and requested public comments. The comment period closed on November 28, 1983, and no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted that authorized the Crow, Hopi, and Navajo Tribes to adopt abandoned mine land reclamation programs without prior approval of Tribal surface mining regulatory programs. OSMRE reopened the comment period for consideration of adequacy of the Navajo Tribe's Plan. After consideration of the comments received and revisions the Tribe made to the Plan, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Navajo Nation Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Navajo Plan.

This final rule is being made effective May 16, 1988, in order to expedite the granting of abandoned mine land reclamation funds to the Navajo Nation so that it can implement its AMLR Program and undertake Tribal reclamation projects to protect the public health and safety.

EFFECTIVE DATE: May 16, 1988.

ADDRESSES: Copies of the full text of the Navajo Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Navajo Division of Resources, The Navajo Tribe, Division of Resources Building, Window Rock, AZ 86515

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director of the Albuquerque Field Office, at (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed AMLR Plan
III. Assistant Secretary's Findings
IV. Public Comment
V. Assistant Secretary's Decision
VI. Procedural Matters

I. Background

Title IV of SMCRA establishes an Abandoned Mine Land Reclamation (AMLR) program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Part 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Navajo, Hopi, and Crow Tribes to obtain Abandoned Mine Land Reclamation programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR 42729 and provide the applicable criteria by which to judge the adequacy of the AMLR Plan provisions. Emergency reclamation activities are set forth in Section 410 of SMCRA. The Navajo Nation's AMLR Plan has requested emergency response authority.

II. Proposed AMLR Plan

The Navajo Tribe submitted a Plan to OSMRE in June 1982. OSMRE conducted a preliminary review at that time, and the Navajo Tribe resubmitted a revised Plan in September 1983. OSMRE requested public comments on the revised draft Plan in the October 28, 1983, **Federal Register**, 48 FR 49870–49872. After receipt of comments and the close of the comment period on November 28, 1983, OSMRE took no further action on the Plan pending authorizing legislation under section 710 of SMCRA.

On July 11, 1987, the President signed a supplemental appropriations Bill, Pub. L. 100–71, which authorized the Navajo, Hopi, and Crow Tribes to obtain AMLR programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA. In response to that legislation, OSMRE notified the Navajo Tribe that it would reopen its review of the Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe with suggestions for revising it to meet the requirements of SMCRA. The Tribe made a number of revisions to the Plan, and OSMRE reopened the public comment period in the December 4, 1987, **Federal Register**, 52 FR 46097–46098. Public comments were received, and the comment period closed on January 4, 1988, without any requests for a hearing or meeting having been received by OSMRE by that date. The Navajo Tribe revised its Plan in accordance with OSMRE's suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Navajo Tribe. That Administrative Record is available for public review at the Albuquerque, New Mexico, address of OSMRE listed above.

The proposed AMLR Plan would provide authority for the Navajo Nation to conduct a reclamation program on Navajo (Indian) lands as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation actions outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

III. Assistant Secretary's Findings

The Assistant Secretary finds that the Navajo Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100–71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;

2. Views of other Federal agencies having an interest in the Plan were solicited and considered;

3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the proposal Plan;

4. The proposed Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;

5. The proposed Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;

6. The Navajo AMLR Plan has requested authority to assume emergency response authority as set forth in Section 410 of SMCRA. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR 42729 and provide the applicable criteria by which to judge the adequacy of the proposed Plan. Among the criteria are:

- A legal opinion from the chief legal officer that the designated agency has the authority under Tribal law to conduct the emergency program on Indian lands in accordance with section 410 of SMCRA.
- A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including:
  - —The purpose of the emergency reclamation program;
  - —The coordination of emergency reclamation work;
  - —Policies and procedures regarding land acquisition;
  - —Policies and procedures regarding emergency reclamation on private and public land;
  - —Policies and procedures regarding emergency project rights-of-entry.
- A description of the administrative and managerial structure to be used in conducting the emergency reclamation program including:
  - —The organization of the designated agency's emergency program;
  - —A description of the adequacy of staff numbers and technical skills to be committed to the emergency program;
  - —Administrative procedures for: (a) Investigating and reporting emergency complaints; (b) determining eligibility; (c) obtaining necessary consents or steps for nonconsensual entry; (d) project supervision; and (e) final project inspection;
  - —The purchasing and procurement systems to be used by the agency which will quickly respond to emergency situations;
  - —The accounting system to be used by the Tribe;
  - —The technical capability to design and supervise the emergency work.
- A general description of emergency reclamation activities to be conducted, including known or suspected geographical areas within the State, a map with locations, and a general description of problems occurring.
- A narrative description which supports the Tribe's position that the procedures, personnel, and other proposed aspects of its program give evidence of its abilities to promptly and effectively mitigate the full range of emergency conditions anticipated on Navajo "Indian" lands.

The Navajo Nation's proposed AMLR Plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13. However, the Tribe's AMLR Plan does not separately and succinctly address the specific criteria specified in the September 29, 1982, **Federal Register** notice concerning assumption of emergency response authority. See 47 FR 42729. Due to this lack of information, the Assistant Secretary is deferring any action on the Navajo Nation's proposal to assume the emergency response authority until additional material can be submitted.

IV. Public Comment

The following comments on the Navajo Nation's Reclamation Plan were received by OSMRE and considered by the Assistant Secretary in making the determination that the Navajo Plan will be approved:

1. One commenter stated that the Notice of Reopening the public comment period does not reflect any limitations upon the Navajo Tribe's implementation of the proposed Plan on off-Reservation areas.

OSMRE responds that the Navajo Plan covers abandoned mine land reclamation on all Navajo Indian lands (see references to "Indian lands" in 30 CFR 872.11(b)(3), 888.11, and page 5 of the Plan). The term "Indian lands" is defined in section 701(9) in SMCRA as

meaning "all lands, including mineral interests, within the exterior boundaries of any Federal Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian Tribe." Accordingly, Indian AMLR programs are not limited to Reservation boundaries but extend to all Indian lands. The scope of the term "Indian lands" has been expresely discussed in the preamble to OSMRE's AMLR regulations. See 43 FR 49932, 49933, and 49939 (October 25, 1978), and 47 FR 28574, 28580, and 28592 (June 30, 1982).

2. Another commenter stated that OSMRE should specifically limit the applicability of the Tribe's Plan with respect to off-Reservation lands.

OSMRE responds that, as defined in the regulations, an Indian reclamation program encompasses reclamation that occurs on "Indian lands" as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Accordingly, OSMRE finds that there is no legal basis for further limiting the applicability of the Navajo Tribe's AMLR program.

3. One commenter stated that the Tribal Code and Plan authorizing the Tribe to acquire land by condemnation raises serious questions as to legal authority, asserting that SMCRA was not intended to expand Tribal power over fee landowners. The commenter continued by stating that OSMRE should reject the Code (section 407) and implementing Plan provisions as being beyond Tribal legal authority as applied to off-Reservation land. Moreover, the commenter stated that serious questions as to the legal authority of the Tribe to acquire lands by condemnation arise when fee lands within Reservation boundaries are involved. The commenter added that the Code appears to incorporate a general condemnation provision that exceeds the limited condemnation authority contemplated by section 407 of SMCRA. The commenter concluded that OSMRE should, therefore, reject any assertion by the Tribe of general condemnation authority under the guise of an AMLR Plan.

OSMRE recognzies that there are certain legal limitations to the Navajo Tribe's use of its condemnation authority. Approval of the Tribe's Plan does not create new jurisdictional rights nor should it be perceived as extending existing rights. Condemnation is only one option in abandoned mine land reclamation. If a Tribe lacks the jurisdictional authority to condemn property, then this option obviously would not be available; and it would have to devise other approaches to reclamation. However, Tribal reclamation programs do not attempt to regulate activities; rather, they are concerned with reclaiming lands that have been adversely affected by past mining practices. Reclamation, in this sense, should be viewed as a cooperative effort between landowners and the AMLR agency. The Tribe does not necessarily need the condemnation authority to carry out its approved Plan. If all landowners consented to the reclamation, there would be no need to condemn. If a problem arose concerning jurisdiction, the Tribe has other options, such as contracting with the Federal Government or a State or local agency, to perform the reclamation.

The commenter's concern about an unwarranted extension of jurisdictional rights is unfounded. An AMLR program has a variety of procedures that limit the ability of a State or Tribe to take precipitous action. For example, each State or Tribe undertakes an extensive public education, comment, and review process that includes discussions with all affected landowners prior to the submittal of a reclamation grant request to OSMRE (see 30 CFR 884.13(c)(7) and pages 23 and 24 of the Tribe's Plan). In addition, OSMRE thoroughly reviews all proposed reclamation projects included in State and Tribal grant requests for compliance with the provisions of SMCRA and an approved Plan. Moreover, OSMRE must specifically approve any requests that involve land acquisition (see section 407(c) of SMCRA). All these procedures allow extensive public review of proposed actions and provide parties who may be opposed to any actions ample time to raise their concerns with the reclamation agency, then OSMRE, and if necessary, ultimately the courts. Accordingly, OSMRE believes that the rights of fee landholders inside and outside the boundaries of the Navajo Reservation are not threatened by the approval of the Tribal Plan and that ample procedures exist by which controversial issues will be adequately aired in public, and reviewed by OSMRE, before reclamation is begun. Therefore, OSMRE believes it is not necessary to change the Navajo Plan concerning this issue.

Concerning the Navajo Code provisions, OSMRE reviewed the Tribal condemnation provisions and found them to be consistent with the provisions of section 407(c) of SMCRA. No changes in the Tribal Plan are, therefore, required.

4. Another commenter stated that section 201(d) of the Code provides that the Tribal department administering the reclamation program "shall be and hereby is clothed with the sovereign immunity from suit enjoyed by the Navajo Nation." The commenter stated that, with limited exceptions, judicial review of Tribal action under the Code is not provided and that effective judicial review, comparable to the... Administrative Procedure Act, 5 U.S.C. 701 *et seq.* (1982), is not available to persons aggrieved by Tribal action.

OSMRE believes that any person who might be aggrieved by Tribal action has the right to seek appropriate protective measures in a court of competent jurisdiction. The AMLR program, however, has a variety of procedures designed to internally resolve problems prior to seeking legal remedies. For example, the Tribal Plan requires extensive public review and scrutiny of proposed projects, including personal contact with local officials and all potentially affected landowners (Navajo AMLR Plan, pages 23–24). In addition, OSMRE reviews each grant request to ensure that the requirements of SMCRA and the implementing regulations are achieved. Finally, the Navajo Tribe is prevented from taking expeditious nonconsensual action (see Navajo AMLR Plan, pages 8–16). Accordingly, OSMRE believes that the Navajo Plan is consistent with the requirements of SMCRA and the Secretary's implementing regulations. OSMRE also believes that the Tribe has provided ample opportunity for public comment and review and that any landowners potentially aggrieved by Navajo reclamation have ample time to raise the jurisdictional issue in a court of competent jurisdiction prior to the actual commencement of reclamation.

5. One commenter asserted that the Tribe's AMLR program is not properly limited to reclamation of lands affected by coal mining. As such, the commenter believed that the Tribe's program exceeds the authority provided in SMCRA.

OSMRE responds that section 409 of SMCRA and 30 CFR Part 875 of the Secretary's regulations provide authority for State and Tribal reclamation programs to use AMLR funds to reclaim lands adversely affected by past noncoal mining activities. Accordingly, no change is required in the Plan (see 47 FR 28574, 28582, June 30, 1982).

6. Another commenter stated that the Notice of Reopening provides no information as to the scope of the proposed Tribal program to put

interested persons on notice that Plan approval could affect off-Reservation lands. The commenter also stated that any proposal to approve the Tribe's assertion of authority outside the Reservation raises sensitive and complicated jurisdictional issues and should be the subject of separate proceedings in which the position of the Tribe and OSMRE are stated specifically to allow interested persons full notice and an opportunity to be heard.

OSMRE notes that approval of the Tribe's Plan would provide authority for the Tribe to conduct reclamation activities on Indian or Tribal lands as that term is defined in section 701(9) of SMCRA. Since 1978, OSMRE's regulations have consistently provided that Indian AMLR programs cover "Indian lands," not Indian Reservations (see 43 FR 49932, October 25, 1978, preamble discussion to Part 872—comment No. 4 and Part 888—comment No. 1; see also 47 FR 28574, June 30, 1982, preamble discussion to § 872.11(b)(3) and Part 888). Accordingly, OSMRE believes that there has been adequate public notice, that the use of the term "Indian lands or Tribal lands" in the Navajo AMLR Plan is correct, and that no further modification of the Plan is necessary.

7. Another commenter believes that the Tribe's program appears to assert authority over non-Indian mineral interests underlying Tribal or possibly allotted surface ownership. The commenter stated that these split-estate matters should be addressed by OSMRE specifically and that fee lands, including all split-estates, should be excluded from the Tribe's program.

OSMRE stated above that the Tribe's Plan covers reclamation activities on "Indian lands." The definition of Indian lands in section 701(9) of SMCRA covers split-estates. The Tribe's ability or authority to conduct reclamation activities, however, does not create or extend its jurisdictional authority over non-Indian mineral interests or over other off-Reservation lands. The ability to contract and conduct reclamation efforts is not meant to imply new regulatory control over off-Reservation lands.

8. One commenter stated that the Settlement Agreement entered in August 1985 between the U.S. Department of the Interior, the State of New Mexico, and others, in *New Mexico v. U.S. Department of the Interior*, U.S.D.C. No. 84–3572 (D.D.C. 1985), provides that allotted lands outside the boundaries of an Indian Reservation are not considered by the Secretary of the Interior to be "Indian lands" as defined in section 701(9) of SMCRA. The commenter concluded that approval of the Tribe's Plan in its present form would contravene the Settlement Agreement, insofar as the Plan asserts Tribal jurisdiction over all lands, including allotments in the "checkerboard area" to the east and south of the Reservation.

OSMRE responds that in September 1984, the Secretary promulgated regulations establishing a Federal program for the regulation of surface coal mining and reclamation operations on Indian lands. The State of New Mexico challenged a provision in those regulations which provides for the Secretary's exclusive regulatory jurisdiction over surface mining operations on Indian lands. The Navajo Tribe intervened in the New Mexico action, requesting that the Secretary's regulations be upheld. The Tribe also filed a counterclaim against New Mexico seeking a declaratory judgment that certain lands in the State are Indian lands under SMCRA and that New Mexico has no regulatory jurisdiction over surface mining on them. The Secretary and New Mexico ultimately entered into a Settlement Agreement in which New Mexico agreed that the Secretary is the exclusive regulatory authority on Indian lands within the State. The Navajo's counterclaim, however, remained before the District Court. In November 1985, the U.S. District Court for the District of Columbia dismissed the Navajo's counterclaim. In February 1986, the Tribe appealed the decision of the District Court. On June 5, 1987, the U.S. Court of Appeals for the D.C. Circuit affirmed the District Court's dismissal of New Mexico's complaint but returned the Navajo's counterclaim to the District Court with instructions to transfer the case to the district court in New Mexico, which would have authority to decide the jurisdictional issues raised by the Tribe. See *New Mexico ex. rel. Energy and Minerals Department v. U.S. Department of the Interior*, No. 85–6165 (D.C. Cir. June 5, 1987).

By approving the Tribe's AMLR program, the Secretary provides the Navajo Tribe with the exclusive responsibility for reclamation on "Indian lands" consistent with the Settlement Agreement. OSMRE, however, realizes that there is on-going litigation to determine what encompasses the full scope of the term "Indian lands." OSMRE does not believe that such litigation should stop or curtail the Navajo Tribe's AMLR program. OSMRE's approval of the Navajo program covers Navajo "Indian lands" as that term is defined in section 701(9) of SMCRA. If the scope of this term is further defined by future litigation, OSMRE will make the necessary changes in the Navajo AMLR program.

9. Two commenters stated that the Tribal AMLR program contemplates the imposition of Tribal reclamation fees, separate and apart from the Federal reclamation fees described in 30 U.S.C. 1232(a), which are not authorized by SMCRA. The commenters concluded that any effort by the Tribe to impose its own reclamation fees exceeds the authority the Secretary is authorized to grant the Tribe under SMCRA.

OSMRE responds that section 402 of the Navajo Tribal Code deals specifically with the transfer of monies from the Abandoned Mine Land Fund administered by the Department of the Interior. Accordingly, the Navajo Plan does not impose a Tribal reclamation fee separate and apart from the Federal reclamation fee described in 30 U.S.C. 1232(a) nor is it authorized to do so under SMCRA. OSMRE consulted the Navajo Tribe, and the Tribe agrees that the Plan does not authorize an AMLR fee. Accordingly, no change to the Plan is necessary.

10. Another commenter stated that the opinion of the Navajo Tribe Attorney General that appears in the Plan does not conform to the requirements of 30 CFR 884.13(b) and fails to demonstrate the Tribe's authority to conduct its program outside the boundaries of the Reservation. The commenter also stated that the opinion fails to demonstrate that the Tribe has the broad condemnation authority the Code asserts over non-Indian lands. In addition, the commenter noted that the opinion refers to the Navajo Coal Mining Commission as the Tribal agency that will administer the program, whereas the Code provides that a new department, called the Abandoned Mine Lands Reclamation Department, was created to administer the Tribal program. Accordingly, the commenter asserts that the legal opinion is not in conformance with OSMRE's regulations. The commenter stated that the Tribal Chairman's designation and certain administrative and management structures are outdated and should be revised.

OSMRE notes that, since 1982 when the Navajo Plan was first submitted to OSMRE, the Navajo Nation has undergone a number of changes. The Tribe submitted additional material during the comment period to update the Plan that OSMRE reviewed that is the subject of this approval. OSMRE believes the legal opinion meets the requirements of 30 CFR 884.13(b) insofar

as it provides that the Tribe has the authority necessary to conduct its reclamation program in conformance with Title IV of SMCRA and the Secretary's implementing regulations. OSMRE recognizes that the Navajo Tribe may lack authority to use certain reclamation options on off-Reservation properties. However, the possible lack of authority to use certain reclamation options does not, and should not, invalidate the Tribe's ability to contract and carry out reclamation activities on such lands. With the consent of the landowners and mineral owners involved, the Tribe certainly has the authority to design, fund, and oversee all reclamation activities on any "Tribal lands." Accordingly, OSMRE believes that the legal opinion is sufficient and that the Tribe does have the authority and ability to conduct reclamation activities on Indian lands.

11. One commenter stated that the Tribe's proposed program appears to create overlapping jurisdictional problems with the State of New Mexico. The commenter stated that New Mexico administers a federally approved AMLR program and undertakes reclamation projects within the geographical area over which the Tribes seeks authority. The commenter believes that this conflict should be addressed specifically in a proper OSMRE notice or proposal so that the State and other interested persons can comment.

OSMRE finds that the State of New Mexico's approved AMLR program does not include "Indian lands." Accordingly, there is no overlap of responsibility between the two programs. Moreover, the coordination provisions of both the Navajo and New Mexico AMLR Plans require coordination of reclamation activities.

12. One commenter objected to provisions on page 30 of the Plan concerning certain Navajo procurement practices. The Navajo Tribe has agreed to delete paragraph No. III C. 2 on page 30 and Appendix 7 and to abide by all applicable Federal and Tribal laws, regulations, and requirements concerning the use of grant funds.

V. Assistant Secretary's Decision

The Assistant Secretary for Land and Minerals Management, based on the above findings and review and consideration of public comments, is approving under the provisions of 30 CFR 884.14 the Navajo Nation's AMLR Plan as submitted in September 1983, and revised in February 1988. A new Part 756 is being added to 30 CFR Chapter VII, Subchapter E—Indian Lands Program—to implement this decision. This approval, however, does not encompass the emergency response authority set forth in section 410 of SMCRA. Action on the emergency response program is being deferred until further documentation, consistent with the findings above, is submitted.

VI. Procedural Matters

1. Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the Office of Management and Budget granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, the action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of the Interior determined that the rule will not have significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance with the National Environmental Policy Act

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 756

Indian lands, Abandoned Mine Land Reclamation Program.

Dated: May 9, 1988.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, Part 756 is added to 30 CFR Subchapter E—Indian Lands Programs to read as follows:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

Sec.
756.1 Scope.
756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

Authority: 30 U.S.C. 1201 *et seq.*

§ 756.1 Scope.

This part implements the provisions in Public Law 100-71 which authorize the Crow, Hopi, and Navajo Tribes to obtain the Secretary's approval of Abandoned Mine Land Reclamation programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA.

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

The Navajo Nation's Abandoned Mine Land Plan as submitted in June, 1982, resubmitted in September, 1983, and amended in February, 1988, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Navajo Division of Resources, The Navajo Tribe, Division of Resources Building, Window Rock, AZ 86515

[FR Doc. 88-10729 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 9]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility of Adult Adoptees for Medical Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment clarifies the intent of title 10, U.S.C. 1072(2), concerning eligibility of adopted children. This amendment is necessary to ensure that reasonable limits are placed on CHAMPUS eligibility. This clarification will result in uniform eligibility determinations corresponding to the intend of Congress. This amendment is combined with previously submitted amendment 9 appearing in the Federal Register on April 22, 1988 (53 FR 13258). Both documents are the body of Change 9 to DoD 6010.8-R.

EFFECTIVE DATE: May 16, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: A. Chris Armijo, Office of Program Development, OCHAMPUS, telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the Federal Register on July 1, 1986 (51 FR 24008).

Section 199.3 discusses eligibility for CHAMPUS benefits and states that a dependent child may receive medical benefits beyond age 21 when that child has a pre-existing condition which renders him or her incapable of self-support. The incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity subsequently recurs, CHAMPUS eligibility cannot be reinstated.

Recently, some confusion has arisen on cases involving adoption of an adult dependent (over the age of 21) by a military sponsor, where an incapacity existed prior to the age of 21.

Accordingly on March 2, 1984, in FR Doc. 84-5367 (49 FR 7837), we published a notice of proposed rulemaking for public comment. All comments received were favorable to the proposed amendment. One commenter suggested that the proposed rule might be misleading because it would affect only incapacitated adoptees and not full-time student adoptees. The amendment, as published, defines "adopted child" in general and, therefore, applies to all adoptees including full-time student adoptees. We accepted the suggestion of another commenter to clarify the language of the heading under Section 199.3. (b)(2)(iv)(B). The heading now reads, "*Child of retiree, or of deceased member, or of deceased retiree.*"

Governing directives have generally been perceived as a continuation of benefits to dependents entitled prior to age 21. To be consistent with the intent of the law and to ensure uniformity, a provision is being added which clarifies that a dependent adopted after the age of 21 is not eligible for CHAMPUS. The effect of this change to the regulation is prospective beginning with the effective date of publication in the Federal Register. This revision will preclude, for CHAMPUS eligibility, individuals adopted after their 21st birthday.

This rule was written primarily to clarify the intent of Congress, and will affect only a small category of individuals. We, therefore, certify that this amendment will not have a significant impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199, is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.3, paragraph (b)(2)(iv)(A)(*2*), the heading of (b)(2)(iv)(B), and paragraph (b)(2)(iv)(B)(*2*) are revised to read as follows:

§ 199.3 Eligibility

* * * * *

(b) * * *

(*2*) * * *

(iv) * * *

(A) *Child of active duty member.*

(*1*) * * *

(*2*) An adopted child whose adoption has been legally completed. For eligibility under this provision, adoption must take place on or before the child's twenty-first birthday.

* * * * *

(B) *Child of retiree, or of deceased member, or of deceased retiree.*

(*1*) * * *

(*2*) An adopted child whose adoption has been legally completed. For eligibility under this provision, adoption must take place on or before the child's twenty-first birthday.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88-10869 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3588/R952; FRL-3380-6]

Poly-D-Glucosamine (Chitosan); Exemption From The Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical growth regulator poly-*D*-glucosamine (hereafter referred to as chitosan) when used as a seed treatment in or on barley, oats, peas, and beans. This exemption was requested by Natural Ag, Division of Bentech Laboratories, Inc.

EFFECTIVE DATE: Effective on May 3, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard F. Mountfort, Product Manager (PM-23), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 3, 1988 (53 FR 3074), which announced that Natural Ag, Division of Bentech Laboratories, Inc., 635 Water Avenue NW., Albany, OR, had submitted a pesticide petition (PP) 8F3588 to EPA, proposing that an exemption from the requirement of a tolerance be established for residues of the biochemical plant growth regulator chitosan when used as a seed treatment in or on barley, oats, peas, and beans.

Chitosan is a naturally occurring substance produced from chitin extracts of crustacean shells (e.g., crab, shrimp, and lobster). The product is intended for use in treatment of seed prior to planting. Plant root growth is stimulated and stem strength enhanced, helping to prevent lodging (when the plants falls over because weak stems are unable to support it) in oats and barley. Plants which lodge are difficult to harvest; therefore, yields may be decreased. In peas and beans, chitosan's mode of activity involves augmenting the function of plant genes by enhancing the immunity system.

The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of barley and oats, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging. In peas and beans, the plants are stimulated to produce substances which inhibit the growth of pathogenic fungi.

The Agency considered the following factors in support of this request for exemption from requirement of a tolerance: Chitosan (1) is not toxic, as

demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) is naturally occurring in the environment in large concentrations; (3) has been exempted from the requirement for a tolerance in or on wheat (40 CFR 180.1072) when used as a seed treatment at an application rate of 4 oz./100 lbs. seed; (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loaf volume of bread.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this exemption request. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Chitosan is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: May 3, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1072 is revised to read as follows:

§ 180.1072 Poly-D-glucosamine (chitosan); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical plant growth regulator poly-*D*-glucosamine when used as a seed treatment in or on barley, beans, oats, peas, and wheat.

[FR Doc. 88–10677 Filed 5–13–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88–137]

Order Revising Procedural Rule Defining Who May Sign Common Carrier Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises § 1.743(b) of its Rules to allow an attorney to sign a common carrier application for an applicant who is absent from the United States. This revision brings the signature rule for common carrier applications into conformity with the signature rules for broadcast and private radio applications.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau; Telephone: 202–632–6450.

ORDER

Adopted: April 7, 1988; Released: April 27, 1988.

By the Commission.

1. The common carrier, broadcast, and private radio services are each governed by specific Commission Rules which explain who may sign applications seeking FCC authorization in those services. The relevant rule sections are § 1.743 for common carrier, § 73.3513 for broadcast, and § 1.913 for private radio. The language of the above rule sections (henceforth, the signature rules) is nearly identical except for the language of subsection (b) of each rule. Subsections (b) are similar in that they allow an attorney to sign an application, or amendment thereto, for an applicant if the applicant is physically disabled. The subsections differ in that an attorney for a broadcast or private radio applicant may sign an application for his client if the applicant is absent from the United States, whereas the attorney for a common carrier applicant may sign for the applicant only if the applicant does not reside in the contiguous 48 States of the United States or the District of Columbia. *Compare* § 73.3513(b) (broadcast) and § 1.913(b) (private radio) with § 1.743(b) (common carrier).

2. We do not perceive any reason for the foregoing inconsistency in our Rules. Moreover, this inconsistency in the signature rules has apparently confused some common carrier applicants, who have allowed their attorneys to sign their applications, or amendments thereto, for them when they were absent from the United States. Such an action is clearly authorized in the broadcast and private radio services, but is not allowed in the common carrier services. The confusion generated by the current inconsistency in the signature rules has resulted in litigation and has generally delayed the provision of service to the public. In view of these considerations, we have decided to revise § 1.743(b) of the Rules to provide that attorneys may sign applications, amendments thereto and related statements of fact for common carrier applicants when those applicants are absent from the United States. This revision will bring § 1.743(b) of the Rules, which governs the signing of common carrier applications, into conformity with §§ 73.3513(b) and 1.913(b) of the Rules, which govern the signing of broadcast and private radio applications, respectively. We believe these rules are consistent with section 308(b) of the Communications Act of 1934, as amended. In addition, this revision will avoid the delays encountered over signature problems under the current version of § 1.743(b) and thus further the Commission's goal of providing service to the public in the most efficient, expeditious manner possible.

3. Authority for this revision of our Rules and Regulations is contained in sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and (j) and 303(r). Because this revision relates to a matter of procedure, the provisions of 5 U.S.C. 553 are not applicable.

4. Accordingly, it is ordered, that on the date that this Order is published in the **Federal Register**, § 1.743(b) of the Commission's Rules and Regulations is revised as set forth below.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Rule Change

Part 1 of 47 CFR is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 1.743 is amended by revising paragraph (b) to read as follows:

§ 1.743 Who may sign applications.

* * * * *

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

* * * * *

[FR Doc. 88–10637 Filed 5–13–88; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–519; RM–6072]

Radio Broadcasting Services; Boulder City, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rock 'N Roll, Inc., substitutes Channel 288C2 for Channel 288A at Boulder City, Nevada, and modifies its license for Station KRRI to specify the higher powered channel. Channel 288C2 can be allocated to Boulder City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 35–58–42 and West Longitude 114–50–18. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–519, adopted April 6, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nevada is amended by amending the entry for Boulder City, Nevada, by removing Channel 288A and adding Channel 288C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10639 Filed 5–13–88; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–500; RM–6050]

Radio Broadcasting Services; Copenhagen, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kevin O'Kane, allocates Channel 294A to Copenhagen, New York, as the community's first local FM service. Channel 294A can be allocated to Copenhagen in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4 miles) south to avoid a short-spacing to unused and unapplied for Channel 293A at Brockville, Ontario, Canada. The coordinates for this allotment are North Latitude 43–50–05 and West Longitude 75–40–20. Canadian concurrence has been received since Copenhagen is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective June 20, 1988. The window period for filing applications will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau. (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–500, adopted April 7, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is amended by adding the following entry: "Copenhagen, Channel 293A."

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10640 Filed 5–13–88; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 70345-8026]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final Rule.

SUMMARY: NOAA issues this final rule to implement a portion of Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP). Measures implemented by this rule: (1) Change the dates of the two-day non-trap recreational season and the beginning of the regular season; (2) remove a daily boat limit of 24 spiny lobsters during the two-day non-trap recreational season; (3) provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances; and (4) revise the requirements for holding undersized spiny lobsters for use as attractants. The intended effects of the rule are to prevent overfishing of the spiny lobster stocks, to rebuild and maintain the stocks at a maximum sustainable yield level through protection of undersized lobsters, and to provide for more consistent State and Federal management measures.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP and its regulations at 50 CFR Part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule implements five conditionally approved measures contained in Amendment 1 to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). A notice of availability of the amendment and request for comments was published on February 25, 1987 (52 FR 5564). A proposed rule to implement Amendment 1 was published on March 18, 1987 (52 FR 8485). A notice of availability of a minority report on the amendment by some members of both Councils was published on April 3, 1987 (52 FR 10780; corrected at 52 FR 13257, April 22, 1987). A final rule to implement a part of Amendment 1 was published on June 15, 1987 (52 FR 22656; corrected at 52 FR 23450, June 22, 1987).

The FMP manages the spiny lobster fishery throughout the exclusive economic zone (EEZ) off the South Atlantic coastal States from the Virginia/North Carolina border south and through the Gulf of Mexico. The management unit for the FMP consists of the spiny lobster, *Panulirus argus*, and the slipper (Spanish) lobster, *Scyllarides nodifer*.

The preamble to the proposed rule contained information on the fishery, discussed problems in the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. That information is not repeated here.

The preamble to the final rule responded to written comments on the proposed rule and Amendment 1, approved Amendment 1, and discussed procedures for implementing delayed measures. That information is not repeated here.

Implementation of Delayed Measures

Five measures, whose conditions for implementation have been met either by changes in Florida's laws or by resolution of the Coast Guard's vessel safety concerns, are as follows:

1. Change the two-day non-trap recreational fishery from the first full weekend preceding July 21 to the first full weekend preceding August 1.

2. During the two-day non-trap recreational season, remove the daily limit of 24 lobsters per boat, leaving a daily bag and possession limit of six spiny lobsters per person.

3. Change the opening of the regular season from July 26 to August 6.

4. Provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances.

5. Require the use of live wells on vessels when undersized spiny lobsters are held for use as attractants in traps.

On June 2, 1987, Florida approved new spiny lobster regulations that, among other things, (1) changed the dates of their two-day sport season and the opening date of the regular season, beginning in 1988; (2) provided for extension of the period for removal of traps from the water at the end of the season, up to a maximum of ten days; and (3) established a daily bag and possession limit of six spiny lobsters per person during the two-day sport season. Thus, the conditions for implementing corresponding measures from Amendment 1 to the FMP have been met.

The safety aspects of the use of live wells have been examined in consultation with the Naval Architecture Branch, Office of the Commandant, U.S. Coast Guard. It is recognized that the installation and use of a live well, as with any structural modification, may affect vessel stability. However, the significance of the effect will depend on a vessel's inherent stability, the amount and location of the added weight, and the "free surface effect" of enclosed liquids. The following excerpt from the Coast Guard's Navigation and Vessel Inspection Circular No. 5-86, "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", discusses the effects of modifications on a fishing vessel's stability:

1. Nearly all of the fishing vessel casualties investigated by the Coast Guard involve vessels in which one or more modifications have been made. Typically, the changes have not been documented nor has the stability of the vessel been reevaluated in order to provide updated stability information to the operator. In most cases, the modifications consist of adding deck equipment, such as winches, A-frames, or other fishing gear, adding or modifying deckhouses, or changing out engines. Where modifications have been made, they have generally increased the displacement of the vessel, resulting in a decrease in reserve buoyancy. In many cases, these changes have also substantially increased the VCG [vertical center of gravity] of the vessel. Both of these actions adversely affect the stability of the vessel.

2. So that operators and naval architects alike will recognize the extent of stability analysis needed following modification, the Coast Guard offers the following recommendations:

a. If the cumulative total of weights added plus weights removed is less than one percent of the original lightship weight,[1] no inclining experiment or deadweight survey is required. A weight summation may be used to adjust the stability information to the operator.

b. If the cumulative total of weights added plus weights removed is between one and ten percent of the original lightship weight, then a corrected lightship weight, VCG and LCG [longitudinal center of gravity] should be calculated based on the weight summation and then verified by a deadweight survey. If the results of the deadweight survey show a change in the lightship displacement of more than ten percent or a change in the LCG of more than one percent of the LBP [length between perpendiculars], then an inclining experiment should be conducted.

c. If the cumulative total of weights added plus weights removed is greater than ten percent of the original lightship weight, a new inclining experiment is recommended.

d. As an example, assume a fishing vessel whose lightship displacement is 100 tons. During a conversion, 8 tons are added and 12 tons are removed. Because the total of weights added and removed, 20 tons, is greater than ten percent of the lightship weight, a new inclining and stability analysis should be completed.

3. Operators should be aware that weight summation calculations are only as good as the weight, VCG, and LCG estimates. The Coast Guard's experience has been that many of these estimates are not accurate enough because some items are overlooked or weights, VCG, and LCG values are incorrect. Thus, the operator should keep a record of the weights added and removed. The record should include the estimated weight, the distance from a known longitudinal reference point such as a bulkhead or the end of a deck house and the distance above a known vertical reference point, such as the main deck. When the record book shows that the sum of the weights added and removed exceeds one per cent of the original lightship weight, a new stability analysis should be conducted.

4. The Coast Guard also recommends that surveyors take photographs at each survey so that changes to the vessel can be readily detected and the need for a new stability analysis thoroughly evaluated. Likewise, the Coast Guard recommends that designers maintain plans and calculations which indicate the vessel's configuration and the equipment on board at the time of the most recent inclining experiment and stability analysis.

5. Vessels also have a tendency to "grow" in displacement over a period of a few years. This may be due to new equipment brought aboard the vessel, additional stores and spare parts not accounted for, or piecemeal modification. Although few of these changes have a major effect by themselves, they do have a cumulative effect. As a check, operators should record the actual draft or freeboard readings for a particular loading condition (i.e. departure condition) at least every six months to ensure that the vessel has not added unaccounted weights. If these readings changed more than two inches from the original readings, then the operator should ask for a new stability evaluation. Painted lines, such as waterlines or boot toppings, should not be used since these may change when the vessel is repainted.

The effect of free surface on stability depends principally on the level of liquid in the well and its length/breadth ratio. That is, a well that is either empty or a closed well that is completely full will have less adverse effect on stability than a well that is partially full; and the transverse orientation of a rectangular live well is more critical to stability than its longitudinal orientation. For a full discussion of these and other vessel stability considerations, as well as other vessel safety considerations, owners and operators may obtain a copy of "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", NVIC No. 5-86, from U.S. Coast Guard Marine Safety Center, 2100 Second St. SW., Washington, DC 20593, at a cost of $11.00.

There is no basis for concluding that the installation and use of a live well, by itself, will endanger a vessel in the spiny lobster fishery. Stability-related vessel accidents are not indicated as being a present problem in this fishery. Fishermen are not pressured to operate in marginal weather conditions under present management measures. Further, the fishery is restricted to daylight hours, is generally close to shore, and is conducted on a day-to-day schedule. A vessel owner or operator, however, should seek the advice of a naval architect on any significant changes in vessel configuration or loading.

Three measures from Amendment 1 to the FMP remain unimplemented, namely, (1) the requirement for a permit to harvest commercial quantities of spiny lobsters, (2) the requirement for a permit to wring tails from spiny lobsters taken in the commerical fishery, and (3) the establishment of a recreational bag limit during the regular season. The latter two measures hinge on the commercial permit, which is necessary to distinguish between commercial and recreational harvesters. Florida's management regime does not provide a meaningful way of distinguishing between these groups.

Changes from the Proposed Rule

In §§ 640.2 and 640.22(b), the term "live well" is substituted for "live box" more clearly to describe the container required for undersized spiny lobsters held for use as attractants in traps. The definition of "live well" is revised to include the requirement that it be shaded, a requirement previously contained at § 640.22(b). Further, the definition provides for continuous circulation of seawater, more clearly to express the requirement of Amendment 1 that a live well be part of an "open system", i.e., open to the sea. Finally, the definition is modified to explain that seawater circulated at a rate that replaces the water at least every 8 minutes meets the requirement for aeration. The underlying principle for aeration of water in a live well is to prevent deoxygenation of the water and the resulting increased mortality of spiny lobsters held therein. However, seawater that is circulated in an open system at a sufficiently high rate does not need independent aeration—the process of such circulation aerates. Aeration through the prescribed rate of circulation obviates the necessity of alternative methods of aeration, such as spraying the seawater through air or bubbling air through the seawater, both of which are more cumbersome and expensive and less efficient. The concept of aeration through circulation at the rate of 8 minutes for complete seawater replacement was developed by the Florida Marine Fisheries Commission through a process which included public hearings. Individual fishermen and representatives of fishermen's organizations who were present at those hearings supported the concept. Sping lobster fishermen will benefit from this change since it clarifies that the State standard satisfies this Federal requirement.

In §§ 640.7 and 640.21(c), specific prohibitions are added which clarify the intent of the existing regulations to hold a vessel operator responsible for the cumulative recreational catch limit applicable to the vessel and to prevent transfer at sea of spiny lobsters caught under the recreational catch limit. These prohibitions enhance substantive provisions of the regulations and will facilitate effective enforcement.

In §§ 640.7 and 640.20(a)(3), a prohibition and a requirement are added relating to the extension of the trap removal period at the end of the regular season. In addition, in § 640.20(a)(3), the procedures for obtaining an extension of the trap removal period are simplified by using the procedures established by Florida for its waters. These changes will enhance enforcement and provide fishermen with uniform standards and procedures to follow whether their traps are in the EEZ or State waters.

Classification

The Regional Director determined that Amendment 1 is necessary for the conservation and management of the spiny and slipper lobster fishery of the Gulf of Mexico and the South Atlantic

[1] "Lightship weight" means the displacement of the vessel with fixed ballast and with machinery liquids at operating levels but without any cargo, stores, consumable liquids, or fuel, water ballast, or persons and their effects.

and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment for the amendment and the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the environment as a result of the amendment's management measures, which are, in part, implemented by this rule.

The Administrator of NOAA determined that this rule is not a "major rule", requiring a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to increase current landings, enhance productivity of the stock, and prevent overfishing of the spiny and slipper lobster stock. The major benefits from the amendment are greater than the associated Federal costs to manage the fishery on a continuing basis. The Councils prepared a supplemental regulatory impact review which concluded that the management measures contained in this rule will increase the likelihood of achieving the projected benefits described in the FMP through more effective enforcement and a reduction in mortality of undersized lobsters. No regulatory-induced price increases or Federal enforcement costs should occur.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it will not significantly reduce harvest levels, alter current fishing practices, or impose significant new costs on the industry. As a result, a regulatory flexibility analysis was not prepared.

The proposed rule contained a collection of information requirement subject to the Paperwork Reduction Act; however, § 640.4, which contained that collection of information requirement, is not being implemented now. Approval from the Office of Management and Budget will be obtained before § 640.4 is implemented.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, Mississippi, and South Carolina agreed with this determination. Alabama and North Carolina did not respond; therefore, consistency is automatically implied. Georgia and Texas do not have approved coastal zone management programs.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR Part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 640.2, the definition for *Live box* is removed and the definition for *Live well* is added in its place to read as follows:

§ 640.2 Definitions.

* * * * *

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

* * * * *

3. In § 640.7, the word "or" at the end of paragraph (a)(20) is removed; the period at the end of paragraph (a)(21) is removed and a semicolon is added in its place; and new paragraphs (a)(22), (a)(23), and (a)(24), are added to read as follows:

§ 640.7 General prohibitions.

(a) * * *

(22) Operate a vessel that fishes for spiny lobster in the EEZ with spiny lobster aboard in excess of the cumulative recreational catch limit, as specified in § 640.21(c)(3);

(23) Transfer at sea in the EEZ spiny lobster caught under the recreational catch limit specified in § 640.21(c) from a fishing vessel to any other vessel or to so transfer at sea any such spiny lobster taken from the EEZ; or

(24) Fail to have on board or present for inspection an extension authorization, as required under § 640.20(a)(3).

* * * * *

4. Section 640.20 is revised to read as follows:

§ 640.20 Seasons.

(a) *Fishing season.* (1) The commercial and recreational fishing season for spiny lobster begins on August 6, one hour before official sunrise, and ends on March 31, one hour after official sunset.

(2) Prior to the season, spiny lobster traps may be placed in the water one hour before official sunrise on August 1 (soak period).

(3) After the season, traps must be removed from the water by one hour after official sunset on April 5 (removal period) unless an extension to the removal period is granted by Florida in accordance with Chapter 46–24, Spiny Lobster (Crawfish) and Slipper Lobster, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. The extension authorization must be carried abroad the boat retrieving the traps and must be presented for inspection upon request of an authorized officer.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, no trap may be transported on the waters of the EEZ during the period from one hour after official sunset on March 31 to one hour before sunrise on August 6.

(5) A spiny lobsete trap, buoy, or rope in the management area at times not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such a trap remains subject to appropriate civil penalties.

(b) *Special non-trap recreational fishery.* There is a special non-trap recreational fishing season on the first full weekend preceding August 1 from 0001 hours, Saturday, until 2400 hours, Sunday.

(c) *Possession.* Spiny lobsters or any parts thereof may be possessed in the EEZ only during the seasons specified in paragraphs (a)(1) and (b) of this section, unless accompanied by a proper bill of landing or other proof indicating lawful harvest outside the EEZ. Holding a spiny lobster in a trap while in the water during the soak period or during the removal period, or an extension thereto, will not be deemed possession provided such spiny lobster is returned immediately to the water unharmed whenever a trap is removed from the water during these periods.

5. In § 640.21, paragraph (c) is revised to read as follows:

§ 640.21 Harvest limitations.

* * * * *

(c) *Recreational catch.* (1) During the special non-trap recreational season described in § 640.20(b), the daily catch and possession of spiny lobsters in or from the EEZ is limited to six per person.

(2) A person who fishes for spiny lobster in the EEZ may not combine the recreational catch and possession limit of paragraph (c)(1) of this section with any bag or possession limit applicable to State waters.

(3) The operator of a vessel that fishes for spiny lobster in the EEZ during the special non-trap recreational season is responsible for the cumulative recreational catch, based on the number of persons aboard, applicable to that vessel.

(4) A person who fishes for or possesses spiny lobsters under the recreational catch and possession limit specified in paragraph (c)(1) of this section may not transfer spiny lobsters at sea from a fishing vessel to any other vessel.

6. In § 640.22, paragraph (b) is revised to read as follows:

§ 640.22 Size limitations.

* * * * *

(b) *Attractants.* A live lobster under the minimum size may be retained for use as an attractant in a trap provided it is held in a live well abroad the vessel. No more than 100 undersized lobsters may be carried on board for use as attractants. The live well must provide a minimum of 3/4 gallons of seawater per spiny lobster.

[FR Doc. 88–10912 Filed 5–11–88; 4:00 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1946

Agricultural Loan Mediation Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule adds a new regulation to implement subtitles A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100–233), enacted on January 6, 1988. This new legislation requires certification of a State's agricultural loan mediation program in order for Farmers Home Administration (FmHA) and other agencies of the Department of Agriculture to participate in mediations conducted pursuant to a State's agricultural loan mediation program, and to enable a State to receive a Federal matching grant(s) to be used for the operation and administration of the program. The intended effect of this action is to establish procedures for certification and for administering the matching grant program, and sets out FmHA's duty to participate in such programs.

DATES: Comments will be received on or before June 15, 1988.

ADDRESSES: Comments should be sent in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, South Building, Room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection on weekdays between the hours of 8:15 a.m. and 4:45 p.m. at the above address. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments on information requirement issues to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wilbert Campbell, Jr., Director, Emergency Designation Staff, Farmers Home Administration, USDA, South Agriculture Building, Room 4929, Washington, DC 20250, telephone (202) 382–1650.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor," since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed action is not expected to substantially affect budget outlays, to affect more than one agency, or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provided better service to agricultural producers and their creditors.

This program/activity will be listed in the Catalog of Federal Domestic Assistance under No. 10.435, Agricultural Loan Mediation Program. This program is being proposed for exclusion from the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities.").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G., "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrator of the Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities.

Public Law 100–233 establishes a procedure under which a State, upon its application, can be certified by the Secretary of Agriculture as a "qualifying" State if the State's agricultural loan mediation program meets certain requirements set out in the statute. The Secretary of Agriculture has delegated the responsibility for State certification and administration of the matching grant program to the Administrator of the Farmers Home Administration (FmHA).

The law sets forth the requirements that a State's agricultural loan mediation program must meet in order to be certified as a qualifying State. Those requirements, which are set out in these proposed regulations, are that the State's agricultural loan mediation program must:

(1) Provide mediation services to producers, and their creditors, which, if decisions are reached, result in mediated, mutually agreeable decisions between parties under an agricultural loan mediation program;

(2) Be authorized or administered by an agency of the State government or by the Governor of the State;

(3) Provide for the training of mediators;

(4) Provide that the mediation sessions shall be confidential; and

(5) Ensure that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

This proposal establishes simple procedures for States to use in applying for certification and for FmHA to follow in deciding whether or not a State should be certified. The proposed substantive standards simply repeat the statutory language and are taken directly from section 501(c) of the Agricultural Credit Act of 1987. While experience with this program may suggest the need for the amplification of these criteria, FmHA tentatively believes that they are sufficiently precise to establish the necessary framework for a workable relationship with States having such programs.

In the administration of the matching grant program to qualifying States, FmHA will use the required uniform standards prescribed in 7 CFR Part 3015, "Uniform Federal Assistance Regulations", and in the new 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", published at 53 FR 8087 *et. seq.* on March 11, 1988 as a final rule to be effective October 1, 1988. FmHA believes that these generally applicable rules are sufficiently well known to the States to permit informed comment on these proposed rules, and thus is not setting out the entirety of those regulations in this preamble.

While the duty to mediate imposed by the Agricultural Credit Act of 1987 on FmHA is immediate upon certification of a State, and will be satisfied by the issuance of a temporary letter certification within 15 days of the receipt of the required information from a State, this rule proposes to make the grant year for all qualifying States run concurrently with the Federal fiscal year, which commences on October first. Thus each State will be able to receive a fair share of the available funds in the event that there is not sufficient appropriated money to give each State all of the funding authorized by the formula in the Agricultural Credit Act. It now appears that FmHA will be able to deal with this issue prospectively, in the light of the comments received in response to this Notice, since no funds have as yet been appropriated for this matching grant program.

List of Subjects in 7 CFR Part 1946

Federal-state relations, Grant programs—agriculture, mediation.

Accordingly, FmHA proposes to add a new Part 1946 and Subpart A, to Chapter XVIII, Title 7, of the Code of Federal Regulations as follows:

PART 1946—MEDIATION

Subpart A—Agricultural Loan Mediation Program

Sec.

1946.1 General.
1946.2 Definitions.
1946.3 Process for certification.
1946.4 Matching grants.
1946.5 Monitoring compliance and penalty for non-compliance.
1946.6 Nondiscrimination.
1946.7 Environmental requirements.
1946.8 Delegation of authority.
1946.9—1946.49 [Reserved]
1946.50 OMB control number.

Authority: 7 U.S.C. 1988; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

§ 1946.1 General.

(a) This subpart provides procedures for administration of the agricultural loan mediation program whereby a State may be certified by the Farmers Home Administration (FmHA) as a qualifying State for purposes of FmHA and other USDA agencies' participation in the program. Such certification is also necessary for a State to receive Federal matching grant funds to be used for the operation and administration of the State's agricultural loan mediation program.

(b) FmHA will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally, and will cooperate in good faith in such mediations by attempting to comply with requests for information and analysis, and in presenting and exploring debt restructuring proposals wherever feasible, when that State is and remains a qualifying State as defined in § 1946.2 (b) of this subpart.

§ 1946.2 Definitions.

(a) *Agricultural Loan Mediation Program.* A State authorized or administered program which meets the requirements for certification outlined in § 1946.3 (a)(2)(i) through (v) of this subpart.

(b) *Qualifying State.* A State which has been certified by FmHA as having an agricultural loan mediation program which meets the requirements outlined in § 1946.3 (a)(2)(i) through (v) of this subpart, provided the State's certification has not expired or been withdrawn under the provisions of § 1946.5 (c) of this subpart.

§ 1946.3 Process for certification.

(a) No later than August 1, of each year, the Governor of a State or Head of a State agency designated by the Governor of a State must submit a written request to the FmHA if the State wishes to be certified as a qualifying State for the purposes of FmHA participation in the State's program and for the State to receive a matching grant to be used for the operation and administration of the program within the State during the fiscal year commencing October 1 of that same year. The request must include:

(1) A description of the State's agricultural loan mediation program.

(2) Documentary information to support the request and a certification by the Governor or Head of a State agency designated by the Governor that the State's agricultural loan mediation program:

(i) Provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties under the program;

(ii) Is authorized or administered by an agency of the State government or by the Governor of the State;

(iii) Provides for the training of mediators;

(iv) Provides that the mediation sessions shall be confidential, and

(v) ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

(b) If the State is a qualifying State at the time the written request is made, the written request must describe only changes to the program since the previous year's request together with such documentary support as may be necessary concerning such changes, as well as a certification that the remaining elements of the program remain as described in the previous application.

(c) The request for certification should be mailed to: Administrator, Farmers Home Administration, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Room 5014, Washington, DC 20250.

(d) If a matching grant is requested in accordance with § 1946.4 of this subpart, the request for certification also must include the information required by § 1946.4 (e)(2) of this subpart.

(e) Within 15 days from receipt of the request for certification, the Administrator will notify the State Governor or Head of a State agency designated by the Governor whether or not the State is certified as a qualifying State as defined in § 1946.2(b) of this subpart, or, if additional information or clarification is needed to make the determination, the Administrator will advise the State Governor or head of a State agency of the additional information or clarification needed. Upon receipt of the additional information or clarification requested, the Administrator will respond within 15 days from the date of receipt.

§ 1946.4 Matching grants

(a) *Administration of grants.* FmHA will administer the program in accordance with the requirements of 7 CFR Parts 3015 and 3016. Any State requesting a grant must comply with the provisions of those regulations.

(b) *Source of funds.* All grants awarded to qualifying States will be

made from appropriated funds

(iv) Payment of administrative costs,

Form FmHA 1940–10, "Cancellation of

CFR Parts 3015 and 3016. In the event that the penalty for non-compliance is

needed to implement the provisions of

governmental agencies or geographic

made from appropriated funds specifically allotted for this program. A statement of the amounts appropriated, obligated, and remaining available for the program at any particular time will be given to any person upon request to FmHA.

(c) *Amount of grant.* A grant will not exceed 50 percent of the total fiscal year funds that a qualifying State requires to operate and administer its Agricultural Loan Mediation Program which has been certified by the Administrator as meeting the requirements of § 1946.3 (a) (2) (i) through (v) of this subpart. In no case will the total amount of a grant exceed $500,000 annually.

(d) *Distribution criteria.* Gant funds will be distributed on a first-come, first-served basis to qualifying States. If, however, when funds for a fiscal year become available, there are not sufficient funds to give all qualifying States 50 percent of their justified estimated expenses for the fiscal year, the percentage allocation will be reduced so as to give all States the same percentage of their expenses. If after the percentage calculation any State's allocation still exceeds $500,000, that State's share will be further reduced to $500,000 and the remaining States' shares will be increased by the same percentage.

(e) *Eligibility criteria for amount of grant requested.* To be eligible to receive the amount of grant requested, a State must:

(1) Have an Agricultural Loan Mediation Program that has been certified by the Administrator in accordance with § 1946.3 of this subpart, which certification has not been withdrawn in accordance with § 1946.5 (c) of this subpart.

(2) Provide evidence to justify the estimated costs of operating and administering the State's Agricultural Loan Mediation Program.

(f) *Grant purposes.* (1) Grants made under this subpart will be used solely for the operation and administration of the State's Agricultural Loan Mediation Program. There is no other authorized use of grant funds. Eligible costs are limited to those allowable under 7 CFR 3016.22 that are reasonable and necessary to carry out the mission of the State's Agricultural Loan Mediation Program in providing mediation services for agricultural produces and their creditors within the State, such as:

(i) Salaries of professional, technical, and clerical staffs;

(ii) Payment of necessary, reasonable office expenses such as office rental, office utilities, and office equipment rental;

(iii) Purchase of office supplies;

(iv) Payment of administrative costs, such as workers' compensation, liability insurance, employer's share of social security, and travel that is necessary to provide mediation serivces;

(v) Training for mediators;

(vi) Security systems necessary to assure confidentiality of mediation sessons.

(2) Grant funds may not be used for:

(i) The purchase of capital assets, real estate, or vehicles or repair and maintenance of privately-owned property;

(ii) Political activities;

(iii) Routine adminstrative activities not allowable under OMB Cost Principles.

(g) *Application processing.* (1) FmHA will have 60 days from the date of certifying a State as a qualifying State to review the State's application and supporting information for a grant, mail the obligation document to the responsible State Government official for signature, to obligate funds, and notify the State of approval. In any case where additional information/clarification is needed for processing a grant application, the 60-day time limit will begin on the date the additional information/clarification is received. FmHA will normally notify the Governor or Head of a State agency within 15 days of receipt of the application for a grant if information/clarification is needed.

(2) A State requesting a matching grant will submit to the Administrator:

(i) Standard Form 424, "Federal Assistance." The application form can be obtained from any FmHA office.

(ii) The information prescribed in paragraph (e) (2) of this section.

(h) *Grant approval.* (1) The Administrator will notify the Governor or Head of the State agency designated by the Governor of grant approval by mailing, on the obligation date, a copy of the completed Form FmHA 1940–1, "Request for Obligation of Funds". The Form FmHA 1940–1 will indicate that the grant is subject to the requirements of 7 CFR Parts 3015 and 3016, FmHA Instruction 1946–A, and will cite any special grantee conditions.

(i) *Fund disbursement or grant termination or major changes.* (1) Qualifying State approved to receive matching grants under this subpart will receive payment in accordance with 7 CFR Parts 3015 and 3016.

(2) In the case of a grant reduction, termination or withdrawal of certification, in accordance with § 1946.5 (c) of this subpart, or major changes in the scope of the State's Agricultrual Loan Mediation Program, the Administrator, or designee, wil execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," to stop further disbursement of funds under the Grant Agreement.

(j) *Financial management systems and reporting requirements.* (1) States receiving grants must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR Parts 3015 and 3016.

(2) Qualifying States receiving matching grants must provide to the FmHA State Office by September 30 an annual report on:

(i) The effectiveness of the State's Agricultural Loan Mediation Program.

(ii) Recommendations for improving the delivery of mediation services to producers; and

(iii) the savings to the State as a result of having an Agricultural Loan Mediation Program.

FmHA State Offices will include any comments or recommendations regarding the State's Agricultural Loan Mediation Program and mail the information to the Administrator no later than November 1.

§ 1946.5 Monitoring compliance and penalty for non-compliance.

(a) *FmHA Monitoring.* The FmHA National Office Farmer Programs Emergency Designation Staff will monitor compliance of the State's Agricultural Loan Mediation Program through the reports received in accordance with § 1946.4 (j) of this subpart, through information received from FmHA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audit.* The qualifying State is subject to the audit requirements of Parts 3015 and 3016 of this chapter. An audit report will be submitted to the FmHA Administrator annually or biennially as applicable in accordance with OMB Circular A–128 by each qualifying State receiving a grant.

(c) *Penalty for non-compliance.* If the administrator determines that a State's Agricultural Loan Mediation Program does not meet or no longer meets the requirements set out in § 1946.3(a)(2) (i) through (v) of this subpart for certification or, that grant funds are not being used only for the operation and administration of the State's Agricultural Loan Medication Program, the FmHA Administrator is authorized to withdraw the certification of the program and terminate additional grant assistance and/or to impose any penalties or sanctions established in 7 CFR Parts 3015 and 3016. In the event that the penalty for non-compliance is enforced, the FmHA and other USDA agencies will cease to participate in mediations conducted by the State Agricultural Loan Mediation Program. If the penalty for noncomplilance is enforced, the reason(s) will be included in a letter to the Governor or Head of the State agency along with appeal rights under Subpart B of Part 1900 of this chapter.

§ 1946.6 Nondiscrimination.

The provisions of 7 CFR Part 1901, Subpart C, "Civil Rights Compliance Requirements," 7 CFR Part 15, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964," 7 CFR Part 15b "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," and 45 CFR Part 90, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," apply to activities financed by grants made under this subpart.

§ 1946.7 Environment requirements.

Environmental requirements are not applicable to this subpart.

§ 1946.8 Delegation of authority.

The Administrator hereby delegates the authority for processing applications and administering grants under this subpart to the Staff Director, Emergency Designation Staff.

§ 1946.9—1946.46 [Reserved]

§ 1946.50 OMB Control number.

The collection of information requirements in this regulation have been governed by the Office of Management and Budget and assigned OMB control number —.

Dated: May 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–10923 Filed 5–13–88; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Parts 1948, 1951, 1955

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to create a regulation for an Intermediary Relending Program (IRP). This action is needed to implement the provisions of section 407 of the Health and Human Services Act of 1986 which amended section 1323 of the Food Security Act of 1985. The intended effect of this action is to provide regulations for making loans to nonprofit, public, Indian and cooperative entities who will in turn provide financial assistance to rural businesses and community development projects for employment opportunities as well as provide a diversification of the economy in rural areas and to service the IRP loans made by FmHA and the Rural Development Loan Fund (RDLF) loans that were transferred from the U.S. Department of Health and Human Services to the U.S. Department of Agriculture.

The Farmers Home Administration (FmHA) proposes to amend various other existing regulations to add references to these new regulations for making IRP loans and servicing the IRP and RDLF loans.

DATE: Written comments must be received on or before June 15, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Director, Business and Industry Division, Farmers Home Administration, USDA, Room 6321, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475–4100.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Review

The activities covered by this proposed rule are subject to the requirements for intergovernmental consultation as stated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities." The proposed programs 1948 Subpart C and 1951 Subpart R are not listed in the Catalog of Federal Domestic Assistance at this time since they are new proposals.

Environmental Impact Statement

The proposed action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

Since there are numerous effects resulting from this action, only those regulations affecting the public will be discussed. Internal activities and administrative functions of the Agency will not be discussed.

Part 1948, Subpart C

Section 1948.101 Introduction.

This section describes the purpose of the program which provides loans from the Farmers Home Administration (FmHA) to nonprofit organizations, public, Indian and cooperative entities (intermediaries) which will in turn reloan the loan funds to local businesses (ultimate recipients) for business facilities and community development projects in rural areas. It also identifies the Director, Business and Industry Division, as the focal point and the contact person for processing activities.

Section 1948.103 Eligibility requirements.

This section prescribes the eligibility criteria for intermediaries under the provisions of this program. It also requires that at least 51 percent of the outstanding interest in any intermediary

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or ultimate recipient be owned by

(b) For financing community antenna

Section 1951.882 Non-Federal funds

Subpart C—Intermediary Relending

or ultimate recipient be owned by citizens of the United States and requires that credit is not otherwise available at reasonable rates and terms.

Section 1948.109 Loan purposes.

FmHA loan funds must be used for the establishment or expansion of a business and must create new employment opportunities. This section also provides guidelines on specific eligible uses of FmHA-related loan funds. The intermediary is to certify that the FmHA-related funds under its control are to be used only for eligible purposes as defined by the guidelines in this section.

Section 1948.110 Ineligible assistance purposes.

Specific ineligible assistance purposes are defined in this section including intermediaries' administrative costs, agricultural production, recreation, tourist homes, hotels, motels, charitable and educational institutions. FmHA loan funds will not be used to finance more than 75 percent of the total project cost of any ultimate recipient.

Section 1948.111 Terms of loans.

This section provides for the structure of loan repayment terms between FmHA and the intermediary. It limits the maximum repayment term to 30 years.

Section 1948.112 Interest rates.

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients.

Section 1948.113 Security.

This section describes the type of security required for the loan and indicates that the securitly for the loan must be adequate. FmHA may require additional security during the term of a loan.

Section 1948.114 Conflict of interest.

This section restricts intermediaries from participation in the program if there is an appearance of a conflict of interest between the intermediary and the ultimate recipient.

Section 1948.116 Fees and charges.

This section provides guidelines for fees to be charged by FmHA and intermediary in regard to their financial assistance under the administration and execution of this program.

Section 1948.117 Other regulatory requirements.

This section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(C) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

Section 1948.118 Loan agreements.

The loan agreement executed by the intermediary and FmHA contains provisions for the loan. These include: Amount, rates, terms, and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

Section 1948.122–1948.124 Applications, filing, processing and evaluation.

Specific information and FmHA forms to be used in the application are identified in this section of the regulations.

Loan applications will be filed with the FmHA National Office, Director, Business and Industry Division, Washington, DC. Intermediaries must file a complete application in one package. Applications will be considered in the order received. However, priority consideration may be given intermediaries who provide more assistance to low-income persons and farm families or involve more funds from other sources. Complete applications will be processed within a 60-day timeframe.

The FmHA Administrator or designee will evaluate the application and make a determination whether the proposed loan complies with all applicable statutes and regulations. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan. If FmHA determines it is unable to provide the loan, the proposed intermediary will be informed in writing.

Section 1948.128 Request to make loans to ultimate recipients.

No commitment of loan funds to an ultimate recipient may be made by the intermediary until an affirmative decision is rendered by FmHA to make a loan to an ultimate recipient. Information to be included in a request for FmHA approval is discussed.

Section 1948.130 Non-Federal funds.

When FmHA-derived loan funds (Federal funds) have been utilized by the intermediary to the ultimate recipient and new ultimate recipients are subsequently financed from the revolving loan fund (non-Federal funds) of the intermediary, these regulations will not be imposed upon the ultimate recipient.

Section 1948.143 Appeals.

This section provides guidelines on the appeal rights of intermediaries due to an adverse decision by FmHA.

Section 1948.148 Exception authority.

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

Section 1948.149 Exhibits.

This section provides for three exhibits to the regulations. These include names and numbers for forms in a loan docket, a suggested Loan Agreement, and a suggested Promissory Note.

Part 1951, Subpart F

The Intermediary Relending Program (IRP) is added to the list of programs that are excepted from FmHA's graduation review requirements. Part 1951, Subpart R.

Section 1951.851 Introduction.

This section describes the purpose of the regulation, which is to service the IRP loans and those Rural Development Loan Fund (RDLF) loans that were previously approved and serviced by the Secretary of the U.S. Department of Health and Human Services under 45 CFR Part 1070. It also identifies the Director, Business and Industry Division, as the focal point and the contact for loan servicing activities within the U.S. Department of Agriculture.

Section 1951.854 Ineligible assistance purposes.

This section provides a listing and discussion of ineligible purposes for which FmHA loan funds may not be used by the intermediary. These include:

(a) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(b) For relending in a city with a population of twenth-five thousand or more as determined by the latest decennial census.

(c) For any line of credit.

This section also provides ineligible purposes for loans to ultimate recipients:

(a) Agricultural production.

(b) For financing community antenna television services or facilities.

(c) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(d) For any illegal activity.

(e) For any hotels, motels, tourist homes, or convention centers.

(f) For any tourist, recreation, or amusement centers.

Section 1951.859 Terms of loans.

This section provides that no loans shall be extended for a period exceeding 30 years and the terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

Section 1951.860 Interest on loans, allowable costs.

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients, and sets forth the use of interest on loans, premiums earned on guarantees and investment or interest income.

Section 1951.866 Security.

This section describes the type of security required.

Section 1951.867 Conflict of interest.

This section restricts intermediaries from participation in the program when FmHA determines there is an appearance of a conflict of interest between the intermediary and the ultimate recipient.

Section 1951.872 Other regulatory requirements.

The section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(c) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

Section 1951.877 Loan agreements.

The loan agreement executed by the intermediary and FmHA contains provisions and servicing activities for the loan. These include: Amount, rates, terms and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

Section 1951.882 Non-Federal funds.

This section provides that FmHA will exempt the intermediary from the requirements of the regulation on Federal funds when the intermediary has provided assistance to the ultimate recipients in an amount equal to the financial assistance the borrower has received from FmHA.

Section 1951.896 Appeals.

This section provides guidelines on the appeal rights of intermediaries and ultimate recipients due to an adverse appealable decision by FmHA.

Section 1951.897 Exception authority.

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

Part 1955, Subpart A

The application of FmHA's regulation on liquidation of loans to the Rural Development Loan Fund program is clarified.

Part 1955, Subpart B

The application of FmHA's regulation on management of inventory property to the Rural Development Loan Fund program is clarified.

Part 1955, Subpart C

The application of FmHA's regulation on disposal of inventory property to the Rural Development Loan Fund is clarified.

List of Subjects

7 CFR Part 1948

Credit, Business and industry, Economic development.

7 CFR Part 1951

Loan programs, Agriculture, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for Part 1948 is added to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1948 is amended by adding Subpart C to read as follows:

Subpart C—Intermediary Relending Program (IRP)

Sec.
1948.101 Introduction.
1948.102 Definitions and abbreviations.
1948.103 Eligibility requirements.
1948.104–1948.108 [Reserved]
1948.109 Loan purposes.
1948.110 Ineligible loan purposes.
1948.111 Terms of loans to intermediaries.
1948.112 Interest rates.
1948.113 Security.
1948.114 Conflict of interest.
1948.115 Post award requirements.
1948.116 Fees and charges.
1948.117 Other regulatory requirements.
1948.118 Loan agreements between FmHA and the intermediary.
1948.119–1948.121 [Reserved]
1948.122 Application.
1948.123 Filing and processing applications for loans.
1948.124 FmHA evaluation of application.
1948.125 Loan approval and obligating funds.
1948.126 Loan closing.
1948.127 [Reserved]
1948.128 Requests to make loans to ultimate recipients.
1948.129 [Reserved]
1948.130 Non-Federal funds.
1948.131–1948.137 [Reserved]
1948.138 Office of Inspector General and Office of General Counsel referrals.
1948.139–1948.142 [Reserved]
1948.143 Appeals.
1948.144–1948.147 [Reserved]
1948.148 Exception authority.
1948.149 Exhibits.
1948.150 OMB Control Number.

Exhibit I to Subpart C—Intermediary Relending Program—Promissory Note.

Exhibit II to Subpart C—Intermediary Relending Program—Loan Agreement.

Exhibit III to Subpart C—Forms and Documents Found in Loan Docket.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.101 Introduction.

(a) This subpart contains regulations for loans made by the Farmers Home Administration (FmHA) to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with Subpart R of Part 1951 of this chapter.

(b) The purpose of the program is to finance business facilities and community development projects in rural areas. This purpose is achieved through loans made by FmHA to intermediaries that establish programs for the purpose of providing loans, guarantees, and other technical and financial assistance to ultimate

recipients for business facilities and community development in a rural area. It is anticipated that businesses assisted through this program will, to the maxiumum extent practicable, use farm labor and products as well as provide services to the farm community.

(c) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for processing activities unless otherwise delegated by the Administrator.

§ 1948.102 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Applicant.* The intermediary applying to FmHA for loan funds for relending to ultimate recipients for business facilities and community development in a rural area.

(2) *Debtor.* The intermediary which obtained a loan from FmHA for the purpose of relending funds to eligible ultimate recipients and where an intermediary defaults on this loan and FmHA has to take over the servicing of its loans. Where the ultimate recipient defaults on its contractual arrangement entered into with the intermediary, the ultimate recipient shall be defined as the "debtor."

(3) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients pursuant to FmHA requirements found in § 1948.103.

(4) *Letter of Conditions.* FmHA's letter of proposed terms and conditions to the intermediary which when accepted by the intermediary provides the binding conditions under which FmHA will make a loan to the intermediary.

(5) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(6) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(7) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(8) *Principals of intermediary.* Includes members, officers, directors, entities, and other entities directly involved in the operation and management of an intermediary organization.

(9) *Ultimate recipient.* The entity or individual receiving financial assistance from the intermediary.

(10) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(11) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(13) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(14) *Intermediary Relending Program (IRP).* A program operated by an intermediary whereby the intermediary uses loan funds received from FmHA, along with any other available funds, to make loans to ultimate recipients. Relending programs will normally establish revolving funds so that income from loans made to ultimate recipients, in excess of necessary operating expenses and debt payments, will be used to make additional loans to ultimate recipients.

(b) *Abbreviations.* The following abbreviations are applicable to this subpart:

(1) *B&I*—Business and Industry

(2) *FmHA*—Farmers Home Administration

(3) *IRP*—Intermediary Relending Program

(4) *OGC*—Office of the General Counsel

(5) *OIG*—Office of Inspector General

(6) *RDLF*—Rural Development Loan Fund

(7) *USDA*—United States Department of Agriculture

§ 1948.103 Eligibility requirements.

(a) The intermediaries which may receive FmHA loan funds for relending to ultimate recipients are:

(1) Community-based organization. A private nonprofit organization that serves a local community and that has a governing body of which at least 51 percent of the members are residents of that community.

(2) Community development corporation. Any nonprofit organization responsible to residents of the area it serves and any organization more than 51 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subpart.

(3) Public agency. Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(4) Indian groups. An Indian tribe on a Federal or State reservation or other federally recognized tribal group.

(5) Cooperative. An incorporated or unincorporated association, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conducts, for the mutual benefit of its members, such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of its members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Demonstrate to FmHA's satisfaction that it has equity in an amount equal to not less than ten percent (10%) of the financial assistance provided to the intermediary by FmHA in the form of loan assistance.

(2) Have written approval by the Governor(s) of the State(s) in which the intermediary intends to operate to administer a revolving loan program as provided for in this subpart.

(3) Be fully bonded against losses occurring from theft, fraud, nonperformance, etc.

(4) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(5) Have a proven record of successfully assisting rural business and industry. Such record will normally consist of:

(i) Recent experience in loanmaking and servicing for loans that are similar in nature to this program;

(ii) A delinquency rate acceptable to FmHA on the loans in the intermediary's portfolio;

(iii) A background and expertise of the intermediary's staff that will be making and servicing the portfolio acceptable to FmHA; and

(iv) Capitalization of the intermediary (for making such loans) acceptable to FmHA.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State or local programs. The intermediary and each ultimate recipient must certify in writing and FmHA shall determine and document that the ultimate recipient is unable to finance the proposed project from their own resources or through commercial credit or other Federal, State or local programs at reasonable rates and terms.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing FmHA loan(s) will not exceed $3,000,000 per intermediary.

(d) At least 51 percent of the outstanding interest in any intermediary and ultimate recipient must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1948.104 through 1948.108 [Reserved]

§ 1948.109 Loan purposes.

(a) *Intermediaries.* FmHA loan funds will be used by the intermediary to provide loans and other technical and financial assistance to ultimate recipients in accordance with paragraph (b) of this section. Prior to receiving FmHA's concurrence to make a loan to an ultimate recipient, the intermediary must certify to FmHA that any assistance to the ultimate recipient, involving FmHA-related funds, complies with the criteria in this section and § 1948.110 of this subpart.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for the establishment of new businesses and/or the expansion of existing businesses, creation of employment opportunities and/or saving existing jobs. Additionally, the ultimate recipients must:

(i) Meet the objective and purpose of the program as described in § 1948.101(b) of this subpart,

(ii) To the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations, and

(iii) To the maximum extent possible be innovative in providing services and/or products for the public.

(2) Financial assistance involving FmHA loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services incidental to business development.

(iv) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of this subpart.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

§ 1948.110 Ineligible loan purposes.

(a) *Intermediaries.* FmHA loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses for providing technical service to ultimate recipients.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the outstanding balance of any existing FmHA loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from intermediaries involving FmHA funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership

and be available for relending to eligible

the intermediary's assistance to the

be performed by an investment banker,

supporting materials, and any required

in accordance with Title VI of the Civil

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§ 1948.111 Terms of loans to intermediaries.

(a) No loans to intermediaries shall be extended for a period exceeding 30 years. Principal payments on these loans will be made at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by FmHA, but not more than 3 years.

(b) The terms of loan repayment to intermediaries will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by FmHA and intermediaries.

§ 1948.112 Interest rates.

(a) Loans made by FmHA pursuant to this subpart shall bear interest at a fixed rate of one percent (1%) per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients shall be negotiated by those parties. Intermediaries are encouraged to make loans at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest income, service fees, and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: the costs of administering the IRP, the provision of technical assistance to borrowers, the absorption of bad debts associated with IRP loans, and repayment of debt. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually to FmHA. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the IRP and be available for relending to eligible ultimate recipients.

§ 1948.113 Security.

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. All loans to intermediaries will be adequately secured. Security for such loans may include but is not limited to:

(1) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(2) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(c) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(d) *Appraisals for security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries.* Real property serving as security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1948.114 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient, or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1948.115 Post award requirements.

(a) Intermediaries receiving loans under this program shall be governed by these regulations, the Loan Agreement, the approved work plan, security interests, and any other conditions which the FmHA may impose in awarding a loan. Prior to making a loan commitment to an ultimate recipient, the intermediary must receive FmHA's concurrence in the proposed use of loan funds outlined in § 1948.128 of this subpart.

(b) Unless otherwise specifically agreed to in writing by the FmHA, disbursed loan proceeds and any interest thereon not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest bearing account or time deposit in a bank or other financial institution which will be covered by a form of federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

§ 1948.116 Fees and charges.

(a) *Late payment charges.* Unpaid principal or interest on the loan to the intermediary will be handled as specified in the Loan Agreements attached as Exhibit II to these regulations. Late payment charges on a loan to an ultimate recipient may be made when loan payment has not been received within the customary timeframe allowed as agreed upon by the ultimate recipient and intermediary. The term "payment received" means that the payment in cash or check, money order, or similar medium has been received by the intermediary at its designated place of payment.

(b) *Documentation of fees.* All fees and charges must be specifically documented and justified on Form FmHA 1948–1, "Appliction for Loan (Intermediary Relending Program)," or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged intermediaries in similar circumstances in the ordinary course of business and are subject to FmHA review and concurrence.

(c) *Eligible packagers and payment of fees.* Packaging fees include services rendered by others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval.

§ 1948.117 Other regulatory requirements.

(a) *Intergovernmental consultation.* The Intermediary Relending Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The initial approval of a loan will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the FmHA loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.*

(1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's application for a loan, the intermediary must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan submitted with its loan application. FmHA will review the application, supporting materials, and any required Forms FmHA 1940–20, and initiate a Class II environmental assessment for the application. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed would undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use loan funds for an ultimate recipient. FmHA will prepare an Environmental Impact Statement for any application for a loan determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex, or marital status with respect to any aspect of a credit transaction anytime FmHA loan funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1948.118 Loan agreements between FmHA and the intermediary.

A loan agreement must be executed by the intermediary and FmHA at loan closing for each loan. The loan agreement will be prepared by FmHA and reviewed by OGC prior to the loan closing. FmHA Instruction 1948–C, Exhibit II (available from the FmHA National Office or any FmHA State Office), may be used as a guide. The loan agreement, as a minimum, must contain the following provisions:

(a) The loan agreement will set out:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due of principal and/or interest if payment for either of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by FmHA does not constitute a waiver of default.

(5) Disbursement procedure. Disbursement of loan funds by FmHA to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. The intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the intermediary in writing. The intermediary may use Form FmHA 440–11, "Estimate of Funds Needed for 30-Day Period Commencing _____," to show the amount of funds needed during the 30-day period. The date of such drawdown shall constitute the date the funds are advanced under the loan agreement for purposes of computing interest payments.

(6) Provisions regarding default. On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan

agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the FmHA:

(i) Failure of the intermediary to carry out or comply with the specific activities in its loan application as approved by FmHA, or loan terms and conditions, or any terms or conditions of the loan agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(ii) Failure of the intermediary to pay any installment of principal or interest on its promissory note to FmHA when due.

(iii) The occurrence of:

(A) The intermediary's becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors;

(B) proceedings for the appointment of a receiver, trustee or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it.

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or FmHA in connection with the financial asistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with Subpart B of Part 1806 of this chapter (FmHA Instruction 428–2).

(b) The intermediary will agree:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

(3) To maintain a separate ledger and segregated account for IRP funds.

(4) To FmHA reporting requirements on the intermediary by providing:

(i) An annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(ii) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans. The reports will include:

(A) Form FmHA 1951–4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(B) Project Progress Review Narrative.

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(iv) Proposed budget for the following year.

(v) Other reports as FmHA may require from time to time.

(5) Before the first relending of FmHA funds to the ultimate recipient, to obtain written FmHA approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments.

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(6) To obtain approval of FmHA before making any major changes in forms or policy.

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, and pledging its real and personal property, and other rights and interests as FmHA may require.

(8) To provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security.

§§ 1948.119 through 1948.121 [Reserved]

§ 1948.122 Application.

An application will consist of:

(a) Form FmHA 1948–1, "Application For Loan (Intermediary Relending Program)."

(b) Work Plan. The intermediary must provide a written work plan and other evidence FmHA requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(1) Document the intermediary's ability to administer an Intermediary Relending Program in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for FmHA's review and the terms of the contract and its duration must be sufficient to adequately service the FmHA loan through to its ultimate conclusion. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved.

(2) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an Intermediary Relending Program. This should include a statement of the source(s) of non-FmHA funds for administration of the intermediary's operations and financial assistance for projects.

(3) Include a proposal for adequately securing the FmHA loan. The proposal should specifically address those items of security outlined in § 1948.113 of this Subpart.

(4) Include a detailed statement of the proposed use of FmHA loan funds. This should include an outline of what will constitute project eligibility for financial assistance the intermediary will make available to ultimate recipients.

(5) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify FmHA funding of its loan request.

(6) Include a list of proposed fees and other charges it will assess the ultimate recipients it funds.

(7) Demonstrate to FmHA's satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to FmHA's satisfaction that the intermediary has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(9) Include the intermediary's plan for relending the loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan.

(c) Form FmHA 1940–20, "Request for Environmental Information," for all projects identified in the intermediary's plan that are Class I or Class II actions under Subpart C of Part 1940 of this chapter.

(d) Comments from the State single point of contact, if the State has elected to review the program under Executive Order 12372, "Intergovermental Review of Federal Programs."

(e) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumption showing the basis for the projections.

(g) A written agreement will be signed by the intermediary to assure that there is no misunderstanding concerning FmHA audit requirements.

(h) Form FmHA 400–1, "Equal Opportunity Agreement."

(i) Form FmHA 400–4, "Assurance Agreement."

(j) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(k) Written approval of the Governor of the State(s) in which the applicant intends to operate, to administer a revolving loan fund.

(l) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs.

(m) Latest audit report, if available.

§ 1948.123 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring FmHA assistance in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, may be contacted to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be considered in the order received.

(c) *Loan priorities.* Priority consideration will be given to intermediaries whose written plan, as required by § 1948.122, demonstrates that the intermediary:

(1) Will provide financial assistance to ultimate recipients that provide the greatest benefit to low-income persons, farm families, and displaced farm families.

(2) Will involve the most financial assistance from other sources in providing assistance to the ultimate recipients as provided by this program.

(d) *Timeframe for processing applications for loans.* All loan applications must be approved or disapproved, and the intermediary notified in writing, not later than 60 days after receipt of a completed application.

(1) If an application is not complete, the intermediary will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the intermediary will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the intermediary of such action within 15 calendar days after the reversal/revision decision is made.

§ 1948.124 FmHA evaluation of application.

(a) FmHA will prepare Form FmHA 2033–34, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033–F.

(b) Applications will be organized in a loan file in accordance with FmHA Instruction 2033–A. The intermediary's Internal Revenue Service (IRS) tax number preceded by State and County code numbers will constitute the case number to be used on all FmHA forms.

(c) The FmHA Administrator or designee will evaluate the application and make a determination whether: The intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to provide the

loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan.

(1) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(2) The letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, sources of funds, project scope, or any other significant changes in the project or intermediary must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

The intermediary must certify at loan closing that there has been no adverse change(s) in its financial condition nor any other adverse change in the intermediary since FmHA's issuance of the letter of conditions.

The loan will be considered approved on the date a signed copy of Form FmHA 1940–1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form FmHA 442–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, the processing of the application is automatically terminated.

(3) The Administrator or designee is the only person authorized to execute the letter of conditions.

(d) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the Form FmHA 442–46 to the FmHA Administrator. If certain conditions cannot be met, the borrower may propose alternate conditions to FmHA. The Administrator or designee must concur with any changes made to the initially issued or proposed letter of conditions.

(e) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, FmHA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this Chapter.

§ 1948.125 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of Form FmHA 1940–1 is mailed to the intermediary. The Administrator or designee may request an obligation of funds when available and according to the following:

(a) Form FmHA 1940–1, authorizing funds to be reserved, may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan, and to enter into required agreements and has signed Form FmHA 1940–1.

(b) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940–1.

(c) The Administrator or designee will request an obligation of loan funds via the FmHA National Office terminal system after signing Form FmHA 1940–1 and mailing a copy directly to Farmers Home Administration, Finance Office, FC 360B, 1520 Market Street, St. Louis, Missouri, 63103. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA 1940–1.

(d) The obligation date and date the intermediary is notified of loan approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(e) Immediately after verifying that funds have been reserved, the Administrator or designee will notify, by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA State Office).

(f) The Administrator or designee will record the date of intermediary notification and the interest rate in effect at that time on the original of Form FmHA 1940–1 and include it as a permanent part of the official FmHA file.

(g) If a transfer of obligation of funds is necessary, complete Form FmHA 450–10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the FmHA National Office terminal system. An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purpose(s) for which FmHA funds will be used, remain substantially unchanged.

§ 1948.126 Loan closing.

(a) After the letter of conditions has been issued and proposed closing documents have been prepared, FmHA will forward the loan docket to the Regional OGC in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, FmHA will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled to OGC review and indexed and tabbed. The OGC will review the docket and furnish advice to FmHA on noted deficiencies. Upon receipt of the OGC's advice, FmHA will correct or cause to be corrected any noted deficiencies. Loans will be closed by FmHA with the assistance of the OGC Regional Attorney who will issue closing instructions detailing the requirements and any actions necessary to proceed with the loan closing.

(b) In all cases, the Administrator or designee will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and Loan Agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports. The intermediary's certifications will include the following.

(1) No major changes have been made in the intermediary's work plan except those approved in the interim by FmHA.

(2) All requirements of the letter of conditions have been met.

(3) Equity requirements have been met. A reconciliation of the intermediary's assets and net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(4) There has been no adverse change in the intermediary's financial condition nor any adverse change in the intermediary since the issuance of the letter of conditions. If there have been adverse changes, they must be explained by the intermediary. They may be waived, at the sole discretion of FmHA. Financial data must not be more than 60 days old at loan closing.

(c) FmHA personnel shall not sign any documents other than those specifically provided for in this Subpart.

(d) The National Office will review any requests for changes to the letter of conditions. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

(e) At loan closing the intermediary will provide sufficient evidence to enable FmHA to ascertain that no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

§ 1948.127 [Reserved]

§ 1948.128 Requests to make loans to ultimate recipients.

(a) When an intermediary proposes to use funds obtained from FmHA to make a loan to an ultimate recipient, and prior to final approval of such loan, the intermediary will submit to FmHA a copy of the ultimate recipient's application and provide certification that the ultimate recipient is eligible; the proposed loan is for an eligible purpose; and the proposed loan complies with all applicable statutes and regulations. No commitment of loan funds to the ultimate recipient may be made by the intermediary until an affirmative decision on proceeding with funding to the ultimate recipient is rendered by FmHA.

(b) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the project a properly completed Form FmHA 1940–20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940–20, and complete the environmental review in accordance with § 1948.117 of this subpart. The results of this review will be used by FmHA in making its decision on the request.

(c) The intermediary will provide, for FmHA review, all comments obtained in accordance with paragraph (a) of § 1948.117 of this subpart, "Intergovernmental review."

(d) If FmHA determines it is unable to concur with the loan request, the intermediary will be informed in writing the reasons for denial.

§ 1948.129 [Reserved]

§ 1948.130 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and loan agreement, new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§§ 1948.131 through 1948.137 [Reserved]

§ 1948.138 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the FmHA designee and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§§ 1948.139 through 1948.142 [Reserved]

§ 1948.143 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this chapter.

§§ 1948.144 through 1948.147 [Reserved]

§ 1948.148 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this Subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: Demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§ 1948.149 Exhibits.

The following documents may be used in connection with this program; they are incorporated into this subpart and made a part hereof. They are not published in the **Federal Register** but may be obtained in any FmHA State Office or in the National Office.

(a) Exhibit I, "Note (Intermediary Relending Program)."

(b) Exhibit II, "Loan Agreement (Intermediary Relending Program)."

(c) Exhibit III, "Loan Docket."

§ 1948.150 OMB Control Number.

The collection of information requirements in the regulation have been approved by the Office of Management and Budget and assigned OMB Control Number_____.

Exhibit I to Subpart C—Intermediary Relending Program—Promissory Note

At: Washington, DC.
Amount: _____ Dated:
Term: _____

1. *For Value received,* the Undersigned promises to pay to the order of the U.S. Department of Agriculture (USDA)/Farmers Home Administration (FmHA), an Agency of the Federal Government through its principal office at 12th & Independence Avenue, Southwest, Washington, District of Columbia, or through such other place as the FmHA may designate in writing the principal sum of _____ dollars ($_____), plus interest on the unpaid principal balance at the rate of one percent (1%) per annum. The said principal and interest shall be paid in the following installments on or before the following dates:

$ _____ on _____, 19____,
$ _____ on _____, 19____,
$ _____ on _____, 19____,
$ _____ on _____, 19____, and
$ _____ thereafter on the _____ of each _____ until the principal and interest are fully paid except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable _____ (_____) years from the date of this note, and except that prepayments may be made at anytime. The consideration

herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Undersigned as requested by the Undersigned and approved by FmHA and interest shall accure on the amount of each advance from its actual date.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Borrower shall pay a late charge of 4% of the payment due of principal or interest if payment for any of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed, and any unpaid late charge shall be added to principal and bear interest at the same rate as noted above for said principal and will be due at the end of the loan terms. Payment of any installment of principal or interest owing on this note may be made prior to the maturity date thereof without penalty.

2. The term, "Indebtedness," shall mean the indebtedness evidenced by this Note, including principal, interest, and late payment charges including any interest thereon, whether now due, or thereafter to become due.

3. If payment of the indebtedness evidenced by this Note, or any part thereof, shall not be made when due and at maturity, by acceleration or otherwise, the Undersigned hereby authorize and empower any attorney of any court of record in the United States to appear for the Undersigned in court, or before any clerk thereof, and confess judgment against the Undersigned in favor of the Holder of this Note for the amount then due with interest and costs.

4. FmHA may, at its option, declare all or any part of the Indebtedness immediately due and payable upon the happening of any of the following events:

(1) Failure to pay any part of the Indebtedness due;

(2) Default under, noncompliance with, or nonperformance of any term or condition of that certain Loan Agreement, of even date herewith, by and between the undersigned and FmHA;

(3) Criminal violations, civil fraud, misrepresentations, or regulatory violations on the part of the Undersigned.

FmHA's failure to exercise its right to accelerate the due date of its payments shall not constitute a waiver thereof.

5. The Indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Undersigned or for any of its property, or upon the making by the Undersigned of an assignment for the benefit of its creditors.

6. The Undersigned shall pay all expenses, whether incurred in or out of court, whether incurred before or after this Note shall become due at its maturity date or otherwise, which FmHA may deem necessary or proper in connection with obtaining satisfaction of the Indebtedness, including but not limited to reasonable attorneys fees. FmHA is authorized to pay at any time and from time to time any and all of such expenses, add the amount of such payment to the indebtedness, and charge interest thereon at the applicable rate of interest specified herein with respect to the principal amount to this Note.

7. The rights of FmHA or its assigns hereunder shall not be impaired by FmHA's sale, hypothecation, or rehypothecation of any note of the Undersigned, or by any indulgence including but not limited to any renewal, extension or modification which FmHA may grant with respect to the Indebtedness or any part thereof, or any indulgence granted in respect of any endorser, guarantor, or surety, except of course to the extent of such indulgence. The purchaser, assignee, transferee, or pledgee of this Note, any guarantee, and any other document (or any of them), sold assigned, transferred, pledged or repledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note and by the aforesaid Loan Agreement and all applications of the Undersigned to FmHA as if said purchaser, assignee, transferee, or pledgee were orginally named as Payee in this Note and in said Loan Agreement and in said application or applications, and subject to any claims and defenses of the debtor under such note, guarantee, loan agreement and any other document.

8. Any amount advanced or expended by FmHA for the collection hereof or protect any security hereto, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced by this Note, at the option of FmHA shall become a part and bear interest at the same rate as the principal of the debt evidenced by this Note and be immediately due and payable by the Undersigned to FmHA without demand.

9. This Note is given to evidence a loan made by FmHA in connection with the implementation of the Intermediary Relending Program. This instrument is to be construed according to pertinent Rules and Regulations of USDA and FmHA and is to be enforced in accordance with applicable Federal Law.

10. In the event that any provision or clause in this Note is not enforceable in a court of law, all other provisions and clauses shall continue to remain in effect.

Attest:

(Seal)

_____

Date

By: _____

Title: _____

Date: _____

Exhibit II to Subpart C—Intermediary Relending Program—Loan Agreement

This agreement dated as of _____ is between the U.S. Department of Agriculture/Farmers Home Administration (hereinafter called FmHA), a Federal agency, and _____ (hereinafter called "Borrower"). In consideration of the mutual covenents and agreements contained herein, the parties agree as follows:

1. *Loan Terms.*

FmHA agrees to loan the principal sum of _____ (hereinafter referred to as "Loan"), to be disbursed as hereinafter provided, bearing interest at the fixed rate of 1 percent per annum from the date funds are advanced as more specifically set forth in paragraph 2 below. The term of the loan is for ____ years from _____.

This loan is evidenced by a promissory note of even date herewith (Exhibit I) made payable to the U.S. Department of Agriculture/Farmers Home Administration. Borrower agrees to use the loan and its proceeds solely for activities as set in its Intermediary Relending Program (IRP) application ("approved program") submitted to FmHA (including any supplements or modifications thereof agreed to by both parties) and in accordance with the Loan Terms and Conditions, the terms and conditions of this Loan Agreement and the Rules and Regulations (as they may be amended) governing the IRP (7 CFR 1948.101).

2. *Repayment.*

Repayment of this loan shall be made as follows:

2.1 Interest only will be paid annually on the unpaid balance for the first _____ year(s). (Strike this section if not applicable)

2.2 Principal and interest will be paid in _____ equal _____ amortized installments beginning on _____, ____ with any remaining balance due and payable _____ years from the date of the note.

2.3 Borrower shall pay a late charge of 4% of the payment due of principal or interest if payment for any of these installments is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and bear interest at the same rate as noted above for said principal. Acceptance of a late charge by FmHA does not constitute a waiver of default.

3. *Organization.*

Borrower shall not change its articles of incorporation, or charter, or by-laws without the written consent of FmHA.

4. *Disbursement Procedure.*

4.1 Disbursement shall take place after this Loan Agreement and the promissory note (Exhibit I) are executed, and any other conditions precedent to disbursement of funds under this award are fully satisfied. The borrower may not make a loan commitment to a project without first receiving FmHA's written concurrence in the proposed use of loan funds.

4.2 Borrower may draw down under this award only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the borrower in writing. The date of such drawdown shall constitute the date the funds are advanced under this Loan Agreement for purposes of computing interest payments.

4.3 Borrower shall maintain a separate ledger and segregated account for IRP funds as required in 7 CFR Part 1948.

5. *Reporting Requirements.*

Borrower shall provide FmHA with the following reports as required by law or as deemed appropriate by FmHA, plus any other report as FmHA shall from time to time require:

5.1 Annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP program. Audits must cover all of the Borrower's activities and shall be due 90 days following the audit period.

5.2 Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period) as follows:

A. Form FmHA 1951–4, "Report of IRP/RDLF Lending Activity." This report will include information on the borrower's lending activity, income and expenses, and financial condition, and a summary of names and characteristics of the ultimate recipients the borrower has financed.

B. IRP Project Progress Review Narrative.

These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the Borrower has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans.

5.3 An annual report on the extent to which increased employment, income, and ownership opportunities are provided to low-income person, farm families, and displaced farm families for each loan made by the Borrowers.

6. *Relending.*

6.1 Before the first relending of FmHA funds, Borrower must obtain written FmHA approval of:

A. All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

B. Borrower's binding policy with regard to the amount and form of security to be required.

6.2 Borrower must obtain FmHA written approval before making any major changes in forms or policy including its work plan.

7. *Default.*

On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest created hereby to be immediately due and payable and may proceed to enforce its rights under this Loan Agreement or any other instruments securing or relating to this Loan and in accordance with the Law and regulations applicable hereto.

Any of the following may be regarded as an "event of default" in the sole discretioin of the Administrator, FmHA:

(A) Failure, inability or unwillingness of Borrower to carry out or comply with the specific activities in its loan application as approved by FmHA, or Loan Terms and Conditions, or any terms or conditions of this Loan Agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(B) Failure of Borrower to pay any installment of principal or interest on its promissory note to FmHA when due as specified in paragraph 2 above.

(C) The occurrence of: (1) Borrower's becoming insolvent, or ceasing, being unable, or admitting in writing its inability, to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee or liquidator of Borrower, or of a substantial part of its assets, being authorized or instituted by or against it.

(D) Submission or making of any report, statement, warranty, or representation by Borrower or agent on its behalf to USDA or FmHA in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(E) Failure of Borrower to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

8. *Collateral.*

8.1 The Borrower shall pledge as collateral its portfolio of investments derived from the proceeds of this loan award, and pledge real and personal property, and other rights and interests FmHA may require. Borrower shall execute any instruments, deliver any documents and take any action necessary or convenient to perfect a security interest in such collateral.

8.2 Borrower shall provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security.

9. *Other Parties.*

This Loan Agreement is not for the benefit of third parties. FmHA shall not be under any obligation to any such parties, whether directly or indirectly interested in the Loan Agreement, to pay any charges or expenses incident to compliance by Borrower with any of the duties or obligations imposed hereby.

10. *Successors and Assigns.*

The Loan Agreement shall be binding upon Borrower and its successors and assigns and upon FmHA and its successors and assigns, and shall survive the closing of the Loan and disbursement of proceeds.

11. *Insurance Requirements.*

11.1 The borrower will require each ultimate recipient to provide hazard insurance with a standard mortgage clause naming the Borrower as beneficiary in an amount that is at least the lesser of the drpreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The Borrower's interest in the insurance will be assigned to the FmHA.

11.2 Ordinarily, the borrower will require ultimate recipients to provide life insurance, which may be decreasing term insurance, for the principals and key employees of ultimate recipients and such life insurance will be assigned or pledged to the Borrower and subsequently to FmHA.

11.3 The borrower will require each ultimate recipient to provide workmen's compensation insurance in accordance with State law.

11.4 The Borrower is responsible for determining if a Borrower-financed project is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the Borrower-financed project is in a flood or mudslide area, then flood mudslide insurance must be provided.

12. *Applicable Laws.*

Interpretation of this Loan Agreement shall be governed and enforced in accordance with applicable Federal Law.

IN WITNESS WHEREOF, FmHA and Borrower have executed this Agreement as of the date first above-mentioned.

Borrower

By: _____

Title: _____

Date: _____

Address: _____

_____

_____

_____

Telephone: _____

FmHA

By: _____

Title: _____

Date: _____

Address: _____

_____

_____

_____

Telephone: _____

Exhibit III Subpart C—Forms and Documents Found in Loan Docket

The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8-position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

Description of Record or Form # and Title		Filing position
FmHA 400–1	Equal Opportunity Agreement.	6
FmHA 400–4	Assurance Agreement	3
FmHA 400–6	Compliance Statement	6
FmHA 440–57	Acknowledgement of Obligated Funds/Check Request.	2
FmHA 1940–1	Request for Obligation of Funds.	2
Exhibit H, Subpart G of Part 1940.	Environmental Assessment for Class II Action.	3
FmHA 1940–20	Request for Environmental Information.	3
FmHA 1948–60	Application for Loan	3
	Letter of Conditions	2

DESCRIPTION OF RECORD OR FORM # AND TITLE—Continued

	Filing position
Recommendation memorandum.	1
Loan Agreement	2
Loan Closing Report	2
Annual Audit Report	1
Intermediary Financial Statements.	1
Report—Exhibit B, FmHA Instruction 2015-C.	1
Borrower's Certification of Indebtedness.	1
Promissory Notes	2
Running Case Record	3
Cost Estimates and Forecast for Contingency Funds.	3
Pro-forma Balance Sheet.	3
Projections of Gross Revenues and Net Earnings.	3
Cash Flow Statements, 3 Years with Assumptions.	3
Comments from State Single Point of Contact (Intergovernmental Consultation).	3
Financial Statements for Last 3 years (or from inception of operation of intermediary if less than 3 years).	
Complete Debt Schedule.	
Interim Financial Statements.	3
Records of any Pending or Final Regulatory Litigation.	3
Correspondence (excluding closing instruments).	
By-laws, Resolutions, or Regulations and Amendments.	
Articles of Incorporation, By-laws, and Regulations or Charter.	
Security Agreements and Financing Statements.	5
Mortgages and Notes	5
Advice of Office of the General Counsel from Review of Docket.	5

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 1032 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

4. Section 1951.251 is revised to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a borrower's needs for continued Farmers Home Administration (FmHA) supervision, further credit and graduation. All borrowers' loan account(s) will be reviewed for graduation in accordance with this subpart, except Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Fund loans and Intermediary Relending Program loans.

5. Part 1951 is amended by adding Subpart R to read as follows:

Subpart R—Rural Development Loan Servicing

Sec.

1951.851 Introduction.
1951.852 Definitions and abbreviations.
1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.
1951.854 Ineligible assistance purposes.
1951.855–1951.858 [Reserved]
1951.859 Terms of loans.
1951.860 Interest on loans; allowable costs.
1951.861–1951.865 [Reserved]
1951.866 Security.
1951.867 Conflict of interest.
1951.868–1951.870 [Reserved]
1951.871 Post award requirements.
1951.872 Other regulatory requirements.
1951.873–1951.876 [Reserved]
1951.877 Loan agreements.
1951.878–1951.880 [Reserved]
1951.881 Loan servicing.
1951.882 Field visits.
1951.883 Reporting requirements.
1951.884 Non-Federal funds.
1951.885 Loan classifications.
1951.886–1951.888 [Reserved]
1951.889 Transfer and assumption.
1951.890 Office of Inspector General and Office of General Counsel referrals.
1951.891 Liquidation; default.
1951.892–1951.893 [Reserved]
1951.894 Debt settlement.
1951.895 [Reserved]
1951.896 Appeals.
1951.897 Exception authority.
1951.898–1951.899 [Reserved]
1951.900 OMB Control Number.

Subpart R—Rural Development Loan Servicing

§ 1951.851 Introduction.

(a) This subpart contains regulations for servicing or liquidating loans made by the Farmers Home Administration (FmHA) under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this subpart supersede conflicting provisions of any other subpart.

(b) This subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR Part 1070. This action is needed to implement the provisions of section 1323 of the Food Security Act of 1985, Pub. L. 99-198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in § 1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other IRP loans serviced by this regulation is in accordance with Part 1948, Subpart C of this chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

§ 1951.852 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients. FmHA becomes an intermediary in the event it takes over loan servicing and/or liquidation.

(2) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(3) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(5) *Principals of intermediary.* Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.

(6) *Ultimate recipient.* The entity receiving financial assistance from the intermediary. This may be interchangeable with the term "subrecipient" in some documents previously issued by HHS.

(7) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(8) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(10) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations.* The following abbreviations are applicable:

(1) *B&I*—Business and Industry
(2) *CSA*—Community Services Administration
(3) *EIS*—Environmental Impact Statement
(4) *FmHA*—Farmers Home Administration
(5) *HHS*—U.S. Department of Health and Human Services
(6) *IRP*—Intermediary Relending Program
(7) *OCS*—Office of Community Services
(8) *OIG*—Office of Inspector General
(9) *OGC*—Office of the General Counsel
(10) *RDLF*—Rural Development Loan Fund
(11) *USDA*—United States Department of Agriculture

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

(a) *RDLF Intermediaries.* Rural Development Loan funds will be used by the RDLF intermediary to provide loans and other technical and financial assistance to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: The costs of administering the RDLF relending program, the provision of technical assistance to borrowers, the absorption of bad debts associated with RDLF loans, and repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to FmHA.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisition, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services incidential to business development.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of Part 1948, Subpart C.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

§ 1951.854 Ineligible assistance purposes.

(a) *RDLF Intermediaries.* RDLF loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses for providing technical service to ultimate recipients.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investing in securities or certificates of deposit.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from RDLF intermediates involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and

disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarly engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§§ 1951.855 through 1951.858 [Reserved]

§ 1951.859 Terms of loans.

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

§ 1951.860 Interest on loans; allowable costs.

(a) RDLF intermediates: When the RDLF loan portfolio was transferred from HHS to USDA as required under Pub. L. 99–198, section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of Pub. L. 99–425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made to RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for FmHA to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for FmHA's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) FmHA will use the anniversary date for October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 thourgh December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to FmHA along with sufficient documentation which should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

§§1951.861 through 1951.865 [Reserved]

§1951.8 Security.

(a) *Loans from RDLF intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the utlimate recipient will also serve as security for the FmHA loan.

(b) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) *Appraisals.* Real property serving as security for all loans to intermediaries and for loans to ultimate recipients will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

§1951.867 Conflict of interest.

(a) The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary.

(b) Any organization which has on its governing board or as agent, consultant or employee, a person who is also a board member or employee, agent or consultant of the intermediary borrower must have specific prior written approval from FmHA, given with full knowledge of the relationship involved. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§§1951.868 through 1951.870 [Reserved]

§1951.871 Post award requirements.

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which FmHA may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the FmHA, disbursed loan proceeds and any interest thereon not immediately needed by the intermediary for an ultimate recipient will be deposited in an interest-bearing account or time deposit in a bank or other financial institution which can be fully protected by Federal or State deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as FmHA deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless FmHA provides prior written apporval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration, using the number assigned, and mailed directly to: Farmers Home Administration, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

§1951.872 Other regulatory requirements.

(a) *Intergovernmental consultation.* The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The initial approval of a loan will be the subject of intergovernmental consulation. For each ultimate recipient to be assisted with a loan under this Subpart and for which the State in which the ultimate recipient to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) When an ultimate recipient is to receive Federal funds, the intermediary must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan. FmHA will review the materials and required Forms FmHA 1940–20 and initiate a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply. The affected public has not been sufficiently identified at this stage of the FmHA review. Each project to be assessed will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use Federal funds. FmHA will prepare an Environmental Impact Statement for any ultimate recipient determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000—2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1951.873 through 1951.876 [Reserved]

§ 1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges.

(5) Provisions regarding default.

(6) Disbursement procedure.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be

required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(1) Not to make any changes in the RDLF intermediary's articles of incorporation or charter without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's concurrence in the proposed use of Federal funds.

§§ 1951.878 through 1951.880 [Reserved]

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. Preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA Finance Office approximately 15 days in advance of the due date of the payments. A copy of the notice will be sent to the FmHA Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of the intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances, payment history of loans, and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper. If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the write ups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with FmHA policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on "RDLF/IRP Review Summary Sheet," or otherwise documented and included in the loan file in the format of the "RDLF/IRP Review Summary Sheet." The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA for those ultimate recipients having Federal funds.

§ 1951.883 Reporting requirements.

(a) Intermediaries are to provide FmHA with reports as required in their respective loan agreements, applicable statutes and as required by FmHA. The report shall include the following:

(1) Annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP program. Audits must cover all of the intermediaries activities and shall be due 90 days following the audit period.

(2) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period) as follows:

(i) Form FmHA 1951–4, "Report of RDLF/IRP Lending Activity," (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(ii) RDLF/IRP project progress review narrative.

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by the IRP intermediary.

(b) These reports, shall contain information only on the RDLF/IRP loan funds, or if other funds are included, the RDLF/IRP loan program portion shall be segregated. In the case where the intermediary has more than one RDLE/IRP loan from FmHA, a separate report shall be made for each of these RDLF/IRP loans.

(c) Intermediaries shall report to FmHA whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

§ 1951.884 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA/RDLF-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§ 1951.885 Loan classifications.

All loans to intermediaries in the FmHA portfolio will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future losses. Substandard, Doubtful and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and followup of FmHA. The loans will be classfied as follows:

(1) *Seasoned Loan Classification.* To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two thirds or less of the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and FmHA regulations.

(3) Have been current on the loan(s) payments for 24 consective months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) *Current Non-problem Classification.* This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and FmHA regulations.

and are not considered to pose a credit risk to FmHA. These loans would be classified as seasoned but for the "24 months" and "two-thirds" requirements for seasoned loans.

(c) *Special Mention Classification.* This classification includes loans which do not presently expose FmHA to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving FmHA's close attention because the failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that may be high quality, but which FmHA is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the colleteral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) *Substandard Classifications.* This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that FmHA will sustain some loss.

(e) *Doubtful Classification.* This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) *Loss Classifications.* This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

§§ 1951.886 through 1951.888 [Reserved]

§ 1951.889 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by FmHA. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for FmHA's review prior to the transfer and assumption.

(d) The transferee will provide FmHA with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that FmHA deems necessary for its review.

(e) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

§ 1951.890 Office of Inspector General and Office of General Counsel referrals.

(a) When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and FmHA and confirmed in writing.

(b) In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§ 1951.891 Liquidation; default.

(a) In the event that FmHA takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the FmHA determine that it is necessary or desirable to take action to protect or further the interests of FmHA in connection with any default or breach of conditions under any loan made hereunder, the FmHA may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as FmHA shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the FmHA in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by FmHA and take such actions in respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this Subpart. The Administrator will notify the FmHA Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.

(b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.

(c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) In the event of default, the intermediary will promptly be informed in writing of the consequences of failing to comply with loan covenant(s).

(e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by FmHA for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.

(f) In the event of bankruptcy by the intermediary and/or ultimate recipient, FmHA is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in writing the estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be considered by FmHA to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with Subparts A, B, and C of Part 1955 of this chapter.

§§ 1951.892 through 1951.893 [Reserved]

§ 1951.894 Debt settlement.

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR Parts 101 through 105).

§ 1951.895 [Reserved]

§ 1951.896 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this chapter.

§ 1951.897 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: Demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§§ 1951.898 through 1951.899 [Reserved]

§ 1951.900 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number _____.

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. Section 1955.3 is amended by revising paragraphs (b), (e), and (k) to read as follows:

§ 1955.3 Definitions.

* * * * *

(b) CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(e) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

* * * * *

(d) *Servicing official.* For loans to individuals as defined in paragraph (d) of this section, the servicing official is the Country Supervisor. For FDLF, IRP, and insured B&I loans, the servicing official is the State Director. For all other types of loans, the servicing official is the District Director.

* * * * *

Subpart B—Management of Property

8. Section 1955.53 is amended by revising paragraphs (a), (h), and (l) to read as follows:

§ 1955.53 Definitions.

* * * * *

(a) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit-Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority of FmHA.

* * * * *

(h) *Loans to organizations.* Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-In-Land Use (Grazing Association); Business and Industrial (B&I) both to individuals and groups, Rural Development Loan Fund (RDLF), Intermediary Relending Program (IRP), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. the housing-type loans identified here are referred to in this subpart collectively as MFH loans.

* * * * *

(l) *Servicing official.* For loans to individuals as defined in paragraph (f) of this section, the servicing official is the County Supervisor. For Rural Development Loan Fund loans, Intermediary Relending Program loans, and insured B&I loans, the servicing official is the State Director. For all other types of loans, the servicing official is the District Director.

* * * * *

Subpart C—Disposal of Inventory Property

9. Section 1955.103 is amended by revising paragraphs (d) and (l) to read as follows:

§ 1955.103 Definitions.

* * * * *

(d) *CONACT or CONACT property.* Property acquired or sold pursuant to

BEST COPY AVAILABLE

the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit At of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(l) *Organization property.* Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-In-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); and Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

* * * * *

10. Section 1955.105 is amended by revising paragraph (a) to read as follows:

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106 through 1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Resource Conservation and Development (RC&D); Watershed (WD); Association Recreation; EOC; Rural Renewal; Water Facility; Business and Industrial (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Before property can be sold, § 1955.73 of Subpart B of this part concerning dwelling retention must be followed, if applicable.

* * * * *

Date: April 18, 1988.

Vance L. Clark,

Administrator, Farmers Home Association.

[FR Doc. 88-10803 Filed 5-13-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-48-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Shorts Model SD3-60 series airplanes, that would require replacement of certain pitot tubes. This proposal is prompted by reports of inoperative pitot tubes due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications.

DATES: Comments must be received no later than June 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113, telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Shorts Model SD3-60 series airplanes. There have been several reports of inoperative pitot tubes due to icing, which have resulted in erroneous airspeed and altitude indications.

Short Brothers, PLC, issued Service Bulletin SD360-34-09, dated March 1984, which indicates that pitot tubes produced between October 1982 and October 1983 were manufactured from stainless steel, in lieu of copper, with a resultant reduction of efficiency of the anti-icing system. These stainless steel pitot tubes bear a code letter "Z" adjacent to the serial number. The service bulletin describes inspection of pitot tubes for code letter "Z," and replacement, if necessary, with copper pitot tubes bearing a code letter other than "Z." The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of left and right pitot tubes bearing code letter "Z" adjacent to the serial number with pitot tubes bearing code letter other than "Z," in accordance with the service bulletin previously mentioned.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,920.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness direction:

Short Brothers, PLC: Applies to Model SD3-60 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z," in accordance with accomplishment instructions in Service Bulletin SD360-34-09, dated March 1984.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 5, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10823 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-6]

Proposed Amendment to Transition Area, Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lewistown, Montana, transition area. The action is necessary to provide additional controlled airspace to encompass a new approach procedure. It will segregate aircraft operating in visual flight rules conditions and aircraft operating in instrument flight rules conditions.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-6, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-6, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestion presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to contain a new approach procedure at Lewistown, Montana. The action is necessary to segregate aircraft operating in visual flight rules conditions and aircraft operating in instrument flight rules conditions. The area will be depicted on aeronautical charts for pilot reference.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lewistown, Montana, Transition Area [Revised]

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Lewistown Municipal Airport (lat. 47°02'56.9" N., long. 109°28'08.1" W.) and within 4 miles each side of the Lewistown VORTAC 289° radial, extending from the 7 mile radius area to 10.5 miles west of the VORTAC; and within 4 miles each side of the Lewistown VORTAC 255° radial, extending from the 7-mile radius area to 17.5 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 16 miles north and 11 miles south of the Lewistown VORTAC 289° radial extending 31 miles west of the VORTAC, and within 5 miles north and 8 miles south of the Lewistown VORTAC 109° radial, extending from the VORTAC to 7 miles east of VORTAC; and excluding overlapping controlled airspace.

Issued in Seattle, Washington, on April 28, 1988.

Francis E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–10824 Filed 5–13–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASO–15]

Proposed Alteration of VOR Federal Airway V–437, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–437 located in the vicinity of Melbourne, FL. Federal Airway V–437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration would permit Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

DATE: Comments must be received on or before June 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 87–ASO–15, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–437 located in the vicinity of Melbourne, FL. The currently preferred routing to Miami is via Melbourne V–437, Pahokee V–267, to GREMM intersection to the Miami terminal area. The realignment of V–437 would improve the traffic flow within the Miami and Patrick Air Force Base terminal areas. This action would improve traffic flow and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–437 [Amended]

By removing the words "From Pahokee, FL; Melbourne, FL;" and substituting the words "From Biscayne Bay, FL; INT Biscayne Bay 340°T(344°M) and Pahokee, FL, 150°T(150°M) radials; Pahokee; INT Pahokee 352°T(352°M) and Melbourne, FL, 217°T(219°M) radials; Melbourne;"

Issued in Washington, DC, on May 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–10825 Filed 5–13–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–15]

Proposed Alteration of VOR Federal Airways, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V–77 and V–568 located in the vicinity of Millsap, TX, by realigning V–77 between Abilene, TX, and Wichita Falls, TX, and by extending V–568 from Acton, TX, to Wichita Falls. This action would permit additional flexibility for maneuvering traffic in the Dallas/Fort Worth Airport terminal area, thereby reducing controller coordination and workload.

DATE: Comments must be received on or before June 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88–ASW–15, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. the FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASW–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing

list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-77 by realigning that airway between Wichita Falls, TX, and by extending V-568 from Acton, TX, via Millsap, TX, to Wichita Falls. The realignment would permit extension of the Dallas/Fort Worth (DFW) terminal airspace as well as improve the traffic flow in the Sheppard Air Force Base terminal area. Also, the rapid growth of air traffic in and around the DFW Metroplex has outgrown the current assigned airspace. This action would improve coordination procedures, reduce en route and terminal delays, and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-77 [Amended]

By removing the words "via Abilene, TX; Wichita Falls, TX;" and substituting the words "Abilene, TX; INT Abilene 047°T(037°M) and Wichita Falls, TX, 204°T(194°M) radials; Wichita Falls;"

V-568 [Amended]

By removing the words "to Acton" and substituting the words "Acton; Millsap, TX; to Wichita Falls, TX"

Issued in Washington, DC, on May 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-10828 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Change of Practice Regarding Tariff Classification of Imported Television Tubes and Chassis

AGENCY: Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: Customs is reviewing its practice of classifying imported color television picture tubes and television chassis, not assembled together at time of importation but nonetheless entered as a single tariff entity, as unfinished articles under item 684.96, Tariff Schedules of the United States (TSUS), which provides for "Televiaion receivers and parts therefore: having a picture tube: assemblies (including kits containing all parts necessary for assembly into complete receivers): color." The proposed change would mean that television picture tubes would be separately classifiable under item 687.35, TSUS, and would be subject to a higher rate of duty than the 5 percent generally applicable to articles classified as television receivers. Comments are invited on the proposed change before any determination is made with regard to the issue.

DATE: Comments must be received on or before June 15, 1988.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Matthew B. Rohde, Classification and Value Division, (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its practice of classifying, as an unfinished and unassembled article under General Headnote 10(h), TSUS, imported television picture tubes and television chassis that, while entered together, are separately packaged and have separate countries of origin. As a result of the classification of such merchandise as a single tariff entity under item 684.96, TSUS, a 5 percent *ad valorem* duty rate is applicable. A 15 percent *ad valorem* duty rate is generally applicable to color television picture tubes, provided for in item 687.35, TSUS.

The current practice is based upon a Customs Service ruling, dated November 15, 1984 (CLA-2 CO:R:CV:V 553020), which was issued in response to a petition filed under section 516 of the Tariff Act of 1930. A summation of the ruling was published in the **Federal Register** on February 19, 1985 (50 FR 7028). Pursuant to § 177.10(c), Customs Regulations (19 CFR 177.10(c)), prior to publication of a ruling which changes an established practice and which results in the assessment of a higher rate of duty, Customs is required to publish the fact that the practice is under review and to afford interested parties an opportunity to comment on the contemplated change. In accordance with § 177.10(b), Customs Regulations (19 CFR 177.10(b)), no ruling will be published unless the practice has been determined to be clearly wrong.

The classification practice is being reviewed upon the referral of a matter to Customs Service Headquarters under internal advice procedures pursuant to 19 CFR 177.11. The factual setting of this matter involves imported color television picture tubes and television chassis which enter the U.S. on the same vessel and generally in equal numbers. While the television tubes and chassis are technically compatible, at time of importation they are not assembled to each other, and have different countries of origin, as well as different countries of exportation. Review of the tariff treatment of such merchandise has brought to light certain factors that previously may not have been properly addressed or given adequate consideration.

The provision at issue, item 684.96, TSUS, provides for "Television apparatus, and parts thereof: Television receivers and parts thereof: Having a picture tube: Assemblies (including kits containing all parts necessary for assembly into complete receivers: Color." In the above-cited ruling of November 15, 1984, this provision (then item 685.14, TSUS) was determined to be the proper classification of color television picture tubes and television chassis entered in a manner similar to the matter currently being considered by Customs Service Headquarters; it was concluded that for tariff classification purposes such merchandise was an unfinished article (i.e., an unassembled, unfinished television receiver) within the scope of General Headnote 10(h), TSUS, which provides that "unless the context requires otherwise, a tariff description for an article covers such article whether assembled or not assembled, and whether finished or not finished."

However, in *Nichimen & Co.* v. *United States*, 565 F. Supp. 148 (CIT 1983), aff'd 726 F. 2d 1580 (Fed. Cir. 1984), the court held that certain radio chassis and tape players, covered by the same entry, were not properly classifiable as a single tariff entity. Rather, the chassis and tape players were classifiable separately because they did not comprise a complete commercial entity, requiring assembly with additional components to form a complete article of commerce.

In Customs Service Headquarters Ruling 553020, it was also determined that the presence of the language pertaining to "kits" in item 684.96, TSUS (then item 685.14), supports a conclusion that at least some of the merchandise classifiable therein need not be physically fastened together. However, the ruling did not address the crucial question of whether the same language in item 684.96, TSUS, by its very terms, precludes the provision from covering a collection of unassembled parts which does *not* contain all parts necessary for assembly into complete receivers.

General Headnote 10(h), TSUS, is inapplicable if it is shown to bring about a classification that is "against a specific provision that implements a policy of Congress, consciously arrived at and clearly stated." *United States* v. *J. Gerber & Co.*, 58 CCPA 110, 115 (1971). The phrase in item 684.96, TSUS, "including kits containing all parts necessary for assembly into complete receivers," is a description of the level of completion necessary before a collection of unassembled parts may be classified in that provision. Accordingly, the context of the provision would require a classification of the color television picture tubes and chassis at issue in a provision other than as an ad unfinished and unassembled article, as would otherwise be directed under General Headnote 10(h), TSUS. *Crabtree Vickers, Inc.* v. *United States*, 79 Cust. 60 1977).

Moreover, while 684.96, TSUS, is an *eo nomine* provision for "assemblies," the absence of legal definitional language relating to "assemblies" in Part 5, Schedule 6, TSUS, does not necessarily support a conclusion that "assemblies" can include not only complete "kits," but also other collections of unassembled parts. Rather, it is clear that the "assemblies" that are not a complete "kit" must be entities distinguishable other than by merely being collections of unassembled parts that are incomplete or unfinished "kits." Otherwise, the language in item 684.96, TSUS, providing for "kits containing all parts necessary" is rendered superfluous, since complete kits would already be contemplated by virtue of General Headnote 10(h), TSUS. It is axiomatic that significance and effect must be given to every word of the tariff schedules. *Carey & Skinner, Inc.* v. *United States*, 42 CCPA 86, C.A.D. 576 (1954).

In summary, the Customs Service is seeking comments on the proposal to classify color television picture tubes as a separate tariff entity, even though they may be entered with a similar number of compatible television chassis, thereby changing a practice of classifying such merchandise as an unfinished, unassembled television receiver, in item 684.96, TSUS.

Authority

Because the proposed change could increase duties assessed on the merchandise and could, because of the issues involved, be of significant interest to both importers and the domestic industry, the Customs Service is giving the notice and opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended, and § 177.10(c)(10), Customs Regulations (19 CFR 177.10(c)(1)).

Comments

The Customs Service will consider any timely written comments. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, at the Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Matthew B. Rohde, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs Service offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 18, 1988.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88-10901 Filed 5-13-88; 8:45 am]

BILLING CODE 9100-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85N-0241]

Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; alteration of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing the alteration of the comment period for a proposed rule from 60 days to 90 days. FDA is proposing to require the filing of a premarket approval application or a notice of completion of a product development protocol for the automated blood cell separator intended for the routine collection of blood and blood components. The agency is taking this action in response to a letter from a medical device trade association requesting additional time to submit comments.

DATE: Written comments by May 19, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFB-230), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53

FR 5108), FDA proposed to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the automated blood cell separator intended for the routine collection of blood and blood components. In accordance with section 515(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)(2)(A)), the agency provided for an opportunity to request a change in classification of the device based on new information relevant to the classification of the device and for the submission of comments on the proposed rule. In accordance with section 515(b)(2)(B) of the act, the proposed rule notified interested persons that requests for a change in classification of the device must be submitted within 15 days of the publication of the proposed rule. In addition, the notice provided for a 60-day comment period on the proposed rule, ending April 19, 1988.

The agency has received a request on behalf of the Health Industry Manufacturers Association to alter the comment period to 90 days. Section 520(d)(2) of the act (21 U.S.C. 360j(d)(2)) provides that the comment period for proposed rulemaking under section 515(b) of the act shall be at least 60 days but may not exceed 90 days unless extended for good cause. Within the discretion provided by the act (section 520(d)(2)), the agency has altered the comment period to 90 days rather than the 60-day comment period originally provided for in the proposed rule of February 19, 1988.

Interested persons may, on or before May 19, 1988, submit to the Dockets Management Branch (address above) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10904 Filed 5-11-88; 3:33 pm]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3360-7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EAP) announces its intent to delete three sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The reason this action is being taken is that Superfund remedial activities have been completed. Consequently, this action is to remove these sites from the Superfund NPL.

DATE: Comments concerning these sites may be submitted until June 15, 1988.

ADDRESSES: Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365. Comprehensive information on this site is available through the EPA Region IV Docket clerk.

Requests for comprehensive copies of documens should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is:

Gail Alston, Region IV, USEPA Library, Room G-8, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-4216.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Bases for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The three sites EPA intends to delete from the NPL are:

1. Gallaway Pits, Gallaway, Tennessee.

2. Lee's Lane Landfill, Louisville, Kentucky

3. Newport Dump, Wilder, Kentucky

The EPA will accept comments on these three sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) on the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment. In addition section 121(f)(1)(c) of CERCLA requires state concurrence for deleting a site from the National Priorities List.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions § 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site. The Agency is considering using similar procedures in the future with the exception that the notice and comment period would be conducted concurrently at the local level and through the **Federal Register.**

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.

2. EPA Region IV is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete was made.

4. Comments received during the notice and comment period will be evaluated before the final decision to delete. Region IV will prepare a responsiveness summary that will address the comments given in the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register.** The NPL will reflect any deletions in the final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Region IV.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete these sites from the NPL.

Gallaway Pits Site, Gallaway, Tennessee

The Gallaway Pits site is located 2.3 miles northeast of Gallaway, Tennessee, in Fayette County. The five-acre site was extensively mined for sand and gravel, producing a landscape dotted with water-filled pits up to 50 feet deep. Some of the pits have been used for the disposal of residential trash, demolition debris, and appliances. One pit designated as Pond 1 was used for the disposal of liquid and solid waste (mainly pesticide or pesticide residues), glass jars containing solid waste, and drums. The site was proposed for inclusion on the National Priorities List (NPL) in December 1982 and appeared on the final NPL in September 1983. In October 1983, the EPA conducted an emergency clean-up of Pond 1, consisting of the excavation and offsite disposal of contaminated sludges and onsite treatment of the water in the pond. In February 1984, EPA obligated funds to conduct a Remedial Investigation/Feasibility Study (RI/FS). The RI/FS included a sampling program for surface water and sediments, surface soils, groundwater and the evaluation of clean-up alternatives. The RI found low levels of pesticide contamination in surface water and sediments in onsite ponds. Chlordane was the most prevalent contaminant with a few occurrences of Dieldrin and Toxaphene. Arsenic and Cadmium were detected above background levels in pond sediments. The groundwater investigation did not show any indication of site-related contamination. The only unacceptable risk presented by the Gallaway Pits site was the potential risk to offsite biota that could occur if ponds designated as Ponds 1, 2, and 5 would overflow to offsite tributaries.

The remedy selected and implemented at the Gallaway Pits site involved the removal of water from Ponds 1, 2 and 5 and subsequent discharge to an unnamed tributary of Cane Creek. The remedy also included the excavation and solidification of contaminated sediments from Ponds 2 and 5, with onsite disposal in Pond 1. Sediment sampling was conducted during excavation to ensure that clean-up levels specified in the ROD were achieved. A multi-media cap meeting RCRA requirements was constructed on Pond 1. Two additional monitoring wells were installed during construction to monitor groundwater quality at the site. Finally, a fence was constructed around the Pond 1 disposal site to restrict site access and future mining activity.

EPA, with the concurrence of the State of Tennessee, has determined that all appropriate Fund-financed response under CERCLA at the Gallaway Pits site has been completed, and has determined that no further clean-up by responsible parties is appropriate.

Lee's Lane Landfill Site, Louisville, Kentucky

The Lee's Lane Landfill site is located immediately adjacent to the Ohio River in Jefferson County, approximately 4.5 miles southwest of Louisvile, Kentucky. The site consisting of 112 acres, is approximately 5,000 feet in length and 1500 feet in width. Domestic, commercial and industrial wastes were disposed of in the landfill from the late 1940's to 1975. Prior to and during its use as a landfill, sand and gravel were quarried at the site. In 1975, residents were evacuated from their homes as a result of explosive levels of methane gas. Between 1975 and 1979 gas study concluded that there were no health hazard to the public. Although the gas collection system was found to be operating at a 41 percent efficiency the gas monitoring program confirmed that the system was preventing gas migration toward Riverside Gardens.

An Enforcement Decision Document (EDD) was signed on September 25, 1986. The remedy selected and implemented for the site included construction of the riprap system,

surface waste clean-up, inspection and repair of a gas collection system, hook-up to an alternate water supply, gas, air and groundwater monitoring, cautionary signs and installation of a gate at the entrance to the site. An action memorandum dated March 10, 1987 initiated the Remedial Action at the site by Region IV's Emergency Response and Removal Branch. All Remedial Action activities were completed by December 1987.

EPA, with the concurrence of the Commonwealth of Kentucky, has determined that all appropriate fund-financed response under CERCLA at the Lee's Lane Landfill site has been completed, and has determined that no further clean-up is appropriate. Operation and Maintenance have been assured by the Commonwealth of Kentucky.

Newport Dump Site, Wilder, Kentucky

The Newport Dump Site is a former municipal landfill located in the City of Wilder in Campbell County, Kentucky. Contiguous to the western boundary of the site is the Licking River, a tributary of the Ohio River. The 39 acre site was originally used by City of Newport for the disposal of residential and commercial wastes from its opening in the late 1940's until its closure in 1979. During this period the Kentucky Department of Natural Resources and Environmental Protection (KDNREP) cited the City of Newport for numerous waste disposal violations and the site was eventualy purchased by the North Kentucky Port Authority. In 1982, the Newport Dump Site was evaluated by the Hazard Ranking System (HRS) and received a score of 37.69 which ranked the site number 359 in Group 8 on the National Priorities List (NPL). The basis for the NPL ranking is that the Newport Site contains over 1,000,000 cubic yards of both hazardous and non-hazardous commercial waste, the site is adjoined on both the southern and western boundaries by an unnamed stream and the Licking River respectively, and across the Licking River, towards the west, is a potable water intake serving 75,000 nearby residents. A Remedial Investigation and Feasibility Study ensued and discovered several inorganic contaminants, barium, chromium, nickel and organic compounds, toluene, leaching into the Licking River sightly above health base levels established by the Safe Water Drinking Act's Maximum Contaminants Levels (MCLs). A Record of Decision (ROD) was signed at Region IV EPA, Atlanta, Georgia on March 27, 1987 selected the following response: monitoring groundwater and subsurface gas migration, construction of a leachate collection system, and regarding and revegetating the 39 acre site to prevent any erosion. An Action Memo to authorize a removal action was signed in June 1987. This response action was constructed and placed into operation within 7 months of the signing of the ROD and completed during December 1987. Groundwater, surface water, soil and sediment sampling were accomplished during the construction and post construction phases. Except for the waste sources, the sampling results listed negligible (well below the MCL criteria) to non-detectable contaminant levels in the adjacent Licking River, and in both on-site and off-site media demonstrated no significant or potentially harmful migration of contaminants to off-site receptors. Currently, Region IV EPA has been successfully implementing the start-up phase of the Operations and Maintenance Plan as mandated by the ROD. U.S. EPA has received a commitment from the State of Kentucky that the State of Kentucky will continue O&M after the EPA has completed the start-up phase. This start-up phase shall be completed by 1st quarter, FY-89. Furthermore, U.S. EPA, with the concurrence of the State of Kentucky, has determined that all appropriate Fund-financed response under CERCLA has been completed for the Newport Dump Site. It is the position of both the U.S. EPA and the State of Kentucky, except for any anticipated emergency action or response, no further clean-up by appropriate governmental authorities or responsible parties is required at this time.

Dated: April 20, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-10675 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 86-337]

Automatic Transmitter Identification System for Video Satellite Uplinks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; oral proceeding.

SUMMARY: This action provides an opportunity for parties to appear and present additional information regarding an Automatic Transmitter Identification System (ATIS) for Video Satellite Uplinks as proposed in a *Further Notice of Proposed Rulemaking* adopted June 10, 1987, in General Docket No. 86-337. See 47 CFR Part 25 Satellite Radio. (52 FR 26538, July 15, 1987).

This action assist the Commission in its selection of an appropriate ATIS standard.

DATE: Oral proceeding will be held on May 16, 1988, 9:30 am, Washington, DC.

ADDRESS: The Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Jones, Field Operations Bureau, (202) 632-7090.

SUPPLEMENTARY INFORMATION:

In a Notice of Proposed Rulemaking and Notice of Inquiry adopted on August 7, 1986, in the above docket, the Commission proposed an Automatic Transmitter Identification System (ATIS) for video satellite uplink signals regulated under Part 25 of the Rules. By a Futher Notice of Proposed Rulemaking in that docket adopted on June 10, 1987, the Commission indicated that commenters overwhelmingly supported the concept of ATIS on video satellite uplinks and requested further comments concerning the technical parameters and methodology to be utilized in such a system.

The satellite radio industry is divided with regard to the appropriate methodology to employ in an ATIS system. The basic requirements of a system for video satellite uplinks include signal availability at all times, even during tune-up; no degradation of transmitted video; detectability under normal modulation conditions; and allowance of flexibility for utilizing the transponder bandwidth. Two ATIS methods discussed in the comments are modulation of the energy dispersal signal and subcarrier modulation.

To further assist the Commission in its selection of an appropriate ATIS standard for Part 25 video satellite uplinks, an oral proceeding will be held on May 16, 1988, at 9:30 a.m., in Room 856, 1919 M Street, NW., Washington, DC. Interested parties will be provided an opportunity to present their views on the following issues:

(1) Are both the energy dispersal and subcarrier systems, as discussed in the comments, compatible with all present uplink systems?

(2) Which proposal is less likely to cause conflicts in future video systems?

(3) Since both the energy dispersal and subcarrier systems are not commercially available, what rule flexibility in terms of technical standards, would aid commercial production and increase applicability to varying uplink signal conditions?

(4) What specific frequency or set of frequencies for a subcarrier based ATIS would allow applicability to varying uplink signal conditions?

(5) What are reasonable time frames for implementing ATIS on existing and new equipment?

The Oral proceeding will be chaired by Dr. Michael J. Marcus, Assistant Bureau Chief for Technology, Field Operations Bureau, and a "public town meeting" format will be used.

Any induvidual or company desiring to make an initial opening presentation should contact Ms. Barbara Jones, telephone No. 202/632-7090, by May 12, 1988, for appropriate arrangements. It may be necessary to limit such presentation time.

Following the meeting, a Public Notice will be issued announcing the availability of a video recording of the meeting. The recording will be associated with the comments of Docket 86-337. Thirty additional days will be provided for written comments regarding matters discussed in the Oral Proceeding.

A copy of this notice is being mailed to all parties of record in this proceeding.

For further information contact Barbara Jones, at (202) 632-7090 or Room 744, 1919 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-10681 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-184, RM-6116]

Radio Broadcasting Services; Coalinga, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William L. Zawila, permittee of Station KNGS(FM) (Channel 261A), Coalinga, California, seeking the substitution of Channel 261B1 for Channel 261A and modification of the permit accordingly.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: William L. Zawila, 12550 Brookhurst Street, Garden Grove, CA 92840; Michael T. McKenna, McKenna Communications, Inc., P.O. Box 90277, Long Beach, CA 90809 (Consultant).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-184, adopted April 7, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10841 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-188, RM-6287]

Radio Broadcasting Services; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Broadco of Texas, Inc. proposing the substitution of Channel 258C2 for Channel 237A at Lawton, Oklahoma, and the modification of its license for Station KMGZ to specify the higher powered channel. Channel 258C2 can be allocated to Lawton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) east to avoid a short spacing to Station KBOG, Cordell, Oklahoma. The coordinates for this allotment are North Latitude 34-34-43 and West Longitude 98-16-25. In accordance with established policy, we propose to modify the license of Station KMGZ to specify operation on Channel 258C2. However, pursuant to § 1.420(g) of the Commission's Rules, modification of the license may not be implemented if another party expresses an interest in the proposed allotment, unless an additional equivalent channel is available for Lawton.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Van Bergh, Esq., Kenkel, Barnard & Edmundson, 1220-19th Street NW., Suite 202, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-188, adopted April 6, 1988, and released May 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10842 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-185, RM-6288]

Radio Broadcasting Services; Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Upper Kanawha Valley Broadcasters, Inc., proposing the allocation of Channel 227A to Montgomery, West Virginia, as that community's first local FM service. A site restriction of 6.5 kilometers (4 miles) west of the community is required. The restricted site coordinates are 38-09-47 and 81-23-40.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey R. Batten, Manager, Upper Kanawha Valley Broadcasters, Inc., 1028 First Avenue, Montgomery, West Virginia 25136 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-185, adopted April 4, 1988, and released May 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this discussion may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceedin

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10843 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-186, RM-6246]

Radio Broadcasting Services; Prairie du Chien, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Prairie Broadcasting Company, licensee of Station WPRE-FM, Channel 232A, Prairie du Chien, Wisconsin, proposing the substitution of Class C2 Channel 232 for Channel 232A and modification of the station license accordingly. A site restriction of 0.6 kilometers (0.4 miles) southwest of the city is required.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: W.C. Schlaugat, Jr., President, Prairie Broadcasting Company, P.O. Box 90, Prairie du Chien, WI 53821 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-186, adopted April 4, 1988, and released May 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10844 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 213

Department of Defense Federal Acquisition Regulation Supplement; Small Purchase and Other Simplified Purchase Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering proposed changes to DoD FAR Supplement 213.106 (b) and (c), to raise the threshold for competition and price reasonableness. The change will result in a threshold established at 10% of the Small Purchase limitation, which is currently at $25,000.

DATE: Comments must be received by the DAR Council at the address shown below on or before June 15, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: The Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (A&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-400 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed change, in part, implements the DoD's efforts to comply with the Packard Commission recommendation to eliminate overly restrictive regulations. Establishing the threshold at 10% of the Small Purchase limitation reduces the need for any future threshold changes should the Small Purchase limitation be increased by statute.

B. Regulatory Flexibility Act Information

The proposed rule does not constitute a significant revision within the meaning of Pub. L. 98-577 and, therefore does not require publication for public comment. Therefore, the Regulatory Flexibility Act does not apply. However, this change is considered to be of interest to the acquisition community and comments are solicited. In addition, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

This proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 213 as follows:

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

§ 213.106 [Amended]

2. Section 213.106 is amended by substituting at the end of the titles for paragraphs (b) and (c) the words "10% of the Small Purchase Limitation" in lieu of the figure "$1,000".

[FR Doc. 88-10847 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 245 and 252

Department of Defense Federal Acquisition Regulation Supplement; Government-Furnished Mapping, Charting and Geodesy Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Department of Defense is proposing to amend DFARS Subpart 245.3 and Part 252 so that "Mapping, Charting and Geodesy (MC&G) Property" in the possession of government contractors will be strictly controlled.

DATE: Comments must be received by the DAR Council at the address shown below on or before June 15, 1987 to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-74 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Many DoD MC&G products, although unclassified, are subject to strict controls on dissemination outside DoD. These limitations are imposed by terms of international agreements, copyrights, and other factors. These limitations require additional regulatory language to ensure that DoD furnished MC&G property is properly disposed of at the end of the contract performance period to preclude improper use. The proposed regulations stipluate that DoD furnished MC&G property shall not be used for other purposes than those necessary for performance of the contract. Upon completion of the contract performance period the contracting officer is required to direct the contractor to either destroy or return to the government, all DoD furnished MC&G property not consumed in the performance of the contract.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because currently MC&G property is accounted for under the existing property clauses. Small as well as large entities currently have to report unused government property at the completion of contract performance. Under the proposed rule, MC&G property will be disposed of by the contractor under separate directions provided by the Countracting Officer and not through the normal goverment peroperty disposal activities. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 245 and 252 as follows:

1. The authority citation for 48 CFR Parts 245 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 245—GOVERNMENT PROPERTY

2. Section 245.301 is amended by adding between the definition "Industrial Plant Equipment" and "Other Plant Equipment" the following definition to read as follows:

245.301 Definitions.

* * * * *

"Mapping, Charting and Geodesy (MC&G) Property", as used in this subpart, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of

topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

* * * * *

3. Sections 245.310 and 245.310–1 are added to read as follows:

245.310 Providing Mapping, Charting and Geodesy Property.

(a) All government-Furnished Mapping, Charting and Geodesy (MC&G) Property is under the control of the Director, Defense Mapping Agency (DMA). (See DoD Directive 5105.40.)

(b) The clause at 252.245–7000 provides that Government-Furnished MC&G Property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contracting officer shall contact DMA for disposition instructions and then direct the contractor to either destroy or return all DoD furnished MC&G property not consumed in the performance of the contract. If the material is to be returned to the Government, the contracting officer shall specify the location and means of shipment.

245.310–1 Contract clause.

The contracting officer shall insert the clause at 252.245–7000, Government-Furnished Mapping, Charting and Geodesy Property, in solicitations and contracts when MC&G Property is to be furnished under the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.245–7000 is added to read as follows:

252.245–7000 Government-Furnished Mapping, Charting and Geodesy Property.

As prescribed in 245.310–1 insert the following clause:

Government-Furnished Mapping, Charting and Geodesy Property (Date)

(a) *Definition.*

"Mapping, Charting and Geodesy (MC&G) Property", as used in this clause, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) MC&G Property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contractor, as directed by the contracting officer, shall either destroy or return to the Government all Government-Furnished MC&G property not consumed in the performance of this contract.

(End of clause)

[FR Doc. 88–10849 Filed 5–13–88; 8:45 am]
BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs; Implementation of the Railroad Accounting Principles Board Findings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing surcharge rule changes in 49 CFR Part 1140 to implement the recent findings of the Railroad Accounting Principles Board. For purposes of computing reasonably expected costs, the Commission proposes to: (1) Determine return on investment using the nominal cost of capital rate; (2) include as a reduction of return on investment any projected holding gains (or losses) that would accrue to the carrier from retention of the line's assets for a one-year period; and (3) emphasize that reasonably expected costs should be calculated on the basis of those costs anticipated during the 12-month period beginning on the effective date of the surcharge. Comment on each of these proposals is invited. The decision also seeks comment on the appropriateness of a deferred tax adjustment. Such an adjustment is designed to recognize the cost-free nature of deferred tax funds.

DATE: Comments are due July 8, 1988.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423; or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor is it expected to have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1140

Administrative practice and procedures, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

For the reason set forth in the preamble, Title 49, Part 1140 is proposed to be amended as described above.

Authority: 49 U.S.C. 10705a, 10321, 11161, 11162, and 11163, and 5 U.S.C. 559.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10855 Filed 5–13–88; 8:45 am]
BILLING CODE 7035–01–M

49 CFR Part 1152

[Ex Parte No. 274 (Sub–No. 11A)]

Abandonment Regulations, Costing; Implementation of the Railroad Accounting Principles Board Findings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing abandonment (and subsidy) rule changes in 49 CFR Part 1152 to implement the recent findings of the Railroad Accounting Principles Board. Specifically, the Commission proposes to: (1) Determine opportunity cost in abandonment proceedings (and "return on investment" in subsidy proceedings) using the nominal cost of capital rate; (2) include as a reduction of opportunity cost (and return on investment in subsidy proceedings) any projected holding gains (or losses) that would accrue to the carrier from retention of the branch line assets for a one-year period; and (3) add a new "Forecast Year" column to Exhibit 1 showing the projected operating results on the line during the 12-month period beginning with the month of the abandonment

filing. Comment on each of these proposals is invited

The decision also seeks comment on the appropriateness of a deferred tax adjustment, an issue that has been raised in several recent abandonment cases.

DATE: Comments are due July 8, 1988.

ADDRESS: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423; or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedures, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

For the reason set forth in the preamble, Title 49, Part 1152 is proposed to be amended as described above.

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903 *et seq.*, 11161, 11162 and 11163.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10856 Filed 5–13–88; 8:45 am]
BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Carpet and Rugs
Form Number: Agency—MQ–22Q; OMB—0607–0559
Type of Request: New collection
Burden: 70 respondents; 140 reporting hours
Needs and Uses: The purpose of this survey is to monitor trade agreements with foreign countries. Census is requesting that this survey be done quarterly and on a mandatory basis because the current voluntary annual data collected is not available in a timely manner.
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sen o Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10833 Filed 5–13–88; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held June 8, 1988, 9:30 a.m. Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of Subcommittee Chairman.
4. Discussion of control hierarchy for packet switching.
5. Discussion of taxonomy for CCL 1519A.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1), shall be exempt from the provisions relating to public meetings found in section 10(a)(10) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: May 10, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–10834 Filed 5–13–88; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications; Columbus, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project performance of October 1, 1988 to September 30, 1989. The MBDC will operate in the Columbus, Ohio Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05–10–88007–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 17, 1988. Applications must be postmarked on or before June 17, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603. 312/353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: May 10, 1988.

[FR Doc. 88–10854 Filed 5–13–88; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Hard Mineral Resources Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Designation of Deep Seabed Mining Environmental Reference Area.

SUMMARY: Ocean Mining Associates (OMA), holder of the National Oceanic and Atmospheric Administration (NOAA) Deep Seabed Hard Mineral Resources Exploration License USA–3, has identified an area within its license site which contains manganese nodules but which it does not plan to mine, and for which it is willing to make available for scientific study all applicable resource and environmental data in its possession. The area is 6250 km² in area and is located in the Western portion of USA–3 as identified in the March 3, 1988, **Federal Register** (53 FR 6859).

NOAA recognizes this as an opportunity to examine the detailed characteristics of an area which could conceivably be utilized as a preservational reference area within the framework of the Deep Seabed Hard Mineral Resources Act (DSHMRA).

Background: Concern about the effect of deep seabed mining on the benthic community of the ocean bottom led Congress to include in DSHMRA a clause requiring negotiations with other seabed mining nations for the purpose of establishing stable reference areas (SRAs). The reasons for establishing these areas would be to "preserve" representative deep-sea biota and to provide areas against which the extent of commercial mining's impact on biological organisms can be compared and thus determined. Similarly, DSHMRA calls for environmental monitoring of seabed mining with respect to those sites for which NOAA issues licenses or permits. NOAA is authorized to establish appropriate monitoring requirements for those sites.

After the 1980 law was enacted, NOAA asked the National Research Council's Ocean Policy Committee to examine the scientific validity of the SRA concept and, assuming the concept is valid, to outline a program for establishing SRAs. In its report, "Deep Seabed Stable Reference Areas" (National Academy Press, Washington, DC 1984, 74 pp.), the comittee found that the concept of SRAs is scientifically valid if two types of SRAs are designated: One type, the preservational reference area (PRA), must be located to ensure that the biota is not affected by mining activities or other anthropogenic activities (such as ocean dumping); the other type, the impact reference area (IRA), must be located close enough to mining to minimize inherent environmental differences so that statistically valid assessments of the impacts of mining can be made.

The committee recommended, as highest priority for near-term research, a small-scale (compared to mining) resuspension experiment designed to assess the effects of resedimentation resulting from the benthic plume that will be created by each mining collector. Knowledge of the nature and extent of the effects is a prerequisite for siting either IRAs or PRAs. NOAA is proceeding with research directed toward the resuspension experiment, now called a "controlled impact experiment."

On October 19, 1987, NOAA licensee OMA submitted a request to NOAA for consultation with the objective of early selection of a specified area as an interim preservational reference area. In proposing to have this area reserved, OMA pointed out that it represents a nodule mining environment which is characteristic of OMA's site as well as contiguous license areas, and offered to make data on the area available to the public following NOAA's approval of the designation. In its notice of this proposal at 53 FR 6859, NOAA explained that OMA's proposal to designate an area as an interim preservational reference area is consistent with the approach NOAA is pursuing for monitoring the environmental effects of deep seabed mining.

Initial consultations revealed that the knowledge is not yet at hand to predict whether or not the area identified by OMA could be affected by mining in adjacent areas. Nevertheless, NOAA recognizes OMA's proposal as an opportunity for concerned scientists to examine the characteristics of an area which could potentially be utilized as a preservational reference area in the future.

Accordingly, NOAA is announcing the designation of this area as an environmental reference area. The effect of this designation is to confirm NOAA's intention to have the area used for environmental study, with a view toward further refining our interpretation of criteria for interim preservational reference areas and toward reaching a final decision on designating the proposed area as a provisional interim preservational reference area.

Persons interested in receiving notices from NOAA on the subject, such as the availability of data for study as well as the conduct of scientific workshops involving the area, should so inform NOAA at the address below.

NOAA also wishes to advise that OMA subsequently has notified NOAA that OMA is preparing a proposal which will set forth an additional environmental monitoring site in the OMA license area as an interim impact reference area. OMA reports that its proposal will take into account its planning for mining activities under a

commercial recovery permit. NOAA will issue a notice after such a proposal from OMA is received.

FOR FURTHER INFORMATION CONTACT: James P. Lawless or John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235, (202) 673–5117.

Dated: May 10, 1988.

John J. Carey,

Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 88–10851 Filed 5–13–88; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 11, and March 25, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 7983 and 53 FR 9798) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926). After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a signficiant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1988:

Commodities

Bag, Plastic
8105–00–837–7753
8105–00–837–7754
8105–00–837–7755

Military Resale Items Nos. and Names

No. 820 Opener, Can & Bottle
No. 824 Slicer, Cheese
No. 826 Peeler, Vegetable
No. 828 Cutter, Pizza
No. 832 Spatula, Plate & Bowl
No. 850 Bib, Baby, Cotton
No. 860 Hooks, Laundry, Plastic
No. 862 Brush, Lint, Plastic

Services

Janitorial/Custodial, Fort Gillem, Georgia
Janitorial/Custodial, AAFES Distribution Center, Newport New, Virginia

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–10967 Filed 5–13–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: June 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entitites of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Pamphlets (3229–S), 7690–00–NSH–0010 (Requirements of Government Printing Office, Philadelphia, PA—DLA Requisitions only)

Services

Parts Sorting, Robins Air Force Base, Georgia
Parts Sorting, Kelly Air Force Base, Texas
Restocking Parts, Kelly Air Force Base, Texas

E. R. Alley , Jr.,

Acting Executive Director.

[FR Doc. 88–10968 Filed 5–13–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Statement of Personal Injury—Possible Third Party Liability—CHAMPUS/CHAMPVA; DD Form X379 (draft); and OMB Control Number 0704–0090.

Type of Request: Extension.

Annual Burden Hours: 17,000.

Annual Responses: 30,000.

Needs and Uses: The State of Personal Injury Possible Third Party Liability Form is completed by CHAMPUS/CHAMPVA beneficiaries suffering from personal injuries and receiving medical care at Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in evaluating and processing these claims.

Affected Public: Individuals or households; Federal agencies or employees.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rasco-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rasco-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88–10670 Filed 5–13–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Contracts; Reduction of Data Acquired From Contractors

AGENCY: Under Secretary of Defense (Acquisition), DOD

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be elimianted or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DoD 5010.12–L, Acquisition Management Systems and Data Requirements Control List (AMSDL): CMAN (Configuration Management); DRPR (Drawing Practices); EDRS (Engineering Data Reproduction Systems); EGDS (Engineering Data Systems); FACR (Facility Construction Design Requirements); GDRQ (General Design Requirements); IPSC (Information Processing Standards for Computers); MCCR (Mission Critical Computer Resources). Comments on other categories of DID's will be requested in future **Federal Register** Notices.

DATE: Comments should be received by July 15, 1988.

ADDRESS: Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD(P&L)DDMO, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: A copy of the DID's may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756–2554.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88–10872 Filed 5–13–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Closed Meeting

May 10, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 31 May and 1 June 1988, from 8:00 a.m. to 5:00 p.m., at Sanders Associates, Inc., Nashua, NH 03061.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–10857 Filed 5–13–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Closed Meeting

May 10, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 31 May and 1 June 1988, from 8:00 a.m. to 5:00 p.m., at AT&T, 100 South Jefferson Road, Whippany, NJ 07981.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–10858 Filed 5–13–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 2, 1988.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will meet on 8–9 June 1988, from 8:00 a.m. to 5:00 p.m., at Wright-Patterson Air Force Base, OH, in Area B, Building 14.

The purpose of this meeting is to receive classified briefings and hold classified discussions on ASD system acquisition programs and technology efforts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–10859 Filed 5–13–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Closed Meeting

May 2, 1988.

The USAF Scientific Advisory Board Electronic Systems Division (ESD) Advisory Group will meet on 7–8 June 1988, from 8:00 a.m. to 5:00 p.m., at

Hanscom Air Force Base, MA, in the Command Management Center, Building 1606.

The purpose of this meeting is to receive classified briefings and hold classified discussions on ESD Intelligence and C3/CM system acquisition programs and related Rome Air Development Center technology efforts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10860 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Closed Meetings

May 10, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Requirements for Hypersonic Test Facilities will meet on 8 June 1988, from 8:00 a.m. to 5:00 p.m., at Marquadt, Van Nuys, CA; on 9 June 1988, from 8:00 a.m. to 5:00 p.m., at the Aerojet Co., Sacramento, CA; and on 10 June 1988, from 8:00 a.m. to 5:00 p.m., at the NASA Ames Research Center, Moffett, CA.

The purpose of the meeting at Marquadt and Aerojet Co. is to tour their hypersonic test facilities and obtain information on future hypersonic facility upgrades/modifications and proposals. The purpose of the meeting at Ames Research Center is to tour their hypersonic test facilities, obtain information on future NASA hypersonic applications, and obtain information on future hypersonic test facility upgrades/modifications and proposals. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10861 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Privacy Act of 1974; Amended Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of an amended system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is amending a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice June 15, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone: 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc 86-8485 (51 FR 12908) April 16, 1986
FR Doc 86-10763 (51 FR 18086) May 16, 1986 (Compilation)
FR Doc 86-12448 (51 FR 19884) June 3, 1986
FR Doc 86-19207 (51 FR 30377) August 26, 1986
FR Doc 86-19208 (51 FR 30393) August 26, 1986
FR Doc 86-28835 (51 FR 45931) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9686 (52 FR 15530) April 29, 1987
FR Doc 87-13560 (52 FR 22871) June 15, 1987
FR Doc 87-27707 (52 FR 45846) December 2, 1987

The specific changes to the record system being amended is set forth below followed by the system notice, as amended, published in its entirety. The proposed amendment does not fall within the purview of the provision of 5 U.S.C. 552a(o), which requires the submission of a new or altered system report.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

N06320-1

System name:

Uncollectible Accounts (51 FR 18190, May 16, 1986).

Changes:

System name:

Delete the entire entry and substitute with the following: "Health Care Accounts and Insurance Information"

Categories of individuals covered by the system:

In line one, after the word "individual," delete the phrase: "* * * incurring indebtedness to the United States by * * *"

Categories of records in the system:

In line 5, delete the phrase: "* * * insurance company * * *" and substitute with: "* * * patient's insurance information * * *"

Authority for Maintenance of the System:

In line three, delete the phrase: "* * * 10 USC 1078-179 * * *" and substitute with the following: "* * * 10 USC 1078-79 and 1095 * * *"

At the end of the entry, add: "* * * and E.O. 9397."

Purpose:

In line 11, after the word: "* * * suspended * * *" add the following phrase: "* * * to determine amounts owed by third party health insurers * * *"

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the entry and substitute with the following: "Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored on index cards (3" x 5") in card files and in file folders and reading files.

Safeguards:

In line five, delete the word: "* * * only * * *".

Notification procedure:

In line two, add the following: "* * * and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command."

In lines four and five, delete the word: "* * * debtor * * *" and substitute with: "* * * patient and sponsor * * *"

N06320-1

SYSTEM NAME:

Health Care Accounts and Insurance Information.

SYSTEM LOCATION:

Primary System—Commander, Naval Medical Command, Navy Department, Washington, DC 20372-5120.
Decentralized Segments—Naval Hospitals and Medical Clinics which provide services or perform work giving rise to such accounts receivable. (See directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual receiving health care treatment or examination services funded by the Navy Medical Department. Coverage also includes sponsors and other persons responsible for the debts of such persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and SSN, sponsor's SSN, if applicable, paygrade, branch of service of service, duty station address, account number, activity performing service, patient's insurance information, civilian employer, patient category, time and dates of service, units of service, physicians' and hospitals' statements of service a total charges for treatment including interest, administrative and penalty charges, payment receipts, admission documents, correspondence relating to collection attempts to ascertain eligibility status, patient category, and third party insurer liability, records of payment received and outstanding balances, letter reports of uncollectible accounts receivable, records suspending or terminating collection action or effecting compromise settlement agreements, and requests for recovery of CHAMPUS funds and substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 USC 191-195, 227, and 952 (also known as the Federal Claims Collection Act of 1966); 10 USC 1078-79 and 1095; 37 USC 702, 705, and 1007; and E.O. 9397.

PURPOSE(S):

To identify and facilitate payment of amounts owed the U.S. Users of the information include Naval Medical Command personnel who are directly involved in processing payments or billings of patient accounts. The information is used to determine amounts owed, methods to be employed to effect recovery, whether or not the claim can be compromised or collection action thereon terminated or suspended, to determine amounts owed by third party health insurers, and to collect charges for utility bills and other miscellaneous items. File may be forwarded to the Naval Investigative Service for investigation or to any component of DOD, as needed, in the performance of their duties related to same.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

DISCLOSURE OF CONSUMER REPORTING AGENCIES:

Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored on index cards (3" x 5") in card files and in file folders and reading files.

RETRIEVABILITY:

Automated records are retrieved by either a query or a request for a standard report. Data may be indexed by any data element although the primary search keys are name and SSN. Paper records are filed alphabetically by last name of debtor.

SAFEGUARDS:

Access to the automated system requires user account number and password sign on. Access to the paper records and/or terminals are limited to authorized personnel that are properly screened and trained. Office space where records and/or terminals are located is locked after official working hours.

RETENTION AND DISPOSAL:

Records are retained in active file until collection action has been completed, compromised, suspended, or terminated. They are held in inactive file until statute of limitations has run and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372-5120 and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, Naval Medical Command and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command. Requests should provide the full name of the patient and sponsor, the military or dependency status of the patient and sponsor, and the location and approximate dates of treatment or examination. Driver's license and/or military ID card will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Automated patient administration system records produced at Medical Treatment Facilities include but are not limited to Inpatient Admission/Disposition Records, NAVMEDCOM 6300/5; Report of Treatment Furnished Pay Patients-Hospitalization/Outpatient Treatment Furnished, DOD 7/7A, Part A/B. Other record source categories are: OCHAMPUS, Denver; U.S. Postal Service; Military Locator Service; State Departments of Motor Vehicles; any component of the DOD; the Department of Justice, the General Accounting Office, retail credit associations, financial institutions, current or previous employers, educational institutions, trade associations, automated system interfaces, local law enforcement agencies, the Department of Health and Human Services, the Internal Revenue Service, and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-10871 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments

BEST COPY AVAILABLE

on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 15, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address sepcified above.

Dated: May 11, 1988

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Case Service Report.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden: Responses: 83.
Burden Hours: 3464.
Recordkeeping:
Recordkeeper: 0.
Burden Hours: 0.
Abstract: State Vocational Rehabilitative agencies report client and program data. The Department uses the information to assess the accomplishments of program goals and objectives, and to prepare the Annual Report to Congress.

[FR Doc. 88–10922 Filed 5–13–88; 8:45 am]
BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Financial Assistance Award; University of California

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: In accordance with 10 CFR 600.7(b) eligibility for award of a grant resulting from (PR No. 01–88PE79038.001) will be restricted to the Regents of the University of California. DOE is conducting negotiations with the Regents of the University of California to support a transportation fuels conference. These negotiations are expected to result in the issuance of Grant No. DE–FGO1–88PE79038 in which DOE will provide $5000 of the total estimated cost of $25,000, for the performance period of twelve months estimated to begin May 23, 1988.

Project Scope: The grant will provide assistance for one conference entitled, "Transportation Fuels in the 1990's and Beyond," to bring together researchers, policymakers, analysts and experts in the field to focus attention and research on the non-petroleum fuels transition. Questions such as: How do we get from a state of complete dependence on petroleum transportation fuels, to some future state, where one or more clean fuels are viable and accepted fuels will be discussed? The emphasis will be on the public policy development and other decisionmaking by federal, state and local government.

The proposed grantee, the University of California and the conference organizer, Professor Sperling, are uniquely qualified to organize and conduct this conference. While other firms have expertise in technical aspects of alternative fuels, in an attempt to bring together policymakers, this conference will examine the comparative economic and market benefits including market development issues in an international context.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5645.

Issued at Washington, DC, on May 10, 1988.

Thomas S. Keefe,

Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88–10846 Filed 5–13–88; 8:45 am]
BILLING CODE 6450–01–M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday and Thursday, June 1 and 2, 1988, 8:30 a.m.–5:00 p.m., Friday, June 3, 1988, 8:30 a.m.–12:00 p.m.

Location: University of Wisconsin, Wisconsin Center Auditorium, 702 Langdon Street, Madison, Wisconsin.

Contact: James M. Turner, Office of Fusion Energy, Office of Energy Research, ER–51, U.S. Department of Energy, Mail Stop J–204, Washington, DC 20545, Phone: (301) 353–4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James M. Turner at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 10, 1988.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

MFAC Agenda Outline

June 1, 1988

1. 8:30 a.m. Welcome.
2. Recent Fusion Program Events—J. Clarke.
3. Report of Panel 18 (Environment, Safety and Economics)—P. Staudhamer.
4. MFAC Discussion of Panel 18 Report.

LUNCH (12:30 p.m.)

5. MFAC Summer Study—F. Ribe, J. Clarke.
6. Wisconsin Fusion Program—J. Callen, N. Hershkowitz, G. Kulcinski, S. Prager, and J. Shohet.
7. Public Comments.
8. Tour of Phaedrus and Stellarator Labs.
9. Dedication of the Madison Symmetric Torus (MST) Facility, Chamberlain Hall, Room 1233.

(Adjourn)

MFAC 2nd Day

June 2, 1988

1. 8:30 a.m. Report of Panel 20 (Long-Range Technology Development)—C. Baker.
2. MFAC Discussion.
3. MFAC Findings on Panel 18.
4. New Charge to Panel 21—F. Ribe.

LUNCH (12:30 p.m.)

5. Tokamak Fusion Test Reactor (TFTR) Status—D. Meade.
6. Compact Ignition Tokamak (CIT) Update—H. Furth, B. Montgomery, and R. Parker.
7. MFAC Discussion Panel 20 Report.
8. Public Comments.

(Adjourn)

MFAC 3rd Day

June 3, 1988

1. 8:30 a.m. Further Discussion of MFAC Summer Study.
2. MFAC Findings on Panel 20.
3. Public Comments.

(Adjourn 12:00 p.m.)

[FR Doc. 88–10909 Filed 5–13–88; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–383–000, et al.]

Duke Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER88–383–000]

Take notice that on May 6, 1988, Duke Power Company (Duke) tendered for filing a Contract for Purchases of Economic Energy by Florida Power Light Company from Duke.

Duke requests an effective date of May 6, 1988. Duke requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations. If such waiver is not granted, however, Duke requests an effective date as soon after May 6, 1988 as the Commission deems appropriate.

Duke states that the price of service contemplated by the Contract is Duke's anticipated incremental production cost plus a negotiated adder that cannot exceed an equal share of the benefits.

Comment date: May 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88–384–000]

Take notice that on May 6, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, amendments and revisions to its General Transfer Agreement, Contract No. DE–MS79–82BP90049 (Pacific's Rate Schedule FERC No. 237), with Bonneville Power Administration (Bonneville).

The General Transfer Agreement provides for reciprocal transfers of power and energy by Pacific or Bonneville, as the case may be, for the other party. The amendments and revisions tendered for filing hereunder provide for continued transfer service for Bonneville's Emerald People's Utility District (EPUD) load, establishes a new point of replacement for the Surprise Valley Electrification Corporation (SVEC) loads, and new service to Pacific's River and Sandpoint loads.

Pacific requests, pursuant to § 35.11 of the Commission's Regulations, that a waiver of prior notice be granted and that an effective date of October 31, 1985 be assigned to the revisions pertaining to SVEC and an effective date of February 8, 1988 be assigned to those pertaining to EPUD.

Copies of this filing have been supplied to Bonneville, EPUC, and the Oregon Public Utilities Commission.

Comment date: May 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10925 Filed 5–13–88; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP88–286–000]

Supplement and Amendment to Complaint; Cascade Natural Gas Corp. et al.

May 10, 1988.

In the matter of: Cascade Natural Gas Corporation, Complainant v. Northwest Pipeline Corporation, Chevron Chemical Company, Llano, Inc., Hadson Gas Systems, Inc., Corpus Christi Industrial Pipeline Company, and Transco Energy Marketing Company, Respondents.

Take notice that on April 27, 1988, Cascade Natural Gas Corporation (Cascade), P.O. Box 24464, Seattle, Washington 98124, filed a supplement and amendment to the complaint filed in the referenced docket. Specifically, Cascade adds Corpus Christi Industrial Pipeline Company (Corpus Christi) and Transco Energy Marketing Company (Temco) as additional respondents to the complaint. Cascade also renews its request for immediate issuance of a restraining order directing Northwest Pipeline Company and Chevron Chemical Company to cease and desist from transportation of natural gas under section 311 of the Natural Gas Policy

Act pending a hearing and decision on Cascade's complaint.

Any person desiring to be heard with respect to this motion should file an answer, protest, or motion to intervene, as appropriate, within 30 days after the date of this notice. The substitute respondents are directed to answer within the same time period. Such pleading should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance the Commission's Rules 211, 213, or 214 (18 CFR 385.211, 385.213 or 385.214), as appropriate. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Persons who have heretofore filed a motion to intervene need not file again. Copies of the motion are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10924 Filed 5-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-496; FRL-3380-8]

E.I. Du Pont De Nemours & Co., Inc.; Amended Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition by E.I. du Pont de Nemours & Co., Inc., for the combined residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoic acid in or on various commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 21, 1985 (50 FR 33840), EPA issued pesticide petition (PP) 5F3252 by E.I. Du Pont de Nemours & Co., Inc., Agricultural Chemicals Department, Burley Mill Plaza, Wilmington, DE 19898, proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy] propanoic acid in or on the commodities cotton and soybeans at 0.05 ppm. Du Pont has amended its petition as follows:

It is proposed that a tolerance be established for the combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl)phenoxy]propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy}phenoxy] propanoate), all expressed as quizalofop ethyl as follows:

Commodity	Parts per million (ppm)
Soybeans	0.05

It is proposed that tolerance be established for the combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoic acid), quizalofop-ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy]phenoxy propanoate), and quizalofop methyl (methyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), all expressed as quizalofop ethyl as follows:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	.02
Cattle, mbyp	.05
Eggs	.02
Goats, fat	.05
Goats, meat	.02
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.02
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.02
Horses, mbyp	.05
Milk	.01
Milk, fat	.05
Poultry, fat	.05
Poultry, meat	.02
Poultry, mbyp	.05
Sheep, fat	.05
Sheep, meat	.02
Sheep, mbyp	.05

Authority: 21 U.S.C. 346a.

Dated: May 11, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10993 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400014; FRL-3380-5]

Toxic and Hazardous Substances Control; Computer Based Systems Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Computer Based Systems, Incorporated of Fairfax, VA for access to information which has been submitted to EPA under sections 303, 311, 312, and 313 of the Emergency Preparedness and Community Right-to-Know Act of 1986, also known as Title III. Some of the information may be claimed or determined to be trade secret information.

DATE: Access to the trade secret information submitted to EPA will occur no sooner than May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Newburg-Rinn, Acting Chief, Public Data Branch (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, 401 M Street SW., Washington, DC 20460, (202-382-3756).

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 86D80013, Computer Based Systems, Incorporated, 2750 Prosperity Avenue, Suite 300, Fairfax, VA 22031, will assist the Office of Toxic Substances, Information Management Division in receiving and processing the information submitted by industry in response to the requirements of sections 303, 311, 312, and 313 of SARA. Specifically, Computer Based Systems, Incorporated will establish and maintain a facility, called the Title III Reporting Center, for this purpose, and will receive, process, archive, store, and retrieve the information.

In accordance with 40 CFR 2.306(j), EPA has determined that Computer Based Systems, Incorporated will require access to trade secret information under SARA to perform successfully the implementation and operation of the Title III Reporting Center. For example, Computer Based Systems, Incorporated personnel will be given access to SARA sections 303, 311, 312, and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide Computer Based Systems, Incorporated access to these trade secret materials son a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Title III Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Computer Based Systems, Incorporated will return all materials to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on September 30, 1992.

Dated: May 3, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-10878 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3380-3]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment for the City of Carthage, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment for the City of Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act.

EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On May 4, 1988, EPA commenced the following Class II proceeding for the assessment of penalties: In the Matter of the City of Carthage, Missouri; EPA Docket No. VII 88-W-0004.

The proceeding was commenced by filling an Administrative Complaint with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2811. The Complaint proposes a penalty of $10,000 per day of violation not to exceed a maximum of $125,000, for discharging pollutants into the Spring River in violation of the effluent limitations in the city's National Pollutant Discharge Elimination System (NPDES) permit, and for failing to implement and enforce a program to require industrial dischargers to the city's sewers to pretreat their wastewaters, also in violation of the city's NPDES permit.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days.

Date: May 4, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-10876 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSIONS

[PR Docket No. 88-214]

Summary of Order to Show Cause, Suspension Order and Designation Order; Nomar Vizcarrondo, et al.

Released April 29, 1988.

The Federal Communications Commission has released an *Order to Show Cause, Suspension Order and Designation Order* designating the application of Nomar Vizcarrondo to renew amateur station license NP4H and his Amateur Extra Class operator license for hearing. In the same *Order* the Commission initiated license revocation and suspension proceedings against Vizcarrondo and 10 other amateur service licensees. Federal Register publication of a summary of this document is required for the issues that relate to Nomar Vizcarrondo's application to renew amateur station license NP4H and his Amateur Extra Class radio operator license. The issues in this proceeding that pertain to Nomar Vizcarrondo are to determine: Whether he assisted others in obtaining amateur service licenses by fraudulent means, in willful and/or repeated violation of § 97.33 and/or 97.129 of the Commission's Rules, 47 CFR 97.33 and 97.129; whether he misrepresented material facts to the Commission; whether he is qualified to remain an amateur radio station licensee; whether the suspension of his amateur operator license should be affirmed, modified or dismissed; and whether granting his application would serve the public interest, convenience and necessity.

The *Order* also specifies issues pertaining to the 10 other amateur

service licensees involved in the proceeding. Following is a list of those licensees and their amateur station call signs: Carlos M. Colon (WP4U), Ramon R. Santos Vazquez (KP4FW), Ellie J. Rivera De Jesus (KP4KB), Belinda Rivera (WP4FOG), Iris Y. Rivera (WP4FOF), Ramon Vizcarrondo (NP4ZM), Margie Vizcarrondo (WP4GAW), Iris C. Lopez (NP4ZM), Richard Zambrana (KP4IN) and Joaquin Hernandez (NP4E). These licensees have been individually notified of their reply deadlines. Petitions to Intervene must be filed within 30 days of publication in the Federal Register in accordance with the specific provisions of 47 CFR 1.223(b) and the general provisions of 47 CFR Part 1.

A copy of the complete *Order to Show Cause, Suspension Order and Designation Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division.

[FR Doc. 88-10845 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002480-004.

Title: Port of Oakland Supplemental Agreement.

Parties:

Port of Oakland (the Port)
American President Lines, Ltd. (APL)

Synopsis: The proposed agreement sets forth amendments to Agreements Nos. 224-002480, 224-002805 and/or 224-003038 relating to the division of secondary use revenues in certain instances and the Port's option to purchase assignee's container cranes on the premises.

Agreement No.: 224-002758-005.

Title: Port of Oakland Terminal Agreement.

Parties:

City of Oakland
American President Lines, Ltd. (APL)

Synopsis: The agreement amends the basic agreement to provide for the division of secondary use revenues of 40% to the Port and 60% to APL in certain instances of long term committed secondary users obtained by APL. It also provides for the monthly payment of maximum guaranteed compensation in equal monthly installments of $153,750.00.

Agreement No.: 224-003038-002.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland
American President Lines, Ltd. (APL)

Synopsis: The agreement amends the basic agreement to provide for the division of secondary use revenues of 40% to the Port and 60% to APL in certain instances of long term committed secondary users obtained by APL.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10827 Filed 5-13-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011193.

Title: Conbulk Carriers Discussion Agreement.

Parties:

Star Shipping A/S
Westwood Shipping Lines
Gearbulk Ltd. dba Gearbulk Container Services

Synopsis: The proposed agreement would authorize the parties to agree on rates, practices and service contracts in the trade from ports and points in Japan and Korea to ports on the west coast of the United States and Canada and inland points via such ports. Adherence to any agreement reached would be voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10928 Filed 5-13-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in dividual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041888 AND 050288

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Datapoint Corporation, Centel Corporation, Centel Corporation	88-1231	04/18/88
Sakata Inx Corp., Acme Printing Ink Company, Acme Printing Ink Company	88-1248	04/18/88
Morningstar Foods, Inc., Kraft, Inc., Avoset Corp	88-1252	04/18/88
Reed International P.L.C., Mr. Stephen K. Pond, c/o Communications/Today Ltd., Communications/Today Ltd., Home Textiles Today, Ltd	88-1290	04/18/88
Dr. Michael Otto (Spiegel, Inc.), Honeybee, Inc., Honeybee, Inc	88-1297	04/18/88
James M. Goldsmith, Generale Occidentale, Diamond Group Inc	88-1304	04/18/88
Exxon Corporation, Westland Oil Development Corporation, Westland Oil Devel. Corp. Westland Oil & Gas Properties	88-1316	04/18/88
Bally Manufacturing Corporation, Pacific West Sports & Racquet Club, Ltd., Pacific West Sports & Racquet Club, Ltd	88-1317	04/18/88
Gannett Co., Inc., New York Subways Advertising Co., Inc., New York Subways Advertising Co., Inc	88-1324	04/18/88
Cummins Engine Company, Inc., Cortes Equipment Service Co., Cortes Equipment Service Co	88-1359	04/19/88
Commonwealth Equity Trust, Del E. Webb Investment Properties, Inc., Del E. Webb Investment Properties, Inc	88-1376	04/19/88
Frank Stronach, Ligma Corporation, Ligma Corporation	88-1206	04/20/88
Crystal Brands, Inc., Voting Trust—Hallmark Cards, Incorporated, Trifari, Krussman & Fishel, Inc	88-1260	04/20/88
Mark IV Industries, RTE Corporation, RTE Corporation	88-1311	04/20/88
Crescott, Inc., The William Carter Company, The William Carter Company	88-1328	04/20/88
Tele-Communications, Inc., Merlon Shapiro, assets of Shapiro's moviethealer operations	88-1404	04/20/88
Cookson Group plc, Peter and Daphne Farago, husband and wife, NEPTCO, Incorporated and NEPT International, Inc	88-1262	04/21/88
CMS Energy Corporation, The Oxford Energy Company, The Oxford Energy Company	88-1396	04/21/88
Lonrho Plc, Compagnie Financiere de Paribas, Banque Paribas	88-1216	04/22/88
Borden, Inc., Robert H. Orchard, The Orchard Corporation of America	88-1256	04/22/88
The Philp Co. Trust, Arabian Investment Banking Corporation, Bertram-Trojan, Inc	88-1257	04/22/88
The Greyhound Corporation, The RTZ Corporation, PLC, 20 Mule Team Division of United States Borax & Chemical	88-1286	04/22/88
International Semi-Tech Microelectronics Inc., Provigo Inc., Consumers Distributing Company Limited	88-1322	04/22/88
Total Compagnie Francaise Des Petroles, CSX Corporation, CSX Oil & Gas Corporation plus certain assets of CSX	88-1327	04/22/88
Norman M. Lear, Multimedia, Inc., Reel Broadcasting Co., Inc	88-1342	04/22/88
Tate & Lyle, Staley Continental, Inc., Staley Continental, Inc	88-1345	04/22/88
Provigo Inc., Petrini's Meat, Inc., Petrini's Meat, Inc	88-1351	04/22/88
William W. LaRoche, KaiserTech Limited *, Kaiser Aluminum & Chemi-cal Corporation	88-1354	04/22/88
U S West, Inc., Enhance Financial Services, Inc., Enhance Financial Services, Inc. and Securities	88-1355	04/22/88
Roy E. Disney and Patricia A. Disney, husband & wife, Show Industries, Inc., Show Industries, Inc	88-1358	04/22/88
Highness Koesn Co., Inc., Ronald L. Fenolio, Mililani Shopping Center	88-1362	04/22/88
Sequa Corporation, WMRI Leasing Corp., WMRI Leasing Corp	88-1364	04/22/88
Landmark Land Company, Inc., American First Corporation, First Life Assurance Company	88-1366	04/22/88
Maersk Inc., James G. Costello, II, J.G.C. Enterprises Corporation	88-1368	04/22/88
Schroder Real Estate Fund A, Equity Financial Investment Co., Orlando Joint Venture	88-1373	04/22/88
General Coast Enterprises Co., Ltd., Minstar, Inc., Min-V Corp	88-1375	04/22/88
David R. Williams, Jr., Santa Fe Southern Pacific Corporation, Black Mesa Pipeline, Inc	88-1379	04/22/88
The Rank Organisation Plc, Gulf & Western Industries, Inc., Fifty-Four Century Corporation	88-1394	04/22/88
TW Services, Inc., Jack Gallone, Corporate Foot Services, Inc	88-1397	04/22/88
Varity Corporation, TRW, Inc., TRW, Inc	88-1213	04/23/88
Occidental Petroleum Corporation, Cain Chemical, Inc., Cain Chemical Inc	88-1303	04/25/88
Jean Noel Bongrain, Bongrain, S.A., Real Fresh, Inc., Real Fresh, Inc	88-1356	04/26/88
The Rank Organisation Plc, Bell & Howell Company, Bell & Howell Video Systems, Inc	88-1392	04/26/88
The Rank Organisation Plc, Columbia Pictures Industries, Inc., Colvita Productions, Inc	88-1393	04/26/88
Health and Rehabilitation Properties Trust, Gerard M. Martin, Heywood Corp	88-1410	04/26/88
The Rank Organisation Plc, BHCP Video, BHCP Video	88-1421	04/26/88
ConAgra, Inc., Blue Star Foods, Inc., Blue Star Foods, Inc	88-1318	04/27/88
J.G.L. Investments Pty. Ltd., Anac Holding Corporation, Caris Parent Corporation	88-1319	04/27/88
Brunswick Corporation, Jack J. White, Jr., Marine Group, Inc., and Marine Group Associates	88-1326	04/27/88
Meggitt Holdings PLC, Charles H. and Margaret M. Dyson, Plastic Fabricating Co. division of Criton Corporation	88-1329	04/27/88
Sam J. Frankino, Replacement Enterprises, Inc., Replacement Rent-A-Car, Inc	88-1336	04/27/88
Golder, Thoma, Cressey Fund III Limited Partnership, Ero Industries, Inc., Ero Industries, Inc	88-1399	04/27/88
John J. Rigas, Campbell Communications, Inc. Campbell Communications, Inc	88-1405	04/27/88
Michael J. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1406	04/27/88
Timothy J. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1407	04/27/88
James P. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1408	04/27/88
Engelhard Corporation, KaiserTech Limited, Kaiser Clay & Catalyst Company and The Harshaw Chemical	88-0902	04/29/88
Craig O. McCaw, Voting Trustee for MFC, Inc., Voting Tru. Affiliated Publications, Inc., Nine Subs and Nine Partnerships	88-1235	04/29/88
Affiliated Publications, Inc., Craig O. McCaw, Voting Trustee for MFC, Inc., Voting Trus McCaw Cellular Communications, Inc	88-1237	04/29/88
R.H. Macy & Co., Inc., Robert Campeau, I. Magnin and Bullock/Bullock Wilshire divisions	88-1330	04/29/88
General Motors Corporation, M&SD Corp., M&SD Corp	88-1339	04/29/88
The May Department Stores Company, Robert Campeau, Filene's & Foley's department store divisions of	88-1344	04/29/88
Enron Corp., TNP Enterprises, Inc., Capital Cogeneration Company, Ltd	88-1347	04/29/88
Enron Corporation, H.B. Zachry, Jr., Capital Cogeneration Company, Ltd	88-1348	04/29/88
American Magnetics Corporation, Damon Corporation, Damon Corporation	88-1349	04/29/88
Ballantrae Partners, L.P., Damon Corporation, Damon Corporation	88-1350	04/29/88
Craig O. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc., v/t McCaw Cellular Communications, Inc	88-1362	04/29/88
John E. McCaw, Jr., Craig O. McCaw, Voting Trustee for MFC, Inc., V/T McCaw Cellular Communications, Inc	88-1363	04/29/88
Bruce R. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc., V/T McCaw Cellular Communications, Inc	88-1364	04/29/88
Keith W. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc. V/T McCaw Cellular Communications, Inc	88-1365	04/29/88
Reynolds Metals Company, Presto Industries, Inc., Presto Industries, Inc	88-1389	04/29/88
LivingWell, Inc., Paramount Acceptance Corporation, Paramount Acceptance Corporation	88-1418	04/29/88
Peter Kiewit Sons', Inc., Union Pacific Corporation, Certain assets of UPE	88-1423	04/29/88
Price Pfister, Inc., GIR Properties, GIR Properties	88-1435	04/29/88
Donald J. Trump, Aoki Corporation, Plaza Operating Partners, Ltd	88-1436	04/29/88
Murphy Oil Corporation, Mobil Corporation, Mobil Exploration & Producing U.S. Inc., Mobil	88-1457	04/29/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041888 AND 050288—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jupiter Industries, Inc., Elgin National Industries, Inc., Elgin National Industries, Inc	88-1459	04/29/88
Maxpharma, Inc., Neoax, Inc., C & H Nationwide, Inc	88-1461	04/29/88

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.
Emily H. Rock,
Secretary.

[FR Doc. 88–10830 Filed 5–13–88; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Availability of Funds for Fiscal Year 1988

In the Matters of a Cooperative Agreement To Support A Southern Occupational and Environmental Health Clinical Examination Center.

The National Institute for Occupational Safety and Health (NIOSH) solicits applications for a cooperative agreement to support a Southeastern Occupational and Environmental Health Clinical Examination Center (CENTER) to serve working population in the Souteast that have been increasing in number.

Although research-based occupational and environmental health clinical examination centers have been established in other parts of the country, the Atlanta area lacks such a center. In this area of the country that is both expanding economically and is a focal point for disease control, the public is currently underserved by a CENTER. With the working population growing in the Southeastern United States and specifically, Federal Region IV, clinical-based epidemiology needs to address emerging work-related disease problems of this expanding population. Region IV includes Alabama, Florida, Kentucky, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, of which Atlanta serves as the Regional Office.

Because recent epidemologic studies into community and workplace hazards have required increasing methodological sophistication, research has turned to new medical diagnostic tests for increasingly subtle health conditions. As epidemiologic research employs such clinical tools, there is a need to contribute to the process of developing new or improved methods for evaluating the health of exposed populations in Region IV.

The CENTER would address several problems. First, it would overcome the constraints of medical testing under field conditions that limit the availability of sophisticated techniques and specialized personnel. Second, it would provide for clinical testing where quality is sacrificed in performing certain tests under field conditions. Third, it would provide a stable unit in occupational and environmental health in the center of Region IV to perform medical evaluations. Fourth, it would respond to a continuing need to perform health surveys, some of which are unpredictable. Fifth, the CENTER would contribute to the process of developing new or improved methods for evaluating the health of exposed populations.

Atlanta, Georgia, serves as the headquarters for the Centers for Disease Control (CDC). Over the years the mission of CDC has expanded from the control of infectious diseases to include the prevention of chronic diseases.

This expansion is evidenced by the location of the Center for Environmental Health and Injury Control and the headquarters of the National Institute for Occupational Safety and Health in Atlanta within the organization of CDC and the location of the Agency for Toxic Substances and Disease Registry with CDC in Atlanta.

The location of the CENTER, in close proximity to Atlanta, is thus, a factor in selecting an institution to support. The CENTER will be observing cases that require the technical assistance of these agencies, and in critical situations, timeliness becomes paramount in providing this assistance.

Authority

The legislative authority for this program is contained in section 22(a) and 20(a) (3) and (5) of the Occupational Safety and Health Act and section 301 of the Public Health Service Act.

Eligibility Requirements

Eligible applicants for this cooperative agreement are medical schools and educational institutes. Essential requirements are to:

A. Be located in an academic health center with—

1. A multidisciplinary faculty with expertise in areas such as pathology, toxicology, pulmonary medicine, dermatology, and emergency medicine; and

2. An established outpatient clinic providing care to patients who are employed and may possess work-related diseases.

B. Conduct—

1. Research on biological assays designed to detect the effects of exposure to potentially harmful substances or their products in biologic materials; and

2. Outpatient health evaluations on a referral basis from the project officer covering a service area of growing employment within Region IV of the Department of Health and Human Services which includes—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The Regional Office is located in Atlanta, Georgia.

Availability of Funds

It is expected that approximately $95,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded within a 12-month budget period and a 5-year project period. It is planned that $200,000 per year will be available for years 2, 3, 4, and 5. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and availability of funds. The funding estimate outlined above may vary and is subject to change.

Program Objectives

Objectives of this cooperative agreement are to:

A. Perform research necessary to improve and develop health testing methodologies needed to evaluate health effects of chemical and physical hazards found among the growing Southeastern populations.

B. Provide a stable, proficient resource for performance of screening and medical evaluations of selected populations of growing concern in the Southeast.

C. Generate hypotheses for further research of these populations so as to benefit the affected public based upon case findings.

D. Study the causes, diagnoses, and treatments of occupational and environmental diseases found in the growing Southeast for use by the medical community at large.

Cooperative Activities

1. Recipient Activities in the First Year of Award

a. Develop the requirements for staffing, management, and administrative system and controls, equipment, and the purpose and goals of the CENTER.

b. Identify and pursue alternative approaches for the provision of resource support for the operational budget of the CENTER that are independent of direct support from the government.

2. Recipient Activities in the Second Through Fifth Year of Award

a. Conduct research activities directed toward the protection of the health of workers and members of the general community in the southeastern States, which include—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The purpose of the research to be conducted at the CENTER will be to gain information regarding the etiology, pathogenesis, and treatment of occupational and environmental diseases among the populations in the Southeast, particularly where economic growth is evident.

b. Provide an outpatient capacity that covers a large catchment area in the Southeast. When operational, conduct human clinical studies utilizing patients ill with occupational or environmental disease. Occupational diseases include, among others, those that result from chemical and physical exposures at work. Environmental diseases result from the contamination by pollutants of any environmental media including air, water, and soil. There will be no funds authorized for direct treatment of patients.

3. CDC/NIOSH Activities

a. Assist the recipients in the diagnosis, treatment, and follow-up of occupational and environmental diseases within the service area of the proposed CENTER and how these cases may generate hypotheses for research. This assistance addresses both known diseases as well as suspected diseases in this service area.

b. Provide technical assistance on cases of vague or unknown etiologies.

Application Submission and Deadline

The original and 2 copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before July 7, 1988, to: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305.

A. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

1. Received on or beofre the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Application Content

Applications must include a narrative which includes the following:

A. Clearly defined and measurable objectives consist with the applicant's proposed activities and the goals of the program outlined as objectives in this document. The CENTER'S proposed objectives should likewise promote clarity of purpose and facilitate integration of activities into a conceptual whole.

B. A method of evaluation aimed at monitoring progress in meeting the CENTER'S objectives.

C. A description of the CENTER director's role and authority relative to staffing the CENTER, coordination of effort, and control over CENTER space and equipment.

D. A description of the core faculty and its role in implementing and evaluating the proposed program.

E. A list of staff, including the director and core faculty who are expected to participate in the CENTER, including titles, tenure status, areas of expertise, and the amount of time devoted to each component of the proposed program, and whether paid from the cooperative agreement or other sources.

F. A list of relevant current funded and/or pending grants and/or contracts for the core faculty under part 5 above. For each grant or contract include:

1. Source of funds;
2. Amount of funding;
3. Identifying numbers;
4. Whether funded or pending;
5. Date of funding, initiation, and termination; and
6. Relationship to the CENTER'S proposed activities, objectives and implementation plan.

G. Charts showing the proposed organizational structure of the CENTER and its relationship to the applicant institution and, where applicable, to affiliated institutions or collaborating organizations.

H. A detailed budget for the CENTER.

Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Review and Evaluation Criteria

Review of the application will be conducted in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the scientific merit of the applications. The applications will be evaluated by the following criteria:

A. Soundness and particularity of the proposed approach and work plan for implementing the 4 program objectives of the CENTER.

B. Demonstrated familiarity with, and experience and success in the development of, a financial support system. The support system should be designated to identify, elicit, and successfully coordinate the provision of phased financial support to an undertaking jointly sponsored by public and private organizations with legitimate interest in the success of the effort.

C. Demonstrated understanding of the need for, and the intended purpose of the CENTER. Explicitly stated understanding of the concept/function of the CENTER to serve as a center for clinical research within the professional, medical, and academic community.

D. Plans to establish facility within 50 mile radius of Atlanta, Georgia.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, Telephone: (404) 639–6575.

Technical assistance may be obtained from: Melvin L. Myers, Deputy Assistant Director, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta.

Georgia 30333, Telephone (404) 639-3901; FTS 236-3901.

Dated: May 9, 1988.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 88-10853 Filed 5-13-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Veterinary Medicine Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Veterinary Medicine Advisory Committee by the Secretary of Health and Human Services (the Secretary). This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on April 24, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10905 Filed 5-13-88; 8:45 am]

BILLING CODE 4160-9-M

Advisory Committees; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Adminsitration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 1 and 2, 1988, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 1, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, June 2, 1988, 9 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research, HFD-110, Rm. 16B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss guidelines for the clinical testing of antihypertensive drugs, and Cipralan (cibenzoline succinate), NDA 19-544, Hoffman-La Roche, Inc., for suppression and prevention of ventricular arrhythmias.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. June 2 and 3, 1988, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 2, 1988, 9 a.m. to 10:00 a.m., unless public participation does not last that long; open committee discussion, 10:00 a.m. to 5 p.m.; open public hearing, June 3, 1988, 9 a.m. to 10:00 a.m., unless public participation does not last that long; open committee discussion, 10:00 a.m. to 12:30 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research, HFD-510, Food and Drug Adminsitration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in obstetrics and gynecology.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On June 2, 1988, the committee will discuss the use of bromocriptine for the suppression of lactation. On June 3, 1988, the committee will discuss reports of functional ovarian cysts associated with the use of oral contraceptives.

Microbiology Devices Panel

Date, time, and place. June 13, 1988, 9 a.m., Rm. 703A-727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Adminsitration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an over-the-counter Group A Streptococcus detection device, and for a device to detect certain types of human papillomavirus.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** ntoice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10907 Filed 5-11-88; 3:34 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[MT-020-08-4121-02]

Receipt of an Exchange Proposal, and Intention to Prepare an Environmental Statement and Hold Scoping Meetings; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement, hold scoping meetings and receipt of exchange proposal between Meridian Minerals Company, a subsidiary of Burlington Northern, Inc. and the Bureau of Land Management, filed in accordance with provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, and Title 43 CFR Part 2200. In accordance with the provisions of section 102 of the National Environmental Policy Act of 1969 as amended, 43 U.S.C. 4321 and Title 40 CFR Parts 1500-1508, an environmental impact statement will be prepared.

SUMMARY: The proposal, filed in the Miles City District on May 3, 1988, involves the exchange of 3,674.36 acres of federal coal ownership in Yellowstone and Musselshell Counties, about fourteen miles south of Roundup, Montana in the Bull Mountains area. The proposed exchange would consolidate coal ownership, which is presently in a checkerboard pattern, for development as an underground mining tract.

In exchance, Meridian would convey lands described as having outstanding recreational, wildlife habitat or watershed values. These lands are currently managed by Plum Creek Timber Company and Glacier Park Land Company, both subsidiaries of Burlington Northern, Inc., Meridian is willing to consider a coal for coal exchange, as an alternative, should BLM prefer that option.

An environmental impact statement (EIS) will be prepared to analyze the proposed exchange and the reasonably foreseeable consequences of it, including an assessment of the underground mining scenario mentioned in the exchange application. In addition, BLM will analyze the impacts or benefits of changing land ownership from private to federal of the lands likely to be exchanged. In general, all impacts will be traced to the point they become insignificant or cannot be attributed to the proposed exchange. The no action or denial of the proposal will also be analyzed

All interested parties, including federal, state and local agencies, are invited to participate in the EIS scoping process. The scoping process begins immediately and will close on June 30, 1988. Agencies with particular expertise are invited to join in the EIS process as cooperators.

Geographic Area: The geographic area to be analyzed for effects is mostly in Yellowstone and Musselshell counties, Montana, the site of the probable underground coal mine. However, lands are being offered for exchange in eleven Montana counties; Beaverhead, Broadwater, Carbon, Custer, Dawson, Deer Lodge, Gallatin, Jefferson, Madison, Musselshell and Prairie counties. Regional or cumulative effects may extend somewhat beyond these counties.

Issues and Concerns: The following issues and concerns have been identified to date:

—Possible impact to ground water from the underground mine.

—Increased road hazards and road deterioration resulting from over the road transportation of the mined coal.

—Air quality degradation around the mine area, and from increased vehicle use.

—Possible subsidence problems, following mining, and the impact of that on local water supplies.

—Social and economic changes which would likely impact the town of Roundup, Montana, and surrounding area.

—Potential loss of tax revenue by federal acquisition of privately owned lands.

—Wildlife impacts from increased traffic.

—Evaluation of the federal coal and the offered private lands.

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EIS.

The scoping process used to collect issues and concerns on the proposed exchange will involve two public meetings and a mail-out packet, which

individuals may request, fill out, and return to the BLM Miles City District at the following address: Bureau of Land Management, Attn: Rob McWhorter, Project Manager, P.O. Box 940, Garyowen Road, Miles City, Montana 59301.

DATES: Scoping packets will be distributed immediately, upon request. Responses and comments will be accepted through June 30, 1988. Public meetings will be held at the following times and locations:

Date: May 25, 1988
Time: 7 p.m. m.d.t.
Location: Central School Multipurpose Room, Sixth Avenue and Second Street, Roundup, Montana
Date: May 26, 1988
Time: 7 p.m. m.d.t.
Location: Town Hall Ennis, Montana

In addition to scoping meetings, an open house "drop in" session to explain the proposal will be held:

Date: May 24 and 25, 1988
Time: 9 p.m. to 5 p.m. m.d.t.
Location: USDA Building, Conference Room, 109 Railroad Avenue, Roundup, Montana

It is anticipated that the draft environmental impact statement will be available for public review in late November 1988.

The federal coal ownership proposed to be acquired by Meridian in their application is:

	Acres
Musselshell County, Montana	
Township 6 North, Range 27 East, M.P.M.:	
Section 18: All (Fractional)	636.92
Section 20: All	640.00
Section 30: All (Fractional)	638.00
Total Musselshell County	1,914.92
Yellowstone County, Montana	
Township 5 North, Range 27 East, M.P.M.:	
Section 4: Lots 1(39.86); 2(39.86); 3(39.86); and 4(39.86)	159.44
Township 6 North, Range 27 East, M.P.M.:	
Section 28: All	640.00
Section 32: N½, SE¼	480.00
Section 34: N½, SW¼	480.00
Total Yellowstone County	1,759.44
Grand Total Musselshell and Yellowstone counties	3,674.36

Candidate lands offered in exchange by Meridian, from which BLM could choose lands totalling equal value to the coal, include the following:

	Acres
Madison River—McAtee Bridge	
T. 6 S., R. 1 W.:	
Section 15	572
Section 25	48
T. 9 S., R. 1 W., Section 1	77
Devils Fence Area—Boulder Valley	
T. 5 N., R. 2 W.:	
Section 19	655
Section 29	640
Section 31	635
Trident—Missouri River	
T. 2 N., R. 2 E.,:	
Section 3	353
Section 9	227
T. 3 N., R. 2 E., Section 27	304
Lombard—Missouri River	
T. 4 N., R. 3 E.,:	
Section 7	251
Section 13	7
Radersburg Area	
T. 5 N., R. 1 E., Section 3	160
Hells Canyon	
T. 1 S., R. 6 W., Section 31	655
Ruby Range	
T. 5 S., R. 5 W., Section 21	654
T. 6 S., R. 6 W.,:	
Section 27	160
Section 35	321
T. 7 S., R. 6 W., Section 1	650
Big Hole—Block Mountain	
T. 4 S., R. 8 W.,:	
Section 1	660
Section 13	639
Section 23	320
Section 25	478
T. 4 S., R. 7 W.,:	
Section 19	160
Section 31	183
Big Hole	
T. 1 N., R. 13 W., Section 17	640
Big Dry 1	
T. 9 N., R. 51 E., Section 35	640
Grove Creek Allotment	
T. 9 S., R. 21 E.,:	
Section 1: Lots 1, 2, 3, 4	±6800
Section 3: S½, S½N½, N½NW¼, NE¼NE¼	
Section 5: N½, N½S½, S½SE¼	
Section 7: All	
Section 8: N½N½, S½NE¼	
Section 11: All	
Section 13: Lots 3, 4	
Section 15: N½, W½SW¼, NW¼SE¼, S½SE¼	
Section 17: All	
Section 19: All	
Section 21: All	
Section 23: All	
Section 31: Lots 1, 2, 3, 4	
Big Dry 2	
T. 13 N., R. 46 E.,:	
Section 27: E½	960
Section 35: All	
Big Dry 3	
T. 13 N., R. 47 E., Section 21: All	640
Big Dry 4	
T. 13 N., R. 46 E., Section 25: All	640
North of Round-Up	
T. 9 N., R. 26 E.,:	
Section 29: NW¼, W½SW¼	±1200
Section 29: All	
T. 10 N., R. 27 E., Section 27: E2	
Powder River Breaks	
T. 7 N., R. 51 E., Section 1: All	1506.77
T. 8 N., R. 51 E., Section 35: Lots 1, 4, 5, 8, and SE¼NE¼, E½SE¼ (All East of Powder River)	
T. 7 N., R. 52 E., Section 7: All	
Big Dry 5	
T. 12 N., R. 45 E., Section 17: All	640
Big Dry 6	
T. 12 N., R. 45 E., Section 5: All	638
Big Dry 7	
T. 18 N., R. 56 E., Section 25: SW¼	160
Big Dry 8	
T. 18 N., R. 56 E., Section 35: River Frontage	120

The Miles City District, Bureau of Land Management is soliciting public comment on the public interest and environmental factors of this exchange proposal. All scoping comments should be received by June 30, 1988. Specific areas where comments are desired are as follows:

(1) Comments or thoughts on how or why the public interest might or might not be served by the proposed exchange.

(2) Comments on the values associated with either the private lands to be acquired or the public coal to be transferred into private ownership.

(3) What are the expected environmental impacts of the proposed exchange?

(4) What are the impacts of the proposed exchange on competition in the coal industry or on competitive coal leasing?

(5) What human or environmental concerns should the EIS address, and to what extent?

FOR FURTHER INFORMATION CONTACT: All comments and requests for further information should be addressed to Rob McWhorter, Project Manager, Miles City District Office, Bureau of Land Management, Box 940, Miles City, Montana 59301 (406) 232-4331.

If, at any time during the EIS process, any person wishes to raise issues for consideration in the EIS, he/she should feel free to do so by contacting the BLM at the above address.

Date: May 9, 1988.

Sandra E. Sacher,
Associate District Manager.

[FR Doc. 88-10894 Filed 5-13-88; 8:45 am]
BILLING CODE 4310-GH-M

[WY-010-08-4333-08]

Intent to Conduct an Evaluation and Public Scoping on the Grass Creek Management Framework Plan for Off-Road Vehicle Designations; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct an evaluation and public scoping on the Grass Creek Management Framework Plan for Off-Road Vehicle (ORV) designations. Request for resource data, including a call for coal resource information.

SUMMARY: The Bureau of Land Management (BLM) is considering the possible need for a Category 1 plan amendment to the 1983 Grass Creek Management Framework Plan (MFP) for ORV designations. Public scoping will be conducted to identify interested parties, issues and concerns, and to encourage public participation. The ORV designations of open, closed, or limited will be applied to all public lands in the Grass Creek Resource Area (GCRA), Worland District, Wyoming. The designations would affect portions of Washakie, Hot Springs, Park, and Big Horn Counties, Wyoming.

Anyone having any resource information and inventory data pertaining to the GCRA, particularly any that has been gathered since 1983, is requested to share the information with BLM. This includes any coal resource information per 43 CFR 3420.1-2. The BLM will use any such new information to update its resource data base and in conducting the plan evaluation.

DATE: Scoping letters were distributed by mail on or about April 13, 1988. Responses and comments will be accepted through June 15, 1988. A public open house will be held June 15, 1988 from 8:00 a.m. to 7:00 p.m. at the Worland District BLM Office, 101 S. 23rd, Worland, Wyoming. Individual contacts will be made with user groups and interested individuals. If additional meetings and public hearings are needed, they will be scheduled and the public notified through individual mailings or the news media.

ADDRESSES: Information and scoping letters can be obtained by writing, telephoning, or visiting the Worland District Office, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401, (307) 347-9871.

Comments and resource information should be sent to the Area Manager, BLM, Grass Creek Resource Area, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Phyllis Roseberry, Grass Creek Resource Area Manager, Bureau of Land Management, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401, phone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The possible need for a plan amendment was identified as a result of an interdisciplinary team review of the 1983 MFP Decisions; input from an *ad hoc* citizens group; public comments; a concern for conflicts occurring between ORV use and other public land users; the increased use by ORV's in the area; and potential environmental impacts, including those to wilderness study areas.

The following preliminary issue and concerns have been identified to date:

Issue: Which lands in the GCRA should be designated open, closed, or limited for ORV use?

Concerns:

a. What negative or positive impacts could potentially occur to other resource activities, BLM permittees and licensees, private landowners, trappers, and recreationists. What options exist for the mitigation of potential impacts from ORV use?

b. How will the ORV designations affect geophysical exploration and mining activity under the 43 CFR Parts 3802 and 3809 regulations?

c. How can the BLM encourage public safety, and if needed, control public recreation in/or around oil fields? Can oil fields be signed to discourage public uses such as hunting?

d. How can conflicts be resolved between motorized and non-motorized recreation uses, particularly during hunting seasons?

e. What motorized vehicle use and non-motorized recreation opportunities are desired by the public, and where should those opportunities be provided?

The public is encouraged to present their ideas and views on these and other issues and concerns.

In addressing the issues and concerns, at least two ORV management alternatives will be analyzed in detail and an environmental assessment (EA) will be prepared.

The alternatives are:

1. Implement the existing ORV designations made in the 1983 MFP.

2. Modify the ORV designations made in the 1983 MFP. Based on the preliminary findings, this alternative represents more stringent restrictions on ORV use in the GCRA.

The draft EA will be made available for public review and comment for 60 days. The final EA and proposed planning decision, including whether or not the Grass Creek MFP will be amended, will be made available for a 30 day protest period and a Governor's consistency review before the decisions are adopted. In addition to deciding the ORV designations for the GCRA, another determination to be made in the process is whether or not the proposed ORV designations would constitute a significant impact that would require preparation of an environmental impact statement (EIS). The public will be notified of these activities and time frames through individual mailing and the news media. Anyone who wishes to be placed on the mailing list should contact the Worland District BLM Office at the above address or phone number.

May 10, 1988.

Marlyn V. Jones,
Associate State Director.

[FR Doc. 88-10893 Filed 5-13-88; 8:45 am]
BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant

Name: University of Oregon Visual Arts, Resources Center, Eugene, OR. File no. PRT-693357.

Type of Permit: Public Display.

Name of Animals: Walrus and unidentified pinnipeds.

Summary of Activity to be Authorized: The applicant proposes to reimport from Canada 40 Eskimo dolls (Alaskan native handicrafts) some of which are partially constructed from walrus ivory and various seal and walrus parts. The exhibit is currently on tour in Canada and the United States. It will be returned to the Alaska State Council of the Arts which owns the exhibit at the end of the tour.

Source of Marine Mammals for Display: Alaska-wild.

Period of Activity: One reimportation—approximately September 30, 1988.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to

the Marine Mammal Commission and

Area and Block: West Cameron, Block

or July. Interested parties are requested

hearing was held pursuant to the

DATES AND ADDRESS: The public is

Washington, DC, 13th and C Streets

the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, at 1375 K Street, NW., Washington, DC.

Dated: May 10, 1988.

R.K. Robinson,

Chief, Branch of Permits.

[FR Doc. 88–10810 Filed 5–13–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Accident Investigation Reports

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an investigation report.

SUMMARY: Notice is hereby given that an investigation report of a blowout and fire that occurred November 10, 1986, on Outer Continental Shelf Lease No. 0244, West Cameron Block 71, is available to the public upon request.

ADDRESS: Copies of the report may be obtained from Minerals Management Service; Offshore Rules and Operations Division, Mail Stop 646; 12203 Sunrise Valley Drive; Reston, Virginia 22091, or Public Information Section; Gulf of Mexico OCS Region; Minerals Management Service; 1420 Elmwood Park Boulevard; New Orleans, Louisiana 70123; Telephone (504) 736–2519, (FTS) 680–2519.

FURTHER INFORMATION CONTACT: Mr. Price McDonald, Chief, Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648–7813, (FTS) 959–7813.

SUPPLEMENTARY INFORMATION: The available accident investigation report is identified as follows:

Open File No.: 88–0007

Event and Date: Blowout and Fire, November 10, 1986

Area and Block: West Cameron, Block 71

Region: Gulf of Mexico

Dated: May 4, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–10831 Filed 5–13–88; 8:45 am]

BILLING CODE 4310–MR–M

Request for Comments Concerning Meetings To Discuss Revised Rules Governing Consolidated Oil, Gas, and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS is planning public meetings to discuss the implementation of the consolidated offshore operating rules for oil, gas, and sulphur which were published on April 1, 1988. Interested parties are invited to indicate interest in attendance at such meetings and to comment on the schedule and locations for holding meetings.

DATE: Comments should be received by June 6, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 642; Room 6A112; Reston, Virginia 22091; Attention: Richard B. Krahl.

FOR FURTHER INFORMATION CONTACT: Richard B. Krahl, Deputy Associate Director for Offshore Operations; Minerals Management Service; (703) 648–7808.

SUPPLEMENTARY INFORMATION: On April 1, 1988, MMS published a final rule which consolidated and revised requirements governing oil, gas, and sulphur operations in the OCS effective May 31, 1988 (53 FR 10596). Following the publication of the new rules, several lessees requested that MMS conduct public meetings with industry to discuss the implications of the new rules. In response to the requests, MMS is planning to hold public meetings and is requesting comments from interested parties to assist MMS in scheduling the meetings.

The MMS expects that there will be sufficient interest to warrant one or more meetings in each of several locations around the country. At this time, MMS is anticipating that at a minimum, meetings will be held in New Orleans, Louisiana; Los Angeles, California; and Anchorage, Alaska, and that the first meeting will be in late June or July. Interested parties are requested to respond to the following questions.

(1) How many people from your organization do you estimate would attend a meeting in each of the three listed locations?

(2) How many of the people estimated in response to question 1 would prefer an alternate location(s)? What is the suggested alternate location(s)? Besides the people estimated in response to question 1, how many additional people would be able to attend if a meeting were held in locations other than the three locations listed above? Identify alternate location(s) and number of additional attendees.

(3) When should the meetings be held?

Companies are invited to respond individually or through associations. Associations are encouraged to consolidate responses from their member companies.

Interested parties are requested to respond at the earliest possible time but definitely before the date identified above to enable MMS to proceed with planning the meetings and providing interested parties sufficient time to schedule their attendance. The MMS will publish a Notice in the Federal Register indicating the exact times and locations of the meetings as soon as this information has been determined.

Date: May 9, 1988.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–10911 Filed 5–13–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Environmental Impact Statement; Congaree Swamp National Monument, SC

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a draft plan approval and finding of no significant impact on a General Management Plan/Wilderness Suitability Study/Environmental Assessment for Congaree Swamp National Monument, South Carolina.

SUMMARY: The National Park Service has prepared a draft Plan Approval and Finding of No Significant Impact (FONSI) on the General Management Plan/Wilderness Suitability Study/Environmental Assessment for Congaree Swamp National Monument in Richland County, South Carolina which was released for public review in November 1987. During this review period, a public hearing was held pursuant to the requirements of the Wilderness Act.

A total of 589 written and oral comments were received. Nine addressed the subject of wilderness. All nine favored designation as proposed or suggested additions to the proposal. All but two of the 589 respondents favored boundary expansion. As a result of new information, the Wilderness Proposal has been changed to include 15,010 acres to be designated wilderness and 3,685 acres to be designated potential wilderness. An addition to the monument of approximately 3,900 acres instead of the 2,464 acres proposed in the General Management Plan/Wilderness Suitability Study/Environmental Assessment is proposed.

DATES: A 30-day comment period on the draft FONSI, in accordance with the Council on Environmental Quality Regulations, will extend until June 16, 1988.

ADDRESSES: Send written comments to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Chief, Planning and Compliance Division, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303, Telephone (404) 331–5465.

Date: May 10, 1988

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88–10917 Filed 5–13–88; 8:45 am]

BILLING CODE 4310–70–M

[DES 88–25]

Environmental Statements; Glacier Bay National Park and Preserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Glacier Bay National Park and Preserve, Alaska and the holding of public hearings and public meetings.

For Glacier Bay National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating an additional 69,580 acres of suitable lands and waters within the study area as wilderness. Alternative 2, the proposed action, recommends 62,790 acres of study area lands and waters for wilderness designation. Also included in the proposed action would be 48,520 acres of waters deleted or excluded from wilderness designation.

DATES AND ADDRESS: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, AK 99503. Comments must be received by August 29, 1988 to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, at 7:00 p.m., Room 300, Alaska Region Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, four public meetings will be held on Glacier Bay National Park and Preserve Wilderness DEIS. On Tuesday, July 19, 1988 a meeting will be held at the city offices in Hoonah at 2:00 p.m. and a second meeting on that day will be held at the school at Gustavus at 7:00 p.m.; on Wednesday, July 20, 1988, at the Borough Assembly Room, Juneau, 7:00 p.m.; and on Thursday, July 21, 1988 at the city offices in Yukutat. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters at Gustavus, Alaska 99826, phone (907) 697–2232 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: May 10, 1988.

[FR Doc. 88–10915 Filed 5–13–88; 8:45 am]

BILLING CODE 4310–70–M

[DES 88–26]

Environmental Statements; Noatak National Preserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Noatak National Preserve, Alaska and the holding of public hearings and public meetings.

For Noatak National Preserve, two alternatives were examined ranging from no action, which means no additional wilderness designation, to designating a portion of suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 757,175 acres or nearly 100 percent of study area lands for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage Alaska, on Monday, July 18, 1988, 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Tuesday, July 19, at 7:00

p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, five public meetings will be held on Noatak National Preserve DEIS. On Monday, July 25, 1988, in the community hall at Kivalina at 2:00 p.m. and in the community hall at Noatak at 7:00 p.m.; on Tuesday, July 26, 1988, in the National Park Service visitor center in Kotzebue at 7:00 p.m.; on Wednesday, July 27, 1988 in the IRA building in Ambler at 7:00 p.m.; and on Thursday, July 28, 1988 in the community building in Kiana at 7:00 p.m. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters at P.O. Box 1029, Kotzebue, Alaska 99752, phone (907) 442–3890 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: May 11, 1988.

[FR Doc. 88–10916 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, May 26, at 1:00 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW, Washington, DC.

The Commission was established by Pub. L. 99–652, for the purpose of advising the Secretary of the Interior or the Administrator or the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC., or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC

George M. White, Architect of the Capitol, Washington, DC

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC

Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC

John Alderson, Administrator, General Service Administration, Washington, DC

Honorable Frank Carlucci, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Preliminary Design Approval

a. Kahlil Gibran Memorial, authorized by Pub. L. 98–537, October 19, 1984. Presentation of preliminary design by the Kahlil Gibran Centennial Foundation.

II. Site Location Approval

a. Peace Garden Memorial, authorized by Pub. L. 100–63, June 30, 1987. Presentation of the proposed site by the Peace Garden Project.

b. Black Revolutionary War Patriots Memorial, authorized by Pub. L. 99–558, October 27, 1986. Presentation of the proposed site by the Black Revolutionary War Patriots Foundation.

c. Korean War Memorial, authorized by Pub. L. 99–572, October 28, 1986. Presentation of the proposed site by the American Battle Monuments Commission.

III. Discussion of Regulations Pursuant to Public Law 99–652

IV. Status Reports of Pending Memorials

Date: May 19, 1988.

Manus J. Fish Jr.,

Regional Director, National Capital Region.

[FR Doc. 88–10914 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31253]

Bluegrass Railway Museum, Inc.; Acquisition Exemption; Southern Railway Co. and Bluegrass Railroad Co.; Operation Exemption; Bluegrass Railway Museum, Inc.

BlueGrass Railway Museum, Inc. (BGRM) and its wholly-owned subsidiary, BlueGrass Railroad Company, Inc. (BGRR), have filed a joint notice of exemption. BGRM seeks exemption to acquire a line of railroad owned by Southern Railway Company. The line extends from milepost 9.0–LL near Versailles, KY to milepost 3.5–LL at the east bank of the Kentucky River near Tyrone, KY, a distance of 5.5 miles. The line will be used principally for operation of passenger excursion trains by BGRM. BGRR seeks exemption to operate the line in common carrier service, if such service should be requested. The transaction is expected to be consummated on May 31, 1988. Any comments must be filed with the Commission and served on: Arthur J. Bryson, Attorney at Law, 376 South Broadway, Lexington, KY 40508.

BGRM & BGRR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved. *See Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901,* ___ I.C.C.2d ___, served February 17, 1988.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10800 Filed 5–13–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub–No. 247X)]

CSX Transportation, Inc.; Exemption; Abandonment in Calhoun County, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 12.7-mile line of railroad between milepost SG–661.0 near Maxwellborn, AL and milepost SG–673.7 near Wellington, AL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 15, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been filed). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 26, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 5, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CXS Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 21, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10798 Filed 5–13–88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party of by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines,* served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance* ___ I.C.C. 2d ___, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87–64]

Vincent A. Sundry, D.O.; Denial of Applications

On July 27, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Vincent A. Sundry, D.O. (Respondent) of 805 S. Pinellas Avenue, Suite #5, Tarpon Springs, Florida 33589 proposing to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration of Respondent with the Drug Enforcement Administration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

By letter dated August 24, 1987, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following perhearing procedures, a hearing was held on October 22, 1987, in Tampa, Florida. On February 12, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed, and on March 18, 1988, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on or about October 25, 1972, in the United States District Court for the Western District of Pennsylvania, Respondent was convicted of four counts of illicit sale and distribution of amphetamine, felony offenses relating to a Schedule II controlled substance. On or about December 14, 1972, in the United States District Court for the Western District of Pennsylvania, Respondent was also convicted of two counts of willfully and knowingly failing to make an income tax return in violation of 26 U.S.C. 7203. On or about April 27, 1981, in the United States District Court for the District of Kansas, Respondent was convicted of acquiring and obtaining possession of Schedule II non-narcotic controlled substances to be distributed and dispensed in violation of 21 U.S.C. 841(a)(1), felony offenses relating to controlled substances. At the same time, Respondent was convicted of 12 counts of causing controlled substances to be distributed and dispensed unlawfully by writing prescriptions in names other than those of the actual recipients of the prescriptions. As a result of these convictions, Respondent served about 45 days in Federal prison.

In 1982, Respondent applied for a DEA registration at an address in Florida. An Order to Show Cause was issued by DEA proposing to deny that application. Respondent requested a hearing which was ultimately scheduled for February 17, 1983, in Tampa, Florida. Govenrment counsel appeared at the hearing, however Respondent's counsel failed to show up. Thereafter, on September 19, 1983, the then-Acting Administrator denied Respondent's application in a final order published in the **Federal Register,** Volume 48, at page 43415 on September 23, 1983.

In October 1982, while Respondent's 1982 application for registration was pending, the Pinellas County, Florida, Sheriff's Office initiated an investigation of Respondent's controlled substance handling practices after receiving information that Respondent was writing prescriptions for controlled substances without being registered by DEA. The investigation revealed that Respondent did, in fact, write prescriptions for controlled substances for various individuals knowing that he was not registered with DEA and, therefore, not authorized to write such prescriptions. As a result of this investigation, Respondent was convicted in a Florida State court on or about August 24, 1983, after pleading *nolo contendere* to thirteen counts of sale or delivery of controlled substances in violation of the Florida Comprehensive Drug Abuse Prevention and Control Act, felony offenses relating to controlled substances.

Respondent has submitted two applications for registration with DEA, one dated November 28, 1986, and the other dated February 26, 1987. These applications are the subject of these proceedings. The Administrative Law Judge concluded that Respondent's registration would be inconsistent with the public interest. Respondent has exhibited flagrant disregard for the laws relating to controlled substances. He has been convicted in three different states of controlled substance-related felonies over a period of eleven years.

In addition, the Administrative Law Judge concluded that Respondent does not appear to have any real need for a DEA Certificate of Registration. A number of Respondent's patients testified on his behalf at the hearing. Most, if not all, of them stated that they have been very satisfied with the professional care and treatment received from Respondent over the past several years. During that period, Respondent was not registered with DEA. Also, during an interview conducted on February 6, 1987, Respondent told a DEA Diversion Investigator that the only reason he was applying for DEA registration was because he needed it to obtain hospital privileges. DEA does not register individuals to enable them to obtain hospital privileges. Registrations under the Controlled Substances Act are issued for one purpose—to enable the registrant to lawfully handle controlled substances.

Based on his conclusion that Respondent's registration would be inconsistent with the public interest, the Administrative Law Judge recommended that Respondent's applications for registration be denied. The Administrator adopts the Administrative Law Judge's opinion and recommended ruling in its entirety. Respondent cannot be trusted to responsibly handle controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that any pending applications for registration under the Controlled Substances Act submitted by Vincent A. Sundry, D.O., be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,
Administrator.

Date: May 10, 1988.

[FR Doc. 88-10903 Filed 5-13-88; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit Program; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level; request for comments.

SUMMARY: The Job Training Partnership Act (JTPA) and the Internal Revenue Code of 1954 provide that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL.

DATE: *Effective date:* This notice is effective on May 31, 1988.

Comments: Written comments on this notice will be accepted through May 31, 1988.

ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4703, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: 202-535-0577.

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those *economically disadvantaged* individuals * * * who are in special need of such training to obtain productive employment." (Emphasis added) JTPA section 2; see 20 CFR 626.1(a)(2). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4. Similar definitions of "economically disadvantaged," which also include references to the LLSIL, are provided at JTPA sections 201(b)(3)(B) and 202(a)(4)(B) for JTPA Title II allotment and within-State allocation purposes. See 20 CFR 629.39 and 630.1.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA section 4(16) defines LLSIL as follows:

> The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary (of Labor) based on the most recent "lower living family budget" issued by the Secretary.

Internal Revenue Code (I.R.C.) sections 44B and 51 establish a Targeted Jobs Tax Credit (TJTC) Program for a portion of the wages paid by employers from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family". See, e.g., I.R.C. sections 51(d) (3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). The LLSIL figures published in this notice shall be used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC program. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA), published the 1987 updates to the LLSIL in the **Federal Register** of July 14, 1987 (52 FR 26378). ETA has again updated the LLSIL to reflect cost of living increases for 1987, by applying the percentage change in the December 1987 consumer price index (CPI), compared with the December 1986 CPI, to each of the July 14, 1987, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed below as well.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	1988 Adjusted LLSIL	70 Percent LLSIL
Northeast:		
Metro	19,790	13,850
Non-Metro	19,130	13,390
North Central:		
Metro	18,820	13,170
Non-Metro	18,000	12,600
South:		
Metro	17,940	12,560
Non-Metro	16,820	11,780
West:		
Metro	19,790	13,850
Non-Metro	19,710	13,800

[1] For ease of calculation, these figures have been rounded to the nearest ten.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce are as follows:

Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virgin Islands

North Central

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin

South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Marshall Islands, Maryland, Mississippi, Micronesia, North Carolina, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia

West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii and Guam as indicated in Table 2 below.

For Alaska, Hawaii and Guam, the 1987 figures were updated by creating a "State Index" based on the ratio of the urban change in the State (using Anchorage and Honolulu) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

Region	1988 Adjusted LLSIL	70Percent LLSIL
Alaska:		
Metro	26,310	18,420
Non-Metro	24,750	17,320
Hawaii-Guam:		
Metro	25,390	17,770
Non-Metro	22,800	15,960

[1] Rounded to the nearest ten.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI changes for a 12-month period ending in December 1987. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest ten, are set forth in Table 3 below.

TABLE 3.—Lower Living Standard Income Level—25 MSA's

Region MSA	1988 adjusted LLSIL	70 percent LLSIL
Anchorage, AK	26,310	18,420
Atlanta, GA	18,300	12,810
Baltimore, MA	19,100	13,370
Boston, MA	20,970	14,680
Buffalo, NY	18,200	12,740
Chicago, IL & Northwestern, IN	19,570	13,700
Cincinnati, OH/KY/IN	19,330	13,530
Cleveland, OH	19,650	13,750
Dallas-Ft Worth, TX	17,590	12,320
Denver-Boulder, CO	19,050	13,330
Detroit, MI	18,100	12,670
Honolulu, HI	25,390	17,770
Houston, TX	16,990	11,890
Kansas City, MO/KS	18,670	13,070
Los Angeles/Long Beach/ Anaheim, CA	20,690	14,480
Milwaukee, WI	18,840	13,190
Minneapolis-St Paul, MN	18,530	12,970
New York, NY/ Northeastern, NJ	20,520	14,370
Philadelphia, PA/NJ	19,510	13,660
Pittsburgh, PA	18,800	13,160
San Diego, CA	20,580	14,400
San Francisco-Oakland, CA	20,750	14,530
Seattle-Everett, WA	20,230	14,160
St Louis, MO/IL	18,630	13,040
Washington, DC/MD/ VA	21,530	15,070

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1988 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figures, the figure is indicated in parentheses.

(Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 53 FR 4213 (February 12, 1988).)

TABLE 4.—SEVENTY PERCENT OF UPDATED 1988 LLSIL, BY FAMILY SIZE [1]

Family of one	Two	Three	Four	Five	Six
(4,240)	(6,950)	(9,540)	11,780	13,900	16,260
(4,280)	(7,020)	(9,630)	11,890	14,030	16,410
(4,440)	(7,270)	9,980	12,320	14,540	17,000
(4,520)	(7,410)	10,170	12,560	14,820	17,330
(4,540)	(7,430)	10,210	12,600	14,870	17,390
(4,560)	(7,480)	10,260	12,670	14,950	17,480
(4,580)	(7,520)	10,320	12,740	15,030	17,580
(4,610)	(7,560)	10,380	12,810	15,120	17,680

TABLE 4.—SEVENTY PERCENT OF UPDATED 1988 LLSIL, BY FAMILY SIZE[1]—Continued

Family of one	Two	Three	Four	Five	Six
(4,670)	(7,650)	10,510	12,970	15,300	17,900
(4,690)	(7,690)	10,560	13,040	15,390	18,000
(4,710)	(7,710)	10,590	13,070	15,420	18,040
(4,740)	(7,760)	10,660	13,160	15,530	18,160
(4,440)	7,770	10,670	13,170	15,540	18,170
(4,750)	7,780	10,680	13,190	15,560	18,200
(4,800)	7,860	10,800	13,330	15,730	18,400
(4,810)	7,890	10,830	13,370	15,780	18,450
(4,820)	7,900	10,850	13,390	15,800	18,480
(4,870)	7,980	10,960	13,530	15,970	18,670
(4,920)	8,060	11,060	13,660	16,120	18,850
(4,930)	8,080	11,100	13,700	16,170	18,910
(4,950)	8,110	11,140	13,750	16,230	18,980
(4,970)	8,140	11,180	13,800	16,290	19,040
(4,990)	8,170	11,220	13,850	16,340	19,110
(5,100)	8,350	11,470	14,160	16,710	19,540
(5,170)	8,480	11,640	14,370	16,960	19,830
(5,180)	8,500	11,660	14,400	16,990	19,870
(5,210)	8,540	11,730	14,480	17,090	19,980
(5,230)	8,570	11,770	14,530	17,150	20,050
(5,290)	8,660	11,890	14,660	17,320	20,260
(5,430)	8,890	12,210	15,070	17,780	20,800
(5,750)	9,420	12,930	15,960	18,830	22,020
(6,240)	10,220	14,030	17,320	20,440	23,900
(6,400)	10,480	14,390	17,770	20,970	24,520
(6,630)	10,870	14,920	18,420	21,740	25,420

[1] Figures provided in Tables 1–3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the Family of *Four* column. Then one may read across the row for family sizes other than four in the appropriate columns.

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESAs), and employers in their States to use in determining eligibility for JTPA and TJTC programs. Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulation at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and TJTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and TJTC.

Signed At Washington, DC, this 29th day of April, 1988.

Robert T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88-10754 Filed 5-13-88; 8:45 am]

BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Announcement of Availability of One-Time Grant Funds for the Provision of Legal Services in the State of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Request for proposals.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of one-time grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and LaSalle. Southwest Louisiana Legal Services has served as the interim provider for the three parishes since late 1986. Legal Services Corporation is hereby soliciting proposals for the establishment of a provider of legal services to the three parishes.

DATE: All applications for grant funds must be received on or before June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director, Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751; (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system or legal services for low-income people, announces the availability of one-time grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and LaSalle. The recipient of this one-time grant award will subsequently be invited to submit an application for refunding.

The annualized level of Legal Services Corporation funding for the service area is approximately $125,190 for calendar year 1988.

All groups and persons interested in applying for this grant should request a grant application from the Grants Assistant, Grants and Budget Division, Office of Field Services, 400 Virginia Avenue, SW., Washington, DC 20024–2751; (202) 863–1837.

Five copies of the grant application should be sent to the Grants Assistant at the Washington, DC address noted above.

Any grant application recommended by the Legal Services Corporation will be announced, pursuant to section 1007(f) of the LSC Act, in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Date: May 11, 1988.

Mary C. Higgins,

Director, Office of Field Services.

[FR Doc. 88-10919 Filed 5-13-88; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-47]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATE AND TIME: May 19, 1988, 8:30 a.m. to 5 p.m. and May 20, 1988, 8:30 a.m. to 3:00 p.m.

ADDRESS: Loews L'Enfant Plaza Hotel, Pierre Suite, 480 L'Enfant Plaza SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room, (which is approximately 50 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda

May 19, 1988

8:30 a.m.—Administrative Items
9 a.m.—Introductory Remarks to Committee
9:30 a.m.—Program Status Update
  Budget
  Baseline Schedule
  International Agreements
  Special Congressional Interests
10:15 a.m.—Current Program Activity
11:15 a.m.—Technical and Management Information System (TMIS) Task Force
11:30 a.m.—Private Sector
  Station Infrastructure
  Commercially Developed Space Facility (CDSF) Utilization
1:30 p.m.—Transportation
  Space Transportation System (STS)/Orbiter
    Performance
    Safety Requirements
    Extended Duration
    Influence on Station
  Expendable Launch Vehicles
  Developments
    Advanced Solid Rocket Motor (ASRM)
    Advanced Crew Return Capability (ACRC)
    Orbital Maneuvering Vehicle (OMV)
3:30 p.m.—Evolution
  Evolutionary Requirements
  Other NASA Programs
4:15 p.m.—Automation and Robotics
  Advanced Automation
  Flight Telerobotics Service
5 p.m.—Adjourn

May 20, 1988

8:30 a.m.—Utilization
  United States (Public/Private)
  Foreign
  Management
10 a.m.—Committee Work Sessions
1 p.m.—Committee Discussion, Planning, Assignments
3 p.m.—Adjourn
May 10, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-10897 Filed 5-13-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowships Section) to the National Council on the Arts will be held on June 6–7, 1988 from 9:00 a.m.–8:00 p.m., and on June 8, 1988 from 9:00 a.m.–9:00 p.m., and on June 9, 1988 from 9:00 a.m.–7:00 p.m., and on June 10, 1988 from 9:00 a.m.–6:30 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, 1988, from 4:30 p.m.–6:30 p.m. for a policy discussion.

The remaining sessions of this meeting on June 6–7, 1988 from 9:00 a.m.–8:00 p.m., and on June 8, 1988 from 9:00 a.m.–9:00 p.m., and on June 9, 1988 from 9:00 a.m.–7:00 p.m., and on June 10, 1988 from 9:00 a.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

May 11,1988.

[FR Doc. 88-10928 Filed 5-13-88; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations) to the National Council on the Arts will be held on June 7–9, 1988 from 9:00 a.m.–5:30 p.m., and on

BEST COPY AVAILABLE

June 10, 1988 from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, 1988, from 2:30 p.m.–5:30 p.m. for a policy discussion.

The remaining sessions of this meeting on June 7–9, 1988 from 9:00 a.m.–5:30 p.m., and on June 10, 1988 from 9:00 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5498 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10927 Filed 5–13–88; 8:45 am]

BILLING CODE 7537–01–M

Office of Partnership Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Partnership Advisory Panel (State Programs) to the National Council on the Arts will be held on June 2, 1988, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5498 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10928 Filed 5–13–88; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement Section) to the National Council on the Arts, will be held on June 2, 1988 from 9:00 a.m.–6:30 p.m. to room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10929 Filed 5–13–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Systems of Records

AGENCY: National Labor Relations Board.

ACTION: Revised publication of Notices of Systems of Records.

SUMMARY: The purpose of this publication is to comply with the requirement of 5 U.S.C. 552a(e)(4) to announce the intention to establish or revise a notice of the existence and character of a system of records. This document contains a complete and current listing of the National Labor Relations Board's 16 Notices of Systems of Records identified as NLRB–1 through NLRB–16 and Appendix listing the NLRB offices. The last complete listing of NLRB systems of records was issued in 47 FR 42043. One notice, NLRB–7, was altered, and one notice, NLRB–15, was added as published in 51 FR 12947. Another notice, NLRB–16, was added as published in 51 FR 31382.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the Agency as warranting modification of the routine uses of the systems as published herein, it is the Agency's intention that the notices as herewith published shall become effective upon expiration of the comment period without further action by the Agency. Pending adoption of the proposed changes described in this publication, the Agency's records will be covered by its previous complete notice issued in 47 FR 42043 (September 23, 1982), the revision of NLRB–7 and the addition of NLRB–15 issued in 51 FR 12947 (April 16, 1986), and NLRB–16 issued in 51 FR 31382 (September 3, 1986).

All persons who desire to do so may submit written comments, views, or arguments for consideration by the Agency in connection with the proposed changes to the notices.

DATE: Written comments, views, or arguments must be submitted no later than July 15, 1988.

ADDRESSES: Written responses should be sent to the Executive Secretary, National Labor Relations Board, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Copies of such communications will be available for examination by interested persons during normal business hours (8:30 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays), in the Office of the Executive Secretary, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, National Labor Relations Board, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Telephone (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following changes have been made to the NLRB Notices of Systems of Records:

1. Two routine uses have been added to NLRB–1 through 6 and NLRB–8 through 14 to provide for disclosure to the Department of Justice for use in litigation, and for Agency disclosure in a proceeding before a court or other adjudicative body. Also, new language has been added to these two routine uses in NLRB–16 so that they are consistent with the language used in other Agency notices.

2. One routine use has been added to NLRB–13, Time and Attendance Records—NLRB, to provide for disclosure to the U.S. Treasury Department for payroll purposes.

3. New System Managers and locations are shown for NLRB–4, Claim Records, and NLRB–9, Occupational Injury and Illness Records, to reflect administrative changes.

4. System safeguards have been changed for NLRB–1, Accounting Records—Financial; NLRB–4, Claim Records; NLRB–9, Occupational Injury and Illness Records; and NLRB–11, Payroll—Finance Records, to reflect changes in operating procedures.

5. Changes have been made to notice NLRB–14, Equal Employment Opportunity Management System, to include the EEO office as a second system location, and to include organizational unit as a category of records in the system and a category by which records can be retrieved.

6. The records retention and disposal information has been changed for all notices except NLRB–3, NLRB–7, NLRB–10, and NLRB–15. These changes were made so that the instructions contained in the notices would conform with current Agency procedures.

7. New paragraphs on Security Classification, Authority for Maintenance of the System, Purpose, and Disclosure to Consumer Reporting Agencies have been added to NLRB–1 through 15.

8. The system location and manager in NLRB–3 has been changed from the Office of the Executive Secretary to the Division of Information.

9. The title of the Data Systems Branch in NLRB–11 in the System Manager and Address paragraph and in NLRB–14 in the System Location paragraph.

10. References to 29 CFR 102.117 have been added to the paragraphs on Notification Procedure, Records Access Procedures, and Contesting Record Procedures in NLRB–1 through 15, where details on these procedures may be found.

11. The Appendix has been completely updated to show all current NLRB office listings.

A listing of all NLRB Notices of Systems and Records and their complete texts appear below. Copies of these notices were forwarded to Congress and the Office of Management and Budget on April 14, 1988, as required by 5 U.S.C. 552a(o).

Dated: Washington, D.C. May 11, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

NLRB–1 Accounting Records—Financial
NLRB–2 Applicant Files for Attorney and Field Examiner Positions
NLRB–3 Biographical Data File—Presidential Appointees
NLRB–4 Claim Records
NLRB–5 Employment and Performance Records, Attorneys and Field Examiners
NLRB–6 Employment and Performance Records, Nonprofessionals and Nonlegal Professionals
NLRB–7 Grievances, Appeals, Complaints, and Related Litigation Records
NLRB–8 Health Maintenance Program Records
NLRB–9 Occupational Injury and Illness Records
NLRB–10 Pay Records—Retirement
NLRB–11 Payroll—Finance Records
NLRB–12 Prefiling Communications
NLRB–13 Time and Attendance Records—NLRB
NLRB–14 Equal Employment Opportunity Program Management System
NLRB–15 Employee Counseling Services Program Records
NLRB–16 Investigative Services Case Files
Appendix

NLRB–1

SYSTEM NAME:

Accounting Records—Financial.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Current records are maintained in: Financial Management Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Each Washington and Field Office is authorized to maintain copies of records relating to reimbursements to employees of that office and other individuals covered within the system. See the attached appendix for addresses of these offices. Inactive records are stored at the appropriate Federal records center in accordance with regulations issued by the National Archives and Records Administration (36 CFR 1228.152).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals reimbursed for expenses in connection with the official functions of the NLRB: i.e., travel on official business, witness fees and transportation expenses, and miscellaneous expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name; home or office address; organizational unit number; purpose, duration, and cost for travel assignment of Agency employees; purpose, duration, points of travel, and cost for witnesses used by the Agency; purpose, category, and cost of miscellaneous expenses incurred by Agency employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 et seq.; 29 U.S.C. 153, 155, 159, 160, and 161(4).

PURPOSE:

These records document financial transactions regarding reimbursement of expenses in connection with official NLRB functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In the processing of claims for reimbursements.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. The U.S. General Accounting Office for audit purposes or determination of validity of claims.

5. The U.S. Department of Treasury for issuance of checks.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the

responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. Another agency, whether Federal, State, or local, or private organization where reimbursable arrangements exist between this Agency and such other agency or private organization.

8. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

10. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

11. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original source documents except travel summary cards, some of which are also maintained on microfilm.

RETRIEVABILITY:

Chronologically by year, and within each year alphabetically by name.

SAFEGUARDS:

Original source documents are maintained in file cabinets within the Finance Section offices. Microfilm is maintained in locked cabinets within Finance Section offices. During duty hours cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel who have a need for access in order to perform their official functions.

RETENTION AND DISPOSAL:

Maintained and disposed of in accordance with the provisions of applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Travel vouchers, witness vouchers, and lodging and miscellaneous receipts submitted by the individual; travel orders submitted by Agency officials; subpoenas; claims for reimbursements; and miscellaneous correspondence and information related thereto.

NLRB–2

SYSTEM NAME:

Applicant Files for Attorney and Filed Examiner Positions.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of Executive Assistant, Division of Operations Management; Board Members' Offices; Office of Representation Appeals; Office of the Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Washington and Field Offices are authorized to maintain the records or copies of the records in connection with processing of applications for employment in the Agency. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Attorney or Field Examiner positions in offices under the general supervision of the General Counsel; applicants for Attorney positions on Board Members' staffs, in the Office of the Solicitor, and in the Office of Representation Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, educational transcripts, resumes, employment interview reports, and other information related to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 et seq.; 29 U.S.C. 153(d), 154, 159, and 160.

PURPOSE:

These records document the skills and background of applicants for attorney and field examiner positions within the NLRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To process applications and evaluate applicants.

b. As a data source for management information for production of summary statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

5. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. To a court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, or (b) any employee of the Agency in his or her official capacity, or (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under surveillance of personnel charged with custody of the records and after duty hours are behind locked doors. Access to the cabinets is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Employment applications not resulting in appointment are destroyed when 2 years old.

SYSTEM MANAGER(S) AND ADDRESS:

1. To those applicants for positions under supervision of the General Counsel—Executive Assistant, Division of Operations Management, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. To those applicants for positions under supervision of a Board Member—Chief Counsel to that Board Member, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

3. Attorneys under supervision of the Director, Office of Representation Appeals—Director, Office of Representation Appeals, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

4. To those applicants for positions under supervision of the Solicitor—Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Applicants, educational institutions, interviewers, evaluators, personnel specialists, references, previous employers.

NLRB–3

SYSTEM NAME:

Biographical Data File—Presidential Appointees

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Information, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Presidential appointees to NLRB positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include biolgraphical sketches; news releases, news articles or speeches and other newsmaking activities; photographs, and material incidental thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 153 (a) and (d), 154(a); 44 U.S.C. 3101.

PURPOSE:

These records document pertinent aspects of the personal and professional history of NLRB's most senior officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the performance of their duties.

2. The public upon demonstrated interest.

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original sources or related papers in file folders.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets within the Office of the Executive Secretary. During duty hours, cabinets are under the surveillance of office personnel charged with custody of the records, and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

Permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Information, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is submitted by the individual, written by Agency staff and approved by the individual, and obtained from general news sources.

NLRB–4

SYSTEM NAME:

Claim Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chief, Administrative Services Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing claims under the Federal Tort Claims Act of 1946; the Military Personnel and Civilian Employees' Claims Act of 1964; claims filed under 41 CFR 101–39.4, Interagency Fleet Management Systems, Accidents and Claims; and claims under contracts with rental car companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include reports of accidents or other events causing damage or loss; data bearing upon the scope of employment of motor vehicle operators; statements of witnesses; claims for damage or loss; investigations of claims, including doctors' reports, it any; police reports; rental agreements; repair estimates; records on disposition of claims; and information related to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2671 et seq.; 29 U.S.C. 153(d), 154(a) and (b); 31 U.S.C. 3701 et seq.

PURPOSE:

These records document the initiation, investigation and disposition of claims filed with the NLRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, ae disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In processing claims against this Agency.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justie is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

5. Investigators utilized by the Agency to obtain information relevant to a claim against the Agency.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential viblation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

8. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms, documents, and other papers.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file safe within the office of the Chief, Administrative Services Branch. During duty hours file safe is under the surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Claims reports involving pecuniary liability are destroyed 10 years after the close of the fiscal year in which final action was taken. All other claims reports are destroyed 3 years after the close of the fiscal year in which final action was taken.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager is accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Claimants, investigators, and witnesses.

NLRB–5

SYSTEM NAME:

Employment and Performance Records, Attorneys and Field Examiners.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of Executive Assistant, Division of Operations Management; Board Members' Offices; Office of Representation Appeals; Office of the Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Washington and Field Offices are authorized to maintain the records or copies of the records for current and former NLRB employees of that office. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Attorneys and Field Examiners in offices under the general supervision of the General Counsel; current and former Attorneys employed on Board Members' Staffs, in the Office of the Solicitor, and in the Office of Representation Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, copies of personnel records, educational transcripts, résumés, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of the official personnel file, correspondence, memoranda, and other information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301 et seq.; 29 U.S.C. 153(d), 154, 159, 160.

PURPOSE:

These records document employee actions and performance appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information.

2. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. A congressional office in response to any inquiry from the congressional office made at the request of the subject individual.

4. Officials of labor organizations recognized under Pub. L. 95–454, when

relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her individual capacity, (c) any employee of the Agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda, and on magnetic disks.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Data captured on magnetic disks are limited to those with access codes and are stored in a locked room during and after duty hours.

RETENTION AND DISPOSAL:

Retained in accordance with applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

1. Attorneys and field examiners under supervision of the General Counsel—Executive Assistant, Division of Operations Management, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. Attorneys under supervision of a Board Member—Chief Counsel to that Board Member, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

3. Attorneys under supervision of the Director, Office of Representation Appeals—Director, Office of Representation Appeals, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

4. Attorneys under supervision of the Solicitor—Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, educational institutions, interviewers, evaluators, references, previous employers, and supervisors.

NLRB–6

SYSTEM NAME:

Employment and Performance Records, Nonprofessionals and Nonlegal Professionals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former nonprofessional employees and nonlegal professional employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, educational transcripts, resumes, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of personnel records, correspondence, memoranda, and other information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301 et seq.; 29 U.S.C. 153(d), 154, 159, 160.

PURPOSE:

These records document employee actions and performance appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information to evaluate job performance, developmental needs, potential within the Agency, and readiness for promotion.

2. Individuals who have a need for the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda, and on magnetic disks.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Data captured on magnetic disks are limited to those with access codes and are stored in a locked room during and after duty hours.

RETENTION AND DISPOSAL:

Retained in accordance with applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

See the attached appendix for the titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, professional employees, educational institutions, interviewers, evaluators, references and previous employers.

NLRB–7

SYSTEM NAME:

Grievances, Appeals, Complaints, and Related Litigation Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include formal or informal grievances, appeals, and complaints, together with information and documents related thereto; letters or notices to the individual; records of hearings when conducted; material placed in the file to support or contradict the decision or determination on such grievance, appeal, or compliant; affidavits or statements; testimonies of witnesses; investigative reports; related correspondence and recommendations; and records on court proceedings, arbitration, or subsequent litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 7101 et seq.; 5 U.S.C. 7501 et seq.; 5 U.S.C. 7701 et seq.; 29 U.S.C. 153(d), 154.

PURPOSE:

These records document the employee grievance process within the NLRB, and also contain material gathered and used in representing the Agency in other appeals, complaints, and litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the performance of their duties.

2. Individuals who have a need for the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. An arbitrator for use in arbitrating a grievance or complaint.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

6. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

7. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the subject individual.

8. The appropriate Federal (including offices of Inspector General), State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

9. Individuals making general requests for statistical information (without personal identification of individuals).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms, documents, letters, memoranda, and other similar papers.

RETRIEVABILITY:

Alphabetically by name of individual or party filing a grievance, claim, or complaint.

SAFEGUARDS:

Access to and use of the records are limited to those persons whose official duties require such access until the records are required to be made public in support of an Agency action or position. These records are maintained in file cabinets which during duty hours are under the surveillance of personnel charged with custody of the records and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

Placed in inactive file when case is closed. Destroyed 3 years after the end of the fiscal year in which the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

1. To those employees under supervision of the General Counsel—Deputy General Counsel, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. To those employees under supervision of the Board—Deputy Executive Secretary, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains; Agency officials; affidavits, statements, and record testimony of individuals; and other documents and memoranda relating to the grievance, appeal, or complaint.

NLRB–6

SYSTEM NAME:

Health Maintenance Program Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NLRB employees participating in Agency-sponsored health maintenance programs, such as diabetes tests, glaucoma tests, vision tests, blood donor program, and similar programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may involve recorded information on individual's names and dates of participation in health maintenance programs, and the name of the screening program in which participated. Also, for blood donor program, contains social security number, sex, donor identification number, home address and telephone, date of last donation, medications being taken, blood type, whether accepted or deferred as donor, and information relevant to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document employee participation in the NLRB health maintenance programs such as screening and blood donor programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees working with the program who have a need for the records or information:

a. The administration of voluntary health maintenance programs.

b. As a data source for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained (without personal identification of individuals).

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The American Red Cross insofar as the records or information pertain to the blood donor program.

4. The U.S. Department of Health and Human Services in the administration of public health service programs.

5. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on logs, forms, and other papers.

RETRIEVABILITY:

By program name and within each program alphabetically by name.

SAFEGUARDS:

Maintained in file safe within the office of the Personnel Branch. File safe remains locked except during access to records. During duty hours, file safe is under the surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Combination is known only to designated members of the Personnel Branch. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Retained for 6 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.177(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information submitted by individual; officials of the servicing health units; and American Red Cross.

NLRB–9

SYSTEM NAME:

Occupational Injury and Illness Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Each Washington and Field Office is authorized to maintain copies of records in this system. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees who have reported a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information pertaining to the complete history of the employee's occupational injury or illness, including any doctors' or investigative reports submitted, and the disposition of claims for compensation filed under the Federal Employees Compensation Act and information relative thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 5 U.S.C. 8101 et seq.; 29 U.S.C. 153(a) and (d),154.

PURPOSE:

These records document the processing of claims filed by NLRB employees for compensation based on an occupational injury or illness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In processing reports of occupational injury or illness and claims for compensation under the Federal Employees Compensation Act.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

5. The U.S. Department of Health and Human Services in the administration of public health service programs.

6. Investigator utilized by the Agency to obtain information relevant to a claim arising under the Federal Employees Compensation Act.

7. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

8. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

10. Individuals who need the information in connection with the processing of an appeal, grievance or complaint. Whenever feasible such information shall be furnished in depersonalized form, i.e., without personal identifiers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms and related correspondence.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in locked filing cabinet within the Personnel Branch. Filing cabinet remains locked except during access. During duty hours filing cabinet is under surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Retain and dispose of in accordance with the General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Forms completed by the employee; witnesses; investigators; employee's supervisor; claims examiners of the U.S. Department of Labor; and doctors' statements, if any.

NLRB–10

SYSTEM NAME:

Pay Records—Retirement

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Financial Management Branch, NLRB, 1717 Pennsylvania, Avenue, NW., Washington, DC 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NLRB employees under the Civil Service Retirement System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name, previous name if any; social security number; sex; birth date; entrance-on-duty date; employment history, including prolonged leave without pay; and monetary contributions to retirement fund made during employment, and information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8301 et set.; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document NLRB employee participation in the Civil Service Retirement System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To administer the Civil Service Retirement System within the Agency.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Office of Personnel Management for administering the Civil Service Retirement System.

4. The U.S. General Accounting Office for audit purposes.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

7. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Whenever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

8. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

9. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

10. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on employment history cards and source documents.

RETRIEVABILITY:

By organizational unit and within each unit by employee name or social security number.

SAFEGUARDS:

Maintained in file cabinets within the Payroll Unit. During duty hours file cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Maintained only on current employees. Transferred to the Office of Personnel Management upon termination of service with the Agency.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Personnel Branch, timekeepers, and supervisors.

NLRB–11

SYSTEM NAME:

Payroll—Finance Records

SYSTEM LOCATION:

Current records are maintained in the Financial Management Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

Inactive records are stored at the appropriate Federal records center in accordance with applicable provisions of the General Records Schedules issued by the National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include each employee's name, date of birth, home address, payroll identification number, organizational unit number, block number pay plan, grade and step, social security number, state identification code and name, leave earned and used, composite designator code and account number, and for the current pay period quarterly and year-to-date hours worked, base pay, overtime pay, premium pay, miscellaneous pay, gross earnings, net earnings, and all withholdings from pay including retirement, taxes (Federal, State, and local) FICA, exemptions (Federal, State, and local), life, group, and optional, insurance, bonds (authorization number and date of issuance), and miscellaneous allotments and deductions. Employment history is also maintained for retirement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501 et seq.; 31 U.S.C. 3501 et seq.; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document the payroll process as it relates to NLRB employees and are used to support various fiscal and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To compile payroll records.

b. To maintain Agency salary and expense accounts.

c. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

d. To transfer information from the records to the individual to whom the record permits.

e. To determine life insurance eligibility, costs, and types of coverage employees shall receive.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. The U.S. Department of the Treasury for payroll purposes.

5. The Office of Personnel Management concerning pay, benefits, retirement deductions and other information necessary for the Office to carry out its Government-wide personnel management functions.

6. State and local authorities for the purpose of verifying tax collections, unemployment compensation claims, and administering public assistance programs.

7. The U.S. Department of Health and Human Services for the administration of the social security program.

8. The U.S. General Accounting Office for audit purposes.

9. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

10. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

11. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

12. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

13. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original source documents, computer printouts, and on a computer disk file with two magnetic tape backups and microfiche.

RETRIEVABILITY:

Employee payroll file maintained chronologically by year, and within each year by organizational unit, and within each unit by social security number or by employee name.

SAFEGUARDS:

Use of the computer file for information printouts is restricted to designated personnel and access is password protected. Original source documents and microfiche are maintained in file cabinets. During duty hours cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Payroll records are retained and disposed of in accordance with the applicable General Records Schedules issued by the National Archives and Records Administration and with General Accounting Office approval. Microfilm, magnetic strip ledgers, and microfiche and maintained for 56 years after the date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570, and Chief, Management and Information Systems Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, timekeepers, and supervisors; Office of Personnel Management bulletins; taxing authority notices; and withholding authorizations.

NLRB–12

SYSTEM NAME:

Prefiling Communications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are authoried to be maintained in all Field Offices of the Agency, at the address listed in the attached appendix, and Office of the General Counsel, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have sought assistance regarding possible institution of an unfair labor practice, representation, or other civil action or proceeding before the National Labor Relations Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include file memoranda detailing the substance of oral communications; letters of inquiry and responses thereto; information relating to an individual's employment history, job performance, earnings, home address, telephone number, union activity; or other information relevant to a potential action or proceeding before the National Labor Relations Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 158–169.

PURPOSE:

These records document the processing of preliminary inquiries regarding potential unfair labor practices, representation, or other civil action or proceding before the NLRB, or representation case issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the processing of cases before the Agency.

2. The appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature.

3. A congressional office in response to an inquiry from the congressional office made a request of the subject individual.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee or Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets in the nonpublic area of the office under the immediate control of the System Manager. During duty hours cabinets are under surveillance of personnel charged with custody of the records and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

In the event a civil action or proceeding is instituted prior to the record being destroyed, the record is placed in the case file which is not indexed by the name of the individual. In the event no action or proceeding is instituted, the records are destroyed when 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. See the attached appendix for titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Individual who seeks assistance.

NLRB–13

SYSTEM NAME:

Time and Attendance Records, NLRB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Current records are maintained in: Financial Management Branch, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Each Washington and Field Office maintains a copy of time and attendance records for current employees in that office, and is authorized to retain such records on former employees of that office. See the attached appendix for addresses of these offices.

Inactive records are stored at the appropriate Federal records center in accordance with provisions of applicable General Records Schedules issued by the General Service Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name; home address; organizational unit number, payroll identification number; entrance-on-duty date; time worked, including regular hours, overtime, compensatory

time, and premium pay status; leave earned and used; absences without leave; and doctors' certificates, when required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6101 et seq.; 5 U.S.C. 6301 et seq.; 29 U.S.C. 153 (a) and (d), 154.

PURPOSE:

These records document various pay and pesonnel functions, including the hours of work performed by employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In the compilation of biweekly payrolls.

b. To maintain leave accounts.

c. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Another Federal Government agency in connection with the transfer of an NLRB employee to that agency.

4. The Office of Personnel Management for administering the Civil Service Retirement System.

5. The U.S. General Accounting Office for audit purposes.

6. Another Government agency or private organization in connection with an agreement under the Intergovernmental Personnel Act.

7. The U.S. Treasury Department for payroll purposes.

8. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

9. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

10. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

11. Officials of labor organizations recognized under Public Law 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

12. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

13. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on Form TDF 10–11.H–1, H–2, and H–3 and related forms and papers, and on microfilm/microfiche.

RETRIEVABILITY:

Chronologically by year, and within each year by organizational unit, and within each unit by social security number or by employee name.

SAFEGUARDS:

Original source documents or copies thereof are maintained in file cabinets. Microfilm/microfiche is maintained in locked fireproof metal cabinets. During duty hours, cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Destroyed after GAO audit or when 3 years old, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, timekeeper or supervisor, doctors' statements.

NLRB–14

SYSTEM NAME:

Equal Employment Opportunity Program Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Management and Information Systems Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Office of Equal Employment Opportunity, NLRB, 1717 Pennsylvania, Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information such as employee name, social security number, Minority Group Designator (MGD) Code, employment status, sex, date of birth, payroll block and unit number, pay plan, grade and step, entrance-on-duty date, and date of last promotion, date of last quality step increase, organizational unit, employment class, and date of separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1613; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document the implementation of the NLRB Equal Employment Opportunity Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom are disclosed to:

1. Agency officials and employees who have a need for the record or information:

a. In monitoring and evaluating the status and progress of minority/female employment.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the Agency's EEO Program (without personal identification of individuals).

c. In connection with the investigation, processing, adjudication and/or settlement of an EEO complaint or civil action.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

5. Officials of labor organizations recognized under Public Law 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

6. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

7. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capactiy where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justicee is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer disk file and magnetic tape backup.

RETRIEVABILITY:

By social security account number, alphabetically by name, or by employee's organizational unit or post of duty.

SAFEGUARDS;

All doors to the computer room have combination locks and during duty hours the computer and magnetic tape backup are under surveillance of Agency personnel charged with custody of the records. After duty hours the computer disk file and magnetic tape backup are stored in a fireproof safe behind locked doors. Access is limited to authorized personnel only. All format programs are password protected and use of the machines for information printouts is restricted to designated personnel.

Information printouts are maintained in file cabinets. During duty hours cabinets are under surveillance of office personnel charged with custody of the printouts and after duty hours are behind locked doors. Access to cabinets is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

The information in these records is updated as changes in the data elements occur. The files and information printouts are disposed of according to applicable provisions of the General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Equal Employment Opportunity, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

Any individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains, Agency officials, and from personnel records.

NLRB-15

SYSTEM NAME:

Employee Counseling Services Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees who have been counseled or otherwise treated for alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors, psychologists, and physicians (Federal, State, local government, or private) and the assessment, diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee, as well as family members of the employee, which may be made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101 et seq.; 29 U.S.C. 153 (a) and (d), 154.

PURPOSE:

These records are used to ducument the nature of the individual's problem and progress and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed to:

1. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, or (b) any employee of the Agency in his or her official capacity, or (c) any employee of the Agency in his or her individual capacity where the Department of Justices has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

3. Qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient identities in any manner (when such records are provided to qualified researchers employed or contracted by the Agency, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Agency having a bona fide need for them or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of Agency policy, afforded the same degree of confidentiality and are generally not disclosed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets labeled confidential with access strictly limited to employees directly involved in the Agency's Employee Assistance Program.

RETENTION AND DISPOSAL:

Files are destroyed 3 years after termination of counseling. The records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An indivdual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the supervisor, the Employee Assistance Program Coordinator, or staff member whom records the counseling session,

and therapists or institutions providing treatment.

NLRB-16

SYSTEM NAME:

Investigative Services Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of contractors of the Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals sought by the Agency for purpose of effecting compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigative reports on efforts to trace individuals, entities, and assets, and include copies of interview reports, public documents, and certain confidential data gathered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(m)(1) and 29 U.S.C. 153(d) and 160.

PURPOSE:

These records are used to effect compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information to:

1. A congressional office in response to an inquiry from congressional office made at the request of the subject individual.

2. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency, or any component thereof, (b) any employee of the Agency his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

3. The Department of Justice for use in litigation when either (a) the Agency, or any component thereof, (b) any employee of the Agency is his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto or to any agency in connection with its oversight review responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file holders in locked filing cabinets in offices of contractors of the Agency. Automated information storage and retrieval systems may also be used by individual contractors.

RETRIEVABILITY:

Records are maintained alphabetically by name, or may be retrieved by other personal identifier.

SAFEGUARDS:

Access to and use of the records is limited to authorized persons on a need-to-know basis.

RETENTION AND DISPOSAL:

The records are retained by the contractor for no more than 3 years after the case is closed, and are destroyed upon notification from the Agency.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Contempt Litigation Branch, Division of Enforcement Litigation, National Labor Relations Board, Room 923, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.11(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Public records, state, and local law enforcement authorities, third party informants, and Agency personnel.

Appendix

Names and Addresses of NLRB Offices referenced in Notice of Record Systems shown above.

NLRB Headquarters Offices

OFFICES OF THE BOARD

Member of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representation Appeals
Director, Division of Information
Solicitor

OFFICES OF THE GENERAL COUNSEL

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity
Address: 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570

Chief Administrative Law Judge, Division of Administrative Law Judges

Address: Room 1121, Hamilton Building, 1375 K Street, NW., Washington, D.C. 20005

San Francisco Office, Division of Administrative Law Judges

Address: Suite 300, 901 Market Street, Federal Building, San Francisco, California 94102

New York Office, Division of Administrative Law Judges

Address: Paramount Building, 4th Floor, 1501, Broadway Street, New York, New York 10036

to Dairyland Power Cooperative (the

dated September 24, 1987 as revised

the above date, the Commission or an

Atlanta Office, Division of Administrative Law Judges

Address: 44 Broad Street NW., Ninth Floor, Atlanta, Georgia 30303

NLRB Field Offices

Regional Director, National Labor Relations Board, Region 1, Boston Federal Office Building, 10 Causeway Street, Boston, Massachusetts 02222–1072.

Regional Director, National Labor Relations Board, Region, 2, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278.

Regional Director, National Labor Relations Board, Region 3, Federal Building, Room 901, 111 West Huron Street, Buffalo, New York 14202.

Regional Director, National Labor Relations Board, Region 4, 1 Independence Mall, Seventh Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106.

Regional Director, National Labor Relations Board, Region 5, Candler Building, Fourth Floor, 109 Market Place, Baltimore, Maryland 21202.

Regional Director, National Labor Relations Board, Region 6, 1501 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Regional Director, National Relations Board, Region 8, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Room 1695, Cleveland, Ohio 44199.

Regional Director, National Relations Board, Region 9, John Weld Peck Federal Office Building, Room 3003, 550 Main Street, Cincinnati, Ohio 45202.

Regional Director, National Relations Board, Region 10, Marietta Tower, Suite 2400, 101 Marietta Street, NW., Atlanta, Georgia 30323.

Regional Director, National Relations Board, Region 11, U.S. Courthouse, Federal Building, 251 North Main Street, Room 447, Winston-Salem, North Carolina 27101.

Regional Director, National Relations Board, Region 12, 700 Twigg Street, Suite 511, P.O. Box 172068, Tampa, Florida 33672–0068.

Regional Director, National Relations Board, Region 13, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604.

Regional Director, National Relations Board, Region 14, 210 Tucker Boulevard North, Room 448, St. Louis, Missouri 63101.

Regional Director, National Relations Board, Region 15, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112.

Regional Director, National Relations Board, Region 16, Federal Office Building, Room 8A24, 819 Taylor Street, Forth Worth, Texas 76102.

Regional Director, National Labor Relations Board, Region 17, Two Gateway Centre, Room 616, Fourth at State, Kansas City, Kansas 66101.

Regional Director, National Labor Relations Board, Region 18, Federal Building, Room 316, 110 South Fourth Street, Minneapolis, Minnesota 55401.

Regional Director, National Labor Relations Board, Region 19, Henry M. Jackson Federal Building, Room 2948, 915 Second Avenue, Seattle, Washington, 98174.

Regional Director, National Labor Relations Board, Region 20, Suite 400, 901 Market Street, San Francisco, California, 94103.

Regional Director, National Labor Relations Board, Region 21, 615 South Flower Street, 11th Floor, Los Angeles, California, 90017–2803.

Regional Director, National Labor Relations Board, Region 22, Peter D. Rodino, Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102.

Regional Director, National Labor Relations Board, Region 23, Bob Casey Federal Building/Courthouse, 515 Rusk Street, Room 4014, Houston, Texas 77002.

Regional Director, National Labor Relations Board, Region 24, Federico Degatau Federal Building, U.S. Courthouse, Room 591, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918.

Regional Director, National Labor Relations Board, Region 25, Minton-Capehart Federal Building, Room 238, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

Regional Director, National Labor Relations Board, Region 26, Mid-Memphis Tower Building, Suite 800, 1407, Union Avenue, P.O. Box 41559, Memphis, Tennessee 38174.

Regional Director, National Labor Relations Board, Region 27, South Towers, 3d Floor, 600 17th Street, Denver, Colorado 80202–5433.

Regional Director, National Labor Relations Board, Region 28, Security Building, 234 North Central Avenue, Suite 440, Phoenix, Arizona 85004.

Regional Director, National Labor Relations Board, Region 29, 16 Court Street, Fourth Floor, Brooklyn, New York 11241.

Regional Director, National Labor Relations Board, Region 30, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203.

Regional Director, National Labor Relations Board, Region 31, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024.

Regional Director, National Labor Relations Board, Region 32, Breuner Building, Second Floor, 2201 Broadway, Post Office Box 12963, Oakland, California 94604.

Regional Director, National Labor Relations Board, Region 33, Savings Center Tower, Sixteenth Floor, 411 Hamilton Boulevard, Peoria, Illinois 61602.

Officer-in-Charge, National Labor Relations Board, Subregion 36, Portland Building, Room 1360, 1120 Southwest Fifth Avenue, Portland, Oregon 97204.

Officer-in-Charge, National Labor Relations Board, Subregion 37, 300 Ala Moana Boulevard, Room 7318, P.O. Box 50208, Honolulu, Hawaii 96850.

Officer-in-Charge, National Labor Relations Board, Subregion 39, One Commercial Plaza, 21st Floor, Hartford, Connecticut 06103.

Resident Officer, National Labor Relations Board, Resident Office-Region 3, Leo W. O'Brien Federal Building, Room 342, Clinton Avenue at North Pearl Street, Albany, New York 12207.

Resident Officer, National Labor Relations Board, Resident Office-Region 5, Gelman Building, Suite 100, 2120 L Street NW., Washington, D.C. 20037.

Resident Officer, National Labor Relations Board, Resident Office-Region 7, Third Floor, The Furniture Co., 82 Ionia, NW., Grand Rapids, Michigan 49503.

Resident Officer, National Labor Relations Board, Resident Office-Region 10, Bank of Savings Building, Suite 305, 1919 Morris Avenue, Birmingham, Alabama 35203.

Resident Officer, National Labor Relations Board, Resident Office-Region 12, Federal Building, Room 278, 400 West Bay Street, Jacksonville, Florida 32202.

Resident Officer, National Labor Relations Board, Resident Office-Region 12, Federal Building, Room 910, 51 Southwest Avenue, Miami, Florida 33130.

Resident Officer, National Labor Relations Board, Resident Office-Region 16, Robert S. Kerr Building, 440 South Houston Avenue, Room 210, Tulsa, Oklahoma 74127.

Resident Officer, National Labor Relations Board, Resident Office-Region 18, Federal Building, 210 Walnut Street, Room 909, Des Moines, Iowa 50309.

Resident Officer, National Labor Relations Board, Resident Office-Region 19, Anchorage Federal Office Building, 701 C Street, Room 510, Box 21, Anchorage, Alaska 99513.

Resident Officer, National Labor Relations Board, Resident Office-Region 21, 555 West Beech Street, Suite 302, San Diego, California 92101.

Resident Officer, National Labor Relations Board, Resident Office-Region 23, Federal Building, Room A–509, 727 East Durango Boulevard, San Antonio, Texas 78206.

Resident Officer, National Labor Relations Board, Resident Office-Region 26, Capitol Centre Building, 303 West Capitol Street, Suite 350, Little Rock, Arkansas 72201.

Resident Officer, National Labor Relations Board, Resident Office-Region 26, Estes Kefauver Federal Building, U.S. Courthouse, Room A–702, 801 Broadway, Nashville, Tennessee 37203.

Resident Officer, National Labor Relations Board, Resident Office-Region 28, Patio Plaza Building, Upper Level, 5000 Marble Avenue, NE., Albuquerque, New Mexico 87110.

Resident Officer, National Labor Relations Board, Resident Office-Region 28, Federal Building, Suite C403, 700 East San Antonio Avenue, El Paso, Texas 79901.

Resident Officer, National Labor Relations Board, Resident Office-Region 31, 600 Las Vegas Boulevard, South Suite 400, Las Vegas, Nevada 89101.

[FR Doc. 88–10680 Filed 5–13–88; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Dairyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional License No. DPR–45, issued to Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR), located in Vernon County, Wisconsin.

Environmental Assessment

Description of Proposed Action

The proposed amendment revises the Physical Security Plan (which includes the LACBWR Security Force Training and Qualifications Plan and the LACBWR Reactor Safeguards Contingency Plan).

LACBWR was permanently shutdown on April 30, 1987 and reactor defueling completed on June 11, 1987. The LACBWR Operating License No. DPR–45 was modified to possess-but-not-operate status on August 4, 1987.

Need for the Proposed Action

The amendment is needed to change the Physical Security Plan which was appropriate for an operating plant but not for the permanently shutdown LACBWR Facility.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because with the reactor permanently shutdown and the fuel moved to the Fuel Element Storage Well our accident analysis shows that there can be no reactor accident and that potential offsite exposures are reduced to less than protective action guide levels. Furthermore, this proposed action has no impact on our accident analysis. The staff has also determined that the proposed change to the Physical Security Plan involves no increase in the amounts, and no significant change in the types of any effluents that may be released offsite and that there would be no increase in individual or cumulative occupational radiation exposures.

Alternative Use of Resources

This action does not involve the use of any resources.

Agencies and Persons Consulted

The licensee initiated this amendment action. The NRC staff has reviewed their request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action would not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated September 24, 1987 as revised March 28 and April 28, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54801.

Dated at Rockville, Maryland, this 10th day of May 1988.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10688 Filed 5–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated February 10, 1988, the amendment would revise the Fermi-2 Technical Specifications to remove the requirement to perform 10 CFR Part 50, Appendix J, Type C leakage testing on the Residual Heat Removal Shutdown Cooling inboard isolation valves.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 15, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

BEST COPY AVAILABLE

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel Muller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 10, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 6th day of May 1988.

For the Nuclear Regulatory Commission.

Daniel Muller,

Acting Director, Project Directorate III–1, Division of Reactor Projects–III, IV, V & Special Projects.

[FR Doc. 88–10880 Filed 5–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Further Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a further amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated March 10, 1988, as supplemented March 22 and 29, 1988.

The proposed amendment would extend the interim authorization granted by Amendment No. 101 dated May 6, 1988 to permanently revise the steam generator tube plugging criteria to allow tubes with defects in the rolled region of the tube sheet to remain in service provided that the first inch of rolled tube contains no imperfections. The interim authorization expires at the end of the next refueling outage, approximately July 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 15, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC., and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 6th day of May, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–10891 Filed 5–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–3 issued to Yankee Atomic Power Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would add requirements to the Technical Specifications (TS) related to the surveillance testing of first level undervoltage protection associated with the 480 volt emergency busses.

The proposed action is in accordance with the licensee's application for amendment dated January 5, 1988.

The Need for the Proposed Action

The proposed change to the TS was submitted by the licensee in response to an NRC request to include first level undervoltage protection in the TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions include surveillance testing in the T.S. that was previously performed under plant operating procedures. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 17, 1988 (53 FR 8826). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternatives Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 5, 1988 which is available for public inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 9th day of May 1988.

For the Nuclear Regulatory Commission.

Vernon Rooney,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–10889 Filed 5–13–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Occupational and Environmental Protection System; Meeting

The ACRS Subcommittee on Occupational and Environmental Protection System will hold a meeting on May 31, 1988, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 31, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review changes to Part 20, "Standards for Protection Against Radiation."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 9, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-10695 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224-OLA; ASLBP No. 88-574-07-OLA]

University of California, Berkeley; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1982), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

University of California, Berkeley, Research Reactor, Facility Operating License No. R-101.

This Board is being established pursuant to a notice published by the Commission on March 10, 1988, in the Federal Register (53 FR 7823-24) entitled, "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License." The proposed Orders would authorize the University of California, Berkeley (the Licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the Licensee's application dated January 8, 1988 and terminate the Facility Operating License No. R-101.

The Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

James A. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 10th day of May 1988.

[FR Doc. 88-10888 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25682; File No. SR-NYSE-88-07]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Global Certification of Debt Securities, Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 24, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its *Listed Company Manual* to clarify its practice of listing debt securities represented by a global certificate. The text of this proposed revision is set out in Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The Exchange's *Listed Company Manual* specifies standards for the textual contents of certificates and for technical requirements for their physical form. The Manual neither prohibits nor provides for a global certificate/book entry system, and the engraving standards of Section 5 have been interpreted to apply only where the issuer intends to create individual certificates for its security holders.

In 1985, the Securities and Exchange Commission determined that the use of a global certificate renders an issue a certificated issue under Article 8 of the Uniform Commercial Code and recommended its use for debt securities. In August 1987, the Exchange listed a $200 million debt offering, the first security listed on the Exchange to utilize a single or global certificate.

The proposed language clarifies the Exchange's practice of permitting the listing of debt securities using a global certificate.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement of Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule change Received from Members, Participants, or Other

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number (File No. SR-NYSE-88-07) in the caption above and should be submitted by June 6, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

May 9, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

501.02 Bond Certificates

(A) General Requirements

Bond certificates shall contain a statement as to such of the following provisions as are applicable:

- Terms of payment of principal and interest.
- A summary of optional and sinking fund redemption provisions, including redemption prices.
- A summary of conversion provisions, including appropriate dates, initial conversion price and reference to subsequent conversion prices.
- A summary of the bondholder's rights with respect to registration and interdenominational exchanges.

Suitable space for entries with respect to registration, transfer and discharge from registration must be provided on coupon bonds registerable as to principal.

Registered bonds and coupon bonds of the same issue must be fully interchangeable.

Bonds shall be issued in the denomination of the unit of trading.

While the normal unit of trading is $1,000, bonds in denominations of $500 and in larger denominations that are in multiples of the unit of trading also are deliverable under Exchange rules provided:

- They are prepared in accordance with the engraving requirements set forth in this section, and
- They are exchangeable without charge for other bonds in the unit of trading.

Registered bonds shall carry the form of assignment as indicated in Para. 501.03(B).

(B) Global Certificates

Bonds using a single global certificate may be listed if: (1) interests therein may be transferred by book-entry on the books of a Qualified Clearing Agency or a Fully-Interfaced Clearing Agency as defined in Rule 132 and Exchange Contracts as defined in Article VII of the Constitution in respect of interests therein may be compared through a Qualified Clearing Agency or a Fully-Interfaced Clearing Agency, and (2) the certificate is on deposit at (a) a depository which is a registered clearing agency under Section 17A of the Securities Exchange Act of 1934 or (b) a depository which is exempt from such registration and which the NYSE has designated as acceptable for this purpose. Since a global certificate is not readily susceptible to fraudulent duplication, the Exchange will dispense with the content and engraving requirements of Section 5 in the case of bonds certificated in this manner. In addition, a specimen certificate is not required as a supporting document to the listing application. The contents and format of the global certificate will be determined by the issuer and depository.

A global certificate may be used for convertible bonds. However, the securities issued upon conversion must comply with the content and engraving requirements of Section 5.

Issuers shall make available to bondholders upon request a statement as to such of the following provisions as are applicable;

- *Terms of payment of principal and interest.*
- *A summary of optional and sinking fund redemption provisions, including redemption prices.*
- *A summary of conversion provisions, including appropriate dates, initial conversion price and reference to subsequent conversion prices.*
- *A summary of the bondholder's rights with respect to registration and interdenominational exchanges.*

If the depository is at any time unwilling or unable to continue as depository and a successor depository is not appointed by the issuer within 90 days, the issuer shall issue certificates as set forth in (A) above in exchange for the global certificate. In addition, the issuer may at any time determine not to have the bonds represented by a global certificate and, in such event, will issue bonds in the required form in exchange for the global certificate. In either instance, an owner of a beneficial interest in the global certificate will be entitled to have bonds equal in principal amount to such beneficial interest registered in the owner's name and will be entitled to physical delivery of such bonds in required form.

702.04 Supporting Documents

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Specimens of the Securities for Which Listing Application is Made—

One specimen certificate of each form, *except global*, and denomination currently issued, or to be issued, shall be filed. They should be mutilated by perforation or otherwise, and clearly and indelibly marked "Specimen".

If the specimens are not available for filing by the time the Exchange takes action on the listing application, they must be filed prior to the original listing date.

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703.01 General Application

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(C) Supporting Documents.

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Specimens—

In the event of a new issue, the company's bank note company should be instructed to submit latest drafts, models and proofs and specimens of the stock certificates, bonds *(except if globally certificated)*, scrip, etc. in latest form. Specimens should be mutilated by perforation or otherwise and clearly and indelibly marked "Specimen".

703.08 Debt Securities Offerings Listing Process

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(G) Supporting Documents

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• Specimen certificates *(except for globally certificated bonds).*

[Additional language italicized.]

[FR Doc. 88-10884 Filed 5-13-88; 8:45 am]
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[Release No. 34-25677; File No. SR-NYSE-88-12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Increase in Specialists' Capital Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the minimum capital requirements for members acting as specialists in stocks listed on the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed changes to Exchange Rule 104.20 will raise the minimum capital required of specialists to the greater of $1 million or 25% of trading unit position requirements. The trading unit position requirements will be increased to three times their current levels. For example, where presently a specialist is required to be able to assume a position of 50 trading units (i.e., 5,000 shares) in each common stock in which he is registered, the new requirement will be for assumption of 150 trading units (i.e., 15,000 shares) in each common stock in which he is registered. The same degree of increase will apply to trading unit position requirements in convertible and non-convertible preferred stocks where requirements will be raised to 30 trading units (3,000 shares) in each convertible preferred stock from 10 trading units (1,000 shares), to 1,200 shares in each 100 share trading unit non-convertible preferred from 400 shares and to 300 shares in each 10 share trading unit non-convertible preferred from 100 shares.

A specialist at the inactive Post (the post at which inactive preferred stocks are traded) will be required to have net liquid assets of $150,000 increased from $50,000. The net liquid asset requirement for relief specialists will be raised to $150,000 from $50,000.

The Exchange believes that such increased capital requirements will enhance the liquidity of the specialist system and provide a greater measure of protection against market volatility.

The proposed increases are being undertaken as an interim measure pending completion of an overall review of the adequacy of existing specialist financial responsibility requirements in view of recent market volatility.

Specialists that do not currently meet the new standards will have thirty days form the date of Commission approval to come into compliance with the requirements of the proposed rule.

The proposed rule changes are consistent with the provisions of section 11(b) of the Act in that they prescribe adequate minimum capital requirements in view of the market for securities on the Exchange. They are also consistent with the provisions of section 11A(a)(1) in that they promote the public interest and the goals of protection of investors and maintenance of fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File SR-NYSE-88-12 and should be submitted by June 6, 1988.

IV. Commission Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 11(b) which permits national securities exchanges to promulgate rules regulating the activities of specialists as necessary or appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets, and section 6(b)(5) which directs that the rules of a national securities exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

The Commission believes that, in view of the market volatility encountered during and in the period since the October 1987 market break, it is appropriate to approve the proposed increases in capital requirements and trading unit position requirements for NYSE specialists. The Commission staff study on the October 1987 market break found that while specialist capital appears sufficient during normal trading situations, it will not be sufficient if markets continue at present volatility levels.[1] The report also stated that additional specialist capital might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopardy of failing. The Commission believes that the proposed rule change will provide an increased level of protection against market volatility for specialists, and ensure that specialists' [2] buying power is not jeopardized.

The Commission believes that the thirty day period provided by the Exchange for those specialist units not already meeting the requirements of the proposed rule to come into compliance is reasonable and that conformity with these standards will not be unduly burdensome on NYSE specialist units. In this regard, the NYSE has stated that the vast majority of its specialist units are already in compliance with the requirements of the proposed rule. Finally, we note that this is an interim measure by the NYSE to ensure the adequacy of spcialist financial responsibility requirements in light of market conditions. We would anticipate additional changes to specialist capital requirements to be proposed as NYSE continues to study this issue.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Exchange may impose increased capital requirements and trading unit position requirements on specialists as in interim measure to help ensure greater specialist liquidity as a response to recent market volatility. It is important that the Exchange be assured immediately of the adequacy of its specialists' financial capacity in light of increased market volatility.

It is therfore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 6, 1988.

[FR Doc. 88-10885 Filed 5-13-88; 8:45 am]
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[1] The October 1987 Market Break, a Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at p. xviii.

[2] According to the Exchange, as of April 29, 1988, only one specialist or specialist unit was below the standards in the proposed rule. Telephone conversation between Donald Selmer, Director, Rule and Interpretive Service, NYSE, and Robert Sevigny, Attorney, Division of Market Regulation, on May 3, 1988.

[Release No. 34-25681; File No. SR-NYSE-87-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.

I. Introduction

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on July 29, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to commence a two year pilot program to test revisions to NYSE Rule 103A ("Rule"), the Exchange's Specialist Performance Evaluation and Improvement Process. Several important features of the revised Rule include, among other things, the incorporation of newly developed objective performance measures into the Ruel 103A process, the adoption of minimum standards for acceptable performance, the codification of reallocation procedures, and the broadening of the Rule's performance improvement action procedures for below standard performance.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 24919, September 15, 1987) and by publication in the Federal Register (52 FR 35821, September 23, 1987). No comments were received concerning the proposal.

II. Background

NYSE Rule 103A contains standards for evaluating specialist performance and authorizes the Exchange's Market Performance Committee ("MPC") to reallocate one or more securities assigned to a specialist unit whose performance is consistently found to be substandard as determined by the Rule.

Presently, the Exchange's primary mechanism to measure specialist performance is its Specialist Performance Evaluation Questionnaire ("SPEQ").[1] The SPEQ, which was revised last in 1986, is a quarterly survey on specialist performance completed by floor brokers. The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.[2] Failure by a specialist unit to achieve a specific score on the questionnaire as a whole or on one or more specific questions for one or more quarters constitutes unacceptable performance.[3] If a specialist unit's SPEQ score, for example, falls below the minimum standard of acceptable performance provided in the Rule for a single quarter, the unit's performance is deemed to be substandard, and, as a result, the specialist unit is required to meet informally with the MPC to discuss its performance.[4] These informal meetings between the MPC and the underperforming specialist units are generally regarded as counseling sessions and are largely designed to identify areas in which a specialist unit's performance is weak as well as develop strategies to improve the unit's performance in subsequent quarters.

Under current Rule 103A procedures, if a specialist unit's performance is found to be substandard for two consecutive quarters as determined by the Rule, the MPC would issue a Supplemental Questionnaire to floor brokers to identify specific securities in which the specialist unit's performance is unsatisfactory. The results of the Supplemental Questionnaire would be utilized by the MPC to determine whether to initiate reallocation proceedings and to determine which stock(s) assigned to the unit would be suitable for reallocation to another

[1] The SPEQ currently consists of 26 questions covering five specific areas of specialist responsibility—the dealer, agency, communication and administrative functions and maintenance of the auction market. Each of these questions is rated by a floor broker on a 5 point scale, ranging from poor to very good. An additional question solicits general comments from the evaluating floor broker regarding specific aspects of the specialist unit's performance such as the unit's ability to attract order flow to the Exchange and retain it. In addition, the question asks the floor broker to recommend specific steps a unit could undertake to improve its performance and receive better ratings in the following quarter. Specialist units are ranked in descending order according to their overall SPEQ scores.

[2] All eligible floor brokers (e.g., those floor brokers with a minimum of one year's experience) participate in the survey process. Floor brokers participating in the survey rate the specialist unit(s) with whom they have the most contact with, as identified by audit trial data.

[3] *But see* note 4, *infra.*

[4] Due to recent 1985 revisions to the SPEQ, which changed the scoring method, the former numerical standard of acceptable performance contained in the Rule is no longer applicable. Further, the Exchange determined not to revise the standard for acceptable performance on the revised SPEQ until it had developed additional performance measures to supplement the existing SPEQ and revised other aspects of the specialist performance evaluation and improvement process. Accordingly, since the implementation of the new SPEQ, results of the SPEQ have not been used as the basis for reallocations. The SPEQ is, however, used as a basis for informal counseling of specialist units and for making allocation decisions for new listings. The prohibition on reallocations under Rule 103A, which has been in effect for nearly two years and is still effective, will be terminated by the proposed revisions to Rule 103A contained herein. *See* Securities Exchange Act Rel. Nos. 23096 (May 14, 1985), 50 FR 21007 and 23747 (October 23, 1986), 51 FR 40550.

specialist unit.[6] If the MPC determines that the results of the Supplemental Questionnaire warrant action, it may commence reallocation proceedings.

Under existing Rule 103A, reallocation proceedings would consist primarily of a hearing in which the MPC considers all materials relevant to the specialist unit's performance, including evidence offered by the unit to support a claim that its unsatisfactory performance is attributable to extenuating or mitigating circumstances. Following the hearing, the MPC may either cancel the specialist unit's registration in a particular stock(s), or due to a showing of extenuating or mitigating circumstances, establish a specific time frame within which the specialist unit must improve its performance. If the specialist unit's performance has not improved sufficiently by the end of the extended time period, the specialist unit would again be subject to reallocation proceedings, in which case one or more of its assigned stocks may be reallocated to another specialist unit. A specialist unit would have a right to appeal any adverse MPC decision to the NYSE Board of Governors pursuant to Article IV, section 14 of the NYSE Constitution.[6]

III. Description of the Proposal

The NYSE's proposal to revise Rule 103A incorporates a number of recommendations provided by the MPC's Subcommittee on Performance Measures and Procedures ("Subcommittee"), which conducted a thorough examination of the Exchange's specialist performance evaluation and improvement process. The revised Rule, among other things, broadens the scope of performance improvement actions as well as incorporates newly developed objective performance measures into the specialist evaluation process. In addition, the revised Rule establishes minimum standards of acceptable performance. Specialist units who fall below these minimum standards are subject to a performance improvement action, and, potentially, reallocation proceedings. Further, the revised Rule codifies existing reallocation procedures as well as adopts several new provisions in connection with the Rule 103A process.

A. Performance Improvement Action Criteria

Under revised Rule 103A, a specialist's performance is measured by a combination of SPEQ scores and newly developed objective standards of performance. The new standards will measure specialist performance concerning stock openings, both regular and delayed, OARS (Opening Automatic Report Service), DOT Turnaround (Designated Order Turnaround System), status requests, and market share. Below standard performance on any one measure will, independently, result in a performance improvement action. As described below, such an action could result in a reallocation of a specialist's securities.[7]

1. The SPEQ

The proposed revisions to the Rule would not alter the existing SPEQ in any substantive fashion; rather, the proposed revisions would establish acceptable performance levels for ratings received under the Questionnaire. Under the proposal, a specialist unit would be subject to a performance improvement action in any case where (1) its overall median score on the SPEQ is below "adequate" in any one quarter (a total numerial score of 117 of 225 possible points is deemed adequate); (2) its SPEQ score in the same function is below "adequate" for two consecutive quarters (24 of a total of 45 possible points in each function is deemed adequate); or (3) its SPEQ score in any two of five functions is below "adequate" for two consecutive quarters.[8]

2. Openings (Regular and Delayed)

The NYSE is proposing to measure specialist performance at the opening in two ways. First, this performance measure would evaluate the timeliness of a specialist unit's openings for both its common and non-convertible perferred stock relative to the Exchange's 9:30 a.m. opening. A specialist unit would be deemed to have performed unsatisfactorily in this measure if, for two consecutive quaters, it did not open, at least 90% of the time, one or more of its common or non-convertible preferred stocks by means of an opening trade or a quotation by 9:45 a.m.[9] The Exchange indicated that it views timely openings as facilitating transactions in securities and as contributing to the maintenance of fair and orderly markets in accordance with its obligations under the Act.

Second, the NYSE would rate whether a unit's request for a non-regulatory delayed opening was made to a Floor Official on a timely basis, based on evaluations by Floor Officials as noted on a Delayed Opening/Halt In Trading Form.[10] Under proposed Rule 103A, a performance improvement action would be triggered whenever a specialist unit receives unfavorable Floor Official evaluations in 15% of its registered common stocks, or in a mimimum of 7 stocks, whichever is greater, in any one quarter.[11] The timeliness of the request would be evaluated by a Floor Official involved and noted on a Delayed Opening/Halt in Trading Form. According to the Exchange, the timely request for the assistance of a Floor Official in arranging an opening contributes to the proper functioning and overall orderliness of exchange markets and may, in some instances, eliminate the need to call a delayed opening.

3. OARS, DOT Turnaround Performance and Status Requests

The Exchange is also proposing to add several other specialist performance standards. These standards will measure the timeliness of inputting OARS price cards, DOT turnaround performance and a unit's timely response to status sequests. The Exchange believes that these three measures are intended to foster the efficient processing of information in regard to securities transactions. In terms of OARS price reports, the revised Rule would provide that substandard performance for this measure would occur in any case where, for two quarters during a rolling four quarter period, a specialist unit fails to transmit or input 90% of its OARS price reports within 10 minutes of the opening of the stock on the Exchange.

The DOT turnaround performance measures a unit's ability to execute and report post-opening market orders up to 2,099 shares through SuperDOT on a timely basis. A unit would be deemed to have performed unsatisfactorily in this measure if it does not turn around 90% of its DOT orders in two minutes during any two quarters in a rolling four quarter period.[12]

Finally, with regard to status requests, this measure would assess the timeliness of a unit's response to a member firm's inquiry as to the status of an order from the time the specialist unit received the request through the SuperDot system. A unit would perform unsatisfactorily in this measure in any case where the unit does not respond to 75% of its administrative messages received through the SuperDot system in 30 minutes during any two of four rolling quarters.

4. Market Share

The final measure concerns market share. A specialist unit would be subject to a performance improvement action in any case where the market share in any stock has declined significantly for two consecutive quarters if the MPC determined that the decline is attributable to factors within the control of the specialist unit.[13] The determination of a significant decline under this measure would be based on the specialist unit's overall percentage of the total share volume on the Consolidated Transaction Reporting Service.[14] The Exchange indicates that this measure is designed to maintain and strengthen its competitive position relative to other market centers.

B. The Performance Improvement Action Process

Under the revised Rule, a performance improvement action would be triggered, with certain exceptions,[15] whenever a specialist unit's performance falls below any performance standards provided in the Rule. The Exchange indicates that the principal purpose of a performance improvement action is to provide assistance and guidance to underperforming specialist units that will enable these units to improve their performance.

Once a performance improvement action is initiated the MPC will develop measurable performance improvement goals that the unit will be expected to achieve to improve its performance. The MPC will then notify the identified unit in writing of (1) the results of the quarterly evaluations indicating that the unit's performance is unsatisfactory and needs to be improved; and (2) the performance improvement goals that the unit is expected to achieve to improve its performance. In addition, the MPC will invite the unit to meet with it to discuss its performance and the goals assigned to the unit.

After the performance improvement goals have been identified, the MPC will select and assign a performance improvement monitoring team to each unit involved in a performance improvement action.[16] According to the Exchange, the monitoring teams will generally provide the MPC with objective assessments of the progress their assigned units have made in meeting their performance goals throughout the performance improvement period. In addition, the monitoring teams will be available to assist each unit in developing strategies to achieve its designated performance goals.

The MPC will establish a time in which each specialist unit must develop a performance improvement plan to identify strategies to meet the MPC's performance goals. The unit may devise its own strategies or, as noted above, develop its strategies with the assistance of its monitoring team. The MPC will review the unit's plan and either approve the plan or modify it.[17] Further, the MPC will determine a reasonable time frame (the "performance improvement period") within which each unit subject to a performance improvement action is expected to accomplish its performance improvement goals and within which the monitoring team must submit its final report to the MPC on the results.[18] The MPC also will retain the right to impose an allocation freeze at any time during the performance improvement period to encourage the unit to achieve its goals.

During the performance improvement period, each monitoring team will be required to monitor the performance of its assigned unit to assess the unit's progress in meeting its performance goals. At anytime during a unit's performance improvement period, the unit's monitoring team will be permitted to submit an interim report, at its discretion, to the MPC notifying the MPC of the unit's progress in meeting it performance goals. In the interim report, the monitoring team may recommend

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[6] Alternatively, the MPC may elect to proceed directly to a reallocation proceeding without the issuance of a Supplemental Questionnaire if the unit previously has had a Supplemental Questionnaire issued on its behalf as a result of subpar performance.

[8] As noted above, the SPEQ serves an additional important function. Historically, SPEQ scores have been the principal criteria considered by the Exchange's Allocation Committee in allocating newly-listed securities to specialist units. Accordingly, specialist units with superior SPEQ ratings (and, consequently, higher SPEQ ranks) are supposed to receive allocation awards of new listings, particularly the more lucrative, highly sought after listings.

[7] *See* discussion on performance improvement actions in Part B, *infra*.

[8] For example, if a specialist unit receives a score below 24 in both the dealer and agency functions in one quarter and receives a score below 24 in both the communication and administrative functions in the next quarter, the unit would be subject to a performance improvement action.

[9] In calculating specialist performance in this measure, the NYSE would exclude regulatory delayed opening and those post-9:45 a.m. delayed openings that are certified in writing by a floor official as being justified by market conditions in the particular stock. We note the NYSE has developed a "Floor Official" Exemption Form that will be used to determine which post-9:45 a.m. openings will be excluded in measuring timely opening performance. The NYSE has agreed to require on this form that the Floor Official provide a brief explanation of why the post 9:45 a.m. opening is justified. (*See* letter from Santo Famularo, Vice President, NYSE to Sharon Lawson, Branch Chief, Division of Market Regulation, dated April 22, 1988 ("NYSE April 22 Letter").

[10] Non-regulatory delayed openings generally occur due to an order imbalance in a stock. We note that the Floor Official must indicate on the Form whether a unit's request for the delayed opening was made in a timely manner.

[11] For example, a unit with 100 registered common stocks would be deemed to have performed unsatisfactorily and, hence, subject to a performance improvement action, if it received 15 unfavorable Floor Official evaluations concerning openings in any one quater. Similarly, a unit with only 5 registered common stocks would have to receive 7 unfavorable Floor Official evaluations concerning its openings in any one quarter to be subject to a performance improvement action.

[12] When a performance improvement action is commenced as a result of substandard DOT performance, the MPC, in establishing specific improvement goals, and the monitoring team assisting in the development of an improvement plan, will be required to consider the unit's DOT order flow per panel; the severity of DOT system malfunctions, if any; whether the unit is equipped with Electronic Display Books; and the assigned post space available to the unit.

[13] In this connection, the Exchange has identified a number of factors which it believes are within the control of a specialist unit. They are (1) a unit's commission rates; (2) whether a unit takes advantage of available automated systems; (3) whether a unit is overly aggressive in breakups of block crosses; and (4) overall specialist performance. By contrast, the Exchange also has identified several factors which it views as not generally being within the control of a specialist unit such as the proprietary interests of some member firm order suppliers with market-marketing operations at other market centers.

[14] The rule does not contain specific standards for what percentage decline in a stock would be viewed as significant under this aspect of the rule. The Commission believes development of such standards are important and expects the NYSE to futher define what consitutes a "significant decline" in market share of a stock during the pilot program for Rule 103A.

[15] Performance improvement actions would not be commenced if a specialist unit's unsatisfactory performance is directly attributable to highly unusual or extenuating circumstances, involving factors beyond the control of the unit, as determined by a majority vote of the MPC on a case-by-case basis. For example, failure of an Exchange system that disrupts floor-wide trading and, consequently, contributes to a unit's poor showing in a performance measure may be considered a highly unusual or extenuating circumstance. Accordingly, any unit whose performance was directly affected by the system failure may not be subject to a performance improvement action (Of course, this assumes that the unit is rated satisfactorily in other performance measures).

[16] Performance improvement monitoring teams are composed of four non-MPC members, of which two are specialists and two are non-specialists. Each member will be randomly selected from a pool of individuals nominated by a variety of Exchange organizations and approved by the MPC to counsel specialist units in need of performance improvement actions. When appropriate, the MPC can select the non-specialist members of the monitoring team based upon the needs of the particular unit subject to the performance improvement action.

[17] Performance improvement periods generally will be determined on a case-by-case basis depending largely upon the nature and degree of a specialist unit's performance improvement needs. According to the Exchange, it determined not to establish a uniform time period because the improvement needs of individual specialist units vary considerably.

[18] All modifications recommended by the MPC to a unit's performance improvement plan will be binding upon the unit.

that the performance improvement action be concluded if the unit's performance so warrants; recommend that the unit's performance improvement plan be altered, including extending the performance improvement period; or, recommend the imposition of an allocation freeze designed to encourage improved specialist performance. The MPC will review the interim report, consider its recommendations, and adopt any recommendation it considers appropriate.

At the conclusion of the performance improvement action, a specialist unit's monitoring team will issue a final report to the MPC.[19] The final report will contain the monitoring team's assessment of the unit's performance, including a description of the measures taken by the unit to improve its performance and areas of continued weak performance. In addition, the monitoring team may recommend the reallocation of particular stock or stocks should it determine that a unit has failed to accomplish the performance improvement goals established by the MPC. Alternatively, the monitoring team may recommend that a unit's performance improvement action be extended, for a period no longer than one quarter, if it believes that a unit's is likely to attain its performance improvement goals during the extended period.[20]

Following the monitoring team's submission of a final report to the MPC, the MPC, the MPC will review the report (including any recommendations contained therein), the specialist unit's performance improvement plan, and the specific steps taken by the unit to improve its performance with the overall results, to determine whether to conclude the performance improvement action process. If the MPC determines that the unit has met its performance improvement goals, it will terminate the unit's performance improvement action. On the other hand, if the MPC determines that a unit has failed to attain its performance improvement goals, the MPC will be required to initiate reallocation proceedings or extend the performance improvement period, for one quarter only, to provide additional time for a unit to achieve its performance improvement goals.

C. Reallocation Proceedings

The proposed revisions to the Rule set forth the specific procedures to be followed in reallocating stocks due to poor performance. Reallocation proceedings would be commenced in those instances in which a unit's performance improvement action has concluded and the MPC determines that the unit has failed to achieve its performance improvement goals. The MPC will then determine which stocks will be reallocated by considering specific performance data that may indicate particular stocks in which the unit's performance was deficient.[21] In this regard, the MPC will review some of the objective measures incorporated into the Rule 103A process, such as OARS and DOT turnaround performance, to identify stocks for reallocation. Further, the Exchange indicates that responses to a question on the revised SPEQ, which solicits the broker's comments in connection with the unit's handling of particular stocks, will aid the MPC in selecting suitable stocks for reallocation.

Proposed Rule 103A also provides for the initiation of reallocations in emergency situations. Under the rule, in any instance where a specialist unit's performance is so egregious as to call into question the integrity or reputation of NYSE's markets, the MPC will be permitted to proceed directly to a reallocation proceeding without intiating a performance improvement action.

The Exchange maintains that the revised Rule will continue to provide procedural safeguards for specialist units involved in performance improvement actions and/or subject to reallocation proceedings. In this regard, any specialist unit subject to a reallocation proceeding will be notified in writing of the basis for the MPC's decision to initiate reallocation proceedings. Further, a written record of all MPC deliberations will be maintained. All written documents that will be considered by the MPC in the proceedings, including the monitoring team's report, will be provided to the specialist unit. In addition, specialist units will be afforded the opportunity to appear before the MPC. The specialist unit will also be able to present its case as to why the selected stocks should not be reallocated and may request the MPC to consider reallocation of alternate stocks. Finally, a unit would have the right to appeal any adverse MPC decision to the Exchange's Board of Governors pursuant to the Exchange's Constitution.[22] According to the Exchange, these procedures will ensure that specialist units that are subject to performance improvement and reallocation proceedings receive adequate due process protections.[23]

D. Additional Provisions

Another provision contained in the Rule addresses potential conflict of interests in the event of a reallocation under the revised Rule 103A. Member organizations directly or indirectly associated with MPC members and members of the monitoring team appointed to assist a specific unit would be prohibited from applying for any stock to be reallocated from the unit under the Rule.

Finally, the revised Rule would authorize the MPC to review any performance related data pertaining to any unit. Pursuant to this review, the MPC would be permitted, at its discretion, to provide educational counseling to a unit even though the unit has not fallen below the acceptable levels of performance, described above, where appropriate

As noted, the NYSE is requesting approval for a two year pilot basis. The Exchange indicates that if its proposal is approved by the Commission, it intends to notify its membership of the substance of its proposal at least one quarter prior to implementation of the two year pilot program.[24] Further, the Exchange maintains that the pilot program is intended to permit the Exchange to monitor the operation of the revised Rule and its associated processes under actual conditions and to make any modifications or amendments to the Rule as it deems

[19] Of course, a final report will not be issued for those units whose performance improvement actions were terminated during the performance improvement period as a result of recommendations made by their monitoring teams in interim reports submitted to the MPC.

[20] The monitoring team only may make this recommendation if specific performance date generated during the unit's performance improvement period indicates that the unit has made significant progress in reaching its performance improvement goals, but nevertheless needs additional time to fully attain those goals.

[21] The MPC will no longer issue a Supplemental Questionnaire to determine which stocks are suitable for reallocations.

[22] This right would extend to allocation freezes imposed by the MPC during a performance improvement action. *See* NYSE April 22 Letter.

[23] The due process procedures also apply to persons subject to reallocation proceedings because of an egregious situation. *See* discussion, *infra*.

[24] On April 4, 1988, the NYSE notified members that, subject to Commission approval, the new evaluation program would commence the following quarter on July 1, 1988. *See* NYSE Information Memorandum from Donald J. Solodar, Senior Vice President, Market Surveillance, to NYSE Specialists, dated April 4, 1988. In the NYSE April 22 Letter, the Exchange notes that only the SPEQ and DOT turnaround performance measures will be implemented for the July 1, 1988 quarter. OARS reporting requirements and Openings Standards will not be implemented until the fourth quarter of 1988, while the performance measures involving status requests and market share will not be implemented until the first or second quarter of 1989.

appropriate.[25] After the evaluation period, the Exchange states that it intends to submit the proposed revisions to Rule 103A to the Commission for permanent approval.

IV. Discussion

The Commission believes that the proposed revisions to the Rule are appropriate and should provide the Exchange with a viable means to monitor specialist performance and to address continued weak performance by a specialist unit. Further, the Commission strongly supports and encourages the Exchange's efforts to improve specialist performance and market quality through its specialist performance evaluation and improvement process, particularly in light of increasingly volatile market conditions. We have reviewed the proposed revisions to the Rule and generally believe that the revised Rule will accomplish the underlying objective of the program to improve specialist performance and market quality. In this connection, we note that the revised Rule differs significantly, in several critical respects, from the current Rule. The Commission believes that the modifications will improve the NYSE's specialist evaluation process and should prove beneficial to the Exchange, its specialist community, and the investing public.

First, with the incorporation of objective measures into the specialist evaluation process, the quarterly SPEQ will no longer serve as the principal tool employed to measure and evaluate specialst performance. Although the SPEQ is an adequate devise to monitor specialist performance, the Commission has long favored the incorporation of objective measurements into the Rule 103A program as a supplemental performance measure to the floor broker evaluations.[26] The objective measures to be incorporated into the Rule 103A program, when combined with the ratings on the SPEQ, should enable the MPC to assess specialist performance in a more precise and comprehensive fashion and make it easier for the Exchange to identify units with poor performance. In addition, although the overall evaluation process is conducted quarterly, the objective measures should allow the MPC to continuously monitor specialist performance and to initiate remedial action, such as educational counseling, on an ad hoc basis in appropriate cases.[27]

The development of standards of minimally acceptable performance is also an important step in increasing the effectiveness of the NYSE's evaluation program. As described above, the NYSE has been unable to initiate reallocation proceedings under the revised SPEQ that has been in effect since 1986 because it did not establish a numerical standard for minimum levels of acceptable performance based on the scoring system in the new SPEQ. The establishment of minimum acceptable levels of performance for the SPEQ and the new objective criteria will aid the NYSE in identifying poor performance and reallocating stocks where necessary.

Despite the improvements in this area, the Commission is still concerned about the lack of relative performance standards. The Commission prevously has urged the NYSE to adopt relative performance measures so that specialists who were regularly among the lowest ranked specialists would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance. As discussed in the Division of Market Regulation report, The October 1987 Market Break, and in the report by the Presidential Task Force,[28] specialist performance during the October 1987 Market Break varied widely. This disparity underscores the need for the adoption of relative standards of performance. We re-emphasize that the NYSE should give specific attention to developing relative standards for their new evaluation program.

Another important modification concerns the Supplemental Questionnaire. The Commission views the elimination of the Supplemental Questionnaire as a crucial refinement to the Rule 103A pilot. In particular, the Commission believes that the Supplemental Questionnaire, which is designed to identify appropriate stocks to reallocate following a specified period of substandard performance on the SPEQ, can unnecessarily protract a Rule 103A proceeding.[29] Under the new rules, the MPC can use objective data and responses on the SPEQ to determine which stocks are appropriate to reallocate. With the elimination of the Supplemental Questionnaire, the MPC can commence reallocation proceedings expeditiously without encountering any unnecessary delays.

Significant modifications also have been made in the performance improvement action process. Among other things, the MPC will establish performance improvement goals tailored to specific areas of weakness for each unit subject to a performance improvement action. The Commission believes that the MPC will be in the best position to establish such goals inasmuch as it reviews performance data for all specialist units and will be able to formulate appropriate goals for each unit based upon its perception of outstanding specialist performance. Further, the Exchange will allow specialist units involved in performance improvement actions to participate in the process by allowing them to establish strategies, with the assistance of their monitoring teams, if needed, to meet their assigned performance goals. The MPC will, however, retain final authority in approving or modifying the proposed strategies of each unit.

The Commission also believes that the proposal adequately provides due process protection to specialists subject to a performance improvement action

[25] Any such changes would have to be submitted to Commission for review pursuant to section 19(b) of the Act prior to implementation.

[26] *See, e.g.*, letter from Douglas Scarff, Director, Division, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981 ("NYSE November 10, 1981 letter") and letter from Richard Ketchum, Director, Division, to Henry Poole, General Counsel, NYSE dated August 1, 1988 ("NYSE August 1, 1988 letter"). *See also* Report by the Division of Market Regulation, United States Securities and Exchange Commission, *The October 1987 Market Break* (1988) pg. XVII ("Division Report"); Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break, Before the United States Senate Committee on Banking, Housing, and Urban Affairs, February 3, 1988 (Testimony of Davis S. Ruder, Chairman, Securities and Exchange Commission); Securities Exchange Act Release No. 22377 (October 28, 1985) 50 FR 45386, (Commission order approving proposed rule change by the Midwest Stock Exchange, Inc. adopting guidelines for the mandatory posting and reassignment of securities from specialists and co-specialists due to substandard performance as measured by objective market share data.)

[27] Although the Commission commends the NYSE's efforts to incorporate objective measures into the Rule 103A pilot, the Commission nonetheless recommends that the NYSE incorporate objective market making measures into the program. The Commission believes that minimally acceptable levels of market making activity, such as depth, continuity, and stabilization rates reflecting the characteristics of each security can be established. *See* NYSE August 1, 1988 letter. The Commission notes that similar individualized standards have been developed by the NYSE for surveillance purposes. During the new 103A pilot period, the Exchange should examine how to devise market making objective standards for inclusion into the program. The Commission also believes that the Exchange should incorporate ITS turnaround and trade-through criteria into its specialist performance standards because of the importance performance as relating to ITS has to intermarket access.

[28] *See* Division Report at 4–28 and 4–29, and Report of the Presidential Task Force on Market Mechanisms, January 1988, at 49–50 and Study VI.

[29] The Commission has on prior occasions recommended the elimination of the Supplemental Questionnaire from the Rule 103A pilot program. *See* NYSE November 10, 1981 letter. *See also* Securities Exchange Act Release No. 19004 (April 8, 1983), 48 FR 16155.

and/or reallocation. As noted above, a written record of all proceedings will be maintained. Moreover, units subject to the initiation of a reallocation proceeding will be given an opportunity to appear before the MPC to present their case,[30] and any decision by the MPC to reallocate a unit's stocks would be appealable to the NYSE's Board of Directors.[31] Finally, MPC members, and members of the monitoring team assigned to a unit, are prohibited from applying for a unit's stock(s) reallocated under the Rule. These procedures should adequately safeguard the rights of specialists subject to an action for substandard performance under Rule 103A.

Finally, because results from the evaluation process will continue to be used as a basis for granting new allocations, the Commission believes that the revised Rule will be helpful to specialists by providing them with concrete guidelines to continuously measure and assess their own performance to determine whether they should take action to improve their performance.[32]

V. Conclusion

The Commission, in approving the proposed rule change, recognizes the increasingly significant role played by the NYSE specialist in providing stability, liquidity, and order to exchange markets, particularly in light of the recent volatility encountered by the securities markets following the events of the October Market Break. Accordingly, a primary concern of the Commission in assessing the proposed rule change has been to ensure that the revised rule serve as a meaningful and effective vehicle to encourage improved specialist performance—both under normal and unusual market conditions. Further, given the events that occurred during the market break and thereafter, the Commission believes that the proposed rule's objective measurements of specialist performance should be closely monitored to determine their effectiveness in evaluating specialist performance under all market conditions and to determine whether additional measures are necessary to provide an accurate and more comprehensive assessment of specialist performance. As noted above, although the proposed objective criteria provides a useful supplement to the existing evaluation process utilizing SPEQ ratings, we believe the NYSE should develop additional standards that would more directly measure specialist market making performance.

In addition, the selected standards of minimally acceptable performance must be monitored to determine whether the thresholds that trigger performance improvement actions are adequate.[33] Thus, the Commission has determined to approve the proposed rule change as requested by the Exchange with the stipulation that the Exchange must submit to the Commission, one year from the date of approval of the proposed rule change, a report containing its assessment of the implementation of the revised Rule, any problems associated with its implementation, any proposed modifications and the reasons therefore.[34]

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change significantly enhances the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest. Moreover, to the extent a unit subject to a performance improvement action does not improve, the MPC will, under the new Rule, have the ability to reallocate the stock to another unit, which will benefit all market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 9, 1988.

[FR Doc. 88-10886 Filed 5-13-88; 8:45 am]
BILLING CODE 8010-01-M

[30] Units would also be entitled to appear before the MPC at the initiation of a performance improvement action.

[31] We continue to believe, as the Commission previously has determined, that the reallocation of securities for unsatisfactory performance under NYSE rules would not constitute a disciplinary action or prohibition or limitation of access to services offered by a self-regulatory organization reviewable by the Commission pursuant to section 19(d)(2) of the Act. *See* Securities Exchange Act Release No. 15827 (May 15, 1979), 44 FR 29778.

[32] The Commission continues to believe that the key criteria for allocating stocks to specialist units should be specialist performance as evidenced by the results of the Rule 103A evaluation process. This will not only help ensure that stocks are allocated to the top specialists who will make the best markets, but should also provide an incentive for improved specialist performance.

[33] As noted above, the Commission believes relative performance standards could be more meaningful than absolute standards. The NYSE should give prompt attention to developing relative performance standards, that would, for example, subject those units in the bottom 10% for two consecutive quarters to a performance improvement action.

[34] The report should contain data for each quarter, on (1) the number of specialists that fell below acceptable levels of performance for each category (2) the number of performance improvement actions commenced (3) the number of units subjected to informal counseling to improve performance, and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved. We would also expect to receive the same information for the second year of the pilot prior to its expiration.

[Release No. 34-25680; File No. SR-Phlx-88-5]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Denial of and Conditions to Membership.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange pursuant to Rule 19b-4, hereby proposes the following rule change: (Arrows indicate additions).

►Denial of and Conditions of Membership

Rule 901. (a). The Exchange may deny membership to any registered broker or dealer or person associated with a registered broker or dealer and deny from becoming associated with a member organization any person who is subject to a statutory disqualification, as that term is defined in the Securities Exchange Act of 1934, as amended.

(b). The Exchange may deny membership to, or condition the membership of a registered broker or dealer if the broker or dealer: (1) is unable satisfactorily to demonstrate its present capacity to adhere to applicable provisions of (i) Sections 15 and 17 of the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder or (ii) Exchange rules relating to the maintenance of books and records; or (2) has previously been found to have violated and there is a reasonable likelihood the broker or dealer will again engage in acts or practices violative of (i) Sections 15 and 17 of the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder, or (ii) rules relating to the maintenance of books and records of the Exchange or other self-regulatory organizations of which the broker or dealer is or was a member.

(c). The Exhange may deny membership to, or condition the membership of a registered broker or dealer, and may bar a person from becoming a member or associated with a member, or condition the membership of a person or association of a person with a member organization if such broker or dealer or person: (1) does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for; (2) does not meet such other standards of training, experience, and competence as may be established by the Exchange; (3) cannot demonstrate a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (4) has been the subject of findings of fact rendered by any of the above mentioned entities such that the broker or dealer or person has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again; or (5)(i) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding (ii) has been or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years (iii) has been and/or remains associated as a general partner, principal, officer, director, stockholder, or PHLX registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature (iv) has engaged in a pattern of failure to pay just debts (v) would bring the Exchange into disrepute or (vi) for such other cause the Committee on Admissions reasonably may decide.

(d). The Committee may, in exceptional cases and where good cause is shown, waive such proficiency examinations as are required by the Exchange upon written request of the applicant, and accept other standards as evidence of an applicant's qualifications. Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.◄

Existing rules 901 through 904 are to be renumbered accordingly 902 through 905.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to formally codify and incorporate previous existing Exchange policies concerning denial or conditions for membership into the rules and to adopt new provisions to provide the Exchange with flexibility concerning such matters. The proposed rule change clarifies the basis upon which the PHLX may deny or condition membership by stating the Exchange could deny or condition membership for the same reasons that the Commission can deny or revoke a broker/dealer registration or a membership under the Act. In addition, the proposed would allow Phlx to deny membership if the applicant has failed required membership examinations; if the applicant has a pattern of failure to pay just debts; if the applicant cannot demonstrate a capacity to adhere to all applicable PHLX, SEC, OCC, and Federal Reserve Board or other appropriate policies rules and regulations; if the applicant would bring the Exchange into disrepute or for such other cause as the Committee on Admissions reasonably may decide. The proposed rule change will enable the PHLX to reflect more accurately its Exchange policies regarding admission of new members and associated persons, providing notice to potential applicants of PHLX criteria for admission to membership. The proposed rule change is largely a codification in a single rule of the policies and various criteria the Exchange's Admissions Committee now employs in considering new applicants. For example, the Exchange's Admissions Committee may waive proficiency examinations for applicants who have successfully completed comparable examinations administered by an SRO or a reapplication within two years by a former member or participant. These policies have functioned well in the past and should allow the PHLX to continue to deny membership to those individuals and organizations that have not demonstrated the ability to comply with the significant economic and regulatory responsibilities attendant to Exchange membership.

The provisions of the proposed rule change allowing denial of membership if the applicant would bring the Exchange into disrepute or for "such other cause as the Committee on Admissions reasonably may decide" is new and is designed to cover important legal and ethical reasons for denial not covered by the other provisions but which should be available to the Exchange in its attempts to limit membership to individuals and firms of integrity and trustworthiness. The overall objective of these provisions, which the Exchange expects judiciously and carefully to apply, is to assure that public confidence in the integrity of the Exchange and the securities markets is not impaired. The waiver provision in proposed paragraph (d) is intended to provide the Admissions Committee authority to excuse applicants from taking proficiency examinations when it can otherwise be determined that an applicant is qualified and where completion of the examination would thus be redundant and needlessly burdensome. A waiver can only be granted under exceptional circumstances where good cause can be demonstrated.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange will promote just and equitable principles of trade and protect

investors and promote the public interest by allowing only those individuals and firms that have demonstrated the requisite ability to comply with the significant economic and regulatory responsibilities attendant to Exchange membership. The proposed rule change also is consistent with section 6(c)(3) of the Act, which sets forth bases upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of the Exchange.

B. Self-Regulatory Organizations Statement on Burden on Competition

For the most part, the PHLX does not believe that the proposed rule change will impose any burden on competition. To the extent the rule has the effect of restricting entry of firms as member organizations, or the association of persons with member organizations, the Exchange believes that result is warranted to protect investors and the public interest, and to promote public confidence in the integrity of the securities markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-88-5 and should be submitted by June 6, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 9, 1988.

[FR Doc. 88-10887 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16393; File No. 811-5313]

Application; Connecticut Mutual Life Insurance Co.; The Composer Separate Account

Date: May 9, 1988.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of application pursuant to section 6(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Composer Separate Account ("Applicant").

Relevant 1940 Act Sections: Deregistration order requested under section 6(f) and Rule 6f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on March 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on June 3, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney at law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549; Connecticut Mutual Life Insurance Company—The Composer Separate Account, 140 Garden Street, Hartford, Connecticut 06154.

For Further Information Contact: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-3061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Composer Separate Account was established under Connecticut law as a separate account of Connecticut Mutual Life Insurance Company. A Form N-8A Notification of Registration was filed under section 8(a) of the Investment Company Act of 1940 on November 6, 1987, but no registration statement was filed pursuant to section 8(b) of the Act.

2. Applicant represents that it has never held assets, incurred liabilities of any kind, and is not a party to any litigation or administrative proceeding.

3. Applicant further represents that it has never made a public offering of its securities, and does not propose to make a public offering or engage in business of any kind.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10883 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council; Public Meeting; Indiana

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting, at 9:30 a.m. EST, on Wednesday, June 1, 1988, at the North Meridian Inn, 1530 North Meridian, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1584, (317) 269-7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88-10930 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting; New Jersey

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting, at 8:30 a.m., on Friday, June 3, 1988, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, and the staff of the U.S. Small Business Administration, or others present.

For further information write or call Stanley H. Salt, District Director U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, (201)645-3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88-10931 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting, at 10:30 a.m., on Tuesday, May 24, 1988, at the Charlotte Chamber of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Room 222, South Church Street, Suite 300, Charlotte, North Carolina 28202, (704) 371-6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88-10887 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting; Texas

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting, at 12:00 noon, on Wednesday, June 8, 1988, in the conference room of the SBA Houston District Office, located at 2525 Murworth, Suite, 112, Houston, Texas 77054, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney Martin, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660-4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88-10932 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting; Washington

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting, at 9:30 a.m., on Thursday, May 19, 1988, in Room 485 U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. Wiebe, Acting District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, P.O. Box 2167, Spokane Washington 99210, (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 10888 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0209]

Raffensperger Hughes Venture Corp.; Issuance of a Small Business Investment Company License

On February 3, 1988, a notice was published in the Federal Register (Vol. 53, No. 22) stating that an application has been filed by Raffensperger Hughes Venture Corp., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business March 4, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0209 on May 5, 1988, to Raffensperger Hughes Venture Corp. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 10, 1988.

[FR Doc. 88-10889 Filed 5-13-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended May 6, 1988

The following applications for certifications of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by enpedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45611

Date Filed: May 3, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 31, 1988.

Description: Application of United Parcel Service Co., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of cargo, property and mail.

Docket No. 45617

Date Filed: May 6, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 3, 1988.

Description: Applications of Trans Continental Airlines, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity for foreign all-cargo charter air transportation be amended to authorize foreign charter air transportation of property and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and any point outside thereof, on the other hand.

Docket No. 45340

Date Filed: May 4, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 1, 1988.

Description: Amendment No. 1 to the Application of Traslados, S.A. for a foreign air carrier permit, so as to limit its request for authority to engage in the following services: Nonscheduled and charter foreign air transportation of property and mail between a point or points in Guatemala, intermediate points San Salvador, El Salvador, Belize City, Belize, and San Pedro Sula, Honduras, and intermediate and co-terminal points Miami, Ft. Lauderdale, and Tampa, Florida, New Orleans, Louisana, and Houston and Brownsville, Texas.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-10850 Filed 5-13-88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir.; Public Debt Series No. 13-88]

Treasury Bonds of 2018

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Bonds of 2018 (CUSIP No. 921810 EA 2), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated May 15, 1988, and issued May 16, 1988. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from May 15, 1988, to May 16, 1988. Interest on the Bonds is payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2018, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 16260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 12, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 11, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500.

That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from May 15, 1988, to May 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds alloted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: Each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the

interest payments corresponding to

7. General Provisions

INTEREST COMPONENTS—Continued

interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiple of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers on book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Components and Interest Components of Treasury Bonds of May 15, 2018, CUSIP No. 912810 EA 2

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2018 due May 15, 2018, CUSIP No. 912803 AN 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
Nov. 15, 1988	EM 8
May 15, 1989	EN 6
Nov. 15, 1989	EP 1
May 15, 1990	EQ 9
Nov. 15, 1990	ER 7
May 15, 1991	ES 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0
Nov. 15, 1998	FH 8
May 15, 1999	FJ 4
Nov. 15, 1999	FK 1
May 15, 2000	FL 9
Nov. 15, 2000	FM 7
May 15, 2001	FN 5
Nov. 15, 2001	FP 0
May 15, 2002	FQ 8
Nov. 15, 2002	FR 6
May 15, 2003	FS 4
Nov. 15, 2003	FT 2
May 15, 2004	FU 9
Nov. 15, 2004	FV 7
May 15, 2005	FW 5
Nov. 15, 2005	FX 3
May 15, 2006	FY 1
Nov. 15, 2006	FZ 8
May 15, 2007	GA 2
Nov. 15, 2007	GB 0
May 15, 2008	GC 8
Nov. 15, 2008	GD 6
May 15, 2009	GE 4
Nov. 15, 2009	GF 1
May 15, 2010	JU 5
Nov. 15, 2010	JV 3
May 15, 2011	JW 1
Nov. 15, 2011	JX 9
May 15, 2012	JY 7
Nov. 15, 2012	JZ 4
May 15, 2013	KA 7
Nov. 15, 2013	KB 5
May 15, 2014	KC 3
Nov. 15, 2014	KD 1
May 15, 2015	KE 9
Nov. 15, 2015	KF 6
May 15, 2016	KH 2
Nov. 15, 2016	KK 5
May 15, 2017	KM 1
Nov. 15, 2017	KP 4
May 15, 2018	KR 0

BILLING CODE 4810-40-M

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 88-10898 Filed 5-11-88; 3:46 pm]

BILLING CODE 4810-02-C

ATTACHMENT B

[Dept. Cir.; Public Debt Series No. 12-88]

Treasury Notes of May 15, 1998; Series B-1998

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of May 15, 1998, Series B-1998 (CUSIP No. 912827 WE 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1988, and issued May 16, 1988. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from May 15, 1988, to May 16, 1988. Interest on the Notes is payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 16260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 11, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 10, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places

on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from May 15, 1988, to May 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tenders was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest of Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public

BEST COPY AVAILABLE

announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF MAY 15, 1998, SERIES B-1998 CUSIP NO. 912827 WE 8

[The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B-1998 due May 15, 1998, CUSIP No. 912820 AN 7.]

Interest Components	
Designation	Cusip Number 912833
Treasury Interest (TINT) due:	
Nov. 15, 1988	EM 8
May 15, 1989	EN 6
Nov. 15, 1989	EP 1
May 15, 1990	EQ 9
Nov. 15, 1990	ER 7
May 15, 1991	ES 5
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 88-10899 Filed 5-11-88; 3:44 pm]
BILLING CODE 4810-40-C

[Dept. Circ.; Public Debt Series No. 11–88]

Treasury Notes of May 15, 1991; Series S–1991

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of May 15, 1991, Series S–1991 (CUSIP No. 912827 WD O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to the terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The Notes will be dated May 16, 1988, and will accrue interest from that date, payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, May 10, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 9, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–10900 Filed 5–11–88; 8:44 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 88, Page 16339, May 6, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Wednesday, May 11, 1988.

CHANGES: The following item was added to the agenda.

Closed to the Public

*Enforcement Matter OS #5629.

The Staff will brief the Commission on issues related to enforcement matter OS #5629

*The Commission decided that agency business required adding this item without the usual advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 11, 1988.

[FR Doc. 88-10991 Filed 5-12-88; 1:30 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 17, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westband Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *FY90 Priorities Projects.*

The Commission will consider priority projects for fiscal year 1990.

2. *Lawn Darts: Option.*

The Commission will consider an additional regulatory option for lawn darts. The option would involve prohibiting the sale of lawn darts that did not meet certain specified criteria.

Closed to the public.

3. *Special Order/Subpoena.*

The Commission will consider issues related to a Special Order/Subpoena in enforcement matters OS #5780.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
May 11, 1988.

[FR Doc. 88-10992 Filed 5-12-88; 1:30 pm]
BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, May 11, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. Williams Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, or the application of Dean Co-operative Bank, an operating non-FDIC-insured co-operative bank located at 21 Main Street, Franklin, Massachusetts, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 12, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-10998 Filed 5-12-88; 1:31 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Wednesday, May 11, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Resolutions expressing the Board's appreciation to certain officers and/or directors of Capital Bank & Trust Co., National Association, Baton Ruge, Louisiana, the FDIC's first "bridge bank."

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,091
The Bowery Savings Bank, New York City (Manhattan), New York.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 12, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-10999 Filed 5-12-88; 1:31 pm]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, May 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 12, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-11023 Filed 5-12-88; 3:41 pm]
BILLING CODE 6210-01-M

TENNESSEE VALLEY AUTHORITY (Meeting No. 1402)

TIME AND DATE: 10 a.m. (EDT), Wednesday, May 18, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 20, 1988.

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1988 Series B Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1988 Series B Power Bonds.

A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—(1) Dry Fly Ash Collection Facility and Dry Stacking Site at Colbert Fossil Plant; (2) TVA/MCI Communications Corporation Fiber Optics Project; and (3) Grassland, Tennessee, 161-kV Substation—Provide New-Delivery Point.

B—Purchase Awards

B1. Invitation KA-454882—Indefinite Quantity Term Agreement for Ash-Disposal Parts for Any TVA Fossil Plant.

C—Power Items

C1. Additional Service Schedule under TVA's Interconnection Agreement with Central Illinois Public Service Company, Illinois Power Company, and Union Electric Company to Provide for Term Energy Transactions between TVA and the Companies.

C2. Schedule for Wholesale Standby Power and Clarification of Certain Provisions of TVA's Dispersed Power Production Guidelines.

C3. Revised Form Agreement to Cover Continued Participation of Distributors in TVA's Electrical Development Program.

C4. New Power Contract with Saturn Corporation, Spring Hill, Tennessee.

C5. Renewal Power Contract with Bolivar, Tennessee.

C6. Agreement Between the Institute of International Education and TVA whereby TVA will Conduct an Energy Conservation Seminar for Approximately 30 Program Participants from Underdeveloped Countries.

E—Real Property Transactions

E1. Filing of Condemnation Cases.

E2. Real Property Transactions Relating to TVA Reservoir Land—(1) Sale at Public Auction of Approximately 58.9 Acres of Wheeler Reservoir land, located in Morgan County, Alabama, for Industrial Purposes; (2) Abandonment of Flowage Easement Rights to Tammy Development Company, Affecting Approximately 2.57 Acres Along Nickajack Reservoir in Hamilton County, Tennessee; and (3) Grant of Permanent Easement to the State of Georgia, Department of Transportation, Affecting Approximately 0.693 Acre of Chatuge Reservoir Land in Towns County, Georgia.

F—Unclassified

F1. Supplement to Contract TV-67206A between TVA and Tennessee-Tombigbee Waterway Development Council for Cooperation in a Project to further Economic and Industrial Development in the Region.

F2. Memorandum of Agreement between TVA and the U.S. Army Engineer District, Little Rock whereby TVA will provide Technical, Engineering, and Construction Management Support Services for a Chemical Production Facility at the U.S. Army Pine Bluff Arsenal, Arkansas.

F3. Revised Bulletin Relating to the Organization of the Tennessee Valley Authority.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 11, 1988.
W.F. Willis,
General Manager.
[FR Doc. 88-10988 Filed 5-12-88; 11:28 am]
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federal register

Monday
May 16, 1988

Part II

Department of Agriculture

Forest Service

35 CFR Parts 211, 217, 228, and 251
Appeal of Decisions Concerning the National Forest System; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 217, 228, and 251

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service is proposing to replace its current administrative appeal regulations at 36 CFR 211.18 with two distinct processes for obtaining administrative review of decisions related to National Forest System management. One rule, to be codified at 36 CFR Part 251, Subpart C, would be limited to appeal of decisions arising from the issuance, approval, or administration of written instruments authorizing occupancy and use of National Forest System lands, except contracts subject to the Contract Disputes Act, and would be available only to certain applicants for and holders of such authorizations. The second rule would be codified at 36 CFR Part 217 and would offer any citizen or organization a simplified, informal process for obtaining review of decisions relating to land and resource management planning, projects, and activities. These proposals result from review of the current rule as required by E.O. 12291 and seek to respond to the findings of that review; namely, that the agency needs to streamline, simplify, and expedite the appeals process and to eliminate the longstanding confusion of purpose and procedures contained in the current appeal regulation. The agency invites interested persons to comment on the proposals.

DATE: Comments must be received in writing by July 15, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rulemaking in the Office of the Staff Assistant for Operations, National Forest System, Room 4211, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, (202) 382–9349, or Kathryn Hauser, WO Appeals and Litigation Coordinator, National Forest System, (202) 382–9346.

SUPPLEMENTARY INFORMATION:

History of Forest Service Appeals Process

The Forest Service is charged with managing the lands and resources of the National Forest System, which today includes 156 National Forests, 19 National Grasslands and other miscellaneous land holdings totalling 191 million acres of lands in 42 States, the Virgin Islands, and Puerto Rico. Under the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), these lands are managed for a variety of uses on a sustained basis to ensure a continued supply of goods and services to the American people in perpetuity.

Management decisions made by Forest Service officials in carrying out the statutory mission of the National Forest System have always been subject to a certain level of controversy and dispute depending on the type of decision made, the resources affected, and the extent to which persons believe they are affected by a decision.

For example, from the establishment of the very first national forest until the present, persons have been authorized to occupy and use the lands and resources of the National Forest System subject to the approval and oversight of Forest Service managers. The uses range from grazing livestock to conducting mining operations, from providing outfitter and guide services to National Forest visitors to obtaining ingress and egress across National Forest lands to privately owned inholdings. To obtain approval for these uses of public lands, persons have to apply for and receive written authorization or approval from the Forest Service and agree to any terms and conditions the agency feels are necessary. These authorizations sometimes give rise to disagreements between "permittees" and other authorized users and the Forest Service.

The Forest Service also issues contracts for the sale of timber from the National Forests as well as for other services. The award and administration of such contracts inevitably produces disagreements with some purchasers and contractors over contract performance.

Broader issues of National Forest resource allocation and Forest Service resource management practices also have always been a facet of National Forest management and a source of some degree of public controversy. Citizens interested in these larger issues do not share a business or legal relationship with the Forest Service as do authorized occupants, users, or contractors, but the agency has long recognized the need for citizens to have a means of questioning and objecting to agency decisions concerning National Forest management by means other than seeking remedy through the Federal courts.

There is no statutory requirement that the Forest Service provide a grievance or appeal procedure. Rather, at its own discretion and initiative, the agency, since 1906, has provided some kind of process by which grievances related to contracts and authorized uses could be heard and settled and by which the general public could challenge decisions of forest officers. In fact, for many years, the appeals process was the principal mechanism the general public had to challenge forest officer's management decisions; until passage of environmental statutes in the 1960's, citizens generally had a very limited opportunity to use the Federal courts to challenge broad public land and resource management decisions.

Appeals procedures were initially set forth in Forest Service directives to its field officers through the old "use" books and later agency manuals. In 1936, the first codified Forest Service appeal regulation was promulgated (1 FR 1092; August 15, 1936). The process was very simple and allowed any one to appeal an administrative decision of a forest officer to a superior officer. The procedures applied to those who received written authorizations to occupy and use National Forest lands or who had contracts with the agency as well as to those who had a general interest in National Forest management. In the 50 plus years since that first regulation, the Forest Service has periodically revised the appeal regulations in response to changing law and policy and to its own administrative experience under the procedures existing at the time. At various times, the agency has limited appeals to those decisions involving contractors and holders of written instruments only to later revise its rules to allow appeals by anyone. The rules have provided alternatively for wholly internal administrative review and for review and adjudication by independent boards.

For example, from 1965 to 1974, rules at 36 CFR 211.20 *et seq.* (1965) provided a grievance procedure administered by a Board of Forest Appeals, an adjudicatory body separate and independent from the Forest Service. The Board reviewed appeals through several levels and with certain interaction at times with agency decisionmakers. Appellants had ultimate resort to the Secretary for a final administrative determination. The kinds of grievances covered by these rules largely concerned contractual issues raised by parties holding a permit or other written instrument with the Forest Service. Provision was made for review by Forest Service line officers of a certain type of appeal that did not involve an appellant's contractual relationship with the agency (class three), but decisions in this category made by Forest Supervisors of District Rangers were not subject to review under the rules.

Since 1965, the appeal regulation has been revised three times. Contractual appeals are now handled pursuant to the Contract Disputes Act of 1978 by an independent Department-wide Board of Contract Appeals (7 CFR Part 24). Revisions since 1965 also reflect the significant changes in environmental law that have emerged with the attendant expansion of citizens' rights to participate in Federal decisionmaking. Of special significance was passage of the National Environmental Policy Act which required agencies to consider and document the environmental impacts and consequences of proposed actions and to involve the public in its analysis and consideration of those impacts. Passage of the comprehensive National Forest Management Act in 1976 and implementation of its land management planning requirements have further increased public participation in agency decisionmaking and strengthened public awareness of the agency's activities. In response, there has been a steady increase in the number of appeals and expansion of the types of forest officers' decisions that are appealed.

The latest revision was in 1982 after the agency conducted a major review of its regulation at 36 CFR 211.19 (1977) in compliance with Executive Order 12044, the first executive order to require review of existing regulations on a 5-year cycle. As a result of that review, the agency issued a revised appeal procedure at § 211.18 (48 FR 13425, March 31, 1983), which is the current rule.

Review of the history and development of Forest Service appeal procedures reveals certain constants:

1. From its infancy, the agency has felt the need to offer some kind of process to review decisions and has perceived such reviews as beneficial and necessary for carrying out its mission of managing the National Forest System.

2. There has always been a tension about the kinds of decisions that should be appealable, especially between the procedures that are appropriate for appealing decisions affecting persons who have a business or legal relationship with the Forest Service and procedures by which the general public could appeal forest management decisions. Despite occasional changes in the rules to limit the types of decisions that can be appealed, the net effect of rule changes over time has been a steady expansion in the types of decisions that can be appealed.

3. The agency has steadfastly sought to provide an informal, simple process but has found itself establishing increasingly complex and legalistic procedures with corresponding increases in the length of time it takes to complete an appeal.

4. The agency has alternated its appeal review approach between independent boards and internal administrative review but has always found that it was more administratively confortable with managing the review process internally.

5. As the number of appeals has steadily increased over the years, the agency's need to efficiently manage the appeals process has become an increasing challenge and concern.

Finally, review of the history shows a consistent recognition by the agency that its appeal and review procedures must be periodically revised based on both public and agency experience as well as in response to changing law and circumstance.

Review of Current Appeal Process

The current regulation, 36 CFR 211.18, provides a two-level appeal process to review decisions of forest officers concerning the National Forest System. (See side-by-side comparison, Appendix A, for additional features). Some matters are excluded from appeal. Notice of decisions which are appealable is given in writing or may be provided through publication in a newspaper of general circulation depending upon the nature of the decision and who is affected by it. The rule establishes certain requirements that parties to an appeal must meet during the course of an appeal. Included are: filing procedures and related timelines; provisions for the time extensions; instructions about the preparation, content, and timing of various documents prepared during an appeal; procedures for filing and responding to stay requests; provisions for intervention by interested parties, and use of comments from other persons or organizations; procedures for oral presentations; provisions for appealing procedural matters such as stays or dismissals; and a description of the appeal record and the nature of decisions the Reviewing Officer may make. Applying timelines available under the rule, an appeal through one level of review takes about 160 days, assuming no time extensions are granted. The second level adds another 145 days, for a total of 305 days. Seldom, however, are appeals completed within these timelines.

There have been two technical amendments to the rule in the past year: one clarifying the use of postmarks to determine timely filing and one clarifying how stay requests are processed.

In accordance with USDA Department Regulation 1512–1 and E.O. 12291, the Forest Service has undertaken a review of its current appeal regulation. The review was announced in the Semi-Annual Regulatory Agenda, published April 27, 1987 (52 FR 14144).

In undertaking the review of 36 CFR 211.18, the agency did not assume that "something was broken that needed to be fixed." Instead, the agency tried to approach the review from the standpoint of objectively assessing what works well, what problems exist, and what changes, if any, could be made to maintain and strengthen the appeal process.

A team composed of Forest Service line and staff personnel from National Forests, Regional Offices, and the Washington Office was assembled to organize and conduct a Service-wide review. Specific objectives of the review were to: (1) Identify specific agency successes and problems in managing and administering the rule; (2) identify administrative impacts, including costs, of the existing rule; (3) assess how the existing rule is or is not meeting public and agency needs; (4) determine future needs for an appeals process and ways to manage it; and (5) propose solutions to problems identified.

Review Methodology

Information was sought from a broad spectrum of sources within and outside the Forest Service; special focus was given to agency performance under the existing rule. On May 20, 1987 the Forest Service issued a press release announcing the impending review and informed the public that their comments would be solicited. Additionally, a **Federal Register** notice (52 FR 22348; June 11, 1987) was published seeking public input about how well the process meets current needs and is likely to meet future needs and what people like and dislike about it. The Forest Service also issued 928 letters inviting comments to general users of the appeals process across the country including attorneys, individual citizens, environmental groups, other government agencies, Indian tribes, industry groups, and forest

land users. The letter asked for their

Review Findings and Conclusions

TABLE 2.—COST SUMMARIES BY FISCAL YEAR, BY ADMINISTRATIVE LEVELS

land users. The letter asked for their thoughts on three questions: (1) What do you perceive to be the need for an appeal process of a forest officer's decision? (2) How well does the process work for you? (3) If the process does not meet your needs, what changes do you recommend? Two hundred and thirteen responses to either the press release, Federal Register notice, or letter were received and analyzed.

To obtain information and suggestions from within the agency, two-person teams visited three Forest Service Regions: The Pacific Northwest Region (R–6), the Southwest Region (R–3), and the Northern Region (R–1). In addition, individual appeal review team members interviewed various employees in their home Regions. Approximately 160 Forest Service employees were interviewed in person at all levels of the Agency, including Regional Foresters, Forest Supervisors, District Rangers, Regional and Forest staff specialists, Washington Office and Regional Office appeal coordinators, and attorneys from the Office of General Counsel in the Washington Office and Regional Offices. Eight National Forests were formally visited by team members: Flathead NF (Montana), Beaverhead NF (Montana), Coconino NF (Arizona), Kaibab NF (Arizona), Santa Fe NF (New Mexico), Deschutes NF (Oregon), Willamette NF (Oregon), and the Mt. Hood NF (Oregon). Additionally, written comments and statistical information were sought and received from each Forest Service Region.

In the interviews, agency employees were asked to respond to a series of questions: (1) What do you want the appeal process to accomplish for the Forest Service? (2) How is your unit organized to manage appeals? (3) What are the positive or negative impacts of the appeals process on your work? Are you a better manager because of the appeals process? (4) What impediments do you see in, or as a result of, the process? (5) Do you see a difference in how appeals are processed and managed by either functional area or administrative level within the agency?

All of the internal and external comments were analyzed by the team, a summary of which is available for public inspection in the office of the Staff Assistant for Operations, National Forest System, 14th and Independence Streets SW (Room 4211), Washington, DC. The comments fell into two major categories: Those related to management concerns (how the agency manages the process) and those proposing changes in the current rule.

Review Findings and Conclusions

Finding 1—Need for an Appeals Process. The Public generally believes there is a need for an appeals process which gives an opportunity to challenge decisions that affect individuals, organizations, and communities. Furthermore, they prefer the relatively easy accessibility to decisionmakers without legal counsel afforded by the current appeal process over recourse through judicial proceedings. Nevertheless, many members of the public believe that the appeals process is cumbersome, inconvenient, expensive, too technical, and too legalistic.

Forest Service managers also believe that there is a need for an appeals process. Generally, they view it as a useful mechanism which permits line officers to review decisions that members of the public find objectionable or that they may misunderstand. In many respects, Forest Service managers' views parallel the public sentiments that the appeals process has become too complicated.

Finding 2—Objectives of the Appeals Process. The current appeals process is a "hybrid" that mixes appeals by those having grievances arising from decisions affecting business or legal relationships with appeals by others who do not have such a relationship.

An appeals process, in its most traditional sense, is adjudicatory, providing a process by which a party who has a business or legal relationship with the agency can address grievances arising from that relationship. Whether in a judicial or administrative context, a traditional appeals process provides a means for looking at what happened, judging the merits of the situation (within the defined limits of a standard of review), and prescribing a remedy.

By and large, the Forest Service appeals process has always been broader in scope than a traditional adjudicatory procedure. Increasingly, it has become a managerial tool for testing the soundness of day-to-day decisionmaking and for testing current policy and the attendant exercise of agency discretion. For the majority of appellants, the current process is more akin to a public involvement process than to an adjudicatory process, because it permits anyone dissatisfied with a decision of a forest officer an opportunity to have that decision reviewed.

While the detail and requirements of 36 CFR 211.18 have some characteristics of adjudicatory processes, it is used less as a grievance process than as a review-of-operations process. If the appeals process is to remain the latter, it need not have the formalities of a traditional adjudicatory procedure; only 15 percent of the appeals workload involves grievances arising from a business or legal relationship with the Forest Service. If the appeals process is to be an adjudicatory process, it can be limited to those with a permit or other authorization to occupy and use National Forest lands, since the agency provides the general public other forums for influencing agency decisionmaking.

Finding 3—Workload and Associated Impacts. Actual time and resources devoted to appeals have increased dramatically in the past few years. Costs of managing the appeals process are growing rapidly each year. As land management planning and project implementation proceed, this trend is definitely on the upswing as shown in the following table.

TABLE 1.—NUMBER OF APPEALS

Fiscal year	Washington office	Servicewide
1980	225	[1]
1981	139	[1]
1982	303	[1]
1983	310	584
1984	147	439
1985	247	681
1986	413	1081
1987	335	874
1988 (midyear)	234	647

[1] No record.

While it is apparent that the number of appeals has fluctuated quite a bit, the workload has steadily increased. The fluctuating patterns result from controversial activities undertaken Servicewide in a given year or the previous one. In 1979 and 1980, for instance, it was the second Roadless Area Review and Evaluation; in 1982 and 1983, it was the Small Business Timber Sale Set Aside program; in 1985, it was the setting of fees for recreational residence permits; and in 1986 it was the beginning of approval of Forest plans mandated by the National Forest Management Act of 1976. Fewer Forest plans were approved during FY 1987 accounting, in part, for fewer appeals this past year than in FY 1986. Appeals doubled between 1985 and 1986, and about half of the increase resulted from appeals of decisions to approve Forest plans.

The process is costly as shown in the following data in Table 2:

TABLE 2.—COST SUMMARIES BY FISCAL YEAR, BY ADMINISTRATIVE LEVELS

Fiscal Year	Grand total	Administrative levels			Washington Office [1]
		Ranger District	Supervisor's Office	Regional Office	
1984	$2,781,229	$472,323	$701,524	$1,211,316	$406,066 (LMP $80,728)
1985	2,633,995	462,284	709,434	674,435	473,842 (LMP $161,451)
1986	5,298,320	706,460	2,034,208	1,907,530	650,102 (LMP $161,451)
1987 [2]	5,311,585	466,117	2,056,035	1,843,757	945,676 (LMP $511,262)
Total	16,035,129	2,127,204	5,495,201	5,937,038	2,475,686 (LMP $914,890)

[1] Figures in parentheses are the share of total Washington Office costs attributable to Land and Resource Management Plan appeals (LMP). Similar breakdowns were not available from Regional or Forest levels.
[2] Data as of 7/1/87, projected through 9/30/87.

The total $16 million dollar price tag to administer appeals (1984–1987) are direct costs only that are attributable to agency staff work.

The process is also time-consuming for all concerned. The current rule provides a duration of about 160 days to decide an appeal through one level of review (assuming there are no time extensions and/or intervention requests granted, and there are no procedural appeals), and 305 days if taken through the second level. On the average, it has taken 225 days, or 7.5 months to decide an appeal at the first level.

Finding 4—Redundancy. A case can be made that some of the reasons for having an appeals process have been legislated into obsolescence by such statutes as the National Environmental Policy Act and National Forest Management Act. Decisions that have been thoroughly analyzed, documented, and subjected to public participation under provisions of these statutes are habitually recycled through the appeals process, giving the public, as it were, redundant opportunities to object to a single decision. The issue is "how many hurdles must be cleared before management decisions may be implemented?"

Sixty percent of all appellants have been involved in some aspect of predecisional public involvement activities; and 60 percent of the time, the issues under appeal involve processes carried out pursuant to the National Environmental Policy Act and the National Forest Management Act.

Finding 5—Communications. Many appeals result from misunderstandings and communication failures between Deciding Officers and affected groups or individuals. There is a general reluctance for the parties to try to resolve problems before an appeal is filed.

Finding 6—Impacts on Projects. The agency's ability to design and implement resource management projects and activities is hampered when agency resources are siphoned from resource management to process management. For example, an appellant can, at minimal cost, increase the cost (and sometimes substantially diminish the feasibility) of a project through the time it takes the agency to complete an appeal, even though the original decision might ultimately be upheld. Where the agency has solicited bids or proposals for special uses on National Forest System lands, such as for winter sports areas, applicants can spend substantial amounts of money responding to the proposals only to incur greater expense, because of the time involved to process the appeal. The process can also be abused by using appeals of procedural rulings as a delay strategy.

Twenty-two percent of the appellants who appeal decisions to adopt Forest plans also appeal later decisions by forest officers to implement project activities permitted under these same plans. More often than not requests for stays accompany appeals of project decisions.

Finding 7—Process Management. Among the many concerns with proper functioning of the current appeals system are that the agency itself does not follow its own rules with respect to time periods and that there is too much paperwork. While supporting the need for an appeal process, the public wants one that is easier to use. Additionally, most believe the current process is biased, because it is an internal review, and that there is a double standard where timelines are concerned.

While the Forest Service does not agree that there is a serious bias problem, it recognizes that, by virtue of its being an internal review process, some citizens will always perceive bias and will further infer bias from appeal decision history. Reviewing Officers affirm about 70 percent of all appeal decisions, and reverse or remand (return to the lower level for specific action, upon which a new appeal could be based) only about 15 percent; and either dismiss (for procedural inadequacies) or close the other 15 percent when the appeal is withdrawn by the appellant, or the initial decision is withdrawn by the forest officer.

Appellants are also quick to point out that while the agency insists that appellants observe rule timelines, it does not consistently do so itself: The average time for forest officers to complete certain tasks (responsive statements, intervention and stay rulings, and final ruling on the merits) is typically longer than permitted under the rule, especially for complex appeals involving land management plans.

Summary of Review Findings

The often-voiced ideal of the appeals process has been to give the public an informal avenue for review and resolution of disputed agency decisions without the necessity of litigation. The process has served the agency and the public with varying degrees of success for many years. But viability of the appeals process has suffered as multiple use management of the National Forests continues to grow in complexity, and the magnitude and intensity of issues expands.

The process, as it has evolved over the last few years, is not the simple, quick, informal process that the agency originally intended it to be. In fact, the appeals process has become a significant generator of paperwork and a time-consuming, costly effort, trading off resources and energies that might otherwise be directed to substantive on-

the-ground land and resource management activities.

The Forest Service "appeals" process needs adjustment to better serve the public and the agency and to be compatible with the agency's public-oriented vision statement of "caring for the land and serving people." Practice under the current rule does neither as well as it might.

Options Considered

In considering the findings of the review, the Forest Service formulated a number of alternatives:

1. Retain the current appeal regulation without change.

2. Revise the current regulation to address some of the major problems discovered in the review process, such as removing delays inherent in handling procedural matters; modifying time periods; streamlining the overall process.

3. Devise a new appeal process that imposes few procedural requirements, is informal, limits paperwork only to existing documents and appellant's notice of appeal, limits participation to appellants, and requires a Deciding Officer to meet with appellants to discuss and resolve concerns.

4. Adopt a highly legalistic process compared to that of the current rule. This option, a grievance style procedure, would, for example, require appellants to meet standing requirements and post bonds to protect the public interest from nuisance-type appeals, allow no extensions of time for the agency or appellants, and require appellants to pay agency costs if appellants do not prevail.

5. Provide a two-track appeal procedure; an adjudicatory one for appeals involving written instruments, and a simplified procedure for decisions that involve agency discretion.

6. Establish an external, independent review board, members of which would be appointed by the Secretary to deal with all appealable decisions or certain classes of decisions.

7. Eliminate the appeal process altogether.

Each option was analyzed in terms of the findings of the review and the agency's objectives in having an appeal process. The conclusions were as follows:

1. While agency personnel and appellants are knowledgeable of the current rule and thus have a certain "comfort level" with its procedures, retaining the current rule without change would ignore the review findings.

2. Trying to fix the current rule would not be sufficient to address the findings and would further "hybridize" the appeals process, continuing the "split personality" of the current rule which blurs a grievance type appeal process with more a discretionary type review process.

3. A rule with few procedural requirements saves effort expended by the agency in time-consuming procedural matters. Savings in time and dollar costs to manage the appeals process could be applied to on-the-ground management of land and resources. However, those appellants who have a legal relationship with the Forest Service through a written instrument or authorization would be short-changed by a new appeal process that provides few procedural or "due process" requirements.

4. Adopting more legalistic procedures similar to those in judicial proceedings is less likely to serve the interests of appellants and the Agency. However, requiring appellants to pay a filing fee may have merit. Such suggestions have been rejected in previous appeal regulations. Filing fees are not included in the proposed rules, but are a recurring topic, so the Agency invites public comment on whether a reasonable minimum filing fee should be required.

5. On the surface, establishing an independent board to hear and rule on appeals might appear to be attractive from the standpoint of obtaining more objective, unbiased decisions. However, the history and nature of such boards is that they require highly structured, formalized rules of procedure which complicate, rather than simplify, an appeals process. Such complexity is not in the best interest of those appellants who lack the resources to hire legal representation. Moreover, such formalized processes may intensify adversarial relationships with the agency whose decisions are being reviewed and ruled on. Such a relationship is counter to the Forest Service commitment and desire to increase communication and cooperation with the public. In addition, an external board could erode the agency's statutory authority to administer its programs and to supervise, correct, or redirect operations.

6. The option of eliminating the current rule and not offering any kind of appeal process ignores the finding that the public and the agency want a process that allows for review of decisions. The agency values an administrative process, because it requires the agency to continue to work with and hear what appellants are saying and objecting to. This active listening, which is quite different from the adversarial relationships of judicial proceedings, allows the agency to correct improper decisions and operational problems. It offers the public a chance to get decisions reversed without the expense of a legal proceeding. Moreover, even though the agency provides an appeal process at its own discretion, because a process has been offered for so long, the public would likely view its elimination as a serious loss.

Based on analysis and consideration of the findings resulting from review of the current appeals process, the Forest Service concludes that the time has come to propose a significant redefinition and redirection of the appeal process. The alternative that appeared to have the most merit was that of developing a two track system (No. 5)—one for appeal of written instruments and one for review of land and resource management planning and project implementation decisions, in which the agency has substantial discretion. This approach would allow adoption of procedures appropriate to review of each type of decision and would eliminate the confusion of purpose and procedure endemic to the current rule. Moreover, this approach allows for responding to the other findings of the review related to simplifying and streamlining the process.

Proposal

The current approach of treating all decisions alike and subjecting appeals and reviews of all decisions to the same procedural requirements under 36 CFR 211.18 confuses the need to provide a grievance procedure with both the agency's need to review its own decisionmaking conduct and the agency's desire to provide full opportunity for the public to participate in and affect Forest Service planning decisions. It is clear that the agency needs to separate those purposes and devise decision review procedures that are appropriate to each. Accordingly, the agency is proposing to replace the current appeal rules with two rules, each being a separate and distinct process for challenging and obtaining review of Forest Service decisions. The distinction is based on the types of decisions at issue and the degree of agency discretion in making the decision. These factors, in turn, determine who is affected by a decision, the type of relationship that exists between the agency and appellants, and the procedures that are appropriate for obtaining review of a decision.

One rule would be limited to appeal of written decisions arising from issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands. This rule would be codified at 36 CFR Part 251—Land Uses as Subpart C. Appeals under these rules would be limited to holders of and certain applicants for authorizations who enjoy a business or legal relationship with the Forest Service based on the agency granting a privilege authorized by statute to use and occupy National Forest System lands. This process is somewhat adjudicatory in nature, as the remedy for the dispute resides within or may be interpreted from the written instrument itself or an authorizing statute or regulation. As previously noted, contractual disputes would not be subject to this rule. Those kinds of disputes would continue to be handled by the Department's Board of Contract Appeals pursuant to the Contract Disputes Act and 7 CFR Part 24.

This written instrument rule would retain many of the features of the current rule (§ 211.18) and seek to offer a fair and deliberate process for appealing and obtaining administrative review. In short, it would provide the elements of due process that are fundamental to resolving issues that arise from a business or legal relationship between the Forest Service and the appellant.

In contrast to the structured, grievance-oriented rules for decisions related to written instruments, the agency is proposing a more informal review process, to be codified at 36 CFR Part 217, for National Forest System land and resource management plan and project decisions. These proposed rules would offer anyone who objects to such decisions, a streamlined, one-level review by an officer at the next administrative level. The decisions reviewable under Part 217 arise from compliance with the National Environmental Policy Act, the National Forest Management Act, implementing regulations, policies, and procedures and represent the public's last administrative opportunity to influence the outcome of National Forest System planning and decisionmaking.

The procedures set forth in each rule have been drafted to conform to and reflect other findings of the review, namely (1) to simplify the process to make it less costly to administer and easier to use; and (2) to give greater emphasis to discussions between the Forest Service Deciding Officer and potential appellants to avoid appeals and to work cooperatively to resolve issues where possible. Accordingly, many of the feature in one rule are included in the other, where not inconsistent with the basic purpose of each rule.

It should be noted that regardless of the nature and degree of any changes to the appeals process through rulemaking, the agency recognizes that it must improve its internal management of the process itself. This will require strengthening the management review of appeals and monitoring of the process Servicewide. If these proposals are adopted, special emphasis will be given to monitoring how well Deciding Officers and Reviewing Officers meet deadlines under the new rules, and prompt action will be taken to remedy excessive delays in Forest Service processing of appeals.

Features of Proposed Rules

Part 251, Subpart C—Appeal of Decisions Related to Occupancy and Use of National Forest System Lands

The rules establishing procedures for appealing decisions related to written instruments issued or approved by the Forest Service would be codified at Part 251—Land Uses. This placement strengthens the logical tie between the primary rules that govern land use authorizations and the procedures for challenging Forest Service decisions about authorizations.

The principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 251.80 Purpose and scope. This section asserts that the purpose is to provide a fair and deliberate process for appealing and reviewing written decisions arising from the issuance, approval, and administration of written instruments that authorize the occupancy and use of National Forest System lands.

Section 251.81 Applicability and effective date. Unless those who can appeal under these rules elect to have a decision reviewed under 36 CFR Part 217, the rules at 36 CFR Part 251, Subpart C, would govern all appeals related to authorized uses of National Forest System lands. This section would allow for the continuance of appeals related to written instruments that have already been brought under the current rule 36 CFR 211.18.

Section 251.83 Parties eligible to participate. There would be only three types of parties participating under this subpart: Appellants, intervenors, and the Deciding Officer who made the decision being appealed. Appellants would be limited to a holder of a written instrument or authorization or to applicants who are applying for an authorization in response to a solicitation by the Forest Service and who either are denied the authorization or object to terms and conditions being offered. The persons allowed to intervene would be other applicants for the same authorization or holders of similar authorizations who have a direct interest and could be directly impacted by the appeal decision.

The limitations on who can appeal and intervene are essential to this proposed rule, because it is designed only to resolve issues arising from a decision to issue or approve, to deny issuance or approval, or to administer an authorization. These persons have a business or legal relationship with the Forest Service by virtue of the application for or acceptance of a written instrument and because of that relationship must have a procedure for bringing and resolving grievances.

Those who object to the use of the lands or resources to be covered by the issuance of an authorization could request review of the basic decision on the management and allocation of the area under the new procedures at 36 CFR Part 217 at the time the basic land management allocation, prescription, or project decision was made. For example, if the Forest Service wants to consider developing a winter sports site on a National Forest, that allocation must be subjected to analysis in accordance with the National Environmental Policy Act and implementing regulations, policies, and procedures in both the land and resource management plan and a later site-specific project proposal. In both circumstances, the results of that analysis would be documented in either an environmental assessment, or, more likely, an environmental impact statement, and the decision would be made and documented in a Decision Notice or a Record of Decision. It is at these points that interested persons could object to the decision under 36 CFR Part 217. If the Deciding Officer decided to establish and develop a winter sports site and the period for requesting review of that decision expired, or the decision was upheld by a Reviewing Officer, the Deciding Officer would solicit applicants to develop the site. When the Deciding Officer chose the best applicant and offered a permit, a business or legal relationship would then exist, which would not be subject to intervention by the general public through 36 CFR Part 217 or Part 251.

This distinction between the public's opportunity to object to a basic allocation decision or site-specific project implementation decision and the right of an applicant or permit holder to enter into a business or legal relationship with the Forest Service is

fundamental to the construction of the two rule process.

Section 251.84 Appealable decisions. This section lists the written decisions arising from specific types of permitted uses of National Forest System lands that can be appealed. The decisions range from approval of grazing of livestock to approvals of special use permits. The approval of plans of mining operations pursuant to 36 CFR Part 228 and 36 CFR 292.17 and 292.18 would be added to the list of appealable decisions, ending the separate abbreviated appeal procedures of 36 CFR 228.14. The new procedures to be established in Part 251 Subpart C are so similar to those now offered under § 228.14 that the agency finds it would be redundant and inefficient to retain a separate procedure for appeal decisions related to mining operating plans.

Paragraph (b) clarifies that decisions made by a forest officer who is not a line officer are considered to be decisions of the line officers. Questions on this have arisen from time to time under the existing rule and have confused some Forest Service officers and appellants as to where an appeal should be filed. This paragraph would eliminate that confusion especially in conjunction with the requirements of paragraph (c) regarding giving notice of a decision.

Paragraph (c) of this section would continue the requirement that the Deciding Officer give applicants and holders written notice of a decision; in most cases, this is a letter. The proposed rule would add a new requirement that the notice specify the name of the officer to whom an appeal may be filed and the deadline and address for filing. Equally important, the rule would require a Deciding Officer to include a statement that the Officer is willing to meet with the applicant or holder to hear and discuss any concerns or issues related to the decision. This requirement reflects the agency's desire to strengthen direct communication between forest officers and users and, in so doing, to foster a climate in which issues can be resolved without leading to an appeal. Such a statement has not been required in previous appeal rules and is proposed to emphasize and signal to Forest Service employees the importance of talking and meeting with National Forest users rather than relying principally on written communication.

Section 251.85 Decisions not appealable under this subpart. This section excludes from appeal the same decisions that are currently excluded under 36 CFR 211.18. In addition, it updates the list of excluded decisions to reflect the enforcement of Uniform Rules for Protection of Archaeological Resources at 36 CFR Part 296, which requires imposing civil penalties for violations covered by those rules, and to reflect enforcement of prohibitions and orders related to National Forest System administration at 36 CFR Part 261. In addition, as a result of the agency's experience with the devastating forest fire season of 1987, the rule would now exclude decisions related to rehabilitation of National Forest System lands resulting from natural catastrophes, if the Regional Forester or Chief finds and gives notice in the Federal Register that good cause exists for excluding such decisions from appeal. Also excluded from review under this rule would be decisions only reviewable under the new process proposed for 36 CFR Part 217.

Section 251.86 Election of appropriate review procedure. Because the agency is also proposing another decision review process at Part 217, it is possible that a decision might occasionally be appealable under Subpart C of Part 251 as well as reviewable under Part 217. For administrative efficiency, in such cases, the same appellant would not be allowed to pursue review of a decision simultaneously, or sequentially, under both processes. This section, therefore, covers that possibility, by requiring the appellant to choose the appropriate review process, and further advises that an appellant thereby forfeits all right to use the other process for that same decision. It should be noted that only a permit holder or applicant is ever faced with this choice. The need to choose the appropriate review procedure would arise only when a decision documented in a Decision Memo, Decision Notice, or Record of Decision affected an appellant's business or legal relationship with the agency.

Section 251.87 Levels of review available. This section would entitle appellants to only one level of review for decisions made by field officers in contrast to the two levels of review currently provided in 36 CFR 211.18. Limiting review to only one level responds to the findings and conclusions that the current process takes too long. The agency believes that the nature of decisions relating to written instruments are of such specificity and detail and so constrained by authorizing statute or regulation that two levels of review is normally excessive. However, the rule would permit discretionary review of appeal decisions by the next higher officer. It would require each Reviewing Officer to immediately forward an appeal decision letter to the higher officer so that officer could decide whether or not to review the lower level appeal decision. This discretion provides an internal control mechanism over appeal decisions.

As in the current rule, initial decisions by the Chief of the Forest Service would be subject to discretionary review by the Secretary of Agriculture, but a holder or applicant is not entitled to this review. This longstanding difference in treatment of appeal of initial decisions by the Chief reflects the differing scope and nature of decisions made by an Agency head. It also reflects the practical reality that automatic review of all decisions by the Chief is inconsistent with the scope of work and responsibility assigned to the Secretary of Agriculture.

Section 251.88 Filing procedures and timeliness. The procedures in this section are the same as in the current rule, except for two differences. Under the current rule, the notice of appeal is filed with the Deciding Officer. Under the proposed rule, an appellant would file an appeal with the Reviewing Officer. The filing period would remain 45 days, but the language of the proposed rule is clarified to specify that the period would end 45 days from the date *on* the written notice of the decision. The rule would make clear that it is the responsibility of the appellant to file the notice properly and by the end of the filing period. The rule would retain legible postmarks as evidence of timely filing in event of question.

Section 251.89 Extension of time. Except for time to file a notice of appeal and for discretionary reviews of appeal decisions, a Reviewing Officer has the discretion to extend the time periods under the rule at the request of appellants, intervenors, and the Deciding Officer, or to extend the time for issuing the appeal decision. These procedures are the same as in the current rule. While the agency seeks to be responsive to concerns about the length of time appeals take, it is impractical not to allow extensions of time where needed. Through strengthened management of the appeals process, the agency intends to give renewed emphasis to meeting deadlines in the rule and to avoiding extensions of time as much as possible.

Section 251.90 Notice of appeal content. In contrast to the current rule, the requirements for notice of appeal content in the proposed rule are very specific. The detailed list of information that is to be provided is necessary to inform appellants of the evidence and argument they must present in order for the Reviewing Officer to review the appealed decision. In fact, the proposed rule makes clear that appellants bear the burden of proving in their notice of appeal why a decision should be changed.

Section 251.91 Responsive statement. It is fundamental to due process that all parties be apprised of information submitted to the record and provided an opportunity to reply to the information. Therefore, the proposed rule retains the features of the current rule with regard to responsive statements.

The proposed rule requires a Deciding Officer to prepare, within 30 days of receipt of the notice of appeal, a statement responding to the facts, or issues of law or regulation alleged by an appellant. A copy must also be sent to the appellant and any intervenors, and they, in turn, may submit a reply to the responsive statement to the Reviewing Officer.

Section 251.92 Implementation and request for stay of implementation. Like the current rule, the proposed rule would allow implementation of a decision under appeal unless a stay is requested and granted. The proposed rule would permit an appellant or intervenor to request a stay at any time if the harmful effects could occur during pendency of the appeal.

This section incorporates most of the content requirements of paragraph (h) of the existing rule for requesting a stay. The proposed rule permits other parties to the appeal to reply to a stay request and requires that if they do so, they must send copies to all other parties to the appeal.

This section departs from the existing stay procedures of 36 CFR 211.18 by requiring a stay to remain in effect for the 15 days past the period for deciding whether to conduct a discretionary review of the appeal decision, unless changed or lifted by the first-level Reviewing Officer. The rule would also allow the Reviewing Officer at the discretionary level on his or her own initiative to extend a stay in whole or in part and to change or lift a stay, as well as to accept petitions to change or lift a stay. This approach is consistent with the objective of streamlining the appeals process at the discretionary level which was discussed under the comments on § 251.87.

Section 251.93 Ruling on stay requests. Under the proposed rule, the Reviewing Officer would have to rule on a stay request within 10 calendar days from receipt; the current rule § 211.18(h)(4) allows 21 days. This reduction in the time for ruling on stays is responsive to the findings of the review of the current rule that the current appeals process takes too long. The criteria the Reviewing Officer shall consider in ruling on a stay request are the same in the proposed rule as in § 211.18(h)(5), except that the additional criterion has been added to consider any information provided by the Deciding Officer or other parties to the appeal in response to the stay request. As in the current rule, the proposed rule requires the Reviewing Officer to issue a written decision on a stay request and specifies the content of the stay decision letter, depending on the decision.

Section 251.94 Duration of and changes to stay decisions. The rules in this section are basically the same as paragraph (i) of the current rule except that—consistent with the desire to streamline and expedite appeals and with a one level of appeal process—decisions to grant, deny, lift, or otherwise change a stay are not subject to further appeal and review.

Section 251.95 Intervention. Because the proposed rule is limited to those persons who have a business or business or legal relationship with the Forest Service, it is appropriate and necessary to limit the basis for intervention in an appeal under the proposed rule. Therefore, under the proposed rule, interventions would be limited to applicants for or holders of a written instrument of the same or a similar type that is the subject of the appeal and who have an interest that could be directly affected by an appeal decision. For example, where a grazing permittee appeals a decision arising from administration of a grazing permit, a holder of a grazing permit on a neighboring allotment might also be affected by the appeal decision and wish to intervene in the appeal to protect his or her interests.

Those requesting intervention would have to make written petition to intervene and bear the burden of showing in the petition how a decision on the appeal would directly affect the petitioner's interests. The Reviewing Officer would determine if a person qualified to intervene and that decision would not be subject to further appeal.

The rule would require appellants and intervenors to furnish copies of all submissions to each other and the Deciding Officer.

In contrast to the current rule, intervenors would not be able to continue an appeal if the appellant withdraws the appeal. The failure to provide such a control in the current rule has led to many cases where the intervenors get an appeal decision after an appellant withdraws. Since the intervenor would not be a party to an appeal unless the appellant had appealed, it is only logical that there be no further standing for an intervenor on issues mooted by withdrawals.

Section 251.96 Oral presentations. In contrast to the current rule, this proposed rule would clarify that the purpose of oral presentations is to restate, emphasize, or clarify information related to an appeal. The rule would also clarify that these presentations, which can be meetings in person or by phone, are informal affairs. Rules of procedure and conduct applicable to a judicial proceeding, such as rules of evidence or cross-examination of participants, are inappropriate.

Consistent with the effort to streamline and simplify the appeals process and with the basic concept of this proposed rule, only appellants could request oral presentations. However, intervenors and the Deciding Officer would be entitled to participate, and the presentation could be open to public attendance, but not participation.

A request for an oral presentation at the time of filing an appeal would automatically be granted. Requests for oral presentation later in the appeal would be considered, but the Reviewing Officer would have discretion to grant or deny the request, and that decision would be final and not subject to further appeal.

The rule would make clear that appellants and intervenors must bear any expense in attending an oral presentation.

Section 251.97 Authority of reviewing officer in conduct of appeal. This section would authorize the Reviewing Officer to establish whatever procedures are necessary to ensure orderly, expeditious, and fair conduct of an appeal. Such procedural matters would not be subject to appeal and further review. This section retains the provision of the current rule allowing a Reviewing Officer to consolidate appeals of the same decision or similar decision involving common issues of fact or law and to issue an appeal decision covering these appeals. The Reviewing Officer must give notice to all parties of a decision to consolidate multiple appeals.

The proposed rule also makes clear that the Reviewing Officer at the first level may ask for additional information from any party to an appeal, but all parties must be notified of the request and receive copies of any information supplied.

Finally, in contrast to the current rule, this section would make clear that an appeal of an initial decision by the Chief conducted by the Secretary would be subject to the same rules and

procedures applicable to all other first level appeals. This section also addresses procedures applicable to conduct of discretionary reviews.

Section 251.98 Appeal record. This section defines what constitutes the appeal record at both the first level of review and at the discretionary levels of review. In contrast to the existing rule at § 211.18, the responsibility for assembling and maintaining the appeal record would reside with the Reviewing Officer. This eliminates an occasionally expressed concern of appellants that it appears to be a conflict of interest for the Deciding Officer to maintain the record.

In the interest of expediting and streamlining the appeal process, a Reviewing Officer, who exercises the discretion to review a lower-level Reviewing Officer's appeal decision, would be limited to the record assembled at the first level and the appeal decision letter of the lower level Reviewing Officer. The rule expressly prohibits reopening the record at this discretionary review level. This prohibition does not apply to review by the Secretary of initial decisions of the Chief, since the Secretary's review would be the first and only level of review of those decisions.

Section 251.99 Appeal decision. This section of the proposed rule provides greater specificity to Reviewing Officers than the current rule on the nature of the decision to be rendered and continues the 30-day timeframe from closure of the appeal record for rendering appeal decisions. This section also would clarify that unless an appeal decision is reviewed at the next level, the Reviewing Officer's decision stands as the final administrative decision of the Department of Agriculture on the matter.

This section also includes a new provision aimed at reducing the time it takes to complete appeals and ending the uncertainty of the status of appeals when a decision is not rendered within 30 days by a Reviewing Officer at the discretionary level of review. Under the proposal, when a discretionary review of an appeal decision is not completed by the end of the 30-day period, the discretionary review is automatically terminated and the appeal decision of the lower level reviewing officer stands as the final administrative decision of the Department. The rule would also require notice to appellants in this event, bringing a much-needed management control to the appeals process. This 30-day limit on discretionary review responds directly to the public criticism that emerged during review of the existing rule; namely, that the Forest Service holds appellants and intervenors to strict compliance with timeframes but often does not itself comply with the timeframes established in the rule. A survey of appeals case workloads shows that second-level reviews (including discretionary reviews) result in the longest delays in rendering appeal decisions. Thus, this proposal to tighten the time period for issuance of discretionary appeal decisions should be an effective remedy. Since oral presentations, intervention, and reopening of the record will not be features of discretionary reviews, the 30-day period should be sufficient for completing reviews.

Section 251.100 Dismissal without decision. This section makes more explicit the various circumstances that will result in the dismissal of an appeal without a decision on the merits. There are several changes from the current dismissal rules under 36 CFR 211.18, namely:

1. The rule would now explicitly require the Reviewing Officer to give written notice of dismissal and include an explanation of why the appeal is dismissed. While this has been a standard Forest Service practice, the requirement is not in the current rule.

2. Dismissal for the reasons cited in this section is now mandatory; the discretion previously granted to the Reviewing Officer is removed. A uniform approach is required to ensure consistent rulings Servicewide by Reviewing Officers.

3. A decision to dismiss for any of the reasons cited would not be subject to further appeal or review. This limitation is consistent with the single level of review provided by the rules and also consistent with the overall objective of simplifying the procedural complexity of the appeals process where possible.

4. Withdrawal of a decision by a Deciding Officer would result in automatic dismissal of an appeal because such action moots the appeal.

Section 251.101 Resolution of issues by means other than appeal. This section states a new requirement that, whenever practicable and consistent with the public interest, Deciding Officers shall consult and meet, preferably in person, with holders of written instruments prior to issuing written decisions. The agency believes that direct communication can lead to better working relationships with holders and that, where the holders and Deciding Officer meet and discuss the issues arising from administration of the written instrument, may appeal situations can be avoided altogether.

This prior communication requirement would not apply to applicants eligible to appeal under this subpart because of the competitive nature of such applications and the possible appearance of improper conduct by the Deciding Officer, if he or she were to discuss an application with only some applicants.

The rule clarifies a point of some confusion under the existing rule, namely that the Deciding Officer has authority to discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree in facts, and explore opportunites for resolving the issue by means other than appeal. Again the emphasis is on direct communication between agency personnel and holders and on arriving at mutual agreements rather than emphasizing the adversarial approach of an appeals process.

Finally, this section retains the provision of the current rule that a Deciding Officer may withdraw a decision, in whole or in part. The ability to modify a decision is essential to the concept and emphasis in the proposed rule of trying to resolve issues even while an appeal is underway.

Section 251.102 Judicial proceedings. This section would declare and give notice to appellants of the longstanding policy that, in any filing for judicial review and relief from a decision appealable under this subpart, the Department of Agriculture will argue that such an action is premature and inappropriate unless the appellant has first sought to resolve the dispute by invoking and exhausting the appeal procedures.

Part 217—Requesting Review of National Forest Planning and Project Decisions

The rules establishing procedures for requesting review of plan and project decisions on National Forests would be codified at 36 CFR Part 217. This placement creates a logical tie between the public participation opportunities provided in Part 216, which set forth procedures for involving the public in formulation of agency directives, and Part 219, which governs land and resource management planning.

Reviewers will note that the rules proposed for Part 217 use different terminology than that in the proposed rule for written instruments. Under Part 217, there are no "appeals," "appellants," or "appeal records"; instead there are "requests for review," "requesters," and "review files." The differing terms are a conscious effort to reflect the more informal review process under Part 217 and to emphasize the fundamental distinctions between appeals under 36 CFR Part 251, Subpart C and requests to review decisions under Part 217. The proposed written instrument rule is built on the fact that there is a business or legal relationship with the Forest Service and there needs to be a procedure to decide disputes that arise from that relationship. The review process envisioned in Part 217 recognizes that requesters do not have a direct business or legal interest but are concerned with broader issues of how the Forest Service exercises its discretion in managing the National Forest System.

As previously noted, the agency views the decision review process proposed for Part 217 as the public's last administrative opportunity to influence the outcome of National Forest System planning and decisionmaking. In offering this review process, however, the Forest Service wants to make clear that it believes better resource decisions and fewer challenges of those decisions will result, if interested citizens and organizations become involved early in the planning and decisionmaking process. Therefore, the agency encourages those interested in National Forest System Management to take advantage of the opportunity to "get in on the ground floor" of planning.

Despite increased emphasis on informing the public of prospective activities and decisions, local forest officers cannot possibly know and identify all the persons or organizations that might have an interest in a particular activity or class of activity. Therefore, of necessity, those interested in National Forest management need to take some responsibility for keeping themselves informed, if they want to have a meaningful opportunity to participate in the decisionmaking process at the earliest stages. For example, all National Forests keep some kind of schedule of planned activities, and many of those schedules are published in local newspapers. Moreover, any citizen or organization can call or write a District Ranger or Forest Supervisor to inquire about upcoming activities and decisions and to request that they be notified when the scoping on the proposed project or activity begins.

The Forest Service is committed to fostering a public participation climate that allows for the open expression of ideas and that encourages the public to join with the agency in identifying and analyzing natural resource management alternatives that balance present and future resource needs and objectives. The agency believes the public interest is far better served by mutual effort to resolve differences *during* the decisionmaking process than by trying to resolve those differences *after* a decision is made.

The informal review process proposed for Part 217 reponds to the majority of those who provided comments during the review of 36 CFR 211.18, who said they wanted a process that is easier to use, takes less time, and is readily available. Therefore, exchange of documents among participants, intervention, oral presentations, and other "legalistic" features of the current rule are not proposed as a part of the Part 217 review process.

Other principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 217.1 Purpose and scope. This section asserts that the purpose of the rule is to provide an informal review process for persons interested in National Forest management to challenge certain planned or proposed actions and to have the challenge reviewed quickly by an official at the next level. The rule further asserts that the process is not adjudicatory and, therefore, establishes a minimum of procedures to guide the review process.

Section 217.2 Applicability and effective date. Unless those who can also appeal under 36 CFR Part 251, Subpart C, elect to appeal a decision under 36 CFR Part 251, Subpart C, the rules at 36 CFR Part 217 would govern all reviews related to planning and project decisions on National Forest System lands. This section would allow for the continuance of appeals that have already been brought under the current rule 36 CFR 211.18.

Section 217.3 Definitions. It should be noted that a new type of decision document, a "Decision Memo," is defined in this proposed rule. A "Decision Memo" is a concise memorandum to the files signed by the Deciding Officer that records a decision to implement an action that has been excluded from documenttion in an environmental assessment or environmental impact statement. Separate notice on this new term and procedures governing preparation and giving notice of such decisions will be published in the **Federal Register** soon as part of a larger revision of policies and procedures for compliance with the National Environmental Policy Act.

Section 217.4 Eligible participants. The current appeal rule at 36 CFR 211.18 provides for three kinds of participation: By appellants, by intevenors, and by other persons or organizaitons who submit written comments. Current requirements for appellants and intervenors are similar. However, an invervenor may enter the appeal process at any time and thus delay the process while appellants have an opportunity to review and comment on intervenors' submissions. Appellants must enter an appeal within 45 days of the date of the decision being appealed. Their material is shared with subsequent intervenors who have an opportunity to comment.

In contrast, the proposed rule makes no distinction between an appellant or an intervenor. The rule treats all interested persons or organizations equally and allows for accepting comments from others who do not wish to formally participate in the review. Forest Service employees are expressly excluded as participants, because the agency provides internal mechanisms to address employee concerns. Federal organizations are also excluded because procedures are available under 40 CFR Parts 1500–1508 for interagency resolution of issues.

Section 217.5 Obtaining notice of decisions. This section would establish a new requirement that responsible field officials publish legal notice of decisions subject to review under Part 217 in a newspaper of general circulation, except for Records of Decision, notice of which is published in the **Federal Register**. Notice of all initial decisions by the Chief would be published in the **Federal Register**. This requirement addresses a continuing problem under the current rules and complies with the intent of the National Environmental Policy Act (NEPA), the National Forest Management Act, and implementing regulations, policies, and procedures that the public is entitled to receive notice and to have an opprotunity to comment.

Section 217.6 Decisions subject to review. Nearly all agency decisionmaking concerning planning and mangement of National Forest System lands and resources is subject to the provisions of NEPA and/or the National Forest Management Act, implementing regulations, policies, and procedures. As a consequence, forest officers document their decisions in "Records of Decisions," "Decision Notices," or "Decision Memos." It is these types of decisions, and no others, that are reviewable under this subpart.

As in the proposed written instrument appeal rule, paragraph (c) clarifies that decisions signed by a forest officer who is an acting line officer or decisions made by a forest staff acting within delegated authority are considered to be decisions of the line officers. Questions on this have arisen from time to time under the existing rule and have confused some Forest Service officers

and appellants as to where an appeal should be filed.

Section 217.7 Decisions not subject to review. This section retains as excludable from review the same decisions that are currently excluded from appeal in 36 CFR 211.18. In addition, it updates the list of excluded decsions to reflect the enforcement of Uniform Rules for Protection of Archaeological Resources at 36 CFR Part 296, which requires imposing civil penalties for violations covered by those rules and to reflect enforcement of prohibitions and orders related to National Forest System administration at 36 CFR Part 261. In addition, reflecting the agency's experience with the devastating forest fire season of 1987, the rule would now exclude decisions related to rehabilitation of National Forest System lands resulting from natural catastrophes if the Regional Forester or Chief finds and gives notice in the **Federal Register** that good cause exists for excluding such decisions from review. Also excluded from review under this rule would be policies and procedures issued through regulation or the Forest Service directive system, participation in which is covered by the Adminsitrative Procedures Act and 36 CFR Part 216, respectively. This section also contains a conforming amendment excluding decisions applicable only to a holder or applicant of a written instument and thus appealable only under the new process proposed for 36 CFR Part 251, Subpart C.

Paragraph (b) would clarify that when initial project decisions are subject to review under Part 217, subsequent decisions related to implementation of the decision will not be reviewable, unless those subsequent decisions are preceded by a separate decision document. For example, a decision to offer a timber sale cannot subsequently be challenged again at the time a sale is advertised or awarded. This provision applies only to projects and activities as defined at § 217.8(b)(3). This limitation is needed to bring closure to administrative decision reviews. It also responds directly to the finding during review of the current rule that many decisions are effectively appealed several times because there is currently no limitation on appealing implementation actions. This recycling of appeals has led to long delays and interruptions in some national forest programs and has offered an opportunity for abuse of the process that was never intended.

Section 217.8 Levels of review available. This section would entitle requesters to only one level of review for decisions made by field officers, in contrast to the two levels of review curently provided in 36 CFR 211.18. Limiting review to only one level of review responds to the findings and conclusions that the current process takes too long. However, with one exception, the rule would permit discretionary review of appeal decisions by the next higher officer and would require each Reviewing Officer to immediately forward an appeal decision letter to the higher officer to enable that officer to decide whether to exercise the discretion to review the Reviewing Officer's decision. As with 36 CFR Part 251, Subpart C, it is felt that providing for discretionary review retains an important internal management control over review decisions.

The exception is that decisions to reoffer returned or defaulted timber sales made after October 30, 1986, would not be subject to discretionary review. This exception is mandated by section 320 of the appropriations act for Fiscal Year 1987 (Pub. L. 99-591) which specified that only one level of appeal be offered for these decisions.

One of the findings of the agency's review of the current rule was that the process was costly to the taxpayers. Over a 4-year period, $16 million could be attributed to agency staff work to administer the process. Reducing the appeal/review process from two levels to a one-level appeal/review, with discretion at the next level, has the potential to save at an average, a million dollars a year, as can be seen in the following chart:

TABLE 3.—WORKLOAD AND COSTS ATTRIBUTABLE TO SECOND LEVEL OF APPEAL UNDER 36 CFR 211.18

Level	Total number of all appeals	Total costs (dollars)	Percent workload 2d level appeals	Costs attributable to 2d level appeals
Fiscal year 1986				
SO	539	$2,034,206	4	$79,254
RO	735	1,907,530	17	324,409
WO	335	650,102	31	201,822
Total		4,591,840	[1] (13)	[2] 605,485
Fiscal year 1987				
SO	668	2,056,035	8	163,128
RO	799	1,843,757	42	777,654
WO	413	945,676	69	650,295
Total		4,845,468	[1] (33)	[2] 1,591,077

[1] Weighted average.
[2] Reducing the appeal/review process from two levels to a one-level appeal/review, with discretion at next level, has the potential to save these costs, average for past two fiscal years = $1,098,281.
SO—Forest Supervison Offices, RO—Regional Offices, WO—Washington Office.

As in the current rule and the proposed rule for appeal of written instruments, initial decisions by the Chief of the Forest Service would be subject to discretionary review by the Secretary of Agriculture, but a requester is not entitled to this level of review. As noted under the discussion of Part 251, this difference in treatment of appeal of initial decisions reflects the differing scope and nature of decisions made by an Agency head and also reflects the practical reality that automatic review of all decisions by the Chief is inconsistent with the scope of work and responsibility assigned to a cabinet officer.

Section 217.9 Filing procedures and timelines. The procedures in this section are the same as in the current rule, except that the request would be filed with the Reviewing Officer, not the Deciding Officer, and the 45-day period for filing would be computed from the date of publication of notice of the written decision. The rule would make clear that it is the responsibility of the appellant to file the notice properly and by the end of the filing period. The rule would retain legible postmarks as evidence of timely filing in event of question.

Section 217.10 Extension of time. Except for time to file a request for review and for discretionary review of lower level review decisions, a Reviewing Officer has the discretion to extend the time periods under the rule at the request of requesters, and the Deciding Officer, or to extend the time for issuing the appeal decision. These procedures are the same as in the current rule.

Section 217.11 Content of a request for review. In contrast to the current rule, the requirements for the contents of a request for review in the proposed rule are very specific. The detailed list of information that is to be provided is necessary to inform requesters of the evidence and argument they must present in order for the Reviewing Officer to review the challenged decision. As in the proposed written instrument rule, the proposed rule makes clear that requesters bear the burden of showing in a request for review why the decision should be changed.

Section 217.12 Requests to delay implementation of a decision. In contrast to the current rule, the proposed rule specifies that implementation of land and resource management plans (forest plans) prepared pursuant to 36 CFR Part 219 will not be delayed. This limitation is appropriate because the concept of a stay is inconsistent with the nature of plans, which are guiding documents for subsequent activities and developments. There are no actions in a forest plan per se that would be immediately implementable and thus there are no actions to be stayed. The proposed rule would permit a requester to request delay of implementation when a project or activity would be implemented during the pendency of a review. In such cases, the request would be granted unless the Reviewing Officer determines there is an urgent and compelling need to proceed with the activity.

The proposed rule departs from the current rule in that the time to rule on a delay request would be 10 days instead of 21, and the decision is not subject to further review or appeal. Additionally, the proposed rule does not contain the stringent requirements of the current rule as to the information a stay request must contain. All of these proposed changes are consistent with the intent of simplifying the process to make it less costly to administer, easier to use, and not as lengthy.

This section also adds a new provision that requires delays to remain in effect for the 15-day period for deciding whether to conduct a discretionary review of the lower level review decision and automatically extends the stay during pendency of the discretionary review. This provision thus preserves the interests of requester(s) during the additional review period.

Section 217.13 Review file. This section defines what constitutes the review file at both the first level of review and at the discretionary level of review. In contrast to the existing rule at 36 CFR 211.18, the responsibility for assembling and maintaining the review file would reside with the Reviewing Officer. This eliminates an occasionally expressed concern of appellants that it appears to be a conflict of interest for the Deciding Officer to maintain the record. In the interest of expediting and streamlining the appeal process at the discretionary review level, the second-level Reviewing Officer would be limited to the record assembled at the first level and the review decision letter of the lower level reviewing officer. The rule would expressly prohibit reopening the record at the second level.

This section also specifies how much time the Deciding Officer would have to assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer.

In contrast to the existing rule and the proposed written instrument rule, the Deciding Officer would not be required to prepare a Responsive Statement. Instead, the rule would allow the Deciding Officer, in transmitting the decision documentation, to respond briefly to issues raised in the request for review. Since review of the decision is to be based on documents prepared in the decisionmaking process, the decision should be adequately addressed in that documentation and there should be no need for long rebuttals from Deciding Officers. As part of its strengthened management of the decision review and appeal processes, the Forest Service plans to monitor Deciding Officer performance carefully on this point and to take prompt corrective action should this provision begin to result in delays because Deciding Officers are preparing lengthy responses to issues raised by requesters.

Section 217.14 Authority of reviewing officer in conduct of a review. This section would authorize the Reviewing Officer to establish whatever procedures are necessary to ensure orderly and expeditious conduct of a review. Such procedural matters would not be subject to appeal and further review. This section retains the provision of the current rule allowing a Reviewing Officer to consolidate reviews of the same decision or similar decision involving common issues of fact or law and to issue an review decision covering these reviews. The Reviewing Officer must give notice to all parties of a decision to consolidate multiple reviews.

In keeping with the informal nature of the decision review process, the rule would permit a Reviewing Officer, except at the discretionary review level, to request additional information from the requester, the Deciding Officer, or anyone who has submitted written comments. The Reviewing Officer would also have authority to discuss issues related to the review with requesters, the Deciding Officer, or those who submit comments.

As in the written instruments proposed rule, this section would make clear that, when the Secretary elects to review an initial decision of the Chief, all the rules and procedures applicable to other first-level reviews would apply to the Secretary's review.

Section 217.15 Review decision. As in the proposed written instrument rule, this section of the proposed rule provides greater specificity to Reviewing Officers than the current rule on the nature of the decision to be rendered and continues the 30-day time from closure of the review file for rendering appeal decisions, except for decisions involving review of land and resource management plan approval, amendment, or revision when the time is extended to 90 days. This section also would clarify that unless a review decision is reviewed at the next level, that decision stands as the final administrative decision of the Department of Agriculture on the matter.

In an effort to reduce the time it would take to complete a review and to end the uncertainty of the status of a review when a decision is not rendered within 30 days by a Reviewing Officer at the discretionary level of review, the rule proposes the same approach as that in the proposed written instruments rule. Under the proposal, when a discretionary review of an Reviewing Officer's decision is not completed by the end of the 30-day period, the discretionary review would automatically terminate and the decision of the lower level Reviewing

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Officer stands as the final administrative decision of the Department. The rule would also require notice to requesters in this event, bringing a much-needed management control to the process. As noted in the discussion of this feature of the written instruments proposed rule, this 30-day limit on discretionary review responds directly to the public criticism that emerged during review of the existing rule; namely, that the Forest Service holds appellants and intervenors to strict compliance with timeframes but often does not itself comply with the timeframes established in the rule. A survey of appeals case workloads shows that second-level reviews (including discretionary reviews) result in the longest delays in rendering appeal decisions. Thus, this proposal to tighten the time period for issuance of discretionary decisions should be an effective remedy.

Section 217.16 Dismissal without review and decision. This section is virtually identical to that in the proposed written instrument rule. It would made more explicit the various circumstances that will result in the dismissal of a request for review without a decision on the merits. Refer to the prior discussion of dismissal under § 251.100 for the list of changes from the current dismissal rules under 36 CFR 211.18.

Section 217.17 Resolutions of issues during review. In keeping with the stated objective of giving greater emphasis to discussions between the Forest Service Deciding Officer and persons interested in National Forest management to work cooperatively to resolve issues where possible, this section in the proposed rule authorizes the Deciding Officer to discuss the issues and try to resolve them, if possible, even during the review process. As in the written instrument proposal, the emphasis in on improving direct communication between the agency and the public on working together toward mutual agreement rather than emphasing the adversarial approach of an appeals process.

Finally, this section retains the provision of the current rule that a Deciding Officer may withdraw a decision, in whole or in part, during the review.

Section 217.18 Policy in event of judicial proceedings. This section is identifical to that in the proposed written instrument rule.

Conforming Amendments

This rulemaking also proposes several conforming amendments to rules in other parts of Chapter II affected by the procedures proposed for Parts 217 and 251. First, the current appeal regulations at 36 CFR 211.17 and 211.18 would be amended to allow for continuation of appeals brought under those rules prior to the effective date of the final rule and to exclude from appeal under those rules, new appeals of any decision issued after the effective date of the final rules. The rules at 36 CFR Part 228, Subpart A—Locatable Minerals, which have provided a separate appeal procedure for mining operating plans, would be amended to provide for appeal under 36 CFR Part 251, Subpart C, the new written instruments appeal rule.

Public Comment

The Forest Service is interested in hearing from individuals, organizations, and other public agencies about these proposed rules. To aid in analysis of comments, it would be helpful if reviewers would key their comments to specific sections. Respondents should also be aware that, in analyzing and considering comments in promulgation of the final rule, the Forest Service will give more weight to substantive comments than to simple "yes," "no," or "check-off" responses to form letter/questionnaire-type submissions. To assist reviewers in commenting on this proposed rulemaking, an abbreviated side-by-side comparison of the current rule and the two proposals is provided in Appendix A as a reference tool.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities

Environmental Impact

Based on both experience and environmental analysis, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 211

Administrative practice and procedure, National forests.

36 CFR Part 228

Environmental protection, Mines, National forests, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Add a new paragraph (o) to § 211.17 to read as follows:

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

* * * * *

(o) *Continuance of appeals.* Appeals filed under this section prior to [*Insert effective date of final rule.*] shall continue to be processed under the procedures of this section. Any decision to reoffer returned or defaulted timber sales made after [*Insert effective date of final rule.*], shall be subject to the review procedures of Part 217 of this chapter.

3. Amend paragraph (a) of § 211.18 by adding a sentence to the end of the paragraph as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(a) * * * The procedures of this section shall not apply to any request to appeal or review a decision filed after [*Insert effective date of final rule.*]

4. Add a new Part 217 to read as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

Sec.

217.1 Purpose and scope.
217.2 Applicability and effective date.
217.3 Definitions and terminology.
217.4 Eligible participants.
217.5 Obtaining notice of decisions.
217.6 Decisions subject to review.
217.7 Decisions not subject to review.
217.8 Levels of review available.
217.9 Filing procedures and timeliness.
217.10 Extension of time.
217.11 Content of a request for review.
217.12 Requests to delay implementation of a decision.
217.13 Review file.
217.14 Authority of reviewing officer in conduct of review.
217.15 Review decision.
217.16 Dismissal without review and decision.
217.17 Resolution of issues during review.
217.18 Policy in event of judicial proceedings.

Authority: 16 U.S.C. 551, 472.

§ 217.1 Purpose and scope.

(a) This subpart provides a process by which a person or organization interested in the management of the National Forest System may challenge certain planned actions prior to implementation and obtain review of the intended action by a higher level official. These rules establish who may request review of planned actions, the kind of decisions that may be challenged, the responsibilities of the participants in a decision review, and the procedures that apply.

(b) The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System decisionmaking prior to implementation of various decisions. The rules are not intended to provide an adjudication process. Accordingly, these rules establish a minimum or procedures to guide the review process. The intent of the part is to provide an expeditious, uncomplicated review of decisions by an official at the next administrative level.

§ 217.2 Applicability and effective date.

(a) The review procedures established in this part apply to all disputes of and requests to review decisions filed after [*Insert effective date of this rule.*].

(b) Requests to review decisions filed under 36 CFR 211.17 and 211.18 prior to [*Insert effective date of this rule.*] remain subject to those procedures.

§ 217.3 Definitions and terminology.

For the purposes of this part—

Deciding Officer means the Forest Service line officer who has the delegated authority and responsibility to make the decision being challenged under these rules.

Decision document means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision, a Decision Notice, or Decision Memo.

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, a project file for proposed actions categorically excluded from documentation in an environmental assessment or environmental impact statement, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

Decision Memo is a concise memorandum to the files signed by a Deciding Officer recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental assessment or environmental impact statement.

Decision Notice means the written document signed by a Deciding Officer when the decision was preceded either by preparation of an environmental assessment (40 CFR 1508.9) or by a determination of categorical exclusion (40 CFR 1508.4).

Decision review is the term used to refer to the process provided in this part by which a higher level officer reviews a decision of a subordinate officer in response to a request for review.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Record of Decision is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

Request for review is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

Requester is the term used to refer to a person or organization (or an authorized agent or representative acting on their behalf) filing a request for review under this part.

Reviewing Officer is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level review decision.

§ 217.4 Eligible participants.

(a) Any person, other than a Forest Service employee, or any non-Federal organization or entity may challenge a decision covered by this part and request a review by a Forest Service line officer at the next administrative level.

(b) Any person or organization interested in review of a decision under this part may submit written comments to the Reviewing Officer for inclusion in the review file.

§ 217.5 Obtaining notice of decisions.

For decisions subject to review under this part that are made at the Ranger District, National Forest, and Regional Office levels, the responsible Forest Service official shall publish legal notice of each decision in a newspaper of general circulation, except for decisions documented in Records of Decision, notice of which is published in the **Federal Register**. For decisions that are made by the Chief that are subject to review under this part, notice shall be published in the **Federal Register**.

§ 217.6 Decisions subject to review.

(a) Except as provided in § 217.7 of this part, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of the National Environmental Policy Act, the National Forest Management Act, implementing regulations, policies, and procedures are subject to review under this part.

(1) Only decisions documented in a Decision Memo, Decision Notice, or a Record of Decision are subject to review under this part. Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act processes made prior to release of final plans, guides, and environmental documents are not reviewable until issuance of decision documents.

(2) Forestry research and State and private forestry programs and activity decisions are subject to review under this part, if a specific decision would be carried out directly on National Forest System lands.

(b) Decisions subject to review under this part include, but are not limited to:

(1) Approval, amendment, and revision of a forest land and resource management plan prepared pursuant to 36 CFR Part 219.

(2) Approval, and amendment of a regional guide for forest planning prepared pursuant to 36 CFR 219.8.

(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, land exchanges and acquisitions, and establishment or expansion of winter sports or other special recreation sites.

(c) Decisions on any of the matters listed in this section made by an authorized subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer to whom the subordinate employee reports.

§ 217.7 Decisions not subject to review.

(a) The following decisions are not subject to review under this part:

(1) Decisions appealable to the Agriculture Board of Contract Appeals, U.S. Department of Agriculture, under 7 CFR Part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions for which the jurisdiction of another Government agency or the Comptroller General supercedes that of the Department of Agriculture.

(4) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question.

(5) Decisions appealable under separate administrative proceedings, including but not limited to, those under 36 CFR 223.117, Administration of Cooperative or Federal Sustained Yield Units; 7 CFR 21.104, Eligibility for Relocation Payment or Amount; and 4 CFR Part 21, Bid Protests.

(6) Decisions pursuant to Office of Management and Budget Circular A–76, Performance of Commercial Activities.

(7) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(8) Decisions covered by the Contract Disputes Act.

(9) Decisions involving Agency personnel matters.

(10) Decisions where relief sought is reformation of a contract or award of monetary damages.

(11) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

(12) Decisions embodied in rulemaking promulgated in accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) or in policies and procedures issued in the Forest Service Manual and handbooks (36 CFR Parts 200, 216).

(13) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or to issue order or violations of prohibitions and orders under 36 CFR Part 261.

(14) Decisions solely affecting the business relationship between the Forest Service and applicants for or holders of written instruments for occupancy and use of National Forest System lands that arise from issuance, approval, or administration of the authorization, except as provided for at 36 CFR 251.80.

(b) In addition to decisions excluded from review by paragraph (a) of this section, the Forest Service shall dismiss any request to review a subsequent implementing action that results from an initial decision for projects and activities subject to review under this part as defined at § 217.6(b)(3). For example, an initial decision to offer a timber sale is reviewable under this part; subsequent actions to advertise or award that sale are not reviewable under this part. A subsequent implementation decision that is documented in a new decision document would be subject to review under this part.

§ 217.8 Levels of review available.

(a) *Decisions made below the level of the Chief of the Forest Service.* The rules of this part entitle the public to only one level of administrative review of written decisions by Forest Service line officers below the level of the Chief. The levels of available review are as follows:

(1) If the decision is made by a district Ranger, the request for review is filed with the Forest Supervisor;

(2) If the decision is made by a Forest Supervisor, the request for review is filed with the Regional Forester;

(3) If the decision is made by a Regional Forester, the request for review is filed with the Chief of the Forest Service.

(b) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the request for review is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a request to review, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture. Procedures governing such reviews are set forth at § 217.14 of this part.

(c) *Discretionary review of review decisions.* Except for decisions to reoffer returned or defaulted timber sales made after October 30, 1986, review decisions rendered by Forest Service line officers pursuant to this part are subject to discretionary review by the officer at the next higher level.

(1) The levels of discretionary review are as follows:

(i) If the Reviewing Officer is the Forest Supervisor, the Regional Forester has discretion to review.

(ii) If the Reviewing Officer is the Regional Forester, the Chief of the Forest Service has discretion to review.

(iii) If the Reviewing Officer is Chief, the Secretary of Agriculture has discretion to review.

(2) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review.

(3) Within one day following the date of a review decision rendered by a Forest Service Reviewing Officer, that officer shall forward a copy to the next higher officer, so the superior officer has full opportunity to exercise the discretion granted in this section.

(4) The higher level officer shall have 15 days from date of receipt to decide whether or not to review, and may call for and use the review file in deciding whether or not to review the decision. If that officer takes no action by the expiration of the 15-day period, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. The requester(s) shall be notified whether or not the decision will be reviewed.

§ 217.9 Filing procedures and timeliness.

(a) *Filing procedures.* To request review of a decision under this part, a person or organization must:

(1) File a written request for review in accordance with the provisions of § 217.11 of this part with the next higher line officer;

(2) File the request for review within 45 days of the date notice of the decision was published (§217.5).

(b) *Computation of time periods.* (1) The day after a notice of decision is published (§ 217.5) is the first day of the time period for filing a review request. All other time periods applicable to this part also will be calculated to begin on the first day following an event or action related to the review.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a request for review; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(3) Simultaneously send a copy of the request for review to the Deciding Officer.

(c) *Evidence of timely filing.* It is the responsibility of the party requesting review of a decision to file the request by the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing of the request. Pursuant to § 217.14 of this part, a Reviewing Officer's decision on timely filing is not subject to review.

§ 217.10 Extension of time.

(a) *Requests for review.* The time period for filing a request for review is not extendable.

(b) *All other time periods.* Requesters, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this part unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section, a Reviewing Officer at the levels described in § 217.8(a) and (b) of this part may extend all other time periods under this part.

(1) Where good cause exists, a Reviewing Officer may extend the time for the Deciding Officer to assemble and transmit relevant decision documents. In case of extension, the Reviewing Officer shall notify the requester(s) of the extension and the new date.

(2) Except for discretionary reviews conducted pursuant to § 217.8(c) of this part, a Reviewing Officer may extend the time period of issuance of the review decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues pursuant to § 217.17 of this part.

§ 217.11 Content of a request for review.

(a) It is the responsibility of those who request review of a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a requester must file a written request with the Reviewing Officer that:

(1) Lists the name, address, and telephone number of the requester;

(2) Identifies the decision to which the requester objects;

(3) Identifies the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(4) Identifies specifically that portion of the decision or decision document to which the requester objects;

(5) States the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy;

(6) Identifies the specific change(s) in the decision that the requester seeks; and

(7) Identifies whether or not the requester has participated in public participation opportunities offered in the decisionmaking process and, if so, the extent of that participation.

§ 217.12 Requests to delay implementation of a decision.

(a) Requests to delay implementation of land and resource management plans prepared pursuant to 36 CFR Part 219 shall not be granted.

(b) Where a project or activity would be implemented before a review decision could be issued which would moot the review, the Reviewing Officer shall accept and grant written requests to delay implementation of the decision pending completion of the review, unless the Reviewing Officer determines there is an urgent, compelling need to proceed with the project.

(c) The requester must file the request to delay implementation with the Reviewing Officer, and provide a copy to the Deciding Officer.

(d) The Reviewing Officer shall rule on delay requests within 10 days of receipt of a request and shall give notice of the decision to the requester(s) and the Deciding Officer.

(e) A decision may be implemented during a review unless the Reviewing Officer has granted a delay in implementation.

(f) A Reviewing Officer's decision on a request to delay implementation of a project or activity is not subject to review at the next administrative level.

(g) When a delay in implementation is granted, it shall, at a minimum, remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.8(c)). If the higher level officer decides to review the Reviewing Officer's decision, implementation shall be delayed until a decision is issued, or until the end of the 30-day review period provided in § 217.15(c), whichever is less.

§ 217.13 Review file.

(a) It is the responsibility of the Reviewing Officer to assemble and maintain in one location a file of documents related to the decision and review.

(b) The review of decisions under this part focuses on the documentation developed by the Deciding Officer in reaching decisions. The records on which the Reviewing Officer shall conduct a decision review consists of the request for review, any written comments submitted by interested parties, the official documentation prepared by the Deciding Officer in the decisionmaking process, the Deciding Officer's letter transmitting those documents to the Reviewing Officer, and any decision-review related correspondence, including additional information requested by the Reviewing Officer pursuant to § 217.14 of this part.

(c) Upon receipt of a copy of the request for review, the Deciding Officer shall assemble the relevant decision documentation (§ 217.3) and pertinent records and transmit them to the Reviewing Officer within 21 days.

(d) In transmitting the decision documentation to the Reviewing Officer, the Deciding Officer shall indicate how and where the documentation addresses

the issues raised in the request for review. The Deciding Officer may also respond briefly to issues raised in the request for review. The Deciding Officer shall provide a copy of the transmittal letter to the requester(s).

(e) Unless the Reviewing Officer has ruled otherwise or has requested additional information pursuant to § 217.14(c) of this subpart, the review file will close upon receipt of the decision documentation from the Deciding Officer.

(f) The decision review file is open to public inspection.

(g) The rules of paragraphs (a) through (e) of this section apply only to the review file at the first level of review (§ 217.8 (a) and (b)). Where an official exercises the discretion in § 217.8(c) of this subpart to review a review decision, the discretionary review shall be made on the existing review file, the Reviewing Officer's review decision, any orders of the Reviewing Officer to extend a delay of implementation, and any petitions to change or lift a delay of implementation. The file shall not be reopened to accept additional submissions from any party to the review or from the Reviewing Officer whose review decision is being reviewed.

§ 217.14 Authority of reviewing officer in conduct of a review.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the review.

(1) In case of multiple requests for review of a decision, the Reviewing Officer may prescribe special procedures as necessary to conduct the review.

(2) The requester(s) and Deciding Officer shall receive notice of any procedural instructions or decision governing conduct of a review.

(3) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple requests for review.* The Reviewing Officer shall determine whether to issue one review decision or separate decisions in cases of multiple requests for review of the same decision. In the event of a consolidated decision, the Reviewing Officer shall give advance notice to all who have requested review of the decision.

(1) Decisions to consolidate a review decision are not subject to review by higher level officers.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may consolidate transmittal of decision documentation to the Reviewing Officer and respond to statements in multiple requests for review in one transmittal letter.

(c) *Requests for additional information.* At any time during the review, the Reviewing Officer conducting a review at the levels specified in § 217.8 (a) and (b) of this part may request additional information from a requester, the Deciding Officer, or anyone who has submitted written comments related to the review. At any level of review (§ 217.8), the Reviewing Officer may discuss issues related to review of a decision with the Deciding Officer (or first level Reviewing Officer), requesters or those who comment on a pending review, or their authorized agents or representatives, as needed to clarify information submitted or to seek resolution of the issues in question.

(d) *Conduct of review of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 217.8(b)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this part.

(e) *Conduct of other discretionary reviews.* Where a higher level officer elects to review a decision rendered by a Reviewing Officer (§ 217.8(c)), the rules of this section do not apply, except that, as provided in paragraph (c) of this section, the officer conducting the discretionary review may discuss issues related to the review with the first level Reviewing Officer, the requester(s), or those who submitted comments.

§ 217.15 Review decision.

(a) The Reviewing Officer should issue a final review decision within 30 days of receipt of decision documentation from the Deciding Officer, except that for review of land and resource management plan approval, amendment, or revision decisions, the Reviewing Officer may take 90 days to issue a decision. The Reviewing Officer shall notify the requester(s) and Deciding Officer if more time is needed and the new date. The Reviewing Officer shall send a copy of the decision to any requester, the Deciding Officer, and to others upon request.

(b) The Reviewing Officer's decision shall affirm or reverse the original decision in whole or in part. The Reviewing Officer's decision may include instructions for further action by the Deciding Officer.

(c) A review decision must be consistent with applicable law, regulations, and orders.

(d) Unless a higher level officer exercises the discretion to review a Reviewing Officer's decision as provided at § 217.8, the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this part.

(1) In the case of a discretionary review pursuant to § 217.8, the second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to a requester that the lower level decision will be reviewed.

(2) If a discretionary review decision is not issued by the end of the 30-day review period, the review is automatically terminated and the decision of the lower level Reviewing Officer stands as the final administrative decision of the Department. In such case, the requester(s) shall be notified.

§ 217.16 Dismissal without review and decision.

(a) A Reviewing Officer shall dismiss a request for review and close the review file without decision on the merits when:

(1) The request is not received within the time specified in § 217.9 of this part;

(2) The requested relief or change cannot be granted under existing law, fact, or regulation;

(3) The request for review fails to meet the minimum requirements of § 217.11 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being reviewed under another administrative proceeding;

(5) The decision is excluded from review pursuant to § 217.7 of this part;

(6) The requester(s) withdraws the request for review; or

(7) The Deciding Officer withdraws a decision.

(b) Dismissal decisions are not reviewable by the next higher officer.

§ 217.17 Resolution of issues during review.

(a) At any time during the decision review process, the Deciding Officer may discuss the issues in dispute with the requester(s) and other persons and seek resolution of the issues in dispute. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review to allow for conduct of meaningful negotiations.

(b) The Deciding Officer has the authority to withdraw the decision at issue during the review period. If the Deciding Officer decides to withdraw the decision, both the Reviewing Officer and the requester(s) shall be notified, and the Reviewing Officer shall close the review file and notify the requester(s) that the case is dismissed. A Deciding Officer's subsequent decision to reissue or modify the withdrawn decision constitutes a new decision and is subject to review under this part.

§ 217.18 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plantiff has first sought to invoke and exhaust the procedures available under this part.

PART 228—MINERALS

5. The authority citation for Part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 551), and 94 Stat. 2400.

Subpart A—Locatable Minerals

6. Revise § 228.14 to read as follows:

§ 228.14 Appeals.

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

PART 251—LAND USES

7. Add a new Subpart C to Part 251 to read as follows:

Subpart C—Appeals of Decisions Related to Occupancy and Use of National Forest System Lands

Sec.

251.80 Purpose and scope.
251.81 Applicability and effective date.
251.82 Definitions and terminology.
251.83 Parties eligible to participate in appeals.
251.84 Appealable decisions.
251.85 Decisions not appealable under this subpart.
251.86 Election of appeals process or decision review procedures.
251.87 Levels of reviews available.
251.88 Filing procedures and timelines.
251.89 Extension of time.
251.90 Notice of appeal content.
251.91 Responsive statement.
251.92 Implementation and requests for stay of implementation.
251.93 Ruling on stay requests.
251.94 Duration of and changes to stay decisions.
251.95 Intervention.
251.96 Oral presentations.
251.97 Authority of reviewing officer in conduct of appeals.
251.98 Appeal record.
251.99 Appeal decision.
251.100 Dismissal without decision.
251.101 Resolution of issues by means other than appeal.
251.102 Policy in event of judicial proceedings.

Authority: 16 U.S.C. 551, 472.

§ 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of issues arising from the issuance, approval, and administration of written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 Applicability and effective date.

(a) Except where applicants or holders elect the decision review procedures of Part 217 of this Chapter, all appeals of decisions arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands as defined at § 251.85 of this subpart shall be subject to the provisions of this subpart as of [*Insert date of effective date of this rule*].

(b) Appeals of the type covered by this subpart and filed prior to [*Insert effective date of this rule*] shall continue to be conducted under the provisions of 36 CFR 211.18.

§ 251.82 Definitions and terminology.

For the purposes of this subpart, the following terms are defined:

Administration of a written instrument or authorization to occupy and use National Forest System lands. A broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions included in written authorizations to which a holder has agreed, modification of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to decisions to grant, deny, or change a stay or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.97).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.83).

Deciding Officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupy and use National Forest System lands that is appealed under this subpart.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or of similar instrument, issued by the Forest Service that is the subject of an appeal, has an interest that could be effected by an appeal, has made a timely request to intervene in that appeal, and has been granted intervenor status by the Reviewing Officer (§ 251.95).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§ 251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§ 251.98).

Parties to an appeal. The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal filed by an appellant.

Reviewing Officer. The officer at the next administrative level above that of the Deciding Officer who conducts appeal proceedings, makes all necessary rulings regarding conduct of an appeal, and issues the appeal decision.

Written instrument or authorization. Any of those documents listed in § 251.84 of this subpart issued or approved by the Forest Service authorizing an individual, organization or other entity to occupy and use National Forest System lands and resources.

§ 251.83 Parties eligible to participate in appeals.

Only the following may participate in the appeals process provided under this subpart:

(a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, filed a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.84 of this subpart and

(1) Was denied the authorization, or

(2) Was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.

(b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.84 of this subpart who seeks relief from a written decision related to administration of that authorization.

(c) An intervenor as defined in § 251.82 of this subpart.

(d) The Deciding Officer who made the decision being appealed under this subpart.

§ 251.84 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers regarding issuance or administration of the following written instruments to occupy and use National Forest System lands:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of Title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR Part 222, Subpart A.

(4) Mining plans of operating under 36 CFR Part 228, Subpart A.

(5) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay, and other similar materials) under 36 CFR Part 228, Subpart C.

(6) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR Part 251, Subpart A.

(7) Special use authorizations issued under 36 CFR Part 251, Subpart B, except, as provided in § 251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53 (e) and (l).

(8) Land exchange agreements under 36 CFR 254.11 and decisions to proceed with land exchanges.

(9) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(10) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

(11) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR Part 296.

(12) Approval of Surface Use Plans.

(13) Decisions to consent, not to consent, to object, or not to object to the issuance of mineral leases.

(14) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR Part 292, Subpart C.

(b) Written decisions on any of the matters listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.

(c) A Deciding Officer shall give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.83 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer's willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§ 251.101). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, and the address and deadline for filing an appeal.

§ 251.85 Decisions not appealable under this subpart.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR Part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR Part 21 (Bid Protests).

(f) Decisions pursuant to Office of Management and Budget Circular A–76, Performance of Commercial Activities.

(g) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning or the National Environmental Policy Act that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR Part 217.

(m) Decisions related to rehabilitation of National Forest Systems lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR Part 261.

(o) Reaffirmation of prior decisions to terminate a special use authorization.

§ 251.86 Election of appeals process or decision review procedures.

(a) No decision can be appealed by the same person under both this subpart and Part 217 of this chapter.

(b) Should a decision be reviewable under this subpart as well as Part 217 of this chapter, a party who qualifies to bring an appeal under this subpart can elect which process to use to request review of a decision, and in so doing, the appellant thereby forfeits all right to appeal that same decision under the other review process.

§ 251.87 Levels of review available.

(a) *Decisions below the level of the Chief of the Forest Service.* The rules of this subpart entitle appellants to only one level of administrative review of written decisions by Forest Service line officers. The levels are as follows:

(1) If the decision is made by a District Ranger, the appeal is to the Forest Supervisor;

(2) If the decision is made by a Forest Supervisor, the appeal is to the Regional Forester;

(3) If the decision is made by a Regional Forester, the appeal is to the Chief of the Forest Service.

(b) *Decisions Made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15 calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided whether or not to review the decision by the expiration of the 15-day period, the appellant shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture.

(c) *Discretionary Review of Appeal Decision.* Appeal decisions rendered by Forest Service Reviewing Officers are subject to discretionary review by the superior officer at the next administrative level.

(1) The levels of discretionary review are as follows:

(i) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review the appeal decision.

(ii) If the Reviewing Officer was a Regional Forester, the Chief has discretion to review the appeal decision.

(iii) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review the appeal decision.

(2) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review.

(3) Within one day following the date an appeal decision by a Forest Service Reviewing Officer is signed, the Reviewing Officer shall forward a copy to the next higher officer so the superior officer has full opportunity to exercise the discretion granted in this section.

(4) The next higher level officer shall have 15 calendar days from date of receipt to decide whether or not to review an appeal decision and may call for or use the appeal record in deciding whether or not to review the appeal decision. If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified that the appeal decision of the Reviewing Officer stands as the final administrative review decision of the Department of Agriculture.

§ 251.88 Filing procedures and timeliness.

(a) *Filing procedures.* In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with § 251.90 of this subpart with the next higher line officer as identified in § 251.84(b).

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§ 251.84(c)); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) *Evidence of timely filing.* It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. A Reviewing Officer's decision on timely receipt is not subject to appeal or review.

(c) *Computation of time period for filing.* (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer gives written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday the filing time is extended to the end of the next Federal working day.

§ 251.89 Extension of time.

(a) *Filing of notice of appeal.* Time for filing a notice of appeal is not extendable.

(b) *All other time periods.* Appellants, Intervenors, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section, the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals filed in accordance with § 251.87(a) and (b) of this subpart, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions conducted pursuant to § 251.87(c) of this subpart, a Reviewing Officer may extend the time period for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues pursuant to § 251.101 of this subpart.

§ 251.90 Notice of appeal content.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a lower level officer should be reversed or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant's name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written instrument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific reference to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation;

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include in the notice of appeal a request for oral presentation (§ 251.96) or a request for stay of implementation of the decision pending decision on the appeal (§ 251.93).

§ 251.91 Responsive statement.

(a) *Content.* A responsive statement contains the Deciding Officer's response to the specific facts or issues of law or regulation, and requested relief set forth by the appellant in the notice of appeal.

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal.

(c) *Replies.* Within 20 days of the postmarked date of the responsive statement, the appellant(s) and any intervenor(s) may file a written reply to the responsive statement with the Reviewing Officer. Appellants and intervenors must send a copy of any reply to a responsive statement to all parties to the appeal, including the Deciding Officer.

§ 251.92 Implementation and request for stay of implementation.

(a) A decision may be implemented during an appeal unless the Reviewing Officer grants a stay.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragaph (c)(3) of this section would occur during the pendency of the appeal.

(c) To request a stay of decision, an appellant or inervenor must:

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful or decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Rewiewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

§ 251.93 Ruling on stay requests.

(a) *Timeframe.* The Reviewing Officer may rule on a stay request at any time but must rule no later than 10 calendar days from receipt.

(b) *Denial where implementation is not imminent.* The Reviewing Officer may deny any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.

(c) *Criteria to consider.* In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to § 251.92(c) of this subpart including the validity of any claim of adverse effect on the requester;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(c) *Notice of Decision on a Stay Request.* A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

§ 251.94 Duration of and changes to stay decisions.

(a) *Duration.* A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.87(c)), unless changed by the Reviewing Officer in accordance with paragraph (b) of this section. In conducting a discretionary review of an appeal decision pursuant to § 251.87(c) of this subpart, a Reviewing Officer may extend the stay, in whole or in part, during pendency of the discretionary review.

(b) *Change in a Stay.* A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue a written notice to all parties to the appeal explaining the reason for making the changes and setting forth any terms or conditions that apply to the change.

(c) *Petitions to Change a Stay.* An appellant or intervenor may also petition a Reviewing Officer to change or lift a stay at any time during the pendency of a stay. Such petitions must be in writing, must explain how circumstances have changed since the stay was imposed, and must state why the change in the stay is being requested. The petitioner must send a copy of the petition to all parties to the appeal.

(d) *Appeal of Stay Decision or Changes in Stay.* A Reviewing Officer's decision to grant, deny, lift or otherwise change a stay is not subject to further appeal and review.

§ 251.95 Intervention.

(a) A request to intervene in an appeal may be made at any time prior to the closing of the appeal record at the first level of appeal (§ 251.87(a)). Requests to intervene in an appeal at the discretionary review level (§ 251.87(c)) shall be denied.

(b) To request intervention in an appeal under this subpart, a party, at a minimum, must:

(1) Submit a written petition to intervene to the Reviewing Officer;

(2) Be, as defined at § 251.83 of this subpart, an applicant for or party to a written instrument issued by the Forest Service that is the subject of or affected by the appeal and have an interest that could be directly affected by a decision on the appeal, and

(3) Show in the request for intervention, how the decision on the appeal would directly affect petitioner's interests.

(c) The Reviewing Officer determines whether a party requesting intervention meets the requirements of paragraph (a) of this section. In granting intervention, the Reviewing Officer must give notice to all other parties to the appeal.

(d) A grant or denial of intervention is not subject to appeal to a higher level.

(e) Appellants and intervenors must concurrently furnish copies of all submissions to each other as well as the Deciding Officer. Failure to provide each other copies may result in removal of a submission from the appeal record. At the discretion of the Reviewing Officer, appellants may be given additional time to review and comment on initial submissions by intervenors.

(f) An intervenor cannot continue an appeal if the appellant withdraws the appeal.

§ 251.96 Oral presentations.

(a) *Purpose.* An oral presentation provides an additional opportunity for an appellant, and other parties to an appeal, to present their viewpoints to the Reviewing Officer. The purpose is to restate, emphasize, and/or clarify information related to an appeal. Oral presentations are to be conducted in an informal manner and shall not be subject to formal rules of procedure such as those applicable to judicial proceedings.

(b) *Requests.* Only an appellant may request and be granted an oral presentation. An appellant may request an oral presentation at any time prior to closing of the appeal record (§ 251.98). A Reviewing Officer shall automatically grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) *Participation.* At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the conference, and how the conference will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) *Limitation.* Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

§ 251.97 Authority of reviewing officer in conduct of appeals.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such procedural orders as deemed appropriate to ensure orderly, expeditious, and fair conduct of an appeal.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) All parties to an appeal shall receive notice of any orders or decisions on the conduct of the appeal.

(3) Orders and determinations governing the conduct of an appeal are not subject to appeal and further review.

(b) *Consolidation of appeals.* A Reviewing Officer may consolidate multiple appeals of the same decision, or of similar decisions involving common issues of fact or law and issue one appeal decision. In such case, the Reviewing Officer shall give notice to all parties to multiple appeals.

(1) A decision to consolidate appeals is not subject to appeal and further review.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(c) *Requests for additional information.* Except in discretionary reviews conducted pursuant to § 251.87(c) of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal. The Reviewing Officer shall notify all parties of the request or information from other sources, provide all parties an opportunity to comment, and extend time periods if necessary.

(d) *Conduct of appeals of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 251.87(b)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this subpart.

(e) *Conduct of other discretionary reviews.* Where a higher level officer elects to review an appeal decision rendered by a Reviewing Officer (§ 251.87(c)), the rules of this section do not apply. Stays may be extended or changed in accordance with the provisions of § 251.94. As provided in § 251.95 and § 251.96 of this subpart, oral presentations and intervention requests at this level of review shall be denied.

§ 251.98 Appeal record.

(a) The following rules apply only to the appeal record for appeals at the first level (§ 251.87 (a), (b) of this subpart):

(1) It is the responsibility of the Reviewing Officer to assemble and maintain in one location the documents related to the appeal.

(2) The record consists of the documents filed with the Reviewing Officer including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(3) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(4) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(5) The appeal record is open to public inspection.

(b) Where an official exercises the discretion in § 251.87(c) of this subpart to review an appeal decision, the discretionary review shall be made on the existing appeal record, the Reviewing Officer's appeal decision, any orders of the Reviewing Officer to extend a stay, and any petitions to change or lift a stay. The record shall not be reopened to accept additional submissions from any party to the appeal or from the Reviewing Officer whose appeal decision is being reviewed.

§ 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and existing law, regulation, orders, policy and procedure.

(b) The Reviewing Officer shall affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of review, the Reviewing Officer should make and issue an appeal decision within 30 days of the date the record is closed. The Reviewing Officer must notify the parties to the appeal if more time is needed.

(d) Unless the next higher officer exercises the discretion to review an appeal decision provided in § 251.87 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or Part 217 of this chapter.

(1) In the case of a discretionary review pursuant to this § 251.87, the second level Reviewing Officer shall

conclude the review within 30 days of

conclude the review within 30 days of the date of notice issued to an appellant that the lower level decision will be reviewed.

(2) If a discretionary review decision is not issued by the end of the 30-day review period, the review is automatically terminated and the decision of the lower level Reviewing Officer stands as the final administrative decision of the Department. In such case, appellants, intervenors, and the lower level Reviewing Officer shall be notified.

(e) The Reviewing Officer shall provide a copy of the decision to all appellants, intervenors, the Deciding Officer, and in the case of discretionary review, the lower level Reviewing Officer.

§ 251.100 Dismissal without decision.

(a) The Reviewing Officer shall dismiss an appeal and close the record without a decision on the merits when:

(1) The appellant is not eligible to appeal a decision under this subpart.

(2) Appellant's notice of appeal is not filed within the required time period, or the notice of appeal fails to meet the minimum requirements of § 251.90 of this subpart to such an extent that the Reviewing Officer lacks adequate information on which to base a decision.

(3) In cases where there is only one appellant, the appellant withdraws the appeal.

(4) The requested relief cannot be granted under existing law, fact, or regulation;

(5) The appeal of a decision is excluded from appeal under this subpart;

(6) The Deciding Officer has withdrawn the decision under appeal.

(7) A request for review of the same decision has been filed by the same person under Part 217 of this Chapter.

(b) The Reviewing Officer shall give written notice of dismissal that includes an explanation of why the appeal is dismissed.

(c) A decision to dismiss an appeal is not subject to further appeal and review.

§ 251.101 Resolution of issues by means other than appeal.

(a) Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or less preferably by phone, with holders of written instruments prior to issuing written decisions related to administration of a written authorization. The purpose of such meetings is to discuss any issues or concerns related to the authorized use and to reach a common understanding and agreement where possible prior to issuance of a written decision.

(b) When decisions are appealed, the Deciding officer may discuss the appeal with the appellant(s) and intervenors together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decison on the appeal. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review to allow for conduct of meaningful negotiations.

(c) The Deciding Officer has the authority to withdrawn a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all parties to the appeal and the Reviewing Officer must receive written notice.

§ 251.102 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of and relief from a decision appealable under this subpart is premature and inappropriate, unless the appellant has first sought to resolve the dispute by invoking and exhausting the procedures of this subpart.

Date: March 21, 1988.

James C. Overbay,

Deputy Chief.

BILLING CODE 3410-11-M

APPENDIX A
COMPARATIVE REVIEW (BY SECTION)
CURRENT RULE 36 CFR 211.18, AND
PROPOSED RULES 36 CFR 251 SUBPART C AND 36 CFR 217

Note: This appendix is for comparative purposes only. It will not appear in the Code of Federal Regulation.

An appeals process, in its most traditional sense, is adjudicatory, by which a party who has a legal right and who believes the right was violated, chooses a process to address the grievance. During an administrative appeal, the agency looks at what happened and judges the rightness or wrongness and prescribes a remedy.

The Forest Service appeal process has from time-to-time been limited to grievance procedures, but over time the process has become broader in scope. While 36 CFR 211.18 has some trappings of an adjudicatory process, it is used less as a grievance process (15%) than as a review-of-operations process (85%).

The recommendation, therefore, is for a 2-rule dispute resolution process, distinguished by the types of decisions at issue and the degree of agency discretion in making the decision. One rule would be for decisions relating to land and resource management plans, projects, and activities conducted in compliance with the National Environmental Policy Act (36 CFR 217); the other for decisions arising from the issuance or administration of written authorizations for the occupancy and use of National Forest System lands (36 CFR 251, Subpart C).

Basic Principles Underlying 36 CFR Part 251, Subpart C	Basic Principles Underlying 36 CFR, Part 217
Subject matter involves an authorization which conveys or involves a legal relationship between an instrument holder and the Forest Service under a law or statute; origin is in the Constitution or a statute or regulation. Process is somewhat adjudicatory and has procedural guarantees for all parties.	Subject matter involves decisions wholly within the discretion of the agency to make and which do not involve a legal relationship between the agency and the aggrieved party. Process provides a means to protest decision and is informal with minimum of procedural requirements.
	Public has a right to receive notice and to have an opportunity to comment on proposed action.
Dispute is usually about a past action. Facts exist about the authorized occupancy or use at time decision made.	Dispute is about a future action authorized by the decision on which review is requested.
Remedy for dispute resides within or may be interpreted from the written instrument involved, statute, or regulation.	Remedy for dispute is to perform the "action" differently or not at all and lies wholly within the agency's discretion to accomplish.
Since written instrument can already be in effect at time of appeal, stay procedures are essential.	Since action to be taken under the decision is in the future, stay of decision may or may not be essential.

Comparative Analysis of 36 CFR 211.18/ 36 CFR 251, Subpart C/36 CFR 217

Current Rule 36 CFR 211.18	Proposed Process for Appeal of Written Instrument Decisions, 36 CFR Part 251, Subpart C	Proposed Decision Review Process, 36 CFR Part 217
What is Appealable and What are the Exclusions?		
(a) Decisions of Forest Officers unless excluded in (b)(1)-(11)	{251.84;.85 Decisions affecting a written instrument, including certain applications; basically excludes same decisions as current rule	.{217.6;.7 Limited to actions arising from NEPA compliance, i.e., decisions recorded in Records of Decision, Decision Notices, Decision Memos; basically excludes same decisions as current rule
Definitions		
None provided	{251.82 Special terms defined	{217.3 Special terms defined
Who May Appeal?		
(a)(1-2) Anyone who objects to a forest officer's decision	{251.83 Holders of written instruments and certain applicants	{217.4 Any person or organization who objects to a decision, except Forest Service employees or Federal agencies
How is Notice Given?		
(a)(2) Written notice to instrument holders; published notices	{251.84 Written notice of decisions; notice specifies Reviewing Officer address to which appeal must be filed and date for filing	{217.5 Notice of decisions published in newspaper or Federal Register
Provision for Conflict Resolution (Negotiation)		
No provision, but alluded to in agency directives (FSM 1571.02 and 1571.03)	{251.84;.90;.101 Decision notice must include invitation to meet and discuss; notice of appeal should state if appellant has met with Deciding Officer to resolve; Reviewing Officer may stop clock to allow negotiation; Deciding Officer may meet w/parties during appeal	{217.17 Authorizes Deciding Officer to resolve dispute while review is in progress

Filing an Appeal and Extensions		
(c) (d) File w/i 45 days w/Deciding Officer, supporting documents filing extendable; Reviewing Officer may give extensions except NOA	{251.88 File Notice of Appeal (NOA) in 45 days w/Reviewing & Deciding Officer; supporting documents filed with NOA; no extensions for filing NOA	{217.9 Request for decision review must be filed 45 days from date notice of decision is published; supporting documents filed with request; no extensions
Statement of Reasons		
(c) Required w/in 45 days of filing appeal, unless Reviewing Officer extends	{251.90 No separate statement of reasons required or allowed; all information is in Notice of Appeal	{217.11 All supporting information is required in the request for review; no separate statement of reasons allowed
Responsive Statement		
(g) Required w/in 30 days after Statement of Reasons received from appellant	{251.91 Due to Reviewing Officer in 30 days unless extension granted; copy to all parties	{217.13 None required; Deciding Officer describes how existing documents respond to requester's issues; 21 days to forward; may briefly respond to issues; agency plans to monitor performance closely
Levels of Appeal		
(f) 2 levels on initial decisions; procedural levels cannot exceed levels of review available for appeal of initial decision	{251.87 1 level; permits discretionary review by next higher level officer; 15 days to decide; if reviewed, 30-day limit for decision	{ 217.8 1 level of review; permits discretionary review by next higher level officer; 15 days to decide; if review, 30-day limit for decision
Intervention		
(l) Anyone with an immediate interest; same rights as appellants; may intervene at any time; can carry appeal forward	{251.95 Limited to like holders or applicants only; cannot continue appeal if appellant withdraws; not available for discretionary level	{217.4 No intervention; interested persons limited to filing written comments

Stays		
(h) Request any time to Reviewing Officer; Reviewing Officer rules in 21 days; requests are detailed and must be site-specific; Reviewing Officer may change decision; stay decisions appealable; decisions may be implemented immediately if stay not requested/granted	{251.92;.93;.94 Similar to current rule except must rule in 10 days; not subject to discretionary review by higher level; stay remains in effect through 15-day period for deciding on discretionary review; can be extended or revised if discretionary review undertaken	{217.12 Called delay of implementation; no delay for forest plans; if project implementation imminent, will be delayed upon request; if project not scheduled to begin until after review is completed, will not be delayed; if granted, remains in effect through 15-day period for deciding on discretionary review and 30-day discretionary review period, if undertaken
Oral Presentations		
(m) Request due 45 days from decision; Reviewing Officer sets procedures; parties can add summary to record afterwards	{251.96 Only appellant may request; automatic if requested at time of appeal, discretionary if requested later; all appellants, intervenors, and Deciding Officer may participate; appellant(s) & intervenors must bear any expense of participation; not available at discretionary level	Not applicable
Timeliness		
(c) 1st level = 45 days; 2nd level = 30 days; USPS postmark precedential; timeliness decided by Reviewing Officer; timeliness decisions appealable	{251.88 Appeal must be filed within 45 days; postmark precedential; timeliness decisions not appealable	{217.9 Similar to appeals of written instruments
Procedural Matters Rulings		
(o) Decisions on stays and dismissals are appealable, if level available	{251.94;.100 No appeals of procedural rulings (stays or dismissals)	{217.12;.16 No further review of procedural rulings allowed
Information Gathering by Deciding or Reviewing Officer		
(q) Reviewing Officer may suspend process and request additional information if record considered inadequate to issue a decision	{251.97;.101 Allows Reviewing Officer to request additional information except at discretionary level; Deciding Officer may discuss appeal with appellants and intervenors--without explicit obligation to document	{217.14;.17 Allows Reviewing Officer to request additional information except at discretionary level; either Officer may consult jointly or separately w/anyone to gain information or discuss issues during review

20-Day Comment Period on Responsive Statement		
(g) Parties may comment on Deciding Officer's responsive statement; extensions may be granted; filed w/Deciding Officer	{251.91 Same as current rule except filed w/Reviewing Officer w/copy to Deciding Officer	Not applicable
Deciding Officer Authority		
Implicit in several subsections	{251.101 More explicit than current rule; permits Deciding Officer to withdraw decision; can discuss appeal w/appellants & intervenors and negotiate	{217.17 Similar to written instruments
Reviewing Officer Authority in Conduct of Appeal/Review		
Implicit in several subsections	{251.97 More explicit than current rule; Reviewing Officer may issue procedural orders, stop clock for negotiation, request more information; makes explicit that if the Secretary reviews an initial decision of the Chief, that review will be subject to rules applicable to other first-level appeals; limits authority of Reviewing Officer at the discretionary level	{217.14;.15 Similar to written instruments
Consolidation of Appeals		
(n) Reviewing Officer may consolidate multiple appeals of same decision and permit Deciding Officer to prepare one responsive statement	{251.97 Same as current rule	{217.14 Similar to current rule
Continuations		
(s) Allowed continuation of appeals already begun under former rule	{251.81 Allows continuation of appeals already begun under current rule	{217.2 Same as written instruments
Appeal Record		
(p) Defined as to content; requires closure; assembled by Deciding Officer	{251.98 Similar to current rule; assembled by Reviewing Officer	{217.13 Called review file; contents simpler because emphasis is on documentation existing at time of initial decision; assembled by Reviewing Officer

Appeal Decision (q) Based only on closed record; due in 30 days from closure date; notify parties if more time needed	{251.99 Similar to current rule; may affirm, reverse or modify the decision; automatic termination of discretionary review if decision not rendered in 30 days	{217.15 Called "review decision"; 90 days if review is of the approval of a LMP; 30 days on all others; otherwise similar to written instruments; automatic termination of discretionary review if decision not rendered in 30 days
Standard of Review No provision but appeals handbook (FSH 1509.12) states "correctness" as standard	{251.99 No standard; appeal decision must include the reasons for the decision	{217.15 Same as under appeals of written instruments
Suspensions (q) Limits to suspending for further information if record inadequate; FSM 1509.12 limits suspension to acquiring existing information	{251.97;.101 Reviewing Officer may extend time periods as needed to acquire information or allow for conduct of negotiations at first level only; specific term suspension not utilized	{217.17 Similar to written instruments

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federal register

Monday
May 16, 1988

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000 et al.
Oil and Gas Leasing, Geothermal Resources Leasing; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3040, 3100, 3130, 3150, 3160, 3180, 3200, 3210, 3220, 3240, 3250, and 3260

[AA-620-88-4111-01; Circular No. 2608]

Oil and Gas Leasing, Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes changes to existing regulations that will clarify procedures in the administration of the oil and gas leasing program on which there have been questions since the publication of the revised regulations for 43 CFR Groups 3000 and 3100 in the **Federal Register** of July 22, 1983. This final rulemaking also makes changes in the regulations in 43 CFR Group 3200.

Proposed changes concerning the noncompetitive and competitive leasing provisions in Subparts 3110, 3111, 3112, and 3120 that were published in the **Federal Register** as proposed rulemaking on June 12, 1987 (52 FR 22592) have been removed in their entirety in this final rulemaking. Those proposed changes were made obsolete by the enactment on December 22, 1987, of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, hereinafter referred to as the Reform Act. A proposed rulemaking published on March 21, 1988, in the **Federal Register** (53 FR 9214) to implement the provisions of the Reform Act contains the revisions proposed to these subparts and changes to other subparts, including Subparts 3102, 3103, 3104, 3106, and 3108. Numerous provisions and references in the June 12, 1987, proposed rulemaking concerning Subpart 3112, or sections therein, have been deleted in this final rulemaking because the specific provisions are no longer pertinent. Changes that are made in this final rulemaking include clarification of the definitions of lessee, operating rights owner (sublessee), and operator and the responsibilities of each concerning lease rights, obligations, and operations on leased lands, including bonding obligations and responsibilities. This final rulemaking also clarifies procedures for approval of lease transfers of record title and operating rights (subleases). It specifies that approval by the Bureau of Land Management is for administrative purposes only and does not warrant that either party to the transfer holds legal or equitable title to the lease. This rulemaking has provisions relating to mass transfers, that is, numerous lease transfers from a single entity to another. In addition, the final rulemaking provides that a request for approval of a voluntary termination of a communitization or unit agreement or the expiration of an agreement without satisfaction of a public interest requirement shall cause the agreement to be invalid from the beginning.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190, or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Groups 3000, 3100, and 3200 was published in the **Federal Register** on June 12, 1987 (52 FR 22592), with a 60-day comment period. During the comment period, comments were received from 35 sources: 14 from business interests, primarily related to the oil industry; 4 from attorneys; 3 from associations; and 14 from Federal agencies. Generally, the comments expressed the view that the changes made by the proposed rulemaking clarify the existing regulations and will be helpful. In addition, there were comments on many of the sections of the proposed rulemaking, some opposing certain provisions and recommending changes. The comments and the action taken on them are discussed in this preamble.

One comment questioned the need for two different authority provisions in each part of the proposed rulemaking. The regulations of the Office of the Federal Register require that an "authority citation" be included at the beginning of each part. The authority section is included in certain parts because it makes the part complete, and in other parts there are special statutory provisions that need to be fully explained in the authority section. Finally, the comment questioned the need to repeat the full text of the authority citation when there is no change in its language. Again, the regulations of the Office of the Federal Register require that the full text of the authority citation be repeated in both the proposed and final rulemaking, even if there is no change in the text of the citation.

43 CFR Part 3000

Section 3000.0-5 Definitions.

Several comments were submitted on the changes made by the proposed rulemaking in the definitions of the terms "party in interest" and "interest." Two of the comments expressed the view that the proposed changes in the definition of these terms caused confusion. The cross-reference to Subpart 3112 in the definition of "party in interest" has been removed and the language in the definition of "interest" in the proposed rulemaking relating to former Subpart 3112 has been removed because that subpart has been removed, the Reform Act having made obsolete the need to delineate differences in the oil and gas leasing methods used by the Department of the Interior. The amended definition of the term "interest" in the final rulemaking addresses only those aspects that do not relate to former Subpart 3112.

In response to several comments on the proposed rulemaking that expressed concern about the expansion of the definition of the term "interest," the final rulemaking has deleted the phrase "fiduciary obligations, security interests." A review of the definition of this term as it appeared in the proposed rulemaking showed that the language of the proposed rulemaking could be interpreted more broadly than was intended. The objective is to identify those holding and controlling interests in oil and gas leases in order to determine whether the acreage limitations and other requirements of the Mineral Leasing Act are being met. It is not the intent to include in the definition of the term "interest" any debt of an entity that may be satisfied by income received from a lease, if that debt does not involve the potential acquisition of the lease by the lender.

One of the comments raised the issue of publicly traded limited partnerships, suggesting that the final rulemaking revise the definition of the term "interest" specifically to exclude unit holders of such partnerships. The final rulemaking has not adopted this suggested change in § 3000.0-5(l), as discussed under section 3102 below.

One of the comments on § 3000.0-5 expressed concern that the changes made by the proposed rulemaking would return the Bureau of Land Management to the earlier requirement that all "parties in interest" be identified in an over-the-counter offer to lease, as well as in all assignments, transfers, and competitive bids. The comment apparently misunderstood the intent on this issue. There is no intention to expand the information relating to "interest" presently required in a lease offer or an assignment, transfer, or competitive bid. The information is not needed by the Bureau of Land Management unless its examination of the lease instrument or other lease-related document indicates that there may be a problem. At that point, the Bureau can request any information it needs to ascertain the propriety of the lease action. Where necessary for consistency, the final rulemaking has adopted changes in § 3200.0-5, which are discussed above in the comments on "interest."

Section 3000.8 Management of Federal minerals from reserved mineral estates.

Several comments were received on this section of the proposed rulemaking. Generally, those comments questioned why this section was not limited in its application to oil and gas. The reference to groups 3000 and 3100, groups covering oil and gas activities, limits the application of this section to those minerals. Therefore, the final rulemaking has not adopted a specific reference to oil and gas because it is unnecessary, nor has it adopted a specific reference to geothermal resources in § 3200.2.

Section 3100.0-3 Authority.

Several comments on this section of the proposed rulemaking objected to the prohibition of leasing of National Park System lands on the basis that leases on such lands could contain stipulations that would protect the lands and resources. These comments have not been accepted because it is a policy of the Department of the Interior, and in many cases a matter of law, that mineral leasing will not be allowed on National Park System lands unless there is specific statutory authority for such leasing.

Section 3100.0-5 Definitions.

Several comments were received on the definition of the term "operator" as it appeared in the proposed rulemaking. The comments suggested that the definition needed to be clarified to set forth what constitutes an operator. Some of the comments raised questions about the use of the phrase "designated operator" in the definition in the proposed rulemaking and what appears to be an attempt to distinguish between an operator, a designated operator, or an official Designation of Operator filed with the Bureau of Land Management, and their respective responsibilities if they do not hold operating rights or an interest in a lease. The final rulemaking has revised the definition of the term "operator" to mean any person or entity who states in writing to the Bureau of Land Management that it is responsible under the terms and conditions of the lease for conducting operations on a lease or a portion thereof. It eliminates the definition of and all reference to "designated operator." In addition, the final rulemaking adds a definition of the term "operating rights owner" to clarify the use of this term when such rights are transferred by sublease. For consistency, the final rulemaking has included this change in §§ 3160.0-5, 3200.0-5, and 3260.0-5, as well as in numerous sections throughout Parts 3160 and 3260.

Section 3100.4-3 Option statements.

Two comments were received on the changes made to this section by the proposed rulemaking. One comment objected to the removal of paragraphs (a) through (e) because the information specified in those paragraphs is required by the Mineral Leasing Act of 1920 (30 U.S.C. 184(d)(2)). After reviewing the comments, it was agreed that the final rulemaking needed to be changed to retain language clarifying the information that shall be included in an option statement. The final rulemaking has moved one of the requirements of an option statement to § 3100.4-1 and revised § 3100.4-3 by dividing the opening paragraph into 2 parts and adding a new paragraph (b) requiring that the semiannual statement contain the number of acres covered by each option and the total acreage of all options held in each State, in addition to any changes to the option statements submitted in accordance with § 3100.4-1(b).

Section 3101.1-2 Surface use rights.

Numerous comments were received on this section of the proposed rulemaking, which was intended to clarify the authority of the Bureau of Land Management to use the terms and conditions of the standard lease form to control site-specific environmental impacts on leaseholds, as opposed to lease-specific protective measures addressed in lease stipulations to mitigate impacts to specific resource values identified on the leased lands. The standard lease form authorizes the Bureau to require "reasonable measures" to the extent such measures would be consistent with the lease rights granted a lessee. However, certain measures considered reasonable and consistent with lease rights by the Bureau may not be viewed the same way by a lessee. To resolve the uncertainty which has existed concerning the Bureau's authority within the terms and conditions of the standard lease form to control site-specific environmental impacts, the proposed rulemaking was intended to establish the measures over which the Bureau has clear authority.

Many of the comments on this section of the proposed rulemaking expressed concern over the implications of defining the term "reasonable," indicating that lessees would be deprived of the opportunity to challenge the Bureau of Land Management's requirements. Some of the comments expressed the view that the measures being established by the proposed rulemaking were either greater or less than those provided in existing land management plans and currently used to develop lease stipulations. A few comments were of the view that the way the word "reasonable" was used in the proposed rulemaking would limit the Bureau's ability to prescribe adequate mitigation measures at the time lease operations are proposed because, without lease stipulations, it could be inferred that the Bureau's authority under the standard lease form is limited. Other comments expressed the opinion that it would expand the Bureau's authority to control environmental impacts and allow measures to be imposed on leases without adequate justification. One of the comments on this section strongly supported the change made by the proposed rulemaking. After careful review of the comments, the provision in the final rulemaking has been revised. The regulation does not seek to limit the lessee's opportunity to challenge environmental requirements imposed after lease issuance. However, it is appropriate to establish minimum parameters within which the Bureau can specify site-specific mitigating measures which, by regulation, are consistent with the lease rights granted a lessee. The final rulemaking provides that the Bureau, at a minimum, can require relocation of proposed operations by 200 meters and can prohibit new surface disturbance for a period of 60 days, and that such requirements are consistent with the lease rights granted. The authorized officer may grant a lease suspension in appropriate cases if new surface disturbance is prohibited under this section. Similarly, the authority of the Bureau to prescribe "reasonable," but more stringent, protection measures is not affected by the final rulemaking.

Finally, 2 comments on this section of the proposed rulemaking related to measures imposed by the Bureau of Land Management at the time of operations that might be used to expand the protection already specified for a

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resource value in a lease stipulation. For

of production. The final rulemaking has

Section 3102.5-2 Certification of

signed by the transferee and that only

action. The failure to comply with such a

preamble to the proposed rulemaking.

resource value in a lease stipulation. For example, such measures might result in an unstipulated additional buffer around an area already stipulated to have a buffer or cause a 180-day delay when a delay of only 120 days is specified by a stipulation. This was not the intent of the proposed rulemaking. Measures imposed by this provision of the rulemaking will not be used to increase the level of protection of resource values that are addressed in lease stipulations.

Section 3101.1–3 Stipulations and information notices.

Section 3101.1–3 of the proposed rulemaking was the focus of numerous comments, most of which were directed to the public review requirement for certain lease stipulations. Because new provisions in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 require public notification of lease offerings and substantial modifications of lease terms, that portion of this section of the proposed rulemaking dealing with public review and waiver of stipulations has been removed from this final rulemaking. This matter is addressed in the separate rulemaking that will implement the new law.

Several of the comments on § 3101.1–3 raised questions about the information notices proposed in this section. The comments urged that a lessee be given pertinent information notices prior to the issuance of a lease. The Bureau of Land Management will inform lessees of all requirements related to a lease. The information notice is a method of informing lessees of requirements that may be imposed by an existing law or regulation, not of imposing new requirements. After careful consideration of the concerns expressed in these comments, the final rulemaking has adopted a change that makes it clear that an information notice has no legal consequences except to give notice of existing requirements.

Several of the comments on this section requested clarification of the provision that a lessee be made aware of or required to indicate acceptance of stipulations. As a result of the comments, the final rulemaking has been amended to state that the filing of a bid constitutes acceptance of the stipulations that are set out at the time the lands are made available for lease under Subpart 3120.

Section 3101.2–3 Excepted acreage.

All comments on this section of the proposed rulemaking supported the change made by the proposed rulemaking clarifying the exclusion from chargeable acreage of offers to lease, overriding royalties, and payments out of production. The final rulemaking has adopted the language of the proposed rulemakings without change.

Section 3102.2 Aliens.

Several comments were offered on this section of the proposed rulemaking. Two comments supported the clarification made by the proposed rulemaking. A third comment strongly opposed the clarification made by the proposed rulemaking of the provision that, in accordance with the Mineral Leasing Act (30 U.S.C. 181), would prohibit aliens from holding, owning, or controlling interests in Federal oil and gas leases through units in a publicly traded limited partnership. The comment expressed the view that the Mineral Leasing Act of 1920 did not prohibit such ownership as long as citizens of countries or foreign entities recognized by the United States are granted reciprocal rights. The comment includes a detailed explanation of its position on this issue. After reviewing the arguments presented in the comment, the final rulemaking has not adopted the suggested change. Section 1 of the Mineral Leasing Act (30 U.S.C. 181) authorizes issuance of leases to "citizens of the United States, associations of such citizens, or to any corporation organized under the laws of the United States." A master limited partnership is an association, and therefore, all of the members in such a publicly traded entity must be citizens of the United States to hold an interest in a Federal oil and gas lease. When the Congress enacted the Act in 1920, the States had laws recognizing corporations and limited partnerships. The Congress, while clearly providing for foreign ownership of stock in domestic corporations, did not provide similar authority for foreign participation in limited partnerships. Limited partnerships and corporate entities are organized under completely different laws and principles. The fact that the Act does not reflect recent investment practices does not provide a basis for an interpretation of the Act that would accord a master limited partnership the same status as a corporation. Therefore, the final rulemaking has adopted this section of the proposed rulemaking without change.

Section 3102.4 Signature.

A number of comments were offered on this section of the proposed rulemaking. Several of them recommended that the final rulemaking simplify the language in paragraph (c) of the section to indicate clearly that a request for approval of a transfer be signed by the transferee and that only one original of such request be required, even though the Mineral Leasing Act of 1920 (30 U.S.C. 187a), requires that 3 copies of the transfer be originally signed and dated by the transferor. One of the comments on this section of the proposed rulemaking pointed out that the request for approval of an assignment does not inure to the benefit of the transferor; rather it is merely the transferee's representation to the Bureau of Land Management that he/she is qualified to hold the interest in the lease that is being transferred. After a thorough review of the comments, the final rulemaking has adopted a change that combines paragraphs (b) and (c) into a single paragraph and revises the provision for clarity.

A final comment on this section of the proposed rulemaking supported the change made by paragraph (e), redesignated paragraph (d) by the final rulemaking, that would not allow reference to a qualification file number. This would eliminate the possibility of referring to a noncurrent qualification statement when the Bureau of Land Management requests information concerning a lessee's qualifications.

Section 3102.5–1 Compliance.

Several comments were received on this section of the proposed rulemaking, with most of those comments pointing out typographical errors, the need to clarify cross-references to other sections of the rulemaking, and other technical problems. The final rulemaking has made these changes. One of the comments suggested that excluding lease assignments or tranfers from compliance with the provisions of section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(2)(A)) is illogical and the position of the Department of the Interior should be reassessed. The Department's Solicitor has considered this question and concluded that section 2(a)(2)(A) prohibits the Secretary of the Interior from issuing leases covered by the requirements of the section, but does not prohibit the approval of an assignment or transfer of a lease to any entity that the section disqualifies from receiving a newly issued lease. (Solicitor's Opinion M–36951, 92 I.D. 537, 556 (1985).) This interpretation allows an entity that is disqualified from receiving a newly issued lease to acquire leases through approval of an assignment or transfer. The final rulemaking, therefore, has not changed this provision.

Section 3102.5–2 Certification of compliance.

Several comments on this section indicated that there was a need to clarify that a separate statement of certifications of compliance is not required when forms approved by the Bureau of Land Management are submitted for leasing actions because the certification is a part of the approved form. After careful review of this issue, the final rulemaking has adopted clarifying language by moving the first sentence of § 3102.5–3 of the proposed rulemaking to the end of this section. In response to a comment, the final rulemaking has adopted an amendment to this sentence to include a reference to the execution of a document as a necessary requirement for certification of compliance.

One of the comments on this section of the proposed rulemaking raised questions concerning the requirement for certification for entities which have constituent members holding, owning, or controlling more than 10 percent of the entity. The final rulemaking has adopted the language of the proposed rulemaking without change. It is the policy of the Department of the Interior to allow corporate entities, as well as publicly traded associations, including publicly traded partnerships, to qualify for Federal oil and gas leases by certifying only as to the citizenship of persons holding or controlling more than 10 percent of the outstanding shares of the entity holding or controlling a Federal oil and gas lease. Such certification is made through execution and submission of Bureau-approved forms. Separate certification of citizenship of such entities and associations is not required by the Bureau.

Section 3102.5–3 Evidence of compliance.

Several comments were received on this section of the proposed rulemaking. Some of the comments concerned the provision requiring the authorized officer to cancel or reject a potential lease action, such as issuance of a lease or approval of a lease transfer, if the information requested is not provided. The comments argued that this penalty was excessive. In recognition of the points raised in the comments, in the final rulemaking the last sentence of this section has been revised to specify that failure to submit the requested information shall result in adjudication of the action based on the incomplete submission. A request by the Bureau of Land Management for additional information will be made to clarify questions concerning a potential lease action. The failure to comply with such a request for information could result in the denial of lease approval or disapproval of the lease action.

One comment expressed the view that the title of this section of the proposed rulemaking needed to be clarified. The final rulemaking has adopted a change to the title of the section, so that it now more accurately describes the purpose of the section.

Section 3103.1–2 Where submitted.

Two comments were received on this section of the proposed rulemaking which sets out the address where annual rental payments are to be sent. One of the comments expressed the view that the final rulemaking needed to clarify paragraph (a)(2) of the section to exclude from its applicability those leases covered by paragraph (b). The final rulemaking adopts the changes suggested by this comment. One comment expressed the view that providing the address of the Minerals Management Service was helpful.

Sections 3103.2–1 and 3103.2–2 Rental requirements and annual rental payments.

One comment was submitted on these two sections of the proposed rulemaking. It expressed the view that the titles improperly differentiated between the advance and annual rental requirements. The comment pointed out that it is common industry understanding that "advance rental" means a year's rental that is paid in advance, i.e., at the beginning of each lease year. In recognition of the use of this term by the industry, the final rulemaking has adopted a change that eliminates the word "advance" from the title of § 3103.2–1. The final rulemaking has not adopted the recommended change in the title of § 3103.2–2 because the title as written properly identifies the content of the section.

Several comments were received on the introductory paragraph of § 3103.2–2 concerning the acceptability of an annual rental payment, required to be made on a day when the Minerals Management Service is closed, that is postmarked on the next day that the designated Minerals Management Service office is open. One of the comments indicated that this change would prevent the inadvertent cancellation of some leases due to confusion between the anniversary date and the date when the rental was actually received, with the date of receipt being controlling when the Service office is closed. Another comment on this specific issue agreed with the interpretation given in the preamble to the proposed rulemaking. Most of the comments on this section strongly opposed the provision contending that it was contrary to the Mineral Leasing Act of 1920 (30 U.S.C. 188(b)) which requires that the rental payment must be made on the anniversary date or, if the office is closed on the anniversary date, the rental must be received on the next day the office is open, but must be made on or before the anniversary date or the lease terminates by operation of law. The final ruelmaking adopts the comments opposed to using the postmark as receipt of payment. The reference to the "postmark" in the proposed rulemaking, as well as the postmark provision that is included in the existing regulations is removed. Accordingly, if the annual rental payment is not received on time in the proper office of the Minerals Management Service, the lease shall terminate automatically by operation of law. However, the final rulemaking includes in § 3108.2–1(a) an additional provision explaining what constitutes reasonable diligence, allowing a lessee to obtain a Class I reinstatement, when the rental is not received on time, under the following circumstances: (1) The rental payment is postmarked on or before the anniversary date; or (2) if the Service office is closed on the anniversary date, the rental payment is postmarked on or before the next day the Service is open to the public. All other requirements of a Class I reinstatement, including receipt of the payment within 20 days of the due date must be met. This change also affects §§ 3108.2–1 and 3108.2–2, and changes to those sections are addressed at the proper point in this preamble.

The preamble to the proposed rulemaking requested the public to comment on a possible change in the rental schedule. Twelve comments were submitted on this subject, with the majority of them being opposed to any rental increase. However, the Reform Act changed the rental rates required for competitive and noncompetitive oil and gas leases. Accordingly, provisions in § 3103.2–2 concerning rental rates are not included in this final rulemaking, but instead are addressed in the separate rulemaking implementing the new law.

Section 3103.3 Royalties.

The proposed rulemaking requested the public to comment on the current competitive lease variable royalty rate schedules, as well as the variable royalty rate schedule attached to 20-year leases at the time they are renewed or exchanged, in terms of efficient

production practice, maximizing resource recovery, collection of maximum royalties, and the administrative burden associated with the schedules contained in the existing regulations. Thirteen comments were submitted in response to the questions raised in the proposed rulemaking.

The majority of the comments indicated that a variable royalty rate may not directly affect the ultimate production from the lease but may influence the decision to drill a well on a lease. From a reservoir management standpoint, factors such as reservoir characteristics and marketing conditions may have a greater influence. Some of the comments, however, were of the view that the current royalty schedules result in incremental distortions of production from some wells. The comments, did not agree on what a new variable rate schedule should be and indicated that a flat rate would be preferable and might increase ultimate production. On the issue of the administrative burden of the current variable royalty rate schedules and whether they could be audited, the comments expressed the view that variable royalty rates complicate the auditing of lease production and add to the administrative burden. Finally, the majority of the comments suggested that successive incremental rates, if continued, be applicable to successive production increments.

Because of the enactment of the Reform Act, the provisions for royalty rates are not addressed further in this final rulemaking. A separate rulemaking to implement the new law addresses the royalty rates provided in §§ 3103.3–1 and 3103.3–2 for the competitive and noncompetitive leasing program in accordance with the new law.

Section 3103.3–3 Limitation of overriding royalties, payments out of production and similar interests and arrangements.

This section of the proposed rulemaking generated a number of comments, with several expressing considerable concern over the inclusion of carried interests and net profit interests because of the difficulty of calculating such interests on a percentage basis. The other comments on this section recommended that the final rulemaking delete the entire section because such overriding royalty interests and other similar agreements are voluntarily entered into by the lessee with other parties. The United States is not required to approve these agreements and, thus, should not become involved, except when a reduction in the Federal rental or royalty rate is requested by the lessee, in which case the effect of outstanding private payments will be considered. Accordingly, at the time of such a request, the authorized officer could require that any excess overriding royalty or similar interest be reduced before consideration will be given to the requested reduction in Federal rental or royalty. Two other comments on this section of the proposed rulemaking pointed out a discrepancy in the next-to-last sentence of the section and the language of § 3103.4–1(c) of the proposed rulemaking. The discrepancy is caused by a difference in the extent of possible reduction of the other interests and the comments recommended that the language of § 3103.4–1 be adopted by the final rulemaking. In response to the comments, § 3103.3–3 has been deleted in its entirety from the final rulemaking.

Section 3103.4–1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

This section of the proposed rulemaking attracted several comments, with one of the comments commending elimination of the requirement that requests be filed in triplicate. All of the comments noted the addition of carried interests and net profit interests or similar arrangements and recommended that these interests be removed by the final rulemaking. The final rulemaking has adopted the recommendations of the comments and removed all reference to these types of interests.

Section 3103.4–2 Suspension of operations and/or production.

Several comments were received on this section of the proposed rulemaking. One of the comments commended the elimination of the requirement to file requests in triplicate. One comment requested that the final rulemaking clarify paragraph (f) concerning the applicability of a suspension of obligations on a Federal lease subject to a unit or cooperative plan with no application of such a suspension to non-Federal leases within a unit. The final rulemaking has adopted this suggestion because the regulations in 43 CFR Group 3100 are applicable only to Federal interests. The non-Federal lands within a unit are governed by the terms of the lease or contract between the non-Federal lessor and its lessee, as well as any requirements of the State where the unit is located.

Most of the comments supported the addition of the *force majeure* provision, with one of the comments recommending that the final rulemaking expand the provision to include lack of market for new production to handle the recent market volatility, while another comment suggested that the language describing this provision is the preamble of the proposed rulemaking be added to this section. *Force majeure* generally includes such events as strikes, acts of God, and unforeseeable administrative delay, but not lack of a market by itself. No changes have been made in the final rulemaking, in order to avoid limiting the discretion of the authorized officer to address unique situations that may occur in lease operations.

A comment on paragraph (d) of this section suggested that the language be clarified to ensure that the requirement for resumption of rental payments on the first day of the month in which a suspension is lifted will not expose a lessee to termination of the lease. The final rulemaking has not adopted a change in this section of the proposed rulemaking. At the time a suspension of operations and production is approved, the advance rental will have already been paid for the full lease year and will continue to be credited for the remainder of a lease year when the suspension is lifted, normally allowing sufficient time for the rental to be paid in advance of the next lease year.

Two comments suggested that the final rulemaking clarify the difference between the three types of suspension that can be approved and suggested that there should be a cross-reference to § 3165.1. In response to these comments, the final rulemaking has adopted a change to clarify the different types of suspension, as well as to include in paragraph (c) a cross-reference to § 3165.1. In addition, the final rulemaking has adopted a clarification as part of paragraph (d) which specifies that a suspension of operations only or suspension of production only does not suspend requirements for payment of rentals and royalties, including minimum royalties.

Section 3104.1 Bond obligations.

As part of the change in the definition of the term "operator" in § 3100.0–5 of the proposed rulemaking to remove all reference to designated operator, the final rulemaking also amends this section of the proposed rulemaking to remove all reference to designated operator, making this section consistent with § 3100.0–5. This change also is being made in the final rulemaking to §§ 3206.1–1, 3206.3–1, 3206.5, and 3206.6 for consistency.

Section 3104.6 Where filed and number of copies.

One comment on this section of the proposed rulemaking suggested that the reference to § 3104.3 should be changed to § 3104.3(a) to clarify that only statewide bonds or riders, rather than nationwide bonds, are required to be filed in the State office having jurisdiction of the lease, because the next sentence also provides that nationwide bonds can be filed in any State office. The final rulemaking has adopted this suggestion.

The comments suggested the removal of the requirement in the proposed rulemaking that a replacement bond or rider to a nationwide bond be filed in the same State office where the original bond was filed. After reviewing the comments, the final rulemaking, in response to the comments, has removed this requirement.

Section 3104.7 Default.

This section of the proposed rulemaking received two comments. One recommended that paragraph (b) be amended by the final rulemaking to set a time limit for the posting of a new bond or restoration of an existing bond, or the posting of a separate or substitute bond for each lease covered by the deficient bond. In response to this comment, the final rulemaking has combined paragraphs (b) and (c) of the proposed rulemaking and made it clear that the time limit for restoring a bond to its full value or for posting a new bond shall be within 6 months of notice from the authorized officer.

The comments on this section of the proposed rulemaking raised a concern that an operator who is in default could expose the record title holder of the lease to liability even though the lessee is not in default. After careful review of this issue, the final rulemaking has adopted a change to this section that gives the authorized officer the discretionary authority to cancel a lease, rather than continuing the more restrictive language of the proposed rulemaking. An operator on the ground is in the best position to carry out the terms and conditions of a lease and should be responsible for handling the default. However, if all efforts to resolve the default fail, including attaching the bond, the authorized officer may then take the appropriate steps to cancel the lease. In response to these comments, and for consistency, the final rulemaking has clarified the responsibilities of the lessee, operator, and operating rights owner (sublessee) throughout Parts 3160, 3160, 3260, and 3280.

Section 3105.2–3 Requirements.

Numerous comments discussed this section of the proposed rulemaking. One of those comments suggested that the communitization agreement application be considered only after a well has been completed because the effective date of any agreement is the date of the first sale, and the operator would have no incentive to file the agreement application until a well is completed on the lease because the public interest requirement must be met or approval of the agreement becomes invalid. The final rulemaking has not adopted this suggestion because, under the provisions of the proposed rulemaking, the agreement approval would be valid if the public interest requirement is met, and the lease could receive a drilling extension even though no production was established.

Two comments questioned allowing the filing and approval of a communitization agreement after the lease expires. One suggested that if all the lands in the proposed communitized area are Federal lands and the leases have expired, no purpose would be served by approving an agreement since there is no well and drilling could not occur until the lands are again under lease. One comment expressed the view that approval of an agreement after the lease expires has the effect of breathing life back into a lease so long as the lands have not been posted on a list of lands available for leasing. The comment further suggested that this form of a lease extension is not authorized by the Mineral Leasing Act, and that in most instances an action to communitize lands is required prior to the expiration date of any involved lease. One comment requested that paragraphs (c) and (d) be reorganized. The final rulemaking removes paragraphs (b) and (c) of the proposed rulemaking relating to informal agreements and filing of agreements for consideration after the lease expiration date. The final rulemaking reorganizes the section into three paragraphs and requires filing of an agreement for approval prior to lease expiration, thus eliminating the uncertainty as to whether a lease has expired.

The comments on the public interest requirement of this section recognized the abuses of operators who terminated unit or communitization agreements solely to gain automatic extension of a lease when no attempt had been made to drill under the terms of the agreement. A few of the comments suggested that the public interest requirement be limited to those instances where there has been no drilling under the agreement or that the requirement be satisfied by any reasonably prudent activity conducted in a good faith effort to explore for oil or gas. Two comments expressed the view that the public interest requirement was never intended to apply to existing production of commencement/continuance of diligent operations to unitized or communitized zones. Other comments questioned the use of the public interest requirement to limit lease extensions, with one of the comments contending that the Bureau of Land Management does not have the authority to alter the language of the law addressing drilling and elimination/termination. Two of the comments pointed out the proposed rulemaking removes the discretion of the authorized officer to terminate an agreement under appropriate circumstances and recommended that this authority be restored by the final rulemaking.

The standards for the public interest requirement are similar to those established for actual drilling operations, which require industry to operate in a responsible manner if it is to receive the benefits of the law. The provision of the proposed rulemaking is consistent with the law, which requires approval of the agreement to be in the public interest. The provision would render the approval invalid if the public interest requirement is not satisfied. The model unit agreement provided for in section 3186 of the existing regulations contains a provision in section 9 that allows the flexibility to terminate a unit for good cause and requires establishing to the satisfaction of the authorized officer that further drilling would be unwarranted or impracticable. The final rulemaking adopts the language of the model agreement in redesignated § 3105.2–3(c) as an exception to the requirement to drill the well pursuant to communitization agreements.

Five comments on § 3105.2–3(e) of the proposed rulemaking also addressed the same provisions contained in § 3183.4 of the proposed rulemaking. The comments all expressed concern regarding the effect that invalidation of approval of a unit agreement would have on lease segregations and extensions of the segregated leases. One of the comments suggested that this provision of the proposed rulemaking be amended by the final rulemaking so that it affects only the extension of leases occurring when a unit agreement terminates and the segregation process, together with extensions of the segregated leases, would be unaffected. Another comment suggested that lease segregations and resulting extensions would have to be "undone" if the unit approval is declared invalid. One of the comments questioned the effect of this section of the proposed rulemaking on the segregated lease where drilling may have taken place and production

established during the two-year extension period following segregation. Finally, two of the comments questioned whether, under the rulemaking, when multi-well obligations are included in the agreement, all wells under a unit agreement must be drilled to meet the public interest requirement.

The Bureau of Land Management's administrative action in processing lease segregations and extensions of segregated leases may be deferred until the authorized officer has determined that the public interest requirement has been satisfied and that the unit agreement is valid. Until a determination is made that a unit agreement is valid as approved, thereby allowing the segregation and extension of leases beyond their primary term, development activity (approval of an Application for Permit to Drill) on such lands outside of the unit agreement area also may be deferred. Development activities would be allowed to continue on the portion of a lease outside the unit area during the primary term of the lease and, if production is established prior to the end of its primary term and the unit approval is determined to be invalid, such production holds the entire lease because no segregation has taken place. In the case of multi-well obligations under a unit agreement, completion of one well to the unitized formation may, as determined by the authorized officer at the time of approval, satisfy the public interest requirement. The final rulemaking has adopted the language of § 3105.2–3(e) of the proposed rulemaking redesignated as § 3105.2–3(c), with the addition of language providing for a determination by the authorized officer that further drilling would be unwarranted or impracticable. These comments also were directed to § 3183.4 of the proposed rulemaking and the final rulemaking has adopted the language of that section without change.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Subpart 3106 of the proposed rulemaking received several comments. One of the comments recommended that what it called "artifical" distinction between the holder of the record title and holder of the operating rights be eliminated and that a transfer of operating rights be recognized as a transfer of the working interest or the execlusive right to explore for minerals in the lands acquired by the lessee with all of the lessee's rights to and obligations for development of the minerals. This comment also recommended that the Bureau of Land Management reinstitute the policy of adjudicating transfers of operating rights and verify that an applicant for an Application for Permit to Drill is either the holder of the operating rights or his/her designee. The comment expressed the view that this change would ensure that the prospective permittee has a right to operate on the lease.

Another comment suggested that the Department of the Interior's decision to discontinue the close examination of subleases will result in increased potential for surface operations to be carried on by one who is not the lessee and it could foster increased litigation over responsibility for violations of the conditions of permits issued to different parties. The comments contended that holding the record title holder liable is insufficient to prevent environmental degradation by a surface operator.

The final rulemaking has not adopted these general suggestions for changes to Subpart 3106 of the proposed rulemaking. The Bureau of Land Management cannot, and should not, undertake the role of attempting to validate privately arranged agreements between any lessee and its sublessee, or of protecting a lessee's rights under a private arrangement to which the Federal Government is not a party. The Bureau does not have the power or authority to warrant title is such circumstances regardless of whatever administrative examinations may be conducted. The Bureau's policy for over two years has been not to adjudicate transfers of operating rights because it is time-consuming and unnecessary unless there is an independent concern about a transferee's qualifications. The Bureau's experience is that this process is working well. The comment regarding eliminating the distinction between the holder of a record title and the holder of operating rights in an oil and gas lease has not been adopted in the final rulemaking because the transfer of operating rights is a sublease or a private subsidiary arrangement between the lessee of record and the operator. As recognized in the statutory language, such an arrangement is in addition to, rather than in place of, the contractual agreement between the lessee of record and the United States.

One comment received on § 3106.1(a) of the proposed rulemaking concerned the requirement that transfers filed more than 90 days following signature by the transferor must provide a statement that the transfer is still in force.

The comment suggested that, in many cases, this is a paper exercise that serves neither the public nor the Bureau of Land Management, because small delays of a few days beyond this time period result in extensions of compliance time to ascertain whether the transfer remains in force or causes disapproval of the transfer followed by a new transfer. In response to this comment, the final rulemaking includes language to change this provision to allow the authorized officer to verify that the transfer is still in force. When factors such as the receipt of any intervening transfer cause the Bureau to question whether the transfer is still valid, at the discretion of the authorized officer, an inquiry would be made to the parties involved prior to approval or disapproval of the transfer.

Section 3106.1(b) of the proposed rulemaking would be revised in the final rulemaking to remove provisions applicable only to leases under Subpart 3112, now made obsolete by enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

Several comments were received on § 3106.4–1 of the proposed rulemaking. One of the comments questioned why a $25 filing fee was required to be submitted with each transfer of operating rights when the Bureau of Land Management no longer adjudicates such transfers. The Bureau is authorized by the Federal Land Policy and Management Act of 1976 to recover costs in connection with its administrative activities and to assess charges for benefits granted. The Bureau has determined that the $25 fee is needed to recover its costs for handling transfers to determine compliance with the Mineral Leasing Act. The final rulemaking continues without changing this provision of the proposed rulemaking.

A few comments on this section recommended that the final rulemaking be reworded for clarity. This recommendation has been adopted in the final rulemaking.

Section 3106.4–1 of the proposed rulemaking generated several comments, two of which suggested that documentation of operating rights, in addition to the required transfer from, should be maintained in the case file for the benefit of present or potential lessees or operators who may wish to know more details of the lease interests that have been created in order to make informed decisions on whether or not to acquire a lease interest or to drill on a particular lease. It is not necessary for the Bureau to maintain copies of private agreements between a sublessor and sublessee to approve a transfer of operating rights because most of the information in such documents involves specific terms and agreements between those parties and does not affect the approval process by the Federal Government. Therefore, the final rulemaking has not adopted this suggested change.

One comment on this section of the proposed rulemaking noted that the rulemaking eliminates the provision in the existing regulations which allows a transferee to make a single request for approval of several transfers filed at the same time. The final rulemaking has adopted the suggested change and restored appropriate language concerning the provision in this section.

Several comments were received on § 3106.4–2 of the proposed rulemaking. Two of the comments suggested that it be made clear that in certain instances a transfer need not be on an officially approved form. This section of the proposed rulemaking included 2 separate paragraphs to distinguish between a transfer in conjunction with a transfer or record title or of operating rights (sublease) and a transfer of interests that is made independent of a transfer of record title or of operating rights (sublease). In the second of these sections are stated the requirements for filing such transfers if the current Bureau form is not used. The final rulemaking adopts this provision of the proposed rulemaking without change. For consistency with the removal in the final rulemaking of § 3103.3–3, the final rulemaking removes from this section the requirement that transfers of overriding royalties and other similar interests contain a statement providing for suspension. The third comment on this section focused on paragraph (b) and suggested eliminating the requirement for an originally executed copy of a transfer in the types of transfers described in this paragraph because the Bureau of Land Management does not approve these kinds of transfers. The final rulemaking has adopted this suggestion and removed the requirement in paragraph (b) for an originally executed copy for this type of transfer when created or reserved in a lease independent of a transfer of record title or of operating rights (sublease).

Section 3106.4–3 of the proposed rulemaking received several comments. Three of the comments expressed strong support for the procedure allowing mass transfers. One comment recommended removal from paragraph (b)(3) of the phrase "and the depths or formations", contending that such information is not needed because the Bureau of Land Management is not adjudicating or abstracting operating rights transfers (subleases). This recommendation has been adopted in the final rulemaking.

One comment was received on § 3106.6–1 of the proposed rulemaking which suggested that the section be amended to provide for those instances when a bond is no longer required. The final rulemaking has adopted the suggested change and also has been revised to adopt the current bond terminology referring to lease bonds, rather than to lessee's general lease or drilling bond and operator's bond. A lease bond may be provided either by a lessee, operating rights owner (sublessee), or operator. For consistency, the final rulemaking has made similar revisions for this terminology in Subparts 3134 and 3206.

The comments on §§ 3106.6–2 and 3106.6–3 of the proposed rulemaking questioned restricting the bond coverage solely to the holder of operating rights and suggested that the sections be amended by the final rulemaking to clarify that the bond may be furnished by any operator. This suggestion has been adopted by the final rulemaking along with a provision that the operator must furnish evidence of the surety's consent under an existing bond to become co-principal. This final rulemaking also redesignates § 3106.6–3 of the proposed rulemaking as § 3106.6–2, and § 3106.6–2 of the proposed rulemaking has been made a part of § 3106.6–1, Lease Bond, in the final rulemaking.

Several comments were directed to § 3106.7–2 of the proposed rulemaking. The comments expressed concern about both the sublessee and the lessee of record having responsibility for all lease obligations. The comments were of the view that the lessee of record should not be fully responsible when it is not the operator on the lease. The final rulemaking has adopted a change which makes the sublessee responsible for all obligations under the rights transferred to the sublessee. This change is consistent with the change made by the final rulemaking in § 3104.7 as discussed earlier in this preamble. This change also is applicable to the bonding and lease transfer provisions in Subpart 3134 and 3135 and the final rulemaking has made the appropriate changes in these subparts. For consistency, the final rulemaking also has made appropriate changes to § 3241.5 and has clarified the responsibilities of the lessee, sublessee, and operator throughout Parts 3160, 3180, 3280 and 3280.

Sections 3106.8–1, 3106.8–2, and 3106.8–3 of the proposed rulemaking generated one comment which raised questions about the requirement for bond coverage under the situation described in these sections because the provisions are not uniform. The final rulemaking makes it clear when a change in bonding coverage may be required.

Section 3107.1 Extension by drilling.

Several comments were made on this section of the proposed rulemaking. All but one of the comments objected to the provision that set forth what constitutes actual drilling operations. One comment suggested that the provision was too narrow, and suggested that the final rulemaking provide that the use of a spudder rig, timely followed by the placement of a rotary rig, which continuously drills to a valid objective would constitute actual drilling operations. Two other comments expressed the view that no purpose is served by the new language in the proposed rulemaking on actual drilling operations, because the current provisions represent a well-established terminology, having been interpreted numerous times by the Department of the Interior Board of Land Appeals, and urged that it be removed in the final rulemaking. Another comment on this point suggested that there is no precedent for the language in the proposed rulemaking requiring penetration of certain horizons and suggested that the model unit agreement allows an operator to cease drilling "at a lesser depth" than that provided in the agreement if unitized substances can be produced in paying quantities. This comment also made the point that there is no requirement that a lessee drill a well on a lease to any particular depth or formation. Another comment objected to any attempt by the proposed rulemaking to impose additional conditions for obtaining an extension of a lease. The comment also stated that the application of unit well standards as a condition for the extension of a lease would result in imposing a burden on an operator who makes a good faith effort to drill, but is unable to drill a well which meets the unit drilling requirements.

The proposed rulemaking did not add any new requirements but incorporated standards established by the Interior Board of Land Appeals as necessary for the Bureau to determine whether a lease is extended. The model unit agreement provides for establishing, to the authorized officer's satisfaction, that further drilling would be unwarranted or impracticable. The same language has been adopted by the final rulemaking for this section as for communitization agreements as discussed under §3105.2–3(e) earlier in this preamble.

Section 3107.3–2 Segregation of leases

Management Service office is open. This

because this section is sufficient, with a

necessary because lease bonds already

rights owner" which conforms to the

Section 3107.3–2 Segregation of leases committed in part.

The final rulemaking makes technical changes in § 3107.3–2 to clarify the period of lease extension for leases segregated in conjunction with a cooperative or unit plan and to specify that no lease operations on the segregated lease will be approved after the primary term of the lease and that no lease extension will be recognized until the public interest requirement for the unit agreement has been satisfied. These changes are added by the final rulemaking to be consistent with the language contained in § 3107.4. Section 9, 18, and 20 of the model unit agreement also have been revised to be consistent with the amendments of §§ 3107.3–2 and 3107.4. These provisions are the correct and consistent interpretation of the Mineral Leasing Act.

Section 3107.4 Extension by elimination.

Several of the comments on the public interest requirement contained in the proposed rulemaking also included a discussion of this section. The public interest requirements are discussed in full under § 3105.2–3(e) earlier in this preamble.

Section 3108.1 Relinquishments.

The only comment on this section expressed the view that the provision allowing relinquishment by the record title holder's attorney-in-fact confuses two issues, i.e., who actually relinquishes a lease, and who may execute the relinquishment. The comment stated that the proposed rulemaking could generate unforeseen consequences because the power of attorney may not permit the attorney-in-fact to execute a relinquishment. After careful review of the comment, the final rulemaking has adopted the provision of the proposed rulemaking but has revised the language to refer to a duly authorized agent, the acceptable terminology under general agency law. It is incumbent upon the parties to an attorney-in-fact or agency agreement to ensure its adequacy in actions taken on behalf of the principal.

Sections 3108.2–1 and 3108.2–2 Automatic termination and Reinstatement at existing rental and royalty rates—Class I reinstatements.

These sections of the proposed rulemaking dealt with allowing a rental payment to be considered filed in a timely manner when it is due on a day the Minerals Management Service office is closed, but which is postmarked on the next day the designated Minerals Management Service office is open. This issue, and the comments received, were extensively discussed under § 3103.2–2 earlier in this preamble. This discussion is not repeated here. The final rulemaking has adopted changes to these sections to make them consistent with § 3103.2–2 of the final rulemaking. The final rulemaking also adopts this change in §§ 3205.3–2, 3244.3–1, and 3244.2–2 for consistency.

One of the comments received on § 3108.2–2(a)(3) of the proposed rulemaking questioned the provision concerning payment of accrued royalty if a terminated lease becomes productive prior to its reinstatement. The comment requested that this provision be clarified as to when such payment is due. Three comments recommended that the final rulemaking amend this section to remove the requirement for providing proof to the Bureau of Land Management of payment of royalty to the Minerals Management Service (MMS) as a condition of a Class I reinstatement. The final rulemaking has adopted a change removing all words after the word "Service" in the proposed rulemaking. Payment of accrued royalty is required prior to reinstatement, but would not be required to be paid within the 60-day period required for submission of the petition for reinstatement. The Bureau would verify that such payment had been made to the MMS office

Part 3130—Authority Citation

One comment recommended that the final rulemaking add the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504 *et seq.*) to the authority citation section. The final rulemaking has not adopted this recommendation because that Act does not provide specific authority for leasing in the National Petroleum Reserve—Alaska, which is the subject of this part.

Section 3135.1–1 Transfers and extensions, general.

One comment on paragraph (d) of this section of the proposed rulemaking recommended that the word "assignment" be changed to the word "transfer". The final rulemaking has adopted this recommended change.

Section 3150.0–1 Purpose.

A number of the comments on the geophysical exploration provisions contained in Part 3150 of the proposed rulemaking indicated some confusion regarding to whom, and in what situation, the provisions of this portion of the rulemaking would apply. The confusion seemed to result from the abbreviated language contained in § 3150.0–1 of the proposed rulemaking. To resolve this uncertainty, the final rulemaking revises the language of this section to clearly state which parties must comply, and under what circumstances the regulations apply with respect to authorization from the Bureau of Land Management to conduct geophysical exploration operations. The final rulemaking also clarifies a similar provision in § 3209.0–1 concerning geophysical exploration for geothermal resources for consistency.

Section 3150.0–3 Authority.

One comment noted that 2 citations had been omitted from the authority section of the proposed rulemaking and recommended that the final rulemaking include them. The final rulemaking has adopted the recommendation for inclusion of the citation of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), but has not included the citation of the Act of May 21, 1930 (30 U.S.C. 301–306), because it has no application to geophysical exploration. The final rulemaking also adds the citation for the Naval Petroleum Reserve Production Act of 1976 (42 U.S.C. 6504) to address exploration activities for the National Petroleum Reserve—Alaska. These new citations also are added to the authority citation provision of the final rulemaking.

Section 3150.0–5 Definitions.

One comment on § 3150.0–5(a) of the proposed rulemaking recommended that the final rulemaking remove the last sentence of the definition because it repeats language contained in § 3150.0–1. The final rulemaking has adopted this suggestion.

Several comments on the definition of the term "public lands," appearing in this section of the proposed rulemaking, indicated some confusion with the definition of the term and the applicability of the rulemaking to various types of lands. After careful review, the final rulemaking has removed the term from §§ 3150.0–5 and 3209.0–5 because it is adequately defined in the Federal Land Policy and Management Act.

Section 3150.1 Suspension, revocation, or cancellation.

One comment on this section questioned why the language in the existing regulations was being changed, and suggested that language dealing with compliance with State standards was needed. After careful review, the final rulemaking has restored the language of the existing regulations

because this section is sufficient, with a change in the beginning to clarify that the right to conduct exploration may be suspended, revoked, or canceled.

Section 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Eight comments were received on this section of the proposed rulemaking. Most of them were supportive of the change made by the proposed rulemaking. However, some of the comments expressed concern that the 5 days allowed for processing a Notice of Intent may not be adequate in all cases. The final rulemaking has revised this section of the proposed rulemaking to reflect the changes made in § 3150.0–1 of the final rulemaking to allow for situations in which additional time is needed to complete the review of the Notice of Intent. The change requires that in those instances when the Notice of Intent cannot be processed in 5 working days of being filed, the authorized officer shall promptly notify the operator of when processing will be completed and state the reason for the delay.

Section 3152.1 Application for oil and gas geophysical exploration permit.

Although no comments were received on this section of the proposed rulemaking, the final rulemaking has adopted a change to make its provisions consistent with changes made by the final rulemaking in § 3150.0–1.

Section 3154.1 Types of bonds.

The only comment on this section questioned the effect of lease terms on a lessee who wishes to conduct geophysical exploration operations on his/her lease. This comment resulted in the word "lease" being removed from both this section of the final rulemaking and § 3154.3 to provide consistency. The word "lease" is not needed because a bond providing exclusive coverage for geophysical exploration operations must fulfill only the requirements contained in the regulations and the Notice of Intent or permit to conduct geophysical exploration operations. If stipulations or other requirements specified at the time of lease issuance are relevant to geophysical exploration operations, such stipulations or requirements also would be included in the Notice of Intent or permit. Further review of this section of the proposed rulemaking revealed that there were two technical flaws. The proposed rulemaking would have required that lessees obtain riders to their lease bonds in order to do geophysical exploration on their own leases. Such a requirement is not necessary because lease bonds already cover all operations by a lessee on his/her leasehold. The final rulemaking has adopted language to resolve this technical problem. The proposed rulemaking also inadvertently removed the provision in the existing regulations that allows the holder of a statewide or nationwide bond to obtain a rider that would allow geophysical exploration to be conducted on lands that the holder did not have under lease. The final rulemaking has retained this provision of the existing regulations.

Section 3154.3 Bond cancellation or termination of liability.

Several comments were received on this section of the proposed rulemaking. All comments were concerned that the 30-day period for inspection of lands subject to geophysical exploration under a Notice of Intent was not adequate. In response to these comments, the final rulemaking retains the 90-day period of the existing regulations.

Section 3160.0–5 Definitions.

Several comments were received on this section of the proposed rulemaking. The final rulemaking, in response to concerns raised in these comments amends the definition of the term "operator" to clarify that there is no distinction between an operator, designated operator, and an official Designation of Operator. The amendment also makes the definition identical to that contained in § 3100.0–5(a) of the final rulemaking. As discussed earlier in the preamble in conjunction with that section, the definition has been revised to mean any person or entity that notifies the Bureau of Land Management that he/she is accepting the responsibilities for conducting operations on a lease or a portion thereof. Under the new definition, any individual or entity that accepts the responsibility for conducting operations on a lease, whether it be the lessee, owner of operating rights (sublessee), or a contractor on behalf of an operator, is responsible for the default that may occur in the conduct of activities in exploration, development, and production under the terms and conditions of the lease. Further, the revisions made by the final rulemaking to the various terms in § 3160.0–5 provide that the individual holding the operating rights to a lease is responsible for all obligations relating to the responsibilities transferred by the lessee of record, including drainage. Accordingly, the final rulemaking also revises the term "lessee" to mean a person or entity holding record title to a lease and adds a definition of "operating rights owner" which conforms to the revised definition of the term "operator." To bring the provisions of Part 3160 into conformance with these definition changes, the final rulemaking has substituted the word "operator" or the term "operating rights owner" for the word "lessee" in numerous sections of the final rulemaking. Finally, this final rulemaking adds definitions of several terms from the final rulemaking to implement the Federal Oil and Gas Royalty Management Act which was published in the **Federal Register** on February 20, 1987 (52 FR 5384).

Section 3162.3–1 Drilling applications and plans.

Three comments received on this section of the proposed rulemaking were a followup to comments made on Subpart 3106 of the proposed rulemaking that objected to the policy of the Bureau of Land Management not to adjudicate transfers of operating rights (subleases). One of the comments suggested that this change was designed to insulate the Bureau from disputes on public lands when an application for development is approved by the authorized officer. The response to these comments has previously been discussed in this preamble under subpart 3106. The final rulemaking has not adopted this suggested change.

Section 3165.1 Relief from operating and producing requirements.

Two comments submitted on the provisions of the proposed rulemaking concerning § 3103.4–2 also recommended that the final rulemaking make revisions in this section of the existing regulations in order to address the provision for a suspension of operations and/or production consistently. The final rulemaking adopts this recommendation and amends § 3165.1 of the existing regulations to be consistent with § 3103.4–2 of the final rulemaking.

Section 3165.4 Appeals.

The final rulemaking clarifies the language in § 3165.4(c) concerning the effect of an appeal on compliance requirements. This change is made to ensure that the provision in this regulation, which made the decision of the authorized officer effective pending an appeal, has the same effect and meaning as it did prior to its amendment on February 20, 1987 (52 FR 5384). The Department of the Interior Board of Land Appeals has suggested that the meaning and effect of this regulation may have been changed by the 1987 amendment (see *Southern Utah*

Wilderness Alliance, 100 IBLA 63 (1987)). No change was ever intended by the amendment and this final rulemaking makes a technical correction to clarify this matter.

Section 3186.1 Model onshore unit agreement for unproven areas.

Changes have been made in sections 9, 13–15, 18, and 20 of the model unit agreement to conform these provisions to the final rulemaking, which defines "operator" and establishes the public interest requirement for unit approval.

Subpart 3200—Geothermal Resources Leasing; General

One general comment on this subpart of the proposed rulemaking recommended that the final rulemaking include language to reflect the statutory mandate in section 115 of the Department of the Interior and Related Agencies Appropriations Act of 1987 (Pub. L. 99–591) for protecting selected thermal features in specific National Park System units. After careful consideration of this comment, the final rulemaking has not adopted the suggestion because the provisions of this Act are very specific. These protective requirements are directly applied to areas affected by the law and are being implemented through interagency agreements and memoranda of agreement.

Section 3200.0–5 Definitions.

Changes made in this section by the final rulemaking have been discussed previously in this preamble under §§ 3100.0–5 and 3180.0–5.

Section 3200.1 Competitive and noncompetitive leasing areas.

Two comments were received on this section of the proposed rulemaking which questioned the use of the phrase "competitive interest" in connection with the classification of known geothermal resource areas. The comments on this issue appeared to misunderstand how "competitive interest" is used in determining whether lands should be classified as known geothermal resource areas. The existence of competitive interest in an area does not automatically compel classification or require that the lands remain classified as a known geothermal resource area. The overriding interest of the Bureau of Land Management is to ensure that lands which have not been subject to geothermal leasing, where there is little or no classification information available, are reviewed for known geothermal resource area classification because of competitive interest. The final rulemaking has adopted this provision of the proposed rulemaking without change.

Section 3210.2–1 Application.

Two comments were received on this section of the proposed rulemaking. One of the comments made the point that the change in the proposed rulemaking to require a different number of copies of an application to lease public domain lands versus the number of copies required for acquired lands was incorrect. This comment has been adopted and the final rulemaking has corrected this section.

The second comment recommended the addition of language similar to that found in § 3111.2–1(d)(2) of the existing regulations with respect to conforming the legal description of an existing lease to a subsequent resurvey or amended protraction survey. For consistency with the existing oil and gas regulations, the final rulemaking has adopted this suggested change.

Section 3220.3 Publication of the notice.

One comment was received on this section of the proposed rulemaking. The comment recommended the deletion of the language requiring the successful bidder to pay a proportionate share of the total cost of the publication of the notice. The final rulemaking has not adopted this recommended change. The policy of the Bureau of Land Management is to defray the costs associated with the programs under its jurisdiction, in accordance with the provisions in the Federal Land Policy and Management Act.

Section 3220.4 Bidding requirements.

Several comments on this section of the proposed rulemaking expressed concern about the deletion from paragraph (a) of the provision allowing the option to pay the balance of the bonus bid, either by a single bid or in two equal annual installments. Three of the comments indicated a preference that the provision of the existing regulations be retained. Two comments recommended that the final rulemaking change the section to allow installment payments based on a high bid threshold. The change made by the proposed rulemaking was designed to reduce lease administration and processing costs, and also to minimize the loss of revenues and interest moneys to the United States by requiring all bonus moneys to be paid prior to lease issuance. The final rulemaking adopts the language of paragraph (a) of the proposed rulemaking without change.

Section 3220.5 Award of lease.

Two comments on paragraph (c) of this section of the proposed rulemaking raised concerns about removal of the 30-day period during which the authorized officer is to accept or reject the highest bid. After careful review of this recommendation, the final rulemaking has adopted language to indicate that if the authorized officer is unable to make a decision within 30 days, the apparent high bidder will be notified and informed of the reason for the delay, and provided an anticipated date when the decision will be made.

Several comments were offered on paragraph (d) of this section of the proposed rulemaking. All objected to the reduction of the period for the successful bidder to execute the lease forms from 30 to 15 days. This change, however, is in response to a report by the General Accounting Office that the United States would benefit from having use of the lease rentals and bonus 15 days earlier. The final rulemaking has adopted the language of paragraph (d) of the proposed rulemaking without change.

Editorial and technical changes, and grammatical corrections, have been made as needed.

The principal authors of this final rulemaking are Gloria Jean Austin, Rob Cervantes, Karl Duscher, Cynthia Embretson, Lois Mason, Judy Reed, and Mona Schermerhorn of the Division of Fluid Mineral Leasing and Sie Ling Chiang of the Division of Fluid Mineral Operations, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The final rulemaking will not have an adverse effect on investment, competition, employment, productivity or the ability of U.S. firms to compete with foreign enterprises. These amendments will affect all businesses, large and small, equally. In addition, the changes will simplify and clarify the existing regulations, reducing the regulatory burden on the public.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034, 1004–0067, 1004–0074, 1004–0132, 1004–0134, 1004–0135, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

List of Subjects

43 CFR Part 3000

Public lands—classification, Public lands—mineral resources.

43 CFR Part 3040

Oil and gas exploration, Public Lands—mineral resources.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3160

Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3210

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3220

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3240

Geothermal energy, Mineral royalties, Public lands—mineral resources, Water resources.

43 CFR Part 3250

Electric power, Geothermal energy, Public lands—mineral resources.

43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Parts 3000 and 3040, Group 3000, Parts 3100, 3130, 3150, 3160, and 3180, Group 3100, and Parts 3200, 3210, 3220, 3240, 3250, and 3260, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below.

James E. Cason,

Acting Assistant Secretary of the Interior.

April 20, 1988.

PART 3000—[AMENDED]

1. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3000.0–5 [Amended]

2. Section 3000.0–5 is amended by:

A. Revising paragraph (g) to read:

(g) "Public domain lands" means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

B. Revising paragraph (k) to read:

(k) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (l) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest;

and

C. Revising paragraph (l) to read:

(l) "Interest" means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An "interest" may be created by direct or indirect ownership, including options. "Interest" does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in Subpart 3102 of this title.

3. A new § 3000.8 is added to read:

§ 3000.8 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals shall be accomplished under the regulations of groups 3000 and 3100 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

PART 3040—[REMOVED]

4. Part 3040 is removed in its entirety.

PART 3100—[AMENDED]

5. The authority citation for Part 3100 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

§ 3100.0–3 [Amended]

6. Section 3100.0–3 is amended by:

A. Revising paragraph (a)(2)(i) to read:

(i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as

provided in paragraph (g)(4) of this section;

B. Revising paragraph (b)(2)(i) to read:

(i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

and

C. Amending paragraph (e) by inserting after the phrase "excess to" the phrase "or surplus by".

§ 3100.0–5 [Amended]

7. Section 3100.0–5 is amended by:

A. Revising paragraph (a) to read:

(a) "Operator" means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

B. Amending paragraph (d) by removing the last sentence thereof in its entirety;

C. Revising paragraph (e) to read:

(e) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "Assignment" which means a transfer of all or a portion of the lessee's record title interest in a lease; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

D. Removing paragraph (f) in its entirety;

E. Redesignating paragraph (g) as paragraph (f);

F. Removing paragraph (h) in its entirety;

G. Redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

H. Amending newly designated paragraph (h), formerly paragraph (j), by removing from paragraph (h)(1) the phrase "drilling or" and by removing from paragraph (h)(2) the last sentence thereof; and

I. Redesignating paragraphs (k) and (l) as paragraphs (i) and (j), respectively, and revising them to read as follows:

(i) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(j) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

§ 3100.2–2 [Amended]

8. Section 3100.2–2 is amended by removing from the last sentence thereof the citation "30 CFR 221.21" and replacing it with the citation "§ 3162.2(a) of this title."

§ 3100.4–1 [Amended]

9. Section 3100.4–1(b) is amended by removing from where it appears in the opening paragraph the phrase "notice or option" and replacing it with the phrase "notice of option", by removing from paragraph (b)(3) the phrase "to the option; and" and replacing it with the phrase "to the option, including the date and expiration date of the option; and", and by removing from paragraph (b)(4) the phrase "signed copy of notice" and replacing it with the phrase "signed copy or notice".

10. Section 3100.4–3 is revised to read:

§ 3100.4–3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.4–1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

11. Sections 3101.1–1 and 3101.1–2 are revised to read:

§ 3101.1–1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

§ 3101.1–2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

12. A new § 3101.1–3 is added to read:

§ 3101.1–3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. A lessee shall be required to indicate acceptance of stipulations prior to the issuance of a lease. Any party submitting a bid under Subpart 3120 of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in a list or notice of parcels available from the proper BLM office. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

§ 3101.2–1 [Amended]

13. Section 3101.2–1(b) is amended by removing from the second sentence thereof all after the word "Alaska" and replacing it with the phrase "begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth."

§ 3101.2–3 [Amended]

14. Section 3101.2–3 is amended by adding at the end thereof a new sentence to read:

* * * Acreage subject to offers to lease, overriding royalties and payments out of production shall not be included in computing accountable acreage.

§ 3101.2–4 [Amended]

15. Section 3101.2–4(b) is amended by removing from where it appears the phrase "bring the lessee within" and replacing it with the phrase "comply with".

§ 3101.2–5 [Amended]

16. Section 3101.2–5 is amended by removing from where it appears the phrase "and co-leassees" and replacing it with the phrase "and co-parties", and by removing from the last sentence thereof the word "lessee" and replacing it with the word "party".

§ 3101.3–1 [Amended]

17. Section 3101.3–1 is amended by removing from where it appears in the second sentence the word "lessee" and replacing it with the word "operator".

§ 3101.3–2 [Amended]

18. Section 3101.3–2 is amended by removing from where it appears the word "noncompetitive" and by removing from where it appears the word "without" and replacing it with the word "outside".

§ 3102.1 [Amended]

19. Section 3102.1 is amended by removing from where it appears at the beginning of the section the word "Leases" and replacing it with the phrase "Leases or interests therein".

20. Section 3102.2 is revised to read:

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

§ 3102.3 [Amended]

21. Section 3102.3 is amended by adding a new sentence at the end thereof to read: "Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title."

22. Section 3102.4 is revised to read:

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

23. Section 3102.5 is revised and §§ 3102.5–1, 3102.5–2 and 3102.5–3 are added to read:

§ 3102.5 Compliance, certification of compliance and evidence.

§ 3102.5–1 Compliance.

In order to own, hold, or control an actual or potential interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee and all such parties (as defined in § 3000.0–5(k)) are:

(a) Citizens of the United States (See § 3102.1) or alien stockholders in a corporation organized under State or Federal law (See § 3102.2);

(b) In compliance with the Federal acreage limitations (See § 3101.2);

(c) Not minors (See § 3102.3);

(d) Not participants in any agreement, scheme, plan or arrangement prohibited in relation to oil and gas leasing; and

(e) Except for an assignment or transfer under Part 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions of § 3108.3 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title.

§ 3102.5–2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5–1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership fo the corporation, association or partnership are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

§ 3102.5–3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

§ 3103.1–2 [Amended]

24. Section 3103.1–2 is amended by:

A. Amending paragraph (a)(1) by removing from where it appears the phrase "applications for approval of an instrument of" and replacing it with the phrase "requests for approval of a"; and

B. Revising paragraph (a)(2) to read:

(a) * * *

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, Colorado 80217.

25. Section 3103.2–2 introductory text is revised to read:

§ 3103.2–2 Annual rental payments.

Rentals shall be paid on or before the anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4–2(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service

office. Rental shall be payable at the following rates:

§ 3103.3–1 [Amended]

28. Section 3103.3–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the citation "30 CFR Part 221, 'Oil and Gas Operating Regulations.'" and replacing it with the citation "§ 3162.7–4 of this title."

B. Removing paragraphs (c) and (d) in their entirety;

C. Redesignating paragraph (e) as paragraph (c); and

D. Adding a new paragraph (d) to read:

(d) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

§ 3103.3–3 [Removed]

27. Section 3103.3–3 is removed in its entirety.

§ 3103.4–1 [Amended]

28. Section 3103.4–1 is amended by:

A. Amending paragraph (b)(1) by removing from where it appears the phrase "in triplicate" and by removing from where it appears in the second sentence thereof the phrase "the proper BLM office name, the name of the record title holder and operator or sub-lessee," and replacing it with the phrase "the names of the record title holders, operating rights owners (sublessees), and operators for each lease,"; and

B. Amending paragraph (c) by removing from where it appears in the second sentence the phrase "royalties or payments out of production" and replacing it with the phrase "overriding royalties, payments out of production, or similar interests" and by removing from where it appears the first time in the third sentence the word "royalties" and replacing it with the phrase "royalties or similar payments".

29. Section 3103.4–2 is revised to read:

§ 3103.4–2 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3104.1 [Amended]

30. Section 3104.1(a) is revised to read:

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart.

§ 3104.3 [Amended]

31. Section 3104.3(b) is amended by removing from the end thereof the phrase "or operations nationwide." and replacing it with the phrase "and operations nationwide."

32. Section 3104.6 is revised to read:

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2–1).

§ 3104.7 [Amended]

33. Section 3104.7 is amended by revising paragraph (b) to read:

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3106.3 of this title.

§ 3104.8 [Amended]

34. Section 3104.8 is amended by removing from where it appears the phrase "alternative bond" and replacing it with the phrase "replacement bond".

35. Section 3105.2–3 is revised to read:

§ 3105.2–3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

36. A new § 3105.8 is added to read:

§ 3105.8 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

37. Subpart 3106 is revised to read:

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Sec.

3106.1 Transfers, general.
3106.2 Qualifications of transferees.
3106.3 Filing fees.
3106.4 Forms.
3106.4–1 Transfers of record title and of operating rights (subleases).
3106.4–2 Transfers of other interests, including royalty interests and production payments.
3106.4–3 Mass transfers.
3106.5 Description of lands.
3106.6 Bonds.
3106.6–1 Lease bond.
3106.6–2 Statewide/nationwide bond.
3106.7 Approval of transfer.
3106.7–1 Failure to qualify.
3106.7–2 Continuing responsibility.
3106.7–3 Lease account status.
3106.7–4 Effective date of transfer.
3106.7–5 Effect of transfer.
3106.8 Other types of transfers.
3106.8–1 Heirs and devisees.
3106.8–2 Change of name.
3106.8–3 Corporate merger.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit or of part of a legal subdivision shall be disapproved unless the necessity of the assignment is established and it is determined that such assignment is in the best interest of the United States. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force. A transfer of production payments or overriding royalty or other similar payments, arrangements or interests shall be filed in the proper BLM office but shall not require approval.

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of Subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

Each transfer of record title or of operating rights (sublease) or each transfer of royalty interest, payment out of production or similar interest for each lease, when filed, shall be accompanied by a nonrefundable filing fee of $25. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned.

§ 3106.4 Forms.

§ 3106.4–1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required, including in those instances where several transfers to a transferee have been submitted at the same time (See also § 3106.4–3). Copies of documents other than the current form approved by the Director shall not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

§ 3106.4–2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights

(sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under Subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4–3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4–1 and 3106.4–2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee of $25 for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3111.2 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

§ 3106.6 Bonds.

§ 3106.6–1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

§ 3106.6–2 Statewide/nationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

§ 3106.7 Approval of transfer.

§ 3106.7–1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7–2 Continuing responsibility.

The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3106.7–3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7–4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7–5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.8 Other types of transfers.

§ 3106.8–1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8–2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.8–3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the authorized officer as a prerequisite to recognition of the merger.

§ 3107.1 [Amended]

38. Section 3107.1 is amended by removing from where it appears in the first sentence thereof the phrase "of this title or 30 CFR 226.12," and replacing it with the phrase "and § 3186.1 of this title," and by removing the last sentence thereof and replacing it with the sentences: "Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable."

§ 3107.2–2 [Amended]

39. Section 3107.2–2 is amended by adding immediately after the phrase "because of production" where it appears the phrase "in paying quantities".

§ 3107.2–3 [Amended]

40. Section 3107.2–3 is amended by revising the title to read: "§ 3107.2–3 Leases capable of production."

§ 3107.3–2 [Amended]

41. Section 3107.3–2 is amended by removing the last sentence in its entirety and replacing it with 3 new sentences to read as follows:

* * * The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

§ 3107.4 [Amended]

42. Section 3107.4 is amended by adding at the end thereof the sentence:

* * * No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

§ 3107.6 [Amended]

43. Section 3107.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3108.2–1" and replacing it with the citation "§ 3108.2".

§ 3107.8–3 [Amended]

44. Section 3107.8–3(b) is amended by removing from where it appears the phrase "out of production in excess of 5 percent" and replacing it with the phrase "out of production or similar interests in excess of 5 percent" and by removing from where it appears the phrase "out of production are reduced to not more than 5 percent" and replacing it with the phrase "out of production or similar interests are reduced to not more than 5 percent".

§ 3108.1 [Amended]

45. Section 3108.1 is amended by adding in the first sentence immediately after the phrase "record title holder" the phrase ", or the holder's duly authorized agent,".

§ 3108.2–1 [Amended]

46. Section 3108.2–1 is amended by:

A. Revising paragraph (a) to read:

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

and

B. Amending paragraph (b) by removing from where it appears in the first sentence the phrase "stated in a bill," and replacing it with the phrase "stated in a bill rendered by the designated Service office,", by revising the third sentence thereof to read "The designated Service office shall send a Notice of Deficiency to the lessee." and by removing from where it appears at the end of the fourth sentence the phrase "the proper BLM office or the Service, as appropriate." and replacing it with the phrase "the designated Service office."

§ 3108.2–2 [Amended]

47. Section 3108.2–2(a) is amended by:

A. Amending paragraph (a)(2) by removing from the end thereof the phrase "lessee; and" and replacing it with the phrase "lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and" and

B. Amending paragraph (a)(3) by adding at the end thereof the sentence "If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

§ 3108.2–4 [Amended]

48. Section 3108.2–4(a) is amended by removing from where it appears in the first sentence thereof the word "validy" and replacing it with the word "validly".

§ 3108.4 [Amended]

49. Section 3108.4 is amended by removing the last sentence thereof in its entirety.

50. A new § 3108.5 is added to read:

§ 3108.5 Waiver of suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

51. Section 3109.1–2 is revised to read:

§ 3109.1–2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to

lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required by each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

§ 3109.2 [Amended]

52. Section 3109.2 is amended by:

A. Amending paragraph (c)(1) by removing from where it appears the phrase "map, 8360–80013A, revised December 1979.", and replacing it with the phrase "map, 8360–80013B, revised February 1988."; and

B. Amending paragraph (d)(1)(ii) by removing from where it appears the phrase "and all lands within any developed and/or concentrated public use area or other area of outstanding recreational significance as designated by the Superintendent on the map (NRA–L.M. 2291A, dated July 1986)" and replacing it with the phrase "and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B, dated October 1987)".

PART 3130—[AMENDED]

53. The authority citation for Part 3130 is revised to read:

Authority. The Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6504 *et seq.*), 43 U.S.C. 1701 et seq.

§ 3130.0–5 [Amended]

54. Section 3130.0–5 is amended by:

A. Removing paragraph (e) in its entirety; and

B. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

§ 3130.3 [Amended]

55. Section 3130.3 is amended by removing from where it appears the phrase "Director, U.S. Geological Survey," and replacing it with the phrase "authorized officer".

§ 3130.5 [Amended]

56. Section 3130.5 is amended by removing from where it appears the citation "§ 3102.1–2" and replacing it with the citation "§ 3109.4".

§ 3131.2 [Amended]

57. Section 3131.2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "Management, with a copy to the Regional Conservation Manager, U.S. Geological Survey." and replacing it with the word "Management."; and

B. Amending paragraph (b) by removing from where it appears the phrase "shall, in consultation with the Regional Conservation Manager," and replacing it with the word "shall".

§ 3132.3 [Amended]

58. Section 3132.3 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "filing charges and fees" and replacing it with the phrase "and filing fees", and by removing from where it appears the phrase "Bureau of Land Management" and replacing it with the phrase "Department of the Interior, Bureau of Land Management"; and

B. Removing from where it appears in paragraph (b) the phrase "U.S. Geological Survey" and replacing it with the phrase "Department of the Interior, Minerals Management Service".

§ 3133.1 [Amended]

59. Section 3133.1(c) is amended by removing the phrase "in any year" and relacing it with the phrase "in any year prior to discovery of oil or gas on the lease".

§ 3133.2 [Amended]

60. Section 3133.2 is amended by removing from where it appears near the end of the section the misspelled word "royality" and replacing it with the correct word "royalty."

§ 3133.2–1 [Amended]

61. Section 3133.2–1 is amended by removing from where it appears near the beginning of the section the misspelled word "leasee" and replacing it with the correct word "lessee."

§ 3134.1 [Amended]

62. Section 3134.1 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "corporate surety bond" and replacing it with the phrase "surety or personal bond in accordance with the provisions of § 3104.1 of this title", and by removing the period at the end of the paragraph and adding the phrase ", or maintains or furnishes a nationwide bond as set forth in § 3104.3(b) of this title and furnishes a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases held within NPR–A.";

B. Revising paragraph (b) to read:

(b) A bond in the sum of $100,000 or $300,000, or a nationwide bond as provided in § 3104.3(b) of this title with a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases within NPR–A, may be provided by an operating rights owner (sublessee) or operator in lieu of a bond furnished by the lessee, and shall assume the responsibilities and obligations of the lessee for the entire leasehold in the same manner and to the extent as though he/she were the lessee.

C. Amending paragraph (c) by removing the phrase "$100,000 lease bond or a $300,000 NPR–A-wide";

D. Revising paragraph (d) to read:

(d) A new bond in the amount previously held or a larger amount as determined by the authorized officer shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu thereof, separate or substitute bonds for each lease covered by the prior bond may be filed. The authorized officer may cancel a lease(s) covered by a deficient bond(s), in accordance with § 3136.3 of this title. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when such lessee is not a party to the bond.

and

E. Revising paragraph (e) to read:

(e) Except as provided in this subpart, the bonds required for NPR–A leases are in addition to any other bonds the successful bidder may have filed or be required to file under §§ 3104.2, 3104.3(a) and 3154.1 and subparts 3206 and 3209 of this title.

§ 3134.1–1 [Amended]

63. Section 3134.1–1 is amended by removing from where it appears the phrase "lessee shall" and replacing it with the phrase "lessee, operating rights owner (sublessee), or operator shall".

§ 3134.1–2 [Amended]

64. Section 3134.1–2 is amended by redesignating the existing text as paragraph (a), by removing from where it appears therein the phrase "the lessee to supply" and replacing it with the phrase "the bonded party to supply", and by adding a new paragraph (b) to read:

(b) The holders of any oil and gas lease bond for a lease on the NPR–A shall be permitted to obtain a rider to include the coverage of oil and gas geophysical operations within the boundaries of NPR–A.

65. The title of Subpart 3135 is revised to read:

Subpart 3135—Transfers, Extensions and Consolidations

66. Section 3135.1 is revised to read:

§ 3135.1 Transfers and extensions, general.

67. Section 3135.1–1 is amended by:

A. Revising the title to read:

§ 3135.1–1 Transfers.

B. Amending paragraph (a) by removing from where it appears the word "assign" and replacing it with the word "transfer";

C. Amending paragraph (b) by removing from where it appears the word "assignment" and replacing it with the word "transfer";

D. Amending paragraph (c) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferor shall continue to be responsible for" and by removing from where it appears at the end of the paragraph the word "assignment" and replacing it with the word "transfer";

E. Amending paragraph (d) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferee shall be responsible for", and by removing from where it appears the phrase "of an assignment," and replacing it with the phrase "a transfer,"; and

F. Adding new paragraphs (e) and (f) to read:

(e) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the rights transferred to the sublessee.

(f) Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3135.1–2 [Amended]

68. Section 3135.1–2 is amended by:

A. Amending paragraph (b) by removing from where it appears therein the word "assignment" and replacing it with the word "transfer"; and

B. Revising paragraph (c) to read:

(c) Where a transfer of record title creates separate leases, a bond shall be furnished covering the transferred lands in the amount prescribed in § 3134.1 of this title. Where a transfer does not create separate leases, the transferee, if the transfer so provides and the surety consents, may become co-principal on the bond with the transferor.

69. Section 3135.1–3 is revised to read:

§ 3135.1–3 Separating filing for transfers.

A separate instrument of transfer shall be filed for each lease on a form approved by the Director or an exact reproduction of the front and back of such form. Any earlier editions of the current form are deemed obsolete and are unacceptable for filing. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the transferee shall be sufficient.

70. Section 3135.1–4 is amended by:

A. Revising the title to read:

§ 3135.1–4 Effect of transfer of a tract.

B. Amending paragraph (a) by removing from where it appears in the first sentence the phrase "an assignment" and replacing it with the phrase "a transfer", by removing from where it appears in the first sentence the word "assigned" and replacing it with the word "transferred" and by removing from where it appears at the beginning of the second sentence the word "Assignment" and replacing it with the word "Transfers".

§ 3136.1 [Amended]

71. Section 3136.1 is amended by removing from where it appears at the beginning of the fourth sentence the phrase "Are linquishment", and replacing it with the correct phrase "A relinquishment", and by removing from where it appears at the end of the section the phrase "Director, U.S. Geological Survey" and replacing it with the phrase "authorized officer".

72. A new Part 3150 is added to read:

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

Sec.
3150.0–1 Purpose.
3150.0–3 Authority.
3150.0–5 Definitions.
3150.1 Suspension, revocation or cancellation.

Subpart 3151—Exploration Outside of Alaska

Sec.
3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.
3151.2 Notice of completion of operations.

Subpart 3152—Exploration in Alaska

Sec.
3152.1 Application for oil and gas geophysical exploration permit.
3152.2 Action on application.
3152.3 Renewal of exploration permit.
3152.4 Relinquishment of exploration permit.
3152.5 Modification of exploration permit.
3152.6 Collection and submission of data.
3152.7 Completion of operations.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

Sec.
3153.1 Geophysical permit requirements.

Subpart 3154—Bond Requirements

Sec.
3154.1 Types of bonds.
3154.2 Additional bonding.
3154.3 Bond cancellation or termination of liability.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504), and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

§ 3150.0–1 Purpose.

The purpose of this part is to establish procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management. Geophysical exploration on public lands, the surface of which is administered by the Bureau, requires Bureau approval. The procedures in this part also apply to geophysical exploration conducted under the rights granted by any Federal oil and gas lease unless the surface is administered by the U.S. Forest Service. However, a lessee may elect to conduct exploration operations outside of the rights granted by the lease, in which case authorization from the surface managing agency or surface owner may be required. At the request of any other surface managing agency, the procedures in this part may be applied on a case-by-case basis to unleased public lands administered by such agency. The procedures of this part do not apply to:

(a) Casual use activities;

(b) Operations conducted on private surface overlying public lands unless such operations are conducted by a lessee under the rights granted by the Federal oil and gas lease; and

(c) Exploration operations conducted in the Arctic National Wildlife Refuge in

accordance with section 1002 of the

implementation plans. The Secretary

Subpart 3152—Exploration in Alaska

purposes for which the affected area is managed under applicable law

(5) A statement that all terms and

include the coverage of oil and gas

accordance with section 1002 of the Alaska National Interest Lands Conservation Act (See 50 CFR Part 37).

§ 3150.0–3 Authority.

The Mineral Leasing Act of 1920, as amended and supplemented, (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

§ 3150.0–5 Definitions.

As used in this part, the term:

(a) "Oil and gas geophysical exploration" means activity relating to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities shall be authorized only by the issuance of an oil and gas lease and the approval of an Application for a Permit to Drill. The regulations in this part, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration.

(b) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement and except over established roads and trails are casual use.

§ 3150.1 Suspension, revocation or cancellation.

The right to conduct exploration under notices of intent and oil and gas geophysical exploration permits may be revoked or suspended, after notice, by the authorized officer and upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations issued under Acts applicable to the public lands and applicable State air and water quality standards or implementation plans. The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if he/she determines that such a suspension is necessary to protect health or safety or the environment. Further, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

Subpart 3151—Exploration Outside of Alaska

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska shall file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on the form approved by the Director. Within 5 working days of the filing date, the authorized officer shall process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 working days of the filing date, the authorized officer shall promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator shall, within 5 working days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator shall signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer shall notify the party whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and extent of actions to be taken by the operator.

Subpart 3152—Exploration in Alaska

§ 3152.1 Application for oil and gas geophysical exploration permit.

Parties wishing to conduct oil and gas geophysical exploration operations in Alaska shall complete an application for an oil and gas geophysical exploration permit. The application shall contain the following information:

(a) The applicant's name and address;

(b) The operator's name and address;

(c) The contractor's name and address;

(d) A description of lands involved by township and range, including a map or overlays showing the lands to be entered and affected;

(e) The period of time when operations will be conducted; and

(f) A plan for conducting the exploration operations.

The application shall be submitted, along with a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a lease held by or on behalf of the lessee), to the District Manager of the proper BLM office.

§ 3152.2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calendar days, unless compliance with statutory requirements such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) delays this action. The applicant shall be notified promptly in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit terms and conditions deemed necessary to protect values, mineral resources, and nonmineral resources. Geophysical permits within National Petroleum Reserve—Alaska shall contain such reasonable conditions, restrictions and prohibitions as the authorized officer deems appropriate to mitigate adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) (See part 3130 for stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) For lands subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the purposes for which the affected area is managed under applicable law.

§ 3152.3 Renewal of exploration permit.

Upon application by the permittee and payment of a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a leasehold by or on behalf of the lessee), an exploration permit may be renewed for a period not to exceed 1 year.

§ 3152.4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the exploration permit and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3152.5 Modification of exploration permit.

(a) A permittee may request, and the authorized officer may approve a modification of an exploration permit.

(b) The authorized officer may, after consultation with the permittee, require modifications determined necessary.

§ 3152.6 Collection and submission of data.

(a) The permittee shall submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) The Bureau shall not release such data and information and any processed, analyzed and interpreted material until such time as disclosure would not adversely affect, in the opinion of the authorized officer, the competitive position of the permittee.

§ 3152.7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(a) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically identifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands and resources.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

§ 3153.1 Geophysical permit requirements.

Except in unusual circumstances, permits for geophysical exploration on unleased lands under the jurisdiction of the Department of Defense shall be issued by the appropriate agency of that Department. In the event an agency of the Department of Defense refers an application for exploration to the Bureau for issuance, the provisions of Subpart 3152 of this title shall apply. Geophysical exploration on lands under the jurisdiction of the Department of Defense shall be authorized only with the consent of, and subject to such terms and conditions as may be required by, the Department of Defense.

Subpart 3154—Bond Requirements

§ 3154.1 Types of bonds.

Prior to each planned exploration, the party(s) filing the notice of intent or application for a permit shall file with the authorized officer a bond as described in § 3104.1 of this title in the amount of at least $5,000, conditioned upon full and faithful compliance with the terms and conditions of this subpart and the notice of intent or permit. In lieu thereof, the party(s) may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of individual, statewide or nationwide oil and gas lease bonds shall be allowed to conduct exploration on their leaseholds without further bonding, and holders of statewide or nationwide lease bonds wishing to conduct exploration on lands they do not have under lease may obtain a rider to include oil and gas exploration operations under this part. Holders of nationwide or any National Petroleum Reserve-Alaska oil and gas lease bonds shall be permitted to obtain a rider to include the coverage of oil and gas exploration within the National Petroleum Reserve—Alaska under Subpart 3152 of this title.

§ 3154.2 Additional bonding.

The authorized officer may increase the amount of any bond that is required under this subpart after determining that additional coverage is needed to ensure protection of the lands or resources.

§ 3154.3 Bond cancellation or termination of liability.

The authorized officer shall not consent to the cancellation of the bond or the termination of liability unless and until the terms and conditions of the notice of intent or permit been met. Should the authorized officer fail to notify the party within 90 days of the filing of a notice of completion of the need for additional action by the operator to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate.

PART 3160—[AMENDED]

73. Note 1 is amended by:

A. Amending the paragraph immediately following the Operating Forms table by removing from where it appears in the second sentence thereof the phrase "the lessee elects" and replacing it with the phrase "the operator elects"; and

B. Amending the paragraph entitled Other Reporting Requirements by removing from where it appears in the first sentence thereof the citation "3162.7–4" and replacing it with the citation "3162.7–5"; and by removing from where it appears in the second sentence thereof the phrase "some lessees to either" and replacing it with the phrase "some operators to either".

74. The authority citation for Part 3160 is revised to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of March 3, 1909, as amended (25 U.S.C. 369); the Act of May 11, 1938, as amended (25 U.S.C. 398a–398q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Department of the Interior Appropriations Act for Fiscal Year 1981 (42 U.S.C. 6508); the Alaska National Interest Lands Conservation

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Act, as amended (16 U.S.C. 3101 *et seq.*), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

75. Section 3160.0–5 is revised to read:

§ 3160.0–5 Definitions.

As used in this part, the term:

(a) "Authorized representative" means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

(b) "Avoidably lost" means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of:

(1) Negligence on the part of the operator; or

(2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or

(4) Any combination of the foregoing.

(c) "Federal lands" means all lands and interests in lands owned by the United States which are subject to the mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(d) "Fresh water" means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or acquatic life, unless otherwise specified in applicable notices or orders.

(e) "Knowingly or willfully" means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(f) "Lease" means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

(g) "Lease site" means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

(h) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(i) "Lessor" means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

(j) "Major violation" means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

(k) "Maximum ultimate economic recovery" means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

(l) "Minor violation" means noncompliance that does not rise to the level of a "major violation".

(m) "New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act" means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

(n) "Notice to lessees and operators (NTL)" means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

(o) "Onshore oil and gas order" means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

(p) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(q) "Operator" means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(r) "Paying well" means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

(s) "Person" means any individual, firm, corporation, association, partnership, consortium or joint venture.

(t) "Production in paying quantities" means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(u) "Superintendent" means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

(v) "Waste of oil or gas" means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

§ 3161.1 [Amended]

76. Section 3161.1(a) is amended by removing from where it appears the phrase "by, or on behalf of the lessee" and replacing it with the phrase "by the operator".

§ 3161.2 [Amended]

77. Section 3161.2 is amended by removing from where it appears the phrase "that the operator is authorized to conduct such operations,".

Subpart 3162—[Amended]

78. The title of Subpart 3162 is revised to read:

Subpart 3162—Requirements for Operating Rights Owners and Operators

§ 3162.1 [Amended]

79. Section 3162.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee or operator" and replacing it with the phrase "the operator".

§ 3162.2 [Amended]

80. Section 3162.2 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall", and by removing from where it appears in the second sentence of the paragraph the phrase "the lessee will pay a sum determined as adequate to compensate the lessor for lessee's failure" and replacing it with the phrase "the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for the operating rights owner's failure";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee, at its" and replacing it with the phrase "The operator, at its"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operating rights owner shall".

81. Section 3162.3 is revised to read as follows:

§ 3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

§ 3162.3–1 [Amended]

82. Section 3162.3–1 is amended by:

A. Removing from where it appears in at the beginning of paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing paragraph (d)(3) in its entirety and redesignating paragraph (d)(4) as paragraph (d)(3); and

C. Adding a new paragraph (g) to read:

(g) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3–2 [Amended]

83. Section 3162.3–2(a) is amended by removing from where it appears the phrase "the lessee on" and replacing it with the phrase "the operator on".

§ 3162.3–3 [Amended]

84. Section 3162.3–3 is amended by removing the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.3–4 [Amended]

85. Section 3162.3–4 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Amending paragraph (c) by removing from where it appears the phrase "When justified by the lessee," and replacing it with the phrase "When justified by the operator,".

§ 3162.4–1 [Amended]

86. Section 3162.4–1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Removing from where it appears in paragraph (b) the phrase "Upon request, the lessee shall" and replacing it with the phrase "Upon request, the operator shall".

§ 3162.4–2 [Amended]

87. Section 3162.4–2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "the lessee shall" and replacing it with the phrase "the operator shall"; and

B. Removing from the 2 places it appears in paragraph (b) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.5–1 [Amended]

88. Section 3162.5–1 is amended by:

A. Removing from the 2 places it appears in paragraph (a) the phrase "lessee shall" and replacing it with the phrase "operator shall";

B. Removing from the 2 places it appears in paragraph (b) the phrase "lessee shall" and replacing it with the phrase "operator shall";

C. Removing from the 2 places it appears in paragraph (c) the phrase "the lessee" and replacing it with the phrase "the operator"; by removing from where it appears the phrase "The lessee" and replacing it with the phrase "The operator"; and by removing from where it appears the phrase "A lessee's" and replacing it with the phrase "An operator's"; and

D. Removing from where it appears at the beginning of paragraph (e) the phrase "The lessee's liability" and replacing it with the phrase "The operator's liability";

§ 3162.5–2 [Amended]

89. Section 3162.5–2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from where it appears in paragraph (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

C. Removing from where it appears in paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

D. Removing from the 2 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator".

§ 3162.5–3 [Amended]

90. Section 3162.5–3 is amended by removing from the 3 places it appears the word "lessee" and replacing it with the word "operator".

§ 3162.6 [Amended]

91. Section 3162.6(b) is amended by removing from where it appears the phrase "lessees shall" and replacing it with the phrase "the operator shall".

§ 3162.7–1 [Amended]

92. Section 3162.7–1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the

phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from the 4 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator"; and

C. Removing from where it appears in paragraph (e) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.7-4 [Amended]

93. Section 3162.7-4 is amended by:

A. Removing from the 2 places it appears in the introductory paragraph the phrase "BLM";

B. Removing from where it appears in paragraph (b) the phrase "BLM";

C. Removing from where it appears in paragraph (c) the phrase "BLM"; and

D. Removing from where it appears in paragraph (h) the phrase "BLM".

§ 3162.8 [Amended]

94–95. Section 3162.8 is amended by:

A. Removing from where they appear in paragraph (a): the phrase "obtained from a lessee" and replacing it with the phrase "obtained from an operating rights owner or operator"; the phrase "consent of the lessee" and replacing it with the phrase "consent of the operating rights owner or operator, as appropriate,"; and the phrase "the lessee may request" and replacing it with the phrase "the operating rights owner or operator, as appropriate,";

B. Removing from where it appears in paragraph (b) the word "lessee" and replacing it with the phrase "operating rights owner or operator";

C. Removing from where it appears in paragraph (c) the phrase "a lessee under this part" and replacing it with the phrase "an operating rights owner or operator under this part"; and

D. Removing from where they appear in paragaph (d): the phrase "the lessee submits" and replacing it with the phrase "the operating rights owner or operator submits"; and the phrase "the lessee's consent" and replacing it with the phrase "the consent of the operating rights owner or operator, as appropriate".

Subpart 3163—[Amended]

96. Subpart 3163 is amended by removing the heading "Noncompliance and Assessments" and replacing it with the heading to read: "Subpart 3163—Noncompliance, Assessments, and Penalties"

§ 3163.1 [Amended]

97. Section 3163.1 is amended by:

A. Removing from the beginning of paragaph (a): the phrase "Whenever a lessee" and replacing it with the phrase "Whenever an operating rights owner or operator"; the phrase "notify the lessee" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate,"; by removing from where it appears in paragraph (a)(1) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(2) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(4) the phrase "the lessee, operations that the lessee fails" and replacing it with the phrase "the operator, operations that the operator fails", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(5) the phrase "subject the lessee to lease cancellation and forfeiture under the bond." and replacing it with the phrase "subject the lease to cancellation and forfeiture under the bond.", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(6) the phrase "the lessee's noncompliance" and replacing it with the phrase "the operator's noncompliance", and by removing from the end of paragraph (a)(6) the word "lessee" and replacing it with the word "operator";

B. Removing from the 2 places it appears in paragraph (c) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

C. Removing from where it appears in paragraph (d) the phrase "subject the lessee to" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate, to".

§ 3163.2 [Amended]

98. Section 3163.2 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears in paragraph (a) the phrase "notify the lessee in writing" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate, in writing", and by removing from where it appears in paragraph (a) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

B. Removing from where it appears in paragraph (b) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

C. Removing from the 2 places where it appears in paragraph (g)(1) the phrase "per operator" and replacing it with the phrase "per operating rights owner or operator", by removing from where it appears at the beginning of paragraph (g)(2)(i) the phrase "The lessee has" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has", by removing from where it appears at the beginning of paragraph (g)(2)(ii) the phrase "The lessee has been" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has been" and by removing from the 2 places it appears in paragraph (g)(2)(iii) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

D. Removing from where it appears in paragraph (j) the phrase "maximum specific" and replacing it with the phrase "maximum specified".

§ 3163.5 [Amended]

99. Section 3163.5 is amended by:

A. Revising the title to read: "§ 3163.5 Assessments and civil penalties.";

B. Removing from where it appears at the beginning of paragraph (b) the phrase "Administrative penalties" and replacing it with the phrase "Civil penalties"; and

C. Removing from where it appears in paragraph (c) the phrase "lessee from the responsibility" and replacing it with the phrase "responsible party".

§ 3164.1 [Amended]

100. Section 3164.1(b) is amended by removing from where it appears the phrase "binding on lessees and operators" and replacing it with the phrase "binding on operating rights owners and operators, as appropriate,".

§ 3164.3 [Amended]

101. Section 3164.3(a) is amended by removing from where it appears at the beginning of the section the phrase "Lessees shall" and replacing it with the phrase "Operators shall".

§ 3165.1 [Amended]

102. Section 3165.1 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "in triplicate with the authorized officer, and they shall" and replacing it with the phrase "with the authorized officer, and shall";

B. Revising paragraph (b) to read:

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to § 3103.4–2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

and

C. Removing from where it appears in paragrph (c) the phrase "was filed with the authorized officer" and replacing it with the phrase "was filed or the date specified by the authorized officer".

§ 3165.1–1 [Amended]

103. Section 3165.1–1 is amended by removing from where it appears the phrase "shall be filed in triplicate in the office" and replacing it with the phrase "shall be filed in the office".

§ 3165.2 [Amended]

104. Section 3165.2 is amended by removing from where it appears the phrase "the lessee's obligations" and replacing it with the phrase "the obligations".

§ 3165.3 [Amended]

105. Section 3165.3(a) is amended by removing from where it appears at the beginning of the paragraph the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears the phrase "given the lessee to remedy" and replacing it with the phrase "given the appropriate party to remedy", by removing from where it appears the phrase "to any person authorized by the lessee to conduct or supervise" and replacing it with the phrase "to any person conducting or supervising", and by removing from where it appears the phrase "or field employee shall be mailed to the lessee or the lessee's designated representative as described above", and replacing it with the phrase "or field employee or designated representative shall also be mailed to the operator", and by removing from where it appears at the end of the last sentence the phrase "mailed to the lessee of record" and replacing it with the phrase "mailed to the operating rights owner"; and

§ 3165.4 [Amended]

106. Section 3165.4 is amended by:

A. Amending paragraph (c) by removing from where it appears the phrase "an appeal shall not result" and replacing it with the phrase "any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result"; and

B. Amending paragraph (d) by removing from where it appears the phrase "in the event the lessee has failed" and replacing it with the phrase "in the event the operator has failed".

PART 3180—[AMENDED]

107. The authority citation for Part 3180 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)).

§§ 3183.3–1, 3183.4, 3183.5 and 3183.6 [Redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7 respectively]

108. Sections 3183.3–1, 3183.4, 3183.5 and 3183.6 are redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7, respectively.

109. Section 3183.4, previously § 3183.3–1, is revised to read:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (§ 3186.1 of this title for example). No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3–2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

§ 3186.1 [Amended]

110. Section 3186.1 is amended by:

A. Amending Section 9 by revising the last paragraph thereof to read:

Until the establishment of a participaint area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid *ab initio* by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid *ab initio* by the AO;

B. Amending Section 13 by removing from the beginning of the first paragraph the phrase "Any party hereto owning or controlling the working interest in any unitized land having thereon a regular well location may" and replacing it with the phrase "Any operator may", by removing from the first paragraph the phrase "drill a well to test" and replacing it with the phrase "drill a well on the unitized land to test", by removing from the second paragraph the phrase "by a working interest owner results in production" and replacing it with the phrase "by a non-unit operator results in production", and by removing from the third paragraph from where it appears the phrase "by a working interest owner that obtains" and replacing it with the phrase "by a non-unit operator that obtains";

C. Amending Section 14 by removing from where it appears in the first paragraph the phrase "or the working interest owner in case of the operation of a well by a working interest owner as herein provided" and replacing it with the phrase "or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided", by removing the phrase "be made by working interest owners responsible" and replacing it with the phrase "be made by an operator responsible", and

by removing the phrase "to relieve the lessees of any land" and replacing it with the phrase "to relieve the responsible parties of any land";

D. Amending Section 15 by removing from where it appears in the first paragraph the phrase "paid by appropriate working interest owners under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations" and replacing it with the phrase "paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations";

E. Amending Section 18(g) by removing from where it appears in the first paragraph the phrase "sec. 17 (j)" and replacing it with the phrase "sec. 17(m)", by removing the phrase "(30 U.S.C. 226(j))" and replacing it with the phrase "(30 U.S.C. 226(m))", and by adding at the end of the second paragraph a new sentence to read: "If public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3–2 and 43 CFR 3107.4, respectively, shall not be effective.";

F. Amending Section 20 by revising the last sentence of the section to read: "If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid."; and

G. Amending the portion entitled "Certification—Determination" by adding at the end of paragraph A a new sentence to read: "This approval shall be invalid *ab initio* if the public interest requirement under § 3183.4(b) of this title is not met."

PART 3200—[AMENDED]

111. The authority citation for Part 3200 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

§ 3200.0–3 [Amended]

112. Section 3200.0–3 is amended by removing from where it appears the phrase "the Geothermal Steam Act of 1970" and replacing it with the phrase "the Geothermal Steam Act of 1970, as amended.

§ 3200.0–5 [Amended]

113. Section 3200.0–5 is amended by:

A. Revising paragraph (b) to read:

(b) "Secretary" means the Secretary of the Interior.

B. Revising paragraph (e) to read:

(e) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest in such lease.

C. Revising paragraph (f) to read:

(f) "Interest" means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options. "Interest" does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in Subpart 3202 of this title.

D. Revising paragraph (g) to read:

(g) "Director" means the Director of the Bureau of Land Management.

E. Amending paragraph (k), by removing paragraphs (k)(1) through (k)(3) in their entirety; and

F. Adding new paragraphs (m) through (w) to read:

(m) "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

(n) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

(o) "Anniversary date" means the same day and month in succeeding years as that on which the lease became effective.

(p) "Surface managing agency" means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

(q) "Bureau" means the Bureau of Land Management.

(r) "Service" means the Minerals Management Service.

(s) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "assignment" which means a transfer of all or a portion of the lessee's record title interest in a leasee; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(t) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(u) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(v) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner, or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(w) "Public domain lands" means lands, including mineral estates, that never left the ownership of the United States, lands that were obtained by the United States in exchange for public domain lands, lands that have reverted to the ownership of the United States through the operation of the public land laws, and other lands specifically identified by the Congress as part of the public domain.

§ 3200.0–6 and 3200.0–7 [Removed]

114. Sections 3200.0–6 and 3200.0–7 are removed in their entirety.

§ 3200.0–8 [Redesignated as § 3200.0–6]

115. Section 3200.0–8 is redesignated as § 3200.0–6 and paragraph (a) thereof is amended by removing the third sentence thereof in its entirety and by removing from the end thereof the word "chapter" and replacing it with the word "title".

116. A new § 3200.1 is added to read:

§ 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with Part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with Part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

(1) The existence of siliceous sinter and natural geysers;

(2) The temperature of fumaroles, thermal springs and mud volcanoes;

(3) The SiO_2 content of spring water;

(4) The Na/K ratio in spring waters or hot-water systems;

(5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(6) Conductive heat flows and geothermal gradient;

(7) The porosity and the permeability of a potential reservoir;

(8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a "discovery" or "discoveries" shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, "nearby" shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by any other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

117. A new § 3200.2 is added to read:

§ 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estate include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management of 1976 43 U.S.C. 1701 *et seq.*).

§ 3201.1–1 [Amended]

118. Section 3201.1–1 is amended by:

A. Adding a new paragraph (a) to read:

(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest;

and

B. The existing paragraph of the section is designated as paragraph (b) by inserting the figure "(b)" at the beginning of the paragraph, and the figures (a), (b), and (c) are changed to (1), (2), and (3).

§ 3201.1–2 [Amended]

119. Section 3201.1–2(b)(2) is amended by removing from where it appears the word "chapter" and replacing it with the word "title".

§ 3201.1–4 [Amended]

120. Section 3201.1–4 is amended by removing the phrase "Federal Power Commission" from the title and the place it appears in the body of the section and replacing it with the phrase "Federal Energy Regulatory Commission".

§ 3202.2 [Amended]

121. Section 3202.2 is amended by revising the first sentence of the section to read: "Submission of an executed lease application or offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act."

§ 3202.2–2 [Removed]

122. Section 3202.2–2 is removed in its entirety.

123. Section 3202.2–3 is redesignated as § 3202.2–2 and revised to read:

§ 3202.2–2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other lease-related document.

§ 3202.2–4 [Removed]

124. Section 3202.2–4 is removed in its entirety.

§ 3202.2–5 [Redesignated as § 3202.2–3]

125. Section 3202.2–5 is redesignated as § 3202.2–3 and is amended by removing the last two sentences thereof and replacing them with the sentence to read: "All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer."

§ 3202.2–6 [Redesignated as § 3202.2–4]

126. Section 3202.2–6 is redesignated as § 3202.2–4 and is amended by removing in its entirety all language following the first two sentences of the section.

127. Section 3203.1–1 is revised to read:

§ 3203.1–1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

§ 3203.1–3 [Amended]

128. Section 3203.1–3 is amended by removing from the beginning of the section the designation "(a)".

§ 3203.1–4 [Amended]

129. Section 3203.1–4 is amended by removing from where it appears in paragraph (d) the citation "30 CFR 270.17" and replacing it with the citation "§ 3205.3–8 of this title".

§ 3203.2 [Amended]

130. Section 3203.2 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end of the second sentence the phrase ", or as provided for in Part 3230 of this

chapter with respect to 'conversion rights' "; and

B. Amending paragraph (d) by removing from where is appears in the first sentence thereof the word "will" and replacing it with the word "shall", by removing from where it appears in the first sentence thereof the word "chapter" and replacing it with the word "title" and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall".

§ 3203.3 [Amended]

131. Section 3203.3 is amended by removing from where it appears the citation "§ 3203.2" and replacing it with the phrase "§ 3203.2 of this title".

§ 3203.5 [Amended]

132. Section 3203.5 is amended by:

A. Removing from where it appears the phrase "lessee or designated operator," and replacing it with the word "operator", and

B. Removing from the 2 places where it appears the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3203.6 [Amended]

133. Section 3203.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3209.9–5(d)" and replacing it with the citation "3209.0–5", by removing from where it appears in the introductory paragraph and paragraph (a) the word "chapter" and replacing it with the word "title", by removing from where it appears in paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a) the citation "43 CFR 3284.4" and replacing it with the citation "§ 3284.4 of this title", by removing from where it appears in paragraph (b) the citation "43 CFR 3282.4" and replacing it with the citation "§ 3282.4 of this title", and by removing from where it appears in paragraph (b), the citation "43 CFR 3282.4–2" and replacing it with the citation "§ 3282.4–2 of this title".

§ 3203.8 [Amended]

134. Section 3203.8 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer" and by removing from where it appears the phrase "consent of any lessee affected" and replacing it with the phrase "consent of any operating rights owner affected"; and

B. Amending paragraph (b) by removing from where it appears the phrase "the lessee must drill" and replacing it with the phrase "the operating rights owner shall drill", by removing from where it appears the phrase "wells, the lessee may, with" and replacing it with the phrase "wells, the operating rights owner may, with", by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer", and by removing from where it appears at the end of paragraph (b) the citation "43 CFR Part 3260" and replacing it with the citation "§ 3262.3 of this title".

135. The title of Subpart 3205 is revised to read:

Subpart 3205—Fees, Rentals and Royalties

§ 3205.1–2 [Amended]

136. Section 3205.1–2(a)(1) is amended by removing from where it appears the phrase "all first-year rentals" and replacing it with the phrase "all first-year advance rentals".

137. Section 3205.2 is revised to read:

§ 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of $75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of $50 for each separate transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

§ 3205.3–1 [Amended]

138. Section 3205.3–1 is amended by revising the first sentence thereof to read: "Each application shall be accompanied by payment of the first-year's advance rental of $1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest.", by removing where it appears in the second sentence thereof the phrase "first-year's rental" and replacing it with the phrase "first-year's advance rental" and by removing from where it appears in the last sentence thereof the phrase "of the application" and replacing it with the phrase "or the application".

§ 3205.3–2 [Amended]

139. Section 3205.3–2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "proper BLM office" and replacing it with the phrase "designated Service office" and by removing from where it appears the word "chapter" and replacing it with the word "title";

B. Amending paragraph (c) by removing from where it appears the word "chatper" and replacing it with the word "title"; and

C. Revising paragraph (d) to read:

"(d) If the payment is due on a day in which the designated Service office is closed, payment received on the next official working day shall be deemed to be made on time."

§ 3205.3–7 [Amended]

140. Section 3205.3–7(b) is amended by revising the introductory paragraph to read:

"(b) An application hereunder shall be filed with the authorized officer and shall:".

141. Section 3205.3–8 is revised to read:

§ 3205.3–8 Suspension of operations and production or suspension of operations.

(a) A suspension of all operations and production on a producing lease may, upon application by the operating rights owner, be consented to by the authorized officer, including cases where the operator is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond the operator's reasonable control. Applications for suspensions of all operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where operations only or all operations and production have been suspended on a lease and the authorized officer approves resumption of operations only or all operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental or minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3205.3–9 [Amended]

142. Section 3205.3–9 is amended by removing from the two places it appears the word "Supervisor" and replacing it with the phrase "authorized officer", by removing from where it appears the word "chapter" and replacing it with the word "title", by removing from where it appears in fourth, seventh and eighth sentences the word "will" and replacing it with the word "shall" and by removing from where it appears in the seventh sentence the word "must" and replacing it with the word "shall".

§ 3205.4–1 [Amended]

143. Section 3205.4–1 is amended by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

§ 3205.4–2 [Amended]

144. Section 3205.4–2 is amended by removing from where it appears the citation "Subpart 3205" and replacing it with the citation "subpart 3205 of this title" and by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

145. Sections 3206.1, 3206.1–1 and 3206.1–2 are revised to read:

§ 3206.1 Bond obligations and filing.

§ 3206.1–1 Bond obligations.

A surety or personal bond conditioned upon compliance of the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations.

§ 3206.1–2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (See § 1821.2–1). For unit bond forms see subpart 3284 of this title.

146. Section 3206.2 is revised to read:

§ 3206.2 Lease bond.

A lease bond may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more pricipals have interests in different portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee and surety consent is provided.

§§ 3206.3 and 3206.3–1 [Removed]

147. Sections 3206.3 and 3206.3–1 are removed in their entirety.

§ 3206.3–2 [Removed]

§ 3206.3–3 [Redesignated from § 3206.3]

148. Section 3206.3–2 is removed in its entirety, and § 3206.3–3 is redesignated as § 3206.3 and revised to read as follows:

§ 3206.3 Liability.

Where a bond is furnished by an operating rights owner (sublessee) or operator, the Secretary may bring suit thereon without joining the lessee if he/she is not a party to the bond.

149. Section 3206.5 is revised to read:

§ 3206.5 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

150. Section 3206.6 is revised to read:

§ 3206.6 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

151. A new § 3206.9 is added to read:

§ 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

152. Section 3207.2–3(c) is revised to read as follows:

§ 3207.2–3 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a noncompetitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

153. Section 3207.3–2(c) is revised to read as follows:

§ 3207.3–2 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a competitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

§ 3209.0–1 [Amended]

154. Section 3209.0–1(a) is amended by removing from where it appears the phrase "on the public land for geothermal resources" and replacing it

with the following: "unleased public lands, the surface of which is administered by the Bureau, and on lands under a Federal lease for geothermal resources by the lessee. At the request of any other surface managing agency, the procedures in this part may be applied on a case by case basis to unleased public lands administered by such agency"; and by removing the last sentence thereof in its entirety.

§ 3209.0–5 [Amended]

155. Section 3209.0–5 is amended by removing paragraph (c) in its entirety and redesignating paragraph (d) as paragraph (c).

156. Section 3209.4–1(b) is revised to read:

§ 3209.4–1 General.

* * * * *

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations, or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the state in which the lands on which he/she has filed the Notice of Intent are situated, or a lease bond of not less than $10,000 furnished in accordance with § 3206.2 of this title.

PART 3210—[AMENDED]

157. The authority citation for Part 3210 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

158. Section 3210.2–1 is revised to read:

§ 3210.2–1 Application.

An application for a lease shall be filed in an original and 2 copies in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the approved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR Part 3210." The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted. The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

PART 3220—[AMENDED]

159. The authority citation for Part 3220 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

160. Section 3220.2 is revised and §§ 3220.2–1 and 3220.2–2 are added to read:

§ 3220.2 Notice of lease sale.

§ 3220.2–1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

§ 3220.2–2 Detailed statement.

The detailed statement shall contain informtion on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

161. Section 3220.3 is revised to read:

§ 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine approriate. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

§ 3220.4 [Amended]

162. Section 3220.4(a) is amended by removing from where it appears in the second sentence the phrase ", together with proof of qualifications as required by these regulations" and by removing the last sentence thereof and adding two new sentences to read: "Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with Subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title."

§ 3220.5 [Amended]

163. Section 3220.5 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end thereof the phrase ", except as required under Part 3230 of this chapter" and by adding to the end thereof the sentence "High bids determined to be inadequate by the authorized officer shall be rejected."

B. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively;

C. Adding a new paragraph (c) to read as follows:

(c) If the authorized officer cannot issue a decision to accept or reject the high bid within 30 days, the high bidder shall be notified and informed in writing of the reason for the delay and when a decision is expected.

D. Revising redesignated paragraph (d) to read as follows:

(d) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus bid submitted with the bid shall be refunded. ; and

E. Amending redesignated paragraph (e) by revising the first sentence thereof to read: "If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first year's rental and the bidder's proportionate share of the notice of lease sale pubication costs."; and

F. Amending redesignated paragraph (f) by removing from where it appears the phrase "the Secretary" and replacing it with the phrase "the authorized officer".

PART 3240—[AMENDED]

164. The authority citation for Part 3240 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

165. The title to Subpart 3241 is revised to read:

Subpart 3241—Transfers

166. Section 3241.1 is revised to read:

§ 3241.1 Transfers, interests and qualifications.

167. Section 3241.1–1 is amended by:

A. Revising the title to read:

§ 3241.1–1 Transfers of record title.

B. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the designation "(a)", by removing from where it appears the word "will" and replacing it with the word "shall", by removing from where it appears the word "chapter" and replacing it with the word "title" and by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer"; and

C. Removing paragraph (b) in its entirety.

D. Designating paragraphs (1), (2), and (3) as paragraphs (a), (b), and (c).

168. A new § 3241.1–2 is added to read:

§ 3241.1–2 Transfers of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

169. Section 3241.2 is revised to read:

§ 3241.2 Requirements for filing of transfers.

170. Section 3241.2–1 is revised to read:

§ 3241.2–1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of $50. A transfer not accompanied by the required nonrefundable filing fee shall not be accepted and shall be returned.

§ 3241.2–2 [Removed]

171. Section 3241.2–2 is removed in its entirety.

172. Section 3241.2–3 is redesignated as § 3241.2–2 and is revised to read:

§ 3241.2–2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

173. Section 3241.2–4 is redesignated as § 3241.2–3 and is revised to read:

§ 3241.2–3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

174. Section 3241.2–5 is redesignated as § 3241.2–4 and is revised to read:

§ 3241.2–4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

175. Section 3241.3 is revised to read:

§ 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a co-principal on the bond with the transferor. Any transfer which does not convey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

176. Section 3241.4 is revised to read:

§ 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer. Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

177. Section 3241.5 is revised to read:

§ 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as if no such transfer had been filed for approval.

(b) Upon approval, the transferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3241.7–1 [Amended]

178. Section 3241.7–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the phrase "assignment or transfer, a statement must" and replacing it with the phrase "transfer, a statement shall";

B. Redesignating paragraph (d) as paragraph (c) and amending the newly redesignated paragraph (c) by removing from where it appears in the first sentence thereof the phrase "assignments by overriding royalty interests must" and replacing it with the phrase "transfers of overriding royalty interests shall", and by removing from where it appears the phrase "interests will not" and replacing it with the phrase "intersts shall not".

179. Section 3241.8 is revised to read:

§ 3241.8 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

180. Section 3241.9 is revised to read:

§ 3241.9 Effect of transfer.

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

§ 3242.1 [Amended]

181. Section 3242.1 is amended by removing from where it appears in the first sentence of the introductory paragraph the word "Supervisor" and

replacing it with the phrase "authorized officer", also by removing from where it

§ 3243.4–1 [Amended]

187. Section 3243.4–1 is amended by:

citation "§ 3244.2–2 of this title" and by

units, including, without limitations, municipalities.

first sentence thereof the phrase", in triplicate," and by removing from where

corporation, association, or municipality that operates any facility on a Federal

replacing it with the phrase "authorized officer", also by removing from where it appears in the introductory paragraph the word "he" and replacing it with the phrase "he/she" and by removing from where it appears in paragraph (c) the word "him" and replacing it with the phrase "him/her".

§ 3242.2–2 [Amended]

182. Section 3242.2–2 is amended by removing from where it appears the citation "§ 3242.2–1" and replacing it with the citation "§ 3242.2–1 of this title".

§ 3243.1 [Amended]

183. Section 3243.1 is amended by removing from where it appears in the second sentence thereof the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears at the end of the second sentence thereof the citation "43 CFR Part 3260" and replacing it with the citation "part 3280 of this title."

§ 3243.2 [Amended]

184. Section 3243.2 is amended by removing from where it appears in the first sentence thereof the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3–1 [Amended]

185. Section 3243.3–1 is amended by amending paragraph (a) by revising the first sentence thereof to read: "When separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when found in the public interest." And amending paragraphs (b) and (c) by removing from where it appears in those paragraphs the word "Supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3–2 [Amended]

186. Section 3243.3–2 is amended by removing from where it appears in the second sentence the word "Supervisor" and replacing it with the phrase "authorized officer" and also by removing from where it appears in the second sentence the word "must" and replacing it with the word "shall."

§ 3243.4–1 [Amended]

187. Section 3243.4–1 is amended by:

A. Revising paragraph (a) to read:

(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.

B. Amending paragraph (b) by removing from where it appears therein the word "Supervisor" and replacing it with the phrase "authorized officer"; and

C. Amending paragraph (c) by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer" and also by removing from where it appears the word "will" and replacing it with the word "shall".

§ 3243.4–2 [Amended]

188. Section 3243.4–2 is amended by:

A. Amending paragraph (a) by removing from the two places it appears therein the word "must" and replacing it with the word "shall" and also by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer"; and

B. Amending paragraph (b) by removing from where it appears the word "must" and replacing it with the word "shall".

§ 3244.1 [Amended]

189. Section 3244.1(a) is amended by revising the introductory text of the paragraph to read:

(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment in the proper BLM office. A partial relinquishment shall not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:

§ 3244.2–1 [Amended]

190. Section 3244.2–1 is amended by removing from where it appears in the first sentence thereof the citation "§ 3244.2–2" and replacing it with the citation "§ 3244.2–2 of this title" and by revising the second sentence thereof to read: "However, if the designated Service office is not open on the day a payment is due, payment received on the next day the designated Service office is open to the public shall be deemed timely made."

§ 3244.2–2 [Amended]

191. Section 3244.2–2 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence the word "paid" and replacing it with the phrase "received" and revising the third and fourth sentences thereof to read: "The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office."; and

B. Amending paragraph (b)(1) by adding after the phrase "part of the lessee;" the words "(reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public);"

§ 3244.5 [Amended]

192. Section 3244.5 is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer".

PART 3250—[AMENDED]

193. The authority citation for Part 3250 is revised to read:

Authority: Secs. 3 and 24, Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

§ 3250.0–3 [Amended]

194. Section 3250.0–3 is amended by removing from where it appears the word "Stream" and replacing it with the word "Steam".

195. Section 3250.1–2 is revised to read:

§ 3250.1–2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitations, municipalities.

§3250.4–1 [Amended]

196. Section 3250.4–1 is amended to remove from where it appears the citation "§ 3200.0–6" and replacing it with the citation "§ 3200.0–6".

§3250.4–2 [Amended]

197. Section 3250.4–2 is amended by removing the second and third sentences thereof in their entirety and adding a new sentence at the end thereof to read: "In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of Part 3260 of this title. Permits granted under Part 3260 of this title shall conform with the requirements of § 3200.0–6 of this title."

§3250.6–1 [Amended]

198. Section 3250.6–1(b) is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears the citation "43 CFR Part 3260" and replacing it with the citation "Part 3260 of this title".

§3250.6–2 [Amended]

199. Section 3250.6–2(a) is amended by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer".

§3250.6–3 [Amended]

200. Section 3250.6–3 is amended by revising the first sentence to read: "Rental at a rate to be determined by the authorized officer shall be paid annually, but said rental shall not be less than $100 per acre or fraction thereof if the utilization facility is for electrical generation, or not less than $10 per acre or fraction thereof if the utilization facility is for non-electrical purposes."

§3250.8 [Amended]

201. Section 3250.8 is amended by:

A. Amending paragraph (a) by removing from the three places it appears the word "must" and replacing it with the word "shall" and by removing from the two places it appears the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (b) by removing from where it appears the phrases "non-refundable fee" and replacing it with the phrase "nonrefundable filing fee".

§3250.9 [Amended]

202. Section 3250.9 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence thereof the phrase", in triplicate," and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (d) by removing from where it appears therein the phrase "Area Geothermal Supervisor" and replacing it with the phrase "authorized officer".

203. The authority citation for Part 3260 continues to read:

Authority: Geothermal Steam Act as amended (30 U.S.C. 1001–1025) and Order No. 3087 (dated Dec. 3, 1982, as amended Feb. 7, 1983) [48 FR 8983].

§3260.0–5 [Amended]

204. Section 3260.0–5 is amended by:

A. Revising paragraph (a) to read:

(a) "Lessee" means a person or entity holding record title in a lease issued by the United States.

and

B. Revising paragraph (b) to read:

(b) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner (sublessee), or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

C. Redesignating paragraphs (c) through (o) as (d) thorugh (p), respectively, and adding a new paragraph (c) to read:

(c) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

D. Amending redesignated paragraph (i) by removing from the last sentence thereof the phrase "exclusive right of a lessee to drill" and replacing it with the phrase "right to drill";

E. Revising redesignated paragraph (j) to read:

(j) "Casual use" means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. For example, activities that do not involve use of heavy equipment or explosives and that do not involve vehicle movement except over established roads and trails are "casual use".

F. Revising redesignated paragraph (o) to read:

(o) "Facility operator" means the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal geothermal lease for the beneficial utilization of geothermal resources.

and

G. Amending redesignated paragraph (p) by removing from where it appears the phrase "between a lessee" and replacing it with the phrase "between an operating rights owner".

§3261.2 [Amended]

205. Section 3261.2 is amended by removing from where it appears in the next to last sentence thereof the phrase "State agencies, lessees, operators" and replacing it with the phrase "State agencies, operating rights owners, operators," by removing from where it appears in the last sentence thereof the phrase "is authorized to conduct the proposed operations;" and by adding at the end of the section a new sentence to read: "Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations."

§ 3261.8 [Removed]

206. Section 3261.8 is removed in its entirety.

Subpart 3262—[Amended]

207. The title of Subpart 3262 is revised to read: "Subpart 3262—Requirements for Operating Rights Owners and Operators".

§ 3262.1 [Amended]

208. Section 3262.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "created by the lessee's operations" and replacing it with the phrase "created by the operations".

209. Section 3262.2 is revised to read as follows:

§ 3262.2 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of

sufficient bond coverage in accordance with Subpart 3206 of this title.

(b) In all cases where an individual production well facility, research and demonstration facility, or plant facility is to be operated by a party other than the operating rights owner or licensee, such other party shall submit to the authorized officer the joint facility operating agreement between the operating rights owner or licensee and the facility operator. Such joint facility operating agreement shall authorize, upon acceptance by the authorized officer, the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with § 3262.4–1 of this title, such preliminary geologic and soil studies as are appropriate for the planning and design of the facilities necessary for the utilization of geothermal resources in the manner proposed. An operating rights owner, operator, or licensee also may construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a plant facility, for which a license has been issued in accordance with the regulations in this group.

§ 3262.2–1 [Amended]

210. Section 3262.2–1 is amended by:

A. Revising the title to read: "§ 3262.2–1 Local representative."; and

B. Amending the language of the section by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3262.3 [Amended]

211. Section 3262.3 is amended by removing from where it appears at the beginning of both paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall".

§ 3262.4 [Amended]

212. Section 3262.4 is amended by removing from where it appears in the opening paragraph three times the word "lessee," and replacing it with the word "operator,".

§ 3262.4–1 [Amended]

213. Section 3262.4–1 is amended by:

A. Amending the opening paragraph of the section by removing from where it appears in the first sentence the phrase "the lessee, licensee, or the designated facility" and replacing it with the phrase "the operating rights owner, operator, licensee, or facility", and by removing from where it appears in the third sentence of the opening paragraph the phrase "the lessee, licensee" and replacing it with the phrase "the operating rights owner, licensee"; and

B. Amending paragraph (i) by removing from where it appears the phrase "The lessee, licensee," and replacing it with the phrase "The operating rights owner, licensee,".

§ 3262.4–2 [Amended]

214. Section 3262.4–2 is amended by removing from the 4 places it appears the phrase "the lessee" and replacing it with the phrase "the operator", and by removing from where it appears the phrase "a lessee" and replacing it with the phrase "an operator".

§ 3262.5 [Amended]

215. Section 3262.5 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.5–1 [Amended]

216. Section 3262.5–1 is amended by removing from the 2 places it appears the phrase "The lessee" and replacing it with the phrase "The operator", and by removing from where it appears in paragraph (c) the phrase "lessee will" and replacing it with the phrase "operator shall".

§ 3262.5–2 [Amended]

217. Section 3262.5–2 is amended by removing from the two places it appears the phrase "The lessee" and replacing it with the phrase "The operator".

§ 3262.5–3 [Amended]

218. Section 3262.5–3 is amended by removing from where it appears the phrase "the lessee unless requested by an offset lessee, and then, at the risk and expense of the offset lessee.", and replacing it with the phrase "the operator unless requested by an offset operating rights owner or operator, and then, at the risk and expense of the offset party."

§ 3262.5–4 [Amended]

219. Section 3262.5–4 is amended by removing from the beginning of the section the phrase "The lessee or operator" and replacing it with the phrase "The operator".

§ 3262.5–5 [Amended]

220. Section 3262.5–5 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6 [Amended]

221. Section 3262.6 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6–1 [Amended]

222. Section 3262.6–1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee or, as appropriate, the licensee, designated operator, or designated facility operator" and replacing it with the phrase "The operator, licensee, or facility operator, as appropriate,".

§ 3262.6–2 [Amended]

223. Section 3262.6–2 is amended by removing from the 2 places it appears the phrase "the lessee" and replacing it with the phrase "the operator".

§ 3262.6–3 [Amended]

224. Section 3262.6–3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7 [Amended]

225. Section 3262.7 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7–1 [Amended]

226. Section 3262.7–1 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

Subpart 3263—[Amended]

§ 3263.1 [Amended]

227. Section 3263.1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3263.2 [Amended]

228. Section 3263.2 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

229. Section 3263.3 is revised to read:

§ 3263.3 Commingling production.

The authorized officer may authorize an operator to commingle production from wells on a lease with production from other leases subject to such conditions as may be prescribed.

Subpart 3264—[Amended]

§ 3264.2–2 [Amended]

230. Section 3264.2–2(d) is amended by removing from where it appears the phrase "the lessee commences" and replacing it with the phrase "the operator commences".

§ 3264.2–3 [Amended]

231. Section 3264.2–3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3264.3 [Amended]

232. Section 3264.3 is amended by removing from where it appears the phrase "the lessee or operator must" and replacing it with the phrase "the operator shall".

§ 3264.4 [Removed]

§ 3264.5 [Redesignated as § 3264.4 and amended]

233. Section 3264.4 is removed in its entirety and § 3264.5 is redesignated as § 3264.4 and is amended by removing the phrase "the lessee so long" and replacing it with the phrase "the operating rights owner or operator, as appropriate, so long".

Subpart 3265.1—[Amended]

234. Section 3265.1(a) is amended by removing from the beginning of the section the phrase "Whenever a lessee or" and replacing it with the phrase "Whenever an operating rights owner, operator, or", by removing from where it appears in the first sentence the phrase "give the lessee notice "and replacing it with the phrase "give notice", and by removing from the beginning of the second sentence the phrase "Failure by the lessee to perform" and replacing it with the phrase "Failure by the party to perform".

Group 3000—[Amended]

235. The Note at the beginning of Group 3000 is amended bya revising the first sentence there of to read as follows:

Note: The information collection requirements contained in Part 3000 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0145.

Group 3100—[Amended]

236. The Note at the beginning of Group 3100 is amended by revising the first sentence thereof to read as follows:

Note: The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3140, 3150, and 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034, 1004–0065, 1004–0067, 1104–0074, 1004–0132, 1004–0134, 1004–0135, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

Group 3200—[Amended]

237. Group 3200—Beothermal Resources Leasing is amended by inserting at the beginning thereof the following Note:

Note: The information collection requirements contained in Parts 3200, 3210, 3220, 3240, 3250, and 3280 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0074 and 1004–0132. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for the exploration, development, and utilization of geothermal resources on the public lands. The information will be used to make this determination. A response is required to obtain a benefit.

PART 3210—[AMENDED]

238. The Note at the beginning of Part 3210 is removed.

PART 3250—[AMENDED]

239. The Note at the beginning of Part 3250 and the Note at the beginning of Subpart 3250 are removed.

PART 3260—[AMENDED]

240. Note 1 at the beginning of Part 3260 is amended by revising the clearance number at the end of the first sentence of paragraph (b) to read "1004–0132".

241. Note 2 at the beginning of Part 3280 is revised to read as follows:

Note 2: The information collection requirements contained in Part 3260 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0132. The information is being collected to evaluate the technical feasibility and environmental impacts of geothermal operations on Federal lands. Clearance number 1004–0132 also covers information required by § 3264.3 as is required to document exploration expenditures for which diligence credit is desired in accordance with § 3203.5. A response is required to obtain a benefit.

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Monday
May 16, 1988

Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa and Pima Counties Carbon Monoxide Plans; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ-10-1-5511; A-1-FRL-3350-6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa and Pima Counties Carbon Monoxide Plans; Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Arizona State Implementation Plan (SIP) for carbon monoxide (CO) submitted by the Governor on November 15, 1987. The revisions consist of the Maricopa County Carbon Monoxide Plan and the Pima County Carbon Monoxide Plan. The Maricopa Plan includes a demonstration of attainment of the CO standard by December 31, 1987, the statutory deadline, and a demonstration of maintenance of the CO standard through 1997. The Pima Plan includes a demonstration of maintenance of the CO standard through 1997. The Maricopa Plan also includes a revised new source review (NSR) program for CO. The Pima Plan includes a revised NSR program for CO and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}). The intended effect of this action is to propose approval of the Maricopa and Pima CO Plans and the NSR revisions for CO and PM_{10} in order to meet the requirements of Part D of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before June 15, 1988.

ADDRESSES: Comments may be mailed to Daniel A. Kotchian, Director, Air Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wishing to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region IX, Air Management Division, 215 Fremont Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (A-5-1), 401 M Street SW., Washington, DC 20460

Arizona Department of Environmental Quality, 2005 North Central Avenue, Phoenix, AZ 85004

Maricopa County Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, AZ 85006

Pima County Department of Environmental Quality, 130 West Congress, Tucson, AZ 85701

FOR FURTHER INFORMATION CONTACT: Jeffrey Yarger, Air Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8220, FTS 454-8220.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Under the Clean Air Act, as amended in 1977, EPA must designate areas of the country as attainment, nonattainment, or unclassifiable for the National Ambient Air Quality Standards (NAAQS). Areas designated nonattainment for CO were classified as moderate or serious by operation of law. Moderate CO nonattainment areas were required to attain the CO NAAQS by December 31, 1982, or, if an extension of up to five years was granted, by December 31, 1987. Serious CO nonattainment areas were required to attain the CO NAAQS by December 31, 1987, or, if an extension of up to five years was granted, by December 31, 1992. Moderate CO nonattainment areas with design values greater than 12.7 parts per million (ppm) were required to submit by January 1, 1986 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987. Serious CO nonattainment areas were required to submit by January 1, 1987 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987, or, if an extension was granted, by December 31, 1992.

Maricopa County was designated nonattainment for CO and classified moderate by operation of law. Maricopa County has a design value greater than 12.7 ppm. Therefore, Maricopa County was required to submit by January 1, 1986 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987. Pima County was designated nonattainment for CO and classified serious by operation of law. Pima County was required to submit by January 1, 1987 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987, or, if an extension was granted, by December 31, 1992.

On November 15, 1987, the Governor submitted the Maricopa CO Plan and the Pima CO Plan. The Maricopa Plan includes a demonstration of attainment of the CO NAAQS by December 31, 1987, the statutory deadline, and a demonstration of maintenance of the CO NAAQS through 1997. The Pima Plan includes a demonstration of maintenance of the CO NAAQS through 1997. The Maricopa Plan also includes a revised NSR program for CO. The Pima Plan includes a revised NSR program for CO and for PM_{10}.

II. Maricopa County CO Plan

A. Background

On March 3, 1986 (51 FR 7534), EPA published a finding that Maricopa County had failed to submit by January 1, 1986 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987. This finding started an 18-month sanctions clock under section 179(a) of the Clean Air Act. Sanctions would be imposed under section 179(a) if EPA disapproved the Maricopa CO Plan or if EPA failed to approve the Maricopa CO Plan within 18 months of the finding. Sanctions would consist of withholding certain highway funds and requiring offsets for new or modified major stationary sources of CO. Sanctions would be imposed in stages, with the first stage beginning 18 months after the finding and the second stage beginning 6 months after the first stage. The sanctions clock was stopped when the Governor submitted the Maricopa CO Plan on November 15, 1987.

On August 27, 1987 (52 FR 32426), EPA published a finding that Maricopa County had failed to submit by January 1, 1987 a SIP revision providing for attainment of the CO NAAQS by December 31, 1987. This finding started an 18-month sanctions clock under section 179(a) of the Clean Air Act. Sanctions would be imposed under section 179(a) if EPA disapproved the Maricopa CO Plan or if EPA failed to approve the Maricopa CO Plan within 18 months of the finding. Sanctions would consist of withholding certain highway funds and requiring offsets for new or modified major stationary sources of CO. Sanctions would be imposed in stages, with the first stage beginning 18 months after the finding and the second stage beginning 6 months after the first stage. The sanctions clock was stopped when the Governor submitted the Maricopa CO Plan on November 15, 1987.

On December 31, 1987, the Maricopa Association of Governments (MAG) and Maricopa County filed a lawsuit against EPA in the United States District Court for the District of Arizona. The lawsuit alleged that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Clean Air Act by failing to promulgate a FIP for CO in the Maricopa nonattainment area. The lawsuit requested the Court to issue an order requiring EPA to promulgate no later than August 10, 1988, a FIP for CO in the

submitted NSR regulations for Maricopa County. On July 3, 1983 (48 FR 34293), EPA approved the Maricopa NSR regulations into the SIP. On May 26, 1987 (52 FR 19408), EPA published a proposed rule to approve revisions to the Maricopa NSR regulations. The revisions were submitted by the Governor on November 15, 1987. The revisions include a revised NSR program for CO. EPA is proposing to approve the revised NSR program for CO in the Maricopa CO Plan.

B. Emissions Inventory

The Maricopa CO Plan includes a 1985 emissions inventory for CO. The inventory includes point, area, and mobile sources. The inventory includes typical winter weekday emissions. The inventory includes emissions for the nonattainment area. The inventory includes emissions for the entire county. The inventory includes emissions for the Maricopa portion of the Phoenix Urbanized Area. The inventory includes emissions for the Maricopa portion of the Phoenix Metropolitan Statistical Area. The inventory includes emissions for the Maricopa portion of the Phoenix Consolidated Metropolitan Statistical Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa Urbanized Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa Metropolitan Statistical Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa Consolidated Metropolitan Statistical Area. 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The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa-Scottsdale-Tempe-Glendale-Peoria-Chandler-Gilbert-Surprise-Avondale-Goodyear-Buckeye-Queen Creek-Apache Junction Metropolitan Statistical Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa-Scottsdale-Tempe-Glendale-Peoria-Chandler-Gilbert-Surprise-Avondale-Goodyear-Buckeye-Queen Creek-Apache Junction Consolidated Metropolitan Statistical Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa-Scottsdale-Tempe-Glendale-Peoria-Chandler-Gilbert-Surprise-Avondale-Goodyear-Buckeye-Queen Creek-Apache Junction-Casa Grande Urbanized Area. The inventory includes emissions for the Maricopa portion of the Phoenix-Mesa-Scottsdale-Tempe-Glendale-Peoria-Chandler-Gilbert-Surprise-Avondale-Goodyear-Buckeye-Queen Creek-Apache Junction-Casa Grande Metropolitan Statistical Area. 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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3380-6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa and Pima Counties Carbon Monoxide Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposed action to approve revisions to the Maricopa portion of the Arizona Carbon Monoxide State Implementation Plan (SIP) submitted by the State on October 5, 1987. Because the approvable measures in the revised plan do not by themselves provide sufficient emissions reductions to demonstrate timely attainment of the carbon monoxide (CO) standard, this notice also proposes to promulgate under section 110(c) of the Clean Air Act (CAA) a Federal Implementation Plan (FIP) for Maricopa County, consisting of a motor vehicle oxygenated fuels program and an employer-based trip reduction program. EPA believes that the revised SIP, supplemented by these two federally promulgated rules, will meet the requirements of section 110 and Part D of the Clean Air Act. The proposed combined plan provides for attainment of the CO standard by the end of 1991, and for continued maintenance of the standard. In addition, EPA is taking comments on whether it may be appropriate to promulgate a FIP for Maricopa County based solely on a motor vehicle oxygenated fuels program. This program would be implemented with a sufficiently high oxygen requirement so that all of the CO reductions necessary for attainment by the FIP would be achieved by the motor vehicle oxygenated fuels program and the approvable State measures. EPA is also proposing: (1) To continue the Part D disapproval of the Maricopa CO plan that EPA announced September 23, 1986 (51 FR 33746) and (2) to find that the State is not making reasonable efforts to submit an adequate Part D plan for CO for Maricopa County. As a result, EPA is proposing to retain the construction ban for major new and modified stationary sources under section 110(a)(2)(I) and to impose in Maricopa County the federal highway funding restriction under section 176(a).

EPA's proposed promulgation of a FIP is in response to an order by the U.S. District Court for the District of Arizona, requiring EPA to promulgate no later than August 10, 1988, a FIP for CO in the Maricopa and Pima Counties Nonattainment Areas. On April 26, 1988, EPA proposed to approve the revised SIP for the Tucson CO Planning Area (Pima County) as meeting the requirements of Part D of the Act. EPA proposes in this notice that, in the event that EPA determines that the Tucson SIP cannot be approved, EPA will promulgate an oxygenated fuels program for Pima County. Any oxygenated fuels program that EPA ultimately would adopt for Pima County would provide for attainment in Pima County by 1990.

DATES: EPA will conduct a public hearing on this Notice of Proposed Rulemaking (NPRM) on June 10, 1988, from 9:00 a.m. until 6:00 p.m. Written comments on the NPRM must be submitted to EPA at the address below by June 15, 1988. The comment period will remain open until July 11, 1988, for submission of rebuttal and supplemental comments relating only to comments already raised at the public hearing.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: A-2-2, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105.

The public hearing will be in the Hearing Room of the Maricopa County Board of Supervisors, 205 W. Jefferson Street, Phoenix, Arizona.

Rulemaking dockets for this notice, including the Technical Support Document, may be inspected at the following locations between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Central Docket Section, Docket No. 9-A-88-01, South Conference Room 4, 401 M. Street SW., Washington DC 20460

U. S. Environmental Protection Agency, Region 9, Air Management Division, State Liaison Section, A-2-2, 215 Fremont Street, San Francisco, California 94105.

Copies of the submitted plans, proposed FIP, and the Technical Support Document are also available at the County and State offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007

Maricopa County Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, Arizona 85006

Pima Association of Governments, 405 Transamerica Building, 177 North Church Street, Tucson, AZ 95701

Pima County Health Department, Air Quality Control District, 150 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) amendments of 1977 required states to revise their state implementation plans (SIPs) by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Generally, the states containing these designated "nonattainment areas" had to submit revised SIPs by January 1, 1979. The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or carbon monoxide (CO) to no later than December 31, 1987, was available under section 172 if the state could demonstrate as part of its 1979 SIP revision that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas that received an attainment date extension from EPA, states were required to submit to EPA by July 1, 1982 an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the CAA.

A. SIP Disapproval

Maricopa County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Maricopa County's initial nonattainment area plan for CO in 1979 and 1980. On October 30, 1980, the State submitted a request to EPA to extend the CO attainment date in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA took final action to approve the 1979 SIP revision on the condition that the State submit revised regulations for Maricopa County to meet the Act's New Source Review (NSR) requirements. On June 3, 1982, and March 4, 1983, the State submitted NSR regulations for Maricopa County. On July 3, 1983 (48 FR 34293), EPA proposed to approve the Maricopa rules with one exception and certain understandings. On April 27, 1988, Maricopa County submitted a letter to EPA making certain commitments regarding implementation of the Maricopa NSR rules pursuant to those understandings. EPA expects to receive an identical commitment letter from the Arizona Department of Environmental Quality in the near future. Based upon these letters, EPA will take final action approving the NSR rules when EPA takes final action on today's proposal.

Beyond establishing this NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan was not adequate to bring about attainment by the end of 1982. EPA premised its limited approval of the plan on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987, and (2) the State would submit another plan revision which would provide for attainment by that date. The State submitted a plan purporting to meet this requirement on October 26, 1982.

On January 27, 1986 (51 FR 3343), EPA proposed to disapprove the Maricopa revised plan and impose the section 110(a)(2)(I) construction ban because the State had not adequately demonstrated that it would provide for timely attainment of the standard.

On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties Nonattainment Areas, and imposing the section 110(a)(2)(I) construction ban on major new sources and major modifications to existing sources of CO in the two areas. As explained fully in the September 23, 1986 notice, EPA determined that it was not necessary to take final action on the State's attainment-date extension request. The Ninth Circuit Court of Appeals upheld EPA's action. *Arizona* v. *Thomas*, 829 F.2d 834 (1987).

B. U.S. District Court Order

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for CO in the Maricopa and Pima Counties Nonattainment Areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI). The timeframe specified in the Court Order for EPA to promulgate a FIP was six months, following either the formal submittal of the Pima CO plan or September 30, 1987, whichever came first. *McCarthy* v. *Thomas*, D. Ariz. No. CIV-85-34-TUC-IWDB (slip op., Aug. 10, 1987). The court left open the possibility that EPA could file a motion after January 1, 1988 requesting an extension of the time period for FIP promulgation if necessary.

EPA outlined its intended approach to comply with the Court Order to promulgate a FIP for Maricopa and Pima Counties in an Advance Notice of Proposed Rulemaking (ANPRM) (52 FR 45466) published on November 30, 1987. EPA received 54 comments on the ANPRM which it took into account in preparing this proposal. A full analysis of the comments and EPA's response to them is included in the TSD. In the ANPRM EPA explained that, to promulgate a FIP for these two areas, EPA must select control measures that fill whatever gaps are left by approved portions of the State plans. The ANPRM also discussed the Maricopa County CO plan that had been submitted as a SIP revision by the State on October 5, 1987. The plan indicated that the area could attain the CO standard as early as 1990 and in any event by 1995 if the recommended control strategy in the SIP, including an oxygenated fuels program for motor vehicles, winter daylight savings time, and an employer-based trip reduction ordinance, were fully adopted and implemented.

The Maricopa plan claimed credit, both implicitly and explicitly, for the Arizona vehicle inspection and maintenance (I/M) program as expanded through 1987. In a separate **Federal Register** notice on the revised Pima CO plan, EPA recently proposed to approve the improvements to the State's I/M program as adopted by the Arizona State Legislature in 1985, 1986, and 1987. (51 FR 14818 (April 28, 1988).) The revised Maricopa plan also assumed credit for the following additional control measures: Transit and ridesharing improvements, expanded facilities to encourage increased pedestrian and bicycle trips, alternative work hours, alternative fuels for vehicle fleets, alternate-fueled transit vehicle purchase, and a voluntary-no-drive-day program. As discussed below, EPA is proposing to approve and assign emissions reduction credit to all of these measures except for the alternative fuels for vehicle fleets and the voluntary-no-drive-day program. The approvable measures in the revised plan, however, do not by themselves provide sufficient emissions reductions to demonstrate timely attainment of the CO standard.

On March 14, 1988, EPA moved the Court to extend the period for EPA to promulgate a FIP for the Maricopa and Pima areas. On April 19, 1988, the Court issued an order requiring EPA to propose a FIP for Maricopa County no later than May 13, 1988, hold public hearings on the proposal no later than June 10, 1988, close the public comment period following the hearing by July 11, 1988, and promulgate a FIP for Maricopa County no later than August 10, 1988. The Court also ordered that the same schedule for FIP promulgation shall apply for Pima County if EPA does not accept the Pima County SIP.

II. Summary of EPA's Proposal

Section 110(c)(1) of the Act provides that the Administrator shall promulgate a FIP within the statutory schedule unless, prior to such promulgation, the state has adopted and submitted a plan which the Administrator determines to be in accordance with the requirements of section 110. While EPA believes that expeditious attainment of the standards would result if the approvable measures in the revised plan were supplemented by an appropriate State oxygenated fuels program alone or in conjunction with a local trip reduction program, the State Legislature and the local Maricopa County jurisdictions have not yet adopted such programs. Thus, EPA believes that the revised Maricopa plan does not at this time relieve the Agency of the responsibility to promulgate a FIP for Maricopa. As discussed in the ANPRM, EPA has evaluated measures that could fill the gaps left by the State plan and thereby bring about near-term attainment of the CO standard. In this notice, EPA proposes to promulgate the two control measures for Maricopa County identified in the ANPRM—an oxygenated fuels program and an employer-based trip reduction program—as technologically-available elements of the FIP to provide the emissions reduction necessary for attainment.

With respect to oxygenated fuels, EPA proposes to require an equivalent oxygen content level of 2.57 percent in motor vehicle fuels first introduced into commerce within the Maricopa area in the winter CO season—specifically, from October 1 through March 31. (The equivalent oxygen content requirement may change in the final rulemaking depending on the combination of control measures selected for promulgation and on whether the State adopts any additional control measures.) Oxygen fuel blends, in the form of aliphatic

alcohols and/or ethers, which are currently on the market and available to the Maricopa area, include methyl-tertiary-butyl ether (MTBE), ethanol (Gasohol), and methanol/cosolvent blends. The effect of these blends in gasoline is to cause motor vehicle engines to run leaner thereby reducing emissions of carbon monoxide.

With respect to the proposed federal trip reduction regulation, EPA proposes to require that each employer of 100 or more employees at a worksite in the nonattainment area develop and offer to his employees alternative modes incentives. These incentives would be designed to reduce the number of single-occupant-vehicle (SOV) commute trips to the employer's worksite. The proposed trip reduction goal is a 5 percent reduction in SOV commute trips in the first year and an additional 5 percent reduction in the second year. Both the proposed trip reduction program and the oxygenated fuels program are discussed in detail later in this notice.

While these two measures are being proposed, EPA intends to give consideration between proposal and final promulgation to the implementation of FIP based upon a single control measure—an oxygenated fuels requirement with a sufficiently high oxygen requirement (2.79 percent) so that attainment can be achieved solely based upon this measure. In essence, with a sufficiently high oxygen content in the motor vehicle oxygenated fuels program the trip reduction program would become unnecessary.

Since EPA has not promulgated either of these measures before, EPA has very little experience regarding the advantages and disadvantages of implementing one measure over the other. Consequently, the final decision of whether to promulgate a trip reduction regulation or whether to rely on a more stringent oxygenated fuels program and no trip reduction regulation will be made after EPA reviews comments received on all parts of this proposal.

EPA believes that the combination of approved SIP measures and the proposed FIP measures will result in attainment of the CO standards in 1991. As discussed in full below, EPA believes that the attainment date that applies to the Maricopa area, now that both of the Part D statutory dates have passed, is the date that is the most expeditious date practicable but no later than three years from the date EPA promulgates this FIP. For the reasons described below, EPA believes that the 1991 date selected for the Maricopa CO FIP meets this test.

The Arizona State Legislature is currently considering several bills that would establish oxygenated fuels programs of varying degrees of stringency in Maricopa County. In addition, the Legislature is debating adoption of legislation aimed at achieving CO emission reductions through mandatory decreases in allowable wintertime gasoline volatility and by improvements to the existing motor vehicle inspection and maintenance program, including initiation of a loaded mode testing requirement, and a trip reduction ordinance similar to that adopted by Pima County. Finally, additional CO emissions reductions may be achieved in the near future from the adoption of the MAG model trip reduction ordinance by Maricopa jurisdictions.

State submittal of any one of these control measures or a combination of these measures as a SIP may occur before EPA's final promulgation of federal control measures. EPA proposes that, if before EPA takes final action on this FIP proposal, the State submits measures with sufficient emission reductions to demonstrate expeditious attainment and maintenance of the CO NAAQS, then EPA will approve those measures in lieu of final FIP promulgation. If additional control measures are submitted before FIP promulgation, but the measures do not completely eliminate the shortfall in CO emissions reductions, EPA will adjust the FIP by either eliminating altogether a superfluous federal control measure or relaxing the stringency of the measures so long as neither expeditious attainment nor maintenance of the standard would be jeopardized. Thus, for example, EPA's proposed oxygenated fuels program might be amended in the final promulgation to mandate a lower oxygen-content requirement if the higher oxygen content were no longer necessary, or the TRO program may be eliminated, in light of the State's supplemental submittal. The emission reductions achievable by the measures under consideration in Arizona, and some of the possible amendments to EPA's proposed oxygenated fuels rule are discussed below in Section VI, "Effect on Proposal of any Future SIP Submittal by Arizona." Should the state submit added control measures after final EPA promulgation of the FIP, EPA will approve those measures and rescind (or amend as appropriate) any EPA regulations that are deemed unnecessary based upon the State revised submittal.

With the exceptions specified below, EPA proposes to approve under sections 110(a)(2)(B) and 172(b)(6) of the Act, the control measures adopted by the State and MAG since the measures would not interfere with timely attainment of the CO standard and, indeed, are necessary for attainment. EPA proposes to conclude, however, that the Maricopa CO plan does not, absent further supplement by the relevant governments in Arizona, provide for attainment of the CO standards. EPA, therefore, proposes to continue the Part D disapproval of the CO plan for Maricopa County and the federal ban on construction of major new or modified stationary sources of CO and to impose the section 179(a) highway funding sanctions until the Agency approves a state plan as adequate to meet the Part D requirements.

EPA believes that the construction ban contained in section 110(a)(2)(I) should remain in place in an area until such time as a state submits and EPA subsequently approves a plan meeting the requirements of Part D, notwithstanding the fact that EPA may promulgate its own plan for the area that meets the requirements of Part D. As a statutory matter, the construction ban is contained in section 110(a), which governs plans submitted by the states. The reference in section 110(a)(2)(I) to the need for a construction ban unless "such plan" meets the requirements of Part D is to the plan referred to in section 110(a)(1), the plan required to be submitted by a state. In addition, EPA's regulations at 40 CFR 52.24 clearly impose the construction ban until such time as a state plan meeting the requirements of Part D is approved by the Administrator. Finally, the primary policy reason for which Congress created the section 110(a)(2)(I) construction ban was to encourage states to promptly prepare and submit to EPA plans meeting the requirements of Part D. EPA was to promulgate plans under section 110(c) for states only where states failed to comply with their statutory duties to prepare adequate plans. It would thus be inconsistent with the Act's purpose to reward these states by lifting the construction ban when EPA prepares a plan for them meeting the requirements of Part D. Although the plan for an area would then meet Part D, there would remain strong policy grounds for continuing the construction ban. The implementation of air pollution control measures in an area is always facilitated if carried out at the state level, and clearly Congress intended such planning and implementation to be done by the states. Thus, although an area would progress towards attainment under a federally promulgated plan, the

construction ban would remain in place to encourage the state to complete its own plan meeting the requirements of Part D and eventually substitute it for the federal plan. EPA specifically solicits comment on this interpretation of section 110(a)(2)(I).

Although the Arizona State and local governments have taken substantial steps in recent months to supplement the previous State CO SIP submittals for the Maricopa area, EPA has no assurance at this time that they will complete action on these supplements. As a result, EPA believes it is appropriate to lay the groundwork now for imposing the additional sanctions provided by section 179(a) of the Clean Air Act should the Arizona governments ultimately fail to adopt the necessary control measures. For this reason, EPA is proposing today that, if Arizona does not supplement the Maricopa plan with the measures necessary to demonstrate expeditious attainment, EPA will make a final finding that the State is not making reasonable efforts to submit an adequate Part D plan. That finding would be based on the State's failure to adopt measures that are necessary to produce attainment of the standard in the Maricopa area. For a further discussion of the criteria EPA would use to make this finding final, see EPA's Notice of Intent on the subject (51 FR 4934 (February 10, 1986)) and EPA's November 30, 1987, ANPRM (52 FR 45466). Upon making such a final finding, the federal highway funding restriction of section 179(a) would go into effect.[1]

With respect to the implementation plan for Pima County, the emission reductions needed for attainment in the Pima County area are significantly less than needed for attainment by the end of 1991 in the Maricopa County area. EPA, therefore, believes that an oxygenated fuels program no more stringent than that proposed in this notice for the Maricopa area, if applied in the Pima area, would provide for attainment of the CO standard in Pima County. Accordingly, EPA intends to rely upon the oxygenated fuels program set forth in this Notice as the most stringent proposed FIP that EPA might promulgate for Pima County in the event that EPA determines, after the close of the comment period on the proposed Pima SIP approval (53 FR 14818 (April 26, 1988)), that the Pima SIP cannot be approved. EPA therefore solicits comment on such a program as a FIP for Pima County.

[1] Pub. L. 100-302, signed into law December 22, 1987, prohibits EPA from imposing certain sanctions under the Clean Air Act, including the section 179(a) funding restriction, during a moratorium extending through August 30, 1988. Therefore, while EPA is today proposing to make a final finding regarding such sanctions should fail to supplement the Maricopa plan, any final action on the sanctions would not go into effect any earlier than August 31, 1988.

III. Legal Requirements

Section 110(c)(1) requires EPA to prepare regulations "setting forth an implementation plan, or portion thereof, for a state" when a state has failed to submit an adequate SIP. The CAA appears to indicate that such an "implementation plan" must meet all of the requirements of section 110(a)(2) and, where still applicable to the state's own planning effort, Part D. For example, section 110(c)(1) states that EPA must promulgate a FIP unless the state, before EPA takes final action, submits a plan "which the Administrator determines to be in accordance with the requirements of (section 110)." This passage indicates that Congress regarded a FIP meeting section 110 (rather than some lesser requirements) as the substitute for a state plan meeting section 110. Beyond that, each of the predicates for the duty to promulgate a FIP (*see* section 110(c)(1)(A)–(C)) directly or indirectly relates to the need to have some plan in place that meets the requirements of section 110. Thus, it is unlikely that Congress would have intended EPA to promulgate a FIP meeting less than those requirements. Moreover, section 110(d) states that the applicable implementation plan for an area is the plan "which has been approved under subsection (a) or promulgated under subsection (c) and which implements the requirements of this section." This language implies that all plans promulgated by the Administrator under section 110(c) must implement the requirements of section 110.

In addition, section 110(a)(2) contains a requirement that the plans for designated nonattainment areas contain a construction moratorium, unless the plan "meets the requirements of Part D." Since the Maricopa Plan for CO has never received EPA's approval as meeting Part D, this requirement still applies to CO planning for the area. For two reasons the Part D requirements also seem to apply to EPA's FIP. First, the section 110(a)(2)(I) requirement for a state plan meeting Part D is contained in section 110 which, as discussed earlier, apparently governs FIPs promulgated under section 110(c). Second, section 172(b), which contains the requirements for Part D plans, refers to plan provisions adopted by the State "or promulgated by the Administrator under section 110(c)." This phrase suggests that, if an area is still otherwise subject to Part D, any FIP required for that area also is subject to Part D.

Having concluded that any FIP that EPA promulgates for the Maricopa area should meet the requirements of both section 110 and Part D, EPA must next interpret those requirements to determine how they apply to the Agency's FIP for this area after December 31, 1987, the latest attainment date expressly identified in the CAA. That date is the planning date for areas that received EPA's approval of an extension beyond the otherwise applicable planning date—December 31, 1982. *See* section 172(a). The Maricopa area has not received EPA's approval of such an extension. However, since the later date, December 31 1987, has now elapsed as well, the discussion below analyzes both dates similarly—as elapsed Part D dates.

The policy that EPA proposed on November 24, 1987 (52 FR 45044) provides background for today's proposal on how to apply Part D to the Arizona CO plans now that the statutory dates have passed. On its face, Part D calls for plans that "provide for attainment" of the standard by the stated date (December 31, 1982, or December 31, 1987). Since plans developed after 1987 cannot conceivably provide for attainment by either of these dates, under the strictest possible reading of Part D EPA could never develop a plan that meets Part D's requirements, and hence, could not actually satisfy the applicable requirements (and the Court's Order).

As explained in EPA's proposed policy, EPA does not believe that such an interpretation of these elapsed dates would be consistent with Congress's intent in adopting Part D, since Congress obviously called for the creation of "plans" for future attainment, not findings that an area could never meet Part D. Thus, since it will be physically impossible after 1987 for EPA to plan for these areas to attain by the elapsed dates in Part D, EPA intends to interpret the requirement to plan for attainment by those dates as a legal impossibility. EPA believes that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the CAA and Part D. *See Chevron, U.S.A.* v. *N.R.D.C.*, 467 U.S. 837 (1984).

Although it is not clear what subsequent date Congress would have intended in these circumstances, the history of the CAA's planning requirements suggests that Congress

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would have provided EPA (and these areas) an additional period analogous to

which implement such primary standard because the necessary technology or other

combination to bring about attainment

EPA proposes not to invoke the two-

emission inventory. In Maricopa County

After SAI completed its work, the State of Arizona's Department of

would have provided EPA (and these areas) an additional period analogous to the 3- and 5-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively. When Congress in 1977 directed EPA to initiate a new round of planning for areas that had failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (3/5 years from EPA's approval of the state plan), rather than shortening those periods and thereby demanding plans for immediate attainment. Section 172(a)(1) required the SIPs for nonextension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1, 1979) (*see* section 129(c)). Congress provided a much longer attainment period for extension areas—from January 1, 1979 to December 31, 1987, approximately nine years from the date the initial Part D SIPs were due. But it set up two planning periods for these areas—one to apply all "reasonably available" measures and a second to supplement those measures. Since most reasonably available measures should already have been implemented in the Maricopa area by now, EPA regards post-1987 planning for the area as comparable to the planning during the second Part D period. That period spanned from the July 1982 submittal date (*see* section 129(c)) to the end of 1987, a period roughly consistent with the 3- and 5-year periods in section 110. Thus, although sections 110(a)(2) and (e) do not literally apply to the Maricopa area, EPA will use them as the best indicators of the attainment periods Congress would have intended to apply to these areas after passage of the Part D dates.[2]

Section 110(a)(2) requires the plan to provide for attainment as expeditiously as practicable but no later than 3 years from EPA's approval of an adequate plan, which in the context of section 110(c) must mean 3 years from the date EPA promulgates the FIP. Section 110(e) allows the EPA Administrator to grant a 2-year extension of the attainment date (beyond the 3-year period in section 110(a)(2)(A)) only if:

(A) One or more emissions sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

It is not readily apparent from the language of subparagraph (A) whether an area becomes eligible for this extension only if the means to attain within 3 years are not available in a technological rather than a cost-related sense. It is doubtful, however, that Congress intended to preclude EPA from considering the economic feasibility or reasonableness of the available means of attainment in making this judgment. If Congress had intended to do so, no area would be eligible for the extension, since all areas can attain the standard within 3 years simply by shutting down all economic activity. Since Congress clearly intended that some areas be provided the extension, EPA is inclined to interpret subparagraph (A) to require only a showing that the implementation of the "reasonably available alternative means" (RAAM) described in subparagraph (B) would not bring about attainment within 3 years. Subparagraph (B), then, would provide assurance that those reasonably available means are indeed implemented to achieve interim progress within the 3-year period. Therefore, an area would be eligible for the 2-year extension if the plan demonstrates that the area is actually implementing the RAAM within the 3-year period and that it still cannot attain within that 3-year period.

Applying these attainment deadlines to the Maricopa area, the plan must demonstrate attainment as expeditiously as practicable but in no case later than 1991 (assuming plan approval or promulgation in 1988), unless even with the application of reasonably available alternative means attainment cannot be achieved within that period. For the reasons described below and later in this notice, EPA proposes to supplement the State's plan for the Maricopa area with two measures suggested by the State's plan—an employer-based trip reduction program and an oxygenated fuels program—that will bring about attainment of the CO standard by 1991 in the area.

EPA believes that both a trip reduction program and an oxygenated fuels program are technologically available measures that would produce enough emissions reductions in combination to bring about attainment by 1991. However, EPA does not believe that any combination of available, practicable measures exists which could provide for attainment in the Maricopa area before 1991. It is true that a very stringent oxygenated fuels program could theoretically advance the attainment date to 1990, but EPA cannot now conclude that any oxygenated fuels program is definitely practicable for application in the Maricopa area due to numerous outstanding questions concerning market penetration, fuel availability, compliance monitoring, and consumer reaction to such a program. EPA is proposing the oxygenated fuels program described later only because it is necessary to provide for attainment by 1991. Whether or not a trip reduction program would be practicable for Maricopa, the emission reduction attributed to such a program alone would not be sufficient to advance the attainment date for the area. Further, as explained in EPA's ANPRM, EPA rejected all other measures for inclusion in the FIP either because EPA lacked authority to implement them, they were impracticable due to major economic and social impacts, or it would be impracticable for EPA to implement them at the federal level given similar existing state programs. *See* (52 FR 45468, 45488 (col. 1)). Consequently, EPA does not believe that any practicable measures exist which could achieve attainment in the Maricopa area before 1991.

On the other hand, EPA can also not make the conclusion, necessary to support a two-year attainment date extension under section 110(e), that a trip reduction program and an oxygenated fuels program are clearly not reasonably available alternative measures. Oxygenated fuels are technologically available and EPA believes that, although they are numerous and significant, the outstanding questions concerning the program may well prove not to be significant obstacles to successful implementation of the program. Similarly, a trip reduction program is in place in some California localities and thus, despite employer resistance, it is possible that such a program will prove reasonably available for the Phoenix area as well.

Therefore, EPA is proposing a trip reduction ordinance and an oxygenated fuels program for the Maricopa area because both programs are technologically available measures to provide the emission reductions that are necessary to bring the area into attainment by 1991. And, beyond that, EPA proposes not to invoke the two-year extension provided in section 110(e).

In preparing the FIP for Maricopa, EPA will comply with outstanding agency guidance on CO SIP preparation. In an April 4, 1979 notice (44 FR 20372), EPA published criteria for approval of the Part D SIP revisions that the Act required states to submit in 1979. On January 22, 1981 (46 FR 7182), EPA published criteria for evaluating the supplemental SIP revisions for extension areas due in mid-1982.

Section 110(a)(2) requires a plan to provide not only for timely attainment of the NAAQS but also for maintenance of the standards thereafter. EPA's FIP for the Maricopa area is based on the modeling and emission projections prepared by MAG as part of its SIP submittal. The MAG Plan projects emissions only through 1995; however, the projections demonstrate that the proposed FIP will continue maintenance of the CO NAAQS at least through 1995. EPA's proposed policy on post-1987 planning would require post-1987 SIPs to include a demonstration of maintenance for a period of ten years following the time of SIP submittal. If this proposed policy were applied to the Maricopa FIP, it would require a maintenance demonstration through 1998. EPA's rough projections indicate that with the FIP proposed today the Maricopa area would attain and maintain the CO NAAQS through 1998 despite the phase out of the CO reduction benefits of the Federal Motor Vehicle Emission Control Program and the continued growth and associated increases in vehicle miles traveled in the Maricopa area. EPA will continue to gather the necessary data to determine whether this initial projection is valid. In the meantime, EPA solicits comment on whether it should apply the maintenance requirements of the proposed post-1987 policy to the Maricopa FIP. If EPA concludes that the FIP should demonstrate maintenance through 1998, and the final data analysis indicate that the standard will not be maintained through that period with the measures in the proposed FIP, EPA will supplement the FIP with additional measures sufficient to demonstrate continued maintenance of the CO standard through at least 1998.

IV. SIP Evaluation

A. Description of the Modeling Analysis

The Maricopa Plan used the Urban Airshed Model (UAM) to evaluate regional carbon monoxide levels and CALINE4/V9–PG to evaluate hotspot CO levels. UAM requires both spacial and temporal disaggregation of the emission inventory. In Maricopa County in 1985, 66.5 percent of the carbon monoxide emitted was from on-road motor vehicles. The balance of the inventory was from military and civilian aircraft operations (6.5 percent), industrial sources, fires, and miscellaneous sources (a total of 5 percent). Stationary source emissions were gridded based on the known locations of the sources (civilian airports and Air Force bases) or were allocated by population.

Mobile source emissions were gridded in a multi-step process which first required traffic modeling and then integration of the traffic modeling results with emission factors from EPA's MOBILE3 model. Traffic modeling was performed by MAG's Transportation Planning Office (MAGTPO) using the Urban Transportation Planning System (UTPS) model. UTPS allocates regional traffic to links in the transportation network based on residential and employment patterns. Vehicle fleet emission factors were developed with MOBILE3 using local vehicle registration data, mileage accumulation rates by age of vehicle, the Arizona inspection and maintenance (I/M) program characteristics, and local tampering and misfueling rates. The mobile source inventory was gridded by integrating traffic volumes for each link from UTPS with the speed- and temperature-adjusted emission factor from MOBILE3. Intrinsic in the mobile source emission inventory are the impacts of the Federal Motor Vehicle Control program (FMVCP), improvements to the Arizona I/M program passed by the State Legislature before 1987, and roadway improvements including the construction of the MAG Regional Freeway/Expressway Plan.

Both the UAM and CALINE4/V9–PG air quality modeling was performed by Systems Applications, Inc. (SAI) under contract to MAG. The modeling simulated the Phoenix atmospheric conditions from 3:00 p.m. to 5:00 a.m. on October 25 to 28, 1985. The results were validated against the measured ambient CO levels. The maximum modeled 8-hour CO concentration was 18.5 ppm, which occurred between the hours of 8:00 p.m. and 4:00 a.m. The modeling results indicate that in the area of the predicted highest 8-hour ambient CO concentrations, the ambient levels are caused by a gradual build-up of CO throughout the urban area rather than by accounted for 15 percent or less of the total modeled ambient CO levels. The relative contributions do not change significantly in the future years modeled.

After SAI completed its work, the State of Arizona's Department of Environmental Quality (ADEQ) with MAG concurrence made three adjustments to the modeling results. All three of these corrections increased the emission reductions needed for attainment in the three future years modeled: 1987, 1990, and 1995.

During the modeling effort, new population forecasts were adopted by the MAG Regional Council. Because the number of vehicle trips and vehicle miles traveled (VMT) in an area are directly related to population, the new population forecasts, which are substantially higher than previous forecasts, indicated that the VMT figures used in the SAI modeling were too low and thus the future ambient concentrations of carbon monoxide predicted in the modeling were also too low. The State corrected the modeling to account for the new VMT projections developed by MAGTPO from the new population figures.

MOBILE3 predicts substantial conversion of the light-duty vehicle fleet to diesel; however, the predicted rates of diesel conversion are not being seen in the Maricopa County vehicle registration data. Because diesel vehicles emit much lower levels of CO than equivalent gasoline-powered vehicles, using the higher fleet penetration of diesels that MOBILE3 predicts, would underestimate the Maricopa fleet emissions. The State thus corrected the modeling to reflect the lower number of diesel vehicles.

The final adjustment that the State made to the modeling was to freeze the I/M benefits for any vehicle that had been in the program for five years. ADEQ believes that the Arizona program provides lower and lower benefits in each consecutive year that a vehicle is inspected. The State modeled this effect by freezing the I/M benefits for any vehicle after five years of inspections. MOBILE3, however, continues to assign benefits in each year that a vehicle is in an I/M program.

Based on the original modeling and the three adjustments discussed above, the State estimated that the reduction in baseline CO emissions that were needed for attainment by the end of 1987 was 34.0 percent. The State also estimated that emission reductions of 31.2 percent are needed to attain by the end of 1990 and 18.5 percent by the end of 1995. A straight-line interpolation of the 1990 and 1995 estimates gives a 1991 reduction target of 28.6 percent.

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[2] EPA has historically concluded that the Administrator may grant himself a 2-year attainment date extension request under section 110(e) if necessary when he promulgates a FIP provided that all of the requirements of that section have been met. *See, e.g.*, 38 FR 30626 (November 6, 1973). *See also City of Santa Rosa v. EPA*, 504 F.2D 150, 153 (9th Cir. 1974) ("The Administrator is permitted to provide a two-year extension of the deadline" in promulgating a FIP).

B. EPA Evaluation of the Modeling Analysis

EPA reviewed the dispersion modeling conducted by SAI and finds that the appropriate models and techniques were used for the analysis. EPA agrees with the State's assessment that high ambient CO levels in Phoenix are due to a gradual build-up of CO throughout the urban area, with a minimal impact from hot spot sources. Because of the areawide nature of the CO problem, the post-modeling adjustments should not introduce any significant error into the emission reduction estimates. EPA recognizes, however, that more accurate emission inventories, if used in the base case simulations and validations, would yield a more accurate forecast of the necessary future-year emission reductions. If future SIP updates are submitted, the most current emission inventories, VMT estimates, meteorological data and air quality data should be used for the modeling inputs and validations.

EPA also reviewed the three adjustments to the modeling made by the State. Because the new population forecasts were substantially higher than the ones used in the model, the State was correct to adjust the modeling to reflect the new figures. EPA is aware of the over-prediction in MOBILE3 of the diesel fraction and will be correcting the problem in the next update of the mobile source emissions model. Therefore, EPA concurs with this correction to the modeling results. The third adjustment the State made—to freeze the I/M benefits for each vehicle after five years—is inconsistent with the accepted use of MOBILE3. The State was unable to provide EPA with data showing that such an effect occurs in either the Arizona I/M program or other I/M programs in the country. EPA, therefore, believes that this adjustment is incorrect and has recalculated the emission reductions needed for attainment excluding it. Although the State is free to base its planning on the higher emission reduction targets derived from its assumption on I/M benefits (*see* CAA section 116), EPA does not believe that it can base its FIP on the State's I/M assumptions.

EPA estimates, based on the information in the MAG CO Plan and its analysis of the modeling adjustments, that a CO emission reduction of 34.0 percent was needed for attainment by the end of 1987. Emission reduction of 25.6 percent is needed for attainment in 1990, 22.0 percent in 1991, and 7.8 percent in 1995.

C. Evaluation of Control Measures in the SIP

The Maricopa Association of Governments recommended a list of forty-five transportation and mobile source control measures for inclusion in its final Carbon Monoxide Plan. These measures include expansion of the I/M program boundaries, improvements to transit and ridesharing programs, trip reduction ordinances, public awareness programs, a voluntary no-drive-day program, parking management, high occupancy vehicle (HOV) facilities, traffic flow improvements, pedestrian and bicycle travel amenities, alternative fuels, alternative work hours, changes in land use policies, winter daylight savings time, and miscellaneous other measures. A complete list of these measures can be found in the technical support document. Modeling of this recommended control package showed that, if it were fully implemented, the Maricopa area could attain the CO standard before 1990.

The MAG member jurisdictions passed resolutions adopting the Plan and describing their specific commitments to the measures listed in it. These resolutions are included in the submitted SIP. Resolutions or letters of commitments are also included in the SIP from the MAG Regional Council, the Phoenix Metropolitan Chamber of Commerce, the Regional Public Transportation Authority (RPTA), the Arizona Department of Transportation (ADOT), and the two local air force bases. Not every jurisdiction or agency committed to every measure recommended by MAG. For many measures, they lacked legal authority to adopt or implement or were not the primary lead agency. Several measures including fleetwide use of alternative fuels, I/M program improvements, and winter daylight savings time require legislative authority to implement.

From the review of the specific commitments in the plan as well as actions of the State Legislature, EPA is crediting as part of the Maricopa SIP the measures listed in Table 1. The measures are described more specifically in Chapter V of the MAG plan. EPA estimates that the total emission reductions from this package of approved measures is 3.9 percent in 1990 and 1991 and 4.3 percent in 1995. The total emission reductions are not the sum of the reduction achieved by the individual measures because measures that control tailpipe emissions (e.g. the I/M program) reduce the impact of measures which control VMT (e.g. ridesharing).

TABLE 1.—Emission Reductions Credits in the MAG CO SIP

Measure	1990	1991	1995
I/M Program—1987 Legislation	2.1%	2.1%	1.8%
Short-Range Transit Improvements	0.1	0.1	0.1
Expanded MAG Regional Ridesharing Program	0.3	0.3	0.5
High Occupancy Vehicle Lanes on Freeways	N/A	N/A	0.3
Freeway Surveillance, Ramp Metering, and Signage	N/A	N/A	0.1
Increased Bicycle Use	0.2	0.2	0.2
Pedestrian Travel	0.1	0.1	0.1
Conversion of Buses to Alternative Fuels and Use of Electric Buses for Shuttle Service	0.1	0.1	0.3
Alternative Work Hours	1.1	1.1	1.0

The cities, towns, and the County of Maricopa also made commitments to other measures (for example: Traffic flow improvements, educational programs, and city/county employee programs) that will contribute to reductions in ambient carbon monoxide concentrations. Unfortunately, due to the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate.

MAG claimed credit in its Plan for two additional measures that EPA is not proposing to approve in this notice. The first measure is conversion of state, local, and corporate fleets to alternative fuels. EPA is not crediting this measure because, later in this notice, EPA is proposing a regional alternative fuels program that will automatically cover these vehicle fleets. Giving individual credit to the MAG measure would result in a double counting of emission reductions.

MAG also claimed substantial credit for a voluntary no drive day program. EPA compliments the Maricopa region on its efforts to establish a program; however, the Agency's review of this measure found several issues that should be resolved before EPA will consider approving the measure as part of the SIP.

The first issue is assurance of annual funding, as required by CAA section 172(b)(7), adequate to support the effort needed to achieve continuing emission reductions. The second issue is the development of an institutional structure meeting the requirements of section 172(b)(10) that the State, the general purpose local governments, or a regional agency designated by the general purpose local governments have legal responsibility for implementing the measure. The last issue is the development of a monitoring program to assess and verify the impact of the program.

In addition to these issues, EPA is unsure of what emission reduction credit to give the program. The MAG plan claims a credit of 11 percent in 1990 and 12.5% in 1995 for the measure; however, based upon EPA's review of the program this credit is clearly too high. MAG has not proposed any alternative level of credit. While the program was operated during the winter of 1987/88, EPA has not yet received documentation of the results. EPA would wish to review these results before determining a specific emission reduction credit. EPA stated its concerns about the voluntary no-drive-day program in a letter to the Maricopa Association of Governments on April 7, 1988. The letter is part of the docket for this notice.

Several other control measures are currently under consideration or study for inclusion in the Maricopa SIP. These measures are further improvements to the inspection and maintenance program, a trip reduction ordinance, an alternative fuels program, and winter daylight saving time. These measures and their potential impact on the proposed FIP are discussed in greater detail later in this notice.

EPA's 1981 policy establishing criteria for approval of 1982 Plan revisions (46 FR 7182 (January 22, 1981)) required SIPs to include procedures to comply with requirements under section 176(c) of the Clean Air Act to assure that federally funded or approved projects conform to the SIP. Although the Maricopa plan does include procedures that can be used for conformity review, the TSD describes additional criteria that the State should add to its program to fully comply with EPA's 1981 guidance. EPA's proposed policy on post-1987 attainment planning (52 FR 45044 (November 24, 1987)) proposed additional conformity requirements. EPA will work with Maricopa County to incorporate procedures and criteria incorporating EPA's guidance of 1980, 1981, and the post-1987 proposal concerning conformity procedures.

D. Demonstration of Attainment in the MAG Plan

EPA's analysis of the Maricopa CO Plan finds that a reduction of 22.0 percent in the 1991 baseline emission inventory is necessary to demonstrate attainment by December 31, 1991. The State submitted approvable control measures that will achieve only a 3.9 percent reduction in carbon monoxide emissions by the end of 1991, leaving a shortfall of 18.1 percent. Therefore, EPA finds that the State's plan neither demonstrates attainment within the necessary timeframe nor maintenance thereafter.

E. New Source Review (NSR)

Arizona has not submitted all of the revisions to its NSR rules necessary to cure the deficiencies that EPA identified in its July 3, 1985 notice proposing approval of the Maricopa NSR rules. EPA has reviewed the deficiencies and has determined that the NSR rules in their current form meet federal current requirements when supplemented by commitments from the ADEQ and MCBAQC to issue permits in compliance with specific provisions of existing federal NSR regulations and policies. The Maricopa County Bureau of Air Quality Control (MCBAQC) submitted its commitment letter to the EPA on April 28, 1988. A copy of the letter is included in EPA's technical support document for this notice. The ADEQ commitment is expected in the near future. Thus, with these commitments, EPA intends to take final action to approve the Maricopa NSR program when EPA takes final action on today's proposal.

F. Public Participation

Based on MAG's public participation program, EPA finds that the State fulfilled the federal public participation requirements. The program utilized four major planning groups: The MAG Air Quality Policy Committee; MAG Air Quality Planning Group; MAG Management Committee and MAG Regional Council. Technical support for the program was provided by MAG, ADEQ, ADOT and Maricopa County Health Department. Together, these groups are composed of elected officials, citizen representatives, and regional traffic and planning experts.

To gather input on the MAG plan, these groups held numerous meetings, provided briefings to local councils, held public hearings and conducted an air quality survey to determine public perceptions regarding air quality.

V. Proposed Federal Implementation Plan

A. Reductions Needed from a Federal Plan for 1991 Attainment

The State of Arizona submitted the *1987 MAG Carbon Monoxide Plan for the Maricopa County Area* to EPA as a revision to the Maricopa County portion of the Arizona State Implementation Plan (SIP). As described above, EPA's evaluation of the air quality modeling analysis in the SIP submittal shows that a 22.0 percent reduction in the 1991 baseline carbon monoxide emissions is needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. The Plan, however, provides an approvable emission reduction of only 3.9 percent by the end of 1991, leaving a shortfall of 18.1 percent in the emission reductions needed for attainment.

To fill this shortfall, EPA is proposing two federal control measures for Maricopa County. These measures are an Employer Alternative Modes Incentives Program and an Oxygenated Fuels Program. The measures in the Arizona SIP submittal that are being proposed for approval together with the two proposed federal measures will provide a 22.0 percent reduction in carbon monoxide emissions by the end of 1991 and are thus sufficient to demonstrate attainment of the 8-hour carbon monoxide standard in Maricopa County.

The proposed federal measures are discussed in detail in the following sections. In this notice, EPA is soliciting comments on all parts of its proposed control measures. It is also requesting comment on the overall control strategy and specifically on whether the proposed trip reduction regulation should be replaced by a higher average oxygen-content level in the oxygenated fuels program.

Trip Reduction Regulation versus Higher Oxygen Content Fuels

EPA recognizes the relatively low emission impact of the proposed trip reduction regulation: Approximately 1.8% of a total 22% reduction in CO emissions necessary by 1991. Trip reduction regulations are also fairly new concepts in controlling air pollution and there is little actual data on implementation and emission reductions. However, locally adopted trip reduction ordinances (TROs) have been successful as traffic congestion and energy conservation measures in many areas of the country. Accordingly, EPA is continuing to examine the usefulness of a trip reduction regulation

as an alternative to an even higher oxygen-content fuel.

The cost of implementing the proposed regulation is a major concern. Limited studies on the range of cost to employers to implement a trip reduction program range from $10,000 for a modest program to cover $100,000 for an extensive program run by a large employer (over 1,000 employees). The total costs for Maricopa County employers of the proposed regulation range from $9.5 to $65.8 million.

Another concern about the proposed trip reduction regulation in Maricopa County is the potential controversies that may occur when over 700 employers, located in 22 jurisdictions, attempt to implement a federally mandated rule. In addition, some local government representatives have expressed strong concern over the timing of the TROs for the Maricopa area. They argue that the sales tax initiative for public transit should be decided in early 1989 before adopting TROs. In addition, they argue that it would be a more cost-effective approach to have a higher oxygen content fuel because it would be a less disruptive method of achieving higher emission reduction sooner.

Another concern raised in the comments to the ANPRM published by EPA on November 30, 1987, was the impact that a trip reduction regulation might have on citizen's ability to travel to and from work and the potential for added cost that an alternative mode of transit might incur.

Because of these numerous concerns over mandating a TRO, and the impacts of a higher average oxygen content fuel program as discussed elsewhere, EPA is especially soliciting comments on the usefulness of mandating a trip reduction regulation in this FIP. EPA is open to both options at this time. Upon review of comments on all parts of this proposal, we will make the final decision on whether to promulgate a federal trip reduction regulation.

B. EPA Proposed Control Measures

1. The Employer Alternative Modes Incentives Program

Trip Reduction Ordinances in the Maricopa CO Plan

Of the forty-five control measures in its 1987 Carbon Monoxide Plan, the Maricopa Association of Governments recommended six for high priority. These six were an expansion to statewide of the vehicle inspection and maintenance program, a feasibility study on the use of alternative fuels, a voluntary no drive day program, long range transit improvements, a switch to winter daylight savings time, and the development of a model trip reduction ordinance. In its resolution to adopt the Plan, MAG committed to "prepare a Model Trip Reduction Ordinance and Coordinated Parking Management Program for consideration for adoption by the MAG cities, towns, and Maricopa County." [8] In addition, a majority of the MAG jurisdictions committed to participate with MAG in the development of the model ordinance and/or consider the model ordinance once developed for adoption.

MAG contracted with K.T. Analytics, Inc. (Frederick, Maryland) to develop the model trip reduction ordinance (TRO) and coordinated parking management program. MAG also appointed a working group to review the contractor's products, to provide information to the contractor, and to monitor the progress of the project. The group was also to solicit input from the private development community. This working group consisted of twenty members representing Maricopa jurisdictions, several State agencies, the Regional Public Transportation Authority, the Phoenix Chamber of Commerce, private businesses, and community groups. EPA participated informally in the working group.

The working group met regularly with the consultant from late September, 1987, to February, 1988, to review and comment on the model ordinance as it was being drafted. During this period, the working group also held a public hearing on the draft model and four forums with local Chambers of Commerce to inform their members about the ordinance and to receive comments. On February 5, 1988, the working group made several changes to the draft model TRO and then voted unanimously to forward it to the MAG Air Quality Policy Committee.

On February 18, 1988, the MAG Air Quality Policy Committee reviewed the draft model ordinance and voted to continue consideration of the model at its March meeting. On March 10, the Air Quality Policy Committee, based on public comment that it had received and its own consideration of the ordinance, voted to recommend to the MAG Regional Council that further consideration of the model trip reduction ordinance be postponed until after the transit funding election tentatively scheduled for the spring of 1989. On March 23, the Regional Council accepted the Policy Committee's recommendation and tabled approval of the model ordinance for effectively one year.

Request by MAG for an Extended Deadline for Adoption of the TRO

On January 27, 1988, EPA stated to the Regional Council that EPA expected adoption of trip reduction ordinances by the Maricopa jurisdictions by May 31, 1988. EPA also stated that if the jurisdictions needed more time to adopt the ordinances, EPA would consider extending the deadline. On March 31, 1988, MAG sent a letter to EPA which described the actions of the MAG Regional Council to table the ordinance, gave the rationale for the action, and requested that EPA extend the May 31, 1988 deadline until after a transit funding election set for an indefinite date in 1989. Please see the Technical Support Document concerning EPA's response to MAG's request.

The question of a new deadline for the adoption of a TRO is made moot by the publication of today's FIP proposal. Since EPA is under court order to promulgate a FIP at this time, it cannot delay into next year for the local jurisdictions to adopt trip reduction ordinances.

The MAG Model Trip Reduction Ordinance

The draft model trip reduction ordinance developed for MAG requires all employers with 100 or more employees at a worksite to implement trip reduction programs to reduce commute trips by their employees. The goal of the employer programs are to reduce single-occupant-vehicle (SOV) trips to the worksite by 5 percent in the first year of operation and by an additional 5 percent in the second year. The model also requires employers of 100 or more in a jurisdiction, but not necessarily all at a single worksite, to provide information to their employees annually on alternative commute modes. Under the model, new developments may receive a reduction in normal parking requirements by taking actions which support trip reduction strategies, such as operating shuttle buses or installing showers, lockers, or bicycle storage lockers.

An employer with 100 or more employees at a worksite is required by the model to disseminate information on alternative modes (trip reduction promotion program), to appoint a transportation coordinator, to perform annual employee surveys, and to prepare and submit an annual trip reduction report and plan. The transportation coordinator can be either an employee of the employer or a contract service. The employee surveys require information on the number of employees at the worksite, the commute modes of the employees, and other information which the jurisdiction will use to assess the impact of the TRO. The annual trip reduction report and plan is to describe the trip reduction activities of the employer in the previous year and to outline the trip reduction goal and strategies for the forthcoming year.

The schedule on which employers become subject to the requirements of the ordinance is based on the number of employees at a worksite. Employers with 500 or more employees at a worksite become subject six months after the effective date of the ordinance. Employers of 200 to 499 employees at a worksite become subject ten months after the effective date, and employers of 100 to 199 employees at a worksite become subject eighteen months after the effective date. The effective date of the ordinance is thirty days after its adoption. Employers are required to appoint a transportation coordinator and initiate the trip reduction promotion program within two months of the date that they become subject to the ordinance. All affected employers have the same due date for the employee survey and the annual trip reduction report and plan. Exact due dates are not specified in the model but are left to the individual jurisdictions to select.

The model ordinance requires the jurisdiction to appoint a jurisdictional transportation coordinator to oversee implementation of the ordinance. The model also establishes an advisory committee in each jurisdiction. Membership of this advisory committee may include representatives of the jurisdiction, employers in the jurisdiction, regional transit and rideshare programs, civic or public interest groups, and the jurisdiction's transportation coordinator. The duties of the committee are to recommend to the jurisdiction guidelines for implementation of and compliance with the ordinance, new trip reduction goals as appropriate, and enforcement actions and to prepare an annual report to the governing body on the TRO. In addition, the jurisdiction transportation coordinator is to coordinate with other jurisdictions and regional agencies. The Maricopa Association of Governments is to recommend regional trip reduction goals annually for consideration by its local jurisdictions.

Violations of the ordinance are failures to conduct or provide the results of the annual survey to the jurisdiction, to prepare or provide the annual trip reduction plan and report, to designate a transportation coordinator, or to implement the trip reduction plan or the promotion program in "good faith and with reasonable efforts." Failure to meet the annual trip reduction goal is not considered to be a violation of the ordinance. Violations are punishable by fines of up to $300 per day or by a civil injunction from violating the provisions of the ordinance.

In its Plan, MAG modeled a hypothetical TRO which required a 10 percent reduction in *vehicle* trips to single employer worksites with 100 or more employees. This modeling showed that such a TRO would reduce carbon monoxide emissions by 2.8 percent in 1990, 2.8 percent in 1991, and 2.7 percent in 1995. The model TRO developed for MAG differed from the hypothetical one in that its goal is a 10 percent reduction in *single-occupant-vehicle* (SOV) trips. These goals are not the same because there is not always a one-to-one correspondence between a SOV trip reduction and a vehicle trip reduction. For example, if two employees who formerly drove to work alone now carpool together, two single-occupant-vehicle trips have been eliminated; however, because one vehicle is still being driven to the worksite, only one vehicle trip has been eliminated. The modeling also assumed adoption of a TRO by all jurisdictions in the nonattainment area.

To determine the appropriate emission reduction for the MAG model ordinance, EPA estimated that the new commute mode of one-half of the SOV trip reductions from the model ordinance would be two-person carpools and one-half would be the third or greater person in a car or vanpool or a transit, bicycle or pedestrian trip. Based on these estimates, EPA calculated the actual trip reduction from the model ordinance to be 7.5 percent and the emission reduction from the ordinance to be 1.8 percent in 1991 (7.5% compared to the 10% trip reduction from the hypothetical TRO). The emission reduction of 1.8 percent is not 75 percent of the 2.8 percent modeled by MAG because factors such as the decrease in vehicle miles traveled and congestion relief as well as the decrease in trips influence the emission reduction from a TRO.

Recently, an amendment to Arizona Senate Bill 1181 was introduced into the Arizona House of Representatives. This amendment is a trip reduction statute modeled closely on the ordinance adopted by five jurisdictions in Pima County. The amended S.B. 1181 would require Maricopa County, through an appointed board, to implement and enforce the statute for all parts of the Maricopa carbon monoxide nonattainment area. Starting in January, 1989, employers with more than 100 employees at a worksite would be required to implement trip reduction strategies sufficient to have 15 percent of all their employees using alternative modes in the first year and 20 percent in the second year. New trip reduction goals would be set annually after the second year. If an employer failed to meet his trip reduction goal, he would be required to implement a specific number of trip reduction strategies. Because of the difference in how the trip reduction goals are measured between this bill and the hypothetical TRO modeled in the MAG Plan, EPA is not able at this time to estimate the potential emission reductions in Maricopa County from the amendment. Informally, EPA has been informed by MAG that this proposed amendment would achieve approximately the same emission reduction as the model TRO. EPA requests that the State analyze the emission reduction benefits of the measure.

Selection of Trip Reduction Regulation for the FIP

The Maricopa region is one of the fastest growing areas in the United States, adding approximately 4 percent to its population each year. Because of the region's large area, low density development patterns, and inadequate transit, the population is highly dependent on the private automobile for mobility. Thus, the number of vehicle miles traveled (VMT) has grown at a faster rate than population. In such situations, growth in VMT can begin to offset the emission reductions from cleaner motor vehicles. When considering measures for the FIP, EPA reviewed both the projected VMT growth rates in Maricopa County and the measures to reduce VMT in the MAG SIP and determined that additional measures to control the rate of growth in VMT needed to be considered for the federal plan.

While home-to-work and work-to-home commute trips are often not the majority of trips taken in an area, they are the most routine of all trip types. The majority of workers commute to and from work each day at the same time following the same route. This routineness facilitates the substitution of alternative commute modes for drive-alone commutes. In addition, commute trips traditionally have had the lowest vehicle occupancy rates. Finally, due to the large number of vehicles on the road,

[8] "Resolution to Adopt the MAG 1987 Carbon Monoxide Plan and the MAG 1987 Ozone Plan for the Maricopa County Area," the Maricopa Association of Governments, July 10, 1987.

the low speeds, and the congestion which are common during rush hours, most violations of the carbon monoxide standard start during the commute hours. For these reasons, programs that address commute trips would be the most effective at reducing VMT and carbon monoxide emissions and ambient air quality standard violations.

There are many ways to encourage conversion of single-occupant commute trips to alternative modes. Improved ridesharing programs; peak hour local and express transit services; parking price strategies that discourage all day parking or provide discounts for car and vanpools; variable work hours which allow employees to make ridesharing/transit arrangements; facilities at the worksite such as showers, lockers, and bicycle parking which encourage walking and bicycling; and provision of food, banking, postal or other services at or near the worksite which eliminate the need for vehicles at lunch time are just some of the viable programs to reduce trips to the workplace. However, of these available measures, the more traditional transportation control measures (TCMs)—like transit improvements or construction of flow improvements, bicycle lanes or pedestrian facilities—would be impracticable for EPA to finance and beyond the authority of EPA to require local jurisdictions to finance (see Response to ANPRM Comments in the TSD). In addition, a blanket requirement for many of these strategies without reference to their applicability to a particular worksite would waste limited resources and would not be as effective at reducing trips as more selective applications.

Faced with the myriad of methods of reducing commute trips, the potential cost of implementing traditional TCMs, and the need to tailor trip reduction strategies to the individual worksites, EPA decided to propose and take comment on an approach to controlling VMT growth that is becoming increasingly popular among communities in the West and is given high priority in the MAG CO Plan: Trip reduction ordinances (TROs) which require employers to develop and implement worksite trip reduction programs. The principle behind TROs is that if an employer enhances alternative commute options and the benefits to the individual employee of these options, then some employees will voluntarily shift out of single-occupant vehicles. However, the individual employee at all times retains his right to choose his commute mode.

TROs have disadvantages as well. Although TROs may be more easily enforced than other TCMs, a TRO would add an additional level of federal enforcement that would not be necessary if a more stringent oxygenated fuels program were adopted. Further, the TRO would be mandatory for certain employers and the costs for providing the incentives necessary to ensure mode switching are not certain and may be expensive.

Individual employees maintain their option to drive alone to work but are informed of and offered alternative modes. TROs allow employers to choose among the range of trip reduction incentives appropriate to their worksite and their employees' interest. Because of these incentives, traditional TCMs such as regional rideshare programs, transit, bicycle and pedestrian amenities are enhanced.

A trip reduction regulation has one important additional advantage which makes it more appropriate for a federal implementation plan than many traditional TCMs. This advantage is that the emission reductions from a TRO can be more easily made enforceable. Regional strategies such as transit and regional rideshare programs must rely on drivers switching voluntarily to them in order to decrease trips. While increased services in these types of programs generally lead to higher levels of use, this result is neither guaranteed nor enforceable. Emission reductions, however, from a trip reduction regulation where employers must offer sufficient incentives to their employees to achieve a certain level of trip reduction can be made enforceable.

The Proposed Federal Trip Reduction Regulation

EPA is proposing for comment today a federal trip reduction regulation similar but not identical to the model trip reduction ordinance developed by the Maricopa Association of Governments. The final decision of whether to promulgate a trip reduction regulation or whether to rely on a more stringent oxygenated fuels program and no trip reduction regulation will be made after EPA reviews comments received on all parts of this proposal. Like MAG's ordinance, this federal rule, titled the "Employer Alternative Modes Incentives Program" (EAMIP), would regulate all employers in the Maricopa County carbon monoxide nonattainment area (which is also the MAG urban planning area) with 100 or more employees at a worksite. The proposed regulation defines all employers with 100 or more employees at a worksite as "Major Employers." The proposed EAMIP requires a Major Employer to develop and offer to his employees an alternative modes incentives program that would reduce single-occupant-vehicle commute trips to his worksite.

Before describing the detailed requirements of the proposed federal trip reduction regulation, a discussion of the EPA's proposed method of and philosophy on implementing the regulation in Maricopa County is appropriate.

Primary responsibility for implementing and enforcing the EAMIP would lie with the Director of the Air Management Division of EPA's Region 9 Office in San Francisco, California. In implementing this program, EPA would work closely with all Major Employers in Maricopa County. EPA realizes that this would be infeasible if the Agency attempts to implement the regulation from its San Francisco office; therefore, EPA at this time proposes to hire a qualified contractor located in Maricopa to implement the EAMIP. A final decision on how to implement will depend on the comments received on this proposal. EPA, however, would retain enforcement activities in its Region 9 Office.

EPA would fund the selected, Maricopa-based, contractor to provide training to employer transportation coordinators, to review and recommend approval and disapproval of trip reduction plans and annual reports, to process exemption requests, and to implement other provisions of the regulation. A major responsibility of the contractor would be to furnish the Major Employer with timely information and assistances on complying with the EAMIP. Currently, it is believed that there are over 700 worksites which would be subject to this proposed regulation. EPA estimates that the contractor would require four full-time employees with additional clerical support. EPA would closely monitor its contractor to insure that the needs of Major Employers are being served.

EPA would select a qualified contractor in Maricopa County within four months of the date of this regulation's promulgation. It is EPA's hope that the contractor would be a regional agency in Maricopa County or an Arizona State agency. EPA would like to integrate the implementation of this regulation into on-going State, regional, and local alternative mode programs and thereby enhance both the effectiveness of the EAMIP and the local programs.

For several reasons, EPA would prefer to have trip reduction programs implemented at the local level. First and primarily, local concerns are best addressed from that level. While EPA intends to establish an advisory committee made up of representatives of affected groups in the Maricopa region, this will not provide EPA with the same knowledge of the area as those who live and work there. Second, even with a contractor in place in Maricopa, some of the implementation and all of the enforcement of the program would still need to be conducted from EPA's Region 9 offices in San Francisco. This distance from the Maricopa region makes the communications necessary for successful implementation more difficult than if the program were adopted by a local government. Finally, EPA believes that to be effective, trip reduction ordinances or regulations must be integrated into other local trip reduction programs. While EPA would make every attempt to do this, the ability to work with local programs to achieve integration is more difficult from the federal level. EPA therefore encourages the local jurisdictions to adopt similar programs.

The sections of the proposed Employer Alternative Modes Incentives Program regulation are described in detail below. Prior to implementing this regulation in Maricopa, EPA would hold workshops for all Major Employers, their transportation coordinators, and other interested parties to discuss the requirements of this regulation.

a. *Notification.* Major Employers who are subject to this regulation would be required to notify EPA that they are subject within six months of its date of promulgation and provide EPA with the company's name, address, a person EPA may contact in the company and that person's telephone number, and the number of employees at the regulated worksite. Employers who become subject to the regulation after the first six month period would be required to notify EPA within three months of first becoming subject and provide the same information.

Notification is intended to give EPA the opportunity to provide information and assistance to the Major Employer on this regulation and means of complying with it well before the Major Employer would be be required to meet any of its requirements. EPA intends to inform potentially subject employers of the notification requirement through the media, trade publications, the local chambers of commerce, local jurisdictions, and other routes. While failure to notify EPA would be a violation of the regulation, each October would be an amnesty period for Major Employers who did not notify EPA within the required time periods to do so without penalty.

b. *Trained Transportation Coordinators.* All Major employers would be required to appoint a trained transportation coordinator. The trained transportation coordinator may be an employee of the Major Employer or a contractor hired to operate the Major Employer's program. Groups of Major Employers may choose to jointly employ a single transportation coordinator which can represent the most cost effective approach that significantly decreases the program cost to individual employers. EPA's purpose in requiring a trained transportation coordinator would be to ensure that there be a designated person at each Major Employer who is knowledgeable on the provisions of this regulation and who is responsible for the operation of the Major Employer's alternative modes incentives program.

The proposed regulation would require that the transportation coordinator be trained. Training is intended to ensure that the employer's transportation coordinator is fully informed on the requirements of the EAMIP and on available trip reduction techniques and programs. The training is envisioned as an initial three- to four hour course and annual or semiannual one- to two-hour refresher courses offered free or at cost by EPA. It is EPA's intention to keep transportation coordinators as fully informed as possible on available trip reduction techniques and programs so that they may develop alternative modes incentives programs which both maximize trip reductions and minimize costs.

The coordinator's responsibilities would include disseminating and posting alternative modes information, performing the annual employee survey, preparing the trip reduction plan and annual report, obtaining management approval of the plan, setting up the incentives programs necessary to implement the plan, and providing assistance to employees on alternative modes. EPA would not expect employers to hire a new person to fill this position. In fact, such a position would best be filled by a current employee who is familiar with the company and its employees. The position would not need to be filled by a management level employee. A management assistant, personnel representative, or equivalent staff person would be sufficient. EPA estimates that an employer with up to 500 employees would need to staff the transportation coordinator position for a maximum of one day per week and in most cases considerably less, especially after the program is up and running, and if a coordinator is shared by a group of employers. The staffing required at larger employers would depend on the complexity of the trip reduction program.

c. *Annual Employee Survey.* Major employers would be required to survey their employees annually on their commute modes. The results of this survey would be used by the Major Employer and EPA to determine if the trip reduction goal has been met. At least six months prior to the first required survey, EPA would publish guidelines detailing the minimum criteria that surveys would be required to meet for completeness and coverage.

Major Employers should consider the survey an opportunity to learn of their employees' alternative mode preferences. This information will enable the Major Employer to tailor the alternative modes incentives program to the interests of his employees and thereby reduce the program's cost by eliminating unwanted incentives.

Because the results of the survey would be used to determine whether the trip reduction goal has been met, EPA may request that a Major Employer use a neutral, third party to perform the survey. EPA would limit this request for a neutral third party to when it believes that the Major Employer's survey did not accurately reflect the situation at the worksite. At any time, a Major Employer at his own discretion may use a neutral third party to perform the employee survey.

EPA is specifically requesting comments on the need for and benefits of the annual employee survey.

d. *Annual Trip Reduction Promotion Program.* In order to inform employees of the alternatives to the single-occupant-vehicle commute, the EAMIP would require Major Employers to annually disseminate information on alternative modes. This information could include bus schedule and route information, ridesharing brochures, information on bicycle routes, etc. The Major Employer would also be required to post alternative mode information in prominent places and provide such information to new employees on hiring. All disseminated information should include information on employer sponsored alternative modes incentives. EPA would assist the Major Employer in developing or obtaining the necessary information.

The purpose of the Employer Alternative Modes Incentives Program would be to have Major Employers

support programs that encourage their employees to voluntarily switch to commute modes other than the single-occupant vehicle. The reason that a promotion program would be required as part of the EAMIP is that an employee's commute pattern becomes a routine. The first step for employees to change modes is education on alternatives, how to use those alternatives, and the positive impact of changing modes. Therefore, Employers should view the promotion program as an integral part of his alternative modes incentives program, that, if effectively implemented, would achieve trip reduction goals in a least cost manner.

e. *The Trip Reduction Plan and Annual Report.* All Major Employers would be required to submit to EPA annually a trip reduction plan and annual report. The plan would describe in detail the alternative modes incentives that the Major Employer would offer during the coming year. The annual report would describe the results of the employee survey, the previous year's alternative modes promotion program and incentives program, and the results of that incentives program. A representative of the Major Employer who is authorized to approve the expenditures necessary to carry out the trip reduction plan and who certifies the accuracy of the annual report should sign the document before submitting it to EPA.

The trip reduction plan would describe in detail the alternative modes incentives that the Major Employer would offer during the coming year. In order to insure that Major Employers offer sufficient alternative modes incentives to achieve the trip reduction goal, EPA would review the plans and annual reports and would either approve or disapprove them. EPA would commit to work with Major Employers and their transportation coordinators to insure that few plans would need to be disapproved.

EPA expects that all alternative modes incentives described in an approved plan would be implemented during the following year. If during the course of a year, a Major Employer were unable to offer an incentive in the plan, he would be able to request that the plan be modified to remove the incentive. The Major Employer should make the request to EPA in writing as early as possible but in all cases before the trip reduction plan and annual report would be due. The request should explain why the incentive could not be offered and discuss the impact of withdrawing the incentive on achieving the trip reduction goal. If possible, the Major Employer should substitute another incentive for the one being removed. No request to modify the trip reduction plan would be denied if the Major Employer adequately supported the reasons why he cannot implement an incentive and showed that the plan would still meet the required trip reduction goal.

The annual trip reduction report would be required to be submitted with the trip reduction plan as a single document. The annual trip reduction report should describe the trip reduction promotion program; report on the conduct of the survey; give a current and accurate estimate of the SOV commute trips made to the worksite as determined from the survey; and describe the alternative modes incentives program, if any, that was in the previous years trip reduction plan including any modifications to the plan. The annual report should also describe what incentives were actually offered and used by the employees, state the previous year's trip reduction goal and whether it was met, and, if the trip reduction goal was not, the reason the Major Employer believes it was not.

Despite the lengthy list of required information in the annual report, EPA does not intend this to be a lengthy document. Tables listing the incentives and their use by employees, charts showing the results of the survey, and short narrative sections would in many cases suffice. In order to give better guidance to Major Employers on these plans and reports, EPA would develop a model trip reduction plan and annual report and distribute it to all transportation coordinators.

Once submitted by the Major Employer, EPA would have sixty days to approve or disapprove the trip reduction plan and annual report. Should EPA disapprove the document, the Major Employer would have thirty days to correct it. When issuing a disapproval, EPA would describe in detail the reasons for the disapproval and would work closely with the transportation coordinator to correct the deficiencies. Any employer who disagrees with EPA's disapproval of his plan and report could appeal the decision following the procedures discussed below under Appeals.

f. *Recordkeeping.* In order to adequately carry out its enforcement responsibilities, EPA may request that the Major Employer provide information to support any statement in his annual plan and report. Major Employers should maintain records on the information in the annual plan and report including the results of the survey for at least three years. By maintaining information, the Major Employer would be able to support his position should EPA question his trip reduction plan and annual report. EPA is aware that much of the information which may be requested would be considered confidential by the Major Employer. Upon submitting any data to the Agency, the Major Employer could, if appropriate, assert a business confidentiality claim covering all or part of it.

g. *Trip Reduction Goal.* The proposed trip reduction goal in the EAMIP is the same as the one proposed in the MAG model: A 5 percent reduction in SOV trips in the first year of a Major Employer's program and an additional 5 percent in the second year for a total of a 10 percent reduction in SOV commute trips within two years. EPA chose to propose the same goals because it concurs with the MAG Model TRO working group that the goals are aggressive yet achievable in light of the transportation system in Maricopa County. Like the MAG model ordinance, EPA's proposed regulation has a procedure for annually reviewing and revising the goal after the first two years. EPA would first consult with agencies and Major Employers in Maricopa County as well as with the Maricopa Region Advisory Committee before revising any goals.

Trip reduction ordinances adopted in other areas vary in the import that they place on the trip reduction goal. Some enforce immediately on failure to meet the goal, while some require specific actions on the part of the employer if the goal is not met, and others only require an updated trip reduction plan for failure to achieve the goal. MAG's Model TRO is in the final group.

EPA is proposing that if a Major Employer fails to achieve the trip reduction goals after three consecutive trip reduction plans with the same goal, he may be subject to enforcement actions. EPA is proposing this provision because it believes that this is a method that insures the emission reductions attributed to this regulation would actually occur. Under the scenario that EPA is proposing, a Major Employer has three years to determine the mix of alternative modes incentives that would encourage his employees to switch from their single-occupant vehicles. In addition, EPA would be working with the Major Employers to develop trip reduction plans that would achieve the goals so that enforcement actions, based on failure to achieve the goal, would not be needed. Any time that the trip reduction goal changes, the Major Employer would have an additional three years to meet that new goal.

Because this proposed treatment of the trip reduction goal varies from the MAG model, EPA is requesting specific comment on the provision allowing enforcement for failure to meet the trip reduction goal and on the penalties for such failures as described below.

h. *Violations.* Major Employers would be subject to enforcement actions under section 113 of the Clean Air Act if they fail to meet any of the requirements of this proposed regulation. Major Employers would also be subject to enforcement actions if they falsify or misreport information in the trip reduction plan and annual report, fail to implement any part of an approved trip reduction plan, or fail to meet the trip reduction goal after three consecutive years at the same goal. It would be EPA's intent to work with Major Employers to identify problems with compliance and correct them as quickly as possible. While the majority of implementation tasks would be performed by EPA's contractor in Maricopa County, any enforcement actions would be conducted by EPA's Region 9 Office.

Section 113(a) of the Clean Air Act authorizes EPA to commence an enforcement action against any person in violation of an applicable implementation plan. As defined in section 110(d) of the Act, the term "applicable implementation plan" includes both state implementation plans (SIPs) approved by EPA and federal implementation plans (FIPs) promulgated by EPA under section 110(c). Enforcement under section 113 begins with the issuance of a notice of violation (NOV) whenever, on the basis of available information, EPA finds that any person is in violation of an applicable implementation plan. If the violation extends beyond the thirtieth day after the issuance of the NOV, EPA may issue an administrative order requiring the person to comply with the requirements of the applicable implementation plan, or EPA may bring a civil action in federal district court for injunctive relief and/or a civil penalty of not more than $25,000 per day of violation.

i. *Exemptions.* Three categories of Major Employers would be allowed to apply for exemptions from the requirements of this regulation. The first category is Major Employers who on the date of promulgation of this regulation already have in place trip reduction programs which achieve at least a 30 percent participation rate of all employees in alternative modes. These trip reduction programs may either be voluntary on the part of the Major Employer or a condition of approval for development imposed by a city, town, or the County of Maricopa. To apply for this exemption, the qualified Major Employer would only need to perform an employee survey annually and submit the results to EPA when requesting the exemption.

The second category of Major Employers who qualify for an exemption is those that emp1oy 100 or more employees for less than three months of the year. The final exemption is for employers covered by a city, town, or county trip reduction ordinance. In order for a Major Employer to receive this exemption, EPA would first have to find that the local ordinance is at least as effective as the federal rule at reducing trips to the Major Employer's worksite. All Major Employers who would apply for any exemption would have to do so in writing and renew the exemption annually.

j. *Schedules.* Major Employers who would be subject to the EAMIP on its date of promulgation would have to notify the Agency within six months of the date of promulgation. Major Employers who would become subject to the regulation after the initial six months would have to notify EPA within three months of the date that they become subject.

Due dates for the requirements of this regulation, except notification, would be determined from the Major Employer's "Effective Date." Effective dates for a Major Employer would be determined by the number of employees at his worksite or by the date the Major Employer first becomes subject to the EAMIP.

The effective dates for Major Employers who would be subject on the date of promulgation would be: For Major Employers of 500 or more at a worksite, nine months after the date of promulgation; for Major Employers of 200 to 499 employees at a worksite, twelve months after the date of promulgation; and for Major Employers of 100 to 199 at a worksite, fifteen months after the date of promulgation.

For Major Employers who would become subject to the regulation after the first six months but before June 1, 1989, their effective date would be fifteen months after the date of promulgation. For Major Employers who would become subject after June 1, 1989, their effective date would be three months after notification.

Within two months of a Major Employer's effective date, he should appoint his trained transportation coordinator and inform the EPA of the coordinator's name, work address and phone number. Within three months of his effective date and annually thereafter on the same date, the Major Employer should perform his employee survey. Within four months of his effective date and annually thereafter on the same date, the Employer should submit his trip reduction plan and annual report.

If a Major Employer wishes to request an exemption, he should apply for it in writing within thirty days of his effective date. In subsequent years, he should apply for the exemption by that same date.

EPA is aware that not all Major Employers would be able to meet the schedules in the EAMIP. Major Employers would be allowed, with good cause, to request extension of their deadlines. EPA would make every effort to be fair and equitable in granting extensions. If a Major Employer failed to meet a deadline because of an action of EPA, the Major Employer would not be held responsible.

In order to provide Major Employers with assistance and prompt responses to submittals and/or requests, EPA would attempt to arrange that about the same number of Major Employers would submit trip reduction plans and annual reports in each month of the year. EPA would do this by assigning randomly selected Major Employers new effective dates or deadlines for meeting the provisions of this regulation. Any Major Employer given a new effective date or deadline would be informed by EPA of the new date at least three months before his original effective date or deadline. Under no circumstances would EPA advance an effective date or deadline.

k. *Appeals.* EPA would work with Employers to minimize the need to disapprove trip reduction plans and annual reports or to deny exemptions. Should the EPA disapprove a plan or deny an exemption, a Major Employer could appeal the decision to the Regional Administrator of Region 9. Appeals should only be made based on reasons or information first provided to and considered by the EPA in making its initial decision.

Appeals would be required to be made in writing within fifteen days of the Major Employer receiving the disapproval or denial. In applying to the Regional Administrator to reverse a decision, the Major Employer should state the reasons why the decision is in error and should show that all issues raised in the appeal were previously considered by EPA.

Within a reasonable time following the appeal, the Regional Administrator

would grant or deny it. The Regional Administrator would grant the appeal by either reversing the decision or remanding the decision to the Director of Region 9's Air Management Division for further review. EPA would move to process any appeal that it receives as quickly as possible.

l. *Maricopa Regional Advisory Committee.* EPA would consider the concerns of Maricopa jurisdictions, their Major Employers and citizens, and the State of Arizona when taking major actions under the EAMIP. Because the Agency cannot claim as much knowledge of the area and its concerns as those who live and work there, EPA proposes to establish the Maricopa Regional Advisory Committee (MRAC) consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

EPA hopes that the State, MAG and its local jurisdictions, and the local chambers of commerce would assist the Director in establishing MRAC by appointing members to it. To achieve a balance among the interested groups, EPA is proposing that the MRAC have eighteen members and that they be appointed as described below. Two members may be appointed by the MAG Regional Council. One of these two members should represent the mid-sized cities of Chandler, Glendale, Mesa, Scottsdale, and Tempe, and the other member should represent the smaller jurisdictions of Maricopa County. Because it has over half the total population and workers in the region, the City of Phoenix may appoint one member. Maricopa County, because it has primary responsibility for tracking air quality, may also appoint one member. Two members representing state agencies, preferably the Department of Environmental Quality and the Department of Transportation, may be appointed by the Governor. One member of the general public who is a citizen of Maricopa County may be appointed by each Chairman of the Transportation Committees of the State Legislature. The Regional Public Transportation Authority, because of its expertise on regional ridesharing and transit issues, may also appoint a member. Eight members representing regulated Employers may be selected by the region's Chambers of Commerce, three by the Phoenix Chamber of Commerce and five by a coalition of the other Chambers. Finally, the Director of EPA Region 9's Air Management Division shall also be a member. Representatives should be either elected or appointed officials or staff members of the jurisdictions or agencies.

The proposed duties of the MRAC would be to advise the Director on implementing and/or revising the regulation when appropriate, on revising the Trip Reduction Goals after June 1991, on alternative enforcement procedures, and on other matters as appropriate. The Committee would also provide the Director with liaison on the EAMIP with the State government and the jurisdictions, citizens, and employers of Maricopa County. EPA proposes that the Committee hold bimonthly public meetings in Maricopa County.

m. *Delegation.* The Administrator of the Environmental Protection Agency has the authority to delegate implementation and enforcement of this regulation to the State, to a regional agency in Maricopa County, or to a local government or the County of Maricopa within its jurisdictional boundaries. Prior to any delegation, the Administrator would have to determine that the agency or jurisdiction requesting the delegation has legal authority to implement and enforce the regulation and has committed the necessary staffing and resources to implement and enforce it. EPA would encourage agencies who meet these criteria to apply for delegation of this regulation.

n. *Implementation Guidelines.* Well before any Major Employer's effective date, EPA would publish additional guidelines for compliance as an appendix to the EAMIP. The Guidelines would be intended to provide more detailed information on various requirements, most specifically on the employee survey. As stated previously, employee surveys would be required to meet certain standards of completeness and coverage. The Implementation Guidelines would contain these standards as well as a list of possible survey questions, techniques for evaluating the results of the survey, and a list of the information that should be presented on the survey in the trip reduction annual report. The Guidelines might also contain information on other topics as appropriate.

Costs to the Major Employer of Complying With the EAMIP

In order for Major Employers to select cost-effective alternative modes incentives, EPA would regularly develop and update data on the effectiveness and costs of various alternative modes incentives and provide the information to Major Employers. EPA would urge Major Employers to work with their employees to determine which alternative modes incentives would be most effective. EPA would also encourage Major Employers to experiment with trip reduction strategies to determine those that maximize reductions in SOV commute trips and minimize the trip reduction program costs.

Evaluation of trip reduction programs in jurisdictions that have TROs or in companies that have voluntary programs shows that substantial reductions in trips can be achieved without great expense. K.T. Analytics, in developing information for MAG's Model Trip Reduction Working Group, reviewed several employer programs in the San Francisco Bay Area and found programs costing from $8.15 per employee to $55.00 per employee per year. Costs of the programs were directly related to how extensive the program was, with the highest cost being for programs that included shuttle buses or van services. Based on its review, K.T. Analytics estimated that the cost for a small employer (less than 500 employees) for a modest program can run from $10,000 to $20,000 per year and for an extensive program, $30,000 to $60,000 per year. Cost for a large employer (more than 1,000 employees) for a modest program can range from $30,000 to $60,000 per year and, for an extensive program, can be from $100,000 to $250,000 depending especially on whether shuttle or van services are included.

EPA would encourage and assist smaller Major Employers to form transportation management associations (TMAs) to meet the requirements of this regulation. By forming or joining TMAs, employers could hire a single transportation coordinator for all members and can share resources and programs, thereby reducing the cost of the overall program to each Major Employer. The larger pool of employees in a TMA can also enhance the effectiveness of relatively low-cost rideshare matching programs. EPA would also encourage Major Employers to use, to the maximum extent possible, the available public programs which encourage ridesharing, transit use, bicycling or pedestrian travel.

It would be EPA's intent to review from time to time the cost and benefits of complying with the EAMIP for Major Employers in Maricopa County. EPA would also solicit information from the Maricopa Region Advisory Committee and the general public on the cost and benefits of compliance. The benefits include decreased congestion, decreased trip times for non-affected commuters, delayed infrastructure investment, reduced employer parking requirements, and increased transit/rideshare usage. EPA would use this information and data on trip reduction levels being achieved to modify the regulation and adjust the trip reduction goals as appropriate.

Expected Emission Reductions

EPA is proposing today to regulate the same group of employers at the same trip reduction level as the MAG Model Trip Reduction Ordinance discussed earlier in this notice. EPA estimates that the MAG model, if fully implemented, could reduce carbon monoxide emission by 1.8 percent by the end of 1991. EPA estimates that its proposed regulation would achieve the same emission reduction as the MAG Model.

Areas for Specific Comments on the Proposed EAMIP

While EPA requests comments on all parts of its proposed regulation, it would like specific comments on the following topics:

a. The trip reduction goal in this proposal requires all Major Employers, independent of their size or location, to reduce SOV commute trips to their worksite by 5 percent in the first year and an additional 5 percent in the second year. EPA would like to solicit comments on whether this goal is appropriate. Specifically:

—Are the proposed goals too stringent or too lenient? If either, what are more appropriate goals?

—Should the goal be the same for all Major Employers? Should larger employers be required to meet higher goals than smaller employers? Should the goals depend on the location of the employer? For example, should employers in the central business district of Phoenix be required to meet higher goals than employers in the outlying areas of Maricopa County? If goals should be based on employer size or location, how should employers be grouped and what are appropriate goals for each group?

—Should the trip reduction goal be based on reductions in single-occupant-vehicle commute trips? Should the measure for trip reduction be a required level of participation of all employees at a worksite in alternative modes such as in the Pima TRO or should the goal be expressed as the average occupancy of vehicles driven to the worksite as in the South Coast (Los Angeles) Air Quality Management District's Regulation XV?

—Finally, should the Major Employer be subject to possible enforcement action if he fails to achieve the trip reduction goal after attempting to do so after a given number of years? Should EPA only require an improved trip reduction plan as in the MAG model TRO? Or, as contained in S.B. 1161, should employers failing to achieve the goal be required to implement a specific number of trip reduction strategies?

b. Multi-tenant buildings and/or business parks are often major attracters of commute trips. Many of the employers in these developments though do not have more than 100 employees and would not be covered by this proposed regulation. Multi-tenant projects, however, because of their often sizeable employee populations and compact sizes are well suited to trip reduction programs such as the establishment of transportation management associations. EPA solicits comments on whether these multi-tenant developments should be covered in the final regulation and, if so, what methods could be used to regulate them.

c. Various other measures can be taken by employers to reduce air pollution from commute trips other than reductions in commute trips. Moving commute trips out of the peak commute periods or converting vehicles to clean fuels such as neat methanol or compressed natural gas are two examples.

EPA solicits comments on whether this proposed trip reduction regulation should also give credit to employer programs that do not directly reduce trips yet still reduce carbon monoxide emissions. Specifically, EPA would like comment on whether credit should be given to employer programs which shift commute trips out of the peak commute periods.

d. Are there other VMT reduction measures that EPA should be considering along with or in place of the EAMIP?

e. Should EPA replace the EAMIP in the Maricopa federal implementation plan with a higher oxygenation level in the oxygenated fuels program also proposed in this notice? Given the prospective benefits of the two measures, are the higher costs and cost-effectiveness ratios of the EAMIP (relative to the higher oxygenation program) justified? See section VIII on Economic Impact.

2. The Proposed Oxygenated Fuels Program

The approved SIP commitments and the federal trip reduction regulation, if promulgated, will provide a significant, but relatively small amount of the overall 22.0 percent emission reduction required for Phoenix to attain the CO NAAQS in 1991. Specifically, an additional 17.35 percent reduction (expressed as the reduction from a baseline which includes the effects of all other adopted controls) is needed from one or more control measures. As already mentioned, the only remaining federally available strategy that appears capable of this degree of control without potentially unacceptable social and economic effects is an oxygenated fuels program. This is not to suggest that the measure is devoid of social and economic implications, but relative to the other approaches it appears to be the only viable alternative. It can also be geographically and temporally targeted to address the Phoenix wintertime non-attainment problem. Therefore, EPA is proposing an oxygenated fuels program with a required level of equivalent oxygen content (defined below) of 2.57 percent. If EPA does not promulgate the proposed federal trip reduction regulation, the equivalent oxygen content requirement will be 2.79 percent as part of the FIP. The requisite equivalent oxygen content could be provided by a variety of oxygenated fuels. As an example, the 2.57% equivalent oxygen content would be met by an 11% methyl-tertiary-butyl-ether (MTBE) blend and a 10% ethanol blend (Gasohol) with 44% and 56% market shares, respectively. Similarly, the 2.79% content requirement would be met by 11% MTBE and Gasohol with market shares of 39% and 61%, respectively. (Various oxygenated fuel program options and EPA's proposed evaluation of any subsequent SIP submission are thoroughly described in Section VI.2.)

The specific use of oxygenated fuels to reduce the CO emissions from motor vehicles is a recent development in air pollution control strategies. To facilitate an understanding of the many issues involved in implementing this program, a brief background discussion of oxygenated fuels in general is presented next. This is followed by a description of the Agency's rationale for choosing a particular form of "oxygenated" fuels program and a discussion of the specific elements that comprise EPA's proposal. Also, the effects on the proposal of EPA's action on a pending application for a section 211(f) waiver for a particular oxygenated fuel are summarized. Finally, EPA's decision not to propose gasoline volatility controls as part of the FIP is stated and explained.

Background for Oxygenated Fuels

a. *Description of Oxygenated Fuels.* Gasoline is a complex mixture of many different hydrocarbon species or compounds. These hydrocarbons are extracted and modified from crude oil, and in some cases, from the liquids associated with natural gas production. Elemental constituents other than

hydrogen and carbon are present only in very low concentrations. Their presence is primarily a consequence of impurities in the crude oil, which are not completely removed in refining, or occurs because the refiner adds special compounds to the product to improve its detergency, corrosion characteristics, or chemical stability in storage. Vehicle manufacturers design their engines to operate satisfactorily on this fairly uniform and essentially pure hydrocarbon fuel.

The concept behind an oxygenated fuels program is to require that fuel sold in a CO nonattainment area contain a concentration of elemental oxygen that is well above that normally present in gasoline (e.g., an oxygen concentration in the range of 1.5 to 3.7 percent by weight). Such levels can only be achieved by adding chemical compounds that contain oxygen and are miscible in gasoline. The most suitable, available, and economical compounds for this purpose are low molecular weight alcohols and ethers, generically referred to as oxygenate compounds or oxygenates. Table 2 lists some oxygenating compounds commonly used in gasoline. As will become clear later, the amount (volume) of an oxygenate, or a mixture of two or more oxygenates, that must be added to gasoline to achieve a given concentration of oxygen in the final blend depends on the oxygenate's chemical composition, specifically the fraction of its mass which is oxygen.

b. *Federal Regulation of Oxygenated Fuels.* Section 211 of the Clean Air Act broadly provides for the regulation of fuels and fuel additives. Of particular interest with regard to today's action are two of the conditions which govern the content of fuels. The first is contained in section 211(f)(1), which prohibits the introduction into commerce of fuels for general use that are not "substantially similar" to the fuel used by EPA and the vehicle manufacturers in the emissions certification testing of 1975 and newer vehicles. The Agency interprets this section to limit the composition of unleaded gasoline only, as leaded gasoline is not for general use in 1975 and newer cars.

The meaning of "substantially similar" has been established by an EPA interpretative rule (46 FR 38582, July 28, 1981). The important aspect of this interpretation with respect to an oxygenated fuels program is that the fuel must contain no more than 2.0 percent oxygen by weight. Perhaps the most notable example of an oxygenated fuel that may be marketed under the substantially similar ruling is up to 11 percent MTBE by volume in unleaded gasoline. Low level blends using other ethers or various alcohols are also permissible.

TABLE 2.—OXYGEN-CONTAINING COMPOUNDS COMMONLY USED IN GASOLINE

Oxygenate	Chemical formula
Methanol (Methyl Alcohol).	CH_3OH
Ethanol (Ethyl Alcohol)	CH_3CH_2OH
Propanol (Propyl Alcohol).	$CH_3CH_2CH_2OH$ (and isomers)
Butanol (Butyl Alcohol)	$C(CH_3)_2OH$ (and isomers)
Methyl Tertiary Butyl Ether (MTBE).	$C(CH_3)_3OCH_3$

The second condition is contained in section 211(f)(4), which allows the above prohibition to be waived upon EPA's approval if specifically requested by a manufacturer, or provides for automatically granting a waiver application if EPA does not act to deny such a request within 180 days. A number of waivers for oxygenated fuels have been approved or automatically granted. Table 3 shows several of the more prominent waivers that are currently in effect, along with their corresponding oxygen content.

There are several important implications of EPA's substantially similar ruling and the section 211(f) waivers with respect to today's action. First, oxygen contents up to 3.7 percent are legal using ethanol as the oxygenate or using any of several mixtures of methanol and other alcohols. Second, blends containing more than 2.0 percent oxygen in any form except ethanol must comply with the otherwise voluntary limits on gasoline volatility established by the American Society of Testing and Materials (ASTM) for the location and time of year of their intended sale. These limits are expressed as the maximum Reid Vapor Pressure (RVP) of the fuel, which is a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit.

TABLE 3.—EXAMPLES OF CURRENTLY APPROVED OXYGENATED FUEL WAIVERS

Common content name	Primary constituents in unleaded gasoline (volume percent)	Maximum oxygen (weight percent)
Gasohol	Up to 10% Ethanol by Volume.	3.7
DuPont	Up to 5% Methanol with at least 2.5% Other Alcohols.	3.7
Oxinol-50	Up to 4.75% Methanol and 4.75% Tertiary Butyl Alcohol (TBA) (Ratio of Methanol: TBA <1).	3.5
Octamix	Up to 5% Methanol and a Minimum of 2.5% Higher Alcohols.	3.7

Third, ethanol blends are not currently subject to any Federal restrictions on RVP (although EPA published a Notice of Proposed Rulemaking on this subject on August 19, 1987). Fourth, and finally, MTBE may be used in gasoline only up to an oxygen content of 2.0 percent, because no waiver has been granted for MTBE blends beyond this level. A waiver request for MTBE up to concentrations corresponding to approximately 2.7 percent oxygen is now pending EPA action and is discussed later.

Questions have arisen concerning the composition of base gasoline for use in ethanol blending, particularly with respect to the use of MTBE. The gasohol waiver was granted in 1978 with conditions as stated by the applicant. Those conditions were that anhydrous ethanol may be added up to 10% by volume in the final blend. No mention of oxygenate composition in the base gasoline was made. However, MTBE was not in use at that time, nor were any other oxygenates, with the exception of small amounts of methanol used as a deicer. Consequently, the Agency's policy has been that the base gasoline used to blend ethanol must be oxygenate-free. However, in order to use in ethanol blending, the Agency has advised ethanol blenders (and methanol blenders) that they may use unleaded gasoline containing up to 2.0 percent MTBE by volume in ethanol blends (and DuPont and Octamix methanol blends) provided that the MTBE is present only as a result of unintentional commingling during transport and storage.

c. *Performance and Emission Qualities of Oxygenate Fuels.* Blends of gasoline and oxygenates have three important effects when used in vehicles designed for essentially pure hydrocarbon gasoline. First, they have a higher octane rating which tends to suppress engine knocking or pinging. This has no significant environmental effect, but it can partially offset the additional cost to the refiner if the refiner takes advantage of the octane increase by decreasing the octane of the base gasoline. If the refiner does not, some late model cars with self-adjusting ignition timing may get a small fuel economy increase from the higher octane fuel and some cars that were knocking may stop. Otherwise, the extra octane has no practical effect.

Second, all oxygenates affect the volatility of the gasoline, i.e., its tendency to evaporate at various temperatures. In some cases, the changes in volatility are large enough that compensating changes in the base gasoline are needed so that the final blend meets the legal limits and/or the refiner's own standards for marketability. Unless completely compensated, these volatility changes may increase a vehicle's evaporative hydrocarbon emissions (i.e., fuel which evaporates and escapes to the air before it is burned in the engine). The implication of this phenomenon with regard to the potential CO reduction from various types of oxygenated fuels is discussed later.

Third, and most important in the case of Phoenix, the presence of chemically bound oxygen in the fuel affects the relative amounts of burnable fuel and oxygen reaching the combustion chambers of the engine, shifting the mixture to relatively more oxygen. This usually results in more complete oxidation of the fuel and lower exhaust emissions of unburned hydrocarbons (HC) and of carbon monoxide (CO). Of the two pollutants, CO is usually reduced by the larger percentage. Emissions of oxides of nitrogen are affected less strongly and may increase or decrease somewhat. Test results show that the CO reductions associated with oxygenated fuels vary significantly from vehicle to vehicle. This indicates that the CO benefits from these fuels depend on a vehicle's design and how well it has been maintained. Nonetheless, reasonably consistent reductions "on average" have been observed for groups of vehicles with similar engine designs and emission control systems. Also, for a given group of vehicles, the CO reduction appears to be dependent on the net oxygen content of the gasoline/oxygenate blend and on its volatility characteristics. There is no apparent correlation between size of CO reduction and the specific oxygenate used in the blend.

d. *EPA Guidance on Estimating Emissions from Oxygenated Fuels.* Because oxygenated fuels affect the CO emissions of different types of vehicles differently, and because the vehicle fleet in an urban area is a constantly changing mix of the different types of vehicles, a complicated calculation of their effect on overall fleet CO emissions is required to assess their contribution as a CO attainment strategy. The Agency's instructions for performing this analysis are contained in "Guidance on Estimating Motor Vehicle Emission Reductions From The Use of Alternative Fuels and Fuel Blends," which was published on January 29, 1988. [Reference 1] This report is the basis of the emission reduction estimates contained in today's notice. The assumptions, methods, and conclusions of the report have not been formally subjected to public comment prior to this notice. Comments on the analysis are specifically requested and will be considered in formulating EPA's final action. A copy of the document has been placed in the public docket for this action, and included in the Draft Technical Support Document, to facilitate this review. Previous informal comments on a draft of the document have also been included in the public docket.

While the intricacies of EPA's guidance document will not be discussed here, a few conclusions from the document are valuable as background for the description of the proposed Federal oxygenated fuels program. To begin, EPA finds that the CO emission reduction associated with using oxygenated fuels should be estimated by separating vehicles into three technology groups: Non-catalyst, catalyst with open-loop engine operation (i.e., non-computer controlled), and catalyst with closed-loop engine operation. Increasingly more of the Phoenix fleet falls into the last group, for which the average CO reduction is somewhat smaller (maximum of 21.4 percent versus 24.5 percent and 34.9 percent for the first and second groups, respectively). Therefore, the overall fleet CO reduction from an oxygenated fuels program, in percentage and absolute (tons per day) terms, will decrease somewhat over time.

For each of the three technology groups, the average CO reduction depends on the net oxygen content of the fuel, and on the difference between the RVP of the oxygenated gasoline and that of the oxygen-free gasoline that is used as the baseline for determining the emission reductions. (In the case of Phoenix, the baseline gasoline would be what is normally sold during 1991 in the absence of any change otherwise required by a SIP and/or FIP action. The MAG plan implicitly assumes this will be the same as the gasoline sold in 1985.) Any volatility differences in fuels, other than RVP, are treated as being so small in degree and/or in CO emissions effects, that they can be ignored. If an oxygenated fuel has a higher RVP than the baseline gasoline, its CO reduction will be less than a comparably oxygenated fuel (i.e., same oxygen content) with an RVP equal to the baseline gasoline.

Of the common oxygenates, only methanol and ethanol cause RVP to increase when added to gasoline. The RVP increase is not linear with alcohol content. Instead, any alcohol level above 2 percent by volume tends to have the same absolute effect on RVP. The average effect with ethanol is about 0.76 pounds per square inch (psi); the average methanol effect is about 2 psi. MTBE does not cause RVP to increase. Therefore, at equal oxygen contents, an alcohol blend will have a smaller CO reduction than an MTBE blend, unless the gasoline portion of the alcohol blend has been modified to compensate for the volatility increase. As noted above, however, unleaded alcohol blends may legally have a higher oxygen content than an MTBE blend. Therefore, the maximum potential CO benefit with a legal alcohol blend may be greater than that of any legal MTBE blend. (This is not true for blends of leaded gasoline, because the amount of oxygenate is not restricted.) If the RVP increase is fully compensated, the CO advantage of the alcohol blends is even greater.

e. *Driveability and Materials Compatibility.* Numerous studies have evaluated the driveability of alcohol blends compared to "clear" gasoline. Several symptoms such as hesitation, stalling, and hard starting have been reported to varying degrees. The Agency has evaluated these studies and believes the driveability of many vehicles on low level alcohol blends appears to be roughly equivalent to that of gasoline. However, some vehicles appear to be more susceptible to certain driveability-related problems with alcohol blends (and some owners are more perceptive of them). These are generally the older, carburetor equipped vehicles without electronic engine controls. Therefore, it cannot be ruled out that some drivers will experience changes in the operation of their vehicles, although EPA believes that the percentage of such individuals in the Phoenix area will be small.

To the extent that these problems do occur, they can be alleviated by switching to a lower oxygen content fuel. As discussed later in today's notice, the proposed Federal oxygenated fuel program would allow such fuels to be marketed in the Phoenix area.

There is also a concern regarding the compatibility of vehicle/engine materials and alcohol blends. The more important of these concerns falls into two basic areas. The first area involves the effect of alcohol blends on plastics and elastomers. At concentrations much higher than EPA waivered levels, some alcohol blends may cause these materials to swell or weaken. However, alcohol blends at EPA waivered levels are not expected to cause such problems.

The second area involves the loosening of rust and scale in service station and vehicle tanks, and the related problem of added corrosion. Regarding the suspension of corrosion products or sediment, this phenomenon has been found to occur with alcohol blends to some degree and may cause a vehicle's fuel filter to become plugged. This type of problem is most likely to occur when gasoline/alcohol blends are first used, but generally would not occur afterwards and is easily corrected by replacing the fuel filter. It should also be noted that ethanol blends have been widely used and fuel filter clogging has not been a serious problem.

Regarding impacts on corrosion rate, it has been shown that ethanol blends without any corrosion inhibitor additives are more corrosive than typical gasoline. This may be due in part to the fact that ethanol is often blended from unbranded gasoline that may lack even the level and types of additives normally found in branded gasoline, and not just because the ethanol poses an increased threat of corrosion. However, virtually all ethanol now supplied for blending with gasoline has special additives to control this effect. Again, non-alcohol blends do not appear to exhibit these phenomena. Therefore, to the extent that these problems occur, they can be completely alleviated by the use of a non-alcohol gasoline. The proposed Federal alternative fuels program discussed later would allow such fuels to be marketed.

A more detailed discussion of these, and other, aspects of using oxygenated fuels is contained in the Draft Technical Support Document for this action. The interested readers, therefore, should consult that document. The Agency has also included additional information on these subjects for public inspection in the rulemaking docket.

f. *Phoenix Gasoline Supply and Marketing.* Nearly all of the gasoline consumed in Maricopa County is supplied by two pipelines. Each delivers petroleum products from refiners outside the State to a large storage and distribution terminal in Phoenix. One pipeline originates from the Los Angeles, California area and is generally referred to as the "west line." The other originates from El Paso, Texas and is usually referred to as the "east line." Both pipelines are owned and operated by the Southern Pacific Pipe Line Inc. (SPPL). This company operates as a common carrier under the Interstate Commerce Act. As such, it functions solely as a transporter of petroleum products, and must treat all shippers in a non-discriminatory, equitable manner.

The west line is the larger of the two pipelines, accounting for about 90 percent of the Phoenix deliveries. It is also more complex in operation. Petroleum products are received into the pipeline system from ten refinery and terminal sources in the Los Angeles area. Upon receipt, the fuel is immediately placed in "breakout" storage tanks at SPPL's Watson, California terminal (near the Los Angeles harbor). This tankage is required to accumulate enough of each fuel type to provide scheduling flexibility and to accommodate the differences in the flow rates between the refineries and the first segment of the pipeline. The minimum quantity of any particular fuel accepted for transport is 420,000 gallons, but such small "batches" are rare. Regular customers may ship fuel of a given grade through the pipeline approximately four times each month.

From the Watson terminal, petroleum products are sent through the pipeline to Colton, California (between San Bernardino and Riverside). There it is handled in one of three ways depending on the ultimate destination. First, fuel may be diverted directly to local terminals serving the San Bernardino/Riverside, California area. Secondly, fuel may be delivered and stored in another pipeline company's breakout tankage for subsequent delivery to Las Vegas, Nevada. Third, and finally, fuel may be stored in separate SPPL breakout tankage for delivery by SPPL to either the Imperial Valley area of California or Phoenix. In this latter case, products are pumped from the breakout tankage into the Colton/Phoenix pipeline segment. SPPL must use breakout tankage in Colton even for fuel destined to the Imperial Valley and Phoenix because the pipeline segment east of Colton pumps at a slower rate than the segment between Watson and Colton.

Presently, only three types of gasoline have separate breakout tankage associated with the west line: Regular leaded, regular unleaded, and premium unleaded. Any gasoline which is substantially different with regard to lead content, octane, and volatility (or oxygen content) cannot be transported with the system's existing operating practices. Within certain bounds, however, adjustments in pipeline operations may be possible to compensate for some differences in fuels. For example, if a suboctane unleaded fuel is put through the regular unleaded breakout tank, the next batch of "normal" octane fuel would have to be refined to have a slightly higher than normal octane to accommodate the dilution with the heel of the suboctane fuel. Similar adjustments might also be possible for fuels with different RVPs and oxygen contents. In particular, SPPL has indicated that it could meet the maximum contamination level of 2 percent MTBE by volume that might be associated with MTBE blends, in unleaded fuel destined to be blended with ethanol.

Nonetheless, along the continuum of feasibility, the pipeline's operational flexibility may become increasingly compromised as more fuel types must be handled. At some point, the trade-off between accommodating different fuels and the associated cost of operation can become so burdensome that the time-consuming construction of new breakout tankage dedicated to this service becomes practically necessary or at least economically justified. This is a potentially significant consideration if reducing air pollution in Arizona were to require special gasolines. (The ramifications of such an event are discussed later in this section.)

The east line delivers about 10 percent of the gasoline received in Phoenix, and is relatively simple in its operation. Petroleum products enter the pipeline directly from the terminal storage areas of four refiners in El Paso. There are no breakout facilities associated with east line operations, since all pipeline segments flow at the same rate. The minimum quantity of any petroleum product accepted for shipment is 210,000 gallons. (This pipeline also supplies virtually all of Tucson's gasoline.)

As already noted, upon reaching Phoenix the petroleum products are delivered into a large terminal area where they are stored for later distribution and sale. The terminal is composed primarily of a central manifolding area for handling the various products, and a large number of individual storage tanks. The tanks themselves are owned by the following companies, utilities, or government entities: SPPL, Shell, Chevron, Unocal, Powerline, ARCO, Texaco, CALJET, City of Phoenix, Maricopa County, Salt River Project, and Arizona Public Service Company. These storage facilities are either used exclusively by the owner or may be leased, in whole or part, to other companies. SPPL in particular does not own any of the fuel stored in its tanks, but instead leases them to others or charges a service fee for their intermittent use. The terminal is also accessible by railroad, although this service is apparently not being used at present.

Pipeline deliveries to Phoenix may change somewhat in the future. Fuel shipments through the west line are presently constrained by the pipeline's capacity. Also, gasoline delivered through the east line is somewhat more expensive, primarily due to differences in crude oil prices and refining economics. As a result, the west line is presently being expanded by SPPL (i.e., increased diameter and increased flow rates), with the new pipeline projected for completion in 1989. Once the expansion is complete, SPPL expects to supply nearly all of the gasoline to Phoenix and probably Tucson through this single line.

Turning to the marketing of fuels, approximately 1.12 billion gallons of gasoline products were delivered by pipeline to the Phoenix terminal in 1987. This represents about 3 million gallons per day. Because of the population distribution within the trading area of the Phoenix terminal, most of this fuel is assumed to be used within the Phoenix non-attainment area. However, some smaller communities in Arizona (e.g., Flagstaff) may receive virtually all their fuel by tank truck delivery from this Phoenix terminal.

The quality of all gasoline-type motor vehicle fuel consumed in Arizona is currently regulated by Section 41-2063 of the Revised Arizona Statutes. That section requires conformance with the specifications established by the American Society for Testing and Materials (ASTM), as contained in document D439-83. The specifications include maximum allowable limits on fuel volatility. (The potential significance of this specification will become clear later.) Additionally, the gasoline normally marketed in the Phoenix area reportedly contains no alcohol additives and only, a trace of Methyl Tertiary Butyl Ether (MTBE). [Reference 2] This latter compound is currently used by some U.S. refiners as an octane enhancer in concentrations of up to a few percent.

There are approximately 800 public refueling facilities in Maricopa County. Major oil companies, and their affiliates, dominate the Phoenix market both in number of service stations and total gasoline sales. The Phoenix area also appears to have about 38 gasoline wholesalers. Most are presumably in the business of delivering gasoline by tank truck to retail and other refueling facilities. Those that do not themselves import gasoline via the SPPL pipelines purchase it at the Phoenix terminal from companies which do.

Oxygenated Fuels Option Selection

The first step in implementing an oxygenated fuels program is to decide on its overall design. The predominant consideration in making this decision is that the CO benefit from these fuels is primarily dependent on the oxygen concentration of the gasoline consumed in the geographic area of concern. So in structuring the program to provide a certain emission reduction, the ultimate goal can be thought of as ensuring that a specific oxygen concentration target is attained. (The actual oxygen target for the Phoenix area is discussed later in this section.) There are three basic program designs that will accomplish this. Each is described below and EPA's preferred option for the proposal is identified.

The first option involves establishing a single minimum oxygen concentration for all gasoline. The minimum would be set at the level necessary to provide the required CO reduction. This concept is being used by the State of Colorado in its alternative fuels program, with a minimum specification of 2 percent oxygen by weight. At this low level, none of the current oxygenated fuel blends currently permissible under EPA unleaded gasoline waivers would be prohibited. The minimum specification for the Phoenix area currently would need to be greater than this value to provide the required CO reduction. Such a requirement has a significantly different effect on fuels availability, as noted below.

The advantage of this option lies in the consistency of the regulatory requirement for all octane grades of gasoline (i.e., regular leaded, regular unleaded, midgrade unleaded if present in the market, and premium unleaded). This consistency would minimize confusion by consumers over the level and type of oxygenate being marketed. The regulatory requirements also would be more straightforward for the affected business community and, similarly, enforcement would be greatly simplified. Compliance with the regulatory standard could be directly monitored through sampling and testing of gasoline in the control area, rather than relying on oversight of a self-reporting system. The principal disadvantage is that it can significantly limit the choice of fuels in the marketplace. For example, the availability of "clear" gasoline (i.e., oxygen-free) would be precluded. Also, as already mentioned, the oxygen target for the Phoenix area would be above 2.0 percent. This currently precludes the availability of alcohol-free, unleaded fuels. Specifically, the marketing of 11 percent MTBE with 2 percent oxygen by weight, which is universally recognized as a fully satisfactory fuel in all vehicle types, would be prohibited. (The implications of a recent waiver request for up to 15 percent MTBE is discussed later in this section.)

A limitation on the choice of fuels available is an important consideration in that a small percentage of owners may require (in their own perception if not in fact) an alcohol-free fuel for the satisfactory operation of their vehicles. Beyond this small group, the simple availability of various fuels may be critical in garnering public acceptance and support for an oxygenated fuels program. This limitation would also reduce the marketing flexibility of fuel suppliers as compared to other potential program designs. It could reduce or eliminate competition between blending agents and cause prices to artificially rise.

The second basic option involves establishing a minimun oxygen concentration by octane grade (or generally specifying oxygen content with an allowance for one unspecified grade to contain some other concentration). As an example, one grade could be specified with a minimum of 2 percent oxygen by weight to allow MTBE in the market. Other grades would be specified at a higher minimum requirement, which could be met with alcohol blends. The selection process, of course, must be governed by ensuring the required emission reduction is achieved.

This program option overcomes the principal problem associated with setting a single minimum oxygen concentration for all gasoline, in that an alternative blend could be made available for those consumers wishing to purchase gasoline containing no alcohol. Under certain scenarios it might be possible, though unlikely, to offer an oxygen-free fuel. Beyond this, much of the first option's advantage of simplified enforcement is retained, especially if the low-oxygen grade was specified by regulation rather than determined by free market conditions.

Unfortunately, such an action would continue to significantly affect consumer choice and free market activities. A further disadvantage of this option relates to the uncertainty of attaining the requisite oxygen concentration

target from the mix of fuels. The market shares for the various fuel grades, and the resulting oxygen content, will depend on the vehicle fleet composition (e.g., catalyst versus non-catalyst equipped vehicles), and the degree to which consumers switch fuels to obtain an alcohol-free or low-oxygen blend. Predicting these effects and setting oxygen requirements with certainty is problematic.

Of course, it may be possible to overcome this difficulty by either limiting in some way the availability of the low-oxygen blend, setting the required concentration of the high-oxygen blend at the maximum allowable level, or by using some combination of these approaches. Such a solution, however, further negates some of the potential advantages of this option. Also, by setting the oxygen requirements at a higher level than actually necessary, the cost of the program could be unnecessarily increased. Finally, if other types of oxygenates became available with oxygen contents between the low- and high-level specifications (e.g., 15 percent MTBE with 2.7 percent oxygen by weight) the program design may have to be reconsidered to allow for such new fuels.

The third, and final, basic option involves the concept of averaging. This type of program is used by EPA in the gasoline lead phasedown program. It can be adapted to an oxygenated fuels program by establishing an average oxygen target at the level needed to achieve the required CO reductions. Gasoline suppliers must, at a minimum, meet this average value over a specified time period. This can be done by always selling fuel with an oxygen content at or above the requisite value, or by adjusting the quantities and types of fuel sold over the averaging period to attain the requisite value.

The principal advantage of this program design is that the requisite emission reduction can be achieved with a minimum of regulatory intrusion into the marketplace. It also appears to retain the maximum degree of marketing flexibility, competition between blending agents, and consumer choice. These advantageous aspects of the averaging program can be further enhanced by allowing suppliers to trade "oxygen credits" among themselves, with a supplier of relatively low oxygen fuels being able to purchase such credits from a supplier of relatively high-oxygen fuel. The primary disadvantage of this approach is the associated increase in the amount of recordkeeping and reporting. A significant amount of additional data is required under this program design for suppliers to track their average oxygen concentrations, to allow for the trading of oxygen credits, and to provide a mechanism for program enforcement. Even with such reporting and recordkeeping requirements, however, program enforceability may be difficult.

In weighing the apparent advantages and disadvantages in the context of the relatively substantial CO reductions needed from an oxygenated fuels program in the Phoenix area, EPA believes that the averaging and trading approach on balance appears preferable to the other basic implementation options. Specifically, the advantages of maximizing consumer choice and marketing flexibility outweigh the disadvantages associated with the increase in recordkeeping and added enforcement burden.

Nonetheless, although EPA currently prefers to implement the proposed oxygenated fuels progran with an averaging and trading scheme, comments are specifically requested on the possibility of specifying a minimum oxygen content for "each batch" of gasoline or for each octane grade, or some variation of this approach, as an alternative to averaging. This simpler program design may be advantageous if the recent request by Sun Oil for a waiver permitting up to 15 percent MTBE blends is approved. Similarly, as discussed later, it may also be a feasible alternative if the State of Arizona adopts additional control measures that would reduce the emissions control necessary from an alternative fuels program, and allow an average oxygen concentration of 2 percent or less.

Description of the Oxygenated Fuels Program

As noted above, the Agency is proposing to implement an oxygenated fuels program for the Phoenix area with an optional averaging and trading compliance scheme. The specific elements of the overall program are described below.

a. *Program Duration.* The intent of the program is to provide the benefits of vehicular operation on oxygenated fuels during the time of year when the Phoenix area would otherwise experience exceedances of the CO NAAQS. In the last three years, the peak CO monitoring site in Phoenix recorded several exceedances of the CO 8-hour standard in the April to September period and the highest of these was recorded on April 23, 1985. (Actual air quality data can be found in the TSD). Although these exceedances fall outside of the proposed program duration dates for the oxygenated fuels program, EPA is concerned with the potential for gasoline volatility increases in the warmer months of April through September if the program were extended to cover those months and its potential effect of exacerbating ozone formation (described elsewhere in the notice). However, EPA believes that the control measures in the MAG plan, including the increasing effectiveness of the I/M program, along with the emission reduction benefit of the phasing in and out of oxygenated gasoline stock before and after the proposed program dates (an approximate two week period), will eliminate these higher concentrations found in the months outside of the program. EPA solicits comment on this issue.

To assure that the gasoline dispensed from a refueling facility contains the requisite oxygen content, some phase-in must be included in the program to allow for the normal "turnover" of fuel in the refueling facilities' storage tanks. The limited information currently available indicates that this phenomenon usually takes at most two weeks for refueling facilities that handle the large majority of the fuel used in an urban area. Therefore, EPA proposes that the mandatory compliance period begin on October 1 of each calendar year and end on March 31 of the subsequent calendar year, beginning with the effective date of the program. During this compliance period, all gasoline first introduced into commerce within the control area (including gasoline deliveries to public or private refueling facilities) must meet the requirements of the oxygenated fuels program as prescribed by regulation. Any other regulatory requirements that may specifically apply to refueling entities (e.g., labeling) must also be adhered to during this period.

Comments are specifically requested on the need for a longer compliance period, or the adequacy of a shorter period.

b. *Geographic Scope.* The requirements of the oxygenated fuels program would apply to all gasoline first introduced into commerce within the boundaries of the Maricopa County nonattainment area as prescribed in the Federal Register by EPA on March 3, 1978 (43 FR 8964). The area encompasses twenty-two cities and towns, including the City of Phoenix and portions of unincorporated area within Maricopa County. Comments are specifically requested on the need for and disadvantages of, enlarging the geographic scope of the program to include more or all of Maricopa County.

c. *Oxygen Content Specification.* As discussed previously, the various oxygenated fuels may exhibit different clean air potentials. Current oxygenated fuels made with ether-based compounds as the blending agent yield equivalent CO reductions for each percent oxygen they contain. This is not necessarily the case, however, for oxygenated fuels made with alcohol-based compounds as the blending agent. These latter blends can increase the volatility of the gasoline, which offsets some of the potential benefit of their oxygen content in reducing CO emissions under at least some ambient conditions encountered in Phoenix. The degree of this offset varies with the composition and RVP of the base gasoline, and with the amount and type of alcohol used in the blend. For ethanol blends, the RVP increase is nearly always 1.0 psi or less, and averages about 0.78 psi. Presently, it appears that the only alcohol-based blends that are likely to be marketed in the Phoenix area are those using ethanol as the blending agent. Therefore, the following discussion will focus primarily on ethanol, although it generally pertains to other alcohol blending agents as well.

In practice, the only way to limit or avoid the CO offset described above for alcohol-based blends is to use a low volatility gasoline as the blending stock so that the resulting fuel is no more volatile than the non-oxygenated gasoline that normally would be marketed. Due to economic considerations this occurs only if the blend would otherwise exceed an applicable regulatory limit on gasoline volatility. Therefore, the CO offset would apply to alcohol blends in the Phoenix area, unless a regulatory constraint forced such fuels to be made with low volatility gasoline as the blending stock.

In making this determination, the potential regulatory constraint of immediate interest is Arizona's statutory requirement that prohibits all gasoline-type fuel, including ethanol blends, from exceeding the ASTM recommended limits on RVP. The maximum allowable RVP levels, as set forth in Section 41–2083 of the Arizona Revised Statutes, during the months encompassing the mandatory compliance period of the proposed oxygenated fuels program are: October, 10.0 pounds per square inch (psi); November, 11.5 psi; December, 13.5 psi; January, 13.5 psi; February, 13.5; and March, 11.5 psi. The issue at this point is whether the oxygen free gasoline supplied to Phoenix has a low enough volatility to accommodate all or most of the approximately 0.78 psi average increase in RVP of ethanol blends within the State maximum volatility limits.

The Agency currently has only a limited amount of data on the RVP levels of gasoline in the Phoenix area. The available information includes the average monthly RVP levels for one petroleum company's pipeline shipments into Arizona from September 1986 through August 1987. [Reference 1] The average monthly RVP values during the six months of interest range from 0.4–3.3 psi below the Arizona standards, with all but two months having levels at least 1.1 psi below the limits. The minimum monthly RVP values range from 1.3–6.0 psi under the standards, with only two months being less than 2.6 under the limits. This data is supplemented by a January 1987 survey of fuel from service stations in Phoenix that showed an average RVP of 12.5 psi. [Reference 1]

This indicates that the 0.78 psi increase in RVP, which is associated with the average ethanol blends, could be accommodated within the State limits by selecting normal gasoline shipments with an appropriately low volatility as the blending stock. Because of this, EPA proposes to account (as described below) for the CO offset associated with the higher RVP of alcohol blends in the oxygenated fuels program, unless it is conclusively demonstrated that the volatility of such fuels will on average match that of the alcohol-free gasoline that would otherwise be available in the Phoenix area. If Arizona subsequently adopts a volatility exemption for alcohol-based blends (e.g., an RVP margin of 1 psi), alcohol-based blends clearly will not match that of other gasoline. However, if Arizona also reduces the basic RVP limit for other fuels so that even with any exemption alcohol blends cannot exceed the average RVP of Phoenix's current gasoline supply (which EPA believes is about 1 psi below the legal limit), the accounting procedure described below will not apply in the final rule.

The Agency finds the relative difference among the various oxygenated gasolines in reducing CO emissions is easily accounted for by expressing the "actual" oxygen content of each fuel in terms of its "equivalent" oxygen content. These values are then used, as described subsequently, to determine compliance with the program. Specifically, the equivalent oxygen content for non-alcohol blends is simply equal to the actual oxygen content (e.g., 11 percent MTBE equals 2.0 percent equivalent oxygen content). For ethanol blends of 1 to 10 percent by volume, the actual oxygen content is converted to the equivalent as illustrated in Table 4.

TABLE 4.—OXYGEN EQUIVALENCE OF VARIOUS FUEL BLENDS IN THE ALTERNATIVE FUELS PROGRAM

Actual		Equivalent		
Nominal		Oxygen content (percent) [1]		Oxygen content (percent)
Concentration of oxygenate (volume percent)	MTBE blend	Ethanol blend [2]	MTBE blend	Ethanol blend [2]
0	0.00	0.00	0.00	0.00
1	0.18	0.37	0.18	0.11
2	0.36	0.74	0.36	0.22
3	0.54	1.11	0.54	0.60
4	0.73	1.48	0.73	0.98
5	0.91	1.85	0.91	1.37
6	1.09	2.22	1.09	1.75
7	1.27	2.59	1.27	2.14
8	1.45	2.96	1.45	2.52
9	1.63	3.33	1.63	2.90
10	1.82	3.70	1.82	3.29
11	2.00		2.00	
12	2.18		2.18	
13	2.36		2.36	
14	2.54		2.54	
15	2.72		2.72	

Notes:
[1] As determined by the proposed measurement procedure.
[2] Methanol blends in the Phoenix market would be treated similarly under current Arizona RVP limits.
[3] 3 Ethanol greater than 10 percent by volume in unleaded gasoline is prohibited. Ethanol exceeding this level in leaded gasoline is not expected.
[4] MTBE blends greater than 11 percent by volume in unleaded gasoline are prohibited. A waiver application for up to 15 percent by volume is currently under EPA review.

EPA proposes that the same conversion as for ethanol blends will be made (at matched actual oxygen content) for methanol/cosolvent based blends if such blends will be marketed in the Phoenix nonattainment area. The actual oxygen content will also be used as the entry point to Table 2 for ethanol blends containing small amounts of other oxygenate compounds. Additional information relating to the volatility increase associated with methanol blends, as well as ethanol and MTBE blends, is contained in an EPA technical report on estimating the potential emission reductions associated with alternative fuels. [Reference 1]

In the past, for the most waivered unleaded gasoline blends containing alcohol (specifically, gasohol and Texas Methanol and DuPont methanol/cosolvent blends), EPA has not pursued enforcement action if up to two percent MTBE were present in the blend as a result of unintentional commingling of the base gasoline during transport and storage. The purpose behind this enforcement discretion was to make

blendstock for alcohol blending more

practical terms, the program should start

Los Angeles area pool. This is true now

proposes that the oxygenated fuels

control season. In addition, persons

one month prior to the starting date of

blendstock for alcohol blending more available, but not to encourage the purposeful mixing of unwaivered oxygenate blends. To avoid encouraging such purposeful mixing, the Agency is considering not allowing the contribution of oxygen from MTBE in the calculation of actual (or equivalent) oxygen content in such waivered alcohol blends, even when the MTBE is present as a result of unintentional commingling in the base gasoline and is under two percent. The Agency requests comments on this approach.

With the oxygen concentrations of each blend consistently expressed on the basis of their equivalent oxygen contents, overall compliance with the program is measured against attainment of an "equivalent oxygen content target." This target is equal to the concentration of equivalent, or non-offset, oxygen required in all gasoline in order to provide the necessary CO reduction. Using this approach, the required 17.35 percent CO reduction that must be provided by the alternative fuels program translates into an equivalent oxygen content target of 2.57 percent. EPA, therefore, proposes 2.57 percent as the required level of equivalent oxygen.

Demonstrating conformity with the 2.57 percent (or 2.79 percent if no TRO is promulgated) will be a matter of weighting the individual equivalent oxygen content values by the volume of the respective fuels first introduced into commerce within the control area during the prescribed period. If oxygen free fuel is allowed in the program, it would be similarly included in the calculations as having an equivalent oxygen content of zero. If trading is allowed and equivalent "oxygen credits" are available, they would also be accounted for in the calculations. The Agency's proposal in these areas is discussed later in this section.

Comments are specifically requested on the feasibility of marketing such fuels under the existing ASTM, federal, and Arizona limits, the appropriateness of including a CO benefit offset for alcohol-containing gasoline such as that described for ethanol blends, the feasibility and cost implications of supplying special volatility adjusted gasoline to the Phoenix area in order to avoid the CO offset, and the likelihood that methanol blends will be marketed in the Phoenix area.

d. *Effective Date.* The Agency believes, and the Clean Air Act requires, that the oxygenated fuels program should be implemented on a schedule that represents reasonable further progress towards attainment prior to full attainment of the CO NAAQS in 1991. In practical terms, the program should start on the earliest date that will not disrupt the supply of gasoline or cause unreasonable cost increases. The Agency's review of the most pertinent factors in making this determination shows that the effective date for the program is related to the leadtime required in three critical areas: Supplying the requisite gasoline and blending agents to the Phoenix terminal complex, terminal storage and handling, and final distribution of the various blended fuels.

Turning first to the issue of final distribution, no changes in tank trucks or associated equipment, which is used to deliver the fuel from the terminal complex to the service stations, should be required. Some modifications to the service station equipment (e.g., storage tank cleaning and the installation of fuel filters) will be generally required for locations marketing alcohol blends. Such modifications are not regarded as requiring a significant amount of lead time to accomplish.

As for the supply of the requisite fuel products, this issue involves the consideration of both production and transportation. There currently appears to be enough MTBE, a low-oxygen blending agent, either produced in the United States or available by importation to satisfy the Phoenix market without significantly elevating its cost from current levels. The same appears to be basically true for ethanol, a high-oxygen blending agent. [Reference 4] With regard to transportation or supply to the Phoenix area, MTBE is most likely to be transported via pipeline in final blended form in the gasoline shipped from the refineries in the Los Angeles area. The Southern Pacific Pipe Line, Inc. (SPPL), which owns and operates the pipeline, has stated there are no technical obstacles in handling MTBE blends within its current capacity, due to the compatibility of these blends with normal gasoline. [Reference 5] (It is possible that MTBE blending may take place in Phoenix, although the extent of this event is currently uncertain.)

Ethanol-based gasoline, on the other hand, will be blended in the Phoenix area. The pure ethanol apparently will be shipped by railcar from production facilities outside the State. This rail capacity appears to already exist. [Reference 4] The oxygen- free gasoline required for blending can also be supplied by pipeline deliveries from California, even if the pipeline is also handling MTBE blends. As noted earlier, ethanol blends for the Phoenix market should be able to be made from present oxygen-free gasoline supplies from the Los Angeles area pool. This is true now even with Arizona's RVP limits on ethanol blends, because the gasoline now being delivered to Phoenix appears to average about 1 psi below the Arizona limits. It will certainly be true if Arizona relaxes its RVP limit during the CO season. This is important due to the added cost and complexity otherwise associated with using a special, low RVP oxygen-free gasoline. (The possible effect of using such a fuel is described below.) Therefore, delivering the necessary fuels and blending stock to the Phoenix terminal complex does not appear to be a critical issue.

The last element of potential concern is storage and handling of the fuels and blending agents within the Phoenix terminal itself. Here again, the compatibility of MTBE blends and existing gasoline means that this type of oxygenated blend could basically displace such gasoline without any significant changes to the terminal facilities.

Dealing with ethanol blends, however, is a more complicated issue. Limited rail service and "off loading" facilities exist, which can be used for the pure ethanol, but may need expansion and improvement. A more substantial obstacle involves the practice of blending the gasoline and ethanol as the fuel is loaded into the tank truck or actually in the tank truck. This requires the segregated storage of the alcohol-free gasoline and the ethanol. The tankage can be made available by displacing other products within the terminal facility, or by building new storage facilities. The latter seems most likely, especially for the pure ethanol, given the volume of ethanol blends that may be used to comply with the proposed oxygenated fuels program. In fact, one ethanol company already appears to be following this approach in response to some of the program options being considered by the Arizona legislature. [Reference 4] Also, the actual blending of gasoline and ethanol may require special equipment.

Therefore, the introduction of ethanol blends into the Phoenix area, at the level which appears necessary, will at a minimum likely require new storage and handling facilities in Phoenix. Such additional facilities have been estimated by SPPL to take about one year to complete. [Reference 6] One year should also be technically adequate for various changes in equipment and operating procedures. Assuming this leadtime starting from publication of the final rulemaking on August 10, 1988, as required by the Court Order, EPA proposes that the oxygenated fuels program take effect October 1, 1989.

The preceding discussion focused on technical requirements. While one year's leadtime may technically permit compliance, it may limit refiners' options for compliance relative to a longer period. It may also require costly changes in refinery operations that could also be avoided. For example, with only one year's leadtime a Los Angeles refiner would likely not be able to construct new tankage to segregate Phoenix-bound MTBE blends or components. This may require preemption of tankage now used for other purposes and may mean that a refiner cannot recover the octane value associated with the high MTBE content. Similarly, a refiner might have to forego recovering the octane value of its planned ethanol blending in Phoenix. Methanol blends may also be precluded, since reduced-RVP base stock would certainly need to be segregated. SPPL may also not be able to build new breakout tankage which would simplify and reduce the costs of simultaneously handling both MTBE blends and oxygen free gasoline destined for ethanol blending. To allow it to consider cost versus schedule tradeoffs and any unexpected technical difficulties caused by an October 1, 1989 effective date, EPA requests comments on the need for and cost impact of providing greater flexibility in establishing the effective date of the oxygenated fuels program. This flexibility could be provided by delaying the actual effective date or gradually phasing in the equivalent oxygen content specification. Comments should be specific to a refiner's own plans for compliance and its own current infrastructure for production, storage, transport, and distribution of gasoline.

e. *Regulated Parties and Activities.* Regulatory requirements would apply to all parties in the gasoline and oxygenate distribution networks in the Phoenix CO nonattainment area during the control season. Four types of regulatory requirements are proposed:

1. *Registration.* All persons in the control area gasoline distribution network would be required to submit a registration form to the Agency no later than one month before the start of each control season. Parties subject to the regulatory standard, as defined below, would be required to provide information on how they intend to comply with such standard. Other parties (e.g., most retailers) would have to submit generally less specific information on their planned role in distributing, transporting, selling, or dispensing oxygenated fuel during the control season. In addition, persons selling or supplying oxygenates (e.g., alcohols and ethers in pure, diluted, denatured, or additive- improved form) to be used within the control area would be required to register.

2. *Regulatory Standard.* The 2.57 percent (2.79 percent if no trip reduction program is promulgated) equivalent oxygen content standard would apply to all persons who first introduce gasoline into commerce within the Phoenix CO nonattainment area. This would include persons who first sell, supply, offer for sale, or offer for supply gasoline within such area (e.g., distributors). The standard would also apply to persons who produce gasoline (e.g., refiners) or who alter its quality and/or oxygen content (e.g., alcohol blenders), and then sell or supply such product, within the control area. Finally, the standard would apply to any person who "imports" product into the control area for direct sale or supply (e.g., a party who transports or causes to be transported gasoline by truck from outside the control area to a retail station or wholesale purchaser-consumer within the area).

3. *Reporting and Recordkeeping.* All persons subject to the equivalent oxygen content standard would be required to submit monthly reports containing information on their compliance with the standard. Persons transporting gasoline into the control area (e.g., pipelines) and those selling or supplying oxygenates within the control area would also be required to submit monthly reports on such activities. Persons subject to reporting requirements would have to maintain adequate records to support the information contained in their reports. Other persons in the control area gasoline distribution network would be required to maintain specified records on their activities during the control period and make them available for EPA review, but would not be required to submit monthly reports.

4. *Labelling.* Retailers and wholesale purchaser-consumers (parties purchasing gasoline in bulk for their own ultimate use) would be required to label pump stands from which gasoline is dispensed with the type of oxygenate used in the gasoline and its oxygen content. Invoices and similar documents which accompany the shipment of gasoline in the control area would also have to be labelled.

These regulatory requirements are discussed in more detail below.

f. *Registration.* As noted above, all persons in the gasoline distribution network in the control area would be required to register with EPA at least one month prior to the starting date of each control season. Persons subject to registration would include refiners, pipeline and terminal operators, distributors, resellers, carriers, retailers and wholesale purchaser-consumers.[4] Such persons would have to supply basic information on their facilities and on their activities during the previous one-year period. Persons subject to registration but not subject to the equivalent oxygen content standard (e.g., most retailers) would be required to submit information on their plans regarding oxygenated fuel during the coming control season.

Persons subject to the equivalent oxygen content standard would be required to provide information on how they intend to comply with the standard during the coming control season. Such parties would have two compliance options. Under the first option, each batch of gasoline sold, supplied, or offered for sale or supply during the control season would have to have a minimum equivalent oxygen content of 2.57 percent by weight. Under the second option, all gasoline sold or supplied during each monthly compliance period would be required to have an average equivalent oxygen content of 2.57 percent. Monthly compliance periods would be on a calendar month basis. In meeting this monthly average standard, regulated parties would be allowed to trade equivalent oxygen credits during the monthly compliance period (as discussed more fully below).

Parties who elect the second compliance option would be required to submit a statement indicating their agreement that any violation of the monthly average standard would be treated as violations committed on each and every day of the averaging period (e.g. if the monthly averaging period is December 1 to December 31, a violation of the standard for this period constitutes 31 days of violation). Parties selecting the second option would also have to submit detailed information on their planned product mix during the control period (e.g., 60 percent of product will contain 11 percent MTBE with 2.0 percent oxygen content, 35 percent will contain 10 percent ethanol with 3.7 percent actual oxygen content

[4] Persons adding oxygenates to gasoline for the first time (including persons who mix oxygenated and non-oxygenated fuels that have already been introduced into commerce as gasoline by other hands) are also required to register as fuel manufacturers under the regulations at 40 CFR Part 79. Persons entering the gasoline distribution network during a control season would have to register at least 15 days before starting operations.

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and 3.29 percent equivalent oxygen content. 5 percent will not contain oxygenates) and on how any shortfall in meeting the average standard will be met through the purchase of equivalent oxygen credits or a change in product mix.

It is the Agency's intent that generally only one party in the distribution network would be responsible for compliance of any particular quantity of gasoline with the equivalent oxygen content standard. Problems may arise, however, where a second party alters the equivalent oxygen content of a quantity of gasoline first introduced into commerce within the control area by another party (e.g., a carrier adds ethanol to a truck load of finished gasoline purchased from a distributor). The Agency requests comments on the best means to prevent such "double reporting".

Persons who intend to sell or supply oxygenates that are used within the control area during the coming control season would also be required to register with the Agency. They would be required to submit detailed information on their planned activities within the control area, including location of storage and dispensing facilities, type(s) of oxygenate(s) to be sold or supplied, and the names and addresses of known customers within the control area.

All parties will be required to revise their registration forms within 15 days of a significant change in operations. Significant changes requiring a revision of registration would include any change in location or ownership of a facility, commencing or ceasing use of a particular oxygenate, a significant change in planned product mix or in use of equivalent oxygen credits, and other circumstances to be specified in the regulations.

g. Equivalent Oxygen Content Determinations, Sampling and Testing. Under both compliance options, it will be necessary to determine the equivalent oxygen content of gasoline subject to regulatory requirements. As discussed above, the Agency will specify the equivalent oxygen content of various oxygenated fuels (including an "RVP penalty" for ethanol). To measure compliance, a representative sample of gasoline first will be tested for its oxygenate content (e.g. percent ethanol, percent MTBE). For parties choosing the first compliance option (determined per batch without averaging or trading), the oxygenate content will be converted to equivalent oxygen content and then compared to the regulatory standard. Compliance measurement and calculation procedures for the second compliance option are discussed in the next section of this notice.

The sampling methodologies would be identical to those proposed for the Agency's gasoline volatility control program. *See* proposed 40 CFR Part 80 Appendix D, set forth at [52 FR 31318–30, August 19, 1987]. The methodologies are also essentially identical to those used by the California Air Resources Board (CARB) in its gasoline volatility control program (Cal. Admin. Code Tit. 13, R. 2281). The proposed methodologies include the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure developed by CARB.

The ASTM methodologies would be used by the Agency in sampling gasoline and oxygenated fuels at facilities such as refineries, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The nozzle sampling procedure would be used at service stations and similar dispensing facilities (e.g., fleets).

The Agency is also considering adoption of two alternative nozzle sampling techniques: (1) Instead of placing the sample container in a chilling medium while being filled and stored (as in the CARB procedures), the container would remain at ambient temperatures prior to pre-testing cooling; and (2) sampling would be done using certain EPA developed equipment and procedures.

The August 19, 1987 notice of proposed rulemaking (52 FR 31274) for the gasoline volatility control program, which contains the specific proposed methodologies and a detailed description of both the proposed and alternative sampling methodologies, has been placed in the rulemaking docket for this FIP.

h. Alternative Compliance Demonstration: Averaging and Trading. As noted above, persons subject to the equivalent oxygen content standard would have the option of meeting this standard on a monthly average basis provided certain registration requirements are met. Under this option, compliance would be based on a weighted average of the equivalent oxygen content of all gasoline sold or supplied within the control area during a monthly period. The following procedures are proposed for the determination of such a monthly average:

1. The equivalent oxygen content (by weight) of each discrete quantity of gasoline in the possession of the regulated party (e.g., each storage tank at a bulk terminal) at the beginning of each compliance period would be sampled and tested according to the procedures described in this notice.

2. The equivalent oxygen content of gasoline would also be tested each time there is a change in its quantity and/or quality that would tend to affect its oxygen content. This would require testing upon addition of any quantity of gasoline to a storage tank, but not upon removal of product for sale. It would also require testing upon the addition of any amount of oxygenate(s) to the gasoline.[5]

3. The amount of gasoline sold or supplied within the control area between the dates and times of equivalent oxygen content tests would be recorded.[6]

4. At the end of the compliance period, the quantities of gasoline recorded per (3) above would be multiplied by the relevant equivalent oxygen content. The resulting "total equivalent oxygen" amounts would then be added together and divided by the total amount of gasoline sold or supplied during the compliance period to determine the monthly average equivalent oxygen content.

In the case of in-line or in-truck blending of oxygenates, the equivalent oxygen content of each discrete quantity of final blended product (e.g., a truck load) would have to be determined and included in the monthly average calculations. Similarly, when gasoline is "imported" from outside the control area for direct sale or supply (e.g., a tank truck load brought from Los Angeles directly to a service station in Phoenix) the equivalent oxygen content of each such discrete quantity of product must be determined and included in monthly average calculations.

The following example illustrates how this averaging mechanism would work. Assume that Distributor A receives gasoline via pipeline from outside the Phoenix control area, stores the product in storage tanks at its Phoenix terminal, and sells the product to retail stations within the control area.

On Day 1 of the compliance period Distributor A tests the equivalent oxygen content of product in its storage tanks and finds the following results:

[5] The Agency requests comments on other changes to gasoline quantity or quality that should (or should not) trigger the testing requirement.

[6] The Agency is considering a requirement that the oxygen content of gasoline be known and provided to the purchaser (or person supplied) prior to sale or supply, and requests comments on such a requirement. This would facilitate compliance with labelling and other regulatory requirements.

Tank X (leaded regular)—2.9 percent; Tank Y (unleaded regular)—2.0 percent; and Tank Z (unleaded premium)—2.0 percent. Distributor A receives other shipments of product in each grade from the pipeline on Day 16 of the compliance period and tests each tank promptly with the following equivalent oxygen content results: Tank X—3.0 percent; Tank Y—2.2 percent; and Tank Z—0 percent. No other shipments were received during the compliance period. Compliance is calculated as follows, using the gallonage of gasoline sold during relevant periods:

A. Days 1 to 16 (until testing):

[Oxygen contents below are expressed as decimals, e.g. 2.9 percent=0.029]

Tank	Equivalent oxygen content		Gallonage		Total equivalent oxygen
X	0.029	x	25,000	=	725
Y	0.020	x	55,000	=	1,100
Z	0.020	x	20,000	=	400
Totals			100,000		2,225

B. Days 16 (after testing) to 30:

Tank	Equivalent oxygen content		Gallonage		Total equivalent oxygen
X	0.030	x	30,000	=	900
Y	0.022	x	60,000	=	1,200
Z	0.0	x	25,000	=	0
Totals			115,000		2,100

C. Monthly Average:

Days	Total equivalent oxygen	–	Total gallonage	=	Average equivalent oxygen content
1 to 16	2,225		100,000		
16 to 30	2,100		115,000		
Totals	4,325		215,000	=	0.0201

In this simple example, Distributor A's monthly average equivalent oxygen content would be 2.01 percent. In order to meet the standard of 2.57 percent, he would have to purchase (or otherwise obtain) equivalent oxygen credits from another regulated party.

Under the proposal, equivalent oxygen credits would be allowed to be sold or traded among regulated parties. Equivalent oxygen credits would be earned by parties to the extent that the average equivalent oxygen content of gasoline sold or supplied during a monthly compliance period exceeds 2.57 percent. Equivalent oxygen credits could only be traded and used during the compliance period in which they are earned. Equivalent oxygen credits are calculated by first computing the total equivalent oxygen content of the regulated party's monthly gallonage. The product of the party's monthly gallonage and 0.0257 (2.57 percent) is then subtracted from the party's monthly total equivalent oxygen content, and the difference is the amount of equivalent oxygen credits available for sale or trade (if the difference is zero or a negative number, the party has no equivalent oxygen credits available for sale or trade).

The trading mechanism is illustrated by the following example. Assume Distributor B complies with all sampling and testing requirements, and determines that all gasoline sold or supplied during a monthly compliance period has a uniform equivalent oxygen content of 3.29 percent.

The amount of product sold/supplied during the compliance period is 200,000 gallons. Distributor B's total equivalent oxygen content for this period is 6580, determined by multiplying its gallonage (200,000) by its average oxygen content (0.0329). In order to meet the 2.57 percent regulatory standard, its total equivalent oxygen content must be 5140 (200,000×0.0257). Thus, Distributor B has 1440 oxygen credits (6580–5140) available for sale or trade during the compliance period. If 1210 of these equivalent oxygen credits were traded or sold by Distributor B to Distributor A in the above example, Distributor A could then demonstrate compliance with the 2.57 percent standard by adding these credits to the total equivalent oxygen content of his product (4325) and dividing the sum (5535) by his gallonage (215,000), resulting in an average monthly equivalent oxygen content (with trading) of 0.0257 (2.57 percent).

i. Labelling. The proposed regulations would require the labelling of pumps from which gasoline is dispensed at retail outlets and wholesale purchaser-consumer facilities during the control season. The pump label would have to include the type of oxygenate which is contained in the fuel being dispensed from that pump, as well as its actual oxygen content (by weight to the nearest 0.1 percent). Such labelling would allow consumers to know what type of oxygenate they are purchasing and provide them with flexibility in choosing a product most compatible with the operation of their vehicles. Labelling will also aid enforcement by allowing the Agency to monitor whether parties are selling product in accordance with their registration statements. It could also provide a partial cross-check on compliance with the regulatory standard, if adequate numbers of inspections can be carried out. The proposed regulations would also require that invoices and other gasoline delivery documents be similarly labelled. Such documents would have to be retained by regulated parties for at least two years and be available for inspection by EPA personnel or contractors during that period.

j. Reporting and Recordkeeping. All persons subject to the oxygen content standard would be required to submit monthly reports containing compliance information. Reports would be due no later than 15 days after the close of each compliance period. Parties who have selected the option of meeting the standard on a "per batch" basis would be required to submit test results and other information relevant to determining compliance (e.g., gallonage introduced into commerce in the control area during the month, and type and quantity of purchased oxygenates).

Parties who have selected the option of meeting the standard on a monthly average basis (with or without trading) would be required to submit more detailed information because of the greater complexities of determining compliance. Information to be submitted would include data on product received by the party (e.g., date, source, type, gallonage), test results, and sale/supply of product by the party (e.g., date, type, gallonage, person to whom sold/supplied, and oxygen content). The party would also be required to calculate the monthly average equivalent oxygen content of its product based on such information and according to the procedure outlined above.

Parties engaged in trading equivalent oxygen credits during a monthly compliance period would be required to supply additional information in their monthly reports. Such information would include the name and address of the other party in each trade and the quantity of equivalent oxygen credits traded. The party selling or otherwise transferring equivalent oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving equivalent oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an equivalent oxygen credit trade would

have to submit supporting

distribution network would be required

flexibility to regulated parties in meeting

after NOV issuance before compliance

recordkeeping requirements, the

Agency is considering as an adjunct to

have to submit supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits during the compliance period for which the trade is reported (e.g., a contract signed by both parties no later than the last day of the compliance period). EPA will not recognize a purported trade as valid unless both parties report and adequately document it. As in the lead phasedown program, the requirement that credits be traded by the end of the compliance period is based on the Agency's view of trading as a planning tool rather than a means to cure violations. Comments on any special hardships this would create are requested. Only parties subject to the monthly average compliance option would be allowed to trade equivalent oxygen credits.

Persons who sold or supplied oxygenates for use within the control area during a compliance period would also be required to submit monthly reports to the Agency. These reports would have to include information on the type of oxygenate sold (e.g., ethanol), date of sale, and the party to whom sold. Such reports would provide a partial cross-check on reports submitted by regulated parties.

Persons who transport gasoline into the control area but who are not subject to the regulatory standard (e.g., pipelines) would also be required to submit monthly reports to the Agency. These reports would have to include information on the type (e.g., unleaded regular) and gallonage of gasoline transported during each compliance period, the party and location (and the specific tank, if known) to which transported, and the type (and concentration, if known) of oxygenate(s) contained in the gasoline transported. Such reports would provide a partial crosscheck on reports submitted by persons subject to the regulatory standard.

All parties subject to monthly reporting requirements would also be required to maintain adequate records (including oxygen content test results) to support the information contained in their reports. Such records would have to be retained for at least a two-year period.

For all reports, EPA would have the authority to determine whether any report should be recognized as meeting regulatory requirements.

Other persons who must register (e.g., retailers who do not transport or cause to be transported gasoline from outside the control area) are not subject to monthly reporting. However, as noted above, all parties in the gasoline distribution network would be required to retain (and make available for EPA inspection) invoices and other gasoline delivery documents for a two-year period. Comments are requested on the need for other recordkeeping requirements for such parties.

k. *Violations and Defenses.* The regulations will specify what constitute violations of the regulatory requirements. Such violations are proposed to include:

1. Failure to submit a registration statement by the date due;
2. Failure to submit a revised registration statement (when required to do so) by the date due;
3. Submittal of an incomplete or incorrect initial or revised registration statement;
4. Failure to sample or test gasoline in accordance with prescribed regulatory methodologies;
5. Failure to sample or test gasoline when required to do so;
6. Selling, supplying, offering for sale, offering for supply or otherwise first introducing into commerce within the control area gasoline whose oxygen content exceeds the regulatory standard after any allowable averaging and trading calculations (by a party subject to such standard);
7. Failure to properly label a retail outlet or wholesale purchaser-consumer pump stand;
8. Failure to properly label an invoice or other gasoline delivery document;
9. Failure to submit a required monthly report by the date due;
10. Submittal of an incomplete or incorrect monthly report;
11. Failure to maintain required records for the applicable time period;
12. Transfer of equivalent oxygen credits which have not been created in accordance with regulatory requirements;
13. Use of improperly created or transferred equivalent oxygen credits to demonstrate compliance with regulatory requirements;
14. Transfer of equivalent oxygen credits after the end of the monthly compliance period in which they are created; and
15. Failure to comply with any other regulatory requirement.

The Agency believes that the large majority of violations listed above are within the power of regulated parties to control and thus should not be subject to specific regulatory defenses. The regulations do not provide a defense for exceedances of the regulatory equivalent oxygen content standard, since the availability of monthly averaging and equivalent oxygen credit trading provides a great deal of flexibility to regulated parties in meeting this standard.[7]

Certain violations, however, may not be fully within the control of a regulated party. This group may include violations of pump and document labeling requirements where a party has reason to believe fuel provided to him by another party complies with the label. It may also include the use of transferred equivalent oxygen credits where the using party does not know (or could not reasonably be expected to know) that the credits were not lawfully generated. The Agency requests comments on what defenses (if any) should be provided for these types of violations.

1. *Federally Assumed Enforcement.* Federal enforcement of air quality implementation plans generally commences with issuance of a notice of violation (NOV) to the violator and the state under section 113(a)(1) of the Clean Air Act. If the violation extends beyond the 30th day after the date of the NOV, EPA may issue a compliance order or bring a civil action under section 113(b) of the Act. Section 113(b) provides for temporary or permanent injunctive relief, or a civil penalty of up to $25,000 per day of violation, or both.

The Act also provides for "federally assumed enforcement." Section 113(a)(2) provides that whenever "the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State." If EPA finds that such failure extends beyond the 30th day after notification, the Agency is required to issue a public notice of such finding. Beginning with the date of such public notice, EPA may issue compliance orders to, or bring civil actions against, violators without prior issuance of individual NOV's under section 113(a)(1).

The Agency is concerned that the requirements of section 113(a)(1) of the Act, in combination with proposed program design elements, may limit enforcement of the proposed federal oxygenated fuels program. The combination of a seasonal control program, a monthly averaging compliance demonstration alternative, report submittal and processing times, and the requirements that individual NOV's be issued to violators and that violations extend beyond the 30th day after NOV issuance before compliance orders can be issued or civil actions brought may mean that only violations which occur early in the control season and extend beyond the 30th day after the NOV (and if the 30th day is also within the control season) would be subject to effective enforcement action. In normal SIP enforcement EPA's enforcement authority under section 113(a)(1) operates in conjunction with a state enforcement program that generally is not subject to requirements concerning NOVs. However, in this case the state appears to have no authority to enforce EPA's oxygenated fuels program.

Furthermore, the Agency believes that the conditions for "federally assumed enforcement" under section 113(a)(2) of the Act will in all likelihood exist in the Maricopa area. EPA is not aware of any plans by the State of Arizona to enforce any FIP regulations nor is it apparent what legal authority the State could use even if it wanted to do so. In the absence of State enforcement the Agency anticipates that widespread violations of the FIP provisions will occur, particularly if federal enforcement is based only on the section 113(a)(1) individual NOV requirements.

EPA therefore intends to carefully scrutinize compliance reports during the first few months of the oxygenated fuels program. If EPA sees violations that are so widespread as to appear to result from the absence of any state enforcement program, it will promptly notify the state as required by section 113(a)(2). If such violations are continuing 30 days later, EPA will give public notice that it is initiating a period of federally assumed enforcement. EPA will then enforce the requirements of the oxygenated fuels program directly against violators without prior issuance of NOVs (and hence without the 30-day post-NOV waiting period) as provided by section 113(a)(2).

This period of federally assumed enforcement will continue until such time as the state satisfies EPA that it will enforce the oxygenated fuels program. EPA does not anticipate that the state will be able to do this since it apparently has no authority to enforce a federal program that is not supported by any state legislation.

m. *Minimum Oxygen Content (In Addition to Averaging/Trading Compliance).* The Agency is concerned that it may be difficult to effectively enforce the proposed oxygenated fuels standard under the averaging/trading compliance alternative. Although the Agency is proposing detailed registration, reporting and recordkeeping requirements, the program essentially relies on the honest reporting of regulated parties to assure compliance. While this is a concern in any self-reporting scheme, it is of particular concern because multiple sources of oxygenates do not provide an effective cross-check on reports submitted by regulated parties. In some cases, the sources of oxygenates (e.g., refineries for MTBE) may be part of the same corporate entity as regulated parties subject to the oxygenated fuels standard.

EPA's experience with the lead phasedown program shows the types of problems that can occur in a self-reporting enforcement scheme. The lead phasedown standard is based on quarterly averaging of lead use in gasoline by refiners and importers. From November 1982 through 1985 inter-refinery averaging of lead usage (trading of lead rights) was allowed. From 1985 through 1987 the banking of lead rights (for use in later compliance periods) was allowed. Although a number of violations were self-reported in the lead phasedown program, recent audits of refiners and importers by EPA (and others) have uncovered a significant number of unreported violations. Means of cheating included overreporting of gasoline gallonage, misclassification of gasoline and gasoline blending stocks, and underreporting of lead usage. The latter type of abuse occurred despite the availability of an effective crosscheck in the form of quarterly reports of lead shipments to refiners by the handful of lead additive manufacturers in the country (who have no apparent incentive to misreport). While such unreported violations can be detected in the lead phasedown program, it generally requires review of a very large quantity of paperwork by a number of EPA investigators. The trading and (particularly) banking components of the lead phasedown program made the job of compliance monitoring much more complex while, at the same time inadvertently creating additional inducements to cheat.

The Agency anticipates that some amount of cheating may occur under the proposed FIP regulation, albeit in the opposite direction from that under the lead phasedown program (i.e., under- rather than overreporting gallonage, overreporting the use of oxygenates rather than underreporting the use of lead). Because of the lack of an effective cross-check like lead additive manufacturer reports, the uncertainty as to whether enough resources will be available to adequately conduct audits of regulated parties' records, and other potential enforcement problems, the Agency is considering as an adjunct to the averaging/trading alternative promulgation of a minimum "per sample" oxygen content standard of 2.0 percent that would apply to all gasoline sold or supplied (or offered for sale or supply) in the Phoenix CO nonattainment area. If such a requirement were adopted, each person choosing to use the averaging/trading alternative to demonstrate compliance with the 2.57% equivalent oxygen content standard would have to meet that standard on average as well as ensure that each batch of gasoline first introduced into commerce during the control period contains at least 2% equivalent oxygen content. Such a requirement could be directly enforced by the Agency at retail outlets, terminals, and other distribution points in the area without the need to audit records of regulated parties. While a minimum standard of 2.0 percent would preclude the sale of nonoxygenated fuel, it would still allow regulated parties the choice of 5.4 percent ethanol, 11 percent MTBE or any other allowable oxygenate with a 2 percent oxygen content as a means to comply.

The Agency anticipates that if such a minimum standard is promulgated as part of the final rulemaking, it will also promulgate a liability regulation very similar to that proposed as part of the recent gasoline volatility rulemaking, under which the location of the violation would determine the presumptively liable parties and which would provide certain defenses for such parties. *See* proposed 40 CFR 80.28 (52 FR 31317–8 (August 19, 1987)).

Comments are requested on such a minimum standard.

n. *Oxygenation Measurements.* Three alcohol content laboratory testing methods are proposed as a new Appendix B to 40 CFR Part 52, Subpart D. Under Method 1, gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard. Results are calculated and reported by data reduction software in the GC using peak area, retention times and other data obtained during the run. Method 1 is not valid for MTBE determination, so if there is any possibility of MTBE in the fuel, Method 2 or 3 must be used. EPA is not aware of any interference caused by MTBE if Method 1 is used, so it proposes to allow use of Method 1 in any situation in which MTBE content is not

[7] Of course, the purported violator will have all of its traditional defenses, including denial, to a claimed violation (e.g. it might show that no violation occurred).

relevant to the compliance determination at issue.

Method 2 is a direct GC injection technique utilizing a single column (30 to 60 meter length) which is capable of resolving the individual alcohols without interference from hydrocarbon fuel components. Little sample handling is necessary, resulting in potentially more accurate results. The GC run time per sample is approximately 30 minutes, but it might be possible to reduce this time depending on running conditions.

Method 3 is a two-column backflush method in which the sample is injected and loaded onto a primary column. This column retains the alcohols but does not retain the lighter weight hydrocarbon fractions of the fuel. After the lighter fractions are rinsed out of the primary column, the carrier gas flow through the column is reversed, the alcohols and heavier hydrocarbon fractions are loaded onto a secondary column and are individually separated for analysis. This method may take approximately 20 minutes of GC run time per sample, as opposed to four minutes for an indirect GC sample run time, and also requires careful carrier gas flow time switching.

The specific procedures for Method 1 are set forth in detail in Appendix F of the proposed rule for volatility control of gasoline and alcohol blends, as published in the Federal Register on August 19, 1987 (52 FR 31340). Specific Method 2 and 3 procedures have not been developed at this time but the Agency has placed in the rulemaking docket a copy of proposed ASTM P-178 Appendices X9 and X11: "Proposed Test Method for Determination of Oxygenates in Spark Ignition Engine Fuel by Gas Chromatography". It is expected that any final Agency procedures adopting direct injection test methods will be similar to these proposed ASTM procedures, and comments are requested on the ASTM proposals.

It should be noted that none of the above three methods may be valid for alcohols with greater than four carbon atoms. However, a fuel waiver was recently granted by EPA for the methanol- cosolvent blend Octamix, which may contain small amounts of alcohols above C_4 (i.e., pentyl-, hexyl-, heptyl-, and octyl-alcohols). Since such a fuel could be used to comply with fuel oxygen content requirements, comments are requested regarding possible suitable techniques for measurement of these higher alcohols (or the oxygen content thereof), along with the C_1–C_4 alcohols that would be present in such a fuel. Furthermore, comments are requested on the test-to-test repeatability and lab-to-lab reproducibility of any of the above methods, including any methods suggested for measurement of the C_5–C_8 alcohols.

Once the mass concentration of each oxygenate in the fuel has been determined using these methods or others approved at a later date, it is necessary to calculate the equivalent oxygen content of the fuel as a whole. This requires multiplying the oxygen content of each oxygenated component by the concentration of that component in the fuel and summing these results for all oxygenates present in the fuel to get the actual oxygen content. If ethanol and methanol are not present (above a trace level of about 0.1 percent), the equivalent oxygen content equals the actual oxygen content. If ethanol and/or methanol are present, the "ethanol" (or alcohol) entries in Table 4 are used to find the equivalent oxygen content that corresponds to the respective oxygen content. Values between the specific points listed in the Table are found by linear interpolation. (Mathematical equations are used to make this conversion in the regulation accompanying this notice.)

Table 5 shows the oxygen contents by mass of the most common oxygen containing compounds that have either been approved in EPA waivers or are considered substantially similar to gasoline at concentrations less than 2.0 percent oxygen.

TABLE 5.—OXYGEN CONTENTS OF COMMON COMPOUNDS IN GASOLINE

Molecular oxygenate	Oxygen mass formula	Fraction
Methanol	CH_4O	0.4993
Ethanol	C_2H_6O	0.3473
Propanols	C_3H_8O	0.2662
Butanols	$C_4H_{10}O$	0.2158
Pentanols or MTBE	$C_5H_{12}O$	0.1815
Hexanols or TAME [1]	$C_6H_{14}O$	0.1566

[1] TAME: Tertiary Amyl Methyl Ether.

As an example, suppose the GC analysis of a leaded gasoline sample finds an ethanol mass concentration of 9.85 percent and an MTBE mass concentration of 1.10 percent. The fuel oxygen content would then be:

Fuel Oxygen Content = (0.0985)(0.3473) + (0.0110)(0.1815)

Fuel Oxygen Content = 0.0392

Fuel Oxygen Content = 3.92 mass percent oxygen

From Table 4, the equivalent oxygen content is between 2.90 and 3.29 percent. Interpolation yields a final value of 3.21 percent.

Potential Effect of Sun Waiver Request for 15 Percent MTBE

As mentioned elsewhere in this notice, Sun Refining and Marketing Company has requested a waiver under section 211(f) for a blend of 15 percent MTBE with unleaded gasoline (52 FR 11701, (April 8, 1988)). A waiver is not legally required for such a blend with leaded gasoline. If the Agency does not act to approve or disapprove the waiver by the end of September 12, 1988, the request will be automatically granted under section 211(f)(4). A blend of 15 percent MTBE by volume with gasoline has an oxygen content of 2.7 percent. Therefore, if the Agency does not deny Sun's waiver, blends of up to 15 percent MTBE could be used to comply with the proposed FIP's requirement for 2.57 percent equivalent oxygen content.

The court-ordered deadline for final promulgation of the FIP is August 10, 1988. If the Sun request has not been granted (or deemed granted) when EPA promulgates the FIP, the final FIP will not differ from the proposal in order to incorporate elements of the pending Sun request. Subsequent granting of the Sun request would provide regulated parties additional flexibility in complying with the FIP, however.

If the Sun request is granted (or deemed granted) prior to final promulgation of the FIP, a new FIP alternative would arise, namely that the FIP require all fuel introduced into commerce to contain 2.57 percent equivalent oxygen, without the opportunity for demonstrating compliance through monthly averaging and trading of oxygen credits and without the associated reporting requirements. It should be noted that EPA's proposed enforcement approach under the averaging/trading system would already allow each party subject to the equivalent oxygen content requirement, as proposed, to elect to comply on a "per batch" basis.

There would be some disadvantages of a uniform oxygen requirement, however, including the lack of public access to gasoline with levels of oxygen below the requisite level. Also, ethanol blenders would have no market for their excess oxygen credits. Compliance monitoring, however, would be significantly enhanced, as fuel could be directly sampled at service stations and other facilities. EPA therefore, is considering the option of a "per batch" approach as an alternative to averaging/trading if the Sun request is approved before the FIP is promulgated (just as it proposes elsewhere in this notice if further SIP controls reduce the required oxygen content to 2 percent or less). Similarly, if the FIP is promulgated before a waiver is issued to Sun, the Agency would consider revising the FIP to rescind the averaging/trading alternative. EPA requests comments on these alternatives. As with the proposed 2 percent minimum oxygen content standard discussed above, if this alternative is adopted, the Agency anticipates promulgation of a liability regulation very similar to that described in the recent fuel volatility proposal (52 FR 31274).

Gasoline Volatility Control Not Proposed

Arizona statute requires all gasoline-type motor vehicle fuels to comply with the quality specifications in the American Society for Testing and Materials (ASTM) document titled D439–83. Among these specifications is a schedule for Reid Vapor Pressure (RVP), a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit (°F). The ASTM RVP maximum for Arizona for the months of October through March are 10.0, 11.5, 13.5, 13.5, 13.5, and 11.5 pounds per square inch (psi), respectively. Proposals have been advanced by several parties to require reductions in these limits as a means to reduce CO emissions. EPA does not propose to include any such reductions in the FIP for Maricopa County, for reasons explained immediately below. As will be mentioned again further below, EPA also proposes not to grant any CO emission reduction credits for any RVP reductions which may be adopted by Arizona and included in a subsequent SIP revision.

EPA believes that it has been well demonstrated that gasoline RVP does affect vehicle CO emissions for some vehicles and under some conditions. Specifically, an RVP decrease from 11.5 psi to 9.0 psi has been shown by tests on over 500 vehicles to decrease the CO emissions of 1981–82 model year passenger cars by about 16 percent and of 1983 and newer cars by about 22.0 percent when these cars are tested according to the official Federal Test Procedure (FTP) (*See* 40 CFR Part 86 for a full description) for measuring vehicle emissions. A sample of nineteen pre-1981 model cars has shown a reduction of about 8 percent under similar testing. Awareness of these test results is what prompted the interest in RVP control in Arizona.

During the FTP testing programs that produced the results quoted above, the vehicles were kept at room temperatures between 75 °F and 80 °F, and the fuel in the vehicles was at about 86 °F at the time measurement of CO emissions began.

EPA's decision not to propose RVP reductions in the FIP stems from the fact that these temperature conditions are not representative of all the ambient conditions under which serious CO exceedances occur in Maricopa County. There have been far fewer vehicles tested for RVP effects on CO at lower ambient temperatures, and the effects have been far less in magnitude than the reductions observed at 75–80 °F. Specifically, fifteen 1983 and newer vehicles tested at 50 °F showed a reduction of only about 5 percent when tested at 9.0 psi RVP versus 11.7 psi. Twelve 1981 to 1983 vehicles tested by Chevron at 43 °F had CO emissions at 9.0 psi RVP that were about 4 percent higher than at 12.0 psi. Scientific theory is consistent with these observations of smaller CO reductions at these cooler temperatures.

In the October through March period, monthly average daily minimum temperatures in Phoenix range between 37.6 °F and 56.8 °F, well below the 75–80 °F temperature of the FTP. In December, January, and February, even the average daily maximums are below 70 °F, (66.4 °F, 64.8 °F, and 69.3 °F, respectively). Warmer days than these averages do occur, and in fact the MAG CO Plan uses a warm day (daily high of 78 °F) as its "design day." However, CO exceedances occur on average days and on cooler than average days as well as on such unusually warm days, and the FIP (or SIP) must provide for attainment on all days. Furthermore, while many of the CO exceedances in Phoenix occur in the evening and seem likely to be heavily influenced by emissions from vehicles that are at temperatures similar to that day's high reading, exceedances also occur in the morning when temperatures are about 20 °F cooler. In EPA's opinion, the CO reductions at the cooler temperatures that are important in Phoenix are too small and too uncertain to cause EPA to rely on RVP reductions in its proposed FIP, or to propose to approve emission reduction credits for any RVP reductions in a SIP revision. EPA has not investigated in much depth the cost and practicability of RVP reductions in Phoenix, and takes no position on these aspects at this time.

While EPA is not proposing any RVP reductions for the FIP, EPA believes that the concept merits further investigation and consideration as a later supplement or substitute for other measures in the SIP and FIP. The CO benefits may be more significant than they may seem at first from the above discussion. For one thing, the exact distribution of temperature conditions under which CO violations occur has not been thoroughly documented. Also, Arizona's RVP limit of 13.5 psi in December, January, and February (and Phoenix's survey-determined average January RVP of about 12.5 psi) is higher than the 11.7 psi test fuel used in the available 50 °F tests and the 12.0 psi test fuel used in the 43 °F tests. At 75–80 °F and no doubt at cooler temperatures the CO response to RVP is non-linear and becomes stronger at higher RVP levels. A reduction from a starting point typical of Phoenix gasoline may yield larger reductions than observed in the testing done to date. EPA intends to continue to investigate the RVP, CO, and temperature relationship. Comment and additional test data are invited.

Finally, while EPA is not proposing to promulgate or grant emission reduction credits for RVP reductions from current levels because of their uncertain effects at cooler temperatures, EPA is concerned about the negative effects of RVP increases. Some CO exceedances—the design exceedance in the MAG CO Plan in particular—occur during periods when the ambient temperature is 75 °F or higher, and any RVP increase will definitely cause CO emission increases during such exceedances. In fact, the RVP effect on CO theoretically should become even more adverse at temperatures about 75 °F; tests on four vehicles at 95 °F confirm this. As discussed above, EPA therefore proposes to account for and compensate for the RVP increase which it expects will be a side effect of the oxygenated fuels regulation that is included in the proposed FIP.

Implementation of the Proposed Federal Oxygenated Fuels Program

EPA believes that the proposed federal oxygenated fuels program has been structured so that it may be implemented by EPA without interfering with any state or local regulatory activities. There may, however, be some duplication of activity and the associated higher costs to industry and businesses. EPA requests comments on how federal, state, and local programs can be coordinated most efficiently, including whether and how implementation of the federal requirements might be delegated.

The federal oxygenated fuels regulations will not prevent Arizona from testing for and enforcing compliance with its existing standards for fuel quality. In particular, Arizona's existing limits on the volatility of gasoline, including ethanol blends, will not be overridden by the federal

program. If Arizona adopts a State oxygenated fuels program which is not effective enough to allow EPA to approve it as a complete replacement for the federal program, Arizona may legally enforce it except to the extent that it would physically preclude industry compliance with the federal requirements. Such interference seems unlikely, at least for the State proposals under discussion at present.

The oxygenated fuels program will require regulated businesses to submit plans and various reports to EPA. In the final FIP, EPA will provide a name and address for the submissions.

C. Demonstration of Attainment of the Combined State and Federal Plans

EPA's evaluation of the air quality modeling analysis in the *MAG 1987 Carbon Monoxide Plan for the Maricopa County Area* indicates that a 22.0 percent reduction in the 1991 baseline carbon monoxide emissions is needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. The State of Arizona submitted the MAG Plan as a revision to the Maricopa County portion of the state implementation plan. As discussed earlier, EPA is approving emission reduction credits for nine measures in the proposed SIP revision. Two of these measures will not be in place before 1992. The remaining seven measures will reduce the 1991 carbon monoxide baseline inventory by a total of 3.9 percent by the end of 1991. The two federal control measures that EPA is proposing for promulgation in this notice will reduce the 1991 baseline inventory by 1.8 percent from the Employer Alternative Modes Incentives Program and by 17.35 percent from the Oxygenated Fuel Program (without the trip reduction program, all the required emission reduction would be achieved with an oxygenated fuels program). All measures being proposed for either approval or promulgation in today's notice are listed in Table 6.

TABLE 6.—PROPOSED CONTROL MEASURES AND EMISSION REDUCTIONS IN THE ATTAINMENT DEMONSTRATION FOR MARICOPA COUNTY

Control measure	1991 Emission reduction [1] (percent)
State Plan:	
I/M Program—1987 Legislation	2.1
Short-Range Transit Improvements	0.1
Expended MAG Regional Ridesharing Program	0.3
Increase Bicycle Usage	0.2
Pedestrian Travel	0.1
Conversion of Buses to Alternative Fuels	0.1
Alternative Work Hours	1.1
Federal Plan:	
Employer Alternative Modes Incentives Program	1.8
Oxygenated Fuel Program	[2] 17.35
Total	22.0

[1] As a percent of the 1991 Baseline.
[2] Without the trip reduction program, the oxygenated fuels program would achieve all the required reduction needed in addition to the state measures to attain in 1991.

The proposed oxygenated fuels program with a scheduled start date of October 1989, will provide emission reductions in the 1989–90 and 1990–91 winter CO seasons. Likewise, the trip reduction program with a start date in late 1989 will provide emissions during those seasons. By the end of 1991, the total control strategy including both SIP and FIP measures provides a carbon monoxide reduction from the 1991 baseline of 22.0 percent. This emission reduction is sufficient to demonstrate attainment of the carbon monoxide standard in Maricopa County by December 31, 1991, and Reasonable Further Progress in each year until the end of 1991.

EPA's evaluation of the MAG Plan indicated that an emission reduction of 7.8 percent in the 1995 baseline emissions will be sufficient to show attainment of the 8-hour CO standard in 1995. The control measures in the MAG Plan being proposed for approval today would achieve a 4.3 percent reduction in 1995. EPA's proposed Employer Alternative Modes Incentives Program will achieve at least 2.1 percent in 1995 and the proposed Oxygenated Fuels Program will achieve 16.4 percent in the same year. The combined emission reduction from all of these control measures is estimated to be 21.0 percent in 1995. This emission reduction is more than sufficient to show continued attainment of the CO standard through 1995. If a motor vehicle oxygenated fuels program with a higher oxygen requirement (2.79 percent) is promulgated, the emission reduction will be 21.3 percent in 1995, more than enough to show continued attainment of the CO standard through 1995.

VI. Effect on Proposal of Any Future SIP Submitted by Arizona

A. Overall Approach to Revising the FIP

It is possible that Arizona may adopt and submit as SIP revisions additional CO control measures prior to final promulgation by EPA of the FIP measures proposed above. If additional controls are submitted and if EPA determines that they are approvable for CO emission reduction credit, EPA will modify the final FIP from today's proposal. The purpose of the modifications will be to rely as much as possible on state controls rather than federal, and to provide via the FIP only as much control as needed to satisfy the 1991 attainment target.

If a legally enforceable trip reduction ordinance is adopted by the State, County, or local governments which is substantially equivalent to the MAG model ordinance and the proposed federal trip reduction regulation, and covers all or virtually all employers of more than 100 persons in the CO nonattainment area, EPA will not finalize its own trip reduction regulation. Any minor difference in the anticipated CO emission reductions from the FIP and SIP versions will be accommodated by adjusting the required average "equivalent oxygen" content in the oxygenated fuels regulation.

If creditable CO controls in addition to a TRO are approved as a SIP revision, but not including a State fuels program, EPA will lower the average "equivalent oxygen" requirement from the 2.57 percent level proposed today, so that overall only a 22.0 percent reduction in 1991 is provided by the combination of the SIP and FIP measures. For example, if no local TRO is submitted but legislation for loaded I/M testing is passed and signed, and assuming EPA decides to promulgate the proposed federal TRO, EPA would either lower the oxygen requirement to 2.33 percent or drop the TRO requirement, based on the evaluation of the benefits of loaded I/M proposed below for public comment. Generally, each additional percentage point of CO reduction from other measures will reduce the average oxygen requirement by 0.065 percentage points. If the oxygen requirement is reduced to 2.0 percent through this process, EPA proposes to use any further new SIP control credit to reduce the coverage or severity of the federal trip reduction regulation, rather than to set an oxygen content less than 2 percent.

If additional SIP controls are large enough to allow the average oxygen requirements to be reduced to 2.0 percent or less, much of the rationale for an averaging program—to achieve a level above 2.0 percent without prohibiting all sales of MTBE blends of 11 percent or less—would disappear. A simple requirement that all gasoline meet the appropriate percent oxygen level would suffice to meet both air quality and consumer choice goals, without the administrative burden to EPA of supervising an averaging program and with more certainty of effective enforcement. It would, however, prevent sales of oxygen-free gasoline during the mandate period, and it would reduce the financial incentive for ethanol blending due to the elimination of salable oxygen credits. EPA proposes this "per batch" approach as an alternative to averaging and trading in the situation described, and requests comments on which approach it should follow.

A final possibility is that Arizona will adopt its own oxygenated fuels program and submit it as a SIP revision. If it does, EPA will assign it credit in the FIP final rule, or other subsequent rulemaking, using the methods and assumptions described elsewhere in this notice. If the revised SIP achieves 22.0 percent or more, and EPA approves it, EPA will not promulgate any FIP. If the revised SIP does not provide enough CO reduction to make a federal oxygenated fuels program unnecessary but does contain some State oxygenated fuels program, EPA will face a potentially complex issue. EPA requests comment on whether it legally can and should set aside the inadequate State fuels program (for example by making a finding that it is pre-empted under section 211(c)(4) and not necessary for attainment given EPA's own program), whether the two programs should operate simultaneously except when the State program would prohibit compliance with the FIP, or whether and how EPA could fashion its program around the State's so that the required CO reduction is met with least conflict and duplication (for example, EPA might require one grade to have a higher "per batch" oxygen level than in the State's program).

B. Measures Under State/Local Consideration

The Arizona State Legislature has under consideration a number of bills which contain a variety of carbon monoxide control measures. Table 7 is a list and a description of bills currently under consideration.

TABLE 7.—AIR QUALITY BILLS CURRENTLY UNDER CONSIDERATION IN THE ARIZONA STATE LEGISLATURE AS OF FEDERAL REGISTER PUBLICATION

Oxygenated fuels	Features
HB 2206: Clean Burning Fuel Tax Bill (amended per H.B. 2014 and Senate oxygenated fuels bills; originally tax incentive bill for compressed natural gas fuel use.	2.8 percent averaged oxygen content; 10/1–3/31; begins October 1988. 1.9 percent averaged oxygen content April 1 through Sept. 30. 1 psi. RVP exemption for alcohol-blended fuel. RVP limits of 9 psi. for the summer months; 10 psi. for winter months.
Trip reduction ordinance	**Features**
SB 1181: Trip Reduction Ordinances (as amended by House Transportation Committee).	15 percent participation of all employees in alternative modes the first year; 20 percent 2nd year. Employers of 100 employees or more per worksite are covered. Maricopa County would implement for nonattainment area.

1. Inspection and Maintenance Program Changes

Loaded-Mode Inspection and Maintenance Testing

H.B. 2014 has been introduced in the Arizona House of Representatives. A provision of this bill would require that, effective January 1, 1989, vehicles subject to the inspection and maintenance (I/M) program be tested in the loaded condition, as well as in the idle mode, to determine pass/fail status. Loaded-mode testing is not practiced in any other I/M program in the United States. EPA believes, however, that sufficient research has been done to indicate that loaded mode testing will be workable and effective for 1981 and newer model year vehicles. MOBILE 3, EPA's emission factor model, has standard emission credits for loaded-mode testing for 1981 and newer passenger vehicles and 1984 and newer light duty trucks. With respect to loaded-mode testing for older vehicles, uncertainties remain as to how many more vehicles would fail the test, what kinds of repairs they would need, and whether the current cost limits would allow those repairs to be performed. If the Arizona legislature adopts the loaded-mode test requirement, EPA may go directly to final approval at the MOBILE 3 level of credit (i.e. for 1981 and newer model year vehicles). This revision to the Arizona I/M program will achieve a 3.7 percent CO emission reduction. EPA will likely repropose emission credits for older vehicles in a separate rulemaking after the State specifies certain parameters for the older vehicles such as loaded cutpoints, failure rate targets and waiver targets.

Boundary Expansion

Two bills, S.B. 1176 and S.B. 1390, have been introduced in the Arizona Senate. Each bill would expand the I/M program coverage area from the nonattainment portion of Maricopa County to the entire County, making a greater number of vehicles subject to the program. Should this revision be adopted by the legislature, EPA would propose approval in a separate rulemaking after evaluating the State's estimate of the benefit to be obtained from the expansion.

Repair Cost Limit Increase

H.B. 2014 and S.B. 1390 would increase the repair cost limit to obtain a waiver from $50 to $100 for vehicles manufactured in or before the 1974 model year. This change would result in more vehicles in this age category being repaired to standard. Since older vehicles generally make a smaller contribution to the total vehicle miles traveled (VMT), however, the emission benefit of this change would be small. EPA would propose approval in a separate rulemaking after evaluating the estimate the State submits of the emission benefit to be obtained, should this revision to the I/M program be adopted.

Model Year Expansion

S.B. 1176 would increase the number of vehicles subject to the I/M program by removing the exemption for vehicles manufactured in or before the 1966 model year. The benefit obtained from adding these vehicles to the program is likely to be small, because vehicles of this vintage make a small contribution to the overall VMT. If adopted, EPA would propose approval in a separate rulemaking after reviewing the evaluation that the State submits of the emission reduction to be achieved by this revision.

2. Alternative Fuel

EPA would prefer that Arizona adopt and implement an oxygenated fuels program itself, rather than EPA carry this FIP proposal to completion. EPA is therefore pleased that the Arizona Legislature is actively considering new

legislation. In order to lay the procedural foundation for EPA to take action on any new legislation with as little delay as possible, EPA here proposes the method and assumptions that it will use in approving or disapproving new legislation and in assigning CO emission reduction credit to it. Unless the final legislation raises issues that are not adequately noticed for public comment in the following discussion, EPA intends to take action without further proposal and opportunity for public comment. If an additional proposal is essential, the proposed FIP may be finalized on schedule rather than delayed, but EPA would then continue the rulemaking process on the SIP and if appropriate rescind the FIP if and when it approves the SIP. EPA requests comment on this proposed approach and on all of the following methods and assumptions:

a. The bills containing mandates for oxygenated fuels (H.B. 2014 and S.B. 1174, 1386, 1388, and 1348) are all in principle eligible for CO reduction credits. The bills which would create tax incentives for use of oxygenated fuels (S.B. 1385 and 1453) are not eligible due to uncertainty about how they would affect sales of each type of oxygenated fuel.

b. The basis for calculation of CO emission reductions will be the EPA report "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA–AA–TSS–PA–87–4. The guidance in this report must be supplemented with some additional information and assumptions to address all of the features of the Arizona bills. These additional items are listed below.

c. Unleaded gasoline sales in the Maricopa CO nonattainment area are and will be assumed to continue to be split 76 percent regular and 24 percent premium, for attainment demonstration purposes.

d. If the final legislation mandates different oxygen levels for specific grades, EPA will calculate the overall CO reduction by assuming that catalyst vehicles and other vehicles labeled for unleaded fuel only will use unleaded regular and unleaded premium at the 76/24 split. Vehicles designed for leaded fuel will be assumed to use mostly leaded fuel, but 8.4 percent of pre-1975 passenger cars and light-duty trucks under 6,000 pounds gross vehicle weight rating (GVWR), 8.4 percent of pre-1979 light-duty trucks over 6,000 pounds GVWR, and 27.6 percent of later model leaded fuel cars and trucks (of which there are few) will be assumed to voluntarily use unleaded fuel at the 76/24 split. The 8.4 percent and 27.6 percent figures come from an EPA Report "Size Specific Total Particulate Emission Factors for Mobile Sources," which will also be the source for the production share of unleaded and leaded fuel vehicles by model year. [Reference 7]

e. If the final legislation mandates one unspecified grade of high oxygen fuel (e.g., 3.4–3.7 percent) and allows the other grades to have a lower oxygen content (e.g., 1.9 percent), EPA will assume that the high oxygen grade is unleaded regular for all fuel suppliers. If two unspecified grades must be high oxygen, EPA will assume that these are leaded and unleaded regular.

f. EPA will assume no switching between the three grades of gasoline due to changes in relative price or consumer desire to use or avoid one type or level of oxygenate.

g. For any grade for which the minimum oxygen content is 1.9 percent, EPA will assume that all (except as described immediately below) fuel sold of that grade is on average 11 percent MTBE (2 percent oxygen). For any grade with a minimum of 1.8 percent, the fuel will be assumed to be 10.45 percent MTBE (1.9 percent oxygen). If the Sun Refining and Marketing Company's request for a waiver for 15 percent MTBE (53 FR 11701 (April 8, 1988)) is not approved, any grade with a minimum oxygen content above 2.0 percent will be assumed to be met by the concentration of ethanol that provides 0.1 percent more oxygen than the minimum specification not to exceed 10 percent ethanol (3.7 percent oxygen). If the Sun request is granted, this assumption will apply above 2.7 percent, but between 2.0 percent and 2.7 percent EPA will assume that MTBE is used with a 0.1 percent oxygen safety margin. These assumptions rely on the premise that Arizona will not allow an enforcement tolerance for oxygen content, so that refiners must blend to a slightly higher oxygen level by their measurements to allow for measurement variability.

If a SIP submittal indicates an intent to allow an enforcement tolerance or is not specific on this question, EPA will assume that average actual oxygen content is exactly equal to the minimum requirement. Comments are requested on both approaches.

h. The exceptions to Assumption (g) immediately above concern possible sale of 10 percent ethanol blends in a grade for which the oxygen content requirement is only 2.0 percent or less. If a major oil company, other sizable gasoline marketer, or other investor indicates in comments that it will purchase and import via pipeline from California oxygen-free gasoline of that grade and offer it for resale to distributors for use in ethanol blending, EPA will assume that 5–10 percent of sales of that grade will be gasohol (10 percent ethanol, 3.7 percent oxygen). The 5–10 percent range reflects the market share gasohol being achieved in states that do not offer State tax subsidies, mostly due to the action of independent marketers. EPA will select a value within this range based on all available comments and information. Also, if a major oil company indicates that it will itself sell an ethanol blend at its branded stations, that information will be used to determine market share also.

i. If the final legislation creates a system of oxygen credit averaging above 2.0 percent actual oxygen, but without the adjustment feature for ethanol blends which appears in EPA's own FIP proposal, EPA will assume that the gasoline industry will overall supply a product slate that in the aggregate requires the least purchase of ethanol but meets the average oxygen requirement. This implies that all ethanol blends will have 10 percent ethanol and that the industry will maintain an oxygenate sales mix of ethanol blends and MTBE blends that just meets the average oxygen requirement. EPA requests comment on whether any marketers would, on the contrary, sell ethanol blends below 10 percent. The effect of any sales of ethanol blends below 10 percent concentration, e.g., 6.7 percent ethanol blend to meet a 2.5 percent oxygen content requirement, would be to reduce the overall CO reduction achieved by a given actual oxygen content requirement, due to the RVP/CO penalty being incurred for more gallons of fuel.

j. The bills now before the Arizona legislature allow ethanol blends to have a higher RVP than other gasoline. Ethanol blends will be assumed to suffer an average RVP increase of 0.76 psi and the associated CO penalty described above in the FIP proposal, even if the final legislation does not provide them such a margin on RVP. However, if ethanol blends are effectively constrained to be no higher in RVP than 1 psi less than the current ASTM limits for Arizona by month, no CO penalty will be assumed. For example, the current ASTM (and Arizona) RVP limit in January is 13.5 psi, but the average RVP of the fuel sold is about 12.5 psi. If new legislation sets a limit of 12.5 psi or less for ethanol blends for January (or if it exempts them from any RVP limit if made from gasoline which cannot exceed 11.5 psi), no CO penalty will be assumed for ethanol blends relative to their oxygen content.

k. General reductions in RVP limits will not be given CO emission reduction credit, beyond the possible exclusion of the ethanol RVP/CO penalty that would otherwise apply as just described.

l. Any averaging period of one month or less will be assumed to yield equal oxygen levels and CO reductions on all days. An averaging period of three months would be acceptable only if the oxygen content requirement applies year round. EPA's rationale for this proposal is that in a program with a mandate period of only about six months there may be significant start-up transients in fuel composition and monthly averaging is needed to control these transients. In an annual program fuel composition should stabilize and quarterly averaging should be adequate. EPA does not recommend a full year mandate for oxygenated fuels.

m. The CO season in which control is needed will be taken to be October 15 through March 31. Retail service station storage tanks will be assumed to require two weeks to "turn over." Thus, service stations' in-tank inventories and sales must either be required to comply with the oxygen content program as of October 15 of each year or all new deliveries starting October 1 must comply. All program requirements must apply through March 31.

n. The effective dates of the program must not allow unnecessary delay in implementation.

o. The SIP must contain a commitment and resources for enforcement.

Table 8 presents estimates of the CO emission reduction credits that would be granted to each of the bills under these assumptions. The range of reductions is 12.8 percent to 20.5 percent.

TABLE 8.—PROPOSED CO EMISSION REDUCTION CREDITS FOR 1991 ATTAINMENT FOR OXYGENATED FUELS BILLS NOW UNDER CONSIDERATION BY THE ARIZONA LEGISLATURE

Bill	CO reduction	
	No declared plan to facilitate ethanol blending (percent)	With a declared plan to facilitate ethanol blending [1]
H.B. 2014 (original)	12.8	13.3–13.7 pct.
S.B. 1174 (original)	13.5	13.9–14.4 pct.
S.B. 1386 (original)	20.7	Not applicable.

TABLE 8.—PROPOSED CO EMISSION REDUCTION CREDITS FOR 1991 ATTAINMENT FOR OXYGENATED FUELS BILLS NOW UNDER CONSIDERATION BY THE ARIZONA LEGISLATURE—Continued

Bill	CO reduction	
	No declared plan to facilitate ethanol blending (percent)	With a declared plan to facilitate ethanol blending [1]
S.B. 1386 (as amended in Health and Welfare Committee).	22.3	Do.
S.B. 1388 (original)	18.6	Do.
S.B. 1348 (original)	12.8	13.3–13.7 pct.

[1] The reductions shown in this column assume that 5–10 percent of gasoline sales are 10 percent ethanol blends despite the requirement being only for 1.8 percent or 1.9 percent oxygen. EPA would accept reductions this large only if some party has declared its intent to facilitate ethanol blending by selling Los Angeles-refined oxygen-free gasoline to ethanol blenders in Phoenix.

3. Trip Reduction Ordinances

The Maricopa Association of Governments has developed a draft model trip reduction ordinance. If adopted by the MAG jurisdictions, the TRO would require employers with more than 100 employees at a worksite to reduce single-occupant commute trips by 10% within two years. A further discussion of the model is in the Employer Alternative Modes Incentives Program section (section V.B.1.) of this notice. In March of this year, the MAG Regional Council tabled approval of the model TRO until after a transit funding election tentatively scheduled for the spring of 1989. The cities, towns, and the County of Maricopa will not consider individual adoption of the TRO until the MAG Regional Council approves it.

Should the Regional Council decide to approve the model TRO and the local jurisdictions adopt it prior to final promulgation of the FIP, EPA proposes to grant a carbon monoxide emission reduction credit of 1.8% to the measure. Further, because the model TRO is similar to and would achieve the same emission reduction as the trip reduction regulation being proposed by EPA today, the Agency proposes to substitute the locally-adopted TRO for the federal trip reduction regulation. If local jurisdictions adopt the model TRO after final promulgation, EPA would propose to amend the FIP either to eliminate unnecessary federal measures or reduce the severity of those measures.

4. Other Measures

Winter Daylight Savings Time and/or Alternative Work Hours

During the fall and winter months, the Maricopa region experiences evening temperature inversions. These temperature inversions reduce the normal upward mixing of the atmosphere thereby reducing the dispersion of pollutants and exacerbating CO ambient concentrations. These inversions generally begin to form at sunset which is also the peak commute period during the winter. Measures like winter daylight savings time (shifting the time back one hour) or alternative work hours that move the commute period to a time before the onset of the inversion may reduce ambient carbon monoxide levels.

In its omnibus 1987 air quality legislation (S.B. 1360), the Arizona State Legislature requested the Department of Health Services (DHS) to study the impact on air quality of winter daylight savings time and alternative work hours. The report on this study, which was prepared by the Department of Environmental Quality for DHS, was delivered to the Legislature on April 1, 1988. EPA's preliminary review of that report shows that both winter daylight savings time and alternative work hours can reduce the severity of evening-time CO violations and the number of total violations. The report also indicates that both programs can increase the severity of morning-time violations and increase carbon monoxide emissions. It should be noted that the majority of violations of the CO standard in Maricopa occur during the evening.

Because winter daylight savings does not reduce CO emissions, EPA is unsure at this time how such a program would be credited as part of an attainment demonstration. EPA requests comments on whether such a program should be credited and on methods to credit it. As discussed earlier in this notice, EPA is proposing to credit the current alternative work hour program in Arizona with a 1.1% emission reduction. In addition to shifting commute trips to periods before the onset of the evening inversion, alternative work hour programs can reduce emissions by reducing traffic congestion during the commute period. EPA requests comments on methods to credit additional alternative work hour programs in the Arizona SIP.

Voluntary No Drive Day Program

During the 1987/88 winter season, the Maricopa Regional Transportation

Authority and the Phoenix Chamber of Commerce jointly conducted a voluntary no drive day program. The "Don't Drive One Day in Five" program requested commuters to use alternatives to their single-occupant vehicle one day per week in order to improve air quality. Behavioral and VMT studies made during the program indicated that some change in commute habits were occurring.

In its CO Plan, MAG took substantial emission reduction credit for this measure. In reviewing the program to determine if credit should be given, EPA was concerned about the institutional features and future funding of the program and decided that it should not grant emission reductions for the measure until the State made changes to the program. EPA's concerns are discussed in more detail earlier in this notice.

Should the State make the necessary changes to the program, EPA would need to evaluate the program's performance before determining an appropriate reduction credit. At that time, EPA would propose modifications to the FIP to account for the new reductions from the SIP.

VII. Proposed Findings Under Section 211(c)(4)(C)

As noted above, EPA proposes to promulgate an oxygenated fuels requirement applicable to portions of Maricopa County. EPA also proposes to approve as part of the Maricopa CO SIP the oxygenated fuel provisions of any legislation which substantially resembles H.B. 2014, S.B. 1174, S.B. 1380, S.B. 1388, or S.B. 1348 if signed by the Governor and submitted as a SIP revision, and to grant CO emission reduction credit towards the attainment target according to the method and assumptions stated above. One question arises whether EPA must make the finding described in section 211(c)(4)(C) of the Clean Air Act prior to promulgating the proposed FIP program on oxygenated fuels and/or prior to any approval of new legislation as part of the Maricopa SIP.

For the reasons discussed below, EPA believes that such a finding is not required before EPA can promulgate the proposed FIP or approve a new SIP revision with legislation on Reid Vapor Pressure limits and/or oxygen content. Assuming, however, that a section 211(c)(4)(C) finding is required, EPA proposes today to make such findings as to provisions concerning oxygen content. With respect to the FIP, the proposed finding is simply that the specific proposed oxygenated fuel regulations are "necessary" under the meaning of section 211(c)(4)(C). The proposal with respect to new State legislation is made with certain limitations, and does not include all provisions of all of the bills now before the Arizona legislature. The proposal covers only an oxygenated fuels program, and only within the bounds described below. The proposed finding does not cover new State limits on Reid Vapor Pressure.

Section 211(c)(4)(A) states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless (the) State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Section 211(c)(4)(C) states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

In the ANPRM for this FIP action (52 FR 45468, November 30, 1987) EPA indicated that section 211(c)(4) would allow the Administrator to promulgate an implementation plan containing a fuel-related control only if he makes this finding of necessity. After further consideration, EPA believes that this finding is required only when EPA promulgates a plan containing a State adopted fuel-related control, not when EPA promulgates a federal fuel-related control. This construction comes directly from a literal reading of the statutory language. Section 211(c)(4)(C) states first that a State may prescribe a fuel-related control in certain circumstances, and then provides that the Administrator may promulgate an implementation plan containing "such a provision," referring to the State prescribed fuel-related control mentioned above, only if he first finds that "the state control or prohibition" is necessary to achieve the NAAQS. Thus, by the express terms of the statute, this provision applies only to State-adopted fuel control measures and not to fuel-related controls promulgated directly by the Administrator.

This construction of section 211(c)(4)(C) is also consistent with the purposes of section 211(c)(4) as a whole. In drafting the section Congress was apparently concerned that where EPA had adopted (or expressly decided not to adopt) generally applicable fuel-related controls, conflicting State fuel controls should not be added to implementation plans unless necessary to achieve the NAAQS. Where EPA promulgates a federal fuel control as part of an implementation plan, however, this concern about conflicting controls from various jurisdictions would not arise, even if EPA had previously promulgated other types of generally applicable fuel-related control.

Although EPA generally tends to discuss a section 110(c) FIP in terms of only those gap-filling provisions EPA promulgates itself, it is apparent that Congress in this case thought of the FIP as the full complement of measures applicable to an area, including any State measures EPA approves for the area. This semantic difference does not in any way affect the legal construction of this provision.

Although EPA believes this interpretation of section 211(c)(4)(C) is the better reading, another reading of the section is possible that would require EPA to make a finding that any fuel-related control, even one promulgated directly by the Administrator, was necessary to achieve the NAAQS if EPA had previously pre-empted the area by adopting certain types of generally applicable fuel-related controls. Under the latter statutory interpretation (which EPA does not believe is correct) and in case EPA decides to approve new legislation in Arizona, the threshold question is whether EPA has pre-empted such a measure in either of the two ways described in section 211(c)(4). The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding, described in subparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and clearly has not published any such findings in the Federal Register.

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in subparagraph (ii) of paragraph (A). EPA believes subparagraph (ii)'s reference to "a control or prohibition applicable to such fuel or fuel additive" was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case, controls on Reid Vapor Pressure (RVP) and/or the oxygen content of fuels. Since EPA has not prescribed any control on the RVP or oxygen content of any fuel by section 211(c) rulemaking,[8] the Agency believes that the pre-emption described in subparagraph (ii) has not yet occurred and that Arizona is free to adopt its own RVP and/or oxygen content control, and EPA is free to approve a SIP which includes them without making the special finding described in section 211(c)(4)(C). For the same reasons, EPA also believes it may promulgate oxygen content controls of its own without this finding even if section 211(c)(4)(C) applies to Federally promulgated fuel-related controls.

Even if preemption has occurred,[9] however, EPA believes that it may still promulgate the proposed FIP controls and approve certain types of State provisions for limits on oxygen content because the Agency can make the finding under section 211(c)(4)(C), which would authorize promulgation/approval and, thus, eliminate the preemption problem. As set forth above, section 211(c)(4)(C) authorizes EPA to promulgate/approve into the SIP a State-adopted fuel control measure that has otherwise been pre-empted by EPA action if EPA finds that the State control "is necessary to achieve the standard" that the SIP implements. EPA interprets this language to require the Agency to find that the fuel control requirement is essential to achieve timely attainment of the standard. EPA believes that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary", since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the CO NAAQS. It is doubtful that Congress would have intended to bar EPA from promulgating/approving State fuel controls into a SIP based on the availability of such drastic alternatives.

It is clear that the reductions achievable by an oxygenated fuels program are essential to bringing about timely attainment of the CO standard in the Maricopa CO nonattainment area. Maricopa needs a reduction in CO emissions of 22.0 percent (relative to the MAG plan's baseline control program) to attain in 1991. The other measures that are being proposed for approval and emission reduction credit will provide only a small portion of those reductions. The SIP as it stands now has an unmet reduction need of almost 19 percentage points of this 22.0 percent target. Even with a locally adopted or federally implemented trip reduction program for large employers, a further reduction of about 17 percent would be needed. A portion of this could be obtained from the loaded I/M test provision of H.B. 2014, leaving an unmet reduction need of about 14 percent.

It is apparent that the unmet reductions needed to attain by 1991 must be largely satisfied by a fuels modification program of some sort. The alternative CO control measures that would achieve the emission reductions necessary to bring about attainment in that time frame without a fuels program—e.g., gas rationing, severe road tolls, substantial gas taxes, enforced curtailment of driving—would impose unreasonable costs and burdens on the local population. Some other, longer-term measures, such as further implementation of existing strategies (e.g., bus lanes and other mass transit improvements) and new measures like a light rail transit system, might ultimately become available for implementation in Maricopa, but not by 1991. EPA, therefore, believes it can find that a fuels program is "necessary" for attainment. EPA proposes to make such a finding for the specific program contained in the proposed FIP. However, attention must be paid to the limits of the possible finding with respect to specific requirements which might appear in new State legislation.

First, because EPA (1) believes that a properly crafted oxygen content requirement can provide for 1991 attainment under both warm and cool ambient conditions but (2) is uncertain of the CO emission reduction effectiveness of RVP reductions at cooler temperatures that are important in Phoenix, EPA does not believe it can make the required finding of necessity for any CO-related State program of more stringent RVP limitations. EPA does not have before it for action an ozone or other SIP revision which might support a finding with respect to RVP limitations outside the CO season. Therefore, EPA does not propose a section 211(c)(4)(C) finding with respect to more stringent State RVP controls. If, contrary to EPA's belief, pre-emption with respect to RVP has occurred, EPA's future approval of a CO SIP revision containing new fuels legislation will not authorize Arizona to enforce such RVP controls.

Again, the Agency wants to stress that it does not believe Federal pre-emption of a State oxygenated fuels and/or RVP program has occurred. Nonetheless, EPA believes it can make a section 211(c)(4)(C) finding for State controls on oxygen content and wishes to do so today. The Clean Air Act, however, may not intend that EPA approve expansive State programs that exceed the requirements for attainment just because some lesser program is "necessary." Some of the bills now before the legislature clearly do exceed the requirements for attainment in that they extend farther beyond the boundaries of the Maricopa CO nonattainment area than reasonably needed to affect CO emissions in the CO nonattainment area, they extend into months of the year in which CO violations do not occur (or in which the CO exceedances are at low enough concentrations that they would be eliminated by 1991 without oxygenated fuels), or they have the possible effect of requiring a higher level of oxygenation than required for attainment. The Agency requests comments on these and any other potential State program elements that might exceed the requirements for attainment.

To address these issues and to lay the procedural foundation for final approval of new legislation without need for another Federal Register notice and period for public comment, EPA lists the following as conditions or restrictions on its proposed finding that an oxygenated fuels program is "necessary" within the meaning of paragraph (C) of section 211(c)(4). These would only apply if pre-emption exists.

[8] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

[9] One court, in *Exxon* v. *City of New York*, 548 F.2d 1088 (2d Cir. 1977), has suggested that EPA'S regulation of the lead content of gasoline amounts under subparagraph (ii) to the preemption of State controls of any aspect of the content of gasoline (unless identical to the federal lead content control). As described in the text above, EPA does not agree with that holding and hence does not believe that the reasoning of the decision should apply in other cases. Nevertheless, the discussion in the text below addresses the hypothetical case in which a court construing subparagraph (ii)'s application to the Maricopa SIP/FIP were to agree with the result in *Exxon*.

EPA requests comments on the appropriateness of these conditions. To the extent that the provisions of new legislation by Arizona conform to these conditions, a final finding by EPA will allow Arizona to enforce those provisions. If there is actual legislation submitted as a SIP revision that poses issues of approvability that are not adequately addressed by these conditions, EPA will repropose its finding and provide further opportunity for comment. (The Agency may modify some of the specific details described below based on comments received in response to the proposed FIP.)

1. The State program may restrict only fuel introduced into commerce in the Maricopa CO nonattainment area. Fuel in other areas may fall under restriction only as reasonably necessary to allow for an enforceable program for the benefit of Maricopa County. This might, for example, require the regulation of all fuel passing through the pipeline terminal tank farm in Phoenix, or an expansion of the program boundaries to incorporate all of Maricopa County.

2. The oxygen content restriction may apply to fuel first introduced into commerce between October 1 of one calendar year and March 31 of the next calendar year. It may apply to fuel actually dispensed from refueling stations only between October 15 and March 31.

3. The level of the oxygen content requirement or specification(s) may only be such that in combination with other CO controls that have been adopted the CO reduction achieved is no larger than needed to complete the 22 percent reduction target for 1991 attainment, within a reasonable limit. This consideration allows Arizona to select between, for example, a loaded I/M test and a higher level of stringency for the oxygen content requirement. EPA will exclude any Federally promulgated trip reduction program in judging satisfaction of this condition.

EPA also request comments on two remaining issues in the area of preemption. The first is what EPA can and should do in a final SIP approval action if the actual fuels legislation submitted in a SIP revision conforms in part to the above three conditions but not entirely. For example, Arizona might adopt an oxygen content law that applies only in the Maricopa CO nonattainment area, but runs year round. EPA requests comment on whether the provisions of new State legislation can be considered separable for purposes of a section 211(c)(4)(C) finding. This would allow EPA to make a finding only with respect to October through March, for example. Comment is requested on the separability issue generally and on what the State's obligation would be, if any, to repeal provisions that are not approved by EPA. Since EPA believes preemption does not apply at all in this case, EPA believes that no obligation exists.

The second remaining issue concerns the exact wording of the section 211(c)(4)(A) restriction on State action: "no State * * * may prescribe or attempt to enforce * * *". EPA believes that this does not require Arizona to obtain a final EPA finding under section 211(c)(4)(C) before enactment of legislation, even though the enactment might be in some sense a prescription in itself. If legislation is enacted and a finding is made after enactment, the single issue of timing should not in EPA's opinion be an obstacle to EPA approval and should not leave the legislation open to challenge in court.

VIII. Economic Impact

The Agency has estimated the cost of the proposed alternative fuels program based primarily on the results of existing economic analyses that evaluated such a requirement as a CO reduction strategy. Most of these studies were done for the Denver area, because that region was the first to mandate the use of oxygenated fuels beginning with the winter of 1988. [Reference 8, 9, 10] However, there has also been one study by Energy and Environmental Analysis, Inc. (EEA) for the Maricopa Association of Governments (MAG) that focused specifically on Maricopa County. [Reference 11]

The cost of the oxygenated fuels program for the Phoenix area is comprised of many elements. Several of the most important are: (1) The cost of the pure oxygenate compound (e.g., MTBE or ethanol), including delivery charges if blending is performed locally rather than at the refinery or if the refinery is remote from the source of the oxygenate compound; (2) the amount of the oxygenate used in the blend; (3) whether a special low volatility gasoline must be used for blending; (4) whether cost-saving refinery adjustments can be made to reduce the octane of the oxygen-free base gasoline; (5) the cost of any necessary fuel distribution equipment changes and maintenance, including storage tank cleaning for ethanol blends; (6) credits for any federal tax incentives that may apply to ethanol blends (e.g., the six cent per gallon federal excise tax exemption); (7) the possibility of a small fuel economy penalty that may accompany the use of oxygenated fuels relative to gasoline; and (8) the amount of fuel consumed during the mandated compliance period.

The overall cost of the program can be expressed as the expected increase in gasoline prices during the mandatory compliance period. These values are readily available, or can be computed, from the above referenced studies for Gasohol (10 percent ethanol) and 11 percent MTBE. The estimated increase for Gasohol ranges from 0.7 to 7.4 cents per gallon. For 11 percent MTBE, the estimated increase ranges from 0.05 to 3.4 cents per gallon. Using the upper and lower end of these cost estimates, the total annual cost for oxygenated fuels in the Phoenix area can be roughly approximated. Based on a six month compliance period, fuel consumption in the Phoenix area of approximately 3 million gallons per day, and a program consisting of a 50 percent market share for Gasohol and 11 percent MTBE, respectively, the annual cost of the program is estimated at between $8 million and $31 million. More complete information on EPA's economic analysis is available in the Technical Support Document.

EPA has estimated the cost to the regulated community of the proposed Employer Alternative Modes Incentives Program (EAMIP) based on the information developed for MAG by K.T. Analytics, Inc. [10] K.T. Analytics looked at the costs of implementing trip reduction programs at several employers in the San Francisco Bay Area. Most of the employers surveyed are located in the suburban sections of the Bay Area and not in San Francisco proper; therefore, the primary commute mode of their employees is the single-occupant vehicle, a condition which is mirrored in Maricopa County.

K.T. Analytics found a wide range in the cost of trip reduction programs. Factors influencing the total cost included number of employees, location of the worksite, full- or part-time transportation coordinator position, and most importantly the number and type of trip reduction incentives offered. The most expensive programs were those that had full-time transportation coordinators and offered shuttle buses from or to transit stations and/or subsidized vanpools.

From its survey, K.T. Analytics estimated the average cost to employers for trip reduction programs. These costs are shown in Table 9. Average costs are broken down by employee size—"large" employers (more than 1,000 employees) and "small" employers (less than 500 employees)—and by program complexity—"moderate" and "extensive." Moderate programs typically have part-time (i.e. half-time or less) transportation coordinators, company rideshare matching programs, but no carpool or vanpool subsidies. Moderate programs can include bus pass subsidies. Extensive programs have full or nearly full-time coordinators, car or vanpool subsidies,[11] and/or shuttle bus services.

[10] K.T. Analytics, Inc., "Review of TSM Ordinances and Parking Management Programs for the Maricopa Association of Governments," August 24, 1987, pp. 19–20.

TABLE 9.—ANNUAL COST RANGES FOR EMPLOYER TRIP REDUCTION PROGRAMS

Level of effort	Employer size	
	Small	Large
Modest	$10,000–$20,000.	$30,000–$60,000
Extensive	$30,000–$60,000.	$100,000–$250,000

Before describing the total cost to employers in Maricopa County of implementing the proposed Employer Alternative Mode Incentives Program, two points should be made. First, the costs described below are to the employer not to the individual commuter. Second, it is the employer who selects the incentives that he will offer his employees. While the proposed EAMIP has some fixed costs, the greatest determining factor in the cost of the regulation to the individual employer is the package of the incentives he offers. Because the proposed EAMIP does not dictate what incentives must be offered, the employer is free to choose from among the myriad of incentives the ones that are appropriate to his worksite and his employees.

Fixed costs to the employer under the proposed EAMIP are the dissemination of alternative mode information,[12] conducting and analyzing an employee survey, preparing a trip reduction plan and annual report, and appointing a transportation coordinator. EPA believes that the greatest fixed cost to most employers will be appointing a transportation coordinator. EPA estimates that an employer with up to 500 employees will need to staff the transportation coordinator position for a maximum of one day per week and in most cases less, especially after the program is up and running, and if a coordinator is shared by a group of employers. The staffing required at larger employers will depend on the complexity of the trip reduction program.

While EPA has estimates of the cost of trip reduction programs for individual employers, it is difficult to calculate the cumulative employer costs because little data is available on the number of employers with more than 100 employees at a worksite. This information is not routinely collected, and when it is, it is generally considered confidential. Regional profiles of employer sizes, which are readily available, are misleading because many employers (e.g. supermarket chains, school districts, banks) have dispersed workforces. While K.T. Analytics estimates that there are over 1100 employers of more than 100 employees in the MAG region,[13] the MAG Transportation Planning Office (MAGTPO) estimated when modeling the impact of the model MAG trip reduction ordinance that there are approximately 700 worksites with more than 100 employees, 125 of which have more than 350 employees.[14] EPA used MAGTPO's figures on the numbers of worksites to determine the regional costs of the EAMIP.

Because the MAGTPO numbers are not broken down any further than between 350 or more and 100 or more employees at a worksite, EPA assumed that costs for a "large" employer in Table 6 are applicable to all employers with 350 or more employees at a worksite and that the cost for a "small" employer are applicable for employers with 100 to 349 employees at a worksite. Based on this assumption and the upper and lower ends of K.T. Analytics' figures, the range of the total cost of complying with the proposed EAMIP can be approximated as between $9.5 and $65.8 million. Given the relatively low trip reduction goals in the proposed EAMIP, EPA believes most employers will need only modest programs to comply with the regulation. Under this assumption, total regional costs for employers for the proposed EAMIP range from $9.5 to $19.0 million. Finally, these costs should not be evaluated in isolation, but should be weighed against the broader benefits that TROs provide to all commuters, employers, transit/rideshare programs, local governments, and taxpayers. These benefits include decreased congestion, decreased trip times for non-affected commuters, delayed infrastructure investment, reduced employer parking requirements, and increased transit/rideshare usage.

In assessing whether to implement (1) a trip reduction program in combination with an oxygenated fuels program or (2) an oxygenated fuels program with a higher oxygen requirement, EPA intends to examine the relative costs of each program. More specifically, the costs of raising the oxygen requirement from 2.57 percent to 2.79 percent will be compared to the costs of implementing the trip reduction ordinance. Should evidence become available that raising the oxygen requirement can be implemented effectively with lower costs, EPA would consider this result along with other advantages and disadvantages of the measures in its decision on the nature of the final promulgated rule. The Agency is seeking information and comments on the costs of these approaches for attaining the necessary CO reduction in Maricopa County.

The two alternative control strategies considered in this package have differing cost effectiveness. The alternative fuels program is likely to have cost effectiveness values from $100 to $700 per ton of CO reduced. For the TRO, the cost effectiveness is likely to range roughly from $1000 to $5000 per ton of CO reduced. These values are based on very preliminary information. EPA will be undertaking a more detailed analysis of the costs and cost effectiveness of this program between the proposal and final promulgation. EPA requests comments on the costs and cost effectiveness of the alternative control strategies proposed today, and on the utility of considering costs and cost effectiveness in making the final decision.

IX. Secondary Environmental Effects

An increase in emissions of volatile organic compounds, a precursor to ozone, may be associated with the use of oxygenated fuels in the fall and winter months. This would result if the oxygenated fuels have a higher volatility than existing gasoline fuels. Arizona regulated gasoline volatility during the spring and summer months. EPA's proposed oxygenated fuels program will not affect these limits on gasoline volatility.

[11] A car or vanpool subsidy can range from free or subsidized parking to employers covering the entire cost of operating the car or vanpool (purchase of the vehicle, maintenance, gasoline, and insurance). A typical "subsidy" is the employer leasing or purchasing the vehicle, providing maintenance and insurance, but recovering all or part of the cost by charging the car- or vanpool members a monthly fee.

[12] Under the proposed method of implementing the EAMIP, much of this information would be prepared by EPA or its contractor and provided to the employer. The employer would then need to copy it for dissemination to his employees.

[13] Memorandum Kiran Bhatt (K.T. Analytics, Inc.) to Lindy Bauer (MAG), on "summary of Regional and Local Data," November 16, 1987, p.5.

[14] Maricopa Association of Government Transportation Planning Office, *Documentation of Traffic Modeling and Transportation Control Measure Analysis for Use in the Air Quality Modeling for the Maricopa County Nonattainment Area* (April, 1987), pp. 5–6.

In order to determine whether a potential increase in volatile organic compounds emissions could cause violations of the ozone NAAQS, EPA reviewed the historic ozone data for Maricopa County. During the fourth quarter of 1981, one exceedance, just slightly above the ozone NAAQS, was recorded in the region. Since that time, EPA's air quality data shows no ozone exceedances at any monitoring station within Maricopa County between October 1 and March 31. Indeed, the typical maximum observed concentration for this six month period since 1980 is substantially below the ozone NAAQS of 0.12 ppm.

Ambient concentrations above the standard typically occur between June and August with the highest number and levels of ozone exceedances occurring in August. Based on this analysis of seasonal ozone data, EPA does not expect that the oxygenated fuels program will cause or contribute to any violations of the ozone standard in the Maricopa area. [Reference 12]

The use of oxygenated fuels may also affect the emissions of other exhaust pollutants such as formaldehyde. This pollutant is of concern because laboratory animal testing and limited epidemiological studies have shown this compound has the potential to cause cancer in humans. An EPA-sponsored study showed that total aldehydes can increase 20–45 percent with the use of ethanol blends. [Reference 12] The increase with MTBE blends was similar. However, very little of this increase for the ethanol blends studied was caused by changes in formaldehyde emissions. Instead, most of the increase in total aldehydes is believed to be associated with a greater production of acetaldehyde. This compound has been found to be carcinogenic in some animal studies, but there is inadequate evidence of its carcinogenicity in humans. The animal data that is available indicated acetaldehyde would have a carcinogenic potency of at most four percent that of formaldehyde. It is also important to note that mobile source emissions of formaldehyde and total aldehydes in general will continue to decrease as exhaust hydrocarbons continue to decrease with more newer model year vehicles in the fleet. Therefore, the use of gasoline oxygenate blends will not reverse the trend towards lower formaldehyde and total aldehyde emissions as older vehicles are replaced with newer ones.

X. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, the proposed rule will cost less than $100 million annually, will cause no major price increases, and should not have a significant adverse effect on competition, productivity, or investment. Accordingly, no Regulatory Impact Analysis is necessary. However, the Agency has prepared a Technical Support Document that contains a detailed assessment of the Arizona SIP revisions for Maricopa County, as well as additional technical information supporting the FIP proposal as described in today's **Federal Register**. It also contains an analysis of the public comments received in response to an Advanced Notice of Proposed Rulemaking on the Arizona FIP, which was published in the **Federal Register** on November 30, 1987 (52 FR 45466).

The Technical Support Document has been placed in the public docket and is available for review in the City of Phoenix, at the locations referenced in the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and EPA response to those comments have been placed in the public docket for this rulemaking.

XI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this proposed regulation will not have such an effect for three primary reasons. First, many of the entities affected by the proposed rule are not "small." Refiners, large distributors, service stations owned by major oil companies or large independent companies (accounting for about 25 percent of public refueling facilities), and employers with 100 or more employees do not constitute small entities. Second, the geographic scope of the proposed regulation as it may affect small entities is limited to a portion of Maricopa County, Arizona. Third, compliance with the alternative fuels program generally will not have a significant impact on a substantial number of small entities because of the limited capital investment required. Fourth, and finally, there are no significant reporting requirements for service stations under the averaging scheme of the proposed alternative fuels program. Nonetheless, the Agency request comments on the economic effects of this proposed rulemaking on small businesses in the Phoenix area.

XII. Reporting and Recordkeeping Requirements

The information collection provisions relating to the proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from the Information Policy Branch; EPA 401 M Street SW., [PM–223] Washington, DC 20460 or by calling (202) 382–2706. Comments may be submitted to EPA at the above address, but should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7462.
Date: May 10, 1988.

Lee M. Thomas,
Administrator.

Arizona FIP NPRM Federal Register References

1. "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," U.S. EPA, OAR, OMS, EPA–AA–TSS–PA–87–4, January 29, 1988.
2. "Selected Gasoline Survey Results for Arizona as Conducted by the Motor Vehicle Manufacturers' Association," Memorandum to P. Lorang from C. Harvey, U.S. EPA, OAR, OMS, May 5, 1988.
3. Letter to Senator P. Corpstein, Arizona State Senate from D. B. Smith, Chevron U.S.A., Inc., February 17, 1988.
4. Letter to Representative J. Jewett, Arizona House of Representatives, from E. A. Harjehausen, Archer Daniel Midland Ethanol Sales, March 3, 1988.
5. Personal Communication to P. Lorang, U.S. EPA from B. R. Pearl, Southern Pacific Pipe Lines, Inc., March 8, 1988.
6. "Statement of Southern Pacific Pipe Lines, Inc. on the Omnibus Air Quality Act to the Arizona House Transportation Committee," B. R. Pearl, Southern Pacific Pipe Lines, Inc., February 2, 1988.
7. "Size Specific Total Particulate Emission Factors for Mobile Sources," U.S. EPA, OAR, OMS, EPA 460/3–85–005, August 1985.
8. "Economic Impact Analysis and Marketing Assessment of a Colorado Oxygenated Fuels Program," Browne, Bortz and Coddington, Inc., January 1987. (Prepared for the Colorado Department of Health.)
9. "Impact of a Mandate Oxygenated Fuels Program on Product Supply, Economics, and Consumer Costs," Rocky Mountain Oil and Gas Association, February 20, 1987.
10. "Colorado's Oxygenated Fuels Program: Economic Evaluation of the First Year," U.S. EPA, OPPE, OPA (PRELIMINARY DRAFT), April 1988.
11. "Feasibility of Using Alternative Fuels as an Air Pollution Control Strategy," Energy and Environmental Analysis, Inc., October 1987. (Prepared for the Maricopa Association of Governments, Phoenix, Arizona.)
12. "Gasohol, TBA, MTBE Effects on Light-Duty Emissions," B. Bulkowski, Southwest Research Institute, EPA 460/3–79–012 (NTIS TB80224062), October 1979. (Prepared for U.S. EPA, OAR, OMS.)

For the reasons set out in the preamble, Subpart D, Part 52, Subchapter C, Chapter I of Title 40, Code of Federal Regulations, is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart D—Arizona

1. The authority citation for Part 52 will continue to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. A new § 52.136 is proposed to be added to read as follows:

§ 52.136 Oxygenated fuels program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the Maricopa CO nonattainment area ("control area") during the period October 1, 1989, to March 31, 1990, and each period of October 1 to March 31 thereafter ("control period") gasoline whose equivalent oxygen content is less than 2.57% (by weight), as determined pursuant to paragraphs (b) and (c) of this section.

(b) *Sampling, testing and equivalent oxygen content calculations.* (1) For the purpose of determining compliance with the standards listed in paragraphs (a) and (b) of this section, the equivalent oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in Appendix A of this subpart to obtain a representative sample of the gasoline to be tested;

(ii) Use of one of the testing methodologies specified in Appendix B of this subpart to determine the mass concentration of each oxygenate in the gasoline sampled;

(iii) Calculation of the actual oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen mass concentration of the oxygenate set forth in paragraph (b)(2) of this section; and

(iv) Calculation of the equivalent oxygen content of gasoline sampled according of the methods set forth in paragraph (b)(3) of this section.

(2) For purposes of this section, the oxygen mass concentrations of oxygenates are the following:

Oxygenate	Oxygen mass
Methanol	0.4993
Ethanol	0.3473
Propanols	0.2662
Butanols	0.2158
Pentanols	0.1815
Methyl Tertiary-Butyl Ether (MTBE)	0.1815
Hexanols	0.1566
Tertiary Amyl Methyl Ether (TAME)	0.1566

(3) For purposes of this section, the equivalent oxygen content of gasoline which does not contain any alcohol oxygenate(s) is equal to the actual oxygen content of such gasoline. The equivalent oxygen content of gasoline which contains any alcohol oxygenate(s) and which has an actual oxygen content of 0.74% or greater is equal to the value derived from the following formula:

Equivalent Oxygen Content (%)
= −0.551 + 1.037 (Actual Oxygen Content (%))

The equivalent oxygen content of gasoline which contains any alcohol oxygenate(s) and which has an actual oxygen content less than 0.74% is equal to the value derived from the following formula:

Equivalent Oxygen Content (%) = 0.2924 (Actual Oxygen Content (%))

(4) *Examples*—(i) *Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the test methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The equivalent oxygen contents of the gasoline sampled is calculated as follows:

Actual Oxygen Content
= (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)
= (0.0985) (0.3473)
= 0.0342
= 3.42%

Equivalent Oxygen Content
= −0.551 + 1.037 (Actual Oxygen Content)
= −0.551 + 1.037 (3.42)
= −0.551 + 3.547
= 2.996
= 3.00%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains an MTBE mass concentration of 7.80% (0.0780). The equivalent oxygen content of the gasoline sample is calculated as follows:

Actual Oxygen Content
= (MTBE Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of MTBE)
= (0.0780) (0.1815)
= 0.0142
Actual Oxygen Content
= 1.42%
Equivalent Oxygen Content
= Actual Oxygen Content
= 1.42%

(iii) *Example 3.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The equivalent oxygen content of the gasoline sample is calculated as follows:

Actual Oxygen Content
= (Methanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)
Actual Oxygen Content
= (0.0450) (0.4993) + (0.0225) (0.3473)
= 0.0225 + 0.0078
= 0.0303
= 3.03%
Equivalent Oxygen Content
= −0.551 + 1.037 (Actual Oxygen Content)
= −0.551 + 1.037 (3.03)
= −0.551 + 3.142
= 2.591
= 2.59%

(c) *Alternative compliance options.* (1) Each person subject to the standard specified in paragraph (a) of this section shall comply with such standard by means of the method set forth in either paragraph (c)(2) or (c)(3) of this section. Such person shall select the method he will use to determine compliance by means of the registration statement submitted pursuant to paragraph (d) of this section. A person subject to such

standard who fails to submit a timely and complete registration statement as required by paragraph (d) of this section shall be deemed to have selected the compliance method set forth in paragraph (c)(2) of this section.

(2) As one alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during the control period shall have an equivalent oxygen content of at least 2.57% (by weight), as determined by calculating the equivalent oxygen content of each discrete quantity of such gasoline according to the procedures set forth in paragraph (b) of this section.

(3)(i) As the second alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during each calendar month of the control period shall have an average equivalent oxygen content of at least 2.57% (by weight).

(ii) The average equivalent oxygen content of gasoline first introduced into commerce by a person during a calendar month shall be calculated as follows:

(A) The equivalent oxygen content of each discrete quantity of gasoline in the possession of such person at the beginning of the calendar month shall be calculated according to the procedures set forth in paragraph (b) of this section.

(B) The equivalent oxygen content of each discrete quantity of gasoline in the possession of such person shall also be calculated according to the procedures set forth in paragraph (b) of this section each time during the calendar month that there is a change in its quantity and/or its characteristics that would tend to affect its equivalent oxygen content. Such changes shall include, but not be limited to, the addition of any quantity of gasoline or of any quantity of an oxygenate to gasoline in the possession of such person.

(C) The number of gallons of gasoline first introduced into commerce within the control area during the calendar month at each equivalent oxygen content level determined according to paragraph (c)(3)(ii) (A) or (B) of this section shall be multiplied by such content to determine the total equivalent oxygen content of each such quantity of gasoline.

(D) The total equivalent oxygen content of all gasoline first introduced into commerce within the control area during the calendar month shall be determined by adding together the total equivalent oxygen content amounts determined in paragraph (c)(3)(ii)(C) of this section.

(E) The total equivalent oxygen content determined in paragraph (c)(3)(ii)(D) of this section shall be added to any equivalent oxygen credits lawfully transferred to such person pursuant to paragraph (c)(3)(iii) of this section.

(F) The total equivalent oxygen content determined in paragraph (c)(3)(ii)(E) of this section shall be divided by the total number of gallons of gasoline first introduced into commerce within the control area during the calendar month, resulting in the average equivalent oxygen content of such gasoline.

(iii) A person subject to the standard specified in paragraph (a) of this section who elects to demonstrate compliance under paragraph (c)(3) of this section may create equivalent oxygen credits, and may transfer such credits to another person for use in demonstrating compliance under this paragraph, in accordance with the following requirements:

(A) The amount of equivalent oxygen credits created by a person shall be equal to the difference between:

(1) The total equivalent oxygen content of all gasoline first introduced into commerce within the control area during the calendar month by such person, as determined according to paragraph (c)(3)(ii) (A) through (D) of this section; and

(2) The total equivalent oxygen content required by paragraph (a) of this section, determined by multiplying the number of gallons of such gasoline by 0.0257.

(B) No transfer or use of equivalent oxygen credits shall be made by any person later than the final day of the calendar month in which such credits are created.

(d) *Registration [Reserved].*

(e) *Labelling.* (1) Each gasoline pump stand from which gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility in the control area shall be affixed during the control period with a legible and conspicuous label which states the type(s) of oxygenate contained in such gasoline and the equivalent oxygen content of such gasoline (percentage by weight). If the gasoline being dispensed from a pump stand does not contain any oxygenate, the pump stand shall be so labelled.

(2) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of gasoline within the control area during the control period shall contain a legible and conspicuous statement which states the type(s) of oxygenate contained in such gasoline and the equivalent oxygen content of such gasoline (percentage by weight). If the gasoline being shipped does not contain any oxygenate, the document accompanying the shipment shall be so labelled. Such documents shall be retained by distributors, resellers, carriers, retailers and wholesale purchaser-consumers for at least two years, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Reporting and Recordkeeping [Reserved].*

(g) *Prohibited Acts [Reserved].*

(h) *Minimum Equivalent Oxygen Content Standard [Reserved].*

(i) *Definitions [Reserved].*

Appendix A—Sampling Procedures [Reserved]

Appendix B—Testing Procedures [Reserved]

3. A new § 52.137 is proposed to be added to read as follows:

§ 52.137 Employer Alternative Modes Incentives Programs.

(a) *Definitions.* (1) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his designee.

(2) "Alternative Modes Incentives Program" means the set of incentives offered by a Major Employer to his Employees to encourage the use of Alternative Modes. These incentives may include but are not limited to

(i) Formation of Carpools and Vanpools through the matching of Employees through internal matching services or active use of regional rideshare programs; partial or full subsidization of Carpools and/or Vanpools including the leasing of vehicles or use of company-owned vehicles; provision of preferential parking for Carpools and Vanpools, or partial or full subsidization of parking for Carpools and Vanpools;

(ii) Encouraging the use of transit through the provision of transit passes at full, discounted, or no cost; provision of shuttle services; provision of route and schedule information; provision of transit stops and shelters; provision of subscription bus services; and/or working with local transit providers to improve routes and scheduling of transit services to the Worksite;

(iii) Encouragement of bicycling and walking through the use of promotions; provisions of showers, lockers for clothing, and secure bicycle parking facilities; and/or cooperation with local jurisdictions to construct or connect walkways or bicycle routes to the Worksite;

(iv) Implementation of parking management including preferential parking for Carpools and Vanpools; parking price discounts for Carpools and Vanpools; and/or elimination or reduction of parking subsidies provided to Employees that do not use Alternative Modes;

(v) Implementation of either full-time or part-time telecommuting or other work-at-home programs;

(vi) Implementation of alternative work schedules including compressed work weeks such as "4/40" or "9/80" schedules and/or Variable Work Hours which allow Employees to use transit or rideshare more conveniently; and

(vii) Provision of on-site or close-by services such as banking, dining, postal, etc. that reduce the need for vehicles during the workday; and/or provision of taxi service or company-owned vehicles for Employee emergencies.

(3) "Alternative Mode or Alternative Transportation Mode" means any mode of transportation including Carpooling, Vanpooling, transit, bicycling, or walking but not including Single Occupant Vehicles.

(4) "Approvable Trip Reduction Plan and Annual Reort" mean an annual plan and report submitted by a Major Employer that meets the requirements of paragraph (b)(3)(i)(D) of this section.

(5) "Carpool" or "Vanpool" means two or more persons commuting together in a single vehicle.

(6) "Commute Trip" means a trip taken by an Employee from home to the Worksite or from the Worksite to home. A Commute Trip may include intermediate stops.

(7) "Date of Promulgation" means the date on which the final notice of rulemaking containing this section is published in the **Federal Register**.

(8) "Director" means the Director of the Air Management Division of the U.S. Environmental Protection Agency, Region 9, or his designee.

(9) "Effective Date" means the date that a Major Employer becomes subject to the requirements in paragraph (b) of this section.

(10) "Employee" means any person hired by a Major Employer including part-time, temporary, or contract workers.

(11) "Employer" means a person, firm, association, organization, partnership, business, trust, corporation, company, district, city, town, county, the state, any of the agencies or political subdivisions of such entities, or any agency or department of the federal government which employs workers within the Program Area.

(12) "Implementation Guidelines" means a set of guidelines to be published by the Administrator as an Appendix to this section which will explain in more detail the requirements of this regulation.

(13) "Major Employer" means an employer who employs 100 or more Employees at a Worksite.

(14) "Maricopa Regional Advisory Committee (MRAC)" means a committee of Arizona and Maricopa County government, business, and citizen representatives who meet regularly to advise the Director on the Employer Alternative Modes Incentives Program.

(15) "Preferential Parking" means parking spaces designated for Carpool and Vanpool use which are located conveniently to the entrances of buildings where Employees work, are provided at reduced cost, and/or have other amenities that are not offered to Single Occupant Vehicles, such as covering.

(16) "Program Area" means the Maricopa Association of Governments' Urban Planning Area as defined as of January 1, 1988.

(17) "Regional Administrator" means the Regional Administrator of the U.S. Environmental Protection Agency, Region 9.

(18) "Single Occupant Vehicle (SOV)" means a motor vehicle occupied by one Employee for commute purposes, excluding motorcycles, mopeds, or other two-wheeled vehicles.

(19) "Trained Transportation Coordinator" means the person(s) designated by a Major Employer as the lead person(s) in carrying out the requirements of paragraph (b)(3) of this Section. The Trained Transportation Coordinator(s) complete a training course on Alternative Mode Incentives Programs which has been certified by the Director or demonstrate equivalent experience and knowledge. The Trained Transportation Coordinator may be either a full or part-time employee of the Major Employer or a contract service hired to operate the Major Employer's program.

(20) "Trip Reduction Goal" means the reduction in Single Occupant Vehicle Commute Trips which a Major Employer shall target in his Trip Reduction Plan or shall achieve each year.

(21) "Variable Work Hours" means a program of scheduling Employee arrivals and departures at the Worksite so as to enhance ridesharing, transit, and other alternative commute mode opportunities.

(22) "Worksite" means a building or any grouping of buildings which are located within the Program Area which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-ways and which are owned, operated, or leased by the same Major Employer.

(b) *Requirements for Major Employers*—(1) *Notification Requirements.* (i) Within six (6) months of the Date of Promulgation, all Major Employers in the Program Area shall notify the Director that they are subject to the requirements of this regulation and provide the Director with the company name, address, phone number, contact person, and the number of Employees per Worksite.

(ii) Employers in the Program Area who become subject to this regulation after the initial six (6) month period shall notify the Director within three (3) months of becoming subject and provide the Director with the company name, address, phone number, contact person, and number of Employees per Worksite.

(iii) If an Employer in the Program Area who became subject to this regulation during a calendar year but failed to notify the Director within the periods required in paragraphs (b)(1) (i) and (ii) of this section notifies the Director that they are subject to the regulation between October 1 to 31 of that year, the Employer shall not be considered in violation of this regulation. However, if the failure to notify occurred in a previous year the employer may be subject to enforcement actions for that year.

(2) The Effective Dates for Major Employers of the paragraph (b)(3) of this section requirements are:

(i) For the fifteen (15) month period after the Date of Promulgation:

(A) For Employers of 500 or more at a Worksite, the Effective Date of this regulation is nine (9) months after the Date of Promulgation;

(B) For Employers of 200 to 499 at a Worksite, the Effective Date of this regulation is twelve (12) months after the Date of Promulgation; and

(C) For Employers of 100 to 199 at a Worksite, the Effective Date of this regulation is fifteen (15) months after the Date of Promulgation.

(ii) For Employers which become subject to this regulation after six months from the Date of Promulgation but before June 1, 1989, the Effective Date is fifteen (15) months after the date of promulgation. For Employers who become subject to this regulation after June 1, 1989, the Effective Date is six months from the date that they become subject to the regulation.

(iii) The Director may at his discretion assign a Major Employer an alternative

Effective Date later than the dates in paragraphs (b)(2) (i) and (ii) of this section. If a Major Employer is assigned an alternative Effective Date he shall be notified in writing at least three (3) months prior to his original Effective Date.

(3) Requirements.

(i) All Major Employers shall take the following actions:

(A) *Trained Transportation Coordinator.* A Major Employer shall appoint a Trained Transportation Coordinator within two (2) months of his Effective Date. He shall then notify the Director of the Trained Transportation Coordinator's name, work address and telephone number. The Major Employer shall maintain the position of a Trained Transportation Coordinator thereafter.

(B) *Employee Survey. (1)* Within three (3) months of his Effective Date and annually thereafter on the same date, a Major Employer shall perform a survey of his Employees' commute modes. The employee survey shall meet the requirements for employee surveys as described in the Implementation Guidelines.

(2) The Director may request that a Major Employer use a neutral third party to perform or certify the Employer's survey.

(3) A Major Employer shall maintain records of his employee surveys for a minimum of three (3) years and shall provide them to the Director within thirty (30) days of request.

(C) *Annual Trip Reduction Promotion Program. (1)* Within three (3) months of his Effective Date and annually thereafter, a Major Employer shall disseminate to all his Employees information on Alternative Transportation Modes with specific information on the employer-sponsored Alternative Modes Incentives Program.

(2) A Major Employer shall provide information on Alternative Transportation Modes and the employer-sponsored Alternative Modes Incentives Program to all new Employees upon hiring.

(3) A Major Employer shall post in prominent locations information on Alternative Transportation Modes and the employer-sponsored Alternative Modes Incentives Program.

(D) *Trip Reduction Plan and Annual Report. (1)* Within four months of his Effective Date and annually thereafter on the same date, a Major Employer shall submit to the Director on Approvable Trip Reduction Plan and Annual Report. To be approvable, the Trip Reduction Plan and Annual Report shall contain the following information:

(i) A description of the Trip Reduction Promotion Program which is required in paragraph (b)(3)(i)(C) of this section;

(ii) A report as outlined in the Implementation Guidelines of the latest annual employee survey;

(iii) A current and accurate estimation of the number of Single Occupant Vehicle Commute Trips made by Employees to the Worksite as determined by the latest annual employee survey;

(iv) A description of the Alternative Modes Incentives Program, if any, the Major Employer committed to offer in the previous year's Trip Reduction Plan including any revisions made to the Alternative Modes Incentives Program during the year;

(v) A description of the incentives actually offered and the Employee response to the incentives, and if any incentive contained in the Trip Reduction Plan was not offered or awarded, an explanation why it was not;

(vi) A discussion of the Trip Reduction Goal and if that Trip Reduction Goal was not achieved, an explanation as to why; and

(vii) A discussion of the coming year's trip reduction goal and a detailed description of the additional Alternative Mode Incentives, if any, that the Major Employer will offer during the coming year that are reasonably expected to achieve the Trip Reduction Goal.

(2) The Trip Reduction Plan and Annual Report must be signed by a representative of the Major Employer who is authorized to approve the expenditures necessary to carry out the Alternative Modes Incentives Program and who certifies the accuracy of the information contained in the Annual Report.

(3) The Director shall either approve or disapprove the Trip Reduction Plan and Annual Report within sixty (60) days of submittal. The employer shall be notified of the approval or disapproval. If a Plan and Annual Report is disapproved, the reasons for disapproval shall be given in writing to the Major Employer. A Plan and Annual Report disapproved by the Director shall be revised by the Major Employer within thirty (30) days of the notice of disapproval. A Major Employer may appeal the disapproval of his Trip Reduction Plan and Annual Report following the procedures in paragraph (f) of this section.

(4) An Approved Plan may be revised by a Major Employer between Plan submittal dates by submitting a Plan revision to the Director. The revision shall not be effective until approved by the Director. If a Major Employer finds that he is unable to provide an Alternative Transportation Mode Incentive that he has in his Trip Reduction Plan, he shall notify the Director as soon as possible but in all cases before his Trip Reduction Plan and Annual Report is due. In order to obtain approval for a Trip Reduction Plan revision, the Major Employer must show that the revised Trip Reduction Plan will still achieve the Trip Reduction Goal.

(ii) In the event that a Major Employer reasonably needs more time to appoint a Trained Transportation Coordinator, perform an employee survey, undertake a Trip Reduction Promotion Program, prepare and submit an Approvable Trip Reduction Plan and Annual Report, or implement any part of his Alternative Modes Incentives Program, additional time may be sought in writing from the Director. Additional time may be granted for good cause, but such extensions shall only be effective if given in writing, with the new submittal date specified. The Director shall notify the Major Employer whether or not the extension has been granted within 15 days of receipt of the request for extension. No extension request will be granted for any of the requirements in paragraph (b)(3)(i) of this section unless the request is received at least one week before the applicable due date of the requirement. No more than one extension per year will be granted per requirement in paragraph (b)(3)(i) of this section. The Director, at his discretion, may assign a Major Employer alternative due dates for the requirements of paragraph (b)(3)(i) of this section. If a Major Employer is assigned an alternative due date for any requirement, he shall be notified in writing at least three (3) months prior to his original due date for the requirement.

(iii) A Major Employer shall maintain for a minimum of three years from the due date, records substantiating information in his Trip Reduction Plan and Annual Report and provide the information to the Director within thirty (30) days of request. The Major Employer may assert a business confidentiality claim covering part or all of the information provided the Director. Such a claim shall be made in the manner described in 40 CFR Part 2, Subpart B.

(4) Trip Reduction Goals.

(i) The Trip Reduction Goal to be achieved by a Major Employer within one year of his Effective Date is a 5% reduction in the number of Single Occupant Vehicle Commute Trips determined in his initial survey.

(ii) The Trip Reduction Goal to be achieved by a Major Employer within two years of his Effective Date is a 10% reduction in the number of Single Occupant Vehicle Commute Trips determined in his initial survey.

(iii) After June 1, 1991, the Director may set Trip Reduction Goals. A Major Employer shall be required to meet the new goals no earlier than one year after the Director revises the goal.

(c) *Violations.* Failure of a Major Employer to meet any of the requirements of this regulation may subject the Major Employer to enforcement actions by the Director pursuant to section 113 of the Clean Air Act (42 U.S.C. 7413). In addition the following actions may also subject the Major Employer to enforcement action:

(1) Falsifying or misreporting information in the Trip Reduction Plan and Annual Report including result of the annual employee survey.

(2) Failure to implement any part of an approved Trip Reduction Plan.

(3) Failure to meet the Trip Reduction Goal which was the same in the previous three consecutive approved annual Trip Reduction Plans.

(d) *Exemptions.* (1) A Major Employer may apply for an exemption from the requirements of this regulation which may be granted at the descretion of the Director on the following grounds:

(i) A Major Employer that has an Alternative Modes Incentives Program as of the Date of Promulgation that is either required by a condition of development or is voluntary which achieves at least a participation rate of 30% of all Employees at the Worksite in Alternative Modes. In order to obtain this exemption the Major Employer must document the effectiveness of the program annually by performing an employee survey that meets the requirements for employee surveys in the Implementation Guidelines and providing the Director with the results of the survey.

(ii) A Major Employer who hires 100 or more Employees at a Worksite for less than 3 months during a calendar year.

(iii) A Major Employer who is subject to a city or county ordinance which requires the implementation of a Trip Reduction Plan by the Employer. In order for a Major Employer to obtain this exemption, the Director shall first determine that the requirements of the ordinance are at least as effective as this regulation in decreasing SOV Commute Trips to the Major Employer's Worksite.

(2) Requests for exemptions shall be submitted in writing to the Director thirty (30) days after the Effective Date of the regulation for the Major Employer requesting the exemption. All exemptions shall be renewed annually by the same date.

(e) *Maricopa Region Advisory Committee.* (1) The Director may establish a Maricopa Regional Advisory Committee (MRAC).

(2) The MRAC, if established by the Director, may be composed of a maximum of seventeen (17) representatives of Maricopa County jurisdictions, Employers, and citizens and representatives of the Arizona State government. The members may be appointed as below. The Director may appoint members if vacancies are not filled.

(i) The Regional Council of the Maricopa Association of Governments may appoint two members who may be either elected or appointed officials or staff members of the jurisdictions. One member may represent the Cities of Glendale, Chandler, Tempe, Scottsdale, and Mesa and one member may represent the Maricopa jurisdictions with populations of less than 70,000 excluding Maricopa County.

(ii) The Maricopa County Board of Supervisors may appoint one member who may be either an elected or appointed official or staff member of Maricopa County.

(iii) The Phoenix City Council may appoint one member who may be either an elected or appointed official or staff member of the City of Phoenix.

(iv) The chairmen of the Transportation Committees of the Arizona State Legislature may appoint two members, one each, who may be members of the general public who are citizens of the Program Area.

(v) The Governor may appoint two members who may be either an appointed official or staff member of a State agency.

(vi) The Board of the Regional Public Transportation Authority may appoint one member who may be either an appointed official or staff member of the Authority.

(vii) Major Employers and Project Developers and Managers subject to this section may appoint eight members. Three of these eight members may be appointed by the Phoenix Metropolitan Chamber of Commerce. Five of these eight members may be appointed by the other Chambers of Commerce in the Program Area. The Chambers may select the members in any manner that they choose.

(3) Duties of the MRAC, if established, shall be to advise the Director on implementation of the regulation, on modifications to the regulation as appropriate, on new Trip Reduction Goals after June 1, 1991, and on alternative enforcement procedures and to provide the Director with additional liaison with Maricopa officials, businesses, and citizens on this regulation.

(4) The MRAC, if established, shall meet at a minimum once every other month in Maricopa County or more frequently at its own discretion.

(5) All MRAC meetings shall be open to the public and the committee may from time to time allow members of the general public to address it.

(6) The Chairman of the MRAC shall be elected annually by the members of the MRAC.

(7) Members of the MRAC, if appointed, serve at the pleasure of their appointing bodies. The Director may request the appointing body that a member be removed. Members who fail to attend or fail to send an alternate for two consecutive meetings may be removed and the appointing body may be requested to appoint another member.

(8) Committee members shall receive no reimbursement of their expenses.

(f) *Appeals.* (1) A Major Employer may appeal the following determinations of the Director to the Regional Administrator:

(i) Disapproval of a Trip Reduction Plan and Annual Report after submission as required by paragraph (b)(3)(i)(D)*(1)* of this section;

(ii) Denial of a request for exemption made under paragraph (d) of this section.

(2) Appeals shall be made in writing and shall be made within fifteen (15) days of the receipt of the notice of disapproval or denial specified in paragraph (f)(1) of this section. The appeal shall include a statement of the reasons supporting the appeal and a demonstration that any issues being raised in the appeal were raised to the Director prior to his decision to disapprove or deny. Within a reasonable time following receipt of an appeal, the Regional Administrator shall either grant or deny the appeal.

(3) An appeal to the Regional Administrator pursuant to paragraph (f) of this section is, under 5 U.S.C. 704 and 42 U.S.C. 7607, a prerequisite to the seeking of judicial review of the final agency action. For purposes of judicial review, final agency action occurs when:

(i) The Regional Administrator denies an appeal;

(ii) The Regional Administrator issues a decision on the merits of an appeal that does not include a remand to the Director; or

(iii) Where there has been a remand to the Director, upon completion of remand proceedings, unless the Regional

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Administrators remand instructions specifically provide that appeal of the remand decision be required to exhaust administrative remedies.

(g) *Delegation.* The Administrator shall have the authority to delegate his responsibility for implementing and enforcing the Employer Alternative Modes Incentives Program pursuant to this section to an agency of the State of Arizona, to a regional agency in Maricopa County, or to a local government of Maricopa County or to Maricopa County for implementation and enforcement within its jurisdictional boundary.

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Monday
May 16, 1988

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act; Controlled Business Provisions and Miscellaneous Changes; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-88-1256; FR-1942]

Real Estate Settlement Procedures Act; Controlled Business Provisions and Miscellaneous Changes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA) in response to Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181). Section 461 defined a "controlled business arrangement", added an exemption under Section 8 of RESPA for certain controlled business arrangements, amended provisions on enforcement of Sections 8 and 9 of RESPA and gave the Secretary of HUD specific investigative authority including subpoena authority. HUD proposes a mortgage broker exemption for voluntary payments by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and HUD-1 settlement statement and is not a condition of the loan or other settlement service. HUD also proposes other changes to improve the clarity of the current regulations and to cover provisions of RESPA (*e.g.*, Section 10) which are not covered in the current regulations.

DATE: Comment due date: July 15, 1988.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Office of General Counsel, (202) 755-6550, Room 10248, or Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, (202) 755-6720, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The current 24 CFR Part 3500, also known as Regulation X, was issued on June 4, 1976. It covers most provisions of the Real Estate Settlement Procedures Act of 1974 (RESPA) (Pub. L. 93-533), as amended by the Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94-205).

RESPA contains certain disclosure requirements and restrictions for settlements involving "Federally related mortgage loans." Most sales of one- to four-family residential buildings involve Federally related mortgage loans. For RESPA-covered transactions, a lender must provide to a loan applicant a special information booklet and good faith estimate of certain settlement charges. One day prior to settlement, the person conducting the settlement must, if requested, provide the borrower with a HUD-prescribed settlement statement, known as the HUD-1 settlement statement, completed with information on settlement costs known to such person at that time. At settlement, a fully-completed HUD-1 settlement statement showing actual settlement costs must be made available to borrower and seller. These requirements are in Sections 4 and 5 of RESPA. HUD has used its statutory authority to create narrow exceptions from these sections. RESPA also prohibits a seller from requiring a buyer to use a particular title company (Section 9) and limits the size of lender-held escrow accounts for taxes, insurance and other charges (Section 10). Finally, Section 8 of RESPA prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits splitting of a charge for a setttlement service other than for actual services rendered (*i.e.*, no payment of unearned fees). Violations of Section 8 are enforceable by criminal penalties and injunctions, and Sections 8 and 9 are each enforceable by private actions for damages in Federal or State courts. RESPA has no specific provisions for enforcement of other sections.

Regulation X has not been amended since it was issued in final form on June 4, 1976, except for one change in 1977 regarding an equal opportunity notice (42 FR 19327). HUD needs to conform Regulation X to the most recent amendment of RESPA which is contained in Section 461 of the Housing and Urban-Rural Recovery Act of 1983 ("HURRA") (Pub. L. 98-181). HUD proposes to use this opportunity to make certain other clarifying and editorial changes and to cover provisions of RESPA (*e.g.*, Section 10) which are not covered in the current regulations. The proposed rule should be considered an updating of Regulation X rather than a complete revision.

II. Controlled Business

A. Background

Section 8(a) of RESPA reads:

> No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

Hence, a Section [8] violation requires: (1) Transfer of a thing of value; (2) the transfer must be *pursuant to* an agreement or understanding to refer business incident to or part of a real estate settlement service; and (3) implicitly, there must be an actual referral pursuant to the agreement or understanding. A Section 8 violation can be readily determined where a specific payment [2] is made for a specific referral and there is no other apparent reason (such as rendering of actual services) for the payment. Where a transaction is not identifiably related to a payment, or only to a payment which ordinarily has some other legitimate purpose, such as a corporate dividend, determination of a Section 8 violation is more difficult. Also, where the party receiving the payment is an owner of the party making the payment, as in the case of a corporate dividend, any referral agreement or understanding is unlikely to be expressly stated but may be implicit in the ownership relationship.

[1] Since the "controlled business" issue arises only with respect to Section 8(a), subsequent references in this Section II to "Section 8" generally are references only to Section 8(a).

[2] In this discussion and in the proposed rule, "payment" is synonymous with the statutory term "thing of value" and does not necessarily mean a transfer of money.

These difficulties in applying Section 8 to so-called "controlled business arrangements" were the principal impetus for the 1983 amendment of RESPA through Section 461 of HURRA.

As defined in Section 3(7) of RESPA (added by Section 461 of HURRA), a "controlled business arrangement" is an arrangement in which a person "who is in a position to refer business incident to or a part of a settlement service involving a Federally related mortgage loan" (or an "associate" of that person) refers such business to a provider thereof in which the referring person (or an "associate" of that person) has either an "affiliate relationship" or a 1% or larger "direct or beneficial" ownership interest. "Associate" is defined in a new Section 3(8) of RESPA and includes various personal and business relationships.

HUD currently has no regulatory position concerning the legality of controlled business arrangements under Section 8 of RESPA, except to the extent that Regulation X indicates that payment of dividends or distribution of partnership profits may constitute the transfer of a "thing of value" required for a Section 8 violation (§ 3500.14(b) and Appendix B, Illustration No. 10). Illustration No. 10 gives specific examples of illegal dividend schemes or partnership distribution schemes: if the dividends, amount of stock or share of partnership profits varied in proportion to actual or anticipated referrals by the owner/partner, or if funds were retained for subsequent distribution in proportion to the amount of referred business. However, there is no stated HUD position on the legality of controlled business arrangements where payments are less obviously part of referral agreements or understandings. A purpose of this proposed rule is to propose such a position in conformity to Section 461 of HURRA.

B. Legislative Response

The Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs held hearings on the "controlled business" question on September 15-16, 1981. By May 1982 the House Committee had reported H.R. 6296 which contained "controlled business" amendments to RESPA (Section 516); Section 516 of H.R. 1 introduced in 1983 was identical.[3] The eventual provision (Section 461 of HURRA) is similar to this Section 516.

As amended, RESPA now defines a controlled business arrangement in the definitions section (Section 3(7)) and contains a new exemption to Section 8 for controlled business arrangements which meet certain tests (Section 8(c)(4)). Nothing in RESPA explicitly states that controlled business arrangements are barred by RESPA, but the structure of the legislative amendment and the accompanying House Report language compels the conclusion that Congress regards the existing prohibition in Section 8 as a sufficient legal basis for HUD sanctions against controlled business arrangements, so that a compensated referral agreement can be inferred from the mere fact of a controlled business arrangement and an ordinary dividend structure. The question which HUD had left open regarding controlled business arrangements where the "return on capital" did *not* vary in proportion to referrals is addressed in only the third of three required elements of the new exemption. Irrespective of the nature or method of calculation of payments in a controlled business arrangement, the other two elements usually must be satisfied to benefit from the exemption. Unless failure to comply with one or both of the other elements is itself sufficient to raise a question of a Section 8 violation, the exemption would have no point.

C. Issues

Two basic questions are posed by the controlled business arrangement amendment. First, are controlled business arrangements *per se* Section 8 violations unless all tests for the exemption are met (*i.e.*, is the new Section 8(c)(4) exemption merely a "safe harbor" ensuring legality, or a statement of the *only legal form* of controlled business arrangement?). Second, should HUD provide an explicit regulatory exemption broader than the statutory one?

While the existence of a controlled business arrangement probably must raise the *presumption* of a Section 8 violation for the controlled business arrangement exemption to make sense, it is HUD's view that there is little legal or factual justification for viewing a controlled business arrangement which fails to meet all elements of the new exemption as a *per se* Section 8 violation (*i.e.*, legal only if the elements of the new exemption are satisfied). Under that approach, no factual showing by either the provider of settlement services or incidental business or the owner of the provider could defeat the conclusions that, given any referral by the owner or an "associate" of the owner, a referral agreement exists and any dividend or similar return on ownership interests is a payment pursuant to that agreement. These conclusions would be enshrined in the regulations no matter how minor the proportion of referral business, the actual circumstances leading to the referral, the relation in time between referral and period of business on which any dividends or other payments were based, whether there are any dividends or other payments, whether the referring party (if an "associate") knew of the controlled business arrangement, or other factors. If Congress wanted this result it could easily have modified Section 8(a) or otherwise stated directly that some or all controlled business arrangements were always illegal without regard to Section 8(a). The RESPA amendments passed in 1983 do not compel this reading.

HUD is proposing in this rule to interpret and clarify the statute and not significantly expand the statutory exemption or reverse Congress' presumptions. HUD will rely heavily on public comments in making its final determination on whether the regulation should differ from the statute in more respects. Specific comments are solicited concerning the need and justification for any additional exemptions beyond the scope of the statutory exemption, or for narrower scope for the presumption of illegality stated in proposed § 3500.15(a) and discussed below. Of course, HUD has no discretion to narrow the statutory exemption.

Definitions are proposed (in § 3500.15(c)) for these terms: "associate" (using the statutory definition), "affiliate relationship" (using the definition suggested in the 1983 House Report), "beneficial ownership" (using the definition suggested in the 1983 House Report), "control" (a term used in the "associate" definition, with a proposed definition similar to the definition in Section 604(1) of the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. 3603(1)), "direct ownership" and "franchise"/"franchisor"/"franchisee" (using as proposed definition the Federal Trade Commission definitions in 16 CFR 436.2). HUD also considered the need to define the term "controlled

[3] House Reports were issued in 1982 and 1983 which shed some light on the RESPA amendment (H.R. Rep. No. 532, 97th Cong. 2d Sess. (1982), pp. 51-57; H.R. Rep. No. 123, 98th Cong., 1st Sess. (1983), pp. 75-8, 131-2). They are referred to as the "1983 House Report" and the "1982 House Report" in the text. The hearings transcript also contains valuable background material. The only other legislative history is an exchange on the House floor regarding the "good faith" defense to a failure to make disclosures required for the new controlled business arrangement exemption, 129 Cong. Rec. H10514 (daily ed. November 18, 1983).

business arrangement" in Regulation X but does not propose to define such term. Because illegal activity under Section 8 consists of the giving and receipt of certain "things of value", rather than the existence of certain business "arrangements", HUD believes that it may be misleading to focus on the presence or absence of arrangements. The controlled business arrangement statutory definition is quite expansive and includes arrangements which may involve payments which raise no apparent Section 8 issues. The current regulation would be more usefully amended by specifying which *payments* which would occur in a controlled business arrangement should be presumed Section 8 violations. Comments are invited concerning these and any other "definitions" questions which should be addressed in the "controlled business" amendments to Regulation X.

HUD proposes to implement the "controlled business" statutory provisions in a new § 3500.15 of Regulation X.

Section 3500.15(a) Controlled business arrangements. In lieu of using the term "controlled business arrangement", this new paragraph would state a presumption of violation of Section 8 whenever a thing of value (*e.g.*, a dividend) is paid by a business entity to any person with which it has an "affiliate relationship" or to an owner of greater than a 1% interest *if* (1) the person receiving the payment is a real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent or other person deriving a significant portion of the person's gross income from providing settlement services or business incident thereto or a part thereof, and (2) if the person receiving the payment or an associate of such person has referred settlement business to the person making the payment. As well, payments in these circumstances to a franchisee by a franchisor ("downstream" payments such as cash advances) or to a franchisor by a franchisee (*e.g.*, royalties) would be presumptive violations. This approach involves a paraphrase of the statutory "controlled business arrangement" definition with a focus on the payment rather than on the "arrangement". Questions raised by the proposed § 3500.15(a), on which comment is invited, are—

1. Who is a "person in a position to refer business incident to or part of a real estate settlement service"? As indicated above, such a person (or an associate of such a person) would need to make a referral in order for the statutory definition of "controlled business arrangement" to apply. While the phrase could literally mean any person, this would make the statutory language unnecessary. Congress apparently intended to address a limited class of "controlled business" referrals. The 1982 House Report (p. 53) indicates that the phrase referred to a real estate broker or agent, lender, builder or developer, or attorney—all persons whom homebuyers often might approach for referrals to settlement services providers and therefore persons more likely to have dividends and similar payments which might be related to referrals. For purposes of the "presumption" approach adopted in the proposed rule, HUD has elected not to use the phrase "person in a position to refer settlement services," but rather to limit the broadly worded statutory class to real estate brokers or agents, lenders, mortgage brokers, builders or developers, attorneys, title companies, title agents, or other persons deriving a significant portion of their gross income from providing settlement services. Comment is invited on this approach, as well as on the question of what is a "significant portion of gross income".

2. What is an "ownership interest" of more than 1%? The statutory definition of controlled business arrangement does not apply if the "person in a position to refer" (or associate) does not have an ownership interest greater than 1% in the settlement services provider receiving the referral. Since the focus of Section 8 is on illegal payments, the proposed rule would apply this test to payments (*e.g.*, more than 1% of total dividends) rather than using other possible tests such as control or voting rights. HUD has some concern that the 1% figure used in the statute may be unnecessarily low and invites comment on the possible use of HUD's exemptive authority to state a higher threshold ownership interest.

3. Is it necessary to cover "affiliate relationships"? The statutory controlled business arrangement definition covers referrals by persons with "affiliate relationships" with the provider receiving referrals in addition to ownership relationships. The 1983 House Report describes these relationships (p. 76) and indicates that the phrase covers situations of "control" among business entities, which are also included in the "associate" definition. Because of the overlap with the definition of "associate", the reference to "affiliate relationships" may not add any significant group of payments which should be presumptive Section 8 violations. The proposed § 3500.15(a) references "affiliate relationships". HUD seeks examples of cases where omission of the term "affiliate relationship" would have a significant effect.

4. What time period is relevant for the referral? Under § 3500.15(a) a payment would only be presumptively illegal if a referral were made, and Section 8(a) of RESPA implicitly requires a referral as an element of a violation. In order for the presumption to be reasonable, the referral should occur during some period relevant to the payment in question. HUD proposes that, in order to raise the presumption of § 3500.15(a), the referral must have occurred after publication of the proposed rule, so that interested persons could have had an indication of HUD's views on the statutory requirements through this proposed rule, and also after (if later) the date of any previous presumptively illegal payment. For example, if a person received quarterly dividends but neither that person nor any associate received any other payments from a company, a key question to determine legality of the dividend would be whether the person or an associate referred any business to the company since payment of the last quarterly dividend. If not, § 3500.15(a) would raise no presumption of illegality regarding that payment "required".

Section 3500.15(b) Required use. The concept of "required use" of a particular provider of a settlement service is important for application of the controlled business arrangement exemption contained in section 8(c)(4)(B) of RESPA and § 3500.15(b) of the proposed rule. HUD proposes to incorporate the same concept within the definition of "referral" for purposes of the general anti-kickback prohibition of Section 8 of RESPA, covered in § 3500.14 of the proposed rule. A definition of "required use" appears in proposed § 3500.2(i). HUD takes a broad view of "required use" as covering any situation where the use of a particular provider for a settlement service is a condition of the availability of some other distinct service or property (including situations where the other service or property will otherwise still be available but at a different price). However, only the person paying for a service could be considered the one "required" to use a particular provider of that service.

Section 3500.15(b) Controlled business exemptions. Subsection (b) of proposed § 3500.15 would implement Section 8(c)(4), the new last sentence of Section 8(c), and Section 8(d)(3) of RESPA. The proposed exemption would follow the three-part structure of Section 8(c)(4) with these major elements: (1) A requirement for *disclosure* of the relationship between parties giving and receiving the referral with estimated charges for the referred business, (2) *a bar against required use* of a particular provider (except in specified exceptions) and (3) a *bar against any additional thing of value* paid to the referring party or associate beyond return on ownership interest, return on franchise relationship, or payments otherwise permissible under Section 8(c) of RESPA. Major questions faced in interpreting the new statutory provisions and drafting this proposed exemption were—

1. What needs to be disclosed? When? The exemption requires the referring party to disclose the "existence of * * * [a controlled business] arrangement". Since HUD does not propose to define "controlled business arrangement", HUD proposes a requirement of written disclosure of the *nature* of the relationship between referring party and provider (*e.g.*, owner and subsidiary, spouse of owner or provider, or franchisee of franchiser owned by same company as provider). A written estimate of charges would also be required which would, like the lender good faith estimate required by § 3500.7, use the terminology of the HUD–1 settlement statement. HUD does not propose a particular form for disclosure, although comment on this question and the question of whether both disclosures must be provided on the same piece of paper is invited. Generally, the disclosure would have to be provided no later than the referral (not three days after the triggering event as for the good faith estimate required by § 3500.7 of Regulation X). However, by statute, lenders may provide the disclosure with the good faith estimate; the proposed rule would also permit the controlled business arrangement disclosure to be combined with a statement of fixed borrower settlement charges under § 3500.7(e). Special timing rules are also proposed to cover the instances where certain attorneys may *require* use of a particular provider so that the timing of the referral may be uncertain. (These are special statutory exceptions to the normal rule that the controlled business arrangement exemption is unavailable when use of a particular provider is required.) The proposed rule would provide that if a lender requires use of a particular provider in connection with a loan for which the borrower will pay no closing costs (and thus will receive no good faith estimate) the "referral" would occur upon loan application. For an attorney requiring use of an affiliated title company, the "referral" would occur at that point where the attorney should know that the client representation would involve use of title insurance. The fact that a requirement to use a particular provider is not always prohibited in the context of a controlled business arrangement nor generally prohibited by Section 8 does not preclude possible antitrust liability on the ground of an illegal tie-in.

2. What does the "good faith" exception to the first element of the exemption involve? Section 8(d)(3), which provides that noncompliance with the "disclosure" elements of the exemption does not remove the exemption in certain "good faith" cases, is based on Section 130(c) of the Truth in Lending Act. The proposed rule repeats the statutory provision. The proposed rule further indicates that an error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide error.* The proposed rule does not prescribe required or recommended procedures for disclosure. The proposed rule notes that judicial and administrative precedent under Section 130(c) of the Truth in Lending Act are not determinative for HUD.

3. What is a "return on ownership interest"? This phrase is used in Section 8(c)(4)(C) of RESPA, which is the third element of the exemption. HUD does not consider it possible to prescribe all the typical or acceptable methods of calculating return on the various forms of corporate, partnership and other ownership interests. HUD does propose to make clear that the label given to a payment ("dividend", "partnership distribution") is not determinative and that a payment calculated with direct reference to number or value of referrals (rather than, *e.g.*, total volume of business) is not permissible. The proposed rule would reaffirm the comments to Illustration 10 in the current Appendix B to Regulation X. HUD is particularly interested in examples of possible payments which are "borderline" cases, from actual experience to the extent possible, so that HUD can address in the final rule the questions which are likely to arise.

4. What is a "return on franchise relationship"? This phrase is also used in Section 8(c)(4)(C) of RESPA. As with ownership interests, this is difficult to define affirmatively. The legislative history suggests use of the franchise agreement as a guide. The proposed rule considers it necessary that a payment to or from a franchisee be pursuant to a franchise agreement; however, a franchise agreement cannot insulate true kickbacks or referral fees. The franchise agreement should not be adjusted on the basis of a previous amount of referrals by the franchisor or franchisees. As with ownership interests, franchise payments should not be directly related to number or value of referrals. HUD is particularly interested in learning about the "borderline" cases from actual experience.

5. What time period is relevant for the controlled business arrangement exemption? The first and second elements of the exemption relate to referrals, presumably during some time period. This should be the same time period and thus the same referrals which would trigger the proposed § 3500.15(a), which would create a presumption of illegality for certain payments as discussed above. Proposed § 3500.15(b)(1) discusses the time period. The disclosure (first element) must be provided no later than the time of each referral or if the lender requires use of a particular provider, the time of application. Lenders may satisfy this requirement at the time that the good faith estimate or statement under § 3500.7(e) is provided. An attorney, which requires a client to use a particular title insurance agent, may satisfy the requirement no later than the time the attorney knew or should have known that the client's transaction would require issuance of a title insurance policy. Proposed § 3500.15(b)(1) states that if the three conditions described in §§ 3500.15(b)(1)(i), (ii) and (iii) are satisfied since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business or the date of publication of the proposed rule, then the payment will not be considered a violation of Section 8.

D. Appendix B

New Illustrations 11–14 are proposed to be added to Appendix B of Regulation X in order to illustrate application of the proposed controlled business arrangement provisions to various fact situations. An additional sentence is proposed for the current Illustration 10.

Proposed Illustration 11 would be the most simple "controlled business" situation, and the comments would summarize the proposed § 3500.15, including subsection (b)(1). In proposed Illustration 12, the referring party would be a franchisee of an owner and both dividends to the owner and any payments by the owner/franchisor to its franchisee would be presumed to be illegal unless the relevant exemption was applied. Proposed Illustration 13 would show how indirect ownership (through more than one corporate layer) could result in an "associate"

relationship with a resulting presumption of illegality for payments by the subsidiary company. Franchise relationships unmixed with ownership relationships would be discussed in proposed Illustration 14, in which a franchisee refers business to another franchisee. Such a referral arrangement would not be presumptively illegal under § 3500.15(a), although it would be illegal under § 3500.14(b) if some thing of value were transferred for referrals, such as reciprocal referrals by each franchisee.

III. Section 8—The Graham Case

Since the enactment of RESPA, HUD has considered that the prohibitions of Section 8 of RESPA extended to loan referrals (see illustrations 2 and 7 in 24 CFR Part 3500, Appendix B). Although the making of a loan is not delineated as a "settlement service" in section 3(3) of RESPA, HUD has traditionally taken the position, based on the statutory language, that this list was not to be inclusive of all settlement services.

This rationale is grounded in the following arguments: (1) Making a Federally-related mortgage loan is central to Federal regulation of settlement services; (2) the position that the making of a loan is business incident to or part of a settlement service is based upon a reasonable interpretation of the statute: Congress could not have meant to exclude the making of a mortgage loan; (3) the legislative history indicates that Congress intended to make the scope of RESPA as expansive as possible to deal with the abuses then taking place in the real estate business.

However, some believe that RESPA does not apply to mortgage loans, even though they recognize that the making of a loan is an integral part of the home purchase process. These commentators believe that RESPA was only intended to apply to ancillary services incidental to the settlement. In their view, the exclusion of loans from section 3(3) means that Congress did not intend RESPA to apply to the making of a loan.

The approach was adopted in *United States v. Graham Mortgage Corp.*, 740 F.2d 414 (6th Cir. 1984), *reh den.*, Nos. 83–1628 and 83–1629 (6th Cir., filed September 26, 1984), wherein the Sixth Circuit Court of Appeals refused to follow HUD's interpretation of the scope of Section 8(a) for purposes of a criminal prosecution.

This *Graham* case involved a realty company which was engaged both in traditional brokerage activity and in the purchase, rehabilitation and resale of homes for its own account. A mortgage banker provided interim financing to the realty company for its purchase, rehabilitation and sale of homes for its own account. For each such loan that it received, the realty company agreed to refer to the mortgage banker two loan applicants from its regular brokerage business, in addition to referring the purchaser of the rehabilitated house. The mortgage banker, when making loans to purchasers of the rehabilitated homes, charged the realty company fewer points than it charged other sellers. To recoup the income lost through this reduction in points charged to the realty company, the mortgage banker increased the points charged to sellers in transactions where the buyer-borrower had been referred by the realty company from its regular brokerage business.

On appeal of a conviction under Section 8(a) of the mortgage banking company, certain of its executives, and an executive of the realty company, the Government argued that the transaction came within the prohibitions of Section 8(a) on the theory that the making of a loan is itself a "settlement service" within the meaning of Section 8(a), notwithstanding its absence from the admittedly non-exclusive definition contained in Section 3(3) of RESPA. Finding the statute and the legislative history ambiguous and HUD's administrative interpretations (including informal opinion letters) inconsistent, the Court of Appeals held that, for purposes of a criminal prosecution under Section 8(a), the term "settlement service" did not include the making of a mortgage loan.[4]

Since the *Graham* decision and during the course of its preparation of this proposed rule, the Department has received considerable correspondence urging that it not adopt a regulatory position directly contrary to the Court of Appeals' decision by adopting a definition of "settlement services" that specifically includes "the making of a Federally related mortgage loan." The basis of this recommendation, as stated in one such letter, was a concern that subjecting mortgage financing to the prohibitions in RESPA "may have a serious and negative impact on the secondary mortgage market, and may halt efforts to introduce efficiencies in the mortgage lending process."

The expressed concern regarding halting efforts to introduce efficiencies implicitly assumes that the mortgage marketplace does not need government intermediation and that settlement fees must be similar for competing members of the industry to survive. HUD has been told that borrowers are more sophisticated than ever before and have more accurate information available to make decisions regarding lending related services. While HUD is charged with providing protection to homebuyers, it seeks to avoid promotion of economic inefficiencies or placement of unwelcome burdens on lenders and other participants in the settlement process.

Given the decisions in the *Graham* and *Eisenberg* cases, as well as recent developments in the mortgage lending industry, HUD is seeking comments from the public regarding the extent that RESPA should apply to the making of a loan, or for desirable exceptions that HUD might create. HUD has already responded to informal comments and concerns and is currently proposing liberalization of the previous RESPA rules, with a "mortgage broker exception", and by allowing disclosed voluntary payments by borrowers to mortgage brokers. HUD, therefore, strongly urges additional comments, including economic analysis, regarding these matters.

The term "settlement services" was not defined in the previous RESPA rule (§ 3500.2). HUD now proposes to add a definition of "settlement services" which states that such services are "*any* services provided in connection with settlement." (§ 3500.2(n)). This definition will be restated at the time of publication of the final rule to set forth HUD's determination regarding the making of a loan as a settlement service. Pending implementation of the final rule, HUD will adhere to its longstanding position and continue to enforce RESPA civilly in all federal circuits and will bring criminal prosecutions in every circuit except for the Sixth Circuit (Kentucky, Michigan, Ohio and Tennessee) for violations, including those involving the making of a mortgage loan.

The Department has received numerous letters and telephone calls regarding its position on mortgage broker activities. The Department requests comments on its position regarding mortgage brokers as currently reflected in Illustration 7. Under the current illustration, compensation by a lender to a mortgage broker is permitted only if the mortgage broker performs additional services, such as obtaining credit and appraisal information, and the payment reflects the reasonable value of those services "without reference to the referral value." The

[4] One civil case, *Eisenberg* v. *Comfed Mtge.*, U.S.D.C. for Dist. of Mass. (84–3488–4), adopted without examination the *Graham* reasoning. The Department had no role in this case, and would not have considered the matter complained of—excess points—to have been a RESPA question.

Department recently has received numerous requests for informal advice regarding evolving mortgage origination practices, some of which have urged that the requirement that mortgage brokers perform additional services introduces an unwarranted inefficiency into the process. Others have suggested that abusive mortgage brokering practices are developing and that HUD needs to clarify the regulations and discuss permissible practices. Moreover, HUD questions whether the dangers of abuse of position which Congress sought to prevent are presented by mortgage brokers who are not otherwise involved in the transaction and/or are approached by borrowers for the explicit purpose of being brought together with a lender. When a borrower decides to deal with and pay a mortgage broker the cost of the referral is clearly separable from the cost of the loan and a borrower will be aware that a referral fee can be avoided entirely if the borrower chooses to locate and approach mortgage lenders directly.

In an informal legal opinion given by former General Counsel John Knapp dated April 24, 1986, HUD approved a mortgage brokerage program involving voluntary payments by borrowers to persons who assisted in bringing the lender and borrower together. The voluntary payment was to be disclosed on both the good faith estimate of settlement costs and HUD–1 settlement statement and was not a condition of the loan or other settlement service. The Department continues to believe that this practice does not violate Section 8 of RESPA. Because this is a complex issue and other variations on this program may be developing, we strongly urge public comment on this issue and request examples of potential or actual problems caused by this opinion.

To clarify the issue within the framework of the regulation HUD is proposing a mortgage broker exemption at § 3500.14(h)(6) for a voluntary payment by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and HUD–1 settlement statement and is not a condition of the loan or other settlement statement service. This exemption is referenced in revised Illustration 7 of Appendix B and the required disclosure of mortgage broker fees form is set forth in proposed new Appendix D to Regulation X. The Mortgage Broker Fee Disclosure Form is to be attached to the good faith estimate. HUD is considering the practical and logistical issues raised by this proposed form. For example, should the good Faith Estimate Form (Appendix C) be combined with the Mortgage Broker Fee Disclosure form (Appendix D) or should mortgage broker fee disclosure language be included with the other mandatory good faith estimate language in § 3500.7(c)? HUD requests any alternative proposals which would be less burdensome and more in conformance with actual business practices.

HUD is also considering adding an explicit exemption in § 3500.14 for a "payment by a lender to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such person has not otherwise acted as a provider of settlement services in connection with the transaction and has not received any other compensation or thing of value from the borrower, the seller, the builder, or any other person for services related to the transaction." This proposed exemption could be considered an extension of the exemption already extended by Section 8(c)(1)(C) of RESPA to the payment of a fee "by a lender to its duly appointed agent for services actually performed in the making of a loan." Any mortgage broker exemption will be adopted only after consultation with the Attorney General, the Administrator of Veterans' Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture.[5] HUD intends to begin this consultation process after publication of this proposed rule but anticipates that the consultation will also encompass consideration by such other agencies, as well as by HUD, of public comments received on the proposal.

A mortgage broker exemption would not make compensated loan referrals by persons who are otherwise involved in the transaction *per se* or even presumptively illegal under Section 8. Instead, it would leave the legality of such compensation dependent upon a determination of the reasonableness of the charge in relation to the value of the service. (Under the mortgage broker exemption mentioned above, a determination of reasonableness of the broker's compensation is not required. HUD anticipates that market competition among lenders based on cost of the loan package to borrowers will provide an effective and adequate source of restraint on fees paid to mortgage brokers.)

As indicated above, HUD in recent months has received numerous requests for informal advice regarding the possible application of Section 8 of RESPA to various loan origination practices, including computerized loan information and origination service networks and use of mortgage brokers paid directly by borrowers, and has been able to respond affirmatively to most such requests on the basis of its pre-*Graham* position. Therefore, HUD does not believe that continued adherence to that position, as reflected in the proposed rule, will interfere with continuing efforts to introduce efficiencies into the mortgage origination process.

HUD solicits comment on application of Section 8 to the mortgage loan origination process, including suggestions as to additional circumstances that might usefully be treated by Illustrations in Appendix B. HUD is especially concerned about Section 8 enforcement matters and intends to pursue violations demonstrated in Illustrations in Appendix B as part of its stepped-up enforcement policy.

IV. Other Provisions of RESPA

The current Regulation X makes no mention of Sections 9, 10, 16, 17, or 19(c) of RESPA. (Section 11 does not pertain to HUD, while Sections 13, 14 and 15 require reports of demonstration projects by HUD and do not impose obligations on any other party). All other sections of RESPA are covered by Regulation X. HUD is proposing interpretive regulations for Section 9(a) (seller cannot require buyer to use particular title company—proposed § 3500.16) and Section 10 (limitations on escrow accounts—proposed § 3500.17). Sections 9(b) (liability for violation of 9(a)—proposed § 3500.19(c)), 16 (court jurisdiction—proposed § 3500.19(d)), 17 (effect on contracts and liens—proposed § 3500.18) and 19(c) (new investigative

[5] It should be noted that the Mortgage Broker exemption does not comport with current Federal Housing Administration rules, specifically 24 CFR 203.1(b) which states as follows:

(b) *Prohibited payments.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other compensation from the mortgagor, the seller, the builder, or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner. The mortgagee shall not pay a referral fee to any person or organization.

Comments are requested as to whether the FHA rule should also be altered so as to encompass a mortgage broker exemption.

and subpoena authority—proposed

accounts to permit them to determine lender compliance and require

There is also no uniform nationwide point in a transaction at which a

of one-day advance review of the HUD–1 settlement statement on the term

of the HUD Secretary under RESPA is

exemption would be added for property

and subpoena authority—proposed § 3500.19(e)) need no interpretation but HUD is proposing to incorporate them nearly verbatim in Regulation X so that it would cover all parts of RESPA relevant to private parties, thereby avoiding the need for them to consult both the statute and Regulation X.

HUD issued an Advance Notice of Proposed Rulemaking in 1978 requesting comments on various matters including regulations for Section 9 and Section 10 (43 FR 39701). With regard to Section 9, most commenters opposed a regulation with one or more of these objections: Section 9 itself is adequate, States adequately regulate the area, there were no known abuses in the area, and (most common) "clarifying" regulations tend to confuse rather than clarify. HUD took no action following the 1978 ANPR. If HUD repeated Section 9 verbatim in Regulation X, none of these objections would be relevant. HUD invites comments generally on what clarifications or interpretations of Section 9, if any, would be desirable as opposed to a verbatim incorporation of Section 9 in the regulations. In addition to a verbatim incorporation, HUD is proposing to incorporate only one position which HUD has repeatedly stated in unofficial staff interpretations—that sellers who choose and pay the title company do not violate Section 9 as long as they do not indirectly recover the cost from the buyer as a separate charge or a specific adjustment to the sales price. The concept of "required use" is central to Section 9 and the new § 3500.14(g) discussed above would also be applicable here.

The majority of commenters also opposed a regulation for Section 10, generally on the grounds that no escrow account abuses existed, that State requirements to pay interest kept escrow accounts to a minimum and the requirements of the Federal Home Loan Bank Board were stricter. However, a significant minority of commenters contended that Section 10 was unclear, incomprehensible or too complex and encouraged clarifying regulations. HUD proposes to reward Section 10 requirements to improve their clarity and proposes a new § 3500.17 for this purpose. The regulation would apply to all Federally related mortgage loans, whenever made, except those which are in classes exempt from Regulation X disclosure requirements under § 3500.5(c). Since no specific enforcement mechanism is provided to HUD with respect to Section 10, HUD believes it is important that borrowers have adequate information about their accounts to permit them to determine lender compliance and require correction in case of noncompliance. To ensure borrowers are provided with annual escrow information, HUD has considered requiring an annual lender statement on escrow account status. It would be based in part on State statutes, particularly Cal. Civil Code § 2954.2 (Deering 1986 Supp.), Iowa Code Ann. § 524.905(2) (West 1986–7 Cum. Supp.) and Mich. Stat. Ann. § 26.575(1) (Callaghan 1982). HUD believes that the actual practice of many lenders may already include an annual escrow account statement. HUD solicits comment on the suggested annual statement requirement and questions whether such a requirement would impose additional or unnecessary paperwork burdens. Additionally, HUD invites comments on the desirability of such regulations, as opposed to verbatim incorporation of section 10.

V. Other Changes to Regulation X

HUD is proposing numerous other changes to Regulation X. Many are minor changes to the current text of Regulation X for such purposes as clarifying terminology, increasing consistent usage of terminology, slight reorganization of provisions or updating, and will not require a change in the behavior of persons who currently comply with Regulation X. A few changes can have a substantive impact. This proposed rule is not a complete revision of Regulation X, nor is it, in general, a proposal to adopt interpretations of RESPA inconsistent with or beyond the scope of the current Regulation X. It is an updating of the rule with the benefit of over thirteen years' experience. Nevertheless, comments on any matters related to Regulation X are welcome and will be reviewed when the final rule is drafted. Specific changes being proposed, on which comment is invited, are described in this section.

Section 3500.2 Definitions. HUD is proposing to revise some of the existing definitions and to add a number of new definitions in addition to the controlled business arrangement-related definitions previously discussed and contained in § 3500.15.

1. *Date of settlement.* The current definition uses the date on which the lender's security interest becomes effective. The right of one-day advance review of the HUD–1 settlement statement is keyed to this date (see § 3500.10) and that right could be meaningless if the borrower is required to sign documents and provide cash to the settlement agent prior to the date the security interest becomes effective. There is also no uniform nationwide point in a transaction at which a security interest becomes effective; for example, in some jurisdictions local law could link effectiveness to initial funds disbursement which might be delayed after the commencement of settlement. HUD therefore proposes to redefine "date of settlement" in terms of the date on which the borrower signs the security documents (or the documents obligating the borrower to repay, for construction loans to builders or loans to manufactured home dealers which are converted to permanent financing for the first user of the residence).

2. *Federally related mortgage loan.* Currently this term is defined in § 3500.5(b) in a manner which is deliberately more limited than the statutory definition. Exemptions from statutory coverage are currently included both in the definition and in § 3500.5(d), with some overlap. The proposed rule would use the term only in its full statutory sense, with changes from the statutory language only to the extent necessary to interpret ambiguous statutory language such as "residential real property." Exemptions of some classes of loans from the "disclosure" and escrow account provisions of Regulation X would continue to be listed in § 3500.5. The proposed definition would give a broad meaning to the term "residential real estate loan" as that term is used in § 3500.2(b)(2)(iv) in conformity with the prevailing HUD interpretation.

3. *Good faith estimate.* The term would be defined for the first time.

4. *HUD–1 settlement statement.* This term would be defined for the first time. (The term "Uniform Settlement Statement" would no longer be used under the proposed rule.)

5. *Lender* and *mortgaged property.* These terms are proposed for minor change in the wording but not the substance of the current definition.

6. *Manufactured home.* This new defined term would replace "mobile home" in keeping with current HUD usage.

7. *RESPA* would be redefined to include the 1983 amendment.

8. *Settlement.* This key term for RESPA is currently undefined in both RESPA and Regulation X. It is proposed for definition in two senses: generally as the process of conveying title including rendering of facilitating services, and specifically as the actual exchange of funds and documents. As part of the term "settlement services", for example, both RESPA and Regulation X use the term "settlement" in its general sense while some provisions, such as the right of one-day advance review of the HUD–1 settlement statement or the term "settlement agent", use the term "settlement" in its specific sense as an event occurring in a defined time and place.

9. *Settlement agent.* This term would be defined as equivalent to the statutory phrase "person conducting settlement". If no one else is chosen, the Lender would be considered the settlement agent.

10. *Settlement Service.* This term is defined in Section 3(3) of RESPA but is not defined directly in Regulation X. The term appears in five substantive provisions of the statute: Section 5(c), requiring the lender to provide a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement"; Section (8), which prohibits compensation pursuant to any agreement or understanding that "business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person"; Section 8(b), which prohibits splitting of charges "made or received for the rendering of a real estate settlement service * * * other than for services actually performed"; and Sections 3(7) and 8(c)(4)(B), which refer to a provider of settlement services.

Since enactment of RESPA, HUD has considered that the term "settlement service" has the same meaning under all sections of RESPA, and that in all contexts the meaning includes the making of the loan itself. This interpretation is reflected in Regulation X as currently in effect. For example, the charges for which good faith estimates are required to be made include, among other things, items payable in connection with the loan, *e.g.*, "loan origination fees", "loan discounts (*i.e.*, "points"), and "prepaid interest". 24 CFR 3500.7(c) and Part 3500, Appendix A. A definition of "settlement service" is proposed to be added in §3500.2(n) and includes any services provided in connection with settlement.

11. *Special information booklet.* This term would be defined for the first time. The definition would also indicate that the booklet is published in the Federal Register.

12. *Title company.* This term would be defined for the first time by incorporating verbatim Section 3(4) RESPA.

Section 3500.3: No delegation of authority to HUD field offices. This section would be revised to remove obsolete references to HUD field offices and to indicate the appropriate office for public inquiries. All power and authority of the HUD Secretary under RESPA is currently delegated to the Director, Office of Insured Single Family Housing, 47 FR 30853 (July 14, 1982) and 51 FR 43670 (December 3, 1986).

Section 3500.4: Reliance upon rule, regulation or interpretation by HUD. This section now states that Regulation X and its appendices are the *only* "interpretations" of HUD which can provide protection from liability under Section 19(b) of RESPA. Since Section 19(b) mentions rules, regulations *and* interpretations thereof, HUD clearly has the legal authority to take a different approach by issuing other official interpretations of Regulation X on which the public could rely. HUD proposes to modify this section to permit, but not mandate, a procedure of publishing such official interpretations in the Federal Register. Such interpretations would normally be of general applicability rather than directed to a specific case. While such procedures would not necessarily eliminate all unofficial staff responses to specific inquiries, it could reduce staff time spent on repetitive inquiries and, more importantly, reduce the potential for confusion inherent in the the existence of unofficial interpretations issued over many years which are collected and published privately and relied upon by the public despite their non-binding nature and their possible inconsistency with current HUD positions.

Section 3500.4 currently excludes this staff advice from the scope of "official interpretations" on which any person may rely. No change from this position is reflected in the proposed rule being published. However, HUD solicits comment on the question of the effect to be given to staff responses to inquiries. For example, should such advice be given an effect similar to that of an IRS private letter ruling, so that at least the party to whom it is addressed may rely upon it? These questions are particularly critical in the context of Section 8, violation of which may involve criminal penalties as well as civil liability.

Section 3500.5 Coverage of RESPA. As proposed for revision, this section would no longer define "Federally related mortgage loan" (which, as noted, will be defined in § 3500.2(b)) but would serve two purposes: to clarify the meaning of the statutory exclusion of "temporary financing such as a construction loan" (in § 3(1) of RESPA) and to exempt some classes of Federally related mortgage loans from the disclosure provisions and from the escrow account limitations of RESPA/Regulation X. The current exemptions would be retained in substance but in substantially reworded and simplified form. An additional exemption would be added for property purchased primarily for the purpose of investment.

Section 3500.6 Special information booklet. Minor editorial changes are proposed for this section. The sole substantive change proposed is a deletion of the current rule requiring only one special information booklet (and, because of § 3500.7(a), one copy of the good faith estimate) in cases of multiple borrowers. HUD believes each borrower should receive this information in order to fully implement RESPA's objective of consumer information. However, HUD proposes not to require the information to be provided separately to husband and wife or to secondary obligors such as guarantors. HUD recognizes that its proposal differs from Section 121(b) of the Truth in Lending Act in which disclosure to only one primary obligor is required; there is no express or implied equivalent provision in RESPA. HUD requests comments on this change and specifically questions whether this new requirement will create unnecessary and burdensome paperwork without a corresponding benefit.

Section 3500.7 Good faith estimate. A number of substantive revisions are proposed. Most important, HUD proposes a suggested format for the good faith estimate as set forth in a proposed new Appendix C to Regulation X. The current rule and the proposed rule both permit a lender to use any form as long as certain minimum requirements are met, but these minimum requirements would be expanded and made more specific in the proposed rule. In HUD's experience, the good faith estimates actually used by lenders often fail to meet minimum requirements and may not facilitate borrower comparison with the HUD–1 settlement statement even when the current § 3500.7 is complied with. The suggested format in proposed Appendix C, if used, should contribute to lender compliance and borrower comprehension. As under the current rule, the lender will also be permited to use Section L of the HUD–1 settlement statement as long as additional prescribed material is added.

HUD also proposes modifying § 3500.7(e)(2) which requires any lender requiring use of a particular provider of legal or title examination services or title insurance to disclose the existence (but not the nature) of any "business relationship" with the provider. The proposed changes are in proposed § 3500.7(d) and require a disclosure of the *nature* of the relationship (including a non-business relationship) and explain

the meaning of "relationship". HUD's concerns are that insufficient guidance is currently given to lenders as to when disclosure is needed, and that for disclosure to a borrower the *nature* of a relationship is significant information. HUD also proposes to move the recordkeeping requirements of § 3500.7(f) to a new § 3500.10(e). Other minor editorial changes are proposed for § 3500.7.

Section 3500.8 Use of HUD–1 settlement statement. Minor editorial changes are proposed for this section. All specific requirements for completion of the HUD–1 settlement statement would be contained in revised instructions in Appendix A to Regulation X. Part of the current paragraph (c) would be incorporated into § 3500.10(b) and the remainder would be incorporated into § 3500.10(e). Allowable modifications to the HUD–1 Settlement Statement for certain reporting aspects of the Tax Reform Act of 1986 are published at 52 FR 29782, June 3, 1987.

Section 3500.9 Reproduction of HUD–1 settlement statement. Minor editorial changes are proposed for this section.

Section 3500.10 Inspection and delivery of HUD–1 settlement statement. Currently lenders must keep completed HUD–1 settlement statements for two years after the date of settlement. Since the statute of limitations for Section 8 actions by the HUD Secretary or an Attorney General or insurance commissioner of a State has been extended to three years, the proposed paragraph (e) would also extend the recordkeeping requirement to three years. Paragraphs (b) and (e) are each proposed to include parts of the current § 3500.8(c). In keeping with the change to § 3500.6, each borrower and seller would be entitled to a copy of the HUD–1, but a copy need not be provided separately to both husband and wife or to secondary obligors such as guarantors. HUD requests comments on this change and specifically questions whether this new requirement will create unnecessary and burdensome paperwork without a corresponding benefit.

Section 3500.11 Mailing; Section 3500.12 No fee. Minor editorial changes are proposed for these sections.

Section 3500.13 Relation to State laws. The current section consists primarily of a verbatim repetition of Section 18 of RESPA. The proposed rule would rewrite the requirements of Section 18 for clarity while also incorporating new Section 8(d)(6) of RESPA. It also would set forth HUD's view that the term "State law" as used in Section 18 should properly be read as including State regulations as well as legal enactments by State political subdivisions.

Section 3500.14 Prohibition against kickbacks and unearned fees. In addition to changes discussed in Sections II and III above, a revision of the paragraph structure of the section is proposed to eliminate unnecessary redundancy and quotation of statutory text, as shown in the following chart which compares the current paragraphs in § 3500.14 and the current headings with the equivalent proposed paragraphs and headings.

COMPARISON OF CURRENT AND PROPOSED § 3500.14

Current paragraphs	Proposed paragraphs
No equivalent provision	(a) Section 8 violation (states that violation of rule is violation of statute).
(a) Statutory prohibitions (text of § 8(a)–(d)).	(b) No referral fees (text of Section 8(a) and material from current (d)).
	(c) No split of charges (text of Section 8(b)); text of Section 8(c) not set forth but substance covered in new (i); text of Section 8(d) moved to new § 3500.18.
(b) Thing of value	(d) Thing of value.
(c) Agreement or understanding.	(e) Agreement or understanding (includes new material).
(d) Payment of thing of value for referral of business.	No equivalent provision; material combined with new (b).
(e) Payment for goods or services actually rendered.	No equivalent provision; material combined with new (c).
No equivalent provision	(f) Referral.
(f) Exemptions	(g) Not violations under this section (includes new exemptions, old (f) and some material from old (e)).
	(h) Secondary Market transactions.
No equivalent provision	(i) Appendix B.
(g) Examples of violations under section 8.	

HUD also proposes to revise the current § 3500.14(f)(1), which has been redesignated as § 3500.14(g)(2)(ii) in the proposed rule, to apply to all kinds of insurance which may be a settlement service rather than only title insurance. HUD proposes to delete the current § 3500.14(g)(4) as unnecessary and confusing in light of the new "controlled business" provisions.

Sections 3500.16–18. These proposed new sections are explained in Section IV of this preamble.

Section 3500.19 Enforcement and investigations.

Paragraph (a) would generally explain the manner of enforcement of the various provisions of RESPA. Paragraph (b) would repeat, largely verbatim, Sections 8(d)(1), (2), (4) and (5) of RESPA. Paragraph (c) would repeat, largely verbatim, Section 9(b) of RESPA and note the unavailability of authority to award court costs and attorney's fees in Section 9 actions. It should be noted that while RESPA does not specifically authorize such a recovery pursuant to its own provisions, a buyer may be able to recover court costs and attorney's fees under the Federal Rules of Civil Procedure or other statutory authority. Paragraphs (d) and (e) of this proposed new section set forth Sections 16 and 19(c) of RESPA.

Appendix A. HUD's 1981 report to the Congress, required by section 14 of RESPA, reported that the present instructions for completing the HUD–1 settlement statement contained in Appendix A to Regulation X were "incomplete, imprecise and difficult to understand." In response to these concerns of providers of settlement services and consumers and based upon several informal inquiries which indicate many common errors in completing the HUD–1, HUD proposes to revise the instructions considerably. Because most of these concerns could be addressed through improved instructions, no substantive change in the HUD–1 is proposed. HUD intends to maintain the HUD–1 in its current consumer-oriented form. Lenders and others who reproduce the HUD–1 should be aware that the required OMB number has changed as shown on the form in Appendix A. Future number changes may be announced in the **Federal Register** under the proposed § 3500.9(a)(5). Comments are requested regarding these proposed instructions and other problems with the HUD–1 or the instructions.

Comments are also requested regarding any problems or advantages which would result from reduction in size of the HUD–1. The General Services Administration has requested HUD to convert as many forms as possible to the 8.5" x 11" size. While developing the proposed rule, HUD attempted to reduce the size of the current legal-size HUD–1 but found some drawbacks, *e.g.*, reduction in the number of blank numbered spaces and elimination of the blank space at the bottom of the form.

For clearer terminology, the proposed instructions would use terms which are defined in proposed Regulation X (*i.e.*, date of settlement, settlement, settlement agent). To aid both the settlement agent and the borrower, the proposed instructions would provide guidance for each section and line of the HUD–1. Use of blank lines would also be explained.

Frequently, settlement agents have failed to provide all information required in each line. The proposed instructions would emphasize the insertion of addresses and zip codes in Section F, identification of the person or firm to whom payments have been made and listing of percentage and *per diem* charges. Unlike the current instructions, the proposed instructions for Sections D and E would require all borrowers and sellers to be named on the HUD–1. The proposed instructions would also describe in greater detail the specific settlement charges to be listed in Section L.

The concept of "P.O.C." charges (paid outside of closing) would be clarified to address problems in disclosing charges paid outside of settlement in cases where borrower's deposits are held by a third party who will not serve as the settlement agent but will retain all or part of the deposit as a commission or fee. The current HUD–1 instructions do not assist settlement agents in cases where the settlement agent or someone else holds the borrower's deposit against the sales price (earnest money). Proposed instructions for Lines 201, 501, 506, 507 and 703 and P.O.C. items would account for the handling of earnest money deposits.

The proposed instructions would elaborate on certain common methods of financing. For example, proposed instructions for Line 202 would provide for cases involving the use of conversion of temporary financing into permanent financing. The types of settlement charges may vary from other settlements, but the proposed instructions would suggest the HUD–1 should be completed taking into account adjustments and charges related to the temporary and permanent financing which are known at the date of settlement. Lines 204–209 would be used to indicate any seller financing arrangements or other new loans not listed in Line 202.

The proposed instructions revise the treatment of various fees in Lines 801–811 to reflect the current FHA, VA and FmHA practices and procedures. Because FHA, VA and FmHA do not charge application fees, Line 808 should only be used for application fees required by private mortgage insurance companies. VA funding fees should be listed on Line 904 and 905. Proposed instructions for Lines 808–811 would indicate that these lines are to be used to list additional items payable in connection with the loan including fees to mortgage originators or mortgage brokers. Proposed instructions for Lines 902–905 would provide instructions for listing lump sum mortgage insurance premiums. Other items which are either required by the lender to be paid in advance (such as flood insurance, mortgage life insurance, credit life insurance and disability insurance) or paid at settlement but not required to be paid at settlement would be listed on Lines 904 and 905. The proposed instructions would also provide directions for transactions involving more than one attorney (Lines 1100–1113).

Appendix B. New proposed Illustrations Nos. 11–14 are explained in Section II of this preamble.

Appendix C. This proposed new appendix would be a suggested form for the good faith estimate to correspond to the proposed revision of § 3500.7. Comments are requested on this suggested form.

Appendix D. This proposed new appendix would be the required form to disclose mortgage broker fees which are permitted by § 3500.14(g)(6). Comments are requested on this form, including whether it should be required or whether the elements should be included elsewhere.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. While the proposals would have some economic impact on small lenders and other small businesses in a position to refer settlement services business such as builders, real estate brokers or agents and attorneys, the impact is not expected to be substantial. HUD finds that there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

OMB Control Number

The information collection requirements contained in §§ 3500.7, 3500.8, 3500.9, 3500.10, HUD–1 (Appendix A to the proposed rule) and Appendix C of this proposed rule have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0265. The information collection requirements contained in Appendix D of this proposed rule have been submitted to OMB under the provisions of the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with this information collection requirement until it has been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Regulatory Impact Analysis

The proposed rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers; individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda of Regulations

This rule was listed at 56 FR 13867 as item #897 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Condominiums, Cooperatives, Housing, Mortgages, Real property acquisition.

Accordingly, 24 CFR Chapter XX would be amended by revising Part 3500 to read as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

Sec.
3500.1 Designation.
3500.2 Definitions.
3500.3 No delegation of authority to HUD field offices.

Sec.
3500.4 Reliance upon rule, regulation or interpretation by HUD.
3500.5 Coverage of RESPA.
3500.6 Special information booklet of loan application.
3500.7 Good faith estimate.
3500.8 Use of HUD–1 settlement statement.
3500.9 Reproduction of HUD–1 settlement statement.
3500.10 One day advance inspection of HUD–1 settlement statement; delivery; recordkeeping.
3500.11 Mailing.
3500.12 No fee.
3500.13 Relation to State laws.
3500.14 Prohibition against kickbacks and unearned fees.
3500.15 Controlled business arrangements.
3500.16 Title companies.
3500.17 Escrow accounts.
3500.18 Validity of contracts and liens.
3500.19 Enforcement and investigations.
Appendix A—Instructions for Completing HUD–1 Settlement Statement
Appendix B—Illustration of Requirements of Section 8
Appendix C—Sample Form of Good Faith Estimate
Appendix D—Mortgage Broker Fee Disclosure Form

Authority: Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533 (12 U.S.C. 2601 *et seq.*), Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94–205), section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181).

§ 3500.1 Designation.

As used in this Part: This Part may be referred to as Regulation X.

§ 3500.2 Definitions.

As used in this Part:

(a) "Date of Settlement" means the date on which a borrower executes the documents which will give the lender a lien on the mortgaged property, except that in the case of a loan made to finance construction of a new structure or purchase of a manufactured home for resale which is used as or converted to a loan to finance purchase by the first user of the structure or manufactured home the date of settlement shall be the date on which the first user executes the documents which will obligate the first user to repay the loan.

(b) "Federally related mortgage loan" means any loan (other than temporary financing) which—

(1) Is secured by a first lien on property:

(i) Upon which there is located, or will be constructed immediately following settlement using proceeds of the loan, a structure designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives (including any related interests such as a share in the cooperative or right to occupancy of the unit)); or

(ii) Upon which there is located, or will be placed immediately following settlement using proceeds of the loan, a manufactured home; and

(2)(i) Is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) Is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) Is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), as such provisions may be amended from time to time, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this section the term "creditor" does not include any agency or instrumentality of any State. A "residential real estate loan" means any loan (including temporary financing) secured by a lien (including a junior lien) on property described in § 3500.2(b)(1) except that such property may also be designed for occupancy by more than four families or may be more than individual cooperative or condominium units.

(c) "Good faith estimate" means the lender's estimate of charges which a borrower is likely to incur in connection with a settlement, prepared in accordance with § 3500.7 of this Part.

(d) "HUD–1 settlement statement" or "HUD–1" means the standard form for the statement of settlement charges which is prescribed by the Secretary pursuant to section 4 of RESPA and which appears in Appendix A to this Part.

(e) "Lender" means the secured creditor or creditors named as such in the debt obligation and document creating the lien. For purposes of § 3500.17 of this Part, "lender" also includes any purchaser of a Federally related mortgage loan.

(f) "Manufactured home" has the meaning given in § 3280.2(a)(16) of this title.

(g) "Mortgaged property" means the property which is security for the Federally related mortgage loan.

(h) "Person" means any individual, corporation, partnership, trust, association or other entity.

(i) "Required use". For purposes of §§ 3500.7(d), 3500.14(f)(2), 3500.15 and 3500.16 of this part, a person is "required" to use a particular provider of a settlement service whenever use of such provider is a condition of the availability to such person of some other distinct service or property and the person will pay for the settlement service of such provider or will pay a charge attributable in whole or in part to such settlement service. A "condition of availability" includes any legally-enforceable requirement (*e.g.*, a provision of a loan agreement or sales contract), any situation where the price of the other service or property will vary according to whether a particular provider is used, any situation where the purchaser must pay for certain additional services or goods unless a particular provider is used (*e.g.*, where a borrower must pay certain lender's attorney's fees only if that attorney does not conduct the settlement), or any situation in which a person would reasonably conclude that no choice of providers is permitted even if there is no express requirement to use a particular provider.

(j) "RESPA" means the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93–533), 12 U.S.C. 2601 *et seq.*, as it may be amended from time to time, including amendments made by the Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94–205) and Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181).

(k) "Secretary" means the Secretary of Housing and Urban Development or any official delegated the authority of the Secretary with respect to RESPA.

(l) "Settlement" means, generally, the process of conveying legal title to residential property to a purchaser who is financing purchase of the property with a Federally related mortgage loan, including the rendering of any services which have as a purpose the facilitating of the conveyance. In some contexts, "settlement" means only the actual collection and distribution of funds and documents related to the conveyance, and may also be known as "closing" or "escrow".

(m) "Settlement agent" means the person conducting the settlement (as defined in the second sentence of the definition of "settlement" in paragraph (1) of this section). If no other person is designated by the lender or the other parties to the settlement, the lender shall be considered the settlement agent.

(n) "Settlement service" means any service provided in connection with settlement.

(o) "Special information booklet" means the booklet prepared by the Secretary pursuant to Section 5 of RESPA to help persons borrowing money to finance the purchase of residential property to understand better the nature and costs of settlement services, in the form most recently published in the **Federal Register**.

(p) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(q) "Title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company.

§ 3500.3 No delegation of authority to HUD field offices.

No authority granted to the Secretary under RESPA has been delegated to HUD field offices. Any questions or suggestions from the public regarding RESPA should be directed to the Office of Insured Single Family Housing, Attention: RESPA, Department of Housing and Urban Development, Room 9278, 451 7th Street, SW., Washington, DC 20410.

§ 3500.4 Reliance upon rule, regulation or interpretation by HUD.

(a) *Statutory provision.* Section 19(b) of RESPA provides: "No provision of this Act or the laws of any State imposing liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

(b) *Rule, regulation or interpretation.* (1) For purposes of section 19(b) of RESPA only the following constitute a "rule, regulation, or interpretation thereof by the Secretary":

(i) All provisions of this part and all Appendices thereto, including the HUD-1 and instructions set forth in Appendix A of this part, but not including any document referred to in this part except to the extent such document is set forth in this part; and

(ii) Any other document which is published in the **Federal Register** by the Secretary which states that it is an "interpretation" for purposes of section 19(b) of RESPA. Such documents are not rules or regulations. Such documents may be revoked or amended by a subsequent document published in the **Federal Register** by the Secretary.

(2) A "rule, regulation, or interpretation thereof by the Secretary" for purposes of section 19(b) of RESPA shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (b)(1) of this section.

(c) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (b)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff. Written requests for such interpretations should be directed to the address indicated in § 3500.3 of this part. Such interpretations provide no protection under section 19(b) of RESPA. HUD staff will not ordinarily issue unofficial interpretations on matters adequately covered by this part or by an official interpretation issued under paragraph (b)(1)(ii) of this section.

§ 3500.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all Federally related mortgage loans except as provided in paragraph (c) of this section.

(b) *Loans to finance construction or purchase of a manufactured home.* The exclusion for temporary financing stated in § 3500.2(b) of this part does not apply to a loan made to finance construction of a new structure or purchase of a manufactured home if—

(1) The structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance transfer of title to the first user, or

(2) The loan either initially has or after completion of construction will have a term of repayment which extends more than two years beyond the date of settlement.

(c) *Exceptions.* Sections 3500.6—3500.11 and 3500.17 of this part do not apply if:

(1) No loan proceeds are used to finance the transfer at settlement of legal title to the property described in § 3500.2(b)(1) of this part (for example, a home improvement loan or refinancing other than refinancing of a land sales contract or installment sales contract to finance transfer of legal title) and no loan proceeds are used to finance construction of a structure or purchase of a manufactured home; or

(2) The property described in § 3500.2(b)(1) exceeds 25 acres or has been purchased or will be purchased for the primary purpose of either resale or investment, provided that property intended to be used at least in part as the borrower's principal residence is not considered property purchased for investment; or

(3) The only transaction of the settlement which involves a Federally related mortgage loan is an assumption of a pre-existing loan or a transfer subject to a pre-existent loan, provided that this exception (3) shall not apply in the case of a pre-existing loan used or converted to a loan to finance transfer of title to the first user. This exception (3) shall not affect the continued application of § 3500.17 of this part for a loan which was already subject to § 3500.17 prior to the settlement.

For the purposes of this paragraph (c), "legal title" means a fee simple estate or a leasehold estate under a perpetual lease, a lease for not less than 99 years which is renewable at the option of the lessee or a lease with a period of not less than 10 years to run beyond the initial maturity date of the Federally related mortgage loan. If a person already holds legal title to property under this definition, then transfer of additional interests in the property to that person (for example, transfer of reversionary interests to a long-term lessee) is not a transfer of legal title.

§ 3500.6 Special information booklet at time of loan application.

(a) *Lender to provide information booklet.* The lender shall provide a copy of the special information booklet to every person from whom the lender receives or for whom it prepares a written application on an application form or forms normally used by the

lender for a Federally related mortgage loan. Where more than one person applies for a loan, the lender shall provide a copy of the special information booklet to each of the persons applying, upon request. Separate copies do not need to be provided to both husband and wife or to secondary obligors such as guarantors. The lender shall supply the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days after the application is received or prepared.

(b) *Revision.* The Secretary may from time to time revise the special information booklet by publishing a notice in the Federal Register.

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible and easily readable.

(d) *Permissible changes.* (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Secretary shall be made other than those specified in this paragraph (d) or any others approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in § 3500.3 of this part, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into other languages.

§ 3500.7 Good faith estimate.

(a) *Lender to provide.* The Lender shall provide the good faith estimate required under this section to every person to whom it must provide a copy of the special information booklet under § 3500.6 of this part by delivering the good faith estimate or placing it in the mail to the loan applicant not later than three business days after the application is received or prepared.

(b) *Content of good faith estimate.* A good faith estimate consists of an estimate, as a dollar amount or range, of each charge which will be listed in Section L (except Line 903 and series 1000 of Section L) of the HUD–1 in accordance with the instructions set forth in Appendix A to this part and the lender anticipates that the borrower will pay at settlement based upon the lender's general experience as to which party normally pays each charge in the locality of the mortgaged property. Each such estimate must be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement, and must be based upon experience in the locality of the mortgaged property. As to each charge with respect to which the lender requires a particular settlement service provider to be used, the lender shall make its estimate based upon the lender's knowledge of the amounts charged by such provider.

(c) *Form of good faith estimate.* The good faith estimate must meet the minimum requirements set forth in this paragraph. A good faith estimate in the suggested form set forth in Appendix C to this part will be in compliance with such requirements except for any additional requirements of paragraph (d) of this section. Other forms may be used, including Section L of the HUD–1 settlement statement, if all required material is included. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, as long as all required material for the good faith estimate is grouped together. The minimum requirements for the good faith estimate are:

(1) The heading "good faith estimate" shall be prominently displayed.

(2) The following four paragraphs or substantially equivalent paragraphs shall be included, except that the second paragraph may be omitted if the lender has determined in good faith that the good faith estimate includes all items which the borrower will be required to pay at settlement:

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates—the actual charges may be more or less.

This form does not cover all items you will be required to pay in cash at settlement, for example, the deposit in an escrow account for payment of real estate taxes and insurance. You may wish to inquire as to the amount of such items.

The numbers listed beside the estimates correspond to the numbered lines contained in the HUD–1 settlement statement which you will be receiving at settlement. The HUD–1 settlement statement will show you the actual cost for items paid at settlement.

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended. Additional information can be found in the special information booklet provided by your lender.

(3) Each charge shall be described using the description from the appropriate line in Section L of the HUD–1 settlement statement or, if a blank line is expected to be used for such item in Section L at settlement, the anticipated description which will be inserted in such line. (See the instructions which are set forth in Appendix A to this part for instructions on completion of Section L.) The appropriate Section L line number and the estimated charge or range of charges shall be shown opposite the item description.

(4) The name of the lender shall be included.

(5) Any information required by paragraph (d) of this section shall be included.

The lender may require additional relevant information, such as the name/signature of the applicant and loan officer, date, and information identifying the loan application and property, as long as the form remains clear and concise and the additional information is not more prominent than the required material.

(d) *Particular providers required by lender.* If the lender requires use of a particular provider of a settlement service and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must clearly state that use of the particular provider is required and that the estimate is based on charges of the designated provider, give the name, address and telephone number of each such provider, and describe the nature of any relationship between each such provider and the lender. For purposes of the preceding sentence, a "relationship" exists if the provider is an associate of the lender, if within the last 12 months the provider has maintained an account with the lender or had an outstanding loan or credit arrangement with the lender, or if the lender has repeatedly used or required borrowers to use the services of the provider within the last 12 months. Section 3500.2(i) of this part defines "required" use of a provider of settlement services.

(e) *Fixed amount.* With respect to a transaction which is described in § 3500.8(c)(2) of this part, in lieu of providing the good faith estimate the lender shall deliver or place in the mail to the borrower not later than three business days after the loan application is received or prepared a statement of the amount of the fixed charge, a statement of the settlement services and other items covered by such charge and, if applicable, the information required by paragraph (d) of this section.

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.8 Use of HUD–1 settlement statement.

(a) *Use by settlement agent.* The settlement agent shall use the HUD–1 settlement statement set forth in Appendix A to this part in every settlement involving a federally related mortgage loan except as provided in paragraph (c) of this section.

(b) *Charges to be stated.* The settlement agent shall complete the HUD–1 in accordance with the instructions set forth in Appendix A to this part.

(c) *RESPA transactions exempt from the use of the HUD–1 settlement statement.* A HUD–1 settlement statement is not required for:

(1) Transactions in which the borrower is not required to pay any charges which would be listed as paid from borrower's funds in Section L of the HUD–1, or

(2) Transactions in which the borrower is required to pay a fixed amount for all charges which would be listed as paid from borrower's funds in Section L of the HUD–1 and the borrower is informed of the fixed amount at the time of loan application.

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.9 Reproduction of HUD–1 settlement statement.

(a) *Permissible changes.* The HUD–1 settlement statement may be reproduced with the following permissible changes and insertions:

(1) The person reproducing the HUD–1 may insert in Section A its business name and/or logotype and may rearrange, but not delete, the other information which appears in Section A.

(2) The name, address and other information regarding the lender and settlement agent may be printed in Sections F and H, respectively.

(3) Reproduction of the HUD–1 must conform to the terminology, sequence and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 which are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be correspondingly shortened. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD–1 may be used for a substitute or new item.

(4) Charges not listed on the HUD–1 but which are customary locally or pursuant to the lender's practice may be inserted in blank spaces; or where existing blank spaces on the HUD–1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD–1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD–1 and do not require prior HUD approval: Size of pages; tint or color of pages; size and style of type or print, vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD–1 contents on separate pages, on the front and back of a single page, or on one continous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of Sections B through I where necessary to accommodate computer printing; and manner of placement on the HUD–1 of the HUD number but not the OMB approval number, neither of which in any case may be deleted from the HUD–1. Any changes in the HUD number or OMB approval number may be announced by notice in the Federal Register rather than by amendment of this rule.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD–1 may be translated into any other language.

(9) An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in real estate settlements, for example, breakdown of payoff figures; a breakdown of the borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between buyer and seller; and the date funds are transferred. If space permits, such information may be added at the end of the HUD–1.

(b) *Written approval.* Any other deviation in the form is only permissible upon receipt of written approval of the Secretary. A request to the Secretary for approval shall be submitted in writing to the address indicated in § 3500.3 of this part, stating the reasons why the applicant believes such deviation is needed. The prescribed form must be used until such approval is received.

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.10 One day advance inspection of HUD–1 settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement.* The settlement agent shall permit the borrower to inspect the HUD–1 settlement statement, completed to set forth those items which are known to the settlement agent at the time of inspection, during the business day immediately preceding the date of settlement. Items related only to the seller's transaction may be omitted.

(b) *Delivery.* The settlement agent shall provide a completed HUD–1 to each borrower, each seller and the lender (if the lender is not the settlement agent), or their agents. Separate copies do not need to be provided to both husband and wife or to secondary obligors such as guarantors. Where borrower's and seller's copies differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 at or before the settlement or place it in the mail no later than three calendar days before the date of settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD–1 no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 shall be mailed or delivered to the borrower, seller and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* Where the borrower or the borrower's agent does not attend the settlement or where the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD–1 for three years after the date of settlement unless the lender disposes of its interest in the mortgage and does not service the mortgage. The lender may permit its copy of the HUD–1 to be delivered to the owner or servicer of the mortgage as a part of the transfer of the loan file. In such case such owner or servicer shall retain the HUD–1 for the remainder of the three-year period. As to each

Federally related mortgage loan which is exempt from the use of the HUD–1 by reason of § 3500.8(c) of this part, the lender shall keep an accurate record for three years of an itemized list of the settlement services provided, the exact charge, if any, which is to be imosed at settlement, and the paragraph (See § 3500.8(c)(1) or (c)(2)) under which the exemption is granted. The Secretary shall have the right to inspect or require copies of records covered by this paragraph (e).

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 3500.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a Federally related mortgage loan made by it (or a loan for the purchase of a manufactured home) for or on account of the preparation and distribution of the HUD–1 settlement statement or statements required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

§ 3500.13 Relation to State laws.

State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. A State law is not inconsistent with RESPA or this part if the State law gives greater protection to a loan applicant, borrower or seller, or if it imposes more stringent limitations on a controlled business arrangement (as defined in section 3(7) of RESPA). The Secretary may determine whether an inconsistency exists upon request of any person or upon the initiative of the Secretary. Any person may request the Secretary to determine whether an inconsistency exists by submitting to the address indicated in § 3500.3 of this part, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Secretary that an inconsistency with State law exists shall be made, after consultation with appropriate Federal agencies, by publication of a notice in the Federal Register. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

§ 3500.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA and is subject to enforcement as such under § 3500.19(b) of this part.

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a settlement service involving a Federally related mortgage loan shall be referred to any person. The fact that the payment of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the payment is prohibited.

(c) *No split of charges except for actual goods or services.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a Federally related mortgage loan other than for services actually performed.

(d) *Thing of value.* "Thing of value" is broadly defined by section 3(2) of RESPA to include any payment, advance, fund, loan, service, or other consideration. Under section 8 of RESPA, a thing of value may be provided either directly or indirectly to a person and can take many forms including, but not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, retained earnings, special bank deposits or accounts, banking terms, special loan or loan guarantee terms, services of all types at special or free rates, referrals of business, and sales or rentals at special prices or rates, trips and payment of another person's expenses. The "payment" is used throughout § 3500.14 and § 3500.15 as synonymous with giving or receiving any "thing of value" and does not require transfer of money.

(e) *Agreement or understanding.* (1) An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct pursuant to with the payor and recipient of the thing of value understand that the payment is in return for the referral of business. A payment that is made repeatedly and is connected in any way which the volume or value of the business referred to the payor by the recipient is presumptively made pursuant to any agreement or understanding for the referral of business.

(2) An agreement or understanding for the referral of business incident to or part of a settlement service does not include any of the following for purposes of this section:

(i) A bona fide employment agreement (including an agreement establishing the relationship between a real estate broker and its real estate agents, even if that relationship may be characterized as one of independent contractor); or

(ii) Any agreement or understanding between an attorney and the attorney's law firm.

(f) *Referral.* (1) A referral includes any action or statement which has the effect of affirmatively influencing the selection by any person of a particular provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (as described in § 3500.2(i)) a particular provider of a settlement service or business incident thereto.

(g) *Not violations under this section.* None of the following shall be considered a violation of this section:

(1) Generally, the payment of a thing of value that bears a reasonable relationship to the value of goods or facilities actually furnished or services actually performed. The payment may be construed as a violation of this section to the extent that the payment exceeds the reasonable value of such goods, facilities or services. The value of a referral (*i.e.*, the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. While calculation of a payment as a percentage of loan amount does not necessarily result in payments in excess of reasonable value, it may have this result when the good, facility or service does not vary significantly regardless of loan amount and when comparable goods, facilities or services are available from other sources which do not calculate payments as a percentage of loan amount.

(2) Payment—

(i) to attorneys for services actually rendered, or

(ii) by a title company or other insurance company to its duly appointed agent for services actually performed in the issuance of a policy of insurance, or

(iii) by a lender to its duly appointed agent for services actually performed in the making of a loan.

(3) Payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers.

(4) Normal promotional and educational activities that are not directly conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto, such as a reception by a title company, free seminars on title matters to professionals, furnishing property descriptions and names of record owners without charge to persons such as lenders, real estate brokers or attorneys, or distribution of calendars and other promotional material of nominal value.

(5) The waiver by a lender of the requirement that a borrower pay a prepayment penalty provided in loan documents, whether or not such waiver is conditioned upon receipt by the lender of a loan application from, or the making of a loan to, such borrower or a person purchasing a property from such borrower.

(6) Voluntary payment by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and the HUD–1 settlement statement and is not a condition of the loan or other settlement service.

(h) *Secondary Market Transactions.* Section 8 of RESPA and this section do not apply to sales of loans or commitments to sell loans after settlement.

(i) *Appendix B.* Illustrations 1–10 of Appendix B illustrate the requirements of this section.

§ 3500.15 Controlled business arrangements.

(a) *General.* Any payment of a thing of value by a business entity to any person with which it has an affiliate relationship or to a holder of a direct or beneficial ownership interest of more than one percent in the business entity (including but not limited to corporate dividends and partnership or joint venture distributions), any payment by a franchisee to a franchisor, and any payment by a franchisor to a franchisee is presumptively made pursuant to an agreement for the referral of business incident to or part of a settlement service. If such a payment is made in connection with a Federally related mortgage loan, it is presumptively a violation of section 8 of RESPA if:

(1) The person receiving the payment (or beneficial owner for whose benefit the payment is received) is a real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent or a person deriving a significant portion of the person's gross income from providing settlement services, or an associate of any of the foregoing; and

(2) The person receiving the payment (or beneficial owner for whose benefit the payment is received) or an associate has referred business incident to or part of a settlement service to the person making the payment since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business under this sentence or the date of publication of this provision in a proposed rule, whichever is later. An ownership interest of more than one percent means a legal right to receive more than one percent of all dividends, partnership or joint venture distributions, or similar payments.

(b) *Exceptions.* Any payment which is presumptively made pursuant to an agreement for the referral of business under paragraph (a) of this section (or any other payment in the context of a "controlled business arrangement" as defined in section 3(7) of RESPA) shall not be considered a violation of section 8 of RESPA:

(1) If the following conditions set forth in paragraphs (b)(1) (i), (ii) and (iii) of this section have all been satisfied since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business under paragraph (a) of this section or the date of publication of this provision as a proposed rule, whichever is later:

(i) The person making each referral has provided to each person whose business is referred both a written disclosure of the nature of the relationship between the provider of settlement services or business incident thereto and the person making the referral and a written estimate of the charge or range of charges generally made by such provider which describes the charge using the same terminology, as far as practical, as Section L of the HUD–1 settlement statement. The disclosures must be provided no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that where a lender makes the referral to a borrower the condition contained in this paragraph (b)(1)(i) may be satisfied as part of and at the time that the good faith estimate or a statement under § 3500.7(e) of this part is provided, and whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm knew or should have known that the client's transaction would require issuance of a title insurance policy. This condition is also satisfied whenever the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with this condition have been maintained throughout the relevant period and that any failure to comply with this condition was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA.

(ii) No person making a referral has required (as defined in § 3500.2(i)) any person to use any particular provider of settlement services or business incident thereto, except (if such person is a lender) for requiring a buyer, borrower or seller to pay for the services of a particular provider such as an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except (if such person is an attorney or law firm) for arranging for issuance of a title insurance policy, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of a client in a real estate transaction.

(iii) The person making the payment has not given any thing of value other than things of value described in the preceding exemptions listed in § 3500.14(g)(1)–(5) of this part or a return on an ownership interest or franchise relationship. Neither the mere labelling

of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a return on an ownership interest or franchise relationship. A return on an ownership interest includes only payments intended as return on capital and does not include any payment which has a basis of calculation or no apparent principal business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals; any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or a payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments. A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous amount of referrals by the franchisor or franchisees.

(c) *Definitions.* As used in this section:

(1) "Associate" means with respect to a particular person—

(A) A spouse, parent or child of such person;

(B) A corporation or other business entity that controls, is controlled by, or is under common control with such person;

(C) An employer, officer, director, partner, franchisor or franchisee of such person; or

(D) Anyone who has an agreement or understanding with such person, the purpose or substantial effect of which is to enable such person to benefit financially from the referral of business incident to or part of a settlement service.

(2) "Affiliate relationship" means the relationship among business entities where one entity has effective control over the other or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent or subsidiary, characterized by an identity of stock ownership.

(3) "Beneficial ownership" means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

(4) "Control", as used in the definitions of "associate" and "affiliate relationship", means that a person—

(A) Is a general partner, officer, director, or employer of another person;

(B) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(C) Controls in any manner the election of a majority of the directors of another person; or

(D) Has contributed more than 20 percent of the capital of the other person.

(5) "Direct ownership" means the holding of legal title to an interest in a provider of settlement services except where title is being held for the beneficial owner.

(6) "Franchise" means any continuing commercial relationship created by any arrangement or arrangements whereby:

(i)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(*1*) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

(*2*) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(B)(*1*) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs; or

(*2*) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs; *Provided, however,* that assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance; or

(ii)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(*1*) Supplied by another person (hereinafter "franchisor"); or

(*2*) Supplied by a third person (*e.g.*, a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(*3*) Supplied by a third person (*e.g.*, a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

(*1*) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(*2*) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(*3*) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (c)(6)(ii)(B) (*1*) and (*2*) of this section; and

(iii) The franchisee is required, as a condition of obtaining or commencing the franchise operation, to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

(iv) Exemptions. The provisions of this part shall not apply to a franchise:

(A) Which is a "fractional franchise" (which means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent not more than 20 percent of the sales in dollar of the franchisee); or

(B) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retail-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly required to do business with by the retailer-grantor or advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(C) Where the total of the payments referred to in paragraph (c)(6)(iii) of this section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than $500; or

(D) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

(v) Exclusions. The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

(A) The relationship between an employer and an employee, or among general business partners; or

(B) Membership in a bona fide "cooperative association"; or

(C) An agreement for the use of a trademark, service mark, trade name, seal, advertising or other commerical symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising, or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(vi) Any relationship which is represented either orally or in writing to be a franchise (as defined in paragraph (c)(6)(i)–(iii) of this section) is subject to the requirements of this part.

(7) "Franchisor" means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (c)(6) of this section.

(8) "Franchisee" means any person who participates in a franchise relationship as a franchisee, as denoted in paragraph (c)(6) of this section, or to whom an interest in a franchise is sold.

(d) *Appendix B.* Illustrations 11–15 of Appendix B illustrate the requirements of this section.

§ 3500.16 Title companies.

No seller of property that will be purchased with the assistance of a Federally related mortgage loan shall require, directly or indirectly, as a condition of selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. Section 3500.2(i) of this part defines "required" use of a provider of a settlement service. Section 3500.19(c) of this part explains the liability of a seller for a violation of this section.

§ 3500.17 Escrow accounts.

(a) *Limitations on settlement deposits and monthly deposits.* If a lender for a Federally related mortgage loan requires a borrower to deposit sums in one or more escrow accounts (also called trust accounts, impound accounts, or similar names) for the purpose of assuring payment of taxes, hazard or mortgage insurance premiums, or other charges with respect to the mortgage property, such sums may not exceed the following:

(1) On or before the date of settlement, a lender may not require a borrower to deposit an aggregate sum in an escrow account in excess of—

(i) A sum that will be sufficient to pay that portion of each charge payable from the escrow account which is attributable to a period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom and ending on the due date of the first full installment payment under the Federally related mortgage loan, and

(ii) One-sixth of an amount which the lender reasonably estimates will be the total amount of charges payable from the escrow account during the twelve-month period following the date of settlement under the normal lending practice of the lender and local custom.

(2) In any month including or following the due date of the first full installment payment under the Federally related mortgage loan, a lender may not require a borrower to deposit an aggregate sum in an escrow account in excess of—

(i) One-twelfth of an amount which the lender reasonably estimates will be the total amount of such charges payable from the escrow account during the ensuing twelve-month period under the normal lending practice of the lender and local custom;

(ii) Such amount as is necessary to maintain an additional balance in such escrow account not to exceed twice the amount calculated under paragraph (a)(2)(i) of this section; and

(iii) Any additional amount which the lender reasonably determines is necessary to avoid or eliminate a deficiency which would preclude full payment from the escrow account of each charge payable from the escrow account on the date a charge would be paid under the normal lending practice of the lender and local custom.

(b) *Normal lending practice.* "Normal lending practice of the lender", as used in paragraph (a) of this section, does not include any lending practice which results in escrow accounts in excess of amounts required by ordinarily prudent lending practice in the locality.

(c) *Example of permitted practices under this section.* For instance, where an annual tax of $1,200 ($100 a month) is paid on March 31 and the date of settlement is June 15 with the first monthly installment due July 1, the lender may require $500 on or before the June 15 settlement. This sum is calculated as follows: The lender is allowed to collect $100 for each month following the date taxes are normally paid (March 31), up to, but not including, the date of the first full mortgage payment (July 1). This constitutes a total of $300 for the months of April, May and June. An additional amount equivalent to two months' payment ($200) may also be required on or before the date of settlement. Thus, on June 15 the lender may require $300 for the "in-between" months and $200 for "cushion", yielding $500. The remaining $700 tax balance is collected at $100 per month for the remaining seven months.

(d) *Loans covered.* Section 10 of RESPA and this section apply to all Federally related mortgage loans, whether made before or after the enactment of RESPA, except for loans covered by the exceptions set forth in § 3500.5(c) of this part.

(e) *Multiple installments.* If a tax or other charge is paid in more than one installment annually, such charge must be paid from a single escrow account instead of separate escrow accounts for different installments.

§ 3500.18 Validity of contracts and liens.

Nothing in RESPA or this part shall affect the validity or enforcement of any sale or contract for the sale of real property or any loan, loan agreement, mortgage or lien made or arising in connection with a Federally related mortgage loan.

§ 3500.19 Enforcement and investigations.

(a) *Manner of enforcement.* RESPA contains specific enforcement provisions only for section 8 and section 9 of RESPA, which correspond to §§ 3500.14, 3500.15 and 3500.16 of this part. The substance of those RESPA enforcement provisions is set forth in this section. The Secretary has taken no position regarding the availability of private causes of action against private parties which violate other provisions of RESPA or this part. It is the policy of the Secretary to cooperate regarding RESPA matters with Federal, State or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition,

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failure to comply with RESPA may be grounds for administrative action by the Secretary under Part 24 of this title concerning debarment, suspension, ineligibility of contractors and grantees, or under Part 25 of this title concerning the Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement which may be legally available.

(b) *Violations of section 8 of RESPA and § 3500.14 of this part.* (1) Any person or persons who violate section 8 of RESPA or § 3500.14 or § 3500.15 of this part shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

(2) Any person or persons who violate the provisions identified in paragraph (b)(1) of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service. For purposes of contemplating the charge paid for a mortgage loan, only the loan origination fee and loan discount are used but not the principal or interest for the loan.

(3) The Secretary or, to the extent authorized by State law, the Attorney General of any State or the insurance commissioner of any State, may bring an action to enjoin violations of such provisions.

(4) In any private action brought pursuant to this paragraph (b), a court may award to the prevailing party the court costs of the action together with reasonable attorney's fees.

(c) *Violations of section 9 of RESPA and § 3500.16 of this part.* Any seller who violates the provisions of section 9 of RESPA or § 3500.16 of this part is liable to the buyer in an amount equal to three times all charges made for the title insurance referred to in § 3500.16. RESPA does not provide for recovery of court costs or attorney's fees in any private action brought pursuant to this paragraph (c).

(d) *Jurisdiction of courts.* Any action pursuant to the provisions of this section may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(e) *Investigations; subpoena authority.* (1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of RESPA, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized by section 19(c) of RESPA to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Under section 19(c) of RESPA, any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Appendix A—Instructions for Completing HUD–1 Settlement Statement

The following are instructions for completing Sections A through L of the HUD–1 settlement statement, required under section 4 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR Part 3500). This form is to be used as a statement of actual charges and adjustments to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. Refer to Regulation X to determine if the HUD–1 is legally required to be used in a particular mortgage loan transaction. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. For this reason, these instructions include various references on handling an assumed existing loan in case of a new second mortgage loan. Refer to the definitions section of Regulation X for specific definitions of many of the terms which are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to Regulation X regarding rules applicable to reproduction of the HUD–1. An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in settlements, for example, a breakdown of payoff figures; a breakdown of the Borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower or Seller by the Lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (*i.e.*, attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided for additional insertions in Sections J and K. The names of the recipients of the settlement charges in Section L and the names of the recipients of adjustments described in Section J or K should be included on the blank lines.

Lines and columns which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be given. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, and zip code of settlement agent; address and zip code of "place of settlement."

Section I. Fill in the date of settlement (as defined in Regulation X).

Section J. Summary of Borrower's Transaction. Line 101 is for the gross sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the gross sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 108 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender or first user loan (a loan to finance construction of a new structure or purchase of a manufactured home where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user). For other loans covered by Regulation X which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities use but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 may indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction) or cash payable to the Borrower at settlement (if, for example, the Borrower's deposit against the sales price (earnest money) exceeded the Borrower's cash obligations in the transaction). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds the deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, and if that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in Section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit which is being disbursed as proceeds and enter in column for Line 506 the amount retained by the above described party for settlement services. If the settlement agent holds the deposit insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Line 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other payoffs of Seller obligations should be shown on Lines 506–509 (but not on Lines 1303–1305). They may also be used to indicate funds to be held by the settlement agent for the payment of water, fuel, or other utility bills which cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements, should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Line 601 and 602 are summary lines for the Seller. Enter total in Line 420 on Line 610. Enter total in Line 520 on Line 602.

Line 603 may indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction) or cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or broker. If the sales commission is based on a percentage of the price, enter the sales price, the percentage, and the dollar amount of the total commission paid by the Seller.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record the fee charged by the Lender for processing or originating the loan. If this fee is computed as a percentage of the loan amount, enter the percentage of the blank indicated.

Line 802 is used to record the loan discount or "points" charged by the Lender, and, if it is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 803 is used for appraisal fees if there is a separate charge for the appraisal. Line 804 is used for credit reports if there is a separate charge for the credit report. Line 805 is used for inspections if there is a separate charge for the inspection. Line 806 is used for mortgage insurance application fees if there is a separate charge for the application fee. Line 807 is used for assumption fees if there is a separate charge for the assumption fee. Line 808 is used for any other charges which the Borrower is paying for the origination of the loan. Lines 809–810 are used for any additional charges which the Borrower is paying for the origination of the loan. Line 811 is for the total of Lines 801 through 810.

Line 901 is used for interest charges which are collected at settlement for the period between the settlement date and the date the first regular payment is due. Line 902 is used for mortgage insurance premiums if they are collected at settlement. Line 903 is used for hazard insurance premiums if they are collected at settlement. Lines 904–905 are used for any additional charges which the Borrower is paying in advance. Line 906 is for the total of Lines 901 through 905.

Line 1001 is used for hazard insurance premiums if they are collected at settlement for the initial escrow account deposit. Line 1002 is used for mortgage insurance premiums if they are collected at settlement for the initial escrow account deposit. Line 1003 is used for city property taxes if they are collected at settlement for the initial escrow account deposit. Line 1004 is used for county property taxes if they are collected at settlement for the initial escrow account deposit. Line 1005 is used for annual assessments if they are collected at settlement for the initial escrow account deposit. Lines 1006–1007 are used for any additional charges which the Borrower is paying for the initial escrow account deposit. Line 1008 is for the total of Lines 1001 through 1007.

Line 1101 is used for settlement or closing fees if there is a separate charge for the settlement or closing. Line 1102 is used for abstract or title search fees if there is a separate charge for the abstract or title search. Line 1103 is used for title examination if there is a separate charge for the title examination. Line 1104 is used for title insurance binder if there is a separate charge for the title insurance binder. Line 1105 is used for document preparation if there is a separate charge for the document preparation. Line 1106 is used for notary fees if there is a separate charge for the notary fees. Line 1107 is used for attorney's fees if there is a separate charge for the attorney's fees. Line 1108 is used for title insurance if there is a separate charge for the title insurance. Lines 1109–1110 are used for any additional charges which the Borrower is paying for settlement services. Line 1111 is for the total of Lines 1101 through 1110.

Line 1201 is used for recording fees if there is a separate charge for the recording fees. Line 1202 is used for city/county tax/stamps if there is a separate charge for the city/county tax/stamps. Line 1203 is used for state tax/stamps if there is a separate charge for the state tax/stamps. Lines 1204–1205 are used for any additional charges which the Borrower is paying for government recording and transfer charges. Line 1206 is for the total of Lines 1201 through 1205.

Line 1301 is used for surveys if there is a separate charge for the survey. Line 1302 is used for pest inspection if there is a separate charge for the pest inspection. Lines 1303–1305 are used for any additional charges which the Borrower is paying for additional settlement services. Line 1306 is for the total of Lines 1301 through 1305.

Line 1400 is for the total settlement charges to Borrower. Enter this amount in Line 103 on Line 1400.

Line 1401 is for the total settlement charges to Seller. Enter this amount in Line 502 on Line 1400.

Section M. Instructions for the use of Lines 1501 through 1506 are the same as those for Lines 1001 through 1006 above.

Line 1507 is for the total of Lines 1501 through 1506.

Section N. Instructions for the use of Lines 1601 through 1606 are the same as those for Lines 1001 through 1006 above.

Line 1607 is for the total of Lines 1601 through 1606.

settlement services in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. Refer to Regulation X to determine if the HUD–1 is legally required to be used in a particular mortgage loan transaction. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. For this reason, these instructions include various references on handling an assumed existing loan in case of a new second mortgage loan. Refer to the definitions section of Regulation X for specific definitions of many of the terms which are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to Regulation X regarding rules applicable to reproduction of the HUD–1. An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in settlements, for example, a breakdown of payoff figures; a breakdown of the Borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower or Seller by the Lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (*i.e.*, attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided for additional insertions in Sections J and K. The names of the recipients of the settlement charges in Section L and the names of the recipients of adjustments described in Section J or K should be included on the blank lines.

Lines and columns which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be given. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, and zip code of settlement agent; address and zip code of "place of settlement."

Section I. Fill in the date of settlement (as defined in Regulation X).

Section J. Summary of Borrower's Transaction. Line 101 is for the gross sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the gross sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 108 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender or first user loan (a loan to finance construction of a new structure or purchase of a manufactured home where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user). For other loans covered by Regulation X which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities use but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 may indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction) or cash payable to the Borrower at settlement (if, for example, the Borrower's deposit against the sales price (earnest money) exceeded the Borrower's cash obligations in the transaction). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds the deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, and if that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in Section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit which is being disbursed as proceeds and enter in column for Line 506 the amount retained by the above described party for settlement services. If the settlement agent holds the deposit insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Line 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other payoffs of Seller obligations should be shown on Lines 506–509 (but not on Lines 1303–1305). They may also be used to indicate funds to be held by the settlement agent for the payment of water, fuel, or other utility bills which cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements, should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Line 601 and 602 are summary lines for the Seller. Enter total in Line 420 on Line 610. Enter total in Line 520 on Line 602.

Line 603 may indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction) or cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or broker. If the sales commission is based on a percentage of the price, enter the sales price, the percentage, and the dollar amount of the total commission paid by the Seller.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record the fee charged by the Lender for processing or originating the loan. If this fee is computed as a percentage of the loan amount, enter the percentage of the blank indicated.

Line 802 is used to record the loan discount or "points" charged by the Lender, and, if it is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 803 is used for appraisal fees if there is a separate charge for the appraisal. Appraisal fees for HUD and VA loans are also included on Line 803.

Line 804 is used for the cost of the credit report if there is a charge separate from the origination fee.

Line 805 is used only for inspections by the Lender or the Lender's agents. Charges for other pest or structural inspections required to be stated by these instructions should be entered in Lines 1301–1305.

Line 806 should be used for an application fee required by a private mortgage insurance company.

Line 807 is provided for convenience in using the form for loan assumption transactions.

Line 808–811 are used to list additional items payable in connection with the loan including fees to mortgage originators or mortgage brokers.

Lines 901–905. This series is used to record the items which the Lender requires (but which are not necessarily paid to the lender, *i.e.*, FHA mortgage insurance premium) to be paid at the time of settlement, other than reserves collected by the Lender and recorded in 1000 series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for all mortgage insurance premiums due and payable at settlement. A lump sum mortgage insurance premium paid at settlement should be inserted on Line 902 with a note which indicates the premium is for the life of the loan and represents the total amount of insurance.

Line 903 is used for hazard insurance premiums which the Lender requires to be paid at time of settlement except reserves collected by the Lender and recorded in the 1000 series.

Lines 904 and 905 are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000 series) including flood insurance, mortgage life insurance, credit life insurance and disability insurance premiums. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1008. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions, this is referred to as an "escrow," "impound," or "trust" account. In addition to the items listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc.

Lines 1100–1113. This series covers title charges, which include a variety of services performed by title companies or others and includes fees directly related to the transfer of title (title examination, title search, document preparation) and fees for title insurance, legal charges (which include fees for Lender's, Seller's or Buyer's attorney, or the attorney preparing title work) and fees for settlement agents and notaries. In many jurisdictions the same person (for example, an attorney or a title insurance company) performs several of the services listed in this series and makes a single undifferentiated charge for such services. In such cases, enter the overall fee on Line 1107 (for attorneys), or Line 1108 (for title companies), and enter on that line the item numbers of the services listed which are covered in the overall fee. If this is done, no amounts should be entered for the individual items which are covered by the overall fee. In transactions involving more than one attorney, one attorney should use Line 1107 and the other attorney should use Line 1111, 1112 or 1113.

Line 1101 is used for the settlement agent's fee.

Lines 1102 and 1103 are used for the fees for the abstract or title search and title examination. In some jurisdictions the same person both searches the title (that is, performs the necessary research in the records) and examines title (that is, makes a determination as to what matters affect title, and provides a title report or opinion). If such a person charges only one fee for both services, it should be entered on Line 1103 unless the person performing these tasks is an attorney or a title company in which case the fees should be entered as described in the general directions for Lines 1100–1113. If separate persons perform these tasks, or if separate charges are made for searching and examination, they should be listed separately.

Line 1104 is used for the title insurance binder which is also known as a commitment to insure.

Line 1105 is used for charges for preparation of deeds, mortgages, notes, etc. If more than one person receives a fee for such work in the same transaction, show the total paid in the appropriate column and the individual charges on the line following the word "to".

Line 1106 is used for the fee charged by a notary public for authenticating the execution of settlement documents.

Line 1107 instructions are discussed in the general directions for Lines 1100–1113.

Lines 1108 and 1110 are used for information regarding title insurance. Enter the total charge for title insurance (except for the cost of the title binder) on Line 1108. Enter on Lines 1109 and 1110 the individual charges for the Lender's and owner's policies. Note that these charges are not carried over into the Borrower's and Seller's columns, since to do so would result in a duplication of the amount in Line 1108. If a combination Lender's/owner's policy is available, show this amount as an additional entry on Lines 1109 and 1110.

Lines 1111–1113 are for the entry of other title charges not already itemized. Examples in some jurisdictions would include a fee to a private tax service, a fee to a county tax collector for a tax certificate, and a fee to a public title registrar for a certificate of title under a "Torrens Act.

Lines 1201–1205 are used for government recording and transfer charges. Recording and transfer charges should be itemized. Additional recording or transfer charges should be listed on Lines 1204 and 1205.

Lines 1301 and 1302 are used for fees for survey and pest inspection.

Lines 1303–1305 are used for any other settlement charges not referrable to the categories listed above on the HUD–1, which are required to be stated by these instructions. Examples may include structural inspections or pre-sale inspection of heating, plumbing, or electrical equipment. These inspection charges may include a fee for insurance or warranty coverage.

Line 1400 is for the total settlement charges paid from Borrower's funds and Seller's funds. These totals are also entered on Lines 103 and 502, respectively, in Sections J and K.

(Approved by the Office of Management and Budget under control number 2502–0265)

Appendix B—Illustration of Requirements of Section 8

The following illustrations provide additional guidance on the meaning and coverage of section 8 of RESPA. While particular illustrations may refer to particular providers of settlement services, such illustrations are applicable by analogy to providers of settlement services other than those specifically mentioned. Other provisions of Federal or State law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts.* A, a provider of settlement services, maintains an abnormally large balance in a non-interest bearing account with B, a mortgage lender, pursuant to an understanding that B will refer borrowers of Federally related mortgage loans to A for the purchase of settlement services involving such loans.

Comments. Allowing B to use the deposited funds at no interest is a thing of value given by A to B pursuant to an agreement or understanding that business incident to or part of a settlement service shall be referred to A in violation of section 8 of RESPA. The maintenance of any accounts reasonably needed by A in the normal course of its business would not be a violation of section 8.

2. *Facts.* B, a lender of Federally related mortgage loans, pays A, a real estate agent, a fee of $25 per transaction purportedly for services performed such as arranging for B's appraiser to visit the property. The purported services for which the fee is paid are services that real estate agents frequently perform as part of their services and the fee is really intended to enable B to compensate A for referring potential borrowers to B.

Comments. Both A and B are in violation of section 8 of RESPA, since the fee is being paid in compensation for the referral of business rather than for legitimate services actually rendered by B on behalf of A.

3. *Facts.* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments. The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business and both A and B are in violation of section 8 of RESPA. Similarly, section 8 would be violated if a title company gives a discount or allowance for the prompt payment of a title insurance premium or other charge for a settlement service to a real estate agent, attorney or lender as a rebate for the placement of business with such title company.

4. *Facts.* B, a lender, encourages persons who receive Federally related mortgage loans from it to employ A, an attorney, to search title and perform related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A will provide legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments. Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender or a real estate agent who only referred a prospective client to the attorney, section 8 would be violated by both individuals.

5. *Facts.* A, a provider of settlement services, pays referral fees to persons who refer settlement services business on commercial real estate to A.

Comments. While commercial transactions are not covered by RESPA, the payment of such referral fees would be a violation of section 8 if they involve indirect compensation for the referral of settlement services business covered by RESPA.

6. *Facts.* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, a title company, for the purchase of title insurance services. A fills out a simple form (*i.e.*, application form) but performs no other services in connection with the issuance of the title insurance policy. B pays A a commission (or pays a portion of the title insurance premium) for the transactions.

Comments. The payment of a commission or portion of the title insurance premium by B to A under circumstances where no substantial services are being provided by A to B is a violation of section 8 of RESPA.

7. *Facts.* A, a "mortgage originator" or "mortgage broker", receives loan applications and refers borrowers to lenders for a fee.

Comments. If A performs services such as obtaining credit and appraisal information or preparing an application for mortgage insurance or guarantee which are of value to a Lender paying the fee, without reference to the referral value of such services, and the fees paid bear a reasonable relationship to the value of such services, the payment of such a fee would not be in violation of Section 8 of RESPA. Section 8 does not apply to voluntary payments by a borrower to A for assistance in locating a lender, provided that the voluntary payment is disclosed on both the good faith estimate of settlement costs and the HUD–1 settlement statement and the payment is not a condition of the loan or other settlement service.

8. *Facts.* A, a title insurance company, provides among its other services an "Insured Closing Service Letter". Under this letter, for which no separate or additional charge is made, the company agrees to provide indemnity against loss due to certain fraudulent or negligent acts of the company's policy-issuing agents or approved attorneys in complying with closing instructions and in conducting the closing of any transaction in connection with which a policy of title insurance is to be issued by A.

Comments. Where A has provided such an Insured Closing Service Letter to a specified person and the protection afforded thereby is effective without regard to whether the particular case was referred to A by the person receiving protection under such letter, the provision of the letter would not be pursuant to an agreement or understanding that settlement services be referred, and therefore not in violation of section 8.

9. *Facts.* A, a service corporation, is a title insurance agent for B, a title insurance company. The search and examination of title, in connection with applications for title insurance policies prepared by A, are performed by employees of B. Employees of B also make any determinations as to the insurability of title. A issues title insurance policies on behalf of B and receives a commission equal to the amount paid other title insurance agents in the community, including other agents of B, who perform the title search and examination as well as prepare and issue the title insurance policy.

Comments. While A may be performing some real service for B, the fact that the amount of the commission received by A is equal to the commissions customarily paid to full-service title insurance agents who perform substantially greater and more valuable service indicates that the commission paid by B to A is really intended to compensate A for the referral of business. The amount by which the commission exceeds the reasonable value of the services rendered by A to B would be a referral fee prohibited by section 8 of RESPA. Section 8 does not prohibit variations in the amount of commissions that may be paid, not does it require that the quantum of services rendered be identical in all cases, so long as services significant to the issuance of a title insurance policy are rendered and the amount of the commission bears a reasonable relationship to the services rendered.

10. *Facts.* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A is part owner of B. B performs the title search and examination, makes determinations of insurability and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments. While the payments of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C, the payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A relative to the amount referred by other owners constitutes a violation of section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varied based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners such arrangements would constitute violations of section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests.

11. *Facts:* Same as illustration 10, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of stock is not based on the amount of business referred or expected to be referred.

Comments: The dividends are presumed to be, at least in part, payments for the referral of business. However, since the payment can be considered a return on ownership interests A and B will be exempt from section 8 if A did not require anyone to use the services of B, A disclosed its ownership interest in B and provided an estimate of B's charges to each person referred by A to B, and B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

12. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: Any payments by A to C such as cash advances and any dividends from B to A are presumed to be, at least in part, for the referral of business to B. A, B and C will all be exempt from section 8 if C disclosed its franchise relationship with the owner of B and provided an estimate of B's charges to each person referred to B and C did not require anyone to use the services of B and all A's payments to C are under the franchise agreement and represent a return on the franchise relationship (rather than, *e.g.*, being based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, *e.g.*, being based on the referrals).

13. *Facts:* A holding company, A, owns subsidiaries B and C. B owns D, a mortgage company, and C owns E, a real estate broker. D and E have a practice of referring business to each other.

Comments: D and E are each owned by an "associate" of the other. Thus, dividends paid by B, C, D and E are presumed to be, at least in part, payments for the referral of business unless all elements of the appropriate exemption are satisfied. However, the fact that D and E have a practice of referring business to each other means that the third

element of the exemption cannot be met for dividends paid by D and E, since additional "things of value" are being paid. D and E are each giving and receiving a "thing of value" by referring business.

14. *Facts:* A, a franchisor, has franchise agreements with B and C, franchised real estate brokers located in different cities. B refers potential buyers moving to C's city to C.

Comments: Section 8 would be violated if B's referral is pursuant to an agreement and if a thing of value is given pursuant to such agreement (for example, reciprocal referrals of business). However, the mere existence of the arrangement described would not create any presumption that payments from A to B were pursuant to a referral agreement.

Appendix C—Sample Form of Good Faith Estimate

[Name of Lender] [1]

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates—the actual charges may be more or less.

This form does not cover all items you will be required to pay in cash at settlement, for example, the deposit in an escrow account for payment of real estate taxes and insurance. You may wish to inquire as to the amounts of such items.[2]

The numbers listed beside the estimates correspond to the numbered lines contained in the HUD–1 Settlement Statement which you will be receiving at settlement. The HUD–1 Settlement Statement will show you the actual cost for items paid at settlement.

Item [3]	HUD–1	Amount or range
Loan Origination Fee	801	$———
Loan Discount Fee	802	$———
Appraisal Fee	803	$———
Credit Report	804	$———
Inspection Fee	805	$———
Interest from —— to —— $—— per day.	901	$———
Mortgage Insurance Premium	902	$———
Settlement Fee	1101	$———
Document Preparation Fee	1105	$———
Attorney's Fee	1107	$———
Title Insurance	1108	$———
Recording Fees	1201	$———
City/County Tax Stamps	1202	$———
State Tax	1203	$———
Survey	1301	$———
Pest Inspection	1302	$———

Applicant ———
Date ———
Loan Officer ———
Date ———

[1] The name of the lender shall be placed at the top or bottom of the form. Additional information identifying the loan application and property may appear at the bottom of the form or on a separate page.

[2] This paragraph may be omitted if the lender has determined in good faith that all items which the borrower will be required to pay in cash at settlement are listed.

[3] Items for which there is estimated to be no charge to the borrower are not required. Any additional items for which there is estimated to be a charge to the borrower shall be listed if required on the HUD–1.

(Approved by the Office of Management and Budget under control number 2502–0265)

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended. Additional information can be found in the Special Information Booklet provided by your lender.

Appendix D—Mortgage Broker Fee Disclosure Form

Instructions: Whenever a mortgage broker fee is paid by the borrower, the disclosure below must be completed and attached to the good faith estimate. No changes to, deletions from or additions to this form shall be made other than those approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in 24 CFR § 3500.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

NOTICE: A mortgage broker fee in the amount of $——— is listed in the above good faith estimate (Line ——) on the basis of information furnished by (mortgage broker). Pursuant to your negotiations with (mortgage broker) and the (agreement) you have signed, this fee will be paid directly to the (mortgage broker) and is not imposed by or paid to the (lender) and is not a condition of the loan or other settlement service. YOU ARE ADVISED THAT THIS FEE *MAY* BE AVOIDED ENTIRELY IF YOU APPROACH THIS OR ANOTHER LENDER DIRECTLY. ADDITIONALLY, LOWER MORTGAGE INTEREST RATES AND MORTGAGE BROKER FEES MAY BE AVAILABLE FROM OTHER MORTGAGE LENDERS OR MORTGAGE BROKERS.

Dated: April 15, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

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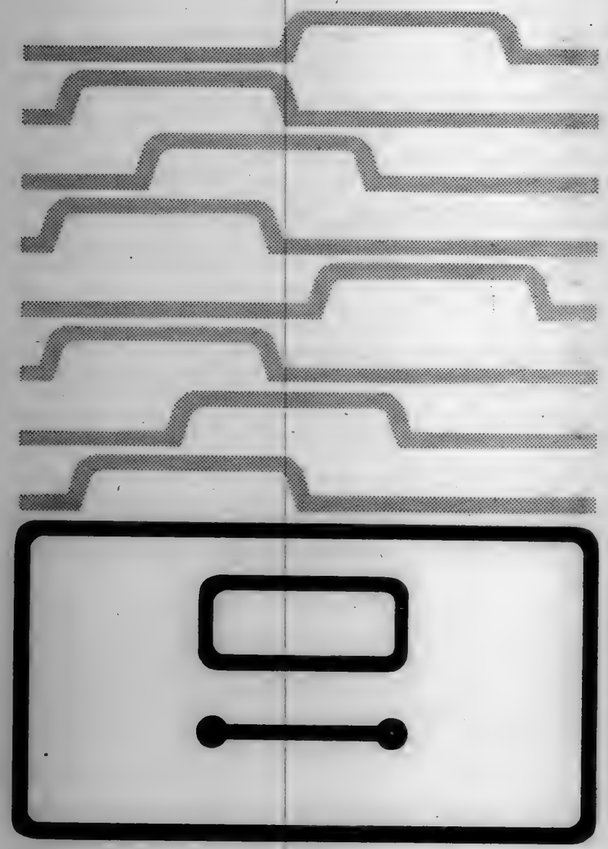
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Presidential Documents

Title 3—

The President

Proclamation 5823 of May 13, 1988

National Safe Kids Week, 1988

By the President of the United States of America

A Proclamation

During National Safe Kids Week parents, relatives, teachers, and everyone responsible for the care and safety of children should take notice of the many ways in which we can help youngsters avoid accidents and grow up safely. Children themselves should also become increasingly aware of ways to protect themselves and other young people. Each year accidents take a tragic toll of perhaps 8,000 young lives lost and 50,000 children disabled. We need to recall that we can prevent the majority of these incidents—and we need to do as much as we can about it, in homes, schools, places of work and recreation, on the highways, and throughout our communities.

Much has been done already. Americans continue to take responsibility by exercising extra care around the house, as well as by using items such as infant and toddler car seats and seat belts, smoke detectors, flame-retardant clothing, and child-proof packaging; and emergency medical services are developing still greater capacities in the prevention of death and of serious aftereffects of injury.

As more and more of us understand that accidental injuries are avoidable, and as we act accordingly, we will substantially reduce this major source of death, disability, and injury to our hope for the future—our "safe kids." That is a goal to which we can all look forward.

The Congress, by Senate Joint Resolution 240, has designated the period of May 16 through May 22, 1988, as "National Safe Kids Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of May 16 through May 22, 1988, as National Safe Kids Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-11142
Filed 5-13-88; 4:11 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of May 13 on signing Proclamation 5823, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 19).

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 242

[INS No. 1035-88]

Detention and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds a new § 242.24 and revises existing § 212.5(a)(2)(ii). The purpose of this regulation is to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Ruth Calhoun, Detention Specialist, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-4120.

SUPPLEMENTARY INFORMATION: Since 1980 the Immigration and Naturalization Service has witnessed a dramatic increase in the number of juvenile aliens it encounters, particularly on the Southern border of the United States. In most cases the juvenile is not accompanied by a parent, legal guardian, or other adult relative. As with adults, the decision of whether to detain or release a juvenile depends on the likelihood that the alien will appear for all future proceedings. However, with respect to juveniles a determination must also be made as to whose custody the juvenile should be released. On the one hand, the concern for the welfare of the juvenile will not permit release to just any adult. On the other hand, the Service has neither the expertise nor the resources to conduct home studies for placement of each juvenile released. This rule strikes a balance by providing a list of appropriate custodians while maintaining the discretion of the District Director or Chief Patrol Agent to release a juvenile to an adult other than those listed individuals in unusual and compelling circumstances.

The Immigration and Naturalization Service published a notice of proposed rulemaking on the Detention and Release of Juveniles in the Federal Register on October 15, 1987. Twelve comments were received in response to the proposed rule. The provisions of the proposed rule which received significant comment will be discussed separately.

The final rule amends 8 CFR Part 242 by adding a new § 242.24 dealing with detention and release of juveniles. The rule also amends 8 CFR Part 212 by revising § 212.5(a)(2)(ii) to provide that parole determinations regarding juveniles will be made pursuant to the criteria set out in § 242.24. This rule thus provides a single policy for juveniles in both deportation and exclusion proceedings.

Several commenters suggested that the list of custodians in the proposed rule is restrictive and should be expanded to include any responsible adult. The Service has attempted to provide for release to those individuals considered responsible for the juvenile's welfare. Release to others beyond these individuals on a routine basis, would require the performance of home studies for which the Service is neither adequately funded nor qualified. Furthermore, the rule permits the District Director or Chief Patrol Agent to exercise his discretion to release to a responsible adult other than those listed in unusual and compelling circumstances.

We agree with comments that the juvenile's interests are best served when the juvenile is placed in a home or shelter-care environment. In fact, the regulations contemplate placement in a shelter care facility as the preferred detention alternative. However, juveniles placed in shelter-care will still be considered to be in INS detention because of issues of payment and authorization of medical care. This preference in the regulations for shelter-care facilities is consistent with provisions of 18 U.S.C. 5035 for detention of juveniles prior to a disposition of delinquency charges.

Based on the foregoing, the Service has determined that the list of suitable custodians shall remain as listed in the proposed rule.

One commenter suggested that the use of the word "may" in § 242.24(b)(1) should be changed to "shall" to indicate that release to such adults should be a matter of course. This suggestion has been incorporated. However, to maintain the discretion of the Service on a case-by-case basis the language "unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others" has been added in the final rule.

Several commenters requested that § 242.24(b)(2) be amended to clarify that the term "adult relatives" are the same as those set out in § 242.24(b)(1)(iii). This has been clarified in the final rule.

Several commenters criticized the fact that the rule contains no guidance regarding the term "unusual and compelling circumstances." This omission was intentional. The intent of the regulation is to provide Service officials with the broadest possible discretion so that each case may be viewed based on a totality of the juvenile's circumstances. Any attempt to define the term would only serve to limit that discretion and thus limit its favorable exercise. Accordingly, this suggestion has not been adopted.

One commenter indicated confusion regarding the release of a juvenile to a detained person as set forth in § 242.24(b)(2). The intention of the rule is to provide for a simultaneous release of the juvenile and the detained adult. This point has been clarified in the final rule.

One commenter indicated that the proposed rule would require a parent or guardian who is lawfully residing in the United States to travel to a distant location far from his home to secure the juvenile's release. This was not our intention. The final rule has been amended to permit a parent or guardian seeking a juvenile's release pursuant to § 242.24(b)(1) to secure release at an INS office located near the parent's or guardian's residence when the juvenile is being detained at a distant location.

One commenter suggested that the requirement in § 242.24(b)(3) for an affidavit to be sworn before an immigration officer or a consular officer is unrelated to concerns for the child's

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welfare or the child's appearance at INS proceedings and affidavits executed before a notary public should be accepted. To the contrary, this requirement is imposed for the purpose of ensuring that the INS is actually receiving the wishes of the parent or guardian. Because of the seriousness with which we view release of a juvenile to an unrelated adult, the Service is unwilling to simply rely on notarized documents for this assurance.

One commenter indicated that the proposed rule does not provide prompt notice to juveniles of restrictions on their release. The INS is developing a simplified form for this purpose which will be provided within twenty-four (24) hours of arrest to each juvenile apprehended who has not been released.

One commenter suggested that the proposed rule failed to consider the court's order in *Perez-Funez* v. *District Director, INS*, 619 F. Supp. 656 (D.C. Cal, 1985). In that case, the court ordered the Service to provide access to telephones and (except for class members residing permanently in Mexico or Canada) ensure that the class member has in fact communicated by telephone or otherwise, with a parent, close adult relative, friend, or a free legal services organization prior to presentation of the voluntary departure form. The proposed rule provided for a Notice and Request for Disposition ("Perez-Funez Advisal") be given to the juvenile upon apprehension. In order to clarify the responsibilities of the INS with respect to *Perez-Funez* class members, the language of the court's order has been incorporated in the final rule.

Several commenters requested the Service to consider permitting an individual or an organization to act as an intermediary between the INS and the parent, guardian, or other custodian to facilitate the release of juvenile aliens. According to the comments, parents or guardians who are unlawfully present in the United States are unwilling to come forward to the INS to secure release of the child for fear of being apprehended. This proposal raises some of the same concerns that release to any reliable adult raises, for example, the inability of the Service to perform home studies. However, while the proposal has not been incorporated into the final rule at this time, it has not been rejected. The Service will continue to consider the proposal, but it was felt that such further review should not delay publication of this final rule.

Two commenters recommended that the term "state or local juvenile facilities" not encompass "juvenile correctional facilities." The Service shares the concern that administrative juvenile detainees not be placed in detention with convicted offenders. For this reason the Service is developing contracts with shelter-care facilities in all locations. However, in certain areas shelter-care facilities are not yet available. This may necessitate the use of a secure facility for a short term period. In all cases where this is necessary, INS juvenile detainees will not be mixed with the general population of the facility. If we were to limit the use of secure facilities at this point, the Service would be required to move juveniles to other locations in order to detain them. This would not serve the juveniles' best interest.

Two commenters suggested that the preamble to the final rule should include a statement that release of minors to parents or adult relatives is the preferred method of dealing with juvenile offenders. We agree. The paramount concern of the INS with respect to minors in custody is the welfare of the minor. In this regard it is the position of the Service that reunification of the juvenile with his or her family is in the best interest of all concerned. Accordingly, the final rule provides that the minor "shall" be released to a parent, legal guardian or adult relative "unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others." Thus, under the final rule reunification represents Service policy, with detention being the exception.

One commenter questioned the nature of the agreement to be signed by the designated adult. The agreement is a written statement made under oath that the adult will care for the juvenile and ensure the juvenile's presence at all future proceedings before the Service or the immigration court. This agreement may, in any given case, be required to be accompanied by an appearance bond.

Another commenter requested that the final rule incorporate standards of detention and other conditions of confinement for juvenile detainees. Standards of confinement are beyond the scope of this particular rule which is limited to processing and release. However, the Service has developed standards of confinement which are incorporated in its contracts for shelter-care facilities.

Finally, one commenter suggested that the position of "juvenile coordinator" be outside the supervision of the Enforcement Branch. This strictly administrative decision is outside the scope of the rulemaking. However, the Service is considering this recommendation in its decision.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Parole, Juveniles.

8 CFR Part 242

Administrative practice and procedure, Aliens, Juveniles.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1182b, 1182c, 1184, 1225, 1226, 1228, 1252.

2. Section 212.5(a)(2)(ii) is revised to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) * * *

(2) * * *

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set forth in § 242.24(b) in determining under what conditions a juvenile should be paroled from detention.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, 1362.

4. A new § 242.24 is added to read as follows:

§ 242.24 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (18) years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to: (i) A parent; (ii) legal guardian; or (iii) adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention, unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others.

In cases where the parent, legal guardian or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at an INS office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in INS detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) *Juvenile Coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile apprehended in the immediate vicinity of the border who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. Each other juvenile apprehended shall be provided access to a telephone and must in fact communicate with either a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If the juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact the requirements of this section are satisfied.

(h) *Notice and Request for Disposition.* When a juvenile alien is apprehended, he or she must be given a Notice and Request for Disposition. If the juvenile is under fourteen years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language the juvenile understands. In the event a juvenile who has requested a hearing pursuant to the Notice subsequently decides to accept voluntary departure, a new Notice and Request for Disposition shall be given to, and signed by the juvenile.

Date: May 10, 1988.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 88-11001 Filed 5-12-88; 2:30 pm]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 88-043]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances in Texas. A commuted traveltime allowance is the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8513.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, Chapter I, Subchapter D, and 7 CFR, Chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular

duty hours, the Government charges a fee for the services in accordance with 9 CFR 97.4 and 7 CFR 354.1. The fee includes the cost of commuted traveltime, if any. Commuted traveltime is the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

Commuted traveltime allowances are established by the Administrator of Veterinary Services (Administrator) for areas where the traveltime is substantially greater than the traveltime normally required for employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. Commuted traveltime allowances are established only for areas where the Administrator has determined that the traveltime is substantially greater than the traveltime normally required for employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

On February 16, 1988, we published in the Federal Register (53 FR 4437-4438, Docket No. 88-043) a proposal to amend the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances in Texas. We proposed to establish commuted traveltime allowances for the following areas in Texas:

1. Those portions of Cameron County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

2. Those portions of Willacy County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

3. Those portions of Kenedy County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

4. Those portions of Kleberg County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

5. Those portions of Nueces County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

6. Those portions of San Patricio County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

7. Those portions of Aransas County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

8. Those portions of Refugio County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

9. Those portions of Calhoun County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

10. Those portions of Matagorda County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

11. Those portions of Brazoria County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

12. Those portions of Galveston County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

13. Those portions of Chambers County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

14. Those portions of Jefferson County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

15. Those portions of Orange County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

16. Those portions of Cameron County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

17. Those portions of Willacy County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

18. Those portions of Kenedy County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

19. Those portions of Kleberg County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

20. Those portions of Nueces County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

21. Those portions of San Patricio County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

22. Those portions of Aransas County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

23. Those portions of Refugio County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

24. Those portions of Calhoun County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

25. Those portions of Matagorda County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

26. Those portions of Brazoria County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

27. Those portions of Galveston County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

28. Those portions of Chambers County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

29. Those portions of Jefferson County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

30. Those portions of Orange County, Texas, bounded by a line beginning at the junction of the Rio Grande River and the Gulf of Mexico; then northwest along the Rio Grande River to the junction of the Rio Grande River and the Brownsville Navigation Canal; then northeast along the Brownsville Navigation Canal to the junction of the Brownsville Navigation Canal and the Gulf of Mexico; then southeast along the Gulf of Mexico to the point of beginning.

or objections regarding the proposed form of order.

requiring new members to have owned and operated a business for six years

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duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime allowances between certain locations in Texas. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Addt			
*	* * * *		
Texas:			
*	* * * *		
Hidalgo	Hachingen		2
Hidalgo	Lyford		2

* * * * *

Done in Washington, DC, this 12th day of May, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-10975 Filed 5-16-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3227]

Multiple Listing Service Mid County, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Brooklyn, NY, real estate firm from participating in various practices that have allegedly restrained price and service competition among residential real estate brokers. Respondent is prohibited from: Requiring that any applicant or member operate a full time office; fixing, maintaining or recommending any division of commission between selling and listing brokers; adopting any policy that has the purpose or effect of exclusive agency listings; requiring any member to inform Mid County or any of its members of the commission agreed to between any listing broker and homeowner; and adopting any policy having the purpose or effect of delaying the solicitation of a listing agreement.

DATE: Complaint and order issued April 20, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Michael J. Bloom or Alfred J. Ferrogari, New York Regional Office, Federal Trade Commission, 2243 Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264-0459.

SUPPLEMENTARY INFORMATION: On Wednesday, December 30, 1987, there was published in the Federal Register, 52 FR 49167, a proposed consent agreement with analysis in the Matter of Multiple Listing Service Mid County, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Combining or Conspiring:* Section 13.384 *Combining or conspiring;* § 13.405 *To discriminate unfairly or restrictively in general;* § 13.430 *To enhance, maintain or unify prices;* § 13.470 *To restrain and monopolize trade.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–45 *Maintain records;* § 13.533–45(k) *Records, in general;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific or contractual constrictions, requirements, or restraints.* Subpart—*Dealing On Exclusive And Tying Basis:* § 13.670 *Dealing on exclusive and tying basis;* § 13.670–20 *Federal Trade Commission Act.*

List of Subjects in 16 CFR Part 13

Multiple listing service, Real estate, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88-11010 Filed 5-16-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

16 CFR Part 13

[Docket No. C-3228]

Florence Multiple Listing Service, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Florence, S.C. firm from conspiring to exclude certain licensed real estate brokers from membership in and use of the multiple listing service, and from restricting competition among multiple listing service members in the services they individually provide to the public. Respondent is also prohibited from requiring new members to have owned and operated a business for six months before application for membership and from insisting on a vote of FMLS members as a condition of membership.

DATE: Complaint and order issued April 20, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jacques Feuillan, FTC/S-3115, Washington, DC 20580. (202) 326-2739.

SUPPLEMENTARY INFORMATION: On Wednesday, December 30, 1987, there was published in the Federal Register 52 FR 49164, a proposed consent agreement with analysis In the Matter of Florence Multiple Listing Service, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Combining Or Conspiring:* Section 13.384 *Combining or conspiring;* § 13.405 *To discriminate unfairly or restrictively in general;* § 13.470 *To restrain and monopolize trade.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–45 *Maintain records;* § 13.533–45(e) *Correspondence;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific, or contractual constrictions, requirements, or restraints.* Subpart—*Dealing On Exclusive And Tying Basis:* § 13.670 *Dealing on exclusive and tying basis;* § 13.670–20 *Federal Trade Commission Act.*

List of Subjects in 16 CFR Part 13

Multiple listing service, Real estate, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88-11009 Filed 5-16-88; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW,, Washington, DC 20580.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Media Relations; Information and Public Affairs

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect an organizational change made since the changes published December 29, 1987, 52 FR 48969. The change is the elimination of the Office of Media Relations and the consolidation of its functions into the Office of Information and Public Affairs.

DATES: May 17, 1988.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-492-6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the Federal Register. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (Government Agencies).

Dated: May 10, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, Part 1000 is revised to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.

1000.1 The Commission.
1000.2 Laws administered.
1000.3 Hotline.
1000.4 Commission addresses.
1000.5 Petitions.
1000.6 Commission decisions and records.
1000.7 Advisory opinions and interpretations of regulations.
1000.8 Meetings and hearings; public notice.
1000.9 Quorum.
1000.10 The Chairman and Vice Chairman.
1000.11 Delegation of functions.
1000.12 Organizational structure.
1000.13 Directives system.
1000.14 Office of the General Counsel.
1000.15 Office of Congressional Relations.
1000.16 Office of the Secretary.

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1000.17 Office of Internal Audit.
1000.18 Office of Equal Employment Opportunity and Minority Enterprise.
1000.19 Office of Executive Director.
1000.20 Office of Program Management and Budget.
1000.21 Office of Planning and Evaluation.
1000.22 Office of Information and Public Affairs.
1000.23 Directorate for Epidemiology.
1000.24 Directorate for Economic Analysis.
1000.25 Directorate for Engineering Sciences.
1000.26 Directorate for Health Sciences.
1000.27 Directorate for Compliance and Administrative Litigation.
1000.28 Directorate for Administration.
1000.29 Directorate for Field Operations.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§ 1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)).

(b) The Flammable Fabrics Act (Pub. L. 90-189, 67 Stat. 111, as amended (15 U.S.C. 1191, *et seq.*)).

(c) The Federal Hazardous Substances Act (Pub. L. 86-613, 74 Stat. 360, as amended (15 U.S.C. 1261, *et seq.*)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, 84 Stat. 1670, as amended (15 U.S.C. 1471, *et seq.*)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84-930, 70 Stat. 953, 15 U.S.C. 1211, *et seq.*)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1-800-638-CPSC (1-800-638-2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1-800-638-8270. The teletypewriter number for use in Maryland is 1-800-492-8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westband Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the states indicated:

(1) Central Regional Center, 230 South Dearborn Street, Room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery Street, Room 401, San Francisco, California 94111; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Products Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides written advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Requests for such interpretations should be sent to the Associate Executive Director for Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westband Avenue, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR Part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the Federal Register and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR Part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;
(2) Office of Congressional Relations;
(3) Office of the Secretary;
(4) Office of Internal Audit;
(5) Office of Equal Employment Opportunity and Minority Enterprise;
(6) Office of Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;
(2) Office of Planning and Evaluation;
(3) Office of Information and Public Affairs;
(4) Directorate for Epidemiology;
(5) Directorate for Economic Analysis;
(6) Directorate for Engineering Sciences;
(7) Directorate for Health Sciences;
(8) Directorate for Compliance and Administrative Litigation;
(9) Directorate for Administration;
(10) Directorate for Field Operations.

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the Federal Register.

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It performs liaison duties for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at official meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other official documents, including Federal Register notices, for and on behalf of the Commission and controls the use of the Commission seal. The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 6(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.17 Office of Internal Audit.

This Office reviews, analyzes, and reports on Commission programs and organization to assess compliance with relevant laws, regulations, and principles of efficiency, effectiveness, and economy.

§ 1000.18 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan

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before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.20 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-related programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international standards coordination and liaison. As an extension of the Office of the Executive Director, it is responsible for assuring the implementation of Commission decisions. Program Managers assigned to the Office provide overall direction to all hazard program projects, including those involving voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.21 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills its mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.22 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.23 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the fields of consumer product-related injuries. It maintains an injury data clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.24 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, the National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.25 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate's functional responsibility includes development and evaluation of product safety standards and test methods based on engineering and other physical sciences and the conduct and relevant evaluation of specific product testing to support general agency regulatory

activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products and provides scientific and technical expertise to the Commission. It conducts and evaluates engineering tests and test methods, participates in the engineering development of product safety standards, and provides advice on proposed mandatory standards and industry voluntary standard efforts. It performs or monitors research in the engineering sciences and manages the Commission's engineering laboratory and engineering test facility and provides analytical services in support of the Commission's enforcement activities. The Directorate for Engineering Sciences conducts studies of the safety of consumer products. It coordinates engineering research testing and evaluation activities with the National Bureau of Standards and other Federal agencies, private industry, and consumer interest groups. The Directorate gives statistical support for the engineering aspects of standards development, certification programs, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including tests and analyses conducted in the field. The Directorate provides engineering technical support to all Commission organizations, activities and programs. The Directorate analyzes accident data, develops accident scenarios, and recommends solutions. This information is applied to develop standards and corrective action plans. The Directorate provides appropriate analytical representation to the Office of Program Management and Budget.

§ 1000.26 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilites include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate also provides scientific and medical expertise to the Commission and it develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical and physical hazards in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on manufacturing practices and quality assurance for chemical consumer products and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all Commission organizations, activities, and programs. The Directorate provides scientific liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards. It also manages activities of the Commission's advisory committees such as Chronic Hazard Advisory Panels.

§ 1000.27 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It provides advice and case guidance to field offices and participation in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products and gives public warning to consumers where appropriate. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.28 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general administrative policy; maintenance of timeliness, quality, and efficiency of services; and planning input, review, and administrative control within its functional area of responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, personnel, training, automated data systems, telecommunications, the reference library, and the physical plant. The Directorate is responsible for the execution of payment, financial control, accounting, and reporting of all expenditures within the Commission. It is responsible for all aspects of personnel management for the Commission, including recruitment and placement, classification standards and policies, and employee and labor-management relations. It evaluates the need for, develops, and implements all training programs for the Commission, including employee training, executive development, and training programs involving outside parties. The Directorate designs, implements, and operates all automated data systems and telecommunications. It provides support services for space management, supply and property management, security, printing and reproduction,

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records management, transportation, warehousing, utilities, and mail. It is responsible for all CPSC contracts and procurement of services and supplies. It develops, implements, and maintains management information systems and distributes summary reports on data accumulated by those systems. The Directorate also maintains and updates the reference library, performs data and bibliographic research for the agency and its constituency, and administers the ordering, receiving, and distribution of all publications requested by or for CPSC personnel.

§ 1000.29 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative and compliance activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government offices.

[FR Doc. 88-10918 Filed 5-16-88; 8:45 am]
BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 240, 250, and 260

[Rel. Nos. 33-6775; 34-25683; 35-24640; 39-2164; IA-1116; IC-16396]

Delegation of Authority to the Office of General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The General Counsel will be delegated authority to approve non-expert, nonprivileged, factual staff testimony and the production of nonprivileged documents by Commission employees pursuant to validly issued subpoenas in private litigation. The purpose of the delegation is to save time for both the staff and the Commission on matters that can most efficiently be handled by the General Counsel.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Humes, Assistant General Counsel, 272-2454, Jeri Cohen, Attorney, 272-2453.

SUPPLEMENTARY INFORMATION: The Commission finds in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register.**

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 230, 240, and 260

Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

Text of Amendments

Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A is amended by adding the following citation:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 79sss, 80a-37, 80b-11). * * * Section 200.30-14 also issued under Pub. L. 94-29, 89 Stat. 163, Pub. L. 87-592, 76 Stat. 395, 15 U.S.C., 78d-1, 78d-2, 5 U.S.C. 552a(d)(2) (B)(ii).

2. The authority citation following § 200.30-14 is removed and a new paragraph (f) is added as follows:

§ 200.30-14 Delegation of authority to the General Counsel.

* * * * *

(f) Approve non-expert, nonprivileged, factual staff testimony and the production of nonprivileged documents when validly subpoenaed in private litigation.

3. The authority citation for Part 200, Subpart M continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 79sss, 80a-37, 80b-11; E.D. 11222); 3 CFR, 1964-65 Comp., 5 CFR 735.104, unless otherwise noted.

4. Section 200.735-3 is amended by revising paragraph (b)(7)(ii), and the last sentence of paragraph (b)(7)(iii) as follows:

§ 200.735-3 General provisions.

* * * * *

(b) * * *

(7) * * *

(ii) Except where the General Counsel has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph.

(iii) * * * The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure of nonprivileged information or documents.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230, §§ 230.100 through 230.215, is revised to read as follows:

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted.

6. The second and fourth sentences of § 230.122 are revised as follows:

§ 230.122 Non-disclosure of information obtained in the course of examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * * Any officer or employee who is served with such a subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted.

8. The second and fourth sentences of § 240.0-4 are revised as follows:

§ 240.0-4 Nondisclosure of information obtained in examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * * Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

9. The authority citation for Part 250 continues to read in part as follows;

Authority: Secs. 5, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless otherwise noted.

10. Section 250.104 is amended by revising the second sentence of paragraph (c) and revising and designating the concluding paragraph as paragraph (d) as follows:

§ 250.104 Public disclosure of information and objections thereto.

* * * * *

(c) *Information obtained in the course of examinations, studies, and investigation.* * * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * *

(d) Any officer or employee who is served with such a subpoena, shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

11. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

12. The second and fourth sentences of § 260.0-6 are revised as follows:

§ 260.0-6 Non-disclosure of information obtained in the course of examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the Office of the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * * Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

By the Commission.

May 10, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10881 Filed 5-16-88; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of Cathine ((+)-norpseudoephedrine), Fencamfamin, Fenproporex and Mefenorex into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the Controlled Substances Act (21 U.S.C. *et seq.*). This temporary scheduling action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. As a result of this rule, the regulatory controls and criminal sanctions of a Schedule IV substance under the Controlled Substances Act (CSA) will be applicable to the manufacture, distribution and possession of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex or mefenorex. The temporary scheduling order for each substance shall remain in effect until the process of permanent scheduling, pursuant to section 201 (a) and (b) (21

BEST COPY AVAILABLE

U.S.C. 811 (a) and (b)) of the CSA, is completed.

1. Registration

DEPARTMENT OF THE TREASURY

United States international treaty obligations

comment procedure under section 553(b)

category for which the overall foreign

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U.S.C. 811 (a) and (b)) of the CSA, is completed.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to place cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the CSA was published in the **Federal Register** On October 30, 1987 (52 FR 41736). As stated in that proposal (52 FR 41736), the Administrator, in order to satisfy treaty obligations under the 1971 Convention on Psychotropic Substances, has found that the placement of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex in Schedule IV of the CSA is necessary. In order to satisfy said treaty obligations in a timely manner, cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex will be controlled on a temporary basis in Schedule IV of the CSA, pursuant to 21 U.S.C. 811(d)(4)(A).

In the October 30, 1987 notice of proposed rulemaking, comments were solicited from persons interested in the proposed control action. DEA received comments regarding the proposed control of cathine ((+)-norpseudoephedrine) and its impact on the use of the plant known as khat. Following a review of the information available on the chemical constituents found in khat, it has been determined that khat will be subject to the same Schedule IV controls as cathine ((+)-norpseudoephedrine), one of the psychoactive substances found in khat. Such a position is consistent with the controls imposed on many other plants containing controlled psychoactive substances.

It is the position of the Administrator that the temporary placement of the above substances into Schedule IV is consistent with the obligations of the United States under the Convention on Psychotropic Substances of 1971, namely that control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the CSA (21 U.S.C. 811(d)(4)(B)).

Regulations that are effective on or after June 16, 1988, and imposed on all of the above listed substances are as follows:

1. Registration

Any person who manufactures, distributes, engages in research, imports or exports any of the above listed substances or who proposes to engage in the manufacture, distribution, importation, exportation or research on such substances shall obtain a registration to conduct that activity by June 16, 1988, pursuant to Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. Security

The above listed substances must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling Packaging

All labels on commercial containers of, and all labeling of, the above listed substances which are packaged on or after June 16, 1988, shall comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. Inventory

Registrants possessing the above listed substances are required to take inventories pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

5. Records

All registrants must keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations.

6. Importation and Exportation

All importation and exportation of the above listed substances shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

7. Criminal Liability

Any activity with the above listed substances not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after June 16, 1988, shall be unlawful.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the placement of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). None of the substances listed above are marketed in the United States. This action is required in order to fulfill United States international treaty obligations.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by United States obligations under an international convention, namely the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, based upon the notification of the Secretary-General of the United Nations, and in accordance with the recommendations of the Assistant Secretary for Health, Department of Health and Human Services, under the authority vested in the Attorney General by 21 U.S.C. 811(d)(4) (A) and (C) and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.14 is amended by redesignating paragraph (e)(2) as (5), paragraph (e)(1) as (2), paragraphs (e)(3) through (6) as (e)(7) through (10) and by adding new paragraphs (e)(1), (3), (4) and (6) to read as follows:

§ 1308.14 Schedule IV.

* * * * * *

(e) * * *

(1) Cathine ((+)-norpseudoephedrine)	1230
* * * * * *	
(3) Fencamfamin	1760
(4) Fenproporex	1575
* * * * * *	
(6) Mefenorex	1580
* * * * * *	

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: May 12, 1988.

[FR Doc. 88–11014 Filed 5–16–88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8201]

Income Taxes; Section 904(f) Transition Rules; Foreign Tax Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to transition rules for implementing the changes made to section 904(f) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986. The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The regulations provide the public with the immediate guidance needed to comply with that Act and will affect individuals and entities claiming the foreign tax credit. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations apply to taxable years beginning after December 31, 1986, and are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3896 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains Temporary Income Tax Regulations (26 CFR Part 1) under section 904 of the Internal Revenue Code of 1986.

Need for Temporary Regulations

The proper application of section 904(f) is dependent upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulation either with notice and public comment procedure under section 553(b) of Title 5 of the United States Code, or under the effective date limitation of section 553(d) of Title 5.

Explanation of Provisions

Prior Law

Prior to 1987, if a taxpayer sustained a foreign source loss with respect to income in a separate limitation category, the loss was treated as offsetting the taxpayer's U.S. source income before offsetting foreign source income subject to another separate limitation. A foreign tax credit was allowed for the taxpayer's other foreign source income if that income was subject to foreign tax. Thus, it was possible for a taxpayer to enjoy a double benefit in a single taxable year in the form of reduced U.S. source income and a foreign tax credit.

Statutory Provision

Section 1203 of the Tax Reform Act of 1986 amended section 904(f) by adding paragraph (5) at the end thereof which requires that a foreign source loss with respect to any income category first offset the taxpayer's foreign source income subject to other separate limitations for the taxable year on a proportionate basis before the loss offsets the taxpayer's U.S. source income.

Explanation of Temporary Regulations

The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The Temporary Regulations contained in this document provide transition rules for the treatment of overall foreign losses incurred by a taxpayer in taxable years beginning before January 1, 1987 (pre-effective date years), that are recaptured in taxable years beginning after December 31, 1986 (post-effective date years). In addition, transition rules are provided for an overall foreign loss that is part of a net operating loss incurred in a pre-effective date year which is carried forward to a post-effective date year and for an overall foreign loss that is part of a net operating loss incurred in a post-effective date year which is carried back to a pre-effective date year.

Section 1.904(f)–13T Transition Rules.

Paragraph (a)(1) provides that an overall foreign loss incurred in a pre-effective date year shall be recaptured in post-effective date years by recharacterizing income received in the income category described in section 904(d) as in effect for post-effective date years that is analogous to the income category for which the overall foreign loss account was established. For example, an overall foreign loss incurred with respect to the income category described in section 904(d)(1)(B) (Dividends from a DISC or former DISC) as in effect for pre-effective date years shall be recaptured from income earned in the income category described in section 904(d)(1)(F) (Dividends from a DISC or former DISC) as in effect for post-effective date years.

Paragraph (a)(2)(i) provides, in general, that an overall foreign loss incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date years, shall be recaptured from the taxpayer's post-effective date general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer's general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the pre-effective date overall foreign loss to be recaptured, then the amount of each type of separate limitation income that will be treated as U.S. source income is determined pursuant to a formula set forth in paragraph (a)(2)(i).

Paragraph (a)(2)(ii) provides an exception to the general rule for recapture of an overall foreign loss in the general limitation category of section 904(d)(1)(E) as in effect for pre-effective date years if a taxpayer can demonstrate to the satisfaction of the Internal Revenue Service that the loss is attributable, in sums certain, to one or more separate categories of section 904(d)(1), as in effect for post-effective date taxable years. In such a case, the taxpayer may recapture the loss (in the amounts demonstrated) from those limitation categories only.

Paragraph (a)(3) provides that an overall foreign loss incurred by a taxpayer in a pre-effective date year shall be recaptured to the extent thereof before recapture of post-effective date overall foreign losses.

Paragraph (b) provides that an overall foreign loss that is part of a net operating loss incurred in a pre-effective date taxable year which is carried forward to a post-effective date year will be allocated first to income in the income category analogous to the income category set forth in section 904(d) as in effect for pre-effective date taxable years in which the loss occurred. If the loss exceeds income in the analogous income category, the loss shall be allocated to other foreign source

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income earned by the taxpayer in accordance with the rules set forth in section 904(f)(5). Losses remaining after application of section 904(f)(5) shall be allocated to the taxpayer's U.S. source income, which will create an addition to the taxpayer's overall foreign loss account.

Paragraph (c)(1) provides that an overall foreign loss that is part of a net operating loss incurred by the taxpayer in a post-effective date taxable year which is carried back to a pre-effective date taxable year shall be allocated first to income in the pre-effective date income category analogous to the income catetgory set forth in section 904(d) as in effect for post-effective date taxable years in which the loss occurred. The general limitation income category for pre-effective date years shall be treated as the income category that is analogous to post-effective date general limitation income, financial services income, shipping income, dividends from each noncontrolled section 902 corporation and high withholding tax interest income.

Paragraph (c)(2) provides that if an overall foreign loss carred back to a pre-effective date taxable year exceeds the foreign source income in the analogous category for the carry back year, the remaining loss shall be allocated against U.S. source income as set forth in § 1.904(f)–3. An addition to an overall foreign loss account resulting from the carry back of a net operating loss shall be treated as having been incurred by the taxpayer in the year in which the loss arose and shall be subject to recapture pursuant to section 904(f) as in effect for post-effective date years.

Paragraph (c)(3) provides that to the extent that an overall foreign loss carried back as part of a net operating loss exceeds the separate limitation income to which it is allocated and the U.S. source income of the taxpayer for the taxable year, the loss shall be allocated pro rata to other separate limitation income of the taxpayer for the taxable year. However, there shall be no recharacterization of separate limitation income pursuant to section 904(f)(5) as a result of the allocation of the net operating loss to other separate limitation income of the taxpayer.

Paragraph (d) provides that for taxable years beginning after December 31, 1986, and before January 1, 1991, the rules set forth in § 1.904(f)–6 shall apply for purposes of recapturing general limitation and foreign oil related income (FORI) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983). For taxable years beginning after December 31, 1990, the rules set forth in § 1.904(f)–13T shall apply for purposes of recapturing pre-1983 general limitation and FORI overall foreign losses.

Paragraph (e) provides that the rules set forth in paragraph (a)(2) shall apply for purposes of recapturing overall foreign losses incurred in taxable years beginning before January 1, 1983, that were computed on a combined basis in accordance with § 1.904(f)–1(c)(1).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Willard W. Yates of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.907–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C 7805. * * *

§§ 1.904(f)–7 through 1.904(f)–12 [Reserved]

Par. 2. New § 1.904(f)–13T is added immediately after § 1.904(f)–6. Sections 1.904(f)–7 through § 1.904(f)–12 are reserved. The added section reads as follows:

§ 1.904(f)–13T Transition rules.

(a) *Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987*—(1) *In general.* If a taxpayer has a balance in an overall foreign loss account at the end of its last taxable year beginning before January 1, 1987 (pre-effective date years), the amount of that balance shall be recaptured in subsequent years by recharacterizing income received in the income category described in section 904(d) as in effect for taxable years beginning after December 31, 1986 (post-effective date years), that is analogous to the income category for which the overall foreign loss account was established, as follows:

(i) Interest income as defined in section 904(d)(1)(A) as in effect for pre-effective date taxable years is analogous to passive income as defined in section 904(d)(1)(A) as in effect for post-effective date years;

(ii) Dividends from a DISC or former DISC as defined in section 904(d)(1)(B) as in effect for pre-effective date taxable years is analogous to dividends from a DISC or former DISC as defined in section 904(d)(1)(F) as in effect for post-effective date taxable years;

(iii) Taxable income attributable to foreign trade income as defined in section 904(d)(1)(C) as in effect for pre-effective date taxable years is analogous to taxable income attributable to foreign trade income as defined in section 904(d)(1)(G) as in effect for post-effective date years;

(iv) Distributions from a FSC (or former FSC) as defined in section 904(d)(1)(D) as in effect for pre-effective date taxable years is analogous to distributions from a FSC (or former FSC) as defined in section 904(d)(1)(H) as in effect for post-effective date taxable years;

(v) For general limitation income as described in section 904(d)(1)(E) as in effect for pre-effective date taxable years, see special rule in paragraph (a)(2) of this section.

(2) *Rule for general limitation losses*—(i) *In general.* Overall foreign losses incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, that are recaptured in post-effective date taxable years shall be recaptured from the taxpayer's general limitation income, financial services income, shipping income, and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer s general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the overall foreign loss to be recaptured, then the amount of each type of separate limitation income that will be treated as U.S. source income shall be determined as follows:

$$\text{Overall foreign loss subject to recapture} \times \frac{\text{Amount of income in each separate category from which the loss may be recaptured}}{\text{Sum of income in all separate categories from which the loss may be recaptured}}$$

This allocation shall be made after application of section 905(f)(5).

(ii) *Exception.* If a taxpayer can demonstrate to the satisfaction of the Internal Revenue Service that an overall foreign loss in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, is attributable, in sums certain, to one or more separate categories of section 904(d)(1), as in effect for post-effective date taxable years, then the taxpayer may recapture the loss (in the amounts demonstrated) from those separate categories only.

(3) *Priority of recapture of overall foreign losses incurred in pre-effective date taxable years.* An overall foreign loss incurred by a taxpayer in pre-effective date taxable years shall be recaptured to the extent thereof before the taxpayer recaptures an overall foreign loss incurred in a post-effective date taxable year.

(4) *Examples.* The following examples illustrate the application of paragraph (a).

Example (1). X corporation is a domestic corporation which operates a branch in Country Y. For its taxable year ending December 31, 1988, X has $600 of financial services income, $100 of general limitation income and $100 of shipping income. X has a balance of $100 in its general limitation overall foreign loss account which resulted from an overall foreign loss incurred during its 1986 taxable year. X is unable to demonstrate to which of the income categories set forth in section 904(d)(1) the loss is attributable. In addition, X has a balance of $100 in its shipping overall foreign loss account attributable to a shipping loss incurred during its 1987 taxable year. X has no other overall foreign loss accounts. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $500. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $60 ($100 x 600/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (2). The facts are the same as in *Example (1)* except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1988. Pursuant to paragraph (a)(2) of this section, the rules of section 904(f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 x 800/1000) will be allocated to X's financial services income, $10 ($100 x 100/1000) will be allocated to its general limitation income and $10 ($100 x 100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1988 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from its noncontrolled section 902 corporation. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $360. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $80 ($100 x 800/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (3). The facts are the same as in *Example (1)* except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1988. Pursuant to paragraph (a)(2) of this section, the rules of section 904(f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 x 800/1000) will be allocated to X's financial services income, $10 ($100 x 100/1000) will be allocated to its general limitation income and $10 ($100 x 100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1988 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from its noncontrolled section 902 corporation. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $500. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $80 ($100 x 800/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (4). The facts are the same as in *Example (1)* except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1988. Pursuant to paragraph (a)(2) of this section, the rules of section 904(f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 x 800/1000) will be allocated to X's financial services income, $10 ($100 x 100/1000) will be allocated to its general limitation income and $10 ($100 x 100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1988 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from its noncontrolled section 902 corporation. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $500. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $80 ($100 x 800/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (5). The facts are the same as in *Example (1)* except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1988. Pursuant to paragraph (a)(2) of this section, the rules of section 904(f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 x 800/1000) will be allocated to X's financial services income, $10 ($100 x 100/1000) will be allocated to its general limitation income and $10 ($100 x 100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1988 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from its noncontrolled section 902 corporation. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $500. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $80 ($100 x 800/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (6). Y is a domestic corporation which has a branch operation in Country Z. For its 1988 taxable year, Y has $5 of shipping income, $15 of general limitation income and $100 of financial services income. Y has a balance of $100 in its general limitation overall foreign loss account attributable to its 1986 taxable year. Y has no other overall foreign loss accounts. Pursuant to section 904(f)(1), $80 of the overall foreign loss is subject to recapture since 50% of Y's foreign source income for 1988 is less than the amount of its overall foreign loss for 1986. Y can demonstrate that the entire $100 overall foreign loss was attributable to a shipping limitation loss incurred in 1986. Accordingly, only Y's $5 of shipping limitation income received in 1988 will be treated as U.S source income. Because Y can demonstrate that the 1986 loss was entirely attributable to a shipping loss, none of Y's general limitation income or financial services income received in 1988 will be treated as U.S. source income.

Example (4). The facts are the same as in *Example* (3) except that Y can only demonstrate that $50 of the 1986 overall foreign loss account was attributable to a shipping loss incurred in 1986. Accordingly, Y's $5 of shipping limitation income received in 1988 will be treated as U.S. source income. The remaining $50 of the 1986 overall foreign loss that Y cannot trace to a particular separate limitation will be recaptured and treated as U.S. source income as follows: $43 ($50 × 100/115) of Y's financial services income will be treated as U.S. source income and $7 ($50 × 15/115) of Y's general limitation income will be treated as U.S. source income.

(b) *Treatment of overall foreign losses that are part of net operating losses incurred in pre-effective date taxable years which are carried forward to post-effective date taxable years*—(1) *Rule.* An overall foreign loss that is part of a net operating loss incurred in a pre-effective date taxable year which is carried forward, pursuant to section 172, to a post-effective date taxable year will be allocated first to income in the category analogous to the income category set forth in section 904(d) as in effect for pre-effective date taxable years in which the loss occurred. The analogous category shall be determined under the rules of paragraph (a) of this section. If the loss exceeds income in the analogous income category (or categories) to which the loss is carried, the overall foreign loss shall be allocated to other foreign source income (if any) earned by the taxpayer in the carryover year in accordance with the rules set forth in section 904(f)(5). If a loss remains after application of section 904(f)(5), the loss shall be allocated to U.S. source income, which will create an addition to the taxpayer's overall foreign loss account.

(2) *Example.* The following example illustrates the rule of paragraph (b)(1).

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Example. Z is a domestic corporation which has a branch operation in Country D. For its taxable year ending December 31, 1988, Z has $100 of passive income and $200 of general limitation income. Z also has a $60 net operating loss which was carried forward pursuant to section 172 from its 1986 taxable year. The net operating loss resulted from an overall foreign loss attributable to a general limitation loss. Z can demonstrate that the loss is a shipping loss. Therefore, the net operating loss will be treated as a shipping loss for Z's 1988 taxable year. Pursuant to section 904(f)(5), the shipping loss will be allocated as follows: $20 ($60 × 100/300) will be allocated to Z's passive income and $40 ($60 × 200/300) will be allocated to Z's general limitation income. Accordingly, after application of section 904(f), Z has $80 of passive income and $160 of general limitation income for its 1988 taxable year. Although no addition to Z's overall foreign loss account for shipping income will result from the NOL carryforward, shipping income earned by Z in subsequent taxable years will be subject to recharacterization as passive income and general limitation income pursuant to the rules set forth in section 904(f)(5).

(c) *Treatment of overall foreign losses that are part of net operating losses incurred in post-effective date taxable years which are carried back to pre-effective date taxable years*—(1) *Allocation to analogous income category.* An overall foreign loss that is part of a net operating loss incurred by the taxpayer in a post-effective date taxable year which is carried back, pursuant to section 172, to a pre-effective date taxable year shall be allocated first to income in the pre-effective date income category analogous to the income category set forth in section 904(d) as in effect for post-effective date taxable years in which the loss occurred. Except for the general limitation income category, the pre-effective date income category that is analogous to a post-effective date income category shall be determined under paragraphs (a) (i) through (iv) of this section. The general limitation income category for pre-effective date years shall be treated as the income category that is analogous to the post-effective date categories for general limitation income, financial services income, shipping income, dividends from each noncontrolled section 902 corporation and high withholding tax interest income. If the net operating loss resulted from separate limitation losses in more than one post-effective date income category and more than one loss is carried back to pre-effective date general limitation income, then the losses shall be allocated to the pre-effective date general limitation income based on the following formula:

$$\text{Pre-effective date general limitation income} \times \frac{\text{Loss in each post-effective date separate limitation category that is analogous to pre-effective date general limitation income}}{\text{Losses in all post-effective categories that are analogous to pre-effective date general limitation income}}$$

(2) *Allocation to U.S. source income.* If an overall foreign loss is carried back to a pre-effective date taxable year and the loss exceeds the foreign source income in the analogous category for the carryback year, the remaining loss shall be allocated against U.S. source income as set forth in § 1.904(f)–3. The amount of the loss that offsets U.S. source income must be added to the taxpayer's overall foreign loss account. An addition to an overall foreign loss account resulting from the carryback of a net operating loss incurred by a taxpayer in a post-effective date taxable year shall be treated as having been incurred by the taxpayer in the year in which the loss arose and shall be subject to recapture pursuant to section 904(f) as in effect for post-effective date taxable years.

(3) *Allocation to other separate limitation categories.* To the extent that an overall foreign loss that is carried back as part of a net operating loss exceeds the separate limitation income to which it is allocated and the U.S. source income of the taxpayer for the taxable year to which the loss is carried, the loss shall be allocated pro rata to other separate limitation income of the taxpayer for the taxable year. However, there shall be no recharacterization of separate limitation income pursuant to section 904(f)(5) as a result of the allocation of a net operating loss to other separate limitation income of the taxpayer.

(4) *Examples.* The following examples illustrate the rules of paragraph (c)(1).

Example (1). X is a domestic corporation which has a branch operation in Country A. For its taxable year ending December 31, 1987, X has a $60 net operating loss which is carried back pursuant to section 172 to its taxable year ending December 31, 1985. The net operating loss resulted from a shipping loss; X has no U.S. source income in the 1987. X had $20 of general limitation income, $40 of DISC limitation income and $10 of U.S. source income for its 1985 taxable year. The $60 NOL is allocated first to X's 1985 general limitation income to the extent thereof ($20) since the general limitation income category of section 904(d) as in effect for pre-effective date taxable years is the income category that is analogous to shipping income for post-effective date taxable years. Therefore, X has no general limitation income for its 1985 taxable year. Next, pursuant to section 904(f) as in effect for pre-effective date taxable years, the remaining $40 of the NOL is allocated first to X's $10 of U.S. source income and then to $30 of X's DISC limitation income for its 1985 taxable year. Accordingly, X has no U.S. source income and $10 of DISC limitation income for its 1985 taxable year after allocation of the NOL. X has a $10 balance in its shipping overall foreign loss account which is subject to recapture pursuant to section 904 (f) as in effect for post-effective date taxable years. X will not be required to recharacterize, pursuant to section 904(f)(5), subsequent shipping income as DISC limitation income.

Example (2). Y is a domestic corporation which has a branch operation in Country B. For its taxable year ending December 31, 1987, X has $200 net operating loss which is carried back pursuant to section 172 to its taxable year ending December 31, 1986. The net operating loss resulted from a ($100) general limitation loss and a ($100) shipping loss. Y had $100 of general limitation income and $200 of U.S. source income for its taxable year ending December 31, 1986. The separate limitation losses are allocated pro rata to Y's 1986 general limitation income as follows: $50 of the ($100) general limitation loss ($100 x 100/200) and $50 of the ($100) shipping loss ($100 x 100/200) is allocated to Y's $100 of 1986 general limitation income. The remaining $50 of Y's general limitation loss and the remaining $50 of Y's shipping loss are allocated to Y's 1986 U.S. source income. Accordingly, Y has no foreign source income and $100 of U.S. source income for its 1986 taxable year. Y has a $50 balance in its general limitation overall foreign loss account and a $50 balance in its shipping overall foreign loss account, both of which will be subject to recapture pursuant to section 904(f) as in effect for post-effective date taxable years.

(d) *Recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983.* For taxable years beginning after December 31, 1986, and before January 1, 1991, the rules set forth in § 1.904(f)–6 shall apply for purposes of recapturing general limitation and foreign oil related income (FORI) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983). For taxable years beginning after December 31, 1990, the rules set forth in this section shall apply for purposes of recapturing pre-1983 general limitation and FORI overall foreign losses.

(e) *Recapture of pre-1983 overall foreign losses determined on a combined basis.* The rules set forth in paragraph (a)(2) of this section shall apply for purposes of recapturing overall foreign losses incurred in taxable years beginning before January 1, 1983, that were computed on a combined basis in accordance with § 1.904(f)–1(c)(1).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 22, 1988.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–10920 Filed 5–16–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–37]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Martin County Commission, the Coast Guard is modifying regulations governing the Roosevelt drawbridge at Stuart by permitting the number of openings to be limited during certain periods. This change is being made because of complaints received from both highway and waterway users. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: The original Notice of Proposed Rulemaking published on October 2, 1987 drew a significant number of comments from waterway users objecting to the 90 minute closed periods during the morning and evening commuter times. These comments were sent to Martin County who then proposed an opening at the midpoint of the commuter closed periods. On February 16, 1988 the Coast Guard published a Supplemental Notice of Proposed Rulemaking (53 FR 4423) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 1, 1988. In each notice, interested persons were given until April 1, 1988 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Twenty eight comments were received. Twenty-three supported the proposal including a petition signed by eleven persons. Five opposed the amendment and expressed support for the original proposal. One writer suggested the bridge should be kept in the closed position for emergency vehicles. This provision is covered by the general drawbridge requirements under 33 CFR 117.31. Three commenters suggested that signs describing the bridge opening schedule be posted on the bridges. The requirement for posting signs for waterway users is covered by 33 CFR 117.55. The Coast Guard will encourage the installation of larger signs as suggested, and will refer the comments about posting signs on the highway for motorists to the bridgeowner. Another commenter suggested a fee should be required for bridge openings, which would encourage vessel owners to modify their vessels so they would not need an opening. We are not implementing this suggestion because the requirement to lower unnecessary appurtenances is already covered under 33 CFR 117.11 After carefully reviewing all comments, the Coast Guard has determined that no new information has been presented which justifies changing the proposed regulation. The final rule is unchanged from the proposed rule published on February 16, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.317(d) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(d) *Roosevelt (US1) bridge, mile 7.4 at Stuart.* The draw shall open on signal; except Monday through Friday, except federal holidays, from 7 a.m. to 6 p.m. the draw need open only on the hour and half hour. However, the draw need not open between 7:30 a.m. and 9 a.m. and 4 p.m. and 5:30 p.m. except at 8:15 a.m. and 4:45 p.m. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent railway bridge is in the closed position at the time of a scheduled opening the draw need not open, but it must then open immediately upon opening of the railroad bridge to pass all accumulated vessels. Exempt vessels shall be passed at any time.

* * * * *

Dated: April 29, 1988.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88–10951 Filed 5–16–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) has amended its National Service Life Insurance (NSLI) policy loan regulation to remove the reference to the initial variable policy loan interest rate of 8 percent. The intent of the regulation is to allow publication of new rates in the **Federal Register** without the requirement of periodic amendments to the loan regulation. The VA is removing reference in codified text to the initial 8 percent rate since that rate may vary annually. The VA will publish any future interest rate changes in the **Federal Register** but not as codified text. The effect of this amendment will be to reduce unnecessary regulatory burdens and publication costs while maintaining

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an adequate method of advising the public of periodic changes in the loan rate through publication in the **Federal Register**.

EFFECTIVE DATE: This amendment is effective May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: On October 2, 1987, a VA regulatory amendment was published at 52 FR 36925 providing for a variable policy loan interest rate on all NSLI policy loans applied for on and after the effective date of the amendment. The regulation, which became effective on November 2, 1987, sets forth the method for determining the variable loan rate, and the initial rate of 8 percent is shown in the regulation as notice to the public. The regulation also provides that notice of future rate changes will be published in the **Federal Register**. In addition, direct notice of the prevailing interest rate will be provided to new borrowers at the time the loan is made, and existing borrowers will be sent direct notice in advance of any rate increases. By removing the reference to the initial 8 percent rate from the regulation itself, future changes may be published in the **Federal Register** without changes to the codified text. In this manner, policyholders will receive reasonable advance notice of any future rate changes, and the Government will save the administrative cost of continued regulatory amendments.

Because this amendment makes no substantive change, the VA finds, under 38 CFR 1.12, that prior notice and opportunity for public comment are unnecessary.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this final regulatory amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this final regulatory amendment imposes no regulatory burdens on small entities, and there will be no direct effect on claimants for VA benefits. In any case, this change does not come within the term "rule" as defined in, and made subject to, the RFA, 5 U.S.C. 601(2).

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this final regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Number is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: April 25, 1988.

Thomas K. Turnage,
Administrator.

PART 8—[AMENDED]

In 38 CFR Part 8, National Service Life Insurance, paragraph (d) of § 8.28 is amended by removing the first sentence so that paragraph (d) reads as follows:

§ 8.28 Policy loans.

* * * * *

(d) Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(Authority: 38 U.S.C. 706)

[FR Doc. 88–11020 Filed 5–16–88; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

Veterans Education; Clarification of Administrative Error

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law provides that the Veterans Administration (VA) will not create an overpayment against the account of a veteran or eligible person if the overpayment is created as a result of an erroneous award of benefits based solely upon administrative error or error in judgment. Increasingly, users of the regulations have relieved veterans of overpayments when the overpayments resulted from administrative errors by third parties such as school officials rather than from such errors in the award of benefits by the VA. This is contrary to the way in which the law has been implemented for several decades. Accordingly, the regulation which implements this provision of law for the education programs which the VA administers is amended to make it clear that the law applies only to administrative error by the VA.

EFFECTIVE DATE: April 25, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On page 46494 of the **Federal Register** of December 8, 1987, there was published a notice of intent to amend Part 21 to clarify that the use of the term "administrative error" when determining the correct date for discontinuance of educational assistance under the Vietnam Era GI Bill and dependents' educational assistance refers to administrative error by the VA.

Interested people were given 30 days to submit comments, suggestions or objections. The VA received two letters. Both were from university officials.

One official stated that he agreed with the clarification. The other neither offered suggestions nor raised specific objections to the proposed regulation. Instead, he provided comments on the general area covered by the amended regulation and asked questions concerning related subject matter. The VA responded personally to him. The VA is adopting the amended regulation.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of Sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 25, 1988.

Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, *Vocational Rehabilitation and Education*, § 21.4135 is amended by revising paragraph (p)(2) and adding an authority citation to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(p) * * *

(2) Date of last payment on an erroneous award based solely on administrative error by the VA or error in judgment by the VA.

(Authority: 38 U.S.C. 3012(b)(10) and 3013)

* * * * *

[FR Doc. 88–11022 Filed 5–16–88; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 82–105]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising 46 CFR 67.03–5 to provide the basis for applying the phrase "controlling interest in the partnership" which was inserted in the Vessel Documentation Act by amendment just before the new vessel documentation regulations were published in the **Federal Register** on June 24, 1982 (47 FR 27490). The change in the regulation specifies when the controlling interest in a partnership is deemed to be owned by citizens of the United States for purposes of vessel documentation. This will reduce the number of inquiries concerning eligibility for documentation of a vessel owned by a partnership.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory L. Oxley, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1492. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal authors of this regulation are Gregory L. Oxley and Thomas L. Willis, Chief, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection.

Background

The regulations governing vessel documentation contained in Part 67 of Title 46, Code of Federal Regulations, were extensively revised in a final rule published on June 24, 1982. That rulemaking project simplified documentation procedures and implemented the Vessel Documentation Act (Pub. L. 98–594). In the supplementary information published with the final rule, the Coast Guard acknowledged that the recent amendment of the Vessel Documentation Act by section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97–138) created a definitional problem by introducing the new term "controlling interest" in the context of documentation of vessels owned by partnerships. The Coast Guard deferred resolution of the definitional problem due to the relative timing of the amendment to the statute and the publication of the final documentation regulations. An Advance Notice of Proposed Rulemaking (ANPRM) was published on November 12, 1982 (47 FR 51170) and the public was given until January 11, 1983 to comment. In response to the requests for extension, a notice was published extending the comment period for the ANPRM to January 24, 1983. A Notice of Proposed Rulemaking (NPRM) was published on July 16, 1984 (49 FR 28744) describing the Coast Guard's proposal for resolving the definitional problem. The public was given until September 14, 1984 to comment on the proposed change to the regulations. A correction document was published on August 16, 1984 (49 FR 32773) to correct minor errors in the published NPRM. A notice was published on September 13, 1984 (49 FR 35967) extending the NPRM comment period until October 15, 1984. Analysis of the comments concerning the proposed regulation is completed, and it is determined that publication of a final regulation is required.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100–239). This new law contains provisions which address American control of vessels which require a fishery license. Controlling interest requirements for a fishery license will be the subject of a future rulemaking project.

Discussion of Comments

Eleven substantive comments concerning the NPRM were received during the comment period. Comments and analyses were provided by law firms, merchant vessel owners and operators, industry associations, a maritime union, a non-profit research and education association, and others. Seven comments stated or implied some support for the regulation proposed by the Coast Guard, while four comments stated or implied objections to the proposed regulation.

Of the seven comments indicating some support for the proposed regulation, three supported it as published in the NPRM. One comment from a large independent marine transporter of petroleum products, which expressed strong support for the proposed regulation, said "it finally makes impossible the control of a United States domestic operator by foreign interests using 'shell' or 'dummy' U.S.-citizen owners." A comment from an association representing 15 member companies owning 103 bulk cargo vessels operating on the Great Lakes said the proposed amendment as published in the NPRM "promotes public policy as expressed by Congress." The third comment, from a law firm representing a fleet owner, said the approach adopted in the NPRM will enable the company it represents to include foreign investors in limited partnerships. The other four comments that indicated some support for the proposed regulation requested various changes. The suggested changes and the Coast Guard's position concerning each suggestion are as follows:

a. In order to prevent the regulation from being unduly restrictive and misleading in determining the question of control in fact, the legal department of a large chemical corporation suggested the phrase *"control* includes any right" in paragraph (e) of the proposed regulation should be changed to read *"control* may, in appropriate circumstances, include any right." The comment states the change allows the Coast Guard to continue to determine

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the issue of control on an *ad hoc* basis. The Coast Guard concurs with the intent of the recommendation, and the final rule is modified to emphasize this point. The rights listed in paragraph (e) are factors that tend to reflect control, and they are considered when evaluating who actually controls a partnership; they are not dispositive. A limited partner may exercise his or her individual rights, but aliens, individually or collectively, may not dictate the business decisions of or "control" a partnership. The Coast Guard will continue to make *ad hoc* determinations; however, the Coast Guard wishes to make it clear that *no* control in fact by aliens is acceptable in a partnership seeking to document vessels under the laws of the United States.

b. A non-profit association, representing 174 member companies, indicated general support for the proposed regulation but said it should include the "controlling interest" test contained in section 2 of the Shipping Act, 1916, as amended (hereinafter cited as 46 App. U.S.C. 802). The Coast Guard disagrees with the specific recommendation but concurs with its intent. Although 46 App. U.S.C. 802 refers to partnerships, the substantive controlling interest test, as articulated by that section, only applies to corporations and is not conducive to citizenship evaluations for partnerships, where stock ownership is not at issue. The Shipping Act test contained in 46 App. U.S.C. 802 does imply that in determining controlling interest, scrutiny of both equity interest and actual control is appropriate. The final rule imposes an equity and control test, but one tailored to partnerships rather than corporations.

c. A law firm, commenting on behalf of a client engaged in shipping activities, indicated general support for the NPRM and the "control" methods in paragraphs (d)(1), (d)(2), and (e) of the proposed regulation, but it also said 46 App. U.S.C. 802 should apply to the basic documentation decision. The comment says the Coast Guard ignored the question of "who controls the partners" in an illegal way, i.e., contrary to the explicit requirements of the statutes. The Coast Guard disagrees. Although several comments provided useful analyses of 46 App. U.S.C. 802 and related legislative history, none provided any information which had not been considered by the Coast Guard before the proposed regulation was written. For that reason, the Coast Guard position remains as stated in the NPRM; that is, for purposes of vessel documentation decisions, 46 App. U.S.C. 802 is inapplicable. The comment also suggests the issue of whether 46 App. U.S.C. 802 controls the documentation of vessels under registry should be made the subject of a separate rulemaking. The Coast Guard sees no necessity for a rulemaking project to consider that issue at this time.

d. A comment by a maritime association that indicated limited support for the regulation also suggested various changes. For example, it suggested that the regulation contain the tests found in 46 App. U.S.C. 802. For the reasons already discussed, that suggestion is not adopted. It also suggested the phrase "partner or partners" in paragraphs (a)(2) and (d)(1) of the proposed regulations be changed to "person" or expanded to read "partner or partners *or any other person.*" The Coast Guard sees no need for such a change. The proposed regulation makes it clear that the documentation of a vessel by a partnership will be permitted if each general partner is a citizen and the controlling interest in the partnership is owned by citizens of the United States as defined by the vessel documentation regulations. The final rule makes it clear that a coastwise or Great Lakes license will not be granted for a vessel owned by a partnership unless all of the general partners are U.S. citizens and at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who could each qualify for a coastwise or Great Lakes license in their own right. This approach does not detract from the requirements of 46 App. U.S.C. 802 in any way and reflects the same policy which the Coast Guard and its predecessor agency have followed since the Shipping Act of 1916, as amended, was enacted.

The commenter also expressed concern that control of a partnership could be conferred upon or permitted to be exercised by non-citizen partners by virtue of the fiduciary duty a general partner owes a non-citizen limited partner. The commenter suggested that language be added which would include within the meaning of "control" the right to have partners stand in a fiduciary capacity. The Coast Guard feels that such language is neither necessary nor proper. The fiduciary duty owed by a general partner is inherent to the nature of the partnership entity. The language suggested would preclude any involvement whatsoever by non-citizen limited partners, a result clearly not within the contemplation of the statute. The right to stand in a position of fair dealing with respect to a general partner is not tantamount to control over that general partner or the partnership. It is simply the right to expect general partners to act in the best interests of the partnership as a whole, rather than acceding to any special interests of partners, be they general or limited. The comment further suggested deletion of the portion of paragraph (e) which reads "but does not include the right to receive a financing return, i.e., interest or the equivalent of interest, on a loan or other financing obligation." It suggested this clause invites abuse by separating investment from equity. The Coast Guard disagrees. The purpose of the phrase used in the proposed regulation is to show that while a variety of "control" indicia are recognized within the legal and business communities—the list in paragraph (e) is not intended to be exhaustive—the Coast Guard position is that a loan or other financing obligation provided to a partnership by an alien which merely gives the alien the right to receive interest or the equivalent of interest does not by itself mean the lender has "control" over the partnership. Of course, if the alien lender has control over the partnership through any other means the partnership cannot document its vessels. The Coast Guard believes the proposed regulation conveys this position clearly and sees no need for the suggested change. Any attempted abuse can be dealt with as it appears.

Four comments reflecting substantial opposition to the proposed regulation were received. The basis for the objections and the Coast Guard's response is as follows:

a. One comment from a law firm said it is not necessary to clarify the definition of "controlling interest" in the partnership context, that the purported "clarification" is really a change from previous Coast Guard rulings, and that use of *ad hoc* determinations as in the past provides a satisfactory approach. The Coast Guard partially agrees. The Coast Guard does not view the proposed regulation as a change from existing policy. However, the need for clarification of the existing policy was clearly established by the comments received in response to the ANPRM. While it is unlikely that any regulation defining "controlling interest" will eliminate *ad hoc* determinations, the regulation delineates what factors the Coast Guard believes are important in determining who controls a partnership. This should benefit the public and the Coast Guard by reducing the need for such determinations. The comment also suggested the criteria for determining the existence of "control" contained in the Revised Uniform Limited Partnership Act (1976) should be incorporated into the proposed regulation. The Coast Guard considered this approach during the development of the proposed regulation and decided it was inappropriate. The Revised Uniform Limited Partnership Act has been enacted as law in only about one-fourth of the jurisdictions affected by the proposed regulation. Moreover, the criteria in the Revised Uniform Limited Partnership Act were developed to aid in deciding when limited partners may be held liable as though they were general partners. While this has some relation to the issue which our proposed regulation is designed to address, that is, whether control over a partnership seeking to document a vessel is in the hands of aliens, the issues are clearly not identical.

b. Two comments from companies involved in offshore shipping activities voiced strong objections to the proposed regulation on the grounds that it either violates 46 App. U.S.C. 802 or allows the statute to be circumvented through the use of several layers of partnerships. One of the comments states that under the Coast Guard definition "a combination of individuals, corporations, and partnerships could in fact result in a 99% alien-owned partnership and be entitled to document vessels under U.S. law (and flag) *and* operate those vessels in coastwise trade." The Coast Guard fails to see how this would be possible under the proposed regulation. In order to be issued a certificate of documentation endorsed with a coastwise license, a vessel must be eligible for documentation, built in the United States, and qualify under 46 App. U.S.C. 802 to be employed in coastwise trade. The other comment, from the legal department of the other company engaged in offshore shipping activities, included a chart purporting to show that by use of several tiers of partnerships the percentage of alien interest, in a partnership seeking to document and license a vessel, could increase progressively to 92.4915% by the ninth level. The Coast Guard disagrees with the analysis that leads to this conclusion. The analysis is not sound and based on a mathematical fiction. Furthermore, at each tier the partnership is 100% controlled by U.S. citizens. Each successive level must satisfy the 75/25 percent citizenship requirement, and therefore control cannot be diluted. Under the approach suggested by these two comments, the Coast Guard would evidently be required to refuse a coastwise license for a vessel owned by a partnership consisting of two other partnerships if the combined alien participation at all levels of the three partnerships exceeded 25 percent, even if each partnership at each level of ownership considered individually could qualify for a coastwise license under 46 App. U.S.C. 802. The Coast Guard and its predecessor agency have never used such an approach when deciding whether a vessel owned by an entity, which in turn is owned by one or more other entities, is eligible for a coastwise license. Moreover, the Coast Guard considers such an approach inconsistent with the language and the intent of 46 App. U.S.C. 802. Therefore, the position suggested by these comments is not incorporated into the regulation.

c. The fourth comment indicating substantial disagreement with the NPRM came from a union representing merchant seamen. The comment requests the Coast guard promulgate regulations that will accord the same interpretation of the term controlling interest as that in 46 App. U.S.C. 802, so as to assure "actual and complete control of a vessel to be documented under the U.S.-flag in the hands of U.S. citizens." For the reasons already discussed, the Coast Guard does not consider the test for "controlling interest" contained in 46 App. U.S.C. 802 applicable to basic documentation determinations. The Coast Guard believes the proposed regulation is sufficient to preclude alien ownership and control of partnership-owned vessels documented under the laws of the United States.

Two additional substantive comments were received outside the public comment period. Each comment was reviewed and found to contain no new significant information and therefore was not considered in the final rule.

Two comments suggested that public hearings be held. Both requests were denied. The Coast Guard does not believe that pubic hearings will produce any significant information not already reflected in the written comments and analyses. The only seriously controverted issue which has arisen during this rulemaking project is whether the Coast Guard is required to use the "controlling interest" test of 46 App. U.S.C. 802 when deciding whether a vessel owned by a partnership is eligible for a document. Approximately 40 comments were received in response to the ANPRM and the NPRM published in the **Federal Register**.

The comments included extensive analyses and arguments based on the statutes, the legislative history, court decisions, and practical considerations. These analyses came from advocates for both sides, including admiralty law firms and others who are well-informed concerning the controverted issue. In light of this, the Coast Guard considers public hearings unnecessary.

Based on the foregoing, the Coast Guard has decided the proposed regulation as published in the NPRM, with minor modifications, should be promulgated as a final rule.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation has been found to be so minimal that further evaluation is unnecessary. The regulation merely clarifies the Coast Guard interpretation of the statutory eligibility requirements pertaining to documentation of a vessel owned by a partnership.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

In consideration of the foregoing, 46 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 is revised to read as follows:

Authority: 46 U.S.C. 12103, 12113, 12115, 12120, 12121; 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 App. U.S.C. 927); 41 Stat. 1006 (46 App. U.S.C. 983); 94 Stat. 978 (42 U.S.C. 9101). 49 CFR 1.46

2. Section 67.03–5 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 67.03–5 Partnership, association, or joint venture.

(a) A partnership is a citizen:

(1) For the purpose of obtaining a registry, a fishery license, or a

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recreational license, if all its general partners are citizens and the controlling interest in the partnership is owned by citizens of the United States.

(2) For the purpose of obtaining a coastwise license or a Great Lakes license, if it meets the requirements of paragraph (a)(1) of this section and at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who, if applying for a license to engage in those trades, would each qualify as a citizen owner under this subpart.

* * * * *

(d) The controlling interest in a partnership is not deemed to be owned by citizens of the United States if:

(1) By any means whatsoever, control of the partnership is conferred upon or permitted to be exercised by a partner or partners who, if applying for a certificate of documentation as owner of a vessel, would not qualify as a citizen owner under this subpart; or

(2) More than 50 per cent of the equity in the partnership is owned by a partner or partners who, if applying for a certificate of documentation as owner of a vessel, would not qualify as a citizen owner under this subpart.

(e) For the purpose of paragraph (d)(1) of this section, control includes an absolute right to direct partnership business, to limit the actions of or replace any general partner, to direct the transfer or operations of any vessel owned by the partnership, or otherwise to exercise authority over the business of the partnership, but not the right to simply participate in these activities or the right to receive a financing return, i.e., interest or the equivalent of interest, on a loan or other financing obligation.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

Dated: May 10, 1988.

[FR Doc. 88-10954 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register

Vol. 53, No. 95

Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 802

Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) reviewed and proposes to revise the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance and Procedural Requirement for Grain Weighing and Inspection Equipment and Related Grain Handling Systems. FGIS proposes to incorporate by reference the applicable requirements of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1988 edition (Handbook 44). Currently, the 1985 edition of Handbook 44 is incorporated into Part 802 by reference. In addition, the proposal would change the test weight requirement for non-automatic hopper scales to 10 percent of the scale's capacity.

DATE: Comments must be submitted on or before July 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., USDA, FGIS, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as shown above telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed action has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Regulatory Review

Part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, prescribes specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing official services.

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems, sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services.

This review of the regulations concerning Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems (7 CFR 801.1-801.11 and 7 CFR 802.0-802.1) included a determination of continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations were serving their intended purpose, the language was clear, and the regulations were consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, proposes that the 1988 edition of Handbook 44 be incorporated by reference into Part 802 of the regulations in order to update the regulations. Additionally, FGIS proposes to revise the test weight requirements for non-automatic hopper scales to 10 percent of the scale's capacity.

Effective March 31, 1986, FGIS incorporated by reference, most provisions in the National Bureau of Standards (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1985 edition (Handbook 44) and all provisions in NBS Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," (Handbook 105-1). Those provisions in Handbook 44 that did not pertain to or were not practical for FGIS grain scales were not incorporated by reference. The provisions that were not incorporated are listed in 802.0(b) of the regulations.

Handbook 105-1 has not been revised by NBS since it was incorporated by reference by FGIS in 1986. Accordingly, that edition of Handbook 105-1 shall remain incorporated by reference.

The 1985 edition of Handbook 44 has been changed by NBS. In the past three years, approximately 42 sections of the Handbook 44 codes adopted by FGIS have been changed by revision, deletion, or addition of new sections. Most of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44. Accordingly, FGIS is proposing to update the regulations to incorporate by reference the most current edition of Handbook 44.

While most of the differences between the 1985 and the 1988 editions of Handbook 44 are minor, the following three sections of Handbook 44 were significantly changed in the 1988 edition:

1. Section T.N.8.2. *Humidity,* Scale Code (2.20), was deleted. This requirement had specified that scales must operate over a specified range of relative humidity. To ensure that scales met this requirement, it was necessary that they be tested in expensive, environmental chambers under varying humidity conditions. Such tests were very difficult to perform and were of arguable value. The impact of deleting this requirement is twofold: weights and measures organizations, such as FGIS, will be saved the expense of purchasing environmental chambers; and scale

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companies will be saved the cost of developing equipment that could comply with this requirement.

2. Section T.1.11. *Tolerance Values*, Scale Code (2.20), was revised to require that unmarked, grain test scales be tested to the same tolerances as marked scales. Unmarked scales are those manufactured prior to January 1, 1986. Marked grain tests scales are currently tested using a step tolerance system. This system was first introduced in 1985. In the step tolerance system, the allowable tolerance for error is small for the lower scale values but gradually increases as the size of the values increase. In the fixed tolerance system, the system FGIS now uses to test unmarked scales, the tolerance is the same throughout the scale's operational range. Preliminary evaluations indicate that all FGIS-approved grain tests scales currently in operation should test as well under the step tolerance system as under the fixed tolerance system.

3. Section T.4. *Radio Frequency Interference (RFI) and Other Electromagnetic Interference Susceptibility*, Scale Code (2.20), was added to ensure that scales are not adversely affected by RFI. Since FGIS already requires scales to be tested for RFI sensitivity, the impact of this requirement should be negligible.

FGIS is also proposing to revise the test weight requirement for non-automatic hopper scales. Both the 1985 and 1988 edition of Handbook 44 specify that test weights equal to or more than 12.5 percent of the capacity of such scales must be used to test these scales. Prior to adoption of Handbook 44, FGIS required non-automatic hopper scales to have test weights equal to at least 10 percent of their capacity. In the intervening period, the Service has found that 12.5 percent requirement is too costly, of limited benefit, and not conducive to effective elevator operation. FGIS proposes that the test weight requirement in section N.3. of Handbook 44 not be incorporated by reference. The Service will reinstate the 10 percent test weight requirement for non-automatic hopper scales by a revision to the FGIS Weighing Handbook.

Changes in Handbook 44 would also necessitate a revision to 802.0(b) concerning those provisions that could not be incorporated by reference because the provisions do not pertain to or are not practical for FGIS grain scales.

Specifically, FGIS proposes to revise:

1. Section 802.0(a), *Applicability*, by revising the edition of Handbook 44 that is incorporated by reference from the 1985 edition to the 1988 edition.

2. Section 802.0(b), *Applicability*, by revising the list of Handbook 44 sections that are not incorporated by reference as follows:

a. Delete Scale Code (2.20) sections N.2.1.1., T.3.8.3., and T.3.8.4. because the code in which these sections were located is not in the 1988 edition of Handbook 44.

b. Delete the title "(New) Scale Code (2.20)" because this code is known as the "Scale Code (2.20)" in the 1988 edition of Handbook 44.

c. Delete (new) Scale Code (2.20) section T.N.8. because the requirements for humidity have been eliminated from this section in the 1988 edition of Handbook 44.

d. Add Scale Code (2.20) section N.3. because this requirement does not improve the evaluation of weighing systems or their subsequent performance and therefore is deemed not practical for FGIS grain scales.

e. Add Scale Code (2.20) section T.N.3.7. because "in motion weighing", regardless of the kind of scale used, has been deemed unacceptable for grain weighing.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Part 802 is proposed to be amended as follows:

PART 802—[AMENDED]

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1988 edition of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NBS Handbook 105–1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures" (Handbook 105–1). Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. The NBS Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. These are also available for inspection at the Office of the Federal Register, Room 8401, 1100 "L" Street NW., Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scale Code (2.20)

N.3. Recommended minimum test weights
N.3.1.1. Test train
T.1.9. Railway track scales weighing in motion
T.N.3.6. In motion weighing
T.N.3.6.1.–4. In motion weighing
T.N.3.7. In motion weighing

Dated: April 26, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–11031 Filed 5–16–88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–932–86]

Income Taxes; Transition Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations relating to transition rules with respect to implementing the changes made to section 904(f) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986. The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The regulations would provide the public with guidance needed to comply with that Act and would affect individuals

and entities claiming the foreign tax credit.

DATES: Written comments and request for a public hearing must be delivered or mailed by July 18, 1988 The amendments are proposed to be effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (INTL–932–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3896 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register adds new § 1.904(f)–13T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1. For the text of the temporary regulations, see T.D. 8201, published in the Rules and Regulations portion of this issue of the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Willard W. Yates, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861.1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Proposal of Regulations

The temporary regulations T.D. 8201, published in the Rules and Regulations portion of this issue of the Federal Register, are hereby also proposed as final regulations under section 904(f) of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–10921 Filed 5–16–88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL–128–87]

Apportionment of Expenses in the FSC and DISC Contexts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to apportionment of expenses in the FSC and DISC contexts.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 18, 1988. The amendments are proposed to be effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [INTL–28–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attn: CC:LR:T). Telephone 202–566–6384, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 861 (b) of the Internal Revenue Code.

Discussion

These regulations modify § 1.861–8(f)(1)(vi)(C) to provide that expenses, losses and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a DISC or FSC from an export transaction and residual gross income are not also allocated and apportioned to gross income consisting of certain distributions from the DISC or FSC. A new *Example* (23) is added to § 1.861–8(g) by these regulations to reflect this change. Specifically, new *Example* (23) illustrates how a related supplier's general and administrative expenses are apportioned to its various classes of gross income if the related supplier pays commissions to the FSC on export sales. In contrast to the apportionment of general and administrative expenses in existing *Example* (22) of § 1.861–8(g) which involves an export sale made through a DISC, new *Example* (23) illustrates that there is not a second stage apportionment to FSC dividends attributable to the FSC's foreign trade income (except to the extent that the foreign trade income is determined under the section 925(a)(3) transfer pricing method) of the related supplier's general and administrative expenses that have already been apportioned to the combined taxable income of the FSC and the related supplier. The example also illustrates that the related supplier's research and development expenses are apportioned in a like manner.

In addition, new *Example* (23) of § 1.861–8(g) illustrates that in the DISC context, there will not be a second stage apportionment to DISC dividends of the related supplier's expenses that have already been apportioned to the combined taxable income of the DISC and the related supplier. Existing *Example* (22) of § 1.861(g) applies only with regard to taxable years beginning before January 1, 1987.

New *Example* (23) does not apply to corporations electing the application of section 936.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register**.

Special Analyses

Although this document is a notice of proposed rulemaking which solicits public comment, it has been concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). It has been determined that this proposed rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

List of Subjects in 26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.861–8(f)(1) (iii) and (vi)(C) is revised to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(f) *Miscellaneous matters—(1) Operative sections.* * * *

(iii) *DISC and FSC taxable income.* Sections 925 and 994 provide rules for determining the taxable income of a FSC and DISC, respectively, with respect to qualified sales and leases of export property and qualified services. The combined taxable income method availabe for making determination of a DISC's taxable income provides, without consideration of export promotion expenses, that the taxable income of the DISC shall be 50 percent of the combined taxable income of the DISC and the related supplier derived from sales and leases of export property and from services. In the FSC context, the taxable income of the FSC equals 23 percent of the combined taxable income of the FSC and the related supplier. Pursuant to regulations under sections 925 and 994, this section provides rules for determining the deductions to be taken into account in determining combined taxable income, except to the extent modified by the marginal costing rules set forth in the regulations under sections 925(b)(2) and 994(b)(2) if used by the taxpayer as provided therein. *See Examples* (22) and (23) of paragraph (g) of this section. In addition, the computation of combined taxable income is necessary to determine the applicability of the section 925(d) limitation and the "no loss" rules of the regulations under sections 925 and 994.

* * * * *

(vi) * * *

(C) The separate classifications of income to which the foreign tax credit limitation is applied separately under section 904(d) (as in effect after enactment of the Tax Reform Act of 1986). In the case of expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a DISC or former DISC under section 994 and residual gross income, such deductions are not also allocated and apportioned to gross income consisting of certain distributions from the DISC or former DISC with respect to DISC or former DISC taxable years beginning after December 31, 1986. Accordingly, *Example* (22) of paragraph (g) of this section does not apply to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years beginning after December 31, 1986. In addition, for taxable years beginning after December 31, 1986, in the case of expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a FSC under section 925 and residual gross income, such deductions are not also allocated and apportioned to gross income consisting of distributions from the FSC or former FSC which are attributable to the foreign trade income of the FSC or former FSC (except to the extent that the foreign trade income is determined under the section 925(a)(3) transfer pricing method). *See Example* (23) of paragraph (g) of this section;

* * * * *

Par. 3. *Example* (22) of § 1.861–8 (g) is amended by adding immediately after subdivision (iii) a subdivision (iv) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (22). * * *

(iv) This *Example* (22) applies only to DISC taxable years beginning before January 1, 1987, and to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years beginning before January 1, 1987.

* * * * *

Par. 4. *Example* 23 of § 1.861–8(g) is removed and replaced with new *Example* (23) to read as follows:

§ 1.861.8 Computation of taxable income form sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (23)—Foreign Sales Corporations—(i) *Facts.* R, a domestic corporation, manufactures a product line of electronic equipment and sells it to retailers both in the United States and in foreign countries through foreign sales branches. On January 1, 1988, R established FSC, a wholly owned corporation, in a possession of the United States. FSC elected under section 922(a)(2) foreign sales corporation status. Both R and FSC are calendar year corporations. R entered into a written agreement with FSC whereby FSC was granted a sales franchise with respect to the export sales of the electronic equipment, which is export property as defined in section 927(a). Under the agreement, FSC would receive commissions with respect to those exports equal to the maximum amount permitted to be received under the administrative pricing rules of section 925(a)(1) and (2). The maximum amount will equal the expenses incurred by FSC plus the maximum profit permitted to be earned by FSC under the pricing rules. In 1988, the profit earned by FSC was $354,424. This profit was determined using the combined taxable income administrative pricing method of section 925(a)(2). FSC paid taxes to the United States in the amount of $41,914 (*i.e.*, $354,424 × 8/23 × .34). The FSC did not pay any foreign tax. On September 15, 1989, FSC paid R a dividend of $312,510 (*i.e.*, profit less United States tax). The 100% dividends received deduction of section 245(c) applied to this dividend. In 1988, R had total export sales of $7,700,000 for which its cost of goods sold was $6,000,000. Thus, its gross income on those sales was $1,700,000. Those sales occurred outside the United States. Moreover, R had U.S. domestic sales of $12,000,000 on which it earned gross income of $900,000. R received royalty income from the foreign license of its electronic technology in the amount of $1,000,000. R's deductible general and administrative expenses allocable to all gross income are $125,000. For purposes of this example, it is assumed that R did not incur any research and development expenses. In addition, it is assumed that R did not incur any direct selling expenses with respect to either its domestic or foreign sales. FSC incurred $100,000 of expenses relating to the activities and functions referred to in section 924(c), (d) and (e). FSC will receive the maximum commission and profit under the combined taxable income method of section 925 (a)(2). Under this method, FSC will receive a profit equal to 23% of the combined taxable income attributable to the export sale of the electronic equipment computed on a product line basis.

(ii) *Allocation.* For purposes of determining combined taxable income of R and FSC from export sales, R's general and administrative expenses of $125,000 must be allocated to and apportioned between gross income resulting from the production and sale of the electronic equipment for foreign markets, and from the production and sale of the electronic equipment for the domestic market.

(iii) *Apportionment—*(a) *Combined Taxable Income.* In order to compute the combined taxable income from the production and sale of the electronic equipment, R's general and administrative expenses of $125,000 are apportioned between the statutory grouping of gross income under section 863(b) from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. None of R's general and administrative expenses are apportioned to the FSC distribution of $312,510. In the absence of more specific or contrary information, R's general and administrative expenses may be apportioned on the basis of gross income in the respective groupings, as follows:

Apportionment of general and administrative expenses to the section 863(b) statutory grouping, gross income from exports of electronic equipment:

$$\$125{,}000 \times \frac{\$1{,}700{,}000}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000)} = \$59{,}028$$

Apportionment of general and administrative expenses to the residual grouping, gross income from domestic sales of electronic equipment, foreign royalty income from licensing electronic equipment technology:

$$\$125{,}000 \times \frac{(\$900{,}000+\$1{,}000{,}000)}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000} = \$65{,}972$$

Total apportionment of general and administrative expenses	$125,000

On the basis of this apportionment, the combined taxable income and FSC's portion of the combined taxable income may be calculated as follows:

Gross income from exports	$1,700,000
Less:	
FSC section 924(c), (d) and (e) expenses	100,000
Apportioned general and administrative expenses	59,028
Total expenses	(159,028)
Combined taxable income	1,540,972
FSC's income—23% of combined taxable income	354,424

(B) *R's section 863(b) taxable income.* R's total section 863(b) taxable income from the export sales equals 77% of combined taxable income and is computed as follows:

Gross receipts	$7,700,000
Cost of goods sold	6,000,000
Gross income	1,700,000
Less:	
Apportioned general and administrative expenses	59,028
Commission to FSC	454,424
Total	(513,452)
R's taxable income	1,186,548

As illustrated, all of the general and administrative expenses apportioned to combined taxable income are taken as deductions in computing R's section 863(b) taxable income.

(C) *R's foreign source royalty income.* In order to determine the amount of taxable income of R from sources without the United States relating to the royalty income, the remaining general and administrative expenses of $65,972 are apportioned between the statutory grouping, foreign royalty income, and the residual grouping of gross income from sources within the United States. The computations below illustrate this apportionment:

Apportionment of the general and administrative expenses to the statutory grouping, foreign royalty income:

$$\$65{,}972 \times \frac{\$1{,}000{,}000}{(\$1{,}000{,}000+\$900{,}000)} = \$34{,}722$$

grouping, gross income from domestic sales of electronic equipment.

Apportionment of general and administrative expenses to the residual

$$\$85,972 \times \frac{\$900,000}{(\$1,000,000 + \$900,000)} = \$31,250$$

(iv) *R's foreign source income from the sales using FSC as a commission agent.* R's section 863(b) income of $1,188,548 from the export sales of electronic equipment manufactured in the United States and sold in foreign countries will qualify for sourcing partly from within and partly from without the United States in accordance with § 1.863–3. For purposes of this example, it is assumed that R's income qualifies for sourcing on the basis of *Example* (2) of § 1.863–3(b)(2). Accordingly, one-half of the income ($593,274) would qualify as foreign source income. However, since the export sales were made using a foreign sales corporation as a commission agent on the sale, section 927(e)(1) will operate to limit R's foreign source income to $385,243. Under section 927(e)(1), R's foreign source income on the export transaction may not exceed the amount which would have been treated as foreign source income had the comparable DISC pricing rule, in this case the 50% of combined taxable income method, been used to compute FSC's profit. The calculations under section 927(e)(1) are as follows (for purposes of this example, it is assumed that there are no export promotion expenses):

Combined Taxable Income (CTI)	$1,540,972
DISC income (50% of CTI)	770,486
R's income (50% of CTI)	770,486
Source of R's income:	
U.S. source	$385,243
Foreign source	$385,243

(v) *Research and development expenses.* For purposes of this example, it was assumed R did not incur any research and development expenses (R & D expenses). Had R incurred R & D expenses, for purposes of computing the combined taxable income from the production and sale of the electronic equipment, those R & D expenses would have been allocated and apportioned between the statutory grouping of gross income from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. R & D expenses would also have been apportioned to R's export sales and royalty income in order to determine R's section 863(b) taxable income from export sales. As with the apportionment of general and administrative expenses none of the R & D expenses, are apportioned to the dividends from the FSC.

(vi) *Apportionment of expenses in DISC context.* For taxable years beginning after December 31, 1986, general and administrative expenses and research and development expenses of a related supplier in a DISC context are also allocated and apportioned as illustrated in this example. None of the expenses are apportioned to DISC dividends.

* * * * *

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 88–11004 Filed 5–16–88; 8:45 am]
BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 9

Servicemen's and Veterans' Group Life Insurance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) is amending its regulations relating to Servicemen's and Veterans' Gorup Life Insurance to reflect that the law provides that members of the Individual Ready Reserve (IRR) and the Inactive National Guard (ING) are eligible to be issued Veterans' Group Life Insurance. Members of the IRR and ING will be able to obtain Veterans' Group Life Insurance (VGLI) by submitting an application together with the initial premium within 120 days of becoming a member of the IRR or ING. If the application and required premium are not submitted within the 120 day period, insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120 day period.

DATES: Comments must be received on or before June 17, 1988. Comments will be available for public inspection until July 1, 1988. The effective date of this regulation, if promulgated, is the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5380.

SUPPLEMENTARY INFORMATION: The Administrator of Veterans Affairs hereby certifies that this proposed regulation, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) this proposed regulation is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation will affect only certain VGLI applicants. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this proposed regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. This proposed regulation will not have a large effect on the economy, will not cause an increase of costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program Number for this regulation is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Servicemen's and veterans' group.

Approved: April 11, 1988.

Thomas K. Turnage,
Administrator.

PART 9—[AMENDED]

In 38 CFR Part 9, *Servicemen's Group Life Insurance and Veterans' Group Life Insurance,* § 9.3 is proposed to be amended by adding paragraph (f) to read as follows:

§ 9.3 Applications.

* * * * *

(f) Members of the Individual Ready Reserve and the Inactive National Guard are eligible to be granted Veterans' Group Life Insurance provided an application together with the initial premium are submitted to the administrative office within 120 days of becoming a member of either organization. If an application and the initial premium are not submitted within the 120 day period as set forth in this paragraph, Veterans' Group Life Insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120 day period.

(Authority: 38 U.S.C. 777)

[FR Doc. 88–11019 Filed 5–16–88; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 91

[CGD 82–004a]

Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations to permit alternative examinations of Offshore Supply Vessels (OSV's) of less than 400 gross tons operating from foreign ports in place of the Coast Guard examination required for reinspection of these vessels. OSV owners must reimburse the Coast Guard for the expenses of marine inspectors conducting foreign inspections, and they occassionally bear the cost of relocating vessels to certain ports to facilitate required inspections. Foreign inspections of OSV's frequently require Coast Guard personnel to be assigned to temporary duty in remote locations where their official status and personal security are matters of concern, and result in a less than optimum allocation of Coast Guard resources. The benefits of alternative examinations would include flexibility and financial savings to the OSV industry, and more effective and secure use of limited Coast Guard resources.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Comments may be mailed to Commandant (G–CMC/21) (CGD 84–004a), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G–CMC), Room 2110, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: CDR R.S. Tweedle, Office of Marine Safety, Security and Environmental Protection, (202) 267–1045.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (82–004a) and the specific section of the proposal to which each comment applies, and give the reason for the comments. Persons desiring acknowledgment that their comments have been received should enclose a stamped, addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

This rulemaking is an extension of an Advance Notice of Proposed Rulemaking (ANPRM) published on February 14, 1983, entitled "Offshore Supply Vessel Regulations" [CGD 82–004]. Two (2) comments were received on parts of the ANPRM which proposed changes to the scope and timing of reinspections. One (1) comment suggested that reinspections had previously been eliminated from Coast Guard regulations.

Drafting Information

The principal persons involved in drafting this proposal are Mr. John M. Kinsey, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Willian Register, Project Counsel, Office of Chief Counsel.

Background and Objective

OSV's are inspected for certification every two years. They are required to be reinspected once between the tenth and fourteenth month of the period of validity of the certificate of inspection. This notice addresses reinspections and proposes an alternative procedure to having Coast Guard personnel conduct the examination required for the reinspection of OSVs that are continuously employed outside of the United States.

In 46 U.S.C. 2101(19) an OSV is defined as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies or equipment in support of exploration, exploitation or production of offshore mineral or energy resources and is not a small passenger vessel. Further, 46 U.S.C. 3306(f) recognizes OSV's as a distinct vessel type and requires that regulatory consideration be given to the characteristics, methods of operation, and nature of service of these vessels.

The Coast Guard is currently engaged in rulemaking which will set uniform, minimum standards for OSV's. An advance notice of proposed rulemaking, CGD 82–004, "Offshore Supply Vessel Regulations," was published in the **Federal Register** on February 14, 1983 (48 FR 6636). Some degree of self-examination was discussed in the ANPRM, together with proposed changes in the intervals for inspections and the scope of inspection. Until this rulemaking is completed, OSV's are inspected and certificated under the provisions of 46 CFR Subchapter I (Parts 90–99), "Cargo and Miscellaneous Vessels." For the reasons explained below, the self-examination aspect of the Offshore Supply Vessel Regulations rulemaking is being considered separately in this rulemaking.

The relevant provisions in 46 CFR Subpart 91.27 require at least one reinspection on each vessel holding a two year certificate of inspection under Subchapter I. Generally, this reinspection is required to be made between the tenth and fourteenth month of the period of validity of the certificate. A reinspection is not intended to be equivalent to an inspection for certification. The scope of a reinspection is intended to be appropriate to assure the continued safe operation of a vessel. The level of detail varies according to the conditions found, the maintenance performed on the vessel, and the vessel's safety history.

While a large number of OSV's operate in areas where Coast Guard inspectors are reasonably available, an increasing and significant number are based overseas due to a decline in the domestic offshore exploration and production industry in recent years. Some have been based in remote locations, and to not normally return to the United States. Under 46 U.S.C. 3317(b), vessel owners or operators must reimburse the Coast Guard for inspector travel and per diem costs incurred to conduct inspections in foreign ports.

The Coast Guard believes that the reinspections required by 46 CFR Subpart 91.27 are necessary to promote and maintain marine safety. However, it is noted that overseas reinspections of these vessels results in less than optimum allocation of Coast Guard resources. In addition, the official status and personal security of marine inspectors assigned to temporary duty overseas in remote locations where

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OSV's operate are also matters of concern. Recently, the Coast Guard was temporarily unable to provide inspectors to conduct OSV inspections due to civil unrest in one area. Coast Guard personnel may not have status in some countries and may be vulnerable to local laws. Current reinspection procedures are costly to vessel owners and operators who are basing more vessels in foreign waters and must reimburse the government for the per diem and travel cost incurred by the Coast Guard in performing these inspections.

To minimize the special concerns arising from foreign inspections of OSV's, the Coast Guard, in cooperation with interests that own or operate 80% of all inspected OSV's, has developed a data base of OSV's operating overseas. The Coast Guard provides these owner/operators with advisories of vessel inspection dates, inspector locations, projected inspection schedules, and future inspection requests to assist in scheduling multiple inspections and avoid vessel relocations where possible. The Coast Guard also notifies the Department of State and cognizant embassies of the itinerary of inspectors performing overseas inspections while on temporary duty.

In the past, the Coast Guard has always used marine inspectors to examine OSV's requiring reinspection overseas, but, in this very narrow set of circumstances, to allow the marine safety resources of the Coast Guard to be used more effectively, and to reduce costs to the agency and to the marine industry, the Coast Guard considers that pursuing alternative methods of reinspection is timely. Some degree of self-examination is possible in these circumstances because of the relatively small size, simplicity and traditional hull form of most OSV's, the presence of licensed crew members aboard these vessels, and since the Coast Guard will continue to perform detailed inspections for certification every two years and two drydock examinations in each five year period. This type of program can be kept workable because of the financial incentives to owners seeking self-examination and because of the enforcement tools available to the Coast Guard for dealing with the owner/operator or Master for violations of applicable requirements. The Coast Guard is not proposing alternative reinspection examinations for other types of vessels because of their size, complexity, service, equipment, scope of operations and potential risks to the environment and crews.

The possibility of discontinuing Coast Guard reinspections was considered. While this would remove the financial burden on the industry and reduce Coast Guard costs, it was felt that the level of safety would decrease because of decreased accountability. A program utilizing Coast Guard approved independent inspectors hired by the owners of OSV's was also considered. In addition to the cost to the government in developing and managing the approval program and the burden on the inspectors in obtaining approval, this would impose substantial additional expense on the industry by requiring the use of fee paid services. Consideration was also given to delegating the reinspection examinations to specific third parties under the provisions of existing law. This alternative was not acceptable as it would also impose substantial costs on the industry in the form of fees and expenses. In addition, most OSV's are not classed by a U.S. classification society. The alternative selected was a program of self-examination with Coast Guard oversight and evaluation accomplished through the existing marine inspection program. This choice would minimize the cost to the industry because it is flexible and allows several alternatives. By allowing existing Coast Guard resources to be concentrated on problem areas, such a program would maintain overall safety in the OSV industry.

This rulemaking concerns only who may perform the examinations conducted for reinspection and how the examination reports will be evaluated. The proposed rulemaking for "Offshore Supply Vessels" considers the intervals for and the scope of reinspections. In place of the reinspection process currently required, the Coast Guard is considering permitting reinspection examinations of OSV's by the Masters of the vessels or by persons retained or employed by the owner/operator, provided the Master and the person performing the examination verifies the accuracy of the examination report. Coast Guard inspectors would continue to conduct inspections for certification every two years and two drydock examinations in any five year period.

This proposal contemplates that the marine inspector performing the biennial inspection for certification would comment in the record of the inspection whether the vessel should be considered for self-examination. The proposed rules would require a factual report of the results of the reinspection examination to be submitted to the Coast Guard. The vessel's Master would be required to perform the examination and submit the report, or, in the alternative, verify the results of an examination by another representative of the owner/operator on the basis of personal knowledge. The report would be forwarded to the Coast Guard via the owner or operator of the vessel. Coast Guard inspectors would review reinspection examination reports, conduct the anticipated increased number of foreign biennial inspections and drydock examinations of OSV's (resulting from the increased number of OSV's operating in foreign ports), conduct oversight of the alternate examination program, and carry out an unchanged overall OSV inspection program on vessels based in U.S. waters.

The Officer in Charge, Marine Inspection would evaluate the continued compliance and fitness of a vessel for its intended route and service on the basis of the examination report. The Coast Guard would require examination reports to be complete, descriptive, and supported by photographs and documentation of the servicing of lifesaving and fire protection equipment.

Vessel owners and operators would be expected to develop report formats appropriate to their vessels and provide factually accurate reports of vessel conditions and required systems. The Coast Guard would initially distribute Cargo, Miscellaneous and Passenger Vessel Hull Inspection books, Form CG-840A (Rev. 11-78) to interested OSV owners and operators to assist in the development of examination report formats. Original examination reports would be submitted to the Officer in Charge, Marine Inspection who issued the certificate of inspection. Vessel owners and operators would be encouraged to retain a copy of the examination report for their own records.

This proposal requires that the person conducting the examination be a representative of the vessel's owner or operator. There are few substitutes for good judgment, knowledge of the vessel's operation, and experience on the part of the person conducting the examination. Further, it is expected that persons who conduct these examinations would be familiar with the applicable Coast Guard regulations. The Coast Guard contemplates that these examinations would be conducted by the Master of the vessel, a company safety officer, port captain or port engineer, or, in some cases, an independent marine surveyor.

Under the provisions of Regulation 16 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), the Coast Guard is obligated to perform annual surveys on

OSV's of 400 gross tons or more operating outside of the United States, and to endorse the International Oil Pollution Prevention (IOPP) Certificate upon completing a satisfactory survey. This survey would normally be conducted concurrently with an inspection for certification or reinspection. The necessity to perform this survey limits the applicability of these proposed rules to vessels of less than 400 gross tons.

The provisions of this rulemaking would not limit an Officer in Charge, Marine Inspection from making such tests or inspections as deemed necessary to be assured of the compliance and seaworthiness of any OSV.

Disussion of the Comments to the ANPRM

Of the comments received to the ANPRM, only 2 addressed proposed changes to the reinspection regulations. One commenter preferred the existing description of the scope of a reinspection in 46 CFR 91.27-5(a) & (b) over the scope of a reinspection described in the ANPRM. This proposed rulemaking does not concern the scope of reinspections. Another commentor suggested that some vessels would be required to have annual surveys under SOLAS 74 or MARPOL 73/78. SOLAS 74 does not require annual surveys for cargo vessels of less than 500 gross tons. This proposed rulemaking takes into consideration the United States' obligations under SOLAS 74 and MARPOL 73/78, by limiting the applicability of the rule to vessels under 400 gross tons which are not required to have annual pollution prevention surveys. A third commenter erroneously concluded that the ANPRM proposed to put reinspections back into Coast Guard regulations, and that to do so would cost the commentor $1 million annually for transportation and lodging. One purpose of this proposed rule is to address industry cost problems. Reinspections were fully a part of Coast Guard regulations when the ANPRM was published. They had, however, been suspended operationally between October 1981 and August 1983 due to Coast Guard budget constraints and personnel shortages. There were no comments on the advantages, disadvantages, procedures or cost benefits of self-inspections.

Discussion of Proposed Amendments

The proposed changes would establish an alternative self-examination program in place of Coast Guard examinations for reinspections of OSV's of less than 400 gross tons operating for extended periods in foreign waters. The examination would be conducted during the period between the tenth and fourteenth month of their certificates of inspection.

Proposed section 91.27-13

This is a new section that would state the eligibility and requirements for requesting, conducting and reporting alternative examinations of OSV's operating in foreign waters. Paragraph (a) proposes that the owner or operator of each OSV that is expected to be employed outside of the United States when the reinspection examination is due may request permission from the OCMI who issued the vessel's certificate of inspection to perform the examination provided certain conditions for eligibility are met. The Coast Guard does not intend for the proposed rule to be used as a mechanism to avoid Coast Guard reinspections of OSV's by temporarily relocating them in foreign waters. Requests for permission to perform alternative examinations will be carefully evaluated to prevent such a practice.

It is proposed that eligibility would be determined on the basis of the vessel's location, it's safety record as reflected in reports of casualties or accidents, the vessel's inspection status, the recommendation of the Coast Guard inspector who performed the prior inspection for certification or drydock examination, and the owner/operator's history of compliance and cooperation with the foreign inspection program. Inspectors would not recommend vessels for alternative examination where, for example, defects or unsafe practices aboard the vessel are revealed in confidence to the inspector or discovered by the inspector.

Proposed paragraph (b) outlines the factors considered by the Officer in Charge, Marine Inspection in determining whether to grant permission for the alternative inspection.

Proposed paragraph (c) details when the examination must be conducted; the scope of the examination and who may conduct it; the content required in the report of examination, and a requirement that each report of examination be verified and forwarded to the owner or operator for review and final submission to the Officer in Charge, Marine Inspection. Paragraph (c) also establishes a requirement that owners or operators submit examination reports to the Officer in Charge, Marine Inspection together with a certified statement of assurances concerning the capacity of the person examining the vessel, the owner's or operator's review of the report, and the correction of deficiencies.

The purpose of proposed paragraph (c)(5) is to emphasize the importance of the supporting role of the owners or operators of OSVs (as compared to the operational role of shipboard personnel) and the requirement for their active involvement in the alternative examination program. It is important that the condition of vessels subject to alternative examination be within the knowledge of their owners or operators to assure accountability, particularly in the sometimes difficult task of obtaining services or equipment in remote locations for routine maintenance and repair, or, to correct deficiencies. In such circumstances, operational personnel require the full logistical support of owners or operators.

Proposed paragraph (d) establishes the required from of certification for examination reports and for the statements of the owner/operator which must accompany examination reports submitted to the Officer in Charge, Marine Inspection.

Proposed paragraph (e) establishes procedures to handle deficiencies discovered during alternative examinations of offshore supply vessels and describes how outstanding deficiencies or hazards reported by the owner or operator are handled by the Officer in Charge, Marine Inspection.

Proposed paragraph (f) emphasizes the authority and responsibility of the Officer in Charge, Marine Inspection to evaluate the conditon of the vessel, to require additional information concerning any vessel and to conduct inspections with or without notice. The owners or operators of vessels inspected by Coast Guard personnel at a foreign port or place will still be required to reimburse the government for travel and per diem expenses.

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule is considered to be non-major under Executive Order 12291. It is considered non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC (202) 426-2307, from 8 a.m. to 4 p.m. Copies may also be obtained by contacting that office.

If this proposal is adopted, it is estimated that the OSV industry would realize an annual savings of $190,000 to

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$240,000 in travel, per diem and vessel relocation expenses. The Coast Guard would save approximately $56,000 annually due primarily to reduced personnel costs and a reduction in the cost associated with collecting inspector travel and per diem expenses from OSV owners and operators. The agency would be able to focus its resources on OSV's with poor safety and compliance records, and fewer Coast Guard inspectors would be assigned to temporary duty in remote locations where their official status and security are matters of concern.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned a operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The regulations would affect owners and operators of offshore supply vessels. Because of the relatively high costs of these vessels (one 180' standard design may be constructed for $5 million; one 120' standard design may be constructed for $1.2 million), their owners and operators tend to be multi-vessel corporations or otherwise substantial corporations. In addition, the proposed rules have the potential of saving vessel owner/operators $1000 to $2000 in each instance where a reexamination of a OSV in a overseas location is necessary. For the above reasons, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirement in § 91.27–13. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES."

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. A categorical exclusion determination has been prepared and is on file in the rulemaking docket.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 91

Cargo vessels, Coast Guard, Law enforcement, Marine safety, Offshore supply vessels, Reporting requirements.

In consideration of the foregoing, Parts 91 of Title 46 of the Code of Federal Regulation is proposed to be amended as follows:

PART 91—INSPECTION AND CERTIFICATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321 (j)(i); 49 CFR 1.46.

2. In Part 91 and Subpart 91.27 a new § 91.27–13 with the heading "Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports" is added to read as follows:

§ 91.27–13 Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons may request permission to conduct an examination of the vessel in lieu of having it examined by the Coast Guard pursuant to § 91.27–5, provided:

(1) The request is received by the OCMI who issued the certificate of inspection before the end of the twelfth month of the period of the certificate's validity;

(2) The vessel is expected to be continuously employed outside of the United States during the tenth through fourteenth month of the period of validity of the vessel's certificate of inspection;

(3) The vessel has not experienced a marine casualty or accident as defined in this Title since the date of the inspection for certification;

(4) The vessel does not have outstanding inspection requirements;

(5) The marine inspector who performed the previous inspection for certification or drydock examination recommends that the vessel be considered for alternative examination in place of examination by the Coast Guard.

(b) In determining whether to grant permission for the alternative examination, the Officer in Charge, Marine Inspection considers:

(1) The necessity of the request, and

(2) The owner/operator's history of foreign inspection compliance and cooperation, including:

(i) The prompt correction of deficiencies;

(ii) The reimbursement of Coast Guard marine inspector travel and per diem for other inspections;

(iii) The submittal of reliable prior alternative examination reports; and

(iv) The reliability of representations that vessels previously examined under this section were employed outside of the United States for the tenth through the fourteenth month of the periods of validity of their certificates of inspection.

If permission is granted, the Officer in Charge, Marine Inspection provides the applicant written authorization to proceed with the alternative examination, including special instructions when appropriate.

(c) The conditions of this paragraph must be met for the examination in paragraph (a) of this section to be accepted by the Coast Guard.

(1) The examination must be conducted between the tenth and fourteenth month of the period of validity of the vessel's certificate of inspection;

(2) The examination must be of the scope detailed in § 91.27–5 and must be conducted by the vessel's Master, owner, or operator or a designated representative of the owner or operator;

(3) Upon completion of the examination, the person or persons conducting the examination shall prepare a comprehensive report describing the conditions found and containing sufficient detail (including reports and receipts documenting the servicing of lifesaving and fire protection equipment and photographs) that the Officer in Charge, Marine Inspection may evaluate the vessel to be assured that it is fit for the service and route specified on the certificate of inspection. Each person preparing the report shall sign it and certify that the information contained therein is complete and accurate;

(4) Unless he or she has participated in the examination and preparation of the report, the vessel's Master shall review the report and shall sign a statement certifying that the examination was conducted as described and that the report is complete and accurate to the best of his or her knowledge and belief. The Master shall forward the report to the vessel's owner or operator;

(5) The owner or operator of an offshore supply vessel examined under this subpart must review and submit the report of examination to the Officer in Charge, Marine Inspection, who issued the certificate of inspection. The report must be received before the sixteenth month of the period of the vessel's certificate of inspection to be considered valid. The forwarding letter or endorsement must be certified and contain the following information:

(i) The person who conducted the examination was assigned as an authorized agent of the vessel owner or operator;

(ii) The report was reviewed by the owner or operator;

(iii) The discrepancies noted during the examination were or will be corrected; and

(iv) The owner or operator has personal knowledge of conditions aboard the vessel at the time of the examination or made all necessary inquires to justify forming a belief that the examination report was true and correct.

(d) The form of certification required under this subpart shall be as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

Note: False statements are subject to the penalties provided by 18 U.S.C. 1001.

(e) Deficiencies and hazards discovered during an examination of an offshore supply vessel under this section must be corrected or eliminated, if practicable, before the report of examination is submitted to the Officer in Charge, Marine Inspection. Deficiencies and hazards that are not corrected or eliminated by the time the report is submitted must be reported as "outstanding." Upon receipt of a report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection, informs the owner or operator of the vessel by letter of the time period specified to correct or eliminate the deficiencies or hazards and the method for establishing that it has been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection, shall initiate appropriate enforcement measures.

(f) On the basis of the information in the report submitted under this section, the Officer in Charge, Marine Inspection, determines whether the vessel is in satisfactory condition and whether it continues to be reasonably fit for its intended service and route, and informs the owner/operator of this determination by letter. The Officer in Charge, Marine Inspection, may request any additional information required to evaluate a vessel, and may conduct inspections with or without notice at any time deemed necessary.

Dated: March 30, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–10955 Filed 5–16–88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1988 Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice and Cotton Programs; Determination Regarding the Proclamation of 1988–Crop Program; Provisions for Wheat, Feed Grains, Rice and Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1988–Crop Program provisions for wheat, feed grains, rice and cotton.

SUMMARY: The purpose of this notice is to affirm the determinations previously made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), including amendments required in the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1988 price support and production adjustment programs for wheat, feed grains (corn, sorghum, barley, oats, and rye), rice, and cotton (upland and extra long staple (ELS)).

EFFECTIVE DATE: May 16, 1988.

ADDRESS: Dr. Orval Kerchner, Acting Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: William J. Gleason, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4038.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.056
Rice Production Stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The 1987 Act amended the 1949 Act with respect to the 1988–90 crops of wheat, feed grains, upland and ELS cotton, and rice.

Generally, these amendments provide that:

(1) Minimum target prices for the 1988 and 1989 crops of wheat, feed grains, upland cotton, ELS cotton, and rice will be lowered;

(2) The reduction in price support rates for the 1988 crops which would have occurred in accordance with the 1949 Act will be limited;

(3) A voluntary paid land diversion program for corn, sorghum, and barley with an acreage diversion requirement of 10 percent and a payment rate of $1.75 per bushel for corn (other payment rates to be established in relation to corn) will be in effect for 1988;

(4) Adjustments of wheat and feed grain county price support rates which reflect transportation differentials may not exceed more than the percentage change in the national average price support rate plus or minus 2 percent for the 1988–90 crops;

(5) A 1988 crop oats acreage limitation program not to exceed 5 percent will be in effect;

(6) Minimum Farmer-Owned Reserve levels for wheat and feed grains will be reduced to 300 million bushels and 450 million bushels, respectively;

(7) Additional yield payments for the 1988–1990 crops will be made to producers of wheat, feed grains, upland cotton, and rice if the farm program payment yield is reduced by more than 10 percent below the 1985 program payment yield;

(8) Advance deficiency payments will be made available with respect to the 1988–90 crops to wheat and feed grains producers at not less than 40 percent, nor more than 50 percent, of the projected payment rate, and for rice and uplance cotton producers, not less than 30 percent, nor more than 50 percent, of the projected payment rate;

(9) Advanced emergency compensation payments will be made to wheat producers who elect, at signup, to receive 75 percent of the projected additional deficiency payment (the "Findley" payment) in December of the respective wheat marketing year;

(10) Haying and grazing of acreage designated as conservation use (CU) and acreage conservation reserve (ACR) shall be permitted, except during any consecutive 5-month period between April 1 and October 31 as designated by the State Agricultural Stabilization and Conservation (ASC) committees. However, haying and grazing shall not be permitted for any crop if the Secretary determines that haying and grazing would have an adverse economic effect in the State. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage;

(11) An optional acreage diversion program, commonly referred to as "0/92," will be available to producers of the 1988–1990 crops of wheat and feed grains. Producers may devote all or a portion of the permitted acreage to CU and receive deficiency payments on an acreage not to exceed 92 percent of the crops permitted acreage. The deficiency payment rate on the CU acreage will not be less than the estimated deficiency payment rate. The Secretary is required to implement the program in such a manner as to minimize the adverse effects on agriculturally related economic interests within any county, State or region taking into consideration acreage idled under other price support, production adjustment, or conservation programs;

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the **Federal Register** Vol. 52, No. 61, Page 15356; No. 136, Page 26707; No. 137, Page 27032; No. 175, Page 34282; and No. 201, Page 38806.

Public comments were recorded and presented before the Secretary prior to the final program provision determinations. Comments received during the specified comment period are summarized below for the 1988 commodity programs of wheat, feed grains, upland cotton, ELS cotton and rice.

Wheat and Common Program Comments

A total of 72 respondents commented on the 1988 Wheat and Common Program determinations. Thirty-two of the respondents were individual producers and twenty were producer organizations.

Common Program Provisions

With respect to the specific comments for the Common Program Provisions of the 1988 crops of Wheat, Feed Grains, Upland and ELS Cotton, and Rice the following are noted:

(a) *Approved Nonprogram Crops (ANPC) and Haying and Grazing on ACR and CU Acres:* Fifty-six respondents opposed ANPC production and haying and grazing of ACR and CU acreage and 43 favored such action. Planting of ANPC and haying of ACR and CU acreage will not be permitted, except under emergency conditions, because of the otherwise adverse economic effect such a determination would have on producers who already grow such crops. However, the haying prohibition may be waived if it is determined by the State ASC Committee that the additional haying will not have an adverse economic effect. Grazing of ACR and CU is permitted except during any 5-consecutive-month period between April 1 and October 31 as designated by the State ASC committees.

(b) *Advance Payments:* Twenty-three respondents favored advanced program payments and 1 respondent opposed such payments. Advance deficiency payments of 40 percent of the projected payment were announced in order to provide program participants with sufficient operating funds.

(c) *Cross Compliance:* Twenty respondents favored limited cross compliance and 1 respondent opposed such action. These compliance requirements were implemented in order to ensure that desired levels of stocks for all program commodities are attained.

(d) *Offsetting Compliance:* Sixteen respondents opposed offsetting compliance and 5 favored such action. These compliance requirements will not be implemented due to: (1) The stautory prohibition of such actions relative to rice and upland cotton; and (2) the likely decrease in the level of program participation that otherwise would have occurred under the wheat, feed grains, and ELS cotton programs. The higher level of participation achieved by not requiring offsetting compliance will likely result in greater overall program effectiveness.

(e) *Farm Acreage Base (FAB) Adjustment:* Sixteen respondents favored the 10 percent FAB adjustment provision and 5 opposed such adjustments. The FAB adjustment program will not be implemented because: (1) Significant budget increses would occur; (2) producers would be discouraged producers from reacting to appropriate market signals and instead seek to capitalize on favorable Government programs; and (3) additional excess production would be stimulated in those commodities with favorable payment programs.

(f) *Advance Recourse Loans:* Four respondents favored advance loans and 3 opposed the use of such loans. Advance recourse loans will not be offered because: (1) Sufficient operating funds are available for the 1988 crop; and (2) such a program could place unnecessary encumbrances upon crops that have not been produced, resulting in increased financial stress for producers.

(g) *Miltiyear Set-Asides:* Eight respondents favored multiyear set-asides and 4 opposed such a program. This program will not be implemented because the expected acres idled under the ALP, PLD, and conservation reserve program (CRP) are considered adequate for the purpose of supply management of program commodities.

(h) *Interest Payment Certificates (IPC):* Seven respondents favored interest payment certificates and 4 opposed the use of such certificates. IPC will not be used because the existing generic certificate exchange procedure will provide sufficient opportunities to producers to use such certificates in the orderly marketing of commodities.

(i) Eight comments were received that related to issues for which comments were not requested.

With respect to the specific comments for the 1988 Wheat Program the following are noted:

(a) *Acreage Limitation Program (ALP):* Twenty-seven respondents favored an acreage reduction level of 27.5 percent or less, 6 favored 30 percent. The announced ALP level of 27.5 percent is 2.5 percent below the statutory maximum. The 1949 Act provides that an ALP of less than 30 percent and more than 20 percent must be implemented if it is determined that a carryover of 1 billion bushels of wheat will exist on June 1, 1988. When the ALP was announced, it had been determined that this carryover would be 1.778 billion bushels. Based upon this estimate it was determined that an ALP of 27.5 percent would result in a decline in carryover stocks while export demands could still be met.

(b) *Established "Target" Price:* Eighteen respondents favored a target price level of $4.38 per bushel, the 1987 level, 10 favored $4.29 per bushel, and 2 favored parity. The target price is set at the statutory minimum of $4.23 per bushel provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Twenty-nine comments were received regarding the establishment of the wheat price support loan level. Twelve respondents favored $2.17 per bushel, the lowest level recommended. The remaining 17 respondents favored higher price support loan levels ranging from $2.22 per bushel to $3.00 per bushel. The minimum statutory loan level of $2.21 per bushel was selected because: (1) Average farm prices during the preceding marketing year did not exceed 110 percent of the loan rate; (2) this level is necessary to maintain a competitive market position; and (3) the loan rate is well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Twenty-six respondents favored a paid diversion program and 3 opposed such a program. A paid diversion program will not be implemented because the ALP

level was determined to be sufficient to adequately manage stock levels.

(e) *Marketing Loan:* Sixteen respondents favored a marketing loan program and 3 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions; and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(f) *Commodity Certificates:* Thirty-four respondents favored payments in generic commodity certificates and 2 opposed such payments. In order to fully utilize the assets of CCC, it has been determined that 50 percent of the advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(g) *Farmer-Owned Reserve (FOR):* Eight respondents opposed entry into the FOR and 5 favored such action. Because the required minimum reserve levels were lowered by the 1987 Act, it was announced that no immediate entry would be permited into the FOR. Actions to encourage participation in the program will be taken if reserve quantities fall below the required minimum level of 300 million bushels.

(h) *Wheat Export Certificate Program:* Five respondents opposed the export certificate program while 2 favored its implementation. This program will not be implemented because the generic commodity certificate and export enhancement programs were determined to be sufficient to provide incentives for the export of wheat from private and CCC-owned stocks.

(i) *Inventory Reduction Program (IRP):* Four respondents favored the IRP and 1 respondent opposed its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

(j) *Special Wheat Grazing and Hay Program:* Three comments were received opposing this program. The special grazing and hay program will not be implemented because it was determined that: (1) Additional haying and grazing supplies will not be needed; (2) haying of additional program acreage will have an adverse economic effect on the incomes of those producers who already grow such crops; and (3) additional reductions in planted acreage is not necessary to manage wheat supplies.

Feed Grain Comments

A total of 115 respondents commented on the 1988 Feed Grain Program determinations. Eighty-seven of the respondents were individual producers and 10 were producer organizations.

With respect to the specific comments for the 1988 Feed Grains Program the following are noted:

(a) *Acreage Limitation Program:* Forty-eight comments were received regarding acreage reduction levels with 20 percent, the statutory maximum ALP level, receiving the most comments at 27. Of the remaining 21 comments, 5 favored a 12.5 percent ALP, 3 favored a 15 percent ALP, 10 favored unspecified ALP levels, and 3 opposed the ALP. The maximum level was selected because corn stock levels on September 1, 1988, were projected to exceed 4 billion bushels, double the statutory target carryover level of 2 billion bushels.

(b) *Established "Target" Price:* Eighteen respondents favored a target price level of $3.03 per bushel, the 1987 level, 10 favored $2.97 per bushel, and 12 favored non-specific raising or lowering of the target price. The target price is set at the statutory minimum of $2.93 per bushel provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Nine respondents favored setting the loan rate for corn at the 1987 level, 7 favored $2.17 per bushel and 9 favored $1.74 per bushel, with 13 non-specific comments. The minimum statutory loan level of $1.77 per bushel for corn was selected because: (1) Average farm prices during the preceding marketing year did not exceed 110 percent of the loan rate; (2) the action is necessary to maintain a competitive market position; and (3) the loan rate is well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Thirty-one respondents favored a paid diversion program and 7 opposed such a program. In accordance with the 1987 Act, a voluntary paid diversion program of 10 percent for corn, sorghum, and barley is required to be implemented with respect to 1988 crops. Accordingly, such a program will be available to producers who also participate in the acreage reduction program.

(e) *Marketing Loan:* Twelve respondents favored a marketing loan program and 6 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions; and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(f) *Commodity Certificates:* Thirty respondents favored payments in generic commodity certificates, 5 opposed the use of certificates, and 2 favored a choice of receiving payments in cash or in certificates. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments and 100 percent of feed grain diversion payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(g) *Farmer-Owned Reserve:* Thirteen respondents favored entry into the FOR and 6 opposed such action. The quantity of corn in the FOR exceeds the statutory maximum level, accordingly it was announced that no immediate entry would be permitted into the FOR. Actions to encourage participation in the program will be taken if reserve quantities fall below the required minimum level of 450 million bushels.

(h) *Feed Grain Export Certificate Program:* Six respondents opposed the export certificate program and 1 respondent favored its implementation. This program will not be implemented because the use of generic commodity certificate and the export enhancement program were determined to be sufficient to provide incentives for the export of feed grains from private and CCC-owned stocks.

(i) *Inventory Reduction Program:* Four respondents opposed the IRP and 3 favored its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

(j) *Eligibility of Barley:* Five comments were received favoring the inclusion of barley in the feed grain program. Barley will be included in the 1988 Feed Grain Program because instituting ALP requirements with respect to the production of barley will help balance barley supply with demand.

(k) *Exemption of Malting Barley:* Three respondents opposed the exemption of malting barley from an acreage limitation program and 2 favored such action. Malting barley producers will not be exempt from the ALP because the exclusion of such varieties from production adjustment requirements would reduce the effectiveness of the feed grain program.

(l) *Nonrecourse Loan for Corn Silage:* Eleven respondents favored the inclusion of corn silage grain equivalent in the loans and purchases program and 4 opposed such action. The program will not be made available because the cost of the program would significantly outweigh the benefits which would be received by producers.

(m) Sixty-two comments were received that were either nonspecific or related to issues for which comments were not requested.

Upland Cotton Program Comments

A total of 10 respondents commented on the 1988 Upland Cotton Program determinations. Two of the respondents were individual producers, 7 were producer organizations, and one represented an industry association.

(a) *Acreage Limitation Program:* Five respondents favored an acreage reduction level of 10 percent or less and 3 favored an ALP of 15 percent. An ALP level of 12.5 percent was selected because it provided a total supply of upland cotton adequate for domestic and export marketings and resulted in carryover stocks at approximately the statutory target level of 4 million bales.

(b) *Established "Target" Price:* Four comments were received supporting the statutory minimum target price level. The target price is set at the statutory minimum of $0.759 per pound provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan Level:* Five comments were received supporting the statutorily determined loan level. The loan level of $0.518 per pound was established based on the statutory formula.

(d) *Land Diversion Program:* Five respondents favored a paid diversion program and 1 opposed such a program. A paid diversion program will not be implemented because the ALP level was determined to be sufficient to adequately manage stock levels.

(e) *Commodity Certificates:* Seven respondents favored payments in the form of generic commodity certificates and 1 respondent opposed such payments. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(f) *Inventory Reduction Program:* One respondent favored the IRP and 1 respondent opposed the implementation of such a program. The IRP will not be implemented for cotton because: (1) Such a program would encourage producers to plant nonprogram crops on available crop acreage thereby adversely affecting the incomes of current producers of such nonprogram crops; and (2) the program requires payments to be made in the form of cotton specific certificates and CCC does not have a sufficient quantity of cotton inventory which could be exchanged for such certificates.

(g) *Plan A/Plan B and Loan Repayment Level:* Four comments were received supporting the Plan B repayment provision. Plan B was selected because of its flexibility in adapting to world price fluctuations, thereby minimizing Government cost exposure should prices rise above expected levels.

(h) *Loan Deficiency Payments:* Five comments were received in support of making loan deficiency payments available to producers. This provision will be implemented for upland cotton because offering loan deficiency payments will provide greater marketing opportunities to producers and also reduce the quantity of upland cotton pledged as collateral for CCC price support loans.

(i) *National Program Acreage (NPA):* Two comments were received opposing the NPA provision. Since an ALP is in effect for the 1988 crop, the NPA determination is not applicable.

(j) *Voluntary Reduction Percentage (VRP):* Two comments were received opposing the VRP provision. Since an ALP is in effect for the 1988 crop, the VRP will not be applicable.

(k) *Seed Cotton Loan Program:* Five comments were received favoring continuation of seed cotton loans. Seed cotton loans will continue to be offered to producers because it helps to provide producers interim financing between the time cotton is harvested and the time the cotton is ginned.

(l) Thirty-one comments were received that were either nonspecific or related to issues for which comments were not requested.

ELS Cotton Program Comments

One respondent commented on the 1988 ELS Cotton Program determinations. The respondent was a producer organization that favored an acreage reduction level of 5 percent. An ALP level of 10 percent was selected because it provided a total supply of ELS cotton adequate for domestic and export marketings and resulted in carryover stocks at approximately the target level of 65,000 bales.

Rice Program Comments

A total of 43 respondents commented on the 1988 Rice Program determinations. Twenty-three of the respondents were individual producers and 10 were producer organizations.

With respect to the specific comments for the 1988 Rice Program the following are noted:

(a) *Acreage Limitation Program:* Forty comments were received regarding acreage reduction levels with 35 percent, the statutory maximum level, receiving the most comments at 20. Of the remaining 20 comments, 8 favored an ALP level of 25 percent, 6 favored 20 percent, 3 favored 15 percent, and 1 each favored 10, 5, and 0 percent. An ALP level of 25 percent was selected because it provided a total supply of rice adequate for domestic and export marketings and resulted in ending stocks at approximately the statutory target level of 30 million cwt.

(b) *Established "Target" Price:* Three respondents favored a target price level of $11.30 per cwt., the 1987 level, and 1 respondent favored $10.74 per cwt. The target price is set at the statutory minimum of $11.15 per cwt. provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Three respondents favored a loan and purchase rate of $6.50 per cwt., the statutory minimum at the time comments were requested, and 1 respondent favored $6.84 per cwt. Subsequently, the 1949 Act was amended to provide for a minimum price support level for the 1988 crop of $6.63 per cwt. The statutory minimum was selected because it was determined to be well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Two comments were received opposing a paid diversion program. A paid diversion program will not be implemented because the ALP level was determined to be sufficient to adequately manage stock levels.

(e) *Commodity Certificates:* Five respondents favored payments in the form of generic commodity certificates and 3 opposed the use of certificates. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

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(f) *Inventory Reduction Programs:* Two comments were received opposing the IRP. The IRP will not be implemented for rice because such a program would encourage producers to plant nonprogram crops on available crop acreage, thereby adversely affecting the incomes of current producers of such nonprogram crops.

(g) *Loan Deficiency Payments:* Three respondents favored making could be available to exchange for such certificates; loan deficiency payments and 1 respondent opposed such action. Loan deficiency payments will be made available because: (1) Part of such payments must be made in the form of rice specific commodity certificates and CCC does not own sufficient quantities of rice which would be available for the exchange of such certificates; (2) these payments are based on program yields rather than harvested yields and, accordingly, producer participation in this provision would to be negligible; and (3) it has been determined that offering producers loan deficiency payments would not significantly reduce the quantities of rice pledged as collateral for CCC price support loans.

(h) *National Program Acreage:* One comment was received opposing the NPA provision. Since an ALP is in effect for the 1988 crops, the NPA determination is not be applicable.

(i) *Voluntary Reduction Percentage:* Two comments were received opposing the VRP provision. Since an ALP is in effect for the 1988 crops, the VRP is not applicable.

(j) *Loan Rate Adjustment:* Seven comments were received regarding the class loan rate differential. Four of the comments favored a differential of $1.00 per cwt., which was the 1987 level. One comment each was received supporting a differential of $4.00, $2.00, and $0.00 per cwt. The loan rate differential was established at $1.00 per cwt. because this level most accurately represents the domestic class loan rates which reflect the ratio of class world prices.

(k) *Purchase of Marketing Certificates:* Two respondents opposed this provision and 1 respondent favored its implementation. Producers will not be required to purchase marketing certificates as a condition of repaying a loan at a reduced rate because such certificates must be exchanged for CCC-owned rice and CCC does not have sufficient quantity of rice in its inventory which could be exchanged for such certificates.

(l) *Marketing Certificates:* Three comments were received in favor of the marketing certificate program. CCC will continue to issue generic commodity certificates to producers whenever the world price for a class of rice (adjusted to U.S. qualities and location) is below the minimum loan repayment level. This action is considered necessary to make U.S. rice competitive in world markets and to maintain and expand exports of rice produced in the U.S.

(m) Twenty-eight comments were received that were either nonspecific or related to issues for which comments were not requested.

This notice affirms the following determinations previously made and announced by the Secretary, beginning July 2, 1987, with respect to the 1988 crops of wheat, feed grains, rice and cotton (upland and ELS).

Determinations

1. Loan and Purchase Level

In accordance with sections 107D(a)(1), 105C(a)(1), 101A(a)(1), 103A(a)(1), and 103(h)(2) of the 1949 Act, the price support loan and purchase level per bushel, unless otherwise indicated, shall be $2.21 for wheat, $1.77 for corn, $1.68 ($3.00 per cwt.) for sorghum, $1.44 for barley, $0.90 for oats, $1.50 for rye, $6.63 per cwt. for rice, $0.5180 per pound for upland cotton, and $0.8092 per pound for ELS cotton.

2. Established (Target) Price

In accordance with sections 107D(b)(1)(G), 105C(b)(1)(E), 101A(c)(1)(D), 103A(c)(1)(D) and 103(h)(3)(B) of the 1949 Act, the established ("target") price per bushel, unless otherwise indicated, shall be $4.23 for wheat, $2.93 for corn, $2.78 ($4.96 per cwt.) for sorghum, $2.51 for barley, $1.55 for oats, $11.15 per cwt. for rice, $0.759 per pound for upland cotton, and $0.957 per pound for ELS cotton.

3. Acreage Reduction/Paid Land Diversion Program

In accordance with sections 107D(f)(1)(B), 105C(f)(1)(B), 103A(f)(2)(A) and 103(h)(8)(A) of the 1949 Act, acreage reduction programs have been established with respect to the 1988 crops at 27½ percent for wheat, 20 percent for corn, sorghum, and barley, 5 percent for oats, 25 percent for rice, 12½ percent for upland cotton, and 10 percent for ELS cotton.

Accordingly, producers will be required to reduce their 1988 acreages of these commodities for harvest from the respective crop acreage base established for a farm by at least these established percentages for each commodity in order to be eligible for price support loans, purchases, and payments for each such commodity. Producers of corn, sorghum, and barley are eligible in accordance with section 105C(f)(5) of the 1949 Act to receive diversion payments on an acreage equivalent to 10 percent of the corn, sorghum, and barley crop acreage base established for the farm if the acreage planted to these crops on the farm for harvest does not exceed 70 percent of such crop acreage base. The diversion payment rates per bushel shall be: $1.75 for corn; $1.65 for sorghum, and $1.40 for barley.

4. Set-Aside Program

In accordance with sections 107D(f)(1), and (3) and 105C(f) (1) and (3) of the 1949 Act, it has been determined that there will be no set-aside program for the 1988 crops of wheat and feed grains.

5. Haying and Grazing/Production of Approved Nonprogram Crops

In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(c)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that haying will not be allowed except under emergency conditions unless it is determined that, based upon information submitted by a State ASC committee, haying will not result in an adverse economic effect in the State. Grazing of acreage designated as ACR and CU will be permitted except during any 5-consecutive-month period between April 1 and October 31 that is established for a State, by the State ASC committee. Haying and grazing of conservation reserve acreage is prohibited. The Secretary has further determined that production of crops, program or nonprogram, will not be permitted on ACR or CU acreage.

6. Advance Deficiency and Land Diversion Payments

In accordance with section 107C of the 1949 Act the Secretary will make available to producers: (1) Advance deficiency payments for the 1988 crops of wheat, feed grains, upland cotton, and rice; and (2) advance land diversion payments for the 1988 crops of corn, sorghum, and barley. Producers may request 40 percent of their projected deficiency payments when they enroll in the 1988 Wheat, Feed Grain, Upland Cotton and Rice Programs. Fifty percent of the advance deficiency payments will be paid in cash and the balance of the advanced amount will be paid in generic commodity certificates. The entire diversion payment will be made in advance on or about May 16, 1988. One hundred percent of the feed grain diversion payment will be paid in generic commodity certificates. No advance deficiency payments will be offered to ELS cotton producers.

7. Binding Contracts

Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

8. Cross and Offsetting Compliance

In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton. Section 103(h)(16)(c) prohibits imposition of limited cross compliance for the 1988 crop of ELS cotton. In accordance with sections 107(d)(i), 105C(i), 103A(n)(1), and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grain and ELS cotton Program participants will not be required as a condition of eligibility for program benefits. Sections 101A(n)(1) and 103A(n)(3) prohibit imposition of offsetting compliance for rice and upland cotton program participants.

9. Establishment of Acreage Bases and Adjustments

In accordance with section 503 of the 1949 Act, farm acreage bases will be established for the 1988 crop year. Adjustments in crop acreage bases for the 1988 program as provided in section 505 will not be allowed. In accordance with section 504 of the 1949 Act, it has been determined that limited adjustments in crop acreage bases may be approved when producers need to change cropping practices to carry out conservation compliance requirements on highly erodible land.

10. Establishment of Program Payment Yields

In accordance with section 506 of the 1949 Act, it has been determined that the actual yield per harvested acre for the 1988 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

11. Marketing Loan

A. Wheat and Feed Grains

In accordance with sections 107D(a)(5) and 105(a)(4) of the 1949 Act, it has been determined that marketing loans will not be implemented for the 1988 crops of wheat or feed grains. The price support loan and purchase levels applicable to such crops have been lowered to the maximum extent possible and it has been determined that this action is sufficient to maintain a competitive market position. Also, the implementation of a marketing loan program for such crops would greatly increase program costs while program benefits would be minimal.

B. Upland Cotton

In accordance with section 103A(a)(5) of the 1949 Act, the Secretary determined on October 29, 1987, that Plan B of the marketing loan program would be implemented in the event that the prevailing world market price (adjusted to U.S. quality and location) for upland cotton falls below the upland cotton price support loan rate. The loan repayment rate shall be equal to the lesser of the loan level or the adjusted world market price.

C. Rice

In accordance with section 101A(a)(5) of the 1949 Act, it has been determined that a producer of 1988-crop rice may repay a price support loan for the 1988 crop of rice at a level that is the lesser of: (1) The price support loan level or; (2) the higher of (i) 60 percent of the rice price support loan rate or (ii) the prevailing world market price for rice. It has been determined that a producer shall not be required to purchase a negotiable marketing certificate as a condition of repaying the rice price support loan at a lower level.

12. Loan Deficiency Payments

In accordance with sections 107D(b), 105C(b), 101A(b), and 103A(b) of the 1949 Act, it has been determined that, with respect to the 1988 price support and production adjustment programs, loan deficiency payments will not be available for wheat, feed grains, and rice, but will be available for upland cotton. It has been determined that offering producers loan deficiency payments in lieu of obtaining a price support loan will reduce the quantity of upland cotton pledged as collateral for price support loans when a marketing loan is in effect, but would not significantly reduce such quantities of rice pledged as collateral. Since, for the 1988 crops, marketing loans are available only with respect to upland cotton and rice, loan deficiency payments will not be available for feed grains and wheat producers.

13. Inventory Reduction

In accordance with sections 107D(g), 105C(g), 101A(g), and 103A(g) of the 1949 Act, it has been determined that the inventory reduction program will not be implemented for the 1988 crops of wheat, feed grains, rice, and upland cotton since such a program would encourage producers to plant nonprogram crops on available crop acreage and thereby adversely affect producers of such nonprogram crops.

14. Advance Recourse Commodity Loans

In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and cotton and advance diversion payments for feed grains (except oats) will substantially augment private lending to producers and, therefore, ease producer credit problems. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

15. Farmer-Owned Reserve Program

In accordance with section 110 of the 1949 Act, it has been determined that there will be no immediate entry into the farmer-owned reserve (FOR) program for the 1988 crop of wheat and feed grains. The lower limit on the size of the reserve for wheat and feed grains is established at 300 million bushels and 450 million bushels, respectively. Actions to encourage participation in the program will be taken if reserve quantities fall below the minimum levels.

16. Inclusion of Barley

In accordance with section 105(c)(1)(F) of the 1949 Act, it has been determined that barley producers are eligible to receive 1988 feed grains program payments since inclusion of barley in the feed grain acreage reduction program permits the alignment of barley stocks with barley demand.

17. Exemption of Malting Barley

In accordance with section 105C(e)(2) of the 1949 Act, it has been determined that malting barley shall not be exempt from the feed grain acreage reduction program since a large portion of barley production is planted to malting barley

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varieties and exclusion of such varieties from any production adjustment requirements would greatly reduce the effectiveness of the feed grain program.

18. Nonrecourse Loans and Purchases for Corn Silage Grain Equivalent

In accordance with section 105C(a) of the 1949 Act, it has been determined that corn silage grain equivalent will not be eligible for nonrecourse loans and purchases since an increase in program costs would result in only marginal increases in program benefits.

19. ELS and Upland Seed Cotton Loan

In accordance with section 103(h)(17) of the 1949 Act and section 5 of the Charter Act, it has been determined that recourse loans will be made available to producers for ELS and upland seed cotton under the same provisions that were applicable to the 1987 crops of ELS and upland cotton.

20. Cost Reduction Options

In accordance with section 1009 of the 1985 Act it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); secs. 101, 101A, 103A, 103(h), 105B, 107C, 107D, 107E, 108, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464 and 1485); sec. 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 U.S.C. 1308a).

Signed at Washington, DC, on May 6, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–10940 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Poverty Income Guidelines

AGENCY: Food and Nutrition, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR Part 246.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291 and has been determined to be *not major*. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.577 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the national School Lunch Act (42 U.S.C. 1758). Under section 9, the income limit for reduced-price school meals is 185 percent of the Federal poverty income guidelines, as adjusted.

Section 9 also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1988 was published by the Department of Health and Human Service (DHHS) in the **Federal Register** for February 12, 1988, at 53 FR 4213. The guidelines published by DHHS are referred to as the poverty income guidelines.

The Department published final WIC regulations on February 13, 1985, at 50 FR 6106. Section 246.7(c) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9 of the National School Lunch Act for reduced-price school meals, or are less than 100 percent of the Federal poverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At the time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1988 through June 30, 1989. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Effective July 1, 1988–June 30, 1989

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	5,770	10,675
2	7,730	14,301
3	9,690	17,927
4	11,650	21,553
5	13,610	25,179
6	15,570	28,805
7	17,530	32,431
8	19,490	36,057
For each additional family member add	1,960	3,626
Alaska:		
1	7,210	13,339
2	9,660	17,871
3	12,110	22,404
4	14,560	26,936
5	17,010	31,469
6	19,460	36,001
7	21,910	40,534
8	24,360	45,066
For each additional family member add	2,450	4,533
Hawaii		
1	6,650	12,303
2	8,900	16,465
3	11,150	20,628
4	13,400	24,790
5	15,650	28,953
6	17,900	33,115
7	20,150	37,278
8	22,400	41,440
For each additional family member add	2,250	4,163

Authority: 42 U.S.C. 1786.

Anna Kondratas,

Administrator.

Date: May 10, 1988.

[FR Doc. 88–11002 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–30–M

Commodity Supplemental Food Program; Elderly Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations, 7 CFR Part 247.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291 and has been determined to be *not major*. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amends section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Department establish procedures allowing agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Pub. L. 99–198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 53 FR 4831. These regulations defined "elderly persons" as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services" (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1988 was published by the Department of Health and Human Services at 53 FR 4213 on February 12, 1988. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1988 through June 30, 1989.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar. The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Effective July 1, 1988—June 30, 1989

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:	
1	7,501
2	10,049
3	12,597
4	15,145
5	17,693
6	20,241
7	22,789
8	25,337
For each additional family member add	2,548
Alaska:	
1	9,373
2	12,558
3	15,743
4	18,928
5	22,113
6	25,298
7	28,483
8	31,668
For each additional family member add	3,185
Hawaii:	
1	8,645
2	11,570
3	14,495
4	17,420
5	20,345
6	23,270
7	26,195
8	29,120

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Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
For each additional family member add	2,925

Authority: Sec. 1562, Pub. L. 99-198, 99 Stat. 1590 (7 U.S.C. 612c note).

Date: May 10, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-11003 Filed 5-16-88; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Upper Stage Gulch Watershed, OR; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1960; the Council on Enfironmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guideline (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Stage Gulch Watershed, Umatilla County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1640 Federal Building, 1220 SW. Third Avenue, Portland, Oregon 97204, telephone 503-221-2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for the watershed. The planned works of improvement include accelerated technical assistance for land treatment or cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jack P. Kanalz,

State Conservationist.

May 6, 1988.

[FR Doc. 88-10947 Filed 5-16-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held June 8, 1988, 9:00 a.m. to 3:00 p.m. The open session will be held at the Willard Hotel located 1401 Pennsylvania Avenue NW., Washington, DC from 9:00 until 11:45. The afternoon session meeting from 1:30 p.m. to 3:00 p.m., will be closed. It will be held at the Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

(Willard Hotel) 9:00-11:45 a.m.

Introduction of new members; objectives of Subcommittee; briefing on Export Administration developments; working group status reports.

Executive Session

(Department of Commerce) 1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1987 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Sharon Gongwer, (202) 377-4275.

Date: May 10, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-11008 Filed 5-16-88; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-408,569 (4,734,524), Synthetic Pheromone 8-Methyl-2-Decanol Propanoate.

SN 6-868,484 (4,735,327), Radio Controlled Downhill Skyline Logging Carriage and System.

SN 6-886,502 (4,735,651), Novel Phytotoxic and Plant Growth Regulating Oligopeptide.

SN 7-042,033 (4,733,493), Trap Gun.

SN 7-152-791, Combined Physical and Chemical Treatment to Improve Lignocellulose Digestibility.

Department of Health and Human Services

SN E-445-87, Method For Treating Acne.

SN 7-094,618, CSF-1 Facilitated Detection, Isolation and Propagation of Monocyte-Tropic Human Immunodeficiency Virus in Human Monocytes.

SN 7-133,948, Method of Eliminating Immunosuppressive Effects of Thymus-Derived (T) Suppressor Cells.

SN 7-135,280, A Human Gene Related to But Distinct from abl Proto-Oncogene.

SN 7-154,692, Cloned cDNA for Human Procathepsin L.

SN 7-159,847, Polyacrylamide Gels for Improved Detection of Proteins.

SN 7-165,173, New, Water Soluble, Antineoplastic Derivatives of Taxol.

SN 7-167,695, Vaccine Against Disease Caused by Human Type 3 Parainfluenza Virus.

SN 7-169,487, Novel Restriction Endonuclease.

SN 7-169,949, Novel Recombinant Vaccinia Virus Expression Vectors and Methods of Selecting Same.

SN 7-175,505, Assay for 06-Alkylguanine-DNA Alkyltransferase Using Restriction Enzyme Inhibition.

SN 7-177,465, Method for Early Detection of Lung Cancer.

Department of the Army

SN 7-128,700, A Saw Dispersive Delay Device.

SN 7-160,952, Local Preservation of Infinite, Uniform Magnetization Field Configuration Under Source Truncation.

SN 7-162,723, Microstrip Resonance Isolator.

[FR Doc. 88-10946 Filed 5-16-88; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Coulter Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Coulter Corporation having a place of business in Hialeah, Fl., and exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Backbone Polysubstituted Chelates for Forming a Metal Chelate-Protem Conjugate," U.S. Patent Application Serial Number 6-903,723. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which estabilishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-10980 Filed 5-16-88; 8:45 am]

BILLING CODE 3510-04-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Ocean Assessments National Ocean Service, NOAA (P415)

On March 7, 1988, notice was published in the **Federal Register** (53 FR 7223), that an application had been filed by the Ocean Assessments Division, National Ocean Service, NOAA, 701 C Street, Box 56, Anchorage, Alaska 99513, for a permit to take specimen materials from animals taken in subsistence hunts or from beached or stranded animals in Alaska for scientific research.

Notice is hereby given that on May 11, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act (16 U.S.C. 1351-1544) the National Marine Fisheries Service (NMFS) issued a Permit for the above taking subject to certian conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 (ESA) is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with the subject to Parts 220-222 of Title 50 CFR, and the NMFS regulations governing endangered species permits.

Documents are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805 Washington, DC; and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: May 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-11027 Filed 5-16-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Programmatic Environmental Impact Statement for the Biological Defense Research Program and Public Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability of draft environmental impact statement and notice of public meeting, Biological Defense Research Program.

SUMMARY: In the April 8, 1987 Notice of Intent, the Department of the Army stated that, as executive agent for the Department of Defense, it is responsible for the ongoing conduct of research and product development in the biological defense field. The Biological Defense Research Program involves research and product development in equipment, devices, drugs, substances, and biologics that are used to detect biological substances, protect soldiers from the adverse effects of biological substances, treat exposed individuals, and decontaminate exposed individuals, areas and equipment. The work is being carried out at a number of Government and university laboratories throughout the country.

The proposed action for EIS evaluation purposes is the continuation of the ongoing program in its current form. Alternatives considered to the proposed action for consideration in the EIS are:

(1) Modification in program scope and

(2) Modification in program implementation.

The draft EIS for the Biological Defense Research Program is available for public review and comment. A copy of the document may be obtained by contacting Mr. Charles Dasey at the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD-PA (Mr. Charles Dasey), Fort Detrick, MD 21701-5012. Written comments should be submitted to the same address. The time period for providing written comments for consideration in

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preparing the final EIS will end August 12, 1988.

A public meeting has been scheduled on July 25, 1988 at the Rosslyn West Park Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, to elicit comments and suggestions on the draft EIS. There will be a morning session beginning at 8:00 a.m. EDT and an afternoon session beginning at 1:00 p.m. EDT. Individuals wishing to present oral comments at the meeting may register in advance by calling (301) 663–2732 up through July 21, 1988, during normal business hours of 8:00 a.m. to 4:00 p.m. EDT. Collect calls will be accepted. On-site registration at the meeting may also be available. All commenters are asked to bring a written copy of their remarks for submission to the meeting record. Persons or organizations unable to attend the public meeting may submit written comments for inclusion in the public meeting record to the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. The time period for providing written comments for inclusion in the meeting record will end August 12, 1988.

Lewis D. Walker,
Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 88–11015 Filed 5–16–88; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8–9 June 1988.

Time: 0800–1700 hours, 8 June 1988.

Place: HQ, Operations, Test and Evaluation Agency, Falls Church, VA 0800–1700 hours, 9 June 1988, Pentagon, Washington, DC.

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet for the purpose of gathering facts in the fifth phase of the study. The focus of the discussions will be to follow up on operational issues that were highlighted in previous phases of the study effort. In addition, the Army Science Board Summer Study on Army Testing will discuss specific test requirements/results for certain selected systems. These sessions will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 88–10981 Filed 5–16–88; 8:45 am]
BILLING CODE 3710–08–M

Military Traffic Management Command; Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Solicitation of international commercial air rates for movement of household goods (HHG) and unaccompanied baggage (UB) worldwide.

SUMMARY: The next 6-month cycle (Volume 007) for the worldwide movement of HHG and UB will be effective October 1, 1988. The solicitation package for the October rate cycle will be distributed in July 1988.

This filing cycle contains some new features. One is an administrative high for each rate channel which will be instituted to provide a more controlled compensatory filing system. Second, rates will be accepted for intertheater moves, e.g., Hawaii to Germany.

Transportation offices have been informed to use only the carriers that participate in the international commercial air program when there is a need for moving HHG and UB by air.

Nonparticipating carriers who wish to receive a copy of the solicitation should contact MTMC (MT–PPC–I) providing a contact, address, phone number, and standard carrier alpha code (SCSA).

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT–PPC–I (Ms. Anderson), Room 408, Falls Church, Virginia 22041–5060. (703) 756–2385.

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 88–10945 Filed 5–16–88; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to Claflin College, Orangeburg, SC, for conduct of a Science Enrichment Training Program. The grant will be for a two-year period at a DOE funding level of $59,186; Claflin College will contribute $14,646. Pursuant to section 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to Claflin College.

Procurement Request Number: 09–88SR18048.000.

Project Scope: Claflin College will conduct a Student Science Enrichment Training Program, with special emphasis placed on chemical and computer science fields. The residential summer sessions will be held at Claflin College for six weeks during the 1988 and 1989 summers. Thirty participants will be selected for the program and will include high school juniors, seniors and some freshman. The students will be selected from rural South Carolina schools which have limited science and computer facilities. The program is intended to focus on high ability students with potential for science and mathematical careers.

Claflin College is a predominantly black institution and served the needs of a primary rural community for more than one hundred years. The participation of Historically Black Colleges and Universities (HBCUs) in federally supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320, dated September 15, 1981, directed Federal agencies to increase the participation of HBCUs in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community and increase the pool of well-qualified, college entering minority students who will elect to enter science and mathematical careers.

DOE has determined that this award to Claflin College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephone: (803) 725–2096.

Issued in Aiken, SC, on May 3, 1988.

C.D. Simpson,
Acting Manager, Savannah River Operations Office.

[FR Doc. 88–11037 Filed 5–16–88; 8:45 am]
BILLING CODE 6450–01–M

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to Savannah State College, Savannah, Georgia, in support of research on coal fly ash. The grant will be for a three-year period at a DOE funding level of $233,430. Pursuant to section 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600 DOE has determined that eligibility for this grant award shall be limited to Savannah State College.

Procurement Request Number: 09–88SR18047.000.

Project Scope: Savannah State College will conduct an investigation into the use of coal fly ash as a component of compost. Fly ash is the major waste product of coal combustion. As such, its disposal and/or utilization are major economic and environmental concerns worldwide. One use of ash is as an additive to soil mixtures. The research to be conducted by Savannah State College will explore the beneficial and harmful effects of using ash in a compost for agricultural crops. Chemical and radiological measurements will be combined with the production of various crops to assess the overall effect of coal fly ash as a composting material.

Savannah State College has conducted previous research on coal fly ash using samples collected from each of the coal-fired power plants on the Savannah River plant.

Savannah State College is a minority institution, a unit of the University System of Georgia. The participation of Historically Black Colleges and Universities (HBCUs) in federally-supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320, dated September 15, 1981, directed federal agencies to increase the participation of HBCUs in federally-funded research and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen related research capabilities and academic programs at this college and increase their participation in DOE mission-oriented research.

The DOE has determined that this award to Savannah State College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P. O. Box A, Aiken, SC 29801, Telephone (803) 725–2096.

Issued in Aiken, SC, on May 3, 1988.

C.D. Simpson,
Acting Manager, Savannah River Operations Office.

[FR Doc. 88–11038 Filed 5–16–88; 8:45 am]
BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No. MC–88]

Lost Power Revenue Mitigation Charge; Withdrawal

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. BPA announces the withdrawal of its proposed Lost Power Revenue Mitigation Charge.

SUMMARY: Continuing discussions with various utilities indicate less interest in the proposed Lost Power Revenue Mitigation Charge than had been expressed at the time the initial proposal was set forth. In view of the expenditures of time and resources required to complete this case and implement the final rate into Assured Delivery Contracts by May 16, 1988, BPA believes that this reduced level of interest no longer supports pursuing the proposal. BPA counsel has moved to withdraw the prefiled testimony of witnesses Cameron, Metcalf, and Lamb, together with the proposed MC–88 Lost Power Revenue Mitigation Charge. The Administrator has requested that the hearing officer terminate the docket.

Responsible Official: John A. Cameron, Jr., Intertie Access Project Manager, is the official responsible for the development of the MC–88 charge.

ADDRESSES: Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Sugai, Public Involvement office, at the address listed above, 503–230–3475. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2516

Mr. George E. Eskride, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewalk, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue N., Suite 400, Seattle, Washington 98109, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

Issued in Portland, Oregon, on May 10, 1988.

James J. Jura,
Administrator.

[FR Doc. 88–11028 Filed 5–16–88; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–370–000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Natural Gas Certificate Filings

May 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–370–000]

Take notice that on April 29, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket

No. CP88–370–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate an 8-inch tap and appurtenant facilities on its 42-inch mainline in Vermilion Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco states that the proposed interconnection would be used for varying transactions, including those relating to the Katy Interchange Service. Further, Transco states that the proposed tap would enable Commerce to receive gas purchased from Tenneco Oil Company to continue the service previously rendered by Multistates Oil Properties, Inc. and Resource Oil and Gas Company and for the redesignation of the rate schedules

No. CI88–403–000 which will expire December 28, 1988. Sonat requests extension of its authorization for a three-year term and modification of its authorization to include (1) uncommitted gas, (2) all of Sonat's certificated sales,

date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Commission review in the same manner as other jurisdictional agency determinations.

On May 2, 1988, the Commission received notice from MMS, Alaska Outer Continental Shelf Region, that 202

No. CP88-370-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate an 8-inch tap and appurtenant facilities on its 12-inch pipeline near the Exxon/Katy plant located in Waller County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the proposed tap would enable it to receive from and/or deliver to Coronado Transmission Company (Coronado), an intrastate pipeline, a maximum quantity of up to 75,000 Mcf per day of natural gas. It is stated that the facilities are estimated to cost $57,500. Transco states that Coronado would construct, own and operate a meter station and approximately 150 feet of 12-inch pipeline connecting its existing 12-inch pipeline to Transco's proposed tap.

Transco states that the proposed interconnection would be used for varying transactions, including those relating to the Katy Interchange Service. Further, Transco states that the proposed tap would enable Coronado to increase the potential for addition of production area transportation throughout.

Comment date: June 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tenneco Oil Company

[Docket No. CI79-380-000, et al.]

Take notice that on April 29, 1988, Tenneco Oil Company (Tenneco Oil), of P. O. Box 2511, Houston, Texas 77252-2511, filed an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder, requesting a permanent certificate of Public Convenience and Necessity authorizing Tenneco Oil Company to continue the service previously rendered by Multistates Oil Properties, Inc. and Resource Oil and Gas Company and for the redesignation of the rate schedules from stating the operator as "Tenneco Oil Company, Operator, *et al.*, Agent for Multistates Oil Properties, N. V. *et al.*", to "Tenneco Oil Company", all as more fully shown on the attached Exhibit "I". This application is on file with the Commission and open to public inspection.

Effective April 29, 1987, pursuant to the laws of the State of Delaware, Multistate Oil Properties, Inc., HCT Oil and Gas Company, One Independence Corporation and Resource Oil and Gas Company merged into Tenneco Oil Company.

Comment date: May 25, 1988, in accordance with Standard Paragraph J at the end of this notice.

EXHIBIT I.—TENNECO OIL CO. (OPERATOR), ET AL, AGENT FOR MULTISTATES, OIL PROPERTIES, INC. (ET AL).

GSC No.	RS No.	Contract date	Docket No.	Purchaser/FERC code No.
1129	3	8/30/61	CI79-360	Williams Natural/02711.
1130	5	10/21/53	CI79-362	Colorado Interstate/003979.
1131	6	6/2/78	CI79-363	El Paso Natural Gas/005708.
1132	7	11/29/78	CI79-364	Kansas Nebraska Gas/010022.
1133	8	10/23/61	CI79-365	Lone Star Gas Company/011158.
1136	9	1/7/75	CI79-366	ANR Pipeline Company/012442.
1137	10	10/22/74	CI79-367	ANR Pipeline Company/012442.
1139	12	9/5/68	CI79-369	ANR Pipeline Company/012442.
1141	13	3/9/57	CI79-370	ANR Pipeline Company/012442.
1140	14	9/26/68	CI79-371	ANR Pipeline Company/012442.
1154	17	10/9/70	CI79-374	Northern Natural Gas Co./013767.
1156	18	7/29/66	CI79-375	Northern Natural Gas Co./013767.
1157	19	4/17/68	CI79-376	Northern Natural Gas Co./013767.
1159	20	8/3/77	CI79-377	Northern Natural Gas Co./013767.
1160	21	2/21/62	CI79-378	Northern Natural Gas Co./013767.
1163	23	8/11/64	CI79-381	Panhandle Eastern Pipeline/014423.
1164	24	1/10/77	CI79-382	Panhandle Eastern Pipeline/014423.
1165	25	4/6/64	CI79-383	Panhandle Eastern Pipeline/014423.
1166	26	8/19/74	CI79-384	Panhandle Eastern Pipeline/014423.
1168	27	1/2/62	CI79-385	Panhandle Eastern Pipeline/014423.
1155	28	2/16/66	CI79-388	Northern Natural Gas Co./013766.
1134	31	6/27/74	CI79-389	ANR Pipeline Company/012442.
1135	32	8/26/75	CI79-390	ANR Pipeline Company/012442.
1144	34	11/6/61	CI79-392	Northern Natural Gas Co./013767.
1145	35	3/18/66	CI79-393	Northern Natural Gas Co./013767.
1146	36	10/14/76	CI79-394	Northern Natural Gas Co./013767.
1147	37	11/1/77	CI79-395	Northern Natural Gas Co./013767.
1167	39	6/18/74	CI79-398	Panhandle Eastern Pipeline/014423.
1170	40	5/1/67	CI79-399	Panhandle Eastern Pipeline/014423.
1171	41	7/30/58	CI79-400	Transwestern Pipe Line/027436.
1172	42	9/1/59	CI79-401	Zenith Natural Gas Co./021166.
1158	43	5/22/78	CI79-396	Northern Natural Gas Co./013767.
1222	44	6/29/60	CI81-510	Wilstern Gas Interstate/020449.
1943	45	6/6/75	83-5-000	Northern Natural Gas Co./013767.
1944	46	6/6/75	83-6-000	Northern Natural Gas Co./013767.
1212	47	9/1/76	CI83-335	Phillips Petroleum/014960.
1211	48	9/1/76	CI83-336	Phillips Petroleum/014960.
	1	8/2/74	CI81-65-000	Northwest Pipeline Corporation.

3. Sonat Exploration Company

[Docket No. CI88-403-001]

Take notice that on April 29, 1988, Sonat Exploration Company (Sonat) of P.O. Box 1513, Houston, Texas 77251-1513, filed an application pursuant to sections 4 and 7 of of the Natural Gas Act and sections 154 and 157 of the Commission's regulations requesting modification and extension of its limited-term abandonment and blanket sales authorizations granted in Docket No. CI88-403-000 which will expire December 28, 1988. Sonat requests extension of its authorization for a three-year term and modification of its authorization to include (1) uncommitted gas, (2) all of Sonat's certificated sales, and (3) any certificated sales from properties which Sonat may acquire from others, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 25, 1988, in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10072 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued May 11, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On May 2, 1988, the Commission received notice from MMS, Alaska Outer Continental Shelf Region, that 202 lease were issued as a result of Sale 97, Beaufort Sea. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Sale	Lease No. OCS-Y	Effective date
97	1062	May 1, 1988.
97	1063	Do.
97	1064	Do.
97	1065	Do.
97	1102	Do.
97	1105	Do.
97	1109	Do.
97	1110	Do.
97	1007	Do.
97	1153	Do.
97	1154	Do.
97	1157	Do.
97	1160	Do.
97	1161	Do.
97	1162	Do.
97	1042	Do.
97	1043	Do.
97	1045	Do.
97	1046	Do.
97	1047	Do.
97	1048	Do.
97	1049	Do.
97	1051	Do.
97	1052	Do.
97	1053	Do.
97	1066	Do.
97	1067	Do.
97	1068	Do.
97	1069	Do.
97	1070	Do.
97	1071	Do.
97	1072	Do.
97	1075	Do.
97	1155	Do.
97	1156	Do.
97	1158	Do.
97	1159	Do.
97	1163	Do.
97	1165	Do.
97	1166	Do.
97	1167	Do.
97	1168	Do.
97	1170	Do.
97	1171	Do.
97	0977	Do.
97	0981	Do.
97	0983	Do.
97	0984	Do.
97	0985	Do.
97	0986	Do.
97	0989	Do.
97	0990	Do.
97	0991	Do.
97	0994	Do.
97	0996	Do.
97	0997	Do.
97	0998	Do.
97	1003	Do.
97	1004	Do.
97	1005	Do.
97	1006	Do.
97	1008	Do.
97	1010	Do.
97	1011	Do.

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Sale	Lease No. OCS-Y	Effective date
97	1012	Do.
97	1013	Do.
97	1014	Do.
97	1015	Do.
97	1018	Do.
97	1019	Do.
97	1020	Do.
97	1021	Do.
97	1022	Do.
97	1023	Do.
97	1026	Do.
97	1027	Do.
97	1028	Do.
97	1029	Do.
97	1030	Do.
97	0958	Do.
97	0959	Do.
97	0963	Do.
97	0966	Do.
97	0978	Do.
97	0979	Do.
97	0982	Do.
97	0987	Do.
97	1001	Do.
97	1008	Do.
97	1016	Do.
97	1017	Do.
97	1024	Do.
97	1025	Do.
97	1115	Do.
97	1152	Do.
97	1169	Do.
97	1116	Do.
97	1117	Do.
97	1164	Do.
97	1103	Do.
97	1104	Do.
97	1106	Do.
97	1107	Do.
97	1108	Do.
97	1111	Do.
97	1112	Do.
97	1056	Do.
97	1057	Do.
97	1058	Do.
97	1089	Do.
97	1090	Do.
97	1095	Do.
97	1096	Do.
97	1118	Do.
97	1122	Do.
97	1124	Do.
97	1125	Do.
97	1126	Do.
97	0960	Do.
97	0964	Do.
97	0967	Do.
97	0968	Do.
97	0970	Do.
97	0971	Do.
97	0974	Do.
97	0975	Do.
97	0976	Do.
97	1032	Do.
97	1033	Do.
97	1038	Do.
97	1039	Do.
97	1044	Do.
97	1050	Do.
97	1054	Do.
97	1055	Do.
97	0988	Do.
97	0992	Do.
97	0993	Do.
97	0998	Do.
97	1000	Do.
97	1031	Do.
97	1034	Do.
97	1035	Do.
97	1036	Do.
97	1037	Do.
97	1040	Do.
97	1041	Do.
97	1059	Do.
97	1060	Do.
97	1061	Do.
97	1073	Do.
97	1074	Do.
97	1076	Do.
97	1077	Do.
97	1078	Do.
97	1079	Do.
97	1080	Do.
97	1081	Do.
97	1062	Do.
97	1063	Do.
97	1064	Do.
97	1065	Do.
97	1066	Do.
97	1067	Do.
97	1068	Do.
97	1091	Do.
97	1092	Do.
97	1093	Do.
97	1094	Do.
97	1097	Do.
97	1098	Do.
97	1099	Do.
97	1100	Do.
97	1101	Do.
97	1119	Do.
97	1120	Do.
97	1126	Do.
97	1147	Do.
97	1148	Do.
97	1149	Do.
97	1150	Do.
97	0961	Do.
97	0962	Do.
97	0965	Do.
97	0969	Do.
97	0972	Do.
97	0973	Do.
97	0990	Do.
97	0995	Do.
97	1002	Do.
97	1113	Do.
97	1114	Do.
97	1121	Do.
97	1123	Do.
97	1127	Do.
97	1129	Do.
97	1130	Do.
97	1151	Do.
97	1172	Do.
97	1173	Do.
97	1174	Do.
97	1175	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10973 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-12-000 and TA88-4-12-001]

Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant To Purchased Gas Cost Adjustment Provision and Request for Waiver

May 13, 1988

Take notice that on May 4, 1988, and May 6, 1988 [1] Distrigas Corporation ("Distrigas") tendered for filing 23rd Revises Sheet No. 1 to its FERC Gas Tariff to reflect rate decreases for LNG from five cargoes delivered pursuant to amended import authorization granted by the Economic Regulatory Administration, and Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing 23rd Revised Sheet No. 3A of its FERC Gas Tariff also to reflect rate decreases.

Distrigas stated that its filing is made pursuant to the Purchased LNG Cost Adjustment provision set forth in its FERC Gas Tariff and that the rate changes therein reflect further decreases in its current sales rates to DOMAC of approximately $0.36. The first cargo is priced at $2.20/MMBtu plus approximately $.005 for custom user and harbor maintenance fee. Subsequent cargoes will be subject to renegotiated prices as authorized by ERA Orders.

DOMAC states that its filing is made under section 15 of the General Terms and Conditions of its FERC Gas Tariff to reflect the Distrigas rate changes in DOMAC's rates for sale to its distribution customers, a losses and uses factor, and the GRI surcharge. The resulting sales price is approximately $2.30 per MMBtu, which reflects a decrease of approximately $0.38. No surcharge is filed to recover outstanding balances in DOMAC's unrecovered purchased LNG cost account.

Distrigas and DOMAC request a waiver of all applicable notice requirements so that the proposed tariff sheets will become effective on the date of delivery of the first LNG cargo imported from Sonatrach pursuant to Amendment No. 2.

A copy of Distrigas' and DOMAC's filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[1] The May 6, 1988 filing corrected several typographical errors that were found on Twenty-Third Revised Sheet No. 1 of the May 4, 1988 filing. Distrigas requests that it be substituted for the previously filed corresponding sheet.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11043 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-003]

El Paso Natural Gas Company; Compliance Filing (Revised)

May 13, 1988.

Take notice that on May 6, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted a revised filing in compliance with the Commission's order issued January 29, 1988 at Docket Nos. RP88-44-000 and CP88-203-000 and the letter order dated March 31, 1988 issued by the Director of the Office of Pipeline and Producer Regulation ("OPPR") at Docket No. RP88-44-002.

El Paso states that the January 29, 1988 order, among other things, conditionally accepted, to be effective July 1, 1988, subject to refund certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1987 pursuant to Section 4 of the Natural Gas Act. Ordering paragraph (H) directed El Paso to refile all tariff sheets referred to in ordering paragraphs (B) through (G) of the order within thirty (30) days of the issuance of the order. On February 26, 1988, El Paso tendered revised tariff sheets to comply with the Commission's directives in the January 29, 1988 order. The March 31, 1988 letter order from OPPR rejecting El Paso's compliance filing provided specific directives to El Paso for a further revised compliance filing. Accordingly, El Paso tendered for filing and acceptance the revised tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

El Paso states that the order issued March 18, 1988 at Docket Nos. RP88-44-001 and CP88-203-001, the Commission granted rehearing of the Commission's January 29, 1988 order for the limited purpose of further consideration. Although El Paso is revising its compliance filing, El Paso believes its filing of December 31, 1987 was correct with regard to the issues and for the reasons set forth in El Paso's request for rehearing and reserves the right to refile its rates and/or tariff provisions based upon the outcome of such request for rehearing.

[1] El Paso further states that it has complied with the conditions set forth in the body of the January 29, 1988 order and the ordering paragraphs and has followed the specific directives contained in the March 31, 1988 letter order by submitting revised and original tariff sheets which reflect the Commission directives and serve to modify El Paso's (i) cost of service, (ii) cost classification, allocation and rate design, and (iii) Transportation General Terms and Conditions.

[1] El Paso states that a copy of the compliance filing has been served upon all parties of record in Docket Nos. RP88-44-000 and CP88-203-000 and, otherwise, upon all parties served with a copy of El Paso's original filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

First Revised Volume No. 1

Substitute Seventeenth Revised Sheet No. 100
Substitute Third Revised Sheet No. 210
Substitute Fourth Revised Sheet Nos. 211 through 213
Substitute First Revised Sheet No. 214
Substitute Third Revised Sheet No. 220
Substitute Sixth Revised Sheet No. 221
Substitute Fifth Revised Sheet No. 222
Substitute Fourth Revised Sheet No. 223
Substitute Third Revised Sheet Nos. 230 through 232

Original Volume No. 1-A

Substitute Sixth Revised Sheet No. 20
Substitute First Revised Sheet No. 21
Substitute Original Sheet No. 21-A
Substitute Second Revised Sheet No. 110
Substitute Second Revised Sheet No. 111
Substitute Third Revised Sheet No. 112
Substitute Third Revised Sheet No. 113
Substitute Second Revised Sheet No. 114
Substitute First Revised Sheet Nos. 130 through 135
Substitute First Revised Sheet Nos. 229 through 230
Substitute First Revised Sheet Nos. 231-A and 231-B
Original Sheet No. 231-C
Substitute First Revised Sheet No. 233
Substitute First Revised Sheet Nos. 235 through 237
Original Sheet No. 237-A

Third Revised Volume No. 2

Substitute Forty-first Revised Sheet No. 1-D
Substitute Twenty-first Revised Sheet No. 1-D.2
Substitute Original Sheet No. 1-D.3

Original Volume No. 2A

Substitute Forth-third Revised Sheet No. 1-C

[FR Doc. 88-11040 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[RP87-22-006]

High Island Offshore System; Tariff Filing

May 13, 1988.

Take notice that on May 6, 1988, High Island Offshore System ("HIOS") tendered for filing Second Substitute Eighteenth and Substitute Nineteenth Revised Sheet Nos. 4 to be included in its F.E.R.C. Gas Tariff, Original Volume No. 1 to be effective January 1, 1988, and April 1, 1988, respectively.

HIOS states that Second Substitute Eighteenth and Substitute Nineteenth Revised Sheet Nos. 4 reflect a decrease of $.02 in its Demand Rate as a result of decreased costs paid to U-T Offshore System under its Rate Schedule X-1 for measurement, dehydration, and separation at the Cameron Meadows facilities. HIOS further states that such rate reduction is in compliance with Article III of RP87-22-000 Stipulation and Agreement approved by the Federal Energy Regulatory Commission ("Commission") on February 25, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC

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20426, in accordance with Rule 211 or rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11041 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-163-000 and TQ88-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

May 12, 1988.

Take notice that on May 6, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, and requests such waivers as necessary to implement an effective date of June 1, 1988:

Forty-Sixth Revised Sheet No. 4
Eleventh Revised Sheet No. 30
Ninth Revised Sheet No. 31
First Revised Sheet No. 31A
Seventh Revised Sheet No. 32
First Revised Sheet No. 32A
Second Revised Sheet No. 32B
Third Revised Sheet No. 32C
Third Revised Sheet No. 33
Second Revised Sheet No. 34
Original Sheet No. 34.1
Original Sheet No. 34.2

South Georgia states that the proposed tariff sheets reflect the restatement of the Purchased Gas Adjustment (PGA) clause of South Georgia's tariff and a revision to its Current Adjustment in compliance with the Commission's Order Nos. 483 and 483-A and the revised PGA Regulations promulgated thereunder. South Georgia notes that the Current Adjustment rate change reflects a commodity decrease of approximately 63.5¢ per MMBtu. No change was made to South Georgia's presently effective Surcharge Adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10974 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-704-002]

Florida Gas Transmission Co; Phase II Pipeline Project; Second Notice of Intent To Prepare An Environmental Assessment and Request for Comments On its Scope

May 13, 1988.

Proposed Action

A second notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket. This second notice identifies the high-density residential areas that would be affected by construction. It has been distributed to the recipients of the first notice, and to homeowners and tenants in selected residential areas whose properties may be crossed by the proposed pipeline or construction equipment.

On October 30, 1987, Florida Gas Transmission Company (FGT) applied to the FERC for a certificate of public convenience and necessity, under section 7 of the Natural Gas Act, to construct 179.7 miles of interstate gas transmission pipeline, and 33,625 horsepower of compression at 11 existing and 2 proposed compressor stations. On February 4, 1988, the FERC staff issued the first *Phase II Notice of Intent to Prepare an Environmental Assessment and Request for Comments on its Scope,* which was sent to all parties in the proceeding, government agencies, and interested persons. The first notice, which contains information about the entire project, can be obtained by calling or writing the project manager identified later in this notice.

The residential areas that would be affected by the project are in or near the Florida cities of Ocala, Orange City, Cocoa, Lakeland, Tampa, Auburndale, and Lake Wales. In total, about 6 miles of pipeline are involved. Most of the pipeline in these areas would be located entirely within existing pipeline, road, and powerline rights-of-way. Residential properties would be affected by construction activities and temporary construction rights-of-way would be needed. However, FGT does not propose to acquire any additional permanent right-of-way for operation of the pipeline except in two locations where there is no existing right-of-way. The proposed location and the temporary and permanent right-of-way configuration for the residential areas are identified in Table 1. Schematic drawings of the right-of-way configurations for these areas are shown in Figure 1, and the location maps are presented in the appendix to this notice. The route maps and drawings are not published in the **Federal Register**, but are included with copies of the notice distributed by the Commission to all parties in the proceeding, Federal, state and local government agencies, and interested members of the public.[1]

Presently, FGT's system can transport 825 million cubic feet of gas per day. According to FGT, the proposed facilities are necessary to transport an additional 100 million cubic feet per day for residential, commercial, and industrial customers. The total cost of the project is expected to be $103,385,000.

Current Environmental Issues

By this notice, the staff of the FERC is requesting public comments on the environmental matters that should be addressed in its EA on the proposal. The EA will be used to determine whether the project constitutes a major Federal action significantly affecting the quality of the human environment. It may also contain staff recommendations to the Commission regarding measures to reduce or avoid impact on the environment. At a minimum, the EA will address the following issues; any additional issues will be considered based on further staff review or public comments.

Land Use—Effect of the right-of-way location and width on existing and future uses of land including residential areas crossed.
Restoration—Erosion control, revegetation, soil productivity after construction.
Aesthetics—Visual impact of the right-of-way.
Wildlife—Impact on wetlands, threatened or endangered species, and habitat.

[1] Route maps are available from the FERC's Division of Public and Legal Reference, telephone (202) 357-8118.

TABLE 1.—RESIDENTIAL AREAS CROSSED BY PIPELINES

Project name	State	County	Nearest city or town	Street or area	Distance (feet)	Pipeline diameter (inches)	Right-of-way configuration (see fig. 1)
Ocala Lateral (New) [a]	FL	Marion	Ocala	NE. 49th St.	3,600	8	Permit 1.
Deland Loop [b]	FL	Volusia	Orange City	Parallel powerline existing right-of-way	11,400	8	O.
				Parallel FGT pipeline.	1,400	6	I.
Cape Canaveral Loop.	FL	Brevard	Williams Point	Parallel Route 430A.	400	6	Permit 1.
				Parallel FGT pipeline.	2,400	12	I.
OUC/Titusville Loop.	FL	do	Deleespine	Parallel FGT pipeline.	1,900	8	G.
St. Petersburg Loop 2.	FL	Polk	Fox Town	New route in new subdivision, parallel Williams Road.	4,000	16	A.
Do	FL	do	Gibsonia	Parallel FGT pipeline along Old Polk City and Marcum Roads.	12,000	16	Permit 3.
Do	FL	do	Galloway	Parallel FGT pipeline through subdivision between Hwy 35A and Galloway Road.	1,000	16	L.
Tampa Interconnect (New).	FL	Hillsborough	Tampa	Various streets NW of MacDill AFB	800	6	Permit 1.
Sarasota Lateral (New).	FL	Polk	Auburndale	Various streets in NW Auburndale.	2,400	16	Permit 1.
				Across properties in north Jones Corner	2,500	16	A.
Lake Wales Loop	FL	do	Floritan/Lake Wales	Parallel FGT pipeline across residential area adjacent to Hwy 60.	200	4	J.

[a] "New" means that it would not be parallel and adjacent to an existing FGT pipeline, although other rights-of-way may be followed.
[b] "Loop" means that the new pipeline would be parallel and adjacent to an existing FGT pipeline.

Geology—Evaluation of potential geologic hazards, including sinkholes.
Cultural Resources—Potential for impact on historic properties and cultural artifacts.
Alternatives—Pipeline route variations and alternative system designs.

All interested parties will receive a copy of and be invited to comment on the EA.

Construction Procedures

FGT proposes to have the facilities in-service by January 1989. Constructing the pipeline would involve the following procedures:

1. The right-of-way would be cleared and graded.
2. The trench would be excavated and the spoil would be stockpiled along one side of the right-of-way.
3. Forty-foot sections of pipe would be placed along the trench, the pipe would be bent to fit the trench contour, and the sections welded together.
4. The pipeline would be lowered into the ditch.
5. The ditch would be backfilled, the pipeline would be tested for leaks using pressurized water, and the right-of-way would be cleaned up.

FGT anticipates that construction along city roads would involve disturbance to only one or two blocks at a time. The clearing and grading operations would be followed closely by cleanup and restoration to reduce the time of traffic disruption in any one area. In residential areas where the pipeline would not follow roads, FGT proposes to use conventional cross-country construction methods which normally result in disturbance lasting from 3 to 6 weeks in any one area. To reduce settling of the trench-fill, the ditch would be compacted by rolling with equipment. The disturbed area would then be seeded or sodded, depending on the requirements of the property owner, to match the surrounding vegetation. The work would be performed by the general contractor or a landscaping firm at the contractor's discretion, and the property owner would be asked to water the seed or sod as specified in the right-of-way agreement.

Comments and Scoping Procedure

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, the Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Partice and Procedure (18 CFR 385.214).

A copy of this notice and request for comments has been distributed to Federal, State, and local environmental agencies, parties in the proceeding, and the public. Written comments on specific environmental issues should contain supporting documentation or rational and be filed as soon as possible, but no later than June 15, 1988. All written comments must reference Docket No. CP86-704-002 and be addressed to the Secretary. Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the written comments should also be sent to the project manager identified below.

Additional information about the proposal, including detailed route maps for specific lacations, is available from Mr. Cary Secrest, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capital Street NE., Washington, DC 20426, telephone (202) 357-9048.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10971 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. RP88-118-000 TQ88-1-15-000, RP88-118-001 and TQ88-1-15-001]

Mid Louisiana Gas Co.; Proposed Change of Rates

May 13, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on May 9, 1988,[1] tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective June 1, 1988:

	Superseding
Sixty-Third Revised Sheet No. 3a	Sixty-Second Revised Sheet No. 3a
Third Revised Sheet No. 28	Second Revised Sheet No. 28
Sixth Revised Sheet No. 28a	Fifth Revised Sheet No. 28a
Ninth Revised Sheet No. 28b	Eight Revised Sheet No. 28b
Seventh Revised Sheet No. 28c	Sixth Revised Sheet No. 28c
Third Revised Sheet No. 28d.3	Second Revised Sheet No. 28d.3
Second Revised Sheet No. 28d.4	First Revised Sheet No. 28d.4

Mid Louisiana states that the purpose of the filing of Sixty-Third Revised Sheet No. 3a is to reflect a 20.89¢ per MCF decrease in its current cost of gas.

Mid Louisiana states that the purpose of the remaining tariff sheets is to implement the amended purchased gas adjustment regulations promulgated by the Commission in Order Nos. 483 and 483-A.

Mid Louisiana states that this filing is being made in accordance with Section 19 of its FERC Gas Tariff. Copies of this filing have been mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-11042 Filed 5-16-88; 8:45 am]
BILLING CODE 6717-01-M

[1] A supplemental filing submitted on May 9, 1988, corrected a pagination error with regard to Tariff Sheet No. 28a.

[Docket No. QF86-433-001]

Midway-Sunset Cogeneration Co.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

May 13, 1988.

On April 28, 1988, Midway-Sunset Cogeneration Company (Applicant), of P.O. Box 55060, 25115 West Avenue, Stanford, Suite 120, Valencia, California 91355, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Kern County, California. The facility consists of three combustion turbine generating units with three waste heat recovery steam generators. Steam produced by the facility will be used by Sun Operating Limited Partnership in enhanced oil recovery operations. The net electric power production capacity of the facility will be 217 MW. The primary energy source will be natural gas. The facility is expected to begin operation in May 1988.

By order issued March 24, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF86-433-000 (38 FERC ¶ 62,203).

The recertification is requested due to the following changes: (1) Change of the ownership structure and the Applicant's name, and (2) inclusion of a 19-mile 230 kV transmission line and switchyard as part of the cogeneration facility. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-11044 Filed 5-16-88; 8:45 am]
BILLING CODE 6716-01-M

Office of Hearings and Appeals

Cases Filed; Week of March 11 Through 18, 1988

During the Week of March 11 through March 18, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 11 through 18, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 12, 1988	T.E. Reserve, Houston, TX	KRZ-0400	Interlocutory. *If granted:* The Office of Hearings and Appeals would strike certain materials from pleadings filed by the Economic Regulatory Administration in T.E. Reserve, Proposed Remedial Order proceeding (Case No. KRO-0400).
Mar. 10, 1988	Elk Trading Company, Washington, DC	KRX-0049	Supplemental Order. *If granted:* The Office of Hearings and Appeals would dismiss the PAM violation in the Remedial Order issued to Elk Trading Co. on February 29, 1988 (Case No. HRO-0286).
Mar. 14, 1988	Froseth Service & Supply, Garretson, SD	KEE-0162	Exception to the Reporting Requirements. *If granted:* Froseth Service & Supply would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	Natural Resources Defense Council, Washington, DC	KFA-0171	Appeal of an Information Request Denial. *If granted:* The January 6, 1988, Freedom of Information Request Denial issued by the Office of Military Application, Defense Programs, would be rescinded and the Natural Resources Defense Council would receive access to documents pertaining to foreign nuclear weapons programs, materials production or atomic information or agreements.
Do	William R. Bowling II, Rolla, MT	KFA-0170	Appeal of an Information Request Denial. *If granted:* The February 10, 1988, Freedom of Information Request Denial issued by the Executive Secretariat would be rescinded and William R. Bowling II would receive access to a complete copy of the minutes of the AEC Meeting No. 1265.
Mar. 15, 1988	Natural Resources Defense Council, Washington, DC	KFA-0172	Appeal of an Information Request Denial. *If granted:* The February 11, 1988, Freedom of Information Request Denial issued by the Office of the Deputy Assistant Secretary for Military Application would be rescinded and the Natural Resources Defense Council would receive access to documents related to nuclear weapons accidents, exercises, and testing with the United Kingdom.
Mar. 16, 1988	Petroleum Traders Corporation, Fort Wayne, IN	KEE-0163	Exception to the Reporting Requirements. *If granted:* Petroleum Traders Corporation would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."

Date received	Name of refund proceeding/ name of refund applicant	Case no.
3/11/88 thru 3/18/88	Crude Oil Refund Applications Received.	RF272-50239 thru RF272-51286
3/11/88 thru 3/18/88	Gulf Oil Refund Applications Received.	RF300-5809 thru RF300-5999
3/5/88	Currie Bros.	RF238-65
3/9/88	E.M. Lane Oil Company, Inc.	RF263-36
9/3/88	Lott Oil Company.	RF225-11008
3/14/88	Peppo Oil Works, Inc.	RF305-2
2/22/88	Wayne Oil Company.	RF265-2612
3/18/88	Tony Fava	RF265-2614
2/24/87	Trump Village Section 4.	RF243-5
9/3/86	Winston Oil Company.	RF225-11009
3/16/86	United Petroleum, Inc.	RF308-1
3/17/88	Hulcher Services.	RD272-09354
3/17/88	Superior Tube Company.	RD272-08219
3/17/88	Century Furniture.	RD272-09644
3/17/88	Norton Company.	RD272-11947
3/17/88	Wellsville Fire Brick Company.	RD272-15370
3/17/88	American Cast Iron Pipe Company.	RD272-16026

[FR Doc. 88-10961 Filed 5-16-88; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of March 18 Through 25, 1988

During the Week of March 18 through March 25, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of the Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,
Director, Office of Hearings and Appeals.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 18 through 25, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 18, 1988	National Helium/Louisiana and Amoco/Louisiana	RM3-107 & RM21-108	Requests for Modification/Rescission. *If granted:* The June 26, 1986 Decision and Order issued to Louisiana (Case Nos. RQ3-262 and RQ21-263) would be modified, regarding the state's application for second stage refund in the National Helium and Amoco refund proceedings.
Mar. 21,1988	Economic Regulatory Administration, Washington, DC	KRX-0050	Supplemental Order. *If granted:* The Office of Hearings and Appeals would issue a Special Report Order requiring Apex Oil to provide information concerning its sales of crude oil and crude oil blends for time periods before and after the audit period (Case No. HRO-9241).
Do	Glen Milner, Seattle, WA	KFA-0173	Appeal of an Information Request denial. *If granted:* Glen Milner would receive access to documents concerning the Trident system.
Do	Mobil/Featherstone Service Station, Washington, DC	RR225-19	Request for Modification/Rescission. *If granted:* The March 3, 1988, Decision and Order issued to Featherstone Service (Case No. RF225-9216) would be modified, regarding the firm's Mobil Oil refund application.
Mar. 23, 1988	Robert T. Yess, Lexington, KY	KFA-0174	Appeal of an Information Request Denial. *If granted:* The March 1, 1988, Freedom of Information Request Denial issued by the SSC Site Task Force would be rescinded and Robert T. Yess would receive access to a copy of the cost estimates for the construction and operation of the Superconducting Super Collider.
Mar. 24, 1988	Eugene S. Post, Graniteville, SC	KFA-0176	Appeal of an Information Request Denial. *If granted:* The March 3, 1988 Freedom of Information Request issued by the Savannah River Operations Office would be rescinded, and Eugene Post would receive access to information used by the DOE for the selection of Lou Crosseman as Branch Chief of the Internal Security Branch at SRP in April 1986 and Ronald Bartholomew as Head of the Analysis Section, Internal Security Branch in October 1987.
Do	Glen Milner, Seattle, WA	KFA-0175	Appeal of an Information Request Denial. *If granted:* The March 8, 1988 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescended and Mr. Milner would receive access to information regarding the Trident I and Trident II nuclear warheads and the shipment of those warheads.
Mar. 25, 1988	Marty Jane Hatfield, Oak Ridge, TN	KFA-0177	Appeal of an Information Request Denial. *If granted:* The March 1, 1988, Freedom of Information Request Denial issued by Oak Ridge Operations would be rescended and Marty Jane Hatfield would receive access to copies of documentation included in her personnel security file.
Do	MCO Holdings, Inc. & MGPC, Inc., Washington, DC	KEF-0108	Implementation of Special Refund Procedures. *If granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the September 11, 1986, Consent Order entered into with MCO Holdings, Inc. & MGPC, Inc.
Do	Patton Oil Company, Washington, DC	KEF-0107	Implementation of Special Refund Procedures. *If granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with February 18, 1987, Consent Order entered into with Patton Oil Company.

Date received	Name of refund proceeding/ name or refund applicant	Case No.
1/11/88	Palo Pinto Louisiana.	RQ5-435
1/11/88	Amoco I/ Louisiana.	RQ21-436
1/11/88	Perry Gas/ Louisiana.	RQ183-437
1/11/88	Belridge/ Louisiana.	RQ6-438
1/11/88	Pennzoil/ Louisiana.	RQ10-439
1/11/88	Charter/ Louisiana.	RQ23-440
1/11/88	Colino/ Louisiana.	RQ2-441
1/11/88	Amoco II/ Louisiana.	RQ251-442
3/18/88 thru 3/25/88	Crude Oil Refund Applications Received.	RF272-51267 thru RF272-52264
3/18/88 thru 3/25/88	Gulf Oil Refund Applications Received.	RF300-6000 thru RF300-6099
3/18/88	Oasis Petroleum Corporation.	KRO-0650
4/29/87	State Escrow Distribution.	RF302-3
6/1/87	Zak's Westside Serv. & Repair.	RF265-2616
3/21/88	Primerica Corporation.	RF265-2615
3/21/88	G.E. Stahl	RF253-50
3/24/88	Strachan Shipping Company.	RF305-3
3/24/88	Ayers Steamship Agency, Inc.	RF305-4
3/24/88	Franzese Trailer Sales.	RF265-2618
10/23/87	Knotty Pine Oil Company, Inc.	RF265-2617

[FR Doc. 88-10962 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of April 11 through 15, 1988

During the week of April 11 through April 15, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection with ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Echo Drilling, Inc., Zanesville, OH, KEE-0150 Crude Oil

Echo Drilling, Inc., a crude oil reseller, filed an Application for Exception from the provisions of 10 CFR 212.10, 212.31, 212.93 and 212.183. The exception request, if granted, would permit Echo to calculate the firm's profits on its sales of crude oil during the period June 1, 1974 through January 31, 1981, according to the transportation rates established by the Ohio Public Utilities Commission. On April 13, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be granted.

[FR Doc. 88-10964 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Period of April 18 Through 29, 1988

During the period of April 18 through April 29, 1988, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

PRO Oil, Ogallala, Nebraska, KEE-164, Reporting Requirements

PRO Oil filed an Application for Exception from the Energy Information Administration reporting requirements regarding Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report". The exception request, if granted, would relieve PRO Oil of any requirement to file the form. On April 25, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Webb's Oil Corporation, Roanoke, Virginia, KEE-0161, Reporting Requirements

Webb's Oil Corporation (Webb's) filed an Application for Exception from the Energy Information Administration reporting requirements regarding Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report". The exception request, if granted, would relieve Webb's of any requirement to file the form. On April 25, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 88-10965 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Period of April 4 through 22, 1988

During the period of April 4 through April 22, 1988, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Tesoro Petroleum Corp., San Antonio, TX, KRO-0670

On April 18, 1988, Tesoro Petroleum Corp., 8700 Tesoro Drive, San Antonio, Texas 78286, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration issued to the firm on February 11, 1988. In the PRO, the ERA found that during the period from December 1974 through December 1980, Tesoro violated the refiner price

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regulations by claiming excessive non-product cost increases and by improperly computing its selling prices of refined petroleum products. The Tesoro PRO would require the firm to recompute its lawful selling prices of refined products and refund any resulting overcharges, which the ERA estimates to be between $4 and $6 million.

[FR Doc. 88-10963 Filed 5-16-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010424-015.
Title: United States Atlantic and Gulf/Hispaniola Steamship Freight Conference.
Parties:
Crowley Caribbean Transport, Inc./CTMT, Inc./Trailer Marine Transport Corporation (As One Party)
Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would permit the parties to establish and publish rates on excepted commodities. It would prohibit independent action ("IA") with respect to rates on excepted commodities and would provide for IA with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker. It would also permit the parties to enter into service contracts on excepted commodities on a group basis only (individual service contracts are prohibited), and would restate the agreement.

Agreement No.: 208-010694-006.
Title: Trans-Atlantic Conferences.
Parties:
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 202-010833-010.
Title: Eurocorde-L
Parties:
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference
Polish Ocean Lines
American Transport Lines Ltd.
Topgallant Group, Inc.
South Atlantic Cargo Shipping (Atlanticargo) N.V.
Mediterranean Shipping Co., S.A.
Dart-ML Limited
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 203-011194.
Title: Intermodal Transportation Association-UIIA Agreement (Foreign).
Parties:
Topgallant Group, Inc.
Norak Pacific Steamship Company Limited
Trans Africa Line
Cedar Star Line

Synopsis: The proposed agreement would permit the parties to agree upon rules and regulations concerning equipment interchange, to include free time, detention and per diem charges; insurance and liability for containers and related equipment and the publication of applicable tariffs in the foreign commerce of the United States. Adherence to any agreement reached would be voluntary.

Agreement No.: 207-011195.
Title: Hyundai Australia Direct Line Joint Service Agreement.
Parties:
PAD Line Overseas, S.A. d/b/a Pacific Australia Direct Line
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed agreement would permit the parties to operate a joint service in the trade between ports on the West Coast of North America (including Alaska, Hawaii, Mexico and Canada), and ports in Australia, New Zealand and islands of the South Pacific and inland and coastal points via such ports.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: May 12, 1988.

[FR Doc. 88-11024 Filed 5-16-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004006-007.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland
Marine Terminals Corporation (MTC)

Synopsis: The proposed agreement amends Agreement No. 224-004006 to reduce the crane rental rates applicable to MTC in certain instances in which the container cranes are used for loading and discharging of non-containerized cargo.

Agreement No.: 224-010619-004.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland
EAC Lines Trans Pacific Service, Ltd.

Synopsis: The proposed amendment provides for the application of the basic Agreement's compensation provisions to User's vessels and cargo handled at another of the Port's public container terminals as a result of User's Joint Service Agreement with Hyundai Merchant Marine Co., Ltd.

Agreement No.: 224-010646-003.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland

Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment provides for the application of the basic Agreement's compensation provisions to User's vessels and cargo handled at another of the Port's public container terminals as a result of User's Joint Service Agreement with EAC Lines.

Agreement No.: 224-011024-001.
Title: South Carolina Terminal Agreement
Parties:
South Carolina State Ports Authority (SCSPA)
Lykes Bros. Steamship Co., Inc. (Lykes)

Synopsis: The proposed amendment provides for SCSPA to furnish Lykes receiving and delivering services for Lykes' containers and chassis and Lykes agrees to pay SCSPA at 60 percent of the rates then published in SCSPA's Terminal Tariff No. 6 as well as pay wharfage on container cargo at discount rates for 50,001 net tons per year and over.

Agreement No.: 224-010642-003.
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland
Stevedoring Services of Ameria (SSA)

Synopsis: The agreement amends the basic agreement to reduce the crane rental rates applicable to SSA to 65% of the tariff rates when the cranes are used for loading and discharging noncontainerized cargo.

By Order of the Federal Maritime Commission.
Dated: May 12, 1988.
Joseph C. Polking,
Secretary.

[FR Doc. 88-11025 Filed 5-16-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Financial Bancorp et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted. comments regarding each of these applications must be received not later than June 8, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp,* Monroe, Ohio; to merge with NB Banc Corp, Van Wert, Ohio, and thereby indirectly acquire Van Wert National Bank, Van Wert, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1 *Calhoun Bankshares, Inc.,* Grantsville, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Calhoun County Bank, Grantsville, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1 *First Miami Bancorp, Inc.,* South Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of South Miami, South Miami, Florida.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Kansas Banc Corporation,* Kansas, Illinois; to become a bank holding company by acquiring 95 percent of the voting shares of Kansas State Bank, Kansas, Illinois. Comments on this application must be received by June 3, 1988.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Citizens National Bank Corporation,* Tell City, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Tell city, Tell City, Indiana. Comments on this application must be received by June 1, 1988.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Express of Nebraska, Inc.,* Lincoln Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Gering State Bank, Gering, Nebraska. Comments on this application must be received by June 3, 1988.

Board of Governors of the Federal reserve System, May 11, 1988.
James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-10948 Filed 5-16-88; 8:45 am]
BILLING CODE 6210-01-M

NBD Bancorp, Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking pratices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

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not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, and NBD Midwest Corporation, both in Detroit, Michigan; to acquire 100 percent of the voting shares of Charter Bank Group, Inc., Northfield, Illinois, and thereby indirectly acquire Bank of Glenbrook, Glenview, Illinois; Bank of Northfield, Northfield, Illinois; Bank of Wheaton, Wheaton, Illinois; and Bank of Winfield, Winfield, Illinois. In addition, NBD Midwest Corporation has applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Charter Group Life Insurance Company, and thereby engage in underwriting through reinsurance of group credit life and credit accident and death insurance that is directly related to extensions of credit by its banking affiliates pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10949 Filed 5-16-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Peter L. Ochs et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter L. Ochs*, Wichita, Kansas, to acquire an additional 25.1 percent; Wesley Rubenich, Wichita, Kansas, to acquire an additional 25.1 percent; and Clay Phillips, Attica, Kansas, to acquire an additional 9.5 percent of the voting share of Attica Financial Corporation, Attica, Kansas, and thereby indirectly acquire First National Bank of Attica, Attica, Kansas.

2. *B.P. Sudberry, III*, Muskogee, Oklahoma; to acquire 97 percent of the voting shares as trustee of Boynton Holding Company, Inc., Boynton, Oklahoma, and thereby indirectly acquire First National Bank, Boynton, Oklahoma.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Paul W. Van Etten*, Walnut Creek, California; to acquire up to 35 percent of the voting shares of Lamorinda Financial Corporation, Lafayette, California, and thereby indirectly acquire Lamorinda National Bank, Lafayette, California.

Board of Governors of the Federal Reserve System, May 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10950 Filed 5-16-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0160]

Drug Export; UBI-Olympus HIV-EIA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Olympus Corp. has filed an application requesting approval for the export of the biological product UBI-OLYMPUS HIV-EIA to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN-322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) of the act have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Olympus Corp., 4 Nevada Dr., Lake Success, NY 11042, has filed an application requesting approval for the export of the biological product UBI-OLYMPUS HIV-EIA, to the United Kingdom. The UBI-OLYMPUS HIV-EIA is an in vitro qualitative enzyme immunoassay for the detection of antibodies to Human Immunodeficiency Virus (HIV) contained in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on May 3, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 27, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 6, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88-11013 Filed 5-16-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ-157-N]

Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the first meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The Panel was established as required by section 9305(h)(2) of the Omnibus Budget Reconciliation Act of 1986 (OBRA'86), Pub. L. 99-509. The meeting is open to the public.

DATE: June 1-2, 1988.

TIME: June 1, 8:00 a.m. to 4:30 p.m. EDST. June 2, 9:00 a.m. to 1:00 p.m. EST.

ADDRESS: Hyatt Regency on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301) 966-6825.

SUPPLEMENTARY INFORMATION: Section 9305(c) of OBRA '86, in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA'86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is to include experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries. The Secretary has named Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center as chairman of the panel and appointed 17 members to the panel.

The panel will have several meetings at which it plans to:

- Develop a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Construct the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluate the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for posthospital extended care services and home health services which are provided to Medicare beneficiaries.

The Secretary must report to Congress no later than January 1, 1989 his recommendations for the appropriate use of a uniform needs assessment instrument to determine a beneficiary's need for post-hospital extended care.

At this meeting, the Advisory Panel will discuss: The discharge planning process; the importance of discharge planning in ensuring continuity of care and the appropriateness of after-care; and other functional assessment issues. The items of discussion are subject to change as priorities change. An Executive session will be held at 8:00 a.m. on June 2, 1988; the remainder of the meeting is open to the public.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program No. 13.773, Medicare—Hospital Insurance Program No. 13.774, Medicare—Supplementary Medical Insurance).

Dated: May 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-11136 Filed 5-16-88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Division of Research Resources; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Animal Resources Review Committee, Subcommittee on Primate Research Centers, Division of Research Resources, May 17-18, 1988, National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892, which was published in the **Federal Register** on Friday, April 15, 1988 (53 FR 12603-12604).

The meeting was cancelled due to the lack of a quorum.

Dated: May 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-11032 Filed 5-12-88; 4:32 pm]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Partially Open, Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, May 18, 1988, Building 1, Wilson Hall, and May 19 and 20, Building 31, Conference Room 6, National Institutes of Health which was published in the **Federal Register** on April 15, (53 FR 12605).

This council meeting was to have been closed to the public from 8:30 a.m. to 6:00 p.m. on May 19, but the meeting will now be closed from 8:30 a.m. to 11:00 a.m., and then closed again from 11:45 a.m. to 6:00 p.m. on May 19, in Building 31, Conference Room 6.

This meeting will be open to the public on May 19, from 11:00 a.m. to 11:45 a.m., at which time Dr. James B. Wyngaarden, Director, NIH, will address the council.

Dated: May 9, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-10933 Filed 5-16-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on

June 8 and 9, 1988, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 9 a.m. to 11:30 a.m. on June 8, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11:30 a.m. on June 8 until adjournment on June 9. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would contitute a clearly unwarrant invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Disease Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 88–11033 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on June 1 and 2, 1988, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public June 1 from 8:30 a.m. to 12 noon and again on June 2 from 1 p.m. to adjournment to discuss administrative details relating to Council buisness and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on June 1 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on June 2 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commerical property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20982, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 6, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–11035 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting dates which will be June 27–28, 1988. The meetings will begin at 8:30 a.m. and end at approximately 5 p.m. each day. On June 27, the Board will meet at the Westin Peachtree Plaza Hotel, Peachtree at International Boulevard, Atlanta, Georgia 30343–9986. On June 28, the meeting will be held at the Center for Disease Control, 1600 Tullie Circle, Freeway Park, Atlanta, Georgia 30333. The primary purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: May 11, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–11034 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

Meeting of National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on June 24–25, 1988, from 8 a.m. to approximately 5 p.m. each day at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Oral and written testimony will be received by the National Kidney and Urologic Diseases Advisory Board (NKUDAB) from members of the kidney and urologic disease commities on June 23, 1988, from 9:00 a.m. to 2:30 p.m. at the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois, 60611. This input will be applied to the development of the first national long-range plan to combat kidney and urologic diseases. If you are interested in presenting oral testimony on June 23, 1988, in Chicago, Illinois, please submit a one-paragraph summary of your presentation to Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852. Oral testimony will be limited to three to five minutes. All written testimony to be received on June 23, 1988, in Chicago, Illinois, must be submitted to the Board office no later than May 25, 1988. For additional information, please contact the Board office.

Dated: May 11, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–11036 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of May 1988:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: May 23, 1988—1:30 p.m. to 5:30 p.m.; May 24, 1988—8:30 a.m. to 12:00 Noon.

Place: Omni Georgetown Hotel, Phillips Ballroom, 2121 P Street, Northwest Washington, DC. Closed May 24, 11:30 a.m. to Noon. Open for remainder of the meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Dirs. or of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include a presentation to the full Council on the draft report of the Medicare Coverage Process Subcommittee and a discussion of the draft recommendations of the report. The Criteria Subcommittee will also meet to review the results of applying a proposed system for classifying the quality of evidence for technology assessments to various assessments completed by the NCHSR's Office of Health Technology Assessment. In addition, the full Council will be presented with a report on the status of the activities of the Criteria Subcommittee. In closed session, May 24 from 11:30 a.m. to Noon, the Council will review technology assessment grant applications submitted to the NCHSR.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1905, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–5850.

Agenda items are subject to change as priorities dictate.

Date: May 10, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88–10982 Filed 5–16–88; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; Endangered and Threatened Species; Frank G. Carlisi et al

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Frank G. Carlisi, North Hollywood, CA, PRT–727371

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Phil van der Merwe, Skietkuil, Cape Provice, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Rare Feline Breeding Center, Center Hill, FL, PRT–726748

The applicant requests a permit to export one femal leopard (*Panthera pardus*) captive-born in the U.S. to Asahiyama Zoological Park, Asahikawa, Hokkaido, Japan for purposes of public display and enhancement of propagation.

Applicant: Peter Paulos, Salt City, UT, PRT–727509

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by F.W.M. Bowker, Jr., Thornkloof, Grahamstown Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Wildlife Safari, Winston, OR PRT–727454

The applicant requests a permit to import two male cheetahs (*Acinonyx jubatus*) captive born in the Netherlands from Safaripark Beekse Bergen, Hilvarenbeek, the Netherlands to add new blood lines to stock currently available in the U.S. for enhancement of propagation or survival of the species.

Applicant: J.C. Schulz, Inc., Catskill, NY, PRT–727502

The applicant requests a permit to purchase one pair of captive-born mandrills (*Papio sphinx*) from the San Diego Wild Animal Park, San Diego, California, for export and sale to the Guadalajara Zoo, Camino Viejo a Huetitan, Guadalajara, Jalisco, Mexico, where the animals will be displayed in a manner designed to educatge the public regarding the species' ecological role and conservation needs.

Applicant: Steven C. Gruber, Miami, FL, PRT–727624

The applicant requests a permit to import one pair of captive-born Jamaican boas (*Epicrates subflavus*) from the Picton Reptile Breeding Foundation, Picton, Ontario, Canada, for captive breeding purposes and future release of the progency in Jamaica.

Applicant: Herman Alton Bennett, Brownwood, TX, PRT–727703

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 11, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–11046 Filed 5–16–88; 8:45 am]

BILLING CODE 4310–55–M

VOL 53 ISS 95 MY 17 1988 UMI

Bureau of Land Management

[CA-060-08-7122-10-1018; CA-21608]

Realty Action; Exchange of Public and Private Lands, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA–21608.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 5 E.
Sec. 30: Lots 14, 16, 21, and 25.
Containing 20.71 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands from The Nature Conservancy:

San Bernardino Meridian California

T. 4 S., R. 6 E.
Sec. 14: SE¼SE¼SE¼.
Containing 10 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for a Federal Aid Highway, serial no. LA 097054, under the Act of November 9, 1921 (42 Stat. 212; 23 U.S.C. 18).

3. A right-of-way for a Federal Aid Highway, serial no. R 243, Act of August 27, 1958, as amended (23 U.S.C. 317).

4. Those rights for transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial no. R 458, under the Act of March 4, 1911 (43 U.S.C. 961).

5. Those rights for electrical transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial no. R 964, under the Act of March 4, 1911 (43 U.S.C. 961).

6. The reservation to the United States, its permittees and licensees, to enter upon, occupy and use any part or all of the said land lying within 50 feet of the centerline of an electric transmission line authorized under Power Project 1397 and Powersite Reserve 530, and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323–4421.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

H.W. Riecken,
Acting District Manager.

Date: May 6, 1988.

[FR Doc. 88–10944 Filed 5–16–88; 8:45 am]
BILLING CODE 4310–40–M

[ES–040–08–4520–12; ES–038602, Group 173]

Florida; Filing of Plat of Subdivision of Section 8

May 11, 1988.

1. The plat of the survey of the subdivision of section 8, and the metes-and-bounds survey of a certain parcel in Lot 1 of section 8, Township 14 South, Range 24 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 27, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,
Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–11000 Filed 5–16–88; 8:45 am]
BILLING CODE 4310–GJ–M

National Park Service

Information Collection Submitted to the Office of Management and Budget Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7313.

Title: Park Use Survey (Great Basin National Park).

Abstract: Survey will affect use of Great Basin National Park. Results of survey will be used in operational, planning and management activities designed to support actual public use activities and needs.

Bureau Form Number: 10–175B.
Frequency: On Occasion.
Description of Respondents: Individuals or Households.
Annual Responses: 1200.
Annual Burden Hours: 150.
Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,
Chief, Administrative Services Division.

[FR Doc. 88–10959 Filed 5–16–88; 8:45 am]
BILLING CODE 4310–52–M

National Register of Historic Places; Notification of Pending Nominations; Alaska et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 7, 1988. Pursuant to 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 1, 1988.

Carol D. Shull,
Chief of Registration, National Register.

ALASKA

Valdez—Cordova Borough

Chugach National Forest vicinity, *Bering River Train*, Cordova Ranger District.

DISTRICT OF COLUMBIA

Washington

Chesapeake and Potomac Telephone Company, Old Main Building, 722 Twelfth St., NW.

MISSOURI

Johnson County

Chilhowee, *Chilhowee Historic District*, Roughly Walnut and Main Sts.

NEW HAMPSHIRE

Chesire County

Hinsdale, *Todd Block*, 27–31 Main St.

Merrimack County

Concord, *New Hampshire Savings Bank Building*, 97 N. Main St.

Rockingham County

Exeter, *Gilman, Major John, House*, 25 Cass St.

NORTH CAROLINA

Cabarrus County

Midland vicinity, *Green, John Bunyan, Farm*, SR 1114.5 mi. E of SR 1178.

Jackson County (also in Transylvania County)

Lake Toxaway vicinity, *Backus, E.M. Lodge*, Cold Mountain Gap Rd.

PUERTO RICO

Caguas County

Caguas, *Benitze, Gautier, High School*, Calle Gautier Benitez and Calle Cristobal Colon.

Caguas, *Logia Union y Amparo No. 44*, Calle Acosta No. 39.

Mayaguez County

Mayaguez, *Esmoris, Duran, Residencia*, Mendez Vigo B204 L204.

Mayaguez, *Gomez Residencia*, Mendez Vigo No. 60.

VERMONT

Rutland County

Poultney, *Poultney Main Street Historic District*, Roughly Main St., E. Main St., Depot St. Knapp Ave., Beaman St., Grove St., Maple Ave., and College Ave.

Windsor County

Harland, *Damon Hall*, US 5 and VT 12.

VIRGINIA

Prince William County

Buckland, *Buckland Historic District*, 7980–8205 Buckland Mill Rd. and 16206, 16208, 16210 and 16211 Lee Hwy.

WISCONSIN

Florence County

Fay Outlet Site (47FL13).

Milwaukee County

Milwaukee, *Knickerbocker Hotel*, 1028 E. Juneau Ave.

Correction: The following property was erroneously listed in New Jersey on the **Federal Register** list dated May 10, 1988. It should read as follows:

NEW YORK

Ulster County

Stone Ridge, *Main Street Historic District*, US 209.

[FR Doc. 88–10960 Filed 5–16–88; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT AND COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Sri Lanka as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Sri Lanka. The Government of Sri Lanka has authorized A.I.D. to request proposals from eligible investors. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and loan number are indicated below:

Government of Sri Lanka

Loan Number: 383–HG–003B—$10 Million
Attention: Dr. A.C. Randeni, Director, Economic Affairs, c/o Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations, 640 Third Avenue, 20th Floor, New York, NY 10017
Telex No.: 420646 LAREP N.Y.
Telephone No.: 212/986–7040

Interested investors should telegram their bids to the Borrower's representative no later than June 7, 1988 at 12:00 noon New York Time (bid closing time). Bids should be open at least 24 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. C. Chanmugam, Secretary, Ministry of Finance and Planning, Colombo 1, Sri Lanka
Telex No.: 21409 FINMIN CE
Telephone No.: 94–1–31761

Mr. David Painter, Assistant Director/Asia, RHUDO/Bangkok, USAID/Bangkok, Box 47, APO San Francisco 96346–0001
Telex No.: 22964 AMEMB
Telephone No.: 66–2–252–6281 or 8191 Ext. 26

Michael G. Kitay or Barton Veret, Agency for International Development GC/PRE, Room 3328 N.S., Washington, DC 20523
Telex No.: 892703 AID WSA
Telefax No.: 202/647–4958 (preferred communication)
Telephone No.: 202/647–8235

Each proposal should consider the following terms:

(a) *Amount:* U.S. $10 Million.
(b) *Term:* Up to 30 years.
(c) *Grace Period on Principal:* Maximum of 10 years with repayment amortizing gradually over the remaining life of the loan.
(d) *Interest Rate:* Alternate Proposals will be acceptable on the basis of one or more of the following three rates: fixed, floating, and floating rate with Borrower's option to convert to fixed rate. Fixed rate bids should provide for prepayment at Borrower's option (the Borrower is interested in obtaining a call option as early as possible). Floating rate bids (with or without option to convert) should specify the index on which the interest is to be based, the margin over the index, the frequency of reset and the frequency of payments. While margin over index is a primary concern, attention will also be given to ease of conversion from a floating rate to a fixed rate obligation which will be governed by market conditions at the conversion date. Such conversion will be solely at the option of the Borrower with the approval of A.I.D. For convertible loans, bidders should

specify (1) earliest date at which loan can be converted consistent with no (or nominal) penalty and (2) costs associated with the remarketing and nature of the remarketing commitment (i.e., underwritten or best efforts).

(e) *Draw Down:* Net proceeds from borrowing will be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(g) *Fees:* Borrower will pay all investment expenses, fees and costs at closing from proceeds of the loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg.), SA–18, Washington, DC 20523

Telephone No.: 703/875–4808

Date: May 13, 1988.

William Gelman,

Acting Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 88–11131 Filed 5–16–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–19142]

ZEN-NOH Grain Corp. et al.; Control Exemption; Consolidated Grain and Barge Co., River Bend Transport Co., and River Terminals Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ZEN-NOH Grain Corporation (Grain), ZEN-NOH Unico America Corporation (Unico), C. Itoh & Co., Ltd. (Trading), and C. Itoh & Co. (America) Inc. (America), all noncarriers and collectively referred to here as petitioners, seek an exemption from the requirement of approval and authorization for their acquisition of control, through a merger and ultimate stock ownership, of Consolidated Grain and Barge Company (Consolidated) (W–1356), a water common and contract carrier, and its wholly-owned, motor property carrier subsidiary River Bend Transport Company (River Bend) (MC–139243) and 50 percent owned, motor property carrier subsidiary River Terminals Transport, Inc. (River Terminals) (MC–119012).[1]

Grain, Unico, Trading, and America will own 37.5 percent, 12.5 percent, 30 percent, and 20 percent, respectively, of the common stock of Consolidated. Grain and Unico are majority-owned subsidiaries of the National Federation of Agricultural Cooperative Associations (ZEN-NOH), a noncarrier federation of agricultural cooperatives established under Japanese law. Trading is a publicly-held Japanese company, and America is a majority-owned subsidiary of Trading.

Petitioners will acquire control of Consolidated by the merger into Consolidated of their noncarrier subsidiary, Cornflake Acquisition Co. (Cornflake). Consolidated will survive the merger, and petitioners thus will be in control of a regulated water carrier and two regulated motor property carriers.[2] River Bend also operates in intrastate commerce in Ohio, Indiana, and Illinois, and those intrastate operations are also subject to this exemption.

Under 49 U.S.C. 11343(a)(4), the Commission's approval and authorization are required for the acquisition of control of at least two carriers by a person that is not a carrier. Therefore, the parties' proposed acquisition of Consolidated and its carrier subsidiaries through Cornflake's merger into Consolidated is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or an exemption from regulation.

Petitioners argue that the transaction is consistent with the National Transportation Policy: Consolidated and its subsidiaries will continue to operate under the same management and control that they have operated under for several years.[3] Only the ultimate control of Consolidated will change, and this assertedly will have no material effect upon the operations of any of the involved carriers. The petitioners' intent is that Consolidated and its subsidiaries will continue their operations in virtually the same manner as they are conducted now. Moreover, petitioners assert that the transaction is of limited scope because it involves only a small number of carriers whose operations represent insignificant portions of their respective markets. Finally, petitioners state that the transaction will not threaten shippers with an abuse of market power because the industry is competitive and entry into it is relatively easy.

DATE: Comments must be received by June 16, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–19142, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioners' representative: Peter A. Greene, Thompson, Hine, and Flory, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Paul Grossman (202) 275–7976, [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Petitioners seek an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers,* 367, I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business Hours.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10970 Filed 5–16–88; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub-No. 5) (88–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Amortization period for back pay and lump sum payments payable under conditions of union contracts.

SUMMARY: The Commission has decided that back pay and lump sum payable under conditions contained in union contracts shall be amortized over a one-year period when calculating the quarterly Rail Cost Adjustment Factor (RCAF). This modification will mitigate upward and downward swings in the RCAF and maximum RCAF rate levels. An opportunity cost calculated using the three-month Treasury Bill interest rate shall be used.

DATES: Effective date is May 15, 1988.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354

or

Robert C. Hasek (202) 275–0938, TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289–4357. Assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in room 2229 at Commission headquarters.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10969 Filed 5–16–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–122 (Sub-No. 1X)]

Terminal Railroad Association of St. Louis; Abandonment Exemption; St. Louis, MO

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.2-mile line of railroad in a tunnel between Third and Spruce Streets in St. Louis, MO.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 16, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been received). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 27, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 6, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Robert J. Wuller, Jr., and Joseph C. Orlet, Gundlach, Lee, Eggmann, Boyle & Roessler, 5000 West Main Street, Box 692, Belleville, IL 62222.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 22, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions upon environmental or public use conditions.

Decided: May 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10799 Filed 5–16–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meetings

ACTION: Notice of meeting.

The second quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on June 23, 1988, from 9:00 a.m. until 4:00 p.m. The meeting will take place at the Department of Housing and Urban Development in the Departmental Conference Room 10233, Seventh and D Streets SW., Washington, DC.

This meeting of the Coordinating Council will focus on the critical issue of crime and drug trafficking by youth gangs. The agenda will include

[1] Consolidated also has three subsidiaries that perform exempt water transportation services pursuant to 49 U.S.C. 10544. Because they perform transportation services not regulated by the Commission, they are not considered carriers within the meaning of 49 U.S.C. 11343. Consequently, in response to petitioners' concern, we find that approval of the transaction is not necessary to the extent it involves these three exempt entities.

[2] Pending the Commission's final approval of the transaction, the shares of River Bend and River Terminals owned by Consolidated will be placed in voting trusts pursuant to 49 CFR Part 1013, in order to enable Grain to acquire Consolidated immediately.

[3] The Commission previously approved Consolidated's control of River Bend and River Terminals in No. MC–F–13389.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines,* served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* ——— I.C.C. 2d ———, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

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presentations by a distinguished pannel of law enforcement experts, school officials, community representatives and others representing various cities in the United States that have serious gang problems, or emerging gang problems.

Individuals and organizations concerned with the issue are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655 to request reserved seating. Requests will be received until space is filled or until 4:00 p.m. on June 17, 1988.

Dated: May 12, 1988.

Diane M. Munson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-11039 Filed 5-16-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; General Motors Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 2, 1988–May 6, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,510; General Motors Corp., New Departure-Hyatt, Sandusky, OH

TA-W-20,524; Rico Fashion, Inc., Union City, NJ

TA-W-20,526; Smokador, A Division of Knoll International, Edison, NJ

TA-W-20,508; General Motors Corp, Ypsilanti, MI

TA-W-20,566; J.S. Designers Associates, Inc., New York, NY

TA-W-20,525; Sigri Carbon Corp., Hickman, KY

TA-W-20,522; Hofmann Industries, Inc., Sinking Spring Foundry Div., Sinking Spring, PA

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,505; General Motors Corp., BOC Flint Auto Body Plant, Flint, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,503; General Electric Co., General Electric Lighting, Incandescent Production Dept., Austintown, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,507; General Motors Corp., CPC Framingham, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,604; Wetterau, Inc., Pittsburgh Division's Coupon Department, Belle Vernon, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,520; Dieterick Standard, Boulder, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-20,519; CSX Transportation, Inc., (CSXT) Jacksonville, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,519A; Consolidated Rail Corp. (Conrail), Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,519B; Norfolk Southern Corp., Norfolk, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,506; General Motors Corp., Central Foundry, Saginaw, MI

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-20,485; Control Data Corp., Magnetic Peripherals, Inc., Normandale Plant, Bloomington, MN

A certification was issued covering all workers in employment related to the production of ferrite products (heads and head arm assemblies) including the WREN III product line separated on or after February 18, 1987.

TA-W-20,538; SL Waber, Inc., Westville, NJ

A certification was issued covering all workers of the firm separated on or after March 7, 1987.

TA-W-20,577; Eaton Corporation, Controls Div., Winamac, IN

A certification was issued covering all workers of the firm separated on or after March 17, 1987.

TA-W-20,502; Elliott Co., Scranton, PA

A certification was issued covering all workers of the firm separated on or after Febraury 29, 1987.

TA-W-20,509; General Motors Corp., Three River, MI

A certification was issued covering all workers of the Three River Plant of the Hydramatic Division separated on or after February 22, 1988.

TA-W-20,504; General Motors Corp., BOC Flint Buick City, Flint, MI

A certification was issued covering all workers of the firm separated on or after February 22, 1987.

TA-W-20,541; Transpetco I, Spearman, TX

A certification was issued covering all workers of the firm separated on or after February 11, 1987.

TA-W-20,541A; Transpetco I, Borger, TX

A certification was issued covering all workers of the firm separated on or after February 11, 1987.

TA-W-20,569; Levolor-Lorentzen, Inc., Hoboken, NJ

A certification was issued covering all workers engaged in the production of venetian blinds separated on or after March 14, 1987.

TA-W-20,523; Razor Ridge, Inc., Sparta, NC

A certification was issued covering all workers separated on or after March 4, 1987.

I hereby certify that the aforementioned determinations were issued during the period May 2, 1988–May 6, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: May 10, 1988

[FR Doc. 88-10936 Filed 5-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,393]

Hussman/Bastian-Blessing; Gran Haven, Mich; Negative Determination Regarding Application for Reconsideration

After being granted a filing extension, the Sheet Metal Workers Union, Local #7 requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Local #581 of the Allied Industrial Workers on behalf of workers at Hussman/Bastian-Blessing, Grand Haven, Michigan. The denial notice was signed on March 2, 1988 and published in the **Federal Register** on March 17, 1988 (53 FR 8819).

Pursuant to 29 CFR 90.18c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union submitted shipping documents for equipment being shipped to a plant in Mexico to replace the work performed at Grand Haven.

The Department's denial was based on the fact that the "contributed importantly" test was not met. Respondents to the Department's survey which accounted for a predominant share of Bastian-Blessing's 1987 sales decline revealed that they did not import food service equipment in 1986 or 1987.

Investigative findings also show that all production of food service equipment from Grand Haven will be transferred to a domestic corporate plant in Missouri. Husaman has an affiliated plant in Mexico but that plant does not produce food service equipment. The Mexican plant produces shelving and brackets. Some of the machinery was moved out of the Grand Haven plant to Mexico. There are no company imports of food service equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of May 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 88-10937 Filed 5-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,416]

SKF Industries, Inc.; Hornell Division, Hornell, NY; Affirmed Determination Regarding Application for Reconsideration

By an application dated March 29, 1988, the Maple City Lodge #1975 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of SKF Industries, Inc., Hornell Division, Hornell, New York. The determination was published in the **Federal Register** on April 5, 1988 (53 FR 11147).

The union claims that accessory products are being imported from SKF in Sweden. The union claims that when production ceases in Hornell, SKF will import mounted ball units from their plant in Mexico The union states that the Department's survey was inadequate and submits the name of a customer who imports pillow blocks from SKF in Canada.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 6th day of May 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-10938 Filed 5-16-88; 8:45 am]

BILLING CODE 4510-30-M

Invitation To Comment on Proposed Procedures for Release of Quality Control Data for Unemployment Insurance Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on proposed procedures and format to release Quality Control data for the Unemployment Insurance program.

SUMMARY: On September 4, 1987, a notice was published in the **Federal Register** at 52 FR 33784 inviting comments on issues relating to the public release of Quality Control (QC) data for the Unemployment Insurance (UI) program. Based on the comments from numerous interested parties, the Department proposes procedures for the release of QC data on benefit payments. This notice offers interested parties the opportunity to review the procedures and provide comments to the Department.

DATE: Written comments must be received by the close of business on June 16, 1988.

ADDRESS: Submit comments to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S-4231, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charles L. Atkinson, Director, Office of Quality Control, Employment and Training Administration, Unemployment Insurance Service, U.S. Department of Labor, Room S-4231, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 535-0220 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The QC program is based on a statistical sample of weeks compensated. From the information gathered by in-depth reviews of samples

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of weeks compensated, the performance of a State's UI benefits system is evaluated in terms of weeks and dollars that were properly or improperly paid, as well as the causes for improper payments based on each State's law and regulations. The QC system also produces information that can be used to guide and evaluate the effectiveness of program improvements in response to the QC data. The system produces samples of weeks compensated that are statistically reliable, sufficiently precise for States to develop and evaluate program improvement plans, and flexible enough to accommodate differences between States and efficiently use available resources.

State have the primary responsibility for proper and efficient administration of the program; thus, the States also have the primary role in program improvements. In other words, program improvements are a State-initiated management approach to improving operations. Given the importance of program improvement planning and implementation in eliminating the causes of errors, careful consideration was given to the roles and responsibilities of the various levels of government for initiating and overseeing program improvements.

After consultations with representatives of organized labor, State government, and employers from the private sector, the Department decided to implement the QC program without providing for any Federal sanctions or funding incentives that States meet specific limitations on error rates. Instead, the Department, based on those consultations, decided that States would be required to release the results of the QC program at the same time each year in a standardized format. In the event that a State did not release this information, the Department would do so. These agreements were incorporated in the QC final rule, 20 CFR Part 602 issued on September 3, 1987.

An important consideration was what incentives exist or need to be provided to achieve QC program objectives. States are highly motivated to try to lower their UI error rates, since State UI tax dollars finance the regular UI benefit costs, and employers, labor organizations, and State legislatures actively oversee the payment of benefits and collection of taxes. As public officials, State administrators are responsible to the voters and taxpayers in their States. If employers, labor orgnaizations and others have sufficient information on error rates or procedural deficiencies, they will likely demand that problems be corrected. The QC program establishes error rates on the basis of analyses to determine the frequency of errors and their causes and to enable States to reduce them through program improvements.

Program improvement is the key to error reduction. QC design anticipates that States will utilize data from the QC effort as a primary basis for statistical and program analyses and for the development of management initiatives to solve the operational problems that have been pinpointed or otherwise bring about program improvements. States may augment QC data with other data in developing program improvement plans, e.g., raw data gathered by QC field investigators, data from management reviews of State QC operations, and information from other management systems which might exist within the respective agencies.

Program improvement strategies generally fall into one of the following categories:

- Policy/law changes
- Procedural changes
- Training
- Process enhancements

Therefore, it can be reasonably expected that some improvements can be accomplished at minimal cost and within a State's existing resources while others will have resource implications. Until QC program results become publicly available, it is not possible to determine the extent to which such resources are appropriate or needed. With the initiation of a mandatory program beginning in October 1987, data will be generated and reported to the Department of Labor and other interested parties.

The regulation to establish the QC program for the Federal-State unemployment insurance system was published in the **Federal Register** at 52 FR 33520 on September 3, 1987 with an effective date of October 5, 1987. Section 602.21(g) of the regulation provides that each State shall:

> Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

The notice of September 4, 1987, set forth design issues and requested public comment on issues relating to the format, method, and timing of the release. The seven design issues are identified below:

1. What should be the objectives and focus of the QC data release?
2. What level of detail should the report include?
3. How much explanatory information should accompany the data?
4. Who should release the data?
5. What type of publication should be used to disseminate data?
6. What should be the timing and scope of data in the first report?
7. Are there any other issues and recommendations which should be considered during design of procedures for release of benefit payment QC data?

Discussion of Responses

Written responses were received by the Department from the following: State Employment Security Agencies (SESAs) (45), Governors (20), labor organizations (2), businesses/business organizations (7), and others (14). All comments were given careful consideration in preparing the proposed procedures and format. The following summarizes the responses to the design questions:

1. Objectives and Focus

Thirteen respondents stated that the primary objective should be the improvement of UI program operations. Others suggested that it should provide information as to the accuracy of benefit payments to those responsible for program administration (4 respondents) or to the other interested parties (6). Additional respondents said it should provide information for a data base (4) or for analysis purposes (5).

Fifteen respondents stated that the focus of the release should be on improper payments, while nine contended that it should be on proper payments. Six respondents requested that any summary of data on improper payments be limited to cases meeting the official definitions of improper payments. Six said that the release should identify the percentage of dollars paid improperly rather than the percentage of cases with improper payments, while one said that the focus should not be on dollar figures.

One other respondent suggested that the focus of the release should be on trends and indicators.

2. What level of detail should the report include?

Eighteen respondents stated that the report should include a minimal level of detail, while three others added that States should have the option to add information of their choosing to any required minimal detail. Three stated that the level of detail should be determined by each State. Seven said that each State should be permitted to explain the effect of its own law and policy. Four stated that the release should only present statewide data rather than be broken out by regions or areas of states.

3. How much explanatory information should accompany the data?

Eight respondents stated that it is necessary for the release to contain explanatory factors, and twelve respondents suggested that the inclusion of any explanatory information should be left to the discretion of each individual State. One respondent requested that a preface be included to explain that comparisons of data cannot be made among States.

Five respondents suggested that program improvements should be identified and included in the release, while one respondent was opposed to inclusion of such information. Three said inclusion of information on program improvements should be at the option of the individual States.

4. Who should release the data?

The States should release the data, according to 37 respondents. Five others said that the Department should be responsible for releasing the data. Ten respondents suggested that the release should be a combined effort by the States and the Department.

Two respondents contended that there should be no release until more QC data is available.

5. What type of publication should be used to disseminate data?

Thirty-six respondents stated that the release should be published as an official State report, six said it should be a Federal report, one said there should be Federal and State reports issued concurrently, and two others responded that Federal and State reports should be issued separately.

6. Timing and Scope of Data in the First Report

Two respondents stated that the first release snould be of data for calendar year 1987 and be issued about June 1, 1988. Forty-four respondents stated that the first release should be for calendar year 1988 and be issued about June 1, 1989.

7. Other Recommendations and Issues

One respondent objected to the Department requiring a public release of QC data. It was contended that such a release would be contrary to the stated purpose of the QC program as a tool for State managers to improve their UI programs. This respondent also said that QC data should not be published without also publishing budget data which would demonstrate that the States have not been fully funded.

Two respondents contended that the Random Audit program, which preceded QC, caused a negative public perception of the claimant population. Therefore, QC data should not be used to reinforce this perception until the Department is in the position to provide data on what the employer community is, or is not, doing as it relates to their responsibilities under State UI laws.

A respondent requested the formation of a committee or work group of State public information officers to assist in the design of the release.

Another respondent stated that the complexity of the QC data, combined with the belief that the release of such data will invite unjust comparisons among States with widely varying statutes and program operations, should warrant reconsideration of the decision to make the data public.

Another contended that if the Department feels constrained to issue the results of QC, it should attempt to incorporate two points in the release: (1) The comparisons among States that the report will necessarily imply are not valid and (2) the "error rates" are estimates only and may have a rather broad range in which the "real" error rates exist.

Another suggestion was that the total cost of the QC program be documented in all data releases. This would include total Federal administrative costs as well as funds allocated to the States to operate the QC program.

Policy Decisions

Listed below are the Department's decisions on the design issues for the release of QC results:

1. Objectives and Focus

The focus of the release will be on both proper and improper payment and on actions/plans for program improvement. The primary objective of the release will be to display the results to program administrators and other appropriate in such a way as to encourage UI program improvements.

2. Level of Detail

The level of detail will be comprehensive enough to provide meaningful statewide data on the percentage of errors, where these errors occur in the UI operations, and the responsibility for and causes of the errors.

3. Explanatory Information

The release will be prefaced by a general discussion of the UI and QC processes and the results. An explanation will be provided of how the results must be interpreted, which will be intended to minimize public misinterpretation of the information. States will have the opportunity to provide explanations of their results, the effect of State laws and policies, and any program improvements planned or underway.

4. Who Should Release the Data?

States will be expected to release the data each year according to a pre-set schedule. The Department will also publish all States' data at a later date after the publication date for the States.

5. Type of Publication

The publication issued by the Department will be a digest of State results presented in a standard format. State releases must contain, at a minimum, the information required for the report issued by the Department.

6. Timing and Scope of First Report

The first report will cover the first complete calendar year (1988) and will be issued by the States in June 1989 and the Department in July 1989.

Proposed Format and Procedures

The report will contain three parts devoted to each State: (1) The annual results for each State, (2) narrative explanation: Each State will be afforded the opportunity to explain or interpret the results, and (3) "program improvement: Under the headings "Issue" and "Program Improvement", each State will be afforded the opportunity to describe actions taken to improve UI operations. The manner in which this is described will be left to discretion of each State.

The following five categories identify and define the data to be included in the format for the QC results.

1. Total Dollar Amount of Benefits Paid

This is the amount of benefits paid during the calendar year for the programs included in QC (UI, UCFE, UCX). These payments form the universe from which samples are currently selected for QC.

The remaining items represent the results of the QC investigations of sampled payments and are expressed as percentage rates of dollars affected.

2. Proper Payment Rates

The dollars paid properly are shown as a percentage of dollars paid from the cases sampled. These include amounts of payments coded as proper, as defined in section 3d(1) of the Error Classification chapter in ET Handbook No. 395. It also includes from section 3d(2) those dollars paid properly, part of

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which were from claims paid improperly; e.g., $120 payment with $10 overpayment = $110 paid properly.

Additionally, the following payments classified as improper in section 3d(2) are included in the proper payment rate:

—*Subsection (a)14:* Pertains to issuance of "formal warning" to claimant, rather than denial of payment.

—*Subsections (a)16 and (b)23:* Pertain to overpayments and underpayments established as a result of the QC investigations which, upon appeal, were officially modified by a higher SESA authority, but the QC unit disagree with this modification.

3. Improper Payment Rates

The percentages of dollars paid improperly are presented as separate rates for overpayments and underpayments. The figures are derived from those payments coded under section 3d(2) of the Error Classification chapter, but exclude (a)14, (a)16, and (b)23. (See definitions above.) Because the QC system accepts coding for up to three errors per case, in cases with multiple errors, the total dollars affected (for up to three errors per case) will be used in the computations as long as the amount originally paid is not exceeded. (E.g., a weekly payment of $120 was found to have two errors. The first was a missed separation issue that should have disqualified the claimant; this amounts to an overpayment of $120. The second was unreported earnings during the key week resulting in an overpayment of $30. The total dollars used in the computation of improper payment would be limited to $120.) If both an overpayment and an underpayment occur in a single case, the net dollar amount improperly paid will be used, unless payment for the entire week should been disallowed, in which case the dollars used in the computation will be the amount of the payment made.

4. Percentage of Dollars Improperly Paid—By Responsibility

The parties responsible for the dollars being paid improperly are identified. The data are sorted into six categories: Claimant solely responsible, claimant shares responsibility, employer solely responsible, employer shares responsibility, agency solely responsible, and agency shares responsibility. The classification scheme is adapted from the coding for section 3e of the Error Classification chapter; however, the category "other", which is present in section 3e, is disregarded here because of a low incidence of occurence. As a result of this categorization showing multiple responsibility, it is possible that the sum of the individual categories presented here will be slightly more than the total dollars improperly paid.

5. Percentage of Dollars Improperly Paid—By Cause

This shows what requirements were not met which resulted in dollars improperly paid, as coded in section 3f of the Error Classification chapter. The categories are base period wages, benefit year earnings, separation issues (voluntary quits and discharges), eligibility issues (work search and others), dependents allowances, and other causes. The fraud and nonfraud proportions of the total are shown separately.

The eligibility requirements for work search vary significantly from state-to-state. Past experience with program evaluations has demonstrated that work search requirements can be both difficult to interpret and to apply. In order to make the figures presented for work search eligibility more meaningful, each State will be asked to identify itself as falling into one of the three following categories:

—Work search required by State law.

—Work search required by State law but required by policy or procedures.

—No work search requirement.

The Department will calculate each State's results and transmit them to the States for confirmation. Each State will have five working days to review the Department's calculations and either confirm them or show why they should be different. Because of the time allowed for SESAs to complete cases selected at the end of a year (up to 90 days) and the subsequent time necessary to prepare the report, the release date will be in July of the following year.

Each State will be expected to make a public release of its own QC results prior to the release by the Department. This release should contain, at a minimum, the data included in the report prepared by the Department. The method of release will not be prescribed; however, it should be made in a reasonable manner to inform the general public, and it should be consistent with State requirements/common practice on releasing information to the general public.

The Department's first report will be prepared using data from calendar year 1988. For each State, the report will contain the data elements displayed in the Appendix to this notice. The report will be distributed to all SESAs. A notice in the **Federal Register** will announce the availability of the report to other interested parties.

If a State fails to release its QC data in the minimum format prescribed, the Department will still include the data for that State in its release. The Department will also publish in the **Federal Register** the data from that State as compiled by the Department.

Upon receipt of comments on the above proposal, the Department will develop and issue final procedures. These will be announced in a notice published in the **Federal Register**.

Signed at Washington, DC, this 10th day of May, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Appendix A—Format

I. Total Dollar Amount of Benefits Paid		
II. Proper Payment Rate		
III. Improper Payment Rates:		
1. Percentage of Dollars Overpaid		
2. Percentage of Dollars Underpaid		
IV. Percentage of Dollars Improperly Paid by Responsibility:		
1. Claimant		
2. Claimant and Other		
3. Employer		
4. Employer and Other		
5. Agency		
6. Agency and Other		
V. Percentage of Dollars Improperly Paid by Cause:	Fraud	Nonfraud
1. Base Period Wages		
2. Benefit Year Earnings		
3. Separation Issues:		
a. Voluntary Quits		
b. Discharges		
4. Eligibility Issues:		
a. Work Search [1]		
b. Others		
5. Dependents Allowance		
6. Other Causes		

[1] Each State will indicate which of the following applies:

—Work search required by State law.

—Work search not required by State law but required by policy or procedures.

—No Work search requirement.

Appendix B—narrative by each State to explain or interpret results presented in Appendix A.

Appendix C—narrative by each State to describe (1) *issues* and (2) *program improvements* made to address issues.

[FR Doc. 88-10939 Filed 5-16-88; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: June 3, 1988, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 2, 1988.

Donald C. Curran,

Acting Associate Librarian for Management.

[FR Doc. 88-10941 Filed 5-16-88; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-49]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Cancelled Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement: 53 FR 12835, Notice Number 88-37, April 19, 1988.

Previously Announced Times and Dates of Meeting: May 18, 1988, 8 a.m. to 4 p.m.; and May 19, 1988, 8 a.m. to 4 p.m. Meeting has been cancelled.

Contact Person for more Information: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2835).

May 10, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11006 Filed 5-16-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-50]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: June 9, 1988, 8 am. to 4 p.m.; and June 10, 1988, 8 a.m. to 4 p.m.

ADDRESS: Northrop Corporation, Aircraft Division, Conference Room E-22, Tech Center Building, 1 Northrop Avenue, Hawthorne, CA 90250-3277.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team of Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

June 9, 1988

8 a.m.—Review of Presentation Material.
10 a.m.—Discussion of Findings and Conclusions.
1 p.m.—Assignment of Working Groups.
2 p.m.—Working Group Activities.
4 p.m.—Adjourn.

June 10, 1988

8 a.m.—Working Group Activities.
1 p.m.—Convene Working Groups—Review of Final Report Elements.
4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11008 Filed 5-16-88; 8:45 am]

BILLING CODE 7510-01-M

[88-48]

Intent To Grant an Exclusive Patent License; Keystone Helicopter Corp.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Keystone Helicopter Corporation of West Chester, Pennsylvania, a limited exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,707,305 for "Helicopter Anti-Torque System Using Fuselage Strakes," which issued November 24, 1988, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain

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appropriate terms, limitations and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing will review the written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received July 18, 1988.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2420.

Date: May 11, 1988.

John E. O'Brien,

General Counsel.

[FR Doc. 88–11067 Filed 5–16–88; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and made available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporary identified by its task number, CE 801–5 (which should be mentioned in all corresponding concerning this draft guide), is proposed Revision 2 to Regulatory Guide 8.12, "Criticality Accident Alarm Systems." The guide is being revised to describe a system acceptable to the NRC staff for meeting the Commission's requirements for a criticality accident alarm system. It endorses, with some limitations, ANSI/ANS–8.3–1986, "Criticality Accident Alarm System."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washingron, DC. Comments will be most helpful if received by July 8, 1988.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 11th day of May 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88–10978 Filed 5–16–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co., (Surry Power Station, Units 1 and 2); Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR–32, which authorizes operation of Surry Power Station Unit 1, and Operating License No. DPR–37, which authorizes operation of Surry Power Station Unit 2. The operating licenses provide, among other things, that the Surry Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is comprised of two pressurized reactors at the licensee's site in Surry, Virginia.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for Containment Integrated Leakage Rate Tests (CILRTs) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS–56.8–1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the NRC staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4–1972.

III

By letter dated March 1, 1988, as revised by letter dated April 8, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4–1972. ANSI N45.4–1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method. The March 1, 1988 letter also proposed amendments to the Technical Specifications (TSs) to maintain consistency between the TSs and the requested exemption. The staff will respond to the proposed amendments by separate correspondence.

The licensee indicated that since the issuance of ANSI N45.4–1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as described in ANSI/ANS–56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours aprart.

On February 29, 1988 (53 FR 5985), the staff published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4–1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with section 7.6 of ANSI N45.4–1972, a test duration of less than 24 hours is only allowed if approved by the NRC staff, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the staff conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated April 8, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the March 1, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Surry pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limit specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed partial exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated March 1, 1988, as revised by letter dated April 8, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule (or may renew its request for exemption). The exemption applies only to the method of calculating leakage rates (by use of the Mass Point method) and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations, providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment May 9, 1988 (53 FR 16479).

A copy of the licensee's request for exemption dated March 1, 1988, as revised on April 8, 1988, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 9th day of May 1988.

[FR Doc. 88–10979 Filed 5–16–88; 8:45 am]

BILLING CODE 7590–01–M

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OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, May 25, 1988
Wednesday, June 1, 1988
Wednesday, June 8, 1988
Wednesday, June 15, 1988
Wednesday, June 22, 1988
Wednesday, June 29, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives form five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability fo the Committee to reach a consensus on the matters beign considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1990 E Street NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

May 11, 1988.

[FR Doc. 88-11016 Filed 5-16-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AAR Corporation
Common Stock, $1.00 Par Value (File No. 7-3328)
Adobe Resources Corporation
Common Stock, $.01 Par Value (File No. 7-3329)
Basix Corporation
Common Stock, $.05 Par Value (File No. 7-3330)
Belo (A.H.) Corporation
Common Stock, $1.67 Par Value (File No. 7-3331)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7-3332)
CLC of America, Inc.
Common Stock, $.50 Par Value (File No. 7-3333)
Carlisle Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7-3334)
Chicago Pacific Corporation
Common Stock, No Par Value (File No. 7-3335)
Coachman Industries, Inc.
Common Stock, No Par Value (File No. 7-3336)
Commercial Metals Co.
Common Stock, $5.00 Par Value (File No. 7-3337)
Continental Information Systems Corporation
Common Stock, $.03 Par Value (File No. 7-3338)
Convertible Holdings, Inc.
Capital Shares, $.10 Par Value (File No. 7-3339)
Allstate Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3340)
Baltimore Bancorp
Common Stock, $5.00 Par Value (File No. 7-3341)
Blue Chip Value Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7-3342)
Crossland Savings Bank
Common Stock, $1.00 Par Value (File No. 7-3343)
Cycare Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-3344)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10988 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25691; File No. SR-DTC-88-6]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal would approve on a permanent basis DTC's Same-Day Funds Settlement ("SDFS") Service. The Commission is publishing this notice to solicit comments on the proposal.

I. Description

The SDFS Service provides full depository and transaction settlement services for certain securities that settle in sameday funds ("SDFS securities"). DTC accepts SDFS securities for deposit and provides such services as deliver orders, withdrawals, pledges, Institutional Delivery System trade confirmation and affirmation, and underwriting distributions. Pilot operation of the SDFS Service began on June 26, 1987, with transactions in municipal notes [1]. The SDFS Service has since been expanded to include zero-coupon bonds,[2] municipal bonds with short-term demand ("put") options,[3] medium-term notes[4] and collateralized mortgage obligations.[5]

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with the requirements of the Act, because it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. DTC states that the proposed rule change will continue to be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control. DTC states that the SDFS System is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. DTC states in its filing that such collateralization permits the depository to accomplish daily settlement when a participant with a net debit fails to settle for any reason.

III. Request for Comments

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld for the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at DTC's principal office. All comments should refer to file number SR-DTC-88-6 and should be submitted by June 7, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 11, 1988.

[FR Doc. 88-10983 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25690; File No. SR-NASD-88-11]

Self-Regulatory Organization; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change on an Accelerated Basis

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 1, 1988 copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to implement an enhancement to the NASDAQ System known as the Order Confirmation Transaction ("OCT") service and to modify the system's operational procedures. The OCT service provides an auxiliary medium for NASD firms to communicate with one another and confirm the execution of orders.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25601, April 19, 1988) and by publication in the Federal Register (53 FR 13387, April 22, 1988). The Commission received one comment letter on the proposed rule change.[2] The commentator expressed concerns regarding best execution of orders, all-or-none treatment of OCT orders, and the potential for price manipulation using the OCT service.

In the filing, the NASD states that it gave active consideration to these concerns while it was monitoring usage of the OCT and was not able to substantiate the commentator's concerns about inferior execution of retail orders or potential price manipulation by the entry of large orders outside the prevailing market. With respect to all-or-none treatment of orders, the NASD has changed the OCT service to permit participants to enter or accept partial executions. Furthermore, the NASD's surveillance staff will monitor usage of the OCT service on a routine basis.[3]

The Commission believes that the NASD adequately has addressed the concerns expressed in the comment letter. Further, the NASD routinely monitors the use of its systems and will be able to detect abuses by firms of the OCT service through surveillance. As noted in the filing, members must comply with all relevant NASD rules; use of OCT does not affect this obligation. Any firm that is violating NASD rules is subject to discipline by the NASD.

Additionally, the NASD states in the filing that since the OCT's initial implementation, the system's daily

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[1] *See* Securities Exchange Act Release No. 24669 (July 9, 1987) 52 FR 26013, which approved the SDFS Service on a temporary basis until January 31, 1988, and Securities Exchange Act Release No. 25308 (February 4, 1988) 53 FR 3400 in which the Commission extended temporary approval to June 30, 1988.

[2] *See* Securities Exchange Act Release No. 25031 (October 15, 1987) 52 FR 38982.

[3] *See* Securities Exchange Act Release No. 25317 (February 5, 1988) 53 FR 4269.

[4] *See* Securities Exchange Act Release No. 25478 (March 17, 1988) 53 FR 9530.

[5] *See* Securities Exchange Act Release No. 25586 (April 13, 1988) 53 FR 12461.

[1] OCT has been the subject of two previous filings: SR-NASD-87-54 and SR-NASD-88-10. The first filing described the terms of access and the operational procedures for OCT and was granted accelerated approval for a ninety-day period. *See* Securities Exchange Act Release No. 25388 (January 11, 1988), 53 FR 1430. The second filing permitted OCT to operate through May 11, 1988. *See* Securities Exchange Act Release No. 25523 (March 28, 1988), 53 FR 10885. The operational procedures subsequently were modified in File No. SR-NASD-88-11, the subject of this approval order, to allow OCT participants to enter or accept partial executions of individual orders.

[2] Letter from Elroy Krumbein, Executive Vice President of Wechsler & Krumbein, Inc., to John T. Wall, Executive Vice President, Member and Market Services, NASD, dated January 25, 1988.

[3] *See* letter from Michael J. Kulczak, Special Counsel, NASD, to Katherine A. England, Branch Chief, SEC, dated May 3, 1988.

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traffic has been approximately 100 entries. The NASD represents that the OCT's capacity is capable of handling the heavy traffic conditions experienced during October of 1987. Traffic through the OCT is a small percentage of the total traffic handled on the NASDAQ network, and thus, the NASD states that heavy traffic flow through OCT would not degrade NASDAQ services. The NASD's daily monitoring of traffic on the NASDAQ network will enable the NASD to make adjustments as necessary.

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**, and, in any event, by May 11, 1988, the date the Commission's extension of the temporary approval of the OCT service expires.[4] The NASD believes accelerated approval is necessary and appropriate for several reasons. First, the OCT service constitutes a critical back-up capability to enable NASD members to continue conducting business during extreme or unusual market conditions. Public investors and NASD member firms would benefit from the immediate availability of this back-up capability. Second, the OCT service has no impact whatsoever on the ability of securities information vendors to service their customers. Third, the NASD believes that implemention of the OCT service will not impose new or more stringent market making obligations of the affected market makers. Finally, retail firms that are eligible to use the OCT service do not incur any additional obligations beyond those already incurred in consummation of transactions via the telephone. For these reasons, the NASD requests that the Commission find good cause to grant accelerated approval of the proposed rule change no later than May 11, 1988.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(A)–(D) and 15A(b)(6) of the Act, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, pursuant to section 19(b)(2)(B) of the Act, in that without accelerated approval, authorization for the OCT service will expire on May 11, 1988. OCT provides an alternate method of communication for firms, it can be used in place of the telephones. During the market break, many firms had trouble contacting other firms by telephone [5] and the Commission believes that the OCT service is a positive development by the NASD to address this problem. Moreover, although OCT has been in effect since January 1988, the NASD has represented, and the Commission is aware of, no problems with the operation of the OCT. In addition, the NASD has responded to the one comment letter which it received.

It is therefore ordered, pursuant to section 19(b)(2)(B) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May, 11, 1988.

[FR Doc. 88–10984 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* letter from Lynn Nellius, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC, dated April 20, 1988.

[5] *See The October 1987 Market Break,* A Report by the Division of Market Regulation, SEC, February 1988.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Pegasus Gold, Inc.
Common Stock, No Par Value (File No. 7–3323)
Dreyfus Strategic Municipals, Inc.
Common Stock, $0.01 Par Value (File No. 7–3324)
First Boston Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3325)
First Wisconsin Corporation
Common Stock, $1.25 Par Value (File No. 7–3326)
Fruehauf Corporation
Class B Common Stock, $0.01 Par Value (File No. 7–3327)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the informaiton available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10989 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25685; File No. SR–Phlx–88–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change

On March 24, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to revise certain of its strike price policies to permit the orderly introduction of one quarter point ($.025) strike price intervals for French franc put and call options contracts.

The proposed rule change was noticed in Securities Exchange Act Release No. 25538 (March 31, 1988), 53 FR 11388 (April 6, 1988). No comments were received on the proposed rule change.

The purpose of the proposed rule change is to reduce maximum strike price intervals in French franc options contracts from one half ($.05) to one quarter point. Because for French franc is less volatile than the United States dollar, market participants have found the half point strike price intervals inadequate to meet their trading and hedging needs. The addition of quarter point strike prices will enable investors in French franc options to manage and hedge their currency risk more effectively.

The Phlx is aware or the potential operational burdens that have resulted from the proliferation of options series in recent months. Therefore, to minimize any potential burdens of the rule change, Phlx will introduce quarter point strike prices gradually, coordinating their introduction with the expiration or removal of current deep-in or deep-out-of-the-money strikes.

The Phlix contends that the statutory basis for the proposed rule change is section 6(b) of the Act in that it is designed to facilitate transactions in Franch franc foreign currency options contracts. In addition, Phlx believes the proposal promotes the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a National Securities Exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. By introducing quarter point intervals, the proposal provides investors in a nonvolatile currency with greater flexibility and precision in managing their currency risk. Moreover, to avoid a proliferation of series, Phlx will add quarter point strikes gradually and only for at-or near-the-money strikes. Finally, the strike price revision is similar to others the Commission has approved in options for other non-volatile currencies.[1]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88–10985 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25686; File No. SR–Phlx–88–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change

On March 24, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to reduce the minimum fractional change for dealing on the Exchange in option contracts on the British pound.

The proposed rule change was noticed in Securities Exchange Act Release No. 25539 (March 31, 1988), 53 FR 11380 (April 6, 1988). No comments were received on the proposed rule change.

The purpose of the rule change is to enable market participants to transact business more competitively in Phlx—listed British pound foreign currency options contracts. Decreasing the minimum fractional change from $.0005 to $.0001 (*i.e.*, the minimum premium change from the equivalent of $6.25 per tick to $1.25 per tick) will enable market participants to more effectively trade and hedge their over the counter currency risk with Exchange traded British pound foreign currency options since over the counter British pound currency option are usually transacted on a one thick basis. Moreover, the ability of the Phlx to offer a one tick minimum premium change will enable the Phlx to be competitive with the options or British pound futures contracts presently traded on a two tick differential basis on the Chicago Mercantile Exchange ("CME").

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. In particular, the Commission believes that the proposal will permit market participants to hedge more effectively their over the counter currency risk since the Phlx's British pound option contracts will conform directly to the minimum price fluctuations that occur in the over the counter foreign currency markets. As a results, market participants will be better able to manage their foreign currency trading risk. Additionally, the Commission believes the proposal will facilitate transactions in British pound foreign currency options contracts by enabling Phlx to be competitive with the options on foreign currency futures traded on the CME.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88–10988 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25687; File No. PHLX 88–18]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Business Hours of Foreign Currency Options Evening Trading Segment

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), proposes to amend its Exchange Rule 101 to modify the hours business trading may be conducted in foreign currency options. Italics indicates material proposed to be added; brackets indicate material proposed to be deleted.

Dealings Upon the Exchange
Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 a.m. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia.

The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 p.m. except that Value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 p.m. each business day. The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the Foreign Currency Options Committee or the Exchange official or

[1] *See Securities Exchange Act Rel. No. 23666 (December 12, 1986), 51 FR 45070 and Securities Exchange Act Rel. No. 24103 (February 13, 1987), 52 FR 5605.*

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officials designated by the Board) foreign currency option trading sessions shall be conducted in the evenings [from] *between the hours of 6:00* [7:00] p.m. *and* [to] 11:00 p.m. Sundays through Thursdays and in the daytime from 8:00 a.m. to 2:30 p.m. Mondays through Fridays.

* * * *Commentary .01*

The Board of Governors has determined that the Foreign Currency Options evening trading segment generally shall correspond to 8:00 a.m. to 12:00 noon Tokyo, Japan time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide the Exchange with the flexibility to conform its evening trading segment hours to coincide with the opening of trading in the Far Eastern foreign exchange markets. The PHLX believes that, by coordinating evening trading segment business hours in foreign currency options with the opening trading session hours in the prime Far Eastern foreign exchange markets, it will better be able to meet the Exchange rate risk protection and related hedging needs of Far Eastern manufacturing, banking and other commercial firms. The flexibility built into the proposed rule is necessary because of changes in time differences that arise when Philadelphia changes from Eastern Standard Time to Daylight Savings Time each fall and spring. The Exchange will provide foreign currency options participants and participant organizations with adequate notice of each timing change made as a result of implementation of the proposed rule change. The Exchange would anticipate making the first such time change with the start of Eastern Standard time on October 30, 1988.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10987 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16366; 812-6967]

American Capital California Tax-Exempt Trust et al.; Application

May 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: American Capital California Tax-Exempt Trust, American Capital Comstock Fund, Inc., American Capital Corporate Bond Fund, Inc., American Capital Enterprise Fund, Inc., American Capital Federal Mortgage Trust, American Capital Government Money Market Trust, American Capital Government Securities, Inc., American Capital Harbor Fund, Inc., American Capital Life Investment Trust, American Capital Over-The-Counter Securities, Inc., American Capital Pace Fund, Inc., American Capital Reserve Fund, Inc., American Capital Tax-Exempt Trust, American Capital Venture Fund, Inc., American General High Yield Accumulation Fund, Inc., American General Money Market Accumulation Fund, Inc. and all future investment companies which are part of the American Capital Mutual Fund Group (the "Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: The Funds seek an order exempting them from section 32(a)(1) of the 1940 Act to permit them to file financial statements signed or certified by an independent public accountant selected at a board of directors' or trustees' meeting held within ninety days before or after the beginning of the Applicants' fiscal year.

Filing Dates: The application was filed on February 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on June 3, 1988. Request a hearing in writing,

giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Funds, 2800 Post Oak Blvd., Houston, Texas 77056 Attention: Nori L. Gabert, Esq.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is an open-end management investment company organized either under the laws of the State of Maryland as a corporation or under the laws of the State of Massachusetts as a business trust.

2. For a number of years, each Fund has held its annual meeting of stockholders during each fiscal year. At the last annual meeting in December, 1987, a number of the Funds took such action as was necessary so that the Funds need not hold annual meetings. Neither the laws of Maryland pertaining to corporations nor the laws of Massachusetts applicable to business trusts require the holding of an annual meeting. Therefore, unless stockholder action is required for some other reason, it is the intention of each Fund that an annual meeting will not be held. Accordingly, under the provisions of section 32(a)(1) of the 1940 Act the Funds now will have to select their independent public accountant within thirty days before or after the beginning of each Fund's fiscal year.

3. The selection of independent public accountants is based on the work of an Audit Committee ("Committee") which is composed of directors who are not interested persons of the Applicants and who serve on the boards of directors of each of the Applicants. The Committee meets with the independent public accountants at least twice each year, once to discuss the scope of the audits and estimated costs and a second time to review the results of such audits. Based on these meetings, the Committee makes its recommendation to the respective boards of each Fund with respect to the selection of the independent public accountants.

4. The boards of directors of all Applicants generally meet jointly. It is the usual practice to consider an issue that affects more than one of the Applicants at the same meeting. In the case of selecting the independent public accountant, it is particularly desirable to follow this practice. Since all the boards of directors of the Applicants meet in joint session, the most convenient way to proceed with the selection of the independent public accountant is to have the matter appear on one agenda during the year instead of on some of the Funds' agenda virtually every meeting throughout the year. In the past, the March meeting has been the usual month for the selection.

5. The same independent public accountant presently serves each Applicant. The accountant's audit programs are designed so that the test work is often done for all Funds at the same time. Unless an unforeseen conflict of interest were to arise, it is anticipated that in the future the independent public accountant selected to serve one Applicant also will be selected by each of the other Applicants. The Applicants, however, have staggered the beginning of their fiscal years. The staggering of the fiscal year-ends was designed to permit economic utilization of resources for both the accounting personnel of the investment manager and the personnel of the independent public accountant. As a result, the decision to continue with the same or to appoint a new accountant really must occur for all Funds at the same point of time each year. Therefore, each Applicant is seeking an order to permit it to file financial statements signed or certified by an independent public accountant which has been selected at a meeting held within ninety days before or after its fiscal year end. By so doing, directors' meetings on a complex-wide basis could be arranged so that the selection of an independent public accountant need be considered only twice each year.

6. Each Applicant submits that it is desirable for it to consider the selection of its independent public accountant at the same during the year as each of the other Applicants. The Applicants believe that expanding the thirty-day window under section 32(a)(1) of the 1940 Act ("section 32(a)(1) Window") will permit a regular and structural consideration of the independent public accountant for the American Capital Mutual Fund Group at a meaningful interval of time. The Applicants submit that this is preferable to the almost monthly selection which would be required if the thirty-day window is not expended, and that such practice is more convenient for the Applicants and is consistent with the policies underlying the 1940 Act.

7. By permitting the scheduling of the independent public accountant twice a year on a complex-wide basis through expanding the section 32(a)(1) Window from 30 to 90 days, the Commission will allow a director review procedure to be put in place that will ensure that selection of the Funds' independent public accountant is considered on a systematic basis. The review procedures will (1) provide for detailed review of the services furnished by the independent accountant to the Fund, and (2) result in directors' consideration of all information developed by the Committee. Further, the process will more accurately reflect the reality of doing business in complexes having a substantial number of funds which is different from the time the 1940 Act was passed when funds were operated on an individual basis or in small fund groups.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10990 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Graves County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Graves County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P. O. Boix 536, Frandfort, Kentucky 40602-0536. Phone (502) 227-7321; FTS 352-5468 or Mr. G. F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622. Phon3 (502) 564-7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

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Kentucky Transportation Cabinet, is preparing an environmental impact statement in Graves County. The proposed improvement (Mayfield Truck Route/Eastern Bypass) is an urban arterial on the east side of Mayfield, Kentucky, from its southern terminus with KY 121, extending north and then west to its ending point with KY 121 on the northwest side of Mayfield, approximately 3.06 miles in length. The proposed project is needed to reduce congestion and truck traffic through Mayfield and its Central Business District, as well as improve traffic flow, safety and accessibility. The proposed roadway is planned to be two lanes initially (four lanes ultimately) with a 50 mile-per-hour design speed. Although there are three alternative approach alignments at each terminus, only one mainline alignment is under consideration at this time. Development on the west from the city of Mayfield and physical constraints to the east make the proposed alignment the only reasonable location that would meet the intended function of the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An interdisciplinary team meeting will be scheduled. In addition, a public meeting soliciting project input will be held. A scoping meeting will be combined with the public meeting early in the project development process. A formal public hearing will be conducted upon approval of the DEIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

It is estimated that the draft EIS will be available for public review in December 1988.

Issued on: May 5, 1988.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 88-10942 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Approval of Request for Removal, Without Disapproval From Roster of Approved Trustees

Notice is hereby given, pursuant to 46 CFR 221.28, that Terrebonne Bank & Trust Company, with offices at 720 Main Street, Houma, Louisiana, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Terrebonne Bank & Trust Company stated it is no longer necessary for the bank to maintain its status as a Maritime Administration trustee.

Therefore, pursuant to Pub. L. 88-346 and 46 221.21-221.30, Terrebonne Bank & Trust Company, Houma, Louisiana, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: May 10, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-11017 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Research Study To Explore Impact Measures of Safety Belt Use Laws

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of grant availability.

SUMMARY: The National Highway Traffic Safety administration announces that applications for grants are being accepted to conduct research to explore the feasibility of using data from a variety of existing and potential sources for better monitoring of the impacts of State safety belt use laws by national and State officials.

Eligible Applicants: States, interstate agencies and non-profit research institutions, including universities and schools of public health.

DATE: Applications must be submitted on or before Thursday, June 23, 1988.

ADDRESS: Applications must be submitted to the attention of Barbara Hansberry, Department of Transportation, National Highway Traffic Safety Administration, Office of Contracts and Procurement, NAD-30, 7th St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This research is authorized under section 106(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89-563) and Chapter 11 of the Supplemental Appropriations Act of 1987 (Pub. L. 100-71).

Following the recent enactment of State laws requiring safety belt use, concerned safety officials and the public have been interested in learning their impacts. Typical current indicators of the laws' consequences have been "belt use levels" and "fatalities". Alternative indicators are needed for measuring the impacts of use laws. For example, if more people are wearing belts, we might expect to see a variety of injury reductions, costs-savings and other effects.

The research envisioned by this announcement would constitute a seven month project that will identify added indicators and their sources (e.g., hospitals, disability groups) and characterize their measures of belt law impacts. Based on an evaluation of data availability, costs, applications, and other features, the project will recommend a set of potentially useful indicators for future research and possible adoption. The project will assess how NHTSA might work with the institutional sources of these measures to provide realistic, ongoing, diverse and affordable information.

Preferably, this research will be supported by one seven-month grant of $90,000 or less. The project will start no later than September 30, 1988, and the revised final report will be submitted as soon as possible, but not later than seven months after award. Note, however, that if several suitable proposals of limited scope would need support to achieve the objectives of this project, two grants totaling $90,000 or less might be awarded instead of a single grant.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

FOR FURTHER INFORMATION CONTACT: For a detailed project description, required application instructions, and the required "Federal Assistance" Standard Form 424, send two self-addressed labels and a written request for grant project DTNH22-88-Z-07391 to Barbara Hansberry, at the above address.

Issued on: May 11, 1988.

Kennerly H. Digges,

Deputy Associate Administrator for Research and Development.

[FR Doc. 88-10953 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-59-M

Announcement; First Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the first meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW. This meeting will seek to identify the specific research activities that the Rollover Subcommittee will initially address.

DATE AND TIME: The meeting is scheduled for June 2, 1988, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will include an examination of published data on the magnitude, nature, and scope of the rollover crash problem. The technical literature concerning factors influencing rollover crash protection will be discussed including analytical computer models, test procedures, and test facilities for both crash avoidance and crashworthiness.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file [Number 88-01—Rollover Subcommittee] has been established to contain the products of the subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: May 12, 1988.

Kennerly H. Digges,

Chairman, Rollover Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88-10956 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration Office of Hazardous Materials Transportation

Applications for Renewal or Modification of Exemptions or Applications to become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expendite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes May 31, 1988.

ADDRESS Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal or exemption
3330-X	Babcock and Wilcox Co., Lynchburg, VA.	3330
3330-X	Western Zirconium, Inc., Ogden, UT.	3330
5493-X	Montana Sulphur & Chemical Co., Billings, MT.	5493
5848-X	U.S. Department of Energy, Washington, DC.	5848
5951-X	Van Waters & Rogers, Inc., Spartanburg, SC.	5951
6442-X	U.S. Department of Defense, Falls Church, VA.	6442
6518-X	Union Carbide Corporation, Danbury, CT.	6518
6518-X	Syntex Chemicals, Inc., Boulder, CO.	6518
6530-X	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA.	6530
6536-X	Pan Products, Inc. Macedonia, OH.	6536
6543-X	Union Carbide Corp., Danbury, CT.	6543
6724-X	U.S. Department of Defense, Falls Church, VA.	6724
6810-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1).	6810
6874-X	Harrisons & Crosfield (Pacific), Inc., Emeryville, CA.	6874
6927-X	Great Lakes Chemical Corp., El Dorado, AR.	6927
6927-X	Bromine Compounds, Ltd., Beer-Sheva, Israel 84101 (See Footnote 2).	6927
6932-X	Eurotainer, S.A., Paris, France.	6932
6932-X	Compagnie des Containers Reservoirs Paris, France.	6932
6944-X	U.S. Department of Defense, Falls Church, VA.	6944
6960-X	Pepsi-Cola Co., Purchase, NY.	6960
7052-X	W.R. Grace & Co., Columbia, MD.	7052
7052-X	Motorola, Inc., Ft. Lauderdale, FL.	7052
7052-X	Moll Energy, Ltd., Burnaby, B.C., Canada (See Footnote 3).	7052
7070-X	American Chemical & Refining Company, Inc., Waterbury, CT.	7070
7247-X	U.S. Department of Defense, Falls Church, VA.	7247
7285-X	Compagnie des Containes Reservoirs, Paris, France.	7285
7601-X	Atlantic Research Corp., Gainesville, VA (See Footnote 4).	7601
7616-X	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	7616
7636-X	Minnesota Valley Engineering, Inc., New Prague, MN (See Footnote 5).	7636
7802-X	Bennett Industries, Pectone, IL.	7802
7873-X	Bromine Compounds, Ltd., Bear Sheva, Israel (See Footnote 6).	7873
8009-X	Pressure Transport, Inc., Austin, TX.	8009
8013-X	Air Products and Chemicals, Inc., Allentown, PA.	8013
8013-X	Union Carbide Corp., Danbury, CT.	8013
8023-X	EFI Corp., d/b/a EFIC San Jose, CA.	8023
8037-X	Meuser Packaging, Ltd., Litchfield, CT.	8037

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Application No.	Applicant	Renewal or exemption
8084-X	IRECO, Inc., Salt Lake City, UT (See Footnote 7).	8084
8115-X	EFI Corp., d/b/a EFIC, San Jose, CA.	8115
8125-X	Compagnie des Containers Reservoirs, Paris, France.	8125
8214-X	Morton Thiokol, Incorporated, Automotive Products, Ogden, UT (See Footnote 8).	8214
8367-X	FMC Corp Philadelphia, PA	8367
8386-X	Scotab Inc., Eagan, MN (See Footnote 9).	8386
8397-X	Mauser Packaging, Ltd., Litchfield, CT.	8397
8445-X	University of Maryland, Baltimore, MD.	8445
8445-X	OECOS International, Inc., Buffalo, NY.	8445
8450-X	Atlantic Research Corp., Camden, AR.	8450
8458-X	E.I. du Pont de Nemours & Company Inc., Wilmington, DE.	8458
8509-X	Mobay Corp. Pittsburgh, PA	8509
8526-X	Binks Corp., Westminster, CO	8526
8555-X	Morton Thiokol, Inc. Brigham City, UT (See Footnote 10).	8555
8723-X	Hamilton Explosives, Inc., Allentown, PA.	8723
8739-X	ICI Americas, Inc., Wilmington, DE.	8739
8747-X	Coppa Industries, Inc., Menomonee Falls, WI.	8747
8760-X	Barton Solvents, Inc., Des Moines, IA.	8760
8809-X	Sonoco Fibre Drum Inc., Lombard, IL.	8809
8812-X	The Protectoseal Co., Bensenville, IL.	8812
8845-X	Pro-Log, Denver City, TX	8845
8850-X	Hoover Group, Inc., Beatrice, NE.	8850
8854-X	Compagnie des Containers Reservire, Paris, France.	8854
8860-X	E.I. du Pont Nemours & Co., Inc., Wilmington, DE.	8860
8862-X	Union Carbide Corp., Danbury, CT.	8862
8885-X	Coppa Industries, Inc., Menomonee Falls, WI.	8885
8893-X	Atlab Powder Co., Dallas, TX	8893
9002-X	PepsiCo, Inc., Purchase, NY	9002
9074-X	U.S. Department of Energy, Washington, DC.	9074
9186-X	Comptank, Corp. Bothwell, Ontario, CN (See Footnote 11).	9186
9211-X	Waterman Steamship Corp., New Orleans, LA.	9211
9221-X	Applied Companies, San Fernando, CA.	9221
9235-X	Bennett Industries, Peotone, IL.	9235
9347-X	Boondock International, Inc. Houston, TX (See Footnote.	9347
9366-X	Pacific Scientific, HTL Division, Duarte, CA (See Footnote 13).	9366
9368-X	Cominco American, Inc., Spokane, WA.	9368
9419-X	FIBA Compressed Gas Equipment, Westboro, MA (See Footnote 14).	9419
9508-X	Callery Chemical Co., Pittsburgh, PA.	9508
9566-X	United Technologies Corp., San Jose, CA.	9566
9610-X	Hercules, Inc. Wilmington, DE	9610
9632-X	Eurotainer S.A., Paris, France	9632
9659-X	Compostek Engineering Corp., Brea, CA (See Footnote 15).	9659
9746-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 16).	9746
9763-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 17).	9763
9817-X	Hoover Group, Inc., Beatrice, NB (See Footnote 18).	9817
9841-X	Consani Engineering (Pty) Ltd., Etelee River 7480, South (See Footnote 19).	9841
9861-X	Degussa Corp., Ridgefield Park, NJ (See Footnote 20).	9861
9941-X	Morton Thiokol, Inc., Huntsville, AL.	9941
9941-X	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	9941
4453-P	Northeast Pump Service Corp., Keene, NH.	4453
4850-P	Teledyne McCormick Selph Hollister, CA.	4850
5022-P	Hercules, Inc., Magna, UT	5022
7052-P	Adcour, Inc., Sharon, MA	7052
7607-P	I.T. Corp., Torrance, CA	7607
7607-P	Wapora, Inc., Atlanta, GA	7607
8526-P	Stoops Express, Inc., Anderson, IN.	8526
8554-P	Cherokee Products, Inc., Jefferson City, TN.	8554
8569-P	Allied-Signal Aerospace Co., Torrance, CA.	8569
8917-P	Fluor Daniel, Sugar Land, TX	8917
9275-P	Giorgio of Beverly Hills, Santa Monica, CA.	9275
9275-P	Parfums Stern, New York, NY	9275
9359-P	ENPAC Corp., Jacksonville, FL.	9359
9430-P	ENPAC Corp., Jacksonville, FL.	9430
9554-P	ENPAC Corp., Jacksonville, FL.	9554
9618-P	ENPAC Corp., Jacksonville, FL.	9618
9769-P	Aqua-Tech, Inc., Port Washington, WI.	9769

(1) To reinstate exemption originally issued for shipment of Helium, classed as nonflammable gas, in DOT Specification 107A tanks mounted on motor vehicles chassis.
(2) To authorize rail freight as an additional mode of transportation.
(3) To authorize an additional material, described as Lithium batteries, classed as Flammable Solid.
(4) To authorize renewal and an additional destination for shipments of High explosives, liquid, Class A explosive.
(5) To authorize and additional model of the exempted cylinder.
(6) To authorize rail freight as an additional mode of transportation.
(7) To authorize an additional packaging for shipment of High explosive, Class A explosive.
(8) To authorize and additonal packaging for shipment of Inflators and modules for passive restraint systems, described as Flammable solid, n.o.s., classed as Flammable solid.
(9) To issue an exemption similar to DOT-E 8368 (manufacture mark and sell) which would authorize the use of non-DOT 5 gallon capacity open head pails for packaging certain corrosive and flammable liquids.
(10) To authorize an additional rocket motor for shipment.
(11) To update exemption reference for Acoustic Emission Tests to the most recent edition of the published standard.
(12) To authorize deletion of sub-paragraphs 8.d. and 8.e. of the exemption, which pertain to retest and reinspection of the exemption cylinders.
(13) To Authorize an additional material of construction for a non-DOT Specification cylinder in which Nitrogen, classed as nonflammable gas, is shipped.
(14) To authorize the use of cylinders that have retested by means of acoustic emissions testing.
(15) To authorize mixtures of nonflammable gases, all of which are presently authorized, as additional materials.
(16) To authorize cargo vessel as an additional mode of transportation.
(17) To authorize cargo vessel as an additional mode of transportation.
(18) To authorize an additional outer packaging.
(19) To authorize additional packagings, similar to those presently authorized, for shipment of materials classed as flammable gas or flammable liquid.
(20) To authorize DOT Specification 44P polyethylene bags, as additional inside packagings, for shipment of a certain Oxidizer, n.o.s.

Application No.	Applicant	Parties to exemption
4453-P	Cherokee Products, Inc., Jefferson City, TN.	4453

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 10, 1988.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-10956 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes June 14, 1988.

Address Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9929-N	Morton Thiokol, Inc.—Elkton Division, Elkton, MD.	49 CFR 172.101, 173.92, 175.30	To authorize shipment of rocket motor, Class B explosive with igniter assembly installed and exceeding the weight limitations presently authorized to be contained in a specially, designed metal container. (Modes 1, 4.)
9964-N	United Technologies—Chemical System Division, San Jose, CA.	49 CFR 173.88(e)(2)(ii), 173.92(a)	To authorize shipment of a Rocket motor, Class B explosive, in a propulsive state and in a package that will exceed the prescribed gross weight limit. (Mode 1.)
9965-N	HazMat Environmental Group, Inc., Buffalo, NY.	49 CFR 172.331	To authorize shipment of Polychlorinated biphenyls, classed as ORM-E, in motor vehicles bearing placards in lieu of marking the bulk packaging. (Mode 1.)
9966-N	Olin Corp.—Defense Systems Group, East Alton, IL.	49 CFR 173.53(q), 173.86, Part 107, Subpart B, Appendix B.	To authorize certain ammunition, classed as Class A, to be shipped as C explosive. (Modes 1, 2, and 4.)
9967-N	Department of Energy, Washington, DC	49 CFR 173.420(a)(4)	To authorize shipment of Uranium hexafluoride, classed as Radioactive material, low specific activity, in a non-DOT specification cylinder that contains more material than is prescribed. (Mode 1.)
9968-N	Moli Energy, Ltd., Burnaby, BC, Canada	49 CFR 173.206	To authorize shipment of Lithium batteries, classed as Flammable solid, or devices containing these batteries, classed as Flammable solid, with the quantity of lithium and number of cells in the batteries exceeding those prescribed. (Modes 1, 2, 3, and 4.)
9969-N	G.C. Industries, Inc., Chatsworth, CA	49 CFR Subparts F, G and H	To manufacture, mark and sell a non-DOT specification permeation device overpacked in specially designed packagings for the shipment of certain flammable or nonflammable gases and liquids that are poisonous, flammable or corrosive materials. (Modes 1, 4.)
9970-N	Hercules Inc., Wilmington, DE	49 CFR 175.65(e)	To authorize shipment of Cyclotrimethylenetrinitramine, wetted with ethyl acetate, classed as Class A explosive, in non-DOT Specification packaging. (Mode 1.)
9971-N	Fisher Scientific Co., Fair Lawn, NJ	49 CFR 176.210, Part 173	To authorize shipment of certain materials classed as Flammable liquid, Corroeive material, Poison B, ORM-A or ORM-E in non-DOT Specification packaging consisting of a DOT Specification 12A box with hand holes containing four 4-liter glass bottles. (Modes 1, 4.)
9972-N	The Lubrizol Corp., Wickliffe, OH	49 CFR 173.225	To authorize shipment of Phosphorus pentasulfide, classed as Flammable solid, in a non-DOT Specification packaging, identified as a AAR Specification 207W tank car. (Mode 2.)
9973-N	Morton Thiokol, Inc.—Ordnance Operations, Shreveport, LA.	49 CFR 173.56	To authorize shipment of an Explosive projectile, in a propulsive state in a non-DOT Specification packaging. (Mode 1.)
9974-N	S.S.I. Group, Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize carriage of Calcium carbide, classed as Flammable solid, by motor vehicle without placards when the quantity of the material does not exceed 350 pounds. (Mode 1.)
9975-N	Allied-Signal, Inc. Morristown, NJ	49 CFR 173.154	To authorize shipment of a certain aluminum/lithium alloy, described as Flammable solid, n.o.s. classed as Flammable Solid, in a non-DOT Specification container. (Mode 1.)
9976-N	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.304	To authorize shipment of Ammonia, anhydrous, classed as Nonflammable gas, in non-DOT packaging identified as heat pipes, overpacked in wooden shipping containers. (Modes 1, 4.)
9976-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.304	To authorize shipment of certain nonflammable gases, compressed gas, n.o.s. and a flammable liquid in non-DOT specification cylinders. (Modes 1, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 9, 1988.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-10957 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-60-M

VOL 53 ISS 95 MAY 17 1988 UMI

Sunshine Act Meetings

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Thursday, May 12, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: May 13, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-11134 Filed 5-13-88; 3:48 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 12, 1988.

TIME AND DATE: 10:00 a.m., Thursday, May 19, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 2274, UMWA* v. *Clinchfield Coal Co.*, Docket No. VA 83-55-C. (Issues include whether the Administrative Law Judge erred in awarding compensation to miners in proceedings on remand from a prior Commission decision.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-11110 Filed 5-13-88; 1:54 pm]

BILLING CODE 6735-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, June 8, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: May 9, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-11061 Filed 5-13-88; 10:01 am]

BILLING CODE 7550-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, May 24, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head on Collision of Southern Pacific Transportation Company Freight Trains Extra 7287 East and Extra 7791 West, at Yuma, Arizona, June 15, 1987.

2. Highway Accident Report: Academy Lines, Inc., Intercity Bus Run-Off-Road and Overturn, Middletown, New Jersey, September 6, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty

Federal Register Liaison Officer.

May 13, 1988.

[FR Doc. 88-11135 Filed 5-13-88; 3:46 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 16, 23, 30, and June 6, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 16

Tuesday, May 17

2:00 p.m.
Briefing by DOE on High Level Waste Program (*Public Meeting*)

Wednesday, May 18

2:00 p.m.
Annual Briefing by INPO (*Public Meeting*)

Thursday, May 19

2:00 p.m.
Briefing on NAS Human Factor Recommendations (*Public Meeting*)
3:30 p.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Friday, May 20

10:00 a.m.
Discussion/Possible Vote of Full Power Opeating License for Braidwood-2 (*Public Meeting*)

Week of May 23—Tentative

Thursday, May 26

3:30 p.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Week of May 30—Tentative

Tuesday, May 31

2:00 p.m.
Briefing on Human Factors Program and NRC Views of NAS Recommendations (*Public Meeting*)

Wednesday, June 1

2:00 p.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (*Public Meeting*)
3:30 p.m
Affirmation//Discussion and vote (*Public Meeting*) (if needed)

Friday, June 3

10:00 a.m.
DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (*Public Meeting*)

Week of June 6—Tentative

Thursday, June 9

10:00 a.m.
Briefing on Status of Pilgrim (*Public Meeting*)
11:30 a.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Motion to Modify or Quash Subpoenas in Farley Nuclear Plant Investigation" (*Public Meeting*) was held on May 6. Affirmation of "Final Rule Amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72: General Requirements for Decommissioning Nuclear Facilities (SECY-87-309)" (*Public Meeting*) was held on May 12.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

May 12, 1988.

[FR Doc. 88-11137 Filed 5-13-88; 4:02 pm]

BILLING CODE 7590-01-M

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Corrections

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Navy

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[8-00154 I-LM]

Special Nevada Report; Meetings

Correction

In notice document 88-9473 beginning on page 15272 in the issue of Thursday, April 28, 1988, make the following correction:

On page 15272, in the third column, under **DATES**, in the 13th line, the date for the Fallon, Nevada, meeting should read "May 18".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82032; FRL-3372-6]

EDTMPA and its Salts; Submission of Notice of Manufacture or Import

Correction

In proposed rule document 88-9522 beginning on page 15428 in the issue of Friday, April 29, 1988, make the following corrections:

1. On page 15429, in the table, in the right column, in the 12th entry, after "(methylene)]" insert "]".

§ 704.95 [Corrected]

2. On page 15431, in § 704.95(a), in the table, in the right column, in the fifth entry, after "[[" insert "[".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51703; FRL-3370-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-9100 beginning on page 14839 in the issue of Tuesday, April 26, 1988, make the following corrections:

1. On page 14840, in the third column, under "*P 88-666*", in the fifth line, "l-amino" should read "1-amino".

2. On page 14842, in the second column, in the last line, insert a hyphen between "4" and "isononyl".

3. On page 14843, in the first column, under "*P 88-729*", in the fifth line, insert a dash between "10,200" and "42,000".

4. On page 14849, in the first column, under "*P 88-882*", in the third line, insert a hyphen between "2-" and "Propenoxy".

5. On page 14850, in the first column, under "*P 88-907*", in the eighth line ">0" should read ">4.0".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 83N-0193]

Medical Devices; Offers To Submit or To Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor)

Correction

In proposed rule document 88-8874 beginning on page 13296 in the issue of Friday, April 22, 1988, make the following correction:

On page 13297, in the third column, in the third complete paragraph, in the sixth line, "FDS" should read "FDA".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in General Internal Medicine and General Pediatrics

Correction

In proposed rule document 88-9779 beginning on page 15710 in the issue of Tuesday, May 3, 1988, make the following corrections:

1. On page 15712, in the first column, in paragraph 6., in the third line, "residency" was misspelled.

2. On the same page, in the second column, in the paragraph headed **Regulatory Flexibility Act and Executive Order 12291**, the 15th and 16th lines should be removed.

§ 57.3104 [Corrected]

3. On page 15713, in the second column, in paragraph (d), in the last line, between "of" and "§ 57.3105(a)(11)", insert "§ 57.3105 with special attention to the requirements of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; COC 48469]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

Correction

In notice document 88-9933 beginning on page 16196 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16196, in the third column, under "*Pike National Forest*" the eighth line should read "Sec. 33, SE¼SE¼ and S½NE¼SE¼".

2. On page 16197, in the first column, "T. 13 S., R. 73 W.," should read "T. 13 S., R. 72 W.,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ANM-11]

Alteration of Transition Area, Missoula, MT; Correction

Correction

In rule document 88-7885 beginning on page 11840 in the issue of Monday, April 11, 1988, make the following corrections:

§ 71.181 [Corrected]

. On page 11841, in the first column, in § 71.181, under "Missoula, Montana (Revised)", in the 7th line, "northwest" should read "northeast", and in the 12th line "southwest" should read "southeast".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-18]

Alteration of VOR Federal Airways; TX

Correction

In rule document 88-10146 beginning on page 16387 in the issue of Monday, May 9, 1988, make the following correction:

On page 16387, in the third column, under **DATES**, in the fourth line, "June 7, 1988" should read "June 17, 1988".

BILLING CODE 1505-01-D

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Tuesday
May 17, 1988

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 19, etc.

Occupational Taxes Relating to Alcohol, Tobacco, and Firearms; Treasury Decision, Final Rule

VOL 53 ISS 95 MY 17 1988 UMI

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 19, 20, 22, 25, 70, 179, 194, 197, 231, 240, 250, 270, 285, and 290

[T.D. ATF-271]

Occupational Taxes Relating to Alcohol, Tobacco, and Firearms

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Treasury decision, Final rule.

SUMMARY: This final rule implements section 10512 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203. This section amended the Internal Revenue Code to require alcohol, tobacco and National Firearms Act (NFA) proprietors to pay new or increased special (occupational) taxes. Proprietors become liable for the new or increased special taxes as of January 1, 1988. However, proprietors in business on January 1, 1988, will have until April 1, 1988, to file special tax returns and pay these occupational taxes. Thereafter, the taxes will be due July 1 of each year.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert White or Steve Simon, Wine and Beer Branch (202-566-7626), or Shirley Osborne, Distilled Spirits and Tobacco Branch (202-566-7531), Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

Special (occupational) tax is imposed on persons who are engaged in certain specified occupations. Prior to Pub. L. 100-203, the tax was imposed on the following occupations under ATF's jurisdiction: Wholesale and retail dealers in liquor (spirits, wine, and/or beer), wholesale and retail dealers in beer only, limited retail dealers, brewers, manufacturers of nonbeverage products (MNBP), and importers, manufacturers and dealers in NFA firearms (including importers, manufacturers and dealers in weapons classified as "any other weapon"). Public Law 100-203 increased the special tax rates for most proprietors who currently pay special tax, and imposed new special taxes on proprietors under ATF's jurisdiction who do not currently have to pay special tax. The new law repealed the special (occupational) tax formerly imposed upon limited retail dealers. The term "limited retail dealer," which is defined in 26 U.S.C. 5122(c), refers to persons who sell alcoholic beverages at events of limited duration, such as lodge picnics, county fairs, etc.

New Occupational Taxes

Special (occupational) taxes have been imposed for the first time on the occupations shown in the following chart. These new taxes apply equally to Federal, State, and local government agencies and instrumentalities engaged in any of the taxable activities. The new special taxes are imposed at the following rates:

RATES OF NEW TAXES

Type of proprietor	Rate per year
Distilled spirits plant (including alcohol fuel plants, experimental plants, and university research plants)	$1,000
Distilled spirits plant (gross receipts in previous taxable year less than $500,000)	500
Bonded wine cellar	1,000
Bonded wine cellar (gross receipts in previous taxable year less than $500,000)	500
Bonded wine warehouse	1,000
Bonded wine warehouse (gross receipts in previous taxable year less than $500,000)	500
Taxpaid wine bottling house	1,000
Taxpaid wine bottling house (gross receipts in previous taxable year less than $500,000)	500
Dealer in specially denatured distilled spirits	250
User of specially denatured distilled spirits (including recoverer of specially or completely denatured distilled spirits)	250
Proprietor who procures or uses tax free alcohol under 26 U.S.C. 5214(a) (2) or (3)	250
Manufacturer of tobacco products	1,000
Manufacturer of tobacco products (gross receipts in previous taxable year less than $500,000)	500
Manufacturer of cigarette papers and tubes	1,000
Manufacturer of cigarette papers and tubes (gross receipts in previous taxable year less than $500,000)	500
Export warehouse proprietor	1,000
Export warehouse proprietor (gross receipts in previous taxable year less than $500,000)	500

Increased Occupational Taxes

Special (occupational) taxes have been increased for wholesale and retail liquor dealers, wholesale and retail beer dealers, manufacturers of nonbeverage products (MNBP), brewers, and importers, manufacturers and dealers of National Firearms Act (NFA) firearms. The new law also eliminated the separate tax category for importers, manufacturers, and dealers in weapons classified as "any other weapon." These proprietors must pay special taxes at the same rate as other NFA firearms proprietors. The increased tax rates are shown below:

INCREASED ANNUAL TAX RATES

Type of proprietor	Old rate	New rate
Wholesale liquor dealer	$255	$500
Wholesale beer dealer	123	500
Retail liquor dealer	54	250
Retail beer dealer	24	250
Brewer	110	1,000
Brewer (less than 500 barrels per year)	55	1,000
Brewer (gross receipts in previous taxable year less than $500,000)	110	500
Brewer (less than 500 barrels per year; gross receipts in previous taxable year less than $500,000)	55	500
Manufacturer of nonbeverage products (25 proof gallons or less)	25	500
Manufacturer of nonbeverage products (50 proof gallons or less)	50	500
Manufacturer of nonbeverage products (more than 50 proof gallons)	100	500
Class 1—Importer of NFA firearms	500	1,000
Class 1—Importer of NFA firearms (gross receipts in previous taxable year less than $500,000)	500	500
Class 2—Manufacturer of NFA firearms	500	1,000
Class 2—Manufacturer of NFA firearms (gross receipts in previous taxable year less than $500,000)	500	500
Class 3—Dealer in NFA firearms	200	500
Class 4—Importer only of weapons classified as "any other weapon"	25	(1)
Class 5—Manufacturer only of weapons classified as "any other weapon"	25	(2)
Class 6—Dealer only in weapons classified as "any other weapon"	10	(3)

[1] Same as class 1.
[2] Same as class 2.
[3] Same as class 3.

Reduced Occupational Taxes for Small Proprietors

For certain occupations, as indicated in the above charts, small proprietors are taxed at a reduced rate. To qualify for the reduced rate, a proprietor must have gross receipts (for the most recent taxable year) of less than $500,000. "Taxable year" in this context refers to the taxpayer's income tax year, not the special (occupational) tax year. The term "gross receipts" means all of the taxpayer's gross receipts—not just those derived from the business subject to special tax. Gross receipts are reduced by returns and allowances made during the taxable year, as provided in 26 U.S.C. 448(c)(3). Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) (pertaining to "controlled groups") shall be treated as one taxpayer for purposes of determining eligibility for the reduced rate of tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, are eligible for the reduced tax rate unless the business is a member of a "controlled group." Complete rules for determining eligibility for the reduced special (occupational) tax rate are contained in the regulations prescribed by this Treasury decision.

Filing of Return and Payment of Special Tax

Every person who engages in a business subject to special (occupational) tax is required to file a special tax return, ATF Form 5630.5, with payment of tax, before commencing operations. Form 5630.5 shall be completed in accordance with the instructions on the form and shall be mailed, along with remittance, to the address indicated on the form. Thereafter, the taxpayer will receive a bill on Form 5630.5 prior to the first day of July in each year. The bill will contain certain preprinted information. The taxpayer shall complete and sign the Form 5630.5 in accordance with the instructions on the form and mail the form, along with remittance, to the address indicated on the form. If the taxpayer does not receive a renewal notice on ATF Form 5630.5 before the tax is due, the taxpayer shall obtain a blank ATF Form 5630.5 from any ATF office and complete the form in accordance with the instructions on the form. The taxpayer shall then mail the completed tax return form, with remittance, to the address indicated on the form.

Special (occupational) taxes are normally prorated for new proprietors who commence operations after July 1 of the tax year. The only exceptions are manufacturers, importers, and dealers in NFA firearms, and manufacturers of nonbeverage products. Those proprietors must pay the full annual special tax for the tax year during which they commence operations. For all others, the initial tax is computed from the first day of the month in which liability is incurred until the 30th day of June following. Tax in subsequent years is computed for the entire tax year (July 1 through June 30). Complete procedures for the preparation and filing of special tax returns and the payment of the tax are prescribed in the regulations amended by this final rule.

Any person required by law to file a return and pay tax who fails to file the return and pay tax on or before the last day prescribed shall pay, as an addition to the tax, a penalty for both failure to file a return and for failure to pay the tax. In addition, interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest shall be charged for each day at the rate prescribed by law in effect on that day. For more information concerning the computation of penalties and interest, refer to Subpart E of 27 CFR Part 70 and Subpart H of 27 CFR Part 194.

Transition Rule

The new regulations on special (occupational) tax take effect on January 1, 1988. However, taxpayers who were in business on that date will not have to file a tax return and pay the increased or new tax until April 1, 1988. Thereafter, the tax return must be filed and the tax paid on or before July 1 of each year.

For purposes of determining the amount of increased or new occupational tax due on April 1, 1988, under this transition rule, any person engaged on January 1, 1988, in any trade or business subject to such a tax shall be treated as having first engaged in the taxable trade or business on that date. If the taxpayer previously paid an occupational tax in respect of any premises for taxable period which began before January 1, 1988, and includes that date, the increased occupational tax imposed by this transition rule in respect of those premises shall not exceed one-half the excess (if any) of—

(a) The annual rate of occupational tax in effect on January 1, 1988, over

(b) The annual rate of such tax in effect on December 31, 1987.

Filing of Return and Payment of Special Tax During Transition Period

During the period between January 1, 1988, and April 1, 1988, taxpayers of record will be sent a bill on one of three supplemental forms. If the taxpayer owed but did not pay special tax for the current tax year, then the taxpayer will be sent ATF Form 5630.5 Supplemental 1 to cover the delinquent tax due plus the tax for the transition period between January 1, 1988, and June 30, 1988. If the taxpayer paid special tax for the current year, the taxpayer will be sent ATF Form 5630.5 Supplemental 2 to cover the increased tax for the transition period between January 1, 1988, and June 30, 1988. If the taxpayer was not previously required to pay special tax but is now required to pay special tax due to the change in the law, the taxpayer will be sent AFT Form 5630.5 Supplemental 3 to cover the tax for the transition period between January 1, 1988, and June 30, 1988.

Taxpayers who receive either ATF Form 5630.5 Supplemental 1, 2, or 3 shall fill out the form in accordance with the instructions on the form and shall mail the form, with remittance of tax, on or before April 1, 1988, to the address indicated on the form. If a taxpayer does not receive a bill on ATF Form 5630.5 Supplemental 1, 2, or 3, he or she is still required to file a tax return and pay the tax on or before April 1, 1988, in accordance with the transition rule described earlier in this preamble. Tax returns may be obtained by contacting any ATF office. The taxpayer shall then mail the return, with remittance, to the address indicated on the form.

Examples of Transition Rule

Example 1

A wholesale beer dealer is in business as of January 1, 1988, and has previously paid special tax at the rate of $123 a year for the period July 1, 1987, through June 30, 1988. This dealer would become liable for the additional tax on January 1, 1988, but would not have to file the tax return or pay the additional tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($500−$123)= ½($377)=$188.50.

Example 2

A proprietor of a distilled spirits plant is in business as of January 1, 1988. Previous law and regulations did not require such proprietors to pay special (occupational) taxes so none was paid. The distilled spirits plant proprietor would become liable for the new tax on January 1, 1988, but would not be required to file the tax return or pay the new tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($1000−$0)= ½($1000)=$500.

If the gross receipts of the distilled spirits plant proprietor (for the most

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recent taxable year ending before the first day of the taxable period to which the special (occupational) tax relates) are less than $500,000, then the proprietor would qualify for the reduced rate of $500 per year. In this example, such a small proprietor would only be required to pay one-half the reduced rate. Therefore, the proprietor would pay $250 on or before April 1, 1988.

Example 3

A manufacturer of NFA firearms began business on December 15, 1987. Since special tax for this proprietor is not prorated, the proprietor filed a tax return and paid tax in the amount of $500 for the period covering December 15, 1987 through June 30, 1988. The proprietor would become liable for the additional tax on January 1, 1988, but would not have to file the tax return or pay the additional tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($1000 −$500)=½($500)=$250.

If this manufacturer had gross receipts of less than $500,000 and thus qualified for the reduced rate as a small proprietor, the tax owed in this example would be ½($500 − $500) which would be zero. In this case, the proprietor should file a tax return but would show zero balance due.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule," because the economic effects flow directly from the underlying statute and not from this final rule. Therefore, it is found that this final rule will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirement to file a special (occupational) tax return has been previously approved by the Office of Management and Budget under Control Number 1512–0472.

Administrative Procedure Act

Because this final rule merely implements a law which has increased special (occupational) taxes and imposed new special (occupational) taxes on alcohol, tobacco and NFA firearms proprietors, and because immediate guidance is necessary to implement the new and increased tax rates, it is found to be unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal authors of this document are Robert White and Steve Simon of the Wine and Beer Branch, and Shirley Osborne of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverage, Authority delegations (Government agencies), Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegatons (Government agencies), Chemicals, Claims, Cosmetics, Excise taxes.

27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Tobacco.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations (Government agencies), Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 231

Administrative practice and procedure, Authority delegations (Government agencies), Labeling, Packaging and containers, Reporting requirements, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 285

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

Issuance

Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 2. The table of sections for Part 19 is amended (1) to remove §§ 19.26 and 19.27, as well as the center heading immediately preceding § 19.26, (2) to add new Subpart Ca immediately following Subpart C, and (3) to add new § 19.906 in Subpart Y immediately following § 19.905. As amended, the table of sections reads as follows:

Subpart Ca—Special (Occupational) Taxes

Sec.
19.49 Liability for special tax.
19.50 Rates of special tax.
19.51 Special tax returns.
19.52 Employer identification number.

Special Tax Stamps

19.53 Issuance, distribution, and examination of special tax stamps.
19.54 Changes in special tax stamps.

* * * * *

Subpart Y—Distilled Spirits for Fuel Use

* * * * *

19.906 Special (occupational) tax.

* * * * *

§§ 19.26 and 19.27 [Removed]

Para. 3. Sections 19.26 and 19.27, as well as the undesignated center heading immediately preceding § 19.26, are removed from Part 19.

Para. 4. New Subpart Ca is added immediately following the regulations in Subpart C, to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant*—(1) *General.* Every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(2) *Transition rule.* For purposes of paragraph (a)(1) of this section, a proprietor engaged in distilled spirits plant operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(b) *Liquor Dealer*—(1) *General.* A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 194 of this chapter.

(2) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax as a wholesale or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax for each distilled spirits plant. The distiller may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the distilled spirits plant.

(c) *Each place of business taxable*—(1) *General.* A proprietor of a distilled spirits plant incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) *Exception for contiguous areas.* A proprietor of a distilled spirits plant does not incur additional special tax liability for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

(26 U.S.C. 5081, 5111, 5113, 5142, 5143)

§ 19.50 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081(a)(1) imposes a special tax of $1,000 per year on every proprietor of a distilled spirits plant.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any distilled spirits plant proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 19.49 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that

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have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 19.51 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 19.52).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 19.723(c).

(d) *Signing of ATF Forms 5630.5—*(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

§ 19.52 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 19.53 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 19.51(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 19.54 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship—*(1) *General.* If there is a change in the proprietorship of a distilled spirits plant, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

§ 19.63 [Amended]

Para. 5. Section 19.63 is amended by adding, right after the word "tax" in the last sentence, the following: ", including special (occupational) tax,".

Para. 6. Section 19.65 is amended by adding the following sentence at the end of the section:

§ 19.65 Experimental distilled spirits plant.

* * * * * * *

* * * A proprietor of an experimental distilled spirits plant established under this section is subject to special (occupational) tax under Subpart Ca of this part and shall hold a separate special tax stamp to cover the experimental operations.

Para. 7. Section 19.67 is amended by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 19.67 Spirits produced in industrial processes.

(a) *Applicability.* (1) Persons who produce spirits in industrial processes (including spirits produced as a by-product in connection with chemical or other processes) are distillers and are required to qualify and pay special (occupational) tax under provisions of 26 U.S.C. Chapter 51 and this part.

(2) The Director may, however, waive any provision of 26 U.S.C. Chapter 51, or of this part, with respect to the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification (except the payment of special (occupational) tax), if such mixtures are produced:

* * * * * * *

Para. 8. Section 19.71 is amended by adding, at the end of paragraph (a), the following new sentence:

§ 19.71 Experimental or research operations by scientific institutions and colleges of learning.

(a) * * *

A person conducting experimental or research operations authorized under this section is subject to special (occupational) tax under Subpart Ca of this part and shall hold a special tax stamp to cover the experimental or research operations.

* * * * * * *

Para. 9. New § 19.906 is added in Subpart Y immediately following § 19.905, to read as follows:

§ 19.906 Special (occupational) tax.

A proprietor of an alcohol fuel plant established under this subpart shall be subject to a special (occupational) tax as prescribed in Subpart Ca of this part, and shall hold a separate special tax stamp to cover the alcohol fuel operations.

(26 U.S.C. 5061)

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Para. 10. The authority citation for Part 20 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 5607, 6055, 6061, 6065, 6109, 6151, 6806, 7011, 7805.

Para. 11. The table of sections for Part 20 is amended to add Subpart Ca immediately following Subpart C, and to add new § 20.241a in Subpart N, immediately following § 20.241, to read as follows:

* * * * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.
20.38 Liability for special tax.
20.38a Special tax returns.
20.39 Employer identification number.

Special Tax Stamps

20.40 Issuance, distribution, and examination of special tax stamps.
20.40a Changes in special tax stamps.

* * * * * * *

Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency

* * * * * * *

20.241a Special (occupational) tax.

* * * * * * *

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Para. 12. New Subpart Ca is added, immediately following the regulations in Subpart C, to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 20.38 Liability for special tax.

(a) *Industrial alcohol permittee.* Every person required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover denatured distilled spirits for industrial purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each industrial alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a permittee engaged in denatured distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* Special (occupational) tax liability is incurred at each place of business for which a permit under Subpart D of this part to procure, use, sell, and/or recover denatured distilled spirits has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5276)

§ 20.38a Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 20.39).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10 percent of more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF is accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 20.267.

(d) *Signing of ATF Forms 5630.5—(1) Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 20.39 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 20.40 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 20.38a(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

§ 20.40a Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship—(1) General.* If there is a change in the proprietorship of an industrial alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Para. 13. New § 20.241a is added in Subpart N, immediately following the regulations in § 20.241, to read as follows:

§ 20.241a Special (occupational) taxes.

Special (occupational) tax at the rate of $250 per year is imposed upon agencies and instrumentalities of the United States required by 26 U.S.C. 5271 to obtain permits to procure and use specially denatured spirits. Permits issued under this part shall not be valid unless the permittee pays the special (occupational) tax. Special tax liability is incurred for each permit held and each location receiving denatured distilled spirits by virtue of such permit. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, and thereafter every year on or before July 1. On commending operations, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(26 U.S.C. 5143, 5214, 5271, 5276)

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Para. 14. The authority citation for Part 22 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6058, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

Para. 15. The table of sections for Part 22 is amended to add new Subpart Ca immediately following Subpart C, and to add § 22.171a in Subpart N, immediately following § 22.171, to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.
22.37 Liability for special tax.
22.38 Special tax returns.
22.38a Employer identification number.

Special Tax Stamps

22.39 Issuance, distribution, and examination of special tax stamps.
22.40 Changes in special tax stamps.

* * * * *

Subpart N—Use of Tax Free Spirits by the United States or Government Agency

* * * * *

22.171a Special (occupational) tax.

* * * * *

Para. 16. New Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 22.37 Liability for special tax.

(a) *Tax-free alcohol permittee.* Every person who is required to hold a permit under 26 U.S.C. 5271 to procure, use, and/or recover alcohol free of tax for nonbeverage purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each tax-free alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing the business of a tax-free alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a permittee engaged in nonbeverage tax-free

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distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* Special (occupational) tax liability is incurred at each place of business for which a permit under Subpart D of this part to procure, use, and/or recover distilled spirits free of tax has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5278)

§ 22.38 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 22.38a).

(4) The exact location of the place of business, by name and number of building or street, of if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of corporate taxpayer) for the period specified on § 22.164.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7100)

§ 22.38a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 22.39 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 22.38(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

§ 22.40 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a tax-free alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the permittee shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The permittee shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the permittee does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Para. 17. New § 22.171a is added in Subpart N, immediately following the regulations in § 22.171, to read as follows:

§ 22.171a Special (occupational) taxes.

Special (occupational) tax at the rate of $250 per year is imposed upon agencies and instrumentalities of the United States required by 26 U.S.C. 5271 to obtain permits to procure and use tax-free spirits under this part. Permits issued under this part shall not be valid unless the permittee pays the special (occupational) tax. Special tax liability is incurred for each such permit held and each location receiving tax-free spirits by virtue of such a permit. The tax shall be paid on or before the date of commencing operations as an industrial alcohol permittee, and thereafter every year on or before July 1. On commencing operations, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(26 U.S.C. 5143, 5214, 5271, 5272, 5273, 5274, 5275, 5276)

PART 25—BEER

Para. 18. The authority citation for Part 25 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6675, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Para. 19. The table of sections in 27 CFR Part 25, Subpart I, is amended to add §§ 25.111a, 25.111b, and to add § 25.120 under the center heading "Execution of Special Tax Returns" and to revise the titles of §§ 25.118, 25.119, 25.123, and 25.125, and the center heading immediately preceding § 25.125, as follows:

* * * * *

Subpart I—Special Taxes

Sec.

* * * * *

25.111a Special tax rates.
25.111b Reduced rate of tax for small brewers.

* * * * *

25.118 Preparation of AFT Form 5630.5.
25.119 Multiple locations and/or classes of tax.
25.120 Signing of ATF Forms 5630.5.

* * * * *

25.123 Preparation and filing of IRS Form SS–4.

Special Tax Stamps

25.125 Issuance of special tax stamps.

* * * * *

Para. 20. Sections 25.111 and 25.112 are revised, and §§ 25.111a and 25.111b are added in Subpart I, to read as follows:

§ 25.111 Brewer's special tax.

(a) *General.* Every brewer shall pay a special (occupational) tax at the rate specified by § 25.111a or § 25.111b, whichever is applicable. The tax shall be paid on or before the date of commencing business as a brewer, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* A brewer who was engaged in business on January 1, 1988, and paid a special (occupational) tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased special tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(26 U.S.C. 5091, 5142)

§ 25.111a Special tax rates.

(a) *Prior rates.* The special (occupational) tax imposed on brewers prior to January 1, 1988, was $110 a year, except that the special tax for any brewer of less than 500 barrels a year was $55 a year.

(b) *Rate effective January 1, 1988.* The special tax rate imposed on brewers (other than small brewers as defined in § 25.111b) is $1000 a year.

(26 U.S.C. 5091)

§ 25.111b Reduced rate of tax for small brewers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by § 25.111 relates) are less then $500,000. The rate of tax for such a brewer is $500 a year. The

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"taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for purposes of paragraph (a) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

§ 25.112 Wholesaler's special tax.

A brewer shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5142)

Para. 21. Section 25.120 is added in Subpart I, and §§ 25.117–25.119, 25.121–25.123, 25.125, and the center heading immediately preceding § 25.125 are revised to read as follows:

Execution of Special Tax Returns

§ 25.117 Special tax returns.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

§ 25.118 Preparation of ATF Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

(a) The true name of the taxpayer.

(b) The trade name(s) (if any) of the business(es) subject to special tax.

(c) The employer identification number (see § 25.121).

(d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(e) The class(es) of special tax to which the taxpayer is subject.

(f) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with the Brewer's Notice, and if the information previously provided is still current.

§ 25.119 Multiple locations and/or classes of tax.

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(a) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(b) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 25.300(c).

§ 25.120 Signing of ATF Forms 5630.5.

(a) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 5061, 5065, 6151, 7011)

Employer Identification Number

§ 25.121 Employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(26 U.S.C. 6109, 6676)

§ 25.122 Application for employer identification number.

Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(26 U.S.C. 6109)

§ 25.123 Preparation and filing of IRS Form SS–4.

The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 25.125 Issuance of Special Tax Stamps.

Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 25.119, but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(26 U.S.C. 6806)

Para. 22. Section 25.131 is revised to read as follows:

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the brewer shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The brewer shall attach the special tax stamp for endorsement of the change in name.

(26 U.S.C. 7011)

Para. 23. Section 25.134 is revised to read as follows:

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The brewer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the brewer does not file the amended return within 30 days, the brewer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 70—PROCEDURE AND ADMINISTRATION

Para. 24. The authority citation for Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6155, 6201, 6203, 6204, 6311, 6313, 6314, 6401, 6402, 6404, 6407, 6423, 6501, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6662, 6671, 6672, 6676, 6701, 6801, 6862, 6863, 7011, 7601–7606, 7608, 7622, 7623, 7653, 7805.

Para. 25. Section 70.109 is amended by revising paragraphs (a)(1)–(4), adding new paragraphs (a)(5)–(7) and concluding text of paragraph (a), and revising paragraph (b), to read as follows:

§ 70.109 Registration of persons paying a special tax.

(a) * * *

(1) Section 5091 (relating to special tax on proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses);

(2) Section 5091 (relating to special tax on brewers);

(3) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

(4) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer);

(5) Section 5276 (relating to special tax on persons holding permits to procure or use tax-free spirits, to procure, deal in, or use specially denatured spirits, or to recover specially or completely denatured spirits);

(6) Section 5731 (relating to special tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors); or

(7) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR Part 197 (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration.* The registration required of a person by reason of the person being engaged in a trade or business, in respect of which one of the special taxes listed in paragraph (a) of this section is imposed, shall be accomplished by timely executing and filing, in accordance with the instructions relating thereto, ATF Form 5630.5, Special Tax Registration and Return.

(26 U.S.C. 5802, 7011)

Para. 26. Section 70.111(a) is amended by revising the second sentence to read as follows:

§ 70.111 Imposition of taxes, qualification requirements, and regulations.

(a) * * * Occupational taxes are imposed upon brewers, dealers in liquors, and proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses; on industrial users of tax-free distilled spirits; on dealers, users, and recoverers of specially denatured spirits; and as a prerequisite for drawback under section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products. * * * * * * *

Para. 27. Section 70.112(a) is amended by revising the sixth sentence to read as follows:

§ 70.112 Excise taxes.

(a) * * * Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, manufacturers of nonbeverage products, and industrial users of tax-free distilled spirits; by dealers, users, and recoverers of specially denatured spirits; and by proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses. * * * * * * * * *

Para. 28. Section 70.131(a) is amended by adding the following after the end of the first sentence:

§ 70.131 Imposition of taxes; regulations.

(a) * * * Occupational taxes are imposed by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors. * * * * * * * * *

Para. 29. Section 70.133 is amended by redesignating paragraph (c) as paragraph (d) and by adding the following new paragraph (c) to read as follows:

§ 70.133 Collection of taxes.

* * * * * *

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(c) *Special tax.* Special (occupational) taxes are paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors on the basis of a return. Special tax stamps are issued to denote the payment of special (occupational) taxes.

* * * * *

Para. 30. Section 70.151(a)(1)(ii) is revised to read as follows:

§ 70.151 Offers in compromise.

(a) * * *

(1) * * *

* * * * *

(ii) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms.

* * * * *

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Para. 31. The authority citation for Part 179 is revised to read as follows:

Authority: 18 U.S.C. 926; 22 U.S.C. 2778; 26 U.S.C. Chapter 53, 6091, 6511, 6676, 6805, 7805.

Para. 32. The table of sections for Part 179 is amended to add new § 179.32a in Subpart D immediately following § 179.32, and to revise the title of § 179.34, as follows:

* * * * *

Subpart D—Special (Occupational) Taxes

* * * * *

Sec.

179.32a Reduced rate of tax for small importers and manufacturers.

* * * * *

179.34 Special tax registration and return.

* * * * *

Para. 33. Section 179.31 is revised to read as follows:

§ 179.31 Liability for tax.

(a) *General.* Every person who engages in the business of importing, manufacturing, or dealing in (including pawnbrokers) firearms in the United States shall pay a special (occupational) tax at a rate specified by § 179.32. The tax shall be paid on or before the date of commencing the taxable business, and thereafter every year on or before July 1. Special (occupational) tax shall not be prorated. The tax shall be computed for the entire tax year (July 1 through June 30), regardless of the portion of the year during which the taxpayer engages in business. Persons commencing business at any time after July 1 in any year are liable for the special (occupational) tax for the entire tax year.

(b) *Each place of business taxable.* An importer, manufacturer, or dealer in firearms incurs special tax liability at each place of business where an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous. See also §§ 179.38–179.39.

(26 U.S.C. 5143, 5801, 5846)

Para. 34. Section 179.32 is revised to read as follows:

§ 179.32 Special (occupational) tax rates.

(a) Prior to January 1, 1988, the special (occupational) tax rates were as follows:

	Per year or fraction thereof
Class 1—Importer of firearms	$500
Class 2—Manufacturer of firearms	500
Class 3—Dealer in firearms	200
Class 4—Importer only of weapons classified as "any other weapon"	25
Class 5—Manufacturer only of weapons classified as "any other weapon"	25
Class 6—Dealer only in weapons classified as "any other weapon"	10

(b) Except as provided in § 179.32a, the special (occupational) tax rates effective January 1, 1988, are as follows:

	Per year or fraction thereof
Class 1—Importer of firearms (including an importer only of weapons classified as "any other weapon")	$1,000
Class 2—Manufacturer of firearms (including a manufacturer only of weapons classified as "any other weapon")	1,000
Class 3—Dealer in firearms (including a dealer only of weapons classified as "any other weapon")	500

(c) A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 35. New § 179.32a is added immediately following § 179.32, to read as follows:

§ 179.32a Reduced rate of tax for small importers and manufacturers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5801(b) provides for a reduced rate of special tax with respect to any importer or manufacturer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 179.32 relates) are less than $500,000. The rate of tax for such an importer or manufacturer is $500 per year or fraction thereof. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (a) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5801)

Para. 36. Section 179.34 is revised to read as follows:

§ 179.34 Special tax registration and return.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form. Properly completing, signing, and timely filing of a return (Form 5630.5) constitutes compliance with 26 U.S.C. 5802.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 179.35).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a license application under Part 178 of this chapter, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for not less than 3 years.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 5802, 5846, 6061, 6065, 6151)

Para. 37. Section 179.35 is revised to read as follows:

§ 179.35 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Para. 38. Section 179.38 is amended by revising the third sentence to read as follows:

§ 179.38 Engaging in business at more than one location.

* * * * *

A manufacturer, upon the single payment of the appropriate special (occupational) tax, may sell firearms, if such firearms are of his own manufacture, at the place of manufacture and at his principal office or place of business if no such firearms, except samples, are kept at such office or place of business. * * *

§ 179.39 [Amended]

Para. 39. Section 179.39 is amended by removing the last two sentences.

Para. 40. Section 179.66 is amended by revising the first sentence to read as follows:

§ 179.66 Qualified manufacturer.

A manufacturer qualified under this part to engage in such business may make firearms without payment of the making tax. * * *

Para. 41. In § 179.88, paragraph (a) and the second sentence of paragraph (b) are revised to read as follows:

§ 179.88 Special (occupational) taxpayers.

(a) A firearm registered to a person qualified under this part to engage in business as an importer, manufacturer, or dealer may be transferred by that person without payment of the transfer tax to any other person qualified under this part to manufacture, import, or deal in firearms.

(b) * * * The application, Form 3 (Firearms), shall (1) show the name and address of the transferor and of the

transferee, (2) identify the Federal firearms license and special (occupational) tax stamp of the transferor and of the transferee, (3) show the name and address of the

Para. 47. Section 194.25 is amended by revising paragraph (c)(2) to read as follows:

§ 194.25 Retail dealer in beer.

* * * * *

imposed on dealers in liquors and beer at the following rates:

Wholesale dealer in liquors (spirits, wines, beer) $500

Wholesale dealer in beer (beer only) 500

the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if

than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

§ 197.25 Payment of special tax.

Each person who uses distilled spirits in the manufacture or production of medicines, medicinal preparations, food

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transferee, (2) identify the Federal firearms license and special (occupational) tax stamp of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that he is entitled to the exemption because the transferee is a person qualified under this part to manufacture, import, or deal in firearms. * * *

* * * * *

PART 194—LIQUOR DEALERS

Para. 42. The authority citation for Part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

Para. 43. The table of sections for Part 194 is amended to reflect the addition of new § 194.187a in Subpart L immediately following § 194.187, and the removal of §§ 194.106b–194.106c from Subpart H and of §§ 194.204–194.205 from Subpart M, as follows:

Subpart L—Exemptions and Exceptions

* * * * *

194.187a Limited retail dealers.

* * * * *

Para. 44. Section 194.1 is revised to read as follows:

§ 194.1 Applicability.

This part contains the substantive and procedural requirements relating to the special taxes imposed on wholesale and retail dealers in liquors and in beer, requirements and procedures pertaining to operations of such dealers prescribed under Title 26 of the United States Code, as amended, and provisions relating to entry of premises and inspection of records by ATF officers.

§ 194.21 [Amended]

Para. 45. Section 194.21 is amended by replacing, at the end of the second sentence, the regulatory citation "194.28" with the citation "194.26."

Para. 46. Section 194.23 is amended by revising paragraph (c)(3) to read as follows:

§ 194.23 Retail dealer in liquors.

* * * * *

(c) * * *

(3) A person who is exempt from special tax under the provisions of §§ 194.181–194.184, 194.187, or 194.187a.

Para. 47. Section 194.25 is amended by revising paragraph (c)(2) to read as follows:

§ 194.25 Retail dealer in beer.

* * * * *

(c) * * *

(2) A person who is exempt from special tax under the provisions of §§ 194.181, 194.184, 194,187, or 194.187a.

Para. 48. Section 194.27 is revised to read as follows:

§ 194.27 Limited retail dealer; persons eligible.

Any person selling distilled spirits, beer or wine, or any combination thereof, to members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or similar outings, and any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization selling distilled spirits, beer or wine, or any combination thereof, on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, is a "limited retail dealer," if the person or organization is not otherwise engaged in business as a dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1344; sec. 1905, Pub. L. 94–455, 90 Stat. 1819, as amended (26 U.S.C. 5122))

§ 194.29 Clubs or similar organizations.

Para. 49. Section 194.29 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a "limited retail dealer" under § 194.27 (the special tax stamp of the proprietor of the premises where the bar is located will not relieve the club or organization of special tax liability); or

* * * * *

Para. 50. Section 194.101 is revised to read as follows:

§ 194.101 Special tax rates.

(a) *Previous rates.* Prior to January 1, 1988, the special (occupational) taxes imposed on dealers in liquors and beer were as follows:

(1) *Annual (tax year) rates:*

Wholesale dealer in liquors (spirits, wines, beer)	$225.00
Wholesale dealer in beer (beer only)	123.00
Retail dealer in liquors (spirits, wines, beer)	54.00
Retail dealer in beer (beer only)	24.00

(2) *Monthly (calendar month) rates:*

Limited retail dealer (spirits, wines, beer)	$4.50
Limited retail dealer (wines, beer)	2.20

(b) *Current rates.* Effective January 1, 1988, special (occupational) taxes are imposed on dealers in liquors and beer at the following rates:

Wholesale dealer in liquors (spirits, wines, beer)	$500
Wholesale dealer in beer (beer only)	500
Retail dealer in liquors (spirits, wines, beer)	250
Retail dealer in beer (beer only)	250

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, 1343; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5121))

Para. 51. Section 194.103 is amended by designating the existing material as paragraph "(a) *General.*" and by adding a new paragraph (b), which reads as follows:

§ 194.103 Computation of special tax.

(a) *General.* * * *

(b) *Transition rule.* A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 52. Section 194.106 is revised to read as follows:

§ 194.106 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with AFT in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 194.106a).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 194.237.

(26 U.S.C. 6011, 6151, 7011)

Para. 53. Section 194.106a is revised to read as follows:

§ 194.106a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§§ 194.106b and 194.106c [Removed.]

Para 54. Sections 194.106b and 194.106c are removed from the part.

§ 194.151 [Amended]

Para 55. Paragraph (a) of § 194.151 is amended by replacing, in the first proviso, the words "who filed an original return, Form 5630.5, under the provisions of § 194.106(b)" with the words "whose original return on ATF Form 5630.5 covered only one location".

Para. 56. New § 194.187a is added immediately following § 197.187, to read as follows:

§ 194.187a Limited retail dealers.

Limited retail dealers, as specified in § 194.27, are not required to pay special tax.

§§ 194.204–194.205 [Removed.]

Para. 57. Sections 194.204 and 194.205 are removed from Part 194.

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Para. 58. The authority citation for Part 197 is revised to read as follows:

Authority: 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 59. The table of sections for Part 197 is amended (1) to revise the heading for § 197.25, (2) to add new § 197.25a, (3) to remove §§ 197.29b–197.29c and 197.55–197.56, and (4) to revise the undesignated center heading following § 197.54, as follows:

* * * * *

Subpart C—Special Tax

Sec.

197.25 Payment of special tax.

197.25a Rates of special tax.

* * * * *

Refund of Special Tax

* * * * *

Para. 60. Section 197.25 is revised to read as follows:

§ 197.25 Payment of special tax.

Each person who uses distilled spirits in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, in order to be eligible for drawback on the distilled spirits so used, must pay special tax at the proper rate, as specified in § 197.25a. Where a claim is filed in the first quarter of a tax year, covering distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, special tax for the preceding tax year must be paid in the appropriate amount. Special tax may be paid in advance of actual use of distilled spirits. The manufacturer is not required to pay the special tax if he does not claim drawback on the distilled spirits used by him.

Para. 61. New § 197.25a is added immediately following § 197.25, to read as follows:

§ 197.25a Rates of special tax.

(a) *Previous rates.* Prior to January 1, 1988, the rates of special tax were as follows: $25 per tax year for total annual use not exceeding 25 proof gallons of distilled spirits, $50 per tax year for total annual use not exceeding 50 proof gallons, and $100 per tax year for total annual use of more than 50 proof gallons.

(b) *Current rate.* Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

(c) *Transition rule.* Manufacturers engaged in drawback operations on January 1, 1988, who paid special tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax, which shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 62. Section 197.27 is revised to read as follows:

§ 197.27 Time for payment of special tax.

The special tax shall be paid before a claimant is eligible for drawback. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid.

Para. 63. Section 197.28 is revised to read as follows:

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§ 197.28 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 6151)

Para. 64. Section 197.29 is revised to read as follows:

§ 197.29 General.

(a) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 197.29a).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for not less than 2 years.

(26 U.S.C. 6011, 7011)

Para. 65. Section 197.29a is revised to read as follows:

§ 197.29a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS FOrm SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§§ 197.29b–197.29c [Removed]

Para. 66. Sections 197.29b and 197.29c are removed from Part 197.

§ 197.40a [Amended]

Para. 67. Section 197.40a is amended by replacing the regulatory cross reference "§ 197.28" with the reference "§ 197.29(b)".

Para. 68. The undersignated center heading immediately following § 197.54 is revised to read as follows:

Refund of Special Tax

§§ 197.55–197.56 [Removed]

Para. 69. Sections 197.55 and 197.56 are removed from Part 197.

Para. 70. Section 197.111 is revised to read as follows:

§ 197.111 Identification of special tax stamp.

If special tax has been paid, the claim shall be accompanied by a statement identifying the special tax stamp by serial number and tax year for which issued.

PART 231—TAXPAID WINE BOTTLING HOUSES

Para. 71. The authority citation for Part 231 is revised to read as follows:

Authority: 26 U.S.C. 5062, 5061, 5111, 5112, 5121, 5122, 5142, 5143, 5172, 5178, 5352, 5356, 5363, 5367, 5368, 5369, 5552, 5661, 6065, 7011, 7342, 7808, 7805.

Para. 72. The table of sections in 27 CFR Part 231 is amended to remove § 231.52 and to add Subpart CA. As amended, the table of sections reads as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.

231.32 Occupational taxes.
231.33 Rates of special tax.
231.34 Each place of business taxable.
231.35 Dealer's special taxes.
231.36 Special tax returns.
231.37 Employer identification number.

Special Tax Stamps

231.38 Issuance, distribution, and examination of special tax stamps.
231.39 Changes in special tax stamps.

* * * * *

Para. 73. Part 231 of 27 CFR is amended by adding Subpart Ca to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 231.32 Occupational taxes.

(a) *General.* Every proprietor of a taxpaid wine bottling house shall pay a special (occupational) tax at the rate specified by § 231.33. Such a proprietor may also be required to pay a special tax as a dealer (see § 231.35). The tax shall be paid on or before the date of commencing business as a taxpaid wine bottling house proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, proprietors operating a taxpaid wine bottling house on January 1, 1988, shall be treated as having commenced operations on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(26 U.S.C. 5061, 5142)

§ 231.33 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5061(a)(4) imposes a special tax of $1,000 per year on every proprietor of a taxpaid wine bottling house.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5061(b) provides for a reduced rate of $500 per year with respect to any taxpaid wine bottling house proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 231.32 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061)

§ 231.34 Each place of business taxable.

A proprietor of a taxpaid wine bottling house incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143)

§ 231.35 Dealer's special taxes.

(a) *Liability of bottling house proprietors.* A proprietor of a taxpaid wine bottling house who sells wine shall file a special tax return on Form 5630.5 and pay special (occupational) tax as a wholesale dealer or retail dealer, as the case may be, as provided in Part 194 of this chapter.

(b) *Wholesale sales at purchaser's place of business.* A wholesale dealer in liquors who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors or to limited retail dealers, at the purchaser's place of business.

(26 U.S.C. 5111, 5112, 5113, 5121, 5122, 5142, 7011)

§ 231.36 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §231.37).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 231.114.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall

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indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 231.37 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 231.38 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 231.36(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 231.39 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship—*(1) *General.* If there is a change in the proprietorship of a taxpaid wine bottling house, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

§ 231.52 [Removed]

Para. 74. Section 231.52 is removed.

PART 240—WINE

Para. 75. The authority citation for Part 240 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5359–5357, 5361, 5362, 5364–5373, 5391–5392, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 76. The table of sections in 27 CFR Part 240 is amended to reflect the revision of Subpart N, as follows:

* * * * *

Subpart N—Special (Occupational) Taxes

Sec.

240.340 Payment of tax.
240.341 Rate of special tax.
240.342 Wholesaler's special tax.
240.343 Exemptions from dealer's special taxes.
240.344 Each place of business taxable.
240.345 Special tax returns.
240.346 Employer identification number.

Special Tax Stamps

240.347 Issuance, distribution, and examination of special tax stamps.
240.348 Changes in special tax stamps.

* * * * *

Para. 77. Subpart N of 27 CFR Part 240 is revised to read as follows:

Subpart N—Special (Occupational) Taxes

§ 240.340 Payment of tax.

(a) *General.* Every proprietor of a bonded wine cellar and every proprietor of a bonded wine warehouse shall pay a special (occupational) tax at the rate specified by § 240.341. The tax shall be paid on or before the date of commencing business as a proprietor of a bonded wine cellar or a proprietor of a bonded wine warehouse, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a), proprietors operating bonded wine cellars and bonded wine warehouses on January 1, 1988, shall be treated as having commenced operations on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(26 U.S.C. 5061, 5142)

§ 240.341 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081 (a)(2) and (a)(3) impose a special tax of $1,000 per year on every proprietor of a bonded wine cellar and every proprietor of a bonded wine warehouse.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5061(b) provides for a reduced rate of $500 per year with respect to any proprietor of a bonded wine cellar or bonded wine warehouse whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 240.340 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 240.342 Wholesaler's special tax.

(a) *General.* A proprietor of a bonded wine cellar shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5112)

§ 240.343 Exemptions from dealer's special taxes.

(a) *Bonded wine cellar.* A proprietor of a bonded wine cellar is not required to pay special tax as a wholesale or retail dealer because of sales, at the proprietor's principal place of business or at the bonded wine cellar, of wine which at the time of sale is stored at the bonded wine cellar or which had been removed and stored in a taxpaid storeroom operated in connection with the bonded wine cellar. The proprietor of the bonded wine cellar shall have only one exemption from dealer's special tax for each bonded wine cellar. The proprietor of the bonded wine cellar may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the bonded wine cellar.

(b) *Wholesale dealer.* A wholesale dealer in liquors who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors or to limited retail dealers, at the purchaser's place of business.

(26 U.S.C. 5113)

§ 240.344 Each place of business taxable.

(a) *General.* Proprietors of bonded wine cellars and proprietors of bonded wine warehouses incur special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas of bonded wine cellar.* A proprietor of a bonded wine cellar does not incur additional special tax liability for sales of wine made at a location other than on bonded wine cellar premises described in the application, Form 698 (5120.25), if the location where such sales are made is contiguous to the bonded wine cellar premises in the manner described in paragraph (a) of this section.

(26 U.S.C. 5143)

§ 240.345 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 240.346).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

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(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 240.92A.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agency or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 240.346 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 240.347 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 240.345(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5140, 6806)

§ 240.348 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a bonded wine cellar or a bonded wine warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Para. 78. The authority citation for Part 250 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5062, 5121, 5122, 5124, 5131–5134, 5141, 5205, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6302, 6604, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 79. The table of sections for Part 250 is amended to add the titles of new §§ 250.46 and 250.47 in Subpart Cb, as follows:

* * * * *

Subpart Cb—Products Coming into the United States from Puerto Rico

* * * * *

Sec.

250.46 Distilled spirits plant proprietor's special (occupational) tax.

250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

* * * * *

Para. 80. Section 250.30(b), (c), and (d)(2) are revised to read as follows:

§ 250.86 Products exempt from tax.

* * * * *

(b) *Industrial spirits.* A distiller of industrial spirits who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with Part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit and has paid special (occupational) tax under Part 22 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 22 of this chapter.

(c) *Denatured spirits.* A distiller who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with Part 19 of this chapter and who denatures spirits in accordance with Parts 19 and 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit and has paid special (occupational) tax under Part 20 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 20 of this chapter, and Subpart Ia of this part.

(d) *Products made with denatured spirits.* * * *

(2) A person in Puerto Rico who manufactures products with specially denatured spirits may ship those products to the United States if that person (i) obtains a permit to use specially denatured spirits, and pays special (occupational) tax, under Part 20 of this chapter, and (ii) complies with the requirements of Part 20 of this chapter and Subpart Ia of this part relating to the manufacture and shipment of those products.

Para. 81. New §§ 250.46 and 250.47 are added in Subpart Cb to read as follows:

§ 250.46 Distilled spirits plant proprietor's special (occupational) tax.

Every proprietor of a distilled spirits plant producing industrial spirits, denatured spirits, or products made with denatured spirits, for shipment to the United States, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a distilled spirits plant proprietor in accordance with Part 19 of this chapter.

(26 U.S.C. 5091, 5314)

§ 250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

Every user of specially denatured spirits who manufactures products made with such spirits for shipment to the United States, and every dealer in specially denatured spirits who ships such spirits to the United States, who is required by § 250.86 to obtain a permit under Part 20 of this chapter, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a user or dealer in specially denatured spirits under Part 20 of this chapter.

(26 U.S.C. 5271, 5276, 5314)

Para. 82. Section 250.171 is amended by replacing the third and fourth sentences with the following:

§ 250.171 Special tax.

* * * * *

If special tax is paid for any such business location under Part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

§ 250.173 [Amended]

Para. 83. Section 250.173(c)(1) is amended by removing the words "and denomination".

Para. 84. Section 250.307 is amended by replacing the third and fourth sentences with the following:

§ 250.307 Special tax.

* * * * *

If special tax is paid for any such business location under Part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

§ 250.309 [Amended]

Para. 85. Section 250.309(c)(1) is amended by removing the words "and denomination".

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Para. 86. The authority citation for Part 270 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 87. The table of sections for Part 270 is amended to add Subpart Ca, immediately following Subpart C, to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.

270.31 Liability for special tax.

270.32 Rates of special tax.

270.33 Special tax returns.

270.34 Employer identification number.

270.35 Issuance, distribution, and examination of special tax stamps.

270.36 Changes in special tax stamps.

* * * * *

Para. 88. Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

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Subpart Ca—Special (Occupational) Taxes

§ 270.31 Liability for special tax.

(a) *Manufacturer of tobacco products.* Every manufacturer of tobacco products shall pay a special (occupational) tax at a rate specified by § 270.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing tobacco products on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of $1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.31 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.33 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 270.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.185.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 5061, 5065, 6151, 7011)

§ 270.34 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§ 270.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 270.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a tobacco factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Para. 89. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 90. The table of sections is amended to add Subpart Ca immediately following Subpart C to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.

285.30b Liability for special tax.
285.30c Rate of special tax.
285.30d Special tax returns.
285.30e Issuance, distribution, and examination of special tax stamps.
285.30f Changes in special tax stamps.

* * * * *

Para. 91. Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

Subpart Ca—Special (Occupational) Tax

§ 285.30b Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 285.30c of this part. The

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tax shall be paid on or before the date of commencing the business of manufacturing cigarette papers and tubes, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing cigarette papers and tubes on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 285.30c Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of $1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 285.30b relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 285.30d Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see paragraph (e) of this section).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 285.31 of this part.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(e) *Employer identification number.*—(1) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(2) *Application for employer identification number on IRS Form SS–4.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one in accordance with the provisions in §§ 285.30 and 285.30a.

(26 U.S.C. 5142, 6061, 6065, 6109, 6151, 7011)

§ 285.30e Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 285.30c(d)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to AFT Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

§ 285.30f Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Para. 82. The authority citation for Part 290 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 83. The table of sections for Part 290 is amended to add Subpart Ba immediately following Subpart B to read as follows:

* * * * *

Subpart Ba—Special (Occupational) Taxes

Sec.
290.31 Liability for special tax.
290.32 Rate of special tax.
290.33 Special tax returns.
290.34 Employer identification number.
290.35 Issuance, distribution, and examination of special tax stamps.
290.36 Changes in special tax stamps.

* * * * *

Para. 84. Subpart Ba is added immediately following the regulations in Subpart B to read as follows:

Subpart Ba—Special (Occupational) Taxes

§ 290.31 Liability for special tax.

(a) *Export warehouse proprietor.* Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 290.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

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(c) *Each place of business taxable.* An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 290.32 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(3) imposes a special tax of $1,000 per year on every export warehouse proprietor.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 290.31 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 290.33 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 290.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 290.142.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by an officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

§ 290.34 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§ 290.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to ATF Form 5630.5 required by § 290.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 290.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the export warehouse proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The export warehouse proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of an export warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the export warehouse proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The export warehouse proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the export warehouse proprietor does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Signed: March 10, 1988.

Stephen E. Higgins,

Director.

Approved: April 7, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–10321 Filed 5–16–88; 8:45 am]

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 740, and 750

Surface Coal Mining and Reclamation Operations; Application Fee for Permit To Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; and Fee for Processing Permit Revisions, Transfers and Renewals; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 740, and 750

Surface Coal Mining and Reclamation Operations; Application Fee for Permit To Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Permit Revisions, Transfers and Renewals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its rules to add a system of fees to be paid to OSMRE by applicants to obtain processing and issuance of surface coal mining and reclamation permits and coal exploration permits, and renewals, revisions, and transfers of existing permits.

The regulations are being amended to establish a system of fees to implement the requirement at section 507(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR 777.17 that permit fees shall accompany an application for a permit.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on July 18, 1988.

Public Hearings: Upon request, OSMRE will hold a public hearing on the propose rule in Washington, DC on July 11, 1988, beginning at 9:30 a.m. Eastern time. Upon request, OSMRE will also hold hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington, at times and on dates to be announced prior to the hearings.

OSMRE will accept requests for a public hearing until 4:00 p.m. Eastern time of June 16, 1988. Individuals wishing to attend, but not testify at the hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC 20240; or mail to the Office of Surface Mining Reclamation and Enforcement Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings requested to be scheduled at other locations will be announced prior to the hearings.

Request for Public Hearing: Submit orally or in writing to person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone (202) 343–1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above, may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date and address for the hearing to be held in Washington, DC has been specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for other hearings that may be requested at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any such hearings.

Any person interested in participating at a hearing should inform Ms. Merchant (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 4:00 p.m. Eastern time June 16, 1988. If no one has contacted Ms. Merchant to express an interest in participating in a hearing, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who play to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**), an advance copy of their testimony.

Persons interested in attending the hearing, but not testifying, should contact the individual listed under **"FOR FURTHER INFORMATION CONTACT"** prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

Introduction

Section 507(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides that a permit application "shall be accompanied by a fee as determined by the regulatory authority [which] may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit * * *" and that "[t]he regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit."

The legislative history of section 507(a) indicates that Congress had originally thought to finance the entire cost of implementing the Act through permit fees, but that considerations of fairness and financial burdens on small and medium size operators led to the allowance of a fee "less than" these costs, and for payment over the term of the permit. H.R. Rep. 94–1445, 94th Cong., 2nd Sess., 5–7 (1976).

OSMRE rules at 30 CFR 777.17 incorporate the requirements of SMCRA section 507(a); the language of §777.17 is similar to the SMCRA language.

On February 22, 1985, OSMRE proposed a permit fee rule which would have required collection of application fees to cover the full cost to the Department of the Interior for processing permits to conduct surface coal mining and reclamation operations and coal exploration and for approving mine plans and all other OSMRE permit-related processing actions (50 FR 7522). The rule would have applied to applications for mining on Indian lands, in the Federal program States, and on Federal lands in States not having State-Federal cooperative agreements. Action

to develop a final regulation which would require operators to reimburse DOI for the cost of processing applications was curtailed by passage of House Joint Resolution 465, Further Continuing Appropriation for FY 1986. The conference report for the FY 1986 appropriations required that OSMRE study the issue further and report to the Congress on its findings. Partially in response to this requirement, cost accounting systems were put in place in each OSMRE permitting unit to track costs associated with processing permits. OSMRE collected cost accounting data through fiscal year 1986 and up to June 1987 and has analyzed that data and reported its findings to interested Congressional parties. Copies of these data and analyses are available for review in the Administrative Record.

The Proposed Fee System

OSMRE is proposing a revised fee schedule for OSMRE permitting actions in Federal program States, on Federal lands where OSMRE issues a permit, and on Indian lands. It is based on actual cost accounting data collected.

The fee system proposed in this rulemaking is a combination of a fixed fee plus a per-acre fee (for land included in the permit area) for permit applications to conduct surface coal mining and reclamation operations, and an hourly rate for permit renewals, coal exploration permits and for the transfer, assignment or sale of rights under an existing permit.

The permit fee system is proposed under the authority of section 507(a) of SMCRA and section 9701 of Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 of the Independent Offices Appropriation Act (IOAA). Section 9701 of the IOAA authorizes an agency to prescribe regulations establishing the charge for a service or a thing of value provided by the agency.

Under section 9701 the charge shall be fair and based on the costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant factors. Guidance to the Federal agencies for interpreting section 9701 is provided by Bureau of the Budget Circular No. A–25 of September 23, 1959, and by related judicial precedent.

The United States Supreme Court, in interpreting the IOAA, has held that under that statute an agency must base a fee for a service on its value to an identifiable recipient. *National Cable Television Assn. (NCTA), v. United States*, 415 U.S. 336 (1974); *Federal Power Comm'n v. New England Power Co.* 415 U.S. 345 (1974). In a series of contemporaneous cases on this issue, the United States Court of Appeals for the District of Columbia Circuit specified the requirements an agency must meet to justify a particular fee. *National Cable Television v. Federal Communications Comm'n*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronics Industries Ass'n v. Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976); *National Ass'n of Broadcasters v. Federal Communications Comm'n*, 554 F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc. v. Federal Communications Comm'n*, 554 F.2d 1135 (D.C. Cir. 1976).

Summarizing its interpretation of the "value to the recipient" standard as laid down in *NCTA*, the D.C. Circuit in *National Association of Broadcasters* stated:

> Briefly, we have interpreted the "value to the recipient" standard to include a number of specific requirements. First, the Commission must *justify* the assessment of a fee by a clear statement of the particular service or benefit which it is expected to reimburse. Second, it must calculate the *cost basis* for each fee assessed. This involves (a) an allocation of the specific expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest: and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular items. Finally, the Commission must set a fee calculated to return this cost basis at a *rate* which reasonably reflects the cost of the services performed or the value conferred upon the payer. The fees may be imposed on beneficiaries of agency services who satisfy the criteria of *NCTA* and *New England Power*.
>
> 554 F.2d at 1133 (emphasis in original; footnote omitted).

The fee schedule for permit applications proposed in this notice is based on an analysis of data collected through OSMRE's cost accounting system. Data accumulated on permit processing costs for permits issued by OSMRE in Tennessee from October 1985 through June 1, 1987, were analyzed to determine the variation in costs of processing a permit that could be explained by variations in acreage to be included in the permit, number of administrative completeness reviews, and number of technical deficiency letters for each permit. Tennessee data were used because the OSMRE field office in Knoxville had the most experience in permit processing and therefore would be the most efficient permit processing unit in the agency. The Tennessee program has been administered by OSMRE as the sole regulatory authority since October 1, 1984. The dollar amounts proposed in this rule are the numbers shown by the analysis to best fit the available data and best explain total permitting costs.

These dollar amounts are:

Administrative completeness review	$250.00
Technical review	1,350.00
Plus per acre (of land included in the permit)	13.50
Decision document	2,000.00
Technical deficiency letter	660.00
Total (assuming no deficiencies)	3,600.00
Plus per acre	13.50

Permit renewals, permit revisions and transfers of ownership in existing permits would be charged at a fixed hourly rate multiplied by the number of hours spent on processing the action to renew or revise the permit or transfer ownership. The variation in costs to OSMRE of processing these actions is too great to allow a meaningful fixed fee to be established. Coal exploration permits would also be charged at an hourly rate because there is insufficient data or experience to make a meaningful estimate of a fixed fee. The proposed rate is $24 per hour, which is based on the average salary of permit review technical staff at OSMRE plus overhead (administrative, support and supervisory costs). No fees are proposed for mining plan reviews because these are performed under the Mineral Leasing Act rather than under SMCRA.

Mid-term permit reviews are viewed as being of primarily public benefit and therefore there would be no charge for these reviews. The mid-term permit review conducted under 30 CFR 774.11 does not convey a direct benefit to the permit recipient, but rather serves to protect the public interest by assuring that the permit continues to reflect conditions at the mine site. However, if as a result of the review a permit revision is necessary, permit revision fees would be charged to the applicant.

Fees would be charged to all applicants for surface coal mining operations and coal exploration activities for which the operator is required to obtain a permit from OSMRE. The proposed permit fees would be charged in the Federal program States, on Indian lands, and on Federal lands where OSMRE issues a permit. In States with cooperative agreements where the State issues a permit on Federal lands, the applicant would be required to pay the State permit fee to the State.

Fees would not be charged retroactively. An effective date would

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be established at the time of publication of the final rule; all permit processing or issuing actions begun on or after the effective date of the final rule would be charged permit fees.

The proposed permit fees would not contain a special fee for small operators. The proposed permit fee schedule includes a per-acre charge for permit application fees which would tend to minimize the fees paid by small operations relative to large operations.

Previously Proposed Rule

On February 22, 1985, OSMRE published a proposed rule to implement an actual cost accounting permit fees system (50 FR 7522). The proposed rule would have required recipients of OSMRE's permit services to reimburse OSMRE for the actual costs incurred by the Department of the Interior in providing the services.

Numerous comments were received on the proposed rule. Most of the commenters were opposed to one or more aspects of the proposed permit fee system. Most of the commenters from the coal industry objected to the proposed rule for the following reasons: (1) The permit fee would be an unknown expense and therefore an operator would not know "up front" the cost of doing business; (2) an actual cost accounting fee would not provide an incentive to OSMRE employees to provide efficient permitting services; (3) a proposed permit fee system should recognize that the public is a beneficiary of OSMRE's service and should therefore share in the cost of these services; (4) permit fees would be prohibitively high for some operators under the proposed system; and (5) some operators would be at a competitive disadvantage under the proposed system if their proposed operations required extensive National Environmental Policy Act (NEPA) compliance, or other special circumstances required extensive OSMRE review.

Most of the comments received from the State representatives reflected a concern that States would be required to adopt a similar cost accounting permit fee system and that Federal grants to the States would be reduced accordingly to offset any fees collected.

Comments from an environmental group indicated concern that actual cost accounting permit fees would: Bring pressure on the regulatory authority to "cut corners" on permit review in order to keep costs down; undercut the States' desire to obtain and retain primacy; be difficult to collect if allowed to be paid over the life of the permit.

OSMRE has considered these comments in developing this revised proposed permit fee system. OSMRE has also had the opportunity to gather and analyze actual cost accounting data and to consider this data along with these comments. The resulting proposed rule should allay many of the commenters' concerns.

The proposed fee system would enable a permit applicant to determine "up front" the cost of a permit to mine. The proposed system recognizes that permit applicants and the public benefit from regulation of surface coal mining and reclamation activities under SMCRA and that the costs of the program should thus be shared. The proposed fee schedule is not prohibitive even for small operators and recognizes the differences in cost for permitting small mines and larger mines by assessing a per-acre fee. States would not be required to adopt similar systems, nor is OSMRE considering phasing out State grants to encourage that similar systems be adopted; therefore, States are not discouraged from retaining primacy. Collection of permit fees should not present problems since most of the fees under this proposed system would be collected before permit processing began.

Comments were also received strongly objecting to OSMRE's proposal to require the operator to reimburse OSMRE for inspection services. Industry felt that the public was the sole beneficiary of these services and therefore should pay the costs. The environmental group felt that if the proposal were adopted, inspectors would be under pressure to do a quicker and less thorough inspection in order to keep costs down.

OSMRE is proposing not to include the cost of inspections in the proposed permit fee system. As stated in the February 22, 1985 proposed rule, not charging for such activities would ensure that the frequency and intensity of inspection and enforcement practices fully reflect OSMRE's firm commitment to the goals of SMCRA, and that inspectors are not inhibited from full performance of their duties by a concern for the costs that might be imposed on surface mining operators resulting from inspection and enforcement activities. Also, while inspection and enforcement may bestow some benefit on operators by encouraging lawful continuation of responsible mining and thereby improving public relations, these activities protect the health and safety of the public and help preserve environmental and other resources, thereby benefiting the public at large.

III. Discussion of Proposed Rule

A. Basis of Fees for a New Permit

Justification

The proposed fee schedule for new permits is based on data collected by OSMRE under an actual cost accounting system for all permits issued in Tennessee from October 1985 to June 1987. The data were analyzed to determine the equation that would best fit the available data and best explain the variation in costs of permit processing on individual mines.

Data were broken down to show the costs of each step of a permit review including the administrative completeness review, the technical review, and the preparation of a decision document for each permit. Data were also collected which showed the number of administrative completeness reviews that were necessary for each permit, the number of technical deficiency letters necessary to obtain additional technical information needed to process each permit, and the number of acres covered under each permit.

Regression analyses were run on the available data using the total permit costs as the dependent, or "y" variable, with various combinations of independent, or "x" variables. The analysis which gave the best results used a combination of three independent variables: number of acres, number of administrative completeness reviews, and number of technical deficiency letters.

The fees that appear in this proposed fee schedule are based on this regression analysis and also consider the breakdown of costs for each step of the permit review. Overhead costs for support and supervisory personnel and administrative costs are included in the proposed fees.

The proposed permit fee system would be similar to fee systems used by other Federal agencies in that it would employ a fixed fee schedule based on historical costs, and applicants would pre-pay for services. The proposal is consistent with draft guidelines for user charges published in the **Federal Register** by the Administrative Conference of the United States on March 12, 1987 (52 FR 7812).

The proposed schedule for new permit applications would be similar to permit fee systems in other States with primacy in that it would include a per-acre component and a fixed per-permit fee. The per-acre charge allows the costs of permit processing to vary directly by size of operation; it also reflects the general trend in variation of OSMRE's permit processing costs.

The proposed fee system would encourage operators to submit complete and accurate permit applications since applicants would be charged additional fees for additional administrative completeness reviews or for technical deficiency letters necessary, and since prepayment of fees is required.

The proposed permit fee schedule is designed to recover the full costs to OSMRE to process a permit application. It is not intended to recover the costs to OSMRE to enforce the permit or to fulfill OSMRE's National Environmental Policy Act of 1969 (NEPA) responsibilities.

NEPA Compliance

The proposed permit fee schedule is based on OSMRE's costs to process and issue a permit but does not include costs incurred in fulfilling NEPA obligations. In *Nevada Power Co. v. Watt*, 711 F.2d 913 (10th Cir. 1983), the court made it clear that the Department of the Interior could charge for environmental impact statement (EIS) costs, because they "are a necessary prerequisite to the receipt by the applicant of a special benefit, the grant of a right-of-way." The court said that Interior is not constrained from charging the full cost of the EIS to the applicant.

However, OSMRE believes that NEPA analysis necessary for obtaining a surface coal mining operation permit should not necessarily be charged to the applicant. NEPA compliance costs vary widely from permit to permit and therefore uniform distribution over all permits would not reflect OSMRE's costs to process each permit as required by IOAA. On the other hand, charging an individual permit applicant for preparation of an environmental impact statement for his/her permit may affect the competitive balance, since NEPA compliance costs on some permits are very high while on others they are inconsequential.

Inspection and Enforcement

The proposed permit fee schedule would not recover OSMRE's costs for inspection and enforcement activities. Section 507(a) of SMCRA authorizes OSMRE to collect a permit application fee which "may reflect the cost of * * * enforcing" the permit; that is, the cost for OSMRE to inspect the permit site and enforce the permit requirements. The Secretary believes that the primary benefits of inspection and enforcement activities accrue to the public and that the public stands to gain by OSMRE's not charging the operator for the service. Not charging for inspection and enforcement activities would ensure that OSMRE is not inhibited in its inspection and enforcement duties by the desire to keep expenditures within the bounds of whatever fees might be charged. OSMRE inspectors should have in mind the purpose of upholding the intent of SMCRA rather than concern for the costs of inspection and enforcement activities.

B. Fee for Permit Renewal or Revision; Transfer, Sale or Assignment of Rights; and Coal Exploration Permits

Fees for permit renewal or revision, for the transfer, sale or assignment of rights under an existing permit, and for coal exploration permits, would be charged at an hourly rate for the actual hours spent by OSMRE reviewers in processing the application. Fees would be charged whether the application is approved, denied or withdrawn.

Hourly rates are proposed for these actions due to the great variation in their processing cost and/or insufficient data to validate a fixed fee. As OSMRE gains more experience in these actions a fixed fee for them may become viable.

Fees would not be charged for informal conferences or public hearings held as a result of these actions. These conferences and hearings are beyond the control of the operator and could be very costly. Charging for the conferences and hearings would be unfair since not all actions would result in a conference or hearing.

No fees would be charged for a notice of coal exploration where a coal exploration permit is not required. No fees would be charged for mid-term permit reviews, since this action is mainly performed for the benefit of the public; however, any necessary permit revision identified as a result of the mid-term review would require permit revision fees in accordance with the fee schedule.

C. Who Will Be Charged Fees

Fees as proposed in this rule would be charged in States where OSMRE is the regulatory authority, on Federal lands where OSMRE issues a permit and on Indian lands. In States with State-Federal Cooperative Agreements under 30 CFR Part 745 where the State issues a permit on Federal lands, the applicant would be required to pay the State permit fee to the State. Where OSMRE issues a permit on Federal lands, permit fees would be charged in accordance with the OSMRE permit fee schedule. Under this proposed rule, permit fees would not be charged for OSMRE actions on mining plans.

Fees would be charged for permit processing and issuing actions begun on or after the effective date of the final rule. Although the fees would not be charged retroactively, any permit application which was currently in process would be assessed a fee for any action begun after the effective date of the rule. For example, if a permit application were in the administrative completeness review stage when the rule became effective, a technical review fee plus per-acre fee would be collected before the technical review stage of the permit processing would begin. An effective date will be established at the time of publication of the final rule.

Federal Enforcement of a State Program

Where OSMRE institutes action under 30 CFR Part 733 and subsequently becomes the regulatory authority for permitting activities in a State with an approved regulatory program, permit fees as established in that State program would be paid to OSMRE. In States where a Federal program is substituted for an existing State program under 30 CFR Part 733, where the State withdraws its program or OSMRE withdraws approval of the program, OSMRE would charge permit fees according to this proposed fee system but would deduct an amount equal to fees the permit applicant had already paid to the State for the permitting action. If a State regains primacy following OSMRE enforcement of the State or Federal program in that State, OSMRE would not refund permit fees.

Upon substituting Federal enforcement for the permitting portion of a State program, or implementing a Federal program in a State, OSMRE may review existing pemits for compliance with SMCRA. Since the need for this review is not caused by negligence on the part of the permit holder but rather results from a deficiency in administration of a program, fees would not be charged for this permit review. However, if this review resulted in a permit revision, fees would be charged for review of the permit revision.

D. Small Operators

The legislative history of SMCRA indicates that Congress had in mind small and medium size operators when it allowed in SMCRA section 507(a) for a permit fee less than the actual cost to review, administer and enforce the permit, and for payment of the fee over the term of the permit. The proposed permit fee, while reflecting OSMRE's actual cost accounting data, would result in lower fees for small and medium size operators relative to large operators, due to the per-acre fee that is

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part of the fee system. OSMRE is proposing not to allow for payment of the permit fee over the term of the permit because the fees that are proposed should not be prohibitive even for small operators, and the administration of a deferred payment system would be costly to OSMRE and could result in imposition of higher fees to compensate for the added costs.

E. Section by Section Analysis

PART 736—FEDERAL PROGRAM FOR A STATE

Section 736.25 Permit Fees. Section 736.25 would establish the fees to be paid for permits for surface coal mining and reclamation operations and permits for coal exploration in States with Federal programs. It would also establish fees to obtain processing of a permit revision or renewal, or the transfer, sale or assignment of rights under an existing permit, for permit holders in Federal program States. Currently there are Federal programs for Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. A Federal program also has been proposed for California (52 FR 39594, October 22, 1987).

Section 736.25(a) Applicability. Paragraph (a) would state that any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration, or for a permit renewal or revision, or the transfer, assignment or sale of rights in an existing permit, shall submit fees as provided in the section.

Section 736.25(b) New Permit and Repermit Applications. Paragraph (b) would provide that fees for a new permit to conduct surface coal mining and reclamation operations would be charged according to the requirements of the schedule listed in paragraph (f) of the section, and the other requirements of the section that follow.

Paragraph (b)(1)(i) would require that applications for a permit to conduct surface coal mining and reclamation operations in States with Federal programs shall be accompanied by the administrative completeness review fee. The fees would be the amount listed for administrative completeness review in paragraph (f). Paragraph (b)(1)(ii) would provide that, if OSMRE's review for administrative completeness of a permit determines that additional information is needed and requests that the applicant submit the additional information, the applicant must submit an additional administrative completeness review fee along with the required information. OSMRE would identify all additional information necessary in the initial letter. If additional letters are needed because the applicant fails to respond adequately to the initial letter, the applicant would be require to pay $250 for each additional letter necessary. If an additional letter is needed due to an oversight on OSMRE's part, the applicant would not have to pay an additional fee.

Paragraph (b)(2) would contain requirements for fees for a technical review of the permit application. Paragraph (b)(2)(i) would provide that when the applicant receives notice from OSMRE that the permit application is administratively complete, the applicant must submit the technical review fee and per-acre fees as listed in paragraph (f) to move the application to the next step of review. Per-acre fees must be submitted for each acre or fraction thereof of land included in the permit area. Technical review of the permit would begin upon receipt of these fees by OSMRE. Paragraph (b)(2)(ii) would require that, if OSMRE notifies the permit applicant of technical deficiencies in the permit and requests additional information, the applicant would be required to pay a technical deficiency fee when the additional information is submitted. OSMRE would cease technical review on the permit while awaiting the required information and would resume review of the application upon receipt of the fee and information. OSMRE would identify all technical deficiencies in the initial technical deficiency letter. If additional technical deficiencies are noted that could have been included in the original letter and consequently an additional letter is sent, no charge would be made for the additional letter.

However, if the applicant fails to respond adequately to the request for additional information contained in the first technical deficiency letter and additional letters are necessary to repeat a request or a portion of a request, the applicant would be charged the technical deficiency fee for additional letters necessary. Further, if the response to a technical deficiency letter raises new issues that require an additional technical letter, the applicant would be charged an additional technical review fee.

Paragraph (b)(3) would provide for payment of the decision document fee. To obtain a permit, the applicant would be required to submit a decision document fee upon being notified by OSMRE that the permit application is technically adequate. When the fee is received by OSMRE, preparation of the decision document would begin.

Section 736.25(c) Permit Renewals and Revisions, Transfer, Assignment or Sale of Rights, Coal Exploration Permits. Under proposed 30 CFR 736.25(c)(1) fees for processing applications for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for coal exploration permits would be charged to the applicant at the hourly rate established in paragraph (f). Fees would be calculated by multiplying the hourly rate by the number of hours of actual time expended by OSMRE staff to review and process the application. Time spent by support staff in support activities and by supervisors in a supervisory capacity would not be added to the fee because the hourly rate includes a factor which takes into account support and supervisory costs and other overhead. Time spent in conducting informal conferences such as those provided for permit renewals and significant permit revisions in 30 CFR Part 744, and in providing for public hearings for coal exploration permits in 30 CFR Part 772, would not be included in the calculation of time expended.

Paragraph (c)(2) would provide that fees due under paragraph (c) shall be paid within 30 days of receipt of a bill from OSMRE even if approval is denied or the application is withdrawn. Approval of the permit renewal or revision application, the transfer, assignment or sale of rights in an existing permit, or the permit to conduct coal exploration, would be issued upon receipt of the fees.

Under proposed § 736.25(c)(3), if the fees are not paid within 30 days they would be considered delinquent and would be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register**. Interest on unpaid fees would run from the 31st day after the bill from OSMRE is received until the date of payment. Failure to pay overdue fees may result in one of more of the actions specified in 30 CFR 870.15 (e)(1) through (e)(5). Delinquent fees may be subject to late payment penalties specified in 30 CFR 870.15(f) and processing and handling charges specified in 30 CFR 870.15(g).

Concerning hourly fees paid for services under this paragraph, OSMRE is soliciting comment on the possibility of pre-collecting these fees also. OSMRE could estimate the costs beforehand and collect the estimated cost from the applicant before the action is processed. Excess money would be refunded to the applicant; if additional funds were found to be necessary, further processing would cease until OSMRE collected an additional estimated amount. This would eliminate the problem of delinquent fees and of trying to collect fees for time spent processing applications that are later denied or withdrawn by the applicant.

Section 736.25 (d), (e). Section 736.25(d) would state that all fees are non-refundable. Section 736.25(e) would require that all fees be submitted in the form of a certified check, bank draft, or money order.

Section 736.25(f) Fee Schedule. Section 736.25(f) would establish the fee schedule to apply to § 736.25.

The administrative completeness review would be $250 for the initial review and for any subsequent reviews necessary because of insufficient information in the permit application.

The fee for the technical review would be $1,350.00 plus $13.50 per acre or fraction thereof of land to be included in the permit area.

The fee for technical deficiency letters would be $690, for each technical deficiency letter necessary to obtain the required permit application information.

The decision document fee is proposed at $2,000.00. This fee would cover the costs of OSMRE's preparation of all documentation necessary to prepare the permit for issuance.

Hourly fees would be $24.00 per hour. When hourly fees are charged, fees would be prorated for charges for less than a full hour.

PART 740—FEDERAL LANDS

Section 750.25 Permit Fees. Section 750.25 would establish the required permit fees to be paid for permits for surface coal mining and reclamation operations and for coal exploration on Federal lands where OSMRE issues a permit. It would also establish required fees for processing of a permit revision or renewal, or for the transfer, sale or assignment of rights in an existing permit, where OSMRE was required to process these actions. These fees would not apply in States with State-Federal Cooperative Agreements where OSMRE does not issue a permit.

The rules in this section would parallel the rules in proposed § 736.25 and therefore the preamble explanation for those proposed rules would apply to this section also.

PART 750—INDIAN LANDS

Section 750.25 Permit Fees. Section 750.25 would establish the required permit fees to be paid for permits for surface coal mining and reclamation operations on Indian Lands. OSMRE is the regulatory authority on Indian lands for surface coal mining and reclamation operations. The Bureau of Land Management has primary responsibility for coal exploration activities involving Indian coal. Proposed § 750.25 would also establish required fees for processing of a permit revision or renewal, or for the transfer, sale or assignment of rights in an existing permit.

The rules in this section would parallel the rules in proposed § 736.25 and therefore the preamble explanation for those proposed rules would apply to this section also, except that permits for coal exploration are not issued by OSMRE on Indian lands; therefore the coal exploration permit fee is omitted.

IV. Procedural Matters

Effect in Federal Program States

Proposed 30 CFR 736.25 would apply in those States with Federal programs. These include Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States which should be reflected as specific amendments to any or all of the Federal programs.

OSMRE has issued a proposal to implement a Federal program for the State of California (52 FR 39594, October 22, 1987). Comments are also specifically solicited as to whether conditions exist in California that should be reflected in the proposed Federal program for that State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Out of the nearly 7,000 active mining operations in the United States, the majority (over 95%) are governed by State programs, and not affected by the rule. Most of the operations in the minority potentially affected by the proposed rule already have surface mining and reclamation permits, so for this minority of operations the rule would apply only to the typically less costly renewal of, revision of, or transfer, assignment or sale of rights in existing permits. Since permit renewal is required only at five year intervals, the potential number of renewal applications in a given year is only one-fifth of the total number of permits outstanding. Adding to these the permits for new operations and for coal exploration for the anticipated number of applications processed annually by OSMRE the anticipated fees are expected to fall below the criteria established by the Executive Order.

Against this background of limited activity, the Department has concluded that the proposed rule would not have an annual effect on the economy of $100 million or more, or result in a substantial increase in costs or prices for the Federal government, consumers, individual industries, State or local government agencies, or geographic regions.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding will be made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Adele Merchant, Chief, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1664 (Commercial or FTS).

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List of Subjects

30 CFR Part 736

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

Accordingly, it is proposed to amend 30 CFR Parts 736, 740, and 750 as set forth below:

Dated: February 18, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 736—FEDERAL PROGRAM FOR A STATE

1. The authority citation for Part 736 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

2. Section 736.25 is added to read as follows:

§ 736.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations in Federal program States according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations pursuant to a Federal program shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical review will resume upon receipt of the fee and information.

(3) *Permit issuance.* Following receipt of a notice from OSMRE of technical adequacy, the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights; coal exploration permits.* (1) The applicant for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for a coal exploration permit, shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE even if the permit action is denied or the application is withdrawn. The permit renewal or revision, the transfer, assignment or sale of rights, or the coal exploration permit will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in § 870.15(e)(1) through (e)(5) of this chapter. Delinquent fees may be subject to late payment penalties specified in § 870.15(f) of this chapter and processing and handling charges specified in § 870.15(g) of this chapter.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New Permit:

Administrative completeness review	$250.00
Technical review	1,350.00
Per-acre of permit area	13.50
Technical deficiency	690.00
Decision document	2,000.00
Hourly fees	24.00

PART 740—FEDERAL LANDS PROGRAM

3. The authority for Part 740 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* as amended, and 30 U.S.C. 181 *et seq.*

4. Section 740.25 is added to read as follows:

§ 740.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations on Federal lands according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations on Federal lands shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical review will resume upon receipt of the fee and information.

(3) *Permit issuance.* Following receipt of a notice from OSMRE of technical adequacy the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights; coal exploration permits.* (1) The applicant for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for a coal exploration permit shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE, even if the permit action is denied or the application is withdrawn. The permit renewal or revision, the transfer, assignment or sale of rights, or the coal exploration permit will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in § 870.15(e)(1) through (e)(5) of this chapter. Delinquent fees may be subject to late payment penalties specified in § 870.15(f) of this chapter and processing and handling charges specified in § 870.15(g) of this chapter.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New permit:

Administrative completeness review	$250.00
Technical review	1,350.00
Per-acre	13.50
Technical deficiency	690.00
Decision document	2,000.00
Hourly fees	24.00

PART 750—INDIAN LANDS PROGRAM

5. The authority for Part 750 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and 5 U.S.C. 301.

6. Section 750.25 is added to read as follows:

§ 750.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations on Indian lands according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations on Indian lands shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical review will resume upon receipt of the fee and information.

(3) *Permit Issuance.* Following receipt of a notice from OSMRE of technical adequacy the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights.* (1) The applicant for a permit renewal or revision, or for the transfer, assignment or sale of rights in an existing permit, shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE even if the permit action is denied or the application is withdrawn. The permit renewal or revision, or the transfer, assignment or sale of rights will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury Financial Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in §§ 870.15 (e)(1) through (e)(5) of this chapter. Delinquent fees may be subject to late payment penalties specified in § 870.15(f) of this chapter and processing and handling charges specified in § 870.15(g) of this chapter.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New Permit

Administrative Completeness Review	$250.00
Technical Review	$1350.00
Per-Acre of permit area	$13.50
Technical Deficiency	$690.00
Decision Document	$2000.00
Hourly Fees	$24.00

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Part IV

Environmental Protection Agency

40 CFR Part 264, etc.
Land Disposal Restrictions for First Third Scheduled Wastes (OSW-FR-88-006); Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 266 and 268

[SWH–FRL–3364–2; OSW–FR–88–006]

Land Disposal Restrictions for First Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to RCRA section 3004(g)(5), EPA is proposing to prohibit the land disposal of certain untreated hazardous wastes listed in 40 CFR 268.10 (the first one-third of the schedule of restricted hazardous wastes). Today's action proposes treatment standards and prohibition effective dates for these wastes. Today's action also reproposes the prohibition effective dates for certain "First Third" wastes that were the subject of a recent, related proposed rulemaking (53 FR 11742, April 8, 1988). EPA is proposing these changes based on data from the Agency's recently conducted survey of available alternative capacity at treatment, storage, disposal, and recycling facilities. In addition, the Agency is proposing to rescind the nationwide variance based on inadequate treatment capacity promulgated for hazardous wastes containing halogenated organic compounds (other than soils), and for F001–F005 spent solvent wastes generated by generators of 100–1000 kilograms of hazardous waste per month and solvent wastes resulting from Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) response actions or RCRA corrective actions.

In actions not involving First Third wastes (or not exclusively involving such wastes), EPA is proposing to amend the treatment standard for spent solvent methylene chloride in wastewaters from the pharmaceutical industry. Also, EPA is proposing to require all hazardous waste derived products that are used in a manner constituting disposal and whose placement on the land is exempt from regulation pursuant to 40 CFR 266.20(b) to meet any applicable treatment standard for each hazardous waste that they contain as a condition of retaining that exemption. With respect to California list wastes containing halogenated organic compounds (HOCs), the Agency is soliciting additional comment on an approach that would allow these wastes to be burned in industrial boilers and furnaces in accordance with applicable regulatory standards. Finally, EPA is making certain corrections to the April 8, 1988 proposed rule and is including regulatory language to § 268.30(a) that was inadvertently omitted from the April 8, 1988 proposal.

If these proposed actions are finalized, these First Third wastes can be land disposed after the applicable effective dates if the respective treatment standards are met or if disposal occurs in units that satisfy the statutory no migration standard (see 40 CFR 268.6).

DATE: Comments on this proposed rule must be submitted on or before June 16, 1988.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S–205) (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–88–LDR8–FFFFF on your comments. The OSW docket is located at EPA RCRA Docket (sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346 (toll free) or (202) 382–3000 locally.

For general information on specific aspects of this proposed rule, contact Stephen Weil, Lisa Faeth or William Fortune, Office of Solid Waste (WH 562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4770. For specific information on BDAT/treatment standards, contact Jim Berlow, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917. For specific information on capacity determinations/national variances, contact Jo-Ann Bassi or Linda Malcolm, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917.

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I. Background

A. The Statute

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, require the Agency to promulgate regulations that prohibit the land disposal of untreated hazardous wastes, except in land disposal units that satisfy the "no migration" standard contained in RCRA sections 3004 (d), (e) and (g). Specifically, the amendments include dates when particular groups of untreated hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection into deep injection wells of solvent- and dioxin-containing hazardous wastes and wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)).

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed.

Although these prohibitions normally take effect immediately, the Agency is authorized to grant national variances from statutory dates and case-by-case extensions of effective dates. The Administrator may grant a national variance from a statutory date and establish a different date, not to exceed two years beyond the statutory deadline, based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may grant a case-by-case extension of an effective date for up to one year, renewable once for up to one additional year, when an applicant "demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date" (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)).

In addition to restricting the land disposal of hazardous wastes, Congress also restricted the treatment and storage of hazardous wastes. The statute allows treatment of restricted wastes in surface impoundments which meet minimum technological requirements (certain exceptions are allowed). Treatment in

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surface impoundments is permissible provided the treatment residues that do not meet the treatment standards, or applicable statutory prohibition levels where no treatment standards have been established, are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)). Storage of restricted wastes is prohibited unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

1. Scheduled Wastes

The amendments require the Agency to prepare a schedule, by November 8, 1988, for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984, in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes covered under section 3004(e). The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

"Soft hammer" provisions specify that if EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first-third or second-third of the schedule, the waste may continue to be disposed in a landfill or surface impoundment provided that (1) the unit is in compliance with minimum technological requirements and (2) prior to disposal, the generator has certified to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal are not similarly restricted and may continue to be used for disposal of the untreated waste until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from land disposal unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(6), 42 U.S.C. 6924(g)(6)).

B. Regulatory Framework

By way of preface, EPA notes that the following description of existing rules is for the readers' convenience, and is not intended to reopen any of these rules for public comment.

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) establishing the regulatory framework for implementing the land disposal restrictions program. This rule also implemented the first phase of the program with regulations prohibiting the land disposal of solvent- and dioxin-containing wastes. Corrections to the November 7, 1986, rule were included in a June 4, 1987, Federal Register notice (52 FR 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were made in a July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment. Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in § 268.4 and 3005(j)(11). Also, the storage restrictions apply to wastes placed in storage after the effective dates. If, however, hazardous wastes subject to the land disposal restrictions are removed from either a storage or land disposal unit, or treated in surface impoundments after the applicable effective date, such wastes are subject to the restrictions and treatment standards.

For the purposes of the restrictions, land disposal includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The Agency also considers placement in a concrete vault or bunker intended for disposal purposes to be land disposal.

The provisions of the land disposal restrictions program apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions.

The land disposal restrictions apply to both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline the Agency must establish the applicable treatment standards under 40 CFR Part 268 Subpart D for each restricted hazardous waste. After the applicable effective dates, restricted wastes may be land disposed in Subtitle C facilities if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal with the exception of first-third and second-third ranked hazardous wastes. The first- and second-third wastes for which EPA has not promulgated treatment standards can continue to be disposed in landfills and surface impoundments, provided certain demonstrations are made, and provided these units meet the minimum technology requirements of section 3004(o), until May 8, 1990, or until EPA promulgates treatment standards, whichever is sooner. Other types of land disposal are not restricted until EPA promulgates treatment standards or until May 8, 1990, whichever is earlier.

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste. EPA may establish treatment standards either as specific technologies or performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Variances From the Effective Dates

The Agency has the authority to grant national variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make this determination EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a 1-year extension (renewable only once) of a ban effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity.

5. "No Migration" Exemptions From the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous. 40 CFR 268.6. If a petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units and for no longer than the term of the RCRA permit for disposal in permitted units. 40 CFR 268.6(h)

6. Variances From the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes which are unable to be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used. 40 CFR 268.44. Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard and the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could result in the establishment of a new treatability group and corresponding treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal. 40 CFR 268.50. A facility which stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not necessary to facilitate proper treatment, recovery, or disposal.

II. Summary of Today's Proposed Rule

A. Regulatory Approach

On May 28, 1986, EPA published a notice in the Federal Register (51 FR 19300) promulgating a schedule for prohibiting the land disposal of hazardous wastes. This schedule is found in 40 CFR 268.10 for so-called "First Third" wastes, 40 CFR 268.11 for "Second Third" wastes, and 40 CFR 268.12 for "Third Third" wastes. In an April 8, 1988, Federal Register notice (53 FR 11742) EPA proposed treatment standards and effective dates for complying with the provisions of the land disposal restrictions program applicable to certain First Third wastes. In addition, the Agency proposed an interpretation of the "soft hammer" provisions of section 3004(g)(6) of RCRA, which allow disposal in a surface impoundment or landfill of first- and second-third scheduled wastes for which EPA has not established treatment standards by the statutory deadline. Today's notice proposes treatment standards and effective dates for additional First Third wastes not addressed in the April 8, 1988 proposal.

The proposed effective dates for prohibitions for these wastes are based on a determination of available alternative capacity derived from a recently conducted survey of treatment, storage, disposal, and recycling facilities. In addition, the Agency is revising its proposal regarding effective dates for the First Third wastes for which treatment standards were proposed in the April 8, 1988, Federal Register notice based on the new capacity data derived from this survey.

The two notices do not propose treatment standards and effective dates for all of the First Third wastes listed in 40 CFR 268.10. It was not possible to develop and analyze treatment data for all of the First Third wastes within the time limits imposed by the statute. EPA intends to promulgate regulations prohibiting the land disposal of the wastes having proposed standards and effective dates on August 8, 1988. All other wastes listed in 40 CFR 268.10 will be subject to the "soft hammer" provisions of RCRA section 3004(g)(6) (42 U.S.C. 6924 (g)(6)). The Agency's interpretation of these provisions will be codified in final form when EPA promulgates the First Third prohibitions as a final rule.

B. Best Demonstrated Available Technologies (BDAT)

This notice discusses the technologies the Agency considered in determining proposed treatment standards for First Third wastes addressed in this proposal. Since the standards are expressed as performance levels of treatment determined by performance of BDAT, any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet these concentration-based treatment standards. The model BDAT technologies on which these performance standards are based are summarized below.

For F006 and K046 nonwastewaters, the BDAT performance standard is based on stabilization; for F006 and K046 wastewaters, the standard is "No Land Disposal". For wastes K001 and K086 (solvent washes and sludges subcategory), the performance standard is based on incineration followed by stabilization of nonwastewater residuals and chromium reduction followed by chemical precipitation for wastewater residuals. BDAT for nonwastewater forms of K022 is based on fuel substitution followed by metals stabilization and metals precipitation of scrubber water. Fuel substitution or incineration is the basis for BDAT for K083. EPA is proposing rotary kiln incineration as the basis for BDAT for K087 and is soliciting information to support a conclusion that total recycling can be accomplished for some K087 subcategories. Proposed BDAT for K099 is based on chemical oxidation with chlorine. The performance achieved by incineration followed by metal stabilization of ash residues represents proposed treatment by BDAT for both K101 and K102. Treatment standards are based on thermal recovery for K106 nonwastewaters and sulfide precipitation followed by filtration for K106 wastewaters. "No Land Disposal" is the proposed BDAT treatment standard for K021, K025, K060, K044, K045, and K047.

EPA is also proposing to revise the performance standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry to be based on steam stripping. This would change the actual performance standards for these wastewaters in § 268.41(a). Furthermore, EPA is soliciting additional comment on an approach that would amend the § 268.42(c)(2) treatment standards to allow burning of California list HOCs in industrial boilers and furnaces in accordance with applicable regulatory requirements.

BASIS FOR TREATMENT STANDARDS

[BDAT]

Waste code	BDAT
F006:	
Nonwastewaters	Stabilization.
Wastewaters	["No land disposal"].
K001	Rotary kiln incineration; stabilization (nonwastewater residuals); chemical precipitation (wastewater residuals).
K022:	
Nonwastewaters	Fuel substitution; metals stabilization; metals precipitation of scrubber water.
Wastewaters	["No land disposal"].
K046:	
Nonwastewaters	Stabilization.
Wastewaters	["No land disposal"].
K083	Liquid injection incineration or fuel substitution.
K086 (solvent washes and sludges subcategory):	
Nonwastewaters	Incineration; stabilization of ash.
Wastewaters	Chromium reduction; chemical precipitation; filtration.
K087	Rotary kiln incineration.
K099	Chemical oxidation using chlorine.
K101	Incineration; metal stabilization.
K102	Incineration; metal stabilization.
K106:	
Nonwastewater	Thermal recovery. *
Wastewaters	Sulfide precipitation; filtration.
K021	["No land disposal"].
K025	["No land disposal"].
K060	["No land disposal"].
K044	["No land disposal"].
K045	["No land disposal"].
K047	["No land disposal"].

C. Waste Analysis Requirements

Today's proposed treatment standards are based on the concentration levels of the hazardous constituents in the waste/treatment residual, the extract of the waste/treatment residual developed using the TCLP, or both the total composition and the extract. Wastes for which destruction and/or removal technologies are BDAT would require a total composition analysis. These wastes are K001, K022, K086, K087, K099, K101, K102, K106, and methylene chloride in F001–F005 wastewaters from the pharmaceutical industry. Wastes for which stabilization technologies are BDAT would require an extract analysis. These wastes are F006 and K046. Proposed treatment standards for wastes requiring a total composition analysis are found in 40 CFR 268.43, and proposed treatment standards for wastes requiring an extract analysis are found in 40 CFR 268.41.

D. National Variances from the Effective Date

EPA is proposing to grant a two-year national variance from the August 8, 1988, effective date of the land disposal restrictions for K106 wastes. The Agency is not proposing to grant a variance to wastes F006, K001, K022, K046, K083, K086, K087, K099, K101 and K102. We are proposing (consistent with drafting in sections 268.30–268.32) that the proposed August 8, 1988, and August 8, 1990 effective dates be codified in § 268.33 of the proposed regulations.

In addition, today's action proposes to grant a two year variance from the applicable effective dates for certain contaminated soils that require solids incineration capacity. EPA is also proposing to change its proposed decision (addressed in the April 8, 1988 notice) to grant a variance from the effective date to wastes K016, K018, K019, K020, K024, K030, and K037. Based on new data, it appears that there is adequate treatment capacity for these wastes and therefore the prohibition effective date should be August 8, 1988.

Among the wastes for which EPA will not set treatment standards by August 8, 1988, are wastes K011, K013, and K014 resulting from production of acrylonitrile. Information received from the industry trade association states that currently, wastes K011 and K013 are all treated by filtering the wastes, underground injecting the filtrate into deep injection wells, and burning the separated suspended matter. The industry association also notes that the producers of the wastes intend to file "no migration" petitions for continued underground injection of these wastes.

The Agency is preparing procedures to evaluate "no migration" petitions for underground injection wells. If the petitions are granted, the waste could be injected into a "no migration" underground injection unit. If no (or insufficient) "no migration" petitions are granted, the Agency may not have sufficient time to set treatment standards for the K011 and K013 filtrate by May 8, 1990, the date these wastes will be absolutely prohibited from land disposal (except in "no migration" units).

EPA is developing treatment standards, which will be promulgated after August 8, 1988, for the separated suspended matter filtered from K011 and K013 wastes, and for K014 still bottoms; these wastes are currently being burned, thus resulting in a residue that will be land disposed, at least in some cases, in units that would not meet the "no migration" standard. These residues must therefore meet BDAT standards before they are land disposed.

E. Rescission of National Variances for Certain Solvents and California List Wastes

The Agency is proposing today to rescind parts of the November 7, 1986, nationwide variances from the prohibition effective date granted for solvents and the July 8, 1987 variances granted for HOCs. The wastes which would be covered by this action are:

(a) Spent solvent wastes identified as EPA Hazardous Wastes Nos. F001–F005 generated by small quantity generators producing from 100–1,000 kilograms of hazardous waste per month;

(b) Solvent waste generated from section 104 or 106 response actions under CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris; and

(c) Hazardous wastes containing HOCs in concentrations greater than or equal to 1,000 mg/l, except for California list HOC contaminated soils.

Based on revised estimates of the treatment capacity available to treat these wastes, EPA has determined that sufficient capacity exists to incinerate or thermally combust these wastes. The revised capacity estimates are discussed in section III.E. of this proposal.

F. Corrections to the April 8, 1988 Proposal (53 FR 11742)

Today's proposal also makes certain corrections to the April 8, 1988 proposal (53 FR 11742). Specifically, these corrections address the following errors: (1) Neglecting to propose regulatory language reflecting the Agency's approach, as currently regulated by § 268.30(a)(3); (2) incorrectly identifying a hazardous constituent in K103 and K104 (2,4-dinitrophenol) as 2,3-dinitrophenol and stating incorrect levels for aniline, nitrobenzene, and phenol in the regulatory text; (3) incorrectly stating the total composition treatment standard for toluene in K015 waste (0.148 mg/l) as 1.00 mg/l; (4) incorrectly heading the wastewater treatment standard tables for K016 and K018 wastes as "nonwastewater", and the K051 tables in the preamble as "K050"; (5) incorrectly stating the hazardous constituent tetrachloroethene as tetrachloroethane in the preamble tables for K019 wastewaters and nonwastewaters and K020 nonwastewaters; (6) stating the incorrect treatment standard for hexachloroethane in K016 wastewater (preamble) and K030 wastewater (regulatory text); and (7) neglecting to include chlorobenzene in the preamble table for K019 nonwastewater.

III. Regulatory Approach for the First Third Wastes

A. Determination of Treatability Groups and Development of BDAT Treatment Standards

1. Waste Treatability Groups

For the First Third wastes, EPA used the individual listed waste codes as the starting point for developing waste treatability groups. In cases where EPA believed that wastes represented by different codes could be treated to similar concentrations using identical technologies, the Agency combined the codes into one treatability group. EPA based its initial treatability group decisions primarily on whether the waste codes were generated by the same or similar industries from similar processes. EPA believes that such groupings can be made even with limited data because of the high likelihood that the waste characteristics which affect treatment performance will be similar for these different waste codes. For example, two codes pertaining to wastes from the production of veterinary pharmaceuticals (K101 and K102) were combined into a single treatability group.

2. Demonstrated Treatment Technologies

As discussed in EPA's promulgated methodology for determining BDAT (see November 7, 1986, 51 FR 40572), a technology is considered to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of that waste or a similar waste. For some of the First Third waste codes covered by today's proposal, EPA identified demonstrated technologies either through review of literature discussing current waste treatment practices or on the basis of information provided by specific facilities currently treating the waste or similar wastes.

In cases where the Agency did not identify any facilities currently treating wastes represented by a particular waste code, EPA identified demonstrated technologies in the following manner. The Agency first characterized each waste for those parameters which the Agency believes affect the selection of applicable treatment technologies (including recycling). EPA then compared these parameters to other wastes for which these technologies are demonstrated. If the parameters were similar, the Agency considered the technology also to be demonstrated for the waste of interest. For example, EPA considers rotary kiln incineration a demonstrated technology for many waste codes containing hazardous organic constituents, high total organic content, and high filterable solids, regardless of whether any facility is currently incinerating these wastes in a rotary kiln. The basis for this determination is data found in literature, as well as data generated by EPA confirming the use of rotary kiln incineration on wastes having the above characteristics. EPA's rationale for determining demonstrated technologies for each waste treatability group is explained in the section III.A.10. in this preamble which describes the waste-specific treatment standards.

3. Selection of Facilities for Engineering Visits and Sampling

In those instances where additional data were needed to supplement the Agency's current knowledge of treatment performance on the demonstrated technologies, EPA arranged engineering visits to facilities that treat wastes with a demonstrated technology that potentially could be the basis for the treatment standards. The purpose of the engineering visits was to confirm that candidates for sampling, in fact, met EPA's criteria of being well designed facilities and that the necessary sampling points were accessible. During the visit, EPA also would confirm that the facility appeared to be well operated, although the actual operation that occurs during sampling is the basis for EPA's decisions regarding whether the sampling data represented the performance of a properly operated treatment unit.

In general, the Agency considers a well designed facility to be one that contains all the unit operations necessary to treat the various hazardous constituents of the waste and any other nonhazardous materials in the waste that may adversely affect treatment performance. For example, a waste containing hazardous metals and a high concentration of oil and grease would require removal of potentially nonhazardous oil and grease in order to facilitate the subsequent removal of the hazardous metals by precipitation. EPA also places considerable emphasis on the levels of performance the system is designed to achieve in determining whether to sample a particular treatment facility, since the facility will seldom exceed the goals of its original design.

In addition to ensuring that a system is reasonably well designed, the engineering visit is designed to examine whether the facility has a measurable way of describing the operation of the treatment system during the time the

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waste is being treated. For example, EPA may choose not to sample a continuous treatment system for which an important design parameter cannot be continuously recorded through the use of a strip chart. In continuous systems, such instrumentation is important in determining whether the treatment system was operating within the design requirements during the period in which the waste was being treated and the samples obtained.

In addition to the design and operation of the treatment system, EPA also bases its decision to sample a facility on whether the piping layout is such that all samples necessary to evaluate treatment performance can be collected. If piping is not suitable or cannot be easily modified, EPA would not perform a sampling visit.

In order to select potential sites for sampling, EPA has established a hierarchy for conducting its engineering visits. The hierarchy is (1) generators treating single wastes on-site; (2) generators treating multiple wastes together on-site; (3) commercial TSDFs; and (4) EPA in-house treatment. The basis of this hierarchy is founded on two major concepts: (1) EPA believes, to the extent possible, that it should try to develop treatment standards from data produced by treatment facilities handling only a single waste; and (2) facilities that routinely treat a specific waste have had the best opportunity to optimize design parameters. Although excellent treatment can occur at many facilities that are not high in this hierarchy, EPA has adopted this approach to avoid, when possible, ambiguities related to the mixing of wastes (particularly wastes from different treatability groups). Therefore, EPA prefers sampling from on-site treatment facilities where the waste of interest is treated alone or as a major component of the total waste handled. If such well designed on site facilities are not available, the Agency then looks to commercial treatment facilities where mixing of many wastes is generally practiced but where extensive optimization of treatment may still have occurred. If no suitable TSDF facilities are identified, EPA conducts in-house tests and optimizes the process itself on a more limited basis.

EPA used a number of data bases to determine if any generators were treating specific wastes on-site or if there were any commercial TSDFs treating this waste. EPA's documentation for locating on-site generating facilities and/or commercial TSDFs for each waste can be found in the Docket for today's rulemaking. Although EPA's data bases provided potential sites of treatment of individual wastes, the data bases provided no data that would preferentially support the selection of one facility for sampling over another. In cases where several treatment sites appear to fall into the same level of the hierarchy, EPA selected sites for visits strictly on the basis of what facility could be visited most expeditiously and later sampled if justified by the engineering visit.

A secondary consideration involved with the selection of technologies for testing was the need to develop data within an ambitious statutory deadline. When selecting technologies to test for performance, these deadlines required that EPA, in some cases, select demonstrated technologies for performance tests based on the Agency's technical judgement. This judgement considered the underlying principles of operation of the various technologies and any available data pertaining to the performance of these technologies on specific types of wastes. EPA's rationale for selecting a given technology is presented by treatability group in Section III.A.10. of this preamble.

4. Hazardous Constituents Considered and Selected for Regulation (BDAT List)

The target list of hazardous constituents to be regulated for all waste codes covered by today's rule is referred to by the Agency as the BDAT List. This BDAT List is derived from a composite of 396 compounds and/or classes of compounds that are presented in 40 CFR Part 261, Appendix VII and Appendix VIII. This composite number includes compounds selected by EPA as representatives of some of the classes. EPA then identified 175 of these 396 for which EPA could not perform an analysis of treatment performance due to one of three reasons: (1) EPA does not presently have an analytical method; (2) there are no analytical standards available for calibrating the instruments; or (3) the analytical method requires the use of an extraction solvent in which the compound would quickly dissociate (break down). The remaining 221 compounds comprise the BDAT List.

For certain treatability groups, the BDAT List was then shortened because it was unlikely that particular constituents would be present. EPA's rationale for shortening the BDAT List for a given waste code or waste treatability group is presented in the Sampling and Analysis Plan (SAP) developed for each Agency sampling visit. The SAP for each tested waste code can be found in the On-site Engineering Reports in the Docket for today's rulemaking.

The specific constituents that the Agency selected for regulation in each treatability group were, in general, those found in the untreated wastes at significant (i.e., treatable) concentrations. EPA does not propose to regulate constituents where data show that they would be effectively treated by use of BDAT and through the regulation of other constituents (i.e., treatment of the regulated constituent naturally results in treatment of other constituents). EPA's rationale for the selection of regulated constituents can be found in the BDAT background document for the treatability group (or waste code) in question.

In some cases, control of indicator pollutants or parameters serves as a means of assuring proper treatment performance. EPA has documented in the record when and why it has selected such indicator pollutants or parameters.

5. Compliance With Performance Standards

All of the treatment standards proposed in today's rule reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that the treatment level be achieved prior to land disposal. It does not require the use of any particular treatment technology. While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal, all treatment standards proposed today are expressed as a concentration level.

In today's rulemaking, EPA has used both total constituent concentration and TCLP analyses of the treated waste as a measure of technology performance. EPA's rationale for when each of these analytical tests is used is explained in the following discussion.

For all organic constituents, EPA is basing the treatment standards on the total constituent concentration found in the treated waste. EPA based its decision on the fact that technologies exist to destroy the various organic compounds. Accordingly, the best measure of performance would be the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

Note.—EPA's land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) uses the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for F001–F005, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP data were considered to be the best measure of performance.

For inorganic constituents, EPA is using either total constituent concentration, the TCLP, or in some cases, both, as the basis for treatment standards. EPA is using total constituent concentrations when the technology basis includes a metal recovery operation. The underlying principle of metal recovery is the reduction of the amount of metal in a waste by separating the metal for recovery; therefore, total constituent concentration in the treated residual is an important measure of performance for this technology. EPA also believes that it is important that any remaining metal in a treated residual waste not be in a state that is easily leachable; accordingly, EPA also is using the TCLP as a measure of performance. It is important to note that, for wastes where treatment standards are based on a metal recovery process, the waste has to meet both the total constituent concentration and the TCLP concentration prior to land disposal.

In cases where treatment standards for metals are not based on recovery techniques but rather on stabilization, EPA is using the TCLP as the measure of the treatment technology's performance. The Agency's rationale is that stabilization is not meant to reduce the concentration of metal in a waste but only to chemically and physically minimize the mobility of the metals in the waste. These are parameters measured by the TCLP protocol.

6. Identification of BDAT

A detailed discussion of the Agency's general methodology for establishing BDAT standards is provided in 51 FR 40572 (November 7, 1986) and is not reopened for comment here. This section discusses the specific application of the methodology to the First Third wastes, and provides a summary of some of the principal elements of the BDAT methodology.

As a first step in the development of BDAT treatment standards, EPA screened the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening step is consistent with EPA's promulgated approach in the November 7, 1986, rulemaking for solvent waste codes F001–F005. Also, this screening step recognizes the fact that different performance measures may be appropriate depending on the technology used (i.e., total constituent analysis for incineration versus TCLP for stabilization) as discussed earlier. EPA was able to emphasize the design and operation of the treatment system for the First Third wastes because its field tests have been modified to gather detailed data to support these analyses. As discussed earlier, the EPA field tests include data describing the operating conditions of the treatment unit during the time that treatment samples were collected.

After the initial screening test, EPA adjusted all treated data values based on the analytical recovery obtained in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg. In developing recovery data (also referred to as accuracy data), EPA would first analyze a waste for a constituent and then add a known amount of the same constituent (i.e., spike) to the waste material). The total amount recovered after spiking minus the initial concentration in the sample divided by the amount added is the recovery value.

After adjusting the data, EPA then averaged the performance values for the various treatment operations and compared the mean values using the analysis of variance test (ANOVA), as described in the November 7, 1986, preamble (see 51 FR 40591), to determine if one technology performed significantly better. EPA's decisions regarding selection of one technology over another that resulted from this methodology can be found in the "Identification of BDAT" sections that follow for each treatability group.

7. BDAT Treatment Standards for "Derived-From" and "Mixed" Wastes

a. *Applicability of BDAT to "Derived-From" Wastes from Treatment Trains Generating Multiple Residues.* In a number of instances in this proposed rule, the proposed BDAT consists of an operation or series of treatment operations which generate additional waste residues. For example, the proposed BDAT treatment for wastes K101 and K102 is based on incineration followed by metals (ash) stabilization. Incineration generates two residues requiring treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters (to remove metals) may generate further additional inorganic residues which also may require stabilization. Ultimately, these additional wastes may require land disposal and must, therefore, meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize the following points:

(1) All of the residues from treating the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2) (this point is discussed more fully in the subsection below). Consequently, all of the wastes generated in the course of treatment would be prohibited from land disposal unless they satisfy the treatment standard or meet one of the exceptions to the prohibition.

(2) The Agency's proposed treatment standards generally contain constituent concentrations for "wastewaters" and constituent concentrations for "nonwastewaters". The treatment standards apply to all of the wastes generated in treating the original prohibited waste. Thus, for example, all solids generated from treating K101 and K102 would typically have to meet the treatment standards for nonwastewaters and all wastewaters generated from treating these wastes would have to meet the treatment standards for wastewaters. (For the purposes of this rule, the Agency defines wastewaters as those wastes, mixed wastes, or derived-from wastes that contain less than 1% total organic carbon (TOC) and less than 1% filterable solids. Those wastes, mixed wastes or derived-from wastes that do not meet this definition are defined as nonwastewaters. A facility is not allowed to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard or vice versa.)

The Agency has not performed tests, in all cases, on every waste that can result from every part of the treatment train. However, the Agency's treatment standards are based on treatment of the most concentrated form of the waste. Consequently, the Agency believes that the less concentrated wastes generated in the course of treatment also will be able to be treated to meet these standards.

b. *Applicability of BDAT to Mixtures and Other "Derived-From" Residues.* There is a further question as to the applicability of the BDAT treatment levels to residues generated not from treating the waste (as discussed above), but generated instead from other types of management. Examples are

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contaminated soil, or leachate that is derived from managing the waste. In these cases, the mixture is still deemed to be the listed waste, either because of the derived-from rule, the mixture rule (40 CFR 261.3(a)(2)(iv)), or because the listed waste is contained in the matrix (see, e.g., 40 CFR 261.33(d)). The prohibition for the particular listed waste consequently applies to this type of waste.

The Agency believes that the majority of these types of residues can meet the treatment standards for the underlying listed wastes (with the possible exception of contaminated soil and debris for which the Agency is currently investigating whether it is appropriate to establish a separate treatability subcategorization). For the most part, these residues will be less concentrated than the original listed waste. By assuming that the values used to establish the treatment standard exhibit a lognormal distribution, the Agency is allowing for a reasonable amount of process variability in the generation and treatment of the waste. The waste also might be amenable to a relatively nonvariable form of treatment technology such as incineration. Finally, and perhaps most important, the rules contain a treatment variance procedure that allows a petitioner to demonstrate that its waste cannot be treated to the level specified in the rule (40 CFR 268.44(a). This provision provides a safety valve that allows persons with unusual waste matrices to demonstrate the appropriateness of a different standard. The Agency notes that to date it has not received any petitions under this provision (for example, for residues contaminated with a prohibited solvent waste), indicating, in the Agency's view, that the existing standards are generally achievable.

c. *Residues from Managing Listed Wastes, or that Contain Listed Wastes, are Covered by the Prohibitions for the Listed Waste.* In response to inquiries, EPA confirms its long-standing interpretation that residues (leachate, for example) that derive from treatment, storage, or disposal of wastes that were disposed before the effective date of the listing are nevertheless subject to the derived-from rule. These residues therefore could become subject to the land disposal ban for the listed waste from which they derive if they are managed actively after the effective date of the land disposal prohibition for the underlying waste. This result follows from direct application of the regulations and the statute.

First, hazardous waste listings are retroactive—that is, once a particular material is identified as a hazardous waste, all of that material, no matter when disposed, is a listed hazardous waste (albeit, not subject to Subtitle C regulations if in an inactive unit, and not subject to the land ban if disposed of before the ban effective date and not removed or exhumed thereafter). See CERCLA section 103(c) (owners of inactive sites that handled hazardous waste identified or listed by EPA, where the identification or listing occurred after the site was closed, must still notify EPA of their existence); 46 FR 22146, 22149 (April 15, 1981) (same); RCRA sections 3004(d)(3), 3004(e)(3), and 3020(b) (application of RCRA Subtitle C requirements to listed wastes and residues from CERCLA response actions, most of which involve wastes disposed of before the listing date); 50 FR 1994 (Jan. 14, 1985) (listing of dioxin-containing waste applies to waste and residues like contaminated soil, disposed before the listing effective date—and before the Subtitle C regulation effective date). Second, residues derived-from treating, storing, or disposing (including leaking—see, *e.g.* RCRA section 1004(3) and *United States* v. *Waste Industries, Inc.*, 743 F.2d 159, 164 (4th Cir. 1983)), of these wastes are also hazardous by virtue of the derived-from rule.

Thus, residues from managing First Third wastes, listed California list wastes, and spent solvents and dioxin wastes are all considered to be subject to the prohibitions for the underlying hazardous wastes. As explained above, this result stems directly from the derived-from rule in 40 CFR 261.3(c)(2), or in some cases because the waste is mixed with or otherwise contains the listed waste. The underlying principle stated in all of these provisions is that listed wastes remain hazardous until they are delisted.

Nor is there any argument that a residue from managing a listed waste is not considered to be the listed waste. For example, the Agency's historic practice in processing delisting petitions addressing mixed residuals has been to consider them to be the listed waste and to require that delisting petitioners address all constituents for which the original derived-from waste (or other mixed waste) was listed. The language in 40 CFR 260.22(b) states that mixtures or derived-from residues can be delisted provided a delisting petitioner makes the identical demonstration that a delisting petitioner would make for the underlying waste. These residues consequently are treated as the underlying listed waste for delisting purposes. The statute likewise takes this position, indicating that soil and debris that are contaminated with listed spent solvents or dioxin wastes are subject to the prohibition for these wastes even though these wastes are not the originally generated waste, but rather are a residual from the waste's management (RCRA section 3004(e)(3)). It is EPA's view that all such residues are covered by the existing prohibitions and by the treatment standards for the listed hazardous waste that these residues contain and from which they are derived.

8. Transfer of Treatment Standards

In today's notice, EPA is proposing some treatment standards that are not based on testing of the treatment technology of the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes for which EPA has previously developed treatment data. EPA believes transferring treatment performance for use in establishing treatment standards for untested wastes is valid technically in cases where the untested wastes are generated from similar industries or from similar processing steps. As explained earlier in this preamble, transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics. However, in the case where only the industry is similar, EPA more closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes.

EPA undertakes a two-step analysis when determining whether wastes generated by different processes within a single industry can be treated to the same level of performance. First, EPA reviews the available waste characteristic data for identifying those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents and other parameters needed to select the treatment technology appropriate for a given waste. A detailed discussion of each analysis, including how each parameter was selected for each waste, can be found in the background document for each waste.

Second, when an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, EPA then

analyzes a more detailed list of constituents that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process for each waste and constituent can be found in the BDAT background documents for each waste or waste treatability group.

9. No Land Disposal as the BDAT Treatment Standard

EPA is proposing "no land disposal" as BDAT for several of the First Third wastes. This standard is analogous to the no discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. It indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated.

An alternative to establishing no land disposal as BDAT would be to indicate that the BDAT treatment standard is a concentration level of "0" for all hazardous constituents. This appears to the Agency to be a less desirable way to proceed, given that the analytical limit of detection is always greater than zero. Given that technologies exist that make land disposal unnecessary, and that "0" really means the analytic detection limit and not truly zero, EPA thinks that specifying no land disposal as BDAT is a better way of expressing its intention.

The Agency notes that it could simply allow the statutory prohibition to take effect (at least by May 8, 1990, the date of the absolute statutory prohibition) to achieve the intended result of no land disposal. The drawback with this approach is that it allows no possibility of granting a variance from a treatment standard for those wastes that might not be amenable to the BDAT treatment technology. In the absence of a treatment standard, a facility would have to initially petition the Agency to establish a treatment standard for the waste, a more cumbersome and time-consuming process than applying for a variance under 40 CFR 268.44. This approach would also allow the waste to be land disposed until May 8, 1990, under the "soft hammer" of section 3004(g)(6) of RCRA. Accordingly, the Agency believes the best way to proceed is to establish "no land disposal" as the treatment standard.

EPA has recently learned that some F006, K022 and K083 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard proposed for these wastewaters would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which these wastes are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of F006, K022 and K083 wastes, and on the nature of the wastes being injected.

10. Waste Specific Treatment Standards

This section describes the development of BDAT treatment standards for all of the First Third treatability groups covered by today's rule. It includes tables showing the specific constituents regulated, as well as the treatment standards.

a. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

1. *Industry Affected and Waste Description.* The listed waste F006 is primarily generated by facilities in the electroplating or metal finishing industries. However, F006 is often generated by many industries where electroplating is a secondary operation. The Agency estimates that there are approximately 4,500 facilities that potentially generate F006. While this waste is generated in just about all portions of the United States, a large proportion of the facilities generating F006 are located in the Midwest, Northeast, and Southeast.

Electroplating has been broadly defined by the Agency to include electrodeposition of common and precious metals, anodizing, chemical conversion coating, electroless plating, immersion plating, chemical etching and milling, and printed circuit board manufacture (51 FR 43350). The overall process is usually conducted in a series of baths used for various operations such as degreasing, acid etching, prerinsing, passivation, electrodeposition, and/or product rinsing. These baths often generate wastewater streams containing metals, metal salts, acids, alkalis, and various bath control compounds. These wastewater streams are typically combined and treated to generate a precipitated, nonwastewater residual defined as F006. The treated wastewater is typically discharged to a POTW or to a surface water under a NPDES permit.

Untreated F006 wastes are typically aqueous sludges containing up to 60% by weight filterable solids comprised primarily of hydroxide or sulfide salts of the metals used in the electroplating process. Since at different plants, different combinations of metals are being plated and since a variety of rinse waters and bath solutions are mixed and treated in the wastewater treatment systems, concentrations of BDAT List metals can vary widely. Wastes identified as F006 are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* Because of the high water content of the waste, dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation have been identified as applicable technologies for reducing the water entrained in the waste. This generally will reduce the volume of solid residuals that require disposal. These technologies, however, are merely simple physical treatment technologies. The Agency does not believe that such technologies provide any significant treatment of the metals or cyanide contained in the sludge. Dewatering technologies are not designed to provide chemical binding of constituents. Thus, little reduction in leachability of metals and/or cyanide is achieved. However, dewatering can be considered an applicable technology when incorporated into a treatment train that includes wastewater treatment technologies such as chromium reduction, cyanide destruction, metals precipitation, settling, filtration (or centrifugation), and solidification.

The Agency has identified a few cases where metal recovery processes for F006 wastes have been performed. The concentrations and identity of metals in F006 wastes vary widely depending on the specific metals used in the plating process. The Agency has determined that while metal recovery processes are applicable technologies for some F006 wastes, at this time, it has not been able to define any particular subcategories of F006 wastes that would be amenable to

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a particular recovery process. EPA is currently investigating F006 wastes that are now being recovered, in order to determine the waste characteristics that would define these subcategories. Specifically, EPA is investigating high temperature metals recovery for these F006 wastes that contain greater than 2.5% zinc. EPA solicits comments and data that can be evaluated for this purpose.

EPA has identified stabilization as an applicable technology for treatment of nonwastewater forms of F006. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals. The Agency has data that indicate that this technology is both applicable and demonstrated for F006. EPA does not consider stabilization to be an applicable technology for the treatment of cyanide.

EPA has identified alkaline chlorination, wet air oxidation, ozonation, electrolytic oxidation, and other chemical oxidation as applicable technologies for the treatment of cyanide contained in F006 wastes. All of these technologies are designed to destroy cyanide by converting it to carbon dioxide and nitrogen gas. The Agency is currently investigating the use of these technologies for F006 wastes that contain treatable quantities of cyanide to establish that it is demonstrated for these wastes.

3. *Data Base.* The Agency has nine TCLP data points for nonwastewater F006 (sludges) treated at a commercial treatment, storage, and disposal facility using a stabilization technology. Cement kiln dust was used as the chemical binding agent. All of the data points appear to represent well-designed and well-operated treatment. These data points were used for the development of the BDAT treatment standards for the metal constituents.

The Agency has three TCLP data points for nonwastewater F006 (sludges) treated at a generator's facility using a stabilization technology. Analysis of the quality assurance information for this data was incomplete at the time of this proposal. Therefore, these data points were not used for the development of the BDAT treatment standards for the metal constituents. This data is presented in the background document for this waste.

4. *Identification of BDAT.* BDAT for nonwastewater F006 (sludges) was determined to be stabilization for the metal constituents. Data and information submitted by the commercial hazardous waste treatment industry indicates that this technology is being widely used throughout the United States. EPA has determined that this technology is both applicable and demonstrated for nonwastewater F006 sludges. The Agency currently has no data demonstrating any other treatment or recycling technology for metal constituents that would be applicable to all F006 wastes. Stabilization is judged to be available to treat the metal constituents of F006 wastes because (1) it is commercially available or can be purchased from the technology developer and (2) it provides a substantial reduction in the leaching potential of hazardous constituents.

BDAT for F006 wastes that also contain cyanide is stabilization of the metal constituents preceded by a pretreatment step to destroy the cyanide. The Agency is currently investigating the use of technologies such as alkaline chlorination, wet air oxidation, ozonation, electrolytic oxidation, and other chemical oxidation as applicable technologies for F006 wastes that contain treatable quantities of cyanide. EPA will confirm these technologies as BDAT when this data becomes available.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as F006 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i) *Nonwastewaters.* For wastes identified as F006 nonwastewaters, EPA is proposing to regulate twelve constituents from the BDAT List as indicators of effective treatment of these wastes. Eleven of these are metal constituents including antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, selenium, silver, and zinc. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment information for antimony, arsenic, barium, selenium and cyanide. Therefore, as noted above, the Agency is proposing to reserve BDAT standards for antimony, arsenic, barium, selenium and cyanide until this evaluation can be completed.

(ii) *Wastewaters.* F006 waste is a sludge consisting of precipitated residues generated following treatment of electroplating wastewaters. The treated wastewater is typically discharged to a POTW or to a surface water under a NPDES permit. No additional wastewater is typically generated during the stabilization of nonwastewater F006 sludges.

EPA recognizes that wastewater forms of F006 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from a treatment process such as sludge dewatering or a process other than stabilization (one that can achieve the same performance). Since generation of these types of wastewaters may occur, the Agency is, therefore, proposing a "treatment standard" for F006 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few, if any, petitions for a variance will be submitted because facilities generally will discharge these wastewaters to a POTW or surface water under a NPDES permit. However, EPA solicits comments from any facility that believes that elimination of land disposal of these wastewaters is not feasible and that numerical treatment standards should be promulgated.

EPA has recently learned that some F006 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which F006 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of F006 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Antimony	(1)	(2)
Arsenic	(1)	(2)
Barium	(1)	(2)
Cadmium	(1)	0.066
Chromium (Total)	(1)	3.8
Copper	(1)	0.71
Lead	(1)	0.53
Nickel	(1)	0.31
Selenium	(1)	(2)
Silver	(1)	0.26
Zinc	(1)	0.086
Cyanide	(2)	(2)

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR F006

[Wastewaters]

NO LAND DISPOSAL

b. K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

1. *Industry Affected and Waste Description.* The listed waste K001 is generated by facilities in the wood preserving industry. The Agency estimates that there are approximately 400 facilities that have wood preserving processes that could potentially generate K001 waste. While this waste can be generated in just about all portions of the United States, a large proportion of the facilities generating K001 are located in the Southeast, Northwest, and Central parts of the United States.

The preservation of wood using creosote and/or pentachlorophenol generates wastewaters containing hazardous constituents present in the preservatives. The treatment by any means (including simple settling) of these wastewaters generates the listed waste K001.

Untreated K001 sludges consist of approximately 35% soil, 20% water, and 25% total organics. The organic constituents present in the wastes include pentachlorophenol, creosote, phenolics, polynuclear aromatics, and some nonhalogenated volatiles. These wastes also contain less than 1% BDAT List metals. K001 wastes are characterized by their high filterable solids concentration and high organic content. These wastes are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified incineration in a rotary kiln followed by stabilization of the resultant incinerator ash as applicable technologies for treatment of all nonwastewater forms of K001. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids that are difficult to atomize through a liquid injector. Many rotary kiln incinerators are also designed to simultaneously incinerate other liquid wastes or supplemental fuel. The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction of sludges, solids, or tarry wastes is potentially applicable to these wastes. However, the Agency believes that the performance of rotary kiln incineration attains the performance achievable by other thermal destruction technologies that are well designed, well operated, and can handle sludges of this type. These incinerators generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are often generated and are classified as wastewaters. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

EPA has identified stabilization as an applicable technology for treatment of certain nonwastewater forms of K001. These include precipitated residues from the treatment of wastewaters (such as scrubber waters), as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

The Agency has also identified a wastewater treatment system as an applicable technology for removal of metals from wastewater residuals (such as scrubber waters) generated during treatment or handling of the nonwastewater forms of K001, followed by stabilization of the solid wastewater treatment residues. This wastewater treatment system includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for nonwastewaters.

EPA has not identified any facility currently performing incineration and metals (ash) stabilization of K001 on a commercial scale. However, EPA believes this technology is demonstrated for K001 in that it is being used to treat wastes similar to K001. EPA has confirmed this judgment by using a test facility to incinerate representative samples of K001 wastes.

3. *Data Base.* For K001 waste, the Agency tested rotary kiln incineration at two facilities. The Agency has nine data sets for incineration of K001 waste collected from two facilities representing both creosote waste and pentachlorophenol waste. Data collected during the testing of rotary kiln incineration technologies show that the treatment systems were well operated. The treatment residuals from rotary kiln incineration (ash and scrubber water) are expected to contain metals in treatable concentrations. The Agency has data for stabilization of metals in other incinerator ash and for chemical precipitation of BDAT List metals in wastewaters.

The Agency examined all available treatment data for stabilization of similar incinerator ash as well as chemical precipitation for similar wastewaters. These data were used to develop treatment standards for BDAT List metals in the treatment residuals.

4. *Identification of BDAT.* EPA has determined that the treatment train consisting of rotary kiln incineration followed by stabilization of nonwastewater residuals, and chemical

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precipitation of metals for wastewater residuals from incineration, achieves a level of performance that represents treatment by BDAT. The Agency believes that these technologies are available to treat K001 because (1) these technologies are commercially available technologies and (2) incineration provides substantial reduction of organic hazardous constituents, stabilization reduces the leachability of metals in the nonwastewater residual, and chemical precipitation removes BDAT List metals from the wastewater residual.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K001 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

The Agency has recently become aware that data exist that indicate the presence of trace levels of polychlorinated dibenzofurans and polychlorinated dibenzodioxins in some K001 wastes. At the time of this proposal, EPA has not completed its evaluation of these data and thus, defers its decision to regulate these constituents as indicators of BDAT performance until after this evaluation can be completed.

(i) *Nonwastewaters.* For wastes identified as K001 nonwastewaters, EPA is proposing to regulate six BDAT List organic constituents as indicators of effective incineration of these wastes. These include naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, and xylenes. EPA is also proposing to regulate three metal constituents, copper, lead and zinc, as indicators of effective stabilization of these wastes (based on data from the stabilization of the ash from incineration). EPA's proposed standard for pentachlorophenol is the result of a relatively high analytical quantitation limit observed for this particular K001 waste. EPA solicits data reflecting the quantitation limits attainable in other K001 wastes.

(ii) *Wastewaters.* For wastes identified as K001 wastewaters, EPA is proposing to regulate the same six BDAT List organic constituents as indicators of effective destruction of organics in the combustion unit, thus preventing accumulation of organics in scrubber waters. EPA is also proposing to regulate copper, lead and zinc as indicators of effective precipitation of metal constituents from these scrubber waters.

BDAT TREATMENT STANDARDS FOR K001

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Naphthalene	7.98	[1]
Pentachlorophenol	36.75	[1]
Phenanthrene	7.98	[1]
Pyrene	7.28	[1]
Toluene	0.143	[1]
Xylenes	0.162	[1]
Copper	[1]	0.71
Lead	[1]	0.53
Zinc	[1]	0.066

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K001

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Naphthalene	0.148	[1]
Pentachlorophenol	0.675	[1]
Phenanthrene	0.148	[1]
Pyrene	0.140	[1]
Toluene	0.143	[1]
Xylenes	0.161	[1]
Copper	0.42	[1]
Lead	0.037	[1]
Zinc	1.9	[1]

[1] Not applicable.

c. K022—Distillation bottom tars from the production of phenol/acetone from cumene.

1. *Industry Affected and Waste Description.* The listed waste K022 is generated by facilities in the organic chemicals manufacturing industry. The Agency estimates that there are eight facilities that have this specific production process that could potentially generate K022 waste. These are located in the Eastern, Central, and Southern parts of the United States.

The cumene hydroperoxide process used in manufacturing acetone and phenol from cumene involves: (1) Oxidation of cumene to a concentrated cumene hydroperoxide; (2) acid cleavage of the hydroperoxide to phenol and acetone along with a variety of other products (e.g., cumylphenols, acetophenone, dimethylphenylcarbinol, and alpha methylstyrene); (3) neutralization of the cleaved products with sodium hydroxide or other suitable base or with ion-exchange resins; and (4) separation of the phenol and acetone using a series of distillation columns. The still bottoms from the distillation columns are RCRA waste K022.

As initially generated, K022 wastes are still bottoms that are typically pumped directly from the distillation unit as viscous organic liquids, while they remain hot. Upon cooling, the viscosity of the waste will increase and K022 can become tarry and viscous. It can be kept fluidized by mixing it with various light hydrocarbons, waste olefinic oils or solvents. If not fluidized or kept hot, the waste will eventually harden into an organic solid. K022 consists primarily of partially polymerized phenolics. Major constituents include acetophenone, phenol, and cumyl phenol. A total carbon content of approximately 82–89% makes the waste an excellent fuel substitute with a very high heat content reported as high as 35,300 BTU per pound. A low ash content and a low chlorine content are further indications of its usefulness as a fuel substitute. BDAT List organic constituents reported in significant concentrations are acetophenone, and phenol. Two other BDAT list constituents also were identified in the raw waste from one plant but were claimed as confidential business information. Wastes identified as K022 are typically generated as still bottoms that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution and liquid injection incineration as applicable technologies for treatment of BDAT List organics contained in nonwastewater K022 wastes. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals with sufficient heat content (BTU per pound). It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K022 in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid injection incinerators. These thermal destruction units often generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are not typically generated from the units using K022 as a fuel substitute. If they were generated, they would be classified as wastewaters. Both of these residues, if generated, must meet the BDAT treatment standards prior to placement in land disposal units.

EPA has identified stabilization as an applicable technology for treatment of BDAT List metals contained in the inorganic nonwastewater forms of K022. These include precipitated residues from the treatment of wastewaters (mixed with or derived from K022 wastes), as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

The Agency has determined that six of the eight facilities that generate K022 are subsequently using the waste as a fuel substitute. The Agency has data that indicate incineration can achieve treatment levels similar to these fuel substitution processes on wastes with similar waste characteristics. Therefore, the Agency has determined that both fuel substitution and incineration are demonstrated for K022 nonwastewaters.

3. *Data Base.* For waste code K022, the Agency has treatment data from two facilities using fuel substitution. EPA has twelve untreated and treated data points.

4. *Identification of BDAT.* EPA has determined that fuel substitution followed by metals (ash) stabilization and metals precipitation of scrubber water achieves a performance level that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K022. While no specific data are available on incineration of K022 in a rotary kiln, EPA believes that it would achieve the same level of performance as fuel substitution. This treatment system is judged to be available to treat K022 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of BDAT List organic constituents in K022.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K022 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by volume basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i) *Nonwastewaters.* For wastes identified as K022 nonwastewaters, EPA is proposing to regulate eight constituents from the BDAT List as indicators of effective treatment of these wastes. These include toluene, acetophenone, phenol, diphenylamine, diphenyl nitrosamine, sulfide, nickel and total chromium. The standard for diphenylamine and diphenylnitrosamine is listed as the sum of these constituents. This is necessary because the two compounds cannot be distinguished using EPA's standard analytical testing procedure. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for sulfide. Therefore, the Agency is proposing to reserve a standard for sulfide until this evaluation can be completed.

A sample of untreated ash from the burning of K022 as a fuel substitute was analyzed for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins. A trace amount (parts per trillion) of tetrachlorodibenzofurans (TCDF) was detected in this sample. This amount was determined to be below the typical BDAT quantitation level for these compounds. Therefore, the Agency is not proposing a treatment standard for TCDF. The Agency is currently reexamining the validity of the quantification of this analysis. K022 wastes do not typically have any chlorinated organics that could be the source or precursor of the TCDF. The Agency is investigating potential mechanisms for its formation due to the presence of other chlorinated organics in the wastes that were blended with the K022.

(ii) *Wastewaters.* No scrubber waters are typically generated during the use of nonwastewater K022 as a fuel substitute. No additional wastewater is typically generated during the stabilization of the resultant ash residues. EPA recognizes that wastewater forms of K022 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from an incineration process that does generate a scrubber water. Since generation of these types of wastewaters may occur, the Agency is therefore, proposing a "treatment standard" for K022 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few petitions for a

variance will be submitted. However, EPA solicits comments from facilities that believe that land disposal of K022 wastewaters is unavoidable.

EPA has recently learned that some K022 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which K022 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of K022 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARD FOR K022

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetophenone	19.0	(1)
Phenol	12.0	(1)
Toluene	0.034	(1)
Sum of diphenylamine and diphenylnitrosamine	13.0	(1)
Sulfide	Reserved	(1)
Chromium (Total)	(1)	3.4
Nickel	(1)	0.25

[1] Not applicable.

BDAT TREATMENT STANDARD FOR K022

[Wastewaters]

[No land disposal]

d. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.

1. *Industry Affected and Waste Description.* The listed waste K046 is generated by facilities in the explosives manufacturing industry. The Agency estimates that there are approximately 150 facilities that have processes that could potentially generate treatment sludges identified as K046. Approximately 35 of these are government owned military facilities. While these wastes are generated in just about all portions of the United States, a large proportion of the nonmilitary facilities are located in California, Utah, Missouri and Pennsylvania and the military facilities are located primarily in Tennessee, Wisconsin, Virginia and Illinois.

Wastewaters are produced during various stages in the manufacture and formulation of lead-based initiating compounds (ones that initiate other explosives) and during the fabrication of these compounds into finished products (such as ammunition). These wastewaters are contaminated with these initiating compounds and with other feedstock chemicals. The wastewater is treated by boiling and/or addition of caustic to decompose residual explosive material. A sludge is generated from this wastewater treatment and is identified as the listed waste K046.

K046 wastewater treatment "sludges" are typically generated as a fluid mixture consisting of approximately 95% by weight water and total organic carbon content of approximately 460 ppm. The primary BDAT List constituent in K046 is lead. Wastes identified as K046 are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified stabilization as an applicable technology for treatment of nonwastewater forms of K046. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

EPA has not identified any facility currently performing stabilization of K046 on a commercial scale. EPA believes stabilization is demonstrated for K046, in that, it is being used to treat wastes that EPA believes have treatability characteristics similar to K046. EPA has confirmed this judgment by using a test facility to stabilize this waste.

3. *Data Base.* The Agency has ten data sets for K046 nonwastewaters. Data were collected by the EPA at a single test facility that employs stabilization using various binder materials. The ten data points for K046 waste were obtained using the Toxicity Characteristic Leaching Procedure and appear to represent proper design and operation. These data points were considered in the development of the treatment standards for K046.

4. *Identification of BDAT.* EPA has determined that the performance achieved by stabilization represents treatment by BDAT. The Agency performed an analysis of variance test for TCLP performance levels achieved by stabilization using three different binder materials: Portland cement, kiln dust, and lime/flyash. The results show that stabilization using Portland cement binder provides significantly better reduction with regard to the concentrations of metals in the leachate than the other two binder materials tested. Stabilization is judged to be available to treat K046 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the leachable levels of BDAT List metals present in the K046 wastes.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K046 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i). *Nonwastewaters.* For wastes identified as K046 nonwastewaters, EPA is proposing to regulate only lead as an indicator of effective treatment of these wastes. The Agency is also proposing a treatment standard of "No Land Disposal" for K046 nonwastewaters that are explosive. If a K046 waste is explosive and remains explosive after treatment by solidification it should meet the same requirements as the explosive wastes identified as K044, K045 and K047. The Agency specifically requests comments on this approach.

(ii) *Wastewaters.* No additional wastewater is typically generated during the stabilization of nonwastewater K046 sludges. EPA recognizes that wastewater forms of K046 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from dewatering or a treatment process other than stabilization (one that can achieve the same performance). Since generation of these types of wastewaters may occur, the Agency is therefore, proposing a "treatment standard" for K046 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few, if any, petitions for a variance will be submitted because these wastewaters usually will be discharged to a POTW or to surface waters following treatment to meet NPDES requirements.

BDAT TREATMENT STANDARDS FOR K046

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Lead	(1)	0.176

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K046

[Wastewaters and Explosive Nonwastewaters]

No Land Disposal

e. K083—Distillation bottoms from aniline production.

1. *Industry Affected and Waste Description.* The listed waste K083 is generated by facilities in the organic chemicals manufacturing industry. The Agency estimates that there are six facilities that have this specific production process that could potentially generate K083 waste.

Aniline is produced almost exclusively by the vapor-phase reduction of nitrobenzene in the presence of a copper catalyst. In a typical process, nitrobenzene is vaporized and fed with excess hydrogen into a reactor. The crude product mixture leaving the reactor consists primarily of aniline, water, hydrogen and some unreacted nitrobenzene. This mixture is condensed to separate the aniline/water mixture from the hydrogen gas stream. The two-phase aniline/water mixture is then separated in a decanter and the aniline phase is purified by a two-stage distillation process. The heavy ends from the distillation process is the listed waste K083.

Untreated K083 wastes are viscous organic liquids consisting of 45 to 85% by weight of a mixture of aniline, diphenylamine, nitrobenzene, phenylenediamine, and benzene. It also contains approximately 15 to 55% by weight of other unidentified organics. The BDAT List organic constituents of concern include aniline, phenylenediamine, diphenylamine, nitrobenzene and benzene. The heat content of the waste is approximately 13,500 BTU per pound. The total organic halogen content of K083 has been reported to range from 0.03 to 0.3% (as Chlorine). Copper is the only metal anticipated to be present and has been measured at 2.5 ppm.

2. *Applicable/Demonstrated Treatment Technology.* The Agency has identified liquid injection incineration and fuel substitution as applicable technologies for the nonwastewater forms of K083. These technologies have been selected due to the high heat (BTU) content, the low halogen content, the low metal content, and the fact that the waste can be handled as a liquid.

EPA has identified fuel substitution as an applicable technology for treatment of liquid forms of nonwastewater K083. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have reasonably high concentrations of organic chemicals in order to have sufficient heat content. It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K083 in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid incinerators. Ash residues and scrubber waters are not typically generated using these fuel substitution processes.

EPA has identified incineration in units with liquid injection as an applicable technology for treatment of nonwastewater forms of K083. Many incinerators are designed specifically to handle only liquid wastes, while others are designed to handle both liquids and solids (or sludges). The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology that is designed for thermal destruction of liquids is potentially applicable to these wastes. However, the Agency believes that the performance of liquid injection incinerators attains the performance achievable by other thermal destruction technologies that are well designed and well operated. While many liquid incinerators generate ash residues and scrubber water residues, the Agency believes that all of the facilities that currently incinerate K083 or use K083 as a fuel substitute are not generating either of these residue types.

Liquid injection incineration has been demonstrated on a commercial basis for the treatment of K083 at two of the facilities that generate K083. Fuel substitution in a steam boiler has been demonstrated on a commercial basis at one of the facilities that generates K083.

3. *Data Base.* The Agency visited one facility that employs liquid injection incineration as a treatment for the listed waste K083. According to plant personnel, no residual ash or scrubber wastewaters are generated from this treatment technology. The analyses of the ash content of untreated K083 confirmed that no ash could be detected below the limit of 0.01% by weight. This facility did not have a vent scrubber or other pollution control device on the liquid injection incinerator and, therefore, did not generate any scrubber water.

4. *Identification of BDAT.* EPA has determined that the performance achieved by liquid injection incineration or fuel substitution represents treatment by BDAT. EPA has determined that liquid injection incineration of K083 can be accomplished without generating any residuals, either ash or scrubber water. Therefore, the level of performance achieved by liquid injection incineration obviously cannot be improved upon. Liquid injection incineration has been demonstrated on a commercial basis. The Agency also believes this technology is available because: (1) This technology is commercially available or can be purchased from a proprietor and (2) this technology achieves substantial reduction of the hazardous organic constituents present in waste K083. Fuel substitution of K083 is also considered by the Agency to be BDAT. Fuel substitution has been demonstrated on a commercial basis.

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5. *Regulated Constituents and Treatment Standards.* The Agency is proposing that, since no residuals are anticipated from the use of either BDAT technology, the BDAT "treatment standard" for wastes identified as K083 is "No Land Disposal". The Agency recognizes that the possibility exists that these wastes may be generated at a CERCLA site, during a corrective action at a RCRA facility, or from the use of a treatment technology that does produce a residual. By establishing the standard as "No Land Disposal", a facility that does generates a treatment residual, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few petitions for a variance will be submitted.

EPA strongly urges facilities that have K083 wastes that they believe will generate a treatment residual, to comment on this rule. Specifically, comments should provide the following: (1) Reasons why the K083 waste generated at their site is believed to be different than the waste described in this preamble; (2) a description of the treatment technology currently being used to treat the K083 generated at their site; and (3) analytical data, including analyses for total constituents, on the residuals (either ash or scrubber water) that are generated by the treatment technology.

EPA has recently learned that some K083 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which K083 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of K083 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters and Wastewaters]

No Land Disposal

f. K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

1. *Industry Affected and Waste Description.* The listed waste K086 is generated by facilities in the ink formulation industry. The Agency estimates that there are approximately 460 facilities that formulate ink and may potentially generate K086 waste. While this waste can be generated in just about all portions of the United States, a large proportion of the facilities generating K086 are located in California, New Jersey, and in states surrounding the Great Lakes.

By definition K086 wastes can be from one of three major subcategories (depending on the material used for washing). These are: (1) Solvent washes; (2) solvent sludges; and (3) caustic/water washes and sludges. However, EPA is not establishing treatment standards at this time for the latter two subcategories. Thus, the discussion that follows relates only to the solvent washes subcategory. K086 solvent washes can also vary depending upon which solvent is used to clean the ink formulating equipment. The principal solvents used include acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and xylenes. It is important to note that some of these solvents also fall under the F001–F005 solvent listings. In such cases, the treatment standards for the F001–F005 wastes that were promulgated in November, 1986, are already in effect. It should be noted, however, that elsewhere in this notice, the Agency is proposing to modify one of the solvent standards. This change is not expected to impact the standards applicable to ink formulators.

For the purposes of investigating BDAT, the solvent washes subcategory is defined as those K086 wastes which are derived from processes which have used any of the following chemicals as a solvent: Acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and/or xylenes.

The solvent washes usually contain relatively high concentrations of the cleaning solvents used and low concentrations of solids. The solvent sludges contain relatively high concentrations of solids. This difference in solids content changes the applicability of the type of incineration unit or fuel substitution unit that would be necessary to destroy the organic constituents in the waste.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution as an applicable technology for treatment of K086 solvent washes. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals in order to have sufficient heat content. It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K086 as a fuel in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid incinerators. Any treatment residues generated from the use of these fuel substitution processes must meet the BDAT treatment standards prior to placement in land disposal units.

Batch distillation and fractional distillation can be used to separate components having different boiling points. Distillation technologies can be used to recover solvents from the solvent washes subcategory. These technologies reduce the amount of material to be treated; nevertheless, the bottoms from this process would require treatment by incineration prior to land disposal.

EPA has identified incineration in units with liquid injection as an applicable technology for K086 solvent washes as well as incineration in a rotary kiln. Liquid injection incinerators are designed to only handle liquid wastes. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids but, simultaneously can also incinerate injected liquid wastes. The purpose of all incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction is potentially applicable to these wastes. However, the Agency believes that the performance of liquid injection incinerators attains the performance achievable by other thermal destruction technologies that are well designed and well operated. For the purposes of BDAT, any solid ash residues are classified as nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the BDAT treatment standards for the K086 solvent washes subcategory prior to placement in land disposal units.

EPA has determined that the applicable technology for scrubber waters is a wastewater treatment system that includes a hexavalent chromium reduction step to convert any hexavalent chromium to the trivalent state and a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for K086 nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of K086 nonwastewater residues that do not meet the BDAT standards for K086. These include precipitated residues from the treatment of K086 scrubber waters, as well as ash residues which may be potentially generated from either incineration or fuel subtitution. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are considered nonwastewaters. The Agency believes that the majority of these processes do not generate residuals that are considered wastewaters.

3. *Data Base.* The Agency's preference is for total recycling for the K086 solvent washes. However, residues from batch distillation are still bottoms that need additional treatment (i.e., incineration and stabilization) prior to land disposal. Therefore, the Agency tested incineration for treatment of the K086 solvent washes subcategory.

At an EPA testing facility, K086 wastes from the solvent washes subcategory were incinerated in a rotary kiln/liquid injection incinerator. The data were collected by EPA at its in-house facility. Operating data collected during the treatment test show that the facility was properly operated during the time that the waste was being treated. Treatment standards for the BDAT List metals are being transferred from wastewater metals treatment data for similar wastes that have been previously developed by the Agency.

4. *Identification of BDAT.* Incineration is demonstrated for treatment of BDAT List organics in K086 solvent washes. The resultant quench waters or scrubber waters are, for the purposes of BDAT, classified as wastewaters. Treatment for the removal of BDAT metals contained by these wastewaters will result in a sludge, which for the purposes of BDAT, are classified as nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

Incineration of BDAT List organics contained in the solvent washes generated a scrubber water that contained BDAT List Metals. EPA does not have treatment data specifically for treatment of this scrubber water. The Agency does have performance data on a metal bearing wastewater judged to be similar to the K086 scrubber water. These data consist of eleven data points from one facility using chromium reduction followed by lime precipitation and sludge filtration. The BDAT List metals contained by the solid residual generated from this treatment system did not require further treatment because TCLP leachate concentrations were not found at treatable levels.

These technologies are judged to be available to treat these wastes because: (1) They are commercially available or can be purchased from a proprietor and (2) they provide substantial reduction of the concentration of hazardous constituents released into the environment.

5. *Regulated Constituents and Treatment Standards.* As noted above, the Agency is not, at this time, proposing treatment standards for K086 wastes in (1) the solvent sludges subcategory or (2) the caustic/water washes and sludges subcategory. Since no standards are being proposed for these subcategories, the "soft hammer" provisions apply.

For the purposes of proposing BDAT treatment standards, the solvent washes subcategory is defined as those K086 wastes which are derived from processes which have used any of the following chemicals as a solvent: Acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and/or xylenes. These solvents are chemicals on the BDAT List that are typically used in rinsing inks and could become K086 wastes.

The proposed regulated constituents and BDAT treatment standards for wastes identified as K086 in the solvent washes subcategory are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be controlled by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/1 (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/1 (or parts per million on a weight by volume basis).

The Agency has data that suggests that approximately sixteen different BDAT List solvents could be used to clean ink formulating equipment. EPA is concerned that regulation of only the solvents that were found in the tested waste matrix would present an incentive to simply switch to the use of other solvents. For this reason, EPA is proposing to regulate all sixteen BDAT List solvents. EPA transferred the performance data achieved for some of these sixteen solvents from performance data for other solvents that had similar physical and chemical properties. The Agency believes that the solvents that have been determined to be similar, can be incinerated to the same treatment concentrations. Details on the transfer of standards can be found in the BDAT Background Document for this waste code. EPA solicits comments on this transfer of performance data. The

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comments should provide data that document that the proposed BDAT treatment standards are not achievable.

For wastes identified as K086 nonwastewaters and wastewaters in the solvent washes subcategory, EPA is proposing to regulate seventeen organic constituents and two metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include acetone, n-butyl alcohol, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, toluene, 1,1,1,-trichloroethane, trichloroethylene, xylenes, bis(2-ethylhexyl)phthalate, cyclohexanone, 1,2-dichlorobenzene, naphthalene, nitrobenzene, total chromium, and lead.

BDAT TREATMENT STANDARDS FOR K086

[Nonwastewaters; solvent washes subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetone	0.37	(1)
n-Butyl alcohol	0.37	(1)
Ethyl acetate	0.37	(1)
Ethyl benzene	0.031	(1)
Methanol	0.37	(1)
Methyl isobutyl ketone	0.37	(1)
Methyl ethyl ketone	0.37	(1)
Methylene chloride	0.037	(1)
Toluene	0.031	(1)
1,1,1-Trichloroethane	0.044	(1)
Trichloroethylene	0.031	(1)
Xylenes	0.015	(1)
bis(2-ethylhexyl)phthalate	0.49	(1)
Cyclohexanone	0.49	(1)
1,2-Dichlorobenzene	0.49	(1)
Naphthalene	0.49	(1)
Nitrobenzene	0.49	(1)
Chromium (Total)	(1)	0.094
Lead	(1)	0.37

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K086

[Wastewaters; solvent washes subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetone	0.015	(1)
n-Butyl alcohol	0.031	(1)
Ethyl acetate	0.031	(1)
Ethyl benzene	0.015	(1)
Methanol	0.031	(1)
Methyl isobutyl ketone	0.031	(1)
Methyl ethyl ketone	0.031	(1)
Methylene chloride	0.031	(1)
Toluene	0.029	(1)
1,1,1-Trichloroethane	0.031	(1)
Trichloroethylene	0.029	(1)
Xylenes	0.015	(1)
bis(2-ethylhexyl)phthalate	0.044	(1)

BDAT TREATMENT STANDARDS FOR K086—Continued

[Wastewaters; solvent washes subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyclohexanone	0.022	(1)
1,2-Dichlorobenzene	0.044	(1)
Naphthalene	0.044	(1)
Nitrobenzene	0.044	(1)
Chromium (Total)	0.32	(1)
Lead	0.037	(1)

[1] Not applicable.

g. K087—Decanter tank tar sludge from coking operations.

1. *Industry Affected and Waste Description.* The listed waste K087 is generated by facilities in the coking industry. The Agency estimates that there are 36 facilities that have coking plants with decanter tanks and, therefore, could potentially generate K087 waste. The majority of these facilities are located in the Eastern United States.

In the production of coke, gases evolved from the coke ovens are collected and subsequently cooled. The condensates and any entrained particulates are channeled to a decanter tank where tar products and ammonia liquor are separated. The heavy residue (sludge) that settles to the bottom of the tank is K087 waste.

K087 waste generally contains from six to eleven percent water and 89 to 94 percent organic compounds, up to twenty percent of which are BDAT List semivolatile organics. The principal BDAT List metals present are arsenic, lead, copper, and zinc; the maximum concentrations for these metals measured in these wastes are 6, 85, 5, and 66 ppm, respectively. The waste, a viscous semisolid tar, has a heating value of approximately 15,000 Btu/lb.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution and rotary kiln incineration as applicable technologies for treatment of K087 nonwastewaters. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals with sufficient heat content (BTU per pound). It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K087 in a well designed and well operated high temperature industrial furnace or kiln attains the performance achievable by other thermal destruction units such as rotary kiln incinerators. These thermal destruction units often generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters, from air pollution control devices of units using K087 as a fuel substitute, generally contain less than 1% TOC and less than 1% filterable solids and, therefore, are classified as wastewaters for the purposes of BDAT. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

Total recycling has been identified as a potentially applicable technology for K087 wastes. Total recycling involves treating the K087 waste for (1) reuse in the coke ovens or (2) production of a commercial tar product. Treatment prior to reuse frequently involves mixing the waste with a flushing liquor, grinding in a ball mill, and mixing the milled material with coal. This K087/coal mixture is fed back to the coke ovens for coke production. Alternatively, the waste may be added to hot tar, ground in a ball mill, and packaged as a saleable product. At this time, however, EPA has little data available to define which K087 materials can be benefically recycled. Specific data were submitted by the American Iron and Steel Institute (AISI) to the EPA with respect to the practice of recycling K087 wastes (See Wednesday, May 6, 1987, FR 17019 and 17020). These data characterize the final products (e.g. coal tar and coke) that result from recycling of K087 and from processing that did not involve recycling. Only one data point from AISI characterized the raw K087 decanter tar sludge. Therefore, the Agency solicits comments and data to assist in definition of K087 wastes that can be recycled.

Wastewater residuals are generated by some of the technologies that are designated as applicable to the nonwastewater forms of K087. The applicable technology for these wastewaters is a wastewater treatment system that includes a chemical precipitation step to remove metals from solution and precipitate them as a solid residue and a filtration step to remove these solids. This wastewater treatment system results in a solid residue that generally contains greater than 1% filterable solids and is considered, for the purposes of BDAT, a nonwastewater. This solid residue must conform with the treatment standards for nonwastewaters. As described below, further application of a stabilization process to this residue may be necessary in order to meet the BDAT standards for metals proposed for nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of BDAT List metals constituents in the nonwastewater K087 wastes identified as treatment residuals. These nonwastewaters include precipitated residues from the treatment of wastewaters forms of K087, and ash residues from incineration or fuel subtitution of K087, and any other nonwastewaters resulting from the "mixture" or "derived-from" rules. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

All of the applicable technologies for BDAT List organics in K087 waste are demonstrated. Data submitted by industry indicate that recycling and fuel substitution are commonly practiced. EPA has identified seven facilities that use recycling and one facility that uses fuel substitution, and believes many other facilities also use these technologies. The Agency has identified one facility that has used rotary kiln incineration of K087 wastes and three generators that send their wastes offsite for multiple hearth incineration of their K087 wastes.

3. *Data Base.* For K087 nonwastewaters, the Agency has five treated data points (ash residues) showing treatment of BDAT List organics by rotary kiln incineration of K087 at an EPA test facility. Also, the Agency has stabilization performance data using lime and fly ash as binders from the treatment of wastes judged to have similar chemical and physical characteristics to K087 ash residues. These stabilization data demonstrate treatment for BDAT List metals.

For K087 wastewaters, the Agency has six treated data points showing the treatment of BDAT List organics by rotary kiln incineration. Also, the Agency has eleven data points showing the treatment of BDAT List metals by chemical precipitation followed by sludge filtration from the treatment of wastes judged to have similar chemical and physical characteristics to K087 scrubber waters.

4. *Identification of BDAT.* EPA is proposing rotary kiln incineration as BDAT for BDAT List organics. EPA is soliciting comments and data that support the fact that total recycling can be accomplished for some subcategory of K087. If EPA receives comments and data that support a determination that total recycling can be accomplished, then EPA will promulgate "No Land Disposal" as a BDAT treatment standard for that subgroup of K087 wastes. EPA has determined that rotary kiln incineration is demonstrated and available, based on its use treating BDAT List organics contained in K087 and on its use for wastes with chemical and physical characteristics similar to K087.

EPA has determined that stabilization of K087 ash is demonstrated for BDAT List metals contained in K087 ash based on a waste judged to have similar chemical and physical characteristics to K087 wastes. With regard to K087 wastewaters, EPA has identified chemical precipitation followed by sludge filtration is demonstrated and available, based on the performance treatment data from wastewaters judged to have similar chemical and physical characteristics to K087 wastewaters.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K087 are listed in the tables at the end of this section. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

Standards for BDAT List organic constituents in K087 wastewaters are based on concentrations found in scrubber waters from rotary kiln incineration. Thermal destruction in a well-designed and well-operated unit results in levels that are at or near the detection limit. Standards for metal constituents in K087 nonwastewaters are based on the transfer of metals precipitation/removal data for treatment of wastewaters containing metals of similar concentrations. These levels are believed to represent performance of the best demonstrated available technologies for these constituents in this waste type.

Standards for BDAT organic constituents in K087 nonwastewaters are based on the concentration found in K087 ashes from rotary kiln incineration. For BDAT List metal constituents, however, EPA transferred stabilization performance data from a waste judged to have similar chemical and physical characteristics to K087 incinerator ashes.

For wastes identified as K087 nonwastewaters and wastewaters, EPA is proposing to regulate nine organic constituents and two metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include acenaphthalene, benzene, chrysene, fluoranthene, indeno (1,2,3-cd) pyrene, naphthalene, phenanthrene, toluene, xylenes, lead, and zinc.

BDAT TREATMENT STANDARD FOR K087

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene	3.4	(1)
Benzene	0.071	(1)
Chrysene	3.4	(1)
Fluoranthene	3.4	(1)
Indeno (1,2,3-cd) pyrene	3.4	(1)
Naphthalene	3.4	(1)
Phenanthrene	3.4	(1)
Toluene	0.65	(1)
Xylenes	0.070	(1)
Lead	(1)	0.53
Zinc	(1)	0.086

[1] Not applicable.

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BDAT TREATMENT STANDARD FOR K087

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene	0.028	(1)
Benzene	.014	(1)
Chrysene	.028	(1)
Fluoranthene	.028	(1)
Indeno (1,2,3-cd) pyrene	.028	(1)
Naphthalene	.028	(1)
Phenanthrene	.028	(1)
Toluene	.008	(1)
Xylenes	.014	(1)
Lead	.037	(1)
Zinc	1.0	(1)

[1] Not applicable.

h. K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D).

1. *Industry Affected and Waste Description.* The listed waste K099 is generated by facilities in the organic chemicals manufacturing industry (specifically pesticides). The Agency estimates that there is only one facility that produces 2,4-D and currently generates K099 waste.

The manufacturing process for 2,4-D includes the reaction of 2,4-dichlorophenol with chloroacetic acid in the presence of sodium hydroxide, hydrochloric acid and a catalyst. The 2,4-D is recovered using a solvent and is then water washed to form the final product. The wastewater generated from the recovery and water-wash processes is RCRA waste K099.

The listed waste K099 principally consists of water, 2,4-D and 2,4-dichlorophenol. The specific concentrations have been claimed by the facility as confidential; however, the organic content of the waste is less than one percent.

2. *Applicable/Demonstrated Treatment Technologies.* The treatment technologies that the Agency believes are applicable are chemical oxidation, wet air oxidation (a specialized form of chemical oxidation), carbon adsorption followed by incineration of the carbon, and biological treatment followed by incineration of the biological sludge. Oxidation is a treatment process that chemically destroys organics found in solution by reaction with an oxidizing agent such as oxygen, chlorine or hydrogen peroxide. Wet air oxidation is a treatment process that chemically destroys organics and some inorganics by reaction with molecular oxygen at elevated temperatures and pressures. Carbon adsorption is the adsorption of hazardous constituents (from a liquid or a gas) by surface attraction within the internal pores of the carbon granules. Biological treatment involves the use of naturally occurring, acclimated microorganisms to degrade organic contaminants in wastewater. Incineration technologies such as fluidized bed, rotary kiln, and liquid injection incineration, are destruction technologies that convert the waste to carbon dioxide, water, and other combustion products.

Of the applicable technologies, the Agency is aware of one facility using oxidation to treat K099. The Agency is not aware of any facility using wet air oxidation, carbon adsorption followed by incineration of the carbon, or biological treatment followed by incineration of the sludge to treat the waste. The Agency did not test these technologies on the waste.

3. *Data Base.* For waste code K099, the Agency has treatment data from one facility. At this facility, the Agency collected two treatment data sets for chemical oxidation of K099 waste using chlorine.

4. *Identification of BDAT.* The best demonstrated available treatment technology (BDAT) for K099 waste was determined to be chemical oxidation using chlorine. This treatment system shows substantial treatment for 2,4-dichlorophenoxyacetic acid (2,4-D). EPA believes that chemical oxidation with chlorine is demonstrated on K099. This treatment system is judged to be available to treat K099 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of the BDAT List organic constituents present in the largest concentrations in K099.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K099 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters.

For wastes and treatment residues identified as K099 nonwastewaters or wastewaters, EPA is proposing to regulate seven organic constituents from the BDAT List as indicators of effective treatment of these wastes. These include 2,4-dichlorophenoxyacetic acid and six chlorinated dioxins and chlorinated dibenzofurans. The 1 ppb analytical detection limit for these constituents described in the final rule for dioxin-containing wastes (51 FR 40843) also is used here. This level represents the analytical limit of detection that can be routinely achieved.

EPA specifically requests comment on the selection of chlorine oxidation as BDAT for K099. Chlorine oxidation was selected as the treatment technology for the destruction of 2,4-dichlorophenoxyacetic acid. The data indicate that this technology provides significant reduction of this chemical. However, the data appear to indicate a slight increase in the concentration of chlorinated dioxins and dibenzofurans (all values below the routine quantitation limit of 1 part per billion) from the untreated waste to the treated residuals. At this time, EPA is not certain that this implies that the chlorine oxidation process is responsible for this slight increase. The Agency is specifically requesting comments and data that would indicate the existence of an alternative treatment technology that could achieve the same performance for the 2,4-dichlorophenoxyacetic acid without an increase in the chlorinated dioxins and dibenzofurans.

BDAT TREATMENT STANDARDS FOR K099

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	0.15	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzofurans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)

BDAT TREATMENT STANDARDS FOR K099—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Pentachlorodibenzofurans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzofurans	0.001	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K099

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	0.15	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzofurans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzofurans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzofurans	0.001	(1)

[1] Not applicable.

i. K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

1. *Industry Affected and Waste Description.* The listed wastes K101 and K102 are generated by facilities in the veterinary pharmaceuticals manufacturing industry. The Agency estimates that there are only two facilities that have production processes that could potentially generate K101 or K102 wastes.

Wastewaters containing arsenic are generated in the manufacture of organo-arsenic veterinary pharmaceuticals. These wastewaters are combined with process area wash waters and are pumped into a treatment system that consists of chemical precipitation and resin adsorption. The resin column is regenerated by a backwash of acetone. The spent acetone solvent mixture is recovered in a distillation column. The distillation tar residues from the acetone recovery column constitute the listed K101 waste.

The manufacture of arsenic-containing pharmaceuticals requires the reaction of an organic compound with inorganic arsenic to form the organic arsenical product, and generates arsenic-containing solid wastes including K102 waste. The Agency has detailed process flow information concerning the manner in which K102 waste is generated. This information, however, has been claimed to be confidential business information (CBI).

K101 wastes are viscous organic still bottoms containing approximately 19% by weight ortho-nitroaniline and less than 1% arsenic. The heat content of these wastes is approximately 7,000 BTU per pound. K102 wastes consist primarily of spent activated carbon contaminated with approximately 300 parts per million of ortho-nitrophenol. BDAT List organic constituents identified as present in K102 include phenol and ortho-nitrophenol. BDAT List metal constituents identified as present in K101 and K102 include antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, selenium, and zinc.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified incineration in a rotary kiln as an applicable technology for treatment of nonwastewater forms of K101 identified as distillation tar residues and nonwastewater forms of K102 identified as activated carbon residues. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids that are difficult to atomize through a liquid injector. Many rotary kiln incinerators are also designed to simultaneously incinerate other liquid wastes or supplemental fuel. The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction of sludges, solids, or tarry wastes is potentially applicable to these wastes. However, the Agency believes that the performance of rotary kiln incineration attains the performance achievable by other thermal destruction technologies that are well designed and well operated. These incinerators generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are often generated and are classified as wastewaters. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

Wastewaters are generated as residuals by many of the incineration technologies that are designated as applicable to the nonwastewater forms of K101 and K102. EPA has determined that the applicable technology for these wastewaters is a wastewater treatment system that includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of inorganic nonwastewater forms of K101 and K102. These include precipitated residues from the treatment of wastewaters, as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

EPA has not identified any facility currently performing incineration and metals (ash) stabilization of K101 or K102 on a commercial scale. However, EPA believes this technology is demonstrated for K101 and K102 in that it is being used to treat wastes similar to them in regard to parameters affecting treatment selection. EPA has confirmed this judgment by using a test facility to incinerate this waste.

3. *Data Base.* For waste code K101, the Agency has treatment data from one full-scale facility. The Agency has four data points of untreated K101 waste and three data points representing residual concentrations found in the ash from rotary kiln incineration. The Agency has

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four scrubber water data points that represent destruction of organic compounds in the afterburner of the rotary kiln incinerator.

For waste code K102, the Agency has treatment data from one full-scale facility. The Agency has four data sets of K102 waste treated by rotary kiln incineration. The Agency has six scrubber water data points that represent destruction of organic compounds in the afterburner of the rotary kiln incinerator.

4. *Identification of BDAT.* EPA has determined that the performance achieved by incineration followed by metal stabilization of ash residues represents treatment by BDAT for both K101 and K102. Incineration followed by metal stabilization is judged to be available to treat these wastes because: (1) These technologies are commercially available and (2) they provide substantial reduction in the levels of organic constituents and substantial reduction in the mobility of metal constituents present in these wastes.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K101 and K102 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

Standards for organic constituents are based on concentrations found in scrubber waters from thermal destruction units. Thermal destruction in a well designed and well operated unit results in levels that are at or near the detection limit. Standards for metal constituents are based on the transfer of metals precipitation/removal data for treatment of wastewaters that contain metals at similar concentrations. These levels are believed to represent performance of the best demonstrated available technologies for these constituents in this waste type.

(i) *Nonwastewaters.* For wastes identified as K101 and K102 nonwastewaters, EPA is proposing to regulate two specific organic constituents that are not included on the BDAT List but have been selected as indicators of effective incineration of these wastes. A standard for ortho-nitroaniline is proposed for K101 and a standard for ortho-nitrophenol is proposed for K102.

EPA is also proposing to regulate nine metal constituents including antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, and zinc as indicators of effective stabilization of these wastes (based on stabilization of the ash from incineration). At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for antimony, arsenic and barium. Therefore, the Agency is proposing to reserve standards for antimony, arsenic and barium until evaluation can be completed. The standards for the other metals are transferred from the treatment of wastes judged to have similar chemical and physical characteristics to K101 and K102 incinerator ashes.

(ii) *Wastewaters.* For wastes identified as K101 and K102 wastewaters, EPA is proposing to regulate two different organic constituents as indicators of effective incineration of these wastes. A standard for ortho-nitroaniline is proposed for K101 and a standard for ortho-nitrophenol is proposed for K102.

For wastes identified as K101 or K102 wastewaters, EPA is proposing to regulate five metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include antimony, arsenic, cadmium, lead, and mercury. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for antimony. Therefore, the Agency is proposing to reserve a standard for antimony until evaluation can be completed.

BDAT TREATMENT STANDARDS FOR K101

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-Nitroaniline	14.0	[1]
Antimony	[1]	[2]
Arsenic	[1]	[2]
Barium	[1]	[2]
Cadmium	[1]	0.066
Chromium (Total)	[1]	3.8
Copper	[1]	0.71
Lead	[1]	0.53
Nickel	[1]	0.31
Zinc	[1]	0.086

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-Nitroaniline	0.266	[1]
Antimony	[2]	[1]
Arsenic	2.036	[1]
Cadmium	0.238	[1]
Lead	0.110	[1]
Mercury	0.027	[1]

[1] Not applicable
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K102

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-Nitrophenol	13.3	[1]
Antimony	[1]	[2]
Arsenic	[1]	[2]
Barium	[1]	[2]
Cadmium	[1]	0.066
Chromium (Total)	[1]	3.8
Copper	[1]	0.71
Lead	[1]	0.53
Nickel	[1]	0.31
Zinc	[1]	0.086

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho Nitrophenol	0.028	[1]
Antimony	[2]	[1]
Arsenic	2.036	[1]

BDAT TREATMENT STANDARDS FOR K102—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cadmium	0.238	[1]
Lead	0.110	[1]
Mercury	0.027	[1]

[1] Not applicable.
[2] Reserved.

j. K106—Wastewater treatment sludges from the mercury cell process in chlorine production.

1. *Industry Affected and Waste Description.* The listed waste K106 is generated by facilities in the inorganic chemicals industry (specifically chlorine manufacturing by the mercury cell process). The Agency estimates that there are 20 facilities that have specific production processes that could potentially generate K106 waste. While these facilities are distributed in just about all regions of the United States, a large proportion of them are located in the Southeast.

Chlorine is produced by the electrolytic decomposition of a saturated sodium chloride brine solution. One type of electrolytic cell uses mercury as an electrode. At such facilities, process wastewaters will contain soluble and elemental mercury. Treatment of this wastewater stream is performed using chemical precipitation of the mercury (primarily as sulfide) followed by sedimentation or filtration of the precipitates. These residuals are the listed waste K106.

Untreated K106 wastes consist primarily of water (80%), mercury sulfide (3%), other metal sulfides (2%), and diatomaceous earth or other filter aid (35%). K106 wastes are sludges and, for the purposes of BDAT, are classified as nonwastewaters. Treatment of K106 results in the generation of solid residuals (nonwastewaters) and wastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* The Agency has identified thermal recovery (retorting) as an applicable technology for nonwastewater K106. Retorting is a metal recovery process, whereby heat is added to volatilize the mercury from the waste. Elemental mercury is subsequently condensed as a reuseable material. The residual waste from retorting contains significantly lower concentrations of mercury. Retorting has been demonstrated on K106 at one facility. Retorting is also demonstrated on ores consisting primarily of mercury sulfides that the Agency believes have chemical and physical characteristics similar to K106 nonwastewaters. Thus, while EPA estimates that there are no facilities currently retorting K106, EPA has identified at least one facility that performs retorting of mercury ores that are comparable to the listed waste. Therefore, the Agency considers that retorting is a demonstrated technology for K106 nonwastewaters.

The Agency considered stabilization as an applicable technology and performed testing on nonwastewater K106. Analyses indicated that no significant reduction in leachability of mercury from the waste was achieved by the stabilization process. Therefore, the Agency concludes that stabilization is not a demonstrated technology for this waste.

The Agency has identified sulfide precipitation followed by filtration as an applicable technology for K106 wastewaters. EPA believes that K106 wastewaters have similar waste characteristics as wastewater generated from the treatment of K071 (brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used). Sulfide precipitation [followed by filtration) of mercury containing wastewaters is demonstrated at nineteen or more facilities. Therefore, the Agency believes that sulfide precipitation is both applicable and demonstrated for wastewaters generated from treatment of K106 nonwastewaters.

3. *Data Base.* The Agency has nine untreated and treated data points from EPA testing of one facility on treatment of K106 nonwastewaters by stabilization. Data collected during these tests show that these technologies were properly operated. These data indicated that no significant reduction in leachability was achieved. Therefore, the Agency concluded that stabilization should not be considered a demonstrated treatment technology for K106.

The Agency has five untreated and treated data points from a literature source on the treatment of K106 combined with K071 nonwastewaters using dewatering followed by retorting. Since the source reports that K106 comprised only 0.5% of the feed to the retort furnace, the Agency believes the waste mixture does not sufficiently represent the majority of K106 wastes. Therefore, EPA did not consider these in the development of the BDAT treatment standards.

The Agency has seven treated data points from the treatment of K106 by retorting. However, the K106 treated was not generated by the conventional method of sulfide precipitation, but consisted of elemental mercury that was concentrated in the residual from membrane filtration of wastewater from the mercury cell process. EPA did not consider these data to be representative of K106 nonwastewaters because nineteen of the twenty facilities generating K106 currently generate a mercury sulfide sludge or residual. Therefore, these data were not considered in the development of the BDAT treatment standards.

As noted previously, the Agency also has data from the retorting of mercury sulfide ores. EPA believes that the similarities in chemical and physical composition of these ores and K106 nonwastewaters are sufficient to allow the transfer of the retorting performance data. These data were used for the development of the BDAT treatment standards for K106 nonwastewaters.

EPA does not have data on treatment of K106 wastewaters generated as part of the retorting operation. EPA believes that these wastewaters are similar in chemical and physical composition to wastewaters generated in treatment of K071 by acid leaching. Therefore, EPA has transferred these performance levels to K106 wastewaters. The data base for K071 wastewaters consists of three untreated and treated data points using sulfide precipitation followed by filtration. All of these data represent a well designed and well operated system and were used in the development of the BDAT standards for K106 wastewaters.

4. *Identification of BDAT.* EPA is proposing to set BDAT standards for K106 nonwastewaters based on the performance achieveable by the retorting of mercury sulfide ores. The Agency has determined that this technology is both demonstrated and available. EPA is proposing to set BDAT standards for K106 wastewaters based on sulfide precipitation followed by filtration. The Agency has determined that sulfide precipitation is demonstrated and available for wastewaters generated from treatment of K106 nonwastewaters (the sulfide residues must meet the standards for nonwastewaters). These technologies are judged to be available to treat these wastes because: (1) They are commercially available or can be purchased and (2) they provide a substantial reduction in the concentrations of hazardous constituents that have to be placed on the land.

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The question of identifying BDAT for K106 also requires some discussion of several other EPA regulations relating specifically to burning hazardous wastes for materials recovery in industrial furnaces, and relating more generally to the issue of when secondary materials are RCRA solid wastes under such circumstances. The most significant issue presented is whether EPA may permissibly establish a BDAT treatment standard for the residual which results from retorting of this waste.

The initial question is whether wastewater treatment sludge from the mercury cell process is a RCRA solid and hazardous waste when it is sent to an industrial furnace for retorting. Under the Agency's existing regulations, this activity is classified as the type of recycling known as "reclamation" because it involves recovery of metals contained in the wastewater treatment sludge (see 40 CFR 261.1(c)(4)). Because the material is a listed sludge, it is therefore defined as a solid waste under 40 CFR 261.2(c)(3).

The Agency believes that this is an appropriate classification because a strong element of waste treatment would characterize this recycling activity (as noted, retorting of K106 is not currently practiced). Storage practices preceding reclamation of this waste also can involve direct placement on the land (for instance, in open waste piles), another indication that the wastewater treatment sludge is a waste. For a more detailed discussion see 50 FR 641 (January 4, 1985) which presents the decision factors to determine whether sludges and byproducts should be designated as solid wastes when they are to be reclaimed. EPA has recently proposed to codify these factors, with some modifications, in its regulations (53 FR 519 and 529, January 8, 1988).

The recent opinion of the District of Columbia Circuit Court of Appeals in *American Mining Congress v. EPA* (824 F. 2d 1177) does not change this analysis. The court stated that when a generator has a secondary material of no further use to him, which he discards by giving to another person for recycling, the material is a "discarded material" within the meaning of RCRA section 1004 (27). An example used in the opinion is used oil given by the original generator to a second person for recycling (824 F. 2d at n. 14). The wastewater treatment sludge is similarly discarded by the generator when it is no longer useful to the original generator, is given to another entity for recycling, and is not recycled in the original process or even in another chlorine and caustic soda process. Thus, it is not the type of in-process, undiscarded material used in on-going, continuous processes found in the *American Mining Congress* case to be an undiscarded material (see generally, 53 FR 519, 520–521, and 522–523, January 8, 1988).

It should be noted that even if the K106 waste was not deemed to be a waste when it is reclaimed in processes unrelated to chlorine production, EPA still could establish BDAT standards for K106 that is being disposed, or otherwise ensure that the waste is recycled by retorting rather than by being land disposed. For example, the Agency could simply prohibit land disposal of the waste and indicate that retorting is BDAT. The Agency also could let the statutory prohibition for the waste take effect, which (as a practical matter) would have the same result.

Since the Agency can require recycling as a BDAT standard, it must consider whether it has authority to set treatment standards for the residuals that result from retorting. The fact that K106 is a solid and hazardous waste when it is sent for retorting does not end the inquiry. The Agency has discussed in a number of preambles the question of whether a waste destined for material recovery in an industrial furnace continues to be a waste when it is actually fed into the furnace. The issue arises because industrial furnaces are normally used as essential components of industrial processes, and when they are actually burning secondary materials for material recovery can be involved in the very act of production, an activity normally beyond the Agency's RCRA authority (see 50 FR 630, January 4, 1985; 50 FR 49167, November 24, 1985; and 52 FR 16889–990, May 6, 1987). Accordingly, the Agency has stated that, even when secondary materials sent to be reclaimed in these devices are wastes before they are reclaimed, they cease to be wastes when they are actually placed in the industrial furnace for materials recovery. To retain authority over industrial furnaces where waste treatment is a driving element of the reclamation activity, the Agency has further stated that the secondary material being reclaimed in the industrial furnace must be "indigenous" to that furnace for it to cease being a waste. The Agency has proposed to define "indigenous" to be any material generated by the same type of furnace in which it will be reclaimed (see the proposal in 52 FR 17034, May 6, 1987). The Agency suggested other possible alternatives in the May 6 proposal, including classifying wastes that contained insignificant concentrations of Appendix VIII constituents in the waste which are not normally found in the feed material to be indigenous.

The K106 sludges would not be considered indigenous, under the May 6 proposal, to the retort furnaces used as the basis for the proposed treatment standard. However, if an alternative such as classifying wastes that contained insignificant concentrations of other Appendix VIII constituents to be indigenous were finalized, the waste may not be considered indigenous. The Agency solicits comments on the similarities of the concentrations of other Appendix VIII constituents (other than mercury) that are present in both K106 and the mercury ores that are retorted in mining operations.

If such a determination of indigenous is made for K106, it would cease to be a solid waste when it is retorted. This would mean that the residuals produced by the furnace during the retorting of the sludge would no longer automatically be deemed to be a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.2(c), because it would no longer derive from treatment of a listed hazardous waste (the K106 waste would no longer be a hazardous waste at the moment of burning). Thus, the residual would be a hazardous waste only if it exhibited a characteristic of a hazardous waste. Depending upon the type of device doing the retorting, and the feed materials to that device, the residual might also presently be excluded from regulation as a waste from the mining, beneficiation, or processing of an ore or mineral (see 52 FR 17012, May 6, 1987). Under these circumstances, the Agency probably could not set treatment standards for the residual which does not exhibit a characteristic of hazardous waste, since the land disposal prohibitions apply only to "hazardous wastes". In addition, any prohibition for residuals exhibiting a characteristic of hazardous waste would take effect on May 8, 1990, as a third third waste.

Thus, although the Agency has proposed treatment standards based on total and leachable mercury concentrations in the residual, EPA solicits comment on the issues with the view that EPA could establish either "total recycle" or "no land disposal" as the treatment standard for K106 should it determine not to set treatment standards for the residual.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K106 are listed in the tables at the end of this section. EPA is proposing that mercury is the only constituent that needs to be regulated for wastes identified as K106. EPA's rationale for selecting mercury is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

The treatment standards are based on analyses of total constituent concentration and leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for analyses of leachate are mg/l (or parts per million on a weight by volume basis).

BDAT TREATMENT STANDARDS FOR K106

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Mercury	630	0.028

BDAT TREATMENT STANDARDS FOR K106

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Mercury	0.030	(1)

[1] Not applicable.

k. Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry Listed as F001, F002, F003, F004 and /or F005.

On November 7, 1986, EPA promulgated treatment standards for regulated constituents in F001–F005 spent solvent wastewaters and nonwastewaters. Since that time, EPA has collected additional data on steam stripping of methylene chloride in wastewaters at similar concentrations as those wastewaters from the pharmaceutical industry. Where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. RCRA section 3004(m)(1) specifically states that treatment standards are to be revised as appropriate. Therefore, in light of the new data collected, EPA is today reproposing the treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry. The treatment standards for all other hazardous constituents in F001–F005 wastewaters, and all hazardous constituents in F001–F005 nonwastewaters are not being reproposed and therefore remain as promulgated on November 7, 1986 (51 FR 40572). The Agency also is not reproposing the standard for methylene chloride in F001–F005 wastewaters other than those from the pharmaceutical manufacturing industry.

EPA established two separate waste treatability groups for wastewaters: Methylene chloride in F001–F005 wastewaters from the pharmaceuticals manufacturing industry and all other F001–F005 wastewaters containing methylene chloride. A BDAT treatment standard of 12.7 mg/1 was promulgated for methylene chloride in wastewaters in the pharmaceuticals manufacturing industry treatability group, based on the performance data for steam stripping. A BDAT treatment standard of 0.20 mg/1 was promulgated for all other F001–F005 wastewaters containing methylene chloride, based on performance data for biological treatment.

BDAT for methylene chloride in wastewaters from the pharmaceutical industry has been confirmed to be steam stripping. Data was obtained from the treatment of wastewaters with influent concentrations of methylene chloride that are similar to the influent concentrations in wastewaters from the pharmaceutical industry. The Agency has determined that the wastewaters that were tested, are in the same treatability group as the wastewaters from the pharmaceutical industry and is transferring the data and standards to the pharmaceutical industry.

The Agency is aware of at least two facilities that use steam stripping to treat methylene chloride in wastewater. EPA has determined that steam stripping is demonstrated to treat F001–F005. Steam stripping is judged to be available to treat these wastewaters because: (1) Steam stripping is commercially available or can be purchased and (2) steam stripping provides a substantial reduction in the concentration of methylene chloride in F001–F005 wastewaters from the pharmaceutical industry.

The revised BDAT treatment standard proposed for methylene chloride in wastewaters identified as F001, F002, F003, F004 and/or F005 from the pharmaceuticals industry is listed in the table at the end of this section. (Note that the proposed treatment standard is reflected in the regulations by amending § 268.41 by removing methylene chloride (from the pharmaceutical industry) and its corresponding concentration, and adding the revised treatment standard in § 268.43.) Facilities must comply with this treatment standard prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden. The treatment standard is based on analysis of total constituent concentration and is expressed in mg/l (or parts per million on a weight by volume basis).

The data and analyses used to develop this standard have been placed in the docket for today's proposed rule and are available as an addendum to the background document for the final rule for F001–F005 solvent wastes.

BDAT TREATMENT STANDARDS FOR F001, F002, F003, F004, AND F005

[Wastewaters; pharmaceuticals industry subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Methylene chloride	0.44	(1)

[1] Not applicable.

l. K021—Aqueous spent antimony catalyst waste from fluoromethanes production.

K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.

K060 Ammonia still lime sludge from coking operations.

Based on available information, the Agency believes that these wastes are no longer generated, and therefore, are not currently being land disposed. EPA solicits comment to the contrary. The Agency is prohibiting land disposal of these wastes. This approach ensures that these wastes will not be land disposed in the future.

The proposed treatment standard for these wastes is "No Land Disposal," allowing for the possibility that these

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wastes may be generated at a CERCLA site or during a corrective action at a RCRA facility and may require a variance from the treatment standard.

BDAT TREATMENT STANDARDS FOR K021, K025, AND K060

[Nonwastewaters and Wastewaters]

No Land Disposal

m. K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K047—Pink/red water from TNT operations.

EPA has determined that a proposed standard of "No Land Disposal" is appropriate for K044, K045, and K047 wastes. This determination is based on the fact that open burning and open detonation of reactive wastes is not considered land disposal. So long as no reactive constituents remain after detonation, there would be no land disposal of a hazardous waste (40 CFR 261.3(a)(2)(iii)).

EPA's listing of K044, K045, and K047 was based solely on the potential of these wastes to explode. The Agency does not have any data to suggest that any hazardous residuals are present following open burning or open detonation. However, EPA solicits comments providing data that show the presence of BDAT List constituents in treatable concentrations in residuals from managing these wastes in this manner.

In the absence of such data, EPA concludes that the current practices of open burning and open detonation provide complete destruction of the hazardous components of K044, K045, and K047 and subsequent land disposal of residuals is unnecessary. Therefore, EPA is proposing "No Land Disposal" as the requirement for these wastes. This standard is consistent with EPA's general approach in that the standard provides a significant reduction in the hazard presented by these wastes and is based on demonstrated and available technology.

EPA recognizes alternative technologies, such as incineration in specially designed units, is being investigated for wastes similar to K044, K045, and K047. By establishing a treatment standard of "No Land Disposal" rather than allowing the statutory bans to take effect, a petition for a variance from the standard can be submitted to the Agency for evaluation.

BDAT TREATMENT STANDARDS FOR K044, K045, AND K047

[Nonwastewaters and Wastewaters]

[No Land Disposal]

n. Wastes for Which EPA is Proposing No Treatment Standards (including all Chemical Specific P and U Wastes).

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K031—By-product salts generated in the production of MSMA (monosodium methanearsenate) and cacodylic acid.

K035—Wastewater treatment sludges generated in the production of creosote.

K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K085—Distillation or fractionation column bottoms from the production of chlorobenzenes.

All remaining "First Third" wastes originally listed under § 261.33 (e) and (f) (i.e., those beginning with a "P" or "U").

The Agency has not completed its evaluation of BDAT for these wastes and is not proposing treatment standards at this time. Therefore, the Agency will not promulgate standards for these wastes by their statutory deadline of August 8, 1988. RCRA section 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions.

Wastes identified as K011, K013, and/or K014 are wastes generated from the production of acrylonitrile. Information supplied by industry trade associations indicate that many of the facilities are combining K011 and K013 and removing filterable solid materials prior to disposal of the filtrate in underground injection wells. The filtered K011 and K013 residues are often combined with K014 and incinerated in a hazardous waste incinerator. The Agency anticipates that many facilities will submit petitions for evaluation of "no migration" from these underground injection units into which filtrates of K011 and K013 are being injected. At this time, EPA has not completed its investigation of the incineration of the filtered residuals nor has it evaluated a "no migration" petition specific to these waste codes. EPA anticipates that it will establish treatment standards based on analysis of the performance of incineration or based on an extrapolation of data for wastes with similar physical and chemical characteristics. This investigation of K011, K013, and K014 will not be completed in time for proposal and promulgation by the statutory deadline of August 8, 1988. Therefore, until EPA promulgates treatment standards (and until May 8, 1990), the "soft hammer" provisions would apply to these wastes if they are placed in land disposal units.

Finally, EPA notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California List wastes. The liquid cyanide wastes, for example, could exceed the statutory prohibition levels for cyanide. Several of the organic hazardous wastes undoubtably exceed the statutory levels for wastes containing halogenated organics (HOC wastes). To the extent that these wastes are prohibited under the California List rule (52 FR 25773, July 8, 1987) or statutory provisions (RCRA section 3004(d)(2)) and also fall under the soft hammer, the California List prohibitions and treatment standards (if any) apply. Thus, for example, any prohibited HOC wastes that also are First Third "soft hammer" wastes would have to be incinerated before land disposal.

o. Burning in Industrial Boilers and Industrial Furnaces as BDAT for HOC's.

EPA has also decided to repropose for additional comment a notice that appeared in the May 6, 1987, proposed rule on boilers and industrial furnaces burning hazardous wastes. 52 FR 17021.

This proposal would have allowed burning in industrial boilers and furnaces to be considered BDAT for California List HOCs. Although most of the comments supported this approach, EPA is soliciting further comment. We note that this rule might become effective a short time before final permitting and interim status standards for emissions from these devices become effective (current schedules call for the boiler and industrial furnace rules to be promulgated early in 1989). EPA is tentatively prepared to accept this possibility because these devices are likely to be operated efficiently so as to achieve substantial destruction of the HOCs in the waste. This is because industrial boilers and industrial furnaces have a commercial purpose which requires relatively efficient burning (see § 260.10 definitions of "boiler" and "industrial furnace" which require, for boilers, energy recovery efficiency of 60 percent and 75 percent export and utilization of recovered energy, and, for industrial furnaces, that the device be an integral part of a manufacturing process). In addition, non-industrial boilers, some of which might be expected to destroy HOCs less efficiently, are essentially prohibited from burning hazardous waste at all. Section 266.31(b).

The rule as proposed would amend § 268.42(a)(2) to say that boilers and industrial furnaces burning in accordance with applicable regulatory standards could burn HOCs. When Part 266 standards exist for these devices, the devices thus must meet these standards. Until then, they would have to meet other applicable Federal, state, and local standards.

11. Requirement that Hazardous Waste Derived Products Used in a Manner Constituting Disposal Meet BDAT in Order to Remain Exempt from Regulation

Under the Agency's rules, hazardous secondary materials being used in a manner constituting disposal are defined as solid and hazardous wastes. 40 CFR 261.2(c)(1). Examples are use of hazardous waste as dust suppressants, road base material, or fertilizers. Products produced from hazardous secondary materials, which are placed on or applied to the land, are likewise defined as solid and hazardous wastes (assuming the waste-derived product remains hazardous, per the definitions in § 261.3). 40 CFR 261.2(c)(1)(B). If the hazardous waste component has "undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means", then such waste-derived products used in a manner constituting disposal are not presently subject to federal regulation. 40 CFR 266.20(b). Commercial waste-derived fertilizers are likewise presently exempt from Federal Subtitle C regulation. The question we are addressing here—and also addressed in a more specific content for waste-derived fertilizers produced from waste K061 in the April 8, 1988 proposed rule—is whether waste-derived products whose placement on the land is presently exempt from Federal regulation should be allowed to be placed on the land if they don't meet the BDAT treatment standards for each prohibited hazardous waste that they contain.

The Agency is proposing to qualify the exemption from regulation for hazardous waste-derived products that are used in a manner constituting disposal (§ 266.20(b)) to provide that such waste-derived products must meet any (and all) applicable treatment standard(s) in Subpart D of Part 268 for the waste. The Agency believes that this approach is warranted for the following reasons.

First, this type of use constituting disposal consists of placing wastes directly on the land, a form of land disposal under section 3004(k). Under the land disposal prohibition program, untreated hazardous wastes are not to be placed directly on the land (i.e., land disposed) except in "no migration" units.

Second, the Agency (with few exceptions) has not evaluated whether the placement of hazardous waste-derived products on the land is safe. The Agency has merely deferred regulation while it studies the problem to determine an appropriate regulatory regime. See 50 FR 646–647 (January 4, 1985). Thus, continuation of the current exemption from regulation in § 266.20(b) appears to directly thwart the policy, and indeed the express command, of the land disposal prohibition statutory provisions. There is not even a countervailing environmental objective at stake since the Agency has no data demonstrating the safety of most of these practices. Indeed, the existing exemption in § 266.20(b) may create an incentive to avoid treatment (or to avoid BDAT-level treatment) and to utilize this form of disposal instead. It consequently appears to the Agency that all hazardous waste-derived products, in order to be exempt from regulation when they are placed on the land, should have to meet any applicable treatment standard for the waste established in Subpart D of Part 268. At that point, even though hazardous wastes were being placed on the land, they at least would be meeting the treatment standard required for all other wastes of the same type.

The Agency consequently solicits comment on whether the existing exemption in § 266.20(b) should be conditioned by requiring that any such waste-derived product meet applicable treatment standards. EPA notes further that if the Agency adopts this proposal, it would not necessarily be finding that further regulation of this type of use constituting disposal is unnecessary, or finding that use constituting disposal of waste-derived products that meet the treatment standard is necessarily safe. Disposal of hazardous waste would still be occurring in unregulated units. Rather, this type of placement on the land would at least be meeting the minimum statutory requirements in section 3004 (d), (e), (g) and (m).

In order to implement this type of requirement, the Agency would need to have some type of tracking scheme in place, and some means for persons producing waste-derived products to demonstrate that they are meeting the applicable treatment standard. Of course, hazardous wastes utilized to produce waste-derived products that are used in a manner constituting disposal are already subject to regulation until the waste-derived product is produced, and so are subject to § 268.7 tracking controls (as well as the other applicable Subtitle C requirements) until that point. The issues on which we are soliciting comment are how should the producer document that the waste-derived product meets BDAT—for instance, is there any reason not to follow the testing procedures in § 268.7(b)—and whether any further tracking to the ultimate user (as occurs normally under § 268.7(b) (1) and (2)) is needed.

Finally, the Agency reiterates that there does not appear to be any question that waste-derived products that are placed on the land are "solid wastes" under RCRA. Nothing in *American Mining Congress* v. *EPA*, 824 F. 1177 (D.C. Cir. 1987) is to the contrary. The hazardous wastes in the waste-derived product are being gotten rid of by disposing of them, and so are being discarded. See generally, 53 FR 521–522 (January 8, 1988), and underlying record materials.

The following examples show how the Agency envisions the proposal would operate.

1. A generator generates a listed wastewater treatment sludge which is prohibited from land disposal and for which the Agency has established treatment standards. The sludge is

combined with virgin materials in a way that causes the hazardous waste to undergo a chemical reaction so as not to be separable from the product matrix by physical means. The waste-derived product is then sold to the public as road base material.

Assuming that the activity is not sham recycling (i.e., that the listed hazardous waste and its hazardous constituents really contribute legitimately to the waste's use as road base material), then the waste-derived product would have to meet the BDAT standard for the listed hazardous waste or it could not legally be placed on the land. The generator of the product also would have to document that the waste-derived product meets the treatment standard.

2. An aggregate kiln burns a variety of prohibited hazardous wastes generated by other generators along with virgin materials to generate waste-derived aggregate, which is sold to the general public for direct placement on the land.

Assuming that the activity is not sham recycling (i.e., that the prohibited hazardous wastes and their hazardous constituents do contribute legitimately to producing aggregate), then the aggregate would have to meet the treatment standard for *each* prohibited hazardous waste that it contains. The kiln operator would also have to document that each batch meets these standards.

12. Corrections to the April 8, 1988 Proposal (53 FR 11742)

Although there were several typographical and editorial errors in the April 8, 1988 proposal, this preamble section addresses only the most pertinent.

First, on page 11770 of the April 8th proposal, the Agency discusses the availability of the 2-year nationwide variance for solvent wastes which contain less than one percent total F001–F005 solvent constituents. Although the Agency did not propose to change its approach from the existing regulation in § 268.30(a)(3), EPA stated that it was proposing regulatory language and soliciting comment on this approach. The Agency, however, inadvertently neglected to include the proposed regulatory language. Today's proposed regulatory language corrects this oversight by proposing the existing regulatory language, as discussed in the April 8th preamble.

Second, an error was made in identifying a hazardous constituent for K103 and K104 wastes in both the preamble and in the regulatory language. On pages 11758 and 11790 of the April 8 proposal, the treatment standard tables for nonwastewater and wastewater K103 and K104 list 2,3-dinitrophenol. The actual constituent, however, is 2,4-dinitrophenol, as stated in the background document for these wastes. Also, regarding the regulatory text for K103 and K104 nonwastewaters on page 11790, an error was made in stating the total composition levels for aniline, nitrobenzene, and phenol. The correct level, 5.44 mg/kg, is correctly stated in the preamble discussion on page 11758. Although the BDAT background document supports these corrections, anyone confused by this may submit further comment addressing the point.

Third, on pages 11783 and 11791 of the April 8 proposal, the concentration level for toluene in K015 waste is stated incorrectly. The tables in the preamble and regulatory language for K015 list the total composition level for toluene as 1.00 mg/l. The actual value, as stated in and supported by the background documents is 0.148 mg/l. Even though the treatment standard is stated correctly in the background document, anyone confused by the April 8 preamble may submit comment on the toluene treatment standard up until the date for comment on this proposed rule.

Fourth, on page 11789 of the April 8 proposal, an error was made in the headings for the treatment standard tables for K016 and K018 wastes (the "wastewater" tables are incorrectly labeled as second "nonwastewater" tables). These tables are correctly labeled in the preamble discussion on page 11758. Also, on page 11762 the second and third tables in the first column are incorrectly labeled K050 wastes. These tables actually present the treatment standards for K051 wastes, as is correctly stated in the regulatory language. The Agency will accept further comment on this issue from anyone confused by these corrections.

Fifth, the tables for K019 wastewater and nonwastewater, and K020 nonwastewater on page 11758 incorrectly state the hazardous constituent tetrachloroethene as tetrachloroethane. The constituent is, however, correctly stated in the regulatory language.

Sixth, in the preamble for K016 wastewater on page 11758 and in the regulatory text for K030 wastewater on page 11790, the total composition treatment standard for hexachloroethane is incorrect. The correct treatment standard is 0.033 mg/l, as supported by the background document. EPA will accept comment on these corrections from anyone confused by the change throughout the comment period on this proposed rule.

Finally, EPA neglected to include a hazardous constituent in the preamble table for K019 nonwastewaters on page 11758. This constituent, chlorobenzene (with a total composition treatment standard of 5.96 mg/kg), is correctly included in the regulatory text and is supported by the background document.

B. Determination and Measurement of Applicable Treatment Standards

1. Relationship to Restrictions on California List Wastes

Certain First Third wastes having proposed treatment standards and prohibition effective dates are also California list wastes. The California list covers a broad group of corrosive wastes and specific metal-, cyanide-, and halogenated organic-containing wastes, for which EPA has promulgated treatment standards and/or effective dates in the July 6, 1987 rule (52 FR 25760). Once the standards and dates proposed today are finalized, they supersede the applicable California list waste treatment standards and effective dates. Under 40 CFR 268.32(h) this interpretation, pursuant to which a waste-specific determination supplants a California list waste determination, has been applied to solvent- and dioxin-containing wastes which have treatment standards and effective dates and are California list wastes.

The April 8, 1988, rule (53 FR 11742) proposed a reading different from that stated above for First Third wastes which have waste-specific treatment standards and are also California list wastes, but for which, due to a significant shortage of alternative capacity, the Agency grants a national variance from the effective date. EPA solicited comment on an approach where, for these wastes, the applicable California list waste treatment standards and effective dates would remain in effect, superseding the waste-specific determinations for the duration of the variance. This rule also proposed that First Third wastes for which the Agency has not set treatment standards and effective dates by August 8, 1988 (wastes covered by the "soft hammer" requirements), are subject to any applicable California list waste treatment standards and effective dates. Comments addressing these proposed interpretations are also requested here.

C. Proposed Approach To Comparative Risk Assessment

Within the regulatory framework established for implementing the land disposal restrictions, EPA included certain criteria in the determination of "available" treatment technologies. One criterion required that treatment technologies not present greater total risks than land disposal waste management practices. See 51 FR 40592–40593 (November 7, 1986). Although the Agency conducted comparative risk assessments in the development of regulations prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), the analyses did not affect the determinations that treatment was available.

Upon further consideration of the existing comparative risk analysis, the Agency has decided not to utilize comparative risk assessment in this rulemaking because it is problematic. In cases where the land disposal practice could be found to be less risky than any of the treatment alternatives, the analysis could lead to anomalous results. For example, in situations where the comparative risk analysis indicated that land disposal was the least risky alternative available, there would be no specified treatment technology for the wastes. At the same time, land disposal would be prohibited by statute. Thus, the generator could not treat or land dispose the wastes, even though treatment could be conducted pursuant to other regulatory standards that assure protection of human health and the environment.

A second anomaly is that unless EPA actually specifies a treatment method as the treatment standard—normally an undesirable option (see 51 FR 44725, December 11, 1986)—the regulated community may still use treatment technologies identified as riskier than land disposal to comply with the treatment standards. In this respect, the comparative risk assessments would not deter the use of treatment found to present greater total risk.

In light of these considerations, EPA has not used the existing comparative risk assessment approach in this proposal and is reconsidering its application as a decision tool in future rulemakings in the determination of "available" treatment technologies. In the future the Agency may conduct risk analyses to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative practices. In the April 8, 1988 proposal the Agency solicited comment on this new approach.

D. Determination of Alternative Capacity and Effective Dates for First Third Wastes

1. Capacity Data Base and Methodology

EPA has developed a new data base for capacity analyses. This data base is comprised of information from responses to the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (the TSDR Survey).

EPA conducted the TSDR Survey during 1987 and early 1988. One major objective of the survey was to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. The TSDR Survey was sent to all RCRA permitted or RCRA interim status facilities that have or plan to have treatment, disposal or recycling capabilities. The TSDR Survey was also sent to a statistical sample of facilities that have only storage. This new data base is the primary source of data for evaluation of capacity for this rule, with supplemental data used as needed. (See the *Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions, Part II.*, referred to hereafter as the "Capacity Background Document," for a complete description of the TSDR Survey data set and other supplemental data.)

The general approach for capacity analyses for this rule is similar to that used for the past land disposal restrictions rules, but the new data set provides for more comprehensive analyses. Major changes in the capacity methodology include an analysis of volumes being treated in surface impoundments that meet the minimum technology requirements, an analysis of planned closure of surface impoundments through replacement with tanks, and an analysis of the sequences of management processes that minimizes the possibility of double counting. (See the Capacity Background Document for a detailed description of the capacity data set and methodology.)

2. Capacity Analysis of First Third Wastes, Solvent Wastes, California List Wastes, and Soil and Debris

The following discussion presents EPA's capacity analyses for the First Third wastes for which EPA is proposing treatment standards. These analyses were performed using the new TSDR Survey data. EPA is also presenting updated capacity analyses for the wastes addressed in the Proposed First Third Rule on April 8, 1988 (53 FR 11742). The Agency explained in this recent notice that the new TSDR Survey data would be used to reassess available treatment capacity for those wastes as soon as it was available (see 53 FR 11742).

Section III.E briefly covers new capacity analyses of waste volumes requiring alternative capacity pursuant to the Solvents Rule (51 FR 40572) and the California List Rule (52 FR 25760). Section III.F presents our analysis of soil and debris wastes. These waste volumes are not included in the analyses of the First Third wastes. However, it is important to note that the discussion of capacity available for treating First Third wastes does reflect only the amount of available capacity remaining after accounting for the treatment of wastes restricted from land disposal under the Solvents Rule and HOCs under the California List Rule.

a. *Total Quantity of Land Disposed First Third Wastes.* EPA has estimated the total quantities of all of the scheduled First Third wastes that are land disposed annually based on the results of the TSDR Survey. These waste quantities, and the methods by which the wastes are stored, treated, and disposed, are presented in the table below. Underground injection, one method of land disposal, is not included, but will be addressed in a separate rulemaking. Other methods of land disposal that are affected by today's proposal (e.g., utilization of salt dome and salt bed formations and underground mines and caves) are not addressed in the capacity analyses because of insufficient data.

TABLE 1.— TOTAL VOLUME OF LAND DISPOSED FIRST THIRD WASTES

[Million gallons/year]

Storage:	
Waste piles	48
Surface impoundments	6
Treatment:	
Waste piles	29
Surface impoundments	612
Disposal:	
Landfills	303
Land treatment	77
Surface impoundments	78
Total	1,153

About 78 million gallons of First Third wastes are disposed of in surface impoundments annually. Ultimately, all of this waste will require alternative treatment capacity. Approximately 6 million gallons of First Third wastes are stored in surface impoundments annually. Since storage means a temporary containment of waste, EPA has assumed that stored wastes are eventually treated, recycled or permanently disposed of in other units. To avoid double counting (i.e., counting

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them once when they are stored and then again when they are finally disposed of) of such wastes, the volumes of wastes reported as being stored in surface impoundments were not included in the estimates of volumes requiring alternative treatment capacity. However, the Agency recognizes that these wastes will eventually require alternative storage capacity because of the restrictions on placement of wastes into surface impoundments.

In addition to the wastes stored and disposed in surface impoundments, about 612 million gallons of First Third wastes are treated annually in surface impoundments that do not meet the minimum technology standards or are residuals that have been removed from those surface impoundments that do meet the minimum technology standards. Additionally, about 48 million gallons were stored in waste piles, 29 million gallons were treated in waste piles, and 380 million gallons were disposed of by landfill and land treatment.

The Agency has also estimated the quantities of land disposed First Third wastes for which treatment standards are being proposed today and for which standards were proposed on April 8, 1988.

WASTE CODES—STANDARDS BEING PROPOSED TODAY

F006	K001	K021	K022	K025 [1]	
K044	K045	K046	K047	K060	K083
K086	K087	K099	K101	K102	K106

[1] K025—originally a Second Third waste (51 FR 19300, May 28, 1986), but treatment standards are being proposed today.

WASTE CODES—STANDARDS PROPOSED APRIL 8, 1988

K004	K006	K015	K016	K018	K019 [1]
K020	K024	K030	K036	K037	K048
K049	K050	K051	K052	K061	K062
K069	K071	K073	K100 [1]	K103	K104

[1] K019—originally a Second Third waste. K100—originally a Third waste. Treatment standards were proposed on April 8, 1988.

Waste quantities for these codes and the method by which they are disposed are presented in the table below.

TABLE 2.— VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE BEING PROPOSED

[Million gallons per year]

Storage:	
Waste piles	40
Surface impoundments	4
Treatment:	
Waste piles	27
Surface impoundments	321
Disposal:	
Landfills	266
Land treatment	77
Surface impoundments	78
Total	833

In addition to the quantities presented above, the Agency also has estimated the amount of land disposed First Third wastes for which treatment standards are not being proposed before August 8, 1988. This group of wastes is subject to the "soft hammer" provisions and includes all of the First Third P and U wastes as well as the following F and K wastes:

F007	F008	F009	F019	K011	K013
K014	K017	K031	K035	K084	K085

Waste quantities for these codes and the method by which they are land disposed are presented in the table below.

TABLE 3.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE NOT BEING PROPOSED

[Million gallons per year]

Storage:	
Waste piles	8
Surface impoundments	2
Treatment:	
Waste piles	2
Surface impoundments	291
Disposal:	
Landfills	17
Land treatment	<1
Surface impoundments	<1
Total	320

b. *Required Alternative Capacity.* In order to complete our capacity analyses, EPA had to assess the requirements for alternative treatment capacity that would result from the promulgation of today's proposed rule. EPA first characterized the volumes of First Third wastes for which treatment standards are being proposed, since these wastes will require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency then determined which treatment technologies are applicable to the waste volumes and placed the wastes into treatability groups (groups of wastes for which proposed treatment standards are based on the same technology). Finally, EPA determined the volumes of alternative treatment capacity that would be required when owners/operators comply with the land disposal restrictions being proposed today.

Based on this analysis, the Agency estimates that today's proposed rule could potentially affect about 833 million gallons of First Third wastes that are land disposed annually. Of this total, about 789 million gallons will require alternative treatment capacity (the remainder is stored). As explained elsewhere in this preamble, EPA is proposing treatment standards that are expressed as concentration limits and is identifying the technology basis of the standards (the Best Demonstrated Available Technology or BDAT). EPA is not requiring that the specified treatment technologies be used to comply with the standards, but these technologies, as described below (Section III.D.3), were generally used as the basis for determining available capacity.

The volumes of First Third wastes that require alternative treatment/recycling capacity are presented in Table 4. This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator.

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES BEING PROPOSED TODAY

[Million gallons/year]

Waste code	Required capacity
F006	128.9
K001	2.4
K021	[1] 0.0
K022	0.1
K025	0.0
K044	0.0
K045	0.0
K046	1.6
K047	0.0
K060	0.0
K083	0.1
K086	0.2
K087	1.4
K099	0.0
K101/102	0.1
K106	0.4

[1] See section III.D.3 for a discussion of wastes not requiring alternative treatment capacity.

TABLE 5.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES PROPOSED APRIL 8, 1988

[Million gallons/year]

Waste code	Required capacity
K004	0.0
K006	0.0
K015	0.0
K016	0.3
K018	0.0
K019	0.1
K020	<0.1
K024	0.2
K030	<0.1
K036	0.0
K037	<0.1
K048	37.1
K049	31.7
K050	11.5
K051	78.0
K052	12.3
K061	82.8
K062	40.3
K069	0.0
K071	3.9
K073	0.0
K100	0.0
K103	0.1
K104	<0.1

See Section III D.3 for a discussion of wastes not requiring alternative treatment capacity.

3. Capacity Currently Available and Effective Dates

The table below also presents the volumes of First Third wastes that require alternative treatment capacity, but, in this case, the volumes are given according to the technology description of the type of alternative treatment required. This table also presents the amount of capacity that is available in each case.

It is important to note that the volumes given for each treatability group represent figures derived by summing volumes reported as land disposed in the TSDR Survey for each waste code. Some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology designated as BDAT (e.g., a waste in the form of a sludge cannot undergo liquid injection incineration, even though this may have been identified as BDAT for a particular waste code). These wastes must be treated through several steps, called a treatment train (in the example given, the sludge would require de-watering and possibly other types of treatment before the residuals could undergo incineration). EPA has assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal and, therefore, EPA has assigned the total volumes reported to appropriate technologies. See the Capacity Background Document for a complete description of the alternative treatment technologies and treatment trains that were included in the analysis.

TABLE 6.—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES

[Million gallons per year]

Technology	Available	Required
Incineration:		
Liquids	246	<1
Solid/sludge	7	[1] 157 (5)
Stabilization	427	146
Mercury retorting	0	<1
High temperature metals recovery	34	83
Wastewater treatment:		
Cyanide oxidation, chemical precipitation, settling/filtration	184	<1
Chromium reduction, chemical precipitation, settling/filtration	195	41
Carbon adsorption, chromium reduction, chemical precipitation, settling/filtration	12	1
Sludge treatment:		
Acid leaching, chemical oxidation, sludge dewatering	0	4

[1] Numbers in parentheses denote the volume of waste that still requires alternative capacity when K048–K052 wastes are not included in the analyses (as explained, a capacity variance is being proposed for K048–K052).

Liquid Incineration. EPA estimates that about one million gallons per year of First Third wastes would require liquid incineration treatment as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K015, K083 and K086 are based on liquid incineration. Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is ample capacity available to treat these wastes (approximately 246 million gallons). Thus, EPA does not propose to grant a capacity variance for K015, K083, or K086 wastes.

Solid/Sludge Incineration Capacity. EPA estimates that about 157 million gallons per year of First Third wastes would require solid/sludge incineration capacity as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K001, K010, K019, K020, K022, K024, K030, K037, K048–K052, K087, K101 and K102 are based on solid/sludge incineration.

Using the new TSDR Survey data, the Agency has evaluated commercial capacity and has determined that there is only about 7 million gallons of solid/sludge incineration capacity available. Therefore, EPA proposes to grant a two-year national capacity variance from the effective date for the wastes K048–K052. The total volume for these wastes dominates the analysis. If they are granted a variance, all of the remaining

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wastes in this treatability group may be treated.

As explained previously, contaminated soil and debris wastes are not included in this section of the preamble, but are discussed in section III.F. However, note that this discussion of incineration capacity demonstrates that there is insufficient commercially available treatment capacity for certain contaminated soils that would require solids incineration to comply with the land disposal restriction standards.

Stabilization. EPA estimates that about 145 million gallons per year of First Third wastes would require stabilization capacity as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes F006 and K046 are based on stabilization.

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is more than enough capacity available to treat these wastes (approximately 427 million gallons). Therefore, the Agency does not propose to grant a capacity variance to wastes for which treatment standards are based on stabilization.

Mercury Retorting and High Temperature Metals Recovery. EPA estimates that less than one million gallons of First Third wastes would require mercury retorting and about 83 million gallons would require high temperature metals recovery capacity per year as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K061 and K106 are based on high temperature metals recovery and mercury retorting, respectively.

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is not enough capacity available to treat K061 or K106. Therefore, EPA proposes to grant a 2-year national capacity variance from the ban effective date for these wastes.

Wastewater Treatment. EPA estimates that less than 43 million gallons per year of First Third waste would require various types of wastewater treatment as a result of the treatment standards proposed today and on April 8, 1988. (See Table 6 for descriptions of the various types of wastewater treatment.) Treatment standards for the waste K062 are based on wastewater treatment (chromium reduction, chemical precipitation and filtration).

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is adequate capacity available for wastewater treatment. Therefore, the Agency does not propose to grant a capacity variance for K062.

Sludge Treatment. EPA estimates that about four million gallons per year of First Third wastes would require sludge treatment as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the waste K071 are based on sludge treatment (acid leaching, chemical oxidation, and sulfide precipitation and filtration).

After analyzing the new TSDR Survey data, the Agency has determined that there is not enough treatment capacity commercially available to treat K071. Therefore, EPA proposes to grant a 2-year national capacity variance from the ban effective date to K071.

Wastes for Which Treatment Standards Are Based on Solvent Recovery or Solvent Extraction. Proposed treatment standards for the wastes K103 and K104 are based on solvent recovery. BDAT for K103 is solvent extraction, followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration. BDAT for K104 is solvent extraction followed by liquid incineration and followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration.

Using the new TSDR Survey data, EPA has determined that the only volumes of these wastes that require alternative commercial capacity are those not amenable to solvent recovery or solvent extraction because of their physical forms. Therefore, the Agency has assumed that the K103 and K104 wastes requiring alternative treatment will undergo incineration, followed by stabilization of the ash. Again, the Agency believes that this treatment can achieve the standard and the volumes of K103 and K104 requiring alternative treatment have been included in the incineration and stabilization totals presented in Table 6.

Wastes Not Requiring Alternative Capacity. After reviewing the new TSDR Survey, EPA has determined that many First Third wastes do not require alternative capacity, even though treatment standards are being proposed. These wastes are: K021, K025, K044, K045, K047, K060, K069, K004, K008, K015, K018, K036, K069, K073, and K100. Each of these is discussed below.

Proposed treatment standards for K044, K045 and K047 wastes are based on open detonation, for which there is no capacity constraint provided the residuals are not hazardous. The Agency believes that when open detonation is properly conducted, no reactive residues remain and the residuals exhibit no other characteristic. Therefore, no K044, K045, or K047 would require alternative commercial capacity and no further analysis is necessary.

Proposed treatment standards for the First Third waste K069 are based on chlorine oxidation. The Agency has determined that this waste is only being generated at one facility, and that the generator is able to treat the waste on-site. Therefore, no volumes were reported as requiring alternative commercial capacity and no further analysis is necessary.

Proposed treatment standards for the First Third waste K015 are based on liquid incineration and standards for waste K018 are based on solid/sludge incineration. However, after analyzing the new TSDR Survey data EPA has determined that neither of these wastes requires alternative treatment capacity. There are several possible explanations for this. First, it is possible that all of these wastes now being generated are being treated on-site, and do not require commercial capacity. Second, it is possible that these wastes are simply not being land disposed or are being land disposed by a method either not covered in the TSDR Survey or not included in the proposed rule (e.g., the wastes may be land disposed in an underground mine or may be deep-well injected). Finally, the waste may not have required alternative capacity in 1986, the reporting date covered by the TSDR Survey.

Proposed treatment standards for the First Third waste K069 are based on total recycle; this waste cannot be land disposed. Available information shows that all K069 wastes currently being generated are now being recycled and that no land disposal is occurring. Thus, this waste does not require alternative capacity.

The Agency has determined that several First Third wastes are no longer being generated. The treatment standards for these wastes are "no land disposal." These wastes are: K021, K025, K060, K004, K008, K036, K073, and K100. Since none of these wastes were reported as being land disposed in the TSDR Survey, no further capacity analysis was required.

Finally, EPA notes that these new TSDR data have implications for soft hammer certifications. EPA will be very skeptical about and will probably invalidate any soft hammer certification for a waste amenable to treatment by a treatment method for which ample capacity is now known to exist. Examples are any waste amenable to liquid injection incineration or to stabilization.

E. Alternative Capacity and Effective Dates for Solvent Wastes and California List Wastes

Using the new capacity data, EPA has reevaluated waste volumes requiring alternative capacity because of the Solvents Rule (51 FR 40572) and the California List HOC rule (52 FR 25760). As described above, the new analysis indicated significant changes in waste management practices and capacity, including significant increases in incineration capacity. Consequently, some national capacity variances are no longer necessary. Specifically, capacity variances are no longer needed for: (1) Solvents (F001–F005) generated by small quantity generators, CERCLA response action and RCRA corrective action sites addressed in § 268.30(a) (1) and (2) (except solvent contaminated soils) and for (2) California List HOCs (except HOC soils). The BDAT treatment for these wastes is incineration, and the new capacity data indicate significant increases in incineration capacity, assuring adequate capacity for these wastes (See Table 6).

F. National Variance From the Effective Date for Contaminated Soils

1. Legal Authority

Under RCRA sections 3004 (d)(3) and (e)(3), Congress provided that the land disposal restriction provisions for disposal of certain "contaminated soil" and "debris" from CERCLA 104 and 106 response actions and from RCRA corrective actions would not apply until 48 months from the enactment of HSWA. These provisions apply specifically to soil and debris contaminated with spent solvents, certain dioxin-containing wastes, and California list restricted hazardous wastes. November 8, 1988, therefore, is the applicable effective date established under RCRA 3004 subsections (d)(3) and (e)(3) for CERCLA and RCRA corrective action contaminated soil and debris. Congress provided no such alternative statutory effective date for CERCLA and RCRA soil and debris contaminated with First Third (or Second Third) wastes. Thus, the statutory effective date for these wastes is the same as for any other hazardous waste which is included in the first one-third of the schedule—August 8, 1988.

EPA has considered carefully the argument that the statutory effective date for solvent, dioxin, and HOC contaminated soils and debris from CERCLA response action and RCRA corrective actions cannot be extended because the national effective date for the underlying hazardous waste already has been extended for the maximum two years. EPA does not find this argument persuasive. First, sections 3004 (d)(3) and (e)(3) appear to establish a November 8, 1988 effective date for a particular category of wastes, namely contaminated soil and debris from CERCLA response actions and RCRA corrective actions. Section 3004(h)(2) then gives the Agency the authority to extend effective dates that otherwise would apply under subsection (d) or (e) for up to two years. The scheme, in fact, is similar to that for solvent, dioxin and California list wastes land disposed by underground injection, which are prohibited from land disposal on August 8, 1988 (RCRA section 3004(f)), which effective date likewise may be extended due to a lack of protective alternative capacity for up to two years.

Second, it is logical that Congress would have intended a later effective date for these wastes. An extra measure of environmental protection and accountability is afforded for these wastes due to the CERCLA and RCRA corrective action processes. These processes provide a documented connection with a regulatory process. Such a connection is not present for normal disposal of restricted wastes, and thus makes less pressing the need for an immediate prohibition effective date. Most important, however, is Congress' evident acknowledgment that it would take extra time to develop treatment capacity for soils and debris at the cleanup sites contaminated with these wastes. Foreseeing this potential shortfall, Congress placed these wastes on an alternative schedule approximately the same as the one for the first group of wastes prohibited under section 3004(g). Restricted hazardous wastes are normally prohibited from land disposal as soon as the statutory deadline passes. (RCRA section 3004(h)(1)). If, however, there is a lack of adequate alternative protective treatment, recovery, or disposal capacity to treat the wastes, the Agency may set an alternative effective date based on the earliest date on which such adequate capacity becomes available, not to exceed two years. (RCRA section 3004(h)(2)).

2. Summary of the Proposed Agency Action

In today's action, the Agency is proposing to grant a national capacity variance for certain contaminated soils that require solids incineration capacity. This variance applies to the following specific categories of soils contaminated with the following wastes: (a) Soils contaminated with spent solvent (F001–F005) and dioxin-containing (F020–23 and F026–28) wastes (restricted under section 3004(e)) from a response action taken under CERCLA section 104 or 106 or a RCRA corrective action; (b) soils contaminated with California list HOC wastes (under 3004(d)) from a response action taken under CERCLA section 104 or 106 or RCRA corrective actions; and (c) soils contaminated with certain First Third wastes for which the proposed treatment standards are based on incineration. (This final capacity variance does not apply exclusively to soils from CERCLA response and RCRA corrective actions. This is because there is no statutory distinction as to effective date between CERCLA/RCRA 3004(g) soils and all other soils as there is for 3004 (d) and (e) soils.) The applicable First Third wastes include K015, K016, K018, K019, K020, K024, K030, K037, and K048–K052 wastes addressed in the April 8, 1988 proposed rule (53 FR 11742), and K001, K083, K087, K101 and K102 wastes addressed in this proposal. Today's action proposes a 2-year national capacity variance from the applicable statutory effective date for these wastes. As such, the soils contaminated with the specified First Third wastes would receive a variance that extends the effective date for the land disposal restrictions to August 8, 1990. On the other hand, CERCLA and RCRA soils contaminated with spent solvent, certain listed dioxin-containing wastes and California list HOC wastes would be covered by the capacity variance until November 8, 1990—two years from the end of the statutory effective date applicable to these wastes. The following chart summarizes the Agency's proposal:

SUMMARY OF CURRENT AND PROPOSED EFFECTIVE DATES

Restricted hazardous waste	Current prohibition effective date	Proposed prohibition effective date
1. Solvent and dioxin-containing soil and debris:		
a. Soil from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste	11–8–88	11–8–90
b. Debris from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste	11–8–88	No change.[1]

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SUMMARY OF CURRENT AND PROPOSED EFFECTIVE DATES—Continued

Restricted hazardous waste	Current prohibition effective date	Proposed prohibition effective date
c. Soil NOT from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste	11–8–88	No change.
II. Soil and debris contaminated with California list HOC containing hazardous wastes:		
a. Soil from CERCLA or RCRA corrective actions	7–8–89	11–8–90
b. Debris from CERCLA or RCRA corrective actions	7–8–89	No change.[1]
c. Soil NOT from CERCLA or RCRA corrective actions	7–8–89	No change.[1]
III. Soil and debris contaminated with First Third wastes:		
a. Soil from CERCLA or RCRA corrective actions for which BDAT is based on incineration	8–8–88	8–8–90
b. Debris from CERCLA or RCRA corrective actions	8–8–88	No change.[1]
c. Soil NOT from CERCLA or RCRA corrective actions for which BDAT is based on incineration	8–8–88	8–8–90

[1] However, see section F.4. of todays preamble.

With respect to soils contaminated with spent solvent and dioxin-containing wastes, only those that result from a response action taken under section 104 or 106 of CERCLA or a corrective action required under RCRA would be included under this capacity variance. For all other soils contaminated with these wastes, an application for a case-by-case extension may be submitted if adequate alternative capacity cannot reasonably be made available by the applicable effective date. (See section 3004(h)(3).) Similarly, the proposed variance does not apply to California list HOC contaminated soils except those resulting from a CERCLA 104 or 106 response action or RCRA corrective action. Note that even though today's action proposes to rescind parts of the July 8, 1987 variances granted for HOCs, the existing capacity variance remains in place until July 8, 1989 for California list HOC contaminated soils. Furthermore, the proposed variance does not apply to soils contaminated with First Third waste for which treatment standards have not been established (i.e., those wastes subject to the "soft hammer" provisions). As a general matter, EPA is not proposing capacity variances for *any* soft hammer wastes. This is because the soft hammer itself provides a mechanism for ascertaining availability of treatment capacity (for wastes whose intended disposition is a landfill or impoundment), by placing the burden of investigating and certifying on the person managing the prohibited waste.

3. The Facts Justifying a National Capacity Variance for These Soils

Soils require rotary kiln incineration to meet BDAT standards. As mentioned in the section on capacity determinations (specifically III.D.4.), the evaluation of commercial rotary kiln incineration capacity required for solids incineration, shows that there is only about 2 million gallons of available commercial capacity (i.e., available after the effective dates for the non-soil solvents wastes, the non-soil California list HOC wastes and non-soil First Third wastes).

The amount of soil estimated to require solids incineration is shown below (These amounts represent the quantity of soils handled by commercial treatment facilities in 1986. Note, that the amount of soils requiring solids incineration that are generated by CERCLA response or RCRA corrective actions is not currently known.):

- Solvent—12 million gal/yr.
- Dioxin—(none reported in 1986)
- California List HOC's (other than First Third wastes for which treatment standards have been proposed)—4 million gal/yr.
- First Third (for which treatment standards have been proposed)—10 million gal/yr.

Thus, all of the solids incineration capacity would be utilized as a result of other actions taken today, and there will be a lack of capacity for soils incineration.

EPA acknowledges that in proposing a national capacity variance for contaminated soils, it is making a policy choice. That is, instead of proposing to rescind the variance for other HOC and solvent wastes requiring solids incineration, and not proposing a variance for certain First Third wastes requiring this type of treatment, EPA instead could try and carve out some segment of CERCLA and RCRA corrective action soils for immediate prohibition (leaving in place, or proposing a variance for these other waste). EPA is not pursuing this course for several reasons. First, it would be hard, if not impossible, to carve out a discrete segment of contaminated clean up soils to fit the available treatment capacity. More importantly, the precise amount of CERCLA and RCRA corrective action soils to be generated over the next 24 months is not certain (due to the unpredictable pace of clean up actions), whereas the amount of the other surface disposal wastes discussed above that require solids incineration capacity is much better quantified. By rescinding, or not proposing, variances for the wastes whose volume is better quantified, EPA is far more certain that the existing treatment capacity will actually be utilized. That is, EPA will not be reserving scarce solids incineration capacity for contaminated soils that might never be generated. EPA thus is structuring these proposed variances to make certain that scarce solids incineration capacity will actually be utilized.

This is not to say that EPA will invariably allocate treatment capacity to prohibited wastes whose generation rate is qualified. For example, if the Agency were required to allocate between corrective action/response wastes and wastes presently disposed of in underground injection wells or surface units other than impoundments and landfills, the Agency might choose to allocate the capacity to the corrective action/response wastes, given that they are customarily generated at sites actually posing a risk. EPA plans to discuss this point further in regulations dealing with First Third wastes that are injected into underground wells.

4. Request for Comment on Variance for Contaminated Debris

EPA is not proposing to grant a capacity variance for contaminated debris. Debris encompasses so many different types of materials—many of them highly out of-the-ordinary—that generic determinations as to type of treatment needed, and amount generated, are difficult.

EPA, however, solicits comment on whether a variance for contaminated debris should be granted. Such a variance would apply to all debris from CERCLA response actions and RCRA corrective actions which is contaminated with solvents, certain dioxins or HOCs above 1,000 ppm. It would also apply to debris contaminated with first third wastes whose treatment standard is based on incineration. Although it is difficult to pinpoint exactly how much debris will be generated, much of it will be solids (see 51 FR 40577, November 7, 1986)

defining "debris" to include "wood, stumps, clothing, equipment, building materials, storage containers, and liners"). The treatment standard for these solids will be based on incineration, and as noted above, EPA has allotted available solids incineration capacity for wastes other than soils and debris. Put another way, if there is not enough solids incineration capacity to accommodate contaminated soils, there also is not enough solids incineration capacity to accommodate both contaminated soils plus contaminated debris. In addition, Congress linked contaminated soils and debris when it established a different effective date for these wastes in sections 3004 (d)(3) and (e)(3). EPA thus solicits comment on extending the scope of the variance to include contaminated debris.

5. No Proposed Variance for Other Contaminated Soils

EPA is not proposing a national capacity variance for any of the following hazardous wastes: (a) Soils contaminated with solvents or dioxins which do not result from CERCLA response actions or RCRA corrective actions; and (b) soils contaminated with wastes whose treatment standard is not based on incineration. (See chart: Summary of Current and Proposed Effective Dates). With respect to soils that are not generated in the course of CERCLA or RCRA clean up activities, the applicable statutory effective date of November 8, 1988 has already passed and cannot be extended further (any person who manages such wastes may, however, submit an application for a case-by-case extension to the effective date). With respect to contaminated soils not requiring incineration to achieve the treatment standard, there is ample treatment capacity (for example, stabilization) so that a capacity variance is not warranted.

6. Definition of "Soil"

For the purpose of determining whether a contaminated material is subject to this national variance, some definition of the term "soil" is needed. Soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids, sludges or debris. The Agency is soliciting comment with respect to appropriate methods for determining whether such mixtures should be considered a soil waste. Soils ordinarily do not include any wastes withdrawn from hazardous waste management units, however, such as impoundment dredgings. EPA has calculated that treatment capacity exists for these wastes, and in addition, they are sludges, not soils. In addition, contaminated soils would ordinarily have to result from some type of cleanup activity not associated with a hazardous waste management unit currently subject to regulations under Parts 264 and 265.

The Agency also notes that the proposed variance obviously would not apply to materials produced as a result of the deliberate addition of soil or dirt to a restricted hazardous waste. Such a practice is forbidden by the provisions of the dilution prohibition (40 CFR 268.3).

7. Notes on Drafting of the Regulatory Language

To implement these changes in the various capacity variances, EPA is proposing to amend regulatory language in §§ 268.30–268.33. With respect to the solvent wastes covered in § 268.30, the Agency is proposing to add a new § 268.30(a)(4) dealing with contaminated soil and debris from CERCLA response and RCRA corrective actions. This provision would replace existing § 268.1(c)(3). New § 268.30(a)(5)–(7) would then indicate that certain residues from treating solvent wastes also would have prohibition effective dates other then November 7, 1988. (Incidentally, we note that the final changes in new § 268.30(a)(5) refers by cross-reference to treatment residues that have less than 1 percent solvent (treatment residues in the (a)(3) treatability group) but not to contaminated soils; this is because the contaminated soils in proposed § 268.30(a)(4) would never be generated as residues from treating another restricted solvent waste).

New § 268.30(b) would then group all the solvent wastes having a November 8, 1988 prohibition effective date (the <1% wastes in § 268.30(a)(3), the treatment residues in proposed § 268.30(a)(5), and CERCLA response and RCRA corrective action debris, and residues from treating the debris). New § 268.30(c) would group the wastes having an earlier effective date: i.e., Small Quantity Generator, CERCLA response and RCRA corrective action non-soil and debris wastes and residues from their treatment. New § 268.30(d) would set forth the 1990 effective date for CERCLA response and RCRA corrective action wastes. We also have added language indicating that if these wastes are to be disposed in landfills or impoundments until the prohibition effective date then the landfill or impoundment unit must meet the section 3004(o) minimum technology requirements. (See 53 FR 11789 (April 8, 1988)).

The Agency is proposing to make similar changes in §§ 268.31, 268.32, and 268.33 (this last provision still is proposed form) to reflect the proposed, revised effective dates. The language in § 268.33(c) would indicate that the 1990 effective date would apply to all soils contaminated with First Third wastes where the treatment standard for the waste is based on incineration. Appendix II of Part 268 will list the technology basis for treatment standards, and so provide a ready means of ascertaining which standards are based on incineration.

IV. Modifications to the Land Disposal Restrictions Framework and to Proposed Soft Hammer Provisions

A. Applicability (40 CFR 268.1)

The Agency is proposing to add a new § 268.1(d) to clarify that the Part 268 standards do not apply invariably to prohibited wastes generated from CERCLA response actions. Rather, such wastes could be subject to one or more of the waivers from otherwise applicable standards, which waivers are contained in CERCLA section 121(d)(4)(A)–(F). The same is true, of course, of all other RCRA provisions, but EPA believes it particularly important to mention this with respect to Part 268 because there are regulatory provisions that deal explicitly with prohibited wastes from CERCLA response actions (see e.g. proposed §§ 268.30(a)(4) and 268.30(c)).

B. Recordkeeping (40 CFR 268.7)

The November 7, 1986, rule (51 FR 40572) established a tracking system for wastes subject to the land disposal restrictions requiring treatment facilities to have records of the notices received from generators or other treatment facilities, and disposal facilities to have copies of the notifications and certifications provided by generators or treatment, storage and disposal facilities as codified in 40 CFR 268.7. The April 8, 1988, notice (53 FR 11742) proposed to modify the tracking system by having storage facilities maintain files of the notices and certifications sent by generators and treatment facilities. This proposal also developed a similar tracking system for wastes subject to the "soft hammer" provisions which would require generators and treatment, storage, and disposal facilities to keep records of the notices and 40 CFR 268.8 demonstrations and certifications.

Today's notice proposes to further modify the tracking system to include in

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40 CFR 268.7 (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) provisions stating that generators and storers must retain copies of the notifications and certifications forwarded to treatment, storage, and disposal facilities and received from storage facilities. The Agency believes that these changes will enhance the enforceability of the land disposal restrictions regulations and will make generator and storage recordkeeping requirements consistent with the recordkeeping requirements of treatment and disposal facilities.

Today EPA is also proposing an additional amendment to 40 CFR 268.7(a)(3) specifying that generators of wastes which are the subject of case-by-case extensions or national variances, or disposers of wastes with "no migration" exemptions must notify treatment and storage facilities receiving the wastes, a change that supplements, and is consistant with, the existing requirement to notify disposal facilities. In addition, the Agency is proposing that generators must retain records of this notification.

EPA is also proposing to add 40 CFR 268.7(a)(5) to require generators to retain records of data from testing the waste, treatment residual, or extract of the waste or treatment residual developed using the TCLP. The Agency believes that this addition to the regulations will establish consistency with the existing provisions requiring that data supporting decisions to restrict wastes based on knowledge of the wastes must be maintained in the generator's files. Furthermore, this action appears to enhance the enforceability of the regulations. EPA is requesting comment on the proposed recordkeeping changes explained in this section of the preamble.

EPA is also proposing to modify § 268.7(a) to provide for a limitation on the time period that records are required to be retained by generators. Although the current regulations require owners and operators of facilities to maintain § 268.7 records for a finite period of time, *i.e.*, until closure of the facility (see §§ 264.73(b) and 265.73(b)), the regulations currently provide that generators must maintain, for an *indefinite* period of time, all supporting data used to determine that a waste is restricted based solely on the generator's knowledge. *See* existing § 268.7(a)(4) (proposed to be redesignated as § 268.7(a)(5) in today's notice). In light of the indefinite time period stated in this existing requirement and today's proposal to require generators to maintain additional information (*i.e.*, copies of the § 268.7 notices, certifications, and all waste analysis data), the Agency believes that a finite time period may be a more appropriate burden on generators, while preserving the Agency's enforcement ability. Therefore, EPA is today proposing a 5-year limitation on the retention requirement for all records generators produce to comply with § 268.7 of the land disposal restrictions.

Similar to the generator manifest retention requirements in § 262.40, EPA is proposing that the 5-year time period would begin on the date that the restricted waste is sent to on-site or off-site treatment, storage, or disposal. Also similar to the § 262.40 manifest provision, the 5-year retention requirement would be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

Unlike the generator manifest requirements in § 262.42, which provide that generators must submit an Exception Report to EPA if they have not received a signed copy of the manifest from the designated owner or operator within 45 days from when the waste is accepted by the initial transporter, EPA is not proposing to create an exception reporting requirement for § 268.7 generator records. The Agency believes that an additional exception reporting requirement would be an undue burden on generators. Instead, EPA believes that requiring generators to retain for a 5-year period the § 268.7 records they produce is a more reasonable requirement, and that this would be adequate to support the Agency's enforcement program. The Agency recognizes that the proposed 5-year limit is unlike § 262.40, which requires generators to maintain a copy of the manifest for a 3-year period (subject to the automatic extension mentioned above). EPA believes that a 5-year limit is an appropriate compromise to imposing an additional exception reporting requirement, particularly in light of the additional concerns Congress has expressed regarding the proper management of wastes that are prohibited from land disposal. However, the Agency also solicits comment on the need for a 5-year limit versus the usual 3-year limit.

EPA also recognizes that the proposed 5-year retention requirement may, as a practical matter, result in a *de facto* change in the manifest retention requirement from three years to five years because many generators are putting the § 268.7 notices and certifications directly onto their manifests. The Agency does not intend to discourage the practice of putting this § 268.7 documentation on the manifest to the extent that such practices comply with State requirements. However, EPA is requesting comment on the generator record retention requirement proposed in today's notice, including comment on whether a finite period should be specified and, if so, whether five years or some other time period is appropriate.

C. National Variance for Spent Solvent Waste Residues (40 CFR 268.30)

EPA is also proposing to make a minor correction to 40 CFR 268.30(b) which will cross-reference rule language in the July 8, 1987, regulations (52 FR 25760). Under this rule the Agency added 40 CFR 268.30(a)(4) stating that residues from treating the wastes described in section 40 CFR 268.30(a) (1), (2), and (3) are eligible for a two-year variance from the effective date of the restrictions. EPA omitted, inadvertantly, to cross-reference paragraph (a)(4) in 40 CFR 268.30(b). We are proposing to correct the omission in this rule. EPA is not soliciting further comment on 40 CFR 268.30(a)(4) or any other provision in 40 CFR 268.30(a) which does not address the rescission of the variance for solvent-containing wastes (with the exception of § 268.30(a)(3) on which EPA has solicited comment; see 53 FR 11770).

EPA is proposing the following minor changes to the provisions implementing the section 3004(g)(6) soft hammer, which EPA proposed on April 8, 1988.

D. Section 268.8(a)(3)

EPA is proposing a small change in the language of proposed § 268.8(a)(3), proposed at 53 FR 11788. The language should refer to landfills and surface impoundments rather than all land disposal facilities, since the soft hammer, which proposed § 268.8(a)(3) implements, restricts disposal only to landfills and surface impoundments.

E. Section 268.8(b)(2)

We are proposing language identical to that proposed on April 8, except that we would delete the final clause which would allow the Regional Administrator to require a given method of treatment upon invalidating a certification. The soft hammer does not appear to allow EPA to affirmatively specify a type of treatment.

F. Section 268.8(c)

We are also proposing a change in proposed § 268.8(c) to indicate more clearly that prohibited soft hammer

wastes can be disposed of in impoundments or landfills until the occurrence of the first of three events: (1) The certification is invalidated; (2) EPA establishes a treatment standard; or (3) the hard hammer falls.

G. Section 268.33(g)

We are proposing modified language to clarify a generator's testing obligations when a treatment standard specifies concentration levels in the total waste versus the waste extract, and also proposing to delete the final three words ("in this section") since this reference was overly restrictive (omitting reference to no migration variances or treatability variances, to maintain only two of the omissions).

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorizations are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

The amendments being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer section 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in 50 FR 28728, *et seq.*, July 15, 1985.

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation of today's proposal and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is proposing to grant and reacind two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be

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authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action will be the establishment of new waste treatability groups. All wastes meeting the criteria of these new waste treatability groups will also be subject to the variances, and thus, granting such variances has national impacts. Therefore, this aspect of the program is not delegated to the States.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. However, the Agency is planning to propose an interpretation of the "no migration" language in the Federal Register for public comment. Because of the controversy surrounding the interpretation of the statutory language, and the potential for changes in policy, EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the Federal Register.

States are free to impose their own disposal restrictions if such actions are more stringent or broader in scope than the actions of Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such restrictions, the broader and more stringent State restrictions govern.

VI. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted First Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of First Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

Management of some First Third wastes could be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

Although there may be economic incentives to manage restricted First Third wastes by ocean dumping and ocean-based incineration, both technologies require permits, which could be issued only if technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence) were met. MPRSA requires that nine specific factors, including the availability and impacts of land-based disposal alternatives, be considered before permits can be issued for ocean disposal.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to First Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other sources of air emissions, such as tanks and waste transfer and handling.

VII. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule. These estimates are required for "major" regulations as defined by Executive Order 12291. The Agency is also required under the Regulatory Flexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's supplementary proposed rule is not a major rule. (However, in combination with the previous proposal (April 8, 1988; 53 FR 11742), the rule is a major rule.) This section of the preamble discusses the results of the analyses of the proposed rule as detailed in the draft Regulatory Impact Analysis (RIA) for the proposed rule. The draft RIA is available in the public docket.

The analyses presented in this section and in the draft RIA do not fully reflect the current status of the proposed rule. Certain wastes were included in the RIA, but due to the additional time required to set treatment standards for the wastes, were not part of the proposed rule. In addition, treatment

standards were set in the proposed rule for certain wastes which did not appear in the database used for the RIA and which were therefore not analyzed. These discrepancies will be addressed in the RIA for the First Third final rule.

2. Executive Order No. 12291

Executive Order 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has prepared an RIA and has concluded that the supplementary proposed rule is not a major rule. The annual cost to the economy of the supplementary proposed rule would be approximately $36 million. (However, in combination with the previous proposal (April 8, 1988, 53 FR 11742), the rule would be a major rule with an annual cost of $717–732 million.)

3. Basic Approach

EPA is proposing to set treatment standards for a subset of the First Third F and K wastes. The effects of the proposed rule were estimated by comparison of post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline is defined to be continued land disposal of wastes in units meeting minimum technological requirements.

4. Methodology

a. *Determination of Affected Population and Waste Management Practices.* The first step in determining the populations of affected wastes and facilities was to characterize waste streams based on available characterization reports and professional judgement. (See Section C for references.) This characterization data was matched with information on waste quantities and management practices from the 1981 RIA Mail Survey and the 1984 Small Quantity Generator Survey to determine the waste streams and facilities potentially affected by the proposed rule. Waste quantities and numbers of facilities from each survey were scaled up, by means of weighting factors, to represent the national population of wastes and facilities.

Next, it was necessary to adjust the affected waste and facility populations by considering the cost of compliance with regulations which have taken effect since the 1981 RIA Mail Survey was conducted. In particular, EPA adjusted reported waste management practices to reflect compliance with the provisions of 40 CFR Part 264, which apply to permitted treatment, storage, and disposal facilities. In making this adjustment, the Agency assumed that facilities would elect the least costly methods of compliance.

This adjustment defines not only baseline management practices and costs associated with them, but also the number of facilities and wastes streams in the affected population. For example, for some facilities, the costs of land disposing certain wastes may have been driven so high by the minimum technological requirements that other management modes became less expensive. EPA assumes that these facilities no longer land dispose these wastes and that these wastes are no longer part of the population of wastes that may be affected by any restrictions on land disposal.

Finally, it was necessary to consider the overlap between First Third wastes and California list, solvent, and dioxin wastes. A number of First Third wastes are California list wastes, and a few First Third mixed wastes contain solvents and dioxins. To isolate the impacts of this proposed rule, it was necessary to "net out" the costs, economic impacts, and benefits stemming from treatment standards established under other rules; in some cases this resulted in waste streams and facilities being dropped from the affected population for this rule.

The population of wastes which would be affected by the proposed rule may include some wastes from CERCLA responses or RCRA corrective actions. However, there are insufficient data at present to estimate these quantities. Underground injected wastes were excluded from this analysis; these wastes will be dealt with in the RIA for a separate rule.

The population of affected facilities may include:

- Commercial hazardous waste treatment, storage, and disposal facilities (commercial TSDFs), which charge a fee for hazardous waste disposal;
- Non-commercial TSDFs, which provide disposal services for wastes generated on-site or off-site by their parent firms;
- Generators, which send their waste off-site to commercial TSDFs for disposal; and
- Small quantity generators (SQGs), which send their waste off-site to commercial TSDFs.

b. *Cost Methodology.* Once waste quantity, type and method of treatment were known for the population of affected facilities, EPA developed estimates of costs of compliance for individual facilities, based on cost estimates for surveyed facilities representing the affected population. EPA estimated baseline and compliance waste management costs using engineering judgment. Wastes amendable to similar types of treatment were grouped to identify economies of scale available through co-treatment and disposal.

Facilities face several possible options if they may no longer land dispose of their wastes. EPA applied the same rationale in predicting facility choice among these options as it did in establishing the affected population: Facilities were assumed to elect the least costly method of complying with the requirements of this rule. Costs of compliance were derived by predicting the minimum-cost method of compliance with land disposal restrictions for each facility and calculating the increment between that and baseline disposal costs. As in the analysis of baseline costs, economies of scale in waste management were considered. Shipping costs for wastes sent off-site for management were also considered.

EPA developed facility-specific compliance costs in two components, which were weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance (O & M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost which is an initial facility outlay incurred for construction and depreciable assets. Capital costs were restated as annual values by using a capital recovery factor based on a nominal interest rate of nine percent. These annualized capital costs were then added to yearly O & M costs to derive an annual compliance cost.

c. *Economic Impact Methodology*—(1) *Non-Commercial TSDFs and SQGs.* EPA assessed economic impacts on non-commercial TSDFs and SQGs in several steps. First, the Agency employed a

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general screening analysis to compare facility-specific incremental costs to financial information for firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. (See Section C for references.) This comparison was based on two ratios, which were used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. This ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a coverage ratio relating cash from operations to costs of compliance. This ratio represents the number of times that facility gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse effect. The coverage ratio is the more stringent of the two ratios, but exceeding the critical level in either one suggests that facility is likely to be significantly affected. These ratios bound possible effects on individual firms.

Once facilities experiencing adverse economic effects were identified using the two screening ratios, a more detailed financial analysis was performed to verify the results and to focus more closely on affected facilities. For this subset of facilities, the coverage ratio was adjusted by allowing a portion of costs to be passed through. Economic effects on individual facilities were examined assuming that product price increases of five percent were possible. Those facilities for which the coverage ratio was less than two were considered likely to close.

(2) *Commercial TSDFs.* For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which might be used as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal and solid wastes. Consequently, the analysis of economic effects on commercial facilities was qualitative. This analysis included an examination of the quantity of waste each facility received from the waste group restricted by today's rule. EPA also examined the ability of each facility to provide the additional treatment required once these restrictions were promulgated, and thus to retain or expand that portion of its business generated by restricted wastes.

(3) *Generators.* EPA's analysis of the economic effects of this rule on generators disposing of large quantities of affected wastes off-site assumed that commercial facilities could entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the RIA Mail Survey, EPA did not develop plant-specific waste characterizations, treatment methods, and compliance costs for generators, as it did for TSDFs. The analysis of the economic effects of today's proposed rule on this group used RIA Mail Survey data to develop model plants generating average waste quantities. This allowed EPA to assess possible effects on generating plants.

d. *Benefits Methodology.* The benefits of today's proposed rule were evaluated by considering the reduction in human health risk that would result from using alternative treatment for First Third wastes rather than employing baseline management practices. Due to time and budget constraints, the benefits from human health risk reduction were analyzed qualitatively. Estimates of risk reduction from previous RIAs were used for certain wastes in this RIA where there was correspondence between the wastes in terms of waste codes, physical forms, baseline and alternative management practices, and quantities.

Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease-causing agents. The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the waste stream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and the fate and transport of chemical constituents in environmental media.

EPA estimated human health risk in previous RIAs in four steps. The first step was to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air, surface water, and ground water) into which they might be released by a certain waste management technology. These estimates depend on the steady-state (i.e., continuous) release rates calculated for each technology, and on environmental fate and transport characteristics for constituents.

The next step was to estimate the total human intake, or dose, of each of the chemicals through inhalation of air and ingestion of ground water, surface water, and contaminated fish. A 65 kilogram person was assumed to be continuously exposed to contaminated media over a 70-year lifetime.

The Agency next calculated the risk to an individual from the dose derived in the previous step. EPA estimated the relationship of dose to effect (using a "dose-response" curve developed based on toxicity data) and weighted the effect according to severity.

Finally, EPA estimated the population risk by multiplying the average individual risk by the number of people in a given environment. The whole process described above was repeated 2,000 times, using different population sizes and environmental settings drawn from representative distributions, to generate a population risk distribution for each waste-technology combination. The mean of the distribution for the baseline disposal technology was compared with the mean of the distribution for an alternative treatment technology to derive the net benefit of the land disposal restrictions for that waste stream. Risks were not discounted.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for First Third wastes are likely to be understated.

5. Results

a. *Population of Affected Facilities.* Most of the affected facilities were generators. Of 138 affected facilities, 95 were generators, 23 were non-commercial TSDFs, and 20 were commercial TSDFs. No SQGs were affected.

b. *Costs.* The annualized incremental cost of the supplemental proposed rule is approximately $36 million, making the rule a minor rule. (However, in combination with the previous proposal (April 8, 1988; 53 FR 11742), the rule would be a major rule with an annual cost of $717–732 million.) Most of the cost of the rule is associated with the treatment of K086 and K087 wastes.

Most of the waste affected by the proposed rule was land disposed in the baseline (as opposed to being stored or treated in surface impoundments or treated under California list land disposal restrictions); the post-regulatory practice for most of the waste was incineration. All of the waste stored in surface impoundments in the baseline dropped out of the analysis because storage in tanks was found to be less expensive than retrofitting surface impoundments to meet Part 264 requirements. Nearly all of the waste treated in surface impoundments dropped out of the analysis, since treatment was less costly than compliance with Part 264 requirements. The small quantity of dredged material from these impoundments requiring treatment caused these costs to be low.

c. *Economic Impacts.* Twenty-six facilities would be significantly impacted by the proposed rule. Of these, 21 are generators and 5 are non-commercial TSDFs. Commercial TSDFs were assumed to pass all compliance costs through to generators; therefore, the number of significantly affected commercial facilities was not calculated.

The significantly impacted non-commercial TSDFs are from the Chemicals and Allied Products industry and the Primary metals industry (SICs 28 and 33, respectively). Significantly impacted generators are from the Primary Metals industry (SIC 33), Fabricated Metals industry (SIC 34), and Transportation Equipment industry (SIC 34). Commercial TSDFs fall primarily into the Electric, Gas, and Sanitary Services sector (SIC 49); those facilities specializing in land disposal services could be adversely affected.

d. *Benefits.* Quantitative estimates of human health risk reduction, derived from previous RIAs, were available for four of the 19 waste streams included in the cost analysis. These four waste streams represent approximately 25 percent of the total waste volume included in the cost analysis. The total benefits for these four waste streams are a reduction of 20 cases of adverse health effects over 70 years, or an annual reduction of 0.29 cases. All of these benefits are due to one K087 waste stream.

Benefits for another six waste streams were assessed qualitatively and found to be low or zero. Data for assessing the benefits of the remaining nine waste streams were not available.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for a proposed rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of the proposed rule on small entities, here defined as concerns employing fewer than 50 persons. Because of data limitations, this small business analysis excluded generators of large quantities of First Third wastes. The small business population therefore included only two groups: All non-commercial TSDFs employing fewer than 50 persons and all SQGs which were also small businesses.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA has examined the proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. Only small businesses were identified as being affected by the proposed rule, and fewer than 20 percent of the small businesses were significantly affected based on the EPA guidelines. EPA has therefore concluded that today's proposed rule will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal RFA in support of the rule. More detailed information on small business impacts is available in the RIA for this rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1447) and a copy may be obtained from Rick Westlund, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2745. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981" (the RIA Mail Survey) (April 1984). EPA's "National Small Quantity Hazardous Waste Generator Survey" (February 1985) was the major source of data on small quantity generators.

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR Part 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR Part 261," Vols. I and II (August 1985);
- RCRA background and listing documents for 40 CFR Part 261;
- RCRA Section 3007 industry studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984); and
- Source assessment documents for various industries. Financial information for the economic impact analysis was obtained from the 1982 Census of Manufacturers and 1984 Annual Survey of Manufacturers. Producer price indices were used to restate 1984 dollars in 1987 terms.

E. Rescission of National Variance for Certain Solvent and California List Wastes

EPA is proposing to rescind parts of the variances granted under the November 7, 1986 and July 8, 1987 rules. Specifically, variances would be rescinded for small quantity generator (SQG) solvent wastes; non-wastewater HOCs with concentrations greater than 1,000 mg/l; and solid HOCs with concentrations greater than 1,000 mg/kg (except HOC soils). Rescission of these variances would have two impacts. First, affected waste generators would have to comply with waste treatment standards at an earlier date. In the case of SQG solvents, rescission of the variance would cause post-regulatory costs to be incurred in August 1988 rather than in November 1988. In the case of California list HOCs, rescission of the variance would cause post-regulatory costs to be incurred in August 1988 rather than in July 1989. The movement of the post-regulatory costs forward in time would result in only minor increases in overall post-regulatory costs (approximately five percent of pre-rescission post-regulatory costs for the wastes affected). (Refer to the background materials on the rescission of land disposal restriction variances for a discussion of the

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methodology and results of the rescission analysis.)

The second impact of the rescission would be to prohibit wastes from land disposal at an earlier date. This would result in short-term benefits to human health and the environment to the extent that alternative treatment is less risky than land disposal.

VIII. Implementation of the Land Disposal Restrictions Program

The generator or owner/operator of a treatment, storage, and disposal facility must follow the waste management procedures specified in 40 CFR Part 268 which are applicable to the restricted hazardous wastes subject to the provisions in today's proposal. These wastes are listed in Subpart C of Part 268. The corresponding treatment standards and effective dates are found in Part 268 Subpart D. After the applicable effective date, a generator of a waste must determine, at the point of initial generation, if the waste meets the treatment standard. This determination can be made based on knowledge or analysis of the hazardous constituents in the waste, treatment residual, or extract of the waste or treatment residual. Data supporting a determination based on knowledge must be kept in the generator's files.

A waste which meets the treatment standard or is the subject of a national variance, case-by-case extension, or "no migration" exemption can be land disposed. The generator must satisfy the notification and certification requirements of 40 CFR 268.7(a) (2) and (3). The land disposal facility is required by 40 CFR 268.7(c) to keep a record of the notice and certification and verify that the treatment standard was met by testing according to the frequency specified in the facility's waste analysis plan.

A waste which does not meet the treatment standard can be land disposed after adequate treatment. The generator must notify the treatment facility in accordance with 40 CFR 268.7(a)(1). The treatment facility must maintain a record of the notification and test the treated wastes according to the frequency specified in the facility's waste analysis plan. For treated wastes which meet the standard the treatment facility must provide the notice and certification required under 40 CFR 268.7(b) (1) and (2) to the land disposal facility. For treated wastes which do not meet the standard the treatment facility must comply with the notice requirements of 40 CFR 268.7(a)(1) if the waste will be managed at a different treatment facility.

In the April 8, 1988, rule (53 FR 11742) EPA solicited comment on modifications to 40 CFR 268.7 which would enable the Agency to track, from generator to treatment and/or disposal facility, the management of restricted hazardous wastes subject to the "soft hammer" provisions. For today's proposal these are wastes listed in 40 CFR 268.10 which do not have treatment standards proposed in this notice or the April 8, 1988 notice. Comments pertaining to the proposed demonstration, certification, and notification requirements for these wastes should be addressed to the April 8, 1988 notice.

Although EPA has stated in earlier rules (*see* 51 FR 40572, November 7, 1986; 52 FR 21010, June 4, 1987; 52 FR 25760, July 8, 1987) that restricted wastes are subject to certain Part 268 requirements (e.g., the § 268.7 recordkeeping requirements and the § 268.3 dilution prohibitions) even if such wastes are subject to an exemption, extension, or variance making them eligible for land disposal, the Agency has become aware of some confusion in the regulated community regarding this point. The confusion seems to have been created through the interchanging use, by both the regulated community and, in some instances, by EPA, of the terms "restricted" and "prohibited." To eliminate this confusion, EPA is clarifying the distinction between "restricted" and "prohibited" wastes in today's notice.

"Restricted" wastes are those categories of hazardous wastes that are prohibited from land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance, any of which makes them currently eligible for land disposal). In other words, a hazardous waste is "restricted" no later than the date of the deadline established in, or pursuant to, RCRA section 3004. Therefore, the F001–F005 solvent wastes and the F020–F023 and F026–F028 dioxin-containing wastes were "restricted" as of November 8, 1986, despite the fact that several subcategories of these wastes obtained 2-year national capacity variances allowing them to be land disposed until November 8, 1988. Similarly, California List wastes were "restricted" as of July 8, 1987, despite the fact that several subcategories of such wastes obtained 2-year national capacity variances allowing continued land disposal until July 8, 1989. Wastes contained in the schedule of thirds (51 FR 19300, May 28, 1986) are considered "restricted" no later than the dates specified in the schedule promulgated at 40 CFR 268.10, 268.11, and 268.12.

Generators must determine whether their wastes are "restricted" at the point of initial generation, *i.e.*, when the waste is first considered a hazardous wastes subject to RCRA regulation. To determine whether a hazardous waste is "restricted," generators need only determine whether the waste belongs to a category of wastes that has been prohibited from land disposal by regulation or by the automatic "hammer" provisions of RCRA. "Prohibited" wastes are a subset of "restricted" wastes, *i.e.*, they are those "restricted" wastes that are currently ineligible for land disposal. Therefore, a hazardous waste that is not "restricted" cannot be "prohibited" under RCRA section 3004. However, once a waste is considered "restricted," at least some of the Part 268 requirements apply.

The first Part 268 requirement applicable to "restricted" wastes is that generators must determine whether their waste currently is eligible for land disposal pursuant to the requirements of § 268.7. If the wastes currently is not eligible for land disposal (*i.e.*, the prohibition effective date has passed, the waste does not meet all applicable treatment standards or prohibition levels, and no § 268.5 extensions, § 268.6 "no migration" exemptions, or national capacity variances apply), then the waste currently is "prohibited" from land disposal as well as "restricted." If, however, the waste currently is eligible for land disposal (*i.e.*, the prohibition effective date has passed but the waste meets the applicable treatment standards or prohibition levels or is subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance) then the waste is considered "restricted" but not currently "prohibited." All wastes that are "restricted" must comply with the § 268.3 dilution prohibition (assuming the wastes are land disposed or otherwise managed after the prohibition effective date), the § 268.7 waste analysis and recordkeeping requirements, and all other applicable Part 268 requirements.

IX. References

Background Documents

(1) U.S. EPA, "Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions Proposed rule First-Third Waste Volume, Characteristics, and Required and Available Treatment Capacity—Part II." U.S. EPA, OSW, Washington, DC 1987.

(2) U.S. EPA, "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities." U.S. EPA, OSW, Washington, DC, 1987.

(3) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K046", Volume 11, U.S. EPA, OSW, Washington, DC, May 1988.

(4) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K101, K102," Volume 12, U.S. EPA, OSW, Washington, DC, May 1988.

(5) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F006", Volume 13, U.S. EPA, OSW Washington, DC, May 1988.

(6) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K087" Volume 14, U.S. EPA, OSW, Washington, DC, May 1988.

(7) U.S. EPA "Best Demonstrated Available Technology (BDAT) Background Document for K086", Volume 15, U.S. EPA, OSW Washington, DC, May 1988.

(8) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K001", Volume 16, U.S. EPA, OSW, Washington, DC, May 1988.

(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K106", Volume 17, U.S. EPA, OSW, Washington, DC, May 1988.

(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K022", Volume 18, U.S. EPA, OSW, Washington, DC, May 1988.

(11) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F002", Volume 19, U.S. EPA, OSW, Washington, DC

(12) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K099", Volume 20, U.S. EPA, OSW, Washington, DC, May 1988.

Regulatory Impact Analysis

(13) U.S. EPA, "Regulatory Impact Analysis of Proposed Restrictions on Land Disposal of First-Third Wastes." U.S. EPA, OSW, Washington, DC 1987.

X. List of Subjects in 40 CFR Part 264, 265, 266, and 268

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Date: May 9, 1988.

Lee Thomas,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Subchapter I of the CFR is proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

I. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart E—Manifest System, Recordkeeping, and Reporting

2. In § 264.73 paragraphs (b) (11) and (12) are revised and paragraphs (b) (15) and (16) are added to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(11) For an off-site treatment facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

(12) For an on-site treatment facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

* * * * *

(15) For an off-site storage facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8; and

(16) For an on-site storage facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In Part 265:

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.73 paragraphs (b) (9) and (10) are revised and paragraphs (b) (13) and (14) are added to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(9) For an off-site treatment facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

* * * * *

(13) For an off-site storage facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8; and

(14) For an on-site storage facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 and § 268.8.

PART 266 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

III. In Part 266:

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. In § 266.20 paragraph (b) is revised to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D (or prohibition levels in Subpart C where no treatment standards have been established) of Part 268 for each recyclable material (i.e. hazardous waste constituent) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided that such fertilizers meet the applicable treatment standards in Subpart D (or prohibition levels in Subpart C where no treatment standards have been established) of Part 268 for each

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recyclable material (i.e. hazardous waste constituent) that they contain.

PART 268—LAND DISPOSAL RESTRICTIONS

IV. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.1 paragraph (c)(3) is removed, paragraphs (c)(4), (c)(5), and proposed paragraph (c)(6) are redesignated and revised as paragraphs (c)(3), (c)(4), and (c)(5), and paragraph (d) is added to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(3) Where the waste is generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram acute hazardous waste per month, as defined in § 261.5 of this chapter;

(4) Where a farmer is disposing of waste pesticides in accordance with § 262.70;

(5) Prior to May 8, 1990, in a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of § 268.8, with respect to wastes that are not subject to Subpart D treatment standards and not subject to the prohibitions in § 268.32 or RCRA section 3004(d).

(d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

3. Section 268.7 is amended by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(3), and (a)(4), and by adding paragraph (a)(5) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d), with each shipment of waste the generator must notify the treatment facility or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d). The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment or storage. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

* * * * *

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d). The generator must retain a copy of the notice and certification for at least five years from the date that the waste was last sent to off-site disposal or storage. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

* * * * *

(3) If a generator's waste is subject to a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide variance under Subpart C, with each shipment of waste, he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available; and

(v) The date the waste is subject to the prohibitions.

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(e) of this part and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(e). The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in § 268.33(e);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data where available.

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. If a generator determines whether the waste is restricted based on testing his waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

* * * * *

4. Proposed § 268.8 is revised to read as follows:

§ 268.8 Landfill and surface impoundment disposal restrictions.

(a) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under § 268.33(e) of this part may be disposed in a landfill or surface impoundment which is in compliance with the requirements of § 268.5(h)(2) provided that the requirements of this section are met.

(1) Prior to such disposal, the person seeking to dispose such wastes (i.e., the generator or owner or operator) has made a good faith effort to locate and contract with treatment and recovery facilities currently available.

(2) Such generator or owner or operator submits to the Regional Administrator a demonstration and certification that the requirements of paragraph (a)(1) of this section have been met. The demonstration must include a list of facilities and facility officials contacted, addresses, telephone numbers, contact dates, and an explanation of why no treatment is practically available. The following certification is required:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) With the initial shipment of waste, such generator or owner or operator must submit a copy of the demonstration and the certification required in paragraph (a)(2) of this section to the landfill or surface impoundment disposal facility. For each subsequent waste shipment to the same disposal facility, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such generator or owner or operator must retain copies of the demonstration (if applicable) and certification required for each waste shipment on-site. The generator must retain a copy of the demonstration and certification for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) After receiving the demonstration and certification, the Regional Administrator may request any additional information which he deems necessary to evaluate the certification.

(1) Any person who has submitted a certification under this section must immediately notify the Regional Administrator when he has knowledge of any change in the conditions which formed the basis of his certification.

(2) If, after review of the certification, the Regional Administrator determines that treatment (or further treatment) that yields reductions in toxicity is practically and currently available, or that some other method of treatment yields greater reductions in toxicity of the waste or residual or greater reductions in the likelihood of migration of hazardous constituents from the waste or residual, the Regional Administrator may invalidate the certification.

(c) Once the certification is made, wastes may be disposed of in a landfill or surface impoundment (unless the Regional Administrator invalidates the certification) until treatment standards are set forth in Subpart D of this part or until May 8, 1990, whichever is earlier.

Subpart C—Prohibitions on Land Disposal

5. Section 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) Effective November 8, 1988, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The initial generator's solvent waste is a solvent-water mixture, solvent-containing sludge or solid, or solvent-contaminated soil (non CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41 of this part.

(4) The solvent waste is contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA); or

(5) The solvent waste is a residue from treating a waste described in paragraph (a)(3) of this section; or the solvent waste is a residue from treating a waste not described in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section provided such residue belongs to a different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (a)(3) of this section; or

(6) The solvent waste is a residue from treating a waste described in paragraphs (a)(1) and (a)(2) of this section; or

(7) The solvent waste is a residue from treating a waste described in paragraph (a)(4 of this section.

(b) Effective November 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a)(3) and (a)(5) of this section are prohibited from land disposal. Between August 8, 1988, and November 8, 1988, wastes included in paragraphs (a)(3) and (a)(5) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(c) Effective August 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a)(1), (a)(2), and (a)(6) of this section are prohibited from land disposal.

(d) Effective November 8, 1990, the F001–F005 solvent wastes which are contaminated soil resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) Effective November 8, 1988, the F001–F005 solvent wastes which are contaminated debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal.

(f) The requirements of paragraphs (a), (b), (c), (d), and (e) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

6. Section 268.31 is revised to read as follows:

§ 268.31 Waste specific prohibitions—Dioxin-containing wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40

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CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the following condition applies:

(1) The F020–F023 and F026–F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA).

(b) Effective November 8, 1990, the F020–F023 and F026–F028 dioxin-containing wastes listed in paragraph (a)(1) of this section are prohibited from land disposal.

(c) Between August 8, 1988, and November 8, 1988, wastes included in paragraph (a) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter. Between November 8, 1988, and November 8, 1990, wastes included in paragraph (a)(1) of this section maybe disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

7. In § 268.32 paragraph (e)(2) is removed, paragraphs (a)(3), (d), (e)(1), (f), (g) introductory text, and (h) are revised to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

(a) * * *

(3) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg and not listed in paragraphs (d) and (e) of this section.

* * * * *

(d) The requirements of paragraph (a) of this section do not apply until November 8, 1988, where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA) unless the following condition applies:

(1) The hazardous waste contains halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg and is contaminated soil resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Effective November 8, 1990, these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, the wastes may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) * * *

(1) Hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and which are contaminated soil not resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

(f) Between August 8, 1988, and July 8, 1989, wastes included in paragraph (e)(1) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(g) The requirements of paragraphs (a), (d), and (e) of this section do not apply if:

* * * * *

(h) The prohibitions and effective dates specified in paragraphs (a)(3), (d), (d)(1), and (e)(1) of this section do not apply where the waste is subject to a Part 268 Subpart C prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, see e.g., § 268.30(a)).

* * * * *

8. Proposed § 268.33 is revised to read as follows:

§ 268.33 Waste specific prohibitions—First Third Wastes

(a) Effective August 8, 1988, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. F006, K001, K004, K008, K015, K016, K018, K019, K020, K021, K022, K024, K025, K030, K036, K037, K044, K045, K046, K047, K060, K062, K069, K073, K083, K086, K087, K099, K100, K101, K102, K103, and K104 are prohibited from land disposal.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048, K049, K050, K051, K052, K061, K071, and K106 are prohibited from land disposal.

(c) Effective August 8, 1990, the wastes specified in 40 CFR 268.10 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil are prohibited from land disposal.

(d) Between August 8, 1988, and August 8, 1990, for wastes described in paragraphs (b) and (c) of this section, disposal in a landfill or surface impoundment is allowed only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between August 8, 1988, and May 8, 1990, the wastes specified in § 268.10 for which treatment standards under Subpart D of this part are not applicable or which do not exceed the prohibition levels in § 268.32 or in RCRA section 3004(d) can be disposed of in a landfill or surface impoundment provided the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in § 268.10 exceeds the applicable treatment standards specified in § 268.41 and § 268.43, the initial generator must test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

9. In § 268.41(a), in the F001–F005 spent solvents table, Methylene chloride (from the pharmaceutical industry) and its corresponding concentrations is removed, and the following subtables are added to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *

F006 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Selenium	(1)
Silver	0.26
Zinc	0.086
Cyanide	(1)

[1] Reserved.

K001 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Copper	0.71
Lead	0.53
Zinc	0.086

K022 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	3.8
Nickel	0.31

K046 nonwastewaters	Concentration (in mg/l)
Lead	0.176

K086 nonwastewaters (solvent washes) (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	0.094
Lead	0.37

K087 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Lead	0.53
Zinc	0.086

K101 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Zinc	0.086

[1] Reserved.

K102 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Zinc	0.086

[1] Reserved.

K106 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Mercury	0.028

* * * * *

10. In § 268.42 paragraph (a)(2) is revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of Part 264 Subpart O or Part 265 Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards. These treatment standards do not apply where the waste is subject to a Part 268 Subpart C treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a)).

* * * * *

11. In § 268.43 the following subtables are added to the table in proposed paragraph (a) to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

* * * * *

F001, F002, F003, F004 and F005 wastewaters (Pharmaceutical industry)	Concentration (in mg/l)
Methylene Chloride	0.44

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide	Reserved.

K001 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Naphthalene	7.98
Pentachlorophenol	36.75
Phenanthrene	7.98
Pyrene	7.28
Toluene	0.143
Xylenes	0.162

K001 wastewaters	Concentration (in mg/l)
Naphthalene	0.148
Pentachlorophenol	0.875
Phenanthrene	0.148
Pyrene	0.140
Toluene	0.143
Xylenes	0.161
Copper	0.42
Lead	0.037
Zinc	1.0

K022 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetophenone	19.0
Phenol	12.9
Toluene	0.034
Sum of Diphenylamine and Diphenylnitrosamine.	13.0
Sulfide	Reserved.

K086 nonwastewaters (Solvent Washes) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetone	0.37
n-Butyl alcohol	0.37
Ethyl acetate	0.37
Ethyl benzene	0.031
Methanol	0.37
Methyl isobutyl ketone	0.37
Methyl ethyl ketone	0.37
Methylene chloride	0.037
Toluene	0.031
1,1,1-Trichloroethane	0.044
Trichloroethylene	0.031
Xylenes	0.015
bis(2-ethylhexyl)phthalate	0.49
Cyclohexanone	0.49
1,2-Dichlorobenzene	0.49
Naphthalene	0.49

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K086 nonwastewaters (Solvent Washes) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Nitrobenzene	0.49

K086 wastewaters (Solvent Washes)	Concentration (in mg/l)
Acetone	0.015
n-Butyl alcohol	0.031
Ethyl acetate	0.031
Ethyl benzene	0.015
Methanol	0.031
Methyl isobutyl ketone	0.031
Methyl ethyl ketone	0.031
Methylene chloride	0.031
Toluene	0.029
1,1,1-Trichloroethane	0.031
Trichloroethylene	0.029
Xylenes	0.015
bis(2-ethylhexyl)phthalate	0.044
Cyclohexanone	0.022
1,2-Dichlorobenzene	0.044
Naphthalene	0.044
Nitrobenzene	0.044
Chromium (total)	0.32
Lead	0.037

K087 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acenaphthalene	3.4
Benzene	0.071
Chrysene	3.4
Fluoranthene	3.4
Indeno (1,2,3-cd) pyrene	3.4
Naphthalene	3.4
Phenanthrene	3.4
Toluene	0.65
Xylenes	0.070

K087 wastewaters	Concentration (in mg/l)
Acenaphthalene	0.028
Benzene	0.014
Chrysene	0.028
Fluoranthene	0.028
Indeno (1,2,3-cd) pyrene	0.028
Naphthalene	0.028
Phenanthrene	0.028
Toluene	0.006
Xylenes	0.014
Lead	0.037
Zinc	1.0

K099 nonwastewaters	Concentration (in mg/kg)
2,4-Dichlorophenoxyacetic acid	0.15
Hexachlorodibenzo-p-dioxine	0.001
Hexachlorodibenzofurans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzofurans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzofurans	0.001

K099 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenoxyacetic acid	0.15
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzofurans	0.001
Pentachlorodibenzo-p-dioxine	0.001
Pentachlorodibenzofurans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzofurans	0.001

K101 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitroaniline	14.0

K101 wastewaters	Concentration (in mg/l)
Ortho-Nitroaniline	0.266
Antimony	Reserved.
Arsenic	2.036
Cadmium	0.238
Lead	0.110
Mercury	0.027

K102 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitrophenol	13.9

K102 wastewaters	Concentration (in mg/l)
Ortho-Nitrophenol	0.028
Antimony	Reserved.
Arsenic	2.036
Cadmium	0.238
Lead	0.110
Mercury	0.027

K106 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Mercury	630

K106 wastewaters	Concentration (in mg/l)
Mercury	0.030

No Land Disposal for:	F006 wastewaters.
	K022 wastewaters
	K046 wastewaters
	K063
	K021
	K025
	K060
	K044
	K045
	K046 explosive nonwastewaters.
	K047

* * * * *

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May 17, 1988

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Definitions of Plan Assets; Participant Contributions; Final Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation defining when certain monies which a participant pays to, or has withheld by, an employer for contribution to a plan are "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). This regulation will provide guidance to employers that sponsor contributory plans, as well as fiduciaries, participants, and beneficiaries of plans.

EFFECTIVE DATE: The final regulation will take effect August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Judith Bleich Kahn, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 523-7901 or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC (202) 523-9596. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In 1979, the Department of Labor (the Department) published a proposed regulation defining the term "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code) [1] and dealing with the requirement of section 403 of ERISA that plan assets must be held in trust (44 FR 50363, August 28, 1979) (the 1979 Proposal). That proposal provided, in part, that the assets of a plan include any property that constitutes employee contributions to the plan. In the preamble to that proposal, the Department indicated that in the case of payroll deductions, an employee contribution is made at the time payment by check or cash is made or is required to be made to an employee in an amount less than that to which he would otherwise have been entitled, the lesser amount being justified on the ground that a contribution is being made to a plan.[2]

The portion of the 1979 Proposal that dealt with the trust requirement of ERISA also contained a proposed exemption from that requirement under which sponsoring employers of welfare plans would have been permitted to retain employee contributions for up to 90 days, provided they satisfied certain conditions with respect to such contributions.

A portion of the 1979 Proposal was reproposed in 1980 (45 FR 38084, June 6, 1980).

In 1982, the Department issued a final regulation dealing with a portion of the plan assets proposal as well as a regulation dealing with the trust requirement (47 FR 21241, May 18, 1982). In the preamble to that regulation, the Department noted that it intended to deal at another time with the issues raised by the comments on the proposed exemption from the trust requirement together with the part of the plan assets proposal regarding employee contributions.

On January 8, 1985, the Department withdrew most of the provisions of the 1979 Proposal and published a new proposal dealing with the definition of "plan assets" (50 FR 961). However, the Department did not withdraw the portion of the 1979 proposal dealing with employee contributions, and, in the preamble accompanying the new proposal, the Department noted that it intended to address these issues separately. Thus, this document contains the final rule relating to participant contributions based on the record develped with respect to the 1979 Proposal.

As noted above, the 1979 Proposal contained a proposed exemption from the trust requirement for certain employee contributions to certain welfare benefit plans. Several comments were received on this aspect of the proposal; these commentators generally argued that participant contributions to such plans represented reimbursement for costs already incurred by the employer and that such amounts should thus not be characterized as plan assets. In particular, one employer commented that it paid approximately 85% of benefits under its welfare plan from its own assets and that only 15% of the amounts paid out in benefits were attributable to participant contributions. In this regard, the Department would consider the appropriateness of an exemption from the trust requirement for certain welfare plans which could show that employee contributions consistently constituted reimbursement to the employer for moneys expended in premium payments or benefits.

Discussion of the Final Regulation

(1) General Rule for Participant Contributions

In response to the proposed regulation, the Department received numerous comments objecting to the requirement that employee contributions be paid into trust at the time such amounts are deducted from the employees' pay. Some of the commentators represented that large companies ..ith several payrolls and payroll locations could not accomplish the necessary accounting and fund transfer operations to place employee contributions in trust immediately without substantial costs and disruption to existing payroll systems. Other commentators argued that the proposed rule would impose increased costs and administrative burdens, especially on small employers; in this regard, one commentator stressed that the regulations should not operate so as to discourage contributory plans, as that may be the only kind of plan an employer can afford to sponsor.

Comments from the banking and insurance industries addressed situations where a plan is funded by insurance contracts with premiums payable monthly or quarterly, and where a plan is maintained in connection with a trust agreement which can only accept monthly or quarterly contributions. These commentators argued that the funding vehicle could not accept contributions more frequently without significant costs. In addition, the commentators indicated that the maintenance of an interim trust would create administrative expenses without concomitant benefits to participants.[3]

Finally, several commentators noted that the proposed 90 day trust exemption for certain welfare plans contrasted sharply with the rule for other types of plans, for which the exemption would not be available.

After consideration of the comments, the Department has decided to modify the rule relating to participant contributions. Under the final regulation, the assets of a plan shall include amounts paid by a participant (or beneficiary) or withheld by an employer from a participant's wages for contribution to a plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in any event within 90 days from the date on which such amounts are received by the employer or would otherwise have been payable to the employee in cash. Under this revised general rule, participant contributions to both pension plans and welfare plans are treated alike.[4]

The revised general rule relating to participant contributions is intended to reflect a balancing of the costs of promptly transmitting such contributions to the plan relative to the protections provided to participants by such transfers. In formulating the final regulation, the Department has attempted to remain consistent with one of the key purposes of the trust requirement of section 403(a) of ERISA—the segregation of plan assets so as to prevent commingling of such assets with an employer's own property.

The regulation is not intended, however, to allow employers to use participant contributions for their own purposes. The Department is concerned that participant contributions be paid promptly into the plan so as to begin earning interest or other investment return and to be available for the payment of benefits. Employers should examine their current payroll procedures to ascertain whether they are indeed transmitting participant contribution amounts at the earliest reasonable time. In this regard, employers who fail to transmit promptly such amounts, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions. *Pension Benefit Guaranty Corporation* v. *Solmsen*, 671 F. Supp. 938 (E.D.N.Y. 1987).[5]

The final rule allows a maximum of 90 days for employers to pay to the plan amounts representing participant contributions. The 90 day period is to begin on the date on which the contribution amount is received by the employer or the date on which such amounts would have otherwise been payable to the employee in cash. While the majority of commentators requested the Department adopt a final rule allowing for quarterly payments of participant contributions to a plan, many employers represented that they currently remitted such contributions on a biweekly or a monthly basis. The Department wishes to stress that the outside limit of 90 days is not intended to supersede the preceding portion of the rule, that is, that participant contributions become plan assets "as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets." What is a reasonable time for segregation from the employer's general assets depends on the facts and circumstances of a particular case.[6]

It will not be reasonable if, absent changed circumstances, an employer which has been making biweekly remittances of such contributions hereafter changes its practices to hold such amounts in its own account for an additional period of time, up to the 90 day limit. It will also not be reasonable for an employer which has been, and is able to continue, making monthly remittances to delay such remittances for an additional 60 days in order to take advantage of the 90 day maximum. Similarly, an employer which has been making remittances of participant contributions to the plan at or within 90 days, but which is reasonably able to remit such amounts at an earlier time, must change its practices to comply with the rule promulgated today.

(2) Relationship to 18 U.S.C. 664

The Department of Justice, in its comments on the proposed regulation, stated that under 18 U.S.C. 664, the embezzlement, conversion, abstraction, or stealing of "any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or any fund connected therewith," is a criminal offense, and that under such language, criminal prosecution may go forward in situations in which the participant contribution is not a plan asset for purposes of Title I of ERISA. Though this regulation defines when participant contributions become "plan assets," it does so only for the purposes of Title I of ERISA and the related prohibited transaction excise tax provisions of the Code. The regulation explicitly states that it may not be relied upon to bar criminal prosecutions pursuant to 18 U.S.C. 664.

However, it should be noted that under this regulation in circumstances in which the employer clearly converts participant contributions to his own use, such amounts will be considered "segregated," and thus will be "plan assets."

(3) Dues-Financed Plans

Several commentators expressed concern that the term "participant contributions" might be interpreted to include amounts paid as union dues when a portion of such dues may be used to pay benefits under a dues-financed welfare or pension plan. If such payments are considered to be participant contributions, one commentator argued, the sponsoring employee organization would be required to incur needless additional expenses. This commentator noted that under section 501(a) of the Labor Management Reporting and Disclosure Act of 1959, officers, agents, shop stewards and other representatives of labor organizations sponsoring plans are declared trustees with respect to such amounts and that criminal penalties are provided for the breach of duty by any such trustee.

The Department does not intend for the regulation relating to participant

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[1] The Secretary of Labor has authority to issue regulations relating to section 4975 of the Internal Revenue Code pursuant to section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[2] 44 FR at 50365, n.12.

[3] Persons commenting on the proposed exemption from the trust requirement raised similar objections to the condition in that exemption which would have required that employee contributions be held in a segregated account.

[4] One employer sponsoring a contributory plan commented that retired persons participated in its welfare benefit plan and requested clarification as to the treatment of amounts received from such persons. Section 3(7) of ERISA defines the term "participant" to mean "any employee or former employee of an employer * * * who is or may become eligible to receive a benefit of any type from an employee benefit plan." In addition, the continuation coverage provisions of Part 6 of title I of ERISA require that group health plans provide certain employees, former employees (including retirees), and family members the opportunity to continue health care coverage under the plan at group rates in certain instances where coverage would otherwise be terminated. See sections 601 through 608 of ERISA. Thus, the statute clearly contemplates that former employees, retirees and certain beneficiaries may be covered by a plan, in addition to active employees. Accordingly, while the final regulation refers to "participant contributions", the regulation also applies to payments made by former employees, retirees, and family member-beneficiaries covered under the plan.

[5] The obligation of a plan fiduciary to collect participant contributions from an employer is similar to the obligation of a fiduciary to collect contributions payable by an employer on its own behalf. In this respect, the Department has indicated that if a multiple employer plan does not establish and implement collection procedures which are reasonable, diligent and systematic, it may be found to be engaging in prohibited transactions under ERISA for failing to collect delinquent contributions. *See* ERISA section 406(a)(1)(B) and Prohibited Transaction Exemption 76-1, 41 FR 12740, 12741, March 26, 1976. *Cf., Central States Pension Fund* v. *Central Transport, Inc.*, 472 U.S. 559, 574 (1985), where the Court interpreted section 406(a)(1)(B) of ERISA as creating a requirement that the plan trustees assure the full and prompt collection of all contributions owed to the plan.

[6] The Department is of the opinion that there will be circumstances where the date of receipt of a participant contribution paid to the employer will be the earliest date on which such a contribution could reasonably be segregated from the employer's general assets and, therefore, in such circumstances, such an amount will be immediately subject to the trust requirement.

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contributions to include amounts paid to an employee organization as union dues. Union dues are generally considered to be income to the union and, like other assets of the union, may be subject to the claims of the union's general creditors or used for the organization's general purposes. The Department has concluded that amounts paid as union dues should not be characterized as participant contributions merely because a portion of such dues might be used to provide benefits under a welfare or pension plan sponsored by the employee organization.[1]

(4) Effective Date

The Department is establishing an effective date for this final rule of 90 days from the date of its publication in the Federal Register in order to allow employers to adjust their accounting procedures and payroll systems to comply with the new rule. During this 90 day period, as noted above, all affected employers should examine their current payroll practices to determine whether they are in compliance with today's rule, that is, whether they are transmitting participant contribution amounts to the plan at the earliest date such contributions can reasonably be segregated from the employer's assets, not to exceed 90 days from the date of payment to or withholding by the employer.

(5) Designation

This final rule is being published at 29 CFR 2510.3–102.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. The regulation would describe when contributions made by a participant of a plan subject to ERISA or to the related prohibited transaction excise tax provisions of the Internal Revenue Code must be transmitted to the plan by an employer withholding the contributions.

Executive Order 12291

The Department has determined that the regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(11).

Statutory Authority

The final regulation is being adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

Final Rule

The Department is amending Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority citation for Part 2510 is revised to read as set forth below:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–88, 3–87, and Labor Management Services Administration Order No. 2–6.

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), and 3 CFR 1978 Comp. 332.

2. By adding, in the appropriate place, the following § 2510.3–102:

§ 2510.3–102. Definition of "plan assets"—participant contributions.

(a) *Participant contributions.* For purposes of Subtitle A and Parts 1 and 4 of Subtitle B of Title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, not to exceed 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(b) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer W is a large national corporation that has several payroll centers. Since each payroll center has a different pay period and each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions, the company has adopted a procedure under which each payroll center promptly forwards figures representing its total payroll deductions for each plan for such month to a centralized location where amounts from all centers are promptly totaled and a single check representing the aggregate participant contributions for the month is issued promptly to the plan by the employer. W has reasonably concluded that this procedure permits segregation of participant contributions at the earliest practicable time. Under paragraph (a), the assets of the plan include the participant contributions as of the date on which the employer issues the check to the plan.

(2) Employer X is a small company with a small number of employees at a single payroll location. X maintains a contributory profit-sharing plan in which all of its employees participate. X's practice is to commingle accumulated participant contributions with its general assets and to issue a single check to the trust that is maintained under the plan in the amount of such accumulated contributions once each quarter. In view of the relatively small number of employees and the fact that they are paid from a single location, X could reasonably be expected to transmit participant contributions to a trust within 10 days of the close of each pay period. The assets of the plan include the participant contributions attributable to any pay period as of the date 10 days from the close of such period.

(c) *Effective date.* This section is effective August 15, 1988.

Signed at Washington, DC, this 11th day of May 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–10935 Filed 5–16–88; 8:45 am]

BILLING CODE 4510–29–M

[1] In some circumstances a union may so specifically "earmark" a portion of such dues as a source of benefits under a plan that those monies should be considered plan assets. This issue is beyond the scope of the regulation being published here.

federal register

Tuesday
May 17, 1988

Part VI

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Regulation Relating to the Definition of Adequate Consideration; Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation Relating to the Definition of Adequate Consideration

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of a proposed regulation under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act of 1986 (FERSA). The proposal clarifies the definition of the term "adequate consideration" provided in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA for assets other than securities for which there is a generally recognized market. Section 3(18)(B) and section 8477(a)(2)(B) provide that the term "adequate consideration" for such assets means the fair market value of the asset as determined in good faith by the trustee or named fiduciary (or, in the case of FERSA, a fiduciary) pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor. Because valuation questions of this nature arise in a variety of contexts, the Department is proposing this regulation in order to provide the certainty necessary for plan fiduciaries to fulfill their statutory duties. If adopted, the regulation would affect plans investing in assets other than securities for which there is a generally recognized market.

DATES: Written comments on the proposed regulation must be received by July 18, 1988. If adopted, the regulation will be effective for transactions taking place after the date 30 days following publication of the regulation in final form.

ADDRESS: Written comments on the proposed regulation (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20216, Attention: Adequate Consideration Proposal. All written comments will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9596 (not a toll-free number) or Mark A. Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–7901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Notice is hereby given of a proposed regulation under section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA. Section 3(18) of the Act provides the definition for the term "adequate consideration," and states:

> The term "adequate consideration" when used in part 4 of subtitle B means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

The term "adequate consideration" appears four times in part 4 of subtitle B of Title I of the Act, and each time represents a central requirement for a statutory exemption from the prohibited transaction restrictions of the Act. Under section 408(b)(5), a plan may purchase insurance contracts from certain parties in interest if, among other conditions, the plan pays no more than adequate consideration. Section 408(b)(7) provides that the prohibited transaction provisions of section 406 shall not apply to the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary of Labor, only if the plan receives no less than adequate consideration pursuant to such conversion. Section 408(e) of the Act provides that the prohibitions in sections 406 and 407(a) of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities, or the acquisition, sale or lease by a plan of qualifying employer real property if, among other conditions, the acquisition, sale or lease is for adequate consideration. Section 414(c)(5) of the Act states that sections 406 and 407(a) of the Act shall not apply to the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of the property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

Public utilization of these statutory exemptions requires a determination of "adequate consideration" in accordance with the definition contained in section 3(18) of the Act. Guidance is especially important in this area because many of the transactions covered by these statutory exemptions involve plan dealings with the plan sponsor. A fiduciary's determination of the adequacy of consideration paid under such circumstances represents a major safeguard for plans against the potential for abuse inherent in such transactions.

The Federal Employees' Retirement System Act of 1986 (FERSA) established the Federal Retirement Thrift Investment Board whose members act as fiduciaries with regard to the assets of the Thrift Savings Fund. In general, FERSA contains fiduciary obligation and prohibited transaction provisions similar to ERISA. However, unlike ERISA, FERSA prohibits party in interest transactions similar to those described in section 406(a) of ERISA only in those circumstances where adequate consideration is not exchanged between the Fund and the party in interest. Specifically, section 8477(c)(1) of FERSA provides that, except in exchange for adequate consideration, a fiduciary shall not permit the Thrift Savings Fund to engage in: transfers of its assets to, acquisition of property from or sales of property to, or transfers or exchanges of services with any person the fiduciary knows or should know to be a party in interest. Section 8477(a)(2) provides the FERSA definition for the term "adequate consideration" which is virtually identical to that contained in section 3(18) of ERISA. Thus, the proposal would apply to both section 3(18) of ERISA and section 8477(a)(2) of FERSA.

When the asset being valued is a security for which there is a generally recognized market, the plan fiduciary must determine "adequate consideration" by reference to the provisions of section 3(18)(A) of the Act (or with regard to FERSA, section 8477(a)(2)(A)). Section 3(18)(A) and section 8477(a)(2)(A) provide detailed reference points for the valuation of securities within its coverage, and in effect provides that adequate consideration for such securities is the prevailing market price. It is not the Department's intention to analyze the requirements of section 3(18)(A) or 8477(a)(2)(A) in this proposal. Fiduciaries must, however, determine whether a security is subject to the specific provisions of section 3(18)(A) (or section 8477(a)(2)(A) of FERSA) or the more general requirements of section 3(18)(B) (or section 8477(a)(2)(B)) as interpreted in this proposal. The question of whether a security is one for which there is a generally recognized market requires a factual determination in light of the character of the security and the nature and extent of market activity with regard to the security. Generally, the Department will examine whether a security is being actively traded so as to provide the benchmarks Congress intended. Isolated trading activity, or trades between related parties, generally will not be sufficient to show the existence of a generally recognized market for the purposes of section 3(18)(A) or section 8477(a)(2)(A).

In the case of all assets other than securities for which there is a generally recognized market, fiduciaries must determine adequate consideration pursuant to section 3(18)(B) of the Act (or, in the case of FERSA, section 8477(a)(2)(B)). Because it is designed to deal with all but a narrow class of assets, section 3(18)(B) and section 8477(a)(2)(B) are by their nature more general than section 3(18)(A) or section 8477(a)(2)(A). Although the Department has indicated that it will not issue advisory opinions stating whether certain stated consideration is "adequate consideration" for the purposes of section 3(18), ERISA Procedure 76–1, § 5.02(a) (41 FR 36281, 36282, August 27, 1976), the Department recognizes that plan fiduciaries have a need for guidance in valuing assets, and that standards to guide fiduciaries in this area may be particularly elusive with respect to assets other than securities for which there is a generally recognized market. *See*, for example, *Donovan v. Cunningham*, 716 F.2d 1455 (5th Cir. 1983) (court encourages the Department to adopt regulations under section 3(18)(B)). The Department has therefore determined to propose a regulation only under section 3(18)(B) and section 8477(a)(2)(B). This proposal is described more fully below.

It should be noted that it is not the Department's intention by this proposed regulation to relieve fiduciaries of the responsibility for making the required determinations of "adequate consideration" where applicable under the Act or FERSA. Nothing in the proposal should be construed as justifying a fiduciary's failure to take into account all relevant facts and circumstances in determining adequate consideration. Rather, the proposal is designed to provide a framework within which fiduciaries can fulfill their statutory duties. Further, fiduciaries should be aware that, even where a determination of adequate consideration comports with the requirements of section 3(18)(B) (or section 8477(a)(2)(B) of FERSA) and any regulation adopted thereunder, the investment of plan assets made pursuant to such determination will still be subject to the fiduciary requirements of Part 4 of Subtitle B of Title I of the Act, including the provisions of sections 403 and 404 of the Act, or the fiduciary responsibility provisions of FERSA.

B. Description of the Proposal

Proposed regulation 29 CFR 2510.3–18(b) is divided into four major parts. Proposed § 2510.3–18(b)(1) states the general rule and delineates the scope of the regulation. Proposed § 2510.3–18(b)(2) addresses the concept of fair market value as it relates to a determination of "adequate consideration" under section 3(18)(B) of the Act. Proposed § 2510.3–18(b)(3) deals with the requirement in section 3(18)(B) that valuing fiduciary act in good faith, and specifically discusses the use of an independent appraisal in connection with the determination of good faith. Proposed § 2510.3–18(b)(4) sets forth the content requirements for written valuations used as the basis for a determination of fair market value, with a special rule for the valuation of securities other than securities for which there is a generally recognized market. Each subsection is discussed in detail below.

1. General Rule and Scope.

Proposed § 2510.3–18(b)(1)(i) essentially follows the language of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA and states that, in the case of a plan asset other than a security for which there is a generally recognized market, the term "adequate consideration" means the fair market value of the asset as determined in good faith by the trustee or named fiduciary (or, in the case of FERSA, a fiduciary) pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor. Proposed § 2510.3–18(b)(1)(ii) delineates the scope of this regulation by establishing two criteria, both of which must be met for a valid determination of adequate consideration. First, the value assigned to an asset must reflect its fair market value as determined pursuant to proposed § 2510.3–18(b)(2). Second, the value assigned to an asset must be the product of a determination made by the fiduciary in good faith as defined in proposed § 2510.3–18(b)(3). The Department will consider that a fiduciary has determined adequate consideration in accordance with section 3(18)(B) of the Act or section 8477(a)(2)(B) of FERSA only if both of these requirements are satisfied.

The Department has proposed this two part test for several reasons. First, Congress incorporated the concept of fair market value into the definition of adequate consideration. As explained more fully below, fair market value is an often used concept having an established meaning in the field of asset valuation. By reference to this term, it would appear that Congress did not intend to allow parties to a transaction to set an arbitrary value for the assets involved. Therefore, a valuation determination which fails to reflect the market forces embodied in the concept of fair market value would also fail to meet the requirements of section 3(18)(B) of the Act or section 8477(a)(2)(B) of FERSA.

Second, it would appear that Congress intended to allow a fiduciary a limited degree of latitude so long as that fiduciary acted in good faith. However, a fiduciary would clearly fail to fulfill the fiduciary duties delineated in Part 4 of Subtitle B of Title I of the Act if that fiduciary acted solely on the basis of naive or uninformed good intentions. *See Donovan v. Cunningham, supra*, 716 F.2d at 1467 ("[A] pure heart and an empty head are not enough.") The Department has therefore proposed standards for a determination of a fiduciary's good faith which must be satisfied in order to meet the requirements of section 3(18)(B) or section 8477(a)(2)(B) of FERSA.

Third, even if a fiduciary were to meet the good faith standards contained in this proposed regulation, there may be circumstances in which good faith alone fails to insure an equitable result. For example, errors in calculation or honest failure to consider certain information could produce valuation figures outside of the range of acceptable valuations of a given asset. Because the determination of adequate consideration is a central requirement of the statutory exemptions discussed above, the Department believes it must assure that such exemptions are made available only for those transactions possessing all the external safeguards envisioned by

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Congress. To achieve this end, the Department's proposed regulation links the fair market value and good faith requirements to assure that the resulting valuation reflects market considerations and is the product of a valuation process conducted in good faith.

2. Fair Market Value

The first part of the Department's proposed two part test under section 3(18)(B) and section 8477(a)(2)(B) requires that a determination of adequate consideration reflect the asset's fair market value. The term "fair market value" is defined in proposed § 2510.3–18(b)(2)(i) as the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well-informed about the asset and the market for that asset. This proposed definition essentially reflects the well-established meaning of this term in the area of asset valuation. *See*, for example, 26 CFR 20.2031–1 (estate tax regulations); Rev. Rul. 59–60, 1959–1 Cum. Bull. 237; *United States v. Cartwright*, 411 U.S. 546, 551 (1973); *Estate of Bright v. United States*, 658 F.2d 999, 1005 (5th Cir. 1981). It should specifically be noted that comparable valuations reflecting transactions resulting from other than free and equal negotiations (*e.g.*, a distress sale) will fail to establish fair market value. *See Hooker Industries, Inc. v. Commissioner*, 3 EBC 1849, 1854–55 (T.C. June 24, 1982). Similarly, the extent to which the Department will view a valuation as reflecting fair market value will be affected by an assessment of the level of expertise demonstrated by the parties making the valuation. *See Donovan v. Cunningham, supra*, 716 F.2d at 1468 (failure to apply sound business principles of evaluation, for whatever reason, may result in a valuation that does not reflect fair market value).[1]

The Department is aware that the fair market value of an asset will ordinarily be identified by a range of valuations rather than a specific, set figure. It is not the Department's intention that only one valuation figure will be acceptable as the fair market value of a specified asset. Rather, this proposal would require that the valuation assigned to an asset must reflect a figure within an acceptable range of valuations for that asset.

In addition to this general formulation of the definition of fair market value, the Department is proposing two specific requirements for the determination of fair market value for the purposes of section 3(18)(B) and section 8477(a)(2)(B). First, proposed § 2510.3–18(b)(2)(ii) requires that fair market value must be determined as of the date of the transaction involving that asset. This requirement is designed to prevent situations such as arose in *Donovan v. Cunningham, supra*. In that case, the plan fiduciaries relied on a 1975 appraisal to set the value of employer securities purchased by an ESOP during 1976 and thereafter, and failed to take into account significant changes in the company's business condition in the interim. The court found that this reliance was unwarranted, and therefore the fiduciaries' valuation failed to reflect adequate consideration under section 3(18)(B). *Id.* at 1468–69.

Second, proposed § 2510.3–18(b)(2)(iii) states that the determination of fair market value must be reflected in written documentation of valuation [2] meeting the content requirements set forth in § 2510.3–18(b)(4). (The valuation content requirements are discussed below.) The Department has proposed this requirement in light of the role the adequate consideration requirement plays in a number of statutory exemptions from the prohibited transaction provisions of the Act. In determining whether a statutory exemption applies to a particular transaction, the burden of proof is upon the party seeking to make use of the statutory exemption to show that all the requirements of the provision are met. *Donovan v. Cunningham, supra*, 716 F.2d at 1467 n.27. In the Department's view, written documentation relating to the valuation is necessary for a determination of how, and on what basis, an asset was valued, and therefore whether that valuation reflected an asset's fair market value. In addition, the Department believes that it would be contrary to prudent business practices for a fiduciary to act in the absence of such written documentation of fair market value.

3. Good Faith

The second part of the Department's proposed two-part test under section 3(18)(B) and section 8477(a)(2)(B) requires that an assessment of adequate consideration be the product of a determination made in good faith by the plan trustee or named fiduciary (or under FERSA, a fiduciary). Proposed § 2510.3–18(b)(3)(i) states that as a general matter this good faith requirement establishes an objective standard of conduct, rather than mandating an inquiry into the intent or state of mind of the plan trustee or named fiduciary. In this regard, the proposal is consistent with the opinion in *Donovan v. Cunningham, supra*, where the court stated that the good faith requirement in section 3(18)(B):

> is not a search for subjective good faith * * * The statutory reference to good faith in Section 3(18) must be read in light of the overriding duties of Section 404.

716 F.2d at 1467. The inquiry into good faith under the proposal therefore focuses on the fiduciary's conduct in determining fair market value. An examination of all relevant facts and circumstances is necessary for a determination of whether a fiduciary has met this objective good faith standard.

Proposed § 2510.3–18(b)(3)(ii) focuses on two factors which must be present in order for the Department to be satisfied that the fiduciary has acted in good faith. First, this section would require a fiduciary to apply sound business principles of evaluation and to conduct a prudent investigation of the circumstances prevailing at the time of the valuation. This requirement reflects the *Cunningham* court's emphasis on the use of prudent business practices in valuing plan assets.

Second, this section states that either the fiduciary making the valuation must itself be independent of all the parties to the transaction (other than the plan), or the fiduciary must rely on the report of an appraiser who is independent of all the parties to the transaction (other than the plan). (The criteria for determining independence are discussed below.) As noted above, under ERISA, the determination of adequate consideration is a central safeguard in many statutory exemptions applicable to plan transactions with the plan sponsor. The close relationship between the plan and the plan sponsor in such situations raises a significant potential for conflicts of interest as the fiduciary values assets which are the subject of transactions between the plan and the plan sponsor. In light of this possibility, the Department believes that good faith may only be demonstrated when the valuation is made by persons independent of the parties to the transaction (other than the plan), *i.e.*, a valuation made by an independent fiduciary or by a fiduciary acting pursuant to the report of an independent appraiser.

The Department emphasizes that the two requirements of proposed § 2510.3–18(b)(3)(ii) are designed to work in concert. For example, a plan fiduciary charged with valuation may be independent of all the parties to a transaction and may, in light of the requirement of proposed § 2510.3–18(b)(3)(ii)(B), decide to undertake the valuation process itself. However, if the independent fiduciary has neither the experience, facilities nor expertise to make the type of valuation under consideration, the decision by that fiduciary to make the valuation would fail to meet the prudent investigation and sound business principles requirement of proposed § 2510.3–18(b)(3)(ii)(A).

Proposed § 2510.3–18(b)(3)(iii) defines the circumstances under which a fiduciary or an appraiser will be deemed to be independent for the purposes of subparagraph (3)(ii)(B), above. The proposal notes that the fiduciary or the appraiser must in fact be independent of all parties participating in the transaction other than the plan. The proposal also notes that a determination of independence must be made in light of all relevant facts and circumstances, and then delineates certain circumstances under which this independence will be lacking. These circumstances reflect the definitions of the terms "affiliate" and "control" in Departmental regulation 29 CFR 2510.3–21(e) (defining the circumstances under which an investment adviser is a fiduciary). It should be noted that, under these proposed provisions, an appraiser will be considered independent of all parties to a transaction (other than the plan) only if a plan fiduciary has chosen the appraiser and has the right to terminate that appointment, and the plan is thereby established as the appraiser's client.[3] Absent such circumstances, the appraiser may be unable to be completely neutral in the exercise of his function.[4]

4. Valuation Content—General

Proposed § 2510.3–18(b)(4)(i) sets the content requirements for the written documentation of valuation required for a determination of fair market value under proposed § 2510.3–18(b)(2)(iii). The proposal follows to a large extent the requirements of Rev. Proc. 66–49, 1966–2 C.B. 1257, which sets forth the format required by the IRS for the valuation of donated property. The Department believes that this format is a familiar one, and will therefore facilitate compliance. Several additions to the IRS requirements merit brief explanation.

First, proposed paragraph (b)(4)(i)(E) requires a statement of the purpose for which the valuation was made. A valuation undertaken, for example, for a yearly financial report may prove an inadequate basis for any sale of the asset in question. This requirement is intended to facilitate review of the valuation in the correct context.

Second, proposed paragraph (b)(4)(i)(F) requires a statement as to the relative weight accorded to relevant valuation methodologies. The Department's experience in this area indicates that there are a number of different methodologies used within the appraisal industry. By varying the treatment given and emphasis accorded relevant information, these methodologies directly affect the result of the appraiser's analysis. It is the Department's understanding that appraisers will often use different methodologies to cross-check their results. A statement of the method or methods used would allow for a more accurate assessment of the validity of the valuation.

Finally, proposed subparagraph (b)(4)(i)(G) requires a statement of the valuation's effective date. This reflects the requirement in proposed § 2510.3–18(b)(ii) that fair market value must be determined as of the date of the transaction in question.

5. Valuation Content—Special Rule

Proposed § 2510.3–18(b)(4)(ii) establishes additional content requirements for written documentation of valuation when the asset being appraised is a security other than a security for which there is a generally recognized market. In other words, the requirements of the proposed special rule supplement, rather than supplant, the requirements of paragraph (b)(4)(i). The proposed special rule establishes a nonexclusive list of factors to be considered when the asset being valued is a security not covered by section 3(18)(A) of the Act or section 8477(a)(2)(A) of FERSA. Such securities pose special valuation problems because they are not traded or are so thinly traded that it is difficult to assess the effect on such securities of the market forces usually considered in determining fair market value. The Internal Revenue Service has had occasion to address the valuation problems posed by one type of such securities—securities issued by closely held corporations. Rev. Rul. 59–60, 1959–1 Cum. Bull. 237, lists a variety of factors to be considered when valuing securities of closely held corporations for tax purposes.[5] The Department's experience indicates that Rev. Rul. 59–60 is familiar to plan fiduciaries, plan sponsors and the corporate community in general. The Department has, therefore, modeled this proposed special rule after Rev. Rul. 59–60 with certain additions and changes discussed below. It should be emphasized, however, that this is a non-exclusive list of factors to be considered. Certain of the factors listed may not be relevant to every valuation inquiry, although the fiduciary will bear the burden of demonstrating such irrelevance. Similarly, reliance on this list will not relieve fiduciaries from the duty to consider all relevant facts and circumstances when valuing such securities. The purpose of the proposed

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[1] Whether in any particular transaction a plan fiduciary is in fact well-informed about the asset in question and the market for that asset, including any specific circumstances which may affect the value of the asset, will be determined on a facts and circumstances basis. If, however, the fiduciary negotiating on behalf of the plan has or should have specific knowledge concerning either the particular asset or the market for that asset, it is the view of the Department that the fiduciary must take into account that specific knowledge in negotiating the price of the asset in order to meet the fair market value standard of this regulation. For example, a sale of plan-owned real estate at a negotiated price consistent with valuations of comparable property will not be a sale for adequate consideration if the negotiating fiduciary does not take into account any special knowledge which he has or should have about the asset or its market, *e.g.*, that the property's value should reflect a premium due to a certain developer's specific land development plans.

[2] It should be noted that the written valuation required by this section of the proposal need not be a written report of an independent appraiser. Rather, it should be documentation sufficient to allow the Department to determine whether the content requirements of § 2510.3–18(b)(4) have been satisfied. The use of an independent appraiser may be relevant to a determination of good faith, as discussed with regard to proposed § 2510.3–18(b)(3), *infra*, but it is not required to satisfy the fair market value criterion in § 2510.3–18(b)(2)(i).

[3] The independence of an appraiser will not be affected solely because the plan sponsor pays the appraiser's fee.

[4] With regard to this independence requirement the Department notes that new section 401(a)(28) of the Code (added by section 1175(a) of the Tax Reform Act of 1986) requires that, in the case of an employee stock ownership plan, employer securities which are not readily tradable on established securities markets must be valued by an independent appraiser. New section 401(a)(28)(C) states that the term "independent appraiser" means an appraiser meeting requirements similar to the requirements of regulations under section 170(a)(1) of the Code (relating to IRS verification of the value assigned for deduction purposes to assets donated to charitable organizations). The Department notes that the requirements of proposed regulation § 2510.3–18(b)(3)(iii) are not the same as the requirements of the regulations issued by the IRS under section 170(a)(1) of the Code. The IRS has not yet promulgated rules under Code section 401(a)(28).

[5] Rev. Rul. 59–60 was modified by Rev. Rul. 65–193 (1965–2 C.B. 370) regarding the valuation of tangible and intangible corporate assets. The provisions of Rev. Rul. 59–60, as modified, were extended to the valuation of corporate securities for income and other tax purposes by Rev. Rul. 68–609 (1968–2 C.B. 327). In addition, Rev. Rul. 77–287 (1977–2 C.B. 319), amplified, Rev. Rul. 59–60 by indicating the ways in which the factors listed in Rev. Rul. 59–60 should be applied when valuing restricted securities.

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list is to guide fiduciaries in the course of their inquiry.

Several of the factors listed in proposed § 2510.3-18(b)(4)(ii) merit special comment and explanation. Proposed subparagraph (G) states that the fair market value of securities other than those for which there is a generally recognized market may be established by reference to the market price of similar securities of corporations engaged in the same or a similar line of business whose securities are actively traded in a free and open market, either on an exchange or over the counter. The Department intends that the degree of comparability must be assessed in order to approximate as closely as possible the market forces at work with regard to the corporation issuing the securities in question.

Proposed subparagraph (H) requires an assessment of the effect of the securities' marketability or lack thereof. Rev. Rul. 59-60 does not explicitly require such an assessment, but the Department believes that the marketability of these types of securities will directly affect their price. In this regard, the Department is aware that, especially in situations involving employee stock ownership plans (ESOPs),[6] the employer securities held by the ESOP will provide a "put" option whereby individual participants may upon retirement sell their shares back to the employer.[7] It has been argued that some kinds of "put" options may diminish the need to discount the value of the securities due to lack of marketability. The Department believes that the existence of the "put" option should be considered for valuation purposes only to the extent it is enforceable and the employer has and may reasonably be expected to continue to have, adequate resources to meet its obligations. Thus, the Department proposes to require that the plan fiduciary assess whether these "put" rights are actually enforceable, and whether the employer will be able to pay for the securities when and if the "put" is exercised.

Finally, proposed subparagraph (I) deals with the role of control premiums in valuing securities other than those for which there is a generally recognized market. The Department proposes that a plan purchasing control may pay a control premium, and a plan selling control should receive a control premium. Specifically, the Department proposes that a plan may pay such a premium only to the extent a third party would pay a control premium. In this regard, the Department's position is that the payment of a control premium is unwarranted unless the plan obtains both voting control and control in fact. The Department will therefore carefully scrutinize situations to ascertain whether the transaction involving payment of such a premium actually results in the passing of control to the plan. For example, it may be difficult to determine that a plan paying a control premium has received control in fact where it is reasonable to assume at the time of acquisition that distribution of shares to plan participants will cause the plan's control of the company to be dissipated within a short period of time subsequent to acquisition.[8] In the Department's view, however, a plan would not fail to receive control merely because individuals who were previously officers, directors or shareholders of the corporation continue as plan fiduciaries or corporate officials after the plan has acquired the securities. Nonetheless, the retention of management and the utilization of corporate officials as plan fiduciaries, when viewed in conjunction with other facts, may indicate that actual control has not passed to the plan within the meaning of paragraph (b)(4)(ii)(I) of the proposed regulation. Similarly, if the plan purchases employer securities in small increments pursuant to an understanding with the employer that the employer will eventually sell a controlling portion of shares to the plan, a control premium would be warranted only to the extent that the understanding with the employer was actually a binding agreement obligating the employer to pass control within a reasonable time. *See Donovan* v. *Cunningham, supra,* 716 F.2d at 1472-74 (mere intention to transfer control not sufficient).

6. Service Arrangements Subject to FERSA

Section 8477(c)(1)(C) of FERSA permits the exchange of services between the Thrift Savings Fund and a party in interest only in exchange for adequate consideration. In this context, the proposal defines the term "adequate consideration as "reasonable compensation", as that term is described in sections 408(b)(2) and 408(c)(2) of ERISA and the regulations promulgated thereunder. By so doing, the proposal would establish a consistent standard of exemptive relief for both ERISA and FERSA with regard to what otherwise would be prohibited service arrangements.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic effect on small plans. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that approximately 6,250 small plans may be affected by the regulation. The total additional cost to these plans, over and above the costs already being incurred under established valuation practices, are estimated not to exceed $875,000 per year, or $140 per plan for small plans choosing to engage in otherwise prohibited transactions that are exempted under the statute conditioned on a finding of adequate consideration.

Executive Order 12291

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs of prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed regulation contains several paperwork requirements. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). A control number has not yet been assigned.

[6] The definition of the term "adequate consideration" under ERISA is of particular importance to the establishment and maintenance of ESOPs because, pursuant to section 408(e) of the Act, an ESOP may acquire employer securities from a party in interest only under certain conditions, including that the plan pay no more than adequate consideration for the securities.

[7] Regulation 29 CFR 2550.408b-(j) requires such a put option in order for a loan from a party in interest to the ESOP to qualify for the statutory exemption in section 408(b)(3) of ERISA from the prohibited transactions provisions of ERISA.

[8] However, the Department notes that the mere pass-through of voting rights to participants would not in itself affect a determination that a plan has received control in fact, notwithstanding the existence of participant voting rights, if the plan fiduciaries having control over plan assets ordinarily may resell the shares to a third party and command a control premium, without the need to secure the approval of the plan participants.

Statutory Authority

This regulation is proposed under section 3(18) and 505 of the Act (29 U.S.C. 1003(18) and 1135); Secretary of Labor's Order No. 1-87; and sections 8477(a)(2)(B) and 8477(f) of FERSA.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Pension and Welfare Benefit Administration.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read as follows:

Authority: Sec. 3(2), 111(c), 505, Pub. L. 93-406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27-74, 1-86, 1-87, and Labor Management Services Administration Order No. 2-6.

Section 2510.3-18 is also issued under sec. 3(18) of the Act (29 U.S.C. 1003(18)) and secs. 8477(a)(2)(B) and (f) of FERSA (5 U.S.C. 8477)

Section 2510.3-101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99-272, 100 Stat. 82.

Section 2510.3-102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), and 3 CFR 1978 Comp. 332.

2. Section 2510.3-18 is added to read as follows:

§ 2510.3-18 Adequate Consideration

(a) [Reserved]

(b)(1)(i) *General.* (A) Section 3(18)(B) of the Employee Retirement Income Security Act of 1974 (the Act) provides that, in the case of a plan asset other than a security for which there is a generally recognized market, the term "adequate consideration" when used in Part 4 of Subtitle B of Title I of the Act means the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor.

(B) Section 8477(a)(2)(B) of the Federal Employees' Retirement System Act of 1986 (FERSA) provides that, in the case of an asset other than a security for which there is a generally recognized market, the term "adequate consideration" means the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(ii) *Scope.* The requirements of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA will not be met unless the value assigned to a plan asset both reflects the asset's fair market value as defined in paragraph (b)(2) of this section and results from a determination made by the plan trustee or named fiduciary (or, in the case of FERSA, a fiduciary) in good faith as described in paragraph (b)(3) of this section. Paragraph (b)(5) of this section contains a special rule for service contracts subject to FERSA.

(2) *Fair Market Value.* (i) Except as otherwise specified in this section, the term "fair market value" as used in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA means the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the asset and the market for such asset.

(ii) The fair market value of an asset for the purposes of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA must be determined as of the date of the transaction involving that asset.

(iii) The fair market value of an asset for the purposes of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA must be reflected in written documentation of valuation meeting the requirements set forth in paragraph (b)(4), of this section.

(3) *Good Faith*—(i) *General Rule.* The requirement in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA that the fiduciary must determine fair market value in good faith establishes an objective, rather than a subjective, standard of conduct. Subject to the conditions in paragraphs (b)(3) (ii) and (iii) of this section, an assessment of whether the fiduciary has acted in good faith will be made in light of all relevant facts and circumstances.

(ii) In considering all relevant facts and circumstances, the Department will not view a fiduciary as having acted in good faith unless

(A) The fiduciary has arrived at a determination of fair market value by way of a prudent investigation of circumstances prevailing at the time of the valuation, and the application of sound business principles of evaluation; and

(B) The fiduciary making the valuation either,

(1) Is independent of all parties to the transaction (other than the plan), or

(2) Relies on the report of an appraiser who is independent of all parties to the transaction (other than the plan).

(iii) In order to satisfy the independence requirement of paragraph (b)(3)(ii)(B), of this section, a person must in fact be independent of all parties (other than the plan) participating in the transaction. For the purposes of this section, an assessment of independence will be made in light of all relevant facts and circumstances. However, a person will not be considered to be independent of all parties to the transaction if that person—

(1) Is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with any of the parties to the transaction (other than the plan);

(2) Is an officer, director, partner, employee, employer or relative (as defined in section 3(15) of the Act, and including siblings) of any such parties (other than the plan);

(3) Is a corporation or partnership of which any such party (other than the plan) is an officer, director or partner.

For the purposes of this subparagraph, the term "control," in connection with a person other than an individual, means the power to exercise a controlling influence over the management or policies of that person.

(4) *Valuation Content.* (i) In order to comply with the requirement in paragraph (b)(2)(iii), of this section, that the determination of fair market value be reflected in written documentation of valuation, such written documentation must contain, at a minimum, the following information:

(A) A summary of the qualifications to evaluate assets of the type being valued of the person or persons making the valuation;

(B) A statement of the asset's value, a statement of the methods used in determining that value, and the reasons for the valuation in light of those methods;

(C) A full description of the asset being valued;

(D) The factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the use or disposition of the property;

(E) The purpose for which the valuation was made;

(F) The relevance or significance accorded to the valuation methodologies taken into account;

(G) The effective date of the valuation; and

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(H) In cases where a valuation report has been prepared, the signature of the person making the valuation and the date the report was signed.

(ii) *Special Rule.* When the asset being valued is a security other than a security covered by section 3(18)(A) of the Act or section 8477(a)(2)(A) of FERSA, the written valuation required by paragraph (b)(2)(iii) of this section, must contain the information required in paragraph (b)(4)(i) of this section, and must include, in addition to an assessment of all other relevant factors, an assessment of the factors listed below:

(A) The nature of the business and the history of the enterprise from its inception;

(B) The economic outlook in general, and the condition and outlook of the specific industry in particular;

(C) The book value of the securities and the financial condition of the business;

(D) The earning capacity of the company;

(E) The dividend-paying capacity of the company;

(F) Whether or not the enterprise has goodwill or other intangible value;

(G) The market price of securities of corporations engaged in the same or a similar line of business, which are actively traded in a free and open market, either on an exchange or over-the-counter;

(H) The marketability, or lack thereof, of the securities. Where the plan is the purchaser of securities that are subject to "put" rights and such rights are taken into account in reducing the discount for lack of marketability, such assessment shall include consideration of the extent to which such rights are enforceable, as well as the company's ability to meet its obligations with respect to the "put" rights (taking into account the company's financial strength and liquidity);

(I) Whether or not the seller would be able to obtain a control premium from an unrelated third party with regard to the block of securities being valued, provided that in cases where a control premium is taken into account:

(*1*) Actual control (both in form and in substance) is passed to the purchaser with the sale, or will be passed to the purchaser within a reasonable time pursuant to a binding agreement in effect at the time of the sale, and

(*2*) It is reasonable to assume that the purchaser's control will not be dissipated within a short period of time subsequent to acquisition.

(5) *Service Arrangements Subject to FERSA.* For purposes of determinations pursuant to section 8477(c)(1)(C) of FERSA (relating to the provision of services) the term "adequate consideration" under section 8477(a)(2)(B) of FERSA means "reasonable compensation" as defined in sections 408(b)(2) and 406(c)(2) of the Act and §§ 2550.408b–2(d) and 2550.408c–2 of this chapter.

(6) *Effective Date.* This section will be effective for transactions taking place after the date 30 days following publication of the final regulation in the Federal Register.

Signed in Washington, DC, this 11th day of May 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–10934 Filed 5–16–88; 8:45 am]

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May 17, 1988

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Improved Seat Safety Standards; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25040; Amdt. No. 25-64]

RIN 2120-AA68

Improved Seat Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment upgrades the standards for occupant protection during emergency landing conditions in transport category airplanes by revising the seat restraint requirements and by defining impact injury criteria. These changes are based on research testing and service experience and are intended to increase airplane occupant protection during emergency landing conditions.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Iven D. Connally, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2120.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 86-11, which was published in the **Federal Register** on July 17, 1986 (51 FR 25982). The notice proposed to upgrade the standards for occupant protection during emergency landing conditions in transport category airplanes by revising the crew and passenger seat restraint requirements and by defining impact injury criteria.

Transport category airplane seats are currently designed to meet the standards contained in § 25.785 (Seats, berths, safety belts, and harnesses), in § 25.561 (Emergency landing conditions), and in Technical Standards Order (TSO) C39b (Seats). Section 25.785(a) requires that each seat (including a crewmember seat as well as a passenger seat), berth, safety belt, harness, and adjacent part of the airplane be designed such that the occupant who experiences the inertial forces specified in § 25.561 will not suffer serious injury in an emergency landing. The inertial forces in § 25.561(b) are specified as ultimate forces experienced by the occupant and are treated as statically applied loads. The notice proposed to upgrade the static load factors defined in § 25.561 in the upward, downward, and sideward directions, and to add an aft direction requirement.

Notice 86-11 also proposed adoption of new dynamic test standards for seats. The proposed standards would require the demonstration of both occupant response and seat/restraint system structural performance. They would provide a more representative evaluation of the interaction of the occupant, the seat, and the restraint system and yield data for impact injury analyses. Two dynamic test conditions were selected based on impact scenarios developed from analyses of survivable ground impact data. One test condition combines vertical and longitudinal loads to simulate ground impact following a high-rate vertical descent. This test condition emphasizes occupant vertical loading and evaluates the means provided to reduce spinal injury under the loads typically resulting from an impact of this nature. The second test, with a predominantly longitudinal component, simulates horizontal impact with a ground-level obstruction. This test condition provides an assessment of the occupant restraint system and seat structural performance. The selection of these two dynamic test conditions is consistent with the results of the crash scenario studies. These dynamic test standards are considered appropriate for all transport category airplanes, regardless of size.

An important part of any test procedure is the pass or fail criteria. The proposed rule would establish such criteria by defining standards that directly relate selected parameters measured during a dynamic test to injury criteria based on human impact injury limits. The performance criteria would be used to evaluate the occupant/seat protection system potential for preventing or minimizing serious injuries from both primary and secondary impacts. Of major concern are secondary head impacts which can inflict debilitating injuries and result in concussion and unconsciousness. The measure of potential head injury proposed in the notice is the Head Injury Criteria (HIC) used in Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208). The HIC is applied when the results of the seat dynamic tests show that structure or other items of equipment are within the occupant's head strike envelope. The head acceleration time history is measured during the dynamic test and evaluated with the HIC when secondary impact can occur.

Spinal injuries also occur in airplane crashes. The Dynamic Response Index (DRI), which is based on a single, damped spring model of the spine and respective support mass, has traditionally been used to predict probability of spinal injury in the performance evaluation of airplane ejection seats. The DRI has been correlated with ejection seat testing and service experience to provide a level of confidence for the application; however, inherent differences in function, geometry, dynamic pulse exposure, and occupant restraint between transport category airplane seats and ejection seats make direct application of the DRI questionable as a performance criterion for transport category airplane seats. A series of dynamic tests of seats in various impact orientations was studied by the FAA Civil Aeromedical Institute (CAMI) to correlate the DRI, determined from measured accelerations at the seat pan, to pelvic loads measured in the spinal base of a modified Part 572 (49 CFR Part 572) anthropomorphic dummy. Additional testing with transport category airplane seats with a lap belt restraint system indicated that the pelvic load peaks while the anthropomorphic dummy is still seated in a predominantly upright position. These tests confirm that the spinal load injury criteria can be used in assessing the dynamic performance of transport category airplane seats. Pelvic loads can be used in assessing the probability of spinal injury, and they are straight forward, easily measured, and require no additional analysis or interpretation. A maximum pelvic load of 1500 pounds would assure a low probability of spinal injury.

Leg injuries also occur in airplane crashes. While leg injuries alone may not be fatal, passengers may be temporarily incapacitated to the extent rapid evacuation of the airplane is not possible. An injured passenger, in an effort to escape, may block the escape route for several other passengers. Femur loads should therefore be measured during the dynamic tests where leg injuries may result from contact with seats or other structure. A measured axial load of 2250 pounds along each femur should not be exceeded during these tests. This is the same as the maximum allowed by Federal Motor Vehicle Safety Standard No. 208. This procedure provides an easily measured quantity that would require no additional analysis or interpretation.

Crash investigations have shown that localized cabin floor deformation can occur in survivable crashes. This has been confirmed by the controlled impact demonstration and drop tests involving transport category airplanes. The inability of some seats to accommodate such deformations, remain in place, and restrain the occupants can contribute significantly to the degree of injury during a crash. The simulated floor deformation used in the dynamic tests, while not intended to be a measure of floor strength or deformation capability, will demonstrate the tolerance of the seat and its attachments to deformations that could occur in an actual crash.

The static strength requirements of § 25.561(b)(3) would be increased to provide a level of safety for seats and fixed items of mass consistent with the new dynamic test standards and accepted industry practice. It is expected that increased static strength requirements would assure a more uniform level of safety in the cabin floor structure, seat tracks, fittings, fixed items of mass, and in the seats. The increased lateral static strength and the added rearward static strength requirements would also improve the conditions for rapid evacuation during an emergency landing by limiting the obstruction of aisle space.

As proposed, the new seat safety standards would apply to all transport category airplanes for which an application for type certificate is made on or after the effective date, regardless of whether the airplanes are used in air carrier service. The new standards would not apply to airplanes for which application for type certificate is made prior to the effective date, nor to derivatives of such airplanes for which an application for an amended type certificate is made.

Discussion of Comments

The public response to requests for comments on Notice 86-11 demonstrates the wide interest shown in this rule. Comments were received from both airplane and seat manufacturers, from airplane operators, from organizations representing flightcrews, and from U.S. and foreign government agencies. All but two commenters support the FAA's objectives of enhancing the protection of occupants during emergency landing conditions through the use of new dynamic seat test methods and occupant injury criteria; however, several commenters are concerned that these requirements should apply only to future transport category airplane certifications. Most of the commenters also support improvements in the static strength requirements for seats and items of mass.

Several commenters requested extension of the public comment period. They argued that more testing was needed to verify the proposed criteria. The FAA considers that sufficient test data were available to the public to generate meaningful comments on the notice within the allowed time. Newly designed seats have, in fact, been successfully tested using the proposed criteria.

Several commenters recommend static load factors less than those proposed in the notice. They are especially concerned with the side load factor of 4.5 when applied to all interior items. They believe the side load factor of 4.5 would be excessive and could cause significant weight penalties. They recommend a side load factor of 3.0 on the airframe and 4.0 on the seats. The proposed values were selected to take advantage of existing floor strength without requiring a significant structural weight increase. After further review of current airplane designs, both narrow body and wide body, the FAA agrees that a side load factor of 4.5 could add weight and cost to the structure without commensurate gains in safety. The higher load factors for seats, listed in TSO-C39b, are an attempt to represent the design ultimate load factor envelope for the typical airplane; i.e., the most critical location in the airplane for the most critical load condition (flight, ground, or emergency landing). The TSO values are usually higher than the airplane design load factors at the center of gravity and usually lower than these factors at the extreme forward and aft fuselage stations. The data indicate that the floor structure can withstand a side load factor of 3.0 without a significant weight penalty. This would provide a load factor capability of 4.0 on all attachments where the 1.33 factor applies (ref. § 25.785(i)(3)). The data and comments provided to the FAA indicate that load factors of 3.0 upward, 6.0 downward, 3.0 sideward, and 1.5 rearward are within the existing design ultimate strength envelope for most airplanes that would be affected by this rule and are adopted accordingly. One commenter requests clarification on where the 1.33 factor required by § 25.785 applies. The 1.33 factor applies only to the static design conditions of § 25.561.

One commenter states that the proposed increase in static side load factor from 1.5 to 4.5 would increase the ability of the seats to resist lateral deformation under crash conditions and would help maintain passable aisles for emergency evacuations. The FAA concurs that some increase in side load capability is needed. Although the current rule only requires a load factor of 1.5 for emergency landing conditions, most modern airplanes are capable of much higher loads. There is evidence to indicate that seats designed to a load factor of 3.0 have deformed in a sideward direction. The data indicate that seats could be designed to withstand a sideward load factor of 4.0 (i.e., 3.0 times the 1.33 factor) without an appreciable increase in structural weight and, as noted above, this load factor is adopted accordingly.

Comments were received concerning the implications of the proposed revisions to § 25.561(b)(3) on other sections of Part 25 which incorporate the provisions of § 25.561 by reference. For instance, fuel tanks in the center section of the horizontal tail must withstand the fuel pressures resulting from the conditions of § 25.561 if they are within the fuselage contour. The applicability of § 25.561 remains unchanged in this regard, and the newly adopted load factors are applicable to the other sections of Part 25 that incorporate § 25.561 by reference as well.

One commenter suggests that galleys be equipped with fail-safe locking systems to avoid recurrent failure of drawers, bins, ovens, etc. Detail design requirements of latches are not the subject of this proposal; however, Advisory Circular (AC) 25.785-1, Flight Attendant Seat Requirements, provides guidance for latches on galleys.

One commenter states that items and structure which are fixed in cabin location should be designed only for the expected loads at their respective locations. The commenter further states that since seats tend to be of common construction, irrespective of cabin location, and may be relocated easily in service, it is reasonable to design all passenger seats to a maximum load factor. The current rules require that all items and structure must be designed to withstand the loads at their respective locations for all points within the structural design envelope, as well as the loads developed during emergency landing conditions. In this regard, nothing has changed from present certification practice.

One commenter suggests that aft-facing seats might prove superior in terms of both cost and passenger protection. The FAA concurs that aft-facing seats could be designed to provide greater support for the upper torso during crash load conditions; however, there are no currently available data to demonstrate that requiring the use of aft-facing seats would be cost effective, considering the increased weight associated with such seats and the improved occupant protection provided by this rule. Although this amendment permits the use of aft-facing seats, it does not require their use.

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According to one commenter, a literal reading of proposed § 25.562(a)(2) would make compliance with this paragraph impossible to achieve. Accordingly, the sentence has been revised to read, "The occupant is exposed to loads resulting from the conditions prescribed in this section."

Several commenters object to the requirement to consider seat tracks misaligned with each other by 10 degrees vertically and one rail rolled 10 degrees to account for floor warpage. They point out that a requirement for the supporting structure to sustain these deformations as per proposed § 25.562(d)(8), while carrying the dynamic loads, is a severe condition outside of the current floor structural capability. The FAA agrees that to require the floor to withstand these deformations without failure would be outside the floor structural capability. The 10-degree misalignment required for testing of seats is intended only to assure a degree of flexibility in the seat structure and floor attachments and is not meant to be a measure of floor structural capability. For this reason, only the forward test condition (§ 25.562(b)(2)) requires the 10-degree deformation for testing. Section 25.562 is therefore revised accordingly.

One commenter believes the proposed § 25.562(c) is unclear as to whether these deformations have to be imposed prior to the dynamic tests or whether it is acceptable to show that they have been achieved, or exceeded, during the course of the tests. This commenter also believes the rail misalignment conditions are not necessarily appropriate to all airplanes and that provision should be made for use of alternative definitions of seat support structure deformation. The reason for testing with deformations is to assure that the seats and attachments will carry the dynamic loads even though the tracks have been distorted. The 10 degrees of track and floor warpage are imposed prior to the dynamic tests. Any seat deformation caused by the test will be recorded for use in the assessment of blockage of emergency egress. Although the majority of transport airplanes use tracks to attach seats to the floor structure, the misalignment conditions specified for the dynamic tests also apply to other types of seat-to-floor attachment fittings. It is expected that acceptable limits on deformation will be included in proposed AC 25.562–1 (51 FR 25990; July 17, 1986), and seat manufacturers will supply measured deformations to the installer.

Several commenters interpret proposed § 25.562(c) to require that each seat model and its attachments be tested with unique airframe support structure. The rule does not require seats and their attachments to be tested with unique floor structure. Tests may be conducted on a rigid test fixture with representative seat tracks installed.

Several comments were received concerning the use of various analytical methods. One commenter recommends application of automobile dynamic impact analysis to aircraft. Another commenter suggests that a rational analysis be allowed as an alternative for dynamic seat tests or for adjusting the dynamic pulse to account for aircraft size. The FAA will consider the analytical method as a means of certification only when sufficient experience is available to demonstrate that the analytical methods can accurately predict the site and mechanism of failure of a seat/restraint system, and can accurately predict the injury criteria obtained in dynamic tests for a wide variety of seat designs. At the present time, rational analysis would be allowed only to demonstrate that seats are less critical than similar "worst case" seats which have successfully passed dynamic testing. There is no valid method to adjust the dynamic pulse for aircraft size, material, construction technique, operating environment, or other factors. The dynamic pulse was selected primarily to provide an effective test environment for seat and restraint system evaluation.

One seat manufacturer states that testing of each seat is impractical and suggests that § 25.562(b) be reworded to read, "Each seat type approved * * * must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests * * *." The FAA concurs with this recommendation, and § 25.562(b) has been revised accordingly. The FAA does not concur with the suggestion that static minimums should be verified by actual testing rather than by analytical methods. Structural static analysis may be used if the structure conforms to that for which experience has shown this method to be reliable.

Some commenters suggest that crew seats, including flight attendant seats attached to bulkheads and galleys, should be subjected to static tests only. The FAA does not concur. There is no justification for providing a lower level of safety for crewmembers. Also, there is no way to demonstrate injury protection parameters (injury criteria) with static tests. One commenter suggests use of submarining indicators on the pelvis of the dummy to permit objective assessment of belt retention. While this may be a good idea, it requires a dummy with a special pelvis, which is costly and not commonly available. Submarining action can also be detected by inspection of the dummy after the test and by careful review of the test films.

One commenter provided analysis to support the position that the pulse shape for both vertical and longitudinal tests should be a triangular dynamic pulse, peaking at 14g with a rise time of 0.08 seconds and a velocity change of 35 feet per second. Comments from related industries were submitted to support that position. The analysis is based on full-scale controlled crash data, and selects velocity change intervals which are claimed to represent the structural limit at which the fuselage breaks up. The FAA does not concur with the level of survivability selected by the commenter to establish his proposed pulse. While localized fuselage breakup did occur in these test airplanes, the fuselage maintained a protective shell and limited acceleration loads to a survivable level in all areas outside of the local fracture. Airplane accident experience confirms that observation and has demonstrated that localized fuselage breakup is not the limit on overall passenger survivability. Moreover, data submitted to the FAA indicate that many seats currently in service are capable of meeting the recommended 35 feet per second and 14g criteria. One commenter believes that seats designed to meet the standards proposed in the NPRM would be practical, feasible, and consistent with current floor strength levels if the seat is designed properly. Recent tests support this belief.

Two commenters contend that it is unnecessary to introduce dynamic testing. They believe that the mode of load application for static testing used by the British Civil Aviation Authority should be used, together with the addition of floor deformation per proposed § 25.562(c). The FAA disagrees. Although improved static test methods could be used to evaluate the structural integrity of the seat, these methods cannot evaluate the ability of the seats to protect passengers and crewmembers from injury. Also, one commenter suggests that dynamic testing may be too complicated (dummy, HIC, two rows, cabin interior), and that a simple drop test of a seat with accelerometers, no anthropomorphic dummy, and no expensive test equipment could be used. The FAA disagrees. No simple dynamic test has been developed which will provide human-like load distribution on a seat/restraint system without using an anthropomorphic dummy. Several efforts have been made without using a dummy, but without success. Moreover, the simple test would not provide any measure of passenger injury protection.

One commenter supports the proposal, but would prefer 20g and similar dynamic tests for items of mass. Designing a seat to meet a 20g dynamic test condition without defining the velocity change and energy level associated with the dynamic pulse would not, in itself, assure a higher level of safety. Seats designed to meet the 16g and 44 feet per second criteria could also be shown to react 20g dynamic loads at an equivalent energy level. Strengthening the floor structure to carry the 20g dynamic load with a 44 feet per second change in velocity would add considerable weight to the structure and could not be shown cost effective. Static criteria are sufficient to evaluate the structural strength and retention characteristics of items of mass where occupant injury assessments are not required.

One commenter argues that specific load values of 2,250 pounds in each femur should be deleted and the rule stated in objective terms. Padding the lower rear edge of the seat is suggested as an alternative. The reason for specifying the 2,250-pound maximum allowable femur load value is to have an objective pass/fail performance criterion. It may be achieved through energy absorbing designs, including padding if appropriate, by clearance for the legs, or by whatever other designs are appropriate.

Several commenters state that more dynamic testing is needed to understand the relationships between seat pitch, bulkhead distance, strike zone from the 10-degree yaw, and the femur loads and HIC. A continuing dynamic test program at the CAMI test facility, which has had the participation of airframe and seat manufacturers, has given a better understanding of the various design parameters affecting the HIC and femur loads. Based on the results of these tests, the FAA believes these design requirements are realistic and achievable without paying an undue design penalty.

One commenter suggests that upper torso restraint for passengers to minimize secondary head impact should be considered, since a HIC less than 1000 would not ensure a conscious passenger. While a HIC of 1000 might not ensure a conscious passenger, it should prevent a fatal head injury in a serious crash. The rule does not prohibit installation of upper torso restraints; however, installation of upper torso restraint systems for passengers on transport airplanes could create significant design problems, such as structural weight penalties associated with the stronger seat back and floor structure, and shoulder straps could create entanglement problems during emergency egress. The new standards for seat performance provide a significant increase in passenger survivability during emergency landing conditions with only lap belt restraints.

Several comments were received regarding specific aspects of the test procedures and compliance criteria (pass/fail criteria, defining critical conditions, etc.). Guidance regarding test procedures, along with acceptable means of compliance, will be provided in the final release of AC 25.562–1.

Several commenters express concern that the cost analysis is inaccurate in that it underestimates the costs associated with the proposed rule. Others state that the costs are overestimated. A revised cost analysis has been prepared which reflects changes in the proposed rule and more accurate estimates of benefits and costs. The revised benefit and cost estimates improve the benefit to cost ratio from the original estimate prepared for the notice.

Several commenters are concerned about the applicability of the new seat requirements to future and current airplanes. Some believe that it should apply to the existing fleet as well as to future certification. Others express concern over possible changes to Part 121 which would make the new standards applicable to current airplanes. They are also concerned that if the Part 25 rule were adopted, they would have to use seats manufactured to meet the new standards, regardless of whether Part 121 was amended, because seats meeting current standards would no longer be produced. The FAA believes seats designed to the new performance standards could also be used in older airplanes without creating an undue economic burden. Seats meeting the new standards could be phased in during major interior modification or during refurbishment, if desired. However, the FAA will not, by virtue of this amendment, require an upgrade of the static strength standards on fixed items of mass, nor require the replacement of seats in airplanes manufactured under existing type certificates. The Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223, December 30, 1987) directs the Secretary of Transportation to initiate rulemaking to consider the retrofit on air carrier aircraft of seats that meet improved crashworthiness standards. The FAA expects to initiate such rulemaking shortly, and comments submitted in response to Notice 86–11 regarding the issue of retrofit will be considered.

The airplane manufacturers, through the Aerospace Industries Association (AIA), submitted a cost analysis covering three separate proposals. Their proposals were grouped I through III, based on cost effectiveness, and range from most expensive to least expensive.

The Group I analysis was based on the erroneous assumption that the rule changes would require that the seat dynamic testing be accomplished on representative aircraft floor structure, and that the aircraft floor structure would thus have to accommodate the floor deformation specified in the rule without failure. This analysis also assumed that all the requirements proposed in the NPRM would be adopted. The Group II analysis was based on the assumption that the seat dynamic testing would be accomplished on a test fixture, rather than on aircraft floor structure, but otherwise equivalent to the Group I assumptions. The Group III analysis was based on the assumption that the static side load factor of § 25.561(b)(3) was increased to 3.0g, an aft load factor of 1.5g was added, the seat static side load factor was 4.0g, and the dynamic test conditions for seat assembly tests were reduced. They estimate that the additional weight increase for seats designed under the Group I or Group II assumptions would be 0.6 pounds per seat, and 0.3 pounds per seat under the Group III assumptions. They estimate that there would be no airframe weight increase for the Group III assumptions. The rule, as adopted, closely corresponds to the Group III assumptions for the airframe; therefore, no significant airframe weight increase is anticipated. The rule corresponds to the Group II assumptions for seat dynamic testing, where analysis indicates a seat weight increase of 0.6 pounds per seat would be anticipated; however, seat manufacturers have indicated that seats complying with the standards proposed in the NPRM have been developed at a weight penalty of only 0.3 pounds per seat. In either case, the projected weight increase (0.9 to 1.8 pounds for a triple-seat assembly) is well within the variation of seat weight among seat models competing successfully in the current market.

Except as discussed above, the proposals in Notice 86–11 are adopted as proposed.

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Regulatory Evaluation Summary

This regulatory evaluation will primarily address the passenger seat. Although the rule also prescribes standards for the flight attendant and flightcrew seats, these seats are expected to have costs and benefits that are similar to those of the passenger seat. In addition, they represent a relatively small economic impact compared to passenger seats. The airplane structure on new type designs is expected to require only minor modification. For this reason, only a negligible cost impact is anticipated.

The benefits and the costs of requiring improved seat performance are both directly proportional to the number of seats; that is, the total cost is equal to the number of seats times the cost per seat and the total benefits are equal to the number of seats times the benefit per seat. Therefore, one can calculate the relationship between benefits and costs by determining the benefits per seat and the cost per seat, and this will be the approach used in this evaluation.

Benefits

The final rule will improve the crashworthiness of transport category airplanes by revising the seat standards. Because of the improved standards, some lives are expected to be saved that otherwise may not have been.

It is difficult to determine, accurately, the potential reduction in casualty loss that may result from this rule because it involves estimating casualty loss that would occur from use of presently designed seats that would not occur from use of seats designed to the improved standards. In reviews of accidents, identification of fatalities or injuries caused by insufficient seat strength or seat attachment deficiencies is difficult because of incomplete knowledge of the crash dynamics, injury mechanisms, and survivor testimony relating to the crash. In addition, post-crash fires consume necessary data. Nevertheless, there are some data available which can offer insight into prospective benefits.

The FAA has reviewed many accidents to determine seat performance. In fact, in March 1983, the FAA published a study, "Crash Injury Protection in Survivable Air Transport Accidents—U.S. Civil Aircraft Experience From 1970 to 1978," relating to the issue of seat adequacy. As part of that study, a comprehensive data base was developed on passenger seat/restraint system performance in survivable transport category airplane accidents. The study drew the following conclusions:

Although injuries and fatalities seem to be decreasing in the more recent survivable crashes, seat performance continues to be a factor in these crashes. Failures range from seat pan collapse to complete breakaway of the seat assembly from the floor are reported. Floor or cabin deformation frequently is a cause of seat failure. Flailing injuries, due to either bending over the restraint system or secondary impact with the aircraft interior, appear to be common.

The National Aeronautics and Space Administration (NASA) and the FAA jointly sponsored parallel studies by Lockheed, McDonnell Douglas, and Boeing to identify areas of research and approaches that may result in improved occupant survivability and crashworthiness of transport category airplanes.

The Boeing study involved accidents involving international airlines as well as U.S. airlines. Boeing concluded that the aircraft strength and occupant injury tolerance appear to be in proper balance in 31 accidents in which seat performance was mentioned in NTSB reports. Douglas stated that it was premature to evaluate seat performance and recommended a test program. Lockheed stated that the results of the review of the seat performance indicate that the seats and restraint systems designed to current FAA criteria are providing a system that protects the occupant.

The FAA contracted with Simula, Inc., and RMS Technologies, Inc., to do a study of severe survivable accidents between 1970 and 1983. The study, among other things, identifies instances where an improved seat/restraint system might have been beneficial. The results of the study were published in a report titled *Crash Dynamics Program Transport Seat Performance and Cost Benefit Study*, October 1986. The Regulatory Evaluation for the NPRM was based on the 1983 FAA study since that was the latest study available at the time. The accident data base for this Regulatory Evaluation will be based on the Simula/RMS Technologies study. This later study reviewed the previous studies, included additional accident data for the period 1979 through 1983, and more clearly related cause and effect, that is, associated fatalities and injuries with seat failure. For example, in the NPRM it was stated that there were 366 fatalities and 346 serious injuries to passengers involved in accidents where seats could have been a contributing factor over the period 1970 to 1978, whereas in the Simula/RMS Technologies study it is stated that at least 107 fatalities and 63 serious injuries had the potential of being avoided through the use of improved seats over the period 1970 to 1983.

During the fourteen year period between 1970 and 1983, there were 3,343 million passenger enplanements on U.S. air carriers. Therefore, the casualty rate where improved seats could have been of benefit is 0.0329 fatalities per million passenger enplanements (107 fatalities divided by 3,343 million passenger enplanements) and 0.0188 serious injuries per million passenger enplanements.

The question arises of how effective an improved seat would have been in preventing the 107 fatalities and 60 serious injuries. In reality, the improved seats would not be 100 percent effective in preventing these deaths and injuries. In the NPRM it was estimated that the improved seat would be from 3 to 15 percent effective in preventing casualty loss of a much larger accident base, that is the improved seat would prevent from 0.00532 fatalities per million passenger enplanements to 0.0266. In reviewing the accidents discussed in the Simula/RMS Technologies study and the ability of the improved seats to match the strength and resiliency of the airplane floor, the FAA estimates that the improved seat would be at least 80 percent effective in preventing the casualty loss described in the study. The effectiveness is based on judgments made as the accident files were reviewed as to whether an injury or fatality was of the type that could have been prevented by an improved seat. It is also apparent that available accident records do not identify all seat related casualty loss. A correction for this lack of data, as indicated in the report, would more than compensate for the assumption associated with other than 100 percent effectiveness. Therefore, in this analysis the fatality rate (0.0320 fatalities per million passenger enplanements) calculated above will be used. The impact of variations in effectiveness of the improved seat will be discussed in the section on sensitivity.

To determine the benefits per seat, the number of enplanements per seat has to be developed. The FAA forecast indicates that there will be about 681,000 seats in the fleet in 1995. That year was used as the point when newly certificated airplanes would be entering the fleet. The number of enplanements for 1995 is forecast at 693.5 million. Therefore, the number of enplanements per seat per year is 1,018 (693.5 million enplanements divided by 681,000 seats). As indicated above, the fatality rate avoided as a result of improved seats is 0.0320 fatalities per million passenger enplanements. Therefore, the number of fatalities avoided per million seats per year is 32.58 (0.0320 fatalities per million passenger enplanements times 1,018 enplanements per seat per year). For the purpose of analysis, the FAA has used the statistical minimum economic value of a human life of $1 million. This is the accepted value used by economists in Government policy analysis. Using this value, the benefit per year per seat is $32.58. Because a serious injury is estimated to cost society less than 10 percent of the cost of a fatality, and the reduction in serious injuries is less than that for fatalities, serious injuries will be neglected for the purpose of comparing benefits and costs.

The service life of a seat can vary widely. Some seats have been providing service in excess of 20 years. Others are replaced because airlines want to reconfigure cabins or desire seats with lower weight or maintenance costs. For the purpose of this analysis, the service life of a seat is assumed to be 7 years. This is in contrast to the ten years used in the Initial Regulatory Evaluation for the NPRM. It is based on additional discussions with the airline industry and makes the benefit estimate more conservative. The present value of benefits per seat is about $159 (7 year life, 10 percent discount rate).

In the Initial Regulatory Evaluation for the NPRM, the number of enplanements per seat was based on historical data during the 1970s. It was brought to the agency's attention that present and prospective data indicate that seats are being used more intensely, that is, load factors are higher and airplanes are being used more hours per day. Therefore, enplanements per seat for the year 1995 is used in this analysis. Also, in the analysis for the NPRM, the prospective accident rate compared to the historical rate was reduced by one-half based on improvements being made in the aviation system. It was difficult to corroborate this by means of statistical analysis, and it will be discussed in the section on sensitivity.

Costs

This cost analysis is based on the one developed for the NPRM and the comments received in response to that document. The two basic elements of the seat cost are the increase in manufacturing cost and the cost impact of any weight increase. Seats for transport category airplanes currently cost about $1,200 and weigh about 19 to 22 pounds per passenger.

The cost for a newly designed seat consists of fixed and variable (or recurring) cost elements. The fixed costs are composed of the following:

1. Engineering design.
2. Construction of prototypes.
3. Development and certification testing.
4. Tooling and training.
5. Documentation.

The seat manufacturers became aware that the FAA was investigating the merits of introducing improved seat standards several years ago and were informed of the details of the FAA proposals with publication of the NPRM in July 1986. As a result of this knowledge, as well as their desire to offer the safest product possible, the seat manufacturers began to develop seats to the proposed standards. Similarly, the airline operators started to specify that seats must meet the proposed standards. Several seat manufacturers are already selling seats which meet the proposed standards. Therefore, development costs can be considered as sunk costs.

The variable costs or recurring costs consist of the materials, labor, and expendables used in the manufacture of the seat. The additional materials are likely to be less than 2 or 3 pounds of metal, including scrap, and thus contribute only modestly to cost. Additional labor requirements are also expected to be modest since basically the same work tasks will be done as are now. For example, the time to forge two similar but slightly different structural elements is likely to be the same. The FAA estimates the increase in fabrication costs to be about 3 percent or about $36 per seat. Of the several seat manufacturers that commented in response to the NPRM, only one made a cost estimate. That estimate was that there would be a 3 percent increase in sales price as a result of the new standard. This is less than the FAA estimate since it includes all costs, both fixed and variable.

The increase in weight of the structure that is expected to result from this rule cannot be determined with any certainty. The FAA estimates the weight increase to be 0.6 pounds. Estimates from the seat manufacturers in response to the NPRM ranged from 0.3 pounds to 1.5 pounds per seat. Each pound of weight increase can result in 15 gallons of additional fuel burn per year. At 60 cents per gallon, the weight increase would cost $5.40 per year (i.e., 0.6 pounds weight increase times 15 gallons per pound times $.60 per gallon).

The annual seat cost is developed by annualizing the seat fabrication cost over a seven year period and adding it to the annual fuel cost. The annual seat cost is $12.79. The present value seat cost is $62.29.

The FAA expects that, with the exception of seats, there will be no significant modification of the airplane structure, its interior furnishings, or the seat restraint systems, such as seat belts, as a result of the rule. The FAA therefore estimates that there will be only negligible additional costs for these items. Several commenters questioned this estimate, and their comments were addressed in the section "Discussion of Comments."

Comparison of Benefits and Costs

As indicated in the section on benefits, the present value of benefits per seat is $159; the costs are about $62, yielding a benefit to cost ratio of 2.6.

Sensitivity

As stated previously, there is some uncertainty with respect to the FAA estimates of costs and benefits. The critical estimates are discussed below.

Life of Seat

In this analysis, it was estimated that the life of a seat is seven years. There is a greater probability that the life of a seat is greater than seven years rather than less. If, for example, the life of a seat were 10 years, the benefit to cost ratio would be 2.9 compared to 2.6.

Effectiveness of Seat

In this analysis, improved seats were estimated to be highly effective in preventing fatalities in which seats were judged to be the cause. It is recognized that the seats will not be 100 percent effective, but on the other hand, the Simula/RMS study stated that there were additional fatalities, due to seats, that could not be identified. In light of these two unquantifiable, off-setting factors, the FAA used the Simula/RMS numbers without adjustment. The FAA assumed that, had the improved seats been installed during the period studied by Simula/RMS, 107 lives could have been saved. The FAA also assumed a linear relationship between the effectiveness of the improved seats and the number of fatalities prevented. If, for example, the improved seat prevented only half of the fatalities estimated, the benefit to cost ratio would be 1.3 rather than 2.6.

"Value" of a Life

The "value" of a life is open to much debate and much has been written in the literature on that subject. The FAA uses $1 million for the "value" of a life for analysis purposes. The benefit to cost ratio will vary directly with the value, that is, if the value were $2 million, the benefit to cost ratio would be 5.2 rather than 2.6. The value must be at least

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$385,000 for a benefit to cost ratio greater than one, in this analysis.

Future Accident Rate

The accident data for this analysis covered the period 1970 through 1983. The prospective accident rate in this analysis was assumed to be the same as in that period. Since accidents are relatively rare events, a single accident can change trends. If it is assumed that the prospective accident rate will be 50 percent of the historical rate, the benefit to cost ratio will be 1.3 rather than 2.6.

Cost of a Seat

The cost of a seat is made up of two elements, the sales price and the cost impact of any weight change. The present value of the sales price and of the weight change (0.6 pound) are $36 and $26, respectively. If the weight change were 1.2 pounds rather than 0.6 pound, the benefit to cost ratio would be 1.8, and if the sales price were increased $72 rather than $36, the benefit to cost ratio would be 1.8 rather than 2.6. If both the weight and price were to double, the benefit to cost ratio would be 1.3 rather than 2.6.

Trade Impact Assessment

The rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. Foreign firms seeking U.S. approval for their products must also meet the new standards. Most likely, the foreign airworthiness authorities will impose similar standards on products, of whatever origin, approved in their countries. Therefore, there should be no competitive advantage to anyone. There were no comments with respect to trade impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule amends 14 CFR Part 25. Part 25 prescribes airworthiness standards for the issue of type certificates for transport category airplanes. The FAA size threshold for a determination of a small entity for aircraft manufacturers is 75 employees; that is, an aircraft manufacturer with more than 75 employees is considered not to be a small entity. The manufacturers of transport category airplanes such as Boeing, Gates Learjet, and McDonnell Douglas, are all large manufacturers. Therefore, it is clear that this rule does not impact small entities. There were no comments relating to the impact on small business.

Additional Information

Additional information relating to the regulatory evaluation is contained in a more detailed evaluation which is available in the docket.

Federalism Implications

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958 (Act), as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Section 601(a)(1) of the Act empowers the Administrator of the FAA to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design, materials, workmanship, construction, and performance of aircraft. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. In addition, the FAA certifies that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none are affected. Since this regulatory document concerns a matter on which there is substantial public interest, the FAA has determined that this document is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25, is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.561 by revising paragraphs (b)(3) (i), (ii), (iii) and (iv), and by adding new paragraphs (b)(3) (v) and (d) to read as follows:

§ 25.561 General.

* * * * *

(b) * * *

(3) * * *

(i) Upward, 3.0g

(ii) Forward, 9.0g

(iii) Sideward, 3.0g on the airframe; and 4.0g on the seats and their attachments.

(iv) Downward, 6.0g

(v) Rearward, 1.5g

* * * * *

(d) Seats and items of mass (and their supporting structure) must not deform under any loads up to those specified in paragraph (b)(3) of this section in any manner that would impede subsequent rapid evacuation of occupants.

3. By adding a new § 25.562 to read as follows:

§ 25.562 Emergency landing dynamic conditions.

(a) The seat and restraint system in the airplane must be designed as prescribed in this section to protect each occupant during an emergency landing condition when—

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided for in the design; and

(2) The occupant is exposed to loads resulting from the conditions prescribed in this section.

(b) Each seat type design approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat, in accordance with each of the following emergency landing conditions. The tests must be conducted with an occupant simulated by a 170-pound anthropomorphic test dummy, as defined by 49 CFR Part 572, Subpart B, or its equivalent, sitting in the normal upright position.

(1) A change in downward vertical velocity (Δv) of not less than 35 feet per second, with the airplane's longitudinal axis canted downward 30 degrees with respect to the horizontal plane and with the wings level. Peak floor deceleration must occur in not more than 0.08 seconds after impact and must reach a minimum of 14g.

(2) A change in forward longitudinal velocity (Δv) of not less than 44 feet per second, with the airplane's longitudinal axis horizontal and yawed 10 degrees either right or left, whichever would cause the greatest likelihood of the upper torso restraint system (where installed) moving off the occupant's shoulder, and with the wings level. Peak floor deceleration must occur in not more than 0.09 seconds after impact and must reach a minimum of 16g. Where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees vertically (i.e., out of Parallel) with one rolled 10 degrees.

(c) The following performance measures must not be exceeded during the dynamic tests conducted in accordance with paragraph (b) of this section:

(1) Where upper torso straps are used for crewmembers, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

(2) The maximum compressive load measured between the pelvis and the lumbar column of the anthropomorphic dummy must not exceed 1,500 pounds.

(3) The upper torso restraint straps (where installed) must remain on the occupant's shoulder during the impact.

(4) The lap safety belt must remain on the occupant's pelvis during the impact.

(5) Each occupant must be protected from serious head injury under the conditions prescribed in paragraph (b) of this section. Where head contact with seats or other structure can occur, protection must be provided so that the head impact does not exceed a Head Injury Criterion (HIC) of 1,000 units. The level of HIC is defined by the equation:

$$HIC = \left\{ (t_2 - t_1) \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t)\,dt \right]^{2.5} \right\}_{max}$$

Where:

t_1 is the initial integration time,

t_2 is the final integration time, and

$a(t)$ is the total acceleration vs. time curve for the head strike, and where

(t) is in seconds, and (a) is in units of gravity (g).

(6) Where leg injuries may result from contact with seats or other structure, protection must be provided to prevent axially compressive loads exceeding 2,250 pounds in each femur.

(7) The seat must remain attached at all points of attachment, although the structure may have yielded.

(8) Seats must not yield under the tests specified in paragraphs (b)(1) and (b)(2) of this section to the extent they would impede rapid evacuation of the airplane occupants.

4. By amending § 25.785 by revising paragraph (a) to read as follows:

§ 25.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of inertia forces specified in §§ 25.561 and 25.562.

* * * * *

Issued in Washington, DC, on May 12, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-11047 Filed 5-13-88; 10:15 am]

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Part VIII

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Federal Aviation Administration

14 CFR Parts 122 and 135

Retrofit of Improved Seats in Air Carrier Transport Category Airplanes; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25611; Notice No. 88-8]

Retrofit of Improved Seats in Air Carrier Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airway Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to "initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness." The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents.

DATES: Comments must be received on or before October 14, 1988.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25611, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25611. Comments may be examined in the Rules Docket weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Arthur J. Hayes, Aircraft Engineering Division (AWS-120), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9937.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25611." The post card will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure, form APA-430 (see address above).

Background

The Need for Rulemaking Action

On December 30, 1987, President Reagan signed the Airport and Airway Safety and Capacity Expansion Act of 1987. Title III, section 303(b) of that act states:

> IMPROVED CRASHWORTHINESS STANDARDS FOR AIRCRAFT SEATS.—Not later than 120 days after the date of the enactment of this Act, the Secretary [of Transportation] shall initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness.

One hundred twenty days after December 30, 1987, is April 28, 1988.

Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, section 303 (December 30, 1987).

On May 12, 1988, the FAA amended Part 25 of the Federal Aviation Regulations (FAR) (14 CFR Part 25) to require that all newly type certificated transport category airplanes be designed to prevent serious injury to occupants when the occupant experiences ultimate inertia forces greater than those previously required (Amendment No. 25-64; available for public inspection on May 13, 1988). The amendment revised § 25.561(b)(3) to increase the ultimate inertia forces in the upward, downward, and sideward directions and to add an inertia force requirement in the aft direction. The forces enumerated in § 25.561(b)(3) are statically applied load factors, which the type certificate applicant must show that the airplane, including the seats, can withstand. The amendment also added a new § 25.562 and revised § 25.785(a) to include new dynamic test standards for seating systems. Amendment 25-64 resulted from a joint National Aeronautics and Space Administration (NASA)/FAA/transport airplane industry crash dynamics and research and development program.

It should be noted that the new seating system standards are applicable only to airplanes for which application for a new type certificate is made after the effective date of Amendment 25-64. Existing airplanes and airplanes yet to be manufactured under existing type certificates were not affected by Amendment 25-64.

This notice proposes to prohibit the operation of transport category airplanes under 14 CFR Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft, and the operation of transport category airplanes in air carrier operation and in scheduled intrastate common carriage under 14 CFR Part 135, Air Taxi Operators and Commercial Operators, unless the airplanes are equipped with seats that comply with the standards as defined in Amendment 25-64. This includes scheduled commuter air carriers, but does not include those air carriers conducting on-demand air taxi operations.

The FAA has determined that the consideration of operations only under 14 CFR Parts 121 and 135 is appropriate for air carriers. The FAA has also determined that air carrier operations and scheduled intrastate common carriage by commercial operators meet the intent of the statute. Additional discussion of the determination to limit

the proposal to transport category airplanes will follow.

The joint NASA/FAA evaluation of the crash dynamic characteristics of transport category airplanes indicated that seating systems designed to meet the requirements of 14 CFR Parts 25 (prior to Amendment 25-64) with some exceptions, provided adequate protection for occupants. A review of existing accident data has shown that, for survivable accident scenarios, the transport category airplane structure remains substantially intact and provides a livable volume for occupants throughout an impact sequence. Fuselage and floor elastic deformation may be present during an impact accident, but the deformation is not evident to investigators after an accident. Accident data indicated that incidents of undersirable seat performance are usually related to elastic displacement of cabin floors and excessive lateral inertial loads; however, an indepth seat dynamic test program of contemporary seat designs revealed differences in load distribution and failure modes between static and dynamic loading. It then became evident that the identified seat deficiencies could be addressed by establishing dynamic test standards to provide the same level of impact injury protection and structural performance as that provided by the airframe itself. The focus of the dynamic testing requirements is the seat performance as it relates to occupant survivability characteristics. Significant benefits could accrue by virtue of improved performance of properly designed seats.

History

Prior to Amendment 25-64, the emergency landing static load factors had remained unchanged since 1952. Part 4b of the Civil Air Regulations was amended at that time to increase the emergency landing static forward load factor for transport category airplanes from 6.0 to 9.0 g. Consideration has been given to increasing the emergency landing load factors since then. Notice No. 69-33 (34 FR 13036; August 12, 1969) proposed to increase the upward and sideward load factors for transport category airplanes to 4.5 g and 3.0 g, respectively. Notice No. 75-26 (40 FR 24802; June 10, 1975) proposed to add a rearward load factor of 1.5 g. In view of the prevailing state-of-the-art in seat design, understanding of crash dynamics, and service record, the FAA withdrew each proposal (37 FR 3964; February 24, 1972 and 43 FR 50583; October 30, 1978).

Research and development to support future rulemaking has continued from that time and as recently as October 7, 1987, the FAA, with industry participation, completed dynamic tests of seating systems in a full scale section of a transport category airplane at the Transportation Research Center in Ohio. The final report for that testing is expected in April 1988. Based on the preliminary assessment of the favorable results of that testing, the FAA has continued, with renewed vigor, the effort to provide for the retrofit of improved seats in the air transportation fleet. Improved seats would be practical, feasible, and consistent with current floor strength levels if the seats are designed properly. The recent tests in Ohio support this finding.

Notice No. 86-11, Improved Seat Safety Standards (51 FR 25982; July 17, 1986), was the basis for Amendment 25-64. In response to Notice 86-11, interested persons provided comments regarding retrofitting the air transportation fleet with improved seats and requiring improved seats on future production transport category airplanes. Two commenters stated that detailed comments were premature then and that the new improved seat standards of 14 CFR Part 25 need to be monitored first before considering a change to 14 CFR Part 121. Two commenters anticipated that future comments will be based on the extent to which retrofitting will require changes to existing airframes. "If the final dynamic testing criteria for seats are commensurable [sic] with airplane structural capabilities, replacement of existing seats on an attrition basis could make sense. If changes to the airplane structure are required, cost may become prohibitive." One commenter believes air carriers will try to standardize and will buy seats that meet improved crashworthiness requirements for use in large fleets. Three commenters stated that the seat retrofit should be required, regardless of cost, and that there should be an upgrade of the floor structure, if needed, to complement the retrofit.

The National Transportation Safety Board has made several recommendations to the FAA to improve seat safety standards. Also, several consumer groups, and groups representing flight crewmembers, support making a proposal as this.

Reference Material

For additional information, see the following:

- *Longitudinal Impact Test of a Transport Airframe Section*, Report DOT/FAA/CT-87/26, To Be Completed April 1988
- *Transport Controlled Impact Demonstration Seat Experiments and Cost Benefit Study*, DOT/FAA/CT-85/36, October 1986
- Draft Advisory Circular on Human Exposure to Impact; and a Preview of the Agency's Crash Dynamics Program (49 FR 37111; September 21, 1984)
- *Vertical Drop Test of a Transport Airframe Section*, DOT/FAA/CT-TN/86/34, October 1986

Related Actions

The joint NASA/FAA crash dynamics program has resulted in the following proposals:

- On July 17, 1986, the FAA issued Notice No. 86-11 (51 FR 25982) that proposed to require increased static load factors in certain directions for seating systems, fixed items of mass and their support structure in the cabin. The notice also proposed dynamic testing and the assessment of human body tolerance to impact as the pass-fail criteria during dynamic tests of seating systems intended for use in transport category airplanes type certificated after the rules become effective. As stated previously, Notice 86-11 was the basis for Amendment 25-64.
- On December 12, 1986, the FAA issued Notice No. 86-19 (51 FR 44878) that proposed to require increased static load factors in certain directions for seating systems, fixed items of mass in the cabin and their support structure, and the dynamic evaluation of seating systems intended for use in normal, utility, and acrobatic category airplanes type certificated after the rules become effective.
- On June 3, 1987, the FAA issued Notice No. 87-4 (52 FR 20938) that proposed dynamic impact design requirements for seating systems, increased static load factors for seating systems and items of mass in the cabin or adjacent to the cabin, a shoulder harness for each occupant, and human impact injury criteria to assess dynamic tests of seating systems intended for use in normal and transport category rotorcraft type certificated after the rules become effective.

Seating systems developed to meet the standards of Amendment 25-64 will provide improved occupant protection, and those standards will be used for the certification of seats intended to be used in transport category airplanes discussed in this proposal. The major focus of the joint NASA/FAA crash dynamics program has been the improvement of seating systems to ensure occupant survival in newly type certificated airplanes; however, the appropriate standards were further evaluated with respect to how improved seats might be used effectively in

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existing transport category airplanes as well as airplanes newly manufactured under existing type certificates.

Although section 309(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 is phrased in terms of "seats on board *all* air carrier *aircraft* * * * based upon the *best available* testing standards * * *" (emphasis added), a final determination of new crashworthiness standards for normal and transport category rotorcraft has not been made. Similarly, new crashworthiness standards including dynamic testing of seats for airplanes type certificated in the commuter category have not even reached the proposal stage. (An airplane in the commuter category is a propeller-driven, multiengine airplane that has a seating configuration, excluding pilot seats, of 19 or less, and a maximum certificated takeoff weight of 19,000 pounds of less, that is intended for nonacrobatic operation.) The FAA expects to publish, concurrently with this proposal, a final rule delineating improved crashworthiness standards for seats installed in newly type certificated normal, utility, and acrobatic category airplanes (ref. 14 CFR Part 23). Although the focus of section 309(b) appears to be the retrofit of improved seats in transport category airplanes, it should be noted that a limited number of airplanes type certificated in the normal or utility category are used in air carrier operations or scheduled intrastate common carriage. Accordingly, the FAA will consider using the new Part 23 standards as the basis for a proposal to require the retrofit of seats in small airplanes used in air carrier operations and scheduled intrastate common carriage. Preliminary data indicates that the retrofit of seats in existing small airplanes would necessitate airframe modifications to achieve a safety benefit commensurate with the improvement of the seats. Thus, further analyses using additional pertinent data are necessary to propose technical requirements and to calcualte related costs. Other aircraft used in air carrier and commercial operations will be considered for rulemaking when new seat crashworthiness standards, appropriate to the type certification category and size, become finalized. Therefore, comments are specifically requested on the issues involved in requiring the retrofit of improved seats in aircraft type certificated in the normal, utility, and commuter airplanes and rotorcraft categories.

The FAA is planning to propose improved crashworthiness standards for seats intended to be used in newly type certificated commuter category airplanes as described. A decision will be made on requiring the replacements of seats in newly manufactured airplanes and in-service airplanes that are consistent with the commuter category of 14 CFR Part 23.

Discussion of Proposals

This proposal would prohibit the operation of transport category airplanes in air carrier operations under 14 CFR Part 121 and the operation of transport category airplanes in air carrier operations and in scheduled intrastate common carriage under 14 CFR Part 135 unles the airplanes are equipped with seats that comply with the standards as defined in Amendment 25–64. This proposal would affect each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing.

Amendment 25–64 revised the static load requirements of § 25.561(b)(3) to increase the ultimate inertia forces for emergency landing conditions from 2.0 g to 3.0 g in the upward direction; from 1.5 g to 3.0 g on the airframe and from 1.5 g to 4.0 g on seats and seat attachments in the sideward direction; and from 4.5 g to 6.0 g in the downward direction. The amendment added a requirement of 1.5 g in the rearward direction where, previously, there had been none.

The amendment also added § 25.562 to prescribe emergency landing dynamic conditions. Section 25.562 describes two dynamic load scenarios as follows:

It must be demonstrated that the seat type can successfully complete—

(1) A change in downward vertical velocity (ΔV) of not less than 35 feet per second, with the airplane's longitudinal axis canted downward 30 degrees with respect to the horizontal plane and with the wings level. Peak floor deceleration must occur in not more than 0.09 seconds after impact and must reach a minimum of 14 g.

(2) A change in forward vertical velocity (ΔV) of not less than 44 feet per second, with the airplane's longitudinal axis horizontal and yawed 10 degrees . . . with the wings level. Peak floor deceleration must occur in not more than 0.09 seconds after impact and must reach a minimum of 16 g. Where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees vertically (i.e., out of parallel) with one railed 10 degrees.

Section 25.562(c) requires an assessment of parameters during the dynamic tests described above to assess the potential for an occupant to survive. Among these parameters are the maximum strap tension for upper torso restraints, the maximum compressive load the test dummy should experience between pelvis and lumbar, upper torso restraint strap and lap safety belt positioning criteria, a defined Head Injury Criterion, and the maximum compressive load the test dummy should experience in either femur. In addition, the performance criteria require that the seat must remain attached at all points of attachment and that the seat must not yield under either of the dynamic load tests to the extent rapid evacuation of the airplane would be impeded. Section 25.785, as amended, requires that each seat, berth, safety belt, harness, and adjacent part of the airplane be designed so that no occupant is seriously injured in an emergency landing as a result of the inertia force specified in §§ 25.561 and 25.562.

Proposed §§ 121.311 and 135.169

This notice proposes to revise § 121.311, Seats, Safety Belts, and Shoulder Harnesses, to prohibit the operation of a transport category airplane, which was type certificated after January 1, 1958, unless *all* seats on board the airplane comply with the applicable requirements of § 25.785 as amended by Amendment 25–64. Additionally, this notice proposes to revise § 135.169, Additional Airworthiness Requirements, to prohibit the operation of a transport category airplane, which was type certificated after January 1, 1958, in air carrier operations and scheduled intrastate common carriage unless *all* seats on board the airplane comply with the applicable requirements of § 25.785 as amended by Amendment 25–64. In each case, operations would be prohibited after June 16, 1995, unless the replacements are made. *All* seats are defined as passenger seats (including divans and sidefacing seats), flight attendant seats, flight crew seats, observer seats, and courier seats in both passenger and cargo operations.

Alternatives

Considering the boundary conditions of transport category airplanes in air carrier operations and scheduled intrastate common carriage, the alternatives are as follows:

- Voluntary seat replacements.
- Required seat replacements 5 years after the adoption of Amendment 25–64.
- Required seat replacements 7 years after the adoption of Amendment 25–64.
- Required seat replacements 10 years after the adoption of Amendment 25–64.
- Required seat replacements 5 to 10 years after the adoption of Amendment 25–64 with an assessment of fixed items of mass, their support structure in the cabin, and the airframe floor for increased static load factors.

Discussion of Alternatives

One alternative to this proposal is reliance upon air carriers and those commercial operators engaged in scheduled intrastate common carriage to incorporate, voluntarily, improved seats in their transport category airplanes. Additionally, it is possible that improved seats will weigh less in some cases, because reductions in weight may be achieved by the use of lightweight alloys and advanced composites. Any reductions in weight will stimulate voluntary retrofits to save weight since that translates to reductions in fuel-burn operating costs.

One variation to this alternative is that at some time new improved seat designs will be the only ones on the market because seat firms manufacture nothing else. The air carriers, affected commercial operators, and aircraft manufacturers would then be forced to purchase improved seats when they replace old ones. If this case of restricted supply should exist, in the absence of this rule, the air carriers and affected commercial operators could decide to avoid the small cost and weight penalties of improved seats by refurbishing or rebuilding existing seats.

In view of the small but nevertheless real economic disincentives of voluntarily using new improved seats, it is possible that either air carriers or affected commercial operators will decide, voluntarily, to purchase improved seats when replacements are either needed or just desired. In the absence of such voluntary incorporation of new improved seats in transport category airplanes at normal replacement points, airline passengers and crewmembers will be at greater risk of sustaining serious or fatal injuries in some future crashes than they would be if this proposal is adopted.

Since there is no guarantee that weight savings will be achieved by all seat manufacturers or that air carriers and affected commercial operators will act voluntarily, the FAA is proposing that *all* seats installed in transport category airplanes used in 14 CFR Part 121 operations and in 14 CFR Part 135 air carrier and scheduled intrastate operations be replaced within 6 years after improved seats become available. The FAA projects that seats that comply will be available in sufficient quantities within 1 year after the adoption of Amendment 25–26. This proposal applies to passenger seats (including divans and sidefacing seats), flight attendant seats, flight crew seats, observer seats, and courier seats. Divans and sidefacing passenger seats designated as occupiable during takeoff and landing must be improved also. All of these types of seating systems must be replaced by types that comply with improved crashworthiness standards. Comments are specifically requested on whether berths or other seating devices should also be replaced.

The FAA is not proposing to require an upgrade of the static strength standards on fixed items of mass in the cabin nor to require modification of the floor structure on either in-service transport category airplanes or transport category airplanes manufactured under existing type certificates, because it has been determined that such action is not necessary. As stated earlier, the current transport category airplane structure remains substantially intact and provides a livable volume for occupants throughout a survivable impact accident. Consequently, in addition to the goal of ensuring occupant survivability in newly type certificated transport category airplanes, the FAA had an objective to ensure that seats complying with improved crashworthiness standards could be used effectively in in-service and newly-manufactured transport category airplanes. That objective will be achieved if improved seats are designed properly as indicated earlier.

The static load factors adopted by Amendment 25–64 were selected to take advantage of existing floor strength without requiring significant structural modifications or weight increases. The data indicates that existing floor structures can withstand a side load factor of 3.0 g. Although the rule prior to Amendment 25–64 only requires a load factor of 1.5 g for the sideward emergency landing condition, most modern transport category airplanes are capable of sustaining higher loads. The forward static load factor has not changed since 1952. Therefore, the FAA concludes that the floors of in-service transport category airplanes are compatible with the static load factors of the improved crashworthiness standards.

The floors of in-service transport category airplanes type certificated after January 1, 1958, are structurally capable of accommodating improved seats, and there is sufficient justification to propose these seat replacements. Since the FAA has determined that 5 years is a reasonable time period in which to obtain a type certificate, transport category airplanes type certificated after 1957 should have 9.0 g floors, which have been required since 1952, that are compatible with the improved crashworthiness standards. Therefore, January 1, 1958, has been selected as the cutoff date and is the same date selected for transport category airplanes needing other new technology replacements in addition to improved seats.

The FAA has chosen 7 years as the compliance period for this proposed rule to provide maximum safety benefits at the earliest feasible date, while minimizing potential costs that could arise from an earlier compliance deadline. A 7-year compliance period, assuming 1 year for additional seat development and 6 years for installation, is relatively consistent with the average seat replacement cycle for transport category airplanes in air carrier operations and scheduled intrastate common carriage. An earlier compliance deadline would require some affected operators to purchase seats sooner than they otherwise would. This required investment in seats would preclude the possibility of earning a return on other potential revenue-generating investments. Thus, an earlier compliance deadline could cause significant additional costs in terms of a foregone return on other investments. A later compliance deadline might allow a compliance period longer than the average normal replacement cycle for seats, thus unnecessarily delaying safety benefits while saving few costs.

Regulatory Evaluation Summary

Benefit-Cost Analysis

The regulatory evaluation prepared for this proposed amendment to 14 CFR Parts 121 and 135 examines the benefit and cost elements associated with requiring that *all* seats of transport category airplanes used in air carrier and scheduled intrastate operations comply with improved crashworthiness standards. These standards are partially based on the best available dynamic testing criteria for seats.

This proposal is based in part on the requirements set forth in the Airport and Airway Safety and Capacity Expansion Act of 1987. The Act directs the Secretary of Transportation to propose that all seats on board all air carrier aircraft meet improved crashworthiness standards.

Costs

The FAA estimates the total cost of compliance expected to accrue from implementation of this proposed rule to be $33 million (discounted present value, 10%, 10 years), in 1987 dollars, over the 1989 to 1998 evaluation period.

In estimating potential costs of this proposed rule, the FAA assumes there would be no additional design or

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development costs since several manufacturers have already developed and are producing seats meeting the improved standards of this proposed rule. Furthermore, the FAA assumes that these are unlikely to be any additional labor costs, for seat installment or replacement. This assessment is based on the finding that seats are regularly replaced on transport category airplanes affected by this proposed rule and that no additional labor cost would be incurred in substituting improved seats for existing seats during routine replacement.

This proposal would only affect air carriers and commercial operators engaged in scheduled intrastate common carriage. These operators would incur two types of costs as follows:

1. Incremental costs of improved seats over seats meeting existing standards.

2. Additional fuel costs due to the increased weight of improved seats.

Additionally, there could be costs incurred relative to a seat replacement cycle if operators were required to purchase large numbers of seats sooner than their normal seat replacement cycle. Each of these cost components is briefly discussed below.

1. Incremental Cost of Improved Seats

Between 1989 and 1998, over 900,000 improved seats are expected to be purchased by air carrier and commercial operators affected by this proposed rule. Each improved seat is expected to cost $36 more than a seat complying with current regulations. This cost component would result in an estimated cost of $29 million (discounted) in 1987 dollars.

2. Additional Fuel Costs Due to Improved Seats

Based on industry input, the FAA assumes that improved seats would weigh about 0.6 pound more than seats currently in U.S. air transportation service. The FAA and industry generally agree that 1 pound of weight added to an airplane equates to 15 gallons of additional fuel use each year, on average. At a current cost of $.60 per gallon for Jet Type A fuel, each improved seat installed in place of a current seat would add $9.40 per year in fuel costs. This cost component would result in an estimated cost of $13 million (discounted) in 1987 dollars.

3. Cost Considerations of a Seat Replacement Cycle of More Than 7 Years

In determining the estimated cost of compliance, the FAA assumed all seats of transport category airplanes used in air carrier operations and scheduled intrastate common carriage are replaced, on average, every 7 years for either marketing or cosmetic reasons, based on information received from U.S. aircraft seat manufacturers and the Air Transport Association. Nevertheless, this estimate contains some uncertainty. As the result of this uncertainty, the FAA solicits comments as to the reasonableness of the 7-year seat replacement cycle estimate. Specifically, the FAA solicits information on the age distribution of seats in the transport category airplanes fleet (Parts 121 and 135). This information would significantly enhance the agency's ability to estimate the potential cost of compliance of this proposed rule, because the current seat replacement cycle time is a critical factor in cost calculations. If operators were required to purchase large numbers of seats sooner than their normal seat replacement cycle, funds would have to be spent on seats that could otherwise earn a return on revenue-generating investments. There would also be an earlier reduction in the economic life or utility of the seats.

Benefits

This proposed rule would improve the crashworthiness of transport category airplanes operating under 14 CFR Parts 121 and 135 by mandating the use of seats that comply with revised testing criteria and sustainable load factors. This proposed rule, if implemented, is expected to prevent fatalities and injuries that otherwise would have occurred under certain circumstances. Therefore, the benefits of this proposed rule would be the reduction of casualty loss due to the installation of improved seats in transport category airplanes used in 14 CFR Part 121 and Part 135 operations.

There are many variables that can affect the magnitude of these potential benefits. Among these variables are the following:

- The degree of effectiveness of improved seats in preventing the sort of casualties that have been attributed to seat failure or displacement in the past.
- The extent to which other rulemaking actions may reduce the possibility of seat failure in the future, by increasing the overall safety level of the U.S. air transport system and thereby reducing the risk of future accidents where seat failure could occur.
- Uncertainties regarding the number of casualties in the past that could be attributed to seat failure.

Because of these and other variables, it is difficult to predict with certainty the value of the potential benefits expected to accrue from this proposed rule. Nonetheless, the FAA has undertaken a quantitative analysis of benefits, using the most current information available.

The FAA technical report entitled "Transport Controlled Impact Demonstration Seat Experiments and Cost Benefit Study" (October 1986) identifies up to 107 fatalities and 63 serious injuries that could have been caused by seats displacing forward or releasing in U.S. air transport accidents between 1970 and 1986. During this 14-year period, there were 3,242.6 million passengers enplaned on U.S. air carriers (including commercial operators). Thus, over the 1970–1983 period, there were approximately 0.0320 seat-related fatalities per million passengers enplaned and 0.0186 seat-related serious injuries per million passengers enplaned.

Applying these rates to forecasts of future passenger enplanements in the United States, the FAA has obtained projections of the number of seat-related casualties that could occur in the absence of this proposed rule over the 1988–1998 period. This proposed rule would not be able to prevent all of these projected casualties, since this proposed rule does not cover the entire fleet of U.S. air carrier airplanes, and gradual installation of improved seats over the compliance period would still leave a majority of current seats in the fleet until after 1992. Nonetheless, as more improved seats are installed, a greater share of these projected casualties would be prevented each year, in proportion to the percentage of the total population of U.S. transport seats represented by improved seats. The prospective number of lives saved and serious injuries prevented by this proposed rule would amount to an estimated 117 and 68, respectively, between 1989 and 1998.

For purposes of regulatory evaluations, the FAA has used the statistical minimum economic value of a human life of $1 million and the value of a serious injury of $54,000. Applying these values to the number of potential lives saved and injuries prevented yields estimated total benefits of $92 million (discounted present value, 10%, 10 years), in 1987 dollars, over the 1989–1998 evaluation period.

Comparison of Costs and Benefits

Total costs of the proposed rule are expected to be $63 million (discounted) over the 1989 to 1998 evaluation period. Benefits over this 10-year period are estimated to total $92 million (discounted), yielding a potential societal net benefit of $29 million from implementation of this proposed rule.

Because of uncertainties in predicting benefits, however, it is impossible to state for certain that net benefits of this proposed rule would be as high as $29 million. Other FAA rulemaking actions may continue to have a significant effect in reducing future accidents. If the accident rate declines, there may be a corresponding decline in the number of circumstances where improved seats would be beneficial in preventing fatalities and serious injuries. Despite these uncertainties in the future risk exposure of passengers, it is nonetheless likely that benefits of this proposed rule would exceed costs.

The regulatory evaluation that has been placed in the docket contains additional information related to costs and benefits that are expected to accrue from implementation of this proposed rule.

International Trade Impact Analysis

This proposal would have no impact on the trade opportunities for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. Historically, foreign countries have adopted safety regulations similar to those in the United States. The FAA believes this practice would continue in concert with this proposed rulemaking action. Thus, neither U.S. nor foreign air carrier operators would have a competitive advantage as the result of this proposal. If, however, foreign countries do not implement safety regulations similar to this proposed rulemaking action, U.S. air carrier operators would incur a slightly higher cost on an annual passenger enplanement basis. Nonetheless, such cost would be minimal. Therefore, consumer demand for U.S. services would not be significantly affected by this proposed rule. United States commercial operators engaged in air carrier operations and in scheduled intrastate common carriage would not be affected by this proposed rule because they do not compete with foreign commercial operators. Virtually all of their operations take place or originate in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

This proposal would amend 14 CFR Parts 121 and 135. Part 121 prescribes rules governing the certification and operations of air carriers. Part 135 prescribes certification and operating rules for air taxi and commercial operators. The FAA defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed or existing rule. The FAA size threshold for a determination of a small entity for either air carrier operators or commercial operators is nine aircraft owned, but not necessarily operated. That is, any operator with more than nine aircraft is not considered to be a small entity. Virtually all U.S. air carriers own more than nine transport category airplanes. While some air carriers with nine or less transport category airplanes owned would incur costs, a substantial number of them would not be affected. That is, less that 11 or less than one-third of the air carriers defined as small entities would be affected by this proposed rule; however, this assessment is not necessarily true for commercial operators with less than 10 aircraft owned. This is because some operators equip their aircraft with more luxurious seats than those seats equipped on most air carriers. Therefore, the cost to upgrade from current to improved seats could be disproportionately higher. The FAA does not know to what extent these small entity operators would be affected. As a result of this uncertainty, the FAA solicits comments from the aviation industry in general and from commercial operators of less than 10 aircraft in particular as to potential economic impacts.

Federalism Implications

The regulations (proposed) in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in this preamble, and based on the findings in the Initial Regulatory Evaluation, the Initial Regulatory Flexibilitry Determination, and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. The FAA cannot determine, at this time, if this proposal, if adopted, will have a significant economic impact, positive or negative, on a substantial number of 14 CFR Part 135 operators defined as small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Initial Regulatory Evaluation of this proposal, including an Initial Regulatory Flexibility Determination and an International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 121

Air carriers, Airplanes, Air transportation, Aviation safety, Safety, Seating, Transportation.

14 CFR Part 135

Air carriers, Air transportation, Aviation safety, Safety, Seating.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.311 is amended by adding a new paragaph (i) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(i) After June 16, 1995, no person may operate a transport category airplane that was type certificated after January 1, 1958, unless each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing complies with the applicable requirements of § 25.785 of this chapter in effect on June 16, 1988.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

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4. Section 135.169 is amended by adding a new paragraph (d) to read as follows:

§ 135.169 Additional airworthiness requirements.

* * * * *

(d) After June 16, 1995, no person may operate a transport category airplane that was type certificated after January 1, 1958, in air carrier operations or scheduled intrastate common carriage, unless each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing complies with the applicable requirements of § 25.785 of this chapter in effect on June 16, 1988.

Issued in Washington, DC, on May 11, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-11048 Filed 5-13-88; 10:15 am]

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federal register

Tuesday
May 17, 1988

Part IX

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Analysis of Public Comments and Final Staff Compliance Guidelines

VOL 53 ISS 95 MAY 17 1988 UMI

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Analysis of public comments on staff compliance guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its analysis of the public comments received in response to its request for comment on the staff compliance guidelines for the Used Car Rule. This notice summarizes and analyzes the issues raised by the commenters and notes those parts of the guidelines that have been modified in response to the comments. The revised compliance guidelines are published in a separate notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joyce E. Plyler (202–326–3021) or Matthew D. Gold (202–326–3019), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Division of Enforcement staff published compliance guidelines for the Used Car Rule in the **Federal Register** on May 18, 1987. The guidelines are meant to provide guidance concerning how the Rule applies in specific situations. They are the opinion of staff only and have not been adopted by the Commission and are not binding on the Commission. However, the guidelines serve as criteria for the staff in assessing compliance with the Used Car Rule.

Five comments were received during the 30-day comment period after publication of the guidelines.[1] Three comments were submitted by trade associations—the National Automobile Dealers Association ("NADA"), the National Independent Automobile Dealers Association ("NIADA"), and the National Vehicle Leasing Association ("NVLA"). One bank holding company, First Virginia Banks, Inc., also commented. The fifth comment, from a consumer, did not make specific substantive comments about the guidelines and is not discussed here. The comments raised six substantive issues, which are discussed separately below, in the order of their appearance in the guidelines.

Based on its analysis of the comments, further review of the guidelines, and subsequent Commission action, the staff has made both substantive and editorial revisions.

[1] The comments were placed on the public record in FTC File 215–54 and are labelled 109–1 through 109–5.

A. Public Comments

1. Demonstrators

NADA objected to staff's interpretation that all demonstrators, including those still in service as demonstrators, must have a Buyers Guide posted on them before being shown to a consumer. In its comment, NADA distinguished between demonstrators that are "offered for sale" and those that are "available for sale."

Although NADA agreed that demonstrators are "used" vehicles, it contended that demonstrators are not "offered for sale" until they are taken out of demonstrator service and put on the car lot. While acknowledging that demonstrators are always "available" for sale, NADA argued that a salesperson who merely responds to a customer's questions about a demonstrator does not offer that vehicle for sale. NADA proposed that the guidelines instruct dealers that they must post Buyers Guides on demonstrator vehicles only after the demonstrators have been removed from service.

Staff rejects NADA's interpretation. We disagree that in used car sales there is a meaningful distinction between "offering" a vehicle for sale and making it "available" for sale. In staff's view, when a salesperson discusses a vehicle that is available for sale with a customer, and is willing to sell the vehicle, then that vehicle is "offered" for sale.

The guidelines have not been substantively revised on this issue, but the illustrations concerning demonstrators have been clarified. Illustration 2.6 has been modified to apply to situations in which demonstrators are still in service so that dealers will be guided on that specific issue. Illustration 2.7 in the former guidelines was deleted because staff agrees with NADA's suggestion that the illustration would not apply in the "real world" and therefore is not helpful to dealers. Dealers do not impose time or mileage restrictions within which demonstrators are not available for sale, as suggested in the former illustration.

2. Lessor/Lessee Sales

All three trade associations commented about sales of leased vehicles. NADA resubmitted the comments it made in the leasing company exemption proceeding, which was considered by the Commission in September, 1987.[3] NADA commented during that proceeding that sales by any dealer, not just a lessor, at auctions, repossession lots, through solicitation for bids and by consignment should be exempted from the Rule. The Commission rejected the petitioners' and NADA's request to exempt sales to consumers through such methods.[3] NADA's comment on the petitions for exemption raises no issues that have not been previously considered by the Commission. Staff has revised the guidelines to make them consistent with the Commission's decision.

NIADA and NVLA both disagreed with staff's advice that sales by lessors to buyers procured by lessees would be covered by the Rule if the lessees advertised the vehicles for sale, but would not be covered if the buyer approached the lessee about purchasing the vehicle. Staff's advice was prompted by its interpretation that the Rule intended to exclude only sales to buyers procured by individual lessees for the vehicles they had personally driven, and not to exclude sales when numerous buyers had been procured by lessees for vehicles the lessees had never driven, as in the case of leased fleets.

NIADA contended that the Rule should apply to all non-lessee or non-employee sales, regardless of how the buyers were procured. NVLA argued that the Rule should not apply to any sales by lessors to buyers procured by lessees because the Rule makes no distinction based on how purchasers are acquired by lessees.

Upon reconsideration of the Rule, staff agrees with NVLA. Section 455.1(d)(3) of the Rule excludes from its definition of dealer "a lessor selling a leased vehicle *by or to* that vehicle's lessee or to an employee of the lessee." (emphasis added). The Statement of Basis and Purpose (SBP) for the Used Car Rule, states:

> The definition of dealer specifically excludes * * * a lessor selling leased vehicles to the vehicle's lessee, to a buyer procured by the vehicle's lessee, or to the lessee's employee.[4]

Neither the Rule nor the SBP distinguishes between the methods a lessee uses to procure a buyer. Thus, staff deleted its advice that lessors would have to comply with the Rule for sales to buyers procured by lessees through advertising.

[3] *See* 52 FR 34760 (1987) (Commission denial of petitions for exemption).

[3] *Id.*

[4] Statement of Basis and Purpose for the Used Car Rule ("SBP"), 49 FR 45692, 45708 (Nov. 19, 1984).

However, the Rule excludes only certain sales by *lessors*. It does not exclude *lessees* if the lessee offers for sale more than five vehicles within twelve months and therefore is a "dealer" as defined by the Rule. Thus, lessees offering for sale six or more vehicles wihin a year are responsible for complying with the Rule.

Staff has modified the guidelines to state that lessors are not required to comply with the Rule for sales to buyers procured by lessees, regardless of how the buyer is procured. Staff also has added a guideline stating that lessees will be required to comply with the Rule if they offer for sale, to persons other than their employees or dealers, six or more used vehicles within a year.

3. Disclosure of Mandatory Warranties

NIADA took exception to staff's advice that the Rule requires dealers to disclose on the Buyers Guide any warranty that they must provide as mandated by state or local law. NIADA analogized mandatory warranties to unexpired manufacturers' warranties because neither is a type of warranty provided voluntarily by the dealer and subject to negotiation. NIADA argued that because the disclosure of unexpired manufacturers' warranties is optional under the Rule, then the Rule must have meant to make disclosure of mandatory warranties optional as well.

Staff rejects NIADA's analysis because it draws an inapt parallel between dealer warranties mandated by law and unexpired manufacturers' warranties. The distinction between the two types of warranties is that the former must be honored by the dealer while the latter is the responsibility of the manufacturer. Section 455.2(b)(2) of the Rule states: "If you [the dealer] offer the vehicle with a warranty, briefly describe the warranty terms in the space provided." Although a dealer may be required by law to provide a warranty, such a mandatory warranty is nevertheless a dealer-offered warranty that must be disclosed.[5] Disclosure of warranties that a dealer must provide, as required by the Rule, is important to ensure that consumers are aware of their potential rights to have repairs made by the dealer. Therefore, staff has not changed its guidance that warranties mandated by law must be disclosed on the Buyers Guide.

4. Service Contracts

NADA requested that one minor word change be made in staff's explanation regarding the disclaimer of implied warranties when service contracts are sold. NADA suggested that staff substitute the words "enter into" for the word "sell" to make clear that implied warranty obligations attach only when a dealer *enters into* a service contract, *i.e.*, when the contract obligates the dealer, rather than a third party, to perform services under the contract. If the dealer sells a third party service contract, the dealer may disclaim implied warranties in states allowing such disclaimers.

Although staff did not intend the word "sell" to include the sale of a third party contract, staff has substituted "enter into" for "sell" in order to make absolutely clear that only when a dealer "enters into" a service contract for any period of time within 90 days of sale may the dealer not disclaim implied warranties. The only sentence affected by this change now reads, "if you also enter into a service contract covering the engine for six months, you automatically provide an implied warranty on the engine."

5. Sales Contract Disclosures

NADA questioned staff's guidance that final warranty terms must be identified in the contract of sale, arguing that it is unnecessary to include such terms in the sales contract since they must appear in a warranty document. The original guidelines stated: "You must include warranty information in the sales contract. (The warranty information may be printed in your sales contract, *or* it may be on a separate warranty page that is referred to and made part of your sales contract)" (emphasis in original).

Staff revised the guidelines to clarify that although final warranty terms must appear in one single document that is part of the contract with the consumer, they are not required to be placed in a document titled, "sales contract," or incorporated by reference into it. The contract with the consumer may include several documents, only one of which must include all of the warranty disclosures required by the Warranty Disclosure Rule.[6] However, neither the Used Car Rule nor the Warranty Disclosure Rule requires that warranty terms be referenced to or repeated in the "sales contract." In addition to revising the main text, staff deleted Illustration 4.2 to eliminate confusion on this issue.

These revisions merely clarify that warranty terms need not be placed in the sales contract as long as they appear in a separate document. Of course, the disclosure regarding incorporation of the Buyers Guide into the contract must be placed conspicuously in the sales contract as required by § 455.3(b) of the Rule.

6. Financing Agreements

First Virginia Banks, Inc., NADA, and NIADA each commented that a "financing agreement" should not be required to include the foreclosure concerning incorporation of the Buyers Guide into the sales contract, contained in § 455.3(b) of the Rule.[7] The original guidelines had advised dealers that the financing agreement might have to include the incorporation disclosure if the financing agreement contained terms apart from those governing the financing of the transaction.

Staff agrees with the commenters that this guideline should be revised to state that a financing document must contain the § 455.3(b) disclosure only if the financing document is the only document used to record the transaction or if the document contains a clause stating that it is the complete and total agreement between the dealer and the consumer. Illustration 4.1 was revised to make this point.

B. Other Revisions

Staff made two substantive changes that were unrelated to the comments. First, staff modified slightly its explanation of the Rule's exclusion of banks and financial institutions. Section 455.1(d)(3) states that the definition of dealer "does not include a bank or financial institution * * *." The guidelines explain that the "definition of 'dealer' specifically excludes banks and financial institutions selling used vehicles forfeited as collateral on consumer loans." Staff has revised the guidelines to delete the phrase "forfeited as collateral on consumer loans."

Although the SBP specifically identified the sale of cars forfeited as collateral as a type of sale by banks that would be excluded from coverage,[8] this was only an illustration of one transaction that is excluded. The Rule itself unequivocally excludes banks and financial institutions. Deletion of the phrase "forfeited as collateral on consumer loans" will eliminate the incorrect implication that a bank's sale of used vehicles other than those forfeited as collateral would be covered by the Rule.

[5] *See id.* at 45710.

[6] 16 CFR Part 701 (1975).

[7] NADA was apparently under the mistaken impression that the guidelines indicated that warranty terms must sometimes appear in a financing agreement. Illustration 4.1, which is the relevant section, applied only to the question of whether the § 455.3(b) disclosure should appear in the financing agreement.

[8] 49 FR at 45708.

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Second, staff revised its guidance concerning sales at auctions to make the guidelines consistent with the Commission's ruling in the proceeding denying exemptions to a number of automobile leasing companies.[9] The guidelines previously stated that sales at auctions are covered by the Rule if the auctions are open to consumers *and* advertised to consumers. The revised guidelines eliminate advertising as a condition to coverage of the Rule in auction settings and state that sales to consumers at any auctions that are open to consumers are covered by the Rule.

Finally, the staff made a number of nonsubstantive editorial changes. For example, all of the illustrations are now placed at the end of the text to make them easier to find within the document.

C. Conclusion

In this notice, staff has analyzed comments on its initial compliance guidelines for the Used Car Rule and has noted a number of areas in which it agrees that changes in the guidelines are warranted. Final staff compliance guidelines for the Used Car Rule incorporating these changes are published in a separate notice in the Federal Register.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily Rock,

Secretary.

[FR Doc. 88-11012 Filed 5-16-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Staff compliance guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Used Car Rule to provide assistance to industry members. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce E. Plyler (202/326-3021) or Matthew D. Gold (202/326-3019), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Staff Compliance Guidelines Outline

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II. What Transactions Does the Rule Cover?
  A. "Vehicle" Defined—Section 455.1(d)(1)
  B. "Used Vehicle" Defined—Section 455.1(d)(2)
  C. "Dealer" Defined—Section 455.1(d)(3)
  D. "Consumer" Defined—Section 455.1(d)(4)
  E. Consignment Sales
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III. The Buyers Guide
  A. General Information
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IV. Sales Contract and Warranty Disclosures
  A. The Used Car Rule's Requirements
  B. The Warranty Disclosure Rule's Requirements
V. Contrary Statements—Section 455.4
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VII. Illustrations

I. Introduction

These staff compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or "Used Car Rule"), 16 CFR Part 455, which was promulgated on November 19, 1984.[1] The Used Car Rule became effective on May 9, 1985.[2] Violations of the Rule can result in the imposition of civil penalties of up to $10,000 per violation.[3]

These final guidelines are a modification of the guidelines published in the Federal Register on May 18, 1987. Some of the changes were based on several comments that were received. An analysis of those comments is included in a separate notice in the Federal Register.

The guidelines neither amend nor modify the Rule. Staff is publishing these guidelines to provide assistance to industry members in understanding the Rule and complying with its obligations. In addition, staff has prepared a brochure entitled "Facts For Business: [A] Dealer's Guide to the FTC Used Car Rule," designed to assist dealers in understanding the Rule. Staff mailed a copy of this brochure to more than 89,000 dealers before the Rule took effect. If you are a new dealer, did not receive this brochure, or need another copy, you may request a free copy by writing to the Publications Branch, Federal Trade Commission, Washington, DC 20580. You also may request a free copy of these compliance guidelines.

The views expressed in these guidelines are those of staff only. These views have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Used Car Rule.

The Used Car Rule is primarily intended to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule requires clear disclosure through a window sticker, called the "Buyers Guide," of any warranty coverage and the terms and conditions of any dealer-offered warranty, including the duration of warranty coverage and the percentage of total repair costs that the dealer will pay. The Rule also requires certain additional disclosures on the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of the fourteen major systems of an automobile and defects that can occur in these systems.

In addition, the Rule provides that the Buyers Guide disclosures are incorporated into the sales contract. Dealers are required to place a specific, two-sentence disclosure in the sales contract informing the purchaser that, in the event of any inconsistency between the Buyers Guide and the sales contract, the information on the Buyers Guide will govern. The Rule also requires dealers to give a copy of the Buyers Guide reflecting the final warranty terms to the purchaser.

When the used car transaction is conducted in Spanish, the Rule requires that the dealer display a Spanish-language version of the Buyers Guide on the vehicle prior to offering the vehicle for sale. The Rule includes a text for the Spanish-language version.

These guidelines explain the Rule's requirements, section by section. The discussion includes illustrations of how the Rule applies in specific fact situations that are faced by many dealers. If further compliance questions arise, dealers may seek an informal staff advisory opinion,[4] or if appropriate, a formal advisory opinion from the Commission, as provided for in Section 1.1 through 1.4 of the Commission's Rules of Practice, 16 CFR 1.1–1.4.

II. What Transactions Does the Rule Cover?

Generally, all sellers of used vehicles are covered by the Rule, except those who sell, or offer to sell, fewer than six (6) used vehicles in a twelve month period. A used vehicle is any car, light-duty van or light-duty truck that has been driven more than the distance necessary for test driving or moving the vehicle prior to delivery to a consumer.

The following definitions, included in the Used Car Rule, provide more detailed information as to the persons, firms, and vehicles that are covered by the Rule. The Used Car Rule does not affect the definitions of terms in state law such as "dealer," "used vehicle," "new vehicle," or "vehicle." Likewise, state law definitions of the specific terms set out in § 455.1(d) of the Rule have no effect on the Used Car Rule.

A. "Vehicle" Defined—Section 455.1(d)(1)

For the purposes of the Rule, a "vehicle" is defined as "any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) [the loaded weight] of less than 6,500 lbs., a curb weight [the weight of an unloaded vehicle] of less than 6,000 lbs., and a frontal area of less than 46 sq. ft." Thus, the Rule covers automobiles, including "classic cars," as well as most light-duty vans and light-duty trucks. Due to the limit on the vehicle size built into this provision, large trucks and recreational vehicles generally are not covered.

Staff believes the Rule also does not apply to the sale of tractors, combines, tillers, and other vehicles that are designed primarily for agricultural use, but which meet the definition of the term "vehicle" that is set forth in the Rule. Motorcycles are not covered by the Rule. Staff believes that mopeds, like motorcycles, also are not covered by the Rule.

B. "Used Vehicle" Defined—Section 455.1(d)(2)

Under the Rule, the term "used vehicle" includes all vehicles that have been "driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer." This definition, therefore, includes demonstrators and company cars.[5] However, a vehicle sold as scrap or for its parts and not as an operating vehicle is specifically excluded from the definition of used vehicle, if the dealer surrenders any title documents to the appropriate state authority and obtains a salvage certification. Illustrations 2.5 and 2.7 discuss the application of the Rule to demonstrator vehicles. Illustration 2.6 discusses how the Rule applies when a vehicle is transferred from one dealer to another.

C. "Dealer" Defined—Section 455.1(d)(3)

Under the Rule, the term "dealer" includes any person or business that is presently selling or offering for sale a used vehicle, after having sold or offered for sale five or more used vehicles during the previous twelve months. In other words, a person or business becomes a "dealer," for purposes of the FTC Used Car Rule, upon offering for sale the sixth used vehicle in twelve months. The Rule does not impose any requirements on persons or businesses that offer fewer than six used vehicles for sale in twelve months. Illustrations 2.1 and 2.2 discuss this provision of the Rule.

The Used Car Rule's definition of "dealer" specifically excludes banks and financial institutions selling used vehicles. However, the Rule applies to the retail sale of used vehicles by affiliates and subsidiaries of banks or financial institutions. Illustration 2.11 discusses the application of the Rule to banks.

Section 455.1(d)(3) of the Rule also excludes sales of used vehicles by a business to its own employees. In addition, the term "dealer" excludes a lessor offering to sell a leased vehicle to any of the following parties: (1) The lessee; (2) an employee of the lessee; or (3) a buyer procured by the lessee.[6] Sales and offers for sale by lessors to all other parties are covered by the Rule. If a *lessee* offers for sale (other than to its employees) more than five leased vehicles within a twelve month period, the lessee most comply with the Rule because the lessee fits the definition of "dealer" and is not specifically excluded. Illustration 2.8 discusses how the Rule applies to the sale of leased vehicles.

D. "Consumer" Defined—Section 455.1(d)(4)

For purposes of the Used Car Rule, the term "consumer" is broadly defined to include any person who is not a used vehicle dealer. Section 455.2(a) of the Rule requires you (the dealer) to prepare and display a Buyers Guide before offering to sell a used vehicle to a consumer. In the Statement of Basis and Purpose, the Commission indicated that the term "consumer" also includes small businesses. 49 FR 45892, 45708 (1984). If you are offering to sell a used vehicle only to another dealer, the Rule does not apply to the sale of that vehicle. Illustrations 2.3 and 2.4 highlight this provision of the Rule.

E. Consignment Sales

Before you offer to sell a used vehicle that you have on your lot through a consignment, power of attorney or other such agreement, the Rule requires you to prepare and display a Buyers Guide. The point to remember is that whenever you, the dealer, offer to sell a used vehicle to a consumer, you are responsible for making sure that there is full compliance with the Rule. If you are a dealer who consigns a car to another dealer for sale to a consumer on your behalf, both you and the other dealer are responsible for complying with the Rule.

F. Auctions

The Rule does not apply if you offer to sell a vehicle through an auction that is open only to other dealers. It does apply when your vehicles are offered for sale at an auction that is open to consumers.[7]

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[1] 49 FR 45692 (1984). That notice included the Used Car Rule and the Commission's Statement of Basis and Purpose concerning the Rule.

[2] *Id. But see* Section II(G), *infra*, concerning the application of the Rule within the State of Wisconsin.

[3] 15 U.S.C. 45(m)(1)(A).

[4] Staff may be contacted at the address listed in the beginning of these guidelines, under the heading "For further Information."

[5] As used in these guidelines, the term "demonstrator" refers to "new" vehicles that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving. This may include use by the dealer, the dealer's employees, the dealer's corporate officers, or anyone else.

[6] *See* Statement of Basis and Purpose, 49 FR at 45708.

[7] *See* 52 FR 34769 (1987) (Commission declined to exempt from the Used Car Rule sales to consumers of used vehicles at auctions that are open to consumers.)

[9] Staff made public its enforcement policy regarding consumer sales at auctions in a staff opinion letter to each of the leasing companies who had petitioned for exemption from the Rule.

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The auction company is also covered by the Rule if it has sold or offered to sell six or more used vehicles to consumers within a twelve month period. In this case, as with consignment sales, both you and the auction company are responsible for complying with the Rule. See Illustrations 2.9–2.10 for a further discussion of sales through auctions.

G. Where Does the Rule Apply?

The Used Car Rule was issued by the FTC based upon two sources of authority: Section 109(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309(b), and section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a. These Acts apply in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. 15 U.S.C. 2301(15). In addition, the Rule covers vehicles exported from the United States for sale at military post exchanges. 16 CFR 700.1(i).

Therefore, with the exceptions of Wisconsin and Maine, which have been granted statewide exemptions, the Used Car Rule applies in each of these jurisdictions. The Commission granted these exemptions under § 455.6 of the Rule, based on the finding that the relevant law in each state "affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule." 51 FR 20936, 20943 (1986); 53 FR 16390, 16394 (1988).

III. The Buyers Guide

A. General Information

Section 455.2 of the Rule requires dealers to prepare and display a window sticker called the "Buyers Guide" before offering a used vehicle for sale to a consumer. The Buyers Guide must disclose whether any warranty is offered and the basic terms of any warranty. If the dealer does not provide an express warranty, then the Buyers Guide must indicate that the vehicle is being offered for sale "as is" (with no express or implied warranties), or with only the applicable "implied warranties" required by state law. Each of these terms is explained on the Buyers Guide.

The Buyers Guide also includes several additional disclosures, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. Finally, at the time of sale, the dealer must give the buyer the original Buyers Guide (or an accurate copy) that was displayed on the vehicle. This Buyers Guide must reflect the final warranty terms agreed on between the buyer and seller.

B. Preparing the Buyers Guide

Section 455.2(a) of the Rule explains how to fill in the Buyers Guide. You must complete four different parts of the preprinted Buyers Guide: (1) Vehicle information; (2) warranty information; (3) servce contract availability; and (4) dealer identification and consumer complaint information.

1. Buyers Guide Format—Section 455.2(a)

The Rule requires dealers to use the exact format for the Buyers Guide that is shown in the Rule. The text of the Rule contains a model Buyers Guide, in both English and Spanish, and also provides specific printing instructions. Dealers may print their own Buyers Guides or get copies from any other source, such as trade associations and from companies.

All Buyers Guides must comply exactly with the standardized wording, type style, type size, and format required by the Rule. Section 455.2(a)(2) of the Rule requires that the Buyers Guide be printed in 100% black ink on white stock that is at least 11 inches high and 7¼ inches wide. Dealers also may post a completely separate window sticker to make other truthful and non-deceptive information known to the consumer, as long as that information does not conflict with the Buyers Guide and the sales contract.

2. Vehicle Information—Section 455.2(d)

In the spaces provided at the top of the Buyers Guide, fill in the vehicle make, model, model year, and vehicle identification number (VIN). You may write in a dealer stock number in the space provided or you may leave this space blank.

3. Warranty Information—Section 455.2(b)

a. "As Is—No Warranty" version. If you offer a vehicle "as is," which means without any express or implied warranties, mark the box provided next to the "As Is—No Warranty" disclosure. The Used Car Rule does not affect any state law that requires you to use special language or a separate form to make an effective "as is" sale. "As is" disclosures will excuse you from liability under state law only if you follow state law requirements for making the disclosure. Illustration 3.2 further discusses this portion of the Rule.

b. "Implied Warranties Only" version. Some states limit or prohibit the sale of used vehicles "as is." The Used Car Rule does not override such state laws. In those states § 455.2(b)(1)(ii) of the Rule requires you to use the version of the Buyers Guide containing the following "Implied Warranties Only" heading instead of the "As Is—No Warranty" heading:

> Implied Warranties Only. This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you brought the vehicle.

If you are not offering an express warranty, the "Implied Warranties Only" box must be checked. If you offer an express warranty, check the "Warranty" box on this Buyers Guide.

In states that allow "as is" sales you also must use the "Implied Warranties Only" heading when you choose to offer only implied warranties. If a state allows "as is" sales for some, but not all, used vehicles, you may use an "As Is—No Warranty" Buyers Guide on those vehicles that the state will allow you to sell "as is."

Buyers Guides with the "Implied Warranties Only" heading are available from the same sources that supply the "As Is—No Warranty" version of the Buyers Guide. Alternatively, dealers could have the "Implied Warranties Only" disclosure printed on labels, and then simply affix these labels to the Buyers Guide, covering up the "As Is—No Warranty" state. Illustration 3.1 discusses use of Buyers Guides with the "Implied Warranties Only" heading. Appendix A gives an example of the "Implied Warranties Only" Buyers Guide.

c. Filling in the Warranty Portion of the Buyers Guide. Dealers who offer a warranty on the vehicle must mark the large box next to the word "warranty," and complete the other parts of the warranty section of the Buyers Guide. Section 455.2(b). First, mark one of the smaller boxes to indicate whether the warranty offered is "Full" or "Limited." Section 455.2(b)(2)(i). Under federal law your warranty is "full" if each of the following five statements about your warranty's terms and conditions is true:[8]

[8] These standards are set out in section 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304. The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers are not required to indicate whether the warranty offered is

Continued

(1) You provide warranty service to anyone who owns the vehicle during the warranty period, when they report a problem.

(2) You provide warranty service free of charge, including such costs as returning the vehicle or removing and reinstalling a "covered" system when necessary.

(3) You provide, at the consumer's choice, either a replacement or a full refund if you are unable, after a reasonable number of tries, to repair the vehicle.

(4) You do not require consumers to perform any duty as a precondition for receiving service, except notifying you that service is needed, unless you can demonstrate that the duty is reasonable.

(5) You do not limit the duration of implied warranties.

If any one of these statements is not true, then your warranty is "limited." A "limited" warranty tells your customers that there are some costs or responsibilities that you will not cover for the specified systems.

A "full" or "limited" warranty need not cover the entire vehicle. You may give a "full" warranty on some systems, and a "limited" warranty on others. If most systems are covered by a "limited" warranty, check the limited warranty box, and list which systems will be covered by a full warranty. See Illustration 3.4 for an additional discussion of this issue.

Second, fill in the percentage of the repair cost that will be paid by the dealer. For example, "The dealer will pay 100% of the labor and 100% of the parts * * *."[9] See Illustration 3.6 for a discussion of how the Rule applies to the use of a deductible. Section 455.2(b)(2)(iv).

Third, indicate which of the specific systems are covered. Do not use shorthand terms such as "drive train" or "power train". Rather, indicate the exact systems (*e.g.*, frame and body, brake systems, etc.) that are covered. A list of the major systems of an automobile is printed on the back of the Buyers Guide. Those terms may be used to indicate the specific systems covered by the warranty. Illustration 3.5 provides an explanation of how to disclose the systems covered. Section 455.2(b)(2)(ii).

Some dealers may wish to provide warranty coverage for some systems of a used vehicle and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. A dealer may use the space provided for warranty disclosures to write in any disclaimers or exclusions. You may enlarge the Buyers Guide, if necessary, to provide additional warranty information. Illustration 3.3 further discusses this issue.

Fourth, indicate the duration of the warranty. For example, "30 days or 1,000 miles, whichever occurs first." If there are different durations for different systems, write out each different duration. If the duration of the warranty is the same for all systems covered by the warranty, you need only write the duration once. Section 455.2(b)(2)(iii).

d. Unexpired Manufacturer's Warranties. If you choose, you may disclose unexpired manufacturer's warranties in the warranty section of the Buyers Guide. To disclose that a manufacturer's warranty still applies on a used vehicle, staff suggests that dealers use one of two methods, depending on whether the dealer offers a warranty in addition to the unexpired manufacturer's warranty. Section 455.2(b)(2)(v).

First, if additional warranty coverage is not offered by the dealer, the dealer should check the large box to indicate that a "warranty" is offered, and then simply fill in (with a rubber stamp, if desired) the following statement, which is set forth in § 455.2(b)(2)(v):

> MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.

Separately, and beneath that statement, the dealer may add the following language, but only if permitted by state law to sell a used vehicle on an "as is" basis:

> The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty.

An example of a completed Buyers Guide with this language is included as Appendix B to these guidelines.

Second, if a dealership warranty is offered and the dealer also chooses to disclose the unexpired manufacturer's warranty, the dealer should: (1) Mark the large box to indicate that a "warranty" is offered, and fully complete the rest of the Buyers Guide's warranty section, indicating whether the dealer's warranty is full or limited, what percentage of parts and labor are covered, the systems covered, and the duration of coverage, as required by § 455.2(b) of the Rule; and (2) fill in (with a rubber stamp, if desired) the unexpired manufacturer's warranty statement below the dealer's warranty disclosure. An example of a completed Buyers Guide with this language is included as Appendix C to these guidelines.

e. Mandatory Warranties. Although the Used Car Rule does not require dealers to disclose on the Buyers Guide warranties that are the responsibility of another party, such as the manufacturer, the Rule does require dealers to disclose information about all warranty coverage that they provide. Therefore, if federal, state, or local laws require you to give a specific warranty on a used vehicle that you offer for sale, you must briefly describe this warranty on the Buyers Guide.[10] Section 455.2(b)(2). This warranty information should be included in the "systems covered/duration" portion of the Buyers Guide. If necessary, you may enlarge the "system covered/duration" portion of the Buyers Guide to accommodate additional warranty information. You also must fully comply with disclosure requirements of the state or local law. For example, you must comply with a state or local law that requires you to give the consumer a separate warranty document.[11]

4. Service Contract Availability

A "service contract" is defined in Section 455.1(d)(7) of the Used Car Rule as "a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle [which is] *provided at an extra charge beyond the price of the used vehicle.*" (emphasis added). Although a warranty also may provide such protection it is distinguishable from a service contract because it is provided at no extra charge beyond the price of the vehicle.

If you offer a service contract on a particular vehicle, § 455.2(b)(3) requires you to mark the box provided on the Buyers Guide, next to the following disclosure:

> SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

"full" or "limited." Rather, dealers may simply cross out the terms "full" and "limited," leaving just the term "warranty." However, all other provisions of the Used Car Rule apply to sales of such vehicles.

[9] The Used Car Rule does not require that a dealer pay any specific percentage of repair or labor costs. The figure in the example is provided only for illustration.

[10] For one example, see New York General Business Law Section 198–b. This provision of New York law requires dealers to give consumers written warranties covering seven mechanical systems of any used vehicle that is sold for over $1,500.

[11] *See, e.g.*, New York General Business Law Section 198–b(b).

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Remember: When a dealer enters into a service contract with a consumer within 90 days of selling the vehicle, federal law prohibits the dealer from disclaiming implied warranties on the systems covered in that service contract. For example, if you are a dealer who sells a car "as is," the car normally will not be covered by implied warranties (assuming that state law permits "as is" sales). But if you also enter into a service contract covering the engine for six months, you automatically provide an implied warranty on the engine.

If you are in a state that regulates service contracts as the "business of insurance," you need not include the service contract disclosure on your Buyers Guides. Section 455.2(b)(3). In those states, you have the option to check the box next to the service contract disclosure, cross out the service contract disclosure, delete it from the Buyers Guide, or do nothing to change the pre-printed Buyers Guide that you have obtained.

5. Dealer Identification and Consumer Complaint Information

Put the name and address of your dealership in the space provided on the back of the Buyers Guide. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address. Section 455.2(c).

In the space provided below the dealer's name and address, you must put the name and telephone number of the person to contact if the buyer has a complaint. You might want to include the position of the person to be contacted, along with their name, so that consumers will know who to contact if the individual named has left the dealership. Section 455.2(e).

C. Spanish Language Sales—Section 455.5

Section 455.5 of the Rule sets forth a Buyers Guide in Spanish that must be used by a dealer who conducts a sale in Spanish. From a practical standpoint, dealers must post both the English and Spanish versions of the Buyers Guide where a substantial number of sales are made in both languages. See Illustration 3.10 for a further discussion of this provision of the Rule.

D. How to Display the Buyers Guide

The Buyers Guide must be displayed in a side window of the vehicle so that the front side (with the title "Buyers Guide") faces the outside. You may display copies of both the front and back of the Buyers Guide so that both sides can be read from outside. Section 455.2(a)(1).

The Buyers Guide should be firmly affixed to the inside of the side window. This may be accomplished using any method you select, such as tape, light glue, etc. If desired, you may display the Buyers Guide inside a clear plastic sleeve which holds the Buyers Guide against the inside of the side window. If necessary, the form may be removed from the window temporarily during a test drive, but you must return it to the window as soon as the test drive is over.

E. Changes in Warranty Coverage

If you and the buyer agree to any changes in the warranty that was described on the Buyers Guide, you must write those changes onto the Buyers Guide. Section 455.2(b)(2)(v) (paras. 2–3). If, for instance, the car was originally offered with a warranty, but following negotiations it was actually sold without a warranty, cross out the offered warranty and mark the "As Is—No Warranty" or "Implied Warranties Only" box, as appropriate. If you first offer the vehicle for sale "as is" (or with only implied warranties), but then sell it with a warranty, simply cross out the box for the "As Is—No Warranty" Disclosure (or the "Implied Warranties Only" disclosure) and fill in the warranty terms. In these cases, be sure that the Buyers Guide that you give to the buyer accurately reflects the final warranty terms. Appendix D and Illustrations 3.7 and 3.8 further explain this provision of the Rule.

In addition to noting any agreed-upon changes in warranty coverage on the Buyers Guide, you must remember to include the final warranty terms in your sales contract or separate warranty document. Section 455.4. Your contract with the consumer may include several documents. It might include a "sales contract" as well as a separate warranty document that gives detailed warranty information. Whether you make warranty disclosures in the sales contract or in a separate warranty document, you must remember to make any necessary changes to the warranty information to reflect the final warranty terms after negotiations with the customer. Sales contract and warranty disclosures are discussed in more detail in the next section.

IV. Sales Contract and Warranty Disclosures

A. The Used Car Rule's Requirements

Pursuant to § 455.3(b) of the Rule, information on the Buyers Guide will override any contrary provisions that there may be in the sales contract. To inform consumers of this provision of the Used Car Rule, you must place the disclosure that follows in the sales contract in a conspicuous manner:

> The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.[18]

See Illustration 4.1 for a discussion of whether a financing document must contain the disclosure.

B. The Warranty Disclosure Rule's Requirements

If you offer a warranty, you must comply with the Federal Trade Commission's Warranty Disclosure Rule, 16 CFR Part 701. The disclosures required by this Rule may be placed in the "sales contract" or in a separate warranty document, but they must all appear together in the same document. Specifically, in simple and readily understood language, your warranty document must:

(1) State whether the warranty offered is "full" or "limited."

(2) Indicate the percentage of the repair costs that you will pay.

(3) List the specific systems that are covered by the warranty.

(4) List any parts or systems that are excluded from coverage under the warranty, if it is necessary for clarification. For example, "battery not covered."

(5) Indicate the duration of warranty coverage for each of the covered systems.

(6) Explain how a customer gets warranty service. Include your company's name, address, and the telephone number of the person to call concerning warranty service.

(7) Include the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."

(8) Disclose all obligations that the consumer has, if any, as a condition to obtaining warranty service.

(9) Include the following disclosure only if you wish to limit the duration of implied warranties: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."

(10) Include the following disclosure only if you wish to exclude or limit consequential or incidental damages:

> "Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to you."

(11) Indicate who is covered by the warranty, if you choose to limit the coverage. For example, "warranty covers only the original purchaser" or "commercial use excluded."

Put into the warranty document everything that you will do and everything that you expect your customers to do under the warranty. Make sure that your customers can find each item of information in the warranty easily.

The Federal Trade Commission has prepared several publications that also may help you to comply with the laws and regulations governing warranties. "Writing Readable Warranties" is available for $2.00, from the Superintendent of Documents, Washington, DC 20402, GPO Order #: 018–000–00302–1. "A Businessperson's Guide to Federal Warranty Law," GPO Order #: 018–000–00324–4, is available for $1.50, also from the Superintendent of Documents. A supplement to that publication, containing the relevent statutes and regulations, is available at no charge from the Publications Branch, Federal Trade Commission, Washington, DC 20580.

You may also want to consult your lawyer to be sure that your warranty meets all the requirements of both Federal and state laws.

V. Contrary Statements—Section 455.4

Section 455.4 of the Rule prohibits dealers from making "any statements, oral or written, or tak[ing] other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3 (of the Rule)." For example, you may not write that there is a warranty on the Buyers Guide, but disclaim all warranties in the contract of sale. As discussed in section IV(A) of these guidelines, the information on the Buyers Guide supercedes contrary information in the contract, under § 455.3(b) of the Rule. However, staff does not interpret § 455.4 to mean that the Used Car Rule prohibits a dealer from repairing a vehicle that was sold "as is."

VI. State Exemption Petitions—Section 455.6

The Used Car Rule includes a specific provision that sets out the standards for granting statewide exemptions from the Rule. This provision States that the Used Car Rule will not be in effect in a state, to the extent specified by the Commission, where:

(1) There is a state requirement in effect which applies to any transaction to which this rule applies, and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by [the Used Car] Rule; * * * for as long as the State administers and enforces effectively the state requirement.

Final staff guidelines for state exemption petitions have been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule"). The state exemption provision in the Funeral Rule (16 CFR 453.9) is virtually identical to the Used Car Rule provision (16 CFR 455.6). Therefore, staff recommends that states that are interested in filing a petition for statewide exemption from the Used Car Rule consult the state exemption guidelines for the Funeral Rule for more detailed information about § 455.6 of the Rule. These guidelines (published at 50 FR 12521 (1985)) provide an analysis of the procedures and materials that staff believes are relevant to an exemption proceeding.

VII. Illustrations

When Does the Rule Apply?

Illustration 2.1: You are opening your first dealership, and on your first day of business, you offer to sell five used vehicles to consumers. In the past twelve months, you have not offered to sell any other used vehicles to consumers. Are you covered by the Rule?

No. You are not a "dealer," because you have not offered to sell at least six used vehicle is a twelve month period. However, as soon as you offer your sixth used vehicle for sale to consumers within a twelve month period you become a "dealer," as defined in the Rule, and therefore must prepare and display a Buyers Guide on all used vehicles that you offer for sale to consumers. Section 455.1(d)(3).

Illustration 2.2: You are an individual who occasionally buys used cars, repairs them, and then offers them for sale to the public. In the past twelve months, you have offered five used cars for sale. You now are offering to sell your sixth used car to the public. Are you covered by the Rule?

Yes. Even if you are not considered a "dealer" under state law, the Rule defines you as a "dealer." Because you are offering to sell your sixth used vehicle to consumers within twelve months, you must comply with all aspects of the Rule, including preparing and displaying a Buyers Guide on that vehicle. Section 455.1(d)(3).

Illustration 2.3: You are a dealer offering to sell a particular used vehicle only to dealers. You do not offer to sell the vehicle to consumers. Must you comply with the Rule in this instance?

No. Because you are not offering to sell the vehicle to consumers the Rule does not apply. Section 455.2(a).

Illustration 2.4: Same as in 2.3 above, but it is your company's policy to offer a vehicle for sale to consumers for only 30 days, and then if the vehicle is unsold, it would be sold to a dealer at wholesale. Must you comply with the Rule during the 30 days that the vehicle is offered for sale to consumers?

Yes. Whenever you offer to sell a used vehicle to a consumer, you must comply with the Rule by preparing and posting a Buyers Guide before offering the vehicle for sale. In this example, you would be required to prepare and display a Buyers Guide while the used vehicle is being offered for sale to consumers. However, the Rule does not apply when you conduct a wholesale transaction, even if the vehicle was first offered for sale to consumers. Section 455.2(a).

Illustration 2.5: You are a dealer who regularly offers both new and used vehicles to the general public. You currently have four "demonstrator" vehicles in service. Are the demonstrators covered by the Rule?

Yes. Under the Rule demonstrator vehicles are included within the definition of "used vehicles."[15] Therefore, before you show a demonstrator vehicle to a consumer, you must post a properly completed Buyers Guide on that vehicle. Demonstrators that are segregated from other vehicles being offered for sale need not have Buyers Guides displayed at all times. However, as a practical matter, you may wish to post Buyers Guides on all demonstrators whenever they are on your lot so that you can ensure your compliance with the Rule. On demonstrators that have never been titled to a consumer, both the Buyers Guide and the new vehicle disclosure sticker (the "Monroney Sticker") must be posted.[16] Section 455.1(d)(2).

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[18] 16 CFR 455.3(b). The Spanish translation of this disclosure is: La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establesca lo contrario y que aparesca en el contrato de venta.

[15] *See supra* note 8 for a discussion of the term "demonstrator."

[16] The Automobile Information Disclosure Act (commonly known as the Monroney Act) can be found at 15 U.S.C. 1231–33. *See also* the Commission's Statement of Basis and Purpose for the Used Car Rule, 49 FR at 45707 n. 234 (recognizing that dealers would have to display both the Monroney Sticker and the FTC Buyers Guide on some vehicles.

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Illustration 2.6: You are a dealer who sometimes "transfers" or "trades" new vehicles with another dealer so that you can provide your customers with the exact car that they want. Do these trade cars have to display a Buyers Guide before you can offer them for sale to a consumer?

No. By simply trading a car with another dealer you have only accumulated mileage for the purpose of delivering the vehicle to the consumer. Therefore, the car would not be a "used vehicle" under the Rule. Section 455.1(d)(2).

Illustration 2.7: Same as 2.6 above, except that the first dealer drove the vehicle as a demonstrator before trading it to you. Does the traded car have to have a Buyers Guide before it can be offered for sale to a consumer?

Yes. If the vehicle was used as a demonstrator at any time, it must have a Buyers Guide in its side window before it can be offered for sale to a consumer. Section 455.1(d)(2).

Illustration 2.8: You are a dealer who also leases vehicles. You lease a car to Jones, who is not a dealer. At the end of the lease term you offer to sell the car to Jones. Must you prepare a Buyers Guide for this vehicle?

No. Although you are a used vehicle dealer, the Rule does not cover situations in which you sell or offer to sell the leased vehicle to the lessee, to an employee of the lessee, or to a buyer who is found by the lessee. Thus, you would not have to comply with the Rule if you offered to sell the car to Jones (the lessee) or to an employee of Jones. In addition, you would not be required to display a Buyers Guide if Jones' next door neighbor asked Jones about buying the car. But, if you reclaimed the car at the end of the lease term and then offered it for sale to the public, the Rule would apply. Section 455.1(d)(3).

Illustration 2.9: You are a used vehicle dealer who sells vehicles, from time to time, at auctions. These auctions are open only to other dealers. The only advertisements for these auctions are in trade journals. Are these sales covered by the Rule?

No. Selling at an auction that is open only to other dealers is just like a non-auction sale to another dealer: the Rule does not apply. Sections 455.1(d)(3), 455.2(a).

Illustration 2.10: Same as 2.9 above, but instead the auctions are open to consumers. Are these sales covered?

Yes. Before your used vehicles are offered for sale, sold, or made available for inspection at an auction that is open to consumers, you must prepare and display a Buyers Guide as required by the Rule. If the vehicle is sold to a consumer, you must comply with the other requirements of the Rule, just as if you had sold the vehicle from your regular place of business. If your used vehicle is sold at the auction to another dealer, you need not comply with respect to that particular vehicle.

Illustration 2.11: In your state, banks and financial institutions may own or operate general businesses as separate entities. You operate a retail used vehicle dealership that is owned in part by a bank. Must you comply with the Rule?

Yes. The Rule is intended to cover all used vehicle dealers, regardless of ownership. However, banks and financial institutions that directly offer to sell used cars are not covered by the Rule. Section 455.1(d)(3); Statement of Basis and Purpose, 49 FR at 45708.

Preparing the Buyers Guide

Illustration 3.1: You are offering a used vehicle for sale in a state that prohibits you from selling used vehicles "as is." Do you have to replace the "As Is—No Warranty" disclosure with the "Implied Warranties Only" disclosure on the Buyers Guide?

Yes. The "Implied Warranties Only" disclosure must appear on the Buyers Guide in place of the "As Is—No Warranty" disclosure if: (1) the vehicle is offered for sale in a state which prohibits "as is" sales; or (2) you decide to offer implied warranties, but no other warranties. In states that prohibit "as is" sales, the "Implied Warranties Only" heading must appear on the form even if you offer an express warranty. If you do offer a warranty you would leave the box next to "Implied Warranties Only" blank, check the warranty box, and fill out the rest of the warranty portion of the Buyers Guide. See Appendix A for an example of a Buyers Guide incorporating the "Implied Warranties Only" disclosure. Section 455.2(b)(1)(ii).

Illustration 3.2: You offer all your used vehicles for sale on an "as is" basis. Under the laws of your state, you must prepare a warranty disclaimer form, using specific language required by state law, and have the buyer sign the form. Can you display that form instead of the Buyers Guide?

No. The state law requirement does not affect your obligation to prepare and post a Buyers Guide on the used vehicle, nor will the Buyers Guide substitute for a state-required form. The Used Car Rule does not affect your obligations under state law, so you still must comply with all applicable provisions of state law, including warranty disclaimer requirements. Sections 455.2(a), 455.2(b)(1)(i).

Illustration 3.3: You are a dealer who is offering a used vehicle for sale and you want to offer a warranty on the vehicle. You would like to warrant only the engine, transmission and drive shaft, differential and electrical systems, and you would like to disclaim any warranties, express or implied, on the other systems of the vehicle. Can you indicate this disclaimer on the Buyers Guide?

Yes. Mark the large box to indicate that a warranty is offered on the vehicle. Indicate whether the warranty is "full" or "limited." [16] Fill in the lines to show what percentage of parts and labor you will pay for repairs to covered systems. Beneath the warranty disclosure, fill in the list of covered systems, and the duration of the warranty coverage for each covered system. Below that, you may indicate that you disclaim all warranties, express or implied, on other systems or parts of the vehicle. Of course, you still must describe the warranty in a separate warranty document, including the systems covered and the systems not covered. This requirement is more fully discussed in Section IV(B) of these guidelines.

Be careful to check your state's laws for any restrictions that might apply to disclaimers of express warranty coverage or disclaimers of implied warranty coverage.

Illustration 3.4: You are a dealer who is offering a warranty on a used vehicle. The warranty that you offer covers less than 100% of the cost of labor and parts for the systems covered. Is this a "full" warranty?

No. A "full" warranty is one which meets the minimum standards for a warranty under Section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304. All other warranties are called "limited." In the example provided in this illustration, the warranty covers less than 100% of the repair costs of the covered systems, and thus does not meet one of the elements of a "full" warranty. The elements of a "full" warranty are discussed more completely in the text that accompanies footnote 8, *supra*. Section 455.2(a)(2)(i).

Illustration 3.5: You are a dealer who wishes to provide a warranty covering all vehicle systems shown on the reverse of the Buyers Guide. Under "systems covered" in the warranty section of the Buyers Guide, can you write "all systems shown on reverse of the Buyers Guide"?

Yes. To indicate that your warranty covers all systems shown on the reverse side of the Buyers Guide, write in the "systems covered" section that the warranty covers: "All systems shown on the reverse side of the Buyers Guide." If you choose to use this sentence, you must specifically list in the "systems covered" section any systems not covered. For example, if your warranty covers all systems shown on the reverse of the Buyers Guide, except for the fuel system, write: "All systems shown on the reverse side of the Buyers Guide, except the fuel system."

You may not use shorthand terms, such as "power train" or "drive train" to describe the systems covered by a warranty. These requirements are designed so that both you and the consumer will understand exactly what is covered by the warranty. This avoids misunderstandings and potential disputes that might otherwise occur. Section 455.2(a)(2)(ii).

Illustration 3.6: You offer a warranty that covers 100% of labor and parts, but with a $50 deductible over the course of the warranty. Should you fill in "100%" on the Buyers Guide in the lines for percentage of repair cost covered under the warranty?

Yes. Fill in "100%*" in the lines for percentage of parts and labor, and include a note to explain the deductible on the first line of the "systems covered/duration" portion of the Buyers Guide. For example, on the first line of the "systems covered/duration" portion, write: "*—A one-time $50 deductible will apply on repairs." See Appendix E for an example of a completed Buyers Guide with this language. Section 455.2(a)(2)(iv).

Illustration 3.7: You are a dealer who is offering a used car for sale "as is" in a state that permits such sales. The Buyers Guide displayed on the vehicle indicates that the car is offered "as is." However, after negotiating with the buyer, you agree to warrant the vehicle's engine for 90 days or 3,000 miles, whichever comes first, and to pay 75% of the cost of parts and labor involved in necessary repairs during the warranty period. Do you have to change the Buyers Guide before you give it to the buyer?

Yes. Before you give the buyer a copy of the Buyers Guide, you must change it to indicate the warranty you have agreed to provide. In the alternative, you may simply fill out a new Buyers Guide with the new information. If, however, you choose to change the "old" Buyers Guide, first cross out the "As Is—No Warranty" box. Next, fill in the warranty portion of the Buyers Guide just as you would if you were originally offering the car with that warranty. Remember that the final warranty terms must be included in the sales contract for the car. An example of the front of a Buyers Guide like the one described in this illustration is included as Appendix D to these guidelines. Sections 455.2(a)(2)(v) (paras. 2–3), and 455.4.

Illustration 3.8: Same as above, but instead you originally offered the car with a warranty. Now you want to sell it with implied warranties only. Do you have to change the Buyers Guide before you offer the vehicle with implied warranties only?

Yes. You should cross out the warranty portion of the Buyers Guide and mark the box for the "Implied Warranties Only" disclosure. Alternatively, you could prepare a new Buyers Guide, and just mark the box next to the "Implied Warranties Only" disclosure. Sections 455.2(a)(1)(ii), 455.2(a)(2)(v) (paras. 2–3), and 455.4.

Illustration 3.9: Your dealership has a used vehicle that is still being prepared for sale. A consumer is interested in looking at that vehicle, with the understanding that it cannot be delivered until the preparations are complete. Does the vehicle need to have a Buyers Guide?

Yes. Before you offer to sell, show, or actually sell any used vehicle to a consumer, you must prepare and display a Buyers Guide in the side window of that vehicle. Therefore, you may want to prepare and display a Buyers Guide soon after you acquire the vehicle. Section 455.2(a).

Illustration 3.10: You are a dealer who makes a substantial number, but not a majority, of your sales to Spanish speaking customers. Your staff is trained to conduct sales in both Spanish and English. Should you display both a Spanish and English version of the Buyers Guide on all your vehicles?

Yes. To ensure your compliance with the Rule, it is a good idea to post both versions of the Buyers Guide if you expect that a sale could be conducted in either Spanish or English. A Spanish language Buyers Guide must be posted on a used vehicle before you begin to discuss, in Spanish, that vehicle with a customer. Therefore, as a practical way to ensure compliance, you should post both English and Spanish Buyers Guides if you make a large number of sales in both languages. Sections 455.2, 455.5.

Sales Contract and Warranty Disclosures

Illustration 4.1: When you sell a vehicle, you complete a customer order, or bill of sale, and, if the consumer finances the vehicle, a financing document prepared by a bank. Do both of these documents have to contain the contract disclosure required by § 455.3(b) of the Rule?

No. The disclosure is required only on the "contract of sale." The contract of sale is the document by which you agree to transfer title to the vehicle upon payment of the purchase price. The "financing agreement" must contain this disclosure if the document contains a clause stating that the financing document represents the complete and total agreement between the dealer and the consumer, or if the financing agreement is the only document given to the consumer to record the transaction.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily Rock,

Secretary.

Editorial note.—This form, which appears in the Code of Federal Regulations in 16 CFR Part 455, is republished for the convenience of the reader.

BILLING CODE 6750-01-M

[16] *See supra* text accompanying note 8 for a discussion of the terms "full" and "limited."

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APPENDIX A

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

☐ IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ WARRANTY

☐ **FULL** ☐ **LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

DURATION:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

VOL 53 ISS 95 MAY 17 1988 UMI

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted-through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890
SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX B

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☐ **LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service locations, etc.	
The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty.	

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

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Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890
SEE FOR COMPLAINTS

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APPENDIX C

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 100 % of the labor and 100 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
Engine	)
Frame & Body	)
Transmission	)
Drive Shaft	)
Differential	) 12,000 miles or 12 months after
Electrical System (except battery)	) sale, whichever comes first

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service locations, etc.

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

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Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890
SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX D

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☒ ~~AS IS - NO WARRANTY~~

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 75 % of the labor and 75 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
Engine	90 days or 3,000 miles, whichever comes first

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

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Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890
SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX E

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 100*% of the labor and 100*% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
* - A one-time $50.00 deductible will apply on repairs.	
Engine	)
Transmission & Drive Shaft	)
Electrical System	) 6 months or 6,000 miles,
Brake System	) whichever comes first
Steering System	)
Cooling System	)

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

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Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

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[FR Doc. 88-11011 Filed 5-16-88; 8:45 am]
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federal register

Tuesday
May 17, 1988

Part X

Department of Education

Adult Education for the Homeless Program; Final Funding Procedure Availability for Fiscal Year 1987; Supplemental Appropriation; Notice

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VOL 53 ISS 95 MY 17 1988 UMI

DEPARTMENT OF EDUCATION

Adult Education for the Homeless Program

AGENCY: Department of Education.

ACTION: Notice of final funding procedure under the adult education for the homeless program for funds made available by the fiscal year 1987 Supplemental Appropriation.

SUMMARY: The Secretary establishes a distribution formula for alloting funds from the fiscal year 1987 supplemental appropriation to States under the Adult Education for the Homeless Program. Because of the enactment of Pub. L. 100–297, the Secretary is not distributing funds from the fiscal year 1988 appropriation pursuant to this notice.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202–5609. Telephone: (202) 732–2241.

SUPPLEMENTARY INFORMATION: Under section 702 of the Stewart B. McKinney Homeless Assistance Act (Act), (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*), the Secretary of Education (Secretary) makes grants to State educational agencies to assist them in developing and implementing a program of literacy training and basic skills remediation for adult homeless individuals. Under section 702(c)(2) of the Act, Federal funds are to be distributed, in part, "on the basis of the assessments of the homeless population in the States" provided in each State's Comprehensive Homeless Assistance Plan (CHAP) submitted to the Secretary of the Department of Housing and Urban Development under section 401 of the Act in order to receive a grant under the Emergency Shelter Grant Program. However, while the Act requires the States to include in their CHAPs an assessment of the need for literacy training and basic skills remediation for homeless individuals, it does not require them to provide an assessment or count of the homeless population for the purpose of distributing funds under the Adult Education for the Homeless Program. Nonetheless, the Secretary has reviewed the CHAPs to determine the feasibility of allocating funds to States on the basis of information they contain.

The Secretary's review revealed that States are experiencing considerable difficulty in obtaining accurate counts of homeless individuals. Many CHAPs continued estimates of homeless populations in the form of a range with numbers at both the upper and lower extremes; others reflect diverse methodologies used to derive estimates; and still others provided no estimates at all. Few States provided estimates for comparable time periods.

The Secretary believes that it is not possible to allocate funds to the States on a consistent, principled, and defensible basis based upon the assessments contained in the CHAPs. In order to implement the Adult Education for the Homeless Program, the Secretary establishes a special funding procedure. The Secretary will allot the funds from the fiscal year 1987 supplemental appropriation to State educational agencies on the following basis:

From the sums available under section 702(c) of the Act, each State will be allotted an amount that bears the same ratio as the number of individuals in each State who have attained 16 years of age, do not have a certificate of graduation from a school providing secondary education (or its equivalent), and are not enrolled in such a school, bears to the number of those individuals in all States, except that no State will receive an allotment of less than $75,000.

Any funds from the fiscal year 1987 supplemental appropriation that are not applied for by States by July 1, 1988 will become available for reallotment to participating States according to the formula used in making the original allotment. However, States that received a minimum allocation in the original allotment will not receive additional funds unless the initial formula distribution, plus the reallocated amount, exceeds $75,000.

While the funding procedure does not incorporate a direct count of the homeless population in each State, a count that would be very difficult to achieve, it does provide a reasonable proxy for the potential population of homeless persons with no or minimal literacy/educational skills. The funding procedure uses as its basis reliable data that are derived from the 1980 census, and are used, in part, to compute allocations under the Adult Education Act. Additionally, the procedure uses the $75,000 minimum allotment required by section 702(c)(2) of the Act.

Because of the enactment of Pub. L. 100–297, only the fiscal year 1987 appropriation will be distributed according to the funding procedure in this notice.

Public Comment

On February 11, 1988, the Secretary published in the **Federal Register** (53 FR 4102) a notice of proposed funding procedure under the Adult Education for the Homeless Program for funds made available by the fiscal year 1987 supplemental appropriation and the fiscal year 1988 appropriation. In the notice the Secretary invited comments on the proposed funding procedure. The only comment the Secretary received supported the proposed funding procedure. The Secretary has made no changes in the funding procedure since publication of the proposed notice. However, as a result of the enactment of Pub. L. 100–297, the funding procedure will apply only to the fiscal year 1987 supplemental appropriation.

Authority: 42 U.S.C. 11421

(Catalog of Federal Domestic Assistance Number 84.192 Adult Education for the Homeless Program)

Dated: May 4, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–11005 Filed 5–16–88; 8:45 am]

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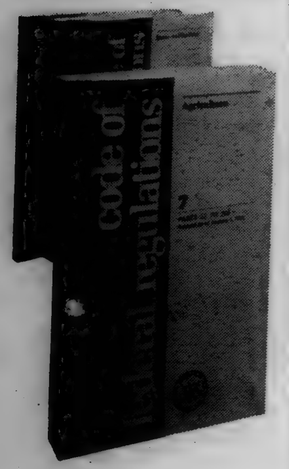
To designate the period commencing May 8, 1988, and ending on May 14, 1988, as "National Tuberous Sclerosis Awareness Week". (May 12, 1988; 102 Stat. 467; 1 page) Price: $1.00

S.J. Res. 240/Pub. L. 100–317

To designate the period commencing on May 16, 1988 and ending on May 22, 1988, as "National Safe Kids Week". (May 13, 1988; 102 Stat. 468; 1 page) Price: $1.00

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5824 of May 16, 1988

Flag Day and National Flag Week, 1988

By the President of the United States of America

A Proclamation

Two hundred and eleven years have now gone by since that June day in 1777 when the Continental Congress adopted a flag for the United States of America, then a brand-new Nation fighting for its independence and for the novel notion that individual liberty was everyone's God-given birthright. The banner adopted then, the beautiful Stars and Stripes, was soon raised by a rebel hand for all the world to see. Our task and our glory as Americans is to keep the flag flying high, because freedom waves in its broad stripes and bright stars.

The preservation of freedom is ours to fulfill for our children and for the hope of mankind, just as our forebears fulfilled it for us in years of peace or peril. We will succeed as our countrymen did before us, but only if we make their spirit our own; we must always revere, just as deeply as did they, the Red, White, and Blue—our battle-scarred flag. The heroism, service, and sacrifice of those who have followed Old Glory on many a hard-fought field and at many a guardpost of peace make this our solemn trust. We will keep faith with them and with generations yet unborn just as long as we can sing of flag and freedom as wholeheartedly as did Francis Scott Key in the last stanza of our National Anthem, "The Star-Spangled Banner":

> Oh! thus be it ever, when freemen shall stand
> Between their loved home and the war's desolation!
> Blest with victory and peace, may the heav'n rescued land
> Praise the Power that hath made and preserved us a nation.
> Then conquer we must, when our cause it is just,
> And this be our motto: "In God is our trust."
> And the star-spangled banner in triumph shall wave
> O'er the land of the free and the home of the brave.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate June 14, 1988, as Flag Day and the week beginning June 12 as National Flag Week, and I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by the Congress as a time to honor America (89 Stat. 211), by having public gatherings and activities in which they can honor their country in an appropriate manner, especially by ceremonies in which all

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renew their dedication by publicly reciting the Pledge of Allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-11321
Filed 5-17-88; 10:18 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 96
Wednesday, May 18, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan; Eligibility

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule.

SUMMARY: On March 28, 1988, the Federal Retirement Thrift Investment Board published interim regulations governing the eligibility of certain union employees to participate in the Thrift Savings Plan on a tax-deferred basis. These regulations provided that employees would have an opportunity to file an initial election form with his or her employing authority at any time before the expiration of 60 days from the publication date of the regulations. Because many of these union employees did not receive a timely notice of these regulations, the Executive Director is extending the initial election period to run from the publication date of the regulations (March 28, 1988) through June 30, 1988.

EFFECTIVE DATE: This amendment is effective May 18, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Accordingly, Chapter VI of Title 5 of the Code of Federal Regulations is amended as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for Part 1620 continues to read as follows:

Authority: 5 U.S.C. 8474, Pub. L. 100-238, Pub. L. 99-591.

§ 1620.34 [Amended]

2. Section 1620.34 is amended by revising the first sentence to read as follows: "Employees who are participating in the Civil Service Retirement System or the Federal Employees' Retirement System must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time from the publication date of these regulations through June 30, 1988. * * *"

Dated: May 12, 1988.

Francis X. Cavanaugh,
Executive Director.

[FR Doc. 88-11045 Filed 5-17-88; 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations of the Agricultural Research Service (ARS), regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It supplements the Department's regulations at Part 1, Subpart A of this title.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, National FOIA Coordinator, Agricultural Research Service, Room 331B, Building 005, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301) 344-3928.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply. The following actions were taken: Sections 510.1, 510.4, and 510.5 have been amended to update section references; and §§ 510.2 and 510.4 have been amended to update the location of the National FOIA Coordinator.

List of Subjects in 7 CFR Part 510

Freedom of information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection and copying.
510.3 Index.
510.4 Requests for records.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this Part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§ 510.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by the ARS at the following office: ARS Information Staff, Room 331B, Building 005, BARC-West, Beltsville, Maryland 20705; (301) 344-3928. Office hours are 8:00 a.m. to 4:30 p.m.

§ 510.3 Index.

In compliance with 5 U.S.C. 552(a)(2), contact the location cited in 510.2 for any available ARS index.

§ 510.4 Requests for records.

Requests for records of the ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the national FOIA coordinator at the following address: ARS Information Staff, Room 331B, Building 005, BARC-West, Beltsville,

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Maryland 20705; (301) 344–3928. The national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 13th day of May, 1988.

M.E. Carter,

Acting Administrator, Agricultural Research Service.

[FR Doc. 88–11160 Filed 5–17–88; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: For the months of April through August 1988 this action suspends the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling under the Nebraska-Western Iowa order. The action was requested by a cooperative association that represents producers who supply milk for the market. The action is necessary to assure that the association's member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 11, 1988; published April 14, 1988 (53 FR 12424).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who regularly have supplied the market's fluid needs will continue to have their milk pooled and priced under the order during the months of April through August 1988 and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 14, 1988 (53 FR 12424) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of April through August 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1065.7(c), the words "51 percent or more of the".

Statement of Consideration

This action suspends, for the months of April through August 1988, the requirement that a cooperative association deliver 51 percent or more of the producer milk of members of the association to pool distributing plants of other handlers in order to qualify a supply plant operated by the cooperative association for pooling. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a large number of the market's producers.

The cooperative stated that the suspension is necessary because the percentage of the cooperative's member milk production shipped to distributing plants is expected to fall below 51 percent. During 1987, the cooperative stated, producer milk pooled on the Nebraska-Western Iowa order increased 5 percent over the amount pooled under the order during 1986. At the same time, the cooperative observed, producer milk used in Class I declined by 2 percent. Mid-Am stated that these trends have continued into 1988, with levels of producer milk pooled under the order during the months of January and February 1988 increasing by 13 and 11 percent, respectively, from the levels of the same months of 1987.

Mid-Am predicted that the present trends in milk production and Class I use, combined with the decrease in Class I sales that will accompany the closing of schools for the summer, will cause the percentage of the cooperative's milk pooled under the Nebraska-Western Iowa order and shipped to distributing plants to fall below 51 percent during the months for which the suspension is to be effective. Consequently, Mid-Am expects the current marketing situation to create difficulties for the cooperative in maintaining the pool status of its member producers who historically have supplied the fluid needs of the Nebraska-Western Iowa market.

As alternatives to depooling some milk of its member producers, the cooperative would have to attempt to pool Nebraska-Western Iowa producer milk on another Federal order or ship milk to distributing plants where the milk would be received, loaded back into the truck and shipped to a manufacturing plant. Either alternative would require the cooperative to move milk in an uneconomic and inefficient manner solely to maintain the pool status of producers who historically have supplied the fluid needs of the Nebraska-Western Iowa marketing area.

In comments filed in support of the suspension, Mid-Am stated that milk production in the Nebraska-Western Iowa marketing area is at a significantly higher level during 1988 than it was during the same months of 1987 and 1986, while Class I sales are weaker. Since suspension of the 51-percent shipping requirement was necessary in both of the two immediately preceding years, when marketing conditions were more favorable for meeting the shipping requirements, the cooperative urged that the provision be suspended again.

No comments opposing the proposed action were received.

Milk production in the Nebraska-Western Iowa market during the first three months of 1988 has exceeded the 1987 level by 12.7 percent. Given current marketing conditions, more than 51 percent of the available milk supplies apparently will have to be shipped to manufacturing plants for surplus use. In view of these circumstances, it is concluded that the 51 percent delivery requirement for cooperative-operated supply plants pooled under the Nebraska-Western Iowa milk order should be suspended for the months of April through August 1988 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic and inefficient movements of milk solely to maintain the pool status of producers who historically have supplied the fluid milk needs of the Nebraska-Western Iowa marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that it will ensure that dairy farmers who are supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning the suspension. No comments opposing this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1065.7(c) of the Nebraska-Western Iowa order are hereby suspended for the months of April through August 1988, as follows:

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1065.7 [Amended]

2. In § 1065.7(c), the words "51 percent or more of the" are suspended for the months of April through August 1988.

Signed at Washington, DC, on May 13, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–11158 Filed 5–17–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1903, 1910, 1943, 1944, 1951, 1962, and 1965

Form FmHA 1944–3, "Budget and/or Financial Statement"

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide for a change in administrative instructions to several CFR parts. This action is necessary because of changes in the format, name, and number of the "Household Financial Statement and Budget" form. The intended effect of the action is to make the form easier to complete. The Budget part of the form can now be completed and used independently of the Financial Statement. The name change is needed to accurately reflect the order of the new format.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Dale Alling, Senior Loan Specialist, Servicing Branch, Single Family Housing Servicing and Property Management Division, FmHA, USDA, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The amended regulation changes the name and number of Form FmHA 431–3, "Household Financial Statement and Budget," to Form FmHA 1944–3, "Budget and/or Financial Statement." This form is used for internal purposes only in determining the repayment ability of applicants and borrowers. Therefore, this action is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

This action affects the following programs listed in the catalog of Federal Domestic Assistance.

10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environment Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects for 7 CFR Parts 1903, 1910, 1943, 1944, 1951, 1962 and 1965

Loan Programs—Agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citations for the Parts 1903, 1910, 1943, 1944, 1951, 1962 and 1965 continue to read as follows:

PART 1903—[AMENDED]

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

PART 1910—[AMENDED]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

PART 1943—[AMENDED]

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1944—[AMENDED]

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

PART 1951—[AMENDED]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

PART 1962—[AMENDED]

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23, CFR 2.70.

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PART 1965—[AMENDED]

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Chapter XVIII—[Amended]

2. 7 CFR Chapter XVIII is amended by removing the words "431–3, Household Financial Statement and Budget," and inserting in their place, the words "1944–3, Budget and/or Financial Statement," in the following places:

(a) Part 1903, Subpart A, § 1903.9 (a)
(b) Part 1910, Subpart A, § 1910.3 (b)(2)
(c) Part 1943, Subpart C, § 1943.132 (a)
(d) Part 1944, Subpart A, § 1944.4 (c), § 1944.20 (a) and § 1944.30 (a)
(e) Part 1944, Subpart J, § 1944.458 (a)(3)
(f) Part 1951, Subpart F, § 1951.201 (e)(2)(i)
(g) Part 1951, Subpart G, § 1951.312 (d)
(h) Part 1965, Subpart A, § 1965.12 (f) and Exhibit C

3. 7 CFR Chapter XVIII is amended by removing the words "Form FmHA 431–3" and inserting in their place, the words "Form FmHA 1944–3" in the following places:

(a) Part 1910, Subpart A, § 1910.7 (a)
(b) Part 1944, Subpart A, § 1944.20 (a)(2), (e) and (f)(2)
(c) Part 1944, Subpart J, § 1944.458 (a)(3)
(d) Part 1951, Subpart G, § 1951.312 (e)(3), (e)(3)(i) and § 1951.313 (b)
(e) Part 1962, Subpart A, § 1962.34 (f)(7)
(f) Part 1965, Subpart A, § 1965.27 (g)(4)

§ 1944.467 [Amended]

4. In § 1944.467, introductory paragraph (b) is amended by changing the title "Family budget form" to "Budget form."

5. In § 1944.467, introductory paragraph (b)(1) is amended by changing the reference in the first sentence from "Form FmHA 431–3, 'Budget and/or Financial Statement'." The second sentence is amended by changing the words "Family budgets" to "Budgets."

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

6. Section 1965.27 is amended by revising paragraph (g)(4) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(g) * * *

(4) *Farm and Home plans and financial statements.* When the transfer involves an ineligible transferee, Form FmHA 1944–3 or FmHA 431–2 will be used to the extent necessary to determine the debt paying ability of the transferee. Another plan of operation acceptable to FmHA may be used in lieu of Form FmHA 431–2. When an assumption will be of less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2, or other plan of operation acceptable to FmHA.

* * * * *

Dated: October 2, 1987

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–11090 Filed 5–17–88; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 9, and 20

Minor Corrective Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to return information that was inadvertently omitted when a final rule was published in December 1987 and to make nonmenclature changes that reflect the 1987 NRC consolidation and were overlooked when a final rule was published in August 1987. These amendments are necessary to inform the public and NRC licensees of the corrections.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On December 31, 1987 (52 FR 49350), the NRC published a final rule revising its Freedom of Information Act regulations in order to implement the Freedom of Information Reform Act of 1986. One of the amendatory instructions indicated that in § 2.790, paragraphs (a)(7), (b)(1)(ii), and (d) were to be revised. For paragraph (d), the instruction should have read that the introductory text of paragraph (d) was revised in order to retain paragraphs (1) and (2) which were inadvertently dropped when the final rule was published. On August 21, 1987 (52 FR 31601), the NRC published a final rule that amended several 10 CFR Parts to reflect the consolidation of the agency. Overlooked were several places in the regulations where the nomenclature changes should have been made. These amendments correct these oversights.

Because these amendments deal with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 9, and 20.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 2.790, and paragraph (d) is revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

* * * * *

PART 9—PUBLIC RECORDS

3. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 9.60 [Amended]

4. In § 9.60, paragraph (a), after the words "Director, Office of Administration", add the words "and Resources Management".

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§20.103 [Amended]

6. In § 20.103, paragraph (g), remove the word "Director", and add in its place the words "Regional Administrator".

§ 20.311 [Amended]

7. In § 20.311, paragraph (g)(3), remove the word "Director", and add in its place the words "Regional Administrator".

Dated at Rockville, Maryland, this 6th day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–11113 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document corrects a previous **Federal Register** document, FR Doc. 88–8302 (List of Marginable OTC Stocks), which was published at page 15195 of the issue for Thursday, April 28, 1988, to be effective May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Based upon corrected information received from the National Association of Securities Dealers, the name of Holiday RV Superstores, Inc., $.01 par common was spelled incorrectly when it was added to the List.

Accordingly, pursuant to 12 CFR 207.2(i)(3) and 207.2(k) (Regulation G), 12 CFR 220.2(o)(4) and 220.2(s) (Regulation T), and 12 CFR 221.2(h)(3) and 221.2(j) (Regulation U), the entry for "Holiday RV Superstars, Inc." is changed to "Holiday RV Superstores, Inc." in the "Additions to the List" in the second column on page 15197.

By order of the Board of Governors of the Federal Reserve System acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), May 12, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11073 Filed 5–17–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 88–ACE–04]

Cancellation of Transition Area; Spirit Lake, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to cancel the transition area at Spirit Lake, Iowa. The nondirectional radio beacon (NDB) at Spirit Lake, Iowa, has been decommissioned, thereby canceling the instrument approach procedure based on this navigational aid. Accordingly, the transition area is no longer required.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri, 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to cancel the transition area at Spirit Lake, Iowa. The NDB at Spirit Lake, Iowa, was decommissioned during 1987. That action canceled the instrument approach procedure predicated on this navigational aid. Accordingly, the Spirit Lake transition area is no longer required and action is taken herein to cancel it. Since the instrument approach procedure has been canceled, this action is one in which the public would not be particularly interested. Therefore, notice and public procedure hereon, under 5 U.S.C. 553(b), are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

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Spirit Lake, Iowa [Removed]

Issued in Kansas City, Missouri, on May 2, 1988.

Paul E. Marchbanks,

Acting Manager, Air Traffic Division.

[FR Doc. 88-11049 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-01]

Cancellation of Control Zone—Russell, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to cancel the control zone at Russell, Kansas. This action was requested by the airport manager, since the Flight Service Station at Russell, Kansas, is scheduled to be closed July 2, 1988.

EFFECTIVE DATE: 0901 UTC, October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: Since the Russell, Kansas, Flight Service Station is scheduled to be closed July 2, 1988, the airport manager at Russell, Kansas, has requested that the control zone be canceled. Action is taken herein to cancel said control zone.

Discussion of Comments

On page 6161 of the Federal Register dated March 1, 1988, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to cancel the control zone at Russell, Kansas. (53 FR 6161.) Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No responses were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Russell, KS [Removed]

Issued in Kansas City, Missouri, on May 2, 1988.

Paul E. Marchbanks,

Acting Manager, Air Traffic Division.

[FR Doc. 88-11050 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80347-8047]

Revisions to the Export Administration Regulations Based on COCOM Review; Electric Furnaces

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends Export Control Commodity Number (ECCN) 1203A on the CCL by imposing a control on vacuum furnaces capable of operating with protective atmospheres. This amendment has resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this amendment to the CCL is necessary to protect U.S. national security interests.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on electric furnaces (ECCN 1203), call Surendra Dhir, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-8550.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before (two weeks after date of publication) may be exported under the general license provisions up to and including (four weeks after date of publication). Any such items not actually exported before midnight (four weeks after date of publication) require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to: Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28787, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12533 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power Generating Equipment), ECCN 1203A is amended as follows:

A. By revising the heading to the entry and to the "List of Equipment Controlled by ECCN 1203A" to read as set forth below:

B. By removing the words "(See also ECCNs 1060A and 1301A.)" from the NOTE following paragraph (c)(3) and by adding those words to the end of the entry;

C. By redesignating the NOTE at the end of the entry as 1; and

D. By adding a new NOTE 2 to read as follows:

1203A Electric furnaces, specially designed components and controls therefor.

* * * * * * *

List of Electric Furnaces Controlled by ECCN 1203A

* * * * * * *

(d) * * *

(2) * * *

Note 1: This ECCN does not control susceptors * * *

Note 2. This ECCN also covers vacuum furnaces capable of operating with protective atmospheres.

(See also ECCNs 1060A and 1301A.)

Dated: May 13, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-11101 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Reparation Proceedings; Date of Reparation Order; Filing of Double Bond in Court of Appeals

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Under section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e), litigants who wish to file a petition for Court of Appeals review of a reparation order issued by the Commodity Futures Trading Commission ("Commission") must file a double bond within 30 days of "the date of the reparation order." The Commission has adopted final Rule 12.406(d) to clarify that the 30-day period for filing the bond runs from the date that the Commission's order is received by the Commission's Proceedings Clerk, a date that is routinely stamped on the first page of the order.

EFFECTIVE DATE: New Rule 12.406(d) becomes effective June 2, 1988.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Curt Bohling, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581, Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: Section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e), specifies the procedure for obtaining review in the United States Court of Appeals of a reparation order issued by the Commission. That section provides, among other things, that a reparation appeal

shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail.

On October 30, 1987, the Commission proposed an interpretative rule to clarify the meaning of the phrase "the date of the reparation order." 52 FR 41733 (Oct. 30, 1987). The proposed rule provided that the 30-day period for filing the bond runs from the date that the Commission's order is received by the Commission's Proceedings Clerk, a date that is routinely stamped on the first page of the order. The Commission invited interested persons to comment on the proposed rule, but no comments have been received.

The Commission proposed the interpretative rule to provide a standard, easily identifiable, measuring date for the filing of a Section 14(e) bond. A number of decisions by United States Courts of Appeals have demonstrated the need for such a standard. The United States Court of Appeals for the District of Columbia Circuit has held that the time for filing the Section 14(e) bond "must be construed as both jurisdictional and unalterable." *Kessenich v. CFTC*, 684 F.2d 88, 93 (D.C. Cir. 1982). Likewise, the United States Court of Appeals for the Ninth Circuit has recently stated that "the timely filing of [the Section 14(e)] bond is a prerequisite for appellate jurisdiction." *Chicago Commodities, Inc. v. CFTC*, 811 F.2d 1262, 1263 (9th Cir. 1987). Should a reparations litigant miscompute the 30-day period for filing the jurisdictional Section 14(e) bond, his petition for review is subject to dismissal by the Court of Appeals. *See, e.g., Clayton Brokerage Co. v. Bunzel*, 820 F.2d 1459 (9th Cir. 1987) ("*Bunzel*").

As the *Bunzel* decision illustrates, the phrase "the date of the reparation order" as used in Section 14(e) may be subject to more than one interpretation. The *Bunzel* court held that, pursuant to

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the terms of the Commission's order in that particular case, "the date of the reparation order" was "the date that the order * * * was served." 820 F.2d at 1462. Since the date of service of the order was not obvious on the face of the order, the court required the Commission to supplement the record with evidence concerning the date of service. Upon reviewing this evidence, the Court determined that the order had been served 31 days before the petitioners filed their Section 14(e) bond. The Court therefore dismissed the petition for review.

To avoid these procedural questions for litigants and to provide certainty as to the measuring date for the filing of the jurisdictional bond, the Commission has adopted new Rule 12.406(d) as proposed. The Rule defines "the date of the reparation order" in Section 14(e) as the date on which the order is filed with the Commission's Proceedings Clerk. This date is routinely stamped on the first page of the Commission's opinion and order or order of summary affirmance. Thus, parties receiving a Commission reparation order will know with certainty the date upon which the 30-day period begins to run.

This rule is a procedural one. *See* 5 U.S.C. 552(a)(1)(c). Consequently, the Commission has determined to make the rule effective 15 days after its publication in the Federal Register. *See* 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the economic impact of proposed rule changes on small business entities. The rule proposed here would not affect the amount of the bond required to be filed in order to obtain judicial review of a Commission reparation order and thus would not have any economic impact on small business entities. Accordingly, the Chairman, on behalf of the Commission, certifies that the rule adopted here will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity futures, Reparations.

PART 12—[AMENDED]

For the reasons set forth in the preamble, the Commission amends Title 17, Part 12 of the Code of Federal Regulations as follows:

1. The authority citation for Part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12a(5), 18(b) (1982).

2. Section 12.406 is amended by adding a new paragraph (d) as follows:

§ 12.406 Final decision of the Commission

* * * * *

(d) *Date of the reparation order.* For purposes of computing the 30-day period for filing the appeal bond required by section 14(e) of the Act, 7 U.S.C. 18(e), "the date of the reparation order" shall be the date that the Commission's opinion and order (or order of summary affirmance, as the case may be) is filed with the Proceedings Clerk. This date shall be reflected by the date stamp on the first page of the Commission's order.

Issued in Washington, DC on May 11, 1988 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-11091 Filed 5-17-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82-18; Notice 12]

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: On April 2, 1987, Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 203 of the Act amends section 408 of the Highway Safety Act, 23 U.S.C. 408, by extending from three to five, the number of fiscal years in which a State may receive alcohol incentive grants.

This Final Rule revises portions of the agency's regulation implementing section 408 of the Highway Safety Act of 1966, relating to supplemental alcohol incentive grants, to reflect this statutory change. Other portions of the regulation were amended in a final rule published in the **Federal Register** on July 22, 1987 (52 FR 27614).

DATE: The amendments made by this final rule are effective on May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, NTS-01, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC-30, NHTSA, telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, was enacted by Congress. Section 203 of the Act amends section 408 of the Highway Safety Act, 23 U.S.C. 408, Incentive Grant Criteria for Alcohol Traffic Safety Programs (the 408 program), by extending from three to five, the number of fiscal years in which a State may receive alcohol incentive grants.

Background

The 408 program was enacted in 1982, under 23 U.S.C. 408 (Pub. L. 97-364), as a two-tier grant program, providing Federal funds (basic and supplemental grants) to States that qualify by implementing certain programs designed to reduce the drunk driving problem. The amount received as a basic grant equals 30 percent of the State's FY 1983 highway safety grant (section 402) apportionment. The amount received as a supplemental grant may not exceed 20 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the States under a grant program established by the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs.

In 1984, section 408 was amended, Pub. L. 98-363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. The amount received as a special grant may not exceed 5 percent of the State's FY 1984 sections 402 and 408 apportionments.

Under the 1982 Act, States could receive section 408 incentive grants in no more than three fiscal years although, as discussed in further detail below, the years in which a supplemental grant is received need not be the same years as those in which a basic grant is received. Similarly, special grants (which were added under the 1984 amendment) can be received in different years than those in which a basic or supplemental grant is received.

Section 203 of Pub. L. 100-17 amends section 408 by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants. In a Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on July 22, 1987 (52 FR 27616), the agency proposed revisions to portions of the agency's regulation implementing section 408, relating to supplemental alcohol incentive grants, to reflect this statutory change. Other portions of the regulation were amended to reflect statutory changes unrelated to supplemental grants in a final rule published in the **Federal Register** on July 22, 1987 (52 FR 27614).

Supplemental Grants

Congress provided in section 408 that a State is eligible for a supplemental grant if the State is eligible for a basic grant and provides for some or all of the criteria established by the Secretary of Transportation. By regulation, a total of twenty-two supplemental criteria have been promulgated. Under the agency's current regulation, the State must show that it has a license suspension system in which the average time from arrest to suspension of a license does not exceed an average of 45 days. (The agency, however, is proposing to amend this and other regulatory requirements under a separate rulemaking action. See discussion on page 10 of this final rule.) In addition, a State must demonstrate compliance with eight of the twenty-two criteria to qualify for a 30 percent supplemental grant in the first year, or with four of these criteria to qualify for a 10 percent supplemental grant. To qualify for a supplemental grant for a second and a third year, a State must show that it has increased its performance for each of the requirements previously adopted, and adopt two more requirements for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

The NPRM proposed revisions to these portions of the agency's regulation, pertaining to supplemental alcohol incentive grants, and requested comments "on the manner in which a State must demonstrate that it qualifies for a supplemental grant in the fourth and fifth years." The agency proposed that, in the fourth and fifth years, (1) "a State would not have to adopt any additional [supplemental criteria]" and (2) "a State need not show increased performance for criteria adopted in previous fiscal years. The State would only be required to demonstrate that performance has been maintained in the criteria previously adopted." Comments were requested on both issues.

The comment period closed on August 21, 1987. We received twenty-one comments from the following persons and organizations: the American Insurance Association (AIA); Mr. Bill Bronrott, former alcohol-highway safety policy coordinator for retired Congressman Michael D. Barnes; the National Association of Governors' Highway Safety Representatives (NAGHSR); the late Congressman James J. Howard, Chairman of the House Committee on Public Works and Transportation; and the remaining 17 from States.

Adoption of Additional Criteria Not Required

The agency proposed, in the NPRM, that a State would not have to adopt any additional requirements in the fourth and fifth years. For example, if a State qualifies for a supplemental grant by implementing eight supplemental criteria in the first year, the State would be required to adopt two additional supplemental criteria in the second and third fiscal years, for a total of twelve. In the fourth and fifth years, the State would be required to adopt no additional supplemental criteria. The agency expressed its concern that requiring a State to adopt additional criteria to qualify for a supplemental grant in the fourth and fifth fiscal years could diminish the effectiveness of criteria adopted in the first three fiscal years by diverting resources from implementation of those criteria.

We received one comment which took a different view. The American Insurance Association (AIA) asserts in comments that its "membership feels that NHTSA should require the adoption of one additional criteria each for the fourth and fifth years. . . . Since NHTSA does not require a state to implement more than a total of fifteen criteria, adding two additional supplementals over the 4th and 5th years would ensure that the State increases its anti-drunk driving activities while resulting in a maximum of fourteen requirements—eight the first year, two each for the 2nd and 3rd year, and one each the last two years."

AIA indicates that it does not believe the concern expressed by NHTSA in the NPRM is valid, "since this could have been the case in the second and third fiscal years as well." It believes that the adoption of one additional criteria each year would not be "unreasonable or burdensome".

All other commenters, including NAGHSR, Congressman Howard and all States addressing the issue, concurred with the agency's proposal. The comments from the State of Louisiana best summarize the views expressed:

> The proposal * * * would be beneficial because states would have more flexibility to focus on their most urgent alcohol traffic safety problems. * * * the states can tailor programs for local variations in the intensity and nature of the traffic problems. * * * they can avoid sinking resources into problems which, for demographic, political or other reasons, are not likely to respond to increased funding. * * *

Of course a state already is permitted to adopt additional criteria if it chooses.

> In contrast, a rule which would require a state to work a broad, rigid, programmatic schedule by increasing the number of criteria in the fourth and fifth years, would find itself inevitably throwing money after diminishing returns. The current proposal would avoid this problem by permitting a concentration of resources into the most responsive areas.

The agency has decided to adopt the proposal presented in our NPRM and require no additional criteria in the fourth and fifth fiscal year. We continue to believe that requiring a State to adopt additional criteria to qualify for a supplemental grant in the fourth and fifth fiscal years could diminish the effectiveness of criteria adopted in the first three years by diverting resources from implementation of those criteria. NHTSA is not persuaded by AIA's suggestion that adding two additional criteria would "ensure that the State increases its anti-drunk driving activities." Rather, we agree with the States that while requiring additional criteria could lead to a longer *list* of activities, it may divert a State's resources from those activities which are most effective.

Demonstration of Performance

Under the agency's current regulation, a State is required to show in the second and third fiscal year an increase in performance of each of the requirements it adopted in the prior year. In the NPRM, the agency proposed to require in the fourth and fifth fiscal years, that States show that performance has been *maintained* in the criteria previously adopted. Two commenters, NAGHSR and Mr. Bronrott, recommend that States instead be required to show an *increase* in these years. These commenters suggest, however, that States should be required to show progress in the *overall* success of the State's alcohol countermeasures program, rather than in *each* criteria (as we proposed).

Mr. Bronrott recognizes that "section 203 of Pub. L. 100-17 does not require states to demonstrate steady or increased performance in the previous fiscal years as a condition of receiving supplemental grants in the fourth and fifth years." However, he asserts that the "congressional intent of the original incentive grant bill, as a general principle, was to require states to show progress." He suggests:

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While the 408 program should be made as flexible as possible, the final rule should maintain that states account for steady or increased performance in order to qualify for continuing supplemental grants. The final rule might define such steady or increased progress by measuring the overall success of a state's alcohol-highway safety program.

NAGHSR makes a similar suggestion, citing the need for flexibility and for an adequate measure of performance. NAGHSR states, "Although it may be difficult for a state to show increased performance for each of the aforementioned criteria for the fourth and fifth years of supplemental grant eligibility, we believe that showing positive performance in the overall supplemental grant program is possible and preferable to showing maintenance of effort within each supplemental criteria."

Rhode Island does not specifically address whether the States should be required to show maintenance, or a different level of performance. However, it echoes the concerns of Mr. Bronrott and NAGHSR about requiring States to address each and every criterion. "Some of the 408 criteria may militate against each other. For instance, an increased public relations effort or enforcement campaign may cause the number of persons arrested for drunk driving to decrease or may result in fewer reported violations through the 'hot line'. Subsequently, . . . Rhode Island . . . may actually suffer a decrease in dedicated revenues because of the efficiency of their program." This concern is also mentioned in the comments of the State of Nevada.

All remaining commenters addressing this issue, agree with the agency's proposal to require that States show that performance has been maintained in each of its previously adopted requirements in the fourth and fifth fiscal years, for many of the same reasons they cited in support of requiring the adoption of no new additional criteria in fiscal years 4 and 5.

NHTSA has decided to adopt Mr. Bronrott and NAGHSR's recommendation to require that each State show in the fourth and fifth fiscal year that performance has been *increased* in its *overall* alcohol countermeasures program. The agency can appreciate the concerns raised by Rhode Island and the other commenters regarding the States' difficulty in demonstrating progress in each supplemental criteria in years 4 and 5.

We believe the change being adopted in this final rule addresses these concerns. The change is intended to provide flexibility to the States by permitting them to demonstrate progress through their *overall* alcohol countermeasures programs, thereby, removing the limitation that States must address each supplemental criterion previously adopted. For example, this amendment would permit a State to qualify for supplemental grant funds in a fourth or fifth year, even if previously adopted supplemental criteria could no longer be continued. To qualify, the State would be required to adopt new supplemental criteria in order to meet the requisite number established in the regulation (at least twelve in the fourth or fifth year) and demonstrate improved performance in its overall program. The State could rely on data unrelated to the use of the discontinued criteria, and could demonstrate improved performance in a variety of ways. It is our hope that the increased flexibility provided by this final rule will enable the States to use their resources for the most effective activities and, thereby, derive the greatest highway safety benefits. Further, this change ensures that States are making progress by requiring that they show *increased* performance in their overall alcohol countermeasures programs.

Prompt Suspension

Pennsylvania suggests in its comments that the agency "waive the requirement of an average of 45 days from arrest to license suspension for those states which maintain compliance with other [criteria] originally established." This issue was not raised in the NPRM which led to this final rule. Accordingly, it can not be addressed in this rulemaking action. However, it is currently being addressed through a separate rulemaking proceeding. On April 8, 1988, NHTSA published an NPRM in the **Federal Register** [53 FR 11679], which proposed to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds. The notice proposes, among other things, to eliminate the more stringent promptness requirement relating to supplemental grants, by making it consistent with the promptness requirement relating to basic grants. Comments were requested in the NPRM regarding this and other changes proposed in that action.

Grants May Be Received in Different Years.

There are a number of States that first qualified for basic and supplemental grants in FY 1984 and 1985, and are now eligible for a fourth year of funding. The final rule which was published in the **Federal Register** on July 22, 1987 (52 FR 27614), permitted these eligible States to apply immediately for a fourth year basic grant in accordance with the procedures established in 23 CFR 1309.4. Of the 15 States that are now eligible for a fourth year of funding, six have applied for and received their fourth year of basic grant funds. However, since this final rule had not been issued until now, these States were unable to apply for and receive a fourth year of supplemental grant funds.

As we indicated in the NPRM (52 FR 27616), these States may now apply for a fourth year supplemental grant. Those States that received their fourth year of basic grant funds in FY 1987, may receive their fourth year supplemental grant and fifth year basic grant in FY 1988. They may apply for a fifth year supplemental grant in FY 1989, provided the State continues to meet the *basic* criteria during that year. Those States that did not apply for or receive basic grant funds in FY 1987, may apply for a fourth year basic and supplemental grant in FY 1988 and a fifth year basic and supplemental grant in FY 1989. This is consistent with a previous interpretation of the agency that section 408 does not require a State to qualify for grants in consecutive years, and that the five year limitation on a State receiving grants applies separately to each type of grant.

Federalism Assessment

The agency has considered whether this action would have any federalism implications. We have determined that this proposal would further the principles of federalism established by the Framers of the Constitution while striking an appropriate balance between increased State flexibility and an appropriate level of Federal involvement as required by the enabling legislation for this grant program. The involvement of alcohol and controlled substances in our motor vehicle fatalities does constitute a problem of national scope. For this reason, Congress directed the agency to make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. In this final rule, we provide flexibility to the States in two respects. We require that they demonstrate no additional supplemental criteria for supplemental grants funding in the fourth and fifth fiscal year. We also permit the States to demonstrate progress through their *overall* alcohol countermeasures program, thereby, removing the limitation that States must address each supplemental criterion previously adopted.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 408 program is voluntary. Accordingly, neither a draft Regulatory Analysis nor a Preliminary Evaluation is required.

When the agency promulgated regulations to implement the section 408 program on February 7, 1983 (48 FR 5545), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in the public docket (Docket No. 82-16; Notice 5). Persons interested in reviewing this document, should request it from the docket section.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this rule that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through April 30, 1990; OMB No. 2127-0501.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1309

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA amends Part 1309 of Title 23 of the Code of Federal Regulations as follows:

PART 1309—[AMENDED]

1. The authority citation for Part 1309 continues to read as follows:

Authority: 23 U.S.C. 408; delegation of authority at 49 CFR 1.50.

2. Subsection 1309.6(e) is added to read as follows:

§ 1309.6 [Amended]

* * * * *

(e) To qualify for a supplemental grant for a fourth and fifth year, a State must show that it has increased performance in its overall alcohol countermeasures program.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 88-11133 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-117]

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; notice of approval of information collection requirements; corrections.

SUMMARY: On December 31, 1987, OSHA published a final standard on grain handling facilities (52 FR 49592). This rule was transmitted to the Office of Management and Budget (OMB) for review and clearance of the information collection requirements contained therein, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320. The information requirements contained in the final rule in paragraphs (d) and (i) of § 1910.272 have received OMB paperwork clearance, and have been assigned OMB Control Number 1218-0144.

This notice amends the final grain handling standard to include the OMB control number, and makes miscellaneous corrections to the Appendices to the final rule, as published in the December 31, 1987 **Federal Register** notice.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, Office of Information and Consumer Affairs, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On December 31, 1987, OSHA published in the **Federal Register** at 52 FR 49592, a final rule concerning grain handling facilities. This final rule added a new § 1910.272 to 29 CFR to provide employee protection at grain handling facilities from fires, grain dust explosions, and other safety hazards. At the time of promulgation of the final rule, the information collection provisions in the standard had not been approved by OMB under the Paperwork Reduction Act. On February 4, 1988, OMB approved the information collection requirements in § 1910.272 (paragraphs (d) and (i)) through February 29, 1991, assigning these requirements OMB Control Number 1218-0144.

This notice adds the OMB control number at the end of § 1910.272, to indicate that OMB approval has been received for the information requirements in paragraphs (d) and (i).

In addition, the December 31, 1987 **Federal Register** notice contained miscellaneous errors and omissions in the Appendices to the final rule. This notice makes corrections to those appendices, as they appeared in the December 31, 1987 notice.

Lists of Subjects in 29 CFR Part 1910

Fire prevention, Grain handling, Grain elevators, Occupational safety and health, Protective equipment, Safety, Welding.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911, 29 CFR Parts 1917 and 1910 are amended as set forth below.

Signed at Washington, DC, this 10th day of May, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

Accordingly, § 1910.272 and Appendices A and C to § 1910.272, as published at 52 FR 49592-49631 (FR Doc. 87-29928) are amended as set forth below:

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PART 1910—[AMENDED]

1. The Authority Citation for Subpart R of 29 CFR Part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

§ 1910.272 [Amended]

2. In § 1910.272, on page 49627, column 1, the OMB control number statement is amended to add the number "1218–0144", and the statement is moved to the end of the section (following Appendix C).

Appendix A—[Amended]

3. Appendix A to § 1910.272 is amended as follows:

a. On page 49628, column 1, Item 6, a sentence is added at the end of the first paragraph to read "Contractors are responsible for informing their own employees."

b. On page 49630, column 2, the first paragraph, lines 21 and 22 are revised to read "or by some other equally effective means. When V-type belts are used to".

c. On page 49630, column 3, lines 2, 3 and 4 are revised to read "from the motor drive shaft, it will be necessary to provide electrical continuity from the head pulley assembly to ground, e.g., motor grounds."

Appendix C—[Amended]

4. Appendix C to § 1910.272 is amended as follows:

a. On page 49630, column 2, Item 12, lines 3 and 4 are corrected to read "Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

b. On page 49630, column 2, Item 13, lines 2 and 3 are corrected to read "Mutual Fire Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

c. On page 49630, column 2, Item 14, lines 4 and 5 are corrected to read "Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

d. On page 49630, column 2, Item 16, lines 3 and 4 are corrected to read "Mutual Fire Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

e. On page 49630, column 3, Item 19, lines 3 and 4 are corrected to read *"Plants*; Mill Mutual Fire Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

f. On page 49630, column 3, Item 21, lines 4 and 5 are corrected to read "Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

g. On page 49630, column 3, Item 22, lines 3 and 4 are corrected to read "Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

h. On page 49630, column 3, Item 23, lines 3 and 4 are corrected to read "Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

i. On page 49630, column 3, Item 24, lines 3 and 4 are corrected to read " Fire Prevention Bureau, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

j. On page 49631, column 2, Item 30, lines 3 and 4 are corrected to read "Department, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

k. On page 49631, column 3, Item 31, lines 2 and 3 are corrected to read "Mill Mutual Loss Control Department, 1 Pierce Place, Suite 1280 West, Itasca, Illinois 60143–1269."

[FR Doc. 88–10602 Filed 5–17–88; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD8–88–10]

Special Local Regulations; Neches Boat Club Raft Race, Beaumont, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Neches Boat Club Raft Races. This event will be held on 22 May 1988 from 8:00 a.m. until 6:00 p.m. on the Neches River at Beaumont, TX. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 22 May 1988 at 7:30 a.m. and terminate on 22 May 1988 at 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lt. Michael W. Walter, Operations Officer, U.S. Coast Guard Group Galveston, Tel: (409) 766–5420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published and good cause exists for making them effective in less than 30 days from publication. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until 21 March 1988 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commenters should include their name and address, identify this notice (CCGD8–88–10) and the specific section of the proposal to which the comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LT Michael W. Walter, Project Officer, Coast Guard Group Galveston, Texas, and LCDR James J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The marine event requiring this regulation is an unpowered raft race called "The Neches Boat Club Raft Race". This event is sponsored by the Neches Boat Club. It will consist of approximately 300 homemade rafts. The course followed by the race will be marked by buoys positioned at various points along its route.

Approximately 200 spectator boats are expected for this event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor.

Non-participating vessels will be permitted to transit the area at *NO WAKE SPEED* every hour on the hour for a period of 10 minutes.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

Part 100—[Amended]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–8–88–10 is added to read as follows:

§ 100.35–8–88–10 Neches River, Texas.

(a) *Regulated area.* The following area will be closed to all vessel traffic: The Neches River from Lawson's Crossing downstream to the Port of Beaumont, TX, except vessels participating in the Neches Boat Club Raft Race.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectator shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(2) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF–FM Channel 16, when required, by the call sign "PATCOM".

(c) *Effective dates:* These regulations will be effective from 7:30 a.m. to 6:30 p.m. 22 May 1988.

Dated: May 5, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88–11060 Filed 5–17–88; 8:45 am]
BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD1 88–021]

Amendments to Empire State Rowing Regatta Regulations, Albany, NY

AGENCY: Coast Guard; DOT.

ACTION: Final Rule.

SUMMARY: The regulations governing the annual Empire State Regatta are being amended to reflect minor changes in race organization. Additionally, this final rule notifies the public that, for the 1988 running of the Empire State Regatta, the regulations will be in effect from June 10 to June 12, 1988 and will close the Albany section of the Hudson River during specific periods of time as put forth below. The regatta is the northeast regional championships of the U.S. Rowing Association.

EFFECTIVE DATES: These regulations are effective from 12:01 pm, June 10, 1988 to 7:00 pm on June 12, 1988 and thereafter annually on the first or second weekend (Friday, Saturday, and Sunday) in June as published in the First Coast Guard District Local Notices to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223–8311.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. These regulations which will govern the annual running of the Empire State Regatta are considered necessary for the safety of life on the navigable waters of the United States. The regulations will be in effect each year for the regatta and public notification of this regulation will be accomplished by publication in the First Coast Guard District Local Notice to Mariners. Each year, commercial interests will be contacted directly by the Coast Guard.

Drafting Information

The drafters of these regualtions are LT L. BROWN, project officer, First Coast Guard District Boating Affairs Branch and CDR M.A. LEONE, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Empire State Regatta serves as the northeast regional championships of the U.S. Rowing Association. Approximately 1,500 participants are expected and the race format will consist of multiple heats in 26 to 28 foot rowing shells. The course consists of six (6) 2000 meter long lanes which will be delineated by temporary floats put in place by the sponsor. The floats will be secured in place by an underwater grid system which will be lowered at the end of each day of racing. The underwater grid network will remain in place overnight at a dept of six (6) feet thereby limiting the vessel size that may transit the area. During racing hours, the river will be closed to all traffic except race participants and race escort/patrol vessels. At the conclusion of the day's racing, the river will be opened to allow escorted passage of transiting vessels less than 20 meters in length. Along with Coast Guard patrols, the event will be patrolled by local and state law enforcement officials, the Coast Guard Auxilliary, and sponsor provided patrol craft.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.308 [Amended]

2. Section 100.308(a) is revised to read as follows: (a) *Regulated area.* That portion of the Hudson River, extending bank to bank, between the Interstate Route 90 bridge (latitude 42–42–04 N; Longitude 73–42–15 W) and the Dunn Memorial bridge (latitude 42–38–32 N; longitude 73–44–55 W) in Albany, New York.

3. Section 100.308(b) is revised to read as follows: (b) *Effective period.* This regulation is effective from 12:01 pm on June 10, 1988 through 7:00 pm on June 12, 1988 and annually thereafter during the same time periods on the first or second weekend (Friday, Saturday, and Sunday) in June as published in the First Coast Guard District Local Notice to Mariners.

4. In § 100.308, paragraph (c)(1) and (3) are revised to read as follows:

(c) * * *

(1) The regulated area will be closed to all vessel traffic, except official patrol craft and sponsor craft, during the following times: Friday from 12:01 pm to 7:00 pm; Saturday from 6:00 am to 7:00 pm; and on Sunday from 6:00 am to 7:00 pm.

* * * * *

(3) Vessels less than 20 meters in length may transit the regulated area at the conclusion of each day of racing. Transiting vessels will be escorted by official regatta patrol vessels specified in paragraph (c)(5) of this section. Approximate periods for transit will be: Friday at 7:00 pm through Saturday at 6:00 am; and again on Saturday at 7:00 pm through Sunday at 6:00 am

5. Section 100.308(c)(8) is redesignated as § 100.308(c)(9).

6. A new paragraph (c)(8) § 100.308 is added to read as follows:

(c) * * *

(8) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel.

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Dated: May 6, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88-11079 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 9

Servicemen's and Veterans' Group Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulations relating to Servicemen's and Veterans' Group Life Insurance to reflect that the law: (1) Provides for an increase in the maximum amount of Servicemen's and Veterans' Group Life Insurance which may be purchased and (2) changes to amounts evenly divisible by $10,000, the amounts that may be issued when less than maximum coverage is desired.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: The Veterans' Administration Health-Care Amendments of 1985, Pub. L. 99-166, in part, amends sections 767 and 777 of title 38, United States Code. The amendments to sections 767 and 777 provide for an increase from $35,000 to $50,000 in the maximum amount of Servicemen's and Veterans' Group Life Insurance. These amendments also provide that amounts of less than $50,000 may be issued only in increments that are evenly divisible by $10,000.

The VA has determined that prior publication for notice and public comment is, pursuant to 38 CFR 1.12, impracticable and contrary to the public interest. There exists good cause for making these final regulatory amendments effective without prior public comment. Since the amendments merely reflect statutory changes in the law, allowing public comment would have no effect on implementing the changes mandated by Congress. Additionally, the cost to the Government, ultimately a burden to the taxpayer, for prior publication is saved.

These final regulatory amendments are considered non-major under the criteria of Executive Order 12291, entitled Federal Regulation. They will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. They will have no adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since a notice of proposed rulemaking will not be published, these changes do not constitute a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, the Administrator certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. This certification can be made because these final regulatory amendments affect only individual VA beneficaries, and merely reflect statutory changes.

The Catalog of Federal Domestic Assistance program number for these final regulatory amendments is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Servicemen's and Veterans' group.

Approved: April 11, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 9, Servicemen's Group Life Insurance and Veterans' Group Life Insurance, is amended as follows:

§ 9.1 [Amended]

1. In § 9.1, paragraph (j) remove the numbers "212" and add, in their place, the numbers "213".

§ 9.2 [Amended]

2. In § 9.2, paragraphs (a) and (b) remove the words "December 1, 1981" and add, in their place, the words "January 1, 1988".

3. In § 9.3, paragraph (d) is revised to read as follows:

§ 9.3 Applications.

* * * * *

(d) A member who, while performing active duty or active duty for training under a call or order specifying a period of less than 31 days, or inactive duty for training scheduled in advance by competent, authority including travel directly to or from any such duty, suffers an injury, or disability or aggravation of a preexisting disability or injury that renders the member uninsurable at standard premium rates, may be granted Veterans' Group Life Insurance in an amount not to exceed his or her Servicemen's Group Life Insurance provided the initial premium and proof of such injury or disability is submitted to the administrative office within 120 days after such training is terminated.

(Authority: 38 U.S.C. 766(b), 777(a))

* * * * *

§ 9.3 [Amended]

4. In § 9.3(e), remove the words "December 1, 1981" everywhere it appears and add, in their place, the words "January 1, 1988".

5. Section 9.4 is revised to read as follows:

§ 9.4 Amount of insurance.

Effective January 1, 1988, Servicemen's Group Life Insurance is issued in the amount of $50,000 unless the insured member elects in writing—

(a) To not be insured, or

(b) To be insured in any lesser amount evenly divisible by $10,000.

The $50,000 coverage does not apply to those members separated or released prior to January 1, 1988, except for those members eligible for coverage under § 9.1(a)(3) of this part.

(Authority: 38 U.S.C. 767)

6. In § 9.6, the first sentence of paragraph (a) is revised to read as follows:

§ 9.6 Waiver or reduction of coverage.

(a) A member may waive his or her right to group coverage or elect to reduce the amount of insurance from the statutory maximum to any lesser amount evenly divisible by $10,000 by filing a written notice with his or her uniformed service. * * *

* * * * *

7. In § 9.8, paragraph (c) is revised to read as follows:

§ 9.8 Restoration of coverage.

* * * * *

(c) Subject to approval by the insurer, coverage is restored in the amount applied for (the statutory maximum or a lesser amount evenly divisible by $10,000) effective the date of receipt of application with evidence of good health by the uniformed service:

(1) For a member who previously waived the right to be covered or elected to be covered for less than the statutory maximum; or

(2) For a member who forfeited the right to be covered for one of the offenses listed in § 9.34 of this part but who was restored to duty under conditions which, in effect, result in a remission of sentence.

(Authority: 38 U.S.C. 210(c), 767(c))

8. In § 9.16, paragraph (g) and the introductory text of paragraph (h) are revised to read as follows:

§ 9.16 Beneficiaries and options.

* * * * *

(g) Until and unless otherwise changed, a beneficiary designation and settlement option election of record on the date a statutory increase in coverage takes effect shall be considered to be a beneficiary and optional settlement election for the increased amount as well, and any beneficiary named therein shall be entitled to the same percentage (%) share of the new total coverage amount as that beneficiary was entitled to prior to the statutory increase in coverage.

(Authority: 38 U.S.C. 210(c))

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under §§ 9.5(a) or 9.7(a) or (b) of this part after termination of duty and waives coverage or elects less coverage than was carried prior to reentry on duty, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(Authority: 38 U.S.C. 767)

* * * * *

9. In § 9.22, paragraph (b) is revised to read as follows:

§ 9.22 Administrative decisions.

* * * * *

(b) When determination is required on a claim that a member who waived coverage, or whose coverage was forfeited for one of the offenses listed in § 9.34 of this part was in fact insured, or that a member who elected to be insured was insured for an amount greater than the amount shown in the record, and there is no record of an application to be insured or to increase the amount of insurance as required by § 9.8(c) of this part:

(1) The person making the claim will be required to submit all evidence available concerning the member's actions and intentions with respect to Servicemen's Group Life Insurance or Veterans' Group Life Insurance.

(2) Request will be made to the member's uniformed service and any other likely source of information considered necessary, for whatever evidence in the form of copies of payroll or personnel records, statements of persons having knowledge of the facts, etc., is essential to a decision in the matter.

Based on the evidence obtained, a formal determination will be made as to whether the member involved is deemed to have applied to be insured, or to be insured for an amount other than the amount shown in the record. The determination will include a finding as to the member's health status for insurance purposes based on the evidence available.

(Authority: 38 U.S.C. 767)

* * * * *

§ 9.24 [Amended]

10. In § 9.24(a) (1) and (2), remove the words "December 1, 1981" and add, in their place, the words "January 1, 1988".

11. In § 9.26, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 9.26 Conversion privilege.

* * * * *

(b) At the termination of Veterans' Group Life Insurance, an insured has the right to convert the group coverage to an individual policy of life insurance without disability or other supplementary benefits with one of the eligible participating life insurance companies as follows:

(1) The individual policy to which an insured converts must be on a plan currently written by the company selected by the insured, except term insurance, in an amount which does not exceed the amount of the insured's group coverage at time application for conversion is made, and which does not provide for the payment of any sum less than the face value of the individual policy or for the payment of an additional amount of premiums if the insured engages in the military service of the United States. The premium for such individual policy shall be the premium, as determined by the company issuing the policy, applicable to the class of risk (other than health conditions and military service) to which the insured belongs and to the form and amount of the individual policy at the insured's attained age at date of issue.

(Authority: 38 U.S.C. 777)

* * * * *

12. In 9.27, paragraph (a) is revised to read as follows:

§ 9.27 Health standards.

(a) For the purpose of determining if a member who incurred a disability or aggravated a preexisting disability during a period of active duty or active duty for training under a call to duty specifying a period of less than 31 days or during a period of inactive duty was rendered uninsurable at standard premium rates, the underwriting criteria used by the insurer in determining good health for persons applying to it for life insurance in amounts not exceeding the maximum amount of coverage then available under 38 U.S.C. 767 will be used.

(Authority: 38 U.S.C. 767)

13. Section 9.36 is revised to read as follows:

§ 9.36 Veterans' Group Life Insurance.

Veterans' Group Life Insurance shall be issued under the following rules:

(a) The insurance shall be issued in an amount not to exceed the statutory maximum, as provided for under 38 U.S.C. 767(a) and 777, that is evenly divisible by $10,000. No person may carry a combined amount of Servicemen's Group Life Insurance and Veterans' Group Life Insurance in excess of the statutory maximim at any one time. Should any person remit premiums in excess of the premiums payable for the maximum allowable amount of coverage, the insurer shall be responsible only for the refund of such excess premiums paid.

(b) The insurance shall:

(1) Provide protection against death;

(2) Be issued on a nonrenewable 5-year term basis; except that, insurance issued to members of the Individual Ready Reserve or Inactive National Guard may be renewed provided the individual remains a member of the Individual Ready Reserve or Inactive National Guard throughout the period of insurance;

(3) Have a no cash, loan, paid-up or extended values;

(4) Except as otherwise provided, lapse for nonpayment of premiums.

(c) Any person insured under Veterans' Group Life Insurance who becomes insured under Servicemen's Group Life Insurance may within 60 days after becoming so insured convert any or all of his or her Veterans' Group Life Insurance to an individual policy of insurance in accordance with § 9.26 of this part.

(Authority: 38 U.S.C. 777)

[FR Doc. 88-11021 Filed 5-17-88; 8:45 am]

BILLING CODE 8320-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[3375-5]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; State of Kansas; Ozone Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Part D of the Clean Air Act, as amended, requires that a state revise its state implementation plan (SIP) for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On February 20, 1985, EPA advised the Governor of Kansas that, based upon air quality, the ozone SIP for the Kansas City Metropolitan Area (KCMA) was substantially inadequate to attain the NAAQS.

On July 2, 1986, the state submitted a revised ozone SIP for Johnson and Wyandotte Counties, Kansas. On January 6, 1988, the state submitted revised regulations for the control of volatile organic compound emissions in the KCMA. Today's action takes final action to approve these revisions which, together, constitute a complete Kansas ozone SIP for the KCMA.

DATES: This action is effective June 17, 1988.

ADDRESSES: The state submittal and EPA's technical support document are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893 or FTS 757-2893.

SUPPLEMENTARY INFORMATION:

On October 2, 1987, in two separate Federal Register notices, EPA proposed approval of revisions to the Kansas ozone SIP for the KCMA. The first notice (52 FR 36983) proposed approval of draft revisions to the state's regulations for the control of volatile organic compound (VOC) emissions. The second notice (52 FR 36985) proposed approval of all remaining elements of the revised plan. No public comments were received on either of these proposed rulemakings. For a detailed discussion of the VOC regulations and the overall plan requirements, the reader is referred to the above referenced Federal Register notices.

After proper notice, the state held its public hearing for the VOC regulations on November 13, 1987. Subsequent to the hearing, minor clarifications were made to the compliance and recordkeeping provisions of Rule 28-19-74, Wool fiberglass manufacturing. The changes were nonsubstantive in that the degree of emission control, compliance determination method, and source applicability requirements were not changed. None of the remaining regulations were changed from their proposed versions.

On January 6, 1988, the Secretary of the Kansas Department of Health and Environment (KDHE) submitted both temporary and permanent versions of the final regulations. Both sets of regulations were approved by the Kansas Attorney General and the temporary versions became effective on December 16, 1987. As provided by state statute, the temporary regulations remain in effect through April 30, 1988; the permanent regulations become effective on May 1, 1988, unless modified by the state's legislature before that date. If any substantive changes occur in the permanent regulations prior to their effective date, EPA will initiate rulemaking action to withdraw this approval action. The temporary and permanent regulation packages are identical in content; therefore, only the permanent versions have been included with the state submittal materials.

In numerous instances, the revised Kansas regulations provide for departmental discretion to approve compliance plans and test methods which are alternatives to the EPA reference methods. EPA is approving these regulations with the understanding that all such alternative compliance plans and test methods must be submitted to EPA, and approved, as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the regulations. Also, the Kansas regulations contain provisions whereby testing is required when the facility intends to demonstrate compliance by improved operations or new emission controls, yet no test procedures are specified. Examples of such provisions are transfer efficiency (TE) and vapor processing systems. Test methods which are developed by the state must be approved by EPA before facilities may demonstrate compliance through alternative controls and/or TE.

On November 24, 1987, at 52 FR 45044, EPA proposed a policy for approval of post-1987 ozone plans for areas which would not attain the ambient standard by December 31, 1987. In that notice the Kansas City area appeared on a list of potential 1988 SIP call areas because preliminary air quality data for the period 1984-1986 indicated the area may still be exceeding the ozone standard. The NAAQS for ozone is attained when the number of expected exceedances is less than or equal to one per year when averaged over the three most recent years of record (see 40 CFR 50.9). EPA has now completed its review of the air quality data from January 1, 1985, through December 31, 1987, and the data show that the area is attaining the ozone standard. Consequently, EPA does not intend to issue a SIP call for this area in 1988.

EPA Action

In today's notice, EPA takes final action to approve the July 2, 1986, submittal of revisions to the Kansas ozone SIP for the KCMA. Also, EPA takes final action to approve the January 6, 1988, submittal of revised VOC regulations. These two submittals, together, constitute a complete ozone plan for the Kansas portion of the KCMA.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note.—Incorporation by reference of the State Implementation Plan for the state of Kansas was approved by the Director of Federal Register on July 1, 1982.

Date: May 1, 1988.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart R, is amended as follows:

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.870 is amended by adding paragraph (c)(20) as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(20) Revisions to the ozone attainment plan for the Kansas City metropolitan area were submitted by the Governor on July 2, 1986. Pursuant to this plan, revised regulations for the control of volatile organic compound emissions were submitted by the Secretary of the Kansas Department of Health and Environment on January 6, 1988. In numerous instances, the revised Kansas regulations provide for departmental discretion to approve compliance plans and test methods which are alternatives to the EPA reference methods. EPA approves these regulations with the understanding that all such alternative compliance plans and test methods must be submitted to EPA, and approved, as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP shall be the emission limits or reduction requirements stated in the regulations. Also, the Kansas regulations contain provisions whereby testing is required when the facility intends to demonstrate compliance by improved operations or new emission controls, yet no test procedures are specified. Examples of such provisions are transfer efficiency (TE) and vapor processing systems. Test methods which are developed by the state must be approved by EPA before facilities may demonstrate compliance through alternative controls and/or TE.

(i) *Incorporation by reference.* (A) Revised regulations K.A.R. 28-19-6, Reporting required; K.A.R. 28-19-61, Definitions; K.A.R. 28-19-62, Testing procedures; K.A.R. 28-19-63, Automobile and light-duty truck surface coating; K.A.R. 28-19-64, Bulk gasoline terminals; K.A.R. 28-19-65, VOC liquid storage in permanent fixed roof type tanks; K.A.R. 28-19-66, VOC liquid storage in external floating roof tanks; K.A.R. 28-19-69, Cutback asphalt; K.A.R. 28-19-70, Leaks from gasoline delivery vessels and vapor collection systems; K.A.R. 28-19-71, Printing operations; K.A.R. 28-19-72, Gasoline dispensing facilities; K.A.R. 28-19-73, Surface coating of miscellaneous metal parts and products and metal furniture; K.A.R. 28-19-74, Wool fiberglass manufacturing; and K.A.R. 28-19-75, Solvent metal cleaning. Temporary versions of these regulations are effective December 16, 1987, through April 30, 1988. The permanent regulations are effective May 1, 1988.

(B) Letter of January 6, 1988, from the Secretary of the Kansas Department of Health and Environment. This letter establishes the effective dates for the revised regulations referenced in subparagraph (20)(i)(A) above.

(ii) *Additional material.* (A) State of Kansas Implementation Plan, Part A—Kansas City Metropolitan Area, Ozone, dated June 1986, submitted by the Governor on July 2, 1986. The plan contains an attainment demonstration, emissions inventories, and a control strategy.

(B) Supplemental information, pursuant to the above referenced plan, was submitted on August 19, 1987.

(C) Negative declarations for certain VOC source categories were submitted on April 16 and August 18, 1987.

[FR Doc. 88-10078 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3256/P953; FRL-3381-2]

Pesticide Tolerance for AC 222,293; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In the Federal Register of April 20, 1988 (53 FR 12943), EPA issued a final rule establishing tolerances for the herbicide AC 222,293 (40 CFR 180.437) and its metabolites in or on various raw agricultural commodities. Through a typographical error, the pesticide petition (PP) number in the bracketed heading of the document was inadvertently misstated as "PP 5F3256." The correct pesticide petition number is "PP 5F3265."

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346(d)(2)).)

Dated: May 5, 1988

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-10994 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[Circular No. 2607; AA-320-08-4830-02]

Amendment to the Appeals Provisions of the Regulations for Rights-of-Way, Principles and Procedures and Rights-of-Way Under the Mineral Leasing Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends §§ 2804.1(b) and 2884.1(b) to alleviate confusion by clarifying that petitions for stay of decisions relating to the issuance of rights-of-way and permits as well as rights-of-way and temporary use permits under the Mineral Leasing Act shall be filed in the Office of Hearings and Appeals, Department of the Interior.

EFFECTIVE DATE: May 18, 1988.

ADDRESS: Inquiries and suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202) 343-8735.

SUPPLEMENTARY INFORMATION: Under the current regulations pertaining to rights-of-way and rights-of-way under the Mineral Leasing Act there has been some confusion about where a request for a stay of a decision should be filed. Sections 2804.1(b) and 2884.1(b) of the regulations presently leave the public with the impression that petitions for stay of decisions could or may be filed with the Secretary of the Interior. However, authority to consider and decide appeals to the Secretary has been delegated to the Director, Office of Hearings and Appeals, if the appeals do not lie within the jurisdiction of an established Appeals Board. Therefore, this final rulemaking amends §§ 2804.1(b) and 2884.1(b) to clarify that petitions for the stay of a decision relating to rights-of-way and rights-of-way under the Mineral Leasing Act shall be filed with the Director, Office of Hearings and Appeals. This Office is part of the Office of the Secretary of the Interior.

The Department of the Interior has determined that, because this rulemaking changes only the location where petitions for stay of decisions are filed, it is a rule of organization, procedure, and practice and does not require notice and an opportunity for public comment under the

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Administrative Procedure Act (5 U.S.C. 553(b)(A)). Therefore, this amendment is published as a final rulemaking to be effective June 17, 1988.

The principal author of this final rulemaking is Mark Lawrence, Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 2800

Communications, Highways and roads, Pipelines, Public lands rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, Reporting and recordkeeping requirements.

Under the authority of section 310 and Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761–1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Subpart 2804, Part 2800, Group 2800, and Subpart 2884, Part 2880, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2804.1(b) is revised to read:

§ 2804.1 Appeals.

* * * * *

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for the stay of a decision shall be filed with the Office of Hearings and Appeals, Department of the Interior.

PART 2880—[AMENDED]

3. The authority citation for Part 2880 continues to read:

Authority: 30 U.S.C. 185.

4. Section 2884.1(b) is revised to read:

§ 2884.1 Appeals.

* * * * *

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for the stay of a decision shall be filed with the Office of Hearing and Appeals, Department of the Interior.

May 9, 1988.

James E. Cason.

Acting Assistant Secretary of the Interior.

[FR Doc. 88–11069 Filed 5–17–88; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195

[CGD 82–042]

Specification for Hand Held Flashlights

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule deletes 46 CFR 161.008, and incorporates by reference in the specific vessel regulations the American Society for Testing and Materials standard ASTM F1014–1986, Standard Specification for Flashlights on Vessels. This rulemaking incorporates this industry standard by reference in the regulations which require flashlights on lifeboats and liferafts, and flashlights suitable for use in hazardous classified atmospheres in emergency lockers and fireman's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases. These regulations incorporate an up-to-date standard which will allow a wider variety of flashlights to be used, without jeopardizing the safety of either the vessel or personnel.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Nolan, Office of Marine Safety, Security, and Environmental Protection, (202) 267–2206.

DATES: This regulation is effective on August 16, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 16, 1988.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on September 25, 1987 (52 FR 36062). Interested persons were requested to submit comments. A total of five comments were received.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Thomas M. Nolan, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Flashlights on lifeboats and liferafts were required to be constructed in accordance with 46 CFR 161.008. The regulation required that each flashlight built to this specification be Coast Guard "Approved." This requirement forced shipowners and operators to purchase flashlights from a specific group of manufacturers.

The regulations for emergency outfits on tank vessels and for fireman's outfits on other vessels required an explosion-proof flashlight or a flashlight listed by Underwriters Laboratories Inc. (UL) for use in a designated hazardous atmosphere. A flashlight of this type was also required as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases.

The Coast Guard, in conjunction with the American Society for Testing and Materials (ASTM) Committee F25 on Shipbuilding, has developed a standard specification for flashlights on vessels. This standard, ASTM F1014–1986, "Standard Specification for Flashlights on Vessels," covers three types of flashlights. These types are as follows:

Type I—Flashlights for use in lifeboats and liferafts,

Type II—Flashlights for use in hazardous locations where fire or explosion hazards may exist due to the presence of flammable gases or vapors, flammable liquids, combustible dust, or ignitable fibers or flyings, and

Type III—Flashlights for use in lifeboats and liferafts that are also suitable for hazardous locations.

This rule deletes 46 CFR 161.008. Manufacturers of flashlights who have current Certificates of Approval for their flashlights may continue to label their flashlights with the appropriate U.S. Coast Guard approval number up to the expiration date of the Certificate of Approval. These Certificates will not be re-issued after their expiration date. Coast Guard approved flashlights in lifeboats presently installed on U.S. flag vessels need not be replaced as long as they are in serviceable condition. These flashlights will be checked at each servicing of the lifeboats.

This rule requires flashlights for lifeboats and liferafts to be constructed to ASTM F1014–1986 as a Type I or Type III flashlight. It also requires flashlights in emergency lockers, fireman's outfits, and as part of the safety equipment on self-propelled vessels carrying bulk liquefied gases to be constructed to ASTM F1014–1986 as a Type II or Type III flashlight. ASTM F1014–1986 contains a section on marking which requires flashlights for use in lifeboats or liferafts (Type I and Type III) to be marked with the ASTM standard number and the type of flashlight. Type II flashlights can be identified by the independent test laboratory label and the hazardous area designation. This labeling enables Coast Guard inspectors to determine acceptability through product marking. Flashlights constructed in accordance with this ASTM Standard will provided a wider variety of acceptable flashlights without jeopardizing the safety of either the vessel or personnel.

Discussion of Comments

Two comments stated that the proposed regulations are deleting the present flashlight acceptance in accordance with Underwriters Laboratories Inc. (UL) labeling based on UL Standard 783, Electric Flashlights and Lanterns For Use in Hazardous Locations, Class I, Groups C and D. Paragraph 12 of ASTM F1014–1986 states that flashlights to be used in hazardous locations (Type II and Type III) must be tested by an independent testing laboratory to UL 783 and must bear the label of that testing laboratory stating that the flashlight meets the UL standard. The ASTM standard does not require Type II flashlights to be "ASTM" labeled, but does require an independent laboratory listing mark. This is consistent with present practice.

One comment asked if the Coast Guard will continue to accept UL listed flashlights for use. UL listed flashlights bearing the testing laboratory label would meet the criteria of paragraph 12 of ASTM F1014–1986, and would therefore be acceptable for use.

One comment suggested that the proposed regulations be amended to specifically require that Type II and Type III flashlights be listed by an independent testing laboratory. This is addressed in paragraph 12 of ASTM F1014–1986 which requires flashlights to be used in hazardous locations, which covers Type II and Type III flashlights, be listed by an independent testing laboratory.

One comment suggested that the proposed regulations be amended to specifically require that Type I flashlights be listed by an independent testing laboratory. This proposal was not adopted. This rulemaking is designed to reduce the cost of flashlights for use on vessels. The ASTM standard provides maritime personnel with a flashlight that is comparable to the old Coast Guard "Approved" flashlights at reduced cost. The requirements for a Type I flashlight will provide for a wider variety of acceptable flashlights for lifeboats without jeopardizing the safety of either the vessel or personnel.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of these rules has been found to be so minimal that further evaluation is unnecessary. Since the impact of the proposal is expected to be so minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 33

Coast Guard, Marine safety, Fire protection, Tank vessels, Barges, Incorporation by reference.

46 CFR Part 35

Coast Guard, Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seaman, Incorporation by reference.

46 CFR Part 75

Coast Guard, Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 77

Coast Guard, Marine safety, Passenger vessels, Navigation (water), Incorporation by reference.

46 CFR Part 94

Cargo vessels, Coast Guard, Marine safety, Incorporation by reference.

46 CFR Part 96

Cargo vessels, Coast Guard, Marine safety, Navigation (water), Incorporation by reference.

46 CFR Part 108

Coast Guard, Fire protection, Vessels, Continental shelf, Oil and Gas Exploration, Marine safety, Marine resources, Incorporation by reference

46 CFR Part 154

Gases, Hazardous materials transportation, Marine safety, Natural Gas Vessles, Incorporation by reference.

46 CFR Part 160

Coast Guard, Marine safety, Incorporation by reference.

46 CFR Part 161

Coast Guard, Fire prevention, Marine safety, Incorporation by reference.

46 CFR Part 192

Coast Guard, Marine safety, Oceanographic vessels, Communications Equipment, Incorporation by reference.

46 CFR Part 195

Coast Guard, Marine safety, Oceanographic vessels, Navigation (water), Incorporation by reference.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR Parts 33, 35, 75, 77, 94, 96, 108, 154, 160, 161, 192 and 195 of Chapter 1 of Title 46, Code of Federal Regulations, as follows:

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306, 49 CFR 1.46.

2. In Part 33, § 33.01–3 is added to read as follows:

§ 33.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels

Sections effected—33.15–10(j).

Note: All other documents referenced in this Part are still in effect.

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3. In § 33.15–10 paragraph (j) is revised to read as follows:

§ 33.15–10 Description of equipment for lifeboats—TB/ALL.

* * * * *

(j) *Flashlights.* The flashlight shall be a Type I or Type III constructed and marked in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Flashlights bearing a Coast Guard approval number may continue to be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 35—[AMENDED]

4. The authority citation for Part 35 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

5. In Part 35, § 35.01–3 is added to read as follows:

§ 35.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Section effected—35.30–20(c)(3)

Note: All other documents referenced in this Part are still in effect.

6. In § 35.30–20 paragraph (c)(3) is revised to read as follows:

§ 35.30–20 Emergency equipment—TB/ALL.

* * * * *

(c) * * *

(3) One, Type II or Type III, flashlight constructed and marked in accordance with ASTM F1014–1986.

* * * * *

PART 75—[AMENDED]

7. The authority citation for Part 75 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

8. In Part 75, § 75.01–3 is added to read as follows:

§ 75.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections affected—75.20–15(j).

Note: All other documents referenced in this Part are still in effect.

9. In § 75.20–15, paragraph (j) is revised to read as follows:

§ 75.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* The flashlight shall be a Type I or Type III flashlight constructed and marked in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Flashlights bearing a Coast Guard approval number may continue to be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 77—[AMENDED]

10. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

11. In Part 77, § 77.01–3 is added to read as follows:

§ 77.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections affected—77.35–5(c).

12. In § 77.35–5 paragraph (c) is revised to read as follows:

§ 77.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed and marked in accordance with ASTM F1014–1986.

* * * * *

PART 94—[AMENDED]

13. The authority citation for Part 94 is revised to read as follows:

Authority: 46 U.S.C. 3102(a), 3306; 49 CFR 1.46

14. In Part 94, § 94.01–3 is added to read as follows:

§ 94.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections effected—94.20–15(j).

Note: All other documents referenced in this Part are still in effect.

15. In § 94.20–15 paragraph (j) is revised to read as follows:

§ 94.20–15 Description of equipment for lifeboats.

* * * * *

(j) *Flashlight.* The flashlight shall be a Type I or Type III flashlight constructed and marked in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced yearly during the annual stripping, cleaning, and overhaul of the lifeboats.

Note: Flashlights bearing a Coast Guard approval number may continue to be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 96—[AMENDED]

16. The authority citation for Part 96 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

17. In Part 96, § 96.01–3 is added to read as follows:

§ 96.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections affected—96.35–5(c).

Note: All other documents referenced in this Part are still in effect.

18. In § 96.35–5, paragraph (c) is revised to read as follows:

§ 96.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed and marked in accordance with ASTM F1014–1986.

* * * * *

PART 108—[AMENDED]

19. The authority citation for Part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 49 CFR 1.46.

20. In Part 108, § 108.101 is added to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections effected—108.497(b).

Note: All other documents referenced in this Part are still in effect.

21. In § 108.497 paragraph (b) is revised to read as follows:

§ 108.497 Fireman's outfits.

* * * * *

(b) A Type II or Type III flashlight constructed and marked in accordance with ASTM F1014–1986.

* * * * *

PART 154—[AMENDED]

22. The authority citation for Part 154 is revised to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277; 49 CFR 1.46.

23. In § 154.1, paragraph (b) is amended by revising the third listing to read as follows:

§ 154.1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM A20–1978 Steel Plates for Pressure Vessels.
ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections effected—154.1400(a)(4), 154.1400(b)(4), 154.1400(c)(40).
Note: All other documents referenced in this Part are still in effect.

* * * * *

24. In § 154.1400, paragraphs (a)(4), (b)(4), and (c)(4) are revised to read as follows:

§ 154.1400 Safety equipment: all vessels.

(a) * * *

(4) Six Type II or Type III flashlights constructed and marked in accordance with ASTM F1014–1986.

* * * * *

(b) * * *

(4) Eight Type II or Type III flashlights constructed and marked in accordance with ASTM F1014–1986.

* * * * *

(c) * * *

(4) Three Type II or Type III flashlights constructed and marked in accordance with ASTM F1014–1986.

* * * * *

PART 160—[AMENDED]

25. The authority citation for Subpart 160.051 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

26. In Part 160, § 160.051–0 is added to read as follows:

§ 160.051–0 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.
ASTM F1014–1986 Standard Specification for Flashlights on Vessels.
Sections affected—160.051–7(c)(4), 160.051–7(d)(4).

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Note: All other documents referenced in this Part are still in effect.

27. In § 160.051–7, paragraph (c)(4) and (d)(2) are revised to read as follows:

§ 160.051–7 Equipment.

* * * * *

(c) * * *

(4) *Flashlight.* A Type I or Type III flashlight constructed and marked in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

Note: Flashlights bearing a Coast Guard approval number may continue to be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

(d) * * *

(2) *Flashlight.* A Type I or Type III flashlight constructed and marked in accordance with ASTM F1014–1986. Three spare cells and two spare bulbs, stowed in a watertight container, shall be provided with each flashlight. Batteries shall be replaced at each servicing of the liferaft.

Note: Flashlights bearing a Coast Guard approval number may continue to be used in lifeboats and liferafts as long as they are in a serviceable condition.

* * * * *

PART 161—[AMENDED]

28. The authority citation for Part 161 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

§§ 161.008–1—161.008–6 [Removed]

29. Subpart 161.008 consisting of §§ 161.008–1—161.008–6 is removed.

PART 192—[AMENDED]

30. The authority citation for Part 192 continues to read as follows:

Authority: 46 U.S.C. 3102(a), 3306, 3703; 49 CFR 1.46, unless otherwise noted.

31. In part 192, § 192.01–3 is added to read as follows:

§ 192.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the section affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels.

Sections affected—195.35–5(c)(2).

35. In § 195.35–5 paragraph (c) is revised to read as follows:

§ 195.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed and marked in accordance with ASTM F1014–1986.

* * * * *

March 24, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–11061 Filed 5–17–88; 8:45 am]

BILLING CODE 4910–14–M

PART 195—[AMENDED]

33. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46

34. In Part 195, § 195.01–3 is added to read as follows:

§ 195.01–3 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the address indicated in paragraph (b).

(b) The material approved for incorporation by reference in this part, and the sections affected is:

American Society for Testing and Materials

1916 Race St., Philadelphia, PA 19103.

ASTM F1014–1986 Standard Specification for Flashlights on Vessels.

Sections affected—195.35–5(c)(2).

35. In § 195.35–5 paragraph (c) is revised to read as follows:

§ 195.35–5 General.

* * * * *

(c) Flashlights shall be Type II or Type III, constructed and marked in accordance with ASTM F1014–1986.

* * * * *

March 24, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–11061 Filed 5–17–88; 8:45 am]

BILLING CODE 4910–14–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1047

[Ex Parte No. MC–188; Administrative Ruling No. 133]

Agricultural Commodities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule and accompanying administrative ruling simplify the composite list of exempt and non-exempt agricultural commodities under 49 U.S.C. 10526(a)(6) by eliminating redundant information contained in current Administrative Ruling No. 119. The promulgated rule and administrative ruling are set forth below and contain a composite list of those agricultural commodities that are specifically *not* exempt by *statute* under 49 U.S.C. 10526(a)(6).

EFFECTIVE DATE: This action will be effective June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Grossman, (202) 275–7978

or

Richard B. Felder, (202) 275–7691. [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: The exemption from regulation for the transportation by motor vehicle of certain agricultural and related commodities (49 U.S.C. 10526(a)(6)) is implemented in our regulations at 49 CFR 1047.25 and in the accompanying Administrative Ruling No. 119. The present regulation and administrative ruling are redundant and excessively lengthy because they attempt to list both exempt and non-exempt agricultural commodities as determined over the course of many years by statute, formal Commission decisions, and informal rulings. The list is so specific and detailed that it is of little practical use.

With a view toward providing a more useful list, the Commission has amended 49 CFR 1047.25 and issued a new Administrative Ruling No. 133. Because the scope of the agricultural exemption is determined by statute, the new ruling contains a list of those agricultural commodities that have *specifically* been determined by *statute* to be *non-exempt*. This list includes all the commodities that were listed as not exempt in Administrative Ruling No. 107 (issued March 19, 1958), with required statutory modifications. Because the statute specifically incorporates this list by reference, publication of the list (as revised by subsequent statutory changes) will be much more useful to the public than the current listing. No substantive change is intended by this publication.

This publication is being issued in the form of a final regulation and administrative ruling, and no notice of proposed rulemaking has been published. Under section 553(b)(A) of the Administrative Procedure Act (APA), interpretive rules are exempt from the APA's notice and hearing requirements. Furthermore, we deem it unnecessary under section 553(b)(B) to provide for notice and hearing because this publication sets forth a previously adopted list of commodities that has been specifically incorporated into the statute.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD Services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation.

We conclude that the rule promulgated here will not have an adverse impact upon a significant number of small entities. The effect of the rule will not require the filing of reports or any recordkeeping. If anything, the rule will have a beneficial effect upon small entities because it will facilitate their determining whether the motor transportation of a commodity is exempt under the statute.

List of Subjects in 49 CFR Part 1047

Motor agricultural commodities, Livestock, Seafood.

Decided: May 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 Part 1047 of the Code of Federal Regulations is amended as follows:

PART 1047—EXEMPTIONS

1. The authority citation for 49 CFR Part 1047 continues to read as follows:

Authority: 49 U.S.C. 10525, 10526, and 10931.

2. Section 1047.25 is revised to read as follows:

Partial Exemption for Agricultural Commodities, Livestock and Fish

§ 1047.25 Commodities that are not exempt under 49 U.S.C. 10526(a)(6).

Section 10526(a)(6) of the recodified Interstate Commerce Act (49 U.S.C. 10526(a)(6)) provides an exemption from regulation for motor vehicles used in carrying ordinary livestock, fish, and unmanufactured agricultural commodities. Certain specific commodities have been statutorily determined to be non-exempt. Administrative Ruling No. 133, which is reproduced below, is a list of those commodities that are non-exempt by statute.

Administrative Ruling No. 133

List of Commodities That Are Not Exempt by Status Under 49 U.S.C. 10526(a)(6)

Animal fats
Butter
Canned fruits and vegetables
Carnauba wax was imported in slabs or chunks
Cattle, slaughtered
Charcoal
Cheese
Coal
Cocoa beans
Coffee, beans, roasted, or instant
Copra meal
Cotton yarn
Cottonseed cake or meal
Diatomaceous earth
Dinners, frozen

Feeds

- Alfalfa meal
- Alfalfa pellets
- Beet pulp
- Bran shorts
- Copra meal
- Corn gluten
- Distilled corn grain residues, with or without solubles added
- Fish meal
- Hominy feed
- Middlings
- Pelletized ground refuse screenings
- Wheat bran
- Wheat shorts

Fertilizer, commercial

Fish

- Canned or salted as a treatment for preserving
- Cooked or partially cooked fish or shrimp, frozen or unfrozen
- Hermetically sealed in containers as a treatment for preserving
- Oil from fishes
- Preserved, or treated for preserving, such as smoked, salted, pickled, spiced, corned or kippered

Flagstone
Flaxseed meal
Flour

Forest products

- Resin products, such as turpentine

Fruits and Berries

- Bananas, fresh, dried, dehydrated, or frozen
- Canned
- Frozen
- Hulls of oranges after juice extractions
- Juice, fruit, plain or concentrated
- Pies, frozen
- Preserved, such as jam
- Purees, strawberry and other, frozen

Grains

- Oils extracted from grain
- Popcorn, popped
- Rice, precooked
- Wheat germ

Gravel
Hair, hog or other animal, product of slaughter of animal
Hay, sweetened with 3 percent molasses by weight
Hemp fiber
Hides, green and salted
Insecticides
Limestone, agricultural

Livestock

- Monkeys
- Race horses
- Show horses
- Zoo animals

Lumber, rough sawed or planed
Maple syrup

Meal

- Alfalfa
- Copra
- Cottonseed
- Fish
- Flaxseed
- Linseed
- Peanut
- Soybean

Meat and meat products, fresh, frozen or canned

Milk and Cream

- Chocolate
- Condensed
- Sterilized in hermetically sealed cans

Molasses

Nuts (including peanuts)
Peanut meal
Roasted or boiled
Oil, mint
Oil, extracted from vegetables, grain, seed, fish or other commodity
Pelts
Pies, frozen
Pigeons, racing
Pulp, beet
Pulp, sugar cane
Rock (except natural crushed, vesicular rock to be used for decorative purposes)
Rubber, crude, in bales
Rubber, latex, natural, liquid, from which water has been extracted and to which ammonia has been added
Sand
Seeds
Oil extracted from seeds
Skins, animal
Soil, potting
Soil, top
Soup, frozen
Sugar
Sugar cane pulp
Sugar raw
Syrup, cane
Syrup, maple
Tea
Tobacco
Cigars and cigarettes
Homogenized
Smoking
Top Soil
Trees
Sawed into lumber
Vegetables
Candied sweet potatoes, frozen
Canned
Cooked
French fried potatoes
Oil, extracted from vegetables
Soup, frozen
Soybean meal
Wool imported from a foreign country
Wool tops and noils
Wool waste (carded, spun, woven, or knitted)
Wool yarn

Note 1: Under 49 U.S.C. 10526(a)(6)(D), any listed fish or shellfish product that is not intended for human consumption is *exempt.*

Note 2: Under 49 U.S.C. 10526(a)(6)(E), any listed livestock feed, poultry feed, agricultural seeds, or plants that are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production is *exempt*

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Proposed Rules

Federal Register
Vol. 53, No. 96
Wednesday, May 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Disposal of Radioactive Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is publishing proposed amendments which require disposal of "greater-than-Class-C" low-level radioactive wastes in a deep geologic repository unless disposal elsewhere has been approved by the Commission. The proposed amendments obviate the need for altering existing classifications of radioactive wastes as high-level or low-level.

DATE: Comment period expires July 18, 1988. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESS: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 1 White Flint North, 11555 Rockville Pike, Rockville, Md. betwen 7:30 a.m. and 4:15 p.m. Federal workdays, or to the NRC Public Document Room at the address and times below. Copies of the regulatory analysis and comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington , DC, between 7:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3884.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1987, the Nuclear Regulatory Commission published an Advance Notice of Proposed Rulemaking (ANPRM) (51FR 5992) announcing its intent to revise the definition of the term "high-level radioactive waste" (HLW) that appears in 10 CFR Part 60. In the ANPRM, the Commission reviewed the previous statutory and regulatory uses of the term "high-level radioactive waste," the NRC's current regulations related to waste classification and disposal, and the pertinent provisions of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 U.S.C. 10101 et seq. (NWPA). As indicated in the ANPRM, the NWPA includes a specific definition of "high-level radioactive waste" and the Commission was considering a change to its own rules to conform to that definition.

In the ANPRM, the Commission proposed to define HLW in a manner that in general would apply the term "high-level radioactive waste" to materials in amounts and concentrations exceeding numerical values that would be stated explicitly in the form of a table. Thus, HLW would be characterized by the kind of hazard that could only be guarded against by disposal in a geologic repository or equivalent facility. Those wastes that could be disposed of safely in an "intermediate" disposal facility would continue to be classified as low-level radioactive waste rather than as HLW.

Comments

The Commission solicited comments on several specified issues and received letters from nearly 100 public agencies, private organizations, and individuals. Virtually all comments on the ANPRM agreed with the Commission on one point: use of the term "high-level radioactive waste," at least under Clause (B) of the NWPA definition, serves to identify those wastes which require the degree of isolation afforded by a deep geologic repository. However, comments differed widely regarding the specific wastes perceived to require that degree of isolation. Some comments advocated classification of all radioactive wastes, other than the most innocuous, as HLW while other comments would prefer to reclassifiy as low-level large quantities of defense reprocessing wastes long regarded as HLW. Conspicuously absent from the comments was any consensus regarding the means to be used by the Commission to distinguish HLW from non-HLW. For example, even the basic concept of a numerical definition of HLW, as suggested in the ANPRM, was criticized as an invitation to dilute or fractionate wastes solely to alter their classification In light of the comments received, the Commission's own review of available technical information related to waste classification and "intermediate" disposal facilities, and review of relevant statutory proposes, the Commission has determined that it would be best to proceed quite differently from its original suggestion put forth in the ANPRM.

Reprocessing Wastes

The NWPA first labels as HLW, under Cluase (A), the "highly radioactive material" resulting from the reprocessing of spent, fuel, including not only the liquid wastes but also any solid material derived from such liquid waste that contains fission products "in sufficient concentrations." Clause (A) wastes have little significance for purposes of NWPA, since the Federal Government was already responsible for the disposal of all reprocessing wastes at the time the statute was passed. (The only commercially-generated reprocessing wastes were made a Federal Government responsibility in 1980 pursuant to the West Valley Demonstration Project Act. Pub. L. 96-368, 42 U.S.C. 2021a note.) In light of this fact, the Commission believes that the preferable construction of the statue is to conform to the traditional definition. Under this approach, materials that are HLW for purposes of the licensing-jurisdiction provisions of the Energy Reorganization Act of 1974 (ERA) will also be regarded as HLW under NWPA. This would include the primary reprocessing waste streams at DOE facilities, though not the incidental wastes produced in reprocessing.

Other Wastes

In the ANPRM the Commission proposed to classify wastes as HLW or non-HLW by examining the disposal capacility of hypothetical, "intermediate" disposal facilities less secure than a deep geologic repository. Wastes which could not be safely disposed of in such facilities would be classified as HLW.

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Following publication of the ANPRM, a technical report (Kocher, D. C. and A. G. Croff, *A Proposed Classification System for High-Level and Other Radioactive Wastes*, ORNL/TM–10289, Oak Ridge National Laboratory, 1987) was publised which attempted to provide a technical basis for classification of wastes as HLW or non-HLW. This report described a number of conceptual "intermediate" disposal facilities which would use either engineered barriers or deeper burial to provide a degree of waste isolation intermediate between that of shallow land burial and a deep geologic repository. The authors attempted an analysis of the waste isolation capability of such facilities but, emphasizing the site-specific nature of such analyses and the very large uncertainties involved, concluded that "[a]t the present time . . . [such facilities are] not sufficiently developed to provide a basis for defining waste classes, and disposal of any wastes using [such facilities] must be considered on a case-by-case basis." Kocher and Croff then presented an alternative approach for defining HLW which, in essence, is based solely on the short-term storage and handling risks associated with the heat and external radiation levels generated by a waste. The Commission could not accept this alternative approach since it bears no correlation to the degree of waste isolation required following disposal.

The Commission's review of Kocher and Croff's study leads it to the same conclusion regarding the impracticability of waste classification based on analyses of the performance of intermediate disposal facilities. If waste classification is to be at all realistic, additional disposal facility development must be completed which will provide a supportable basis for such classification. Such disposal facility development is more properly the responsibility of DOE rather than NRC. However, the very small volume (about 2,000 m^3 through the year 2020) of commercially-generated, greater-than-Class-C (GTCC) wastes may make an intermediate disposal facility economically unattractive. Because no such facility now exists for disposal of commercially-generated wastes, and because there is no assurane that one will ever be constructed, the Commission believes that an alernative, technically conservative approach should be taken.

The Commission proposes to require disposal of all GTCC wastes in a deep geologic repository unless disposal elsewhere has been explicitly approved by the Commission. This proposal reflects the Commission's view that intermediate disposal facilities may never be available, in which case a repository would be the only type of facility generally capable of providing safe disposal for GTCC wastes. At the same time, the Commission wishes to avoid foreclosing possible use of intermediate disposal facilities by the Department of Energy (DOE). If DOE chooses to develop one or more intermediate disposal facilities, the Commission anticiptes that the acceptability of such facilities would be evaluated in the light of the particular circumstances, considering for example the existing performance objectives of 10 CFR Part 61 and any generally applicable environment radiation protection standards that might have been established by the U.S. Environmental Protection Agency. Technical criteria to implement the performance objectives and environmental standards would be developed by the Commission after DOE had completed its conceptual design and selected a site for a specific type of facility.

The Commission considers that the proposal presented in the notice would obviate any need to reclassify certain GTCC wastes as HLW. The proposal follows the alternative approach alluded to in the ANPRM, that the Commission "need not exercise NWPA Clause (B) authority in order to assure that radioacative wastes from licensed activities are disposed of properly" (52 FR 5998). Many comments on the ANPRM adocated classification of all GTCC wastes as HLW in order to ensure availability of a safe disposal "home" for those wastes, but this proposal achieves the same purpose while leaving open the prospect that an intermediate disposal facility may prove attractive at some time in the future. (Since the possibility of using such a facility is left open, the Commission is not now determining that the wastes, even if highly radioactive, do in fact "require permanent isolation"; accordingly, the NWPA definition of HLW does not apply). Moreover, this proposal avoids the problem of trying to distinguish HLW from non-HLW without an adequate technical basis for doing so. And the legal and administrative complications identified in the ANPRM, as well as questions as to the retroactive application of any new classification, would be avoided or reduced. However, additional legislation may be needed by DOE to provide for payment of disposal costs for above Class C wastes, or to authorize recipt of such wastes for disposal at a repository.

The Commission also observes that the satutory framework for nuclear waste matters has changed greatly since enactment of NWPA. When that law was passed, it placed a responsibility on the Federal government to receive, manage, and disposal of certain wastes (HLW as well as spent nuclear fuel) in geologic repositories. In that context, the definition of the term "high-level radioactive waste" assumed importance because it provided a basis for differentiating between State and Federal responsibilities. This concern was subsequently mooted by adoption of the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99–240, 42 U.S.C. 2021b et seq. This later statute established a Federal Government responsibility for the disposal of commercially generated wastes with radionuclide concentrations exceeding the limits established in 10 CFR Part 61 for Class C radioactive waste. In view of this development, the Commission perceives little practical importance or significance in proceeding with a precise definition of HLW. To do so would not advance the objectives of NWPA.

Proposed Amendments

In line with the foregoing discussion, therefore, the Commission is proposing two changes to its existing rules. First, by amending 10 CFR 61.55, it would henceforth require all greater-than-Class-C waste to be disposed of in a geologic repository unless an alternative proposal is approved by the Commission. Second, the jurisdictional reach of 10 CFR Part 61 would be extended to cover all activities of the Department of Energy that may be subject to the licensing and regulatory authority of the Commission. This is intended to reflect the policy of the Low-Level Radioactive Waste Policy Amendments Act, which provides that all commercially-generated waste with concentrations exceeding Class C limits shall be disposed of in a facility licensed by the Commission that the Commission determines is adequate to protect the public health and safety. This change would take the form of eliminating the more restrictive language regarding the Deparatment of Energy that appears in the definition of the term "Person" in § 61.2.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an enviornmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

The first change, pertaining to the definition of "person," is corrective in that it merely reflects the broader jurisdiction of the Commission under the Low-Level Radioactive Waste Policy Amendments Act. The modification is not substantial.

The second change, pertaining to the disposal of greater-than-Class-C radioactive wastes in a geological repository, is minor. The existing regulations in 10 CFR Part 61 already preclude disposal of GTCC in a Part 61 licensed disposal facility without further review and approval. This amendment does no more than state the Commission's conclusion that, in the absence of such an approved alternative, a geologic repository is the only currently authorized facility acceptable for GTCC disposal without further review by the Commission. Thus, it is a minor change to specify that the "more stringent" methods are to include disposal in a repository, where it is also expressly provided that, as before, proposals for other methods of disposal may still be submitted to the Commission for approval. No substantial modification of existing regulations is involved.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0135.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Document Room, 1717 H street NW., Washington DC. Single copies of the draft analysis may be obtained from W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3884.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft anslysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) and NRC Size Standards (December 9, 1985, 50 FR 50241), the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this proposed rule would be the U.S. Department of Energy, which does not fall within the scope of the definition of small entities" set forth in the Regulatory Flexibility Act. All waste generators, some of which might be classified as small entities, must pay the costs associated with management and disposal of the wastes they generate. This proposed rule would not affect those costs since it preserves all options currently available for waste disposal. Only DOE's selection of a specific disposal technology from the full range of alternatives available would potentially have an economic impact on small entities.

Backfitting Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not invovle any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Radioactive, waste, Reporting and recordkeeping requirements, Waste classification, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 61.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of Sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under Sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 61.10 through 61.16, 61.24, and 61.80 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 61.2, the definition of "person" is revised in the alphabetical sequence to read as follows:

§ 61.2 Definitions.

As used in this part:

* * * * *

"Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (except that the Department of Energy is considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to law), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

* * * * *

3. In § 61.55, paragraph (a) is amended by revising paragraph (a)(2)(iv) to read as follows:

§ 61.55 Waste classification.

(a) * * *

(2) * * *

(iv) Waste that is not generally acceptable for near-surface disposal is waste for which waste form and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absence of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in Part 60 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are submitted to the Commission for approval.

* * * * *

Dated at Rockville, MD, this 12th day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–11138 Filed 5–18–88; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-88-101]

Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking and Request for Public Comments Regarding Energy Conservation Standards for Dishwashers, Clothes Washers, and Clothes Dryers

AGENCY: Department of Energy.

ACTION: Advance Notice of Proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA), requires the Department or Energy to administer a program of energy conservation standards for 12 types of household appliances. This advance notice of proposed rulemaking addresses the requirement of EPCA: to consider amending the energy conservation standards for dishwashers, clothes washers, and clothes dryers.

The purpose of this advance notice of proposed rulemaking is to: (1) Present for comment the product classes that DOE is planning to analyze; (2) present a detailed discussion of the expected analytical methodology and analytical models that the Department expects to use in performing the analysis to support this rulemaking; and (3) facilitate the gathering of information prior to publishing the notice of proposed rulemaking.

DATES: Written comments in response to this advance notice of proposed rulemaking must be received by the Department by July 18, 1988.

ADDRESSES: Written comments are to be submitted to: U.S. Departmen of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CE-RM-88-101, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0507

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, and by the National Appliance Energy Conservation Act (NAECA), Pub. L. 100-12,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators, refrigerator-freezers and freezers; room air conditioners; central air conditioners and central air conditioning heat pumps; water heaters; furnaces; dishwashers; clothes washers; clothes dryers; direct heating equipment; kitchen ranges and ovens; pool heaters; and television sets; as well as any other consumer product classified by the Secretary of Energy. See section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Bureau of Standards (NBS), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Beginning one hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bears a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there are FTC rules requiring labels under the Act for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators, refrigerator-freezers and central air conditioners. 44 FR 66475, November 19, 1979, and 52 FR 46888, December 10, 1987.

For each of 11 of the covered products, the Act prescribes an initial Federal energy conservation standard. Section 325(b)–(h). The Act establishes

[1] Part B of Title III of EPCA as amended by NECPA and NAECA, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b) through (h). After the specified three- to ten-year period, DOE may promulgate new standards for each product; however, such standards may not be less stringent than those initially established by the Act. Section 325(1)(1).

The Act also directs DOE to review, for possible amendment, the energy conservation standards on dishwashers, clothes washers, and clothes dryers, and to issue a final rule no later than January 1, 1990, for units manufactured after January 1, 1993. Section 325(g)(4)(A).

The Act also permits the Department to prescribe standards for any other type of consumer product that, using certain criteria, DOE may classify as a covered product. Section 325 (i), (l) and (m). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in this type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant. In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to amend a Federal energy conservation standard for any covered product. Section 325(k)(1).

b. Background

NECPA required the Secretary, by rule, to prescribe energy efficiency standards for each of 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product was to be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors set forth above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment not including furnaces, kitchen ranges and ovens, and central air conditioners.

The DOE published an advance notice of proposed rulemaking for the nine first priority products on January 2, 1979. 44 FR 20. On December 13, 1979, the DOE published an advance notice of proposed rulemaking for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5802.

After receiving comments on the advance notices, on June 30, 1980, DOE published its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal.) The June 1980 proposal set forth DOE's proposed energy efficiency standards for these covered products. It also proposed comprehensive requirements for certification and enforcement of the standards and procedures for processing petitions by States that sought exemption for regulations subject to the general preemption requirements of NECPA.

On April 2, 1982, DOE issued a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). With respect to eight of the products, DOE proposed to make a determination that a standard would not result in significant conservation of energy and would not be economically justified.[3] The April 1982 proposal also proposed rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule in which DOE determined that efficiency standards were not warranted for clothes dryers and kitchen ranges and ovens. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.) At that time, DOE also adopted final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted.

On August 30, 1983, DOE published a final rule with respect to the remaining six covered products: refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule). For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: dishwashers,

[2] The consumer products covered by NECPA included: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

[3] The April 1982 proposal did not propose any rule with respect to the product type "home heating equipment, not including furnaces" or with respect to that class of the product water heaters made up of heat pump water heaters or with respect to those classes of the product central air conditioners that are heat pumps.

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television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the April 1985 proposal). For each of the four products covered by the 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals set aside DOE's December 1982 and August 1983 final rules: *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the Federal Register removing the December 1982 and August 1983 final rules and withdrawing the April 1985 proposal. 51 FR 7549 and 51 FR 7582.

The National Appliance Energy Conservation Act (NAECA), which became law on March 17, 1987, amended EPCA in part by: redefining "covered products" (specifically, refrigerators/refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products (with television sets being the exception); and creating a schedule for which these standard levels are to be reviewed to determine if they should be amended. The effective date of NAECA's standards for the three products being addressed in this ANOPR was January 1, 1988.

The Act directs DOE to publish an advance notice of proposed rulemaking (ANOPR), with a 60-day comment period, in advance of the Department's consideration of prescribing a new or amended standard. Section 325(m)(1). On December 7, 1987, DOE published such an ANOPR with respect to consideration of amending the NAECA-imposed standard levels on refrigerators, refrigerator-freezers, and freezers, of establishing a small gas furnace standard between 71 percent and 78 percent efficiency, and of considering energy conservation standards for television sets.

Publication of the final rule in the Federal Register for which this document is an advance notice is scheduled by January 1, 1990. The purpose of this rulemaking is to review, for possible amendment, the energy conservation standards for dishwashers, clothes washers, and clothes dryers, that have been established by the Act.

II. Methodology

This section provides a brief description of the analysis of the impacts of standards. It offers an overview of the analytic methodology, and discusses the major components of the analysis: the Engineering Analysis, the Manufacturer Analysis, and the Impact Analysis which includes the Consumer Analysis. The section also discusses the interrelationships among the components which ensure consistency throughout the analysis.

A later discussion, Impact Models, Data and Assumptions, describes the computer models used in the analysis. The models predict the response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards. Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analysis are:

- Engineering Performance Models,
- Consumer Impact Models.
- Manufacturer Impact Models.
- Utility Impact Model.

The function, data sources, assumptions and validity of the results for each model are discussed below.

The impact of appliance conservation standards will be determined by comparing projections under the base case,[4] with the projections under potential standards. These projections will first be made for a base case by use of the analytic models described below. The calculations will then be repeated imposing the potential standard levels.

The differences between the projections of the energy consumption and economic variables in the base and standards cases provide quantitative estimates of the impacts of the standards. To evaluate the significance of the differences, a sensitivity analysis will be performed on the key parameters and assumptions.

The economic analysis will be performed in the following areas:

- An Engineering Analysis, which establishes the technical feasibility and product attributes including costs of design options to improve appliance efficiency.
- A Manufacturer Analysis, which provides an estimate of manufacturers' response to the proposed standards. Their response is quantified by changes in several financial performance measures.
- A Consumer Analysis, which forecasts appliance sales, efficiencies, energy use, and consumer expenditures.
- A separate Life-Cycle Cost Analysis to evaluate the savings in operating expenses relative to increases in purchase price.
- A Utility Analysis that measures the impacts of the altered energy-consumption patterns on electric utilities.
- An Industry Impact Analysis that provides the financial and competitive impacts on the appliance industry.
- A Cost-Benefit Analysis that collects the results of all the analyses into the net benefits and costs from a national perspective.

Each analysis area will be performed for each of the three products under consideration. The results of the Engineering Analysis will be reviewed by DOE to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings, for example, if there is no combination of design options that would result in improved product efficiency, the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed. For dishwashers, clothes washers and clothes dryers, the analysis will be performed for a base case plus three levels of standards. The levels to be analyzed will be selected after the Engineering Analysis is completed and reviewed.

There is interaction among the Engineering, Consumer, Utility and Manufacturer Analyses. The Engineering Analysis establishes appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis, which uses them to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis also forecasts energy savings and consumer expenditures on the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Three periods of time are considered by the analysis. First, the analysis extends over a time period that is consistent with the lifetimes of each of

[4] The base case assumes implementation of the conservation standards that were set by the Act.

the products. Second, the Manufacturer Analysis is performed for a typical year after the standards have been imposed. The typical year selected is the fifth, by which time all major impacts of a standard would have occurred. Third, the Engineering Analysis examines the technical feasibility of improving the efficiency of the covered products before the standards are effective—within the next three to five years.

III. Models, Data and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first requirement is the Department's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, manufacturing costs, and appliance prices to other components of the overall analysis.

The features of appliances that provide utility to the consumer are incorporated into the analysis through the creation of appliance classes. Classes are a subset of appliance types. For example, clothes washers comprise an appliance type, while front-loading washers comprise an appliance class. The Engineering Analysis develops cost and efficiency data for a set of design options within each appliance class. These data are the output of the engineering performance models and costing analysis discussed in subsections 5–9, below.

1. Appliance Classes

The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas or electricity), or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the three appliances, the following are the classes that the Department plans to review. DOE welcomes comments, in response to today's notice, on whether additional classes are needed.

(i) Dishwashers. The following are the classes of dishwashers that the Department is proposing to examine:

Compact Dishwasher
Standard Dishwasher
Water Heating Dishwasher, Compact (115V)
Water Heating Dishwasher, Standard (115V)
Water Heating Dishwasher, Compact (230V)
Water Heating Dishwasher, Standard (230V)

Compact dishwashers use less water and energy than standard size dishwashers. While standard size dishwashers have an exterior width greater than or equal to 22 inches, compacts have an exterior width less than 22 inches.[*]

Water-heating dishwashers have the ability to heat incoming hot water. Water-heating dishwashers allow for a lower inlet water temperature since they can operate at that temperature by providing internal water heating in at least one wash phase.

(ii) Clothes Washers. Six classes of clothes washers are specified in this notice. These are:

Front Loading
Suds Savers
Top Loading, Compact
Top Loading, Standard
Top Loading, Large
Top Loading, Semi Automatic

Front loading washing machines use less water than top loaders; since most of the energy used by a clothes washer is for heating water, front loaders, by using less water, consume less energy. On the other hand, top loaders spin the clothes dryer. Suds savers can reuse suds and warm water from an earlier wash by pumping them back into the washer; therefore, less energy is used since less water is heated.

The Department is planning to divide top loading washers into three classes by capacity: compact (1.6 cubic feet, or less), standard capacity (1.6 to 2.59 cubic feet), and large capacity (2.6 cubic feet, or greater) since the size of the unit affects the amount of water used and, in turn, the amount of energy used. In addition, a separate class for semi-automatic clothes washers is specified, since the Department has estimated higher hot and warm water usage for semi-automatic than for fully automatic clothes washers.

(iii) Clothes Dryers. Five classes of clothes dryers are specified in this notice. These are:

Electric, Standard
Electric, Compact (120V)
Electric, Compact (240V)
Gas, Standard
Gas, Compact

These classes are distinguished by different energy sources and by performance-related features. Gas and electricity are the energy sources. The performance-related features include drum capacity and application voltage.

Class distinctions were considered based on the type of control used to end the drying cycle but are not being proposed. The three types of control systems are: (1) a present time control, (2) an automatic temperature-sensing control, and (3) an automatic moisture-sensing control. The energy efficiency for a dryer is related to these controls. However, product classes based on these controls were not established because: (1) the test procedure accounts for effects of controls with a field use factor, which gives efficiency "credits" for automatic controls; and, (2) the Department does not believe that automatic controls provide utility to the consumer.

Product classes were established for electric dryers based on drum capacity and application voltage. The test procedures specify two sizes of drum capacity. These are: (1) compact, electric dryers with a drum capacity of less than 4.4 cubic feet and (2) standard electric dryers with a drum capacity of 4.4 cubic feet or more. The compact dryers tend to be less energy-efficient than the standard dryers. Also, since compact dryers provide utility—they are suitable for small spaces—a separate class was established for them.

Separate product classes were established for compact electric dryers, based on appliance voltage. The 120-volt dryer tends to dry clothes at lower temperatures and for longer time periods than the 240-volt dryer. In general, the 240-volt dryer is less energy-efficient, because, by operating at higher temperatures (even for shorter time periods), it consumes more energy per load. Many consumers feel that the 120-volt dryer has utility because it can be installed anywhere, while the 240-volt dryer must be near a 240-volt outlet. Since the 240-volt compact electric dryer is less energy-efficient and provides utility to consumers, a separate product class was established for it.

A clothes dryer's efficiency is related to its drum capacity. Larger drums have a higher thermal capacity and, therefore, require more energy to reach a desired temperature than do smaller drums. Since the test procedure uses a fixed load size, independent of drum size.

[*] These definitions of "standard" and "compact" differ from the definitions in the Federal Trade Commission's Appliance Labeling Regulations, where a "standard" size dishwasher is defined as one capable of cleaning 8 place-settings at a time. Therefore, some dishwashers that the FTC classifies as "standard" would be classified as "compact" by these proposed classes.

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larger capacity dryers use more energy per pound of clothes, as measured by the test procedure. In addition, the air flow through the tumbling clothes is affected by the ratio of the load size to the drum size. If small loads are used in large drums, the air tends to bypass the clothes, increasing the energy required to dry the test loads. Using the same test load for all sizes of standard dryers means smaller capacity standard dryers have higher energy efficiency (as measured by the test procedure) than large capacity standard dryers.

Relationships between efficiency and capacity were derived from data submitted by individual manufacturers. Testimony submitted by industry on the June 1980 proposal indicated that gas units would have the same relationship between efficiency and capacity as electric ones do. Data from these sources all indicated a distinct negative relationship between capacity and efficiency for standard size electric units; that is, the larger the drum size, the lower the efficiency. The same relationship was assumed for electric and gas units. For compact units, the available data were inconclusive about the relationship between efficiency and capacity. In some cases, as capacity increased, efficiency increased; in other cases, the opposite relationship existed. In any case, the extent of the relationship was small. Therefore, the standard for compact dryers was assumed to be independent of capacity.

2. Baseline Units

For the purpose of generating a cost/efficiency relationship the Engineering Analysis needs to define a starting point or baseline. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to select a baseline unit. In past analyses a baseline unit represents a typical model within an appliance class sold during the base year of the analysis. For this analysis, DOE intends to use the same baseline units as in the April 1982 (for clothes dryers) and April 1985 (for dishwashers and clothes washers) proposals.[5] Once identified, each baseline unit is characterized by its efficiency-related design options.

3. Design Options

The Engineering Analysis will identify individual or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market or that are likely to be on the market by the time standards are effective January 1, 1993, will be considered.

The following is a list of design options that will be examined:

(i) Dishwashers

(A) Improved Food Filters
(B) Improved Spray Arm Geometry
(C) Improved Fill Control
(D) Modified Sump Geometry
(E) Optional Power Dry
(F) Reduced Inlet Water Temperature
(G) Improved Motor Efficiency
(H) Increased Insulation

(ii) Clothes Washers

(A) Eliminate Warm Rinse
(B) Improved Fill Control
(C) Water Use Reduction From Changed Configuration
(D) Reduced Thermal Mass
(E) Saved Suds
(F) Added Insulation
(G) Improved Motor Efficiency
(H) Thermostatically-Controlled Mixing Valves
(I) Electrolytic Dissociation of Water
(J) Ultrasonic Vibration

(iii) Clothes Dryers

(A) Automatic Termination by Moisture Sensing
(B) Automatic Termination by Temperature Sensing
(C) Added Insulation
(D) Condenser Use
(E) Recycle Heat Exchanger Use
(F) Inlet Air Preheat
(G) Modified Operating Conditions
(H) Heat Pump Use
(I) Microwave Dryer Use

4. Maximum Technologically Feasible Designs

The analysis also will identify the combination of design options in each class that DOE believes would yield the highest efficiency and could be commercially produced by the time standards are effective. This represents the maximum technologically feasible efficiency level.

5. Performance Models

Computer simulation models will be used to determine efficiency levels for various design options for dishwashers, clothes washers, and clothes dryers. The energy consumption of these appliances is based on data collected by DOE, including measured performance data obtained from manufacturer testing.

6. Costing Analysis

The manufacturer cost data are being obtained through a process that includes meetings and evaluation of manufacturing facilities, manufacturers' costing data, and review of the data received. The cost data that will be presented for each product class will represent the average of figures obtained from at least two different sources. It will be in the form of incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging and tooling.

7. Price-Efficiency Relationship

The results of the Engineering Analysis are summarized in the price-efficiency relationships that show the efficiency, unit energy consumption, and cost of each design option, and combination of design options, for each appliance class. Manufacturer and dealer markups are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. Data Sources

Shipments data will be based on information from industry sources and published data from industry trade associations. Cost of purchased materials and parts will be based on quotations from the suppliers of these items. Data on engineering and labor costs are to be taken from on-site visits to manufacturing plants and published sources.

9. Outputs From the Engineering Analysis

For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the DOE energy factor); [6]
- Increased material, purchased parts, labor, and investment costs for medium [7] and large manufacturers by product class;
- Annual energy consumption per unit (based on DOE test procedures);
- The relationship between price and efficiency level by product class; and
- Other information on product characteristics, such as maintenance costs.

b. LBL Residential Energy Model (LBL–REM)

Early energy demand modeling focused on engineering estimates or on the relationship between energy consumption and economic growth. In the 1970's, Oak Ridge National Laboratory (ORNL) developed the first model to integrate these two important aspects, the Engineering-Economic Model of Residential Energy Use (ORNL Model). That model was brought to Lawrence Berkeley Laboratory (LBL) in 1979, and adapted to the analysis of Federal appliance efficiency standards. The ORNL Model used in the earlier rulemakings has been documented in the Consumer Products Efficiency Standards Economic Analysis Document, DOE/CE–029, March 1982. The ORNL Model has been updated by LBL, resulting in the LBL Residential Energy Model (LBL–REM) which is summarized below.

The LBL–REM forecasts the appliance purchase choices that households make, as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances, and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. The engineering data provide alternative designs, characterized by purchase price and efficiency, that are available for purchase. The output from the LBL–REM satisfies the legislative requirements regarding energy savings and consumer economic impacts (operating expenses and life-cycle costs).

Engineering, economic, and demographic data are used in the LBL–REM. The engineering data for appliances are described above. Additional data include engineering data regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data includes projected energy price [8] and household income, and models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end-use. Demographic data includes number of households by type, projected housing starts and demolitions, and initial appliance holdings.

1. Structure

The LBL–REM segments annual energy consumption into house types, end-uses, and fuel types. The house types are single family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period, 1980–2015. The end-uses are space heating (including room and central), air conditioning, water heating, refrigeration, freezing, cooking, clothes drying, lighting, and miscellaneous. Up to four fuels are considered, as appropriate to each end-use: electricity, natural gas, heating oil, and LPG. The model exists in two versions: national (one region), and regional (10 Federal regions). Since usage of these appliances is not likely to differ by geographic location, the national version will be utilized in this analysis.

The model projects five types of activities: technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

2. Housing Stock Submodel

This submodel prepares data about housing stock projections for the LBL–REM. The number of occupied households, by type, is taken from the 1980 Censuses of Population and Housing. An exogenous projection of housing starts is obtained and estimates of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981–2015, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single family, multifamily, and mobile homes, respectively.

3. Efficiency Choice Algorithm

For dishwashers, clothes washers, and clothes dryers, historical efficiency data are available for selected years for each class of appliance through 1985. The Federal energy conservation standards for new units of these appliances were met in 1988. After 1988, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. DOE believes the forecasting algorithm is designed to allow annual shipment-weighted efficiency factors (SWEFs) to increase if either more efficient designs become available at lower prices, or energy prices increase. Conversely, if energy prices decrease, the SWEF may decline, but would have a lower bound at the 1988 Federal standard level.

4. Thermal Integrity

The projection of the level of investment in thermal integrity measures in new houses is based on a life-cycle cost calculation, analogous to that done for equipment efficiencies.[9] Estimates of the incremental costs of thermal integrity measures are used in conjunction with current fuel prices and a discount rate.

5. Modeling Efficiency Standards

The LBL–REM projects the average efficiency of new products, for example, dishwashers, purchased each year, in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average, based on efficiency distributions observed in the marketplace. This information includes information from industry sources, published data from the industry trade associations and industry-wide data obtained from Form CS–179.[10] A new Federal standard level would eliminate part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again, for the standards case, with the adjusted average efficiencies, to calculate any changes in market shares, usage behavior, or investment in building shell thermal improvements that may occur due to standards, and to calculate the net energy savings.

6. Turnover of Appliance Stocks

The initial age distribution of appliances in stock is characterized based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase the model associates an average efficiency, so that when older appliances are retired, they are also recognized as less efficient.[11]

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances, plus some fraction of those households that did not previously own the product.

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[5] See Consumer Products Efficiency Standards Engineering Analysis Document, March 1982, DOE/CE–0020 and Technical Support Document Energy Use Projections for Four Consumer Products, DOE/CS/20315–1, March 1986.

[6] The energy factor is a measurement of energy efficiency derived from the DOE test procedure for that product.

[7] As was the case with the April 1982 proposal, small manufacturers will not be analyzed seperately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers costs have been assumed to equal those of medium manufacturers.

[8] The projections of energy prices will be taken from the most recent *Annual Energy Outlook*, a publication of the Department's Energy Information Administration.

[9] The equipment efficiency and thermal integrity decisions are not solved simultaneously, but recursively. The previous year's thermal integrity is assumed in projecting this year's equipment efficiency; then this year's equipment efficiency is used to calculate this year's thermal integrity.

[10] Survey of Consumer Product Manufacturers through Trade Associations in 1979.

[11] See Consumer Products Efficiency Standards Economic Analysis Document, DOE/CS–0029, March 1982, pp. 412–13.

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7. Calculation of Market Shares

Potential purchasers may purchase any competing technology within an end-use, or none. For example, for dishwashers, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., compact, is specified exogenously. For dishwashers, long-term market share elasticities have been estimated with respect to equipment price, operating expense, and income respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment cost will decrease market shares, while lower operating expense will increase market shares. The net result (predicted market share) depends on the standard level selected, and associated equipment price and operating expense.

8. Usage Behavior

For some products, changing the operating expense results in changes in usage behavior. These changes are modeled using usage elasticities in operating expense and income. For dishwashers, clothes washers, and clothes dryers, we expect these elasticities to be at or near zero; usage behavior is not influenced by the cost of operating the appliance. The Department will appreciate any comments on this assumption.

9. Energy Consumption Calculations

The total energy consumption per house for each end-use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes), and usage factor, e.g., relative hours of full-load use for dishwashing. The corresponding energy consumption for all households is the consumption per house times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for residential dishwashing in a particular year is the sum of house types and vintages of standard electric dishwashers, compact ones, and the various classes of water-heating dishwashers. National residential electricity consumption in that year is the sum of all end-uses of electricity consumption in the residential sector.

10. Model Outputs

The principal outputs from the LBL–REM for each year are:

- Energy consumption by end-use and fuel.
- Per unit equipment price and operating expense by product.
- Total residential energy consumption by fuel.
- Projected annual shipments of residential appliances.
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1990–2015. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product, and for the end-use(s) comprising the regulated and competing products.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes building shell improvements, changes in fuel choice, or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.[13] Net present value is calculated from per unit changes in equipment and operating costs, multiplied by base case shipments. If the net present value were calculated without normalizing to base case shipments, erroneous results would be obtained: if standards caused decreased purchases of a product, this would appear an economic benefit, namely less money spent on purchasing and using appliances; [13] and if standards resulted in increased purchases, this would be incorrectly counted as a cost, when it reflects consumers' preference for the post-standards product.

Base case usage is assumed in calculating the net present value, since any "rebound effect" [14] reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect" prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

11. Other Consumer Impacts

One measure of the effect of standards on consumers is the change in operating cost as compared to the change in purchase price. This is quantified by the difference in life-cycle cost between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating cost discounted over the lifetime of the appliance. It will be calculated at the average efficiency for each class in the year standards are imposed using consumer discount rates of five, seven, and ten percent. The purchase cost is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. The operating cost is calculated from the unit energy consumption derived in the Engineering Analysis adjusted for differences in usage, i.e., operating load hours, between the test procedure and the LBL Residential Energy Model. Projected energy efficiencies and usages are taken from the results of LBL–REM.

Two other measures of economic impact are useful in evaluating the impacts on consumers. The payback period measures the amount of time it takes to recover, through lower operating costs, the additional expenditure on increased efficiency. Numerically, it is the ratio of the increase in first cost between the base and standards cases to the decrease in annual operating costs. Both the

[13] Present value is the discounted total value of energy consumption during the appliances' lifetimes, plus the discounted equipment costs for those appliances that are purchased during those periods, at alternative standards levels. The difference between each of the two cases is the net present value (NPV) attributable to standards (or amended standards). A positive NPV for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased first cost for a more efficient appliance, discounted to the present, compared to the base case.

[13] Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product, or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

[14] The "rebound effect" is the projected energy savings (from an efficiency improvement) that does not occur. This results when purchasers of more energy efficient appliances use them more intensively, thereby saving less energy than the engineering estimates would have indicated. Empirical studies indicate that approximately 15 percent of the potential energy savings is thus not achieved. Therefore, in calculating energy savings, the LBL–REM assumes that only 85 percent of the savings that are indicated by engineering estimates will actually be achieved.

numerator and denominator of this expression are evaluated at the average efficiency in the year standards come into effect and at the energy prices in that year. The cost of conserved energy is the increase in first cost amortized over the lifetime of the appliance at the consumer discount rate divided by the annual energy savings. The consumer will benefit whenever the cost of conserved energy is less than the price of energy for that end use.

c. Manufacturer Impact Models

1. Conceptual Approach

The Manufacturer Impact Analysis estimates both the overall impact of new or amended standards on manufacturers as well as the distribution of effects among different manufacturers.

2. Measures of Impact

The analysis examines three types of long-run impact: profitability; growth; and, competitiveness. To do this, three measures of impact are tracked for the industry as a whole and for any segments that may exist. The three impact variables are: return-on-equity (ROE); assets; and labor.

ROE provides the primary measure of profitability, although gross margin, return-on-assets (ROA), and return-on-sales (ROS) are also reported. Assets and labor provide the measures of growth (positive or negative). The impact on competitiveness is analyzed by looking at the relative changes in growth and profitability for large and small firm segments.

Two short-run impacts are also analyzed. First, the ability for the industry as a whole and for specific segments of the industry to provide the one-time investments required to meet the new standard is examined. These expenditures are compared to available cash and to their historical variation. Second, if standards result in decreased sales for the particular industry being analyzed, the possibility of a price war in the time period when the industry is adjusting to a lower sales volume is examined.

3. LBL Manufacturer Impact Model (LBL–MIM)

In order to estimate the impacts of energy efficiency standards a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), was developed.

The LBL–MIM uses a "typical year" approach rather than a dynamic approach. This approach models a "typical year" for the industry both in the modified standards case and in the existing-standards case. The typical year chosen for the model is the fifth year after the imposition of standards. Five years is considered long enough to capture any major impacts from the standard, such as profitability changes or firm entry into or exit from the industry.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis would be a very expensive undertaking. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, the analysis estimates the impact of the standards by using prototypical firms.

A prototypical firm is a hypothetical firm representative of a particular portion of an industry. The goal of defining the prototypical firms is to characterize firm-to-firm variations in the industry as best as possible. Prototypical firms are defined in terms of parameters that have importance in determining the level of impact and are consistent with industry data for that particular portion of the industry. Important parameters used in the model include the cost and marketing strategies.

An important simplifying assumption of the LBL–MIM is that each prototypical firm offers products to several different markets. The product offerings are generally differentiated by using the product classes established by the Act. Different markets are defined in terms of the technological characteristics of the products, e.g., standard size or compact dishwashers. At times, this market segmentation plays an important role in determining a firm's profits. Generally, appliance manufacturers are thought to be able to charge different markups for different products. Firms are able to charge higher markups on products that have desirable characteristics. Products on the low end of this spectrum are generally bought in larger quantities at lower prices by consumers who are more highly price conscious, and thus the markups for these products are lower. The per unit profits made by manufacturers for these different products may differ significantly. The model incorporates this market reality by allowing firms to charge different markups on different products.

The model sets product prices in the modified standards case in two stages. In the first stage the price is computed by assuming that the industry's gross margin remains unchanged under the new standards. This is the pricing rule most often referred to by the industry.

Stage two drops the assumption of a constant gross margin, and instead assumes that firms face a downward sloping demand curve and set price to maximize profit. Economic theory states that this is done by setting price equal to the long-run marginal cost (LMC) times a markup that depends only on the elasticity of the demand curve. Stage two begins by dividing costs into long-run fixed costs and LMC, and then estimating the firm's markup. Before using the markup, a new LMC is computed which includes any additional unit variable costs and the variable part of levelized capital and engineering costs. Once the new LMC is computed, this figure is multiplied by the markup factor to determine the new price.

A change in standard level affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue both through price and demand.

The most obvious investment induced by standards is the purchase of new plant and equipment. This cost first is evaluated from engineering data, and then averaged by taking into account the life of the investment, the date on which it is made, tax laws, and the appropriate cost of funds. An additional and sometimes larger investment takes place as the old inventory is replaced with more expensive new units. The model assumes previous inventory ratios are maintained. A third form of investment tracked by the model is the change in the transactions demand for cash that accompanies a change in revenues.

Increased costs of production are modeled by coupling engineering data on changes in unit costs caused by standards with data from LBL–REM on the marketplace demand of the product.

Revenue is affected by both price and shipments. Price is computed from costs in two stages. First, a constant gross margin pricing rule is used. Then a markup over long-term marginal costs is computed and used to determine an optimal price. Demand is determined by measured price and operating cost elasticities, coupled with the changes in price and operating costs resulting from the standards.

The LBL–MIM produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, the

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outputs present four measures of performance: gross margin, return on sales, return on total assets, and return on equity. The results are presented for the without-standards case and the with-standards case, and the relative difference between the two is also given. Another output table analyzes the source of changes in income, expenses, and assets from an economic point of view, while a third output table analyzes price and profitability changes under the two pricing scenarios mentioned above.

4. Data Sources

The LBL–MIM needs data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: LBL business consultation groups; the Engineering Analysis; the Consumer Analysis, public financial data; and industry profiles.

d. Utility Impact Model

The Utility Analysis serves several purposes within the overall assessment of the impact of the proposed standards. It contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. The reduction in fossil fuel consumption is also an input to the Environmental Assessment. By calculating utility avoided costs, this area of the analysis provides marginal electricity costs to be used in evaluating the societal benefits of standards. Finally, it examines the impacts on the electric utility industry in terms of changes in investment, revenue requirements, the need for new generating capacity, and residential load factors.

The Utility Analysis adopts the standard convention that the value of electricity savings can be broken down into energy (or marginal cost) savings and capacity (or reliability) savings. The energy impact measures the production costs avoided by reduced electrical demands, valued at the marginal energy costs of the utility. The capacity impact measures the reliability value of reduced loads during system peak periods, which is, by convention, valued at the cost of a combustion turbine that would have been needed to meet the load. The analysis characterizes these avoided costs per kWh of heating, cooling, and baseload energy saved.[18] These values are used to calculate societal benefits from reduced electricity consumption.

The utility impact model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council (NERC) regions and a simplified load duration curve for each region. First, the model allocates national electricity savings that are forecasted by the LBL–REM to NERC regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction respectively, are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors (CLFs) for the energy savings attributable to the standards, as well as the capacity value of a combustion turbine. A conservation load factor is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The CLFs are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per kWh values described above. The NERC forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If NERC forecasts an adequate reserve margin in a region for a given year, no reliability value is given to the capacity savings in the region.

The inputs needed for the utility impact model are conservation load factors, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use, as well as electricity generation by fuel type and capacity need by NERC region. The outputs of the analysis are the fuel savings, the reduction in the need for new generating capacity, and the avoided energy and capacity costs for heating, cooling, and baseload appliances per million Btu of resource energy. These marginal costs are used to calculate societal costs and benefits of standards.

e. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

IV. Comments

a. Questions for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, DOE welcomes discussion on improvements or alternatives to this approach. In particular, DOE is interested in gathering data on the incremental costs of improving the energy efficiency of dishwashers, clothes washers, and clothes dryers. The design options listed above can be used as a starting point; however, data for additional design options would be welcome.

While the Department has been unable to identify any small manufacturers, nevertheless, for purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. The Department is especially interested in learning of the existence of such manufacturers, and in obtaining costing data from small manufacturers of the products under consideration.

For the LBL Residential Energy Model, DOL requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices, and on the installation and maintenance costs of these appliances are also requested.

The manufacturer analysis needs the financial data from the product division level, i.e., dishwashers, clothes washers, and clothes dryers. All of these data are available at the firm level, but firms are typically much larger than the relevant division, and thus firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: net income, revenue, selling and general and administrative expenses, engineering expenses, cost of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

The Department also would welcome current data on unit sales and revenue for the industries as a whole.

b. Comment Procedure

Interested persons are invited to submit written comments to DOE. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation CE–RM–88–10. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before the Department continues this rulemaking proceeding. Pursuant to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and five copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

Issued in Washington, DC, May 5, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88–10976 Filed 5–17–88; 8:45 am]

BILLING CODE 6450–01–M

[18] For the purposes of calculating utility avoided costs, electric heating appliances are defined as electric heat pumps and electric resistance heat, cooling appliances are defined as room and central air conditioners plus heat pumps, and baseload appliances are defined as all other appliances.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–46–AD]

Airworthiness Directives; Empresa Brazileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Embraer Model EMB–120 series airplanes, which currently requires a change to the Airplane Flight Manual (AFM) procedures for emergency/abnormal operations, an inspection of the flap actuator, and replacement of the flap actuator, if necessary. That action was prompted by a report of an uncommanded extension of the outboard flap actuator. This action would require the installation of new and improved hydraulic filters in the actuator solenoid valves, actuator inlet fitting, and flap hydraulic system; and use of revised AFM operational procedures. This action is prompted by results of an investigation of the reported incident, which revealed that hydraulic fluid contamination caused malfunction of the actuator to occur. This condition, if not corrected, could lead to flap asymmetry, which could result in loss of control of the airplane during a critical phase of flight.

DATE: Comments must be received no later than July 7, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–46–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from EMBRAER, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. William Trammell, Systems Branch (ACE–130A), Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–3020.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–46–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On June 19, 1987, FAA issued AD 87–11–03, Amendment 39–5663 (52 FR 24136; June 29, 1987), applicable to all Embraer Model EMB–120 series airplanes, to require certain changes to the FAA-approved Airplane Flight Manual (AFM) regarding procedures during emergency/abnormal operations involving flap control faults, flap disagreement, and flap asymmetry; inspection of the flap actuator; and replacement of the flap actuator, if necessary. That action was prompted by the report of an incident where there was an uncommanded right outboard flap, full deployment, during flight. This condition, if not corrected, could lead to loss of control of the airplane.

Since issuance of that AD, further investigation was conducted to determine the cause of the reported incident. Parker Hannifin Control

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System Division, the manufacturer of the flap system actuators, has concluded that hydraulic fluid contamination caused the malfunction of the actuator. New and improved filters have now been developed for the actuator solenoid valve, inlet fitting, and flap hydraulic system that will improve filtration of the hydraulic fluid and prevent contamination from creating the unsafe condition addressed in AD 87-11-03.

EMBRAER has issued Service Bulletin 120-027-0050, dated April 13, 1988, which describes procedures for installation of a filtration design improvement for the actuator solenoid valve which will prevent contamination from passing by the filter and keeping the solenoid slug from seating properly; Service Bulletin 120-027-0042, dated February 10, 1988, which describes procedures for installation of an actuator inlet fitting filter with an improved micron rating which will increase the filtration into the actuator and decrease the amount of contamination that collects on the solenoid screen; and Service Bulletin 120-027-0038, dated November 16, 1987, which describes procedures for installation of in-line filters added to the airplane flap hydraulic system which will improve hydraulic fluid filtering.

Additionally, since issuance of AD 87-11-03, all U.S.-registered Model EMB-120 series airplanes have been modified to include three new failure indicating lights in the annunciator panel. (Procedures for this installation are described in EMBRAER Service Bulletin 120-031-0009.) These lights identify the specific flap system failure that has occurred, and thereby aid in reducing the pilot's recognition and reaction time for corrective action. The FAA-approved AFM has been revised to incorporate the procedures required by AD 87-11-03, and to amend those procedures as they relate to the use of this new failure indicating light installation. This AFM revision is identified as Revision 9 to AFM 120/794 and Revision 14 to AFM 120/624.

In light of the foregoing, the FAA proposes to supersede AD 87-11-03 with a new AD that would require installation of new and improved filters in the actuator or solenoid valve and inlet fitting, and installation of in-line hydraulic filters to the airplane flap hydraulic system, in accordance with the EMBRAER service bulletins described above; and would require use of the most recent revision to the FAA-approved AFM. The FAA has determined that accomplishment of these actions will prevent the malfunction of the actuators caused by hydraulic fluid contamination.

This airplane is manufactured in Brazil and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

The CTA, which is the airworthiness authority for Brazil, has notified FAA that it plans to amend its Brazilian Airworthiness Directive No. 87-05-01, issued October 17, 1987, which addresses this same subject, to require the accomplishment of actions similar those proposed in this Notice.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD. Parker Hannifin has indicated that it plans to supply and install the solenoid valve and inlet fitting for each actuator at no cost to operators. Additionally, the modification for the hydraulic system in-line filter is to be supplied at no cost by the manufacturer. Therefore, the only cost to operators would be the installation of the flap hydraulic system in-line filters. It would take approximately 20 manhours per airplane to accomplish the required installation, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $32,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($800). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-11-03, Amendment 39-5663 (52 FR 24136; June 29, 1987), with the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Applicable to all Model EMB-120 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent flap asymmetry that could lead to loss of control of the airplane in a critical phase of flight, accomplish the following:

A. Within 15 days after the effective date of this AD, revise the FAA-approved Airplane Flight Manual (AFM) to include Revision 9 (for EMB-120RT AFM 120/794) or Revision 14.(for EMB-120 AFM 120/624), as applicable.

B. Within 90 days after the effective date of this AD accomplish the following:

1. Replace the flap actuator solenoid valves with new valves equipped with new filters, in accordance with Embraer Service Bulletin 120-027-0050, dated April 13, 1988;

2. Replace the inlet filter fitting of the flap actuators, in accordance with Embraer Service Bulletin 120-027-0042, dated February 10, 1988; and

3. Install in-line filters to the flap control hydraulic plumbing, in accordance with Embraer Service Bulletin 120-027-0038, dated November 16, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request for an alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Atlanta Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315.

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

Issued in Seattle, Washington, on May 5, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11050 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-3]

Proposed Establishment of Red Bluff, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone and extension at the Red Bluff Municipal Airport, Red Bluff, CA. The intended effect is to provide controlled airspace for aircraft executing published instrument approach procedures to the Red Bluff Municipal Airport.

DATE: Comments must be received on or before July 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-3, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone and extension at the Red Bluff Municipal Airport, Red Bluff, CA, to provide controlled airspace for aircraft executing published instrument approach procedures to Red Bluff Municipal Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Red Bluff, CA [NEW]

Within a 5-mile radius of Red Bluff Municipal Airport, Red Bluff, CA. (lat. 40°09'04" N., 122°15'05" W.) and within 2 miles each side of the Red Bluff VORTAC 167° Radial, extending from the 5-mile radius zone to 8 miles south of the VORTAC.

Issued in Los Angeles, California, on May 5, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-11051 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-41]

Proposed Removal of Transition Area; Carnegie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Carnegie, OK. This proposal is necessary since the standard instrument approach procedure (SIAP) to the Carnegie Municipal Airport, utilizing the proposed Carnegie Nondirectional Radio Beacon (NDB), has been canceled. The Carnegie NDB is not being installed as previously planned. The intended effect of this proposed action is to return that controlled airspace no longer required due to the cancellation of the SIAP. Coincident with this action, the status of the airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before June 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-41, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area located at Carnegie, OK. This proposed action is necessary based on the fact that the SIAP to the Carnegie Municipal Airport, utilizing the proposed Carnegie NDB, has been canceled. The NDB will not be installed, requiring the cancellation of the SIAP and negating the need for a 700-foot transition area. Coincident with this action, the airport status will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Carnegie, OK [Removed]

Issued in Fort Worth, TX on May 4, 1988.

Larry L. Craig

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11052 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-88-1384; FR 2500]

Urban Development Action Grant (UDAG); Implementing Prohibitions on Use of Urban Development Action; Grants for Business Relocations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the regulations governing Urban Development Action Grants by revising and adding new text to the existing provisions pertaining to prohibitions on the use of UDAG for business relocations. This proposal intends (1) to codify HUD policy for administering the existing statutory and regulatory prohibition on the use of UDAG funds for speculative projects intended to facilitate the relocation of businesses from one area to another and (2) to implement new statutory amendments which prohibit the use of UDAG funds for projects with identified intended occupants likely to facilitate the relocation or expansion of businesses from UDAG eligible jurisdictions, provide for appeal of adverse determinations, and for assistance for individuals adversely affected by prohibited relocations.

DATES: Comment Due Date: June 17, 1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6290. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5319), authorizes the Secretary of Housing and Urban Development to "make urban development action grants to cities and counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery."

Subsection (h) of section 119 provides:

(h) No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated.

The foregoing prohibition is reflected in the UDAG program regulation at 24 CFR 570.456(c), which provides:

(c) Except as specified herein, no assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that such relocation does not significantly and adversely affect the level of unemployment or the economic base of the area from which such industrial or commercial plant or facility is to be relocated. However, moves within a metropolitan area shall not be subject to this provision.

The amended section 119(h) at section 516 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), (1987 Act), contains provisions prohibiting assistance to projects with identified intended occupants as follows:

(2) Projects with identified intended occupants. No assistance may be provided or utilized under this section for any project with identified intended occupants that is likely to facilitate—

(A) a relocation of any operation of an industrial or commercial plant or facility or other business establishment—

(i) from any city, urban county, or identifiable community described in subsection (p), that is eligible for assistance under this section; and

(ii) to the city, urban county, or identifiable community described in subsection (p), in which the project is located; or

(B) an expansion of any such operation that results in a reduction of any such operation in any city, county, or community described in subparagraph (A)(i).

(3) Significant and adverse effect. The restrictions established in paragraph (2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the city, county, or community from which the relocation or expansion occurs.

I. Background

The Urban Development Action Grant program is designed to encourage new private investment in cities which are experiencing severe economic distress. Action grants are available to carry out a wide variety of economic investment activities which increase jobs and the tax base of the distressed cities.

Applications for action grants are submitted to and reviewed by HUD every two months. Applications which are selected by HUD in the competitive funding rounds receive preliminary funding approval to the extent funds for assistance are available. Following preliminary approval of a proposed project, a grant agreement is executed by the recipient city and HUD. Recipients then must submit "legally binding commitments" to HUD which demonstrate that public and private activities necessary for the project will be completed. After approval of the legally binding commitments by HUD, a letter of credit is made to the recipient city against which it may draw down grant funds for the project in accordance with the grant agreement.

Two types of industrial and commercial projects are contained in the applications for action grant funds: (1) Projects with identified intended occupants and (2) speculative projects in which the occupants of all or a portion of the space are not identified at the time the application is considered for funding.

In applications for projects with identified intended occupants, threshold findings as to whether a relocation is involved can be made because a facility is designed and developed to specifically service an identified business firm which is to move from an identified existing location. However, in applications for development of speculative space, no such threshold findings can be made, although the policy concerns of not assisting relocations which generated the statutory and regulatory prohibition remain to be enforced. When the Department learned that some speculative projects involved marketing of the speculative space to potential relocatees from nearby areas, HUD issued a Statement of Policy concerning application of the statutory prohibition to proposed UDAG projects containing speculative space, 50 FR 1506 (January 11, 1985). The Statement of Policy was designed to be used by UDAG applicants as a guide and advisory interpretation of section 119(h) as it applies to applications for development of speculative space.

As noted in the Statement of Policy, the Department found that if certain elements were present in applications for development of speculative space it was reasonable to presume that a speculative space project was more likely than not to be intended to facilitate a relocation, although the identity of the relocatees may not become known until subsequent marketing of the speculative space. The necessary elements for the presumptions of a prohibited relocation and a significant and adverse effect were: (1) The proposed project was reasonably proximate (i.e., within 50 miles) to an area from which there had been a significant current pattern of movement, to areas reasonably proximate thereto, of jobs of the category for which the speculative space is appropriate; (2) there was a likelihood of a continuation of such a pattern; and (3) the area from which the movement of jobs had been occurring was a distressed community as defined in the UDAG regulations. However, the presumptions of a relocation were rebuttable by the applicant. If not rebutted to the Secretary's satisfaction, the application would not be approved. The Statement of Policy also established guidelines for use in the applicant's rebuttal of the presumptions: i.e., marketing studies which would support an inference that

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occupancy of the speculative space would more likely result from expansion of other firms in the area outside of the proximate distressed community. The marketing studies alone would not be sufficient to overcome the presumption, but could be supportd by covenants and commitments reasonably adequate to preclude a relocation from the proximate distressed community. The covenants and commitments would have to be agreed to prior to preliminary approval and would become part of the grant agreement and legally binding commitments. And the Secretary would be given remedies for breach of the covenants, including prompt repayment of the grant. Finally, the Statement of Policy announced guidelines for threshold amounts of speculative space in projects for the presumptions of a prohibited relocation to apply.

II. Current Issues and New Legislation

The Department continued to be confronted by issues in interpretation and enforcement of the statutory and regulatory provisions quoted above, especially with respect to projects with identified intended occupants. In some project applications, business firms participating with the UDAG applicant city would offer commitments not to relocate the operation of a facility it was shutting down in another distressed community so that there would be no "relocation" under the statute and regulations. And the meaning and application of words and phrases in section 119(h) and its implementing regulation quoted above continued to cause difficulties in following the congressional purpose that Federal UDAG assistance would not be used to facilitate relocations of commercial and industrial facilities from one area to another. The issues include:

(1) What thresholds apply to find a prohibited relocation?

(2) What portion of a business unit's operation that is being relocated amounts to a prohibited relocation?

(3) What constitutes unemployment or job loss necessary to trigger a prohibited relocation?

(4) Are covenants and commitments by applicants and participating parties useful in determining whether the threshold of a prohibited relocation is met?

(5) What is the meaning of "from one area to another"?

(6) Is the Secretary required to make determinations that there is no significant and adverse affect on unemployment or the economic base of the community from which the facility is being relocated?

(7) What factors or criteria are to be used by the Secretary in making findings of no significant and adverse effect?

The continuing difficulties led to enactment of section 516 of the Housing and Community Development Act of 1987, quoted above to add new provisions applicable to projects with identified intended occupants where the projects are "likely to facilitate" relocations of business operations. By its terms it is to apply to urban development action grants that have not received preliminary approval before the date of enactment (February 5, 1988). Yet the Secretary is given 60 days to issue regulations needed to implement the new statutory provisions. We have elected to issue the new regulations in the form of a proposed rule because of the inherent and indentified complexities in this matter.

III. Proposed Rule

(A) Applications for Development of Speculative Space

The proposed rule codifies all of the guidelines of the Statement of Policy, except the use by an applicant city of covenants and commitments to rebut presumptions of a prohibited relocation.

The proposed rule provides (1) determinable circumstances which would create rebuttable presumptions that a proposed speculative project is intended to facilitate the relocation of an industrial or commercial plant or facility from one area to another and that such relocation will also significantly and adversely affect the employment or economic base of the area from which the relocation will occur; (2) that the Secretary is not required to determine whether there is a significant and adverse affect; and (3) threshold proportional amounts of speculative space for different size projects, below which the presumptions do not apply.

(B) Applications for Projects with Identified Intended Occupants

The proposed rule provides: (1) Criteria for determining whether a proposed project with identified intended occupants is likely to facilitate a proscribed relocation or expansion; (2) criteria for determining whether such relocation or expansion will significantly and adversely affect the employment or economic base of the UDAG eligible jurisdiction from which the relocation or expansion will occur; (3) that the Secretary is not required to determine whether or not there is a significant and adverse effect; and (4) criteria to be used by the Secretary in determining whether there is a significant and adverse effect, if the Secretary makes such a determination.

The proposed rule also addresses the geographic area in which the prohibition is applicable, both for projects with identified intended occupants and for speculative projects. It provides that the prohibition does not apply to relocations within the same metropolitan area. This approach is based on the legislative history of the original provisions of the business relocation prohibitions and the interpretation the Department has given to it over the ten-year history of the UDAG program. In explaining the provision in H.R. 6655 which became section 119(h), the House Committee on Banking, Finance and Urban Affairs stated in H.R. 95–236:

> The committee recognizes that stimulation of private investment by one jurisdiction in a metropolitan area may in some instances result in the loss of commercial or employment activity in another. The disadvantaged community may in fact be the one least capable of retaining its economic base and be most in need of economic development.

Intra-MSA Insulation Against Prohibition

Although the 1987 Act applies the prohibition in the case of identified intended occupants to relocation from a UDAG-distressed community to another UDAG-distressed community, there is no indication in the 1987 legislative history that the Congress intended to change the Congressional focus on relocations outside the same metropolitan area. Further, since the provisions in section 119(h) dealing with the speculative space projects are essentially unchanged by the 1987 Act, the Department believes the thrust of this Congressional intent remains in force. The Department's longstanding regulatory implementation at § 570.456(c) has been more limited than the statement in the 1977 House Report quoted above. While the House Report only discussed moves *from* one metropolitan area to *another* (and theoretically does not address moves to or from nonmetropolitan areas as well as moves within the same metropolitan area), HUD's ten-year old regulation has been limited to insulating against the prohibition only relocations within the same metropolitan area.

Accordingly, the proposed rule would continue not to apply the prohibition to relocations within the same metropolitan area (an exception which has lesser effect in the case of identified intended occupants since their relocation from non-UDAG distressed communities are not prohibited *anywhere*).

The proposed rule also provides for appeals to the Secretary by applicants adversely affected by prohibited relocations and for assistance for individuals adversely affected by prohibited relocations.

The proposed rule also requires the project developer to certify that, to the best of its knowledge, the requested UDAG funds will not facilitate any business relocation as described in § 570.456(c). If the UDAG funds will facilitate any business relocation, a detailed explanation shall be provided.

Findings

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Ordinarily the Department provides 60 days for public comment on proposed rulemakings. However, publication of this rule has been delayed by the required prepublication review under section 7(o)(2) of the Department of HUD Act (42 U.S.C. 3535(o)(2)) and the additional legislative review requirement that final rules, once published, must await 30 congressional session days to take effect will make it difficult for the Department to make this rule effective during calendar 1988. (This is because under the current congressional schedule, a rule must be published by Ax early in order to complete its 30 session day review period before the scheduled adjournment.

By reducing the public comment period to thirty days, the Department hopes to have adequate time to take comments into account and produce a final rule for August publication—thus assuring the rule takes effect this year.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because the number of affected small entities would not be substantial. The funding for the UDAG program has been reduced in recent years, and only a small portion of UDAG applications contain projects which involve prohibited relocations.

This rule was not listed in the Department's Seminannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalogue of Federal Domestic Assistance number is 14.221-Urban Development Action Grants.)

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, 24 CFR Part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Paragraph (c) of § 570.456 would be revised to read as follows:

§ 570.456 Ineligible activities and limitations on eligible activities.

* * * * *

(c)(1) No assistance may be provided under this subpart for speculative projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another. The provisions of this paragraph (c)(1) shall not apply to a relocation of any such plant or facility within a metropolitan area.

(i) HUD will presume that a proposed project which includes speculative commercial or industrial space is intended to facilitate the relocation of a plant or facility from one area to another, if it is demonstrated to HUD's satisfaction that:

(A) The proposed project is reasonably proximate (i.e., within 50 miles) to an area from which there has been a significant current pattern of movement, to areas reasonably proximate, of jobs of the category for which such space is appropriate; and

(B) There is a likelihood of continuation of the pattern, based on measurable comparisons between the area from which the movement has been occurring and the area of the proposed project in terms of tax rates, energy costs, and similar relevant factors.

(ii) The restrictions established in this paragraph (c)(1) shall not apply if the Secretary determines that the relocation does not significantly and adversely affect the employment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, the Secretary will presume that there is a significant and adverse effect where the significant pattern of job movement and the likelihood of continuation of such a pattern has been from a distressed community.

(iii) The presumptions established in accordance with this paragraph (c)(1) are rebuttable by the applicant. However, the burden of overcoming the presumptions will be on the applicant.

(iv) The presumptions established in this paragraph (c)(1) will not apply if the speculative space contained in a commercial or industrial plant or facility included in a project constitutes a lesser percentage of the total space contained in that plant or facility than the threshold amounts specified below:

Size of plant or facility	Amount of speculative space (percent)
0 to 50,000 sq. ft.	10
50,001 to 250,000 sq. ft.	8
250,001 to 1,000,000 sq. ft.	5
1,000,001 or more sq. ft.	3

(2) Projects with identified intended occupants. (i) No assistance may be provided or utilized under this subpart for any project with identified intended occupants that is likely to facilitate:

(A) A relocation of any operation of an industrial or commercial plant or facility or other business establishment from any UDAG eligible jurisdiction; or

(B) An expansion of any operation of an industrial or commercial plant or facility of other business establishment that results in a substantial reduction of any such operation in any UDAG eligible jurisdiction.

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The provisions of this paragraph (c)(2) shall not apply to a relocation of an operation or to an expansion of an operation within a metropolitan area. The provisions of this paragraph (c)(2) shall apply only to projects that do not have speculative space, or to projects that include both identified intended occupant space and speculative space.

(ii) Significant and adverse effect. The restrictions established in this paragraph (c)(2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the UDAG eligible jurisdiction from which the relocation or expansion occurs. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, among the factors which the Secretary will consider are:

(A) Whether it is reasonable to anticipate that there will be a significant net loss of jobs in the plant or facility being abandoned; and

(B) Whether an equivalent productive use will be made of the plant or facility being abandoned by the relocating or expanding operation, thus creating no deterioration of economic base.

(3) Within 90 days following notice of intent to withhold, deny or cancel assistance under paragraph (c)(1) or (2), the applicant may appeal in writing to the Secretary the withholding, denial or cancellation of assistance. The applicant will be notified and given an opportunity within a prescribed time for an informal consultation regarding the action.

(4) Assistance for individuals adversely affected by prohibited relocations. (i) Any amount withdrawn by, recaptured by, or paid to the Secretary because of a violation (or a settlement of an alleged violation) of this section (or any regulation issued or contractual provision entered into to carry out this section) by a project with identified intended occupants will be made available by the Secretary as a grant to the UDAG eligible jurisdiction from which the operation of an industrial or commercial plant or facility or other business establishment was relocated, or in which the operation was reduced.

(ii)(A) Any amount made available under this paragraph shall be used by the grantee to assist individuals who were employed by the operation involved before the relocation or reduction and whose employment or terms of employment were adversely affected by the relocation or reduction. The assistance shall include job training, job retraining, and job placement.

(B) If any amount made available to a grantee under this paragraph (c)(4) is more than is required to provide the assistance described in paragraph (c)(4)(ii)(A), the grantee shall use the excess amount to carry out community development activities eligible under section 105(a) of the Housing and Community Development Act of 1974.

(iii)(A) The provisions of this paragraph (c)(4) shall be applicable to any amount withdrawn by, recaptured by, or paid to the Secretary under this section, including any amount withdrawn, recaptured, or paid before the effective date of this paragraph.

(B) Grants may be made under this paragraph (c)(4) only to the extent of amounts provided in appropriation Acts.

(5) For purposes of this section, the following definitions apply:

(i) "Operation" means any plant, equipment, facility, substantial number of positions, substantial employment opportunities, production capacity, or product line.

(ii) "Metropolitan area" means a metropolitan area as defined in § 570.3(p) and which consists of either a freestanding metropolitan area or a primary metropolitan statistical area where both primary and consolidated areas exist.

(iii) "Likely" means probably or reasonably to be expected, as determined by firm evidence such as resolutions of a corporation to close a plant or facility, notifications of closure to collective bargaining units, correspondence and notifications of corporate officials relative to a closure, and supportive evidence, such as newspaper articles and notices to employees regarding closure of a plant or facility. Consultant studies and marketing studies may be submitted as supportive evidence, but by themselves are not firm evidence.

(iv) "UDAG eligible jurisdiction" means a distressed community, a Pocket of Poverty, a Pocket of Poverty community, or an identifiable community described in section 119(p) of the Housing and Community Development Act of 1974.

(6) Notwithstanding any other provision of this subpart, nothing in this subpart may be construed to permit an inference or conclusion that the policy of the urban development action grant program is to facilitate the relocation of businesses from one area to another.

3. Section 570.456(c)(14) would be amended to add new paragraph (xvi) as follows:

§ 570.456 Full applications.

* * * * *

(c) * * *

(14) * * *

(vi) The project developer must certify that, to the best of its knowledge, the requested UDAG funds will not facilitate any business relocation as described in § 570.456(c). If the UDAG funds will facilitate any business relocation, a detailed explanation shall be provided.

Date: April 15, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 88-11187 Filed 5-17-88; 8:45 am]

BILLING CODE 4210-29-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1515

[FRL-3379-9]

Acquisition Regulation; Disclosure and Use of Information in Proposals Before Contract Award

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: This document proposes a rule regarding the Environmental Protection Agency's (EPA) disclosure and use of information in proposals before contract award. The Federal Acquisition Regulation (FAR) gives EPA, as well as other executive agencies, the authority to use alternate procedures to release proposals outside the Government for evaluation. The authority, however, must be in agency regulations that implement the FAR. The intended effect of this action is to amend the EPA Acquisition Regulation (EPAAR) to permit the use of the alternate procedures in the FAR. These alternative procedures will allow EPA to obtain the opinion of outside experts in evaluating proposals submitted under EPA's Small Business Innovative Research Program.

DATE: Written comments should be submitted not later than July 18, 1988.

ADDRESS: Comments should be addressed to: Procurement and Contracts Management Division (PM-214-F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Joseph Nemargut, Jr.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut at (202) 475-9780.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation 15.413-1 provides that after receipt of proposals, none of the information contained in them shall be made available to the public. FAR 15.413-2 provides that Agency regulations may provide for the alternate procedures in FAR 15.413-2 instead of the procedures in FAR 15.413-1.

The purpose of this proposed rule is to adopt the alternate procedures in FAR 15.413-2 for EPA. FAR 15.413-2 permits disclosure of proposals outside the Government only to the extent authorized by, and in accordance with the procedures in FAR 15.413-2(f). This rule also retains the restrictions relating to release of proposal information in FAR 15.413-1, paragraphs (a) and (b), notwithstanding adoption of the procedure in FAR 15.413-2.

The EPA is adopting these alternate procedures in order to obtain the opinion of outside experts in evaluating proposals submitted under EPA's Small Business Innovative Research Program. The EPA may also rely on the technical expertise of non-Federal employees in evaluating other types of proposals requiring a high level of detailed expertise, especially in areas of complex and constantly changing technology.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring Office of Management and Budget review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The rule permits EPA to exercise its authority under the FAR to release proposals outside the Government for evaluation. The rule has no impact on the EPA Source Selection Procedures in 48 CFR Subpart 1515.6.

List of Subjects in 48 CFR 1515

Government procurement, Contracting by negotiation authority.

For the reasons set out in the preamble, Part 1515 of Title 48 Code of Federal Regulations, is proposed to be amended as follows:

PART 1515—[AMENDED]

1. The authority citation for Part 1515 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1515.413 is added to read as follows:

1515.413 Disclosure and use of information before award.

(a) Contracting Officers shall follow the Alternate II proposal evaluation procedures in FAR 15.413-2.

(b) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest. In the event an outside evaluation is to be obtained, information in proposals or information concerning the number or identity of offerors shall be disclosed only to the extent authorized by and in accordance with the procedures of FAR 15.413-2(f) and these regulations, 1515.413.

(c) During the preaward or preacceptance period of a negotiated acquisition, only the contracting officer, the contracting officer's superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others (see FAR 15.610, Written or oral discussion). However, general information that is not prejudicial to others may be furnished upon request.

(d) The Chief of the Contracting Office (CCO) is the designated official to make the decision as provided by FAR 15.413-2(f)(1).

(e) The Contracting Officer shall submit a written determination to the CCO whenever the use of FAR 15.413-2(f) procedures is contemplated. Following CCO approval, proposals may be released to non-Government employees for review and evaluation consistent with the provisions of FAR 15.413-2(f)(2)-(5).

(f) The following written certification and agreement shall be obtained from the non-Government evaluator prior to the release of any proposal to that evaluator:

Certification on the Use and Disclosure of Proposals

RFP# _____

Offeror _____

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the Source Evaluation Board assembled for this acquisition or individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____

(Name and Organization)

_____

(Date of Execution)

(End of Certificate)

(g) The Contracting Officer shall place the Government Notice for Handling Proposals (FAR 15.413-2(e)) on the cover pages of all proposals upon their receipt.

3. Section 1515.804-70(a) is amended by adding a sentence to the end of the paragraph to read as follows:

1515.804-70 Personal conflicts of interest.

(a) * * * In the event an outside evaluation is to be obtained, non-Government employees may participate only if the procedures in FAR 15.413-2(f) and 1515.413 are followed.

* * * * *

Date: April 28, 1988.

G.M. Katz,

Acting Director, Office of Administration.

[FR Doc. 88-10720 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2810, 2852 and 2870

[Justice Acquisition Circ. 87-3]

Acquisition Regulations; Nondiscrimination on the Basis of Handicap in Programs or Activities Performed by Contractors

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice intends to amend the Justice Acquisition Regulations (JAR), 48 CFR, Chapter 28, to add a new clause in Part 2852 and a new Part 2870 to implement the requirements of section 504 of the

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Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies and the United States Postal Service (29 U.S.C. 794). Because the Department of Justice (DOJ) relies on contractors to perform selected agency activities, compliance with section 504's prohibitions would be facilitated by incorporation of appropriate contract clauses into DOJ contracts. This proposed rule, therefore, makes clear that DOJ's regulations implementing section 504 in programs or activities conducted by DOJ (28 CFR Part 39) applies to such programs or activities performed by contractors. The proposed rule, however, provides expedited alternative complaint procedures in addition to those found in 28 CFR Part 39. Alternative complaint procedures administered by the DOJ contracting officer are authorized because a complaint involving a DOJ contracted activity is subject to the remedies available in the contract and in the Federal Acquisition Regulations (FAR) in addition to the remedies available under 28 CFR Part 39. The availability of summary procedures is important particularly when activities performed by contractors are of short duration, such as training programs or conferences, and an informal and expeditious procedure to resolve complaints is desirable. The proposed rule allows *de novo* consideration of a complaint adjudicated by the contracting officer under the complaint procedures set forth in 28 CFR Part 39. A complainant, however, may elect to bypass the more expeditious procedures provided in this proposed rule and file a complaint directly under 28 CFR Part 39. In addition, this proposed rule also makes editorial corrections in Parts 2801 and 2810.

DATE: To be assured of consideration, comments must be received by June 17, 1988.

ADDRESS: Interested parties should submit written comments to: W.L. Vann, Procurement Executive, Justice Management Division, Room 6400, Patrick Henry Building, U.S. Department of Justice, Washington, DC 20530. Please cite Justice Acquisition Circular (JAC) 87–3 in any correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division, 202–272–8354 or 202–272–4091(TDD).

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exemption applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 48 CFR Parts 2801, 2810, 2852 and 2870

Civil Rights, Government procurement, Handicapped.

Harry H. Flickinger,
Assistant Attorney General for Administration.

For the reasons set out in the preamble, Title 48, Chapter 28 of the Code of Federal Regulations (CFR) is proposed to be amended as follows:

The authority citation for 48 CFR Parts 2801, 2810, continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C 486(c); 28 CFR 0.75(j) and 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

2801.603 [Amended]

1. In section 2801.603, paragraphs (c)(2)(ii), (3)(ii) and (4)(ii) are amended by revising the cite "2801.601(f)" to read "2801.603(e)."

2. In section 2801.603 paragraph (e)(1)(v) is amended by revising "Contact" to read "Contract."

PART 2810—SPECIFICATIONS, STANDARDS AND OTHER PURCHASE DESCRIPTIONS

3. In the table of contents, the entry 2810.004–70 "Brand name of equal" purchase description is amended by revising "of" to "or."

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The authority citation for Part 2852 is revised to read as follows:

Authority: 28 U.S.C. 510; 29 U.S.C. 794; 40 U.S.C. 486(c); 28 CFR 0.75(j); 28 CFR 0.76(j) and 28 CFR Part 39.

5. Section 2852.270–1 is added to read as follows:

2852.270–1 Nondiscrimination on the basis of handicap in DOJ programs or activities performed by contractors.

As prescribed in 2870.104, insert the following clause in all solicitations and contracts where the agency program or activity performed by contract provides an aid, benefit or service to applicants, participants, Federal personnel or members of the public.

Nondiscrimination on the Basis of Handicap in DOJ Programs or Activities Performed by Contractors

In the performance of this contract, the contractor agrees as follows:

(a) *Participation.* The contractor shall take appropriate steps to ensure that qualified handicapped persons are afforded equal opportunities to participate in and benefit from, DOJ programs or activities performed under this contract.

(1) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, or be denied the benefits of, or otherwise be subjected to discrimination under the activities or programs conducted as a result of this contract.

(2) The contractor in providing any aid, benefit or service, whether directly or through subcontracts or other arrangements may not, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or service to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; or,

(v) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(3) The contractor may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(4) The contractor may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or,

(ii) Defeat or substantially impair accomplishment of the objectives of the program or activity with respect to handicapped persons.

(5) The contractor may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under the program or activity conducted by the contractor; or,

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this contract.

(7) The contractor shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(b) *Communications.* The contractor shall take appropriate steps to ensure effective communications with applicants, participants, Federal personnel, and members of the public.

(1) The contractor shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the contractor.

(i) In determining what type of auxiliary aid is necessary, the contractor shall give primary consideration to the requests of the handicapped person.

(ii) The contractor need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the contractor communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(3) The contractor shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(4) The contractor shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(5) If the contractor believes that an action required by this section would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the contractor shall notify the contracting officer. The contracting officer may request a determination from the Associate Attorney General, pursuant to 28 CFR 39.150(a)(2), that the action would result in a fundamental alteration or in undue financial and administrative burdens. If the Associate Attorney General makes such a determination, the contractor and the contracting officer shall negotiate revisions to the contract to specify what actions are required to ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

(c) *Program accessibility.* Except as otherwise provided in (2) below, no qualified handicapped person shall, because the contractor's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination in the performance of a DOJ contracted program or activity.

(1) If any facility used in the performance of this contract is not readily accessible to and usable by handicapped persons, the contractor shall make the program or activity readily accessible to and usable by handicapped persons through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, or any other effective methods.

(2) If the contractor believes that an action required by this section would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the contractor shall notify the contracting officer. The contracting officer may request a determination from the Associate Attorney General, pursuant to 28 CFR 39.150(a)(2), that the action would result in a fundamental alteration or in undue financial and administrative burdens. If the Associate Attorney General makes such a determination, the contractor and the contracting officer shall negotiate revisions to the contract to specify what actions are required to ensure that handicapped persons receive the benefits and services of the program or activity.

(3) The contractor shall not under any circumstance obligate any funds under this contract for the alteration or construction of facilities without the prior written permission of the contracting officer.

(d) *Noncompliance.* Failure to comply with the requirements of this clause and the provisions of 2870.103 regarding compliance procedures may result in this contract being subject to the remedies contained in the Federal Acquisition Regulations 48 CFR Chapter 1, including suspension of payments, suspension or termination of the contract, and consideration by the contracting offices of the protective remedies in 48 CFR, Chapter 1, Part 9 regarding debarment and suspension.

(e) *Subcontracts.* The Contractor shall include the terms of this clause in all subcontracts awarded under this contract.

(End of Clause)
January 1988

6. Part 2870 is added to read as follows:

PART 2870—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN DEPARTMENT OF JUSTICE PROGRAMS OR ACTIVITIES PERFORMED BY CONTRACTORS

2870.100 Scope of part.
2870.101 Policy.
2870.102 Application.
2870.103 Compliance procedures.
2870.104 Contract clause.

Authority: 29 U.S.C. 794; 28 CFR Part 39.

2870.100 Scope of part.

This part prescribes policies and procedures for implementing section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies and the United States Postal Service, in programs or activities of the Department of Justice (DOJ) that are performed by contractors. This part only addresses requirements for the provision of services by contractors in programs or activities conducted by DOJ. It does not address requirements under section 503 of the Act (29 U.S.C. 793) regarding the employment of individuals with handicaps by contractors (*see* FAR Subpart 22.14).

2870.101 Policy.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in any program or activity conducted by Federal Executive agencies and the United States Postal Service. The Department of Justice issued a regulation implementing the requirements of section 504 in September 1984 (28 CFR Part 39). It is the policy of DOJ that Federal contractors, when performing DOJ programs or activities, have the same obligation to afford individuals with handicaps the opportunity to benefit from or participate in the program or activity as if DOJ were conducting it. This rule and the clause at 48 CFR 2852.270–1 implement the requirements of section 504 with respect to services performed by DOJ contractors.

2870.102 Application.

This part applies to all DOJ programs or activities that are performed by contractors and that provide an aid, benefit, or service to applicants, participants, Federal personnel, or members of the public.

2870.103 Compliance procedures.

(a) Any person who believes that he or she has been subjected to discrimination prohibited by this part or by the contract clause at 48 CFR 2852.270–1 may by him or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part or the contract clause at 48 CFR 2852.270–1 and who is a member of that class or the authorized representative of a member of that class may file a complaint.

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(b) Complaints must be filed with the contractor, the DOJ contracting officer, or the contracting officer's technical representative (COTR) within 180 days of the alleged discrimination. The official who receives the complaint shall, within one working day of receipt of the complaint, notify the other two officials that a complaint has been filed. The contractor and the DOJ officials shall review the merits of the complaint and determine within three days what, if any, action is appropriate to resolve the complaint. If a complaint is first filed with the contractor, failure of the contractor to notify the DOJ officials listed in this paragraph, or other officials designated to receive complaints in their absence, within the prescribed time shall constitute a violation of the contract and shall be grounds for imposition of remedies available under the contract and the Federal Acquisition Regulations, including suspension of payments, termination or suspension of the contract, and consideration of suspension or debarment of the contractor. Complaints submitted to parties other than the contractor shall be considered confidential unless this confidentiality is expressly waived by the complainant and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation or proceeding under this part.

(c) A complaint shall be submitted in writing, signed by the complainant or authorized representative, and dated. It shall contain the complainant's name and address and sufficient information to enable the contractor and agency officials to understand the nature of the complaint and the requested resolution.

(d) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR Part 542.

(e) If, after the initial discussion of the complaint's merits, facts are in dispute, the contracting officer shall promptly seek clarification or conduct fact-finding as necessary. Where the complaint is determined by the contracting officer to have merit and the violation cannot be resolved informally, the contracting officer shall proceed in accordance with the remedies available under the contract and the Federal Acquisition Regulations, including suspension of payments, termination or suspension of the contract, and consideration of suspension or debarment of the contractor. A final decision shall be issued within five days of receipt of the complaint.

(f) The complainant may file a complaint under 28 CFR 39.170 as an alternative to the procedures of paragraphs (a)–(e) of this section or as a request for *de novo* consideration of a complaint for which a final decision was rendered under paragraph (e) of this section. Complaints filed under 28 CFR Part 39 must be filed within 180 days of the occurrence of the alleged discrimination, except that complaints filed as a request for *de novo* consideration of a complaint for which a final decision was rendered under paragraph (e) of this section may be filed within 180 days of the occurrence of the alleged discrimination or within 30 days of the final decision of the contracting officer, whichever is later. If the complaint is a request for *de novo* consideration of a final decision rendered under paragraph (e) of this section, the complaint shall so indicate.

2870.104 Contract clause.

The contracting officer shall insert the clause set forth at 48 CFR 2852.270–1, Nondiscrimination on the Basis of Handicap in DOJ Programs or Activities Performed by Contractors, in all solicitations and contracts where the contractor is to provide an aid, benefit, or service to applicants, participants, Federal personnel, or members of the public. Examples of aids, benefits, or services covered by this clause include, but are not limited to training or seminars, conferences, transportation services, ceremonial services, operation of halfway houses or similar arrangements, activities in Federal prisons, operation of cafeterias or similar services, operation of a credit union, recreational facilities, or airline ticket offices.

[FR Doc. 88–10943 Filed 5–17–88; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21; Notice 8]
RIN: 2127–AC24

Federal Motor Vehicle Safety Standard 114, Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for a notice of proposed rulemaking (NPRM) published April 5, 1988, requesting comment on a NHTSA proposal to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 114, by establishing requirements to decrease the prospect of inadvertent gear shifting or inadvertent steering column lock up. The petitioner requested that certain information underlying the proposal be placed in the public docket and that closing date be extended to provide an opportunity to review that information. Petitioner asserted that without adequate time to review this information, it could not conduct a comprehensive assessment to develop a useful response to the NPRM. To provide this opportunity, the agency is extending the comment period from May 20 to July 5, 1988.

DATE: The comment period for Docket No. 1–21, Notice 8 now closes July 5, 1988.

ADDRESS: Comments should refer to Docket No. 1–21, Notice 8, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. The telephone number is (202) 366–4949. The Docket Section is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, NRM–11, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Rutland's telephone number is (202) 366–5267.

SUPPLEMENTARY INFORMATION: On April 5, 1988, NHTSA published an NPRM proposing to amend FMVSS No. 114 by requiring a gear shift lever lock on automatic transmission vehicles, and a locking sequence that NHTSA tentatively believes would make inadvertent locking of a steering column less likely in both automatic and manual transmission vehicles. NHTSA sought comment on whether inadvertent gear shift poses a significant safety problem for vehicles equipped with a manual transmission, and welcomed further information on the incidence of inadvertent gear shift in automatic transmission vehicles. Comment was also sought on the incidence of inadvertent steering column lock-up as a safety problem, and on the likely costs of these proposed revisions.

On April 26, 1988, NHTSA received a petition for an extension of the comment period submitted on behalf of the Motor Vehicle Manufacturers Association (MVMA). In its petition, MVMA stated that its efforts to submit comments were hampered by the unavailability in the public docket of information that NHTSA had identified in the proposal as underlying its proposed changes.

MVMA cited the information, and asserted that as of April 20, 1988, the information was not available in the public docket. MVMA therefore asked that the agency extend the comment period to 45 days after all background materials used to prepare the April 5, 1988 NPRM were placed in the docket.

NHTSA has considered the request for extension of the comment period and finds that comments from MVMA and other interested parties on the information requested by MVMA would be useful in the agency's evaluation of the proposed rule. That information will soon be placed in the public docket.

For the proceeding reasons, the agency concludes that there is good cause for extending the comment period, and further concludes that such extension is in the public interest. Therefore, NHTSA extends the comment period, originally due to expire May 20, 1988, to July 5, 1988.

Issued Date: May 12, 1988.

Barry Felrice,
Associate Administrator for Rulemaking.

[ER Doc. 88–11077 Filed 5–17–88; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 80477–8077]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed notice and request for public comments.

SUMMARY: Regulations on subsistence taking of North Pacific fur seals require NMFS to publish, in the Federal Register by April of each year, a summary of the previous year's fur seal harvest and a discussion of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands. This notice summarizes the 1987 harvest and estimates the number of seals which may be needed in 1988. Following a 30-day public comment period, a final notice of the expected harvest levels will be published before the start of the harvest season on June 30.

DATES: Comments must be received on or before June 16, 1988.

ADDRESS: Comments may be mailed to Nancy Foster, Ph.D., Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, 907–586–7233 or Georgia Cranmore, 202–673–5351.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of North Pacific (northern) fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR Part 215 Subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes. As required by 50 CFR 215.32(b), this notice summarizes the 1987 harvest and estimates the number of seals that may be needed for subsistence in 1988. The traditional subsistence use of fur seals on the Pribilof Islands is discussed in Veltre and Veltre (1981).

Summary of the 1987 Harvest

(1) Duration of the Harvest and Number of Seals Taken

(a) *St. Paul Island.* Although the fur seal harvest season opened on June 30, fur seals were first taken on St. Paul Island on Tuesday, July 14. Harvesting was carried out each subsequent weekday through Friday, August 7. As required by 50 CFR 215.32(e)(1)(iii), the harvest was terminated on August 7, when the lower end of the estimated subsistence level of 1600 seals was reached. On August 7, the Tanadgusix Corporation (TDX) requested an extension of the subsistence harvest season. Such an extension is permissible under the terms of 50 CFR 215.32(f)(2) if certain conditions are met. On August 11, TDX informed NMFS representatives on St. Paul that a survey of Island residents had indicated that 211 more seals were needed for subsistence.

After obtaining the comments of interested parties, NMFS determined that the subsistence needs of the residents of St. Paul Island had not been met and that the harvest could continue until the additional 211 seals were taken, or until 5 females were accidentally taken. As required by 50 CFR 215.32(f)(2)(iii), the harvest was terminated when the number of female seals harvested reached 5. The total number of seals killed during the 20 days of harvesting in 1987 on St. Paul Island was 1710. Six of the animals were female, the remaining animals were subadult males.

(b) *St. George Island.* Fur seal harvesting began on St. George Island on Saturday, July 11. As required by 50 CFR 215.32(f)(1), the harvest on St. George Island was terminated on August 8. Only two days of harvesting occurred during the July 11-August 8 period. A total of 92 seals were taken on the two harvest days. Residents of St. George Island did not request an extension of their harvest season.

(2) Use of Seal Meat and Other Parts

NMFS considers the removal and consumption of the following seal parts to constitute substantial use which would be consistent with the requirement in 50 CFR 215.31(b) that the taking of seals not be accomplished in a wasteful manner: All hearts, livers, flippers, breasts, shoulders, and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections (also see 51 FR 24831–24832, July 9, 1987). Prior to the 1985 harvest it was determined that the mean weights of hearts, livers, flippers, and shoulders (including much of the breast) constituted approximately 30.2 percent of the mean total weight of the animals (Zimmerman and Letcher, 1986). This has since been used as a minimum value to estimate whether substantial use is being made of carcasses each day.

In 1987, 101 animals were weighed before and after the minimum butchering had been done (i.e., only the heart, liver, flipper, shoulder, and breast had been taken from each animal for human consumption). A mean 29.1 percent of each animal was dressed out under these circumstances. An additional 83 seals were weighed before and after virtually all consumable parts of the animals had been dressed out, i.e., everything was taken except for the pelt, blubber, skull, neck, and body fluids. A mean 53.3 percent of each animal was used under this circumstance. Thus, the mean range between minimally butchered and maximally butchered seals is estimated to lie between 29.1 and 53.3 percent of the initial carcass weight.

(a) *St. Paul Island.* During 1985–1987, NMFS collected data on the percent-use of seal carcasses and the weight of seal meat taken for human consumption on St. Paul Island. During 1986 and 1987, these values were estimated each day by weighing approximately 10 percent of the carcasses before and after

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butchering. (For a discussion of these methods, see Zimmerman and Letcher (1986) and Zimmerman and Melovidov (1987).) Approximately 41 percent of each seal carcass was used for subsistence purposes on St. Paul Island in 1987. This was lower than the approximately 44 percent-use estimated in 1985 and the 47 percent-use in 1986. However, based on the measurements described above, a mean use of 41 percent of each seal substantially exceeds the minimum level of butchering required.

As in 1986, the number of animals taken each day was based on the number of orders placed with the Conservation Officer for the Tribal Government of St. Paul. Daily harvests were carried out by experienced sealers employed by TDX. Butchering was done by either the individuals who had requested the seals, or by the harvest crew for later delivery to the fish processing plant or to the home of the requester.

The mean weight of unbutchered animals (25.4 kg; 55.8 lb) was significantly greater in 1987 (Fisher's least significant difference test; $p < .01$) than in 1986 (23.4 kg; 51.7 lb), and significantly less than in 1985 (28.5 kg; 62.8 lb). As indicated in Zimmerman and Melovidov (1987), the decrease between 1985 and 1986 mean weights appeared to result from the fact that smaller and younger seals were taken for food in 1986. Although the same bias for smaller seals was operative in 1987, the increase in mean weight probably reflects an increasing age of subadult males on the hauling grounds. Such a shift in age structure would be expected to occur in response to the increased survival of each year class since the termination of the commercial harvest in 1985.

The estimated mean weight of meat taken per seal in 1987 was approximately 10.4 kg (22.9 lb) per seal. This is somewhat less than the 12.5 kg per seal taken in 1985, and the 11.1 kg taken per seal in 1986. As in 1986, there was no community storage of meat in 1987. Many of the persons who placed large orders for seals (15–40 animals) indicated that they were planning to freeze or salt much of the meat for later consumption. To facilitate the packaging and freezing of subsistence meat, the Aleut Community of St. Paul allowed individuals to use the fish-processing plant and freezer to process and store seal meat.

The estimated total amount of meat taken for human consumption on St. Paul in 1987 was approximately 17,700 kg (39,000 lb). Assuming that the native population of St. Paul Island is 483 (1980 Census data), the 17,700 kg of meat taken for human consumption would allow a theoretical mean daily consumption of 0.1 kg (about 3.5 oz) per person for one year. This is slightly in excess of the theoretical mean daily consumption which could have resulted from the 1986 harvest (0.08 kg; about 3.0 oz).

Unlike 1986, when most skins were discarded, the first 1,600 pelts taken in 1987 were preserved using traditional methods. These skins are presently being stored on St. Paul Island. There was no observed taking of bacula in 1987 and random checks at the dump indicated that no unobserved takings of bacula had occurred.

(b) *St. George Island.* Although NMFS observers were present at each of the harvests held on St. George Island, the small number of animals taken did not provide an opportunity for the collection of sufficient data comparable to that collected on St. Paul Island. Visual observation of the two harvests on St. George indicated that substantial use was being made of the animals.

(3) Estimated Number of Seals Needed For Subsistence in 1988

NMFS is required by its regulations to include in this notice a discussion of the anticipated harvest levels for 1988 that will satisfy the subsistence needs of the residents of the Pribilof Islands. Because employment levels continue to fluctuate on each Island, and economic conditions remain unpredictable, the Pribilovians' needs for seal meat may vary from year to year. For instance, in 1987 there was relatively high unemployment on St. Paul Island and relatively low unemployment on St. George Island. In 1988, the opposite may be true. Breakwater building, which had employed much of the available work force on St. George Island in 1987 is now essentially complete. On St. Paul Island, where no breakwater construction occurred in 1987, breakwater construction should be a major source of employment in 1988. Because of these changing economic conditions, and because purely subsistence harvests have only been conducted for three years under evolving conditions, it may not be possible to provide a specific estimate of the subsistence needs for each Island. Therefore, as in previous years, the NMFS is proposing a projected range of expected harvest levels.

During the 1987 harvest, 1,600 seals were harvested on St. Paul Island during the June 30—August 8 season. A survey of Island residents conducted shortly thereafter indicated that an additional 211 seals would be needed to meet the remaining subsistence needs. Since the 1987 harvest was carried out on a personal-demand basis, and since the August survey was carried out by Island residents without any known bias, it must be assumed that the number of seals needed by residents of St. Paul Island in 1987 was 1,811. However, as described above, until harbor construction on St. Paul Island has been completed, and the economy stabilized, it may be difficult to estimate each year's subsistence needs. Based on the 1986 and 1987 harvests, the lower bound of the range of projected subsistence needs may be set at 1,600 seals. This is in excess of the requested number of seals in 1986 (1,587 seals), but less than the number requested in 1987 (1,811). Once the lower bound is reached, the harvest must be suspended for up to 48 hours, under 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of St. Paul Island residents have been met. The upper end of the range for 1988 is set at 2,500 seals which is somewhat less than the level allowed in 1987, but still provides room for a reasonable increase over 1986 and 1987 harvest levels should unforeseen circumstances arise.

The number of seals harvested on St. George Island in 1986 and 1987 may under represent the true subsistence needs of Island residents for seal meat. Because the labor force was fully utilized during these years, there was reduced incentive for harvesting seals. What harvesting did occur in 1987 was carried out on Saturdays because the experienced sealers were too fatigued from harbor construction or commercial fishing to harvest seals during weekdays. Although the breakwater on St. George Island is esentially complete, there will be a lag of some years before the harbor can be fully completed and utilized. Thus, unemployment may be higher on St. George Island in 1988, and there may be an increased incentive to harvest seals. It is reasonable to assume that harvest levels on St. George Island in 1988 may, on a per-capita basis, more closely parallel those on St. Paul Island. Since the population of St. George Island is approximately one-third that of St. Paul Island, the lower end of the projected range for that island is proposed as 600 seals. The upper end of the range is accordingly proposed as 833 seals.

References

Veltre, D.W. and M.J. Veltre. 1981. A preliminary baseline study of subsistence resource utilization in the Pribilof Islands. Subsistence Division, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK. 99802. Technical Paper 57, 216p.

Zimmerman, S.T. and J.P. Letcher. 1986. The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on St. Paul Island, Alaska. Marine Fisheries Review 48(1):10–14.

Zimmerman, S.T. and M.D. Melovidov. In Press. The 1986 subsistence harvest of northern fur seals, *Callorhinus ursinus*, on St. Paul Island, Alaska. Marine Fisheries Review.

Dated: May 12, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-11130 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 222

[Docket No. 80355-8055]

Listing Endangered and Threatened Species; Action on a Petition To List the Chinese River Dolphin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: In response to a petition to add the Chinese river dolphin (*Lipotes vexillifer*) to the U.S. List of Endangered and Threatened Wildlife, NMFS conducted a status review to determine whether the action is warranted. NMFS believes that the best available scientific and commercial data indicated that the population of the Chinese river dolphin is endangered and should be listed on the U.S. List of Endangered and Threatened Species.

DATE: Comments on the proposed rule should be received by July 18, 1988.

ADDRESS: Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Resources, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673–5349).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act (ESA) and 50 CFR Part 424 contain provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add or remove a species from the List of Endangered and Threatened Wildlife.

On December 3, 1986, NMFS received a petition from the Center for Environmental Education to list the Chinese river dolphin (*Lipotes vexillifer*) as an endangered species. According to the petition, this river dolphin is found primarily in the lower and middle sections of the Chang Jiang (Yangzte) River in the eastern, central region of mainland China.

On February 14, 1987, the Assistant Administrator for Fisheries determined that the petition presented substantial scientific information and, in the **Federal Register**, solicited information and comments concerning the status of the Chinese river dolphin. Comments were received from the U.S. Fish and Wildlife Service and Chen Peixun of the Institute of Hydrobiology in the People's Republic of China. Both favored listing the Chinese river dolpin as endangered.

The following status review was conducted by Robert L. Brownell, U.S. Fish and Wildlife Service, and William F. Perrin and Douglas P. DeMaster, NMFS.

Status Review

The Chinese river dolphin is also called baiji and Yangtze river dolphin. In this review, it will be referred to as baiji.

Distribution

a. Present: The baiji is found mainly in the middle and lower reaches of the Yangtze River.

b. Past: From the end of the 19th Century until the 1940's, the range of the baiji extended from the estuary of the Yangtze River to Yichang and even some 30 km upstream near Huanglingmiao just below the Three Gorges Region. As recently as 1955, it was found in the Qiantang River up to Fuyang County and sometimes reached Tonglu County, (Zhou, Qian, and Li, 1977). However, since 1974, these dolphins have been found only in the Yangtze River downstream from Zhicheng. They no longer occur in Dongting (Tungting) Lake, Hunan County, where the type specimen was collected in 1916 (Brownell and Herald, 1972), or the Qiantang River.

Estimated Numbers

The geographic distribution, and hence the population size, has declined drastically since the species was originally described. Work on estimation of the population size did not begin until 1979. Between 1979 and 1981, it was estimated that less than 400 occurred in the middle and lower reaches of the Yangtze River (Zhou, Pilleri and Li, 1980; Zhou, Li, Nishiwaki and Kataoka, 1982; Zhou, 1982). The most recent reports on the status of this species were provided by Zhou and Li, in press, and Chen and Hua, in press. The total world population currently consists of an estimated 300 individuals (Chen and Hua, in press), of which about 100 occur in the lower reaches of the river (Zhou, and Li, in press). The population is fragmented in small groups dispersed along approximately 1600 km of river habitat. Census results suggest that the population is still declining. If the current rate of decline is not mitigated, it is unlikely that the Yangtze river dolphin population will persist for more than 20 to 50 years (See Goodman 1984, 1986 and Berkson et al. (1985). This figure is based on the population continuing to decline at 5 percent per year and a level of incidental take of 10 percent per year. An estimate of how long Chinese river dolphins are expected to survive as a species (i.e., persistence time) was found to be quite sensitive to the level of incidental take. Additional research on the expected persistence time of the Yangtze river dolphin is underway by Chinese scientists (Perrin and Brownell, in press).

Present Legal Status

a. International: The International Union for Conservation of Nature and Natural Resources (I.U.C.N.) originally listed the baiji as "indeterminate" due to lack of data (I.U.C.N. Red Data Book, 1976), but now considers it "endangered" (1986 I.U.C.N. Red List of Threatened Animals). The baiji is also listed on Appendix 1 of the Convention on International Trade of Endangered Species of Wild Flora and Fauna (CITES).

b. National: The baiji is a "Protected Animal on the First Order" in the People's Republic and China, and its protection has a high priority; it is illegal to deliberately catch these animals under the Regulations Regarding the Propagation and Protection of Fishery Resources and the State Council Decree Concerning the Strict Protection of the Rare Wild Animals (Zhou, 1986). In the areas where the baiji is the most common, Hubei and Anhui Provinces, a council has been set up to educate the public about the baiji.

Listing Factors

1. The present or threatened destruction, modification, or curtailment of its habitat or range: The banks of the Yangtze River have been extensively modified to prevent floods. Most of the lakes along the river have been isolated by sluice gates to retain the water in the lakes during the dry season for irrigation and fish culture. Because the lakes are important nursery areas for many fish species, this isolation may have had adverse effects on the baiji by changing

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fish biomass and species composition in the river. A hydroelectric dam was completed in 1983 below the Three Gorges and another is planned in the Three Gorges region. To date, research has not detected adverse effects of the existing dam on most fish populations. A study of the effects of the proposed new dam on the baiji's habitat has been carried out, but the report is not yet available in an English translation.

Some fish stocks in the river appear to be greatly reduced due to the loss of nursery areas for migratory species, overfishing, and pollution (Zhou and Li, in press). Thus reduction in prey availability may have played an important role in the decline of the baiji.

2. Overutilization for commercial, recreational, scientific or educational purposes: The baiji is not directly exploited.

3. Disease or predation: Nothing is known about these factors. However, based on examination of those dead dolphins recovered, neither appears to be a major problem.

4. The inadequacy of existing regulatory mechanisms: Information is not available about this factor.

5. Other natural or man-made factors: Human use of the Yangtze River is extensive. Over the last 35 years, increasing industrial activity, boat traffic, and exploitation of fish resources have combined to degrade the baiji's habitat (Zhou, 1986). The baiji suffers from various forms or human-induced mortality, the most serious of which seems to be accidental entanglement in bottom longlines, called "rolling hooks", set to snag bottom-feeding fish such as sturgeon. Baiji are also taken incidentally in fish traps and gillnets. Fishing gear may account for almost half the known baiji mortality (Lin, Chen, and Hua, 1985; Zhou and Li, in press).

Some dolphins are killed by boat propellers; this problem appears to be most serious in the lower reaches of the river where boat traffic is heaviest and expected to double in the next ten years (Zhou and Li, in press).

Explosions, usually associated with construction projects but occasionally with illegal fishing, account for 15–20 percent of known baiji deaths (Zhou and Li, in press; Chen and Hua, in press). Six dolphins were killed in one constuction blast. Conclusion

We believe that the best available scientific and commercial data indicate that the population(s) of the Chinese river dolphin is endangered and should be listed on the U.S. List of Endangered and Threatened Species.

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Zhou Kaiya. 1986. A project to translocate the baiji, *Lipotes vexillifer,* from the mainstream of the Yangtze River to Tongling Baiji semi-nature Reserve. Aquatic Mammals 12:21–34.

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Zhou Kaiya, Qian Weijuan and Li Yuemi. 1977. Studies on the distribution of baiji, *Lipotas vexillifer* Miller. Acta Zoologica Sinica 23:72–79.

Recommended critical habitat

In the final rule regarding listing of species (50 CFR Part 424.12(H), critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction.

Classification

The 1982 Amendments to the ESA (Pub. L. 97–304), in Section 4(b)(1)(A), restrict the information which may be considered when assessing species for listing. Based upon this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413–23; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, endangered and threatened wildlife, exports, fish, import, marine mammals, reporting and recordkeeping requirements, transportation.

Dated May 12, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

For the reasons described in the preamble, Part 222 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for Part 222 continues to read as follows:

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. Section 222.23(a) of Subpart C is amended by adding the phrase "Chinese river dolphin (*Lipotes vexillfier)*" immediately after the phrase "cochito *(Phocoena sinus)*" in the second sentence.

[FR Doc. 88–11122 Filed 5–7–88; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 53, No. 96
Wednesday, May 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 13, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Food and Nutrition Service*
  Multi Food Requisition.
  FNS 53.
  On occasion.
  State or local governments; 1,080 responses; 3,240 hours; not applicable under 3504(h).
  Robert Beard (703) 756–3660.
- *Food and Nutrition Service*
  Report of Coupon Issuance and Commodity Distribution for Disaster Relief.
  FNS 292.
  Recordkeeping; On occasion.
  State or local governments; 100 responses; 97 hours; not applicable under 3504(h).
  Alan Rich (703) 756–3100.
- *Food and Nutrition Service*
  Participation by Charitable Institutions.
  FNS 708–1.
  Semi-Annually.
  State or local governments; 57 responses; 171 hours; not applicable under 3504(h).
  Robert Beard (703) 756–3660.
- *Food and Nutrition Service*
  Food Requisition.
  FNS 52.
  On occasion.
  State or local governments; 8,736 responses; 17,472 hours; not applicable under 3504(h).
  Robert Beard (703) 756–3600.

Reinstatement

- *Food and Nutrition Service*
  Food Stamp Program Regulations, Part 275—Quality Control (Reporting and Recordkeeping).
  Recordkeeping; On occasion.
  State or local governments; 53 responses; 266 hours; not applicable under 3504(h).
  Joseph H. Pinto (703) 756–3471.

Revision

- *Food and Nutrition Service*
  Report of School Program Operations.
  FNS 10.
  Monthly; Annually.
  State or local governments; 2,976 responses; 110,112 hours; not applicable under 3504(h).
  Alan Rich (703) 756–3100.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–11159 Filed 5–17–88; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 88–012N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Technical Services, Food Safety and Inspection Services (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy

memoranda issued from October 1, 1987, through April 1, 1988.

Persons interested in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Managment Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
005A	Labeling of Certain Cooked Sausage Products Containing Both Livestock and Poultry Ingredients, November 25, 1987.	What names should be used to identify nonstandardized cooked sausages of the frank, bologna, vienna, and knockwurst variety which contain both livestock and poultry ingredients?	Superdedes Policy Memo 005. 9 CFR 319.180; Policy Memo 067A.
070B	Fat and Lean Claims, November 18, 1987	What are the guidelines for the review and approval of labeling claims relating to the fat and lean content of meat and poultry products?.	Replaces Policy Memo 070A.
085B	Nutrition Labeling Verification Procedures, January 26, 1988.	What is required to assure the continued accuracy of nutrient claims, including calorie, protein, lean, fat, cholesterol, salt, and sodium content on labeling?.	Replaces Policy Memo 085A. Policy Memo 047A.
108A	Water-Misted and Ice-Glazed Meat and Poultry Products, December 4, 1987.	What is the appropriate labeling for meat and poultry products that are protected with a thin layer of water or ice?	Replaces Policy Memo 108.
109	Labeling Prominence Guidelines for Cured, Cooked Products with Added Substances That Do Not Return to Green Weight, October 8, 1987.	What guidelines are needed to assure the product name and product name qualifiers for cured cooked products with added substances, that weigh more than the weight of the fresh uncured article (the green weight), are prominently disclosed?	9 CFR 319.100, 319.101, 319.102, 319.104; Policy Memos 057A, 084; and 087A; 9 CFR 317.2(b).
110	Perishable, Uncured Meat and Poultry Products in Hermetically Sealed Containers, December 8, 1987.	What additional requirements are necessary to obtain approval and use of final labels for certain perishable uncured meat and poultry products packaged in hermetically sealed (airtight or impervious) containers bearing a "Keep Refrigerated" or similar statement?	9 CFR 318 and 381, subparts G and X.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by a future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on May 13, 1988.

Ashland L. Clemens,

Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service.

[FR Doc. 88-11088 Filed 5-17-88; 8:45 am]

BILLING CODE 3410-DM-M

Rural Electrification Administration

Intent to Conduct Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct a public scoping meeting and prepare an environmental assessment.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct a public scoping meeting and prepare an Environmental Assessment (EA) in connection with possible REA approvals relating to a project proposed by Southern Maryland Electric Cooperative, Inc. (SMECO), of Hughesville, Maryland. The project consists of the construction and operation of a 70 megawatt (MW) combustion turbine generating unit. SMECO's preferred location is the Chalk Point Generating Station site of Potomac Electric Power Company. The site is located near the Patuxent River in southeastern Prince Georges County, Maryland.

DATE: The REA will conduct the public scoping meeting on June 22, 1988 at the SMECO Headquarters Meeting Room in Hughesville, Maryland, at 7:30 p.m.

ADDRESS: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meeting in order for comments to be part of the formal record. Comments should be sent to Mr. James A. Ruspi, Chief, Distribution and Transmission Engineering Branch, Northeast Area—Electric, Rural Electrification Administration, Room 0250, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ruspi, Notheast Area—Electric, above address, telephone (202) 382-1432 or FTS 382-1432, or Mr. Richard J. McCoy, Southern Maryland Electric Cooperative, Inc., Route 231, Hughesville, Maryland, 20637-0501, telephone (301) 274-3111.

SUPPLEMENTARY INFORMATION: REA, in order to meet requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 150) and REA Environmental Policies and Procedures (7 CFR Part 1794), intends to conduct a public scoping meeting and prepare an Environmental Assessment. This notice is in connection with possible REA approvals relating to a proposal by SMECO for the construction and operation of a 70 MW combustion turbine generating unit in Prince Georges County, Maryland.

The proposed project will enable SMECO to provide a portion of its consumers' electrical power requirements.

Alternatives to be considered by REA include, among other options: (1) No action; (2) conservation and load management; (3) joint participation in the generation project of another utility; (4) alternative methods of generation; and (5) alternative sites.

The public scoping meeting to be conducted by REA, will be held to solicit public input and comments including but not limited to, the nature of the proposed projects, its possible location, alternatives, and any significant issues and environmental concerns that should be addressed in the EA. Requests for additional information concerning the meeting may be directed to either REA or SMECO at the addresses shown above. Copies of the Alternatives Analysis and Site Selection Study are available for public review at the offices of REA, SMECO and at the public libraries in La Plata, Oxon Hill, Prince Frederick and Upper Marlboro.

Any REA approval will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA.

This program is listed in the Catalog of Federal Domestic Assistance under 10.8509—Rural Electrification Loans and Loan Guarantees. For reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: May 12, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88-11092 Filed 5-17-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Quarterly Apparel Survey.
Form Number: Agency—MQ-23A; OMB-0607-0560.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 2,000 respondents; 4,000 reporting hours.
Needs and Uses: In October 1986, Congress amended Title 13 to require Census to collect quarterly data on domestic production of apparel and textiles. These data are needed to monitor the effect of imports on the domestic apparel industry.
Affected Public: Businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395-7340.

Agency: Bureau of the Census.
Title: Broadwoven Fabrics (Grey).
Form Number: Agency—MQ-22T; OMB-0607-0558.
Type of Request: New collection.
Burden: 341 respondents; 1,724 reporting hours.
Needs and Uses: The purpose of this survey is to monitor trade agreements with foreign countries. Census is requesting that this survey be done on a mandatory basis because the current voluntary survey does not produce data in a timely manner.
Affected Public: Businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 12, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-11071 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trades Zones Board

[Order No. 362]

Disapproval of Application of the Rhode Island Port Authority for Subzone Status for Pawtucket Fasteners, Inc., Pawtucket, RI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

WHEREAS, the Rhode Island Port Authority and Economic Development Corporation, Grantee of Foreign-Trade Zone No. 105, has made applications (filed October 23, 1985, FTZ Doc. 40-85, 50 FR 46678) to the Board for authority to establish a special-purpose subzone at the stainless steel fastener manufacturing plant of Pawtucket Fasteners, Inc., In Pawtucket, Rhode Island;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

WHEREAS, the Board, having reviewed the proposal in the light of the Government's steel policy and the special import relief program on certain stainless steel mill products, has determined that approval of the proposal would not be in the public interest because it would tend to encourage imports of stainless steel rod and bar and result in a net negative economic impact;

NOW, THEREFORE, the Board hereby orders:

That the application filed October 23, 1985 (FTZ Doc. 40-85) is disapproved.

Signed at Washington, DC, this 4th day of May, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 88-11030 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 23-88]

Proposed Foreign-Trade Zone for Victoria and Calhoun Counties, Texas, With Two Subzones in Victoria County for CMC Steel Fabricators, Inc.; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Calhoun-Victoria Foreign-Trade Zone, Inc. (CVFTZ), a non-profit Texas Corporation, requesting authority to establish a general-purpose foreign-trade zone in Calhoun and Victoria Counties, Texas, and two special-purpose subzones in Victoria County, all sites of which would be within or adjacent to the Point Comfort Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 27, 1988. CVFTZ is authorized to make the proposal under House Bill 83, 69th Texas Legislature, Third Call Session, 1986, signed on October 15, 1986.

The proposal calls for a general-purpose zone consisting of six sites totalling 1,235 acres in Calhoun and Victoria Counties. Sites 1, 2, and 3 are located in Calhoun County; Sites 4, 5, and 6 are in Victoria County. Site 1 (97 acres) is at the Calhoun County Navigation District's marine terminal, located at Point Comfort two miles south of U.S. Highway 35 on FM 1395. The site contains a public dock and 25,000 square feet of warehouse space and is expected to be the first to be activated for Calhoun County. Site 2 (494 acres) is adjacent to Site 1 on its north. It is owned by the Aluminum Company of America (Alcoa) and contains a bauxite processing facility, part of which is currently active. Site 3 (120 acres) is the Westside Navigation District's Long Mott Turning Basin property, located between State Highway 185 and the Victoria Barge

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Canal, near the Union Carbide dock. The site is about 12 miles west of Sites 1 and 2. The Calhoun County Navigation District will operate all three sites, using Sites 2 and 3 for longer-term development (industrial/commercial activity) for large industrial users. Site 4 (135 acres), owned by Victoria County, is located at the Victoria Regional Airport on U.S. Highway 59, and development as an industrial park is planned. Site 5 (29 acres), known as Skytop Brewster, is located at Skytop and Moller Roads in eastern Victoria, about 1 mile from Site 4. The privately owned site has over 255,000 square feet of manufacturing, office and warehouse space that is available for immediate activation. The site was formerly used for the assembly of oil rigs and can be utilized for both warehousing and manufacturing operations. This site is expected to be the focus of the County's initial zone activity. Site 6 (359 acres) is the Victoria Navigation District's Pickering Turning Basin property at the north end of the Victoria Barge Canal. It is located about 12 miles southwest of Sites 4 and 5, and industrial/commercial development is anticipated. The latter three sites will be operated by the Victoria Economic Development Corporation.

No manufacturing approvals are being sought at this time for the general-purpose zone sites. Such requests would be made to the Board on a case-by-case basis.

The two proposed subzones are for the railroad freight car repair and rebuilding facilities of Safety Railway Service and Safety Steel Service, operating divisions of CMC Steel Fabricators, Inc., a Texas corporation. The Safety Railway facility (176 acres) is located at Aloe Field at the corner of Warehouse Road and Highway 59, four miles west of the City of Victoria, and the Safety Steel plant (7 acres) is located at 201 East Crestwood Street, Victoria. The plants use some parts and steel material from foreign sources for their operations. Safety Railway expects to use imported parts, such as wheels, axles, sideframes and bolsters, dutiable at 5.5 percent, in the repair of railroad freight cars, which are dutiable at 18 percent. Safety Steel imports steel, dutiable at 6 percent, for the sizing, cutting, shaping and welding of parts (5.5%) which would then be supplied to Safety Railway for their repair operation. Safety Steel estimates that 15 percent of the steel it presently uses is imported. It expects an increase to 20 percent in the near future. The application indicates that the main purpose for zone procedures is to assist the companies in obtaining contracts for the repair and rebuilding of foreign-owned railroad freight cars for reexport.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Don Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 Sal Felipe Street, Houston, Texas, 77057–3012; and Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77553–1229.

As part of its investigation, the examiners committee will hold a public hearing on June 16, 1988, beginning at 9 a.m., at the Calhoun County Courthouse, 211 South Ann Street, Port Lavaca, Texas 79979.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by June 13, 1988. Instead of an oral presentation, written statements (triplicate) may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 18, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

County Judge's Office, Calhoun County, 2nd Floor, Calhoun County Courhouse, 11 South Ann Street, Port Lavaca, Texas 79979.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 10, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–11029 Filed 5–17–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–427–009]

Industrial Nitrocellulose From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner and Societe Nationale des Poudres et Explosifs ("SNPE"), the Department of Commerce ("the Department") has conducted an administrative review of the antidumping order on industrial nitrocellulose from France. The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1986 through July 31, 1987. The review indicates the existence of dumping margins for the firm during the period.

The Department tentatively determined to revoke the order on industrial nitrocellulose from France in the preliminary results of the last administrative review published in the **Federal Register** (53 FR 7773) on March 10, 1988. Since we found margins in the current review, the Department has preliminarily determined not to revoke the antidumping duty order. As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 18, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the Department published in the **Federal Register** (53 FR 15282) the final results of its last administrative review of the antidumping order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). SNPE and the petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on September 21, 1987 (52 FR 35466). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. These imports are currently classifiable under item 445.2500 of the *Tariff Schedules of the United States Annotated* and under item numbers 3012.20.00 and 3912.90.00 of the Harmonized System.

The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1986 through July 31, 1987.

United States Price

In calculating the United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the c.i.f., packed price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, ocean freight, marine insurance, U.S. inland freight, and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, inland insurance, brokerage and handling, loyalty discounts, rebates, discounts, quantity adjustments, and differences in the physical characteristics of the merchandise, credit, and packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of 4.39 percent exists for Societe National des Poudres et Explosifs for the period 8/1/86 through 7/31/87.

The Department tentatively determined to revoke the order on industrial nitrocellulose from France in the preliminary results of the last administrative review published in the **Federal Register** (53 FR 7773, March 10, 1988). Since we found margins in the current review, the Department has preliminarily determined not to revoke the antidumping duty order.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in these comments, may be filed not later than 32 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margin shall be required for SNPE. For any further entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1987 and who is unrelated to the reviewed firm, a cash deposit of 4.39 percent shall be required. These cash deposit requirements are effective for all shipments of French industrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: May 11, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–11150 Filed 5–17–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner and a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube products from Turkey. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period January 3, 1986 through April 30, 1987. The review indiciates the existence of dumping margins for these firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Because one firm did not respond to the Department's questionnaire, we used the best information available for that firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department of Commerce ("The Department") published in the **Federal Register** (51 FR 17784) the antidumping duty order on certain welded carbon steel pipe and tube products from Turkey. The petitioner and a respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initation of the antidumping duty administrative review on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The Unites States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers

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and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consulation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs officer to consult the schedule.

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, currently classificable under TSUSA items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610,3258, and 610.4925 and HS item numbers 7306.30.50 and 7306.30.10. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably as A-120, A-53, or A-135.

The review covers three manufacturers and/or exporters of Turkish welded carbon steel pipe and tube products to the United States and the period January 3, 1986 through April 30, 1987. One firm, Yucel Boru, did not respond to our questionnaire; therefore, for this firm we used the best information available, which is the highest rate for responding firms with shipments during the period.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. or c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, foreign inland freight, rebates, countervailing duties, U.S. import duties, and foreign import duty drawback. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to related and unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, discounts, and differences in credit expenses, physical characteristics of the merchandise, and packing. No other adjustments were claimed or allowed. For Erkboru we investigated and found that there were home market sales below the cost of production. Since the remaining sales above cost were insufficient to constitute a viable market, we used constructed value, as defined in section 773(e) of the Tariff Act. Constructed value consisted of the sum of materials and fabrication costs, general expenses, profit, and packing. For general expenses we used actual costs because they exceeded the ten percent statutory minimum. For profit we used the statutory eight percent of materials, fabrication, and general expenses because the actual profit was less than the statutory eight percent.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer	Time period	Margin (percent)
Borusan	1/3/86-4/30/87	0.03
Erkboru	1/3/86-4/30/87	31.13
Yucel Boru	1/3/86-4/30/87	31.13

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping dutics on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Turkish welded carbon steel pipe and tube products. Since the margin for Borusan is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for these firms (51 FR 17784, May 15, 1986). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 31.13 percent shall be required. These deposit requirements are effective for all shipments of Turkish welded carbon steel pipe and tube products entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and 19 CFR 353.53a.

Dated: May 11, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-11149 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-DS-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held June 9, 1988, 9:30 a.m., Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implemention of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda:

Open Session

1. Opening Remarks by the Chairman.
2. Introduction of Members & Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Subcomittee Report on Pilot Study of the MITAC proposal on Technical Data.
6. Status Report on Review Initiated at the Public Forum on Technical Data.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Geneal Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Ruth D. Fitts, 202-377-2583.

Date: May 11, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-11070 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications; New Brunswick, NJ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$165,000* for the project performance of *October 1, 1988* to *September 30, 1989*. The MBDC will operate in the *New Brunswick, New Jersey* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of informaion and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 27, 1988.

Applications must be postmarked on or before June 27, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director New York Regional Office at (212) 264-3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address. A pre-application Conference to assist all interested applicants will be held on June 8, 1988, at 10:00 a.m. in New Brunswick, NJ, 390 George St., 2nd Floor. (201) 745-5050 (at the office of New Brunswick Tomorrow).

William R. Fuller,

Deputy Regional Director, New York Regional Office.

May 11, 1988.

[FR Doc. 88-11068 Filed 5-17-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

National Fish and Seafood Promotional Council

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Time and Date: The meeting will convene at 8:00 a.m., June 1, 1988, and adjourn approximately 4:30 p.m., June 2, 1988.

Place: Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601.

Status: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual plan and budget to the Secretary of Commerce for his approval that describes the marketing activities the

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NFSPC intends to carry out. Funding for the NFSPC activities are provided for through Congressional appropriations and private donations.

Matters to be Considered

Portion Opened to the Public: June 1, 1988

8:00 am—8:15 am—Council Chairman's opening remarks

1:00 pm—3:00 pm—Discussion of inland/Great Lakes fisheries, approval of minutes from last meeting, status of qualitative, quantitative and omnibus market research studies.

June 2, 1988

10:00 am—4:30 pm—Proposal to fund news media person, discussion of marketing plan, status of advertising agency procurement, seafood cookoff, pending issues, and Council meeting schedule.

Portion Closed to the Public: June 1, 1988

8:15 am—12:00 noon—Status of Executive Director selection process; interview of finalists.

June 2, 1988

8:00 am—10:00 am—Vote/discussion on selection of an Executive Director

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Coordinator, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., Room 618, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: May 13, 1988.

Carmen J. Blondin,

Director, Office of Trade and Industry Services.

[FR Doc. 88–11151 Filed 5–17–88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Cetus Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cetus Corporation, having a place of business in Emeryville, CA., an exclusive license in the United States to practice the invention entitled "Method of Controlling Graft Versus Host Reaction", U.S. Patent Application No. 6–792,836 (U.S. Patent No. 4,670,567). The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–11107 Filed 5–17–88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Issuance of a New Exempt Certification Stamp for Certain Cotton, Wool and Man-Made Fiber Textile Products Exported From Peru

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new exempt certification stamp.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION: The Governments of the United States and Peru have agreed to amend the exmept certification requirements to provide for the use of a new exempt certification stamp for shipments of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported on or after June 1, 1988.

A facsimile of the new exempt certification stamp has been furnished to the Commissioner of Customs. A copy of the facsimile is on file at the Office of Textiles and Apparel, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room H3100, Washington, DC 20230.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47742, dated December 11, 1987). Also see 51 FR 4409 published on February 4, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 30, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru for which the Government of Peru has not issued an appropriate export visa or exempt certification.

Enclosed is a facsimile of a new exempt certification stamp, allowing more space to describe exempted articles. This stamp replaces the one currently being used by the Government of Peru.

Effective on June 1, 1988, you are directed to permit entry of shipments of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported on or after June 1, 1988 for which the Government of Peru has issued the new exempt certification stamp.

Shipments covered by the old certification stamp (exported prior to June 1, 1988) will not be denied entry.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11146 Filed 5–17–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 19, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the current limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 361 is being increased by the addition of shift. The limit for Category 317, for the period July 1, 1987 through December 31, 1987, is being reduced to account for the shift added to Category 361.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 23882, published in the **Federal Register** on June 25, 1987, and 53 FR 165 and 53 FR 166, published on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 31, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the periods which began, in the case of Category 317, on July 1, 1987 and extended through December 31, 1987; and, in the case of Category 361, on January 1, 1988 and extends through June 30, 1988.

Effective on May 19, 1988, the directives of December 31, 1987 are hereby amended to adjust the restraint limit for the following categories, as provided under the terms of the current agreement between the Governments of the United States and Turkey.

Category	Adjusted 6-mo limit [1] (July 1, 1987–Dec. 31, 1987)
317	6,450,185 square yards.

[1] The limit has not been adjusted to account for any imports exported after June 30, 1987.

Category	Adjusted 6-mo limit [1] (Jan. 1, 1988–June 30, 1988)
361	273,904 numbers.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11147 Filed 5–17–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 19, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 339, 341, 341-Y (sublimit), 348, 348-T (sublimit) and 350 are being increased by the addition of shift. To account for the shift added, the limits are being reduced for Categories 335, 337, 340/640, 340–Y/640–Y (sublimit), 347 and 347–T (sublimit) for the July 1, 1987 through December 31, 1987 period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 23882, published in the **Federal Register** on June 25, 1987 and 53 FR 165 and 53 FR 166 published on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 31, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the periods which began, in the case of Categories 335, 337, 340/640, 340–Y/640–Y, 347 and 347–T, on July 1, 1987 and extended through December 31, 1987; and, in the case of Categories 339, 341, 341–Y, 348, 348–T and 350, on January 1, 1988 and extends through June 30, 1988.

Effective on May 19, 1988, the directives on December 31, 1987 are amended to include the following adjusted limits, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Turkey.

Category	Adjusted 6-mo. limit [1] July 1, 1987–Dec. 31, 1987
335	31,349 dozen.
337	27,723 dozen.
340/640	214,867 dozen of which not more than 107,433 dozen shall be in Categories 340–Y/640–Y.[2]
347	259,341 dozen of which not more than 116,703 dozen shall be in Category 347–T.[3]

[1] The limits have not been adjusted to account for any imports exported after June 30, 1987.

[2] In Categories 340–Y/640–Y, only TSUSA numbers 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547, and 381.9550.

[3] In Category 347–T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3930, 381.3940, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6811, 381.6924, 381.8510, 381.8634, 381.9930, and 791.7418.

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Category	Adjusted 6-mo. limit [1] January 1, 1987–June 30, 1988
339	261,336 dozen.
341	257,868 dozen of which not more than 108,784 dozen shall be in Category 341–Y.[2]
348	330,035 dozen of which not more than 165,003 dozen shall be in Category 348–T.[3]
350	56,606 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 341–Y, only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4708.
[3] In Category 348–T, only TSUSA numbers 378.5440, 384.0015, 384.0283, 384.0285, 384.0287, 384.0288, 384.6958, 384.0608, 384.0612, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0728, 384.0731, 384.0733, 384.0736, 384.0965, 384.2708, 384.2751, 384.3027, 384.3029, 384.3035, 384.3038, 384.3044, 384.3466, 384.4520, 384.4647, 384.4651, 384.4652, 384.4735, 384.4746, 384.4747, 384.4756, 384.4763, 384.4764, 384.4765, 384.4774, 384.5275, 384.5422, 384.5528, 384.7716, 384.7815, 384.9527, and 791.7420.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11145 Filed 5–17–88; 8:45 am]

BILLING CODE 3510–DR–M

Revision in the Unit of Quantity Requirements on Export Visas

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs revising an export visa requirement.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION: Although the various export visa arrangements state that entry of textile and apparel products shall not be permitted into the United Staes if the quantity indicated on the visa is less than that of the shipment, quantities over one, but less than an additional whole unit, shall be construed to be the quantity of the closest whole number. A unit refers to pound, square yard, square foot, dozen or dozen pair.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Effective on June 1, 1988, you are directed to permit entry for consumption or withdrawal from warehouse for consumption into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) shipments of textile and apparel products covered by export visas on which the foreign government has rounded the quantity down to the nearest whole number. Quantities over one, but less than half of a whole unit, shall be construed to be the quantity of the closest whole number. Quantities of less than a single unit shall not be construed to be zero.

Examples:

Quantity in Shipment	Accept the Visa for entry purposes if the Visa reads
(a) 10 4/12 dozen (124 pcs)	10 dozen.
(b) 1,543.38 pounds	1,543 pounds.
(c) 4,439.33 square yards	4,439 square yards.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 88–11148 Filed 5–17–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 5, 1988.

The USAF Scientific Advisory Board Summer Study on Integrated Avionics and Hypersonic Test Facilities will meet on 11–22 July 1988, from 8:00 a.m. to 5:00 p.m., at the Naval Postgraduate School, Monterey, CA.

The purpose of this meeting will be to determine conclusions and recommendation and to write the study report.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Office.

[FR Doc. 88–11109 Filed 5–17–88; 8:45 am]

BILLING CODE 3910–01–M

DELAWARE RIVER BASIN COMMISSION

Open Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 25, 1988 beginning at 1:30 p.m. in Room 5890 of #2 World Trade Center, New York, New York. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and is scheduled to include a report on hydrologic conditions in the Delaware River Basin and a discussion of extension and verification of the Estuary Salinity Model for 1980–1986.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or § 3.8 of the Compact:

1. *Holdover Project: Mid-Atlantic Shipping and Stevedoring, Inc. D–87–67.* An application to dredge at the Salem River Cutoff in order to provide adequate depth of water for vessel access to a proposed cargo relieving facility. The applicant plans to mechanically dredge approximately 8,500 cubic yards of materials to a depth of 15 feet below mean low water. The 20,000-square foot dredged area will not extend beyond 70 feet from the shoreline. The proposed marine terminal will include a ship dock, a dock apron, a warehouse, and a truck loading and unloading facility. The project site is immediately west of the existing port in Salem City, Salem County, New Jersey. This hearing continues that of January 13, 1988.

2. *Holdover Project: Delaware River Basin Commission (DRBC)—Upper Delaware Ice Jam Project D–88–22 CP.* An application by DRBC on behalf of the City of Port Jervis, New York; Borough of Matamoras and Westfall Township, Pennsylvania; the State of New York; and the Commonwealth of Pennsylvania to have the U.S. Army Corps of Engineers construct an ice diversion channel on Mashipacong Island and a 39-acre mitigation site on the mainland, both in Montague Township, Sussex County, New Jersey. The purpose of the mitigation site is to mitigate the effect of clearing of wetlands that are located within the diversion channel. A 13,000-foot-long, 200-foot-wide path will be cleared of all trees larger than four inches in diameter to allow the passage of ice in the Delaware River and reduce the potential for ice jams and the resulting upstream flooding in Pennsylvania and New York. No excavation is proposed. The clearing of the path, the construction of an access road for equipment and a 5-foot-high gabion dam at the mitigation site will be the only construction activities. The project has been studied, planned and designed by the U.S. Army Corps of Engineers. This hearing continues that of April 27, 1988.

3. *Pennsylvania Department of Environmental Resources (PADER)—Extension of the Schuylkill River Scenic River Designation D–82–30 CP (Revised).* An application by PADER to modify sections of the Little Schuylkill River segment included in the Comprehensive Plan by DRBC Docket No. D–82–30 CP to be consistent with Pennsylvania legislation which formalized designation and classification of the Schuylkill River Extension. The reduced Little Schuylkill River designated segment will extend from Port Clinton to the Pennsylvania Highway T–846 Bridge near Rauschs in Schuylkill and Berks Counties, Pennsylvania.

4. *AT&T Technology Systems D–86–81.* An application to modify an industrial process wastewater treatment plant to treat concentrated acid wastes. The existing treatment plant, as described in Docket No. D–70–185, treats an average flow of 1.675 million gallons per day (mgd). The applicant proposes to process only 2,500 gallons per day of concentrated acid at the treatment plant; therefore the existing hydraulic capacity is adequate, although several new facilities are required. The proposed modification is expected to increase the effluent total diseolved solids (TDS) concentration from 1,700 million gallons (mg) to 3,500 mg on an average monthly basis. The treatment plant is located at 2525 North 12th Street in Muhlenberg Township, Berks County, Pennsylvania approximately 1000 feet north of the City of Reading boundary. Treatment plant effluent discharges to Bernharts Creek at River Mile 92.47–78.29–1.9. Sanitary waste is discharged to the City of Reading sewer system.

5. *Fleetwood Borough Authority D–87–54 CP.* An application to upgrade a 0.5 mgd sewage treatment plant located off Walnuttown Road in Richmond Township, Berks County, Pennsylvania. The existing plant provides high quality secondary treatment of flow from domestic and industrial sources in Fleetwood Borough, Berks County. The proposed plant is designed to provide nitrification of ammonia. No expansion of treatment capacity or of service area is required. Treatment plant effluent will continue to be discharged to Willow Creek thrugh the existing outfall.

6. *Nazareth Borough Municipal Authority D–87–79 CP.* An application to construct a 1.1 mgd sewage treatment plant to replace a 0.5 mgd facility that was constructed in 1929. The plant is located just southeast of the intersection of Van Buren and Nazareth Roads in Lower Nazareth Township, Northampton County, Pennsylvania. The proposed plant is designed to provide high quality secondary treatment of flow from Upper Nazareth, Bushkill, Lower Nazareth Township, plus Nazareth Borough, all within Northampton County. The proposed facility is designed to serve an equivalent population of 14,765 persons through the year 2006. Treatment plant effluent will continue to be discharged to Shoeneck Creek, but a new outfall will be constructed just north of the existing line.

7. *Doylestown Township Municipal Authority D–88–18 CP.* An application for approval of a ground water withdrawal project to supply up to 2.94 mg/30 days of water from new Well Nos. LS–1 and LS–2. The project is located approximately 400 feet northeast of the intersection of Old Dublin Pike and Pine Run Road in Doylestown Township, Bucks County, Pennsylvania and is in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Tamiment Resort-Wesland Development, Inc. D–88–20 CP.* An application for approval of a ground water withdrawal project to supply up to 5.5 mg/30 days of water to the applicant's resort complex from existing Well Nos. 1 and 2. The project is located in Lehman Township, Pike County, Pennsylvania.

9. *Texaco Refining and Marketing, Inc. D–88–25.* An application for approval of a ground water withdrawal of up to 6.48 mg/30 days of water from existing Well Nos. C–6, C–7 and C–29 as part of the applicant's ground water decontamination project. The project is located in New Castle County, Delaware.

10. *Rollins Environmental Services, Inc. D–88–26.* An application to modify an industrial waste treatment plant that serves the applicant's hazardous waste processing facility in Logan Township, Gloucester County, New Jersey. The project is designed to improve treatment efficiency at the plant by providing a new clarifier and a chemical precipitation/microfiltration unit. The treatment plant is designed to remove over 90% of the total suspended solids from an incinerator scrubber wastewater flow of 1.12 mgd. The proposed modifications represent an upgrade and no expansion of treatment capacity is required. Treatment plant effluent will continue to be discharged to Raccoon Creek through the existing outfall located in Water Quality Zone 4.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

May 10, 1988.

[FR Doc. 88–11059 Filed 5–17–88; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

[CFDA # 84.117P]

Inviting Applications for New Awards Under the Research and Development Centers Program for FY 1988

Purpose: To provide additional awards to funded research and development centers to support special activities related to the improvement of education. Only existing Research and Development Centers under 34 CFR Parts 706 and 708 are eligible for an award under this competition.

Deadline for Transmittal of Applications: July 5, 1988.

Applications Available: May 19, 1988.

Available Funds: $220,000.

Estimated Average Size of Award: $75,000 to $220,000.

Estimated Number of Awards: 1–3

Project Period: One year.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in the Federal Register on March 22, 1988 (53 FR 9408). If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resubmit their applications. (b) the Notice of Proposed Biennial Research Priorities published in the Federal Register on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantive changes affecting the priority chosen for this competition are made in the final biennial research priorities, other than the change described in the absolute priority section of this notice, applicants will be given an opportunity to revise or resubmit their applications. (c) the Education Department General Administrative Regulations, 35 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the Federal Register on November 20, 1987 (52 FR 44625) the following as an absolute priority: Improvement in education. This priority includes assessing the implementation and impact of school reform initiatives, with particular emphasis on the refinement of measures of effective school, teaching, and classroom practices. The Secretary expects that the final priority will also include emphasis on the refinement of measures of counseling practices, and thus applicants may address this aspect of the priority in their applications. If any further substantive changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications.

Weighting for Selection Criteria: The proposed program regulations at 34 CFR 708.20(e) authorize the Secretary to distribute an additional 10 points among the critria described in 34 CFR 708.12 to bring the total of possible points to a maximum of 100 points. The Secretary will distribute the reserved 10 points as follows: Five (5) additional points to the criterion at 708.12(c) (Plan of operation), bringing the total for this criterion to 25 points; and five (5) additional points to the criterion at 708.12(d) (Technical soundness), bringing the total for this criterion to 30 points.

For applications or information contact: Dr. Martin Orland, OERI, Office of Research, Room 627K, 555 New Jersey Avenue NW., Washington, DC 20208–1430, (202) 357–6214.

Program Authority: 20 U.S.C. 1221e.

Dated: May 13, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–11096 Filed 5–17–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SW(EU)–144, for the transfer of 400 barrels of unirradiated scrap, containing 20 kilograms of uranium, enriched to approximately 3 percent in the isotope uranium–235, for incineration. The material is then planned to be returned to either the Federal Republic of Germany, or to the United States.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–11188 Filed 5–17–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Coal Policy Committee; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and time: Wednesday, June 8, 1988, 1:30 pm.

Place: Madison Hotel, 15th & M Streets, NW., Washington, DC 20005.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: Discuss studies currently being conducted by the Council.

Tentative Agenda:

—Call to order by Irving Leibson, Chairman.
—Discuss studies currently being conducted by the National Coal Council.
—Discuss draft report on the "Economic Impact of Substituting U.S. Coal for Imported Energy."
—Discuss any other business properly brought before the Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone listed above. Requests must be received at leat 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 88–11164 Filed 5–17–88; 8:45 am]

BILLING CODE 6450–01–M

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and time: Thursday, June 9, 1988, 9:30 a.m.

Place: Madison Hotel, 15th & M Streets, N.W., Washington, D.C. 20005.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, D.C. 20585, Telephone: 202/586–4695.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal industry issues.

Tentative Agenda:

—Call to order by James G. Randolph, Chairman.
—Remarks by Chairman Randolph.
—Remarks by Department of Energy official.
—Guest speakers.
—Report of the Coal Policy Committee.
—Consideration of administrative matters.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 88–11165 Filed 5–17–88; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: June 8, 1988, 9 a.m.

Place: The Westin Hotel, Ballroom II, 2401 M Street, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order by Edwin L. Cox, Chairman, National Petroleum Council.
—Remarks by the Honorable John S. Herrington, Secretary of Energy.
—Report of the NPC Committee on Establishing a Petroleum Research Institute.
—Report of the NPC Committee on Petroleum Storage and Transportation.
—Guest Speakers.
—Consideration of Administrative matters.
—Discussion of any other business properly brought before the National Petroleum Council.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88–11166 Filed 5–17–88; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Record of Decision for the California-Oregon Transmission Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has made the decision to participate in the construction, operation, and maintenance of the California-Oregon Transmission Project (COTP).

Western's decision is based on the information contained in the draft, supplement to the draft, and final environmental impact statements (EIS) that were issued for the project (DOE/EIS–0128). The decision is also based on the information contained in Bonneville Power Administration's (BPA) Intertie Development and Use (IDU) final EIS.

With two exceptions, the COTP would be constructed along the environmentally preferred route as described in the final EIS and presented briefly below.

Western plans to construct facilities for the upgrading of two existing 230-kilovolt (kV) transmission lines to a single 500-kV transmission line between the Olinda Substation and the Sacramento River Delta area, construct approximately 20 miles of new 500-kV transmission line between the Sacramento River Delta area and the Tracy Substation, and construct the associated substation facilities near Olinda, Maxwell, and Tracy, California. Other facilities for the COTP will be constructed by the Transmission Agency of Northern California (TANC) and by BPA.

Western has adopted the mitigation measures for the COTP that are listed in the final EIS and has committed to adopt a mitigation compliance and monitoring plan that will ensure that the measures are integrated into the proposal. In addition, any unforeseen site-specific mitigation requirements identified during the construction phase will be addressed by Western and coordinated with the appropriate Federal, State, and local agencies.

While Western is not planning to participate in the financing, construction, operation, or maintenance of the Los Banos-Gates and Pacific Northwest (PNW) Reinforcement Project and has no decision making authority with regard to these projects, the three projects were considered in one EIS because of the interrelationships among them. Decisions on these projects will be made by the California Public Utilities Commission (CPUC) and BPA, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 500, Sacramento, CA 95825, (916) 978-4418.

SUPPLEMENTARY INFORMATION: Title III of the Energy and Water Development Appropriations Act for Fiscal Year 1985 (Pub. L. 98-360) authorized the Secretary of Energy, through Western, to "construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California." The proposal was developed by a group of California public and private utilities and Western through a Memorandum of Understanding (MOU) that provides the framework for development of the projects.

The purposes of the proposed actions are to expand the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system and to help serve California's need for economical power, the Pacific Northwest's desire to sell surplus power, and the need for maintaining and increasing the reliability of the existing transmission system. The COTP will add approximately 1,600 megawatts (MW) of additional transfer capability between the Pacific Northwest and California. The COTP, Los Banos-Gates Transmission Project, and PNW Reinforcement Project would add to and strengthen the existing high voltage transmission links between California and the Pacific Northwest. These projects would provide for greater access to Northwest power surpluses, facilitate more efficient use of power resources, provide greater resource diversity, and enhance transmission system reliability.

One provision of the COTP MOU is that Pacific Gas and Electric Company (PG&E) provide power transfers between the existing Tesla Substation and southern California for certain participants. Earlier PG&E studies of both the existing and future transmission needs between the Tesla Substation and southern California indicated that a new 500-kV line and supporting facilities would be the most appropriate and economical means for PG&E to meet the contractual obligations of the COTP MOU. These facilities became known as the Los Banos-Gates Transmission Project. PG&E has since studied the Los Banos-Gates power flow requirements and believes it can meet its commitments under the MOU to provide firm bidirectional transmission without constructing the Los Banos-Gates Project at this time.

The PNW Reinforcement Project is a proposal by BPA, Pacific Power and Light Company, and Portland General Electric Company to construct new and modify existing transmission lines and supporting facilities in southern Washington and Oregon. This project was identified as a result of studies of future transmission needs associated with increased power flows on the Intertie system.

Although the three projects have different sets of sponsors, all are related to the exchange of approximately 1,600 MW of additional power between the two regions. Because of this interrelationship, the three projects were considered together in one EIS to promote an assessment of the cumulative impacts and a coordinated process. In addition, the EIS was jointly prepared with TANC as an environmental impact report (EIR). The EIR was used by TANC to fulfill its requirements under the California Environmental Quality Act.

Western's participation is necessary because the COTP, as proposed, involves the upgrading of approximately 170 miles of Western's Shasta-Tracy/Cottonwood-Tracy Transmission Line from two 230-kV circuits to a single 500-kV circuit. As compensation for the use of the Federal facilities, the Federal government will receive 6.25 percent, or 100 MW, of capacity in the proposed project to serve Federal agencies, including the DOE laboratories and fish and wildlife refuges. This capacity will be in addition to Western's existing capacity on the two 230-kV lines that would be replaced. Western's purposes and needs for participating in the COTP are to provide access to economical Northwest power for the Federal agencies, to obtain greater reliability for its entitlement on the existing Pacific Alternating Current (AC) Intertie lines and the interconnected transmission grid as a whole and to promote efficient use of power resources.

The COTP, Los Banos-Gates Project, and PNW Reinforcement Project include constructing new and modifying existing 500-kV and 230-kV AC transmission facilities in northern and central California, Oregon, and in southern Washington. The proposed actions for the COTP are summarized below.

Description of the Proposed Action

1. Facilities

The proposal is to construct and operate approximately 340 miles of transmission lines, three substations, a series compensation station, communication facilities, and to modify two existing substations. Specifically, the proposed actions are:

Construct a new substation at site E3 near the California-Oregon border along the existing Malin-Meridian 500-kV AC Transmission Line to serve as the northern terminus for the COTP and interconnection point with the Pacific Northwest transmission system. Presently, it is planned that this substation will be constructed by BPA.

Construct a new 500-kV AC transmission line (approximately 146 miles long) from the California-Oregon border area substation to the proposed Olinda Substation near Redding, California.

Construct the Olinda Substation at site GP4 south of Redding near the interconnection of Gas Point Road and Happy Valley Road and relocate approximately 1 mile of existing 230-kV transmission line right-of-way (ROW).

Upgrade an existing double-circuit 230-kV AC line (approximately 170 miles long) owned by Western, to a single-circuit 500-kV AC line from the proposed Olinda Substation to the Sacramento River Delta area.

Construct the Maxwell Series Compensation Station at site SC3 near the town of Maxwell, California.

Construct approximately 20 miles of new 500-kV AC transmission line from the Sacramento River Delta area to the existing Tracy Substation.

Construct a new 500-kV AC double-circuit link (approximately 6 miles long) between the Tracy Substation and the area of the Tesla Substation. This line will be connected to the existing Tesla-Los Banos Number 2 500-kV line, creating the Tracy-Tesla and Tracy-Los Banos 500-kV Transmission Lines.

Expand the Tracy Substation to include a 500-kV substation and replace six 230-kV circuit breakers in the existing Tracy Substation. Approximately 1 mile of existing 230-kV transmission lines will be rerouted to make room for the new substation.

Modify the Tesla Substation to replace two 230-kV circuit breakers, relaying, and other equipment.

Modify existing and construct new microwave communication system facilities in central and northern California and southern Oregon.

Modify the existing Cottonwood Substation to replace three 230-kV circuit breakers.

The transmission lines for the COTP will be supported on steel structures that will be designed and constructed to meet State and national standards. Several types of structures will be used depending on the line configurations, engineering factors, and mitigation needs. These types include single-circuit lattice, double-circuit lattice, single-circuit tubular, single pole and H-frame, double-circuit tubular, and upgrade towers. On the upgraded single-circuit lattice towers, steel support members will be added to the main body of the existing 230-kV double-circuit lattice towers, and the top will be rebuilt to support the new 500-kV AC conductors and provide adequate electrical clearances. Structures will typically be 125-180 feet tall.

2. Proposed Route

North D of the four northern alternatives discussed in the draft EIS and South B of the three southern alternatives, represented both the environmentally preferred and project preferred alternatives. Route segments discussed in the supplement to the draft EIS were options within alternatives North D and South B. The environmentally preferred and project preferred route between Olinda Substation and Tracy Substation is the upgrade of Western's existing double-circuit 230-kV AC line to 500-kV AC. The selected route segments, traveling from the Oregon Border to Tracy Substation are:

Southern Oregon switching station site E3, North 1, N-10G, N-10J, N-10K, N-10L, N-10M1, N-10M2(A1), N-10M2(A), North 2B, N-10Alt5(B), N-10Alt5(D), N-10Alt5(C), N-7Alt1(A), N-7Alt1(B), North 3J, N-8A(3), N-8C, North 4, N-8Alt2(A), N-9A, N-9C, N-9D, N-9G, N-9J, N-9N, N-9O, N-9Q, N-13A, Olinda Substation site GP4, S-1A, Maxwell Series Compensation Station Site SC3, S-8B, S-8C, S-8Alt1, S-8E1(A), South 1, S-8Alt3, S-8K, Tracy Substation site T1, S-9D, S-9G, South 2.

Alternative D in the northern section was selected as the environmentally preferred alternative primarily because it minimizes impacts to timberlands, emphasizes route segments on public lands where resource impacts are similar, and minimizes impacts to earth, water and vegetation resources, and critical wildlife species and their habitats. Alternative D was selected as the project preferred route because it satisfies transmission system reliability requirements provided that a fuels management plan and fire response plan is developed in conjunction with the U.S. Forest Service (USFS) and implemented for the area between the existing Intertie and the preferred route. The USFS indicated that the area east of the North 3J corridor has a feasible route location that will minimize resource impacts while meeting geologic concerns. Should a superior location be found near North 3J during final design, the lead agencies will work with the USFS to identify, review, and approve the new location.

The Western upgrade is environmentally preferable to any alternative route between Olinda and the Sacramento River because any alternative involving construction of a new line in a new ROW would cause more environmental impacts than the upgrade. This route was selected as the project preferred due to environmental, economic, and engineering considerations, as explained in the EIS.

Alternative B in the southern section was identified as the environmentally preferred alternative because it minimizes impacts to developed and planned land uses. Alternative B was selected as the project preferred route because environmental impacts are minimized while separation from the existing Intertie is maximized to the extent practical.

Comments received on the draft EIS led to the identification of new routing options for portions of the preferred route for the COTP, which were considered in a supplement to the draft EIS issued in July 1987. The major concerns expressed in the comments included concerns about visual impacts on property and the possibility of resultant impacts to property values; concerns about impacts to agricultural crops and agricultural practices, such as aerial application of chemicals and irrigation systems; concern for collision of waterfowl and raptors with the transmission lines; recommendation that public lands rather than private land be used whenever possible; concern for effects on prime timberlands; doubt of the need for separation of the proposed project from the existing Intertie lines; concern for the economics of the project; concern over recent scientific literature indicating possible correlations between electromagnetic fields and human health; and the need for more specificity in the mitigation measures. The route option comparisons are discussed in detail in section 1.2.2 of the final EIS. The following changes to the routing were made:

A new site (E3) for the southern Oregon substation would have fewer impacts on agricultural lands and is less visible from the town of Malin, Oregon.

Alternative route North 1 is a 9.7-mile route option located to the east of the original project preferred route. The North 1 route option avoids a private airstrip and avoids more agricultural land.

Route segment N-10M2(AI) avoids an area managed by the USFS for old-growth habitat and a tree plantation.

Route N-10M reduces impacts to prime timberland when compared to the original preferred route. The original preferred route (N-10Alt5) offered greater transmission system reliability due to lower probability of fires and other common-mode types of outages because it provided greater separation from the existing Intertie. The USFS has strongly maintained that reliance on centerline separation without consideration for fire suppression activities would not significantly reduce forest fire-caused outages. The USFS has stated that it will help develop a fuels management and fire response plan for the COTP. N-10M was reconsidered as a feasible alternative based on the commitment from the USFS.

Route North 2B would require less extensive access road construction and represents additional separation from the existing Intertie. It is the preferred route for reasons of increased system reliability.

The North 3J option reduces impacts to USFS timber sale areas and spotted owl management areas. The USFS indicated that the area east of the North 3J corridor (east of Little Meadows) has a feasible route location that will minimize resource impacts while meeting geologic concerns. Should a better location be found near North 3J during the final design, Western will work with the USFS to identify, review, and approve the location.

The North 4 route avoids a small residential community, is further from the Roaring Creek Rancheria, and reduces visual impacts.

The South 1 routing option was identified in response to concerns of landowners along the original preferred route. The new route reduces the severance of parcels and avoids development along Sand Mound Slough. The southern section of this route also avoids crossing Woodward Island, where access for construction and maintenance would be difficult.

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Selection of South 1 resulted in the identification of a new segment, S–8Alt3. This segment is preferred to segment S–8J, which it replaces, because it is shorter and minimizes impacts to agricultural uses.

The South 2 route is preferred to the original preferred route because it takes advantage of more compatible land uses and avoids an elevated road crossing of the Interstate Highways 580/205 interchange. This route takes advantage of two existing public ROW's for part of its length.

The environmentally preferred alternatives were selected as the project preferred route with the exception of one area in the Tulelake basin and one area near Bear Mountain. In the Tulelake basin, the environmentally preferred route (N–10 Alt.4) was found to have prohibitively high costs compared to slight environmental benefits and was judged to be infeasible from an economic perspective. In the Bear Mountain area, it was found that a more extensive access road system and construction efforts on North 2C made the comparison with North 2B so close that one is not clearly environmentally better than the other. In this and other areas, environmental impacts along the selected route can be reduced through implementation of mitigation measures. These are noted in table 1.1.2–1 in the final EIS.

The following routes were considered but were not selected as part of the project proposal. An analysis of their impacts and more detailed reasons for their rejection are found in section 1.2.2 of the final EIS.

The John Cross Alternative and variations of it were rejected because they either would greatly decrease system reliability, were not economical, or both.

The California Department of Fish and Game proposal was rejected because of engineering concerns and because there were no potentially significant impacts to bald eagles identified along the selected route with the implementation of mitigation.

The underground crossing of the Intertie was rejected based on concerns for reliability of the transmission system.

Locating east of the existing Interties into Nevada was rejected based on economic considerations and because it would not meet the purpose of the proposed project.

Locating along the PG&E pipeline was rejected because of concerns with reliability since crossing of the existing Interties would be required.

The Rio Vista to Tracy alternative was rejected because of concerns with lack of access for construction, waterfowl habitat, and increased costs due to increased length and special foundation requirements.

Locations west of the upgraded portion were rejected based on increased environmental impacts and increased costs.

Interstate Highway 5 to Tracy was eliminated due to increased environmental impacts and higher costs.

The Modoc National Forest Intertie relocation suggestion was rejected since it is an extreme and costly measure in light of the timber impacts to the Modoc National Forest.

The Hearst alternative and Forest Service segments in the Grizzly Peak area were rejected because portions of these suggestions involve steep, unstable slopes that are susceptible to landslides and surface erosion in the Devil's Canyon area.

The new Antioch route was rejected based on engineering considerations and because the location would have required crossing the Intertie lines—a situation that is unacceptable from a systems reliability viewpoint.

The Henwood proposal was eliminated due to concerns with system reliability and project cost.

The Beebe proposal was rejected based on increased environmental impacts.

3. Right-of-Way Acquisition

Contracts for ROW's or additional easements will be negotiated with the individual landowners. Between the proposed Olinda Substation and the Sacramento River Delta area, Western has an approximately 125-foot wide easement for its existing double-circuit 230-kV transmission line. Because the proposal involves installing a 500-kV line in an easement designed for a double-circuit 230-kV line, additional rights for construction of a 500-kV line will have to be acquired, but no additional ROW width will be needed with the exception of some areas of minor relocations of structures. In those parts of the proposed project where a new transmission line will be constructed (i.e., between the southern Oregon substation and the Olinda Substation, and from the Sacramento River Delta area to the Tracy Substation) new ROW's will be needed. Easement rights for access road ROW's will be acquired over certain existing roads and trails to assure continuity of access to the transmission line.

4. Construction Practices

During the construction of the transmission line and supporting facilities there are several phases of work including, but not limited to, surveying, clearing, construction of access roads, foundation installation, allocation of materials along the construction route, structure modification, conductor stringing, conductor pulling site restoration, and final clean-up. Figure 2.1–4 of the draft EIS shows the installation of the transmission line conductors. Volume 3A, appendix A discusses the operations in greater detail.

5. Operation and Maintenance Practices

The proposed line will be energized and operated at a nominal voltage of 525-kV, plus or minus 5 percent. Changes in power flow will cause minor fluctuations in the actual operating voltage. System dispatchers in power control centers will direct the day-to-day line scheduling and equipment operation by supervisory control to operate, maintain, and protect the system. Circuit breakers will operate automatically in an emergency to ensure the safety of the system.

Land use activities within the transmission line ROW will be permitted within the terms of the easement. Farming and grazing are generally encouraged within the ROW if appropriate precautions are observed. Incompatible activities not permitted within the ROW include constructing buildings, drilling wells, and other activities that compromise safety or hinder Western's maintenance activities.

Various techniques will be used within the ROW to control or eliminate vegetation that could interfere with reliable service. The ROW will not be clear-cut; as much vegetation will be left as possible. Techniques include hand and mechanical cutting as well as selective application of approved herbicides. The management objective, type of vegetation present, adjacent land use and development, and impacts of the control technique will be considered in selecting the most appropriate method to use at each facility and along each ROW segment. Herbicides will not be used on Federally-owned lands, consistent with current Federal court restrictions, but may be used on other lands in cooperation with the landowners.

A maintenance program will be established to ensure continued reliable service of the transmission system. The proposed transmission line structures, access roads, and ROW's will be inspected on foot, in vehicles, or air craft one to six times per year. Emergency repairs will be made if the transmission line is damaged and requires immediate attention. Maintenance crews of generally less than ten persons would use a variety of equipment to effect repairs, including hand tools, trucks, aerial lift trucks, cranes, and other equipment.

6. Mitigation

All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. The mitigation measures that have been adopted are listed in section 1.1.5 of the final EIS. These measures will be incorporated into the proposed action through a Compliance Monitoring Plan that is being developed by the project in cooperation with the landowners and managers. Western is committed to adopt the provisions of the plan. The plan will be prepared during project design to include engineering designs and construction plans. It will be developed through additional consultation with state and Federal agencies that will be involved in monitoring its implementation.

Implementation of the Compliance Monitoring Plan will be assured through several measures. First, the lead agencies will ensure that the applicable mitigation measures are included in the construction contracts. The construction inspectors will verify that the mitigation measures are implemented and will have the authority to enforce the measures by redirecting activities of the construction contractor to the extent necessary to meet the mitigation requirements included in the construction specifications. Second, both Western and TANC, as lead agencies under the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act will monitor the implementation of the mitigation measures. Third, cooperating and responsible agencies and other local, State, and Federal agencies may also monitor the implementation of the mitigation measures under their jurisdiction. Details of the coordination and reporting mechanisms for this monitoring will be included in the Compliance Monitoring Plan.

Alternatives Considered but not Selected

1. No Action

Selection of the no-action alternative would mean that the COTP, Los Banos-Gates, and PNW Reinforcement Project would not be constructed. Consideration of the no-action alternative was not limited to assessment of the consequences of foregoing the three projects. If the projects are not built and if the utilities presently participating in them do not act in concert to construct an alternative 1,600 MW resource, these utilities may meet their power requirements through independent development of other resource alternatives. Selection of the no-action alternative could lead to a number of individual actions by the many different participating utilities to obtain power from other resources. It is also noted that the plans used in the economic analysis without the three projects, already included all of the anticipated energy and capacity planned to be available from Qualifying Facilities.

At present, California utilities in the aggregate have substantial amounts of excess generation capacity, primarily in the form of older and less efficient oil and gas-fired units. Due to construction lead times as well as regulatory factors, it is assumed that if the projects were not constructed, California load growth over the short term would likely be accommodated by more extensive use of such units (i.e., more extensive use than would be justified on economic grounds if the projects were in place). In the short term, publicly owned utilities may be expected to increase power purchases from their investor-owned utility (IOU) wholesale power suppliers until planning, permitting, and construction of the alternative resources can be completed. The IOU's, in the short term, would likely burn more oil and gas both to meet their own load growth and to meet the increased wholesale power sales requirements of the publicly-owned utilities. Increased reliance on the use of inefficient oil and gas burning units would result in higher costs to California ratepayers and could result in impacts to air quality.

In the longer term, other alternatives that might be independently or collectively pursued would include development of pumped-storage hydroelectric projects, thermal plants, the installation of combustion turbines, construction of other transmission alternatives, and joint participation with other utilities in the development of out-of-state coal projects. Comparisons of these transmission and generation alternatives is included in Volume 1, sections 2.5.1.1 and 2.5.2.1 of the draft EIS for the COTP.

For both the publicly owned utilities and the IOU's, a principal advantage of constructing the proposed projects, that would be foregone with selection of the no action alternative, is the opportunity for exchanges with the Pacific Northwest to capitalize on seasonal diversity between the two regions. Because California's load peaks in the summer, and the Northwest loads are sharply winter-peaking, there are significant opportunities for the two regions to share in the economic advantages of seasonal exchanges. Additionally, since the projects would be constructed on an ROW separated from that of the existing Intertie, the reliability of power supply from the Northwest would be significantly increased.

Construction of the projects is expected to significantly enhance the reliability of the Western Systems Coordinating Council (WSCC) area transmission systems. The prospects for outages and the resulting impacts will continue if the projects are not constructed. Further, the transfer capability of the existing Intertie presently constrains the amount of Northwest energy that can be absorbed in California during daily peak periods. The construction of the proposed projects would alleviate such constraints and provide added benefits from the use of Northwest energy delivered during the California utilities' onpeak period. Any alternative project should provide these types of opportunities by providing generation or connection to generation resources.

The publicly-owned utility participants in particular would need alternative peaking resources, both as reserves for existing thermal units and as backup resources for existing hydro projects during adverse water years. It is most likely that such needs would be met in the short term with combustion turbines if the proposed projects were not constructed. The estimated extent of the use of combustion turbines as part of a complete utility resource plan with and without the proposed projects is presented in Volume 1, section 2.5.2.1 of the draft EIS. It is also conceivable that in the absence of the proposed project, increased loads would occasion diminished service reliability and increase reliance on high cost emergency actions.

The most likely long-term alternative resource for meeting California's baseload requirements in the absence of the proposed projects would be the development of out-of-state coal resources. This alternative, however, raises considerable uncertainty regarding the ability to obtain regulatory approvals, including those needed for construction of the transmission facilities needed to transmit power from out-of-state to California load centers. The use of out-of-state coal capacity as part of an overall utility resource plan with and without the proposed projects

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is discussed in Volume 1, section 2.5.2.1 of the draft EIS.

None of the alternatives that the individual utilities would rely on if the no-action alternative were selected, would have the economic advantages of regional exchanges with the Northwest. Further, none of the power supply alternatives identified are economically superior to the proposed projects. In the absence of the proposed projects, increased reliance on burning fossil fuels may produce significant negative impacts on air quality. Additionally, the oil embargo of 1973 has shown that world oil prices and supplies are strongly influenced by actions of a relatively few oil-exporting countries who have the ability to sharply reduce oil supplies and increase prices. Consequently, the more extensive use of oil and gas may subject California ratepayers to significant uncertainties regarding future supplies and prices of these fuels.

The no-action alternative would have fewer environmental impacts than the proposal in the short term. By not constructing the proposed projects, the short-term impacts would be associated primarily with air quality since there would be increased reliance on burning fossil fuels for power generation. There would be no direct impacts to other resources such as vegetation, wildlife, visual, or archaeological since no new construction would be expected in the short term. In the longer term, however, selecting the no-action alternative would mean that the participating utilities would undertake other transmission construction projects or would participate in the construction of other generation resources that would each have environmental impacts.

2. Transmission Alternatives

Two transmission projects were quantitatively considered as potential alternatives to the proposed action. One is a proposal to upgrade the existing 500-kV Pacific AC transmission Intertie lines between California and the Pacific Northwest. The second would replace the COTP with a second DC line and possibly eliminate the need for some of the capacity of the Los Banos-Gates Project. Both are based on the concept of adding transmission capability to allow additional northwest power purchases.

AC Transmission

An alternative to constructing the 146 miles of new line in the northern section of the Project is to upgrade the two existing 500-kV Pacific AC Intertie lines to provide two 2,400 MW AC lines, an increase of 800 MW on each line. This alternative was determined to be infeasible based on economic, physical, and reliability problems. Such a line could, in theory, provide a potential increment of 1,600 MW of Intertie transmission capability equivalent to the capability of the proposed COTP. This transmission capability would increase access to load-following generation resources as well as baseload resources.

Increasing the existing two-line capability by 1,600 MW without providing a separate corridor would further aggravate the system reliability problem in the WSCC area. If each of the existing Intertie lines is increased from the present 1,600 to 2,400 MW of capability, an outage of one line would result in the loss of 2,400 MW of transmission capability as compared to the loss of 1,600 MW of capability in the event of an outage of one line of the existing system. Concentrating this much power in two adjacent transmission lines would not meet the WSCC's reliability criteria. As a result, the added transmission capability would not provide the same transfer rating capability as the COTP. The transfer capability would also be reduced when power flows across other pathways of the WSCC's system (i.e., from Arizona to California or from Colorado/Utah to Arizona/New Mexico) are above certain levels.

Aside from the reliability issue, the cost of upgrading the existing lines would be substantially higher than the cost of the COTP. Additional costs would be accrued due to required changes in tower configuration, conductor sizes and other hardware changes, substation modifications, lost revenues due to interruptions of power transactions during construction, replacement of lost power by use of gas-fired generation, and the need for additional ROW's.

Direct Current (DC) Transmission

Several DC transmission concepts have been considered that would increase the transmission capability between the Pacific Northwest and California. Each of these would increase access to load-following as well as baseload generation resources. Economic studies indicated that each of these alternatives would be less feasible than the COTP. A DC line connecting essentially the same Oregon and California points as the COTP was qualitatively analyzed, and a second DC line from Oregon through Nevada to the Southwest and Southern California was quantitatively analyzed along with a trans-Sierra line connecting northern California to the second DC line.

A DC line is well-suited to the transmission of bulk power over long distances between two points. One major concern over the DC option is the cost of each converter station that would be needed to change DC to AC. This expense is a factor that limits the ability to interconnect such a line with the required multiple points of delivery for the COTP and was a major cause for rejection of this option. A 500-kV AC line can readily accommodate the multiple interconnection points. For this reason, in addition to substantially higher costs of the DC option, lack of operating experience in multiple tap DC commercial systems, and lack of any environmental advantages, the option of a DC line from Oregon through California was eliminated.

A second DC line routed through Nevada and interconnecting the Pacific Northwest with southern California, similar to the existing DC Intertie, was also considered and compared to the proposed actions.

The second DC line alone would not meet the objectives of the COTP for all of the participating utilities. The COTP was compared to the second DC line in two manners: (1) The prorata share of the COTP for the southern California participants was compared to an equivalent capability of the second DC line; and (2) the COTP costs were compared to the estimated costs for a combined second DC line and Trans-Sierra crosstie that would serve the central and northern California participants.

The proportionate cost of a second DC line that would be borne by the California utilities under either option is greater than their costs of the COTP. On a capital cost basis alone, the second DC line offers fewer economic benefits than the COTP. A second DC line would have environmental impacts comparable to those discussed for the proposed action.

3. Parallel Existing Intertie Lines

The COTP represents a major addition to the bulk transmission system of California as well as to the western North American transmission systems that link 14 States, the Canadian provinces of British Columbia and Alberta, and Baja California Norte, Mexico, which form the WSCC. Since the proposed projects would be a major integrated portion of the system in the WSCC area, system reliability is one of the important criteria for guiding the selection of the configuration. Routing of the proposed lines must be done to avoid a situation in which an outage of three 500-kV AC lines could be a credible event. Constructing the third 500-kV AC line close to the two existing lines or terminating the line at the same substation (such as at the Malin or Round Mountain substations) would degrade the reliability of the interconnected transmission system because it would increase the potential for a single event-induced failure that would result in the loss of all three 500-kV lines. Insufficient system reliability might require derating of the proposed line by the participating utilities in order to meet WSCC standards. All utilities that construct new projects are responsible for planning and constructing facilities that do not jeopardize system reliability. Reliability was the major issue that determined the infeasibility of this alternative.

Project studies indicate that placing the new line on the eastern side of the existing Pacific AC Intertie lines would require that the COTP line cross over the existing lines twice north of the Olinda Substation. Simultaneous unexpected outages of the COTP line and one of the existing Malin-Round Mountain 500-kV lines could lead to overloading of the other existing Malin-Round Mountain line. Eight possible solutions to the overload problem were considered, but none were found to be acceptable due to either economics or increased dependency on new and more complex remedial action schemes for the WSCC interconnected systems.

To ensure that the required level of regional system reliability is met, special precaution has been taken to provide adequate distance between the route proposed for the COTP line in the eastern corridor and the existing lines. Construction of a new Intertie route so that a three-line outage is not credible was a major consideration for corridor selection.

4. Underground Construction

The primary factors that were considered in comparing underground and above ground transmission were the relative costs of construction and maintenance, and the environmental impacts. Prohibitive cost and lack of proven technology for the size of the proposed transmission line were the major factors that resulted in rejection of underground construction.

Nontransmission Alternatives

If a new transmission link from California to the Pacific Northwest was not built, increased energy exchanges due to seasonal diversity would not occur. Resources would then be required to provide the capacity and energy needed in each region. The nontransmission alternatives that were considered in order for the California utilities to meet the amount and type of utility system needs that would be provided by the proposed action are discussed in detail in section 2.5.2 of the draft EIS, as are the reasons why each would not meet the project purpose and need and were, therefore, rejected. The nontransmission alternatives considered but rejected are: generation alternatives including combustion turbine generation, combined cycle generation, out-of-state coal generation, increased Southwest purchases (economy energy), cogeneration and small power production projects, refurbishments and life extensions for existing generation facilities, pumped-storage hydroelectric capacity for peaking, and conservation and load management.

Integration With Other Requirements

1. Floodplains/Wetlands Statement of Findings

Appendix E (section 1.1.5) of the final EIS contains detailed information on the locations of crossings of wetlands and floodplains by the proposed action. The potential for avoiding most of these during final siting and construction of the facilities is high and is the preferred method of mitigating potential impacts. A floodplains/wetlands assessment is contained in section 6.1.1 of the draft EIS and additional information is provided on page 1.1.6–2 of the final EIS. Construction of the new line between the Sacramento River and the Tracy Substation will require construction activities in the floodplains of the Sacramento and San Joaquin River Deltas. Avoidance of construction in these floodplains is not practicable. Alternatives to locating the facilities were analyzed during the environmental studies. These alternatives are discussed in the draft, supplement to the draft, and final EIS. The proposed facilities will conform to all applicable State or local floodplain protection standards. Mitigation measures adopted that would reduce impacts to floodplains and wetlands are presented in sections 1.1.5 and 1.1.6 of the final EIS.

2. Other Requirements

A detailed discussion of integration of requirements for cultural resource protection, endangered species protection, and other local, State, and Federal requirements can be found in section 6.0 of the draft EIS and section 1.1.6 of the final EIS. Western's obligations under the provisions of Section 7 of the Endangered Species Act of 1973, as amended, and under section 106 of he National Historic Preservation Act of 1966, as amended, have not been completed. These requirements will be completed prior to construction.

Relationships With Associated Projects

Western's decision to participate in the COTP was made after consideration of the impacts associated with actions addressed in BPA's IDU EIS. The final IDU EIS was issued on April 15, 1988. Appendix D of Volume 3A of the draft EIS for the COTP contained a summary of the draft IDU EIS. Section 1.5.4 of the final COTP EIS contained a summary of the results of analyses conducted for the final IDU EIS. Western was a cooperating agency in the IDU EIS preparation.

Decisions on the Los Banos-Gates Project will be made by PG&E as the project proponent, and by the CPUC as the State agency responsible for regulating the IOU's. The CPUC will consider the information in the COTP EIS in its decision on whether to issue a Certificate of Public Convenience and Necessity for the project. The CPUC will address the final configuration and route for the Los Banos-Gates Project.

Decisions on the PNW Reinforcement Project and BPA's participation in the COTP will be made by BPA, based on the environmental information contained in the COTP EIS, IDU EIS, and the Bureau of Land Management's Eugene-Medford EIS. BPA will issue a record of decision that will address the final configuration of the PNW Reinforcement Project and adopted mitigation measures. The decision by BPA on whether to allow the interconnection of the COTP with their facilities in the Pacific Northwest Intertie system will also be addressed in their record of decision.

Issued at Golden, Colorado, April 22, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-11087 Filed 5-17-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

[OPP-00259; FRL-3381-1]

Pesticide Monitoring Inventory; Availability for use By the General Public

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

BEST COPY AVAILABLE

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SUMMARY: This notice announces the availability of the Pesticide Monitoring Inventory (PMI) as of April 20, 1988. The PMI is a compilation of monitoring projects being performed by Federal, State, and local governments and private institutions.

FOR FURTHER INFORMATION CONTACT:
The User Support Staff
Constance A. Hoheisel, (703) 557-7499
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Thomas E. Dixon, (703) 557-5455
Environmental Protection Agency, Office of Pesticide Programs, HED/EAB/Monitoring Section (TS-769C), 401 M Street SW., Washington, DC 20460.

For Brochures, Fact Sheets, and New Project Forms contact: Public Information Center (PIC), PM-211B, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2080.

SUPPLEMENTARY INFORMATION: Section 20 (b) and (c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to monitor the environment for pesticide residues. In addition, the Agency has developed a National Monitoring Strategy which coordinates monitoring activities performed by all EPA program offices. The Office of Pesticide Programs' (OPP) response to both of these needs took the form of the National Pesticide Monitoring Plan (NPMP) which was completed in July of 1985.

The primary goal of the NPMP is to provide information on exposure and effects to enhance the accuracy of pesticide risk assessments and thereby improve the soundness of FIFRA risk/benefit regulatory decisions.

The PMI was created as a part of the NPMP. The data base contains a short synopsis of each pesticide monitoring project, including chemicals, substrates, and location. It also lists the name, address, and telephone number of a person to contact to gain additional information on a specific project.

The PMI is located on a personal computer and is accessible by dataphone similar to the PC to PC bulletin boards that are used to share information. It is completely menu driven and it is on-line 22 hours per day, Monday through Friday, and 24 hours per day on weekends. The PMI may be off-line between the hours of 1:00 and 3:00 p.m., Eastern Standard Time, each weekday for maintenance. Users may search for projects by chemical, substrate, EPA Region, State, and by various other criteria and download the results of their search to their own computer. To access the PMI, users must have a computer/modem or terminal capable of being set at the following parameters:

Baud rate: 1200.
Databits: 7.
Stop: 1.
Parity: even.
Duplex: full.
Phone Number: (703) 557-1919; FTS 8-557-1919.

The PMI is intended to provide a network by which all those involved with regulating, manufacturing, or using pesticides may communicate and share monitoring information with each other. As the PMI expands, it will allow the user community to tap a broad base of information that will enhance their own monitoring programs, eliminate duplicative efforts, and encourage the development of cooperative, cost-effective programs. Those would could benefit from using the PMI include State and Federal regulatory agencies, EPA Regional Offices, environmental groups, pesticide-associated industry, researchers, and environmental and health officials.

In addition to assisting the general user community, the PMI will provide EPA with information that will aid in the evaluation of the effectiveness of regulatory actions, illustrate the environmental results of regulatory actions, and identify unanticipated, emerging health and environmental problems.

While OPP is providing the support which will allow the PMI to function, its growth and its ultimate value to users will largely depend upon *users* who provide monitoring projects for inclusion into the data base. To add your project to the PMI, contact any member of the User Support Staff or the Public Information Center (addresses above) to obtain New Project Forms.

Dated: May 4, 1988.

Susan H. Wayland,

Deputy Director, Office of Pesticide Programs.

[FR Doc. 88-10998 Filed 5-17-88; 8:45 am]
BILLING CODE 6560-50-M

[OPP-50679; FRL-3381-3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticide for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

241-EUP-119. Issuance. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 525 pounds of the insecticide/nematicide terbufos on 450 acres of field corn, grain sorghum, and sugar beets to evaluate the control of various insects and nematodes. The program is authorized in the States of Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from March 23, 1988 to March 23, 1990. A permanent tolerance for residues of the active ingredient in or on field corn, grain sorghum, and sugar beets has been established (40 CFR 180.352). (William Miller, PM 16, Rm. 211, CM#2, (703-557-2600))

55681-EUP-1. Renewal. Melamine Chemicals Inc., P.O. Box 748, Donaldsonville, LA 70346. This experimental use permit allows the use of 4,432 pounds of the herbicide hexazinone on 3,530 acres of Christmas tree plantations and conifer forests to evaluate the control of herbaceous and woody weeds. The program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Montana, North Carolina, Oregon, South Carolina, Tennessee, Virginia, and Washington. The experimental use permit was previously effective from March 17, 1986 to June 30, 1987; the permit is now effective from March 31, 1988 to June 30, 1989. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

45639-EUP-27. Renewal. Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 300 pounds of the insecticide amitraz on 300 acres of cotton to evaluate the control of mites. The program is authorized only in the States of Alabama, Arizona, California, and Texas. The experimental use permit was previously effective from April 24, 1987 to April 24, 1988; the permit is now effective from April 18, 1988 to April 18, 1989. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (Dennis Edwards, PM 12, Rm. 202, CM#2 (703-557-2386))

45639-EUP-33. Issuance. Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 1,369.875 pounds of the miticide clofentezine on 3,725 acres of almonds, nectarines, and peaches to evaluate the control of the European red mite. The program is authorized only in the States of California, Colorado, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Washington. The experimental use permit is effective from March 30, 1988 to March 30, 1989. A temporary tolerance for residues of the active ingredient in or on almonds, nectarines, and peaches has been established. (Dennis Edwards, PM 12, Rm. 202, CM#2 (703-557-2386))

707-EUP-105. Renewal. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 818 pounds of the fungicide alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile on 605 acres of apples and grapes to evaluate the control of blackrot, powdery mildew, rusts, and scabs. The program is authorized only in the States of Arkansas, Arizona, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit was previously effective from February 28, 1986 to February 28, 1988; the permit is now effective from March 23, 1988 to March 1, 1989. A temporary tolerance for residues of the active ingredient in or on apples and grapes has been established. (Lawerence Schnaubelt, PM 21, Rm. 233, CM#2, (703-557-8610))

55947-EUP-6. Extension. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 603 pounds of the herbicide norflurazon on 420 acres of peanuts to evaluate the control of various weeds. The program is authorized only in the State of Alabama, Florida, Georgia, North Carolina, South Carolina, and Texas. The experimental use permit is effective from April 9, 1988 to April 9, 1989. A temporary tolerance for residues of the active ingredient in or on peanuts has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: May 9, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10997 Filed 5-17-88; 8:45 am]
BILLING CODE 6560-50-M

[PP 4G3149 and PP 7G3479/T561; FRL-3381-6]

Myclobutanil; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA.)

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the fungicide myclobutanil and its metabolites containing both the chlorophenyl and triazole rings in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire February 28, 1989.

FOR FURTHER INFORMATION CONTACT:
By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: RM. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** on April 17, 1986 (51 FR 13091) and February 24, 1988 (53 FR 5465), stating that a temporary tolerance had been established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolites containing both the chlorophenyl and triazole rings in or on the raw agricultural commodities apples and grapes at 0.5 part per million (ppm), and for residues of myclobutanil on meat, fat and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep at 0.04 ppm; liver of cattle, goats, hogs, horses and sheep at 0.2 ppm; meat, fat and meat byproducts of poultry, eggs and milk at 0.02 ppm. EPA renewed a related food additive regulation (21 CFR 193.477) for myclobutanil in or on raisins and a feed additive regulation (21 CFR 561.443) for myclobutanil in or on raisin waste, apple pomace, and grape pomace, published in the **Federal Register** of April 20, 1988 (53 FR 12942). These tolerances were renewed in response to pesticide petitions PP 4G3149 and PP 7G3479, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

The company has requested a 1-year renewal of the temporary tolerances for the combined residues of the fungicide and its metabolites to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 707-EUP-105, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire February 28, 1989. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be

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revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 10, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–11126 Filed 5–17–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3381–5]

Privacy Act of 1974; System of Records

AGENCY: Environmental Protection Agency.

ACTION: Notice of System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Environmental Protection Agency (EPA), gives notice of a system of records designated as Claims Office Master Files (COMF). This system contains records for EPA's claim programs which include administrative tort claims, debt collection claims, employee personal property claims, waiver of overpayment of pay claims, garnishment claims for alimony and/or child support, and rental car deductible claims.

EFFECTIVE DATE: The Environmental Protection Agency is requesting a waiver from the Office of Management and Budget of its sixty-day advance review period. If the Office of Management and Budget grants the waiver, this system will become formally operational thirty days after publication unless comments are received which would result in a contrary determination.

ADDRESS: Claims Officer, Office of General Counsel (LE–132G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ray E. Spears, Claims Officer, Office of General Counsel (LE–132G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: COMF is composed of six subsystems. These subsystems are: (1) COMF–TOR which contains records relating to claims under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*; (2) COMF–FCC which contains records relating to EPA debt collection claims under the Federal Claims Collection Act, as amended, 31 U.S.C. 3711 *et seq.*; (3) COMF–MCE which contains records relating to EPA employee claims for loss or damage to personal property under the Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 3721; (4) COMF–WAV which contains records relating to EPA employee requests for waiver of erroneous payments of pay pursuant to the provision of 5 U.S.C. 5584; (5) COMF–GAR which contains records relating to claims against EPA employees for garnishment of salary for alimony and/or child support payments pursuant to the provisions of 42 U.S.C. 659, 661–662; and (6) COMF–RCD which contains records relating to employee claims for reimbursment of rental vehicle collision deductibles as authorized travel related expenses under 5 U.S.C. 5704.

Dated: May 5, 1988.

Charles Grizzle,

Assistant Administrator for Administration and Resources Management, United States Environmental Protection Agency.

EPA–24

SYSTEM NAME:

Claims Office Master Files (COMF)—EPA/OGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Claims Office, Room 1045 West Tower, 401 M Street SW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The COMF contains claim records affecting individuals in six categories. COMF–TOR is composed of records covering individuals filing claims under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, for money damages for injury, death or damage caused by the negligence or wrongful acts or omissions of employees of EPA. COMF–FCC is comprised of records covering individuals who are indebted to EPA and against whom EPA has initiated actions under the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.* COMF–MCE is composed of records covering individuals making claims for loss or damage to personal property under the Military Personnel and Civilian Employees Claims act, 31 U.S.C. 3721. COMF–WAV is composed of records covering individuals requesting waiver under 5 U.S.C. 5584 of claims for erroneous payments of salary or transportation expenses. COMF–GAR is composed of records covering EPA employees whose salaries are garnished under 42 U.S.C. 659, 661–662 for alimony and/or child support. COMF–RCD is composed of records covering indivudals claiming reimbursement of collision deductible payments on rental vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

COMF–TOR contains records relating to tort claims against EPA. It may contain administrative claims, investigative reports, witness statements, certifications of scope of employment, damage estimates, medical records, letters to claimants, claimant responses, the Agency final decision on claims, and other records concerning tort claims.

COMF–FCC contains documents relating to debts owed EPA by individuals, corporations, State and local governments, and Indian tribes. It may include documents which evidence the debt (e.g., audit reports, travel voucher, consent decrees, etc.), demand letters, debtor responses, credit reports, information obtained from private collection agencies, and other records concerning debt claims. It may contain the social security numbers of individual debtors to the extent such numbers are contained in travel vouchers or other documents upon which the debt is based.

COMF–MCE contains records relating to employee claims for loss or damage to personal property. It may contain administrative claim forms, investigative reports, supervisor's reports, accident reports, documentation of the amounts claimed as damages, the Agency final action on claims, and other records concerning employee property claims.

COMF–WAV contains records relating to employee requests for waiver by the Government of claims for erroneous payment of salary or travel expenses. It may contain employee request for waiver forms, investigative reports and recommendations, certifications of the amount of overpayment, personnel records relevant to overpayments, evidence of the Government's final action on the request, and other records concerning waiver requests. The social security number of the employee is contained in the file.

COMF–GAR contains legal documents supporting the garnishment of the salary of EPA employees. It may include the order of garnishment or attachment, notices to the employee of garnishment, responses by the employee, payroll information, and other records concerning garnishment requests. The social security number of the employee may be contained in the file.

COMF–RCD contains records required to settle claims against EPA employees for rental car damage deductible claims. It may contain rental agreements, accident reports, damage estimates, employee requests for reimbursement, travel vouchers, correspondence with rental car companies, evidence of the Agency final action on the claim, and other records concerning rental car deductible claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory and regulatory authorities for maintenance of records in COMF are:

COMF–TOR—28 U.S.C. 2671 *et seq.* and 40 CFR Part 10.

COMF–FCC—31 U.S.C. 3711 *et seq.* and 4 CFR Parts 101–105.

COMF–MCE—31 U.S.C. 3721 and 40 CFR Part 14.

COMF–WAV—5 U.S.C. 5584 and 4 CFR Parts 91–93.

COMF–GAR—42 U.S.C. 659, 661–662 and 5 CFR Part 581.

COMF–RCD—5 U.S.C. 5704.

Executive Order 9397, November 22, 1943, provides authority for collection of social security numbers.

PURPOSE:

The purpose of COMF is to assist the EPA Claims Office in managing its receipt, tracking, processing and resoluton of claims and to assist the Department of Justice and the General Accounting Office in final resolution of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses identified in paragraphs 1 through 7 apply generally to all of the subsystems of COMF. The routine use identified in paragraph 8 applies only to COMF–WAV, the routine use in paragraph 9 applies only to COMF–FCC, the routine uses in paragraphs 10 and 11 apply only to COMF–RCD, and the routine use in paragraph 12 applies only to COMF–GAR.

1. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. To a Federal agency which has requested information relevant to its decision in connection with a claim filed by or against an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

3. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning a claim by or against an employee.

4. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

5. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

6. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessay to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

7. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

8. Records maintained in the COMF–WAV subsystem may be disclosed to the General Acounting Office in connection with its responsibility for approving waiver of erroneous overpayment of pay claims pursuant to 5 U.S.C. 5584 and 4 CFR Parts 91–93.

9. Records maintained in the COMF–FCC subsystem may be disclosed to commercial collection agencies under contract with EPA, as provided by 31 U.S.C. 3718 and 40 CFR Part 13, for collection purposes.

10. Records maintained in the COMF–RCD subsystem may be disclosed to rental car companies as part of EPA's resolution of claims by the rental car companies for damage.

11. Records maintained in COMF–RCD may be disclosed to Federal agencies where relevant to their involvement in the rantal agreement or claims arising from it.

12. Records maintained in the COMF–GAR subsystem may be disclosed to the State agency responsible for child support and/or alimony collection and enforcement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from records maintained in the COMF–FCC subsystem to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3701(a)(3)(B)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in COMF are maintained in file folders in file cabinets within the Claims Office and are accessible through computer indexes maintained in the Claims Office.

RETRIEVABILITY:

Records in COMF are retrievable by the name of the person, corporation, local or state government or Indian tribe, and the assigned claim number. This information is maintained in computer indexes within the Claims Office.

SAFEGUARDS:

COMF records are kept in locked file cabinets in a building with restricted

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access. The computer indexes are accessible only through a personal computer within the claims area and which has restricted entry requiring keyed access.

RETENTION AND DISPOSAL:

COMF records are retained for ten (10) years. A resolved claim is retained within the Claims Office for five (5) years then transferred to the Federal Records Center where it is retained for an additional five (5) years. The record is destroyed by the Federal Records Center at the end of the retention period.

SYSTEM MANAGER AND ADDRESS:

EPA Claims Officer, Office of General Counsel (LE-132G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if COMF contains a record pertaining to them may send an inquiry to the System Manager at the address identified above. The inquiry should contain the full name and address of the claimant, a specific statement of what is requested and the assigned EPA claim number if known. The System Manager may require additional identifying information.

RECORD ACCESS PROCEDURE:

Same as notification procedures. In addition, the requestor should identify the specific record being sought.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. In addition, the individual should reasonably identify the record, specify the information he/she is contesting, and provide justification for the requested amendment or correction.

RECORD SOURCE CATEGORIES:

Information in all COMF subsystems is provided by the individual covered by the system and by EPA employees in their official capacities. In addition, other sources may provide information as follows:

COMF-TOR—local police authorities and witnesses;

COMF-FCC—private collection agencies and credit bureaus, other Federal agencies, local officials and State employees;

COMF-MCE—law enforcement and security personnel;

COMF-GAR—State court authorities and garnishors;

COMF-RCD—rental car companies and automobile repair companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-11127 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44506; FRL-3381-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on biphenyl (CAS No. 92-52-4) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules 88T-412 promulgated under section 4(a) within 15 days after it it received.

I. Test Data Submission

Test data for biphenyl was submitted by The Dow Chemical Company pursuant to a test rule at 40 CFR 799.925. It was received by EPA on May 3, 1988. The submission describes an embryo larval toxicity test with rainbow trout, *salmo gairdneri* Richardson. Fish early life stage toxicity testing is required by this test rule. Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44506). This record includes copies of all studies reproted in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 6, 1988.

J. Miranda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-11128 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3319/T559; FRL-3380-4]

Norflurazon; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide norflurazon and its desmethyl metabolite in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire March 30, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the Federal Register of June 11, 1986 (51 FR 21235), announcing the establishment of temporary tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the following raw agricultural commodities: Peanuts at 0.2 part per million (ppm), peanut hulls at 1.0 ppm, and peanut vines at 2.0 ppm. These tolerances were issued in response to pesticide petition (PP) 6G3319, submitted by Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 55947-EUP-6, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it

was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Sandoz Crop Protection Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 30, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Aministrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 3, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10879 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62060; FRL-3381-8]

Receipt of Application for Approval To Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from General Electric Company, Schenectady, New York, for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using a solvent distillation system. This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of the rquest, and comments may be submitted.

DATE: Comments should be received by June 17, 1988.

ADDRESS: Three copies of written comments should be addressed to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS-62060. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE-G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances (OPTS) share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), on PCB disposal methods involving less than 500 pounds of PCB material. The Assistant Administrator for OPTS determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material. Notwithstanding, the Assistant Administrator for OPTS may delegate the authority to review and approve any aspect of a disposal system to OPTS staff or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the Federal Register of March 30, 1983 (48 FR 13181).

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the aplicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30-day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration approval. If the application cannot be approved because the process demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

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EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application from General Electric Company proposes the following plan. Transformers containing PCBs are flushed with trichlorotrifluoroethane (freon). The PCB-contaminated solvent is distilled in the disposal system to produce a clean solvent and PCB still bottoms. The clean solvent is recovered for reuse in the flushing process and the remaining PCB still bottoms are incinerated in an EPA-approved incinerator. If approved, the process will be used in facilities in Atlanta, Georgia; Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Houston, Texas; Philadelphia, Pennsylvania; Portland, Oregon; and Tonawanda, New York.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: May 10, 1988.

Martin P. Halper,

Director, Exposure Evaluation Division.

[FR Doc. 88-11125 Filed 5-17-88; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice: Correction.

SUMMARY: This action corrects the frequency of the report as published in the Federal Register of Tuesday May 10, 1988. In FR document 88-10943, published Tuesday, May 10, 1987, on page 16586, on the "Frequency Report line" of the document: "Annually" is changed to read "Biennially."

FOR FURTHER INFORMATION CONTACT: Margaret P. Ulmer, (202) 634-1932.

For the Commission:

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 88-11088 Filed 5-17-88; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL RESERVE SYSTEM

FNW Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Co's.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FNW Bancorp, Inc.*, Elgin, Illinois; to acquire 100 percent of the voting shares of Bank of Cahokia, Cahokia, Illinois. Comments on this application must be received by June 8, 1988.

2. *First Colonial Bankshares Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of American Bank & Trust Company, Springfield, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Casey County Bancorp, Inc.*, Liberty, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Casey County Bank, Inc., Liberty, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Ostrander Bancshares, Inc.*, Ostrander, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Ostrander State Bank, Ostrander, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas Bank Corporation*, Liberal, Kansas; to acquire 100 percent of the voting shares of American National Bancshares of Westlink, Inc., Wichita, Kansas, and thereby indirectly acquire American National Bank of Westlink, Wichita, Kansas.

Board of Governors of the Federal Reserve System, May 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11072 Filed 5-17-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of a New Federal Building in Downtown Chicago

The General Services Administration (GSA) is preparing an Environmental Impact Statement (EIS) for the proposed construction of a 600,000 occupiable square foot Federal office building in downtown Chicago. The limits of the geographical area under consideration for the building are bounded to the north and west by the Chicago River, to the east by Lake Michigan, and to the south by Congress Parkway.

The proposed Federal Building will house the regional headquarters of various Federal agencies. The principal utilization of the facility will be for administrative and management functions; minimal public service functions are anticipated. Sixty parking spaces reserved for Government use will also be incorporated into the structure.

The building will be acquired through a lease finance mechanism which will place the property in private ownership for as long as thirty years. GSA intends to award a lease contract to a developer by the Fall of 1988. Offerors will identify, propose, and acquire the site, as well as suggest their own design for the building. Occupation of the completed facility is projected for mid-1991.

The EIS will evaluate potential environmental and socio-economic impacts resulting from the different project alternatives. Both the new Federal Building and "No Action" alternatives will be included. Historic, cultural, and urban quality effects will be assessed in the EIS, as well as impacts on transportation, parking, utilities and services, and real estate market activity. Potential short-term and long-term impacts will be discussed in the EIS.

A scoping meeting is scheduled to provide interested parties with an opportunity to identify the significant issues which will arise as a result of the proposed project and alternatives. The details of the meeting are described below.

Scoping Meeting

Date: May 20, 1988
Time: 10:00 a.m.
Place: Kluczynski Federal Building, 230 South Dearborn Street, Room 3518, Chicago, Illinois

All participants are requested to register by mail or in person if they elect to make an oral presentation at the meeting. Oral presentations will be limited to ten minutes. Written comments will be accepted for incorporation into the record at the meeting and for ten workdays following the meeting.

For more information or to register for an oral presentation at the scoping meeting, please contact or direct correspondence to: Matthew A. Kling, Planner, Planning Staff—5PL, 230 South Dearborn Street, Rm. 3618, Chicago, Illinois 60604, (312) 353-5610.

May 10, 1988.

Kenneth J. Kalscheur,

Acting Regional Administrator.

[FR Doc. 88-11060 Filed 5-17-88 8:45 am]

BILLING CODE 6820-BH-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts; Federal Claims Collection

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 14.5% for the quarter ended March 31, 1988. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: May 11, 1988.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 88-11028 Filed 5-17-88; 8:45 am]

BILLING CODE 4150-04-M

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Time and Date:
8:30 am—4:30 pm—June 1, 1988.
9:00 am—1:00 pm—June 2, 1988.

Place: Auditorium B, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The entire meeting will be open to the public. Written comments for consideration by the Board are welcomed and should be received by the Executive Secretary prior to the opening of the meeting. The meeting will include an orientation of Board members to ATSDR programs and activities. A program of work for the Board will be developed at this initial meeting.

Also, the agenda will include a description of ATSDR national registry of persons exposed to hazardous substances and the Board's response to selected scientific questions about the registry. Agenda items are subject to change as priorities dictate.

Contact person for more information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Chamblee 27, Mail Stop F-38, 1600 Clifton Road, NE., Atlanta, Georgia 30033, Telephone: FTS: 236-4800; Commercial: 404-488-4800.

Dated: May 12, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 88-11066 Filed 5-17-88; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Immunization Conference; Meeting

ACTION: Notice of Meeting—22nd National Immunization Conference. Federal, State, and local public health officials as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate.

Time and Date: Registration—Sunday, June 19, 1988. The Program is scheduled for 8:30 a.m.–5 p.m., Monday, June 20, through Thursday, June 23, and from 8:30 a.m.–12:00 noon on Friday, June 24.

Place: St. Anthony Inter-Continental Hotel, San Antonio, Texas, 512/227-4392.

Status: Open to public, limited only by the space available.

Matters to be Discussed: Current status of the epidemiology, prevention, and control of vaccine preventable diseases.

Contact person for more information: Mr. Conrad P. Ferrara, Program Support Section, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: FTS 236-1836; Commercial: 404/639-1836.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-11065 Filed 5-17-88; 8:45 am]

BILLING CODE 4160-18-M

Tuberculosis Elimination Advisory Committee; Meeting

ACTION: Notice of meeting.

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In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date: 8:00 a.m–5:00 p.m., July 27, 1988; 8:00 a.m.–12:30 p.m., July 28, 1988.

Place: Conference Room 207, Building 1, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control in correctional institutions, tuberculosis and human immunodeficiency virus (HIV) infection, tuberculosis control among the foreign-born. Agenda items are subject to change as priorities dictate.

Contact person for more information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E–10, Atlanta, Georgia 30333, Telephones: FTS: 236–2501; Commercial: 404/639–2501.

Dated: May 12, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–11064 Filed 5–17–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[FDA 225–88–2002]

Memorandum of Understanding Between the State Administration of Import and Export Commodity Inspection of the People's Republic of China and the Food and Drug Administration; Ceramicware for Food Use

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the State Administration of Import and Export Commodity Inspection of the People's Republic of China and FDA, U.S. Department of Health and Human Services. This MOU describes two mutual goals of the State Administration of Import and Export Commodity Inspection of the People's Republic of China and FDA. The two goals are to: (1) Establish certification requirements for ceramicware intended for use in the preparation, serving, or storage of food exported directly to the United States or via Hong Kong from the People's Republic of China, and (2) minimize the need for extensive FDA audit sampling of these food-related products.

DATE: This agreement became effective February 26, 1988.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1582.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: May 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services of the United States of America and the State Administration of Import and Export Commodity Inspection of the People's Republic of China, Covering Ceramicware Intended for Use in the Preparation, Serving, or Storage of Food or Drink and Offered for Export to the United States of America.

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) of the United States of America and the State Administration of Imort and Export Commodity Inspection of the People's Republic of China (hereinafter known as the SACI) in entering into this Memorandum of Understanding are to:

1. Establish certification requirements for ceramicware intended for use in the preparation, serving or storage of food exported directly to the United States or via Hong Kong from the People's Republic of China, in order to assure that ceramicware having an unsafe quantity of leachable lead or cadmium will not be exported to the United States.

2. Minimize the need for extensive FDA audit sampling of these food related products from the People's Republic of China certified by the various Provincial or Municipal China Import and Export Commodity Inspection Bureaus (hereinafter known as CCIBs') that would be necessary without this Memorandum of Understanding.

II. Definitions

For the purposes of this Memorandum, both parties agree to the following definitions:

Production Lot—A production lot is a unit of ceramicware which the CCIBs' certify to be uniform and that represents ceramicware from no more than one homogeneously milled slip. The lot must be uniform in the time and temperature of firing and the composition and application of the decorations.

Delivery Lot—A delivery lot is a unit of ceramicware, shipped at one time, consisting of a production lot or several production lots. It is packaged in containers/cartons that identify each production lot separately and bear the name and address of the manufacturer.

Sample—A sample is six units, randomly selected, of identical size, shape, color and decoration from each production lot.

Flatware—Flatware are ceramic articles that have an internal depth, as measured from the lowest point to the horizontal plane passing through the upper rim, that does not exceed 25 mm.

Hollowware—Hollowware products are ceramic articles having an internal depth, as measured from the lowest point to the horizontal plane passing through the upper rim, greater than 25 mm. The two sizes of hollowware are:

Small hollowware: a capacity of less than 1.1. liter; and,

Large hollowware: a capacity of 1.1 liter or more.

Action level—The limit above which FDA will take legal action to remove products from the market.

III. Substance of Agreement

The State Administration of Import and Export Commodity Inspection of the People's Republic of China

The State Administration of Commodity Inspection (SACI) is the competent authority in charge of unified supervision and administration of all of China's import and export commodity inspections. The CCIB's, attached to SACI, are authorized to conduct the inspection of Chinese ceramicware exported directly or via Hong Kong to the United States. To fulfill its responsibilities under this agreement, the CCIBs' will direct their activities to assuring that the ceramicware products that are to be offered for export to the United States are safe for use in the preparation, serving or storage of food or drink, by inspecting ceramicware products before distribution and by collecting and examining samples to assure compliance with the requirements identified in Section VI. CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICS.

To discharge its responsibilities regarding ceramicware products that are to be offered for export to the United States.

1. The CCIBs' are responsible for inspecting and issuing certificates for ceramicware exported to the United States under contracts signed by Chinese corporations. The CCIBs' will have their laboratories examine a representative sample of each category of ceramicware (i.e., Flatware, Small hollowware, and large hollowware) from each production lot of ceramicware to be offered for export to the United States. This inspection will be made to determine whether the ceramicware in each production lot exceeds the action levels specified in Section VI. CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICS. The laboratories of the CCIB's will assure, by appropriate procedures, that these analyses are completed as described in Section V. ANALYTICAL METHODOLOGY.

2. The CCIBs' shall offer for export and shall issue a certificate only for those production lots that meet the criteria set forth in section VI. CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICS.

3. The CCIBs' shall require that all containers/cartons of delivery lots of ceramicware exported to the United States under certification be marked with the production lot number(s).

4. The CCIBs' shall include the following information on the certificate for each production lot of the ceramicware exported to the United States:

(a) Production lot identification, including name and address of manufacturer;

(b) Test methodology used to determine the levels of leachable lead and cadmium;

(c) Analytical results of the tests for lead and cadmium;

(d) Number and types of pieces of ceramicware in each production lot;

(e) The number and types of the pieces of ceramicware that were tested;

(f) Date of the certification; and,

(g) Name of the authorizing official and seal of the office. The validated certificate(s) will accompany the shipping manifest.

5. Shipments exported to the United States via Hong Kong shall be sealed by the CCIBs' in such a way as to prevent opening during transit and they shall be accompanied by a valid CCIB's certificate.

6. The CCIBs' shall affix their certificate(s) to the packing list supplied by the manufacturer, for every production lot present in each delivery lot.

7. The CCIBs' shall furnish FDA, upon request, with a copy, both in English and in Chinese, of their current regulations and of the procedures it uses to assure that each production lot of ceramicware is acceptable.

The Food and Drug Administration, Department of Health and Human Services of the United States of America

FDA is charged with the enforcement of the Federal Food, Drug and Cosmetic Act and the Fair Packaging and Labeling Act, certain portions of the Public Health Service Act, and other related statutes. FDA directs its activities toward the protection of the public health of the United States by assuring that foods and food-related products are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal firstly through inspections of manufacturers and distributors. Second, it collects and analyzes samples to assure compliance with the statutes it enforces. FDA makes a concerted effort to ensure that foods and food-related products entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding ceramicware products exported to the United States from the People's Republic of China:

1. FDA may sample representative pieces from delivery lots certified under this agreement to audit the effectiveness and reliability of the certification process.

2. FDA shall detain the entry of all lots of ceramicware not accompanied by a valid certificate or those exceeding the CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICS (Section VI).

3. FDA shall promptly notify SACI, and the Commercial Office of the Embassy of the People's Republic of China in the United States of America, of any lot of any ceramicware covered by this agreement which is detained. This notification shall include:

a. The name of the product;

b. Quantity of ceramicware detained;

c. Delivery and/or production lot numbers;

d. FDA's sample number;

e. Date sample collected;

f. Reason for detention;

g. Date of detention;

h. FDA's District and Port of Entry;

i. Manufacturer/shipper name;

j. Importer of record name; and,

k. The CCIBs' certificate number(s).

4. FDA shall promptly notify SACI of any modifications in the U.S. statutes or the FDA regulations pertaining to these ceramicware products.

5. FDA will share expertise and provide assistance to SACI when necessary. Both parties will have regular technical exchanges. Areas of mutual cooperation will include but not be limited to: Training; personnel exchanges; data gathering; technical information updating; and, the exchange of new and/or improved methods of sampling and testing of ceramicware products.

IV. Sample Collections

The same subsamples will be used for determining the presence of lead and cadmium. These subsamples will be obtained as follows:

Six (6) units, of identical size, shape, color and design will be collected from each sampled delivery lot.

V. Analytical Methodology

Compliance with the established action levels for lead and cadmium will be determined by using the analytical procedures described in the current edition of "Official Methods of Analysis, Association of Official Analytical Chemists," (currently, the 14th Ed., 1984, 25.031–25.034), except that the extraction step should be performed so that the surface under test is *NOT* exposed to light. The levels of lead and cadmium will be determined by analyzing the six (6) units at the same time, individually, according to the above cited method.

VI. Criteria for Certification for Export of Ceramics

Lots of ceramicware that exceed the following criteria will not be certified for export to the United States.

Category	Action basis	Action level (micrograms/mL)
1. Lead		
Flatware	Average of 6 units	7.0
Small hollowware	Any one of 6 units	5.0
Large hollowware	do	2.5
2. Cadmium		
Flatware	Average of 6 units	.5
Small hollowware	Any one of 6 units	.5

Category	Action basis	Action level (micrograms/mL)
Large hollowware	do	.25

VII. Administrative Procedures

The parties will mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this agreement.

VIII. Participating Parties

A. State Administration of Import and Export Commodity, Inspection of the People's Republic of China, 12, Jianguomenwai Street, Beijing, The People's Republic of China.

B. The Food and Drug Administration, The Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

IX. Liaison Officers

A. For the State Administration of Import and Export Commodity Inspection of the People's Republic of China:

Deputy Director, Division of Supervision and Control (Currently Mme. ZHANG Peiyu), 12, Jianguomenwai Street, Beijing, The People's Republic of China.
Telephone No. 500-1811.
Telex No. 210076 SACI CN.

B. For the Food and Drug Administration:

Mr. Edward A. Steele, Director, Division of Program Operations, Center for Food Safety and Applied Nutrition, 200 C Street, SW, Washington, DC 20204.
Telephone No. (202) 245-2140.
Telex No. 197623 PHS PKLN.

X. Period of Agreement and Textual Versions

This agreement shall become effective upon acceptance by both parties and shall remain in effect indefinitely. It may be modified by mutual consent or terminated by either party upon a 30-day advance written notice to the other party.

This agreement is written in Chinese and English, both texts are equally valid.

In witness whereof, the agencies have executed this Memorandum of Understanding covering ceramicware products between our governments.

Approved and accepted for the Food and Drug Administration of the Department of Health and Human Services of the United States of America.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: February 26, 1988.

Approved and accepted for the State Administration of Import and Export Commodity Inspection of the People's Republic of China.

Mr. Zhu Zhenyuan,

Deputy Director General.

Dated: December 5, 1987.

[FR Doc. 88-11074 Filed 5-17-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-875; FR-25-16]

General Counsel of the Department of Housing and Urban Development; Designation as Official Responsible for Implementation of Executive Order 12606 and 12630

AGENCY: Office of the Secretary, HUD.

ACTION: Designation.

SUMMARY: This document designates the General Counsel of the Department as the HUD official responsible for ensuring the implementation of Executive Order 12606 on The Family and Executive Order 12630 on Governmental Actions and Interference with Constitutionally Protected Property Rights.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7055. (This is not a toll-free number.)

Designation Of General Counsel As Responsible HUD Official Under Executive Orders 12606 and 12630

The General Counsel of the Department of Housing and Urban Development is designated as the departmental official responsible for implementation of Executive Orders 12606, September 2, 1987 (52 FR 34188, September 9, 1987), and Executive Order 12630, March 15, 1988 (53 FR 8859, March 18, 1988). As HUD's responsible official the General Counsel is directed to take all actions necessary to ensure that the policies set out in these Executive Orders are implemented.

In particular, the General Counsel will assess proposed policies and regulations of the Department to determine:

(1) Whether features of HUD policy under consideration have positive or negative implications in light of the Family Policymaking Criteria set out in section 1 of Executive Order 12606;

(2) Whether actions undertaken or contemplated by the Department are consistent with the principals, criteria, and requirements stated in sections 1 through 5 of Executive Order 12630.

The General Counsel shall be responsible, in each instance where the policies of these Executive Orders are affected by a departmental policy or regulation, for assuring full adherence the principles set out in the Orders.

Date: May 9, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-11056 Filed 5-17-88; 8:45 am]
BILLING CODE 4210-32-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

South Atlantic Outer Continental Shelf Lease Sale 108
Request for Interest

Purpose

Proposed Sale 108--South Atlantic is being reviewed by the Secretary of the Interior to determine whether the Outer Continental Shelf (OCS) presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring in the South Atlantic.

The responses will assist the Secretary of the Interior in determining if the presale process for the proposal should be started, delayed, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data and economic or other conditions could create bidding interest in areas which may now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could turn an area now unattractive to potential bidders into one which could be of interest. Other information of interest would include new geophysical data; new geological data; new interpretations of existing data; and new estimates of costs of production. By requesting information and acting on it prior to the issuance of the Call for Information and Nominations, the risk of inappropriate expenditures for such sales would be reduced.

If the Request for Interest indicates sufficient interest to warrant proceeding with the sale, these prelease steps will follow: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS); Area Identification; draft EIS; Public Hearing; final EIS; proposed Notice of Sale; Governors' Comments; and final Notice of Sale.

Description of the Area

The South Atlantic Planning Area extends east along a line extending from the juncture of the Submerged Lands Act (SLA) limit at approximately 35° N. latitude to approximately 70° W. longitude thence south to approximately 34° N. latitude thence west to 72° W. longitude thence south to approximately 32° N. latitude thence west to approximately 74° W. longitude thence south to approximately 31° N. latitude thence west to approximately 76° W. longitude thence south to approximately 29° N. latitude thence west to 78° W. longitude thence south to 28°17'10" N. latitude thence west to the SLA limit thence in a northerly direction along the SLA limit to the point of origin. The planning area includes approximately 19,100 full and partial blocks covering approximately 107 million acres.

The total area open for comment at this time consists of 13,046 full and partial blocks (approximately 73.7 million acres) and is outlined on the attached map. This area is shown in detail on the Request for Interest Map available from the Regional Supervisor, Office of Leasing and Environment, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

The following Official Protraction Diagrams are wholly or partially included in this request:

NI 18-4	NI 18-7	NI 18-11	NH 18-2	NH 18-7
NI 18-5	NI 18-8	NI 18-12	NH 17-5	NH 17-11
NI 18-6	NI 18-9	NH 17-2	NH 17-6	
NI 19-4	NI 17-12	NH 17-3	NH 18-4	
NI 17-9	NI 18-10	NH 18-1	NH 17-8	

These diagrams may be purchased for $2.00 each from the Regional Supervisor, at the above address (checks made payable to the U.S. Department of the Interior--MMS).

Previous Sale Related Activities

There have been four South Atlantic OCS lease sales, including one Re-Offering sale. The first was Sale 43, held on March 28, 1978, and the last was Sale 78, held on July 26, 1983. The U.S. Treasury has received almost $125 million for the 75 leases issued as a result of these lease sales. Since the last lease sale, 55 leases have been relinquished or have expired.

The last proposed lease sale in this area, Sale 90, was cancelled on June 13, 1986, following a determination that there was little industry interest in a sale at that time.

There have been six exploratory wells and one COST well drilled in this area resulting in seven dry holes. All seven wells have been plugged and abandoned.

Instructions on Request for Interest

Information regarding leasing and exploring in the South Atlantic Planning Area may be provided by mail, telephone, or, alternatively, by informal meeting with the Regional Director or designated representative. General or detailed information may be submitted. We request that you provide information on the following:

(1) Are you interested in the area at this time?

(2) Would your level of interest in this area change if oil and gas prices increase?

(3) What general or detailed information can you provide regarding whether we should proceed in this planning area with the OCS presale process; delay the presale process for 1 year or more; or defer the sale for consideration in a future 5-year schedule?

(4) Is your company spending money on any oil and gas activities in this area or are expenditures anticipated on activities such as geologic and geophysical work, etc.?

(5) What comments and suggestions can you provide on your choice of minimum bid levels, alternative bidding systems, and other procedures which may lead to enhanced understanding of the oil and gas resources of the South Atlantic OCS?

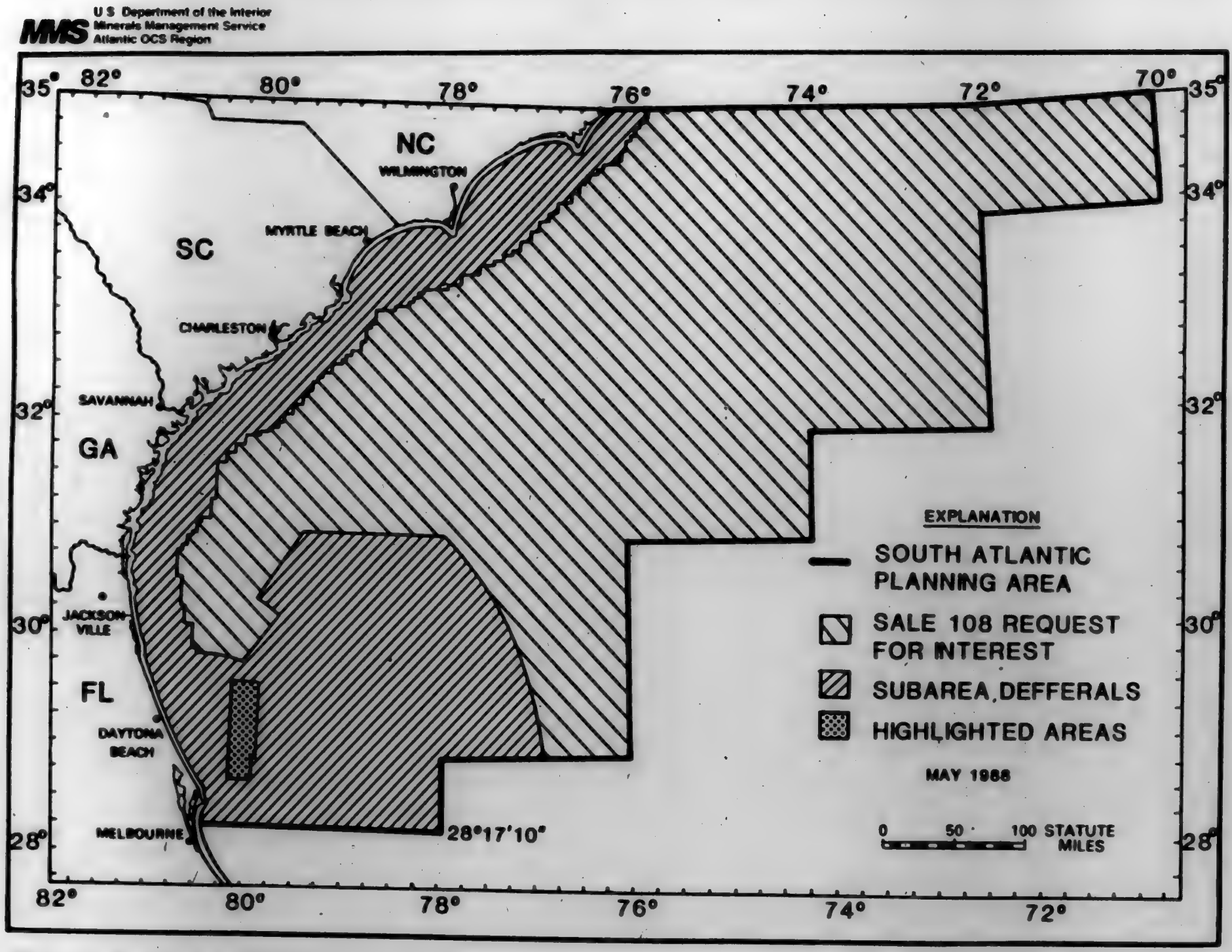
Indications of interest and comments should be received no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Request for Interest on Proposed Lease Sale 108--South Atlantic."

Letters should be mailed or hand delivered to the Regional Supervisor at the address stated under "Description of Area."

Director, Minerals Management Service
William D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles
MAY 18 1988
Date



[FR Doc. 88-11086 Filed 5-17-88; 8:45 am]
BILLING CODE 4310-MR-C

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Nogales International Wastewater Treatment Plant Expansion Nogales, Arizona; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an adopted environmental assessment and a supplementary statement, the International Boundary and Water Commission, United States and Mexico, United States Section ("Commission" and "U.S. Section") finds that the proposed action to upgrade and expand the Nogales International Wastewater Treatment Plant to accommodate an additional 4.0 million gallons per day (mgd) capacity for a total treatment capacity of 17.2 mgd that includes additional capacity for Mexico's part in the proposed expansion is not a major federal action that would cause a significant local, regional, or national adverse impact on the environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy of 1969 (NAPA); the Council on Environmental Quality Final Regulations (40 CFR Parts 1500–1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the Federal Register September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared.

ADDRESS: Mr. J.S. Valdez, Principal Engineer, Operations, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa, C–310, El Paso, Texas 79902. Telephone: (915) 534–6693, FTS 570–6693.

SUPPLEMENTARY INFORMATION:

Proposed Action

The U.S. Section proposes to upgrade and expand the Nogales International Wastewater Treatment Plant (NIWWTP) to accommodate an additional 4.0 mgd capacity for a total treatment of 17.2 mgd. The additional capacity includes Mexico's part in the proposed expansion of the international plant.

The existing design capacity of the NIWWTP, which began operation in 1972 to provide service for the cities of Nogales, Arizona and Nogales, Sonora, Mexico, is 8.2 mgd with capacity allocations of 4.95 mgd to Nogales, Sonora and 3.25 mgd to Nogales, Arizona. Currently, the NIWWTP is treating an average daily flow of approximately 8.6 mgd including approximately 3.5 mgd from Nogales, Arizona and 5.1 mgd from Nogales, Sonora. Excessive flows directly affect the international plant's performance, resulting in overloading and decreased detention time which, in turn, causes effluent violations. The proposed upgrading and expansion of the existing system will prevent these violations from occurring.

The Mexican Section and U.S. Section of the Commission are presently considering a proposed agreement recommending Mexico join in the expansion of the NIWWTP by purchasing a capacity up to 4.95 mgd in excess of the 4.95 mgd presently assigned to Mexico at the international plant. The existing lagoon treatment system would be up-graded to a complete mix cell system followed by a series of partial mix cells with a total detention time at design flow approximately equal to five (5) days. Treatment of Mexico's additional capacity would be provided by additional aeration and minor modifications to the 13.2 mgd total treatment capacity plant without expansion of the physical area of the existing plant site.

Alternatives Considered

Six alternatives were considered in addition to the "no action" alternative; however, three were eventually eliminated from further consideration because of failure to meet alternative evaluation criteria. Three biological treatment alternatives were selected for further evaluation: Short Detention Time Aerated Lagoon Process (the preferred alternative), Sequential Batch Reactor Process, and Biotower/Activated Sludge Process.

These alternatives satisfied all criteria for alternative selection including: Reliable and consistent effluent quality compatible with National Pollution Discharge Elimination System permit or effluent reuse requirements; adaptability/flexibility in meeting future variations in effluent standards; and ability to be constructed within the confines of the existing plant site since expansion of the physical area of the plant is restricted by the Santa Cruz River and railroad right-of-way.

Environmental Assessment

The U.S. Section has adopted, with supplemental information, the Arizona Department of Environmental Quality (ADEQ) Environmental Assessment (EA) for plant expansion of the NIWWTP dated August 1987. Whereas, the ADEQ environmental assessment only considered in the final analysis a total treatment capacity of 13.2 mgd which includes 1.45 mgd future reserved capacity either for purchase by Mexico or Nogales, Arizona; the U.S. Section supplements that EA with consideration of an additional 4.0 mgd (17.2 mgd total treatment capacity) to include additional capacity for Mexico's part in the international plant expansion.

Findings of the Supplemented Environmental Assessment

The U.S. Section has determined that the ADEQ analysis (EA, pp. 11–13) of the environmental impacts for the 13.2 mgd capacity plant would be the same for the 17.2 mgd capacity plant. An overall positive environmental effect is associated with the expansion of the international plant whether that expansion is for 13.2 mgd or 17.2 mgd total treatment capacity. In summary:

1. No adverse effects are expected from treatment of Mexico's additional capacity on surface water or groundwater quality or quantity. No significant impact is expected on the flood plain nor will the expansion project increased the probability of flood damage to the international plant. The proposed expansion will neither benefit nor degrade air quality in the area.

2. No negative impact is expected on flora and fauna in the area. Expansion for treatment of Mexico's additional 4.95 mgd capacity will not require additional surface area beyond that already available at the existing international plant site. Effluent discharges will continue with better quality waters, and impacts to aquatic biota are not expected.

3. No adverse effects are expected for socio-economic factors, and no cultural resource impacts are expected.

4. No long-term detrimental environmental impacts are anticipated as a result of the construction or operation of the proposed expansion for Mexico's additional capacity. Long-term environmental impacts for the 17.2 mgd capacity plant are beneficial in nature and far exceed any potential negative impacts.

5. Short-term construction impacts are expected to be temporary and minimal in both duration and area. Mitigation measures to minimize these impacts are proposed.

On the basis of the Supplemented Environmental Assessment, an environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Finding of No Significant Impact and Supplemental Statement have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental documents are available to fill single copy requests at the above address.

Date: May 6, 1988.

Suzette Zaborcski,

Staff Counsel.

[FR Doc. 88–11111 Filed 5–17–88; 8:45 am]

BILLING CODE 4710–03–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–390 (Preliminary)]

Digital Readout Systems and Subassemblies Thereof From Japan

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1672b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of digital readout systems and subassemblies thereof,[3] provided for in item 710.80 of the Tariff Schedules of the United States,[4] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 28, 1988, a petition was filed with the Commission and the Department of Commerce by Anilam Electronics Corp., Miami, FL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of digital readout systems and subassemblies thereof from Japan. Accordingly, effective March 28, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–390 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 4, 1988 (53 FR 10953). The conference was held in Washington, DC, on April 20, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commisison transmitted its determination in this investigation to the Secretary of Commerce on May 12, 1988. The views of the Commissioners are contained in USITC Publication 2081 (May 1988), entitled "Digital Readout Systems and Subassemblies Thereof from Japan: Determination of the Commission in Investigation No. 731–TQ–390 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 13, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11157 Filed 5–17–88; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes, Lodwick, and Rohr determine that an industry in the United States is not materially injured or threatened with material injury, ann the establishment of an industry in the United States is not materially retarded, by reason of imports form japan of digital readout systems and subassemblies thereof, provided for in item 710.80 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value.

[3] Digital readout (DRO) systems subject to this investigation provide linear or rotational displacement information for high precision industrial equipment such as metalworking machine tools. The scope of the investigation covers DRO systems, whether assembled or unassembled. An unassembled DRO system would include a console and a transducer (glass scale, magnetic, and rotary encoder but not laser) destined for use in a DRO system and imported into the United States for assembly and scale as a DRO system. The scope of investigation also covers subassemblies and parts therof. Subassemblies and parts thereof include consoles and parts of consoles destined for use in DRO systems.

[4] DRO systems and subassemblies thereof are currently also provided for in subheading 9031.80.00 of the Harmonized Tariff Schedule of the United States.

[Investigation No. 337–TA–228]

Certain Fans With Brushless DC Motors; Request for Written Submissions on the Issues of Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Request for written submissions.

SUMMARY: Notice is hereby given that the Commission has decided to solicit written submissions on the issues of remedy, the public interest, and bonding prior to final disposition of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 202–252–1103.

SUPPLEMENTARY INFORMATION: Authority for the Commission's solicitation of written submissions is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.58(a) of the Commission's rules of practice and procedure (19 CFR 210.58(a)).

This investigation was instituted on October 9, 1985, in response to a complaint filed by Rotron, Inc. ("Rotron") against Matsushita Electric Industrial Co., Ltd. and Matsushita Electric Corp. ("respondents"), based on allegations of infringement of claims 1–4 and 6–12 of Rotron's U.S. Letters Patent 4,494,028. The presiding administrative law judge ("ALJ") issued the final ID on July 9, 1986, finding that claims 1, 6, and 8 of Rotron's patent were invalid as anticipated pursuant to 35 U.S.C. 102(b), and that claims 1–4 and 6–12 were invalid as obvious pursuant to 35 U.S.C. 103. The ALJ also found that (i) if Rotron's patent had been valid, it would have been infringed, (ii) substantial injury to a domestic industry resulted from past importation of respondents' fans, and (iii) future importation of such fans will have the tendency to injure substantially a domestic industry. The Commission reviewed and affirmed the ALJ's findings that claims 2–4, 7, 9–12 were invalid as obvious under 35 U.S.C. 103, and determined not to review the remainder of the ID. Rotron appealed the Commission's findings that claims 3 and 9–12 of Rotron's patent were invalid as obvious to the U.S. Court of Appeals for the Federal Circuit ("CAFC"). In *Rotron, Inc. v. U.S.I.T.C., et al.*, Appeal No. 87–1099 (February 16, 1988), the CAFC reversed the Commission's finding of patent invalidity respecting claims 3 and 9–12, and found a violation of section 337 as a matter of law. In light of the Commission's findings of patent infringement and injury, the CAFC, by mandate dated April 14, 1988, remanded the investigation to the Commission for appropriate further proceedings. The Commission must now consider the issues of remedy, the public interest, and bonding.

In considering remedy, the Commission may issue (i) an order which could result in the exclusion of the subject articles from entry into the United States and/or (ii) cease and desist order(s) which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. The Commission is interested in

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receiving written submissions which address the form of remedy, if any, that should be ordered.

The Commission must consider the effect of any order on the public interest by examining the impact exclusion and/or cease and desist order(s) will have on (i) the public health and welfare, (ii) competitive conditions in the United States economy, (iii) the production in the United States of articles that are like or directly competitive with those articles subject to investigation, and (iv) United States consumers. The Commission is therefore interested in receiving written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President thas 60 days in which to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation, interested Government agencies, and the public are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed exclusion and/or cease and desist order(s) for the Commission's consideration.

Initial written submissions by the parties must be received in the Office of the Secretary to the Commission during official business hours (8:45 a.m. to 5:15 p.m.) no later than the date which is 14 days after the date of publication of this notice in the **Federal Register**. Submissions from all other sources and the parties' reply submissions must be received in the Office of the Secretary during official business hours no later than the date which is 21 days after the date of publication of this notice in the **Federal Register**. Persons filing written submissions must submit an original and 14 true copies of each such submission on or before the deadlines prescribed above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the Commisison. All such requests must be directed to the Secretary to the Commission and must include a full discussion of the reasons supporting the requested treatment. Properly marked documents containing information granted confidential treatment by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours on Monday through Friday, at the Office fo the Secretary, U.S. International Trade Commission, 500 E Steet, SW., Washington, DC 20436, telephone: 202–252–1000.

Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal at 202–252–1810.

By order of the Commission.

Issued: May 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11156 Filed 5–17–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–278]

Certain Programmable Digital Clock Thermostats; Commission Decision Not To Review an Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of respondent Computime Limited on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) terminating respondent Computime Limited from the above-captioned investigation on the basis of a consent order. As Computime Limited was the only remaining respondent in the investigation, its termination terminated the investigation.

FOR FURTHER INFORMATION CONTACT: George W. Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1090.

SUPPLEMENTARY INFORMATION: On April 12, 1988, the presiding ALJ issued an ID terminating the investigation with respect to Computime Limited. The ID granted the joint motion of complainant Emerson Electric Co. and Computime Limited to terminate the investigation with respect to Computime on the basis of a consent order. No petitions for review of the ID or government agency or public comments were received.

Termination of the investigation as to respondent Computime Limited will further the public interest by conserving Commission resources as well as those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: May 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11155 Filed 5–17–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-148X)]

Illinois Central Railroad Co.—Exemption—Discontinuance of Trackage Rights Between Haleyville and Birmingham, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903 *et seq.*, the discontinuance by Illinois Central Railroad Company of 81 miles of trackage rights between Haleyville and Birmingham, AL subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 17, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988.

Petitions to stay must be filed by May 31, 1988, and petitions for reconsideration must be filed by June 7, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub-No. 148X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William C. Sippel, Two Illinois Center, 233 North Michigan Avenue, Suite 2306, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: This discontinuance exemption is directly related to IC's sale to Southern Railway Company of 199 miles of railroad and 154 miles of trackage rights between Centralia, IL and Haleyville, AL simultaneously approved by the Commission in Finance Docket No. 31088. Additional information is contained in the Commission's decision under Finance Docket No. 31088. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721, or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–11099 Filed 5–17–88; 8:45 am]

BILLING CODE 7035–01–M

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the FR on December 22, 1987 (52 FR 48440–48–446).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–88–60–C]

Camp Fork Fuel Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Camp Fork Fuel Co., Inc. Box C, Elkhorn City, Kentucky 41532 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its No. 4 Mine (I.D. No. 15–08333) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. Petitioner states that the use of a 20-foot width in the entries would result in a dimunition of safety for the miners affected because roof supports are presently being used and in order to compy it would be necessary to eliminate all roof supports. a 20-foot width is to narrow to operate the equipment and does not allow enough space for the equipment to make a 90 degree turn.

3. Petitioner further states that the mine's roof is solid limestone and does not need roof bolting.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 10, 1988.

[FR Doc. 88–11057 Filed 5–17–88; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 5, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the

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records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Defense, Defense Logistics Agency (N1–361–88–1). Facilitative records relating to DLA productivity program, personnel matters, engineering support, and other matters.

2. Environmental Protectioin Agency, Federal Water Pollution Control Board (N1–412–88–1). Reading file, questionnaires, mailing list and other transitory records relating to the work of the New England New York Inter-Agency Committee.

3. General Services Administration, Office of Administration (N1–269–88–1). Reduction in retention period for selected personnel security case files.

4. Department of Justice, Criminal Division (N1–60–88–6). Records pertaining to tax return information requests.

5. Department of Justice, Bureau of Justice Statistics (N1–423–88–1). Input forms relating to Offender-Based State Correctional Information System, 1985–80 (electronic data base) is designated for permanent retention.

6. Department of State, Bureau of Personnel (N1–59–88–26). Personnel Models and Inventories System.

7. Department of the Treasury, Comptroller of the Currency (N1–101–88–2). Domestic branch and customer bank communication terminal files.

Dated: May 9, 1988.

Claudine J. Weiher,

Deputy Archivist of the United States.

[FR Doc. 88–11112 Filed 5–17–88; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on June 1, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 1, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will begin its review of the GE ABWR. This meeting will concentrate on the first review module consisting of SAR Chapters 4, 5, 6, and 15–1.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 7:30 p.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 10, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–11139 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 18, 1988 (53 FR 12735). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk(*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Regional Programs, May 24, 1988, Atlanta, GA. The Subcommittee will review the activities under the control of the NRC Region II Office.

Improved LWRs, May 25, 1988—Postponed to June 8, 1988.

Metal Components, May 26, 1988, Washington, DC. The Subcommittee will discuss the quality of fasteners in nuclear power plants, BWR reactor pressure vessel in-service inspections, status of the piping-erosion-corrosion program and other matters.

Occupational and Environmental Protection Systems, May 31, 1988, Washington, DC. The Subcommittee will review changes to 10 CFR Part 20, "Standards for Protection Against Radiation."

Advanced Boiling Water Reactors, June 1, 1988, Washington, DC. The Subcommittee will begin its review of the GE ABWR. This meeting will concentrate on the first review module consisting of SAR Chapters 4, 5, 6, and 15–1.

Improved LWRs, June 6, 1988, Washington, DC. The Subcommittee will discuss Chapters 3, 4, and 5 of the EPRI ALWR Requirements document.

Reliability Assurance, June 14, 1988, Washington, DC. The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study. An update on the implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Nuclear Power Plants," is also planned.

Maintenance Practices and Procedures, June 15, 1988, Washington, DC. The Subcommittee will be briefed by RES on the current status of the Maintenance Rule.

Thermal Hydraulic Phenomena, June 21, 1988, Washington, DC. The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

Advanced Reactor Designs, June 22, 1988, Washington, DC. The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

Decay Heat Removal Systems, June 23, 1988 (tentative), Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position of USI A–45.

*Waste Management**, June 27–29, 1988, Bethesda, MD. The Subcommittee will review the following pertinent high-level nuclear waste management topics: (1) DOE's proposal to petition for rulemaking on the Design Basis Accident Dose Limit for a geologic repository, (2) a report on the meeting on Alternative Conceptual Models of the Yucca Mt. Site held in Las Vegas, NV the week of April 11–15, 1988, (3) a report on the Performance Assessment Workshop held at Sandia National Laboratories, and (4) a briefing on the licensing procedures used to authorize, at reactor, LLW processing and spent fuel compaction and dry storage operations.

TVA Organizational Issues, July 13, 1988, Bethesda, MD. The Subcommittee will review the lessons learned from the NRC Staff's review of the shutdown of TVA's nuclear power plants.

*Waste Management**, July 21–22, 1988, Bethesda, MD.

Maintenance Practices and Procedures, September 13, 1988, Bethesda, MD. The Subcommittee will discuss and review the maintenance rule and associated NUREG.

*Waste Management**, September 15–16, 1988, Bethesda, MD.

Advanced Pressurized Water Reactors, Date to be determined (June/July), Washington, DC. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Safety Philosophy, Technology and Criteria, Date to be determined (June/July), Washington, DC. The Subcommittee will review the status of NUREG–1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients.

Decay Heat Removal Systems, Date to be determined (June/July), Washington, DC. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Occupational and Environmental Protection Systems, Date to be determined (June/July), Washington, DC. The Subcommittee will review: (1) "Hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planing rule, (4) the control room habitability report by ANL, and (5) other related matters.

Advanced Pressurized Water Reactors, Date to be determined (July), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Advanced Pressurized Water Reactors, Date to be determined (July/August), Washington, DC. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Advanced Reactor Designs, Date to be determined (July/August), Washington, DC. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

General Electric Reactor Plants, Date to be determined (August), Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

Containment Requirements, Date to be determined (August/September), Washington, DC. The Subcommittee will review the NRC Staff's document on interim recommendations for containment performance and improvements (BWR Mark I only).

Decay Heat Removal Systems, Date to be determined, Washington, DC. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date and location to be determined. The Subcommittee will review the Diagnostic Evaluation Program and other related licensee performance review efforts by the NRC Staff.

Thermal Hydraulic Phenomena, Date to be determined, Washington, DC. The Subcommittee will discuss the status of Industry best-estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary Systems, Date to be determined, Washington, DC. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the Staff to review the Chilled Water Systems design.

ACRS Full Committee Meeting

June 2–4, 1988—Items are tentatively scheduled.

*A. *Thermal Hydraulic Research (Open)*—Discuss NRC programs to provide research data applicable to thermal hydraulic phenomena.

*B. *Advanced Reactors (Open)*—Review regulatory requirements for key design features of advanced liquid-metal cooled and high-temperature gas-cooled nuclear power plants.

*C. *Babcock & Wilcox Nuclear Power Plants (Open)*—Review safety reassessment of B&W nuclear power plants.

*D. *Important Safety Related Issues (Open)*—Discuss hierarchical structure of important safety related issues identified by the ACRS members.

*E. *ACRS Practices and Procedures (Open)*—Discuss proposed changes in ACRS Bylaw regarding activities of members (e.g., participation in meetings not sponsored by the ACRS) and realignment of ACRS subcommittee assignments.

*F *Generic Issues (Open)*—Discuss the priority rankings proposed by the NRC Staff to a group of generic issues.

G. *ECCS Evaluation Model (Closed)*—Review proposed Westinghouse Electric Corporation's revised ECCS evaluation model for 2-Loop Upper-Plenum Injection plants.

*H. Emergency Planning (Open)—Briefing and discussion regarding proposed NRC rule regarding emergency preparedness for fuel cycle and other radioactive material licensees.

*I. *Quality of Nuclear Power Plant Fasteners (Open)*—Briefing regarding NRC Staff effort to evaluate the quality of bolts and other fasteners used in nuclear power plants.

*J. Systems Interactions (tentative) (Open)—Briefing regarding the proposed resolution of USI A–17, "Systems Interactions in Nuclear Power Plants."

*K. *10 CFR Part 20 (Open)*—Review proposed revisions to 10 CFR Part 20, "Standards for Protection Against Radiation."

*L. *ACRS Subcommittee Activities (Open)*—Reports and discussion of the status of assigned subcommittee activities, including NRC Regional activities, the advanced boiling water reactor, EPRI design requirements for nuclear power plants, inspection of BWR pressure vessel, and international

*Expected to be established as the Advisory Committee on Nuclear Waste in the near future.

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meeting on nuclear power plants operation and safety.

*M *Future Activities (Open)*—Discuss proposed items for consideration by the ACRS and anticipated subcommittee activities.

N. *Appointment of New ACRS Members (Closed)*—Discuss qualifications of candidates proposed for consideration as members for appointment to the ACRS.

July 14–16, 1988—Agenda to be announced.

August 11–13, 1988—Agenda to be announced.

Dated: May 12, 1988

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-11140 Filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved LWRs; Date Change

The ACRS Subcommittee meeting on Improved LWRs scheduled to be held on May 25, 1988, the notice of which was published in the **Federal Register** on Wednesday, May 11, 1988 (53 FR 16800), has been *rescheduled to Wednesday, June 8, 1988*, Room 1046, 1717 H Street, NW., Washington, DC. All other items pertaining to this meeting remain the same as in the previous notice.

Dated: May 12, 1988.

Richard Savio,

Chief, Branch No. 1.

[FR Doc. 88-11143 Filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 23, 1988 through May 6, 1988. The last biweekly notice was published on May 4, 1988 (53 FR 15905).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 17, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: July 10, 1987

Description of amendment request: The July 10, 1987 BG&E application proposed adding Technical Specification (TS) operability and reporting requirements for the reactor vessel level monitoring system (RVLMS) to the Units 1 and 2 TS 3/4.3.3.6, "Post-Accident Instrumentation," and TS 6.9.2, "Special Reports."

Basis for proposed no significant hazards consideration determination: This change proposed for Units 1 and 2 to modify (1) TS 3/4.3.3.6, "Post-Accident Instrumentation," by changing the referenced TS Tables 3.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements," and 4.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements," and (2) TS 6.9.2, "Special Reports," to incorporate operability and reporting requirements for RVLMS. The proposed TS correspond, with two exceptions, to the generic Combustion Engineering (CE) RVLMS TS that were found acceptable by the NRC staff in the October 28, 1986 NRC letter from D. M. Crutchfield to R. W. Wells of the CE Owners' Group. The exceptions proposed by BG&E, concerning actions required when no RVLMS channels are operable, were:

1. to modify Action 35.1 of TS Table 3.3-10 to initiate an alternative method of monitoring for core and reactor coolant system voiding rather than for monitoring reactor vessel inventory, and

2. to change the generic requirement that the RVLMS system be restored to operability at the next scheduled refueling outage (Table 3.3-10 requires a minimum of 2 RVLMS channels to be operable) to the proposed requirement that at least one RVLMS channel be restored to operability at the next scheduled refueling outage.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

This change is consistent with one of the different examples provided: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement." This proposed change would impose surveillance requirements where none previously existed. Consequently, the NRC staff proposes to determine that this proposed change which adds RVLMS surveillance and reporting requirements to the TS, involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra, Director

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50-400, Shearon Harris Nuclear Power Plant (SHNPP), Unit 1, Wake and Chatham Counties, North Carolina

Dates of amendment request: February 1, February 8, and April 13, 1988

Description of amendment request: The proposed amendment contains five (5) groups of Technical Specification changes that are required to support Shearon Harris Cycle 2 operation. These groups are entitled: (1) D-Bank Reconfiguration; (2) F_Q^T Increase From 2.28 to 2.32 - RAOC/Base Load Operation and F_Q Surveillance; (3) Increased F-Delta-H Multiplier; (4) boron dilution/sliding shutdown margin; and (5) Miscellaneous. In addition, a Bases change involving Rod Bow Penalty has been made.

Group 1 relates to those changes arising from the licensee's change from a four rod Control Bank-D currently used, to a more standard eight rod Control Bank-D configuration. The proposed amendment would revise TS Figure 3.1-1, Rod Group Insertion Limits Versus Thermal Power Three Loop Operation. In addition, TS Figure 3.1-1 has been

administratively renumbered to Figure 3.1-2 in conjunction with a new Figure 3.1-1 proposed in Group 4 below.

Group 2 changes involve: (1) increasing the Heat Flux Hot Channel Factor, F_Q^T, in Technical Specification 3.2.2; (2) revising the Local Axial Penalty Function, K(z), in Technical Specification Figure 3.2-2; (3) replacing the existing Constant Axial Offset Control (CAOC) procedures of Technical Specification Section 3/4.2.1 with a combined Relaxed Axial Offset Control (RAOC)/Base Load operating strategy; (4) replacing the existing F_{xy} surveillance of Technical Specification 4.2.2.1 with a F_Q^T surveillance; (5) revising f(delta-I) reset function in Technical Specification Table 2.2.-1; and (6) revising Technical Specification 6.9.1.6, which delineates the content and schedule requirements of the Radial Peaking Factor Limit Report.

Group 3 would revise the equation used to determine F-Delta-H, the Nuclear Enthalpy Rise Hot Channel Factor, presented in Technical Specification 3.2.3.b. The existing 0.2 multiplier has been increased to 0.3. This multiplier acts to increase the allowable F-Delta-H at reduced power levels. In addition, the core limit curves presented in Technical Specification Figure 2.1-1 have been revised. These curves, which are based on F-Delta-H, show the loci of points of thermal power, Reactor Coolant System pressure and average temperature for which the minimum Departure from Nucleate Boiling Ratio (DNBR) is no less than 1.30.

Group 4 modifies the shutdown margin requirements of Technical Specification Section 3/4.1.1. The current Technical Specifications require a fixed value for shutdown margin for a given mode of operation. The proposed amendment maintains the current fixed shutdown margin requirement for Modes 1, 2, and 6 while implementing a variable shutdown margin requirement as a function of reactor coolant system (RCS) boron concentration for Modes 3, 4 and 5. Due to the higher shutdown margin required at the beginning of SHNPP Cycle 2 for Mode 5, the minimum fluid volume requirements for the boric acid tank and the refueling water storage tank specified in Technical Specifications 3.1.2.5 and 3.1.2.6 have been increased to provide sufficient inventory to go from Mode 1 to Mode 5. The addition of a new figure in the Technical Specifications necessitates administrative changes affecting the designation of the Rod Group Insertion Limits versus Thermal Power Figure and associated references, the details are discussed in the "D-Bank reconfiguration - Control Rod Insertion Limits" Technical Specification change.

Group 5 would revise: (1) the Technical Specification Table 4.3-1 Surveillance Requirements for the Excore Power Range Monitors; and (2) the description of Fuel Assemblies located in Technical Specification 5.3.1. Currently, Technical Specification Table 4.3-1 requires that a single-point comparison of INCORE/EXCORE Axial Flux Difference (AFD) be performed monthly and an INCORE/EXCORE calibration be performed quarterly. The proposed change to Table 4.3-1 revises these surveillances to once per 31 Effective Full Power Days (EFPD) and once per 92 EFPD, respectively.

The proposed change to the fuel assembly description of Technical Specification 5.3.1 allows for repair of fuel assemblies by substitution of filler rods or vacancies for damaged fuel rods.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined:

Group 1

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Currently, Control Bank D consists of four Rod Cluster Control Assemblies (RCCAs) located near the core periphery. During the upcoming SHNPP refueling outage, the four RCCAs located near the core center which currently comprise Shutdown Bank D will be combined into Control Bank D and Shutdown Bank D will no longer exist. The limits shown on the Rod Group Insertion Limits Versus Thermal Power figure have been revised, using NRC approved methodology from WCAP 9273-A, to establish new limits which ensure that with the eight rod Control Bank D configuration: (1) power distributions are maintained within current limits; (2) the minimum shutdown margin for power operation (Modes 1 and 2) remains the same as that for SHNPP Cycle 1 operation; and (3) the potential effects of rod misalignment, including rod ejections and rod withdrawal, on associated accident analyses are limited as discussed herein.

The addition of the four Shutdown Bank D rods to Control Bank D returns SHNPP to an eight rod configuration as was approved in the SHNPP PSAR. The eight rod Control Bank D is the generic configuration for Westinghouse 3-loop 17 x 17 design plants. The Commission has previously approved this eight rod configuration at other facilities such as V. C. Summer, J. M. Farley Units 1 and 2, and Beaver Valley Units 1 and 2. This generic configuration provides for a more uniform control of the core radial power distribution as control rods are inserted. Since the total integral worth of the revised rod insertion limits is comparable to Cycle 1, the worth of any single inserted RCCA at power is reduced because the worth is distributed over twice the number of RCCAs. The probability and consequences of previously evaluated rod worth accidents at SHNPP will now be comparable to that at other Commission accepted eight rod Control Bank D plants.

The addition of four rods to Control Bank D decreases the probability of a rod ejection event at hot zero power because fewer rods are allowed in the core by the proposed rod insertion limits at zero percent power than are allowed by the existing Technical Specification. At full power the probability of a rod ejection event is increased. Rod ejection is classified as an ANS Condition IV event, that is, an event which is not likely to occur over the lifetime of the plant. This classification is applied to rod ejection at other operating facilities with an eight rod Control Bank D configuration. Since the eight rod Control Bank D configuration is a generic design for 3-loop 17 x 17 Westinghouse plants, the Commission has previously licensed other facilities with this same configuration, and the rod ejection event remains an ANS Condition IV event, CP&L has determined that the increase in the probability of a rod ejection event at full power is not significant.

The Control Bank D modification does not affect the scram functions of the affected RCCAs. The acceptable scram times for these rods are not different from those currently established. The current assumptions used in the SHNPP FSAR Chapter 15 non-LOCA analyses for shutdown margin, trip reactivity, power distribution limits, ejected and dropped rod worths, post-ejected rod peaking factors, integral rod worths, and differential rod worths were compared with the expected Cycle 2 values for these parameters. It was confirmed that the Cycle 2 values are bounded by those assumed in the current analyses. Therefore, the consequences presented in the SHNPP FSAR for non-LOCA events remain bounding given the new rod insertion limits.

No credit is taken for control rods in the mitigation of a large break LOCA in terms of peak clad temperature or long term cooling. As such, the proposed rod insertion limits have no impact on this analysis. The small break LOCA analysis only models rod insertion in terms of a reactor trip and insertion of all banks. Since the revised rod insertion limits have no impact on the insertion time or reactivity insertion, the proposed amendment does not affect the consequences of a small break LOCA. Based on the above, CP&L has determined that the proposed changes do not increase the consequences of a previously evaluated accident.

The revision to the designation for the Rod Group Insertion Limits Versus Thermal Power figure and associated references is administrative in nature and, as such, can not increase the probability or consequences of an accident previously evaluated.

2. As stated in Item 1, revising the limits in the Rod Group Insertion Limits Versus Thermal Power figure does not alter the method in which any system performs its intended safety function. The eight rod Control Bank D configuration provides for a more uniform control of the core radial power distribution as control rods are inserted. The total integral worth of the revised rod insertion limits is comparable to Cycle 1. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident, including reactivity insertion or withdrawal accidents, from any accident previously evaluated. It should be noted that the eight rod Control Bank D configuration is identical to generic Westinghouse 3-loop 17 x 17 plant designs and has previously been approved for use at V. C. Summer, J. M. Farley, Units 1 and 2, and Beaver Valley, Units 1 and 2. The NRC approved safety analyses for these plants do not address any new or different accidents from those currently analyzed for SHNPP.

The revision to the designation for the Rod Group Insertion Limits Versus Thermal Power figure and associated references is administrative in nature and, as such, can not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Currently, Control Bank D consists of four Rod Cluster Control Assemblies (RCCAs) located near the core periphery. During the upcoming SHNPP refueling outage, the four RCCAs located near the core center which currently comprise Shutdown Bank D will be combined into Control Bank D and Shutdown Bank D will no longer exist. The limits shown on the Rod Group Insertion Limits Versus Thermal Power figure have been revised, using NRC approved methodology from WCAP 9273-A, to establish new limits which ensure that with the eight rod Control Bank D configuration: (1) power distributions are maintained within current limits; (2) the minimum shutdown margin for power operation (Modes 1 and 2) remains the same as that for SHNPP Cycle 1 operation; and (3) the potential effects of rod misalignment, including rod ejections and rod withdrawal, on associated accident analyses are limited as discussed herein.

The addition of the four Shutdown Bank D rods to Control Bank D returns SHNPP to an eight rod configuration as was approved in the SHNPP PSAR. The eight rod Control Bank D is the generic configuration for Westinghouse 3-loop 17 x 17 design plants. The Commission has previously approved this eight rod configuration at other facilities such as V. C. Summer, J. M. Farley Units 1 and 2, and Beaver Valley Units 1 and 2. This generic configuration provides for a more uniform control of the core radial power distribution as control rods are inserted. Since the total integral worth of the revised rod insertion limits is comparable to Cycle 1, the worth of any single inserted RCCA at power is reduced because the worth is distributed over twice the number of RCCAs. The margin of safety at SHNPP will now be comparable to that at other Commission accepted eight rod Control Bank D plants.

The Control Bank D modification does not affect the scram functions of the affected RCCAs. The acceptable scram times for these rods are not different from those currently established. The current assumptions used in the SHNPP FSAR Chapter 15 non-LOCA analyses for shutdown margin, trip reactivity, power distribution limits, ejected and dropped rod post-ejected rod peaking factors, integral rod worths, and differential rod worths were compared with the expected Cycle 2 values for these parameters. It was confirmed that the Cycle 2 values are bounded by those assumed in the current analyses. Therefore, the conclusions presented in the SHNPP FSAR for non-LOCA events remain bounding given the new rod insertion limits.

No credit is taken for control rods in the mitigation of a large break LOCA in terms of peak clad temperature or long term cooling. As such, the proposed rod insertion limits have no impact on this analysis. The small break LOCA analysis only models rod insertion in terms of a reactor trip and insertion of all banks. Since the revised rod insertion limits have no impact on the insertion time or reactivity insertion, the proposed amendment does not alter the current analysis for a small break LOCA.

Based on the above reasoning, the Company has determined that there is no decrease in the margin of safety as a result of the proposed revision to Control Bank D configuration.

The revision to the designation for the Rod Group Insertion Limits Versus Thermal Power figure and associated references is administrative in nature and, as such, can not reduce the margin of safety.

Group 2

The changes do not involve a significant hazards consideration for the following reasons:

1. The proposed increase in the F_Q^T limit and the associated change in the K(z) Local Axial Penalty function do not increase the probability of an accident previously evaluated because they do not affect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident and, as such, can not increase the probability of any accident previously evaluated. Operation with the proposed increase in the F_Q^T limit and the associated change in the K(z) Local Axial Penalty function does not result in an increase in the radiological consequences resulting from non-LOCA, overpower transients or small break LOCA events. The current SHNPP FSAR accident analyses for non-LOCA, overpower transients and small break LOCA assume an F_Q^T limit of 2.32 or greater which bounds the proposed value of 2.32. The large break LOCA event has been reanalyzed by Westinghouse. This analysis was performed using the NRC approved BASH computer code. The BASH computer code provides a more realistic thermal/hydraulic simulation of the reactor core and the Reactor Coolant

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System during the reflood phase of a LOCA thereby allowing the increase, F_Q^T limits. The NRC generically approved the Westinghouse BASH analysis methods as WCAP-10266, Revision 2. The results of this reanalysis show a decrease in the peak clad temperature, a slight increase in the maximum local metal-water reaction, and a comparable total core metal-water reaction. The increase in the maximum local metal water reaction is from 5.69% to 6.03%, which is insignificant when compared to the acceptance criteria of 17% specified by Appendix K of 10 CFR 46. Based on the above reasoning, CP&L has determined that, the consequences of previously evaluated accidents are not significantly increased as a result of the proposed F_Q^T increase.

The proposed amendment to: (1) replace the existing Constant Axial Offset Control (CAOC) procedures with a combined Relaxed Axial Offset Control (RAOC)/Base Load operating strategy; (2) replace the F_{xy} Surveillance of Technical Specification 4.2.2.1 with an F_Q Surveillance; and (3) revise the f(delta-I) reset function in Technical Specification Table 2.2.1 does not increase the probability of an accident previously evaluated because they do not affect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident. As such, these changes can not increase the probability of any accidents previously evaluated.

CP&L has determined that the proposed amendment to: (1) replace the existing Constant Axial Offset Control (CAOC) procedures with a combined Relaxed Axial Offset Control (RAOC)/ Base Load operating strategy; (2) replace the F_{xy} Surveillance of Technical Specification 4.2.2.1 with an F_Q Surveillance; and (3) revise the f(delta-I) reset function in Technical Specification Table 2.2.1 does not increase the consequences of an accident previously evaluated. RAOC is a method of using available margin by expanding the allowable axial flux difference (AFD) band, particularly at reduced power levels. This enhances operational flexibility during routine operational maneuvers. RAOC in combination with F_Q surveillance provides an alternate method for assuring plant operation remains below the F_Q^T limit specified in the Technical Specifications based upon a measured parameter, neutron flux. The RAOC methodology has been approved for use by the NRC in WCAP-10216-P-A, Relaxation of Constant Axial Offset Control, F_Q Surveillance Technical Specification, dated June 1983, and has been approved for use at many operating facilities including McGuire Units 1 and 2 and Catawba Units 1 and 2. Therefore, the consequences of previously evaluated accidents at SHNPP will now be comparable to that at other Commission accepted RAOC/F_Q Surveillance plants.

The impact of operating under the proposed RAOC strategy is determined by the affect the power shape envelope resulting from the newly defined AFD limits has on the consequences of the safety analyses presented in the SHNPP FSAR. For non-LOCA events, the power shapes resulting from RAOC have been evaluated with respect to the limiting power shape used in the existing analyses. It has been determined that the most limiting RAOC power shape results in a higher DNBR value than the reference power shape used in the current FSAR analyses. Therefore, the consequences of the non-LOCA events remain unchanged. In addition, power shapes which could occur at the core limits are determined using the RAOC power shape envelope and are used to define the f(delta-I) reset function (a component of the OT-delta-T trip function) necessary to preserve a DNBR of 1.30 and to meet fuel clad stress requirements. The more restrictive f(delta-I) reset function, reflected in the revised Technical Specification 2.2.1, preserves the DNBR and fuel clad stress limits used in the current analyses. Since the design limits for DNBR and clad stress remain the same as in the current analyses, the more restrictive Technical Specification limit placed on the f(delta-I) reset function provides assurance that the consequences presented in the SHNPP FSAR remain unchanged with the implementation of RAOC.

For the LOCA analysis, the power shape envelope defined by the new RAOC limits has been determined to be bounded by the chopped cosine shape for Large break LOCA and the top-skewed shape for the small break LOCA that form the basis for the existing analysis. Therefore, the adoption of RAOC does not change the existing LOCA analyses presented in the SHNPP FSAR and, as such, the consequences are not changed.

The proposed changes provide the flexibility to use a Base Load mode of operation. The analysis to support this mode of operation is the standard Westinghouse CAOC methodology as approved by the NRC in WCAP-8385, Topical Report - Power Distribution Control and Load Following Procedures, September 1974 and is currently in use at SHNPP. The power shapes resulting from operating within the narrow AFD bands allowed under Base Load result in a more conservative DNBR value than those allowed under RAOC and, therefore, are bounded by the discussions mentioned previously.

The proposed change replaces the existing F_{xy} Surveillance with an F_Q Surveillance. F_Q Surveillance is an alternate method to F_{xy} Surveillance that provides a more precise means of ensuring that the core F_Q remains within Technical Specification limits during routine operational maneuvers and has been approved by the NRC for use with RAOC/Base Load operation in WCAP-10216-P-A, Relaxation of Constant Axial Offset Control, F_Q Surveillance Technical Specification, dated June 1983. The change to F_Q Surveillance is only a change in the means by which measured power distributions are penalized in order to maintain actual power distributions within Technical Specification limits during operational maneuvers it does not represent a change to these limits. In addition, the existing Technical Specifications allow operation to continue with F_{xy} outside the Technical Specification limits provided an analysis of the affect on F_Q is performed. The proposed F_Q Surveillance removes this flexibility by establishing fixed limits on F_Q. Based on the above reasoning, CP&L has determined that use of F_Q Surveillance does not involve a significant increase in the consequences of previously evaluated accidents. Use of F_Q Surveillance in combination with RAOC/Base Load has been approved for use at many operating facilities including McGuire Units 1 and 2 and Catawba Units 1 and 2; therefore, the consequences of previously analyzed accidents at SHNPP will now be comparable to those at other Commission accepted F_Q Surveillance plants.

The proposed change to Technical Specification 6.9.1.6 is administrative in nature and, as such, can not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. None of the proposed changes introduce any new equipment or require any existing equipment or systems to perform a different type of function than they are currently designed to perform. In addition, F_Q Surveillance requirements in combination with RAOC/Base Load operations have been approved by the NRC for other operating units such as McGuire Units 1 and 2 and Catawba Units 1 and 2. New or different accidents were not created by the use of this methodology on those similar Westinghouse reactors.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The assumptions made in the existing accident analyses for non-LOCA and small break LOCA events currently assume an F_Q^T of 2.32 or greater. Therefore, these analyses remain bounding when compared to the proposed increase in the F_Q^T limit to 2.32 and the associated change in the K(z) Local Axial Penalty Function. As such, there is no change to the margin of safety for non-LOCA and small break LOCA events. A reanalysis of the Large break LOCA event was performed by Westinghouse. This analysis was performed using the NRC approved BASH computer code. The BASH computer code provides a more realistic thermal/hydraulic simulation of the reactor core and the Reactor Coolant System during the reflood phase of a LOCA, thereby allowing the increased F_Q^T limits. The NRC generically approved the Westinghouse BASH analysis methods as WCAP-10266, Revision 2. The results of this reanalysis show a decrease in the peak clad temperature, a slight increase in the maximum local metal-water reaction, and a comparable total core metal-water reaction. The increase in the maximum local metal water reaction is from 5.69% to 6.03%, which is insignificant when compared to the acceptance criteria of 17% specified by Appendix K of 10 CFR 46. Based on the above reasoning, CP&L has determined that, the proposed change does not significantly decrease the margin of safety.

The proposed changes to: (1) replace the existing Constant Axial Offset Control (CAOC) procedures with a combined Relaxed Axial Offset Control (RAOC)/Base Load operating strategy; (2) replace the F_{xy} Surveillance of Technical Specification 4.2.2.1 with an F_Q Surveillance; and (3) revise the f(delta-I) reset function in Technical Specification Table 2.2.1 do not involve a significant reduction in the margin of safety.

The impact of operating under the proposed RAOC strategy is determined by the affect the power shape envelope resulting from the newly defined AFD Limits has on the consequences of the safety analyses presented in the SHNPP FSAR. For non-LOCA events, the power shapes resulting from RAOC have been evaluated with respect to the limiting power shape used in the existing analyses. It has been determined that the most limiting RAOC power shape results in a higher DNBR value than the reference power shape used in the current FSAR analyses. Therefore, there is no change in the margin of safety. In addition, power shapes which could occur at the core limits are determined using the RAOC power shape envelope and are used to define the f(delta-I) reset function (a component of the OT-delta-T trip function) necessary to preserve a DNBR Of 1.30 and to meet fuel clad stress requirements. The more restrictive f(delta-I) reset function, reflected in the revised Technical Specification 2.2.1, preserves the DNBR and fuel clad stress limits used in the current analyses. Standard Westinghouse methodology defines the f(delta-I) reset function by defining which RAOC power shapes will meet a DNBR of 1.30 and the limit on fuel clad stress. Those shapes which would cause a violation of these limits are prevented from occurring by making the Technical Specification f(delta-I) reset function more restrictive. In this manner, the margin of safety is not reduced.

For the LOCA analysis, the power shape envelope defined by the new RAOC limits have been determined to be bounded by the chopped cosine shape for Large break LOCA and the top-skewed shape for the small break LOCA that form the basis for the existing analysis. Therefore, the adoption of RAOC does not affect the existing margin of safety for the LOCA analyses presented in the SHNPP FSAR.

The proposed changes provide the flexibility to use a Base Load mode of operation. The analysis to support this mode of operation is the standard Westinghouse CAOC methodology as approved by the NRC in WCAP-8385, Topical Report - Power Distribution Control and Load Following Procedures, September 1974 and is currently in use at SHNPP. The power shapes resulting from operating within the narrow AFD bands allowed under Base Load result in a more conservative DNBS value than those allowed under RAOC, and therefore are bounded by the discussions mentioned previously and do not decrease the margin of safety.

The proposed change replaces the existing F_{xy} surveillance with an F_Q Surveillance. F_Q Surveillance is an alternate method to F_{xy} Surveillance that provides a more precise means of ensuring that the core F_Q remains within Technical Specification limits during routine operational maneuvers and has been approved by the NRC for use with RAOC/Base Load operation in WCAP-10216-P-A, Relaxation of Constant Axial Offset Control, F_Q Surveillance Technical Specification, dated June 1983.

The change to F_Q Surveillance is only a change in the means by which measured power distributions are penalized in order to maintain actual power distributions within Technical Specification limits during operational maneuvers it does not represent a change to the limits. In addition, the existing Technical Specifications allow operation to continue with F_{xy} outside the Technical Specification limits provided an analysis of the affect on F_Q is performed. The proposed F_Q Surveillance removes this flexibility by establishing fixed limits on F_Q. Based on the above reasoning, CP&L has determined that use of F_Q Surveillance does not involve a significant reduction in the margin of safety. Use of F_Q Surveillance in combination with RAOC/Base Load has been approved for use at many operating facilities including McGuire Units 1 and 2 and Catawba Units 1 and 2; therefore, the margin of safety at SHNPP will now be comparable to that of at other Commission accepted F_Q Surveillance plants.

The proposed change to Technical Specification 6.9.1.6 is administrative in nature and, as such, can not involve a significant reduction in the margin of safety.

Group 3

The changes do not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment revises the equation used to determine F-Delta-H, the Nuclear Enthalpy Rise Hot Channel Factor, presented in Technical Specification 3.2.3.b. The existing 0.2 multiplier is being increased to 0.3. This multiplier acts to increase the allowable F-Delta-H at reduced power levels. In addition, the core limit curves presented in Technical Specification Figure 2.1-1 have been revised. The proposed amendment does not affect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident and, as such, can not increase the probability of any accident previously evaluated.

Since the increase in the F-Delta-H multiplier only allows a higher Nuclear Enthalpy Rise Hot Channel Factor at power levels below 100%, the majority of safety analyses (those initiated from full power) are not impacted. Non-LOCA transients initiated from reduced power which directly model F-Delta-H are affected by the changes. Indirectly, any events which rely on the OT-delta-T/

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OP-delta-T setpoints for protection may be impacted by the increase in the F-Delta-H multiplier. Since a power dependent value of F-Delta-H is assumed in the generation of the core limits, the increase in F-Delta-H at reduced power will result in a change to the core limits below 100% power. The existing OT-delta-T/OP-delta-T setpoints were compared to the revised core limits which include the F-Delta-H multiplier increase. It was determined that the existing setpoints continue to protect the limits shown in Technical Specification Figure 2.1-1, and thus events which rely on the OT-delta-T/OP-delta-T setpoints for protection remain within their acceptance criteria presented in Chapter 15 of the SHNPP FSAR. The only SHNPP FSAR Chapter 15 event initiated from part power is startup of an inactive loop. An evaluation has shown that the current limit specified in FSAR Section 15.4.4 for the minimum DNBR (greater than 1.30) is met for this event with the revised F-Delta-H multiplier. In addition, operation with an inoperable loop is not permitted by the SHNPP Technical Specifications.

Based on the above reasoning, the consequences of previously evaluated accidents are not increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed amendment does not introduce any new equipment or require any existing equipment or systems to perform a different type of function than they are currently designed to perform. The change merely establishes revised F-Delta-H limits at reduced power levels. Therefore, the proposed change can not create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, similar changes to the F-Delta-H multiplier have been granted for McGuire Units 1 and 2 and Catawba Units 1 and 2. No new or different accidents from those analyzed for SHNPP are addressed for these plants.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment revises the equation used to determine F-Delta-H, the Nuclear Enthalpy Rise Hot Channel Factor, presented in Technical Specification 3.2.3.b. The existing 0.2 multiplier is being increased to 0.3. This multiplier acts to increase the allowable F-Delta-H at reduced power levels. In addition, the core limit curves presented in Technical Specification Figure 2.1-1 have been revised to reflect the increase in allowed peaking for power levels less than 100%. Since a power dependent value of F-Delta-H is assumed in the generation of the core limits, the increased allowable peaking for power levels less than 100% tends to reduce the margin between the OT-delta-T trip setpoints and the curves representing the loci of 1.30 DNBR points. Since the increase in the F-Delta-H multiplier only allows a higher peaking at power levels below 100%, the majority of safety analyses (those initiated from full power) are not impacted. The only SHNPP FSAR Chapter 15 event initiated from part power is startup of an inactive loop. An evaluation has shown that the current limit for the minimum DNBR (greater than 1.30) is met for this event with the revised F-Delta-H multiplier. In addition, operation with an inoperable loop is not permitted by the SHNPP Technical Specifications. Based on this reasoning, the Company has determined that the proposed change does not involve a significant reduction in the margin of safety.

Group 4

The changes do not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revision to the shutdown margin requirements established in Technical Specifications 3.1.1.1 and 3.1.1.2 does not increase the probability of an accident previously evaluated because it does not affect any systems or equipment involved in the initiation or mitigation of any previously analyzed accident. The proposed changes to Technical Specification 3.1.1.1 are administrative in nature. Reference to Modes 3 and 4 is deleted from Technical Specification 3.1.1.1 and included in the revised Technical Specification 3.1.1.2. The licensing basis for SHNPP establishes 15 minutes as an acceptable operator action time limit for termination of an Inadvertent Boron Dilution (IBD) event. For Mode 3, an operator action time of 15 minutes to terminate the IBD event has been preserved by the proposed amendment. Also, appropriate margins for uncertainties and malfunctions, such as a struck rod, are maintained. The IBD event for Mode 4, though not currently analyzed in the SHNPP FSAR, has been analyzed for Cycle 2 to ensure that the same criteria applicable to Mode 3 are met. This represents an added conservatism since an IBD event is not currently analyzed in the SHNPP FSAR. The revised Technical Specification 3.1.1.2 for Mode 5 increases the required shutdown margin at high boron concentrations and reduces the required shutdown margin at low boron concentrations. The only SHNPP FSAR Chapter 15 event affected by the proposed sliding shutdown margin coupled with the a lower High Flux at Shutdown Alarm (HFSA) setpoint maintains at least 15 minutes from alarm indication to loss of shutdown margin and assures that appropriate margins for uncertainties and malfunctions such as a stuck rod are maintained. Therefore, the consequences of the IBD event are not increased.

The increased minimum fluid volume requirements for the boric acid tank and the refueling water storage tank specified in Technical Specifications 3.1.2.5 and 3.1.2.6 do not alter the method in which any safety related system performs its intended function. Therefore, the revision to Specifications 3.1.2.5 and 3.1.2.6 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not require the use of a new or different system than currently exists, nor does it require existing systems to perform functions which they were not intended to perform. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, similar changes to incorporate a variable shutdown margin have been granted for V. C. Summer, Vogtle, and South Texas Project. No new or different accidents from those analyzed for SHNPP are addressed for these plants.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed changes to Technical Specification 3.1.1.1 are administrative in nature. Reference to Modes 3 and 4 is deleted from Technical Specification 3.1.1.1 and included in the revised Technical Specification 3.1.1.2. The licensing basis for SHNPP establishes 15 minutes as an acceptable operator action time limit for termination of an Inadvertent Boron Dilution (IBD) event. For Mode 3, an operator action time of 15 minutes to terminate the IBD event has been preserved by the proposed amendment. Also, appropriate margins for uncertainties and malfunctions, such as a stuck rod, are maintained. The IBD event for Mode 4, though not currently analyzed in the SHNPP FSAR, has been analyzed for Cycle 2 to ensure that the same criteria applicable to Mode 3 are met. This represents an added conservatism since an IBD event is not currently analyzed in the SHNPP FSAR. The revised Technical Specification 3.1.1.2 for Mode 5 increases the required shutdown margin at high boron concentrations and reduces the required shutdown margin at low boron concentrations. The only SHNPP FSAR Chapter 15 event affected by the proposed reduction in shutdown margin in Mode 5 is IBD. The Mode 5 IBD event has been reviewed to ensure that during normal operation including anticipated operational occurrences specified fuel design limits are not exceeded. The proposed sliding shutdown margin coupled with a lower HFSA setpoint maintains at least 15 minutes from alarm indication to loss of shutdown margin and assures that appropriate margins for uncertainties and malfunctions such as a stuck rod are maintained. Therefore, the revision to the shutdown margin requirements established in Technical Specifications 3.1.1.1 and 3.1.1.2 does not involve a significant reduction in the margin of safety.

The increased minimum fluid volume requirements for the boric acid tank and the refueling water storage tank specified in Technical Specifications 3.1.2.5 and 3.1.2.6 do not alter the method in which any safety related system performs its intended function. The minimum borated water volumes were increased so that sufficient inventory is available to provide the required shutdown margin. Therefore, the revision to Specifications 3.1.2.5 and 3.1.2.6 does not involve a reduction in the margin of safety.

Group 5

The changes do not involve a significant hazards consideration for the following reasons:

1. Revising the surveillance frequencies associated with calibration of the excore detectors from a strictly calendar basis to an Effective Full Power Days does not affect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident. The change to the surveillance interval does not alter the channels ability to perform their necessary functions. The instruments response changes as a function of core exposure and is not dependent on the number of calendar days between surveillance. The existing Technical Specification allows for plant operation at 100% power for 30 calendar days, therefore, the excore detector is currently allowed to operate for up to 30 EFPD without recalibration. Since instrument response is a function of core exposure, revising the Technical Specification allows for plant operation at 100% power for 30 calendar days, therefore, the excore detector is currently allowed to operate for up to 30 EFPD without recalibration. Since instrument response is a function of core exposure, revising the Technical Specification surveillance interval from 30 calendar days to 30 EFPD does not represent a relaxation of current Technical Specification requirements. Therefore, the proposed revision to the Technical Specification Table 4.3-1 surveillance frequencies does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the fuel assembly description in Technical Specification 5.3.1 does not affect any systems or equipment involved in the initiation or mitigation of any previously analyzed accident. The change merely allows replacement of damaged fuel rods with filler rods or vacancies provided a cycle specific evaluation is performed to justify the modification. Therefore, the proposed revision to Technical Specification 5.3.1 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes to Technical Specification Table 4.3-1 and Technical Specification 5.3.1 do not require the use of a new or different system than currently exists, nor do they require existing systems to perform functions for which they were not intended. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The change to the surveillance intervals associated with the calibration of the excore power range channels specified in Technical Specification Table 4.3-1 does not adversely affect their operability. The instruments response changes as a function of core exposure and is not dependent on the number of calendar days between surveillance. The existing Technical Specification allows for plant operation at 100% power for 30 calendar days, therefore, the excore detector is currently allowed to operate for up to 30 EFPD without recalibration. Since instrument response is a function of core exposure, revising the Technical Specification surveillance interval from 30 calendar days to 30 EFPD does not represent a relaxation of current Technical Specification requirements. Therefore, this change does not result in a significant reduction in the margin of safety.

The proposed change to Technical Specification 5.3.1 allows substitution of filler rods or vacancies for damaged fuel rods provided a cycle specific evaluation is performed to justify the modification. This evaluation will take into account the actual configuration of the reconstituted assemblies. Therefore, the proposed revision to Technical Specification 5.3.1 does not involve a significant reduction in the margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's conclusions. Specifically, regarding Group 1, Item 1, paragraph 3, the increase in the probability of a rod ejection event is solely a function of the number of rods in the core as there is no change in the control rod mechanism pressure housing or the surveillance of the housing to assure its integrity which would increase the probability of mechanical failure. Although the probability of a rod ejection event has not been quantified, it is considered to be a low enough probability event that the increase from four to eight rods in Control Bank D is not a significant increase in the probability of the accident. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

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Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 19, 1988

Description of amendment request: The proposed change will revise Technical Specification Table 3.11-1, "Containment Isolation Valves" by adding five containment isolation valves (CIVs) and deleting two CIVs. Table 3.11-2 will have a page number change from 3-20d to 3-20e.

Basis for proposed no significant hazards consideration determination: Haddam Neck Technical Specification, Table 3.11-1, "Containment Isolation Valves," list CIVs that are designed to automatically close upon a high

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containment pressure or safety injection signal. During the 1987 refueling outage, plant modifications were implemented to containment penetrations P-7, P-10, P-23B, P-23C, P-23D, P-30, P-31, P-35, P-36, P-37, P-38, P-41, P-59, P-60, P-70 and P-72B.

CYAPCO has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Penetration No. P-23B is permanently capped. Therefore, LM-TV-1812 is not required as a CIV.

Penetration No. P-7, seal water return, does not require CH-MOV-331 as a CIV due to the installation of two new CIVs, CH-TV-240 and CH-TV-241. These two new CIVs do not close automatically upon a CIS but seal water system leakage is included in the 3 liters per hour total leakage assumed in the design basis analysis. If CH-TV-240 or CH-TV-241 fails closed, that failure will not increase the probability of occurrence of a previously analyzed accident or the consequences of such an accident. If either CH-TV-240 or CH-TV-241 fail open when they are required to be shut, the other (nonfailed) valve will provide the closing function since they are in series. (This is the basic principle of 10 CFR 50, Appendix A, General Design Criterion 56.) Therefore, whether CH-TV-240 or CH-TV-241 fails open or closed, no new failure mechanism is introduced.

If LD-TV-230 inadvertently closes or fails closed, letdown flow would stop and a level excursion would result in the pressurizer. In this event, the operators would establish an alternate letdown flow path in accordance with plant procedures. This does not constitute a new failure mechanism since the potential already exists for the three existing AOVs (LD-FCV-202, 203, and 204) to fail closed. The probability or consequences of a design basis event will not be increased. The excursion caused by LD-TV-230 going closed will not initiate a design basis accident. If LD-TV-230 fails open with a CIS, LD-FCV-202, 203, and 204 will shut since only one active failure is assumed. Therefore, the probability of occurrence or consequences of a previously analyzed accident will not increase if LD-TV-230 fails open.

If HS-TV-360 or 361 fails (either closed or open) the failure would not increase the probability of occurrence or consequences of any accident previously evaluated in the Safety Analysis Report since they are not part of a safety-related system and provide no safety function.

Failure or inadvertent closure of CC-TV-917 or CC-TV-920 would eventually result in an increase in temperature of the neutron shield tank. However, this failure will not initiate nor increase the consequences or probability of a design basis event. Therefore, the probability of occurrence or consequences of an accident previously evaluated will not be increased since that failure mechanism already existed with CC-TV-1831 which is also contained in the CCW line from the neutron shield tank cooler and closes on a CIS. If either CC-TV-917 or 920 fails open on a CIS, the nonfailed valve will accomplish the closing function and provide containment isolation for that penetration.

Furthermore, adding five new valves and deleting two valves to Table 3.11-1 does not increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report since the change involves adding more valves to the list of CIVs that automatically close. Adding these five (5) new automatic valves to the list provides more assurance that the CIVs will function when required. This assurance includes both that the valves will close automatically and that their leakage when closed is below that assumed in the design basis accidents. Therefore, the change does not adversely impact the consequences or increase the probability of the design basis accidents.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The possibility for an accident or malfunction of a different type than any accident previously evaluated in the Safety Analysis Report is not created since:

- with respect to CH-TV-240 and 241, the failure mechanism (fail closed) already existed with CH-TV-334,
- with respect to LD-TV-230, the failure mechanism (fail closed) already existed with LD-FCV-202, 203, and 204,
- with respect to HS-TV-360 and 361, the house heating steam system does not serve any safety-related function, and
- with respect to CC-TV-917 and 920, the failure mechanism already exists with CC-TV-1831.

The change increases the number of valves to the list of containment isolation valves. Adding the above valves to the list does not modify plant response or affect the probability of any new accident. There are no failure modes associated with the technical specification change.

3. Involve a significant reduction in a margin of safety. The leak rate testing associated with the penetrations affected ensure that there is no adverse impact on containment integrity. The additions to these systems improve the margin of safety because the penetrations affected now conform to 10 CFR 50, Appendix A, GDC 56 and allow for leak testing in accordance with 10 CFR 50, Appendix J. Since the proposed changes to the technical specifications do not affect the consequences of any accident previously analyzed, there is no reduction in a margin of safety.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendment request: December 8, 1986, December 14, 1987 and March 3, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Indian Point Nuclear Generating Unit Nos. 1 and 2 to reflect recent changes to that regulation. The proposed amendments would modify paragraph 3.D of Facility Operating License No. DPR-5 and paragraph 2.J of Facility Operating License No. DPR-26 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 8, 1986, December 14, 1987 and March 30, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra, Director

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendments request: April 15, 1988

Description of amendments request: The proposed amendments would revise the Indian Point 1 and 2 Technical Specifications concerning organization. Specifically, the Director, Power Generation Services, has been promoted to the title Assistant Vice President, Power Generation Services, reporting directly to the Senior Vice President, Central Operations. The Senior Vice President, Central Operations, reports to an Executive Vice President, whose responsibilities, while not indicated in the revised organization chart have been expanded. The Executive Vice President reports to the President. In the current Specifications, the position of Senior Vice President Central Operations does not exist. Instead the Director, Power Generation Services, is shown to report to the Executive Vice President Central Operations, who reports to the President. Additionaly, changes are being made to the Nuclear Power Organization chart. The Chemistry Manager and staff, formerly reporting to the General Manager, Technical Support, will now report to the General Manager, Environmental Health and Safety. The Test and Performance group, currently shown to report to the General Manager, Technical Support, will report to the Chief Plant Engineer who reports to the General Manager, Technical Support.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The licensee has determined, and the NRC staff agrees that the proposed amendments will not involve a significant hazards consideration. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated in that the proposed changes reflect the licensee's reorganization with realignment and consolidation of responsibilities. The changes are administrative and as such do not involve hardware or procedural changes to the facility. The amendments will not create the possibility of a new or different kind of accident because the proposed changes are intended to enhance the licensee's organization and as stated previously do not involve any facility hardware or procedural changes. The proposed changes do not involve a reduction in margin of safety because the changes are administrative in nature. All functions performed previously will continue to be performed by the new organizations.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 13, 1987

Description of amendment request: The proposed changes to the Indian Point 2 Technical Specifications will remove fire protection requirements in accordance with Generic Letter 86-10. The fire protection requirements which would be removed by the proposed changes have been incorporated into the "Indian Point 2 Fire Protection Plan" which is referenced as part of the updated FSAR and implemented by plant procedures with the exception of plant shutdown restrictions associated with the high pressure water fire protection system as contained in Specification 3.13.A.3(c). Specifically the following changes are requested:

(1) Technical Specification 3.13, Fire Protection and Detection Systems, would be deleted.

(2) Technical Specification 4.14, Fire Protection and Detection Systems (Surveillance Requirements) would be deleted.

(3) Technical Specification 6.2.2, Facility Staff, would be revised to delete item f_a which identifies the requirements for fire brigade.

(4) Technical Specification 6.4, Training, would be revised to delete Section 6.4.2 which requires a fire brigade training program.

(5) Technical Specification 6.5.2.8, Audits, would be revised to delete items h, i, and j which require periodic audits of the facility fire protection and loss prevention program and implementing procedures.

(6) Technical Specification 6.9.2, Special Reports, would be revised to delete item b which deletes the reporting requirement associated with the inoperability of the fire protection and detection equipment within the scope of Technical Specification 3.13.

(7) License Condition 2.K dealing with changes to the Fire Protection Program would be revised to address the fire

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protection program plan as described by reference in the updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The licensee provided the following analysis:

"...the aforementioned proposed change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated, since the fire protection program requirements are not being changed, with the exception of deletion of the plant shutdown restriction requirements presently dictated by Specification 3.13.A.3(c) for the high pressure water fire protection system. Deletion of these requirements would not involve a significant increase in the probability or consequences of an accident previously evaluated because the Fire Hazards Analysis does not solely rely on the high pressure water protection system to ensure the capability to achieve safe shutdown in the event of a fire, and the plant accident analysis does not assume that a Design Basis Accident occurs simultaneously with a fire. The IP-2 Alternate Safe Shutdown System (ASSS), which assures that the plant can be brought to a controlled safe shutdown given a fire, does not rely on the high pressure water system. In any case, several means of fire detection and fire protection are not affected by the loss of the high pressure water system and therefore remain operable. These fire protection capabilities include fire detection instrumentation, plant fire barriers, halon fire suppression and backup hydrants supplied by city water. Also, impairment criteria in the IP-2 Fire Protection Program Plan (FPPP) requires establishment of an additional backup fire protection system or verification of ASSS operability within 24 hours.

(2) create the possibility for a new or different kind of accident from any previously evaluated, since the proposed change does not involve any physical change in plant equipment. The shutdown requirement is unnecessary because fire detection and fire protection capabilities remain available in the event of the loss of the high pressure water system. Thus, deletion of this shutdown requirement will not create the possibility for a new or different kind of accident from any previously evaluated. With the exception of the unnecessary shutdown requirement, those aspects of the fire protection program covered by existing Technical Specifications will continue to be implemented. The FPPP includes the program aspects and fire protection design provisions pertaining to safety related and safe shutdown features in effect at IP-2. Implementation and maintenance of the fire protection program will continue to require operability of the fire protection design features presently covered by the requested change to License Condition 2.K, which requires the approved fire protection program, as described by reference in the Updated Final Safety Analysis Report (UFSAR), to continue to be properly implemented and maintained.

(3) involve a significant reduction in the margin of safety, since the fire protection program compliance will continue as required by proposed License Condition 2.K as part of the UFSAR. With the proposed change, all safety criteria previously evaluated are still met and remain conservative. The periodic testing and inspection of the fire protection design features and actions to be taken in the event of inoperability currently addressed in the Technical Specifications have been included in the impairment criteria of the IP-2 FPPP and implemented by controlled plant procedures to conform to the current interpretation of NRC fire protection regulations. The proposed deletion of the shutdown requirement for loss of the high pressure water fire protection system does not involve a significant reduction in the margin of safety since alternate means of fire detection and fire protection remain available.

The proposed change would revise License Condition 2.K to require implementation and maintenance in effect of the approved fire protection program which is described in the UFSAR, and the "Indian Point Unit 2 Fire Protection Program Plan," which by reference, is part of the USFAR and contains the Fire Hazards Analysis. The USFAR is updated annually in accordance with 10CFR50.71(e). The proposed License Condition would allow Con Edison to make changes to the approved fire protection program without prior NRC approval provided that those changes do not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. The proposed License Condition is consistent with the standard license condition provided by Generic Letter 86-10.

The proposed change would also delete exisiting technical specifications relating to implementation of the fire protection program. Those aspects of the fire protection program covered by existing technical specification will continue to be implemented. Deletion of the technical specification requirements as describe above is consistent with NRC Generic Letter 86-10."

Based on the above, the staff proposes that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 18, 1988

Description of amendment request: The proposed amendment would revise the Indian Point 2 Technical Specifications to correct typographical errors, make editorial changes and to repaginate the text for uniformity purposes. In addition, the amendment would delete pertinent portions of the Technical Specifications that related to one-time only date extensions which have since expired and to plant equipment which had been removed from service pursuant to previously received submittals. An example of the former is the statement, "The January 1976 scheduled measurements with the moveable Incore Instrumentation System may be delayed until February 6, 1976," which is located currently in Section 3.11 of the Indian Point 2 Technical Specifications. An example of the latter is snubber 17-SR-1 (listed in Table 3.12-1, Sheet 4 of 13) which has a double-asterick denoting that removal of this snubber has been approved, this snubber will be removed and at that time shall be considered deleted from this Table. Since the snubber has been physically removed from the system, it is being removed from the Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are not likely to involve a significant hazards consideration. The proposed changes are enveloped by example (i) which relates to a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature. The proposed changes correct typographical errors, makes editorial changes for consistency, repaginates the document and deletes obsolete information.

Therefore, the staff proposed that the changes will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Director

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 26, 1988 (NRC-87-0202)

Description of amendment request: The proposed license amendment would change Technical Specifications 3/4.8.3.1., "Onsite Power Distribution Systems - Operating", and 3/4.8.3.2, "Onsite Power Distribution Systems - Shutdown", to clarify the Limiting Condition for Operation of the 480v MCC 72CF swing bus.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed changes to the Technical Specifications:

(1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes to specifically denote the operability requirement of the 480v MCC 72CF swing bus are clarifications only and are added to achieve consistency between the Limiting Condition of Operation and the corresponding surveillance requirement and to achieve consistency throughout the Technical Specifications. The changes only explicitly denote the requirements which have always been implicit to the operability of the swing bus and are considered not to involve a significant hazards consideration.

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, these are editorial clarifications only and are added for consistency. These changes do not result in any modification to the plant or system operation and no safety-related equipment or function will be altered. The requested changes do not create any new accident mode.

(3) Do not involve a significant reduction in a margin of safety. As stated in (1) above, these are editorial clarifications only and are added for consistency. Moreover, the changes will clarify for the operators, specific actions which have in the past been implicit in the Technical Specifications.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 1, 1987, as supplemented on November 24, 1987

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to update the LOCA - Limited Maximum Allowable Linear Heat Rate (Figure 3.5.2-16). These revisions would reflect NUREG-0630, Cladding Swelling and Rupture Models for LOCA Analysis and Babcock and Wilcox (B&W) Owners' Group Topical Report BAW-1915P, Bounding Analytical Assessment of NUREG-0630 models of LOCA Kw/ft limits with use of FLECSET.

A generic bounding assessment of the impact of NUREG-0630 on loss-of-coolant accident (LOCA) linear heat rate (LHR) limits has been performed by B&W on behalf of the B&W Owners Group. The evaluation was performed for all core elevations consistent with B&W Emergency Core Cooling System (ECCS) Evaluation Model methods. The impact of NUREG-0630 was a reduction in LOCA LHR limits at the 2, 4, and 6-foot core elevations because of rupture time dependency of these elevations.

In an effort to reduce the NUREG-0630 impact, the B&W Owners' Group has incorporated the benefits of using compensating models. B&W has evaluated the FLECHT-SEASET heat transfer correlation and modified it for B&W plant application. The modified correlation is modeled in the computer program "FLECSET".

BAW-1915P and BAW-10104 Revision 5 have been reviewed by the Commission and approved on October 5 and December 27, 1987. These reports provide the technical basis for this revision. The models addressed in these reports are used to determine the LOCA-Limited Maximum Allowable LHR. The proposed revision to Figure 3.5.2-16 reflects application of the new models.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). Example (vi) of the types of amendments not likely to involve significant hazards considerations is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

This proposed revision will update the LOCA-Limited Maximum Allowable Linear Heat Rate (Figure 3.5.2-16) to reflect NUREG-0630 and FLECSET data. As such, the previously analyzed accident that is applicable to this change would be a large break loss of coolant accident. Acceptance criteria for this event are identified in 10 CFR Part 50.46 and 10 CFR Part 50, Appendix K. FLECSET and BAW-10104P Rev. 5 (B&W's ECCS Evaluation Model) have been reviewed by the Commission.

FLECSET is a B&W modified version of the FLECHT-SEASET reflood heat transfer correlation. Reflood heat transfer coefficients versus time were calculated using FLECSET and compared to those calculated by the present large break LOCA Evaluation Model (BAW-10104, Rev. 3). The FLECSET reflood heat transfer coefficients at the 2-foot core elevation are higher than those calculated by the current Evaluation Model during the early stage of reflooding. These higher reflood heat transfer coefficients allow the peak cladding temperature to turn over earlier in the transient.

The licensee considers the correlation in FLECSET to be a more accurate correlation than that used in the current Evaluation Model (BAW-10104 Rev. 3) and is applicable for predicting reflood heat transfer coefficients to both skewed and cosine power shapes at any core elevation. Test benchmarks have been provided to demonstrate the ability of the B&W modified FLECSET code to conservatively predict experimental data. The staff has agreed that comparisons of FLECSET predictions to FLECHT test data and semiscale data demonstrate that FLECSET is conservative as used for Oconee.

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Justification for use of the FLECSET code is based on (1) comparisons of calculated heat transfer coefficients calculated by FLECSET with those calculated by the present Evaluation Model, and (2) comparison with experimental data.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to changes to the LOCA - Limited Maximum Allowable Linear Heat Rate (Figure 3.5.2-16) resulting from the use of FLECSET and NUREG-0630 data. The limiting FSAR accident because of this change is a large break LOCA.

The staff has determined in its approval of FLECSET and BAW-10104 Rev. 5, and the analysis result applicable to Oconee, that operating conditions determined by such models are consistent with all NRC acceptance criteria and requirements including the NRC acceptance criteria for LOCAs identified in 10 CFR Part 50.46 and 10 CFR Part 50, Appendix K.

The proposed amendment is similar to example (vi) and accordingly, the Commission proposes to determine that the amendment revisions do not involve significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 29, 1987, as supplemented December 4, 1987 and April 1, 1988

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 4.3-1, "Reactor Trip Systems Instrumentation Surveillance Requirements" to delete the requirement to test the reactor coolant flow rates in the bypass loops in which Resistance Temperature Detectors (RTDs) are installed to measure the hot leg and cold leg temperatures. The revisions are applicable to Catawba Unit 1 only; however, Unit 2 is included administratively because the TSs for both Units are combined in one document. The flow rates affect the time response of the temperature signals which are needed for reactor controls and protection. The licensee proposes to remove the RTD bypass manifolds in Unit 1 and to place the RTDs directly in the hot leg and cold leg pipes, thereby eliminating the need for bypass flow testing requirements. The proposed station modifications have already been completed for Unit 2 during its recent refueling outage. For Unit 1, they will be completed during its fourth refueling outage scheduled to end in March 1990.

In response to the licensee's letters of June 29 and December 4, 1987, the staff has previously published a **Federal Register** Notice (52 FR 49223). The licensee's letter of April 1, 1988, informed the staff that the modifications were completed for Unit 2 and the schedule for Unit 1 modifications was changed from January 1989 to March 1990.

For Catawba Unit 1 the next flow rate verification tests are due in May 1988 according to the TS requirement for flow rate verification tests every 18 months. The proposed amendments would exempt the licensee from the requirement to perform these tests.

In its letters of June 29 and December 4, 1987, and April 1, 1988, the licensee provided the following justifications for the proposed changes:

1. The performance of the RTD Bypass Loop flow rate test involves four people (two Nuclear Equipment Operators, one Performance Technician and one Health Physics Technician) spending four hours each in lower containment, which results in a significant dose to those involved.

2. There is minimal potential for flow blockage in the 2-inch and 3-inch diameter bypass lines.

3. Individual low flow alarms with individual status lights for each reactor coolant loop bypass flow are provided on the main control board. The alarm and status lights provide the operator with immediate indication of low flow condition in the bypass loops associated with any reactor coolant loop. If the RTD Bypass Loop flow rate for Loop A, B, C or D decreases to 90% of its initial measured value, an annunciator alarms in the control room. Since the initial measured values for all of the loop flows are well above the minimum acceptable flow rates, the control room annunciator will alarm well in advance of any loop flow rate dropping below the acceptance criterion flow rate. A quarterly channel calibration will be performed on the control room low flow alarms.

4. Local indicators are provided to monitor total flow through the RTD bypass manifolds for each loop. The indicators are located inside containment but are accessible during power operations. These indicators will be monitored quarterly, as well as following any bypass low flow alarm or following a period when a bypass loop has been out of service.

5. The deletion of the flow rate verification tests will have no effect upon the ability of the RTDs to perform their intended safety functions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the deletion of the bypass flow rate verification tests will not degrade the safety aspects of the RTD temperature measurement capability. Low bypass flow rates will continue to be alarmed in the control room, and the flow rates will continue to be measured quarterly on the local flow rate indicators.

The proposed amendments will not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and operation of the plant will be unaffected and no new plant configurations are introduced.

The proposed amendment will not (3) involve a significant reduction in a margin of safety because of the continued availability of the local flow rate indicators and of the low flow alarms in the control room.

Based on the above considerations, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 15, 1988

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 4.8.1.1.2g.7) and add TS 4.8.1.1.2g.15) to permit testing of the diesel generators (DGs) for a 24 hour (or more) test run and a Hot Restart with full engineered safety features (ESF) load acceptance separately and independently. Currently, these tests are carried out in succession.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for this proposed determination are discussed below for the separation of the 24-hour diesel run and the Hot Restart with full ESF Load Test. The licensee states that this change separates the two tests (24 hour run and Hot Restart) in order to minimize delays associated with testing during plant outages. As a result of the change, the Hot Restart Testing requirements are virtually unchanged because the DGs would be operated until temperature stabilization is achieved which is the objective in both cases. This proposed change would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the Hot Restart testing requirements are virtually unchanged. This proposed change would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the tests under the proposed change would be carried out under conditions which are nearly identical to those required for the current tests.

Because the proposed change does not significantly alter the requirements for either the 24 hour test run or the Hot Restart test with full ESF load acceptance, it provides nearly the same degree of assurance regarding the DG operability and reliability. Therefore, the proposed change would not (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 23, 1986 (TSCR 148) as revised April 5, 1988. The October 23, 1986 submittal was published in the Federal Register on November 19, 1986 (51 FR 41855)

Description of amendment request: The proposed amendment would revise the requirements on the maximum radioiodine concentration allowed in the reactor coolant in Sections 3.6 and 4.6, Radioactive effluents, in the Appendix A Technical Specifications (TS). The proposed changes (1) add a new definition to Section 1.0, Definitions, and to the Table of Contents, (2) reduce the maximum allowed concentration of radioiodine in the reactor coolant in Section 3.6, (3) add reporting requirements to Section 3.6, (4) add sampling and analysis requirements for iodine following changes in thermal power or offgas level to Section 3.6, and (5) restrict the reactor modes, where a radioiodine sample is required to be taken, to the Run, Startup and Shutdown Modes in Section 4.6.

Basis for proposed no significant hazards consideration determination: The licensee stated in its amendment request that on October 22, 1984, it submitted Technical Specification Change Request (TSCR) No. 69, Revision 1, "Radiological Effluent Environmental Technical Specifications." The TSCR No. 69, Revision 1 proposed changes to TS Sections 3.6 and 4.6 concerning reactor coolant system (RCS) radioiodine activity limits and surveillance requirements. These changes were proposed following discussions with the NRC staff during the integrated assessment of the Systematic Evaluation Program (SEP) for Topic XV-16, "Radiological Consequences of Failure of Small Lines Carrying Primary Coolant Outside Containment."

Subsequently, the NRC staff requested resubmittal of the proposed changes for RCS radioactivity limits by providing a definition for Dose Equivalent Iodine I-131, limits for non-iodine radioactivity in the RCS and an annual reporting requirement for radioiodine spiking as shown in Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG-0123) and NRC Generic Letter 85-19, "Reporting Requirement on Primary Coolant Iodine Spikes." The staff also requested changes to the Limiting Conditions for Operation which are also given in NUREG-0123.

During a meeting of June 30, 1987, the staff requested resubmittal of the proposed changes with the following provisions:

1. Delete words "if inhaled by an adult" from the definition of Dose Equivalent (D.E.) I-131.

2. Incorporate provisions for performing additional analyses at least once per four hours until the specific activity of the primary coolant is restored to within its limit when the coolant activity exceeds 0.2 uCi/gram D.E. I-131.

3. Eliminate provisions for allowing a second sample, and place the reactor in hot shutdown within 12 hours when the coolant activity exceeds 4 uCi/gram D.E. I-131.

4. Add sampling and analysis requirements for iodine following changes in thermal power or offgas level.

Therefore, the licensee has prepared TSCR 148 and TSCR 148, Revision 1 in response to the staff's requests described above.

This change request provides definitions, limiting conditions for operation, surveillance and an annual reporting requirement to incorporate the applicable requirements provided in the Standard Technical Specifications for General Electric Boiling Water Reactors and NRC Generic Letter 85-19. The licensee has determined that this change request involves no significant hazards considerations in that operation of the Oyster Creek Plant in accordance with the proposed amendment will:

1. Not involve a significant increase in the probability of an accident previously evaluated, because the primary coolant activity is not an initiator of an accident. Also, the proposed change will not increase the consequences of an accident, because the proposed change, a reduction of the primary coolant activity limit, will not result in an increased amount of radioactive release for design basis accidents previously evaluated; or

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2. Not create the probability of a new or different kind of accident from any accident previously evaluated because a bounding design basis accident associated with changes in the primary coolant activity level was already evaluated and reported in the updated Final Safety Analysis Report (FSAR) (i.e., Control Rod Drop Accident); or

3. Not involve a significant reduction in a margin of safety because a more restrictive limit for the primary coolant radio-iodine activity will increase a margin of safety.

The staff has reviewed the licensee's no significant hazard considerations above and is in agreement with the conclusions drawn by the licensee.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposed to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 19, 1988

Description of amendment request: The amendment would modify the Technical Specifications (TS) to (1) add an annual time limit on containment venting and purging via the Standby Gas Treatment System, and (2) add Limiting Conditions for Operation and Surveillance Requirements for devices installed in certain large containment isolation valves for the purposes of insuring capability to close against the dynamic forces of a loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include, "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g. a more stringent surveillance requirement." The proposed amendment would add additional limitations and requirements for which no comparable requirements are presently specified. These new requirements will provide additional assurance of containment integrity and continued vent/purge capability in event of a LOCA which occurs during routine vent/purge operations.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 25, 1988

Description of amendment request: By application for license amendment dated April 25, 1988, Northeast Nuclear Energy Company, et al. (the licensee), requested a change to Technical Specifications (TS) 3.4.4, "Pressurizer," for Millstone Unit 2. The proposed change to the TS would require that the 130KW of operable pressurizer heaters be, "...capable of being suppied by emergency power."

Basis for proposed no significant hazards consideration determination: The requirement that 130KW of pressurizer heaters, capable of being supplied by emergency power, be operable, had previously been incorporated in the Millstone Unit 2 TS. In the course of issuing License Amendment No. 97 on August 24, 1984, the words "...capable of being supplied by emergency power" were inadvertently deleted. The proposed change to the TS would correct the error introduced with issuance of License Amendment No. 97.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (i) which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change to TS 3.4.4 is within scope of example (i) in that it would correct an error in the TS.

Based on the above, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 15, 1988

Description of amendment request: The proposed amendment would change Technical Specification Section 3/4.6.3 Containment Isolation Valves to permit the plant to enter an operational mode when the plant has inoperable containment isolation valves that have been compensated for by compliance with action statement b. and c. These action statements require that each affected penetration be isolated within four hours by use of at least one deactivated automatic valve secured in the isolation position or one closed manual valve or blind flange. Specifically, the change would indicate that the provisions of Specification 3.0.4 are not applicable to action statements b and c.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration because the change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change has no impact on the probability of an accident. Allowing plant startup with isolation valves closed and de-energized or the penetration isolated with a blind flange provides at least the same level of assurance that the affected penetrations will be isolated when required as normal operating conditions. Because the ability to isolate the containment is not adversely affected, there can be no adverse impact on the consequences of any accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not affect plant response in any way, and there are no new failure modes associated with the change that could create a new accident. The specific valves which are inoperable have no safety function other than containment isolation, which is satisfied by meeting the Action statements. These valves are not associated with a post accident situation.

3. Involve a significant reduction in safety margin. The proposed change will apply only when the inoperable containment isolation valve(s) are isolated by use of at least one deactivated automatic valve secured in the closed position or by use of a closed manual valve or blind flange. In this position, the penetration is isolated. Therefore, the proposed change does not have any adverse impact on the containment boundary. Allowing plant startup in this configuration involves no adverse impact. The basis of Technical Specification 3.6.3 is to ensure that the containment can be isolated from the outside atmosphere when required. Allowing plant start-up with affected penetrations isolated is consistent with the basis of this Technical Specification.

Accordingly, the staff has mode a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: March 1, 1988

Description of amendment request: The proposed license amendment would revise the plant Technical Specifications (Appendix A to Facility Operating License No. DPR-22) to reflect an increase in the Boron-10 enrichment to 55 atom percent in the sodium pentaborate solution used for the Standby Liquid Control System (SLCS). This results in a solution concentration as low as 10.7% versus the minimum 13.7% concentration stipulated in 10 CFR 50.62. To maintain an equivalent injection capability, the effect of a higher atom percent Boron-10 enrichment and lower solution concentration is to reduce the system flow rate from 26 gpm to 24 gpm. The proposed amendment would delete the requirement for a mid-cycle sodium pentaborate solution surveillance due to the availability and planned use of pre-mixed and vendor certified solutions. This precludes the need for the licensee to mix the solution components (Boric acid and Borax) on site.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed Technical Specification changes for the SLCS do not constitute a significant hazards consideration for the following reasons:

1. The proposed amendment revises the Technical Specifications to reflect a sodium pentaborate solution which has a Boron-10 enrichment of 55 atom percent supplied by a vendor in its final form, and certified to the specified Boron-10 enrichment by the vendor. This change in no way detracts from the ability to meet the requirements of the Anticipated Transient Without Scram (ATWS) Rule. The proposed Technical Specification changes, with a decrease in the minimum pump flow rates and increase in the Boron-10 enrichment, maintain the ATWS Rule goal of reducing the time necessary to achieve plant cold shutdown. As such, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, or the ability of the SLCS to deal with an accident.

2. The proposed amendment does not result in any mechanical modification of the SLCS. Boron-10 is a stable isotope and no degradation of the enrichment level over time is expected. Other solution characteristics, such as concentration, are within the ranges of past operations. The minimum pump flow rate specified by the proposed changes is a return to the value contained in the Technical Specifications prior to the implementation of the ATWS Rule. The requirement for a mid-cycle enrichment surveillance when new chemicals are added was instituted because of mixing of the individual solution components (that is enriched boric acid and borax) by the licensee on site. The sodium pentaborate will be supplied pre-mixed and certified by a vendor to the specified Boron-10 enrichment. This change eliminates the possibility of an accident at the plant site due to the mixing process. For these reasons, the proposed amendment does not create a new or different kind of accident from previously evaluated accidents.

3. The proposed amendment would not diminish the ability of the SLCS to meet its original design basis or the requirements of the ATWS Rule. The reduction in the minimum pump flow rate from 26 gpm to 24 gpm actually provides for additional margin in the pump flow rate. As such, the proposed change enhances rather than reduces the margin of safety.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller, Acting Director

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: March 31, 1988

Description of amendment request: The propsed amendment would revise Trojan Technical Specifications (TS) Section 6.0, "Administrative Controls" by deleting the organizational charts, Figure 6.2-1 "Offsite Organization," and Figure 6.2-2 "Facility Organization" from the TS. The TS would also be revised to provide a description of the general requirements for both facility and corporate organizations.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the propsed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident

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from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated since deletion of the organization charts from the Technical Specifications is administrative in nature and does not affect plant operation. The organizational requirements essential to safe operation are still contained in the Technical Specifications. In addition, a description of the organization and organization charts are provided in the Updated Final Safety Evaluation Report (UFSAR). Changes to the organizational structure are included in the annual updates to the UFSAR, and are also discussed in the licensee's changes to the Quality Assurance Program.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The proposed changes do not involve a significant reduction in a margin of safety. PGE's QA programs and its use of only qualified personnel in positions of responsibility assures that safety functions performed by both facility and corporate organizations will continue to be performed at a high level of competence.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards considerations.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 12, 1988

Description of amendment request: The proposed amendment would revise Trojan Technical Specification (TS) Tables 3.3-3, "Engineered Safety Features Actuation System Instrumentation," and 3.3-9, "Remote Shutdown Monitoring Instrumentation" by renaming the shutdown panel outside of the control room from "C-160 Panel" (located in the Turbine Building) to "Remote Shutdown Station." This change is necessitated due to the removal of the C-160 panel from its present location, and the installation of its upgraded replacement at a different portion of the plant.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards consideration is Example (i) is a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the technical specification, correction of an error, or a change in nomenclature.

The proposed change involves the renaming of the shutdown panel outside of the control room, and eliminates the reference to its location. The surveillance and operability requirements of the remote shutdown panel as applied to the upgraded replacement remote shutdown panel remain unchanged.

The proposed change is editorial in nature and is considered to fall within the scope of the Commission's Example (i) cited above.

As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: March 15, 1988

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

The existing Technical Specification 3.4.A requires that all the twenty ASME code approved main steam line safety valves be operable when the RCS temperature is above 350° F. The allowable out of service time for these safety valves is 48 hours. The proposed revision to Technical Specification 3.4.A and its associated Basis would allow plant operation with up to three inoperable main steam line safety valves per steam line provided the power range neutron flux high setpoint is reduced per Table 3.4-1

There are five safety valves on each steam line; one 8 inch valve and four 10 inch valves. The relief capacities for the individual valves range from 540,000 to 823,000 lbm/hr. The total relieving capacity at full power is 3,777,000 lbm/hr per steam generator or 15,108,000 lbm/hr through all 20 valves. The total full power steam flow is 12,974,500 lbm/hr. Therefore, the total relieving of the 20 valves is 116% of the total secondary steam flow at 100% rated power (3025 Mwt).

The existing and proposed Technical Specifications ensure compliance with the ASME Code requirement on steam generators having 110% design steam flow rate relief capability. In order to satisfy the relief capability requirement during plant operations with inoperable safety valves, the total steam flow is reduced by decreasing the power level. The reduction in power level is ensured by reducing the power range neutron flux high setpoint.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated? The proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated. The ASME Code requires that the steam generators have the capability to remove 110% of the design steam flow rate. The Loss of External Electrical Load Transient poses the greatest challenge to the main steam line safety valves. The worst case Loss of Load Transient analyzed in the FSAR results in the relief of 69% of the steam flow at 100% rated power. The reduction in power level compensates for the reduction in steam relief capability with inoperable main steam safety valves. The ASME relief capability requirements are satisfied by reducing the power range neutron flux high setpoint per Technical Specification Table 3.4-1. The proposed license amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? The proposed amendment involves a reduction in operating power level in order to compensate for a reduction in steam relief capability posed by inoperable safety valves. Plant operations at a reduced power level does not create the possibility of a new or different kind of accident from an accident previously evaluated. The transients analyzed in the FSAR bound plant operations at a reduced power level.

3. Does the proposed amendment involve a significant reduction in a margin of safety? As the reduction in power dictated by Table 3.4-1 compensates for the reduction in relief capability posed by the inoperable safety valves, the margin of safety is maintained. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 22, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS's) relating to organization, both with respect to offsite and facility (onsite) staff. Specifically, the proposed amendment would delete Figures 6.2-1 and 6.2-2 from TS Section 6.2. In addition, TS Section 6.2.1 would be modified to include certain aspects of organization which are important to safety and must be included in the TS's. These include requirements that lines of authority, responsibility, and communications be established and documented; assignment of corporate and operational responsibility and authority; and provisions for independence from operational pressure for certain operating staff. TS Section 6.2.2 would be modified to specify that the Assistant Plant Manager for Operations and the Operations Superintendent shall hold senior reactor operator licenses. The proposed changes are in accordance with the guidance provided in NRC Generic Letter 88-06.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has made a proposed determination that:

A. The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes would not modify any accident conditions or assumptions. The proposed changes meet the requirements of 10 CFR 50.36 by providing for the organization and management to ensure safe operation of the facility.

B. The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not affect any system, equipment, or procedure. The organization charts would be replaced with general requirements that include the essence of the organizational structure in the TS's.

C. The changes would not involve a significant reduction in a margin of safety because the proposed changes would not affect any operating practices, limits or equipment important to safety.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: November 21, 1986 and November 17, 1987

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Callaway Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-30 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 21, 1986, and November 17, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was

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amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 2, 1986, October 9, 1987 and March 16, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Vermont Yankee Nuclear Power Station to reflect recent changes to that regulation. The proposed amendment would modify paragraphs 3.G. and 3.H. of Facility Operating License No. DPR-28 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on March 16, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director

Virginia Electric and Power Company, Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: January 14, 1988

Description of amendment request: The proposed changes would allow the widening of the axial flux difference bands from the current ±5% about a target value to +6% to -15% at 100% power and +20% to -28% at 50% power. The proposed changes would provide additional operating flexibility during return to power after trips near the end of the NA-1 Cycle No. 7. The proposed changes for NA-1 have already been approved for NA-2 by Amendment No. 64 to Facility Operating License NPF-7 issued April 14, 1988.

The heat flux hot channel factor (FQ) operating limit specified in the NA-1&2 Technical Specifications (TS) is established by LOCA/ECCS analyses performed in accordance with 10 CFR 50, Appendix K. These analyses show that if the FQ limit is not exceeded, the predicted LOCA peak clad temperature will not exceed the 2200° F limit specified in the Final ECCS Acceptance Criteria. The TS also establish the required method for verification that the actual peaking factor realized during operation will not exceed the axially dependent peaking factor (FQ(Z)) limit. This verification is currently performed by combining the axially dependent radial peaking factor, Fxy(Z), which is determined by periodic surveillance with the core flux monitoring system, with an analytically determined axial peaking factor (PZ(Z)). The determination of PZ(Z) involves evaluating various plant operating maneuvers such as load following. During Constant Axial Offset Control (CAOC) operation, the measured core axial flux difference (AFD) is maintained within a fixed band (+ or - 5%) of a target value. The target AFD is established by equilibrium operating conditions.

The proposed changes will replace the CAOC AFD limits with a set of limits established by the Relaxed Power Distribution Control (RPDC) methodology discussed in the licensee's report entitled, "Relaxed Power Distribution Control Methodology and Associated FQ Surveillance Technical Specifications" dated March 1988. These changes, as noted above, have already been approved for NA-2. The important feature of the RPDC strategy is that, instead of analytically verifying the peaking factor (FQ) margin for a fixed AFD limit band, the AFD band is varied until the available FQ margin is utilized. Because a wider range of axial shapes can be realized under normal RPDC operation, additional analyses must be performed to verify that the overtemperature delta-T (OTDT) and overpower delta-T (OPDT) trips continue to provide adequate DNB and local overpower (high kw/ft) protection over the entire range of anticipated Condition II events. In addition, the shapes are evaluated as potential preconditions for the complete loss of flow accident, to ensure that no DNB violations would occur during the bounding, non-OTDT-protection accident. The methodology for performing this verification is discussed in further detail in the licensee's RPDC report.

Additionally, the current requirement for monitoring the axially dependent radial peaking factor, Fxy(Z), is being replaced by a requirement to monitor the total peaking factor FQ(Z). This is accomplished by taking a full core flux map under equilibrium conditions and increasing the measured value by appropriate factors to account for manufacturing tolerances and measurement uncertainties. Finally, since FQ(Z) is measured under equilibrium conditions, a nonequilibrium factor, N(Z), is applied. N(Z) accounts for the maximum potential increase in local peaking which could occur during transient, nonequilibrium operation. In accounting for transient effects, N(Z) thus has a function which is similar to PZ(Z) in the current approach. The difference is that where P(Z) is a nonequilibrium axial peaking factor, N(Z) envelopes the potential equilibrium-to-nonequilibrium FQ increase and accounts for both axial and radial xenon and power redistribution effects.

The licensee has performed a detailed review of the impact of operation with relaxed power distribution control/FQ surveillance on the various accident scenarios discussed in Chapter 15 of the NA-1&2 UFSAR. Specifically, the impact of the wider axial flux difference on key safety parameters which could influence accident analysis results has been assessed. Among those parameters considered are: trip reactivity, both total value and reactivity as a function of rod insertion; shutdown margin; reactivity insertion rates due to rod withdrawal from subcritical and at power; and rod worths and/or peaking factors for ejected, dropped or misaligned control rods.

The NA-1 Cycle 7 reload core design has been evaluated for operation under the proposed RPDC TS in accordance with the licensee's RPDC methodology. The analysis included examination of the LOCA and complete Loss of Flow Accident (LOFA) preconditions, the peak linear power (kw/ft), the overtemperature delta-T f(delta-I) function and the fuel rod design criteria. The appropriate Core Surveillance Report and AFD limits were also generated. These analyses assumed implementation after 3000 MWD/MTU burnup; the analyses for subsequent cycles will support RPDC operation throughout the entire cycle. The analysis results yielded two conclusions: (1) none of the normal operation conditions allowed by RPDC were found to violate the key safety criteria, and (2) all of the Condition II events examined in the Final Safety Analysis Report (FSAR) were shown to yield acceptable results when initiated from any of these normal operation conditions. The RPDC bands were thus found to be an acceptable operating space.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes involve only a relaxation of the limits in axial power distribution skewing which has been previously reviewed and approved by the NRC staff for application to NA-2. Furthermore, the approved RPDC analysis procedures and continued application of current reload design and safety analysis methodology will ensure that the UFSAR accident analyses remain bounding.

2. Involve any alterations to the physical plant which introduce any new or unique operational modes or accident precursors. Thus, the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not being created by these proposed changes.

3. Involve a significant reduction in the margin of safety. While a relaxation of the axial offset operating limits is realized, the margin of safety as defined in the basis for any Technical Specification is not reduced by these proposed changes; the margins of safety are preserved by the imposition of a frequent FQ surveillance requirement, by effectively reducing the limit on measured equilibrium FQ by a conservative nonequilibrium factor, N(Z), and by reload verifications of the DNB, linear power and clad integrity criteria.

Therefore, the proposed changes meet the criteria specified in 10 CFR Part 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 30, 1988

Description of amendment request: The proposed changes to the NA-1&2 Technical Specifications (TS) would add incore thermocouples in the Accident Monitoring Instrumentation specified in Tables 3.3-10 and 4.3-7. The proposed changes are in accordance with the requirements of NUREG-0737, Item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling," and NRC Generic Letter 83-37, "NUREG-0737 Technical Specifications." Specifically, the proposed changes would add incore thermocouples to the NA-1&2 TS Table 3.3-10, Accident Monitoring Instrumentation and require four thermocouples per core quadrant for operability determination while allowing two thermocouples per quadrant as the minimum number of operable channels for operation. Also, the incore thermocouples would be added to the NA-1&2 TS Table 4.3-7, Accident Monitoring Instrumentation Surveillance Requirements, requiring a "Channel Check" on a monthly basis and a "Channel Calibration" at each refueling. These changes conform to the NRC sample as provided in Enclosure 3 to Generic Letter 83-37, pages 15 and 16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would

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not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes would not:

(1) Involve a significant increase in the probability or consequence[s] of an accident previously evaluated, because the change[s] will require additional controls and surveillances in the operation of [NA-1&2] and [are] in accordance with Generic Letter 83-37 and NUREG-0737. The operability requirements and the surveillance requirements for the accident monitoring instrumentation have not been decreased by [these] change[s].

(2) Create the possibility of a new or different kind of accident from any accident previously identified, because the change[s] will require additional controls and surveillances in the operation of [NA-1&2] and [are] in accordance with Generic Letter 83-37 and NUREG-0737. The proposed change[s] [do] not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

(3) Involve a significant reduction in a margin of safety, because the change[s] will require additional controls and surveillances in the operation of [NA-1&2] and [are] in accordance with Generic Letter 83-37 and NUREG-0737. The results of the accident analyses performed in the UFSAR will continue to bound operation.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facilities in accordance with the proposed changes would not involve significant hazards considerations.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: December 11, 1986, October 16, 1987 and February 24, 1988.

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Virginia Electric and Power Company submitted amendments to the Physical Security Plan for the Surry Power Station, Units No. 1 and No. 2 to reflect recent changes to that regulation. The proposed amendments would modify paragraph 3.J of Facility Operating Licenses No. DPR-32 and DPR-37 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised Plan on December 11, 1986, October 16, 1987 and February 24, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised Plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and example of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii), "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: March 30, 1988

Description of amendment requests: The proposed change would clarify Technical Specification (TS) 6.5.B.7, "Station Operating Records" for Surry Units 1 and 2. Currently, TS 6.5.B.7 requires that the primary records of inservice inspections performed, including photographs of the surface of those welds inspected by a visual or surface examination, be retained during the life of the plant. The proposed change would clarify the requirement to retain the radiographs and photographs when taken pursuant to the requirements of Section XI of the ASME Code.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations. The licensee's analysis is provided below.

This proposed change to the Surry Technical Specifications has been reviewed pursuant to the requirements of 10 CFR 50.92 and it has been determined that a significant safety hazard is not created. Specifically, the operation of Surry Power Station with the proposed amendment[s] will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment[s] [do] not affect plant operation nor [do they] alter the requirements for inservice inspection methods, scope, or frequency. Only the requirements for retaining records are clarified in [these] amendment[s].

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment[s] [do] not affect the material or physical condition of the station systems, structures or components. There is no new or different kind of accident created since the amendment[s] [are] a clarification of previous requirements.

3. Involve a significant reduction in the margin of safety. The proposed amendment[s] [do] not affect the margin of safety since there is no reduction in the requirements to conduct an inservice inspection program in accordance with the ASME Section XI Code, the augmented inspection requirements of the Technical Specification and the ASLB decisions.

After a preliminary review of the licensee's analysis, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: April 4, 1988

Description of amendment request: The proposed amendment would make the battery charger output Technical Specification for Charger No. 3 the same as for chargers No. 1 and No. 2. This is a result of the planned replacement of old Battery No. 3 with a new upgraded battery.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the April 4, 1988 letter states the following:

This change has been evaluated and determined to involve a no significant hazards consideration. As such, this proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The new upgraded battery and charger perform the same function as the present components. The new battery has added capability to power all the existing dc loads and future loads, if needed. The new charger has adequate capability to power normal dc loads and fully recharge the new battery, from a complete discharge state, within an acceptable time. The installation of an upgraded Battery No. 3 and charger adds further assurance that this equipment will perform as designed and thus does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The installation of an upgraded Battery No. 3 and charger will enhance the capability of the DC System, since on a loss of ac all safety and nonsafety dc loads could be powered for a substantially longer time. The impact of the new larger charger on the existing AC System has been evaluated and found within the acceptable limits. The change of the new charger's power supply enhances the redundancy of the DC System in that each battery charger will be fed from an independent power source. The installation of an upgraded Battery No. 3 and charger will enhance the capability of the 125 V dc Bus No. 3 to perform its functions and thus does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The new battery and charger perform the same function as the present components, and their capabilities are substantially higher than the present equipment. Since this proposed change will result in an increase in the size and capability of Battery No. 3 and charger, it does not involve a significant reduction in a margin of safety.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: April 20, 1988

Brief description of amendment: The proposed license amendment would change Technical Specification Table 4.3.1.1-1, "Reactor Protection System Instrumentation Surveillance Requirements," to delete the Daily Channel Check requirements of Note (g) for the Average Power Range Monitor Flow Biased Neutron Flux - High Scram Functional Unit.

Date of publication of individual notice in **Federal Register:** April 29, 1988 (53 FR 15476)

Expiration date of individual notice: May 31, 1988

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

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Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 6, 1988

Brief description of amendment request: The proposed amendment would delete reference to recirculation fans 2V418 A&B and fan associated breakers, and add fans 2V415 A&B and the associated breakers to the Technical Specifications.

Date of publication of individual notice in **Federal Register:** April 15, 1988 (53 FR 12825)

Expiration date of individual notice: May 16, 1988

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Dates of application for amendment: January 21, and February 2, 1988

Brief description of amendment: The amendment revises Specification 3/4.4.8.3 to add a footnote to the applicability of the Specification for RCS temperatures between 255° F and 295° F. The amendment also clarifies the surveillance requirements and bases section for Specification 4.11.2.5 dealing with the monitoring of hydrogen and oxygen gases in the waste gas holdup system and with the automatic control features of the system. These changes make those Specifications consistent with the current Specifications for Palo Verde, Units 2 and 3.

Date of issuance: May 5, 1988

Effective date: May 5, 1988

Amendment No.: 31

Facility Operating License No. NPF-41: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7585). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of application for amendment: December 3, 1987, and supplemental documents dated December 2, 1987 and February 4, 1988.

Brief description of amendment: The amendment revises several portions of the Technical Specifications to incorporate changes in support of Cycle 2 operation. One of the proposed changes to the Technical Specifications in the amendment request, relating to Azimuthal tilt limits, is still under review. The completion of review for this request, which is not required for restart of Palo Verde, Unit 2, is pending on receipt of the additional information.

Date of issuance: May 5, 1988

Effective date: May 5, 1988

Amendment No.: 19

Facility Operating License No. NPF-51: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2307). The supplemental letters did not change the initial proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of applications for amendments: October 1, 1986 and January 22, 1987, as supplemented on February 16, and February 26, 1988.

Brief description of amendments: These amendments (1) Modify the Unit 1 TS Limiting Condition For Operation 3.3.3.2 for incore detectors by placing additional restrictions upon operability above those that were required for operation duiring the previous cycle (Cycle 8); (2) Change the surveillance periods of the Units 1 and 2 TS Surveillane Requirements (SRs) 4.1.3.4.c (demonstration of full length control element assembly drop time) and 4.3.3.2.b (incore detector channel calibration) from at least once per 18 months to at least once per refueling interval, where a refuleing interval shall be defined as 24 months; (3) Modify the Units 1 and 2 TS SR 4.7.11.1.1.f.3 for cycling fire suppression water system flow path valves that are not testable during plant operation; and 4.7.11.4.b, for the inspection, reracking and replacement of degraded coupling gaskets for fire hoses inside containment, by extending their associated surveillance intervals from at least once every 18 months to at least once per refueling interval (24 months); (4) Renumber the Units 1 and 2 TS SR 4.7.11.1.1.f.3 as 4.7.11.1.1.g(2); TS SR 4.7.11.1.1.g as 4.7.11.1.1.g(1); and TS SR 4.7.11.1.1.f.4 as 4.7.11.1.1.f.3 and change the Units 1 and 2 TS SRs 4.7.11.1.1.g (fire suppression system flow test), 4.7.11.2.b and c (spray and sprinkler system functional test), and 4.7.11.4.c (containment fire hose stations operability and hydrostatic tests) by making administrative changes and more restrictive changes to the surveillance requirements; and (5) Change the Units 1 and 2 TS SR 4.4.10.1.2, "Augmented Inservice Inspection Program for Main Steam and Main Feedwater Piping," to update the required ASME Boiler and Pressure Vessel Code, Section XI, for Class 2 components, from the 1974 Edition with Addenda through Summer 1975 to the 1983 Edition with Addenda through Summer 1983. In addition TS SR 4.4.10.1.2.a would be deleted and TS SR 4.4.10.1.2.b would be renumbered as 4.4.10.1.2 and would be clarified to reflect a new 10-year inservice inspection interval.

Date of issuance: May 3, 1988

Effective date: May 3, 1988

Amendment Nos.: 129 and 111

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2870) and January 13, 1988 (53 FR 619) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 20, 1988

Brief description of amendment: This amendment changes Technical Specification (TS) Section 6.5.1.6.5 to increase the quorum requirement of the Plant Nuclear Safety Committee. It also includes editorial changes in TS Section 6.7.1.

Date of issuance: April 28, 1988

Effective date: April 28, 1988

Amendment No. 117

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5488) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983, as supplemented October 29, 1984, August 14, 1985, and January 3, 1986.

Brief description of amendment: The amendment revises the Technical Specifications concerning refueling. The change consists of distributing the original specifications into three groups which apply to plant conditions significant to movement of heavy loads. In addition, requirements are added concerning the availability of the RHR pumps and heat exchangers when fuel is in the reactor vessel and the reactor head bolts are less than fully tensioned.

Date of issuance: May 3, 1988

Effective date: May 3, 1988

Amendment No.: 130

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43133) and renoticed October 9, 1985 (50 FR 41248) and March 26, 1986 (51 FR 10455). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 12, 1987

Brief description of amendment: The amendment revises the Technical Specifications to impose revised and additional requirements on reactor coolant system pressure isolation valves, in accordance with the staff's Generic Letter 87-06.

Date of issuance: April 25, 1988

Effective date: April 25, 1988

Amendment No. 124

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 28, 1987 (52 FR 48892) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 22, 1988, as supplemented April 20, 1988.

Brief description of amendments: The amendment replaced the organization charts in the Technical Specifications with more general organizational requirements. Various title changes were also made to the Company Nuclear Review Board members. A Technical Specification was added which required the Operations Supervisor to hold a Senior Reactor Operator license.

Date of Issuance: April 28, 1988

Effective Date: April 28, 1988

Amendment Nos.: 93 and 29

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9503) Additional information was submitted by letted dated April 20, 1988. The additional information did not change, in any way, the staff's initial proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 16, 1987

Brief description of amendments: These amendments deleted the remaining Sections 1.0 and 5.0 of the Turkey Point Plant Environmental Technical Specifications and replaced them with an Environmental Protection Plan, which is incorporated by reference in the licenses.

Date of issuance: April 25, 1988

Effective date: April 25, 1988

Amendment Nos. 128 and 122

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32202) The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated April 21, 1988 (53 FR 13204) and in a Safety Evaluation dated April 25, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: February 19, 1988, as supplemented April 22, 1988.

Brief description of amendments: These amendments replaced the organization charts in the Technical Specifications with more general organizational requirements. In addition, several other changes to Section 6 were made. Those include: changing references of "Vice President-Nuclear Operations" or "Group Vice President-Nuclear Energy" to "Senior Vice President-Nuclear" in six different places in the TS; clarification of "immediate" written notification to mean "within 24 hours" for a specific action identified; and finally, revision of the TS pertaining to the Company Nuclear Review Board (CNRB) to change one membership from "Chairman: Group Vice President - Nuclear Energy" to "Senior Vice President - Nuclear"; to change another membership from "Vice President - Nuclear Operations" to "Vice President - Nuclear Energy"; to change a third membership from "Senior Project Manager - Power Plant Engineering" to "Manager - Power Plant Engineering"; and to not require a vice-president to be the CNRB chairman. By letter dated April 22, 1988, the licensee withdrew a portion of their original request related to the deletion of the requirement for the Operations Superintendent to be a licensed Senior Reactor Operator. This will be further addressed under separate correspondence.

Date of issuance: April 28, 1988

Effective date: April 28, 1988

Amendment Nos. 129 and 123

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9504). The licensee's letter dated April 22, 1988 provided supplemental information which did not alter the staff's no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 4, 1988

Brief description of amendments: The amendment revised Section 3.4.4 of the Technical Specifications related to the component cooling water system.

Date of issuance: April 29, 1988

Effective date: April 29, 1988

Amendment Nos. 130 and 124

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 12203 dated April 13, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 13, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 1988.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: December 21, 1987

Brief description of amendment: The amendment modified the Technical Specifications to require full stroke testing of the main steam isolation valves in accordance with the ASME Code, Section XI.

Date of issuance: May 2, 1988

Effective date: May 2, 1988

Amendment No.: 153

Facility Operating License No. DPR-57: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7592) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: January 12, 1988

Brief description of amendment: Revises Technical Specifications to allow storage of new reactor fuel with enrichments up to and including 4.3 weight percent U-235.

Date of Issuance: April 25, 1988

Effective date: April 25, 1988

Amendment No.: 138

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9505) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 11, 1986 and November 6, 1987

Brief description of amendment: The amendment modified paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: April 26, 1988

Effective date: April 26, 1988

Amendment No.: 21

Facility Operating License No. NPF-47. The amendment revised the License.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9506) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1988.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County Maine

Date of application for amendment: March 1, 1988

Brief description of amendment: Revises the Technical Specifications to update Figure 5.2-1 and Figure 5.2-2 in Technical Specification 5.2 "Organizational" to reflect a successional change in the offsite corporate organization and associated changes in the functional reporting structure.

Date of issuance: April 26, 1988

Effective date: April 26, 1988

Amendment No.: 104

Facility Operating License No. DPR-36. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9507) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1988.

No signficant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 16, 1987 as supplemented by letters dated November 3, 1987 and January 18, 1988.

Brief description of amendment: The amendment changed License Condition Paragraph 2.C.3 to require compliance with the amended Physical Security Plan as amended to incorporate the requirements of 10 CFR 73.55. Consistent with the provisions of 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: April 25, 1988

Effective date: April 25, 1988

Amendment No.: 119

Facility Operating License No. DPR-46. Amendment revised the license.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9506)

The Commission's related evaluation of the amendment is contained in a letter to Nebraska Public Power District dated April 25, 1988 and a Safeguards Evaluation Report dated April 25, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 28, 1987, as modified by letter dated February 22, 1988.

Brief description of amendment: The amendment changes the Technical Specifications to revise reactor vessel pressure-temperature limits for heatup and cooldown, normal operation, and pressure testing.

Date of issuance: April 26, 1988

Effective date: April 26, 1988

Amendment No.: 120

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45889) The February 22, 1988 submittal provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1988.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 8, 1988

Brief description of amendment: The amendment would allow the licensee to use annual average (rather than real-time) meteorological dispersion factors to calculate doses, and corrects and clarifies some parts of Technical Specifications 2.9.1 and 5.9.4. However, the requested changes for removing instantaneous release and removal of the radioactive effluent reports according to Regulatory Guide 1.21 was not approved by the staff.

Date of issuance: May 4, 1988

Effective date: 90 days from the date of issuance.

Amendment No.: 113

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9509) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: December 23, 1987

Brief description of amendment: Cycle 3 Reload changes to Technical Specifications.

Date of issuance: April 25, 1988

Effective date: Prior to startup for Cycle 3 operation

Amendment No.: 45

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications to support the fuel reload and Cycle 3 operations.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2322) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 4, 1988

Brief description of amendment: The amendment revises Technical Specifications Section 3/4.7.3, "Component Cooling Water System" to be consistent with "split-train" operation.

Date of issuance: May 3, 1988

Effective date: May 3, 1988

Amendment No.: 141

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9511). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1988.

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No Significant hazards consideration comments recieved: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: October 15, 1986

Brief description of amendment: The amendment revises the allowable control rod drop time form 2.7 seconds to 2.44 seconds to be consistent with the safety analysis for the facility.

Date of issuance: April 26, 1988

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 100

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9515) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1988.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 17, 1988

Brief description of amendments: The amendments revise the NA-1&2 TS, Section 6, Administrative Controls to reflect major reorganizational changes in the offsite and onsite corporate structure of Virginia Electric and Power Company. The changes (in total) are in conformance with either Generic Letter 88-06 (Removal of Organizational Charts from Technical Specifications) or more closely with the most current version of the Westinghouse Standard Technical Specifications, which appropriately apply to NA-1&2.

Date of issuance: April 28, 1988

Effective date: April 28, 1988

Amendment Nos.: 99 and 86

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 28, 1988 (53 FR 10005) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 17, 1988

Brief description of amendments: The amendments revise the Surry Units 1&2 Technical Specifications, Section 6, Administrative Controls to reflect major reorganizational changes in the offsite and onsite corporate structure of Virginia Electric and Power Company. The changes (in total) are in conformance with Generic Letter 88-06 (Removal of Organizational Charts from Technical Specifications) and also with the most current version of the Westinghouse Standard Technical Specifications, which appropriately apply to SPS-1&2.

Date of issuance: April 28, 1988

Effective date: April 28, 1988

Amendment Nos.: 119 and 119

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 28, 1988 (53 FR 10003). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 17, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Washington Public Power Supply System Docket No. 50-397, Washington Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 5, 1988

Brief description of amendment: The amendment revised Technical Specification 3/4.6.1.6, "Drywell and Suppression Chamber Purge System," to allow up to a total of 100 hours of purging in the current 365 days period. Telephone authorization was granted on an emergency basis on February 5 and confirmed by letter dated February 10, 1988.

Date of issuance: May 5, 1988

Effective date: February 5, 1988 through April 9, 1988

Amendment No.: 56

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Washington, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 5, 1988.

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Attorney for licensee: Nicholas Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Dated at Rockville, Maryland, this 12th day of May, 1988.

For the Nuclear Regulatory Commission

Walter Butler,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 88-10977 Filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-603 and 50-604]

All Chemical Isotope Enrichment, Inc. (AlChemIE); Receipt of Antitrust Information

In accordance with section 105c of the Atomic Energy Act of 1954, as amended, All Chemical Isotope Enrichment, Inc. (AlChemIE) submitted combined construction permit/operating license applications to construct and operate two facilities for the purpose of enriching stable isotopes for medical, industrial and research applications on a world-wide basis. AlChemIE plans to use gas centrifuge machines obtained as surplus from the Department of Energy. Although the machines were designed and built for enriching uranium, AlChemIE does not intent to use them for this purpose.

AlChemIE is headquartered in Oak Ridge, Tennessee where one facility, the Centrifuge Plant Demonstration Facility (CPDF), is located. AlChemIE plans to lease this facility from the Department of Energy. The second plant is scheduled to be build in Oliver Springs, Tennessee.

The antitrust information accompanying AlChemIE's application is available for review at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Any person who wishes to express views pursuant to the antitrust issues raised in the instant application, should submit said views within sixty (60) days of the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11114 filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co., Pilgrim Nuclear Power Station; Exemption

Boston Edison Company (the licensee) is the holder of Facility Operating License No. DPR-35 which authorizes operation of Pilgrim Nuclear Power Station (the facility) at steady-state reactor power levels not in excess of 1998 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a boiling water reactor located at the licensee's site in Plymouth, Massachusetts. The facility is currently shutdown for refueling and modifications.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.3 of Appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by States with local governments, within the plume exposure pathway Emergency Planning Zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR describes the special circumstances in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III

By letter dated September 17, 1987, the licensee requested a one-time exemption from the schedular requirements of section IV.F.3. of Appendix E. The last biennial emergency preparedness exercise was a full participation exercise conducted at the Pilgrim Nuclear Power Station on September 5, 1985. The licensee requested that an exemption be granted to allow the next biennial exercise to be deferred from 1987 to the second quarter of 1988.

The licensee stated that the Commonwealth of Massachusetts, the local governments within the EPZ and the two emergency reception center communities were in the process, with the assistance of the licensee, of implementing numerous improvements in their offsite emergency preparedness programs. These improvements included revision of the emergency plans of the local governments and the Commonwealth, the development of associated procedures, the development and implementation of training programs for officials and emergency personnel, and the upgrading of Emergency Operation Centers. The licensee expected the work to continue through early 1988. The licensee informed the NRC that in view of the extensive ongoing efforts, the Commonwealth and the local governments indicated that they were not able to fully participate in an exercise during calendar year 1987.

On December 16, 1987, the Nuclear Regulatory Commission published a **Federal Register** notice approving the exemption stipulating that the exercise be conducted prior to June 30, 1988. By letter dated April 14, 1988, the licensee requested an extension of the June 30, 1988 exemption deadline to permit conduct of the exercise prior to the end of 1988. The licensee stated that substantial progress has been made to improve emergency preparedness since the orignial exemption request; however, the extensive emergency planning efforts have taken longer than anticipated. The licensee has requested an extension of the exemption for the same special circumstances as existed at the time of the original exemption request.

Boston Edison is assisting the Commonwealth and the local authorities in the improvement of their emergency response programs. These efforts have included an updated evacuation time estimate study and traffic management plan, a study to identify public shelters for protecting the beach population, and the identification of and provision for the special needs and transportation dependents populations within the EPZ. The Commonwealth has forwarded drafts of the emergency plans for the five EPZ towns and two reception center communities to FEMA for informal technical review. The licensee states that preparation of emergency plan implementing procedures is in process; draft procedures have been approved for one of the towns. A new training program for offsite emergency response personnel has been developed and training is being conducted. These efforts are extensive and the licensee states they will not be ready for an exercise until late 1988.

Onsite emergency preparedness has been evaluated by the NRC during inspections and exercises including the most recent onsite exercise conducted on December 9, 1987. The 1987 exercise included partial participation by the Commonwealth. The NRC inspection report for the 1987 exercise documented that Boston Edison's emergency response actions were adequate to provide protective measures for the health and safety of the public. The NRC inspection findings and the licensee's training drills provide assurance that the licensee has maintained a satisfactory capability to respond to an emergency at Pilgrim.

Since the last full participation biennial exercise at Pilgrim (in September 1985), the Commonwealth has participated on a limited basis with the licensee in the December 1986 exericse, the quarterly onsite drills in 1987 and the December 1987 exercise. The March and June 1987 drills also included limited participation by several of the towns within the EPZ. The towns within the EPZ have also cooperated in the full scale siren test conducted by FEMA in September 1986. The Commonwealth has also participated in full participation exercises at the Yankee Nuclear Power Station in June 1986 and at the Vermont Yankee Nuclear Generating Station on December 2, 1987.

IV

The requested exemption extension is a temporary one and is necessary because ongoing emergency preparedness efforts will not be completed before late 1988. The licensee has made a good faith effort to comply with the regulation by assisting in the ongoing improvements to the Commonwealth and local offsite emergency response programs. The extensive efforts required to upgrade the offsite plans, implement the changes and conduct training precluded the conduct of a meaningful and effective full participation exercise before June 30, 1988. This situation constitutes the special circumstances described in 10 CFR 50.12(a)(2)(v). In granting the original exemption, the NRC stated its belief that the public health and safety would be better served by the conduct of a full participation exercise following the completion of efforts to improve the Commonwealth and local government emergency response programs. The emergency preparedness efforts are still not complete, thus, the NRC continues to believe that a full participation exercise should await completion of the planning efforts.

The Pilgrim plant is presently shutdown. The determination whether to restart the Pilgrim plant will involve an evaluation by the NRC of the status of the resolution of the emergency planning issues identified by FEMA. The safety of the resumption of plant operation will be addressed by the NRC staff before restart is approved.

For these reasons, the Commission has thus determined that, pursuant to 10 CFR 50.12, the exemption extension requested by the licensee's letter dated April 14, 1988, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby approves the following exemption:

The Pilgrim Nuclear Power Station is exempt from the requirements of 10 CFR 50, Appendix E, Section IV.F.3 for the conduct of an offsite full participation emergency preparedness exercise in calendar year 1987, provided that this exercise be conducted prior to the end of 1988.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of this Exemption extension would have no significant impact on the environment (52 FR 46693, December 9, 1987). A copy of the licensee's request for exemption extension dated April 14, 1988 is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption extension is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of May 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11115 Filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335-OLA]

Florida Power and Light Co., (St. Lucie Plant, Unit No. 1); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding:

Thomas S. Moore, Chairman
Alan S. Rosenthal
Howard A. Wilber

Dated: May 11, 1988.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 88-11141 Filed 5-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 154 to Facility Operating License No. DPR-57, and Amendment No. 92 to Facility Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), which revised the Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (the facility) located in Appling County, Georgia. The amendments were effective as of the date of issuance.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on November 12, 1986, (51 FR 41036). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the

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action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated October 1972. (53 FR 16803)

For further details with respect to the action see: (1) The application for amendment dated September 9, 1988, as supplemented May 8 and December 15, 1987, (2) Admendment No. 154 to license No. DPR–57, (3) Amendment No. 92 to license No. NPF–5, (4) the Commission's related Safety Evaluation, and (5) the Environmental Assessment dated May 4, 1988. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

A copy of items (2), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Project Manager, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR Doc. 88–11116 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2, located in San Luis Obispo County, California.

In accordance with the licensee's application for amendments dated January 22, 1988 (reference LAR 88–02), the amendments would change the surveillance test frequency in the Technical Specifications of the turbine stop valves, control valves and intercept valves associated with turbine overspeed protection. Surveillance testing of these valves is necessary to assure the performance of their safety function in protecting against the consequences of a turbine missile ejection accident. Specifically, the surveillance test frequency would be changed from monthly to quarterly.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 17, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with paticularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified to 10 CFR 2.714(a)(1)(i)–(v) asnd 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 10th day of May, 1988.

For the Nuclear Regulatory Commission.

George Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88–11117 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–344

Portland General Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1 issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Power, located in Columbia County, Oregon. The request for amendment was submitted by letter dated March 1, 1988.

The proposed amendment would eliminate the uranium (U–235) fuel enrichment limit on reactor fuel assemblies, and would permit the storage of fuel with a maximum enrichment of 4.5 weight percent U–235 in the new fuel storage racks. The licensee is already authorized to store fuel assemblies of up to 4.5 weight percent U–235 in the spent fuel storage racks.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 17, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with paticularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference do the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. A person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missiouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esq., Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) asnd 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 1, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Portland State University Library, 731 SW. Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 5th day of May, 1988.

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For the Nuclear Regulatory Commission.
George W. Knighton,
Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects.
[FR Doc. 88-11118 Filed 5-17-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-20584, License No. 35-12120-02, EA 88-103]

Radiology and Nuclear Medicine, Inc.; Order Suspending License and Order To Show Cause Why License Should Not Be Revoked (Effective Immediately)

I

Radiology and Nuclear Medicine, Inc., Tulsa, Oklahoma, (licensee) is the holder of Byproduct Materials License No. 35-12120-02 issued by the Nuclear Regulatory Commission (NRC/Commission) on November 30, 1983. The last amendment, Amendment No. 3, to the license was issued on August 27, 1987. The license is due to expire on November 30, 1988. The license authorizes the licensee to (a) conduct specified diagnostic procedures, (b) use iodine-131 for the treatment of hyperthyroidism and cardiac dysfunction, and (c) use a dose calibrator reference standard.

II

On April 14, 1988, the Region IV staff performed an initial inspection at the licensee's facility, 2325 South Harvard, Suite 607-A, Room 101, Tulsa, Oklahoma. Previous attempts to inspect the licensee were unsuccessful due to two previous moves and inactivity of licensee. As a result of the April inspection, a Notice of Violation (NOV) was sent to the licensee on June 4, 1986. The NOV cited the licensee for failure to maintain area survey records; failure to equip personnel with the licensee's dosimetry; failure to conduct annual accuracy tests, quarterly linearity tests, and daily constancy checks on the dose calibrator; failure to calibrate the survey meter; failure to have certain documents posted; failure to have procedures for safely opening packages in which licensed material is received; failure to conduct leak testing on a sealed source; and failure to maintain quarterly inventory records of the calibration source. The letter transmitting the NOV also requested that the licensee describe actions to improve the effectiveness of management controls and perform and report on a close-out survey of the licensee's previous facility in Pryor, Oklahoma. The licensee's response to the NOV, dated August 28, 1986, included corrective action to specifically replace the dose calibrator. The NRC indicated to the licensee by a telephone call on September 23, 1986 and letter dated September 23, 1986 that licensee's response was inadequate as to the closeout survey of its Pryor, Oklahoma facility and in addressing improvement in management control of the program. The response to this second letter was received on October 13, 1986 and acknowledged by the NRC on November 18, 1986.

On February 1, 1988, NRC received an allegation concerning improper activities being conducted by the licensee. On March 24, 1988, a Region IV inspector inspected the licensee's facility. During the inspection, the following apparent violations and deviation were discovered: Failure to equip personnel (e.g., Dr. Forsythe) with dosimetry (a repeat violations); failure to maintain personnel dosimetry records, failure to conduct annual accuracy tests, quarterly linearity tests, and daily constancy checks on the dose calibrator (a repeat violation); failure to calibrate the survey meter (a repeat violation); failure to have certain documents posted (a repeat violation); failure to conduct leak testing on a sealed source (a repeat violation); failure to perform quarterly inventory for the calibration source (a repeat violation); failure to conduct surveys of unrestricted areas; failure to perform activity measurements of radioisotopes administered to patients, and failure to replace the dose calibrator which had become inoperable during the period, April 14, 1986 to August 28, 1986, a deviation from licensee's committed corrective action outline in letter dated August 28, 1986. Several of the violations are repeats from the April 1986 inspection and have remained uncorrected since the 1986 inspection. A Confirmatory Action Letter was issued on April 1, 1988 to confirm, among other things, the licensee's agreement to suspend nuclear medicine activities until NRC concurred on the resumption of licensee's operations.

Since the issuance of the Confirmatory Action Letter five attempts were made to reach Dr. Forsythe by telephone to discuss the status of licensed activities. Messages left with the licensee's secretary or message recorder were not returned. On April 24, 1988, a certified letter (receipt requested) was sent inviting the licensee to an enforcement conference scheduled for May 5, 1988. The licensee received that letter on May 2, 1988. The letter also requested the licensee contact the Region IV office by 12:00 noon, May 4, 1988, to confirm his attendance at the enforcement conference or arrange for a different mutually acceptable time. In addition, the letter informed the licensee that in the absence of attendance at the enforcement conference or contacting the NRC to arrange a different mutually acceptable time and date, NRC would proceed to issue the applicable enforcement action which might involve the formal suspension of the license. The licensee did not respond by the May 4, 1988 deadline. The NRC again attempted to contact Dr. Forsythe by telephone on May 5, 1988 to confirm the licensee's attendance at the enforcement conference. Dr. Foresythe neither responded to the telephone message requesting he call the NRC nor attended the enforcement conference on May 5, 1988.

III

Based on the NRC inspection of March 24, 1988, that resulted in the identification of numerous violations, several of which were uncorrected since the 1986 inspection and the licensee's failure to replace the inoperable dose calibrator, a deviation from his commitment to replace the dose calibrator in response to the June 4, 1986, NOV, the licensee has demonstrated an unwillingness to comply with regulatory requirements and safe work practices. The licensee has been unresponsive to our repeated requests to discuss issues associated with the license. Such performance cannot be tolerated. Therefore, I lack the requisite reasonable assurance that the licensee will comply with Commission requirements in the future. I have determined that the public health, safety, and interest require that the License No. 35-12120-02 should be formally suspended. I have further determined that, pursuant to 10 CFR 2.201(c), no prior notice is required and, pursuant to 10 CFR 2.202(f), that the suspension should be immediately effective pending further Order.

IV

In view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Part 35, it is hereby ordered, effective immediately, that:

A. Pending further Order activities authorized under License No. 35-12120-02 are hereby suspended and the licensee shall not receive or use byproduct material.

B. Within 2 days of the date of this Order, the licensee shall place all licensed material in its possession in locked storage or transfer such material to an authorized recipient.

C. Within 10 days of the date of this Order, the licensee shall provide, in writing to the Region IV, office information regarding the disposition of all licensed material possessed at the time that this Order was issued.

D. The licensee shall show cause, in accordance with Section V of this Order, why License No. 35-12120-02 should not be revoked.

The Regional Administrator, Region IV, may in writing, relax or rescind any of the above provisions in section IV upon demonstration of good cause by the Licensee.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order should not have been issued and why its license should not be revoked by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in section IV above. Upon consent of the licensee, to the provisions set forth in section IV of this Order, or upon the licensee's failure to file an answer within the specified time, the provisions specified in section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), the licensee or any other person adversely affected by this Order may request a hearing within 20 days of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 10th of May 1988.
James M. Taylor,
Deputy Executive Director for Regional Operations.
[FR Doc. 88-11119 Filed 5-17-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated April 15, 1988.

The proposed amendment is a request to revise sections 2, 3, and 4 of the Appendix A Technical Specifications to be consistent with a replacement upgrade of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) Nuclear Instrumentation System (NIS). The modification would consist of a complete replacement of the NIS detectors, cabling, and signal processing equipment. Certain existing output devices and cable routing would be retained. The licensee stated that the proposed revisions to the technical specifications would assure appropriate limiting conditions for operation and surveillance requirements for the upgraded NIS. The safety analyses of transients and accidents are reviewed in the application. Because the new NIS detectors are not symmetrical with respect to the reactor, a revised dropped control rod analysis is presented which is the analysis most affected by the upgraded nuclear instrumentation system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

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limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 12th day of May, 1988.

For The Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11120 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating, License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated March 18, 1988 (Reference G02–88–065).

The proposed amendment would change Technical Specification section 4.8.2.1, "D.C. Sources Surveillance Requirements." Subsection d. of that section specifies the discharge amperage profiles which must be achievable for the DC batteries to be declared operable. The proposed amendment would revise those discharge amperage profiles. This change is being made because review of design documents indicated an inconsistency with the Technical Specifications. Battery load profiles were recalculated to provide the revised values.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 17, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such am amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative of the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20055, and the Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005–3502 and Mr. G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearig is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 6th of May, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11121 Filed 5–17–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24642]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 12, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 6, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–7501)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), Northeast Nuclear Energy Company ("NNECO"), and Rocky River Realty ("RRR"), all of 107 Selden Street, Berlin, Connecticut 06037, subsidiaries of NU, (collectively, "Declarants") have filed a declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rule 45 thereunder.

By three prior Commission orders, the overall short-term borrowing authority for the Declarants was limited, through December 31, 1988, to: NU–$60 million; CL&P–$300 million; WMECO–$75 million; Holyoke-$10 million; NNECO–$50 million, RRR–$10 million; NUSCO–$40 million (December 24, 1986, February 10, 1987 and December 4, 1987; HCAR Nos. 24282, 24316 and 24516). Subject to that authority, the Declarants now seek authority to issue short-term notes pursuant to a proposed revolving credit agreement ("Credit Agreement") under which each Declarant may borrow and reborrow up to $50 million, at any time and from time to time, up to an aggregate of $50 million for all Declarants. The Credit Agreement will be entered into with a syndicate of regional commercial banks ("Banks"), for which The Connecticut Bank and Trust Company, N.A. is acting as agent ("Agent"). In addition, NU requests authority to guaranty the payment obligations under the Credit Agreement of NUSCO, NNECO, and RRR.

The term of the Credit Agreement will be three years, with a right for the Declarants, with the consent of all Banks, to extend the term on a year-by-year basis up to a maximum of seven years. All borrowings under the Credit Agreement will be short-term borrowings of six months or less and will be on a revolving basis. The borrowings will be evidenced by a note delivered to each Bank executed on behalf of each borrower, for the amount of that Bank's commitment. Each loan will bear interest according to the type of loan selected, which may be either a LIBOR Loan of 1, 2, 3, or 6 month maturity, or a Prime Rate Loan of up to 90 days, each type of loan, as defined in the Credit Agreement.

Consolidated Natural Gas Company, et al. (70–7516)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, CNG Coal Company, CNG Energy Company, CNG Research Company, CNG Trading Company, Consolidated Natural Gas Service Company, Inc., The Peoples Natural Gas Company, all of the foregoing located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130; CHG Transmission Corporation 445 West Main Street, Clarksburg, West Virginia 26301; Hope Gas Inc., National Center West, Clarksburg, West Virginia 26301; The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street,

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Cleveland, Ohio 44115; and West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802 (collectively "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Consolidated proposes, for intra-system financings through June 15, 1989, to issue and sell up to $400 million of either domestic commercial paper and/or Euro-commercial paper to dealers pursuant to an exception from competitive bidding. To the extent it becomes impractical to issue commercial paper, Consolidated proposes to issue and sell up to $400 million unsecured short-term notes to banks. If not needed for back-up of commercial paper, a bank line of $175 million of unsecured short-term notes could also be used to finance gas storage inventories and other working capital requirements of the Subsidiary Companies.

It is also proposed that: (1) Consolidated make up to $749,500,000 in open account advances to certain Subsidiary Companies; (2) Consolidated acquire and certain Subsidiary Companies issue up to $200 million in long-term non-negotiable notes; (3) Consolidated make revolving credit advances not to exceed $250 million to certain Subsidiary Companies; (4) Consolidated acquire from, and CNG Coal Company, CNG Development Company, CNG Producing Company and CNG Research Company and CNG Research Company issue, respectively, an aggregate of $91,200,000 in common stock at $100 par value; and that (5) CNG Development's certificate of incorporation be amended to increase its authorized capital stock from 1,100,000 shares to 1,400,000 shares of common stock at $100 par value.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11106 Filed 5-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25894; File No. SR-NYSE-88-14]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Specialists Post Wires

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to further amend proposed Rule 36.30.[1] As originally proposed, Rule 36.30 was intended to codify existing Exchange policy as to the use of telephone wires connecting the trading posts of the specialists with off-floor locations by permitting specialist units to install telephone lines to connect them with their off-floor offices or clearing firm. The current proposal would further amend the language of proposed Rule 36.30 to permit, with Exchange approval, a specialist unit to use the telephone line at its trading post location to enter options or futures hedging orders through a member (on the floor) of an options or futures exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of the proposed rule change is to provide a faster means and to expand the Specialist's ability to enter options or futures hedging orders from its post location on the Floor directly with a member (on the floor) of an options or futures exchange.

(2) *Statutory Basis*—The basis under the Securities Exchange Act of 1934 (the "1934 Act") for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that remove impediments to and perfect the mechanism of a free and open market. The proposed rule change is also consistent with section 6(b)(8) of the 1934 Act which provides that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the 1934 Act.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments on the proposed rule change from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-14 and should be submitted by June 8, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11102 Filed 5-17-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The proposed NYSE Rule 36.30, which this filing would amend, was submitted for Commission consideration as part of a general rule filing by the Exchange (File No. SR-NYSE-87-19) seeking to codify the NYSE's policy regarding members' ability to install and maintain telephone lines on the NYSE floor to enable them to communicate, from the Exchange floor, with non-members located off-floor. Notice of the proposed rule change was given in Securities Exchange Act Release No. 24625 (June 22, 1987), 52 FR 24578 (July 1, 1987). The proposed rules in File No. SR-NYSE-87-19 are currently under review by the Commission staff.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

May 12, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Horizon Bancorp
Common Stock, $4.00 Par Value (File No. 7-3354)
Kaneb Energy Partners, Ltd.
Depository Units, No Par Value (File No. 7-3355)
Kleinwort Benson Australian Income Fund, Inc.
Common Stock, $.0001 Par Value (File No. 7-3356)
Kysor Industrial Corporation
Common Stock, $1.00 Par Value (File No. 7-3357)
MAI Basic Four, Inc.
Common Stock, $.25 Par Value (File No. 7-3358)
MFS Municipal Income Trust
Shares of Beneficial Interest (File No. 7-3359)
Monarch Capital Corporation
Common Stock, $1.00 Par Value (File No. 7-3360)
Pilgrim's Pride Corporation
Common Stock, $.01 Par Value (File No. 7-3361)
Plains Petroleum Co.
Common Stock, No Par Value (File No. 7-3362)
Primark Corporation
Common Stock, No Par Value (File No. 7-3363)
Royce Value Trust, Inc.
Common Stock, $.0001 Par Value (File No. 7-3364)
Russ Berrie & Co., Inc.
Common Stock, $.10 Par Value (File No. 7-3365)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11103 Filed 5-17-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 12, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Blue Arrow PLC
American Depository Receipts, No Par Value (File No. 7-3366)
Birmingham Steel Corporation
Common Stock, $.01 Par Value (File No. 7-3367)
Borden Chemical & Plastic, LP
Depository Units, No Par Value (File No. 7-3368)
Digital Communications Association, Inc.
Common Stock, $.10 Par Value (File No. 7-3369)
IMC Fertilizer Group, Inc.
Common Stock, $1.00 Par Value (File No. 7-3370)
Morgan Products Ltd.
Common Stock, $.01 Par Value (File No. 7-3371)
Northeast Savings F.A.
Common Stock, $.01 Par Value (File No. 7-3372)
Neveen New York Municipal Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3373)
Oppenheimer Multi Sector Income Trust
Common Stock, No Par Value (File No. 7-3374)
Putnam Master Income Trust
Shares of Beneficial Interest (File No. 7-3375)
Careercom Corporation
Common Stock, $.01 Par Value (File No. 7-3376)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11104 Filed 5-17-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

May 12, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the

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Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Arkansas Best Corporation
Common Stock, $1.00 Par Value (File No. 7-3345)
Brazil Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3346)
Ferro Corporation
Common Stock, $1.00 Par Value (File No. 7-3347)
LeaRonal, Inc.
Common Stock, $1.00 Par Value (File No. 7-3348)
GEO International Corporation
Common Stock, $0.10 Par Value (File No. 7-3349)
Grubb & Ellis Company
Common Stock, $1.00 Par Value (File No. 7-3350)
Hotel Investors Trust/Corporation
Combined Stock, $1.00 Par Value (File No. 7-3351)
Global Growth and Income Fund, Inc.
Capital Shares, $1.00 Par Value (File No. 7-3352)
Growth Stock Outlook Trust, Inc.
Common Stock, $0.10 Par Value (File No. 7-3353)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11105 Filed 5-17-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20-128, Design Considerations for Minimizing Hazards Caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor and Fan Blade Failures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20-128, Design Considerations for Minimizing Hazards Caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor and Fan Blade Failures. This AC sets forth a method of compliance with the requirements of 23.903(b)(1), 25.901(d) and 25.903(d)(1) of the FAR pertaining to design precautions taken to minimize the hazards to an airplane in the event of uncontained engine or auxiliary power unit rotor (compressor and turbine) failure and engine fan blade failures.

DATE: Advisory Circular 20-128 was issued by the FAA, Office of Airworthiness in Washington, DC, on March 9, 1988.

How to Obtain Copies: A copy of AC 20-128 may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 2, 1988.

William B. Ashworth,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 88-11053 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

[AC NO. 135-XX]

Proposed Advisory Circular on Emergency Medical Services/Helicopter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) for Emergency Medical Services/Helicopter (EMS/H).

SUMMARY: The proposed AC is intended to provide information in the conduct of EMS (Helicopter) for operators providing service under Part 135 of the Federal Aviation Regulations.

Comments invited: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 135-XX.

DATE: Comments must be received on or before June 17, 1988.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Air Transportation Division (Attention: AFS-250), 800 Independence Avenue SW., Washington DC 20591

FOR FURTHER INFORMATION CONTACT: Freddie Cooper, AFS-250, at the above address; telephone: (202) 267-3772 (8:30 a.m. to 5:00 p.m. EST).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects the material to assist all operators in the conduct of EMS.

Issued in Washington, DC, on May 10, 1988.

William T. Brennn,

Acting Director of Flight Standards.

[FR Doc. 88-11054 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Burbank-Glendale-Pasadena Airport Authority, Burbank, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps in April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP-611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles California 90009, (213) 297-1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Burbank-Glendale-Pasadena Airport, Burbank, California, are in compliance with applicable requirements of FAR Part 150, effective April 22, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible and uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Burbank-Glendale-Pasadena Airport Authority on April 14, 1987 and April 15, 1988. The FAA has determined that the noise exposure maps for the Burbank-Glendale-Pasadena Airport are in compliance with applicable requirements. This determination is effective on April 22, 1988. The FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations.

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.
Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, California 90261.
Mr. Richard Vacar, Manager, Airports Affairs, 2627 Hollywood Way, Burbank, California 91505.

Issued in Hawthorne, California, on April 22, 1988.

Herman C. Bliss,

Manager, Airports Division Western-Pacific Region.

[FR Doc. 88-11055 Filed 5-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 11, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1048.
Form Number: 8644.
Type of Review: Resubmission.
Title: Election to be a Qualified Electing Fund.
Description: Form 8644 is used by foreign corporations whose main source of income is from investments. These corporations may elect on Form 8644 to become a "qualified electing fund." A qualified electing fund must submit certain information to the IRS and its U.S. shareholders. The IRS uses this information to determine if U.S. persons have reported the correct amount of income from the fund.
Respondents: Businesses or other for-profit.
Estimated Burden: 7,096 hours.
Clearance Officer: Garrick Sherar, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Officer of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-11063 Filed 5-17-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 12, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB NUMBER: New.
Form Numbers: 8736.
Type of Review: New Collection.
Title: Application for Automatic Extension of Time to File Return for a U.S. Partnership or for Certain Trusts.
Description: Form 8736 is used by partnerships and by certain trusts to request an automatic 3-month extension of time to file Form 1065, Form 1041, or Form 1041S. Form 8736 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 6,000 hours.
Clearance Officer: Garick Shear, (202) 535-4297, Internal Revenue Service,

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Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–11084 Filed 5–17–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 12, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0143.

Form Number: 2290.

Type of Review: Resubmission.

Title: Heavy Vehicle Use Tax Return.

Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of motor vehicles which have a taxable gross weight of at least 55,000 pounds. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Burden: 660,795 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–11065 Filed 5–17–88; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Cooperative Studies Evaluation Committee has been renewed for a two year period beginning May 2, 1988 through May 2, 1990.

Dated: May 10, 1988.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–11163 Filed 5–17–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 96
Wednesday, May 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of agency meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:04 p.m. on Friday, May 13, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: May 16, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–11193 Filed 5–16–88; 11:24 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, May 23, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–11152 Filed 5–16–88; 8:45 am]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

USITC SE–88–13

TIME AND DATE: Thursday, June 2, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731–TA–384 (Final) (Nitrile Rubber from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

May 10, 1988.

[FR Doc. 88–11153 Filed 5–16–88; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

USITC SE–88–12

TIME AND DATE: Tuesday, May 24, 1988 at 2:00 p.m.

PLACE: Room 101, 500 E. Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Venetian Blind Components (Docket Number 1442).
5. Inv. Nos. 701–TA–290–292 (P) and 731–TA–400–404 (P) (Thermostatically Controlled Appliance Plugs & Probe Thermostats Therefor from Canada, Hong Kong, Japan, Malaysia, and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

May 10, 1988.

[FR Doc. 88–11154 Filed 5–16–88; 9:12 am]

BILLING CODE 7020–02–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 16614 May 10, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, May 5, 1988.

CHANGES IN THE MEETING: Additional item.

The following additional item was considered a closed meeting on Wednesday, May 11, 1988, at 2:30 p.m.

Regulatory matter regarding financial institutions.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

May 12, 1988.

[FR Doc. 88–11241 Filed 5–16–88; 9:45 am]

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federal register

Wednesday
May 18, 1988

Part II

Department of Transportation

Coast Guard

46 CFR Part 50 et al.
Vital System Automation; Final Rule

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DEPARTMENT OF TRANSPORTATION

46 CFR Parts 50, 52, 56, 58, 61, 62, 110, 111, 113

[CGD 81-030]

Vital System Automation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding regulations for automated vital systems on self-propelled commercial vessels to the Marine Engineering Regulations contained in various subchapters of Title 46 of the Code of Federal Regulations. Since the early 1980's, technological advances have caused an ever-growing dependence on automation to provide for the safe operation of vessels while reducing operating costs. Domestically, the Coast Guard has published a series of Navigation and Vessel Inspection Circulars (NVIC's) to promulgate its policy and guidance regarding the safe design, testing, maintenance, and manning of automated vessels. These circulars are inadequate and outdated. Internationally, the need for safe automation on vessels has resulted in the inclusion of automation regulations in the first set of amendments to the International Convention on the Safety of Life at Sea, 1974 (SOLAS '74). These amendments entered into force internationally on September 1, 1984. To ensure that safety is not compromised by automation or reduced manning, uniform safety regulations are needed to replace the NVIC's currently in effect, and to conform to and interpret the provisions of the recent SOLAS amendments. The Coast Guard intends these rules to provide minimum performance and testing standards that do not restrict use of technological developments or alternative arrangements that provide an equivalent degree of safety. Additionally, these rules detail the configuration and degree of automation the Coast Guard deems necessary when authorization for minimally attended or periodically unattended machinery plant operation is requested by the owner or operator of a vessel.

DATES: This regulation is effective August 16, 1988. The Incorporation by Reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 1988.

ADDRESSES: A final regulatory evaluation has been prepared for this rulemaking and may be inspected and copies at the Marine Safety Council (G-CMC/21) at Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: LCDR Peter L. Randall, Office of Marine Safety, Security and Environmental Protection, (202) 267-2206.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the Federal Register on September 23, 1985 (50 FR 38606). Interested persons were requested to submit comments and fifty-two letters were received, each containing numerous comments. These comments are discussed in detail below.

Drafting Information

The principal persons involved in drafting this rulemaking are: LCDR Peter L. Randall, Project Manager, and Mr. W.R. Register, Project Counsel, Office of the Chief Counsel.

Discussion of Regulations

a. Background

(1) The vital machinery and engineering spaces of commercial vessels are automated for a variety of reasons, including operator convenience, increased efficiency, reduction or elimination of the need for operators to be continuously present, and detection and control of unsafe conditions. Most automation is provided at the option of the owner of the vessel to reduce necessary manning and increase operating efficiency, thereby reducing operating costs. Over the life of a vessel, the savings as a result of these reduced operating costs usually exceed the capital investment cost of the automation.

(2) The Code of Federal Regulations does not address technical criteria for the safe and reliable automation of vital systems on commercial vessels. For more than 20 years, the Coast Guard has issued a series of NVIC's to express its policy and provide guidance for the cognizant Officer in Charge, Marine Inspection in an effort to ensure a general level of safety on automated vessels at least equal to that experienced on vessels that are not automated. The primary circular for self-propelled vessels other than small passenger vessels and offshore supply vessels has been NVIC 1-69, "Automated Main and Auxiliary Machinery." This NVIC was issued in January 1969 as a result of Coast Guard and industry experience with the automation technology and steam propulsion systems prevalent in the 1960's. Worded as the "judgment of the Coast Guard" in the context of 46 U.S.C. 222 (now 46 U.S.C. 8101), it provided guidelines for equipment design, maintenance, and testing. It also specified the equipment and procedures deemed necessary to qualify for reduced engineroom manning and emphasized that safety must not be compromised as a result of either automation or associated reductions in manning. While many of the underlying concepts of this NVIC have stood the test of time and are consistent with the international views on safe and reliable automation, it lacks guidance and flexibility applicable to new technologies, configurations, and propulsion systems, particularly diesel engines and electronics. The Coast Guard has used internal policy statements and interpretations to address these deficiencies. The existence of these numerous guidelines and interpretations in nonregulatory form has at times caused confusion in the marine industry and resulted in nonuniform application, misinterpretation, and unnecessary additional costs to the industry.

(3) In 1970, the United States submitted NVIC 1-69 the Inter-governmental Maritime Consultative Organization (IMCO) for consideration in the development of international automation standards. (In 1982, IMCO changes its name to International Maritime Organization, IMO.) In 1974, the United States participated in the development of the International Convention for the Safety of Life at Sea (SOLAS '74), which was developed under the auspices of IMCO. SOLAS '74 was ratified by the United States on September 7, 1978, and entered into force internationally on May 25, 1980. The first set of amendments to SOLAS '74, including automation regulations, were adopted at the Forty-fifth session of the Maritime Safety Committee (MSC) of IMCO in November, 1981. Under the amendment procedures of SOLAS '74, the contracting governments, including the United States, accepted the amendments on March 1, 1984. These amendments entered into force internationally on September 1, 1984. The United States actively participated at all levels of development of the SOLAS '74 amendments and the document that comprised the automation requirements,

Resolution A.325(IX). Public comment was invited and the marine industry participated in all aspects of the development of the United States' position. The SOLAS '74 amendments are generally consistent with the U.S. position; however, they require substantial interpretation and augmentation by the Coast Guard and affected members of the public if they are to be applied in a uniform and fair manner to the U.S. commercial fleet.

(4) In 1981, the Coast Guard initiated this regulatory project, CGD 81-030, to update and replace NVIC 1-69, to incorporate IMCO Resolution A.325(IX), and to solicit public comment before publishing regulations. In 1983, difficulties in evaluating foreign flag vessels being brought under the U.S. flag further accentuated the need for revised Coast Guard automation requirements. NVIC 6-84, "Automated Main and Auxiliary Machinery, Interim Guidance On," was published on June 25, 1984, to provide immediate interim guidance on the application of the SOLAS amendments and NVIC 1-69 pending publication of final rules in this rulemaking. Since its publication, NVIC 6-84 has served its purpose of clarifying how the Coast Guard intends to apply SOLAS to U.S. flag vessels, informing the public, reinforcing certain general concepts found in both NVIC 1-69 and SOLAS, and de-emphasizing certain obsolete or conflicting guidelines in NVIC 1-69.

(5) On September 23, 1985, the Coast Guard published the NPRM for this rulemaking with a comment period set to close December 23, 1985. Shortly before the end of the comment period, however, requests for additional time to prepare and submit comments were received from the American Bureau of Shipping (ABS) and others. The requests cited the extensive and comprehensive nature of the proposed rule as the reason additional time was needed. Due to the significance of this rulemaking, the Coast Guard considered it important to allow parties with relevant comments additional time to evaluate the proposal. An extension of the comment period to February 21, 1986, was published in the Federal Register (51 FR 3352).

Shortly before the end of the extended comment period, the National Marine Engineers' Beneficial Association (NMEBA) requested that a public hearing be held on the proposed rules, citing perceived significant changes in Coast Guard technical and manning policies and the need for fullest possible public participation. The Coast Guard carefully considered the points raised in the request and noted that they reflected a misunderstanding of Coast Guard policy and the intent of the proposal. The Coast Guard also considered the extended length of the comment period, the public hearings on vessel manning held in a related rulemaking discussed later in this preamble (Licensing of Maritime Personnel Rulemaking, CGD 81-059), and the written comments received from the affected public, and concluded that a public hearing at that stage in the rulemaking was not necessary. All points raised in the request, and the Coast Guard's detailed response, have been included in the public docket and are addressed in detail elsewhere in this rulemaking.

b. Issues Addressed.

(1) *Safety.* The marine industry, the Coast Guard, and the member nations of IMO recognize that automated vital system failures are a hazard to navigation and personnel. Coast Guard records for casualties on U.S. flag vessels during 1985 and 1986 include at least 78 marine casualties involving automation addressed by this rulemaking, at a known total cost of at least $3.2M in damages. These casualties are discussed at length in the Final Evaluation referenced above under ADDRESSES. As an example, Coast Guard casualty records include several cases where remote propulsion controls have failed, resulting in loss of control of the vessel and ensuing damage. These propulsion control casualties alone have directly or indirectly accounted for $1.3M in damages in 1985 and 1986.

(2) *Vessel manning.* Automation is a vessel manning issue as much as it is an issue of equipment safety and reliability. The Coast Guard is charged by 46 U.S.C. 8101 with determining the complement of licensed officers and crew necessary for safe operation of a vessel. The Coast Guard recently published revised manning requirements in the Federal Register of October 18, 1987 (52 FR 38614) which include manning provisions relating to vessel automation (see 46 CFR Part 15 entitled "Manning Requirements"). While these revised requirements in Part 15 state that the degree of automation is considered by the Officer in Charge, Marine Inspection (OCMI) in determining the manning requirements for a particular vessel, the technical criteria for making this determination has been in NVIC's 1-69 and 6-84, which are now considered by the marine industry and the Coast Guard to be inadequate.

(3) *Lack of regulatory requirements.* The reason most commonly cited by all interested parties as the need for automation regulations is the lack of clear regulations, and the inadequacy of NVIC's 1-69 and 6-84. Both construction costs and operating costs have been unnecessarily incurred by the marine industry because of misinterpretation of requirements.

(4) *SOLAS.* The SOLAS amendments leave certain detailed requirements and interpretations to the discretion or satisfaction of the "Administration," *i.e.*, the Coast Guard. Certain SOLAS provisions are also more stringent than previous requirements for U.S. flag vessels. An example of this is SOLAS Regulation II-1/31.2.7, which requires propulsion control systems to fail to a preset speed and direction. This SOLAS requirement exceeds past requirements and leaves interpretation of "preset" and the failures to be considered to the individual Administrations.

(5) *Technological advances.* The state of the art of marine automation has advanced from steam plants and elementary controls and instrumentation to the diesel and hybrid plants, distributed automatic controls, and microprocessor control and monitoring technologies prevalent today. This developmental trend is expected to continue and must be taken into account by automation regulations.

(6) *Safety evaluation complexity.* The details of an automated machinery plant depend upon the design of the machinery, its arrangement, and the automation technology (electronic, electric relay, pneumatic, hydraulic, mechanical, etc.) employed. The combination of these factors often makes the details of an automation system unique to a given vessel or class of vessels. The trend toward greater automation of vessels as a result of economic pressure has resulted in large vessels with 1000-2000 monitoring points and sophisticated electrical plant management systems. This uniqueness and complexity in turn makes it difficult to evaluate the safety and reliability of automated vessels, and dictates the need for comprehensive performance standards as opposed to detailed design requirements.

(7) *Applicability.* SOLAS '74 and NVIC 1-69 were not developed to address certain systems or classes of vessels, such as mobile offshore drilling units (MODU's), non-self propelled vessels, dynamically supported craft, or

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tanker overflow control systems. The applicability of standards derived from SOLAS and the NVIC to these vessels must be given further consideration. These rules do not apply to those vessels.

c. Intent of Rules.

(1) *General.* The Coast Guard intends the regulations to—

(i) provide flexible, performance-oriented rules to assure acceptable minimum levels of safety, regardless of an automated vessel's degree of automation, the type of automation technology, or the configuration employed;

(ii) assure compliance of automated U.S. flag vessels with the international standards of safety promulgated by the SOLAS convention and the applicahble IMO resolutions;

(iii) emphasize the role of the marine industry, particularly in the areas of design, construction, and maintenance, in providing safe and reliable vessels; and

(iv) closely integrate the specific automated vessel technical design and construction requirements of these rules with the vessel manning requirements of recently revised 46 CFR Part 15, to assure the safety and adequate manning of U.S. flag vessels.

(2) *Structure.* (i) The provision of a single set of automation regulations applicable to all vessels to which the Marine Engineering Regulations apply should promote a uniform set of standards that can be more easily understood and simplify the process of revising the regulations when necessary. It should also facilitate Coast Guard plans concerning possible future transfer of certain functions associated with the regulations to the American Bureau of Shipping or other non-government agencies.

(ii) The rules are broken into four major segments:

(A) An equivalency provision.

(B) General performance, reliability, and safety criteria for all automated systems.

(C) Specific criteria for specific types of systems, where provided.

(D) The minimum equipment and systems deemed necessary for minimally attended and periodically unattended machinery spaces on automated vessels.

Each of these segments is intended to build upon the prior, *i.e.*, systems listed under the specific provisions must also meet the general criteria, and systems required for minimally attended or periodically unattended machinery space manning must also meet applicable specific and general critiera.

(3) *Assumptions and objectives.* (i) In developing the safety performance standards in this rulemaking, the Coast Guard used several assumptions and basic objectives. These were derived from the Coast Guard's experience with automated vessels over the last 20 or more years and from input provided by the public. They are considered to be fundamental concepts that, in various degrees, are reflected in past and present Coast Guard, IMO/IMCO, SOLAS, and classification society policies and regulations for vessel safety. These basic assumptions were presented in the NPRM and are again listed below. Clarification of Assumption (B) has been made as a result of public comments, and the revision is shown in italics.

Assumption (A) Regardless of how well designed, constructed, or operated any automated equipment is, it can fail catastrophically. While extensive and detailed design, quality control, and maintenance regulations may reduce the likelihood of a failure, a finite probability remains that a failure can occur. Regulations that attempt to completely prevent failure might in fact be counter-productive to safety, expensive, and burdensome to all parties. Therefore, it is prudent to assume that failures will occur and consider the necessary safety contingencies.

Assumption (B) Localized flooding or fire can occur regardless of the precautions taken to prevent them. Such emergencies can disable vital system automation, make it inaccessible, and pose an immediate threat to the safety of the vessel and its crew. Therefore, it is prudent to provide alternative means of operation. *Further, the ability to counteract localized flooding or fires should not be diminished by the provision or location of automation.*

Assumption (C) The evaluation of the safety of any automated vessel in light of the events described in Assumptions (A) and (B) should be limited to any single, non-concurrent failure or event and its logical effects. In light of the large number of concurrent combinations possible and the relatively low probability of their occurrence, it is impractical and burdensome to consider such combinations. It is, however, prudent and reasonable to consider the logical chain of events that could occur as a result of a single failure or event, and to consider conditions that contribute to unsafe conditions.

Assumption (D) The safety of vessels with automated vital systems should be at least equal to that of a vessel with its vital systems under direct manual supervision.

(ii) Based on these assumptions, these regulations are intended to meet the following objectives:

Objective (A) To the greatest extent practicable, the failure of automation or automated equipment should be safe (failsafe) and the foreseeable unsafe effects minimized by design. In a similar manner, the effects of a localized fire or flooding on safe control and operation should be minimized and localized.

Objective (B) A responsible member of the crew must promptly become aware of a failure, fire, or flooding, either directly from personal observation or indirectly from reliable instrumentation or alarms.

Objective (C) Upon becoming aware of a failure, fire, or flooding, the crew must have an alternate, effective means available to operate the vessel safely and to counteract the effects of failure, fire, or flooding.

Objective (D) The crew should know how to operate both the automated system and the alternate controls in the event the automation fails. Similarly, the operation of the system must be clear and obvious to the crew.

Objective (E) There must be indication at operator control locations of the safe, or unsafe, state of operation of the equipment controlled from that location.

(iii) A failure scenario was developed that describes the intended sequence of events deemed desirable to attain the primary goal of this rulemaking, safety. The scenario includes options that depend upon the nature of the automation, manning of the vessel, and its operation. It is a development upon the aforementioned assumptions and objectives, and includes the following sequence of events:

Event (A) The vessel is underway in normal operation, with spaces and machinery status monitored by crewmembers or automation.

Event (B) A single vital system or vital system component fails, or localized fire or flooding occurs.

Event (C) In the case of a vital system failure, it fails to a pre-determined safe state and the effects of the failure are minimized.

Event (D) A crewmember on duty promptly becomes aware of the failure, fire, or flooding.

Event (E) In the case of a vital system failure, either—

(i) the failed unit is automatically removed from service and replaced with a reliable, effective backup; or

(ii) a crewmember manually removes the failed unit from service and manually transfers to a reliable and effective alternate means of operation.

In the case of localized fire or flooding, either—

(i) The crew takes action locally to counteract the effects of the hazard, if the space and equipment are accessible and operable; or

(ii) The crew takes action from an alternate, remote location to counteract the effects of the hazard, if the space or equipment are not accessible or operable.

Event (F) The failure scenario ends with the vessel in continued or restored safe operation, even if at a reduced operational capacity.

(4) Discussion of Specific Regulations—§ 58.01–35 Main propulsion auxiliary machinery. This rule is an interpretation of SOLAS Regulation II–1/26 and provides general performance criteria not found elsewhere in the Marine Engineering Regulations. It has been included because it is fundamental to compliance with the performance standards in Part 62.

Subpart 61.40 Design Verification and Periodic Tests

These tests are intended to make sure that automated systems initially operate in a safe and reliable manner and continue to do so during the service life of the vessel. The tests are similar to those described in NVIC 1–89. The Design Verification Tests in § 61.40–1 are intended to be more detailed and intensive than the Periodic Safety Tests of § 61.40–6, in that they must confirm that all systems, when initially installed, function as required by the performance standards of Part 62. Design Verification Tests are generally associated with yard trials and sea trials. Periodic tests are intended to confirm the continued operation of major safety systems and features annually. On vessels where the Coast Guard has accepted automated systems to replace specific personnel or reduce overall crew requirements, the periodic tests are also intended to determine, in part, the adequacy of the required planned maintenance program and the adequacy of the mainning with which the vessel has operated.

Section 62.01–5(d) Applicability, Central Control Rooms.

This paragraph is an interpretation of the SOLAS requirements referenced in Table I and is generally more stringent than past Coast Guard guidelines. Implicit in this interpretation is the assumption that a control room partially or completely isolates the operator from the machinery space environment. Certain essential monitoring and control functions, therefore, are required to be extended from the machinery space to the control room to provide a level of safety equivalent to that of an operator located in the machinery space itself.

Subpart 62.20 Plan Submittal. This subpart contains certain changes from past standards. Significant among these are a new requirement for a qualitative failure analysis of certain complex automated systems, deletion of the previous requirement for a maintenance program approved by the Coast Guard, and provisions for the self-certification of compliance with environmental design standards in lieu of plan review and laboratory testing.

Section 62.20–1 Plans for Approval. The plan submittal requirements in this section are similar to those of the past. Designers and manufacturers of automation equipment should also see 46 CFR 50.20–15, which outlines the requirements for the use of previously approved plans. Information necessary to confirm general compliance with the Marine Engineering and Electrical Regulations will continue to be required by those regulations, such as overcurrent protection, wiring and connection materials, and fluid piping.

Section 62.20–3 Plans for Information.

The *approval* of a planned maintenance program is no longer a prerequisite for reduced manning. The specific content of the program is up to the vessel's operator. The maintenance program will initially be used by the Coast Guard to aid in evaluation of requests for reduced manning. Once the vessel is in service, it is intended that re-inspection and the Periodic Safety Tests of Subpart 61.40 witnessed by the Coast Guard will determine the adequacy of the maintenance program.

This section also requires that a qualitive failure analysis be developed and submitted as an information document for certain complex systems. This document will aid in the evaluation of the system and will emphasize the role of the designer and manufacturer in evaluating the designed safety of vital system automation. Further discussion of the failure analysis requirements is included in the *Analysis of Comments* discussion below.

Subpart 62.25 General Requirements for All Automated Vital Systems

This subpart is intended to provide general performance and arrangement standards applicable to the control and monitoring of any vital shipboard system.

Section 62.25–25 Programmable Systems and Devices.

These requirements are intended to prevent either the intentional or unintentional modification of required safety parameters on systems or equipment that readily lend themselves to adjustment or loss of function, such as safety trip sensors and programmable controllers. The requirements are not intended to prohibit routine adjustments and calibration necessary for the normal and efficient operation of automatic controls or instrumentation.

Section 62.25–30 Environmental Design Standards.

These standards generally correspond to those of international technical bodies. Rather than require detailed and costly testing to these standards in an effort to confirm component suitability, the Coast Guard intends to emphasize the realiable and safe function of the overall system, testing after installation, and manufacturer and designer certification of component suitability.

Subpart 62.30 Reliability and Safety Criteria, All Automated Vital Systems

This subpart is intended to provide general performance standards applicable to any automated vital system.

Section 62.30–1 Failsafe.

The failsafe operation of vital systems has long been a Coast Guard policy. In some cases, such as failure of propulsion controls to a preset speed and direction, the failsafe state is internationally definable and recognizable. In other cases, such as a microprocessor based system, the complexity or nature of the system may preclude the statement of a single preferred failsafe state. It is the intent of this rule that each control and alarm system fail in a manner consistent with the overall safety of the vessel and personnel in light of the assumptions and failure scenario discussed in this rulemaking. For certain complex systems and in equivalency determinations, the failure analysis required by § 62.20–3(b) is intended to aid in the identification of a preferred failsafe state.

Section 62.30–5 Independence.

Independence of systems or equipment normally implies separate and discrete components in order to provide reliability. Complete duplication in this manner is costly, may not be necessary, or may be impractical. As the term independent is defined and used in these rules, however, common reliable components could be used provided the performance criteria are met. An example is a system that provides for disconnection of a failed subsystem while allowing continued operation of the required function. This definition is included to allow arrangements that do not provide complete duplication but do

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provide a level of safety and reliability equivalent to complete duplication.

Subpart 62.35 Requirements for Specific Types or Automated Vital Systems

This subpart augments the general performance and configuration requirements of Subpart 62.25 and 62.30. It addresses safety criteria peculiar to specific systems of equipment that might be automated on a vessel.

Section 62.35–5(e)(3) Remote Propulsion Control System Details.

This rule has special significance in that it requires failsafe propulsion control operation. Failure of propulsion controls, particularly while manuevering, has caused numerous vessel casualties. This rule, in conjunction with the failure analysis required by § 62.20–3(b)(2), is intended to address known causes of propulsion control failures.

Section 62.35–20 Oil-Fired Main Boilers

These rules include automatic safety trip controls for all main boilers to prevent major boiler failures, greater emphasis on boiler air flow to prevent explosive conditions, and prohibition of certain automatic functions following boiler safety shutdowns.

Table 62.35–50 Minimum System Monitoring and Safety Control Requirements for Specific Systems. This table is intended to summarize in a single location the minimum instrumentation, alarms and safety controls deemed necessary by the Coast Guard for specific types and categories of automated equipment.

Subpart 62.50 Automated Self Propelled Vessel Manning

This subpart is intended to address the minimum systems, configurations, and maintenance programs necessary for the Coast Guard to accept automated systems to replace specific personnel or to reduce overall crew requirements in accordance with the new § 15.715 of the manning requirements mentioned above under *Issues Addressed.* The requirements of this subpart would be in addition to the rest of the technical requirements of Part 62. The references to specific levels of manning and watchstanders in NVIC 1–69 have been deleted, as they have resulted in misinterpretation and confusion. These rules are intended to establish technical criteria to be used by the Officer in Charge, Marine Inspection in determining the manning requirements for a particular vessel. Actual manning may exceed the Coast Guard's minimum required complement and is usually subject to agreement between a vessel's labor and management interests. Failure of automated equipment to perform in accordance with the provisions of the rules could result in the Coast Guard adjusting the minimum complement of officers and crew.

Section 62.50–20 Additional Requirements for Minimally Attended Machinery Plants

These requirements are intended to address vessel machinery plants and spaces that are automated, but not to a degree where the plant could safely be left unattended. Emphasis is placed on the centralized remote control and monitoring of the machinery plant and machinery spaces and the assumptions and failure scenario discussed in this rulemaking. The cognizant Officer in Charge, Marine Inspection (OCMI) may determine the need for more or less equipment depending on the vessel characteristics, route, or trade. For example, the personnel alarm may not be required if normal operation includes two crewmembers continuously in attendance.

Section 62.50–20(h) Maintenance Program

Where automation is provided to replace personnel or to reduce overall crew requirements, there may be a greater need for planned maintenance. This occurs because of a potential reduction in the maintenance work force, an increase in the sophistication and quantity of equipment to be maintained, and the reliance of the crew upon the automated equipment. The Coast Guard therefore considers it necessary to require automated vessels to have a planned maintenance program. As the content of such a program varies with vessel type, trade, route, manning and similar factors, the rules leave program content and implementation up to vessel management. The Coast Guard will evaluate the actual effectiveness of the program during the trial period and re-inspections and will then determine the adequacy of the program and manning.

Section 62.50–30 Additional Requirements for Periodically Unattended Machinery Plants

These requirements are intended to address machinery plants and spaces that are automated to the degree that they are self-regulating and self-monitoring and can safely be left periodically unattended. Emphasis is placed on providing systems that act automatically until the crew can take action in the event of a failure or emergency. As required by the Coast Guard in the past, the requirements for a periodically unattended machinery plant are in addition to those of a minimally attended machinery plant. This permits the crew to operate the plant directly should the arrangements for unattended operations prove unsatisfactory, for whatever reason.

Section 62.50–30(k) Continuity of Electrical Power

This rule, in consideration of SOLAS II–1/53.2, which requires automatic standby power for the main switchboard, and 46 CFR 112.05–3, which prohibits automatic feedback by the main-emergency bus-tie, no longer permits use of the emergency generator as the automatic standby source of electrical power.

Analysis of Comments and Changes Made

Need for Regulations. This rulemaking has presented a new and comprehensive set of safety regulations for vital system automation. Four comments on the proposed rules opposed the development of any new regulations, and stated a definite preference for NVIC's or comparable guidelines. The reasons given included: (1) the NVIC's are less rigid and less costly, (2) the maritime industry is in recession and cannot give the proposed rules the attention they deserve, and (3) there is no clear mandate, *i.e., need for regulation.* Twenty-nine comments supported the development of new regulations, with ten stating the rulemaking represents a marked improvement over the NVIC's, which should help eliminate confusion and which should be generally beneficial.

These rules have been developed as performance standards to allow the maximum possible flexibility in compliance consistent with safety. The costs related to these regulations are discussed under *Evaluation and Certification.* These rules, and the NVIC's and SOLAS regulations from which they are derived, have been developed with considerable public input over the last 25 years, and the public actively participated in the development of the final rules. Because of the ever present potential for casualties related to vital system automation, these safety regulations are considered to be essential.

Delegations to Classification Societies. The draft regulatory evaluation and the notice of proposed rulemaking (NPRM), at 50 FR 38615, stated that the proposed rules could potentially result in a cost savings to the Coast Guard as a result of further delegation of plan review and inspection functions to the American Bureau of Shipping (ABS). Automated vital system functions are not presently delegated by the Coast Guard to any party. Although the NPRM did not propose any delegation of plan review and inspection functions to classification societies, four comments supported such a delegation. Specific delegations to the ABS or any other classification society are considered to be beyond the scope of these rules, and are being addressed in a separate rulemaking docket entitled "Delegation of Authority to United States Classification Societies" (CGD 85–019).

Clarifications. The final rules include various clarifications to provisions proposed in the NRPM which have been made principally in response to recommendations of commenters. Many of the clarifications address specific recommendations that certain text be revised to remove unclear or confusing concepts as noted in specific comments. With one or two exceptions, these clarifications have not been individually discussed below as the reasons for the clarification become self evident simply by comparing the text of the clarified rule with corresponding proposed rule text. Certain clarifications have also been made to make text consistent with the text of various substantive changes which are discussed below.

Sections 52.01–10(a) and 62.35–20(a)(1) Main Boiler Safety Trips

One comment recommended deleting the requirement to have automatic safety trips on manually fired main boilers because they are not required by SOLAS. This comment has not been adopted. Coast Guard casualty records show that numerous boiler casualties, particularly flarebacks, occur when boilers are manually fired and can be avoided by providing automatic safety trips. These same findings are supported by ANSI/NFPA 85D "Standards for Prevention of Furnace Explosions In Fuel Oil-Fired Multiple Burner Boiler-Furnaces." Automatic safety trips are considered essential and are normally provided on vessels as a matter of general industry practice.

Section 56.50–80(i) Lubricating Oil System

One comment recommended that the requirement in the proposed rules to have an emergency supply of oil for all propulsion turbines only be applied to steam turbines. This recommendation has been adopted. There was no intent to apply the requirement to propulsion machinery other than steam turbines and associated high speed gearing. The shorter coast down period of diesel propulsion machinery generally makes an emergency supply unnecessary.

Section 58.01–35 Duplication of Auxiliary Machinery

This regulation requires duplication of auxiliary machinery vital to the main propulsion system. One comment stated that the regulation should specify which auxiliaries must be duplicated. Another comment requested clarification regarding single propulsion boiler installations, piping, cabling, deadship starts, and the relation of this regulation to SOLAS II–1/26 and Subpart 56.50 of Subchapter F. Specific requirements for most auxiliaries required to be duplicated are contained in Subparts 56.50 and 111.10 of Title 46, CFR. Specific requirements for piping and cabling are also in Subpart 56.50, Subpart 111.10, and in § 111.60–9. This regulation is substantively the same as SOLAS Regulation II–1/28.3.

Two comments recommended that the note to § 58.01–35 concerning partial reduction of normal propulsion capability refer to a reduced navigating capability (after propulsion auxiliary failure) of 7 knots or half speed, whichever is *less* (rather than *greater*, as proposed in the proposed rule). This recommendation has been adopted. The proposed rule would have required slower vessels to have unnecessary additional equipment which is not needed when proceeding at half speed. The note as revised is comparable to the various recognized classification society rules which generally specify 7 knots or less.

One comment asked whether an automation feature of "automatic slowdown" would comply with § 58.01–35. Automatic slowdown upon loss of an auxiliary component is one means of compliance.

Section 61.40–1(b) Test Responsibility

This regulation specifies that testing must be done by persons designated by the owner. One comment recommended that a marine inspector, rather than the owner of a vessel, randomly select a crewmember to conduct the testing required by this section in order to evaluate crew familiarity with the vessel. This recommendation has not been adopted. The tests are intended to evaluate the equipment, not the capabilities of the crew. The Coast Guard's role with regard to automation test procedures is not to supervise or participate in the tests, but rather to inspect and witness testing of the vessel according to an approved procedure.

Section 61.40–3(a) Design Verification Testing

This rule requires design verification tests to be based on failure analysis, if required by § 62.20–3(b), and other criteria. One comment stated that it will be difficult to derive a design verification test procedure from a failure analysis, especially where a microprocessor or computer control system is concerned. Failure analysis is intended to evaluate the safety and reliability of the design and readily lends itself to identifying critical safety features that should be confirmed by testing. As an example, the failure analysis may show that a power outage to one section of a microprocessor or computer control system should not affect the operation of the rest of the system. This design feature is identified by the failure analysis and can then be confirmed by a one-time design verification test.

Section 61.40–6(b) Periodic Safety Tests

Two comments recommended that the typical period between tests be one year in lieu of at each inspection for certification (*i.e.*, every two years). This recommendation has been adopted. The Officer in Charge, Marine Inspection (OCMI) can specify test intervals longer or shorter than one year, depending on the particulars of the vessel's operation, maintenance program, and past performance of the automation. Normally, however, the interval between periodic safety tests witnessed by the Coast Guard has been one year.

Section 62.01–5(a) Vessel Applicability—MODUs

Several comments stated that the proposed rules should not be applied to mobile offshore drilling units (MODUs). The applicability of the rules to MODUs was addressed as issue b.7. above and made reference to the OCEAN RANGER casualty. As a result of this casualty, attention to MODU ballast systems and ballast control systems has significantly increased. Substantial effort has gone into developing international standards for these systems at various meetings of the International Maritime Organization, IMO. Pending the anticipated completion of international standards in 1988, the Coast Guard will continue to treat MODU automation as a vital system on a case-by-case basis. The requirements in this rulemaking (CGD 81–630) will not be applied to MODU's at this time. Applicable requirements of this rulemaking and the finalized IMO standards will be proposed for MODU's in Coast Guard rulemaking docket (CGD 83–071a) when the IMO standards become effective.

OSV's. Several comments questioned whether the proposed rules would apply to Offshore Supply Vessels (OSV's).

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These rules do not apply to OSV's. Requirements for these vessels are addressed separately in NVIC 1–78 and have been incorporated into proposed rules being prepared for OSV's in a separate rulemaking docket, (CGD 82–004). See the advance notice of proposed rulemaking for planned OSV requirements, which was published in the Federal Register of February 14, 1983 (48 FR 6636).

Other Vessels. Two comments recommended limiting the applicability of these regulations to self-propelled vessels to which NVIC 1–69 and SOLAS apply, and a third comment recommended limiting applicability to self-propelled vessels over 1600 gross tons, with provisions for type and locale of operation. As in the case of OSV's, these rules were never intended to apply to self-propelled vessels under 500 gross tons certificated under Subchapters D, I or U, or to certificated passenger vessels under 100 gross tons. A new subsection 5(a) has been added to exclude the applicability of these regulations to these types and sizes of vessels. These limits are the same as SOLAS and the Coast Guard's application of NVIC 1–69 and NVIC 6–84. The recommended 1600 gross ton cutoff was not adopted. This cutoff would exclude vessels such as coastal tankers, coastal freighters, dredges, passenger ferries, passenger cruise vessels, and research vessels, all of which commonly use automation. There are approximately 130 such existing vessels above the 100/500 gross ton cutoffs of these rules and below 1600 gross tons, and NVIC 1–69 has been applied to most of them.

The limitations for type and locale of operation are inherent in the regulations. For example, if the only automation on a passenger ferry is remote propulsion control, only those requirements relevant to remote propulsion control will apply. However, if sufficient automation is provided to reduce manning, the cognizant OCMI will determine the need for more or less equipment depending on the vessel characteristics, route, or trade (see § 62.50–1(b), note). This approach represents a continuation of current Coast Guard policy.

One comment suggested that the proposal only apply to vessels that are automated to reduce manning, but not to vessels that automate vital systems, as an option, without reduced manning. This recommendation has not been adopted. Coast Guard casualty records show that automation can fail regardless of a vessel's manning, and that adequate safety precautions must be taken. This is one of the fundamental points discussed under *Assumptions and Objectives* in this document. Additionally, SOLAS Regulation II–1/31 also contains automation requirements for vessels that automate vital systems, as an option, without reduced manning.

Section 62.01–5 (b) and (c) System and Equipment Applicability

These rules apply to automated vital systems and equipment listed in § 62.01–5(b) except for certain exemptions listed in § 62.01–5(c). One comment said this applicability is too broad and appears to include simple systems for closing fuel valves, stopping ventilation, and automatically starting pumps. The comment recommended that the applicability be more specific and, in particular, be limited to propulsion control systems. This recommendation has not been adopted. The basic safety principles discussed in *Assumptions and Objectives* have been applied by the Coast Guard in developing these rules and are intended to apply to simple and complex systems alike. The proper location and failsafe operation of remote motor and valve controls, the provision of local manual alternate control, and the automatic starting of standby vital auxiliaries in unattended machinery spaces are important safety considerations for automated vessels. Fire protection systems, flooding safety systems, and electrical power generation systems are among the systems that are automated and essential to safety that would be excluded by adopting this recommendation.

One comment said the regulations should not apply to systems that are only being monitored and that are not automatically or remotely controlled. This recommendation has not been adopted. Instrumentation and alarms, from simple bilge level alarms to complex computerized video displays in control rooms, are relied upon by the crew as extensions of their own senses and as a source of information for making decisions. Reliable and clear presentation of this information is necessary for safe operation of the vessel and its machinery.

Proposed paragraph (b)(3) exempted optional control and monitoring systems from all of the proposed requirements. One comment recommended that this exemption be deleted, *i.e.*, that the requirements in this rulemaking be made applicable to optional control and monitoring systems which can effect vital systems. This recommendation has been adopted. The final rules (see § 62.01–5 (b) and (c)) have been made applicable to optional control and monitoring systems unless otherwise exempt as non-vital or industrial systems or other systems exempted under § 62.01–5(c). Non-vital exempt systems include performance monitoring and trending systems and similar non-required, non-vital systems whose failure would not degrade the safety and reliability of required systems.

Section 62.01–5(d) Central Control Rooms

This paragraph provides that the requirements of subpart 62.50 for automated self-propelled vessel manning only apply to vessels automated to replace specific personnel or to reduce overall crew requirements, with certain exceptions. The exceptions relate to vessels having main propulsion or ships service electrical generating plants which are automatically or remotely controlled from a control room. In this case, vessels must provide certain additional essential monitoring and control functions required in §§ 62.50–30(a)(3), (b)(3), (c), (e)(1), (e)(2), (e)(4) and (f)(2), including fire protection and flooding safety functions. As explained in the NPRM, this regulation was derived from SOLAS Regulations II–1/31.3 and assumes that a control room partially or completely isolates the crew from the machinery space environment.

One comment said that reference § 62.50–20(a)(3)(ii) (relating to control and monitoring of the electrical *generating and distribution* plant from the control room) should be deleted. This recommendation has been partially adopted. The provision in § 62.50–20(a)(3)(ii) for control and monitoring of the electrical *generating plant* from the control room has been retained in the final rules. Situations arise where the licensed engineer in a control room, without these capabilities, would be effectively isolated from the controls and instrumentation needed to restore power in the event of a blackout. Control of the entire electrical distribution was not intended, however, and the final rules have been modified to provide that compliance with the electrical distribution provision in § 62.50–20(a)(3)(ii) is not required. Compliance is also not required in the comparable SOLAS regulation, II–1/31.3, and the revision reflects contemporary industry practice.

The proposed rule included a reference to § 62.50–20(d) (relating to remote control of fire pumps). One comment recommended that this reference be deleted because it unnecessarily exceeds SOLAS Regulations II–2/4.3.4. This recommendation has been adopted. The reference does exceed SOLAS and it refers only to vessels not having reduced manning, in which case sufficient crewmembers should be available to quickly respond to the required fire alarms regardless of the location of pump control.

One comment recommended that the reference to the requirement in § 62.50–20(e)(2) for remote control of a required bilge pump from the control room be deleted because it exceeds SOLAS. This recommendation has not been adopted. The intent of § 62.01–5(d) and SOLAS II–1/31.3 and 48 is to ensure the ability to take timely and effective action to counter flooding. Also the need for § 62.01–5(d) is supported by casualty information involving engineroom flooding. Remote control of a bilge pump from the control room is essential to carry out *this* intent and, accordingly, the provision has been retained in the final rule.

To comments expressed uncertainty as to whether the requirements in this paragraph apply to vessels with open control stations. These rules do not apply to vessels with open control stations where reduced manning is not desired; nor do the rules require enclosed control rooms.

Section 62.05–1 Incorporation by Reference

The proposed rules referenced the IEEE "Guide for General Principles of Reliability Analysis of Nuclear Power Generating Station Protection Systems" as the primary standard for the development of failure analysis required by this part. Four comments recommended deleting this reference because it is not a commercial maritime standard, the commercial maritime industry is generally unfamiliar with it, and because it could be applied in a manner that would be overly restrictive and impose a prohibitively high cost. This recommendation has been adopted. Failure analysis, and acceptable formats for failure analysis, are discussed below under *§ 62.20–3(b) Plans for Information, Failure Analysis.*

Three comments recommended comparing the proposed rules to those of the American Bureau of Shipping, and whenever the ABS rules will suffice, adopt them in lieu of the proposed rules. This recommendation has also been adopted, and the rules have been revised to incorporate by reference the ABS "Rules for Building and Classing Steel Vessels" where possible. More extensive incorporation by reference of ABS rules in this rulemaking has not been possible because of differences in requirements, scope, and application.

Two comments suggested that the Coast Guard work with the ABS to resolve differences and change ABS automation rules to facilitate additional incorporations by reference. The Coast Guard is actively working with ABS, ASTM, SNAME, and others to develop industry automation standards and guidelines suitable for future incorporation by reference.

Section 62.10–1(a) and 62.30–1(a) Definitions, Failsafe

Two comments noted the absence of a definition of what is failsafe for a given system and wanted specific failsafe states specified by the Coast Guard, if possible. Section 62.30–1(a) requires the evaluation of failsafe states on a case-by-case basis. Case-by-case evaluation is necessary because systems and vessels vary, and what is safe for one may not be safe for another. For example, shutdown of one of two propulsion engines on a vessel due to overheating may be safe because propulsion can be maintained without jeopardizing the vessel or personnel. On a single propulsion engine vessel, however, the same shutdown would result in loss of propulsion and should not be considered "failsafe" because a less critical alternative, *e.g.*, a reduction in power without shutdown, may be possible and preferable. Table 62.10–1(a) provides a listing of *typical* failsafe states for automated equipment specified in the rules.

One comment requested clarification of what is considered to be the failsafe state for remotely operated fuel tank valves. These valves should fail closed under fire conditions, but should fail open under other conditions to permit continued operation of engines. Table 62.10–1(a) has been revised to reference § 56.50–60(d) which specifies these valves must either fail closed or have a stored energy system to close them.

One comment said that some safety systems should be allowed to fail in an "as is and alarm" state rather than result in the shutdown of vital machinery. The table has been revised to include this option.

Section 62.20–1(a) Plans for Approval

One comment asked if automation plans, test procedures, and failure analysis can be submitted at any time for review and approval. Automation plans must apply to a specific vessel, and must be submitted for review in accordance with Subparts 50.20 and 62.20. However, § 50.20–15(a) provides that if a manufacturer wishes to fabricate equipment in accordance with plans previously approved, including work accomplished under a previous contract, resubmittal of plans is not required if the equipment is certified to be identical, that there are no changes in the applicable regulations, and that the same Coast Guard plan review office, *i.e.*, the Marine Safety Center, is the approving authority. The Coast Guard will review previously approved plans to determine if they are suitable for the specific vessel and system application. The industry is encouraged to take advantage of the provisions of § 50.20–15(a) as they are both time and cost effective for the Coast Guard and industry alike. A manufacturer or shipyard planning to use previously approved plans should contact the Marine Safety Center to discuss establishment of a design file, how plan modifications and contract-specific details are to be treated, how information plans are to be treated, and similar details.

Sections 62.20–3(a)(2), 62.50–20(h) and 62.50–30(j) Planned Maintenance Program

The final rules require a planned maintenance program on vessels automated to replace specific personnel or to reduce overall crew requirements. The rules also require that this program be submitted to the OCMI as an information document for use in evaluating automated vessels and the proposed manning. Two comments suggested that these requirements are unnecessary and recommended deleting them. These recommendations have not been adopted. Planned maintenance programs are necessary on these vessels because of a potential reduction in the maintenance work force, an increase in the sophistication and quantity of equipment that must be maintained, and the reliance of the crew on the automated equipment. The Coast Guard has required and approved maintenance programs under the provisions of NVIC 1–69. Section 62.50–20(h)(1) states that program content and detail are optional, provided it includes the necessary maintenance and repair manuals and checkoffs to help avoid errors of omission. Sections 62.50–1(b)(4) and the new § 15.715(a) of the recently adopted "Manning Requirements" state that Coast Guard acceptance of automated systems to replace specific personnel or to reduce overall crew requirements is predicated upon a planned maintenance program to ensure continued safe operation of the vessel. Maintenance programs vary from provision of scheduled shore-side maintenance personnel for vessels with a dedicated route, to the provision of a detailed

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program carried out by a reduced shipboard engineering complement. The Coast Guard considers this information in evaluating automated vessel manning requests.

Section 62.20–3(b) Plans for Information, Failure Analysis

The proposed rules required submittal for approval of a qualitative, non-numeric failure analysis of *all* vital system automation. The proposed requirement for review and approval of a qualitative failure analysis of all automation was part of a multi-tiered safely scheme comprising failure analysis at the design stage, oversight of the analysis by the Coast Guard, review of safety requirements for overpressure, overcurrent, fire safety, shock, and similar material characteristics, design verification testing to confirm the accuracy of the failure analysis, a shipboard trial period, and follow-up periodic safety tests to confirm that the system continues to operate safely. In many respects, this scheme was more comprehensive than past criteria. The proposed requirement represented an expansion of Coast Guard policy in recent years of requiring a qualitative failure analysis for microprocessor-based vital system automation because of the complexity of these systems. It was also comparable to the requirements of various classification societies such as the American Bureau of Shipping (ABS).

Five comments opposed the use of qualitative failure analysis as the primary means to evaluate safe functioning and reliability of designs. The comments suggested that potential abuses and a decrease in safety could result along with uncertainty among designers as to application of the regulations, and they emphasized that the proposal would unnecessarily add to the overall costs of relatively uncomplicated systems on smaller vessels. In accordance with these comments, proposed § 62.20–1(a)(4) and § 62.30–10, which required failure analysis approval for *all* vital system automation, have been deleted. However, the final rules (§ 62.20–3(b)) retain a requirement for qualitative failure analysis for certain complex systems and particularly vital safety features. As recommended by the comments, detailed automation piping and wiring plans currently required by 46 CFR Subchapters F and J will continue to be required.

Qualitative failure analysis is a relatively new concept for many in the industry. Detailed plan review is adequate for simpler systems. The approach taken by the final rules minimizes the financial impact on the industry by requiring qualitative failure analysis only in those cases involving complex systems where experience shows that the analysis is necessary and the industry is generally familiar with the concept. Qualitative failure analysis will be used to *assist* in evaluating the safe functioning of complex systems represented by detailed piping and wiring plans. This approach is similar to the requirement for stability calculations required by 46 CFR 170.090 (which aid in the evaluation of vessel stability) and is similar to the requirement for calculation of short circuit currents (fault current analysis) required by 46 CFR Subpart 111.52 (which aids in the evaluation of vessel electrical systems).

As discussed above, experience has shown that analysis is necessary for certain complex systems. A brief discussion of the analysis requirements in the final rule and why they were retained follows.

(a) Section 62.20–3(b)(1) of the final rules requires a qualitative failure analysis for propulsion controls. As discussed in the NPRM, Coast Guard casualty records include several cases where these vital and often complex systems have failed, resulting in loss of control of the vessel and ensuing damage. Experience has shown that numerous casualties can be prevented by the use of failure analysis at the design stage to identify the design flaws that have resulted in many of these casualties.

(b) Section 62.20–3(b)(2) of the final rules requires a qualitative failure analysis of microprocessor based system hardware. This requirement has been a policy of the Coast Guard since 1983. It is necessary because of the complexity of these systems and their tendency to fail in indeterminate modes, making traditional evaluation by detailed plan review impractical and ineffective.

(c) Section 62.20–3(b)(3) of the final rules requires a qualitative failure analysis of safety controls. This requirement is necessary to aid in the evaluation of the required reliability, functional independence, and failsafe operation of these particularly important controls.

(d) Section 62.20–3(b)(4) of the final rules requires a qualitative failure analysis of electrical power management systems. Electrical power management systems have become increasingly complex in recent years in an effort to increase vessel efficiency. This requirement is necessary to evaluate the effect of electrical power management system failure on the continuity of ship service electrical power, the propulsion plant, and the overall reliability and safety of vessel systems that rely on electricity for power.

(e) Section 62.20–3(b)(5) of the final rule requires a qualitative failure analysis for automation equipment or functions that are required to be independent but that are not physically separate. This requirement is necessary to evaluate the safety of systems and equipment which share a common component or components, such as a control actuator, data bus, or uninterruptable power supply, but which must still be able to function independently in the event of failure in one of the systems. The failure analysis will typically only address the effect of failures to these common components on otherwise physically separate systems or functions.

(f) Section 62.20–3(b)(6) of the final rule requires a qualitative failure analysis of any other vital system automation that, in the judgment of the Commandant, constitutes a safety hazard to the vessel or personnel in case of failure. This requirement is necessary to address the safety and reliability of new or innovative automation designs or technologies, and to address automation that, as the result of future casualty experience, the Commandant considers particularly hazardous in the event of failure.

Section 62.20–3(b) includes a note explaining the intent, level of detail, procedures and content necessary for the required failure analysis. The note states that analysis need only be to a level of detail necessary to show compliance with the requirements of this rulemaking. One comment suggested that analysis should be conducted to a detailed component level in order to be of value because it is at that level that failures occur. This recommendation has not been adopted. The discussion in the NPRM said that it is not intended that the failure analysis be performed to the extremely detailed level. Normally, the level of analysis would be to the major subsystem or major replaceable component level, such as a remote control subsystem, power supply, or actuator. Once the analysis identifies that required safety provisions are met, *e.g.*, failsafe, functional independence, safety trips, operation, etc., additional analysis of the feature in greater detail is not needed to determine safe operation after failure.

Section 62.20–5(a) Self-Certification

The proposed rules required the designer and manufacturer of an automated system to certify to the Coast Guard, in writing, that the system is designed to meet the environmental design standards of proposed § 62.25–30. The proposal also stated that plan review and independent testing to show compliance with the referenced standards was not necessary. Four comments said that self-certification is inadequate and recommended equipment testing to determine compliance with environmental design standards. This recommendation has not been adopted. With few exceptions, self-propelled vessels are classed by a classification society, and their automation equipment is therefore tested to environmental design standards of the classification society by the manufacturer. Additional environmental design testing by the manufacturer for the Coast Guard would be unnecessary duplication of effort and cost, particularly considering the assumptions of this rulemaking concerning equipment failure and the requirements for failsafe operation, alternate control, failure analysis, plan review, design verification testing, shipboard trial periods and follow-up periodic safety tests. On the occasional unclassed vessel, the accountability of the designers, the manufacturers, the owner, and the operator should avoid abuses in the self-certification process.

Section 62.25–1(b) Proposed Posted Operating Instructions

Proposed § 62.25–1(b) required operating instructions to be provided and emergency operating instructions to be posted at control stations when the operation is not common or readily apparent. Two comments said the required posting of emergency operating instructions is unnecessary because they would have to be voluminous and superfluous and would clutter the control station, would duplicate the technical manuals already required by § 62.20–1(a)(8), and because the licensed engineers should normally be aware of emergency procedures without reference to posted instructions. In accordance with these comments, proposed § 62.25–1(b) has been deleted. It should also be noted that Section 15.405 of the new manning rules requires each licensed engineer to become familiar with the relevant characteristics of the vessel, including emergency duties, controls, and main propulsion and auxiliary machinery, prior to assuming his or her duties on the vessel.

Section 62.25–1(b) of the final rule provides that automation which controls or monitors more than one safety control, interlock, or operating sequence must perform all assigned tasks continuously, *i.e.*, the detection of unsafe conditions must not prevent control or monitoring of other conditions. Three comments said this requirement should be revised to allow scanning type monitoring rather than continuous monitoring. This recommendation has not been adopted. The rule is intended to preclude systems that identify and process individual problems for an indeterminate length of time, to the exclusion of other, possible more important, assigned responsibilities. Such operation is not equivalent to manual control and monitoring by the crew. Automated systems that repeatedly scan inputs or conditions with sufficient speed to be equivalent to manual monitoring, however, would be acceptable.

Sections 62.25–5(a) and 62.35–5(d) Control Location

Proposed § 62.25–5(a) required control of propulsion systems, electric power generation systems and electric power distribution systems to be from only one location at a time, except for safety trips. One comment recommended deleting reference to electric power generation systems and electric power distribution systems because it would prevent pilothouse load and generator selection input to electric power management systems which are controlled in the engineroom with remote input from the pilothouse. This comment has been adopted in § 62.35–5(d), and proposed § 62.25–5(a) has been deleted.

Section 62.25–5(c) Control Systems, Inadvertent Grounding

The proposed rule said that inadvertent grounding of an electrical or electronic safety control system must not cause false signals or safety control bypassing. One comment recommended that the use of self-monitoring circuits which would automatically alarm if there is a ground should be allowed as an alternative. The recommendation has not been adopted. The intent of the rule is to preclude, by design, unsafe effects of grounds on control systems. The proposed alternative would not normally be acceptable because it does not preclude these effects; it only alarms them.

Section 62.25–20 Instrumentation, Alarms, and Centralized Control Locations

The rules in this section are performance standards that provide performance criteria for instrumentation and alarm displays. They do not provide specific requirements for any particular instrumentation technology, *e.g.*, analog gauge displays, digital displays, or cathode ray tube (CRT) displays. Three comments recommended that specific requirements for CRT displays be added. Reasons cited included CRT susceptibility to single failures, their inability to continuously display information during alarm conditions, and the limitations on the amount of information that can be displayed at one time. These recommendations have not been incorporated in the final rules. CRT displays can provide the same performance capabilities as conventional console displays and both are considered to be acceptable as long as they meet the standards in these rules. Depending on their configuration, both can be susceptible to single failures that can eliminate most or all of their display capability and, accordingly, both are evaluated to determine the effects of such failures. The limitation on the amount of information that can be displayed at one time by a CRT is comparable to the limitation on the amount of information that can be effectively observed at one time on a large conventional console display, *ie.*, the CRT screen display is comparable to the viewable portion of the conventional console. Also, both CRT's and conventional systems can be configured to simultaneously display both alarm and system information, *e.g.*, one CRT used to display only alarm conditions.

Paragraph 62.25–20(b)(2) requires systems with remote instrumentation to have provisions for the installation of instrumentation at the monitored system equipment. Two comments asked whether this rule requires permanently installed instruments. The answer is no. This paragraph does not require instruments to be permanently installed and it is identical to a longstanding guideline in NVIC 1–69 that was intended to make sure instruments can be utilized at the equipment location if the remote monitoring system fails.

Paragraph (b)(3) of the proposed rule required the status of automatic or remotely controlled vital auxiliaries, power sources, switches, and valves to be visually indicated in the machinery spaces and at the cognizant remote control location. The second sentence of the note to the proposed rule provided that if status was clearly indicated by other instrumentation, such as pump status indicated by pump output pressure indication, additional status indication would not be necessary. One comment recommended that this provision in the note be deleted because the distinct status indicators at the ECC for pumps provide valuable information in determining the cause of low pressure

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alarms. The note in the final rule has been revised to incorporate this recommendation.

Paragraph (b)(5) of the proposed rule required that all data displays required to be alarmed must have continuous or demand instrumentation displays in the machinery spaces unless Table 62.35–50 specified otherwise. One comment said this requirement appeared to be a change in policy because NVIC 1–69 required the displays to be at the ECC, and recommended that the past policy be continued to aid the operator in monitoring the plant. There was no intent to modify the policy in NVIC 1–69. The final rule has been reworded to emphasize that instrumentation displays must be provided in the EEC or in the machinery space if an ECC is not provided.

Proposed paragraph (d)(1)(ii) required alarms to clearly distinguish between fire, general, CO_2/halon, machinery, flooding, and non-vital alarms. One comment said that the engineers' assistance-needed alarm of 46 CFR Subpart 113.37 should be added to the list because of its importance. The final rule has been changed to adopt this recommendation.

One comment said this rule should specify colors for alarm indicators. This recommendation has not been incorporated. The markings required for general alarms and fire safety alarms can be found in the individual vessel subchapters. The Coast Guard will continue its policy of accepting any consistent application of optional automation alarm color codes, pending the completion of the Code for Alarms presently being developed by the International Maritime Organization (IMO).

Paragraph (d)(2) of the rule says that required alarms in high ambient noise areas must be supplemented by visual means, such as rotating beacons. One comment recommended that if there are non-vital alarms in high ambient noise areas, they should consist of rotating beacons only to minimize confusion with the required alarms. This recommendation has not been adopted. A requirement for beacons on non-vital alarms, in addition to the beacons already necessary to draw attention to *required* alarms, will only add to confusion and difficulty in providing distinct alarm indication.

Paragraph (d)(6) of the proposed rule required failure of a control or alarm system to be alarmed at a manned control station. One comment said that for unattended plants, this would result in unnecessary alarms on the bridge. The comment said this rule appears to conflict with § 62.25–20(g)(3), which requires minimization of bridge alarms, and recommended that these alarms only be extended to the engineers' accommodations. The final rule has been changed to require the alarm in the machinery spaces and at the ECC, if provided. The rule was not intended to unnecessarily require alarms on the bridge.

Paragraph (e)(vii) of the final rule requires audible alarms to annunicate until manually acknowledged. One comment recommended that manual acknowledgment be required at the ECC in accordance with past Coast Guard policy. The final rule has not been changed. NVIC 1–69 and these rules do not require a central control station unless the vessel is automated to replace specific personnel or to reduce overall crew requirements. If an ECC is not provided or required, the alarms may be safely located and acknowledged at the equipment. If an ECC is required, then the rules require alarms and manual acknowledgment at the ECC, as recommended by the comment.

Section 62.25–25 Programmable and Adjustable Systems and Devices

Paragraph (a) of the rule prohibits programmable control or alarm system logic from being altered after design-verification testing without the approval of the OCMI. It also requires a means, acceptable to the OCMI, to make sure setpoints remain within the safe operating range of the equipment. Four comments said this requirement should not prohibit the normal practice of adjusting setpoints and tuning vital system automation. The rule has not been changed. It does not restrict the adjustment of setpoints within the safe operating range of the equipment. It requires a means to make sure that safety trip control, safety limit control, and alarm setpoints cannot be readily or inadvertently adjusted to the extent that they become meaningless and ineffective in ensuring safety and preventing equipment damage.

One comment said the rule would require numerous spare circuit boards to be carried, instead of allowing replaceable multiple-use boards that are typically carried and recalibrated on board. The rule has not been changed. It does not prohibit or make the use of multiple use boards impracticable. The *logic* of the calibrated board in a specific application cannot be changed without the approval of the OCMI because it can represent a re-design of the approved system.

Proposed paragraph 62.25–25(b) required operating programs for microprocessor-based or computer-based vital control, alarm, and monitoring systems to be stored in memory that did not rely on mechanical devices. One comment recommended that mechanical memory storage such as disk drives be permitted if provided in duplicate. The final rule has been changed in accordance with this comment to permit disk drives and similar mechanical devices. Analysis and experience with such installations since the NPRM have shown they can be safely applied. These devices are subject to failure analysis under the provisions of § 62.20–3(b)(2).

Paragraph (c) of the rule provides that if microprocessor-based or computer-based systems serve both vital and non-vital systems hardware and software priorities must favor the vital systems. One comment recommended that failures that cause incorrect priorities be alarmed. The rule has not been changed. These systems are subject to failure analysis to identify such malfunctions, and the rules require failure of all vital control and alarm systems, including microprocessor-based and computer-based systems, to be alarmed.

Section 62.25–30 Environmental Design Standards

Paragraph (a)(4) of the proposed rule required automation to be designed to be suitable for a relative humidity of 0 to 100%. Two comments recommended changing the requirement to 0 to 95% relative humidity because it is typical for industry design and because 100% relative humidity is unrealistic and will create unnecessary costs and design changes for previously acceptable equipment. The final rule has been changed in accordance with these comments to require automation to be suitable for 0 to 95% relative humidity.

Paragraph 62.25–30(b) of the final rule requires low voltage electronics to be designed with due consideration for static discharge, electromagnetic interference (EMI), fungal growth, and contact corrosion. One comment said that an EMI standard such as MIL–STD–461B should be referenced. This recommendation has not been adopted. Incorporation of a specific EMI standard such as MIL–STD–461B would unnecessarily eliminate other equally effective and less stringent performance criteria to prevent EMI.

Section 62.30–5(b) Independence

The proposed rule required the primary control, alternate control, and safety control systems for any vital system to be independent of each other, and required alarm and instrumentation systems to be independent of primary and alternate control systems, including sensors. Four comments said that the rule should also require alarm and instrumentation systems to be independent of primary control, alternate controls, and safety controls because the classification societies require this type of independence and because this would make safety systems independent of alarm systems, thus enhancing their reliability. The final rule has been changed to adopt this recommendation. This change will prevent an unnecessary and costly conflict with the requirements of the classification societies while maintaining acceptable functional independence criteria.

Four comments recommended deleting the requirement for having independent sensors because they are expensive, preclude some safe parallel redundant control and monitoring schemes, and are impractical in many cases. Two comments supported having independent sensors for propulsion control speed or pitch feedback because sensor failure can result in system runaways but indicated that additional requirements concerning independent sensors are unnecessary. The final rule has been changed to require sensors for primary speed, pitch, and direction of rotation control in closed loop propulsion control systems to be independent and physically separate from required safety control, alarm, or instrumentation sensors. Coast Guard casualty records confirm that propulsion control feedback sensor failure can result in propulsion machinery runaway. The final rule has also been changed to delete the requirement for other alarm and instrumentation sensors to be independent for the reasons given in the comments and because any potential impact on safety is substantially offset by requiring alarm and instrumentation systems to be independent of primary controls, alternate controls, and safety controls.

One comment said that certain critical functions such as "stop" should not be processed by a computer and should be separate and independent because experience showed that a computer malfunction has resulted in a shutdown failure. The final rule has been changed to require the propulsion safety trip control of § 62.35–5(c)(1)(ii) to be independent and physically separate. This is consistent with past Coast Guard policy in NVIC 1–69 and the application of SOLAS requiring these safety trip controls to be independent and physically separate.

Section 62.30–5(c) Power Source Failure Alarm

The proposed rule required failure of either of the two required power sources to cause an alarm in the machinery spaces. One comment said that only the loss of the normal source should be alarmed because SOLAS only requires alarming of the normal source. This recommendation has been adopted for the reason given and because the visible indicator and test switch requirements for emergency power sources in 46 CFR Subpart 112.45 provide protection equivalent to alarming the failure of the emergency power source.

Section 62.30–15(b) Built-In Test Equipment

The proposed rule required built-in test equipment that failed to return the tested system to normal operation to cause an alarm at a manned control location. One comment recommended that the requirement for an alarm be deleted because it is unnecessary, expensive, and the required indicator at the control station provides sufficient information to the operator. The final rule has been changed to delete the requirement for an alarm. In addition to the reasons given, the criteria for causing the alarm, *e.g.*, operator not in attendance, time, etc., can be very subjective.

Section 62.35–5 Remote Propulsion Control Systems

This section addresses propulsion control in terms of speed and direction of thrust of the propeller. One comment said that this approach is too general and may allow interpretations deviating from the intent of SOLAS and Coast Guard policy. The comment recommended that the concept of propulsion control be addressed more specifically in terms of discrete engine speed control and propeller direction control. This recommendation has not been incorporated. The performance requirements in these rules and SOLAS are intended to address overall vessel propulsion control, regardless of whether it is attained by integrated or discrete engine speed control or propeller control.

Paragraph (c)(3) of the proposed rule required an indicator to be provided at the main pilothouse control location to annunicate when the shaft direction or the pitch of a controllable pitch propeller did not match that commanded by the navigating bridge operator control device. Two comments stated that this requirement is unnecessary because the required indication is provided by the shaft speed and thrust indicators required by Subpart 113.37 of this Chapter. This recommendation has been adopted, and proposed paragraph (c)(3), as well as the listing for an associated main propulsion remote control wrong direction alarm in Table 62.35–50, have been deleted from the final rules. The intent of the proposal was to indicate failure of the propulsion control system. The indications required by 46 CFR Subpart 113.37, in conjunction with the requirements for failure analysis, failsafe operation of propulsion controls, and alarming of propulsion control failure adequately meet the intent.

Paragraph (c)(1) of the rules navigating bridge propulsion control to include automatic performance of all associated services and not to allow overloading of the propulsion machinery during normal operation. One comment recommended extending the overload protection criteria to other control locations. This recommendation has not been adopted. The engineers in the ECC or at the local manual control station are generally more familiar with the limitations of the machinery and have more detailed instrumentation available to monitor possible overload. One comment said the rule should include protection during abnormal operation because overloads may be higher. This recommendation has been adopted. The intent of the requirement, as stated in NVIC 1–69 and SOLAS, is to prevent overload of the propulsion system as the result of movement of the bridge control device. The final rule has been changed to require the control system to prevent the rate of movement of the control device from causing overload of the propulsion machinery.

Paragraph (c)(3) of the final rule requires alarms on vessels propelled by internal combustion engines to indicate starting power of less than 50% of the required capability. It also requires that if automatic starting is provided, the number of automatic consecutive attempts that fail to produce a start must be limited to a reserve of 50% of the required starting capacity, which is required to be 12 starts for reversing engines, and 6 starts for non-reversing engines. Two comments recommended that the rule be changed to require limiting the number of automatic consecutive attempts to three, after which an alarm sounds and reset of the equipment by the operator is necessary prior to further automatic starting attempts. This recommendation has not been adopted. However, the recommendation represents an acceptable option that is consistent with

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the rule and the requirements of SOLAS and the classification societies.

One comment said that there should be no limit on the number of automatic consecutive attempts because the low starting air alarms required by this section and the ability of the operator to override automatic starting attempts constitutes adequate protection against inadvertent depletion of starting capacity. This recommendation has not been incorporated. It is contrary to common industry practice and SOLAS requirements which limit automatic starting attempts to safeguard starting power.

Paragraph (d) of the rule incorporates ABS provisions which require automatic remote primary control systems to automatically prevent control location transfer from significantly altering propelling thrust. One comment said these requirements are unnecessary because it is normal practice for operators to manually align control levers before transfer to equalize signals at both stations and therefore prevent a change in thrust. The final rule has not been changed because it reflects NVIC 1–69 and SOLAS requirements. Many automation designs are arranged so that control transfer cannot occur unless the control levers are aligned as described by the comment.

Proposed paragraph (f)(2) required an automatic propulsion turbine safety trip to prevent inadvertent movement as a result of control system malfunction. One comment recommended that this requirement be deleted because the trip could itself malfunction and unnecessarily result in the loss of propulsion. This recommendation has been adopted. The proposed trip requirement has been deleted for the reason given and because the requirement in paragraph (e)(3) of the final rule for propulsion control systems to be failsafe provides the intended protection against inadvertent vessel movement resulting from control system malfunction.

Paragraph (e)(2) in the final rule permits a temporary override, located at the main navigating bridge control location, for propulsion machinery automatic safety trips. One comment said that these overrides should not be permitted because bridge personnel do not have the training or information necessary to make decisions concerning the propulsion machinery. The rule has not been changed. These optional overrides are permitted by SOLAS, are common industry practice, and have been accepted by the Coast Guard in the past. If an owner or operator does not feel the bridge personnel have the training or information necessary to make decisions concerning the propulsion machinery, they have the option not to install or permit use of the override. In other cases, the overrides permit the bridge personnel to reduce power settings or maintain steerage in emergency maneuvering situations.

Paragraph (e)(3) of the final rule requires remote propulsion control systems to be failsafe by maintaining the preset speed and direction of thrust until local manual or manual alternate control is in operation. Three comments suggested clarification of the term preset. One of these comments suggested that preset means "as is". Another suggested that preset means the setting of the mechanical speed governor. The final rule clarifies that preset means "as is," as the SOLAS regulation has been interpreted by the Coast Guard, classification societies, and manufacturers in the past. This permits the operator to either maintain plant status until local or alternate control is achieved, or to trip the plant using the manually activated safety trip required by § 62.35–5(b)(2). These options are superior to "trip" or "Zero" in a maneuvering situation. In some specific cases, where it does not result in a significant speed change, the preset setting of the mechanical speed governor is acceptable, but must be evaluated on a case-by-case basis.

One comment said that only loss of control power should be considered as a cause when evaluating failures of remote propulsion controls for compliance with this rule. This recommendation has not been adopted. Other causes in addition to control power failures, such as loss of feedback signal and computer malfunction, have resulted in casualties involving propulsion control failures.

Section 62.35–10 Flooding Safety

Paragraph (a)(1) of the proposal required automatic bilge pumps to be provided with an independent bilge high level alarm system. Three comments recommended that bilge high level alarms be permitted as part of the central alarm system because this has been permitted by NVIC 1–69. This recommendation has been adopted. The final rule has been changed to require bilge high level alarms to be independent of the automatic bilge pump controls. This is consistent with the requirements of NVIC 1–69 and there was no intent to modify that policy.

Paragraph (a)(2) of the rule requires automatic bilge pumps to be monitored to detect excessive operation in a specified time period. One comment recommended that the time period be specified. The final rule has not been changed. The intent is to detect excessive leakage which may be a prelude to a major casualty, and the time period for detection depends on variables that are different for each ship, such as size of the pump and size of the bilge wells. The operator usually establishes the time based on the particulars of the vessel, *e.g.*, the time it takes for the automatic bilge pump to drain the bilge well.

Section 62.35–20 Oil Fired Main Boilers

Proposed paragraph (c)(1) required automatic combustion control subsystems to provide the air/fuel ratio necessary for complete combustion and stable flame with the fuel in use, but in no case less than 10% excess air. Four comments recommended deleting the requirement for 10% excess air because it is inefficient and safe operation can be obtained with excess air of less than 5%. This recommendation has been adopted. The final rule as changed should allow flexibility in attaining a safe and efficient air/fuel ratio. This change essentially retains the air/fuel ratio provision in NVIC 1–69.

One comment recommended that automatic combustion controls be required to have a low fire interlock to prevent boiler damage during warn up, as required by NVIC 1–69. This recommendation has been adopted, and a new subparagraph (c)(3) has been added to require automatic combustion control subsystems to provide a low fire interlock to prevent high firing rate and superheater damage during boiler warm-up. This was an unintended omission from the NPRM.

Paragraph (d)(1) requires boilers to undergo a continuous purge of at least 5 changes of air volume. This is a change of policy from the minimum of four changes of air required by NVIC 1–69. One comment said the change from the past policy is unjustified. This recommendation has not been adopted. Boiler flareback casualties have been attributed to inadequate purging, and the National Fire Protection Association and the Society of Naval Architects and Marine Engineers both recommend more than 4 changes of air. There is no cost increase associated with this requirement.

Proposed paragraph (d)(2)(ii) required that boiler air flow during light off be at least 25 percent of boiler full load volumetric air flow. This was a change from past policy intended to preclude pocketting of combustible gases and ensure an air rich condition for safe light off. Three comments said this proposed requirement should be reconsidered because it is overly restrictive, the airflow necessary for lightoff varies from installation to installation, and the proposal is contrary to the practice of closed register light off recommended by many manufacturers. The final rule has been revised by deleting the 25% airflow criteria and by requiring total boiler airflow during lightoff to be sufficient to prevent pocketting and explosive accumulations of combustible gases, *i.e.*, to provide an air rich furnace atmosphere. This change is consistent with the intent of the proposed rule, and permits necessary performance flexibility.

Proposed subparagraph (d)(2)(iv) required the burner trial for ignition period to be no longer than 5 seconds. This was a deliberate change from NVIC 1–69, which permitted trial for ignition periods of up to 15 seconds. The proposed rule was intended to minimize the amount of unburned fuel that enters the boiler. One comment said 5 seconds is too short because it won't allow settling of air flow after the purge that immediately precedes trial for ignition. One comment said it should be increased to 10 seconds, and two comments recommended that the NVIC 1–69 requirement of 15 seconds be continued. The final rule has been changed to require the trial for ignition period to be as short as practical for the specific installation, but in no case longer than 15 seconds. This will allow periods longer than 5 seconds, if necessary, while minimizing entry of unburned fuel into the boiler.

Subparagraph (d)(3)(ii) prohibits automatic increases in air flow to the boiler following boiler safety trip control operation. One comment said that the rule should be changed to require operation of the boiler safety trip control to cause immediate automatic post-purge of the boiler to clear the furnace of unburned oil vapors. This recommendation has not been adopted. Boiler safety trip occurs when there is a problem, such as flame failure. Automatically increasing airflow can result in an explosive atmosphere in a malfunctioning hot boiler. Following boiler safety trip, air flow changes should be gradual and under manual control, preferably after the cause of the trip has been determined and corrected.

Paragraph (i) lists the conditions that must result in closing the master and all burner fuel oil valves. One comment recommended that burner valve position feedback to the burner and boiler safety trip controls be required and that unsuccessful burner shutdown be an additional condition that causes valve closure. In support of the recommendation the comment said this would ensure that the commanded valve position actually occurred and would encourage proper maintenance of valves and valve actuators. This recommendation has not been adopted. It could result in tripping the boiler because of unsuccessful shutdown of a single burner, causing a loss of propulsion or loss of electric power to the vessel. Instead, a requirement for burner valve status instrumentation (open/closed) has been added to Table 62.35–50 to provide the recommended burner valve position feedback to the operator. This requirement is consistent with § 62.25–20(b)(3), which requires the status of automatically or remotely controlled vital valves to be visually indicated.

Section 62.35–35 Internal Combustion Engines

Proposed paragraph (b) required all controls and alarms for gas turbines to be provided at a centralized control location. This rule has been deleted because it unnecessarily duplicates the requirements of §§ 58.10–15 and 62.25–20(g).

Section 62.35–40(b)(1) Coal Fuels

The proposed rule provided that systems and equipment that operate on coal or two types of fuel, such as oil/gas, oil/coal, heated/unheated oil, and heavy/light oil require special consideration by the Commandant (G–MTH). Three comments said that, with the exception of coal, the rules are adequate for safety without special consideration by the Commandant, and recommended that the rule only require special consideration of coal systems. This recommendation has been adopted. There are sufficient requirements in Part 62 and elsewhere in Title 46 CFR to address the safety of oil-gas, heated/unheated oil, and heavy/light oil fuel systems. The final rule only requires controls and instrumentation for coal systems to be subject to special consideration by the Commandant (G–MTH).

Section 62.35–50 Tabulated Monitoring and Safety Control Requirements for Specific Systems

The rule includes a tabulation of automated system instrumentation, alarms, and safety control requirements that apply if the system listed is provided or required. The tabulation includes the requirements in Part 62 and provides clarifying notes. The table has been developed from NVIC 1–69, SOLAS, and experience gained with past and contemporary designs.

The table does not specify instrumentation location. One comment recommended that the table specify instrument location as local, remote, or both. This recommendation has not been adopted. The location requirements vary with vessel configuration and degree of automation, *e.g.*, if an ECC is provided or required, or if the vessel is designed for minimally attended or periodically unattended machinery spaces, etc. Location requirements can be found in § 62.25–20(b) (Instrumentation Location), § 62.25.20(g) (Central Control Locations), § 62.01–5(d) (Central Control Rooms), Subpart 62.35 (Requirements for Specific Types of Automated Vital Systems), and §§ 62.50–20 and 62.50–30 (Additional Requirements for Minimally Attended and Periodically Unattended Machinery Spaces).

The proposal included requirements for engine coolant tank level instrumentation. One comment recommended deleting this requirement because it was excessive, exceeded the requirements of classification societies, and the low level alarm provided adequate safety. This recommendation has been adopted for these reasons.

The proposal included a requirement to monitor main propulsion diesel engine fuel oil pressure to injectors. Two comments recommended changing this requirement to monitoring of fuel oil booster pressure because the high pressure of fuel oil to injectors is impractical and dangerous to monitor. This recommendation has been adopted for the reason stated.

One comment recommended that an alarm to indicate standby generator failure should be added to the table. This recommendation has not been adopted. The lack of ship service power will be obvious and the other ship service and emergency generator alarms provide adequate indication.

One comment recommended that pitch indication be included in the table requirement for main propulsion remote control shaft thrust instrumentation. This recommendation has been adopted. Pitch indication is required by § 113.37–5.

One comment recommended adding auxiliary boiler alarms to the table. This recommendation has been adopted, and the rule has been changed to require running indication and a trip alarm for vital auxiliary boilers, with reference to the detailed control and alarm requirements in Part 63, Control Systems for Automatic Auxiliary Heating Equipment. The reason for this change is to provide operators with summary status information and failure information for auxiliary boilers that are vital; *e.g.*, they provide steam for ship service turbo-generators or for heating

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fuel used in propulsion engines. This requirement is similar to the instrumentation and alarm requirements for other vital auxiliaries listed in the table.

One comment recommended that the table require an exhaust gas temperature deviation alarm for each exhaust belt of diesel main propulsion engines and diesel generator engines, where more than one exhaust belt is provided, because it would alarm failure of a fuel pump. This recommendation has not been adopted. The individual cylinder deviation alarms required by the table provide adequate indication of fuel pump failure.

Note 18 in the proposed Table required fire detection systems to use flame or smoke detectors, or a combination of these. Two comments recommended changing this requirement becuase SOLAS does not permit the use of flame detectors alone. This recommendation has been adopted and the rule has been changed to agree with SOLAS and current Coast Guard policy. The note now says that the use of thermal detectors alone is subject to special consideration by the Commandant (G–MTH), and flame detectors may only be used in conjunction with smoke or thermal detectors.

Subpart 62.50 Automated Self-propelled Vessel Manning

Sections 62.50–20 and 62.50–30 specify additional requirements for minimally attended machinery plants and periodically unattended machinery plants. Two comments recommended defining the terms minimally attended machinery plants and periodically unattended machinery plants. The preamble to the NPRM included descriptions of these terms. These descriptions have been included as notes to §§ 62.50–20 and 62.50–30 in the final rules to provide clarification of the terms.

The rules do not specify engineering manning or watchstander levels on automated vessels. NVIC 1–69 provided general guidelines for the reduction of manning in machinery spaces on automated vessels, and also referred to the elimination of specific watchstanders by the installation of specific automation. These rules, NVIC 1–69, and the manning rules in Part 15 of this chapter refer to the OCMI as the authority who specifies an automated vessel's minimum manning based upon the evaluation of the vessel's equipment, automation reliability, planned maintenance program, crew organizational structure, trade, route, and other factors listed in §§ 62.50–1, 15.501(b), 15.705(a), and 15.715. Three comments recommended that the rule specify standard minimum manning levels for automated enginerooms. Two of these comments said that without specific standard manning levels, the OCMI might be subject to pressure to reduce manning below levels necessary for safety, and that manning levels for similar vessels would vary from OCMI to OCMI and port to port. The third comment said that arbitrary judgments by OCMI's would be disastrous to commercial eocnomics and labor/management relations. A fourth comment entirely supported the proposed approach taken.

The recommendation to specify standard manning levels has not been adopted. The OCMI has the authority and responsibility to issue the Certificate of Inspection which specifies the vessel's complement. The OCMI determines the minimum complement consistent with safety based upon evaluation of the crew and vessel to meet the criteria described above. There is no change from NVIC 1–69 to the final rule regarding the OCMI's role. Coast Guard Headquarters has been involved for several years in evaluating the safe manning of each and every automated vessel and in administering a Coast Guard wide uniform manning policy. This Headquarters involvement should prevent inconsistencies or arbitrary judgments by OCMI's referred to in the comments.

As stated in the NPRM, the references to specific levels of manning and watchstanders in NVIC 1–69 have misled people into believing that if specific automation is provided, specific manning is assured, without regard to the other essential criteria in these rules and the manning rules and in the new Part 15. The Coast Guard's policy has been, and continues to be, the emphasis of these latter considerations. The lack of reference to specific manning levels and watchstander levels in the rule is intended to eliminate the misconception that specific manning is assured if specific equipment is provided.

One comment recommended that the rules require a licensed engineer and an unlicensed rating to be on watch in automated enginerooms. The comment said it would afford the crew and vessel a reasonable degree of safety, allow simultaneous monitoring and maintenance of automated equipment, provide additional help and a back-up crewmember if necessary, and provide sufficient personnel to cope with emergencies. This recommendation has not been incorporated. The setting of watches is the responsibility of the master of the vessel. The comment's reasons for requiring watchstanders are among the considerations in determining the crew complement necessary for the safe operation of the vessel, including evaluation of the complement necessary to allow the master to set appropriate watches.

Section 62.50–1 General

Section 62.50–1(b)(3) requires the engineering manning of vessels incorporating automated vital systems to be conditioned by the proven performance of the plant during an initial trial period. Two comments requested clarification as to whether builder's sea trials are suitable for this purpose. A third comment recommended that successful builder's sea trials be accepted as the trial period for determining crew complement because this is common practice for some foreign flags and it would place U.S. flag vessels in a more competitive economic position. Sea trials are not considered to be adequate to evaluate the reliability of the vessel's automated systems. It is longstanding Coast Guard policy, as expressed in NVIC 1–69 and in section 15.715 of the Title 46 CFR, to require a period of proven operation and reliability of the automation following initial testing and de-bugging (*i.e,* after builder's sea trials) before establishing the final crew complement. SOLAS II–1/31.3 and 46.2 also require measures to be taken to ensure that the equipment is functioning in a reliable manner.

Experience has shown that the safety precaution of a trial period not only helps identify possible ship design and automation problem areas, but it also helps identify problems with the crew organization and complement in responding to emergencies, automation failures, and in maintaining and operating the vessel. The length of the trial period varies, with 6 months being typical for the first in a class of vessels. Subsequent vessels in a class having no major system changes typically undergo shorter trial periods, depending on the circumstances. The complete elimination of the trial period and acceptance of the builder's sea trials may provide some economic benefit to some U.S. flag operators, depending on the labor/management collective bargaining agreement. However, any benefit is more than offset by the potential inadequacy of the automation, crew complement, or crew organization, as demonstrated by some U.S. flag vessels which have had their trial periods extended because of problems encountered with unsafe or unreliable automation during the required trial period.

Paragraph (c) of the rule states that equipment provided to replace specific crewmembers or to reduce overall crew requirements that proves unsafe or unreliable in the judgment of the cognizant OCMI must be immediately replaced or repaired or vessel manning will be modified to compensate for the equipment inadequacy. One comment said that this rule's provision regarding modifications in manning should be deleted because subjecting vessel manning to re-evaluation introduces unacceptable economic uncertainty for vessel operators. This recommendation has not been adopted. It would permit vessels whose automation proved unsafe or unreliable subsequent to the initial trial period, or whose maintenance requirements increased as the vessel aged, to operate in the unsafe condition of having an inadequate crew complement. The operator has the option, instead of increasing the vessel complement to compensate for equipment inadequacy, of replacing or repairing the equipment that proves unsafe or unreliable. Both of these options have been used in the past.

Section 62.50–20 Additional Requirements for Minimally Attended Machinery Plants

Paragraph (d) of the rules requires ECC control of the main machinery space fire pumps. One comment recommended deleting this requirement because it exceeds SOLAS, which only requires fire pump control from the navigating bridge. This recommendation has not been adopted. The fire pump controlled from the navigating bridge is not always located in the main machinery space, and remote control of the main machinery space fire pumps from the ECC under minimally attended conditions compensates for the crewmembers that would otherwise be present to start machinery space fire pumps. Also, remote control permits those in attendance to perform such tasks as bringing additional electrical generating capacity into play. This requirement is consistent with longstanding requirements in NVIC's 1–69 and 6–72, Guide to Fixed Fire Fighting Equipment Aboard Merchant Vessels. The intent of this rule is to ensure that the firemain can be charged as quickly as possible in the event of a fire.

Paragraph (e) of the proposed rules required the controls for machinery space fixed gas fire extinguishing systems to be operable from the ECC, except for systems that protect the ECC, which must have controls outside the ECC exit that is independent of the machinery space. Two comments recommended deleting the requirement for control from the ECC because it does not increase safety and it unnecessarily exceeds SOLAS requirements. This recommendation has been adopted for the reasons given and because the crew actions involving operation of fixed gas fire extinguishing systems should be the same regardless of manning: evacuate the space, secure the ventilation, and operate the fire extinguishing system from outside the space. Additional control location requirements in the ECC for minimally attended machinery spaces are not considered necessary.

Paragraph (e)(2) of the proposed rule required that either automatic bilge pumps be provided to dewater machinery space locations where liquid might accumulate, or that the ECC be required to include the controls necessary to bring at least one of the bilge pumps required by Subpart 56.50 of this chapter into operation to dewater these locations. Two comments said that control from the ECC of the bilge pumps required by Subpart 56.50 should be mandatory, instead of an option, to allow timely action to counter flooding in an emergency. This recommendation has been adopted and the required alternative of providing automatic bilge pumps has been deleted from paragraph (e)(2) of the final rules. The provision of control of a bilge pump from the ECC has long been one of the required alternatives in NVIC 1–69. Also, it is the intent of SOLAS II–1/31.3 and 48 to ensure the ability to take timely and effective action to counter flooding. Automatic bilge pumps are typically small pumps intended for the removal of routine accumulations that are ineffective to counter flooding.

One comment said that the proposed rule did not adequately address the requirements in SOLAS II–1/48.3 for the location of valve controls for protection against flooding. This was an oversight and a new paragraph (e)(4) has been added to include the provisions of the SOLAS rule, which are essentially the same as the corresponding provision in NVIC 1–69. The new paragraph (e)(4) requires controls for the sea inlet and discharge valves and emergency bilge suction valves to be provided and be so arranged to allow time for operation in the event of flooding with the vessel in the fully loaded condition. Section 62.01–5(d), *Central Control Rooms,* has also been amended to include this provision because it is required by SOLAS II–1/31.3, regardless of manning.

Paragraph (g)(1) requires the ECC to include controls and instrumentation necessary to place the ship service and propulsion generators in service in 30 seconds. Two comments said that NVIC 1–69 did not have a time criteria of 30 seconds and recommended that the time criteria be deleted. Reasons given were that (1) it is impractical for vessels with two steam turbogenerators to meet the time criteria, (2) the criteria exceed the baseline *Assumption* of the rulemaking that the safety of vessels with automated vital systems must be at least equal to that of a vessel with its vital systems under direct manual supervision, and (3) it would make it difficult for existing vessels with two steam turbo-generators to be automated for the purpose of reducing the crew complement. The 30 second criteria has been retained in the final rules. It is essential to the safety of the vessel to restore ship service and propulsion electrical power as quickly as possible, and this criteria is readily attained by contemporary new-construction to which this rule applies. Existing vessels with steam turbo-generators should be able to comply with the 30 second criteria if they provide a level of safety and electrical power continuity to vital loads equivalent to that required by this rule. It will not apply to existing vessels that do not undergo modification or do not request a change in manning indicated on the certificate of inspection, *e.g.,* vessels previously evaluated under the provisions of NVIC's 1–69 or 6–84.

Proposed paragraph (h)(3) required remote starting and connection from the ECC of manually started or controlled electrical power sources required by Subpart 112.05. This proposal has been deleted because it duplicated the requirements of Subpart 112.35.

Section 62.50–30 Additional Requirements for Periodically Unattended Machinery Plants

Paragraph (a) requires compliance with this section to be met in addition to the requirements in § 62.50–20 (Minimally Attended Machinery Spaces). One comment said that the personnel alarm of § 62.50–20(b)(1) incorporated by this rule should not be required on vessels designed for periodically unattended machinery plant operation because it is an expensive nuisance that serves no purpose on these vessels. The final rule has not been changed. The requirement for the personnel alarm in § 62.50–20(b)(1) is a longstanding requirement of NVIC 1–69 that is intended to monitor crew well-being in the event that an automation failure in a plant designed for periodically unattended operation results in minimally attended operation.

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This alarm also permits the master the option of operating the machinery plant in a minimally attended mode, as opposed to a periodically unattended mode.

Proposed paragraph (f) included a note that the requirement for certain ECC alarms to be extended to the engineers' accommodations could be met by operation of the engineers' assistance-needed alarm. One comment recommended deleting this option because one function of the engineers' assistance-needed alarm is to indicate the non-response of the duty engineers to an alarm condition, and if the engineers' assistance-needed alarm fails for any reason, neither the original alarm nor the duty engineers' non-response will be indicated in the engineers' accommodations. This recommendation has been adopted and the note has been deleted for the reasons given.

Paragraph (h) requires a fire control station located outside the machinery spaces. One comment recommended adding to the rule the requirement that control of machinery space oil piping positive shutoff valves required by § 56.50–80(d) be located at this central fire control station. This recommendation has been adopted. The final rule is consistent with NVIC 1–69, SOLAS, and classification society requirements.

Paragraph (j) of the proposed rule required automatic bilge pumps to be provided for periodically unattended machinery spaces. One comment recommended deleting this requirement because it is counterproductive to safety, can give a false sense of security, and because these pumps can permit leaks in machinery piping to go undetected without causing either a bilge high level alarm or an automatic bilge pump excessive run alarm to alert the crew. This comment said that bilge high level alarms provide better protection. This recommendation has been adopted for the reasons stated and because automatic bilge pumps are an option usually provided for removal of routine bilge accumulations. The bilge high level alarms recommended by the comment are required by § 62.50–20(e)(1).

Paragraph (k) of the rule requires the electrical plant to be arranged in such a way that upon failure of any one operating ship service generator, power to the main switchboard loads essential to propulsion, maneuvering, and safety is automatically maintained or restored within 30 seconds. One comment recommended permitting the generator to restore power within 45 seconds, instead of 30 seconds, to coincide with the requirements of the ABS. This recommendation has not been adopted. It is essential that ship service power be restored as quickly as possible in the event of a blackout. Also, contemporary designs readily comply with this criteria, which has been a longstanding requirement in NVIC 1–69. Relaxation of this safety criteria is not justified.

Section 113.35–3 Engine Order Telegraph Systems, General

Paragraph (f) of the rule requires engine order telegraph and remote propulsion control systems to be separate and independent, except that a single operator control device with separate transmitters and connections for each system may be used. Two comments recommended that the single operator control device be required instead of being an option, because it reduces confusion and is safer because the operator uses the same lever for engine orders in all operating modes. This recommendation has not been adopted. A single operator control device is not being required because it would prevent optional use of numerous independent engine order telegraph system designs that have been used safely and effectively for years.

One comment said the requirement for separate transmitters and connections should be deleted because it is unnecessary and serves no purpose. This recommendation has not been adopted. Separate transmitters and connections are required to permit the engine order telegraph to serve as an independent backup means of passing propulsion orders in the event the remote propulsion control system fails.

Section 111.01–9 Watertight, Waterproof, and Dripproof Equipment

Paragraph (b) of the rule requires central control consoles and similar enclosures to be dripproof, regardless of location. One comment said that this may not always be possible and alternatives should be offered such as use in dry locations and use of dripshields. These recommendations have not been adopted. Dripproof construction to prevent electrical damage or malfunction from dripping, spilling, or sprayed fluids in common practice.

Evaluation and Certification

These regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. The evaluation may be inspected and copied at the address listed under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** The Coast Guard does not have specific monetary information, nor does it have specific information on the type of automation or the number of vessels that would apply for inspection under the rules. The evaluation is based on certain assumptions that characterize current industry practice and trends relating to automation and vessel construction.

The primary benefit of the rules will be increased safety for crewmembers and property. It is estimated that at least $1.6M per year in damages associated with U.S. flag vessel casualties can be averted by these requirements. It is also estimated that the rules will result in a net savings to the marine industry of $100,000 per year, or $5,000 per new vessel, as compared to compliance with previous requirements and guidelines. The primary beneficiaries of these savings will be self-propelled vessel owners and operators, shipyards, and designers and manufacturers of automation systems. The savings will result from the elimination of the requirement for certain equipment that is of questionable safety value, more efficient and consistent evaluation of automation, and the reduction of costs associated with uncertainty and misinterpretation of requirements.

The rules should also produce an estimated annual cost savings for the Coast Guard of $15,000. These savings will result from possible further Coast Guard delegations of plan review and inspection functions to the ABS, which may reduce certain duplications of effort. The ABS would also benefit monetarily from such a delegation.

This rulemaking contains information collection and recordkeeping requirements in sections 61.40–1(a), 61.40–1(c), 61.40–10(a), 62.50–20(h), 62.50–30(j), and Subpart 62.20. They have been previously submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 et seq.) and have been approved. Approval numbers have been assigned as set out in revised § 50.01–20 of these rules.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Coast Guard has determined that this rulemaking does not significantly affect the environment. An Environmental Assessment was prepared in accordance with COMDTINST 16475.1B, National Environmental Policy Act, Implementing Procedures and Policy for Considering Environmental impacts. The Environmental Assessment is included in the Final Evaluation. A finding of no significant impact (FONSI) has been prepared. The Environmental Assessment and FONSI are available for public inspection and copying in the rulemaking docket at the address listed above under **"ADDRESSES."**

As the rules substantially involve the design, construction, and operation of large vessels, ferries, and coastal tankers, and freighters over 500 gross tons, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 52

Marine safety, Vessels.

46 CFR Part 56

Marine safety, Vessels.

46 CFR Part 58

Oil and gas exploration, Marine safety, Vessels.

46 CFR Part 61

Marine safety, Vessels.

46 CFR Part 62

Electric power, Fire prevention, Incorporation by reference, Marine safety, Vessels.

46 CFR Part 110

Administrative practice and procedure, Coast Guard, Electric power, Vessels.

46 CFR Part 111

Electric power, Marine safety, Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Vessels.

In consideration of the foregoing, Chapter 1 of Title 46, Code of Federal Regulations is amended as follows:

PART 52—POWER BOILERS

1. The authority citation for Part 52 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

2. In § 52.01–10, by revising paragraph (a) to read as follows:

§ 52.01–10 Automatic controls.

(a) Each main boiler must meet the special requirements for automatic safety controls in § 62.35–20(a)(1) of this chapter.

* * * * *

3. The authority citation for Part 50 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 App. U.S.C. 86; 43 U.S.C. 1333 (d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46.

3a. In § 50.01–20, by revising paragraph (b) to read as follows:

§ 50.01–20 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR Part or Section where Identified or Described	Current OMB Control No.
Part 61	2115–0142
Part 62	2115–0546
Part 63	2115–0142

PART 56—PIPING SYSTEMS AND APPURTENANCES

4. The authority citation for Part 56 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

5. In § 56.50–80, by adding a new paragraph (i) to read as follows:

§ 56.50–80 Lubricating oil system.

* * * * *

(i) Steam driven propulsion machinery must be provided with an emergency supply of lubricating oil that must operate automatically upon failure of the lubricating oil system. The emergency oil supply must be adequate to provide lubrication until the equipment comes to rest during automatic shutdown.

6. In § 56.50–95, by revising the existing last sentence of paragraph (d)(1) and by adding an additional sentence immediately thereafter to read as follows:

§ 56.50–95 Overboard discharges and shell connections.

* * * * *

(d)(1) * * * These controls shall be readily accessible above the floor plates and shall be provided with indication showing whether the valve is opened or closed. Manned machinery spaces include the main machinery space and are either attended by the crew or are automated in accordance with Part 62 of this subchapter to be comparable to an attended space.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

7. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46, and all other authority citations in this part are removed.

8. In Subpart 58.01, a new § 58.01–35 is added to read as follows:

§ 58.01–35 Main propulsion auxiliary machinery.

Auxiliary machinery vital to the main propulsion system must be provided in duplicate unless the system served is provided in independent duplicate, or otherwise provides continued or restored propulsion capability in the event of a failure or malfunction of any single auxiliary component.

Note.—Partial reduction of normal propulsion capability as a result of malfunction or failure is acceptable if the reduced capability is not below that necessary for the vessel to run ahead at 7 knots or half speed, whichever is less, and is adequate to maintain control of the ship.

PART 61—PERIODIC TESTS AND INSPECTIONS

9. The authority citation for Part 61 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 CFR 1.46.

10. In Part 61, the table of contents is amended and a new Subpart 61.40 is added, to read as follows:

Subpart 61.40—Design Verification and Periodic Testing of Vital System Automation

Sec.
61.40–1 General.
61.40–3 Design verification testing.
61.40–6 Periodic safety tests.
61.40–10 Test procedure details.

* * * * *

Subpart 61.40—Design Verification and Periodic Testing of Vital System Automation

§ 61.40–1 General.

(a) All automatically or remotely controlled or monitored vital systems addressed by Part 62 of this subchapter must be subjected to tests and inspections to evaluate the operation and reliability of controls, alarms, safety features, and interlocks. Test procedures must be submitted to the Coast Guard for approval.

(b) Persons designated by the owner of the vessel shall conduct all tests and the Design Verification and Periodic

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Safety tests shall be witnessed by the Coast Guard.

(c) Design Verification and Periodic Safety test procedure documents approved by the Coast Guard must be retained aboard the vessel.

§ 61.40–3 Design verification testing.

(a) Tests must verify that automated vital systems are designed, constructed, and operate in accordance with all applicable requirements of Part 62 of this subchapter. The tests must be based upon the failure analysis, if required by § 62.20–3(b) of this subchapter, functional performance requirements, and the Periodic Safety tests of § 61.40–6.

(b) Tests must be performed immediately after the installation of the automated equipment or before the issuance of the initial Certificate of Inspection.

§ 61.40–6 Periodic safety tests.

(a) Periodic Safety tests must demonstrate the proper operation of the primary and alternate controls, alarms, power sources, transfer override arrangements, interlocks, and safety controls. Systems addressed must include fire detection and extinguishing, flooding safety, propulsion, maneuvering, electric power generation and distribution, and emergency internal communications.

(b) Tests must be conducted at periodic intervals specified by the Coast Guard to confirm that vital systems and safety features continue to operate in a safe, reliable manner.

Note.—Normally, these tests are conducted annually.

§ 61.40–10 Test procedure details.

(a) Test procedure documents must be in a step-by-step or checkoff list format. Each test instruction must specify equipment status, apparatus necessary to perform the tests, safety precautions, safety control and alarm setpoints, the procedure to be followed, and the expected test result.

(b) Test techniques must not simulate monitored system conditions by misadjustment, artificial signals, improper wiring, tampering, or revision of the system unless the test would damage equipment or endanger personnel. In the latter case, the use of a synthesized signal or condition applied to the sensor is acceptable if test equipment is maintained in good working order and is periodically calibrated to the satisfaction of the Officer in Charge, Marine Inspection. Other test techniques must be approved by the Commandant (G–MTH).

11. Part 62 is added to 46 CFR Subchapter F to read as follows:

PART 62—VITAL SYSTEM AUTOMATION

Subpart 62.01–General Provisions

Sec.
62.01–1 Purpose.
62.01–3 Scope.
62.01–5 Applicability.

Subpart 62.05–Reference specifications

62.05–1 Incorporation by reference.

Subpart 62.10–Terms used

62.10–1 Definitions.

Subpart 62.15–Equivalents

62.15–1 Conditions under which equivalent may be used.

Subpart 62.20–Plan submittal

62.20–1 Plans for approval.
62.20–3 Plans for information.
62.20–5 Self-certification.

Subpart 62.25–General Requirements for All Automated Vital Systems

62.25–1 General.
62.25–5 All control systems.
62.25–10 Manual alternate control systems.
62.25–15 Safety control systems.
62.25–20 Instrumentation, alarms, and centralized stations.
62.25–25 Programable systems and devices.
62.25–30 Environmental design standards.

Subpart 62.30–Reliability and Safety Criteria, All Automated Vital Systems

62.30–1 Failsafe.
62.30–5 Independence.
62.30–10 Testing.

Subpart 62.35–Requirements for Specific Types of Automated Vital Systems

62.35–1 General.
62.35–5 Remote propulsion control systems.
62.35–10 Flooding safety.
62.35–15 Fire safety.
62.35–20 Oil-fired main boilers.
62.35–95 Internal combustion engine starting systems.
62.35–40 Fuel systems.
62.35–50 Tabulated monitoring and safety control requirements for specific systems.

Subpart 62.50–Automated Self-propelled Vessel Manning

62.50–1 General.
62.50–20 Additional requirements for minimally attended machinery plants.
62.50–30 Additional requirements for periodically unattended machinery plants.

Authority: 46 U.S.C. 3306, 3703, 8105; 49 CFR 1.46.

Subpart 62.01—General Provisions

§ 62.01–1 Purpose.

The purpose of this part is to make sure that the safety of a vessel with automated vital systems, in maneuvering and all other sailing conditions, is equal to that of the vessel with the vital systems under direct manual operator supervision.

§ 62.01–3 Scope.

(a) This part contains the minimum requirements for vessel automated vital systems. Specifically, this part contains—

(1) In subpart 62.25, the general requirements for all vital system automation;

(2) In subpart 62.30, the criteria used to evaluate the designed reliability and safety of all automated vital systems;

(3) In subpart 62.35, the minimum additional equipment, configuration, and functional requirements necessary when certain vital systems are automated; and

(4) In subpart 62.50, the minimum additional requirements when automated systems are provided to replace specific personnel or to reduce overall crew requirements.

§ 62.01–5 Applicability.

(a) *Vessels.* This part applies to self-propelled vessels of 500 gross tons and over that are certificated under Subchapters D, I, or U and to self-propelled vessels of 100 gross tons and over that are certificated under Subchapter H.

(b) *Systems and Equipment.* Except as noted in § 62.05–5(c), this part applies to automation of vital systems or equipment that—

(1) Is automatically controlled or monitored;

(2) Is remotely controlled or monitored; or

(3) Utilizes automation for the purpose of replacing specific personnel or to reduce overall crew requirements.

(c) *Exceptions.* This part does not apply to the following systems and equipment unless they are specifically addressed or unless their failure would degrade the safety and reliability of the systems required by this part:

(1) Automatic auxiliary heating equipment (see part 63 of this subchapter).

(2) Steering systems (see subparts 58.25 and 111.93 of this chapter).

(3) Non-vital and industrial systems.

(4) The communication and alarm systems in part 113 of this chapter.

(d) *Central control rooms.* The requirements of subpart 62.50 only apply to vessels automated to replace specific personnel or to reduce overall crew requirements, except where the main propulsion or ship service electrical generating plants are automatically or remotely controlled from a control room. In this case, § 62.50–20(a)(3) (except the provision in paragraph 62.50–20(a)(3)(ii) relating to electrical power distribution), (b)(3), (c), (e)(1), (e)(2), (e)(4), and (f)(2) apply, regardless of manning.

Subpart 62.05—Reference Specifications

§ 62.05–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and at the Office of Marine Safety, Security, and Environmental Protection [G–MTH–2/12), Room 1218, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001.

(b) The material approved for incorporation by reference in this part is:

(1) **Rules for Building and Classing Steel Vessels, 1986,** issued by the American Bureau of Shipping. This document is available from: American Bureau of Shipping, 45 Eisenhower Drive, Paramus, New Jersey 07653–0910. Sections affected by this incorporation by reference are: 62.25–1(c), 62.25–5(a), 62.25–30(a)(1), (a)(2), (a)(3), (a)(5), 62.35–5(d), 62.35–35(a), 62.35–40(c), 62.35–50, 62.50–30(c), and 62.50–30(k).

Subpart 62.10—Terms Used

§ 62.10–1 Definitions.

(a) For the purpose of this part:

"Alarm" means an audible and visual indication of a hazardous or potentially hazardous condition that requires attention.

"Automated" means the use of automatic or remote control, instrumentation, or alarms.

"Automatic control" means self-regulating in attaining or carrying out an operator-specified equipment response or sequence.

"Boiler low-low water level" is the minimum safe level in the boiler, in no case lower than that visible in the gage glass [see § 52.01–110 of this chapter, Water Level Indicators).

"Engineering Control Center (ECC)" means the centralized engineering control, monitoring, and communications location.

"Failsafe" means that upon failure or malfunction of a component, subsystem, or system, the output automatically reverts to a pre-determined design state of least critical consequence. Typical failsafe states are listed in Table 62.10–1(a).

TABLE 62.10–1(a)—TYPICAL FAILSAFE STATES

System or component	Preferred failsafe state
Cooling water valve	As is or open.
Alarm system	Annunciate.
Safety system	Shut down, limited, or as is & alarm.
Burner valve	Closed.
Propulsion speed control	As is.
Feedwater valve	As is or open.
Controllable pitch propeller.	As is.
Propulsion safety trip	As is & alarm.
Fuel tank valve	See § 56.50–60(d).

"Flooding safety" refers to flooding detection, watertight integrity, and dewatering systems.

"Independent" refers to equipment arranged to perform its required function regardless of the state of operation, or failure, of other equipment.

"Limit control" means a function of an automatic control system to restrict operation to a specified operating range or sequence without stopping the machinery.

"Local control" means operator control from a location where the equipment and its output can be directly manipulated and observed, e.g., at the switchboard, motor controller, propulsion engine, or other equipment.

"Manual control" means operation by direct or power-assisted operator intervention.

"Monitor" means the use of direct observation, instrumentation, alarms, or a combination of these to determine equipment operation.

"Remote control" means non-local automatic or manual control.

"Safety trip control system" means a manually or automatically operated system that rapidly shuts down another system or subsystem.

"System" means a grouping or arrangement of elements that interact to perform a specific function and typically includes the following, as applicable:

A fuel or power source.
Power conversion elements.
Control elements.
Power transmission elements.
Instrumentation.
Safety control elements.
Conditioning elements.

"Vital system or equipment" is essential to the safety of the vessel, its passengers and crew. This typically includes, but is not limited to, the following:

Fire detection, alarm, and extinguishing systems.
Flooding safety systems.
Ship service and emergency electrical generators, switchgear, and motor control circuits serving vital electrical loads.
The emergency equipment and systems listed in § 112.15 of this chapter.
Propulsion systems, including those provided to meet § 58.01–35.
Steering systems.

Subpart 62.15—Equivalents

§ 62.15–1 Conditions under which equivalents may be used.

(a) The Coast Guard accepts a substitute or alternate for the requirements of this part if it provides an equivalent level of safety and reliability. Demonstration of functional equivalence must include comparison of a qualitative failure analysis based on the requirements of this part with a comparable analysis of the proposed substitute or alternate.

Subpart 62.20—Plan Submittal

§ 62.20–1 Plans for approval.

(a) The following plans must be submitted to the Coast Guard for approval in accordance with § 50.20–5 and § 50.20–10 of this chapter:

(1) A general arrangement plan of control and monitoring equipment, control locations, and the systems served.

(2) Control and monitoring console, panel, and enclosure layouts.

(3) Schematic or logic diagrams including functional relationships, a written description of operation, and sequences of events for all modes of operation.

(4) A description of control or monitoring system connections to non-vital systems.

(5) A description of programable features.

(6) A description of built-in test features and diagnostics.

(7) Design Verification and Periodic Safety test procedures described in subpart 61.40 of this chapter.

(8) Control system normal and emergency operating instructions.

§ 62.20–3 Plans for information.

(a) One copy of the following plans must be submitted to the Officer in Charge, Marine Inspection, for use in the evaluation of automated systems provided to replace specific personnel or to reduce overall crew requirements:

(1) Proposed manning, crew organization and utilization, including routine maintenance, all operational evolutions, and emergencies.

(2) A planned maintenance program for all vital systems.

(b) One copy of a qualitative failure analysis must be submitted in accordance with § 50.20–5 of this chapter for the following:

(1) Propulsion controls.

(2) Microprocessor-based system hardware.

(3) Safety controls.

(4) Automated electric power management.

(5) Automation required to be independent that is not physically separate.

(6) Any other automation that, in the judgement of the Commandant, potentially constitutes a safety hazard to the vessel or personnel in case of failure.

Note.—The qualitative failure analysis is intended to assist in evaluating the safety and reliability of the design. It should be conducted to a level of detail necessary to demonstrate compliance with applicable requirements and should follow standard qualitative analysis procedures. Assumptions, operating conditions considered, failures considered, cause and effect relationships, how failures are detected by the crew, alternatives available to the crew, and possible design verification tests necessary should be included. Questions regarding failure analysis should be referred to the Marine Safety Center at an early stage of design.

§ 62.20–5 Self-certification.

(a) The designer or manufacturer of an automated system shall certify to the Coast Guard, in writing, that the automation is designed to meet the environmental design standards of § 62.25–30. Plan review, shipboard testing, or independent testing to these standards is not required.

Note.—Self-certification should normally accompany plan submittal.

Subpart 62.25—General Requirements for All Automated Vital Systems

§ 62.25–1 General.

(a) Vital systems that are automatically or remotely controlled must be provided with—

(1) An effective primary control system;

(2) A manual alternate control system;

(3) A safety control system, if required by § 62.25–15;

(4) Instrumentation to monitor system parameters necessary for the safe and effective operation of the system; and

(5) An alarm system if instrumentation is not continuously monitored or is inappropriate for detection of a failure or unsafe condition.

(b) Automation systems or subsystems that control or monitor more than one safety control, interlock, or operating sequence must perform all assigned tasks continuously, i.e., the detection of unsafe conditions must not prevent control or monitoring of other conditions.

(c) Vital control and alarm system consoles and similar enclosures that rely upon forced cooling for proper system operation must meet section 41.23.2 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

§ 62.25–5 All control systems.

(a) Controls for engines and turbines equipped with jacking or turning gear must meet section 41.21.4 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

(b) Automatic control systems must be stable over the entire range of normal operation.

(c) Inadvertent grounding of an electrical or electronic safety control system must not cause safety control operation or safety control bypassing.

§ 62.25–10 Manual alternate control systems.

(a) Manual alternate control systems must—

(1) Be operable in an emergency and after a remote or automatic primary control system failure;

(2) Be suitable for manual control for prolonged periods;

(3) Be readily accessible and operable; and

(4) Include means to override automatic controls and interlocks, as applicable.

(b) Permanent communications must be provided between primary remote control locations and manual alternate control locations if operator attendance is necessary to maintain safe alternate control.

Note.—Typically, this includes main boiler fronts and local propulsion control.

§ 62.25–15 Safety control systems.

(a) Minimum safety trip controls required for specific types of automated vital systems are listed in Table 62.35–50.

Note.—Safety control systems include automatic and manual safety trip controls and automatic safety limit controls.

(b) Safety trip controls must not operate as a result of failure of the normal electrical power source unless it is determined to be the failsafe state.

(c) Automatic operation of a safety control must be alarmed in the machinery spaces and at the cognizant remote control location.

(d) Local manual safety trip controls must be provided for all main boilers, turbines, and internal combustion engines.

(e) Automatic safety trip control systems must—

(1) Be provided where there is an immediate danger that a failure will result in serious damage, complete breakdown, fire, or explosion;

(2) Require manual reset prior to renewed operation of the equipment; and

(3) Not be provided if safety limit controls provide a safe alternative and trip would result in loss of propulsion.

§ 62.25–20 Instrumentation, alarms, and centralized stations.

(a) *General.* Minimum instrumentation and alarms required for specific types of automated vital systems are listed in Table 62.35–50.

(b) *Instrumentation Location.* (1) Manual control locations, including remote manual control and manual alternate control, must be provided with the instrumentation necessary for safe operation from that location.

Note.—Typically, instrumentation includes means to monitor the output of the monitored system.

(2) Systems with remote instrumentation must have provisions for the installation of instrumentation at the monitored system equipment.

(3) The status of automatically or remotely controlled vital auxiliaries, power sources, switches, and valves must be visually indicated in the machinery spaces or the cognizant remote control location, as applicable.

Note.—Status indicators include run, standby, off, open, closed, tripped, and on, as applicable. Status indicators at remote control locations other than the ECC, if provided, may be summarized. Equipment normally provided with status indicators are addressed in Table 62.35–50 and Subparts 58.01, 58.50, and 112.45.

(4) Sequential interlocks provided in control systems to ensure safe operation, such as boiler programing control or reversing of propulsion diesels, must have summary indicators in the machinery spaces and at the cognizant control location to show if the interlocks are satisfied.

(5) Instrumentation listed in Table 62.35–50 must be of the continuous display type or the demand display type. Displays must be in the ECC or in the machinery spaces if an ECC is not provided.

(c) *Instrumentation details.* Demand instrumentation displays must be clearly readable and immediately available to the operator.

(c) *Alarms.* (1) All alarms must clearly distinguish among—

(i) Normal, alarm, and acknowledged alarm conditions; and

(ii) Fire, general alarm, CO_2/halon, vital machinery, flooding, engineers' assistance-needed, and non-vital alarms.

(2) Required alarms in high ambient noise areas must be supplemented by visual means, such as rotating beacons, that are visible throughout these areas. Red beacons must only be used for general or fire alarm purposes.

(3) Automatic transfer to required backup or redundant systems or power sources must be alarmed in the machinery spaces.

(4) Flooding safety, fire, loss of power, and engineers' assistance-needed alarms extended from the machinery spaces to a remote location must not have a duty crewmember selector.

Note.—Other alarms may be provided with such a selector, provided there is no off position.

(5) Automation alarms must be separate and independent of the following:

(i) The fire detection and alarm systems.

(ii) The general alarm.

(iii) CO_2/halon release alarms.

(6) Failure of an automatic control, remote control, or alarm system must be immediately alarmed in the machinery spaces and at the ECC, if provided.

(e) *Alarm details.* (1) All alarms must—

(i) Have a manual acknowledgement device (No other means to reduce or eliminate the annunciated signal may be provided except dimmers described in paragraph (g)(2) of this section);

(ii) Be continuously powered;

(iii) Be provided with a means to test audible and visual annunciators;

(iv) Provide for normal equipment starting and operating transients and vessel motions, as applicable, without actuating the alarm;

(v) Be able to simultaneously indicate more than one alarm condition, as applicable;

(vi) Visually annunciate until the alarm is manually acknowledged and the alarm condition is cleared;

(vii) Audibly annunciate until manually acknowledged;

(viii) Not prevent annunciation of subsequent alarms because of previous alarm acknowledgement; and

(ix) Automatically reset to the normal operating condition only after the alarm has been manually acknowledged and the alarm condition is cleared.

(2) Visual alarms must initially indicate the equipment or system malfunction without operator intervention.

(3) Power failure alarms must monitor on the load side of the last supply protective device.

(f) *Summarized and grouped alarms.* Visual alarms at a control location that are summarized or grouped by function, system, or item of equipment must—

(1) Be sufficiently specific to allow any necessary action to be taken; and

(2) Have a display at the equipment or an appropriate control location to identify the specific alarm condition or location.

(g) *Central control locations.* (1) Central control locations must—

(i) Be arranged to allow the operator to safely and efficiently communicate, control, and monitor the vital systems under normal and emergency conditions, with a minimum of operator confusion and distraction;

(ii) Be on a single deck level; and

(iii) Co-locate control devices and instrumentation to allow visual assessment of system response to control input.

(2) Visual alarms and instruments on the navigating bridge must not interfere with the crew's vision. Dimmers must not eliminate visual indications.

(3) Alarms and instrumentation at the main navigating bridge control location must be limited to those that require the attention or action of the officer on watch, are required by this chapter, or that would result in increased safety.

§ 62.25–25 Programable systems and devices.

(a) programable control or alarm system logic must not be altered after Design Verification testing without the approval of the cognizant Officer in Charge, Marine Inspection (OCMI). (See subpart 61.40 of this subchapter, Design Verification Tests). Safety control or automatic alarm systems must be provided with means, acceptable to the cognizant OCMI, to make sure setpoints remain within the safe operating range of the equipment.

(b) Operating programs for microprocessor-based or computer-based vital control, alarm, and monitoring systems must be stored in non-volatile memory and automatically operate on supply power resumption.

(c) If a microprocessor-based or computer-based system serves both vital and non-vital systems, hardware and software priorities must favor the vital systems.

(d) At least one copy of all required manuals, records, and instructions for automatic or remote control or monitoring systems required to be abroad the vessel must not be stored in electronic or magnetic memory.

§ 62.25–30 Environmental design standards.

(a) All automation must be suitable for the marine environment and must be designed and constructed to operate indefinitely under the following conditions:

(1) Ship motion and vibration described in Section 41.37 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

Note.—Inclination requirements for fire and flooding safety systems are described in § 112.05–5(c) of this chapter.

(2) Ambient air temperatures described in Section 41.29.1 and 41.29.2 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

(3) Electrical voltage and frequency tolerances described in Section 41.29.3 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

(4) Relative humidity of 0 to 95% at 45 °C.

(5) Hydraulic and pneumatic pressure variations described in Section 41.39.3e of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

Note.—Considerations should include normal dynamic conditions that might exceed these values, such as switching, valve closure, power supply transfer, starting, and shutdown.

(b) Low voltage electronics must be designed with due consideration for static discharge, electromagnetic interference, voltage transients, fungal growth, and contact corrosion.

Subpart 62.30—Reliability and Safety Criteria, All Automated Vital Systems

§ 62.30–1 Failsafe.

(a) The failsafe state must be evaluated for each subsystem, system, or vessel to determine the least critical consequence.

(b) All automatic control, remote control, safety control, and alarm systems must be failsafe.

§ 62.30–5 Independence.

(a) Single non-concurrent failures in control, alarm, or instrumentation systems, and their logical consequences, must not prevent sustained or restored operation of any vital system or systems.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, primary control, alternate control, safety control, and alarm and instrumentation systems for any vital system must be independent of each other.

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(b)(2) Independent sensors are not required except that sensors for primary speed, pitch, or direction of rotation control in closed loop propulsion control systems must be independent and physically separate from required safety control, alarm, or instrumentation sensors.

(b)(3) The safety trip control of § 62.35—5(b)(2) must be independent and physically separate from all other systems.

(c) Two independent sources of power must be provided for all primary control, safety control, instrumentation and alarm systems. Failure of the normal source of power must actuate an alarm in the machinery spaces. One source must be from the emergency power source (see part 112 of this chapter, Emergency Lighting and Power Systems) unless one of the sources is—

(1) Derived from the power supply of the system being controlled or monitored;

(2) A power take-off of that system; of

(3) An independent power source equivalent to the emergency power source.

§ 62.30–10 Testing.

(a) Automated vital systems must be tested in accordance with subpart 61.40 of this chapter.

(b) On-line built-in test equipment must not lock out or override safety trip control systems. This equipment must indicate when it is active.

Subpart 62.35—Requirements for Specific Types of Automated Vital Systems

§ 62.35–1 General.

(a) Minimum instrumentation, alarms, and safety controls required for specific types of automated vital systems are listed in Table 62.35–50.

(b) Automatic propulsion systems, automated electric power management systems, and all associated subsystems and equipment must be capable of meeting load demands from standby to full system rated load, under steady state and maneuvering conditions, without need for manual adjustment or manipulation.

§ 62.35–5 Remote propulsion control systems.

(a) *Manual propulsion control.* All vessels having remote propulsion control from the navigating bridge, an ECC or maneuvering platform, or elsewhere must have a manual alternate propulsion control located at the equipment.

Note.—Separate local control locations may be provided for each independent propeller.

(b) *Centralized propulsion control equipment.* Navigating bridge, ECC, maneuvering platform, and manual alternate control locations must include—

(1) Control of the speed and direction of thrust for each independent propeller controlled;

(2) A guarded manually actuated safety trip control (which stops the propelling machinery) for each independent propeller controlled;

(3) Shaft speed and thrust direction indicators for each independent propeller controlled;

(4) The means to pass propulsion orders required by § 113.30–5 and § 113.35–3 of this chapter; and

(5) The means required by paragraph (e) of this section to achieve control location transfer and independence.

(c) *Main navigating bridge propulsion control.* (1) Navigating bridge remote propulsion control must be performed by a single control device for each independent propeller. Control must include automatic performance of all associated services, and must not permit rate of movement of the control device to overload the propulsion machinery.

(2) On vessels propelled by steam turbines, the navigation bridge primary control system must include safety limit controls for high and low boiler water levels and low steam pressure. Actuation of these limits must be alarmed on the navigating bridge and at the maneuvering platform or ECC.

(3) On vessels propelled by internal combustion engines, an alarm must annunciate on the navigating bridge and at the maneuvering platform or ECC, if provided, to indicate starting capability less then 50% of that required by § 62.35–35(a). If the primary remote control system provides automatic starting, the number of automatic consecutive attempts that fail to produce a start must be limited to reserve 50% of the required starting capability.

(d) *Control location transfer.* Control location transfer must meet Sections 41.19.3 and 41.19.4 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels." Manual alternate propulsion control locations must be capable of overriding and operating independent of all remote and automatic control locations.

(e) *Control system details.* (1) Each operator control device must have a detent at the zero thrust position.

(2) Propulsion machinery automatic safety trip control operation must only occur when continued operation could result in serious damage, complete breakdown, or explosion of the equipment. Other than the overrides mentioned in § 62.25–10(a)(4) and temporary overrides located at the main navigating bridge control location, overrides of these safety trip controls are prohibited. Operation of permitted overrides must be alarmed at the navigating bridge and at the maneuvering platform or ECC, as applicable, and must be guarded against inadvertent operation.

(3) Remote propulsion control systems must be failsafe by maintaining the preset (as is) speed and direction of thrust until local manual or alternate manual control is in operation, or the manual safety trip control operates. Failure must activate alarms on the navigating bridge and in the machinery spaces.

§ 62.35–10 Flooding safety.

(a) Automatic bilge pumps must—

(1) Be provided with bilge high level alarms that annunciate in the machinery spaces and at a manned control location and are independent of the pump controls;

(2) Be monitored to detect excessive operation in a specified time period; and

(3) Meet all applicable pollution control requirements.

(b) Remote controls for flooding safety equipment must remain functional under flooding conditions to the extent required for the associated equipment by § 56.50–50 and § 56.50–95 of this chapter.

(c) Remote bilge level sensors, where provided, must be located to detect flooding at an early stage and to provide redundant coverage.

§ 62.35–15 Fire safety.

(a) All required fire pump remote control locations must include the controls necessary to charge the firemain and—

(1) A firemain pressure indicator; or

(2) A firemain low pressure alarm.

§ 62.35–20 Oil-fired main boilers.

(a) *General.* (1) All main boilers, regardless of intended mode of operation, must be provided with the automatic safety trip control system(s) of paragraphs (h)(1), (h)(2)(i), (h)(2) (ii), and (i) of this section to prevent unsafe conditions after light off.

(2) Manual alternate control of boilers must be located at the boiler front.

(3) A fully automatic main boiler must include—

(i) Automatic combustion control;

(ii) Programing control;

(iii) Automatic feedwater control;

(iv) Safety controls; and

(v) An alarm system.

(4) Following system line-up and starting of auxiliaries, fully automatic main boilers must only require the operator to initiate the following sequences:

(i) Boiler pre-purge.

(ii) Trial for ignition of burners subsequent to successful initial burner light-off.

(iii) Normal shutdown.

(iv) Manual safety trip control operation.

(v) Adjustment of primary control setpoints.

(5) All requirements for programing control subsystems and safety control systems must be met when a boiler—

(i) Automatically sequences burners;

(ii) Is operated from a location remote from the boiler front; or

(iii) Is fully automatic.

(6) Where light oil pilots are used, the programing control and burner safety trip controls must be provided for the light oil system. Trial for ignition must not exceed 15 seconds and the main burner trial for ignition must not proceed until the pilot flame is proven.

Note: Light oil is defined in § 63.05–75(a) of this chapter.

(b) *Feedwater control.* Automatic feedwater control subsystems must sense, at a minimum, boiler water level and steam flow.

(c) *Combustion control.* Automatic combustion control subsystems must provide—

(1) An air/fuel ratio which ensures complete combustion and stable flame with the fuel in use, under light off, steady state, and transient conditions; and

(2) Stable boiler steam pressure and outlet temperatures under steady state and transient load conditions; and

(3) A low fire interlock to prevent high firing rates and superheater damage during boiler warm up.

(d) *Programing control.* The programing control must provide a programed sequence of interlocks for the safe ignition and normal shutdown of the boiler burners. The programing control must prevent ignition if unsafe conditions exist and must include the following minimum sequence of events and interlocks:

(1) *Prepurge.* Boilers must undergo a continuous purge of the combustion chamber and convecting spaces to make sure of a minimum of 5 changes of air. The purge must not be less than 15 seconds in duration, and must occur immediately prior to the trial for ignition of the initial burner of a boiler. All registers and dampers must be open and an air flow of at least 25 percent of the full load volumetric air flow must be proven before the purge period commences. The prepurge must be complete before trial for ignition of the initial burner.

Note: A pre-purge is not required immediately after a complete post-purge.

(2) *Trial for ignition and ignition.* (i) Only one burner per boiler is to be in trial for ignition at any time.

(ii) Total boiler air flow during light off must be sufficient to prevent pocketing and explosive accumulations of combustible gases.

(iii) The burner igniter must be in position and proven energized before admission of fuel to the boiler. The igniter must remain energized until the burner flame is established and stable, or until the trial for ignition period ends.

(iv) The trial for ignition period must be as short as practical for the specific installation, but must not exceed 15 seconds.

(v) Failure of the burner to ignite during a trial for ignition must automatically actuate the burner safety trip controls.

(3) *Post-purge.* (i) Immediately after normal shutdown of the boiler, an automatic purge of the boiler equal to the volume and duration of the prepurge must occur.

(ii) Following boiler safety trip control operation, the air flow to the boiler must not automatically increase. Post purge in such cases must be under manual control.

(e) *Burner fuel oil valves.* Each burner must be provided with a valve that is—

(1) Automatically closed by the burner or boiler safety trip control system; and

(2) Operated by the programming control or combustion control subsystems, as applicable.

(f) *Master fuel oil valves.* Each boiler must be provided with a master fuel oil valve to stop fuel to the boiler automatically upon actuation by the boiler safety trip control system.

(g) *Valve closure time.* The valves described in paragraphs (e) and (f) of this section must close within 4 seconds of automatic detection of unsafe trip conditions.

(h) *Burner safety trip control system.* (1) Each burner must be provided with at least one flame detector.

(2) The burner valve must automatically close when—

(i) Loss of burner flame occurs;

(ii) Actuated by the boiler safety trip control system;

(iii) The burner is not properly seated or in place; or

(iv) Trial for ignition fails, if a programing control is provided.

(i) *Boiler safety trip control system.* (1) Each boiler must be provided with a safety trip control system that automatically closes the master and all burner fuel oil valves upon—

(i) Boiler low-low water level;

(ii) Inadequate boiler air flow to support complete combustion;

(iii) Loss of boiler control power;

(iv) Manual safety trip operation; or

(v) Loss of flame at all burners.

(2) The low-low water level safety trip control must account for normal vessel motions and operating transients.

§ 62.35–35 Internal combustion engine starting systems.

(a) The starting system for propulsion engines and ship service generator prime movers required to automatically start must meet Sections 34.23.3, 34.37.2, and 34.39 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels," except the sections referenced therein.

§ 62.35–40 Fuel systems.

(a) *Level alarms.* Where high or low fuel tank level alarms are required, they must be located to allow the operator adequate time to prevent an unsafe condition.

(b) *Coal fuels.* (1) Controls and instrumentation for coal systems require special consideration by the Commandant (G–MTH).

(2) Interlocks must be provided to ensure a safe transfer of machinery operation from one fuel to another.

(c) *Automatic fuel heating.* Automatic fuel heating arrangements must meet Section 41.78.1 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

(d) *Overflow prevention.* Fuel oil day tanks, settlers, and similar fuel oil service tanks that are filled automatically or by remote control must be provided with a high level alarm that annunciates in the machinery spaces and either an automatic safety trip control or an overflow arrangement.

§ 62.35–50 Tabulated monitoring and safety control requirements for specific systems.

(a) The minimum instrumentation, alarms, and safety controls required for specific types of systems are listed in Table 62.35–50.

TABLE 62.35-50—MINIMUM SYSTEM MONITORING AND SAFETY CONTROL REQUIREMENTS FOR SPECIFIC SYSTEMS (1)

System	Service	Instrumentation	Alarm	Safety control	Notes
Main (Propulsion) boiler.	(1)	(2)	(1)		(5, 7)
	Supply casing and uptakes		Fire		
	Burner flame	Status	Failure	Burner auto trip	(7)
	Burner seating		Failure	do	(7)
	Trial for ignition	Status	Failure	do	
	Control power	Available (pressure)	Failure (low)	do	(7)
	Burner valve	Open/closed		Manual trip	(7)
	Low fire interlock	Status			
	Program control interlock	Status			
Main (Propulsion steam) turbine.		(3)	(6)		(5, 7)
				Manual trip	
Main propulsion, diesel.	(8)	(1)	(1)		(5, 7)
				Manual trip	
Main propulsion, remote control.			Failure	do	
	Auto safety trip override		Activated		
	Starting power	Pressure (voltage)	Low	Limit	(7)
	Location in control	Status	Override		(7)
	Shaft speed/direction/pitch	(3)	(3)	(3)	(3)
	Clutch fluid	Pressure	Low		
Main propulsion, electric.	(4)	(4)	(4)	(4)	(7)
Main propulsion, shafting.	Stern tube oil tank level		Low		
	Line shaft bearing	Temperature, forced lubrication	High		
		Pressure	Low		
Main propulsion, controllable pitch propeller.	Hydraulic oil	Pressure	High, Low		
		Temperature	High		
Generators	Ship service	(1)	(1)		
		Starting pressure/voltage	Low		
			Tripped		
	Emergency	(9)	(9)	(9)	(9)
	Turbogenerator	(1, 9)	(1, 9)	(9)	
				Manual trip	
	Diesel	(1, 9)	(1, 9)	(9)	(9)
				Manual trip	
Auxiliary boiler		Run	Trip		(12)
Gas turbine	(8)	(8)	(8)	(8)	(5)
Engines and turbines.	Jacking/turning gear	Engaged			(9)
Fuel oil	(8)	(8)	(8)		
	Remote/auto fill level		High	Auto trip or overflow arrangement.	
	Hi. press. leakage level		High		
Bilge	Pump remote control	Run			
	Pump auto control	Run	Excessive operations		
	Level		High/location		
Machinery space CL3 W.T. doors.		Open/closed			
Fire detection	Machinery spaces		Space on fire		(9)
Fire main		Pressure	Low		
Personnel	Deadman		Fail to acknowledge		(10)
General, control and alarm systems.	Power supply	Available (pressure)	Failure (low)		
	System function		Failure		(11)
	Console air conditioning		Failure		
	Built in test equipment	Active			
	Sequential interlock	Activated			
	Safety control		Activated	Auto trip/limit	(11)
Redundant auxiliary, system, power supply.		Status	Auto transfer		

[1] See ABS Table 41.1.
[2] See ABS Table 41.1, except Shaft Roller.
[3] See § 113.37 of this chapter.
[4] See subparts 111.33 and 111.35 of this chapter.
[5] See subparts 112.45 and 112.50 of this chapter.
[6] See § 111.12-1(c) of this chapter.
[7] See § 111.12-1 (b), (c) of this chapter.
[8] See § 58.10-15(g) of this chapter.
[9] See ABS Table 41.1, "Additional Services."

Notes on Table 62.35-50:

1. The monitoring and controls listed in this table are applicable if the system listed is provided or required. References to ABS Table 41.1 apply to the "Operation," "Display," "Alarm," and "Notes" 1 through 12, except the reference to ACCU in Note 11.
2. Safety limit controls must be provided in navigating bridge primary propulsion control systems. See § 62.35-5(c).
3. Safety trip controls and alarms must be provided for all main boilers, regardless of mode of operation. See § 62.35-20(a).
4. Loss of forced lubrication safety trip controls must be provided, as applicable.
5. Override of overspeed and loss of forced lubrication pressure safety trip controls must not be provided. See § 62.35-5(e)(2).
6. Transfer interlocks must be provided.
7. Semiconductor controlled rectifiers must have current limit controls.
8. Interlocks must be provided. See § 62.25-5(a).
9. See subparts 113.10, 161.002, and fire protection requirements of the applicable subchapters. The use of thermal detectors alone is subject to special consideration by the Commandant (G-MTH). Flame detectors may only be used in conjunction with smoke or heat detectors.
10. See § 62.50-20(b)(1).
11. Alarms and controls must be failsafe. See § 62.30-1.
12. Vital auxiliary boilers only. Also see Part 63.

Subpart 62.50—Automated Self-propelled Vessel Manning

§ 62.50-1 General.

(a) Where automated systems are provided to replace specific personnel in the control and observation of the engineering plant and spaces, or reduce overall crew requirements, the arrangements must make sure that under all sailing conditions, including maneuvering, the safety of the vessel is equal to that of the same vessel with the entire plant under fully attended direct manual supervision.

(b) Coast Guard acceptance of automated systems to replace specific personnel or to reduce overall crew requirements is predicated upon—

(1) The capabilities of the automated systems;

(2) The combination of the personnel, equipment, and systems necessary to ensure the safety of the vessel, personnel, and environment in all sailing conditions, including maneuvering;

(3) The ability of the crew to perform all operational evolutions, including emergencies such as fire or control or monitoring system failure;

(4) A planned maintenance program including routine maintenance, inspection, and testing to ensure the continued safe operation of the vessel; and

(5) The automated system's demonstrated reliability during an initial trial period, and its continuing reliability.

Note: The cognizant Officer in Charge, Marine Inspection, (OCMI) also determines the need for more or less equipment depending on the vessel characteristics, route, or trade.

(c) Equipment provided to replace specific personnel or to reduce overall crew requirements that proves unsafe or unreliable in the judgment of the cognizant Officer in Charge, Marine Inspection, must be immediately replaced or repaired or vessel manning will be modified to compensate for the equipment inadequacy.

§ 62.50-20 Additional requirements for minimally attended machinery plants.

Note: Minimally attended machinery plants include vessel machinery plants and spaces that are automated, but not to a degree where the plant could be left unattended. Emphasis is placed on the centralized remote control and monitoring of the machinery plant and machinery spaces.

(a) *General.* (1) Navigating bridge propulsion control must be provided.

(2) An ECC must be provided and must include the automatic and remote control and monitoring systems necessary to limit the operator's activity to monitoring the plant, initiating programed control system sequences, and taking appropriate action in an emergency.

(3) The ECC must include control and monitoring of all vital engineering systems, including—

(i) The propulsion plant and its auxiliaries;

(ii) Electrical power generation and distribution;

(iii) Machinery space fire detection, alarm, and extinguishing systems; and

(iv) Machinery space flooding safety systems.

(4) ECC control of vital systems must include the ability to place required standby systems, auxiliaries, and power sources in operation, unless automatic transfer is provided, and to shut down such equipment when necessary.

Note: ECC remote control need not include means for a single operator to bring the plant to standby from a cold plant or dead ship condition or controls for non-vital systems or equipment.

(b) *Alarms and instrumentation.* (1) A personnel alarm must be provided and must annunciate on the bridge if not routinely acknowledged at the ECC or in the machinery spaces.

(2) Continuous or demand instrumentation displays must be provided at the ECC to meet the system and equipment monitoring requirements of this part if the ECC is to be continuously attended. If the watchstander's normal activities include maintenance, a roving watch, or similar activities in the machinery spaces but not at the ECC, both alarms and instrumentation must be provided.

(3) All required audible alarms must annunciate throughout the ECC and machinery spaces.

(c) *Fire detection and alarms.* An approved automatic fire detection and alarm system must be provided to monitor all machinery spaces. The system must activate all alarms at the ECC, the navigating bridge, and throughout the machinery spaces and engineers' accommodations. The ECC and bridge alarms must visually indicate which machinery space is on fire, as applicable.

Note: For purposes of this part, the specific location of fires that are not in machniery spaces need not be indicated.

(d) *Fire pumps.* (1) The ECC must include control of the main machinery space fire pumps.

(2) Remote control of a required fire pump must be provided from the navigating bridge. Where one or more fire pumps is required to be independent of the main machinery space, at least one such pump must be controlled from the navigating bridge.

(e) *Flooding safety.* (1) Machinery space bilges, bilge wells, shaft alley bilges, and other minimally attended locations where liquids might accumulate must be monitored from the ECC to detect flooding angles from vertical of up to 15° heel and 5° trim.

(2) ECC must include the controls necessary to bring at least one of the bilge pumps required by subpart 56.50 of this chapter into operation to counter flooding in the locations listed in paragraph (e)(1).

(3) Where watertight doors in subdivision bulkheads are required in the machinery spaces, they must be Class 3 watertight doors and must be controllable from the ECC and the required navigating bridge control location.

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(4) Controls must be provided to operate the sea inlet and discharge valves required by § 56.50–95(d) of this chapter and the emergency bilge suction required by § 56.50–50(f). These controls must be arranged to allow time for operation in the event of flooding with the vessel in the fully loaded condition. Time considerations must include detection, crew response, and control operation time.

(f) *Communications.* (1) A means must be provided at the ECC to selectively summon any engineering department member from the engineering accommodations to the ECC.

(2) The voice communications system required by § 113.30–5(a) of this chapter must also include the engineering officers' accommodations.

(g) *Electrical systems.* (1) The ECC must include the controls and instrumentation necessary to place the ship service and propulsion generators in service in 30 seconds.

(2) The main distribution and propulsion switchboards and generator controls must either be located at the ECC, if the ECC is within the bounaries of the main machinery space, or the controls and instrumentation required by Part 111 of this chapter must be duplicated at the ECC. Controls at the switchboard must be able to override those at the ECC, if separate. Also see § 111.12–11(g) and § 111.30–1(a)(4) regarding switchboard location.

(g) *Maintenance program.* (1) The vessel must have a planned maintenance program to ensure continued safe operation of all vital systems. Program content and detail is optional, but must include maintenance and repair manuals for work to be accomplished by maintenance personnel and checkoff lists for routine inspection and maintenance procedures.

(2) The planned maintenance program must be functioning prior to the completion of the evaluation period for reduced manning required by § 62.50–1(b)(5).

(3) Maintenance and repair manuals must include details as to what, when, and how to troubleshoot, repair and test the installed equipment and what parts are necessary to accomplish the procedures. Schematic and logic diagrams required by § 62.20–1 of this part must be included in this documentation. Manuals must clearly delineate information that is not applicable to the installed equipment.

§ 62.50–30 Additional requirements for periodically unattended machinery plants.

Note. Periodically unattended machinery plants include machinery plants and spaces that are automated to the degree that they are self-regulating and self-monitoring and could safely be left periodically unattended. Emphasis is placed on providing systems that act automatically until the crew can take action in the event of a failure or emergency. Requirements are in addition to those of a minimally attended machinery plant.

(a) *General.* The requirements of this section must be met in addition to these of § 62.50–20 of this part.

(b) *Automatic transfer.* Redundant vital auxiliaries and power sources must automatically transfer to the backup units upon failure of operating units.

(c) *Fuel systems.* The fuel service and treatment system(s) must meet Section 41.77.1 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

(d) *Starting systems.* Automatic or remote starting system receivers, accumulators, and batteries must be automatically and continuously charged.

(e) *Assistance-needed alarm.* The engineer's assistance-needed alarm (see subpart 113.27 of this chapter) must annunciate if—

(1) An alarm at the ECC is not acknowledged in the period of time necessary for an engineer to respond at the ECC from the machinery spaces or engineers' accommodations; or

(2) An ECC alarm system normal power supply fails.

(f) *Remote alarms.* ECC alarms for vital systems that require the immediate attention of the bridge watch officer for the safe navigation of the vessel must be extended to the bridge. All ECC alarms required by this part must be extended to the engineers' accommodations. Other than fire or flooding alarms, this may be accomplished by summarized visual alarm displays.

(g) *ECC alarms.* All requirements of this part for system or equipment monitoring must be met by providing both displays and alarms at the ECC.

(h) *Fire control station.* A control station for fire protection of the machinery spaces must be provided outside the machinery spaces. At least one access to this station must be independent of category A machinery spaces, and any boundary shared with these spaces must have an A–60 fire classification as defined in § 72.05 of this chapter. Except where such an arrangement is not possible, control and monitoring cables and piping for the station must not adjoin or penetrate the boundaries of a category A machinery space, uptakes, or casings. The fire control station must include—

(1) Annunciation of which machinery space is on fire;

(2) Control of a fire pump required by this chapter to be independent of the main machinery spaces;

(3) Controls for machinery space fixed gas fire extinguishing systems;

(4) Control of oil piping positive shutoff valves located in the machinery spaces and required by § 56.50–60(d);

(5) Controls for machinery space fire door holding and release systems, skylights and similar openings;

(6) The remote stopping systems for the machinery listed in § 111.103 of this chapter; and

(7) Voice communications with the bridge.

(i) *Oil leakage.* Leakages from high pressure fuel oil pipes must be collected and high levels must be alarmed at the ECC.

(j) *Maintenance program.* The maintenance program of § 62.50–20(h) must include a checkoff list to make sure that routine daily maintenance has been performed, fire and flooding hazards have been minimized, and plant status is suitable for unattended operation. Completion of this checkoff list must be logged before leaving the plant unattended.

(k) *Continuity of electrical power.* The electrical plant must meet Sections 41.75.1 and 41.75.3 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels" and must—

(1) Not use the emergency generator for this purpose;

(2) Restore power in not more than 30 seconds; and

(3) Account for loads permitted by § 111.70–3(f) of this chapter to automatically restart.

PART 110—GENERAL PROVISIONS

12. The authority citation for Part 110 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

13. In § 110.25–1, by removing the existing paragraphs (i) and (j) and renumbering the existing paragraphs (k) through (p) as (i) through (n), respectively.

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

14. The authority citation for Part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

15. In Subpart 111.01, § 111.01–9 is revised to read as follows:

§ 111.01–9 Watertight, waterproof, and dripproof equipment.

(a) Electric equipment exposed to the weather or located in a space where it is exposed to seas, splashing, or similar moisture conditions must be watertight

or be in a watertight enclosure, except a motor, which must be either watertight or waterproof. A watertight enclosure must be designed in such a way that the total rated temperature of the equipment inside the enclosure is not exceeded.

(b) Central control consoles and similar control enclosures must be dripproof, regardless of location.

16. In § 111.12–11, a new paragraph (j) is added to read as follows:

§ 111.12–11 Generator protection.

* * * * *

(j) *Circuit breaker reclosing.* Generator circuit breakers must not automatically close after tripping.

17. In Subpart 111.54, a new § 111.54–3 is added to read as follows:

§ 111.54–3 Remote control.

Remotely controlled circuit breakers must have local manual means of operation.

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

18. The authority citation for Part 113 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

19. In 113.35–3, a new paragraph (f) is added to read as follows:

§ 113.35–3 General requirements.

* * * * *

(f) Engine order telegraph and remote propulsion control systems must be electrically separate and independent, except that a single mechanical operator control device with separate transmitters and connections for each system may be used.

April 1, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–10622 Filed 5–17–88; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

Sulfamethazine; Availability of National Center for Toxicological Research's Technical Report and Sulfamethazine in Food Producing Animals; Notices

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0040]

Sulfamethazine; Availability of National Center for Toxicological Research's Technical Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a technical report from its National Center for Toxicological Research (NCTR) entitled "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in Fischer 344 Rats." FDA is also announcing the availability of additional data associated with an NCTR technical report entitled "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in B6C3F1 Mice," which FDA previously made available. FDA's Center for Veterinary Medicine (CVM) is reviewing the reports. On May 25 and 26, 1988, the Commissioner of Food and Drugs will hold a public hearing on sulfamethazine use.

ADDRESS: Written requests for copies of the technical report or the additional data to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request.) The technical report and the additional data are available for public examination in the Dockets Management Branch, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Max Crandall, Center for Veterinary Medicine (HFV-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3450.

SUPPLEMENTARY INFORMATION: FDA has received from NCTR and is making available a technical report of a 24-month chronic toxicity and carcinogenesis study conducted by NCTR in which rats were fed a diet containing sulfamethazine. Sulfamethazine is a new animal drug widely used in food-producing species.

Groups of male and female rats were fed a diet containing 0, 10, 40, 600, 1200, or 2400 parts per million (ppm) sulfamethazine. The feeding portion of the study was conducted from November 1982 to December 1984. The study results showed dose-related changes in mortality, i.e., the dosed animals had a lower mortality rate than the control group. There was a slight reduction in mean body weight in each dose group relative to the control group. In the animals scheduled for sacrifice at 24 months, NCTR reported the following incidences of thyroid follicular cell adenomas and adenocarcinomas.

Dose (ppm)	Female		Male	
	Incidence	Percent	Incidence	Percent
0	6/170	4	0/170	0
10	0/86	0	2/87	2
40	1/85	1	0/84	0
600	4/84	5	4/88	5
1200	8/87	9	4/83	5
2400	9/88	10	9/87	10

The increased incidence of adenomas and adenocarcinomas was statistically significant for trend (P=0.005 for females; P=0.00005 for males). The increased incidence of adenocarcinomas alone was statistically significant for trend (P=0.003 for females; P=0.00006 for males). NCTR did not report any other significant neoplastic lesions in rats.

NCTR calculated the concentration of sulfamethazine corresponding to a 1 in 1 million lifetime risk in rats, based on thyroid follicular cell adenocarcinomas alone, to be 0.027 ppm (27 parts per billion (ppb)) for females and .023 ppm (23 ppb) for males.

In conjunction with the chronic study in rats, NCTR measured the concentrations of T3 (total triiodothyronine), T4 (total thyroxine), and TSH (thyroid-stimulating hormone) in the rats at 12, 18, and 24 months. These data were published (Ref. 1) and are presented in Tables 1, 2, and 3 below.

TABLE 1.—SERUM TRIIODOTHYRONINE (T3) LEVELS (ng/100ml)[1] IN FISCHER 344 RATS DOSED WITH SULFAMETHAZINE

Sulfamethzine dose level (ppm)	Duration of exposure (mo)		
	12	19	24
Males			
0	168±30(15)	120±45(14)	100±45(62)
10	156±28(15)	112±71(14)	112±42(30)
40	164±38(15)	126±61(13)	103±39(32)
600	159±61(15)	104±30(15)	72±35(30)
1200	176±26(15)	127±33(12)	78±31(29)
2400	173±43(15)	112±39(13)	84±46(30)
Females			
0	169±51(15)	151±31(13)	104±32(50)
10	164±54(15)	149±57(15)	96±26(23)
40	204±41(15)	124±45(14)	99±32(19)
600	208±19(15)	141±36(15)	101±35(29)
1200	175±35(15)	136±49(14)	97±42(27)
2400	206±36(14)	114±56(14)	78±31(29)

[1] Mean ± standard deviation (number of animals).

TABLE 2.—SERUM THYOXINE (T4) LEVELS (μg/100) ml)[1] IN FISCHER 344 RATS DOSED WITH SULFAMETHAZINE

Sulfamethazine dose level (ppm)	Duration of exposure (mo)		
	12	19	24
Males			
0	4.5±0.9(15)	4.0±0.7(14)	3.1±1.4(62)
10	5.7±0.7(15)	4.5±1.4(14)	3.0±1.7(31)
40	5.5±0.9(15)	4.7±1.1(13)	3.2±1.1(32)
600	5.1±1.9(15)	4.6±0.8(15)	2.3±0.9(30)[2]
1200	5.0±0.7(15)	4.1±0.8(12)	2.2±0.8(29)[2]
2400	6.1±1.2(15)	4.9±0.8(13)	2.4±1.4(30)[2]
Females			
0	3.2±1.3(15)	3.1±0.5(13)	1.9±1.0(56)
10	4.4±1.1(15)	3.9±0.9(15)	1.7±0.9(29)
40	3.9±0.8(15)	3.5±0.8(14)	1.8±0.8(28)
600	4.5±0.7(15)	3.2±0.8(15)	1.5±1.0(28)
1200	3.6±0.7(15)	2.7±0.4(14)[2]	1.4±1.1(30)
2400	4.2±1.0(14)	2.4±0.8(14)[2]	2.1±1.0(30)

[1] Mean ± standard deviation (number of animals).
[2] Significant at p <0.05. Levels of significance were compared with values for 0 dose levels.

TABLE 3.—SERUM TSH LEVELS (ng 1.00 μl)[1] IN FISCHER 344 RATS DOSED WITH SULFAMETHAZINE

Sulfamethazine dose level (ppm)	Duration of exposure (mo)		
	12	19	24
Males			
0	575±133(15)	217±61(14)	165±57(31)
10	461±135(15)	374±117(14)	155±98(20)
40	395±112(15)	347±275(13)	177±63(19)
600	670±189(15)	394±107(15)	165±55(20)
1200	631±225(15)	347±155(12)	168±60(20)
2400	709±208(15)	420±184(13)	182±76(20)
Females			
0	367±101(15)	257±121(13)	170±59(29)
10	372±93(15)	341±88(15)	170±47(21)
40	318±88(15)	285±109(14)	160±33(20)
600	515±96(15)	376±89(15)	202±98(20)
1200	464±163(15)	314±128(14)	180±52(20)
2400	435±207(14)	290±84(14)	174±42(20)

[1] Mean ± standard deviation (number of animals).

FDA is also making available additional data associated with an NCTR study in mice entitled "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in B6C3F1 Mice," which FDA previously made available (March 23, 1988; 53 FR 9492). The new data consist of the organ weights of the test animals.

The data from NCTR's rat study, like those from its mouse study, are undergoing review by the National Toxicology Program as well as FDA. The agency's decisions on the presence or absence of tumors in the test rats, like its decisions on the presence or absence of tumors in the test mice (see 53 FR 9492; March 23, 1988), will not become final until these reviews are completed. FDA does not expect the reviews of either study to be completed until fall 1988. Nonetheless, the results in rats and mice reported by NCTR raise significant questions about the safety of residues of sulfamethazine in the edible products of food-producing animals. FDA advises that *if* the incidence of thyroid lesions in rats (or mice) is confirmed, *and* FDA concludes that sulfamethazine should be regulated as a carcinogen, FDA would determine the safe concentration of residue using the agency's risk assessment procedures codified at 21 CFR 500.84 and guidelines for evaluating the safety of compounds used in food-producing animals (52 FR 49586; December 31, 1987). Based on the data in NCTR's technical report on the rat study, the permitted concentration of total residue in a total diet of 1500 grams in humans would be about 25 ppb. For each species in which sulfamethazine is approved, FDA would need to determine a target tissue and marker residue (21 CFR 500.86) from residue depletion data to ensure that the residue of carcinogenic concern would not exceed 25 ppb in the total diet of humans. Currently, FDA has sufficient residue depletion data only for swine.

The data from a total residue depletion and metabolism study in swine were previously published (Ref. 2). The concentrations of ^{14}C-residues in tissues of swine dosed with ^{14}C-sulfamethazine are shown in Table 4 below. The concentrations are parts per billion of sulfamethazine equivalents (mean ± standard error). All swine were dosed for 7 days and then sacrificed 8 hours or 2, 5, or 10 days after the last dose.

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TABLE 4

Tissue	Time after last date (days)	Total residue (parts per billion)	Sulfamethazine (parts per billion)
Skeletal Muscle	0.3	3150±170	1107±21
	2	930±100	315±59
	5	60±23	20.2±8.1
	10	4±1	0.56±0.12
Liver	0.3	6970±570	1747±478
	2	2410±410	513±121
	5	230±50	43.4±13.8
	10	62±7	4.60±1.44
Kidney	0.3	9270±830	4275±496
	2	2810±320	1364±208
	5	180±58	80.3±30.2
	10	26±4	2.35±0.35
Adipose	0.3	1200±70	288±27
	2	340±40	79±14
	5	20±9	3.8±2.1
	10	3±1	0.13±0.04

If FDA concludes that these data are reliable, FDA's application of the procedures specified in 21 CFR 500.86 to those data will result in a tolerance of approximately 5 ppb for parent sulfamethazine (the marker residue) in kidney (the target tissue) of swine to ensure that each edible tissue has total residue below the safe concentration.

Interested parties may receive a copy of the NCTR technical report "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in Fischer 344 Rats" or the additional data (for organ weights) for the chronic mouse study by writing to the Dockets Management Branch (address above).

FDA has scheduled a public hearing before the Commissioner of Food and Drugs for May 25 and 26, 1988, to provide an opportunity for interested persons to present relevant scientific data and pertinent information on the safety of sulfamethazine and whether sulfamethazine can be used in food-producing animals without illegal drug residues in tissue resulting from such use (53 FR 15886). FDA requests that, at or after the hearing (see 53 FR 15886 at 15890), interested persons address the following questions in addition to those set out in the May 4, 1988, notice of hearing (53 FR 15886 at 15888):

(1) Assuming that they are reliable, whether the data on the effects of sulfamethazine on T3, T4, and TSH levels (Ref. 1) are consistent or inconsistent with a hypothesis that the thyroid tumors in rats as reported by NCTR were caused by thyroid perturbation.

(2) What data are needed to show that the thyroid tumors in rodents following sulfamethazine feeding (as reported by NCTR) are the result of thyroid perturbation and not the result of a direct effect of sulfamethazine on the thyroid cells?

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fullerton, F.R., R.J. Kushmaul, R.L. Suber, and N.A. Littlefield, "Influence of Oral Administration of Sulfamethazine on Thyroid Hormone Levels in Fischer 344 Rats," *Journal of Toxicological and Environmental Health*, 22:175–185, 1987.

2. Mitchell, A.D. and G.D. Paulson, "Depletion Kinetics of ^{14}C-Sulfamethazine Metabolism in Swine," *Drug Metabolism and Disposition*, 14:161–165, 1986.

Dated: May 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–11076 Filed 5–13–88; 11:20 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0040]

Sulfamethazine in Food-Producing Animals; Public Hearing Before the Commissioner; Time Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in the starting time for a public hearing before the Commissioner of Food and Drugs (the Commissioner) on the safety of the new animal drug sulfamethazine and on whether sulfamethazine can be used in food-producing animals without illegal drug residues in tissue (drug residues) resulting from such use. The hearing, originally scheduled to begin at 8:30 a.m. on May 25, 1988, is being changed to begin at 10 a.m. On May 26, the hearing will begin at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT:

Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2830.

or

David F. Tishler, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6244.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 1988 (53 FR 15886), FDA announced a public hearing before the Commissioner on the safety of the new animal drug sulfamethazine and on whether sulfamethazine can be used in food-producing animals without illegal drug residues in tissue (drug residues) resulting from such use.

Residues of sulfamethazine in tissue are of particular concern at this time because FDA's National Center for Toxicological Research has recently completed a chronic toxicity and carcinogenesis feeding study of sulfamethazine in mice, the results of which indicate that sulfamethazine may be a carcinogen. FDA will use information presented at and after the public hearing, together with other data and information, to determine whether the use of sulfamethazine in food-producing animals presents an unacceptable risk to human health and, if so, an appropriate course of action to minimize that risk.

The hearing is scheduled to be held on May 25 and 26, 1988, at the Jack Masur Auditorium, Bldg. 10, Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. The hearing, originally scheduled to begin at 8:30 a.m. on May 25, is being changed to begin at 10 a.m. On May 26, the hearing will begin at 8:30 a.m.

Dated: May 11, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–11075 Filed 5–13–88; 11:20 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 5 etc.
Federal Acquisition Regulation; Miscellaneous Amendments

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, 9, 10, 13, 14, 15, 17, 19, 31, 38, 39, 42, 47, 52, and 53

[Federal Acquisition Circ. 84-37]

Federal Acquisition Regulation; Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-37 amends the Federal Acquisition Regulation (FAR) with respect to the following: Synopsis of Proposed Contract Actions; Subcontract Competition; Cost Comparison Threshold, FAR 7.302; Delivery Date for Purchase Orders; Proper Uniform Contract Format Locations for Provisions and Clauses Incorporated by Reference; Withdrawal of Bids; Use of Letter RFP for Noncompetitive Procurements; Price Proposals, Submission; Options; Small Business Set-Asides (Sec. 809(c), Pub. L. 100-180); Unallowable Costs Under FAR 31.205; Acquisition, Management, and Use of Information Resources; Visits to Contractors Facilities; Request for Revision to 52.210-1; FAR Transportation Clauses; and CICA Exception 1.

EFFECTIVE DATE: June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-37, Items I thru XV. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

B. Regulatory Flexibility Act

FAC 84-37, Items I, II, III, IV, V, VI, VII, VIII, XIII, and XIV. The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-37, Item IX. The revisions to FAR 15.804-6 and SF 1411 will neither expand existing Government rights of access to information nor will these revisions eliminate existing protections for proprietary commercial pricing data. The revisions, in limiting the right of examination to information necessary to adequately evaluate the proposed price, clarify existing policy and do not constitute significant revisions. The DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602, et seq.)

FAC 84-37, Item X. As noted in the **Federal Register** notice of October 28, 1986, the Councils had determined that the proposed rule would not have a significant effect beyond the internal operating procedures of procuring agencies or a significant cost or administrative impact on contractors or offerors. Consequently, section 22 of the Office of Federal Procurement Policy Act did not require publicizing the proposed rule for public comment. Because publicizing was not required, the Regulatory Flexibility Act did not apply to the proposal. Nevertheless, the Councils solicited public comments to facilitate maximum participation in fashioning sound procurement regulations. None of the comments received questioned the underlying assumption concerning impact and effect. Moreover, none of the revisions incorporated in the final rule appears to alter the rule's impact or effect on contractors or offerors. Accordingly, the Councils have not prepared a final regulatory flexibility analysis for the final rule.

FAC 84-37, Item XI. This final rule change to FAR 19.501(k) will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it implements a statutory requirement which does not place limitations upon subcontracting (section 921(c) of the Small Business Act.

FAC 84-37, Item XII. The change to FAR 31.204 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the new rule is merely guidance for application of the cost principles and has no economic impact on large or small business.

FAC 84-37, Item XV. This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because use of city boundaries, rather than just commercial zones designated by the Interstate Commerce Commission, is both more equitable for bidders and more in accord with commercial practice. No comments were received from small entities in response to the proposed rule.

C. Public Comments

FAC 84-37, Item II. A proposed rule was published in the **Federal Register** on October 28, 1986 (51 FR 39456). The comments that were received as a result of the proposed rule were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-37, Item VIII. A proposed rule was published in the **Federal Register** on October 15, 1986 (51 FR 36777). The comments that were received as a result of the proposed rule were considered by the Councils in the development of this final rule.

FAC 84-37, Item IX. A proposed rule was published in the **Federal Register** on June 26, 1986 (51 FR 23396). The comments that were received as a result of the proposed rule were considered by the Councils in the development of this final rule.

FAC 84-37, Item X. A proposed rule was published in the **Federal Register** on October 28, 1986 (51 FR 39456). As a result of the comments received, as well as the passage of Pub. L. 99-661, the Councils have further revised FAR Subpart 17.2 and Part 52 and are issuing the complete revisions as a final rule.

FAC 84-37, Item XII. A proposed rule was published in the **Federal Register** on April 30, 1987 (52 FR 15884). The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council considered the public comments received and concluded that there is a need to develop language in FAR 31.204, Applications of principles and procedures, to provide guidelines for determining the status of costs to which more than one cost principle is relevant and to minimize the number of interpretations of the prevailing rules. This final rule language clarifies the proposed rule coverage and describes the process for determining the relevant cost principles to apply.

This final rule language stresses two points. In instances where a cost can be subdivided, it must be apportioned among the selected cost principles in 31.205. In instances where such an apportionment cannot be accomplished, the cost principle which most specifically deals with or best captures the essential nature of the cost at issue governs. This final rule language emphasizes the need to associate costs, or elements of a cost, with the appropriate cost principles.

List of Subjects in 48 CFR Parts 5, 7, 9, 10, 13, 14, 15, 17, 19, 31, 38, 39, 42, 47, 52, and 53

Government procurement.

Dated: May 12, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-37 is effective June 17, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

John Alderson,

Acting Administrator.

May 10, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-37 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Synopsis of Proposed Contract Actions

FAR 5.207 is revised to add certain format requirements for synopses to eliminate retyping of synopses at the CBD. Strict adherence to these format requirements will allow expedited publication of notices which may result in future reduction of the presumptive time provided in FAR 5.203(f). The change also deletes existing coverage providing routing indicator codes for certain electronically transmitted synopses. Agencies are advised that the deleted codes have not changed but have been deleted only for simplification purposes. Agencies transmitting via AUTODIN are advised that the system accommodates ASCII.

Item II—Subcontract Competition

FAR 7.105(b)(2)(iv) is added to require that when subcontract competition is both feasible and desirable, contracting officers address in acquisition plans how subcontract competition will be sought, promoted, and sustained throughout an acquisition.

Item III—Cost Comparison Threshold

FAR 7.302(d) is revised as a result of a revision to OMB Circular A-76. The dollar threshold of $100,000 for conducting a cost comparison has been replaced with a fulltime equivalent (FTE) threshold of 10 FTE's (see Part I, Chapter 2, paragraph A1 of the Supplement to OMB Circular A-76).

Item IV—Delivery Date for Purchase Orders

FAR 13.501(f) provides for a determinable delivery date vice a definite calendar date as presently provided in the regulation.

Item V—Request for Revision to 52.210-1

The provision at 52.210-1, Availability of Specifications, Standards and Commercial Item Descriptions, is amended to revise the title and to eliminate the need to frequently update the General Services Administration Business Service Centers' (BSC) addresses and telephone numbers. Accordingly, FAR 9.203, 10.001, 10.003, 10.005, 10.006, 10.008, 10.011, 38.102-3, 52.210-3, and 52.210-4 are editorially revised to reflect the new title of the Index to read "GSA Index of Federal Specifications, Standards and Commercial Item Descriptions."

Item VI—Proper Uniform Contract Format for Provisions and Clauses Incorporated by Reference

Various sections of the FAR are revised to eliminate conflicting instructions regarding the proper Uniform Contract Format location for provisions and clauses incorporated by reference.

Item VII—Withdrawal of Bids

FAR 14.406-3 is revised to clarify the existing coverage concerning the delegation of authority to make determinations allowing withdrawal of bids. The revision will allow individual agencies to determine the appropriate level for the decision authority.

Item VIII—Use of Letter RFP for Noncompetitive Procurements

FAR 15.402 and 15.406 are revised to permit the use of letter requests for proposals for acquisitions conducted under 6.302, Circumstances permitting other than full and open competition.

Item IX—Price Proposals and SF 1411

FAR 15.804-6 is revised concerning submission of price proposals. FAR 53.301-1411, Contract Pricing Proposal Cover Sheet, and Standard Form (SF) 1411 are also revised.

Item X—Options

FAR Subpart 17.2 and Part 52 are revised to clarify when agencies should evaluate offers for option quantities in awarding the basic contract and when exercise of an option will satisfy the requirements of full and open competition.

Item XI—Small Business Set-Asides (Sec. 809(c), Pub. L. 100-180)

Section 15(p) of the Small Business Act (15 U.S.C. 644(p)) required contracting officers under certain conditions to release the names and addresses of those offerors expected to respond to a small business set-aside. Accordingly, FAR 19.501(k) was added in the interim rule published in the **Federal Register** on October 14, 1987 (52 FR 38188) as FAC 84-31 to implement this requirement. The Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100-180, repealed section 15(p) of the Small Business Act, therefore, FAR 19.501(k) is deleted.

Item XII—Unallowable Costs Under FAR 31.205

FAR 31.204 is revised to provide guidelines for determining the allowability of costs to which more than one cost principle is relevant. The revised language describes the process for apportioning costs among the relevant cost principles.

The revised language stresses two points. In instances where a cost can be subdivided, it must be apportioned among the selected cost principles in 31.205. In instances where such an apportionment cannot be accomplished, the cost principle which most specifically deals with or best captures the essential nature of the cost at issue governs. The revised language emphasizes the need to associate costs, or elements of a cost, with the appropriate cost principles.

Item XIII—Acquisition, Management, and Use of Information Resources

FAR Part 39 has been revised to clarify the relationship between the FAR and the FIRMR.

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Item XIV—Visits to Contractors' Facilities

FAR 42.402(b) is revised to state that the CAO will (1) consult (instead of coordinate) with the contractor, and (2) consult with the cognizant audit office to determine whether information requested by a prospective visitor adequate to fulfill the requirement has recently been reviewed by or is available within the Government. If the information exists, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located.

Item XV—FAR Transportation Clauses

FAR 47.303–1, 47.303–3, 47.303–4, 47.303–5, and the clauses at 52.247–29, 52.247–31, 52–247–32, and 52–247–33 are revised to permit the Government to designate a delivery point, for f.o.b. origin shipments, that is within the same city or commercial zone as the f.o.b. origin point specified in the contract. Therefore, 48 CFR Parts 5, 7, 9, 10, 13, 14, 15, 17, 19, 31, 36, 39, 42, 47, 52, and 53 are amended as set forth below.

FAC 84–28 was published in the Federal Register on June 9, 1987 (52 FR 21884), as an interim rule. Item II of FAC 84–28, Competition in Contracting Act (CICA) Exception 1, is hereby adopted as a final rule without change.

1. The authority citation for 48 CFR Parts 5, 7, 9, 10, 13, 14, 15, 17, 19, 31, 36, 39, 42, 47, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1) through (b)(3), and the introductory text of (b), (b)(4), with no revisions to the 17 FORMAT ITEMS; by redesignating and revising paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5); and by revising paragraph (c)(2), by removing paragraphs (c)(2)(i) and (c)(2)(ii), and redesignating existing paragraphs (c)(2)(iii) through (c)(2)(xvi) as paragraphs (c)(2)(i) through (c)(2)(xiv) to read as follows:

5.207 Preparation and transmittal of synopses.

(a) *Transmittal.* Contracting officers shall transmit synopses of actions identified under § 5.101 to the Commerce Business Daily by the most expeditious and reliable means available.

(1) *Electronic transmission.* All synopses transmitted by electronic means shall be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(2) *Hard copy transmission.* When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, IL 60680.

(b) *Format.* The contracting officer shall prepare the synopsis in the following style and format to ensure timely processing of the synopsis by the Commerce Business Daily.

(1) *General.* Format for all synopses shall employ conventional typing with abbreviations, capitalization, and punctuation all grammatically correct. Each synopsis shall include all 17 format items. Do not include the title for the format item.

(2) *Spacing.* Begin each line flush left and use double spaced lines between each format line. If more than one synopsis is sent at one time, separate each synopsis with four line spaces and begin each new synopsis with format item number 1.

(3) *Abbreviations.* Minimize abbreviations or acronyms to commonly recognized abbreviations.

(4) *Standard format.* Prepare each synopsis in the following manner. Begin each format item with the number of the item followed by a period (e.g., 1.). Then make two spaces after the period. Next type the appropriate information for each format item. Then conclude each format item with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., * * * * *).

* * * * *

(5) *Nonapplicable format items.* When a format item is not applicable, type the item number, a period, two blank spaces, and "N/A" (e.g., 10. N/A!!).

6. The following is an illustrative solicitation synopsis format:

1. P!!
2. 0925!!
3. 85!!
4. 57936!!
5. 19111–5098!!
6. 95!!
7. Defense Industrial Supply Center, 700 Robbins Ave., Philadelphia, PA 19111–5098!!
8. 95—metal plate steel!!
9. DLA500–86–B–0090!!
10. BOD, 111585!!
11. Contact, Mary Drake, 215/697–XXXX/ Contracting Officer, Larry Bird, 215/697–XXXX!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. NSN9515–00–237–5342,—Spec MIL–S–228988,—0.1875 in thk, 96 in w. 240 in lg.—Carbon steel,—45,000 lbs.—Del to NSY Philadelphia, PA, NSC Norfolk, VA.—Del by 1 Oct 86.—When calling, be prepared to state name, address and solicitation number.—See notes 4, 55.—All responsible sources may submit an offer which will be considered.* * * * *

(c) * * *

(2) Include the following elements to the extent applicable, in sequence, with each element separated by two hyphens. Do not include the Roman numeral designator preceding each element, and do not include the supply/service classification code.

* * * * *

PART 7—ACQUISITION PLANNING

3. Section 7.105 is amended by adding paragraph (b)(2)(iv) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(2) * * *

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

* * * * *

4. Section 7.302 is amended by revising paragraph (d) to read as follows:

7.302 General.

* * * * *

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity involving 10 or fewer full-time equivalents as defined in OMB Circular No. A–76. Activities below this threshold should be performed by contract unless in-house performance is justified. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study may be conducted.

PART 9—CONTRACTOR QUALIFICATIONS

5. Section 9.203 is amended by revising paragraph (b)(1) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(b) * * *

(1) GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.001 is amended by revising the definitions "Federal specification or standard" and "General Services Administration Index of Federal Specifications and Standards" to read as follows:

10.001 Solicitation provisions and contract clauses.

* * * * *

"Federal specification or standard" means a specification or standard issued or controlled by the General Services Administration (GSA) and listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

"General Services Administration Index of Federal Specifications, Standards and Commercial Item Descriptions" means the GSA publication that lists Federal specifications and standards, including supplements, that have been implemented for use by all Federal agencies.

* * * * *

7. Section 10.003 is amended by revising paragraph (a) to read as follows:

10.003 Responsibilities.

(a) The Administrator of GSA, under separate authority and regulations, prepares, maintains, and controls specifications and standards covering products commonly used by Government agencies, and lists those descriptions in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

* * * * *

8. Section 10.005 is amended by revising the first sentence of paragraph (c) to read as follows:

10.005 Management of purchase descriptions.

* * * * *

(c) Recommendations for changes in specifications and standards listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, Item Management Division, Washington, DC 20406. * * *

10.006 [Amended]

9. Section 10.006 is amended by removing in paragraph (a)(1) the words "Index of Federal Specifications and Standards" and inserting in their place the words "GSA Index of Federal Specifications, Standards and Commercial Item Descriptions".

10.008 [Amended]

10. Section 10.008 is amended in paragraphs (a), (d), and (g) by removing in each paragraph the words "Index of Federal Specifications and Standards" and inserting in each place the words "GSA Index of Federal Specifications, Standards and Commercial Item Descriptions".

10.011 [Amended]

11. Section 10.011 is amended in paragraphs (a), (c), and (d) by removing in each paragraph the words "Index of Federal Specifications and Standards" and inserting in each place the words "GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

12. Section 13.501 is amended by revising paragraph (f) to read as follows:

13.501 General.

* * * * *

(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.

* * * * *

PART 14—SEALED BIDDING

14.201–3 [Amended]

13. Section 14.201–3 is amended by removing the second sentence.

14.201–5 [Amended]

14. Section 14.201–5 is amended by removing the second sentence in paragraph (b).

15. Section 14.406–3 is amended by revising paragraph (c) to read as follows:

14.406–3 Other mistakes disclosed before award.

* * * * *

(c) If, under paragraph (a) or (b) of this subsection,

(1) The evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or

(2) The evidence reasonably supports the existence of a mistake but is not clear and convincing,

an official above the contracting officer, unless otherwise provided by agency procedures, may make a determination permitting the bidder to withdraw the bid.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

16. Section 15.402 is amended by redesignating the existing paragraph (g) as (h) and by adding a new paragraph (g) to read as follows:

15.402 General.

* * * * *

(g) Unless prohibited by agency regulations, letter RFP's may be used for acquisitions conducted under 6.302, Circumstances permitting other than full and open competition. When this technique is used, contracting officers must still comply with other portions of this regulation, such as Subparts 5.2, Synopses of Proposed Contract Actions, and 15.8, Price Negotiation. Letter RFP's should be as clear and concise as possible; exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

(1) RFP number and date.

(2) Name and address of contracting office.

(3) Type of contract contemplated.

(4) Quantity, description, and required delivery for the item.

(5) Applicable certifications and representations.

(6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable).

(7) Offer due date.

(8) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.

17. Section 15.406–1 is amended by redesignating paragraph (a)(6) as (a)(7) and by adding a new paragraph (a)(6) to read as follows:

15.406–1 Uniform contract format.

(a) * * *

(6) Letter Request for Proposals (see 15.402).

* * * * *

18. Section 15.406–2 is amended by revising paragraph (a)(1) to read as follows:

15.406–2 Part I—The Schedule.

* * * * *

(a) * * *

(1) Prepare RFP's on Standard Form 33, Solicitation, Offer and Award (53.301–33), unless otherwise permitted by this regulation. The first page of the

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SF 33 is the first page of the solicitation and includes section A of the uniform contract format.

15.406-3 [Amended]

19. Section 15.406-3 is amended by removing the third sentence in paragraph (c).

15.406-5 [Amended]

20. Section 15.406-5 is amended by removing the third sentence in paragraph (b).

21. Section 15.804-6 is amended by revising paragraph (5) in Table 15-2 in paragraph (b)(2) to read as follows:

15.804-6 Procedural requirements.

* * * * *

Table 15-2 Instructions for Submission of a Contract Pricing Proposal

* * * * *

5. By submitting offeror's proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine, at any time before award, those books, records, documents, and other types of factual information, regardless of form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

22. Section 17.200 is revised to read as follows:

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for:

(a) Services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property;

(b) Architect-engineer services;

(c) Research and development services;

(d) Automatic data processing (ADP) equipment systems; and

(e) Telecommunications equipment and services.

However, it does not preclude the use of options in those contracts.

23. Section 17.202 is amended by adding a paragraph (a) a parenthetical second sentence to read as follows:

17.202 Use of options.

(a) * * * (See 17.207(f) with regard to the exercise of options.)

* * * * *

24. Section 17.206 is revised to read as follows:

17.206 Evaluation.

(a) In awarding the basic contract, the contracting officer shall, except as provided in paragraph (b) of this section, evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See 17.208.)

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.

25. Section 17.207 is amended by revising paragraph (f) to read as follows:

17.207 Exercise of options.

* * * * *

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and Part 6. To satisfy requirements of Part 6 regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, e.g.—

(1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if—

(i) The option contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

* * * * *

26. Sectdion 17.208 is amended by revising paragraphs (b) and (c) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, a determination has been made that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) A determination has been made that there is a reasonable likelihood that the option will be exercised.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.501 [Amended]

27. Section 19.501 is amended by removing paragraph (k).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

28. Section 31.204 is amended by revising paragraph (c) to read as follows:

31.204 Application of principles and procedures.

* * * * *

(c) Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in 31.205 is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in 31.205 is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals with, or best captures the essential nature of, the cost at issue.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTS

29. Section 38.102-3 is amended by revising in paragraph (a) the third and fourth sentences to read as follows:

38.102-3 New Item Introductory Schedule.

(a) * * * These centers are listed in the provision at 52.210-1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions. The BSC screens the applications and forwards them to the GSA, Federal Supply Service (FSS), for review and acceptance or rejection. * * *

* * * * *

30. Part 39 is revised to read as follows:

PART 39—ACQUISITION OF INFORMATION RESOURCES

39.001 Policy.
39.002 Delegations of procurement authority.

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

Note.—Until more comprehensive coverage is included in the FAR, this part serves as a means of referring acquisition personnel to the Federal Information Resources Management Regulation (FIRMR) for those special policies and procedures applicable to acquisition of certain automatic data processing (ADP), telecommunications, and related resources.

39.001 Policy.

In acquiring information resources, acquisition personnel shall follow the policies and procedures contained in the FAR except in those areas where the FIRMR (41 CFR Ch. 201) prescribes special policies, procedures, provisions, or clauses.

39.002 Delegations of procurement authority.

The Administrator of General Services has certain exclusive authorities regarding acquisition of information resources which may be delegated to agencies. The FIRMR, contains blanket delegations and rules for requesting specific delegations. In addition, the FIRMR contains rules regarding other delegations that may be granted to meet specific information resources needs. Provisions for requesting these delegations are provided in the FIRMR (see particularly FIRMR Part 201-23).

PART 42—CONTRACT ADMINISTRATION

31. Section 42.402 is amended by revising paragraph (b) to read as follows:

42.402 Visits to contractors' facilities.

* * * * *

(b) If the visit will result in reviewing, auditing, or obtaining any information from the contractor relating to contract administration functions, the prospective visitor shall identify the information in sufficient detail so as to permit the CAO, after consultation with the contractor and the cognizant audit office, to determine whether such information, adequate to fulfill the requirement, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located. Where the office is the CAO, such information will be immediately forwarded or otherwise made available to the requestor.

* * * * *

PART 47—TRANSPORTATION

32. Section 47.303-1 is amended by revising paragraph (a)(4) to read as follows:

47.303-1 F.o.b. origin.

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048).

* * * * *

33. Section 47.303-3 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303-3 F.o.b. origin, freight allowed.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

* * * * *

34. Section 47.303-4 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303-4 F.o.b. origin, freight prepaid.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

35. Section 47.303-5 is amended by revising paragraph (a)(1)(iv) to read as follows:

47.303-5 F.o.b. origin, with differentials.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR Part 1048); and

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

36. Section 52.102-1 is amended by adding paragraph (d) to read as follows:

52.102-1 Incorporation by reference.

* * * * *

(d) In order to incorporate provisions and clauses by reference into the Uniform Contract Format (UCF) sections designated in the matrices in Subpart 52.3, the contracting officer shall include in such sections the following statement, appropriately completed to list the number, title, date, and source (e.g., FAR) of each of the pertinent provisions and clauses:

Notice.—The following solicitation provisions and/or contract clauses pertinent to this section are hereby incorporated by reference:

37. Section 52.107 is amended by revising paragraphs (a) and (b) to read as follows:

52.107 Provisions and clauses prescribed in Subpart 52.1.

(a) (1) The contracting officer shall insert the provision at 52.252-1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference, if the solicitation uses the Uniform Contract Format (UCF).

(2) If the solicitation incorporates provisions by reference and does not use the UCF, the contracting officer shall use the provision with its Alternate I, and shall list each of these provisions by number, title, and date.

(b) (1) The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to

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incorporate clauses by reference if the solicitation or contract uses the Uniform Contract Format (UCF).

(2) If the solicitation or contract incorporates clauses by reference and does not use the UCF, the contracting officer shall use the clause with its Alternate I, and shall list each of these clauses by number, title, and date.

* * * * *

38. Section 52.210–1 is revised to read as follows:

52.210–1 Availability of Specifications Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(a), insert the following provision:

Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988)

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Specifications Unit, 7th & D Sts., SW., Washington, DC 20407 (Tel. 202–472–2205 or 472–2140), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta GA; Chicago, IL; Kansas City, MO; Ft. Worth, TX; San Francisco, CA; Los Angeles, CA; and Auburn, WA. Additional copies may be purchased from the GSA Specifications Unit in Washington, DC.

(b) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(End of provision)

39. Section 52.210–3 is amended by revising the section title, the introductory test of the provision, the provision title and date, and by removing the derivation line following "End of provision" to read as follows:

52.210–3 Availability of specifications not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(c), insert a provision substantially the same as the following:

Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988)

* * * * *

40. Section 52.210–4 is amended by revising section title, the introductory text of the provision, the provision title and date, and by removing the derivation line following "End of provision" to read follows:

52.210–4 Availability for examination of specifications not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(d), insert a provision substantially the same as the following:

Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988)

* * * * *

41. Section 52.217–4 is revised to read as follows:

52.217–4 Evaluation of option exercised at time of contract award.

As prescribed in 17.208(b), insert a provision substantially the same as the following:

Evaluation of Options Exercised at Time of Contract Award (Jun 1988)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

42. Section 52.217–5 is revised to read as follows:

52.217–5 Evaluation of options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following:

Evaluation of Options (Jun 1988)

(a) Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

43. Section 52.247–29 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1988)"; by revising paragraph (a)(4); by removing paragraph (c)(1); by redesignating paragraph (c)(2) as new paragraph (c)(1); by redesignating and revising paragraph (c)(3) as paragraph (c)(2); and by removing both derivation lines following "(End of clause)" to read as follows:

52.247–29 F.o.b. origin.

* * * * *

(a) * * *

(4) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

* * * * *

(c) * * *

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

* * * * *

44. Section 52.247–31 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1988)"; by revising paragraph (a)(1)(iv); by removing paragraph (c)(1); by redesignating paragraph (c)(2) as new paragraph (c)(1); by redesignating and revising paragraph (c)(3) as paragraph (c)(2); and by removing both derivation lines following "(End of clause)" to read as follows:

52.247–31 F.o.b. origin, freight allowed.

* * * * *

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

* * * * *

(c) * * *

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

* * * * *

45. Section 52.247–32 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1988)"; by revising paragraph (a)(1)(iv); by removing paragraph (c)(1); by redesignating (c)(2) as new (c)(1); by redesignating and revising (c)(3) as (c)(2); and by removing

both derivation lines following "(End of clause)" to read as follows:

52.247–32 F.o.b. origin, freight prepaid.

* * * * *

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

* * * * *

(c) * * *

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense to the container yard in the same of nearest city where seavan container service is available.

* * * * *

46. Section 52.247–33 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1988)"; by revising paragraph (a)(1)(iv); and by removing all derivation lines following "(End of clause)" to read as follows:

52.247–33 F.o.b. origin, with differentials.

* * * * *

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commission at 49 CFR 1048); and

* * * * *

47. Section 52.252–1 is revised to read as follows:

52.252–1 Solicitation provisions incorporated by reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (Jun 1988)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(End of provision)

Alternate I (JUN 1988). If the solicitation incorporates provisions by reference and does not use the Uniform Contract Format—

(a) Substitute the words "the following" for the words "one or more" in the first sentence of the basic clause; and

(b) Add the following, listing by number, title, and date each provision that is incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) SOLICITATION PROVISIONS

II. [*insert regulation name*] (48 CFR CHAPTER—) SOLICITATION PROVISIONS

48. Section 52.252–2 is revised to read as follows:

52.252–2 Clauses incorporated by reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (Jun 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(End of clause)

Alternate I (JUN 1988). If the solicitation or contract incorporates clauses by reference and does not use the Uniform Contract Format—

(a) Substitute the words "the following" for the words "one or more" in the first sentence of the basic clause; and

(b) Add the following, listing by number, title, and date each provision that is incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

II. [*insert regulation name*] (48 CFR CHAPTER—) CLAUSES

PART 53—FORMS

53.215–2 [Amended]

49. Section 53.215–2 is amended by removing in paragraph (a) the date "(10/83)" and inserting in its place the date "(7/87)".

50. Section 53.301–1411 (SF 1411) is revised to read as follows:

BILLING CODE 6820–61–M

53.301-1411 Contract pricing proposal cover sheet.

CONTRACT PRICING PROPOSAL COVER SHEET	1. SOLICITATION/CONTRACT/MODIFICATION NO.	FORM APPROVED OMB NO. 9000-0013

NOTE: This form is used in contract actions if submission of cost or pricing data is required. *(See FAR 15.804-6(b))*

2. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*	3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT	3B. TELEPHONE NO.

4. TYPE OF CONTRACT ACTION *(Check)*

☐ A. NEW CONTRACT	☐ D. LETTER CONTRACT
☐ B. CHANGE ORDER	☐ E. UNPRICED ORDER
☐ C. PRICE REVISION/ REDETERMINATION	☐ F. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*
☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PROPOSED COST *(A+B=C)*

A. COST	B. PROFIT/FEE	C. TOTAL
$	$	$

7. PLACE(S) AND PERIOD(S) OF PERFORMANCE

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. *(Continue on reverse, and then on plain paper, if necessary. Use same headings.)*

A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. REF.

9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING *(If available)*

A. CONTRACT ADMINISTRATION OFFICE	B. AUDIT OFFICE

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? *(If "Yes," identify)*	11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? *(If "Yes," complete Item 11B)*	11B. TYPE OF FINANCING *(If one)*
☐ YES ☐ NO	☐ YES ☐ NO	☐ ADVANCE PAYMENTS ☐ PROGRESS PAYMENTS ☐ GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? *(If "Yes," identify item(s), customer(s) and contract number(s))*	13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31 COST PRINCIPLES? *(If "No," explain)*
☐ YES ☐ NO	☐ YES ☐ NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA *(Public Law 91-379 as amended and FAR PART 30)*

A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? *(If "No," explain in proposal)*	B. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT *(CASB DS-1 or 3)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)*
☐ YES ☐ NO	☐ YES ☐ NO
C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*	D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*
☐ YES ☐ NO	☐ YES ☐ NO

This proposal is submitted in response to the RFP, contract, modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b) (2), Table 15-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine, at any time before award, those books, records, documents and other types of factual information, regardless of form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

15. NAME AND TITLE *(Type)*	16. NAME OF FIRM

17. SIGNATURE	18. DATE OF SUBMISSION

NSN 7540-01-143-8846 1411-102 STANDARD FORM 1411 (REV. 7-87)
Prescribed by GSA
FAR (48 CFR) 53.215-2(c)

☆ U.S. GPO: 1987-181-247/60157
[FR Doc. 88-11087 Filed 5-17-88; 8:45 am]
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federal register

Wednesday
May 18, 1988

Part V

Department of Education

Office of Special Education and Rehabilitation Services

Experimental and Innovative Training Program; Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Experimental and Innovative Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1988.

SUMMARY: The Secretary announces annual funding priorities for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to areas of identified personnel need during fiscal year 1988. The Secretary gives an absolute preference to applications that meet the terms of the priorities.

EFFECTIVE DATE: These final funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of the final funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3326—M/S 2312), Washington, DC 20202. Telephone: (202) 732–1351.

SUPPLEMENTARY INFORMATION: Grants for the Experimental and Innovative Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe disabilities and to develop new and improved methods of training rehabiliation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

On March 3, 1988 the Secretary published a notice of proposed priorities for this program in the **Federal Register** (53 FR 6948–4). Except for minor technical revisions, there are no significant differences between these final priorities and the proposed priorities.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications submitted under the Experimental and Innovative Training Program that address the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies to provide effective rehabilitation services to traumatically brain-injured adults. The training must upgrade their knowledge and improve their skills: (1) To determine and substantiate the eligibility of traumatically brain-injured adults to receive rehabilitation services; (2) to evaluate the functional capacities of traumatically brain-injured adults; (3) to plan and deliver effective vocational and independent living rehabilitation services to traumatically brain-injured adults; (4) to coordinate community resources in the rehabilitation plan to address their needs; (5) to utilize rehabilitation engineering resources; and (6) to develop jobs for and place traumatically brain-injured adults in employment.

The training must include an emphasis in its curriculum on improving the capacity of personnel trained to develop linkages between providers of special education and vocational rehabilitation services and enhance coordination and transition among service providers. The training must include technical assistance to rehabilitation continuing education programs to increase their capacity to train employed personnel to provide improved rehabilitation services to traumatically brain-injured adults. This technical assistance is intended to ensure the integration and replication of training supported under this priority by rehabilitation continuing education programs. In addition, written training materials and visual aids must be developed and made available to rehabilitation continuing education programs for their use in training rehabilitation personnel to provide effective services to traumatically brain-injured adults. Program regulations for the Rehabilitation Continuing Education Programs are established at 34 CFR Part 389.

Priority 2

The training under this priority must address the training of direct service personnel to provide community-based supported employment services.

The 1986 Amendments to the Rehabilitation Act of 1973 established a State supported employment formula grant program and added supported employment as an acceptable employment outcome under the traditional vocational rehabilitation program under Title I of the Act. While supported employment is a viable rehabilitation method for achieving competitive employment for individuals with the most severe handicaps, there is critical shortage of direct service personnel, such as job coaches, to provide supported employment services. Unless this shortage is addressed, the full benefits of the new program and services under the vocational rehabilitation program may be delayed unnecessarily.

Training under this priority must be non-academic in nature. The training approach should include a sequential series of workshops or seminars and practicum experiences in community-based settings that directly involve trainees in providing supported employment services to individuals with the most severe handicaps. Programs should provide intensive training in all skill areas necessary for direct service personnel to provide effective supported employment services. Individuals who will be trained in the program should have prior experience in working with individuals with severe handicaps and may be currently employed, recruited from retirement, or already participating in another educational training program. The training may be supplementary to an existing training program.

(Authority: 29 U.S.C. 774.)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: May 4, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–11094 Filed 5–17–88; 8:45 am]

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May 18, 1988

Part VI

Department of Transportation

Coast Guard

46 CFR Parts 50, 56, and 61

Vessel Piping Systems; Supplemental Notice of Proposed Ru'emaking

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 56, and 61

[CGD 77-140]

Vessel Piping Systems

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the vessel piping systems regulations to clarify technical requirements, correct errors, and revise the lists of acceptable standards and specifications. In addition, these proposed amendments would delete the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, would incorporate industry developed standards. The affidavit system has proven to be flawed and misunderstood and many regulations are confusing or out of date. These changes would eliminate the submission of technical information for these components and reduce the overall cost burden in staff hours and paperwork for both industry and the Government, while providing a better method for ensuring that the components comply with Coast Guard regulations.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 77-140), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments will be available for examination or copying between 8 a.m. and 3 p.m., Monday through Friday, except holidays, at the Office of the Marine Safety Council, Room 2110, at the above address. Telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Howard L. Hime, Office of Marine Safety, Security and Environmental Protection, (202) 267-2206.

SUPPLEMENTARY INFORMATION: On January 9, 1985, the Coast Guard published a Notice Of Proposed Rulemaking (NPRM) entitled "Miscellaneous Changes to Parts 50 and 56" (50 FR 1072). On March 21, 1985, the period for receipt of comments was extended an additional 63 days (50 FR 11397). Since the date of the NPRM, the Coast Guard has made extensive changes and additions to the proposal. Because the comments received do not address these changes, the Coast Guard is publishing this Supplemental Notice of Proposed Rulemaking (SNPRM), retitled "Vessel Piping Systems," and asking interested parties again to submit comments.

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 77-140) and the specific section of the proposal to which each comment applies, and give the reasons for the comment. If acknowledgment of receipt of a comment is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard L. Hime, Project Manager, and Mr. Stephen H. Barber, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Rule

This proposal is intended to clarify certain technical requirements for vessel piping systems in 46 CFR Part 56, correct errors, and revise the lists of acceptable standards and specifications. In addition, this proposal would delete from 46 CFR Part 50 the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, would incorporate industry developed standards. Under 46 CFR 50.05-1, these proposals would have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment or a system is replaced, these proposals (as well as other regulations issued after the original date of acceptance) which relate to the equipment or system would be applicable to the replacement.

The reference to nuclear piping systems has been removed from various places in these regulations because these systems are required to meet the nuclear system regulations in 46 CFR Part 55. These references should have been removed when 46 CFR Part 55 was revised to include nuclear piping systems.

The term "pound" and its abbreviation "lb." appear in various places in the existing regulations to identify different pressure classes of piping components, such as valves, flanges, and fittings. The term "pound" or "lb." has been replaced by the term "class" in the text of ANSI B31.1 and in the title of several adopted ANSI standards. To bring our regulations up to date, the term "class" is being substituted for the term "pound" or "lb." For example, in § 56.25-10(b), the reference to "150 pound standard steel flanges" is revised to read "class 150 standard steel flanges".

1. *Section 50.10-20.* This section would be revised to correct the zip code in the mailing address of the Office of the Commandant.

2. *Section 50.15-20.* Paragraph (a) would be revised to include additional organizations whose standards are to be incorporated by reference into these regulations. Many organizations presently listed in this section have moved since this subchapter was last amended. Addresses of those organizations would be corrected with this rulemaking. Additionally, the organizational listing would be alphabetized to simplify locating organizations on the list.

3. *Section 50.20-5.* Paragraphs (c) and (d) would be revised to correct the zip code in the mailing address of Commandant (G-MTH) and of the Marine Safety Center.

4. *Section 50.20-15.* Paragraph (a)(3) would be revised to permit manufacturers to fabricate equipment in accordance with previously approved plans without having to resubmit the plans for review, provided that a copy of each approved plan is available for review by the approving office. With the merger of the three field technical offices into the Marine Safety Center, the existing requirement for the original plan approval to have been given by the same office from which the new approval is desired becomes moot. Marine inspectors must always have access to plans which approve items of equipment so they may ensure that fabrication is done in accordance with methods which have been determined to comply with the applicable regulatory requirements.

5. *Subpart 50.25.* This subpart would be retitled and revised to delete the affidavit system and incorporate appropriate industry standards for each specific item covered. The affidavit system was developed in the hopes of providing a convenient means for manufacturers of various piping components to certify to the Coast Guard that they are knowledgeable of Coast Guard regulations pertaining to inspected and certificated vessels and that components manufactured by them and destined to be installed on those vessels comply with the regulations. This system was intended to enable vessel owners and shipbuilders to order shipboard piping components from participating manufacturers and be sure that those components comply with Coast Guard regulations. At the time, it was believed that the affidavit system would expedite plan review because reviewers would be able to determine a piping component's acceptability simply by checking to see if it was manufactured by an accepted supplier. While the system appeared to have merit, in reality it proved to be flawed. It has proven to be misunderstood and misused by manufacturers, distributors, vessel designers, builders, owners, and Coast Guard personnel. Products supplied by, or ordered from, manufacturers who have submitted affidavits are often found not to comply with applicable regulations, however, because they are supplied by accepted manufacturers, they are often assumed to be satisfactory. The result is that purchasers and the Coast Guard cannot be sure that piping components meet the applicable regulatory requirements. Also, the affidavit system did not reduce our plan review time as intended because all components must still be checked to verify that they are suitable for their intended purpose.

Under 46 CFR 50.25-10(a), the use of affidavits is to terminate when appropriate standards are available. Since 1968, many industry standards for piping system components have been developed. Many of these are incorporated by reference into 46 CFR Part 56. The American Society for Testing and Materials (ASTM), through its Committee F-25 on Shipbuilding Standards, has established an Affidavit Task Group to develop standards for piping components not presently covered by a standard and their work is nearly complete. This rulemaking proposes to incorporate those completed standards which are considered suitable for inclusion into the regulations. In addition, standards which are completed prior to publication of the final rule which conform to the regulations will be incorporated in the final rule. Components constructed to referenced standards would be suitable for use within their design pressure and temperature ratings aboard inspected and certificated vessels. Where the regulations permit, manufacturers would have the option of fabricating piping system components to these adopted standards or of meeting the performance requirements specified in the regulations.

6. *Section 50.25-1.* This section would be revised to describe the basic acceptance criteria for materials and piping components and to remove existing Table 50.25-1(a). Paragraph (b) would inform manufacturers how to gain acceptance of materials and piping components by means of manufacturer or mill certificates. These procedures would remain virtually unchanged from the procedures currently followed by manufacturers of those components.

Paragraph (c) would be added to indicate that the acceptance of valves, fluid conditioner fittings, and special purpose fittings complying with an adopted industry standard would be through review of appropriate marking indicating compliance with the adopted industry standard.

Paragraph (d) would be added to formalize the submittal procedures currently followed by manufacturers of components which are accepted through vessel plan review, resulting in specific letters of approval or approved plans. Components are reviewed on a case-by-case basis in order that their suitability for intended applications can be verified. These reviews are done by the Marine Safety Center or the Officer in Charge, Marine Inspection, having cognizance over the actual installation of these products and are usually done in conjunction with the review of the entire piping system in which the component will be installed. Requests for such reviews are made by the vessel owner or authorized representative so that the Marine Safety Center or cognizant Officer in Charge, Marine Inspection, can deal with a single point of contact rather than with the multitude of manufacturers which supply individual components to the vessel.

Paragraph (e) would formalize the procedures currently followed for acceptance of nonmetallic hose assemblies and hydraulic components which require shock testing. These items are required to be individually accepted by the Commandant. Specific letters of acceptance for these items are issued after they have been shown to conform to applicable regulations. Specific installations of these components are then reviewed and approved by the Marine Safety Center or cognizant Officer in Charge, Marine Inspection.

Paragraph (f) would require a vessel owner or representative to make available to the Officer in Charge, Marine Inspection, the manufacturer or mill certificates, approval letters, or approved plans which grant acceptance of the piping components, in order to verify compliance with the regulations.

Table 50.25-1(a) would be removed. Many of the requirements summarized in it would be eliminated. That information which remains unchanged would be incorporated into the wording of the regulations.

7. *Section 50.25-3.* Paragraph (a) would be revised by changing "physical properties" to "mechanical properties" to reject accepted terminology.

8. *Section 50.25-5.* Paragraph (a) would be revised by removing the reference to Table 50.25-1(a). Paragraph (d)(3) would be revised by changing "physical properties" to "mechanical properties".

9. *Section 50.25-7.* Paragraph (a) would be revised by removing the reference to Table 50.25-1(a).

10. *Section 50.25-10.* This section would be revised entirely to delete the affidavit system. Paragraph (a) would specify the information to be submitted by manufacturers desiring acceptance of piping components which do not comply with an adopted industry standard. This information is essentially the same as that presently required to be submitted by manufacturers desiring to have affidavits accepted by the Coast Guard.

Paragraph (b) would specify how acceptance is designated by the Marine Safety Center or the cognizant Officer in Change, Marine Inspection.

11. *Sections 50.25-15 through 50.25-40.* These sections would be removed because special review or acceptance requirements would no longer be necessary for these piping components. The requirements in proposed § 50.25-10 would apply to acceptance of these piping components.

12. *Section 56.01.* In the note to Subpart 56.01, the reference to USAS-B31.1 has been revised to read ANSI B31.1. In 1969, the USA Standards Institute (USAS) became the American National Standards Institute (ANSI).

13. *Section 56.01-10.* In Paragraph (c)(1), the reference to nuclear systems would be removed because these systems are required to meet 46 CFR Part 55.

14. *Section 56.07-5.* Paragraph (e) would be revised to clarify the definition of a "nonstandard fitting."

15. *Section 56.15.* The heading of Subpart 56.15 would be changed to read simply "Fittings". This subpart would be divided into three sections which would separate and delineate the requirements for pipe joining fittings, fluid conditioner fittings, and special purpose fittings. This would be done to allow manufacturers of each type fitting to

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easily identify the requirements which their product must meet.

16. *Section 56.15–1.* This section would be revised by changing the heading to read "Pipe joining fittings" and by adding specific requirements for those components.

Paragraph (a) of this section would instruct manufacturers of fittings on how to obtain acceptance of their products.

Paragraph (b) would state the acceptability of fittings manufactured in accordance with standards referenced in these regulations. The remainder of the section would provide guidance for manufacturers of nonstandard pipe joining fittings who desire to have their product accepted for use aboard Coast Guard inspected and certificated vessels.

17. *Section 56.15–5.* A new section entitled "Fluid conditioner fittings" would be added.

Paragraph (a) of this section would instruct manufacturers of fluid conditioner fittings on how to obtain acceptance of their products.

Paragraph (b) would state the acceptability of fluid conditioner fittings manufactured in accordance with standards referenced in these regulations. The remainder of the section would provide guidance for manufacturers of nonstandard fluid conditioner fittings who desire to have their product accepted for use aboard Coast Guard inspected and certificated vessels.

18. *Section 56.15–10.* A new section entitled "Special purpose fittings" would be added.

Paragraph (a) of this section would instruct manufacturers of special purpose fittings on how to obtain acceptance of their products.

Paragraph (b) would state the acceptability of special purpose fittings manufactured in accordance with standards referenced in these regulations. The remainder of the section would provide guidance for manufacturers of nonstandard special purpose fittings who desire to have their product accepted for use aboard Coast Guard inspected and certificated vessels.

19. *Section 56.20–1.* This section would be amended to reflect the fact that valves would no longer be covered by the affidavit system.

Paragraph (a) of this section would instruct valve manufacturers on how to obtain acceptance of their products.

Paragraph (b) would permit the use of non-welded valves manufactured to adopted standards provided the valves are used within their specified pressure and temperature ratings, meet the limitations of §56.07–10(c) as appropriate, and are constructed of materials complying with Subpart 56.60 of this part.

Paragraph (c) would delineate the requirements which must be met by manufacturers of all other type valves.

Paragraph (d) would be revised by changing "ANSI–B16.5" to "ANSI B16.34". This change would require any penetration of the pressure wall of the valve to meet the requirements for auxiliary connections in ANSI B16.34 and reflects the proposed adoption of ANSI B16.34 for valves.

20. *Section 56.20–15.* Paragraph ((b)(2)(ii) would be revised by changing "firemain" to "fixed fire extinguishing systems." All fire fighting systems, not just the firemain, must function effectively during a fire. A Category B resiliently seated valve does not provide effective closure when the resilient material in the valve is damaged or destroyed, as would almost certainly occur when the material is subjected to a fire. Therefore, Category B valves would be prohibited in all fixed fire extinguishing systems.

21. *Section 56.25–5.* In existing paragraph (a), the reference to Appendix II, Part A, and UA–47 of Section VIII of the ASME Code would be changed to refer to Appendix 2 of Section VIII of the ASME Code. This reflects an editorial change in the ASME Code in which the Roman numerial II was revised to the Arabic number 2. Also, the reference to Table 126.1 of ANSI–B31.1 would be removed for clarification. There is no substantive in requirements.

Existing paragraph (b) would be removed because flanges would no longer be covered by the affidavit system.

22. *Section 56.25–10.* The term "pound" in paragraph (b) would be changed to "class" without changing the sustance of the provision.

23. *Section 56.25–20.* In paragraph (a)(1), the reference in Table 126.1 of ANSI B31.1 would be removed because § 56.60–1(b) replaces Table 126.1. In paragraph (a)(3), "§ 58.30–15(b)" would be corrected to "§ 56.30–15(c)".

In paragraphs (a)(1) and (b), the term "pound" would be changed to "class" without changing the substances of the provision.

24. *Section 56.30–5.* Several changes would be made to the requirements for welded joints in this section. In paragraph (b), "ASNI" is corrected to read "ANSI".

In paragraph (c)(1), the reference to "Table 126.1 of ANSI B31.1" would be changed to "Table 56.60–1(b)" because Table 56.60–1(b) replaces Table 126.1. Also, a reference to the socket weld requriements for flanges in § 56.30–10(b)(4) through (b)(6) would be added because they modify ANSI B31.1.

In paragraph (c)(2), a reference to the section containing restriction on the use of socket welds for low temperature piping would be added. The reference to nuclear piping systems would be removed because these systems are required to meet the nuclear systems regulations in 46 CFR Part 55.

Paragraph (c)(3) would be revised to conform to the latest edition of ANSI B31.1.

In paragraph (d), the references for fillet weld sizes to ANSI–B31.1 Figures 127.4.4B for flanges and 127.4.4C for socket-welds would be changed to §§ 56.30–10 and 56.30–5(c), respectively, to reflect the proposed changes in § 56.30–5(c) for fillet weld sizes.

25. *Section 56.30–10.* Several changes would be made to the requirements for flanged joints. In paragraphs (b)(2) through (b)(4), the term "pound" would be changed to "class" without change in meaning.

Paragraph (b)(2) would be reworded to clarify that threaded flanges with a strength fillet weld may be used in Class I systems not exceeding 750° F or 4 NPS, in Class II systems without diameter limitation, and in Class II–L systems not exceeding 1 NPS. The currrent requirements are confusing and conflict with other sections of the regulations. Currently, paragraph (b)(2) would permit a low-hubbed flange with screw threads plus a strength fillet weld to be used in Class I systems without diameter limitation. However, existing § 56.70–15(d)(3) requires butt type weld joints to be used in Class I systems when full radiography is required as in § 56.95–10 for systems exceeding certain pipe diameters. Existing §§ 56.30–20 and 56.70–15(d)(3) permit threaded and socket-type joints to be used in Class II piping systems without restrictions as to size. Existing § 56.50–105(a)(4) prohibits the use of threaded joints in Class I–L systems. For Class II–L systems, existing § 56.50–105(b)(4) permits threaded joints in sizes 1 inch and smaller.

In paragraph (b)(4), the reference to the section containing restrictions on the use of socket welds for low temperature piping would be added. The reference to nuclear piping systems would be removed because these systems are required to meet the nuclear system regulations in 46 CFR Part 55.

26. *Section 56.30–20.* In paragraph (b), "Table 126.1 of ANSI–B31.1" would be changed to read "Table 56.60–1(b)" because Table 56.60–1(b) replaces Table 126.1. In note 1 of Table 56.30–20(c) and paragraph (d), the reference to nuclear systems would be removed because these systems are required to meet 46 CFR Part 55.

27. *Section 56.30–25.* In paragraph (a), "Table 126.1 of ANSI–B31.1" would be changed to read "§ 56.60–1" because § 56.60–1 replaces Table 126.1. In paragraph (d), a requirement to permit threads other than taper pipe threads would be added. This would permit fittings with straight pipe threads and O–ring face seals to be used. In paragraph (f)(2), redundant language would be removed, as would the reference to § 50.25–10, because that section is completely revised in this proposed rulemaking.

28. *Section 56.30–27.* "118 of ANSI–B31.1" would be changed to "116 of ANSI B31.1" to conform with current designation.

29. *Section 56.30–40.* In paragraph (e), flexible couplings manufactured in accordance with standards adopted by these regulations would be permitted to be used within the material, size, pressure, and temperature limitations as set forth in those standards and within further limiations specified in this subchapter. Additional requirements for flexible couplings fabricated by welding are specified. The distinction between flexible couplings rated below 15 psig and those rated above 15 psig would be eliminated.

In paragraph (f), the term "screwed' would be changed to "threaded" with no change in meaning.

30. *Section 56.35–1.* The reference to nuclear piping systems in paragraph (a) would be removed because these systems are required to meet the nuclear systems regulations in 46 CFR Part 55.

31. *Section 56.35–10.* This section would be amended to eliminate the distinction between nonstandard special pupose fittings with maximum allowable pressures not exceeding 15 psig and those which do exceed 15 psig. This section would be changed to specify requirements for nonmetallic expansion joints regardless of their rated pressure. Nonmetallic expansion joints would be required to comply with standards adopted in the regulations. Also specified would be installation requirements.

The proposed requirements for nometallic expansion joints is a direct result of two recent vessel casualties. Both vessels had severe engineroom flooding when nonmetallic expansion joints in sea water service lines failed. These amendments would reduce the likelihood of similar casualties.

32. *Section 56.35–15.* This section would be amended to apply only to metallic expansion joints. The distinction between metallic expansion joints rated above 15 psig and those rated below 15 psig would be removed. This section would be changed to require metallic expansion joints to comply with adopted standards and would instruct manufacturers how to gain acceptance of their products.

33. *Section 56.50–60.* In paragraph (k), the word "deep" would be removed in two places to clarify that the provisions apply to all tanks. The existing regulation is intended to prevent flooding of spaces to undesired mixing of fluids through piping that is damaged or corroded in tanks. Because the term "deep tanks" has been variously interpreted in the past, the limitation of this requirement to "deep tanks" is removed and the provision made applicable to all tanks. Additionally, an exemption from the requirements of this paragraph would be included for bilge and ballast piping installed in tanks, provided strength and stability calculations show that crossflooding will not seriouly affect the safety of the ship and the contents of the tank and piping system are compatible.

34. *Section 56.50–55.* Paragraph (c) would be modified to clarify misunderstandings about required bilge pump capacities. The present wording of this paragraph requires each power bilge pump to have the capacity to develop a suction velocity of not less than 400 feet per minute through the size of bilge suction pipe required by § 56.50–50. Existing § 56.50–50(d) requires that the internal diameter of bilge suction pipes be as determined by a specified formula, but it also permits the use of the nearest commercial pipe size provided that it is not more than one fourth inch under the required diameter. The question has arisen as to whether or not the bilge pump capacity can be based on producing a flow velocity of 400 feet per minute through the smaller pipe instead of being based on the required pipe size as determined by formula. This would permit a bilge pump with a lesser capacity. Conversely, if an owner opts to install a larger bilge suction pipe, a flow velocity of 400 feet per minute would necessitate a pump with a greater capacity. Paragraph (c) would be amended to require each bilge pump to be capable of developing a velocity of 400 feet per minute through the size of bilge main piping required by existing § 56.50–50(d)(1). In cases where smaller piping is permitted or where the owner opts to install larger piping, the required bilge pump parameter would remain unaffected, and the volumetric flow rate through the bilge piping would be the same.

35. *Section 56.50–60.* Paragraph (d)(3)(i) would be revised by changing "all" to "fluid" in the second sentence. Only valves actuated by hydraulic or pneumatic power are intended to be provided with energy storage systems. Electrically operated valves would not be required to have stored energy sources.

36. *Section 56.50–65.* The word "propulsion" in paragraph (b)(1) would be removed to clarify that the requirements apply to both propulsion and auxiliary oil fired boilers. In paragraph (d), the term "screwed-bonnet" would be changed to "threaded-bonnet" with no change in meaning.

37. *Section 56.50–85.* Paragraph (a)(4) would be revised to require that all vents extend above the weatherdeck. Vents from fresh water tanks, bilge oily-water holding tanks, bilge slop tanks, and tanks containing Grade E combustible liquids, such as lubricating oil, would be permitted to terminate within the machinery space provided that: (1) Vents are arranged to prevent an overflow from impinging on machinery, electrical equipment, or hot surfaces; (2) tanks containing combustible liquids are not heated; and (3) vents terminate above the deep load waterline whenever the tank being vented has a boundary in common with the hull.

Existing paragraph (a)(4-a) would be redesignated as paragraph (a)(5) and be amended to delete the requirement that vents from ballast and fuel oil tanks extend above the weatherdeck. This requirement would be included in the proposed change to § 56.50–85(a)(4).

Existing paragraph (a)(5) would be redesignated as paragraph (a)(6) and be amended to define a vent "of substantial construction." Ths requirement is derived from Regulation 20 of the 1966 International Load Line Convention. This proposal replaces "substantial construction" of vent pipes with the requirement that they be "at least Schedule 40 in wall thickness." This size requirement would not impose an undue burden on industry because Schedule 40 pipe has been required by ABS Rules since 1983. Additionally, the minimum required height for vents terminating on the superstructure deck would be reduced from 18 inches to 17½ inches. This would make the vent height requirements of this subchapter identical to those found in Subchapter E, "Load Lines," and the ABS Rules.

Paragraph (a)(6) through (a)(12) would be redesignated as (a)(7) through (a)(13).

Paragraph (b) would be added for the following reasons. Tank vents should remain within the watertight subdivision boundaries in which the tanks they vent are located. On occasion, where structural configuration dictates that the

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contents of the tank be vented in an interior space, the Coast Guard has allowed tank vents to penetrate watertight subdivision bulkheads and terminate in adjacent compartments. A recent vessel casualty resulted in intercompartmental flooding when water flowed from a flooded compartment, through a tank vent penetrating the subdivision bulkhead, and into the adjacent compartment. This occurred despite the fact that the drains were fitted with check valves intended to prevent such an occurrence. Because of this, the National Transportation Safety Board recommended that whenever tank vents penetrate watertight bulkheads they be required to terminate above the weather deck. This recommendation would be incorporated into new paragraph (b). Additionally, the more fundamental issue would be addressed. Tank vents would be required to remain within the boundaries of the watertight subdivision in which the tanks they vent are located unless structural configurations would make meeting this requirement impractical.

38. *Section 56.50–96.* Paragraph (a)(2)(iv) would be revised to clarify the fairing requirements for keel coolers.

39. *Section 56.60–1.* The section heading and paragraph (b) would be amended to clarify their intent. Some readers construe the existing wording to mean that Table 128.1 of ANSI B31.1 remains in effect and that materials permitted by the acceptable commercial standards listed in Table 56.60–1(b) were accepted even though the materials did not meet § 56.60–1(a). To avoid confusion, the following nonsubstantive changes are proposed.

The section heading and the note to Table 56.60–1(a) would be amended because the table replaces Table 126.1 of ANSI B31.1.

Note 16 to Table 56.60–1(a) would be amended by correcting "§ 56.00–20" to read "§ 56.60–20".

Table 56.60–1(b) would be amended as follows:

(a) ANSI B2.2 is removed because it is obsolete and replaced by ANSI B1.20.3.

(b) MSS standard SP–37 is removed because it is obsolete.

(c) MSS standard SP–42 is removed because ANSI B16.34 covers the same items.

(d) ANSI standards B1.20.3, B16.34, and B16.42 are added.

(e) ASTM standards F682–82a, F1006–86, F1007–86, F1020–86, F1120–87, and F1123–87 are added.

Other ASTM standards for traps, drains, strainers, filters, quick disconnect couplings, fuel oil meters, nonmetallic expansion joints, and ball type expansion joints are currently under joint ASTM/Coast Guard/industry development. The standards being developed or being referenced in this proposal, contain technical requirements identical to those in the existing regulations applicable to the component. New ASTM standards conforming to existing or proposed regulations which are published before the final rule will be added at that time.

(f) The titles of several standards in the current edition are updated.

(g) The current addresses for Manufacturer's Standardization Society and Fluid Controls Institute are added.

(h) Footnote 3 (applicable to ANSI B16.5, B16.9, B16.24, and B16.34) and Footnote 4 (applicable to ANSI B16.14, B16.15, B16.18, B16.22, B16.23, B16.28, and B16.29, MSS SP–44, SP–51, SP–67, and SP–72, to FCI 69–1, and to ASTM F1006–86 and F1020–86) are added. These notes would inform readers of the additional information needed to determine compliance with general material regulations when components made to varius adopted standards are selected. They would not change existing requirements but would make the combined effect of regulations, such as § 56.15–10(a), Subpart 50.25, § 50.15–1(a), and Subpart 56.60, clearer to the reader.

40. *Section 56.60–2.* Note 9 Table 56.60–2(a) would be amended by correcting "ATMS B154" to read "ASTM B154".

41. *Section 56.60–10.* Paragraph (a) would be revised to clarify the intent that valves made of cast iron or malleable iron are limited to the pressure-temperature ratings in ANSI B16.1 for class 125 and class 250 flanges and fittings. Currently ANSI B16.1 contains requirements for cast iron flanges and fittings in classes 25, 125, 250, and 800. Originally, these classes were in different standards and ANSI B16.1 contained requirements for only class 125 flanges and fittings. Only ANSI B16.1 and B16.2, which contained requirements for class 250 flanges and fittings, were adopted in the regulations (33 FR 18843; December 18, 1968). In 1975, when ANSI B16.2 were discontinued and ANSI B16.1 was revised to include requirements for classes 25, 125, 250, and 800 flanges and fittings, the regulations were changed to delete ANSI B16.2 and adopt ANSI B16.1 for classes 125 and 250 only (40 FR 40165; September 2, 1975). However, through printing errors this change is not incorporated completely in later editions of 46 CFR Part 56.

42. *Section 56.60–15.* This section would be amended by deleting reference to ASTM A445, which is obsolete, and by including provisions for using ductile iron castings in hydraulic systems operating at pressures exceeding 1,000 psi. These provisions are being proposed at the request of industry because they are now using components in this pressure range.

43. *Section 56.60–25.* Paragraph (a)(7)(i) would be amended by adding ASTM D2665, which is suitable for sewage service and is frequently used for Marine Sanitation Device (MSD) installations. The material types would be removed to be consistent with revisions to the ASTM standards which no longer refer to material types.

Paragraph (a)(10) would be amended by including a burning rate for glass reinforced resins and other plastics. This is necessary because the acceptance criteria for flammability has been removed from ASTM D635. This burning rate is the same as that required by proposed ASTM F927 for fiberglass reinforced pipe (FGP).

In paragraph (b)(1), the term "machine survey" would be corrected to read "machinery served" with no change in requirements.

Paragraph (c)(5) would be amended by correcting the word "and" in the second line to read "end". A sentence would be added to clarify requirements for end fittings. Society of Automotive Engineers (SAE) standard J1475 would be adopted for hose end fittings. This standard was developed jointly by the Coast Guard and the SAE Fluid Conductors and Connectors Technical Committee. Section 56.97–5 would be specified for the hydrostatic test to eliminate confusion with other hydrostatic tests in § 56.97.

Paragraph (e) would be removed because the requirements for nonmetallic expansion joints would be found in proposed § 56.35–10(b).

Existing paragraph (f) would be redesignated as paragraph (e).

44. *Section 56.70–10.* Paragraph (b) would be amended by requiring fillet welds for flanges to comply with § 56.30–10(b) instead of the requirements in Figure 127.4.4B of ANSI B31.1. This is necessary to avoid any conflict in the regulations because Figure 127.4.4B permits smaller size fillet welds than required by § 56.30–10(b).

45. *Section 56.70–15.* The reference in paragraph (b) to "Table 126.1 of ANSI–B31.1" would be removed for clarification because § 56.60–1 replaces Table 126.1.

The reference in paragraph (c) to "127.4(c)" would be changed to "127.2(c)" to be consistent with the current edition of ANSI B31.1.

Paragraph (d)(1) would be amended by replacing references to Figures 127.4.4B and 127.4.4C of ANSI B31.1 with §§ 56.30–5(c) and 56.30–10(b) for fillet weld details because these sections modify the fillet weld provisions of ANSI B31.1.

Paragraph (d)(3) and (d)(4) would be amended by removing the requirement that the throat dimension of fillet welds be not less than the nominal thickness of the pipe or tube. Fillet weld sizes for socket-welding components would be required to meet § 56.30–5(c) (see proposed changes to § 56.70–15(d)(1)). The sizing of fillet welds has been reduced in ANSI B31.1 from a leg dimension of 1.4 times the nominal pipe wall thickness to 1.09 times the nominal wall thickness. The reduction to 1.09 times the nominal wall thickness provides an ideal throat size of 77% of the wall thickness. Section 56.30–5(c) permits this reduction in fillet weld size for socket weld components other than flanges.

46. *Section 61.15–12.* This new section would detail requirements for the inspection and replacement of expansion joints. In two recent vessel casualties, both vessels had severe engineroom flooding when nonmetallic expansion joints in sea water service lines failed. In this proposal, expansion joints would be required to be examined for signs of excessive wear, fatigue, deterioration, physical damage, misalignment, improper flange-to-flange spacing, and leakage during each inspection for certification. Additionally, nonmetallic expansion joints in systems which penetrate a vessel's side, where both the expansion joint and the hull penetration are below the deepest load waterline, would be required to be replaced ten years after their date of manufacture. This replacement interval is the same as currently required of nonmetallic expansion joints in manned machinery spaces aboard naval vessels.

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft evaluation has been prepared and placed in the public docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, (202) 267–1477, from 8 a.m. to 3 p.m. Copies may also be obtained by contacting that office.

Two major issues in the proposed regulations are the deletion of the affidavit system and the addition of the requirement to periodically replace certain nonmetallic expansion joints. A study conducted in 1980 concluded that the deletion of the affidavit system would result in an estimated annual savings in excess of $70,000 for the Coast Guard and $500,000 for vessel owners. Adjusting these figures by the Producer Price Index for Finished Goods for the years 1980 to 1987 results in an estimated annual savings (in 1987 dollars) of $84,000 for the Coast Guard and $600,000 for vessel owners. These savings are based on the elimination of the overall cost of the affidavit system, which was determined by evaluating the costs incurred by the Coast Guard to grant initial affidavit acceptances, evaluate products of affidavited manufacturers, and verify the proper use of affidavited products, by manufacturers to comply with the requirements of the affidavit system, and by vessel owners to purchase products from affidavited manufacturers.

Requiring vessel owners to periodically replace nonmetallic expansion joints in seawater piping systems would result in an estimated annual cost (in 1987 dollars) to vessel owners of approximately $2,520 for each steam propelled vessel and $1,172 for each diesel propelled vessel. The economic benefits of periodic replacements of nonmetallic expansion joints are difficult, if not impossible, to quantify. However, when the costs of vessel replacement and the loss of daily vessel revenues which could result from expansion joint failures are considered, the economic benefits of periodic expansion joint replacement are substantial.

Persons interested in submitting information concerning the costs associated with meeting the proposed requirements are invited to do so. This information will be used in preparing the final evaluation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As described in the Regulatory Evaluation section above, the effect of this proposal is to reduce Coast Guard and industry costs. Most of the changes proposed by this action are editorial in nature and would have a minimal economic impact. There is no reason to assume that the deletion of the affidavit system as a result of these proposed regulations would cause small entities to be unable to effectively compete against larger concerns. To the contrary, the elimination of the affidavit system would increase sales opportunities for new companies entering the marine market because prospective clients would be unable to require a company first to have an affidavit accepted by the Coast Guard. The regulations requiring periodic replacement of nonmetallic expansion joints would apply to owners of Coast Guard inspected and certificated vessels. Due to the cost of owning and operating a vessel, the annualized cost of replacements is not considered to have a significant impact. The cost will be less on smaller vessels than on larger ones. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if promulgated, would not have a significant impact on a substantial number of small entities. If, however, you feel that your business may qualify as a small entity and that the proposed rules would have a significant economic impact on your business, please notify the Coast Guard (see "ADDRESSES") and explain why you feel your business qualifies and in what way and to what degree the proposed regulations would economically affect your business.

Paperwork Reduction Act

This proposed rulemaking contains no new information or recordkeeping requirements. The information collection requirements contained in this proposed rulemaking have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2115–0142. Proposed § 50.25–10 would eliminate the requirement for a manufacturer's affidavit, Form CG–935A, thus reducing this paperwork burden. The savings associated with this reduction have been previously discussed. However, in recent year less than five affidavits per year have been received.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, these proposals will have no significant environmental impact and are categorically excluded

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from further environmental documentation. The proposed regulations revise existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Incorporation By Reference

Approval of the Director of the Federal Register to incorporate by reference the following documents will be requested before the final rule is published. Copies of these documents are available as follows:

ANSI Standards B1.20.3, B16.34, and B16.42—the American National Standards Institute, 1430 Broadway, New York, NY 10018.

ASME Specification SA–675—the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.

ASTM Specifications D2665, F682–82a, F1006–86, F1007–86, F1020–86, F1120–87, and F1123–87—the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

EJMA Standards—the Expansion Joint Manufacturers Association, Inc., 25 N. Broadway, Tarrytown, NY 10591.

MSS Standard SP–83—the Manufacturers' Standardization Society of the Valve and Fittings Industry, 127 Park Street, NE, Vienna, VA 22180.

SAE Standard J–343—the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

These documents are also available for inspection at Office of Merchant Marine Safety, Room 1218, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington DC 20593–0001.

List of Subjects in 46 CFR Parts 50, 56, and 61

Marine safety, Vessels.

For the reasons set out in the preamble, it is proposed to amend Title 46, Parts 50, 56, and 61 of the Code of Federal Regulations as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for Part 50 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 46 U.S.C. 3306, 3703; 49 CFR 1.46.

2. Section 50.10–20 is revised to read as follows:

§ 50.10–20 Headquarters.

"Headquarters" means the Office of the Commandant, U.S. Coast Guard, Washington, DC 20593–0001.

3. In § 50.15–20, paragraphs (a)(1) through (a)(13) are revised and a new paragraph (a)(14) is added to read as follows:

§ 50.15–20 Additional standards.

(a) * * *

(1) American Boat and Yacht Council, Inc. (ABYC), 190 Ketchum Avenue, Amityville, NY 11701.

(2) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005.

(3) American Welding Society (AWS), United Engineering Center, 345 East 47th Street, New York, NY 10017.

(4) Commercial Standards, Commerce Department, National Bureau of Standards, Washington, DC 20234.

(5) Compressed Gas Association (CGA), 1235 Jefferson Davis Highway, Suite 501, Arlington, VA 22202.

(6) Expansion Joint Manufacturers Association, Inc. (EJMA), 25 North Broadway, Tarrytown, NY 10591.

(7) Fluid Controls Institute, Inc. (FCI), 31 South Street, Suite 303, Morristown, NJ 07960.

(8) Manufacturers' Standardization Society of the Value and Fittings Industry (MSS), 127 Park Street NE, Vienna, VA 22180.

(9) Military specifications, which may be obtained from the Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120.

(10) National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269.

(11) National Fluid Power Association (NFPA), Post Office Box 49, Theinsville, WI 53092.

(12) Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, PA 15096.

(13) Tubular Exchanger Manufacturers' Association, Inc. (TEMA), 25 North Broadway, Tarrytown, NY 10591.

(14) Underwriters' Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709.

* * * * *

4. In § 50.20–5, paragraphs (c) and (d) are revised to read as follows and paragraph (c)(1) is removed:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(c) Plans for boilers and nuclear vessels may be submitted to the Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001. The plans will be reviewed and returned to the submitter and a copy forwarded to the Officer in Charge, Marine Inspection.

(d) Plans, other than those for boilers and nuclear vessels, may be submitted to the Marine Safety Center, U.S. Coast Guard, Washington, DC 20593–0100.

* * * * *

5. In § 50.20–15, paragraph (a)(3) is revised to read as follows:

§ 50.20–15 Previously approved plans.

(a) * * *

(3) A copy of the approved plan is available for review by the approving office.

Subpart 50.25 [Amended]

6. The heading of Subpart 50.25 is revised to read "Acceptance of Material and Piping Components."

7. Section 50.25–1 is revised to read as follows (and Table 5025–1(a) is removed):

§ 50.25–1 General.

(a) Materials and piping components used in the construction of boilers, pressure vessels, pressure piping systems, and related components are accepted by review of manufacturer or mill certificates under § 50.25–3, product marking in accordance with an adopted industry standard, or technical information indicating their compliance with the requirements of this subchapter.

(b) Materials and piping components, such as plate, bar stock, pipe, tube, standard pipe joining fittings (tees, elbows, reducers, etc.), bolting, castings, forgings, and flanges, are accepted by review of manufacturer or mill certificates. Manufacturers of these products must follow the provisions of §§ 50.25–3, 50.25–5, and 50.25–7 of this chapter.

(c) Valves, fluid conditioner fittings, and special purpose fittings complying with an adopted industry standard are accepted through review of marking indicating compliance with the adopted industry standard.

(d) Valves, fluid conditioner fittings, special purpose fittings, and pipe joining fittings not complying with an adopted industry standard are accepted for use on a case-by-case basis. Acceptance is granted by the Marine Safety Center or the Officer in Charge, Marine Inspection, having cognizance over the installation of the product. To obtain acceptance of a product, the manufacturer must submit, via the vessel owner or representative, the information described in § 50.25–10 to the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection.

(e) Components designed for hydraulic service which require shock testing under § 50.30–15(f) of this chapter and nonmetallic flexible hose assemblies must be accepted by the Commandant. Manufacturers desiring acceptance of these products must submit information necessary to show compliance with §§ 56.60–25(c) or 56.30–17 of this chapter, as applicable. Acceptance of specific installations of acceptable nonmetallic flexible hose assemblies and shock tested hydraulic components is granted by the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection, as described in paragraph (d) of this section.

(f) The vessel owner or representative shall make available to the Officer in Charge, Marine Inspection, the manufacturer of mill certificates, specific letters of acceptance, or approved plans necessary to verify that piping components comply with the requirements of this subchapter.

§ 50.25–3 [Amended]

8. In § 50.25–3, "physical tests" in paragraph (a) is revised to read "mechanical properties".

§ 50.25–5 [Amended]

9. In § 50.25–5, "as listed in Table 50.25–1(a)," in paragraph (a) is removed and "physical properties" in paragraph (d)(3) is revised to read "mechanical properties".

§ 50.25–7 [Amended]

10. In § 50.25–7, "(refer to Table 50.25–1(a))" in paragraph (a) is removed.

11. Section 50.25–10 and its headings are revised to read as follows:

§ 50.25–10 Acceptance of piping components by specific letter or approved plan.

(a) A manufacturer of a piping component which does not comply with an adopted industry standard and requiring acceptance by specific letter or approved plan must do the following:

(1) Submit an engineering type catalog or representative drawings of the component which include the pressure and temperature ratings of the component and identify the service for which it is intended.

(2) Identify materials used to fabricate the component. Materials must meet the requirements of Part 56, Subpart 56.60 of this chapter. If the component is not manufactured to accepted material specifications, the manufacturer must prove equivalency to accepted material specifications by comparing details of the material's chemical composition, mechanical properties, method of manufacture, and complete chemical and mechanical test results with an accepted material specification.

(3) Identify the industry standard, if any, to which the component is manufactured.

(4) Submit a description of nondestructive testing performed on the component.

(5) Submit a description of the marking applied to the component.

(6) Submit information showing compliance with the requirements of Part 56, Subparts 56.15, 56.20, 56.25, 56.30, or 56.35 of this chapter, as applicable.

(7) Submit any additional information necessary to evaluate the component's acceptability for its intended application.

(b) If the component is found to comply with the requirements of this subchapter, the component is designated as acceptable for its intended installation. This acceptance is in the form of a specific letter relating directly to the particular component or in the form of an approved piping system plan in which the component is identified as an integral part.

§ 50.25–15 through 50.25–40 [Removed]

12. Sections 50.25–15, 50.25–20, 50.25–25, 50.25–30, 50.25–35, and 50.25–40 are removed.

PART 56—PIPING SYSTEMS AND APPURTENANCES

13. The authority citation for Part 56 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

Subpart 56.01 [Amended]

14. In the note to Subpart 56.01 preceeding § 56.01–1, "USAS–B31.1" is revised to read "ANSI B31.1".

§ 56.01–5 [Amended]

15. In Table 56.01–5(a) of § 56.01–5, "Table 126.1 modified by . . . 56.30–5(c)(3), 56.60–1" is revised to read "Table 126.1 replaced by . . . 56.60–1."

§ 56.01–10 [Amended]

16. In § 56.01–10(c)(1), remove paragraph.

§ 56.04–1 [Amended]

17. In Table 56.04–1 of § 56.04–1, remove the number "5" after "subchapter".

18. In § 56.07–5, paragraph (e) is revised to read as follows:

§ 56.07–5 Definitions (modifies 100.2).

* * * * *

(e) *Nonstandard fittings.* "Nonstandard fitting" means a component of a piping system which is not fabricated under an adopted industry standard.

19. Subpart 56.15 consisting of §§ 56.15–1 through 56.15–10, and its heading are revised to read as follows:

Subpart 56.15—Fittings

§ 56.15–1 Pipe joining fittings.

(a) Manufacturers of pipe joining fittings may obtain acceptance of their fittings by following Part 50, Subpart 50.25 of this chapter.

(b) Threaded, flanged, socket-welding, buttwelding, and socket-brazing pipe joining fittings, made in accordance with the applicable standards in Tables 56.60–1(a) and 56.60–1(b) of § 56.60–1 and of materials complying with Subpart 56.60 of this part, may be used in piping systems within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Fittings must be designed for the maximum pressure to which they may be subjected, but in no case less than 50 pounds per square inch gage.

(c) Nonstandard pipe joining fittings must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60–1.

(2) Fittings must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c), the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Commandant (G–MTH).

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(3) Fittings must be tested in accordance with § 56.97–5.

(4) If welded, fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically accepted by the Commandant (G–MTH). In addition, the following requirements must be met:

(i) For fittings sized 3 inches and below—

(A) The longitudinal joints must be fabricated by either gas or arc welding;

(B) The first fitting of each size from the production line and at least one fitting from each lot of 100 or fraction thereof must be flattened cold until the opposite walls meet without the weld developing any cracks;

(C) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(D) If a fitting fails to meet the test in paragraph (c)(4)(i)(B) or (c)(4)(i)(C) of this section, the entire lot from which the fitting was chosen must be rejected.

(ii) For fittings sized above three inches—

(A) The longitudinal joints must be fabricated by arc welding;

(B) For pressures exceeding 150 pounds per square inch, each fitting must be radiographically examined as specified in Section VIII of the ASME Code;

(C) For pressures not exceeding 150 pounds per square inch, the first fitting from the production line and at least one fitting from each size in each lot of 20 or fraction thereof must be examined by radiography to ensure that the welds are of acceptable quality;

(D) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(E) If a fitting fails to meet the test in paragraph (c)(4)(ii)(C) or (c)(4)(ii)(D) of this section, the entire lot from which the fitting was chosen must be rejected.

(d) Single welded butt joints without the use of backing strips may be employed in the fabrication of pipe joining fittings of welded construction provided radiographic examination indicates that complete penetration is obtained.

(e) Each pipe joining fitting must be marked in accordance with MSS Standard SP–25.

§ 56.15–5 Fluid conditioner fittings.

(a) Manufacturers of fluid conditioner fittings may obtain acceptance of their fittings by following Part 50, Subpart 50.25 of this chapter.

(b) Fluid conditioner fittings, not containing hazardous materials as defined in § 150.115 of this chapter, which are made in accordance with the applicable standards listed in Table 50.60–1(b) of § 56.60–1 and of materials complying with Subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) The following requirements apply to nonstandard fluid conditioner fittings which do not contain hazardous materials as defined in § 150.115 of this chapter:

(1) The following nonstandard fluid conditioner fittings must meet the applicable requirements in § 54.01–5 (c)(3), (c)(4), and (d) of this chapter or the remaining provisions in Part 54 of this chapter, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(2) All other nonstandard fluid conditioner fittings must meet the following:

(i) All pressure-containing materials must be accepted in accordance with § 56.60–1.

(ii) Nonstandard fluid conditioner fittings must be designed so that the maximum allowable working pressure does not exceed one fourth of the burst pressure or produce a primary stress greater than one fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c), the maximum allowable working pressure must not exceed one fifth of the burst pressure or produce a primary stress greater than one fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(A) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(B) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(C) Other means specifically accepted by the Commandant (G–MTH).

(iii) Nonstandard fluid conditioner fittings must be tested in accordance with § 56.97–5.

(iv) If welded, nonstandard fluid conditioner fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically accepted by the Commandant (G–MTH).

(d) All fluid conditioner fittings that contain hazardous materials as defined in § 150.115 of this subchapter must meet the applicable requirements of Part 54 of this chapter, except Subpart 54.10.

(e) Heat exchangers having headers and tubes and brazed boiler steam air heaters are not considered fluid conditioner fittings and must meet the requirements in Part 54 of this chapter regardless of size. For brazed boiler steam air heaters, see also § 56.30–30(b)(1).

§ 56.15–10 Special purpose fittings.

(a) Manufacturers of special purpose fittings may obtain acceptance of their fittings by following Part 50, Subpart 50.25 of this chapter.

(b) Special purpose fittings made in accordance with the applicable standards listed in Table 56.60–1(b) of § 56.60–1 and of materials complying with Subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) Nonstandard special purpose fittings must meet the requirements of §§ 56.30–25, 56.30–40, 56.35–10, 56.35–15, or 56.35–35, as applicable.

20. Section 56.20–1 is revised to read as follows:

§ 56.20–1 General.

(a) Manufacturers of valves may obtain acceptance of their valves by following Part 50, Subpart 50.25 of this chapter.

(b) Non-welded valves complying with the standards listed in § 56.60–1 may be used within the specified pressure and temperature ratings of those standards, provided the limitations of § 56.07–10(c) are applied. Materials must comply with Subpart 56.60 of this part. Welded valves complying with the standards and specifications listed in § 56.60–1 may be used in Class II systems only if they meet paragraph (c) of this section.

(c) All other valves must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60–1.

(2) Valves must be designed so that the maximum allowable working pressure does not exceed one fourth of the burst pressure or produce a primary stress greater than one fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c), the maximum allowable working pressure must not exceed one fifth of the burst pressure or produce a primary stress greater than one fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code, if the valve shape permits this;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Commandant (G–MTH).

(3) Valves must be tested in accordance with § 56.97–5.

(4) If welded, valves must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically accepted by the Commandant (G–MTH).

(d) Where liquid trapped in any closed valve can be heated and an uncontrollable rise in pressure can result, means must be provided in the design, installation, and operation of the valve to ensure that the pressure in the valve does not exceed that allowed by this part for the attained temperature. (For example, if a flexible wedge gate valve with the stem installed horizontally is closed, liquid from testing, cleaning, or condensation can be trapped in the bonnet section of the closed valve.) Any resulting penetration of the pressure wall of the valve must meet the requirements of this part and those for threaded and welded auxiliary connections in ANSI B16.34.

21. In § 56.20–15, paragraph (b)(2)(ii) is revised to read as follows:

§ 56.20–15 Valves employing resilient material.

* * * * *

(b) * * *

(2) * * *

(ii) Category B valves may be used in any piping system, except in any location in a fixed fire extinguishing system or bilge system; as the positive closure for any opening in the shell of a vessel; in a position in which the valve serves as the positive shutoff valve required by § 56.50–60(d) for systems subject to internal head pressure from tanks containing flammable, combustible, or hazardous materials; or as otherwise prohibited under this subchapter.

22. Section 56.25–5 is revised to read as follows:

§ 56.25–5 Flanges.

Flanges must conform to the design requirements of the applicable standards of Table 56.60–1(b) of § 56.60–1 or Appendix 2 of Section VIII of the ASME Code. Plate flanges must meet the requirements of § 56.30–10(b)(5) and the material requirements of § 56.60–1(a). Flanges may be integral or may be attached to pipe by threading, welding, brazing, or other means within the applicable standards specified in Table 56.60–1(b) of § 56.60–1 and the requirements of this subpart. For flange facing gasket combinations other than those specified above, calculations must be submitted indicating that the gaskets will not result in a higher bolt loading or flange moment than for the acceptable configurations.

23. In § 56.25–10, paragraph (b) is revised to read as follows:

§ 56.25–10 Flange facings.

* * * * *

(b) When bolting class 150 standard steel flanges to flat face cast iron flanges, the steel flange must be furnished with a flat face, and bolting must be in accordance with § 56.25–20. Class 300 raised face steel flanges may be bolted to class 250 raised face cast iron flanges with bolting in accordance with § 56.25–20(b).

24. In § 56.25–20, paragraphs (a)(1), (a)(3), and the last sentence of paragraph (b) are revised to read as follows:

§ 56.25–20 Bolting.

(a) *General.* (1) Bolts, studs, nuts, and washers must comply with applicable standards and specifications listed in § 56.60–1. Unless otherwise specified, bolting must be in accordance with ANSI B16.5.

* * * * *

(3) See § 56.30–15(c) of this chapter for exceptions on bolting used in fluid power and control systems.

(b) * * * When class 250 cast iron flanges are used or when class 125 cast iron flanges are used with ring gaskets, the bolting material must be carbon steel conforming to ASTM Specification A307, Grade B.

* * * * *

25. In § 56.30–5, paragraphs (b)(3), (c), and (d) are revised to read as follows:

§ 56.30–5 Welded joints.

* * * * *

(b) * * *

(3) Consumable insert rings must be used. Commonly used types of butt welding end preparations are shown in ANSI B16.25.

* * * * *

(c) *Socket welds (modifies 127.3.3A).* (1) Socket welds must conform to ANSI B16.11, applicable standards listed in Table 56.60–1(b) of § 56.60–1(b), and Figure 127.4.4C in ANSI B31.1 as modified by § 56.30–10 (b)(4) through (b)(6). A gap of approximately one-sixteenth inch between the end of the pipe and the bottom of the socket must be provided before welding. This may best be provided by bottoming the pipe and backing off slightly before tacking.

(2) Socket welds must not be used where severe erosion or crevice corrosion is expected to occur. Restrictions on the use of socket welds appear in § 56.70–15(d)(3) for Class I service and in § 56.50–105 for low temperature service. These sections should be checked when designing for these systems. See § 56.70–15(d)(4) for Class II service.

(3) (Reproduces 111.3.4.) Drains and bypasses may be attached to a valve or fitting by socket welding provided the socket depth, bore diameter, and shoulder thinkness conform to ANSI B16.11.

(d) *Fillet welds.* Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A of ANSI B31.1. Fillet weld details for socket/welding components must meet § 56.30–5(c). Fillet weld details for flanges must meet § 56.30–10. See also § 56.70–15(d)(3) and (d)(4) for applications of fillet welds.

* * * * *

26. In § 56.30–10, "USA Standard" in the introductory text of paragraph (b) is revised to read "American National Standard" and paragraphs (b)(1) through (b)(5) are revised to read as follows:

§ 56.30–10 *Flanged joints (modifies 104.5.1(a)).*

* * * * *

(b) * * *

(1) *Figure 56.30–10(b), Method 1.* Flanges with screw threads may be used

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in accordance with Table 56.30–20(c) of § 56.30–20.

(2) *Figure 56.30–10(b), Method 2.* ANSI B16.5 class 150 and class 300 low-hubbed flanges with screw threads, plus the addition of a strength fillet weld of the size as shown, may be used in Class I systems not exceeding 750 °F or 4 NPS, in Class II systems without diameter limitations, and in Class II–L systems not exceeding 1 NPS. If 100 percent radiography is required by § 56.95–10 for the class, diameter, wall thickness, and material of the pipe being joined, the use of threaded flanges in not permitted and butt welding flanges must be provided. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T.

(3) *Figure 56.30–10(b), Method 3.* ANSI B16.5 slip-on flanges may be used in Class I, Class II, or Class II–L systems not to exceed the service pressure-temperature ratings for the class 300 and lower class flanges, within the temperature limitations of the material selected for use, and not to exceed 4 NPS in Class I and Class II–L systems. If 100 percent radiography is required by § 56.95–10 for the class, diameter, wall thickness, and material of the pipe being joined, the use of slip-on flanges is not permitted and a butt welding flange must be provided. The configuration in Figure 127.4.4B(b) of ANSI B31.1 utilizing a face and backweld may be preferable in those applications where it is desirable to eliminate void spaces. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T and the distance from the face of flange to the end of the pipe may be a maximum of three-eighths inch. Restrictions on the use of slip-on flanges appear in § 56.50–105 for low temperature piping systems.

(4) *Figure 56.30–10(b), Method 4.* ANSI B16.5 socket welding flanges may be used in Class I, II, or II–L systems not exceeding 3 NPS for class 600 and lower class flanges and 2½ NPS for class 900 and class 1500 flanges within the service pressure-temperature ratings of the standard. Whenever full radiography is required by § 56.95–10 for the class, diameter, and wall thickness of the pipe being joined, the use of socket welding flanges is not permitted and a butt weld type connection must be provided. For Class II piping, socket welding flanges may be used without diameter limitation, and the size of the fillet weld may be limited to a maximum of 0.525 inch instead of 1.4T. Restrictions on the use of socket welds appear in § 56.50–105 for low temperature piping systems.

(5) *Figure 56.30–10(b), Method 5.* Flanges fabricated from steel plate meeting the requirements of Part 54 of this chapter may be used for Class II piping for pressures not exceeding 150 pounds per square inch and temperatures not exceeding 450 °F. Plate material listed in USC–6(b) of Section VIII of the ASME Code may not be used in this application, except that material meeting ASTM Specification A36 may be used. The fabricated flanges must conform at least to the American National Standard class 150 flange dimensions. The size of the strength fillet weld may be limited to a maximum of 0.525 inches instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eights inch.

* * * * *

§ 56.30–20 [Amended]

27. In § 56.30–20, "Table 126.1 of ANSI–B31.1" in paragraph (b) is revised to read "Table 56.60–1(b) of § 56.60–1", "and nuclear" in paragraph (d) and note 1 of Table 56.30–20(c) is removed, and Table 56.30–20(c) is relocated after paragraph (c).

28. In § 56.30–25, paragraphs (a), (d), and (f)(2) are revised to read as follows:

§ 56.30–25 Flared, flareless, and compression joints.

(a) Flared, flareless, and compression type tubing fittings may be used for tube sizes not exceeding 2-inch outside diameter within the limitations of applicable standards and specifications listed in § 56.60–1 and of this section.

* * * * *

(d) Threads must be either American National Standard taper pipe threads or Dryseal American National Standard taper pipe threads. Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seating surface other than the threads and where experience or testing has demonstrated that the threads are suitable.

* * * * *

(f) * * *

(2) Grip-type fittings that are tightened in accordance with the manufacturers' instructions need not be disassembled for checking. For fluid services (other than hydraulic systems) using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that, flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel copper, or copper nickel alloy. When using copper or copper zinc alloys, flared fittings are required. See also § 56.50–70 for gasoline fuel systems and § 56.50–75 for diesel fuel systems. In the case of hydraulic systems, flareless fittings of the bite type may be used where experience or testing has demonstrated that the fittings are suitable.

29. Section 56.30–27 is revised to read as follows:

§ 56.30–37 Caulked joints.

Caulked joints may not be used in marine installations.

30. In § 56.30–40, paragraph (e) is revised to read as follows and, in the last sentence of paragraph (f), the word "screwed" revised to read "threaded":

§ 56.30–40 Flexible pipe couplings of the compression or slip-on type.

* * * * *

(e) Flexible couplings made in accordance with the applicable standards listed in Table 56.60–1(b) of § 56.60–1(b) and of materials complying with Subpart 56.60 of this part may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Flexible couplings fabricated by welding must also comply with Part 57 of this chapter.

* * * * *

§ 56.35–1 [Amended]

31. In § 56.35–1, ", and for the primary piping of nuclear power systems" in paragraph (a) is removed.

32. Section 56.35–10 is revised to read as follows:

§ 56.35–10 Nonmetallic expansion joints (replaces 119.5.1).

(a) Manufacturers of nonmetallic expansion joints may obtain acceptance of their expansion joints by following Part 50, Subpart 50.25 of this chapter.

(b) Nonmetallic expansion joints must conform to the standards listed in Table 56.60–1(b) of § 56.60–1(b). Nonmetallic expansion joints may be used within their specified pressure and temperature rating in vital and nonvital machinery sea connections inboard of the skin valve. These joints must not be used to correct for improper piping workmanship or misalignment. Joint movements must not exceed the limits set by the joint manufacturer.

33. Section 56.35–15 is revised to read as follows:

§ 56.35–15 Metallic expansion joints (replaces 119.5.1).

Metallic expansion joints must conform to the standards listed in Table 56.60–1(b) of § 56.60–1(b) and may be used within their specified pressure and temperature rating. Manufacturers of metallic expansion joints may obtain acceptance of their expansion joints by following Part 50, Subpart 50.25 of this chapter.

34. In § 56.50–50, paragraph (k) is revised to read as follows:

§ 56.50–50 Bilge and ballast piping.

* * * * *

(k) Where bilge and ballast piping is led through tanks, except ballast piping in ballast tanks, means must be provided to prevent the flooding of other spaces in the event of pipe leakage within the tanks. The piping may be in an oiltight or watertight pipe tunnel, may be of Schedule 80 pipe wall thickness fitted with expansion bends with all joints within the tanks welded, or may be installed using other designs acceptable to the Commandant. Where a pipe tunnel is installed, the watertight integrity of the bulkheads must be maintained and, if the pipe tunnel is not of sufficient size to afford easy access, no valve or fitting must be located within the tunnel. These requirements need not be met provided the contents of the tank and piping system are compatible and provided strength and stability calculations show that crossflooding resulting from a pipe leak between the tank and the spaces through which the piping passes will not seriously affect the safety of the ship, including the launching of lifeboats due to the ship's listing. Bilge lines led through tanks without a pipe tunnel must be fitted with nonreturn valves at the bilge suctions.

35. In § 56.50–55, paragraph (c) is revised to read as follows:

§ 56.50–55 Bilge pumps.

* * * * *

(c) *Capacity of independent power bilge pump.* Each power bilge pump must have the capacity to develop a suction velocity of not less than 400 feet per minute through the size of bilge main piping required by § 56.50–50(d)(1) under ordinary conditions; except that, for vessels of less than 65 feet in length not engaged on international voyages, the pump must have a minimum capacity of 25 gallons per minute and need not meet the velocity requirement of this paragraph.

* * * * *

36. In § 56.50–60, paragraphs (d)(3) introductory text and (d)(3)(i) are revised to read as follows:

§ 56.50–60 Cargo oil systems and fuel oil systems for boilers and internal combustion engines; transfer systems; and general arrangements.

* * * * *

(d) * * *

(3) Power operated valves installed to comply with the requirements of this paragraph must meet the following requirements:

(i) Valve actuators must be capable of closing the valves under all conditions, except during physical interruption of the power system (e.g. cable breakage or tube rupture). Fluid power actuated valves, other than those opened against spring pressure, must be provided with an energy storage system which is protected from fire and collision, as far as practicable. The storage system must be used for no other purpose and must have sufficient capacity to cycle all connected valves from the initial valve position to the opposite position and return. The cross connection of this system to an alternate power supply will be given consideration by the Commandant.

* * * * *

§ 56.50–65 [Amended]

37. In § 56.50–65, "propulsion" is removed from paragraph (b)(1) and "screwed-bonnet" in paragraph (d) is revised to read "threaded-bonnet".

38. In § 56.50–85, the introductory text of paragraph (a) and paragraphs (a)(4) and (a)(5) are revised, paragraph (a)(4–a) is removed, existing paragraphs (a)(6) through (a)(12) are redesignated as paragraphs (a)(7) through (a)(13), and new paragraph's (a)(6) and (b) are added to read as follows:

§ 56.50–85 Tank vent piping.

(a) This section applies to vents for all independent, fixed, non-pressure tanks or containers or for spaces in which liquids, such as fuel, ship's stores, cargo, or ballast, are carried.

* * * * *

(4) Tank vents must extend above the weather deck, except vents from fresh water tanks, bilge oily-water holding tanks, bilge slop tanks, and tanks containing Grade E combustible liquids, such as lubricating oil, may terminate in the machinery space, provided—

(i) The vents are arranged to prevent overflow on machinery, electrical equipment, and hot surfaces;

(ii) Tanks containing combustible liquids are not heated; and

(iii) The vents terminate above the deep load waterline if the tanks have boundaries in common with the hull.

(5) Vents from oil tanks must terminate not less than three feet from any opening into living quarters.

(6) Vents extending above the freeboard deck or superstructure deck from fuel oil and other tanks must be at least Schedule 40 in wall thickness. Except for barges in inland service and for Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches on the freeboard deck and 17½ inches on the superstructure deck. On Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches on the freeboard deck, 24 inches on the raised quarterdeck, and 12 inches on other superstructure decks. Where the height of vents on Great Lakes vessels may interfere with the working of the vessel, a lower height may be accepted by the Commandant provided the vent cap is properly protected from mechanical damage. For barges in inland service, the vents must extend at least six inches above the deck. A lesser amount may be accepted by the Commandant if evidence is provided that a particular vent has proven satisfactory in service.

* * * * *

(b) Tank vents must remain within the watertight subdivision boundaries in which the tanks they vent are located. Where the structural configuration of a vessel makes meeting this requirement impracticable, the Commandant may permit a tank vent to penetrate a watertight subdivision bulkhead. All tank vents which penetrate watertight subdivision bulkheads must terminate above the weather deck.

39. In § 56.50–96, paragraph (a)(2)(iv) is revised to read as follows:

§ 56.50–96 Keel cooler installations.

(a) * * *

(2) * * *

(iv) The forward end of the structure must be faired to the hull such that the horizontal length of the fairing is no less than four times the height of the structure.

40. In § 56.60–1, the section heading, paragraph (b), the table heading, headnote and note 16 to Table 56.60–1(a), and the heading, footnote 2 and table entries to Table 56.60–1(b) are revised to read as follows; and, in Table 56.60–1(b), ANSI standard B2.2 and MSS standards SP–37, SP–42, and SP–66 are removed and ANSI standards B1.20.3, B16.34 and B16.42, ASTM standards F682–82a, F1006–86, F1007–86, and F1020–86, and footnotes 3 and 4 are added to read as follows:

§ 56.60–1 Acceptable materials and specifications (replaces 123 and Table 126.1 in ANSI B31.1).

* * * * *

(b) Components made in accordance with the commercial standards listed in Table 56.60–1(b) and made of materials complying with § 56.60–1(a) of this chapter may be used in piping systems within the limitations of the standards and within any further limitations specified in this subchapter.

Table 56.60–1(a)—Adopted Specifications and Standards (Replaces Table 126.1).

Note: Table 56.60–1(a) identifies the acceptable pipe, tubing, and fitting specifications intended for piping system use and replaces Table 126.1 in ANSI B31.1. Piping system applications will be considered if certification of mechanical properties is furnished. Without this certification, use is limited to applications inside heat exchangers that insure containment of the material inside a pressure shell.

* * * * *

Note: * * *

* * * * *

[10] Copper pipe must not be used for hot oil systems except for short flexible connections at burners. Copper pipe must be annealed before installation in Class I piping systems. See also §§ 56.70–5(c) and 56.60–20.

* * * * *

TABLE 56.60–1(a)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS

[Replaces table 126.1]

ANSI Standards (American National Standards Institute), 1430 Broadway, New York, NY 10018

* * * * *

B1.20.3..... Dryseal Pipe Threads.

* * * * *

B16.1..... C.I. Flanges and Fittings-Classes 125 and 250 Only.

B16.3..... M.I. Threaded Fittings-Classes 150 and 300.

B16.4..... C.I. Threaded Fittings-Classes 125 and 250.

B16.5..... Steel Pipe Flanges and Flanged Fittings.[9]

B16.9..... Steel Buttwelding Fittings.[9]

* * * * *

TABLE 56.60–1(a)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS

[Replaces table 126.1]

B16.14..... Ferrous-Threaded Plugs, Bushings and Locknuts.[4]

B16.15..... Cast Bronze Threaded Fittings-Classes 125 & 250.[4]

B16.18..... Cast Brass Solder Joints.[4]

* * * * *

B16.22..... Wrought Copper and Bronze Solder Joint Fittings.[4]

B16.23..... Cast Bronze Solder-Joint Drainage Fittings.[4]

B16.24..... Brass or Bronze Flanges and Fittings-Classes 150 and 300.[9]

* * * * *

B16.28..... Wrought Steel Buttwelding Short Radius Elbows and Returns.[4]

B16.29..... Wrought Copper and Wrought-Copper Alloy Solder Joint Drainage Fittings.[4]

B16.34..... Valves-Flanged and Buttwelding End.[9]

B16.42..... Ductile Iron Pipe Flanges and Fittings.[9]

* * * * *

ASTM Standards (American Society for Testing and Materials), 1916 Race St., Philadelphia, PA 19103

F682–82a.. Wrought Carbon Steel Sleeve-Type Couplings.

F1006–86.. Entrainment Separators for Use in Marine Piping Applications.[4]

F1007–86.. Pipe Line Expansion Joints of the Packed Slip Type for Marine Applications.

F1020–86.. Line Blind Valves for Marine Applications.[4]

F1120–87.. Standard Specification for Circular Metallic Bellows Type Expansion Joints.

F1123–87.. Standard Specification for Non-Metallic Expansion Joints.

FCI Standards (Field Controls Institute, Inc.), 31 South Street, Suite 303, Morristown, NJ 07960

FCI 69–1.... Pressure Rating Standard for Steam Traps.[4]

MSS Standards (Manufacturers' Standardization Society of the Valve and Fittings Industry), 127 Park Street NE, Vienna, VA 22180

* * * * *

SP–25..... Standard Marking System for Valves, Fittings, Flanges and Unions.

SP–44..... Steel Pipe Line Flanges.[4]

* * * * *

SP–51..... Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings.[4]

* * * * *

SP–67..... Butterfly Valves.[10]

* * * * *

SP–72..... Ball Valves with Flanged or Butt-Welding Ends for General Service.[4]

* * * * *

TABLE 56.60–1(a)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS

[Replaces table 126.1]

SP–83..... Carbon Steel Pipe Unions Socket-Welding and Threaded.

[1] [Removed and Reserved]

[2] In addition, for bronze valves, adequacy of body shell thickness shall be satisfactory to the Commandant, and refer to § 56.60–10 for cast iron valves.

[3] Mill or manufacturer's certification is not required, except where a needed portion of the required marking is deleted due to size or is absent due to age of existing stocks.

[4] Because this standard offers the option of several materials, some of which are not generally acceptable to the Coast Guard, compliance with the standard does not necessarily indicate compliance with these regulations. The marking on the component or the manufacturer or mill certificate must indicate the material specification and/or grade as necessary to fully identify the materials used. The material used must comply with the requirements in this subchapter relating to the particular application.

§ 56.60–2 [Amended]

41. In § 56.60–2, "ATMS B154" in footnote 9 to Table 56.60–2(a) is revised to read "ASTM B154".

42. In § 56.60–10, paragraph (a) is revised to read as follows:

§ 56.60–10 Cast iron and malleable iron.

(a) The low ductility of cast iron and malleable iron should be recognized and the use of these metals where shock loading may occur should be avoided. Cast iron and malleable iron fittings conforming to the specifications of Table 56.60–1(a) of § 56.60–1 may be used at pressures not exceeding the limits of the applicable standards of Table 56.60–1(b) of § 56.60–1 at temperatures not exceeding 450°F. Valves of either of these materials may be used if they conform to the standards for class 125 and class 250 flanges and flanged fittings in ANSI B16.1 and if their service does not exceed the rating as marked on the valve.

* * * * *

43. Section 56.60–15 is revised to read as follows:

§ 56.60–15 Ductile iron.

(a) Ductile cast iron components made of material conforming to ASTM A395 may be used within the service restrictions and pressure-temperature limitations of UCD–3 of Section VIII of the ASME Code.

(b) Ductile iron castings may be used in hydraulic systems at pressures in excess of 1000 psi, provided:

(1) The castings receive a ferritizing anneal when the as cast thickness does not exceed one inch;

(2) Large castings for components, such as hydraulic cylinders, are examined as specified for a casting quality factor of 90 percent in accordance with UG–24 of Section VIII of the ASME Code; and

(3) The castings are not welded, brazed, plugged, or otherwise repaired.

(c) Ductile iron castings must be hydrostatically tested after machining to twice their maximum allowable working pressure and must show no leaks.

44. In § 56.60–25, paragraphs (a)(7)(i)(*a*), (a)(7)(i)(*b*), (a)(10)(c)(5) are revised to read as follows, "machine survey" in paragraph (b)(1) is revised to read "machinery served", paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e):

§ 56.60–25 Nonmetallic materials.

(a) * * *

(7) * * *

(i) * * *

(A) *Pipe (PVC).*

ASTM D1785 (Schedule 40, 80, 120).
ASTM D2241 (Standard Dimension Ratio).
ASTM D2665.

(B) *Fittings (PVC).*

ASTM D2464 (Schedule 80 threaded).
ASTM D2466 (Schedule 40 socket).
ASTM D2467 (Schedule 80 socket).
ASTM D2665.

(10) Materials, such as glass reinforced resins or other plastics, may be authorized by the Commandant if full mechanical and physical properties and chemical description are furnished. Flammability of the material must be determined by standard test methods ASTM D635 and ASTM D2863. The average extent of burning must be less than 10 mm, the average time of burning must be less than 50 seconds, and the limiting oxygen index must be greater than 21.

* * * * *

(c) * * *

(5) Nonmetallic hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J1475 (Hydraulic Hose Fittings For Marine Applications). Field attachable fitting must be installed following the manufacturer's recommended practice (method). If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5.

* * * * *

45. In § 56.70–10, the heading and paragraph (b) are revised to read as follows:

§ 56.70–10 Preparation (modifies 127.3).

* * * * *

(b) *Fillet welds (modifies 127.3.2).* In making fillet welds, the weld metal must be deposited in such a way as to obtain adequate penetration into the base metal at the root of the weld. Piping components which are to be joined utilizing fillet welds must be prepared in accordance with applicable provisions and requirements of this section. For typical details, see Figures 127.4.4A and 127.4.4C of ANSI B31.1 and Figure 56.30–10(b) of § 56.30–10. See § 56.30–5(d) for additional requirements.

46. In § 56.70–15, "(Reproduce 127.4(cc))" in paragraph (b)(5) is revised to read "(Reproduces 127.2(c))", "Table 126.1 of ANSI–B31.1 and" in paragraph (c) is removed, and paragraph (d) is revised to read as follows:

§ 56.70–15 Procedure.

* * * * *

(d) *Fillet welds.* (1) Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A in ANSI B31.1. Fillet weld details for socket-welding components must meet § 56.30–5(c). Fillet weld details for flanges must meet § 56.30–10.

(2) The limitations on cracks and undercutting set forth in paragraph (b)(8) of this section for girth welds are also applicable to fillet welds.

(3) Class I piping not exceeding 3 NPS and not subject to full radiography by § 56.95–10 may be joined by sleeves fitted over pipe ends or by socket type joints. Where full radiography is required, only butt type joints may be used. The inside diameter of the sleeve must not exceed the outside diameter of the pipe or tube by more than 0.080 inch. Fit between socket and pipe must conform to applicable standards for socket weld fittings. Depth of insertion of pipe or tube within the socket or sleeve must not be less than three-eighths inch. The fillet weld must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10.

(4) Sleeve and socket type joints may be used in Class II piping systems without restriction as to size of pipe or tubing joined. Applicable standards must be followed on fit. The fillet welds must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10.

* * * * *

PART 61—PERIODIC TESTS AND INSPECTIONS

47. The authority citation for Part 61 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

48. A new § 61.15–12 is added to read as follows:

§ 61.15–12 Expansion joints.

(a) Expansion joints must be examined at each inspection for certification for signs of excessive wear, fatigue, deterioration, physical damage, misalignment, improper flange-to-flange spacing, and leakage.

(b) A nonmetallic expansion joint must be replaced ten years after its date of manufacture if it is located in a system which penetrates the vessel's side and both the penetration and the nonmetallic expansion joint are located below the deepest load waterline.

Date: May 10, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Enviromental Protection.

[FR Doc. 88–10952 Filed 5–17–88; 8:45 am]
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Part VII

Department of Education

Law-Related Education Program; Notices

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DEPARTMENT OF EDUCATION

Law-Related Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority under the Law-Related Education Program.

SUMMARY: The Secretary proposes a funding priority for the Law-Related Education Program.

DATE: Comments must be received on or before June 17, 1988.

ADDRESS: All comments should be addressed to Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW., Room 4132, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Secretary's Discretionary Fund. Telephone (202) 732–3566.

Proposed Absolute Priority for Fiscal Year 1988: In accordance with 34 CFR 75.105 (b) and (c)(3), the Secretary has chosen as an absolute priority civics-related projects focusing on the bicentennial of the U.S. Constitution. Only applications proposing activities under this priority will be considered.

Within this absolute priority, the Secretary encourages applications that will lead to greater knowledge and understanding of "The Federalist Papers," an authoritative analysis of the U.S. Constitution written by Alexander Hamilton, James Madison and John Jay.

The Secretary is particularly interested in supporting projects that will:

- Implement alternative strategies to use "The Federalist Papers" in the national celebration activities of the U.S. Constitution.
- Involve creative use of community resources, including eminent scholars and professionals, to stimulate student interest in and understanding and appreciation of "The Federalist Papers."
- Improve teacher qualifications and skills fostering substantive knowledge about "The Federalist Papers."
- Demonstrate the importance of "The Federalist Papers" to students in a manner that reflects the fundamental principles underlying the U.S. Constitution.

The above examples of ways to implement the absolute priority are only suggestions. Applicants are encouraged to propose activities other than these examples.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed absolute priority.

All comments will be available for public inspection, during and after the comment period, in Room 4132, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Regulations: (a) The Law-Related Education Program regulations, 34 CFR Part 241; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78 and 79.

Program authority: 20 U.S.C. 3851.

(Catalog of Federal Domestic Assistance No. 84.123, Law-Related Education Program)

Dated: April 22, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–11097 Filed 5–17–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA NO. 84.123B]

Notice Inviting Applications for New Awards Under the Law-Related Education Program for Fiscal Year 1988

Purpose: To invite applications to conduct civics-related projects focusing on the bicentennial of the U.S. Constitution.

Deadline for Transmittal of Applications: July 5, 1988.

Applications Available: May 25, 1988.

Available Funds: $900,000.

Estimated Range of Awards: $10,000 – $75,000.

Estimated Average Size of Awards: $36,500.

Estimated Number of Awards: 25.

Project Period: 12 Months.

Priority: The Secretary has proposed in a notice in this issue of the **Federal Register**, an absolute priority for projects to conduct civics-related projects focusing on the bicentennial of the U.S. Constitution. Subject to the Secretary's adoption of a final priority after consideration of public comments, applications must meet the proposed absolute priority in order to be eligible to be considered for an award.

Important Note to Applicants: Applicants should note that a notice announcing a separate grant competition for law-related education projects was published in the **Federal Register** on November 5, 1987 (52 FR 42471). Applications under both competitions will be carefully reviewed to ensure that no grantee receives duplicative Federal funding.

Applicable Regulations: (a) The Law-Related Education Program regulations, 34 CFR Part 241; (b) when adopted in final form, the Notice of Proposed Funding Priorities under the Law-Related Education Program published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priority. If there are any substantive changes made in the proposed priority when it is published in final form, applicants will be given the opportunity to amend or resubmit their applications; and (c) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW. Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 3851.

Dated: April 22, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–11098 Filed 5–17–88; 8:45 am]

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Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

North Pacific Fur Seal; Pribilof Island Population, Designation as Depleted; Final Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50219-8058]

North Pacific Fur Seal; Pribilof Island Population; Designation as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The NMFS is designating the Pribilof Island population of North Pacific fur seals as depleted under the Marine Mammal Protection Act (MMPA). This action is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). Since the current Pribilof Island population of North Pacific fur seals is below 50 percent of the population levels observed in the 1940s and early 1950s, this population is below the level which can maintain maximum net productivity, the lower bound of the OSP range. Once a population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation.

EFFECTIVE DATE: June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202-673-5351.

SUPPLEMENTARY INFORMATION:

Background

A Status Review of the North Pacific Fur Seal (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, was prepared in response to a petition by the Humane Society of the United States to add the North Pacific fur seal to the U.S. List of Endangered and Threatened Wildlife, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531-1543. A notice of the NMFS determination not to list the fur seal as a threatened species, incorporating the complete text of the Status Review for the Pribilof Island population, was published in the Federal Register on March 6, 1985 (50 FR 9232). The denial of the ESA petition was based on a number of factors, including the size of the species' population. However, conclusions regarding the status of the Pribilof Island population indicated that it was below 50 percent of its carrying capacity based on a comparison of current population levels and those observed in the 1940s and early 1950s.

Carrying capacity is the number of animals that a given ecosystem can support in terms of food availability, space requirements, and other factors. Carrying capacity can change if one or more of the environmental factors on which the population depends also changes. In the case of the Pribilof Island population of North Pacific fur seals, however, the Status Review concludes that the carrying capacity of the Bering Sea and North Pacific Ocean for fur seals has probably not changed significantly since peak numbers of animals were observed during the 1940s-1950s.

Carrying capacity is the upper bound of a range of population levels known as Optimum Sustainable Population (OSP). When consistent with its objective of maintaining the health and stability of the marine environment, the goal of the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361-1407, is the maintenance of OSP for marine mammals. OSP as defined at 50 CFR 216.3 is a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers or biomass resulting from additions to be population due to reproduction and growth, less losses due to natural mortality (see 41 FR 55538, December 21, 1976).

The Status Review found that the population size of North Pacific fur seals at which maximum productivity would occur is at least 60 percent of the carrying capacity. Since the Pribilof Island population is at less than 50 percent of carrying capacity, it falls below the lower bound of OSP and is, by definition, depleted. The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under * * * this Act, determines that a species or population stock is below its optimum sustainable population * * *." the Marine Mammal Commission (MMC) provided a formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA.

Once a species or population stock has been designated as depleted, intentional takings from that population are permitted only for research purposes or for subsistence and handicraft purposes by Alaskan Natives. Small incidental takes resulting from other activities may be authorized under certain circumstances. The following MMPA restrictions apply: A depleted species or population stock is not eligible for a waiver of the moratorium on taking and importation, 16 U.S.C. 1371(a)(3)(A); it may not be taken or imported for public display purposes and no taking may be permitted in the course of commercial fishing operations, 16 U.S.C. 1371(a)(3)(B); it may not be taken under the small take exemption of section 101(a)(4), 16 U.S.C. 1371(a)(4); however, Pub. L. 99-659, signed November 14, 1986, extends the coverage of section 101(a)(5), 16 U.S.C. 1371(a)(5), to depleted species such that small incidental takes of such species or population stocks can be authorized for specified activites other than commercial fishing; and regulatory restrictions under the MMPA may be imposed on the taking of the species or stock by Alaskan Natives, 16 U.S.C. 1371(b). In the case of the Pribilof Island population of fur seals, subsistence regulations have already been issued under the authority of the Fur Seal Act of 1966, as amended, (FSA), 16 U.S.C. 1151 et seq. (See 51 FR 24828, July 9, 1986). Thus, the NMFS does not contemplate further rulemaking regarding Native taking of fur seals as a consequence of this depletion designation.

Until 1985, management of fur seals fell only partially within the purview of the MMPA by virtue of section 113. Section 113 provides that the MMPA shall not be considered to contravene the provisions of any existing international treaty or convention and its implementing legislation which applies to the taking of marine mammals. The exception created by section 113 of the MMPA clearly covered the Interim Convention on Conservation of North Pacific Fur Seals of 1957, and ensured that the Convention, and the FSA sections that implement the Convention, superceded application of certain provisions of the MMPA. These views received judicial approval in *International Fund for Animal Welfare v. Baldrige*, 594 F. Supp. 129 (D.D.C. 1984). Judge Gesell found that the fur seal population was below its OSP level, but that the commercial harvest was not barred by the MMPA's moratorium on taking as long as the Convention remained in force.

From 1957 through 1984, a commercial harvest of fur seals on the Pribilof Islands was conducted under the authority of the Convention. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976 and 1980. Under the terms of the 1980 extension, the Convention expired on October 14, 1984. On October 12, 1984, the United States, Canada, Japan and the Soviet Union signed a Protocol

that, upon acceptance by all four nations, would have extended the Convention until October 13, 1988. Japan, Canada and the Soviet Union ratified the 1984 Protocol. On March 20, 1985, the President transmitted the Protocol to the Senate, requesting its advice and consent. On June 13, 1985, a hearing was held on the Protocol before the Senate Committee on Foreign Relations, but no final action was taken.

In consultation with the Departments of State and Justice, and the MMC, NOAA determined that no commercial harvest could be conducted under existing domestic law, absent Senate ratification of the Protocol extending the Convention or provisional application of the Protocol. Accordingly, on July 8, 1985 (50 FR 27914), the NMFS issued an emergency interim rule to govern subsistence taking of North Pacific fur seals for the 1985 season under the authority of section 105(a) of the FSA. The purpose of the interim rule was to limit the take of seals to a level providing for the legitimate subsistence needs of the Pribilovians and to restrict taking by sex, age and season for herd management purposes. A permanent subsistence rule was proposed on May 15, 1986 (51 FR 17896), and a final rule was published on July 9, 1986 (51 FR 24828).

During consideration of the subsistence harvest regulations, a number of issues were raised concerning the OSP of the fur seals: In the preamble to the 1985 rule, the NMFS summarized the findings of the March 6, 1985, Status Review concerning OSP, and requested comments on and any additional data relevant to the issue of depletion for the North Pacific fur seal. At that time the MMC provided its formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA. Four other commenters on the rule also requested a finding of depletion. Since a finding of depletion is a condition precedent to regulation of a subsistence harvest under the MMPA but not under the FSA, the NMFS chose not to make such a finding part of its 1986 proposed rulemaking, under section 105(a) of the FSA, and to address the issue independently. As noted by the MMC in comments on the interim rule, the designation of depletion carries with it certain restrictions which may affect the interests of private parties and other Federal and state agencies. Interested parties were therefore provided an opportunity to review and comment on the proposed designation as an issue separate from the proposed subsistence rules.

On December 30, 1986 (51 FR 47155), a proposed rule was published to add the Pribilof Island population of North Pacific fur seals to the list of depleted species at 50 CFR 216.15. At the request of a number of Native Alaskan and subsistence interest groups and their representatives, a public meeting was held in Anchorage, Alaska, on January 21, 1987, to accept oral comments on this proposal. An extension of the public comment period from a 30-day (ending February 6, 1987) to a 67-day comment period (ending March 6, 1987) was granted to accommodate the special needs of rural Alaskans (52 FR 4365, February 11, 1987). Comments were received and accepted through March 30, 1987.

On September 1, 1987, NMFS received a petition regarding this rulemaking from the St. Paul Aleut Community and the Pribilof Aleut Sealing Commission. The petition requested a reopening of the record, an environmental impact statement, an adjudicatory hearing, peer review, and a contribution to a Bering Sea Scientific conference. NMFS denied the petition on September 28, 1987. Copies of the petition and our response, containing specific bases for denial, are available from the information contact listed above. On December 31, 1987, the public comment period was reopened for 60 days as discussed below.

Public Comments on the Proposed Rule

(a) *Public Meeting in Anchorage, Alaska*

The following individuals appeared at the public meeting in Anchorage and provided their views and recommendations on the depletion of Pribilof Island fur seals:

Anthony Philemonoff, Tanadgusix Corporation
Michael R. Wheeler, St. Paul Traditional Village Council
Adrian Melovidov, St. Paul Traditional Village Council
Ron Philemonoff, Pribilof Fur Seal Commission
Larry Merculieff, Pribilof Fur Seal Commission
Agafon Krukoff, Aleut Corporation
Dalee Sambo, Inuit Circumpolar Conference
Vernita Zilya, Rural Alaska Resources Association
Dave Monture (through Zilys), Indigenous Survival International
Mike Zaharof, Mayor, St. Paul, Alaska
Suzanne Iudicello, Center for Environmental Education
Patrick Kozloff (written), Aleut Leader
Cindy Lowry, Greenpeace, Alaska
John Grandy, Humane Society of the United States
Julie Kitka, Alaska Federation of Natives

(1) Effect on Subsistence Harvests

Of the 15 individuals who appeared at the public hearing on this issue, only the three representatives of environmental groups supported the proposed NMFS action. Seven speakers questioned the impact of a depletion finding for fur seals on Aleut subsistence uses. Most felt that animal welfare organizations would use the depletion designation to force additional restrictions on the Aleut subsistence hunt or force its complete elimination. As one St. Paul Island resident put it, "animal rights groups have shown their ability to manipulate Congress through public misinformation campaigns to prevent action to ratify an international treaty. There is little to prevent these groups from imposing their will on the agency and forcing a totally arbitrary administrative decision to further restrict or eliminate our subsistence rights once a depletion finding is made." This speaker further outlined the cultural and nutritional significance of seal meat on the Pribilof Islands. He listed a number of major changes that have been imposed on the Pribilovians in recent years, namely, the withdrawal of Federal jobs and services in 1984 (as the result of the 1983 Amendment to the FSA), cessation of the commercial skin harvest in 1985 (as a result of the expiration of the treaty), and publication of permanent subsistence harvest regulations in 1986. Designation of the Pribilof Island fur seal as depleted is considered by this speaker to be a final and unacceptable attack on the Aleut way of life.

Two speakers complained of implications that Aleuts may waste seal meat taken in the subsistence harvest, apparently in reference to the "wasteful manner" criteria of the MMPA. One speaker said "such regulatory language impugns the integrity of the Aleut people and all aboriginal people." One St. George Island resident demanded a reevaluation of the facts to "determine whether the subsistence harvest or any activities by the Pribilovians has or can have an impact on the size of the herd."

One of the consequences of a depletion finding for any marine mammal species is that regulatory restrictions under the MMPA may be imposed on the taking of the species or stock by Alaskan Natives. In the case of the Pribilof Island population of fur seals, however, subsistence regulations have already been issued and, as stated in the preamble to the proposed rule, "NMFS does not contemplate further rulemaking regarding native taking of

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fur seals as a consequence of a possible depletion designation" (51 FR 47156). In his opening address at the public hearing in Anchorage, Deputy General Counsel of NOAA, Timoth R.E. Keeney, made the following comments regarding this issues:

> There are apparently some misconceptions concerning the effect of the proposed rule on the subsistence harvesting. First, let me remind you that last July, 1986, we published permanent regulations governing the subsistence harvest of fur seals on the Pribilof Islands. At that time, it was anticipated that a depletion designation would be appropriate for Pribilof Island fur seals and that a separate rulemaking would follow to address this issue.
>
> In other words, the subsistence regulations of last summer were predicated upon the probability that this species would be declared depleted. We do not need and do not intend to alter the subsistence regulations as a result of any designation of depletion under the Marine Mammal Protection Act. A depletion designation should not affect subsistence hunting.

The subsistence regulations at 50 CFR 215.31 were promulgated under the authority of both the FSA and the MMPA. Both acts provide for subsistence harvests, regardless of the status of the species if such taking is "not accom, lished in a wasteful manner." The wasteful manner criteria was intended as a cap or safeguard for the native taking exemption and is not intended in the Act or in our regulations to insult or impugn the motives of native peoples.

Three speakers representing environmental groups emphasized that they are not proposing changes to the current subsistence regime and said they recognized the contribution of fur seals to the diet and culture of Probilovians. One speaker stated that

> I want to make it clear from the point of view of the Humane Society of the United States and for most of the organizations we've been associated with over time, including the two that have preceded us, there should not be in this depletion matter nor in anything else that we've said today, any implication that we are talking about eliminating subsistence use.
>
> Indeed, we have continually supported the rights of the Aleuts to use fur seals to meet subsistence needs and we want to continue to do that.

The comment of one of the Pribilovian speakers concerning the possible impact of the subsistence harvest on the size of the herd is particularly relevant here. Any discussion of restrictions on subsistence-take as a consequence of a depletion finding would include an assessment of possible contributions of the subsistence harvest to the population decline. Research conducted under the terms of the treaty indicates that a harvest of females or harem bulls could have a disastrous effect on the already declining fur seal population. One of the causes of the population decline observed prior to the 1970s was the female harvest, 1956–1968. In contrast, based on available information, a harvest of subadult males at levels which allow for the future reproductive needs of the population will probably have no negative impact on long-term population trends. Clearly, an annual harvest in the range of 1,423 (1986 harvest total) to 1,802 (1987 harvest total) mostly subadult males, or less than 0.25 percent of the stock, could not be expected to contribute to a population decline or prevent a return to high population numbers.

(2) Possible Changes in Carrying Capacity

The second major concern addressed at the public hearing on the proposed rule was the determination of carrying capacity of the environment for fur seals. Six speakers challenged the NMFS conclusion that the carrying capacity for fur seals probably had not changed significantly since peak numbers were reached in the late 1940s to early 1950s. Several speakers pointed out that a number of species in the eastern Bering Sea are declining in numbers and concluded that the carrying capacity of this ecosystem had changed. One speaker gave a slide presentation on the rates of decline for certain seabirds. He pointed out the coincident declines of red-legged kittiwakes, common murres, Steller (northern) sea lions, and North Pacific fur seals near the Pribilof Islands. This speaker shared the view of most Aleut representatives that a reduction in pollock, thought to be due to overfishing, is the cause of the observed declines.

Several speakers claimed that the fur seal's carrying capacity had declined within the last two decades due to reductions in food availability and reduced habitats caused by pollution, including marine debris. One speaker believes that, although the Pribilof Island seal population reached its peak 40 years ago, it is now at its "natural equilibrium level" with a new, lower carrying capacity. Factors noted by the NMFS in the preamble to the proposed rule, namely relative stability in pup numbers in recent years, an increase in pup weights and a decline in duration of feeding trips at sea, are evidence, according to this speaker, of a "healthy population adjusting to a new equilibrium level."

Biomass trends for several species of groundfish in the Bering Sea indicate that major components of this ecosystem have changed dramatically during the 1970s and early 1980s. Fluctuations in species populations of seabirds and marine mammals in this area could be related to changes in food availability, disease, toxic substances, or other factors. If food resources are limiting, however, as suggested by several speakers, we would expect to see reduced mean body sizes, reduced growth rates and higher pup mortality in the Pribilof population of fur seals. On the contrary, as discussed in the preamble to the proposed rule (51 FR 47159), the average body size and body length in this population has increased. Pup mortality rates on land are as low as those observed during the 1920s when the population was rapidly increasing.

As mentioned by one of the speakers, fur seals are vulnerable to changes in food availability near the Pribilof Islands during the breeding season. However, any changes in food availability near the Pribilof Islands that might explain a population decline of one-third in less than a decade, very likely would be reflected in increases in the length of the feeding cycle at sea near the Pribilof Islands as males and nursing females search for scarce resources. On the contrary, however, feeding trips to sea have declined in duration since the 1950s. This may be in response to an increase rather than a decrease in food availability near the Pribilof Islands and is consistent with the observed increase in pup weights. Toxic substances, such as heavy metals, are a potential factor in the fur seal decline that was mentioned by a number of speakers. As discussed in the preamble to the proposed rule (51 FR 47159), mortality in seals from toxic substances in their environment has not been demonstrated despite regular examination of seal tissues for such concentrations.

If changes have occurred in the resources or measurable abiotic components of the fur seal's ecosystem that would be detrimental to the Pribilof Island fur seal population, these changes have gone undetected in field studies. Fur seals, as indicators of current environmental conditions, have characteristics in common with populations that are not limited by their natural environment. Current pup mortality on land, growth rates, and the variance in mortality rates on land and at sea are all characteristic of a population substantially below its carrying capacity.

In addition to the statements made at the public meeting, written comments were also received on the determination

of carrying capacity for fur seals and further discussion of this issue can be found below. Two speakers questioned the pup estimates from the 1950s and felt our estimates were too high. As stated in the preamble to the proposed rule:

> In view of the lack of complete reliability on the estimates of pups * * * other comparisons can be made to provide insight into the approximate level of decline in the population * * *. [There are] several indicators, in addition to pup numbers, that might suggest the current status of the population relative to the apparent peak in abundance in the 1940s and early 1950s. In 1983, harem bull estimates (down 53 percent), idle male estimates (down 56 percent), and commercial harvest levels (down 89 percent), had all declined significantly since the 1940s and early 1950s. The foregoing information, and preliminary analyses of photographs of rookery space utilization since about 1915, suggests a decline of about 50 percent in the population. (51 FR 47155)

(3) Timing of Our Decision

Six speakers stated that insufficient information was available to make a depletion finding and urged postponement of the decision until further research can be completed. NMFS is unable to grant this request. Since at least 1983, annual reviews of the Pribilof Island fur seal population, prepared for the North Pacific Fur Seal Commission, concluded that this population is probably below its OSP. While there exists uncertainty regarding some of the underlying data, our estimates indicate that the North Pacific fur seal population on the Pribilof Islands is currently below 50 percent of its carrying capacity, based on current population levels (about 800,000) compared to those of the 1940s and early 1950s (about 2.2 million). Since the late 1970s, the Pribilof Island population has declined by one-third. Once the Interim Convention expired, and management of the fur seals came under the MMPA, an affirmative decision on depletion became mandatory since current information indicates that the population is below its OSP. Should new, significant information become available in the future, based on additional research and further analysis of historical data, for example, a review of this decision would be appropriate. In addition, any future increase in the population above the lower end of the OSP range would be grounds for removing this population from the list of depleted species.

(b) *Written comments on the proposed rule.* During the first public comment period, from December 30, 1986 to March 6, 1987, the following groups and individuals submitted written comments on the proposed rule:

Senator Ted Stevens
North Pacific Fishing Vessel Owners Association
Alaska Factory Trawler Association
Marine Mammal Commission
Senator Frank H. Murkowski
Humane Society of the United States
U.S. Department of the Interior
Dan C. Heinemeier
Center for Environmental Education
Alaska Department of Fish and Game
Greenpeace U.S.A.
Alaska Groundfish Data Bank
Lydia T. Black
International Association of Fish & Wildlife Agencies
The Wildlife Legislative Fund of America
International Wildlife Coalition
Living Resources, Inc.

Of the 17 groups and individuals who provided 58 pages of written comments, seven supported the depletion designation. Nine commenters expressed concern regarding effects of the designation on fisheries, OCS oil and gas activities, commercial seal harvests, or the chances of renegotiating the Interim Convention. Most recommended a delay in rulemaking to accommodate additional research and analysis. One commenter requested an extension of the comment period. It should be kept in mind that the purpose of this rulemaking is to determine whether or not the Pribilof Island population of North Pacific fur seals fits the definition of "depletion", i.e., is it below OSP? The decision to be made is primarily a scientific one, and NMFS does not have the discretion from that finding on the basis of any potential consequences of a depletion designation.

(1) Possible Changes in Carrying Capacity

Five commenters questioned the assumption, discussed in the preamble to the proposed rule, that the carrying capacity of the Bering Sea and North Pacific Ocean for fur seals has probably not changed significantly since peak numbers of animals were observed during the 1940s and 1950s. These commenters believe that the carrying capacity for fur seals must have changed because a significant groundfish fishery has been operating in this area since the 1960s, pollution, including entangling plastic debris, must have increased during this period, major changes in fish and shellfish populations have been recorded, and declines in seabirds and other marine animals are coincident with the fur seal decline.

Reasons for what these commenters believe to be a decline in the ability of the environment to support higher fur seal populations include reduction in food available to fur seals due to foreign fishing in the Bering Sea, and/or changes in water temperature or other physical parameters. As discussed above in response to the public meeting comments, and also discussed in the preamble to the proposed rule, we have not detected any effects on fur seals due to possible reductions in food resources or changes in their physical environment. On the contrary, fur seals show increases in body size and increased pup survival rates characteristic of healthy, growing mammal populations. Declines in numbers of fur seals, demonstrated by declines in pup estimates and counts of adult males, appear to be the result of factors causing increased mortality of juvenile age classes at sea (See 51 FR 47159–47160). Entanglement in marine debris may be a significant cause of this mortality, but other, as yet undetermined, factors may be contributing to the decline, as well.

The Marine Mammal Commission (MMC) agrees with our assessment, discussed in the preamble to the proposed rule, that it is unlikely that the carrying capacity for the fur seal's habitat has been reduced significantly. This assessment is based, in part, on an examination of changes in length and size of individual animals, and duration of feeding trips to sea, which suggest increased rather than decreased availability of food. The MMC included with their comments a copy of Swartzman, G.L. and R.T. Haar, 1983, Interactions between fur seal populations and fisheries in the Bering Sea, Fishery Bulletin, Vol. 81, No. 1, pp. 121–132. This report concludes that the changes which have been observed in the fur seal population do not support the hypothesis that fur seal carrying capacity has been reduced by fisheries for important fur seal prey species such as walleye pollock and Pacific herring.

Regarding the impact of the start of a major pollock fishery in 1964 with peak yields in the early 1970s, the authors note that

> Study of the fur seal diet data indicated that walleye pollock comprised a larger part of the fur seal diet in the 1970's, after the establishment of the fishery, than earlier, although average pollock size appeared to drop significantly. This trend may have been induced by an increased harvest of older fish. Since walleye pollock are cannibalistic, the removal of the older fish by the fishery could result in lower mortality among the younger pollock stocks, the outcome being an increase in the pollock resource available to both the fishery and the fur seal.

While NMFS does not believe that food is a current limiting factor for the

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Pribilof Island fur seal population, work is proceeding on further analyses of feeding behavior, diet, and the relationships between fur seals and their prey species in the Bering Sea and North Pacific Ocean. Identification and elimination of the cause or causes of the population decline is a major objective of the NMFS fur seal conservation plan.

On this issue, the Alaska Department of Fish and Game (ADF&G) provided the following opinion

During the period over which the Pribilof Island fur seals have declined in abundance, commercial fisheries have expanded greatly in some parts of their range. The supplementary information with the proposed rule states that parameters such as pup weight and body size of older animals have increased in recent years, which shows "that the ecosystem can still support a fur seal population as high as that observed in the 1940s and 1950s." This is incorrect. The increases referred to suggest an increase in *per capita* food availability, but do not show that food availability in the environment is still adequate to support 1.8 million fur seals. In other words, if the carrying capacity for fur seals was reduced by 50 percent while the population declined by 60 percent, the remaining seals would experience a per capita increase in food availability, and show the growth responses that have been documented.

NMFS agrees that the current and historic relationship between fur seals and the fisheries remains unclear. No numerical model exists to provide an answer with any reasonable degree of certainty on the number of fur seals that could be maintained by current prey resources. A plausible, intuitive agrument is that the removal of millions of tons of groundfish by commercial fisheries since the 1960s would decrease the carrying capacity of the Bering Sea for fur seals. However, some model results indicate that removal of larger, older fish by fisheries has in fact increased the availablity to fur seals of the smaller, younger sizes that they prefer to prey upon. This would have the effect of improving the fur seal's lot. Moreover, we cannot find any evidence of food limitations in individual fur seals.

ADF&G suggests that our findings, i.e., increased pup weights and juvenile body sizes, are not indicators that the carrying capacity can still support about 2 million fur seals, but only show a per capita increase in food availability consistent with a reduction in carrying capacity. We are not, however, merely comparing findings in 1940–1950 to current data. An extensive time series of data exists since 1940–1950 on pup weights, length of harvested seals, teeth weights, pup mortality rates, depth of dives and duration of trips to sea. These data show no evidence over the entire period for catastrophic changes in food or other environmental factors that might explain the loss, for example, of over one-third of the population since the late 1970s.

ADF&G also pointed out that "the data regarding the past and present size of the fur seal herd are actually extrapolations of estimates rather than counts." This refers to the method used to estimate the size of the Pribilof Island herd, namely, estimates of pups born, information on the age/sex structure of the population and age-specific survival estimates. Only adult males (territorial bulls) are directly counted. These counts show a decline of over 50 percent since the 1940–1950s and are still declining (1987).

ADF&G commented on the population decline rate as follows:

Extrapolations of total population size from estimates of pup production may be seriously biased if the relationship of population size to carrying capacity changes. Productivity is likely to respond in a density-dependent fashion such that per capita production of pups will decrease as the population approaches carrying capacity (K). In a population at or near carrying capacity, the proportion of females giving birth on the rookeries each year will be lower, and therefore the total population size may be under estimated from pup counts. This factor, in combination with problems in estimation techniques that occurred especially during the years of high pup abundance, suggests that the actual decline in population size may be less than indicated. Data other than pup estimates also suggest that the population size has declined in recent years, but the actual magnitude of the decline is poorly understood.

Work is in progress on St. Paul Island to assess any changes that may be occurring in fur seal natality rates. At this time, we are not convinced that such changes as ADF&G suggests are affecting population size estimates. As discussed earlier, in addition to pup estimates, the magnitude of the population decline can be estimated from photographs of rookery space utilization since about 1915, direct harem bull counts (down 53 percent) and idle male estimates (down 56 percent).

Another commenter provided his opinion that "the North Pacific fur seal is not presently depleted." According to this commenter the fur seal "may now be below 50 percent of the maximum population size that occurred in the 1940's and 1950's. It is not 50 percent below the long term carrying capacity for fur seals." The commenter states:

The key issue is whether the large size of the population in the 1940's and early 1950's is a valid "benchmark" on which to make a determination about carrying capacity of the marine environment that supports fur seals. In my opinion the high numbers of the late 1940's and early 1950's were a short term anomaly which resulted from the rapid recovery of a population reduced to very low numbers in the 1910–1918 period. I seriously doubt that such a population size can ever again be reached *except* through the same mechanism of recovery from very low numbers resulting from severe exploitation or unusual natural calamity. In either case the maximum attainable population size can not be maintained for long in nature.

This commenter notes two examples of "artificially high populations that exist for a short period of time", Weddell seals in McMurdo Sound, Antarctica and Pacific walrus. According to this commenter, the pre-exploitation size of the Weddell seal population was about 2,000. This population was greatly reduced by harvesting and subsequently increased to 3,000 and has since declined to less than 2,000. In this commenter's opinion, a parallel situation is underway with Pacific walruses, where peak numbers observed in 1978–82 "were not sustainable over time." It is the opinion of NMFS, however, that the population of North Pacific fur seals in the 1940s–1950s was not an artificially high, peak level that is not sustainable over time. Indeed, the maximum numbers and relative stability, as evidenced by direct bull counts, lasted almost 20 years. This high population level was ended by the large harvests of female seals in the late 1950s–1960s. The effect of the female harvest should have passed through the population by the mid-late 1970s, and the population could by that time have begun to return to high levels. In our view, by the mid-1970s another factor or factors had begun to increase mortality of, especially, juvenile age classes. The cause of this mortality is not yet completely understood.

The MMPA does not require that marine mammal populations be kept at maximum recorded levels, but that they be maintained at optimum sustainable levels. In the case of the Pribilof Island fur seal we believe this level is at least 60 percent of the numbers attained during the 1940s–1950s. To assume that the high populations of this time were "not sustainable over time" merely because they were not indeed sustained due to improper management (i.e., the female harvest) begs the question of the appropriate carrying capacity for this species. This commenter claims that "major changes in abundance of several components of the Bering Sea ecosystem" and changes in the physical environment "argue against the presumed stability in carrying capacity for fur seals." An intuitive argument can indeed be made for a reduction in the carrying capacity. But, to repeat, we find no evidence in nearly 30 years of consecutive data on the fur seals themselves to suggest that there are environmental factors limiting the population to current, or lower, levels.

(2) Effect on Commercial Fisheries

The MMC and the Alaska Factory Trawler Association (AFTA)/North Pacific Fishing Vessel Owners Association requested additional information on the expected impacts on commercial fisheries of a depletion designation for fur seals. Two other commenters questioned our assessment of the level of incidental take of fur seals in foreign and domestic fisheries. Under the MMPA, permits for incidental taking during the course of commercial fishing may not be issued for depleted species.

Six domestic general permits issued by NMFS in 1984 authorize the incidental take of North Pacific fur seals and other marine mammals in the North Pacific Ocean. A total of 25 fur seals are authorized to be taken annually incidental to commercial fishing operations. These 5-year permits expire on December 31, 1988. If Pribilof Island fur seals are designated as depleted, NMFS under present law may not issue permits for their incidental take, although we know that these animals will inevitably be taken in the course of some fisheries operations.

NMFS has interpreted its authority under the MMPA to include discretion to issue permits for incidental taking when populations covered by the permit will not be disadvantaged, without requiring proof that all other species that might possibly be taken are also within OSP. However, in a recent decision involving a permit issued to the Federation of Japan Salmon Fisheries Cooperative Association to take Dall's porpoises incidental to commercial salmon fishing, a much stricter interpretation of the MMPA has been adopted by the courts (*Kokechik Fishermen's Ass'n, et al. v. Secretary of Commerce, et al.*, No. 87–5239, slip op. (D.C. Cir. February 16, 1988). The courts considered whether or not NMFS may legally issue a permit allowing incidental taking of one protected marine mammal population that was above OSP knowing that other protected marine mammals (not demonstrably at OSP) would also be taken. The courts held the permit NMFS issued to the Federation to be invalid and "contrary to the requirements of the MMPA." This decision may be appealed.

In response to concerns about impacts on commercial fisheries that have arisen out of this case, NMFS announced its decision to support an amendment to the MMPA (See 52 FR 19874, May 28, 1987). This amendment could allow incidental, but not intentional, takings of small numbers of depleted marine mammals by vessels engaged in commercial fishing if such taking will have only a negligible impact on the affected population. NMFS is now considering whether or not it can reissue domestic general permits for fisheries that might take depleted stocks or species for which no OSP determination has been made (See 53 FR 2089, January 26, 1988). Consequences of a depletion determination for the Pribilof Island population of North Pacific fur seals will depend on these deliberations and on potential Congressional action on MMPA reauthorization during 1988.

One commenter suggests that unreported incidental takes could be higher than expected and states that

For example, the fur seal has been one of the species covered in the domestic general permit issued to the North Pacific Fishing Vessel Owners Association * * *. There are no observers on these U.S. based fisheries, so there are no actual estimates of numbers of fur seals taken. A review of entanglement in North American Fisheries (CEE, Marine Wildlife Entanglement in North America, in press) has shown that fishermen tend not to report incidents under the permit certificates of inclusion. With increased participation by U.S. based fishermen in several of the bottom fish trawl fisheries in the North Pacific, which are known to take fur seals, the exclusion of the fur seal from the general permit could have a significant impact in reducing mortalities *if the prohibition is enforced.* On the other hand, an incentive of no prosecutions for accidental takings could conceivably be used as the basis for a scientific observer program aboard U.S. vessels.

Along similar lines, the MMC made the following comment

It is not clear, for example, where, when, how, and how many fur seals are being taken in commercial fishing operations in the North Pacific Ocean. Therefore, we consider it desirable to expand research efforts so as to make those determinations and to identify appropriate changes in fishing gear and practices that would reduce or eliminate incidental take.

Research of this nature requires the cooperation and assistance of parties involved in commercial fishing operations. Consequently, it is desirable to include commercial fishing operations in the research program. This could be done by authorizing participating fishery operators to incidentally take fur seals as part of the Service's directed research program and pursuant to a Marine Mammal Protection Act scientific research permit. Such a program would provide authority to incidentally take small numbers of fur seals while providing important information necessary to assess accurately the nature and possible significance of fur seal incidental take and to determine, if necessary, how fishing gear and practices could be modified to reduce or eliminate incidental take.

NMFS remains convinced that the incidental take of fur seals in the course of commercial fishing is probably insignificant, at least within the U.S. EEZ and territorial waters. We believe the number of fur seals incidentally killed in both foreign and domestic fisheries is less than 50 each year. At this time, based on observer reports, incidental take in active gear of foreign or domestic fisheries in the EEZ and territorial waters does not appear to be a significant cause of mortality and is not considered a likely factor in the population decline. In 1986, only one fur seal was observed taken by foreign fishing vessels off Alaska. It would hardly seem worthwhile to engage commercial vessels in research operations when the chances of encountering an entangled animal are so low. On the other hand, should new data indicate that incidental take is a significant or contributory cause in the decline, NMFS will reassess its research priorities to include work on gear and operational improvements to prevent significant taking of fur seals in commercial fisheries.

One commenter requested an assessment of the incidental take of fur seals in the squid driftnet fishery outside the U.S. EEZ. In 1986, a U.S. observer reported the taking of 14 North Pacific fur seals during 30 sets. There were no observers during 1987, but the United States continues to seek participation in a cooperative observer effort to estimate incidental take of marine mammals in this fishery. At this time, insufficient data exist on which to base any conclusions regarding the actual level or rate of incidental take in this fishery.

(3) Effects on Oil and Gas Development

The Department of the Interior (DOI) is concerned that designating the Pribilof Island fur seal population as depleted could inhibit production of domestic oil and gas resources on the outer continental shelf (OCS) of Alaska and possibly California, Oregon and Washington. DOI stated that:

A depletion designation may inhibit OCS leasing and permitting activities. In addition, the requirements and procedures for obtaining permits under the MMPA for small incidental but unintentional taking of fur seals would presumably apply to OCS operators. We are concerned that designation of the population as depleted may have an effect on the ability of those operators to plan

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their activities and obtain incidental take permits or meet permit requirements. For example, offshore Alaska, depletion designation may lend credence to a perceived need for a leasing-and/or activity-free buffer zone around the Pribilof Islands. This could complicate the use of the Pribilofs as a support base for Bering Sea OCS activities. Increased industry costs associated with any potential new restrictions or permit requirements cannot be accurately predicted at this time.

In areas offshore California, Oregon, and Washington, a depletion designation would probably not have a significant effect on the OCS oil and gas program. However, most female and young male fur seals spend winters and springs in these areas. In the extremely unlikely event that a large oil spill resulted from OCS activities, unintentional "take" of fur seals could occur under certain circumstances (e.g., oil moved offshore into areas inhabited by fur seals). If such a circumstance arose and taking of fur seals resulted, it would be difficult, if not impossible, to determine whether the animals "taken" were from the Pribilof population or the local, nondepleted, San Miguel population. Thus, a practical matter of identifying impacts to the Pribilof Island population complicates how incidental taking could be assessed in these areas during winter and spring.

As we pointed out in the preamble to the proposed rule, Pub. L. 99–659, signed November 14, 1986, amended the MMPA by extending the coverage of section 101(a)(5), 16 U.S.C. 1371(a)(5), to depleted species. Small incidental takes of depleted species or population stocks can be authorized for specified activities other than commercial fishing, including OCS oil and gas development. The findings needed to satisfy 101(a)(5) are the same whether the population is depleted or not. However, any significant taking from the population would require a waiver of the moratorium. A depleted species is not eligible for a waiver. Thus, if large numbers of fur seals are expected to be taken in the course of oil and gas development offshore Alaska, California, Oregon, or Washington the depletion designation will foreclose the possibility of a waiver of the MMPA's moratorium to accommodate any significant taking for this purpose.

In addition, the DOI wants to clarify that the FWS did not recommend that the North Pacific fur seal population be designated as depleted (as stated in the preamble to the proposed rule), but rather supported initiation of the formal designation process. DOI further recommends that additional analysis be done concerning the determination of carrying capacity for fur seals.

(4) Effect on Subsistence Taking

Three commenters addressed the possible effect of a depletion designation on subsistence rights. One commenter stated that "it is imperative that should a finding of depletion be warranted, thorough discussion of the impacts of such a finding on the existing subsistence regulations be included in the final decision." As stated at length earlier during discussion of the public meeting, the NMFS does not intend to alter the subsistence rule as a consequence of the depletion finding. As another commenter put it "a depletion designation does not create any basis to reopen rulemaking or reexamine subsistence harvest regulation." A third commenter "supports the existing approach to regulation of the fur seal harvest, and does not advocate any further restrictions of this important subsistence right."

(5) Effect on Ratification of the Convention

Four commenters suggested that a depletion designation would have an adverse effect on ratification of the 1984 Protocol extending the Interim Convention. One commenter requested assurances that "if a depletion finding is made, that such a finding will not preclude a future commercial harvest of the North Pacific Fur Seal." Another stated that "the NMFS and the U.S. Senate can do more to help the North Pacific Fur Seal by working to ratify the Treaty as quickly as possible, then it has over the past three years while trying to appease animal protection groups." However, this commenter will "support a Treaty that suspends the commercial harvest until the North Pacific Fur Seals have reached sustainable numbers." Another commenter believes that depletion "will indubitably aid those who object to the renewal of the Interim Convention * * *." The fourth commenter believes that "the depletion proposal is an ill-supported expedient to employ the Marine Mammal Protection Act in the absence of Treaty extension at the risk of reducing the present fur seal population." This commenter believes we have failed to discuss "the effects of the failure of the U.S. Senate to ratify the extension of the North Pacific Fur Seal Treaty and consequent commecial pelagic sealing."

As discussed above, the 1984 protocol to the Interim Convention has not been ratified. In 1985, in consultation with the Department of State (DOS), the Department of Justice, and the MMC, NOAA determined that no commercial harvest of fur seals could be conducted under existing domestic law (i.e., the MMPA and the FSA) without Senate ratification or provisional application of the protocol.

The protocol was submitted to the Senate for its advice and consent to ratification in March 1985. The DOS received a letter in April 1985 signed by 44 Senators stating their opposition to the protocol. This precluded any chance of achieving the two-thirds majority needed for ratification. The opposition to the protocol was based on objections to the commercial harvest provision of the Convention. Unlike domestic law, the treaty allowed the continuation of the commercial harvest despite the decline in the fur seal population.

In 1986, DOS renewed its request for favorable consideration of the protocol. The staff of the Senate Foreign Relations Committee recanvassed the opposition and found that it remained unchanged. The Senate will not give its advice and consent to ratification of the 1984 protocol, and, consequently, the Interim Convention is no longer in effect. Consultations are planned, however, with former parties to the Convention on the possibility of a new agreement that would extend the pelagic sealing ban and continue international research coordination on fur seals. No commercial harvests are possible on the Pribilof Islands while this population remains below OSP.

(6) Status under the ESA

One commenter that supports the depletion designation also encourages NMFS "to reconsider its decision and list the fur seal as a threatened species" under the ESA. As mentioned above, our decision not to list the Pribilof Island population as threatened was based on a number of factors, including the current size of the population. In our view this species' population of about 1 million is probably not at or near a critical level that could lead to extinction in the foreseeable future. In the early 1900s, the species reached levels as low as 300,000 and was still able to rebound to numbers as high as 2–3 million. As this commenter points out, one of the bases of our decision was the fact that this species was the subject of an international treaty that prohibited pelagic harvesting, encouraged international research cooperation, and placed limits on harvests of this species on land. We considered that a mechanism was already in place for the conservation and recovery of this species to higher levels.

Since our 1985 ESA decision, the treaty has lapsed and the species has come under the purview of the MMPA. The FSA and the MMPA are now the regulatory authority for a subsistence harvest on the Pribilof Islands. Further restrictions on taking from the Pribilof Island stock will be imposed as a result of this depletion designation, i.e., no permits will be issued for incidental take or public display. The subsistence regime, and the depletion designation, should provide an adequate regulatory mechanism for the recovery of the Pribilof Island stock. The NMFS will, however, consider the fur seal for an ESA candidate species list that is currently under development. Continued declines in species populations will result in periodic reconsideration of an ESA listing.

(7) Conservation Planning and Other Issues

Four of the commenters who supported a depletion designation urged immediate action on recovery of the species. One commenter noted that:

> Common sense and public policy demand that in the face of a 4 to 6% annual decline in a population already reduced to below 60% of its OSP, resource managers must act quickly to stop the decline and take measures to restore the population. In today's world of competing demands for marine resources, and increasing pressures for development in marine and coastal habitats, it is a given that man's activities will continue, inevitably, to alter the carrying capacity of our oceans for marine life. The argument that the agency use "diminished carrying capacity" as a method to avoid making a strictly numerical depletion finding begs the question of whether, faced with a significantly reduced and declining population, resource managers simply revise the "bottom line." Such an approach is counter to the intent and purpose of the Marine Mammal Protection Act.

Another commenter states that "we understand that the agency, as is customary in the scientific community feels compelled to accompany its references to research results and conclusions about the fur seal population with appropriate qualifiers. Nonetheless, neither the agency nor the public should harbor any doubts about the strength of the evidence that the North Pacific Fur Seal is in jeopardy and is suffering a severe decline in population, due especially to entanglement in ocean debris." This commenter further noted that "we support the agency's decision to formally designate this population as depleted. This step, long appropriate and too long delayed, we hope, signals NMFS' renewed commitment to take *all* regulatory and enforcement measures necessary to protect the North Pacific Fur Seal."

A third commenter believes "it is the responsibility of the NMFS to take immediate corrective measures to ensure the population will recover. After the final determination that the population is depleted, we look forward to the timely receipt of proposals to replenish the population of the Pribilof Island stock of Northern fur seals, as the preliminary step to the NMFS fulfillment of their obligation under the law." The fourth commenter on this issue recommends that "the most sensible way to approach the declining fur seal population is to give it protection while seeking to ascertain the exact reasons for the decline. Designation as depleted will be a proper initial step." This commenter further suggests that "monitoring of the fur seal population continue through observation and nondisruptive censusing methods. In addition, we urge that all possible steps to minimize continuing entanglement of fur seal in netting and plastic debris be implemented."

NMFS is preparing a conservation plan for fur seals that will be available for public review later this year. The conservation plan will have as its goal the recovery of the Pribilof Island population to OSP. The plan's objectives will include (1) the identification and elimination or mitigation of the cause(s) of the population decline; (2) monitoring population trends to ensure that fur seals remain a significant functioning element in their ecosystem; and (3) actions needed to minimize adverse effects on fur seals and their habitats from man's activities. Research, public education, and industry assistance on the entanglement problem will be significant elements in our plan. The existing subsistence harvest regime, this depletion designation, and the development and implementation of a conservation plan for the Pribilof Island fur seals provide a coordinated program of conservation efforts that should lead to a recovery of this population to more productive and sustainable levels.

One commenter also recommended that we assess the status of other North Pacific fur seal populations and begin a review of the status of the Steller sea lion under the MMPA. We do not have sufficient data, at this time, on historic trends in populations of North Pacific fur seals under Soviet jurisdiction to provide accurate assessments of the current status of these populations. Historically, the Pribilof Island population, by number, has represented about three-fourths of the species. On April 24, 1987, NMFS announced its intention to prepare a report on the population status of Steller sea lions to determine abundance and trends (52 FR 13743). The resultant report, entitled "Status Review, Northern (Steller) Sea Lion (*Eumetopias jubatus*) in Alaska" (January 1988), concludes that the number of adult and juvenile sea lions observed on rookeries in southwest Alaska declined about 52 percent from at least 140,000 in 1956–60 to about 68,000 in 1985. Copies of this report are available from the information contact noted above.

(c) *Reopening of the public comment period.* NMFS reopened the public comment period on the proposed rule for a 60-day period, ending February 29, 1988, to consider additional information on possible changes in the carrying capacity of the Bering Sea ecosystem (52 FR 49450, December 31, 1987). Biomass trends for red king crab and several species of groundfish in the Bering Sea were presented to demonstrate that changes have occurred in important components of this ecosystem during the 1970s and early 1980s (See 52 FR 49452–49456).

New information was presented that indicates that the carrying capacity of the central North Pacific has changed over the past 20 years. An article in *Science* magazine (E.L. Venrick, et al., 1987, Climate and chlorophyll a: Long-term trends in the Central North Pacific Ocean, Science 238:70–72) reported a significant increase in chlorophyll *a*, an index of phytoplankton biomass, in the central North Pacific. This increase was correlated with decreases in sea suface temperature and more active winter storminess. According to the **Federal Register** notice, this article and previous work by NMFS "suggest one plausible mechanism, a trend in storm activity, through which the carrying capacity for fur seals might be affected."

On December 17, 1987, in anticipation of the reopening of the comment period on the 1986 proposed rule. The Humane Society of the United States and Friends of Animals filed a complaint for declaratory and injunctive relief to compel NMFS to issue forthwith a final depletion rule. On January 11, 1988, Plaintiffs filed a motion for summary judgment and request for expedited consideration on their earlier claim (*The Humane Society of the United States et al., v. C. William Verity, et al.*, Civil Action No. 87–3433, D.D.C.) In association with these actions, on February 10, 1988, NMFS indicated that a review of the additional information provided in the **Federal Register** notice did not change the previous view that the Pribilof Island population of North Pacific fur seals is below OSP and is therefore depleted.

It is possible that a change in some physical factor in the fur seal's environment—such as storm activity—could have altered the carrying capacity of the Bering Sea and North Pacific Ocean. However, following a review of available scientific information, and

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based on public comments on this issue, it appears that there is little or no evidence supporting this hypothesis. Accordingly, NMFS has concluded that no new inforamtion exists on this subject to warrant further delay on a depletion designation.

During this second public comment period, the following groups and individuals submitted written comments:

Alaska Native Brotherhood, Grand Camp
Senator Fred F. Zharoff, Alaska State Legislature
United States Department of the Interior
Aleutian/Pribilof Islands Association, Inc.
Greenpeace U.S.A.
Alaska Factory Trawler Association
Friends of the Sea Otter
Nana Regional Corporation, Inc.
Rural Alaska Community Action Program, Inc.
The Aleut Corporation
Eskimo Walrus Commission
E.L. Venrick, Scripps Institution of Oceanography
Committee for Humane Legislation
The Humane Society of the United States
Tribal Government of St. Paul
Center for Environmental Education
Indigenous Survival International
Rural Alaska Resources Association
Alaska Federation of Natives, Inc.
International Association of Fish and Wildlife Agencies
Alaska Department of Fish and Game
William N. Arterburn, Willow, Alaska

Eleven commenters representing Alaska Native subsistence groups strongly opposed the depletion designation because, as one commenter states, "[d]eclaring the Pribilof Island population depleted would have a significant adverse effect on the well-being of the Aleut people of the Pribilof Islands. And as a precedent, it could also have a significant adverse effect on all Alaska Natives who depend upon marine mammals for their sustenance." These groups urge closer cooperation between NMFS and user-groups on a conservation and management program for fur seals as an alternative to the depletion finding.

The effect of the depletion designation on subsistence users was the major subject to discussion during the public meeting on the proposed rule on January 21, 1987, in Anchorage, Alaska. These concerns are addressed in detail above. As discussed above in section (a)(1), in the preamble to the proposed rule, and during an opening address at the public meeting, once a species or population is designated as depleted, regulatory restrictions under the MMPA may be imposed on taking by Alaska Natives. However, in the case of the Pribilof Island population of fur seals, subsistence regulations have already been issued under the authority of the Fur Seal Act. No further regulation is deemed necessary nor is it contemplated by NMFS as a consequence of this designation. A depletion designation for Pribilof Island fur seals does not mean that other Alaska pinnipeds are more likely to be designated as depleted. This action is not a "precedent" for future designations unless the biological status of other populations also warrants a depletion designation, i.e., they fall below OSP.

The 11 Native subsistence representatives also stated that "weak" or "unsupported" scientific evidence was used in making the depletion designation. Several commenters mentioned dissension within NMFS on the depletion question. Clearly there has been disagreement on this issue as evidenced by the reopening of the comment period. Additional scientific information was provided by NMFS's NWAFC to counter the assumption in the proposed rule that the carrying capacity of the Bering Sea had probably not changed since the 1950s. There is, however, complete agreement on the fact that the population has declined by over 50 percent since the 1950s. The point of dissension concerned whether or not the peak number observed in the 1950s represents the current carrying capacity or maximum number of fur seals that the Bering Sea and North Pacific Ocean can accommodate today.

The Tribal Government of St. Paul observed that the notice reopening the comment period did not reference the information introduced during the public meeting in January 1987, concerning "the reduced carrying capacity of the Bering Sea indicated by population declines in other species, particularly birds and other marine mammals." As discussed above (in section (a)(2)), coincident declines in sea bird populations and in the Steller sea lion were presented during the public hearing by Native groups as evidence that the carrying capacity must have changed due to overfishing, especially of pollock. The evidence for a reduction in food availability as an explanation of the decline (or a reduction in carrying capacity) has been thoroughly evaluated (see sec. (a)(2) and (b)(1)). The robust nature of individual fur seals and the observed reduction in feeding time at sea has led to the conclusion that food is probably not a limiting factor for this population.

The Tribal Government stated that "[t]here are key gaps in NOAA's definition of OSP" and demanded the answers to certain questions.

These questions include: (a) whether the term carrying capacity comprehends maximum *sustainable*, as opposed to all-time high, population numbers; (b) whether factors such as entanglement, harvest of food species, environmental contaminants, or deliberate population reduction programs, are to be regarded as carrying capacity limiters, and if not, whether carrying capacity is a concept intended to recapture an unattainable state of nature, before man's appearance on the scene; (c) whether MNP for Pribilof Island fur seals can be set, in a peer-reviewed, scientifically accepted manner, as a population size sixty percent of the carrying capacity level. A failure to resolve definitional questions in any rule to designate the Pribilof Island fur seal population as "depleted" would render the proposal fatally defective.

Carrying capacity is the upper bound of a range of population numbers within OSP. It does not coincide with maximum sustainable yield, a concept similar to MNP which is the lower bound of the OSP range. Carrying capacity is not necessarily the "all-time high" population level. Carrying capacity means the maximum population level that the ecosystem can support at equilibrium, or the mean number of animals in a population undergoing natural fluctuations about the level supportable by the environment. In the case of the Pribilof Island fur seal, the number of pups born during the 1940s and early 1950s was averaged to determine the carrying capacity level (about 555,000 pups or 2.2 million total population). The definition of OSP provides a range of population numbers to accommodate the fact that numbers of animals may fluctuate between MNP and the carrying capacity (i.e., 1.3–2.2 million animals). Evidence for a reduction in food availability for fur seals could, if it existed, change NMFS's opinion on the level of the population representing the current carrying capacity. Major changes in physical factors, atmospheric or oceanographic, could be evidence for a change in carrying capacity. This was the subject of the reopening of the comment period. However, relatively short-term, man-induced mortality factors such as marine debris or other contaminants would not necessarily be of such a sustained or widespread occurrence as to constitute a change in the carrying capacity of this environment. The determination of MNP for this species has been the subject of several "peer-reviewed" scientific articles as discussed in the proposed rule and its

references (see 51 FR 47160). This subject is further discussed below.

The Tribal Government asked to incorprate by reference their September 1987 petition for a reopening of the record on the proposed rule and other matters. As mentioned above, this petition was denied by NMFS and copies of the petition and our denial are available from the information contact listed above. The Tribal Government renewed the following comments: (1) The carrying capacity of the environment of the Pribilof Island population of fur seals has declined since the early 1950s; (2) MNP is not sixty percent of the carrying capacity level or the 1950s high; (3) higher mean body weights and growth rates, and historically uniform pup mortality and length of feeding cycles, would not tend to prove that the Pribilof Island population of fur seals is not food-limited.

A response to these comments can be found above in sections (a)(2) and (b)(1) since these concerns were raised during the first public comment period. In addition, this commenter quotes a 1978 NMFS memorandum to demonstrate the change in NMFS' position regarding the cause or causes of the decline in Bering Sea marine mammals and other species. In the 1978 memorandum, the decline in fur seals was largely attributed to "the development of a tremendous commercial fishery." It concludes that the carrying capacity for fur seals "could be considerably less in 1978 than it was in 1956." It should be noted that the number of Pribilof Island fur seals has declined by one-third since the late 1970s, and this second, steeper, decline phase is inversely related to the level of commercial fishing effort, which has decreased considerably during this period.

The Tribal Government also repeated their comments concerning food-availability, which have been addressed in detail above (see section (a)(2)), and provided the following "new evidence": "greater abundance of Copepods since 1982 correlated with enhanced growth rates in Least Auklets. This indicates that primary predator on Copepods—pollock—are less abundant." They also mention studies of murres and kittiwakes and their analysis of foreign shipping logs to demonstrate their strong belief that overfishing of pollock is the cause of these population declines.

The Tribal Government is concerned that the "NMFS staff and no rational basis in fact to support its assertion that the Pribilof Island population of fur seals can attain any given, *higher* level of abundance." This is an important misunderstanding of previously published material. NMFS has not determined finally the cause or causes of this population decline; consequently, we cannot anticipate when, if ever, this population can return to previous high numbers. It is possible that this population may never return to 1950s levels despite all efforts available by law. This is not sufficient reason to fail to act on a depletion designation. The population is below its OSP and the goal of NMFS conservation efforts will continue to be to bring it up to OSP, i.e., 1.3 to 2.2 million fur seals.

Commenters further claim that the use of 60 percent of carrying capacity as an estimate of MNP "has not been accepted * * * as applicable to the Pribilof Island fur seal population. It is based on species or environments not analogous to fur seals." In the preamble to the proposed rule (51 FR 47160) it is stated that "[b]ased on empirical information for fur seals (Smith 1973) and interspecific comparisons (Fowler 1984b), the population at which maximum productivity (maximum natural growth of the total population) would occur is about 60 percent of the carrying capacity."

An overview of the literature on population dynamics of large mammals shows that they tend to exhibit their greatest level of productivity (rate of population change) at population levels which are close to the mean naturally occurring levels (or the carrying capacity of their natural environments). So far, all such populations appear to grow most rapidly (in numbers per unit time) at levels greater than 50 percent of carrying capacity, some at 60 percent or higher. In addition to fur seals, this relationship has been shown for fin whales, gray whales, and *Stenella* dolphins.

The Tribal Government claims that the Marine Mammal Commission (MMC) did not "substantiate in the record a detailed scientific and factual basis for its recommendation of depleted status. At any event, its recommendation is at least three years' dated and obscures food abundance issues—in which it has little competence. Thus, a remand of that recommendation to the Commission and the NWAFC jointly is warranted." The MMC provided comments during the first comment period in March 1987 that repeated its advice on the depletion issue (see section (b)(1)). The legal representatives of the Tribal Government and of other Pribilof Aleut entities were provided copies of all comments received on the proposed rule and copies of the transcripts of the public meeting.

The commenter questions whether or not our OSP determination for the Pribilof Island fur seal population could be sustained in court and attempts to draw certain analogies with a separate proceeding involving an OSP determination for the Commander Island population (See a discussion on the Dall's Porpoise case in sec. (b)(2)). They also state that "a depletion finding would compound existing havoc for Pribilof Islander's subsistence, its ports, and for commerical Native take of fur seals."

The Alaska Department of Fish and Game (ADF&G) believes that the fur seal population decline in the late 1950s and early 1960s was caused primarily by a harvest of females and that the decline in pup production in the late 1970s can be partially attributed to entanglement of seals in net debris. ADF&G further concludes "informed scientists agree that they cannot determine the present carrying capacity of the Bering Sea and North Pacific Ocean for fur seals or directly evaluate whether it has changed in recent years." ADF&G present the following explanation for the recent changes in abundance of the Pribilof Island fur seal population.

The carrying capacity for fur seals in the early to mid 1950s was approximately 2.2 million animals (as indexed by pup production of about 555,000). At that time, some stocks of fishes (e.g., salmon and halibut) were greatly reduced, as were several species of large whale and pinnipeds (e.g., California sea lions and elephant seals). When the harvest of females reduced the fur seal population, other components of the ecosystem were changing concurrently so that carrying capacity for fur seals was reduced. The population size stabilized at or near carrying capacity in the late 1960s and early 1970s at about 1.3 million individuals (pup production about 326,000).

Entanglement in net debris, which began to increase in 1970 and peaked in 1975, caused a density independent mortality that reduced the population somewhat below carrying capacity. Using measures of average pup production on St. Paul Island for 1964–1976 (264,478) and 1980–1987 (180,715), we estimate that the present population is above 68 percent of the most recent (early 1970s) carrying capacity level. The population therefore is above the generally accepted level which produces MNPL, and does not qualify for classification as depleted under the terms of the NMPA.

NMFS has concluded, based on the same data, that the Pribilof Island population is a less than 60 percent of the carrying capacity observed during the 1940s–1950s. The commercial harvest of females during 1956–68 cannot be considered to have permanently reduced the carrying capacity of this environment. Using

ADF&G's logic, the current situation (800,00 population) could represent a second reduction in carrying capacity caused by debris entanglement and associated with coincident declines in Steller sea lions and seabirds. On the contrary, carrying capacity is not a sliding index of current population size.

ADF&G recommends against a depletion designation because "designating the population as depleted would needlessly limit the options available for managing fur seals, would affect management of other valuable marine resources, and could substantially impact the lives of Alaskans on the Pribilof Islands and elsewhere."

Another commenter questioned the assumption that the carrying capacity has probably not changed since the 1950s.

> First and most obvious, the fishery resources—bottom fish, shellfish, finfish, and all species in between—have been the subject of all time high exploitation effort during the years since World War II. Fishermen have become more plentiful, more productive and more thorough about using the resources. Whole fisheries in the fur seal migratory area have come and gone during this period, such as king crab in the Pribilof area, and the shrimp fishery. Halibut in the Bering Sea have declined and returned in this period.

Based on his experience with the North Pacific Fishery Management Council, this commenter believes that reliable resource assessment in the Bering Sea is "a near impossibility" because of the existence of the unclaimed "donut hole" which raises doubts about the abundance of resources. He believes we must "address the Bering Sea as one ecosystem." He feels that the depletion designation "ought not to be made before the entire intent and purpose of NMPA is reexamined by the Congress this year."

The International Association of Fish and Wildlife Agencies (IAFWA) renewed its concern about the NMFS' "ill supported expedient to employ the Marine Mammal Protection Act in the absence of a Treaty extension for North Pacific Fur Seals." This subject was addressed in section (a)(5) above. IAFWA also endorsed ADF&G's comments and "embrace[s] the hypothesis that carrying capacity is dynamic and that the numbers and production of fur seals is a product of carrying capacity within the region."

The Alaska Factory Trawler Association is concerned about the impact of a depletion designation on commercial fishing. The Association renewed its previous comments in light of recent court decisions on Dall's porpoise. This subject is discussed in section (b)(3) above. The Department of the Interior provided a list of publications on the Bering Sea ecosystem that were developed in association with outer continental shelf oil and gas development proposals.

Dr. Venrick, the senior author of the *Science* article, discussed above, commented that extrapolation of her results into the Bering Sea is "Completely unjustified." Regarding the possible effects of climate on fur seals, Dr. Venrick states:

> The global connections between ocean and atmosphere are such that the changes observed in the Central Pacific may, in fact, be accompanied by climatological changes in the Bering Sea. However, the direction of this relationship and the relative timing of the changes in the two environments are totally unknown. It is quite possible that winter storminess in the Bering Sea decreased rather than increased, or that the change in the Bering Sea preceeded or followed the changes in the Central Pacific by several years.

NMFS had postulated that increased storminess could have affected fur seals in the Bering Sea and also throughout their range in the North Pacific Ocean. Female seals and juveniles of both sexes migrate through the Aleutian passes and along the coasts of Alaska, Canada, Washington, Oregon and California. NMFS did not intend to confine the consideration of a possible correlation between fur seal mortality and storm activity to the Bering Sea only, as has been assumed by this commenter.

Four other commenters also challenged the use of Venrick et al. (1987) to justify a reconsideration of the depletion designation. Greenpeace believes that the results "cannot be extrapolated to the Gulf of Alaska, the Bering Sea and coastal NEP [North Eastern Pacific] regions, where most northern fur seals of the Pribilof stock live and migrate * * * Venrick and colleagues' maps, as well as other studies show clearly that temperature and winter storm trends behaved differently in the CNP [Central North Pacific], NEP coastal waters and Bering Sea, respectively."

Greenpeace argues against the assumtpion that storminess may affect carrying capacity for fur seals. They provide references to support conclusions that coastal sea surface temperatures increased and storminess decreased in the North Pacific, "SST of Gulf of Alaska and NEP coastal waters increased during the past 10–15 years (Tabata, 1983; Xiang and Payer, 1983; Mysak, 1986) * * * Winter storminess has decreased along the NEP shelf south of 58 degrees N. (see Figure 3 in Venrick et al. 1987) * * *." Greenpeace states that "the oceanographic and biological connections between the CNP and coastal NEP, Gulf of Alaska and Bering Sea do not exist in the way the Notice claims and therefore cannot be applied to northern fur sea population dynamics." Regarding the possible effect of winter storms on fur seal carrying capacity, Greenpeace argues "[w]inter storms, those shown by Venrick et al. (1987) to have increased in strength, do not affect most females and younger males, since they migrate south to areas where winter storminess has actually decreased in recent years * * *." Greenpeace concludes that "no claim for a causal mechanism connecting abiotic factors to fur seal population dynamics can be made at this time."

Friends of Animals/Committee for Humane Legislation commented on this subject and concluded as follows:

> The Venrick research focuses on an oligotrophic environment located above ocean areas of profound depth. The northern fur seals inhabit a highly productive environment in the relatively shallow waters above the continental shelf. These two ecosystems are very dissimilar and the findings made in one should not be applied to the ecological dynamics of another without very considerable caution and substantive scientific corroboration which, as yet, does not exist.

Friends of the Sea Otter commented that this "new" information "should simply confirm our inability to predict the future with any great measure of confidence and reaffirm our responsibility to manage as conservatively as possible." They further conclude:

> We certainly hope this tortured analysis will be promptly put aside and the depletion designation finalized without further delay—not only for the sake of the fur seals themselves (as well as other species which could be jeopardized by such a dismal precedent), but also for the sake of maintaining the credibility of the United States' commitment to marine mammal protection at home and abroad.

The Humane Society of the United States (HSUS) submitted pleadings and exhibits previously filed in the civil action mentioned above. HSUS commented that this material supports HSUS's continuing position that "the Pribilof Island fur seal is a depleted population stock and that the decision to reopen the comment period was improper." Copies of all briefs filed in this case and exhibits are available for inspection during normal business hours in Room 603b, 1852 Connecticut Ave. NW., Washington, DC.

HSUS submitted as an exhibit the declaration of Dr. David M. Lavigne concerning the carrying capacity for North Pacific fur seals. Dr. Lavigne concluded that

> Our knowledge of this species exceeds that of almost all other marine mammal populations. Nonetheless, the study of marine mammal populations is necessarily based on estimates, approximations and predictions, since the size and behavior of large wildlife populations, particularly those that spend a large part of their lives at sea, can never be determined with absolute precision. Within the limits of marine mammal biology, however, the conclusion that the Pribilof Island fur seal population is currently below 50 percent of its estimated carrying capacity and, thus, less than the population size necessary to produce maximum net productivity, is well supported by the available evidence.

And, finally, the Center for Environmental Education commented that

> The supplementary information does not offer the kind of new evidence sufficient to justify the reversal of a long-standing scientific finding about how fur seals respond to their environment * * *. Hypotheses, as stated in the Supplementary Information, that sea surface temperatures, and food resource reductions are responsible for the mortality of young fur seals at sea appear to be so speculative that they are not considered viable subjects of research by seal scientists or the agency in setting its funding priorities.

Classification

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This rule will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices; or (c) a significant adverse effect on the U.S. economy. This rule will have no economic effects except those nondiscretionarily mandated by statute. Consequently, the General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

A designation of depletion in this instance, which is similar to a listing action under section 4(a) of the ESA, is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS) (NOAA Directives Manual 02–10 Environmental Review Procedures, 49 FR 29647, para. 5.c.(3)(h), implementing the National Environmental Policy Act of 1969 (NEPA)). A decision on the status of this population relative to its OSP is a biological determination. Once the population is found to be below OSP, it is, by definition, depleted. Thus, NMFS has no discretion to deviate from this biological determination on the basis of potential impacts on the human environment. Any regulations or major actions resulting from the depletion designation, however, would be subject to the requirement to prepare an EA or EIS. A 1985 EIS was prepared on the fur seal Convention which includes a complete review of the environment of the Pribilof Islands, and EAs were published in July 1985 and May 1986 to assess impacts of the subsistence taking of fur seals on the Pribilof Islands. Copies of these NEPA documents are available from the information contact listed above.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practices and procedure, Marine mammals, Penalties, Reporting and recordkeeping requirement.

Dated: May 12, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR Part 216, Subpart A is amended as follows:

PART 216—[AMENDED]

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

2. Section 216.15 is revised to read as follows:

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the Act.

(a) Hawaiian monk seal *(Monachus schauinslandi).*

(b) Bowhead whale *(Balaena mysticetus).*

(c) North Pacific fur seal *(Callorhinus ursinus). Pribilof Island population.*

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Part IX

Department of the Interior

Minerals Management Service

Gulf of Alaska/Cook Inlet, Lease Sale 114; Call for Information and Nominations and Notice of Intent To Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Gulf of Alaska/Cook Inlet
Lease Sale 114

Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 114. This sale, located in the Gulf of Alaska and Cook Inlet Planning Areas, is tentatively scheduled for September 1990. Information and nominations on oil and gas leasing, exploration, and development and production within the Gulf of Alaska/Cook Inlet are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The area of Call is in the Gulf of Alaska Planning Area and Cook Inlet Planning Area off south-central Alaska.

The area available for nominations and comments consists of approximately 25,500 whole and partial blocks (about 139.4 million acres) and is outlined on the attached map. To assist in focusing on promising acreage, the Call map outlines the Minerals Management Service (MMS) interpretation of the area of hydrocarbon potential. Although primary consideration will be given to those blocks included in the area of hydrocarbon potential, respondents may nominate and are asked to comment on any acreage within the entire Call area. A larger scale map of the Gulf of Alaska/Cook Inlet Planning Areas showing boundaries on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for $2.00 each.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in OCS Lease Sale 114. Nominations must be depicted on the larger scale Call map by outlining the area(s) of interest along block lines. Respondents may also submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also asked to rank areas nominated according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Areas nominated which do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority, because blanket priorities on large areas are not useful in the analysis of industry interest.

The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments also are sought on potential conflicts that may result from the proposed sale and future OCS oil and gas activities with approved local coastal management plans (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may be in terms of either broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Gulf of Alaska/Cook Inlet Lease Sale 114," or "Comments on the Call for Information and Nominations for Proposed Gulf of Alaska/Cook Inlet Lease Sale 114," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area. Copies of the Call map showing indications of interest and any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230, 18th and C Streets, NW, Washington, DC 20240.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to refine the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of

environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS, including a description of the scoping process, is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and the Coastal Management Program.

Existing Information

An extensive environmental studies program has been underway in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area, or by telephone at (907) 261-4621. The reports may be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 or by calling (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Description of Area or by telephone at (907) 261-4620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the OCS Lands Act, as amended, and with established departmental procedures.

Tentative milestones that will precede this sale, proposed for September 1990, are:

Milestones	Dates
Comments due on the Call	June 1988
Scoping Comments Due	June 1988
Area Identification	August 1988
Draft EIS Published	September 1989
Hearings on Draft EIS Held	October 1989
Final EIS Published	February 1990
Availability of Proposed Notice of Sale Published	April 1990
Governor's Comments Due on Proposed Notice	June 1990
Final Notice of Sale Published	August 1990
Sale	September 1990

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 114 in the Gulf of Alaska/Cook Inlet off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

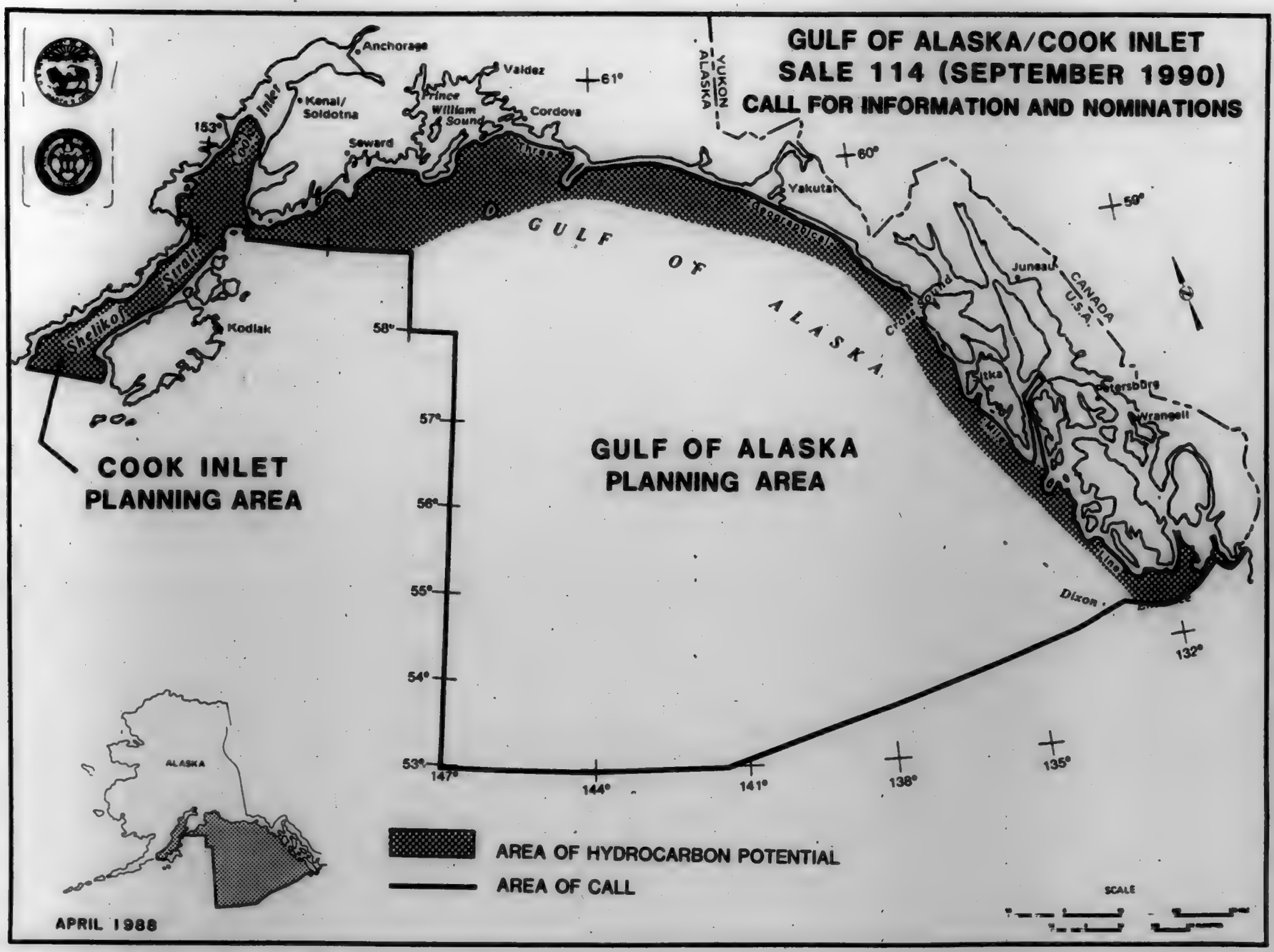
Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Gulf of Alaska/Cook Inlet Lease Sale 114." Comments are due no later than 45 days from publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Director, Minerals Management Service
Wm. D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles

MAY 13 1988
Date



[FR Doc. 88-11169 Filed 5-17-88; 8:45 am]

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Part X

Environmental Protection Agency

Science Advisory Board Environmental Health Committee, Drinking Water Subcommittee; Meeting; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL 3383-1]

Science Advisory Board Environmental Health Committee, Drinking Water Subcommittee; Meeting

Under Public Law 92-463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on June 2-3, 1988 in Room 130-138 of the Andrew Breidenbach Environmental Research Center of the U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, Ohio 45269. This meeting will start at 8:30 a.m. on June 2nd and will adjourn no later than 4 p.m. on June 3rd.

The purpose of this meeting will be in five areas. The first area is analytical methodology where methods development in the areas of disinfection by-products and pesticides will be discussed as well as a laboratory certification issue. In the second area, treatment technology, methodology involving lead and disinfection by-products will be discussed as well as the issue of how much field testing should be required. The third area will be the review of specific issues concerning the drinking water health criteria document for Arsenic. The fourth area involves specific issues concerning the draft of the proposed regulations for Phase II drinking water contaminants. The fifth area involves the proposed sampling scheme for determining the concentrations of lead in drinking water.

Documentation for this meeting is available from the Office of Drinking Water.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460 by May 26, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Donald Barnes,

Director, Science Advisory Board.

Dated: May 11, 1988.

[FR Doc. 88-11291 Filed 5-18-88; 11:11 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S. 2273/Pub. L. 100–318

To provide for the transfer of certain funds to the Secretary of the Interior for the benefit of certain members of the Crow Tribe. (May 13, 1988; 102 Stat. 469; 2 pages) Price: $1.00

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RESERVATIONS: Laurice Clark, 202–523–3517

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WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Rules and Regulations

Federal Register
Vol. 53, No. 97
Thursday, May 19, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-077]

Oriental Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are removing the Oriental fruit fly regulations that designated a portion of Orange County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from Orange County, California, and the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the quarantined area in Orange County, California.

DATES: Interim rule effective May 16, 1988. Consideration will be given only to comments postmarked or received on or before July 18, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket Number 88-077. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** on July 22, 1987 (52 FR 27529-27536, Docket Number 87-095), but effective on signature, July 17, 1987, we established the Oriental fruit fly regulations and quarantined portions of Los Angeles and Orange Counties in California. In an interim rule published in the **Federal Register** on October 26, 1987 (52 FR 39899-39900, Docket Number 87-138), but effective on signature, October 20, 1987, we added an additional portion of Orange County in California to the list of areas designated as quarantined areas. In an interim rule published in the **Federal Register** on December 1, 1987 (52 FR 45597-45598, Docket Number 87-161), but effective on signature, November 24, 1987, we removed the quarantine from portions of Los Angeles and Orange Counties that we had established in July 1987.

We have since determined that the Oriental fruit fly has been eradicated from the remaining quarantined area of Orange County.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. An area in Orange County was quarantined due to the possibility that the Oriental fruit fly could be spread artificially from this area to noninfested areas of the United States. The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles. Since the quarantined area is no longer infested, and because keeping the area quarantined imposes an unnecessary regulatory burden on the public, we are taking immediate action to remove the Oriental fruit fly regulations.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these circumstances, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Orange County that is quarantined, there are approximately 80 small entities that may be affected. These include approximately 60 nurseries, 10 roadside stands and flea markets, 6 fruit and vegetable growers, 2 packing houses, 1 processor, and 1 farmers market. The vegetable growers have a total of 23 acres in production, including 3 acres of avocados, 10 acres of tomatoes, and 10 acres of peppers and cucumbers. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate and are not affected by the regulatory provisions we are removing. Those sales that are affected are mainly of articles that can be moved interstate after compliance with treatment or inspection provisions of the regulations. Compliance with these provisions does not add significant costs to the interstate movement of most of these affected articles.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

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determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.93 through 301.93–10 [Removed and Reserved]

2. "Subpart-Oriental Fruit Fly" (7 CFR 301.93 through 301.93–10) is removed and reserved.

Done at Washington, DC, this 16th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11281 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 88–064]

Melon Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are removing the melon fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of the melon fly into noninfested areas of the United States. We have determined that the melon fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the quarantined area in Los Angeles County, California.

DATES: Interim rule effective May 16, 1988. Consideration will be given only to comments postmarked or received on or before July 18, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket Number 88–064. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** on February 10, 1988 (53 FR 3850–3856, Docket Number 87–173), and effective February 5, 1988, we established the melon fly regulations (7 CFR 301.97 *et seq.*, referred to below as the regulations) and quarantined portions of Los Angeles County in California.

The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the melon fly to noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on trapping surveys conducted by inspectors of the United States Department of Agriculture and state agencies of California, we have determined that the melon fly has been eradicated from the infested areas of Los Angeles County, and that our regulations are no longer necessary.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. An area in Los Angeles County was quarantined due to the possibility that the melon fly could be spread artificially from this area to noninfested areas of the United States. Since this no longer is possible, and because the quarantined status of a portion of Los Angeles County imposes an unnecessary regulatory burden on the public, we are taking immediate action to remove the melon fly regulations.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these circumstances, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Los Angeles County that was quarantined, there were fewer than 250 small entities affected, including 53 nurseries, 150 mobile fruit vendors, 30 fruit stands, 5 fruit wholesalers, and 8 companies catering to airlines. Most of the sales by the fruit vendors and the fruit stand operators are local intrastate, and were not affected by the quarantine. Effects on the nurseries were minimized by the availability of soil treatment under the regulations. Effects on the fruit wholesalers were minimized by the availability of treatments for many of the regulated articles. Effects on the caterers were negligible, because

virtually all of their food products intended for interstate movement originate outside the quarantined area and, properly handled, can be moved onto aircraft without a certificate or limited permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Melon fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.97 through 301.97–10 [Removed and Reserved]

2. "Subpart-Melon Fly" (7 CFR 301.97 through 301.97–10) is removed and reserved.

Done in Washington, DC, this 16th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11280 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 88–025]

Peach Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are removing the peach fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of peach fruit fly to noninfested areas of the United States. We have determined that the peach fruit fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the quarantined area in Los Angeles County, California.

DATES: Interim rule effective May 16, 1988. Consideration will be given only to comments postmarked or received on or before July 18, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–025. Comments may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** December 14, 1987 (52 FR 47367–47372, Docket Number 87–143), and effective December 8, 1987, we amended the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding "Peach Fruit Fly" regulations (referred to below as the regulations).

These regulations quarantined part of Los Angeles County, California, because of the peach fruit fly, and restricted the interstate movement of regulated articles from the quarantined area in order to prevent the spread of the peach fruit fly to noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on trapping surveys conducted by inspectors of the United States Department of Agriculture and state agencies of California, we have determined that the peach fruit fly has been eradicated from the infested areas of Los Angeles County. The last finding of peach fruit fly was made on September 30, 1987. Since then, no evidence of infestations has been found. We have determined that infestations no longer exist in Los Angeles County.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. The area in Los Angeles County was quarantined due to the possibility that peach fruit fly could be spread artifically from this area to noninfested areas of the United States. Since this situation no longer exists, and because the quarantined status of this portion of Los Angeles County imposes an unnecessary regulatory burden on the public, we are taking immediate action to remove the peach fruit fly regulations.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these circumstances, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 533 to make this interim rule effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

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Within the quarantined area, there are fewer than 115 small entities that may be affected, including 45 nurseries, 50 mobile fruit vendors, eight fruit stands, and eight companies catering to airlines. The effect of this rule on these entities should be insignificant. Most of the sales by the entities, except for the nurseries and caterers, are local, intrastate and were not affected by the regulatory provisions we are removing. Effects on the nurseries were minimized by the availability of soil treatment under the regulations. Effects on the caterers were negligible, because virtually all of their food products intended for interstate movement originated outside the quarantined area and, properly handled, were permitted to be moved onto aircraft without a certificate or limited permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, peach fruit fly.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.96 through 301.96–10 [Removed]

2. "Subpart—Peach Fruit Fly" (7 CFR 301.96 through 301.96–10) is removed.

Done in Washington DC, this 16th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11282 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–34–M

Cooperative State Research Service

7 CFR Part 3403

Availability of Information

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations of the Cooperative State Research Service (CSRS), regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It supplements the Department's regulations at Part 1, Subpart A of this title.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, National FOIA Coordinator, Agricultural Research Service, Room 331B, Building 005, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301) 344–3928.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply. This document is being published in accordance with Part 1, Subpart A of this title.

This rule supersedes the notice published on April 5, 1984, 49 FR 13669.

List of Subjects in 7 CFR Part 3403

Freedom of information.

Accordingly, 7 CFR Part 3403 is added to read as follows:

PART 3402—PUBLIC INFORMATION

Sec.

3403.1 General statement.
3403.2 Public inspection and copying.
3403.3 Index.
3403.4 Requests for records.
3403.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 3403.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Cooperative State Research Service (CSRS) to the public.

§ 3402.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. The CSRS does not maintain material within the scope of this requirement.

§ 3403.3 Index.

The CSRS does not maintain material within the scope of this requirement.

§ 3403.4 Requests for records.

Requests for records of the CSRS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the national FOIA coordinator at the following address: ARS Information Staff, Room 331B, Building 005, BARC-West, Beltsville, Maryland 20705; (301) 344–3928. The national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3403.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 5th day of May, 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–11161 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–22–M

National Agricultural Library

7 CFR Part 4100

Availability of Information

AGENCY: National Agricultural Library, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations of the National Agricultural Library (NAL), regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It supplements the Department's regulations at Part 1, Subpart A of this title.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, National FOIA Coordinator, Agricultural Research Service, Room 331B, Building 005, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; (301) 344–3928.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply. This document is being published in accordance with Part 1, Subpart A of this title.

This rule supersedes the notice published on April 5, 1984, 49 FR 13669.

List of Subjects in 7 CFR Part 4100

Freedom of information.

Accordingly, 7 CFR is amended by adding Chapter XLI consisting of Part 4100 to read as follows:

CHAPTER XLI—NATIONAL AGRICULTURAL LIBRARY, DEPARTMENT OF AGRICULTURE

PART 4100—PUBLIC INFORMATION

Sec.

4100.1 General statement.
4100.2 Public inspection and copying.
4100.3 Index.
4100.4 Requests for records.
4100.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 4100.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this Part, govern the availability of records of the National Agricultural Library (NAL) to the public.

§ 4100.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by the NAL at the following office: ARS Information Staff, Room 331B, Building 005, BARC–West, Beltsville, Maryland 20705; (301) 344–3928. Office hours are 8:00 a.m. to 4:30 p.m.

§ 4100.3 Index.

In compliance with 5 U.S.C. 552(a)(2), contact the location cited in § 4100.2 for any available NAL index.

§ 4100.4 Requests for records.

Requests for records of the NAL under 5 U.S.C. 552(a)(3) shall be made in accordance with section 1.6 of this title and submitted to the national FOIA coordinator at the following address: ARS Information Staff, Room 331B, Building 005, BARC–West, Beltsville, Maryland 20705; (301) 344–3928. The national FOIA coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 4100.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Director, National Agricultural Library, U.S. Department of Agriculture, Beltsville, Maryland 20705.

Done at Beltsville, Maryland, this 11th day of May, 1988.

Joseph H. Howard,

Director, National Agricultural Library.

[FR Doc. 88–11162 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–86–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 110, and 171

Addresses for Personal Delivery of Communications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate an additional address for the personal delivery of communications. The addition of the new address is necessitated by the relocation of the NRC's Commission-level offices to the agency's new headquarters office building in Rockville, Maryland. These amendments are being made to inform NRC licensees and members of the public of this new address.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On April 20, 1988 (53 FR 13036), the NRC published in the **Federal Register** a general notice announcing that as of April 11, 1988, the following components of the NRC had been relocated at the agency's new office building located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland: The five NRC Commissioners, the Office of the Secretary of the Commission, Congressional Affairs staff (of the Office of Governmental and Public Affairs), and the staff of the Office of the General Counsel who were formerly located at 1717 H Street NW., Washington, DC. These amendments indicate this relocation by adding the Rockville address to the list of addresses where personal delivery of communications may be made. The NRC is also removing the name of a former headquarters office building which has been vacated by the agency.

Because these amendments deal with the agency organization and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

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List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 171

Annual charges, Nuclear power plants and reactors, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 110, and 171.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 1.5, remove paragraph (a)(10), redesignate paragraph (a)(11) as paragraph (a)(10), and revise the introductory text of paragraph (a) to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and papers are maintained within the District of Columbia at 1717 H Street NW., and in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland. The mailing address for all NRC Headquarters offices is Washington, DC, 20555. The locations of NRC offices in the Washington, DC, area are as follows:

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

3. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 110.30, paragraph (a) is revised to read as follows:

§ 110.30 Filing license applications.

(a) A person shall file a license application with the Assistant Director for International Security, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or deliver the application in person to the Commission's Offices at 11555 Rockville Pike, Rockville, Maryland, or at 1717 H Street NW., Washington, DC.

* * * * *

PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

5. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 82 Stat. 1242, as amended (42 U.S.C. 5841).

6. Section 171.9 is revised to read as follows:

§ 171.9 Communications.

All communications regarding the regulations in this part should be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications may be delivered in person to the Commission's Offices at 11555 Rockville Pike, Rockville, Maryland, or at 1717 H Street NW., Washington, DC.

Dated at Rockville, Maryland, this 9th day of May 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-11213 Filed 5-18-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is making technical and procedural amendments, primarily to clarify that Part 326 of its regulations applies to FDIC-insured state-licensed branches of foreign banks ("insured State branches"). In addition, a recordkeeping requirement is being eliminated.

DATE: This final rule is effective on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: R. Eugene Seitz, Review Examiner, Division of Bank Supervision, (202) 898-6793, or Katharine H. Haygood, Senior Attorney, Legal Division, (202) 898-3732, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 1359 of the Anti-Drug Abuse Act of 1988 ("Act") amended section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, and required the appropriate federal banking agencies to prescribe regulations requiring "insured banks" to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act. The mandated regulations became effective on January 27, 1987 (52 FR 2858); the FDIC's regulations are to be found at Subpart B of 12 CFR Part 326.

The term "insured bank" covers insured branches of foreign banks. *See* 12 U.S.C. 1813(h). Notice of this coverage was made in a publication distributed to affected branches shortly after the effective date of the regulations. *See* FDIC Bank Letter 4-87 (February 26, 1987). Inadvertently, however, the term "insured state nonmember bank" was used in the regulation thereby limiting the indicated coverage of Subpart B. The correct terminology, "insured nonmember bank," which includes insured State branches, is being substituted in Subpart B.

In addition, in line with FDIC's policy to amend regulations pre-existing the International Banking Act when other changes are made to those regulations, changes are being made to Subpart A, as well as to the title, of Part 326 to clarify that it also covers insured State branches. The requirements of Subpart A, *i.e.*, Bank Protection Act requirements, are and have been applied to insured State branches as a matter of practice whenever those branches apply for deposit insurance. As a consequence, such branches have not been permitted to operate as insured branches unless they have complied with the provisions of Subpart A.

Other minor changes are being made. A change is being made at section 326.1(d) to indicate that the Northern Marianas have the same status as Guam in regard to federal banking law. *See* Pub. L. No. 94-241, Section 502, 90 Stat. 263, 268 (1976). Paragraph (b) of § 326.5 is being removed to eliminate the record identifying the law enforcement official consulted on security matters; the consultation continues to be statutorily

mandated, however. The authority citation has been amended; notably, references to 12 U.S.C. 1813, 1815, 1817 and 1818 have been added.

Since the changes are technical or procedural, the rule is being adopted as a final rule.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601-602) does not apply; similarly, a small bank impact statement is not required.

List of Subjects in 12 CFR Part 326

Banks, banking, Currency, Foreign currency, Reporting and recordkeeping requirements, Security measures.

Authority and Issuance

For the reasons set forth in the preamble, 12 CFR Part 326 is amended to read as follows:

1. The authority citation for 12 CFR Part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 [Tenth], 1881-1883; 31 U.S.C. 5311-5324.

2. The title of Part 326 is revised to read as follows:

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT [1] COMPLIANCE

§ 326.0 [Amended]

3. Section 326.0 is amended by substituting the term "subpart" for the term "part" in the introductory paragraph and by substituting the term "insured nonmember bank" for the term "insured State nonmember bank" in paragraph (a).

4. Section 326.1 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 326.1 Definitions.

For the purposes of this subpart—

(a) The term "insured nonmember bank" means any bank, including a foreign bank having an insured branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a member of the Federal Reserve System. The term does not include any institution chartered or licensed by the Comptroller of the Currency, any District bank, or any Federal savings bank.

(c) The term "banking office" includes any branch of an insured nonmember bank, and, in the case of an issured state nonmember bank, it includes the main office of that bank.

(d) The term "branch" for a bank chartered under the laws of any state of the United States includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any state of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. In the case of a foreign bank, as defined in 12 CFR 346.1(a), the term "branch" has the meaning given in 12 CFR 346.1(d).

* * * * *

5. Section 326.2 is revised to read as follows:

§ 326.2 Designation of security officer.

Within 30 days after the issuance of federal deposit insurance, the board of directors of each insured nonmember bank [2] shall designate an officer or other employee of the bank who shall be charged, subject to supervision by the designating party or parties, with responsibility for the installation, maintenance, and operation of security devices and for the development and administration of a security program which equal or exceed the standards prescribed by this subpart.

6. Section 326.4(a) is amended by revising the first sentence to read as follows:

§ 326.4 Security procedures.

(a) *Development and administration.* Within 30 days after the issuance of federal deposit insurance, each insured nonmember bank shall develop and provide for the administration of a security program to protect each of its banking offices from robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts. * * *

7. Section 326.5 is amended by revising the first and second sentences of paragraph (a), by removing and reserving paragraph (b), by revising the first sentence of paragraph (c), and by adding at the end of the section the Office of Management and Budget control number to read as follows:

§ 326.5 Reports and records.

(a) *Compliance reports.* As of the last business day in June of each year, each insured nonmember bank shall complete a compliance report certifying to its compliance with the security requirements of this subpart. This report shall be signed by the president or cashier or managing officer of the bank or the managing official of an insured branch of a foreign bank and shall be retained in the bank files for a period of three years for review by Federal Deposit Insurance Corporation examiners.

(b) [Reserved]

(c) *Records of external crime.* After a robbery, burglary, or nonemployee larceny is committed or attempted at a banking office of an insured nonmember bank, the bank shall keep a record of the incident at its main office, or in the case of an insured State branch of a foreign bank, at the banking office involved.

* * * * *

(Approved by the Office of Management and Budget under control number 3064-0095)

§ 326.6 [Amended]

8. The first sentence of § 326.6 is amended by substituting "insured nonmember bank" for "insured State nonmember bank"; the second sentence of § 326.6 is amended by substituting "subpart" for "part."

§§ 326.3, 326.5, and 326.7 [Amended]

9. Sections 326.3(a) and (c), 326.5(d), and 326.7 are amended by substituting "insured nonmember bank" for "insured State nonmember bank" each time the latter term is used.

§ 326.8 [Amended]

10. Section 326.8(a) is amended by substituting "insured nonmember bank as defined in 12 CFR 326.1(a)" for "insured state nonmember bank" and by adding footnote [3] after the substituted term.

By order of the Board of Directors.

Dated at Washington, DC this 11th day of May, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-11192 Filed 5-18-88; 8:45 am]

BILLING CODE 6714-01-M

[1] In its original form, subchapter II of chapter 53 of Title 31, United States Code was part of Pub. L. 91-508 which requires recordkeeping for and reporting of currency transactions by banks and others and is commonly known as the "Bank Secrecy Act."

[2] The term "board of directors" includes the managing official of an insured branch of a foreign bank for purposes of 12 CFR 326.0-327.7.

[3] In regard to foreign banks, the programs and procedures required by Section 326.8 need be instituted only at an "insured branch" as defined in 12 CFR 346.1(g) which is a "State branch" as defined in 12 CFR 346.1(f).

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-163-AD; Amdt. 39-5991]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires inspection for cracks and repair or replacement, if necessary, of the aft attendant's seat support structure. This amendment is prompted by reports of cracks in the mounting brackets of the aft attendant's seat support structure below the cabin floor. This condition, if not corrected, could result in failure of the support bracket and jamming of engine controls.

DATES: Effective June 27, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Cerification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection for cracks and repair or replacement, if necessary, of the aft attendant's seat structure on British Aerospace Model BAC 1-11 series airplanes, was published in the Federal Register on January 19, 1988 (53 FR 1372).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received.

The commenter had no objection to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,800.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of engine controls due to a failed mounting bracket of the aft attendant's seat, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within the next 350 landings after the effective date of this AD, whichever occurs later, inspect the mounting brackets of the aft attendant's seat for cracks in accordance with British Aerospace Alert Service Bulletin 53-A-PM5931, Issue No. 1, dated November 19, 1986.

1. If cracks are detected less than 1 inch in length, repair prior to further flight and continue to inspect at intervals of 350 landings, in accordance with the service bulletin.

2. If cracks exceed 1 inch in length, replace brackets prior to further flight, in accordance with the service bulletin.

3. If no cracks are found, repeat the inspections in accordance with the service bulletin at intervals not to exceed 3,600 landings.

B. Incorporation of Modification PM5931 constitutes terminating action for the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 27, 1988.

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11202 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-45]

Revision of Transition Area; Leeville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Leeville, LA. The abandonment and closure of the Caillou Island Seaplane Base and the subsequent cancellation of the standard instrument approach procedure (SIAP) that was serving the seaplane base have made this revision necessary. The intended effect of this revision is to return that controlled airspace no longer required due to the abandonment and closure of the seaplane base and the cancellation of the associated SIAP.

EFFECTIVE DATE: 0901 U.t.c., July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Leeville, LA (53 FR 6831).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Leeville, LA. The abandonment and closure of the Caillou Island Seaplane Base and the subsequent cancellation of the associated SIAP have necessitated this revision. The intended effect of this revision is to return that controlled airspace no longer required due to the abandonment and closure of the seaplane base and the cancellation of the associated SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Leeville, LA [Revised]

That airspace extending upward from 700 feet above the surface within 3.5 miles each side of the Leeville VORTAC (latitude 29°10'30" N., longitude 90°06'14" W.), 275° radial extending from the VORTAC to 14 miles west of the VORTAC.

Issued in Fort Worth, TX, on May 4, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11199 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-39]

Revision of Transition Area; Jacksonville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Jacksonville, TX. A review of the existing transition area revealed that the current northwest arrival extension is not properly aligned for the SIAP now serving the Cherokee County Airport, Jacksonville, TX, thus necessitating this revision. The intended effect of this revision is to realign the northwest arrival extension of the existing transition area. There will be no reduction of controlled airspace for aircraft executing the SIAP to the airport. The status of the airport will remain IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

EFFECTIVE DATE: 0901 U.t.c., July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Jacksonville, TX (53 FR 6832).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Jacksonville, TX. A review of the existing transition area revealed that the current northwest arrival extension is not properly aligned for the SIAP now serving the Cherokee County Airport, Jacksonville, TX, thus necessitating this revision. The intended effect of this revision is to realign the northwest arrival extension of the existing transition area. There will be no reduction of controlled airspace for aircraft executing the SIAP to the airport. The status of the airport will remain IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

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substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Jacksonville, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cherokee County Airport (latitude 31°52'09" N., longitude 95°13'02" W.), and within 4 miles each side of the 307° bearing of the Cherokee County NDB (latitude 31°52'12" N., longitude 95°23'55" W.), extending from the 6.5-mile radius area to 11 miles northwest of the Cherokee County Airport.

Issued in Fort Worth, TX, on May 4, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11199 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-53]

Removal of Transition Area; Kirbyville, TX, and Revision of Transition Area; Jasper, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Kirbyville, TX, and will revise the transition area located at Jasper, TX. This multiple action is necessary due to the removal of the Boggy Creek and Pine Nondirectional Radio Beacons (NDB) and the subsequent cancellation of the associated standard instrument approach procedures (SIAP) to the Kirbyville and Jasper County Airports utilizing these two NDB's. The intended effect of the action is to release that controlled airspace no longer required due to the cancellation of the SIAP's. Coincident with this action, the status of the Kirbyville Airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 U.t.c., July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Kirbyville, TX, and revising the transition area located at Jasper, TX (53 FR 7376).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at Kirbyville, TX, and will revise the transition area located at Jasper, TX. The removal of the Boggy Creek and Pine NDB's and the subsequent cancellation of the SIAP's serving both the Kirbyville and Jasper County Airports utilizing these NDB's have necessitated this multiple action. The intended effect of this multiple action is to return that controlled airspace no longer required due to the cancellation of the SIAP's and provide adequate controlled airspace for aircraft executing the NDB RWY 18 SIAP to the Jasper County Airport. Coincident with this action, the status of the Kirbyville Airport will change from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kirbyville, TX [Removed]

3. Section 71.181 is amended as follows:

Jasper, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Jasper County Airport (latitude 30°53'32" N., longitude 94°02'03" W.), within 3.5 miles each side of the 360° bearing from the Jasper NDB (latitude 30°57'16" N., longitude 94°02'00" W.), extending from the 5-mile radius area to 11.5 miles north of the Jasper NDB.

Issued in Fort Worth, TX, on May 4, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11196 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-54]

Revision of Transition Area: Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Albuquerque, NM. The closure of the Alameda Airport, resulting in the cancellation of the VORTAC-A standard instrument approach procedure (SIAP) to the Alameda Airport, and the development of a new ILS RWY 22 SIAP to the Double Eagle Airport have made this revision necessary. The intended effect of this revision is to return that controlled airspace no longer required due to the cancellation of the SIAP serving the Alameda Airport and provide adequate controlled airspace for aircraft executing the new SIAP serving the Double Eagle Airport. Coincident with this action, the status of the Alameda Airport will change for instrument flight rules (IFR) to visual flight rules (VFR), and the status of the Double Eagle Airport will change from VFR to IFR.

EFFECTIVE DATE: 0901 UTC, July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 24, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Albuquerque, NM (53 FR 7375).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Albuquerque, NM. The closure of the Alameda Airport, resulting in the cancellation of the VORTAC-A SIAP to the airport, and the opening of the Double Eagle Airport with the development of a new ILS RWY 22 SIAP to this airport have necessitated this revision. The intended effect of this revision is to return that controlled airspace no longer required due to the cancellation of the VORTAC-A SIAP to the Alameda Airport and provide adequate controlled airspace for aircraft executing the new ILS RWY 22 SIAP serving the Double Eagle Airport. Coincident with this action is the changing of the status of the Alameda Airport from IFR to VFR and the Double Eagle Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Albuquerque, NM [Revised]

That airspace extending upward from 700 feet above the surface within a 14-mile radius of the Albuquerque International Airport (latitude 35°02'30" N., longitude 106°36'23" W.) and within an 11.5-mile radius of the Double Eagle Airport (latitude 35°08'42" N., longitude 106°47'41" W.).

Issued in Fort Worth, TX, on May 4, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-11200 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 215, 298, and 389

[OST Docket No. 44684; Amendment No. 215-7; 298-32; 389-36]

Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is making final its proposal in Notice 87-3 to reissue its rules for the use and change of names by airlines. The final rule replaces detailed requirements with a simple name registration provision. Airlines are required under this rule to notify other airlines with similar names. The rule encourages carriers to resolve potential problems in the use of names among themselves without unnecessary government intervention and it decreases the filing fee for changes of name. The rule will now apply to commuter air carriers. The Department retains its authority to take enforcement action, when necessary, against unfair and deceptive practices in the use of names.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Szrom, Chief, Air Carrier Fitness Division (202-366-9721) or Joseph Brooks (202-366-9349).

SUPPLEMENTARY INFORMATION: On February 25, 1987, the Department issued a Notice of Proposed Rulemaking (NPRM), 52 FR 5547, in which we proposed amending Part 215 of our regulations (14 CFR Part 215) by deleting those portions that set detailed rules and standards for applications by carriers to change or use names different from those on their operating authorizations. The NPRM proposed replacing the detailed rules with a less complex and burdensome name registration system.

After reviewing the comments received in response to our NPRM, we have decided to make final our proposal to amend Part 215, with one clarification. This approach will simplify and focus the Department's role in determining whether the prospective use of a particular name may cause significant potential for or actual public confusion. The present rule gives no encouragement to air carriers to resolve potential problems among themselves without government regulatory intervention and to use the mechanisms already available to them to register

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names and trademarks. We also believe that portions of the rule are duplicative and unnecessary and do not properly reflect the spirit of deregulation. The Department, of course, retains its ability to take enforcement action where there is significant potential for or actual consumer harm in the use of an air carrier name.

The Department received four comments to the NPRM. Three of the commenters were air carriers and one was an association of commuter air carriers. Orion Air and Tower Air, filing nearly identical comments, believed that the proposed rule would not lessen the regulatory burden on either the applicant or the Department because of a potential increase in enforcement complaints, and that the planned use by a new applicant of a name similar to an existing carrier should be a matter of grave concern in the Department's fitness determination. Gulf Air, Inc., the other air carrier commenter, urged the Department to reconsider the proposal to alter the current air carrier name change regulations because many air carriers had relied on the present system, and did not register their names and trademarks with the Patent and Trademark Office. If the Department adopted its proposed rule, Gulf Air believes that there would be a "mass scramble" to protect names and to use other names, causing public and FAA confusion. The Regional Airline Association (RAA), an association of commuter air carriers, requested that the Department exclude commuter air carriers from the amendments to the rule because it believes that the new rule will increase the paperwork for commuter air carriers.

Contrary to the views of Orion Air and Tower Air, the Department is convinced that the proposed amendments to Part 215 will lessen the regulatory burden on both the industry and the Department. Part 215 was adopted in 1963, during a period of strict economic regulation of the aviation industry. Economic regulation of the industry has now been substantially reduced, and air carriers have operated in a deregulated, pro-competitive environment for almost 10 years. The propose amendments to Part 215 reflect the changes that have occurred in the aviation industry concerning this issue since deregulation. Part 215 has functioned, in fact, as an adjunct to the licensing function, not as a surrogate for enforcement action, as Orion and Tower believe. There have been few enforcement cases involving the use of similar names. In fact, over the last four years, some carriers have gone to court to stop such practices. Others, however, have tried to convert licensing proceedings into enforcement cases or to use those proceedings in lieu of lawsuits in the civil courts. Our revised rule will stop this use of an inappropriate forum. With respect to Orion's and Tower's concerns about carrier fitness, we will continue to review an applicant's compliance disposition in establishing whether a carrier is fit to operate. That review, however, will not be a substitute for either enforcement action or court proceedings where such action would clearly be more appropriate.

On the other hand, the Department agrees with Gulf Air, Inc.'s comment that air carriers have built up substantial goodwill in their names and that this goodwill is a valuable business asset. However, the Department does not support the position that it is our responsibility to protect the business assets of the carriers we regulate. We believe that Gulf Air's comment is strong support for our decision to amend Part 215 as we have proposed. Air carriers should register their trade names and trademarks under the Lanham Act [14 U.S.C. 1050–1127] for protection of that asset. The Patent and Trademark Office of the Department of Commerce, administers the Lanham Act, which protects and ensures the proper use of registered trade names and trademarks. If carriers register their names under the Lanham Act, we believe that they will have much greater protection for the goodwill encompassed in their names. Some carriers have done so and have been aggressive in protecting their names and trademarks in court.

We disagree with Gulf, also, about the potential for confusion after this rule is adopted while air carriers move to register their names. If actual consumer harm occurs or appears significantly likely, we retain our authority to institute enforcement action.

The RAA asked the Department to exclude commuter air carriers from the proposed amendments to Part 215. Although Part 215 does not now apply to commuter carriers, the same name similarity issues arise with these carriers as with carries operating large aircraft. Under the final rule, the Department will treat commuter air carriers the same as other air carriers in this area. We believe that equality of treatment in this matter is necessary. The only additional burden that the rule imposes on commuters is that they will have to notify any other air carrier of the intention to use a name similar to that carrier's. In the long run, commuters should be benefitted by this provision, which should assist in resolving any disputes before a commuter makes any large investment in marketing a new name. The commuter industry is a growing and important segment of our air transportation system. With respect to its business assets and potential consumer harm from its actions, it should be treated as such.

Finally, in the NPRM we stated that air carriers could use the courts to protect their names and trademarks. We also stated that enforcement actions could still be brought by the Department under section 411 of the Federal Aviation Act to protect the public from unfair or deceptive practices or unfair methods of competition in air transportation that involved similar carrier names. Most of the commenters expressed some doubt about the likelihood of the Department bringing a section 411 action against an air carrier in such circumstances. In that regard, Gulf Air requested that, at the very least, the Department should forbid registrations of names identical to those already covered under existing certificates.

The Department will not go so far as to forbid registrations of names identical to those already issued. In fact, this is routinely done for code-sharing carriers. However, we will state that, in other cases, a carrier who uses a name that is identical to one already known to be in use, as opposed to nearly identical or similar, will be subjecting itself to a possible section 411 action for unfair or deceptive practices, as well, as of course, to potential private law suits.

The Department is making one clarification to the proposed rule. In § 215.3, we have added a sentence to clarify the unchanging requirement that a carrier must not operate using a name that has not been acknowledged by the Department as a registered name on the carrier's operating authority.

For the reasons stated in the NPRM and above, we are thus adopting our proposed rule as final.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this rule is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions.

Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Also, the rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. It involves the elimination of unnecessary procedural requirements and government intervention. The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The rule reduces administrative burden on the applicants, carriers, and the Federal government.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule has no federalism implication that warrants the preparation of a Federalism Assessment.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. It will have no impact on the environment. The reporting and paperwork requirements of this rule subject to the Paperwork Reduction Act have been approved by the Office of Management and Budget under control number 3024–006.

List of Subjects

14 CFR Part 215

Air Carriers, Foreign air carriers, Trade names.

14 CFR Part 298

Air taxis, Alaska, Antitrust, Consumer protection, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 389

Archives and records.

Accordingly, the Department amends 14 CFR Parts 215, 298 and 389 as follows:

1. Part 215 is revised to read as follows:

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

Sec.

215.1 Applicability.
215.2 Purpose.
215.3 Use of name.
215.4 Change of name or use of trade name.
215.5 Procedure in cases of similarity of names.
215.6 Acknowledgment of registration.

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1381, 1386, 1387.

§ 215.1 Applicability.

This part applies to all certified air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

§ 215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade names statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§ 215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered, and shall not operate or hold out to the public in a name not acknowledged by the Department to be so registered. Except as provided in §§ 221.21(j) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

§ 215.4 Change of name or use of trade name.

(a) *Registrations.* Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, a well as any commuter air carrier registration or amendment filed under Part 298, as containing a "registration" of the intended name. A separate name registration document need not be filed. A carrier registering use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with §§ 302.3 and 302.4 of this chapter registering its intended name with the Air Carrier Fitness Division if it is a U.S. certificated or commuter carrier, or within the Licensing Division if it is a foreign air carrier.

(b) *Montreal Agreement.* Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) [OST Form 4523] signed by the carrier using the proposed name. Upon arrival of the application, the Department will place a copy of the signed OST form 4523 in Docket 17325.

(Reporting and recordkeeping requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024–0084.)

§ 215.5 Procedure in case of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

§ 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

PART 298—EXEMPTIONS FOR AIR TAXI OPERATIONS

2. The authority citation for Part 298 continues to read as follows:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771; 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

3. Section 298.36 is amended by revising paragraph (a) as follows:

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§ 298.36 Limitation on use of business name.

(a) An Air taxi operator in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier operating certificate is issued pursuant to section 604 of the Act by the Federal Aviation Administration, and in which it is registered with the Department under this part.

* * * * *

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

4. The authority citation for Part 389 continues to read as follows:

Authority: Secs. 204, 1602, Pub. L. 85–726, as amended, 72 Stat 743, 797; 49 U.S.C. 1324, 1502, Act of August 31, 1951, ch. 378, 65 Stat. 288; 31 U.S.C. 483a.

5. Section 389.25 is amended by revising the following fees:

§ 389.25 Schedule of processing fees.

Code	Document	
	Interstate and Overseas Air Transportation	
	* * * * *	
8	Change of Name (registration of trade name or reissuance of certificate)	56
	* * * * *	
	Foreign Air Transportation (U.S. and _____ Air Carriers)	
	* * * * *	
19	Change of Name (registration of trade name or reissuance of certificate)	56
	* * * * *	

Issued this 10th day of May 1988, at Washington, DC.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88–11212 Filed 5–18–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 80103–8085]

Limit on Duty-Free Insular Watches in Calendar Year 1988

AGENCIES: Import Administration, International Trade Administration, Commerce; Office of Territorial and International Affairs, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for establishing a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Departments to establish the shares of this limited quantity which may be entered from the three insular possessions of the U.S. and the Northern Mariana Islands (NMI). This action establishes the total quantity of duty-free insular watches and watch movements for 1988 at 6,700,000 units and divides this amount among the three insular possessions of the United States and the NMI. We have done this by amending 15 CFR 303.14(e), which now permits a total of 6,000,000 units distributed among the three insular possessions and the NMI.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377–1660.

SUPPLEMENTARY INFORMATION: We published these revisions in proposed form on April 25, 1988 (53 FR 13414) and invited comments. We received one late comment concurring with the proposed changes.

Accordingly, the Departments are establishing for calendar year 1988 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,700,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,700,000

We find that it is in the public interest to make this rule effective immediately for the following reasons: (1) The existing amount of the duty-exemption for the Virgin Islands is 4,000,000 units. (2) The total allocations to be made to existing firms under this rule exceed 4,000,000 units. Thus, this rule relieves a restriction and is exempt from the delayed effectiveness requirement of the Administrative Procedure Act, 5 U.S.C. 553(d)(1).

Classification

Executive Order 12291

In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

For reasons set forth above, we amend 15 CFR Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note).

2. Section 303.14 is amended by revising paragraph (e) to read as follows:

§ 303.14 Allocation factors and miscellaneous provisions.

* * * * *

(e) Territorial shares. The shares of the total duty exemption are 4,700,000 for the Virgin Islands, 1,000,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

Joseph A. Spetrini,

Deputy to the Deputy Assistant Secretary for Import Administration.

Mark Hayward,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88–11276 Filed 5–18–88; 8:45 am]

BILLING CODE 3510–DS–M; 4310–93–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F–0419]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an ultrafiltration membrane consisting of a sintered carbon support that is coated with zirconium oxide containing up to 12 percent yttrium oxide. This action responds to a petition filed by Societe De Fabrication D'Elements Catalytiques.

DATES: Effective May 19, 1988; objections by June 20, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF–335), 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 21, 1986 (51 FR 42140), FDA announced that a petition (FAP 6B3950) had been filed by Societe De Fabrication D'Elements Catalytiques, Boite Postale No. 201, 84500, Bollene, France, proposing that the food additive regulations be amended to provide for the safe use of zirconium oxide with yttrium oxide supported by amorphous carbon as an ultrafiltration membrane for use in food processing.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that § 177.2910 (21 CFR 177.2910) should be amended as set forth below. The agency is making certain editorial changes in the regulation to reflect the listing of this type of ultrafiltration membrane.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before June 20, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2910 is amended by revising the text of the introductory paragraph, by redesignating paragraph (a) as (a)(1) and revising it, and by adding new paragraph (a)(2) to read as follows:

§ 177.2910 Ultra-filtration membranes.

Ultra-filtration membranes identified in paragraphs (a)(1) and (a)(2) of this section may be safely used in the processing of food, under the following prescribed conditions:

(a)(1) Ultra-filtration membranes that consist of paper impregnated with cured phenol-formaldehyde resin, which is used as a support and is coated with a vinyl chloride-acrylonitrile copolymer.

(2) Ultra-filtration membranes that consist of a sintered carbon support that is coated with zirconium oxide (CAS Reg. No. 1314–23–4) containing up to 12 percent yttrium oxide (CAS Reg. No. 1314–36–9).

* * * * *

Dated: May 6, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–11190 Filed 5–18–88; 8:45 am]

BILLING CODE 4160–01–M

VOL 53 ISS 97 MY 19 1988 UMI

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8203]

Income Tax; Taxable Years Beginning After December 31, 1953; Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to registration requirements with respect to certain debt obligations and sanctions on issuers of registration required obligations not in registered form. These regulations affect issuers of obligations held by foreign persons and issuers of certain other obligations. These final regulations provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982.

DATE: The regulations under § 1.163–5(c)(2)(i) generally apply to obligations issued after December 31, 1982. The regulations under § 1.163–5(c)(2)(i)(B) (foreign targeting rules) generally apply to obligations issued after June 20, 1988. The change in § 1.163.5(c)(3) to the effective date of § 1.163–5T(c)(3) applies with respect to an obligation issued after December 31, 1982 and on or before January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (attention: CC:LR:T) or telephone 202–566–3386 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1.163–5 was issued as T.D. 8110 and was published in the Federal Register at 51 FR 45453 on December 19, 1986. Section 1.163–5(c)(2)(i) provides, among other things, that an exchange of one obligation for another is considered an original issuance if and only if the exchange constitutes a disposition of property for purposes of section 1001 of the Code. Generally, the assumption of an outstanding obligation by a new obligor constitutes a disposition of property for purposes of section 1001 of the Code, because a change in obligor is a change in a material term of the obligation. Thus, the assumption of an obligation would be considered an original issuance under § 1.163.5(c)(2)(i) of the regulations. It has been suggested that compliance with the requirements of § 1.163–5(c)(2)(i) imposes a difficult burden upon the assumption of an obligation which was previously in compliance with those requirements if the assumption involves a change in obligor alone with no other changes in the terms of the obligation.

In the preamble to the final regulations under § 1.163–5(c), the Treasury Department stated that it does not have the authority to permit the offer, sale, or delivery of bearer obligations inside the United States in connection with their original issuance. Accordingly, the regulations should have required that a bearer obligation be delivered outside the United States in order for the issuer of the obligation to meet the test of arrangements reasonably designed to ensure sale only to persons who are not United States persons. The requirement of delivery outside the United States was not, however, included in the text of § 1.163–5(c)(2)(i)(B).

Section 1.163–5(c)(3) requires a certification under § 5f.163–1(c)(2)(i)(B)(4) if the taxpayer chooses to apply the rules of § 1.163–5(c) with respect to an obligation issued after January 31, 1982 and on or before January 20, 1987. The reference to § 5f.163–1(c)(2)(i)(B)(4) is incorrect. The correct citation is § 1.163–5T(c)(2)(i)(B)(4).

Explanation of Provisions

Section 1.163–5(c)(2)(i) of these regulations provides an exception from the general rule that an exchange of one obligation for another is considered an original issuance if and only if the exchange constitutes a disposition of property for purposes of section 1001 of the Code. Under this exception, a change in obligor alone, provided that there are no changes in the terms of the obligation, will not be considered a new issuance. Accordingly, in such a case an obligation which previously met the requirements of § 1.163–5(c)(2)(i) before such a change in obligor, would not have to requalify under § 1.163–5(c)(2)(i) after such a change in obligor.

Section 1.163–5(c)(2)(i)(B) provides that a bearer obligation can be delivered only outside the United States under the second test of arrangements reasonably designed to ensure sale (or resale in connection with the original issue) only to a person who is not a United States person. The second test of arrangements reasonably designed applied to an obligation that is registered under the Securities Act of 1933, that is exempt from registration under section 3 or 4 of such Act, or that is not a security.

Section 1.163–5(c)(3) of these regulations requires a certification under § 1.163–5T(c)(2)(i)(B)(4) rather than § 5f.163–5(c)(2)(i)(B)(4), an incorrect citation.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The Internal Revenue Service has concluded that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these final regulations is Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department paticipated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

The following amendments to 26 CFR Part 1 are hereby adopted:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.163–5 [Amended]

Par. 2. Section 1.163–5(c)(2)(i) introductory text is amended by adding a new sentence immediately following the second sentence thereof, to read as follows:

* * * However, an exchange of one obligation for another will not be considered a new issuance if the obligation received is identical in all respects to the obligation surrendered in exchange therefor, except that the obligor of the obligation received need not be the same obligor as the obligor of the obligation surrendered. * * *

Par. 3. Section 1.163–5(c)(2)(i)(B)(4) is amended by revising the first sentence thereof to read as follows:

* * * In connection with the original issuance of the obligation in bearer form it is delivered in definitive form (or issued, if the obligation is not in definitive form) to the person entitled to physical delivery thereof only outside the United States and its possessions and only upon presentation of a certificate signed by such person to the issuer, underwriter, or member of the selling group, which certificate states that the obligation is not being acquired by or on behalf of a United States person, or for offer to resell or for resale to a United States person or any person inside the United States, or, if a beneficial interest in the obligation is being acquired by a United States person, that such person is a financial institution as defined in § 1.165.12(c)(1)(v) or is acquiring through a financial institution and that the obligation is held by a financial institution that has agreed to comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder and that is not purchasing for offer to resell or for resale inside the United States. * * *

Par. 4. Section 1.163–5(c)(3) is amended by deleting "5f.163–1(c)(2)(i)(B)(4)" and inserting in lieu thereof "1.163–5T(c)(2)(B)(4)".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 22, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–11257 Filed 5–18–88; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 35a

[T.D. 8202]

Income Taxes; Temporary Employment Tax Regulations Under the Interest and Dividend Tax Compliance Act of 1983; Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and amended temporary regulations.

SUMMARY: This document contains temporary regulations and amendments to temporary regulations relating to registration requirements with respect to certain debt obligations, and sanctions on issuers of registration-required obligations not in registered form. These regulations affect issuers of obligations held by foreign persons and issuers of certain other obligations. These temporary regulations provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The text of these regulations also serves as the text for a notice of proposed rulemaking published in this issue of the Federal Register.

DATE: The temporary regulations under § 1.163–5T(d) (pass-through certificates) generally apply to obligations issued after December 31, 1982. The temporary regulations under § 35a.9999–5(f) are deleted effective January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202–566–3386 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1.163–5T(d) provides temporary regulations addressing the application of the term "registration-required obligations" to to pass-through certificates, such as mortgage pass-through certificates, and the application of the sanctions on issuers of "registration-required obligations" not in registered form to the issuers of such certificates. These temporary regulations were originally published in the Federal Register as T.D. 8048 at 50 FR 33522 on August 20, 1985 and were the subject of a notice of proposed rulemaking published in the Federal Register at 50 FR 33552. Section 1.163–5T in its entirety was removed by T.D. 8110, which was published in the Federal Register at 51 FR 45453 on December 19, 1986. However, it was not intended that § 1.163–5T(d) should be removed.

Paragraph (f) of § 35a.9999–5 consisting of Q&A 23 through 27 provides rules concerning the exclusion from portfolio interest of interest received by related parties. These temporary regulations were published in the Federal Register as T.D. 8111 on December 19, 1986 at 51 FR 45484. In Notice 87–24, 1987–9 I.R.B. 9, the Internal Revenue Service stated that pragraph (f) of § 35a.9999–5 of the temporary income tax regulations would be suspended retroactive to January 21, 1987, the date that the paragraph became effective.

Explanation of Provisions

Section 1.163–5T(d) of these temporary regulations republishes the text of former § 1.163–5T(d) (1) through (6) unchanged from the text as it was originally published (except for cross-references) in the Federal Register at 50 FR 33522 on August 20, 1985. These temporary regulations provide that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pool trust treated as a grantor trust) ("pass-through certificate") is considered to be a "registration-required obligation" if the pass-through certificate is described in section 163 (f)(2)(A), without regard to whether any obligation held by the fund or trust to which it relates is described in section 163(f)(2)(A). Also, a pass-through certificate is considered to satisfy the requirements of section 163(f)(2)(B) if it satisfies the requirements of section 163(f)(2)(B) without regard to the status of the underlying obligations. Mortgage pass-through certificates are therefore obligations to which section 163(f)(2) (A) or (B) may apply.

These temporary regulations do not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government or backed by United States Government securities comply with the requirements of section 163(f)(2)(B) and the regulations thereunder.

Section 35a.9999–5(f) applied generally to interest paid on obligations issued after January 20, 1987. Section 35a.9999–5(f) is deleted from the temporary regulations effective January 21, 1987 and, accordingly, section 35a.9999–5(f) does not apply to interest paid on obligations issued after January 20, 1987.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive order 12291 and that a regulatory impact analysis therefore is not required. The Internal Revenue Service has concluded that the regulations adopted hereby are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

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Drafting Information

The principal author of these temporary regulations is Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 35a

Income taxes.

Adoption of Amendments to the Regulations

The following amendments to 26 CFR Part 1 are hereby adopted:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.163–5T is added after § 1.163–5.

The added section reads as follows:

§ 1.163–5T Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).

(a)–(c) [Reserved]

(d) *Pass-through certificates.* (1) A pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be a "registration-required obligation" under section 163(f)(2)(A) and § 1.163–5(c) if the pass-through certificate is described in section 163(f)(2)(A) and § 1.163–5(c) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and § 1.163–5(c). A pass-through certificate is considered to be described in section 163(f)(2)(B) and § 1.163–5(c) if the pass-through certificate is described in section 163(f)(2)(B) and § 1.163–5(c) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(B) and § 1.163–5(c).

(2) An obligation held by a fund or trust in which ownership interests are represented by pass-through certificates is considered to be in registered form under section 149(a) and the regulations thereunder or to be described in section 163(f)(2) (A) or (B), if the obligation held by the fund or trust is in registered form under section 149(a) and the regulations thereunder or is described in section 163(f)(2) (A) or (B), respectively, without regard to whether the pass-through certificates are so considered.

(3) For purposes of section 4701, a pass-through certificate is considered to be issued solely by the recipient of the proceeds from the issuance of the pass-through certificate (hereinafter the "sponsor"). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the pass-through certificate.

(4) In order to implement the purpose of section 163, § 1.163–5(c) and this section, the Commissioner may characterize a certificate or other evidence of interest in a fund or trust which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner and any obligation held by such fund or trust in accordance with the substance of the arrangement they represent and may impose the penalties provided under sections 163(f)(1) and 4701 in the appropriate amounts and on the appropriate persons. This provision may be applied, for example, where a corporation issues obligations purportedly in registered form, contributes them to a grantor trust as its only assets, and arranges for the sale to investors of bearer certificates of interest in the trust which do not meet the requirements of section 163(f)(2)(B). If this provision is applied, the obligations held by the fund or trust will not be considered to be issued in registered form or to meet the requirements of section 163(f)(2)(B). The corporation will not be allowed a deduction for the payment of interest on the obligations held by the trust, and the excise tax under section 4701, calculated with reference to the principal amount of the obligations held by the trust will be imposed on the corporation may be collected from the corporation and its agents. This paragraph (d)(4) will not be applied so as to alter the tax consequences of transactions as to which rulings have been issued by the Internal Revenue Service prior to September 19, 1985.

(5) The rules set forth in this paragraph (d) apply solely for purposes of sections 4701, 163(f)(2)(A), 163(f)(2)(B), § 1.163–5(c), and any other section that refers to this section for the definition of the term "registration-required obligation" (such as the regulations under sections 871(h) and 881(c)). The treatment of obligations described in this paragraph (d) for purposes of section 163(f)(2) (A) and (B) does not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government, a United States Government-owned agency, a United States Government sponsored enterprise (within the meaning of § 1.163–5(c)(1)) or that are backed (as described in the Treasury Department News Release R–2835 of September 10, 1984 and Treasury Department News Release R–2847 of September 14, 1984) by obligations issued by the United States Government, a United States Government-owned agency, or a United States Government sponsored enterprise comply with the requirements of section 163(f)(2)(B) and the regulations thereunder.

(6) The provisions of this paragraph (d) (1) through (5) may be illustrated by the following example:

Commercial Bank K forms a pool of 1000 residential mortgage loans, each made to a different individual homeowner, by assigning them to Commercial Bank L, an unrelated entity serving as trustee of the pool. Commercial Bank L immediately sells in a public offering certificates of interest in the trust of a maturity of 10 years in registered form. Commercial Bank L transfers the cash proceeds of the offering to Commercial Bank K. The certificates of interest in the trust are of a type offered to the public and are not described in section 163(f)(2)(B). Pursuant to paragraph (d)(1), the certificates of interest in the pool are registration-required obligations without regard to the fact that the obligations held by the trust are not registration-required obligations.

PART 35a—[AMENDED]

Par. 3. The authority for part 35a continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 35a.9999–5 [Amended]

Par. 4. In 35a.9999–5, paragraph (f) is removed.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 22, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–11259 Filed 5–18–88; 8:45 am]

BILLING CODE 4830–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission revises its Freedom of Information Act (FOIA) regulations to implement the provisions of the Freedom of Information Reform Act of 1986 regarding fees and fee waivers. Some changes also have been made in the Commission's procedures for responding to requests for information or access to records.

EFFECTIVE DATE: May 19, 1988.

ADDRESSES: Copies of this notice or other information may be obtained from: Linda A. Whitsett, Public Information Specialist, Occupational Safety and Health Review Commission, Room 414, 1825 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Linda A. Whitsett at (202) 634–7943.

SUPPLEMENTARY INFORMATION: On June 18,1987, the Commission proposed to amend its regulations implementing the Freedom of Information Act, 5 U.S.C. 552 (FOIA), as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, sections 1801–1804 (Reform Act). 52 FR 23185 (June 18, 1987). The Commission invited comments from the public. The Society of Professional Journalists, Sigma Delta Chi, submitted comments concerning fee charges and fee waivers under the proposed regulations. The Commission has changed some of the proposed rules in response to the comments and adopts the changed rules as final.

Analysis of Comments and of Changes

Section 2201.8(c)(2)

This proposed regulation was intended to implement the new version of 5 U.S.C. 552(a)(4)(ii)(II). That provision requires agencies to charge representatives of the news media only the cost of duplicating a requesting document, and to not charge for searching for or reviewing a document. The Society of Professional Journalists commented that "[t]he definition for a representative of the news media incorporated into this rule is vague and can be manipulated to deny [Freedom of Information Act] requests * * *." The Society's comment evidently is directed at the phrase "that supports the news dissemination function of the requester" that appears in the proposed section.

The proposed section was not intended to define the term "representative of the news media." Instead, its purpose was to make clear that a request by a representative of the news media must, to qualify for lower fees, be made for the purpose of news dissemination, rather than some commercial purpose. This qualification, which is implicit in the statute, reflects section 8(c) of the guidelines adopted by the Office of Management and Budget 52 FR 10012, 10019 (March 27, 1987). The Commission is required by the Freedom of Information Act to follow the OMB's guidance. See 5 U.S.C. 552(a)(4)(i) (second sentence). The Commission therefore adopts the proposed provision as final.

Section 2201.8(a)(3)

This proposed regulation stated that the Commission would "presume that a request is for a commercial use unless the request indicates otherwise or the requester later shows otherwise." The provision also provided that "inferences" as to the purpose of a request could be drawn from the identity of the requester, as indicated by the letterhead or the text of the request. The Society urged that the provision be deleted. It objected that there is no basis in the legislative history of the Reform Act for a presumption that a request is commercial.

Unlike other fee categories created by the Reform Act, inclusion in the "commercial use" category is determined not by the identity of the requester, but by the use to which the requester will put the information obtained. Because the identity of the requester is not dispositive for purposes of inclusion in this category, the Commission was concerned that it might not always be possible to determine from the request itself whether or not the requested information was for a "commercial use." The purpose of the proposed regulation thus was to indicate how, through the use of presumptions, the Commission would classify requests, in the event that it lacked complete information as to how a request would be used.

Upon further consideration, the Commission has decided not to include any presumptions in its final version of § 2201.6(a)(3). The Commission has had few FOIA requests. In the requests it has received, determination of whether the request is for a commercial use has not proven to be difficult. Further, the Commission has determined that, if it is not clear from the request whether the commercial use category is applicable, it is preferable for the Public Information Specialist to seek further information from the requester, rather than to apply presumptions concerning the likely use of the information. The proposed § 2201.6(a)(3) therefore has been modified so that the Public Information Specialist, if necessary, may seek additional clarification from the requester as to whether or not the "commercial use" category is applicable.

Section 2201.8(c)

This section concerns the aggregation of requests for fee assessment purposes when a requester, or a group of requesters acting in concert, breaks a request into a series of requests in an attempt to evade fees. The Society noted that the Commission's proposed rule does not include some of the language in the OMB guidelines relating to the aggregation of requests. The Society urged the Commission to incorporate in its final rule the wording of the OMB guidelines.

The Commission finds it unnecessary to adopt the OMB guidelines on aggregating requests in their entirety. Nevertheless, this section has been revised to improve its clarity and to avoid any possible implication that it is inconsistent with the OMB guidelines.

Section 2201.9

This section concerns the factors the Commission will consider in determining whether to waive FOIA fees. Under the fee waiver provision at 5 U.S.C. 552(a)(4)(A)(iii), agencies are required to furnish documents at no charge or at a reduced charge if "disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations of the government" and "disclosure is not primarily in the commercial interest of the requester." In the proposed rule, the Commission relied in part upon the factors recommended by the Department of Justice in an interpretive memorandum dated April 2, 1987. The Society vigorously opposes the use of these factors, arguing that they are "too restrictive." The Society believes that the Justice Department policy guidelines disregard the legislative history of the Reform Act and improperly require that agency officials judge the newsworthiness of the requested material.

The legislative history of the Reform Act contains apparently divergent statements concerning the waiver of fees. Senator Leahy declared that the fee waiver provision did not require the

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requester to intend "to disseminate the requested information widely to the public" and that fees could be waived "even if the issue is not of interest to the public-at-large." 132 Cong. Rec. S14928 (daily ed. Sept. 30, 1986). However, Senator Hatch observed that agencies should interpret the word "public" so as to require "a breadth of benefit beyond any particularly narrow interests that might be presented." 132 Cong. Rec. S16505 (daily ed. Oct. 15, 1986). Despite these divergent views, it is clear that Congress, in enacting the legislation, contemplated that fee waivers be based upon something greater than a personal interest in the subject matter of the request. Further, it is clear that the Reform Act's amendment of the statutory language from a focus on the "general public" to simply "public understanding" indicates that the new standard for fee waivers lessens the emphasis upon the impact on the public-at-large.

The Commission, in publishing its final rule concerning fee waivers, has not attempted to establish the outer limits as to when a request will contribute to "public understanding" and therefore qualify for a fee waiver. As noted above, the Commission has received very few FOIA requests. Further, the Commission does not anticipate that, for the requests it will receive, it will be difficult for it to determine whether they will be entitled to a fee waiver. Finally, the Commission expects to receive future guidance concerning the appropriateness of fee waivers through the resolution of fee waiver issues in the Federal Courts and through its own experience and that of other agencies.

The Commission, however, has made some changes in this section in response to the Society's comments. The Commission has deleted the proposal's reference to a "large segment" of the public in recognition that Congress, in amending the fee waiver provision, was lessening the emphasis placed upon the request's impact upon the public-at-large. Some other changes have been made to improve the clarity of the section.

While in its final rule the Commission has not used the same language as the Department of Justice memorandum, the Commission nevertheless believes that in general the memorandum provides a useful outline of the statute's mandate. Thus, even though the Commission is not required by FOIA to follow the recommendations of the Department of Justice, the Commission will look to its recommendations for guidance.

List of Subjects in 29 CFR Part 2201

Freedom of information, Records.

For the reasons set forth in the Preamble, 29 CFR Part 2201 is revised to read as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

2201.1 Purpose and scope.
2201.2 Description of agency.
2201.3 Delegation of authority.
2201.4 General policy.
2201.5 Copies of Commission decisions.
2201.6 Procedure for requesting records.
2201.7 Responses to requests.
2201.8 Fees for copying, searching, and review.
2201.9 Waiver of fees.
2201.10 Maintenance of statistics.

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552.

§ 2201.1 Purpose of scope.

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission under the Freedom of Information Act, 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR Subpart 2200, Subpart D.

§ 2201.2 Description of agency.

The Occupational Safety and Health Review Commission (OSHRC or Commission) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission.

§ 2201.3 Delegation of authority.

The Public Information Specialist is delegated the authority to act upon all requests for records. In the absence of the Public Information Specialist, the Chairman or the Executive Director may designate another Commission officer or employee, such as the General Counsel or the Executive Secretary, to respond to requests. Copies of individual Commission decisions may be obtained directly from the Commission's regional offices as well as from the Public Information Specialist. See § 2201.5(a). All other information requests shall be directed to the Public Information Specialist. See § 2201.6(b).

§ 2201.4 General policy.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 553(b) or published in the Federal Register under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.6.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the Public Information Specialist may inform the requester that the request for a particular document should be directed to the court.

(c) *Time for examination and copying.* Records may be examined and copied, under conditions prescribed by the Public Information Specialist, between the hours of 10 a.m. and 3 p.m. on any business day so long as the examination or copying does not interfere with the hearing or disposition of a pending case.

§ 2201.5 Copies of Commission decisions.

(a) *Single decisions.* One copy of a Commission decision or decision by an Administrative Law Judge may be obtained free of copying fees by calling, writing or visiting any Commission regional office or the Public Information Specialist at the Commission's national office. A search fee may be charged, however, if the decision is not identified by name and date, or by docket number, or if it is not otherwise easily identifiable. See § 2201.8(b)(2)(i). Copying fees will be charged if more than one decision is requested and the copying cost exceeds $10. See § 2201.8 (a)(1) and (b)(1). The addresses and telephone numbers of the offices at which decisions are available are:

National Office

OSHRC, Public Information Specialist, 1825 K Street, NW., Room 414, Washington, DC 20006–1246. Telephone 202–634–7943.

Regional Offices

Atlanta, Georgia: 1365 Peachtree Street, N.E., Room 240, Atlanta, Georgia 30309–3119. Telephone 404–347–4197.

Boston, Massachusetts: John W. McCormack Post Office and Courthouse, Room 420, Boston, Massachusetts 02109–4501. Telephone 617–223–9740.

Dallas, Texas: Federal Building, Room 7B11, 1100 Commerce Street, Dallas, Texas 75242–0701. Telephone 214–767–5271.

Denver, Colorado: 1050 Seventeenth Street, Suite 1718, Denver, Colorado 80265–1701, 303–844–2281.

(b)(1) *OSAHRC Reports.* All final Commission decisions (including decisions of the Commission and its Administrative Law Judges) of general applicability, and concurring and dissenting opinions, are published in a series of microfiche entitled OSAHRC Reports. OSAHRC Reports may be purchased from the Superintendent Of Documents, U.S. Government Printing Office, Washington, DC 20402. Persons wishing to obtain copies of numerous decisions and avoid large copying charges may purchase OSAHRC Reports or subscribe to a private reporting service.

(2) *Citation form.* Decisions in the microfiche series of OSAHRC Reports are officially cited as follows: The name of the cited employer; the last two digits of the year of the decision; OSAHRC (signifying the name of the official reporter, OSAHRC Reports); the serial number of the fiche on which the decision is printed, followed by a slash mark and the coordinates on the fiche for the first page of the decision. For example, *J.W. Black Lumber Co.*, 75 OSAHRC 1/B9.

(3) *Indices.* The Commission indexes decisions in OSAHRC Reports by docket number and alphabetically by name. These indices may be purchased by contacting the Public Information Specialist.

§ 2201.6 Procedure for requesting records.

(a) *Obtaining procedural rules, press releases, hearing dates, etc.* Press releases, rules of procedure, published material other than decisions and their indices, information concerning the date, time and place of hearings, and other information of a general nature concerning operations of the Commission may be obtained free of charge by calling, writing or visiting the Public Information Specialist. See the address and telephone number in § 2201.5(a).

(b) *Other information.* Persons wishing to obtain copies of documents (including the hearing transcript) filed in a case before the Commission or one of its Judges, or any other information or record of the Commission or in its custody (except for one copy of a decision by the Commission or a Judge, and information that is freely available under paragraph (a) of this section), shall submit a request in writing to the Public Information Specialist at the address in § 2201.5(a). The request shall be clearly identified as a request for information under the Freedom of Information Act. The envelope or cover enclosing or covering the request shall have the phrase "INFORMATION REQUEST" in capital letters on it.

(c) *Date of receipt.* A request that complies with the preceding paragraph is deemed received when received by the Commission. A request that does not comply with the preceding paragraph is deemed received when it is actually received by the Public Information Specialist. If the Public Information Specialist has required advance payment or satisfactory assurance of full payment under § 2201.8(f), the request will not be deemed received until the Public Information Specialist has received the payment or assurance.

(d) *Specificity required.* Requesters shall describe the records sought with reasonable specificity.

§ 2201.7 Responses to requests.

(a) *Response within ten working days.* Except in the unusual circumstances stated in 5 U.S.C. 552(a)(6)(B) (concerning search and collection of records in separate offices, voluminous records, and consultation with another agency or another Commission office), the Public Information Specialist shall respond to a request for records or information submitted in accordance with § 2200.6 within ten working days after receipt of the request.

(b) *Content of denial.* When the Public Information Specialist denies a request, the notice of the denial shall state the reason for it and that the denial may be appealed as specified below. A refusal by the Public Information Specialist to process the request because the requester has not made an advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under paragraph (c) of this section.

(c) *Appeal of denial.* A denial of a request may be appealed in writing to the Chairman of the Commission within 30 working days after the requester receives notice of the denial. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, he shall notify the requesting person that he may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4) (B)–(G).

§ 2201.8 Fees for copying, searching, and review.

(a) *Discretion in charging fees—(1) Fees required unless waived.* The Public Information Specialist shall charge the fees in paragraph (b) of this section unless the fees for a request are less than $10, in which case no fees shall be charged. The Public Information Specialist shall, however, waive the fees in the circumstances stated in § 2201.9.

(2) *News media requests deemed not commercial.* Requests made for a commercial use are generally subject to higher fees than requests from a representative of the news media. For the purpose of this section, a request from a representative of the news media that supports the news dissemination function of the requester will not be considered to be for a commercial use.

(3) *Determination of Commercial Use Request.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Where the Public Information Specialist has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Public Information Specialist may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

(b) *Types of fees—(1) Copying fee.* The fee per copy of each page up to 8½" × 14" shall be $.25 per copy per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. One copy of a Commission or judge's decision will be provided free of charge. See § 2201.5(a).

(2) *Search fee.* The fee for searching for information and records shall be $10 per hour of clerical time and $20 per hour of professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. Commercial requesters shall be charged for all search time. Time spent on unsuccessful searches shall be fully charged. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

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(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. The review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions, but shall not be charged for review by the Chairman under § 2201.7(c). The review fee is $20 per hour.

(c) *Aggregation of requests.* When the Public Information Specialist reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Public Information Specialist may aggregate any such requests and charge accordingly.

(d) *Certification or authentication.* The fee for certification or authentication shall be $3 per document.

(e) *Fees likely to exceed $25.* If copying or search charges are likely to exceed $25, the Public Information Specialist shall notify the requester of the estimated amount of the charges, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The notification shall offer the requester an opportunity to confer with the Public Information Specialist to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance Payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed $250, the Public Information Specialist shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the Public Information Specialist may request the requester to pay the full amount owed plus any interest owed as provided in paragraph (g) of this section or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the Public Information Specialist begins to process the new request or a pending request from that requester.

(g) *Interest on unpaid bills.* The Public Information Specialist shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. The accrual of interest will be stayed when the Public Information Specialist receives a check in payment. Interest will be at the rate described in 31 U.S.C. 3717 and will accrue from the date of billing.

(h) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Public Information Specialist may resort to the debt collection procedures set out in the Debt Collection Act of 1982, Pub. L. 97–365, including disclosure to consumer credit reporting agencies (see 28 U.S.C. 6103) and use of collection agencies to encourage payment. See 31 U.S.C. 3718 and 3302.

§ 2201.9 Waiver of fees.

(a) *General.* The Public Information Specialist shall waive part or all of the fees assessed under § 2201.8(b) if two conditions are satisfied: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Public Information Specialist shall afford the requester the opportunity to show that he comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the Public Information Specialist will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

§ 2201.10 Maintenance of statistics.

(a) The Public Information Specialist shall maintain records of:

(1) The total amount of fees collected by this agency under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records requested and the number of instances of participation for each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Public Information Specialist shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

E. Ross Buckley,
Chairman.

Date: May 10, 1988.

[FR Doc. 88–11268 Filed 5–18–88; 8:45 am]
BILLING CODE 7020–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–88–26]

Special Local Regulations for Blue Angels Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Blue Angels demonstration to be held on May 23, 1988, over the waters of the Severn River from shore to shore bounded to southeast by a line drawn between Carr and Horn Points and to the northwest by the Route 450 Bridge, Annapolis, Maryland. The special local regulations will also apply during the Blue Angels practice sessions held on the previous day. The special local regulations govern vessel activities during the Blue Angels demonstration and practice session. The special local regulations are considered necessary due to the potential dangers to the waterway users under the Blue Angels flight paths, the confined nature of the waterway, and the expected spectator craft congestion during the demonstration.

EFFECTIVE DATES: These regulations are effective as follows: 11:30 a.m. to 2:30 p.m., May 22, 1988; 12:30 Noon to 4:30 p.m., May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Adherence to normal rulemaking procedures would not have been possible. The sponsor's application to hold the event was not received in sufficient time to publish a notice of proposed rulemaking, receive comments, and then publish a final rule.

Drafting Information

The drafters of there regulations are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy is sponsoring this event, which will consist of six high performance jet aircraft flying at low altitudes in various formations over the Severn River. Federal Aviation Administration regulations require as a prerequisite to issuing permits for such demonstration that the waterway over which the aircraft will fly be closed to vessel traffic for the term of the demonstration. For this reason, the Commander, Fifth Coast Guard District, is issuing these regulations to close the Severn River to all vessel traffic during the airshow and airshow practice session. Closure of the waterway for any extended period is not anticipated, and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0526 is added to read as follows:

§ 100.35–0526 Severn River, MD.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Severn River enclosed by a line drawn between Carr Point at latitude 38°58'53" North, longitude 76, longitude 76°27'48" West and Horn Point at latitude 38°58'20" North, longitude 76°28'27" West, and a line drawn along the Southeastern edge of the Route 450 Bridge.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel, may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(A) Stop his vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign, and

(B) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

EFFECTIVE DATE: These regulations are effective as follows: 11:30 a.m. to 2:30 p.m., May 22, 1988; 12:30 Noon to 4:30 p.m., May 23, 1988.

Dated: May 9, 1988.

W.J. Ecker,
Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District

[FR Doc. 88–11250 Filed 5–18–88; 8:45 am]
BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Amendment of Forfeiture Regulations

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations concerning forfeiture. The effect of these amendments will be to change the criteria for entitlement to an apportionment or death benefits by dependents and survivors of certain veterans who forfeited all rights to benefits because of fraud or treason, and to clarify that the $10 fee limitation applies to representation in forfeiture cases. The changes are based on opinions of the VA General Counsel.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 41644–46 of the Federal Register of November 18, 1986, the VA published proposed changes to the forfeiture regulations together with a proposed definition of fraud. Interested persons were given until December 17, 1986, to submit comments on the proposed amendments. As no comments were received on the proposed changes to the forfeiture regulations, the amendments are adopted as proposed, except as noted below.

Based on a review of comments received on the proposed definition of fraud, we will be separately publishing that again as a proposed rule. Because we are not publishing a final rule on the definition of fraud, we are rescinding the proposed removal of paragraph (a) of $3.901 and the proposed redesignation of the remaining paragraphs of that section.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities

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as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these regulatory amendments are nonmajor for the following reasons:

1. They will not have an annual effect on the economy of $100 million or more.

2. They will not cause a major increase in costs or prices.

3. They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance program numbers are 64.100 through 64.110.)

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims Handicapped, Health care, Pensions, Veterans.

Approved: April 25, 1988.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

38 CFR, Part 3, *Adjudication*, is amended to read:

§ 3.900 [Amended]

1. In § 3.900(d) remove the word "his" and add, in its place, the words "his or her."

2. In § 3.901, the introductory text of paragraph (c) and the last sentence of paragraph (d) are revised to read as follows:

§ 3.901 Fraud.

* * * * *

(c) *Forfeiture before September 2, 1959.* Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts:

(Authority: 38 U.S.C. 3503(e))

* * * * *

(d) * * *

Where the veteran's rights have been forfeited, no part of his or her benefit may be paid to his or her dependents.

(Authority: 38 U.S.C. 3503 (a), (d), (e))

* * * * *

3. In § 3.902(b) remove the word "he" and add, in its place, the words "he or she."

4. In § 3.902 the introductory text of paragraphs (c), (c)(1) and (c)(2), and paragraph (e) are revised to read as follows:

§ 3.902 Treasonable acts.

* * * * *

(c) *Forfeiture before September 2, 1959.* Where forfeiture for treasonable acts was declared before September 2, 1959, the Administrator may pay any part of benefits so forfeited to the dependents of the person provided the decision to apportion was authorized prior to September 2, 1959, except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit.

(Authority: 38 U.S.C. 3504(c))

(1) *Compensation.* Whenever a veteran entitled to disability compensation has forfeited his or her right, any part of the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents. The total amount payable will be the lesser of these amounts:

* * * * *

(2) *Pension.* Whenever a veteran entitled to pension has forfeited his or her right, any part of the pension payable except for the forfeiture provision may be paid to the veteran's spouse and children. The total amount payable will be the lesser of these amounts:

* * * * *

(e) *Children.* A treasonable act committed by a child or children, regardless of age, who are in the surviving spouse's custody and included in an award to such person will not affect the award to the surviving spouse.

§ 3.903 [Amended]

5. In § 3.903(a)(4) remove the citation at the end which reads "(Pub. L. 92–128; 85 Stat. 347)".

6. In § 34.904, paragraph (a) and the first sentence in paragraph (b) are revised to read as follows:

§ 3.904 Effect of forfeiture after veteran's death.

(a) *Fraud.* Whenever a veteran has forfeited his or her right by reason of fraud, his or her surviving dependents upon proper application may be paid pension, compensation, or dependency and indemnity compensation, if otherwise eligible. No benefits are payable to any person who participated in the fraud causing the forfeiture.

(Authority: 38 U.S.C. 3503(c))

(b) *Treasonable acts.* Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959, and such benefits were authorized prior to that date. * * *

* * * * *

7. In § 3.905 paragraphs (a) and (b), remove the words "Chief Attorney" wherever they appear and add, in their place, the words "District Counsel."

8. In § 3.905, paragraph (b)(5) is revised to read as follows:

§ 3.905 Declaration of forfeiture or remission of forfeiture.

* * * * *

(b) * * *

(5) The right to a hearing within 60 days, with representation by counsel of the person's own choosing, that fees for the representation are limited in accordance with 38 U.S.C. 3404(c) and that no expenses incurred by a claimant, counsel or witness will be paid by the VA.

* * * * *

[FR Doc. 88–11018 Filed 5–18–88; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3375–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Group III CTG Regulations and Miscellaneous Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions require reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment and from polystyrene manufacturing equipment. The revisions also include amendments clarifying VOC compliance methods for surface coating operations. The intended effect of this action is to approve regulations adopted by the State fulfill commitments made in its fully approved ozone attainment plan in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on June 20, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, JFK Federal Building, Room 2311, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252 or Lynne A. Hamjain, (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On November 19, 1986 (51 FR 41810), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed to approve two new regulations developed and proposed by the State based on EPA's Group III Control Techniques Guideline (CTG) documents. The NPR also proposed to approved amendments to the existing SIP regulation regarding VOC compliance methods for surface coating operations.

The NPR indicated that certain changes to the proposed regulation were necessary for final EPA approval. As outlined below, Connecticut's formally submitted SIP revisions reflect that all of these changes were made to the regulations prior to their final adoption. The State has also made revisions pursuant to public comments received from an affected source during the State's public comment period. The rationale for approving these revisions is presented below.

1. *"Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment," Subsection 22a–174–20(x).* The regulation requires a VOC leak detection and repair program to be instituted at subject facilities. In the NPR, EPA required Connecticut to include the definition of "in VOC Service," in the regulation to make it consistent with the applicable CTG document, *Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment* (EPA–450/3–83–006). The State defined this term in the finally adopted regulation, and, therefore, the regulation is now fully approvable.

The State also made changes to the proposed version of this regulation pursuant to a public comment received from an affected facility. These changes add monitoring exemptions to the final version of the regulation. The final regulation does not require quarterly monitoring of safety relief valves that are isolated by a frangible disk or rupture disk; it does, however, require that these configurations be monitored annually in case the disk is improperly situated or has corroded. Additionally, the final regulation exempts canned pumps that have demonstrated compliance with 40 CFR 60.482–2 (e)(2) and (e)(3) from quarterly monitoring and visual weekly inspections. These exemptions are consistent with the New Source Performance Standard (NSPS) for this industry titled, "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry." (40 CFR Part 60, Subpart VV.)

Final Action: EPA is approving the addition of subsection 22a–174–20(x), "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment," as a revision to the Connecicut SIP because it is consistent with the CTG document for this source category.

2. *"Manufacture of Polystyrene Resins," Subsection 22a–174–20(y).* This regulation requires all continuous polystyrene resin manufacturing facilities to comply with an emission limit of 0.12 kg of VOC/1,000 kg of product in total from the styrene condenser vent and the styrene recovery unit condenser vent. EPA finds this regulation consistent with the CTG document *Control of Volatile Organic Compounds Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins* (EPA–450/3–83–008). This regulation does not address polypropylene and high-density polyethylene manufacturers. On May 29, 1987, the Connecticut DEP submitted a letter, pursuant to an EPA request, certifying that there are no sources of these types in the State. Therefore, it is not necessary for Connecticut to adopt a regulation covering these types of facilities. If such a facility did locate in the State of Connecticut at some point in the future, it would be covered at a minimum under the NSPS entitled, "Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry." (40 CFR Part 60, Subpart DDD.) This NSPS was proposed for approval by EPA on September 30, 1987 (52 FR 36878).

The DEP made one change to the proposed version of this regulation pursuant to public comments received during its public comment period. Under subdivision 22a–174–20(y)(8), "Test Methods," the State has added an emission rate equation to the finally-adopted regulation for use with EPA Reference Method 18. In the proposed version of the regulation, the emission rate equation could only be used with EPA Reference Method 25. The additional use of the emission rate equation in the final version of the regulation is approvable because the EPA-recommended test methods for this CTG category are Methods 18, 25, or 25A.

Final Action: EPA is approving the addition of subsection 22a–174–20(y), "Manufacture of Polystyrene Resins" as a revision to the Connecticut SIP because it is consistent with the CTG document for this source category.

3. *"VOC Compliance Methods," Subsection 22a–174–20(bb).* This regulation is being amended to clarify that VOC surface coating sources are required to use a capture system with a 90% collection efficiency when utilizing add-on control equipment to achieve compliance. Pursuant to a request by EPA, the State has also clarified the applicability of this regulation. In Connecticut's proposed version of the amendments, subsection 22a–174–20(bb) was inadvertently listed as applicable to the following subsections: subsection 22a–174–20(t), "Manufacture of Synthesized Pharmaceutical Products," subsection 22a–174–20(u), "Manufacture of Pneumatic Rubber Tires," and subsection 22a–174–20(v), "Graphic Arts Rotogravers and Flexography." These regulations already contain capture and control efficiency requirements within them. The State has removed these subsections from the applicability paragraph of subsection 22a–174–20(bb) in the final by adopted version of the amendments to this regulation.

Final Action: EPA is approving revisions to subsection 22a–174–20(bb), "VOC Compliance Methods," of the Connecticut SIP.

Additionally, the Connecticut DEP submitted a letter to EPA on July 3, 1986 clarifying the testing requirements in section 22a–174–5 "Methods for Sampling Emission Testing, and Reporting," of its regulations. In this letter, the DEP commits to requiring only EPA-approved test methods when requiring emission testing of sources of VOC emissions. This letter has been provided to EPA to clarify the DEP's implementation of section 22a–174–5.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1988. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: May 1, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.370 is amended by adding paragraph (c)(38) as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(38) Revisions to the State Implementation Plan were submitted by the Connecticut Department of Environmental Protection (DEP) on April 14, 1987.

(i) *Incorporation by reference.* (A) Letter dated April 14, 1987 from the Connecticut Department of Environmental Protection submitting revisions to the State Implementation Plan for EPA approval.

(B) Letter dated April 1, 1987 from the Secretary of State of Connecticut to EPA.

(C) Section 22a–174–20(x) of Connecticut's Regulations for the Abatement of Air Pollution titled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment," effective April 1, 1987.

(D) Section 22a–174–20(y) of Connecticut's Regulations for the Abatement of Air Pollution titled, "Manufacture of Polystyrene Resins," effective April 1, 1987.

(E) Amendments to subsection 22a–174–20(bb) of Connecticut's Regulations for the Abatement of Air Pollution titled, "Compliance Methods," effective April 1, 1987.

(ii) *Additional materials.* (A) Letter from the Connecticut DEP dated July 3, 1986 committing the Connecticut DEP to use only EPA approved test methods when requiring the testing of sources emitting volatile organic compound emissions.

(B) Letter from the Connecticut DEP dated May 29, 1987 certifying that there are no polypropylene or high-density polyethylene manufacturers in the State of Connecticut.

3. Section 52.375 is amended by adding paragraph (d) as follows:

§ 52.375 Certification of no sources.

* * * * *

(d) Manufacturers of High-density Polyethylene and Polypropylene Resins.

[FR Doc. 88–10077 Filed 5–18–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–057–F]

Medicare Program; Assignment and Reassignment of Provider-Based Home Health Agencies and Hospices To Designated Regional Intermediaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are modifying Medicare regulations to assign provider-based home health agencies, provider-based hospices and all new freestanding hospices to regional intermediaries designated by HCFA.

EFFECTIVE DATE: These regulations are effective June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Norman Fairhurst: Regarding transition issues, (301) 594–9496; Toba M. Winston: Regarding intermediary designation (301) 597–0471.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

In the Medicare program, in general, intermediaries under contract with HCFA are responsible for making payment to providers of services for the covered services they furnish to Medicare beneficiaries.

Section 1816 of the Social Security Act permits any group or association of providers to nominate an intermediary to determine the proper amount of reimbursement and to make that reimbursement. As amended in 1977, this section authorized the Secretary to assign and reassign providers that had nominated intermediaries to other intermediaries, and to designate regional or national intermediaries for a class or classes of providers, if he determines that to do so would result in the more effective and efficient administration of the program (section 1816(e) of the Act).

B. Home Health Agencies

1. Background

Section 1816(e)(4) of the Act requires the Secretary to assign home health agencies to designated regional intermediaries, except that he may assign a home health agency (HHA) that is a subdivision of a hospital (and that agency and hospital are affiliated or under common control) only if, after applying criteria relating to administrative efficiency and effectiveness as he has promulgated, he determines that to do so would result in more effective and efficient administration of the Medicare program.

To implement the provisions of section 1816(e)(4) of the Act, we amended our regulations (42 CFR 421.117) to require that all freestanding HHAs served by a nominated intermediary be served instead by a regional intermediary designated by HCFA (47 FR 38535, September 1, 1982). At that time, in the preamble to those amendments, we defined "regional" as meaning "State" and we designated one intermediary to serve freestanding HHAs in each State. We also amended our regulations (42 CFR 421.103) concerning providers' options to elect to receive payments directly from HCFA rather than through an intermediary (49 FR 3638, January 30, 1984). These regulations clarified our authority to contract out the workload of HHAs that dealt directly with us instead of through intermediaries. Effective February 29, 1984, we required the direct dealing freestanding HHAs to receive payments from the designated regional intermediaries. In addition, we made available to HHAs the option of requesting an alternative designated intermediary if the HHA could demonstrate that such an arrangement would be consistent with the effective and efficient administration of the Medicare program. (42 CFR 421.117 (e), (f) and (g), 47 FR 3660, January 30, 1984).

As a result of these revisions, all freestanding HHAs were assigned to designated regional intermediaries. Provider-based HHAs were not affected by these revisions and continued to be served by the intermediaries serving the parent providers.

In 1984, Congress amended section 1816(e)(4) of the Act (section 2326 of Pub. L. 98–369) to require that, by not later than July 1, 1987, HCFA reduce the number of designated regional home health intermediaries to not more than ten. Accordingly, on February 13, 1986, we published a final notice designating ten regional intermediaries to serve freestanding home health agencies (51 FR 5403).

(See below for a listing of the designated intermediaries and their service areas.)

2. Proposed Rule Related to HHAs

On January 22, 1987, we published a proposed rule announcing our intent to assign provider-based HHAs to the same intermediaries designated for freestanding HHAs (52 FR 2424).

With respect to a hospital-based HHAs, section 1816(e)(4) of the Act states that the Secretary shall assign hospital-based HHAs to designated intermediaries only if, after applying criteria relating to administrative efficiency and effectiveness as the Secretary may promulgate, it is determined that such assignment would result in the more effective and efficient administration of the Medicare program. We proposed to modify 42 CFR 421.117 to establish criteria that are applicable to this issue and determined, based on the application of the criteria listed and discussed below, that the assignment of hospital-based HHAs to designated regional intermediaries could be expected to result in more effective and efficient administration of the program. Additionally, although not required to do so, we also determined based on the application of these criteria, that the assignment of HHAs that are based in a Medicare provider other than a hospital (e.g., based in a Medicare skilled nursing facility) could also be expected to result in more effective and efficient administration of the program.

The six specific criteria we used to determine whether to assign provider-based HHAs to the ten regional intermediaries are as follows:

a. Uniform interpretation of Medicare rules—Assignment of provider-based HHAs to designated regional intermediaries must facilitate uniformity in interpreting Medicare rules.

b. Expertise in bill processing—Assignment of provider-based HHAs to designated regional intermediaries must ensure that HHA bills are processed by an intermediary with expertise in processing and adjudicating home health bills.

c. Control of administrative costs—Assignment of provider-based HHAs to designated intermediaries must have the potential to reduce administrative costs.

d. Ease of communication with HHAs—Assignment of provider-based HHAs to designated regional intermediaries must facilitate communication of program policy and issues.

e. Ease of data collection—Assignment of provider-based HHAs to designated regional intermediaries must facilitate data collection.

f. Ease of HCFA monitoring of intermediary performance—Assignment of provider-based HHAs to designated regional intermediaries must facilitate HCFA's monitoring of intermediary performance.

We also proposed that the Secretary could use other criteria he believes to be pertinent.

All of the criteria except item b above are met simply by virtue of transferring all HHA providers to the ten intermediaries. For example, it is more efficient and less costly to send out ten sets of instructions rather than more, to collect data from ten intermediaries than to collect it from more, or to make data processing systems changes at ten intermediaries rather than more.

While it is not as evident that criterion b has been met, we were confident that it would be. We proposed to transfer HHAs to intermediaries whose long-term overall performance indicates they are effective and efficient and we believed that once the HHAs were transferred to the designated intermediaries, performance data would substantiate the accuracy of our projection.

We proposed that the intermediaries designated to serve the provider-based HHAs be the same intermediaries currently designated to serve the freestanding HHAs.

These intermediaries and the areas they serve are:

a. Associted Hospital Service of Maine—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

b.[1] The Prudential Insurance Company of America—New Jersey, New York, Pureto Rico and the Virgin Islands.

c. Blue Cross of Greater Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia.

d. Blue Cross and Blue Shield of South Carolina—Kentucky, North Carolina, South Carolina and Tennessee.

e. Aetna Life and Casualty—Alabama, Florida, Georgia and Mississippi.

f. Blue Cross and Blue Shield United of Wisconsin—Wisconsin, Michigan and Minnesota.

g. Health Care Service Corporation (Chicago, Illinois)—Illinois, Indiana and Ohio.

h. New Mexico Blue Cross and Blue Shield, Inc.—Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

i. Blue Cross of Iowa, Inc.—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

j. Blue Cross of California—Alaska, Arizona, California, Hawaii, Idaho, Oregon, Nevada and Washington.

We also proposed granting provider-based HHAs the same opportunity afforded freestanding HHAs to request to be served by an alternative designated regional intermediary. These requests were not to be granted automatically; rather an HHA would be required to demonstrate that the change to the alternative designated regional intermediary would be consistent with the effective and efficient administration of the Medicare program. The requests would have to be filed in accordance with the timetable established at 42 CFR 421.108(a) and would be evaluated in accordance with criteria contained at 42 CFR 421.108(b). The intermediaries we proposed designating as alternative designated intermediaries for provider-based HHAs and the areas in which they would be available are:

The Pardential Insurance Company of America—Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia;

Blue Cross of Iowa, Inc.—Alaska, Arizona, Arkansas, California, Hawaii, Idaho, Illinois, Indiana, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Puerto Rico, Texas, Virgin Islands, Washington and Wisconsin; and

[1] Note.—The Prudential Insurance Company of America notified the Health Care Financing Administration on April 20, 1988 that it intends to terminate its Medicare contracts effective December 31, 1988. Those home health agencies and hospices that were to be or are currently served by Prudential will be notified of their servicing intermediary as soon as a replacement for Prudential is selected.

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Blue Cross of California—Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

In proposing to assign provider-based HHAs to the designated intermediaries, we proposed that where the HHA and parent provider would be served by different intermediaries that audit and cost report settlement for both remain the responsibility of the intermediary serving the parent provider. Bill processing, making coverage determinations and making payments to the HHA would be done by the designated regional intermediary.

C. Hospices

1. Background

Section 1816(e)(5) of the Act requires the Secretary to designate the intermediary that will serve each hospice, except that with respect to a hospice that is a subdivision of another Medicare provider (and the hospice and parent provider are under common control) due regard be given to the intermediary serving the parent provider.

To implement the provisions of section 1816(e)(5), we amended our regulations at 42 CFR 421.117 to require that (1) freestanding hospices receive payment through an intermediary designated by HCFA; (2) hospices that are subdivisions of another Medicare provider that elected to receive payments through an intermediary receive payment through the same intermediary that serves the parent provider; and (3) hospices that are subdivisions of another Medicare provider that elected to deal directly with HCFA receive payment through an intermediary designated by HCFA. (48 FR 56036, December 16, 1983).

Currently two intermediaries are designated to serve freestanding hospices and provider-based hospices in category (3) above. The Prudential Insurance Company of America serves hospices located in States east of the Mississippi River and Blue Cross of California serves hospices located in States west of the Mississippi River. The entire States of Minnesota and Louisiana are served by Blue Cross of California.

2. Proposed Rule Related to Hospices

In the proposed rule published on January 22, 1987, we announced our intent to amend current regulations at 42 CFR 421.117(c) to assign provider-based hospices and all newly participating freestanding hospices to the designated regional intermediaries serving HHAs. Thus, we planned to expand from two to ten the number of intermediaries designated to serve freestanding hospices. We pointed out that while we had previously designated two intermediaries to serve freestanding hospices, this had not resulted in a concentration of the workload because there are many intermediaries processing small provider-based hospice workloads. We also pointed out that existing regulations require that provider-based hospices be served by the same intermediary serving the parent provider. Since the majority of hospices are based in HHAs, an indirect result of the assignment of freestanding HHAs to the ten designated intermediaries was a concentration of the hospice workload in these ten intermediaries. We believe it makes sense to make this concentration complete. Therefore, we proposed that the intermediaries designated to serve hospices be those same intermediaries designated to serve HHAs. In the case of provider-based hospices, we proposed that the settlement of the Medicare cost report, including the supplemental hospice worksheets, continue to be the responsibility of the intermediary serving the parent provider.

We proposed assigning newly-participating freestanding hospices to the intermediary designated for its location.

In the interest of minimizing disruptions, we proposed an exception to the general rule in order to allow those freestanding hospices currently served by Prudential or Blue Cross of California to continue to be served by those intermediaries, if the hospice so desired.

We also proposed granting a hospice the opportunity to request to be served by an alternative designated regional intermediary if it demonstrated that the change to the alternative designated regional intermediary would be consistent with the effective and efficient administration of the Medicare program. Such requests would have to be filed in accordance with the timetable established at 42 CFR 421.106(a) and would be evaluated in accordance with criteria contained at 42 CFR 421.106(b). We proposed that the alternative designated regional intermediaries and the areas in which they would be available be the same as those listed above for HHAs.

We made the above proposal in the interest of achieving greater effectiveness and efficiency in administering the Medicare hospice benefit. We proposed that the criteria relating to effective and efficient administration listed above in connection with HHAs also apply to the designation of intermediaries for hospices. Additionally, reassignment of the provider-based hospices would not have a negative impact on the intermediaries currently serving them. Very few hospice providers would be eliminated from an intermediary's current list of providers. In the majority of cases, only one hospice would be eliminated from the list. A loss of so few providers would not have a detrimental effect on the involved intermediaries.

D. Technical revisions.

We proposed making the following technical changes:

- Amending the definition of "Intermediary" at 42 CFR 421.3, by changing the term "freestanding HHAs" to "HHAs" to clarify that we have designated intermediaries for all HHAs.
- Deleting the clause "Except for certain hospice physician services, which are generally reimbursed by carriers" from 42 CFR 405.117(c) (redesignated as 42 CFR 405.117(d). Carriers have never reimbursed hospice physician services, so this clause is inaccurate.
- Deleting 42 CFR 421.117(g) (redesignated as 42 CFR 421.117(h)), which gave freestanding providers dealing directly with HCFA 30 days from January 30, 1984 to request transfer to the alternative designated regional intermediary without having to prove the transfer would result in more effective and efficient administration. Provisions of that paragraph are now obsolete.
- Amending 42 CFR 421.128(f) by deleting the word "freestanding" to show that, under section 1816(e)(4) of the Act, an intermediary that loses either freestanding or provider-based HHAs or hospices as a result of the reassignment or by the designation of regional intermediaries does not have the right to appeal any adverse effect.

II. Analysis and Response to Comments

We received 92 comments: 76 from providers, 7 from provider associations, 6 from Medicare intermediaries, and 1 each from a member of Congress, a State health department, and a county health department. Sixteen of the commenters wrote in support of our proposal; the others objected to the proposal or had concerns with some aspects of the proposal. We discuss the comments and our responses to them below.

Comment: Several commenters, while not disagreeing with the criteria relating to administrative efficiency and effectiveness that we proposed, disagreed that they would be met. Specific comments were (1) it has not yet been demonstrated that the selected intermediaries have expertise in home health bill processing; (2) until HCFA provides clear guidance of such terms as "skilled nursing," "intermittent care," and "homebound," we will not have consistency in coverage determinations; and (3) savings from economies of scale will be minimal.

Respone: Based on our experience with freestanding HHAs, we continue to believe that uniform interpretation of Medicare rules, better control of administrative costs, ease of communication with HHAs, data collection and HCFA monitoring of intermediary's performance will be enhanced by virtue of reducing the number of intermediaries processing provider-based home health bills from 53 to 10. For example, it is more efficient and less costly to work with or issue instructions (or both) to 10 intermediaries than 53. We are better able to monitor performance and collect data from 10 rather than 53 intermediaries to assure there is more uniform interpretation of Medicare rules. We have been monitoring HHA performance data on a monthly basis and where there are issues to be resolved, we are working with the regional office and intermediary staff to resolve these issues.

Regarding criterion b, expertise in bill processing, the designated intermediaries long-term overall performance indicates they have the expertise to adjudicate and process home health bills. Additionally, they have demonstrated the ability to assume a significant increase in workload and continue to process bills accurately and timely. The transfer of freestanding home health agencies to the designated intermediaries was completed September 1, 1987. Approximately 3,000 home health agencies were reassigned. Although a few intermediaries encountered isolated transition problems, the problems were few relative to the magnitude of the task and they have been resolved.

Regarding consistency of coverage determinations, having 10 intermediaries making such decisions is an improvement over having 53 intermediaries making coverage determinations. Furthermore, we have been working with the ten regional intermediaries to identify areas where inconsistent determinations have been made, to arrive at proper determinations, and to see that in the future the guidelines will be applied uniformly.

We agree that savings from economies of scale may be minimal. While we do expect some savings to accrue from economies of scale in HHA bill processing, we see a large part of the reduced administrative costs coming from having to modify fewer bill processing systems when changes in the home health program require modifications to software programs.

Comment: Several commenters stated that distance from the regional intermediary will create problems. For example, there will be some delays in handling inquiries and there will be additional provider administrative costs, such as long distance telephone calls.

Response: We do not agree that increased distance by itself will create problems. A number of HHA providers at their request are currently assigned to the alternative designated regional intermediary. In many of these cases, the provider is located over 800 miles from the intermediary. This has not created problems. Additionally, for years, many providers, located throughout the United States, elected to be served by HCFA's Office of Direct Reimbursement (ODR). They also did not find distance from ODR to be a problem. While face-to-face provider/intermediary contacts may be less frequent, experience has shown that most issues can be resolved timely and satisfactorily either by telephone or written correspondence.

If the transfer should result in increased provider costs, these costs will be reimbursed according to established Medicare reimbursement principles to the extent they are reasonable, allowable, and verified by the intermediary. If the HHA's costs exceed the limits as the result of the required transfer to a designated regional intermediary, and exception to the limits may be granted to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the provider and verified by the intermediary. In the case of hospices, there is no legislative or regulatory basis for exceptions to the rates.

Comment: A couple of commenters stated that transition of provider-based home health agencies to designated intermediaries may mean an initial loss of electronic media claims processing.

Response: The providers will not have to forego the benefits of automation. The designated intermediaries have the capacity to receive HHA bills via various electonic media (tape cassette, disk, dial-up, etc.). Some providers may have to make minor system changes to meet the intermediaries' format and submittal requirements. The designated intermediaries will hold provider training sessions to familiarize the home health agencies and hospices with their billing requirements.

Comment: Several commenters stated that the ten designated intermediaries have not been in place long enough and requested that we delay the move until we have assessed the effect of the transition of the freestanding home health agencies.

Response: The ten designated intermediaries have a long history of processing home health bills (from the beginning of the Medicare program) and they have further demonstrated their ability in satisfactorily assuming the additional freestanding HHA workload. As we stated previously, over 3000 freestanding home health agencies have transferred to the designated intermediaries. Each intermediary has been able to assume the additional workload, provide orientation and training for the providers, and process bills while maintaining adequate cash flow to providers. The designated intermediaries accomplished this even though, for most of them, the home health workload increased 100 percent or more. We have demonstrated our ability to conduct a smooth transition.

Comment: A commenter with an HHA-based hospice located in a State that is currently served by Aetna has as its intermediary Prudential, because Prudential serves the parent HHA as an alternative designated HHA intermediary. The hospice asked whether it would have to transfer to the intermediary for the State, Aetna. The commenter pointed out that the proposed exception that would allow a hospice currently served by Prudential or California Blue Cross to remain with that intermediary was restricted to freestanding hospices.

Response: We appreciate the commenter calling this situation to our attention. It is our intent that all hospices be assigned to designated intermediaries, but that this be achieved in the least disruptive manner. Therefore, we are allowing any freestanding hospice that is currently assigned to Prudential or Blue Cross of California to continue to be served by that intermediary even if it is not the designated or alternate intermediary for its location. (However, as noted earlier, Prudential does not intend to serve as intermediary after December 31, 1988; its hospices and HHAs will be reassigned by that time.) We will also allow a provider-based hospice currently assigned to any one of the ten designated intermediaries to continue to be served by that intermediary even if it is not the regional or alternate intermediary for its location. Therefore,

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the hospice may stay with Prudential if it so chooses.

Although it was not stated in the proposed rule, it is our intention to grandfather in any HHAs in this same situation. We are therefore clarifying the regulations to allow any HHA that is currently served by any one of the designated intermediaries to continue to be served by that intermediary even if it is not the regional or alternate intermediary for its location, if the HHA so chooses.

Comment: Many of the commenters stated that dealing with two intermediaries will be costly and cumbersome and will create confusion. Regarding the latter, the example most often stated was receiving conflicting advice from each intermediary; e.g., regarding preparation of cost reports.

Response: It is true that in some cases providers may need to incur costs for minor computer modifications and personnel training. However, aside from the initial setup expenses, the effect on ongoing costs is expected to be minimal. Costs incurred by the HHA or its parent provider will be reimbursed according to established Medicare reimbursement principles to the extent they are reasonable, allowable, and verified by the intermediary. Hospice rates, on the other hand, are subject to limits and there is no provision for increases beyond the limits even if due to cost increases.

We have taken steps to reduce the possibility of confusion of having two intermediaries serving the provider by assigning each separate, clearly identifiable areas. For example, questions related to fiscal areas such as preparation of cost reports, setting interim rates, audit and cost settlement will be answered by the intermediary serving the "parent" provider. The home health agency or hospice will deal with its designated intermediary regarding all other issues. We will work with intermediaries and providers to make sure that they are informed and clearly understand these divisions of responsibility. Should a question be directed to the inappropriate intermediary (because of the education effort we expect this to be a rare occurrence), that intermediary will not provide an answer, but will refer the question or questioner to the proper intermediary. Therefore, concern that the provider will need to deal with conflicting advice from two intermediaries is unwarranted. We are amending 42 CFR 421.100 to clarify the delineated responsibilities for service to provider-based hospices and HHAS.

Comment: A couple of commenters suggested that they should have access to toll-free 800 numbers to the designated intermediaries.

Response: We are not considering the establishment of toll-free telephone lines. The costs of provider telephone calls continue to be included in the HHA's cost report as a normal business expense and are reimbursable under established Medicare reimbursement principles.

Comment: One commenter stated that providers are being deprived of their right to a choice of intermediary.

Response: In the case of home health agencies and hospices, the right of a provider to choose its intermediary is limited by statute (sections 1816(e)(4) and 1816(e)(5) of the Act). Under this rule HHAs retain the same right other providers have to request a change of intermediary; i.e., they may request a change to the alternative designated intermediary. As in the case of other providers, we will evaluate any such request based on criteria at 42 CFR 421.100. An exception is provided for a hospice or HHA that as of [the effective date of this rule] is receiving payment from any one of the ten designated regional intermediaries. Such a hospice or HHA may, if it so desires, continue to receive payment from that intermediary even if that intermediary is not the designated regional intermediary or the alternative designated regional intermediary for the particular State in which the hospice or HHA is located.

Comment: A few commenters questioned our objectivity in selecting the designated intermediaries. Some quoted the General Accounting Office (GAO) report, "Need to Strengthen Home Health Care Payment Control and Address Unmet Needs", (GAO/HRD-87-9) that stated that information we used in the selection process raised questions about the prior performance of all 47 intermediaries assessed, including the 10 selected to serve as regional intermediaries.

Response: In making selections of the 10 regional intermediaries, we engaged in a public process to allow input from all interested parties. We published a proposed notice (50 FR 14162) on April 10, 1985, with a 60 day comment period announcing this initiative. On February 13, 1986, after an analysis of all comments received, we published a final notice (51 FR 5403). To summarize what is explained in detail in those notices: in the selection process, we considered the distribution of providers and workload, transition risks, and each intermediary's performance against an entire array of criteria as compared with other existing intermediaries available within the proposed regional configurations. We evaluated each intermediary's performance specific to serving HHAs, their electronic data processing capability and past performance as measured by HCFA's fiscal year 1983 and 1984 Contractor Performance Evaluation Program (CPEP).

With respect to the GAO report, we note that GAO criticism of our selection relied heavily on data related to denials. As we stated in the February 13, 1986 final notice, we did not use denial rates in our analysis because denial rates are subject to ambiguous interpretation. For example, it is not clear to what extent low denial rates are related to good provider education efforts by intermediaries or overly broad interpretations of existing coverage policy.

Comment: A number of commenters were concerned that the transition could disrupt cash flow to the provider-based agencies.

Response: We will make every effort to assure that there will be no interruption of cash flow. Before the transition, we will identify each home health agency, its method of reimbursement and its frequency of receiving that reimbursement so that we can identify potential problem areas. As we have done in the past transitions, we will work closely with the intermediaries and affected providers to resolve problems that could interrupt cash flow. Additionally, we will use existing payment procedures to meet provider cash flow requirements under special circumstances. The reassignment of freestanding HHAs was completed September 1, 1987. Approximately 3,000 HHAs were transferred. The transfers went well; no major problems occurred. We promptly addressed and settled issues raised.

Comment: One commenter stated that since the regional intermediary is used to dealing with proprietary agencies only, it will not understand the special needs and functions of a hospital-based agency.

Response: Our designated intermediaries serve all types of home health agencies within their service area. These include, in addition to proprietary agencies, visiting nurse association agencies, combined government and voluntary agencies, official health agencies, private non-profit agencies, rehabilitative facility-based agencies and hospital-based and skilled nursing facility-based agencies. Each intermediary is aware of and able to accommodate the unique features and special needs of each type of agency to the extent appropriate to do so.

Comment: Several commenters expressed the opinion that there could be problems in the timely exchange of remittance and utilization information between the designated intermediary and the local intermediary. These commenters were concerned about how this would effect setting interim rates.

Response: Separating the claim processing and fiscal functions will require coordination between the two intermediaries. The intermediary serving the parent provider will need utilization data from the regional intermediary in order to establish and adjust interim rates.

We are working to identify data exchange needs and establish time frames for exchange of those data. This procedure will be in place before we begin transfer of provider-based HHAs. Since the designated intermediary is also a local intermediary for hospitals in its own State, it is aware of the need for prompt and accurate Provider Statistical and Reimbursement (PS & R) reports.

Comment: A substantial number of commenters stated that they have had a good working relationship with their current intermediary and some questioned whether this type of relationship will continue.

Response: We are pleased to hear that providers have been satisfied with the service given by their current intermediaries. The designated intermediaries and we will do everything possible to facilitate the formation of new, effective working relationships with the providers that are transferred. To illustrate, designated intermediaries have held nearly 700 workshops for providers reassigned to them. These workshops will continue with the reassignment of the provider-based HHAs. In addition, a HCFA ombudsman is available in each HCFA region to help solve any problems which may arise.

Comment: A few commenters stated that the current regional home health intermediaries are overburdened and are not processing claims timely. Some questioned whether the intermediaries can absorb the additional workload.

Response Eight out of the ten designated regional intermediaries are meeting or exceeding the Congressional standard for timely HHA bill processing (95 percent of clean claims must be paid within 30 days of receipt). Of the two remaining intermediaries, one is very near this standard (based on data for September 1987) and the other is experiencing problems unrelated to the absorption of the freestanding HHA workload. The intermediary has taken steps to correct the problem and improvement in timely HHA bill processing is anticipated shortly.

Regarding absortion of the provider-based HHA workload, as we did for the freestanding HHA transition, HCFA will ask each designated intermediary to submit a plan which details the measures it will take; i.e., the number, location, and frequency of provider training workshops and the hiring and training of additional staff needed to accommodate this workload successfully. We will carefully review each plan to ensure that each designated intermediary will have the capability to process home health bills timely and correctly without disruption of service to providers.

Comment: A few commenters thought that the change to designated intermediaries would be confusing for beneficiaries.

Response: Claims for home health services are submitted to the intermediaries by the providers and reimbursement is made directly to the providers. Generally, beneficiaries communicate with intermediaries only when they request a reconsideration or an appeal of a decision. In those instances, they will have a written decision from the intermediary who processed the claim and will therefore know where they should direct their request.

Comment: One commenter stated that it is inappropriate to allow providers to request and be served by an alternative regional intermediary. The commenter pointed out that it is contrary to the goal of consistency in coverage determinations to allow home health providers in the same State to have different regional intermediaries.

Response: We agree that the ideal situation, with respect to consistency, would be to have only a single intermediary serving home health agencies within a given location. However, as administrator of a national program we also wish to treat all classes of providers fairly and grant them the same privileges, insofar as possible. Therefore, we think it is appropriate to maintain the ability to request a change of intermediary. This policy is consistent with existing regulations at 42 CFR 421.106(b), which empowers us to permit a provider to change to another intermediary if we conclude that such change is in the best interest of the Medicare program.

Comment: One commenter stated that our interpretation of when a request to be served by the alternative designated regional intermediary is in the best interests of effective and efficient administration of the Medicare program has become more restrictive over the past twelve months. The commenter felt we should provide more detailed instructions on the criteria that will be used to determine assignment to the alternative designated regional intermediary.

Response: The right of a home health agency to request to be served by an alternative intermediary was first established by 42 CFR 421.117 when we reduced the number of HHAs dealing directly with HCFA. At that time, HHAs that were served by HCFA's Office of Direct Reimbursement and that did not wish to be served by the designated regional intermediary were given the opportunity to elect to be served by the alternative designated intermediary. Freestanding HHAs that were served by intermediaries were given the opportunity to request a change to the alternative intermediary. However, in the case of these HHAs served by intermediaries, such requests were not to be granted automatically. These HHAs were required to demonstrate that the change to the alternative intermediary would be consistent with the effective and efficient administration of the Medicare program.

The policy relative to granting approval for use of the alternative intermediary can be misinterpreted so that one might believe a request to change intermediaries would be automatically granted. We would like to state clearly in this preamble that no request for a change in intermediary will be granted without sufficient development. The policy as established by 42 CFR 421.117 (f) and (g) is still effective and is not being changed by this rule.

It should be noted, however, that a hospice or an HHA that as of June 20, 1988 is served by one of the ten designated intermediaries may continue, if it so desires, to be served by that intermediary even if that intermediary is not the designated regional intermediary or the alternative designated regional intermediary for the particular State in which the hospice or HHA is located. This exception is established by this rule at 42 CFR 421.117(h).

Our rules at 42 CFR 421.117 (f) and (g) reflect our desire to accommodate a provider faced with a totally unacceptable situation (such as, but clearly not limited to, a conflict of interest situation) that would preclude acceptable operational efficiencies being realized by the Medicare program, were the HHA required to remain with the designated regional intermediary. In those cases where an HHA or an HHA chain desires to be served by the alternative intermediary, and in the absence of a clearly unacceptable situation, such as the demonstrable

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conflict of interest situation, we fully expect the HHA to quantify the operational advantages specifically to be realized by the Medicare program as well as any advantages that accrue to the agency. We will examine, in order to verify, the reported benefits to the Medicare program before we approve any request for transfer to any alternative intermediary. We will decide each case on an individual basis and on its own merits.

Comment: One commenter, a Medicare-participating health maintenance organization (HMO) with a Medicare-certified HHA, stated that it currently submits a UB-82 form on each home health patient as a "no-pay" claim so that Medicare will have a record of the services. The commenter raised two points. First, this HMO was concerned that information regarding its practice patterns would be going to an intermediary which competes with it in the marketplace, giving the intermediary a competitive advantage. Second, the commenter pointed out that since the designated intermediary would not make coverage determinations, but would only forward the no-pay bill data to HCFA, the significant advantages that will accrue from more uniform interpretation of coverage policy will not apply to HMOs. The commenter suggested we, therefore, consider an exception to the assignment to the designated intermediary.

Response: An HMO is no longer required to submit "no-pay" bills for services provided by its HHA. The HMO community was informed informally of this some time ago and this change will be formalized by revised instructions in the HMO and HHA Manuals. This resolves both of the above issues. First, the potential for the intermediary to gain a competitive advantage is eliminated since data will not be submitted to the designated intermediary. (Note: The Medicare intermediary agreement prohibits the intermediary from using either its position as a Medicare contractor or information it obtains in performing its functions as a Medicare contractor for purposes of furthering its private business interests or gain.) Second, it is not necessary to make an exception in the regulations, since the assignment of the HMO-based HHA will be, in effect, merely a "paper" tie-in. Because the provider need not submit any claims or data to the intermediary, the tie-in will have no effect on the provider's operation.

Comment: One commenter, a statewide hospital association commenting on behalf of its membership, stated that as a general policy it believes it is unwise to create specialized intermediaries for each service covered under the Medicare program.

Response: We agree there should not be a general policy to have specialized intermediaries for all Part A services. Each covered service needs to be evaluated individually to determine whether specialized intermediaries are desirable. In the case of the home health and hospice benefits, designation of intermediaries was legislatively mandated for such freestanding facilities. We have evaluated the situation and have concluded that it is efficient and effective to treat provider-based home health agencies and hospices in the same manner.

Comment: A Medicare intermediary suggested that we also transfer the provider-based rural health clinics (RHCs) to the intermediaries designated to serve the freestanding RHCs.

Response: As stated in the previous response, each service needs to be evaluated individually. In 1985, HCFA staff did an analysis concerning specialization of RHCs and at that time recommended against specializing the provider-based RHC workload. We appreciate the commenter's interest in improving the Medicare program but we are not adopting this comment.

Comment: One commenter stated that Mississippi Blue Cross' loss of the HHA workload would deprive the State of Mississippi of needed revenue.

Response: Although Mississippi Blue Cross is losing the provider-based home health and hospice workloads in terms of bill processing, it is retaining responsibility for all fiscal functions such as audit and settlement of cost reports for these providers. Based on historical patterns, we expect the reduction in HHA and hospice bill volume will be mostly offset by an increase in the volume of other bill types. The slight decrease in the workload of one organization should have imperceptible consequences for the state economy.

Comment: Two commenters stated that chain providers should be exempt from these regulations. They did not give specific rationale.

Response: Section 1816(e)(4) of the Act does not permit exemption for chain providers from the requirement that they be served by designated intermediaries. We recognize that there may be cases in which the degree of centralization of the chain would make it more efficient for the chain to be served by a single intermediary. Therefore, a chain may, in accordance with proposed 42 CFR 421.117(e), request to be served by a single intermediary. We will evaluate such a request in accordance with criteria contained at 42 CFR 421.106.

Comment: A Medicare intermediary commented that if the proposal were adopted and if the CPEP standards remain consistent for FY 1988, our proposed reassignment could jeopardize the intermediary's ability to pass CPEP.

Response: This initiative should not adversely affect intermediary performance; rather, we anticipate a greater ability to sustain or improve current performance. We do, however, recognize that there are differing responsibilities between the intermediary serving the parent provider and the designated regional intermediary. It is possible that one of these intermediaries could be adversely affected by some action or inaction of the other. As spelled out in CPEP, if a condition exists that adversely affects an intermediary's performance and that is outside of that intermediary's control, we will assess the adverse circumstances and make appropriate adjustments in performance measures.

Comment: One commenter questioned our reason for going to ten designated intermediaries for hospices rather than staying with the two currently designated to serve the freestanding hospices. The commenter stated the belief that the growth of the certified hospice movement is questionable.

Response: Increasing the number of intermediaries designated to serve hospices was not based solely on the number of hospice providers (128 freestanding, 275 provider-based, as of September 1, 1987). We agree that this workload could be handled by two intermediaries. However, one of our goals is to minimize disruption among the hospice providers. Regulations in effect at the time we designated the ten regional intermediaries for freestanding home health agencies required that hospices be served by the intermediary serving the parent provider. Since approximately 65 percent of the provider/based hospices were based in freestanding home health agencies, an indirect result of the HHA intermediary designation was a concentration of the provider/based hospices in the ten designated HHA intermediaries. We did not want to require these hospices, which had recently transferred along with the parent home health agency, to transfer to a new intermediary again.

Comment: One commenter recommended that if a hospital has both an affiliated home health agency and hospice, their transfer to the designated intermediary should coincide.

Response: We agree; they will be transferred at the same time.

III. Provisions of the Final Rule

We are adopting in final, with minor technical changes to correct typographical errors, the rules as proposed on January 22, 1987. As proposed, we are amending our regulations at 42 CFR 421.117 so that all HHAs and hospices are to be assigned to designated regional intermediaries. (See section B.2. of the Background for a listing of these intermediaries and their service areas.)

As proposed, we are granting all HHAs and hospices the right to request to be assigned to an alternative designated intermediary. We will not grant these requests automatically; the provider must demonstrate that the change would be consistent with the effective and efficient administration of the Medicare program. The request must be filed in accordance with the timetable established at 42 CFR 421.106(a) and will be evaluated in accordance with criteria contained at § 421.106(b). (See section B.2. of the Background for a listing of the alternative designated intermediaries and the areas in which they will be available.)

We are amending regulations at 42 CFR 421.100 to delineate clearly in regulations the responsibilities for service to provider-based HHAs and provider-based hospices. Where the HHA or hospice and its parent provider will be served by different intermediaries, the designated regional intermediary will process bills, make coverage determinations and make payments to the HHAs and hospices. The intermediary serving the parent provider will perform all fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

The proposed rule allowed any freestanding hospice to continue to be served by Prudential or Blue Cross of California, if it so wished. As explained in the "Comment" section, we are expanding this exception so that any hospice or HHA that is currently served by a designated regional intermediary or alternative designated regional intermediary also may remain with that intermediary.

We are adopting the technical changes as proposed.

IV. Implementation Activities

We expect approximately 1,200 provider-based HHAs and approximately 80 provider-based hospices to be reassigned to another intermediary under this proposal.

A. Notification to Providers

We will send a notice to each affected HHA and hospice, advising it of the name of its designated regional intermediary and the scheduled change-over date for bill submittals.

B. Transfer Schedule

Providers will receive at least a 60-day advance notice before the date of the change-over. Fiscal functions will remain the responsibility of the intermediary serving the parent provider. Consequently, transfers need not be based on the provider cost report year ending date. The reassignment of all affected HHAs and hospices is expected to be completed within 6 months.

C. Procedures During the Change-Over Period

We will notify each affected HHA and hospice by mail of procedures to follow during the change-over process. We are arranging for an orderly transition of service.

1. HHAs and hospices will submit bills for services provided before the change-over date to the current intermediary. This same intermediary will continue to be responsible for the settlement of cost reports, prior unsettled cost reports, any appeals arising from those cost reports, and all other fiscal issues.

2. The HHAs and hospices will submit all bills for services provided on and after the change-over date to the designated intermediary.

3. We are continuing ombudsmen-type positions established in each HCFA regional office to assist providers in resolving any problems encountered during the transition or thereafter.

D. Assurance of Cash Flow

We will make every effort to assure that there will be no interruption of cash flow to HHAs or hospices. We will work closely with the designated intermediary, HHAs and hospices to identify and resolve problems that might interrupt the provider's cash flow.

E. Transition Costs

HHA costs incurred due to the transfer will be allowable and reimbursable under established Medicare reimbursement principles. If the HHA's costs exceed the limits as the result of the required transfer to a designated regional intermediary, we will grant an exception to the limits, to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the provider and verified by the intermediary. We will process requests for transition cost exceptions consistent with the provisions for handling other exceptions requested under 42 CFR 413.30(f)(2).

In the case of hospices, there is no legislative or regulatory basis for exceptions to the rates.

Regulatory Impact Statement

A. Executive Order No. 12291

Executive Order No. 12291 requires us to prepare and publish an initial regulatory impact analysis for any regulations that are likely to meet criteria for a "major rule".

A major rule is one that would result in:

(1) an annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document contains our description of how we will interpret and implement sections 1816(e) (4) and (5) of the Act. We believe it is not a rule subject to the Executive Order. Nevertheless, in the spirit of the Executive Order, we are voluntarily providing the following information.

We project that, under our proposal, 1,200 provider-based HHAs and approximately 80 provider-based hospices will be reassigned from their present intermediary to a different intermediary. We project that we will incur one-time administrative costs of $2 million for travel and training related to the reassignment of these providers. We expect to achieve some administrative savings as a result of the consolidation of the HHAs and hospices and the reduction in the number of intermediaries serving them. Savings will be associated with reduced systems modification expenses and with minimal economies-of-scale that would lower unit processing costs. The potential savings, coupled with the one-time costs, will not begin to approach the $100 million threshold and would not produce a major increase in cost or prices.

Generally, we consider an adverse effect on employment, productivity, innovation, or competition to be significant only if that effect is

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equivalent to an economic loss of $10 million or more, and the adverse effect results in a 10 percent or greater change in a year for a common measurement of an economic variable of the affected entities. For the reasons discussed above, we expect these proposed reassignments to have beneficial, rather than adverse, effects on productivity and possibly on innovation. Further, although the reassignment of provider-based HHAs and hospices to fewer intermediaries might result in a reduced level of employment by those intermediaries that will no longer serve those providers, we believe this will be of insignificant magnitude.

Finally, we have determined that this rule will not have an adverse effect on competition. Section 1816 of the Act gives providers the right to nominate their servicing intermediary. Because of this, HCFA, in selecting intermediaries, is exempt by operation of law from the requirement of competition that governs most Federal procurements. Historically, with the exception of a few contracts entered into under experimental or demonstration contracting authority, intermediaries have been administratively selected without competition. This designation of regional intermediaries for provider-based HHAs and hospices is consistent with existing law and policy. For the above reasons, we have determined that the assignment and reassignment of provider-based HHAs and hospices to the designated regional intermediaries do not meet any of the criteria for identifying major rules. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all providers to be small entities.

For the reasons given, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. Nevertheless, in the spirit of E.O. 12291 and the RFA, we are voluntarily providing the following information.

This rule will have an impact upon approximately 30 percent of the Medicare-certified hospices. It also requires reassignment of a substantial number of provider-based HHAs to the designated regional intermediaries and, for purposes of regulatory flexibility analysis, we consider all providers and other entities participating in Medicare to be small entities. However, we have determined that the impact on the affected entities will be insignificant.

Since audit and fiscal functions will remain the responsibility of the affected providers' current intermediaries, the impact of assignment to the designated intermediaries will be slight. Additionally, we will provide reasonable advance notice of the change-over date and will make every effort to assure a continued cash flow for each of the affected providers. For these reasons, we believe, and the Secretary certifies, that this rule will not result in a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Burden

Section 421.117(f) of this rule contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1842 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

2. Section 421.3 is revised by removing the modifier "freestanding" that applies to home health agencies to read as follows:

§ 421.3 Definitions.

"Intermediary" means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis and to perform other related functions. For purposes of designating regional or alternative regional intermediaries for home health agencies and of designating intermediaries for hospices under § 421.117 as well as for applying the performance criteria in § 421.120 and the statistical standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by HCFA with the Blue Cross and Blue Shield Association to perform intermediary functions.

3. In § 421.100, the introductory paragraph is republished for the convenience of the reader and a new paragraph (i) is added to read as follows:

§ 421.100 Intermediary functions.

An agreement between HCFA and an intermediary shall provide for the performance of the following functions:

* * * * *

(i) *Dual intermediary responsibilities.* With respect to the responsibility for service to provider-based HHAs and provider-based hospices, where the HHA or hospice and its parent provider will be served by different intermediaries under § 421.117 of this part, the designated regional intermediary will process bills, make coverage determinations and make payments to the HHAs and hospices. The intermediary serving the parent provider will perform all fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

4. Section 421.117 is amended by redesignating paragraphs (b) through (g) as (c) through (h) respectively, adding a new paragraph (b), and revising paragraphs (a), (c), and (d) through (h). As revised, § 421.117 reads as follows:

§ 421.117 Designation of regional and alternative designated regional intermediaries for home health agencies and hospices.

(a) This section is based on section 1816(e)(4) of the Social Security Act, which requires the Secretary to designate regional intermediaries for home health agencies (HHAs) other than hospital-based HHAs but permits him or her to designate regional intermediaries for hospital-based HHAs only if the designation meets promulgated criteria concerning administrative efficiency and effectiveness; on section 1816(e)(5) of the Social Security Act, which requires the Secretary to designate intermediaries for hospices; and on section 1874 of the Act, which permits HCFA to contract with any organization for the purpose of making payments to any provider that elects to receive payment directly from HCFA.

(b) HCFA applies the following criteria to determine whether the assignment of hospital-based HHAs to designated regional intermediaries will result in the more effective and efficient administration of the Medicare program:

(1) Uniform interpretation of Medicare rules;

(2) Expertise in bill processing;

(3) Control of administrative costs;

(4) Ease of communication of program policy and issues to affected providers;

(5) Ease of data collection;

(6) Ease of HCFA's monitoring of intermediary performance; and

(7) Other criteria as the Secretary believes to be pertinent.

(c) Except as provided in paragraphs (e), (f), and (g) of this section, an HHA must receive payment through a regional intermediary designated by HCFA.

(d) Except as provided in paragraphs (f) through (h) of this section, a hospice must receive payment for covered services furnished to Medicare beneficiaries through an intermediary designated by HCFA.

(e) An HHA chain not desiring to receive payment from designated regional intermediaries may request service by one lead intermediary with the assistance of a local designated regional intermediary. Alternatively, the chain may request to be serviced by a single intermediary. A lead, local, or a single intermediary must be an organization that is a designated regional intermediary. Any request made under this paragraph is evaluated by HCFA in accordance with the criteria contained at § 421.106 of this subpart.

(f) An HHA or hospice not wishing to receive payment from a regional intermediary designated under paragraph (c) or (d) of this section may submit a request to the HCFA Regional Office to receive payment through an alternative regional intermediary designated by HCFA.

(g) Except as provided in paragraph (h) of this section, any request that an HHA or hospice may make to change from a designated regional intermediary to an alternative designated regional intermediary, in accordance with paragraph (f) of this section, is evaluated by HCFA in accordance with the criteria set forth at § 421.106(b) of this subpart and must be filed within the timeframe established at § 421.106(a) of this subpart.

(h) *Exception:* An HHA or a hospice that, as of June 20, 1988 is receiving payment from a designated regional intermediary may, without regard to the limitations contained in § 421.106 of this subpart, continue to receive payment from that intermediary. It may do so even if that intermediary is not the designated regional intermediary or the alternative designated regional intermediary for the particular State in which the HHA or hospice is located.

5. Section 421.128(f) is revised by removing the modifier "freestanding" that applies to home health agencies and hospices to read as follows:

§ 421.128 Intermediary's opportunity for hearing and right to judicial review.

* * * * *

(f) *Exception.* An intermediary adversely affected by the designation of a regional intermediary or an alternative regional intermediary for HHAs, or an intermediary for hospices, under § 421.117 of this subpart is not entitled to a hearing or judicial review concerning adverse effects caused by the designation of an intermediary.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance)

Dated: February 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 1, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-11206 Filed 5-18-88; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6788]

List of Communities Eligible for the Sale of Flood Insurance; North Carolina

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: April 5, 1988.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 64.6 List of eligible communities.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

State	Community name	County	Community No.	Effective date
North Carolina	Charlotte, city of	Mecklenburg	370159	April 5, 1988, suspension withdrawn.
Do.	Gastonia, city of	Gaston	370100	Do.
Do.	Harrisburg, town of	Cabarrus	370038	Do.
Do.	Indian Trail, town of	Union	370235	Do.
Do.	Kings Mountain, city of	Cleveland	370304	Do.
Do.	Long View, town of	Catawba	370055	Do.
Do.	Unincorporated areas	Mecklenburg	370158	Do.
Do.	Mount Holly, city of	Gaston	370102	Do.
Do.	Spencer, town of	Rowan	370216	Do.
Do.	Wingate, town of	Union	370365	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: May 8, 1988.

[FR Doc. 88-11205 Filed 5-18-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6789]

List of Communities Eligible for the Sale of Flood Insurance; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Pennsylvania: Smithfield, township of, Monroe County.	421896	Nov. 8, 1974, Emerg.; Mar. 4, 1988, Reg.; Mar. 4, 1988, Susp.; Apr. 5, 1988, Rein.	Mar. 4, 1988.
Kentucky:			
Greenup, city of, Greenup County	210086	Dec. 15, 1975, Emerg.; July 5, 1982, Reg.; Feb. 4, 1988, Susp.; Apr. 5, 1988, Rein.	July 5, 1982.
Woodford County, unincorporated areas.	210230	Mar. 30, 1973, Emerg.; June 1, 1978, Reg.; Feb. 4, 1988, Susp.; Apr. 6, 1988, Rein.	June 1, 1978.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Missouri:			
Neosho, city of, Newton County	290265	Apr. 22, 1975, Emerg.; July 5, 1982, Reg.; July 5, 1982, Susp.; Apr. 6, 1988, Rein.	July 5, 1982.
Monroe, city of, Marion and Monroe Counties.	290688	May 4, 1976, Emerg.; Sept. 4, 1986, Reg.; Sept. 4, 1986, Susp.; Apr. 6, 1988, Rein.	Mar. 4, 1988.
Pennsylvania: McSherrystown, borough of, Adams County.	421245	Dec. 4, 1975, Emerg.; Mar. 4, 1988, Reg.; Mar. 4, 1988, Susp.; Apr. 6, 1988, Rein.	Do.
Florida: Fanning Springs, town of, Gilchrist and Levy Counties.	120146	Aug. 22, 1975, Emerg.; Sept. 5, 1984, Reg.; Sept. 5, 1984, Susp.; Apr. 8, 1988, Rein.	Sept. 5, 1984.
Pennsylvania: Freedom, township of, Adams County.	421251	Jan. 13, 1975, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988, Susp.; Apr. 8, 1988, Rein.	Mar. 16, 1988.
Kansas: St. George, city of, Pottawatomie County.	200274	Apr. 8, 1988, Emerg	Jan. 3, 1975.
Texas:			
Bee Cave, village of, Travis County [1]	481610	Apr. 12, 1988, Emerg.; Apr. 12, 1988, Reg.	Do.
Opdyke West, town of, Hockley County [2].	481611-New	Apr. 14, 1988, Emerg	Do.
Tennessee: Mount Pleasant, city of, Maury County.	470125	Oct. 5, 1973, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.; Apr. 11, 1988, Rein.	Feb. 17, 1988.
Kentucky: Cattlesburg, city of, Boyd County.	210018	Aug. 21, 1975, Emerg.; Jan. 3, 1979, Reg.; Feb. 4, 1988, Susp.; Apr. 11, 1988, Rein.	Jan. 3, 1979.
Pennsylvania:			
Bath, borough of, Northampton County.	420717	Aug. 8, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.; Apr. 14, 1988, Rein.	Feb. 17, 1988.
Upper Frankford, township of, Cumberland County.	421586	Aug. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.; Apr. 14, 1988, Rein.	Apr. 5, 1988.
New Hampshire: Lee, town of, Strafford County.	330148	July 23, 1975, Emerg.; Apr. 2, 1986, Reg.; Apr. 2, 1986, Susp.; Apr. 18, 1988, Rein.	Apr. 2, 1986.
New York: Lodi, township of, Seneca County.	360753	Sept. 21, 1976, Emerg.; Jan. 15, 1988, Reg.; Jan. 15, 1988, Susp.; Apr. 18, 1988, Rein.	Jan. 15, 1988.
North Carolina: Haywood County, unincorporated areas.	370120	June 9, 1975, Emerg.; July 16, 1984, Reg.; July 16, 1984, Susp.; Apr. 18, 1988, Rein.	July 16, 1984.
New Hampshire: Fremont, town of, Rockingham County.	330131	Apr. 21, 1988, Emerg.; Apr. 21, 1988, Reg.	Apr. 15, 1981.
Tennessee: McMinnville, city of, Warren County.	470195	Jan. 15, 1974, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988, Susp.; Apr. 19, 1988, Rein.	Mar. 16, 1988.
Florida: Tavares, city of, Lake County	120138	May 15, 1975, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988, Susp.; Apr. 27, 1988, Rein.	Do.
Georgia: Fort Oglethorpe, city of, Catoosa County.	130248	Oct. 18, 1974, Emerg.; Feb. 1, 1984, Reg.; Feb. 4, 1988, Susp.; Apr. 27, 1988, Rein.	Feb. 1, 1984.
New Hampshire: Ashland, town of, Grafton County.	330042	June 4, 1975, Emerg.; Apr. 2, 1986, Reg.; Apr. 2, 1986, Susp.; Apr. 29, 1988, Rein.	Apr. 2, 1986.
Pennsylvania:			
Frailey, township of, Schuylkill County	422007	Dec. 3, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Apr. 29, 1988, Rein.	Sept. 1, 1986.
Kiskiminetas, town of, Armstrong County.	421209	Feb. 26, 1977, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.; Apr. 29, 1988, Rein.	Apr. 5, 1988.
Michigan: White Oak, township of, Ingham County.	260417	Apr. 28, 1988, Emerg	Do.
New Mexico: San Juan County, unincorporated areas [3].	350064	Dec. 15, 1975, Emerg.; Apr. 22, 1988, withdrawn	Dec. 15, 1975.

[1] The Village of Bee Cave, Texas (481026) has adopted Travis County's Flood Insurance Study with accompanying maps effective April 1, 1982, for floodplain management and insurance purposes. Note that the County's FIRM was revised on September 27, 1985.
[2] The Town of Opdyke West has adopted Hockley County's FHBM dated October 25, 1977, for floodplain management and insurance purposes.
[3] San Juan County is withdrawing from participation in the NFIP before its conversion to the Regular Program. The conversion is scheduled to take effect on August 4, 1988. However, if the County's Program status is nonparticipating on that date, the County will not be converted to the Regular Program. The County's FIRM will be in effect.

State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date
Region III, Minimal Conversions				
Pennsylvania	Dallas, township of, Luzerne County	420602	Apr. 1, 1988, Suspension Withdrawn.	Apr. 1, 1988.
Do.	Larimer, township of, Somerset County	422515	....do....	Apr. 1, 1988.
West Virginia	Capon Bridge, town of, Hampshire County	540046	....do....	Apr. 1, 1988.
Do.	Hundred, town of, Wetzel County	540256	....do....	Apr. 1, 1988.
Do.	Lester, town of, Raleigh County	540171	....do....	Apr. 1, 1988.
Do.	Pine Grove, town of, Wetzel County	540210	....do....	Apr. 1, 1988.
Virginia	Berryville, town of, Clarke County	510037	....do....	Apr. 1, 1988.
Region II—Regular Program Conversions				
New York	Annsville, town of, Oneida County	360516	Apr. 5, 1988, Suspension Withdrawn.	Apr. 5, 1988.
Region III				
Pennsylvania	Cranberry, township of, Venango County	422109	....do....	Apr. 5, 1988.

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State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date
Do.	Parks, township of, Armstrong County	421311	do.	Apr. 5, 1988.
Do.	Honaker, town of, Russell County	510321	do.	Apr. 5, 1988.
Region IV				
Alabama	Cottonwood, town of, Houston County	010102	do.	Apr. 5, 1988.
Region V				
Illinois	Ogle County, unincorporated areas	170525	do.	Apr. 5, 1988.
Region VI				
Louisiana	Catahoula Parish, unincorporated areas	220047	do.	Apr. 5, 1988.
Do.	Harrisonburg, village of, Catahoula Parish	220048	do.	Apr. 5, 1988.
Region VIII				
North Dakota	Tioga, city of, Williams County	380147	do.	Apr. 5, 1988.
Region IX				
California	Solano County, unincorporated areas	060631	do.	Apr. 5, 1988.
Do.	Sutter County, unincorporated areas	060394	do.	Apr. 5, 1988.
Region X				
Idaho	Boise County, unincorporated areas	160205	do.	Apr. 5, 1988.
Do.	Idaho City, city of, Boise County	160222	do.	Apr. 5, 1988.
Oregon	Dallas, city of, Polk County	410187	do.	Apr. 5, 1988.
Do.	Independence, city of, Polk County	410189	do.	Apr. 5, 1988.
Do.	Monmouth, city of, Polk County	410190	do.	Apr. 5, 1988.
Do.	Polk County, unincorporated areas	410188	do.	Apr. 5, 1988.
Region II, Regular Program Conversions				
New York	Vernon, village of, Oneida County	360580	April 15, 1988, Suspension Withdrawn.	Apr. 15, 1988.
Region III				
Delaware	Newark, city of, New Castle County	100026	do.	Apr. 15, 1988.
Region V				
Illinois	Amboy, city of, Lee County	170414	do.	Apr. 15, 1988.
Do.	Dixon, city of, Lee County	170417	do.	Apr. 15, 1988.
Region VIII				
Wyoming	Ranchester, town of, Sheridan County	560046	do.	Apr. 15, 1988.
Region IX				
Arizona	Avondale, city of, Maricopa County	040038	do.	Apr. 15, 1988.
Do.	Carefree, city of, Maricopa County	040126	do.	Apr. 15, 1988.
Do.	El Mirage, town of, Maricopa County	040041	do.	Apr. 15, 1988.
Do.	Gila Bend, town of, Maricopa County	040043	do.	Apr. 15, 1988.
Do.	Glendale, city of, Maricopa County	040045	do.	Apr. 15, 1988.
Do.	Good Year, town of, Maricopa County	040046	do.	Apr. 15, 1988.
Do.	Mesa, city of, Maricopa County	040048	do.	Apr. 15, 1988.
Do.	Maricopa County, unincorporated areas	040037	do.	Apr. 15, 1988.
Do.	Peoria, city of, Maricopa County	040050	do.	Apr. 15, 1988.
Do.	Phoenix, city of, Maricopa County	040051	do.	Apr. 15, 1988.
Do.	Surprise, town of, Maricopa County	040053	do.	Apr. 15, 1988.
Do.	Tempe, city of, Maricopa County	040054	do.	Apr. 15, 1988.
Do.	Wickenburg, town of, Maricopa County	040056	do.	Apr. 15, 1988.
Region X				
Idaho	Sitles, city of, Idaho County	160071	do.	Apr. 15, 1988.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: May 12, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-11204 Filed 5-18-88; 8:45 am]

BILLING CODE 6718-21-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 514 and 515

[APD 2800.12 CHGE 55]

Acquisition Regulation; Use of SF-30 for Additional Awards to an Offeror Under a Single Solicitation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add §§ 514.407-1 and 515.414 to prescribe the Standard Form 30, Amendment of Solicitation/Modification of Contract, for use in making additional awards to an offeror under a single solicitation and to provide the regulatory authority for such awards. The intended effect is to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration published GSAR Notice 5-180 in the **Federal Register** (53 FR 2515) on January 28, 1988, inviting comments from interested parties. No comments were received from the public; however, comments received from the Office of Federal Procurement Policy and various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply clarifies a procedural matter relating to the form used when making additional contract awards to an offeror under one solicitation. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 514 and 515

Government procurement.

1. The authority citation for 48 CFR Parts 514 and 515 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 514—SEALED BIDDING

2. The table of contents for Part 514 is amended by adding § 514.407-1 to read as follows:

Subpart 514.4—Opening of Bids and Award of Contract

* * * * *

Sec.
514.407-1 General.

3. Section 514.407-1 is added to read as follows:

514.407-1 General.

If an award is made to a bidder for less than all of the items that may be awarded to that bidder under a solicitation and additional items are being withheld for possible subsequent award, any subsequent award to that bidder must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see GSAR 519.502-3(c) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for the subsequent award will be FAR 14.407-1(c)(4). This procedure presumes that initial and subsequent awards are being made during the bid acceptance period.

PART 515—CONTRACTING BY NEGOTIATION

4. The table of contents for Part 515 is amended by adding § 515.414 to read as follows:

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

* * * * *

Sec.
515.414 Forms.

5. Section 515.414 is added to read as follows:

515.414 Forms.

When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, the first award to that offeror shall state that the Government may make subsequent awards on those additional items within the offeror's offer acceptance period. Subsequent awards to the offeror must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see GSAR 519.502-3(c) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for subsequent awards will be GSAR 515.414.

Dated: May 12, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-11173 Filed 5-18-88; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Part 552

[APD 2800.12 CHGE 54]

Acquisition Regulation; Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise the matrixes in §§ 552.320-70 and 552.370 to add a reference to the FAR clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era. In addition, the reference to the FAR clause at 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts, is deletd from the matrix at 552.370. Acquisition Circular AC-87-2 is canceled. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4027, Washington, DC 20405, (202) 523-4763.

SUPPLEMENTARY INFORMATION: On April 15, 1987, the General Services Administration published in the **Federal Register** (52 FR 12182) Acquisition Circular AC-87-2, which temporarily amended Part 552 of the GSAR to implement the reporting requirements of the Veterans' Compensation, Education and Employment Amendment of 1982 prescribed by the Department of Labor (DOL) on March 4, 1987 (52 FR 6674-6679). The rule was not published in the **Federal Register** for public comment because it merely implemented the

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Labor Department regulation which had already undergone the public comment process.

Impact

The Director, Office of Management and Budget (OMB) by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule cancels the acquisition circular since the reporting requirements of the Veterans' Compensation, Education and Employment Amendment of 1982 were incorporated in the Federal Acquisition Regulation by FAC 84-32 and merely adds a reference to the FAR clause regarding the reporting requirements, in the clause matrixes. The OMB has assigned OMB Control No. 1293-0005 to the DOL information collection requirements reflected in FAR clause 52.222-37.

List of Subjects in 48 CFR Part 552

Government procurement.

PART 552—[AMENDED]

1. The authority citation for 48 CFR Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

§ 552.300 [Amended]

Editorial Note: The matrixes listed in the summary of this rule are illustrated in and made a part of the regulation. However, the matrixes are not illustrated in the Federal Register or the Code of Federal Regulations. Individual copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

Dated: May 10, 1988.

Patricia A. Szarvo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-11175 Filed 5-18-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket 88-04, Notice 2]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 109, *New Pneumatic Tires*, to include an additional maximum inflation pressure, 340 kPa, in the Standard. The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of the 340 kPa pressure. The petitioner stated that its members are receiving requests with increasing frequency from vehicle manufacturers for reinforced tires at an inflation pressure higher than 300 kPa, for purposes of safety and optimum vehicle handling. The requests for these tires are primarily for station wagons. E.T.R.T.O. requested that a pressure of 340 kPa be added, so that the standard inflation pressure for reinforced tires (280 kPa) can be increased for special performance requirements with no increase in tire load capacity. After evaluating the petition and comments on the proposal, NHTSA has decided to include 340 kPa as a permissible inflation pressure.

DATES: The final rule is effective June 20, 1988. Petitions for reconsideration must be filed by June 20, 1988.

ADDRESSES: Submit petitions for reconsideration to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4803).

SUPPLEMENTARY INFORMATION: Until the effective date of this rule, Standard No. 109, *New Pneumatic Tires*, requires that the maximum permissible inflation pressure for each tire must be 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The standard specifies differing test criteria depending upon the maximum permissible inflation pressure.

The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional inflation pressure, 340 kPa, in Standard No. 109. The petitioner stated that its members are receiving requests with increasing frequency from vehicle manufacturers for reinforced tires at an inflation pressure higher than 300 kPa, for purposes of safety and optimum vehicle handling. The requests for these tires are primarily for station wagons. E.T.R.T.O. requested that a pressure of 340 kPa be added, so that the standard inflation pressure for reinforced tires (280 kPa) can be increased for special performance requirements with no increase in tire load capacity.

On January 18, 1988, NHTSA published a notice of proposed rulemaking to allow a new maximum permissible tire inflation pressure. (53 FR 936.) NHTSA addressed petitions raising almost identical issues in 1978. As discussed in the January 18, proposal, the 300 kPa maximum pressure for non-reinforced tires was added to the standard in response to those petitions. The relationship of the 300 kPa non-reinforced tire to the standard inflation pressure (240 kPa) non-reinforced tire is analogous to that of the 340 kPa reinforced tire to the 280 kPa reinforced tire. Thus, NHTSA tentatively concluded that the 340 kPa tire pressure should be added to Standard No. 109 for the same reasons the 300 kPa pressure was added. The agency explained its reason in detail in the January 18, proposal.

The agency received comments from Chrysler Motors Corporation, General Motors Corporation, General Tire, and Volkswagen of America. Each commenter endorsed the proposal. NHTSA is adopting the proposed changes for the reasons expressed in the proposal.

Further, the agency is issuing a conforming amendment to Table 1, 49 CFR 575.104, *Uniform Tire Quality Grading Standards*, to set out the 340 kPa maximum permissible inflation pressure. The agency inadvertently neglected to propose the Table 1 amendment when NHTSA issued the proposed rule. Without such an amendment, NHTSA could not conduct compliance testing for UTQGS of tires with a 340 kPa maximum inflation pressure. The agency finds that there is good cause for amending Table 1 without notice and comment because the amendment adds no new substantive requirement for tires with a 340 kPa maximum inflation pressure.

The agency finds that there is good cause for making this final rule effective in less than 180 days because the amendment relieves a restriction, and permits the sale of tires that can provide better performance without any negative impact on safety.

Impact Assessments

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not impose new requirements for current tires, but instead permit a new category of tire. Since the new tires can provide better performance, the amendments will result in consumer benefits.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The agency believes that few of the tire manufacturers qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce these new tires. Small non-profit organizations and small governmental units are affected by the final rule only to the extent that they purchase motor vehicles. These small entities may benefit to small extent if they purchase vehicles with these new tires.

The agency has analyzed this action under principles and criteria of Executive Order 12612, and has determined that this final rule does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule does not have any significant impact on the human environment.

List of Subjects in 49 CFR Parts 571 and 575

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Parts 571 and 575 are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

2. S4.2.1(b) is revised to read as follows:

* * * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40 or 60 psi, or 240, 280, 300 or 340 kPa.

* * * * *

3. S4.2.2.2 is revised to read as follows:

* * * * *

S4.2.2.2 *Physical dimensions.*

The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, 300, or 340 kPa) 7 percent or 0.4 inch, whichever is larger.

* * * * *

4. S4.3.4 is revised to read as follows:

* * * * *

S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 300, or 340 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

* * * * *

5. Tables I-A, I-B, I-C, and II of Appendix A are revised to read as follows:

Appendix A—[Amended]

TABLE I-A.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH OF 6 INCHES AND ABOVE

Cord Material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,650	2,574	3,300	1,650	3,300	1,650	3,300
Nylon or polyester (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

TABLE I-B.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH BELOW 6 INCHES

Cord Material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,000	1,875	2,500	1,000	2,500	1,000	2,500
Nylon or polyester (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900

TABLE I-C.—FOR RADIAL PLY TIRES

Size Designation	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Below 160 mm (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900
160 mm or above (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

* * * * *

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TABLE II.—TEST INFLATION PRESSURES

Maximum permissible inflation pressure	32 lb/in²	36 lb/in²	40 lb/in²	60 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Pressure to be used in tests for physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220
Pressure to be used in test for high-speed performance	30	34	38	58	220	260	220	260

PART 575—[AMENDED]

6. The authority citation for Part 575 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

7. Table 1 to § 575.104(g) is revised to read as follows:

§ 575.104 [Amended]

* * * * *

(g) * * *

TABLE 1.—TEST INFLATION PRESSURES

Maximum permissible inflation pressure	32 lb/in²	36 lb/in²	40 lb/in²	260 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Pressure to be used in tests for treadwear and in determination of tire load for temperature resistance testing	24	28	32	52	180	220	180	220
Pressure to be used for all aspects of temperature resistance testing other than determination of tire load	30	34	38	58	220	260	220	260

* * * * *

Issued on May 11, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-11078 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 53, No. 97
Thursday, May 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Industrial Development Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the Agency's policies and procedures governing the administration of Industrial Development Grants. This action is necessary to comply with the Omnibus Budget Reconciliation Act of 1987 and the continuing resolution for 1988, which allows private nonprofit organizations to participate with public agencies as grant recipients and expands the use of grant funds to include the financing of small and emerging rural businesses. The agency's proposal to expand the Industrial Development Grant Program will result in enterprise development and job creation in distressed rural communities.

DATES: Comments must be received on or before June 20, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Frederick R. Young, Branch Chief, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6310, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; Telephone: (202) 382-9668.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have significant economic impact on a substantial number of small entities, because the action, while increasing costs to ineligible transferees in Community Programs, will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Program Affected

This program, Industrial Development Grants, is listed in the Catalog of Federal Domestic Assistance under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1901-J.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 is revised to read as follows and the authority citations throughout Subpart G are removed:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Industrial Development Grants

2. Section 1942.301 is revised to read as follows:

§ 1942.301 Purpose.

This subpart outlines Farmers Home Administration (FmHA) policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises.

3. Section 1942.302 is revised to read as follows:

§ 1942.302 Policy.

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

4. Section 1942.304 is amended by revising paragraph (a) and adding paragraphs (f), (g), and (h) to read as follows:

§ 1942.304 Definitions.

(a) Industrial Development (ID) grants—Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural

Development Act, as amended, section 310B (7 U.S.C. 1932).

* * * * *

(f) Technical Assistance—A function performed for the benefit of a grantee project and is a problem solving activity such as market research, product and/or service improvement, feasibility study, etc.

(g) Project—The result of the use of program funds, i.e., a facility, whether constructed by the applicant or a third party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 paragraphs (b) and (c), as well as the specific uses of the revolving funds.

(h) Small and emerging private business enterprise—Generally any private business which will employ 50 or less new employees and has less than $1.0 million in projected gross revenues and has or will utilize technological innovation and commercialization of: (1) New products that can be used in rural areas and (2) new processes that can be used in such production.

5. Section 1942.305 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) ID grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas. The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanized or urbanizing, the State Director must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide the correct density figure. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries or land set aside for such purposes will be excluded.

* * * * *

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met by each application and the degree to which those priorities are met, and apply good judgment.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed for priority for funding and scored. When considering authorizing an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete grant processing. Those applicants with eligible lower priority scoring applications which obviously cannot be funded within a funding cycle should be notified that funds are not available; and requested to advise whether they wish to have their application maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such applications. Such requests will be considered along with all others on hand.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3)(i) through (v) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of under 25,000 population—10 points.

(ii) *Economic conditions.* (A) Proposed project(s) will primarily be located in areas where the unemployment rate: (1) Exceeds the State rate by 25% or more—20 points, (2) exceeds the State rate by less than 25%—10 points, (3) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by Office of Management and Budget under section 624 of Economic Opportunity Act of 1964 for a family of 4 for the state is: (1) Less than poverty line—25 points, (2) more than poverty line but less than 85% of state MHI—15 points, (3) between 85% and 100% of state MHI—10 points, (4) equal or greater than state MHI—0 points.

(iii) *Experience.* Applicant has substantial experience in administering a rural economic development program—15 points.

(iv) *Other.* (A) Grant funds will be used to develop or construct industrial or business sites—25 points.

(B) Applicant has industry or business committed to locate in the sites—25 points.

(C) Applicant is a unit of general purpose local government (Public Body or Indian Tribe)—15 points.

(D) Grant request contains evidence of substantial commitment of funds from nonfederal sources for proposed projects—25 points.

(v) *Discretionary.* In certain cases FmHA may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations.

6. Section 1942.306 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Startup operating cost and working capital.

(4) Technical assistance for proposed grantee projects.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(b) Grants may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

* * * * *

7. Section 1942.307 is revised to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agricultural products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries or timber operations.

(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and changes for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(b) Funds will not be used for any project which will require more than $500,000 in FmHA grant funds available under this subpart.

(c) At least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

8. Section 1942.310 is amended by revising paragraphs (b) and (d); removing paragraph (e); redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g); and by adding new paragraphs (h) and (i) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(b) *Environmental requirements.* (1) *General applicability.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in § 1940.303 and § 1940.304 in Subpart G of Part 1940 of this Chapter. Although the purpose of the grant program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA's environmental review process by § 1940.310(e)(1)-of Subpart G of Part 1940 of this Chapter. However, as further specified in § 1940.330 of Subpart G of Part 1940 of this Chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of Subpart G of Part 1940 of this Chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA will review the preapplication, supporting materials and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this Subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter, prior to FmHA providing its consent to the grantee to assist the third party project.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to third parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

* * * * *

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 7 CFR Part 3015 and 7 CFR Part 3016, as appropriate, and established FmHA guidelines.

* * * * *

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

9. Section 1942.311 is amended by removing paragraph (b) and redesignating paragraph (c) as (b), and by revising paragraph (a) to read as follows:

§ 1942.311 Application processing.

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of Subpart A of Part 1942 of this Chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. If the application is for the development of facilities, the applicant shall use Form AD–624, "Application for Federal Assistance (for Construction Programs)." If the application is for the financing of facilities, the applicant shall

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use Form AD–623, "Application for Federal Assistance (Non-Construction Programs)."

(2) Applications which propose to establish revolving loan programs shall contain detail on the applicant's experience operating a revolving loan program, proposed projects to be funded from the revolving fund, applicant's financial ability to administer a revolving fund, need for a revolving fund, and other funds available to leverage funds made available under this program.

(3) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.305(b)(3) of this Subpart. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA to complete a thorough priority rating.

* * * * *

§§ 1942.312 and 1942.313 [Removed and Reserved]

10. Sections 1942.312 and 1942.313 are removed and reserved.

11. Section 1942.314 is needed and reads as follows:

§ 1942.314 Scope of work.

For applications involving a loan to a third party, the applicant shall develop a Scope of Work. As a minimum the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made.

(d) How the grant purposes will be accomplished.

12. Section 1942.316 is amended by revising the heading and paragraph (c) to read as follows:

§ 1942.316 Grant approval, fund obligation and third party financial assistance.

* * * * *

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this Subpart.

§§ 1942.317, 1942.318, 1942.319 and 1942.320 [Removed and Revised]

13. Sections 1942.317, 1942.318, 1942.319, and 1942.320 are removed and reserved.

§ 1942.322 [Amended]

14. Section 1942.322 is removed and reserved.

15. Section 1942.350 is revised to read as follows:

§ 1942.350 Forms, guides, and attachments.

Exhibit A of Subpart H of Part 1942 of this Chapter, Guides 1 and 2 of this Subpart, Attachment 1, and forms referenced (all available in any FmHA office) are for use in administering ID Grants.

Exhibits A and B to Subpart G—[Removed]

16. Exhibits A and B to Subpart G of Part 1942 are removed.

Dated: May 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–11089 Filed 5–18–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–16–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 series airplanes equipped with R.F.D. Type AES–12B inflatable escape slides, which would require installation of a longer operating cable on the emergency escape slide deployment system. This modification would increase the clearance between the outboard edge of the forward passenger door and the slide during the slide inflation sequence. This proposal is prompted by a report of an incident where it was found that, if the passenger entrance door is pushed open slowly, it is possible for the slide to inflate before sufficient clearance between the door and doorway sill has been achieved. This condition, if not corrected, could result in improper slide deployment during emergency evacuation procedures.

DATES: Comments must be received no later than July 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–16–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–1967.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–16–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement notified the FAA of an unsafe condition which exists on British Aerospace Model BAC 1–11 airplanes equipped with certain R.F.D. inflatable escape slides. An incident has been reported where it was found that if the passenger entrance door is pushed open slowly, it is possible for the slide to inflate before sufficient clearance between the door and doorway sill has been achieved. This condition, if not corrected, could result in improper slide deployment during emergency evacuation procedures.

That incident occurred on an airplane using an R.F.D. Type AES–12A slide. The manufacturer issued British Aerospace Service Bulletin 25–PM–5943, dated November 24, 1986, which describes procedures for installation of a longer inflation cable on R.F.D. Type AES–12A slide to increase the clearance between the outboard edge of the forward passenger door and the slide during inflation of the slide and, thereby, prevent the unsafe condition from occurring. The CAA classified that service bulletin as mandatory, and FAA issued AD 87–18–02, Amendment 39–5720 (52 FR 34632; September 14, 1987) to require, among other things, the installation of the longer cable in accordance with the British Aerospace service bulletin.

That service bulletin did not address the R.F.D. Type AES–12B slide, however. Recent tests by the manufacturer have revealed that the R.F.D. AES–12B slide is also subject to the same unsafe condition described above.

British Aerospace has now issued Service Bulletin 25–PM5943, Revision 1, dated May 8, 1987, which describes procedures for replacement of the existing 27-inch long operating cable, part number 2399029, with a new 37.5-inch long operating cable, part number 4020601, on the R.F.D. Type AES–12B slide assembly. The CAA has classified this service bulletin as mandatory.

This airplane is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on other airplanes of this model registered in the United States, an AD is proposed which would require installation of a longer operating cable on the emergency slide deployment assembly, in accordance with the service bulletin previously mentioned. This proposal would only be applicable to those airplanes equipped with R.F.D. type AES–12B inflatable escape slides.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $600.

The regulation set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federal Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($100). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 series airplanes equipped with R.F.D. AES–12B inflatable escape slides, identified in British Aerospace BAC 1–11 Service Bulletin 25–PM5943, Revision 1, dated May 8, 1987, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent failure of the emergency escape slide deployment system, accomplish the following.

A. Modify the F.F.D. Type AES–12B emergency escape slide system in accordance with BAC 1–11 Service Bulletin 25–PM5043, Revision 1, dated May 8, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of a FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11201 Filed 5–18–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–ASW–6]

Proposed Revision of Transition Area; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to revise the transition area located at Athens, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP) to the Athens Municipal Airport, utilizing the Frankston Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), and the

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subsequent cancellation of the current NDB RWY 35 SIAP to the airport when the new VOR/DME-A SIAP becomes effective, have made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Athens Municipal Airport and to return that controlled airspace no longer required due to the cancellation of the NDB RWY 35 SIAP.

DATE: Comments must be received on or before June 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-6, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcare on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Athens, TX. The development of a new VOR/DME-A SIAP to the Athens Municipal Airport, utilizing the Frankston VORTAC, and the subsequent cancellation of the current NDB RWY 35 SIAP to the Athens Municipal Airport, when the new VOR/DME-A SIAP becomes effective, have necessitated this proposed revision. The existing controlled airspace designed for the SIAP serving the Lochridge Ranch Airport will not be changed. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Athens Municipal Airport and to return that controlled airspace no longer required due to the cancellation of the current NDB RWY 35 SIAP to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Athens, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Athens Municipal Airport (Latitude 32°09'43" N., Longitude 95°49'40" W.), and within 2 miles each side of the 209° radial of the Frankston VOR (Latitude 32°04'26" N., Longitude 95°31'50" W.), extending from the 6.5-mile radius area to 9 miles east of the Athens Municipal Airport; and within an 8.5-mile radius of the Lochridge Ranch Airport (Latitude 31°56'21" N., Longitude 95°57'08" W.), and within 4.5 miles each side of the 356° bearing of the Lochridge Ranch NDB (Latitude 32°02'49" N., Longitude 95°57'27" W.), extending from the 8.5-mile radius area to 10.5 miles north of the Lochridge Ranch NDB.

Issued in Fort Worth, TX, on May 4, 1988.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 88-11197 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-59]

Proposed Revision of Transition Area; San Marcos, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at San Marcos, TX. The development of a new standard instrument approach procedure (SIAP) to the Lockhart Municipal Airport, Lockhart, TX, utilizing the Austin Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP to the Lockhart Municipal Airport. Coincident with this proposal would be the changing of the status of the Lockhart Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before June 23, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-59, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-59." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPR's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at San Marcos, TX. The development of a new SIAP to the Lockhart Municipal Airport, utilizing the Austin VORTAC, has necessitated the proposal of this revision. This proposal would expand the existing San Marcos Transition Area to include the Lockhart Municipal Airport. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Lockhart Municipal Airport. Coincident with this action would be the changing of the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

San Marcos, TX [Revised]

By adding to the end of the legal description: and within a 6.5-mile radius of the Lockhart Municipal Airport (latitude 29°50'58" N., longitude 97°40'20" W.).

Issued in Fort Worth, TX, on May 6, 1988.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 88-11197 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-090-86]

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides a notice of proposed rulemaking relating to the definition of the term "registration-required obligations" with respect to pass-through certificates and the application of the sanctions on issuers of "registration-required obligations" not in registered form to the issuers of such certificates. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary income tax regulations with respect to this subject. The text of these temporary regulations serves as the comment document for this notice of proposed rulemaking.

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DATE: Written comments and requests for a public hearing must be delivered or mailed by July 18, 1988.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–990–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T [INTL–990–86], telephone 202–566–3388, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1.163–5T (d) was deleted by T.D. 8110, which was published on December 19, 1986, in the **Federal Register** at 51 FR 45453 when all of § 1.163–5T was removed. Paragraph (d) is being replaced retroactively into the regulations as § 1.163–5T (d) (with prior paragraphs reserved) through temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register.**

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for A Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of this regulation is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR 1.61 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposal of Regulations

The temporary regulations, FR Doc. [T.D. 8202] published in the Rules and Regulations portion of this issue of the **Federal Register,** are hereby also proposed as final regulations under section 163 of the Internal Revenue Code of 1954.

Lawrence B. Gibbs,
Commissioner of Internal Revenue
[FR Doc. 88–11280 Filed 5–18–88; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–905–87]

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides a notice of proposed rulemaking relating to the application of the sanctions on issuers or registration required obligations not in registered form. These regulations would provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982.

DATES: Written comments and requests for a public hearing must be delivered or mailed before July 18, 1988. These regulations are proposed to be applicable to the transfers of obligations occurring after August 17, 1988.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–905–87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3388 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 4701 imposes a tax on issuers of "registration-required obligations" not in registered form. Section 5f.103–1(c) (1) provides generally that an obligation is in registered form if it is registered with the issuer (or its agent) and may be transferred by surrender and reissuance by the issuer (or its agent), or through a book entry system maintained by the issuer (or its agent), or through both of these methods.

Explanation of Provisions

An issuer or its agent may have no knowledge or control over the method of transfer of an obligation that is held by a nominee. A new paragraph (d)(7) of § 1.163–5T has been proposed to provide explicitly for the application of section 4701 to circumstances in which a holder transfers an obligation through a method not described in § 5f.103–1(c)(1).

Section 1.163–5T(d)(7) of these proposed regulations provides, pursuant to § 46.4701–1(a)(5), that any person who holds a registration required obligation that is in registered form within the meaning of § 5f.103–1(c)(1) and who transfers the obligation through a method not described in § 5f.103–1(c)(1) is considered the issuer of the obligations transferred for purposes of section 4701. Such transferor is therefore subject to the tax imposed under section 4701, even though he may not be the person whose interest deduction would be disallowed by reason of section 163(f)(1). Such transferor is considered to have issued the obligation on the date of the transfer in the principal amount of the obligation transferred. Section 1.163–5T(d)(7) would apply to transfers occurring after August 17, 1988.

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comments, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) and a Regulatory Flexibility Analysis has not been prepared.

Comments and Requests for a Public Hearing

Before adopting final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both in matters of substance and style.

Lists of Subjects in 26 CFR 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Paragraph (d)(7) is added immediately after paragraph (d)(6) of § 1.163–5T. The added paragraph reads as follows:

§ 1.163–5T Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).

(d) *Pass-through certificates.*

* * * * *

(7)(i) For purposes of section 4701, any person who holds a registration-required obligation that is in registered form within the meaning of § 5f.103–1 (c)(1) and transfers the obligation through a method not described in § 5f.103–1 (c)(1) is considered to have issued the obligation so transferred on the date of the transfer in the principal amount of the obligation received by the transferee. Such person is therefore liable for any excise tax under section 4701 that may be imposed. This paragraph (d)(7) applies to transfers of obligations occurring after August 17, 1988.

(ii) The provisions of this paragraph (d)(7) may be illustrated by the following examples:

Example (1). X, a corporation, holds a registration required obligation in registered form in the principal amount of 10x with a maturity date of December 31, 1999. X transfers the obligation through a method not described in § 5f.103–1 (c)(1) on June 30, 1990. For purposes of section 4701, X is considered to have issued an obligation on June 30, 1990 in the principal amount of 10x with a maturity date of December 31, 1999. Because X has issued a registration required obligation not in registered form, X is liable for the tax imposed by section 4701 in an amount computed with reference to the principal amount of 10x and the period beginning on June 30, 1990 and ending on December 31, 1999.

Example (2). X, a corporation, holds a registration required obligation in registered form as nominee of Y, a corporation. The principal amount of the obligation is 10x and the maturity date of the obligation is December 31, 1999. On June 30, 1990, X issued a bearer receipt to Y for the obligation. For purposes of section 4701, X is considered to have issued an obligation on June 1990 in the principal amount of 10x with a maturity date of December 31, 1999. Because X has issued a registration required obligation not in registered form, X is liable for the tax imposed by section 4701 in an amount computed with reference to the principal amount of 10x and the period beginning June 30, 1990 and ending December 31, 1999.

Example (3). The facts are the same as in *Example* (1) except that X transfers 5x of the 10x obligation held by X. X is considered to have issued an obligation on June 30, 1990 in the principal amount of 5x with a maturity date of December 31, 1999. Because X has issued a registration required obligation not in registered form, X is liable for the tax imposed by section 4701 in an amount computed with reference to the principal amount of 5x and the period beginning on June 30, 1990 and ending on December 31, 1999.

Example (4). The facts are the same as in *Example* (1) except that X is a natural person. X is considered to have issued an obligation on June 30, 1990 in the principal amount of 10x with a maturity date of December 31, 1999. Because X is a natural person, the obligation is not a registration-required obligation and, therefore, X is not subject to the tax imposed under section 4701.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
[FR Doc. 88–11256 Filed 5–18–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–88–10]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Lauderdale-by-the-Sea, the Coast Guard is considering a change to the regulations governing the Commercial Boulevard (SR 870) drawbridge at Lauderdale-by-the-Sea, Florida, by extending the hours of the existing regulation. This proposal is being made because of highway traffic delays. This action should accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 5, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Ave, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and giver reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

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Drafting Information:

The drafters of this notice are Mr. Brodie Rich, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Commercial Boulevard drawbridge presently opens on signal, except that, from November 1 through May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sundays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

The City of Lauderdale-by-the-Sea has asked that the bridge open only on the hour, quarter-hour, half-hour, and three-quarter hour from 8 a.m. to 6 p.m. daily, year-round. The Coast Guard has carefully evaluated information about highway traffic volumes and drawbridge openings for this bridge. Although regulation changes appear to be needed to help reduce highway traffic delays, the level of highway service and limited number of drawbridge openings do not justify opening restrictions during the off-season months.

The proposed 15-minute operating schedule the busiest boating months should allow accumulated vehicular traffic to disperse between bridge openings with minimal additional delay to vessels. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea.* The draw shall be open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: May 3, 1988.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88–11251 Filed 5–18–88; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86–7A]

Extension of Comment Period; Inquiry of Definition of Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright office is re-opening for additonal public comment its Notice of Inquiry (RM 86–7) into issues relating to the definition of cable systems for purposes of 17 U.S.C. 111. The Office is broadening the scope of its Inquiry to include issues relating to the eligibility of satellite carriers to operate under the section 111 cable compulsory license.

DATE: Comments should be received on or before July 18, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287–8380.

SUPPLEMENTARY INFORMATION: On October 15, 1986, the Copyright Office in a Notice of Inquiry (51 FR 36705) invited public comment on the definition of the term "cable system" as it concerns the operation of the compulsory licensing mechanism in title 17 U.S.C. 111, the Copyright Act of 1976 Comments were invited through December 15, 1986, and reply comments through January 13, 1987. The comment period was reopened from August 3, 1987, until September 2, 1987 (52 FR 28731), so that the public might respond to four comments received by the Copyright after the closing of the intial comment and reply period.

Since the closing of the second comment period in this Inquiry, the Copyright Office has receive statements of account and royalty fees for the first accounting period of 1987 deposited by two satellite carriers. These filing raise the question of whether a satellite carrier that retransmits broadcast signals nationwide to home satellite earth station owners is a "cable system" eligible for a cable compulsory license pursuant to section 111. The Office is reopening the comment period in this Inquiry on the definition of "cable system" to receive the benefit of public commentary on that issue prior to deciding whether to amend its regulations at 37 CFR 201.11(a)(3).

The Office is aware that certain aspects of the issues raised in this notice are currently being litigated in U.S. district courts.[1] Furthermore, the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary is considering legislation that would give satellite carriers a new interim statutory licesne to cover satellite carriers' retransmission of superstations for private veiwing by earth station owners. H.R. 2848, 100th Cong., 1st Sess. (June 30, 1987). Accordingly, the office will be cautious to avoid any administrative action that may impede the judicial or legislative processes, and may ultimately decide to take no action, pending a judicial decision.

The filing of statements of account by two different satellite carriers ordinarily requires some action by the Copyright Office. Either the Office must accept the filing without comment; accept them provisionally, either taking no position

[1] The Office understands that the cases have been briefed, and the parties await the decision of the court. Only one of the two carrier filing statements of account is involved in the litigation.

on the filings or commenting upon any reservations we may have; or refuse the filings as not eligible under the compulsory license, giving appropriate written reasons for that position. The statements of account filed by the carriers (United Video and Satellite Broadcast Network) are open to public inspection. The Office notes that United Video apparently has received satellite resale carrier authorization from the Federal Communications Commission for other transmission activities but not necessarily for servicing the home earth station market.

In addition to general comment about the eligibility of satellite carriers to qualify as cable systems for purposes of 17 U.S.C. 111(c), the Office seeks comment as to whether the same entity may qualify for the passive carrier exemption of section 111(a) with respect to certain transmissions and also qualify as a cable system with respect to other transmissions.

List of Subjects in 37 CFR Part 201

General provision on copyrights, Cable television, Cable compulsory license.

Dated: May 4, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88–11171 Filed 5–18–88; 8:45 am]

BILLING CODE 1410–08–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

Freedom of Information

AGENCY: Office of Administration, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to revise its regulations to incorporate the predisclosure notification procedures for confidential commercial information prescribed by EO 12600 of June 23, 1987.

DATE: Comments should be submitted in writing to the address shown below on or before June 20, 1988.

ADDRESS: General Services Administration (CAIR), Room 3016, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Alexandra Mallus, GSA Freedom of Information Act (FOIA) Officer (202–535–7963).

SUPPLEMENTARY INFORMATION: On June 23, 1987, the President signed EO 12600. This order mandates that agencies establish procedures to notify submitters of records containing confidential commercial information when those records are requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, unless the provisions of section 8 apply. The General Services Administration has determined that this rule is not a major rule for the purpose of EO 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105–60

Freedom of Information.

It is proposed to amend 41 CFR Part 105–60 to read as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for 41 CFR Part 105–60 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90–23, as amended by Pub. L. 93–502 and Pub. L. 99–570); and EO 12600 of June 23, 1987.

2. Section 105–60.101 is revised to read as follows:

105–60.101 Purpose.

Part 105–60 implements the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") (Pub. L. 90–23, which codified Pub. L. 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.); Pub. L. 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Pub. L. 99–570, the Freedom of Information Reform Act of 1986; and EO 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987. This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA.

3. Section 105–60.405 is added to read as follows:

105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply.

(1) "Confidential commercial information" means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the Government. The term "submitter" includes, but is not limited to, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* After January 1, 1988, submitters must designate confidential commercial information as such, when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotitated procurements, the requirements of FAR 15.407(c)(8) and 52.215–12 also apply.

(d) *Procedural requirements—consultation with the submitter.* (1) If GSA receives an FOIA request for confidential commercial information, it will notify the submitter promptly in writing before releasing any records unless paragraph (f) of this section applies.

(2) GSA will give the submitter 7 workdays from receipt of the letter to object to releasing the information. If the submitter objects to disclosure, he or she must provide GSA with a detailed written explanation as to how disclosure of any specified portion of the records would be competitively harmful.

(3) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in rseponding to the request due to the need to consult with the submitter.

(4) GSA will review all grounds for nondisclosure before deciding whether the information must be released or should be withheld. If the agency decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter should contain a complete copy of the material to be disclosed or should offer the submitter an opportunity to review the material in one of GSA's offices. If GSA decides not to release the material, it

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will notify the submitter orally or in writing.

(5) GSA will inform the submitter that GSA will delay 5 workdays from the estimated date the submitter receives GSA's reply before it releases the information.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA will notify a submitter whenever it receives an FOIA request for such information:

(i) If the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could resonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notify a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) The disclosure of which GSA believes could reasonably be expected to cause substantial competitive harm.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required.* The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) Disclosure is required by an agency rule that—

(i) Was adopted pursuant to notice and public comment,

(ii) Specifies narrow classes of records submitted to the agency that are to be released under FOIA, and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section, appears obviously frivolous; except that, in such case, the agency must provide the submiter with written notice of any final administrative decision 5 workdays prior to disclosing the information.

(g) *Lawsuits.* If an FOIA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Dated: April 28, 1988.

Paul T. Weiss,

Associate Administrator for Administration.

[FR Doc. 88-11174 Filed 5-18-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period; Stephen's Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened for the proposed determination of endangered status for the Stephen's kangaroo rat (*Dipodomys stephensi*). The species has suffered widespread habitat loss and degradation, resulting in small isolated populations. The reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period which originally closed on January 19, 1988, and was extended to April 19, 1988, now closes June 20, 1988.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Stephen's kangaroo rat is found in the vicinity of the Perris and San Jacinto Valleys in western Riverside County and the San Luis Rey and Temecula Valleys in northern San Diego County. Occupied habitats are usually described as sparce slightly disturbed coastal sage scrub or annual grasslands. The species is threatened by deterioration or loss of habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 44453) on November 19, 1987.

The comment period on the proposal originally closed on January 19, 1988. The Service extended the comment period to April 19, 1988. Written comments may not be submitted until June 20, 1988, to the Service office in the Addresses section.

Author

The primary author of this notice is Mr. Wayne S. White, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: May 10, 1988.

Rolf L. Wallenstrom,

Regional Director.

[FR Doc. 88-11278 Filed 5-18-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18, 228, and 402

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; notice of 45-day extension of comment period.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service give notice that they are extending the comment period for regulations proposed to implement recent amendments to the Marine Mammal Protection Act of 1972 and Endangered Species Act of 1973. That rule proposes to amend existing procedures governing incidental take authorizations for activities other than commercial fishing. By request, the comment period is being extended for 45 days.

DATE: Comments on the proposed rule will now be accepted through July 5, 1988.

ADDRESS: Comments should be submitted to the Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Robert Peoples, Division of Fish and Wildlife Management Assistance, Fish and Wildlife Service, 202-343-6307, or Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 202-673-5348.

SUPPLEMENTARY INFORMATION: A proposed rule to amend existing regulations (50 CFR 18.27, 50 CFR Part 228, 50 CFR 402.14(i)) governing the taking of marine mammals incidental to specified activities (other than commercial fishing) was published in the **Federal Register** on March 15, 1988 (53 FR 8473). The proposed rule included a 60-day period, ending May 16, 1988, for submitting comments. Since several interested parties have requested additional time to review the proposal, the Fish and Wildlife Service and National Marine Fisheries Service have decided to extend the comment period for another 45 days to ensure all affected entities have ample opportunity to provide comments.

Author: The primary author of this notice is Robert Peoples, Fish and Wildlife Service, Department of the Interior.

Authority: 16 U.S.C. 1361 *et seq.* and 16 U.S.C. 1531 *et seq.*

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Fish and Wildlife Service, Imports, Indians, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration

50 CFR Part 402

Endangered and threatened species, Fish and Wildlife Service, National Oceanic and Atmospheric Administration.

Date: May 13, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service

Date: May 13, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 88-11283 Filed 5-18-88; 8:45 am]

BILLING CODE 3510-22-M/4310-55-M

VOL 53 ISS 97 MY 19 1988 UMI

Notices

Federal Register
Vol. 53, No. 97
Thursday, May 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census; Commerce
Title: 1990 Decennial Census—Listing Phase of the List/Enumerate Operation
Form Number: Agency–D–104A, D–104B, D–104C, and D–169(LE); OMB–NA
Type of Request: New collection
Burden: 8,654,800 respondents; 1,211,672 reporting hours
Needs and Uses: The purpose of this operation is to count rural and sparsely populated areas of the United States, and its commonwealths and territories. This operation will be a combination of visiting households, listing addresses, picking up completed short questionnaires, and completing long questionnaires as needed.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1988.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 88–11247 Filed 5–18–88; 8:45 am]
BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Proposed Revision of Exploration License

AGENCY: National Oceanic and Atomspheric Administration Commerce.
ACTION: Notice of receipt of application from Ocean Minerals Company to revise exploration plan incorporated into exploration license issued August 29, 1984, and request for comments.

SUMMARY: On April 5, 1988, the Ocean Minerals Company (OMCO), 3385 Scott Boulevard, Santa Clara, California 95051, submitted to the National Oceanic and Atomspheric Administration (NOAA) a proposal to change the exploration plan incorporated into deep seabed mining exploration license, USA–1, issued to OMCO by NOAA on August 29, 1984, as revised on August 30, 1985, and April 5, 1988, pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970. NOAA has determined that this proposal constitutes an application for revision of the license under 15 CFR 970.513, and is commencing public review procedures prescribed in 15 CFR 970.514(b).

OMCO's current 10-year exploration plan, as revised in 1985, consists of two 5-year phases. Phase I of OMCO's work schedule is designed to analyze and integrate exploration data from settlement agreements and other sources, compile environmental data, and identify test sites and candidate sites suitable for commerical mining. In Phase II, OMCO has scheduled selection and integration of survey systems, survey and selection of commerical recovery permit areas, and collection and analysis of environmental data. Survey operations and scale-up in expenditures for the pilot plant and equipment development have been planned in Phase II, in conjunction with the investment decision whether or not to proceed with commerical mining.

In accordance with § 970.203, OMCO is requesting that Phase I be extended 1 year in order to postpone investment decisions in a time of metals market uncertainty. It also defines the initiation of Phase II (tentatively license year number seven) as the time of corporate decision to proceed with scale-up pilot plant operations. This revised work plan will also provide a longer period for the evaluation of significant quantities of exploration data gained by OMCO through conflict resolution with domestic and foreign mining consortia. OMCO has also requested a reduction in total expenditures for Phase I, from $1,700,000 to $1,050,000.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the application for revision and to provide comments by July 18, 1988. These documents may be examined at NOAA, 1825 Connecticut Avenue NW., Suite 710, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Suite 710, Washington, DC 20235, (202) 673–5117.

Dated: May 16, 1988.
John J. Carey,
Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.
[FR Doc. 88–11248 Filed 5–18–88; 8:45 am]
BILLING CODE 3510–12–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish Fishery Management Plan Monitoring Team (PMT) will convene separate public meetings at the National Oceanic and Atomspheric Administration, National Marine Fisheries Service, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI, as follows:

May 18, 1988—will convene from 9 a.m. to noon to: (1) Draft criteria for defining fishing power replacement vessels and new entrants for the Northwestern Hawaiian Island (NWHI) bottomfish fishery under the limited entry program established in Amendment 2 of the FMP, (2) review the status of bottomfish programmatic projects, and (3) discuss research and data needs for 1990–1995.

May 26, 1988–will convene from 9 a.m. to noon to discuss the status of the 1987 annual report. PMT members will review draft modules and discuss PMT recommendations to be presented to the Western Pacific Council for management action.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: May 12, 1988.
Ann D. Terbush,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 88–11270 Filed 5–18–88; 8:45 am]
BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Eagle Crusher Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Eagle Crusher Company, having a place of business in Galion, OH, an exclusive right in six foreign countries to manufacture, use, and sell products embodied in the invention entitled "Low Profile Crushing Apparatus", under foreign patents counterpart to U.S. Patent 4,288,040. Foreign patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.
[FR Doc. 88–11220 Filed 5–18–88; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Socialist Republic of Sri Lanka

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port of call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: During recent negotiations between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, agreement was reached to establish a new Bilateral Textile Agreement, effected by a Memorandum of Understanding dated March 23, 1988, for the period which begins on June 1, 1988 and extends through June 30, 1992. The first agreement period will be from June 1, 1988 through June 30, 1989. Each agreement period thereafter will be from July 1 to June 30 of the following year.

A copy of the Memorandum of Understanding is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of is provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.
May 16, 1988.

Committee for the Implementation of Textile Agreements
May 13, 1988.
Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated March 23, 1988 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the thirteen-month period which begins on June 1, 1988 and extends through June 30, 1989, in excess of the following levels of restraint:

Category	13-mo restraint limit
331/631	1,711,667 dozen pairs.
333/633	34,667 dozen.
334	243,750 dozen.
335/835	178,750 dozen.
336	82,333 dozen.
337/637	184,167 dozen.
338/339	812,500 dozen of which not more than 677,083 dozen shall be in shirts other than T-shirts and tank tops (Categories 338pt./339pt.) [1]
340	639,167 dozen of which not more than 216,667 dozen shall be in shirts made from fabrics of two or more colors in the warp and/or the filling (Category 340pt.) [2]
341	639,167 dozen of which not more than 270,833 dozen shall be in shirts and blouses made from fabrics of two or more colors in the warp and/or the filling (Category 341pt.) [3]
342/642/842	422,500 dozen.
345/845	109,417 dozen.
347/348/847	845,000 dozen.
350/850	75,833 dozen.
351/651	178,789 dozen.

Category	13-mo restraint limit
352/652	966,667 dozen.
359-C/659-C [4]	1,625,000 pounds.
363	7,854,167 numbers.
369-D [5]	1,300,000 pounds.
369-S [6]	1,083,333 pounds.
434	3,250 dozen.
435	7,042 dozen.
442	14,818 dozen.
445/446	102,917 dozen.
448	6,500 dozen.
634	162,500 dozen.
635	236,333 dozen.
636/836	185,250 dozen.
638/639/838	567,917 dozen.
640	135,417 dozen.
641	639,167 dozen.
644	325,000 numbers
645/646	130,000 dozen.
647/648	671,667 dozen.

[1] In Category 338pt., only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970, 384.3437 and only TSUSA numbers 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339pt.

[2] In Category 340pt., only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637 and 381.5660.

[3] In Category 341pt., only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788.

[4] In Categories 359-C/659-C, only TSUSA numbers 381.0622, 381.6510, 384.0926 and 384.5222 in Category 359-C; and 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 659-C.

[5] In Category 369-D, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2660.

[6] In Category 369-S, shoptowels in TSUSA number 366.2940.

Imports charged to the category limits for the periods June 1, 1987 through December 31, 1987 and January 1, 1988 through May 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the Memorandum of Understanding dated March 23, 1988 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-11245 Filed 5-18-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

May 13, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: May 20, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: On March 7 and 14, 1988 the Governments of the United States and the Arab Republic of Egypt exchanged notes to amend and extend the Bilateral Textile Agreement of December 7 and 28, 1977 for the period which began on January 1, 1987 and extends through December 31, 1989.

All overshipments of 1987 specific limits will be charged to 1988 specific limits. Current data show overshipments in Categories 300/301 (8,383,624 pounds), 315 (2,787,805 square yards) and 339 (33,663 dozen).

A copy of the current Bilateral Textile Agreement between the Governments of the United States and the Arab Republic of Egypt is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 20, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988, in excess of the following levels of restraint:

Category	12-mo. restraint limit [1]
218-220, 224-227, 313-317 and 326, as a group.	65,000,000 square yards.
Sublevels in the group:	
218	3,000,000 square yards.
219	18,250,000 square yards.
220	16,250,000 square yards.
224	16,250,000 square yards.
225	16,250,000 square yards.
226	16,250,000 square yards.
227	16,250,000 square yards.
313	26,000,000 square yards.
314	16,250,000 square yards.
315	16,250,000 square yards.
317	16,250,000 square yards.
326	3,000,000 square yards.
Individual Limits not in a Group:	
300/301	11,686,000 pounds of which not more than 1,636,320 pounds shall be in Category 301.
393	504,686 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The foregoing restraint limits are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Arab Republic of Egypt.

Imports charged to the category limits for the periods January 1, 1987 through December 31, 1987 and September 1, 1987 through December 31, 1987 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The following amounts should be charged to the limits established in this directive. The charges are for goods imported during the period January 1-31, 1988. Additional charges will be supplied as data become available.

Category	Amount to be charged
300	230,773 pounds.
339	24,760 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-11246 Filed 5-18-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract; Japanese Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBOT") has applied for designation as a futures contract market in CBOT Japanese Stock Index futures. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.98, has determined that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBOT Japanese Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBOT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBOT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on May 16, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-11270 Filed 5-18-88; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposed Futures Contract; Morgan Stanley Capital International United Kingdom Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 1240.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and condition can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and condition of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

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Issued in Washington, DC, on May 10, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-11271 Filed 5-18-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 12, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs meeting originally scheduled on 24–25 May 1988, will now take place on 21–22 June 1988 from 8:00 a.m. to 5:00 p.m., at the Office of the USAF Scientific Advisory Board, Room 5D982, the Pentagon, Washington, DC, 20330–5430.

The purpose of this meeting is to review the task statement, focus on the task, decide on a study approach, agree on the required milestones, and obtain required reliability and maintainability informational briefings on the representative system to be studied. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-11221 Filed 5-18-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 12, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Requirements for Hypersonic Test Facilities will meet on 15–17 June 1988, from 8:00 a.m. to 5:00 p.m., at the Office of the Air Force Scientific Advisory Board, the Pentagon, Room 5D982, Washington, DC.

The purpose of this meeting is to prepare a status briefing for SAF/AQ and NASA on the progress of the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-11222 Filed 5-18-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 9 June 1988.

Time of Meeting: 0900–1500 hours.

Place: Southwest Research Institute, San Antonio, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Belvoir Research, Development and Engineering Center effectiveness review will visit the Southwest Research Institute to discuss the relationship of the Institute to the Belvoir RD&E Center. The subgroup will be gathering information relative to the effectiveness of the Center-Institute relationship in the area of fuel and lubrication. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-11223 Filed 5-18-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 10 June 1988.

Time of Meeting: 0830–1530 hours.

Place: 1800 Diagonal Road, Alexandria, VA.

Agenda: The Army Science Board Steering Group will meet to discuss the status of current studies and peer reviews, prioritization of HQ TRADOC's proposed topics and potential new studies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-11224 Filed 5-18-88; 8:45 am]

BILLING CODE 3710-08-M

Military Carrier Qualification Program; Freight Carrier Qualification Program

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DOD.

ACTION: Proposed program for qualifying DOD freight motor carriers.

SUMMARY: MTMC requests public comment on its proposed Freight Carrier Qualification Program. Subject to certain exceptions, the program will apply to all freight motor carriers intending to participate in transportation of all freight administered by MTMC's Directorate of Inland Traffic (except used household goods, hazardous, or secret materials, and sensitive weapons and munitions). The program will commence at a date announced in the final publication of the program in the **Federal Register**. Carriers without rates on file as of the effective date will have to qualify prior to MTMC's acceptance of their service offers. Carriers with rates on file as of the effective date will be required to submit qualification data when requested by MTMC. All carriers will be required to meet these qualification standards on or before 1 July 1990.

Carriers interested in qualifying or remaining qualified will submit the data described below to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the carrier's headquarters domicile. The area command will schedule a meeting with the carrier to clarify any qualification elements. The carrier must attend and provide an oral presentation on its company. The carrier may also receive guidance on how to do business with the DOD. The area command will then evaluate the data to determine whether the carrier has the equipment, facilities, personnel and finances necessary to handle the carrier's proposed scope of operations.

If the carrier is approved and signs the agreement, HQMTMC will then accept (or in the case of existing carriers continue to accept) tenders, tariffs or similar rate submissions. Carriers disapproved will be notified of the problems found and may reapply for approval once the problems have been corrected.

DATE: Comments must be received by June 20, 1988.

ADDRESS: Comments may be addressed to: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–INF, Room 607, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Sours or Ms. Patricia McCormick at (703) 756–1565/1566.

SUPPLEMENTARY INFORMATION: MTMC's proposed qualification criteria are as follows:

a. Safety Ratings. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency. Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are now in full compliance with Department of Transportation safety requirements.

b. Operating Authorities. Carriers will submit copies of all certificates authorizing operations as a common carrier (interstate and intrastate) needed to transport DOD traffic.

c. Insurance—Public Liability and Cargo. (1) *Public Liability.* Motor carriers will submit proof of their public liability insurance to MTMC on either a DOT Form MCS 90 or an ICC Form BMC–91/91X and a certificate of insurance form issued by the insurance company. The certificate holder block of the form will identify HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041, ATTN: MT–INFF, to be notified 30 days in advance of any change or cancellation. The public liability requirements are specified by 49 CFR 387.9 and are summarized as follows based on the commodities transported:

Property (nonhazardous)	$750,000
Oil; hazardous wastes, materials, and substances not in bulk	1,000,000

(2) Cargo. Motor carriers will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. The certificate holder block of the form will identify HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041, ATTN: MT–INFF, to be notified 30 days in advance of any change or cancellation. DOD's minimum cargo insurance requirements are $150,000 for loss and damage of Government freight and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) in the form of certificate(s) of insurance.

d. Financial Records. Motor carriers will provide copies of their balance sheet and income statements for the last 3 years. Motor carriers in existence less than 3 years but more than 12 months must provide copies of all balance sheets and income statements from the date business was commenced (proforma income statements and balance sheets may be required). Carriers in business less than 12 months must provide proforma income statements and balance sheets. All carriers must also state their extent of financial interests in other transportation companies or their affiliation with any firm holding interests in other transportation companies.

e. Carriers will provide the following information: (1) A listing of the company's officers.

(2) A listing of the company's owners and the percentage owned by each.

(3) Company background and history including the year the company was formed.

(4) A list by type and quantity of equipment owned and leased.

(5) The number of company drivers employed and number of drivers under lease.

(6) Copies of interline agreements, long-term and short-term lease agreements, and equipment leases.

(7) A list of terminal locations including the street address and telephone numbers.

(8) Three reference letters from the shippers they served during the previous 12 months.

(9) Proposed services by type of service, traffic lane, or geographical area.

(10) Copies of driver hiring, screening, and training procedures.

(11) Small business, disadvantaged business, and women-owned business certification statements (if applicable).

f. Carriers meeting the above qualification requirements will be required to sign the following agreement:

Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval To Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, hereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), hereinafter called the Government, agrees to comply with all requirements and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD freight administered by the Directorate of Inland Traffic, MTMC (except used household goods, hazardous or secret materials, and sensitive weapons and munitions). Noncompliance by the carrier with any provision of this Agreement may result in termination by MTMC of approval to participate in this traffic. If the carrier's approval is revoked, the carrier may be prohibited from participation in any DOD freight traffic transportation for up to 1 year.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent on establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service until it has served DOD in an approved status for 12 continuous months.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC followup evaluations at any time subsequent to signing this agreement to confirm continued eligibility.

3. Lawful Performance. Transportation for the DOD will be performed in accordance with all applicable Federal, State, municipal, and other local laws and regulations (no fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government).

4. Operating Authority. Carrier will maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be, in fact, involved in the brokerage of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Code of Federal Regulations.

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Section 387.9. Carriers will ensure that their insurance company(s) file with MTMC and the Interstate Commerce Commission proof of public liability insurance, in the form of a BMC 91 or 91–X, MCS 90, in accordance with Sections 29 and 30 of the Motor Carrier Act of 1980.

b. The carrier will also file with MTMC proof of $150,000 per incident minimum cargo insurance for loss and damage of Government freight. If transporting automobiles or vehicles in haulaway service using automobile transporters or trailers, the carrier will file proof of minimum cargo insurance of $20,000 per vehicle.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders of service or similar rate schedules with DOD/MTMC. The carrier will ensure that the policies include a provision requiring the insurer to notify HQMTMC 30 days prior to any change or cancellation of the policies. Proof of insurance must also be on file with HQMTMC prior to any performance of service by the carrier. Changes, renewals and cancellation notices must also be sent to HQMTMC at the address in paragraph 18. *This requirement applies to both interstate and intrastate carriers.* Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to allow unannounced safety inspections of its facilities, terminals, equipment, employees, operations, and procedures by DOD civilian, military, or contract employees. These inspections may include in transit surveillance of vehicles and drivers. Carrier will provide evidence of an active driver safety training and evaluation program that fulfills the requirements set forth at 49 CFR 390–396. Inspection of carrier equipment, driver's records, route plans, and inspection reports will be allowed during pickup and delivery of shipments and in coordination with police or other authorities while in transit. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier will have, in place, a company-wide safety management program. Carrier safety programs will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier will notify the consignor and consignee named on the Government bill of lading (GBL) or Commercial bill of lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, and time, place of occurrence, and other pertinent accident details. When requested, carrier will furnish to MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

7. Driver Requirements. Drivers used by carriers to transport DOD freight must possess a valid driver's license issued by his or her state of domicile. Drivers must have, at a minimum, 1 year's experience driving equipment similar to that used to transport DOD freight or have graduated from an accredited motor carrier driving school.

8. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from HQMTMC. Leases of less than 30 days are considered trip leases.

9. Shipment. The carrier agrees to provide the status of any shipment within 24 hours after an inquiry is made at no additional cost to the Government. Further, the carrier will not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

10. Documentation.

a. Carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government and will be bound by all terms and conditions stated on SF 1103 regardless of the type of bill of lading tendered.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

11. Loss or Damage. The carrier will be liable for loss or damage to cargo in accordance with the provisions of Title 49, United States Code, Section 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

12. Standard Tender of Service.

a. The carrier will comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that tenders not in compliance with these instructions will be rejected by MTMC.

b. Carrier will provide MTMC with a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier will also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue the use of the carrier.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal. The issuing carrier will be advised when tenders are removed under these circumstances. The carrier may also be placed in a nonuse status pending correction of the tenders.

13. Rates. Carrier agrees to transport Government shipments at its lowest applicable rate whether or not the rate tender is referenced on the GBL/CBL.

14. Carrier Performance. Carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State, and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency.

15. General Provisions. The carrier agrees to have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents. If different operating divisions of a carrier desire to file tenders with the DOD, the carrier agrees to maintain a seperate agreement and SCAC with MTMC for each division.

16. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by MTMC until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier will promptly notify MTMC of any changes in ownership, executive officers, and/or board members.

17. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for any other types of service and/or commodities.

18. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, Attention: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

19. Carrier Acknowledgment and Acceptance. The certifying carrier official will ensure all company officials and employees are familiar with the requirements of this Agreement and are in full compliance with the applicable provisions contained herein.

Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments, or during the qualification procedures shall be grounds for automatic cancellation of this agreement and immediate nonuse of the carrier, the affiliated companies, divisions and entities.

I, (typed name and title of carrier official), understand the requirements of this agreement and on behalf of (typed name of carrier), agree to comply with the terms and conditions contained herein.

Name of carrier _____
Carrier address _____

_____

_____

_____

Signature of carrier official

_____

Date
Telephone number ( ) _____
24 Hr emergency number ( ) _____
SCAC _____
Interstate operating authority certificate number—MC _____

Intrastate operating authority certificate number(s) (Include issuing State e.g. PA—#12345). _____

Military Traffic Management Command Acknowledgment/Acceptance

Signature _____
Title _____
Date _____
(Initial Date)

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–11188 Filed 5–18–88; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Grant Award

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Ceter.

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 12-month grant to the National Academy of Sciences, National Research Council, Polar Research Board, Washington, DC., in the amount of $20,000.

The DOE has determined that restriction to the national Academy of Sciences is appropriate based on the following information:

The National Research Council was established by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and of advising the Federal Government in matters pertaining to science, engineering and medicine. The National Research Council's Polar Research Board, founded in 1958, serves the national interest by monitoring the status and needs of polar sciences and assisting U.S. Government agencies in the development and maintenance of strong programs of polar research that are responsive to scientific opportunities and national interests in the Arctic and Antarctic.

The DOE is keenly interested in enhancing the supply of domestic fossil fuels by encouraging scientific and technological advances at all stages of research in resource development and technology transfer. This is especially true of the enormous supplies of oil and natural gas on the Alaskan North Slope and the potential supplies in the Alaskan Beaufort, Chukchi, and Bering Seas. These areas represent nearly 60 percent of the U.S. offshore undiscovered oil and 40 pecent of the undiscovered offshore gas. As such, the DOE is interested in ascertaining what solid-earth geoscience research is needed in advancing the knowledge base for economic environmentally safe recovery of the Arctic fossil fuels. The Polar Research Board, with its multidisciplinary staff and resources is uniquely qualified to carry out the work under this project. Therefore, it has been determined that it is appropriate to award a grant to the National Research Council's Polar Research Board, National Academy of Sciences, on a restricted eligibility basis.

This project will consist of the execution of tasks related to the identification of the principal research questions in Arctic solid-earth sciences; recommendation of the priorities to guide the direction of future research in this field; and an indication of the facilities and support required for a meaningful research program for the remainder of this century.

FOR FURTHER INFORMATION CONTACT: James H. Urbati, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–88MC25103.000.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88–11285 Filed 5–18–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: June 13, 1988–8:30 a.m.–5:00 p.m., June 14, 1988–8:15 a.m.–2:30 p.m., June 15, 1988–8:30 a.m.–12:00 Noon.

Place: Lawrence Livermore National Laboratory (LLNL), MFE Computer Center—Building 451, 7000 East Avenue, Livermore, CA 94550, (415) 423–2576.

Contact: John E. Metzler, Executive Director, Energy Research Advisory Board, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 586–5444.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to the last minute changes. Visitors planning to attend for a specific topic

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should confirm the time prior to and during the date of the meeting.

June 13, 1988

8:30 a.m. Business Items
9:00 a.m. Welcoming Remarks
9:10 a.m. DOE Welcome and Report on the Site Evaluation Task Force for the New Production Reactor (NPR)
9:30 a.m. Overview of the NPR Technology Assessment
10:00 a.m. NPR Subpanel Report: Liquid Metal Reactor
10:45 a.m. Break
11:00 a.m. NPR Subpanel Report: Light Water Reactors
11:45 a.m. NPR Subpanel Report: Modular High Temperature, Gas-Cooled Reactors
12:30 p.m. Lunch
1:30 p.m. NPR Subpanel Report: Heavy Water Reactors
2:15 p.m. Discussion of NPR Technology Assessment
3:30 p.m. Break
3:45 p.m. Continuation of Discussion
4:50 p.m. Public Comment (10 minute rule)
5:00 p.m. Adjourn

June 14, 1988

8:15 a.m. Review of Draft Report: Research and Technology Utilization (RTU)
10:15 a.m. Break
10:30 a.m. Continuation of Reveiw of RTU Report
11:30 a.m. Review of Draft Report: Science and Engineering Education
12:30 p.m. Lunch
1:30 p.m. Continuation of the Report on Science and Engineering Education
2:30 p.m. Public Comment (10 minute rule)
2:30 p.m. Adjourn

June 15, 1988

8:30 a.m. Approval of the NPR Technology Assessment Report
10:00 a.m. Break
10:15 a.m. Approval of the RTU Report
10:45 a.m. Approval of the Science and Engineering Education Report
11:30 a.m. Discussion of Possible New Topics for ERAB Other Business
11:50 a.m. Public Comment (10 minute rule)
12:00 Noon Adjourn

Public Participation: The meeting is opne to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Written statements may be filed with the Board either before of after the meeting. Members of the public who wish to make oral statments pertaining to agenda items should contact John Metzler at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. *Please note:* To facilitate access to the meeting room, members of the public are encouraged to call Ms. Silillian Anderson on (202) 586–5444 to let her know you plan to attend. U.S. citizenship is required. Just prior to the beginning of the meeting each day a bus will be at the East Entrance of the Laboragory to take you to the meeting site.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–11286 Filed 5–18–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $360,045 obtained as a result of a Consent Order that the DOE entered into with Power Test Petroleum Distributors, Inc. (Case No. KEF–0042), a reseller-retailer of motor gasoline located in Westbury, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF–0042.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a December 13, 1983 consent order between the DOE and Power Test Petroleum Distributors, Inc. (Powertest). That consent order settled certain disputes between the firm and the DOE concerning Powertest's possible violations of DOE regulations in its sales of motor gasoline. The consent order covers the period August 19, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $360,045, funded by Powertest pursuant to the consent order. The DOE has proposed that the consent order fund be disbursed to purchasers that were allegedly overcharged by Powertest in its sales of motor gasoline. Under the proposed procedures, purchasers of Powertest motor gasoline may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Powertest consent order fund. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from Powertest. The DOE has proposed to adopt a small-claims presumption in which reseller-retailer claimants whose claims are under $5,000 are presumed injured. Those reseller-retailer claimants whose claims exceed $5,000 will be required to show injury. The specific requirements for proving injury are set forth in the Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 12, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 12, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Power Test Petroleum Distributors, Inc.

Date of Filing: June 20, 1986.

Case Number: KEF–0042.

On June 20, 1986, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Power Test Petroleum Distributors, Inc., (Powertest). 10 CFR Part 205, Subpart V. This Proposed Decision and Order sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Because the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of Powertest refund applications is authorized.

I. Background

Powertest was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was located in Westbury, New York during the period of price controls.[1] Powertest was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR Parts 211 and 212. The ERA conducted an extensive audit of Powertest's operations and found in a Notice of Probable Violation (NOPV) that the firm had violated applicable DOE pricing regulations in its sales of motor gasoline during the period August 19, 1973 through January 27, 1981 (the consent order period).[2] In order to settle all claims and disputes between Powertest and the DOE, the two parties entered into a Consent Order that became final on December 13, 1983. The Consent Order covers Powertest's sales of motor gasoline during the consent order period.

Under the terms of the Consent Order, Powertest agreed to remit $450,000 to the DOE to settle alleged violations that occurred during the consent order period. Pursuant to the Consent Order, disbursements were made from a constructive fund of $125,000 that was established on March 1, 1984, from which payments were directly made by Powertest to settle claims in DOE-approved judgments or settlements.[3] The balance of the settlement amount, $325,000, was paid to the DOE in monthly installments which included accrued interest on each monthly payment. Powertest made its final payment to the DOE on January 28, 1986. The total amount remitted by Powertest available for distribution equals $360,045 plus accrued interest. This Proposed Decision and Order concerns the distribution of those funds. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

We propose that firms and individuals that purchased Powertest motor gasoline during the consent order period may file refund claims in this proceeding.[4] Although the NOPV indicates that Powertest sold motor gasoline chiefly to retail stations, we recognize that other firms and individuals may have purchased Powertest products. Therefore, based on our considerable experience in conducting Subpart V refund proceedings, we believe that most potential claimants will fall into the following categories: (1) End-users, i.e., consumers who used Powertest motor gasoline; (2) regulated non-petroleum industry entities that used Powertest motor gasoline in their businesses, or cooperatives that resold Powertest products; and (3) resellers, retailers or refiners that resold Powertest motor gasoline.

In establishing the procedures that will govern the Powertest Special Refund Proceeding, we propose to adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and that will enable the OHA to consider refund applications in the most efficient manner possible.[5] *American Pacific International*, 14 DOE ¶ 85,156 (1986) (*API*). First, we propose to adopt a presumption that the alleged overcharges were dispersed equally among all sales of motor gasoline made by Powertest during the consent order period and that refunds should therefore be made on a volumetric basis. In the absence of better information, a volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *API*, 14 DOE at 88,293.[6]

Under the volumetric refund approach we propose to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Powertest motor gasoline purchased times the per gallon refund amount, plus accrued interest. Allocating the alleged violations on a volumetric basis results in a maximum refund amount of $.00042 per gallon (hereinafter referred to as the volumetric refund amount).[7]

We also propose to adopt a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Powertest's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in Section II(A) below.

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[1] Powertest sold its products primarily to retail stations located in the New York City, Long Island and Mid-Hudson area. Powertest is presently located in Nassau County, New York and is an affiliate of Getty Oil Company.

[2] The ERA issued a NOPV to Powertest on December 30, 1980.

[3] In compliance with the terms of the Consent Order, Powertest made a DOE-approved deduction of $50,000 from the constructive fund to Silberline, Inc. (Silberline) of West Orange, New Jersey as a result of a July 5, 1983 settlement between Powertest and Silberline. Furthermore, on December 7, 1984, in the case of *Patrick Bello v. Power Test Corporation*, (Bello) Civil Action No. 81–1936 (E.D. Pa.), Powertest made a DOE-approved payment of $73,179 to the plaintiff. After these disbursements were made, Powertest paid $1,821, the remaining balance of the constructive fund, plus $8,404 in accrued interest to the DOE.

[4] We propose that Silberline and Bello may apply far a refund in this proceeding. However, their applications must include a detailed explanation of the facts surrounding any prior payment received from Powertest as a result of their settlement with the DOE.

[5] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. 10 CFR Part 205, Subpart V.

[6] Nevertheless, we recognize that the impact of Powertest's pricing practices on an individual purchaser may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharge that it incurred in order to be eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[7] To compute this figure, we first estimated that Powertest's sales of motor gasoline during the consent order period totalled approximately 852,737,989 gallons. This figure was obtained from sales data supplied by Powertest and verified by data suplied by the ERA. Dividing this total volume into the $360,045 received from Powertest yields a volumetric refund amount of $.00042, exclusive of interest. Each successful applicant will also receive a pro rata share of interest which will increase over time and will be computed for each refund at the time of payment.

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(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

We propose to adopt a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Powertest's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). Consequently, end-users of Powertest's motor gasoline will only have to document their purchase volumes from Powertest to demonstrate injury.

(2) Refund Applciations of Cooperatives and Regulated Firms

We propose that firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be rquired to demonstrate injury as a result of alleged overcharges on Powertest motor gasoline. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed any overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we propose to require that such applicants certify that they will pass any refund received through to their customers. We further propose that such aplicants provide us with a detailed explanation of how they plan to accomplish this restitution and how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Powertest motor gasoline to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Powertest's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982) (*Uban*). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Powertest motor gasoline it purchased during the consent order period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88, 210 (1984).

We propose that if a reseller, retailer or refiner's claim exceeds $5,000, it will be required to provide a detailed demonstration of injury. First, a firm is generally required to provide a monthly schedule of its "banks" of unrecouped increased product costs for the motor gasoline that it purchased from Powertest during the consent order period.[9] We further propose that a firm must show that market conditions forced it to absorb the alleged overcharges. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Powertest. *API*, 14 DOE at 88,295. If a claimant elects not to submit a detailed demonstration of injury, it may still apply for a small claims refund of $5,000, plus accrued interest.

(4) Refund Applications for Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of Powertest motor gasoline, we will consider that claimant to be a spot purchaser. We propose to adopt the rebuttable presumption that claimants who made only spot purchases from Powertest were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot purchases from Powertest unless they were able to pass through the full amount of any price increases to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Therefore, a firm that made only spot purchases from Powertest will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all Applications for Refund must be in writing and must be signed by the applicant. An application must refer to the Power Test Petroleum Distributors, Inc., Special Refund Proceeding (Case No. KEF–0042). If an applicant indirectly purchased Powertest motor gasoline from a reseller, it must explain why it believes that the products originated with Powertest and must identify the reseller from which the product was purchased.

We propose to establish a minimum amount of $15.00 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than $15.00 are sought outweighs the modest benefits of restitution in those situations. *Uban*, 9 DOE at 85,225.

(C) Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all refund claims from the Powertest fund have been analyzed, the funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986).

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register**.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Power Test Petroleum Distributors, Inc., pursuant to the Consent Order executed on December 13, 1983 will be distributed in accordance with the foregoing decision.

[FR Doc. 88–11210 Filed 5–18–88; 8:45 am]

BILLING CODE 6450–01–M

[9] A "bank" must be equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either motor gasoline was decontrolled or the banking regulations expired. Retailers and resellers of motor gasoline were only required to maintain cost banks through July 15, 1979 and April 30, 1980, respectively, rather than through January 27, 1981, the decontrol date of motor gasoline.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3382–3]

Fuels and Fuel Additives; Correction of Fuel Waiver Granted to the Texas Methanol Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a conditional waiver granted under section 211(f) of the Clean Air Act (Act) to the Texas Methanol Corporation on February 1, 1988. The conditional grant of the waiver stated that heptanols and octanols were restricted to a maximum of five percent by weight of the higher molecular weight alcohols (pentanols, hexanols, heptanols and octanols). This notice corrects that condition, to more accurately reflect the waiver application, so that the heptanols and octanols are restricted to a maximum of five percent by weight of the total cosolvent mix.

ADDRESS: Copies of documents relevant to this waiver application and subsequent submissions are available for inspection in public docket EN–87–06 at the Central Docket Section (LE–131) of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475–8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act provides that the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of vehicles to meet emission standards.

The Texas Methanol Corporation submitted a waiver application for a gasoline-alcohol fuel blend, referred to as OCTAMIX, on August 7, 1987. A **Federal Register** notice was published on September 2, 1987 (52 FR 33282), acknowledging receipt of the application and soliciting comments. On February 1, 1988, the Administrator granted the waiver, subject to certain conditions. A **Federal Register** notice of this decision was published on February 8, 1988 (53 FR 3636). One of those conditions was that the heptanols and octanols in the cosolvent mix would be limited to a maximum of five percent by weight of the higher molecular weight alcohols (pentanols, hexanols, heptanols, and octanols). Subsequent to publication of the decision notice, EPA discovered that the application had actually been intended to limit heptanols and octanols to a maximum of five percent by weight of the total cosolvent mix. After a review of the fuel configuration as stated in the application, the Agency has concluded that the technical difference between the condition imposed by EPA and that intended by the application is insubstantial. If 2.5 percent by volume cosolvent is used, the different interpretations would result in less than one tenth of one percent difference in allowable amounts of heptanols and octanols in the final fuel. Such a small difference would not have any impact on emissions.

EPA is, therefore, correcting its original decision such that the heptanols and octanols are limited to a maximum of five percent by weight of the total cosolvent mix rather than five percent by weight of the higher molecular weight alcohol fraction (pentanols, hexanols, heptanols and octanols).

Thus, Texas Methanol's gasoline-alcohol fuel waiver is now subject to the following conditions:

(1) The final fuel consists of a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvent in unleaded gasoline. The cosolvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols within the following constraints: the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 percent by weight of the cosolvent mix, whereas a maximum limit of 40 percent by weight of the cosolvent mix is placed on the pentanols, hexanols, heptanols and octanols or mixtures thereof. Furthermore, the heptanols and octanols are limited to a maximum 5 percent by weight of the cosolvent mix;

(2) A maximum concentration of up to 3.7 percent by weight oxygen in the final fuel is observed;

(3) Petrolite's proprietary corrosion inhibitor formulation, TOLAD MFA–10, is blended in the final fuel at 42.7 milligrams/liter;

(4) The final fuel must meet ASTM D439–85a Standard Specifications for Automotive Gasoline (a copy of which is in the docket), with the qualification that Test Method D323 for RVP be replaced by the "dry" test method described in ASTM D–2 Proposal P–176, Proposed Specification for Automotive Spark Ignition Fuel, Annex A.3 or by automatic apparatus described in Annex A.4 of the D–2 Proposal 176 (attached to the decision document as Appendix B);

(5) The final fuel must meet the maximum temperature for phase separation as specified in ASTM D–2 Proposal P–176, Table 4 using the test method for water tolerance contained in Annex A.5 (attached to the decision document as Appendix C);

(6) The fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added, provided, however, that up to two percent by volume of methyl tertiary butyl ether (MTBE) will be allowed in the base stock to which the alcohols are added if the MTBE is present only as a result of commingling in transport and storage, not purposefully added as an additional component to the alcohol blend;

(7) Specifications for alcohol purity attached to the decision document as Appendix D are met.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

Authority: Section 211, 42 U.S.C. 7545.

Dated: May 12, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88–11253 Filed 5–18–88; 8:45 am]

BILLING CODE 6560–50–M

VOL 53 ISS 97 MY 19 1988 UMI

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Jones Ford—Mercury, Inc., Wickenburg, Arizona; EPA Docket No. IX–FY88–21; filed on May 10, 1988, with James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974–0718; proposed penalty up to $125,000 for discharging to Waters of the United States without an NPDES permit.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: May 10, 1988.

Keith Takata,

Acting Director, Water Management Division.

[FR Doc. 88–11255 Filed 5–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Lafayette Bancorporation; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be availble for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding these applications must be received not later than May 30, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lafayette Bancorporation,* Lafayette, Indiana; to acquire 100 percent of the voting shares of Banc of Reynolds, Reynolds, Indiana, and thereby indirectly acquire Bank of Reynolds, Reynolds, Indiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Spring Rivers Bancshares, Inc.,* Imboden, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Imboden, Imboden, Arkansas.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–11416 Filed 5–18–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Alcohol, Drug Abuse, and Mental Health Administration

Research Grants on Alcohol-Related Behavior That Increases the Risk of AIDS and/or Research on Prevention Strategies To Reduce That Risk

AGENCY: National Institute on Alcohol Abuse and Alcoholism; HHS.

ACTION: Amendment notice.

SUMMARY: Notice was given in the **Federal Register** on April 12, 1987, Volume 53, No. 70, on page 12076 of the availability of a Request for Applications (RFA) for Research Grants on Alcohol-Related Behavior that Increases the Risk of AIDS and/or Research on Prevention Strategies to Reduce that Risk. As stated in the subject notice, the single application receipt date for this RFA is May 25, 1988. This is to amend that notice to announce that late applications will be held and reviewed in October-November 1988 with other AIDS applications submitted to NIAAA during the next AIDS review cycle.

Date: May 16, 1988.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–11256 Filed 5–18–88; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Dental Implants; Meetings

Notice is hereby given of the NIH Consensus Development Conference on Dental Implants, sponsored by the National Institute of Dental Research, the NIH Office of Medical Applications of Research, and the Food and Drug Administration. The conference will be held June 13–15, 1988, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The use of dental implants in or on the jawbone to replace missing teeth is becoming an important component of modern dentistry that is expected to increase dramatically in the future. Implants are now available for patients who have lost all of their teeth or only a few. It is not clear, however, whether there is an implant device appropriate for every patient situation, nor are the long-term efficacy and safety of the most widely used implants clearly established. Conference participants will address these and other issues.

The conference will bring together dentists, including oral surgeons, prosthodontists, periodontists and pathologists, as well as other experts in orthopedics, bone biology, statistics, biomaterials science, bioengineering, and representatives of the public. Following two days of presentations by dental and medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to several key questions:

- What is the evidence that dental implants are effective for the long term?
- What are the indications and contraindications of various types of dental implants?
- What are the requirements for surgical, restorative, and periodontal management of patients with dental implants?
- What are the health risks of dental implants?
- What are the future directions for research on materials and designs of dental implants and on clincial management?

On the final day of the meeting, the draft statement will be read to the conference audience and there will be an opportunity for comments and questions at that time.

Information on the program may be obtained from: Kathleen Edmonds, Prospect Associates, 1810 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–6555.

Dated: May 11, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–11273 Filed 5–18–88; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Perioperative Red Cell Transfusion; Meetings

Notice is hereby given of the NIH Consensus Development Conference on "Perioperative Red Cell Transfusion," sponsored by the National Heart, Lung, and Blood Institute, the NIH Office of Medical Applications of Research, the NIH Clinical Center, and the Food and Drug Administration. The conference will be held June 27–29, 1988, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

About 70 percent of red cell transfusions are given to support surgery—preoperatively, during surgery, or in the postoperative period. Improved understanding of the immediate and long-term risks of blood transfusion has triggered a reevaluation of the need and benefits of this procedure. Older guidelines on when and how to use red cell transfusion in the perioperative period may no longer be appropriate.

The meeting will deal with infection and other risks of blood transfusion and with the effect of anemia on surgery and the ability of a patient to recover from surgery.

Experts in surgery, anesthesiology, transfusion medicine, hematology, respiratory physiology, virology, immunology, and nursing and members of the general public and representatives of the blood-banking industry will gather for this two-and-one-half-day conference.

Following 2 days of presentations by medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to the following key questions:

- What should the criteria be for perioperative red cell transfusion?
- What are the risks of red cell transfusion—both immediate and long term?
- What is the morbidity of anemia in the perioperative period?
- What are the alternatives to red cell transfusion?
- What are the directions for future research?

On the final day of the meeting, the Consensus Panel Chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Andrea Manning, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, MD 20852, (301) 468–MEET.

Date: May 11, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–11274 Filed 5–18–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1988:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: June 28–29, 1988, 8:30 a.m.

Place: The Majestic Hotel, 1500 Sutter Street, San Francisco, California.

Open June 28, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of June 28 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Services Research Review Subcommittee.

Date and Time: May 31–June 1, 1988, 1:00 p.m.

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Place: Tucson Hilton East, Parlor A, 7600 East Broadway, Tucson, Arizona.

Open May 31, 1:00 p.m. to 2:00 p.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on May 31 from 1:00 p.m. to 2:00 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, DER, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Care Technology Study Section.

Date and Time: June 7–8, 1988, 8:30 a.m.

Place: Days Inn—Congressional Park, Montrose Room, 1775 Rockville Pike, Rockville, Maryland.

Open June 7, 8:30 a.m. to 9:30 a.m.

Closed for the remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 8:30 a.m. to 9:30 a.m. on June 7 be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Date: May 12, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-11275 Filed 5-18-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Ranking of Applications for Emergency Shelters/Halfway Houses for Indian Youth

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of ranking.

This notice is published to inform all Tribal applicants of the ranking for renovation and/or construction funding for emergency shelters/halfway houses for Indian youth pursuant to Pub. L. 99–570, the Anti-Drug Abuse Act of 1986, section 4213 "Emergency Shelters."

Sixty (60) applications were received and evaluated by a five member committee with representation from Bureau of Indian Affairs, Division of Social Services, Branch of Judicial Services, Facilities Management and Construction Center and Office of Indian Education Programs, along with representation from Indian Health Service. Twenty-three (23) of the applications were disqualified because they did not conform with the requirement of an emergency shelter/halfway house as described in Pub. L. 99–570, section 4213 or the respondent was not requesting construction funding.

The remaining thirty-seven (37) applications were scored by each of the five committee members based upon established criteria and point values. The individual criteria scores were then accumulated, averaged and totaled. The results of this evaluation process are as follows:

Ranking and Applicant's Name

1—Crow Creek Sioux Tribe—South Dakota
2—Ute Mountain Ute Tribe—Colorado
3—Oglala Sioux Tribe—South Dakota
4—Shoshone and Arapahoe Tribe—Wyoming
5—Rosebud Sioux Tribe—South Dakota
6—Couer D'Alene Tribe of Idaho—Idaho
7—Toiyabe Indian Health Project—California
8—Crownpoint Youth Home—New Mexico
9—Cheyenne and Arapahoe Tribe of Oklahoma—Oklahoma
10—Northwest Inter-Tribal Education and Training Board—Washington
11—Sault Ste. Marie Tribe of Chippewa Indian—Michigan
12—[1] Bay Mills Indian Community—Michigan
13—[1] Fort Sill Apache (The)—Oklahoma
14—[1] Santo Domingo Tribe—New Mexico
15—Southern Indian Health Council, Inc.—California
16—Fallon Paiute-Shoshone Tribe—Nevada
17—Ute Indian Tribe—Utah
18—Santa Clara Indian Pueblo—New Mexico
19—Tetlin Village Council—Alaska
20—Kiowa Tribe of Oklahoma—Oklahoma
21—Chinle Agency Alcohol and Substance Abuse Task Force—Arizona
22—Iowa Tribe of Oklahoma—Oklahoma
23—Northern Cheyenne Tribe—Montana
24—Blackfeet Nation—Montana
25—St. Croix Tribal Council—Wisconsin
26—Chippewa Cree Tribe of the Rocky Boy's Reservation—Montana
27—Yankton Sioux Tribe—South Dakota
28—[1] Port Lions Tribal Council—Alaska
29—[1] Colville Confederated Tribes—Washington
30—Omaha Tribe of Nebraska—Nebraska
31—Turtle Mountain Agency—North Dakota
32—Twin Hills Village Council—Alaska
33—Cherokee Agency—North Carolina
34—Confederated Tribes of Siletz Indians of Oregon—Oregon
35—Arctic Village Alaska—Alaska
36—Crooked Creek Traditional Council—Alaska
37—Ft. McDowell Mohave-Apache Indian Community—Arizona

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management Department of the Interior, 16th & C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3403.

[1] Scores were tied.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 88-11177 Filed 5-18-88; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[NV-930-08-4212-24; N-43232]

Airport Leases; Termination of Segregative Effect; Nevada

May 12, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; termination of segregative effect, Nevada.

SUMMARY: This notice terminates the segregative effect of airport lease application, N–43232.

FOR FURTHER INFORMATION CONTACT: James W. Elliott, District Manager, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882–1631.

EFFECTIVE DATE: June 20, 1988.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.3–2(b), the segregative effect, as it pertains to the following described lands, will terminate on June 20, 1988:

Mount Diablo Meridian, Nevada

T. 13 N., R. 21 E.,
Sec. 33, W½SE¼.

The airport lease application was filed on January 21, 1986, at which time the lands became segregated from all forms of appropriation.

The Douglas County Board of County Commissioners denied the applicant's request for a Special Use Permit for the operation of an airport facility. Therefore, the subject application has been rejected.

At 10:00 a.m., on June 20, 1988, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on June 20, 1988, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on June 20, 1988, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-11225 Filed 5-18-88; 8:45 am]

BILLING CODE 4310-HC-M

[AK-967-4213-15]

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation. The lands involved are in the vicinity of Kake and Hoonah, Alaska.

COPPER RIVER MERIDIAN, ALASKA

Serial No.	Land description	Approximate acreage (acres)
AA–10485	T. 57 S., R. 73 E., Sec. 23.	9
AA–10528	T. 42 S., R. 62 E., Sec. 8.	21

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 (907) 271–5660).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until June 20, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 88-11185 Filed 5-18-88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-020-08-4322-12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on June 28 and 29, 1988.

The meeting will convene at 9:30 am on June 28, 1988 in the conference room of the Bureau of Land Management Office, 200 South Oakley Highway, Burley, Idaho. (The 29th will be a tour of the Burley District pilot riparian project and will convene at the District Office at 8:00 am.)

Agenda items for the meeting will include: 1. Election of Board officers; 2. Discussion regarding Advisory Board funds and possible bookkeeper/treasurer; 3. Project cost tracking program review; 4. Review 1988 range improvement projects as a Board; 5. Discuss procedure for processing Advisory Board funded projects (project request through completion); 6. Discuss weed control funding possibilities; 7. Items of information: (a) Proposed 1988 weed and grasshopper control activities; (b) Review current Burley District Grazing Advisory Board Charter; (c) Unauthorized agricultural use update. Tour of Burley District pilot riparian project.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 1:00 pm on June 28, 1988, or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the Associate District Manager by June 27, 1988 for inclusion in the meeting schedule. Anyone wishing to attend the tour of the pilot riparian project must furnish their own transportation and food. A pickup or high clearance vehicle is recommended.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley,

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Idaho, and will be available for public inspection during regular business hours, (7:45 am to 4:30 pm, Monday thru Friday) within 30 days following the meeting.

DATE: June 28 and 29, 1988.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Marvin Bagley, Associate District Manager, (208) 678–5514.

Date: May 13, 1988.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 88–11228 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–GG–M

[UT–060–08–4830–12]

Vernal District Advisory Council Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of district advisory council tour.

SUMMARY: Notice is hereby given that on Thursday, July 7, beginning at 8:00 a.m., District personnel will take members of the Vernal District Advisory Council on a two-day tour to parts of the Book Cliffs Resource Area. The tour will begin at the District Office located at 170 South 500 East, Vernal, Utah.

The purpose of the tour is to provide the Council with on-the-ground information on management concerns which will be discussed at a subsequent Council meeting.

The tour calls for specific visits to the following specific and possibly other incidental sites:

Thursday, July 7th

- Local natural building stone sites
- Local threatened cactus areas
- Cooperative BLM–Ute Tribe wild horse management sites
- Site of proposed north-south county all-weather road to connect Vernal with Interstate 70
- Greenwood Sales area

Friday, July 8th

- Sweetwater Riparian Management Area
- Chaining Site
- Livestock-Wildlife management area

The tour is open to the public, however, they would need to supply their own food, transportation and sleeping facilities.

A written summary of the tour highlights will be maintained at the District Office and will be available for public review.

David E. Little,

Vernal District Manager.

Date: May 12, 1988.

[FR Doc. 88–11178 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–920–08–4111–12; SDM 43977]

Proposed Reinstatement of Terminated Oil and Gas Lease; South Dakota

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease SDM 43977, Harding County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 16, 1988.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 88–11227 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–DN–M

[ID–040–07–4212–11–I–25474]

Realty Action; Classification for Recreation Public Purpose Lease; Custer County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, classification for recreation public purpose lease of public land in Custer County, Idaho.

TERM AND DATE:

The effective date of this classification will be 60 days from the date of **Federal Register** publication. The lease will be subject to the following terms and conditions:

1. Development in accordance with the approved Plan of Development.
2. Civil Rights requirements.
3. All conditions contained in section 1–8 of Lease from 2912–1.

SUMMARY: The below described public land has been identified and examined and is hereby classified as suitable for lease under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended.

T.11N., R.18E., B.M.,

Section 27: NE¼NE¼

Containing 10 acres.

The Custer County Commissioners have made application for this parcel in order to develop a solid waste collection site (dumpster).

The classification is based on the following reasons:

1. The lands are physically suitable for the proposed development.
2. The lands meet the guidelines for conveyances and leases as contained in 43 CFR 2741.4.
3. These lands are valuable for public purposes as stated in 43 CFR 2430.4(a) and may properly be classified for lease under the Recreation and Public Purposes Act as stated in 43 CFR 2439.4(c).

The previously described lands are hereby segregated from appropriation under the public land laws except the R&PP Act including the mining laws for a period of 18 months.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the lease can be obtained by contacting Robert H. Hale, Challis Resource Area Manager, at (208) 756–5400.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467..

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

The following petition for classification is hereby approved.

Name of Petitioner: Custer County Commissioners

Type of Petition: Recreation and Public Purpose Act of June 14, 1926, as amended.

Dated: May 10, 1988.

Steven R. Till,

Acting District Manager.

[FR Doc. 88–11182 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–GG–M

NM–940–084520–1]

Filing of Plat of Survey; New Mexico

May 12, 1988.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

The supplemental plats amending certain lot numbers in section 4, Township 5 South, Range 1 East, and section 6, Township 5 South, Range 1 East, New Mexico Principal Meridian, New Mexico, filed May 12, 1988.

The supplemental plat amending a certain lot number in section 15, Township 7 North, Range 11 West, Indian Meridian, Oklahoma, filed May 12, 1988.

These supplemental plats were requested by the Records Improvement Unit, New Mexico State Office, Bureau of Land Management.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88–11180 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–FB–M

[WY–940–08–4520–12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., May 9, 1988.

Sixth Principal Meridian

T. 24 N., R. 60 W.

The plat representing the retracement of the Nebraska-Wyoming State Boundary between Mile Posts 72 and 74, the dependent resurvey of a portion of the individual lines, and the subdivision of section 15, T. 24 N., R. 60 W., Sixth Principal Meridian, Wyoming, Group No. 500, was accepted May 3, 1988.

T. 54 N., R. 68 W.

The plat representing the dependent resurvey of the Eighth Auxiliary Meridian West, through T. 54 N., between Rs. 68 and 69 W., portions of the east and north boundaries and the subdivisional lines, T. 54 N., R. 68 W., Sixth Principal Meridian, Wyoming, Group No. 483, was accepted May 3, 1988.

T. 54 N., R. 69 W.

The plat representing the dependent resurvey of the west and north boundaries, and the subdivisional lines, T. 54 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group No. 482, was accepted May 3, 1988.

T. 21 N., R. 85 W.

The plat representing the dependent resurvey of the west boundary and a portion of the north boundary, Fort Steele Military Reservation, and portions of the east, west and north boundaries and a portion of the subdivisional lines, T. 21 N., R. 85 W., Sixth Principal Meridian, Wyoming, Group No. 443, was accepted May 3, 1988.

T. 21 N., R. 114 W.

The plat representing the dependent resurvey of portions of Lot Nos. 37 and 39, a portion of the subdivisional lines, and the metes and bounds survey of Tract 46, T. 21 N., R. 114 W., Sixth Principal Meridian, Wyoming, Group No. 502, was accepted May 3, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

T. 42 N., R. 114 W.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines and subdivision of section 6, and the survey of the subdivision of section 6, and the metes and bounds survey of Tracts 38 and 39, T. 42 N., R. 114 W., Sixth Principal Meridian, Wyoming, Group No. 506, was accepted May 3, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: May 11, 1988.

Richard L. Oakes,

Chief, Branch of Cadastral Survey.

[FR Doc. 88–11231 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–22–M

[MT–030–08–4220–10; SDM 76798]

Proposed Withdrawal and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 5,569.45 acres of National Forest System lands near the Jewel Cave National Monument for protection of existing cave resources and preservation and protection of caverns which are of great scientific and public interest. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The Forest Service will continue to permit uses within the statutory authorities pertinent to National Forest lands and subject to discretionary approval.

DATE: Comments and requests for meeting should be received on or before August 17, 1988.

ADDRESS: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, Chief, Branch of Land Resources, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: On April 14, 1988, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the general mining laws, subject to valid existing rights:

Black Hills Meridian

T. 3 S., R. 2 E.,
Sec. 34, S½;
Sec. 35, S½.
T. 4 S., R. 2 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, S½;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all.
T. 3 S., R. 3 E.,
Sec. 20, N½;
Sec. 31, lots 1 and 2, E½SW¼, SE¼.
T. 4 S., R. 3 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, E½W½.

The areas described aggregate 5,569.45 acres in Custer County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is

BEST COPY AVAILABLE

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afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those that are within the statutory authorities pertinent to National Forest lands and subject to discretionary approval.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.
May 9, 1988.

[FR Doc. 88-11176 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-DN-M

[CA-010-08-4212-13; CA 22479]

Realty Actions; Sales, Leases, etc.; California

AGENCY: Bureau of Land Management (BLM); Interior.

REALTY ACTION: Exchange of Public Lands in Placer and Yuba Counties, CA.

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Placer County, California
T. 15 N., R. 10 E., MDM.
Sec. 14, N½NE¼, lot 1;
Sec. 22, E½SE¼, SW¼SE¼;
Sec. 23, S½S½NE¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 26, W½NW¼SW¼, SW¼SW¼, S½SE¼SW¼, lots 1, 2, 6, 9 & 11;
Sec. 35, W½NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.

Yuba County, California
T. 19 N., R. 6 E., MDM,
Sec. 13, NW¼NW¼, lots 1, 2, 3, 4, 5, 8 & 7.

SUPPLEMENTARY INFORMATION: In exchange for some of the above public lands (not all would be exchanged), the United States would acquire approximately 600 acres of private land from Bohemia Inc. The private lands offered to the U.S. by Bohemia, Inc. are located in the vicinity of the North Fork of the American River which Congress has designated as a Wild and Scenic River in 1978.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the Federal Register of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing. Once negotiations are completed, a notice will be published identifying the specific Federal and private lands to be exchanged.

ADDRESS: Information concerning this exchange proposal is available from Mike Kelley at the Folsom Resource Area Office, 63 Natoma Street, Folsom, CA 95630; (916) 985-4474.

DATE: For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager at the above address.

Date: May 13, 1988.
D.K. Swickard,
Area Manager.

[FR Doc. 88-11228 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-84-M

[MT-070-04-4212-14; M-84171]

Realty Action: Sale of Public Land in Powell County, MT

AGENCY: Bureau of Land Management; Interior.

ACTION: Proposed noncompetitive sale of public land in Powell County, Montana.

SUMMARY: The following described land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana
T. 13 N., R. 12 W.,
Sec. 16, lot 16, containing .10 acres more or less.

The above described land is being offered as a direct sale to the owners of the improvement on the land at the appraised value. Sale of the land will not be held until 60 days after the date of this notice.

DATE: For a period of 45 days from the date of this notice, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

SUPPLEMENTARY INFORMATION: The proposed sale will resolve an inadvertent occupancy trespass. The action is consistent with the Garnet Resource Management Plan. Powell County and Montana government officials have been notified of the sale. The land has been not been used for and is not required for any Federal purpose. The public interest will be served by the sale of this parcel to protect the private landowner's equity.

Publication of this notice in the Federal Register will segregate the public land described above from settlement, location, or entry under the public land laws, including the mining laws, as provided in 43 CFR 2711.102, but not from sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

Detailed information concerning the sale is available at the Buttle District Office.

May 13, 1988.
James A. Moorhouse,
District Manager.

[FR Doc. 88-11230 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-DN-M

[ES-940-08-4520-13; (ES-038801, Group 154)]

Minnesota; Filing of Plat of Subdivision of Section 8

May 12, 1988.

1. The plat of the dependent resurvey of the east boundary and portions of the south and west boundaries and a portion of the subdivisional lines of Township 143 North, Range 39 West, Fifth Principal Meridian, Minnesota, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 27, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bauman,
Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-11227 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-GJ-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submnitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5618, Block 221, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on May 11, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the Subject DOCD is availavle for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70885.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533).

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 11, 1988.
J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-11232 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9001, Block 706, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Conner, Texas.

DATE: The subject DOCD was deemed submitted on May 13, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 13, 1988.
J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-11233 Filed 5-18-88; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5806, Block 145, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on May 10, 1988.

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ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 10, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–11181 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR Part 840.

Abstract: Section 517 of Pub. L. 95–87 requires that inspections of surface coal mining and reclamation operations are conducted as necessary to administer and evaluate approved State programs. This information is used by the regulatory authority and the Office of Surface Mining Reclamation and Enforcement to ensure that surface coaling mining and reclamation operations are conducted in a manner which preserves and enhances environmental concerns as expressed in the Act.

Bureau Form Number: None.

Frequency: On occasion, monthly, quarterly, and annually.

Description of Respondents: State regulatory authorities.

Annual Responses: 120,100.

Annual Burden Hours: 456,492.

Bureau Clearance Officer: Nancy Ann Baka, (202) 343–5981.

Dated: May 12, 1988.

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88–11234 Filed 5–18–88; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–383 (Final)]

Certain Bimetallic Cylinders From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of certain bimetallic cylinders,[2] provided for in item 678.35 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 15, 1988, following a preliminary determination by the Department of Commerce that imports of bimetallic cylinders from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 3, 1988 (53 FR 3084). The hearing was held in Washington, DC, on April 7, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 13, 1988. The views of the Commission are contained in USITC Publication 2060 (May 1988), entitled "Certain Bimetallic Cylinders from Japan: Determination of the Commission in Investigation No. 731–TA–383 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 13, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–11209 Filed 5–18–88; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Bimetallic cylinders are defined as hollow metal cylinders that serve as part of a machine used to process various materials, including plastic resins, and various types of food, either by injection molding, extrusion, or by blow molding. The products consist of an outer shell of steel and an inner lining of a corrosion- and abrasion-resistant alloy that are metallurgically bonded, and are, if imported, reported under items 678.3570, 678.3575, and 678.3580 of the Tariff Schedules of the United States Annotated (TSUSA).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Resource Conservation and Recovery Act; Keystone Consolidated Industries, Inc.

In accordance with Departmental policy, notice is hereby given that on May 11, 1988, a proposed Consent Decree in *United States v. Keystone Consolidated Industries, Inc.*, was lodged with the United States District Court for the Central District of Illinois. The proposed Consent Decree provides for compliance with closure requirements under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at defendant's facility in Peoria, Illinois, and for payment by defendant of a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Keystone Consolidated Industries, Inc.*; D.J. reference #90–7–1–338.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of Illinois, 100 NE. Monroe Street, room 253, Peoria, Illinois, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–11187 Filed 5–18–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant To Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 5, 1988, a proposed consent decree in *United States of America; and State of Maine and Board of Environmental Protection v. Richard Dingwell d/b/a The McKin Company, et al.*, Civil Action No. 88–0101–B, was lodged with the United States District Court for the District of Maine. The complaint filed by the United States, jointly with the State of Maine, sought recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act against over 300 companies that generated hazardous wastes found at the McKin Landfill in Gray, Maine.

The consent decree provides that the settling defendants will complete remedial work at the site, and will reimburse the United States and the State of Maine for most of their past response costs and future costs of overseeing the remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America; and State of Maine and Board of Environmental Protection v. Richard Dingwell d/b/a The McKin Company, et al.*, D.J. Ref. 90–11–2–133.

The proposed consent decree and amendment may be examined at the office of the United States Attorney, 156 Federal Street, Portland, Maine and at the Region I office of the Environmental Protection Agency, 2203 JFK Federal Building, Boston, Mass. 02203. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of ____ (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–11236 Filed 5–18–88; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Clean Air Act Enforcement Action; Multi-Color Corp.

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Compliant and Consent Decree in *United States v. Multi-Color Corporation*, Civil Action No. C–1–88–0425 was lodged with the United States District Court for the Southern District of Ohio on May 9, 1988. The Complaint alleges Multi-Color Corporation has violated the Clean Air Act and the Ohio State Implementation Plan for volatile organic compounds at Multi-Color's Cincinnati, Ohio facility. The proposed decree requires Multi-Color to install pollution control technology, to satisfy various monitoring, record keeping and reporting requirements, and orders Multi-Color to pay a civil penalty of $75,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States v. Multi-Color Corporation*, 90–5–2–1–857A.

The proposed consent decree can be examined at the office of the United States Attorney, 220 U.S. Post Office, 5th and Walnut Street, Cincinnati, Ohio 45202 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States. The Decree can be examined at the above address without cost.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–11237 Filed 5–18–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—SEMATECH, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the members of SEMATECH, Inc. ("SEMATECH") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the members of SEMATECH and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SEMATECH and SEMATECH's general area of planned activity, are given below.

The members of SEMATECH are:

Advanced Micro Devices, Inc.
American Telephone & Telegraph Company
Digital Equipment Corporation
Harris Corporation

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Hewlett-Packard Company
INTEL Corporation
International Business Machines Corporation
Micron Technology, Inc.
Motorola, Inc.
National Semiconductor Corporation
Rockwell International Corporation
Texas Instruments Incorporated
NCR Corporation

SEMATECH's area of planned activity is research and development related to advanced semiconductor manufacturing techniques that can be used by SEMATECH's members in their own manufacturing processes.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-11235 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Cambridge Isotope Laboratories

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 14, 1988, Cambridge Isotope Laboratories, 20 Commerce Way, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II

These substances will be manufactured in limited quantities ranging from two to ten grams.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 11, 1988.

[FR Doc. 88-11261 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 8, 1988, and published in the **Federal Register** on February 12, 1988; (53 FR 4233), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 11, 1988.

[FR Doc. 88-11262 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Radian Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 11, 1988, Radian Corporation, P.O. Box 201088, 8501 Mo-Pac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Fentanyl (9801)	II

These materials will be produced in order to prepare analytical standards and the maximum amount of any of these substances which will be manufactured is 5 grams.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 11, 1988.

[FR Doc. 88-11263 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

Smithkline and French Laboratories, Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 1988, Smithkline and French Laboratories, Division of Smithkline Beckman Corporation, 1530 Spring Garden Street, Philadelphia, Pennsylvania 19101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and

may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 20, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 11, 1988.

[FR Doc. 88-11264 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

Smithkline Chemicals, Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 1988, Smithkline Chemicals, Division Smithkline Beckman Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such commnents, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 20, 1988.

Dated: May 11, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-11265 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

Western Fehr Laboratories, Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 28, 1988, Western Fher Laboratories, Inc., Carretera 132, KM. 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance phenmetrazine and its salts (1631).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 20, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 11, 1988.

[FR Doc. 88-11266 Filed 5-18-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Partially Open Meeting; Expansion Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Community Foundation Initiative Section) to the National Council on the Arts will be held on June 7, 1988 from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 7, 1988 from 9:00-10:00 a.m. and from 4:30-5:30 p.m. The topics for discussion will include general program review and policy issues.

The remaining sessions of the meeting on June 7, 1988, from 10:00 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 16, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-11287 Filed 5-18-88; 8:45 am]

BILLING CODE 7537-01-M

Partially Open; Expansion Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 8, 1988 from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 8, 1988 from 9:00-10:30 a.m. and from 4:20-5:30 p.m. The topics for discussion will include general program overview and policy issue.

The remaining sessions of the meeting on June 8, 1988, from 10:30 a.m.-4:20 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for

financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, ro call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 16, 1988.

[FR Doc. 88–11288 Filed 5–18–88; 8:45 am]

BILLING CODE 7537–01–M

Closed Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on June 9, 1988, from 9:00 a.m.–5:30 p.m.; June 10, 1988, from 9:00 a.m.–10:30 p.m.; and on June 11, 1988, from 9:00 a.m.–4:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

May 16, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–11289 Filed 5–18–88; 8:45 am]

BILLING CODE 7537–01–M

Partially Open Meeting; Museum Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Arts Advisory Panel to the National Council on the Arts to be held on May 24, 1988 from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed. This notice supersedes the previous notice in 53 FR 17128, May 13, 1988.

A portion of the meeting that was to be closed to the public on May 24, 1988, from 9:15–10:00 a.m. has been changed. The meeting will be open to the public on a space available basis from 9:00 a.m.–5:30 p.m. The topics for discussion will include guidelines, budget and other policy issues.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 16, 1988.

[FR Doc. 88–11290 Filed 5–18–88; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including dicussion of information given in confidence to the agency by grant applications. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code..

1. *Date:* June 6, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Texts/ Publication Subvention applications in the fields of literature and linguistics, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

2. *Date:* June 3, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Texts/Publication Subvention applications in the fields of the arts and philosophy, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88–11240 Filed 5–18–88; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection:

10 CFR Part 35—Medical Use of Byproduct Material
NRC Form 473—Diagnostic Misadministration Report

3. The form number if applicable: NRC Form 473.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years. NRC Form 473 is submitted following the occurrence of a diagnostic misadministration.

5. Who will be required or asked to report: Physicians and medical institutions who are applicants for or holders of an NRC license authorizing the administration of byproduct material or its radiation to humans for medical care.

6. An estimate of the number of responses:

10 CFR Part 35—85, 755
NRC Form 473—500

7. An estimate of the total number of hours needed to complete the requirement or request:

10 CFR Part 35—An average of 0.34 hours per response plus 156 hours per recordkeeper. The total industry burden is 419,929 hours.
NRC Form 473—An average of one hour per response. The total industry burden is 500 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 35, Medical Use of Byproduct Material, contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical care. NRC Form 473 is used by NRC medical licensees to report diagnostic misadministrations of radiopharmaceuticals as required by 10 CFR Part 35. The information in the required reports, applications and records is used by the NRC to ensure that the health and safety of the public is protected and that licensee possession and use of byproduct material is in compliance with license and regulatory requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 12th day of May, 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–11214 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company, (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would change Technical Specification (TS) 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels (i.e., vacancies) for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage. Presently, TS 5.3.1 requires that each fuel assembly contain 264 fuel rods clad with Zircaloy-4, except that limited substitutions of fuel rods with filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in peripheral fuel assemblies if justified by cycle-specific reload analyses. The revised TS 5.3.1 would require that each fuel assembly nominally contain 264 fuel rods clad with Zircaloy-4, except that substitutions of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in fuel assemblies if justified by cycle-specific reload analyses using NRC-approved methodology. The proposed revision would also state that should more than 30 rods in the core, or 10 rods in any assembly, be replaced per refueling, a special report describing the number of rods replaced would be submitted to the Commission pursuant to Specification 6.9.2 within 30 days after cycle startup.

The Need for the Proposed Action

The proposed TS change which removes TS requirements concerning "limited substitutions" and "peripheral fuel assemblies" is needed to provide increased operational flexibility. Under the proposed change, limitations on fuel rod substitutions or omissions and limitations regarding core locations are those implicit in the justifying analyses required to be performed by the licensee for each fuel cycle using NRC-approved methodology to demonstrate that existing design limits and safety analyses criteria continue to be met. The proposed flexibility is intended to provide for improved fuel performance by permitting the timely removal of individual fuel rods which are found to be leaking during a refueling outage. The requirement for special reporting is proposed in response to the NRC's request to be informed in the event a significant deviation from past fuel performances should be observed during a refueling outage.

Environmental Impacts of the Proposed Action

The purpose of the change is to provide for reductions in future occupational radiation exposure and plant radiological releases through improvements in the licensee's fuel performance program. The licensee's present goal for fuel reliability improvement is that the cycle average steady-state Iodine-131 activity, corrected for tramp contribution and normalized to a common purification rate, remain below 0.02 microcuries per gram. This corresponds to about 12 leaking fuel rods. The licensee's goal is to achieve one-half the present goal, or 0.01 microcuries per gram, by 1990 and beyond. This will be achieved, in part, by an action plan of outage inspections and reconstitution; if the I–131 activity exceeds 0.05 microcuries per gram anytime during the cycle, then all of the

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reconstitutable assemblies to be reinserted will be examined by special ultrasonic testing (UT) equipment for defects in individual failed rods and results used for reconstitution decisions. Fuel handling, UT, and reconstitution of failed assemblies of a reconstitutable top-nozzle design would be conducted in parallel during refueling outages. The licensee estimates the fuel improvement program will reduce the total station occupational dose by at least 5 to 10 percent. Radiological releases from the station during normal operation would also be significantly reduced because of improved fuel performance.

The Commission has completed its review of the proposed amendments to revise the TS. The revision does not result in any significant adverse change in the process for determining the adequacy for reload designs and plant operation. The licensee will continue to justify each cycle specific reload by analyses using NRC-approved methodology in order to demonstrate that existing design and operating limits are met in advance of operation. Therefore, the proposed change does not increase the probability or consequences of accidents. As discussed above, no adverse changes are being made in the types or amounts of effluents that may be released offsite, and there is not significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Relating to Operation of William B. McGuire—Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated April 1, 1988 and a previous application of February 5, 1988 which it replaced. Also see D. Hood memorandum of April 1, 1988, entitled "Summary of March 28, 1988 meeting on TS changes Regarding Use of Steel Rods and Open Water Channels in Reconaititutable Fuel Assemblies." These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11215 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the required on-site primary property damage insurance requirement of 10 CFR 50.54(w)(1) to the Long Island Lighting Company (LILCO), the licensee, for the Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w)(1) to reduce the full amount of required on-site primary property damage insurance. By letter dated November 23, 1987, the licensee requested an exemption to reduce the amount of primary property damage insurance from 1.06 billion dollars to 337 million dollars unit such time LILCO is authorized to operate SNPS at power levels greater than five percent of full rated powera. The reduction in the amount of required on-site primary property damage insurance is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's November 23, 1987 letter provided technical justification that 337 million dollars of primary property damage insurance provides an adequate level of coverage to return the SNPS plant to a condition ready for decommissioning following an accident considering the current operational limit. Granting the exemption request relieves the licensee from the unnecessary financial burden of carrying insurance coverage of 1.06 billion as required by 10 CFR 50.54(w)(1) while operation of SNPS is limited to five percent of full rated power.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the amount of on-site primary property damage insurance coverage and does not affect the manner of normal facility operation or the risk of facility accidents. While the change in insurance coverage may affect the financial arrangement of the licensee and have some economic consequences, the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote. The staff has determined, in a safety evaluation which will be issued separately, that a reduction in the amount of required on-site damage insurance, from 1.06 billion dollars to 337 million dollars is commensurate with the clean-up cost associated with a postulated accident while operating at power levels less than or equal to five percent of full rated power. Thus, the reduced coverage authorized by the proposed exemption is sufficient to fund clean-up of radiological impacts associated with any accidents postulated at 5% power. In addition, the exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposure. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require the licensee to carry 1.06 billion dollars of on-site primary property damage insurance. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated November 23, 1987. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11210 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–388]

Pennsylvania Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22, issued to Pennsylvania Power and Light Company, (the licensee), for operation of the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) to support the Residual Heat Removal System (RHR) modifications intended to reduce the potential of waterhammer when RHR system is required to switchover from Suppression Pool Cooling (SPC) mode of operation to Low Pressure Coolant Injection (LPCI) mode of operation.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1987, as supplemented by its letters dated March 11 and 24, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to permit the licensee to incorporate modifications to install RHR system bypass capability which would reduce the potential of waterhammer when RHR system switches over from SPC mode to LPCI mode of operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed modification will be made to install bypass lines across valves HV–251FO28 A&B. These bypass flow paths will be used for normal suppression pool cooling. The new piping will also include fast closing valves HV–25129 A&B, which will isolate upon RHR pump trip or LPCI initiation signal. The closing time is selected to allow RHR piping to remain water filled, thereby reducing the potential of a waterhammer. The modification will neither affect the present valves used for suppression pool cooling, nor will it adversely affect LPCI injection, since the new valves being installed close faster than the current valves. Therefore, both RHR mode and LPCI mode of operation will be unaffected. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 11, 1988 (53 FR 7995). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, Unit 1 and 2, dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact

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statement for the proposed license amendment.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 23, 1967 and supplements dated March 11 and 24, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11217 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated December 22, 1987, as revised April 12, 1988, the amendment would revise the provisions in the Technical Specifications relating to low temperature, overpressure protection and the heatup and cooldown limits for meeting the requirements of 10 CFR Part 50, Appendix G.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 20, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to paricipate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–600 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1987, as revised April 12, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49201.

Dated at Rockville, Maryland, this 11th day of May, 1988.

For The Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III–1, Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88–11218 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Meeting Notice

The Nuclear Safety Research Review Committee (NSRRC) will hold its second meeting of FY 1988 on June 2 and 3, 1988, at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to public attendance with the exception of the Closed Session noted below.

The meeting will begin at 8:15 a.m. on June 2 and 3 and conclude at 6:00 p.m. on June 2 and 3:00 p.m. on June 3. The Committee will hold a Closed Session with the Director of the Office of Nuclear Regulatory Research (RES) on June 2 from 2:00 p.m. to 2:30 p.m. to discuss personnel matters of importance. The Committee will also hold an Open Session on June 2 from 2:30 p.m. to 3:00 p.m. to discuss matters relating to the Committee's review.

The primary objective of this second meeting will be for the Nuclear Regulatory Commission (NRC) staff to provide the Committee with additional information on the NRC nuclear safety research program and address questions raised by the Committee resulting from the initial NSRRC meeting that was held February 17 and 18, 1988. The Committee is expected to provide advice and recommendations to the NRC concerning the overall management and direction of its nuclear safety research program.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close a portion of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency [5 U.S.C. 556b(c)(2)], and for information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed can be obtained from Dr. R. L. Shepard (telephone 301/492–3710).

Date: May 16, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–11269 Filed 5–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–457]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR 50.49(f) and 50.49(j) as it pertains to Environmental Qualification and a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Commonwealth Edison Company (CECo, the licensee) for Braidwood Nuclear Power Station, Unit No. 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action: The proposed action would grant schedular exemptions from the requirements of 10 CFR 50.49(f) and (j) relating to the environmental qualification of four Bunker Ramo instrument penetrations. During an NRC environmental qualification audit inspection conducted at the Braidwood facility during February and March of 1988, it was determined that the environmental qualification of four containment penetration assemblies supplied by Bunker Ramo had not been adequately demonstrated. These assemblies protect electric circuits for certain post-accident monitoring equipment. Further review led the NRC staff to conclude that the tests used by the licensee to environmentally qualify the assemblies in accordance with the requirements of 10 CFR 50.49(f) were inadequate with regrard to licensing criteria applicable to the facility and did not demonstrate qualification of the assemblies.

The partial exemption from Appendix J would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J following normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the applicant's request in the Final Safety Analysis Report in the response to Question 022.78. The proposed exemption was found acceptable in section 6.2.6 of both "Safety Evaluation Report Related to the Operation of Byron Station, Unit 2," dated February 1982, and "Safety Evaluation Report Related to the Operation of Braidwood Station, Units 1 and 2," dated November 1983 (NUREG–0876 and NUREG–1002, respectively).

The Need for the Proposed Action: The proposed exemption to 10 CFR 50.49(f) and (j) is needed to allow issuance of the full power license for the facility. The exemption is strictly schedular in that the licensee has committed to either qualifying the Bunker Ramo penetrations in question or replacing them following the Braidwood Unit 2 surveillance outage in the January 1989 time frame with penetrations which have been previously demonstrated to be qualified per the licensing criteria applicable to the facility. Additionally, the licensee has provided a detailed evaluation of the economic impact associated with the immediate replacement of the electrical penetration assemblies in advance of the scheduled January 1989 surveillance outage. The evaluation indicated this would result in undue hardship (economic costs) that is significantly in excess of that incurred by others similarly situated.

The NRC staff reviewed the licensee's description of the special circumstances relative to this exemption request and determined that special circumstances do exist as required by 120 CFR 50.12 and that this exemption authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

The proposed exemption to Appendix J is required to provide the applicant with greater plant availability over the lifetime of the plant.

Environmental Impacts of the Proposed Action: The proposed schedular exemption to 10 CFR 50.49(f) and 50.49(j) relating to the environmental qualification of four Bunker Ramo instrument penetrations would allow operation of Braidwood Unit 2 until completion of the first surveillance outage in January 1989. With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. Additionally, automatic functions in the reactor protection and engineered safety features system would operate in a timely fashion during any accident condition by suitable alternative means should a failure of these penetrations occur. This exemption does not affect the potential for or consequences of radiological accident and does not affect radiological plant effluents. The exemption has no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there is no significant

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impact associated with this proposed exemption.

The staff's detailed evaluation will be documented in Supplemental Safety Evaluation Report, SSER No. 6 (NUREG-1002), dated May 1988, which supports issuance of the Braidwood Unit 2 full power license.

The proposed exemption to Appendix J grants the substitution of an air lock seal test for an air lock pressure test while the reactor is in a shutdown or refueling mode. When no maintenance has been performed on the air lock that could affect its sealing capability, the air lock doors has been properly closed, and the periodic 6-month test at Pa required by Paragraph III.D.2(b)(i) of Appendix J has been performed on schedule, there is no reason to expect the air lock to leak excessively just because it has been opened while the reactor is in a shutdown or refueling mode. Performing the door seal leak test of Paragraph III.D.2(b)(iii) of Appendix J is sufficient, in this case, to demonstrate the continuing integrity of the air lock.

With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage test and the protection against excessive leakage afforded by the other tests required by Appendix j and, therefore, there is no environmental impact with respect to this exemption.

Alternative to the Proposed Actions: Because the staff has concluded that the environmental effects of the proposed actions are negligible, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative in each case would be to deny the requested exemptions. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility, delay licensing, and unjustified costs for the licensee.

Alternative Use of Resources: These actions involve no use of resources not previously considered in the Final Environmental Statements (construction permit and low power license) for the Braidwood Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted: the NRC staff reviewed the licensee's request and no other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon this environmental assessment, we conclude that the proposed action will have no significant effect on the quality of the human environment.

For details with respect to this action, see the request for schedular exemption dated April 7, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 17th day of May 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-11357 Filed 5-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23 issued to Carolina Power & Light Company (the licensee) for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment would change the Technical Specifications (TS) by:

(1) Changing section 3.3.1, Safety Injection and Residual Heat Removal Systems, to remove the restriction of operating power to 1380 MWt with two safety injection (SI) pumps operable.

(2) Changing section 3.10.2, Power Distribution Limits, to restore the power peaking factor (F_Q) to 2.32 from its current value of 2.26 with two SI pumps operable.

The proposed amendment would allow operation at a steady state reactor core power level not in excess of 2300 MWt with two SI pumps operable.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 20, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 7, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 10th day of May 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11356 Filed 5-18-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee to be held Monday, May 24, 1988, from 9:30 a.m. to 12:00 Noon in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-11238 Filed 5-18-88; 8:45 am]

BILLING CODE 3190-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Application for Special Use of Parks and Plazas

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Public notice.

SUMMARY: Notice is hereby given that the Corporation withdraws its public notice on the same subject published in the Federal Register March 7, 1988 (53 FR 7271). The reason for this withdrawal is to provide additional opportunity for discussion of the considerations that form the basis for the general and special conditions upon which the Corporation approves applications for special use permits and to integrate these considerations into the process of developing procedures and uniform standards for public use of parks and plazas (53 FR 14500, April 25, 1988).

DATE: This action is effective as of March 19, 1988.

ADDRESS: Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue NW., Washington, DC 20004-1703.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, (202) 724-9057.

M.J. Brodie,

Executive Director.

Date: May 13, 1988.

[FR Doc. 88-11186 Filed 5-18-88; 8:45 am]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16401 (812-7032)]

E.F. Hutton & Co. Inc., et al.; Application and Temporary Order

May 16, 1988.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order of Permanent Exemption under the Investment Company Act of 1940 ("1940 Act"), and Order of Temporary Exemption.

Applicants: E.F. Hutton & Company Inc. ("Hutton"), Shearson Lehman Hutton Inc., formerly Shearson Lehman Brothers Inc. ("Shearson"), Shearson Asset Management Inc. ("Asset Management"), Shearson Lehman Investment Strategy Advisors Inc. ("Strategy Advisors"), Shearson Lehman Global Asset Management S.A. ("SLGAM"), Bernstein-Macaulay, Inc. ("Bernstein"), The Boston Company Advisors, Inc. ("Boston Advisors"), TBC Funds Distributor, Inc. ("TBC Distributor"), Lehman Management Co., Inc. ("LEMCO"), The Ayco Corporation ("Ayco"), Mercer Allied Corporation ("Mercer"), Carnegie Capital Management Company ("Carnegie") and Carnegie Fund Distributors, Inc. ("Carnegie Distributors") (collectively, "Applicants"). Applicants request that any relief granted by the Commission also apply, subject to the terms and conditions set forth in the application, to any future affiliate of Hutton or its successor company.

Relevant 1940 Act Sections: Permanent order requested, and temporary order granted, under section 9(c) from section 9(a).

Summary of Application: Applicants seek a permanent order pursuant to

section 9(c) of the 1940 Act granting exemption from the provisions of section 9(a). Applicants also request a temporary order granting exemption from section 9(a) until the Commission takes final action on the request for the permanent order.

Filing Date: The application was filed on May 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on June 13, 1988. Request a hearing in writing, stating the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Hutton, One Battery Park Plaza, New York, New York 10004; Shearson, American Express Tower, World Financial Center, New York, New York 10285; Asset Management and Strategy Advisors, Two World Trade Center, New York, New York 10048; SLGAM, One Broadgate, London EC2M 7HA, United Kingdom; Bernstein, 410 Park Avenue, New York, New York 10022; Boston Advisors and TBC Distributor, One Boston Place, Boston, Massachusetts 02108; LEMCO, 55 Water Street, New York, New York 10041; Ayco and Mercer, One Wall Street, Albany, New York 12205; Carnegie and Carnegie Distributors, 1100 Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney, (202) 272–3033, or Houghton R. Hallock, Jr., Special Counsel, (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Applicant, other than Carnegie and Carnegie Distributors, is a direct or indirect, wholly-owned subsidiary of Shearson Each Applicant serves as investment adviser or depositor of investment companies registered under the 1940 Act and/or principal underwriter for registered open-end investment companies or registered unit investment trusts. Applicants collectively serve as investment adviser and/or principal underwriter for 81 registered management investment companies ("Funds") and as depositor or principal underwriter for over 1,500 series of unit investment trusts ("UITs", collectively with Funds, "Investment Companies"). Shearson is an indirect, majority-owned subsidiary of American Express Company ("American Express"), which, through its subsidiaries, is primarily engaged in providing a variety of travel related, investment, international banking, insurance and investors diversified financial services.

2. Under the terms of an Agreement and Plan of Merger, by and among The E.F. Hutton Group Inc. ("Hutton Group"), the parent company of Hutton, Shearson Lehman Brothers Holdings Inc. ("Shearson Holdings"), the parent company of Shearson, and SLBP Acquisition Corp., a wholly-owned subsidiary of Shearson Holdings, Shearson Holdings agreed to acquire all the outstanding common stock of Hutton Group. On April 29, 1988, Hutton Group became a wholly-owned subsidiary of Shearson, and, as a result, Hutton is now an indirect, wholly-owned subsidiary of Shearson. Over a period of time, the business and operations of Hutton Group and Hutton have been in part, and will continue to be, consolidated with those of Shearson and certain of its subsidiaries and, in the future, Hutton Group and Hutton will be merged into Shearson. The merger of Hutton into Shearson is currently anticipated to occur within 90 days of the filing of this application. The business and operations of Hutton Group and Hutton have not been, and are not expected to be, consolidated with those of any of Applicants other than Shearson. As of May 16, 1988, all of Hutton's branch offices have been consolidated into the Shearson branch office system. Hutton's investment advisory business is currently expected to be operated for the immediate future as the "Hutton Asset Management" division ("HAM") of Hutton. HAM is anticipated to be operated separately and distinctly from the investment advisory businesses of Shearson and Shearson's affiliates other than Hutton. Under current plans, HAM would continue as a separate division of Shearson, the Hutton Advisory Division, at such time as Hutton is merged into Shearson.

3. Applicants state that on April 15, 1988, Hutton entered into a plea agreement with the United States Attorney for the District of Rhode Island pursuant to which Hutton, on May 16, 1988, entered a plea of guilty ("Conviction") in the United States District Court for the District of Rhode Island to three felony counts. One count charged that Hutton conspired to violate, and the other two counts charged that Hutton did violate, certain provisions of the Bank Secrecy Act ("BSA") due to a failure to file currency transaction reports with the Internal Revenue Service. The counts to which Hutton agreed to plead guilty carry an aggregate fine of $1,010,000 that will be paid at the time of sentencing. According to the application, the unlawful conduct occurred at Hutton's Providence, Rhode Island branch office ("Hutton-Providence") primarily in the period from 1982 to 1983, and none transpired later than October, 1984—more than three years before Shearson acquired Hutton. Applicants represent that none of the conduct underlying the Conviction involved the Investment Companies or securities owned by the Investment Companies. Applicants represent that none of the individuals who were principally involved in the conduct underlying the Conviction, including the brokers who participated in the wrongdoing and their branch manager, is now employed by Hutton or Shearson.

4. Applicants state that in December, 1987, Shearson retained outside counsel to conduct an internal investigation and provide legal advice concerning compliance by Hutton, with the reporting requirements of the BSA. The internal investigation covered 24 Hutton retail branch offices in the New York metropolitan area, four Hutton retail branch offices randomly selected in the Los Angeles, Dallas, Chicago, and Miami financial districts, and relevant headquarters administrative departments. The investigation revealed unreported currency transactions at certain of Hutton's New York branch offices prior to Shearson's acquisition of Hutton. No such transactions were found in the offices reviewed outside the New York area. Outside counsel is in the process of evaluating the possible involvement of any individuals in these branches, and will provide Shearson with a report as to such involvement. Shearson will take appropriate action against any current Hutton employee involved in a violation of currency transaction reporting requirements. To date, outside counsel's investigation has not revealed evidence of involvement of any Hutton corporate management personnel. Outside counsel to date is aware of no evidence that suggests that unreported currency transactions were a pervasive problem throughout Hutton's branch office operations prior to Hutton's acquisition by Shearson. Shearson has reported the results of its internal investigation to the office of the United States Attorney for the Southern District of New York and is cooperating with that office in resolving any remaining questions.

5. Applicants state that, as of February 8, 1988, each former Hutton branch office was made subject to the same internal procedures for processing currency transactions to which Shearson and its retail brokerage subsidiaries are subject. According to the application, Shearson's procedures with respect to currency transaction reporting ("Procedures") were adopted as a means of avoiding the type of situation that occurred at Hutton-Providence. The Procedures prohibit the deposit or payment in currency at any Shearson or Hutton branch office. The Procedures also mandate that any Shearson or Hutton employee, who is asked by a customer to deposit currency in any account, inform the customer that Shearson and Hutton will only accept a non-cash instrument and will not accept cash. The Procedures further protect against the kind of irregularities that occurred at Hutton-Providence by requiring Shearson and Hutton employees to notify immediately not only their branch manager, but also Shearson's Compliance Department (located in New York City), if any customer, during a limited period of time (typically from one to three days), deposits a series of cashier's checks, traveler's checks, money orders or checks in bearer form (*i.e.*, checks made payable to cash or endorsed in blank) that are each under $10,000 but collectively exceed $10,000. The Compliance Department has a full-time staff that regularly conducts follow-up inquiries with the branch offices to ascertain whether any employee has been involved in a violation of the Procedures. The Compliance Department determines whether the various Shearson branch offices are complying with the Procedures by means of, among other things, a specially developed computer software program that reviews all daily deposits for each Shearson branch office.

6. According to the application, Shearson believes that the Procedures are "state-of-the-art", and are designed reasonably to ensure that neither Shearson nor any of its retail brokerage affiliates will be used as a vehicle for "laundering" money or otherwise avoiding the reporting of income to the Government. In view of the adoption of the Procedures, Shearson believes that the type of irregularities that occurred at Hutton-Providence are extremely unlikely to occur at any Shearson or former Hutton branch offices in the future.

Applicants' Legal Analysis

1. Under section 9(a)(1) of the 1940 Act, any person convicted of certain crimes is disqualified from serving or acting in the capacity of investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the 1940 Act extends the prohibitions of section 9(a)(1) to any affiliated person of a person disqualified under the provisions of section 9(a)(1). Although not related to Hutton at the time that the events underlying the Conviction occurred, Applicants acknowledge that each of the Applicants other than Hutton is now an affiliated person (as the term "affiliate" is defined in section 2(a)(3) of the 1940 Act) of Hutton. Therefore, to the extent that the Conviction operates to disqualify Hutton from serving in the capacities specified in section 9(a) of the 1940 Act, section 9(a)(3) operates similarly to disqualify those Applicants other than Hutton from serving in the capacities enumerated in section 9(a).

2. In support of their position that the Commission should issue orders granting Applicants temporary and permanent exemptions from the provisions of section 9(a) of the 1940 Act, Applicants assert the following:

a. The facts underlying the Conviction did not involve any activities of the Investment Companies, Applicants' activities on behalf of the Investment Companies or Applicants' activities with respect to any of their other investment advisory clients and customers. Moreover, none of the conduct underlying the Conviction involved either the Investment Companies or securities held by the Investment Companies. The Conviction relates solely to the unauthorized actions of terminated employees committed in violation of Hutton's then-existing rules and regulations. Further, the facts underlying the Conviction relate to events that transpired only at Hutton-Providence and more than three-and-one-half years have elapsed since cessation of the unlawful activities.

b. To the extent that Applicants other than Hutton are subject to the prohibitions of section 9(a), they are so subject solely because they are currently affiliated persons of Hutton within the meaning of the 1940 Act. Moreover, the transactions underlying the Conviction occurred well before Applicants other than Hutton became affiliated with Hutton.

c. In order to diminish the possibility of future occurrence of the activity that formed the basis for the Conviction, Shearson has not only adopted the Procedures and applied them to all Hutton branch offices, but now has several full-time employees in its Compliance Department who review the results of a specially created computer program that reflects all daily deposits for each Shearson branch office and for each former Hutton office. In addition, Shearson is reaffirming in written and oral communications to its employees, including all former Hutton brokers, the requirements of Federal law and the Procedures as they relate to currency transactions taking place at Shearson branch locations. Shearson submits that the implementation of the Procedures at all former Hutton offices reflects a bona fide effort to prevent the occurrence or reoccurrence of the conduct that formed the basis of the Conviction.

d. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to the Investment Companies, because those prohibitions would deprive the Funds and their shareholders of Applicants' investment advisory and distribution services and deprive the UITs and their unitholders of Applicants' sponsorship and market making functions. In the absence of the requested relief, the shareholders of the Investment Companies would be deprived of the advisory and distribution services they have selected in investing in the Investment Companies and would be forced to undergo the effort and expense involved in securing alternate investment advisory and distribution arrangements. The uncertainties and expenses involved in making those arrangements could also engender significant net redemptions of shares of the Funds, which may frustrate efforts to manage effectively the Funds' assets and further increase their expense ratios, to the detriment of the remaining shareholders. The prohibitions of section 9(a) would thus operate significantly to the detriment of the financial interests of the Investment Companies (which have in excess of $60 billion in assets) and their over 3.3 million investor accounts, none of which were affected, to

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Shearson's or Hutton's knowledge, by the events that gave rise to the Conviction.

e. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Applicants because these prohibitions would deprive Applicants of their ability to render investment advisory and distribution services to the Investment Companies and to other registered investment companies that may be organized in the future. In the absence of the requested relief, Applicants, which have approximately 700 offices and over 35,000 employees, could be forced to curtail their operation as they relate to those services. Curtailing Applicants' investment advisory and distribution operations could have the collateral effect of reflecting unfavorably and unfairly on areas of Applicants' businesses not involving servicing registered investment companies. Section 9(a) could thus operate significantly to the detriment of the financial interests of Applicants and their employees, as those interests relate to servicing registered investment companies, none of which were in any way involved in the events that gave rise to the Conviction.

f. The events that underlie the Conviction are not such as to make it against the public interest or protection of investors to grant the relief requested in the application.

g. In order to maintain uninterrupted operations of Applicants and the Investment Companies, it is necessary and appropriate in the public interest that the temporary exemption requested by Applicants be granted.

3. Applicants submit that, because entities other than Applicants may become affiliated persons of Hutton or its successor company at sometime in the future and serve in the capacities enumerated in section 9(a) of the 1940 Act, it is necessary that the requested relief apply to those entities, subject to the terms and conditions set forth in the application.

4. Shearson and Hutton represent and warrant that they will cooperate and use their best efforts to cause their present and former officers, directors, employees and agents to cooperate with the Commission in any investigation by the Commission into any matters relating to, regarding or arising out of the Conviction.

5. In making the application, Applicants acknowledge, understand and agree that no permanent order will be issued by the Commission until such time as the conditions set forth above have been satisfied. In addition, Applicants acknowledge, understand and agree that the application and any order granting a temporary or permanent exemption issued with respect to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemptions from statutory requirements, including, without limitation, the consideration of Applicants' request for an order granting a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act or the revocation or removal of any order granting a temporary exemption granted in connection with the application. Applicants further acknowledge, understand and agree that the exemptive relief sought by the application shall apply only to the disqualification of Applicants under section 9(a) of the 1940 Act that may occur as a result of the Conviction.

Applicants' Conditions

Shearson and Hutton agree to the imposition of the following conditions in connection with the requested relief:

(1) The proposed consolidation of the investment company business and operations of Hutton with that of Shearson and certain of Shearson's subsidiaries may be completed, so long as no current officer or employee of Hutton involved in the development or provision of distribution, investment advisory or administrative services to any management investment company registered under the 1940 Act, to the best of Shearson's knowledge based upon reasonable inquiry, engaged in violations of the currency transaction reporting provisions of the BSA at any time during the five-year period preceding the filing of the application.[1]

(2) Hutton and Hutton Group may not act or continue to act as promoter, sole managing underwriter or lead co-managing underwriter or investment adviser for any management investment company that is registered or required to be registered under the 1940 Act or any company that elects to be treated as a business development company under section 54 of the 1940 Act, unless:

(a) A majority of the board of directors or trustees of the management investment company consists of persons who are not "interested persons" as defined in section 2(a)(19) of the 1940 Act ("disinterested directors or trustees");

(b) The disinterested directors or trustees of the management investment company retain counsel experienced in matters under the 1940 Act and the Investment Advisers Act of 1940 who will represent only the disinterested directors or trustees and not Hutton or Hutton Group or investment companies serviced by Hutton or Hutton Group; and

(c) The management investment company has an audit committee composed solely of disinterested directors or trustees.

(3) Hutton and Hutton Group may not act as sole managing or lead co-managing underwriter or promoter for any new management investment company, including any new series of registered management investment companies to which Hutton currently provides distribution, investment advisory or administrative services,[2] for so long as the temporary order requested by Applicants remains in effect.[3]

(4) Shearson will retain its independent auditors, at its expense, (a) to confirm that the Procedures are in place, and that the computer software program used in connection with the Procedures is operational, with respect to each former Hutton branch office, (b) to review the Procedures (i) to determine whether the Procedures are reasonably designed to ensure compliance with the currency transaction reporting provisions of the BSA, (ii) to detect non-compliance with the Procedures, and (iii) to make recommendations, if appropriate, for changes in the Procedures and staffing necessary reasonably to ensure compliance with applicable law relating to currency transaction reporting; and (c) to report to Shearson the results of its review. The auditors' review shall be completed within 180 days of the filing of the application with the Commission. Shearson will, within 60 days of delivery to it of the auditors' report and recommendations, if any, submit the report and recommendations to the Commission together with a report of Shearson setting forth the action it has taken or proposes to take concerning the implementation of the recommendation.

[1] This representation does not apply to any Hutton employee whose only contact with any such registered investment company was as a registered representative selling shares of the company.

[2] Hutton may sponsor new UITs or new series of its existing UITs.

[3] As described above, it is anticipated that Hutton will be merged into Shearson within 90 days of the filing of the application. Subsequent to this action, so long as the temporary order is in effect, Shearson, acting through its Hutton Advisory Division, may not: (a) Act or continue to act as the sole managing or lead co-managing underwriter, promoter or investment adviser for any management investment company that is registered or required to be registered under the 1940 Act or any company that elects to be treated as a business development company under Section 54 of the 1940 Act unless ithe requirements described in paragraph 2 above are met, and (b) act as the sole managing or lead co-managing underwriter or promoter for any new management investment company, including any new series of registered management investment companies to which Hutton previously provided distribution, investment advisory or administrative services.

Temporary Order

Based on the foregoing, the Commission has considered the matter and finds, under the standards of section 9(c) of the 1940 Act applicable to this matter, that Applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, it is ordered, under serction 9(c) of the 1940 Act, that Applicants, as listed above, are hereby temporarily exempted, to the extent necessary as a result of the Conviction, from the provisions of section 9(a) of the 1940 Act until the Commission takes final action on the application for an order granting Applicants a permanent exemption from the provisions of section 9(a) of the 1940 Act,

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11242 Filed 5-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16402/(812-7031)]

IDS Financial Corporation, et al.; Application and Temporary Order

May 16, 1988.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order of Permanent Exemption under the Investment Company Act of 1940 ("1940 Act") and Order of Temporary Exemption.

Applicants: IDS Financial Corporation ("Financial Corp."), IDS Financial Services Inc. ("IDS"), IDS Life Insurance Company ("IDS Life"), IDS International, Inc., IDS Advisory Group Inc. (collectively, the "IDS Applicants"), American Express Service Corporation ("AESC") and Economic Security Association Incorporated ("ESAI," collectively with AESC and IDS Applicants, "Applicants").

Relevant 1940 Act Sections: Permanent order requested, and temporary order granted, under section 9(c) from section 9(a).

Summary of Application: Applicants seek a permanent order pursuant to section 9(c) of the 1940 Act granting exemption from the provisions of section 9(a). Applicants also request a temporary order granting exemption from section 9(a) until the Commission takes final action on the request for a permanent order.

Filing Date: The application was filed on May 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on June 13, 1988. Request a hearing in writing, stating the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549; IDS Applicants, IDS Tower 10, Minneapolis, Minnesota 55440; AESC, American Express Tower, World Financial Center, New York, New York 10285; ESAI, 1650 Los Gamos Drive, San Rafael, California 94903.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3033, or Houghton R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Applicant is a direct or indirect, wholly-owned subsidiary of American Express Company ("American Express"), which, through its subsidiaries, is primarily engaged in providing a variety of travel related, investment, international banking, insurance and investors diversified financial services. Until January, 1984, Financial Corp., now a wholly-owned subsidiary of American Express, was a subsidiary of Alleghany Corporation, a publicly-traded company having no affiliation with American Express or any of its subsidiaries. The other four IDS Applicants are all wholly-owned subsidiaries of Financial Corp. During the period 1982 through 1984, AESC and ESAI (the "American Express Applicants") were essentially inactive. ESAI today serves as investment adviser to American Express Variable Annuity Fund Inc., which is currently inactive and has no assets. AESC today serves as the investment manager and distributor of The American Express Funds, a registered investment company whose registration statement was declared effective by the Commission on April 7, 1988.

1. Each Applicant is a direct or indirect, wholly-owned subsidiary of American Express Company ("American Express"), which, through its subsidiaries, is primarily engaged in providing a variety of travel related, investment, international banking, insurance and investors diversified fiancial services. Until January, 1984, Financial Corp., now a wholly-owned subsidiary of American Express, was a subsidiary of Alleghany Corporation, a publicly-traded company having no affiliation with American Express or any of its subsidiaries. The other four IDS Applicants are all wholly-owned subsidiaries of Financial Corp. During the period 1982 through 1984, AESC and ESAI (the "American Express Applicants") were essentially inactive. ESAI today serves as investment adviser to American Express Variable Annuity Fund Inc., which is currently inactive and has no assets. AESC today serves as the investment manager and distributor of The American Express Funds, a registered investment company whowee registration statement was declared effective by the Commission on April 7, 1988.

2. At December 31, 1987, the IDS Applicants collectively served as investment adviser or principal underwriter for 28 registered management investment companies ("IDS Funds") and the American Express Applicants collectively served as investment adviser and/or principal underwriter for two registered management investment companies ("non-IDS Funds") (IDS Funds and non-IDS Funds, collectively the "Funds"). IDS Certificate Company ("Certificate Company"), a registered face-amount certificate company, is wholly-owned subsidiary of Financial Corp. which issues face-amount certificates. Financial Corp. serves Certificate Company as investment manager or adviser, and IDS serves Certificate Company as principal underwriter.

3. The requested exemption is sought in connection with the agreement by E.F. Hutton & Company Inc. ("Hutton"), an indirect subsidiary of American Express

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and a registered broker-dealer and investment adviser, to the entry of a judgment of conviction relating to the conduct of two employees of Hutton's branch office in Providence, R.I., that took place during the period 1982 through 1984. Under the terms of an Agreement and Plan of Merger dated as of December 2, 1987, The E.F. Hutton Group Inc., the parent company of Hutton, became a wholly-owned subsidiary of Shearson Lehman Hutton Inc. ("Shearson") on April 29, 1988. Shearson, a registered broker-dealer and investment adviser, is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. which is in turn a majority-owned subsidiary of American Express.

4. By virtue of being direct or indirect wholly-owned subsidiaries of American Express, each of the Applicants is currently an "affiliated person" within the meaning of section 2(a)(3) of the 1940 Act of both Shearson and Hutton, although none of the Applicants was affiliated with Hutton prior to Shearson's acquisition of Hutton in January, 1988. None of the Applicants was involved in any manner in the acquisition of Hutton.

5. Applicants operate independently of both Shearson and Hutton. The principal place of business of each of the Applicants, other than AESC, is located outside of New York City, which is the location of Shearson's and Hutton's principal place of business. Neither Shearson nor Hutton acts as the principal underwriter for securities of any of the Funds or Certificate Company (Funds and Certificate Company are referred to collectively hereinafter as the "Investment Companies"), and as a result, securities of the Investment Companies are not sold through any Shearson or Hutton offices.

6. Applicants state that any overlap of the operations of the Investment Companies and Applicants at the present time with those of Shearson is minimal and with those of Hutton is non-existent. Applicants and certain subsidiaries of Shearson other than Hutton ("Shearson Subsidiaries") share responsibility for providing certain services specified in the application to two investment companies registered under the 1940 Act. In addition, two investment companies served by Shearson Subsidiaries serve as funding vehicles for life insurance policies issued by an IDS Applicant, IDS Life, and a wholly-owned subsidiary of IDS Life, IDS Life New York.

7. The Shearson Subsidiaries became affiliated persons of Hutton within the meaning of the 1940 Act with the acquisition of Hutton by Shearson. To the best of Applicants' knowledge: (1) The Shearson Subsidiaries operate separately and distinctly from Hutton; (2) no current member of Hutton's senior management is a member of senior management of any of the Shearson Subsidiaries; and (3) certain of the principal executive officers of the Shearson Subsidiaries are officers of Shearson, but all of those officers assumed their positions with Shearson prior to the acquisition of Hutton in January, 1988.

8. A number of former Hutton employees have become associated with certain of the IDS Applicants and, as a result, may sell securities of the IDS Funds and Certificate Company. To Applicants' knowledge, none of these former Hutton employees, however, was involved in any way in the conduct underlying the conviction described below. In addition, to Applicants' knowledge, but on the basis of no special inquiry, no current or former Hutton officer or employee responsible for ensuring Hutton's compliance with the currency transaction reporting requirements of the Bank Secrecy Act (the "BSA") is now employed by or associated with any of Applicants.

9. According to the application, on April 15, 1988, Hutton entered into a plea agreement with the United States Attorney for the District of Rhode Island pursuant to which Hutton, on May 16, 1988, entered a plea of guilty ("Conviction") in the United States District Court for the District of Rhode Island on the counts set forth in an Information dated May 6, 1988 ("Information"). The Conviction arises out of the conduct of two brokers, formerly employed in Hutton's Providence, Rhode Island branch office, occurring primarily in the period from 1982 to 1983 and not later than October, 1984—more than three years before Shearson acquired Hutton. One count of the Information charged that Hutton conspired to violate, and the other two counts charged that Hutton did violate, certain provisions of the BSA due to a failure to file currency transaction reports with the Internal Revenue Service.

Applicants' Legal Analysis

1. Under section 9(a)(1) of the 1940 Act, any person is disqualified from serving or acting in the capacity of investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company, if the person has been convicted within the past 10 years of any felony or misdemeanor involving the purchase or sale of a security or arising out of the person's conduct as an underwriter, broker, dealer or investment adviser. For purposes of the application, Applicants are proceeding on the basis that the actions underlying the Conviction arose out of Hutton's conduct as a broker or dealer. Section 9(a)(3) of the 1940 Act extends the prohibitions of section 9(a)(1) to any affiliated person of a person disqualified under the provisions of section 9(a)(1). Although not related to Hutton at the time of the events underlying the Conviction, each Applicant is now an affiliated person of Hutton solely because of the common ownership of Shearson and each Applicant directly or indirectly by American Express. Therefore, to the extent that the Conviction operates to disqualify Hutton from serving in the capacities specified in section 9(a) of the 1940 Act, section 9(a)(3) operates similarly to disqualify Applicants from serving in those capacities.

2. In support of their position that the Commission should grant the requested temporary and permanent exemptions from the provisions of section 9(a) of the 1940 Act, Applicants assert the following:

a. To the extent that Applicants are subject to the prohibitions of section 9(a), they are so subject solely because they are currently affiliated persons of Hutton within the meaning of the 1940 Act. None of the Applications is described in the Information or subject to the Conviction. Moreover, the transactions underlying the Conviction occurred more than three years prior to Applicant's becoming affiliated with Hutton.

b. The facts underlying the Conviction did not involve any activities of the Investment Companies, Applicants' activities on behalf of the Investment Companies or Applicants' activities with respect to any of their other investment advisory clients and customers. Moreover, to Applicants' knowledge, none of the conduct underlying the Conviction involved either the Investment Companies or securities held by the Investment Companies.

c. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to the Investment Companies, because those prohibitions would deprive the Funds and their shareholders and Certificate Company and its certificate-holders, of investment advisory and distribution services provided by the various Applicants. In the absence of the requested relief, the shareholders or certificate-holders of the Investment Companies would be deprived of the advisory and distribution services they have selected by investing in the Investment Companies, and would be forced to undergo the effort and expense involved in securing alternate investment advisory and distribution arrangements. The uncertainties and expenses involved in making those arrangements could also engender significant net redemptions of shares of the Funds and surrenders of certificates of Certificate Company, which may frustrate efforts to manage effectively the Investment Companies' assets and cause an increase in expense ratios, to the detriment of the remaining securityholders. The prohibitions of section 9(a) would thus operate significantly to the detriment of the financial interests of the Investment Companies (which have in excess of $10 billion in assets), their over 1.8 million investor accounts and their approximately 340,000 IDS Life policies or contracts.

d. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Applicants because these prohibitions would deprive Applicants of their ability to render investment advisory and distribution services to the Investment Companies and to other registered investment companies that may be organized in the future. In the absence of the requested relief, Applicants, which have over 3,700 employees, could be forced to curtail their operations as they relate to those services. Curtailing Applicants' investment advisory and distribution operations could have the collateral effect of reflecting unfavorably and unfairly on areas of Applicants' businesses not involving servicing registered investment companies. Section 9(a) could thus operate significantly to the detriment of the financial interests of Applicants and their employees, as those interests relate to servicing registered investment companies, none of which were in any way involved in the events that gave rise to the Conviction.

e. For the reasons outlined above, the conduct of Applicants is not such as to make it against the public interest or protection of investors to grant the relief requested in the application.

f. In order to maintain uninterrupted operations of Applicants and the Investment Companies, it is necessary and appropriate in the public interest that the temporary exemption requested by Applicants be granted.

3. In making the application, Applicants acknowledge, understand and agree that the application and any order granting a temporary or permanent exemption issued with respect thereto shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including, without limitation, the consideration of Applicants' request for an order granting a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act or the revocation or removal of any order granting a temporary exemption granted in connection with the application.

4. In making the application, Applicants acknowledge, understand and agree that the exemptive relief sought by the application shall apply only to the disqualification of Applicants under section 9(a) of the Act that may occur as a result of the Conviction.

Temporary Order

Based on the foregoing, the Commission has considered the matter and finds, under the standards of section 9(c) of the 1940 Act applicable to this matter, that Applicants have made the necessary showing to justify the granting of a temporary exemption.

Accordingly, it is ordered, under section 9(c) of the 1940 Act, that Applicants are hereby temporarily exempted, to the extent necessary as a result of the Conviction, from the provisions of section 9(a) of the 1940 Act until the Commission takes final action on the application for an order granting Applicants a permanent exemption from the provisions of section 9(a) of the 1940 Act.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11243 Filed 5-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on May 13, 1988

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on May 13, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Arnette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on May 13, 1988.

DOT No: 3062.

OMB No: 2106-0028.

Administration: Department of Transportation /OST.

BEST COPY AVAILABLE

Title: Carrier Owned Computer Reservation Systems.
Need for Information: To monitor compliance with regulations and to prevent unfair competitive practices by CRS owners.
Proposed Use of Information: Information will be used by CRS users to monitor compliance with regulations. Information about bookings through CRS will be used in airline marketing and sales planning.
Frequency: Upon request of recipient of information.
Burden Estimate: 5,604.25.
Respondents: Airlines affiliated with or operating computer reservation systems.
Form(s): None.
DOT No: 3063.
OMB No: 2105–0517.
Administration: Department of Transportation/OST.
Title: Transportation Acquisition Regulation (TAR).
Need for Information: *Necessary for administering and monitoring Government property in the possession of contractors.
Proposed Use of Information: *To monitor and track Government property in the possession of contractors.
Frequency: *Yearly.
Burden Estimate: **84,110.
Respondents: *630.
Form(s): N/A.
*These responses apply only to TAR clause 1252.245–70, Government Property Reports, which was added to the TAR in November 1987. The addition of this clause necessitated a modification to the previously approved paperwork submission for the TAR.
**This estimate is for the entire TAR, it includes 5,670 hours for the new TAR clause 1252.245–70, Government Property Reports.
DOT No: 3064.
OMB No: New.
Administration: Department of Transportation/OST—Aviation.
Title: Part 215—Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers.
Need for Information: To ensure that carriers do not advertise or operate in any name other than that in which they are authorized to do so by the Department.
Proposed Use of Information: To enable the Department and the public to identify the specific carriers offering or operating services.
Frequency: As necessary.
Burden Estimate: 335.
Respondents: 65.
Form(s): None.
DOT No: 3065.
OMB No: New.
Administration: U.S. Coast Guard.
Title: Survey of Alcohol Intoxication in Recreational Boat Operations.
Need for Information: This information collection requirement is needed to determine the relative risk of fatal recreational boating accidents associated with various Blood Alcohol Concentrations (BAC's).
Proposed Use of Information: The information will be used to determine the blood alcohol level of the boat operators. The Coast Guard and state boating officials will further use this information to inform and educate boat operators about the riak associated with intoxication and boating.
Frequency: One time.
Burden Estimate: 175.
Respondents: Boat operators.
Form(s): CG–5472 (OT).
DOT No: 3066.
OMB No: 2106–0040.
Administration: Department of Transportation.
Title: Basic Essential Air Service Questionnaire.
Need for Information: To enable DOT to meet statutory mandate to review basic essential air service requirements for all eligible points.
Proposed Use of Information: Base documents for DOT analysis of small community air transportation needs.
Frequency: Triennial.
Burden Estimate: 596.
Respondents: State and local governments.
Form(s): None.
DOT No: 3067.
OMB No: 2106–0006.
Administration: Department of Transportation/OST—Aviation.
Title: Part 323—Terminations, Suspensions, or Reductions of Service.
Need for Information: To enable DOT to meet statutory mandate of guarantesing air service to eligible communities.
Proposed Use of Information: Base document for DOT actions of holding-in filing carriers and seeking replacement carriers.
Frequency: On occasion.
Burden Estimate: 664.
Respondents: Air carriers and State and local governments.
Form(s): N/A.
DOT No: 3068.
OMB No: 2115–0061.
Administration: U.S. Coast Guard.
Title: Shipping Articles, Forecastle Card, and Master's Report of Seamen Shipped or Discharged.
Need for Information: The Coast Guard needs this information collection requirement to ensure that various navigational statutes are being complied with for its commercial vessel safety program.
Proposed Use of Information: The information is used by the Coast Guard as a means of managing and enforcing vessel manning laws and regulations and it provides a written contract and record for seamen's protection and relief. Seamen also use this information to obtain their entitlements or benefits. Casualty investigators use the information to examine the qualifications of the crew members.
Frequency: On occasion.
Burden Estimate: 6,083.
Respondents: Merchant seamen, shipping companies.
Form(s): CG–704, 705A and 735T.
DOT No: 3069.
OMB No: 2106–0024.
Administration: Department of Transportation/OST—Aviation.
Title: Part 316 of the Department's Procedural Regulations—Collection of Claims owed the United States.
Need/Proposed Use of Information: This Part implements the Federal Claims Collection Act, by the General Accounting Office and Department of Justice. It provides procedures under which the Department will collect claims owed to the United States arising from activities under the Departments jurisdiction.
Frequency: Occasionally.
Burden Estimate: 60 hours.
Respondents: Air carriers that owe money to the U.S. Government.
Form(s): None.
DOT No: 3070.
OMB No: 2106–0001.
Administration: Department of Transportation/OST—Aviation.
Title: Part 223—Free and Reduced Rate Transportation.
Need for Information: Implements Section–403(b) of the Federal Aviation Act relating to free and reduced rate transportation.
Proposed Use of Information: To monitor carrier compliance with Section 403(b) of the Act, and to enable carriers to obtain exemptions therefrom.
Frequency: Other: On occasion.
Burden Estimate: 32.3 hours.
Respondents: U.S. & Foreign Air Carriers.
Form(s): None.
DOT No: 3071.
OMB No: 2106–0028.

Administration: Department of Transportation/OST—Aviation.
Title: Carrier Owned Computer Reservation Systems.
Need for Information: To facilitate enforcement of prohibitions on biased displays and discriminatory fees by permitting CRS users to monitor the performance of vendors.
Proposed Use of Information: For disclosure to CRS users.
Frequency: Information to be disclosed upon request.
Burden Estimate: 5604.25 hours.
Respondents: 5.
Form(s): None.
DOT No: 3072.
OMB No: 2106–0012.
Administration: Department of Transportation/OST.
Title: Part 205 Aircraft Accident Liability Insurance.
Need For Information: To monitor insurance coverage for all air carriers regarding policy effectiveness, and proper amount of coverage.
Proposed Use of Information: On file to ensure that in the event of an accident, the public is adequately compensated.
Frequency: Occasionally.
Burden Estimate: 570
Respondents: U.S. Air Carriers and Foreign Air Carriers.
Form(s): OST 4520 Formerly—CAB Form 205A.
DOT No: 3073.
OMB No: 2106–0013.
Administration: Department of Transportation.
Title: Part 294—Canadian Charter Air Taxi Operators Economic Regulations Enactment Docket 39000.
Need For Information: Required to obtain a benefit of flying into the U.S. for charter purposes.
Proposed Use of Information: To monitor foreign air carriers flying into the U.S.
Frequency: On occasion.
Burden Estimate: 25.
Respondents: Canadian Air Taxi Operators.
Form(s): OST Form 4505 (Formerly CAB Form 294–A.
DOT No: 3074.
OMB No: 2133–0511.
Administration: Maritime Administration
Title: Parent Company of Foreign-Flag Vessels.
Need For Information: To verify information on vessels that could be vital in a national or international emergency.
Proposed Use of Information: To perform contingency planning for sealift mobilization requirements.
Frequency: Annually.
Burden Estimate: 47.5 hours.
Respondents: Ship owners, ship operators.
Form(s): N/A.
DOT No: 3075.
OMB No: 2130–0500.
Administration: Federal Railroad Administration.
Title: Accident/Incident Reporting and Recordkeeping Requirements.
Need For Information: To identify hazardous conditions on the railroads.
Proposed Use of Information: FRA uses this information to identify hazardous conditions associated with rail transportation and to assure compliance with the Railroad Safety Act.
Frequency: Recordkeeping, On Occasion, Monthly, Annually.
Burden Estimate: 56,102 hours.
Respondents: Railroads.
Form(s): FRA–F–6180.45; FRA–F–6180.54; FRA–F–6180.55; FRA–F–6180.55A; FRA–F–6180.57;.
DOT No: 3076.
OMB No: 2130–0506.
Administration: Federal Railroad Administration.
Title: Identification of Cars Moved in Accordance with Order 13528.
Need For Information: To identify freight cars being moved in accordance with Order 13528.
Proposed Use of Information: An identification card is applied to any freight equipment setting forth the restrictions to be complied with for legal movement under order 13528.
Frequency: Recordkeeping.
Burden Estimate: 110 Hours.
Respondents: Railroads.
Form(s): None.
DOT No: 3077.
OMB No: 2125–0025.
Administration: Federal Highway Administration.
Title: Highway Safety Improvement Program and Priorities.
Need For Information: To meet the recordkeeping reporting requirements contained in 23 U.S.C. 130 and 152, and 23 CFR 924.
Proposed Use of Information: For States to identify hazards, prioritize corrections and schedule improvements, and to report to Congress the required information on the effectiveness of highway safety improvement projects.
Frequency: Annually.
Burden Estimate: 96,208.
Respondents: State highway agencies.
Form(s):
DOT No: 3078.
OMB No: 2130–0525.
Administration: Federal Railroad Administration.
Title: Certification of Glazing Materials.
Need For Information: To assure that window glazing materials are in compliance with Federal Safety Standards.
Proposed Use of Information: FRA uses this information to assure that glazing materials have been fully tested and are in compliance with Federal safety requirements.
Frequency: Recordkeeping.
Burden Estimate: 321 Hours.
Respondents: Railroads.
Form(s): None.
DOT No: 3097.
OMB No: New.
Administration: Research and Special Programs Administration.
Title: Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipeline and Liquefied Natural Gas Facilities.
Need For Information: As provided by P.L. 99–516, gas and hazardous liquid pipeline operators would be required to give notice of certain safety-related conditions, prompting government intervention if needed to avoid an incident or accident.
Proposed Use of Information: To monitor corrective actions proposed by operators with the objective of preventing occurrence of an incident or accident.
Frequency: On occasion.
Burden Estimate: 48,300..
Respondents: State and local governments and Businesses.
Form(s): N/A.

Issued in Washington, DC, on May 13, 1988.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 88–11252 Filed 5–18–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 87–095]

Lists of Ports or Terminals Holding Certificates of Adequacy Notice

This document publishes lists of each U.S. port or terminal holding a valid Certificate of Adequacy (COA) issued as evidence of meeting the requirements of Annexes I or II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships (Marpol 73/78) and 33 CFR Part 158, Subparts B or C. These lists are published as required by The Act to Prevent Pollution from Ships (33 U.S.C. 1905(d)), to aid ship owners, operators and agents in locating ports and terminals having adequate reception facilities capable of receiving residues

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and mixtures containing oil or noxious liquid substances (NLS) from seagoing ships. The lists include all COA's issued and in effect as of May 1, 1988.

Definitions of the terms used in these lists are found in 33 CFR 158.120.

Table I, published below, lists the ports or terminals holding a valid Certificate of Adequacy (COA) issued under 33 CFR Part 158, Subpart B (Criteria for Reception Facilities: Residues and Mixtures Containing Oil). The list provides the names, locations, telephone numbers and quantities of oily wastes that each can accept. The ports and terminals which have "0" listed under the "Daily Capacity of Reception Facility" column are small facilities in remote, rugged areas that receive only a few ships operating in a dedicated trade. To comply with the intent of MARPOL 73/78 and the regulations, ships visiting these ports or terminals have agreed to discharge their oily waste at other locations, where adequate reception facilities are available.

Table II, published below after Table I, lists the ports or terminals holding a valid COA issued under 33 CFR Part 158, Subpart C (Criteria for Certifying That a Port's or Terminal's Facilities Are Adequate for Receiving NLS Residue). The list provides the names, locations, telephone numbers and quantities of various categories of NLS waste that each can accept. A listing of cargo names and their appropriate Annex II pollution category are found in 46 CFR Part 153, Table I. The ports and terminals which have no amounts listed under the column "Daily Capacity," receive only vessels that do not require any prewashing of their cargo tanks. They have the capacity to reduce back pressure to below 1 BAR to facilitate stripping of cargo tanks but have no capacity to receive NLS waste.

Date: May 12, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

TABLE I—ANNEX/RECEPTION FACILITIES

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
AK	Angoon	Angoon Ferry Terminal	907-465-3946	0
AK	Angoon	Port of Angoon Alaska	907-788-3653	0
AK	Clark Bay	Clark Bay Ferry Terminal	907-465-3946	0
AK	Craig	Port of Craig Alaska	907-826-3275	0
AK	Excusion Inlet	Excursion Inlet Packing Co	907-586-4244	0
AK	Haines	Haines	907-766-2448	0
AK	Haines	Haines Army Terminal	907-766-2357	0
AK	Haines	Haines Ferry Terminal	907-465-3946	0
AK	Hobart Bay	Hobart Bay Logging Camp	907-225-2675	0
AK	Hollis	Hollis Ferry Terminal	907-465-3946	0
AK	Homer	Port of Homer	907-235-8597	447
AK	Hoonah	Hoonah Ferry Terminal	907-465-3946	0
AK	Hoonah	Port of Hoonah Alaska	907-945-3670	0
AK	Hydaburg	Hydaburg	907-285-3761	0
AK	Juneau	Alaska Marine Highway System	907-465-3955	1,007
AK	Juneau	Auke Bay Ferry Terminal	907-465-3946	0
AK	Juneau	City and Borough of Juneau	907-586-5255	20
AK	Juneau	Union Oil Juneau, Alaska	907-586-1276	0
AK	Kake	Kake Ferry Terminal	907-465-3946	0
AK	Kake	Port of Kake Alaska	907-785-3804	0
AK	Kasaan	Port of Kasaan Alaska	907-542-2212	0
AK	Kenai	Kenao Pipeline Co. Mikiski Term.	907-776-8161	642
AK	Kenai	Tesoro Alaska Petroleum Co	907-776-8191	354
AK	Kenai	Unocal Chem Division	907-776-8121	590
AK	Ketchikan	Chevron USA Ketchikan	907-225-2106	20
AK	Ketchikan	City Docks	907-225-3111	20
AK	Ketchikan	Ketchikan Ferry Terminal	907-465-3946	0
AK	Ketchikan	Unocal	907-225-4176	20
AK	Klawock	Port of Klawock Alaska	907-755-2261	0
AK	Metlakatla	Annette Island Packing	907-886-4661	0
AK	Metlakatla	Metlakatla Ferry Terminal	907-465-3946	0
AK	Metlakatla	Port of Metlakatla Alaska	907-886-4646	0
AK	Pelican	Port of Pelican Alaska	907-735-2202	0
AK	Petersburg	Chevron USA Petersburg	907-772-4251	0
AK	Ketchikan	City Docks	907-225-3111	20
AK	Ketchikan	Ketchikan Ferry Terminal	907-465-3946	0
AK	Ketchikan	Unocal	907-225-4176	20
AK	Klawock	Port of Klawock Alaska	907-755-2261	0
AK	Metlakatla	Annette Island Packing	907-886-4661	0
AK	Metlakatla	Metlakatla Ferry Terminal	907-465-3946	0
AK	Metlakatla	Port of Metlakatla Alaska	907-886-4646	0
AK	Pelican	Port of Pelican Alaska	907-735-2202	0
AK	Petersburg	Chevron USA Petersburg	907-772-4251	0
AK	Petersburg	Icicle Seafoods Co	907-772-4294	0
AK	Petersburg	Neilbro Packing Co	907-772-4486	0
AK	Petersburg	Petersburg Ferry Terminal	907-465-3946	0
AK	Petersburg	Port of Petersburg Alaska	907-772-4688	0
AK	Port of Anchorage	Municipality of Anchorage	907-272-1531	1,400
AK	Rig Tender Dock, Kenai	Puget Sound Tug and Barge Co	907-776-8660	45
AK	Sitka	Port of Sitka	907-907-3439	20
AK	Sitka	Sitka Ferry Terminal	907-465-3946	0
AK	Skagway	Port of Skagway Alaska	907-983-2297	0
AK	Skagway	Skagway Ferry Terminal	907-465-3946	0
AK	Tenakee Springs	Port of Tenakee Springs	907-736-2221	0

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
AK	Tenakee Springs	Tenakee Springs Ferry Terminal	907-465-3946	0
AK	Wrangell	Wrangell Ferry Terminal	907-465-3946	0
AK	Yakutat	Chevron USA Yakutat	907-784-3411	0
AK	Yakutat	Port of Yakutat Alaska	907-784-3323	0
AK	Chickasaw	Mobile-Chickasaw Port Facility	205-456-7848	1,587
AL	Jackson Co. Port Authority	Port of Pascagoula	601-762-4041	206
AL	Mobile	Alabama Dry Dock & Shipbuilding	205-690-7011	2,809
AL	Mobile	Alabama State Docks	205-690-6113	4,406
AL	Mobile	Amerada Hess Corp	205-456-4888	12,000
AL	Mobile	Chickasaw Terminal Corp	205-456-6375	4,406
AL	Mobile	Louisiana Land & Exploration Co	205-675-7040	206
AL	Mobile	Mobile Bulk Terminal	205-438-9891	178
AL	Mobile	Mobile River Terminal Co	205-432-3233	4,406
AL	Mobile	Pacific Molasses Co	205-432-8771	4,406
AL	Theodore	Ideal Basic Industries	205-653-5800	4,406
AL	Theodore	Resource Consultants, Inc	205-653-6324	20
CA	Alameda	Pennzoil	415-522-4224	450
CA	Benicia	Benicia Port Terminal	707-745-2394	358
CA	Carpinteria	Chevron U.S.A.	213-782-1939	0
CA	Crocket	C&H Sugar	415-772-3918	450
CA	Hunnington Beach	Golden West Refining Co	714-536-8130	2,110
CA	Long Beach	Cooper/T. Smith Stevedoring Co	213-437-3524	459
CA	Long Beach	Domtar Gypsum America Inc	213-436-4611	131
CA	Long Beach	Dow Chemicalo USA	213-533-5375	268
CA	Long Beach	Forest Terminals Corp	213-432-5401	228
CA	Long Beach	Four Corners Pipeline	213-428-9022	7,646
CA	Long Beach	Gold Bond Building Products	213-435-4465	1,309
CA	Long Beach	International Transportation	213-435-7781	229
CA	Long Beach	Long Beach Container Terminal	213-435-8585	228
CA	Long Beach	Maersk Lines Long Beach Pier G	213-435-7706	131
CA	Long Beach	Metropolitan Stevedoring Co.	213-830-5340	380
CA	Long Beach	Ocean Salt Co	213-437-0071	20
CA	Long Beach	Pacific Coast Cement	213-435-0195	210
CA	Long Beach	Pacific Container Terminal	213-435-0842	245
CA	Long Beach	Petro-Diamond Terminal Co	213-435-8364	346
CA	Long Beach	Procter & Gamble Mfg. Co	213-432-6661	346
CA	Long Beach	Salen Shipping Agencies, Inc	213-436-9961	364
CA	Long Beach	Standard Fruit & Steamship CP	213-437-3521	2,153
CA	Long Beach	Star Terminal Co. Inc	213-436-2273	130
CA	Long Beach	Stevedoring Services of America	213-432-6477	245
CA	Long Beach	Texaco Refiners & Marketing	213-513-2463	15,000
CA	Long Beach	Toyota Motor Sales, USA, Inc	213-437-6767	549
CA	Los Angeles	United States Lines Inc	213-435-3761	228
CA	Los Angeles	Defense Fuel Support Point	213-832-3144	5,135
CA	Los Angeles	Distribution & Auto Service Inc	213-549-18-	131
CA	Los Angeles	Indies Terminal Co	213-547-3351	245
CA	Los Angeles	Los Angles Cruiseship Terminals	213-519-4049	228
CA	Los Angeles	Matson Terminals Inc	213-519-6438	346
CA	Los Angeles	Mobil Oil Corporation SW Terminal	213-832-2702	174
CA	Los Angeles	Overseas Terminal Co	213-832-3341	0
CA	Los Angeles	PASHA	213-437-0911	244
CA	Los Angeles	Penzoil Petroleum Terminal	213-385-0311	346
CA	Los Angeles	Petrolane, Inc	213-833-5275	2,178
CA	Los Angeles	Southern California Outport	213-514-4970	836
CA	Los Angeles	Todd Pacific Shipyards Corp	213-832-3361	346
CA	Los Angeles	Union Oil Co-Supertanker Term	213-832-4519	20
CA	Los Angeles	Unocal Corp	213-513-7600	1,200
CA	Los Angeles	Western Oil Fuel Co	213-549-7711	837
CA	Oakland	Maersk Line	415-398-1515	460
CA	Oakland	Matson Container Terminal	415-271-9819	460
CA	Oakland	Oakland Ctr Term	415-834-5822	460
CA	Oakland	Pacific Dry Dock and Repair	415-893-7020	67
CA	Oakland	Schnitzer Steel Products	415-444-3919	460
CA	Oakland	Sealand Services	415-271-1000	460
CA	Oakland	Stevedoring Services	415-271-1800	460
CA	Oakland	Stevedoring Services of America	415-271-1800	460
CA	Richmond	Burmah-Castrol Terminal	415-236-6312	30
CA	San Diego	Bay City Marine Inc	619-224-6655	2,975
CA	San Diego	Campbell Industries	619-233-7115	1,489
CA	San Diego	Continental Maritime	619-234-8651	2,975
CA	San Diego	Embarcadero Marine Inc	619-233/6684	1,052
CA	San Diego	National Steel and Ship Building	619-696-7936	3,346
CA	San Diego	Naval Supply Ctr, Pt. Loma Annex	619-225-2355	4,738
CA	San Diego	Port of San Diego	619-291-3900	3,346
CA	San Diego	Southwest Marine, Inc	619-238-1000	2,975
CA	San Diego	Tuna Clipper Marine	619-232-1838	1,654
CA	San Francisco	Continental Maritime Inc	415-957-1500	3,360
CA	San Francisco	Baker Commodities	415-282-4188	460

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
CA	San Francisco	C & H Sugar Co	415-772-3816	460
CA	San Francisco	California Fats and Oils Inc	415-826-6166	460
CA	San Francisco	California Stevedore & Ballast	415-826-7160	460
CA	San Francisco	Continental Grain Co	415-824-7177	460
CA	San Francisco	Continental Maritime	415-957-1586	3,360
CA	San Francisco	Forrest Terminals	415-951-5113	1,346
CA	San Francisco	Maersk Line	415-398-1515	460
CA	San Francisco	Marine Terminals	415-986/6576	460
CA	San Francisco	Matson Container	415-271-9819	460
CA	San Francisco	Oakland Center Terminal	415-834-5822	460
CA	San Francisco	Pennzoil Co	415-522-4224	450
CA	San Francisco	Pier 70	415-546-9111	460
CA	San Francisco	San Francisco Port Commission	415-391-8000	460
CA	San Francisco	Star Terminal	415-981-6622	460
CA	San Francisco	Stevedoring Service of America	415-271-1800	460
CA	San Francisco	Todds Shipyard	415-621-8633	2,279
CA	San Pedro	American President Lines	213-432-5991	228
CA	San Pedro	Chevron USA Inc	213-632-3324	150
CA	San Pedro	Evergreen Trminal	213-519-6942	20
CA	San Pedro	Gatx Tank Storage Terminal	213-547-9855	257
CA	San Pedro	Gatx Terminals Corp	213-547-0881	547
CA	San Pedro	Kaiser International Corp	213-514-3860	346
CA	Terminal Island	Hugo Neu Proler T1 210	213-775-6626	346
CA	Wilmington	Berth 200-A	213-830-8181	131
CA	Wilmington	Berths 180-181, LA Harbor	213-834-3444	0
CA	Wilmington	Cargill Inc	213-830-8231	228
CA	Wilmington	Chemolin Petroleum Co	213-834-7254	7,463
CA	Wilmington	Gatx L.A. Marine Terminal	213-835-0187	0
CA	Wilmington	L.A. Terminals	213-549-5822	228
CA	Wilmington	Marine Terminal	213-834-7254	7,463
CA	Wilmington	Marine Terminals Corp	213-432-5904	288
CA	Wilmington	Pacific Molasses Company	213-549-1810	530
CA	Wilmington	Shell Oil Co	213-834-2636	3,000
CA	Wilmington	United Fruit Co	213-834-2631	346
CA	Wilmington	Wilmington Liquid Bulk Terminals	213-549-0981	500
CT	East Hartford	Andrew Wilgoos Turbine Lab	203-565-3975	90
CT	East Hartford	Texaco Sales Terminal	203-568-9808	0
CT	East Hartford	The Atlas Oil Company	203-568-7220	0
CT	Groton	Pfizer Inc	203-441-3208	102
CT	Groton	United Fuel Corp	203-445-4095	1,486
CT	Middleton	Peterson Oil	203-346-7775	0
CT	Middleton	United Technologies Corporation	203-344-4317	273
CT	New London	New London Terminals Div	203-442-3939	240
CT	Norwich	Dahl Oil Company	203-889-3525	0
CT	Norwich	Lehigh Oil Company	203-889-4311	0
CT	Norwich	State of Ct. Norwich Hospital	203-889-7364	0
CT	Portland	Chevron Asphalt	203-342-1449	406
CT	Portland	Rocky Hill Oil Co., Inc	203-563-6123	30
CT	Rocky Hill	F.L. Roberts & Co., Inc	203-529-6821	0
CT	Wethersfield	Amerada Hess Wethersfield	203-529-7761	0
CT	Wethersfield	Northeast Petroleum	203-529-3299	0
FL	Canaveral	Canaveral Port Authority	305-783-7831	252
FL	Cape Canaveral	Belcher Oil Company	904-783-3393	272
FL	Dania	Port Denison	305-920-2561	189.6
FL	Ft. Lauderdale	Port Everglades	305-523-3404	5,380
FL	Ft. Lauderdale	Tracor Marine, Inc	305-463-1211	77
FL	Ft. Pierce	Ft. Pierce	305-464-5606	120
FL	Ft. Pierce	Indian River Terminal Company	305-465-7709	113.51
FL	Jacksonville	Amerada Hess Corporation	904-757-4498	281
FL	Jacksonville	Amoco Oil Co	904-757-5708	61
FL	Jacksonville	Belcher Oil Company	904-783-3393	20
FL	Jacksonville	Bellinger Shipyard	904-246-9981	1,250
FL	Jacksonville	Bernuth Lambacke Co	904-355-6567	214
FL	Jacksonville	Canaveral Port Authority	904-783-7831	252
FL	Jacksonville	Calotex Corporation	904-751-4400	61
FL	Jacksonville	Chevron U.S.A. Inc	904-353-1094	368
FL	Jacksonville	Commodores Points Terminal Corp	904-353-0828	2,934
FL	Jacksonville	Eastern Seaboard Petroleum Co	904-355-9875	122
FL	Jacksonville	Gulf Product Division of B.P. Inc	904-757-4650	61
FL	Jacksonville	Jacksonville Bulk Terminal Inc	904-355-8099	404
FL	Jacksonville	Jacksonville Port Authority	904-633-5140	61
FL	Jacksonville	Naval Supply Center Jacksonville	904-757-5354	2,367
FL	Jacksonville	North Florida Shipyards Inc	904-354-3278	1,481
FL	Jacksonville	Phillips Pipeline Co	904-353-6740	122
FL	Jacksonville	Port of Fernandina	904-261-0758	1,550
FL	Jacksonville	Shell Oil Co	904-355-5821	3,020
FL	Jacksonville	Trailer Marine Transport Corp	904-354-0352	2,720
FL	Jacksonville	U.S. Gypsum Company	904-768-2501	850

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
FL	Jacksonville	Witco Corp	904-353-0841	20
FL	Key West	Port of Key West	305-294-3721	53.45
FL	Miami	Port of Miami	305-371-7678	431
FL	Panama City	Port of Panama City	904-763-8471	4,388
FL	Pensacola	Port of Pensacola	904-436-4270	72
FL	Port St. Joe	Amerada Hess Corp	205-229-6763	1,250
FL	Port St. Joe	Amerada Hess Corporation	904-229-6763	1,250
FL	West Palm Beach	Port of Palm Beach	305-842-4201	3,321
GA	Brunswick	Brunswick Port Authority	912-265-3700	601
GA	Brunswick	Georgia Authority	912-264-7295	342
GA	Brunswick	LCP Chemicals-Georgia	912-265-8560	6,563
GA	Gardea City	Gold Bond Building Products	912-964-1561	274
GA	Garden City	Koch Asphalt Co	912-964-1913	196
GA	Port Wentworth	Savannah Sugar Refinery	912-964-1361	601
GA	Port Wentworth	Stevo Container Corp	912-964-1271	1,312
GA	Savannah	Amoco Oil Company	912-964-6262	601
GA	Savannah	Belcher Oil Company	912-964-1811	196
GA	Savannah	Blue Circle Atlantic Inc	912-263-6316	1,500
GA	Savannah	Bulk Terminal Management	912-964-2785	1,500
GA	Savannah	Chevron USA	912-232-0184	3,111
GA	Savannah	Colonial Oil Industries, Inc	912-236-1331	347
GA	Savannah	Demand Manufacturing Co	803-233-3003	134
GA	Savannah	East Coast Terminal Company	912-236-1531	1,500
GA	Savannah	Genstar	912-233-4951	1,005
GA	Savannah	Georgia Port Authority	912-964-3811	196
GA	Savannah	Georgia Steamship Company	912-964-0719	7,875
GA	Savannah	Marcona Ocean Industries, Ltd	912-234-5005	340
GA	Savannah	Occidental Chemical Agricultural	912-964-1214	196
GA	Savannah	Panocean Southland Inc	912-964-1811	196
GA	Savannah	Powell Duffryn Terminals	912-437-2600	3,925
GA	Savannah	Seylor Marine Corp	912-234-2266	123
GA	Savannah	Union Oil Company	912-233-9266	601
GA	Wentworth	Atlantic Wood Industries, Inc	912-964-1234	10
IL	Chicago	International Port District	312-646-4400	294
IN	Portage	Burns International Port	219-787-8638	103
LA	AMA	ADM-Growmark System	504-431-8245	10,000
LA	Arabi	Amstar Corp	504-271-5331	1,100
LA	Arabi	Amstar Corporation	504-271-5331	1,100
LA	Arabi	Kaiser Aluminum Chemical	504-271-7046	20
LA	Avondale	International Matex	504-436-4466	40
LA	Baton Rouge	Exxon Company USA	504-359-7518	15,000
LA	Baton Rouge	Formoss Plastics Corp	504-358-3341	6,048
LA	Baton Rouge	Port of Greater Baton Rouge	504-387-4207	104,909
LA	Belle Chasse	Miss. River Grain Elevator	504-658-2213	199
LA	Belle Chasse	B.P. Oil Inc	504-658-7711	6,530
LA	Belle Chasse	Chevron Chemical Co	504-394-4320	50
LA	Belle Chasse	Dockside Elevators, Inc	504-524-0611	4,200
LA	Brunaide	Burnside Terminal	504-473-4245	1,175
LA	Carville	Cos-Mar Company	504-642-5454	180
LA	Chalmette	Exxon Co, USA	504-358-7605	6,000
LA	Chalmette	Tenneco Oil Company P&M	504-279-9481	100
LA	Convent	Delta Bulk Terminals	504-524-7105	640
LA	Convent	Diamond Shambrock	504-562-7402	20
LA	Convent	Zen-Noh Grain Elevator	504-562-3571	2,940
LA	Darrow	Cooper/T. Smith Stevedoring	504-473-4266	24
LA	Darrow	River Cement Company	504-473-6748	1,581
LA	Devant	Electro-Cal Transfer Corp	504-524-4181	2,300
LA	Destrehan	Bunge Corporation	504-466-5300	595
LA	Destrehan	St. Charles Grain Elevator Co	504-466-2753	3,000
LA	Destrehan	Tulane Anchorage	504-464-1466	980
LA	Donaldsonville	Agrico Chemical	504-473-4271	150
LA	Donaldsonville	C & F Industries, Inc	504-473-8291	1,200
LA	Donaldsonville	Triad Chemical	504-473-9231	2,978
LA	Geismar	Allied Corporation	504-642-6311	180
LA	Geismar	Shell Chemical Plant	504-473-4261	1,470
LA	Goodhope	GATX Terminal Corp	504-443-2511	802
LA	Gramercy	Kaiser Aluminum & Chemical Corp	504-525-0460	20
LA	Gramercy	Colonial Sugar, Inc	504-529-1102	61
LA	Hackberry	OXY Cities Services N.G.L. Inc	504-762-4201	1,699
LA	Hahnville	Becker Industries Corp	504-783-6872	1,100
LA	Hahnville	Occidental Chemical Corp	504-783-6611	389
LA	Hahnville	Union Carbide Corp	504-468-4300	645
LA	Harvey	BP North America Petroleum, Inc	504-368-2560	4,200
LA	Harvey	Delta Commodity, Inc	504-340-4911	199
LA	Houma	Texas Pipe Line Company	504-876-5645	1,250
LA	Lake Charles	Citgo Pipeline	318-491-6237	11,000
LA	Lake Charles	Conoco	318-491-5855	1,670
LA	Lake Charles	Lake Charles Carbon	318-437-3200	31

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TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
LA	Lake Charles	Lake Charles Harbor & Terminal	318-439-3661	812
LA	Lake Charles	Olin Corporation	318-491-3320	1,670
LA	Lake Charles	PPG Industries	318-491-4266	1,670
LA	Lake Charles	Trunkline LNG	318-478-9936	1,000
LA	Marrero	Texaco Refining & Marketing, Inc	504-595-6611	150
LA	Meraux	Murphy Oil, Inc	504-271-4141	47
LA	New Orleans	Avondale Industries Shipyard	504-436-5165	2,350
LA	New Orleans	Buck Kreiks, Co	504-524-7661	1,400
LA	New Orleans	Chevron Pipeline Co	504-364-2496	1,000
LA	New Orleans	Dixie Machine & Welding Inc	504-581-3066	100
LA	New Orleans	I.T.O. Corporation	504-899-9544	1,200
LA	New Orleans	Port of New Orleans	504-528-3209	9,413
LA	New Orleans	Southern Scrap Material Co., Ltd	504-944-3371	3,000
LA	Pauline	Peavey Grain Elevator	504-482-4405	47
LA	Plaquemines	Dow Chemical Corp	504-366-6646	58
LA	Plaquemines	Georgia Gulf Corp	504-685-2500	159
LA	Port Sulphur	Freeport Sulphur	504-564-3981	5,400
LA	Port Sulphur	International Marine Terminals	504-656-7341	3,000
LA	Reserve	Godchaux Henderson Sugar, Co	504-536-1161	1,200
LA	St. James	Koch Gathering Systems	504-265-2112	500
LA	St. James	Shell Pipeline Corporation	504-588-4831	1,250
LA	Sulphur	Fredemans Shipyard	318-583-7363	1,670
LA	Sunshine	Petrounited Terminals, Inc	504-642-5335	2,205
LA	Uncle Sam	Freeport Chemical Co	504-562-3501	27
LA	Union	Missouri Portland Cement	504-562-7471	1,400
LA	Westlake	Conoco	318-491-5222	1,050
LA	Westlake	Dravo Basic Materials	318-436-5642	1,670
LA	Westlake	Ideal Basic Industries	318-436-7561	20
LA	Westwego	Continental Grain Elevator	504-436-9200	1,000
LA	Westwego	Gold Bond Building Products	504-341-8566	381
LA	Westwego	Pacific Molasses	504-347-8454	389
LA	Westwego	Petit Tank	504-823-0000	191
MA	Boston	Boston Edison Company	617-424-3547	2,284
MA	Boston	Economic Development & Ind. Co	617-725-3300	1,003
MA	Boston	Mass Port Authority	617-973-5354	730
MA	Boston (Charlestion)	Amstar Corp. Bunker Hill Refin	617-242-5335	1,003
MA	Boston (Charlestown)	Blue Circle Atlantic Cement	617-241-9040	983
MA	Boston (East)	Boston Fuel Transportation, Inc	617-567-9100	983
MA	Boston (East)	Mobil Oil Corporation	617-381-4039	296
MA	Boston (South)	Belcher of South Boston, Inc	617-269-8400	1,391
MA	Chelsea	Cumberland Farms Inc	617-884-5960	983
MA	Chelsea	Eastern Minerals	617-884-0029	3,126
MA	Chelsea	Gulf Oil Products Company	617-884-5960	983
MA	Chelsea	Northeast Petroleum	617-884-7570	125
MA	Chelsea	U.S. Gypsum Co	617-241-9100	1,003
MA	Chelsea	Ultramar Petroleum Inc	617-288-1100	983
MA	Dorchester	Boston Gas Co	617-288-3820	983
MA	E. Braintree	Citgo Petroleum Corporation	617-848-2565	296
MA	East Boston	Amerada Hess Corp	203-529-7781	76
MA	East Boston	General Ship	617-569-4200	2,530
MA	Everett	Coldwater Seafood Corporation	617-387-2050	1,151
MA	Everett	Everett Marine LNG Terminal	617-423-5959	730
MA	Everett	Exxon Co., USA-Everett Terminal	617-381-2800	983
MA	Everett	Independent Cement Corporation	617-387-3829	1,155
MA	Everett	Proterized New England Company	617-389-8300	296
MA	Fall River	Borden & Remington Corp	617-675-0181	1,003
MA	Fall River	Northeast Products Co., Inc	617-678-8367	1,004
MA	Gloucester	Americold/Quincy Market Cold	617-283-6160	1,003
MA	Lynn	General Electric Company	617-594-3834	1,155
MA	New Bedford	Frionor Kitchens, Inc	617-997-0031	122
MA	New Bedford	Glen Petroleum Corp	617-996-8271	327
MA	New Bedford	Global Petroleum Corp	617-997-4534	327
MA	North Weymouth	C.H. Sprague & Son Co	603-431-1000	983
MA	Quincy	General Dynamics Corp	617-471-4200	214
MA	Quincy	Quincy Oil, Inc	617-773-2500	1,391
MA	Quincy	The Proctor & Gamble Mfg Co	617-471-9100	296
MA	Revere	Belcher New England, Inc	617-284-4480	1,391
MA	Revere	Gibbs Oil, Div. of BP Oil, Inc	617-289-4201	1,391
MA	Revere	Northeast Petroleum	617-884-7570	1,391
MA	Revere	Revere Terminal Corporation	617-289-2108	1,391
MA	Salem	New England Power Co	617-744-5540	1,281
MA	Salem	Northeast Petroleum	617-884-7570	1,391
MA	Sandwich	Esco Terminals, Inc	617-888-2001	327
MA	Somerset	Montsup Electric Co	617-678-5283	327
MA	Somerset	New England Power Company	617-678-8321	327
MA	Woods Hole	Woods Hole Oceanographic	617-548-1400	1,003
MD	Baltimore	Agrico Chemical Corporation	301-276-8100	546
MD	Baltimore	Amerada Hess Corporation	301-355-0706	124

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
MD	Baltimore	Amoco Oil Co	301-636-0522	491
MD	Baltimore	Amstar Corporation	301-752-6150	115
MD	Baltimore	B.P. Oil Inc	301-355-7200	619
MD	Baltimore	Blue Circle Atlantic	301-355-4440	3,672
MD	Baltimore	Cargill	301-539-5950	390
MD	Baltimore	Central Soya, Canto Grain Eleva	301-522-5100	2,251
MD	Baltimore	Chesapeake Terminal	301-625-1370	1,866
MD	Baltimore	Conoco Docking Facility	301-355-5296	3,082
MD	Baltimore	Consolidation Coal Sales Company	301-342-1020	454
MD	Baltimore	Curtis Bay Coal & Ore Pier	301-347-5201	583
MD	Baltimore	Eastalco Aluminum Co	301-354-1113	1,516.3
MD	Baltimore	Essex Industrial Chemical, Inc	301-355-1770	828
MD	Baltimore	G & M Terminal Incorporated	301-355-8833	575
MD	Baltimore	Gold Bond Building Products	301-563-5315	615
MD	Baltimore	Indiana Grain-Locust Pt. Elev	301-685-6410	106
MD	Baltimore	Joseph E. Seagrams & Sons, Inc	301-247-1000	2,579
MD	Baltimore	Lebanon Chemical Corp	301-327-4700	11,067
MD	Baltimore	Louis Dreyfus Canada	301-752-6997	119
MD	Baltimore	Maryland Port Administration	301-955-1160	1,820
MD	Baltimore	Petroleum Fuel & Terminal	301-342-7800	1,075
MD	Baltimore	Port Covington Piers 4, 5, 6	301-347-5201	583
MD	Baltimore	Rukert Terminal Corp	301-276-1013	154
MD	Baltimore	Shell Oil Co	301-354-0404	327
MD	Baltimore	Support Terminal Services, Inc	301-355-6262	49
MD	Baltimore	Texaco Refining & Marketing Inc	301-355-6500	58
MD	Baltimore	The Proctor & Gamble Mfg. Co	301-576-1291	113
MD	Baltimore	United States Gypsum Company	301-355-6600	660
MD	Piney Point	Stuart Petroleum	301-994-1200	686
MD	Sparrows Point	Bethlehem Steel	301-388-7707	959
ME	Bangor	Barrett Paving	207-942-4681	305
ME	Bangor	Irving Oil Co	207-942-6323	305
ME	Bangor	Mobil Oil Co	207-942-8248	305
ME	Bangor	Webber Oil Co	207-942-5501	305
ME	Bar Harbor	CN Marine Terminal	207-288-3395	0
ME	Brewer	Mainway Terminal Inc	207-989-2410	305
ME	Brewer	Webber Thomas Inc	207-989-7770	305
ME	Bucksport	C.H. Sprague & Son Co	207-469-7946	305
ME	Bucksport	Elden Corp	207-469-7450	305
ME	Bucksport	Webber Tanks Inc	207-469-3185	305
ME	Cousins Island	Central Maine Power-Wyman	207-846-9055	197
ME	Eastport	Federal Marine Terminals, Inc	207-853-6098	120
ME	Hampden	Texaco Inc	207-945-9485	305
ME	Portland	Portland International Lyons	207-775-5611	197
ME	Searsport	C.H. Sprague & Son Co	207-548-2531	305
ME	Searsport	Irving Oil Co	207-942-6323	305
ME	Searsport	Tenco Service's	207-548-2201	305
ME	So. Harpswell	Defense Fuel Supply Point	207-833-6232	306
ME	So. Portland	BP Oil Inc	207-799-9586	305.8
ME	So. Portland	Exxon Co. Inc	207-767-2141	306
ME	So. Portland	Getty Petroleum Corp	207-799-8518	305
ME	So. Portland	Koch Fuels Inc	207-767-2161	305
ME	So. Portland	Mobil Oil Corp	207-767-3251	259
ME	So. Portland	Portland Pipeline Corp	207-767-3231	20
ME	So. Portland	Texaco Inc	207-799-3394	200
ME	So. Portland/Portsmouth	Northeast Petroleum	207-799-2294	328
ME	Winterport	Maine Terminal Inc	207-223-5011	305
ME	Wiscasset	Central Maine Power-Mason	207-882-6212	259
ME	Yarmouth	Central Maine Power-Wyman	207-846-9055	197
MI	Bay City	Dow Chemical Seaway Terminal	517-667-0308	120
MI	Bay City	Saginaw Valley Marine	517-895-8571	120
MI	Detroit	Harridon Terminal	313-841-7680	444
MI	Ludington	Dow Chemical USA	616-845-4444	10
MI	Port Huron	Port Huron Terminal Company	313-982-8596	444
MI	River Rouge	Nicholson Terminal & Dock Co	313-842-4300	6,643
MI	Saginaw	Berger and Company	517-754-1480	120
MN	Duluth	Port of Duluth/Superior	218-727-8525	150
MS	Bay St. Louis	Port Bienville	601-467-9231	389
MS	Gulfport	MS State Port Authority	601-865-4317	354
MS	Pascagoula	Chevron, USA, Inc	601-938-4214	6,432
MS	Pascagoula	Ingalls Shipbuilding Division	601-935-4676	370
NC	Morehead City	Port of Morehead City	919-726-3158	6,394
NC	Wilmington	Amerada Hess Wilmington	919-763-5123	6,394
NC	Wilmington	Cape Fear Terminal Port	919-762-6815	6,339
NC	Wilmington	Exxon Terminal	919-799-0144	650
NC	Wilmington	Gold Bond Building Products	919-799-3954	6,394
NC	Wilmington	Paktank Corp-Wilmington Terminal	919-763-0104	1,314
NC	Wilmington	Port of Wilmington	919-371-2325	1,743
NC	Wilmington	Transcarolina Terminal	919-763-4444	6,394

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
NC	Wilmington	W.R. Grace-Nitrex Plant	919-763-5171	20
NC	Wilmington	Wilmington Shipyard, Inc	919-763-6274	380
NH	Newington	C.H. Sprague & Son	603-431-1000	331
NH	Newington	Fuel Storage Corp	603-431-6000	327
NH	Newington	Sea-3 Inc	603-431-5990	327
NH	Portsmouth	C.H. Sprague	603-431-1000	331
NH	Portsmouth	Gold Bond Building Products	603-436-4848	305
NH	Portsmouth	Granite State Minerals Inc	603-436-8505	1,003
NH	Portsmouth	New Hampshire State Port Auth	603-436-8500	1,008
NJ	Bayonne	Constable Terminal Corporation	201-437-2993	278
NJ	Bayonne	Exxon Company USA	201-858-5503	14,460
NJ	Bayonne	Gordon Terminal Service	201-437-8300	279
NJ	Bayonne	Hoboken Shipyards, Inc	800-845-4506	412
NJ	Bayonne	Imtt-Bayonne	201-437-2200	3,325
NJ	Bayonne	Port Belcher of New York	201-437-2104	11,760
NJ	Bayonne	Powell Duffern Terminals	201-437-2800	540
NJ	Bayonne	Rollins Terminals, Inc	201-436-5000	279
NJ	Bayonne	Standard Tank Cleaning Corp	201-339-5222	15,360
NJ	Bayonne	Texaco Refining and Marketing Inc	201-436-2200	15,008
NJ	Carteret	Amoco Oil Company	201-541-5131	187
NJ	Carteret	CGebr Terminal Corporation	201-541-5161	15,008
NJ	Elizabeth	Atlantic Container Lines	201-289-3000	262
NJ	Elizabeth	Chevron-Seyway Lube Plant	201-354-1700	443
NJ	Elizabeth	Croda Storage Inc	201-353-8933	621
NJ	Elizabeth	Crown Central Petroleum Corp	201-352-0542	0
NJ	Elizabeth	Puerto Rico Marine Management	201-225-2121	
NJ	Elizabeth	Sea-Land Service, Inc	201-558-8001	11,760
NJ	Hoboken	Union Drydock & Repair	201-792-9090	14,895
NJ	Jersey City	Global Terminal Cont Serv, Inc	201-451-5200	15,008
NJ	Jersey City	Port Mahar Terminal	201-963-2100	15,008
NJ	Kearny	Columbia Terminals Inc	201-344-3604	5,040
NJ	Linden	BP Tremley Point	201-862-2990	15,008
NJ	Linden	Citgo Petroleum Corp	201-862-3300	20,843
NJ	Linden	E.I. Du Pont De Nemours & Co	201-474-1726	313
NJ	Linden	Exxon Seyway	201-474-7361	14,460
NJ	Newark	Celanese Chemical Co., Inc	201-589-2705	137
NJ	Newark	Port Tenneco Oil Company	201-589-8582	2559
NJ	Newark	Sun Refining & Marketing Co	201-465-3200	25
NJ	Newark	Texaco Refining & Marketing Inc	201-344-6815	15,008
NJ	Newark	Trumbull Asphalt	201-998-2534	390
NJ	Newark	Van Iderstine Co	201-465-1900	11,760
NJ	Perth Amboy	Chevron U.S.A. Inc	201-738-2090	75
NJ	Perth Amboy	Stolt Terminals Inc	201-826-1144	192
NJ	Port Newark	B.P. North American	201-465-2424	15,008
NJ	Port Newark	Ecuadorian Line Inc	201-589-9894	127
NJ	Port Newark	Hudson Tank Storage Company	201-465-1115	440
NJ	Port Newark	InterAmerican Juice Company, Inc	201-589-4044	0
NJ	Port Newark	Maersk Container Service Co., Inc	201-465-1000	15,008
NJ	Port Newark	Turbana Corp. Shed 139 Berth 4	201-690-5390	198
NJ	Sewaren	Port Shell Oil Co	201-634-1000	15,202
NJ	Sewaren	Royal Petroleum, Inc	201-634-3344	3,500
NJ	Woodbridge	Amerada Hess Port Hudson	201-750-6555	124
NY	Albany	Cibro Petroleum Products, Inc	518-462-4237	262
NY	Albany	Port Mobil	518-436-8575	78
NY	Athens	Peckham Materials Corp	518-945-1120	34
NY	Beacon	Garret-Storm Inc	914-831-1100	0
NY	Bronx	Fred M. Schildwachter & Sons	212-828-2500	0
NY	Bronx	Getty Terminals Corporation	212-324-5134	0
NY	Bronx	Port Castle Coal & Oil Co., Inc	212-823-8800	11,760
NY	Bronx	Port Cibro Petroleum	212-585-0600	576
NY	Bronx	Ultramar Petroleum Inc	201-573-0300	512
NY	Brooklyn	Amoco Oil Company	718-389-5961	236
NY	Brooklyn	Ametar Corporation	718-387-6800	11,760
NY	Brooklyn	Coastal Drydock & Ship Repair	718-403-6291	15,008
NY	Brooklyn	Lumber Exchange Terminal, Inc	718-383-5000	512
NY	Brooklyn	Newton Creek Water Pollution	212-860-8314	0
NY	Brooklyn	Port Continental Terminal, Inc	718-875-4935	15,008
NY	Brooklyn	South Brooklyn Marine Terminal	718-499-3900	11,760
NY	Brooklyn	Terminalle Corp	718-388-7011	0
NY	Buffalo	Gateway Trade Center Inc	716-826-2690	20
NY	Buffalo	NIA Frontier Trans. Authority	716-852-1921	20
NY	Cementon	Port Lehigh Portland Cement Co	718-943-5300	421
NY	East Elmhurst	Dept. of Corrections	718-726-7859	15,008
NY	East Greenbush	Gold Bond Products Terminal	518-449-7354	419
NY	Glenmont	Sears Petroleum & Transport Co	518-436-7942	323
NY	Glenwood Landing	Glenwood Terminal Corrections	516-676-2500	0
NY	Glenwood Landing	Port Long Island Lighting Co	516-671-3100	103
NY	Great Neck	A.H.J. Associates	516-922-7000	337

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
NY	Great Neck	Universal Utilities, Inc	516-922-7000	337
NY	Highland	Star Terminal Corp	914-691-8171	0
NY	Inwood	Amoco Oil Company	516-239-4913	0
NY	Inwood	Port Wetcher Petroleum	516-239-8800	0
NY	Lackawanna	Bethlehem Steel Corp	716-821-2587	20
NY	Massena	Ultramar Petroleum Inc	315-769-3538	20
NY	Mt. Vernon	Amoco Oil Company	914-667-8339	0
NY	New Rochelle	Port Westchester Hudson Fuel	914-736-8110	0
NY	New Windsor	Big "S" Oil CO	914-561-4300	135
NY	New York	Con-Edison of New York	718-390-2705	514
NY	New York	Neturnar Lines of NY	212-669-1709	512
NY	New York	Pier 42 East River	212-349-5075	307
NY	New York	Port Authority of NY & NJ	212-466-7968	99,999
NY	New York	Port Universal Maritime Services	212-269-5121	15,008
NY	New York	Witte Chase	201-344-7600	180
NY	Newburgh	Mid-Valley Petroleum Corporation	914-561-4000	135
NY	North Tarrytown	General Motors	914-631-8000	0
NY	Oceanside	Chevron-Oceanside	516-764-3488	66
NY	Ogdensburg	Port of Ogdensburg	315-393-7580	20
NY	Oswego	Nia. Mohawk Steam Station	315-349-2220	20
NY	Oswego	Port of Oswego Authority	315-343-4503	20
NY	Oswego	Ultramar Petroleum Inc	315-343-6070	20
NY	Port Washington	Lewis Oil Company	516-883-1000	148
NY	Poughkeepsie	Effron Fuel Oil Company	914-452-2600	744
NY	Poughkeepsie	J.R. Sousa & Sons, Inc	914-452-4330	135
NY	Ravena	Blue Circle Atlantic	518-756-6141	422
NY	Rensselaer	Atlantic Refining & Market Corp	518-449-7138	323
NY	Rensselaer	Petroleum Fuel Terminal	518-465-1557	333
NY	Rensselaer	Port Bray Terminals	518-462-5052	400
NY	Rensselaer	Ultramar Petroleum Inc	518-463-6809	124
NY	Staten Island	Chester A. Poling, Inc	718-727-1000	147
NY	Staten Island	Chevron-Gulfport Terminal	718-981-1000	479
NY	Staten Island	First Marine Shipyard Inc	212-448-1882	14,894
NY	Staten Island	Moranie Oil Tankers/Shipyard	718-442-0700	14,895
NY	Staten Island	Port Mobil	718-948-2200	21,588
NY	Staten Island	Taverna Fuel Co., Inc	718-448-9840	19,260
NY	Staten Island	U. S. Lines	201-272-9800	97
NY	Stony Point	United States Gypsum Co	914-786-2712	443
NY	Syracuse	Agway Petroleum Corp	315-447-6128	0
NY	Tompkins Cove	Port Orange & Rockland Utilities	914-577-2150	95
NY	Tonawanda	Asland Pertroleum Company	716-879-8810	20
NY	Troy	Chevron-Asphalt Troy	518-272-2040	237
NY	Wards Island	Wards Is. Sewage Treatment Plant	212-860-9341	318
NY	Woodbridge	Amarada Hess Port New York	201-750-6555	15,008
NY	Yonkers	A. Terracone Inc	914-964-9866	0
NY	Yonkers	Refined Sugars, Inc	914-963-2400	30
OH	Ashtabula	Pinney Dock & Transportation	216-964-7196	400
OH	Cleveland	Cuyahoga County Port Authority	216-241-8004	238
OH	Huron	The Pillsbury Company	419-433-4900-	80
OH	Toledo	Toledo-Luces County Port Auth.	419-243-8251	80
OR	Astoria	Port of Astoria	503-325-4521	332
OR	Coos Bay	Union Oil Co. of California	503-269-96	452
OR	Newport	New Port International	503-265-7758	266
OR	Portland	Chevron	503-221-7700	300
OR	Portland	Gasco Portland	503-286-9621	330
OR	Portland	Gatx Corp	503-286-1691	1,345
OR	Portland	Georgia-Pacific Corp	503-248-7370	332
OR	Portland	Palmco	503-286-8341	298
OR	Portland	Texaco Refining & Marketing	503-226-357	332
OR	Portland	Time Oil Co	503-286-1611	1701
OR	Portland	Trumbull Asphalt	503-227-2666	1,061
OR	Portland	Union Oil Co	503-248-1530	355
OR	Portland	Union Oil Co Chemical Division	213-977-7146	247
RI	Ere	Erie International	814-453-6651	20
RI	East Providence	Astroline Corp	401-438-1666	1,004
RI	East Providence	Getty Petroleum Corp	401-434-1322	1,004
RI	East Providence	Union Chemicals Div., Union Oil	401-438-7250	118
RI	Providence	C.H. Sprague & Son Co	401-421-4690	327
RI	Providence	George Mann and Co., Inc	401-781-5800	1,004
RI	Providence	Independent Cement Corp	401-467-8411	268
RI	Providence	Petrolane Transport	401-781-6640	1,003
RI	Providence	Port of Providence	401-781-4717	1,004
RI	Providence	Providence Terminal Associates	401-941-4640	1,004
RI	Providence	Texaco	401-461-6800	125
SC	Charleston	Braswell Shipyard	803-577-4692	1,018
SC	Charleston	Defense Fuel Support Point	803-723-7442	1,103
SC	Charleston	Delmonte Fresh Fruit	803-723-7442	1,103
SC	Charleston	Exxon Charleston Term	803-723-7442	1,103

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TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
SC	Charleston	Gulf Oil Products	803-722-3858	1,103
SC	Charleston	Macalloy Corp	803-723-7442	1,103.06
SC	Charleston	Scapa Union Pier	803-723-7442	1,103
SC	Charleston	Shipyard River Coal Terminal	803-723-7442	1,103
SC	Georgetown	International Paper Co	803-723-7442	1,103
SC	Georgetown	Scapa	803-723-7442	1,103
SC	Mt Pleasant	Detyens Shipyard	803-884-2811	2,571
SC	Mt Pleasant	Scapa Wando	803-723-7442	1,103
SC	North Charleston	Amerada Hess Charleston	803-554-1581	601
SC	North Charleston	Chem-Marine Corp	803-724-4332	1,103
SC	North Charleston	Marathon Petroleum Company	803-554-5440	601
SC	North Charleston	Scapa	803-723-7442	1,103
SC	North Charleston	Texaco Refining & Marketing Inc	803-747-5262	601
SC	North Charleston	Westvaco Dock	803-723-7442	1,103
SC	Port Royal	Port Royal–Pier 21	803-525-6001	601
TX	Arabi	Arister Corporation	504-721-5331	11,000
TX	Aransas Pass	American Petrofina	512-758-3571	12,999
TX	Aransas Pass	Exxon Pipeline Company	512-289-4147	1,299
TX	Baytown	Exxon Baytown Refinery	713-452-3300	17,400
TX	Beaumont	Amoco Pipeline Co	409-835-5381	7,000
TX	Beaumont	Brooks Terminal	409-838-3663	155
TX	Beaumont	E.I. Dupont de Nemours & Co Inc	409-727-9565	118
TX	Beaumont	Mobil Chemical	409-839-1200	20
TX	Beaumont	Mobil Oil Corp	409-833-9411	1,419.26
TX	Beaumont	Port of Beaumont	409-722-3242	2,500
TX	Beaumont	Texas Gulf Chemicals	409-835-5311	1,907
TX	Brownsville	Port of Brownsville	512-831-4592	2,999
TX	Channelview	Cargill	713-452-4741	1,172
TX	Corpus Christi	Amerada Hess Corporation	512-884-4831	12,000
TX	Corpus Christi	American Chrome and Chemical Inc	512-883-6421	1,299
TX	Corpus Christi	Bay Incorporated	512-289-2100	1,500
TX	Corpus Christi	Centar Cement Corporation	512-883-6381	1,299
TX	Corpus Christi	Champlin Petroleum Company	512-880-5475	20,250
TX	Corpus Christi	Coastal Refining and Marketing	512-887-4258	14,875
TX	Corpus Christi	Coastal States Crude Gathering	512-887-3820	1,299
TX	Corpus Christi	Diamond Shamrock	512-884-6393	1,299
TX	Corpus Christi	Interstate Grain Port Terminal	512-289-5651	1,299
TX	Corpus Christi	Koch Refining Company	512-241-4811	16,500
TX	Corpus Christi	Mobil Pipeline Co	512-884-8061	1,299
TX	Corpus Christi	Port of Corpus Christi Authority	512-882-5633	1,299
TX	Corpus Christi	Southwestern Refining Co. Inc	512-884-8863	37,250
TX	Corpus Christi	The Permian Corporation	512-884-0491	1,299
TX	Corpus Christi	Valero Refining Company	512-288-6008	25,255
TX	Deer Park	Petrank Corp Deer Park Terminal	713-479-6051	2,775
TX	Deer Park	Shell Oil	713-476-6332	12,600
TX	Deer Park	Union Equity Coop. Exchange	713-479-2601	1,172
TX	Freeport	Bastl Harbor Terminal	409-238-6357	1,333
TX	Freeport	Dow Chemical	409-238-4003	96
TX	Freeport	Phillip 66 Port of Freeport	409-647-4431	3,282
TX	Freeport	Port of Freeport (Brazos River)	409-233-2667	192
TX	Galena	Amerada Hess Corp	713-453-6301	23,541
TX	Galena Park	Gebx Terminals Corporation	713-455-1231	276
TX	Galena Park	International Terminals Corp	713-672-2536	2,685
TX	Galena Park	US Gypsum	713-672-8261	20
TX	Galena Park	Warren Gas Terminal	713-453-7173	40
TX	Galveston	Galveston Oil Terminal	409-744-6351	805
TX	Galveston	Pennzoil Sulphur	409-763-5374	4,255
TX	Galveston	Port of Galveston	409-766-6172	4,255
TX	Galveston	Texas A&M University	409-740-4562	2,502
TX	Galveston	Texas International Terminals	409-740-1271	3,753
TX	Gregory	Reynolds Metals Company	512-643-6531	1,299
TX	Houston	Bludworth Bond Shipyard	713-923-2001	110
TX	Houston	Care Shipping	713-457-6083	172
TX	Houston	Crown Central Petroleum	713-920-3920	4,285
TX	Houston	Hill Petroleum Co	713-923-3421	60
TX	Houston	Houston Fuel Oil Terminal Co	713-452-3300	4,286
TX	Houston	Jacob Stern & Son	713-926-6386	77.9
TX	Houston	Joe H. Hughes Inc	713-422-7577	123
TX	Houston	Lyondell Petrochemical	713-475-4506	20,600
TX	Houston	Newpark Shipyard	713-926-5051	1,728
TX	Houston	Oiltanking of Texas	713-452-5901	25
TX	Houston	Port of Houston Authority	713-226-2100	413.38
TX	Houston	Texas Petrochemical	713-474-7458	21
TX	Ingleside	E.I. du Pont de Nemours Co., Inc	512-643-7511	1,299
TX	Ingleside	Sun Marine Terminals, Inc	512-776-7535	23
TX	Nederland	Palmer Barge Line	409-982-3937	1,260
TX	Nederland	Sun Marine Terminals, Inc	409-721-4834	793
TX	Nederland	Union Oil Co. of California	409-724-3223	8,571

TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
TX	Nederland	Unocal	409-724-3223	8,571
TX	Orange	Orange County Navigation	409-883-4363	155
TX	Orange	Port of Orange	409-883-4363	155
TX	Pasadena	Kerley Agriculture	713-477-4400	46
TX	Pasadena	Occidental Chemical Corp	713-884-4020	60
TX	Pasadena	Georgia Gulf	713-473-4453	313
TX	Pasadena	Occidental Chemical	713-884-4020	60
TX	Pasadena	Occidental Chemical Agricultural	713-479-6008	20
TX	Pasadena	Phillips Petroleum	713-475-3612	233
TX	Point Comfort	Alcoa	512-987-2804	754
TX	Point Comfort	Port Lavaca-Point Comfort	512-987-2813	869
TX	Port Arthur	Atlantic Shippers of Texas	409-962-2457	3,990
TX	Port Arthur	Bethlehem Steel	409-836-6621	2,115
TX	Port Arthur	Carotex	409-962-0251	155
TX	Port Arthur	Chevron	409-985-1306	9,330
TX	Port Arthur	Coastal Marine Service of Texas	409-983-1616	8,829
TX	Port Arthur	Fina Oil & Chemical	409-962-4421	4,781
TX	Port Arthur	Great Lakes Carbon	409-985-4421	155
TX	Port Arthur	Hall-Buck Marine Services	409-983-6271	30
TX	Port Arthur	Pabtex Terminal	409-962-8343	155
TX	Port Arthur	Port of Port Arthur	409-983-2011	155
TX	Port Arthur	Sabine Towing & Transportation	409-962-0201	4,914
TX	Port Arthur	Texaco Refining & Marketing	409-962-5711	7,200
TX	Port Arthur	Vessel Repair	409-962-1302	01,349
TX	Port Arthur	Comnotex	409-962-0251	20
TX	Port Neches	Erickson Refining	409-722-9366	128
TX	Port Neches	Texas Chemical	409-722-8381	7,200
TX	Seabrook	Baytank (Houston)	713-474-4181	20
TX	Seabrook	Celanese Chemical	713-474-3841	20
TX	Seabrook	Petro United Terminals	713-474-4433	20
TX	Texas City	Almcor Marine Terminal	409-945-7210	3,278
TX	Texas City	Amoco Chemicals	409-948-1601	184
TX	Texas City	Amoco Oil Docks	409-945-1345	6,192
TX	Texas City	Arco Pipe Line	713-450-2081	23,197
TX	Texas City	Coastal States Crude Gathering	409-945-6622	4,255
TX	Texas City	IMC Marine Terminal	409-945-7210	4,255
TX	Texas City	Lowry-Unitank	409-948-6310	7,056
TX	Texas City	Marathon Petroleum Co	409-945-2331	4,570
TX	Texas City	Stan Trans, Inc	409-948-3561	294
TX	Texas City	Sterling Chemicals, Inc	409-942-3720	2,535
TX	Texas City	Texas City Refining	409-945-4451	2,672
TX	Texas City	Union Carbide Corp	409-948-5171	2,340
TX	Vidor	Texas Eastern Products Pipeline	409-768-1093	20
VA	Alexandria	Robinson Terminal Warehouse	703-836-6300	228
VA	Chesapeake	Amerada Hess Chesapeake	201-750-6000	6,394
VA	Chesapeake	American Hoechst Corp	801-484-2500	6,394
VA	Chesapeake	Amoco Oil Co	804-545-4841	6,394
VA	Chesapeake	Atlantic Energy Inc	804-485-1018	6,934
VA	Chesapeake	Bernuth Lembcke Co. Inc	804-543-6229	6,394
VA	Chesapeake	BP North America Inc	804-543-4444	6,394
VA	Chesapeake	Cargill Elevator	804-545-8461	9,751
VA	Chesapeake	Elizabeth River Terminals	804-543-0335	6,394
VA	Chesapeake	Hitch Terminal	804-545-0735	6,394
VA	Chesapeake	Mobil Oil Corp	804-545-4681	6,394
VA	Chesapeake	Royster Agricultural Products	804-545-3024	6,394
VA	Chesapeake	Swann Oil	804-485-3000	7,236
VA	Chesapeake	Tenneco Oil Co	804-543-3514	6,394
VA	Chesapeake	Texaco Refining Marketing	804-543-6811	6,394
VA	Chesapeake	Unocal	804-545-8455	6,394
VA	Galena Park	Amerda Hess	713-453-6301	23,541
VA	Hopewell	Allied Fibers	804-541-5000	6,394
VA	Newport News	Chesapeake Ohio Railway Co	804-380-5000	6,394
VA	Newport News	Dominion Terminal Assoc	804-245-2275	6,394
VA	Newport News	Koch Fuels, Inc	804-244-8545	6,394
VA	Newport News	Massey Coal Term., Inc	804-244-0554	6,394
VA	Norfolk	Chemphalt of Caroline	804-545-7371	602
VA	Norfolk	Colonna's Shipyard, Inc	804-545-2414	2,074
VA	Norfolk	Exxon Company USA	804-440-2540	6,394
VA	Norfolk	Lamberts Point Docks	804-446-1200	6,394
VA	Norfolk	Lone Star Industries	804-853-6704	224
VA	Norfolk	Lyon Shipyard, Inc	804-622-4661	78
VA	Norfolk	Metro Machine Corp	804-543-6801	6,451
VA	Norfolk	Norfolk Oil Transit, Inc	804-622-2687	6,394
VA	Norfolk	Norfolk Shipbuilding & Drydock	804-545-3551	3,772
VA	Norfolk	Norfolk & Western Railway Coal	804-446-5343	9,751
VA	Norfolk	Seahorse Marine	804-625-5386	9,751
VA	Norfolk	The Jonathan Corp	804-622-0440	6,394
VA	Norfolk	U.S. Gypsum Company	804-545-2461	6,394

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TABLE I—ANNEX/RECEPTION FACILITIES—Continued

State	City	Terminal	Area code and phone No.	Daily capacity of reception facility (metric tons)
VA	Portsmouth	Aluminum Co. of America	804-485-3301	6,394
VA	Portsmouth	Sea-Land Services, Inc	804-393-4071	6,394
VA	Yorktown	Amoco Oil Company	804-898-5120	429
WA	Aberdeen	Port of Grays Harbor	206-533-9519	1,050
WA	Anacortes	Port of Anacortes	206-293-3134	1,667
WA	Anacortes	Shell Oil Company	206-293-9122	275
WA	Anacortes	Texaco Refining & Marketing, Inc	206-293-0800	1,102
WA	Bellingham	Bellingham Cold Storage	206-733-1640	131
WA	Bellingham	Georgia Pacific Corp	206-733-4410	134
WA	Bellingham	Port of Bellingham	206-676-2500	920
WA	Edmonds	Unocal Edmonds Terminal	206-774-9584	824
WA	Everett	Port of Everett	206-259-3764	2,657
WA	Ferndale	Arco Petroleum Products Co	206-384-2200	3,750
WA	Ferndale	Intalco Aluminum Corp	206-384-7292	76
WA	Ferndale	Mobil Oil Corporation	206-384-1011	2,873
WA	Hoquiam	ITT Rayonier	206-532-2500	1,030
WA	Kalama	Kalama Chemical Inc	206-673-2550	332
WA	Kalama	North Pacific Grain Growers	206-673-2011	332
WA	Longview	Reynolds Aluminum Co	206-425-2800	387
WA	Manchester	Naval Supply Center	206-476-2145	1,950
WA	Mukilteo	Defense Fuel Support Point	206-355-2051	1,607
WA	Olympia	Port of Olympia	206-754-1660	1,607
WA	Port Angeles	BP North America Petroleum, Inc	206-452-1433	206
WA	Port Angeles	ITT Rayonier	206-457-3391	1,607
WA	Port Angeles	Merrill & Ring	206-452-2367	1,607
WA	Port Angeles	Port of Port Angeles	206-457-9527	1,604
WA	Port Townsend	Port Townsend Paper Corp	206-385-3170	560
WA	Richmond Beach	Chevron U.S.A., Inc	206-542-2131	364
WA	Seattle	American President Lines	206-292-4650	1,607
WA	Seattle	Atlantic Richfield	206-623-4635	1,350
WA	Seattle	Cargill, Inc	206-284-4851	1,350
WA	Seattle	Gatx TST Corporation	206-622-0920	1,350
WA	Seattle	Hanjin Container Lines (T-18)	206-447-9422	20
WA	Seattle	International Terminal Company	206-763-3460	1,350
WA	Seattle	Jacob Sterns & Sons, Inc	206-622-3260	1,350
WA	Seattle	Kaiser Cement	206-764-3075	233
WA	Seattle	Lake Union Drydock Co	206-323-6400	3,190
WA	Seattle	Lockheed Shipbuilding Co	206-292-4745	30
WA	Seattle	Marine Power & Equipment Co	206-632-1441	7,887
WA	Seattle	Maritime Contractors, Inc	206-647-0080	59
WA	Seattle	Matson Terminals, Inc	206-223-2494	1,167
WA	Seattle	Port of Seattle	206-728-3258	1,350
WA	Seattle	Seacon Terminals, Inc	206-628-6772	1,350
WA	Seattle	Shell Oil Company	206-453-3051	1,167
WA	Seattle	Stevedoring Services of America	206-623-0304	20
WA	Seattle	Terminal 37	206-622-4520	20
WA	Seattle	Terminal 91	206-284-2450	1,470
WA	Seattle	Texaco Refining & Marketing, Inc	206-623-6101	2,800
WA	Seattle	Time Oil Co	206-285-2400	1,167
WA	Seattle	Todd Pacific Shipyards Corp	206-623-1635	1,470
WA	Seattle	Wyckoff Co	206-624-3535	1,350
WA	Tacoma	Continental Grain Co	206-572-3511	504
WA	Tacoma	Domtar Gypsum America	206-627-2106	72
WA	Tacoma	Occidental Chemical Corp	206-593-1362	875
WA	Tacoma	Pennwalt Corp	206-627-9101	875
WA	Tacoma	Port of Tacoma	206-383-5841	3,217
WA	Tacoma	Sound Refining, Inc	206-835-6505	5,554
WA	Tacoma	U.S. Oil & Refining Co	206-383-1651	1,224
WA	Tacoma	Unocal Tacoma Terminal	206-272-3215	1,080
WA	Tacoma	Weyerhaeuser Co	206-593-7921	875
WA	Vancouver	Aluminum Co. of America	206-696-8657	232
WA	Vancouver	Ideal Cement	206-695-9208	1,729
WA	Vancouver	Port of Vancouver	206-693-3611	332
WI	Green Bay	Anamax Terminal	414-494-5233	148
WI	Green Bay	F.Hurlbut Dock	414-432-7731	148
WI	Green Bay	North Dock, Green Bay	414-432-8632	148
WI	Green Bay	U.S. Oil Company, Inc	414-432-4422	148
WI	Kenosha	Westlake Harbor Terminals	414-652-3125	65
WI	Manitowoc	The Manitowoc Company, Inc	414-684-6621	577
WI	Milwaukee	Port of Milwaukee	414-278-3511	65
WI	Sturgeon Bay	Bay Shipbuilding Co	414-684-6621	577
WI	Superior	Fraser S/Y, Inc	715-394-7787	168

TABLE II—ANNEX II RECEPTION FACILITIES

State	City	Terminal Name	Area code and telephone No.	Type of wastewater facility can receive (Category)	Daily Capacity (Metric tons)
CA	Long Beach	Dow Chemical	213-553-5375	B	
CA	Long Beach	Petro-Diamond Terminal Company	213-435-8364	C	
CA	Long Beach	C. Brewer Terminals, Inc	213-435-5623	C	
CA	Pittsburg	Pittsburg Terminal	415-423-5498	B, C	
CA	Richmond	Unitank Terminal Service	415-236-2020	C	226
CA	Richmond	Petromark, Inc	415-232-3275	B	50
CA	Richmond	Chevron USA, Richmond Refinery	415-620-2314	C	
CA	San Pedro	Gatx Terminals Corporation	213-547-0661	C	
4778	CA	Wilmington Liquid Bulk Terminals	213-549-0961	C	8,000
CT	Groton	Pfizer Inc	203-441-3206	C	121
CT	New Haven	E.I. Dupont Demours & Co	203-562-5151	C	
DE	Wilmington	Delaware Terminal Co	302-654-3717	B, C	
GA	Savannah	Colonial Oil Industries, Inc	912-236-1331	B, C	100
GA	Savannah	Powell Duffryn	912-437-2600	B, C	75
HI	Honolulu	Chevron U.S.A. Inc	808-527-2747	C	
IL	Chicago	Stolt Terminals (Chicago) Inc	312-646-4445	B, C	
LA	Baton Rouge	Exxon Company, USA	504-359-7518	B, C	
LA	Bridge City	Paktank Corp. (Westwego)	504-436-2242	C	762,000
LA	Carville	Cos-Mar Company	504-642-5454	C	2191
LA	Geismer	Shell Chemical Co	504-379-6366	B, C	117.5
LA	Hahnville	Union Carbide Corp	504-468-4300	C	
LA	Harvey	Delta Commodities	504-340-4911	A, B	
LA	Jennings	SBA Shipyards, Inc	201-824-1519	A	1,427
LA	Lake Charles	PPG Industries	318-491-4260	B	
LA	NORCO	Gatx Terminals Corp	504-443-2511	A, B	1,041
LA	Plaquemine	Georgia Gulf Corp	504-685-2500	B	
LA	Plaquemine	Dow Chemical Company	504-389-6157	C	
LA	Sulphur	Fredman Shipyard, Inc	318-583-7383	B, C	189
LA	Sunshine	Petrounited Terminals Inc	504-642-8335	C	
LA	Uncle Sam	Agrico Chemical Co	504-562-3501	C	
MD	Baltimore	Essex Industrial Chemical Inc	301-356-8080	C	
MD	Sparrows Point	Bethlehem Steele Co	301-388-7417	C	
NC	Leland	Port of Wilmington	919-371-2325	C	
NC	Leland	Koch	919-371-2325	C	
NC	Leland	Chemserv Terminals Inc	919-371-2325	C	
NC	Leland	Pfizer Inc	919-371-2325	C	
NC	Wilmington	Patank Corporation	919-763-0104	C	334.7
NC	Wilmington	Exxon Company USA	919-799-0144	C	
NJ	Bayonne	Constable Terminal Corp	201-437-2993	C	191
NJ	Bayonne	Exxon Co., USA	201-858-5508	C	
NJ	Bayonne	Powell Duffryn Terminals	201-437-2600	A,B,C	75
NJ	Bayonne	Rollins Terminals, Inc	201-436-5433	B,C	412
NJ	Bayonne	Gordon Terminal Service Co	201-437-8300	C	
NJ	Bayonne	IMTT-Bayonne	201-437-2200	A,B	
NJ	Bridgeport	Monsanto Chemical Co	609-467-3000	B,C	
NJ	Deepwater	DuPont Marine Terminal	609-540-2706	B	
NJ	Elizabeth	Allied-Signal, Inc	201-354-3215	C	
NJ	Linden	Exxon Co., USA Bayway Refinery	201-474-7079	C	
NJ	Newark	Celanese Chemical Company, Inc	201-589-2705	C	
NJ	Pauleboro	BP Oil Co	609-423-4000	C	
NJ	Perth Amboy	Stolt Terminals, Inc	201-826-1144	B,C	
NJ	Port Newark	Hudson Tank Storage Co	201-465-1115	B	292
NJ	Seaworen	Shell Oil Co	201-855-3310	B,C	50
NJ	Westville	Costal Eagle Point Oil Co	609-853-3100	C	239
NY	Staten Island	Proctor & Gamble, Port Ivory	718-816-2199	C	40
PA	Marcus Hook	Sun Refining and Marketing Co	215-447-5998	C	
PA	Philadelphia	Chevron USA, Inc-Girad Point	215-339-7233	B,C	50
PA	Philadelphia	Unitank Terminal Service	215-634-3031	A,B,C	2,595
TN	Milwaukee	Milwolv River Terminal	414-252-3550	C	
TX	Corpus Christi	American Chrome & Chemicals	512-883-6421	B	
TX	Corpus Christi	Koch Refining Co	512-242-8357	B,C	
TX	Deer Park	Shell Oil Company	713-476-6815	C	
TX	Deer Park	Intercontinental Terminals Co	713-479-8024	B,C	
TX	Freeport	Dow Chemical Co	409-238-4283	B,C	100
TX	Galena Park	Warren Petroleum Terminal	713-453-7173	C	
TX	Galena Park	Paktank Corporation	713-675-9171	A,B,C	

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TABLE II—ANNEX II RECEPTION FACILITIES—Continued

State	City	Terminal name	Area code and telephone No.	Type of wastewater facility can receive (category)	Daily capacity (metric tons)
TX	Galena Park	Amerada Hess Corporation	713-453-6301	A	
TX	Houston	Stolt Oiltanking Chemical	713-452-2212	A,B,C	
TX	Houston	Lyondell Petrochemical	713-475-4506	C	
TX	Houston	South Coast Terminals, Inc	713-926-7451	B	
TX	Houston	Oiltanking Inc	713-452-2212	A,B,C	
TX	Pasadena	Georgia Gulf Corp	713-920-4301	C	
TX	Seabrook	Baytank Inc	713-474-4181	A,B,C	
TX	Seabrook	Hoechst Celanese Corporation	713-474-2841	C	
TX	Seabrook	Petrounited	713-474-4433	C	
TX	Texas City	Amoco Chemicals Company	409-948-1601	B,C	
TX	Texas City	Costal States Crude Gathering	409-945-8622	C	1,633
TX	Texas City	Stan Trans, Inc	409-948-3561	B,C	1,380
TX	Texas City	Union Carbide Corp	409-948-5171	B	8,351
TX	Texas City	Unitank-Texas, Inc	409-948-6310	B,C	499
TX	Texas City	Sterling Chemicals Dock 1	409-942-3448	C	16,536
WI	Milwaukee	Milsolv River Terminal	424-252-3550	C	

[FR Doc. 88-11082 Filed 5-18-88; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160 (9th Mtg.)-406 MHz Emergency Locator Transmitters (ELT); Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 9th meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on June 5-17, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approved of the eighth meeting's minutes, (3) review and discuss EUROCAE Working Group 29 activities, (4) report on problems of frequency interference in 406 MHz band, (5) review of task assignments from last meeting, (6) review the fifth draft of the MOPS, (7) new task assignments, (8) other business, and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contract the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 12, 1988.

R.E. Reichenbach,

Acting Designated Officer.

[FR Doc. 88-11194 Filed 5-18-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Dauphin Borough and Middle Paxton Township, Dauphin County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Dauphin County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Manuel A. Marks, Division Administrator, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3461.

or

William Greene, Project Manager, Pennsylvania Department of Transportation, 21st & Herr Streets, Harrisburg, Pennsylvania 17103-1699, Telephone: (717) 783-5148.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement on a proposal to relieve traffic congestion and improve safety on US 22/322 in Dauphin Borough and Middle Paxton Township, located in south central Pennsylvania. The proposed project is approximately 5.0 miles in length and may consist of a highway on a new alignment. The project begins in Dauphin and travels north to tie into the 4 lane facility in the Village of Speeceville. Section 4(f) Evaluations will be performed as necessary in conjunction with the project.

Three basic alternatives will be considered: a transportation systems management alternative using much of the existing highway system, an alignment mainly on new location with limited access, and a non-build alternative. For each of the alternatives under study, the following areas will be investigated: traffic, preliminary design and cost, air quality, noise, energy, water quality and aquatic biota, ground water, and hydrogeology, vegetation and wildlife, floodpains and flood hazard areas, endangered species, hazardous waste facilities, wetlands, soils and erosion, farmlands, visual quality, socioeconomics and land use, construction impacts, and archeological and historic resources.

Public involvement and interagency coordination will be maintained throughout the development of the Environmental Impact Statement. A Plan of Study and an invitation to scoping meetings will be distributed to interested agencies. A public hearing will be held if required to obtain formal public input on the findings of the environmental and engineering studies.

To ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the Environmental Impact Statement should be directed to the FHWA or PennDOT at the addresses listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: May 12, 1988.

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 88-11239 Filed 5-18-88; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Availability of Funds for Research To Establish a Mid-Atlantic Trauma Registry in the States of New Jersey, Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of grant availability.

SUMMARY: The National Highway Traffic Safety Administration announces that competitive applications for grants are being accepted to conduct research to develop a regional trauma registry of uniform and widely-used format and to document in detail the potential uses at the local, state, and federal levels in optimizing the use of resources to obtain the best possible emergency medical, hospital trauma treatment, rehabilitation and trauma prevention systems with available funds.

DATE: Applications must be submitted on or before June 20, 1988.

ADDRESS: Applications must be submitted to the attention of Linda Lee Payne, Contract Specialist, Office of Contracts and Procurement, NAD-30, Room 5301, National Highway Traffic Safety Administration, DOT, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carl C. Clark, Research and Development, NHTSA, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-4740.

Program Background and Objectives: The objective of this study is to generate a Trauma Registry, which is a listing of injuries requiring hospitalization and related data of cause and treatment, for the Mid-Atlantic region of the states of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia. This will be the first effort to create a regional trauma registry, with emphasis on the state and local benefits of cooperating to share the needed data to identify the adequacy of utilization of emergency medical services, hospital emergency rooms, hospital trauma services, rehabilitation, and injury prevention. The program will identify data and means to work toward trauma prevention. The first year will utilize data presently being collected, with the trauma program goal to have a common Trauma Registry data format and agreed upon analyses and uses by the end of the second year.

This research will be supported by a two (2) year grant to one (1) grantee, not to exceed a total of $260,000. The grantee will deliver the following items during the course of the work: (1) a computer disk or tape of a preliminary trauma registry for the first two weeks of 1987, put in a standard format, for all hospitals in the mid-Atlantic region that currently have computerized trauma registries, and, through the state or DC Emergency Medical Services directors, agree to cooperate with this program, with estimates of the percent of the state of DC hospitalized trauma population served by that hospital. The standard format shall be that of the Centers for Disease Control trauma registry, including data elements linked to the hospital record from police and ambulance run reports. This preliminary data tape and all subsequent data tapes delivered to the federal government will have privacy removed.

(2) A computer disk or tape of all trauma registry data for all of 1987 from all of the cooperating hospitals, again in the standard format, delivered at the end of the fourth month. (3) Monthly progress reports, developing the forms of analysis of the trauma data that would be useful at the local, state, and national levels, in cooperation with the participating groups, and reporting other progress to attain a common format registry of all hospitalized trauma cases of the region.

(4) A final report in draft at the end of the tenth month, for review and revisions by all concerned, and submitted for publication at the end of the first year. This first year final report will discuss the problems of development and use of a common format regional trauma registry, and its utilization to improve the emergency medical system, trauma care and rehabilitation, and trauma prevention.

The second year of the grant will repeat the same four steps but with 1988 data and hopefully many more cooperating hospitals. The second year final report, after review, will be submitted for publication by June 30, 1990.

Eligible Applicants: Eligible applicants are States, interstate agencies and non-profit institutions.

Applications must be submitted on Standard Form 424 (original and five copies must be submitted) and include:

1. A description of the research to be pursued including:

(i) The method or methods that will be used.

(ii) The sources of data that will be used.

(iii) The types of data analyses that will be carried out and how they will address the development of the regional trauma registry.

2. A list of those individuals responsible for the conduct of the research, their qualifications, and the role each will play.

3. A complete budget for the period of this research, to include the grantee's shared cost, and

4. A description of the Applicants' previous or on-going efforts that relate to this type of research.

5. Written agreements with the Atlantic EMS Council to assume all necessary cooperation required to meet the grant objectives.

Review Process: All proposals will be reviewed and evaluated by the NHTSA staff to determine the applicant's understanding of the problem, the applicant's qualifications, the suitability of the proposed research plan, and evidence of the applicant's capability to effectively carry out the project on schedule.

Applicants are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Program Management: An agreement will be reached with the grantee following the award of the grant to assure that, to the maximum degree possible, there is not undue duplication of research.

Date: May 12, 1988.

Approval:

Thomas J. Stafford,

Director, Office of Contracts and Procurement, Department of Transportation/NHTSA.

[FR Doc. 88-11189 Filed 5-18-88; 8:45 am]
BILLING CODE 4910-59-M

Saint Lawrence Seaway Development Corporation

Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 11:00 a.m., June 15, 1988, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh St. SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 8, 1988, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on May 13, 1988.

Paul A. Maroun,

Advisory Board Liaison.

[FR Doc. 88-11260 Filed 5-18-88; 8:45 am]

BILLING CODE 4910-61-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. This is the second announcement for this program, with a new closing date. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

State Legislature and Congressional Information Systems: a Program For Central American Parliamentarians and Political Leaders

The Office of Private Sector Programs will assist in supporting an exchange that will bring twleve parliamentarians and young political party representatives from six Central American countries to the United States to provide them with an overview of the American legislative process and to enhance the technical and research skills of the specialized support staffs of the legislative assemblies in these countries. The participants will be selected by USIA representatives abroad. The project, scheduled for September 1988, will be conceived and executed by a U.S. not-for-profit institution with expertise in State Legislature and Congressional information systems. The program design will include a state assembly orientation program to observe state legislative processes, information systems, and research support; a comparison of state and federal government in the U.S.; and presentations and meetings in Washington, DC, on library and information retrieval systems, research support groups, and the basic process of making legislation.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs, AR State Legislature), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-11179 Filed 5-18-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 97
Thursday, May 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., June 2, 1988.
9:00 a.m. to 5:00 p.m., June 3, 1988.
9:00 a.m. to 3:00 p.m., June 4, 1988.

PLACE: Lowes Ventana Canyon Hotel, 7000 North Resort Drive, Tucson, Arizona.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Consideration of Concept Papers submitted for Institute funding.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684-6100.

David I. Tevelin,

Executive Director.

[FR Doc. 88-11308 Filed 5-17-88; 10:39 am]

BILLING CODE 6820-SC-M

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Corrections

Federal Register
Vol. 53, No. 97
Thursday, May 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

Correction

In rule document 88-9073 beginning on page 14788 in the issue of Tuesday, April 26, 1988, make the following correction:

On page 14788, in the second column, in the eighth line, "*Bunostonum*" should read "*Bunostomum*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 88-9071 beginning on page 14857 in the issue of Tuesday, April 26, 1988, make the following correction:

On page 14857, in the second column, in the fifth complete paragraph, the last line should read "information (5 U.S.C. 552b(c)(4))."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Iowa Electric Light and Power Co. et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License

Correction

In notice document 88-9858 beginning on page 15931 in the issue of Wednesday, May 4, 1988, make the following correction:

On page 15931, in the first column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[SD-214]

VISAS; Passports and Visas Not Required for Certain Nonimmigrants

Correction

In proposed rule document 88-10482 beginning on page 16975 in the issue of Thursday, May 12, 1988, make the following correction:

On page 16975, in the third column, in amendatory instruction 2, in the first line, "paragraph (1)" should read "paragraph (l)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25567; Notice No. 88-5]

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes

Correction

In proposed rule document 88-5672 beginning on page 8742 in the issue of Wednesday, March 16, 1988 make the following correction:

§ 25.365 [Corrected]

On page 8744, in the third column, in § 25.365(e)(2), in the ninth line, the last sentence is incomplete and should read, "The size H_c must be computed by the following formula:".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8196]

Income Taxes; Corporate Distributions and Certain Nonrecognition Exchange and Other Transfers Under Section 897 (c), (d), (e), (g), (i), and (j) and Section 367(e)(2) and Withholding Under Section 1445(e) (5) and (6)

Correction

In rule document 88-9782 beginning on page 16214 in the issue of Thursday, May 5, 1988, make the following corrections:

§ 1.897-5T [Corrected]

1. On page 16218, in the third column, in § 1.897-5T(b)(3)(iii), in the third line, after "interest" insert "shall".

2. In the same column, in the same section, in the 16th line, after "of" insert "the". Also, in the 17th line, after "foreign" insert "corporation".

3. On page 16219, in the first column, in § 1.897-5T(b)(3)(iv)(A), in the sixth line, after "to" insert "the".

4. On page 16220, in the third column, in § 1.897-5T(c)(1), in the second line, "987" should read "897".

5. On page 16221, in the first column, in § 1.897-5T(c)(2)(iii), Example (1), paragraph (ii), in the last line, "(d)(2)(1)" should read "(d)(2)(i)".

§ 1.897-6T [Corrected]

6. On page 16225, in the third column, in § 1.897-6T(a)(7), Example (9), paragraph (iii), in the 14th line, "(d)(i)(C)" should read "(d)(1)(C)".

BILLING CODE 1505-01-D

federal register

Thursday
May 19, 1988

Part II

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System, Identification and Listing of Hazardous Waste; Notice of Data Availability and Request for Comments; Supplement to Proposed Rule

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 3368-4]

Hazardous Waste Management System, Identification and Listing of Hazardous Waste: Use of a Generic Dilution/Attenuation Factor for Establishing Regulatory Levels and Chronic Toxicity Reference Level Revisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments; supplement to proposed rule.

SUMMARY: On June 13, 1986, the Environmental Protection Agency proposed to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by modifying the existing Toxicity Characteristic used by waste generators in determining whether their solid wastes are hazardous. As proposed in 1986, the new Toxicity Characteristic was to be based, in part, on using chronic toxicity reference levels along with compound-specific dilution/attenuation factors (DAFs) for each of the constituents.

Today's notice solicits comment on an alternative strategy for setting the DAF's in the Toxicity Characteristic, proposed on June 13, 1986. This notice also presents revised values and new information on 14 of the 38 chronic toxicity reference levels proposed in the June 13, 1986 notice.

DATE: EPA will accept public comments on this notice until July 5, 1988.

ADDRESSES: One original and three copies of all comments, identified by the Docket Number F–88–TCNN–FFFFF should be sent to the following address: EPA RCRA Docket (S–212), U.S. Environmental Protection Agency (WH–562), 401 M Street SW., Washington, DC 20460. The EPA RCRA docket is located in the sub-basement area at the above address, and is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal Holidays. To review docket materials, members of the public must make an appointment by calling (202) 475–9327. A maximum of 50 pages of material may be copied from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline by calling (800) 424–9346 toll-free, or (202) 382–3000. For information on specific aspects of this notice, related to the use of a generic DAF, contact John W. Goodrich-Mahoney (202) 475–8551 and for the chronic toxicity reference level revisions, contact Lisa A. Ratcliff (202) 382–4761, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Revisions and Request for Comments
A. Use of Generic Dilution/Attenuation Factor
B. Chronic Toxicity Reference Level Revisions/Data Availability
1. Background
2. Revisions and New Data
III. References

I. Background

Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to identify wastes that pose a hazard to human health and the environment, if improperly managed. One means for doing this is through identification of characteristics of hazardous wastes; one approach in developing characteristics is for the Agency to determine reasonable mechanisms by which harm to human health or the environment might occur, develop models to establish regulatory levels, and specify methods for testing the wastes. Characteristics are established at levels providing a high degree of certainty that a waste is hazardous. Thus, a characteristic level is not intended to be a threshold identifying hazard but a level that is clearly hazardous. The Agency may decide to list other wastes as hazardous based on the criteria set forth in 40 CFR 261.11.

The Extraction Procedure (EP) Toxicity Characteristic (EPTC) [40 CFR 261.24] has been used to identify wastes with the potential to produce leachate containing significant concentrations of toxicants if the wastes would be disposed in a sanitary landfill with municipal trash and garbage (*i.e.*, codisposal). The Extraction Procedure (EP) test described in detail in 40 CFR Part 261, App. II is the laboratory procedure used to estimate leachability. Wastes are considered hazardous under the existing Toxicity Characteristic if their EP test leachate concentrations exceed the regulatory levels that are specified. These levels are set so that National Interim Primary Drinking Water Standards (DWS) will not be exceeded at down-gradient drinking water wells; the EPTC assumes that toxicants will be diluted and/or attenuated during ground water transport by a factor of 100.

On June 13, 1986 [51 FR 21648], the Agency proposed to amend the EPTC by: (1) Expanding the characteristic to include 38 additional organic constituents, (2) introducing a modified leaching procedure, Method 1311 (referred to as the Toxicity Characteristic Leaching Procedure or TCLP) and (3) applying compound-specific dilution/attenuation factors (DAFs) for each organic constituent while retaining the 100-fold dilution/attenuation factor for the inorganic constituents.

The Agency's June 1986 proposal contemplated that state-of-the-art ground water modeling would allow the Agency to determine specific DAF's for each of the organic constituents in the Toxicity Characteristic. The various DAFs were to be calculated from a ground water transport model incorporating compound-specific hydrolysis and soil adsorption data, coupled with parameters describing a generic underground environment (*e.g.*, ground water flow rate, soil porosity, ground water, pH, etc.).

EPA proposed to use these compound-specific DAFs to estimate the particular reduction in concentration to be expected for each organic constituent during transport in the ground water to a drinking-water source. These values would be used in establishing regulatory levels for organic constituent concentrations in TCLP (Method 1311) leachate. For each organic constituent, the Drinking Water Standard, reference dose, or risk-specific dose, as appropriate, would be multiplied by a specific DAF to establish the regulatory level. Wastes producing leachate concentrations above the regulatory levels would potentially produce unacceptable toxicant levels at a drinking water source, and thus would exhibit the Toxicity Characteristic and be regulated as hazardous waste. Wastes producing leachate concentrations below the regulatory levels would not exhibit the toxicity characteristic and would not be hazardous with respect to that characteristic.

The Agency has received many comments on the June 1986 proposal and will address those comments and publish revisions to the ground water transport model and other aspects of the proposal at a later time. However, the Agency is today soliciting comment on an alternative approach by which the Agency would initially regulate certain wastes with high concentrations of hazardous constituents while this work continues. The Agency is also presenting revised values and new information on 14 of the 38 chronic toxicity reference levels proposed in the June 1986 notice.

II. Discussion of Revisions and Request for Comments

A. Use of a Generic Dilution/Attenuation Factor

The Agency is evaluating alternative approaches for establishing dilution/attenuation factors (DAFs) for the 38 additional toxic organic constituents proposed in the Toxicity Characteristic in June 1986.

One alternative involves setting DAFs for these constituents in two phases. In the first phase, the Agency would use a generic DAF that is sufficiently high to assure regulation in the short-term of those wastes with high concentrations of hazardous constituents. The use of a generic DAF to determine regulatory levels is not new to the Agency; a generic DAF of 100 has been a component of the EPTC [45 FR 33110], for both organic and inorganic constituents, since 1980.

The Agency is considering applying the generic DAF to those 38 additional toxic organic constituents proposed for inclusion in the TC on June 13, 1986. Today's notice does not affect the current regulatory levels for the EP constituents. The Agency is not considering changing the DAF for the EP constituents at this time.

In the second phase, the Agency would address further the manner in which DAFs are used to set regulatory levels. The second phase is expected to result in regulatory levels that are lower than those in this first phase, and thus all wastes identified as hazardous in the first phase will remain classified as hazardous after completion of the second phase. For the second phase, EPA may continue to use generic DAF's, employ a ground water transport model to develop constituent-specific DAF's, or use a combination of the two approaches.

The Agency is also considering promulgating the TC in one phase, with use of a generic DAF, as discussed above. EPA believes a two-phase approach for promulgating the revised Toxicity Characteristic is consistent with sections 3001 (g) and (h) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the legislative history of these provisions, which state that the EPA should take all necessary action to revise expeditiously the Toxicity Characteristic (Conference Report No. 98–1133 (98th Congress, 2nd Session) at 105–106). This approach allows the Agency to proceed with one level of regulation as quickly as possible in keeping with its Congressional mandate.

The selection of a generic DAF also allows EPA to expeditiously identify those wastes with high concentrations of hazardous constituents. The Agency intends to use a sufficiently high DAF such that wastes, which are regulated as hazardous in the first phase, should also be regulated as hazardous in the second phase.

Based on the above discussion, the Agency specifically requests comment on a two-phased approach, wherein those wastes with the highest concentrations of hazardous constituents would be identified in the first phase, the most appropriate dilution/attenuation factor to use under the two generic phased approach, and the basis for choosing that DAF. The Agency specifically solicits comment on the use of a generic DAF in the first phase of 100 or 500.

B. Chronic Toxicity Reference Level Revisions/Data Availability

1. Background

On June 13, 1986 [51 FR 21648], the Agency proposed to amend the Extraction Procedure Toxicity Characteristic by expanding the characteristic to include 38 additional toxicants, and, using chronic toxicity reference levels (combined with compound-specific dilution/attenuation factors), to calculate leachate concentration limits for individual toxicants which would define a waste as hazardous. Specifically, EPA proposed to use either the National Interim Primary Drinking Water Standard (NIPDWS) or the Maximum Contaminant Level (MCL), where available, as the starting point for establishing the regulatory level for each of the contaminants. For those toxicants where NIPDWS or MCL's have not been established, the Agency proposed to use Risk-Specific Doses (RSD's) for the carcinogens and Reference Doses (RfD's) for the noncarcinogens.

Today's notice presents revised chronic toxicity reference levels for a number of the contaminants; these changes (as shown in Table 1) are explained in detail below. To summarize, the chronic toxicity reference levels for vinyl chloride and 1,4-dichlorobenzene have been revised since the MCL's promulgated for these compounds [July 8, 1987; 52 FR 25690] differ from those proposed [November 13, 1985; 50 FR 46902]. Phenol, pyridine, and 2,3,4,6-tetrachlorophenol have different chronic toxicity reference values based on changes to their RfD's, while the values for acrylonitrile, chlordane, chloroform, heptachlor, and methylene chloride have been revised based on changes to their RSD's.

TABLE 1.—SUMMARY OF REVISED CHRONIC TOXICITY REFERENCE LEVELS FOR PROPOSED TOXICITY CHARACTERISTIC CONTAMINANTS

Contaminant	Proposed * chronic toxicity reference level (mg/L)	Revised chronic toxicity reference level (mg/L)
Acrylonitrile	0.002	0.0007
Chlordane	0.002	0.0003
Chloroform	0.005	0.06
1,4-dichlorobenzene	0.75	0.075
Heptachlor	0.0001	0.00008
Methylene chloride	0.5	0.05
Phenol	4	1
Pyridine	0.075	0.04
2,3,4,6-tetrachlorophenol	0.4	1
Vinyl chloride	0.001	0.002

* June 13, 1986; 51 FR 21648.

It should be noted that in the June 13, 1986, TC notice, EPA proposed an apportionment scheme for use with the chronic toxicity reference levels derived from RfD's [52 FR 21667]. EPA also proposed to develop RSD's using specific risk levels keyed to the Agency's classification scheme for characterizing carcinogens based on their experimental weight of evidence [52 FR 21666]. The Agency asked for and received considerable public comment on these two issues. Today's notice does not address either the proposed apportionment scheme or the choice of risk levels of concern; EPA will respond to the related comments in the final rule. Therefore, it should be noted that the risk levels used in deriving the RSD's discussed in today's notice are the same as those proposed on June 13, 1986 (10^{-5} for A and B carcinogens and 10^{-6} for C carcinogens).

Finally, the Agency is also making available for public review and comment the results of the meta-cresol, ortho-cresol, para-cresol, isobutanol, pyridine, and 2,3,4,6-tetrachlorophenol toxicity studies sponsored by the Office of Solid Waste. The studies were used by the Agency in the development of RfD's for these 6 toxicants. Accordingly, the chronic toxicity reference levels for 2 of these contaminants, pyridine and 2,3,4,6-tetrachlorophenol, have been revised based on the final study results.

2. Revisions and New Data

The following information concerning 1,4-dichlorobenzene and vinyl chloride is provided only as background for the reader. The Agency is *not* soliciting

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comments regarding the derivation of the MCL's themselves, or the appropriateness of the use of MCL's as chronic toxicity reference levels. (EPA received public comment on this issue in response to the June 13, 1986 TC proposal.)

1,4-Dichlorobenzene

Chronic Toxicity Reference Level: EPA is revising the chronic toxicity reference level for 1,4-dichlorobenzene from 0.75 to 0.075 mg/L since the promulgated MCL differs from the proposed MCL. In particular, on November 13, 1985, EPA promulgated a Recommended Maximum Contaminant Level (RMCL), now called Maximum Contaminant Level Goal (MCLG), for 1,4-dichlorobenzene of 0.75 mg/L and proposed an MCL of 0.75 mg/L [50 FR 46880 and 50 FR 46902, respectively]. The MCLG and proposed MCL were based on 1,4-dichlorobenzene's classification as a Group D compound, i.e., a chemical not classified or for which there is inadequate animal evidence of carcinogenicity. This classification resulted from the Agency's assessment of several negative carcinogenicity studies in rats and mice, including one chronic inhalation study, and several subchronic inhalation and gavage studies. A suggested RfD of 0.1 mg/kg/day for 1,4-dichlorobenzene was calculated, using a no-observed-adverse-effect-level (NOAEL) of 150 mg/kg/day identified in a Battelle (1980) subchronic gavage study in rats, and an overall uncertainty factor of 1000, which was employed to account for inter- and intraspecies extrapolation (10 each) and use of data from an exposure duration significantly less than lifetime (10). The MCLG and the proposed MCL were based on the RfD, a relative source contribution factor of 20 percent for drinking water, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Since that time, the Agency received the results of a long-term study on 1,4-dichlorobenzene conducted by the National Toxicology Program (NTP). The NTP (1986) study was a chronic oral gavage bioassay utilizing F344 rats and B6C3F1 mice. The NTP concluded that there was evidence of carcinogenicity both for male rats as shown by an increased incidence of renal tubular cell adenocarcinomas, and for mice of both sexes as shown by increased incidences of hepatocellular carcinomas and hepatocellular adenomas. No evidence of carcinogenicity was seen in female rats. Based on this new information, EPA proposed to amend 1,4-dichlorobenzene's MCLG to zero and reproposed its MCL at 0.005 mg/L on April 17, 1987 [52 FR 12676]. Specifically, the Agency proposed to reclassify 1,4-dichlorobenzene as a Group B2 carcinogen. However, the notice also indicated that EPA was considering classifying 1,4-dichlorobenzene in Group C instead of Group B2. Thus, the Agency asked for public comment on the appropriate classification based on the weight of evidence.

On July 8, 1987 [52 FR 25690], EPA promulgated an MCL of 0.075 mg/L for 1,4-dichlorobenzene. Because of the limited evidence of carcinogenicity, the Agency decided to classify 1,4-dichlorobenzene as a Group C carcinogen, and as such, its MCLG and MCL were based on noncarcinogenic endpoints, using the RfD of 0.1 mg/kg/day with an additional uncertainty factor of 10, the relative source contribution factor of 20 percent, and body weight and consumption values of 70 kg and 2 L water per day, respectively. The application of an additional uncertainty factor to the RfD in deriving MCLG's and MCL's for Group C carcinogens is Agency policy [50 FR 46902, November 13, 1985]. Thus, the revised chronic toxicity reference level for 1,4-dichlorobenzene, 0.075 mg/L, is the promulgated MCL; it is a factor of 10 lower than the original proposed MCL of 0.75 mg/L.

Vinyl Chloride

Chronic Toxicity Reference Level: EPA is revising the chronic toxicity reference level for vinyl chloride from 0.001 to 0.002 mg/L since the promulgated MCL differs from the proposed MCL. Based on the statutory (Safe Drinking Water Act) directive for setting MCL's, the Agency derives MCL's from an assessment of a range of pertinent factors, including the availability and performance of the "best available technology" (BAT), the costs of these technologies for different size water systems, and the number of water systems that would have to install these technologies. The Agency also evaluates the availability of analytical methods and the reliability of analytical results, as well as the resulting health risks of various contaminant concentration reduction levels attainable by BAT. (For more information on the Agency's process for deriving MCLG's and MCL's, see 52 FR 46880 and 52 FR 46902, November 13, 1985; see also 52 FR 25690, July 8, 1987.) The "practical quantitation level" (PQL) is the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. For vinyl chloride, EPA originally established the PQL at 0.001 mg/L, and thus proposed an MCL of 0.001 mg/L for vinyl chloride on November 13, 1985 [50 FR 46902]. The chronic toxicity reference level in the June 13, 1986, TC proposal was based on this proposed MCL. The Agency subsequently increased the PQL for vinyl chloride to 0.002 mg/L, and on July 8, 1987, promulgated an MCL based on this higher PQL [52 FR 25690]. Thus, the revised chronic toxicity reference level for vinyl chloride is 0.002 mg/L.

Phenol

Chronic Toxicity Reference Level: EPA is modifying the chronic toxicity reference level for phenol from 4 to 1 mg/L because the RfD has been revised. In particular, the Agency's RfD Workgroup verified a new RfD of 0.04 mg/kg/day on October 28, 1986 [1]. This RfD is based on a Dow Chemical Co. (1945) study in which slight kidney and liver pathology was observed in rats administered phenol by gavage for 6 months. Groups of 10 rats were gavaged with 0, 50, or 100 mg/kg of phenol, 5 days/week (estimated as 0, 35.7, or 71.4 mg/kg/day on a 7-day basis) until 135 or 136 doses were administered, after which surviving animals were killed for histopathological examination of the target organs. The animals receiving 71.4 mg/kg/day of phenol showed a greater temporary drop in body weight gain than did the other groups, but the group rapidly recovered. Surviving animals (6/10) in this group showed a very slight amount of cloudy swelling of the liver, while four animals had some kidney damage. In the animals that survived (6/10) treatment with 35.7 mg/kg/day phenol, there were two that showed a slight amount of kidney damage. Mortality was not treatment related. The low dose (35.7 mg/kg/day) was judged a lowest-observed-adverse-effect-level (LOAEL).

The original RfD of 0.1 mg/kg/day, which was used to derive the chronic toxicity reference level of 4 mg/L in June 13, 1986, TC proposal was based on the same study and LOAEL as the new RfD. However, the new RfD was calculated using a larger overall uncertainty factor (1000 vs. 500) to account for the uncertainties of concern, i.e., 10 for the uncertainty in the interspecies conversion, 10 for the uncertainty in the range of human sensitivity, and 10 for the uncertainty in the use of a less-than-chronic study. Although a LOAEL, instead of a NOAEL, was used in deriving the RfD, an extra uncertainty factor was not considered necessary because of the minimally severe effects at the low dose. Thus, the revised chronic toxicity reference level for phenol, 1 mg/L, is calculated using the new RfD of 0.04 mg/kg/day and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, two comments were received that recommended that EPA use the National Cancer Institute (1980) oral subchronic and chronic studies as the basis of the RfD for phenol. Specifically, the commenters criticized the Agency's selection of the Dow study for two reasons: (1) the study is unpublished and has not been peer reviewed, and (2) the gavage route of administration employed is not relevant for drinking-water use. Both commenters asserted that the National Cancer Institute (NCI) studies are more relevant for the RfD determination since the animals were administered phenol in drinking water.

Agency Response: The Agency maintains that the Dow study is the appropriate basis for the phenol RfD. Specifically, EPA disagrees with the commenters' argument that a gavage study is not relevant for the development of an oral RfD; the gavage route of administration is a well-established and widely-used means of determining the toxicity of ingested substances. However, the RfD Workgroup did consider all known relevant studies before verifying the RfD, including the NCI studies. In the 90-day NCI subchronic test, no effects in the liver, kidneys, or any other organs were observed in mice (1,700 mg/kg/day) and in rats (780 mg/kg/day) that received various doses of phenol in drinking water. Mice and rats were also exposed to phenol in drinking water for 103 weeks, and the animals were observed for a subsequent 2 weeks. Mice and rats treated with 313 and 153 mg/kg/day phenol, respectively, showed decreased weight gain and reduced water intake. In addition, male and female rats at the 344 mg/kg/day dose had significantly increased incidences of chronic kidney inflamation. The LOAEL identified in the chronic NCI test is 344 mg/kg. It is a science policy of the Agency to identify the critical endpoint used in noncancer dose-response assessments as the one associated with the highest NOAEL which lies below the lowest LOAEL, or the lowest LOAEL. Therefore, the RfD Workgroup chose to use the gavage study of Dow since it produced the lower LOAEL (35.7 mg/kg) [1].

EPA acknowledges the commenters' criticism that the Dow study is unpublished, and thus not readily available. The Agency is attempting to remedy this problem by placing the study report, along with the IRIS chemical file for phenol, in the RCRA docket. As for the commenters' assertion that the study has not been peer reviewed, the Agency believes that the study has undergone a thorough internal review by the RfD Workgroup. However, EPA welcomes any further public comment concerning the study report.

Pyridine

Chronic Toxicity Reference Level: EPA is modifying the chronic toxicity reference level for pyridine from 0.075 to 0.04 mg/L because the RfD has been revised. The original RfD of 0.002 mg/kg/day was verified on July 8, 1985, based on a subchronic inhalation study in rats that was reported in the 1983 Encyclopedia of Occupational Safety and Health [2.]. Confidence in the study was low because of a lack of details about the study and the identification of a free-standing LOAEL (2.15 mg/kg/day) only. Because of concern regarding reported neurotoxic symptoms associated with short-term, low-level occupational exposure to pyridine [Encyclopedia of Occupational Safety and Health, 1983], as well as clinical signs of CNS-related toxicity reported in a 1979 National Toxicology Program (NTP) subchronic oral gavage study in rats and mice, the Office of Solid Waste sponsored a subchronic oral neurotoxicity study in rats [Arthur D. Little, Inc., 1986].

In this study, Sprague-Dawley rats, 10 animals/sex/dose, were gavaged daily with 0, 0.25, 1, 10, 25, and 50 mg/kg/day pyridine for 90 days. Data generated from this test included body and organ weights, food consumption, hematological and clinical chemistry parameters, ophthalmological evaluations, and histopathological examinations of target organs. Results of this test indicated a signifiant dose-related increase in the female liver-to-body weight ratios in the 10, 25, and 50 mg/kg/day dose groups. The males of the 1 mg/kg/day dose group showed a significant decrease in the relative liver weights. However, the males in other dose groups did not show any significant differences; thus, this effect in males exposed to 1 mg/kg/day pyridine is probably an artifact.

In order to examine the neurotoxicity of pyridine, 10 rats/group were perfused at the time of sacrifice; histopathological examinations of brain, liver and target organs were conducted. The histopathological examinations did not reveal any morphological alterations in the brains of exposed and unexposed animals. However, histopathological evaluations of target organs showed a 70-percent incidence of non-neoplastic hepatic lesions in males of the high-dose group (50 mg/kg/day) compared with 10-percent incidence in the vehicle control group. The 0.25 and 1.0 mg/kg/day dose male rats also showed a 10-percent incidence of these lesions; however, no such lesions were observed in the 10 or 25 mg/kg/day dose groups. In the females, the frequency of incidence of these lesions was 30 percent in the 50 mg/kg/day group and 10 percent in the vehicle control group. Based on the data presented above, the 1 mg/kg/day was identified as a NOAEL, and 10 mg/kg/day as a LOAEL for hepatic hypertrophy in female rats.

Thus, the RfD Workgroup verified a new RfD of 0.001 mg/kg/day for pyridine on August 13, 1987 [2], using the NOAEL of 1 mg/kg/day and an overall uncertainty factor of 1000, i.e., 10 to account for the uncertainty in extrapolating from animal data to human exposure, 10 to account for the uncertainty in extrapolating from a subchronic NOAEL to a chronic NOAEL, and 10 for the variation in sensitivity among members of the human population. The chronic toxicity reference level for pyridine, 0.04 mg/L, is calculated using the new verified RfD of 0.001 mg/kg/day and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986 TC proposal, one comment was received that criticized the Agency's derivation of an RfD from the LOAEL of a study reported in a secondary source (Encyclopedia of Safety and Health, 1983). The commenter urged EPA to use the NOAEL reported for the NTP (1979) subchronic toxicity study.

Agency Response: The Agency acknowledges that the original RfD was based on a study in which confidence was low, and that the NTP subchronic toxicity test was a better study (although it was available only as a draft at that time). However, as mentioned above, the Agency felt that the possible CNS-related toxicity of pyridine warranted further testing. EPA's subchronic neurotoxicity study produced a NOAEL of 1 mg/kg/day, while the NTP subchronic study resulted in a NOAEL of 25 mg/kg/day, well above the LOAEL of 10 mg/kg/day identified in EPA's neurotoxicity study. Thus, in accordance with Agency science policy, utilization of the higher 25 mg/kg/day NOAEL would not have been sufficiently protective since adverse effects were demonstrated at a lower exposure level. The Agency's neurotoxicity study and the IRIS chemical file for pyridine are available

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for review in the RCRA Docket; copies of the study are also available from the National Technical Information Service, or NTIS (Nos. PB88–176130 and PB88–176144).

2,3,4,6–Tetrachlorophenol

Chronic Toxicity Reference Level: EPA is modifying the chronic toxicity reference level for 2,3,4,6-tetrachlorophenol from 0.4 to 1 mg/L because the RfD has been revised. In particular, on July 6, 1985, the Agency's RfD Workgroup verified an RfD of 0.01 mg/kg/day based on a no-observed-effect-level (NOEL) of 10 mg/kg/day identified in a 55-day oral gavage study (Hattula et al., 1981) in rats [3]. However, an inadequate study design (few animals per group) and impurities associated with the commercial grade 2,3,4,6-tetrachlorophenol used in this study raised some concerns about the validity of the data base for use in deriving an RfD. These concerns prompted the Office of Solid Waste to sponsor a 90-day oral gavage study (American Biogenics Corp., 1986) and an oral gavage teratology study (Research Triangle Institute, 1986) in rats. Both the studies used purified 2,3,4,6-tetrachlorophenol (98–percent pure) suspended in olive oil.

In the oral subchronic study, Sprague-Dawley rats, 10 animals/sex/dose, were gavaged daily with 0, 25, 100, or 200 mg/kg/day 2,3,4,6-tetrachlorophenol. Body weight gain, food consumption, clinical signs of toxicity, and mortality were recorded throughout the study. Clinical pathology was performed on 10 rats/sex/dose both at the 44-45-day interval (interim sacrifice) and after 90 days; gross pathology was performed on all animals killed at interim or final sacrifice and on all animals found dead or sacrificed moribund. Histopathological evaluations were also conducted in animals sacrificed at 90 days as well as in cases of unscheduled death. Results of this study indicated that 200 mg/kg/day dose male rats showed progressive depression of body weights 3 weeks after the onset of dosing; these body weight depressions were significantly different from controls during week 4 and weeks 8 through 12. No such difference was observed in females. Liver and kidney weights and relative liver and kidney weights (ratio to body and brain weight) were significantly higher than controls, both in males and females at the time of sacrifice. Centrilobular hypertrophy was observed histopathologically in 15 males and 6 females at this dose (200 mg/kg), compared with none seen in the controls. Other significant biochemical or clinical pathological changes were also reported in male and female rats treated with the high dose.

Rats administered 100 mg/kg/day 2,3,4,6-tetrachlorophenol were found to have statistically significant elevations in liver weights (absolute and relative) in both males and females. In females, both absolute and relative kidney weights were also elevated. Centrilobular hypertrophy in livers was seen (with lower incidence than in the 200 mg/kg dose group) in 12 males and 1 female. The only statistically significant finding in the 25 mg/kg/day group was acidic urine in males at 45 days and in females at 90 days. Though not statistically significant, urine pH was lower than that of control males at 90 days. Since most of the ingested compound has been shown to be excreted unchanged (Hattula et al., 1981), the decrease in urinary pH may possibly be related to the presence of the compound. Based on the results discussed above, the 25 mg/kg/day dose represents the NOAEL and the 100 mg/kg/day the LOAEL for 2,3,4,6-tetrachlorophenol in this oral subchronic study.

In the oral teratology study, pregnant rats were administered daily by gavage doses of 0, 25, 100, or 200 mg/kg/day 2,3,4,6-tetrachlorophenol on days 6 through 15 of gestation. Body weight gain, food consumption, and clinical signs of toxicity were recorded during the gestation period. Rats were sacrificed on gestation day 20. Gross pathology, liver and gravid uterine weight, and status or uterine contents were recorded. Fetuses were removed, weighed, and examined for malformations.

Results of this study indicated that the only statistically significant adverse effect in the high-dose group (200 mg/kg/day) is reduced maternal weight gain (corrected to exclude weight of uterine contents) as contrasted with controls. No significant maternal effects were noted at the 25 or 100 mg/kg/day dose group. Embryo-fetal growth and prenatal viability were not adversely affected by 2,3,4,6-tetrachlorophenol exposure, nor was there any definitive evidence of an effect of the compound on fetal morphological development.

Based on the data presented above, the RfD Workgroup identified 25 mg/kg/day as the subchronic NOAEL, and applying an overall uncertainty factor of 1000 to this NOAEL, established a new verified RfD of 0.03 mg/kg/day on August 13, 1987 [3]. The uncertainty factor of 1000 accounts for the uncertainty in the use of a less-than-chronic NOAEL (10) the uncertainty in the interspecies conversion (10), and the uncertainty in the range of human sensitivity (10). Thus, the revised chronic toxicity reference level for 2,3,4,6-tetrachlorophenol, 1 mg/L, is calculated using the RfD of 0.03 mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, three comments were received that pointed out that EPA has proposed a regulatory level for 2,3,4,6-tetrachlorophenol, despite stating that the existing data were insufficient for establishing an RfD [51 FR 21665]. The commenters disagreed with the Agency's decision to set a regulatory level for 2,3,4,6-tetrachlorophenol using preliminary testing data, and they questioned the basis of the chronic toxicity reference level.

Agency Response: In the June 13, 1986, TC proposal, EPA apparently was not sufficiently clear in explaining what kind of preliminary data it used to establish the RfD for 2,3,4,6-tetrachlorophenol. At that time, the Agency already had a verified RfD based on the Hattula et al. study. However, the Agency felt it would be prudent to consider the RfD "interim" until the results of the above-mentioned subchronic toxicity and terstology studies were known. These studies and the IRIS chemical file for 2,3,4,6-tetrachlorophenol are available for review in the RCRA Docket; copies of the terstology study are also available from NTIS (Nos. PB88–176151 and PB88–176169).

Isobutanol

Chronic Toxicity Reference Level: The chronic toxicity reference level for isobutanol is *not* being changed from the value (10 mg/L) presented in the June 13, 1986, TC proposal. However, EPA is taking this opportunity to make available for review and comment the results of a subchronic study which served as the basis for the RfD that the Agency's RfD Workgroup verified on May 14, 1986 [4], shortly before the TC proposal was published. In order to evaluate the toxicity of isobutanol, the Office of Solid Waste sponsored a 90-day study in Sprague-Dawley rats (Toxicity Research Laboratories, 1986). Thirty animals/sex/dose were administered daily doses of 0, 100, 316, or 1,000 mg/kg/day isobutanol by gavage. No effect on body weight or clinical and histopathological parameters was observed at doses less than or equal to 316 mg/kg/day. Treatment at the high dose (1,000 mg/kg/day) resulted in a minor decrease in

body weight gain during week 2 and decreased serum potassium levels and hypoactivity. Hypoactivity was the most frequently observed clinical sign. It occurred in every rat in the 1,000 mg/kg/day dose group during week 1; hypoactivity was markedly decreased by week 4 and occurred only sporadically thereafter. Ataxia was also seen at low incidence in the 1,000 mg/kg/day dose group throughout the study. The NOEL was identified as 316 mg/kg/day, and an overall uncertainty factor of 1,000 was applied to it to derive an RfD of 0.3 mg/kg/day. The uncertainty factor accounts for the uncertainties in the interspecies conversion (10), the range of human sensitivity (10), and the use of a less-than-chronic NOEL (10). Thus, the chronic toxicity reference level for isobutanol, 10 mg/L, is calculated using the verified RfD of 0.3 mg/kg/day and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, three comments were received that pointed out that EPA was proposing a regulatory level for isobutanol, despite stating that the existing data were insufficient for establishing an RfD [51 FR 21665]. The commenters disagreed with the Agency's decision to set a regulatory level for isobutanol using preliminary testing data, and they questioned the basis of the chronic toxicity reference level.

Agency Response: In the June 13, 1986, TC proposal, EPA inadvertently identified isobutanol as one of the constituents for which preliminary toxicity data had been used in deriving "interim" RfD's, i.e., values to be used until the appropriate testing was completed [51 FR 21665]. The Agency's subchronic test for isobutanol was actually completed in late 1985, and, as mentioned above, the study results were reviewed by the RfD Workgroup in May 1986. The study and the IRIS chemical file for isobutanol are available for review in the RCRA Docket; copies of the study are also available from NTIS (No. PB88–176177).

Meta-, Ortho-, and Para-Cresol

Chronic Toxicity Reference Levels: The chronic toxicity reference levels for meta-cresol, ortho-cresol, and para-cresol are *not* being changed from those values presented in the June 13, 1986, TC proposal (2 mg/L for each isomer). Although new toxicological data are now available from which "new" RfD's have been derived, these new RfD's are the *same* numerical value as the original RfD. The RfD Workgroup previously verified on July 6, 1985, an RfD of 0.05 mg/kg/day for mixed cresols based on a TLV–TWA of 10 mg/m³ [5]. This TLV was based on a report of a Russian study (Uzhdavine et al., 1972) in which rats and guinea pigs were exposed to o-cresol. However, the report lacks experimental details, such as the size of the experimental groups. Thus, the Office of Solid Waste sponsored 90-day subchronic studies and 90-day neurotoxicity studies for each isomer.

In the oral subchronic studies (Microbiological Associates, 1986), Sprague-Dawley rats, 30 animals/sex/dose were administered by gavage the following doses for 90 days: o-cresol at 0, 50, 175, or 600 mg/kg/day; m-cresol at 0, 50, 150, or 450 mg/kg/day; p-cresol at 0, 50, 175, or 600 mg/kg/day. In the neurotoxicity studies (Toxicity Research Laboratories, 1987), Sprague-Dawley rats, 10 animals/sex/dose, were administered by gavage the following doses for 90 days: o-cresol at 0, 50, 175, 450, or 600 mg/kg/day; m-cresol at 0, 50, 150, or 450 mg/kg/day; and p-cresol at 0, 50, 175, or 600 mg/kg/day. In the subchronic studies, the following parameters were evaluated: body and organ weights, food consumption, mortality, clinical signs of toxicity, and clinical pathology. At sacrifice, animals were necropsied and tissues and organs were subjected to histopathological evaluation.

In the neurotoxicity studies, in addition to the above-mentioned parameters, such signs of neurotoxicity as salivation, urination, tremors, piloerection, diarrhea, pupil size, pupil response, lacrimation, hypothermia, vocalization, exophthalmia, palpebral closure, convulsions (type and severity), respiration (rate and type), impaired gait, positional passivity, locomotor activity, stereotypy, startle response, righting reflex, performance on a wire maneuver, forelimb strength, positive geotrophism, extensor thrust, limb rotation, tail pinch reflex, toe pinch reflex, and hind limb splay were also evaluated. In the neurotoxicity studies, the lowest dose of each cresol isomer, 50 mg/kg/day, appeared to have caused some clinical signs of CNS-stimulation post-dosing; these incidences appeared predominantly during the first week of dosing and were sporadic in nature throughout the course of the studies. Higher doses of cresol isomers (greater than 450 mg/kg/day) produced significant neurological events, such as increased salivation, urination, tremors, lacrimation, palpebral closure, and rapid respiration. Similarly, high-dose animals also showed abnormal patterns in the neurobehavioral tests. In general, most of the clinical signs of toxicity were dose-related, although these signs diminished after reaching a peak.

In the subchronic study with m-cresol, there was a 20–25 percent reduction in body weight gain in males and 10–15 percent in females at 450 mg/kg/day; food intake was reduced by 10–15 percent in males. Also, at this dose there was a significant increase in the incidence of salivation, myotonus, and tremors. At the 150 mg/kg/day dose, weight gain was reduced by 10–15 percent in males, though no reduction was seen in females. At the 50 mg/kg/day level, there were no significant adverse effects. The NOAEL identified for m-cresol from these studies was 50 mg/kg/day.

At 600 mg/kg/day, in the subchronic study with o-cresol, there was a 47 percent mortality (9/30 males, 19/30 females), 30 percent reduction in body weight at week 1 and 10 percent at final sacrifice. Food consumption was also significantly reduced during weeks 1 through 6 and 9. The kidney-to-body weight ratio was 13 percent higher than that of the control value at the end of the study. In addition to the above effects, CNS effects such as lethargy, ataxia, coma, dyspnea, tremors, and convulsions were seen post-gavage within 15–30 minutes of dosing; recovery occurred within 1 hour post-gavage. At 450 mg/kg/day, mortality was 10 percent (1/10 males, 1/10 females). In the 175 mg/kg/day group, two animals each exhibited tremors on day 1 of the study during the hour following gavage administration, and one of these animals became comatose during that time. At 50 mg/kg/day, no significant adverse effects were observed. The NOAEL identified was 50 mg/kg/day for o-cresol based on these studies.

At 600 mg/kg/day in the subchronic study of p-cresol, there was a significant reduction in weight gain (15 percent for females, 25 percent for males), significantly reduced food consumption at weeks 1 through 7 and 9 in males, and a significantly increased incidence of CNS signs, such as lethargy, excessive salivation, tremors, and diarrhea. Also, the liver-to-body weight and kidney-to-body weight ratios were significantly increased. There was a greater prevalence of tracheal epithelial metaplasia in this group of animals compared with the animals in the control, low-dose, or mid-dose groups. At the mid-dose group (175 mg/kg/day), the reduction in weight gain was 5–10 percent in males between weeks 1 and 3, the liver-to-body weight ratio was elevated (though not statistically significantly), and the kidney-to-body weight ratio was elevated significantly

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for males. At the 50 mg/kg/day level, although there was a slight reduction in weight gain and a small increase in kidney-to-body weight ratio, these effects were not statistically significant. The NOAEL identified from these studies was 50 mg/kg/day for p-cresol.

Thus, the RfD Workgroup verified on August 13, 1987, new RfD's of 0.05 mg/kg/day for m-cresol, o-cresol, and p-cresol, using a NOAEL of 50 mg/kg/day and an overall uncertainty factor of 1,000 (i.e., 10 to account for the variation in sensitivity among members of the human population, 10 to account for the uncertainty in extrapolating from animal data to human exposure, and 10 to account for the uncertainty in extrapolating from a subchronic NOAEL to a chronic NOAEL) [5]. Since the original verified RfD for mixed cresols and the new verified RfD's for the individual isomers are the same value, the chronic toxicity reference levels also remain unchanged. These chronic toxicity reference levels of 2 mg/L are calculated using the new verified RfD's of 0.05 mg/kg/day and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, three comments were received that pointed out that EPA was proposing regulatory levels for the cresol isomers, despite admitting that the existing data were insufficient for establishing RfD's [51 FR 21985]. The commenters disagreed with the Agency's decision to set regulatory levels for these constituents using preliminary testing data, and they questioned the basis of the chronic toxicity reference levels.

Agency Response. In the June 13, 1986, TC proposal, EPA apparently was not sufficiently clear in its explanation [51 FR 21985] of what kind of preliminary data it used to establish the RfD's for m-cresol, o-cresol, and p-cresol. At that time, the Agency already had a verified RfD of 0.05 mg/kg/day for mixed cresols. EPA also had the preliminary results of the above-mentioned subchronic toxicity studies; the "in-life" portions of these studies terminated (e.g., the final sacrifices occurred) in December 1985 and January 1986. The data from these studies supported the choice of the RfD of 0.05 mg/kg/day as well. However, the Agency felt it would be prudent to consider the RfD's "interim", in case the results of the ongoing neurotoxicity studies indicated otherwise. The subchronic and neurotoxicity studies and the IRIS chemical files for the cresol isomers are available for review in the RCRA Docket.

Acrylonitrile

Chronic Toxicity Reference Level: EPA is revising the chronic toxicity reference level for acrylonitrile from 0.002 to 0.0007 mg/L because the original level was derived from inhalation slope factor rather than an oral slope factor. The inhalation slope factor, 0.24 $(mg/kg/day)^{-1}$, was based on an epidemiological study (O'Berg, 1980) of textile workers exposed to acrylonitrile [8]. However, on March 17, 1987, the Agency's Carcinogen Risk Assessment Verification Endeavor (CRAVE) Workgroup verified an oral slope factor of 0.54 $(mg/kg/day)^{-1}$ for acrylonitrile [7]. This quantitative potency estimate was calculated using the results of three chronic drinking-water studies in either Sprague-Dawley or Fischer 344 rats (Biodynamics, 1980; Biodynamics 1980; Quast, 1980). In each study, an increased incidence of brain and spinal cord astrocytomas, Zymbal gland carcinomas, and stomach papillomas and carcinomas was observed in the rats. (A brief summary of the dose-response data reported for these three studies is presented in the IRIS chemical file for acrylonitrile; a copy of the IRIS file is located in the RCRA Docket for review.) The CRAVE Workgroup classified acrylonitrile as a probable human (Group B1) carcinogen based on the observation of a statistically significant increase in incidence of lung cancers in exposed workers and the observation of tumors, generally astrocytomas in the brain, in studies of two rat strains exposed by various routes, e.g., drinking water, gavage, and inhalation [7].

Thus, using a 10^{-5} risk level as proposed for group B carcinogens in the June 13, 1986, TC notice [51 FR 21666], an RSD of 1.9×10^{-5} mg/kg/day is derived from the new oral slope factor of 0.54 $(mg/kg/day)^{-1}$. The revised chronic toxicity reference level for acrylonitrile, 0.0007 mg/L, is subsequently calculated using the RSD of 1.9×10^{-5} mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Chlordane

Chronic Toxicity Reference Level: EPA is revising the chronic toxicity reference level for chlordane from 0.002 to 0.0003 mg/L because the underlying slope factor has been revised, as well as the weight of evidence classification. The original slope factor, 1.61 $(mg/kg/day)^{-1}$, was based on a long-term feeding study (International Research and Development Corporation, 1973) in which a significant dose-related increase in hepatocellular carcinomas was seen in both male and female CD-1 mice [8]. Chlordane was also classified as a Group C carcinogen, so the chronic toxicity reference level proposed in the June 13, 1986, TC notice was based on a 10^{-6} risk level [51 FR 21666]. On April 1, 1987, the Agency's CRAVE Workgroup verified a new oral slope factor of 1.3 $(mg/kg/day)^{-1}$ for chlordane [9]. This quantitative potency estimate was calculated using the results from the above-mentioned IRDC study, and an NCI (1977) study in which male and female B6C3F1 mice were fed chlordane for 80 weeks. A significant increase in hepatocellular carcinomas in both sexes was also observed in this study. (A brief summary of the dose-response data reported for these two studies is presented in the IRIS chemical file for chlordane; a copy of the IRIS file is located in the RCRA Docket for review.) The CRAVE Workgroup classified chlordane as a probable human (Group B2) carcinogen based on sufficient evidence of liver tumor induction in four strains of mice of both sexes and in F344 male rats, and inadequate evidence in humans [9].

Thus, using a 10^{-5} risk level as proposed for Group B carcinogens in the June 13, 1986, TC notice [51 FR 21666], an RSD of 7.8×10^{-6} mg/kg/day is derived from the new oral slope factor of 1.3 $(mg/kg/day)^{-1}$. The revised chronic toxicity reference level for chlordane, 0.0003 mg/L, is subsequently calculated using the RSD of 7.8×10^{-6} mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Chloroform

Chronic Toxicity Reference Level: EPA is modifying the chronic toxicity reference level for chloroform from 0.005 to 0.06 mg/L because the underlying slope factor has been revised. The original oral slope factor, 7×10^{-3} $(mg/kg/day)^{-1}$, was based on two chronic oral studies (NCI, 1976; Roe et al., 1979) in which statistically significant increases of hepatocellular carcinomas in male and female B6C3F1 mice, renal epithelial tumors in male Osborne-Mendel rats, and renal tumors in male ICI mice were observed [10]. On August 28, 1987, the Agency's CRAVE Workgroup verified a new oral slope factor of 6.1×10^{-3} $(mg/kg/day)^{-1}$ for chloroform [11]. This quantitative potency estimate was calculated using the results of 2-year oral study (Jorgenson et al., 1985) in which chloroform was administered in drinking water to male Osborne-Mendel rats and female B6C3F1 mice. A significant increase in renal tumors in male rats

was observed; the liver tumor incidence in female mice was not significantly increased. (A brief summary of the dose-response data reported for this study is presented in the IRIS chemical file for chloroform; a copy of the IRIS file is located in the RCRA Docket for review.) The CRAVE Workgroup classified chloroform as a probable human (Group B2) carcinogen based on increased incidence of several tumor types in rats and mice, and inadequate data in humans [11].

Thus, using a 10^{-5} risk level as proposed for Group B carcinogens in the June 1986 TC notice [51 FR 21666], an RSD of 1.6×10^{-3} mg/kg/day is derived from the verified oral slope factor of 6.1×10^{-3} $(mg/kg/day)^{-1}$. The revised chronic toxicity reference level for chloroform, 0.06 mg/L, is subsequently calculated using the RSD of 1.6×10^{-3} mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, one comment was received that criticized EPA for using the NCI study as the basis for deriving the original RSD [e.g., its slope factor). The commenter asserted that (1) the gavage route of administration produces a bolus dose of material, which may alter absorption and metabolism of a given test substance; (2) the use of vegetable oil as the gavage vehicle may also alter absorption and metabolism; and (3) vegetable oil acts independently as a tumor promotor. The commenter urged EPA to use the Jorgenson et al. drinking-water study, pointing out that it is not subject to the scientific deficiencies of the corn oil gavage data.

Agency Response: The Agency agrees with the commenter that the Jorgenson et al. study is the more appropriate choice for use in deriving the oral slope factor for chloroform and is thus revising the proposed chronic toxicity reference level based on that study.

Heptachlor

Chronic Toxicity Reference Level: EPA is modifying the chronic toxicity reference level for heptachlor from 0.0001 to 0.00008 mg/L because the underlying slope factor was revised. The original slope factor, 3.37 $(mg/kg/day)^{-1}$, was based on a chronic feeding study (NCI, 1977) in which a statistically significant increase of hepatocellular carcinomas was observed for both male and female B6C3F1 mice [8]. On April 1, 1987, the Agency's CRAVE Workgroup verified a new oral slope factor of 4.5 $(mg/kg/day)^{-1}$ for heptachlor [12]. This quantitative potency estimate was calculated using the results of the above-mentioned NCI study, and a 2-year feeding study (Davis, 1965) using male and female C3H mice. In the Davis study, a two-fold increase in benign liver lesions over the controls was reported. After a histological reevaluation, Reuber (1977) diagnosed a statistically significant increase in liver carcinomas in the treated male and female groups by comparison to controls. (A brief summary of the dose-response data reported for these two studies is presented in the IRIS chemical file for heptachlor; a copy of the IRIS file is located in the RCRA Docket for review.) The CRAVE Workgroup classified heptachlor as a probable human (Group B2) carcinogen based on inadequate evidence in humans, and sufficient evidence of liver carcinoma induction in two strains of mice of both genders [12].

Thus, using a 10^{-5} risk level as proposed for Group B carcinogens in the June 13, 1986, TC notice [51 FR 21666], an RSD of 2.2×10^{-6} mg/kg/day is derived from the new slope factor of 4.5 $(mg/kg/day)^{-1}$. The revised chronic toxicity reference level for heptachlor, 0.00008 mg/L, is subsequently calculated using the RSD of 2.2×10^{-6} mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Methylene Chloride

Chronic Toxicity Reference Level: EPA is revising the chronic toxicity reference level for methylene chloride from 0.6 to 0.05 mg/L because the underlying slope factor has been revised. The original slope factor, 6.3×10^{-4} $(mg/kg/day)^{-1}$ by the oral route, was based on a chronic inhalation study (Dow Chemical Co., 1980) in which a statistically significant increase in salivary gland sarcomas was observed in male rats [13]. On December 4, 1986, the Agency's CRAVE Workgroup verified an oral slope factor of 7.5×10^{-3} $(mg/kg/day)^{-1}$ for methylene chloride [14]. This quantitative potency estimate was calculated using the results of two chronic studies in F344 rats and B6C3F1 mice. In a 2-year NTP (1986) inhalation study, treated mice of both sexes had increased incidences of hepatocellular adenomas and carcinomas, as well as highly significant increases in alveolar/bronchiolar adenomas and carcinomas. In a 2-year drinking-water study (National Coffee Association, 1983), treated male mice had elevated incidences of hepatocellular carcinomas or adenomas in comparison to controls; however, this increase was not statistically significant. The CRAVE Workgroup, taking into account methylene chloride's rapid absorption following either inhalation or ingestion, decided that the use of inhalation data for calculation of the new oral slope factor is justified if the lung tumor data are excluded [14]. (A brief summary of the dose-response data reported for these two studies is presented in the IRIS chemical file for methylene chloride; a copy of the IRIS file is located in the RCRA Docket for review.) The CRAVE Workgroup classified methylene chloride as a probable human (Group B2) carcinogen based on increased cancer incidence in rats and mice and inadequate data in humans [14].

Thus, using a 10^{-5} risk level as proposed for Group B carcinogens in the June 13, 1986, TC notice [51 FR 21666], an RSD of 1.3×10^{-3} mg/kg/day is derived from the new verified oral slope factor of 7.5×10^{-3} $(mg/kg/day)^{-1}$. The revised chronic toxicity reference level for methylene chloride, 0.05 mg/L, is subsequently calculated using the RSD of 1.3×10^{-3} mg/kg/day, and body weight and consumption values of 70 kg and 2 L water per day, respectively.

Comment Summary: In response to the June 13, 1986, TC proposal, three comments were received that suggested that methylene chloride should be classified as a Group C (possible human) carcinogen and not a Group B (probable human) carcinogen. Two of these commenters specifically stated that the experimental evidence is inadequate for the Agency to make the determination that methylene chloride is, in fact, a probable human carcinogen. Two of the commenters also stated that the evidence from animal testing indicates that methylene chloride, like other chlorinated solvents, may be a promoter but not a carcinogen.

They suggested that methylene chloride would be more appropriately characterized as a Group C carcinogen until EPA develops a separate risk assessment procedure for promoters.

Agency Response: EPA disagrees with the commenters on the weight of evidence for methylene chloride's carcinogenicity and on the appropriate characterization of chlorinated solvents as promoters. The CRAVE Workgroup has classified methylene chloride as a Group B2 carcinogen on the basis of the above-mentioned NTP inhalation study. EPA does not believe the experimental evidence is sufficiently persuasive to demonstrate either that chlorinated solvents are promoters or that methylene chloride, in particular, is a promoter. Even if it were established that methylene chloride is a promoter, there is no established risk assessment procedure for utilizing this information.

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Until EPA develops a separate risk assessment procedure for promoters, it will continue to assess promoters and initiators in a like manner.

Comments on this notice must be received by the EPA on or before July 5, 1988, to ensure consideration. It should be noted that the Agency is reopening the comment period for only those issues/revisions discussed in this notice.

Date: April 15, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

III. References

1. *U.S. EPA. 1985.* Integrated Risk Information System (IRIS). Reference Dose (RfD) for Oral Exposure for Phenol. Online. (Revised; Verification Date 10/28/86). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

2. *U.S. EPA. 1985.* Integrated Risk Information System (IRIS). Reference Dose (RfD) for Oral Exposure for Pyridine. Online. (Revised; Verification Date 08/13/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

3. *U.S. EPA. 1985.* Integrated Risk Information System (IRIS). Reference Dose (RfD) for Oral Exposure for 2,3,4,6-Tetrachlorophenol. Online: Input Pending. (Revised; Verification Date 08/13/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

4. *U.S. EPA. 1986.* Integrated Risk Information System (IRIS). Reference Dose (RfD) for Oral Exposure for Isobutanol. Online. (Verification Date 05/14/86). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

5. *U.S. EPA. 1985.* Integrated Risk Information System (IRIS). Reference Dose (RfD) for Oral Exposure for Meta-, Ortho-, and Para-Cresol. Online: Input Pending. (Revised; Verification Date 08/13/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

6. *U.S. EPA. 1983.* Health Assessment Document for Acrylonitrile. Final Report. Office of Health and Environmental Assessment, Washington, DC (EPA-600/8-82-007F).

7. *U.S. EPA. 1987.* Integrated Risk Information System (IRIS). Risk Estimate for Carcinogenicity for Acrylonitrile. Online. (Verification Date 03/17/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

8. *U.S. EPA. 1985.* Drinking Water Criteria Document for Heptachlor, Heptachlor Epoxide, and Chlordane. Environmental Criteria and Assessment Office, Cincinnati, OH. (ECAO-CIN-406).

9. *U.S. EPA. 1987.* Integrated Risk Information System (IRIS). Risk Estimate for Carcinogenicity of Chlordane. Online. (Verification Date 04/01/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

10. *U.S. EPA. 1985.* Health Assessment Document for Chloroform. Final Report. Office of Health and Environmental Assessment, Washington, DC (EPA/600/8-84/004F).

11. *U.S. EPA. 1987.* Integrated Risk Information System (IRIS). Risk Estimate for Carcinogenicity of Chloroform. Online: Input Pending. (Verification Date 08/28/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

12. *U.S. EPA. 1987.* Integrated Risk Information System (IRIS). Risk Estimate for Carcinogenicity for Heptachlor. Online. (Verification Date 04/01/87). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

13. *U.S. EPA. 1985.* Health Assessment Document for Dichloromethane (Methylene Chloride). Final Report. Office of Health and Environmental Assessment, Washington, DC (EPA/600/8-82/004F).

14. *U.S. EPA. 1986.* Integrated Risk Information System (IRIS). Risk Estimate for Carcinogenicity for Methylene Chloride. Online. (Verification Date 12/04/86). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

[FR Doc. 88-8959 Filed 5-18-88; 8:45 am]

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federal register

Thursday
May 19, 1988

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf Operations; Gulf of Mexico; Lease sale; Call for Information and Nominations; Notice

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4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf Lease Sale 123
Western Gulf Lease Sale 125
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 123 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1990, and OCS Lease Sale 125 in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1990.

Information and nominations on leasing, exploration, and development and production within the CGOM and WGOM Planning Areas are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas.

The CGOM Planning Area is bounded on the east by approximately 88° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, then east to approximately 92° W. longitude, then south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the

Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments at this time consists of approximately 9,093 blocks on 47,742,847 acres and is outlined on the attached map.

The WGOM Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the CGOM Planning Area. The area extends south to the provisional maritime boundary with Mexico. The entire area is offshore Texas. The area available for nominations and comments at this time consists of approximately 6,514 blocks on 35,903,896 acres and is outlined on the attached map.

A standard large-scale Call for Information Map showing boundaries on a block-by-block basis is available without charge from:

Minerals Management Service
Public Information Unit
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394
Telephone: (504) 736-2519

Areas Deferred from this Call

High Island Area, East Addition, South Extension, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Instructions on Call

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1990 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1990 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area all of which has been identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in proposed OCS Lease Sales 123 and 125.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of

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public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]. We encourage respondents to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest.

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing and Adjudication Section at (504) 736-2765. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential-use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore

operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and a State CMP.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area") or by telephone at (504) 736-1896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region (see address under "Description of Area"). Copies of the Gulf of Mexico OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act, as amended.

The following is a list of tentative milestone dates preceding these sales:

	CGOM Sale 123	WGOM Sale 125
Comments due on the Call	June 1988	June 1988
Notice Of Intent Comments Due (Scoping)	June 1988	June 1988
Area Identification	August 1988	August 1988

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Draft EIS published	March 1989	March 1989
Public Hearings held on Draft EIS	April 1989	April 1989
Final EIS published	August 1989	August 1989
Proposed Notice of Sale announced	September 1989	February 1990
Governor's comments due on Proposed Notice	November 1989	April 1990
Final Notice of Sale published	January 1990	June 1990
Sale Date	March 1990	August 1990

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 123 in the CGOM, and Sale 125 in the WGOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments

should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed 1990 Lease Sales in the Gulf of Mexico." Comments are due no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Carolita Kallaur

Acting Director, Minerals Management Service

Approved:

Carolita Kallaur

Assistant Secretary - Land and Minerals Management

J. Steven Griles

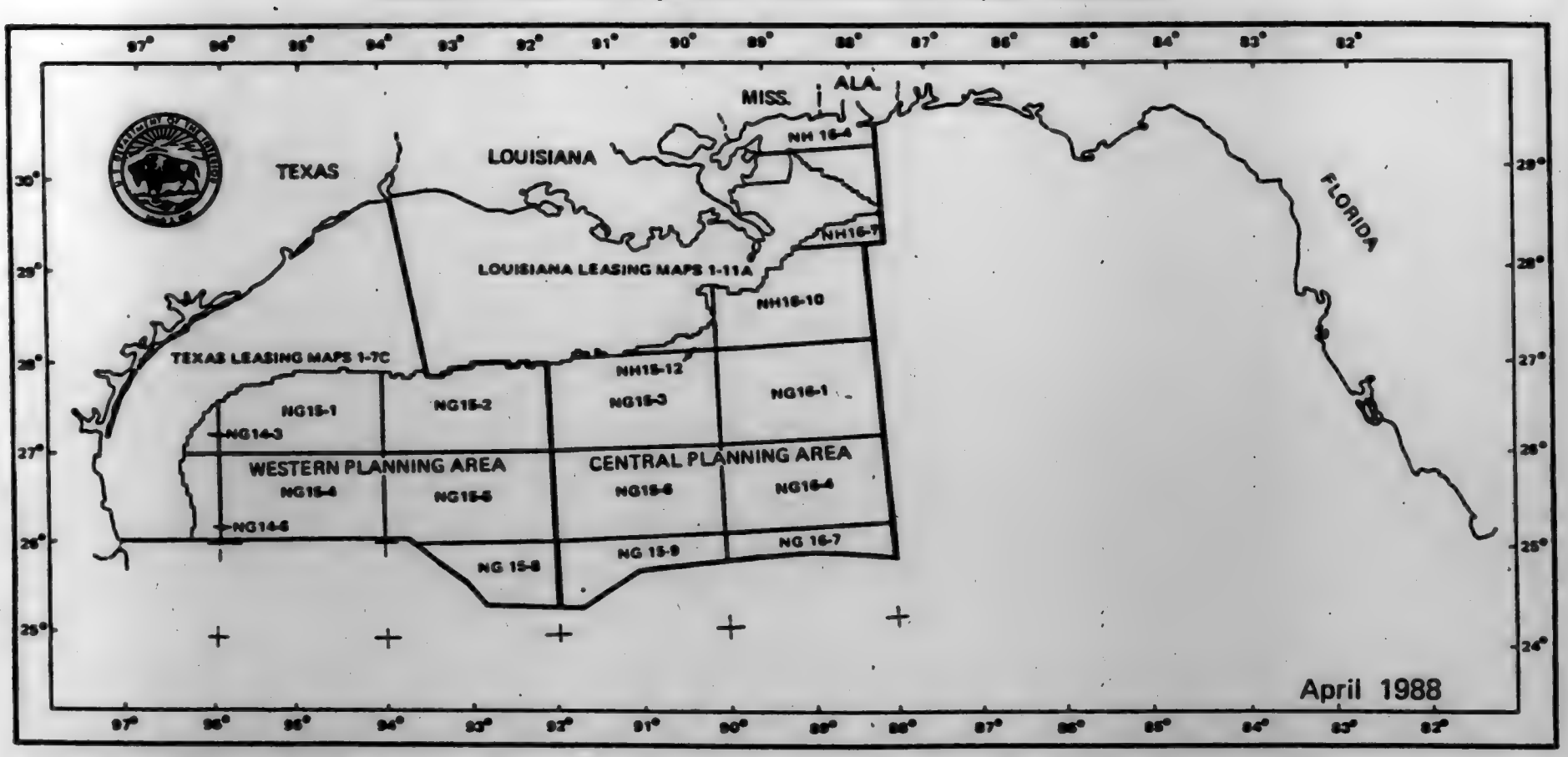
MAY 13 1988

Date

1990 Proposed Lease Sales

Call for Information and Nominations

Notice of Intent to Prepare an Environmental Impact Statement



[FR Doc. 88-11284 Filed 5-18-88; 8:45 am]

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federal register

Thursday
May 19, 1988

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 390, etc.

Federal Motor Carrier Safety Regulations; General; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393, 394, 395, 396, and 397

[FHWA Docket No. MC-114]

Federal Motor Carrier Safety Regulations; General

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising Part 390, General, of the Federal Motor Carrier Safety Regulations (FMCSRs). The revision: (1) incorporates definitions from the Motor Carrier Safety Act of 1984; (2) consolidates the definitions of many general items currently located in other sections of the FMCSR's; (3) clarifies and updates certain regulations; (4) eliminates redundancy; (5) eliminates or modifies certain regulatory exemptions; and (6) institutes a new rule that requires certain motor carriers to mark their self-propelled commercial motor vehicles in a specific manner. The revisions have been made in response to section 206 of the Motor Carrier Safety Act of 1984 and to comments received to a notice of proposed rulemaking (NPRM) published in the **Federal Register** on July 13, 1987 (52 FR 26278). Also, conforming amendments to Parts 391–397 are being made.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act), 49 U.S.C. app. 2501–2520 (Supp III 1985), was signed into law by the President on October 30, 1984.

On January 23, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (50 FR 2998) seeking public comment concerning possible revisions to the FMCSRs. Approximately 25 comments were received concerning changes to Part 390 of the FMCSRs. An NPRM was published in the **Federal Register** (52 FR 26278) on July 13, 1987. Twenty-seven commenters submitted comments in response to this NPRM. Comments were received from: 17 associations representing motor carriers, shippers, truck leasing companies, intermodal interests, and traffic safety interests; 2 motor carriers; 1 leasing company; 2 labor unions; and 5 governmental entities. Most of the comments addressed the following issues:

(1) Application of the regulations to school bus operations;

(2) Lightweight vehicle operations, including those involving 15-passenger vans;

(3) The rescission of exempt intracity operations;

(4) A "grandfather clause" for those drivers who currently operate wholly within an intracity zone;

(5) The exemption of the highway transportation operations of governmental entities; and

(6) The marking of self-propelled commercial motor vehicles, by certain motor carriers, in a specific manner.

Background

Section 206 of the Act directs the Secretary of Transportation (Secretary) to issue regulations pertaining to commercial motor vehicle safety. Due to the complexity of reissuing the FMCSRs, a separate rulemaking action was established for each part that is being addressed. The goals of the Act are to promote the safe operation of commercial motor vehicles, minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and assure increased compliance with the rules issued pursuant to the Act. The FHWA's motor carrier safety program goals are to reduce commercial motor vehicle accidents and thereby decrease fatalities, injuries, and property losses.

Section 206 of the Act specifically authorizes the Secretary to waive application of the regulations to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. It is not the intention of the FHWA to enter into a large scale program of exemptions. Safety on the public highways is an area that should not and must not be compromised. The FHWA has historically exempted some segments of transportation, however, and plans to continue such exemptions unless evidence supports a change in policy.

School bus operations, lightweight vehicles, exempt intracity operations, transportation performed by governmental entities, and the marking of motor vehicles are discussed in separate sections of this preamble. Other miscellaneous issues which the FHWA believes are minor are discussed in the section captioned "Other Issues." The FHWA's disposition of the comments received on each issue in response to the NPRM is included.

School Bus Operations

Section 206(f) of the Act expressly directs the Secretary to waive application of the regulations issued under section 206 with respect to school buses, unless the Secretary determines that making such regulations applicable to school buses is necessary for public safety taking into account all Federal and State laws applicable to school buses. The Act refers to school buses as defined in section 102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(14)).

The vast majority of school bus operations may be categorized by one or more of the following types of operations:

1. The motor carrier is an agency of the Federal, State, or local Government;

2. The motor carrier is a private carrier of passengers; or

3. The operations are not in interstate commerce.

Under the current rules, none of these operations are subject to the FMCSRs. However, some school bus operations are currently subject to the FMCSRs (e.g., a non government, for-hire motor carrier of passengers transporting school children from one State to another).

The FHWA proposed in the NPRM to exempt school bus operations involving interstate operations when the school bus is used to transport only school children and/or school personnel from home to school and from school to home. Any for-hire transportation of school children and/or school personnel to other geographical points in interstate commerce would be covered by the proposed regulations. School bus operations conducted wholly in intrastate commerce are not subject to the safety jurisdiction of the FHWA.

Three commenters addressed the proposed school bus exemption. Two commenters supported the exemption as proposed. A third commenter, the National School Transportation Association (NSTA), contended that the exemption does not go far enough. "Unless the definition [of school bus operation] is revised to incorporate all bona fide school transportation operations, the FHWA's proposed exemption will have little appreciable practical effect and most privately-owned buses will remain subject to the FMCSR," stated the NSTA. It proposed that the definition of "school bus operation" be amended to include

"events or activities that are an ordinary and integral part of the school program sponsored and supervised by school authorities and considered an official school function."

The American Bus Association (ABA), on the other hand, contended that a school bus being used to take a group of students, parents, and teachers to a distant place across State boundaries should be regulated as would any other interstate bus operation. The ABA believes that school children should be fully protected on such long interstate trips regardless of who is operating the bus.

We recognize that school bus operations are distinguished from other types of commercial motor vehicle operations because of their highly restricted type of service. For the most part, the operation of school buses entails the transportation of school children and/or school personnel from home to school and from school to home. This type of transportation, most generally, involves the regularly scheduled operation of school buses into and through residential, rural, and business areas, which collectively encompass a relatively small geographic area within the confines of a single State. The routes are, in most instances, predetermined and of a "stop and go" nature during specific morning and afternoon hours. The other users of the highways have generally come to expect and accept the "stop and go" operations of school buses during those specific hours of operation.

The operation of school buses to transport children, school personnel, and/or parents, in other than school-home trips, utilizes the same highways, many of which are high speed arteries, as do all other commercial motor vehicles. The speeds that are maintained are considerably greater than those attained in "stop and go" pickup operations. The actual time spent driving is generally greater as is the possibility of fatigue.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), 49 U.S.C. app. 2701 *et seq.*, requires all drivers who operate a vehicle designed to transport more than 15 passengers, including the driver, to obtain a commercial driver's license (CDL). In order to obtain a CDL, a driver must pass a knowledge test and driving skills test for the type of vehicle the individual intends to operate. The CMVSA also required that commercial motor vehicle operators have a single driver's license, one record of their driving violations, and that there be uniform disqualification penalties for drivers who commit certain serious criminal or traffic violations while operating a commercial motor vehicle. The CMVSA has established minimum qualification requirements for most school bus drivers, even those operating intrastate.

Currently, 48 States have some type of periodic, mandatory school bus inspection program. Twenty States, including the District of Columbia, also have special driver qualification requirements for school bus operators. Some local jurisdictions and/or school systems impose additional requirements on those who transport school children. Most States have programs to review the qualifications of school bus operators and school bus vehicles involved in home to school and school to home movements. The FHWA believes that the States have established and enforce comparable requirements for movements of school children and school personnel from home to school and from school to home. The FHWA believes that the transportation of school children and school personnel from home to school and back again involves problems which are common to the States, and which, in accordance with the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987), can best be left to the individual States to effectively deal with them.

No data was submitted to the docket that indicates what detailed State reviews are applied to other interstate movements of school buses. For example, no data was submitted to the docket that indicated what the various States require concerning driver qualification, hours-of-service, or inspection, repair, and maintenance for after school movements. Absent this data, we must make sure that such drivers and vehicles meet the FHWA's minimal requirements if they are to operate in interstate commerce. Commercial motor vehicle operators engaged in the transportation of passengers in interstate commerce must comply with the applicable provisions of Parts 383, 390, 391, 392, 393, 394, 395, and 396 of the FMCSRs. The FHWA believes that to require less of a motor carrier of passengers transporting school children in interstate commerce, other than from home to school and from school to home, would be inappropriate. Allowing any motor carrier of passengers to meet less stringent requirements than those minimal requirements of the FMCSRs must be considered as compromising the safety of those passengers and that of the general public.

The FHWA believes that Federal regulation of the interstate movement of school buses by for-hire motor carriers, other than those involving the transportation of school children and/or school personnel from home to school and from school to home, is necessary to enhance public safety. Therefore, in view of the foregoing, the FMCSRs will apply to the interstate operation of school buses, by for-hire motor carriers, when those buses are being operated for purposes other than to transport school children and/or school personnel from home to school and from school to home.

Interstate school bus operations which involve events sanctioned by school officials (e.g., transporting school teams or clubs) will be subject to the FMCSRs if the operation involves a for-hire motor carrier. School buses owned or operated by the school, regardless of the type of operation involved, will not be subject to the FMCSRs, since this transportation involves either private transportation of passengers or transportation by a governmental entity (see discussion below).

Lightweight Vehicle Exemption

Section 204 of the Act, defines a "commercial motor vehicle" as one having a gross vehicle weight rating (GVWR) of 10,001 pounds or more; designed to transport more than 15 passengers, including the driver; or transporting hazardous materials in quantities requiring the vehicle to be placarded. The Senate Committee on Commerce, Science and Transportation, in a report which accompanied the Motor Carrier Safety Act of 1984, stated: "The 10,000-pound limit, which is in the current BMCS [FHWA] regulations, is proposed to focus enforcement efforts and because small vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial vehicles, and can best be regulated under State automobile licensing, inspection, and traffic surveillance procedures." S. Rep. No. 424, 98th Cong., 2d Sess. 6–7 (1984).

The FHWA proposed to exempt from the FMCSRs those vehicles not meeting the definition of a "commercial motor vehicle" in the 1984 Act. Five commenters addressed the proposed lightweight vehicle exemption. One commenter, the American Truck Dealers division of the National Automobile Dealers Association, generally supported the exemption as proposed. Four commenters opposed the exemption.

The Metropolitan Police Department, City of St. Louis, Missouri, believes that the definition of "commercial motor vehicle" should include any vehicle used for commercial purposes or in the furtherance of a business. It cites an

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instance where a lightweight vehicle carrying seven cylinders of acetylene need not be placarded and, therefore, is not subject to the FMCSRs, while a vehicle weighing more than 10,000 pounds, carrying the same seven cylinders of acetylene, is subject to the FMCSRs. They see no reduced safety hazard by transporting the hazardous materials in a lightweight vehicle. The Metropolitan Police Department also agrees with the United Parcel Service comment that "OMCS should not give any motor vehicle any exemptions that would permit unsafe vehicles or unqualified drivers to operate on the public highways."

Vehicles laden with hazardous materials in a quantity requiring placarding do present an additional safety risk by the nature of the cargo being transported. The transportation of hazardous materials has been of great concern to the Department for many years. The DOT has placed special emphasis on regulating and enforcing safety rules when hazardous materials are being transported. The FHWA has reviewed its position and believes there is no need to regulate lightweight cargo carrying vehicles laden with nonhazardous property or small quantities of hazardous materials which do not require the vehicle to be placarded. In view of the foregoing, motor vehicles, transporting nonhazardous property or quantities of hazardous materials which do not require placarding, having a GVWR or gross combination weight rating of 10,000 pounds or less will not be subject to Federal safety regulation.

The American Bus Association (ABA) opposes removing 15-passenger vans from the purview of Federal safety regulations. It contends "there is nothing in the statutory language or the legislative history to suggest that this was a Congressional direction to FHWA to remove 15-passenger vans from regulation. There is a reference to 'small vans and pickup trucks' being more analogous to 'automobiles than to ', but this legislative language clearly refers to the motor vehicles of property affected by the 10,000-pound limit. We seriously question whether Congress or any other authority would define a 15-passenger van as a 'small van.' "

The GVWR of the Dodge and Ford 15-passenger vans are approximately 8,510 pounds and 9,100 pounds, respectively. The GVWR of the 12-passenger vans manufactured by the Chevrolet Division of the General Motors Corporation (GMC), the Dodge Division of the Chrysler Corporation, the Ford Motor Company, or GMC Truck and Coach Division of the General Motors Corporation range from 6,500 pounds to 8,500 pounds.

The FHWA has historically regulated all commercial motor vehicles engaged in interstate commerce, although specific lightweight vehicle exemptions have been allowed. Most vehicles having a GVWR of 10,000 pounds or less have operating characteristics similar to a large automobile and generally pose no greater safety risk than other vehicles of similar or lesser weight when used on the highway. Thus, the FHWA has long focused its activities on larger vehicles.

In enacting the Motor Carrier Safety Act of 1984, the Congress defined "commercial motor vehicle" to more clearly focus the Federal resources devoted to motor carrier safety on medium and heavy weight motor vehicles. It specifically addressed the transportation of passengers and hazardous materials, and chose to limit application of the authority granted to the agency to issue safety regulations. Accordingly, the Act authorizes the issuance of safety regulations applicable to vehicles designed to transport more than 15 passengers, including the driver.

Similarly, when the Congress recently enacted the Commercial Motor Vehicle Safety Act of 1986, to require implementation of a single, classified commercial driver's license program, it defined the commercial motor vehicles to which the program would apply to include motor vehicles designed to transport more than 15 passengers, including the driver. This too, then, reveals the Congressional policy of applying available Federal motor carrier safety resources to larger vehicles.

The FHWA believes that the Congress has clearly indicated its policy in this area. Although the FHWA retains its authority to regulate lighter weight vehicles in the interest of safety (49 U.S.C. 3102), the FHWA does not believe that such Federal regulation is warranted at this time. Existing accident data do not reveal that passenger vans used to transport 15 or fewer passengers in interstate commerce require the application of the FMCSRs to enhance the safety of their operation. Nor do these data or other considerations reflect a need for Federal enforcement of safety rules which are applicable to these operations. The FHWA believes that the safety regulation of these vehicles and their drivers can best be left to the States and local governments.

For the reasons set forth above, the FHWA has decided to limit the application of the FMCSRs to "commercial motor vehicles" as defined in section 204 of the Act and as proposed in the NPRM. Thus, the FMCSRs, will not apply to motor vehicles which have gross vehicle weight ratings of 10,000 pounds or less, unless they are designed to transport more than 15 passengers, including the driver, or are used to transport hazardous materials in quantities requiring placarding.

Exempt Intracity Operation

A commercial zone is an area surrounding a city or municipality. The commercial zones were originally defined by the Interstate Commerce Commission (ICC) for the purpose of exempting from economic regulations those motor carriers operating wholly within a single city or municipality. An intracity exempt zone is defined by the FHWA as those commercial zones established by the ICC as of October 1, 1975. The size and number of intracity exempt zones has not been increased by the FHWA since October 1975, even though the ICC has expanded the commercial zones. The interstate operations in these intracity exempt zones are exempt from most of the requirements contained in the FMCSRs. Carriers in these zones must only comply with the accident reporting and driver's hours-of-service requirements of the FMCSRs. The commercial zone exemption has been in place since 1938. The original reason given by the ICC for this exemption was that intracity operations were adequately regulated by city and State ordinances. Also, at that time intracity travel was primarily at slower speeds. However, the ICC also recognized in 1938 that there was a need to regulate the driver's hours-of-service and to collect accident data for these operations. Generally, drivers and vehicles used to transport hazardous materials in quantities which require a placard are not exempt. The FHWA proposed to rescind this exemption and to provide for a 2-year "grandfathering" period for affected drivers. A total of 21 commenters addressed this issue. Nine commenters supported the rescission as proposed. Seven commenters conditionally supported the rescission. Five commenters opposed the proposed rescission.

Comments Favoring Rescission

Claims were made by a number of the commenters that the zones have been used as a "dumping ground" for vehicles that no longer meet the standards set forth in the FMCSRs and drivers that are not qualified to operate outside the exempt zone. Those supporting the rescission generally felt that such action was long overdue and that there was no justification for continuing the exemption. The seven commenters that conditionally favored the rescission strongly expressed their opposition to conditioning the exemption upon compatible State regulation. These commenters asserted that the proposal to condition the rescission on current State requirements would be confusing and would prove to be unworkable and ineffective. They further argued that this proposal would exacerbate the lack of uniformity in applicable motor carrier safety regulations, increase administrative costs, and make enforcement more difficult.

Comments Opposing the Rescission

The National Solid Waste Management Association (NSWMA) believes that some vehicles may not be able to be retrofitted to comply with certain requirements of the FMCSRs, especially the rear end protection requirements of § 393.86. The NSWMA recommends that the FHWA maintain the exemption for certain types of carriers, such as trash haulers and service vehicles, which by the nature of their operations are found in municipal areas operating at slow speeds.

The National Association of Wholesaler-Distributors (NAW) believes Congress had no intention in the 1984 Act of intruding into the area of intrastate commerce or vehicles operated in an exempt intracity zone. Further, it states "current State regulations are wholly sufficient to assure these vehicles are not only safe, but are operated in a safe manner." The NAW urges the FHWA to withhold action on this rulemaking until the DOT has completed and forwarded to Congress the section 218 study and attendant recommendations required under the 1984 Act.

The Rio Grande Valley Trucking Coalition (RGV) favors retention of the existing exemption, but is willing to accept the FHWA proposal provided that Mexican carriers operating within the Rio Grande Valley commercial zone may readily operate under general roadworthiness standards or under the Texas vehicle inspection law. The RGV further states that the exempt intracity zones that its members operate in are sparsely populated for the most part and that transportation is performed on many secondary roads that are used by low volume traffic.

The Local Cartage Association, Inc., of Greater St. Louis states its opposition to the elimination of the partial exemption for commercial zone operations. It concludes that the Department should withhold action and initiate a study to develop new or modified rules which would be tailored for commercial zone operations.

Discussion

The NSWMA expressed concern about approximately 15,000 vehicles that would have to be retrofitted to meet the requirements of § 393.86, Rear end protection, if the intracity zone exemption is rescinded. The FHWA believes that many motor vehicles are constructed and maintained so that the body, chassis, or other parts of the vehicle afford the rear end protection contemplated and thus may already be in compliance with the rear end protection requirement. Generally, the FHWA believes that every commercial motor vehicle should meet all applicable safety requirements. However, should motor carriers, operating a particular class of motor vehicle, be required to expend substantial sums to bring those vehicles into compliance and the motor carriers believe the costs involved exceed the benefits to be derived, those motor carriers may petition the agency for relief.

Previously, it was stated that the RGV favors retention of the existing exemption, but is willing to accept the FHWA's proposal of rescission provided that Mexican carriers operating within the RGV commercial zone may readily operate under general roadworthiness standards or under the Texas vehicle inspection law. The Texas Department of Public Safety recently adopted the FMCSRs. In its adoption, the agency did not adopt the intracity zone exemption. Therefore, effective January 1, 1988, all commercial motor vehicles operated in, into, or through the State of Texas must comply with its regulations. A similar response must be made to the concerns of the Local Cartage Association, Inc., of Greater St. Louis. The Metropolitan Police Department of the City of St. Louis has adopted and is actively enforcing the FMCSRs within that municipality.

Federalism Assessment

In the NPRM, the FHWA proposed to rescind the current intracity zone exemption for those zones where a State has not adopted and enforced State laws and regulations which are compatible with the FMCSRs. Many of the commenters who supported rescission of this exemption opposed the conditioning of the rescission on current State requirements.

The FHWA has carefully reviewed its proposal in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Motor Carrier Safety Act of 1984, the Congress found that it is in the public interest to enhance commercial motor vehicle safety and that, "improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations * * *." 49 U.S.C. app. 2502. While identifying commercial motor vehicle safety as a matter of national importance, the Congress also found that, "interested State governments can provide valuable assistance to the Federal Government in assuring that commercial motor vehicle operations are conducted safely and healthfully." *Id.* In his Executive Order on Federalism, the President has ordered Executive Departments and agencies to be guided by certain fundamental federalism principals in formulating and implementing policies that have federalism implications. The FHWA recognizes that its proposed rescission of the intracity zone exemption has federalism implications.

The Act provides the Secretary with clear statutory authority to regulate commercial motor vehicle safety as defined in the Act. This means the operation of commercial motor vehicles in interstate commerce, including that portion of the interstate movement which occurs in the intracity zone. It should also be noted that the Secretary also has the authority to regulate motor carrier safety in interstate commerce under what was formerly Part II of the Interstate Commerce Act, now codified in part at 49 U.S.C. Chapters 5 and 31 (1982 & Supp. III 1985). Neither of these statutory authorities limits the Secretary's authority to regulate interstate commerce in "intracity zones."

The exemption for intracity zone operations was originally adopted by the Interstate Commerce Commission (ICC) in 1938. In proposing to rescind the exemption, the FHWA recognized that interstate transportation in these zones has dramatically changed in character over the past 50 years. The risk to public safety now posed by the operation of commercial motor vehicles in these zones is no less than the risk presented by the operation of these same vehicles outside the zones. Rescission of the intracity zone exemption means that motor carriers, drivers, and their vehicles engaged in interstate commerce would be required to comply with the FMCSRs, even if they never leave the zone. Many of the commenters on this proposal believe that rescission of the

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exemption is warranted and, in fact, long overdue.

Information available to the FHWA indicates that 13 States currently regulate commercial motor vehicle safety in the zones which are located in those States. Through the Motor Carrier Safety Assistance Program (MCSAP), the FHWA is providing Federal funds to States to adopt and enforce State motor carrier safety regulations which are compatible with Federal regulations. However, many States have also adopted the intracity zone exemption. Thus, interstate transportation in many of these areas has been subject to neither Federal nor State safety regulation.

Under the FHWA's proposed contingent rescission of the exemption, interstate operations in the zones would be subject to either Federal or State regulations. This means that if a State has compatible regulations and is enforcing those regulations in those zones, there would be no Federal intrusion in this area.

The safety regulations adopted by the FHWA under either section 206 of the Act or 49 U.S.C. 3102 are minimum standards. States may continue to adopt and enforce regulations applicable to interstate motor vehicle operations which occur within the State. As now is the case outside the zones, interstate motor vehicle operations would be required to comply with the Federal requirements and State requirements which are not inconsistent with the Federal regulations.

The Congress addressed the issue of non-uniformity in motor carrier safety regulations applicable to interstate motor carrier operations as a result of this dual Federal/State jurisdiction in sections 207–209 of the Act. These provisions established a Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to review all State laws and regulations applicable to interstate commercial motor vehicle safety. Relying on recommendations from the Safety Panel, the Act directs the Secretary, through notice and comment rulemaking, to preempt less stringent State safety regulations and more stringent ones as well if they produce no safety benefit; regulations incompatible with the Federal regulations; or regulations which impose an undue burden on interstate commerce. *See* 49 U.S.C. app. 2508–2508. This review is underway and is being conducted in close consultation with each of the States. Meanwhile, dual Federal/State coverage of these operations will enable the Federal Government and the States to cooperate in assuring that commercial motor vehicle operations are conducted safely as intended by Congress. The MCSAP fosters this cooperation while promoting increased compatibility between the Federal and State safety regulations.

Accordingly, the FHWA has concluded that, in order to achieve the purposes of the Act while adhering to the principles of Executive Order 12612, the FHWA will condition its rescission of the intracity zone exemption, as proposed, upon State regulatory action. This action imposes no additional costs or burdens on the States, nor will it affect the States' ability to discharge traditional State governmental functions or other aspects of State sovereignty.

Exempt Intercity Operation Drivers

In the July 13, 1987 NPRM, the FHWA proposed that those drivers operating wholly within the exempt intercity zone would be required to be medically qualified every 2 years to operate a commercial vehicle in accordance with Part 391, Subpart E, of the FMCSRs. The FHWA also proposed, however, that drivers, who would otherwise qualify to operate except for failing to meet the age or at least one of four medical requirements, would be excepted (grandfathered) for 2 years in meeting those requirements. The grandfather provision was intended to allow drivers and their employers affected by the new age and medical standards an opportunity to adjust to these new requirements. The exceptions relate to minimum age (§ 391.11(b)(1)); diabetes mellitus currently requiring insulin for control (§ 391.41(b)(3)); the clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle (§ 391.41(b)(8)); and vision and hearing standards (§ 391.41(b)(10) and (11)). The FHWA intended that drivers found not qualified under § 391.41(b)(1) or (2) (loss or impairment of extremities) would be afforded the opportunity to obtain waivers pursuant to § 391.49, Waiver of certain physical defects.

In order for a driver to take advantage of the grandfather exceptions, the FHWA proposed that the driver must (1) have been a regularly employed driver (as defined in § 390.5) for a particular motor carrier as of a certain date; (2) continue to be a regularly employed driver for a motor carrier; (3) be used wholly within what had been the exempt intracity zone (as defined in § 390.5); and (4) not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding. These conditions were proposed in order to restrict the operations of these drivers, and, thus, not increase the risk to the public of these drivers operating in interstate commerce.

The commenters who supported rescission of the intracity operation exemption also generally supported a provision which would grandfather current drivers who would otherwise not be qualified to operate commercial motor vehicles in interstate commerce. The International Brotherhood of Teamster (IBT) opposed a 2-year limitation of this grandfather right. It stated that the limitation is grossly unfair and unreasonable. It believes the grandfather clause should be permanent. The IBT recommends all medical provisions be grandfathered for an indefinite period of time as did the State of Michigan. The American Trucking Associations (ATA) believes the 2-year limitation is needlessly stringent. It contends that a driver's continued service should be based on the driver's safe performance as evidenced by 12 months free of conviction for a safety-related moving violation prior to the effective date of the rule, and maintenance of a good record thereafter. Most commenters agreed that the proviso that a driver "continue to be regularly employed by a single motor carrier" is unduly rigid and should be deleted or modified to embrace operations of "other motor carriers."

Discussion

The FHWA believes that all interstate and foreign commerce drivers should meet the qualification requirements contained in Part 391. The FHWA proposed the 2-year grandfather exception for drivers currently driving in intercity exempt zones subject to the FMCSRs in order to minimize the short-term effect on such drivers and their employers. As previously mentioned, the commenters to the docket supported a grandfather provision of greater duration than the 2-year period.

The safety implications of allowing drivers who are not medically qualified under the applicable provisions of the FMCSRs for an indefinite period must also be considered. In order to mitigate the potential adverse effects of permitting drivers who do not meet the minimum Federal physical qualification requirements to continue to drive, the FHWA is including in this final rule a 2-year grandfather provision, as proposed in the NPRM, which commences on the effective date of this rule. Intracity drivers meeting the requirements set forth in this rule will be permitted to operate until the drive is disqualified under the provisions of § 391.15, operates a commercial motor vehicle

beyond the exempt intracity zone, or until 2 years from the effective date of this rule, whichever comes first. At such time, the provisions of § 390.3(g) will no longer be effective and all those drivers will have to meet the requirements of § 391.11(b)(1) and § 391.41(b)(3), (8), (10), and (11) in addition to the other applicable requirements of the FMCSRs. As discussed below, the grandfather provision will be "conditional" in order to limit the risk associated with those drivers.

In proposing the grandfather provision, the FHWA intended that a driver with insulin controlled diabetes or with an established medical history or a current clinical diagnosis of epilepsy or any other condition likely to cause loss of consciousness be allowed to drive under the limited exceptions. However, in reassessing this position, the FHWA recognizes that a person's medical condition in these areas can deteriorate for a number of underlying reasons to the point where the driver presents an increased and unacceptable risk to the public if allowed to continue operating a commercial vehicle. The FHWA does not believe that a person should then be allowed to drive. In order to control such a situation, the FHWA has required in the final rule that a qualified physician must first make a determination of the driver's capability to operate a commercial motor vehicle. The determination must be based on the facts available to the physician and the physican's medical expertise. The FHWA has revised § 390.3(g) to indicate that a driver, who does not meet the requirements of § 391.41(b)(3) or (8), may continue to drive only in the intracity zone if a qualified physician makes an individual determination that the driver's condition is not likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely.

When proposing the limited vision exception (§ 391.41(b)(10)), the FHWA intended to allow drivers with impaired vision or monocular drivers to continue driving in the intracity zone. As with the insulin-using diabetics, it was not the FHWA's intent to waive this requirement totally if a person's condition deteriorated. Since vision deteriorates with age or because of injury or disease, the FHWA believes it prudent to require a periodic reassessment of a driver's ability to operate under this grandfather provision. This reassessment should preclude the imposition of a safety risk on the general public greater than that which exists today. Therefore, in the new § 390.3(g)(2)(iii), the FHWA has included the current vision standards (distinct visual acuity, field of vision, and color recognition), but has indicated that only one eye has to meet these requirements. Under the final rule, a driver who does not meet the vision requirements in § 391.41(b)(10) may continue to drive in the exempt intracity zone, if a qualified physician or optometrist certifies that the driver meets the vision requirements prescribed in § 390.3(g)(2)(iii).

The limited hearing exception presented a similar concern. The FHWA did not intend to allow persons with no hearing capability to drive. Hearing loss can occur at any time and be caused by a variety of things. The FHWA believes it to be in the best interests of safety to require a periodic examination and reassessment of this medical condition. Therefore, in the final rule, a driver who does not meet the hearing requirements in § 391.41(b)(11) may continue to drive in the exempt intracity zone, if a qualified physician makes an individual determination that the driver's hearing loss is not likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely.

There is currently a total prohibition against the use of drugs (§ 391.41(b)(12)) and drivers cannot consume any type of intoxicating beverage while driving (§ 392.5) or have a current clinical diagnosis of alcoholism (§ 391.41(b)(13)). The FHWA has not and will not entertain any relaxation of those prohibitions for drivers in the intracity zone.

Therefore, in an effort to minimize the potential safety risk to which the general public would be exposed and to allow as many drivers as possible to continue driving, the FHWA is permitting temporary relief to those exempt intracity zone drivers having a clinical diagnosis of diabetes mellitus treated with insulin, epilepsy, or an inability to meet the visual or auditory requirements of 49 CFR 391.41. The FHWA will require these drivers to meet all the current medical standards applicable to all interstate or foreign drivers, but will allow the examining physician to make an individual determination regarding the driver's condition. That is, the standard will permit the certification of a driver, for at most a 2-year period, if the examining physician determines that the condition is not likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely. The physician's determination must be based on accepted medical practices and the type of motor vehicle operation a driver experiences in an intracity zone operation. In each of the four cases, a specialist trained in the treatment of the specific medical condition must recommend a decision based on the medical history, medical records, diagnostic tests, and a job task description (including operational parameters).

As indicated, the grandfather provision can be for no more than a 2-year period beginning on the effective date of the final rule. The FHWA also believes that the grandfather exception should not apply to persons operating outside the intracity zone or to operating commercial vehicles carrying hazardous materials in quantities sufficient to require a placard. In an accident, vehicles laden with hazardous materials in placardable quantities present an increased risk to public safety. The commenters to the docket did not object to the conditions proposed, except for the proposal that drivers must continue driving for the motor carrier they worked for on January 1, 1988. In response to the arguments raised by the commenters, the FHWA has included in this final rule the conditions proposed in the NPRM. The second condition set forth below has been revised to allow drivers to change employers. Those drivers currently operating a commercial motor vehicle wholly within an intracity zone must:

1. Be a regularly employed driver for a motor carrier as of May 19, 1988.
2. Continue to be regularly employed by a motor carrier.
3. Meet all physical requirements other than those relating to age, insulin controlled diabetes, epilepsy, visual acuity, and hearing.
4. Operate a commercial motor vehicle wholly within a currently exempt intracity zone.
5. Operate no commercial motor vehicle containing placardable amounts of hazardous materials.

The FHWA has also added an additional condition that the driver not be disqualified under § 391.15. This condition is included to prevent persons who are disqualified because of a conviction of a serious offense, such as driving under the influence of alcohol, from claiming they have a right to operate in the exempt intracity zone. In addition, the FHWA has included a provision which would invalidate the grandfather exception for any driver who violated the requirement that they drive solely within the zone. That condition would help enforce the FHWA's policy to not increase the risk to public safety associated with the grandfather exception.

Motor carriers who utilize the services of these drivers will be required to obtain the physical examination certificate required by § 391.43(d). The following statement must appear on the medical examiner's certificate: "medically unqualified unless driving within an exempt intracity zone." Any driver who operates a commercial motor vehicle outside the exempt intracity or operates a hazardous materials laden commercial motor vehicle requiring placarding will no longer be able to take advantage of the relief that is afforded by this rulemaking. Motor carriers who allow unqualified drivers to operate commercial motor vehicles in intracity zones will be in violation of the rules and will be subject to possible prosecution.

The American Diabetes Association (ADA) petition to allow waivers on a case-by-case basis for insulin-using diabetics and similar reviews addressing individual medical determinations should be completed within the next 2½ years (before the grandfather provision ends). The results of those reviews could potentially provide additional relief for drivers who cannot now be qualified under the existing physical qualification requirements.

Small Business Impact

The U.S. Small Business Administration (SBA) in its comments contends that the elimination of the exempt intracity zone exemption would subject tens of thousands of small businesses to Federal driver qualification, driving, parts and accessories, and inspection, repair and maintenance requirements. The SBA encourages the FHWA to reconsider the necessity of subjecting drivers of smaller single body vehicles to the driver requirements of Part 391. The SBA states that "The difference between a tractor trailer and a single body truck is significant with regard to the expertise needed to drive them. A single body truck handles more like an automobile than a tractor trailer and does not require the same special expertise as driving a tractor with a separate trailer.

"The commercial zone exemption has, for over 50 years, exempted vehicles traveling within a limited area, such as local pick up and delivery vehicles, from Federal regulations. . . . The proposal would arbitrarily apply all federal safety regulations to all vehicles operating within a commercial zone without examining the need for the application of each type of regulation to each type of vehicle.

"The Federal Motor Carrier Safety Regulations were written primarily for long-haul over-the-road trucks—large, heavy tractor trailers which travel several hundred miles a day." The SBA continues by stating that "The proposed rule could eliminate many part-time and temporary drivers under the age of 21 and would unreasonably burden small companies by requiring the maintenance of driver records." Therefore, the SBA asks the FHWA to consider (1) exempting smaller vehicles within commercial zones from driver qualification requirements and (2) requiring vehicle inspections within commercial zones every 1,000 miles rather than daily. It believes that the certification contained in the NPRM that the proposed rule will not have a significant impact on a substantial number of small entities is inaccurate. For the above reasons, it urges the FHWA to conduct an initial regulatory flexibility analysis (IRFA) which assesses the effect of alternatives to the proposed rule and to republish the NPRM along with the IRFA.

From September 9, 1982, to May 18, 1984, the FHWA was involved in a rulemaking action that addressed motor vehicles having a GVWR of between 10,001 and 15,000 pounds. (See BMCS Docket No. MC–103) During that rulemaking action, the FHWA contracted with the University of Michigan's Transportation Research Institute (UMTRI) to investigate the contention of the petitioner, American Bakers Association, that vehicles having a GVWR of 10,001 to 15,000 pounds have handling and operational characteristics similar to vehicles having a GVWR of 10,000 pounds or less. (See Gillespie, T.D.; Ervin, R.D., "Comparative Study of Vehicle Roll Stability, FH–11–9577, University of Michigan Transportation Research Institute, Ann Arbor, Michigan.) The UMTRI's findings showed that the rollover threshold of the utility vans (15,000 pounds GVWR) is actually closer to that of some combination vehicles (tractor-trailers) than it is to passenger cars. More importantly, the research showed that the vehicles in these weight classes have handling characteristics more like larger vehicles than passenger cars.

Federal safety standards for vehicles and drivers operating in interstate commerce have been in effect since 1936. The commercial zone exemption has been in effect since 1938. Motor carriers using drivers and vehicles wholly within a commercial zone were partially exempt from the FMCSRs. Those motor carriers have always been subject to the accident reporting requirements of Part 394 and the hours-of-service requirements of Part 395.

The FMCSRs, from their inception, applied to all motor vehicles with a GVWR of more than 10,000 pounds and the drivers of those vehicles when operated in interstate commerce. Rescission of the intracity zone exemption would not apply all Federal safety regulations to *all* vehicles operating within those zones. All vehicles having a GVWR of 10,000 pounds or less and the drivers operating those vehicles would not be subject to the FMCSRs, unless the vehicle was transporting hazardous materials in a quantity that requires placarding.

Vehicles and drivers which operate in interstate commerce but solely within an ICC commercial zone may already be subject to the FMCSRs and, therefore, are not affected by the rescission of the exemption. This is because the geographic bounds of the intracity zone have not changed since 1975, whereas, the ICC's "commercial zones" have generally increased in size. Drivers and motor carriers should not be confused with the ICC commercial zone, which concerns economic regulation, and the intracity zone which concerns motor carrier safety. Additionally, those drivers under the age of 21 that are currently operating commercial motor vehicles in the intracity zone will be able to continue if they can meet the criteria set forth in this final rule.

It is evident that those opposing rescission of the exemption are concerned about being required to comply with the provisions of Part 391 of the FMCSRs. In particular, concern has been expressed about the procedures and records that go into the creation and maintenance of a "Driver's Qualification File." The hiring and certification process is one of the most important, if not the most important, steps in ensuring safety of operation. In most instances, drivers, not motor vehicles, cause accidents. Statistics developed over the years by the FHWA, the insurance industry, and the trucking industry indicate that more than 50 percent, and in some studies more than 75 percent, of all motor vehicle accidents involve driver error. That is, action by the driver could have prevented the accident. Investigation of an applicant's previous work history, accident, and driving record is a very important part of the hiring process. Elimination of any of these aspects of the hiring process could potentially create an additional safety risk. One 1979 study, entitled "Prior Violation Records of 1,447 Drivers Involved in Fatal Crashes" by Leon S. Robertson and Susan P. Baker, showed

that drivers with four or more convictions or violations prior to the fatal crash were more than nine times as likely to be involved in fatal crashes as those with no such violations. Another study, entitled "The Statistical Association Between Past and Future Accidents and Violations," prepared by J. Richard Stewart and B. J. Campbell, reveals that drivers with no violations had an average accident frequency of .10 while drivers with 6 violations had an average frequency of .42.

Two other requirements must be addressed regarding paperwork reduction burdens for businesses affected by this rule. The requirement of § 395.8 that a driver prepare a daily record of duty status does not now apply to a driver who drives wholly within an intracity zone if the employing motor carrier maintains other required records and the driver does not violate the hours-of-service rules of § 395.3 and works no more than 12 consecutive hours. Also, under § 396.11 a driver is now required to file, in writing, at the completion of each day's work, a vehicle inspection report listing any defect or deficiency discovered or reported to the driver which would affect the safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report must so indicate. Since exposure to potential accidents is greater in urban areas than anywhere else, it is incumbent upon the drivers of those vehicles to assure themselves that their vehicles are always in good mechanical repair. The other users of the highways within urban areas deserve the same degree of care as is required for the users of suburban or rural highways.

Currently, there are 189,906 motor carriers of record in the DOT motor carrier census file. There are 145,009 (76.3 percent) who operate a single motor vehicle. An additional 25,253 (13.3 percent) motor carriers operate between two and six motor vehicles. The FMCSRs have been applied uniformly to small entities operating outside the exempt intracity zones since 1936. The FHWA is unaware of any unique attribute of small entities operating as motor carriers within an exempt intracity zone that would make them more likely to suffer adverse effects than small entities operating outside those zones. The FHWA continues to believe that our certification that the rule will not have a significant impact on a substantial number of small entities is accurate.

Government Transportation Operations

Motor vehicles operated by agencies of the Federal or the various State governments and/or their political subdivisions, in furtherance of their governmental or civic duties, have been administratively exempted from the safety regulations. However, the FHWA has encouraged their compliance with the FMCSRs.

The FHWA proposed to continue the exemption for Federal, State, and local governments. Comments were requested on this proposal as well as on what additional steps the FHWA might take to foster compliance with the regulations by governments. Seven commenters addressed this issue. It is noted by the FHWA that none of the commenters on this issue were from a governmental entity. Six commenters opposed the proposed exemption and one favored it. The ATA stated that it does not believe "that DOT can effectively promote such compliance on one hand while on the other hand, it tells the government agencies that they don't have to comply." The commenters opposing the exemption generally believe that where government fleet operations are similar in nature to normal commercial vehicle operations, they should meet the same safety standards. The ABA believes that the Congress has clearly indicated its intent that these groups should be governed by Federal safety regulations when performing interstate operations.

The FHWA believes that Congress intended that the safety regulations of governmental operations be left to the State and local authorities. In the Motor Carrier Safety Act of 1984, Congress defined "employer" and "employee" to exclude the United States, any State, or any political subdivision of a State. [Section 204]. This definition is different from that used in the Commercial Motor Vehicle Safety Act of 1986 for the employers of drivers of commercial motor vehicles which included Federal, State, and local governments in the definition of employers. The 1984 Act and the 1986 Act address separate and district issues regarding commercial motor vehicle operations. The 1984 Act requires the Secretary to issue regulations pertaining to commercial motor vehicle safety involved in interstate commerce. The 1986 Act requires the Secretary to issue rules pertaining to the issuance of commercial driver's licenses to all drivers operating large commercial motor vehicles in interstate and intrastate commerce. Thus, the final rule follows the 1984 Act and governmental entities are being excluded from coverage by the FMCSRs.

In considering this issue, the FHWA has considered the President's Executive Order on "Federalism" issued on October 26, 1987. The purpose of the Executive Order is to restore the division of governmental responsibilities between the national government and the States. "Federal action limiting the policy-making discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." (Section (3)(b).) When undertaking to formulate and implement policies that have Federalism implications, Executive departments and agencies are required to "refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, defer to the States to establish standards." (Section (3)(d)(2).) Where a Federal statute does not preempt State law, "Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate the department or agency the authority to issue regulations preempting State law." (Section (4)(b).)

In light of these considerations, the FHWA will continue to exempt the transportation operations conducted by agencies of the Federal Government, a State, or any political subdivision of a State. This exemption will also include mass transit agencies established under a compact between States that has been approved by the Congress of the United States. This action is consistent with the Executive Order. The FHWA will periodically review the safety performance of these operations. If it appears that these operations, or a segment of them, pose an unacceptable risk to public safety, the FHWA will propose appropriate, necessary safety measures to improve these operations. To this end, the FHWA will continue to require governmental entities engaging in interstate charter transportation of passengers to comply with the accident reporting requirements of Part 394 of the FMCSRs.

In addition, the FHWA is exempting, from the requirements of 49 CFR 390 through 399, all emergency vehicles (i.e., ambulances, fire trucks, and rescue vehicles) while engaged in emergency operations. This exemption is applicable to nongovernment vehicles. As noted

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earlier, drivers of such vehicles are subject to the provisions of the CMVSA as promulgated in 49 CFR Part 383. This exemption reflects an interpretation of the FMCSRs regarding ambulances and makes it applicable to other emergency vehicles. The FHWA believes that the safety regulation of emergency vehicles is best left to State and local governments.

Marking of Motor Vehicles (§ 390.21)

The FHWA, in its NPRM of July 13, 1987, proposed to require the motor carrier's census number to be marked on every self-propelled commercial motor vehicle operated by an interstate motor carrier of migrant workers and a private motor carrier which transports property in interstate commerce. The agency also proposed that the motor carrier's name or trade name, and the name of the city or community and State abbreviation where its principal place of business is maintained be included as part of the marking requirement.

Ten commenters offered views on this issue. Four favored the requirement as proposed. Private motor carrier commenters oppose the requirement to display the name or trade name and the city and State in which the carrier maintains its principal place of business. They cite several reasons for their opposition (e.g., do not want to encourage the theft of high-value freight; do not want to advertise the fact that a manufacturer makes and delivers its products to its competitors).

Private motor carriers operating commercial motor vehicles in interstate commerce and laden with hazardous materials requiring placarding are required to identify each vehicle by displaying (1) the name or trade name of the private carrier, and (2) the city or community and State abbreviation in which the carrier maintains its principal place of business or in which the vehicles are customarily based. (*See* 49 CFR 397.21.) For-hire motor carriers operating commercial motor vehicles in interstate commerce under authority issued by the ICC must similarly identify their vehicles. (*See* 49 CFR Part 1058.)

There are now more motor vehicles on the Nation's highways than ever before. There are continuing reports made to Federal, State, and local governments that the owners or operators of commercial motor vehicles involved in motor vehicle accidents are difficult to identify. Sideswipe accidents and hit and run accidents have been cited as two problem areas. License plates and names on trailers often cannot be used to identify the operator of a specific vehicle. Verification of ownership by law enforcement officers is often impeded because the vehicle being operated is licensed to someone other than the operator of the vehicle. Generally, those motor carriers who would be affected by the proposed marking rule have no requirement to carry identification of any sort on the vehicle other than State requirements for vehicle registration. Also, many of these motor carriers have the same or similar names which tend to negate quick and positive identification.

This marking requirement would assist Federal and State enforcement personnel in properly identifying motor carriers during roadside vehicle inspections, thus assuring the submission of accurate inspection results and other data into a management information system. Also, the general public will be able to identify and report to the motor carrier or an enforcement agency any operations being conducted in a reckless manner by the operator of a commercial motor vehicle.

There is a segment of the motor carrier industry that neither the DOT nor the ICC has the authority to regulate insofar as vehicle identification and marking is concerned. That segment is known as "exempt carriers." "Exempt carriers" are for-hire motor carriers that have been exempted from economic regulation. This group of for-hire motor carriers is currently subject to Federal safety regulations, but will not be required to mark their vehicles. The ATA urges the DOT to seek additional legislative authority to regulate the marking of this group of motor carriers.

In view of the above, the FHWA will require every self-propelled commercial motor vehicle operated by a private motor carrier of property in interstate commerce, and every motor vehicle operated by an interstate motor carrier of migrant workers to be marked with an identification number, if a number has been assigned to the motor carrier by the FHWA, the name or trade name of the private carrier or migrant worker carrier, and the city or community and State abbreviation in which the carrier maintains its principal place of business.

The statutory authority for this requirement is clear. [*See* 49 U.S.C. 3104.] The FHWA believes that the benefits derived from a uniform requirement for marking interstate commercial motor vehicles requires Federal action in this instance.

Motor carrier identification numbers are assigned by computer when the identity of a motor carrier is entered into the FHWA's Office of Motor Carriers Management Information System. All motor carriers are assigned a number, including carriers certificated by the ICC. A portion of this number appears in the upper right of the letter notifying the carrier of its assigned safety rating. No effort has heretofore been made to notify motor carriers of their assigned numbers since it was only used by the FHWA to distinguish between carriers that have the same or similar names and trade names. It is now also used for data processing purposes. The FHWA will notify all currently registered motor carriers by mail of their motor carrier identification number. A motor carrier that does not receive notification by mail may obtain its identification number by providing the FHWA with the motor carrier name, principal office address, and, if applicable, the ICC assigned docket number. Written requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street SW., Washington, DC, 20590. Motor carriers *should not* display a number without receiving mailed notification of the correct number from the FHWA.

Motor carriers that have not been assigned an identification number may obtain one by filing Form MCS–150, Motor Carrier Identification Report, with the FHWA. Form MCS–150 may be obtained from any of the FHWA region or division motor carrier safety offices. The location of the Regional Motor Carrier Safety Offices are listed in § 390.40.

The Truck Rental and Leasing Association (TRALA) supports the requirement for private motor carriers and carriers of migrant workers to display the proposed information. The TRALA proposes that commercial rental vehicles (i.e., those vehicles rented or leased to private carriers for less than 1 year) be allowed to use the rental company's name and address for census identification purposes and that a DOT census number be assigned to the truck rental company for use on its rental vehicles. Rental vehicles are generally used by private motor carriers to temporarily supplement or replace permanently owned-leased vehicles for periods of a few days or a few weeks. "It would be impractical," TRALA states, "to require that these temporary vehicles be permanently marked with the lessee's identification or to require an expensive removable identification device be prepared each time a commercial customer wishes to rent a truck." Those motor carriers now required to mark their vehicles in a specific manner lease motor vehicles from leasing companies for periods of less than one year whenever such vehicles are needed. Such a practice has been ongoing for many years. There has been little or no resistance to the current marking requirements by those motor carriers. Further, the FHWA has no authority to require non-motor carriers to mark vehicles.

Private Carriage of Passengers

Section 204(1) of the Act defines the term "commercial motor vehicle," in part, as "any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property * * * ." This definition includes the private carriage of passengers.

The ABA commented at length concerning the definition of a "commercial motor vehicle" as it appears in Section 204 of the Act. The ABA called for the immediate inclusion of private motor carriers of passengers under the applicability section of the FMCSRs.

The FHWA recognizes that the Congress provided the Secretary with the authority to regulate the safety of the private carriage of passengers. Since this segment of the motor carrier population has never been subject to Federal safety regulations, however, it was decided that this issue should be addressed in a separate rulemaking action. The FHWA has contracted with a research firm, ASW Associates of Silver Spring, Maryland, to prepare a regulatory evaluation and regulatory flexibility analysis for the inclusion of private motor carriers of passengers under the provisions of the FMCSRs. The FHWA intends to publish a NPRM in the near future to seek public comment on this subject.

Other Issues

Aiding or Abetting Violations (§ 390.13)

The aiding or abetting prohibition previously found at 49 CFR 391.7 is incorporated in § 390.13. The IBT was the sole commenter to this issue and endorsed the proposal made in the NPRM. The IBT recommended that the requirement be made more explicit by adding the word "driver" after the term "motor carrier." We believe that this recommendation clarifies the existing rule and we have decided to incorporate it, with modification, by adding the word "employee" which we believe is more encompassing and consistent with the intent of the rule. The term, "this subchapter," has been replaced with the term, "this chapter." This is being done to include Part 325, Compliance with interstate motor carrier noise emission standards.

This provision gives notice that any person who knowingly and willfully conspires with a motor carrier or an employee of a motor carrier to violate the rules of Chapter III, Title 49, Code of Federal Regulations, may be subject to prosecution under Title 18 of the United States Code. See 18 U.S.C. 371 (1982).

Intermittent, Casual or Occasional Driver

The FHWA proposed to move all definitions appearing in more than one part of the FMCSRs to a centralized location, entitled "Definitions," in Part 390. Further, comments were sought concerning the clarity and application of the definitions contained in the proposed § 390.5.

For the sake of clarity, the ATA recommended adding the following sentence to the definition of "intermittent, casual or occasional driver":

> The qualification of such a driver shall be determined and recorded in accordance with the provisions of Sections 391.63 or 391.65 of this subchapter, as applicable.

The recommended language does clarify the proposed definition. For this reason, the FHWA has added the recommended language to the definition of "intermittent, casual or occasional driver."

State and Local Laws, Effect on (§ 390.9)

The FHWA proposed to redesignate § 390.30, State and local laws, effect on, as § 390.9. In its proposal, the FHWA recognized that the work of the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel), established under section 209 of the Act, might require a revision to this section. It is the FHWA's intention to retain § 390.9, however, until the Safety Panel has completed its work.

The ATA proposed that the various States be specifically prohibited from promulgating truck safety regulations in such areas as qualifications of drivers, special driving rules for trucks, equipment requirements, hours-of-service requirements, and inspection and maintenance, which are inconsistent with the FMCSRs. Section 208 of the Act directs the Secretary to conduct a rulemaking proceeding to determine whether a particular State motor carrier safety law or regulation may remain in effect and enforced with respect to commercial motor vehicles. The Safety Panel has been established to provide recommendations to the Secretary. The Safety Panel is in the process of reviewing and analyzing the laws and regulations of each State in accordance with Section 208. The FHWA believes that any preemption of State laws and regulations pertaining to commercial motor vehicle safety should occur only after the Safety Panel's recommendations have been received, and only in accordance with the procedures set forth in Section 208 of the Act.

Relief from Hours-of-Service Regulations—Disasters (§ 390.23)

At the present time, § 395.12 provides that relief may be granted from the hours-of-service regulations if a motor carrier has been requested to transport passengers or property to or from any section of the country to provide relief, such as in the case of earthquake, flood, drought, or other disasters. The FHWA has proposed that the relief provisions of § 395.12 be brought to Part 390 and be designated as § 390.23, Relief from hours-of-service regulations—disasters. It was further proposed that motor carriers apply for such relief in accordance with procedures used by the FHWA since 1977. These proposals were made to assist potential users in locating the relief provision in the FMCSRs and to provide information as to the conditions which must exist and the procedures which must be followed in order to obtain temporary relief. The ATA opposed the proposal. It believes the proposed rule is unnecessary, unworkable, and will unnecessarily hamper the efforts of motor carriers to provide disaster relief.

In the past, motor carriers who were asked to perform a transportation service in connection with some type of disaster have sought the assistance of the agency's field staff. Details concerning what constituted a disaster and what relief from the hours-of-service regulations was available were sought by the motor carriers. Many of the motor carriers seeking assistance had overlooked § 395.12 or were unaware of its existence. There were enough requests for assistance from motor carriers that the agency, in February of 1977, developed a procedure for assisting these motor carriers. The procedure has saved many motor carriers time while en route to a specific emergency (i.e., being able to produce a letter of authorization to a State law enforcement officer at the time the driver was stopped). Further, violations of the hours-of-service rules could be readily explained during a subsequent Compliance Review performed by either Federal or State personnel by presentation of the letter issued by the appropriate Regional Director of Motor Carrier Safety.

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Currently, any motor carrier seeking relief from the hours-of-service regulations because it is providing or is going to provide some type of disaster relief must follow an administrative procedure which, in substance, is the same as the proposed rule. The FHWA believes that by specifying the procedure in this final rule motor carriers and drivers will be better informed of the procedures to be followed.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rule to all individuals will be minimal. A regulatory evaluation and flexibility analysis has been prepared and is available for review in the public docket.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This final regulation principally amends Parts 390 of the FMCSRs pertaining to the scope and applicability of the FMCSRs to interstate transportation by motor carriers. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety regulations which, at the current time, may be supplemented by the States, except for the adoption of inconsistent regulations. The statutory basis for Federal regulation of interstate commerce has been outlined above. Several issues addressed in this final rule, however, involve policies that have federalism implications. These issues have been addressed separately above. (See specifically the discussion of school buses, intracity zone exemption, government vehicles and other emergency vehicles, and marking of vehicles.) This final rule limits the policymaking discretion of the States only in narrow ways, and does so only to achieve the national purposes of the Act. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

List of Subjects in 49 CFR Parts 390, 391, 392, 393, 394, 395, 396, and 397.

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Issued on May 12, 1988.

Robert E. Farris,

Deputy Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, as follows:

1. Part 390 is revised to read as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Subpart A—General Applicability and Definitions

Sec.
390.1 Purpose.
390.3 General applicability.
390.5 Definitions.
390.7 Rules of construction.

Subpart B—General Requirements and Information

390.9 State and local laws, effect on.
390.11 Motor carrier to require observance of driver regulations.
390.13 Aiding or abetting violations.
390.15–390.17 [Reserved]
390.19 Additional equipment and accessories.
390.21 Marking of motor vehicles.
390.23 Relief from hours-of-service regulations—disasters.
390.25 [Reserved]
390.27 Locations of regional motor carrier safety offices.
390.29 [Reserved]
390.31 Copies of records or documents.
390.33 Vehicles used for purposes other than defined.
390.35 Certificates, reports, and records: falsification, reproduction, or alteration.
390.37 Violation and penalty.

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

Subpart A—General Applicability and Definitions

§ 390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§ 390.3 General applicability.

(a) The rules in Subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.

(b) The rules in Part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in Part 387, Minimum levels of financial responsibility for motor carriers, are applicable to motor carriers as provided in §§ 387.3 or 387.27 of this subchapter.

(d) Additional requirements. Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) Knowledge of and compliance with the regulations.

(1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) Exceptions. Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States. The accident reporting requirements of Part 394 of this subchapter remain applicable to the entities identified in this paragraph when engaged in the interatate charter transportation of passengers.

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) Any "exempt intracity zone" operation, as defined in § 390.5, if a State has adopted and enforces State laws and regulations, compatible with the rules in this subchapter, applicable to such intracity zone operation;

(7) The private transportation of passengers.

(g) Limited exceptions. The provisions of § 391.11(b)(1) (relating to minimum age), and the provisions of §§ 391.41(b)(3) (pertaining to insulin controlled diabetes), (b)(8) (pertaining to epilepsy, (b)(10) (pertaining to visual acuity), and (b)(11) (relating to hearing), do not apply to a person who:

(1) Was a regularly employed driver (as defined in § 390.5) for a motor carrier as of May 19, 1988;

(2) Meets all the other requirements of § 391.41(b); and

(i) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control that is likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely.

(ii) Has no established medical history or clinical diagnosis or epilepsy or any other loss of consciousness condition that is likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely.

(iii) Has distant visual acuity of at least 20/40 (Snellen) in one eye without corrective lenses or visual acuity corrected to 20/40 (Snellen) or better with corrective lenses. Has a field of vision of at least 70° in the horizontal Meridian in one eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and yellow.

(iv) Has no current clinical diagnosis of hearing loss, with or without a hearing aid, which is likely to interfere with the driver's ability to control and drive a commercial motor vehicle safely.

(3) Has been certified in accordance with § 391.43(e)(3);

(4) Continues to be a regularly employed driver for a motor carrier;

(5) Operates wholly within the exempt intracity zone (as defined in § 390.5); and

(6) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(h) The limited exceptions provided in paragraph (g) of this section shall be effective until—

(1) The driver is disqualified under the provisions of § 391.15 of this subchapter;

(2) The driver operates a commercial motor vehicle beyond the exempt intracity zone; or

(3) November 15, 1990, whichever comes first.

§ 390.5 Definitions.

In this subchapter:

"Bus" means any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs.

"Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

"Charter transportation of passengers" means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle, have acquired the exclusive use of the vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

"Driveaway-towaway operation" means any operation in which a motor vehicle constitutes the commodity being transported and one or more set of wheels of the vehicle being transported are on the surface of the roadway during transportation.

"Driver" means any person who operates any commercial motor vehicle.

"Employee" means:

(a) A driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(b) A mechanic;

(c) A freight handler; and

(d) Any individual, other than an employee, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

"Employer" means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

"Exempt intracity zone" means a municipality or the commercial zone of that municipality as defined by the ICC in 49 CFR Part 1048, revised as of October 1, 1975. The definitions are printed in Appendix F to Subchapter B of this Chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii.

"Exempt motor carrier" means a person engaged in transportation exempt from economic regulation by the Interstate Commerce Commission (ICC) under 49 U.S.C. 10526. "Exempt motor carriers" are subject to the safety regulations set forth in this subchapter.

"Farm-to-market agricultural transportation" means the operation of a motor vehicle controlled and operated by a farmer who:

(a) Is a private motor carrier of property;

(b) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer; and

(c) Is not using the vehicle to transport hazardous materials of a type or quantity that require the vehicle to be placarded in accordance with § 177.823 of this subtitle.

"Farm vehicle driver" means a person who drives only a motor vehicle that is—

(a) Controlled and operated by a farmer as a private motor carrier of property;

(b) Being used to transport either—

(1) Agricultural products, or

(2) Farm machinery, farm supplies, or both, to or from a farm;

(c) Not being used in the operation of a for-hire motor carrier;

(d) Not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with § 177.823 of this subtitle; and

(e) Being used within 150 air-miles of the farmer's farm.

"Farmer" means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

(a) Are owned by that person; or

(b) Are under the direct control of that person.

"Federal Highway Administrator" means the chief executive of the Federal Highway Administration, an agency within the Department of Transportation.

"For-hire motor carrier" means a person engaged in the transportation of goods or passengers for compensation.

"Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous substance" means a material, and its mixtures or solutions, that is identified in the Appendix to § 172.101, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in § 171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the Appendix to § 172.101.

"Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR Part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR Part 123, Subpart F.

"Intermittent, casual, or occasional driver" means a driver who in any period of 7 consecutive days is employed or used as a driver by more than a single motor carrier. The qualification of such a driver shall be determined and recorded in accordance with the provisions of §§ 391.63 or 391.65 of this subchapter, as applicable.

"Interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"Intrastate commerce" means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

"Motor carrier" means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of Subchapter B, the definition of *"motor carrier"* includes the terms *"employer"* and *"exempt motor carrier."*

"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Highway Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

"Operator" — See driver.

"Other terms" — Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

"Person" means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

"Principal place of business" means a single location designated by the motor carrier, normally its headquarters, where records required by Parts 387, 391, 394, 395, and 398 of this subchapter will be maintained. Provisions in this subchapter are made for maintaining certain records at locations other than the principal place of business.

"Private motor carrier of passengers" means a person who is engaged in an enterprise other than transportation, and provides transportation of passengers, by motor vehicle, that is within the scope of, and in the furtherance of that enterprise.

"Private motor carrier of property" means a person who transports, by motor vehicle, property of which that person is the owner, lessee or bailee; such transportation being for the purpose of sale, lease, rent, bailment, or in the furtherance of any commerical enterprise other than transportation.

"Regional Director" means the Regional Director, Office of Motor Carrier Safety, for a given geographical region of the United States.

"Regularly employed driver" means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier.

"Residential district" means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

"School bus" means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

"School bus operation" means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home.

"Secretary" means the Secretary of Transportation.

"Special agent" See Appendix B to Subchapter B — Special agents.

"State" means a State of the United States and the District of Columbia and includes a political subdivision of a State.

"Taxicab" means a passenger-carrying vehicle, usually a motor vehicle designed to seat five or seven persons, with or without a taximeter, available as a common carrier for hire by hailing on public thoroughfares or at public stations or stands, but not operated on a schedule. Taxicabs do not include vehicles that are only available by radio or telephone dispatch, but may include vehicles that are dispatched by radio or telephone if those vehicles are also available for hire by hailing on public thoroughfares or at stations or stands.

"Trailer" includes:

(a) *Full trailer* means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing unit. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(b) *Pole trailer* means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing vehicle by means of a "reach" or "pole," or by being "boomed" or otherwise secured to the towing vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(c) *Semitrailer* means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing vehicle.

"Truck" means any self-propelled motor vehicle except a truck tractor, designed and/or used for the transportation of property.

"Truck tractor" means a self-propelled motor vehicle designed and/or used primarily for drawing other vehicles.

"United States" means the 50 States and the District of Columbia.

§ 390.7 Rules of construction.

(a) In Part 325 of Subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the masculine gender include the feminine; and

(4) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) *"Officer"* includes any person authorized by law to perform the duties of the office;

(2) *"Writing"* includes printing and typewriting;

(3) *"Shall"* is used in an imperative sense;

(4) *"Must"* is used in an imperative sense;

(5) *"Should"* is used in a recommendatory sense;

(6) *"May"* is used in a permissive sense; and

(7) *"Includes"* is used as a word of inclusion, not limitation.

Subpart B—General Requirements and Information

§ 390.9 State and local laws, effect on.

Except as otherwise specifically indicated, Subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

§ 390.11 Motor carrier to require observance of driver regulations.

Whenever in Part 325 of Subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§ 390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

§§ 390.15—390.17 [Reserved]

§ 390.19 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 390.21 Marking of motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated by a private motor carrier of property in interstate commerce, and every self-propelled motor vehicle operated by an interstate motor carrier of migrant workers, must be marked as specified in paragraphs (b) and (c) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The name or trade name of the motor carrier operating the self-propelled motor vehicle.

(2) The city or community and State [name abbreviated], in which the carrier maintains its principal place of business.

(3) The motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT".

(4) If the name of any person other than the operating carrier appears on the motor vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required by paragraphs (b)(1) and (2) of this section, and be preceded by the words *"operated by."*

(5) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph.

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet while the vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of this section, and such marking shall be maintained in such a manner as to remain legible as required by this section.

§ 390.23 Relief from hours-of-service regulations—disasters.

(a) Any motor carrier which has been requested to provide relief services due to disasters such as floods, earthquakes, or pestilence, or governmentally declared emergencies, may request relief from § 395.3(b) of Part 395 regarding maximum driving and on-duty time. The relief shall apply only to those situations where a motor carrier is directly engaged in or supporting relief operations.

(b) Any motor carrier seeking relief from § 395.3(b) shall contact the Regional Director for Motor Carrier Safety in the region in which the motor carrier's principal place of business is located, by telephone, giving full details of the disaster or emergency situation. If it is determined that relief from § 395.3(b) is necessary to enhance the motor carrier's ability to provide vital service to the public, relief shall be granted along with any restrictions which may be considered necessary.

(c) Within 24 hours after any relief from § 395.3(b) has been granted by telephone communication, a formal written request shall be submitted to the Regional Director. The request shall give full details of the relief operation, the regulatory relief sought, and the period of time for which the relief is requested. All approvals for relief may be subject to special conditions.

§ 390.25 [Reserved]

§ 390.27 Locations of regional motor carrier safety offices.

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Region No.	Territory included	Location of regional office
1	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien, Federal Office Building, Room 729, Albany, NY 12207.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	31 Hopkins Plaza, Federal Building, Room 1643, Baltimore, MD 21201.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	1720 Peachtree Rd., NW., Suite 200, Atlanta, GA 30309.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. That part of Canada west of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border, and east of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line north to the Canadian border.	18209 Dixie Highway, Homewood, IL 60430.
6	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. All of Mexico, except the States of Baja California and Sonora and the Territory of Baja California Sur., Mexico. All nations south of Mexico.	Room 8A00, Federal Building, 819 Taylor Street, Ft. Worth, TX 76102.
7	Iowa, Kansas, Missouri, and Nebraska	6301 Rockhill Rd., P.O. Box 19715, Kansas City, MO 64141.
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingegate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, Room 400, Lakewood, CO 80228.
9	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Mariana Islands. The States of Baja California and Sonora, Mexico, and the Territory of Baja California Sur., Mexico.	211 Main Street, Room 1108, San Francisco, CA 94105.
10	Alaska, Idaho, Oregon, and Washington. That part of Canada west of Highway 95 Kingegate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	Mohawk Building, Room 414, 708 SW., Third Ave., Portland, OR 97204.

§ 390.29 [Reserved]

§ 390.31 Copies of records or documents.

(a) All records and documents required to be maintained under this subchapter must be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period.

(b) To be acceptable in lieu of original records, photographic copies of records must meet the following minimum requirements:

(1) Photographic copies shall be no less readily accessible than the original record or document as normally filed or preserved would be and suitable means or facilities shall be available to locate, identify, read, and reproduce such photographic copies.

(2) Any significant characteristic, feature or other attribute of the original record or document, which photography in black and white will not preserve, shall be clearly indicated before the photograph is made.

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to all such forms, but an identified specimen of each form shall be on the film for reference.

(4) Film used for photographing copies shall be of permanent record-type meeting in all respects the minimum specifications of the National Bureau of Standards, and all processes recommended by the manufacturer shall be observed to protect it from deterioration or accidental destruction.

(5) Each roll of film shall include a microfilm of a certificate or certificates stating that the photographs are direct or facsimile reproductions of the original records. Such certificate(s) shall be executed by a person or persons having personal knowledge of the material covered thereby.

(c) All records and documents required to be maintained under this subchapter may be destroyed after they have been suitably photographed for preservation.

(d) *Exception.* All records except those requiring a signature may be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data.

§ 390.33 Vehicles used for purposes other than defined.

Whenever a motor vehicle of one type is used to perform the functions normally performed by a motor vehicle of another type, the requirements of this subchapter and Part 325 of Subchapter A shall apply to the motor vehicle and to its operation in the same manner as though the motor vehicle were actually a motor vehicle of the latter type.

Example: If a motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that motor vehicle.

§ 390.35 Certificates, reports, and records: falsification, reproduction, or alteration.

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by Part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or Part 325 of Subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or Part 325 of Subchapter A.

§ 390.37 Violation and penalty.

Any person who violates the rules set forth in this subchapter or Part 325 of Subchapter A may be subject to civil or criminal penalties.

Technical Amendments

Due to the revision of 48 CFR Part 390, the following technical amendments are necessary to correct citations found in other parts of title 49 CFR and are set forth below.

PART 391—[AMENDED]

2. The authority citation for Part 391 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.1 [Amended]

3. In § 391.1, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b).

§ 391.2 [Amended]

4. In § 391.2, paragraphs (a), (b), (c), and (f) are removed; paragraph (d) is redesignated as paragraph (a); and paragraph (e) is redesignated as paragraph (b).

§§ 391.3, 391.5, and 391.7 [Removed]

5. Sections 391.3, 391.5, and 391.7 are removed.

§ 391.15 [Amended]

6. In § 391.15, paragraph (c)(2)(i), the reference to § 390.40 in footnote 1 is revised to read § 390.27, and the words "Bureau of Motor Carrier Safety" in footnote 1 are revised to read "Office of Motor Carrier Standards."

§ 391.35 [Amended]

7. In § 391.35, paragraph (e), the reference to § 390.40 in footnote 1 is revised to read § 390.27, and the words "Bureau of Motor Carrier Safety" in footnote 1 are revised to read "Office of Motor Carrier Standards."

§ 391.41 [Amended]

8. In § 391.41, paragraph (b)(12), the reference to § 390 in footnote 1 is revised to read § 390.27, and the words "Bureau of Motor Carrier Safety" in footnote 1 are revised to read "Office of Motor Carrier Standards."

9. Section 391.43, paragraph (e), is amended by redesignating the concluding text as paragaphs (e)(1), (2), and (3) and revising it to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) * * *

(1) If the driver is qualified only when wearing a hearing aid, the following statement must appear on the medical examiner's certificate: "Qualified only when wearing a hearing aid."

(2) If a medical examiner determines a waiver is necessary under § 391.49, the following statement shall appear on the medical examiner's certificate: "Medically unqualified unless accompanied by a waiver."

(3) If a medical examiner determines the driver is qualified to drive only in an exempt intracity zone, the following statement shall appear on the medical examiner's certificate: "Medically unqualified unless driving within an exempt intracity zone."

§ 391.51 [Amended]

10. In § 391.51, paragraph (g), the reference to "§ 390.40" is revised to read as "§ 390.27".

§ 391.61 [Amended]

11. In § 391.61, the reference to "§ 395.2(f)" is revised to read as "§ 390.5".

§ 391.62 [Removed and reserved]

12. Section 391.62 is removed and reserved.

§ 391.63 [Amended]

13. In § 391.63, paragraph (a), the reference to "§ 395.2(f)" is revised to read as "§ 390.5".

14. In § 391.65, paragraph (a)(2)(iii) is revised to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

(a) * * *

(2) * * *

(iii) Certifies that the driver has been regularly employed as defined in § 390.5; * * * * *

§ 391.67 [Amended]

15. In § 391.67, in the introductory text, the reference to "§ 391.3(d)" is revised to read "§ 390.5".

§ 391.69 [Amended]

16. In § 391.69, paragraph (b), the reference to "§ 395.2(f)" is revised to read "§ 390.5".

§ 391.71 [Amended]

17. In § 391.71, paragraphs (a) and (b), the references to "§ 395.2(f)" are revised to read "§ 390.5"; in paragraph (b)(1) the reference to "§ 390.4" is revised to read "§ 390.5".

PART 392—[AMENDED]

18. The authority citation for Part 392 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

19. Section 392.1 is revised to read as follows:

§ 392.1 Scope of the rules in this part.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

§ 392.4 [Amended]

20. In §392.4, paragraph (a)(1), the reference in footnote 1 to "§ 390.40" is revised to read "§ 390.27", and the words "Bureau of Motor Carrier Safety" in footnote 1 are revised to read "Office of Motor Carrier Standards."

PART 393—[AMENDED]

21. The authority citation for Part 393 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

22. Section 393.1 is revised to read as follows:

§ 393.1 Scope of the rules of this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.2 [Removed and reserved]

23. Section 393.2 is removed and reserved.

24. In § 393.75, paragraph (f)(1) is revised to read as follows:

§ 393.75 Tires.

(f) * * *

(1) *Front wheels—General rule.* No motor vehicle shall be operated with tires on the front wheels which carry a greater weight than that specified for the tires in any of the publications of the standardizing bodies listed in FMVSS No. 119 (49 CFR 571.119) and marked on the sidewall of the tire. *Exception: Provided,* that the load does not exceed rated capacity, tires not marked in accordance with FMVSS No. 119 may be used on the front axles of single-unit property-carrying vehicles.

PART 394—[AMENDED]

25. The authority citation for Part 394 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

26. In § 394.1, paragraph (c) is revised to read as follows:

§ 394.1 Scope of the rules in this part.

* * * * *

(c) *Exemptions.* The rules in this part do not apply to farm-to-market agricultural transportation as defined in § 390.5.

* * * * *

§ 394.3 [Amended]

27. In § 394.3, paragraph (b)(3), the reference to "§ 394.5" is revised to read "§ 390.5".

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§ 394.5 [Removed and reserved]

28. Section 394.5 is removed and reserved.

§ 394.7 [Amended]

29. In § 394.7, paragraph (a), the reference to "§ 390.40" is revised to read "§ 390.27".

§ 394.9 [Amended]

30. In section 394.9, paragraphs (a) and (d), the references to "§ 390.40" are revised to read "§ 390.27", and the words "Regional Director, Motor Carrier Safety" in paragraph (d) are revised to read "Regional Director, Office of Motor Carrier Safety."

PART 395—[AMENDED]

31. The authority citation for Part 395 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 395.1 [Removed and reserved]

32. Part 395 is amended by removing and reserving § 395.1.

§ 395.2 [Amended]

33. In § 395.2, paragraphs (f) and (j) are removed, and paragraphs (g), (h), and (i) are redesignated as paragraphs (f), (g) and (h), respectively.

§ 395.3 [Amended]

34. In § 395.3, paragraph (a)(3), the reference to "§ 395.2(g)" is revised to read "§ 395.2(f)".

§ 395.8 [Amended]

35. In § 395.8, in paragraphs (f)(11) and (h)(2), the references to "§ 395.2(g)" are revised to read as "§ 395.2(f)"; in paragraph (k)(2), the words "Regional Director, Motor Carrier Safety" are revised to read "Regional Director, Office of Motor Carrier Safety"; the reference to "§ 390.40" is revised to read as "§ 390.27"; paragraph (l)(2) is removed; and paragraph (l)(3) is redesignated as (l)(2).

§ 395.13 [Amended]

36. In § 395.13, paragraph (c)(2), the words "Regional Director, Motor Carrier Safety" are revised to read "Regional Director, Office of Motor Carrier Safety,".

PART 396—[AMENDED]

37. The authority citation for Part 396 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 396.1 [Amended]

38. In § 396.1, paragraph (b) is removed and the paragraph designation (a) is removed.

§ 396.3 [Amended]

39. In § 396.3, paragraph (c) is removed and paragraph (d) is redesignated as (c).

40. In § 396.11, paragraph (d) is revised to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(d) *Exemption.* The rules in this section shall not apply to driveaway-towaway operations as specified in § 396.15, or to any motor carrier operating only one (1) motor vehicle.

PART 397—[AMENDED]

41. The authority citation for Part 397 is revised to read as follows:

Authority: 49 U.S.C. App. §§ 1801–1813 (1982 and Supp. III 1985); 49 CFR 1.48.

§ 397.1 [Amended]

42. In § 397.1, paragraph (c) is removed.

§ 397.19 [Amended]

43. In § 397.19, paragraph (b), the reference to § 390.40 is revised to read § 390.27.

§ 397.21 [Removed]

44. Section 397.21 is removed.

45. Appendix F to Subchapter B is added to read as follows:

Appendix F to Subchapter B—Commercial Zones

Note.—The text of these definitions is identical to the text of 49 CFR Part 1048, revised as of October 1, 1975, which is no longer in print.

Commercial Zones

Sec.
1 New York, N.Y.
2 Chicago, Ill.
3 St. Louis, Mo.-East St. Louis, Ill.
4 Washington, D.C.
5 Los Angeles, Calif., and contiguous and adjacent municipalities.
6 Philadelphia, Pa.
7 Cincinnati, Ohio
8 Kansas City, Mo.-Kansas City, Kans.
9 Boston, Mass.
10 Davenport, Iowa; Rock Island and Moline, Ill.
11 Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.
12 Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.
13 Tucson, Ariz.
14 Albuquerque, N. Mex.
18 Ravenswood, W. Va.
19 Lake Charles, La.
20 Syracuse, N.Y.
21 Baltimore, Md.
22 Cleveland, Ohio.
23 Detroit, Mich.
24 Seattle, Wash.
25 Albany, N.Y.
26 Minneapolis-St. Paul, Minn.
27 New Orleans, La.
28 Pittsburgh, Pa.
29 Portland, Oreg.
30 Vancouver, Wash.
31 Charleston, S.C.
32 Charleston, W. Va.
33 Memphis, Tenn.
34 Houston, Tex.
35 Pueblo, Colo.
36 Warren, Ohio
37 Louisville, Ky.
38 Sioux City, Iowa.
39 Beaumont, Tex.
40 Metropolitan Government of Nashville and Davidson County, Tenn.
41 Consolidated City of Indianapolis, Ind.
42 Lexington-Fayette Urban County, Ky.
43 Definitions.
44 Commercial zones determined generally, with exceptions.
45 Controlling distances and population data.

Section 1 New York, N.Y.

(a) The application of § 1048.101 Commercial Zones determined generally, with exceptions, is hereby extended to New York, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, performed wholly within the zone the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except:

(1) Transportation which is performed wholly within the following territory: The area within the corporate limits of the cities of New York, Yonkers, Mount Vernon, North Pelham, Pelham, Pelham Manor, Great Neck Estates, Floral Park, and Valley Stream, N.Y., and Englewood, N.J.; the area within the borough limits of Alpine, Tenafly, Englewood Cliffs, Leonia, Fort Lee, Edgewater, Cliffside Park, Fairview, Palisades Park, and Ridgefield, Bergen County, N.J.; and that part of Hudson County, N.J., east of Newark Bay and the Hackensack River;

(2) Transportation which is performed in respect of a shipment which has had a prior, or will have a subsequent movement by water carrier, and which is performed wholly between points named in subparagraph (1) of this paragraph, on the one hand, and, on the other, those points in Newark and Elizabeth, N.J., identified as follows: All points in that area within the corporate limits of the cities of Newark and Elizabeth, N.J., west of Newark Bay and bounded on the south by the main line of the Central Railroad of New Jersey, on the west by the Newark & Elizabeth Branch of the Central Railroad Company of New Jersey, and on the north by the property line of the Penn Central Transportation Company.

(3) Transportation which is performed in respect of a shipment by rail carrier, and which is performed wholly between points named in subparagraph (1) of this paragraph, on the one hand, and, on the other,

(a) Those portions of Kearny, N.J., within an area bounded on the north by the main line of the Jersey City Branch of the Penn Central Transportation Co., on the south and east by Fish House Road and Pennsylvania Avenue, and on the west by the property line of the Penn Central Transportation Co. Truck-Train Terminal.

(b)(i) That portion of Newark, N.J., within an area bounded on the north by South Street and Delancey Street, on the east by Doremus Avenue, on the south by the freight right-of-way of the Penn Central Transportation Co. (Waverly Yard, Newark, N.J., to Greenville Piers, Jersey City, N.J., line), and on the west by the Penn Central Transportation Co.'s Hunter Street produce yard, and (ii) that portion of Newark, N.J., within an area bounded on the north by Poinier Street, on the east by Broad Steet, on the south by the passenger right-of-way of the Penn Central Transportation Co.'s main line and on the west by Frelinghuysen Avenue.

(c) That portion of Port Reading, N.J., within an area bounded on the east by the Arthur Kill, on the south by the right-of-way of the Reading Co., on the west by Cliff Road, and on the north by Woodbridge-Carteret Road, and

(d) That portion of Elizabeth, N.J., within an area bounded by a line extending from Newark Bay westward along Trumbull Street to its intersection with Division Street; thence northward along Trumbull Street to its intersection with East North Avenue; thence eastward along East North Avenue to its intersection with the New Jersey Turnpike, thence along the New Jersey Turnpike to the Elizabeth Channel; thence easterly along the Elizabeth Channel to Newark Bay; thence along the western shore of Newark Bay to the point of beginning.

Sec. 2 Chicago, Ill.

The zone adjacent to and commercially a part of Chicago, Ill., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

The area within the corporate limits of Chicago, Evanston, Oak Park, Cicero, Berwyn, River Forest, Willow Springs, Bridgeview, Hickory Hills, Worth, Homewood, and Lansing, Ill.; the area within the township limits of Niles, Maine, Leyden, Norwood Park, Proviso, Lyons, Riverside, Stickeny, Worth, Calumet, Bremen, and Thornton Townships, Cook County, Ill.; the area comprised of that part of Lemont Township, Cook County, and that part of Downers Grove Township, Du Page County, Ill., bounded by a line beginning at the intersection of Archer Avenue and the southern corporate limits of Willow Springs, Ill., and extending in a southwesterly direction along Archer Avenue to its junction with Chicago Joliet Road (Sag Lemont Highway), thence in a westerly direction over Chicago Joliet Road to its junction with Walker Road, thence directly north along an imaginary line to the southern shoreline of the Chicago Sanitary and Ship Canal, thence in a northeasterly direction along said shoreline to the corporate limits of Willow Springs, including points on the indicated portions of the highways specified; the area within Burr Ridge, Du Page County, bounded by a line beginning at the intersection of County Line Road and Frontage Road, thence southwesterly along Frontage Road to its intersection with Garfield Street, thence northerly along Garfield Street to its junction with 74th Street, thence westerly along an imaginary line to the junction of 74th Street and Grant Street, thence southerly along Grant Street to its junction with 75th Street, thence westerly along 75th Street to its junction with Brush Hill Road, thence southerly along Brush Hill Road to its junction with Frontage Road, thence northeasterly along Frontage Road to its junction with County Line Road; and the area within the corporate limits of Hammond, Whiting, East Chicago, and Gary, Ind.

Sec. 3 St. Louis, Mo.-East St. Louis, Ill.

(a) The zone adjacent to and commercially a part of St. Louis, Mo.-East St. Louis, Ill, within which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

(1) All points within the corporate limits of St. Louis, Mo.;

(2) All points in St. Louis County, Mo., within a line drawn 0.5 mile south, west, and north of the following line:—Beginning at the Jefferson Barracks Bridge across the Mississippi River and extending westerly along Missouri Highway 77 to its junction with U.S. Highway 61 Bypass, thence along U.S. Highway 61 Bypass to its junction with U.S. Highway 66, thence westerly along U.S. Highway 66 to its junction with Bowles Avenue, thence northerly along Bowles Avenue, actual or projected, to the Meramec River, thence easterly along the south bank of the Meramec River to a point directly south of the western boundary of Kirkwood, thence across the Meramec River to and along the western boundary of Kirkwood to Marshall Road, thence westerly along Marshall Road to its junction with Treecourt Avenue, thence northerly along Treecourt Avenue to its junction with Big Bend Road, thence easterly along Big Bend Road to the western boundry of Kirkwood, thence northerly along the western boundary of Kirkwood to its junction with Dougherty Ferry Road, thence westerly along Dougherty Ferry Road to its junction with Interstate Highway 244, thence northerly along Interstate Highway 244 to its junction with Manchester Road, thence easterly along Manchester Road to its junction with the northwest corner of Kirkwood, thence along the western and northern boundaries of Kirkwood to the western boundary of Huntleigh, Mo., thence along the western and northern boundaries of Huntleigh to its junction with Lindbergh Boulevard, thence northerly along Lindbergh Boulevard to its junction with Lackland Avenue, thence in a westerly direction along Lackland Avenue to its junction with the right-of-way of the proposed Circumferential Expressway (Interstate Highway 244), thence in a northerly direction along said right-of-way to its junction with the right-of-way of the Chicago, Rock Island and Pacific Railroad, thence in an easterly direction along said right-of-way to its junction with Dorsett Road, thence in an easterly direction along Dorsett Road to its junction with Lindbergh Boulevard, thence in a northerly direction along Lindbergh Boulevard to its junction with St. Charles Rock Road, thence westerly along St. Charles Rock Road to its function with the Missouri River, thence northerly along the east shore of the Missouri River to its junction with the Norfolk and Western Railway Co. right-of-way, thence easterly along the southern boundary of the Norfolk and Western Railway Co. right-of-way to Lindbergh Boulevard, thence in an easterly direction along Lindbergh Boulevard to the western boundary of St. Ferdinand (Florissant), Mo., thence along the western, northern, and eastern boundaries of St. Ferdinand to junction Insterstate Highway 270, and thence along Interstate Highway 270 to the corporate limits of St. Louis (near Chain of Rocks Bridge); and

(3) All points within the corporate limits of East St. Louis, Belleville, Granite City, Madison, Venice, Brooklyn, National City, Fairmont City, Washington Park, and Sauget, Ill.; that part of the village of Cahokia, Ill., bounded by Illinois Highway 3 on the east, First Avenue and Red House (Cargill) Road on the south and southwest, the east line of the right-of-way of the Alton and Southern Railroad on the west, and the corporate limits of Sauget, Ill., on the northwest and north; that part of Centerville, Ill., bounded by a line beginning at the junction of 26th Street and the corporate limit of East St. Louis, Ill., and extending northeasterly along 26th Street to its junction with Bond Avenue, thence southeasterly along Bond Avenue to its

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junction with Owen Street, thence southwesterly along Owen Street to its junction with Church Road, thence southeasterly along Church Road to its junction with Illinois Avenue, thence southwesterly along Illinois Avenue to the southwesterly side of the right-of-way of the Illinois Central Railroad Co., thence along the southwesterly side of the right-of-way of the Illinois Central Railroad Co. to the corporate limits of East St. Louis, Ill, thence along the corporate limits of East St. Louis, Ill., to the point of beginning; and that area bounded by a line commencing at the intersection of the right-of-way of the Alton and Southern Railroad and the Madison, Ill., corporate limits near 19th Street, and extending east and south along said right-of-way to its intersection with the right-of-way of Illinois Terminal Railroad Co., thence southwesterly along the Illinois Terminal Railroad Co. right-of-way to its intersection with Illinois Highway 203, thence northwesterly along said highway to its intersection with the Madison, Ill., corporate boundary near McCambridge Avenue, thence northerly along the Madison, Ill., corporate boundary to the point of beginning.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act in respect of transportation by motor vehicle, in interstate or foreign commerce, between Belleville, Ill., on the one hand, and, on the other, any other point in the commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed, and the said transportation is hereby subjected to all applicable provisions of the Interstate Commerce Act.

Sec. 4 Washington, DC.

The zone adjacent to and commercially a part of Washington, DC, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.A. 303(b)(8)) includes and it is comprised of all as follows:

Beginning at the intersection of MacArthur Boulevard and Falls Road (Maryland Highway 189) and extending northeasterly along Falls Road to its junction with Scott Drive, thence west on Scott Drive to its junction with Viers Drive, thence west on Viers Drive to its junction with Glen Mill Road, thence northeast on Glen Mill Road to its junction with Maryland Highway 28, thence west on Maryland Highway 28 to its junction with Shady Grove Road, thence northeast on Shady Grove Road approximately 2.7 miles to Crabbs Branch, thence southeasterly along the course of Crabbs Branch to Rock Creek, thence southerly along the course of Rock Creek to Viers Mill Road (Maryland Highway 586), thence southeasterly along Viers Mill Road approximately 0.3 mile to its junction with Aspen Hill Road, thence northeasterly along Aspen Hill Road to its junction with Brookeville Road (Maryland Highway 97), thence southeasterly along Brookeville Road to its junction with Maryland Highway 183, thence northeasterly along Maryland Highway 183 to Colesville, Md., thence southeasterly along Beltsville Road to its junction with Powder Mill Road (Maryland Highway 212), thence easterly over Powder Mill Road to its junction with Montgomery Road, thence northeasterly along Montgomery Road, approximately 0.2 mile, to its junction with an unnumbered highway extending northeasterly to the north of Ammendale Normal Institute, thence along such unnumbered highway for a distance of about 2.2 miles to its junction somewhat north of Virginia Manor, Md., with an unnumbered highway extending easterly through Muirkirk, Md., thence along such unnumbered highway through Muirkirk to its junction, approximately 1.8 miles east of the Baltimore and Ohio Railroad, with an unnumbered highway, thence southwesterly along such unnumbered highway for a distance of about 0.5 mile to its junction with an unnumbered highway, thence southeasterly along such unnumbered highway through Springfield and Hillmeade, Md., to its junction with Defense Highway (U.S. Highway 50), thence southwesterly along Defense Highway approximately 0.8 mile to its junction with Enterprise Road (Maryland Highway 556), thence southerly over Enterprise Road to its junction with Central Avenue (Maryland Highway 214), thence westerly over Central Avenue about 0.5 mile to its crossing of Western Branch, thence southerly down the course of Western Branch to Maryland Highway 202, thence westerly approximately 0.3 mile along Maryland Highway 202 to its junction with White House Road, thence southwesterly along White House Road to its junction with Maryland Highway 221, thence southeasterly along Maryland Highway 221 to its junction with Maryland Highway 4, thence westerly along Maryland Highway 4 to the boundary of Andrews Air Force Base, thence south and west along said boundary to Brandywine Road (Maryland Highway 5), thence northwesterly along Maryland Highway 5 to its junction with Maryland Highway 337, thence southwesterly along Maryland Highway 337 to its junction with Maryland Highway 224, thence southerly along Maryland Highway 224 to a point opposite the mouth of Broad Creek, thence due west across the Potomac River to the west bank thereof, thence southerly along the west bank of the Potomac River to Gunston Cove, thence up the course of Gunston Cove to Pohick Creek, thence up the course of Pohick Creek to Virginia Highway 611, thence southwesterly along Virginia Highway 611 to the Fairfax-Prince William County line, thence along said county line to Virginia Highway 123, thence northerly along Virginia Highway 123 to its junction with Virginia Highway 636, thence northeasterly along Virginia Highway 636 to its junction with Virginia Highway 638, thence northwesterly along Virginia Highway 638 to its junction with Virginia Highway 620, thence westerly along Virginia Highway 620 to its junction with Virginia Highway 655, thence northeasterly along Virginia Highway 655 to its junction with U.S. Highway 211, thence westerly along U.S. Highway 211 to its junction with Virginia Highway 608, thence northerly along Virginia Highway 608 to its junction with U.S. Highway 50, thence westerly along U.S. Highway 50 to the Fairfax-Loudoun County line, thence northeasterly along said county line to its intersection with Dulles International Airport, thence along the southern, western, and northern boundaries of said airport to the Fairfax-Loudoun County line (at or near Dulles Airport Access Road), thence northeasterly along said county line to its junction with Virginia Highway 7, thence southeasterly along Virginia Highway 7 to its junction with Virginia Highway 193, thence along Virginia Highway 193 to its junction with Scott Run Creek, thence northerly down the course of Scott Run Creek to the Potomac River, thence due north across the river to MacArthur Boulevard to its junction with Maryland Highway 189, the point of beginning.

Sec. 5 Los Angeles, Calif., and contiguous and adjacent municipalities.

(a) The exemption provided by section 203(b)(8) of Part II of the Interstate Commerce Act to the extent it affects transportation by motor vehicle, in interstate or foreign commerce, performed wholly within Los Angeles, Calif., or wholly within any municipalitiy contiguous or adjacent to Los Angeles, Calif., or wholly a part of Los Angeles, as defined in paragraph (b) of this section, or wholly within the zone adjacent to and commercially a part of the San Pedro, Wilmington, and Terminal Island Districts of Los Angeles and Long Beach, as defined in paragraph (c) of this section, or wholly within the zone of any independent municipality contiguous or adjacent to Los Angeles, as determined under § 1048.101, or otherwise, between any point in Los Angeles County, Calif., north of the line described below, on the one hand, and, on the other, any point in Los Angeles County, Calif., south thereof is hereby removed and the said transportation is hereby subjected to all the applicable provisions of the Interstate Commerce Act:

Beginning at the Pacific Ocean, and extending easterly along the northern and eastern corporate limits of Manhattan Beach to the northern corporate limits of Redondo Beach, thence along the northern and eastern corporate limits of Redondo Beach to the intersection of Inglewood Avenue and Redondo Beach Boulevard, thence along Redondo Beach Boulevard to the corporate limits of Torrance, thence along the northwestern and eastern corporate limits of Torrance to 182d Street, thence along 182d Street, Walnut, and Main Streets to Alondra Boulevard, thence along Alondra Boulevard to its intersection with Dwight Avenue, thence southerly along Dwight Avenue and an imaginary straight line extending southward to Greenleaf Boulevard, thence eastward along Greenleaf Boulevard to the northwestern corner of the corporate limits of Long Beach, thence along the northern and eastern corporate limits of Long Beach to Artesia Boulevard, thence east on Artesia Boulevard to the Los Angeles-Orange County line.

(b) For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Los Angeles and contiguous municipalities (except the San Pedro, Wilmington, and Terminal Island districts of Los Angeles and Long Beach, Calif.), in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt from regulation under section 203(b)(8) of the act, is hereby defined to include the area of a line extending in a generally northwesterly and northerly direction from the intersection of Inglewood Avenue and Redondo Beach Boulevard along the eastern and northern corporate limits of Redondo Beach, Calif., to the eastern corporate limits of Manhattan Beach, Calif., thence along the eastern and northern corporate limits of Manhattan Beach to the Pacific Ocean, thence along the shoreline of the Pacific Ocean to the western corporate limits of Los Angeles at a point east of Topanga Canyon, and thence along the western corporate limits of Los Angeles to a point near Santa Susana Pass; south of a line extending in a generally easterly direction from a point near Santa Susana Pass along the northern corporate limits of Los Angeles to the eastern corporate limits of Burbank, Calif., thence along the eastern corporate limits of Burbank to the northern corporate limits of Glendale, Calif., and thence along the northern corporate limits of Glendale and Pasadena, Calif., to the northeastern corner of Pasadena; west of a line extending in a generally southerly and southwesterly direction from the northeastern corner of Pasadena along the eastern and a portion of the southern corporate limits of Pasadena to the eastern corporate limits of San Marino, Calif., thence along the eastern corporate limits of San Marino and the eastern and a portion of the southern corporate limits of Alhambra, Calif., to the western corporate limits of Monterey Park, Calif., and the western corporate limits of Montebello, Calif., thence along the western corporate limits of Montebello, Calif., to the Rio Hondo, and the Los Angeles River to the northern corporate limits of Long Beach; and north of a line extending in a generally westerly direction from the Los Angeles River along the northern corporate limits of Long Beach and thence along Greenleaf Boulevard to its intersection with an imaginary straight line extending southward from Dwight Avenue, thence north on the imaginary straight line extending southward from Dwight Avenue, and thence northerly along Dwight Avenue to Alondra Boulevard, thence west along Alondra Boulevard, Main, Walnut, and 182d Streets to the eastern corporate limits of Torrance, thence along a portion of the eastern and the northwestern corporate limits of Torrance to Redondo Beach Boulevard, and thence along Redondo Beach Boulevard to Inglewood Avenue.

(c) For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of the San Pedro, Wilmington, and Terminal Island districts of Los Angeles and Long Beach in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt from regulation under section 203(b)(8) of the act, is hereby defined to include the area east of a line extending in a generally northerly and northwesterly direction from the Pacific Ocean along the western corporate limits of Los Angeles to 258th Street, thence along 258th Street to the eastern corporate limits of Torrance, and thence along a portion of the eastern, and along the southern and western, corporate limits of Torrance to the northwestern corner of Torrance, south of a line extending in a generally easterly direction from the northwestern corner of Torrance along the northwestern and a portion of the eastern corporate limits of Torrance to 182d Street, thence along 182d, Walnut, Main, and Alondra Boulevard to its intersection with Dwight Avenue, thence southerly along Dwight Avenue and an imaginary straight line extending southward from Dwight Avenue to Greenleaf Boulevard and thence along Greenleaf Boulevard and the northern corporate limits of Long Beach to the northeastern corner of Long Beach; west of the eastern corporate limits of Long Beach; and north of the southern corporate limits of Long Beach and Los Angeles.

Sec. 6 Philadelphia, Pa.

The zone adjacent to and commercially a part of Philadelphia, Pa., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The area within Pennsylvania included within the corporate limits of Philadelphia and Bensalem and Lower Southampton Townships in Bucks County; Conshohocken and West Conshohocken, Pa., and Lower Moreland, Abington, Cheltenham, Springfield, Whitemarsh, and Lower Merion Townships in Montgomery County; an area in Upper Dublin Township, Montgomery County, bounded by a line beginning at the intersection of Pennsylvania Avenue and Fort Washington Avenue and extending northeast along Fort Washington Avenue to its junction with Susquehanna Road, thence southeast along Susquehanna Road to its junction with the right-of-way of the Pennsylvania Railroad Company, thence southwest along the right-of-way of the Pennsylvania Railroad Company to Pennsylvania Avenue, thence northwest along Pennsylvania Avenue to its junction with Fort Washington Avenue, the point of beginning; Haverford Township in Delaware County; and an area in Delaware County south and east of a line extending southward from the intersection of the western and northern boundaries of Upper Darby Township along Darby Creek to Bishop Avenue, thence south along Bishop Avenue to Baltimore Pike, thence west along Baltimore Pike to Pennsylvania Highway 320, thence south along Pennsylvania Highway 320 to the corporate limits of Chester, thence along the northern corporate limit of Chester in a westerly direction to the eastern boundary of Upper Chichester Township, thence south to the southern boundary of said township along the eastern boundary thereof, and thence west along the southern boundary of said township to the Delaware State line, and thence south along the Delaware State line to the Delaware River, and

(b) The area in New Jersey included in the corporate limits of Camden, Gloucester City, Woodlynne, Merchantville, and Palmyra Boroughs, and the area included in Pennsauken Township in Camden County.

Sec. 7 Cincinnati, Ohio.

The zone adjacent to and commercially a part of Cincinnati, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49

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U.S.C. 203(b)(8)), includes and is comprised of all points as follows:

Addyston, Ohio.	North Bend, Ohio.
Cheviot, Ohio.	Norwood, Ohio.
Cincinnati, Ohio.	St. Bernard, Ohio.
Cleves, Ohio.	Covington, Ky.
Elmwood Place, Ohio.	Newport, Ky.
Fairfax, Ohio.	Cold Spring, Ky.
Mariemont, Ohio.	

That part of Ohio bounded by a line commencing at the intersection of the Colerain-Springfield Township line and corporate limits of Cincinnati, Ohio, and extending along said township line in a northerly direction to its intersection with the Butler-Hamilton County line, thence in an easterly direction along said county line to its intersection with Ohio Highway 4, thence in a northerly direction along Ohio Highway 4 to its intersection with Seward Road, thence in a northerly direction along said road to its intersection with Port Union Road, thence east along Port Union Road to the Fairfield Township-Union Township line, thence northward along said township line to its intersection with the right-of-way of the Pennsylvania Railroad Co., thence southeasterly along the right-of-way of the Pennsylvania Railroad Co. to its intersection with Princeton-Glendale Road (Ohio Highway 747), thence southward along said road to its intersection with Mulhauser Road, thence in an easterly direction along said road to the terminus thereof west of the tracks of the Pennsylvania Railroad Co., thence continue in an easterly direction in a straight line to Allen Road, thence along the latter to the junction thereof with Cincinnati-Dayton Road, thence in a southerly direction along Cincinnati-Dayton Road, to the Butler, Hamilton County line, thence along said county line to the Warren-Hamilton County line in an easterly direction to the Symmes-Sycamore Township line, thence in a southerly direction along the Symmes-Sycamore Township line to its intersection with the Columbia Township line, thence in a westerly direction along Sycamore-Columbia Township line to Madeira Township, thence in a clockwise direction around the boundary of Madeira Township to the Sycamore-Columbia Township line, thence in a westerly direction along said township line to Silverton Township, thence in a southerly direction along said corporate limits to junction with Redbank Road, thence in a southerly direction over Redbank Road to the Cincinnati Corporate limits.

That part of Kenton County, Ky., lying on and north of a line commencing at the intersection of the Kenton-Boone County line and Dixie Highway (U.S. Highways 25 and 42), and extending over said highway to the corporate limits of Covington, Ky., including communities on the described line.

That part of Campbell County, Ky., lying on and north of a line commencing at the southern corporate limits of Newport, Ky., and extending along Licking Pike (Kentucky Highway 9) to junction with Johns Hill Road, thence along Johns Hill Road to junction with Alexandria Pike (U.S. Highway 27), thence northward along Alexandria Pike to junction with River Road (Kentucky Highway 445), thence over the latter to the Ohio River, including communities on the described line.

That part of Boone County, Ky., bounded by a line beginning at the Boone-Kenton County line west of Erlanger, Ky., and extending in a northwesterly direction along Donaldson Highway to its intersection with Zig-Zag Road, thence along Zig-Zag Road to its intersection with Kentucky Highway 18, thence along Kentucky Highway 18 to its intersection with Kentucky Highway 237, thence along Kentucky Highway 237 to its intersection with Kentucky Highway 20, and thence easterly along Kentucky Highway 20 to the Boone-Kenton County line.

That part of Boone and Kenton Counties, Ky., bounded by a line commencing at the intersection of the Boone-Kenton County line and U.S. Highway 42, and extending in a southwesterly direction along U.S. Highway 42 to its junction with Gunpowder Road, thence southerly along Gunpowder Road to its junction with Sunnybrook Road, thence easterly along Sunnybrook Road to its junction with Interstate Highway 75, thence in a straight line in a northeasterly direction to Richardson Road, thence in an easterly direction over Richardson Road to its junction with Kentucky State Route 1303, thence in a northerly direction over Kentucky State Route 1303 to the southern boundary of Edgewood, Kenton County, Ky.

Sec. 6 Kansas City, Mo.-Kansas City, Kans.

The zone adjacent to and commercially a part of Kansas City, Mo.-Kansas City, Kans., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

Beginning on the north side of the Missouri River at the western boundary line of Parkville, Mo., thence along the western and northern boundaries of Parkville to the Kansas City, Mo., corporate limits, thence along the western, northern, and eastern corporate limits of Kansas City, Mo., to its junction with U.S. Bypass 71 (near Liberty, Mo.), thence along U.S. Bypass 71 to Liberty, thence along the northern and eastern boundaries of Liberty to its junction with U.S. Bypass 71 south of Liberty, thence south along U.S. Bypass 71 to its junction with the Independence, Mo., corporate limits, thence along the eastern Independence, Mo., corporate limits to its junction with Interstate Highway 70, thence along Interstate Highway 70 to its junction with the Blue Springs, Mo., corporate limits, thence along the western, northern, and eastern corporate limits of Blue Springs, Mo., to its junction with U.S. Highway 40, thence east along U.S. Highway 40 to its junction with Brizen-Dine Road, thence south along the southerly extension of Brizen-Dine Road to its junction with Missouri Highway AA, thence along Missouri Highway AA to its junction with the Blue Springs, Mo., corporate limits, thence along the southern and western corporate limits of Blue Springs, Mo., to its junction with U.S. Highway 40, thence west along U.S. Highway 40 to its junction with the Lee's Summit, Mo., corporate limits.

Thence along the eastern Lee's Summit corporate limits to the Jackson-Cass County line, thence west along Jackson-Cass County line to the eastern corporate limits of Belton, Mo., thence along the eastern, southern, and western corporate limits of Belton to the western boundary of Richards-Gebaur Air Force Base, thence along the western boundary of said Air Force Base to Missouri Highway 150, thence west along Missouri Highway 150 to the Kansas-Missouri State line, thence north along the Kansas-Missouri State line, to 110th Street, thence west along 110th Street to its junction with U.S. Highway 69, thence north along U.S. Highway 69 to its junction with 103d Street, thence west along 103d Street to its junction with Quivera Road (the corporate boundary of Lenexa, Kans.), thence along the eastern and southern boundaries of Lenexa to Black Bob Road, thence south along Black Bob Road to 119th Street, thence east along 119th Street to the corporate limits of Olathe, Kans., thence south and east along the Olathe corporate limits to Schlagel Road, thence south along Schlagel Road to Olathe Morse Road, thence west along Olathe Morse Road to the northeast corner of Johnson County Airport, thence south, west, and north along the boundaries of said airport to Pflumm Road, thence north along Pflumm Road to its junction with Olathe Martin City Road, thence west along Olathe Martin City Road to its junction with Murden Road, thence south along Murden Road to its junction with Olathe Morse Road (the corporate boundary of Olathe, Kans.), thence west and north along said corporate boundary to its intersection with U.S. Highway 56, thence southwest along U.S. Highway 56 to its junction with 159th Street.

Thence west along 159th Street to its junction with the Johnson County Industrial Airport, thence south, west, north and east along the boundaries of said airport to the point of beginning, on 159th Street, thence, east along 159th Street to its junction with U.S. Highway 56, thence northeast along U.S. Highway 56 to its junction with Parker Road, thence north along Parker Road to the northern boundary of Olathe, thence east and north along the northern corporate limits of Olathe to Pickering Road, thence north along Pickering Road to 107th Street (the corporate boundary of Lenexa, Kans.), thence along the western and northern boundaries of Lenexa to Pflumm Road, thence north along Pflumm Road to its junction with Kansas Highway 10, thence along Kansas Highway 10 to its junction with Kansas Highway 7, thence along an imaginary line due west across the Kansas River to the Wyandotte County-Leavenworth County line (142d Street) at Loring, Kans., thence westerly along County Route No. 82, a distance of three-fourths of a mile to the entrance of the facilities at Mid-Continent Underground Storage, Loring, thence from Loring in a northerly direction along Loring Lane and Lindwood Avenue to the southern boundary of Bonner Springs, Kans.

Thence along the southern, western, and northern boundaries of Bonner Springs to its intersection with Kansas Highway 7, thence southeast along Kansas Highway 7 to its junction with Kansas Highway 32, thence east on Kansas Highway 32 to the corporate boundary of Kansas City, Kans., thence north, west, and east along the corporate boundaries of Kansas City, Kans., to its junction with Cernech Road and Pomeroy Drive, thence northwesterly along Pomeroy Drive to its junction with 79th Street, thence along 79th Street to its junction with Walcotte Drive at Pomeroy, Kans., thence due west 1.3 miles to its junction with an unnamed road, thence north along such unnamed road to the entrance of Powell Port facility, thence due north to the southern bank of the Missouri River, thence east along the southern bank of Missouri River to a point directly across from the western boundary of Parkville, Mo., thence across the Missouri River to the point of beginning.

Sec. 9 Boston, Mass.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Boston, Mass., and contiguous municipalities in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act from regulation, is hereby defined to include the following:

Boston, Mass.; Winthrop, Mass.; Chelsea, Mass.; Revere, Mass.; Everett, Mass.; Malden, Mass.; Medford, Mass.; Somerville, Mass.; Cambridge, Mass.; Watertown, Mass.; Brookline, Mass.; Newton, Mass.; Needham, Mass.; Dedham, Mass.; Milton, Mass.; Quincy, Mass.

Sec. 10 Davenport, Iowa; Rock Island and Moline, Ill.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zones adjacent to and commercially a part of Davenport, Iowa, Rock Island and Moline, Ill., in which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such municipalities or zones, will be partially exempt from regulation under section 203(b)(8) of the act (49 U.S.C. 303(b)(8) are hereby determined to be coextensive and to include and to be comprised of the following:

(a) All points within the corporate limits of the city of Davenport and the city of Bettendorf, and in Davenport Township, Iowa.

(b) All points north of Davenport Township within that portion of Sheridan Township, Iowa, bounded by a line as follows: Beginning at the points where U.S. Highway 61 crosses the Davenport-Sheridan Township line and extending northward along U.S. Highway 61 to the right-of-way of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., thence northwesterly along said right-of-way to its junction with the first east-west unnumbered highway, thence westerly approximately 0.25 mile to its junction with a north-south unnumbered highway, thence southerly along such unnumbered highway to the northeast corner of Mount joy Airport, thence along the northern and western boundaries of said airport to the southwestern corner thereof, and thence south in a straight line to the northern boundary of Davenport Township.

(c)(1) That part of Iowa lying west of the municipal limits of Davenport south of Iowa Highway 22, north of the Mississippi River and east of the present western boundary of the Dewey Portland Cement Co., at Linwood, including points on such boundaries, and (2) that part of Iowa east of the municipal limits of Bettendorf, south of U.S. Highway 67, west of a private road running between U.S. Highway 67 and Riverside Power Plant of the Iowa-Illinois Gas & Electric Co., and north of the Mississippi River, including points on such boundaries.

(d) The municipalities of Carbon Cliff, Silvis, East Moline, Moline, Rock Island, and Milan, Ill., and that part of Illinois lying south or east of such municipalities, within a line as follows: Beginning at a point where Illinois Highway 84 crosses the southern municipal limits of Carbon Cliff and extending southerly along such highway to its junction with Colona Road, thence westerly along Colona Road to Bowlesburg Road, thence southerly on Bowlesburg Road to the southern boundary of Hampton Township, thence along the southern boundaries of Hampton and South Moline Townships to U.S. Highway 150, thence southerly along U.S. Highway 150 to the southern boundary of the Moline Airport, thence along the southern and western boundaries of the Moline Airport to Illinois Highway 92, and thence along Illinois Highway 92 to the corporate limits of Milan.

(e) All points in Illinois within one-half mile on each side of Rock Island County State Aid Route No. 9 extending southwesterly from the corporate limits of Milan for a distance of 1 mile, including points on such highway.

Sec. 11 Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.

(a) The application of § 1048.101 is hereby extended to each municipality in New Jersey, any part of which is within 5 miles of the corporate limits of New York, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, performed wholly within any commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except (1) transportation which is performed wholly between any two points in New Jersey, or (2) transportation which is performed wholly between points in New Jersey named in § 1048.1(b)(1), on the one hand, and, on the other, points in New York named in § 1048.1(b)(1).

Sec. 12 Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.

(a) The application of § 1048.101 is hereby extended to each municipality in Westchester or Nassau Counties, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, performed wholly within any commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except (1) transportation which is performed wholly between points in New York neither of which is New York City, NY, or (2) transportation which is performed wholly between points in Westchester or Nassau County named in § 1048.1(b)(1), on the one hand, and, on the other, New York City, N.Y., or points in New Jersey named in § 1048.1(b)(1).

Sec. 13 Tucson, Ariz.

That zone adjacent to and commercially a part of Tucson, Ariz., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Tucson, Ariz., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Tucson, Ariz.

(c) All points in that area south of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section, intersects Wilmot Road, thence south along Wilmot Road to junction Nogales Old Vail Connection, thence west along Nogales Old Vail Connection, actual or extended, to the Santa Cruz River, thence north along the east bank of the Santa Cruz River to its joinder

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with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section.

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Tucson or by any municipality included under the terms of paragraph (d) of this section.

Sec. 14 Albuquerque, N. Mex.

The zone adjacent to and commercially a part of Albuquerque, N. Mex., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Albuqerque, N. Mex., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Albuquerque, N. Mex.

(c) All points in that area north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the intersection of the line described in paragraph (b) of this section and New Mexico Highway 528, extending in a northeasterly direction along New Mexico Highway 528 to its intersection with New Mexico Highway 44, thence easterly along New Mexico Highway 44 to its intersection with New Mexico Highway 422, thence southerly along New Mexico Highway 422 to its intersection with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section;

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Albuquerque, N. Mex., or by any municipality included under the terms of paragraph (b) of this section.

Sec. 18 Ravenswood, W. Va.

That zone adjacent to and commercially a part of Ravenswood, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Ravenswood, W. Va., itself.

(b) All points within a line drawn 3 miles beyond the corporate limits of Ravenswood, W. Va., and

(c) All points in West Virginia in that area south and southwest of those described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the Ohio River meets the line described in paragraph (b) of this section southwest of Ravenswood, thence southerly along the east bank of the Ohio River to the point where the mouth of the Lick Run River empties into the Ohio River; thence in a northeasterly direction along the northern bank of the Lick Run River to the point where it crosses West Virginia Highway 2 south of Ripley Landing, W. Va.; thence in a northerly direction along West Virginia Highway 2 to its intersection with the line described in paragraph (b) of this section west of Pleasant View, W. Va.

Sec. 19 Lake Charles, La.

That zone adjacent to and commercially a part of Lake Charles, La., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Lake Charles La., itself;

(b) All points within a line drawn 4 miles beyond the corporate limits of Lake Charles, La.;

(c) All points in that area south and west of the line described in paragraph (b) of this section, bounded by a line, as follows: beginning at the point where the line described in paragraph (b) of this section intersects Louisiana Highway 385; thence south along Louisiana Highway 385 to its intersection with the Calcasieu-Cameron Parish line; thence west along the Calcasieu-Cameron Parish line to its intersection with Louisiana Highway 27; thence northerly along Louisiana Highway 27 to a point thereon 2 miles south of U.S. Highway 90; thence east along a line parallel to U.S. Highway 90 to Louisiana Highway 108; thence north along Louisiana Highway 108 to junction U.S. Highway 90; thence east along U.S. Highway 90 to the intersection thereof with the line described in paragraph (b) of this section;

(d) All of the municipality any part of which is within the limits of the combined areas in paragraphs (b) and (c) of this section; and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the City of Lake Charles or by any municipality included under the terms of paragraph (d) of this section.

Sec. 20 Syracuse, N.Y.

The zone adjacent to and commercially a part of Syracuse, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

(a) The municipality of Syracuse, NY., itself;

(b) All other municipalities and unincorporated areas within 5 miles of the corporate limits of Syracuse, N.Y., and all of any other municipality any part of which lies within 5 miles of such corporate limits;

(c) Those points in the town of Geddes, Onondaga County, N.Y., which are not within 5 miles of the corporate limits of Syracuse, N.Y.;

(d) Those points in the towns of Van Buren and Lysander, Onondaga County, N.Y., not within 5 miles of the corporate limits of Syracuse, N.Y., and within an area bounded by a line beginning at the intersection of Van Buren Road with the line described in (b) above, thence northwesterly along Van Buren Road to its intersection with the cleared right-of-way of Niagara Mohawk Power Company, thence northwesterly and north along said right-of-way to its intersection between Church Road and Emerick Road, with the cleared right-of-way of New York State Power Authority, thence easterly along said cleared right-of-way to its intersection with the Seneca River, thence south along the Seneca River to its intersection, near Gaskin Road, with the cleared right-of-way of Niagara Mohawk Power Company, thence southwesterly along said cleared right-of-way to its intersection with the eastern limits of the Village of Baldwinsville, thence south along such Village limits to their intersection with a line of railroad presently operated by the Erie-Lackawanna Railroad Company, thence southeasterly along said line of railroad to its intersection with the Van-Buren Lysander Town line, thence southeasterly along the Van-Buren Lysander Town line to its intersection with the Van-Buren Geddes Town line, thence southeasterly along the Van-Buren Geddes Town line to the line described in (b) above.

Sec. 21 Baltimore, Md.

The zone adjacent to and commercially a part of Baltimore, Md., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

(a) The municipality of Baltimore itself;

(b) All points within a line drawn 5 miles beyond the boundaries of Baltimore;

(c) All points in that area east of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses Dark Head Creek and extending in a southeasterly direction along the center of Dark Head Creek and beyond to a point off Wilson Point, thence in a northeasterly direction to and along the center of Frog Mortar Creek to Stevens Road, thence northerly along Stevens Road to Eastern Avenue, thence easterly along Eastern Avenue to Bengies Road, thence northwesterly along Bengies Road, to the right-of-way of the Penn Central Transportation Co., thence westerly along such right-of-way to the junction thereof with the line described in paragraph (b) of this section;

(d) All points in that area south of the line described in paragraph (b) of this section, bounded on the west by the right-of-way of the line of the Penn Central Transportation Co., extending between Stony Run and Severn, Md., and on the south by that part of Maryland Highway 176, extending easterly from the said railroad to its junction with the line described in paragraph (b) of this section;

(e) All points in that area southwest of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses the Baltimore-Washington Expressway and extending in a southwesterly direction along the Baltimore-Washington Expressway to its intersection with Maryland Highway 176, thence westerly along Maryland Highway 176 to its intersection with the Howard-Anne Arundel County line, thence southwesterly along said county line to its intersection with Maryland Highway 32, thence northwesterly along Maryland Highway 32 to its intersection with the Little Patuxent River, thence northerly along the Little Patuxent River to the intersection of its north fork and its east fork located approximately 1 mile north of the intersection of Maryland Highway 32 and Berger Road, thence easterly along the east fork of the Little Patuxent River to its intersection with Broken Land Parkway, thence southerly along Broken Land Parkway to its intersection with Snowden River Parkway, thence easterly along Snowden River Parkway, to its intersection with relocated Maryland Highway 175, thence southeasterly along relocated Maryland Highway 175, to its intersection with Lark Brown Road, thence northeasterly along Lark Brown Road to its intersection with Maryland Highway 175, thence southerly along Maryland Highway 175 to its intersection with Interstate Highway 95, thence northeasterly along Interstate Highway 95 to its intersection with the line described in paragraph (b) of this section;

(f) All points in that area north of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the junction of the line described in paragraph (b) of this section and the Baltimore-Harrisburg Expressway (Interstate Highway 83), thence northerly along Interstate Highway 83 to its junction with Shawan Road, thence easterly along Shawan Road to its junction with York Road (Maryland Highway 45) and continuing to a point 1,500 feet east of Maryland Highway 45, thence southerly along a line 1,500 feet east of the parallel to Maryland Highway 45 to its junction with the line described in paragraph (b) of this section;

(g) All points in that area west of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section intersects U.S. Highway 40 west of Baltimore, Md., and extending in a westerly direction along U.S. Highway 40 to its intersection with St. John's Lane, thence southerly along St. John's Lane to its intersection with Maryland Highway 144, thence easterly along Maryland Highway 144 to its intersection with the line in paragraph (b) of this section;

(h) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b), (c), (d), (e), (f), and (g) of this section;

(i) All of any municipality wholly surrounded, or surrounded except for a water boundary, by the city of Baltimore or by any municipality included under the terms of (h) above.

Sec. 22 Cleveland, Ohio

The zone adjacent to and commercially a part of Cleveland, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

(a) All points in Cuyahoga County, Ohio, and

(b) All points in Wickliffe, Willoughby Hills, Waite Hill, Willoughby, Willowick, Eastlake, Lakeline, Timberlake, and Mentor, Lake County, Ohio.

Sec. 23 Detroit, Mich.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Detroit, Mich., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, all that area within a line as follows:

Beginning at a point on Lake St. Clair opposite the intersection of Fifteen Mile Road and Michigan Highway 29 and extending south and southwest along the shore of Lake St. Clair, to the Detroit River, thence along such River (east of Belle Isle) and Trenton Channel to a point opposite Sibley Road, thence west to and along Sibley Road to Waltz Road, thence north along Waltz Road to Wick Road, thence west along Wick Road to Cogswell Road, thence north along Cogswell Road to Van Born Road, thence east along Van Born Road to Newburgh Road, thence north along Newburgh Road to its junction with Halsted Road, thence north along Halsted Road to West Maple Road, thence east along West Maple Road to Telegraph Road, thence north along Telegraph Road to Sixteen Mile Road, thence east along Sixteen Mile Road to Utica Road, thence southeasterly along Utica Road to Fifteen Mile Road (also called East Maple Road), thence along Fifteen Mile Road and across Michigan Highway 29 to Lake St. Clair, the point of beginning.

Sec. 24 Seattle, Wash.

The zone adjacent to and commercially a part of Seattle, Wash., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for continuous carriage or shipments to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Seattle itself.

(b) All points within a line drawn 5 miles beyond the municipal limits of Seattle, except points on Bainbridge Island, Vashon Island, and Blake Island.

(c) All points more than 5 miles beyond the municipal limits of Seattle (1) within a line as follows: Beginning at that point south of Seattle where the eastern shore of Puget Sound intersects the line described in paragraph (b) of this section, thence southerly along the eastern shore of Puget Sound to Southwest 192d Street, thence easterly along Southwest 192d Street to the point where it again intersects the line described in paragraph (b) of this section; and (2) within a line as follows: Beginning at the junction of the southern corporate limits of Kent, Wash., and Washington Highway 181, and extending south along Washington Highway 181 to the northern corporate limits of Auburn, Wash., thence along the western, southern, and eastern corporate limits of Auburn to the junction of the northern corporate limits of Auburn and Washington Highway 167, thence northerly along Washington Highway 167 to its junction with the southern corporate limits of Kent, Wash., including all points on the highways named.

(d) All points more than 5 miles beyond the municipal limits of Seattle within a line as follows: Beginning at the junction of the northern corporate limits of Lynwood, Wash., and U.S. Highway 99, thence north along U.S. Highway 99 to its junction with Washington Highway 525, thence along Washington Highway 525 to its junction with West Casino Road, thence east along West Casino Road to the western boundary of the Everett facilities of the Boeing Co. at or near 4th Avenue West, thence along the western, northern and

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eastern boundaries of the facilities of the Boeing Co. to West Casino Road, thence east along West Casino Road to its junction with U.S. Highway 99, thence south along U.S. Highway 99 to 112th Street, thence easterly along 112th Street to its junction with Interstate Highway 5, thence southerly along Interstate Highway 5 to its intersection with the present zone limits, including all points on the named routes.

(e) All of any municipality any part of which is within the limits set forth in (b) above.

(f) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Seattle or by any municipality included under the terms of (b) above.

Sec. 25 Albany, N.Y.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Albany, N.Y., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulations, is hereby determined to include, and to be comprised of, the following:

(a) The municipality of Albany itself,

(b) All points within a line drawn 5 miles beyond the municipal limits of Albany,

(c) All points in that area more than 5 miles beyond the municipal limits of Albany bounded by a line as follows: Beginning at that point on Swatling Road (in the Town of Colonie) where it crosses the line described in (b) above and extending northerly along such road to the municipal limits of Cohoes, thence along the western and northern boundary of Cohoes to the Mohawk River, thence along such river to the northern boundary of the Town of Waterford, thence along the northern and eastern boundaries of the Town of Waterford to the northern boundary of the City of Troy (all of which city is included under the next following provision),

(d) All of any municipality any part of which is within the limits of the combined areas defined in (b) and (c) above, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Albany or by any other municipality included under the terms of (d) above.

Sec. 26 Minneapolis-St. Paul, Minn.

The zone adjacent to and commercially a part of Minneapolis-St. Paul, Minn, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

Beginning at the intersection of Minnesota Highway 36 and the Minnesota River and extending along the Minnesota River to the southwest corner of the city of Bloomington, thence north along the western boundaries of the city of Bloomington and the village of Edina to the southern boundary of the city of Hopkins, thence along the southern, western, and northern boundaries of the city of Hopkins to the western boundary of the city of St. Louis Park, thence north along the western boundaries of the city of St. Louis Park and the village of Golden Valley to the southeast corner of the village of Plymouth, thence west along the southern boundary of Plymouth to Interstate Highway 494, thence north along Interstate Highway 494 to Minnesota Highway 55, thence southeast along Minnesota Highway 55 to the western boundary of the village of Golden Valley, thence north along the western boundaries of the villages of Golden Valley and New Hope to the northwestern corner of the village of New Hope, thence east along the northern boundary of the village of New Hope and the city of Crystal to the western boundary of the village of Brooklyn Center, thence north along the western boundary of the village of Brooklyn Center to its northern boundary, thence east along such northern boundary to the Hennepin County-Anoka County line, thence north along such county line to the northwestern corner of the village of Spring Lake Park in Anoka County, thence east along the northern boundary of the village of Spring Lake Park to the northwest corner of Mounds View Township in Ramsey County, thence east and south along the northern and eastern boundaries of Mounds View Township to the northwestern corner of the village of Little Canada, thence east and south along the northern and eastern boundaries of Little Canada to the northwest corner of the village of Maplewood, thence east and south along the northern and eastern boundaries of the village of Maplewood to the northeastern corner of the village of North St. Paul, thence south along the eastern boundary of the village of North St. Paul to the southeast corner of such village, thence south along the eastern boundary of the village of Maplewood to the northeastern corner of the village of Newport, thence south and west along the eastern and southern boundaries of the village of Newport to U.S. Highway 61, thence southeasterly along U.S. Highway 61, to the eastern boundary of the village of St. Paul Park, thence along the eastern, southern, and western boundaries of the village of St. Paul Park to a point on the Mississippi River opposite the southeast corner of the original village of Inver Grove, thence westerly across the river and along the southern and western boundaries of the original village of Inver Grove to the northwest corner of such village, thence due north to the southern boundary of South St. Paul, thence north and west along the western and southern boundaries of South St. Paul to the southeastern corner of West St. Paul, thence west along the southern boundary of West St. Paul to County Highway 63, thence south along County Highway 63 to its junction with County Highway 63A, thence west along County Highway 63A to its junction with Minnesota Highway 49, thence north along Minnesota Highway 49 to its junction with County Highway 28, thence west along County Highway 28 to its junction with Minnesota Highway 13, thence southwest along Minnesota Highway 13 to its junction with Minnesota Highway 36, thence north and northwest along Minnesota Highway 36 to the Minnesota River, the point of beginning

Sec. 27 New Orleans, La.

The zone adjacent to and commercially a part of New Orleans, La., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points in the area bounded as follows:

Commencing at a point on the shore of Lake Pontchartrain where it is crossed by the Jefferson Parish-Orleans Parish line; thence easterly along the shore of Lake Pontchartrain to the Rigolets; thence through the Rigolets in an easterly direction to Lake Borgne; thence southwesterly along the shore of Lake Borgne to the Bayou Bienvenue; thence in a general westerly direction along the Bayou Bienvenue (which also constitutes the Orleans Parish-St. Bernard Parish line) to Paris Road; thence in a southerly direction along Paris Road to the Back Protection Levee; thence in a southeasterly direction along the Back Protection Levee (across Lake Borgne Canal) to a point 1 mile north of Louisiana Highway 46; thence in an easterly direction 1 mile north of Louisiana Highway 46 to longitude 89°50' W.; thence south along longitude line 89°50' W. (crossing Louisiana Highway 46 approximately three-eighths of a mile east of Toca) to Forty Arpent Canal; thence westerly, northwesterly, and southerly along Forty Arpent Canal to Scarsdale Canal; thence northwesterly along Scarsdale Canal and beyond it in the same direction to the middle of the Mississippi River; thence southerly along the middle of the Mississippi River to the Augusta Canal; thence in a westerly direction along the Augusta Canal to the Gulf Intracoastal Waterway; thence in a northerly direction along the middle of the Gulf Intracoastal Waterway (Harvey Canal) to the point where Lapalco Boulevard runs perpendicular to the Gulf Intracoastal Waterway (Harvey Canal); thence in a westerly direction along Lapalco Boulevard to its junction with Barataria Boulevard; thence north on Barartaria Boulevard to a point approximately 2 miles south of the Mississippi River where a high tension transmission line crosses Barataria Boulevard; thence in a westerly direction following such transmission line to the intersection thereof with U.S. Highway 90; thence westerly along U.S. Highway 90 to the Jefferson Parish-St. Charles Parish line; thence north along such parish line to the middle of the Mississippi River; thence westerly along the middle of the Mississippi River to a point south of Almedia Road; thence north to Almedia Road; thence in a northerly direction along Almedia Road to its junction with Highway 61; thence north to the shore of Lake Pontchartrain; thence along the shore of Lake Pontchartrain in an easterly direction to the Jefferson Parish-Orleans Parish line, the point of beginning.

Sec. 28 Pittsburgh, Pa.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Pittsburgh, Pa., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) All points in Allegheny County, Pa., except Forward, Elizabeth, South Versailles, Marshall (including the Borough of Bradford Woods), Pine Richland, West Deer and Fawn Townships and that part of Frazer Township north of a line made by extending easterly in a straight line the southern boundary of West Deer Township.

(b) Borough of Trafford situated in both Alleghency and Westmoreland Counties;

(c) Borough of Ambridge and Harmony Township located in Beaver County; and

(d) The City of New Kensington and Borough of Arnold in Westmoreland County.

Sec. 29 Portland, Oreg.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Portland, Oreg., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) The municipality itself.

(b) All points in Oregon within a line drawn 5 miles beyond the corporate limits of Portland.

(c) All of any municipality any part of which is within the line described in (b) above.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Portland or by any municipality included under the terms of (c) above.

Sec. 30 Vancouver, Wash.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Vancouver, Wash., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) The municipality itself.

(b) All points in Washington within a line drawn 4 miles beyond the corporate limits of Vancouver.

(c) All of any municipality any part of which is within the line described in (b) above.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the City of Vancouver or by any municipality included under the terms of (c) above.

Sec. 31 Charleston, S.C.

The zone adjacent to and commercially a part of Charleston, S.C., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes and is comprised of, all points and places as follows:

(a) The municipality of Charleston itself.

(b) All points within a line drawn 4 miles beyond the boundaries of Charleston.

(c) All points in that area north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses Cooper River and extending in a northerly direction along the center of Cooper River to Goose Creek; thence north and west along the center of Goose Creek to the dam of the reservoir of the Charleston waterworks; thence northwesterly along the west bank of the Charleston waterworks reservoir for approximately one mile to an unnamed creek; thence westerly along the center of this unnamed creek for approximately one mile to U.S. Highway 52; thence northerly along U.S. Highway 52 to junction South Carolina Highway S–10–75; thence westerly along South Carolina Highway S–10–75 approximately one and one half miles to a point one quarter mile west of the track of the Southern Railway Company; thence southeasterly along a line one quarter of a mile west of, and parallel to, the track of the Southern Railway Company to the junction thereof with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section.

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Charleston or by any municipality included under the terms of paragraph (d) of this section.

Sec. 32 Charleston, W. Va.

That zone adjacent to and commercially a part of Charleston, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points and places as follows:

(a) The municipality of Charleston, W. Va., itself.

(b) All points within a line drawn 4 miles beyond the corporate limits of Charleston, W. Va.

(c) All points in that area northwest of those described in (b) above, bounded by a line as follows: Beginning at a point on the line described in (b) above, one-half mile south of U.S. Highway 60 west of Charleston, thence westerly along a line one-half mile south of and parallel to U.S. Highway 60 to a point one-half mile south of the junction of U.S. Highway 60 with West Virginia Highway 17 near 2¾ Mile Creek, thence westerly along a line one-half mile south of and parallel to West Virginia Highway 17 to the Coal River, thence north along the center of the Coal River to West Virginia Highway 17, thence northerly along West Virginia Highway 17 to Scary Creek, near Scary, W. Va., thence east along Scary Creek to the center of the Kanawha River, thence northerly along the center of the Kanawha River to a point opposite the mouth of Blake Creek (between Nitro and Poca, W. Va.), thence easterly along a straight line drawn through the junction of U.S. Highway 35 and West Virginia Highway 25 to a point one-half mile beyond said junction, thence southerly along a line one-half mile northeast of and parallel to West Virginia Highway 25 to the junction of the line described in (b) above.

(d) All points in that area southeast of those described in (b) above, bounded by a line as follows: Beginning at a point on the line described in (b) above one-half mile south of the Kanawha River, thence easterly along a line one-half mile south of, and parallel to, the Kanawha River to junction with a straight line intersecting the highway bridge at Chelyan, W. Va., thence northerly along said straight line across the Kanawha River to a point one-half mile north of the Kanawha River, thence westerly along a line one-half mile north of and parallel to the

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Kanawha River to the junction of the line described in (b) above.

(e) All of any municipality any part of which is within the limits of the combined areas defined in (b), (c), and (d) above.

Sec. 33 Memphis, Tenn.

That zone adjacent to and commercially a part of Memphis, Tenn., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Memphis, Tenn., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Memphis, Tenn.

(c) All points in that part of Shelby County, Tenn., north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the intersection of the line described in paragraph (b) of this section and U.S. Highway 51 north of Memphis, thence northeasterly along U.S. Highway 51 for approximately 3 miles to its intersection with Lucy Road, thence easterly along Lucy Road for approximately 1.4 miles to its intersection with Chase Road, thence northerly along Chase Road for approximately 0.6 mile to its intersection with Lucy Road thence easterly along Lucy Road for approximately 0.8 mile to its intersection with Main Road, thence southeasterly along Main Road approximately 0.3 mile to its intersection with Amherst Road, thence southerly and easterly along Amherst Road for approximately 0.8 mile to its intersection with Raleigh-Millington Road, thence southerly along Raleigh-Millington Road for approximately 2 miles to its intersection with the line described in paragraph (b) of this section north of Memphis;

(d) All of any municipality any part of which is within the limits of the combined areas described in paragraphs (b) and (c) of this section.

Sec. 34 Houston, Tex.

The zone adjacent to, and commercially a part of Houston, Tex., and contiguous municipalities in which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act from regulation, is hereby defined to include the area which would result by application of the general formula promulgated in § 1048.101, and in addition thereto, the municipalities of Baytown, La Porte and Lomax, Tex.

Sec. 35 Pueblo, Colo.

The zone adjacent to and commercially a part of Pueblo, Colo., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

(a) The municipality of Pueblo, Colo., itself;

(b) All points within a line drawn 4 miles beyond the corporate limits of Pueblo, Colo.;

(c) All of the area known as the Pueblo Memorial Airport, consisting of about 3,500 acres, not within 4 miles of the corporate limits of Pueblo, Colo., and within an area located on the East of Pueblo, the nearest point being about 3.80 miles from the city limits of Pueblo, and bounded on the south by the tracks of the Santa Fe Railroad and the Missouri Pacific Railroad, and a public highway known as Baxter Road and designated as U.S. Highway 50 Bypass and Colorado Highway 96, with such property extending north, west, and east of the described southern base line.

Sec. 36 Warren, Ohio.

The zone adjacent to and commercially a part of Warren, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation includes, and is comprised of, all points as follows:

(a) The municipality of Warren, Ohio, itself.

(b) All points within a line drawn 4 miles beyond the corporate limits of Warren, Ohio.

(c) All points in that area, south of the line in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section intersects Ellsworth-Baily Road, thence south along Ellsworth-Baily Road to the Ohio Turnpike, thence southeast along the Ohio Turnpike to New Hallock-Young Road, thence northeast along New Hallock-Young Road to Hallock-Young Road, thence east along Hallock-Young Road to junction Ohio Highway 45 (Salem-Warren Road), thence north along Ohio Highway 45 (Salem-Warren Road) to its intersection with the line described in paragraph (b) of this section.

Sec. 37 Louisville, Ky.

The zone adjacent to and commercially a part of Louisville, Ky., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Louisville, Ky., itself;

(b) All other municipalities and unincorporated areas within 5 miles of the corporate limits of Louisville, Ky., and all of any municipality any part of which lies within 5 miles of such corporate limits; and

(c) Those points not within 5 miles of the corporate limits of Louisville, Ky., and within an area bounded by a line beginning at the junction of Kentucky Highway 146 (LaGrange Road) and Kentucky Highway 1447 (Westport Road), thence over Kentucky Highway 146 to the junction of Kentucky Highway 146 and Kentucky Highway 841 (Jefferson Freeway), thence over Kentucky Highway 841 to the junction of Kentucky Highway 841 and Kentucky Highway 1447, thence over Kentucky Highway 1447 to junction Kentucky Highway 1447 and Kentucky Highway 146, the point of beginning, all within Jefferson County, Ky.

Sec. 38 Sioux City, Iowa.

The zone adjacent to and commercially a part of Sioux City, Iowa, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Louisville, Ky., itself;

(b) All other municipalities and unincorporated areas within 5 miles of the corporate limits of Louisville, Ky., and all of any municipality any part of which lies within 5 miles of such corporate limits; and

(c) Those points not within 5 miles of the corporate limits of Louisville, Ky., and within an area bounded by a line beginning at the junction of Kentucky Highway 146 (LaGrange Road) and Kentucky Highway 1447 (Westport Road), thence over Kentucky Highway 146 to the junction of Kentucky Highway 146 and Kentucky Highway 841 (Jefferson Freeway), thence over Kentucky Highway 841 to the junction of Kentucky Highway 841 and Kentucky Highway 1447, thence over Kentucky Highway 1447 to junction Kentucky Highway 1447 and Kentucky Highway 146, the point of beginning, all within Jefferson County, Ky.

Sec. 38 Sioux City, Iowa.

The zone adjacent to and commercially a part of Sioux City, Iowa, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The area which would result by application of the general formula promulgated in § 1048.101; and, in addition thereto,

(b) That area bounded by a line beginning at the intersection of Interstate Highway 29 and the line described in paragraph (a) of this section, and extending southeasterly along Interstate Highway 29 to its intersection with the Liberty-Lakeport Township, Iowa, line, thence westerly along the Liberty-Lakeport Township, Iowa, line to the Missouri River, thence northerly along the east bank of the Missouri River to its intersection with the line described in paragraph (a) of this section, thence along the line described in paragraph (a) of this section, to the point of beginning.

Sec. 39 Beaumont, Tex.

The zone adjacent to and commercially a part of Beaumont, Tex., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The areas which would result by application of the general formula promulgated in § 1048.101 for Beaumont, Tex.; and in addition thereto,

(b) That area bounded by a line beginning at that point where the west bank of Hillebrandt Bayou intersects the line described in paragraph (a) of this section; thence along the west bank of Hillebrandt Bayou to its confluence with Taylors Bayou; thence in a southeasterly direction along the west and south banks of Taylors Bayou to its confluence with the Intracoastal Waterway; thence along the west and north banks of the Intra-coastal Waterway to its confluence with Sabine River and Sabine Lake at a point immediately east of Groves; thence in a northeasterly direction along the north and west banks of Sabine Lake and Sabine River to the Orange-Newton County line; thence westerly along said county line to the west right-of-way line of State Highway 87; thence southerly along the west right-of-way line of State Highway 87 to the north right-of-way line of Interstate Highway 10; thence westerly along the north right-of-way line of Interstate Highway 10 to intersection with the line described in paragraph (a) of this section; thence along the line described in paragraph (a) of this section, to the point of beginning.

Sec. 40 Metropolitan Government of Nashville and Davidson County, Tenn.

The zone adjacent to and commercially a part of the Metropolitan Government of Nashville and Davidson County, Tenn, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The Metropolitan Government of Nashville and Davidson County itself.

(b) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the Metropolitan Government of Nashville and Davidson County.

Sec. 41 Consolidated City of Indianapolis, Ind.

The zone adjacent to and commercially a part of the Consolidated City of Indianapolis, Ind., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The Consolidated City of Indianapolis, Ind., itself.

(b) All of any municipality wholly surrounded or so surrounded except for a water boundary, by the Consolidated City of Indianapolis.

Sec. 42 Lexington-Fayette Urban County, Ky.

The zone adjacent to and commercially a part of Lexington-Fayette Urban County, Ky., within which transporation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) Lexington-Fayette Urban County, Ky., itself.

(b) All other municipalities and unincorporated areas within 5 miles of the intersection of U.S. Highway 27 (Nicholasville Road) with the corporate boundary line between Jessamine County, Ky., and Lexington-Fayette Urban County, Ky.

Sec. 43 Definitions.

For the purposes of this part, the following terms are defined:

(a) "Municipality" means any city, town, village, or borough which has been created by special legislative act or which has been, otherwise, individually incorporated or chartered pursuant to general State laws, or which is recognized as such, under the Constitution or by the laws of the State in which located, and which has a local government. It does not include a town of the township or New England type.

(b) "Contiguous municipalities" means municipalities, as defined in paragraph (a) of this section, which have at some point a common municipal or corporate boundary.

(c) "Unincorporated area" means any area not within the corporate or municipal boundaries of any municipality as defined in paragraph (a) of this section.

Sec. 44 Commercial zones determined generally, with exceptions.

The commercial zone of each municipality in the United States, with the exceptions indicated in the note at the end of this section, within which the transportation of passengers or property, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, is exempt from all provisions of Part II, Interstate Commerce Act, except the provisions of section 204 relative to the qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be deemed to consist of:

(a) The municipality itself, hereinafter called the base municipality;

(b) All municipalities which are contiguous to the base municipality;

(c) All other municipalities and all unincorporated area within the United States which are adjacent to the base municipality as follows:

(1) When the base municipality has a population less than 2,500 all unincorporated areas within two miles of its corporate limits and all of any other municipality any part of which is within two miles of the corporate limits of the base municipality,

(2) When the base municipality has a population of 2,500 but less than 25,000, all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality,

(3) When the base municipality has a population of 25,000 but less than 100,000, all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base municipality, and

(4) When the base municipality has a population of 100,000 or more, all unincorporated areas within 5 miles of its corporate limits and all of any other municipality any part of which is within 5 miles of the corporate limits of the base municipality, and

(d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any

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municipality adjacent thereto which is included in the commercial zone of such base municipality under the provisions of paragraph (c) of this section.

Note: Except: Municipalities the commercial zones of which have been or are hereafter individually or specially determined.

Sec. 45 Controlling distances and population data.

In the application of § 1048.101:

(a) Air-line distances or mileages about corporate limits of municipalities shall be used.

(b) The population of any municipality shall be deemed to be the highest figure shown for that municipality in any decennial census since (and including) the 1940 decennial census.

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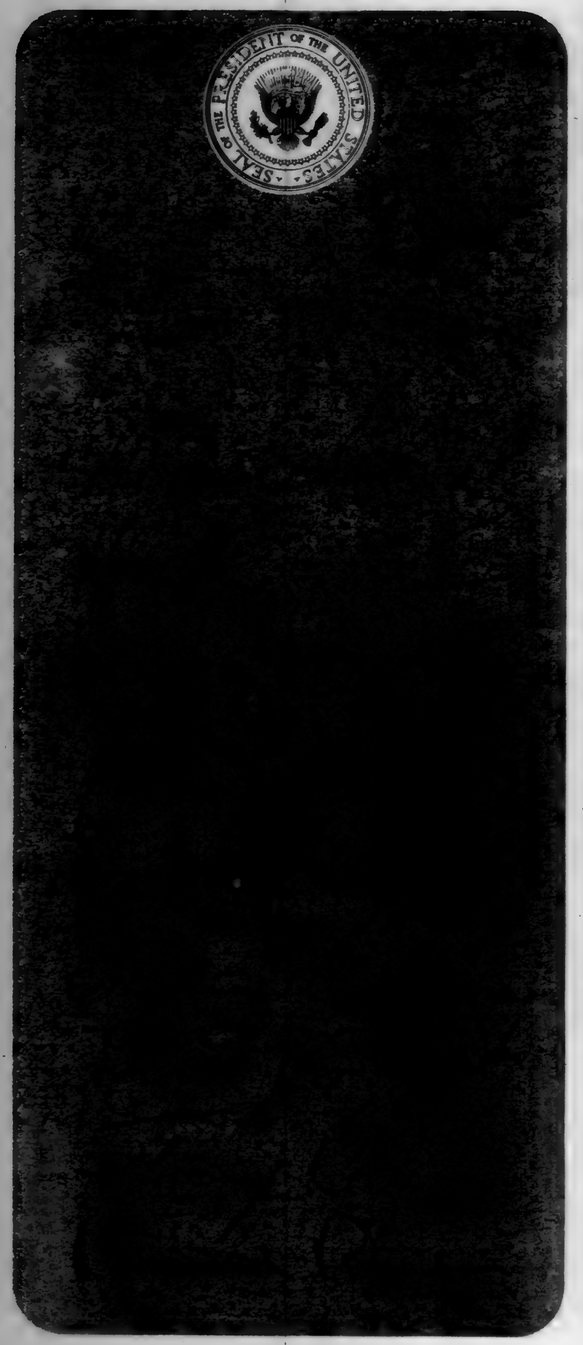
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General); Interest on Back Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule implementing a provision of Pub. L. 100–202 that provides for the payment of interest on back pay awards to Federal employees. This rule establishes the interest rate or rates to be used in the computation, the frequency of compounding, the period of time for which interest accrues, and certain other computational procedures.

DATES: This interim rule is effective for all determinations which become final on or after December 22, 1987, awarding back pay under 5 U.S.C. 5596. Comments must be submitted on or before July 19, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Pub. L. 100–202, December 22, 1987, Further Continuing Appropriations for Fiscal Year 1988, amended 5 U.S.C. 5596 to provide for the payment of interest on back pay awards to Federal employees. This provision applies to determinations that become final on or after the date of enactment. Agencies, therefore, must review their records to determine whether interest must be computed and paid on back pay awards that became final on or after December 22, 1987.

The statute provides that interest begins to accrue on the effective date of the withdrawal of pay, allowances, and differentials. A particular money amount is not withdrawn from an employee until the actual date (usually a pay date) on which the employee would have received it if the unjustified or unwarranted personnel action had not occurred. Therefore, most awards will involve a series of effective dates, and an additional money amount of withdrawn pay, allowances, and differentials must be incorporated into the interest computation for periods on or after each such date.

Section 5596(b)(1)(A)(i) of title 5, United States Code, reduces an employee's entitlement to back pay by the amount of earnings through other employment during the period covered by the corrective action. The Office of Personnel Management (OPM) has determined that since computing an employee's entitlement to back pay requires deducting the amount of outside earnings, such earnings should not be included in the computation of the employee's entitlement to interest on back pay.

To incorporate this determination into the process of computing the amount of interest due, the interim regulations include a method of prorating the amount of outside earnings. For computation purposes, ensuring that interest does not accrue on outside earnings means that such earnings must be subtracted from the amount of pay, allowances, and differentials due for specific dates during the period covered by the corrective action. However, performing this subtraction only on the actual date such earnings were paid would mean that earnings which exceeded the amount of pay, allowances, and differentials due for the corresponding period would not be deducted from back pay. Therefore, the interim regulations establish a method of uniform proration over the full period covered by the corrective action.

The agency must issue the interest payment within 30 days of the date on which accrual of interest ends. If issuance of the interest payment is delayed more than 30 days after the date on which accrual of interest ends, interest must be recomputed based on a new ending date that meets the 30-day requirement.

The agency normally will issue the interest payment at the same time it issues the payment of back pay. When simultaneous payment is not feasible (e.g., when a decision became final on or after December 22, 1987, and payment of back pay was issued before implementation of this rule), the payment of back pay will be subtracted from the accrued amount of back pay and interest effective with the date the payment of back pay was issued. Interest will continue to accrue on the remaining amount of back pay (if any) and interest until the date interest accrual ends. Additional guidance concerning the computational procedures to be followed in implementing this provision will be provided through the Federal Personnel Manual System.

The statute also provides for payment of interest on back pay awards if the final determination was made prior to December 22, 1987, and if, under terms of the decision, a right to interest was specifically reserved, contingent on the enactment of a statute authorizing the payment of interest on claims brought under 5 U.S.C. 5596. The Office is aware of only two such decisions—*Karamatsu* v. *United States* and *Alaniz* v. *Office of Personnel Management*. If interested parties know of other decisions that meet these conditions, they should bring them to the attention of the Office. The statute provides that payment of interest on these decisions may not be made before October 1, 1988. Affected agencies will be informed of special processing requirements.

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because the effective date of the statute was December 22, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a

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substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 550 of Title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for Part 550, Subpart H, is revised to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100-202.

2. In § 550.801, paragraph (a) is revised to read as follows:

§ 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.

* * * * *

3. In § 550.805, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

§ 550.805 Back pay computations.

* * * * *

(f) For the purpose of computing the amount of back pay under paragraph (e) of this section, interest shall be included in the amount from which deductions for erroneous payments are made, as required by § 550.805(e)(2) of this part.

* * * * *

4. Sections 550.806 and 550.807 are redesignated as § 550.807 and § 550.808 respectively; and new section § 550.806 is added to read as follows:

§ 550.806 Interest computations.

(a) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had not occurred.

(b) In computing the amount of interest due under section 5596 of title 5, United States Code, the agency shall reduce the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section by an amount determined as follows:

(1) Divide the employee's earnings from other employment during the period covered by the corrective action, as described in § 550.805(e)(1) of this part, by the total amount of back pay prior to any deductions;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section.

(c) The agency shall compute interest on the amount of back pay computed under section 5596 of title 5, United States Code, and this subpart before making deductions for erroneous payments, as required by § 550.805(e)(2) of this part.

(d) The rate or rates used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury as the overpayment rate under section 6621(a)(1) of title 26, United States Code (or its predecessor statute), for the period or periods of time for which interest is payable.

(e) On each day for which interest accrues, the agency shall compound interest by dividing the applicable interest rate (expressed as a decimal) by 365 (366 in a leap year).

(f) The agency shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.

(g) To the extent administratively feasible, the agency shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends and the interest payment is issued after the payment of back pay is issued, the amount of the payment of back pay shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if any) and interest until the date on which accrual of interest ends.

(h) This section shall not apply to any determination made before December 22, 1987, if the determination was no longer subject to reconsideration or higher-level review or appeal on December 22, 1987.

[FR Doc. 88-11392 Filed 5-19-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 614]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 614 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 355,000 cartons during the period May 22 through May 28, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 614 (§ 910.914) is effective for the period May 22 through May 28, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviwed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through

group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on May 17, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purpose of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.914 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.914 Lemon Regulation 614.

The quantity of lemons grown in California and Arizona which may be handled during the period May 22, 1988, through May 28, 1988, is established at 355,000 cartons.

Dated: May 18, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11405 Filed 5-19-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

California Kiwifruit; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish an assessment rate under Marketing Order 920 for the 1987-88 and 1988-89 fiscal periods. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1987 through July 31, 1988 (§ 920.203), and August 1, 1988 through July 31, 1989 (§ 920.204).

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 15226, April 28, 1988). That document contained a proposal to revise § 920.203 and add § 920.204 to establish expenses and assessment rates for the Kiwifruit Administrative Committee. That rule provided that interested persons could file comments through May 9, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 533).

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.203 is revised and § 920.204 is added to read as follows (these sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

§ 920.203 Expenses and assessment rate.

Expenses of $130,418 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

§ 920.204 Expenses and assessment rate.

Expenses of $112,618 by the Kiwifruit Administrative Committee are

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authorized and an assessment rate of $0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1988. Unexpended funds may be carried over as a reserve.

Dated: May 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11353 Filed 5-19-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 959

South Texas Onions; Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate under Marketing Order 959 for the 1987–88 fiscal period. The change is necessary for the South Texas Onion Committee to meet its 1987–88 expense obligations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1987 through July 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 959 (7 CFR Part 959) regulating the handling of onions grown in South Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 13414, April 25, 1988). That document contained a proposal to amend § 959.228 to increase the assessment rate for the South Texas Onion Committee. That rule provided that interested persons could file comments through May 5, 1988. No comments were received.

It is found that the 1987–88 fiscal period assessment rate increase, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the marketing order for South Texas onions requires an increase in the rate of assessment for a fiscal period to be applicable from the beginning of that period to all onions which were regulated under this part and handled during such period. The 1987–88 fiscal period began August 1, 1987.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions (Texas).

For the reasons set forth in the preamble, 7 CFR Part 959 is amended as follows:

PART 959—[AMENDED]

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.228 is revised to read as follows (this section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations):

§ 959.228 Expenses and assessment rate.

Expenses of $312,380 by the South Texas Onion Committee are authorized, and an assessment rate of $0.07 per 50-pound container or equivalent quantity of onions is established for the fiscal period ending July 30, 1988. Unexpended funds may be carried over as a reserve.

Dated: May 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11354 Filed 5-19-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Part 1010

Conduct of Employees; Cooperation With the Inspector General

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Department's Conduct of Employees regulations (10 CFR Part 1010) to clarify Department policy regarding cooperation required of Department employees in matters relating to official investigations by the Office of Inspector General.

EFFECTIVE DATE: June 20, 1988.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Buchanan, Attorney-Advisor, Office of Assistant General Counsel for General Law, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1522

Sanford J. Parnes, Counsel to the Inspector General, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4393.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208 of the Department of Energy Organization Act (Pub. L. 95–91) provides for the establishment of an Office of Inspector General within the Department. It also provides that the Inspector General shall be responsible for conducting "investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department." To facilitate such activities, it is considered appropriate that the subject of DOE employees' duty to cooperate with the Office of Inspector General be addressed in the regulations governing conduct of DOE employees. Accordingly, the Department is amending Part 1010 of Title 10, Code of Federal Regulations, by adding a new section (§ 1010.217) entitled, "Cooperation with the Inspector General." The new section makes reference to the other sections of the regulations that have a bearing on conduct of employees in this area. Section 1010.217 does not confer new authority upon the Office of Inspector General or any other DOE official; rather, it clarifies the policy and authority established by existing statutes, regulations, Federal case law, and Departmental directives.

II. Opportunity for Public Comment

A proposed rulemaking was published on pages 38770–38771 of the **Federal Register** of October 19, 1987. A 30-day period was provided for comments. Comments were received from three individuals.

One commenter suggested the regulation specify that only a Government employee may be considered a "representative of the Office of Inspector General" for purposes of § 1010.217(a) because disclosure to Office of Inspector General support service contractors of trade secrets or confidential information provided to the Department by private parties would violate 18 U.S.C. 1905, the so-called "Trade Secrets Act." However, 18 U.S.C. 1905 only prohibits *unauthorized* disclosure of such information by Federal Government employees. The Department's Office of Inspector General has been authorized to contract with public agencies and private persons for services deemed necessary to carry out its mission. In view of this, disclosure of proprietary information to Office of Inspector General contractors constitutes authorized disclosure and does not violate 18 U.S.C. 1905. (See *Coastal States Gas Corp. v. Department of Energy*, 480 F. Supp. 813 (S.D. Texas 1979), *motion for stay denied* 609 F.2d 736 (5th Cir. 1979).)

Another commenter expressed the view that the language of paragraph (a) of § 1010.217 implies that any Departmental employee who refuses to cooperate in an Office of Inspector General investigation *must* be guilty of a crime and that the only reason for seeking information from an employee is to obtain evidence for use against the employee in a criminal prosecution. This commenter also suggested that paragraph (a) be amended to include language on confidentiality of employees' statements and discuss employees' constitutional rights to representation and other due process protections.

The purpose of paragraph (a) of § 1010.217 is to state clearly that it is the duty of a Department of Energy employee to cooperate in an Office of Inspector General investigation, regardless of whether the employee or another is the subject of the investigation. The statement that an employee is not required to respond to a request for information if the answers may subject the employee to criminal prosecution simply embodies the case law on the subject of the requirement for such cooperation. Clearly, there are other substantive and procedural rights that may be relevent to the circumstances of a particular investigation, but it is not practicable to set forth an all-inclusive statement of employees' rights in the regulation. That they are not set forth does not affect their applicability.

The president of the National Treasury Employees Union chapter that represents Department of Energy Headquarters bargaining unit employees who work in the Forrestal building also provided several comments on the proposed rule. First, he expressed the view that the rule adversely impacts the work environment and employees' "constitutionally guaranteed rights through the sanction of disciplinary action without limitation of the application, as a means of coercing employees to participate in investigations in a manner which severely jeopardizes their economic, physical (and) mental welfare." However, as indicated above, nothing in the rule abrogates employees' constitutional rights. As also stated previously, the rule does not confer new authority upon the Office of Inspector General, but merely sets forth employees' duties and responsibilities under the law as it is presently interpreted.

Additionally, this commenter opined that the proposed rule "would appear to have a chilling effect upon the investigatory process of the Inspector General (the IG hotline) by precluding employee involvement in matters adversely impacting the Department." The point being made seems to be that employees will not volunteer information about wrongdoing by means of the IG hotline (where callers may speak anonymously) if they know that they may later be required to cooperate in a resultant investigation by answering questions about the matter. While that may, indeed, deter some employees from using the Office of Inspector General hotline, it seems reasonable that employees should be made aware that there is no exception to the requirement for cooperation with the Inspector General for hotline users. Their use of the hotline does not abrogate their responsibility to cooperate in any Office of Inspector General investigations that result from information they provide on the hotline. Furthermore, the Inspector General does not disclose the identity of complainants without their consent, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation.

This commenter also objected that the regulation makes no mention of the right to union representation during employee interviews in Office of Inspector General investigations—the so-called "*Weingarten*" right as it applies to Inspector General Investigations. (*See, NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).) However, as stated previously, it is not practicable to set forth an all-inclusive statement of employees' rights in this regulation. Furthermore, to the extent *Weingarten* rights apply, the Department is currently meeting its responsibilities regarding informing employees of their rights to representation by means of annual employee notices.

The commenter concluded by discussing the union's right to submit proposals and bargain prior to implementation of the rule. However, this regulation is merely a statement of the law and Departmental policy on the subject of employees' cooperation with the Inspector General. Discussion of its impact and implementation is not appropriate at this time. In any event, such discussions must be held with the Department's Office of Labor Relations.

No changes have been made to the final rule in response to the comments discussed above. However, a clause was added at the end of the first sentence of paragraph (b) of § 1010.217 to clarify that the purpose of the paragraph is to address the duty to report wrongdoing. Also, in the clause "under oath if specified by an investigator who is an employee of the Office of Inspector General," in the second sentence of § 1010.217(a), the modifier "Federal" was inserted in front of the word "employee" for added clarification.

III. Review Under Executive Order 12291

It has been determined that this regulation is not a "major rule" within the meaning of Executive Order 12291 (February 17, 1981) because the amendment will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

IV. Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that this

regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

V. Review Under the National Environmental Policy Act

DOE has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

VI. Review Under the Paperwork Reduction Act

This rule does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

List of Subjects in 10 CFR Part 1010

Conflict of interest; Conduct of employees.

In consideration of the foregoing, Part 1010 of Title 10 of the Code of Federal Regulations, is amended, as set forth below.

Issued in Washington, DC on May 13, 1988.

John S. Herrington,

Secretary of Energy.

PART 1010—CONDUCT OF EMPLOYEES

1. The authority citation for Part 1010 is revised to read as follows:

Authority: Sec. 208, 601–608, 644, Pub. L. 95–91, 91 Stat. 575–577, 591–596, 599 (42 U.S.C. 7138, 7211–7218, 7254); Sec. 522, Pub. L. 94–163, 89 Stat. 961 (42 U.S.C. 6392); Sec. 308, Pub. L. 95–39, 91 Stat. 189 (42 U.S.C. 5816a); 5 U.S.C. 301 and 303(a); 5 U.S.C. app. 207(a); 18 U.S.C. 201–209; E.O. 11222, as amended by E.O. 12565.

2. The Table of Contents is amended by adding the following at the end of Subpart B:

1010.217 Cooperation with the Inspector General.

3. Part 1010 is amended by adding the following new section:

§ 1010.217 Cooperation with the Inspector General (applicable to FERC).

(a) Upon the duly authorized request of a representative of the Office of Inspector General, a DOE employee shall provide information requested by the representative pertaining to the operations and programs of the Department. In responding to such a request, an employee shall testify or respond to questions, under oath if specified by an investigator who is a Federal employee of the Office of Inspector General, and, where appropriate, furnish a signed statement; except that, an employee is not required to respond to questions or to testify if the answers or testimony may subject the employee to criminal prosecution. If the employee's statements or information gained by reason of such statements may not be used against the employee in a criminal prosecution, failure to respond to such a request for information could lead to disciplinary action.

(b) Employees have a duty to expose fraud, waste, inefficiency, or other forms of wrongdoing on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees, and to report such activities in accordance with this paragraph. All alleged violations of these regulations shall be referred to the Counselor and the Inspector General, and the Counselor shall review and determine appropriate action in accordance with § 1010.502(c). Reviewing officials shall report actual or alleged employee misconduct to the Counselor and the Inspector General (§ 1010.104(b)(6)). Notwithstanding any other provision in these regulations, DOE employees should, when appropriate, report directly to the Office of Inspector General any information concerning wrongdoing by Department employees, or DOE contractors, subcontractors, grantees, or other recipients of DOE financial assistance, or their employees.

[FR Doc. 88–11400 Filed 5–19–88; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–44–AD; Amdt. 39–5931]

Airworthiness Directive; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, equipped with General Electric engines, without a secondary latching system installed. This amendment requires a daily security check for each engine core cowl door, and a security check of the engine core cowl door after it is opened and subsequently closed, until a secondary latching system is installed. This amendment is prompted by several reported incidents where engine core cowl doors have separated from airplanes equipped with this engine core cowl door design, due to failure of the latching device. This condition, if not corrected, could result in separation of the door, which, in turn, could cause structural damage to the airplane.

EFFECTIVE DATE: June 10, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. The McDonnell Douglas service bulletin may be obtained by writing to McDonnell Douglas Corporation, 3855 Lakewood Blvd., Long Beach, California 90846, Attention: Director of Publications, Mail Stop: C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with the provisions of an existing bilateral airworthiness agreement, notified the FAA of an unsafe condition that exists on Airbus Model A300 series airplanes. There has been a report of the loss of an engine core cowl door from a Model A300, apparently caused by the incorrect function or failure of the door latch locking device. This condition, if not corrected, could result in separation of the door and consequent structural damage to the airplane.

This same engine cowl door design is installed on certain McDonnell Douglas Model DC–10 series airplanes. There have been multiple incidents reported where the engine core cowl door has separated from these airplanes and caused damage to the fuselage and/or engine inlet, or has created an obstacle to other airplanes on the runway. McDonnell Douglas has issued Alert Service Bulletin A71–150, Revision 1, dated January 27, 1988, which describes daily inspection procedures to ensure correct locking of the core cowl door latches for the left and right wing engines. (On March 7, 1988, the FAA issued AD 88–06–06, Amendment 39–5879, to require this daily inspection of affected Model DC–10 series airplanes.) Airbus Industrie has indicated that it is in the process of preparing a service bulletin with similar inspection procedures for the Model A300.

Airbus Industrie has issued Service Bulletin A300–71–053, Revision 2, dated January 6, 1987, which describes procedures for the installation of a secondary latching system on core cowl doors. The DGAC has declared this service bulletin mandatory.

The airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the U.S., this AD requires a daily security check procedure to ensure correct locking of the core cowl door latches for each engine and a security check of the core cowl latches after each opening and closing of the core cowl doors, until a secondary latching system on the two core cowl doors is installed. Although this final rule reflects installation of the secondary latching system as an optional requirement, the FAA is considering further rulemaking to require the installation of the secondary latching system.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, equipped with General Electric engines, without a secondary latching system on core cowl doors, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the airplane due to engine core cowl door separation, accomplish the following:

A. Within 10 days after the effective date of this AD, check the core cowl door latches of each engine once each day, and re-check after each core cowl door is opened and subsequently closed.

1. If the latch is open, before further flight, properly close the latch.

2. If the latch will not engage, adjust the latch, in accordance with the A300 maintenance manual.

3. If the latch cannot be properly adjusted, replace the latch prior to further flight.

B. The checks required by paragraph A., above, may be discontinued after a secondary latching system is installed, in accordance with Airbus Industrie Service Bulletin A300–71–053, Revision 2, dated January 6, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on May 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11309 Filed 5–19–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–155–AD, Amdt. 39–5890]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires structural inspection and repair, as necessary, of the forward lower cargo doorway frames. This amendment requires continued inspection and repair, as necessary, of the forward lower cargo doorway frames, in addition to the replacement of certain repair parts previously installed in accordance with the existing AD. This action is prompted by reports that certain frame angles, used as an alternate repair method, are subject to cracking during installation. Continued operation with undetected cracked frames could result in skin cracks and eventual rapid decompression of the airplane.

EFFECTIVE DATE: June 27, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM–120S; telephone 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

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SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-09-06, Amendment 39-5307 (51 FR 17324; May 12, 1986), to require structural inspection and repair, as necessary, of the forward lower cargo doorway frames on certain Boeing Model 737 series airplanes, was published in the **Federal Register** on December 17, 1987 (52 FR 47945).

Interested persons have been afforded the opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of one member airline, requested that inspection for cracks and replacement, as necessary, be allowed in lieu of mandatory replacement of repair angles, as would be required by paragraph D. of the proposed AD. The FAA does not concur with this request. It has been determined that certain repair angles used as a means of complying with the existing AD were made from a brittle material which cracked during or shortly after installation. This material is, therefore, inadequate and unacceptable for its intended use, and the FAA has determined that it must be removed from the airplane. However, as provided in paragraph I. of this final rule, individual operators may choose to request approval for alternate means of compliance which provides an acceptable level of safety.

Additionally, the final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided in paragraph I.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 186 airplanes of U.S. registry will be affected by this AD. (However, it is expected that only a few airplanes will require rework as a result of this action.) It will take approximately 350 hours per airplane to accomplish the required work, the average labor cost will be $40 per hour, and parts will be $2,200. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,200 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation prepared for this regulation has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 86-09-06, Amendment 39-5307 (51 FR 17324; May 12, 1986), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes listed in Boeing Service Bulletin 737-53-1051, Revision 4, dated July 30, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following:

A. Prior to the accumulation of 6,000 landings after June 16, 1988, visually inspect the forward and aft body frames adjacent to the forward lower cargo door for cracks, in accordance with Flight Safety Inspection Program in Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985. Repeat the inspections at intervals not to exceed 4,000 landings.

B. After the effective date of this AD, if cracks are found, prior to further flight, repair in accordance with Part III.A. or Part III.B., as applicable, of Boeing Service Bulletin 737-53-1051, Revision 4, dated July 30, 1987.

C. For airplanes that have had cracks repaired in accordance with Part III.A. of Boeing Service Bulletin 737-53-1051, initial release, dated June 16, 1978, or later FAA-approved revisions: Prior to the accumulation of 25,000 landings after the repair, and thereafter at intervals not to exceed 17,000 landings, visually inspect the frames for cracks in the area of the repair in accordance with Boeing Service Bulletin 737-53-1051, Revision 3. Parts found cracked must be repaired prior to further flight in accordance with an FAA-approved repair method.

D. For airplanes that have had cracks repaired in accordance with Part III.B. of Boeing Service Bulletin 737-53-1051, Revision 3: Prior to the accumulation of 3,000 landings after effective date of this AD, replace the repair parts with new airworthy repair parts in accordance with Boeing Service Bulletin 737-53-1051, Revision 4.

E. For airplanes that have had cracks repaired in accordance with the Boeing Model 737 Structural Repair Manual, Section 51-40-3, or with Part III.B. of Boeing Service Bulletin 737-53-1051, Revision 4, or later FAA-approved revisions, or in accordance with paragraph D., above: Prior to the accumulation of 6,000 landings after the repair and thereafter at intervals not to exceed 4,000 landings, visually inspect the frames for cracks in the area of the repair in accordance with Boeing Service Bulletin 737-53-1051, Revision 4. Parts found cracked must be repaired prior to further flight, in accordance with an FAA-approved repair method.

F. Modification of uncracked frames in accordance with the Preventative Modification of Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985, constitutes terminating action for the requirements of this AD.

G. Airplanes with cracked frames may be flown unpressurized in accordance with FAR 21.197 and 21.199 to a maintenance base for repairs or replacement required by this AD.

H. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

I. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 86-09-06, Amendment 39-5307.

This amendment becomes effective June 27, 1988.

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11310 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-148-AD; Amdt. 39-5934]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which requires certain manual and/or electrical tests; inspections and repair, if necessary; interim manual operating procedures; and modifications to the lower lobe forward and aft cargo doors. This amendment is prompted by a report of a lower lobe forward cargo door, with damaged lock sectors, that partially opened in flight. This condition, if not corrected, could result in the opening of a lower lobe cargo door in flight, which could result in rapid depressurization of the airplane.

EFFECTIVE DATE: July 1, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires, as applicable, certain manual and/or electrical tests; inspections and repair, if necessary; interim manual operating procedures; and modifications to the lower lobe forward and aft cargo doors on Boeing Model 747 series airplanes, was published in the **Federal Register** on January 28, 1988 (53 FR 2502).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, representing operators of Boeing Model 747 airplanes, commented that Boeing Alert Service Bulletin 747-52A2206, Revision 3, includes a statement that accomplishment of Boeing Service Letter 747-SL-52-38B is equivalent to Steps III.A. and III.B. of the service bulletin and, therefore, the rule should indicate this equivalency. The FAA agrees and the rule has been revised accordingly.

An operator commented that, for aircraft listed in Boeing Alert Service Bulletin 747-52A2206, Revision 3, the proposed rule requires a visual inspection of the lock sectors, without aluminum plates installed, for possible damage; however, the service bulletin does not include a procedure for the inspection. The operator requested that the final rule not be issued until a procedure is incorporated in the service bulletin and received by the affected operators. The FAA does not agree that a specific procedure developed by the manufacturer is required to perform the visual inspection because special step-by-step access procedures, inspection techniques, or special tools, are not required.

An operator commented that the proposed rule would require operators to make a temporary revision to their FAA-approved maintenance program to provide special procedures for manual door operation, and requested that, if FAA-approval is required before implementation, those special procedures not become mandatory until at least 30 days after approval. The FAA requires approval of temporary revisions to operators maintenance programs and the final rule has been clarified accordingly. However, the FAA does not concur that an additional 30-day period after FAA approval is necessary to implement the procedure, and justification has not been provided to support such an extension of the compliance time.

An operator commented that the proposed rule would require special procedures for manual door operation that must be continued and performed prior to each flight until electrical operation is restored and resumed. The operator requested that the special procedures not be required prior to flight, providing the door has not been operated. The FAA agrees and the final rule has been revised for clarification.

Since the issuance of the NPRM, Boeing has issued Revision 4 to Alert Service Bulletin 747-52A2206, and Revision 1 to Alert Service bulletin 747-52A2209, both dated April 14, 1988. The FAA has reviewed and approved those revisions and has determined that operators may use these later revisions as an alternate means of complying with the requirements of this AD. Use of these revisions does not increase the economic burden on any operator nor does it increase the scope of the rule.

The airplane effectivity listed in Boeing Alert Service Bulletin 747-52A2209, Revision 1, has been revised to delete one airplane. The final rule has been changed accordingly.

Additionally, the final rule has been revised to remove the phrases referring to the use of "later FAA-approved revisions [of the applicable service bulletin]," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 156 airplanes of U.S. registry will be affected by this AD, that it will take approximately 52 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $324,480.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under

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Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletins 747-52A2206, Revision 3, dated August 27, 1987, and 747-52A2209, Revision 1, dated April 14, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure that inadvertent opening of the lower lobe cargo doors will not occur in flight, accomplish the following:

A. For those airplanes, specified in Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987:

1. Within 30 days after the effective date of the AD for those airplanes without aluminum lock sector plates installed, and within 90 days after the effective date of this AD for those airplanes with aluminum lock sector plates installed, perform, as applicable, the mechanical and electrical latch lock system tests on the lower lobe forward and aft cargo doors in accordance with paragraphs III.A. and III.B. of Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987, or Revision 4, dated April 14, 1988. (Boeing Service Letter 747-SL-52-38B, dated March 31, 1987, is substantially equivalent and acceptable for compliance to those tests described in paragraphs III.A. and III.B. of the service bulletin.) Airplanes with doors that do not pass either test must be repaired prior to further flight, in accordance with FAA-approved procedures. The electrical test in accordance with paragraph III.B. of the service bulletin must be repeated at intervals not to exceed one year until terminating action in accordance with paragraph A.2.a., above, is accomplished.

2. Within 30 days after the effective date of the AD, for those lower lobe cargo doors without aluminum lock sector plates installed:

a. Visually inspect for broken, bent, or otherwise damaged lock sectors which could affect the integrity of the door locking mechanism, and repair, if necessary, prior to further flight, in accordance with FAA-approved procedures.

b. Change the FAA-approved maintenance program, with concurrence of the FAA Principal Maintenance Inspector, to provide special procedures for manual door operation. Those procedures must include the following requirements:

(1) The procedures must be accomplished or witnessed by qualified personnel in accordance with the operator's FAA-approved maintenance program.

(2) Just prior to pulling the cargo loading ramp away from the door, the master latch lock handle must be recycled; the lock handle and pressure relief doors must fully open when the lock handle release trigger is pressed; and the pressure relief doors must close fully when the lock handle is fully stowed.

(3) Compliance with these procedures must be documented in accordance with the operator's FAA-approved maintenance program.

c. The special procedures specified in paragraph A.2.b., above, for manual door operation, must be continued and performed prior to takeoff following each operation of the door until electrical restoration and operation are resumed and reinspection of the lock sectors has been accomplished in accordance with paragraph A.2.a., above.

3. Within 18 months after the effective date of this AD, for those airplanes without aluminum lock sector plates installed, and within 24 months for those airplanes with aluminum lock sector plates installed on the forward and/or aft lower lobe cargo door locking mechanism, modify the doors in accordance with paragraphs III.H. through III.O. of Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987, or Revision 4, dated April 14, 1988. Completion of this modification constitutes terminating action for this AD and the special door operating procedures required by paragraph A.2.b., above, may be deleted from the operator's maintenance program.

B. For those airplanes, specified in Boeing Alert Service Bulletin 747-52A2209, Revision 1, dated April 14, 1988:

1. Within 90 days after the effective date of this AD, perform the electrical latch lock system test on the lower lobe forward and aft cargo doors in accordance with paragraph III.A. of Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987, or Revision 1, dated April 14, 1988. Airplanes with doors that do not pass the above test must be repaired, prior to further flight, in accordance with FAA-approved procedures. The above test must be repeated at intervals not to exceed one year, until terminating action in accordance with paragraph B.2., below, is accomplished.

2. Within 24 months after the effective date of this AD, modify the lower lobe forward and aft cargo doors in accordance with paragraphs III.E. through III.L. of Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987, or Revision 1, dated April 14, 1988. Completion of this modification constitutes terminating action for this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 1, 1988.

Issued in Seattle, Washington, on May 13, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11331 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-173-AD; Amdt. 39-5936]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires the incorporation of seal plates over the electrical wiring and hydraulic tubing cutouts on the body upper skin common to the vertical fin. This amendment is prompted by a recent analysis performed by the manufacturer that indicated a failure of the aft pressure bulkhead could lead to overpressurization of the vertical fin.

This condition, if not corrected, could lead to structural failure of the fin.

EFFECTIVE DATE: July 1, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the incorporation of seal plates over the electrical wiring and hydraulic tubing cutouts on the body upper skin common to the vertical fin on certain Boeing Model 767 series airplanes, was published in the Federal Register on February 8, 1988 (53 FR 3663).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter, the Air Transport Association (ATA) of America on behalf of one of its member operators, requested that the compliance time for installation of the seal plates be extended from 12 months, as proposed, to 24 months, so that the installation could be performed during scheduled main base visits. Further, the commenter pointed out that this request is justified since there are other rulemaking actions currently in effect whose requirements are intended to reduce the risk of a bulkhead failure. Such other rulemaking actions include AD 86-29-07, Amendment 39-5402 (51 FR 30328; August 26, 1986), which requires installation of a stronger access door for the opening within the empennage providing access to the vertical fin; and a proposed AD, Docket 86-NM-28-AD (53 FR 13286; April 22, 1988), which, if adopted, would require repetitive inspections of the aft pressure bulkhead.

The FAA does not concur with the commenter's request. Although the FAA is fully aware of other rulemaking mandated to protect against fin overpressurization in the case of an aft pressure bulkhead failure, it has determined that the modification required by this AD action is equally necessary to provide an acceptable level of safety. This modification must be accomplished in the shortest time period which does not impose undue burden on the operators. The FAA maintains that a 12-month compliance time will satisfy this requirement. Therefore, the compliance time in the final rule remains at 12 months, as proposed.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA had determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph B.

After careful review of the available data, including the comment noted above, the FAA has determined that safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,240.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, or a substantial number of small entities, because few, if any, Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Service Bulletin 767-53-0025, dated June 4, 1987, certificated in any category. Compliance required within 12 months after the effective date of this AD, unless previously accomplished.

To prevent structural failure of the vertical fin in the event of a failure of the aft pressure bulkhead, accomplish the following:

A. Install seal plates over the electrical wiring and hydraulic tubing cutouts on the fin-to-body skin in accordance with Boeing Service Bulletin 767-53-0025, dated June 4, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of the AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacture may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 1, 1988.

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Issued in Seattle, Washington, on May 13, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11333 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-02-AD; Amdt. 39-5937]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires the replacement of the aileron control cable grommets. This amendment is prompted by several reports of water freezing on the cables at the grommets, which caused the system to bind up. This condition, if not corrected, could lead to reduced roll controllability, or erratic operation of the lateral control system.

EFECTIVE DATE: July 1, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM-120S; telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires removing and replacing aileron cable grommets on Boeing Model 757 series airplanes, was published in the **Federal Register** on February 16, 1988 (53 FR 4418).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter expressed concern that the proposed modification, in requiring an increase in the size of the bore on the grommets, would result in excessive clearance for the aileron control cables; this could increase the cable wear by changing restraints for vibration that is suppressed by contact with the grommets. FAA does not agree, since the cable will have contact with the new grommets during normal flight, due to wing bending.

The other commenter suggested that the concern over cable freezing can be addressed by simply removing two grommets from each wing installation. This commenter stated that, in June 1986, it removed two grommets from each wing of the Boeing Model 757 series airplanes in its fleet, and since that time there have been no reports of aileron freezing problems; prior to the grommet removal, there were two incidents of aileron freezing in its fleet. The FAA does not agree with the commenter's suggestion, since there have been additional reports of cable binding occurring on airplanes after the removal of the two grommets per wing.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph B.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour and $81.20 for parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,708.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive.

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Bulletin 757-27-0079, Revision 1, dated June 25, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent binding in the aileron control system, accomplish the following:

A. Modify the aileron control system in accordance with Boeing Service Bulletin 757-27-0079, Revision 1, dated June 25, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon requests to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 1, 1988.

Issued in Seattle, Washington, on May 13, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11334 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-53-AD; Amdt. 39-5932]

Airworthiness Directives; Bruce Industries, Inc., Ballasts, Part Number 05421-1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all aircraft equipped with Bruce Industries, Inc., ballasts, Part Number 05241-1, which requires installation of a fuse assembly to the electrical power wire leading to each affected ballast. This amendment is prompted by a recent report of fire in the passenger cabin of a Boeing Model 737-200 airplane, apparently due to the failure of the subject ballast. This condition, if not corrected, could result in a fire.

EFFECTIVE DATE: June 10, 1988.

ADDRESSES: The applicable service information may be obtained from Bruce Industries, Inc., P.O. Box 1700, Dayton, Nevada 89403, Attention: Contract Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Kuniyoshi, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: An operator of a Boeing Model 737-200 series airplane reported an incident of a fire in the passenger compartment, necessitating the flight crew to declare an emergency. The fire was caused by the failure of a ceiling fluorescent light ballast, Bruce Industries, Inc., Part No. 05241-1 and HITCO Part No. 9000203-101. The ballast had shorted internally in an area where a coil winding and a resistor are mounted. If not detected and corrected, a failed fluorescent light ballast could cause arcing and sparks, resulting in a fire.

The FAA has reviewed and approved Bruce Industries, Inc., Alert Service Bulletin A05241-33-20-01, dated May 2, 1988, which describes procedures for installing a fuse assembly to the electrical power wire leading to each affected ballast. The FAA has also reviewed and approved HITCO Alert Service Bulletin A9000203-33-20-01, dated May 2, 1988, which lists the airplanes equipped with HITCO cabin interiors that incorporate the subject ballasts, and describes procedures for installation of the fuse. While a majority of the affected ballasts were installed through HITCO interior modifications, other installations are also affected.

Since this condition is likely to exist or develop on other aircraft on which the affected parts are installed, this AD requires modification of the fluorescent lighting systems, in accordance with service bulletins previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulation set forth in this amendment is promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bruce Industries, Inc.: Applies to all ballasts, Part Number 05241-1, as installed on, but not limited to, aircraft modified in accordance with Supplemental Type Certificate (STC) Numbers SA1061NW, SA1315NM, SA1952NM, SA3144NM, and SA4042WE; and Civil Aviation Authority Airworthiness Approval Note No. 17027, Issue 2. Compliance required as indicated.

Note: HITCO Alert Service Bulletin A9000203-33-20-01, dated May 2, 1988, lists specific aircraft modified in accordance with the referenced STC's; however, these ballasts may also be installed on other aircraft.

To prevent fire caused by shorted and sparking ballast, accomplish the following, unless already accomplished:

A. Within 30 days after the effective date of this airworthiness directive (AD), install a fuse assembly for each affected ballast in accordance with the accomplishment instructions of Bruce Industries, Inc., Alert Service Bulletin A05241-33-20-01, dated May 2, 1988.

Note: HITCO Alert Service Bulletin A9000203-33-20-01, dated May 2, 1988, is considered an approved equivalent modification.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Bruce Industries, Inc., P.O. Box 1700, Dayton, Nevada 89403,

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Attention: Contracts Department; or (for airplanes with HITCO cabin interiors) HITCO, 1600 West 135th Street, Gardena, California 90249, Attention: Contracts Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on May 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11329 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-159-AD; Amdt. 39-5935]

Airworthiness Directives; McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 Series Airplanes, Equipped with Hydro-Aire Auto Brake Control Units Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809, or 42-839

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes, which requires modification of the Auto Brake Control Unit. This amendment is prompted by reports of the Auto Brake System (ABS) being inadvertently disarmed due to electrical power interruptions or transients. This condition, if not corrected, could lead to the loss of automatic braking capability, which may cause the airplane to overrun the runway during a rejected takeoff.

EFFECTIVE DATE: July 1, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires the modification of Hydro-Aire Auto Brake Control Units, Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809, or 42-839, installed on certain McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes, was published in the **Federal Register** on January 8, 1988 (53 FR 515). The comment period for the proposal closed March 8, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its member operators, stated that the proposed rule was not warranted since fight crews are trained to respond to an Auto Brake disarm condition with timely application of the manual brakes. The FAA disagrees. While flight crews may be trained to respond immediately to a recognized abnormal condition, the FAA has determined that timely recognition of an Auto Brake disarm condition, occurring infrequently, may not be consistently detected by the flight crew during the high stress situation of a rejected takeoff.

This commenter also stated that, based on one member's large fleet size, vendor turnaround time to modify the subject Auto Brake Control Units will require 18 months to complete, and requested that the proposed compliance period be revised accordingly. The FAA disagrees with an 18-month complaince period and considers that a 12-month compliance requirement is appropriate, based upon the anticipated effective date of this rule and availability of parts.

This commenter also stated that the proposed rule should not affect those airplanes having de-activated Auto Brake Systems. The FAA disagrees. While operators may continue to dispatch with the Auto Brake System inoperative under the present DC-9 MEL provisions, the requirements of this rule must be applicable to all airplanes with the system installed.

The final rule has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph B.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

It is estimated that 340 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estiamted to be $54,400.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, or DC-9-83 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Models DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83, series airplanes; equipped with Hydro-Aire Auto Brake Control Units, Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809, or 42-839; certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate inadvertent disarming of the Auto Brake System following exposure to momentary electrical power interruptions or transients, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify the Hydro-Aire Auto Brake Control Units, Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809 or 42-839, in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 32-216, dated September 24, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, Calfornia.

This Amendment becomes effective July 1, 1988.

Issued in Seattle, Washington, on May 13, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-11332 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-20; Amdt. 39-5926]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes) Model 269C Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the service life limit of certain tail rotor retention strap assemblies from 5,100 hours to 3,540 hours on Schweizer Aircraft Corporation Model 269C helicopters. The AD is needed to prevent continued use of these parts beyond the life limit of 3,540 hours which could result in failure of the tail rotor retention strap assembly and loss of the helicopter.

EFFECTIVE DATE: June 10, 1988.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, FAA, New York Aircraft Certification Office, ANE-172, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: The FAA had determined that stainless steel retention strap assemblies, Part Numbers (P/N) 269A6065 and 369A1706, used on Schweizer Model 269C helicopters were improperly processed during manufacture. The original 5,100-hour service life was based upon fatigue tests of straps with reamed rivet holes in the strap pack laminates. All strap packs manufactured between 1968 and 1984 has as-sheared rivet holes. Fatigue tests of strap packs with as-sheared holes substantiated a fatigue life of 3,540 hours. All such parts in service which have exceeded 3,540 hours' time in service must be removed from service. Schweizer P/N's 369A1706-505 and 369A1706-507 are replacement parts with reamed rivet holes in current production with a life limit of 5,100 hours. Since this condition is likely to exist or develop on other helicopters of the same type design, and AD is being issued which requires removal from service of tail rotor retention strap assemblies, P/N's 269A6065 and 369A1706, that have accumulated 3,540 hours' or more time in service.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends § 39.19 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Schweizer Aircraft Corporation (McDonnell Douglas Helicopter Company; Hughes Helicopter, Inc.): Applies to Model 269C helicopters certificated in any category, equipped with tail rotor retention strap assemblies, P/N 269A6065 and P/N 369A1706.

Compliance is required as indicated, unless already accomplished.

BEST COPY AVAILABLE

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To prevent failure of the tail rotor retention strap assembly which could result in loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time service after the effective date of this AD, or upon the accumulation of 3,540 hours' time in service, whichever occurs later, remove tail rotor retention strap assemblies, P/N 269A6085 and P/N 369A1706, from service.

(b) Replace P/N 269A6085 and P/N 369A1706 with serviceable parts.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Alternative inspection, modification, or other actions which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

This amendment becomes effective June 10, 1988.

Issued in Forth Worth, Texas, on May 6, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-11311 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ASW-18, Amdt. 39-5927]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which provides for repetitive inspections, checks, and replacement, as necessary, of main gearbox suspension bars on Aerospatiale Model AS 355 series helicopters. This amendment is needed to clarify that the pilot can conduct the visual check of the marking tape.

DATES: *Effective Date:* June 8, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone No. 513.38.30 or R. T. Weaver, Rotorcraft Standards Staff, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5651 (52 FR 24142; June 29, 1987); AD 87-13-05, which currently requires repetitive inspections, checks, and replacement, as necessary, of main gearbox suspension bars on Aerospatiale Model AS 355 series helicopters. After issuing Amendment 39-5651, the FAA has determined that clarification was needed to explain that pilots may conduct the visual checks of the marking tapes. Therefore, the FAA is amending Amendment 39-5651 by clarifying that pilots may conduct the visual checks of the marking tapes on the suspension bars as described in paragraph (b)(1) of AD 87-13-05.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

This amendment is promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this amendment does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves 150 aircraft and imposes no cost. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-5651 (52 FR 24142; June 29, 1987), AD 87-13-05, by revising paragraph (b)(1) to read as follows:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to Aerospatiale Model AS 355 series helicopters certificated in any category.

* * * * *

(b) * * *

(1) Check that the edge of the tape is in line with the anchoring lug surface as shown in Figure No. 2. This check may be conducted by the pilot. The person performing this check shall make appropriate entries of the results of the check in the aircraft records.

* * * * *

This amendment becomes effective June 8, 1988.

This amendment amends Amendment 39-5651 (52 FR 24142; June 29, 1987), AD 87-13-05.

Issued in Forth Worth, Texas, on May 6, 1988.

R.G. Knight,

Acting Director, Southwest Region.

[FR Doc. 88-11312 Filed 5-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0287]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers For Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of poly[[6-(1,1,3,3-tetramethylbutyl)amino]-*s*-triazine-2,4-diyl] [(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a stabilizer in polyethylene and in olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 20, 1988; objections by June 20, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 2, 1987 (52 FR 37018), FDA announced that a petition (FAP 7B4021) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl]amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the food additive is safe for this use, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below. This substance is already listed for certain uses in polypropylene and polyethylene.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before June 20, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by revising item 3 under "Limitations" in the entry for "Poly[[6-[(1,1,3,3-tetramethylbutyl]amino]-*s*-triazine-2,4-diyl] [(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]]" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-*s*-triazine-2,4-diyl] [(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]] (CAS Reg. No. 70624-18-9).	For use only: * * * 3. At levels not to exceed 0.3 percent by weight of polyethylene that has a density less than 0.94 gram per cubic centimeter complying with § 177.1520 of this chapter, items 2.1, 2.2, and 2.3, and of olefin polymers and copolymers complying with items 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 4. The finished polymers are to contact food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter, and when contacting fatty foods of Types III, IV-A, V, VII-A, and IX described in Table 1 of § 176.170(c) of this chapter, the finished articles are to have a volume of at least 18.9 liters (5 gallons).
* * *	* * *

Dated: May 6, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11380 Filed 5-19-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3378-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Ohio Power, Muskingum River Power Plant located in Morgan and Washington Counties. This action consists of: (1) Revising the federally promulgated emission limitation of 6.48 pounds of SO_2 per million British Thermal Units (lbs/MMBTU) and replacing it with two separate emission limits for the plant;

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and (2) approving stack gas sampling (as specified in 40 CFR Part 60, Appendix A, Method 6) as the exclusive method for determining compliance with the SO_2 emission limitations.

USEPA is approving an emission limit of 8.6 lbs/MMBTU to protect the primary National Ambient Air Quality Standards (NAAQS) with a compliance date of June 17, 1980. In addition, USEPA is approving an emission limitation of 7.6 lbs/MMBTU to protect the secondary NAAQS with a compliance date of July 1, 1989.

This revision is based on a USEPA modeling analysis and monitoring data submitted by the State of Ohio. The analysis demonstrates that this revision will nto interfere with the attainment and maintenance of the SO_2 NAAQS.

EFFECTIVE DATE: This final rulemaking becomes effective on June 20, 1988.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V Office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, EPA, 401 M Sreet SW., Washington, DC 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On April 8, 1982, and November 8, 1982, Ohio Environmental Protection Agency (OEPA) requested revisions to the SO_2 SIP for the Ohio Power, Muskingum River Power Plant. The State requested that USEPA revise the federally promulgated emission limitation of 6.48 pounds of SO_2 per million British Thermal Units (MMBTU) and approve two separate emission limitations for the plant.

The State requested an emission limit of 8.6 lbs/MMBTU to protect the primary National Ambient Air Quality Standards (NAAQS), with a compliance date of June 17, 1980. The compliance date for the Federal emission limitation was October 14, 1982. Since the State's compliance date for the revised primary limit was earlier than the date USEPA had already established as consistent with the minimum requirements of Section 110(a)(2), the Agency is approving the State's date.

In addition, the State requested an emission limitation of 7.6 lbs/MMBTU to protect the secondary NAAQS, with a compliance date of July 1, 1989. Section 110(a)(2)(A) of the Clean Air Act requires attainment of a secondary NAAQS within a reasonable period of time. A "reasonable time" for secondary NAAQS attainment is defined in 40 CFR 51.110 as follows: Reasonable time will depend on the degree of emission reduction needed for attainment of the secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment of the secondary standard. The State's submittal shows, based on specific environmental and economic justification, that good cause exists for establishing the July 1, 1989, date. Further discussion of the State's justification is contained in the docket. (The federally established attainment date contained in 40 CFR 52.1875 remains in effect as to the primary NAAQS.)

Ohio also submitted a compliance schedule for the secondary emission limit as required by Title 40 Part 51 of the Code of Federal Regulations. Parts 51.110. 51.260-51.262 require that attainment plans contain compliance schedules which provide for legally enforceable increments of progress toward compliance. USEPA has reviewed this schedule and feels it contains appropriate increments of progress leading to attainment of the secondary SO_2 NAAQS within a reasonable period of time.

As a result of approving these two separate emission limitations and compliance dates, the primary limit of 8.6 lbs/MMBTU will be in effect until July 1, 1989, when the secondary limit of 7.6 lbs/MMBTU becomes effective.

On September 25, 1984 (49 FR 37644), USEPA proposed to approve the revised emission limits for the Muskingum River Plant. A discussion of the modeling analysis which supports this revision is contained in the notice of proposed rulemaking and the technical support documents for this revision. The modeling techniques used in the demonstration supporting this revision are generally based on the modeling guidelines in place at the time the analysis was performed, i.e., USEPA's 1978 guidelines. Since that time, USEPA has promulgated a revision to the guidelines. Because the modeling was completed prior to the September 9, 1986, date of publication of the revised guidance, USEPA can accept the analysis as it stands. Additionally, the supporting monitoring data is discussed in the State's report entitled "Muskingum River Plant Supplementary Technical Support Document". These documents are contained in the docket for this rulemaking and are available at the Region V office.

On November 12, 1986, Ohio submitted an additional revision to the SIP. This revision, in the form of an Administrative Order, specified that stack gas sampling (as specified in 40 CFR Part 60, Appendix A, Method 6) is the exclusive test method for determining compliance with the revised emission limitations. On November 18, 1987 (52 FR 44152), USEPA proposed to approve this revision. In the notice of proposed rulemaking, USEPA stated that a stack test is acceptable as the sole compliance test method because: (1) The current federally enforceable test method for this source is a stack test; and (2) this method will provide the necessary short-term data to assess compliance with the associated short-term emission limits (as proposed for approval on September 25, 1984) and the short-term SO_2 NAAQS.

Stack Height Credit

On July 8, 1985, (50 FR 27892), USEPA promulgated Stack Height Rules, pursuant to section 123 of the Clean Air Act. These rules do not apply to stack heights "in existence" before December 31, 1970. A stack is "in existence" if the owner or operator had by December 31, 1970: (1) Begun a continuous program of physical on-site construction of the stack; or (2) entered into a binding agreement or contractual obligation, which could not be cancelled or modified without substantial loss, to undertake a program of stack construction to be completed within a reasonable time.

On June 13, 1984, Ohio Power provided dated copies of original construction project status sheets which show that the two existing stacks at the Muskingum River Plant were under construction prior to December 31, 1970. Thus, the physical stack height for these two stacks is not subject to the Stack Height Rules and is fully creditable. It should also be noted that one of the existing stacks replaced three shorter stacks. A USEPA memo entitled "Determining Stack Heights "In Existence" Before December 31, 1970", dated October 28, 1985, states that USEPA will rely on the "in existence" definition to evaluate credit for merged stacks. Under this definition, the three stacks were merged before December 31, 1970, and thus, merged stack credit is allowed.

Public Comment

In response to the September 25, 1984, notice of proposed rulemaking, comments were submitted by the Natural Resources Defense Counsel (NRDC) and the Ontario Ministry of the Environment. The Ohio Power Company submitted comments in response to NRDC's and Ontario's comments. These comments and USEPA's response are summarized below. No comments were received in response to USEPA's November 18, 1987, notice of proposed rulemaking regarding the compliance method.

Comment: The Ontario Ministry of the Environment argued that the SIP revision should be denied because: (1) the Muskingum River Plant was cited by Ontario on two previous occasions as being a major source of SO_2, (2) SO_2 causes" * * * damage to the ecosystem * * *", including possible forest dieback, and (3) denial of the revision would be honoring the United States Government's commitment in the Memorandum of Intent to combat Transboundary Air Pollution.

Response: USEPA acknowledges that the Muskingum River Plant is a major source of SO_2 and that SO_2 concentrations above the primary and secondary NAAQS pose a threat to the public health and welfare. In the Memorandum of Intent to which the commenter refers, the United States committed to abide by the terms of the Clean Air Act and to ensure that the NAAQS for sulfur dioxide were protected. As stated in the September 25, 1984, notice, USEPA reviewed the revision for consistency with section 110 of the Clean Air Act, including the section 110(a)(2)(E) interstate impact requirements. The modeling was limited to a 50 km radius around the Muskingum River plant, the useful distance to which most gaussian models are considered accurate.

As explained more throughly in the technical support document applicable to USEPA's proposal, the applicable USEPA reference models demonstrated that 3-hour and 24-hour ambient SO2 concentrations would decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in USEPA's judgement, the revision would not contribute substantially to SO2 nonattainment in either nearby West Virginia or more distant States.

Comment: The NRDC urged USEPA to disapprove the proposed emission limitations and the proposed secondary standard attainment date. NRDC objected to the use of block averages in the modeled attainment demonstration. NRDC argued that:

(i) Block averages are not consistent with the definition of the NAAQS and would permit exposures to harmful air quality concentrations;

(ii) Running averages are consistent with USEPA guideline documents;

(iii) The validity of running averages were upheld by a recent court decision, and reaffirmed by a USEPA legal opinion of that court decision;

(iv) A recent USEPA policy memorandum which dictates the use of block averages offered on rational or reasonable basis for its recommendation; and,

(v) The proposed emission limits provide no margin of safety and may in fact pose a threat to the public health and welfare since the predicted block concentrations are equal to or just below the NAAQS and block averages (by USEPA's own previous admission) may be 30-40% less than running averages.

Response: It is USEPA's position that the current 24-hour and 3-hour SO_2 NAAQS are block average standards because of their original derivation; the limitations of monitoring, modeling, and computational capabilities extant at the time the standards were set; evidence that the earliest interpretation of the standards by the Agency contemplated and accepted determinations based on block averages; USEPA's monitoring guidance; and by the Agency's general practice since that time.

A March 28, 1986 memorandum from Gerald Emison, Director of the Office of Air Quality Planning and Standards to the regional Air Directors states that "past Agency policy has been to use block averages in implementing the 3-hour and 24-hour SO_2 NAAQS".[1]

The rationale for this position is contained in an OAQPS Staff Paper, entitled "Proper Interpretation of the Averaging Convention for the National Ambient Air Quality Standards for Sulfur Oxides", dated March 1986. The paper explains that limitations of monitoring, modeling, and computational abilities extant at the time the standards were set; evidence that the earliest interpretation of the standards by the Agency contemplated and accepted determinations based on block averages; USEPA's monitoring guidance and the Agency's general practice since that time lead to the conclusion that is expressed in the Emison memorandum.

Additionally, in a memorandum from Kathleen Bennett (then Assistant Administrator for Air, Noise, and Radiation) dated December 24, 1981, it was stated that following the decision in PPG Industries, Inc. v Costle, 659 F.2d 1239 (D.C. Cir. 1981) it is unnecessary "* * * to examine running average data to insure attainment and maintenance of the 24-hour (SO_2) NAAQS".

The use of modeled block averages in the Muskingum River attainment demonstration is consistent with the position expressed in the documents mentioned above.

With respect to NRDC's concern that the proposed emission limits provide no margin of safety and may in fact pose a threat to the public health and welfare, section 109 of the Clean Air Act requires that when establishing a national primary ambient air quality standard, a margin of safety must be built into the standard. This, of course, occurred when the NAAQS for SO_2 was promulgated. Therefore, because the emission limitation for the Muskingum River Power Plant is demonstrated to achieve the SO_2 standard, the Act's requirement for a margin of safety is satisfied.

Comment: NRDC argued that USEPA ignored previous modeling analyses, using 1964 meteorological (MET) data which showed 3-hour violations at the proposed emission limits. NRDC stated that ignoring these analyses violates the law, Agency policy, and an opinion from the Office of General Counsel (OGC).

(i) Legal Duty—NRDC stated that the law required USEPA to ensure attainment and maintenance of the NAAQS. This requires USEPA to insist on some minimum period of MET data in modeling for demonstrating attainment. Although Agency policy requires a minimum of 5 years of data, NRDC claimed that USEPA has a legal duty to consider additional available valid data.

(ii) Agency Policy—In addition to the 5 year data requirement, NRDC claimed that Agency policy does not allow excluding valid data which show violations just because it represents more than the minimum 5 years of data.

(iii) USEPA Opinion—NRDC pointed to a previous letter from USEPA's OGC which stated that the previous analyses using 1964 data are valid and can be used to determine emission limitations. NRDC also noted a USEPA memorandum which stated that the

[1] However, there have been limited circumstances in the past where running averages have been employed in evaluating SO_2 SIP's for attainment and maintenance of the NAAQWS. In the enforcement context, in cases where supplementary control systems (SCS) were used as an interim measure to protect the NAAQS at primary copper smeltors, USEPA has entered into consent decrees where running averages were specified. See e.g. US. v. Phelps Dodge Corporation Civil No. 81-086-TUC-MAR (D. Ariz.)

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different blocking procedures used in the previous analyses is not technically wrong.

Response: In implementing a block average system, it is necessary that a consistent set of block periods be used. Consequently, all models currently block the hours the same in computing 24-hour and 3-hour average concentrations, and the meteorological data files pre-processed by USEPA currently define each hour (i.e., which hour corresponds to each National Weather Service (NWS) observation) in the same way. The current convention is to use hours 1–3, 4–6, etc., to compute 3-hour averages and hours 1–24 to compute 24-hour averages and to assign the NWS observation (taken at approximately 10 minutes before each hour) to the hour during which it is taken. (The previous modeling referred to in NRDC's comments relied on a different blocking convention—i.e., the NWS observation was assigned to the following hour.)

As noted in an October 17, 1984, memorandum, from M. Koerber to the Files (Docket), USEPA did consider 1964 MET data (blocked according to the current convention) in supporting the proposed emission limitations. Further modeling analyses with the 1964 data (current blocking convention), performed along with the 1972–1975, 1977 data analysis, which also support the proposed emission limitations are contained in the record. The previous modeling (previous blocking convention) cited by the commenter was not considered only because of the inconsistency in the blocked periods. Under current modeling practice use of both blocked periods would be logically inconsistent. Thus, in accordance with the current blocking convention, USEPA based its judgment on the appropriate data and analysis.

Comment: NRDC argued that the use of highest, second high short-term concentrations in the attainment demonstration is incorrect. NRDC cited USEPA guideline documents and the air quality standards as requiring the use of the overall second highest concentration for a well-defined single source which dominates a group of receptors. NRDC further argued that since USEPA models are less accurate in identifying the precise location where high concentrations will occur, USEPA has no adequate basis for asserting that two exceedances will not, in fact, occur at the same location.

Response: USEPA's "Guideline on Air Quality Models" (April 1978) makes it clear that the design concentration is to be based on the highest of the second-high concentrations. As stated in that document, this type of estimate is more consistent with the criteria for determining violations of the NAAQS, which are identified in "Guidelines for Interpretation of Air Quality Standards". NRDC's claim that the "Guidelines for Interpretation of Air Quality Standards" requires the second highest overall, rather than the highest, second-high, does not apply here. The Guideline specifies using the second highest only in the "* * * special cases of Supplementary Control Systems (monitoring) networks * * *". Otherwise, the highest, second-high approach is appropriate.

It should also be noted that the second high procedure identified by NRDC is illogical. NRDC concedes that one exceedance is allowed by the definition of the short-term NAAQS, but that a second exceedance (anywhere, anytime) is not allowed. Because the size of any modeled exceedance area is not restricted to a single point, NRDC's approach is, for all practical purposes, equivalent to a "no-exceedance" system. That is, if one receptor is modeled to be over the standard, then another close-by receptor can, in almost all instances, be found that is also over the standard. Thus, the only way to ensure attainment under NRDC's approach is either to narrow the exceedance area to a single point (which is nearly impossible) or to never allow any exceedance (anywhere, anytime), which contradicts the definition of the standard. It should also be noted that NRDC's approach would also be inconsistent with the way USEPA determines compliance for attainment and redesignation purposes.

Comment: NRDC implied that the attainment demonstration was incomplete since concentrations resulting from fumigation and downwash were not accounted for.

Response: No refined reference methods are available for calculating impacts under inversion break-up fumigation conditions. Thus these conditions are usually not considered in SIP attainment demonstrations. Furthermore, NRDC has provided no evidence to show that such conditions would result in violations of the NAAQS under the proposed emission limitations. As for downwash effects, stack-tip downwash is not expected to be a problem in view of the high (23–34 meters/second) stack exit velocities; and building downwash is not expected to be a problem in view of the tall stack heights (252 meters). The surrounding terrain does not create any downwash problems.

Comment: NRDC argued that Ohio has not adequately supported the proposed secondary attainment date for the following reasons:

(i) Since the plant is located in a nonattainment area, Part D of the Act is applicable. Part D requires attainment as expeditiously as practicable. Ohio has failed to not only demonstrate that secondary attainment is impractical prior to 1989, but also that 1989 constitutes a "reasonable time" pursuant to section 110.

(ii) USEPA regulations require attainment within 3 years, unless a showing is made that attainment would require measures beyond RACT or that good cause exists for delaying application of RACT. Ohio has failed to make either of these two showings.

Response: USEPA's rationale for proposing to approve the secondary attainment date is discussed in the September 25, 1984 Notice of Proposed Rulemaking and in the docket.

Today's approval of the State emission limits for Muskingum is being promulgated pursuant to section 110 due to the fact that it is the initial SIP for the area replacing the 1976 plan promulgated by USEPA under section 110. The federally promulgated limit for Muskingum of 6.48 lb/MMBTU has been in effect since 1976, and thus the limits being approved today are the initial federally approved State submitted limits for this plant. For these reasons, and due to the fact that the SIP approved today assures attainment of the standards, USEPA believes that a Part D SIP is not required, even though the area is currently designated nonattainment for the secondary standard. (Note: The State promulgated limits reflect the fact that the 6.48 lb/MMBTU federal limit may have been more stringent than necessary to assure attainment and maintenance of the SO2 NAAQS. Further, the 1978 designation of the area around the Muskingum plant as nonattainment for the secondary standard was premised on the fact that actual emissions were in excess of the FIP limit.)

For these reasons, USEPA has judged the state submission against Section 110's requirement that the SIP provide for attainment of the secondary standard within a reasonable time. This limit, in USEPA's judgment does provide for attainment of the secondary NAAQS within a reasonable time. USEPA regulations generally define a reasonable time as three years (40 CFR 51.110(c)). In this case Ohio specified a period which initially appeared to be longer than three years, and provided a demonstration that good cause for the later date existed, and USEPA proposed to accept Ohio's showing that "good cause" existed for postponing compliance beyond three years.[3]

No comments filed in response to the proposal justify a change from USEPA's acceptance of the State showing. In any event, as the compliance date Ohio selected, July 1, 1989, is now less than eighteen months away, and, therefore, far less than three years from approval, USEPA believes that there is good cause for concluding that, as a practical matter the compliance date is the most expeditious date that is reasonable. After all, at this point the State could not practically complete a new rulemaking to advance the compliance date significantly from July 1, 1989, and USEPA assumes that retroactive compliance date would not be viable under state law.

Thus, under the rules implementing section 110, this compliance date provides for attainment of the secondary standard within a reasonable time.

The commenter urged that this SIP revision should be reviewed under Part D, rather than section 110, and that, as a consequence, it should be disapproved. As described above, USEPA judges this revision to have been properly submitted and approvable under section 110. However, even under the Part D, "expeditiously as practicable" requirement for attainment, this revision would be approvable. USEPA judges that given the remaining time until the compliance date, and the "good cause" showing made by the state, an earlier compliance date would not be practicable.

Comment: Ohio Power Company submitted comments in response to NRDC's and Ontario's comments. Ohio Power argued that NRDC's comments on block v. running averages, the exclusion of 1964 MET data, and design concentration have no merit. Ohio Power stated that Ontario's comments provided no basis for USEPA to do anything, other than to finalize the proposed regulations.

Response: USEPA acknowledges Ohio Power's comments and, as the responses above indicate, essentially agrees that the proposed SIP revision satisfies the requirements of section 110 of the Clean Air Act, and thus, should be approved.

[3] Ohio's "good cause" showing was submitted in compliance with 40 CFR 51.13(b)(2). Since the proposed approval appeared in the Federal Register, Part 51 has been recodified. The successor provision to § 51.13(b)(2) is § 51.110(c)(2)(ii).) While the specific language requiring a "good cause" showing has been deleted, the underlying criteria remain the same, and USEPA believes that the State submission satisfies § 51.110(c)(2)(ii).

Final Action

USEPA is approving the 8.6 lbs/MMBTU SO_2 emission limit to protect the primary NAAQS and the compliance date of June 17, 1980. USEPA is also approving the 7.6 lbs/MMBTU SO_2 emission limit to protect the secondary NAAQS, along with the compliance schedule and the July 1, 1989, compliance date. Finally, USEPA is approving stack gas sampling (as specified in 40 CFR Part 60, Appendix A, Method 6) as the exclusion method for determining compliance with the revised State SO_2 emission limits.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Note—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 1, 1988.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

2. Section 52.1870(c) is amended by adding paragraph (c)(70) as follows:

§ 52.1870 Identification of plan

* * * * *

(c) * * *

(70) On April 8, 1982, June 22, 1982, November 8, 1982, May 24, 1985, and November 12, 1986, the Ohio Environmental Protection Agency submitted a revision to the sulfur dioxide SIP for the Ohio Power Muskingum River Power Plant located in Morgan and Washington Counties. USEPA approves an emission limit of 8.6 lbs/MMBTU to protect the primary NAAQS with a compliance date of June 17, 1980. In addition, USEPA approves an emission limit of 7.6 lbs/MMBTU to protect the secondary NAAQS with a compliance date of July 1, 1989.

(i) Incorporation by reference:

(A) Ohio Administrative Code (OAC) rule 3745–18–03(C)(3)(gg)(vi) effective in Ohio December 28, 1979; rule 3745–18–64(B) and rule 3745–18–90(B) effective in Ohio on October 1, 1982.

(B) Director's Final Findings and Orders dated October 18, 1982, before the Ohio Environmental Protection Agency.

(C) Director's Findings and Order dated November 18, 1986, before the Ohio Environmental Protection Agency.

(ii) Additional information.

(A) Technical Support Document for emission limitations including dispersion modeling for the Muskingum River Plant submitted by the State on April 8, 1982.

(B) Muskingum River Plant Supplementary Technical Support Document submitted by the State on June 22, 1982.

(C) Air Monitoring Data submitted by the State on June 22, 1982.

3. Section 52.1881 is amended in paragraph (a)(4) by revising the entries for Morgan County and Washington County and in paragraph (a)(8) by revising the entry for Washington County and removing the entry for Morgan County to read as follows:

§ 52.1881 Control Strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) * * * Morgan County, * * * Washington County (except Shell Chemical), * * *

* * * * *

(8) * * * Washington County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), * * * Washington County (Shell Chemical Company), * * *

* * * * *

[FR Doc. 88–10626 Filed 5–19–88; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85–388; RM 5167; FCC 88–154]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: In a Fourth Report and Order, the FCC amends Part 22 of its rules to require non-wireline applicants proposing to provide cellular radio service to Rural Service Areas (RSAs) to submit a financial qualification showing with each RSA application. All non-wireline RSA applicants must demonstrate that they have the funds available or that they have received a firm financial commitment from a qualified lender to provide sufficient funds to cover the costs of construction, operation, and other initial expenses for one year. The Report and Order sets forth criteria for determining whether a source of financing would be qualified, and provides specific terms that must be included in any firm financial commitment letter relied on by an RSA applicant. Provisions have also been made to accommodate those applicants intending to rely on financing obtained through a parent corporation; and for those applicants intending to file applications proposing cellular service for more than one RSA. This action is taken in response to the overwhelming number of speculative non-wireline applications filed in previous cellular lotteries. The intent of this action is to ensure that only financially qualified, sincere entities will apply for cellular RSA licenses.

EFFECTIVE DATE: June 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sari Greenberg, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* adopted April 21, 1988 and released May 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Fourth Report and Order

1. On February 19, 1988, the Commission released a *Third Notice of Proposed Rulemaking*, 53 FR 5020 (1988), in this proceeding, proposing to amend § 22.917 of the Rules to require applicants proposing to provide cellular radio service to Rural Service Areas (RSAs), to demonstrate a firm financial commitment at the time they filed their applications. The Commission carefully considered the comments and adopted a *Fourth Report and Order* which requires non-wireline RSA cellular applicants to include a satisfactory financial qualification showing with each application. Non-wireline applications that do not include satisfactory financial showings will be disqualified.

2. In order to be deemed financially qualified, non-wireline applicants must submit either certified financial statements indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year, and a balance sheet dated within 60 days of the application filing date indicating continued availability of the same; or they must submit a firm financial commitment from a qualified source of financing. Qualified lenders with respect to this section of the Commission's Rules are: (1) State or federally chartered banks or savings and loan institutions; (2) other recognized financial institutions; or (3) financial arms of capital equipment suppliers. The FCC indicated that it would require questionable lenders to demonstrate that they have the funds available to cover the total commitments they have made. Applicants intending to rely on financing from a parent corporation must submit certified financial statements and balance sheets as they apply to the parent corporation.

3. Firm financial commitment letters from third parties must state that the lender has examined the creditworthiness of the particular applicant and the financial viability of the proposed project. Commitment letters must also state that the lender is committed to lend a sum certain to that applicant and that the lender's willingness to enter into the commitment is based solely on its relationship with the applicant and is no in any way guaranteed by any entity other than the applicant. The same firm financial commitment may be used for each application filed, subject to certain requirements specified in § 22.917(c)(1), as amended.

4. The objective of these amendments is to discourage speculative applicants from applying for RSA cellular licenses, and to ensure that only financially qualified, sincere applicants do apply. The FCC concluded that there is no evidence of abuse of the licensing process by wireline carriers, and thus noted that wireline applicants would be required to show their financial qualifications within 30 days of the public notice announcing their status as tentative selectee, sole applicant, or surviving entity in a full market settlement, as required by the current rules.

5. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FCC expects this action to deter speculative applications and to ensure that only those who are financially qualified to construct and operate cellular systems will apply for RSA cellular licenses. The FCC noted that it adopted specific requirements for obtaining financing under a variety of circumstances in order to allow sincere non-wireline applicants flexibility in structuring their financing. The FCC considered alternative approaches, and concluded that there are no specific alternatives that would maintain the integrity of the licensing procedure by ensuring that only sincere applicants with the desire and means to construct cellular systems would apply for RSA cellular licenses.

6. *Service List.* A copy of this Report and Order shall be sent to the Chief, Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission
H. Walker Feaster III,
Acting Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.917 is amended by redesignating paragraphs (c) and (d) as (d) and (e) and adding a new (c) to read as follows:

§ 22.917 Demonstration of financial qualifications.

* * * * *

(c) *Rural Service Areas.* (1) A non-wireline applicant for a new station shall demonstrate, at the time it files its application that it has either a firm financial commitment or available financial resources necessary to construct and operate for one year its proposed cellular system. The firm financial commitment may be contingent on the applicant obtaining a construction permit. The same commitment may be used for each application filed, subject to the following provisions:

(i) Where a non-wireline applicant provides a firm financial commitment that is not contingent upon the applicant obtaining a construction permit, the commitment need not be market specific and may be applied to any market or markets applied for as long as the commitment is sufficient to cover the costs of the proposed RSA systems.

(ii) Where a non-wireline applicant provides a firm financial commitment that is contingent upon the applicant obtaining a constuction permit and that is restricted on its face to a specific market or markets, the commitment may be used only for the markets to which it refers.

(iii) Where a non-wireline applicant provides a firm financial commitment that is contingent upon the applicant obtaining a construction authorization and that indicates that the bank or lending institution has reviewed the projects for which the applicant is applying, but the commitment is not restricted to any specific market, it may be applied to any market or markets applied for as long as the commitment is sufficient to cover the costs of the proposed RSA systems.

(2) If a non-wireline applicant does not win in a lottery, it may reapply its commitment to its applications for the next lottery consistent with the requirements of paragraph (c)(1) of this section.

(3) A non-wireline applicant that wins in more than one market shall file the firm financial commitment for the additional market or markets within 30 days after the public notice date when it is announced as the lottery winner of the additional market, unless its first firm financial commitment is sufficient to cover the costs of the additional market(s).

(4) The demonstration of commitment must include and be sufficient to cover the realistic and prudent estimated costs of construction, operating and other initial expenses for one year.

(5) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier and shall contain a statement that the lender—

(i) has examined the financial condition of the applicant including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(ii) that the lender has examined the financial viability of each RSA proposal for which the applicant intends to use the commitment;

(iii) that the lender is committed to providing a sum certain to the particular applicant;

(iv) that the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(v) that the commitment is not in any way guaranteed by any entity other than the applicant.

(6) Non-wireline applicants intending to rely on personal or internal resources must submit—

(i) audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(ii) a balance sheet current within 60 days of the date of filing that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and

(iii) a certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(7) Non-wireline applicants intending to rely upon financing obtained through a parent corporation must submit the information required by § 22.917(c)(6) (i) through (iii), as the information pertains to the parent corporation.

* * * * *

[FR Doc. 88-11365 Filed 5-19-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 22

[General Docket No. 85-388; [RM 5167]; FCC 88-155]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a Third Report and Order, the FCC amends Part 22 of its rules (which apply to Rural Cellular Service) to prohibit: (1) Pre-filing, post-filing and post-grant partial settlements among competing non-wireline cellular applicants to serve Rural Service Areas (RSAs); (2) non-wireline RSA applicants from having *any* ownership interest, including those of less than one percent, in more than one application in a market; and (3) the transfer or alienation of any interest in an RSA cellular application prior to the grant of a construction authorization. This action was taken because under the rules permitting partial settlements and a less than one percent ownership interest in more than one application per market, litigation increased and the grant of construction authorizations was delayed. Many non-wireline applicants who entered into partial settlements did not appear to be *bona fide* applicants seeking to become independent licensees, diluted their ownership interests, and requested transfer of their interests prior to the grant of authorization. The intended effect of the action is to dissuade speculators from filing. Further, prohibiting the transfer, assignment, or other alienation of a pending application will expedite service to the public.

EFFECTIVE DATE: June 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

This is a summary of the Commission's Third Report and Order adopted April 21, 1988 and released May 18, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third Report and Order

1. On April 21, 1988, the FCC adopted a Third Report and Order (*Order*) to amend the rules for Rural Service Areas (RSAs) in regard to filing cellular radio applications. The amendments were made after reviewing and considering the comments to the *Further Notice of Proposed Rulemaking*, in CC Docket No. 85-388, 1 FCC Rcd 499 (1986), that proposed to prohibit (1) all pre-filing, post-filing and post-grant partial settlements among competing non-wireline applicants who propose to serve RSAs; (2) wireline and non-wireline applicants from holding or acquiring *any* interest in more than one application in the same RSA, even that which is less than 1% (except for permissible interests in publicly traded corporations, in which interests of less than 5% are not deemed cognizable); and (3) the sale, transfer, assignment or

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other alienation of any interest in a cellular application, permit or license to offer service to RSAs until the cellular facility has been placed in operation. The FCC adopted proposal (1) and has modified proposal (2) to apply only to non-wireline applicants. The FCC did not eliminate partial settlements or cumulative chances for wireline applicants. As for proposal (3), the FCC agreed with the commenters that the proposed policy would unnecessarily limit the ability of MSA licensees and RSA grantees to construct regional cellular systems made up of existing MSA systems and either all or a portion of planned RSA systems. The FCC concluded that the continued flexible application of Section 22.40(b) to transactions involving construction authorizations for unbuilt facilities would better serve the public interest than the original proposal would. However, the FCC did not believe that these considerations apply before an applicant has been granted a construction authorization. With pending applications, disruption of orderly processing and delay of service to the public would occur if transfers were allowed; and therefore, the FCC prohibited the alienation of any interest in an RSA application prior to the grant of a construction authorization. The objective of these proposed changes is to deter speculative applicants from filing.

2. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FCC expects this action to deter speculative applications and promote efficient and expedient authorization of cellular licenses in the RSAs and lower the administrative costs associated with the process of granting licenses in these RSAs. The FCC considered alternative approaches for the filing of RSA cellular applications and found no specific alternatives which will allow for equally predictable and efficient licensing of cellular service in RSAs.

3. *Service List.* A copy of this *Notice* shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

Ordering Clauses

4. Authority for this rulemaking is contained in sections 1, 4(i) and 301, 303 and 309 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission.

H. Walker Feaster,

Acting Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.33(b)(2) is revised to read as follows:

§ 22.33 Grants by random selection.

* * * * *

(b) * * *

(2) Markets Beyond the Top-120 and Rural Service Areas. In markets beyond the top-120 cellular modified Metropolitan Statistical Areas and in Rural Service Areas, the cumulative lottery chances described in paragraph (b)(1) of this section will be awarded to joint enterprises resulting from partial settlements among mutually exclusive wireline applicants only. Any joint enterprise resulting from a partial settlement among mutually exclusive non-wireline applicants for markets beyond the top-120 Metropolitan Statistical Areas will not be entitled to any cumulative lottery chances. Partial settlements among non-wireline applicants for Rural Service Areas are prohibited.

* * * * *

3. Section 22.921(b) is revised to read as follows:

§ 22.921 Ownership in applications for cellular service for markets below the top-90.

* * * * *

(b) *Markets beyond the top-120 and Rural Service Areas—(1) General.* Except as otherwise provided herein, no party may have an ownership interest, direct or indirect, in more than one application for the same MSA or NECMA market, except that interests of less than one percent will not be considered. For Rural Service Areas, no party to a non-wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, including an interest of less than one percent. No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered.

(2) *Ownership interests in publicly-traded corporate applicants.* Notwithstanding paragraph (b)(1) of this section, no party may have an ownership interest, direct or indirect, in mutually exclusive applications filed by publicly-traded corporations for an MSA market, a non-MSA/non-NECMA area, or a Rural Service Area, except that interests of less than five percent will not be considered.

* * * * *

4. Part 22 is amended by adding a new § 22.922 to read as follows:

§ 22.922 Transfers and assignments of applications, permits or licenses in Rural Service Areas.

(a) Notwithstanding any other section of this Part, the sale, transfer, assignment or other alienation of any cellular application to offer service to Rural Service Areas is prohibited prior to the grant of a construction authorization. This restriction on transfers of interests in such cellular applications shall include any form of alienation, including option arrangements and agreements, as well as equity and debt placement plans.

[FR Doc. 88-11375 Filed 5-19-88; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 98
Friday, May 20, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

Irish Potatoes Grown in Colorado; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate under Marketing Order No. 948 for the 1988–89 fiscal period. Authorization of this budget would allow the Colorado Potato Administrative Committee Area III to incur expenses reasonable and necessary to administer the program. Funds to cover these expenses would be derived from assessments on handlers.

DATE: Comments must be received by May 31, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 948 (7 CFR Part 948) regulating the handling of potatoes grown in Colorado. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Colorado Area III potatoes under this marketing order and approximately 80 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Secretary for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Colorado Potato Committee Area III met on April 7, 1988, and unanimously recommended a budget for the 1988–89 fiscal period of $3,537 and an assessment rate of $0.002 per hundredweight of potatoes. This compares to the 1987–88 budget of $3,662. The proposed budget is $125 less than last year, reflecting a decrease in the cost of office equipment and monthly services such as telephone and utilities. At the proposed assessment rate of $0.002, the same as last year, anticipated fresh market shipments of 758,500 hundredweight would yield $1,517 in assessment income. This along with approximately $570 in fees and interest and $1,450 from the reserve would be adequate to cover budgeted expenses. At the end of the fiscal period, the reserve fund is expected to total $4,600.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, potatoes (Colorado).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.201 is added to read as follows:

§ 948.201 Expenses and assessment rate.

Expenses of $3,537 by the Colorado Potato Administrative Committee Area III are authorized, and an assessment rate of $0.002 per hundredweight of potatoes is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-11352 Filed 5-19-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1113-88]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of availability.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This notice announces the availability to the public of a preliminary working draft of the proposed regulations for the adjustment of status of a temporary resident alien to that of an alien lawfully admitted for permanent residence. This action is necessary to communicate the availability of the preliminary working draft to interested parties and ensures that the public has an opportunity to provide comments at the preliminary working draft step in the formulation process for the Service's proposed regulations.

DATES: Interested parties may call (202–786–5723) to request a copy of the preliminary working draft. Written comments on the preliminary working draft must be received by close of the business day (5:00 p.m.) on or before June 20, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, at the above address.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603 was enacted on November 6, 1986. On January 20, 1987, the Service took the unprecedented step of publishing in the **Federal Register** a notice making available to the public the preliminary working draft regulations for the adjustment of certain aliens to temporary resident status (52 FR 2115). More than 6,800 copies of the preliminary working draft were requested and forwarded. The Service was pleased with the amount of constructive comments received. The comments were reviewed and contributed to the proposed regulations published in the **Federal Register** on March 19, 1987 (52 FR 8752).

The Service feels that it would be beneficial to repeat the preliminary working draft step in the formulation process for the regulations for the adjustment of a temporary resident alien to that of an alien lawfully admitted for permanent residence. Therefore, the Service invites interested parties to request a copy of the preliminary working draft and provide applicable comments.

Alan C. Nelson,

Commissioner.

Date: May 16, 1988.

[FR Doc. 88-11363 Filed 5-19-88; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Safety Requirements for Industrial Radiographic Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 15, 1988, (53 FR 8460), the NRC published for public comment a proposed rule to require additional safety features on radiographic exposure devices and associated equipment and to require that radiographers wear pocket alarm dosimeters. The comment period for this proposed rule was to have expired on May 16, 1988. Two letters, and two telephone requests which are to be followed by letters, have been received, requesting an extension of the comment period for periods of time that range from 30 to 180 days. One of the commenters is the Non-Destructive Testing Management Association (NDTMA), a major trade organization representing a significant number of radiographic equipment manufacturers and users.

In view of the importance of the proposed rule and the fact that:

- The rule involved major changes in existing radiographic equipment.
- The industry will require significant time to develop their own cost analysis of the impact of the rule to compare with NRC estimates.
- The industry will require significant time to do a survey of actual device lifetimes to compare with NRC estimates and which is necessary for the cost analysis cited above.

The NRC feels that the present comment period of 60 days allows insufficient time to complete the required analyses. For this reason the NRC has decided to extend the comment period for an additional 90 days. The extended comment period now expires on August 16, 1988.

DATES: The comment period has been extended and now expires August 16, 1988. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

Dated at Rockville, MD, this 16th day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-11377 Filed 5-19-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-29; Notice No. SC-88-3-NM]

Special Conditions; Gates Learjet Model 31

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Gates Learjet Model 31 airplanes. These airplanes will have novel or unusual design features associated with the installation of the electronic engine control systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical or essential, are maintained.

DATE: Comments must be received on or before June 9, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-29, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-29. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-29." The postcard will be date/time stamped, and returned to the commenter.

Background

On March 16, 1987, Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277, made an application to the Federal Aviation Administration for an amended type certificate for the Model 31 airplanes.

Model 31 Design Features

General

The Gates Learjet Model 31 airplane is a twin engine business jet with maximum seating of 13. It has the Model 35 fuselage and horizontal tail, Model 55 wing, Model 28 vertical tail, addition of delta fins on the lower rear fuselage, deletion of stick pusher/puller and Mach trim systems, and as an option, a Model 28 forward fuselage fuel tank. The wing span is 42.18 feet, winglet span is 3.74 feet, fuselage length is 48.58 feet and the cabin and cockpit length is 21.7 feet. It is powered by two Garrett TFE 731–2–3B engines, also used on the Lear 35 and 36. These engines have electronic controls with conventional manual backup. Total thrust of these engines is 7,000 pounds. Fuel capacity is 4,168 pound standard with an optional capacity of 4,598 pounds. Maximum takeoff weight is 15,500 pounds (16,500 optional). Maximum ramp weight is 15,750 pounds (16,750 optional). The maximum operating altitude will be 51,000 feet. V_{MO}/M_{MO} is 300 KIAS/.78M_I, and V_{DF}/M_{DF} is 375 KCAS/.86M_C.

The regulations incorporated by reference on the type certificate for these airplanes do not include adequate airworthiness standards for lightning protection of the electronic engine controls and, as a result, these special conditions are proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The Model 31 is being designed with electrical interfaces for critical and essential engine functions such as the start schedule, governing schedule, acceleration schedule, surge schedule and minimum fuel schedule inputs to the engines. These systems, which are designed to perform critical and essential functions, can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating aircraft, a special condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion:

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition. It is based on SAE report AE4L–87–3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effected to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (1/2 Component D) A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitutde, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficent energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting form this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an anlytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (1/2 Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_b (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple Burst (Component H)
I_b, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:					
I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and $(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	———
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	———

Type Certification Basis

The type certification basis for the Gates learjet Model 31 is as follows: Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25–2 and 25–4. Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21, and 25–30, plus Section 25.955(b)(2) of Amendment 25–11. Section 25.954 of Amendment 25–14. Sections 25.803(e), 25.811(f), 25.853(a), 25.853(b), and 25.855(a) of Amendment 25–15. Section 25.1359 of Amendment 25–17. Section 25.785(c) of Amendment 25–20. Sections 25.25, 25.113, 25.145, 25.251, 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331 and 25.1585(c) of Amendment 25–23. Sections 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36. Sections 25.45 thru 25.75 *deleted*, 25.101, 25.161, 25.615, 25.1332 and 25.1403 of Amendment 25–38. Sections 25.903(e), 25.939, and 25.943 of Amendment 25–40. Sections 25.29, 25.143, 25.147, 25.149, 25.177, 25.181, 25.201, 25.207, 25.233, 25.237, 25.255 and 25.703 of Amendment 25–42. Section 25.1326 of Amendment 25–43. Section 25.253 of Amendment 25–54. Sections 25.33 and 25–961 of Amendment 25–57. Part 36 of the FAR effective December 1, 1969, as amended by Amendment 36–12. SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27–5. Special Conditions for operation to 51,000 ft.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

As the intended type of certification date for the first Gates Learjet Model 31 to install this electronic engine control system is June 6, 1988, we have shortened the comment period to 20 days in order to make the final special conditions effective prior to that TC date.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Gates Learjet Model 31 airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.*

(a) Each digital electronic engine control system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the aircraft is exposed to lightning.

(b) Each essential function of the digital electronic engine control system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning. Manual mode reversion is considered an acceptable method of retaining the essential functions.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11390 Filed 5–19–88; 8:45 a.m.]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 284 and 385

[Docket No. RM88–13–000]

Brokering of Interstate Natural Gas Pipeline Capacity

Issued May 3, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: On April 4, 1988, the Commission issued a proposed rule to allow holders of firm transportation rights on an interstate natural gas pipeline to sell or assign those rights. (53 FR 15061, April 27, 1988). On May 3, 1988, an extension of time was granted at the request of various interested groups for the filing of comments on the proposed rule.

DATE: The time for filing comments is extended from May 19, 1988 to June 17, 1988.

ADDRESS: Office of the Secretary, 825 N. Capitol St. NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Acting Secretary, (202) 357–8400.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11394 Filed 5–19–88; 8:45 am]

BILLING CODE 6717–01–M

VETERANS ADMINISTRATION

38 CFR Part 4

Systemic Diseases, Temporary Total Evaluations Based on Periods of Hospitalization or Surgery, Regular Schedular Assignment of a Total Evaluation Based on Total Industrial Impairment

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The systemic disease entity, Melioidosis, as well as acquired immunodeficiency syndrome (AIDS) and AIDS Related Complex (ARC), and human immunodeficiency virus (HIV) Antibody Positive are proposed to be added to the Schedule for Rating Disabilities (38 CFR Part 4). More equitable rating criteria are proposed for the evaluation of other systemic diseases. A broadened definition of surgery for assignment of a temporary total evaluation under § 4.30 is proposed, and clarification of what constitutes 21 days of hospitalization under § 4.29 is proposed. Where the main criterion for assignment of a total evaluation is total industrial impairment (in mental disorders) it is proposed that such total evaluation will be assigned without resort to the individual unemployability provisons of § 4.16. Revised psychiatric nomenclature is inserted in § 4.124a to conform with a recent revision to § 4.132.

DATES: Comments must be received on or before June 20, 1988. Comments will be available for public inspection until July 5, 1988. These rules are proposed to be effective 30 days following date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) unti July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 357–6504.

SUPPLEMENTARY INFORMATION: Melioidosis is a systemic disease endemic to Southeast Asia. Among the residuals are chronic pulmonary infections, osteomyelitis and skin abscesses. This disease entity will be added to the Schedule for Rating Disabilities under DC 6318 with a maximum evaluation of 100%.

The number of claims for disability benefits based on a diagnosis of AIDS or ARC has increased sufficiently to warrant the assignment of specific diagnostic codes. We are, therefore, proposing to assign diagnostic code 6351 for AIDS and diagnostic code 6352 for ARC. Evaluations will be based on the severity of the underlying disease(s) from which the veteran is suffering because of the immune system deficiency. In addition, we are proposing to assign diagnostic code 6353 for HIV Antibody Positive with a 0% evaluation.

The following additional amendments to the systemic disease segment of the Schedule for Rating Disabilities are proposed:

Diagnostic Code 6305—Filariasis, change the term "Scrotum" to gender-neutral "genitalia", change the term "adenitis" to more appropriate "lymphadenitis", add a 10% evaluation

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with the criteria "chronic, with mild residuals in well established diagnosis."

Diagnostic Code 6309—Rheumatic fever, add a 100% evaluation with the criteria "As established active generalized disease with constitutional symptoms."

Diagnostic Code 6314—Beriberi, change the current "rate the residuals" format to specific evaluations of 10%, 30%, 60% and 100% based on moderate, moderately severe, severe and pronounced symptoms.

Diagnostic Code 6316—Brucellosis, add a 100% evaluation with the criteria "As active incapacitating febrile disease with arthritis, endocarditis, uveitis or other complications".

Under the provisions of § 4.29, a veteran is entitled to a temporary 100% evaluation when hospitalized for a period in excess of 21 days because of a service-connected disability. Under current policy, a veteran may be granted an authorized absence of up to four days for short term patients and up to 14 days for long term patients (those who have been or are expected to be hospitalized for 30 or more days). The main purpose behind the provisions of § 4.29 is to compensate the veteran because of temporary removal from employment for a period in excess of 21 days. While we recognize the value of authorized absences from the hospital administration point of view, the granting of extended or excessive authorized absences during the first 21 days of hospitalization is inconsistent with the theory that the veteran has been removed from employment for a period in excess of 21 days. We propose to amend § 4.29 to provide that an authorized absence in excess of four days, or a third authorized absence of four days, which begins during the first 21 days of hospitalization is the equivalent of a discharge. Such discharge is effective the first day of the authorized absence in excess of four days or the first day of the third four-day authorized absence, whichever is applicable. Subsequent re-hospitalization would then be considered a new admission for purposes of determining entitlement under § 4.29. After 21 days of hospitalization, the current rules would apply with respect to a third consecutive authorized absence of 14 days. Temporary release which is approved by an attending VA physician as part of the veteran's treatment plan will not be considered an absence.

A perceptible increase is noted in the use of outpatient surgical clinics rather than hospitals, with convalescence being accomplished at home. The current structure of § 4.30 requires post hospital convalescence and hospital discharge for the assignment of a temporary total evaluation following surgery. These technical requirements act as a bar to assigning a temporary total evaluation when surgery is performed in other than a hospital setting and a significant period of convalescence is required at home. We propoose to amend § 4.30 to make it applicable to outpatient surgery when a significant period of convalescence is required. A change to § 3.401(h)(2) will be forthcoming to include outpatient surgery. We also propose to amend § 4.30 by providing that a minimum of one month of convalescence be required for assignment of a temporary total evaluation.

The rating criteria for mental disorders provide that total industrial inadaptability warrants a 100% evaluation. When a mental disorder rated 70% is the only compensable service-connected disability and such disorder is the reason for a veteran's unemployability, applying the unemployability provisions of § 4.16(a) is inconsistent. A change to the Schedule for Rating Disabilities is proposed that will bar the application of § 4.16(a) in such cases and assign a schedular 100% evaluation in lieu thereof.

The term "dementia" is replacing "non-psychotic organic brain syndrome" in portions of § 4.124a following diagnostic codes 8045, 8046, and 8914. This will conform with a recent revision of § 4.132.

The Administrator hereby certifies that these proposed regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: March 29, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 4, *Schedule for Rating Disabilities*, is proposed to be amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. In § 4.16, paragraph (c) is added to read as follows:

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

* * * * *

(c) The provisions of paragraph (a) of this section are not for application in cases in which the only compensable service-connected disability is a mental disorder assigned a 70 percent evaluation, and such mental disorder precludes a veteran from securing or following a substantially gainful occupation. In such cases, the mental disorder shall be assigned a 100 percent schedular evaluation under the appropriate diagnostic code.

3. In § 4.29, the introductory text, paragraph (a) and the first sentence of paragraph (c) are revised to read as follows:

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Veterans Administration or an approved hospital for a period in excess of 21 days or *hospital observation at expense* for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability.

(1) An authorized absence in excess of four days, or a third authorized absence of four days each, which begins during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the first day of the third authorized absence of four days, or the first day of the authorized absence in excess of four days, whichever is applicable.

(2) Following a period of hospitalization in excess of 21 days, a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to § 3.105(e) of this chapter.

* * * * *

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge. * * *

* * * * *

4. In § 4.30, introductory text is added and paragraphs (a), (a)(1), (a)(2) and (a)(3) are revised to read as follows:

§ 4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a)(1), (2) or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to § 3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery _____).

(2) Surgery with severe postoperative residuals such as incompletely healed wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight bearing prohibited). (Effective as to outpatient surgery _____).

(3) Immobilization by cast, without surgery, of one major joint or more.

* * * * *

5. In § 4.88a, diagnostic codes 6305, 6309, 6314, 6316 are revised and diagnostic codes 6318, 6351, 6352, and 6353 are added so that the revised and added material reads as follows:

§ 4.88a Schedule of ratings-systemic diseases.

* * * * *

	Rating
* * * * *	
6305 Filariasis:	
Initial infection with severe lymphangitis or lymphadenitis	100
Chronic, with repeated recurrences and tendency to severe multiple involvement of extremities and genitalia or severe lymphadenitis	100
Chronic, with repeated recurrences and beginning permanent deformity of one or more extremities or genitalia or moderate lymphadenitis	60
Chronic, following any recurrence, symptomatic	30
Chronic, with mild residuals in well established diagnosis	10
With subsidence of symptoms following only one attack	0
Note: The following ratings of this code may be combined among themselves to cover multiple involvements but are not to be combined with the preceding rating of this code.	
Permanent deformity of an extremity or of the genitalia:	
Severe	60
Moderate	30
Mild	10
* * * * *	
6309 Rheumatic fever:	
As established active generalized disease with constitutional symptoms	100
Note: Rate residuals under the appropriate cardiac, musculoskeletal, neurological or other diagnostic code, e.g., 7000, 5002 or 8105.	
* * * * *	
6314 Beriberi:	
Pronounced, with long history of limited nourishment, edema, weakness, cardiac enlargement or murmurs, peripheral neuropathy or other manifestations not responding to therapy	100
Severe form, with some of the above precluding more than strictly sedentary activity	60
Moderately severe form, with some of the above precluding more than ordinary activity	30
Moderate residuals	10

	Rating
* * * * *	
6316 Brucellosis (Malta or undulant fever):	
As active incapacitating febrile disease (initial or recurrent episode) with arthritis, endocarditis, uveitis or other complications	100
Chronic forms:	
Severe, with frequent febrile episodes	50
Moderately severe, with febrile episodes not more frequently than once in 3 months	30
Moderate, with infrequent febrile episodes, but with fatigability, moderate depression, etc	10
Rate complications, as arthritis, endocarditis, uveitis, etc., separately.	
* * * * *	
6318 Melioidosis	
Pronounced, with persistent cough, weakness, emaciation, central nervous system involvement or other residuals of military dissemination	100
For less severe residuals rate under appropriate system.	
* * * * *	
6351 Acquired immunodeficiency syndrome (AIDS):	
6352 AIDS Related Complex (ARC):	
Note: Rate underlying disease(s) analogous to an appropriate diagnostic code for the affected body system. Evaluations may be assigned from zero to 100 percent using an evaluation for the analogous diagnostic code selected.	
6353 HIV Antibody Positive (no underlying disease)	0
* * * * *	

§ 4.124a [Amended]

In the first chart, "Organic Diseases of the Central Nervous System," in the second paragraph under diagnostic code 8045, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "dementia associated"; in the second paragraph under diagnostic code 8046, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "multi-infarct dementia".

In "The Epilepsies" under the paragraph titled, "Mental Disorders in Epilepsies:," remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the word "dementia".

[FR Doc. 88–11272 Filed 5–19–88; 8:45 am]
BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Manifest Mailing System (MMS)

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend existing postal regulations and

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procedures to provide for a standardized manifest mailing system. This system would enable a mailer to combine nonidentical weight and rate pieces of mail of the same class and processing category in a single permit imprint mailing.

The purpose of the proposal is to provide for situations when postage charges cannot be adequately verified by weighing or normal acceptance procedures are impractical.

DATE: Comments must be received on or before July 5, 1988.

ADDRESS: Written comments should be directed to Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Tekla B. Zimmerman, (202) 268-5305.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to revise the DMM to include provisions for a Manifest Mailing System (MMS). Use of an MMS would allow mailers who pay postage through a permit imprint advance deposit account to combine nonidentical weight and rate pieces of mail of the same class (except for second-class) and processing category as a single mailing. Under an MMS, each piece of mail would be encoded with specific information to allow verification that postage has been properly paid. Postage for each piece in a mailing would be documented by the mailer on a computer-generated manifest listing. This manifest listing and completed mailing statement (PS Form 3602 or 3605), or computer-generated facsimile, must be submitted to the Postal Service with each mailing.

To be authorized to use MMS, mailers must complete an application and system review process designed to insure that all requirements are met. Following this process, the mailer and the Postal Service will execute a service agreement setting forth specific conditions that will apply to the submission of manifest mailings in addition to the requirements contained in Postal Service regulations.

Mail make-up and sortation requirements must be in accordance with existing DMM regulations. The Postal Service will perform a random sampling of each mailing to verify proper preparation and payment of postage. The sample will be deemed to be representative of the entire mailing, so any adjustment in the postage amount for the sample will be applied proportionately to the total mailing.

In addition, the Postal Service will periodically develop Customer Publications to specify manifesting procedures which meet the standards set forth in postal regulations. From time to time the Postal Service may add other Customer Publications to further expand the availability of standardize MMS programs.

Draft Customer Publications are now available for the categories listed below:

First-Class Letter Size	PUB 401–A
First-Class Parcels (Under 12 oz.)	PUB 401–B
Priority Mail	PUB 401–C
Third-Class Letter Size	PUB 403–A
Third-Class Parcels	PUB 403–B
Parcel Post	PUB 403–A
Bound Printed Matter	PUB 403–B
Special Fourth-Class	PUB 403–C
Library Fourth-Class	PUB 403–D
Registered Mail	PUB 404–A
COD Mail	PUB 404–B

An information copy of the proposed text for the Customer Publications listed above may be obtained by request from the Office of Classification and Rates Administration at the address specified above. All requests must specify title(s) and publication number(s) desired.

In addition, the Postal Service proposes to completely revise DMM 145.9 on alternate methods of mailing and retitle it as Alternative Mailing Systems (AMS). This section would contain provisions for mailer quality control procedures, cost/benefits analysis, and detailed authorization and revocation procedures.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553(b), (c), the Postal Service invites public comments on the following proposed revisions of Part 145 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 145—PERMIT IMPRINTS (MAIL WITHOUT AFFIXED POSTAGE)

1. *Renumber 145.1 Definition, as 145.11 and amend last sentence to read as follows:*

Permit imprint mailings that have postage paid through an advance deposit account must be weighed by the Postal Service to verify the accuracy of the piece counts claimed and the total weight of the mailing, unless acceptance under an alternative procedure, as described in 145.7, .8 or .9, is authorized by the Rates & Classification Center.

2. *Renumber 145.21 Application, as 145.12.*

3. *Renumber 145.22 Application, as 145.13.*

4. *Renumber 145.3 Preparation of Permit Imprints, as 145.2 and amend the third sentence in new 145.21 to read as follows:*

The content of the imprint must be in accordance with *145.3* and the format in accordance with *145.4*.

5. *Renumber 145.4 Contents of Permit Imprints, as 145.3.*

6. *Amend the reference at the end of the second sentence in new 145.31 to read as follows:*

(See Exhibit 145.41a–41e)

7. *Amend the second sentence in new 145.33 to read as follows:*

The company's name may be shown in place of the city and permit number, in accordance with *145.34*.

8. *Renumber 145.5 Format of Permit Imprints as 145.4.*

9. *Add new 145.41 to read as follows:*

Permit imprints for other than official mail or Mailgrams must be prepared in one of the formats shown in *Exhibits 145.41a through 145.41e*. Any of these formats may be used to display the information prescribed by *145.3*.

10. *Add new 145.42 to read as follows:*

Permit imprints for Mailgrams and official mail must be prepared in one of the formats shown in *Exhibits 145.42a–145.42d*.

11. *Renumber 145.6 Mailings with Permit Imprints as 145.5 and amend the first sentence in the new 145.51 to read as follows:*

Permit imprint mailings must consist of a minimum of 200 pieces or 50 pounds, except as provided in *145.52*.

12. *Renumber 145.7 as 145.6 and amend (a) in the first sentence in the new 145.62 to read as follows:*

(a) when company permit imprints are used as provided for by *145.35*.

13. *Add a new 145.7 to read as follows:*

145.7 Manifest Mailing System (MMS).

.71 Purpose. The Manifest Mailing System (MMS) permits the Postal Service to accept and verify mailings containing nonidentical weight and/or rate pieces of the same mail class (except for second-class) and processing category, when the mailers have generated these mailings in accordance with the regulations set forth below. The purpose of the MMS is to provide for situations when postage charges cannot be adequately verified by weighing and/or normal acceptance procedures are impractical.

.72 General Qualification Requirements. In order to use MMS, the following conditions must be met:

.721 Service Agreement. A service agreement will be signed by the mailer, postmaster and the General Manager, Rates and Classification Center before the first mailing is presented to the Postal Service. The service agreement will be the controlling document of MMS.

.722 Automated Mail Production. The mailer must have an automated mail production system which generates mail consistent with postal requirements and calculates postage accurately as follows:

a. Presorted Mail. The automated system must fully determine the qualifying presort level and correct rate of postage. The system must also perform the presort sortation and number each piece in consecutive order.

b. Nonpresorted/Nonletter Size Mail. The mailer must have an automated mail production system which calculates postage accurately before the mailing is presented for acceptance in the Postal Service.

.723 Computerized Manifest. Each mailpiece must be uniquely identified by the mailer and bear prescribed information in a "key line", as outlined in section 145.742a, when applicable. The automated system must provide a computer-generated manifest listing for each mailing that permits Postal Service verification of the postage amount and levels of presort, as applicable. The manifest listing must account for every piece in the mailing and must include the following information:

a. Presorted Mail. The manifest must list destinating ZIP Codes, presort category, batch number ranges, postage amounts and cumulative postage amounts and ZIP + 4 information, when appropriate.

b. Nonpresorted/Nonletter Mail. The manifest must list the postage for each piece and those factors, such as destinating postal zone and piece weight, that are used to calculate the correct amount of postage for the particular class of mail. Each page of the manifest must show cumulative postage totals and a computer-generated summary must appear on the last page displaying the total for all detail pages.

c. Special Services. When special services, such as collect on delivery (COD) or registered are used, the manifest must include the applicable fees for each piece.

.724 Identification. Each piece in a manifest mailing must bear a unique piece identification number.

.725 Mailer Quality Control. The mailer must implement a quality control program acceptable to the Postal Service. This program must demonstrate (a) that the mail is properly prepared, and (b) that accurate documentation is provided. The service agreement must include a detailed description of the proposed quality control procedures. Each mailing under an MMS agreement must be accompanied by a statement by the mailer certifying that a Quality Control verification has been performed.

.726 Permit Imprint. Mailings deposited under the program must qualify as permit imprint mailings in accordance with 145.1, except that for letter size mail the qualified rate category endorsement must appear in the keyline.

.727 Batch Definition. Mailings consisting of First- or third-class letter size mail must be prepared in batches produced in presort order and consecutively numbered. A batch is defined as a small group of pieces within a sortation level, such as carrier route, 5-digit or 3-digit ZIP Code. A batch may consist of pieces of different weight increments and rate categories. The Postal Service will determine and specify the proper batch size for each mailer.

.728 Mailing Statement. The mailer must submit a mailing statement with each mailing. The statement may be a computerized facsimile of Form 3602, *Statement of Mailing with Permit Imprints*, or Form 3605, *Statement of Mailing—Bulk Zone Rates*, if it includes all the information otherwise required on the official Postal Service mailing statement that is relevant to the mailing.

.729 Manual Adjustment. A method for adjusting the manifest listing must be used when pieces of mail have been mutilated, spoiled, or destroyed during normal processing operations and cannot be presented as part of the mailing.

.73 Additional Technical Information. The Postal Service has published a series of Customer Publications to help mailers develop systems meeting the requirements for each class in MMS. Mailers who follow these guidelines and develop systems that meet DMM regulations and the pre-approved specifications outlined in the Customer Publication will receive approval of their manifesting application.

.74 Markings.

.741 Endorsement Compliance. When mailings are made under 145.7, mailers may comply with the marking requirements for endorsements in DMM 362, 862, 762, 763, 764, and 767 by using a key line as prescribed in 145.742 or other means specified in the authorization.

.742 Machinable Letter Size Mail. Requirements for key line contents, rate category abbreviation, and key line location are as follows:

a. Key Line Contents. The following key line data must be printed in the following order on each piece of machinable letter size First-Class Mail and third-class mail (some data not required for third-class, as indicated) included in an MMS mailing:

(1) Consecutive piece number unique to each piece;

(2) Weight increment (First-Class only);

(3) Rate category for which the mailpiece qualifies; and

(4) Postage paid according to weight and rate category.

b. Mailer Key Line Codes. Codes for internal mailer use may be printed to the right of the postage paid information. A break of at least two spaces must appear between the postage paid and any internal code information.

c. Rate Category Abbreviations. The only acceptable rate category abbreviations for machinable letter size mail key line data are listed below:

FIRST-CLASS MAIL:

(1) ZB—ZIP + 4 BARCODED
(2) ZP—ZIP + 4 PRESORT
(3) ZN—ZIP + 4 NONPRESORT
(4) FP—FIRST-CLASS PRESORT
(5) CR—CARRIER ROUTE PRESORT
(6) FN—NONPRESORT

BULK THIRD-CLASS MAIL (Regular and Special Rates):

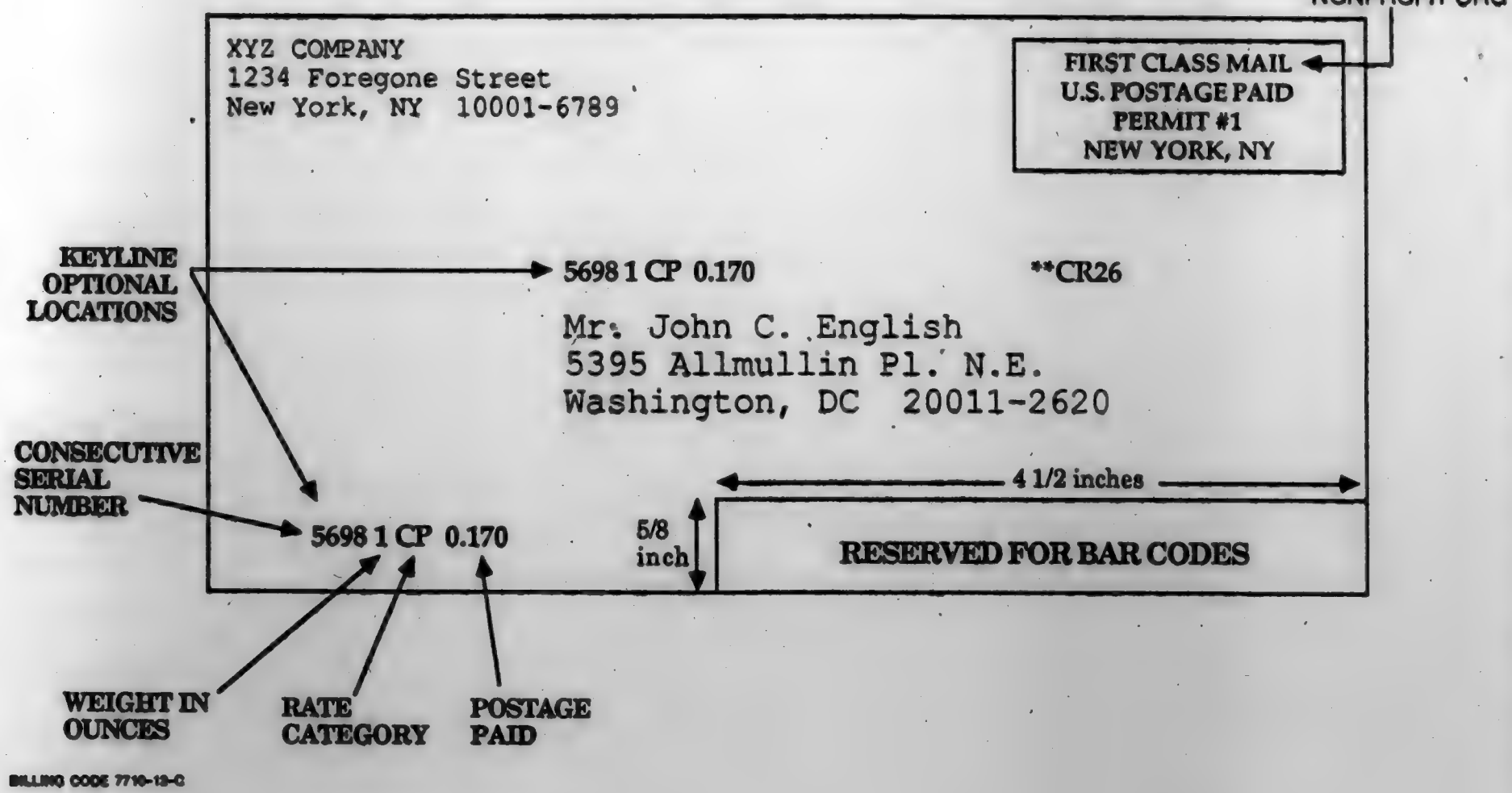
(1) ZB—ZIP + 4 BARCODED
(2) ZP—5—DIGIT ZIP + 4
(3) ZN—BASIC ZIP + 4
(4) CR—CARRIER ROUTE
(6) BA—BASIC

c. Key Line Location. The key line must be printed either in a position at least two (2) lines above the address or in the lower left corner of the envelope. For machinable letter size mail, the placement of the key line must not intefere with the OCR read area. See Exhibit 122.33. When window envelopes are used, key line data may be printed on the insert in a position above the address provided the address and key line data are entirely visible through the window with at least ⅛ of an inch clearance between the window and the edge of the panel. See Exhibit 145.7.

BILLING CODE 7710-12-M

LETTER SIZE MAIL

APPLICABLE FOR FIRST- AND THIRD-CLASS MAIL



BILLING CODE 7710-12-C

EXHIBIT 145.7

.743 Other than Machinable Letter Size Mail. A unique mailpiece number must be printed either directly above the address or in the lower left corner of the mailing label. The unique number may be a computer-generated sequential number, a product number or any other number devised by the mailer, as long as numbers are not duplicated within the mailing. These numbers must be printed in ascending order on the manifest.

.75 Application Procedures.

.751 Applications. The mailer must submit a Manifest Mailing Application to each post office where MMS mail will be entered. Applications and detailed information about mailer requirements and responsibilities and qualifying criteria are available through post offices. The application formally expresses to the local postmaster the mailer's interest in the Manifest Mailing system, and provides information essential to obtaining authorization.

.752 Service Agreement/Support Documentation. After development of a manifest mailing system that meets postal specifications is completed, the mailer is required to submit the following documentation:

a. The basic Manifest Service Agreement.

b. Appropriate addendum, which specifies responsibilities for both parties not covered in the basic service agreement.

c. Sample manifest listing with corresponding sample mailing pieces.

d. Sample mailing statement (Form 3602 or 3605).

e. A detailed description of the Quality Control procedures to be conducted by the mailer.

f. Any additional documents outlined in the basic service agreement.

.753 Review Procedures. The mailer must submit the basic service agreement and attachments to the entry post office for forwarding through appropriate Postal Service channels for review. The General Manager, Rates and Classification Center, may modify the basic service agreement and addendum as necessary, prior to approval, to meet Postal Service needs and requirements.

.754 Conditions of Authorization For All MMS Programs.

a. Postage Adjustments. The mailer agrees that postage adjustments will be required for overpayments or underpayments identified during postal verification and that verification samples are deemed to be representative of the entire mailing and postage adjustment calculations are applied to the total mailing.

Note: A computer software program which automatically skips to the next weight increment for borderline weight pieces will not require a postage adjustment.

b. Postage Error Penalty. The mailer agrees to pay a penalty whenever the sampling verification determines that the postage error exceeds 1.5 percent of the corrected postage. The total corrected postage plus a penalty equal to 10 percent of the postage error calculation will be deducted from the permit imprint advance deposit account.

c. Authorization Period. A manifest mailing system will be authorized for a period not to exceed two years. Authorizations may be renewed following a Postal Service review that shows the system remains qualified.

d. System Modification. The mailer agrees to provide advance written notice to the Postal Service of any modification or adjustment to the system which will affect the calculation of postage, generation of required mailing documentation, or mail presorting prior to preparing and presenting the mailing for acceptance.

e. Advance Deposit Account. Mailer must pay postage through an advanced deposit account. Funds in the account may be deducted by the Postal Service to cover any deficiency discovered after acceptance of the mail.

.76 Approving or Denying Applications.

.761 Responsibility. The General Manager, Rates and Classification Center (RCC), serving the post office to which the mailer's application was submitted, ensures that all required documentation has been provided and approves or denies applications for all options available under the Manifest Mailing System.

.762 Approval. If a decision is made to approve an application, the General Manager, RCC, will forward the agreement containing instructions for administering it to the Field Division General Manager/Postmaster, who will ensure that (a) the agreement is signed by the mailer and the administering postmaster and that (b) all affected parties are provided with a copy of the signed agreement. The division will return the original signed agreement to the RCC serving the administering post office.

.763 Denial. If a decision is made to deny an application, the General Manager, RCC, will notify the mailer, the administering post office, and the Field Division, in writing, of the decision. The denial becomes final 15 days from the receipt of the notice by the mailer unless, within that time, the mailer files a written appeal, which contains additional evidence as to why the manifest mailing system application should be approved, to the Director, Office of Classification and Rates administration, USPS Headquarters, Washington, DC 20260-5360. The Director issues the final agency decision.

.77 Revocation.

.771 Conditions. The RCC may revoke an MMS authorization under the following circumstances:

a. When it has been established that a mailer consistently has provided incorrect data on the manifest listing and appears unable or unwilling to correct the problems.

b. Whenever it is discovered that the mailer is not properly conducting the required quality control verification procedures.

c. Whenever the MMS no longer meets the criteria established by this regulation and those outlined in the Manifest Service Agreement.

d. When there have been no mailings presented under MMS for more than six months.

e. Whenever a mailer continues to present mailing that are improperly prepared or proper postage is not paid.

.772 Notification. Whenever a mailer fails to meet MMS requirements as described in DMM 145.781, the Division Manager will notify the mailer, in writing, prior to any revocation action, of the nature of the discrepancy and the need for corrective action. The mailer and the Division Manager will determine the actions to be taken and set up an implementation schedule. When the mailer has completed the necessary corrective measures to bring the system into compliance, the Division Manager must be notified and a follow-up review conducted. Failure to correct existing problems is sufficient grounds to revoke a mailer's MMS authorization.

.773 Revocation Procedures. The following procedures apply to a revocation:

a. If, after notification, the mailer is unable or unwilling to correct the discrepancies cited by the Division Manager within the time frame allotted, the Division Manager will advise the mailer in writing that the General Manager, RCC, will be requested to revoke the authorization to mail under MMS.

b. The mailer may appeal this decision in writing within 15 days from the date of receipt of the notice. The mailer's appeal should contain evidence explaining why the MMS authorization should not be revoked. The appeal must be filed with the General Manager, RCC.

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c. If evidence provided by the mailer indicates that the authorization should be continued, the General Manager, RCC, may reverse the revocation.

d. If the General Manager, RCC, does not find sufficient evidence to reverse the revocation, the appeal will be forwarded to the Director, Office of Classification and Rates Administration, USPS Headquarters, Washington, DC, who will issue the final agency decision.

14. *Amend 145.82 to read as follows:*

145.82 Qualification Requirements. Any permit imprint mailer whose mailings comply with the requirements of *145.5* may apply for authorization to use optional acceptance proecdures. Optional procedure authorization will not be granted if (a) mailings do not meet the requirements of *145.5*, (b) the Postal Service cannot be assured of the receipt of proper postage revenue, or (c) significant recoverable savings will not result for the Postal Service.

15. *Amend the heading of 145.9 and the entire 145.91 and 145.92 to read as follows:*

145.9 Alternate Mailing Systems (AMS).

.91 Purpose. The purpose of this section is to provide for situations where other systems for the acceptance of permit imprint mail, not specifically outlined in 145.7 or 145.8, satisfactorily provide for proper postage payment and mail preparation without verification by weight.

.92 General Qualification Requirements and Request Procedures.

.921 AMS Request. Mailers may request authorization to pay postage by an alternate method by submitting a written request to the postmaster at the office of mailing. The request must include (a) a complete description of the type(s) of matter to be mailed, (b) the proposed method of paying postage, (c) the proposed method to determine correct mail make-up and (d) a statement of the mailer's reasons for requesting the alternate system.

.922 Postage Payment. All postage must be paid in accordance with the provisions of 145.11, unless an alternate system is approved in writing by the General Manager, Rates and Classification Center (RCC).

.923 Cost/Benefit. There must be no additional cost to the Postal Service to administer the AMS Agreement in lieu of normal permit mail acceptance procedures. The applicable Field Divison will perform a detailed cost/benefit analysis and this will be included in the supporting documentation provided to the General Manager, RCC.

.924 Mailer Quality Control. The mailer must implement a quality control program acceptable to the Postal Service. The program must demonstrate that accurate documentation is provided and that mail is properly prepared. The supporting documentation must include a detailed description of the proposed quality control procedures. Each mailing under an AMS agreement must be accompanied by a statement by the mailer certifying that a Quality Control verification has been performed.

.925 Application Procedures and Authorization Requirements. The procedures for and conditions of authorization are as follows:

a. The Postmaster will forward copies of the written request and support documents to the General Manager, RCC, for review and evaluation. Authorization to use AMS may be granted when its adoption is in the best interests of the Postal Service.

b. Overpayments or underpayments identified during postal verification will require a postage adjustment. Verification sampling procedures are deemed to be representative of the entire mailing and postage adjustment calculations will be based on the total mailing.

c. The mailer must agree to pay a penalty whenever the sampling verification determines the postage error exceeds 1.5 percent of the corrected postage. The total corrected postage for the entire mailing plus a penalty equal to 10 percent of the postage error calculation will be deducted from the permit imprint advance deposit account.

d. The agreement must specify the terms and conditions for use of AMS, including a time limitation not to exceed two years.

.926 Approving or Denying Applications. The procedures for approving or denying applications are as follows:

a. Responsibility. The General Manager, Rates and Classification Center (RCC), serving the post office to which the mailer's application was submitted, will approve or deny a written request for AMS. Prior to approval, concurrence of the General Manager, Business Systems Division (BSD), Headquarters, Washington, DC, must be obtained.

b. Approval. If a decision is made to approve the request, the General Manger, RCC will prepare and forward the agreement containing instructions for its administration, to the Field Division General Manager/Postmaster, who will ensure that (a) the agreement is signed by the mailer and the administering postmaster and that (b) all affected parties are provided with a copy of the signed agreement. The division will return the original signed agreement to the RCC serving the administering post office.

c. Denial. If a decision is made to deny the request, the General Manager, RCC, will notify the mailer, the administering post office, and the Field Division, in writing, of the decision. The denial becomes effective 15 days from the receipt of the notice by the mailer unless within that time the mailer files a written appeal containing additional evidence as to why the AMS request should be approved, with the Director, Office of Classification and Rates Administration, USPS Headquarters, Washington, DC 20260–5360. The Director issues the final agency decision.

.927 Revocation. An AMS Authorization may be revoked by the RCC under the following circumstances:

a. When it has been established that a mailer consistently has provided incorrect data for mailings and appears unable or unwilling to correct the problems.

b. Whenever it is discovered that the mailer is not properly conducting the required quality control verification procedures.

c. Whenever the AMS no longer meets the criteria established by this regulation and those outlined in the Agreement.

d. When there have been no mailings presented under AMS for more than six months.

e. Whenever a mailer continues to present mailings that are improperly prepared and/or proper postage is not paid.

.928 Notification. Whenever a mailer fails to meet AMS requirements as described in DMM 145.927, the Division Manager will notify the mailer, in writing, prior to any revocation action, of the nature of the discrepancy and the need for corrective action. The mailer and the Division Manager will agree on the actions to be taken and set up an implementation schedule. When the mailer has completed the necessary corrective measures to bring the system into compliance, the Division Manager must be notified and a follow-up review conducted. Failure to correct existing problems is sufficient grounds to revoke a mailer's AMS authorization.

.929 Revocation Procedures. The following procedures apply to a revocation:

a. If, after notification, the mailer is unable or unwilling to correct the discrepancies cited by the Division Manager within the time frame allotted, the Division Manager will advise the mailer in writing that the General Manger, RCC, will be requested to revoke the authorization to mail under AMS.

d. The mailer may appeal this decision in writing within 15 days from the date of receipt of the notice. the mailer's appeal should contain evidence explaining why the AMS authorization should not be revoked. The appeal must be filed with the General Manager, RCC.

c. If evidence provided by the mailer indicates that the authorization should be continued, the General Manager may reverse the revocation.

d. If the General Manager does not find sufficient evidence to reverse the revocation, the appeal will be forwarded to the Director, Office of Classification and Rates Administration, USPS Headquarters, Washington, DC, who will issue the final agency decision.

16. *Amend 145.932 to read as follows:*

.932 Description.

Western Union Mailgram messages are enclosed in window envelopes that bear in the upper right corner of the address side the Mailgram message imprint illustrated in *145.42a*.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc 88–11373 Filed 5–19–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL–3330–4]

Hazardous Waste Management System; Amendment to Subpart C—Requirements of Rulemaking Petitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule amendment.

SUMMARY: EPA regulations under the Resource Conservation and Recovery Act (RCRA) allow persons to petition the Agency to exclude wastes from the hazardous waste management system which are presently listed under Part 261 as hazardous. Passage of the 1984 Hazardous and Solid Waste Amendments(HSWA) required that EPA promulgate conforming changes to the exclusion (delisting) regulations. These changes, promulgated on July 15, 1985, (50 FR 28727–28728) inadvertently failed to make necessary changes to § 260.22(b). Thus, today EPA is proposing to amend § 260.22(b) to ensure consistency with the HSWA requirement that, when evaluating exclusion petitions, the Administrator consider factors (including additional constituents) other than those for which the waste was listed if he/she has a reasonable basis to believe that such factors could cause the waste to be a hazardous waste.

DATE: Written comments should be submitted on or before July 5, 1988.

ADDRESSES: The original and two copies of comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste [WH–562], U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official docket for this regulation, including comments received by the Agency, is located in the sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The docket number for this rule is F–88–RRPA–FFFFF. The public must make an appointment to review docket materials. Call [202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline toll-free at (800) 424–9346, or locally at (202) 382–3000. For technical information contact: Linda Cessar, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or by phone at (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of sections 1004, 2002(a), 3001, 3006, and 7004 of the Solid Waste Disposal Act as Amended [42 U.S.C. 6703, 6712, 6921, 6926, 6974).

II. Background

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments (HSWA) of 1984. These amendments changed the hazardous waste management system established by the Resource Conservation and Recovery Act (RCRA) of 1980. One of HSWA's several requirements was to establish additional and more specific criteria for evaluating petitions, submitted under 40 CFR 260.20 and 260.22, to exclude specific wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, new Section 3001(f)(1) of RCRA requires EPA to consider, during evaluation of a petition, any additional factors, including constituents other than those for which the waste was listed, if the Administrator has reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

As promulgated in 1980, EPA's delisting regulations required the applicant and the Agency to consider only those hazardous constituents which were listed in Appendix VII to 40 CFR Part 261 as the rationale for the Agency's decision to declare the waste "hazardous." In most cases, EPA recorded in Appendix VII only one or two hazardous constituents for each waste listing. Although EPA realized that a waste might contain many hazardous chemical constituents, EPA did not believe it was necessary to identify all of the waste's constituents before deciding that the waste needed to be regulated. Rather, the waste should be listed and regulated as soon as the Agency found even one hazardous chemical constituent.

The legislative history to new section 3001(f) of RCRA explains that Congress was concerned that EPA's delisting analysis was too narrow in scope. Limiting the analysis to listed constituents could allow the Agency to "de-regulate" a waste that contained other harmful constituents. *See* H.R. Rep. No. 98–198, 98th Cong., 1st Sess. 57–58 (1983). Consequently, Congress amended RCRA to direct the Agency to consider "factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste." Section 3001(f)(1).

EPA incorporated this new requirement into its delisting rules by adding a new paragraph to 40 CFR 260.22(a), (c), (d) and (e). *See* 50 FR28727–28728, July 15, 1985. EPA did not amend 40 CFR 260.22(b) at that time. As explained in more detail below, EPA later realized that the language in paragraph (b) can be read to conflict with new section 3001 (f) and the new regulatory requirement codified in § 260.22(a)(2), (c)(2), (d)(2) and (e)(2).

III. Purpose of Today's Rule

Today's proposal would clarify the potential ambiguity created by EPA's inadvertent failure to alter 40 CFR 260.22(b) when modifying other portions of § 260.22 to ensure that the program is consistent with HSWA. Specifically, EPA neglected to modify or to delete language in 40 CFR 260.22(b) that could be read to conflict with the post-HSWA language of § 260.22(a), (c)–(e), which require a delisting demonstration to be made for all constituents present in a

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waste that may cause the waste to be hazardous. Thus, EPA is proposing to modify § 260.22(b) to remove this potential ambiguity.

As currently worded, § 260.22(b) can be read to imply that a petitioner need only sample and analyze the listed hazardous wastes in a waste stream or waste mixture. Co-mingled, non-listed "solid wastes", however, may also contain some of the same constituents of concern found in hazardous wastes. Making delisting decisions without considering the constituents in co-mingled, non-listed wastes would not fully protect human health and the environment. For example, a listed F007 waste (F007 is listed for cyanide) might be mixed with a non-listed waste containing hazardous levels of 1,2-dichloroethene, toluene, arsenic and beryllium. If the Agency interpreted the regulation cited above to require analysis of only the listed F007 waste, and if the constituents in that waste did not exceed levels of regulatory concern, the waste would be eligible for delisting. The presence of hazardous levels of the other constituents would not be taken into consideration.

The Agency does not believe that Congress intended that such a distinction be made for waste mixtures. The Agency has not found any evidence in either the statute or the legislative history showing that Congress intended for delisting to address only a portion of a waste mixture. Section 3001(f) clearly applies to all delisting petitions, and clearly requires EPA to consider factors beyond the listed constituents of listed wastes where they are relevant. The Agency therefore strongly believes that it should not interpret § 260.22(b) to be inconsistent with the language and intent of HSWA and with § 260.22 (a)(2), (c)(2), (d)(2) and (e)(2). The HSWA amendments (and the subsequent regulations) were developed to incorporate accountability into the delisting evaluation for all hazards that a waste may present, including toxic constituents for which a particular waste was not listed originally.

Thus, EPA, is today proposing to modify 40 CFR § 260.22(b) to remove the possibility of such an erroneous intrepretation, by deleting existing language and by adding language to clarify that all factors in a mixture must be considered for delisting.

IV. Effective Date

Since this proposal would clarify existing requirements for making a formal petition to delist a waste, this rule will become effective immediately upon promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d) and 3010(b) of RCRA.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The proposed rule published today does not impose a substantial impact because it merely incorporates and codifies a statutory requirement. The proposal imposes no new sampling or analytical requirements beyond those required by section 3001(f) of RCRA.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities.

This proposed amendment will not have adverse economic impact on small entities because the rule will not require any change in the amount of information required for RCRA delisting petitions. The statute imposed the broader data requirements; this rule merely codifies Congressional intent. Accordingly, I hereby certify that this proposed amendment will not have a significant impact on a substantial number of small entities. Thus, this amendment does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 260

Hazardous materials, Waste treatment, and Disposal, Recycling.

Date: May 11, 1988.

Lee M. Thomas,

Administrator.

PART 260—[AMENDED]

For the reasons set out in the preamble, Part 260 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6703, 6712, 6921, 6926, 6974.

2. Section 260.22 is amended by revising paragraph (b) to read as follows:

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at at particular facility.

* * * * *

(b) The procedures in this section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3 (a)(2)(ii) or (c), a waste which is described in those sections and is either a waste listed in Subpart D, or is derived from a waste listed in Supart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the waste was listed as hazardous, but also for factors (including additional constituents) that could cause the waste to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

[FR Doc. 88-11388 Filed 5-19-88; 8:45 am]
BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 98
Friday, May 20, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 and 55) Tobaccos; 1988–89 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination of 1988–89 Marketing Quotas and Acreage Allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1988, with respect to the 1988 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: fire-cured (type 21), 5,588 acres; fire-cured (types 22–23), 11,890 acres; dark air-cured, 4,022 acres; Virginia sun-cured, 595 acres; and cigar-filler and binder (types 42–44 & 53–55), 8,296 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for fire-cured (types 21–23) and dark air-cured (types 35–36) tobaccos for the three marketing years beginning October 1, 1988 and sets forth the results of the separate referendums held during the period March 28–31, 1988, in which producers of fire-cured and dark air-cured tobaccos approved marketing quotas for the 1988–89, 1989–90, and 1990–91 marketing years.

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1988 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on March 1, 1988 and to set forth certain other determinations with respect to these kinds of tobacco. On March 1, 1988 the Secretary also announced that separate referendums would be conducted by mail with respect to fire-cured and dark air-cured tobaccos.

During the period March 28–31, 1988, eligible fire-cured producers and dark air-cured producers voted in separate referendums to determine whether such producers disapprove marketing quotas for the 1988–89, 1989–90, and 1990–91 marketing years for fire-cured and dark air-cured tobaccos. Of the producers voting, 90.4 percent favored marketing quotas for fire-cured tobacco and 91.7 percent favored marketing quotas for dark air-cured tobacco. Accordingly, quotas for both kinds are in effect for the 1988–89 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to fire-cured and dark air-cured tobaccos, the 1987–88 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for fire-cured and dark air-cured tobaccos is proclaimed for each of the three marketing years beginning October 1, 1988, October 1, 1989, and October 1, 1990. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1987, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-filler and binder (types 42–44 & 53–55) tobaccos for the 1988–89 marketing year.

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Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 11, 1988, a Notice of Proposed Determination was published (53 FR 630) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Fourteen written responses were received in response to the Notice of Proposed Determination. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: One comment was received. It recommended that the marketing quotas established for this kind of tobacco be established at the level which was applicable for the 1987 marketing year.

Virginia sun-cured (type 37) tobacco: One comment was received. It recommended that the marketing quotas established for this kind of tobacco be established at the level which was applicable for the 1987 marketing year.

Fire-cured (types 22–23) tobacco: Seven comments were received. Recommendations ranged from a 20 percent reduction to a 20 percent increase from the 1987 marketing quota.

Dark air-cured tobacco: Five comments were received. These comments ranged from a recommendation of no change in the marketing quota to an increase of 10 percent from the 1987 marketing year.

Cigar-filler and binder (types 42–44 and 53–55) tobacco: Four comments were received, but only two made specific quota recommendations. One recommended that marketing quotas be established at the same level which was applicable for the 1987 marketing year while the other recommended a 10 percent increase.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1987–88 marketing year was approximately 2.4 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1987–88 marketing year was 2.8 million pounds (farm sales weight basis). Domestic use has trended downward while exports have fluctuated erratically. Accordingly, a normal year's domestic consumption has been determined to be 1.7 million pounds and a normal year's exports have been determined to be 2.8 million pounds. Application of the formula prescribe by section 301(b)(14)(B) of the Act results in a reserve supply level of 9.8 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1987, of 7.1 million pounds. The 1987 fire-cured (type 21) tobacco crop is estimated to be 2.6 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1987–88 marketing year is 9.7 million pounds. During the 1987–88 marketing year, it is estimated that disappearance will total approximately 2.4 million pounds. By deducting this disappearance from the total supply, a carryover of 7.3 million pounds at the beginning of the 1988–89 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1988 is 2.5 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly less than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 5.5 million pounds is necessary to make available production of 2.5 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1988–89 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1988–89 marketing year of 6.6 million pounds.

In accordance with section 313(g) of the Act, the 1988–89 national marketing quota divided by the 1983–87 5-year national average yield of 1,181 pounds per acre results in a 1988 national acreage allotment of 5,588.48 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 30.0 acres, by the total of 1988 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quality of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1987–88 marketing year was approximately 17.3 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco product produced in the United States and exported during the 10 marketing years preceding the 1987–88 marketing year was 18.8 million pounds (farm-sales weight basis).

Domestic use and exports fluctuate widely. Accordingly, a normal year's domestic consumption has been determined to be 23.2 million pounds and a normal year's exports have been determined to be 20.1 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 101.8 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1987, of 96.0 million pounds. The 1987 fire-cured (types 22–23) crop is estimated to be 23.2 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 119.2 million pounds. During the 1987–88 marketing year, it is estimated that disappearance will total approximately 36.0 million pounds. By deducting this disappearance from the total supply, a carryover of 83.2 million pounds at the beginning of the 1988–89 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1988 is 18.6 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1988–89 marketing year a supply equal to the reserve supply level. During the past 5 years, slightly more than 95 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1988–89 marketing year of 19.5 million pounds is necessary to make available production of 18.6 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1988–89 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1988–89 marketing year of 23.4 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1988–89 marketing year has been divided by the 1983–87, 5-year national average yield of 1,988 pounds per acre, to obtain a national acreage allotment of 11,890.24 acres, for the 1988–89 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1988–89 marketing year less a national reserve of 30 acres by the total of the 1988 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1987–88 marketing year was approximately 12.6 million pounds. The average annual quantity produced domestically and exported during this period was 2.1 million pounds (farm-sales weight basis). Both domestic use and exports have been erratic. Accordingly, 15.4 million pounds have been used as a normal year's domestic consumption and 2.5 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 48.8 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1987, of 48.7 million pounds. The 1987 dark air-cured crop is estimated to be 6.7 million pounds. Therefore, the total supply for the market year beginning October 1, 1987, is 55.4 million pounds. During the 1987–88 marketing year, it is estimated that disappearance will total approximately 12.7 million pounds. By deducting this disappearance from the total supply, a carryover of 42.7 million pounds at the beginning of the 1988–89 market year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1988 is 6.1 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, just over 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1988–89 marketing year of 6.6 million pounds is necessary to make available production of 6.1 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1988–89 marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1988–89 marketing year of 7.9 million pounds.

In accordance with sections 313(g) of the Act, the 1988–89 national marketing quota, divided by the 1983–87, 5-year national average yield of 1,964 pounds per acre, results in a national acreage allotment of 4,022.40.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 16.4 acres, by the total of the 1988 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1987–88 marketing year was approximately 500 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 150 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 250 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 135 thousand pounds has been determined to be a normal year's exports. Applications of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 955 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on Ocober 1, 1987 of 1,000 thousand pounds. The 1987 Virginia sun-cured tobacco crop is estimated to be 130 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1987–88 marketing year is 1,130 thousand pounds. During the 1987–88 marketing year, it is estimated that disappearance will total approximately 300 thousand pounds. By deducting this disappearance from the total supply, a carryover of 830 thousand pounds at the beginning of the 1988–89 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1988 is 125 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During

the last 5 years, less than one-fourth of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 533 thousand pounds is necessary to make available production of 125 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 640 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1988–89 marketing year of 640 thousand pounds.

In accordance with section 313(g) of the Act, the 1988–89 national marketing quota divided by the 1983–87 5-year national average yield of 1,075 pounds per acre, results in a 1988 national acreage allotment of 595.35 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 1.9 acres, by the total of the 1988 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1987–88 marketing year was approximately 22.1 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1987–88 marketing year was very small. Domestic use has trended downward and exports are small. Accordingly, a normal year's domestic consumption has been established at 19.2 million pounds while a normal year's exports have been established at .06 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 55.5 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1987 of 53.8 million pounds. The 1987 cigar-filler and binder crop is estimated to be 7.8 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the 1987–88 marketing year is 61.6 million pounds. During the 1987–88 marketing year, it is estimated that disappearance will total about 16.0 million pounds. By deducting this disappearance from the total supply, a carryover of 45.6 million pounds at the beginning of the 1988–89 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1988 is 9.9 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such a marketing year a supply equal to the reserve supply level. During the past 5 years, approximately 72 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a 1988–89 national marketing quota of 13.8 million pounds is necessary to make available production of 9.9 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 16.6 million pounds is necessary to avoid undue restrictions of marketings. This results in a national marketing quota for the 1988–89 marketing year of 16.6 million pounds.

In accordance with section 313(g) of the Act, the 1988–89 national marketing quota of 16.6 million pounds divided by the 1983–87 5-year national average yield of 2,001 pounds per acre results in a 1988–89 national acreage allotment of 8,295.85 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 33 acres, by the total of the 1988 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1988 are affirmed:

Proclamations of National Marketing Quotas for Fire-Cured and Dark Air-Cured Tobaccos

Since the 1987–88 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for fire-cured and dark air-cured tobaccos, a national marketing quota for such kinds of tobacco for each of the 3 marketing years beginning October 1, 1988, October 1, 1989, and October 1, 1990 is proclaimed.

Determinations for the 1988–89 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

Referendum Results

Marketing quotas shall be in effect for the 1988–89 marketing year for fire-cured (types 21–23) and dark air-cured tobaccos. In referendums held during the period March 28–31, 1988, 90.4 percent of producers of fire-cured tobacco voted in favor of marketing quotas, and 91.7 percent of producers of dark air-cured voted in favor of marketing quotas.

The following is a summary, by State, of the results of each referendum:

	Total votes	Yes votes	No votes	Votes (percent)
Fire-cured:				
Virginia	697	643	54	92.3
Kentucky	2,732	2,504	228	91.7
Tennessee	2,947	2,614	333	88.7
Total	6,376	5,761	615	90.4
Dark air-cured:				
Indiana	11	10	1	90.9
Kentucky	4,949	4,535	414	91.6
Tennessee	1,439	1,320	119	91.7
Total	6,399	5,865	534	91.7

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1988:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 9.8 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987, is 9.7 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1988, is 7.3 million pounds.

(d) *National marketing quota.* The 1988–89 national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1988, is 6.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 5,588.48 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0.

(g) *National reserve.* The national acreage reserve is 30 acres of which 5 acres are made available for the 1988 new farms and 25 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 101.8 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 119.2 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 83.2 million pounds.

(d) *National marketing quota.* The 1988–89 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 23.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,890.24 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1988–89 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 30 acres of which 5 acres are made available for 1988 new farms, and 25 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1988:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 48.8 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1987, is 55.4 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1988, is 42.7 million pounds.

(d) *National marketing quota.* The 1988–89 national marketing quota for dark air-cured (types 35 & 36) tobacco for the marketing year beginning October 1, 1988, is 7.9 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,022.40 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1988–89 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 16.4 acres, of which 2.4 acres are made available for 1988 new farms and 14.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured tobacco for the marketing year beginning October 1, 1988:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 955 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1987 is 1,130 thousands pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1988, is 830 thousand pounds.

(d) *National marketing quota.* The national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1988, is 640 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 595.35 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1988–89 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 1.9 acres, of which 0.9 acres are made available for 1988 new farms, and 1.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1988:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 55.5 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987 is 61.6 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1988 is 45.6 million pounds.

(d) *National marketing quota.* The amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1988, is 16.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 8,295.85 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1988–89 marketing year is 1.0

(g) *National reserve.* The national acreage reserve is 33 acres, of which 30.0 acres are made available for 1988 new farms, and 3.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C. 1301, 1312, 1313, 1375).

Signed at Washington, DC, on May 6, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–11406 Filed 5–19–88; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

1988–89 National Marketing Quota and Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1988 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1988 marketing quota for burley tobacco to be 473.3 million pounds and that the price support level for the 1988 crop would be $1.500 per pound.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment,

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productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enerprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1988 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers intentions;
2. The amount of the average exports for the 1985, 1986, and 1987 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national acreage reserve:
   A. For establishing acreage allotments for new farms, and
   B. For making corrections and adjusting inequities in old farms;
7. The national factor; and
8. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase in U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1988 crop of burley by January 15, 1988. Six such manufacturers were required to submit such a statement for the 1988 crop and the total of their intended purchases for the 1988 crop was 364.5 million pounds.

For the years prior to 1986, industry officials noted that significant amounts of both domestic and foreign-grown burley tobaccos blended with domestic flue-cured tobacco were reported to the Bureau of Census as flue-cured tobacco exports. Census recorded exports of burley totaled 150.6 million pounds, farm sales-weight, for the 1985–86 year; however, the USDA adjused number more accurately reflects actual exports.

At the request of the Bureau of Census, exporters have enhanced the accuracy of their declarations. It appears that due to shifts among certain export categories beginning in 1986, Census data are now significantly more accurate. Because of this, actual Census data was used for 1986–87. Accordingly, the three-year average of exports is 165 million pounds. This is based on adjusted 1985 exports of 164.6 million pounds, 1986 Census-reported exports of 165.3 million pounds, and USDA-projected 1987 exports of 165 million pounds.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1987 marketing quota for burley tobacco. The national marketing quota for the 1987 crop year was 464 million pounds (52 FR 18255). Accordingly, the reserve stock level for use in determining the 1988 marketing quota for burley tobacco is 70 million pounds.

As of January 22, 1988 the two loan associations had in their inventory 61 million pounds of 1985 and 1986 crop burley tobacco which remained unsold (net of deferred sales). In addition, an estimated 92 million pounds of the 1987 crop was expected to be pledged as collateral for price support loans. The amount of tobacco in excess of the reserve stock level is estimated at 83 million pounds (61 million pounds plus 92 million pounds minus 70 million pounds). However, the 1938 Act limits the downward adjustment to one-half the excess reserves. Therefore, the adjustment to the reserve stock level is a decrease of 41.5 million pounds.

The total of the three marketing quota components for the 1988–89 marketing year is 488 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. To ensure against the development of an oversupply situation, the Secfetary exercised this discretionary authority to decrease the three-component total by three percent. Accordingly, the national marketing quota for the marketing year beginning October 1, 1988 for burley tobacco is 473.4 million pounds.

In accordance with section 319(c) of the 1938 Act (7 U.S.C. 1314(e)), the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1988 crop of burley tobacco of 490,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1988 crop of burley tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support of the 1988 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1987 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:
   (I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the lowest in such period, is greater or less than
   (II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and
(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II)) is 1.8 cents per pound. The difference in the cost index from January 1 to December 31, 1987 is 0.6 cents per pound.

Applying these components to the price support formula (1.8 cents per pound, two-thirds weight; 0.6 cents per pound, one-third weight) results in a 1.4 cent increase in the level of price support from the previous year. However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred if an oversupply exists for such kind of tobacco. The total supply of burley is sufficient for about 2.95 years' use. This ratio is expected to drop to 2.75 in 1988. Generally, a quantity which is equal to 2.6 years' use is considered to be normal. Since supplies are only slightly excessive, the increase in price support has been limited to 86 percent of the increase that would have otherwise been established.

Section 106(f)(8) of the 1949 Act provides that the price support level for the 1988 crop of burley tobacco will be reduced by 1.4 percent from the level otherwise determined in accordance with section 106 or that in lieu of such a reduction, an assessment be established in an amount that will realize a reduction in outlays which would have resulted from such a reduction in the price support level. On March 18, 1988, the Secretary announced that an assessment of .4 cents per pound would be imposed, with producers and purchasers of burley tobacco each being responsible for one-half of this amount. Accordingly, the 1988 crop of burley tobacco will be supported at 150.0 cents per pound.

The level of support for the 1988 crop of burley tobacco was announced on March 18, 1988 and the national marketing quota for the 1988 burley marketing year was announced on February 1, 1988 by the Secretary of Agriculture. This notice affirms these determinations.

Determinations 1988–89 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1988:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1988 year totaled 364.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 165 million pounds, based on exports of 164.6 million pounds, 165.3 million pounds and 165 million pounds for the 1985, 1986, and 1987 crop years, respectively.

(c) *Reserve stock level.* The reserve stock is 70 million pounds, based on 15 percent of 1987's national marketing quota of 464 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is 41.5 million pounds, based on a reserve stock level of 70 million pounds, anticipated loan stocks of 153 million pounds, and the requirement that the adjustment be limited to half the excess if the excess exceeds 70 million pounds.

(e) *National marketing quota.* The national marketing quota is 473.4 million pounds.

(f) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 490,000 pounds.

(g) *National acreage factor.* The national factor is determined to be 1.02.

(h) *Price support level.* The level of support for the 1988 crop of burley tobacco is 150.0 cents per pound.

(Secs. 301, 313, 317, 375, 52 Stat. 38, as amended 47, as amended, 79 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375); Secs. 106, 401, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445, 1421))

Signed at Washington, DC, on May 13, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–11407 Filed 5–19–88; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

National Advisory Council on Child Nutrition; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the United States Department of Agriculture, has scheduled a meeting for June 7–9, 1988.

DATE: The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, June 7 and 8 and from 9:00 a.m. to noon on Thursday, June 9.

ADDRESS: The meeting will be held at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: The meeting will be devoted primarily to a discussion of current program issues and the development of the 1988 biennial report to the President and the Congress. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: May 13, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88–11409 Filed 5–19–88; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Klamath National Forest; Kangaroo Fire Recovery; Siskiyou County, CA; Environmental Impact Statement; Cancellation

The Department of Agriculture, Forest Service, has withdrawn its proposal to implement fire recovery projects on a portion of the Fort/Copper fire area on the Oak Knoll Ranger District; the project boundary being the Kangaroo released roadless area.

The Notice of Intent, published in the Federal Register of February 11, 1988, is hereby rescinded (53 FR 4049).

FOR FURTHER INFORMATION CONTACT: JoEllen J. Keil, Resource Officer, Oak Knoll Ranger District, Klamath National Forest, 22541 Highway 96, Klamath River, California 96050; telephone (916) 465–2241.

Date: May 9, 1988.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 88–11219 Filed 5–19–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Technology Medal Nomination Evaluation Committee; Meeting

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the National Technology Medal Nomination Evaluation Committee. The Committee was chartered on February 9, 1984 and rechartered February 4, 1988. The Committee makes recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Technology Medal.

The Committee will meet to discuss primarily organizational matters dealing with the committee and to acquaint new members of the Committee with its procedures and operations.

Time and Place: The meeting will be open and will begin at 10:00 a.m. and end at 3:30 p.m. on May 24. The meeting will be held in Room 280 of the National Academy of Engineering, 2101 Constitution Avenue, NW., Washington DC, 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Executive Director, National Medal Nomination Evaluation Committee, Room 4814–B, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230, (202) 377–5572.

SUPPLEMENTARY INFORMATION: Due to scheduling difficulties of various committee members, it was not possible to provide 15 days notice for the meeting.

Date: May 17, 1988.

Jack Williams,

Director, Office of Productivity, Technology and Innovation.

[FR Doc. 88–11430 Filed 5–19–88; 8:45 am]

BILLING CODE 3510–18–M

Minority Business Development Agency

Minority Business Development Application; Richmond, VA

AGENCY: Minority Business Development Agency, Commerce

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of October 1, 1988 to September 30, 1989. The MBDC will operate in the Richmond, Virginia Metropolitan Statistical Area. The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 03–10–88006–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MDBA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 30, 1988. Applications must be postmarked on or before June 30, 1988.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202/377–8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 16, 1988.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 88–11388 Filed 5–19–88; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 20, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 6, 1987 and March 11 and March 25, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 42704, 53 FR 7963, and 53 FR 9798) of proposed additions to and deletion from Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1988:

Commodity

Pad, Desk, Paperboard
7520–00–224–7238

Services

Litter Pick-Up
Tinker Air Force Base, Oklahoma
Preservation and Packaging
New Cumberland Army Depot, Pennsylvania
Removal of Tool Identification Numbers
Tinker Air Force Base, Oklahoma

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Service

Administrative Services
Environmental Protection Agency at the following locations:
Beltsville Research Laboratory
Beltsville, Maryland
6100 Executive Boulevard
Rockville, Maryland
9100 Brookville Road
Silver Spring, Maryland

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–11371 Filed 5–19–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: June 20, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Rag, Wiping
7920–00–205–1711
(Requirements for Warner Robins, Georgia only)

Service

Commissary Shelf Stocking, Custodial and Warehouse Service
McClellan Air Force Base, California

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–11372 Filed 5–19–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board, Meeting

May 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 6–7 June 1988, from 8:00 a.m. to 5:00 p.m., at The Boeing Company, Seattle, Washington 98124–2207.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11347 Filed 5–19–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 6–7 June 1988, from 8:00 a.m. to 5:00 p.m., at the McDonnell Douglas Corporation, St. Louis, MO 63166.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11348 Filed 5–19–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 13–15 June 1988, from 8:00 a.m. to 5:00 p.m., at the TRW Electronic Systems Group, San Diego, CA 92128.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11349 Filed 5–19–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 13–15 June 1988, from 8:00 a.m. to 5:00 p.m., at Hughes Aircraft Company, Los Angeles, CA 90045–0066.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11351 Filed 5–19–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 17, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 29–30 June 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–11350 Filed 5–19–88; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Between the USA and Switzerland

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to United Kingdom (British Nuclear Fuels, plc.) for the purpose of reprocessing, 126 irradiated fuel assemblies, containing approximately 50,000 kilograms of uranium, enriched to approximately 0.9% in U–235 and 520 kilograms of plutonium, from the Gosgen-Daniken nuclear power station. This subsequent arrangement is designated as RTD/EU (SD)–70. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continous session of the Congress, beginning the day after the date on which the reports required by section 131b(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Commission on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Date: May 17, 1988.

George J. Bradley Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc 88–11326 Filed 5–19–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement Between the USA and Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the Euorpean Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Switzerland to France, Compagnie Generale des Matieres Nucleaires (COGEMA), for the purpose of reprocessing, 60 irradiated fuel assemblies, containing approximately 10,567 kilograms of uranium, enriched to approximately 0.81% in U–235 and 92 kilograms of plutonium, from the Muhleberg nuclear power station, and 96 irradiated fuel assemblies, containing approximately 29,613 kilograms of uranium, enriched to approximately 1.02% in U–235 and 294 kilograms of plutonium, from the Beznau nuclear power station. These subsequent arrangements are designated as RTD/EU(SD)–68 and RTD/EU(SD)–69, respectively. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: May 17, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–11327 Filed 5–19–88; 8:45 am]

BILLING CODE 6450–01–M

Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Friday, June 3, 1988, 10:00 a.m. (Please note: This meeting replaces the one scheduled for May 25, 1988, which had to be canceled.)

Place: O'Hara Marriott Hotel, Salon A, 8535 West Higgins, Chicago, Illinois.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the parent council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda:

Opening remarks by Chairman and Government Cochairman.

Discuss the pipeline survey.

Review progress on individual assignments.

Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 AM and 4:00 PM Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88–11478 Filed 5–18–8; 2:30 pm]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–22–NG]

Phillips 66 Natural Gas Co. and Marathon Oil Co.; Application To Amend Authorization To Export Liquefied Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to export liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 11, 1988, of an application filed by Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) requesting approval of a 15-year extension and modification of their existing authorization to export liquefied natural gas (LNG) from the Kenai peninsula of Alaska to Japan.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than June 20, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The LNG export authorization held by Phillips 66 and Marathon was granted originally by the Federal Power Commission on April 19, 1967 (37 FPC 777), and was subsequently amended by DOE/ERA Opinion and Order No. 49 (1 ERA ¶ 70,116, December 14, 1982); DOE/ERA Opinion and Order No. 49A (1 ERA ¶ 70,127, April 3, 1986); and DOE/ERA Opinion and Order No. 206 (Order 206) (1 ERA ¶ 70,128, November 16, 1987). The applicants currently are authorized to export annually through May 31, 1989, up to 50.57 trillion Btus of LNG from the Kenai LNG plant in the Cook Inlet area of Alaska to two Japanese customers, the Tokyo Electric Power Company, Inc., and the Tokyo Gas Company, Ltd. Order 206 approved application of the following pricing formula to these LNG sales:

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$$\text{Price for Calendar Month} = 582.8 \times \frac{\text{Avg. selling price (month prior to Calendar month)}}{34.46} + \text{Adjustment}$$

Where: *average selling price* is the weighted average official price in U.S. dollars per barrel for the top 20 crude oils imported into Japan in the previous year and sold on a term basis.

adjustment is an adjustment required to keep the price of Alaskan LNG competitive with other sales of LNG in the Japanese market (the adjustment changes as frequently as market conditions require or on request of either party).

Phillips 66 and Marathon request the ERA to extend their export authorization under modified terms through March 31, 2004, in accordance with an agreement in principle reached between themselves and their Japanese buyers. The agreement reflects four principal changes to the contractual arrangement currently authorized by Order 206. First, the contract year has been changed from a twelve-month period beginning June 1 to a twelve-month period beginning April 1. Second, the pricing formula set forth above has been amended to limit the presently unspecified "adjustment" factor to a range of 30.0 cents (plus or minus) per MMBtu. Third, commencing April 1, 1989, the annual contract quantity (ACQ) has been increased from 50.57 trillion Btu's per year to 52.0 trillion Btu's per year. This quantity will increase to 57.5 trillion Btu's per year beginning in the first contract year in which applicants place larger LNG tankers into operation for the entire contract year. According to the application, an increase to 57.5 trillion Btu's is likely to occur for the contract year commencing April 1, 1994, but could occur as early as the contract year commencing April 1, 1993. Fourth, buyers may request additional deliveries up to a maximum of 6 percent of the ACQ, as increased above, during any contract year.

In support of their application, Phillips 66 and Marathon state that extension of the export would continue the beneficial impact of the project on the economy of the State of Alaska and on the balance of payments between the United States and Japan. The applicants also state that, in light of the current natural gas surplus in Alaska and in the lower forty-eight states, there is no evidence of either regional or national need for the gas proposed to be exported. The applicants included as part of their application an analysis of the economic impacts of the proposed export. Further, they assert that the pricing formula will continue to provide parties with the flexibility to respond to market conditions and therefore is consistent with ERA policy.

Phillips 66 and Marathon request that this amendment be granted on an expedited basis. An ERA decision on their request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether this export of natural gas is in the public interest will be based upon consideration of domestic need for the gas and such other matters as the Administrator finds to be appropriate in the particular circumstances of this case.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestants a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must filed no later than 4:30 p.m. e.d.t., June 20, 1988.

The Administrator intends to develop a decisional record on the application through reponses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 20 CFR 590.316.

A copy of Phillip 66's and Marathon's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–11328 Filed 5–19–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 9260–001]

Adirondack Hydro Development Corp.; Availability of Environmental Assessment and Finding of No Significant Impact

May 16, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license listed below and has assessed the environmental impacts of the proposed development.

LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
9260–001	Sissonville Project	NY	Raquette River	St. Lawrence	Adirondack Hydro Development Corp.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

Environmental Assessment

Federal Energy Regulatory Commission Office of Hydropower Licensing Division of Project Review

Sissonville Hydroelectric Project

[FERC Project No. 9260–001—New York]

April 22, 1988.

I. Application

On May 8, 1986, the Adirondack Hydro Development Corporation (Adirondack Hydro) filed an application for a license for the Sissonville Hydroelectric Project, a major project of 2.3 megawatts (MW). Adirondack Hydro supplemented the application on December 23, 1986, and October 29, 1987.

The project would be located on the Raquette River, a major tributary to the St. Lawrence River in northern New York State. The project site is located 1.5 miles downstream from the Village of Potsdam, in St. Lawrence County, New York (figure 1).

II. Resource Development

A. Purpose

The proposed project would provide an estimated 12,677,000 kilowatthours (kWh) of electrical energy per year to the Niagara Mohawk Power Corporation [NMPC].

B. Need for Power

The power from the project would be useful in meeting a small portion of the need for power projected for the New York Power Pool of the Northeast Power Coordinating Council (NPCC) region. From the time the project goes on-line (i.e., into commercial operation), it would be available to displace fossil-fueled, electric power generation in the NPCC region, thus conserving nonrenewable fossil fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

III. Proposed Project and Alternatives

A. The Proposed Project

1. Project Description

The proposed project consists of reconstructing a breached dam, which is owned by the applicant, and constructing a new concrete powerhouse. The project features include the following facilities: (1) A 14-foot high, 370-foot-wide dam with a spillway at elevation 394 feet mean sea level (msl); (2) a 30-acre reservoir with a storage capacity of 205 acre-feet at 394 feet msl; (3) a 45-foot wide, 22-foot high intake structure; (4) a headrace channel approximately 160 feet long and 60 feet wide; (5) a concrete powerhouse 40 feet wide and 100 feet long containing one turbine/generator with an installed capacity of 2.3 MW; (6) a tailrace channel approximately 970 feet long and 60 feet wide; (7) a 400-foot-long bypassed reach; (8) a 13.2 kilovolt (kV), 4,000-foot-long transmission line; and (9) appurtenant facilities. The project has a hydraulic range from 440 cubic feet per second (cfs) to 2,200 cfs and would generate an average of 12,677,000 kWh when operating with a net head of 15 feet. The power produced by the project would be sold to the NMPC.

2. Proposed Mitigative Measures

Adirondack Hydro proposes to reduce the impacts of developing the project by implementing the following mitigative measures: (1) Analyzing the sediments to be removed from the project site for contaminants prior to initiating project construction; (2) disposing of the sediments in a manner approved by the New York State Department of Environmental Conservation (DEC); (3) consulting with the DEC to determine a schedule for installing cofferdams, removing sediments, and altering the waterflows prior to construction; (4) utilizing bedrock removed from the tailrace to stabilize the riverbank and to minimize erosion; and (5) releasing 200 cfs into the 400-foot-long bypassed reach during the spring to provide spawning habitat for resident fish and releasing 100 cfs during the remainder of the year. In addition, Adirondack Hydro has purchased a 9-acre parcel of land along the Raquette River for mitigating the anticipated loss of 7.9 acres of woodland from the developing the proposed project.

B. Alternative to the Proposed Project

Because Adirondack Hydro is not an electrical utility, the only alternative to the proposed action, in the event of denial of license, is to not construct the project. If the license is not issued, the project would not be constructed, and

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the power that would have been developed from a renewable resource would be lost, and eventually may have to be produced using nonrenewable fuels or be offset by energy conservation measures.

C. No-Action Alternative

The no-action alternative would prohibit Adirondack Hydro from constructing the proposed project. The no-action alternative would mean no alteration of the existing environment and would preclude the applicant from producing electricity at the site.

IV. Consultation and Compliance

A. Agency Consultation

The Commission's regulations require prospective applicants to consult with the appropriate resource agencies before filing an application for license. This consultation constitutes an initial step in compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Prefiling consultation must be completed and documented in accordance with the Commission's regulations.

After the Commission accepts an application, concerned entities may submit formal comments during a public notice period. In addition, organizations and individuals may petition to intervene and to become a party to any subsequent proceedings. The Commission makes the comments of the concerned entities part of the record and the staff considers the comments during the review of the proposed project.

The following entities commented on the project or petitioned to intervene, pursuant to the Commission's public notice of the application dated February 18, 1987.

	Date of letter
Commenting entity:	
Environmental Protection Agency	3/12/87
Department of the Interior (Interior)	4/14/87
Town of Potsdam, New York	5/28/87
New York State Department of Environmental Conservation	6/5/87
Intervenor:	
Town of Potsdam, New York	4/23/87
New York State Department of Environmental Conservation	6/3/87

B. Water Quality Certification

No action was taken by the DEC within 1 year of the date of Adirondack Hydro's request for section 401 water quality certification, dated May 5, 1986; therefore, water quality certification for the Sissonville Project is considered waived. The DEC states in its letter dated June 3, 1987, pursuant to the waiver of the 401 certificate, that the outstanding water quality issues for the proposed project include the potential to flood the Town of Potsdam's Wastewater Treatment Plant and that dredge material to be removed from the project site should be tested for the presence of toxic substances. This environmental assessment (EA) addresses these two concerns of the DEC.

V. Environmental Analysis

A. Proposed Project

1. General Description of the Locale

The Sissonville Hydroelectric Project would be located on the Raquette River in St. Lawrence County, near the village of Sissonville in northern New York State. The Raquette River originates from several high elevation lakes in the Adirondack Mountains and flows north into a region of New York State commonly known as the Peripheral Adirondacks. From there, the river flows through the St. Lawrence River Valley to its confluence with the St. Lawrence River along the Canadian border (Figure 2).

The central Adirondack Mountains, south of the project site, have elevations of about 1,500 to 2,000 feet msl. The proposed project would be located at 394 feet msl. The Raquette River is used extensively for hydropower generation throughout its length, and the Sissonville Project would be one of numerous hydropower projects on the river. The Sissonville Project would be located at the site of a former hydropower facility.

2. Geology and Soils

Affected Environment: The proposed project area is located in the relatively flat, glaciated terrain of the St. Lawrence-Champlain Lowlands of northern New York State. Bedrock at the project consists of relatively flat, sandy dolostone and dolomitic sandstone (Atlantic Testing Laboratories, Ltd., 1986). Unconsolidated deposits in the proposed project area include northeast-oriented ridges of glacial till with lake deposits of clay and sand in the flat-bottomed low-land areas between ridges (Atlantic Testing Laboratories, Inc., 1986).

Environmental Impacts and Recommendations—Turbidity and Sedimentation. Removal of protective vegetation, excavation of soils, disposal of excess spoil materials, and alteration of slopes and other land-clearing and land-disturbing activities during site access and project construction would cause increased erosion and sedimentation. Raised impoundment levels during project operation would result in bank erosion, particularly on steeper sections of the reservoir shoreline. The DEC, in a letter dated June 3, 1987, recommends the following measures: (1) All sediments to be removed from the project site be analyzed for heavy metals and toxic substances; (2) the DEC be notified prior to any testing; and (3) the DEC be provided the test results and plans for toxic sediment disposal for evaluation prior to commencement of related construction activities. The applicant agrees with DEC's recommendations for analyzing the sediments for contaminants prior to construction and disposing of any contaminated sediments and other sediments in a DEC approved manner.

The applicant proposes to consult with the DEC prior to project construction to schedule the installation of cofferdams, the removal of sediments, and the alteration of streamflows. The applicant proposes to stabilize the banks of the impoundment above the new dam to minimize erosion.

In addition, the applicant outlines several mitigative measures to reduce the potential for erosion created by project construction and initial project operation. These include: (1) Using straw bales to filter the sediments; (2) discharging construction water through a sediment basin; (3) reseeding the construction staging area after completing construction; (4) leaving trees stumps and tree trunks within the cleared area to provide erosion protection during construction and during the initial stages of project operation; (5) using cofferdams to allow construction activities such as major excavations, building embankments, and completing access roads under dry ground conditions; (6) using excavated rock to provide permanent erosion protection throughout the project; (7) using straw bales, permanent vegetation, stone, and woodchips to control erosion at the new recreational site; and (8) using riprap to provide erosion protection along distrubed reservoir shoreline areas and downstream streambank areas exposed to the new project operation flow conditions (Adirondack Hydro Development Corporation, 1987).

The impacts from project-related erosion and sedimentation would be kept to minor levels by careful planning and by implementing a final erosion control plan that utilizes the above-mentioned mitigative measures. The licensee should file a final erosion control plan, for Commission approval, after consulting with appropriate resource agencies, and prior to commencing project-related, land-distrubing activities. The erosion control plan should include the measures to reduce erosion outlined by Adirondack Hydro in the license application.

Unavoidable Adverse Impacts: Minor, short-term erosion and sedimentation would be unavoidable during project construction. Some river and reservior bank erosion would be unavoidable during early stages of project operation until the banks have stabilized to new impoundment levels and flow patterns.

3. Water Resources

Affected Environment: The Raquette River originates in the Adirondack Mountains in northern New York State and flows north through the project area to its confluence with the St. Lawrence River. The natural drainage area of the river at the project dam site is approximately 1,025 square miles. A gauging station on the Raquette River, upstream of the project site in the town of Raymondville, New York, indicates that over a 14-year period of record, the average flow of the river at Sissonville is estimated at 1,850 cfs. The average monthly flows range from a low of 1,186 cfs during August to a high of 3,795 cfs during May. Most of the precipitation in the area occurs from October through June; however, heavy precipitation is common year-round.

The DEC classifies the Raquett River in the project area as a Class B stream. Class B streams are suitable for primary contact recreation and other uses, except for drinking and food processing. Water quality data for the Raquett River, collected by the Geological Survey, indicates that the water temperature of the river varies from a low of 0 degrees Celsius (°C) in January to a high of 24°C in August. The dissolved oxygen (DO) levels within the river range from 81 to 101 percent saturation with the highest DO levels occurring in winter and spring and the lowest levels occurring during the month of August. The pH values range from 6.2 to 7.1 with no seasonal pattern noted.

Environmental Impacts and Recommendations: Turbidity and Sedimentation. Erosion from disturbed land and instream construction activities would increase the sediment levels in the Raquette River. Fine silt and clay-size particle introduced into the river would be transported downstream of the project site, and the larger particle would settle in the pools immediately downstream of the project.

Increases in turbidity and sedimentation, with subsequent negative effects on aquatic resources, are among the most significant, construction-related impacts of hydroelectric development (Rochester et al., 1984). To minimize the introduction of sediment into the water column, Adirondack Hydro proposes to implement a series of erosion control measures, including constructing the project in the dry, behind cofferdams. The licensee should consult with the U.S. Fish and Wildlife Service (FWS) and the DEC to develop a detailed erosion control plan, as discussed in Section 1, Geology and Soils.

Flooding Potential. Reconstructing the Sissonville Dam would form a 30-acre reservoir, would increase the water surface evelation to 394 feet msl, and would inundate 7.9 acres of woodland habitat (figure 4). The proposed increase in water surface elevation would not increase the probability of seasonal flooding.

The DEC states in its letter dated June 3, 1987, pursuant to the waiver of the 401 certificate, that the proposed project may increase the probability of flooding at the Town of Potsdam's Wastewater Treatment Plant, subsequently resulting in severe adverse impacts to the water quality of the Raquette River if untreated wastewater is released into the river. The Town of Potsdam's Wastewater Treatment Plant is located approximately 0.8 miles upstream of the proposed project site along the Raquette River.

The staff determines that because of the controlled nature of the Raquette River by hydroelectric projects upstream, the proposed project would not increase the potential for the river to flood the Town of Potsdam's Wastewater Treatment Plant. The NMPC owns and operates 13 hydropower facilities upstream of the proposed Sissonville Project and, as such, the flows in the Raquette River are controlled by the NMPC under FERC license. The applicant, which presently operates two hydropower facilities downstream of the proposed project, receives from NMPC a daily reading of the river flow and informs the applicant of any anticipated changes to the river flow. It takes about 12 hours for any adjusted releases from the upstream projects for the flow change to reach the Sissonville Project site. This 12-hour period would provide adequate time for the applicant to manipulate floodgates and to accommodate any changes in the river flow. This controlled aspect of the river would increase the applicant's ability to control the water levels and would not increase the potential for the river to flood the Town of Potsdam's Wastewater Treatment Plant.

Unavoidable Adverse Impacts: Construction activities would have a minor, short-term adverse impact on the water quality of the Raquette River downstream of Sissonville by increasing erosion, turbidity, and sedimentation in the project area.

4. Fishery Resources

Affected Environment: The Raquette River supports a wide variety of fish species throughout its length. The headwaters of the river in the Adirondack Mountains support several species of coldwater fish such as brown trout (*Salmo trutta*), brook trout (*Salvelinus fontinalis*), and sculpins (*Cottus* spp.). As the river flows north out of the mountains, the fish species composition changes to primarily coolwater species. The fish inhabiting the project area are classified as coolwater species. These include walleye (*Stizostedion vitreum*), smallmouth bass (*Micropterus dolomieui*), yellow perch (*Perca flavescens*), and northern pike (*Esox lucius*). Trout are occasionally found in the project area; however, their occurrence is primarily a result of being flushed downstream from the headwater streams during high flows. Trout are not stocked in the project area and they are not known to inhabit the area on a year round basis.

As the Raquette River flows north across the St. Lawrence Valley downstram of the project, it becomes slow moving, the mean water temperature increases, the river becomes more shallow, and the composition of the fish community changes to include many warmwater species. The warmwater species inhabiting the river downstream of the proposed project include largemouth bass (*Micropterus salmoides*), brown bullhead (*Ictalurus nebulosus*), pumpkinseed (*Lepomis gibbosus*), and suckers (*Catostomus* spp.), along with many of the coolwater species indicated above.

The Raquette River in the project area supports a popular recreational fishery for coolwater species, including walleye, smallmouth bass, and northern pike. The pools and rapids in the projects area provide suitable fishery habitat. Local anglers are known to fish these pools and rapids extensively.

Environmental Impacts and Recommendations—Sedimentation and Turbidity. The increased sedimentation and turbidity levels associated with construction activities could have short-term, adverse impacts on the fishery resources in the project area. Construction-related sedimentation and turbidity could reduce feeding of sight-feeding fish, disrupt spawning, and

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smother aquatic fish food organisms (Rochester, et al., 1984). To reduce these effects, the licensee should develop and implement the erosion and sedimentation plan, as described in Section 1, Geology and Soils.

Project Operation. Streamflows of the Raquette River are regulated by hydroelectric dams located both upstream and downstream of the project site. The operating procedures of these hydroelectric dams fluctuate the flow in the river on a daily basis, and are particularly noticable during low-flow periods.

To reduce the potential impacts to important fishery resources, Adirondack Hydro proposes, and the FWS and the DEC recommends, that the project be operated in a run-of-river mode. By operating the project in a run-of-river mode, outflows from the project would equal the inflow to the impoundment. This run-of-river operation would not change the existing flow regime of the river and would minimize fluctuations in the elevation of the reservoir and discharges downstream of the project. Minimizing the streamflow fluctuations would reduce instances when the streambed would be dewartered and would minimize the disruptions of fish, habitat in the Raquette River caused by fluctuating water levels. Therefore, the licensee should operate the project in a run-of-river mode.

Minimum Flows in the Bypassed Reach. Operating the proposed project would bypass approximately 400 feet of the Raquette River below the dam (Figure 4). This area is inhabited by recreationally important coolwater fish such as walleye and smallmouth bass. Walleye currently spawn in the project area, including the bypassed reach.

Adirondack Hydro proposes, and the FWS and the DEC recommends, that 200 cfs be released into the bypassed reach during the spring and 100 cfs be released during the remainder of the year to protect the fishery resources in the Raquette River. The FWS recommends that the 200-cfs flow be released from March 15 to May 15 of each year, while the DEC recommends that this flow be released during the walleye spawning season. DEC defines the walleye spawning season as the period beginning with the first 4 days after ice-out in which the river temperature reaches 3°C and continuing until 30 days after the river temperature exceeds 10°C.

Reducing flows in the bypassed reach would adversely affect the populations of coolwater fish, especially the walleye, by dewatering the spawning and nursery areas contained in the bypassed reach. Maintaining a minimum flow in the bypassed reach would reduce, but would not eliminate, the impacts of the project on the populations of coolwater fish using that area. Releasing a minimum flow into the bypassed reach would provide flows over the riverbed and would maintain one component of the fishery habitat, waterflow, in the bypassed reach. Therefore, to prevent dewatering of the bypassed reach and to maintain the spawning habitat for walleye and other coolwater species, the licensee should release 200 cfs into the 400-foot-long bypassed reach of the Sissonville Project from March 15 to May 15 of each year and 100 cfs the remainder of the year. Releasing 200 cfs from March 15 to May 15, as recommended by the FWS, would encompass the walleye spawning period as defined by the DEC.

Maintaining the Fishery Habitat in the Project Area. The proposed project would reduce the suitability of the project area to support resident fish by adversely affecting the quality of the fishery habitat. The quality of the fishery habitat in any river depends on numerous physical and biological factors, including streamflow, substrate, and accessibility. Providing a minimum flow in the bypassed reach of the Sissonville Project would maintain the streamflow needed by resident fish. The project would, however, reduce the quality of fish habitat in the project area by eliminating the free upstream movement of adult and juvenile fish, except during high-flow periods, and would reduce the movement of gravel past the project dam to spawning areas located downstream of the dam.

By restricting the upstream movement of adult and juvenile fish into spawning, nursery, or feeding habitats upstream, the numerous existing dams have segmented the Raquette River and the fish populations into discrete units. Adult and juvenile fish that move downstream at high flows are presently unable to move back upstream to potential spawning, nursery, and feeding areas, and would be subjected to additional blockage with the proposed project dam. Segmenting the river may eliminate habitat needed for the long-term survival of the fish populations and may reduce the ability of some species to sustain viable populations. Constructing another dam on the Raquette River would further segment the river and the fish populations. The DEC has determined, however, that upstream fish passage facilities are not needed at this time. The DEC recommends that when fish passage facilities are needed to properly manage the Raquette River fishery, facilities should be installed by the project licensee.

Without adequate gravel recruitment from upstream sources through the existing breached dam, the gravel would be flushed downstream and may not be replaced. The bypassed reach would over time, become unsuitable for fish spawning regardless of the minimum flow release. The effects of reducing gravel recruitment may offset the benefits to the fishery habitat of providing a minimum flow. Therefore, to maintain the quality of the fishery habitat in the project area, principally in the bypassed reach, the licensee, after consulting with the DEC and the FWS, should develop a plan to enhance fish habitat by introducing appropriate-sized spawning gravel and boulders into the area below the dam during the life of the project. The plan should also include provisions to periodically monitor the area below the project dam to ensure that a suitable substrate is maintained.

Turbine Mortality. Installing a hydroelectric project on Raquette River could kill and injure resident fish species through impingement and entrainment within the project facilities. This would reduce the number of fish moving into downstream areas from upstream reaches of the Raquette River. To protect resident fish from turbine-related injury and mortality, the DEC recommends that provisions to reduce turbine mortality be designed and incorporated into the facility.

Installing a fish screen or a small mesh trash rack may be effective in reducing the numbers of fish entrained in hydroelectric facilities. However, high water velocities upstream of the project intake may result in high levels of impingement on the screen, thereby offsetting the benefits of the fish screen. In general, the lower the intake velocities, the lower the amount of impingement mortality (Bell, 1986). At similar hydropower projects in New York State, intake velocities near 2 feet per second have been found adequate in minimizing fish impingement (personal communication, Edward Miller, Biologist, New York State Department of Environmental Conservation, Albany, New York). Since low intake velocities can be effective in reducing impingement mortality, the applicant should maintain water velocities upstream of the intake at 2 feet per second or less.

To reduce the impacts of project-related injury and mortality on resident fish in the project area, the licensee should consult with the DEC and the FWS and develop a plan and a schedule to reduce fish entrainment and impingement mortality in the project facilities. The plan should include provisions for installing a fish screen or a small mesh trash rack on the intake and maintaining water velocities directly upstream of the intake at 2 feet per second or less.

Unavoidable Adverse Impacts: The effects of project construction, such as increased turbidity, on resident fish would be unavoidable. Constructing the Sissonville Project would preclude migratory species, such as walleye, from moving upstream of the project under most operating conditions. This would reduce access for the coolwater species to the Raquette River upstream of the project and may eliminate access to potentially important spawning, rearing, and feeding areas for these species. The proposed project would reduce the recruitment of upstream gravel to spawning areas downstream of the dam. Downstream movement of aquatic organisms, such as juvenile fish, would experience higher levels of mortality as they become entrained or impinged within the project facilties.

5. Terrestrial Resources

Affected Environment: The vegetation of the project area is dominated by the birch-beech-maple forest association typical of the Peripheral Adirondack Mountains-St. Lawrence River Valley transition zone. Tree species inhabiting the project area include red maple *(Acer rubrum)*, sugar maple *(A. saccharum)*, gray birch *(Betula populafolia)*, American beech *(Fagus grandifolia)*, quaking aspen *(Populus tremuloides)*, white ash *(Fraxinus americana)*, and black cherry *(Prunus serotina)*. Wet sites in the project areas are inhabited by plant species tolerant to periodic flooding, such as speckled alder *(Almus regosa)*, American hornbeam *(Carpinus caroliniana)*, northern white cedar *(Thuja occidentalis)*, box elder *(A. negundo)*, goldenrod *(Solidago spp.)*, and asters *(Aster spp.)*. Scattered areas dominated by grasses and staghorn sumac *(Rhus typhinia)* are also present in the project area.

Wildlife species commonly found in the area include opossum *(Didelphis virginiana)*, raccoon *(Procyon lotor)*, muskrat *(Onodatra zibethicus)*, red fox *(Vulpes vulpes)*, common crow *(Corvus brachyrhynchos)*, bluejay *(Cyanocitta cristata)*, downy woodpecker *(Dendrocopos pubescens)*, black-capped chickadee *(Parus atricapillus)*, great-horned owl *(Bubo virginianus)*, and red-tailed hawk *(Bueto jamaicensis)*. Reptiles and amphibians frequenting the area include American toad *(Bufo americanus)*, bullfrog *(Rana catesbeiana)*, leopard frog *(Rana palustris)*, mink frog *(Rana septentrionalis)*, snapping turtle *(Chelydra serpentiana)*, painted turtle *(Chrysemys picta)*, water snake *(Natrix sipedon)*, and garter snake *(Thamnophis sirtalis)*.

Environmental Impacts and Recommendations: Construction activity and restoration of the project reservoir would result in the loss of approximately 7.9 acres of mixed woodland habitat (Figure 4). To mitigate for this loss, the applicant has purchased a 9-acre tract of land of similar habitat type, adjacent to the project area, and would designate this parcel of land as a preserve. The FWS states that this action would mitigate for the loss of 7.9 acres of woodland (letter from Dieter N. Busch, Acting Field Supervisor, U.S. Fish and Wildlife Service, Cortland, New York, December 11, 1986). The FWS recommends that as much vegetation as possible be left in the areas to be inundated by the reservoir to enhance aquatic habitat, and that educational information concerning the value of such inundated vegetation be posted for the general public. The applicant agrees with the FWS' recommendations.

The staff concludes that the 9 acres of woodland, purchased by the applicant that would be designated as a forest preserve for the life of the project, would adequately mitigate for the loss of 7.9 acres of woodland. Further, the staff concurs with the FWS recommendation to leave as much vegetation as possible in areas to be inundated and to post educational information on the benefits of these actions on the fish and wildlife resources of the Raquette River.

Construction activities would cause wildlife to avoid the project area. This impact would be minor and temporary.

Unavoidable Adverse Impacts: Approximately 7.9 acres of woodland would be permanently lost due to construction activity and inundation of the upstream riparian habitat. Wildlife would avoid the project area during construction.

6. Threatened and Endangered Species

The FWS states that no federally listed or proposed threatened or endangered species are present in the project impact area (letter from William Patterson, Department of the Interior, Office of Environmental Project Review, Boston, Massachusetts, April 14, 1987).

Environmental Impacts and Recommendations: Since there are no federally listed threatened or endangered species in the project area, there would be no impacts to any such species.

7. Recreational Resources

Affected Environment: No recreational facilities exist in the immediate vicinity of the proposed project site. The limiting factors for recreational access include steep river banks on both sides of the river, poor road access to the site, and private landownership in the proposed project area. Despite these limitations, the area provides opportunities for recreational angling. According to the FWS, the project vicinity is well used by the public (letter from Paul P. Hamilton, Field Supervisor, U.S. Fish and Wildlife Service, Cortland, New York, August 7, 1985). Access to the project area by the public, mostly anglers, is primarily by foot-trails. These trails are not maintained and are generally used by more ambitious anglers, as there are other accessible fishing sites downstream of the proposed project site.

Recreationally important fish species found in the project area include walleye, smallmouth bass, yellow perch, and northern pike (see Section 3).

Although some recreational boating occurs in the Raquette River, there are no launching facilities in the proposed project vicinity, nor has this river segment been identified by the resource agencies as a whitewater boating resource. The DEC reports that the 2-mile segment of the Raquette River downstream from the town of Potsdam, including the project area, is not recommended for boating by inexperienced boaters due to restricted access and difficult rapids. Obstacles hampering boating opportunities include the Hewittville Exemption (FERC Project No. 2498) and the Unionville Project (FERC Project No. 2499), which are located within 1 mile downstream of the proposed project, and the Potsdam-East Project (FERC Project No. 2869), which is about 1.5 miles upstream of the proposed project.

Despite the presence of these obstacles, some noncomercial recreational boating does take place on the Raquette River as the boaters portage around the dams and other obstacles. Commercial boating does not occur in the project area, and the river is not conducive for future commercial boating activity (personal communication, Len Olevette, Biologist, New York State Department of Environmental Conservation, Watertown, New York, December 22, 1987).

Environmental Impacts and Recommendations: The applicant proposes to construct facilities in the

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project area to promote recreational activities. The recreational facilities would include: (1) A parking area for 10 cars; (2) six picnic tables; (3) a trail along the river's edge leading from the parking area to the picnic and boat launch areas; (4) an 8-foot wide road leading from the parking area to the boat launch for unloading equipment; and (5) wooden benches and trash receptacles in key locations in the recreation area. A large (4-foot x 4-foot) sign would be placed at the entrance to the recreation area to identify the licensee of the project and the availability of the area for public recreation.

The access provided by the applicant for hunting, fishing, trapping, and passive recreational activities, such as hiking and picnicking, are the primary benefits of the proposed recreational enhancements. The applicant estimates that the project would contribute approximately 3,241 recreational user days after completion of the recreational facilities. A recreational user day is defined as 12 hours of recreational use in any combination of persons or hours; for example 12 people and 1 hour of recreation, 3 people and 4 hours of recreation, etc.

The DEC, by letter dated June 3, 1987, identifies a need for the recreational enhancements proposed by the applicant. In addition, DEC requests that portage facilities be provided for boaters to portage around the dam, and that the applicant consult with the FWS and the DEC regarding the recreation plan prior to commencement of construction (letter from Murdock M. Mackenzie, Chief, Project Review Section New York State Department of Environmental Conservation, Albany, New York, June 3, 1987). The Department of the Interior, by letter dated April 14, 1987, states that the recreation plan proposed by the applicant was adequate for meeting the present recreational demands.

The staff concurs with Interior and DEC that the proposed recreational enhancements would be beneficial to the public. The staff also concurs that, in addition to the proposed recreation plan, the applicant should provide launching and portage facilities upstream and downstream of the project dam to accommodate the recreational boaters. The portage facilities should include a trail connecting the two launch areas. These facilities would allow boaters to portage around the dam and to continue downstream.

The staff concludes that the recreation plan, including the portage facilities, would enhance the overall recreational opportunities on this segment of the Raquette River.

Unavoidable Adverse Impacts: Recreational boaters and anglers in the immediate vicinity of the project would be disturbed by construction activities, such as noise and dust caused by equipment usage. Certain areas of the construction site would be temporarily restricted from use due to safety concerns. Sedimentation may also temporarily reduce fishing success in the project area.

Creating an impoundment on the Raquette River would convert rapidly flowing water used occasionally by recreational boaters into a slow-moving, flatwater impoundment. The new impoundment would displace the occasional whitewater boaters with other boating enthusiasts attracted to the flatwater boating.

8. Socioeconomic Considerations

Affected Environment: The economy of St. Lawrence County is based on the following factors: (1) Processing of aluminum into products such as wire, cable, and foundry castings; (2) processing of paper; (3) manufacturing of telephone and telegraph apparatus; (4) dairy farming and processing of milk; (5) mining of zinc and talc; (6) the presence of St. Lawrence University and the State University of New York at Potsdam; and (7) tourism.

The county's location adjacent to the St. Lawrence River, with a readily available supply of inexpensive hydroelectric energy and water transportation routes, were responsible for development of St. Lawrence County's primary metal industry. There are five large establishments in the county that manufacture primary metals. In March 1984, these five manufacturing industries employed a total of about 4,032 people. (personal communication, Gerald Foyer, Statistician, Bureau of the Census, Suitland, Maryland, June 24, 1987).

In 1982, St. Lawrence County's agricultural sector included 1,807 farms, which received $79,495,000 from the sale of agricultural products, including $67,917,000 for milk and other diary products (personal communication, Brenda Prout, Statistical Information Assistant, Bureau of the Census, Suitland, Maryland, June 24, 1987).

The population of St. Lawrence County has remained relatively constant since 1970 as a result of the outmigration of young adults. The Bureau of the Census estimates that 113,400 persons resided in the county as of July 1, 1985, compared to 112,300 persons in 1970 (personal communication, Audrey Primas, Statistical Information Assistant, Bureau of the Census, Suitland, Maryland, June 24, 1987).

Environmental Impacts and Recommendations: Onsite construction activities and project-related vehicles would produce unwanted noise, dust, and exhaust emissions and could cause minor delays for motorists in the Sissonville-Potsdam area. The project would displace a private residence and a business establishment.

During construction, an average of 25 and a peak of 50 persons would be employed at the project site. Because most of these workers would commute daily to and from the construction site from within a 50-mile radius of the site, construction activities would not induce the immigration of families with school-age children to St. Lawrence County, and the project would not produce any discernable impacts to local government services. The money spent by construction personnel at local retail trade and service establishments would represent a beneficial, albeit short-term economic impact. Once operational, the new project facilities would generate approximately $73,000 in local property taxes each year. The staff concludes that the project's socioeconomic impacts would be predominately beneficial and mitigative measures would not be required.

Unavoidable Adverse Impacts: Project-related construction activities and vehicles would produce unwanted noise, dust, and exhaust emissions and could cause delays for motorists in the project vicinity.

9. Cultural Resources

Affected Environment: The New York State Historic Preservation Officer (SHPO) states that the Sissonville Project would have no effect upon districts, sites, buildings, structures, objects, or archeological resources included or eligible for inclusion in the National Register of Historic Places (letter from Julia Stokes, State Historic Preservation Officer, Albany, New York, October 18, 1985).

Environmental Recommendations: Changes to the project, especially changes in the proposed location and design of the project, are occasionally needed after a license has been issued and may require an applicant to amend a license. Under these circumstances, whether or not an application for amendment of license is required, the survey results and the SHPO's comments would no longer reliably depict the cultural resources impacts that would result from developing the project. Therefore, before beginning land-clearing or land-disturbing activities within the project boundaries, other that those specifically authorized in the license and previously commented on the SHPO, the licensee should consult with the SHPO regarding the need to conduct additional archeological or historical surveys and to implement further avoidance or mitigative measures.

Also, land-clearing and land-disturbing activities could adversely affect archeological and historic properties not previously identified. Therefore, if the licensee encounters such sites or properties during the development of project works or related facilities, the licensee should stop land-clearing and land-disturbing activities in the vicinity of the sites, and should carry out any necessary measures to avoid or to mitigate effects on the properties.

Unavoidable Adverse Impacts: None.

10. Cumulative Impacts

The Council on Environmental Quality defines cumulative impacts as effects on the environment which result from the incremental impact of the action, when added to past, present, and reasonably foreseeable effects of future actions, regardless of the agency or person undertaking such action (40 CFR 1508.7). Although there are other licensed and unlicensed hydroelectric facilities operating on the Raquette River, the Sissonville Project is currently the only proposed project in the basin.

The Existing Hydropower Projects in the Raquette River Basin. Throughout its length, the Raquette River is extensively developed with hydroelectric dams and water storage reservoirs (Figure 5). The drop in elevation of the river from the Adirondack Mountains to the St. Lawrence River Valley (1,600 feet in 88 miles) and the dependable amounts of water have made the Raquette River ideal for hydropower development.

Currently, the river contains three storage reservoirs, Carry Falls Reservoir (115,000 acre-feet), Bog River Reservoir (23,000 acre-feet), and Tupper Lake (19,000-acre feet), which are all operated to regulate flows for downstream hydropower projects. The waterflows are stored during the winter and spring and are released during the summer and fall to control seasonal flooding and to facilitate hydroelectric power generation. The existing hydropower capacity of the Raquette River is approximately 170 MW.

The Raquette River Basin contains 18 hydropower dams, all of which are located on the mainstem river (Figure 5). These include six licensed hydropower projects, one unlicensed project, and one exempted project. From the St. Lawrence River upstream, these projects include: The Raquette River Project (FERC Project No. 2330) consisting of four dams (Raymondville, Norfolk, East Norfolk, and Norwood); the unlicensed Yaleville Project (FERC Project No. 9222) which is currently under a preliminary permit; the Unionville Project (FERC Project No. 2499); the Hewittville Exemption (FERC 2869); the Raquette River Projects (FERC Project No. 2320) consisting of four dams (Sugar Island, Hannawa, Colton, and Higley); the Raquette River Projects (FERC Project No. 2084) consisting of five dams (South Colton, Five Falls, Rainbow Falls, Blake Falls, and Stark Falls); and the Piercefield Development (FERC Project No. 7387). The Sissonville Project would be located between the Hewittville and the Potsdam-East Project.

Cumulative Environmental Impacts. As a result of the numerous hydropower developments, the character of the Raquette River has been changed from a free-flowing river to one consisting of a series of pools and reservoirs with short stretches of free-flowing river between the dams. Developing the river for hydropower has adversely affected the fishery habitat and the potential for recreational boating in much of the river.

Constructing and operating the Sissonville Project has the potential to contribute to cumulative adverse impacts by: (1) Reducing the amount of free-flowing river habitat available for recreational boating within the basin; (2) changing fish habitat from free-flowing river conditions to a flatwater impoundment; (3) increasing fish mortality through entrainment and impingement; (4) reducing upsteam movements of resident fish within the river; and (5) inundating riparian woodland habitat.

The potential cumulative adverse impacts to the fishery resources, terrestrial resources, and recreational boating in the Raquette River Basin would be minimized by implementing the mitigative measures proposed by the applicant and by the staff. These mitigative measures include operating the project in a run-of-river mode, maintaining a minimum flow release, installing fish screens on the project intake, maintaining the fishery habitat within the project area through gravel recruitment, and establishing a 9-acre tract of woodland as a forest preserve to offset the loss of 7.9 acres of riprarian habitat.

Operating the project in a run-of-river mode and providing a minimum flow through the bypassed reach below the project dam would allow aquatic resources depending on free-flowing conditions to maintain levels similar to preproject conditions. Creating a 30-acre reservoir above the dam would convert a 1.5-mile section of a free-flowing river into a flatwater impoundment, would replace fastwater recreational boating activities with flatwater boating opportunities, and would change fish habitat and fish species from those adapted to a free-flowing river environment to those adapted to an impoundment environment. The proposed project would also cause additional segmentation of the fish populations of the Raquette River by preventing upstream movement of fish. The loss of upstream movement of fish would not cause significant cumulative adverse impacts to the fishery resources of the Raquette River because fish populations would be maintained at similar levels above and below the project site by continued recruitment of fish from upstream areas.

B. No-Action Alternative

Selecting the no-action alternative would not cause any changes to the existing physical or biological components of the Raquette River basin. It would, however, preclude the opportunity to use the renewable water power resource of this section of the Raquette River.

C. Recommended Alternative

The benefits of developing the project and of using the renewable water power resources available at the project site could be realized with only minor impacts to the quality of the human environment. If properly mitigated, developing the project would result in minor impacts to the environmental resources of the project area. Therefore, the staff recommends that the Adirondack Hydro Development Corporation's Sissonville Project be licensed.

VI. Finding of No Significant Impact

Construction activities would cause temporary, localized increases in erosion, sedimentation, and stream turbidity. These conditions would have a minor, adverse impact on the water quality and fishery resources of the Raquette River. Project construction would cause the permanent inundation of approximately 7.9 acres of riparian habitat and would cause permanent loss of this area and the avoidance of the area by wildlife. During project construction, there would be a short-term, adverse impact to recreational anglers utilizing the project area. Constructing the project would preclude the resident fish from freely moving upstream of the project under most operating conditions. The movement of

gravel substrate from areas upstream of the dam to downstream areas would be eliminated under most operating conditions. Downstream moving organisms, particularly juvenile fish, would be subjected to increased levels of mortality from entrainment or impingement caused by the project. A 1.5-mile segment of the Raquette River would be converted from rapidly flowing water to a flatwater impoundment.

Implementing the mitigative measures proposed by the applicant and the Commission staff would ensure that the environmental impacts associated with project construction and operation would not be significant and would not cause significant cumulative adverse impacts.

The staff prepared this EA for the Sissonville Project in accordance with the National Environmental Policy Act of 1969. On the basis of the record and of the staff's independent analysis, issuance of a license for this project would not constitute a major federal action significantly affecting the quality of the human environment.

VII. Literature Cited

Adirondack Hydro Development Corporation. 1988. Application for license for the Sissonville Hydroelectric Project, a major water power project of 2.3 megawatts, FERC Project No. 9280, New York. May 8, 1988.

Adirondack Hydro Development Corporation. 1987. Additional information for the application for license for the Sissonville Hydroelectric Project, a major water power project of 2.3 megawatts, FERC Project No. 9280, New York. December 23, 1987.

Atlantic Testing Laboratories, Limited. 1986. Subsurface elevation report, Adirondack Hydro Development Corporation. Appendix VI of the application for license for the Sissonville Hydroelectric Project, a major water power project of 2.3 megawatts, FERC Project No. 9280, New York. May 8, 1988.

Bell, C.M. 1986. Fisheries handbook of engineering requirements and biological criteria. Department of the Army, North Pacific Division Corps of Engineers, Portland, Oregon.

Rochester, H., jr., T. Lloyd, and M. Farr. 1984. Physical impacts of small-scale hydroelectric facilities and their effects on fish and wildlife. FWS/OBS-84-19. Office of Biological Services, U.S. Fish and Wildlife Service, Department of the Interior. 191 pp.

VIII. List of Preparers

Mark Bagdovitz—Coordinator; Fishery Resources, Water Resources, Cumulative Impacts (Ecologist; M.S., Fishery Biology).

Jim Haimes—Socioeconomic Considerations (Economist, M.S. Economics).

James Keaney—Terrestrial Resources and Threatened and Endangered Species (Wildlife Biologist, M.S., Wildlife Biology).

Peter Leitzke—Geology and Soils (Geologist; M.A. Geological Sciences).

Leonard Podell—Purpose, Economic Analysis, Flooding Potential (Civil Engineer; Ph.D., Civil Engineering).

Brian Romanek—Recreational Resources (Outdoor Recreation Planner; B.S. Recreation Resource Management and Planning).

Edwin Slatter—Cultural Resources (Archeologist; Ph.D., Anthropology).

Mary Nowak—Editor (B.S., English).

[FR Doc. 88-11395 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-13964-000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company et al., Applications for Abandonment of Service and to Amend Certificates [1]

May 18, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 2, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-13964-000, D, May 2, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, Boundary-Butte Area, San Juan County, Utah.	(1)
CI62-1251-012, D, May 2, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Arbs Energy Resources, a division of Arbs, Inc. Red Oak, *et al.* Fields, Latimer, *et al.* Counties, Oklahoma.	(2)
CI63-1424-000, D, April 29, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	Panhandle Eastern Pipe Line Company, Putnam Field, Dewey County, Oklahoma.	(3)
CI64-159-000, D, April 29, 1988	do	do	(4)
CI66-470-012, D, May 2, 1988	Sun Exploration and Production Company	N.E. Trail Field, Dewey County, Oklahoma	(5)
CI69-835-000, D, April 29, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Arbs Energy Resources, a division of Arbs, Inc., Pine Hollow Field, Pittsburg County, Oklahoma.	(6)
CI71-405-001, D, May 3, 1988	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Transwestern Pipeline Company, Rock Tank Field, Eddy County, New Mexico.	(7)
CI79-388-001, D, April 29, 1988	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	El Paso Natural Gas Company, Toro (Ellenburger) Field, Reeves County, Texas.	(8)
CI81-60-001, D, April 22, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Panhandle Eastern Pipe Line Company, Selan S.E. Field, Ellis and Woodward Counties, Oklahoma.	(9)
		Lone Star Gas Company, a Division of ENSERCH Corporation, Dexter Area, Cooke County, Texas.	(10)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI88-430-000, F, April 21, 1988	Amoco Production Company, 1670 Broadway, Room 1754, Denver, CO 80202.	Northwest Pipeline Corporation, Basin Dakota Field, San Juan County, New Mexico.	(11)
CI88-432-000, (CI64-516), B, April 29, 1988.	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, N.E. Trail Field, Dewey County, Oklahoma.	(12)
CI88-433-000, (CI79-380), B, April 29, 1988.	Multistate Oil Properties, N.V.	Natural Gas Pipeline Company of America, Hansford Field, Hansford County, Texas.	(11)
CI88-437-000 (CI65-704), B, May 2, 1988.	Texaco Producing Inc.	ANR Pipeline Company, Kings Bayou Field, Cameron Parish, Louisiana.	(13)

[1] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[2] Effective 3-1-88, Sun assigned its interest in Property No. 414040, Beshers Unit, to Eberly and Meade, Inc.
[3] A.L. Stephenson #1 well was plugged and abandoned and the leases were surrendered.
[4] The A.L. Stephenson #1 well was plugged and abandoned. Effective 1-1-87, Tenneco Oil Company assigned certain acreage to Unit Corporation, and effective 4-1-88, Tenneco Oil Company assigned certain other acreage to Anadarko Production Company, *et al.*
[5] Effective 3-1-88, Sun assigned its interest in Property No. 616423, Compekube Unit, to Texaco Producing Inc.
[6] Effective 10-1-87, TPI assigned to Helmerich and Payne, Inc., its rights to the SW/4 and NW/4 of Section 32, Block 50, T-7, T&P RR Co. Survey, Helmerich #1 Campbell State Gas Unit, Reeves County, Texas.
[7] Effective 12-1-86, Tenneco Oil Company and Multistate Oil Properties, Inc., assigned certain acreage to Bell & Kinley Company.
[8] Effective 3-1-88, Atlantic Richfield Company assigned to Amoco certain acreage lying in San Juan County, New Mexico.
[9] Effective 9-1-87, Tenneco Oil Company assigned certain acreage to Vital Oil Company.
[10] Not used.
[11] Effective 6-1-87, TPI assigned certain acreage to Shell Western E&P Inc.
[12] The A.L. Stephenson #1 well was plugged and abandoned. Effective 1-1-87, Tenneco Oil Company assigned certain acreage to Unit Corporation.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 88-11398 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8713-004]

Kittitas Reclamation District; Surrender of Preliminary Permit

May 18, 1988.

Take notice that Kittitas Reclamation District, permittee for the proposed Kachess Dam Project, has requested that its preliminary permit be terminated. The permit was issued on January 16, 1986, and would have expired on December 31, 1988. The project would have been located on the Kachess River, near the towns of Easton and Cle Elum, in Kittitas County, Washington.

The permittee filed the request on April 19, 1988, and the preliminary permit for Project No. 8713 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11397 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No.5330-001]

City of Santa Clara, CA; Surrender of Preliminary Permit

May 18, 1988.

Take notice that the city of Santa Clara, California, permittee for the proposed East Fork Trinity Project, has requested that its preliminary permit be terminated. The permit was issued on February 24, 1987, and would have expired on January 31, 1990. The project would have been located on the East Fork Trinity River, near Redding, in Trinity County, California.

The permittee filed the request on October 8, 1987, and the preliminary permit for Project No. 5330 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-11396 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1490-003]

Brazos River Authority; Issuance of Annual License

May 18, 1988.

On May 13, 1985, the Brazos River Authority, licensee for the Morris Sheppard Dam Project No. 1490, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1490 is located on the Brazos River in Palo Pinto County, Texas.

The license for Project No. 1490 was issued for a period ending May 24, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the Brazos River Authority pursuant to Section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to the Brazos River Authority for a period effective May 25, 1988, to May 24, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1490, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before May 24, 1989, an annual license will be issued each year thereafter, effective May 25 of each year, until such time as a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11399 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-268-000]

Niagara Mohawk Power Corp.

May 16, 1988.

Take notice that on April 21, 1988, Niagara Mohawk Power Corporation (Mohawk) tendered for filing a modification to the agreement between Atlantic City Electric Co. (ACE) and Mohawk that was originally filed on February 18, 1988.

Any person desiring to be heard or to protest said filing should file a motion to

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intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11345 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-166-000]

Raton Gas Transmission Co.

May 16, 1988.

Take notice that on May 3, 1988, Raton Gas Transmission Company (Raton) filed a letter stating that it is not making a PGA filing under Order No. 483 to be effective June 1, 1988.

Raton points out that § 154.308(b) provides for exception to rate filing if the adjustment to rates is under 1 mill per MMBtu of jurisdictional sales and that its current rate adjustment would be 0.1 mill due to GRI reduction in Colorado Interstate Gas Company (CIG) rate effective January 1, 1988.

Raton states that its current Surcharge Adjustment is effective through September 30, 1988 and therefore cannot be changed under the Regulations at this time.

Raton states that it has only one supplier, CIG and that CIG advised Raton that change rates in three pending dockets is expected to be finalized in late June or July, 1988. At that time Raton will make the required PGA rate change.

Raton believes it is correct in its interpretation of the regulations governing this matter. However, if Raton is not correct in its interpretation, Raton requests a waiver thereof to prevent unnecessary and inconsequential filings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11342 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-145-001]

Texas Gas Pipe Line Corp.; Filing

May 16, 1988.

Take notice that on May 9, 1988, Texas Gas Pipe Line Corporation (TGPL) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1988:

Third Revised Sheet No. 19
First Revised Sheet No. 21a
Fourth Revised Sheet No. 22

TGPL states that Third Revised Sheet No. 19 was submitted correcting the numbering of First Revised Sheet No. 19, that First Revised Sheet No. 21a was submitted correcting a typographical error discovered on Original Sheet No. 21a, and that Fourth Revised Sheet No. 22 was submitted to delete the section referencing "Incremental Pricing Surcharge" contained in Third Revised Sheet No. 22. TGPL points out that these tariff sheets were filed as part of its Purchased Gas Adjustment filing by letter dated April 29, 1988, and that these corrections do not constitute any substantive change in the prior submission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11343 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-150-001]

Transwestern Pipeline Co.; Filing

May 16, 1988.

Take notice that on May 9, 1988, Transwestern Pipeline Company (Transwestern) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute 6th Revised Sheet No. 73
Substitute 1st Revised Sheet No. 75A
Substitute 7th Revised Sheet No. 76
Substitute 3rd Revised Sheet No. 76A
Substitute 3rd Revised Sheet No. 76B

Transwestern states that on April 29, 1988, it submitted its first annual Purchased Gas Cost Adjustment filing to be effective July 1, 1988 and a new Purchased Gas Adjustment Clause to be effective June 1, 1988. Transwestern states that after communicating with the Commission Staff, Transwestern made revisions to the tariff sheets listed above.

Transwestern states that copies of the revised tariff sheets have been mailed to all interested parties and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11344 Filed 5-19-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3383-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5074.

Availability of Environmental Impact Statements, Filed May 9, 1988 Through May 13, 1988, Pursuant to 40 CFR 1506.9.

EIS No. 880149, Draft, NPS, AK, Noatak National Preserve, Wilderness Recommendation, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880150, Draft, NPS, AK, Glacier Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: Lind Nebel (907) 257-2654.

EIS No. 880151, Final, BLM, CA, Eastern San Diego County Planning Unit, Section 202 WSAs', Wilderness Recommendations, Designation or Nondesignation, San Ysidro Mountain, Sawtooth Mountains A, Sawtooth Mountains C and Table Mountain, WSAs, El Centro Resource Area, California Desert District, San Diego County, CA, Due: June 20, 1988, Contact: Gerry Hillier (714) 351-6386.

EIS No. 880152, Draft, USA, PRO, NAT, Nationwide Biological Defense Research Program Continuation, Implementation, Due: August 12, 1988, Contact: Charles Dasey (301) 663-2732.

EIS No. 880153, DSuppl, UMT, CA, Los Angeles Rail Rapid Transit Project, Sunset Boulevard Alternate Alignment, Updated Project Cost, Impacts on MacArthur Park, Vermont Avenue/Sunset Boulevard Station Location and Cumulative Impacts of the Hollywood Bowl Connector, Funding, Los Angeles, County, CA, Contact: Carmen C. Clark (415) 974-7317.

EIS No. 880154, Final, USN, AK, Southeast Alaska Acoustic Measurement Facility (SEAFAC) Construction, Establishment and 404 Permit, Behm Canal, Back Island, Ketchikan Gateway Borough, AK, Due: June 20, 1988, Contact: Jeff Thielen (206) 476-5775.

EIS No. 880155, Draft, NPS, AK, Aniakchak National Monument and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880156, Draft, FRC, OH, WV, PA, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mohoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, Armstrong, Fayette, Washington and Westmoreland Cos, PA, Contact: George Taylor (202) 376-4454.

Dated: May 17, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-11417 Filed 5-19-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3383-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 2, 1988 through May 6, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clear Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-AFS-L65116-00, Rating EC2, Rogue River National Forest, Land and Resource Management Plan, Implementation, Jackson, Klamath, Josephine and Douglas Counties, CA and Siskiyou County, OR.

Summary: EPA's concern with this document is the level of detail and commitment for water quality and fisheries monitoring is not commensurate with the sensitivity of the resources.

ERP No. D-AFS-L65119-WA, Rating EC2, Mount Baker-Snoqualmie National Forest, Land and Resource Management Plan, Implementation, King, Pierce, Skagit, Snohomish and Whatcom Counties, WA.

Summary: EPA's main concern is that the level of detail and commitment for water quality and fishery habitat monitoring is not commensurate with the sensitivity of the resource. The final EIS should include additional information on existing environmental conditions, especially water quality.

ERP No. D-COE-K61093-NV, Rating EO2, Galena Resort Construction and Operation, Section 404 Permit and Special Use Permit, Toiabe National Forest, Washoe County, NV.

Summary: EPA expressed environmental objections because the project fails to comply with the section 404(b)(1) Guidelines of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the U.S.: (1) The draft EIS did not fully analyze alternatives to avoid adverse impacts to wetlands; (2) proposed mitigation does not adequately offset wetlands loss; and (3) the wetlands loss would be a significant degradation of the aquatic ecosystem. EPA requested additional information on groundwater, surface water, air quality impacts and monitoring. EPA DRR asked that the Army Corps prepare a supplemental draft EIS.

ERP No. D-FRC-B03003-00, Rating EO2, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and Section 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara, Rensselaer and Wyoming Counties, NY and Hampden and Worcester Counties, MA.

Summary: EPA concludes that this project could cause substantial water quality, wetlands, and noise impacts and that the alternatives analysis is seriously flawed. EPA recommends the selection of the environmentally preferable site at "Ironstone"; use of dry cooling technology; routing of pipelines around critical wetlands; and stringent noise mitigation measures. (NOTE: The above summary should have appeared in the 5-13-88 FR Notice.)

Final EISs

ERP No. F-AFS-K65106-CA, Los Padres National Forest, Land and Resource Management Plan, Implementation, Monterey, San Luis Obispo, Santa Barbara, Ventura and Los Angeles Counties, CA.

Summary: EPA has no objections to the project as proposed and suggests that U.S. Forest Service coordinate nonpoint source water pollution planning with the State and that several measures to protect air and water quality be included for future mining activities on the forest.

ERP No. F-COE-C36080-NY, Cazenovia Creek Flood Damage Reduction Plan, Implementation, Town of West Seneca, Erie County, NY.

Summary: EPA's concerns regarding potential impacts to downstream biota as a result of operation of the sluice gate and ice retention structure have been addressed. Accordingly, we have no

objections to the implementation of the project as proposed.

ERP No. FS–COE–K32038–CA, Oakland Outer and Inner Harbor, Deep Draft Navigation Improvements, Alcatraz Dredged Material Disposal Site, Changed Conditions, Implementation, Alameda County CA.

Summary: EPA's review indicated that overall environmental risks were reduced by several key agreements, including: (1) Restricting the dredging to the initial phase only (approximately 500,000 cubic yards.) Before additional dredging can proceed, the Army Corps will prepare a supplemental EIS. (2) Disposal of acceptable sediments at an ocean disposal site. Contaminated sediments would not be disposed of in either San Francisco Bay or the Pacific Ocean.

Amended Notice

ERP No. D–FHW–G40122–LA, Rating LO, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding, Jefferson County, LA.

Summary: EPA has no objections to the long siding removal with certain other of the alternatives proposed to relieve the railroad traffic flow conflicts and noise problems associated with the operations of the New Orleans Terminal Company Railroad in the Old Metairie area. Correction in summary—Published FR 05–13–88.

Dated: May 17, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–11418 Filed 5–19–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00261; FRL–3382–8]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State-FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, June 7 and 8, 1988, and the Working Committee on Registration and Classification will meet on Thursday and Friday, June 9 and 10, 1988. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meetings will be held at: Radisson Plaza Hotel Orlando, 60 South Ivanhoe Boulevard, Orlando, FL 32804, (305)–425–4455.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office Location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–7096.

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Status reports on and discussion of the following: revision of Part 171 regulations on certification and training; Public/Private Sector initiative; enforcement of special projects; endangered species; groundwater protection; uniform reporting of enforcement actions; compliance strategy evaluation project; regulation on sale of Restricted Use Pesticides to uncertified applicators; training programs/projects completed or currently under way; and the joint EPA-USDA Private Applicator Training Review.

2. Enforcement strategies as they relate to the following: Chlordane, dicofol, dinoseb, diazinon, chlordimeform, aldicarb, and chemigation.

3. Problem of grocery stores that have pesticide analyses run by private laboratories on agricultural produce.

4. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Status reports on and discussion of the following: Termiticide labeling; Label Utility Project; availability of final printed labeling; unenforceable label language; Statements of Practical Treatment; irradiation of food products; chemigation labeling; endandered species; hydrogen cyanamide registrations; sulfites use on grapes; restriction of chlorine products; impact of recent court decisions on state programs; expansion of crop groupings; and impact of ground water protection strategy on pesticide labeling.

2. EPA's response to NAS Report: Regulating Pesticides in Food.

3. Minor crop uses—impact of the reregistration requirements.

4. Other topics as appropriate.

Dated: May 3, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–11340 Filed 5–19–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59238B, 59241C, 59242B; FRL–3382–9

Certain Chemicals; Approval of Modifications to Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing periods for three test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated these applications as TME–87–7, TME–87–12 and TME–87–14, respectively. The test marketing conditions are described below.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M. St. SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME–87–7, TME–87–12, and TME–87–14. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification requests,

and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notices of Approval of Test Marketing Application must be met.

T–87–7

Date of Receipt: January 16, 1987.
Notice of Approval: March 30, 1987 (52 FR 10135).
Modified Test Marketing Period: 12 Months.
Commencing On: Date of manufacture.

T–87–12

Date of Receipt: March 16, 1987.
Notice of Approval: May 8, 1987 (53 FR 17464).
Modified Test Marketing Period: 6 months.
Commencing On: Expiration of original test marketing period.

T–87–14

Date of Receipt: April 14, 1987.
Notice of Approval: June 5, 1987 (52 FR 21367).
Modified Test Marketing Period: 6 months.
Commencing On: Expiration of original test marketing period.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Date: May 11, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–11339 Filed 5–19–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. CL–88–110]

Common Carrier Public Mobile Services Information; Listing of Cellular Rural Service Areas With Component Parts

May 19, 1988.

In accordance with the Further Order on Reconsideration in CC Docket No. 85–388 (RM 5167) (FCC 88–156, Released May 18, 1988) the attached list of 428 Cellular Rural Service Areas (RSAs) is being released to the public and will be published in the **Federal Register**.

Applications for individual RSAs will, not be accepted in numerical order as were MSA applications. Since the RSAs are relatively similar in terms of population, and recognizing that each RSA has its unique needs, the Commission divided the country into five geographic blocks with each block containing a like number of RSAs. The Commission further determined that the only equitable method of determining the order in which applications would be accepted would be through some form of random selection. A lottery was, therefore, held to determine the order in which applications would be accepted for each block of RSAs. As a result of that lottery the following order was determined:

1. Block 2

Alaska	Nevada
Arizona	New Mexico
California	Oregon
Colorado	Utah
Hawaii	Washington
Idaho	Wyoming
Montana	

2. Block 5

Illinois	Nebraska
Indiana	North Dakota
Iowa	South Dakota
Minnesota	Wisconsin

3. Block 3

Arkansas	Missouri
Kansas	Oklahoma
Louisiana	Texas

4. Block 1

Alabama	North Carolina
American Samoa	Northern Marianas
Florida	Puerto Rico
Georgia	South Carolina
Guam	Tennessee
Mississippi	Virgin Islands

5. Block 4

Connecticut	New Jersey
Delaware	New York
Kentucky	Ohio
Maine	Pennsylvania
Maryland	Rhode Island
Massachusetts	Vermont
Michigan	Virginia
New Hampshire	West Virginia

By subsequent public notices, filing windows for each RSA block will be announced. Within each block RSAs there will be multiple windows with applications for all RSAs within one or more states being filed in each window.

Questions regarding this public notice should be addressed to Andrew Nachby at (202) 632–6450 or Steve Markendorff at (202) 653–5560.

CL–88–110—List of Cellular Rural Service Areas With Component Parts

ALABAMA

307. Alabama 1—Franklin	
Franklin	Morgan
Marion	Lawrence
Winston	Blount
Cullman	
308. Alabama 2—Jackson	De Kalb
Jackson	Cherokee
309. Alabama 3—Lamar	Greene
Lamar	Choctaw
Fayette	Hale
Pickens	Marengo
Sumter	
310. Alabama 4—Bibb	Wilcox
Bibb	Lowndes
Perry	Chilton
Dallas	
311. Alabama 5—Cleburne	Randolph
Cleburne	Coosa
Talladega	Tallapoosa
Clay	Chambers
312. Alabama 6—Washington	Monore
Washington	Conecuh
Clarke	Escambia
313. Alabama 7—Butler	Pike
Butler	Coffee
Covington	Geneva
Crenshaw	
314. Alabama 8—Lee	Bullock
Lee	Barbour
Macon	Henry

ALAKSA

315. Alaska 1—Wade Hampton	North Slope
Wade Hampton	Yukon-Koyukuk
Nome	Fairbanks N. Star
Kobuk	Southeast Fairbanks
316. Alaska 2—Bethel	Kenai Peninsula Borough
Bethel	Matanuska-Susitna Borough
Dillingham	Valdez-Cordova
Bristol Bay Borough	Aleutian Islands
Kodiak Island Borough	
317. Alaska 3—Haines	Sitka Borough
Haines Borough	Skagway-Yakutat-Angoon
Juneau Borough	Prince of Wales-Outer Ketchikan
Wrangell-Petersburg	
Ketchikan-Gateway Borough	

ARIZONA

318. Arizona 1—Mohave	
Mohave	
319. Arizona 2—Coconino	Coconino
	Yavapai
320. Arizona 3—Navajo	Apache
Navajo	
321. Arizona 4—Yuma	
Yuma	
322. Arizona 5—Gila	Pinal
Gila	
323. Arizona 6—Graham	Santa Cruz
Graham	Cochise
Greenlee	

ARKANSAS

324. Arkansas 1—Madison	Carrol
Madison	Boone
	Newton

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325. Arkansas 2—Marion	**Izard**
Marion	Stone
Baxter	Searcy
Fulton	
326. Arkansas 3—Sharp	**Lawrence**
Sharp	Independence
Randolph	Jackson
327. Arkansas 4—Clay	**Craighead**
Clay	Poinsett
Greene	Mississippi
328. Arkansas 5—Cross	**Monroe**
Cross	Phillips
St. Francis	Arkansas
Lee	
329. Arkansas 6—Cleburne	**White**
Cleburne	Woodruff
	Prairie
330. Arkansas 7—Pope	**Perry**
Pope	Conway
Yell	Van Buren
331. Arkansas 8—Franklin	**Johnson**
Franklin	Logan
	Scott
332. Arkansas 9—Polk	**Pike**
Polk	Howard
Montgomery	Sevier
333. Arkansas 10—Garland	**Clark**
Garland	Dallas
Hot Spring	Grant
334. Arkansas 11—Hempstead	**Lafayette**
Hempstead	Nevada
	Columbia
335. Arkansas 12—Ouchita	**Cleveland**
Ouchita	Lincoln
Calhoun	Drew
Bradley	Ashley
Union	Desha
	Chicot

CALIFORNIA

336. California 1—Del Norte	**Siskiyou**
Del Norte	Humboldt
	Trinity
337. California 2—Modoc	**Lassen**
Modoc	Plumas
338. California 3—Alpine	**Calaveras**
Alpine	Tuolumne
Amador	Mariposa
339. California 4—Madera	**Merced**
Madera	San Benito
340. California 5—San Luis Obispo	San Luis Obispo
341. California 6—Mono	**Inyo**
Mono	
342. California 7—Imperial	**Imperial**
343. California 8—Tehama	**Glenn**
Tehama	Colusa
344. California 9—Mendocino	**Mendocino**
Mendocino	Lake
345. California 10—Sierra	**Nevada**
Sierra	
346. California 11—El Dorado	**El Dorado**
347. California 12—Kings	
Kings	

COLORADO

348. Colorado 1—Moffat	**Routt**
Moffat	Jackson
Rio Blanco	Grand
349. Colorado 2—Logan	**Morgan**
Logan	Washington
Sedgwick	Yuma
Phillips	
350. Colorado 3—Garfield	**Pitkin**
	Gunnison
Garfield	Delta
Eagle	Mesa
Summit	Montrose
Clear Creek	
351. Colorado 4—Park	**Chaffee**
Park	Fremont
Lake	Custer
352. Colorado 5—Elbert	**Kit Carson**
Elbert	Cheyenne
Lincoln	
353. Colorado 6—San Miguel	**San Juan**
	Hinsdale
San Miguel	Montezuma
ouray	La Plata
Dolores	
354. Colorado 7—Saguache	**Rio Grande**
	Alamosa
Saguache	Conejos
Mineral	Archuleta
355. Colorado 8—Kiowa	**Otero**
Kiowa	Bent
Crowley	Prowers
356. Colorado 9—Costilla	**Las Animas**
Costilla	Baca
Huerfano	

CONNECTICUT

357. Connecticut 1—Litchfield	**Litchfield**
358. Connecticut 2—Windham	**Windham**

DELAWARE

359. Delaware 1—Kent	**Sussex**
Kent	

FLORIDA

360. Florida 1—Collier	**Hendry**
Collier	
361. Florida 2—Glades	**Okeechobee**
Glades	Indian River
Highlands	
362. Florida 3—Hardee	**De Soto**
Hardee	Charlotte
363. Florida 4—Citrus	**Lake**
Citrus	Sumter
Hernando	
364. Florida 5—Putnam	**Flagler**
Putnam	
365. Florida 6—Dixie	**Levy**
Dixie	Gilchrist
366. Florida 7—Hamilton	**Columbia**
Hamilton	Union
Suwannee	
367. Florida 8—Jefferson	**Taylor**
Jefferson	Lafayette
Madison	
368. Florida 9—Calhoun	**Liberty**
Calhoun	Franklin
Gulf	
369. Florida 10—Walton	**Jackson**
Walton	Washington
Holmes	
370. Florida 11—Monroe	
Monroe	

GEORGIA

371. Georgia 1—Whitfield	**Pickens**
	Gilmer
Whitfield	Fannin
Murray	Union
Gordon	Towns
372. Georgia 2—Dawson	**Banks**
Dawson	Franklin
Lumpkin	Stephens
White	Rabun
Habersham	Barrow
Hall	
373. Georgia 3—Chattooga	**Floyd**
	Polk
Chattooga	Bartow
374. Georgia 4—Jasper	**Taliaferro**
Jasper	Wilkes
Putnam	Lincoln
Morgan	Elbert
Greene	Hart
Oglethorpe	
375. Georgia 5—Haralson	**Heard**
Haralson	Troup
Carroll	Coweta
376. Georgia 6—Spalding	**Monroe**
Spalding	Crawford
Lamar	Taylor
Upson	Talbot
Pike	Harris
Meriwather	
377. Georgia 7—Hancock	**Laurens**
Hancock	Washington
Baldwin	Johnson
Wilkinson	
378. Georgia 8—Warren	**Bullock**
Warren	Screven
Glascock	Jenkins
Jefferson	Burke
Emanuel	Treutlen
Candler	
379. Georgia 9—Marion	**Webster**
Marion	Terrell
Schley	Randolph
Macon	Clay
Dooly	Quitman
Crisp	Stewart
Sumter	

380. Georgia 10—Bleckley	**Ben Hill**
	Turner
Bleckley	Irwin
Pulaski	Coffee
Dodge	Jeff Davis
Wilcox	Wheeler
Telfair	Montgomery
381. Georgia 11—Toombs	**Bacon**
Toombs	Ware
Tattnall	Pierce
Evans	Brantley
Appling	Charlton
382. Georgia 12—Liberty	**Wayne**
Liberty	Glynn
Long	Camden
Mcintosh	
383. Georgia 13—Early	**Decatur**
Early	Mitchell
Calhoun	Grady
Baker	Thomas
Miller	Seminole
384. Georgia 14—Worth	**Lanier**
Worth	Lowndes
Tift	Clinch
Berrien	Echols
Colquitt	Atkinson
Cook	Brooks

HAWAII

385. Hawaii 1—Kauai	
Kauai	
386. Hawaii 2—Maui	**Kalawao**
Maui	
387. Hawaii 3—Hawaii	
Hawaii	

IDAHO

388. Idaho 1—Boundary	**Benewah**
Boundary	Latah
Bonner	Nez Perce
Kootenai	Lewis
Shoshone	Clearwater

ILLINOIS

389. Idaho 2—Idaho	**Valley**
Idaho	Payette
Adams	Gem
Washington	
390. Idaho 3—Lemhi	**Custer**
Lemhi	Boise
391. Idaho 4—Elmore	**Owyhee**
Elmore	Canyon
392. Idaho 5—Butte	**Lincoln**
Butte	Twin Falls
Blaine	Jerome
Camas	Minidoka
Gooding	Cassia
393. Idaho 6—Clark	**Bonneville**
Clark	Power
Fremont	Bannock
Jefferson	Caribou
Madison	Oneida
Teton	Franklin
Bingham	Bear Lake
394. Illinois 1—Jo Daviess	**Ogle**
	De Kalb
Jo Daviess	Whiteside
Stephenson	Lee
Carroll	
395. Illinois 2—Bureau	**Marshall**
Bureau	Livingston
La Salle	Ford
Stark	Iroquois
Putnam	
396. Illinois 3—Mercer	**Hancock**
Mercer	Fulton
Knox	McDonough
Warren	Schuyler
Henderson	
397. Illinois 4—Adams	**Scott**
Adams	Morgan
Brown	Calhoun
Cass	Greene
Pike	Macoupin
398. Illinois 5—Mason	**De Witt**
Mason	Piatt
Logan	Moultrie

INDIANA

399. Illinois 6—Montgomery	**Bond**
	Fayette
Montgomery	Effingham
Christian	Marion
Shelby	
400. Illinois 7—Vermilion	**Cumberland**
Vermilion	Jasper
Douglas	Crawford
Coles	Clark
Edgar	
401. Illinois 8—Washington	**Jackson**
	Williamson
Washington	Union
Jefferson	Johnson
Randolph	Alexander
Perry	Pulaski
Franklin	Massac
402. Illinois 9—Clay	**Hamilton**
Clay	White
Richland	Saline
Lawrence	Gallatin
Wayne	Pope
Edwards	Hardin
Wabash	
403. Indiana 1—Newton	**Pulaski**
Newton	Jasper
La Porte	White
Starke	
404. Indiana 2—Kosciusko	**Noble**
	Steuben
Kosciusko	Lagrange
405. Indiana 3—Huntington	**Grant**
	Blackford
Huntington	jay
406. Indiana 4—Miami	**Carroll**
Miami	Clinton
Fulton	Wabash
Cass	
407. Indiana 5—Warren	**Parke**
Warren	Putnam
Fountain	Benton
Montgomery	
408. Indiana 6—Randolph	**Rush**
	Fayette
Randolph	Union
Henry	Franklin
Wayne	
409. Indiana 7—Owen	**Martin**
Owen	Pike
Greene	Dubois
Knox	Perry
Daviess	Spencer
410. Indiana 8—Brown	**Orange**
Brown	Washington
Bartholomew	Crawford
Lawrence	Harrison
Jackson	
411. Indiana 9—Decatur	**Ohio**
Decatur	Switzerland
Jennings	Jefferson
Ripley	Scott

IOWA

412. Iowa 1—Mills	**Fremont**
Mills	Page
Montgomery	Taylor
Adams	
413. Iowa 2—Union	**Ringgold**
Union	Decatur
Clarke	Wayne
Lucas	
414. Iowa 3—Monroe	**Davis**
Monroe	Van Buren
Wapello	Jefferson
Appanoose	
415. Iowa 4—Muscatine	**Henry**
Muscatine	Des Moines
Louisa	Lee
416. Iowa 5—Jackson	**Cedar**
Jackson	Clinton
Jones	
417. Iowa 6—Iowa	**Mahaska**
Iowa	Jasper
Keokuk	Marion
Poweshiek	Washington
418. Iowa 7—Audubon	**Cass**
Audubon	Adair
Guthrie	Madison
419. Iowa 8—Monona	**Harrison**
Monona	Shelby
Crawford	
420. Iowa 9—Ida	**Calhoun**
Ida	Carroll
Sac	Greene
421. Iowa 10—Humboldt	**Hamilton**
Humboldt	Boone
Wright	Story
Webster	
422. Iowa 11—Hardin	**Marshall**
Hardin	Tama
Grundy	Benton
423. Iowa 12—Winneshiek	**Fayette**
	Clayton
Winneshiek	Buchanan
Allamakee	Delaware
424. Iowa 13—Mitchell	**Floyd**
Mitchell	Chickasaw
Howard	Butler
425. Iowa 14—Kossuth	**Hancock**
Kossuth	Cerro Gordo
Winnebago	Franklin
Worth	
426. Iowa 15—Dickinson	**Pocahontas**
Dickinson	Buena Vista
Emmet	Clay
Palo Alto	
427. Iowa 16—Lyon	**O'Brien**
Lyon	Plymouth
Osceola	Cherokee
Sioux	

KANSAS

428. Kansas 1—Cheyenne	Decatur
Cheyenne	Sherman
Rawlins	Thomas
	Sheridan
429. Kansas 2—Norton	Graham
Norton	Rooks
Phillips	Osborne
Smith	
430. Kansas 3—Jewell	Cloud
Jewell	Clay
Republic	Lincoln
Washington	Ottawa
Mitchell	
431. Kansas 4—Marshall	Riley
Marshall	Pottawatomie
Nemaha	Geary
432. Kansas 5—Brown	Jackson
Brown	Atchison
Doniphan	Leavenworth
433. Kansas 6—Wallace	Greeley
Wallace	Wichita
Logan	Scott
Gove	Lane
434. Kansas 7—Trego	Ness
Trego	Rush
Ellis	Barton
Russel	Pawnee
435. Kansas 8—Ellsworth	Rice
Ellsworth	McPherson
Saline	Marion
Dickinson	
436. Kansas 9—Morris	Chase
Morris	Lyon
Wabaunsee	Greenwood
437. Kansas 10—Franklin	Woodson
Franklin	Allen
Coffey	Bourbon
Anderson	Miami
Linn	
438. Kansas 11—Hamilton	Grant
Hamilton	Haskell
Kearney	Morton
Finney	Stevens
Stanton	Seward
439. Kansas 12—Hodgeman	Ford
Hodgeman	Meade
Gray	Clark
440. Kansas 13—Edwards	Pratt
Edwards	Comanche
Stafford	Barber
Kiowa	
441. Kansas 14—Reno	Harper
Reno	Sumner
Harvey	Cowley
Kingman	
442. Kansas 15—Elk	Chautauqua
Elk	Montgomery
Wilson	Labette
Neosho	Cherokee
Crawford	

KENTUCKY

443. Kentucky 1—Fulton	McCracken
Fulton	Graves
Hickman	Marshall
Carlisle	Calloway
Ballard	
444. Kentucky 2—Union	Livingston
Union	Caldwell
Webster	Lyon
Hopkins	Trigg
Crittenden	
445. Kentucky 3—Meade	Butler
Meade	Edmondson
Breckinridge	Todd
Hancock	Logan
Ohio	Warren
Grayson	Simpson
McLean	Allen
Muhlenberg	
446. Kentucky 4—Spencer	Washington
	Mercer
Spencer	Marion
Anderson	Larue
Hardin	Green
Nelson	Taylor
447. Kentucky 5—Barren	Russell
Barren	Clinton
Monroe	Wayne
Metcalfe	McCreary
Adair	Hart
Cumberland	
448. Kentucky 6—Madison	Casey
	Lincoln
Madison	Rockcastle
Garrard	Pulaski
Boyle	Laurel
449. Kentucky 7—Trimble	Franklin
	Owen
Trimble	Grant
Carroll	Pendleton
Gallatin	Harrison
Henry	Shelby
450. Kentucky 8—Mason	Rowan
Mason	Bracken
Lewis	Robertson
Fleming	Nicholas
Bath	Menifee
Montgomery	
451. Kentucky 9—Elliott	Johnson
Elliott	Martin
Lawrence	Floyd
Morgan	Pike
Magoffin	
452. Kentucky 10—Powell	Jackson
	Owsley
Powell	Breathitt
Estill	Perry
Wolfe	Knott
Lee	Letcher
453. Kentucky 11—Clay	Knox
Clay	Bell
Leslie	Harlan
Whitley	

LOUISIANA

454. Louisiana 1—Claiborne	Lincoln
	Bienville
Claiborne	Jackson
Union	
455. Louisiana 2—Morehouse	Madison
	Franklin
Morehouse	Tensas
West Carroll	East Carroll
Richland	
456. Louisiana 3—De Soto	Sabine
	Natchitoches
De Soto	Vernon
Red River	
457. Louisiana 4—Caldwell	de Salle
	Catahoula
Caldwell	Condordia
Winn	
458. Louisiana 5—Beauregard	St. Landry
	Acadia
Beauregard	Jefferson Davis
Allen	Cameron
Evangeline	Vermilion
Avoyelles	Pointe Coupee
459. Louisiana 6—Iberville	Iberia
	St. Mary
Iberville	Assumption
460. Louisiana 7—West Feliciana	St.Helena
	Tangipahoa
West Feliciana	Washington
East Feliciana	
461. Louisiana 8—St. James	St. Charles
	St. John the Baptist
St. James	
462. Louisiana 9—Plaquemines	Plaquemines

MAINE

463. Maine 1—Oxford	Franklin
Oxford	
464. Maine 2—Somerset	Piscataquis
Somerset	Aroostook
465. Maine 3—Kennebec	Knox
Kennebec	Lincoln
Waldo	
466. Maine 4—Washington	Washington
	Hancock

MARYLAND

467. Maryland 1—Garrett	Garrett
468. Maryland 2—Kent	Somerset
Kent	Wicomico
Talbot	Worcester
Caroline	Calvert
Dorchester	Queen Anne's
St. Mary's	
469. Maryland 3—Frederick	Frederick

MASSACHUSETTS

470. Massachusetts 1—Franklin	Franklin
471. Massachusetts 2—Barnstable	Dukes
	Nantucket
Barnstable	

MICHIGAN

472. Michigan 1—Gogebic	Baraga
	Iron
Gogebic	Marquette
Ontonagon	Dickinson
Houghton	Menominee
Keweenaw	
473. Michigan 2—Alger	Luce
	Chippewa
Alger	Mackinac
Delta	
Schoolcraft	
474. Michigan 3—Emmet	Antrim
	Grand Traverse
Emmet	Kalkaska
Charlevoix	

475. Michigan 4—Cheboygan	Montmorency
	Alpena
Cheboygan	Crawford
Presque Isle	Oscoda
Otsego	Alcona
476. Michigan 5—Manistee	Mason
	Lake
Manistee	Osceola
Wexford	Leelanau
Missaukee	Benzie
477. Michigan 6—Roscommon	Iosco
	Clare
Roscommon	Gladwin
Ogemaw	Arenac
478. Michigan 7—Newaygo	Isabella
	Montcalm
Newaygo	Gratiot
Mecosta	
479. Michigan 8—Allegan	
Allegan	
480. Michigan 9—Cass	Hillsdale
	Lenawee
Cass	Branch
St. Joseph	
481. Michigan 10—Tuscola	Sanilac
	Huron
Tuscola	

MINNESOTA

482. Minnesota 1—Kittson	Marshall
	Pennington
Kittson	Red Lake
Roseau	
483. Minnesota 2—Lake of the Woods	Clearwater
	Norman
Lake of the Woods	Mahnomen
Beltrami	
484. Minnesota 3—Koochiching	Koochiching
	Itasca
485. Minnesota 4—Lake	Cook
Lake	
486. Minnesota 5—Wilkin	Douglas
	Big Stone
Wilkin	Stevens
Becker	Pope
Otter Tail	Swift
Traverse	Todd
Grant	Wadena
487. Minnesota 6—Hubbard	Aitkin
	Carlton
Hubbard	Mille Lacs
Cass	Kanabec
Crow Wing	Pine
Morrison	Isanti
488. Minnesota 7—Chippewa	Renville
	McLeod
Chippewa	Sibley
Kandiyohi	Nicollet
Meeker	
489. Minnesota 8—Lac qui Parle	Lincoln
	Lyon
Lac qui Parle	Redwood
Yellow Medicine	
490. Minnesota 9—Pipestone	Nobles
	Jackson
Pipestone	Martin
Murray	Brown
Watonwan	Cottonwood
Rock	
491. Minnesota 10—Le Sueur	Waseca
	Steele
Le Sueur	Faribault
Rice	Freeborn
Blue Earth	
492. Minnesota 11—Goodhue	Winona
	Mower
Goodhue	Fillmore
Wabasha	Houston
Dodge	

MISSISSIPPI

493. Mississippi 1—Tunica	Coahoma
	Quitman
Tunica	Panola
Tate	Lafayette
Marshall	
494. Mississippi 2—Benton	Prentiss
	Union
Benton	Pontotoc
Tippah	Lee
Alcorn	Itawamba
Tishomingo	
495. Mississippi 3—Bolivar	Tallahatchie
	Leflore
Bolivar	Carroll
Sunflower	Holmes
496. Mississippi 4—Yalobusha	Calhoun
	Chickasaw
Yalobusha	Clay
Granada	Monroe
497. Mississippi 5—Washington	Warren
	Sharkey
Washington	Humphreys
Issaquena	Yazoo
498. Mississippi 6—Montgomery	Oktibbeha
	Lowndes
Montgomery	Attala
Webster	Winston
Choctaw	Noxubee
499. Mississippi 7—Leake	Kemper
	Scott
Leake	Newton
Neshoba	Lauderdale
500. Mississippi 8—Claiborne	Franklin
	Wilkinson
Claiborne	Amite
Jefferson	Lincoln
Adams	
501. Mississippi 9—Copiah	Lawrence
	Jefferson Davis
Copiah	Walthall
Simpson	Marion
502. Mississippi 10—Smith	Clarke
	Covington
Smith	Jones
Jasper	Wayne
503. Mississippi 11—Lamar	Perry
	Greene
Lamar	George
Forrest	Pearl River

MISSOURI

504. Missouri 1—Atchison	Worth
	Gentry
Atchison	Holt
Nodaway	
505. Missouri 2—Harrison	Putnam
	Grundy
Harrison	Sullivan
Mercer	
506. Missouri 3—Schuyler	Clark
	Adair
Schuyler	Knox
Scotland	Lewis
507. Missouri 4—De Kalb	Caldwell
De Kalb	Livingston
Daviess	Carroll
Clinton	
508. Missouri 5—Linn	Shelby
Linn	Chariton
Macon	Randolph
509. Missouri 6—Marion	Ralls
Marion	Audrain
Monroe	Pike
510. Missouri 7—Saline	Pettis
Saline	Cooper
Howard	Lafayette
Johnson	
511. Missouri 8—Callaway	Montgomery
	Lincoln
Callaway	Warren
512. Missouri 9—Bates	Vernon
Bates	St. Clair
Henry	Cedar
513. Missouri 10—Benton	Camden
Benton	Polk
Hickory	Dallas
514. Missouri 11—Moniteau	Cole
	Miller
Moniteau	Osage
Morgan	Gasconade
515. Missouri 12—Maries	Dent
Maries	Pulaski
Crawford	Phelps
516. Missouri 13—Washington	St. Francois
	Ste. Genevieve
Washington	
517. Missouri 14—Barton	Lawrence
Barton	McDonald
Dade	Barry
518. Missouri 15—Stone	Ozark
Stone	Douglas
Taney	Howell
519. Missouri 16—Laclede	Webster
	Wright
Laclede	Texas
520. Missouri 17—Shannon	Iron
	Oregon
Shannon	Carter
Reynolds	Ripley
521. Missouri 18—Perry	Wayne
Perry	Bollinger
Madison	Cape Girardeau
522. Missouri 19—Stoddard	New Madrid
	Dunklin
Stoddard	Pemiscot
Scott	Butler
Mississippi	

MONTANA

523. Montana 1—Lincoln	Sanders
Lincoln	Lake
Flathead	Teton
Glacier	Pondera

524. Montana 2—Toole	**Hill**
Toole	Blaine
Liberty	Chouteau
525. Montana 3—Phillips	**Valley**
Phillips	Garfield
526. Montana 4—Daniels	**McCone**
Daniels	Richland
Sheridan	Dawson
Roosevelt	Wibaux
527. Montana 5—Mineral	**Lewis and Clark**
Mineral	Ravalli
Missoula	Granite
Powell	
528. Montana 6—Deer Lodge	**Broadwater**
	Meagher
Deer Lodge	Judith Basin
Silver Bow	Wheatland
Jefferson	
529. Montana 7—Fergus	**Musselshell**
Fergus	Sweet Grass
Petroleum	Stillwater
Golden Valley	
530. Montana 8—Beaverhead	**Madison**
	Gallatin
Beaverhead	Park
531. Montana 9—Carbon	**Treasure**
Carbon	Rosebud
Big Horn	
532. Montana 10—Prairie	**Fallon**
Prairie	Powder River
Custer	Carter

NEBRASKA

533. Nebraska 1—Sioux	**Banner**
Sioux	Kimball
Dawes	Morrill
Box Butte	Cheyenne
Sheridan	Garden
Scotts Bluff	Deuel
534. Nebraska 2—Cherry	**Boyd**
Cherry	Holt
Keya Paha	Garfield
Brown	Wheeler
Rock	
535. Nebraska 3—Knox	**Madison**
Knox	Stanton
Antelope	Wayne
Cedar	Cuming
Dixon	Thurston
Pierce	Burt
536. Nebraska 4—Grant	**Blaine**
Grant	Loup
Arthur	Custer
Hooker	Valley
McPherson	Sherman
Thomas	Greeley
Logan	Howard
537. Nebraska 5—Boone	**Colfax**
Boone	Butler
Nance	Dodge
Merrick	Washington
Platte	Saunders
Polk	
538. Nebraska 6—Keith	**Lincoln**
Keith	Dawson
Perkins	Buffalo
539. Nebraska 7—Hall	**York**
Hall	Seward
Hamilton	
540. Nebraska 8—Chase	**Gosper**
Chase	Furnas
Dundy	Phelps
Hayes	Harlan
Hitchock	Kearney
Frontier	Franklin
Red Willow	
541. Nebraska 9—Adams	**Fillmore**
Adams	Thayer
Webster	Saline
Clay	Jefferson
Nuckolls	
542. Nebraska 10—Cass	**Johnson**
Cass	Nemaha
Otoe	Pawnee
Gage	Richardson

NEVADA

543. Nevada 1—Humboldt	**Pershing**
	Churchill
Humboldt	
544. Nevada 2—Lander	**Eureka**
Lander	Elko
545. Nevada 3—Storey	**Lyon**
Storey	Carson City
Douglas	
546. Nevada 4—Mineral	**Esmeralda**
Mineral	Nye
547. Nevada 5—White Pine	**White Pine**
	Lincoln

NEW HAMPSHIRE

548. New Hampshire 1—Coos	**Grafton**
	Sullivan
Coos	Cheshire
549. New Hampshire 2—Carroll	**Belknap**
	Merrimack
Carroll	

NEW JERSEY

550. New Jersey 1—Hunterdon	**Hunterdon**
551. New Jersey 2—Ocean	
Ocean	
552. New Jersey 3—Sussex	**Sussex**

NEW MEXICO

553. New Mexico 1—San Juan	**Cibola**
	Rio Arriba
San Juan	Taos
Mckinley	
554. New Mexico 2—Colfax	**Union**
	Mora
Colfax	Harding
555. New Mexico 3—Catron	**Valencia**
	Socorro
Catron	Sierra
556. New Mexico 4—Santa Fe	**De Baca**
	Quay
Santa Fe	Curry
San Miguel	Roosevelt
Torrance	Los Alamos
Guadalupe	
557. New Mexico 5—Grant	**Hidalgo**
	Luna
Grant	
558. New Mexico 6—Lincoln	**Otero**
	Eddy
Lincoln	Lea
Chaves	

NEW YORK

559. New York 1—Jefferson	**St. Lawrence**
	Lewis
Jefferson	
560. New York 2—Franklin	**Essex**
	Hamilton
Franklin	Fulton
Clinton	
561. New York 3—Chautauqua	**Genesee**
	Wyoming
Chautauqua	Allegany
Cattaraugus	Steuben
562. New York 4—Yates	**Cayuga**
Yates	Tompkins
Seneca	Cortland
Schuyler	Chenango
563. New York 5—Otsego	**Schoharie**
	Sullivan
Otsego	Ulster
Delaware	
564. New York 6—Columbia	**Columbia**
	Greene

NORTH CAROLINA

565. North Carolina 1—Cherokee	**Macon**
	Swain
Cherokee	Haywood
Clay	Jackson
Graham	Transylvania
566. North Carolina 2—Yancey	**Avery**
	Watauga
Yancey	Caldwell
Mitchell	
567. North Carolina 3—Ashe	**Wilkes**
	Alleghany
Ashe	Surry
568. North Carolina 4—Henderson	**Rutherford**
	Cleveland
Henderson	McDowell
Polk	Lincoln
569. North Carolina 5—Anson	**Montgomery**
	Richmond
Anson	Scotland
570. North Carolina 6—Chatham	**Moore**
	Lee
Chatham	
571. North Carolina 7—Rockingham	**Granville**
	Vance
Rockingham	Warren
Caswell	Franklin
Person	
572. North Carolina 8—Northampton	**Nash**
	Wilson
Northampton	Edgecomb
Halifax	
573. North Carolina 9—Camden	**Chowan**
	Gates
Camden	Hertford
Pasquotank	Bertie
Perquimans	
574. North Carolina 10—Harnett	**Johnston**
	Wayne
Harnett	

575. North Carolina 11—Hoke	**Robeson**
	Bladen
Hoke	Columbus
576. North Carolina 12—Sampson	**Duplin**
	Pender
Sampson	
577. North Carolina 13—Greene	**Jones**
	Craven
Greene	Carteret
Lenoir	Pamlico
578. North Carolina 14—Pitt	**Tyrrell**
	Dare
Pitt	Beaufort
Martin	Hyde
Washington	
579. North Carolina 15—Cabarrus	**Iredell**
	Davie
Cabarrus	Stanly
Rowan	

NORTH DAKOTA

580. North Dakota 1—Divide	**Burke**
	Renville
Divide	McLean
Williams	Ward
Mountrail	
581. North Dakota 2—Bottineau	**Pierce**
	Benson
Bottineau	Towner
Rolette	Cavalier
McHenry	Ramsey
582. North Dakota 3—Barnes	**Nelson**
	Griggs
Barnes	Steele
La Moure	Traill
Dickey	Ransom
Pembina	Sargent
Walsh	Richland
583. North Dakota 4—McKenzie	**Bowman**
	Hettinger
McKenzie	Adams
Dunn	Grant
Billings	Sioux
Golden Valley	Mercer
Stark	Oliver
Slope	
584. North Dakota 5—Kidder	**Foster**
	Sheridan
Kidder	Wells
Stutsman	Logan
Emmons	McIntosh
Eddy	

OHIO

585. Ohio 1—Williams	**Henry**
Williams	Paulding
Defiance	
586. Ohio 2—Sandusky	**Seneca**
Sandusky	Huron
Erie	
587. Ohio 3—Ashtabula	
Ashtabula	
588. Ohio 4—Mercer	**Shelby**
Mercer	Logan
Darke	Union
589. Ohio 5—Hancock	**Wyandot**
Hancock	Crawford
Hardin	Marion
590. Ohio 6—Morrow	**Wayne**
Morrow	Holmes
Ashland	Coshocton
Knox	Licking
591. Ohio 7—Tuscarawas	**Guernsey**
Tuscarawas	Noble
Harrison	Monroe
Muskingum	
592. Ohio 8—Clinton	**Highland**
Clinton	Brown
Fayette	Adams
593. Ohio 9—Ross	**Jackson**
Ross	Scioto
Pike	Gallia
594. Ohio 10—Perry	**Athens**
Perry	Vinton
Morgan	Meigs
Hocking	
595. Ohio 11—Columbiana	**Columbiana**

OKLAHOMA

596. Oklahoma 1—Cimarron	**Texas**
	Beaver
Cimarron	
597. Oklahoma 2—Harper	**Woods**
	Alfalfa
Harper	Major
Ellis	Woodward
598. Oklahoma 3—Grant	**Logan**
Grant	Pawnee
Kay	Payne
Noble	Lincoln
599. Oklahoma 4—Nowata	**Washington**
	Delaware
Nowata	Cherokee
Craig	Adair
Ottawa	
600. Oklahoma 5—Roger Mills	**Custer**
	Blaine
Roger Mills	Kingfisher
Dewey	
601. Oklahoma 6—Seminole	**Hughes**
	McIntosh
Seminole	Muskogee
Okfuskee	Pittsburg
Okmulgee	
602. Oklahoma 7—Beckham	**Greer**
	Kiowa
Beckham	Caddo
Washita	Grady
Harmon	
603. Oklahoma 8—Jackson	**Cotton**
	Stephens
Jackson	Jefferson
Tillman	
604. Oklahoma 9—Garvin	**Pontotoc**
	Johnston
Garvin	Marshall
Murray	Coal
Carter	Atoka
Love	Bryan
605. Oklahoma 10—Haskell	**Pushmataha**
	Choctaw
Haskell	McCurtain
Latimer	

OREGON

606. Oregon 1—Clatsop	**Tillamook**
Clatsop	Yamhill
Columbia	
607. Oregon 2—Hood River	**Sherman**
	Gilliam
Hood River	Morrow
Wasco	Jefferson
608. Oregon 3—Umatilla	**Grant**
Umatilla	Baker
Union	Malheur
Wallowa	
609. Oregon 4—Lincoln	**Benton**
Lincoln	Linn
610. Oregon 5—Coos	**Curry**
Coos	Josephine
Douglas	
611. Oregon 6—Crook	**Harney**
Crook	Klamath
Deschutes	Lake

PENNSYLVANIA

612. Pennsylvania 1—Crawford	**Warren**
	Venango
Crawford	Forest
613. Pennsylvania 2—McKean	**Elk**
	Cameron
McKean	
614. Pennsylvania 3—Potter	**Tioga**
	Clinton
Potter	
615. Pennsylvania 4—Bradford	**Sullivan**
	Wyoming
Bradford	Wheeler
616. Pennsylvania 5—Wayne	**Wayne**
	Pike
617. Pennsylvania 6—Lawrence	**Butler**
	Clarion
Lawrence	Armstrong
618. Pennsylvania 7—Jefferson	**Indiana**
	Clearfield
Jefferson	
619. Pennsylvania 8—Union	**Snyder**
	Montour
Union	Northumberland
Columbia	Schuylkill
620. Pennsylvania 9—Greene	**Greene**
	Fayette
621. Pennsylvania 10—Bedford	**Fulton**
	Franklin
Bedford	
622. Pennsylvania 11—Huntington	**Mifflin**
	Juniata
Huntington	
623. Pennsylvania 12—Lebanon	**Lebanon**

RHODE ISLAND

624. Rhode Island 1—Newport	**Newport**

SOUTH CAROLINA

625. South Carolina 1—Oconee	**Oconee**

626. South Carolina 2—	**Edgefield**
Laurens	**Saluda**
Laurens	Newberry
Greenwood	Abbeville
McCormick	
627. South Carolina 3—	**Union**
Cherokee	**Chester**
Cherokee	Fairfield
628. South Carolina 4—	**Dillon**
Chesterfield	**Marlboro**
Chesterfield	Darlington
Kershaw	
629. South Carolina 5—	**Marion**
Georgetown	**Horry**
Georgetown	
630. South Carolina 6—	**Williamsburg**
Clarendon	**Lee**
Clarendon	Sumter
631. South Carolina 7—	**Barnwell**
Calhoun	**Bamberg**
Calhoun	Allendale
Orangeburg	
632. South Carolina 8—	**Colleton**
Hampton	**Jasper**
Hampton	Beaufort
633. South Carolina 9—	**Lancaster**
Lancaster	**York**

SOUTH DAKOTA

634. South Dakota 1—	**Perkins**
Harding	**Butte**
Harding	Lawrence
635. South Dakota 2—	**Dewey**
Corson	**Campbell**
Corson	Walworth
Ziebach	Potter
636. South Dakota 3—	**Brown**
McPherson	**Faulk**
McPherson	Spink
Edmounds	
637. South Dakota 4—	**Clark**
Marshall	**Grant**
Marshall	Codington
Roberts	Hamlin
Day	Deuel
638. South Dakota 5—	**Fall River**
Custer	**Shannon**
Custer	
639. South Dakota 6—	**Jones**
Haakon	**Lyman**
Haakon	Mellette
Stanley	Todd
Jackson	Tripp
Bennett	Gregory
640. South Dakota 7—	**Jerauld**
Sully	**Brule**
Sully	Aurora
Hughes	Davison
Hyde	Douglas
Hand	Charles Mix
Buffalo	
641. South Dakota 8—	**Sanborn**
Kingsbury	**Miner**
Kingsbury	Lake
Brookings	Moody
Beadle	
642. South Dakota 9—	**Lincoln**
Hanson	**Bon Homme**
Hanson	Yankton
McCook	Clay
Hutchinson	Union
Turner	

TENNESSEE

643. Tennessee 1—Lake	**Weakley**
Lake	Henry
Obion	Carroll
Dyer	Benton
Lauderdale	Stewart
Crockett	Houston
Gibson	Humphreys
644. Tennessee 2—	**Warren**
Cannon	**White**
Cannon	Van Buren
De Kalb	Grundy
Coffee	Smith
645. Tennessee 3—	**Pickett**
Macon	**Overton**
Macon	Fentress
Trousdale	Scott
Roane	Morgan
Cumberland	Campbell
Clay	Clairborne
Jackson	Hancock
Putman	
646. Tennessee 4—	**Cocke**
Hamblen	**Grainger**
Hamblen	Jefferson
Greene	Sevier
647. Tennessee 5—	**McNairy**
Fayette	**Hardin**
Fayette	Decatur
Haywood	Perry
Madison	Wayne
Hardeman	Hickman
Chester	Lewis
Henderson	Lawrence
648. Tennessee 6—Giles	**Moore**
Giles	Bedford
Marshall	Franklin
Lincoln	
649. Tennessee 7—	**Bradley**
Bledsoe	**McMinn**
Bledsoe	Polk
Rhea	Monroe
Meigs	Loudon
650. Tennessee 8—	**Johnson**
Johnson	
651. Tennessee 9—Maury	
Maury	

TEXAS

652. Texas 1—Dallam	**Deaf Smith**
Dallam	Sherman
Hartley	Moore
Oldham	
653. Texas 2—Hansford	**Carson**
Hansford	Gray
Ochiltree	Wheeler
Lipscomb	Armstrong
Hutchinson	Donley
Roberts	Collingsworth
Hemphill	
654. Texas 3—Parmer	**Hale**
Parmer	Cochran
Castro	Hockley
Swisher	Yoakum
Bailey	Terry
Lamb	Lynn
655. Texas 4—Briscoe	**Crosby**
Briscoe	Dickens
Hall	King
Childress	Garza
Floyd	Kent
Motley	Stonewall
Cottle	
656. Texas 5—Hardeman	**Throckmorton**
Hardeman	Baylor
Foard	Wilbarger
Knox	Archer
Haskell	Young
Shackelford	Stephens
657. Texas 6—Jack	**Montague**
Jack	Cooke
Palo Pinto	
658. Texas 7—Fannin	**Red River**
Fannin	Franklin
Hunt	Titus
Rains	Camp
Lamar	Upshur
Delta	Morris
Hopkins	Cass
Wood	Marion
659. Texas 8—Gaines	**Glasscock**
Gaines	Scurry
Andrews	Mitchell
Dawson	Sterling
Martin	Fisher
Borden	Nolan
Howard	Coke
660. Texas 9—Runnels	**Comanche**
Runnels	Erath
Coleman	Somervell
Eastland	Hamilton
Brown	Bosque
Mills	Hill
661. Texas 10—Navarro	**Milam**
Navarro	Robertson
Van Zandt	Leon
Henderson	Anderson
Limestone	Freestone
Falls	
662. Texas 11—Cherokee	**Angelina**
Cherokee	San Augustine
Rusk	Shelby
Panola	Sabine
Nacogdoches	
663. Texas 12—Hudspeth	**Jeff Davis**
Hudspeth	Presidio
Culbertson	Brewster
664. Texas 13—Reeves	**Pecos**
Reeves	Terrell
665. Texas 14—Loving	**Irion**
Loving	Crockett
Ward	Schleicher
Crane	Sutton
Upton	Winkler
Reagan	
666. Texas 15—Concho	**Kerr**
Concho	Gillespie
Menard	Kendall
Llano	Blanco
Kimble	Burnet
McCulloch	Lampasas
Mason	San Saba
667. Texas 16—Burleson	**Jackson**
Burleson	Matagorda
Lee	Wharton
Bastrop	Colorado
Caldwell	Fayette
Gonzales	Austin
Lavaca	Washington

668. Texas 17—Newton	**Walker**
Newton	Grimes
Jasper	Madison
Tyler	Houston
Polk	Trinity
San Jacinto	
669. Texas 18—Edwards	**Zavala**
Edwards	Frio
Real	Dimmit
Kinney	La Salle
Uvalde	Val Verde
Medina	Bandera
Maverick	
670. Texas 19—Atascosa	**Zapata**
Atascosa	Starr
McMullen	Brooks
Duval	Kenedy
Live Oak	Kleberg
Jim Wells	Willacy
Jim Hogg	
671. Texas 20—Wilson	**De Witt**
Wilson	Refugio
Karnes	Calhoun
Bee	Aransas
Goliad	
672. Texas 21—	**Chambers**
Chambers	

UTAH

673. Utah 1—Box Elder	**Cache**
Box Elder	Rich
674. Utah 2—Morgan	**Summit**
Morgan	Wasatch
675. Utah 3—Juab	**Sanpete**
Juab	Sevier
Millard	
676. Utah 4—Beaver	**Iron**
Beaver	Washington
677. Utah 5—Carbon	**Emery**
Carbon	Grand
Daggett	Duchesne
Uintah	
678. Utah 6—Piute	**Garfield**
Piute	Kane
Wayne	San Juan

VERMONT

679. Vermont 1—	**Lamoille**
Franklin	**Washington**
Franklin	Caledonia
Orleans	Orange
Essex	
680. Vermont 2—Addison	**Windsor**
Addison	Bennington
Rutland	Windham

VIRGINIA

681. Virginia 1—Lee	**Buchanan**
Lee	Russell
Wise	Norton City
Dickenson	
682. Virginia 2—Tazewell	**Bland**
Tazewell	Wythe
Galax City	Grayson
Smyth	
683. Virginia 3—Giles	**Carroll**
Giles	Floyd
Pulaski	Patrick
Montgomery	Radford City
684. Virginia 4—Bedford	**Franklin**
Bedford	Henry
Bedford City	Martinsville City
685. Virginia 5—Bath	**Buena Vista City**
Bath	Clifton Forge City
Rockbridge	Covington City
Alleghany	Lexington City
686. Virginia 6—Highland	**Nelson**
Highland	Harrisonburg City
Augusta	Staunton City
Rockingham	Waynesboro City
687. Virginia 7—	**Halifax**
Buckingham	**Prince Edward**
Buckingham	Cumberland
Charlotte	South Boston City
688. Virginia 8—Amelia	**Mecklenburg**
Amelia	Brunswick
Nottoway	Lunenburg
689. Virginia 9—	**Surry**
Greensville	**Isle of Wight**
Greensville	Emporia City
Sussex	Franklin City
Southampton	
690. Virginia 10—	**Page**
Frederick	**Rappahannock**
Frederick	Fauquier
Clarke	Warren
Shenandoah	Winchester City
692. Virginia 11—	**Spotsylvania**
Madison	**Louisa**
Madison	Stafford
Culpeper	Fredericksburg City
Orange	
694. Virginia 12—	**Westmoreland**
Caroline	**Northumberland**
Caroline	Lancaster
King George	Mathews
King William	Northampton
King and Queen	Accomack
Essex	Middlesex
Richmond	

WASHINGTON

693. Washington 1—	**Island**
Clallam	**San Juan**
Clallam	Skagit
Jefferson	
694. Washington 2—	**Chelan**
Okanogan	**Douglas**
Okanogan	
695. Washington 3—	**Stevens**
Ferry	**Pend Oreille**
Ferry	
696. Washington 4—	**Grays Harbor**
Grays Harbor	**Mason**
697. Washington 5—	**Grant**
Kittitas	**Lincoln**
Kittitas	Adams
698. Washington 6—	**Wahkiakum**
Pacific	**Lewis**
Pacific	Cowlitz
699. Washington 7	**Skamania**
Skamania	**Klickitat**
700. Washington 8—	**Columbia**
Whitman	**Garfield**
Whitman	Asotin
Walla Walla	

WEST VIRGINIA

701. West Virginia 1—	**Jackson**
Mason	**Roane**
Mason	Calhoun
702. West Virginia 2—	**Ritchie**
Wetzel	**Gilmer**
Wetzel	Lewis
Tyler	Doddridge
Pleasants	
703. West Virginia 3—	**Harrison**
Monongalia	**Taylor**
Monongalia	Barbour
Marion	Preston
704. West Virginia 4—	**Hampshire**
Grant	**Morgan**
Grant	Berkeley
Pendleton	Jefferson
Hardy	
705. West Virginia 5—	**Webster**
Tucker	**Braxton**
Tucker	Clay
Randolph	Nicholas
Upshur	Pocahontas
706. West Virginia 6—	**Logan**
Lincoln	**Boone**
Lincoln	McDowell
Mingo	Wyoming
707. West Virginia 7—	**Mercer**
Raleigh	**Summers**
Raleigh	Monroe
Fayette	Greenbriar

WISCONSIN

708. Wisconsin 1—	**Washburn**
Burnett	**Polk**
Burnett	Barron
709. Wisconsin 2—	**Iron**
Bayfield	**Sawyer**
Bayfield	Rusk
Ashland	Price
710. Wisconsin 3—Vilas	**Lincoln**
Vilas	Langlade
Oneida	Forest
Florence	Taylor
711. Wisconsin 4—	**Oconto**
Marinette	**Menominee**
Marinette	Shawano
712. Wisconsin 5—Pierce	**Pepin**
Pierce	Buffalo
Dunn	
713. Wisconsin 6—	**Clark**
Trempealeau	**Jackson**
Trempealeau	Monroe
714. Wisconsin 7—Wood	**Adams**
Wood	Marquette
Portage	Green Lake
Waupaca	Waushara
Juneau	
715. Wisconsin 8—	**Grant**
Vernon	**Sauk**
Vernon	Iowa
Crawford	Lafayette
Richland	Green
716. Wisconsin 9—	**Jefferson**
Columbia	**Walworth**
Columbia	Fond du Lac
Dodge	

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717. Wisconsin 10—Door Door	Kewaunee Manitowoc

WYOMING

718. Wyoming 1—Park Park Hot Springs	Big Horn Washakie
719. Wyoming 2— Sheridan Sheridan Johnson	Campbell Crook Weston
720. Wyoming 3—Lincoln Lincoln Teton Carbon	Uinta Sublette Fremont Sweetwater
721. Wyoming 4— Niobrara Niobrara Albany	Platte Goshen Laramie
722. Wyoming 5— Converse	Converse

PUERTO RICO

723. Puerto Rico 1— Rincon	Rincon
724. Puerto Rico 3— Adjuntas Adjuntas Guanica Guayanilla Lejas Lares	Las Marias Maricao Penuelas Sabana Grande San Sebastian Yauco
725. Puerto Rico 3— Ciales Ciales Municipio Jayuya Municipio	Morovis Municipio Orocovis Municipio Utuado Municipio
726. Puerto Rico 4— Aibonito Albonito Municipio Arroyo Municipio Barranquitas Municipio Coamo Municipio Comerio Municipio	Guayama Municipio Maunabo Municipio Patillas Municipio Salinas Municipio Santa Isabel Municipio Yabucoa Municipio
727. Puerto Rico 5— Ceiba	Ceiba Municipio Naguabo Municipio
728. Puerto Rico 6— Vieques	Vieques Municipio
729. Puerto Rico 7— Culebra	Culebra Municipio

U.S. VIRGIN ISLANDS

730. Virgin Islands 1—St. Thomas Island St. Thomas Island	St. John Island and environs
731. Virgin Islands 3—St. Croix Island	St. Croix Island and environs

GUAM

732. Guam Island of Guam	and environs

OTHER TERRITORIES AND POSSESSIONS

733. American Samoa Eastern District Manu'a District	Rose Island Swains Island Western District
734. Northern Mariana Islands Northern Island Municipality	Rota Municipality Saipan Municipality Tinian Municipality

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-11387 Filed 5-19-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA-REP-4-NC-4]

North Carolina Radiological Emergency Response Plans

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plans.

SUMMARY: For operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local governments' plans, the State of North Carolina has submitted their radiological emergency response plans to the FEMA Regional Office. These plans support a nuclear power plant which impacts on North Carolina and includes those of local governments near Carolina Power and Light Companys' Shearon Harris Nuclear Power Plant located in Wake County, North Carolina.

Date Plans Received: North Carolina—May 6, 1988

FOR FURTHER INFORMATION CONTACT: Mr. Major P. May, Regional Director, FEMA Region IV, 1371 Peachtree Street, NE., Atlanta, Georgia 30309, 404/853-4200.

Notice: In support of the Federal requirement for emergency response plans, FEMA has a final Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness", 45 FR 42341, "The North Carolina Emergency Response Plan in Support of the Shearon Harris Nuclear Power Plant" was received by the Federal Emergency Management Agency, Region IV Office.

Included are radiological emergency response plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of Plant Harris. Plans are included for Chatham, Harnett, Lee and Wake Counties, North Carolina.

Copies of the plans are available for review at the FEMA Region IV Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in Subpart C of 44 CFR Part 5. There are 592 pages in this document; reproduction fees are $0.10 a page payable with the request for copy.

Comments on the plan may be submitted in writing to Mr. Major P. May, Regional Director, at the above address within thirty days of this Federal Register Notice.

FEMA Rule CFR 350.10 also calls for a public meeting prior to approval of the palns. This meeting was held in accordance with FEMA Rule 44 CFR 350.10 in Apex, North Carolina, at 3:30 p.m., May 19, 1988.

Major P. May,

Regional Director.

[FR Doc. 88-11348 Filed 5-19-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010636-040

Title: U.S. Atlantic-North Europe Conference

Parties: Atlantic Container Line, B.V., Dart-ML Limited, Hapag-Lloyd AG, Sea-Land Service, Inc., A.P. Moller-Maersk Line, Gulf Container Line (GCL), B.V., P&O Containers Line (TFL) Limited, Compagnie Generale Maritime (CGM), Nedlloyd lijnen, B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 202-010637-029

Title: North Europe-U.S. Atlantic Conference

Parties: Atlantic Container Line, B.V., Hapag-Lloyd AG, Sea-Land Service, Inc., Nedlloyd Lijnen, B.V., Gulf Container Line (GCL), B.V., P&O Containers Line (TFL) Limited, Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 203-011141-003

Title: Gulfway

Parties: Lykes Bros. Steamship Co., Inc., Hapag-Lloyd AG, Sea-Land Service, Inc., P&O Containers Line (TFL) Limited, Gulf Container Line (GCL), B.V., Compagnie Generale Maritime (CGM), Nedlloyd Lijnen, B.V., South Atlantic Cargo Shipping (Atlanticargo), N.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 17, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-11374 Filed 5-19-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-15]

California Shipping Line, Inc. v. Yangming Marine Transport Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by California Shipping Line, Inc. ("CSL") against Yangming Marine Transport Corp. ("Yangming") was served May 16, 1988. CSL alleges that Yangming has violated section 8(c) of the Shipping Act of 1984 ("the Act"), 46 U.S.C. app. 1707(c) by failing and refusing to make available to CSL the essential terms of three service contracts. Yangming is also alleged to have violated section 10(b)(2) of the Act, 46 U.S.C. app. 1709(b)(12) by subjecting CSL to an unreasonable refusal to deal or to any undue or unreasonable prejudice or disadvantage, and section 10(b)(5) of the Act, 46 U.S.C. app. 1709(b)(5) by unjustly discriminating against CSL.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by May 16, 1989, and the final decision of the Commission shall be issued by September 18, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-11306 Filed 5-19-88; 8:45 am]

BILLING CODE 6730-01-M

Intent to Cancel Inactive Tariffs

The foreign commerce files of the Federal Maritime Commission contain numerous tariffs filed on behalf of firms which appear to be inactive or no longer operating as common carriers. For the purpose of this notice a carrier has been deemed to be inactive or no longer operating if it has met all of the following criteria: (1) Return as undeliverable by the United States Postal Service of an anti-rebating certificate reminder letter mailed to the carrier at its last known address; (2) failure of the carrier to file an anti-rebating certificate; and (3) failure of the carrier to amend its tariffs during the preceding twelve months.

Inactive tariffs reflect inaccurate information and serve no useful purpose. Accordingly, in the absence of a showing of good cause why such action should not be taken, the Commission proposes to cancel the tariffs of the companies included on the atached list which are inactive or no longer operating. It should be noted that certain information items on the attached list may not apply to a particular carrier and are, therefore, designated no applicable (NA).

Now therefore, it is ordered, That the carriers included on the attached list advise the Federal Maritime Commission's Director, Bureau of Domestic Regulation at 1100 L Street NW., Washigton, DC 20573, in writing, within 30 days after the publication of this Order in the Federal Register, of any reason why the Commission should not cancel their respective tariffs;

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed in the attachment;

It is further ordered, That the tariffs of all carriers named in the attached list who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status be cancelled;

It is further ordered, That this notice be published in the Federal Register.

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Federal Maritime Commission

Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations

Inactive Tariffs Listed by Acronym and name Number

Acronym: Adriatic Container Line
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via L. Einuadi
City: 1—34121 Trieste
State:
Country: Italy
License Number: 000168

Acronym: AEI Ocean Services Corporation
DBA: NA.
Person Type: non-Vessel-Operating Common Carrier
Street: 120 Tokeneke Road, P.O. Box 1231
City: Darien
State: CT 06820
Country: United States of America
License No.: NA.
Name Number: 007686

Acronym: Africa Ocean Line (NIG) Ltd.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 346 Herbert Macaulay-Jaba
City: Lagos
State:
Country: Nigeria
License No.: NA.
Name Number: 002845

Acronym: African Liner Service, Inc.
DA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 39 Broadway
City: New York
State: NY 10004
Country: United States of America

License No.: NA.
Name Number: 007683

Acronym: Agencija Rudenjak Inc.
DBA: NA.
Person Type: non-Vessel-Operating Common Carrier
Street: 32-08A Broadway
City: Astoria
Country: United States of America
License No.: NA.
Name Number: 00175

Acronym: Agro Marine, Inc.
DBA: NA.
Person Type : non-Vessel-Operating Common Carrier
Street: 555 Northeast 15th St., Suite Penthouse B
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 006618

Acronym: Agro Steamship line, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 3301 Northwest Southriver Drive
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 006619

Acronym: AHS Internation, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 603 Kendall Court
City: Schaumburg
State: IL 60194
Country: United States of America
License No.: NA.
Name Number: 007687

Acronym: Air Ocean Express, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 9808 Bryn Mawr Ave.
City: Rosemont
State: IL 60019
Country: United States of America
License No.: NA.
Name Number: 006301

Acronym: Airline Booking Center Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 2311 Lee Avenue—unit 8
City: South El Monte
State: CA 91733
Country: United States of America
License No.: NA.
Name Number: 007689

Acronym: Altamirano Shipping, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 239 Elm Street
City: Newark
State: NJ 07106
Country: United States of America
License No.: NA.
Name Number: 000214

Acronym: Amerasia, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 611 Tonnelle Avenue
City: Jersey City
State: NJ 07307
Country: United States of America
License No.: NA.
Name Number: 006190

Acronym: America/Middle East Line, The
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 17 Battery Place, Suite 1930
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007679

Acronym: American International Forwarding, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 5177 Campbell Run Road
City: Pittsburgh
State: PA 15205
Country: United States of America
License No.: NA.
Name Number: 000227

Acronym: American Navigation Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: One World Trade Center, Suite 2161
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 007685

Acronym: American Ocean Freight Carriers Corp.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 66 Springfield Ave.
City: Springfield
State: NJ 07061
Country: United States of America
License No.: NA.
Name Number: 007684

Acronym: American Seaway Carriers, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 899 Market Street, P.O. Box 127
City: Paterson
State: NJ 07513
Country: United States of America
License No.: NA.
Name Number: 005856

Acronym: American Shipping Lines, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating) non-Vessel-Operating Common Carrier
Street: 6000 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007719

Acronym: American Trader Lines
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 7529 Chatham road
City: Medina
State: OH 44256
Country: United States of America
License No.: NA.
Name Number: 005860

Acronym: American Transport, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 307 51st Place
City: Kenosha
State: WI 53140
Country: United States of America
License No.: NA.
Name Number: 007688

Acronym: American Union Transport
DBA: NA.
Person type: Ocean Freight Forwarder (Independent) non/Vessel-Operating Common Carrier
Street: 15 East 25th Street
City: New York
State: NY 10010
Country: United States of America
License No.: 448
Name Number: 004235

Acronym: Aquarius Intermodal, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1932 Lebanon Street
City: Hyattsville
State: MD 20783
Country: United States of America
License No.: NA.
Name Number: 000265

Acronym: Aresmar C.I.F.S.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Viamonte 494
City: Buenos Aires
State:
Country: Argentina

License No.: NA.
Name Number: 006197

Acronym: Armada Central American Lines Ltd
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 80 Broad Street
City: Monrovia, Liberia
State:
Country: Liberia
License No.: NA.
Name Number: 005682

Acronym: Arrow Ocean Lines Ltd.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4896 Pearce St
City: Huntington Beach
State: CA 92649
Country: United States of America
License No.: NA.
Name Number: 000273

Acronym: Ascot International, U.S.A.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2201 W. Lunt Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 006196

Acronym: Astram
DBA: Astratainer
Person type: Non-Vessel-Operating Common Carrier
Street: Noorderlaan, 139
City: 2030 Antwerp
State:
Country: Belgium
License No.: NA.
Name Number: 001766

Acronym: Atlantic Express Lines
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: C/O Terra Marine Logistic, 1602 ITM Bldg No. 2 Canal Street
City: New Orleans
State: LA 70130
Country: United States of America
License No.: NA.
Name Number: 007666

Acronym: AVI International, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Seven Dey Street, Suite 711
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 000321

Acronym: Azalea Shipping and Chartering, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Brookley Industrial Complex, Bldg. 219
City: Mobile
State: AL 36615
Country: United States of America
License No.: NA.
Name Number: 006348

Acronym: Bahama Adventure Shipping, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box N-3587
City: Nassau, NP
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000333

Acronym: Balikbayan Cargo Consolidators
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1201 Sixth St.
City: San Francisco
State: CA 94107
Country: United States of America
License No.: NA.
Name Number: 007681

Acronym: Benovi Line S.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 3611 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007687

Acronym: Bermuda Atlantic Line, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 1198
City: Hamilton 5
State:
Country: Bermuda
License No.: NA.
Name Number: 006363

Acronym: Bermuda Atlantic Lines, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 750 N.E. 7th Avenue
City: Dania
State: FL 33004
Country: United States of America
License No.: NA.
Name Number: 007672

Acronym: Bilgrey Cargo, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 158-10 Rockaway Boulevard
City: Jamaica
State: NY 11434
Country: United States of America
License No.: NA.
Name Number: 006166

Acronym: Bimini Businessmen's Association
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Box 629
City: Alice Town, Bimini Islands
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000376

Acronym: Bimini Conveyors, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 601
City: Bimini
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000377

Acronym: Boat Shippers, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 2505 W. Coast Hwy, Suite 102
City: New Port Beach
State: CA 92663
Country: United States of America
License No.: NA.
Name Number: 007728

Acronym: Box Caribbean Lines, S.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007682

Acronym: Brasil-America Container Line
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box N-4465
City: Nassau Bahamas
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006200

Acronym: Broadland Freight Services Co., Ltd.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: Unit 1515 World Finance Center, South Tower Harbor City

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City: Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 006201

Acronym: BSK Speditionsgesellschaft
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: OST West Strabe 74
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007665

Acronym: Budget International Transport
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 530 East 8th Street
City: Los Angeles
State: CA 90014
Country: United States of America
License No.: NA.
Name Number: 000394

Acronym: BWI Transworld, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 3200 4th Avenue South
City: Seattle
State: WA 98134
Country: United States of America
License No.: NA.
Name Number: 007673

Acronym: C D Consolidators
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 4519 Wawona Street
City: Los Angeles
State: CA 90065
Country: United States of America
License No.: NA.
Name Number: 006324

Acronym: C.C. Group Line
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 10920 LA Cienega Boulevard
City: Lennox
State: CA 90304
Country: United States of America
License No.: NA.
Name Number: 007693

Acronym: C.M.T. Lines SA
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 3701 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007680

Acronym: C.O.D. Cargo Express, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 3660 Wilshire Blvd., Suite 326
City: Los Angeles
State: CA 90010
Country: United States of America
License No.: NA.
Name Number: 006335

Acronym: C.P. Container Corp.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 277 Broadway, Suite 1005
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007061

Acronym: Capella Marine Service, S.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 37–74 Oficina 105, via Espana, Edificio Rafael
City: Panama City
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006234

Acronym: Cargo Line & Services, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 5360 S.W. 3rd Street
City: Miami
State: FL 33136
Country: United States of America
License No.: NA.
Name Number: 002800

Acronym: Cargo Point International Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 45 John Street Suite 902
City: New York
State: NY 10038
Country: United States of America
License No.: NA.
Name Number: 005995

Acronym: Cargo Transport Corporation
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: C/O Ray Carlisle, P.O. Box 55846
City: Houston
State: TX 77255
Country: United States of America
License No.: NA.
Name Number: 007697

Acronym: Cari-Cargo International, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8341 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 000718

Acronym: Caribbean American Freight, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1561 N.W. 82nd Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007699

Acronym: Caribbean Atlantic Line
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 90 Broad Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 005969

Acronym: Caribbean Bulk Lines, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 999 South Bayshore Drive, Tower 1, Suite 1405
City: Miami
State: FL 33131
Country: United States of America
License No.: NA.
Name Number: 002396

Acronym: Caribbean Container Lines, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: c/o North Star Airlines, Cargo Building 263
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA.
Name Number: 000706

Acronym: Caribbean Freight Service, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 14068
City: Charlotte
State: NC 28206
Country: United States of America
License No.: NA.
Name Number: 000708

Acronym: Caribbean Freight Systems, Inc.
DBA: NA.

Person type: Non-Vessel-Operating Common Carrier
Street: 2160 N.W. 66 Avenue
City: Miami
State: FL 33152
Country: United States of America
License No.: NA.
Name Number: 007694

Acronym: Caribtran, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 6800 N.W. 37th Court
City: Miami
State: FL 33147
Country: United States of America
License No.: NA.
Name Number: 005751

Acronym: Carimar Shipping Line
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8323 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007700

Acronym: Carribean Shipping Services, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 5119 Church Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 007698

Acronym: Celadon Shipping, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 888 Seventh Avenue
City: New York
State: NY 10106
Country: United States of America
License No.: NA.
Name Number: 002795

Acronym: Celtic Bulk Carriers
DBA: NA.
Person type: Foreign Joint Service—Consortium Agreement
Street: Merrion Hall Strand Road
City: Dublin 4
State:
Country: Ireland
License No.: NA.
Name Number: 000730

Acronym: Central America Transports Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: C/O Sol Madura (Florida) Inc. 1040 Port Boulevard
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 007028

Acronym: Central American Container Line
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 66469 AMF
City: Houston
State: TX 77205
Country: United States of America
License No.: NA.
Name Number: 007675

Acronym: China National Chartering Corporation
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Er Li Gou Xi Jou
City: Beijing
State:
Country: People's Republic of China
License No.: NA.
Name Number: 006019

Acronym: CHT Ltd.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 880 Bergen Avenue
City: New Jersey
State: NJ 07306
Country: United States of America
License No.: NA.
Name Number: 007695

Acronym: Clipper Shipping Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box N–7786
City: Nassau
State:
Country: Bahama Islands
License No.: NA.
Name Number: 007696

Acronym: CMA-USA
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007747

Acronym: Coastal & Overseas Shipping, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 11911 N.E. 1st Street
City: Bellevue
State: WA 98005
Country: United States of America
License No.: NA.
Name Number: 007662

Acronym: Colombian Maritime Transport, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: C/O Mille Hiller, P.O. Box 623
City: Linden
State: NJ 07036
Country: United States of America
License No.: NA.
Name Number: 007690

Acronym: Colsa Line
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Place Du Champ De Mars, 5 Boite 36
City: B–1050 Brussels
State:
Country: Belgium
License No.: NA.
Name Number: 006028

Acronym: Com-Tainer Shipping Line, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 19 Rector Street—Suite 1905
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007668

Acronym: Combitrans (U.S.A.) Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: One World Trade Center—Suite 5347
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 006206

Acronym: Concord Express (Shipping) Ltd.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Flat E1, 3/fl., Hoi Bun Industrial Bldg., 6 Wing Yip Street
City: Kwun Tong, Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 006054

Acronym: Concorde Caribe Lines, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2150 N.W. 70th Avenue
City: Miami
State: FL 33122

Country: United States of America
License No.: NA.
Name Number: 000797

Acronym: Concorde/Nopal Line
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 2150 NW 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA.
Name Number: 007720

Acronym: Confreight Marine Line Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2700 Coyle Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 007663

Acronym: Container Marine Transport Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 50 Oak Street
City: east Rutherford
State: NJ 07073
Country: United States Of America
License No.: NA.
Name Number: 000814

Acronym: Container Marine Transport Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 340 South Stiles Street
City: Linden
State: NJ 07036
Country: United States Of America
License No.: NA.
Name Number: 007692

Acronym: Contranslink, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 61 Broadway—Suite 500
City: New York
State: NY 10006
Country: United States Of America
License No.: NA.
Name Number: 007691

Acronym: Contship Co., Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: P.O. Box 450998
City: Miami
State: FL 33145
Country: United States Of America
License No.: NA.
Name Number: 006228

Acronym: Conveyor Freight Co., Ltd
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: C/O John Y. Lau, 8635 Aviation Boulevard
City: Inglewood
State: CA 90301
Country: United States Of America
License No.: NA.
Name Number: 007670

Acronym: Convopal, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 1301 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States Of America
License No.: NA.
Name Number: 007669

Acronym: Cosmo Sea Freight (USA) Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 147-35 183rd Street, Suite 201
City: Jamaica
State: NY 11413
Country: United States Of America
License No.: NA.
Name Number: 002239

Acronym: Cox Shipping Line, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: South Caicos Island
City: Turks & Caicos Island, B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 00837

Acronym: Crown Overseas Forwarders
DBA: NA.
Person type: non-Vessel-Operating Common Carrier Household Goods Carrier
Street: 2070 Burroughs Avenue
City: San Leandro
State: CA 94577
Country: United States Of America
License No.: NA.
Name Number: 007415

Acronym: Cruise Cargo Company
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 1378 York Avenue, Suite 4c
City: New York
State: NY 10021
Country: United States Of America
License No.: NA.
Name Number: 007725

Acronym: CSL Container Lines Ltd.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 1102 Join-In Commercial Center 33 Lai Chi Kok Road, Monkok
City: Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 005987

Acronym: Cube Shipping & Warehousing Co. Ltd.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: Cunard Building, Water Street
City: Liverpool, L13 1 DS Merseyside (England)
State:
Country: Great Britain
License No.: NA.
Name Number: 005974

Acronym: D'Amico Mediterranean Pacific Line
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Corso D'Italia, 35/B
City: Rome
State:
Country: Italy
License No.: NA.
Name Number: 000909

Acronym: D'Leo International Services Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 3111 W. Montrose
City: Chicago
State: IL 60618
Country: United States Of America
License No.: NA.
Name Number: 006078

Acronym: Damco Internationale Spedition GMBH
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: P.O. Box 101340
City: Hamburg 1
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 005802

Acronym: Damco-Baltimore, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 32 South Street
City: Baltimore
State: MD 21202
Country: United States of America
License No.: NA.
Name Number: 007726

Acronym: Dansk Steamship Lines
DBA: NA.
Person type: non-Vessel-Operating Common Carrier

Street: 1 World Trade Center
City: Port of Sacramento, West Sacramento
State: CA 95691
Country: United States of America
License No.: NA.
Name Number: 000912

Acronym: Davothom Corporation S.A.
DBA: Caribrasil Line
Person type: Ocean Common Carrier (Vessel Operating)
Street: Edificio Tapia Ave. Justo Arusemena Y Calle 31 NO. 3-80
City: Panama 5
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006229

Acronym: Delta Steamship Lines, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Glenpointe Center East
City: Teaneck
State: NJ 07666
Country: United States of America
License No.: NA.
Name Number: 007742

Acronym: Demline Egypt
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 77, Sultan Hussein Street
City: Alexandria
State:
Country: Egypt
License No.: NA.
Name Number: 005831

Acronym: Deutsche Karibik Linie Thien & Heyenga Shiff.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 6, Raboisen
City: 2000 Hamburg 1
State:
Country: German Federal Republic (west)
License No.: NA.
Name Number: 005741

Acronym: Diamond M. International Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: Calle 151 CM No. 37
City: Carolina
State:
Country: United States of America
License No.: NA.
Name Number: 000933

Acronym: Dist. Naviera del Caribe C.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 301 Broadway, Suite 138
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.
Name Number: 007749

Acronym: Domcon Express, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: P.O. Box 8849
City: Ponce, Puerto Rico
State:
Country: United States of America
License No.: NA.
Name Number: 006692

Acronym: Dominicana Shipping Company
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 1257 St. Nicholas Avenue
City: New York
State: NY 10032
Country: United States of America
License No.: NA.
Name Number: 000950

Acronym: Dynacross Liner Services, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: C/O Gebr. van Weelde Scheepvaartkantoor, P.O. Box 1575
City: 3000 BN Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 007144

Acronym: EAC Lines
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 007718

Acronym: Eastern Forwarding International, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: P.O. Box 161
City: Avenel
State: NJ 07001
Country: United States of America
License No.: NA.
Name Number: 007748

Acronym: ECH Cargo Services
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 645 E. 219th Street, Unit 6
City: Carson
State: CA 90745
Country: United States of America
License No.: NA.
Name Number: 006758

Acronym: Elite Shipping Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 2525 North loop west
City: Houston
State: TX 77008
Country: United States of America
License No.: NA.
Name Number: 007676

Acronym: Enterprise Shipping Corporation
DBA: Euro Pac Lines
Person type: Non-Vessel-Operating Common Carrier
Street: 49 Geary Street
City: San Francisco
State: CA 94102
Country: United States of America
License No.: NA.
Name Number: 006755

Acronym: Eur-A-Med Shipping, Ltd.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2700 Azalea Drive
City: Charleston Heights
State: SC 29045
Country: United States of America
License No.: NA.
Name Number: 001247

Acronym: Euramer Consolidators Corp.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Piso 7, Ofic. No. 7A
City: Caracas
State:
Country: Venezuela
License No.: NA.
Name Number: 001248

Acronym: Euro Scan Atlantic Line
DBA: E.S.A.L.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Box 1533, S-401
City: 50 Goteborg
State:
Country: Sweden
License No.: NA.
Name Number: 00606

Acronym: Euromar
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: Calle Cathedral Nr. 1009, Room 1602
City: Santiago
State:
Country: Chile
License No.: NA.
Name Number: 006591

Acronym: Export-Import Serivce Co., Inc.

DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 28265 Beverly Road
City: Romulus
State: MI 48174
Country: United States of America
License No.: NA.
Name Number: 004417

Acronym: Faith International Cargo Services
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4845 1/2 N. Damen
City: Chicago
State: IL 60625
Country: United States of America
License No.: NA.
Name Number: 006579

Acronym: Fak Container Lines, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2–24 Sellers Street
City: Kearny
State: NJ 07032
Country: United States of America
License No.: NA.
Name Number: 007711

Acronym: Far East Express International Ltd.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 53 Park Place
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 002850

Acronym: Far East Services, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4214 Beverly Blvd., Suite 206
City: Los Angeles
State: CA 90004
Country: United States of America
License No.: NA.
Name Number: 006687

Acronym: First Maritime Company, Inc.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 7505 Waters Avenue, Suite C-8
City: Savannah
State: GA 31416
Country: United States of America
License No.: NA.
Name Number: 005731

Acronym: Flotamar Container Line, Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 190
City: Grand Cayman, Cayman Islands B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006887

Acronym: Four Star Cargo, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 7640 N.W. 63rd Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 005840

Acronym: Freight Expediters, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 6565 Eastland Rd.
City: Cleveland
State: OH 44142
Country: United States of America
License No.: NA.
Name Number: 000435

Acronym: Freight-Base Ocean
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 66479
City: Chicago
State: IL
Country: United States of America
License No.: NA.
Name Number: 006245

Acronym: G.&S. Shipping Co., Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 206–16 Hollis Avenue
City: Hollis Queen
State: NY 11428
Country: United States of America
License No.: NA.
Name Number: 006750

Acronym: G.A.A.C. Express Cargo
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 7646 De moss Street
City: Houston
State: TX 77036
Country: United States of America
License No.: NA.
Name Number: 006258

Acronym: Ganda Overseas Lines
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: P.O. box 2295
City: Los Angeles
State: CA 90051
Country: United States of America
License No.: NA.
Name Number: 005858

Acronym: Global Cargo and Travel Services, Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 14539 Blythe Street, unit B–1
City: Van Nuys
State: CA 91402
Country: United States of America
License No.: NA.
Name Number: 006608

Acronym: Global Marine, S.A.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: Avenida Prolongacion, Mexico 85
City: Santo Domingo
Country: Dominican Republic
License No.: NA.
Name Number: 006175

Acronym: Global Operations Line
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA.
Name Number: 005866

Acronym: Gordon's Shipping Co., Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 137–09 Eastgate Plaza
City: Springfield Garden, Queens
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 000474

Acronym: Great Republic Maritime Shipping Co., Ltd., the
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: C/O Robert C. McQuigg, P.O. Box 11474
City: Washington
State: DC 20008
Country: United States of America
License No.: NA.
Name Number: 007761

Acronym: Gulf Carib Lines Ltd.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: P.O. box 1500
City: Tampa
State: FL 33601
Country: United States of America
License No.: NA.
Name Number: 007710

Acronym: Gulfmarine, Inc.
DBA: NA.

Person type: Ocean Common Carrier (Vessel Operating)
Street: 2000 Post Oak Boulevard
City: Houston
State: TX 77056
Country: United States of America
License No.: NA.
Name Number: 006603

Acronym: Hakko Maritime Corporation
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: 6–13 Nishi-Shinbashi 1-Chome
City: Minatoku, Tokyo
State:
Country: Japan
License No.: NA.
Name Number: 007743

Acronym: Hercules Packing, Shipping & Moving Co., Inc.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 23–96 48th Street
City: Astoria
State: NY 11103
Country: United States of America
License No.: NA.
Name Number: 005847

Acronym: Holiday International Services
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 1757 Evangellista St. Bangkal
City: Makati, Metro Manila
State:
Country: Philippines
License No.: NA.
Name Number: 005809

Acronym: Hoshiko Line
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 128–A West Bay St.
City: Savannah
State: GA 31401
Country: United States of America
License No.: NA.
Name Number: 007449

Acronym: Hyonik Express Co., Ltd.
DBA: NA.
Person type: non-Vessel-Operating Common Carrier
Street: 51 Sogong-dong Rm 1903 new kal bldg
City: Chung-Ku, Seoul 100
State:
Country: Republic of Korea
License No.: NA.
Name Number: 005818

Acronym: I.M.S, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4416 Wheeler Avenue
City: Alexandria
State: VA 22304
Country: United States of America
License No.: NA.
Name Number: 001316

Acronym: Incan Superior Limited Tariff
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Suite 102, 105 South May Street
City: Thunder Bay, ON. (C) P7E 1B1
State:
Country: Canada
License No.: NA.
Name Number: 001328

Acronym: Indonesia Nusantara Corporation
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 8411 La Cieneoa Blvd.
City: Inglewood
State: CA 90301
Country: United States of America
License No.: NA.
Name Number: 002782

Acronym: Intercontinental Transport (ICT) B.V.
DBA: NA.
Person type: Ocean Common Carrier (Vessel Operating)
Street: Wilhelminakade 39, P.O. Box 545
City: 3000 AM Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 002424

Acronym: Interlink Lines
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 90 West Street, Suite #1100
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007723

Acronym: Intermodal S.A.
DBA: NA.
Person type: Agent-Filing Ocean Common Carrier (Vessel Operating)
Street: 61 Broadway, Suite 2528
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 005931

Acronym: International Distribution Systems (USA) Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 002657

Acronym: International Export Packers, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 4607 Eisenhower Avenue
City: Alexandria
State: VA 22304
Country: United States of America
License No.: NA.
Name Number: 007426

Acronym: International Shipping Associates, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 90 Western Avenue
City: Allston
State: MA 02134
Country: United States of America
License No.: NA.
Name Number: 001371

Acronym: International Shipping Company
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4201 Cathedral Avenue N.W. #1202 W
City: Washington
State: DC 20016
County: United States of America
License No.: NA.
Name Number: 005567

Acronym: Interocean Express Line, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 18383 Susana Road
City: Compton
State: CA 90221
County: United States of America
License No.: NA.
Name Number: 007717

Acronym: Interocean Marine
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 2250 Devon Avenue
City: Des Plaines
State: IL 60018
Country: United States of America
License No.: NA.
Name Number: 007772

Acronym: Interroll S.A.
DBA: NA.
Person type: Ocean Common Carrier (Vessel-Operating)
Street: 2021 Union Avenue
City: Montreal, Quebec H3A 2Y5
State:
Country: Canada
License No.: NA.

Name Number: 005905

Acronym: International Sea Transport Consolidators, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 691 85th Avenue
City: Oakland
State: CA 94621
Country: United States of America
License No.: NA.
Name Number: 007716

Acronym: Island Consolidation, Inc.
DBA: NA.
Person type: Non-Vessel-Operating Common Carrier
Street: 1025 17 St. W.
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.
Name Number: 001381

Acronym: ITS Consolidators, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 100 Church Street, Suite 320
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007737

Acronym: Jadranska Slobodna Plovidba
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street:
City: Split
State:
Country: Yugoslavia
License No.: NA.
Name Number: 001401

Acronym: JC Express
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5300 W. Century Blvd. Suite 409
City: Los Angeles
State: CA 90045
Country: United States of America
License No.: NA.
Name Number: 007746

Acronym: Jetstream Freight Services, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 145 Hook Creek Blvd
City: Valley Stream
State: NY 11581
Country: United States of America
License No.: NA.
Name Number: 005875

Acronym: Kamtel Express
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2228 Livingston Street
City: Oakland
State: CA 94606
Country: United States of America
License No.: NA.
Name Number: 007729

Acronym: Keen International Cargo, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: One World Trade Center—Suite 1101
City: New York
State: NY 10048
Country: United States America
License No.: NA.
Name Number: 007722

Acronym: Kelso Shipping, Inc
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Western Plaza, Suite 70 10725 S. W. Barbur Blvd.
City: Portland
State: OR 97219
Country: United States of America
License No.: NA.
Name Number: 007730

Acronym: Kien Hung Shipping Co., Ltd. S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3rd Floor, No. 127–1, Sung Chiang Road
City: Taipei
State:
Country: People's Republic of China
License No.: NA.
Name Number: 005811

Acronym: Kinford Group, Inc., The
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 253 Chesterfield Road
City: Oakdale
State: CT 06370
Country: United States of America
License No.: NA.
Name Number: 005757

Acronym: Koam Forwarding, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 38 W. 32nd Street—Room 1007
City: New York
State: NY 10001
Country: United States of America
License No.: NA.
Name Number: 007750

Acronym: Kreitz Motor Express, Inc.
DBA: KMX International
Person Type: Non-Vessel-Operating Common Carrier
Street: 796 Fritztown Road P.O. Box 2152
City: Sinking Spring
State: PA 19606
Country: United States of America
License No.: NA.
Name Number: 005777

Acronym: L.K. Overseas Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 555 E. Ocean Blvd. #818
City: Long Beach
State: CA 90802
Country: United States of America
License No.: NA.
Name Number: 005911

Acronym: Landmark Union Limited
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Enrico Fermi 28 San Giorgio Di Nogaro
City: Udine
State
Country: Italy
License No.: NA.
Name Number: 001815

Acronym: Leaseway International Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 61 Broad Avenue
City: Fairview
State: NJ 07022
Country: United States of America
License No.: NA.
Name Number: 001596

Acronym: Leman of America
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2920 Wolff Street
City: Racine
State: WI 53404
Country: United States of America
License No.: NA.
Name Number: 007731

Acronym: Liberty Shipping Co., Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 796
City: Lakewood
State: CA 90714
Country: United States of America
License No.: NA.
Name Number: 006357

Acronym: Lignes Centrafricaines
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Krausstrasse 1–A
City: D–4100 Duisburg 13, West Germany
State:
Country: German Federal Republic (West)

License No.: NA.
Name Number: 001602

Acronym: Load Line, Inc.
DBA: NA.
Person Type: Agent—Filing Non-Vessel-Operating Common Carrier
Street: Route 4, Box 1
City: Beaumont
State: TX 77705
Country: United States of America
License No.: NA.
Name Number: 005812

Acronym: Loadstar Container Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 55 New Montgomery Street
City: San Francisco
State: CA 94105
Country: United States of America
License No.: NA.
Name Number: 007732

Acronym: M.L.S. Maritime Logistic Services SA
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: BD Perolles 1, P.O. Box 587
City: 1600 Fribourg
State:
Country: Switzerland
License No.: NA.
Name Number: 001632

Acronym: Marine Transport Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 182–16 149th Road
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 005954

Acronym: Maritime Bulk Carriers Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 615 S.W. 2nd Avenue, Suite 207
City: Miami
State: FL 33130
Country: United States of America
License No.: NA.
Name Number: 001657

Acronym: Maritima Atlantica—Danoluz S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Plaza Independencia 822, Officina 602
City: Montevideo
State:
Country: Uruguay
License No.: NA.
Name Number: 006359

Acronym: Maritime Export Services, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 21795
City: Baltimore
State: MD 21222
Country: United States of America
License No.: NA.
Name Number: 005976

Acronym: Marz International
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 8150 S.W. 8th Street
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007744

Acronym: Matina Lines
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Frankrijklei 115
City: 2000 Anterp
State:
Country: Belgium
License No.: NA.
Name Number: 007713

Acronym: Mayaca Container Line
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3741 N.W. 25th Street
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 005957

Acronym: Medas Int'l Moving & Shipping Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 803 Sterling Place
City: Brooklyn
State: NY
Country: United States of America
License No.: NA.
Name Number: 007733

Acronym: Medcon Ser.Schiffahrtsgesellschaft GMBH & Co.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Furbringerstrasse 22
City: 1000 Berlin 61
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007714

Acronym: Merit Container Express, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 2712
City: Trenton
State: NJ 08607
Country: United States of America
License No.: NA.
Name Number: 001707

Acronym: Milam Cargo, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1364 NW 78TH Avenue
City: Miami
State: FL 33126
Country: United States of America
License No: NA.
Name Number: 005959

Acronym: Modular International Carriers, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4761 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No: NA.
Name Number: 005909

Acronym: Naviera Riomar, S.A. De C.V.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Paseo De La Reforma #199 17th Floor
City: Colonia Cuauhtemoc
State: 06500
Country: Mexico
License No: NA.
Name Number: 007759

Acronym: Navitalica, Societa Di Navigazione, S.R.L.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Cesarea No. 3–10
City: Genoa
State:
Country: Italy
License No: NA
Name Number: 006362

Acronym: Net Consol Service
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Room 610 Donga Mapo Bldg16–7 Dowhadong, Mapogu
City: Seoul, Korea
State:
Country: Republic of Korea
License No: NA.
Name Number: 006676

Acronym: Ocean Cargo Services
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5726 La Mirada Avenue

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City: Los Angeles
State: CA 90038
Country: United States of America
License No: NA.
Name Number: 006606

Acronym: Ocean/Air Freight Consolidators
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 521188
City: Miami
State: FL 33152
Country: United States of America
License No: NA.
Name Number: 006577

Acronym: Oceangate Container Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 11222 La Cienega Blvd. Suite 470
City: Inglewood
State: CA 09304
Country: United States of America
License No: NA.
Name Number: 002789

Acronym: OCS/USA, Inc.
DBA: Orient Consolidation Service
Person Type: Non-Vessel-Operating Common Carrier
Street: 74 Trinity Place, Suite 610
City: New York
State: NY 10006
Country: United States of America
License No: NA.
Name Number: 006696

Acronym: Omega Ocean Line, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1700 South Highland Avenue
City: Baltimore
State: MD 21224
Country: United States of America
License No: NA.
Name Number: 007724

Acronym: Oniedan Line Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1121 Lincoln Ave.
City: Holbrook
State: NY 11741
Country: United States of America
License No: NA.
Name Number: 001297

Acronym: OPL Line
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 4th Floor, Takeshin Bldg.
City: 11–10 Ginza 2–Chome
State:
Country: Japan
License No: NA.
Name Number: 007712.

Acronym: Overocean Transport Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Outlook Street
City: Stamford
State: CT 06902
Country: United States of America
License No: NA.
Name Number: 006207

Acronym: Pace Lines
DBA: P.A.C.E. Lines
Person Type: Non-Vessel-Operating Common Carrier
Street: 465 California St
City: San Francisco
State: CA 94101
Country: United States of America
License No: NA.
Name Number: 002456

Acronym: Pacific Cargo Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 7315 NW 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No: NA.
Name Number: 007735

Acronym: Pacific Caribbean Shipping (U.S.A.) Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 231 East Millbrae Avenue, Suite 219
City: Millbrae
State: CA 94030
Country: United States of America
License No.: NA.
Name Number: 007751

Acronym: Pacific Marine Transport, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 100 California Street, Suite 1080
City: San Francisco
State: CA 94111
Country: United States of America
License No.: NA.
Name Number: 007745

Acronym: Pacific Star Express Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Room 907, 346, Sec. 3, Nanking East Road
City: Taipei
State:
Country: Taiwan
License No.: NA.
Name Number: 006329

Acronym: Pacline Pacific Shipping Ltd.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Achilles House, 2nd Floor, CNR Customs and Commerce Streets
City: Auckland, New Zealand
State:
Country: New Zealand
License No.: NA.
Name Number: 006731

Acronym: Palm Beach International Shipping Corp.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 251-A Royal Palm Way, 3rd Floor
City: Palm Beach
State: FL 33480
Country: United States of America
License No.: NA.
Name Number: 007734

Acronym: Pan Africa Shipping Corporation (USA)
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 4500 Bissonnet, Suite 340
City: Bellaire
State: TX 77401
Country: United States of America
License No.: NA.
Name Number: 007715

Acronym: Pan Caribbean Freightliners, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2780 SW Douglas Road
City: Miami
State: FL 33133
Country: United States of America
License No.: NA.
Name Number: 007709

Acronym: Panamarcaribe, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 44–1404
City: Miami
State: FL 33144
Country: United States of America
License No.: NA.
Name Number: 007708

Acronym: Panatlantic CCS, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 74 Broad Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007740

Acronym: R.E. Rogers, Inc.
DBA: NA.

Person Type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place—Suite 1629
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 000878

Acronym: Rahming Shipping, Ltd.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Lowe Sound
City: Andros Bahamas
State:
Country: Bahama Islands
License No.: NA.
Name Number: 005819

Acronym: Reefer Express Lines, Ltd.
DBA: Great Circle Lines, Ltd.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 5 Becker Farm Road
City: Roseland
State: NJ 07068
Country: United States of America
License No.: NA.
Name Number: 000884

Acronym: Republic Marine Lines Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 1300 Market Street
City: Wilmington
State: DE 19801
Country: United States of America
License No.: NA.
Name Number: 007739

Acronym: Rical Ocean Forwarding Co., Ltd.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Flat 8, Newport Centre 21F, 116 Ma Taukok Rd.
City: Tokwawan, Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 002848

Acronym: RJ International Freight Services
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 803 A Linden Avenue
City: San Francisco
State: CA 94080
Country: United States of America
License No.: NA.
Name Number: 006871

Acronym: S.F. Enterprises
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 265 Cabrillo Avenue
City: Vallejo
State: CA 94591
Country: United States of America
License No.: NA.
Name Number: 007758

Acronym: Salen Dry Cargo AB
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Norrlandsgatan 15
City: S–106 09 Stockholm
State:
Country: Sweden
License No.: NA.
Name Number: 007741

Acronym: Sam Jung Shipping Los Angeles, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1070 East Dominguez St., Suite B
City: Carson
State: CA 90746
Country: United States of America
License No.: NA.
Name Number: 001056

Acronym: Sam Jung Shipping USA Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 17 Battery Place Room 1443
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 001057

Acronym: Samba Caribe Line, S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 6719
City: Panama 5
Country: Republic of Panama
License No.: NA.
Name Number: 006025

Acronym: Scindia Container Line, S.A.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 20 Stone Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 005991

Acronym: Sea—Bridge Express, Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: R.W. Murphy, P.O. Box 677,
City: Westfield
State: NJ 07091
Country: United States of America
License No.: NA.
Name Number: 007721

Acronym: Sea Trade Shipping
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1401 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 006066

Acronym: Sea-Bridge International, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 600 Richmond Terrace
City: Staten Island
State: NY 10301
Country: United States of America
License No.: NA.
Name Number: 006729

Acronym: Seabreeze Steamship Ltd.
DBA: Family Island Line
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 105
City: Georgetown, Grand Cayman
State:
Country: Bahama Islands
License No.: NA.
Name Number: 002805

Acronym: Seacorp Shipping, Ltd
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 1001 N. American Way, Room 102
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 007736

Acronym: Seagate Line, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: J.G. Kim, Issuing Officer, 215 Long Beach Blvd., Suite 408,
City: Long Beach,
State: CA 90802
Country: United States of America
License No.: NA.
Name Number: 007738

Acronym: Sealine Shipping Company
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Medawar Avenue Charles Helou
City: IMM Sehnaoui, Beruit
State:
Country: Lebanon
License No.: NA.
Name Number: 001112

Acronym: Seaonic Mecante Shipping Co.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier

Street: 1032 Winthrop Street
City: Brooklyn
State: NY 11211
Country: United States of America
License No.: NA.
Name Number: 006224

Acronym: Seko Ocean Forwarding, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3839 North Willow
City: Shiller Park
State: IL 60176
Country: United States of America
License No.: NA.
Name Number: 002846

Acronym: Sesko International, Inc.
DBA: NA.
Person Type: Ocean Freight Forwarder (Independent) Non-Vessel-Operating Common Carrier
Street: 4715 N.W. 72nd Ave
City: Miami
State: FL 33166
Country: United States of America
License No.: 1171
Name Number: 001132

Acronym: Sino-Piff International Freight Ltd.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 267–275 Des Voeux Road, RM. 1201 Loon Kee Bld
City: Central
State:
Country: Hong Kong
License No.: NA.
Name Number: 006005

Acronym: Skyway Systems
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1334 Brommer Street, P.O. Box 1810
City: Santa Cruz
State: CA 95061
Country: United States of America
License No.: NA.
Name Number: 005993

Acronym: Smith's Transfer Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1000
City: Staunton
State: VA 24401
Country: United States of America
License No.: NA.
Name Number: 002784

Acronym: Societe General D'Armement Et De Navigation
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 16, Rue Washington
City: Paris
State: 75006
Country: France
License No.: NA.
Name Number: 007755

Acronym: Sonthel International Cargo Services, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4553 Santa Monica Blvd
City: Los Angeles
State: CA 90029
Country: United States of America
License No.: NA.
Name Number: 006221

Acronym: Sonymont Shipping
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1811 W. Katella, Suite 231
City: Anaheim
State: CA 92804
Country: United States of America
License No.: NA.
Name Number: 006368

Acronym: Square Deal Shippers
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Utica Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 007677

Acronym: Stalker Enterprises, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 10320 Little Patuxent Parkway, Equitable Bank Center,
City: Columbia,
State: MD 21044
Country: United States of America
License No.: NA.
Name Number: 001177

Acronym: Steebo B.V.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Rollostraat 55
City: 3084 Pl Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 001189

Acronym: Sunjin Shipping Company, Ltd.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 217 Broadway, Suite 412
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 001202

Acronym: Superior B and C, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 555 Dowd Avenue
City: Elizabeth
State: NJ 07201
Country: United States of America
License No.: NA.
Name Number: 006103

Acronym: Tagship Sales International, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 350627
City: Fort Lauderdale
State: FL 33335
Country: United States of America
License No.: NA.
Name Number: 006371

Acronym: Tasman Jebsen New Zealand Line
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 9th FL., Air New Zealand House, 1 Queen Street, P.O. Box 3917,
City: Auckland, New Zealand
State:
Country: New Zealand
License No.: NA.
Name Number: 007058

Acronym: TCI Carriers Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 14 West Main Street
City: Oyster Bay
State: NY 11771
Country: United States of America
License No.: NA.
Name Number: 000510

Acronym: Tem Fresh Exxpress
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 655 Montgomery Street
City: San Francisco
State: CA 94111
Country: United States of America
License No.: NA.
Name Number: 005797

Acronym: Texas Antilles Shipping Corp, Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 1584
City: La Porte
State: TX 77571
Country: United States of America
License No.: NA.

Name Number: 997754

Acronym: Thermotank, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2001 San Sebastian
City: Houston
State: TX 77058
Country: United States of America
License No.: NA.
Name Number: 006372

Acronym: Todd Logistics, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 30 Pulaski Street
City: Bayonne
State: NJ 07002
Country: United States of America
License No.: NA.
Name Number: 007753

Acronym: Todman Express Lines, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 14802 N. Dale Mabry, Suite 333
City: Tampa
State: FL 33624
Country: United States of America
License No.: NA.
Name Number: 006714

Acronym: Topman Express Lines, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Atlantic Shipping Agencies Ltd., 14802 N. Dale Mabry, Suite 333
City: Tampa
State: FL 33624
Country: United States of America
License No.: NA.
Name Number: 007760

Acronym: Total Transportation Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 429 Moon Clinton Rd
City: Corapolis
State: PA 15108
Country: United States of America
License No.: NA.
Name Number: 005488

Acronym: Trans-Med Lines
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: C/O Oste, 1146 Hemoor
City: Beirut
State:
Country: Lebanon
License No.: NA.
Name Number: 007757

Acronym: Trans-Modal, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1121 North Tower Lane
City: Bensenville
State: IL 60106
Country: United States of America
License No.: NA.
Name Number: 007782

Acronym: Trans-Oceanica Paraguaya S.R.L.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Calle TTE V. Kannonikoff 998
City: Ascuncion
State:
Country: Paraguay
License No.: NA.
Name Number: 005785

Acronym: Trans-Orient Express, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 149–10, 183 Street
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 00596

Acronym: Transamerican Ocean Contractors, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 006712

Acronym: Transamerican Steamship Corporation
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 007770

Acronym: Transglobal Lines Ltd.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 6 Caledonia Place
City: St. Helier, Jersey
State: NJ
Country: United States of America
License No.: NA.
Name Number: 006171

Acronym: Transhansa Projects, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 21 West Street—Suite 2306
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007756

Acronym: Translog, S.A.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 15 Ave Des Alpes
City: CH–1211 Geneva 1
State:
Country: Switzerland
License No.: NA.
Name Number: 000585

Acronym: Transmar
DBA: Transmar
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Suite 200 3750 N.W. 28th Street
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 006619

Acronym: Transportacion Maritima Y Fluvial, S.A. DE CV
DBA: Mayan Line
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Moras 850, Col. Del Valle
City: C.P. 03100, Mexico, D.F.
State:
Country: Mexico
License No.: NA.
Name Number: 006607

Acronym: Transrose Marine Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 39 Broadway Room 1801
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007752

Acronym: Tri-State International
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3910 E. Coronado Street, # 202
City: Anaheim
State: CA 92807
Country: United States of America
License No.: NA.
Name Number: 006237

Acronym: Trinamco International, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 6595 N.W. 36th Street, Suite 103
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 002778

Acronym: Triport International Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 822 Broadway
City: Bayonne
State: NJ 07002
Country: United States of America
License No.: NA.
Name Number: 005789

Acronym: Twin Express Trailer Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Bldg. 2141 (MIAD) Miami Int'l Airport
City: Miami
State: FL 33148
Country: United States of America
License No.: NA.
Name Number: 007769

Acronym: Unimodal Container Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Phoenix House, New Road
City: Rainham Essex RM13 8RJ
State:
Country: Great Britain
License No.: NA.
Name Number: 006153

Acronym: Union Internacional De Vapores, S.A.
DBA: Univsa Lines.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 172A—7A. Avenida 5–10 Zona 4
City: Guatemala
State:
Country: Guatemala
License No.: NA.
Name Number: 006155

Acronym: United American Tank Container, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: P.O. Box 837
City: Fulton Beach
State: TX 78358
Country: United States of America
License No.: 2510
Name Number: 005405

Acronym: United Cargo Corporation
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 45 Rockefeller Plaza
City: New York
State: NY 10020
Country: United States of America
License No.: NA.
Name Number: 001754

Acronym: Universal Express
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3530 Wilshire Blvd., Suite 100–0
City: Los Angeles
State: CA 90010
Country: United States of America
License No.: NA.
Name Number: 006674

Acronym: Valley Freight Systems, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Market Street
City: Patterson
State: NJ 07513
Country: United States of America
License No.: NA.
Name Number: 006701

Acronym: Ventana Inc
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 36-50 31st Street
City: Long Island City
State: NY 11106
Country: United States of America
License No.: NA.
Name Number: 000011

Acronym: Victory International Transport
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Building No. 62, Office No. 8
City: Port Everglades Station, Ft. Lauderdale
State: FL 33316
Country: United States of America
License No: NA.
Name Number: 000014

Acronym: VNV Filserv
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 15825 Greenworth Drive
City: La Mirada
State: CA 90638
Country: United States of America
License No: NA.
Name Number: 006374

Acronym: Webster Container Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5420 W. 104th Street
City: Los Angeles
State: CA 90045
Country: United States of America
License No: NA.
Name Number: 007771

Acronym: Weltrans International Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 6F, No. 73, Fu Hsin N. Rd.
City: Taipei, Taiwan
State:
Country: Taiwan
License No: NA.
Name Number: 006293

Acronym: West Gulf Services
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 41173
City: Houston
State: TX 77241
Country: United States of America
License No: NA.
Name Number: 002842

Acronym: Westchase Transportation Group, Inc.
DBA: Westchase Transportation Group, Inc..
Person Type: Non-Vessel-Operating Common Carrier
Street: 9800 Richmond, Suite 366
City: Houston
State: TX 77042
Country: United States of America
License No: NA.
Name Number: 001763

Acronym: World Cargo Services (WCS)
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 68868
City: Seattle
State: WA 98168
Country: United States of America
License No: NA.
Name Number: 002217

Acronym: World Express Lines, Inc.
DBA: NA.
Person Type: Ocean Freight Forwarder (Independent) Non-Vessel-Operating Common Carrier
Street: 1755 West Walnut Pkwy
City: Compton
State: CA 90220
Country: United States of America
License No: 2670
Name Number: 005538

Acronym: World Trade Shipping Corporation
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 88
City: Oyster Bay
State: NY 11771
Country: United States of America
License No: NA.
Name Number: 000121

Acronym: World Transportation Services, Inc., Agent
DBA: NA.
Person Type: Agent—Rules Tariff
Street: 1331 H Street, N.W.
City: Washington
State: DC 20005
Country: United States of America
License No: NA.
Name Number: 001803

Acronym: Worldline Shipping Co. (USA). Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: C/O Barry Brenno, 10777 Northwest Freeway
City: Houston
State: TX 77092
Country: United States of America
License No: NA.
Name Number: 007678

Acronym: Worldwide Shipping Co. (USA), Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 10777 Northwest Freeway, Suite 500 P.O. Box 53180
City: Houston
State: TX 77052
Country: United States of America
License No: NA.
Name Number: 006697

Acronym: Wyllie's Worldwide Shipping Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 431 Rutland Road
City: Brooklyn
State: NY 11203
Country: United States of America
License No: NA.
Name Number: 000132

Acronym: YSH International
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5440 Pomona Blvd.
City: Los Angeles
State: CA 90022
Country: United States of America
License No: NA.
Name Number: 006331

[FR Doc. 88–11337 Filed 5–19–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Employee Stock Ownership Trust for Ameritex Bancshares Corporation*, Bedford, Texas; to acquire 17.43 percent of the voting shares of Ameritex Bancshares Corporation, Bedford, Texas, and thereby indirectly acquire Riverbend National Bank, Fort Worth, Texas; American Bank of Commerce, Grapevine, Texas; and Haltom City State Bank, Fort Worth, Texas.

2. *Jerry L. Pipes*, Crockett, Texas, and Steven M. Pipes, Dallas, Texas; to each acquire 25.14 percent of the voting shares of Crockett Bancshares, Inc., Crockett, Texas, and thereby indirectly acquire The Crockett State Bank, Crockett, Texas.

Board of Governors of the Federal Reserve System, May 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–11318 Filed 5–19–88; 8:45 am]
BILLING CODE 6210–01–M

Heritage Bancorp, Inc. et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Heritage Bancorp, Inc.*, Northampton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage-NIS Bank for Savings, Northampton, Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gwinnett Investors, Joint Venture*, Atlanta, Georgia; to become a bank holding company by acquiring 50 percent of the voting shares of Investors Trust Financial Corporation, Duluth, Georgia, and thereby indirectly acquire Investors Bank and Trust, Duluth, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ashton Bancshares, Inc.*, Ashton, Iowa; to become a bank holding company by acquiring Ashton State Bank, Ashton, Iowa. Comments on this application must be received by June 9, 1988.

Board of Governors of the Federal Reserve System, May 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–11319 Filed 5–19–88; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 22, 1988.

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VOL 53 ISS 98 MY 20 1988 UMI

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. End Stage Renal Disease Transplant Information—0938–0064 This form is completed by all Medicare approved ESRD transplant facilities upon completion of a kidney transplant. Reports are used to prepare annual "ESRD Patient profile Tables," which show demographic characteristics of living and dead transplant recipients. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 199; Frequency of Response: Occasionally; Estimated Annual Burden: 6,666 hours.

2. Identification of Extension Units of OPT/OSP Providers—0938–0273—This form is needed to ensure that each location of OPT/OSP providers at which services are rendered are identified. These premises are considered to be part of the OPT/OSP and are subject to the same certification policy as the primary site. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 400; Frequency of Response: Occasionally; Estimated Annual Burden: 100 hours.

3. Request for Federal Assistance—0938–0078—The PG–11 is used to request support under HCFA's funding priorities. Applications are submitted by private or public non-profit agencies or organizations including State agencies that administer the medicaid program. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 250; Frequency of Response: Occasionally; Estimated Annual Burden: 15,000 hours.

4. Hospice Request for Certification in the Medicare Program—0938–0313—This form is used by hospice facilities applying for entrance into the Medicare Program. It is used by State agency surveyors as a screening device to ensure that facilities meet preliminary requirements. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 500; Frequency of Response: Annually; Estimated Annual Burden: 125 hours.

5. Municipal Health Service Cost Report Form—0938–0155—In order to determine the cost of the clinical services provided, it is necessary to determine the direct and indirect costs incurred by the participating clinics for the ancillary cost centers. The HCFA 255 is used to report the cost. Respondents: State or local governments. Number of Respondents: 15; Frequency of Response: Annually; Estimated Annual Burden: 90 hours.

6. Information Collection Requirements contained at 42 CFR 405.2112, 405.2123, 405.2136, 405.2137, 405.2138, 405.2139, 405.2140, and 405.2171—0938–0386—These requirements are needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and facilities. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 1,700; Frequency of Response: Annually; Estimated Annual Burden: 69,681 hours.

7. Information Collection Requirements for CORF's contained in 42 CFR 485.56, 485.60, 485.64, 485.66, and 405.262—NEW—In order to participate in Medicare/Medicaid as a CORF provider of services, providers must be in compliance with the standards for coverage set forth in regulations. Respondents: State or local governments. Number of Respondents: 162; Frequency of Response: Occasionally; Estimated Annual Burden: 77,014 hours.

OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. Section 427(a)(2)(A) of Title IV–B of Social Security Act—0980–0138—Section 427 of the SSA provides incentive payments to the States which meets specified protections. States must implement and operate a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: 1; Estimated Annual Burden: 102,000 hours.

OMB Desk Officer: Shannah Koss-McCallum

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Psychiatric Review Technique—0960–0413—The information collected by use of this form is needed to identify possible additional sources for evidence necessary to determine severity of the impairment and to evaluate all aspects of the impairment. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: 9,407; Estimated Annual Burden: 127,000 hours.

OMB Desk Officer: Shannah Koss-McCallum

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

1. Quarterly WIN Demonstration Projects Reports—NEW—These data are used to compare the effectiveness of the WIN Demos to the former WIN Programs in the 29 States that have elected this program. The Act requires evaluations that compare each State's current and former job entry data. Respondents: State or local governments. Number of Respondents: 29; Frequency of Response: Quarterly; Estimated Annual Burden: 1,740 hours.

OMB Desk Officer: Shannah Koss-McCallum

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

Centers for Disease Control

1. Survey of Visits to Hospital Outpatient and Emergency Departments—NEW—The purpose of this project is to develop the design for a National survey of patient visits to hospital outpatient and emergency departments. The resulting design will be tested and evaluated through actual data collection. Results will be used to implement a National survey of hospital ambulatory services in the future. This request is for a concept clearance. Respondents: Business or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1; Frequency of Response: Occasionally; Estimated Annual Burden: 1 hour.

2. Reproductive Study of Women who work with Video Display Terminals—0920–0166—This study concerns the potential reproductive health effects of working with Video display terminals (VDT). The study population consists of a cohort of married women who use VDT's full-time at work and a group who do not and are employed at three communications companies in eight southern States. The objective of the study is to determine whether VDT's are related to an increased risk of adverse reproductive outcomes. Respondents: Individuals or households. Number of Respondents: 1,650; Frequency of Response: One-time; Estimated Annual Burden: 825 hours.

3. Coalworker's Pneumoconiosis in Underground Coalminers—0920–0016—This study evaluates the effectiveness of dose standards on retarding the rates of progression of coal worker's pneumoconiosis and other respiratory ailments associated with coal mining. This study helps to identify miners who are developing respiratory disease at early stages and guides the miner and his physician to take steps to prevent pneumoconiosis from becoming disabling. Respondents: Individuals or households. Number of Respondents: 1,500; Frequency of Response: 1; Estimated Annual Burden: 875 hours.

Alcohol, Drug Abuse, and Mental Health Administration

1. Evaluation of the Utility of the National Reporting Program Data for Local Facilities—NEW—This project is a formative evaluation of the format and content of feedback reports to local mental health organizations designed to permit than to compare their own facility data on variables reported in the 1986 Inventory of Mental Health Organizations and General Hospital Mental Services, with State and National norms. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 216; Frequency of Response: 1; Estimated Annual Burden: 142 hours.

2. Surveillance of Needle Sharing Behavior—Pilot Study–NEW–One hundred intravenous drug users in each of 5 cities will be interviewed to determine frequency and intensity of needle sharing, and to determine the prevalence of putative risk factors for needle sharing behavior. The information will be used to develop a mathematical model regarding the impact of these behaviors on the spread of AIDS. Respondents: Individuals or households. Number of Respondents: 500; Frequency of Response: One-time; Estimated Annual Burden: 500 hours.

3. Inventory of Mental Health Organizations and General Hospital Mental Health Services—0930–0119—The Inventory of Mental Health Organizations and General Hospital Mental Health Services will provide information to update longitudinal data bases for the United States and each State, to support ongoing research, and to provide an universe of organizations for organization-based sample patient surveys. The data are used to study trends in utilization, staffing, and financial characteristics of mental health organizations and to support intramural and extramural research. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 7,216; Frequency of Response: One-time; Estimated Annual Burden: 3,164 hours.

Food and Drug Administration

1. Survey of Consumer Food-Handling Practices and Awareness of Microbiological Hazards—NEW—Feedback is needed about consumer's knowledge of food hygiene design education programs for consumers, food industry and the media. Information on safe handling of new products and protecting against emerging pathogens must be disseminated or consumer misuse will nullify hygiene efforts by industry and regulatory agencies. Respondents: 0; Frequency of Response: One-time; Estimated Annual Burden: 1 hour.

2. Cosmetic Risk Assessment: Exposure Survey—NEW—A data base is needed on cosmetic usage practices in the United States that can be used by Agency scientists to conduct scientific risk assessments of the possible health effects due to ingredients or contaminants in cosmetic products. Survey information will be used for constructing exposure estimates. Respondents: Individuals or households. Number of Respondents: 1; Frequency of Response: One-time; Estimated Annual Burden: 1 hour.

Health Resources Services Administration

1. Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR Part 124, Subpart H)—0915–0099—Provides a means for the Federal Government to recover grant funds when a grant-assisted hospital is sold or leased, or there is a change of use of the facility a method of calculating interest, and a waiver of the right of recovery under certain circumstances. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 30; Frequency of Response: Occasionally; Estimated Annual Burden: 60 hours.

National Institutes of Health

1. Basic OCC Audience Definition Survey (National Health Psychographic Study)—NEW—A National probability sample of 1600 households will be surveyed for a psychographic segmentation of the general public, providing a unique approach for use in developing OCC programs. A combination of telephone and mail questionnaires will be used to measure health knowledge and beliefs and emotional issues associated with health and cancer. Respondents: Individuals or households. Number of Respondents: 1,972; Frequency of Response: One-time; Estimated Annual Burden: 1,223 hours.

2. Application of the Critical Incident Technique to Study Health Professionals' Use of MEDLINE and MEDLINE-derived Information—NEW—NLM will apply the Critical Incident Technique to obtain factual accounts of outcomes associated with the use of NLM's MEDLINE system by individuals engaged in the professional practice of medicine. This study will contribute substantially to the NLM's development of responsive, computer-based information systems designed to meet the health-care needs of the Nation. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 500; Frequency of Response: Single-time; Estimated Annual Burden: 250 hours.

3. Smoking Prevention Among Black Youth—NEW—The Life Skills Training program will be tested using 4500 black adolescents. The program is designed to help prevent smoking in children and therefore could prove useful to the NCI's National Cancer Prevention and Control Program which is designed to help reduce mortality from cancer and to reduce the discrepancy in the rate of cancer between the white and the black populations. Respondents: Individuals or households. Number of Respondents: 4,365; Frequency of Response: Single-time; Estimated Annual Burden: 4,212 hours.

OMB DESK OFFICER: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
OHDS: 202–472–4415
FSA: 202–245–0652
SSA: 301–965–4149

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Date: May 16, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-11338 Filed 5-19-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Ophthalmic Devices Panel

Date, time, and place: June 20 and 21, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person: Open public hearing, June 20, 1988, 9 a.m. to 10 a.m., open committee discussion, 10 a.m. to 3 p.m.; closed comittee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. 5 p.m.; open public hearing, June 21, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

General function of committee: The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety, effectiveness, and suitability for marketing.

Agnedo—Open public hearing: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 2, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion: On June 20, 1988, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers, intraocular lenses (IOL's), and other class III surgical or diagnostic devices; the committee may discuss specific PMA's of these devices. If discussion of all pertinent Nd:Yag laser, IOL, or other class III surgical or diagnostic device issues are not completed, discussion will be continued the following day. On June 21, 1988, the committee will discuss PMA's for contact lenses and other devices, and requirements or PMA approval.

Closed committee deliberations: On June 20 and 21, 1988, the committee may discuss trade secret and/or confidential commercial or financial information relevant to PMA's for IOL's Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel

Date, time, and place: June 24, 1988, 8 a.m., Rm. 703-727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person : Open public hearing, 8 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee: The committee reviews and evaluates available data on the safety and effectiveness of the devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 3, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion: The committee will discuss premarket approval applications (PMA's) for a collagen device for temporary embolization and a polypropylene suture. The committee may discuss a PMA for a biosynthetic temporary skin substitute and a nylon suture.

Closed committee deliberations: The committee may review and discuss trade secret information regarding the manufacture of a collagen embolization device, a polypropylene suture, or a biosynthetic temporary skin substitute. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under sections 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 12, 1988.

John A. Norris,

Acting Commissioner for Food and Drugs.

[FR Doc. 88-11381 Filed 5-19-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Availability of Grants for Minority AIDS Education/Prevention Demonstration Projects

AGENCY: Office of Minority Health/Office of Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of availability of funds and request for applications under the Office of Minority Health's Program of Grants for Minority AIDS Education/Prevention Projects.

SUMMARY: The Office of Minority Health announces the availability of grants to provide support to minority community-based organizations and national minority organizations. These grants will be awarded for projects that demonstrate effective minority-targeted education and prevention strategies, to prevent infection with human immunodeficiency virus (HIV), the virus that causes Acquired Immune Deficiency Syndrome (AIDS).

Background

AIDS is characterized by a defect in natural immunity—the body's ability to defend itself against disease. People with AIDS are vulnerable to serious illnesses that rarely cause health problems in people with normal immunity. In general, these illnesses cause significant disability and premature death. The characteristic features of AIDS include "opportunistic" infections (such as *Pneumocystis carinii* pneumonia), cancer (such as Kaposi's sarcoma) and nervous system disease.

The interval between initial HIV infection and the presence of symptoms and signs that characterize AIDS is long and variable. This period ranges from several months to seven years or longer. It is not known whether, given sufficient time, everyone infected with the HIV will eventually develop AIDS. Thus, infection with HIV results in a spectrum of disease. At one end of the spectrum are people infected with HIV who look and feel perfectly healthy. At the opposite end are people with AIDS. Between these two extremes, HIV-infected people may develop illnesses that range from mild to extremely serious. AIDS-related complex (ARC) is a designation that has been created to describe a set of signs and symptoms that do not meet the Centers for Disease Control definition for AIDS. In general, the signs and symptoms that characterize ARC are not as serious as those for AIDS, however ARC may also cause significant illness and premature death. It is important to note that a person who is infected with HIV, even while feeling healthy, may unknowingly infect others.

HIV is transmitted in a number of ways—through homosexual or heterosexual contact, also by sharing needles and other "works" among intravenous drug users. The term "works" describes drug paraphernalia used to process and inject drugs intravenously (including the needle and syringe, the cooker used to liquify the drug, and the cotton used for filtering). All "works" may be potentially contaminated with infected blood. HIV is also transmitted from infected mother to infant during pregnancy, delivery and possibly through breast milk during nursing. HIV has been transmitted through transfused blood or blood components, and in a very small number of cases, HIV transmission through

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occupational exposure has been documented.

In the spring of 1985 screening the blood supply for evidence of HIV began. Beginning in 1987, blood components used to treat hemophilia were treated with heat to inactivate any HIV present. Therefore, HIV transmission through the tranfusion of blood or blood components would now be extremely unlikely. Occupational transmission of HIV has occurred in a very small number of cases as a consequence of accidental needle-sticks or the exposure of either mucous membranes or inflamed, uncovered skin to large amounts of infected blood. The implementation of specific infection control procedures in health care settings makes occupational transmission also extremely unlikely.

HIV is not transmitted through casual contact such as shaking hands, hugging, or social kissing. HIV is also not transmitted from toilet seats, drinking fountains, door knobs, dishes, drinking glasses, pets, or biting insects such as mosquitos and fleas.

The behaviors that increase the risk of infection with HIV include: Having a history of male homosexual contact since 1977, having a history of numerous sexual partners (either homosexual or heterosexual); sharing needles or other "works" among people using drugs intravenously. Having sex with someone who has had numerous homosexual or heterosexual partners, or having sex with someone who uses drugs intravenously and shares needles or other "works" are also "high risk" behaviors.

Current statistics indicate that Blacks and Hispanics are disproportionately represented among the over 53,000 people with AIDS that, to date, have been reported in the United States. While Blacks and Hispanics respectively represent about 12% and 7% of the U.S. population, 25% of people with AIDS are Black and 14% are Hispanic. This disparity is even more striking when one examines the difference in rates of AIDS cases by race—for non-Hispanic whites: 168.3 cases per million, for Hispanics: 454.5 cases per million, for Blacks: 520 cases per million. Asian/Pacific Islanders and Native Americans (including Native Hawaiians) respectively represent 1.6% and 0.7% of the U.S. population and together currently account for less than 1% of people with AIDS. However, Asian/Pacific Islanders and Native Americans are also very much at risk for AIDS. Because we do not have accurate HIV seroprevalence data, we do not know whether the current low rates among these groups will continue.

There is a significant degree of geographic variation in the racial/ethnic distribution of people with AIDS. For example, 62% of Blacks and 65% of Hispanics with AIDS resided in New York, New Jersey and Florida, while 33% of non-Hispanic whites with AIDS resided in these three states. Recognizing this variation is essential to understanding how the HIV epidemic has impacted upon various minority communities.

There are striking differences in patterns of transmission of HIV among Blacks and Hispanics compared to non-Hispanic whites. Overwhelmingly, non-Hispanic whites with AIDS are more likely to have contracted the disease through homosexual/bisexual activity or transfusion of blood or blood products (including hemophiliacs). For Blacks and Hispanics homosexual/bisexual transmission is also the predominate mode of contracting AIDS but intravenous drug abuse (by sharing needles and other "works") and heterosexual contact are much more important modes of transmission than for non-Hispanic whites. Furthermore, over 70% of heterosexuals, over 70% of women and nearly 80% of children with AIDS are Black and Hispanic. It must be emphasized, however, that people at risk for AIDS become so because of individual behavior, not because of any inherent feature of race or ethnicity.

At the present time there is no cure for HIV infection. Furthermore, there is no available treatment or vaccine to prevent the spread of the HIV. Prevention through individual behavior change is the only method currently available to stop spread of HIV infection. Only through prevention of HIV infection can the increase in future AIDS cases be slowed.

A number of public surveys have been done recently about the public's knowledge, attitudes and beliefs about AIDS. Some of these surveys suggest that minority populations tend to have less information about AIDS and greater misconceptions about AIDS. These studies also indicate that currently, minorities are not being adequately reached by AIDS education programs oriented toward the "general" population.

To effectively influence behavior, health messages for minorities must take into account culture, language, level of education and other socio-economic factors that may limit the efficacy of health education efforts designed for the "general" population. This is especially true for AIDS education which requires discussion of potentially emotionally charged issues about very personal behaviors, such as discussion of specific sexual behaviors, homosexuality, bisexuality and drug use.

Recognition of significant heterogeneity within minority populations, including differences in HIV risk factor profiles, will require creativity and innovation in the development of approaches to AIDS education/prevention—for example, providing information using posters, billboards, pamphlets, comic books, music, street theater and minority focused media. Furthermore, these messages must be presented by people and organizations that are credible to the targeted population. Community-based community service organizations that represent racial/ethnic minorities, and national minority organizations, therefore offer unique opportunities for conveying health information in general, and AIDS information in particular. Supporting these organizations to initiate or expand AIDS education/prevention activities provides an opportunity to intensify the quality and scope of HIV disease prevention for minority populations.

Authority

This program is authorized under section 301 of the Public Health Service Act, as amended.

Program Purpose

The purpose of this grant program is to demonstrate the effectiveness of AIDS education and prevention strategies designed for racial/ethnic minority populations which (1) expand the range of minority community-based and national organizations involved in AIDS education/prevention activities and (2) encourage innovative approaches that appropriately address the diversity within and among minority populations.

Program Objectives

The objectives of this grant program are to fund projects which:

(1) Demonstrate innovative approaches, among minorities, through information dissemination and education/prevention at a local or national level, in order to reduce behaviors associated with a high risk of contracting and spreading HIV infection;

(2) Demonstrate specific and detailed methods for disseminating AIDS information and providing AIDS education/prevention to racial/ethnic minorities presented in a medium, format and language that is appropriate for the targeted population;

(3) Demonstrate coordination with existing AIDS education/prevention resources (such as the local or state health department);

(4) Demonstrate experience of the organization in minority community service on a national or local level;

(5) Monitor and evaluate how the project's specific objective have been met through the proposed activities.

Definitions

For the purposes of this grant program the following definitions are provided:

Minority Community-based Organization

A private nonprofit or for-profit organization with an established record of community service within racial and ethnic minority communities. Such organizations must also show substantial minority input into policy making decisions. Documents which may indicate minority involvement include, but are not limited to, the organization's constitution or by-laws.

National Minority Organization

A private nonprofit or for-profit organization with interests and activites that have a predominant minority focus and are national in scope.

Community

A defined geographical area in which persons live and work that is characterized by: (a) Formal and informal channels of communication; (b) formal and informal leadership structures for the purpose of maintaining order and improving conditions; (c) the capacity to serve as a focal point for addressing societal needs including health needs.

Target Population

The population for whom the proposed project is directed. Proposals will be considered which address AIDS education/prevention activities for racial/ethnic minority populations within the United Staes and its territories. For the purposes of this grant program racial/ethnic minorities are defined as Asian/Pacific Islanders, Blacks, Hispanics and Native Americans/Alaska Natives (which include Native which include Native Hawaiians).

High Risk Behaviors

The behaviors that increase the risk of infection with HIV including male homesexual contact (after 1977), having numerous sexual partners (either homosexual or heterosexual); sharing needles or other "works" among people using drugs intravenously; having sex with someone who has had numerous homeosexual or heterosexual partners, or having sex with someone who uses drugs intravenously and shares needles or other "works."

Intervention

An activity or series of activities that are implemented to produce positive change.

Examples of Grant Program Activities

Please note that a broad range of approaches may be submitted as responsive to this proposal. The following examples are provided to describe *possible elements* of an acceptable program. A proposed program might include one, all or none of the examples described below:

(1) Designing and performing a needs assessment and planning project for a selected minority population that would characterize demographic features regarading levels of knowledge, attitudes and beliefs about HIV infection; assess the prevalence of high-risk behaviors; profile existing current sources of HIV infection/AIDS information; describe barriers to information dissemination; describe effective strategies for enhancing HIV infection/AIDS education that particular minority population;

(2) Providing instruction to community professionals and out-reach workers to disseminate AIDS information and provide AIDS education;

(3) Developing mechanisms to encourage volunteers to do community AIDS education/prevention out-reach;

(4) Identifying existing educational materials, developing educational materials or educational campaigns to provide factual information about HIV infection and prevention of HIV transmission;

(5) Developing strategies to provide AIDS education/prevention using hospital emergency rooms, other health care centers, churches, youth shelters, teen centers, adult education centers, detention centers or social service agencies;

(6) Developing and implementing activities to enable people at risk for contracting HIV infection to make a realistic assessment of their personal risk and their potential for transmitting the virus to others;

(7) Developing and implementing activities to assist people at risk in planning, negotiating and reinforcing behavior change to prevent HIV infection.

Availability of Funds

Under this announcement the Office of Minority Health will make $700,000 available in Fiscal Year 1988 to support 10–15 grants of $20,000–$50,000 each per year to be awarded to minority community-based organizations and 4–8 grants of $25,000–$75,000 each per year to be awarded to national minority organizations. The specific amount funded will depend on the merit and scope of the proposed project and the overall availability of funds. Since a variety of approaches would represent valid responses to this announcement, a range of cost is expected among individual grants awarded.

These grants will be funded for up to a three year project period. Funding for the second and third year of the project period will be contingent on the applicant's performance during the first year and future availability of funds. Under this announcement it is anticipated that funds will be awarded before September 30, 1988.

Applicant Eligibility

Eligible applicants for this grant program must be minority community-based organizations or national minority organizations as defined within this announcement (see definitions). Individuals are not eligible to apply.

Federal demonstration grant support is not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA is targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to balance geographic, racial/ethnic and HIV infection risk considerations in the distribution of grant awards.

Application Procedures

Application Forms

The forms used to apply for grants under this program are Form PHS 398. Copies of the application kit may be obtained from the Grants Management Branch, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadlines

The deadline for receipt of applications is 5:30 p.m. (EST) on July 15, 1988. Applications will be considered as meeting the deadline if they are either:

(1) Received at the above address on or before the deadline date, or

(2) Sent to the above address on or before the deadline date and received in time for orderly processing.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will

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not be accepted as proof of timely mailing.)

Late Applications

Applications which do not meet the Deadline criteria specified above will be considered late applications and will be returned to the applicant without being processed.

Terms of Condition and Support

Funds may be used to cover expenses clearly related and necessary to conduct the demonstration project. These expenses include the cost of personnel required to implement the program and the cost for consultants, support services and materials. Funds may not be used for HIV testing or screening. Funds may not be used for building construction costs or building alterations and renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project.

Review Methods and Review Criteria

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Applications for funding will be subject to State review but comment must be received by 60 days after the due date by the program grants management office. Applicants should contact State Single Points of Contact (SPOC) early in the application preparation process.

All applications will be reviewed and evaluated only in terms of the evidence presented in the application regarding the ability of the applicant to meet the Grant Program objectives. A review group will be convened by the Office of Minority Health solely for this purpose. The criteria presented below will be used to assist reviewers in evaluating proposed projects. (An indicator of relative weight of criteria appears in parentheses):

Project Objectives

1. The consistency of the project's goals and objectives with those of the Grant Program (high);

Target Population

2. The need for AIDS education/prevention for the target population specified by the applicant (high);

Intervention

3. The appropriateness and feasibility of the intervention strategy, specific activities and methods of implementation proposed for the target population (high);

Workplan

4. The coherence, detail, and explanation of the workplan (high)

Organizational Capability

5. The organization's capacity to be a credible source of AIDS information and education for the target population (high);

6. The organization's capacity to meet the objective's of its proposed program and carry out all proposed functions (high);

7. The organization's ability and commitment to coordinate its AIDS information and education efforts with other existing resources available for the target population (medium);

Project Management and Staffing

8. Qualifications and appropriateness of proposed program staff, both paid and voluntary, and adequacy of time allocated for them to accomplish program activities (high);

9. Appropriateness of management plan and qualifications and experience of managers proposed (medium);

Evaluation

10. The appropriateness and usefulness of methods proposed to monitor activities and measure progress toward obtaining the project objectives (medium);

11. The extent to which the evaluation plan assesses the effects of the project intervention(s) on the target population (medium).

Information and Technical Assistance

Information on the application procedures and copies of application forms may be obtained from Ralph Sloat, Grants Management Officer, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (phone 301–443–4033).

Technical assistance on the programmatic content of the application may be obtained from Jacqueline Bowles, M.D., Office of Minority Health, Room 118F, HHH Building, Washington, DC 20201 (phone 1–800–444–6472 or 202–245–0020).

(The Catalog of Federal Domestic Assistance Number for this program is 13.160)

Dated: April 20, 1988.

Herbert W. Nickens,

Director, Office of Minority Health.

[FR Doc. 88–11410 Filed 5–19–88; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program—SSA/State and Federal agencies administering workers' compensation (WC) programs.

SUMMARY: SSA is issuing public notice of its intent to conduct a matching program with the various State and Federal agencies which administer WC programs. SSA's Office of System Requirements will perform the match using certain data provided by the States and the Department of Labor (DOL). The matching program will be an interface involving the DOL system of records entitled DOL/ESA–13 (which was last published in the **Federal Register** (FR) on July 13, 1982, page 3382) and the SSA systems of records listed below (included in the list is the date and page number of the **Federal Register** (FR) issue in which a notice of the system last was published):

(1) 09–60–0045—Black Lung Payment System, HHS/SSA/OSR (FR, March 25, 1987, page 9543);

(2) 09–60–0090—Master Beneficiary Record, HHS/SSA/OSR (FR, May 1, 1986, page 16223); and

(3) 09–60–0103—Supplemental Security Income Record, HHS/SSA/OSR (FR, October 13, 1982, page 45635).

The purpose of the match is to detect and/or prevent erroneous payments of Social Security benefits, Supplemental Security Income payments and Black Lung benefits.

DATES: The data exchange will begin in fiscal year 1988.

ADDRESS: Interested parties may comment on this publication by writing to the Acting SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3–F–1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Hoos, Special Programs Branch, Office of Disability, Social Security Administration, 3–M–25 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–7687.

SUPPLEMENTARY INFORMATION: The matching program which SSA will conduct will be a computerized interface involving SSA's Black Lung Payment System, Master Beneficiary Record and Supplemental Security Income Record systems of records matched against DOL's DOL-ESA–13 system and extracts of the WC payment files maintained by State agencies. Obtaining WC data through a matching operation will permit timely, proper payment of title II/title XVI benefits/payments under the Social Security Act and Black Lung benefits under the Black Lung Act. The matching operation also will detect and prevent erroneous payments of benefits/payments.

Further information regarding the matching program, including the authority for the program, a description of the program, the personal records which will be matched, and other information relative to the matching program are provided in the notice below. The information in the notice is required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs (published in the FR on May 19, 1982, pages 21657–21658). A copy of the notice has been furnished to both Houses of Congress and the Office of Management and Budget.

Dated: May 13, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

NOTICE OF A COMPUTER MATCHING PROGRAM

Social Security Administration (SSA) Matching With State and Federal Workers' Compensation (WC) Records

A. *Authority.* Sections 224, 1631(e)(1)(B), and 1631(f) of the Social Security Act; section 412(b) of the Black Lung Benefits Act.

B. *Description of Computer Matching Program.*—1. *Organizations Involved.* SSA, the State agencies administering WC programs, and the Department of Labor (DOL) are the involved entities.

2. *Purpose.* We will use State and Federal WC data in the matching program to verify appropriate title II and Black Lung (BL) offset applications as well as title XVI unearned income adjustments. Obtaining State and Federal WC payment data through a matching operation will permit timely, proper payment of title II, title XVI, and BL benefits and assist SSA in detecting and preventing erroneous payments.

3. *Procedures.* The State WC agencies and DOL will furnish SSA extracts of their payment files containing identifying data (name, Social Security number, date of birth) and pertinent WC data (date of award, type of WC, basis of the award, payment history, lump sum information, and the WC claim number). These data will be processed against SSA's title II, title XVI and BL payments records.

For those records matched, action will be taken to assure that Social Security and BL benefits have been adjusted appropriately. For the title XVI program, the WC information will be treated as a third-party lead requiring confirmation with the individual concerned prior to payment adjustment. For the title II and BL program, the WC information will be used in payment computation, but affected individuals will be afforded due process prior to implementation of the payment modification. SSA will make no further subsequent contacts with the States or DOL as part of this matching program, except in specific cases where issues which arise from the match must be resolved.

C. *Records to be Matched.* SSA will match extracts of State WC agency records and DOL's DOL/ESA–13 system (last published in the **Federal Register** (FR) on July 13, 1982, page 3382) with the following SSA system of records (included in the list are the dates and page numbers of the FR issues in which notices of the systems appeared):

1. 09–60–0045—Black Lung Payment System (BLPS), HHS/SSA/OSR (FR, March 25, 1987, page 9543)
2. 09–60–0090—Master Beneficiary Record (MBR), HHS/SSA/OSR (FR, May 1, 1986, page 16223)
3. 09–60–0103—Supplemental Security Income Record (SSR) HHS/SSA/OSR (FR, October 13, 1982, page 45635)

D. *Projected Starting and Ending Dates.* The match will begin and run during fiscal year 1988. If it is cost effective, a new match notice will be published in fiscal year 1989.

E. *Security Safeguard.* Security safeguards pertaining to the BLPS, MBR, and SSR as reflected in the FR publications cited above will apply. All magnetic tape and disk records are kept within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge which is issued only to authorized personnel. Specific safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for them in the performance of their official duties. These same safeguards will apply to State and DOL tapes while they are in SSA's possession.

F. *Disposition of Records.* SSA will use data received for the match only for the purposes of this matching program and will return the data to State WC agencies and DOL after the matching operation. A record of the "hits" will be placed in the claim folder of the selected individual. Information regarding matched records will be incorporated into the BLPS, MBR, or SSR as appropriate.

G. *Other Comments.* For those records matched, SSA will take proper action to assure that Social Security payments are adjusted accordingly after providing due process procedures to the individuals concerned.

[FR Doc. 88–11376 Filed 5–19–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–88–1805]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

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of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507, Paperwork reduction Act, 44 U.S.C. 3507; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: May 10, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Certificate of Need for Health Facility and Assurance of Enforcement of State Standards
Office: Housing
Description of the need for the information and its proposed use: Sections 232 and 242 of the National Housing Act authorize mortgage insurance for nursing homes and/or intermediate care facilities (ICFs), board care homes, and hospitals. The form, Certificate of Need, is used and needed by the nursing homes, ICFs, and hospitals to obtain approval for an insured loan.
Form number: HUD–2576–HF
Respondents: State of Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Frequency of respondents: On Occasion
Estimated burden hours: 40
Status: Extension
Contact: C. Edward Lewis, Jr., HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880

Date: May 10, 1988.

Proposal: Application for Transfer of Physical Assets
Office: Housing
Description of the need for the information and its proposed use: These forms are completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held before the transfer. The information is needed by HUD for approval of a transfer of physical assets. HUD uses the information to ensure that the project is not placed in physical, financial, or managerial jeopardy by the transfer.
Form number: HUD–9575 and 92266
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of respondents: On Occasion
Estimated burden hours: 43,400
Status: Extension
Contact: Judith L. Lemeshewsky, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880

Date: May 10, 1988.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Application Requirements
Office: Public and Indian Housing
Description of the need for the information and its proposed use: These forms will be used by Public Housing Agencies/Indian Housing Authorities (PHAs/IHAs) in assessing their physical and management improvement needs and in applying for modernization funds. These forms are necessary to implement the statutory requirements of the CIAP.
Form number: HUD–52821, 52823, 52824, and 52825
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of respondents: On Occasion and Annually
Estimated burden hours: 16,288
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755–6640; John Allison, OMB, (202) 395–6880

Date: April 15, 1988.

Proposal: Lead-Based Paint Hazard Elimination in Public Housing
Office: Public and Indian Housing
Description of the need for the information and its proposed use: Section 566 of the Housing and Community Development Act of 1987 amends Section 302 of the Lead-Based Paint Poisoning Prevention Act to require Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to maintain records on tenant and purchaser notification, testing by location, and abatement by location and method. The PHAs and IHAs are also required to provide tenants and purchasers a copy of all positive lead-based paint test results.
Form number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of respondents: Recordkeeping and On Occasion
Estimated burden hours: 202,178
Status: Revision
Contact: Carolyn J. Newton, HUD, (202) 755–6640; John Allison, OMB, (202) 395–6880

Date: April 20, 1988.

Proposal: Survey of New Mobile Home Placements
Office: Policy Development and Research
Description of the need for the information and its proposed use: The mobile home placement data is collected from dealers and needed to monitor trends in this type of low-cost housing. HUD uses the statistics produced to formulate policy, draft legislation, and evaluate programs.
Form number: Forms C–MH–9A and C–MH–9B
Respondents: Businesses or Other For-Profit and Small Businesses or Organizations
Frequency of respondents: Monthly
Estimated burden hours: 4,000
Status: Extension
Contact: Connie H. Casey, HUD, (202) 755–5060; David Fondelier, Census, (301) 763–5731; John Allison, OMB, (202) 395–6880

Date: April 20, 1988.

Proposal: Multifamily Insurance Benefits Claims Package
Office: Administration
Description of the need for the information and its proposed use: This information is needed for lenders to claim insurance benefits. HUD uses the information to calculate the claim for insurance benefits under the contract of mortgage insurance pertaining to a specific project.
Form number: HUD–2744A, 2744B, 2744C, 2744D, and 2744E
Respondents: State or Local Governments and Businesses or Other For-Profit Organization.
Frequency of respondents: On Occasion
Estimated burden hours: 900
Status: Extension
Contact: Alice P. Thomas, HUD, (202) 755–6448; John Allison, OMB, (202) 395–6880

Date: April 20, 1988.

Proposal: Tenant Data Summary
Office: Public and Indian Housing
Description of the need for the information and its proposed use: The information is needed by HUD to monitor compliance with statutory and regulatory requirements and provide information by program evaluation and statistical reports. Each Public Housing Agency (PHA) will use the form as a means of certifying that the information the family gave the PHA has been verified, that the family was eligible at admission, and that the family certified it gave the PHA accurate and complete information.
Form: HUD–50058
Respondents: State or Local Governments
Frequency of respondents: Annually and On Occasion
Estimated burden hours: 2,640,000
Status: Reinstatement
Contact: Joyce Ann Bassett, HUD, (202) 426–0744, John Allison, OMB, (202) 395–6880

Date: April 15, 1988.

Proposal: Good Faith Estimate and Special Information Booklet
Office: Housing
Description of the need for the information and its proposed use: Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires lenders to provide borrowers a Special Information Booklet and Good Faith Estimate of settlement costs borrowers are likely to incur at that time. Section 4 of RESPA requires settlement agents to provide borrowers and sellers a HUD–1, Settlement Statement, which shows all charges to be paid by the borrower and the seller in connection with the loan settlement.
Form number: HUD–1
Respondents: Businesses or Other For-Profit
Frequency of respondents: Recordkeeping and On Occasion
Estimated burden hours: 867,501
Status: Extension
Contact: Richard E. Harrington, HUD, (202) 755–5676, John Allison, OMB, (202) 395–6880

Date: April 21, 1988.

Proposal: Land Sales Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice
Office: Housing
Description of the need for the information and its proposed use: The Interstate Land Sales Full Disclosure Act requires developers of certain types of subdivisions to register with the Department of Housing and Urban Development or take steps to comply with the law prior to commencing sales. Disclosure requires developers to define their plans for such subdivisions and to provide purchasers with information on registered subdivisions.
Form number: None
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of respondents: Annually
Estimated burden hours: 48,406
Status: Extension
Contact: Roger G. Henderson, HUD, (202) 755–0502, John Allison, OMB, (202) 395–6880

Date: April 26, 1988.

Proposal: Single Family Default Monitoring System
Office: Housing
Description of the need for the information and its proposed use: This data is needed to report information into the HUD Single Family Default Monitoring System (SFDMS). This system tracks and produces various reports containing information on mortgages in default and foreclosure procedures. The information is used by HUD to monitor and evaluate the mortgagees' servicing practices.
Form number: HUD–92068A and 92068C
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations
Frequency of respondents: Monthly and Quarterly
Estimated burden hours: 38,400
Status: Revision
Contact: Leslie Bromer, HUD, (202) 755–7330, John Allison, OMB, (202) 395–6880

Date: April 29, 1988.

[FR Doc. 88–11415 Filed 5–19–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–08–4332–13]

Availability of Final Environmental Impact Statement; Eastern San Diego County Planning Unit Section 202 Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Eastern San Diego County Planning Unit Section 202 Wilderness Study Areas (WSAs).

SUMMARY: This EIS assesses the enviromental consequences of managing four Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

San Ysidro Mountain WSA (CA–060–022)—2,131 acres; 0 acres suitable, 2,131 acres nonsuitable.
Sawtooth Mountains A WSA (CA–060–024A)—3,892 acres; 0 acres suitable, 3,892 acres nonsuitable.
Sawtooth Mountain C WSA (CA–060–024C)—2,509 acres; 0 acres suitable, 2,509 acres nonsuitable.
Table Mountain WSA (CA–060–026)—958 acres; 0 acres suitable, 958 acres nonsuitable.

For Section 202 WSAs that he does not recommend for wilderness designation (all four WSAs in this final EIS), the State Director has the authority to release those public lands from wilderness study and return them to multiple-use management in accordance with existing land use plans. A Record of Decision will be prepared for these WSAs for State Director's approval. Multiple-use management may begin 30 days after the State Director files the final EIS with the Environmental Protection Agency or approximately 30 days from the filing of this notice.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & "C" Streets NW., Washington, DC 20240.

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room E–2841, Sacramento, CA 95825

or

Bureau of Land Management, California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District Office, 1695 Spruce Steet, Riverside, CA 92507, (714) 351–6386.

Date: May 9, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–11207 Filed 5–19–88; 8:45 am]
BILLING CODE 4310–40–M

[MT–060–08–4322–02]

Grazing Advisory Board Meeting; Lewistown, MT

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet June 23, 1988. The agenda will be:

10:00 a.m.—Introduction and welcome.
10:05 a.m.—Range improvement update.
10:30 a.m.—AMP implementation, consultation, cancellation.
10:50 a.m.—ORV use on grazing allotments.
11:20 a.m.—Prairie dog control.
11:45 a.m.—Grazing regulation update.

12:00 noon—Lunch.
1:00 p.m.—Livestock lease and control agreement and leases of base property.
1:30 p.m.—CRP program impacts on grazing allotments.
1:50 p.m.—Land use plan update and riparian initiative.
2:15 p.m.—Grazing board member issues.
3:00 p.m.—Date, time, place for next meeting. Adjourn.
Public comment will be sought at the end of each agenda item.
Date: June 23, 1988 10:00 a.m. to 3:00 p.m.
Location: Yogo Inn, 211 East Main, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the *Federal Advisory Committee Act, 5 U.S.C. Appendix 1.* The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Date: May 13, 1988.

B. Gene Miller,
Acting District Manager.

[FR Doc. 88-11320 Filed 5-19-88; 8:45 am]
BILLING CODE 4310-DN-M

[WY-030-08-4322-10]

Rawlins District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Pursuant to the Taylor Grazing Act of 1934, the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, and the Executive Order 12548 of February 14, 1986, notice is hereby given of a meeting of the Rawlins District Grazing Advisory Board to be held at 9:00 a.m., June 7, 1988. This meeting will consist of a morning session in the main conference room of the district office and an afternoon tour and lunch in the vicinity of Seminoe reservoir.

DATE: June 7, 1988.

ADDRESS: Bureau of Land Management, Rawlins District Office, 1300 N. Third St., P.O. Box 670, Rawlins, Wyoming, 82301.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range conservationist, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opportunity for the public to present information or make comment.
2. Discussion of New Grazing Regulations.
3. Riparian Video.
4. Riparian Presentation—Discussion.
5. Depart for Seminoe Reservoir and sack lunch.
6. 1988 Range Improvement Update.
7. Monitoring Discussion.
8. Discuss grazing management within the Seminoe Allotment with emphasis on cooperation and coordination concerning access and recreation in the area.

The meeting and field trip will be open to the public, however interested persons must furnish their own 4-wheel drive transportation and lunch. Anyone interested in attending this meeting or making an oral presentation, must notify the District Manager by May 31, 1988. Written statements may also be filed for the Boards consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Michael J. Karbs,
Associate District Manager.

[FR Doc. 88-11480 Filed 5-19-88; 8:45 am]
BILLING CODE 4310-22-M

[ES-940-08-4520-13, ES-038800, Group 5]

Maine; Filing of Plat of Dependent Resurvey and Survey

May 16, 1988.

1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Penobscot Nation in Township 6, Range 8, West of the East Line of the State (W.E.L.S.), Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 30, 1988.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 30, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,
Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-11389 Filed 5-19-88; 8:45 am]
BILLING CODE 4310-GJ-M

National Park Service

[DES 88-26]

Availability of the Draft Environmental Impact Statement; Aniakchak National Monument and Preserve; Alaska

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Aniakchak National Monument and Preserve, Alaska and the holding of public hearings and a public meeting.

For Aniakchak National Monument and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 293,336 acres or 49 percent of study area lands for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held Tuesday, July 19, at 7:00 p.m., in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, a public meeting will be held on Aniakchak National Monument and Preserve Wilderness DEIS in King Salmon at the National Park Service office on Wednesday, July 20, 1988 at 7:00 p.m. A section 810 will be conducted as part of the meeting.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters, c/o Katmai National Park and Preserve, P.O. Box 7, King Salmon, Alaska 99614, phone (907) 246-3305 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington DC, 18th and C Streets, NW.

Date: May 13, 1988.

Gerald D. Patten,
Associate Director, Planning and Development.

Approved.

Bruce Blanchard,
Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-11322 Filed 5-19-88; 8:45 am]
BILLING CODE 4310-70-M

[DES 88-27]

Availability of the Draft Environmental Impact Statement; Cape Krusenstern National Monument, Alaska

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Cape Krusenstern National Mounment, Alaska and the holding of public hearings and public meetings.

For Cape Krusenstern National Monument, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 465,007 acres or 74 percent of study area lands for wilderness designation.

Dates and addresses: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, 7:00 p.m. Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearings will be held on Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, five public meetings will be held on Cape Krusenstern National Monuments DEIS. On Monday, July 25, 1988, in the community hall at Kivalina at 2:00 p.m. and in the community hall at Noatak at 7:00 p.m.; on Tuesday, July 26, 1988, in the National Park Service visitor center in Kotzebue at 7:00 p.m.; on Wednesday, July 27, 1988 in the IRA building in Ambler at 7:00 p.m.; and on Thursday, July 28, 1988 in the community building in Kiana at 7:00 p.m. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters at P.O. Box 1029, Kotzebue, Alaska 99752, phone (907) 442-3890 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington DC, 18th and C Street, NW.

Date: May 12, 1988.

Gerald D. Patten,
Associate Director, Planning and Development.

Approved.

Bruce Blanchard,
Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-11323 Filed 5-19-88; 8:45 am]
BILLING CODE 4310-70-M

Intent to Prepare Environmental Impact Statement; Roanoke River Parkway, VA

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Notice is hereby given that the National Park Service intends as lead agency to prepare an EIS in accordance with section 102 of the National Environmental Policy Act of 1969 for the Roanoke River Parkway. Interested and affected Federal, State and local agencies, interested groups and individuals are invited to participate in determining the scope of the EIS and significant issues to be analyzed in depth in the EIS.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 authorized the funding of $12 million for the construction of a 10-mile segment of the Roanoke River Parkway to connect the Blue Ridge Parkway with the proposed Explore Project. A tripartite agreement was set up between the National Park Service, the Federal Highway Administration and the Virginia Department of Transportation to obtain $15 million over the next five (5) years for the planning, design and construction of this segment of roadway. The proposed parkway is from Tinker Creek near the Roanoke-Vinton city limits in Roanoke County to Hardy Ford in Bedford and Franklin Counties, Virginia. This roadway will be designed and constructed by the National Park Service and the Federal Highway Administration. It will be owned by the United States and maintained by the National Park Service.

The EIS will assess the impacts to the environment as well as the socio-economic impacts associated with the preferred alignment for this 10-mile segment of the parkway as well as alternative alignments.

ADDRESSES: Send written comments to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Assistant Manager, Eastern Team, Denver Service Center, National Park Center, P.O. Box 25287, Denver, Colorado 80225, Telephone (303) 969-2400.

Dated May 9, 1988.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 88-11325 Filed 5-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 241)]

CSX Transportation, Inc.; Abandonment in Hamilton and Suwannee Counties, FL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 15.04-mile rail line between Jasper (milepost AR-654.06) and Live Oak (milepost AR-669.10) in Hamilton and Suwannee Counties, FL. The abandonment certificate will become effective 30 days ater this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11301 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31272]

CSX Transportation, Inc.; Acquisition Exemption; Certain Line of Norfolk and Western Railway Co.

CSX Transportation, Inc. (CSXT) has filed a notice of exemption to acquire a line of railroad owned by Norfolk and Western Railway Company (N&W). The line extends between milepost V-73.7 and milepost V-75.4 at Jarratt, VA, a distance of approximately 1.06 miles of main track, along with approximately 2.76 miles of passing and crossover track. The transaction was expected to be consummated on April 28, 1988.

The line CSXT is acquiring is part of a longer line of railroad which the Commission authorized to be abandoned in Docket No. AB-10 (Sub-No. 46), *Norfolk and Western Railway Company—Abandonment—Between Briery and Jarratt in Prince Edward, Lunenberg, Brunswick, Greensville, and Sussex Counties, VA* (not printed), served August 26, 1987. This acquisition, which was noted in the abandonment decision, permits direct CSXT access to a Georgia Pacific Corporation facility at Jarratt. Because that facility has been open to reciprocal switching by CSXT, the acquisition of the line will not constitute a major market extension by CSXT. See 49 CFR 1180.3(c). Accordingly, the transaction falls within the class of transactions exempted by 49 CFR 1180.2(d)(1).

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleading must be filed with the Commission and served on: Lawrence R. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

Decided: May 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11244 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31267]

Dallas Area Rapid Transit—Acquisition and Operation Exemption—Rail Lines Of Southern Pacific Transporation Co.; Exemption

Dallas Area Rapid Transit (DART), a noncarrier, has filed a notice of exemption to acquire by purchase and to operate approximately 34 miles of railroad in Dallas and Collins Counties, TX, from Southern Pacific Transporation Company (SP). The properties consist of: (a) The Soumethun Branch line of railroad from milepost 273.00 at Gifford Junction to milepost 269.78 at Lovers Lane, in Dallas TX, (b) the Ennis Subdivision North Mainline of railroad from milepost 285.10 at Spring Creek Parkway in Plano, TX, to milepost 273.00 at Gifford Junction in Dallas, including the Aprapaho Lead, (c) the Ennis Subdivision South (Dallas Belt) line from milepost 13.74 at Gifford Junction to milepost 6.94 at GC & SF Overpass at Tenison Park in Dallas, (d) the Athens Branch East line of railroad from milepost 315.00 at Briggs Junction to milepost 305.76 at Rylie in Dallas, and (e) the Athens Branch West out-of-service line from milepost 317.92 at Hall Street to milepost 315.00 at Briggs Junction in Dallas, less portions of the line segment previously conveyed by SP to the City of Dallas.

The transaction was expected to be consummated on April 28, 1988. A grant of trackage rights to SP over part of the lines that were to be sold to DART is the subject of a notice of exemption filed concurrently in Finance Docket No. 31270, *Southern Pacific Transportation Company—Trackage Rights Exemption—Dallas Area Rapid Transit.* Another grant of trackage rights to SP's affiliate, *St. Louis Southwestern Railway Company,* is the subject of a notice of exemption filed in Finance Docket No. 31278, *St. Louis Southwestern Railway Company—Trackage Rights Exemption—Dallas Area Rapid Transit.* Any comments must be filed with the Commission and served on: Lonnie E. Blaydes, Jr., 601 Pacific Avenue, Dallas, TX 75202.

DART must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved. *See Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901,* ——— I.C.C.2d ———, served February 17, 1988.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11292 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30800 (Sub-No. 1)]

Exempt Transaction To Merge Oklahoma, Kansas and Texas Railroad Co. Into Missouri-Kansas-Texas Railroad Co.

Missouri-Kansas-Texas Railroad Company (MKT) and Oklahoma, Kansas and Texas Railroad Company (OKT) have filed a notice of exemption for OKT to merge into MKT.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction which will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District,* 360 I.C.C. 60 (1979).

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11296 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 19X)]

Missouri-Kansas-Texas Railroad Co.—Abandonment Exemption—In Montgomery County, KS, and Nowata County, OK; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.2-mile line of railroad between milepost A-168.7 at Coffeyville, KS, and Milepost A-170.9 at South Coffeyville, OK, in Montgomery County, KS, and Nowata County, OK.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment. The Section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 18, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary,
Case Control Branch,
Interstate Commerce Commission,
Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Michael E. Roper,
701 Commerce Street,
Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11293 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 17)]

Missouri-Kansas-Texas Railroad Co.—Abandonment—In Bourbon, Crawford, Neosho, and Labette Counties, KS; Findings

The Commission has found that the public convenience and necessity permit the Missouri-Kansas-Texas Railroad Company to abandon its 43.3-mile line of railroad between milepost 340.5 near Griffith and milepost 383.8 near Parsons in Bourbon, Crawford, Neosho, and Labette Counties, KS.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11295 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164 (1987) and published at 52 FR 46440 (1987).

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[Docket No. AB-102 (Sub-No 16)]

Missouri-Kansas-Texas Railroad Co.—Abandonment—In Pettis and Henry Counties, MO; Findings

The Commission has found that the public convenience and necessity permit the Missouri-Kansas-Texas Railroad Company to abandon its 33.6-mile line of railroad between milepost 229.0 near Sedalia and milepost 262.6 near North Clinton in Pettis and Henry Counties, MO.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11297 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 18X)]

Missouri-Kansas-Texas Railroad Co.—Abandonment Exemption—In Comal County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Missouri-Kansas-Texas Railroad Company of a 16.7-mile line of railroad between milepost M-995.9 near Hunter and milepost M-1012.6 near Ogden in Comal County, TX, subject to standard employee protective conditions. A segment of the abandoned track serving New Braunfels, TX, will remain in service as industrial track. Shippers are advised that industrial track is not subject to the abandonment jurisdiction of the Commission or the State of Texas. Accordingly, if they do not seek reconsideration and the exemption becomes effective, shippers will have no agency recourse if MKT subsequently discontinues service at New Braunfels.

DATES: This exemption is effective on June 19, 1988. Petitions to stay must be filed by June 6, 1988, and petitions for reconsideration must be filed by June 14, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-102 (Sub-No. 18X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in F. D. No. 30800. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11301 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 23X)]

Missouri-Kansas-Texas Railroad Co.—Abandonment Exemption—In Fannin and Hunt Counties, TX; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 25.5-mile line of railroad between milepost D-668.1 at Trenton and milepost D-713.6 near Greenville, in Fannin and Hunt Counties, TX.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment. The Section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be affective June 18, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987) and published at 52 FR 48440 (1987).

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc 88-11300 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 21X]

Missouri-Kansas-Texas Railroad Co.—Abandonment Exemption—In Grayson County, TX; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 10.51-mile line of railroad between milepost P-662.54 at Denison and milepost P-673.05 at Sherman, in Grayson County, TX.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commisison or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result form the abandonment. The Section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

As a condition to use of this exemption, (1) applicant shall comply with section 106 of the National Historic Preservation Act with respect to the Ray and Downtown Yards in Denison; and (2) any employee affected by the abandoment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 18, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab inition*.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-11299 Filed 5-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-No. 22X)]

Missouri-Kansas-Texas Railroad Co.—Abandonment Exemption—In Grayson County, TX; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.8-mile line of railroad between milepost D-659.5 at Denison and milepost D-674.3 near Bells, in Grayson County, TX.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment. The Section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

As a condition to use of this exemption, (1) Applicant shall comply with section 106 of the National Historic Preservation Act with respect to the Ray and Downtown Yards in Denison; (2) applicant should consult with the Texoma Regional Planning Commission prior to bridge removal; and (3) any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 18, 1988, (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner

[1] *See Exemption of Rail Line Abandonments or Discontinuance-Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987) and published at FR 52 48440 (1987).

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987) and published at 52 FR 48440 (1987).

Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11298 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 62)]

Missouri Pacific Railroad Co., Abandonment; Butler County, KS

The Commission has issued a certificate authorizing the Missouri Pacific Railroad Company to abandon its 19.7-mile line of railroad between milepost 454.7 near Eldordo and milepost 474.4 near Whitewater, in Butler County, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11302 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 63)]

Missouri Pacific Railroad Co.; Abandonment; Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Brian Counties, OK

The Commission has found that the public convenience and necessity permit the Missouri Pacific Railroad Company to abandon its 123.6-mile line of railroad between milepost 174.0 near Henryetta and milepost 297.6 near Durant in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Brian Counties, OK.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11303 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No 64X)]

Missouri Pacific Railroad Co.; Abandonment Exemption; in Sumner County, KS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.4-mile line of railroad between milepost 544.5 near Riverdale and milepost 558.9 near Conway Springs, in Sumner County, KS.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment. The section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, see at (202) 275-7316.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 18, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Joseph D. Anthofer, Jeanna L. Regier, Room 130, 1416 Dodge Street, Omaha, NE 68179

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11304 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[1] *See Exemption of Rail Line Abandonments or Discontinuance-Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987) and published at 52 F.R. 48440 (1987).

[Docket No. AB-244 (Sub-No. 1X)]

Oklahoma, Kansas And Texas Railroad Co.; Abandonment Exemption in Dickinson County, KS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 7.5-mile line of railroad between milepost S-172.8 at North Herington and milepost S-180.3 at Woodbine, in Dickinson County, KS.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment. The Section of Energy and Environment (SEE) prepared an Environmental Assessment (EA) which has been served on all parties. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

As a condition to use of this exemption, (1) applicant should consult with the Kansas Fish and Game Commission prior to any salvage operations near Lyon Creek, and (2) any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 18, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 8, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Michael E. Roper, 701 Commerce Street, Dallas, TX 75202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: May 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11305 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987) and published at 52 F.R. 48440 (1987)

[Finance Docket No. 31278]

St. Louis Southwestern railway Co. Trackage Rights Exemption—Dallas area Rapid Transit; Exemption

Dallas Area Rapid Transit (DART) has agreed to grant trackage rights to St. Louis Southwestern Railway Company (SSW) over aline of railroad in Dallas and Collins Counties, TX, a total distance of approximately 18.89 miles. DART has agreed to grant bridge trackage rights to SSW between milepost 6.94 at GC & SF Overpass in Dallas and milepost 282.10 at Plano, TX. The trackage rights became effective on May 5, 1988.

A transaction relating to a similar grant of trackage rights to SSW's affiliate, Southern Pacific Transportation Company, is the subject of a notice of exemption filed in Finance Docket No. 31270, *Southern Pacific Transportation Company—Trackage Rights Exemption—Dallas Area Rapid Transit*.[1] This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 10, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-11294 Filed 5-19-88; 8:45 am]
BILLING CODE 7035-01-M

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987) and published at 52 F.R. 48440 (1987)

[1] In Finance Docket No. 31267, *Dallas Area Rapid Transit—Acquisition and Operation—Rail Lines of Southern Pacific Transportation Company*, DART filed a notice of exemption to acquire from SP and operate 34 miles of rail line, including the line that is the subject of the trackage rights grant here.

[Finance Docket No. 31270]

Southern Pacific Transportation Co.; Trackage Rights Exemption by Dallas Area Rapid Transit

Dallas Area Rapid Transit (DART) has agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over certain lines of railroad in Dallas and Collins Counties, TX, a total distance of approximately 27.89 miles. DART has agreed to grant trackage rights to SP: (a) Between milepost 315.00 at Briggs Junction and milepost 306.76 at Rylie; and (b) between milepost 6.94 at GC & SF Overpass at Tenison Park in Dallas and milepost 282.10 at Plano, TX. The trackage rights became effective on April 28, 1988.

DART, a noncarrier, has filed concurrently a notice of exemption in Finance Docket No. 31267, *Dallas Area Rapid Transit—Acquisition and Operation Exemption—Rail Lines of Southern Pacific Transportation Company*, relating to DART's purchase and operation of 34 miles of line in Dallas and Collins Counties, TX, including the line that is the subject of the trackage rights grant here. The lines were expected to be purchased from SP on April 28, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Where a noncarrier that is purchasing a line acquires incidental trackage rights for purposes of facilitating its operations over the purchased line, that acquisition of incidental trackage rights is governed

by 49 U.S.C. 10901. *See Class Exemption-Acq & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985). As a result, the imposition of labor protective conditions is discretionary. A different situation exists where a seller is acquiring trackage rights over the line it has just sold. The latter trackage rights acquisition is governed by 49 U.S.C. 11343 and accordingly, the imposition of labor protective conditions is mandatory. While SP maintains that labor protection should not be imposed it implicitly has acknowledged that the trackage rights transaction is governed by section 11343, in filing its notice of exemption under 49 CFR 1180.2(d)(7).

Dated: May 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 11444 Filed 5–19–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Judgment Pursuant to the Clean Air Act; University of Massachusetts

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Judgment in *United States* v. *University of Massachusetts* has been lodged with the United States District Court for the District of Massachusetts. The consent judgment addresses alleged violations by the University of Massachusetts of the Clean Air Act in regard to its boiler plant at its Amherst, Massachusetts campus.

The proposed Consent Judgment requires the University of Massachusetts to pay a civil penalty of $20,000 and enjoins the University to comply with 310 C.M.R. Section 7.02 of the particulate matter emission limitations of the Massachusetts State Implementation Plan and the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *University of Massachusetts*, D.J. Ref. number 90–5–2–1–923.

The proposed Consent Judgment may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2003, Boston, Massachusetts 02203. Copies of the Consent Judgment may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–11370 Filed 5–19–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Consumer Price Index Housing Survey
1220–0034; BLS 222I, BLS 222R, BLS 222S, BLS 222NC, BLS 222.01 I/R BLS 222.02 I/R
Semiannually/annually
Individuals or households; Business or other for profit; Small businesses or organizations
112,357 responses; 13,841 hours; 6 forms

The Consumer Price Index (CPI) Housing Survey is the nation's chief source of information on change in both residential rent and shelter costs of owner occupants. The Housing Survey currently provides the measure of price change for about 20 percent of the CPI. The CPI is the nation's leading measure of inflation at the retail level. It is widely used to develop and to measure the success of national economic policy and to escalate both federal and private payments of many kinds. As part of the 1987 revision of the CPI, the Bureau of Labor Statistics (BLS) is making significant changes in its Housing Survey data collection methods. In particular, the procedures for collecting data are being rigidly structured to standardize the collection interview.

Extension

Occupational Safety and Health Administration

Powered Platforms for Exterior Maintenance
1218–0121;
On occasion
Businesses and other for-profit;
19,500 respondents; 243,750 burden hours; no forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a powered platform and for taking the necessary preventive action to assure employee safety.

Employment Standards Administration

Request for Earnings Information
1215–0112; LS–426
On occasion
Individuals or households
1,900 responses; 475 hours; 1 form

Report gathers information regarding an employee's average weekly wage. This information is required for determination of compensation benefits in accordance with section 10 of the Longshore and Harborworkers' Compensation Act.

Occupational Safety and Health Administration

Air Quality Record
On occasion
Businesses or other for profit; Small businesses or organizations
187,500 responses; 46,876 hour; 1 form

Underground construction employers are required to keep a record of air quality test results in order to identify decreasing oxygen levels or potentially hazardous concentrations of air contaminants in time to take corrective action prior to the attainment of hazardous conditions.

Signed at Washington, DC, this 17th day of May, 1988.

Paul E. Larson,

Departmental Clearance Officer

[FR Doc. 88–11401 Filed 5–19–88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these deteminations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of evey contract for performance of the described work within the geogaphic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Govenment Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None

Volume II

Indiana
IN88–3 (Jan. 8, 1988)—p. 267
Missouri
MO88–10 (Jan. 8, 1988)—p. 656
Nebraska
NE88–1 (Jan. 8, 1988)—p. 670

Volume III

North Dakota
ND88–1 (Jan. 8, 1988)—p. 222
ND88–3 (Jan. 8, 1988)—p. 234
Nevada
NV88–1 (Jan. 8, 1988)—pp. 242, 246
NV88–2 (Jan. 8, 1988)—p. 260
NV88–3 (Jan. 8, 1988)—pp. 266–267
NV88–4 (Jan. 8, 1988)—pp. 272–280

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Deteminations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Govenment Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of May 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–11172 Filed 5–19–88; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–20,426]

Allison Abrasive Co., Shelton, CT; Negative Determination Regarding Application for Reconsideration

By an application dated April 22, 1988, the United Steelworkers (USW) Local #6038 requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed on behalf of workers at Allison Abrasive Company, Shelton, Connecticut. The denial notice was signed on March 17, 1988 and published in the **Federal Register** on March 25, 1988 (53 FR 9824).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union submitted packing lists from Korea indicating that the Shelton plant was importing abrasive wheels in May 1985. The union also submitted letters from the company dated May 17, 1985 and January 3, 1986 indicating a reduction in force.

The Department's denial was based on the fact that the "contributed importantly" test of the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey of the firm's customers, which accounted for over 100 percent of the firm's 1987 sales decline, showed that the import purchases of abrasive wheels were unimportant and did not contribute importantly to any employment declines at Shelton.

Investigative findings show that all domestic production was transferred to another company facility in Kentucky which increased its production of abrasive wheels substantially in 1987 by absorbing all of Shelton's production.

Company officials indicated that the imported abrasive wheels were general purpose wheels. Shelton's main business was in "made to order" wheels for specific customers. According to company officials, the imported wheels accounted for a negligible amount of Shelton's production in the brief time they were imported. The company ceased all imports in 1987 and currently obtains the general purpose wheel from domestic sources.

Increased imports and worker separations in 1985 and 1986 are beyond the scope of the Department's investigation under petition TA–W–20,426. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were separated from employment more than one year prior to the date of the petition which in this case is January 15, 1988.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of May 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–11402 Filed 5–19–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20,466]

PPG Industries, Inc., Tipton, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at PPG Industries, Incorporated, Tipton, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–20,466; PPG Industries, Incorporated, Tipton, Pennsylvania (May 9, 1988)

Signed at Washington, DC this 10th day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–11403 Filed 5–19–88; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 9th day of May 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/worker/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Baumgartner Resources Ltd. (Workers)	Englewood, CO	5/9/88	4/27/88	20,653	Crude Oil & Gas.
Bilt-Rite Juvenile (Workers)	Orangeburg, NY	5/9/88	4/26/88	20,654	Baby Strollers, Cribs & Playards.
Capri Textile Processors (ACTWU)	Fall River, MA	5/9/88	4/25/88	20,655	Dyeing & Printing Clothing Materials.
Florida Shoe, Inc. (Workers)	Miami, FL	5/9/88	4/27/88	20,656	Men's, Women's Children Shoes.
General Electric Co., CRTO, Bldg. 6 (Workers)	Syracuse, NY	5/9/88	4/25/88	20,657	Color Cathode Ray Tubes.
Hanson Textiles (Company)	Hatfield, PA	5/9/88	4/26/88	20,658	Dish Cloths.
International Heating Element (Workers)	Portland, ME	5/9/88	4/19/88	20,659	Water-Bed Heaters.
Mac Gregor Sand Knit (Workers)	Fox Lake, WI	5/9/88	4/26/88	20,660	Sportswear.
Max-Switch, EECO, Inc. (Workers)	Erwin, SD	5/9/88	4/25/88	20,661	Computer Keyboards.
New England MacKintoch (ILGWU)	Brockton, MA	5/9/88	4/29/88	20,662	Ladies' Coats.
P&E Woodworking (Workers)	Newport, WA	5/9/88	4/19/88	20,663	Wood Products.
Lee-Mar Shirt Co. (Workers)	Pulaski, TN	5/9/88	3/29/88	20,664	Boys' Shirts.
Summit Sportwear (ILGWU)	Stoughton, MA	5/9/88	5/2/88	20,665	Ladies' Skirts, Pants & Jackets.
Whirlpool Corp., Findlay Division (Workers)	Findlay, OH	5/9/88	4/29/88	20,666	Ranges and Dishwashers.

[FR Doc. 88–11414 Filed 5–19–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–59–C]

Cecil & Bob Coal Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

Cecil & Bob Coal Company, Inc., P.O. Box 213, Cawood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Mine No. 5 (I.D. No. 15–12915) located in Harlan County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternative method, petitioner proposes to use a 26-foot width in the belt entry, a 24-foot width in the crosscuts and a 20-foot width in the aircourses.

3. In support of this request, petitioner states that the mine is using conventional roof control with the specified widths along with spot bolting and cribbing for adverse conditions. Full bolting is highly impractical in thin seams 25 inches to 30 inches, because it is difficult to transport miners and supplies. Bolting would take 1½ inches to 2 inches of the available clearance, creating an unsafe condition due to equipment snagging on protruding roof bolts.

4. Petitioner further states that the mining equipment used is an auger type continuous miner. This system is not designed to operate in 20-foot widths, which does not allow enough space to maneuver in the petitioner's mine. A 20-foot width would also restrict the mobility of the miners.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 20, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

May 10, 1988.

[FR Doc. 88–11404 Filed 5–19–88; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The amendments would change Technical Specification (TS) 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels (i.e., vacancies) for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage. Presently, TS 5.3.1 requires that each fuel assembly contain 264 fuel rods clad with Zircaloy-4, except that limited substitutions of fuel rods with filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in peripheral fuel assemblies if justified by cycle-specific reload analyses. The revised TS

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5.3.1 would require that each fuel assembly nominally contain 264 fuel rods clad with Zircaloy-4, except that substitutions of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in fuel assemblies if justified by cycle-specific reload analyses using NRC-approved methodology. The proposed revision would also state that should more than 30 rods in the core, or 10 rods in any assembly, be replaced per refueling, a special report describing the number of rods replaced would be submitted to the Commission pursuant to Specification 6.9.2 within 30 days after cycle startup.

The increased flexibility associated with the proposed change results from removal of "limited substitutions" and "peripheral fuel assemblies." Under the proposed change, limitations on fuel rod substitutions or omissions and limitations regarding core locations are those implicit in the justifying analyses required to be performed by the licensee for each fuel cycle using NRC-approved methodology to demonstrate that existing design limits and safety analyses continue to be met. The proposed flexibility is intended to provide for improved fuel performance by permitting timely removal of individual fuel rods which are found during a refueling outage to be leaking. The requirement for special report is proposed in response to the NRC's request to be informed in the event a significant deviation from past fuel performances should be observed during a refueling outage.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 20, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date.

Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number; (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 1, 1988, which modifies a letter of February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews, Director,

Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11358 Filed 5–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–508]

Washington Public Power Supply System, Pacific Power and Light Co., et al.; Washington Public Power Supply System Nuclear Project No. 3; Order Extending Construction Completion Date

Washington Public Power Supply System (Portland General Electric Company, Puget Sound Power and Light Company, The Washington Water Power Company) is the current holder of Construction Permit No. CPPR–154, issued by the Nuclear Regulatory Commission on April 11, 1978, for construction of WPPSS Nuclear Project No. 3 (WNP–3). The facility is presently under construction at the applicant's site in southeastern Grays Harbor County, Washington.

On November 2, 1984, the Washington Public Power Supply System (WPPSS or the applicant) filed a request for an extension of the completion date. On March 10, 1986, the applicant requested a revision to the date requested in the earlier submittal. The extension has been requested because construction has been delayed by the following events:

1. The temporary lack of demand for the energy to be produced by WNP–3;
2. The temporary inability to finance the continued construction from Bonneville Power Administration (BPA) revenues;
3. Recommendations of the BPA to WPPSS that the construction restart be delayed until 1994 due to the latest regional planning;
4. The allowance of a 54-month construction period to complete WNP–3 and a margin of uncertainties such as those associated with regional load growth or time to startup the project to full construction making a revised construction completion date of July 1, 1999.

Although the applicant has not submitted a specific request to have WNP–3 be made a deferred plant pursuant to the Commission's Policy Statement on Deferred Plants, 52 FR 38077, October 14, 1987, it has provided all the information necessary to allow the staff to conclude that WNP–3 is a deferred plant. Accordingly, the NRC staff has determined that WNP–3 is a deferred plant as defined by the Commission in the policy and that it is, therefore, subject to any applicable provisions of the policy set forth there.

Good cause has been shown for the delays; the causes were beyond the control of the applicant; and the requested extension is for a reasonable period, the bses for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (53 FR 16799 dated May 11, 1988).

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Local Public Document Room at W. H. Memorial Library, 125 Main Street, South, Montesano, Washington 28523.

It is Hereby Ordered That the latest completion date for Construction Permit No. CPPR–154 is extended from January 1, 1985 to July 1, 1999.

Date of Issuance: May 16, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11359 Filed 5–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado (Fort St. Vrain Nuclear Generating Station); Exemption

I

Public Service Company of Colorado (PSC or the licensee) is the holder of Facility Operating License No. DRP–34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station (the facility) at a steady-state power level not in excess of 842 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a high temperature gas-cooled reactor (HTGR) located at the licensee's site in Weld County, Colorado.

II

The 10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

By letters dated November 10 and December 17, 1984, and January 17 and April 1, 1985, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of Sections III.G and III.J of Appendix R to 10 CFR Part 50. Additional correspondence on this subject is referenced in the Commission's concurrently issued Safety Evaluation. A description of the exemptions requested and a summary of the Commission's evaluation follows.

Exemption Requested

The licensee requested an exemption from III.G for the Three Room Control Complex and Diesel Generator Rooms from having 3-hour rated fire dampers, doors, and penetration seals.

The staff's principal concern was in the event of a fire of significant magnitude, products of combustion would pass through the wall and damage redundant/alternate post-fire shutdown systems on the other side. However, the areas on both sides of these walls are protected by automatic fire detection systems. These systems alarm in the Control Room. The staff therefore expects that any potential fire would be detected in its incipient stage before significant flame spread or room temperature rise occurred. The plant fire brigage would then be dispatched and would put out the fire using manual fire fighting equipment. If rapid fire spread occurred, the automatic fire suppression systems would actuate to control the fire and reduce ambient temperature rise. Until this occurred, the existing walls which surround these areas would act to confine the effects of the fire to the area of origin. Because openings exist in the walls, the staff expects a quantity of smoke and hot gases to pass through them and enter the adjoining locations. The smoke would be so dissipated and

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the hot gases cooled to the point where they would not represent a significant threat to post-fire shutdown systems outside of the fire area. On this basis, the staff concludes that the licensee's alternate fire protection configuration, with the proposed modifications, will achieve an acceptable level of fire safety equivalent to that provided by Section II.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the 3-hour barrier is to protect redundant trains of safe shutdown equipment. However, this would be achieved as discussed above. Thus, the underlying purpose of the rule would be satisfied without installing the required 3-hour rated dampers, doors and penetration seals.

Exemption Requested

The licensee requested exemption from III.G.3 for the Control Room from having a fire detection system installed throughout this fire area.

The staff's principal concern is that because of the absence of an areawide fire detection system, a fire could develop which would damage shutdown systems to the extent that the plant could not be safely shut down after the fire. However, the Control Room is continuously manned and automatic smoke detectors are located in the Control Room cabinets and consoles. There is reasonable assurance that a fire would be detected and suppressed by the Control Room operators or the plant fire brigade before significant damage occurred. If a serious fire developed, the existing halon fire suppression system would be manually actuated to put out the fire or control it until the plant fire brigade arrived. If such a fire caused the loss of redundant post-fire shutdown systems, the Alternate Cooling Method is available to bring the plant to a safe shutdown condition. Therefore, an areawide fire detection system in the Control Room is not necessary to provide reasonable assurance that a fire would be detected and post-fire shutdown capability maintained free of fire damage.

On this basis, the staff concludes that the licensee's alternate fire protection configuration provides an acceptable level of fire safety equivalent to that provided by Section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the areawide fire detection is to minimize the potential for damaging all equipment within a fire area. However, this would be essentially achieved as discussed above. Thus, the underlying purpose of the rule would be satisfied without installing areawide fire detection in the control room.

Exemption Requested

The licensee requested exemption from III.G.2; for the Turbine Building from having a fire detection system installed throughout this fire area.

The staff's principal concern with this exemption was that a fire of significant magnitude could develop and damage systems needed to safely shut down the plant. However, a fire detection system will be installed throughout every elevation of this fire area that does contain post-fire shutdown systems. If a fire should occur in these locations, it is expected to be detected by the system. An alarm would be transmitted automatically to the Control Room and the fire brigade would subsequently be dispatched. The brigade would put out the fire using manual fire fighting equipment. If fire should break out on the operating floor or the upper elevations of the Access Control Bay, it would be discovered, after some time delay, by plant operators or the security force. Until the arrival of the fire brigade, there are no post-fire shutdown systems that could be damaged by fire in these locations. Therefore, an areawide fire detection system is not necessary to provide reasonable assurance that a post-fire shutdown capability will remain free of fire damage.

On this basis, the staff concludes that the licensee's alternate fire protection configuration, with the proposed modifications, will achieve an acceptable level of fire safety equivalent to that provided by Section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the areawide fire detection is to minimize the potential for damaging all equipment within a fire area. However, this would be essentially achieved as discussed above. Thus, the underlying purpose of the rule would be satisfied without installing areawide fire detection in the Turbine Building.

Exemption Requested

The licensee requested exemption from III.G.2 for the Access Control Bay from having redundant post-fire shutdown systems adequately separated, and the area protected by automatic fire detection and suppression systems.

The staff's principal concern was that because of the relative proximity of the reactor plant exhaust fans, a fire of significant magnitude would damage redundant post-fire shutdown systems to such an extent that safe shutdown could not be achieved and maintained.

However, the fire load in this location is not significant, with combustible materials dispersed throughout the elevation. If a fire should occur, it would be detected by the fire detection system in its incipient stages before significant flame propagation or room temperature rise occurred. The fire brigade would then be dispatched and would put out the fire using manual fire fighting equipment. Pending arrival of the brigade, the effects of the fire would be mitigated because the smoke and hot gases would rise up into the high celing area, which would tend to act as a heat sink. Also, the fan motors and related cables would be shielded from the effects of a fire by the metal fan enclosures. Nevertheless, if a fire did result in damage to both reactor plant exhaust fans, the licensee will be able to recover from this damage by relying upon a chiller unit and recirculation fan that is located in a separate fire area. Therefore, the absence of a fixed fire suppression system is not necessary to provide reasonable assurance that safe shutdown can be achieved and minatined.

On this basis, the staff concludes that the licensee's alternate fire protection configuration, plus the proposed modifications, will achieve an acceptable level of fire protection equivalent to that provided by Section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to provide adequate protection for the redundant shutdown equipment. However, in this case the equipment is already adequately protected, and redundant equipment exists in another fire area. Thus, the underlying purpose of the rule would be satisfied without requiring equipment separation and automatic fire detection and suppression.

Exemption Requested

The licensee requested exemption from III.G.2 and III.G.3 for Outside Areas-Exterior Routing and the Turbine/Reactor Building Common Wall from the requirement for a 3-hour fire barrier to separate redundant (alternate) post-fire shutdown systems.

The staff's principal concern was that a fire of significant magnitude may result in damage to components associated with the normal post-fire shutdown systems and the alternate cooling method (ACM).

If a fire were to occur in the above referenced outside locations, a potential exists for components associated with the ACM to be damaged. However, because there areas are located outside and away from the normal post-fire shutdown systems located within the Turbine Building, the products of combustion or radiant energy from such a fire should not affect the normal systems. Smoke and hot gases would tend to be dissipated in the open air. Radiant energy would be mitigated by the intervening open space and by the exterior walls of the Turbine Building. Similarly, if a fire were to occur inside the Turbine or Reactor Building, the fire should be detected by the automatic fire detection system or by plant operators or the security force. The fire would either be extinguished manually by the plant fire brigade or by the automatic fire suppression systems. Because these locations are large open plant areas, the smoke and hot gases from such a fire might spread within each area. But it is the staff's judgment that the metal and masonry walls which bound these fire areas are capable to a significant extent of confining the effects of the fire to the immediate fire area, until the fire is extinguished. Because these walls are not all fire-rated, some products of combustion may spread beyond them. However, the smoke and hot gases would be cooled and dissipated so that there will be no threat to the redundant/alternate post-fire shutdown systems in the adjoining fire areas. Therefore, complete 3-hour rated fire walls are not necessary to provide reasonable assurance that safe shutdown conditions could be achieved and maintained with undamaged post-fire shutdown systems in the other fire areas.

On this basis, the staff concludes that the licensee's alternate fire protection configuration will achieve an acceptable level of fire safety equivalent to that achieved by compliance with Sections III.G.2 and III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstanc is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to provide adequate protection and separation for alternate/redundant post-fire shutdown equipment. However, in the case the equipment is already adequately separated. Thus, the underlying purpose of the rule would be satisfied without installing 3-hour rated fire barriers.

Exemption Requested

The licensee requested exemption from III.G.2 for Alternate Cooling Method/Congested Cable Area Interface from having redundant post-fire shutdown systems adequately separated and the area protected by automatic fire detection and suppression systems.

The staff's principal concern with the level of fire safety in these locations was that a fire of significant magnitude might damage systems associated with both the normal post-fire shutdown capability and the alternate cooling method. There is no major unmitigated fire hazard in these locations. The only significant hazard which would represent a threat to post-fire shutdown systems is the concentration of combustible insulation on the cables. However, these cable concentration areas are protected by automatic sprinkler systems. The suppression systems along the "G" and "J" walls were originally designed for manual actuation. However, at the staff's request, the licensee converted these systems to automatic actuation. Additionally, the interface areas will be protected by an automatic fire detection system. As a result, any potential fire should be detected early, before significant fire propagation or room temperature rise occurs. The fire would then be extinguished by the plant fire brigade using manual fire fighting equipment. If rapid fire spread occurred, the automatic wet pipe sprinkler systems should actuate and limit fire spread, moderate room temperature rise, and protect the post-fire shutdown cables along the "G" and "J" walls. Until the arrival of the brigade, the spatial separation between post-fire shutdown systems provides passive protection to prevent damage to redundant/alternate post-fire shutdown systems. For those systems which are not sufficiently separated, the licensee has identified alternate means of achieving and maintaining safe shutdown that would not be affected by a fire.

On this basis, the staff concludes that the licensee's alternate fire protection configuration, with proposed modifications, will achieve an acceptable level of fire safety equivalent to that achieved by compliance with Section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to provide adequate protection for the redundant shutdown equipment. However, in this case, the equipment is already adequately protected. Thus, the underlying purpose of the rule would be satisfied without requiring equipment separation and automatic fire detection and suppression.

Exemption requested

The licensee requested exemption from the III.J requirement that emergency light be powered by individual 8-hour batteries packs.

The staff had two concerns with the proposed emergency lighting system in these buildings. The first was that a sufficient number of lights would not be installed so as to provide an adequate level of illumination. However, all essential valves and equipment components requiring manual operator actions, and access and egress routes thereto, will be covered by the local zone lighting plus spot beams from adjacent zones. In addition, the licensee committed to verify the adequacy of the illumination by conducting a field walkdown with plant operators to confirm the adequacy of the number, locations, and positioning of the lights.

The second concern was that a fire could damage the power supply to the emergency lighting. However, the new system is designed in such a manner that fire in any one zone would not affect the emergency lighting in adjacent zones. Therefore, individual 8-hour batteries for each emergency light not necessary to provide reasonable assurance that sufficient emergency lighting would be available to complete safe shutdown functions after a fire.

On this basis, the staff concludes that the licensee's alternate configuration will achieve an acceptable level of safety equivalent to that achieved by compliance with Section III.J.

The special circumstance of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The proposed emergency lighting system provides an adequate level of illumination and is adequately protected against fire damage. Thus, the underlying purpose of the rule would be satisfied without installing 8-hour battery packs.

Exemption Requested

The licensee requested exemption from III.G.2 for the Reactor Building from having redundant post-fire shutdown systems adequately separated

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and the area protected by automatic fire detection and suppression systems.

The staff's principal concern was that a fire of significant magnitude would damage systems associated with redundant post-fire shutdown methods. However, the major fire hazards in this area are covered by an automatic fire suppression system. Consequently, a fire involving these hazards would be mitigated by the system. Remaining combustible materials are generally dispersed throughout the remainder of the area. As a result, a fire involving these materials would be of limited magnitude and extent and characterized initially by low flame propagation and ambient temperature rise.

If a fire did occur, it would be detected early by the fire detection systems. Where no detectors have been provided above the refueling floor, no shutdown systems exist. Upon actuation of the detection system or discovery of the fire by plant personnel, the Control Room would be notified and the fire brigade dispatched. The fire would then be either suppressed manually using portable fire fighting equipment, or automatically if the fire originated in the sprinkler area. Until the fire is controlled, the spatial separation between post-fire shutdown systems which in part extends over more than one floor elevation, will provide reasonable assurance that a post-fire shutdown capability will remain free of fire damage.

On this basis, the staff concludes that the licensee's alternate fire protection configuration, with the committed modifications, will provide an acceptable level of fire safety, equivalent to that achieved by compliance with Section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to provide adequate protection for the redundant shutdown equipment. However, in this case the equipment is already adequately protected. Thus, the underlying purpose of the rule would be satisfied without requiring equipment separation and automatic fire detection and suppression.

Exemption Requested

The licensee requested exemption from III.G.2 for the Turbine Building from having redundant post-fire shutdown systems adequately separated and the area protected by automatic fire detection and suppression systems.

The staff's principal concern was that a fire of significant magnitude would damage systems associated with redundant post-fire shutdown methods. However, the major fire hazards in this area are covered by an automatic fire suppression system, or are separated by fire walls, or both. Consequently, a fire involving these hazards would be mitigated by the protection systems. Remaining combustible materials are generally dispersed throughout the remainder of the area. As a result, a fire involving these materials would be of limited magnitude and extent. It would be initially characterized by low flame propagation and ambient temperature rise.

If a fire did occur, it would be detected early by the fire detection system. Where no detectors have been provided, no shutdown systems exist. Upon actuation of the detection system or discovery of the fire by plant personnel, the Control Room would be notified and the fire brigade dispatched. The fire would then be either suppressed manually using portable fire fighting equipment, or automatically if the fire originated in a sprinkler area. Until the fire is controlled, the spatial separation between post-fire shutdown systems, which in part extends over more than one floor elevation, will provide reasonable assurance that a post-fire shutdown capability will remain free of fire damage.

On this basis, the staff concludes that the licensee's alternate fire protection configuration with the committed modifications will provide an acceptable level of fire safety equivalent to that achieved by compliance with Section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to provide adequate protection for the redundant shutdown equipment. However, in this case, the equipment will be adequately protected. Thus, the underlying purpose of the rule would be satisfied without requiring equipment separation and automatic fire detection and suppression.

Exemption Requested

The licensee requested exemption from III.G.2 for Buidling 10 from the requirement that structural steel which is part of a fire boundary be protected to achieve a 3-hour fire barrier rating.

The staff's principal concern is that the steel wall separates two rooms which contain redundant post-fire shutdown systems. The rooms on both sides of this wall are equipped with an automatic fire detection system. If a fire should occur, it would be detected in its formative stages before significant temperature rise occurs. The fire would then be put out manually using portable fire extinguishers. If rapid fire spread occurred, the automatic fire suppression system should actuate to control the fire. The system has sufficient extinguishing agent for a manually initiated second discharge if the fire was not completely extinguished after the first discharge. Until the fire is extinguished, and considering the low fire loading (equivalent to a 15-minute duration on the ASTM E-119 time temperature curve), it is the staff's judgment that the unprotected steel will remain undamaged and the integrity of the fire wall will be maintained. On this basis, the staff concludes that the licensee's fire protection configuration will provide an equivalent level of fire safety to that achieved by compliance with Section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the low fire loading and the presence of manual and automatic fire suppression equipment minimize the threat to the steel fire barrier. Thus, the underlying purpose of the rule would be satisfied without upgrading the steel wall to a 3-hour fire rating.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifics are discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shudown capability. These features include separation distance, fire barriers, sealed penetrations, water spray or halon systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loadings, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability. At this time, the licensee has not completed all of the modifications upon which these exemptions are based. However, the licensee has in place acceptable compensatory measures and is committed to the timely completion of the committed modifications.

Accordingly, the Commission hereby grants the exemptions from the requirements of 10 CFR Part 50, Appendix R as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 36319).

The Safety Evaluation concurently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Greeley Public Library, City Complex Building, Greeley, Colorado.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of May 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-11360 Filed 5-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company, (the licensee), for operation of the Callaway Plant located in Callaway County, Missouri.

The amendment would increase the allowed flow variations of the control room emergency ventilation system, filtration air handling units, pressurization air handling units, and pressurization filter units. The amendment would also reduce the control room pressurization requirement from ¼ inch water gauge to ⅛ inch water gauge.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 20, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public

comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 25, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Callaway County Public Library 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

M.D. Lynch,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11361 Filed 5–19–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25698; File No. SR–NSCC–88–3]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corp.; Relating to an Interpretation of National Securities Clearing Corporation's ("NSCC") Clearing Fund Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1988 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is an interpretation of NSCC's Clearing Fund Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. The purpose of the proposed rule change is to clarify, through an interpretation, the application of the Clearing Fund and to specifically designate the services for which the Corporation guarantees the completion of transactions. The interpretation specifies that certain CNS and balance order transactions are guaranteed by the Corporation as well as certain envelope deliveries made pursuant to Rule 9 and designates these as "systems" for the purposes of Rule 4.

The interpretation clarifies that while losses arising in ISCC are first to be satisfied out of ISCC's Clearing Fund, if all Members have terminated their business with ISCC and an ISCC loss remains unpaid, any such loss may be satisfied out of NSCC's Clearing Fund. Such use would support NSCC's guarantee of ISCC's obligations, the terms of which guarantee are set forth as Exhibit "B" hereto. The interpretation further clarifies that the entire Clearing Fund is available to satisfy any liabilities of NSCC which are not first satisfied by users of the Fund/Serv Service.

The proposed rule change clarifies the use of the Clearing Fund and therefore will enable NSCC to better protect itself against losses. The proposed rule change will ultimately provide protection of investors and public interest and is therefore consistent with the requirements of the Securities Exchange Act of 1934, as amended, ("the Act").

B. *Self-Regulatory Organization's Statement on Burden on Competition.* NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. *Self-Regulatory Organizaiton's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others.* Comments on the proposed rule change have not been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11408 Filed 5–19–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0208]

Hidden Oaks Financial Services, Inc.; Issuance of a Small Business Investment Company License

On March 17, 1988, a notice was published in the **Federal Register** (53 FR 52) stating that an application had been filed by Hidden Oaks Financial Services, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until the close of business April 16, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0208 on May 11, 1988, to Hidden Oaks Financial Services, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–11413 Filed 5–19–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–88–18]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 9, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 12, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25024	University of Illinois Institute of Aviation.	14 CFR Part 141, Appendixes A, C, D, F, and H.	To extend Exemption No. 4719 that allows petitioner to train its students to a performance standard in lieu of meeting minimum flight time requirements.
23936	R. A. Clark Westinghouse Defense & Electronics Systems Co. (DESCO).	101.12(a)(2) & (a)(4)	Petitioner requests reissuance of exemption from Part 101 to permit continued testing of tethered aerostats more than 500 feet above the surface of the earth and within 5 miles of the boundary of the airport.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20090	Sierra Academy of Aeronautics	14 CFR 61.63(d)(2) and (3); 61.157(d)(1) and (2); Appendix A of Part 61.	To extend Exemption No. 2963, as amended, that allows petitioner to use FAA-approved simulators to meet certain training and testing requirements of the FAR. *GRANT, April 29, 1988, Exemption No. 2963G.*
20549	Boeing Commercial Airplane Co.	14 CFR portions of Parts 21 and 25.	To amend Exemption No. 3035 to remove the reference to specific air carriers, thereby permitting operation of certain Boeing 747 airplanes by any foreign air carrier with the flap position indicator in the lower left-hand corner of the pilot's center instrument panel and with the servo altimeter configured with dial markings at 50-foot increments rather than 20-foot increments. *GRANT, April 19, 1988, Exemption No. 3035F.*
21350	The Coastal Corporation	14 CFR 61.58(c)(1)	To extend Exemption No. 4644 that permits petitioner's pilots in command (PIC) of BAC 1–11 aircraft to complete the entire 24-month PIC check in an FAA-approved visual simulator provided that the pilot taking the flight check has completed three takeoffs and three landings within the preceding 90 days in a BAC 1–11 aircraft. *GRANT, April 29, 1988, Exemption No. 4644A.*
23336	Simulator Training, Inc.	14 CFR 61.63(d)(2) and (3); 61.157(d)(1) and (2); and Appendix A to Part 61.	To amend Exemption No. 4797, as amended, that allows petitioner and persons who contract for services from petitioner who are applicants for an airline transport pilot certificate or are applying for a type rating to be added to their pilot certificate to use FAA-approved simulators to completion a portion of the training and testing requirements of §§ 61.63(d)(2) and (3) and 61.157(d)(1) of the FAR. *GRANT, April 29, 1988, Exemption No. 4797C.*
24413	Flight Training International	14 CFR 61.63(d)(2) and (3); 61.157(d)(1) and (2) and (e)(1) and (2); Appendix A of Part 61; and Appendix H of Part 121.	To extend Exemption No. 4327, as amended, that allows petitioner and persons who contract for services from petitioner to use FAA-approved simulators to meet certain training and testing requirements of the FAR. *GRANT, April 29, 1988, Exemption No. 4327D.*

[FR Doc. 88–11315 Filed 5–19–88; 8:45 am]

BILLING CODE 4910–13–M

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Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Long Island Rail Road

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before July 6, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance are as follows:

The Long Island Rail Road

[Waiver Petition Docket Number LI–87–2]

The Long Island Rail Road (LIRR) seeks a temporary waiver of compliance with a provision of the Locomotive Safety Standards (49 CFR Part 229) for 140 of its fleet of 172 locomotives.

The temporary waiver sought by the LIRR would permit the continued use of 140 locomotives with overdue 24-month air brake work. The relief is requested for a period of 10 months. The time extension is needed because the LIRR has encountered extensive delays in delivery of replacement air brake portions. Many air brake components ordered in the spring of 1986 have not yet been received.

The delay in delivery of the air brake equipment is due to the relocation of WABCO's passenger air brake equipment division from Wilmerding, Pennsylvania, to Spartanburg, South Carolina.

Issued in Washington, DC, on May 2, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–11341 Filed 5–19–88; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 13–88]

Treasury Bonds of 2018

May 13, 1988.

The Secretary announced on May 12, 1988, that the interest rate on the bonds designated Bonds of 2018, described in Department Circular—Public Debt Series—No. 13–88 dated May 5, 1988, will be 9⅛ percent. Interest on the bonds will be payable at the rate of 9⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–11382 Filed 5–19–88; 8:45 am]

BILLING CODE 4810–40–M

[Amdt. To Department Circular—Public Debt Series—No. 11–88]

Treasury Notes, Series S–1991

May 11, 1988.

Department of the Treasury Circular, Public Debt Series—No. 11–88, dated May 5, 1988, as supplemented, descriptive of the 8⅛ percent Treasury Notes of Series S–1991, is hereby amended, effective May 16, 1988, to issue the Notes as an additional issue of the 8⅛ percent Treasury Notes of Series J–1991 (CUSIP No. 912827 TJ 1), as described in Department of the Treasury Circular, Public Debt Series—No. 11–88, dated February 19, 1988, as supplemented. The provision in Department of the Treasury Circular, Public Debt Series—No. 11–88, for a $5,000 minimum denomination on the Series S–1991 notes will have no effect following the merger of the two issues. Both the original and the additional issue of the 8⅛ percent Notes will have a $1,000 minimum denomination and will mature on May 15, 1991.

The additional issue of the 8⅛ percent Treasury Notes of Series J–1991 will accrue interest from May 15, 1988, and payment for the Notes will be calculated on the basis of the auction price determined in accordance with Department of the Treasury Circular, Public Debt Series—No. 11–88, plus accrued interest from May 15, 1988, to May 16, 1988, in the amount of $0.22079 per $1,000 of notes allotted.

The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the *Treasury Direct* Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

Registered definitive securities tendered in payment for the Notes allotted and to be held in *Treasury Direct* are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

Otherwise, the Notes are as described in the following excerpt from Department of the Treasury Circular, Public Debt Series—No. 11–88:

2.1. The Notes will be dated March 5, 1988, and will accrue interest from that date, payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secertary.

[FR Doc. 88–11384 Filed 5–19–88; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 11–88]

Treasury Notes, Series S–1991

May 11, 1988.

The Secretary announced on May 10, 1988, that the interest rate on the notes designated Series S–1991, described in Department Circular—Public Debt Series—No. 11–88 dated May 5, 1988, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–11385 Filed 5–19–88; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 12–88]

Treasury Notes, Series B–1998

May 12, 1988.

The Secretary announced on May 11, 1988, that the interest rate on the notes designated Series B–1998, described in Department Circular—Public Debt Series—No. 12–88 dated May 5, 1988, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–11383 Filed 5–19–88; 8:45 am]

BILLING CODE 4810–40–M

Customs Service

[T.D. 88–26]

Accreditation of a Commercial Laboratory; Core Laboratories

AGENCY: Customs Service, Treasury.

ACTION: Notice of accreditation of a commercial laboratory.

SUMMARY: Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), Core Laboratories, 8210 Mosley Road, Houston, Texas 77075, has applied to Customs for accreditation to analyze imported petroleum and petroleum products for certain characteristics. Customs has determined that Core Laboratories meets all of the requirements for accreditation.

Accordingly, Core Laboratories is hereby accredited to analyze imported petroleum and petroleum products for the following characteristics: API gravity, Sediment and Water, and distillation characteristics in compliance with the Customs Regulations (19 CFR Chapter I) in all Customs districts.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: May 13, 1988.

John B. O'Loughlin,

Director, Office of Technical Services.

[FR Doc. 88–11378 Filed 5–19–88; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 88–25]

Approval of a Commercial Gauger; Dahl & Co., Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of approval as a commercial gauger.

SUMMARY: Pursuant to §151.13, Customs Regulations (19 CFR 151.13), Dahl & Company, Inc., 214 N. Gulf Blvd. (P.O. Box 1121), Freeport, Texas 77541, has applied to Customs for approval to gauge imported petroleum and petroleum products and bulk liquid organic chemicals. Customs has determined that Dahl & Co. meets all of the requirements for approval.

Accordingly, Dahl & Company, Inc. is hereby approved to gauge imported petroleum and petroleum products and bulk liquid organic chemicals in all Customs districts.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: May 11, 1988.

John B. O'Loughlin,

Director, Office of Technical Services.

[FR Doc. 88–11379 Filed 5–19–88; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Receipt of Cultural Property Request From the Government of Bolivia and Amendment to Agenda of Closed Meeting of the Cultural Property Advisory Committee

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of Bolivia, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from Bolivia is for U.S. import restrictions on certain endangered ethnological material to assist Bolivia in protecting its cultural patrimony.

Bolivia's request will be referred to the Cultural Property Advisory Committee for review at its meeting on May 19–20. The Cultural Property Advisory Committee meeting to be held in Room 840, 301 Fourth Street SW., was previously announced and will be closed to the public for the reasons specified in **Federal Register** announcement of Monday, May 9, 1988, Vol. 53, No. 89, page 16511.

Date: May 17, 1988.

Marvin L. Stone,

Deputy Director, United States Information Agency.

[FR Doc. 88–11544 Filed 5–19–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

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ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW. Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 16, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management an Statistics.

Extension

1. Department of Veterans Benefits
2. Report of Automatic Manufactured Home and/or Lot Loan
3. VA Form 26–8149
4. This form seves as the means for lenders to report to VA the information necessary to receive guaranty under the automatic processing procedure.
5. On occasion
6. Business or other for profit
7. 5,400
8. 2,700
9. Not applicable

[FR Doc. 88–11386 Filed 5–19–88; 8:45 am]

BILLING CODE 8320–01–M

Availability of Report of Therapeutic Work Programs Evaluation

Notice is hereby given that the Therapeutic Work Programs Evaluation has been completed.

Single copies of the Therapeutic Work Programs Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. H. Raymond Wilburn, Director, Studies and Evaluation Service, Veterans' Administration (072), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 13, 1988.

By direction of the Administration.

Raymond S. Blunt

Director, Office of Program Analysis and Evaluation.

[FR Doc. 88–11387 Filed 5–19–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 98

Friday, May 20, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:03 p.m. on Monday, May 16, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

An administrative enforcement proceeding involving an insured bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,207 (Amendment)
Alaska National Bank of the North, Fairbanks, Alaska
and
First Interstate Bank of Alaska, Anchorage, Alaska

Matters relating to the possible closing of certain insured banks.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Request for assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 17, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–11411 Filed 5–17–88; 4:42 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * * *

DATE AND TIME: Thursday, May 26, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Draft AO 1988–12—John R. Hall on behalf of Empire of America Federal Savings Bank, Buffalo, New York.

Draft AO 1988–19—John C. Biehl on behalf of Ashland Oil, Inc.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202–376–3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88–11431 Filed 5–16–88; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, May 24, 1988.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public

(1) Oral Argument in Olin Corporation, Docket No. 9196.

Portions Closed to the Public

(2) Executive Session to follow Oral Argument in Olin Corporation, Docket No. 9196.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,

Secretary.

[FR Doc. 88–11419 Filed 5–18–88; 9:00 a.m.]

BILLING CODE 6750–01–M

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Corrections

Federal Register
Vol. 53, No. 98
Friday, May 20, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 86F-0489]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Boiler Water Additives

Correction

In rule document 88-9340, appearing on page 15199 in the issue of Thursday, April 28, 1988, make the following correction:

On page 15199, in the third column, in amendatory instruction 2, in the fifth line, "acid-co–" should read "acid-co-".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0435]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 88-9339, beginning on page 15199 in the issue of Thursday, April 28, 1988, make the following corrections:

1. On page 15200, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "[HHF-335]" should read "[HFF-335]".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, "buty-l4-" should read "butyl-4-".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

Correction

In notice document 88-9700 beginning on page 15740 in the issue of Tuesday, May 3,1988, make the following corrections:

1. On page 15743, in the third column, in the eighth paragraph, in the third line, "date" should read "data".

2. On the same page, in the same column, in the third line from the bottom, "could not be" should read "could be".

3. On page 15744, in the first column, in the first complete paragraph, in the third line, "pubication to HCFR" should read "publication to HCFA".

BILLING CODE 1505-01-D

federal register

Friday
May 20, 1988

Part II

Environmental Protection Agency

Twenty-second Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals; Notice

40 CFR Parts 712 and 716

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41029; FRL-3381-7]

Twenty-second Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-Second Report to the Administrator of EPA on May 2, 1988. This report, which revises and updates the Committee's priority list of chemicals, adds 10 chemicals to the list for priority consideration by EPA in promulgation of test rules under section 4(a) of the Act. The Twenty-Second Report is included with this notice. One chemical, 1,6-hexamethylene diisocyanate (CAS No. 822-06-0) is designated for response within 12 months. In response to ITC's designation, EPA will either initiate rulemaking under section 4(a) of TSCA, or publish a **Federal Register** notice explaining the reasons for not initiating such rulemaking within 12 months. Crotonaldehyde (CAS No. 4170-30-3); imidazolium quaternary ammonium compounds (CAS No. 68122-86-1); and seven ethoxylated quaternary ammonium compounds (CAS Nos. 68153-35-5, 68389-88-8, 68389-89-9, 68410-69-5, 68413-04-7, 68554-06-3, and 70914-090-9) are not designated for response within 12 months. EPA invites interested persons to submit written comments on the report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations.

Additionally, EPA is soliciting interest in public participation in the consent agreement process for crotonaldehyde, imidazolium quarternary ammonium compounds, and seven ethoxylated quaternary ammonium compounds.

The ITC also has removed 9 chemicals from the priority list. Six aminoanthraquinone dyes (CAS Nos. 128-66-9, 2861-02-1, 6247-34-3, 6424-85-7, 12217-79-7 and 17418-58-5) have been removed from the list on the basis of relatively low aggregate production and sufficient genotoxicity testing to reduce concerns about these chemicals. Tributyl phosphate (CAS No. 126-73-8), isopropanol (CAS No. 67-63-0), and methyl *tert* butyl ether (CAS No. 1634-04-4) have been removed because EPA has responded to the ITC's previous recommendations for testing of the chemicals.

DATES: Written comments should be submitted by June 20, 1988. Submit written notice of interest in being designated an "interested party" to development of consent agreements for crotonaldehyde, imidazolium quaternary ammonium compounds and seven ethoxylated quaternary ammonium compounds by June 20, 1988. Focus Meetings will be held on June 14 and June 17, 1988.

ADDRESS: Send written submissions to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M Street SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41029).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Focus Meetings will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M Street SW., Washington, DC. Persons planning to attend the Focus Meetings, and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To ensure seating accommodations at the Focus Meetings, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA has received the Report of the TSCA Interagency Testing Committee to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the ITC to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. The chemical 1,6-hexamethylene diisocyanate is a designated chemical. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Twenty-Second Report was received by the Administrator on May 2 and follows this Notice. The Report adds 10 substances to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice is published elsewhere in today's **Federal Register** adding 8 of the 10 substances recommended in the ITC's Twenty-Second Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). Two of the 10 substances, 1,6-hexamethylene diisocyanate (52 FR 16022, May 1, 1987) and crotonaldehyde (51 FR 2890, January 22, 1986), already are subject to this rule, which requires the reporting of unpublished health and safety studies on the listed chemicals. All 10 chemicals will be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to these chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held as follows:

June 14, 1988

9:30 a.m.—Imidazolium quaternary ammonium compounds
1:00 p.m.—Ethoxylated quaternary ammonium compounds

June 17, 1988

9:30 a.m.—Crotonaldehyde
1:00 p.m.—1,6-Hexamethylene diisocyanate

They will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M Street SW., Washington, DC. These meetings are intended to supplement and expand upon written comments submitted in response to this notice.

Persons wishing to attend these meetings, or subsequent meetings on these chemicals, should call the TSCA Assistance Office at the telephone number listed above at least one week in advance.

This notice also serves to invite persons interested in participating in or monitoring negotiations for consent agreements for crotonaldehyde, imidazolium quaternary ammonium compounds, and ethoxylated quaternary ammonium compounds to notify EPA no later than June 20, 1988. The procedures for negotiations are described in 40 CFR 790.22. All written submissions should bear the identifying docket number (OPTS-41029).

III. Status of List

In addition to adding the 10 recommendations to the priority list, the ITC's Twenty-Second Report notes the removal of 9 chemicals from the list since the last ITC report. Six aminoanthraquinone dyes have been removed from the list by the ITC on the basis of relatively low aggregate production and sufficient genotoxicity testing to reduce concerns. Subsequent to ITC's preparation of its Twenty-First Report, EPA responded to the ITC's recommendations for three additional chemicals. The three chemicals removed and the dates of publication in the **Federal Register** of EPA's responses to the ITC for these chemicals are: tributyl phosphate (52 FR 43346, November 12, 1987); isopropanol, (53 FR 8638, March 16, 1988); and methyl *tert* butyl ether (53 FR 10391, March 31, 1988).

The current list contains 1 designated substance, 2 chemicals recommended with intent-to-designate, and 14 recommended substances.

Authority: 15 U.S.C. 2603.

Dated: May 11, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division.

Twenty-Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of 10 chemicals.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups of chemicals recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1—ADDITIONS TO THE SECTION 4(e) PRIORITY LIST, MAY 1988

Chemical/Group	Recommended studies
A. *Designated for response within 12 months:*	
1,6-Hexamethylene diisocyanate [1] CAS No. 822-06-0.	Health Effects: Chronic toxicity, including oncogenicity; reproductive and developmental effects. Chemical Fate: None Ecological Effects: None
B. *Recommended with Intent-to-Designate:*	
Crotonaldehyde [2] CAS No. 4170-30-3.	Health Effects: None Chemical Fate: Volatilization rate from water; aerobic aquatic biodegradation rate. Ecological Effects: Acute toxicity to algae, fish and aquatic invertebrates.
C. *Recommended Without Being Designated for Response Within 12 Months:*	
Imidazolium Quaternary Ammonium Compounds [3] (CAS No. 68122-86-1).	Health Effects: Chronic toxicity studies to evaluate potential effects through long-term dermal exposures. Chemical Fate: Aerobic and anaerobic biodegradation of the chemical sorbed to freshwater and estuarine sediments. Ecological Effects: Acute and chronic effects on representative freshwater and estuarine benthic organisms.
Ethoxylated Quaternary Ammonium Compounds [4] (CAS Nos. 68153-35-5, 68389-88-8, 68389-89-9, 68410-69-5, 68413-04-7, 68554-06-3, and 70914-09-9).	Health Effects: Chronic toxicity studies to evaluate potential effects through long-term dermal exposures. Chemical Fate: Aerobic and anaerobic biodegradation of the chemicals sorbed to freshwater and estuarine sediments. Ecological Effects: Acute and chronic effects on representative freshwater and benthic organisms.

CA Index Names (9 CI)

[1] Hexane, 1,6-diisocyanato-.

[2] 2-Butenal.

[3] Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates.

[4] Ethanaminium, 2-amino-N-(2-aminoethyl)-N-(2-hydroxyethyl)-N-methyl-, N,N'-ditallow acyl derivs., Me sulfates (salts); CAS No. 68153-35-5.

Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-dicoco acyl derivs., Me sulfates (salts); CAS No. 68389-88-8.

Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-

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bis(hydrogenated tallow acyl) derivs., Me sulfates (salts); CAS No. 68389–89–9,

Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-ditallow acyl derivs., Me sulfates (salts); CAS No. 68410–69–5,

Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis(2-aminoethyl)-methylammonio]-methylethyl]-ω-hydroxy-, N,N'-, ditallow acyl derivs., Me sulfates (salts); CAS No. 68413–04–7,

Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl)-methylammonio]-2-hydroxypropyl]-ω-hydroxy-, N-coco acyl derivs., Me sulfates (salts); CAS No. 68554–09–9, and

Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-di-C_{14-18} acyl derivs., Me sulfates (salts); CAS No. 70914–09–9

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
Joseph Jehl, Member [1]
Department of Commerce
Partick D. Cosslett, Member
Raimundo Prat, Alternate
Environmental Protection Agency
John D. Walker, Member
Laurence S. Rosenstein, Alternate
National Cancer Institute
Richard Adamson, Member
Elizabeth K. Weisburger, Alternate
National Institute of Environmental Health Sciences
James K. Selkirk, Member and Chairperson
National Institute for Occupational Safety and Health
Bryan D. Hardin, Member and Vice Chairperson
Rodger L. Tatken, Alternate
National Science Foundation
Rodger W. Baier, Member
Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
Robert Turnage, Member [2]
Stephen Mallinger, Alternate

Liaison Agencies and Their Representatives

Consumer Product Safety Commission
Lakshmi C. Mishra
Department of Agriculture
Richard M. Parry, Jr.
Elise A. B. Brown
Department of Defense
Vacant
Department of the Interior
Sarah Gerould
Food and Drug Administration
Arnold Borsetti
National Library of Medicine
Vera Hudson
National Toxicology Program
Dorothy Canter

Committee Staff

Robert H. Brink, Executive Secretary
Norma Williams, ITC Program Specialist

Support Staff

Alan Carpien—Office of the General Counsel, EPA

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

[1] Appointed on October 30, 1987.
[2] Appointed on October 30, 1987.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1988 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register**. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and seven liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 6).

1.2 *Committee's previous reports.* Twenty-one previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 6). Ninety-six entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, fourteen chemicals and one group of chemicals were recommended without being so designated.

1.3 *Committee's activities during this reporting period.* Between October 16, 1987 and April 21, 1988, the Committee continued to review chemicals from its fifth and sixth scoring exercises, and from nominations by Member Agencies, Liaison Agencies and State Agencies.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on eighty-four chemicals. Ten were selected for addition to the section 4(e) Priority List, and twenty-four were deferred indefinitely. The remaining chemicals are still under study.

In its twentieth report to the EPA Administrator (Ref. 5, ITC, 1987), the Committee placed ethylbenzene (CAS No. 100–41–4) on the Priority List on the "Recommended with Intent-to-Designate" category. The Committee recommended that ethylbenzene be tested for acute toxicity to freshwater algae and invertebrates and to saltwater algae, invertebrates and fish. Subsequently, the Committee learned that acute toxicity testing of ethylbenzene with freshwater invertebrates had recently been completed at the University of Wisconsin. As noted in the twenty-first report, the Committee also was informed that a consortium of ethylbenzene producers, the Styrene and Ethylbenzene Association, voluntarily sponsored studies on the other acute toxicity tests recommended by the Committee. The Committee deferred a decision on whether or not to designate ethylbenzene pending a review of the data developed during the above studies. The Committee has reviewed the data developed in those studies and has concluded that all of the data gaps identified in the twentieth report have been satisfactorily resolved with the exception of saltwater invertebrate testing. Industry has volunteered to sponsor additional studies with saltwater invertebrates. The Committee has decided to continue to defer a decision on whether or not to designate ethylbenzene pending a review of data from the additional invertebrate tests.

In its twenty-first report to the EPA Administrator, the Committee recommended genotoxicity testing on six aminoanthraquinone dyes (CAS Nos. 128–86–0, 2861–02–1, 6247–34–3, 6424–85–7, 12217–79–7 and 17418–58–5). Subsequent to the recommendation the Committee had an opportunity to examine the TSCA section 8(a) Preliminary Assessment rule and TSCA section 8(d) Health and Safety Data Reporting rule information submitted to the EPA. That information included current production and use information on those dyes and additional data on genotoxicity tests. As a result of its review of that information, the Committee has concluded that the six aminoanthraquinone dyes with the above CAS numbers should be removed from the Priority List on the basis of relatively low aggregate production and sufficient genotoxicity testing to reduce concerns.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA direct the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding ten chemicals: 1,6-hexamethylene diisocyanate (CAS No. 822–06–0), crotonaldehyde (CAS No. 4170–30–3), imidazolium quaternary ammonium compounds (CAS No. 68122–86–1) and ethoxylated quaternary ammonium compounds (CAS Nos. 68153–35–5, 68389–88–8, 68389–89–9, 68410–69–5, 68413–04–7, 68554–06–3 and 70914–09–9). Nine chemicals are being removed from the Priority List at this time. Tributyl phosphate (CAS No. 126–73–8) was the subject of a Notice of Proposed Rulemaking (52 FR 43346; November 12, 1987). Isopropanol (CAS No. 67–63–0) also was the subject of a Notice of Proposed Rulemaking (53 FR 8638; March 16, 1988) and methyl *tert* butyl ether (CAS No. 1634–04–4) was the subject of a Testing Consent Order (53 FR 10391; March 31, 1988). In addition, six aminoanthraquinone dyes (CAS Nos. 128–86–9, 2861–02–1, 6247–34–3, 6424–85–7, 12217–79–7 and 17418–58–5) are being removed for the reasons given in section 1.3.

With the ten new recommendations and nine removals noted in this report, seventeen entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 2 follows:

TABLE 2—THE TSCA SECTION 4(e) PRIORITY LIST, MAY 1988

Entry	Date of designation
A. Chemicals and Groups of Chemicals Recommended and Designated for Response Within 12 Months:	
1. 1,6-Hexamethylene diisocyanate.	May 1988
B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate:	
1. Ethylbenzene	May 1987
2. Crotonaldehyde	May 1988
C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months:	
1. Diisodecyl phenyl phosphite	Nov. 1985
2. C.I. Disperse Blue 79	Nov. 1986
3. Methyl ethyl ketoxime	Nov. 1986
4. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide.	May 1987
5. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide.	May 1987
6. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]-acetamide.	May 1987
7. Imidazolium. compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates.	May 1988
8. Ethanaminium,2-amino-N-(2-aminoethyl)-N-(2-hydroxyathyl)-N-methyl-, . N,N'-ditallow acyl derivs., Me sulfates (salts).	May 1988
9. Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-dicoco acyl derivs., Me sulfates (salts).	May 1988
10. Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts).	May 1988
11. Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio-ethyl]-ω-hydroxy-, N,N'-ditallow acyl derivs., Me sulfates (salts).	May 1988
12. Poly[oxy(methyl-1,2-ethanediyl)],α-[2-[bis(2-aminoethyl)-methylammonio]-methylethyl]-ω-hydroxy-, N,N'-, ditallow acyl derivs., Me sulfates (salts).	May 1988
13. Poly(oxy-1,2-ethanediyl),α-[3-[bis(2-aminoethyl)-methylammonio]-2-hydroxypropyl]-ω-hydroxy-, N-coco acyl derivs., Me sulfates (salts).	May 1988
14. Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-di-C_{14-18} acyl derivs., Me sulfates (salts).	May 1988

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830–44837.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substances to the section 4(e) Priority List: 1,6-hexamethylene diisocyanate (CAS No. 822–06–0), crotonaldehyde (CAS No. 4170–30–3), imidazolium quaternary ammonium compounds (CAS No. 68122–86–1) and ethoxylated quaternary ammonium compounds (CAS Nos. 68153–35–5, 68389–88–8, 68389–89–9, 68410–69–5, 68413–04–7, 68554–06–3 and 70914–09–9). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members.

2.2 *Chemicals designated for response within 12 months*—2.2.a *1,6-Hexamethylene diisocyanate—Summary of recommended studies.* It is recommended that 1,6-hexamethylene diisocyanate be tested for the following:

1. *Chemical fate:* None.

2. *Health effects:* Chronic toxicity (including oncogenicity) and reproductive and developmental effects studies.

3. *Ecological effects:* None.

Physical and Chemical Information

CAS Number: 822-06-0
Synonyms: Hexane, 1,6-diisocyanato-; Hexamethylene diisocyanate; 1,6-Diisocyanatohexane
Acronym: HDI
Trade Names: Desmodur H; Mondur HX
Structural Formula: $OCNCH_2CH_2CH_2CH_2CH_2CH_2NCO$

$OCNCH_2CH_2CH_2CH_2CH_2CH_2NCO$

Empirical Formula: $C_8H_{12}N_2O_2$
Molecular Weight: 168.0
Appearance: Liquid
Boiling Point: 212.8 °C at 760 mmHg (Ref. 22, NIOSH, 1978)
Vapor Pressure: 0.05 mmHg at 24 °C (Ref. 22, NIOSH, 1978)
Specific Gravity: 1.04 (Ref. 22, NIOSH, 1978)
Flashpoint: 140 °C (Ref. 22, NIOSH, 1978)
Solubility: Poorly soluble in water; readily soluble in organic solvents (Ref. 22, NIOSH, 1978)
Log Octanol/Water Partition Coefficient (log P): −1.9 (Est'd., Ref. 14, Leo et al., 1971).

Rationale for Recommendations

I. Exposure Information

A. Production/Use/Disposal/Environmental Release

Hexamethylene diisocyanate (HDI) is produced in commercial quantities at Baytown, TX; current annual production is about 11 million pounds (Ref. 18, Mobay, 1988b). Laboratory quantities of HDI are also produced by Morton Thiokol, Inc. at its Danvers, MA plant (Ref. 18, ICF, 1988). The public portion of the TSCA Inventory lists U.S. production at 1 to 10 million pounds in 1977 (Ref. 27, USEPA, 1988). No import data are reported for HDI. In 1981, approximately 2 to 3 million pounds were exported (Ref. 16, Mobay, 1982).

The manufacturing process for HDI, similar to that of other diisocyanates, employs phosgenation of hexamethylene diamine. In response to a request for information, Mobay estimated that the quantity of HDI that enters the environment during production and use does not exceed 20,000 pounds per year (Ref. 16, Mobay, 1982).

HDI is used in the manufacture of higher molecular weight biuret polyisocyanate products. These are commercially used as curing agents in the formulation of polyurethane paint systems for automobile refinishing, industrial maintenance, marine coatings, and other higher performance coating systems (Ref. 16, Mobay, 1982).

B. Evidence for Human and Environmental Exposure

There is no OSHA permissible exposure level (PEL) for HDI. In 1978, NIOSH recommended that OSHA adopt the same standard also recommended for toluene diisocyanate (TDI) and methylene diphenyldiisocyanate (MDI), i.e., an 8-hour time-weighted average of 5 ppb (35 ug/m³) (Ref. 22, NIOSH, 1978). The recommended 10-minute short-term exposure limit is 0.02 ppm (140 ug/m³) (Ref. 22, NIOSH, 1978). ACGIH earlier recommended the same levels (Ref. 1, ACGIH, 1976). The level immediately dangerous to life and health (IDLH), beyond which irreversible health effects are known to occur, is 10 ppm (Ref. 28, Woolrich, 1982).

The National Occupational Hazard Survey (NOHS), conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974, estimated that about 4,480 workers in 238 plants were exposed to HDI through manufacture, processing, or use in 1970. Of these, about 4,000 were involved with coating applications (Ref. 21, NIOSH, 1976). NIOSH also conducted a second workplace survey, the National Occupational Exposure Survey (NOES) from 1980 to 1983 (Ref. 23, NIOSH, 1984). Preliminary data from the NOES indicated that 39 workers, including 11 women, were potentially exposed in 1980.

The number of workers exposed to HDI is probably underestimated since it is impossible to estimate the workers in trade professions or other operations using products containing HDI. However, data indicate that coatings applications provide the greatest source of occupational exposure to HDI. Information obtained from the United Auto Workers suggests that 1,000 to 10,000 workers are potentially exposed to HDI-containing coatings and adhesives in new car manufacture (Ref. 26, UAW, 1988). The Automotive Services Association estimated that there are 60,000 to 100,000 private autobody and repaint shops that usually employ 1.5 to 12 persons each, potentially exposing between 90,000 and 1.2 million persons (Ref. 4, ASA, 1988). In a 1982 submission to the TSCA Interagency Testing Committee, Mobay estimated that 153,000 autobody repair workers were potentially exposed to HDI (Ref. 16, Mobay, 1982).

Information received from the International Brotherhood of Painters and Allied Trades (IBPAT) indicated that about 60,000 union members use an HDI-containing coating at least once a year. HDI-containing coatings are used several times a year by about 30,000 workers; 3,000 use HDI-containing paint exclusively (Ref. 9, IBPAT, 1988). The Communication Workers of America indicated that about 51,000 of their members are exposed to multiple diisocyanates, including HDI. Of these, about 45,000 telecommunications cable splicers and outside plant technicians work with plugging compounds containing HDI. The remaining 6,000 workers are exposed to diisocyanate-containing inks and RIM plastics (Ref. 5, CWA, 1988).

The civilian and military aircraft industry uses aliphatic diisocyanate-containing paint almost exclusively because of its stability in ultraviolet light (Ref. 8, Hulse, 1984). The number of persons potentially exposed to HDI through these occupations is not known at this time.

In summary, excluding individuals exposed through the aerospace industries and the military, it appears that between 285,000 and 1,315,000 workers are potentially exposed to HDI-containing products.

Between 1978 and 1982, Mobay conducted field industrial hygiene surveys during spray applications of HDI-containing paint systems. Data gathered during six different surveys demonstrated HDI concentrations between <0.005 ppm and 0.04 ppm (Ref. 16, Mobay, 1982). As shown in a section 8(d) submission from Mobay, oven exhaust from a heat-cured urethane resulted in monomeric HDI concentrations of 230 ppb (Ref. 17, Mobay, 1978). This level exceeded the ACGIH threshold limit value (TLV) and NIOSH recommended short-term exposure limit (STEL) of 20 ppb by about 11 times.

A study was conducted to determine the airborne concentrations of total reactive isocyanate groups (–NCOs) from the application of consumer-available polyurethane products. A two-part HDI-containing polyurethane enamel was used in a controlled area simulating a workshop/garage. The product was sprayed on a metal bookcase. Analyses of personal and area air samples collected during the spray application of the enamel found –NCO groups in excess of the upper limit of detection, >5.0 mg NCO/m³ or >2.9 ppm (Ref. 20, MRI, 1987). This level was almost 300 times the NIOSH-recommended 10-minute STEL of 0.02 ppm.

II. Chemical Fate Information

Although HDI is likely to be released to the environment, primarily in fugitive air emissions, it is not expected to persist and should be rapidly

transformed, especially in the presence of liquid water. Therefore, chemical fate testing is not recommended at this time.

III. Biological Effects of Concern to Human Health

A. Metabolism and Toxicokinetics

No information was found.

B. Acute (short-term) Effects

The acute and subacute toxicity of HDI are summarized in the following Tables 3 and 4.

TABLE 3.—CRITICAL END POINTS FOR THE ACUTE/SUBACUTE TOXIC EFFECTS OF HDI

Test	Test subject [a]	Critical toxic effect end points from multiple dose/concentration studies		Reference
		LOEL [b]	NOEL [c]	
Skin irritation	Guinea pig	0.4 mg/animal (approx.)	0.2 mg/animal (approx.)	Kondrat'yev and Mustayev (1969, Ref. 13).
Ocular irritation	Rabbit	NE [d]	NE	Mobay (1981, Ref. 15).
Sensory irritation	Male mouse	0.062 ppm (0.43 mg/m³)	NE	Sangha et al. (1981, Ref. 24).
Pulmonary irritation	Albino rat	NE	NE	Lomonova and Frolova (1968, as cited in NIOSH, 1978, Ref. 22).
Pulmonary irritation	Rabbit	NE	NE	Frolovaya (1966, 1968, as cited in Kondrat'yev and Mustayev 1969, Ref. 13).
Contact sensitivity, induction	Male mouse	8 ug/animal (0.28 mg/kg)	2.1 ug/animal (0.075 mg/kg)	Thorne et al. (1987, Ref. 25).
Contact sensitivity induction	Guinea pig	NE	NE	Kondrat'yev and Mustayev (1969, Ref. 13).
Contact sensitivity elicitation	Guinea pig	8 ug/animal (approx.)	NE	Kondrat'yev and Mustayev (1969, Ref. 13).
Contact sensitivity elicitation	Male mouse	NE	NE	Thorne et al. (1987, Ref. 25).

[a] With the exception of the mice used in the Sangha et al. (1981) study, test animal parameters such as sex, age, weight, and strain were not reported.
[b] Lowest-observable-effects level.
[c] No-observable-effects level.
[d] NE, not established in this study.

TABLE 4.—ACUTE TOXICITY OF HDI IN LABORATORY ANIMALS

Species	LC_{50} Concentration (mg/m³)	LC_{50} Concentration (ppm)	Duration (hours)	LD_{50} Oral (mg/kg)	LD_{50} Dermal (mg/kg)	Reference
Rat	385	56	6	710		Woolrich (1982, Ref. 28).
Rat (M)	310	45	4			Bunge et al. (1977, as cited in NIOSH, 1978, Ref. 22).
Rat (F)	350	51	4			Bunge et al. (1977, as cited in NIOSH, 1978, Ref. 22).
Rat				1,050		Mobay (1981, Ref. 15).
Mouse	30	4	2			Lomonova and Frolova (1968, as cited in NIOSH, 1978, Ref. 22).
Rabbit					570	Woolrich (1982, Ref. 28).
Rabbit					*	Mobay (1981, Ref. 15).

* Single dermal doses of 1,000 to 1,250 mg/kg caused lethality, damage to subcutaneous layers of skin, and systemic injury including extensive pulmonary congestion.

HDI is known to produce irritation and inflammation of the upper respiratory tract, so-called sensory irritation. Sangha et al. (Ref. 24, 1981) conducted an acute inhalation study with mice. Depression of the respiratory rate was observed at the lowest dose of HDI tested, 62 ppb (0.43 mg/m³). No LOEL was established.

Experiments dealing with the elicitation of dermal HDI hypersensitivity were performed early in the study of diisocyanates. A key study with guinea pigs published in 1969 by Kondrat'yev and Mustayev (Ref. 13, 1969) provided a LOEL of 8 ug per animal. Since this is the lowest dose that has been tested in this manner, it is clear that a NOEL has not yet been established.

Thorne et al. (Ref. 25, 1987) induced dermal sensitization to HDI in mice by application of a single dose to shaved abdominal skin. Sensitization was demonstrated by a single challenge does to the ear. The SD^{50} (does predicted to sensitize 50 percent of the animals) upon homologous challenge for HDI was 0.088 mg/kg. The LOEL for HDI was 8 ug per animal; the NOEL was 2.1 ug per animal.

C. Genotoxicity.

In the *Salmonella* assay, HDI was not mutagenic in strains TA100, TA98, or TA1537 with or without metabolic activation. A wide dose range, up to the highest noninhibitory dose, was used (Ref. 3, Andersen et al., 1980). HDI is also reported to inhibit mutagenesis induced by ultraviolet light in an *Escherichia coli* wild-type strain but not in DNA-repair-enzyme deficient strain (Ref. 12, Kawazoe et al., 1981)

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D. Oncogenicity

The Mobay Corporation is conducting a 2-year inhalation toxicity/oncogenicity study for HDI. Male and female Fischer 344 rats were exposed to 0, 0.005, 0.025, and 0.125 ppm for 0 to 4 months and to 0.175 ppm thereafter. The exposure regimen was 6 hours per day, 5 days per week for approximately 24 months.

Sixty rats of each sex were exposed at each level, and 10 rats of each sex at each level for a satellite group. Preliminary review of the data indicated no toxicologically significant effects on body weight, ophthalmology or mortality; no other parameters were evaluated. The final report is scheduled to be completed during mid-1989 (Ref. 18, Mobay, 1988a).

E. Chronic (Long-term) Effects

No information was found.

F. Reproductive and Developmental Effects

No information was found.

G. Observations in Humans

Allegations of adverse health effects following exposure to HDI (and other diisocyanates) were the subject of a TSCA section 8(c) reporting rule (53 FR 1408; January 19, 1988). The rule required only submission of unknown or unreported adverse health effects. Several of these involved a two-part polyurethane enamel. The activator for this enamel contains over 70 percent HDI-polyisocyanate. According to the Material Safety Data Sheet, HDI monomer is controlled to <0.7 percent by weight. With aging, the monomer content may increase to 1.6 percent by weight (Ref. 6, Dupont, 1981.)

One case study describes an individual who inadvertently stepped into a puddle of two-part polyurethane enamel. This person began to experience immediate "trouble", which gradually worsened to a burning sensation up to mid thigh with aching discomfort and mild weakness in foot muscles. Another case associated exposure to the two-part polyurethane enamel with subsequent testicular cancer and terminal chest cancer. A third case involved 12 men employed in an unspecified job; all experienced urological problems allegedly due to exposure to this enamel (Ref. 7, Dupont, 1988).

Another reported incident involved firefighters exposed to the two-part polyurethane enamel. This paint was used in firehouses in Balitmore, MD between January 1982 and March 1984. Of 10 infants fathered during this 15-month interval, 6 died during spontaneous abortion or soon after birth. A similar report involved a man employed in an autobody shop and exposed to this enamel. He claimed that his exposure prior to and subsequent to the conception of his son was responsible for severe birth defects (Ref. 7, Dupont, 1988).

Many case-specific reports suggest adverse health effects following exposure to polymeric HDI. Of particular note is a case described by Malo et al. (1983, as cited in Karol, 1987, Ref. 11), in which an individual exposed to a spray paint containing polymeric HDI experienced shortness of breath, wheezing, malaise, and chills late in the afternoon on working days. Symptoms lasted for several hours and were accompanied by wheezing at night. Inhalation challenge under simulated occupational exposure conditions reproduced the symptoms and thereby identified the source of the active material.

A recently published study of Swedish car painters exposed both to HDI and biuret-modified HDI at average concentrations of 0.001 ppm and 0.013 ppm, respectively, demonstrated that pulmonary closing volume was increased in car painters relative to vital capacity; controls did not exhibit this decrement. The authors found this suggestive of "small airways disease" (Ref. 2, Alexandersson et al., 1987).

H. Rationale for Health Effects Recommendations.

Annual domestic production of HDI is about 11 million pounds. It is estimated that well over 1 million individuals are exposed to this chemical in the workplace, as a result of its use in coatings. Although one carcinogenicity study is currently being conducted in one rodent species, data are not available to assess fully the long-term effects of HDI. Therefore, the Committee recommends that chronic toxicity studies with carcinogenicity as an endpoint be conducted in another species in accordance with accepted guidelines for carcinogenicity testing. The Committee also is concerned about available human data suggesting potential reproductive impairment. Considering the lack of definitive reproductive and developmental effects data, the Commitee recommends that testing addressing these specific endpoints also be conducted.

IV. Ecological Effects of Concern

Since HDI is not expected to persist following release to the environment and should be rapidly transformed in the presence of water, ecological effects testing is not being recommended at this time.

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2.3 *Chemicals recommended with intent-to-designate—2.3a Crotonaldehyde—Summary of recommended studies.* It is recommended that crotonaldehyde be tested for the following:

1. *Chemical fate:* Volatilization rate from water. Aerobic aquatic biodegradation rate.

2. *Health effects:* None.

3. *Ecological effects:* Acute toxicity to algae, fish, and aquatic invertebrates.

Physical and Chemical Information

CAS Number: 4170–30–3

Synonyms: 2–Butenal (9 CI); B–Methyl acrolein; Crotonal; Crotonic aldehyde; Propylene aldehyde.

Structural Formula:

$$CH_3CH{=}CHCHO$$

Empirical Formula: C_4H_6O

Molecular Weight: 70.1

Melting Point: -76.5°C (Ref. 6, Merck, 1983); -69°C (Ref. 8, Sax and Lewis, 1987)

Boiling Point: 104.0°C (Ref. 6, Merck, 1983); 102°C (Ref. 8, Sax and Lewis, 1987)

Vapor Pressure: 30 mmHg at 20°C (Ref. 8, Sax and Lewis, 1987); 19 mmHg at 20°C (Ref. 11, Verschueren, 1983)

Solubility in Water: 155 g/L at 20°C (Ref. 11, Verschueren, 1983); 18.1 g/100 g at 20°C (Ref. 6, Merck, 1983)

Specific Gravity: 0.853 at 20/20°C (Ref. 6, Merck, 1983)

Log Octanol/Water Partition Coefficient (log P): 0.55 (Est'd; Ref. 7, NRC, 1981)

Henry's Law Constant: 1.7×10^{-5} atm m^3/mole, calculated

Description of Chemical: Water white, mobile liquid with a pungent, suffocating odor (Ref. 8, Sax and Lewis, 1987)

Rationale for Recommendation

I. Exposure Information

A. *Production/Use/Release to Environment*

Most crotonaldehyde is manufactured from acetaldehyde using continuous, enclosed reactor systems via the aldol condensation route, although a variety of less common methods may be used (Ref. 4, Kirk-Othmer, 1979). Annual current and projected U.S. production is from 5 to 15 million pounds (Ref. 2, Eastman Kodak, 1987). Crotonaldehyde also may be formed naturally in the atmosphere by the interaction of reactive molecules such as ozone and hydroxyl radicals with hydrocarbons and their oxidation products (Ref. 7, NRC, 1981). Crotonaldehyde is used primarily as a chemical intermediate for the synthesis of other organic compounds such as n-butanol, sorbic acid, 3-methoxybutanal, and crotonic acid (Ref. 4, Kirk-Othmer, 1979).

Releases of crotonaldehyde to the environment are expected to occur in wastewater.

B. *Evidence for Exposure*

Crotonaldehyde has been detected in the effluent of sewage treatment plants (Ref. 9, Shackelford and Keith, 1976). Exhaust from cars without emission controls was found to contain crotonaldehyde (Ref. 7, NRC, 1981). Crotonaldehyde also has been identified as a constituent of tobacco smoke (Ref. 3, Florin et al., 1980) and wood smoke (Ref. 5, Lipari et al., 1984).

II. Chemical Fate Information

A. *Transport*

Environmental releases are expected to be from wastewater. The physical and chemical properties of crotonaldehyde indicate that it will partition to both air and water following release to the environment. The Henry's Law Constant of 1.7×10^{-5} atm m^3/mole allows an estimation of the half-life in receiving stream water of 60 to 70 hours. Sorption to solids will not be significant.

B. *Persistence*

Crotonaldehyde released directly to the atmosphere or evaporated from surface water will be rapidly degraded by reactions with hydroxyl radicals and ozone and by direct sunlight photolysis. Biodegradation is expected to be the most significant transformation process in water, but no aquatic biodegradation rate data were found. The 5-day biochemical oxygen demand (BOD) for crotonaldehyde was reported as 37 percent of theory (Ref. 11, Verschueren, 1983) and 51 percent of theory (Ref. 10, Union Carbide, 1986). The Union Carbide reference also lists BOD data after 10, 15, and 20 days incubation as 60 percent, 64 percent and 70 percent of theory, respectively. These data suggest ready and complete biodegradation when sewage or sludge, which may be acclimated to crotonaldehyde, are used as the inoculum, but they do not permit a determination of the biodegradation half-life in receiving systems.

C. *Rationale for Chemical Fate Recommendation*

Since crotonaldehyde may be released to surface waters at manufacturing and use sites, it is necessary to obtain experimental data on volatilization rates from water and on the aerobic, aquatic biodegradation rate to better assess potential environmental concentrations.

III. Biological Effects of Concern to Human Health

The Committee determined that crotonaldehyde has been studied extensively for health effects and concluded that additional studies are not required. Therefore, health effects testing is not being recommended at this time.

IV. Ecological Effects of Concern

A. *Acute and Subchronic (Short-term) Effects*

An 85 percent aqueous solution of crotonaldehyde produced a 96-hour LC_{50} of 3.5 mg/L to bluegills (*Lepomis macrochirus*) in a static bioassay at 20° C (Ref. 1, Dawson et al., 1977). A 96-hour LC_{50} value of 2.8 mg/L with fathead minnows (*Pimephales promelas*) was reported by Union Carbide (Ref. 10, 1986). The 96-hour LC_{50} for tidewater silversides (*Menidia beryllina*) was reported to be 1.3 mg/L in a static bioassay at 20° C (Ref. 1, Dawson et al. 1977). Percent survival of silversides decreased with exposure time.

B. *Chronic (long-term) Effects*

No information was found.

C. *Other Ecological Effects*

Sewage treatment microorganisms were reported to be adversely affected by 25 to 50 mg/L crotonaldehyde (Ref. 10, Union Carbide, 1986). At concentrations from 0.05 to 1.0 percent, crotonaldehyde produced an immediate loss of the metachronic wave in the lateral cilia of freshwater mussels (*Lamellibranchiata unio*) (Ref. 12, Wynder et al., 1965). At the 0.5 and 1.0 percent concentrations, total stasis in mussel cilia was observed, with no recovery.

D. *Bioconcentration and Food-Chain Transport*

No information was found, but the high water solubility and low log P of crotonaldehyde make it unlikely that any sigificant bioconcentration will occur.

E. *Rationale for Ecological Effects Recommendation*

The available data, from tests using nominal concentrations in static tests, show that crotonaldehyde has significant acute toxicity to both freshwater and marine fish. It is necessary to develop more reliable acute toxicity data using measured concentrations of crotonaldehyde in flow-through or static-renewal tests, using algae, fish, and aquatic invertebrates.

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2.4. *Chemicals recommended without being designated for response within 12 months—2.4.a Imidazolium quaternary ammonium compounds—Summary of recommended studies.* It is recommended that the imidazolium quaternary ammonium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), methyl sulfates (IQAC) be tested for the following:

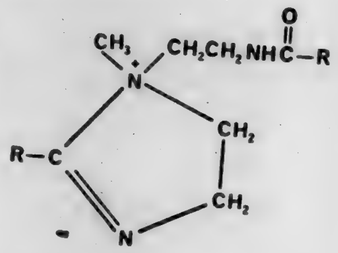
1. *Chemical fate:* Aerobic and anaerobic biodegradation of IQAC sorbed to freshwater and estuarine sediments.

2. *Health effects:* Chronic toxicity studies to evaluate potential effects through long-term dermal exposure.

3. *Ecological effects:* Acute and chronic studies to evaluate effects on representative freshwater and estuarine benthic organisms.

Physical and Chemical Information

CAS Number: 68122–86–1
9 CI Name: Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates
Synonym: Imidazolium quaternary ammonium compounds
Acronym: IQAC
Structural Formula:



where R=tallow
Empirical Formula (typically): $C_{37}H_{74}N_3O$ to $C_{41}H_{82}N_3O$
Molecular Weight: 577.0 for R=$C_{15}H_{31}$; 633.1 for R=$C_{17}H_{35}$
Boiling Point: <200°C (Ref. 3, Capital City Products, 1986)
Solubility in Water: 19.2 mg/L in deionized water after 16 days of continuous mixing; 0.5 mg/L in filtered river water after 16 days of continuous mixing (Ref. 4, Procter and Gamble, 1984a)
Specific Gravity: No information was found.
Log Octanol/Water Partition Coefficient (log P): 2.15, measured (Ref. 4, Proter and Gamble, 1984a)

Rationale for Recommendations

I. Exposure Information

A. Production/Use/Release to Environment

IQAC production in 1984 was estimated at about 15 million pounds in the U.S. (Ref., 4, Procter and Gamble, 1984a). The TSCA Inventory update contains confidential 1986 production information for IQAC. The major use of IQAC appears to be in fabric softeners used during the clothes-washing process. Analogs of IQAC that might also be used in fabric softener formulations include chemical mixtures with the following CAS Nos.: 68132–27–4, 69011–82–1, 70775–90–5, 71060–67–8, 71060–68–9, 72275–90–2, 72823–81–5 and 72823–82–6. If these compounds or similar imidazolium quaternary ammonium compounds are used now, or in the future, in substantial quantities as ingredients in fabric softeners for consumer use, the Committee would have the same environmental fate, health effects and ecological effects concerns for them as for IQAC. IQAC and any of its analogs used in fabric softeners are likely to be released to the environment in wastewater following their use.

B. Evidence for Exposure

General population exposure to IQAC may be high given its use in fabric softeners used in laundry washing machines. Consumers who use this type of fabric softener are likely to be exposed almost continuously through skin contact with clothing, towels and linens. An assessment by the Office of Toxic Substances (Ref. 1, Battin, 1988a) estimated annual consumer dermal exposure to IQAC, from exposure to softened clothing, linens, etc., at 4.06 to 10.14 g per year. Procter and Gamble (Ref. 4, 1984a) estimated daily consumer exposure to IQAC, from clothing to skin, to be 0.07 mg active compound per kg per day for adults and 0.14 mg active compound per kg per day for children assuming IQAC is deposited on fabrics at 0.17 mg/in^2. No environmental monitoring studies were found. An assessment by the Office of Toxic Substances (Ref. 1, Battin, 1988a) estimated receiving stream concentrations of 1 to 1,300 ug/L at manufacturing sites and 0.05 to 50 ug/L near use sites, depending upon location and stream flows. Procter and Gamble (Ref. 4, 1984a) estimated that consumer use of IQAC would yield raw wastewater concentrations of about 170 ug/L.

II. Chemical Fate Information

A. Transport

The physical and chemical properties of IQAC indicate that it will partition significantly to sludge solids and sediments with some remaining dissolved in water. The estimated very low vapor pressure and moderate solubility rule out volatilization as an important factor. The cationic nature of these compounds will contribute to their sorption to sludge and sediment solids which generally are negatively charged and it is expected that IQAC will sorb to solids within a short time after release to the environment.

B. Persistence

No published information was found on the persistence of IQAC. A summary report of an unpublished study (Ref. 4, Procter and Gamble, 1984a) showed about 50 percent biodegradation in 34 days in diluted activated sludge, as determined by following the evolution of radiolabelled carbon dioxide. The concentration of IQAC was not reported. BOD studies reported by Sherex (Ref. 6, 1984) showed 2 percent of theoretical oxygen uptake after 5 days and 19 percent after 30 days. While this indicates that IQAC is biodegradable under aerobic conditions, it also indicates that biodegradation in surface waters is likely to be slow. IQAC is expected to partition significantly to sediments following release to the environment and its persistence in sediments, under both aerobic and anaerobic conditions, is unknown. Also unknown is the persistence of IQAC under conditions found in estuaries and the ocean. Persistence in saline waters may be different than in fresh water. Nitrilotriacetic acid, for example, was found to be resistant to biodegradation in estuarine waters (Ref. 2, Bourquin and Przybyszewski, 1977) although it is readily biodegraded by acclimated microorganisms in fresh water.

C. *Rationale for Chemical Fate Recommendations*

IQAC is likely to sorb strongly to waste treatment sludges and receiving stream organic sediments and may persist for relatively long time periods following sorption. Since it is being released continuously to both fresh water and estuarine receiving waters and may persist for relatively long periods of time, there may be a tendency for it to accumulate in estuarine, river and lake sediments near discharge points, with gradually increasing concentrations. There is a need to better determine the persistence of IQAC, dissolved in water and sorbed to sediments. It is recommended that those studies be conducted under conditions typical of both fresh surface waters and estuarine waters and that studies with IQAC sorbed to sediment be conducted under both aerobic and anaerobic conditions. Information from these studies is needed to better assess the potential concentration of IQAC in receiving waters and sediment and the potential hazard to aquatic and benthic organisms.

III. Biological Effects of Concern to Human Health

A. *Metabolism and Toxicokinetics*

A summary of metabolism studies (Ref. 4, Procter and Gamble, 1984a) using radiolabelled IQAC (^{14}C on the N-methyl group) suggests that the compound is poorly absorbed in rats via both oral and dermal routes. Upon oral administration, less than 1 percent of the oral dose was absorbed and metabolized. Eighty-seven percent of the oral dose was eliminated in feces within 24 hours. A "small but significant amount of radioactivity was found in the bone marrow" (Ref. 4, Procter and Gamble, 1948a). Less than 0.5 percent of the dermal dose was absorbed, with a small amount of radioactivity found in the bone marrow.

B. *Acute and Subchronic (Short-term) Effects.*

Summary reports on unpublished data from acute oral, dermal skin irritation, eye irritation, skin sensitization, and subchronic toxicity studies with IQAC were submitted by Procter and Gamble (Ref. 4, 1984a and Ref. 5, 1988). Data from acute oral, skin and eye irritation, and skin sensitization studies were submitted by Sherex (Ref. 6, 1984). Acute oral tests with IQAC in rats yielded an LD_{50} of 20.8 g/kg in one test (Ref. 6, Sherex, 1984) and 2 deaths out of 10 in another test at a dose level of about 18 g active compound per kg (Ref. 4, Procter and Gamble, 1984a). In another study, no deaths were reported with oral doses up to 16 cc of IQAC dispersion (13.5 wt percent solid) per kg (Ref. 6, Sherex, 1984).

Procter and Gamble reported moderate to severe irritation for IQAC instilled into the conjunctival sac of rabbit eyes unrinsed after treatment (Ref. 4, 1984a). However, it produced minimal irritation to rinsed rabbit eyes (Ref. 4, Procter and Gamble, 1984a; Ref. 6, Sherex, 1984).

Percutaneous studies with IQAC in rabbits yielded a minimum lethal dose of greater than 1.8 g active compound per kg (Ref. 4, Procter and Gamble, 1984a).

Primary skin irritation studies conducted with IQAC on intact and abraded rabbit skin indicated moderate to severe irritation in one study (Ref. 4, Procter and Gamble, 1984a) and only mild irritation in another (Ref. 6, Sherex, 1984).

Skin sensitization studies with IQAC by Procter and Gamble (Ref. 4, 1984a) showed delayed contact hypersensitivity in 17 out of 20 guinea pigs tested. Sherex (Ref. 6, 1984), on the other hand, reported that IQAC was not a strong sensitizer in guinea pigs tested with three different lots.

In a subchronic toxicity study (Ref. 4, Procter and Gamble, 1984a) four groups of 20 male and 20 female rats each were fed a diet containing IQAC at concentrations of 0, 10, 100, or 1,000 mg

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active compound per kg per day for 13 weeks. There were no treatment-related changes in mean body weights or food consumption. Lower total protein and higher serum glutamic-pyruvic transaminase values were observed in blood samples of males in the 1,000 mg per kg group. These males also showed lower absolute and relative liver weights. No treatment-related changes were observed in bone marrow. The no-observable-effects level (NOEL) was 100 mg per kg per day. According to Procter and Gamble, this level is at least 10 million times the expected daily human exposure to IQAC in drinking water.

In a percutaneous subchronic toxicity test, two groups of 5 male and 5 female rabbits each were treated topically with 2 mL per kg per day IQAC at dose levels of 9 or 27 mg active compound per kg per day for 13 weeks (Ref. 4, Procter and Gamble, 1984a). A control group of 5 males and 5 females received the vehicle, distilled water. Slight to moderate erythema, edema, and desquamation were observed in treated animals at both doses. No treatment-related changes were observed in clinical pathology, bone marrow smears, body weights, organ weights, microscopic changes in skin, or histopathologic changes to internal organs. The NOEL for systemic toxicity was 27 mg active compound kg per day.

C. *Genotoxicity*

IQAC was tested for mutagenicity in the *Salmonella* assay (with and without metabolic activation), mouse lymphoma assay, rat *in vitro* cytogenetics assay, and for unscheduled DNA synthesis in human diploid cells (Ref. 4, Procter and Gamble, 1984a). IQAC did not show mutagenic effects in any of the assays.

D. Oncogenicity

No information was found.

E. Reproductive and Developmental Effects

Rats were administered IQAC (78 percent active compound) by gavage at dose levels of 200 or 900 mg active compound per kg daily from days 6 to 12 or 15 of gestation (Ref. 4, Procter and Gamble, 1984a). A control group received the vehicle, 15 percent w/v aqueous isopropanol. Doses were given to each group of 30 females at a constant volume of 2 mL per kg per day. The animals were observed for mortality, clinical signs, body weight changes, and food consumption. No maternal deaths were observed. A decrease in food consumption was found in the 900 mg per kg per day group during the first 3 days. Overall reproduction parameters and pregnancy rates were unaffected. The incidences of skeletal and soft-tissue defects were not significantly different between the treated and the control groups. At the highest dose tested (900 mg active compound per kg per day) no maternal or developmental toxicity was observed.

F. Chronic (Long-term) Effects

No information was found.

G. Observations in Humans

Little or no irritation was observed with human volunteers in a skin irritation test with a dilute, aqueous dispersion of 0.3 mL IQAC per occluded patch (Ref. 4, Procter and Gamble, 1984a). IQAC was tested in three 24-hour exposures over a 6-day period at concentrations of 0.5, 1.0, and 5.0 percent w/v. In another Procter and Gamble study (Ref. 4, 1984a), 217 volunteers received 9 exposures to 0.25 percent w/v aqueous IQAC (0.3 mL per occluded patch) applied for a 24-hour period, 3 times a week during a 3-week induction period. No skin sensitization was observed when subjects were challenged 2 weeks later with 0.25 percent w/v IQAC in a single 24-hour occluded patch test.

H. Rationale for Health Effects Recommendations

It has been estimated that fabric softeners that are applied to the fabrics during the washing process are widely used in the U.S. Annual U.S. consumption of imidazolium quaternary ammonium type fabric softeners has been estimated at about 15 million pounds. It is quite apparent that a significant portion of the population is exposed, on a nearly continuous basis, to these chemicals in clothing, towels and bed linens. Dermal exposure tests reported to date have involved only acute or short-term exposures. IQAC produced moderate to severe skin irritation in rabbits and was a skin sensitizer in guinea pigs.

Although exposure concentrations used in short-term studies were reported to be several-fold higher than estimated human exposures from softened fabrics, information from these short-term, intermittent-exposure tests is not useful in predicting what effects might occur with long-term (years) continuous exposure. It is therefore recommended that IQAC and commercially important analogs be tested for chronic toxicity to evaluate potential effects resulting from long-term dermal exposure.

IV. Ecological Effects of Concern

A. Acute and Subchronic (Short-term) Effects

Data submitted by Procter and Gamble (Ref. 4, 1984a) show moderate toxicity to bluegills, mysid shrimp and *Daphnia magna*. The presence of anionic surfactants or the use of natural surface water with sediments mitigated the effects on bluegills and daphnia. No data were found for benthic organisms and this is a data gap of concern since IQAC will sorb to and may concentrate in sediments near wastewater discharge sites.

B. Chronic (Long-term) Effects

No published information was found but Procter and Gamble (Ref. 5, 1988) indicated that data have been developed with a hydrogenated analog of IQAC in chronic studies with midge.

C. Other Ecological Effects (Biological, Behavioral, or Ecosystem Processes)

IQAC was reported (Ref. 4, Procter and Gamble, 1984a) to inhibit algal growth at relatively low concentrations. The algistatic concentrations were 0.037 mg/L for a *Selenastrum* sp. and 0.23 mg/L for a *Microcystis* sp.

D. Bioconcentration and Food-chain Transport

The measured log P of 2.15 indicates a potential for some bioconcentration. Procter and Gamble (Ref. 4, 1984a) reported a measured bioconcentration factor (BCF) of 10.7 for bluegills exposed to 8.8 g/L IQAC in a flow-through system. This report is suspect because the reported concentration of IQAC is well above its water solubility. Nevertheless, the evidence is that there may be some bioconcentration.

E. Rationale for Ecological Effects Recommendations

Environmental fate considerations indicated that IQAC will sorb strongly to sludge solids and sediments. It may persist for relatively long time periods under these conditions and may accumulate in sediments near wastewater discharges. This information plus the known toxicity of IQAC to fish, aquatic invertebrates and algae, raise concerns for benthic organisms. Acute toxicity data should be obtained for representative freshwater and estuarine benthic organisms and, if these compounds are found to be relatively persistent, chronic studies on the same organisms may be warranted.

References

(1) Battin, A. Memorandum on exposure and release of imidazolium quaternary ammonium compounds in liquid fabric softeners from Andrew Battin, Exposure Assessment Branch, Office of Toxic Substances, U.S. Environmental Protection Agency, to John D. Walker, Test Rules Development Branch. (February 2, 1988a.)

(2) Bourquin, A.W. and Przybyszewski, V.A. "Distribution of bacteria and nitrilotriacetate-degrading potential in an estuarine environment." *Applied and Environmental Microbiology.* 34:411–418 (1977).

(3) Capital City Products. Material Safety Data Sheet on Accosoft 808 75 and product literature submitted by Capital City Products, Janesville, WI (November 12, 1986).

(4) Procter and Gamble. Letter from T.W. Mooney, Manager, Technical Government Relations, The Procter and Gamble Co., Cincinnati, OH, to Arthur Stern, TSCA Interagency Testing Committee. (September 12, 1984a.)

(5) Procter and Gamble. Letter from R.N. Sturm, Associate Director, Bar Soap & Household Cleaning Product Development, Procter and Gamble Co., Cincinnati, OH, to Robert Brink, TSCA Interagency Testing Committee (April 19, 1988).

(6) Sherex. Letter from Howard H. Hickman, Manager of Regulatory Affairs, Sherex Chemical Co., Dublin, OH, to Martin Greif, TSCA Interagency Testing Committee. (January 17, 1984.)

2.4.b *Ethoxylated quaternary ammonium compounds—Summary of recommended studies.* It is recommended that ethoxylated quaternary ammonium compounds, EEQ (CAS No. 68153–35–5) and PEQ (CAS No. 68410–69–5) and any commercially important analogs of PEQ (e.g., CAS Nos. 68389–88–8, 68389–89–9, 68413–04–7, 68554–06–3 and 70914–06–3) be tested for the following:

1. *Chemical fate:* Aerobic and anaerobic biodegradation of the ethoxylated quaternary ammonium compounds sorbed to freshwater and estuarine sediments.

2. *Health effects:* Chronic toxicity studies to evaluate potential effects through long-term dermal exposure.

3. *Ecological effects:* Acute and chronic effects on representative freshwater and estuarine benthic organisms.

Physical and Chemical Information

CAS No.: 68153–35–5

9 CI Name: Ethanaminium, 2-amino-N-(2-aminoethyl)-N-(2-hydroxyethyl)-N-methyl-, N,N'-ditallow acyl derivs., Me sulfates (salts)

Synonyms:

Ethoxylated ethanaminium quaternary ammonium compounds;

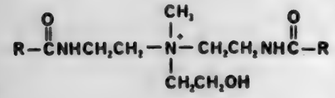
N,N-Bis(2-tallow amidoethyl)-N-(2-hydroxyethyl)-N-methylammonium methyl sulfate;

N,N-Di(2-tallow amidoethyl)-N-(2-hydroxyethyl)-N-methylammonium methyl sulfate;

Quaternary ammonium compounds, (hydroxyethyl)-methylbis(2-tallow amidoethyl), Me sulfates

Acronym: EEQ

Structural Formula:



where R = tallow

Empirical Formula (typically): $C_{39}H_{80}N_3O_3$ to $C_{43}H_{88}N_3O_3$

Molecular Weight:

639.1 where R = $C_{15}H_{31}$

695.5 where R = $C_{17}H_{35}$

Melting Point: 170°C, estimated (Ref. 2, Battin, 1988c)

Boiling Point: 567°C, estimated (Ref. 2, Battin, 1988c)

Vapor Pressure: 2.86×10^{-7} mmHg at 25°C, estimated (Ref. 2, Battin, 1988c)

Solubility in Water: 35 mg/L in deionized water after 14 days of continuous mixing (Ref. 5, Procter and Gamble, 1984b)

Specific Gravity: No information was found.

Log Octanol/Water Partition Coefficient (log P): 2.48, measured (Ref. 5, Proctor and Gamble, 1984b)

Henry's Law Constant: 7.71×10^{-19} atm m^3/mole, estimated (Ref. 2, Battin, 1988c)

Log Adsorption Coefficient (log K_{oc}): 2.27, estimated (Ref. 2, Battin, 1988c)

Physical and Chemical Information

CAS No.: 68410–69–5

9 CI Name: Poly(oxy-1,2-ethanediyl), α-[2-[bis[2-aminoethyl)methylammonio]-ethyl]-ω-hydroxy-, N,N-ditallow acyl derivs., Me sulfates (salts)

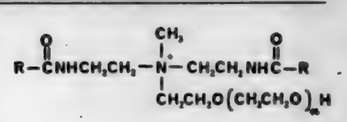
Synonyms:

Methyl tallow diethylenetriamine condensate, polyethoxylated, methyl sulfate;

Quaternary ammonium compounds, (2-hydroxyethyl) methylbis(2-tallow amidoethyl), Me sulfates, ethoxylated

Acronym: PEQ

Structural Formula:



where R = tallow and n = 1–7

Empirical Formula (typically): $C_{41}H_{84}N_3O_4$ to $C_{67}H_{116}N_3O_{10}$

Molecular Weight:

683.2 where R = $C_{15}H_{31}$ and n = 1

1,003.9 where R = $C_{17}H_{35}$ and n = 7

Melting Point: No information was found.

Boiling Point: No information was found.

Vapor Pressure: No information was found.

Solubility in Water: No information was found.

Solubility in Organic Solvents: No information was found.

Specific Gravity: No information was found.

Log Octanol/Water Partition Coefficient (log P): No information was found.

Henry's Law Constant: No information was found.

Log Adsorption Coefficient (log Koc): No information was found.

Rationale for Recommendations

I. Exposure Information

A. Production/Use/Environmental Release

It was estimated that the market for EEQ in 1984 was about 25 million pounds per year in the U.S. (Ref. 5, Procter and Gamble, 1984b). Information obtained during the ITC review of these chemicals indicated that in recent years PEQ has taken a large share of the market away from EEQ. TSCA Inventory update information contains a total for 1986 production and import of EEQ that is classified as confidential business information (CBI). Production and import of PEQ was not reported for the TSCA Inventory update. The lack of PEQ data in the updated Inventory contrasts with reports (to Dynamac Corp.) from industry of substantial current PEQ production. The Committee is unable to obtain current production and import data for PEQ and its analogs because they are classified as polymers and are exempt from Inventory update reporting. However, because of the potential for widespread chronic exposures they are all recommended for testing.

The major use for both EEQ and PEQ is in fabric softeners for industrial and consumer applications. Consumer

product formulations typically contain from 3.5 to 8 percent dispersions of the active ingredient. EEQ also is reported to be used as an anti-static agent, corrosion control agent, foam stabilizer and emulsifier (Ref. 5, Procter and Gamble 1984b). During and after use, these compounds will be released to the environment, mostly in wastewater from clothes-washing operations.

Analogs of PEQ, which also may be used as fabric softeners, and that are included in the recommended testing, are shown in the following Table 5:

TABLE 5—ADDITIONAL ETHOXYLATED QUATERNARY AMMONIUM COMPOUNDS RECOMMENDED FOR TESTING IF USED IN SUBSTANTIAL QUANTITIES IN FABRIC SOFTENING APPLICATIONS

CAS No.	Chemical name
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, N,N'-dicoco acyl derivs., Me sulfates (salts)
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, N,N'-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts)
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis(2-aminoethyl)methylammonio]methyl-ethyl-ω-hydroxy—, N,N'-ditallow acyl derivs.
68554-08-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl)methylammonio]-2-hydroxypropyl]-ω-hydroxy-, N-coco acyl derivs., Me sulfates (salts)
70914-09-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, N,N'-di-C_{14-18} acyl derivs., Me sulfates (salts)

B. Evidence for Exposure

1. *Evidence for human exposure.* General population exposure to PEQ may be high given its use in fabric softeners. Ethoxylated quaternary ammonium fabric softeners are used in detergent formulations and in products designed for addition to washing machines prior to the last deep rinse of the wash cycle. The major route of exposure is skin contact with fabrics that have been treated with the fabric softener. Consumers who use these types of fabric softeners are likely to be exposed almost continuously through skin contact with clothing, towels and bed linens. Procter and Gamble (Ref. 5, 1984b) estimated daily consumer exposure to a "similar compound," from clothing to skin to be 0.07 mg active compound per kg per day for adults and 0.14 mg active compound per kg per day for children, assuming EEQ is deposited on fabrics at 0.17 mg/in^2. Sherex (Ref. 8, 1987) indicated that PEQ and EEQ are similar chemically and with respect to use. Therefore, the exposure estimates made by Procter and Gamble for EEQ appear to be applicable to PEQ.

An assessment by the Office of Toxic Substances (Ref. 1, Battin, 1988b) estimated annual consumer dermal exposure to this kind of compound, from exposure to softened clothing, linens, etc, at 1.08 to 2.69 g per year. Human exposure via drinking water is not expected to be significant. The ethoxylated quaternary ammonium compounds are expected to sorb strongly to sediments and other solids in surface waters and soils. Surface and ground waters used for drinking water will receive treatment (e.g., flocculation and sedimentation) that will further reduce the concentration of dissolved ethoxylated quaternary ammonium compounds. It has been estimated that surface waters used for drinking water supplies would contain no more than 0.35 μg/L of these compounds (Ref. 5, Procter and Gamble, 1984b).

2. *Evidence for environmental exposure.* No monitoring studies were found. An assessment by the Office of Toxic Substances (Ref. 1, Battin, 1988b) estimated receiving stream concentrations of 0.03 to 0.25 ug/L at manufacturing sites and 0.02 to 18.5 ug/L near use sites, depending upon location and stream flows. Procter and Gamble (Ref. 5, 1984b) estimated that consumer uses of EEQ would yield raw wastewater concentrations of about 280 ug/L. Most (95 percent or more) will be sorbed by sludge solids during wastewater treatment and the concentration of EEQ in treatment plant effluents was estimated at 35 ug/L.

II. Chemical Fate Information

A. *Transport*

The physical and chemical properties of the ethoxylated quaternary ammonium compounds indicate that they will partition strongly to sludge solids and organic sediments. The estimated low vapor pressure and moderate solubility in water rule out volatilization as an important factor. The cationic nature of these compounds will contribute to their sorption to sludge and sediment solids which generally are negatively charged.

B. *Persistence*

No published information was found on the persistence of the ethoxylated quaternary ammonium fabric softeners. A summary report of unpublished information (Ref. 5, Procter and Gamble, 1984b) showed 24 to 34 percent biodegradation after 138 days, using EEQ at 10 and 100 ug/L in river water and following carbon dioxide evolution. BOD studies using PEQ reported by Sherex (Ref. 7, 1984) showed 18 percent of theoretical oxygen uptake after 5 days and 31 percent after 30 days. While this indicates that EEQ and PEQ are biodegradable under aerobic conditions in river water, it also indicates that aerobic biodegradation will be relatively slow. The Procter and Gamble report (Ref. 5, 1984b) noted that the river water biodegradation studies were conducted with and without sediment but did not provide details. These quaternary ammonium compounds are expected to partition to sediments following release to the environment and their persistence in sediments, under both aerobic and anaerobic conditions, is unknown. Also unknown is the persistence of these compounds under conditions found in estuaries and the ocean. Persistence in saline water may be different than in fresh water. Nitrilotriacetic acid, for example, was found to be resistant to biodegradation in estuarine waters (Ref. 3, Bourquin and Przybyszewski, 1977) although it is readily biodegraded by acclimated microorganisms in fresh water.

C. *Rationale for Chemical Fate Recommendations*

EEQ, PEQ and PEQ analogs are likely to sorb strongly to waste treatment sludges and receiving stream organic sediments and may persist for relatively long time periods following sorption. Since they are being continuously released to both fresh water and estuarine receiving waters and may persist for relatively long periods of time there may be a tendency for these compounds to accumulate in estuarine, river and lake sediments near discharge points, with gradually increasing concentrations. There is a need to better define the persistence of these compounds, under both aerobic and anaerobic conditions, when sorbed to organic sediments typical of both freshwater and estuarine conditions. This information is needed in order to better assess the potential concentrations of these compounds in the sediments and the potential hazard to benthic organisms.

III. Biological Effects of Concern to Human Health

A. *Metabolism and Toxicokinetics*

No information was found.

B. *Acute and Subchronic (Short-term) Effects*

Summary reports on unpublished data from acute oral, percutaneous, ocular, skin irritation and subchronic toxicity studies with EEQ were submitted by Procter and Gamble (Ref. 5, 1984b; Ref. 6, 1988). Data on acute oral, eye irritation, skin irritation and skin sensitization studies with PEQ were submitted by Sherex (Ref. 7, 1984). Data from acute oral, eye irritation and primary skin irritation studies with PEQ were provided by Capital City Products (Ref. 4, 1987).

The acute oral tests with EEQ and PEQ were all conducted using rats. Studies with EEQ yielded a minimum lethal dose greater than 15 g/kg. Studies with a 4 percent dispersion of PEQ showed an LD_{50} greater than 15.38 g/kg.

Minimal eye irritation was observed for EEQ instilled in the conjunctival sac of rabbit eyes unrinsed after treatment. PEQ was rated minimally irritating after instillation to unrinsed rabbit eyes.

Percutaneous studies with undiluted EEQ applied occluded to clipped intact and abraded backs of rabbits at dose levels of 2 g per kg for 24 hours yielded a minimum lethal does greater than 1.5 g per kg (the only dose tested) with a 14-day post-application period for mortality.

EEQ was applied occluded or on an open patch to clipped intact and abraded rabbit backs for 24 hours. Mild to moderate skin irritation was observed for up to 48 hours after patch removal. PEQ was applied to gauze patches and exposed to clipped intact and abraded rabbit backs for 24 hours. The substance was rated mildly to severely irritating following observations at 24 and 72 hours.

A skin sensitization study reported by Procter and Gamble (Ref. 5, 1984b) employed 25 percent (w/v) EEQ in 80:20 ethanol: Water solution applied in occluded patches to the clipped backs of guinea pigs for six hours, once a week, during a three-week induction period. The EEQ treated animals were challenged with 20 percent (w/v) EEQ in acetone for a single 6-hour occluded exposure approximately two weeks after completion of induction. Five out of 20 induced guinea pigs showed signs of delayed contact hypersensitivity. These studies led to the conclusion with EEQ is a mild skin sensitizer in guinea pigs. Similar studies reported by Sherex (Ref. 7, 1984) concluded that PEQ is not a skin sensitizer.

In a subchronic toxicity study (Ref. 5, Procter and Gamble, 1984b) rabbits were treated topically with 2 mL per kg per day of EEQ at a dose level of 300 mg of active compound per kg per day, five days per week for 4 weeks. Each group contained five males and five females. There were no treatment-related changes in body weights, body weight gain, organ weights or organ to body weight ratios. It was also reported that there were no treatment-related clinical changes. However, animals receiving EEQ had significantly greater mean corpuscular volumes in week 4 than the controls and there was an increased incidence of dermal inflammation, of diffuse distribution and associated with acanthosis, that was considered treatment-related. An increased incidence of dermatitis was attributed to "random variation."

C. Genotoxicity

In summary reports it was stated that EEQ was tested for mutagenicity in the *Salmonella* assay, with and without metabolic activation, and the mouse lymphoma assay (Ref. 5, Procter and Gamble 1984b) and that those tests produced negative results. No information was found for PEQ or the other ethoxylated quaternary ammonium compounds recommended in this Report.

D. Oncogenicity

No information was found.

E. Reproductive and Developmental Effects

No information was found.

F. Chronic (Long-term) Effects

No information was found.

G. Observations in Humans

Little or no irritation was observed with human volunteers in a skin irritation test with aqueous dispersions of EEQ using 0.3 mL of EEQ per occluded patch (Ref. 5, Procter and Gamble, 1984b). EEQ was tested in a single 24-hour and three 24-hour exposures over a 6-day period at concentrations up to 20 percent (w/v). In another Procter and Gamble study (Ref. 5, 1984b), 87 volunteers received 9 exposures to 10 percent (w/v) aqueous EEQ and 205 volunteers received 9 exposures to 25 percent (w/v) aqueous EEQ (0.3 mL per occluded patch) applied for a 24-hour period, 3 times a week during a 3-week induction period. No skin sensitization was observed when subjects were challenged two weeks later with a single 24-hour occluded patch with the same concentration used during induction.

H. Rationale for Health Effects Recommendations

It has been estimated that fabric softeners that are applied to fabrics during the washing process are widely used in the U.S. Annual U.S. consumption of the ethoxylated quaternary ammonium type fabric softeners has been estimated at about 25 million pounds. It is quite apparent that a significant portion of the population is exposed, on a nearly continuous basis, to these chemicals in clothing, toweling and bed linens. Exposure will be primarily dermal although there may be very low concentrations in some drinking water supplies. Dermal exposure tests reported to date have involved only acute or short-term exposures. EEQ was described as a mild to severe irritant and PEQ was mildly irritating when applied to rabbit skin. EEQ was a mild skin sensitizer in some guinea pig studies.

Although exposure concentrations used in short-term studies were reported to be several-fold higher than estimated human exposures from softened fabrics, information from these short-term, intermittent-exposure tests is not useful in predicting what effects might occur with long-term (years) continuous exposure. It is therefore recommended that EEQ, PEQ and commercially important analogs of PEQ be tested for chronic toxicity to evaluate potential effects resulting from long-term dermal exposure.

IV. Ecological Effects of Concern

A. Acute and Subchronic (Short-term) Effects

Summary data submitted by Procter and Gamble (Ref. 5, 1984b) show EEQ toxicity to bluegills, sheepshead minnows, mysid shrimp and *Daphnia magna* water fleas, with LC_{50} values ranging from 0.3 to 45 mg/L. The presence of an anionic surfactant or the use of natural surface waters with sediments mitigated the effects on bluegills and daphnia. No data were found for benthic organisms and this is a data gap of concern since these compounds are likely to partition to sediments following release to the environment. No data were found for PEQ or its analogs.

B. Chronic (Long-term) Effects

No information was found.

C. Other Ecological Effects (Biological, Behavioral or Ecosystem Processes)

EEQ was reported to inhibit algal growth at moderately low concentrations (Ref. 5, Procter and Gamble, 1984b). The algistatic concentrations were 1.33 mg/L for a *Selenastrum* sp., 0.52 mg/L for a *Mycrocystis* sp., and 9.4 mg/L for a *Dunaliella* sp. No data were found for PEQ or its analogs.

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D. Bioconcentration and Food-chain Transport

The measured log P of 2.48 for EEQ indicates a potential for some bioconcentration. Procter and Gamble (Ref. 5, 1984b) reported an estimated bioconcentration factor (BCF) of 45 for EEQ, based on the log P. No information was found for PEQ or its analogs.

E. Rationale for Ecological Effects Recommendations

Environmental fate considerations indicate that the ethoxylated quaternary ammonium compounds will sorb strongly to sludge solids and sediments. They may persist for relatively long periods of time under those conditions and accumulate in sediments in the vicinity of wastewater discharges. This information plus the demonstrated toxicity of EEQ to fish, aquatic invertebrates and algae, raise concerns for benthic organisms. Acute toxicity should be determined for representative freshwater and estuarine benthic organisms and, if the ethoxylated quaternary ammonium compounds are found to be relatively persistent in the environment, chronic studies on the same organisms may be warranted.

References

(1) Battin, A. Memorandum on exposure and release of ethoxylated quaternary ammonium compounds in liquid fabric softeners from Andrew Battin, Exposure Assessment Branch, Office of Toxic Substances, U.S. Environmental Protection Agency, to John D. Walker, Test Rules Development Branch. (February 2, 1988b).

(2) Battin, A. Memorandum on physical/chemical property estimations from Andrew Battin, Exposure Assessment Branch, Office of Toxic Substances, U.S. Environmental Protection Agency, to Robert Brink, TSCA Interagency Testing Committee (April 8, 1988c).

(3) Bourquin, A.W. and Przybyszewski, V.A. "Distribution of bacteria and nitrilotriacetate-degrading potential in an estuarine environment," *Applied and Environmental Microbiology*. 34:411–418 (1977).

(4) Capital City Products. Letter and unpublished information from John B. Braunwarth, Operations Manager, Capital City Products Co. Janesville, WI, to Robert Brink, TSCA Interagency Testing Committee (February 18, 1987).

(5) Procter and Gamble. Letter and unpublished information from T.W. Mooney, Manager, Technical Government Relations, The Procter and Gamble Co., Cincinnati, OH, to Arthur Stern, TSCA Interagency Testing Committee (September 12, 1984b).

(6) Procter and Gamble. Letter from R.N. Sturm, Associate Director, Bar Soap and Household Cleaning Product Development, Procter and Gamble Co., Cincinnati, OH, to Robert Brink, TSCA Interagency Testing Committee (April 19, 1988).

(7) Sherex. Unpublished information submitted from Howard M. Hickman, Sherex Chemical Co., Inc., Dublin, OH, to Martin Greif, TSCA Interagency Testing Committee (January 17, 1984).

(8) Sherex. Personal communication from Howard Hickman of Sherex Chemical Co., Inc. Dublin, OH, to L. Borghi, Dynamac Corporation (January 13, 1987).

[FR Doc. 88–11254 Filed 5–19–88; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS–84028; FRL–3382–1]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-second Report to EPA recommended that EPA give priority consideration to ten chemical substances in proposing chemical test rules. To assist EPA in its determination of which, if any, tests are needed for these substances, EPA is adding the ten substances to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR). Eight of these ten substances are also being added to the TSCA section 8(d) Health and Safety Data Reporting Rule.

DATE: This rule shall become effective on June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202–554–1404).

SUPPLEMENTARY INFORMATION: This rule adds ten chemical substances to the PAIR and eight of these ten chemical substances to the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data and/or end use, exposure, and volume data to the Agency. Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-second Report of the ITC, which was transmitted to EPA on May 2, 1988.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing chemical test rules. For some of these chemicals the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so. For the remainder of the recommended substances, no time limit for Agency response is imposed.

Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-second Report of the ITC, which was transmitted to EPA on May 2, 1988. The Twenty-second Report revises and updates the Committee's priority list of chemicals and adds ten substances to the section 4(e) priority list. This rule adds these ten substances to the PAIR and eight of the ten substances to the section 8(d) Health and Safety Data Reporting Rule which will require manufacturers, importers, and processors to report unpublished health and safety data and/or volume, end use, and exposure data to EPA. The two substances added to the PAIR but which are not added to the section 8(d) Health and Safety Data Reporting Rule are not being added because they were previously listed under the section 8(d) rule (Hexane, 1,6-diisocyanato- (CAS Number 822-06-0) 52 FR 16022, May 1, 1987; 2-Butenal (CAS Number 4170-30-3) 51 FR 2890, January 22, 1986).

To assist EPA in responding to the ITC recommendations, EPA has developed two model information-gathering rules (PAIR and the section 8(d) Health and Safety Data Reporting Rule) which provide for the automatic addition to ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without notice and comment, amend the two model information-gathering rules by adding the recommended substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. EPA revised the section 8(d) model rule on September 15, 1986 (51 FR 32720). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

II. Chemicals To Be Added

The following ITC priority list substances for which reporting is required under 40 CFR Parts 712 and/or 716 are listed by ITC designation in ascending Chemical Abstracts Service Registry Number (CAS No.) order:

A. *Designated for response within 12 months:*

CAS No. and Name

822–06–0 Hexane, 1,6-diisocyanato-

B. *Recommended with Intent-to-Designate:*

CAS No. and Name

4170–30–3 2-Butenal

C. *Recommended without being designated for response within 12 months:*

CAS No. and Name

66122–86–1 Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates

66153–35–5 Ethanaminium, 2-amino-*N*-(2-aminoethyl)-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N*-ditallow acyl derivs., Me sulfates (salts)

66389–86–8 Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-*N,N*-dicoco acyl derivs., Me sulfates (salts)

66389–89–9 Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-*N,N*-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts)

66410–60–5 Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-*N,N*-ditallow acyl derivs., Me sulfates (salts)

66413–04–7 Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[bis(2-aminoethyl)methylammonio]methylethyl]-omega-hydroxy-, *N,N*-ditallow acyl derivs., Me sulfates (salts)

66554–06–3 Poly(oxy-1,2-ethanediyl), alpha-[3-[bis(2-aminoethyl)methylammonio]-2-hydroxypropyl]-omega-hydroxy-, *N*-cocco acyl derivs., Me sulfates (salts)

70914–09–9 Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-*N,N*-di-C_{14-18} acyl derivs., Me sulfates (salts)

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III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than August 18, 1988. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address which precedes Unit I.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

Detailed guidance for reporting unpublished health and safety data is provided in the section 8(d) Health and Safety Data Reporting Rule published in the **Federal Register** of September 15, 1986 (51 FR 32720) (40 CFR 716.60). Also found there are the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: (insert either PAIR or 8(d) Reporting)

D. Removal of Chemicals From the Rules

Any person who believes that section 8 (a) or (d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the substance from this rule. When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than August 18, 1988.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $12,915. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these substances. Since no companies qualify as small businesses as defined in 40 CFR 712.25(c), EPA expects six firms to report a total of eleven reports.

Reporting Cost (dollars)

(a) 11 reports expected at $807/report	$8,877
(b) 6 familiarization cases at $673/case	4,038
Total	12,915
Average cost per site	2,153
Average cost per firm	2,153

Reporting Burden (hours)

(a) Familiarization: 18 hours per site × 6 sites	108
(b) Reporting: 16 hours per report × 11 reports	176
Total	284 hours

EPA Cost

Processing Cost = 11 reports × $91/report = $1,001.

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these substances is $18,890. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data is not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this rule is low in comparison with its potential benefits. Health and safety studies concerning these substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$2,040
Site identification	1,224
File searches at affected sites	2,484
Title listing	126
Photocopying	1,627
Managerial review	9,792
Reporting on newly-initiated studies	90
Submissions after initial reporting period	1,507
Total	18,890

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS-84028). All of these documents are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Twenty-second Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2070-0054 and 2070-0004.

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: May 6, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In Part 712:

a. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding the following substances to paragraph (w) in CAS Number order as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective date	Reporting date
822-06-0	Hexane, 1,6-diisocyanato-	6/20/88	8/18/88
4170-30-3	2-Butenal	6/20/88	8/18/88
68122-86-1	Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates	6/20/88	8/18/88
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl)-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N'*-ditallow acyl derivs., Me sulfates (salts)	6/20/88	8/18/88
68389-88-8	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N'*-dicoco acyl derivs., Me sulfates (salts)	6/20/88	8/18/88
68389-89-9	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl-omega-hydroxy-, *N,N'*-bis (hydrogenated tallow acyl) derivs., Me sulfates (salts)	6/20/88	8/18/88
68410-69-5	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N'*-ditallow acyl derivs., Me sulfates (salts)	6/20/88	8/18/88
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[bis(2-aminoethyl)methylammonio]methylethyl]-omega-hydroxy-, *N,N'*-ditallow acyl derivs., Me sulfates (salts)	6/20/88	8/18/88
68554-08-3	Poly(oxy-1,2-ethanediyl), alpha-[3-[bis(2-aminoethyl)methylammonio]-2-hydroxypropyl]-omega-hydroxy-, *N*-coco acyl derivs., Me sulfates (salts)	6/20/88	8/18/88
70914-09-9	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N'*-di-C_{14-18} acyl derivs., Me sulfates (salts)	6/20/88	8/18/88

PART 716—[AMENDED]

2. In Part 716:

a. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. By adding substances to paragraph (a)(1) numerically by CAS Number, and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

(1) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
68122-86-1	Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates.		6/20/88	6/20/98
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl)-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N'*-ditallow acyl derivs., Me sulfates (salts).		6/20/88	6/20/98

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CAS No.	Substance	Special exemptions	Effective date	Sunset date
68389-88-8	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-,*N,N*-dicoco acyl derivs., Me sulfates (salts).		6/20/88	6/20/98
68389-89-9	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts).		6/20/88	6/20/98
68410-69-5	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-,*N,N*-ditallow acyl derivs., Me sulfates (salts).		6/20/88	6/20/98
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[bis(2-aminoethyl)methylammonio]methylethyl]-omega-hydroxy-, *N,N*-ditallow acyl derivs., Me sulfates (salts).		6/20/88	6/20/98
68554-06-3	Poly(oxy-1,2-ethanediyl), alpha-[3-[bis(2-aminoethyl)methylammonio]-2-hydroxypropyl]-omega-hydroxy-, *N*-coco acyl derivs., Me sulfates (salts).		6/20/88	6/20/98
70914-09-9	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-,*N,N*-di-C_{14-18} acyl derivs., Me sulfates (salts).		6/20/88	6/20/98

(2) * * *

Substance	CAS No.	Special exemptions	Effective date	Sunset date
Ethanaminium, 2-amino-*N*-(2-aminoethyl)-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N*-ditallow acyl derivs., Me sulfates (salts).	68153-35-5		6/20/88	6/20/98
Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates.	68122-86-1		6/20/88	6/20/98
Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N*-bis(hydrogenated tallow acyl) derivs., Me sulfates (salts).	68389-89-9		6/20/88	6/20/98
Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N*-di-C_{14-18} acyl derivs., Me sulfates (salts).	70914-09-9		6/20/88	6/20/98
Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N*-dicoco acyl derivs., Me sulfates (salts).	68389-88-8		6/20/88	6/20/98
Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl)methylammonio]ethyl]-omega-hydroxy-, *N,N*-ditallow acyl derivs., Me sulfates (salts).	68410-69-5		6/20/88	6/20/98
Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[bis(2-aminoethyl)methylammonio]methylethyl]-omega-hydroxy-,*N,N*-ditallow acyl derivs., Me sulfates (salts).	68413-04-7		6/20/88	6/20/98
Poly(oxy-1,2-ethanediyl), alpha-[3-[bis(2-aminoethyl)methylammonio]-2-hydroxypropyl]-omega-hydroxy-,*N*-coco acyl derivs., Me sulfates (salts).	68554-06-3		6/20/88	6/20/98

(Approved by the Office of Management and Budget under control number 2070-0004)

[FR Doc. 88-11123 Filed 5-19-88; 8:45 am]

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federal register

Friday
May 20, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 99

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones (ADIZ); Final Rule and Request for Comments

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 99

[Docket No. 25113; Amdt. 99–13]

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones (ADIZ)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends Part 99 of the Federal Aviation Regulations by changing the lateral boundaries of ADIZ's around the Continental U.S., Alaska, and Guam. Additionally, this action makes editorial changes and deletes references to Distant Early Warning Identification Zones (DEWIZ), Domestic ADIZ's, and Coastal ADIZ's. The action is taken at the request of the Department of Defense for reasons of national security.

DATES: *Effective date*: June 30, 1988.

Comment date: Comments must be received by August 15, 1988.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. [25113], 800 Indpendence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this action is in the form of a final rule which involves airspace modifications and was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire on any portion of the rule. When the comment period ends, the FAA will use the comments submitted together with other available information, to review the regulations. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulations. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25113." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

Air defense identification zones (ADIZ) are areas of airspace primarily over international waters, that are established to facilitate the monitoring of aircraft operations for national security and other purposes.

On October 23, 1986, the FAA received a petition from the U.S. military Joint Chiefs of Staff to initiate rulemaking action in order to amend portions of the Pacific and Gulf of Mexico Coastal ADIZ's by deleting those areas that lay south of the U.S. border with the Republic of Mexico.

Subsequent requests, the lateat of which was received in December 1987, amended to original petition for realignment by requesting the realignment of Alaska DEWIZ to include the Aleutian Islands. Additionally, the Joint Chiefs of Staff requested that the FAA make editorial name changes to delete ambiguous terms such as Coastal, Gulf, Domestic, Pacific, and Distant Early Warning when referring to the different areas and, for standardization purposes, use the single term Air Defense Identification Zones. The ADIZ realignment was developed in support of the North American Defense Command (NORAD) mission of controlling access to sovereign airspace and peacetime mission of national security.

Additionally, the U.S. Air Force requested by letter dated September 29, 1987, that the FAA realign the Guam ADIZ. This request for a rule amendment is based on the increase in the level of potential threats to U.S. government personnel and facilities on the island of Guam.

The Department of Defense (DOD) by letter dated April 19, 1988, requested the FAA to upgrade the priority of the ADIZ petition and asked that the implementation of the ADIZ realignment be expedited.

Discussion

The FAA has reviewed the requests for amendment to Part 99 and finds that amendment to the ADIZ boundaries in Part 99 of the Federal Aviation Regulations is necessary to reconcile issues of Mexican sovereign airspace specifically, the alteration of the ADIZ in the Gulf of Mexico and in the southwest portion of the U.S., off the coast of lower California, aligns the ADIZ so that it does not extend into the sovereign airspace of the Republic of Mexico.

The alteration of the existing ADIZ boundaries in the Alaskan area would alleviate current flight plan and position reporting requirements for those pilots conducting operations in the Aleutian Island chain who presently depart some of the island airports and routinely must exit and reenter the ADIZ. Additionally, this amendment will eliminate a gap in the ADIZ on the western shore of Canada by providing a continuous ADIZ between the U.S. airspace and the Canadian Domestic ADIZ.

In regard to the requested modification of the Guam ADIZ, the FAA agrees with the DOD that an inner ADIZ for the defense of the Mariana Islands is necessary. Such an ADIZ will facilitate the implementation of new air defense procedures without causing any undue interference with local air traffic.

Additionally, the FAA concurs with the DOD in the simplification of the nomenclature of ADIZ's by removing references to specific types ad location names of ADIZ's. To accommodate the simplification aspect, minor editorial changes are necessary in the following: Sections 99.11, 99.13, 99.17, 99.19, 99.21, 99.23, 99.25, 99.43, 99.45, and 99.47.

The DOD has requested implementation of the revised boundaries of the ADIZ at the earliest possible date which would permit inclusion of the action in revised aeronautical charts to be issued on June 30, 1988. In response to the DOD assessment of the importance of the ADIZ realignment for national defense objectives, the FAA finds that further delay in the implementation of the rule for public notice and comment under 5 U.S.C. 553 is impracticable and contrary to the public interest. Further, the FAA notes that a change in the ADIZ boundaries, primarily over international waters, is not the type of action which would normally involve public comment but for the change in the descriptive language in FAR Part 99. Neither the ADIZ action nor the editorial revisions

affect in any way the operating procedures which apply in the ADIZ or affect designations of controlled airspace or special use airspace. Notwithstanding the minimal impact of this action, the FAA is requesting comments on the final rule. Comments received will be used in determining whether additional rulemaking is needed.

For the above reasons the FAA has determined that this action is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation as the overall impact on users of the system is to be minimal.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has also consulted with the Department of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854 inasmuch as this amendment involves airspace outside of the United States.

Adoption of the Amendment

Accordingly, Part 99 of the Federal Aviation Regulations (14 CFR Part 99) is amended, effective 0901 u.t.c., June 30, 1988, as follows:

The Amendment

For the above reasons the FAA revises FAR Part 99 (14 CFR Part 99) as follows:

PART 99—SECURITY CONTROL OF AIR TRAFFIC

Subpart A—General

Sec.

99.1 Applicability.
99.3 General.
99.5 Emergency situations.
99.7 Special security instructions.
99.9 Radio requirements.
99.11 ADIZ flight plan requirements.
99.15 Arrival or completion notice.
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99.19 Position reports; aircraft operating in or penetrating an ADIZ; DVFR.
99.21 Position reports; aircraft entering the United States through an ADIZ; U.S. aircraft.
99.23 Position reports; aircraft entering the United States through an ADIZ; foreign aircraft.
99.27 Deviation from flight plans and ATC clearances and instructions.
99.29 Radio failure; DVFR.
99.31 Radio failure; IFR.

Subpart B—Designated Air Defense Identification Zones

99.41 General.
99.42 Conterminous U.S. ADIZ.
99.43 Alaska ADIZ.
99.45 Guam ADIZ.
99.47 Hawaii ADIZ.
99.49 Defense Area.

Authority: 49 U.S.C. 1348, 1354(a), 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Subpart A—General

§ 99.1 Applicability.

(a) This subpart prescribes rules for operating civil aircraft in a defense area, or into, within, or out of the United States through an Air Defense Identification Zone (ADIZ), designated in Subpart B.

(b) Except for § 99.7, this subpart does not apply to the operation of an aircraft—

(1) In an ADIZ north of 30 degrees north latitude or west 86 degrees west latitude at a true airspeed of less than 180 knots;

(2) In the Alaskan ADIZ at a true airspeed of less than 180 knots while the pilot maintains a continuous listening watch on the appropriate frequency;

(3) From any point in the 48 contiguous States on an outbound track through the Southern Border ADIZ;

(4) Within the 48 contiguous States and the District of Columbia, or within the State of Alaska, which remains within 10 nautical miles of the point of departure; or

(5) Over any island, or within 3 nautical miles of the coastline of any island, in the Hawaiian ADIZ.

(c) Except as provided in § 99.7, the radio and position reporting requirements of this subpart do not apply to the operation of an aircraft within the 48 contiguous States and the District of Columbia, or within the State of Alaska, if that aircraft does not have two-way radio and is operated in accordance with a filed DVFR flight plan containing the time and point of ADIZ penetration and that aircraft departs within 5 minutes of the estimated departure time contained in the flight plan.

(d) An FAA ATC center may exempt the following operations from this subpart (except Section 99.7), on a local basis only, with the concurrence of the military commanders concerned:

(1) Aircraft operations that are conducted wholly within the boundaries of an ADIZ and are not currently significant to the air defense system.

(2) Aircraft operations conducted in accordance with special procedures prescribed by the military authorities concerned.

§ 99.3 General.

(a) The Air Defense Identification Zone (ADIZ) is an area of airspace over land or water in which the ready identification, location, and control of civil aircraft is required in the interest of national security.

(b) Unless designated as an ADIZ, a Defense Area is any airspace of the United States in which the control of aircraft is required for reasons of national security.

(c) For the purposes of this Part, a Defense Visual Flight Rules (DVFR) flight is a flight within an ADIZ conducted under the visual flight rules in Part 91.

§ 99.5 Emergency situations.

In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from the rules in this Part to the extent required by that emergency. He shall report the reasons for the deviation to the communications facility where flight plans or position reports are normally filed (referred to in this Part as "an appropriate aeronautical facility") as soon as possible.

§ 99.7 Special security instructions.

Each person operating an aircraft in an ADIZ or Defense Area shall, in addition to the applicable rules of this Part, comply with special security instructions issued by the Administrator in the interest of national security and that are consistent with appropriate agreements between the FAA and the Department of Defense.

§ 99.9 Radio requirements.

Except as provided in § 99.1(c), no person may operate an aircraft in an ADIZ unless the aircraft has a functioning two-way radio.

§ 99.11 ADIZ flight plan requirements.

(a) No person may operate an aircraft in or penetrate an ADIZ unless that

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person has filed a flight plan with an appropriate aeronautical facility.

(b) Unless ATC authorizes an abbreviated flight plan—

(1) A flight plan for IFR flight must contain the information specified in § 91.83; and

(2) A flight plan for VFR flight must contain the information specified in § 91.83(a) (1) through (7).

(3) If airport of departure is within the Alaskan ADIZ and there is no facility for filing a flight plan then:

(i) Immediately after takeoff or when within range of an appropriate aeronautical facility, comply with provisions of paragraph (b)(1) or (b)(2) as appropriate.

(ii) Proceed according to the instructions issued by the appropriate aeronautical facility.

(c) The pilot shall designate a flight plan for VFR flight as a DVFR flight plan.

§ 99.15 Arrival or completion notice.

The pilot in command of an aircraft for which a flight plan has been filed shall file an arrival or completion notice with an appropriate aeronautical facility, unless the flight plan states that no notice will be filed.

§ 99.17 Position reports; aircraft operating in or penetrating an ADIZ; IFR.

The pilot of an aircraft operating in or penetrating an ADIZ under IFR—

(a) In controlled airspace, shall make the position reports required in § 91.125; and

(b) In uncontrolled airspace, shall make the position reports required in § 99.19.

§ 99.19 Position reports; aircraft operating in or penetrating an ADIZ; DVFR.

No pilot may operate an aircraft penetrating an ADIZ under DVFR unless—

(a) That pilot reports to an appropriate aeronautical facility before penetration: The time, position, and altitude at which the aircraft passed the last reporting point before penetration and the estimated time of arrival over the next appropriate reporting point along the flight route;

(b) If there is no appropriate reporting point along the flight route, that pilot reports at least 15 minutes before penetration: The estimated time, position, and altitude at which he will penetrate; or

(c) If the airport departure is within an ADIZ or so close to the ADIZ boundary that it prevents his complying with paragraphs (a) or (b) of this section, that pilot has reported immediately after taking off: the time of departure, altitude, and estimated time of arrival over the first reporting point along the flight route.

§ 99.21 Position reports; aircraft entering the United States through an ADIZ; United States aircraft.

The pilot of an aircraft entering the United States through an ADIZ shall make the reports required in §§ 99.17 or 99.19 to an appropriate aeronautical facility.

§ 99.23 Position reports; aircraft entering the United States through an ADIZ; foreign aircraft.

In addition to such other reports as ATC may require, no pilot in command of a foreign civil aircraft may enter the U.S. through an ADIZ unless that pilot makes the reports required in §§ 99.17 or 99.19 or reports the position of the aircraft when it is not less than one hour and not more than 2 hours average cruising distance from the United States.

§ 99.27 Deviation from flight plans and ATC clearances and instructions.

(a) No pilot may deviate from the provisions of an ATC clearance or ATC instruction except in accordance with § 91.75 of this chapter.

(b) No pilot may deviate from the filed IFR flight plan when operating an aircraft in uncontrolled airspace unless that pilot notifies an appropriate aeronautical facility before deviating.

(c) No pilot may deviate from the filed DVFR flight plan unless that pilot notifies an appropriate aeronautical facility before deviating.

§ 99.29 Radio failure; DVFR.

If the pilot operating an aircraft under DVFR in an ADIZ cannot maintain two-way radio communications, the pilot may proceed in accordance with original DVFR flight plan or land as soon as practicable. The pilot shall report the radio failure to an appropriate aeronautical facility as soon as possible.

§ 99.31 Radio failure; IFR.

If a pilot operating an aircraft under IFR in an ADIZ cannot maintain two-way radio communications, the pilot shall proceed in accordance with § 91.127 of this chapter.

Subpart B—Designated Air Defense Identification Zones

§ 99.41 General.

The airspace above the areas described in this subpart is established as an ADIZ Defense Area. The lines between points described in this subpart are great circles except that the lines joining adjacent points on the same parallel of latitude are rhumb lines.

§ 99.42 Conterminous U.S. ADIZ.

The area bounded by a line 28°00'N, 96°35'W; 28°00'N, 95°00'W; 28°30'N, 95°00'W; then along 28°30'N to; 28°30'N, 84°00'W; 24°00'N, 83°00'W; 24°00'N, 80°00'W; 24°00'N, 79°25'W; 25°40'N, 79°25'W; 27°30'N, 78°50'W; 30°45'N, 74°00'W; 39°30'N, 63°45'W; 43°00'N, 65°48'W; 41°15'N, 69°30'W; 40°32'N, 72°15'W; 39°55'N, 73°00'W; 39°38'N, 73°00'W; 39°36'30"N, 73°40'30"W; 39°30'N, 73°45'W; 37°00'N, 75°30'W; 36°10'N, 75°10'W; 35°10'N, 75°10'W; 32°01'N, 80°32'W; 30°50'N, 80°54'W; 30°05'N, 81°07'W; 27°59'N, 79°23'W; 24°49'N, 80°00'W; 24°49'N, 80°55'W; 25°10'N, 81°12'W; then along a line 3 nautical miles from a shoreline to; 25°45'N, 81°27'W; 25°45'N, 82°07'W; 28°55'N, 83°30'W; 29°20'N, 85°00'W; 30°00'N, 86°00'W; 30°00'N, 88°30'W; 29°00'N, 89°00'W; 28°45'N, 90°00'W; 29°26'N, 94°00'W; 28°42'N, 95°17'W; 28°05'N, 96°30'W; 26°25'N, 96°30'W; 26°00'N, 96°35'W; 25°58'N, 97°07'W; then westward along the Mexican Border to 32°32'03"N, 117°07'25"W; 32°30'N, 117°20'W; 32°00'N, 118°24'W; 30°45'N, 120°50'W; 29°00'N, 124°00'W; 37°42'N, 130°40'W; 48°20'N, 132°00'W; 48°20'N, 128°00'W; 48°30'N, 125°00'W; 48°29'38"N, 124°43'35"W; 48°00'N, 125°15'W; 46°15'N, 124°30'W; 43°00'N, 124°40'W; 40°00'N, 124°35'W; 38°50'N, 124°00'W; 34°50'N, 121°10'W; 34°00'N, 120°30'W; 32°00'N, 118°24'W; 32°30'N, 117°20'W; 32°32'03"N, 117°07'25"W.

§ 99.43 Alaska ADIZ.

The area bounded by a line 54°00'N, 136°00'W; 56°57'N, 144°00'W; 57°00'N, 145°00'W; 53°00'N, 158°00'W; 50°00'N, 169°00'W; 50°00'N, 180°00'; 50°00'N, 170°00'E; 53°00'N, 170°00'E; 60°00'N, 180°00'; 65°00'N, 169°00'W; then along 169°00'W to; 75°00'N, 169°00'W; then along the 75°00'N parallel to; 75°00'N; 141°00'W to; 69°50'N, 141°00'W; 71°18'N, 156°44'W; 69°52'N, 163°00'W; then south along 163°00'W to; 54°00'N, 163°00'W; 56°30'N, 154°00'W; 59°20'N, 146°00'W; 59°30'N, 140°00'W; 57°00'N, 136°00'W; 54°35'N, 133°00'W; to point of beginning.

§ 99.45 Guam ADIZ.

(a) *Inner boundary.* From a point 13°52'07"N, 143°59'16"E, counterclockwise along the 50-nautical-mile radius arc of the NIMITZ VORTAC (located at 13°27'11"N, 144°43'51"E); to a point 13°02'08"N, 145°28'17"E; then to a point 14°49'07"N, 146°13'58"E; counterclockwise along the 35-nautical-mile radius arc of the SAIPAN NDB (located at 15°06'46"N, 145°42'42"E); to a point 15°24'21"N, 145°11'21"E; then to the point of origin.

(b) *Outer boundary.* The area bounded by a circle with a radius of 250 NM centered at latitude 13°32'41"N, longitude 144°50'30"E.

§ 99.47 Hawaii ADIZ.

(a) *Outer boundary.* The area included in the irregular octagonal figure formed by a line connecting 26°30'N, 156°00'W; 26°30'N, 161°00'W; 24°00'N, 164°00'W; 20°00'N, 164°00'W; 17°00'N, 160°00'W; 17°00'N, 156°00'W; 20°00'N, 153°00'W; 22°00'N, 153°00'W; to point of beginning.

(b) *Inner boundary.* The inner boundary to follow a line connecting 22°30'N, 157°00'W; 22°30'N, 160°00'W; 22°00'N, 161°00'W; 21°00'N, 161°00'W; 20°00'N, 160°00'W; 20°00'N, 156°30'W; 21°00'N, 155°30'W; to point of beginning.

§ 99.49 Defense Area.

All airspace of the United States is designated as Defense Area except that airspace already designated as Air Defense Identification Zone.

Issued in Washington, DC, on May 13, 1988

T. Allan McArtor,

Administrator.

[FR Doc. 88-11191 Filed 5-17-88; 12:30 pm]

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Part IV

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 639

Capital Leases; Notice of Proposed Rulemaking and Request for Comments

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 639

[Docket No. 88-C]
RIN 2132-AA28

Capital Leases

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This Notice of Proposed Rulemaking and request for comments is issued by the Urban Mass Transportation Administration (UMTA) to implement section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 308 allows funds from grants for capital projects under section 9 of the Urban Mass Transportation Act of 1964, as amended, to be used for leasing facilities and equipment if a lease arrangement is more cost-effective than purchase or construction. Section 308 also directs the Administrator of UMTA, by delegation from the Secretary of Transportation, to issue regulations governing these leases.

DATE: Comments should be received by July 19, 1988.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-C, 400 Seventh Street SW., Room 9316, Wahington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Candace Noonan, Transportation Program Specialist, Office of Grants Management, (202) 366-2440 or Linda C. Hart, Office of Chief Counsel, (202) 366-4063.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

Under section 9 of the Urban Mass Transportation Act of 1964, as amended (the UMT Act), Federal funds are made available to urbanized areas on the basis of a statutory formula. These Federal funds are available for either 80% of the cost of acquisition or construction of facilities and equipment in transportation service, or 50% of the net cost of operating, by lease or otherwise, facilites and equipment in transportation service. A grant for 80% funding is known as a capital assistance grant, while one for 50% funding is known as an operating assistance grant. Since the inception of the transit program, leases have rarely been used for long term capital acquisition because imputed interest in lease costs has not been an eligible capital expense, although it has always been eligible for operating assistance.

Section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, however, amended section 9 of the UMT Act and expressly extended the availability of Federal funds at the 80% capital rate to leases of facilities and equipment where leasing is more cost-effective than purchase or construction. Leases that cannot be shown to be more cost-effective than purchase or construction or are otherwise not eligible for the capital program will continue to be eligible for operating assistance.

In this proposed regulation, UMTA intends to allow grantees the greatest possible flexibility in entering into eligible leasing arrangements to broaden the competitive opportunities for providing transit services. UMTA also seeks to minimize any administrative burdens associated with this proposed regulation. UMTA believes that this approach to drafting the proposed regulation offers the greatest potential benefit to the transit industry and to the taxpayer.

B. The Proposed Regulation

In this proposed regulation, the term "capital lease" includes any lease arrangement used to obtain a capital asset. A capital lease which may be eligible for capital assistance can range from a lease of an asset only, to arrangements which include providing services such as maintenance and operation even though certain costs of the lease may not be eligible for capital assistance.

While this proposed regulation would allow a grantee to obtain capital assets in the most cost-effective manner possible, it is not meant to permit the unwarranted capitalization of operating expenses. The procedures in the proposed regulation are designed to ensure balanced consideration of the options available for obtaining the asset.

In order to fairly evaluate the cost-effectiveness of a proposed lease, a grantee must first determine what it needs. These needs should be expressed in specific terms, including performance and technical criteria as would be set forth in a bid specification, so that a fair evaluation of purchasing or constructing the asset versus leasing may be made. The regulation refers to this expression of need as "the proposal to obtain the asset."

UMTA takes the position that the cost-effectiveness at issue is the cost-effectiveness to the grantee, and that a grantee may self certify to UMTA its cost-effectiveness finding. This self-certification approach is consistent with the section 9 program, which is, by statute, largely one of self-certification.

Subpart C of proposed regulation describes the process a grantee must follow in identifying the cost of each option to be evaluated and in determining the cost-effectiveness of the options considered. The proposed regulation does not specify in detail how to conduct the cost-effectiveness evaluation. Rather, it provides a general framework and some basic considerations that must be addressed. Local transit management and transit boards will then make a determination whether a lease arrangement is more cost-effective than buying or constructing the asset.

By taking this more general approach, UMTA intends to maximize the types of capital leases that can meet the cost-effectiveness requirement; UMTA has not limited the calculation to the traditional "make or buy" approach. Rather, cost-effectiveness calculations may include costs and benefits beyond the narrow financial ones. UMTA is willing to permit valuation of costs and benefits from improved reliability, greater passenger comfort, or other factors which are recognizably difficult to quantify.

It is UMTA's intention that this proposed regulation be conducive to a wide range of potential lease arrangements, including uniform and nonuniform payments, lease purchase options, or any other arrangement which meets the basic requirements of the proposed regulation.

C. Section-By-Section Analysis

Subpart A includes general information about this part. Sections 639.1 and 639.3 set out the purpose and scope of the regulation. Section 639.5 defines the terms used in the regulation, including "capital asset," "capital assistance," and "capital lease." A capital asset is a facility or piece of equipment which has a useful life in mass transportation service of at least one year and which is eligible for capital assistance. This definition does not modify UMTA's existing treatment of the useful life of capital items. Capital assistance is Federal financial assistance under section 9 of the UMT Act at the Federal share for capital projects, 80 percent. A capital lease is a lease to obtain the use of capital asset. A capital lease may or may not be eligible for capital assistance in whole or in part.

Subpart B includes general information about a capital lease, including eligibilitly, grant options available for funding the lease, and the distinction between capital and operating costs within a lease.

Specifically, § 639.11 sets out the general eligibility requirements. Paragraph (1) requires that the capital asset be otherwise eligible for captial assistance under section 9 of the UMT Act. That is, only an asset that, if purchased or constructed by a grantee would be eligible for capital assistance under section 9, would be eligible for capital lease purposes. The new leasing provision does not expand the scope of activities eligible for funding under section 9. Rather, it provides that certain projects that are eligible to be funded at an 80 percent rate may now be accomplished by lease in place of purchase or construction. Paragraph (2) prohibits capital funds from being used for a lease in which there is already an existing Federal interest, to preclude a grantee from "doubledipping" from Federal funds. However, if the Federal interest in the asset is eliminated by appropriate means, the UMTA grant can be made.

Paragraph (3) reflects the requirement in the law that a capital lease must be more cost-effective than purchase or construction of the capital asset. It is important to emphasize this point. A capital lease must be compared to the purchase of the same asset, not some other alternative. For example, a grantee cannot compare the cost of leasing new buses against the cost of extending the life of its existing fleet.

Section 639.13 describes the grant options available for capital assistance for a capital lease. Paragraph (a)(1) explains that a grantee may choose to receive annual lease payments through a series of annual grants from UMTA. A grantee choosing this option must self-certify to UMTA that it has the ability to meet future obligations under the lease in the absence of future Federal funding. Under this approach, a grantee would reapply to UMTA each year for funding. UMTA will give automatic preaward authority for subsequent lease payments so that if Federal appropriations are delayed beyond the time a subsequent lease payment is due, that subsequent payment would be eligible for reimbursement as soon as Federal funds became available. UMTA believes this annual grant method of funding may be useful since it provides a grantee flexibility to decide each year whether to fund the lease payments from local or Federal sources, or even, in accordance with the terms of the lease, to terminate the lease.

Paragraph (a)(2) explains that a grantee may choose to receive a single grant for the Federal share of the lease for a particular period of a lease to be paid out over more than one year. In this case, although all of the funds for the payments on a particular portion of the lease would be obligated by UMTA at one time, the grantee would draw down these funds as lease payments actually were made over the period requested in the grant.

Finally, UMTA recognizes that there may be interest in developing a multi-year agreement for capital leases along the lines of UMTA's full funding contract method. Under this approach UMTA would approve a grant for the length of the lease but would space Federal funds payments out over the course of the lease. This multi-year approach would, of course, be subject to the availability of funds from Congress in future years since UMTA is by law unable to obligate funds beyond a current fiscal year.

UMTA seeks comment on each of these three approaches and in particular on refinements that could be recommended. It may be in the best interest of all parties for UMTA to permit each of these approaches and to let a grantee decide which suits its interests best.

Section 639.15 describes which costs associated with a lease are eligible for capital assistance and which are not. Paragraph (a) states that all costs directly attributable to making the capital asset available are eligible. These would include finance charges, including interest, and ancillary costs such as delivery and installation charges. Paragraph (b) provides that costs for materials, supplies, or services which are generally provided by the grantee are not eligible for capital assistance. Costs in a capital lease which are not eligible for capital assistance may be eligible for operating assistance. For example, maintenance costs included in the lease would not generally be eligible as capital costs, but they would be eligible for operating assistance, and any savings or additional costs resulting from the inclusion of maintenance costs would be considered in calculating cost-effectiveness.

Another issue that needs to be addressed involves a significant difference in the timing of funding for capital or operating assistance projects. An operating assistance project may involve the reimbursement of expenses already incurred, and the approval of a Federal grant implicitly permits the payment of those expenses incurred before the grant was approved. Under a capital grant, however, generally only those costs incurred after the date of the approval of the Federal grant are eligible for Federal funding. Thus if a grantee determines a capital lease is more cost-effective than a purchase, it cannot incur costs under that lease until after the Federal grant is approved if the grantee wants those payments to be eligible for Federal funding. UMTA seeks comment on whether this approach should continue, or whether the regulation should allow some sort of preaward authority to make costs incurred under a lease which the grantee has determined to be cost-effective eligible costs of a grant approved at a later date.

Section 639.17 provides that the parties to a lease are subject to the same Federal statutory and administrative requirements they would be subject to if the asset were being purchased or constructed by the grantee. A grantee receiving capital assistance for a capital lease is subject to the same requirements as are other recipients of section 9 capital formula grants, including: UMTA Circular 9030.1A, "Section 9 Formula Grant Application Instructions," UMTA Circular 5010.1A, "UMTA Project Management Guidelines for Grantees," UMTA Circular 4220.1A, "Third Party Contracting Guidelines," 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs, and generally accepted accounting principles. This also means that activities of a lessor to prepare existing facilities or equipment for a lease or in anticipation of a lease must be performed in accordance with the same statutory and administrative requirements a seller would be subject to if the asset were being purchased.

Subpart C describes the cost-effectiveness evaluation. The cost-effectiveness evaluation in Subpart C compares the total cost of a purchase or construction option to the total cost of a lease option. However, before costs can be compared, they must be expressed in similar terms. Because a dollar amount today is not necessarily worth the same dollar amount ten years from now, all costs not payable in the year in which a grant is applied for must be calculated in terms of their "present value." The formula for calculating present value is a basic one familiar to accountants, engineers and economists. Moreover, tables that provide present value factors which can be applied to scheduled payments are generally available in

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business texts, libraries or a grantee's engineering department. Many pocket calculators even have a present value function.

Similarly, before the cost of two sets of goods can be compared it is necessary to make sure that similar items are placed in each set. Thus, §§ 639.23 and 639.25 explain what to include when calculating the purchase cost and the lease cost. For purposes of comparison only, these costs will include not only the cost of purchasing or constructing or leasing the asset itself but also ancillary costs such as delivery and installation plus the cost to provide any other service or benefit the grantee included in its proposal to obtain the asset. Additional services or benefits beyond the grantee's needs as expressed in its proposal to obtain the asset may be included in a capital lease, but should not be included in the cost comparison. It is important to note that all costs which must be included in the comparison may not be eligible for capital assistance.

Additionally, all other factors should be as nearly equivalent as possible. This includes the term of use of the capital asset in transportation service and performance assumptions. A capital asset does not have to be in transportation service for its entire expected useful life; however, the cost calculations must reflect the return of the value of the asset for any period of that expected useful life it is not planned for use in transportation service. Performance assumptions should be included where possible by calculating the cost of down time or additional maintenance.

Section 639.21 states the basic requirement that a grantee must perform a written cost-effectiveness evaluation under subpart C and certify to UTMA that the capital lease is more cost-effective than purchase or construction. UMTA intends to allow grantees to self-certify as to cost-effectiveness for two reasons. First, it is consistent with the way in which UMTA administers the rest of the section 9 program, and with the statutory self-certifications of that program. Second, it minimizes the burden on the grantee and the delay associated with submitting the cost-effectiveness analysis to UMTA for concurrence. Moreover, these self-certifications will be subject to review by UMTA, as are all other self-certifications, during the triennial review process required under section 9. Paragraph (c) allows a grantee with a potential capital lease which does not lend itself to the cost-effectiveness evaluation in subpart C to apply to UMTA on a case-by-case basis for approval of an alternative form of cost-effectiveness evaluation. This alternative might be used, for example, when the speed of technological developments makes purchase impracticable even though it might otherwise on its face appear to be more cost-effective to purchase.

Sections 639.23 and 639.25 explain how to calculate purchase cost and lease cost. All costs associated with obtaining the asset should be included in the comparison. UMTA realizes that many costs and benefits must be estimated in order to conduct the cost-effectiveness evaluation. UMTA is willing to accept reasonable estimates as long as they are justified in writing in the cost-effectiveness evaluation. For example, a grantee may survey several other operators to get their experience data on the performance of a particular item.

Subpart D contains project management requirements specific to capital lease projects. These requirements are in addition to the general project management requirements detailed in UMTA Circular 5010.1A, "UMTA Project Management Guidelines for Grantees." Section 639.31 sets out grantee obligations to repay Federal funds to UMTA if a capital lease is terminated before the end of the period used in the cost-effectiveness evaluation. However, this provision does not apply if the grantee terminates the lease with UMTA approval and substitutes another lessor.

D. Request for Comments

UMTA seeks comments from all interested parties on this proposed rule. UMTA's final rule will reflect the agency's consideration of all comments received within 60 days of date of publication in **Federal Register.**

UMTA recognizes that there may be opportunities for capital leases which today's proposed rule does not facilitate. UMTA specifically requests comments on potential leases which would not be eligible under this proposed rule. UMTA also specifically requests comments on cost-effectiveness factors and their evaluation.

Commentors wishing acknowledgement of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with date and time the comments are received and return the card to the commentor.

II. Regulatory Inspects

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million dollars or more.

B. Departmental Significance

This proposed regulation is not significant under the Department's Regulatory policies and Procedures. UMTA finds that the economic impact of this proposed regulation is so minimal that a full regulatory evaluation is not necessary. This proposed regulation would not affect the amount of money a grantee receives under the section 9 formula program; it simply gives the grantee an additional option regarding its expenditure.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA certifies that this proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

The collection of information requirements in this proposed rule is subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, specifically requires a determination of cost-effectiveness before UMTA may approve a grant for a lease of a capital asset for capital assistance. The required cost-effectiveness evaluation in this proposed rule has been submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget as part of UMTA's request for extension of the approved collection for the section 3 and section 9 urbanized area capital assistance program, OMB Control #2132-0502.

E. Executive Order 12612

This proposed rule has been reviewed under Executive Order 12612 on "Federalism," and it has been determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. This proposed rule will not limit policy making and administrative discretion of the States, nor will it impose additional costs or burdens on the States. This rule will not affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspects of State sovereignty.

This proposed rule offers grantees greater latitude in the use of Federal funds and provides them with increased discretion in the administration of their programs. By allowing self-certification of compliance, UMTA proposes to impose an absolute minimum of regulatory burden on grantees. This approach is consistent with the principles of Federalism which encourage a greater role for State and local governments and a reduced regulatory role for the Federal government.

List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—Transportation, Mass transportation.

III. New 49 CFR Part 639

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 639 to read as follows:

PART 639—CAPITAL LEASES

Subpart A—General

Sec.
639.1 Purpose of this Part.
639.3 Scope of this Part.
639.5 Definitions.

Subpart B—Capital Leases

639.11 Eligibility requirements.
639.13 Form of grant.
639.15 Lease costs eligible for capital assistance.
639.17 Applicability of other Federal requirements.

Subpart C—Cost-effectiveness

639.21 Determination of cost-effectiveness.
639.23 Purchase cost.
639.25 Lease cost.

Subpart D—Lease Management

639.31 Early termination of lease.

Authority: 49 U.S.C. 1601 *et seq.*, 1607b(j); 1 CFR 1.51.

Subpart A—General

§ 639.1 Purpose of this Part.

This part implements section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17). Section 308 amends section 9(j) of the UMT Act to allow recipients of Federal financial assistance for capital projects under section 9 of the UMT Act to obtain equipment and facilities by lease where the lease arrangement is more cost-effective than purchase or construction. This part prescribes the policies and procedures which govern the eligibility treatment of leases of equipment and facilities for capital assistance under section 9 of the UMT Act, including procedures for determining cost-effectiveness.

§ 639.3 Scope of this Part.

This part applies to all requests for capital assistance under section 9 of the UMT Act where the proposed method of obtaining a capital asset is by lease rather than purchase or construction.

§ 639.5 Definitions.

In this part:

(1) "Capital asset" means facilities and equipment for use in mass transportation service with a useful life of at least one year which are eligible for capital assistance.

(2) "Capital assistance" means Federal financial assistance for capital projects under section 9 of the UMT Act.

(3) "Capital lease" means a lease to obtain the use of a capital asset.

(4) "Equipment" means nonexpendable personal property.

(5) "Facilities" means real property, including land, improvements and fixtures.

(6) "Present value" means the value at the time of calculation of a future payment, or series of future payments discounted by the time value of money as represented by an interest rate or similar cost of funds.

(7) "Recipient" means an entity that receives Federal financial assistance from UMTA, including an entity that receives Federal financial assistance from UMTA through a State or other public body.

(8) "UMT Act" means the Urban Mass Transportation Act of 1964, as amended.

(9) "UMTA" means the Urban Mass Transportation Administration.

Subpart B—Capital Leases

§ 639.11 Eligibility requirements.

An applicant may apply to UMTA for capital assistance for a capital lease only if—

(a) The capital asset is otherwise eligible for capital assistance;

(b) There would be no existing Federal grant interest in the capital asset as of the date the lease would take effect; and

(c) Lease of the capital asset is more cost-effective, as determined under subpart C of this part, than purchase or construction of the asset.

§ 639.13 Form of grant.

(a) A recipient may choose to receive capital assistance for a capital lease approved under this part—

(1) In a grant which obligates an amount equal to UMTA's share of the total eligible costs for a particular year of a lease; or

(2) In a grant which obligates an amount equal to UMTA's share of the total eligible lease costs for a period of the lease to be paid out over more than one year.

(b) A recipient choosing to receive a grant under paragraph (a)(1) of this section—

(1) Must certify to UMTA that it has the financial capacity to meet its future obligations under the lease in the event Federal funds are not available for capital assistance in subsequent years; and

(2) May apply to UMTA for subsequent grants, subject to the availability of appropriations.

§ 639.15 Lease costs eligible for capital assistance.

(a) All costs directly attributable to making the capital asset available to the lessee are eligible for capital assistance, including, but not limited to—

(1) Finance charges, including interest; and

(2) Ancillary costs such as delivery and installation charges.

(b) The cost of materials, supplies and services provided under a lease which would not be eligible for capital assistance if they were provided directly by the applicant are not eligible for capital assistance where they are included in a capital lease.

§ 639.17 Applicability of other Federal requirements.

(a) A recipient of capital assistance for a capital lease is subject to the same statutory and administrative requirements as the recipient would be if the capital asset were being purchased or constructed directly.

(b) A lessor in a capital lease is subject to the same statutory and administrative requirements as a seller would be if the capital asset were being purchased or constructed directly when the lessor—

(1) Purchases or constructs a capital asset in contemplation of a lease; or

(2) Prepares an existing capital asset in contemplation of a lease.

Subpart C—Cost-Effectiveness

§ 639.21 Determination of cost-effectiveness.

(a) An applicant for capital assistance for a capital lease must—

(1) Perform a written cost-effectiveness evaluation under this part before entering into the lease; and

(2) Certify to UMTA that obtaining the asset by lease is more cost-effective than purchase or construction.

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(b) For purposes of this part, obtaining the asset by lease is more cost-effective than purchase or construction when the lease cost calculated under § 639.25 of this part is less than the purchase cost calculated under § 639.23 of this part.

(c) If an applicant is unable to perform the cost-effectiveness evaluation as prescribed under this part as required by paragraph (a) of this section, an applicant may submit a request to UMTA for approval of an alternate form of cost-effectiveness evaluation.

§ 639.23 Purchase cost.

(a) For purposes of this subpart, the purchase cost of a capital asset is—

(1) The estimated cost to purchase or construct the asset; plus

(2) Ancillary costs such as delivery and installation; plus

(3) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.

(b) The estimated cost to purchase or construct must be—

(1) Reasonable; and

(2) Based on the expected useful life of the asset in mass transportation service.

(c) For purposes of this part, the expected useful life of a revenue vehicle is the useful life which is established by UMTA for recipients of Federal financial assistance under UMTA's Circulars for Section 9 recipients. The applicant is responsible for establishing a reasonable expected useful life for other capital assets.

(d) If the applicant does not intend to use the capital asset it is proposing to obtain in mass transportation service for its entire expected useful life, the applicant must subtract the net present value of that portion of the asset's useful life it does not intend to use in mass transportation service when calculating the purchase cost.

§ 639.25 Lease cost.

For purposes of this subpart, the lease cost of a capital asset is—

(a) The cost to provide the asset for the same use specified in the applicant's proposal to obtain the asset; plus

(b) Ancillary costs such as delivery and installation; plus

(c) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.

Subpart D—Lease Management

§ 639.31 Early lease termination.

(a) Except as provided in paragraph (c) of this section, if a capital lease under this part is terminated before the end of the period used in the cost-effectiveness evaluation, the recipient must refund to UMTA—

(1) Any Federal funds granted for the portion of the lease term eliminated by early termination; and

(2) The Federal share of the excess, if any, of the present value of lease costs, excluding penalties, which exceed the purchase costs as calculated under Subpart C of this part for the period of the lease up to the point of termination.

(b) Penalties resulting from early termination of a capital lease under this part are not eligible for Federal financial assistance.

(c) Paragraph (a) of this section does not apply if a lessor is not performing as required under capital lease and a recipient receives UMTA approval to terminate the lease and substitute another lessor.

Issued on May 13, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-11316 Filed 5-19-88; 8:45 am]

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federal register

Friday
May 20, 1988

Part V

Department of Education

34 CFR Part 656

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 656

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the National Resource Centers Program. The amendments are needed to implement changes made in Title VI of Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498. The major statutory change requires separate criteria for evaluating applications for comprehensive and undergraduate Centers. The regulations implement that statutory change.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, Room 3053, ROB-3, 400 Maryland Avenue SW., Washington, DC 20202-3306. Telephone: 732-3283.

SUPPLEMENTARY INFORMATION: The National Resource Centers Program is authorized by section 602(a) of the HEA and is designed to provide grants to institutions of higher education and combinations of those institutions to establish, operate, and strengthen National Resource Centers for the teaching of modern foreign languages plus area studies, international studies, and the international and foreign language aspects of professional studies. Before section 602(a) was amended by the Higher Education Amendments of 1986, it referred to graduate and undergraduate centers. After the amendments, it specifically defined each type of Center and required separate evaluative criteria for comprehensive and undergraduate Center applications. Before the amendments, the same criteria were used to evaluate both types of Centers.

On October 2, the Secretary published a Notice of Proposed Rulemaking for the National Resource Centers Program in the **Federal Register** (52 FR 37084). The major regulatory change in the proposed regulations was the separate listing of funding criteria for comprehensive and undergraduate centers. Except for minor technical and editorial changes, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, ten parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes which the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 656.1 What is the National Resource Centers Program?

Comment: One commenter urged substituting the term "broad understanding" for the "full understanding" phrase used in § 656.1(b), as well as in some subsequent sections, to provide a more attainable objective.

Discussion: The language of the statute is "full understanding" and is therefore preferable.

Changes: None.

Comment: One commenter requested the addition to § 656.1(c) of the phrase "or research and training which contribute to the preparation of students who matriculate into advanced language or area studies or professional school programs" so that the description would conform to the definition for an undergraduate center provided in the statute.

Discussion: The suggested phrase is appropriate as part of the definition of an undergraduate center and therefore was included in § 656.7(f), the section providing definitions.

Changes: None.

Section 656.3 What activities define a comprehensive or undergraduate National Resource Center?

Comment: One commenter pointed out that the statute specifies training in "any modern foreign language", while the NPRM, in § 656.3(a), says that a Center "Teaches modern foreign languages." The commenter recommends clarification, ensuring eligibility for programs offering only one modern foreign language.

Discussion: Although clarification on this point is provided in other sections, the Secretary agrees that an additional revision would be helpful.

Changes: Section 656.3(a) is revised to read "Teaches at least one modern foreign language."

Comment: One commenter questioned an apparent omission of the statutory phrase "* * * for research and training in international studies * * *" from § 656.3(b).

Discussion: Section 656.3(b)(2) indicates that one type of center provides "Resources for training and research in international * * * aspects of * * * fields of study * * *"

Changes: None.

Comment: One commenter suggested clarification of § 656.3(b)(2) by the addition of "preparation for" after "aspects of", in order to put more emphasis on the preparatory training of undergraduates.

Discussion: The addition of this phase would be redundant, because the section describes categories of fields of study, and the preparation for the field is considered for this program to be synonymous with study in the field.

Changes: None.

Comment: One commenter requested a rewording of § 656.3(c) to state that Centers make outreach services available to national, regional, and local entities.

Discussion: The Secretary feels that the proposed wording describes the outreach function adequately in reference to national, regional and local levels.

Changes: None.

Comment: One commenter suggested the addition of "Employs an appropriate proportion of faculty with * * *" to § 656.3(e)(2).

Discussion: The language of the statute, describing the attributes of a center, regardless of the characteristics of the entire university of which it is a part, is sufficiently clear.

Changes: None.

Section 656.7 What definitions apply?

Comment: One commenter requested a revision of § 656.7(b) (definition of "area studies") to indicate that coverage of all the fields of study listed is not required.

Discussion: This definition of area studies does not prescribe a full range of possible fields of study.

Changes: None.

Comment: One commenter, in connection with § 656.7(d)(1) (definition of "Comprehensive Center"), requested a clarification of the term "national interest," noting the importance of his university's medieval manuscript collection.

Discussion: Because a definition of "national interest" would be very broad, including many facets of national life, it would be inappropriate in these regulations. Applicants must demonstrate the aspects of the national interest which their applications would serve.

Changes: None.

Comment: One commenter urged deletion of the definition of "intensive language instruction," § 656.7(e), or, if deletion is not acceptable, then revision that would include a minimum standard for the summer and would allow for variation by type of language, purpose of study, academic level, and duration of each course. The commenter argued that current practice in the language teaching field is, for intensive language instruction, a minimum of 7-10 contact hours per week for an academic year program, and that specification of a lower minimum in these regulations will encourage institutions to lower their standards.

Discussion: The Secretary agrees that the definition of "intensive language instruction" should be broadened to apply to the summer term. However, because the statute specifies intensive language instruction as a requisite of any comprehensive program, a definition must be included in these regulations. The standard cannot be raised, for purposes of this section, without rendering ineligible important categories of potential applicants whose programs may include only languages for which enrollments—which the statute is intended to encourage—are already very low, which in turn means that it is impossible for institutions to offer the variety of instructional modes that the commenter anticipates.

Changes: The definition has been changed, with the addition of a standard for summer programs.

*Sections 656.21 and 656.22 What selection criteria does the Secretary use to evaluate an application for a * * * Center?*

Comment: Three commenters requested more precision in the evaluation criteria, one with respect to library strength and all with respect to definitions of quality for several criteria. One, however, did note that the kind of detail requested is not essentially regulatory.

Discussion: The Secretary agrees that more detailed definitions of quality are not appropriate for these regulations.

Changes: None.

Comment: Two commenters asked whether the apparent reduction in the proportion of points to be awarded by reviewers for current and proposed outreach activities indicates that Centers may cut back on their efforts in this sphere. Both favored continued strong emphasis on outreach by Centers. One commenter acknowledged that strength in outreach does contribute also to evaluation under criteria for institutional commitment, library resources, and the plan of operation.

Discussion: The reduced proportion of points now allocated for outreach activities is not an indicator of the Secretary's interest in this activity. Because the competition for Center funding has been keen, the standards for outreach have been high, irrespective of the number of points for the criterion.

Changes: None.

Comment: One commenter found that the total number of points for evaluation is too low to allow for sufficient discrimination between applicants.

Discussion: Careful reading by evaluators, combined with realistic application of the point scale, will enable sufficient distinctions between applicants.

Changes: None.

Comment: Three commenters questioned the allocation of 20 out of 120 points, compared with 10 out of 170 under the previous regulations, for priority activities, arguing that such emphasis on priority activities, which can change from one application period to another, may work against the long-term, comprehensive commitment and the institutional flexibility which have enabled grantees to use funds most advantageously. One of the commenters added that, because the actual choice of priorities from among the options listed in § 656.23 is announced in the application notice, applicants do not have an opportunity to comment on whether the Secretary's choices correspond to the most serious long-term needs perceived by the community of applicants.

Discussion: The Secretary specifies priorities as a means for encouraging applicants to develop their programs in those directions. The overall emphasis of the program is clearly on core development and the serving of ongoing, long-term needs, represented by more than 80 percent of the possible points. The number of points for priorities is within the realm of innovative redirection. The existence of a significant number of points for priorities may be expected to serve as a leavening agent, recognizing both innovative efforts and statutory intent.

Changes: None.

Comment: One commenter requested elimination of § 656.22(h)(2), arguing that cooperative arrangements with departments, schools, and professional programs are inappropriate for an undergraduate center.

Discussion: Without cooperation with various departments, whether in connection with undergraduate or comprehensive programs, a Center cannot operate effectively in the university context. Some institutions, both four-year colleges and universities, have professional programs or schools which operate at the undergraduate level.

Changes: None.

Comment: One commenter requested the deletion of "at the national level" from § 656.22(j)(3) because it seems unnecessary for undergraduate centers to be making an impact at the national level while at the same time providing a national example of excellence.

Discussion: Precisely because undergraduate centers are expected to be providing a national example of excellence it is reasonable to expect some impact at the national level.

Changes: None.

Comment: One commenter objected to the inclusion of the phrase "primarily for national groups" in § 656.22(k)(1), dealing with outreach activities expected for undergraduate Centers.

Discussion: The Secretary agrees, noting that the wording was in fact different even for the corresponding criterion for comprehensive Centers.

Changes: Section 656.22(k)(1) now conforms to the language of § 656.21(k)(1).

Section 656.30 What are allowable costs and what are the limitations on allowable costs?

Comment: One commenter recommended specific authorization in the regulations for the use of grant funds for travel for graduate students, while another notes that the statute states that grant funds may be used for "* * * the cost of training and improvement of staff * * *."

Discussion: Section 656.30(a) provides a list of examples of types of costs for which grant funds may be used, preceded by the phrase "including, but not limited to." Faculty improvement costs could be a part of almost every category of cost which is enumerated. Neither faculty improvement nor graduate student travel is explicitly excluded in § 656.30(b).

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

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Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 656

Colleges and universities, Education, Educational study programs, Fellowship, Foreign languages, Grant programs—education, Resource center, Reporting and recordkeeping requirements.

Dated: May 6, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.015, National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies)

The Secretary revises Part 656 of Title 34 of the Code of Federal Regulations to read as follows:

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.

656.1 What is the National Resource Centers Program?
656.2 Who is eligible to receive a grant?
656.3 What activities define a comprehensive or undergraduate National Resource Center?
656.4 What types of Centers receive grants?
656.5 What activities may be carried out?
656.6 What regulations apply?
656.7 What definitions apply?

Subpart B—How Does One Apply for a Grant?

656.10 What combined application may an institution submit?

Subpart C—How Does the Secretary Make a Grant?

656.20 How does the Secretary evaluate an application?
656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?
656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?
656.23 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

656.30 What are allowable costs and what are the limitations on allowable costs?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program For Foreign Language and Areas Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards grants to institutions of higher education and combinations of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

(a) Stimulating the attainment of foreign language acquisition and fluency;

(b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the foreign language is commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs which concern one or more countries.

(Authority: 20 U.S.C. 1122)

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C. 1122)

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches at least one modern foreign language;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the languages taught are commonly used;

(2) Resources for training and research in international and foreign language aspects of professional and other fields of study; or

(3) Opportunities for training and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) In the case of a comprehensive Center—

(1) Maintains specialized library collections; and

(2) Employs scholars engaged in research which relates to the subject area of the center; and

(e) In the case of an undergraduate Center—

(1) Maintains library holdings, including basic reference works, journals, and works in translation; and

(2) Employs faculty with strong credentials in language area, and international studies.

(Authority: 20 U.S.C.1122)

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

(a) Focus on—

(1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or

(2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and

(b) Provide training at the—

(1) Graduate, professional, and undergraduate levels, as a comprehensive center; or

(2) Undergraduate level only, as an undergraduate center.

(Authority: 20 U.S.C.1122)

§ 656.5 What activities may be carried out?

A Center may carry out any of the activities described in § 656.3 under a grant received under this part.

(Authority: 20 U.S.C. 1122)

§ 656.6 What regulations apply?

The following regulations apply to this part:

(a) CFR Part 658.

(b) The regulations in this Part 656.

(c) The Education Department General Administrative Regulations [EDGAR] in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1122)

§ 656.7 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR Part 655.

(b) "Area studies" means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

(c) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.

(d) "Comprehensive Center" means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization; and

(4) Makes training available to a graduate, professional, and undergraduate clientele.

(e) For purposes of this section, "intensive language instruction" means instruction of at least 5 contact hours per week during the academic year or the equivalent of a full academic year of language instruction during the summer.

(f) "Undergraduate Center" means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree program;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR Part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the criterion in § 656.21(1) or § 656.22(1) is used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary uses the following criteria in evaluating an application for a comprehensive Center:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Budget and cost effectiveness.* (5) (See 34 CFR 655.31(c)).

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(e) *Commitment to the subject area on which the center focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution will provide financial and other support to the Center, faculty members, and qualified students in fields related to the Center.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area and the educational levels (graduate, professional, undergraduate) on which the Center focuses; and

(2) The extent to which the institution will provide financial support for the acquisition of library materials and for library staff in the subject area of the Center.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality and extent of the Center's language training program including the adequacy of its instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the Center to carry out its purposes.

(h) *Quality of the Center's relationships within the institution.* (10) The Secretary reviews each application to determine the extent to which the Center—

(1) Provides multi- and interdisciplinary instruction; and

(2) Has entered into cooperative arrangements with departments, schools, and professional programs of the institution.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, organizations, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project in improving the knowledge of languages, areas, issues in world affairs which concern one or more countries, or international studies at the national level and in providing a national example of excellence and innovation in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center will provide to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to activities such as curriculum development, professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

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§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary uses the following criteria in evaluating an application for an undergraduate Center:

(a) *Plan of operation.* (10) [See 34 CFR 655.31(a)].

(b) *Quality of key personnel.* (15) [See 34 CFR 655.31(b)].

(c) *Budget and cost effectiveness.* (5) [See 34 CFR 655.31(c)].

(d) *Evaluation plan.* (5) [See 34 CFR 655.31(d)].

(e) *Commitment to the subject area on which the Center focuses.* (10) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area;

(2) The extent to which the institution is committed to the center by providing financial and other support to the Center and to tenured faculty members of the Center; and

(3) The extent to which students matriculate into advanced language and area or international studies programs or related professional programs.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area on which the Center focuses; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality of the Center's language training program, including the adequacy of instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the center to carry out its purposes.

(h) *Quality of the center's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which the Center provides multi- and interdisciplinary instruction;

(2) The extent to which the Center has entered into cooperative arrangements with departments, schools, and professional programs of the institution; and

(3) The extent to which substantial instruction in the subject area and languages on which the Center focuses have been incorporated into baccalaureate degree programs.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project—those activities for which funding is requested—in improving the knowledge of languages, areas, or international studies at the national level and in providing a national example of excellence and innovation for undergraduate education in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center provides to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

§ 656.23 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.

(2) Specific focus of a center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.

(3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours per week.

(4) Types of activities to be carried out, for example, cooperative summer intensive language programs or teacher training activities.

(b) The Secretary announces any priorities in the application notice published in the Federal Register.

(Authority 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

(1) Faculty and staff salaries and travel;

(2) Library acquisitions;

(3) Teaching and research materials;

(4) Curriculum planning and development; and

(5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops.

(b) *Limitations on allowable costs. The following are limitations on allowable costs:*

(1) Equipment costs exceeding ten percent of the grant are not allowable.

(2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center focuses.

(3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

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May 20, 1988

Part VI

Department of Labor

Wage and Hour Division

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates; Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations implementing the 1986 Amendments to section 14(c) of the Fair Labor Standards Act (FLSA). This section provides for the employment of certain workers at wage rates below the statutory minimum otherwise required by FLSA. The existing regulations are contained in 29 CFR Parts 524 (Special Minimum Wages for Handicapped Workers in Competitive Employment), 525 (Employment of Handicapped Clients in Sheltered Workshops), and 529 (Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages). The proposed regulations (29 CFR Part 525) incorporate the changes mandated by the Amendments and eliminate the need for separate regulations. The proposed regulations also reflect changes in Departmental policies or procedures adopted since these regulations were last amended in 1966 and clarify certain areas in the existing regulations which have proven difficult to administer.

DATE: Comments are due on or before July 19, 1988.

ADDRESS: Submit comments to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are asked to include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1986, Pub. L. 99–486 was signed and became effective. This law amended section 14(c) of FLSA which provides for the employment under certificate of workers with disabilities at special minimum wage rates. Such wage rates are below the minimum otherwise required by FLSA but commensurate (i.e., based on comparative productivity) with those paid experienced nondisabled workers performing essentially the same type of work in the same vicinity. Special wage rates are permitted by the statute in order to prevent the curtailment of opportunities for employment.

Prior to the recent amendments, section 14(c) provided for three distinct types of certification at special minimum wages: (1) Certificates authorizing wages not less than 50 percent of the applicable statutory minimum; (2) certificates, which did not provide for a minimum guarantee, approved by State agencies administering or supervising the administration of vocational rehabilitation services for evaluation or training programs or for multihandicapped individuals; and, (3) certificates for work activities centers which also did not provide for minimum guarantees. Work activities centers were defined in the previous statute as "centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential."

Provisions allowing for the employment of individuals with disabilities at special minimum wages have been in FLSA since its enactment in 1938. Provisions establishing the three distinct types of certification outlined above were introduced as a part of the FLSA Amendments of 1966. At that time, it was assumed that most certificates issued would authorize employment at the first level which provided for a minimum guarantee of 50 percent of the statutory minimum. However, as more severely disabled individuals were deinstitutionalized and placed in rehabilitation facilities offering employment, the work activities center became the predominant type of facility certified. By fiscal year 1986, work activities centers comprise over 55 percent of the certified programs and employed nearly 60 percent of those workers employed under certificates issued in accordance with FLSA section 14(c).

It became apparent, subsequent to the 1966 Amendments, that having three distinct levels of certification presented several serious administrative problems. First, an employer, particularly a nonprofit rehabilitation facility, might be required to apply for and maintain several different certificates for a single location. This requirement not only imposed an administrative burden on the employer, but also presented the possibility of technical violations where the employer inadvertently applied for the wrong type of certificate. The second and most serious administrative problem with respect to the previous statute was the requirement that a work activities center be planned and designed exclusively for workers with inconsequential productive capacity. One aspect of this problem was that of defining "inconsequential productive capacity." With the help of the Advisory Committee on Sheltered Workshops, the Department of Labor (the Department) developed two definitions. One definition was based on average annual productivity and the other on average annual earnings. However, experience proved these definitions to be overly rigid and imprecise, particularly for those work activities centers which employed more productive workers.

Also of concern to the rehabilitation community were the requirements that the work activities center be physically separate and apart from other programs, that intermingling with more productive workers be prohibited, and that separate records and supervision be provided. It was argued that dual programs represented an obvious administrative burden and that such programs were also detrimental to those individuals who would have benefited from the opportunity to work and interact with more productive workers.

Several efforts were made in previous sessions of Congress to adopt legislation simplifying section 14(c) of FLSA. In the last session of the 99th Congress, legislation was passed which eliminated the various levels of certification, but retained the requirement that special minimum wages paid to workers with disabilities be commensurate with those paid to nondisabled workers for essentially the same type, quality, and quantity of work. This legislation also included the following additional provisions: (1) During a two-year period beginning June 1, 1988, wage rates of certain workers cannot be reduced without prior authorization of the Secretary of Labor; (2) employers must provide written assurances of semi-annual (for workers paid an hourly wage rate) and annual wage reviews; and, (3) employees may petition for a review by an Administrative Law Judge of the special minimum wage rate paid pursuant to section 14(c).

On December 11 and 12, 1986, the Department convened a meeting of the Advisory Committee on Sheltered Workshops to discuss regulatory changes necessitated by the 1986 Amendments. The Committee strongly endorsed the concept of combining the three existing regulations. The Committee also offered numerous

specific proposals with respect to regulatory language, most of which have been incorporated in the proposed regulations. Other changes have been made to reflect changes in Departmental policies or procedures established or revised since 1966, the last time these regulations were substantively revised. Changes were also made to delete items or requirements eliminated by the 1986 Amendments.

Summary of Rule

The proposed regulations are divided into twenty-four sections. These sections closely parallel material contained in the existing Parts 524, 525, and 529 of this title, as this material was affected by the 1986 Amendments. All three of these Parts are very similar in their content and requirements.

Section 525.1 states the applicability of the regulations and summarizes the statutory language contained in FLSA section 14(c).

Section 525.2 defines the purpose and scope of the regulations and clarifies that the proposed regulations would govern the employment of all workers with disabilities at special minimum wages under certificates.

Section 525.3 contains definitions of the terms used in this part. The definitions of "employ", "special minimum wage", "commensurate wage", and "vicinity" or "locality" incorporate current Wage and Hour interpretations or policies as they relate to the employment of workers with disabilities including patient workers. The term "patient worker" is redefined for clarity and for the purpose of deleting references viewed by the Advisory Committee and others as pejorative and outmoded.

Section 525.4 contains special information with respect to determining when a patient worker is considered to be an employee. This information is currently contained in existing § 529.2(d).

Section 525.5 contains the Department's general requirements concerning the payment of wages to individuals with disabilities employed under this Part and the specific rules regarding wage payments made to patient workers. This subject is discussed in existing §§ 525.11 and 529.4.

Section 525.6 clarifies the issue of compensable time with respect to workers with disabilities. At the request of the Advisory Committee, this section deals specifically with the situation which arises in a facility providing a program of rehabilitation where, very often, an individual is on the premises of the facility even when that individual is not working. A more general definition is contained in existing § 529.4(g).

Section 525.7 of the proposed rule contains the procedural requirements for certificate application. Section 525.8 contains the provisions for obtaining temporary authority to employ workers with disabilities pursuant to a vocational program of the Veterans Administration or one administered by a State agency. Such requirements are contained in §§ 524.3, 524.4, 525.4, and 529.5 of the existing regulations.

Section 525.9 contains the criteria for consideration in issuance of certificates to employ workers at special minimum wages. This subject is discussed in existing §§ 524.5, 525.7, and 529.6. The proposed section contains new language reflecting the requirements for written assurances contained in section 14(c)(2) of the Amendments. The Department proposes to remove some of the requirements which currently apply only to rehabilitation facilities in § 525.7 in order to establish consistent standards which will be applied to all employers requesting certificates under Part 525.

Section 525.10 is a new section which provides specific guidelines for determining the prevailing wage rate which employers must use to determine commensurate wage rates for individual employees. This proposed section would codify standards acceptable to the Wage and Hour Division in determining prevailing wage rates. Although the requirement that employers ascertain prevailing wages in determining commensurate wages existed even prior to the 1986 Amendments, the current regulations provide no guidance in the area of prevailing wage determinations. As a result of the lack of guidance, considerable difficulty has been experienced by employers in complying with this area of the law. Wage rates in any vicinity for a particular type of work can vary widely from company to company. Use of a prevailing wage which is unacceptable to the Department can result in a back wage liability. For this reason the Advisory Committee strongly endorsed the inclusion of this section and supported the language proposed by the Department with only minor modifications. This area is one in which the Department would particularly welcome public comment.

Section 525.11 covers the issuance of certificates and appears in §§ 524.7, 525.8, and 529.7 of the existing regulations.

Section 525.12 states the terms and conditions of special certificates. Terms and conditions of certificates are currently contained in §§ 524.8, 525.9, and 529.8. The proposed regulations do not contain certain terms and conditions contained in the existing regulations. Upon review, it was determined that certain of these terms and conditions, while of obvious merit, are not clearly authorized by the language of the statute and are therefore inappropriate in these regulations. For example, requirements relating to unfair competition and abnormal labor conditions have not been included in the proposal. However, the Department proposes to add to this section by incorporating work measurement requirements for employees compensated on an hourly or piece rate basis. Work measurements are necessary for employers to verify that commensurate wages are being paid as required by the statute. This is another area in which the Department has been strongly urged by the Advisory Committee to provide further guidance in order that employers may be clearly informed of their obligations under the law. Most of the language regarding the work measurement requirements was provided by a subcommittee of the advisory committee during an August 1985 meeting. The Department would also particularly welcome public comment on this section.

Section 525.13 contains procedures for certificate renewal as discussed in §§ 524.9, 525.11, and 529.9 of the existing regulations.

Section 525.14 sets forth the requirement that an employer with a certificate post a notice alerting employees who are paid subminimum wages of the special terms and conditions of their employment. This requirement is currently stated in subsection (j) of § 525.13. The Department proposes to move this requirement to a separate section in order to provide more emphasis on the notice requirement.

Section 525.15 provides special certification procedures for rehabilitation facilities employing homeworkers with disabilities in certain industries. Such employment must be in conjunction with an established program of rehabilitation offered by a facility licensed or otherwise recognized by the appropriate State or local licensing agency. In addition, the workers so employed must meet the statutory definition of a "worker with a disability." This section restates provisions contained in § 525.12.

Section 525.16 outlines those recordkeeping requirements unique to the employment of workers with disabilities. These requirements are contained in existing §§ 524.10, 525.13, and 529.10.

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Section 525.17 contains procedures for the revocation of certificates where violations occur or where the certificate is no longer necessary. These procedures are contained in existing §§ 524.14 and 529.11 and in Part 528 for workers with disabilities in competitive employment.

Section 525.18 contains procedures for reviewing certificate actions taken by the Wage and Hour Division. These procedures are contained in existing §§ 524.11, 525.15, and 529.12.

Section 525.19 covers investigations and hearings that may be required by the Wage and Hour Division in reviewing certificate actions. These provisions appear in §§ 525.16 and 529.13 of the existing regulations.

Section 525.20 points out the relation of the requirements of this Part to other laws which may establish higher standards. This statement is contained in §§ 524.8, 525.17, and 529.14 of the existing regulations.

Section 525.21 is new and interprets the provision in section 14(c)(3) prohibiting the reduction of the wage rates of certain workers with disabilities without prior approval from the Secretary of Labor. The Department interprets this provision as protecting workers employed under a special certificate which specified a minimum guaranteed rate, i.e., a regular work program certificate or an individual rate certificate. The Department proposes to interpret the statutory phrase, "wage rate prescribed by certificate" as referring to the specific hourly amount actually guaranteed by a certificate i.e., in the case of a regular work program certificate, at least $1.66 per hour (50% of the statutory minimum), and not whatever commensurate wage above $1.68 per hour a worker may have been receiving on June 1, 1986. The section is interpreted as not covering workers formerly employed in work activities centers and evaluation and training programs on June 1, 1986. The section also specifies the circumstances which will justify reduction of wage rates. The Department is interested in receiving comments regarding its interpretation of this provision.

Section 525.22 is new and discusses the employee's right to petition for a review by an Administrative Law Judge of the special minimum wage rate. The procedures outlining this review process are contained in this section.

Section 525.23 is new and restates the provisions of section 14(c)(4) of the FLSA, that employers may continue to maintain or establish work activities centers provided the other regulatory requirements are met.

Section 525.24 provides a regulatory reference to the Advisory Committee on Special Minimum Wages.

Editorial changes have also been proposed in several sections to simplify and clarify regulatory language, delete repetitive references, and eliminate gender-specific terminology.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore a regulatory impact analysis is not required.

Regulatory Flexibility Act

The proposed rule, if promulgated, will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of individuals at special minimum wages under section 14(c) of FLSA. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 525

Handicapped, Hospitals, Minimum wages.

Accordingly, it is proposed to amend Chapter V of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, DC, on the 17th day of May 1988.

Ann McLaughlin,
Secretary of Labor.
Fred W. Alvarez,
Assistant Secretary for Employment Standards.
Paula V. Smith,
Administrator, Wage and Hour Division.

PART 524—[REMOVED]

1. Part 524, Special Minimum Wages for Handicapped Workers in Competitive Employment, is removed.

PART 529—[REMOVED]

2. Part 529, Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages, is removed.

3. Part 525 is revised to read as follows:

PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

Sec.

525.1 Introduction.
525.2 Purpose and scope.
525.3 Definitions.
525.4 Patient workers.
525.5 Wage payments.
525.6 Compensable time.
525.7 Application for certificates.
525.8 Special provisions for temporary authority.
525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.
525.10 Prevailing wage rates.
525.11 Issuance of certificates.
525.12 Terms and conditions of special minimum wage certificates.
525.13 Renewal of special minimum wage certificates.
525.14 Posting of notices.
525.15 Industrial homework.
525.16 Records to be kept by employers.
525.17 Revocation of certificates.
525.18 Review.
525.19 Investigations and hearings.
525.20 Relation to other laws.
525.21 Lowering of wage rates.
525.22 Employee's right to petition.
525.23 Work activities centers.
525.24 Advisory Committee on Special Minimum Wages.

Authority: 52 stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–486, 100 stat. 1229 (29 U.S.C. 214).

§ 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99–486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals handicapped for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to nonhandicapped workers employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurance that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

§ 525.2 Purpose and scope.

The regulations in this Part govern the issuance of all certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of FLSA.

§ 525.3 Definitions.

(a) "FLSA" means the Fair Labor Standards Act of 1938, as amended.

(b) "Secretary" means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) "Worker with a disability" for the purpose of this Part means an individual whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury for the work to be performed.

(e) "Patient worker" means a worker with a disability, as defined above, employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment.

(f) "Hospital or institution," hereafter referred to as "institution," is a public or private, nonprofit or profit facility primarily engaged in (i.e., more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or defective, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

(g) "Employ" is defined in FLSA as "to suffer or permit to work." An employment relationship arises whenever an individual including a worker with a disability is suffered or permitted to work. The determination of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit.

(h) "Special minimum wage" is the wage paid pursuant to a certificate issued under this Part to a worker with a disability. Such a wage is less than the minimum wage, but is commensurate with the wages paid to experienced nondisabled workers performing essentially the same work in the vicinity in which the individual under the certificate is employed.

(i) "Commensurate" wage means the wage paid to a worker with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of the disabled worker, would be set at 75% of the wage paid to the nondisabled worker.

(j) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

§ 525.4 Patient workers.

With respect to patient workers, as defined in § 525.3(e), a major factor in determining if an employment relationship exists is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform, in whole or in part in the institution or elsewhere. However, a patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration in connection with such services. Nor does the patient become an employee if engaged in such activities as making craft products, where the patient voluntarily participates in such activities and the products become the property of the patient making them, or all of the funds resulting from the sale of the products are divided among the patient participants or are used in purchasing additional materials for the craft products.

§ 525.5 Wage payments.

(a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a certificate issued pursuant to this Part and must be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the applicable minimum wage may be paid a special minimum wage, but only after the employer has obtained a certificate authorizing payment of a special minimum wage from the appropriate office of the Wage and Hour Division of the Department of Labor.

(b) With respect to patient workers employed in residential care facilities such as nursing homes, hospitals, and institutions, no deductions can be made from such individuals' commensurate wages to cover the cost of room, board, or other services provided by the facility. Such an individual must receive his or her wages free and clear, except for amounts deducted for taxes assessed against the employee and any voluntary wage assignments directed by the employee. (See Part 531 of this title.) However, it is not the intention of these regulations to preclude the residential care facility thereafter from assessing or collecting charges for room, board, and other services actually provided to an individual to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§ 525.6 Compensable time.

Individuals employed subject to this part must be compensated for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. However, where the

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individual is completely relieved from duty and is not required to remain available for the next assignment, such time will not be considered compensable time. For example, an individual employed by a rehabilitation facility would not be engaged in a compensable activity where such individual is completely relieved from duty but is provided therapy or the opportunity to participate in an alternate program or activity in the facility not involving work and not directly related to the worker's job (e.g., self-help skills training, recreation, or vocational training). The burden of establishing that such hours are not compensable rests with the facility and such hours must be clearly distinguishable from compensable hours. (For further information on compensable time under FLSA, see Part 785 of this title.)

§ 525.7 Application for certificates.

(a) Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place.

(b) The employer shall provide answers to all of the questions contained on the application form.

(c) The application shall be signed by the employer or the employer's authorized representative.

§ 525.8 Special provisions for temporary authority.

(a) Temporary authority may be granted to an employer permitting the employment of workers with disabilities pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency.

(b) Temporary authority is effective for 90 days from the date the appropriate section of the application form is signed and completed by the duly designated representative of the State agency or the Veterans Administration. Such authority may not be renewed or extended by the issuing agency.

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Wage and Hour Division. Where additional information is required or certification is denied, the applicant will receive notification from the Wage and Hour Division.

§ 525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.

(a) In order to determine that special minimum wage rates may lawfully be paid, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed;

(2) The prevailing wages of experienced employees not handicapped for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The comparative productivity of the workers with disabilities and the experienced nondisabled workers employed in the vicinity in comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning the employment of workers subject to section 14(c) as required by FLSA:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months, and

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

§ 525.10 Prevailing wage rates.

(a) An employer, whose work force primarily consists of nondisabled workers performing the same work as the worker(s) with disabilities employed under a special minimum wage certificate, may use as the prevailing wage the wage rate paid to the experienced nondisabled employees of the firm.

(b) Other employers having a work force primarily composed of workers with disabilities must determine the prevailing wage for the work performed by ascertaining the wage rates paid experienced nondisabled workers in the vicinity. Such data may be obtained by surveying a representative sample of similar-sized or larger companies in the vicinity offering similar services or by contacting other sources, such as the Bureau of Labor Statistics and in certain instances private and State employment services. If comparable work cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(c) The prevailing wage must be based upon the wage rate paid to experienced nondisabled workers. An experienced nondisabled worker is one who has become proficient in the job performance and who is not receiving entry level wages. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information as required in this Part.

(d) The prevailing wage must be based upon work utilizing similar methods and equipment. Where the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises, such as collating documents, it would be acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs, such as file clerk or general office clerk, requiring the same general skill levels.

(e) The following information should be recorded in documenting the determination of prevailing wage rates:

(1) Date of contact with firm or other source;

(2) Name, address, and phone number of firm or other source contacted;

(3) Individual contacted within firm or source;

(4) Title of individual contacted;

(5) Wage rate information provided;

(6) Brief description of work for which wage information is provided;

(7) Basis for the conclusion that wage rate is not based upon an entry level position. See also § 525.10(c).

(f) The prevailing wage may not be less than the minimum wage specified in section 6(a) of the FLSA.

§ 525.11 Issuance of certificates.

(a) Upon consideration of the criteria cited in this Part, the Administator may issue a special certificate.

(b) If a special minimum wage certificate is issued, a copy shall be sent to the employer. If denied, the employer will be notified in writing and told the reasons for the denial, as well as the right to petition under § 525.18.

§ 525.12 Terms and conditions of special minimum wage certificates.

(a) A special minimum wage certificate shall specify the terms and conditions under which it is granted.

(b) A special minimum wage certificate shall apply to all workers employed by the employer to which the special certificate is granted provided such workers are in fact disabled for the work they are to perform.

(c) A special minimum wage certificate shall be effective for a period to be designated by the Administrator. Workers with disabilities may be paid wages lower than the statutory minimum wage rate set forth in section 6 of FLSA only during the effective period of the certificate.

(d) Workers paid under special minimum wage certificates shall be paid wages commensurate with those paid experienced nondisabled workers employed in the vicinity in which they are employed for essentially the same type, quality, and quantity of work.

(e) Workers with disabilities shall be paid not less than one and one-half time their regular rates of pay for all hours worked in excess of the maximum workweek applicable under section 7 of FLSA.

(f) The wages of all workers paid a special minimum wage under this part shall be adjusted by the employer at periodic intervals at a minimum of once a year to reflect changes in the prevailing wages paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(g) Each worker with a disability and, where appropriate, a parent or guardian of the worker, shall be informed, orally and in writing, of the terms of the certificate under which such worker is employed.

(h) In establishing piece rates for workers with disabilities, the following criteria shall be used:

(1) Industrial work measurement methods such as stop watch time studies, predetermined time systems, standard data, or other measurement methods (hereinafter referred to as "work measurement methods") shall be used by the employer to establish standard production rates of non-handicapped workers.

(i) The piece rates shall be based on the standard production rates (number of units an experienced worker not disabled for the work is expected to produce per hour) and the prevailing industry wage rate paid experienced nondisabled workers in the vicinity for essentially the same type and quality of work or for work requiring similar skill. (Prevailing industry wage rate divided by the standard number of units per hour equals the piece rate.)

(ii) Piece rates shall not be less than the prevailing piece rates paid experienced workers not disabled for the work doing the same or similar work in the vicinity when such piece rates can be compared with the actual employment situations.

(2) Any work measurement method used to establish piece rates shall be verifiable through the use of established industrial work measurement techniques.

(i) If stop watch time studies are made, they shall be made with a person or persons whose productivity represents normal or near normal performance. If their productivity does not represent normal or near normal performance, adjustments of performance shall be made. Such adjustments, sometimes called "performance rating" or "leveling" shall be made only by a person knowledgeable in this technique, as evidenced by successful competition of training in this area. The persons tested should be given time to practice the work to be performed in order to provide them with an opportunity to overcome the initial learning curve. The persons tested shall be trained to use the specific work method and tools which are available to workers with disabilities employed under special minimum wage certificates.

(ii) Appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9–10 minutes per hour) shall be used in conducting time studies.

(iii) Work measurements shall be conducted using the same work method that will be utilized by the majority of workers with disabilities. When modifications are made to production methods to accommodate special needs of individual workers with disabilities, additional time studies need not be conducted where the modifications enable the workers with disabilities to perform the work or increase productivity.

(i) Each worker with a disability employed on a piece rate basis should be paid full earnings. Employers may "pool" earnings only where piece rates cannot be established for each individual worker. An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, in such situations, the employer should make every effort to objectively divide the earnings according to the productivity level of each individual worker.

(j) The following terms shall be met for workers with disabilities employed at hourly rates:

(1) Hourly rates shall be based upon the prevailing hourly wage rates paid to experienced workers not disabled for the job doing essentially the same type of work and using similar methods or equipment in the vicinity. See also § 525.10.

(2) An initial evaluation of a worker's productivity shall be made within the first month after employment begins in order to determine the appropriate rate of pay. The results of the evaluation shall be recorded and the worker's wages shall be adjusted accordingly no later than the first complete pay period following the initial evaluation.

(3) Upon completion of not more than six months of employment, a review shall be made with respect to the quantity and quality of work of each hourly-rated worker with a disability as compared to that of nondisabled workers engaged in similar work or work requiring similar skills and the findings shall be recorded. The worker's productivity shall then be reviewed and the findings recorded at least every 6 months thereafter. A review and recording of productivity shall also be made during the first 6 months after a worker changes jobs and at least every 6 months thereafter. The worker's wages shall be adjusted accordingly no later than the first complete pay period following each review.

§ 525.13 Renewal of special minimum wage certificates.

(a) Applications may be filed for renewal of special minimum wage certificates.

(b) If an application for renewal has been properly and timely filed, an existing special minimum wage certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Workers with disabilities may continue to be paid special minimum wages after notice that an application for renewal has been denied if review of such denial is requested in accordance with this part. However, if the denial is affirmed on review, the employer shall reimburse any worker paid a special minimum wage in an amount equal to the difference between the applicable minimum wage and the lower wage paid such worker retroactive to the expiration date of the certificate.

§ 525.14 Posting of notices.

Every employer having workers who are employed under special minimum wage certificates shall at all times display a poster as prescribed by the Administrator. Such a poster will explain, in general terms, the conditions under which special minimum wages must be paid and be posted in a conspicuous place on the employer's

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premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers.

§ 525.15 Industrial homework.

(a) Where the employer is an organization or institution carrying out a recognized program of rehabilitation for workers with disabilities and holds a special certificate issued pursuant to this part, certification under regulations governing the employment of industrial homeworkers (29 CFR Part 530) is not required.

(b) For all other types of employers, special rules apply to the employment of homeworkers in the following industries: Jewelry manufacturing, knitted outerwear, gloves and mittens, button and buckle, handkerchief manufacturing, embroideries, and women's apparel. See 29 CFR Part 530.

§ 525.16 Records to be kept by employers.

Every employer of workers employed under a special minimum wage certificate under this part shall maintain and have available for inspection records indicating:

(a) Verification of the workers' disabilities and, where the disability cannot be readily observed, appropriate medical or psychiatric reports, or results of psychological tests;

(b) Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);

(c) The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also § 525.15(b) and (d));

(d) The production standards (work measurement) and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and

(e) The records required under all of the applicable provisions of Part 516 of this title, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities employed by a recognized nonprofit rehabilitation facility and who are working in or about a home, apartment, tenement, or room in a residential establishment. See § 525.15 above. Records required by this section shall be maintained and preserved for the periods specified in Part 516 of this Title.

§ 525.17 Revocation of certificates.

(a) A special minimum wage certificate may be revoked for cause at any time. A certificate may be revoked:

(1) As of the date of issuance, if it is found that misrepresentations or false statements have been made in obtaining the certificate or in permitting a worker with a disability to be employed thereunder;

(2) As of the date of violation, if it is found that any of the provisions of FLSA or of the terms of the certificate have been violated; or

(3) As of the date of notice of revocation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this part other than those referred to in (2) above have not been complied with.

(b) If a petition for review is filed under section § 525.18 of this Part, the effective date of the revocation shall be postponed until action is taken thereon. However, if the revocation order is affirmed on review, the employer shall reimburse any worker with a disability paid a special minimum wage in an amount equal to the difference between the applicable minimum wage and the lower wage paid such worker retroactive to the effective date of revocation.

(c) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be revoked, facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§ 525.18 Review.

Any person aggrieved by any action of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted, shall be made by the Administrator. Other interested persons, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

§ 525.19 Investigations and hearings.

The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views.

§ 525.20 Relation to other laws.

No provision of this Part, or of any special minimum wage certificate issued under this part, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.

§ 525.21 Lowering of wage rates.

(a) No employer may reduce the minimum hourly wage rate guaranteed by a special minimum wage certificate in effect on June 1, 1988, of any worker with disabilities from June 1, 1988 until May 31, 1988, without prior authorization of the Secretary.

(b) This provision applies to those workers with disabilities who were:

(1) Employed during the pay period which included June 1, 1988, even if no work was performed during that pay period; and,

(2) Employed under a group or individual special minimum wage certificate which specified a minimum guaranteed rate, i.e., a special certificate issued under former section 14(c) (1) or (2)(b) of FLSA.

(c) In order to obtain authority to lower the wage rate of a worker with a disability to whom this provision applies to a rate below the certificate rate, the employer must submit information as prescribed under this part to the appropriate Regional Office of the Wage and Hour Division. The burden of establishing the necessity of lowering the wage of a worker with a disability rests with the employer.

(d) In reviewing a request to lower a wage rate of a worker with a disability, the Administrator will consider documented evidence of the following:

(1) Any change in the worker's disabling condition which has a substantially negative impact on his or her productive capacity;

(2) Any change in the type of work being performed in the facility which would affect the productivity of the worker with a disability or which would result in the application of a lower prevailing wage rate;

(3) Any change in general economic conditions in the locality in which the work is performed which results in lower prevailing wage rates.

(e) A wage rate may not be lowered until authorization is obtained from the Administrator.

§ 525.22 Employee's right to petition.

(a) Any employee receiving a special minimum wage at a rate specified pursuant to subsection 14(c) of FLSA or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. No particular form of petition is required, except that a petition must be signed by the individual, or the parent or guardian of the individual, and should contain the name and address of the employee and the name and address of the employee's employer. A petition may be filed in person or by mail with the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210. Upon receipt, the petition shall be forwarded immediately to the Chief Administrative Law Judge.

(b) Upon receipt of a petition, the Chief Administrative Law Judge shall, within 10 days of the receipt of the petition by the Secretary, appoint an Administrative Law Judge (ALJ) to hear the case. Upon receipt, the ALJ shall notify the employer named in the petition. The ALJ shall also notify the employee, the employer, the Administrator, and the Associate Solicitor for Fair Labor Standards of the time and place of the hearing. The date of the hearing shall be not more than 30 days after the assignment of the case to the ALJ. All the parties shall be given at least eight days notice of such hearing. Because of the time constraints imposed by the statute, requests for postponement shall be granted only sparingly and for compelling reasons.

(c) Hearings held under this subpart shall be conducted, consistent with statutory time limitations, under the Department's rules of practice and procedure for administrative hearings found in 29 CFR Part 18. There shall be a minimum of formality in the proceeding consistent with orderly procedure. Any employer who intends to participate in the proceeding shall provide to the ALJ, and shall serve on the petitioner and the Associate Solicitor for Fair Labor Standards no later than 15 days prior to the commencement of the hearing, that documentary evidence pertaining to the employee or employees identified in the petition which is contained in the records required by § 525.16(a), (b), (c) and (d). The Administrator shall be permitted to participate by counsel in the proceeding upon application.

(d) In determining whether any special minimum wage rate is justified, the ALJ shall consider, to the extent evidence is available, the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity and the conditions under which such productivity was measured. In these proceedings, the burden of proof on all matters relating to the propriety of a wage at issue shall rest with the employer.

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties by Express Mail or other similar system guaranteeing one-day delivery. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, any interested party who seeks review thereof may request review by the Secretary. No particular form of request is required, except that a request must be in writing and must attach a copy of the ALJ's decision. Requests for review shall be filed with the Secretary of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Any other interested party may file a reply thereto with the Secretary and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by Express Mail or other similar system guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Secretary grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Secretary shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Secretary, shall be deemed to be a final agency action.

(h) Within 30 days of issuance of the final action of the Secretary reviewing the decision of the ALJ or declining to grant such review, any person adversely affected or aggrieved by such action may seek judicial review pursuant to Chapter 7 of Title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 525.23 Work activities centers.

Nothing in these regulations shall be interpreted to prevent an employer from maintaining or establishing work activities centers to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirements of this Part. Work activities centers shall include centers planned and designed exclusively to provide therapeutic activities for workers with disabilities whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Any establishment whose workers with disabilities are employed must comply with the requirements of this part, regardless of the designation of such establishment.

§ 525.24 Advisory Committee on Special Minimum Wages.

The Advisory Committee on Special Minimum Wages appointed periodically by the Secretary shall advise and made recommendations to the Administrator concerning the administration and enforcement of this part and the need for amendments thereof and for such other purposes as may be desired by the Administrator.

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Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1988 of 22 deferrals contained in the three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987 and February 19, 1988.

Rescissions (Table A and Attachment A)

As of May 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of May 1, 1988, $6,288.4 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Register** listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987
Vol. 52, FR p. 42400, Wednesday, November 4, 1987
Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,
Director.

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TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

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TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	9,310.0
Routine Executive releases through April 1, 1988 (OMB/Agency releases of $3,028.4 million and cumulative adjustments of $6.8 million)	-3,021.6
Overturned by the Congress	0
Currently before the Congress	6,288.4

Attachments

BEST COPY AVAILABLE

Attachment A - Status of Rescissions - Fiscal Year 1988

As of May 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of May 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D88-20	2,949,000		3-19-88	865,000				2,084,000
Economic support fund	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	3-19-88	290,430				1,710,297
Military assistance	D88-21	608,186		3-19-88	202,346				405,840
International disaster assistance	D88-22	13,479		3-19-88	6,200				7,279
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					
	D88-3A		10,529	2-19-88					130,954
Timber salvage sales	D88-4	34,841		10-1-87	10,436				24,385
Cooperative work	D88-5	628,025		10-1-87	157,084				470,941
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	186,955				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					
	D88-9A		149	2-19-88					785

Attachment B - Status of Deferrals - Fiscal Year 1988

As of May 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance	D88-16	6,000		10-29-87					13,200
	D88-16A		7,200	2-19-88					
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D88-17	774		10-29-87					0
	D88-17A		2,426	2-19-88	3,200				
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D88-18	2,391		10-29-87					2,960
	D88-18A		569	2-19-88					
Social Security Administration									
Limitation on administrative expenses (construction)	D88-10	6,171		10-1-87					6,207
	D88-10A		36	2-19-88					
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					1,329,907
	D88-12A		450,858	2-19-88					
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		5,443,688	3,866,281		3,028,379	0		6,800	6,288,390

[FR Doc. 88-11390 Filed 5-19-88; 8:45 am]

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Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61, etc.

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Notice of Public Hearings

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 25148; Notice No. 88-4]

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearings.

SUMMARY: On March 14, 1988, the Federal Aviation Administration (FAA) published a notice of proposed rulemaking entitled "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities" (53 FR 8368). That notice stated that the FAA was considering holding a public hearing on the proposal. The FAA has determined that public hearings would be useful in this rulemaking proceeding. This notice announces a series of three public hearings to solicit information concerning the proposed rule and to address the issues and questions contained in the notice of proposed rulemaking. Information gathered at the public hearings will be included in Docket No. 25148 and will be reviewed and evaluated by the FAA in conjunction with the rulemaking proceeding.

DATES: The hearings are scheduled for 9:00 a.m. on June 2 and June 3, 1988, in Washington, DC; 9:00 a.m. on June 7, 1988, in Denver, Colorado; and 9:00 a.m. on June 9, 1988, in San Francisco, California. Registration for each hearing will begin at 8:00 a.m. on the date of the hearing at each location; the registration period will end at 8:45 a.m. The FAA anticipates that each hearing will adjourn at or before 5:00 p.m. The hearing officer has sole discretion to extend the time of the hearing.

An individual or representative of an organization must request an opportunity to make a statement at a hearing at least 7 days before the date of the particular hearing that the individual or representative plans to attend. A request to make a statement at a hearing must be directed to the person listed in the section **"FOR FURTHER INFORMATION CONTACT."** Only those individuals who make a request within the deadline will be initially scheduled to make a statement at the hearing. A request to make a statement that is received after the deadline may be accepted at the sole discretion of the hearing officer. The FAA requests that an individual or representative submit an advance copy of a statement or material to be presented at the hearing to the FAA at least 7 days before the date of the hearing that an individual or representative plans to attend.

ADDRESSES: The public hearings will be held on the following dates at the following locations:

Date and Location:

June 2 and 3, 1988—FAA Headquarters, FAA Auditorium, Third Floor, 800 Independence Avenue SW., Washington, DC.

June 7, 1988—Embassy Suites, Denver Airport, 4444 North Havana Street, Denver, Colorado (303) 375-0400.

June 9, 1988—Clarion Hotel, San Francisco Airport, 401 East Millbrae Avenue, Millbrae, California (414) 692-6363.

FOR FURTHER INFORMATION CONTACT: Requests to make a statement at any hearing or inquiries about the logistics of a hearing should be directed to Ms. Rose Strauss-Vender, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-9681. Questions concerning the subject matter of the notice of proposed rulemaking should be directed to Dr. Robert S. Bartanowicz or Ms. Rose Strauss-Vender, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9677 or (202) 267-9681.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1988, the FAA published a notice of proposed rulemaking (NPRM) entitled "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities" (53 FR 8368). The NPRM proposes rules to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, and air traffic control facilities not operated by FAA or the U.S. military to have an anti-drug program for employees who perform sensitive safety- and security-related functions. Testing under the proposed rules would be conducted prior to employment, periodically, randomly, after an accident, and based on reasonable cause. The NPRM also requests comments on how to provide employers with the maximum flexibility in designing company-specific programs. In addition, the NPRM seeks comments on a regulatory alternative for the rehabilitation to be offered to employees.

At the time the NPRM was issued, the FAA was considering holding a public hearing on the proposal. The FAA has determined that public hearings would be useful in this rulemaking proceeding. Information gathered at the public hearings will be included in Docket No. 25148. This information will be reviewed and evaluated by the FAA in conjunction with the rulemaking proceeding.

The NPRM included many questions regarding the proposed rules, including specific questions about implementation of a program for small operators, costs associated with the proposed program, and alternatives to the proposed rehabilitation requirements. The questions contained in the NPRM will not be repeated in this notice. The FAA is interested in information on any aspect of the proposed rule. But, the FAA is also interested in obtaining specific, factual information regarding any other anti-drug programs, "success" rates of those programs based on the population of individuals involved in the program, and difficulties that may be encountered during implementation of an anti-drug program.

An individual is not required to make a statement at a hearing in order to participate in this rulemaking proceeding. Any individual may submit comments to the NPRM to the FAA Rules Docket (Docket No. 25148) instead of, or in addition to, making a statement at a hearing. Comments to the NPRM must be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Room 915G, Docket No. 25148, 800 Independence Avenue SW., Washington, DC 20591. Comments must be received by June 13, 1988. The comments may be reviewed in Room 915G between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

After the deadline for a request to make a statement has passed, the FAA will develop an agenda for each hearing. The agenda will be distributed to participants during registration for each hearing. The hearing officer has sole discretion to determine whether an individual, whose request was submitted after the deadline, may make a statement at the hearing.

Hearing Procedures

The following procedures are established by the FAA to facilitate the hearings:

1. The hearing will be open to all persons who register on the day of the hearing subject to the availability of space in the hearing room.

2. An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of a company, union, trade association or organization, is limited to a 15-minute statement at any hearing. The time limits are intended to provide an opportunity for a wide variety of individuals and representatives to make a statement at a hearing. The time limits are not intended to limit discussion on particular issues or to narrow the scope of the hearing. The hearing officer has sole discretion to grant additional time for a statement at the hearing if, at the time the individual requests an opportunity to make a statement at a hearing, the individual provides an estimate of the amount of additional time needed and sets forth reasons showing that the 15-minute time limit is insufficient.

3. The FAA requests that persons participating at a hearing provide sufficient copies of their statement, and any other material to be included in the record, for distribution to the hearing officer, members of the hearing panel, and other participants at the hearing. The FAA estimates that a minimum of 25 copies of a statement, and any other material to be included in the record, will be needed for distribution.

4. Statements may be made by the hearing officer or any member of the hearing panel to clarify issues or facilitate discussion during the hearing. Any statements made during the hearing are not intended to be, and should not be construed as, a position of the FAA with respect to the rulemaking proceeding.

5. The hearing will be recorded by a court reporter. A transcript of the hearings and any material accepted by the hearing officer during the hearing to be included in the record will be included in Docket 25148 of the proposed rule. Any person interested in purchasing a copy of the transcript should contact the court reporter directly.

6. The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual or representative will not be subject to cross-examination by any other participant; the hearing officer or any member of the hearing panel is entitled to ask questions in order to clarify the statement made at the hearing or material accepted by the hearing officer during the hearing.

Issued in Washington, DC on May 16, 1988.

Robert J. Dame,

Deputy Director, Office of Program and Regulations Management.

[FR Doc. 88-11314 Filed 5-18-88; 1:55 pm]

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federal register

Monday
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federal register

Monday
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Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Laurice Clark, 202–523–3517

KANSAS CITY, MO

WHEN: June 10; at 9:00 a.m.
WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
RESERVATIONS: Call the St. Louis Federal Information Center;
Missouri: 1–800–392–7711
Kansas: 1–800–432–2934

NEW YORK, NY

WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule revises the delegations of authority by the Secretary of Agriculture to accommodate the provisions of House Joint Resolution 395, making further continuing appropriations for the fiscal year ending September 30, 1988 (Pub. L. 100–202; 101 Stat. 1329). The rule delegates authority from the Secretary to the Assistant Secretary for Special Services and to the Chiefs of the Forest Service and Soil Conservation Service. The rule also removes the delegations of authority formerly granted to the Assistant Secretary and Deputy Assistant Secretary for Natural Resources and Environment and reserves to the Secretary certain authorities formerly reserved to the Assistant Secretary for Natural Resources and Environment.

EFFECTIVE DATE: This rule is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Rice, Deputy Chief for Administration, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–6707 or John W. Peterson, Deputy Chief for Administration, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013 (202) 447–6297.

SUPPLEMENTARY INFORMATION: The act making further continuing appropriations for fiscal year 1988 abolished the office of the Assistant Secretary for Natural Resources and Environment and established a new office of Assistant Secretary for Special Services. The action necessitates revision of the delegations of authority by the Secretary of Agriculture to provide for the orderly continuation of forestry, soil conservation, and environmental programs of the Department.

The revisions of delegated authority in this rulemaking essentially continue the delegations of authority to the Chiefs of the Forest Service and Soil Conservation Service previously delegated by the Assistant Secretary for Natural Resources and Environment. The rule, however, does grant a few new authorities to each Chief that were formerly exercised by the Assistant Secretary. The delegation of these additional authorities is necessary to achieve the manageable assignment and performance of responsibilities within the Department.

The new authorities delegated to the Chief of the Forest Service include:

1. Authority to issue proposed rules. Except for final rules issued pursuant to 36 CFR 261.70, the authority to issue final rules is reserved to the Secretary.

2. Authority to approve the acquisition of lands or interests in lands under the Weeks Act of March 1, 1911, and other authorities up to $250,000 in value. Delegation of this authority is consistent with the scope of the Chief's other authorities for land acquisition. Under current delegations set forth at 7 CFR 2.60(a)(2), the Chief has long had authority to approve acquisition of lands for addition to the National Forest System except for Weeks Act acquisitions of $25,000 or more. Weeks Act acquisitions through purchase or exchange represented only 11% of the total acquisitions by the Forest Service in 1987.

3. Authority to divide into and designate as national forests contiguous tracts of 3,000 acres or less acquired under or subject to the Weeks Act of 1911, as amended. The authority to divide and designate all other lands acquired under or subject to the Weeks Act is reserved to the Secretary.

4. Authority to perform all responsibilities of the Secretary under the Wild and Scenic Rivers Act, except recommendations on establishing new rivers or adding to existing rivers. This authority includes, but is not limited to, making determinations on issuance of water resource project licenses and permits, conducting comprehensive planning for Wild and Scenic Rivers on National Forest lands, and administering units of the National Wild and Scenic Rivers System and has been exercised by the Chief for many years under the authority to administer and manage the National Forest System. Because questions as to the Chief's authority have arisen from time to time, the Department is taking this opportunity to expressly delegate this authority to the Chief.

This final rule also makes several technical corrections and clarifications to existing delegations to the Chief of the Forest Service. Specifically, the rule:

1. Revises the characterization of the term forestry as used in the delegations to be consistent with the congressional direction for management of the resources of the National Forest System as set forth in the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528–531) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

2. Revises the Chief's authority to act as custodian of Bankhead-Jones Farm Tenant Act lands to include authority to administer reserved and reversionary interests in lands previously conveyed to States or local agencies. The existing delegation clearly assigned responsibility to the Forest Service to oversee leases and sale contracts. However, it inadvertently failed to provide recognition that the Forest Service also administers any reservations that may have been made when Title III lands were conveyed to others. In many cases, Title III lands were granted to States and local governments with a provision that if not used for public purposes, the lands would revert to the United States. The Forest Service has administered these interests since 1954, and the change will reflect that fact.

Wherever possible, the text of existing forestry-related delegations has been revised for clarity. In addition, it should be noted that the order and paragraph designations of delegated authorities to the Chief of the Forest Service are not identical to the arrangement currently in 7 CFR 2.60. Transfer of the Chief's authorities to a new section necessitated new enumerations. To avoid the confusing double paragraph enumerations (aa)-(zz), similar and closely related authorities have been grouped together. Finally, legal citations to authorizing statutes have been

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corrected or added for several delegations. None of these technical changes is intended to change the scope, nature, or exercise of the delegated authorities to the Chief of the Forest Service.

Of the authorities related to soil and water conservation programs previously delegated to the Assistant Secretary for Natural Resources and Environment, the authority to approve and transmit to Congress comprehensive river basin reports in now delegated to the Chief of the Soil Conservation Service.

All other authorities related to soil and water conservation programs previously reserved to the Assistant Secretary for Natural Resources and Environment are now reserved to the Secretary. These are as follows:

1. Authority to execute cooperative agreements and memoranda or understanding for cooperation with soil and water conservation and similar districts;

2. Authority to evaluate and coordinate land use policy and to administer certain functions and responsibilities under the Farmland Protection Policy Act;

3. Authority to give final approval to and transmit to Congress watershed work plans that require congressional approval; and

4. Authority to approve additions to existing authorized Resource Conservation and Development projects. The authority to designate new project areas for resource conservation and development program assistance continues to be reserved to the Secretary.

This rule also delegates authority to the Assistant Secretary for Special Services who serves primarily in an advisory capacity to the immediate Office of the Secretary of Agriculture on significant matters affecting Forest Service, Soil Conservation, and environmental activities of Department agencies. The Assistant Secretary also is delegated authority to render the decisions of the Secretary in administrative appeals of decisions of the Chief of the Forest Service arising from National Forest System management pursuant to 36 CFR 211.18(f) (1)(iv) and (2). These authorities are codified at § 2.19. Finally, § 2.59 is revised to delegate authority to the Deputy Assistant Secretary for Special Services to act for the Assistant Secretary when that officer is absent or unavailable.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7 of the Code of Federal Regulations is hereby amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Revise § 2.19 to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Special Services.

The following authorities are delegated by the Secretary of Agriculture to the Assistant Secretary for Special Services:

(a) Analyze, recommend and provide advice to the Secretary regarding significant planning, program, and policy issues affecting the Forest Service and the Soil Conservation Service.

(b) Assist in assuring that natural resource and environment activities of Department agencies are properly coordinated. This authority includes:

(1) Coordinating issues arising in the context of legislative proposals and reports, regulations, budgets, correspondence, and any other matters involving such issues.

(2) Representing the decisions of the Secretary in such matters with other Executive Branch agencies, Department agencies, the Congress, interested groups, and the general public.

(3) Serving as chair of the Department's Natural Resources and Environment Committee, which is responsible for coordinating the Department's planning with respect to such matters as endangered species issues, ground and surface water quality, as well as rangeland, wildlife, and other related issues of concern in the administration and implementation of USDA programs and activities.

(c) Render decisions of the Secretary in administrative appeals of decisions made by the Chief of the Forest Service pursuant to 36 CFR 211.18(f) (1)(iv) and (2).

§ 2.20 [Removed and reserved]

3. Remove § 2.20.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

4. In Subpart D, add new §§ 2.42, 2.43, 2.44, and 2.45 to read as follows:

§ 2.42 Delegations of authority to the Chief of the Forest Service.

The following delegations of authority are made by the Secretary of Agriculture to the Chief of the Forest Service:

(a) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being.)

(b) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisitions of land under the Weeks Act of March 1, 1911, as amended, and related acts is limited to acquisitions of less than $250,000 in value.

(1) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(2) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(3) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(4) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(5) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 402(a)).

(6) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(c) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research, renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(1) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(2) Coordinate activities with other agencies in the Department, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(3) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 1643–1645).

(4) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (16 U.S.C. 3710a–3710c).

(5) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C 3318).

(6) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(d) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas. (16 U.S.C. 2102–2111).

(1) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(2) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(3) Administer rural fire protection and control programs (16 U.S.C. 2106).

(4) Provide technical assistance on forestry technology for the implementation and administration of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(e) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(f) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(g) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(1) Administer the forestry aspects of paragraphs (g) (i), (ii), and (iii) of this section on the National Forest System, rangelands within national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(i) Cooperative river basin surveys and investigations program (16 U.S.C. 1006).

(ii) Eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(iii) Small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701 a–h; 16 U.S.C. 1001–1009).

(2) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

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(h) Provide assistance to other U.S. Department of Agriculture agencies as follows:

(1) To the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–590q).

(2) To the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1923); and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(i) Jointy administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(j) Carry out the following Department-wide responsibilities:

(1) Coordinate mapping work of the Department, including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by Department agencies;

(iii) Preparing and submitting required Departmental reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(2) Administer the radio frequency licensing work of the Department, including:

(i) Representing the Department of the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within the Department and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of the Department and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of the Department's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(3) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950 as amended (50 U.S.C. App. 2251 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(4) Represent the Department on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735.

(5) Represent the Department in all matters relating to responsibilities and authorities under the Federal Water Power Act, approved June 10, 1920, as amended (16 U.S.C. 791–823).

(6) Coordinate Departmental input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate Department of Agriculture review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(k) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for the Department of Agriculture.

(l) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor. Administer other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(m) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(n) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(o) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(p) Issue proposed rules relating to the authorities delegated in this section and final rules as provided at 36 CFR 261.70.

§ 2.43 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided at 36 CFR 261.70.

(b) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3000 acres acquired under the subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(c) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), Executive Order 11609).

(d) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249; and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(e) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(f) Approval of acquisitions of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and under other authorities, of $250,000 or more in value for national forest purposes.

§ 2.44 Delegations of authority to the Chief of the Soil Conservation Service.

The following delegations of authority are made by the Secretary of Agriculture to the Chief of the Soil Conservation Service:

(a) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designated to assure:

(1) Quality in the natural resource base for sustained use;

(2) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(3) Quality in the standard of living based on community improvement and adequate income.

(b) Participate in evaluating and coordinating land use policy and in providing national leadership in implementing the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), except as otherwise delegated to the Assistant Secretary for Science and Education and redelegated to the Administrator, Extension Service in § 2.108(a)(22) and the Director, National Agricultural Library in § 2.109(a)(15).

(c) Administer the basic program of soil and water conservation under Pub. L. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(1) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(i) Comprehensive planning assistance in nonmetropolitan districts.

(ii) Assistance in the field of income-producing recreation on rural non-Federal lands.

(iii) Forestry assistance, as a part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreads and shelter belts to prevent wind and water erosion of lands.

(iv) Assistance in developing programs relating to natural beauty.

(v) Assistance to other Department agencies in connection with the administration of their programs, as follows:

(A) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs.

(B) To the Farmers Home Administration in connection with their loan and land disposition programs.

(2) Soil surveys, including:

(i) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing of soil surveys.

(ii) Conducting soil surveys for resource planning and development.

(iii) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(A) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.).

(B) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011).

(C) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(d) Administer the watershed protection and flood prevention programs, including:

(1) The 11 authorized watershed projects authorized under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(2) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(3) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service. Representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(4) The pilot watershed projects under 16 U.S.C. 590a–f, and Pub. L. 156, 83d Congress, except for responsibilities assigned to the Forest Service.

(5) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Farmers Home Administration and the Forest Service.

(6) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009.

(7) The Emergency Conservation Program under 16 U.S.C. 2201.

(e) Administer the Great Plains Conservation program under 16 U.S.C. 590–(b).

(f) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Farmers Home Administration.

(g) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(h) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), relating to agricultural lands and water.

(i) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445; 30 U.S.C. 1201 *et seq.*), except for responsibilities assigned to the Forest Service and Agricultural Research Service.

(j) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*), except for responsibilities assigned to other USDA agencies.

(k) Administer rural water quality cost-sharing program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(l) Monitor actions and progress of the Department in complying with Executive Orders 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor Agency efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(m) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(n) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(1) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(2) Conduct salinity control studies of irrigated salt source areas;

(3) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(4) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(5) Develop and implement long-term monitoring and evaluation plans to measure and report progress and

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accomplishments in achieving program objectives; and

(6) Coordinate salt source planning and monitoring and evaluation activities within the Department and with the Bureau of Reclamation, other federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1592(c)).

(o) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844) and carry out responsibilities for conservation of highly erodible lands and wetlands assigned at 7 CFR Part 12 pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(p) Approve and transmit to the Congress comprehensive river basin reports.

§ 2.45 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(b) Providing national leadership in and evaluating and coordinating land use policy and administering responsibilities assigned under the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*) except as otherwise delegated to the Assistant Secretary for Science and Education at § 2.30(a)(75).

(c) Approving additions to authorized Resource Conservation and Development Projects, designating new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(d) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart G—Delegations of Authority by the Assistant Secretary for Special Services

5. Revise the heading for Subpart G as set out above.

6. Revise § 2.59 to read as follows:

§ 2.59 Delegation of authority to the Deputy Assistant Secretary for Special Services.

Pursuant to § 2.19 of this part and subject to policy guidance and direction by the Assistant Secretary, the Deputy Assistant Secretary for Special Services is delegated authority to perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Special Services. This authority is to be exercised only during the absence or unavailability of the Assistant Secretary.

§§ 2.60 and 2.62 [Removed and reserved]

7. Remove §§ 2.60 and 2.62.

For Subparts C And D:

Richard E. Lyng,

Secretary.

Dated: May 16, 1988.

For Subpart G:

George S. Dunlop,

Assistant Secretary for Special Services.

Dated: May 16, 1988.

[FR Doc. 88–11514 Filed 5–20–88; 8:45am]

BILLING CODE 3410–11–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88–063]

Mediterranean Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the Mediterranean Fruit Fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register on February 10, 1988 (53 FR 3849–3850, Docket Number 87–171), and effective February 5, 1988, we removed the Mediterranean fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from Los Angeles County, California and the regulations are no longer necessary. Comments on the interim rule were required to be postmarked or received on or before April 11, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of Los Angeles County that was quarantined, there are approximately 150 small entities that may be affected, including 87 mobile and eight stationary fruit stands, 40 wholesale produce dealers, 15 nurseries, and one farmers' market. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate and were not affected by the regulatory provisions we are removing; those sales that were affected were generally of articles that could be moved after compliance with treatment or inspection provisions of the regulations.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 3849–3850 on February 10, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 18th day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–11513 Filed 5–20–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 211

[INS No. 1105–88]

Alien Commuters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends 8 CFR 211.5 to provide that commuter aliens, in order to retain resident status, must demonstrate either that they have not been unemployed for a continuous period of six months or that they have worked ninety days, in the aggregate, during the twelve-month period preceding their application for admission into the United States. The current regulations governing alien commuters provide for a loss of permanent resident status to commuters who have been out of regular employment in the United States for a continuous period of six months.

DATES: This interim rule is effective May 23, 1988. Comments must be received on or before June 22, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Special Agricultural Worker Program, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), (202) 633–5309.

SUPPLEMENTARY INFORMATION: The regulations at 8 CFR 211.5 provide that an alien lawfully admitted for permanent residence may reside in a contiguous foreign territory and commute to employment in the United States, but that such alien who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost resident status.

Pursuant to section 210(a)(4) of the Immigration and Nationality Act as amended in 1986, special agricultural workers (SAWs) accorded lawful temporary resident status have "the right to travel abroad (including commutation from a residence abroad) * * *, in the same manner as for aliens lawfully admitted for permanent residence." A significant number of SAWs who normally migrate to the United States only once a year for a few months would, if they continue this practice, be out of employment in the United States for a continuous period of six months, and would thus, under the current regulation, lose resident status. Many such workers who might prefer to reside abroad and continue their seasonal migrations for agricultural employment might feel forced to relocate to the United States in order to maintain their resident status. Others might choose to abandon their resident status. In either event the purpose of Congress in enacting section 210 to provide for a legal agricultural workforce would be frustrated. Although aliens granted resident status under section 210 have the right to physically reside in the United States with unrestricted employment authorization, this rule would allow migrants who do not wish to relocate to continue traditional patterns of seasonal migration for agricultural employment. This rule is thus consistent with the intent of Congress in section 210 to provide for a legal agricultural workforce by granting legal status to certain alien agricultural workers.

The Service recognizes an apparent contradiction between section 210(a)(4) of the Act and section 210(a)(3) which provides for a termination of temporary resident status only upon a determination that the alien is deportable. By allowing temporary residents SAWs to commute "in the same manner as aliens lawfully admitted for permanent residence", section 210(a)(4) implies that temporary resident status may be lost, as permanent resident status may be lost for failure to meet the minimum employment standard for commuters. To allow a SAW temporary resident to retain that status when a permanent resident would lose his, would place temporary residents within a more lenient regulatory framework than permanent resident aliens. The intent of Congress was not to allow temporary residents the privilege of that status and the right to reside abroad without a connection to the U.S. labor market, but rather to accord them equal treatment with permanent resident aliens.

This rule effectively embodies the intent of section 210 in according SAWs the same rights to travel and commute from abroad as permanent resident aliens while facilitating their continued employment in agriculture.

Section 211.5(d) is removed as it pertains exclusively to special agricultural worker category which, via this amendment, has been adequately addressed in parts a, b, and c.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this regulation have been approved by OMB under the provisions of the Paperwork Reduction Act, under control number 1115–0003.

List of Subjects in 8 CFR Part 211

Alien commuters.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

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PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

2. Section 211.5 (a) and (b) are revised to read as follows:

§ 211.5 Alien commuters.

(a) *General.* Notwithstanding any other provision of this part, an alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his place of employment in the United States. Such commutation may be daily or seasonal for employment which, on the whole, is regular and stable. At the time of each reentry the commuter must present a valid Form I–151, I–551, or I–688 in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work would be presumed to have taken up residence in the United States if he is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United states for a continuous period of six months shall be deemed to have lost his residence status, notwithstanding temporary entries in the interim for other than employment purposes, unless his employment in the United States was interrupted for reasons beyond his control other than lack of a job opportunity or he can demonstrate that he has worked ninety days in the aggregate during the twelve-month period preceding his application for admission into the United States. Upon loss of status, Form I–151, I–551, or I–688 shall become invalid and shall be surrendered to an immigration officer.

* * * * *

§ 211.5 [Amended]

3. Section 211.5(d) is removed.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

March 31, 1988.

[FR Doc. 88–11506 Filed 5–20–88; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Implementation of Severe Accident Policy; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: On August 8, 1985, the Commission issued a Severe Accident Policy Statement (50 FR 32138) and further information concerning the Commission's plans regarding assessments of postulated severe accidents in both existing and future reactors was issued in NUREG–1070 dated July, 1985. The staff has undertaken to develop guidance to implement the severe accident policy and intends to hold a series of public meetings to gather information and solicit comments on our plans to establish regulatory requirements for future plants related to postulated severe accidents. The first such meeting is planned for Thursday, June 9, 1988 from 8:30 a.m. to 5 p.m. at the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852, phone: (301) 468–1100. Future meetings will also be announced in the **Federal Register**. In this first meeting, the NRC staff will present an overview of the current plans for implementation of the severe accident policy for future plants. A discussion will follow on the selected technical issues listed below. Persons wishing to make presentations on the listed issues should notify the contact listed below at least one week prior to the meeting. Anyone who cannot attend the meeting should send their comments to the contact.

FOR FURTHER INFORMATION CONTACT: Brad Hardin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3733.

SUPPLEMENTARY INFORMATION:

Meeting Topics

The following topics will be discussed in the meeting:

1. How should acceptable safety be demonstrated regarding severe accidents?
   - What standards (acceptance criteria) should be applied?
   - What form should these standards take?
   - Should future plants be safer than existing reactors? How should this be implemented?
   - How should severe accident issues be selected for consideration?
   - How should the balance between prevention and mitigation be maintained?
   - What specific prevention/mitigation design features might be desirable on future reactors, such as:
     - —Improved shutdown capability
     - —Core cooling systems
     - —Capability for feed and bleed decay heat removal
     - —Capability for PWR automatic depressurization
     - —Reactor cavity design and other features to mitigate direct containment heating effects
     - —Containment design (including concrete type) and other features to mitigate corium-concrete interactions
     - —Hydrogen control features
     - —Filtered vent systems on containment
     - —Reactor vessel design
     - —Equipment survivability
   - What other severe accident vulnerabilities are considered important and how should they be addressed?

2. What information should be developed to determine if a design is acceptable with respect to severe accidents?
   - PRA?
   - Deterministic analyses (e.g., Ch. 15, Standard Review Plan)?
   - When in the licensing process should this information be submitted?
   - How often during the life of the plant should this information be updated?

3. What role should PRA play in the assessment of the acceptability of reactor designs regarding severe accidents?
   - What should be the scope and content of the PRAs?
     - —Should PRAs include both internal and external events?
     - —Should PRAs address full power, low power and refueling conditions?
     - —How should parts of the plant that are not designed or are site specific be handled?
   - How should the PRA results be used?

4. How should uncertainties in severe accident phenomenology, plant behavior and analysis methods be treated?

5. Open discussion including other significant topics.

6. Summary.

Dated in Rockville, Maryland this 17th day of May 1988.

For the Nuclear Regulatory Commission.

Thomas L. King,

Chief, Advanced Reactors & Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88–11462 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 88–353]

Issuance and Form of Stock in Federal Home Loan Banks

Date: May 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting final amendments to its Federal Home Loan Bank System Regulations ("Regulations") to authorize the capital stock of a Federal Home Loan Bank ("Bank") to be represented in uncertificated, *i.e.*, book entry form. Currently, the Regulations provide for Bank stock to be issued in certificated form only, but on the basis of an earlier legal opinion by the Board's Office of General Counsel some Banks are now using uncertificated stock. The amendment would clarify a Bank's authority both to issue uncertificated stock and to convert certificated stock to book entry form. No Bank that converts to a book entry system will be required to issue stock in certificated form.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: William J. Carey, Director, Bank Liaison Division, Office of the District Banks, at (202) 377–6656; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377–6447, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Federal Home Loan Bank Act ("Act"), every institution that becomes a Bank member must make an "original stock subscription * * * [in] an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500." 12 U.S.C. 1428(c) (1982) and Supp. III 1985). Thereafter, the amount of Bank stock that the member is required to hold is adjusted annually by the Bank in accordance with the original subscription formula. *Id.*

While the Act established the minimum amount of a member's Bank stockholdings, it does not explicitly prescribe the manner in which existence of such interests may be evidenced. Under modern corporate practice, securities can be either certificated—*i.e.*, represented by a physical instrument—or uncertificated—*i.e.*, evidenced by an entry on the books of the issuer. *See* U.C.C. 8–102 (a) and (b) (1979). Despite the widespread acceptance of uncertificated securities by corporations generally, the Banks for a number of years have been directed by § 522.10 of the Regulations to issue a "certificate" to each new member in the amount of its initial stock subscription. 12 CFR 522.10 (1987). The regulatory language had generally been construed to mean that Banks could fill initial stock subscriptions and make subsequent annual stockholding adjustments solely through the use of certificated shares.

In 1979, a legal opinion of the Board's Office of General Counsel reviewed the statutory authority underlying § 522.10 and concluded that nothing in the Act prohibited issuance of uncertificated Bank stock. On the basis of this ruling at least two banks began using uncertificated stock. Due to an oversight, however, the text of § 522.10 was never changed to incorporate the revised legal position.

On July 29, 1987, the Board proposed these amendments both to rectify the inadvertent omission of an express authorization for issuance of Bank stock in book entry form in § 522.10 of the Regulations and to promote administrative efficiency by streamlining a routine Bank procedure in conformance with an accepted modern corporate practice. On the basis of the public comments and staff analysis, the Board has decided to adopt the amendments substantially as proposed with one exception.

In response to the proposal, the Board received three public comments from an industry trade association, an insured institution and a Bank. Both the trade association and the insured institution favored adoption of the amendments without further modification. The Bank observed that under the proposed language a member would have been able to obtain certificated stock upon written request, even though an issuing Bank might have converted to a book entry system, and expressed concern "that the ability of institutions to ask for certificated stock on an exception basis would lead to a significant additional administrative burden and unnecessary cost". Among the drawbacks noted were additional costs to a Bank associated with the required maintenance of two accounting systems and potential loss of dividends to members relating to redemptions of physical stock certificates.

In the Board's view, the concerns expressed by the commenting Bank are well justified. Gains in administrative efficiency contemplated by a switch to a book entry system could largely be squandered if two types of stock continued to be available. Therefore, the Board has decided to eliminate a member's option to receive certificated stock in Banks that have converted to the book entry form. Otherwise, the text of the proposal is essentially unchanged.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, the small entities to which the final rule applies are the 1,651 insured member institutions of the Bank System which had assets totaling $100 million or less as of December 31, 1986. There are no feasible alternatives that would achieve the Board's principal goal of correcting a flaw in existing regulatory procedures.

List of Subjects in 12 CFR Part 522

Federal home loan banks, Conflict of interests.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 522, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs.

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402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1728, 1730); sec. 207, 62 Stat. 892, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp. p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1988).

2. Section 522.10 is revised to read as follows:

§ 522.10 Issuance and form of stock.

A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of its stock subscription but the Bank shall not transfer stock so issued until it has received full payment therefor. Stock may be issued in certificated or uncertificated form at the discretion of the Bank. A Bank may convert all outstanding certificated stock to uncertificated form at its discretion. If a member with stock in certificated form changes its name, a new certificate shall be issued.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11454 Filed 5–20–88; 8:45 am]

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12 CFR Parts 545 and 563

[No. 88–355]

Adjustable-Rate Mortgage Home Loan Disclosures

Date: May 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting and publishing amendments to its regulations regarding the disclosures and notices that lenders must give to borrowers concerning adjustable-rate mortgage ("ARM") home loans. The changes are being made in conjunction with the Board of Governors of the Federal Reserve System ("FRB"), the Office of the Comptroller of the Currency ("OCC"), and the Department of Housing and Urban Development ("HUD") working through the Federal Financial Institutions Examination Council ("Exam Council" or "FFIEC"). The purposes of the revisions are to improve the adequacy of information given to consumers shopping or applying for ARMs and to relieve lenders of the burden of duplicative federal regulations. The changes will enact the unanimous Exam Council recommendations of August 1986. As amended, the Board's regulations will require lenders to provide to a prospective borrower a clear and concise description of the lender's ARM program(s), including a historical example, either when an application form is given to the consumer or before the consumer pays a non-refundable fee, whichever is earlier. The new rule changes the timing for ARM disclosures and simplifies disclosures concerning the ARM program(s) being offered to the consumer, but continues the use of the booklet titled, *Consumer Handbook on Adjustable Rate Mortgages* ("ARMs Handbook"), A provision referencing the maximum interest rate cap requirement of the Competitive Equality Banking Act of 1987 is also included.

The FRB published its final rule on ARM disclosures on December 24, 1987 (52 FR 48665), and the OCC published its final rule on March 11, 1988 (53 FR 7885).

EFFECTIVE DATE: May 23, 1988, but optional compliance until October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, (202) 653–2879, Division of Consumer and Civil Rights, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is directed by Title IV of the National Housing Act, 12 U.S.C. 1724–30, to assure the sound and safe operation of institutions the accounts of which are insured by the FSLIC ("insured institutions(s)"). Pursuant to that mandate, the Board is adopting revisions and clarifications to its regulations regarding the initial disclosures and subsequent notices that lenders must give to prospective borrowers and loan customers. The revisions implement a simple and uniform method of initial disclosures for ARMs. The disclosures were developed in consultation with other financial regulatory agencies.

Currently, four federal agencies require that lenders subject to their regulations provide specific disclosures about ARMs to borrowers. Under Regulation Z (12 CFR Part 226), the FRB requires that an ARM be described briefly to consumers. In contrast to Regulation Z, the regulations of the Board, OCC, and HUD call for more extensive, detailed information. The Board requires ARM disclosures for federal associations and also for certain other lenders that wish to market their loans to federal institutions (12 CFR 545.33). In addition, insured institutions, including federal associations, are also required to make certain ARM disclosures (12 CFR 563.9–9). The OCC mandates ARM disclosures for national banks and other lenders that seek to market their loans to national banks (12 CFR Part 29). Under the "Alternative Mortgage Transaction Parity Act of 1982", 12 U.S.C. 3802, state-chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following the rules of the Board or the OCC. Finally, HUD prescribes disclosures for lenders wishing to participate in the Federal Housing Administration ("FHA") insurance program (24 CFR Parts 203 and 234).

The Exam Council members and HUD believe that this regulatory structure which requires different disclosures by different lenders delivered at different times, is causing problems for both consumers and mortgage lenders. The ability of consumers to understand and make important decisions about ARMs before entering into these transactions may be hampered by their receipt of different information about ARM programs depending on what type of lender they have approached. This problem is exacerbated by the variety of ARM products now being offered as well as the complexity of some of these programs. In addition, consumers often pay an application fee prior to receiving any disclosures about the lender's loan programs. At the same time, these regulatory requirements have proved burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or to a national bank may have to make disclosures under both agencies' rules. Furthermore, it has been claimed that the variety of regulatory requriements has hampered the development of a thriving secondary market for ARMs.

Revisions to federal ARM disclosure requirements were initially requested by members of Congress, financial industry trade associations, and consumer groups in 1984. Initial requests called for uniform federal requirements for disclosures including a "worst case" statement of the highest interest rate of payment that might apply to an ARM. After extensive deliberations by a task force, the Exam Council made an initial recommendation in November 1984. As outlined by the Exam Council, the

required disclosures would have been specific to each consumer transaction and included a "worst case" payment example based on hypothetical index rate increases of two percentage points per year for three years. Based on these recommendations, the FRB proposed amendments to Regulation Z on May 15, 1985 (50 FR 20221). Many of the 500 public comments received by the FRB on the 1985 proposal objected to both the potential burden on creditors of requiring transaction-specific disclosures and to the assumptions about index rate movement.

For more than a year following the FRB proposal of the initial disclosure scheme, the Exam Council considered alternative plans for uniform ARM disclosures. In August 1986, the Exam Council approved a proposal requiring that creditors provide two types of disclosures to consumers seeking information about ARMs: (1) The *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute, and (2) disclosures that fully describe each of the lender's ARM programs, with a 15-year historical example of how changes in the index or formula values used to compute interest rates would have affected interest rates and payments on a $10,000 loan. The example, starting in 1977, would be updated annually until a 15-year history is shown; therafter, it would reflect the most recent 15-years of index values. In addition, the maximum interest rate and payment that could result under the program for a $10,000 loan would be disclosed.

On November 24, 1986, the FRB again proposed to amend Regulation Z (51 FR 42241). In a parallel action, on February 5, 1987, the Board published proposed amendments to its ARM disclosure regulations by requiring disclosures similar to those proposed by the FRB (52 FR 3665). The regulation, as proposed, would have covered all loans secured by borrower-occupied property (including open-end equity lines of credit). Finally, on October 2, 1987, the CCC proposed to delete its ARM disclosure regulation and to defer to revised Regulation Z disclosure requirements (52 FR 36953).

The Board received 86 comments during its 30-day comment period in February and March, 1987. The majority (61) came from the thrift industry, four (4) were from Federal Home Loan District Banks, and the balance were sent by commercial banks, mortgage companies, trade associations, law firms, and consumer groups. Ten (10) comment letters expressed unqualified support for the Board's proposal. Twenty-one (21) of the commenters generally opposed any new (and in some cases existing) ARM disclosures; thirty-four (34) of the commenters endorsed uniform ARM disclosures with critical comments on one or more provisions; and the balance only commented on specific provisions. Nine (9) commenters supported the proposed changes based specifically on the need for uniformity among the federal regulatory agencies.

Almost one-half (41) of the commenters opposed the use of the 15-year historical example of the index movements, most seeing the example as confusing to consumers and burdensome to lenders. Fifteen (15) of these letters were virtually identical and came from a single Bank System district. A number of the commenters opposed to the historical example did not appear to understand that every movement of the index in the 15-year period would not have to be disclosed and that the example would not have to be transaction-specific. The FRB proposal of May, 1985, requiring a "worst case" disclosure using a hypothetical example in which the index increased by two percentage points per year for three years, drew overwhelming opposition when it was proposed, but several commenters recommended it as an alternative to the 15-year example. Reducing the historical example to ten (10) years or less was suggested. Only one commenter suggested a longer history. The Board, after reviewing the comments and on its own analysis, believes that the 15-year historical example best serves consumer needs for disclosure in selecting a loan program. The Board also believes that the example is not burdensome to lenders, because it is not transaction-specific and need only be updated once a year. It is also an essential part of the Exam Council recommendation. Uniform initial disclosure would not be possible without it.

The 15-year historical example will not be based on the actual amount to be borrowed. Lenders will be able to pre-print the disclosures for each loan program and give them to consumers with an ARMs Handbook. The provision that the example be based on the historical performance of individual indices, rather than on assumed rate increases, reflects the revised recommendation of the FFIEC. Lenders also will be required to include a statement on the disclosure form explaining to consumers how to calculate their actual monthly payment amount for a loan amount other than $10,000. The example based on $10,000 also reflects the recommendation of the FFIEC and is premised, in part, on the rationale that figures based on a $10,000 example provide information that consumers can use with minimal difficulty to calculate their actual monthly payments for a specific transaction. The amendments require that the example shown be based on the history of the specific index or formula to be used in the loan program. The index values used in the example will begin with the value for 1977 and be updated annually to add the values for additional years until a 15-year history is shown. For example, the disclosures for an ARM made in 1988 will include index values for each year from 1977 through 1987. In each subsequent year until 1991 a lender's disclosures will include the index value for one more year. From that time forward, lenders will show a "rolling" history of index values, updated annually, for the preceding 15 years.

If the values for an index have not been available back in 1977, lenders need only go back as far as the values have been available in giving the history and may start the example at the year in which values are available. The history should reflect the method of choosing values for each program. For instance, if an average of index values is used, averages would be used in the history, but if a single index value is used, single index values would be shown. Lenders should assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan program; they may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history. Only one index value per year need be shown, even if the program provides for adjustments to the interest rate or payment more than once in a year. In such cases, the lender may assume that the index rate remained constant for the full year for the purpose of calculating the interest rate, payment, and loan balance. Updating will be necessary only once each year to reflect the most recent year's index value. New disclosures would be required when an ARM program changes.

The payment and outstanding loan balance figures in the example must reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted interest rate, negative amortization, and interest carryover need to be taken into account by lenders in calculating the payment and outstanding balance figures. Because disclosures will be

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given early, lenders will need to assume a value for the margin in order to do the calculations for the example. Lenders may select a margin that they have used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected may be used until a lender updates the disclosure form to reflect the most recent 15 years of index values. Similarly, to the extent that the ARM program has a discounted initial rate, lenders also will be permitted to assume an amount by which the initial rate will be discounted—which is representative of the amount of discounts by the lender during the preceding six months—and disclose on the form that the initial rate has been discounted to the extent of other discounts offered by the lender recently. The provision for a representative discount was added to respond to the concerns expressed by lenders about the need for individual program disclosure forms to reflect the amount of every discount offered by the creditor—amounts that could fluctuate daily depending upon market conditions.

The amendments also require disclosure of the maximum interest rate and payment. These disclosures would be calculated based on a $10,000 loan that is originated at the most recent interest rate shown in the historical example and would assume that the interest rate then increases as rapidly as possible under the program. Thus, in a loan with interest rate limitations, or "caps," of 2 percentage points per year and 5 percentage points for the life of the loan, the maximum interest rate would be 5 percentage points higher than the most recent rate shown in the historical example, and the loan would not reach the maximum interest rate increase until the fourth year of the loan because of the 2 percentage points annual limitation. Consequently, the maximum payment disclosed would reflect the amortization of the loan during that period. Finally, to enable HUD/FHA lenders to follow the new requirements, this provision has been modified also to require a statement of the initial interest rate and payment for that loan. The Board believes that this requirement will also benefit consumers by providing a point of reference for evaluating the stated maximum levels for an ARM. As amended, the regulation does not preclude lenders from also providing customers with alternative projections, such as a best case example, provided that the examples are factual and accurate as required by the Board's advertising regulations (12 CFR 563.27(a)).

The new regulations ensure that every consumer considering applying for an ARM will receive a brochure at an early stage in the application process. The *ARMs Handbook*, developed by the Board and the FRB, may be used by lenders to fulfill this requirement. The amendments would also permit lenders to provide a "suitable substitute" in place of the *ARMs Handbook*. Rather than the Board's evaluating whether an individual lender's ARM brochure is a "suitable substitute," individual lenders should make a good faith determination of whether a brochure is, in fact, a suitable substitute. The Board envisions that substitutes must be, at a minimum, comparable to the *ARMS Handbook* in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular ARM programs than is contained in the *ARMs Handbook*.

The *ARMs Handbook* has been reprinted for resale by private publications companies and by various trade organizations such as the American Bankers Association, the Mortgage Bankers Association, the National Council of Savings Institutions, and the U.S. League of Savings Institutions.

The Board's proposal to require ARM disclosures in all adjustable-rate loans secured by the borrower's dwelling, whether the loans were open-end loans (such as home equity loans) or closed-end loans (such as the traditional 30-year mortgage), was expressly opposed by twenty-four (24) of the commenters. The vast majority of these comments urged that open-end credit, specifically home equity loans, not be covered by the ARM disclosure regulation. The value of the proposed disclosures was questioned for loans with an unknown amount, an unknown term, and a changing interest rate. Many commenters cited the complexity and ongoing evolution of home equity loans as critical reasons for not requiring the same disclosures for home equity loans as for traditional ARMs. Consumer groups, on the other hand, favored coverage of home equity loans.

Since the Board's proposal in February 1987, home equity loans and similar open-end credit have been the subject of review by consumer groups, financial regulatory agencies, and Congress. In addition, the FRB has published for comment amendments to Regulation Z specifically for home equity loans. Therefore, the Board has decided to limit these ARM disclosure regulations to closed-end credit in keeping with the regulations of the other federal financial regulatory agencies and the recommendations of the Exam Council.

Several commenters objected to the Board's proposal to include breach by the borrower in the disclosures required in § 563.9–9(d)(5), rather than exclude it as the current regulations do in 12 CFR 545.33(f)(9). The principal objection was that the proposed language could be read to require an extensive legal treatment of borrower and lender rights and remedies. The Board has decided, therefore, to exclude borrower breach from the amended regulation.

The Board also received questions concerning the disclosures required for costs and charges incidental to an ARM, such as hazard insurance, mortgage insurance, taxes and similar expenses that are subject to change. As amended, the regulations do not require new disclosures or projections for these incidental expenses, but the fact that they may change and an explanation of how they will be paid should be included in the escrow disclosures required by § 563.9–9(d)(3). Such disclosure is in addition to any treatment required by other statutes or regulations, such as the Real Estate Settlement Procedures Act of 1974, and Regulation Z.

Twenty (20) commenters criticized the adjustment notice provision (§ 563.9–9(c)) proposed by the Board, pointing out that it did not comport with the proposal of the FRB and could be impossible to comply with for loans adjusting daily or monthly. Upon review of the comments and the proposed language, the Board has decided to adopt the same adjustment notice language as the FRB. The regulation provides for an adjustment notice at least once each year during which an interest rate adjustment is implemented without an accompanying payment change. In the case of a payment change, an adjustment notice must be given at least 25, but not more than 120, calendar days before a payment at the new level is due. This action will provide consumers with adequate notice of interest rate and payment changes and be easier for lenders to comply with than previous requirements.

The subsequent disclosure provision requires notice of the adjusted payment amount, interest rate, index rate, and loan balance. The lender also will be required to disclose the extent to which any increase in the interest rate has not been fully implemented at the adjustment date (for example, if the new index plus margin would exceed an interest rate adjustment cap), and the payment that would be required to fully amortize a loan (if different from the payment already disclosed). In transactions providing that payment adjustments accompany interest rate adjustments, lenders would be required to send borrowers notice at least 25, but not more than 120, days before the due date of a payment at the new level. The minimum advance notice was revised to 25 days to track the notice requirements of the FRB and to provide creditors more flexibility in giving adjustment notices for the variety of loans that will be subject to the new requirements. At the same time, the Board believes that the timing of the disclosures will provide consumers with adequate advance notice of adjusted payment amounts. The timing was clarified to refer to calendar days and a requirement that the disclosure must be delivered or placed in the mail within the specific period was added. Finally, the timing provision was tied to the due date of the payment at a new level rather than to the effective date of the interest rate adjustment. Notice is required to be given whenever interest rate adjustments and corresponding payment adjustments can be made periodically under the loan agreement but are not made because, for example, the index values have not changed or an interest rate cap has prevented any such adjustments. However, lenders are required to send borrowers notice only once each year if interest rate adjustments are made without a corresponding payment adjustment. Thus, in transactions where the interest rate may be adjusted more frequently than the payment, the lender would be required to send at least one notice each year during which there have been interest rate adjustments but no corresponding payment adjustments.

The Board notes that the notice of adjustment provision (§ 563.9–9(c)) applies to all loans made subject to the regulation herein adopted, and to loans subject to the adjustment provision currently in effect as set forth in 12 CFR 545.33(e)(4)(1987).

In the case of an ARM that may be converted to a fixed-rate loan, lenders should provide, at the time of application, all requried initial ARM disclosures specified in § 563.9–9(b) including the conversions feature. When a borrower subsequently exercises the option to convert, such borrower should receive a final adjustment notice setting forth the information required by § 563.9–9(c) for the new fixed-rate loan.

An assumption of an ARM is not an event requiring new initial disclosures. Lenders must still provide to the new borrower the applicable Regulation Z disclosures at the time of the assumption, as well as subsequent adjustment notices required by § 563.9–9(c).

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule.

2. *Issues raised by comments and agency assessment and response.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule. To summarize, in response to comments the Board has (a) reduced the coverage of the rule from all ARMs secured by borrower occupied property (as proposed) to closed-end loans of one year or longer secured by borrower occupied property; (b) revised the subsequent notice provision to match the regulatory language used by the FRB in Regulation Z (12 CFR Part 226); (c) revised the uniform initial disclosures provisions to match the regulatory language used by the FRB in Regulation Z; (d) added a provision on maximum interest rate caps implemented by the FRB; and (e) made numerous technical and language changes suggested by comments.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule should have no untoward impact on small institutions. Properly complied with, the rule should reduce and simplify document preparation for all institutions. In addition, the rule should benefit the secondary market for ARM loans to the advantage of all lenders regardless of size.

List of Subjects in 12 CFR Parts 545 and 563

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic fund transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 545, Subchapter C, and Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.33 by revising the introductory text of paragraph (e) by revising paragraph (e)(4); by removing paragraph (f) and redesignating paragraphs (g) and (h) as the new paragraphs (f) and (g) respectively; and by adding a new paragraph (h) to read as follows:

§ 545.33 Home loans.

* * * * *

(e) *Adjustments.* For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term to maturity shall comply with the limitations of this paragraph (e). The disclosure and notice requirements of § 563.9–9 shall also be complied with.

* * * * *

(4) Adjustment notices shall be provided in accordance with § 563.9–9(c). In the case of an open-end line-of-credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit, and advance notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given. In the case of a non- or partially-amortized loan, (including a loan with a "call" provision), an association shall provide the borrower with notice of maturity at least 90 but not more than 120 days prior to the date of expected maturity.

* * * * *

(h) *Notice of housing creditors regarding alternative mortgage transactions.* Pursuant to Title VIII, Pub. L. 97–320, housing creditors that are not commercial banks, credit unions, or Federal associations may make alternative mortgage transactions (as defined by section 803 of Pub. L. 97–320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with section 807(b) of Pub. L. 97–320, the provisions listed below are identified as

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appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: Section 545.32(b)(3) and (4), § 545.33(c) and (e), and § 563.9–9. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever appropriate.

Appendix—[Removed]

3. Amend Part 545 by removing the Appendix located at the end of the Part.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

4. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. Section 563.9–9 is amended by revising the heading of the section, paragraphs (a)(1), (b) and (c); by redesignating paragraphs (a)(2) and (a)(3) as the new paragraphs (a)(3) and (a)(4); by adding a new paragraph (a)(2); by redesignating paragraph (d) as new paragraph (f); by adding new paragraphs (d) and (e); and by revising newly redesignated paragraph (f) to read as follows:

§ 563.9–9 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.

(a) * * *

(1) "Adjustable-rate mortgage loan" means a mortgage loan, secured by property occupied or to be occupied by the borrower, providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.

(2) "Fixed-rate mortgage loan" means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, the term, and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

* * * * *

(b) *Initial disclosures for adjustable-rate mortgage loans.* Insured institutions offering adjustable-rate home loans, except open-end loans, with a term of more than one (1) year and secured by property occupied or to be occupied by the borrower, shall provide two types of written disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Federal Home Loan Bank Board and the Federal Reserve Board, or a suitable substitute.

(2) A loan program disclosure for each adjustable-rate home loan program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:[1]

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the use of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(x) The maximum interest rate and payment for a $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan.

(xi) The fact that the loan program contains a demand feature.

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) *Adjustment notices.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate transaction subject to this § 536.9–9 is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following written disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to amortize fully the loan at the new interest rate over the remainder of the loan term.

(d) *Fixed-rate and adjustable-rate mortgage loan disclosures.* Not later than three business days following receipt of a written application for a fixed-rate or adjustable-rate mortgage loan, insured institutions shall disclose in writing to the applicant the information specified in this paragraph (d). Disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as defined in § 583.15) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures shall be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the institution, may be purchased notwithstanding these disclosures requirements, provided that such loans comply with the disclosure requirements of other federal laws and regulations to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. If insured institutions elect to disclose the information in paragraphs (d)(1) through (d)(4) of this section as part of their advance disclosures under paragraph (c) of this section, disclosed information need not be repeated. Disclosures do not constitute a commitment on the part of an institution to make a loan to the applicant. At a minimum, the following shall be disclosed:

(1) If the loan contract contains a due-on-sale clause, what rights the lender has under the clause.

(2) If the loan contract authorizes the imposition of a late charge or a prepayment penalty the amount of the charge or penalty or the manner in which it is to be determined. If the method of calculating the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(3) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, how any surplus will be returned to the borrower, and the rights of the lender if the borrower fails to make the escrow payments.

(4) In the case of non- or partially-amortized loans (including a loan giving the lender the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the institution has unconditionally obligated itself to refinance the loan, and whether there will be a large payment due at maturity or upon call of the loan.

(e) *Maximum interest rate caps.* All insured institutions making adjustable-rate loans, originated on or after December 8, 1987, whether open-end or closed-end, shall comply with Regulation Z (12 CFR 226.30) by specifying in their credit contracts the maximum interest rate that may be imposed during the term of the obligation.

(f) *Exception.* The disclosures in paragraph (b) of this section are not required in connection with the extension of consumer credit as defined in § 561.38 of this subchapter even if it is secured by a borrower-occupied home as long as the home is not the primary security for the loan.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Adjustable-Rate Mortgage Disclosure Sample

This disclosure describes the features of the Adjustable Rate Mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment are Determined

- Your interest rate will be based on an index rate plus a margin.
- Your monthly (principal and interest) payment will be based on the interest rate, loan balance, and loan term.
- The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.
- Information about the index rate is published weekly in the *Wall Street Journal.*
- Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.
- Your initial interest rate will be discounted, and not based on the index used to make later adjustments. Ask us for the amount of current interest rate discounts.

How Your Interest Rate Can Change

- Your interest rate can change yearly.
- Your interest rate cannot increase or decrease more than 2 percentage points per year.
- Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

- Your monthly payment can change yearly based on changes in the interest rate.
- For example, on a $10,000, 30-year loan with an initial interest rate of 9.71% (the rate shown in the interest rate colum below for the year 1987), the maximum amount that the interest rate can rise under this program is 5 percentage points, to 14.71%, and the monthly payment can rise from a first-year payment of $85.62 to a maximum of $123.31 in the fourth year.
- You will be notified in writing at least 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount, and loan balance.

Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1977 to 1987. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount—$10,000
Term—30 years
Payment adjustment—1 year
Interest adjustment—1 year
Margin—3%[1]

- Caps.—2% annual interest rate; 5% lifetime interest rate
- Index.—1-year Treasury Bill adjusted to a constant maturity

[1] A sample disclosure form may be found in the **Federal Register** issue of May 23, 1988 or may be obtained from the Board.

[1] This is a margin we have used recently; your margin may be different.

Year (as of first week ending in July)	Index (percent)	Margin [1] (percentage points)	Interest rate (percent)	Monthly payment [4]	Remaining balance
1977	5.72	3	8.72	$78.46	$9,927.64
1978	8.34	3	[2]10.72	92.99	9,874.67
1979	9.44	3	12.44	105.67	9,832.70
1980	8.51	3	11.51	98.79	9,776.04
1981	14.94	3	[2]13.51	113.51	9,731.98
1982	14.41	3	[2]13.72	115.07	9,683.39
1983	9.76	3	12.76	108.25	9,618.21
1984	12.17	3	[2]13.72	114.96	9,554.39
1985	7.66	3	[2]11.72	101.96	9,456.03
1986	6.36	3	[2]9.72	88.13	9,311.25
1987	6.71	3	9.71	88.07	9,151.55

[1] This is a margin we have used recently; your margin may be different.
[2] This interest rate reflects a 2% points annual interest rate cap.
[3] This interest rate reflects a 5% points lifetime interest rate cap.
[4] Payment of principal and interest.

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by the resulting amount. (For example, in 1987 the monthly payment for a mortgage amount of $60,000 taken out in 1977 would be: $60,000 ÷ $10,000 = 6; 6 x $88.07 = $528.42.)

[FR Doc. 88-11455 Filed 5-20-88; 8:45 am]
BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Interpretive Ruling and Policy Statement No. 88-1; Policy on Selection of Securities Dealers and Unsuitable Investment Practices

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Interpretive ruling and policy statement number 88-1.

SUMMARY: With minor modifications, the NCUA Board has adopted as its statement of general policy for Federal credit unions ("FCU's") the Federal Financial Institutions Examination Council ("FFIEC") supervisory policy entitled "Selection of Securities Dealers and Unsuitable Investment Practices." The FFIEC has recommended that its constituent members adopt the policy.

EFFECTIVE DATE: May 23, 1988.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Julie Tamuleviz, Staff Attorney, Office of General Counsel, NCUA, at the above address or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: FFIEC, an inter-agency group, has recommended that its constituent members—the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency—adopt its supervisory policy entitled "Selection of Securities Dealers and Unsuitable Investment Practices." The NCUA Board approved the FFIEC supervisory policy, with minor modifications, on April 22, 1988, and authorized its inclusion in NCUA's official system of Policy Statements.

The supervisory policy provides guidance to financial institutions concerning selection of securities brokers and avoidance of unsound investment practices. It is consistent with advice that NCUA has provided to FCU's on numerous previous occasions.

NCUA, in adopting the supervisory policy as its general policy, has made minor modifications to the supervisory policy to clarify that certain investment practices discussed in the statement are not permissible for FCU's. Sections 107(7), 107(8) and 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8) and 1757(15) and Part 703 of NCUA's Rules and Regulations (12 CFR 703.1-703.4) contain FCU investment and deposit authority. FCU's considering investment in privately-issued mortgage-related securities pursuant to section 107(15)(B) of the Federal Credit Union Act (12 U.S.C. 1757(15)(B)) should also review NCUA Letter to Credit Unions Number 96.

Interpretive Ruling and Policy Statement Number 88-1

Policy on Selection of Securities Dealers and Unsuitable Investment Practices.

Purpose

This issuance is to provide you with recommended procedures to be employed when selecting securities dealers and to advise you of certain securities activities that NCUA and the other Federal financial institution regulators view as unsuitable in an investment portfolio.

Background

The Federal financial institution regulators have become aware of speculative activity which has taken place in a number of financial institutions' investment portfolios. Certain of these institutions have failed because of the speculative activities, and other institutions have been weakened significantly as their earnings and capital have been impaired and the liquidity of their securities has been eroded by the depreciation in their market value.

Speculative activity often occurs when a financial institution's investment portfolio manager follows the advice of securities dealers who, in order to generate commission income, encourage speculative practices that are unsuitable for the investment portfolio.

Recommendations Concerning the Selection of a Securities Dealer

It is common for the investment portfolio managers of many financial institutions to rely on the expertise and advice of a securities sales representative for: Recommendations of proposed investments; investment strategies; and the timing and pricing of securities transactions. Accordingly, it is important for the management of these institutions to know the securities firms and the personnel with whom they deal. An investment portfolio manager should not engage in securities transactions with any securities dealer that is unwilling to provide complete and timely disclosure of its financial condition. Management must review the dealer's financial statements and make a judgment about the ability of the dealer to honor its commitments. An inquiry into the general reputation of the dealer also is necessary.

The board of directors and/or an appropriate board committee should review and approve a list of securities firms with whom the financial institution's management is authorized to do business. The following securities dealer selection standards are recommended, but are not all-inclusive. The dealer selection process should include:

- A consideration of the ability of the securities dealer and its subsidiaries or affiliates to fulfill commitments as evidenced by capital strength and operating results disclosed in current financial data, annual reports, credit reports, etc.;
- An inquiry into the dealer's general reputation for financial stability and fair and honest dealings with customers, including an inquiry of past or current financial institution customers of the securities dealer;
- An inquiry of appropriate state or Federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers, concerning any formal enforcement actions against the dealer or its affiliates or associated personnel;
- An inquiry, as appropriate, into the background of the sales representative to determine his or her experience and expertise;
- A determination whether the financial institution has appropriate procedures to establish possession or control of securities purchased. Purchased securities and repurchase agreement collateral should only be kept in safekeeping with selling dealers when (1) the board is completely satisfied as to the creditworthiness of the securities dealer and (2) the aggregate value of securities held in safekeeping in this manner is within credit limitations that have been approved by the board of directors, or a committee of the board, for unsecured transactions (see FFIEC Policy Statement adopted October 1985, NCUA's Interpretive Ruling and Policy Statement No. 85-2). Federal credit unions, when entering into a repurchase agreement with a broker/dealer, are not permitted to maintain the collateral with the broker/dealer, reference Part 703 of the National Credit Union Administration Rules and Regulations.

As part of the process of managing a financial institution's relationships with securities dealers, the board of directors may wish to consider including in the code of ethics or conduct a prohibition by those employees who are directly involved in purchasing and selling securities for the institution from engaging in personal securities transactions with the same securities firm that the institution uses for its transactions without specific board approval and periodic review. The board also may wish to adopt a policy applicable to directors, officers or employees concerning the receipt of gifts, gratuities or travel expenses from approved dealer firms and their personnel (also see in this connection the Bank Bribery Law, 18 U.S.C. 215 and interpretive releases).

Objectionable Investment Practices

Financial institution directors are responsible for prudent administration of investments in securities. An investment portfolio traditionally has been maintained to provide earnings, liquidity, and a means of diversifying risks. When investment transactions are entered into in anticipation of taking gains on short-term price movements, the transactions are no longer characteristic of prudent investment activities and should be conducted in a securities trading account. Securities trading of the types described in section I of the attached appendix will be viewed as unsuitable activities when they are conducted in a financial institution's investment account. Securities trading should take place only in a closely supervised trading account and be undertaken only by institutions that have strong capital and current earning positions. Acquisitions of the various forms of zero coupon, stripped obligations, and asset-backed securities residuals discussed in section II of the attached appendix will receive increased regulatory attention and, depending upon the circumstances, may be considered unsuitable activities.

State-chartered financial institutions are cautioned that certain of the investment practices listed in the appendix may violate state law. If any such practices are contemplated, the appropriate state supervisor should be consulted regarding permissibility under state law.

By the National Credit Union Administration Board on April 22, 1988.

Becky Baker,

Secretary of the Board.

Appendix

I. Trading in the Investment Portfolio

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity, which, when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In this situation, a failure to follow accounting and reporting standards, applicable to trading accounts may result in a misstatement of the financial institution's income and a filing of false regulatory reports and other published financial data. It is an unsafe and unsound practice to record and report holdings of securities that result from trading transactions using accounting standards which are intended for investment portfolio transactions; therefore, the discipline associated with accounting standards applicable to trading accounts is necessary. Securities held in trading accounts should be marked to market, or the lower of cost or market, periodically with unrealized gains or losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the institution.

The following practices are considered to be unsuitable when they occur in a financial institution's investment portfolio.

A. "Gains Trading"

"Gains trading" is a securities trading activity conducted in an investment portfolio, often termed "active portfolio management." "Gains trading" is characterized by the purchase of a security as an investment and the subsequent sale of that same security at a profit within several days or weeks. Those securities initially purchased with the intent to resell are retained as investment portfolio assets if they cannot be sold at a profit. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at cost, and losses are not recognized unless the security is sold. "Gains trading" often results in a portfolio of securities with extended maturities, lower credit quality, high market depreciation and limited practical liquidity.

In many cases, "gains trading" has involved the trading of "when-issued" securities and "pair-offs" or "corporate settlements" because the extended settlement period associated with these practices allows speculators the opportunity for substantial price changes to occur before payment for the securities is due.

B. "When-Issued" Securities Trading

"When-issued" securities trading is the buying and selling of securities in the interim between the announcement of an offering and the issuance and payment date of these securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before taking delivery and paying for it. Frequent purchases and sales of

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securities during the "when-issued" period generally are indications of trading activity and should not be conducted in a bank's investment portfolio. Federal credit unions engaging in when-issued securities trading must follow NCUA's regulation on cash forward agreements.

C. "Pair-Offs"

A "pair-off" is a security purchase transaction which is closed out or sold at, or prior to, settlement date. As an example, an investment portfolio manager will commit to purchase a security; then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transaction are settled by one party to the transaction remitting to the counter party the difference between the purchase and sale price. Like "when-issued" trading, "pair-offs" permit speculation on securities price movements without paying for the securities. Pair-off transactions using cash forward agreements are impermissible for Federal credit unions. According to NCUA's regulation, cash forward agreements (settlement occurring between 30–120 days) must be settled on a cash basis.

D. Corporate Settlement on U.S. Government and Federal Agency Securities Purchases

Regular-way settlement for transactions in U.S. Government and Federal agency securities is one business day after the trade date. Regular-way settlement for corporate securities is five business days after the trade date. The use of a settlement method (5 business days) for U.S. Government securities purchases appears to be offered by dealers in order to facilitate speculation on the part of the purchaser.

E. Repositioning Repurchase Agreements

Dealers who encourage speculation through the use of "pair-off", "when-issued" and "corporate settlement" transactions often provide the financing at settlement of purchased securities which cannot be sold at a profit. The buyer purchasing the security pays the dealer a small "margin" that is equivalent roughly to the actual loss in the security. The dealer then agrees to fund the purchase by buying the security back from the purchaser under a resale agreement. Apart from imprudently funding a longer-term, fixed-rate asset with short-term, variable-rate source funds, the purchaser acquires all the risks of ownership of a larger amount of depreciated securities for a very small margin payment. Purchasing securities in these circumstances is inherently speculative and is a wholly unsuitable investment practice for credit unions and other financial institutions.

F. Short Sales

A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are speculative transactions that should be conducted in a trading account, and when conducted in the investment portfolio, they are considered to be unsuitable.

Short sales are not permissible activities for Federal credit unions.

II. Stripped Mortgage-Backed Securities, Residuals and Zero Coupon Bonds

There are advantages and disadvantages in owning these products. A financial institution must consider the liquidity, marketability, pledgeability, and price volatility of each of these products prior to investing in them. It may be unsuitable for a financial institution to commit significant amounts of funds to long-term stripped mortgage-backed securities, residuals and zero coupon bonds which fluctuate greatly in price.

A. Stripped Mortgage-Backed Securities (SMBS's) consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlying mortgage-backed securities. In its purest form, an SMBS is converted into an interest-only (IO) strip, where the investor receives 100% of the interest cash flows, and a principal-only (PO) strip, where the investor receives 100% of the principal cash flows.

All IO's and PO's have highly volatile price characteristics based, in part, on the payment of the underlying mortgages and consequently on the maturity of the stripped security. Generally, PO's will increase in value when interest rates decline while IO's increase in value when interest rates rise. Accordingly, the purchase of an IO strip may serve, theoretically, to offset the interest rate risk associated with mortgages and similar instruments held by a financial institution, Similarly, a PO may be useful as an offset to the effect of interest rate movements on the value of mortgage servicing. However, when purchasing an IO or PO the investor is speculating on the movements of future interest rates and how these movements will affect the payment of the underlying collateral. Furthermore, those SMBS's that do not have the guarantee of a government agency or a government-sponsored agency as to the payment of principal and interest have an added element of credit risk.

As a general rule, SMBS's cannot be considered as suitable investments for the vast majority of financial institutions. SMBS's, however, may be appropriate holdings for institutions that have highly sophisticated and well managed securities portfolios, mortgage portfolios or mortgage banking functions. In such institutions, however, the acquisition of SMBS's should be undertaken only in conformance with carefully developed and documented plans prescribing specific positioning limits and control arrangements for enforcing these limits. These plans should be approved by the institutions' boards of directors and vigorously enforced.

In those financial institutions that prepare their published financial statements in accordance with Generally Accepted Accounting Principles, SMBS holdings must be accounted for in accordance with Financial Accounting Standards Board Statement #91 (FAS #91) which requires that the carrying amount be adjusted when actual prepayment experience differs from prepayment estimates. Other institutions may account for their SMBS holdings under FAS #91 or, alternatively, at market value or the lower of cost or market value.

Several states have adopted, or are considering, regulations that prohibit state-chartered banks from purchasing IO strips. Accordingly, state-chartered institutions should consult with their state regulator concerning the permissibility of purchasing SMBS's.

B. Asset-Backed Securities (ABS) Residuals

Residuals are the excess cash flows from an ABS transaction after the payments due to the bondholders and the trust administrative expenses have been satisfied. This cash flow is extremely sensitive to prepayments, and thus has a high degree of interest rate risk.

Generally, the value of residual interests in ABS's rises when interest rates rise. Theoretically, a residual can be used as a risk management tool to offset declines in the value of fixed-rate mortgage or ABS portfolios. However, it should be understood by all residual interest purchasers that the "yield" on these instruments is inversely related to their effectiveness as a risk management vehicle. In other words, the highest yielding ABS residuals have limited risk management value usually due to a complicated ABS structure and/or unusual collateral characteristics that make modeling and understanding the economic cash flows very difficult.

Alternatively, those residuals priced for modest yields generally have positive risk management characteristics.

In conclusion, it is important to understand that a residual cash flow is highly dependent upon the prepayments received. Caution should be exercised when purchasing a residual interest, especially higher "yielding" interests, because the risk associated over the life of the ABS's may warrant an even higher return in order to adequately compensate the investor for the interest rate risk assumed. Purchases of these equity interests should be supported by in-house evaluations of possible rate of return ranges in combination with varying prepayment assumptions.

Only residual interests in ABS's rated in one of the top two rating categories are permissible acquisitions for Federal credit unions. Holding of ABS residuals should be accounted for in the manner discussed under stripped mortgage-backed securities and should be reported as "Other Assets" on regulatory reports.

C. Other Zero Coupon or Stripped Products

The interest and/or principal portions of U.S. Government obligations are sometimes sold to financial institutions in the form of stripped coupons, stripped bonds (principal), STRIPS, or propriety products, such as CAT's or TIGR's. Also, Original Issue Discount Bonds (OID's) have been issued by a number of municipal entities. Longer maturities of these instruments can exhibit extreme price volatility and, accordingly, disproportionately large long-maturity holdings (in relation to the total portfolio) of zero coupon securities may be unsuitable for investment holdings for financial institutions.

[FR Doc. 88–11493 Filed 5–20–88; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71024–7224]

Amendments to the Commodity Control List Based on Coordinating Committee Review

AGENCY: Bureau of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of CCL entries in the categories of metal-working machinery; general industrial equipment; transportation equipment; electronics and precision instruments; metals, minerals, and their manufactures; and chemicals, metalloids, petroleum products and related materials. These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the CCL are necessary to protect U.S. national security interests.

EFFECTIVE DATE: This rule is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature regarding metal-working machinery, contact Surendra Dhir, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–5695.

For questions of a technical nature regarding general industrial equipment and transportation equipment, contact Bruce Webb, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–3806.

For questions of a technical nature regarding electronics and precision instruments, contact Robert Anstead, Electronics Components Technology Center, Bureau of Export Administration, Telephone: (202) 377–1641.

For questions of a technical nature regarding metals, minerals, and their manufactures, contact Jeff Tripp, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–1309.

For questions of a technical nature regarding chemicals, metalloids, petroleum products and related materials, contact Jeff Tripp, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–1309.

For questions of a general nature, contact John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before June 6, 1988, may be exported under the general license provisions up to and including June 20, 1988. Any such items not actually exported before midnight June 20, 1988, require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assesment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1091A is amended by redesignating paragraph (b)(i)(1) as (b)(i)(1)(a) and by revising in the fifth sentence of that paragraph the phrase "not included from control" to read "not excluded from control" and by adding the word "*or*" at the end of the paragraph;

by adding a paragraph (b)(i)(1)(b);

by revising paragraphs (b)(i)(7)(b) and (b)(ii);

by revising in paragraph (b)(ii)(2) the phrase "the requirements of (i)(1)" to read "the requirements of (i)(1)(a)";

by adding a paragraph (b)(iii);

by revising paragraph (d);

by revising in Advisory Note 2, paragraph (c), the phrase "Maximum (Z axis)" to read "Maximum horizontal (Z axis)"; and

by revising in the Advisory Note for the People's Republic of China, paragraph (a)(6)(ii)(a), the phrase "necessary for diagnostic" to read "necessary for diagnostics", as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 376.11 for special information to include on the validated license application and reexport request.)

* * * * *

List of Commodities Controlled by ECCN 1091A

* * * * *

(b) * * *

(i) * * *

(1) * * *

(b) Not more than three linear axes plus one rotary axis, but no tilting axis, capable of simultaneously coordinated contouring motion, *i.e.*, the total number of linear plus rotary contouring axes cannot exceed *four*. (A secondary parallel contouring axis, e.g., W axis on horizontal boring mills, is not counted as an additional contouring axis. A secondary rotary table, the centerline of which is parallel to the primary rotary table, is also not counted as an additional contouring axis. Machines may have non-contouring parrallel or non-contouring, non-parallel rotary axes in addition to the four axes capable of simultaneously coordinated contouring motion. Machines having the capability of being simultaneously coordinated in more than *four* axes are not excluded from export control even if the numerical control unit attached to the machine limits it to three simultaneously coordinated contouring axes. For example, a machine with a control unit switchable between any three out of *five* contouring axes is not excluded from control.);

* * * * *

(7) * * * (b) ±(0.01 + (0.0025/300 x (L–300))) mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

* * * * *

(ii) Machine tools (other than boring mills, milling machines and machining centers described in paragraph (b)(i) of this section), having all of the following characteristics:

(1) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc.);

(2) Meeting the requirements of paragraphs (b)(i)(1)(a), (i)(6) and (i)(7) of this section;

(iii) Dimensional inspection machines, having all of the following characteristics:

(1) A linear positioning accuracy equal to or worse than:

(a) ± (3+L/300) micrometer for L shorter than or equal to 3,300 mm;

(b) ±14 micrometer for L longer than 3,300 mm;

(2) A rotary accuracy of equal to or worse than 5 seconds for every 90 degrees; *and*

(3) Meeting the requirements of paragraph (b)(i)(1) of this section; (For high precision turning machinery, see also ECCN 1370A.)

* * * * *

(d) Specially designed sub-assemblies and "software" that, according to the manufacturer's technical specifications, can upgrade the capabilities of numerical control units and machine tools so that they would become controlled for export by paragraphs (a), (b) or (c) of this section.

Note.—Specially designed printed circuit board sub-assemblies are controlled by this paragraph (d).

(For machine tool parts and components, see also ECCN 1093A.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the Technical Note immediately before the Advisory Note for the People's Republic of China to read as follows:

Technical Note.—For purposes of this ECCN, "stored program control" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions. Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the phrase "cylindrical plasma etchers without digital control" in paragraph (b)(i)(viii) to read "cylindrical plasma etchers without stored program control";

by removing paragraph (b)(1)(xi), redesignating paragraph (b)(1)(xii) as (b)(1)(xi), and redesignating paragraph (b)(1)(xiii) as (b)(1)(xii);

by redesignating Technical Note 3, following paragraph (b)(8), as Note 1;

by redesignating Technical Note 4 as Note 2 and revising this newly redesignated Note 2;

by revising in paragraph (m) of the Advisory Note for the People's Republic of China the phrase "Photo-optical mask fabrication equipment" to read "Mask fabrication equipment using photo-optical methods"; and

by revising in paragraphs (s), (t), and (v) of the Advisory Note for the People's Republic of China the phrase "Digitally controlled" to read "Stored program controlled", as follows:

1355A Equipment for the manufacture or testing of electronic components and materials and specially designed components, accessories and "specially designed software" therefor.

* * * * *

List of Equipment Controlled by ECCN 1355A

* * * * *

(b) * * *

(8) * * *

Note.—* * *

Notes.—1. * * *

2. For the purposes of this ECCN, "stored program control" is defined as a control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

Note.—Equipment may be "stored program controlled" whether the electronic storage is internal or external to the equipment.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by adding a Note 3 and designating it as *Reserved* and by removing the (Advisory) Note 3 and revising the Advisory Note for the People's Republic of China to read as follows:

Advisory Note for the People's Repulic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of semi-conductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

Note.—The photodiodes will be supplied on a replacement basis with no enhancement of the system.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 3605A is amended by revising the "List of Nickel Powder and Porous Nickel Metal Controlled By ECCN 3605A" and by revising the Advisory Note and adding other Notes, as follows:

3605A Nickel powder and porous nickel metal.

Controls for ECCN 3605A

* * * * *

List of Nickel Powder and Porous Nickel Metal Controlled by ECCN 3605A

(a) Powder with a nickel purity content of 99% or more and a mean particle size of less than 10 micrometers measured by the ASTM B 330 standard;

(b) Porous nickel metal produced from materials controlled for export by paragraph (a) of this List *except* single porous nickel metal sheets not exceeding 930 cm^2 intended for use in batteries for civil applications.

Note.—Paragraph (b) refers to porous nickel metal manufactured from nickel powder defined in paragraph (a) that has been compacted and sintered to form a metal material with fine pores interconnected throughout the structure.

Advisory Note.—Licenses are likely to be approved for export to Country Groups QWY of nickel powder in uncompacted powder form in quantities of 4,000 kg or less for non-nuclear civil applications.

Advisory Note For The People's Republic of China: Licenses are likely to be approved for export to the People's Republic of China of nickel powder obtained by the carbonyl process for non-nuclear civil applications.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1763A is amended by removing the quotation marks from the phrase "Fibrous and filamentary materials" in the heading and in paragraphs (a) and (b);

by revising paragraph (b)(2)(ii) to read "Discontinuous multiphase polycrystalline alumina fibers in chopped fiber or random mat form, containing 3% by weight or more silica, having a "specific modulus" less than 10 × 10^6 m (3.92 × 10^8 inches);" and

by revising in paragraph (d) of Technical Note 1 the word "blanket" to read "blankets".

Dated: May 17, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–11369 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3226]

Medical Staff of Doctors' Hospital of Prince Georges County; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the medical staff of a hospital in Prince Georges County, Maryland from engaging in concerted, coercive conduct to prevent or impede a health maintenance organization or others from offering health care services.

DATE: Complaint and Order issued April 14, 1988 [1].

FOR FURTHER INFORMATION CONTACT: Jane R. Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: On Thursday, January 28, 1988, there was published in the **Federal Register** 53 FR 2506, a proposed consent agreement with analysis In the Matter of Medical Staff of Doctors' Hospital of Prince Georges County, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under CFR Part 13, are as follows: Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.405 To discriminate unfairly or restrictively in general; § 13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general, § 13.533–50 Maintain means of communication;

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

§ 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Dealing On Exclusive And Tying Basis: § 13.670 Dealing on exclusive and tying basis; § 13.670–20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Doctors, Medical staffs, Medical facilities, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11439 Filed 5–20–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. 9154]

Volkswagen of America, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Troy, Mich. automobile company to offer an arbitration program to owners of certain Volkswagen and Audi automobiles with faulty valve seals and other oil consumption-related problems.

DATE: Complaint issued April 1, 1981. Order issued April 13, 1988 [1].

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, FTC/H–238A, Washington, DC 20580. (202) 326–3114.

SUPPLEMENTARY INFORMATION: On Friday, April 17, 1987, there was published in the **Federal Register**, 52 FR 12546, (*corrections*, 52 FR 17960 and 52 FR 20098) a proposed consent agreement with analysis In the Matter of Volkswagen of America, Inc., and Volkswagen AG, corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered a modified order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–5 Arbitration; § 13.533–20 Disclosures; § 13.533–25 Displays, in-house; § 13.533–40 Furnishing information to media; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication. Subpart—Neglecting, Unfairly Or Deceptively, To Make Material Disclosure: § 13.1845 Composition; § 13.1845–15 Federal Trade Commission Act; § 13.1875 Non-standard character; § 13.1886 Quality, grade or type.

List of Subjects in 16 CFR Part 13

Arbitration, Automobiles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11438 Filed 5–20–88; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center For Drug Evaluation and Research

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to submission of and effective approval dates for abbreviated new drug applications and certain new drug applications. The amendment changes the title of officials who are delegated this authority to conform with the new organizational title, Center for Drug Evaluation and Research (CDER). The amendment also delegates an additional authority for 180-day exclusivity determinations.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The Center for Drugs and Biologics was reorganized to create two new centers: The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research CBER). FDA is amending § 5.93 *Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications* (21 CFR 5.93) by changing the titles of the officials listed in the delegation to conform with the new organizational title, CDER. In addition, FDA is delegating an additional authority under section 505(j)(4)(B)(iv) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(4)(B)(iv)) to authorize the Director and Deputy Director, CDER, and the Director and Deputy Director, Office of Drug Standards, CDER, to make 180-day exclusivity determinations.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 282, 283, 283b through 283m, 284, 285, 300w *et seq.*, 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.93 is revised to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 505(c)(3)(D), (j)(4)(B)(iv), and (j)(4)(D) of the Federal Food, Drug and Cosmetic

Act (the act) concerning the date of submission or the date or effective approval of abbreviated new drug applications including supplements thereto submitted under section 505(j) of the act and of new drug applications including supplements thereto submitted under section 505(b)(1) of the act and described under section 505(b)(2) of the act:

(a) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Drug Standards, CDER.

Dated: May 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–11494 Filed 5–20–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 1 and 140

[FHWA Docket No. 86–18, Notice No. 2]

Reimbursement for Railroad Work

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on reimbursement for railroad work to allow, at the option of a State highway agency, Federal-aid highway funds to be used to pay for certain overhead and indirect construction costs incurred by railroads performing work on Federal-aid highway projects.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering (202) 366–4652; or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA's current regulation dealing with reimbursement for railroad work performed on Federal-aid highway projects is contained in 23 CFR Part 140, Subpart I. However, 23 CFR 1.11(a) prohibits Federal reimbursement for certain overhead costs incurred by railroad companies when performing engineering services. The Association of American Railroads requested that the FHWA reconsider its policy relating to these overhead costs. The FHWA agreed to review the issue.

In a notice of proposed rulemaking (NPRM), FHWA Docket 86–18 (51 FR 44996, December 16, 1986), the FHWA proposed to amend its regulation to allow Federal funds to participate in a railroad's overhead and indirect construction costs not charged directly to a construction activity, provided these costs are allocated to the construction activity on an equitable basis. This change was proposed so that the railroad companies may be more fully compensated for the costs they incur in performing construction work with their own labor forces on Federal-aid highway projects.

There were 18 commenters on the NPRM. Comments were received from 12 State highway agencies, a State Department of Transportation, a transit authority, a public utility commission, a railroad company, the Association of American Railroads, and the American Association of State Highway and Transportation Officials' (AASHTO) Administrative Subcommittee on Internal and External Audit. There was also a request for a time extension on the comment period. Twelve out of the 18 commenters opposed the proposal to expand eligibility to include further overhead costs. Of these 12 commenters, nine were State highway agencies, one State Department of Transportation, one a public utility commission and one the AASHTO Subcommittee on Audits. The other six commenters expressed general support for the proposal or offered some technical advice.

Several respondents supported their opposition by relating that use of Federal funds to reimburse the railroads for a broader range of overhead costs could result in a decrease in funding ability for improving railroad-highway crossings. Assuming a fixed level of funding for the railroad-highway grade crossing safety program, their analyses indicated that reimbursing railroads for the added overhead expenses could effectively reduce by 5 to 10 percent the funding being applied to construction of crossing improvements. This would then likely lead to a commensurate reduction in the number of railroad-highway crossings improved.

Another reason given for opposing the expansion of eligibility to include further overhead costs was that the determination of eligible costs may prove to be difficult. Several cited recent experiences with difficulties in determining appropriate railroad equipment rates as examples of the difficulties in auditing railroad cost records.

Upon further review the FHWA has decided to allow Federal-aid highway funds to be used to reimburse the railroads for additional overhead and indirect construction costs outlined in the NPRM. The primary reason for this decision is a desire that the Federal regulation not be viewed as a barrier or an impediment to use of Federal funds for this purpose and to provide the States the flexibility to make their own decisions. As a result, the final rule being adopted does not mandate to the States that Federal funds must be used to pay for these additional railroad overhead expenses. Rather, this decision is left to the individual States. The States may establish payment standards more restrictive than those permitted or required by this regulation. For example, if a State is concerned that payment of these additional railroad overhead expenses will adversely affect its railroad-highway grade crossing improvement program, then it could choose not to pay for these expenses. Also, any Federal-aid funding reimbursement for these overhead expenses is always dependent on a State's determination of the acceptability of a railroad's cost accounting records. Costs for which records are not readily available for audit would not be eligible for Federal-aid reimbursement. The State has the authority to decide on the availability and acceptability of a railroad's records.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of this revision will be minimal. Although railroad companies may, at a State's option, be reimbursed for additional types of overhead or indirect expenses, the economic impact on the overall highway program is negligible. Accordingly, a full regulatory evaluation is not required. For these reasons and under the criteria of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the FHWA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule is consistent with those principles. This action will provide to a State the flexibility to use its Federal-aid highway funds to reimburse a railroad

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for additional overhead expenses incurred should a State choose to do so.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

List of Subjects in 23 CFR Part 140

Grant programs—Transportation, Highways and roads, Railroads.

In consideration of the foregoing, Part 1 and Part 140, Subpart I to Chapter 1 of Title 23, Code of Federal Regulations, are amended as set forth below.

Issued on May 16, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Parts 1 and 140, Subpart I as follows:

PART 1—GENERAL

1. The authority citation for Part 1 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 1.48(b).

§ 1.11 [Amended]

2. In § 1.11, paragraph (a) is amended by removing the words "paragraphs (b) and (c)" and inserting in lieu thereof the words "paragraph (b)" each place they appear in the text.

PART 140—REIMBURSEMENT

Subpart I—Reimbursement for Railroad Work

3. The authority citation for Part 140, Subpart I continues to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 1.48.

4. In § 140.904, paragraph (a) is revised to read as follows:

§ 140.904 Reimbursement basis.

(a) *General.* On projects involving the elimination of hazards of railroad-highway crossings, and on other projects where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred by the State in making changes to railroad facilities as required in connection with a Federal-aid highway project, in accordance with the provisions of this subpart.

* * * * *

5. Part 140, Subpart I is amended by adding § 140.907 to read as follows:

§ 140.907 Overhead and indirect construction costs.

(a) A State may elect to reimburse the railroad company for its overhead and indirect construction costs.

(b) The FHWA will participate in these costs provided that:

(1) The costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally accepted accounting principles,

(2) The costs included in the distribution are limited to costs actually incurred by the railroad,

(3) The costs are eligible in accordance with the Federal Acquisition Regulation (48 CFR), Part 31, Contract Cost Principles and Procedures, relating to contracts with commercial organizations,

(4) The costs are considered reasonable,

(5) Records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates,

(6) The rates are adjusted at least annually taking into consideration any overrecovery or underrecovery of costs, and

(7) The railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.

[FR Doc. 88-11425 Filed 5-20-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8204]

Income Taxes; Safe-haven Interest Rates and Rental Charges for Commonly Controlled Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of safe-haven interest rates for certain loans and advances between commonly controlled taxpayers and the deletion of a safe-haven rental charge for the leasing of certain tangible property between controlled taxpayers. These regulations provide for floating safe-haven interest rates under section 482 and are intended to make the safe-haven rates consistent with the interest rates applicable under sections 483 and 1274, as directed by Congress in the Tax Reform Act of 1984. These regulations also make changes to the allowable interest-free period for certain intercompany trade receivables. These regulations affect all controlled taxpayers and provide them with guidance on the use of safe-haven interest rates and lease rates under section 482.

EFFECTIVE DATES: The amendments to the safe-haven interest rates and the safe-haven lease rules are generally effective for loans or advances and for leases entered into after May 8, 1986. The amendments to the interest-free period for intercompany trade receivables (the six-month rule) are effective for amounts arising after June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-748-86), or phone (202) 566-3872, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 482 of the Internal Revenue Code were published in the Federal Register on April 8, 1986 (51 FR 12022, 12035). The change from fixed to floating safe-haven interest rates under section 482 was proposed to make the safe-haven rates consistent with the interest rates applicable under sections 483 and 1274, as directed by Congress in the Tax Reform Act of 1984 (98 Stat. 494, 531). The proposed amendments would also make other changes to the section 482 regulations, including changing the interest-free period for certain intercompany trade receivables. Many written comments responding to the proposed regulations were received. A public hearing on the proposed regulations was held on November 17, 1986. The final regulations published in this document are adopted after considering all the comments received on the proposed regulations.

Explanation of the Final Regulations

Safe-Haven Interest Rates

Section 1.482-2(a)(2)(iii) of the final regulations adopts the safe-haven interest rates contained in the proposed regulations without change. The range of safe-haven interest rates generally applicable under the final regulations are from 100 to 130 percent of the applicable Federal rate (AFR) as determined under section 1274(d) in effect on the date a loan between controlled entities is made, effective generally for loans made after May 8, 1986. Comments received on the proposed regulations were generally in favor of using the AFR mechanism to provide floating safe-haven interest rates under section 482, and commentators also favored the proposed range of safe-haven interest rates of from 100 to 130 percent of the AFR.

Interest-Free Period on Intercompany Transactions

The Prior Regulations

Section 1.482-2(a)(3) of the prior regulations provided that interest shall be charged on an indebtedness between controlled entities beginning on the day the indebtedness arises. An exception was provided in the prior regulations for indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group and not evidenced by a written instrument requiring the payment of interest (hereinafter referred to as "intercompany trade receivables"). Under this exception, interest need not be charged on intercompany trade receivables until six months after the debt arises (the "six month rule"), or until a later date if the taxpayer shows that the regular trade practice conducted by either it or others in its industry permits comparable balances with unrelated parties to remain outstanding for more than six months without charging interest (the "trade practice exception"). The period for which interest need not be charged on intercompany trade receivables is generally referred to as the "interest-free period".

The Proposed Regulations and Comments

Under § 1.482-2(a)(1)(iii) of the proposed regulations the six month interest-free period would be reduced to 60-days (the "60-day rule"), but the proposed regulations would also retain the trade practice exception. The definition of intercompany trade receivables is unchanged in the proposed regulations. The prior and the proposed regulations do not distinguish between intercompany trade receivables incurred in a trade or business conducted by the debtor member within the United States, and intercompany trade receivables incurred in a trade or business carried on by the debtor member outside the United States.

Most of the comments received on the proposed regulations addressed the proposed 60-day rule. Commentators stated that a 60-day rule would be commercially unreasonable, burdensome, and inconsistent with the implicit six month interest-free period built into sections 483 and 1274. Commentators also stated that a 60-day rule could require extensive tracing to determine that timely payment has been made. Comments critical of the 60-day rule were most often raised in the context of international intercompany transactions where there may be difficulties in arranging and transmitting payments that are not present in domestic transactions (for example, assembling documents necessary for customs clearing requirements and banking requirements for the purchase of foreign exchange). Commentators also argued that audit adjustments under section 482 requiring the accrual of interest would be more numerous and difficult to perform under a 60-day rule.

The Final Regulations

The final regulations published in this document provide for a basic interest-free period and for several exceptions to the basic interest-free period for certain classes of intercompany trade receivables. The portions of the final regulations relating to the interest-free period for intercompany trade receivables are effective for intercompany trade receivables arising after June 30, 1988.

Section 1.482-2(a)(1)(iii)(B) of the final regulations provides that interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month following the month in which the intercompany trade receivable arises. Under § 1.482-2(a)(1)(iii)(C) of the final regulations, in the case of intercompany trade receivables incurred by the debtor member of the group in transactions in the ordinary course of a trade or business which is actively conducted by the debtor member outside the United States, interest is not required to be charged on such intercompany trade receivables before the first day of the fourth calendar month following the month in which the intercompany trade receivable arises. Under either of these provisions, the trade practice exception provided in § 1.482-2(a)(1)(iii)(D) of the final regulations may be used to lengthen the interest-free period. For purposes of determining the interest-free period, the term "United States" includes any possession of the United States, and the term "foreign country" excludes any possession of the United States.

Under the above rules of the final regulations, the interest-free period on intercompany trade receivables will not be shorter than two full calendar months in the case of domestic intercompany trade receivables; or shorter than three full calendar months in the case of intercompany trade receivables incurred by the debtor member in a foreign business. If the trade practice exception is not used, the interest-free period will end on the last day of a calendar month. In the case of intercompany trade receivables incurred by the debtor member in a foreign business, the interest-free period will always include the end of a fiscal quarter. These rules are intended to simplify administration of a shorter interest-free period: one month's intercompany trade receivables may be treated as a single group having the same interest-free period, thereby limiting the number of intercompany trade receivables that must be tracked for compliance with the interest-free period rules.

Under § 1.482-2(a)(1)(iii)(E) of the final regulations an additional exception for determining a longer interest-free period is provided for intercompany trade receivables attributable to related party purchases of property for resale to unrelated persons located in a foreign country. This longer interest-free period is equal to ten (10) calendar days plus the purchasing member's average collection period for sales to unrelated persons located in the same foreign country of products within the same product group that includes the property purchased from the related party. The interest-free period under this exception, however, may not exceed 183 days. This interest-free period is intended to approximate the collection period that the related party seller might have experienced if it made the sale itself.

For purposes of this exception a product group is based upon a three-digit grouping of the Standard Industrial Classification Code (three-digit SIC code). Rules for determining the average collection period are provided in § 1.482-2(a)(1)(iii)(E)(*2*) of the final regulations. If the related party purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of its average collection period, by product group within each country, are required. The interest-free period under this exception is not available if the property sold to the unrelated party has been manufactured, produced, or constructed (within the meaning of § 1.954-3(a)(4)) by the related party purchaser.

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Safe-Haven Lease Rates

The proposed regulations would delete the formula method for determining a safe-haven rental charge for leases of tangible depreciable property between controlled entities. The safe-haven rule for subleases would be retained. No comments were received on these portions of the proposed regulations and they are adopted without change.

Special Analyses

It has been determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, it has been concluded that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department, however, participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1 to 1.483–2

Income taxes, Accounting, Deferred compensation plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Section 1.482–2 also issued under 26 U.S.C. 482.

Par. 2. Paragraphs (a) and (c)(2) of § 1.482–2 are revised to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district directory may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (a) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(1) Loans or advances of money or other consideration (whether or not evidenced by a written instrument), and

(2) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (a) does not apply to so much of an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragraph (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482–2(a)(3)(i).

(iii) *Period for which interest shall be charged*—(A) *General rule.* This paragraph (a)(1)(iii) is effective for indebtedness arising after June 30, 1988. See 26 CFR 1.482–2(a)(3) (revised as of April 1, 1988) for indebtedness arising before July 1, 1988. Except as otherwise provided in paragraphs (a)(1)(iii)(B) through (E) of this section, the period for which interest shall be charged with respect to a bona fide indebtedness between controlled entities begins on the day after the day the indebtedness arises and ends on the day the indebtedness is satisfied (whether by payment, offset, cancellation, or otherwise.) Paragraphs (a)(2)(iii)(B) through (E) of this section provide certain alternative periods during which interest is not required to be charged on certain indebtedness. These exceptions apply only to indebtedness described in paragraph (a)(1)(ii)(A)*(2)* of this section (relating to indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group) and not evidenced by a written instrument requiring the payment of interest. Such amounts are hereinafter referred to as "intercompany trade receivables". The period for which interest is not required to be changed on intercompany trade receivables under this paragraph (a)(1)(iii) is called the "interest-free period". In general, an intercompany trade receivable arises at the time economic performance occurs (within the meaning of section 461(h) and the regulations thereunder) with respect to the underlying transaction between controlled entities. For purpose of this paragraph (a)(1)(iii), the term "United States" includes any possession of the United States, and the term "foreign country" excludes any possession of the United States.

(B) *Exception for certain intercompany transactions in the ordinary course of business.* Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

(C) *Exception for trade or business of debtor member located outside the United States.* In the case of an intercompany trade receivable arising from a transaction in the ordinary course of a trade or business which is actively conducted outside the United States by the debtor member, interest is not required to be charged until the first day of the fourth calendar month following the month in which such intercompany trade receivable arises.

(D) *Exception for regular trade practice of creditor member or others in creditor's industry.* If the creditor member or unrelated persons in the creditor member's industry, as a regular trade practice, allow unrelated parties a longer period without charging interest than that described in paragraph (a)(1)(iii) (B) or (C) of this section (whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule.* If in the ordinary course of business one member of the group (the "related purchaser") purchases property from another member of the group (the "related seller") for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(i) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)*(2)* of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country, plus

(ii) Ten (10) calendar days.

The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President).

(2) Average collection period. An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows:

(i) Step 1. Determine total sales (less returns and allowances) by the related purchaser in the product group to unrelated persons located in the same foreign country during the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(ii) Step 2. Determine the related purchaser's average month-end accounts receivable balance with respect to sales described in paragraph (a)(1)(iii)(E)*(2)(i)* for the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(iii) Step 3. Compute a receivables turnover rate by dividing the total sales amount described in paragraph (a)(1)(iii)(E)*(2)(i)* of this section by the average receivables balance described in paragraph (a)(1)(iii)(E)*(2)(ii)* of this section.

(iv) Step 4. Divide the receivables turnover rate determined under (a)(1)(iii)(E)*(2)(iii)* of this section into 365, and round the result to the nearest whole number to determine the number of days in the average collection period.

If the related purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of an average collection period, by product group within each country, are required. If the related purchaser resells fungible property in more than one foreign country and the intercompany trade receivables arising from the related party purchase of such fungible property cannot reasonably be identified with resales in particular foreign countries, then solely for the purpose of assigning an interest-free period to such intercompany trade receivables under this paragraph (a)(1)(iii)(E), an amount of each such intercompany trade receivable shall be treated as allocable to a particular foreign country in the same proportion that the related purchaser's sales of such fungible property in such foreign country during the period described in paragraph (a)(1)(iii)(E)*(2)(i)* of this section bears to the related purchaser's sales of all such fungible property in all such foreign countries during such period. An interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to any intercompany trade receivables arising in a taxable year of the related seller if the related purchaser made no sales described in paragraph (a)(1)(iii)(E)*(2)(i)* of this section from which the appropriate interest-free period may be determined.

(3) Illustration. The interest-free period provided under paragraph (a)(1)(iii)(E) of this section may be illustrated by the following example:

Example—(i) *Facts.* X and Y use the calendar year as the taxable year and are members of the same group of controlled entities within the meaning of section 482. For Y's 1988 calendar taxable year X and Y intend to use the interest-free period determined under this paragraph (a)(1)(iii)(E) for intercompany trade receivables attributable to X's purchases of certain products from Y for resale by X in the ordinary course of business to unrelated persons in country Z. For its 1987 calendar taxable year all of X's sales in country Z were of products within a single product group based upon a three-digit SIC code, were not manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by X, and were sold in the ordinary course of X's trade or business to unrelated persons located only in country Z. These sales and the month-end accounts receivable balances (for such sales and for such sales uncollected from prior months) are as follows:

Month (1987)	Sales	Accounts receivable
January	$500,000	$2,835,850
February	600,000	2,840,300
March	450,000	2,850,670
April	550,000	2,825,700
May	650,000	2,809,360
June	525,000	2,803,200
July	400,000	2,825,850
August	425,000	2,796,240
September	475,000	2,839,390
October	525,000	2,850,550
November	450,000	2,775,450
December	650,000	2,812,600
Totals	6,200,000	33,665,160

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables turnover rate} = \frac{\$6,200,000}{\$2,805,430} = 2.21$$

$$\text{Average collection period} = \frac{365}{2.21} = 165.16 \text{ days.}$$

rounded to the nearest whole day=165 days.

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

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(iv) *Payment; book entries.* (A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(i) Facts. X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May. During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y, and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(ii) Application of payments. Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $20 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii) (B) through (E) of this section.

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate—*(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986—*(A) *Applicability—(1) General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) of this section applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(i) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*)) of this section the loan or advance is entered into after May 8, 1986, and

(ii) After May 8, 1986, under a demand loan or advance between such controlled entities.

(2) Grandfather rule for existing loans. The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in 26 CFR § 1.482–2(a)(2)(iii) (revised as of April 1, 1985) shall apply to—

(i) Term loans or advances made before May 9, 1986, and

(ii) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of Chapter 1 of the Code—

(1) The rate of interest actually charged if that rate is—

(i) Not less than 100 percent of the applicable Federal rate (the "lower limit"), and

(ii) Not greater than 130 percent of the applicable Federal rate (the "upper limit'), or

(2) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually, or

(3) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually,

unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i) of this section. In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term "applicable Federal rate" means, in the case of a loan or advance to which this section applies and having a term of—

(1) Not over 3 years, the Federal short-term rate.

(2) Over 3 years but not over 9 years, the Federal mid-term rate, or

(3) Over 9 years, the Federal long-term rate,

as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (the "lowest 3-month rate", as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the "applicable Federal rate" means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short-term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business or making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Code section. After the enactment of the Tax Reform Act of 1984, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows:

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Code section.

(ii) Second, the other Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Code section.

(iii) Third, whether or not the other Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example (1). An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example (2). B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example (3). The facts are the same as in example (2) except that the amount lent by Z to B is 9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 *de minimis* exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example (4). X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is not total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

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Example (5). Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1990, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. As provided in section 1274A(a) and (b), the discount rate for purposes of section 1274 will be nine percent, compounded semiannually, because the stated principal amount of B's note does not exceed $2,800,000. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

* * * * *

(c) *Use of tangible property* * * *

(2) *Arm's length charge*—(i) *In general.* For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the period and location of the use, the owner's investment in the property or rent paid for the property, expenses of maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See 26 CFR 1.482-2(c)(2)(ii) (revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1988, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases.* (A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section, or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

* * * * *

Par. 3. Paragraph (b)(12) of § 1.7872-5T is revised to read as follows:

§ 1.7872-5T. Exempted loans.

* * * * *

(b) *List of exemptions.* * * *

(12) Indebtedness subject to section 482, but such indebtedness is exempt from the application of section 7872 only during the interest-free period, if any, determined under § 1.482-2(a)(1)(iii) with respect to intercompany trade receivables described in § 1.482-2(a)(1)(ii)(A)(*ii*). See also § 1.482-2(a)(3);

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: May 4, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-11393 Filed 5-20-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6676

[AK-932-08-4220-10; AA-50224]

Withdrawal of Public Land for the Cape Fanshaw Natural Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 600 acres of National Forest System lands from surface entry and mining for a period of 20 years to protect the Cape Fanshaw Natural Area. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a United States Forest Service Natural Area:

Copper River Meridian (Unsurveyed)

T. 54 S., R. 75 E.,

Corner #1, the true point of beginning, is a 2,238-foot peak located in the E½NE¼ SE¼NW¼, W½NW¼SW¼NE¼, protracted Section 10, T. 54 S., R. 75 E., Copper River Meridian, Alaska, as shown on the Sumdum A-5 USGS Quad map (1948).

From corner #1 proceed North approximately 32 chains to corner #2 which is located on the left bank of an unnamed intermittent stream; from corner #2 proceed northwesterly meandering the thread of that stream to corner #3 which is a point on the left bank of that stream, located approximately 16 chains from its outlet into South Passage; from corner #3 proceed South 42 chains to corner #4; thence S. 58° W. approximately 70 chains to corner #5, a point at the toe of a ridge located northerly of an unnamed intermittent stream; thence easterly and northeasterly approximately 140 chains following the ascending ridge of the 2238-foot peak to corner #1 and the point of beginning.

The area described contains approximately 600 acres near Cape Fanshaw, Alaska.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11490 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6677

[AK-932-08-4220-10; F-22389]

Withdrawal of Public Land for the Beaver Creek Radio Relay Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2.5 acres of public lands from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, for a period of 20 years to protect the U.S. Air Force Beaver Creek Radio Relay Site.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2) and from leasing under the mineral leasing laws, to protect a United States Air Force radio relay site:

Copper River Meridian

A parcel of land located within Sections 27 and 28, T. 15 N., R. 19 E.; said parcel being more particularly described as follows:

Commencing at the point of intersection of Latitude 63°03'32.43" North and Longitude 141°46'35.59" West (1927 NAD), which point is monumented by Corps of Engineers Brass Cap TD-2 Test Tower and located North 3°18'19" West, a distance of 3,812.00 feet, more or less, of Station 2478+93.3 (Mile 1267.1) of the Alaska Highway;

Thence North 71°40'25" East, a distance of 226.73 feet to the east boundary of said parcel and *The True Point of Beginning;*

Thence South, a distance of 165.00 feet;

Thence West, a distance of 330.00 feet;

Thence North, a distance of 330.00 feet;

Thence East, a distance of 330.00 feet;

Thence South, a distance of 165.00 feet closing on the True Point of Beginning.

This area described contains 2.5 acres, more or less.

2. This withdrawal will not affect or alter any existing leases relating to existing land use.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11489 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6678

[AK-932-07-4220-10; AA-55135]

Public Land Order No. 6618, Correction; Revocation of Public Land Order No. 5548; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects the land description in Public Land Order (PLO) No. 6618.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6618 published at 51 FR 25205-25206, July 11, 1986, is hereby corrected as follows:

1. The land description on page 25205, third column, line 17, which reads "within T. 37 S., R. 64 E., secs. 19 and 20," is hereby corrected to read "within T. 41 S., R. 66 E., secs. 19 and 20."

2. The land description on page 25205, third column, line 25, is hereby corrected by adding and deleting the following described lands:

Copper River Meridian

Add

T. 41 S., R. 66 E.,
Sec. 29, NE¼SW¼.

Delete

T. 41 S., R. 66 E.,
Sec. 29, NW¼SW¼.

3. The correction in paragraph 1 has no effect on land status as the township and range are given only for the purpose of referencing the general location of U.S. Survey No. 1096.

4. The land added in paragraph 2 of this order is land that was initially intended to be made available for selection by the State of Alaska by PLO 6618. As provided by section 6(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available.

5. The land deleted in paragraph 2 of this order was interim conveyed from the general Government to Goldbelt, Inc. in May 1981. PLO 6618 purported to revoke the withdrawal on this conveyed land and make the land available for selection by the State of Alaska. As the land was no longer under Federal jurisdiction, PLO 6618 had no effect on land status and any notation to this effect shall be removed from the land status records.

6. This order does not change any provisions of PLO 6618, but only corrects errors which occurred therein.

Dated: May 13, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-11491 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-184; RM-5635]

Radio Broadcasting Services; Monticello, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Monticello, Arkansas, as that community's second local FM service, in response to a petition for rule making filed on behalf of Craig T. Dale. With this action, the proceeding is terminated.

DATES: Effective June 20, 1988; The window period for filing applications on Channel 260A at Monticello, Arkansas, will open on June 21, 1988, and close on July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-184, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by revising the entry for Monticello, Arkansas, to add Channel 260A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11515 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-453; RM-5739]

Radio Broadcasting Services; Bremen, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Bremen, Indiana, as that community's first local FM service, in response to a petition filed on behalf of Margaret E. Karwatka. With this action, the proceeding is terminated.

DATES: Effective June 24, 1988, the window period for filing applications on Channel 245A at Bremen, Indiana, will open on June 25, 1988, and close on July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-453, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Bremen, Channel 245A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11516 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-35; RM-5596]

Radio Broadcasting Services; Ellettsville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Ellettsville, Indiana, as that community's first local FM service, in response to a petition filed by Bruce Quinn. With this action, the proceeding is terminated.

DATES: Effective June 24, 1988. The window period for filing applications on Channel 286A at Ellettsville, Indiana, will open on June 25, 1988, and close on July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-35, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Ellettsville, Channel 286A, under Indiana.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11517 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-508; RM-5856]

Radio Broadcasting Services; Ida Grove, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Buena Vista College, substitutes Channel 225C2 for Channel 224A at Ida Grove, Iowa, and modifies its license for Station KIDA(FM) to specify operation on the higher powered channel. Channel 225C2 can be allocated to Ida Grove in compliance with the Commission's minimum distance separation requirements and can be used at Station KIDA(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 42-15-16 and West Longitude 95-23-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-508, adopted April 7, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Iowa is amended by revising the entry for Ida Grove to delete Channel 224A and add Channel 225C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11518 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-393; RM-5966; RM-6170]

Radio Broadcasting Services; Roland and Heavener, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Family Broadcasting Company, allocates Channel 222A to Roland, Oklahoma, as the community's first local FM service. Channel 222A can be allocated to Roland in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) north to avoid a short-spacing to the pending application for Channel 223A at Heavener, Oklahoma (ARN-871124NZ). The Commission also denies the counterproposal of Double Eagle Broadcasting Corp. to substitute Channel 223C2 for Channel 222A at Heavener, Oklahoma. With this action, this proceeding is terminated.

DATES: Effective June 24, 1988. The window period for filing applications will open on June 27, 1988, and close on July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-393, adopted April 5, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding the following entry, Roland, Channel 222A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11519 Filed 5-20-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64h]

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Congress recently enacted section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987. This section requires the application to the Federal Aviation Administration's airport financial assistance program of the provisions of the Department's disadvantaged business enterprise (DBE) rule previously applicable only to the Federal Highway Administration's and Urban Mass Transportation Administration's programs. This rule makes this change.

DATES: This rule is effective on May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9306.

SUPPLEMENTARY INFORMATION: Congress recently passed, and the President signed, section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987. This provision establishes a statutory disadvantaged business enterprise (DBE) program in Federal Aviation Administration (FAA) financial assistance programs for airports. The content of the provision is taken virtually verbatim from section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Because the Department had already made changes to its DBE program regulation in response to section 106(c) (52 FR 39225; October 21, 1987), it is not necessary to make further substantive changes in the regulations as a result of the new FAA statutory provision. However, it is necessary to make technical and conforming amendments to the regulation in order to specify that Subpart D of the rule (which previously has applied only to the Department's highway and mass transit financial assistance programs) now applies to FAA recipients as well as to UMTA and FHWA recipients. This final rule makes those needed amendments.

The October 21 amendments to Part 23 have not yet appeared in the printed volumes of the Code of Federal Regulations, and many persons interested in the airport program probably were not aware of Part 23 amendments many of which, when made, pertained only to highways and mass transit. Therefore, we are providing the following summary of the October 21 amendments, which now will apply to the airport program as well:

Section 23.45 (e) and (f) were amended to require that addresses of DBE firms be listed in recipients' directories and that recipients take a number of procedural steps when certifying DBEs (on-site visits, obtaining work histories of the firm and its principal owners, interviewing the principal owners, analysis of stock ownership, analysis of bonding and financial capacity of the firm, list of equipment and licenses held by the firm and its key personnel, and a statement of the type of work the firm prefers to do).

Section 23.45(g) was amended to require a single overall and a single contract goal for DBEs (as opposed to separate goals for WBEs and DBEs).

Section 23.47(e) was amended to provide that 60 percent of the value of supplies

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purchased from a DBE "regular dealer" could be counted toward DBE goals (formerly, only 20 percent could be counted). The amendment also included a definition of "regular dealer" and clarification of the "commercially useful function" concept.

Section 23.62 was amended to exclude from the definition of "small business concern" firms whose average gross annual receipts over three years exceed $14 million and to include women in the definition of "socially and economically disadvantaged individuals".

Technical amendments and conforming changes to the explanatory material in Appendix A to Subpart D of the regulation were also made.

The Department's action is required by statute. Since the Department has no discretion in the matter, and because it is important to conform to a Congressional enactment as soon as possible, the Department is issuing this rule as a final rule, effective upon publication.

While the rule will cause recipients to make certain administrative changes in their programs (e.g., have a single DBE goal instead of separate minority and women's business enterprise goals, as in the past, and establishing a third-party challenge procedure), we do not believe that these administrative changes are likely to be unduly disruptive. For example, the same recipients who have had MBE programs will now have DBE programs. The FAA will shortly issue guidance to its grantees concerning the transition to administering their programs under Subpart D.

Another provision of the Airport and Airway Safety and Capacity Expansion Act concerns particiption by DBE firms in the airport concessions business. This rule does not attempt to implement this statutory provision, which will require the development of new substantive regulations. The Department hopes to propose these new regulations for public comment along with other revisions to Part 23 which are now being reviewed within the Department.

Regulatory Process Matters

The Department has determined that this rule does not constitute a major rule under the criteria of Executive Order 12291. It is a nonsignificant rule under the Department's Regulatory Policies and Procedures. Since the regulation simply makes administrative adjustments to an existing program expressly required by statute, its economic impacts are expected to be small, and the Department has consequently not prepared a regulatory evaluation. For this reason, the Department certifies that the rule does not have a significant economic impact on a significant number of small entities. Also, the Department certifies, in accordance with Executive Order 12612, that the rule does not have significant Federalism implications to warrant the preparation of a Federalism assessment.

The rule concerns matters under Federal grants, and hence is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). In addition, the rule must be implemented rapidly, in order to ensure that the provisions apply to funds authorized by the Act, as Congress intended. For these reasons, the Department has determined that there is good cause to promulgate these portions of the rule without prior notice and comment (see 5 U.S.C. 553(b)(B)) and to make the rule effective immediately, rather than after a 30-day period (see U.S.C. 553(c)(3)).

List of Subjects in 49 CFR Part 23

Minority businesses, Highways, Mass Transportation.

Issued in Washington, DC, on May 17, 1988.

Jim Burnley,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation amends 49 CFR Part 23 as follows:

PART 23—[AMENDED]

1. The authority citation for Part 23 is revised to read as follows:

Authority: Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987; sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17); sec. 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223); Title 23 of the U.S. Code (relating to highways and traffic safety, particularly sec. 324 thereof); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

2. Section 23.61(a) is amended by revising the first sentence up to the first comma to read as follows:

§ 23.61 [Amended]

(a) The purpose of this subpart is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17) and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) so that, * * *

3. Section 23.61(b) is amended by adding the words "and section 105(f)" after the words "section 106(c)".

4. Section 23.62 is amended by revising the definition of "Act" to read as follows:

§ 23.62 [Amended]

* * * * *

"Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17), with respect to financial assistance programs of the FHWA and UMTA, and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223), with respect to FAA programs.

5. Section 23.63 is amended by adding a new paragraph (d), to read as follows:

§ 23.63 [Amended]

* * * * *

(d) Funds authorized under section Title I of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223).

§ 23.64 [Amended]

6. Section 23.64 is amended, in paragraph (b)(2) thereof, by adding the words "or airport" after the words "urban mass transportation" and by adding the words "or FAA" after the word "UMTA".

7. Section 23.64 is amended, in paragraph (c) thereof, by substituting the words "Federal-aid highway funds, urban mass transportation funds, or airport funds" for the words "Federal-aid highway funds or urban mass transportation funds"; and, in paragraphs (c) and (e) thereof, by adding the words "or FAA" after the word "UMTA" in each instance in which the word "UMTA" occurs.

8. Section 23.64 is amended, in paragraph (e)(2), by deleting the word "or" following the words "(* * * state transportation agency)", by inserting a comma (,) at that point, and by adding, after the semicolon, the words "or, with respect to an airport sponsor, the elected official, head of the board, or other official responsible for the operation of the sponsor,".

§ 23.65 [Amended]

9. Section 23.65 is amended, in its first line, by adding the words "or FAA" following the word "UMTA".

§ 23.68 [Amended]

10. Section 23.68 is amended, in paragraph (e)(2), by adding the words "or FAA" after the word "UMTA", both times the word "UMTA" occurs.

Appendix A—[Amended]

11. The portion of Appendix A, following Subpart D, entitled "Section 23.61 Purpose" is amended by adding, before the period (.) at the end of the first sentence, the words "and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987" and by adding the words "and section 105(f)" after the words "section 106(c)" in both places in the last sentence of the paragraph in which the words "section 106(c)" appear.

12. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding before the period in the first sentence, the words "Airport and Airway Safety and Capacity Expansion Act of 1987".

13. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing from the second sentence of the second paragraph under the title "Socially and economically disadvantaged individuals" the word ",FAA" following the word "FRA" and, in the same sentence, by substituting the words "FHWA, UMTA and FAA" for the words "FHWA and UMTA".

14. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability." is amended, in the first paragraph, in the first sentence thereof, by substituting the words "a number of" for the word "two"; in the third and fifth sentences thereof, by adding the words "or FAA" after the word "FWHA" in both instances in which the word "FHWA" occurs; and in the fifth sentence thereof, by adding the words "or otherwise to acquire land" after the words "to acquire right-of-way".

15. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability." is amended by adding the following sentence to the second paragraph thereof.

The provisions of Subpart D also apply to the FAA-administered airport funds authorized by the Airport and Airway Safety and Capacity Expansion Act of 1987.

16. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding the words "or FAA" after the word "UMTA" in the last sentence of the first paragraph thereof and by adding a new sentence before the present last sentence of the first paragraph, to read as follows:

Recipients of FAA airport program funds who receive planning funds in excess of $75,000 or more than $250,000 (general aviation airports), $400,000 (non-hub airports), or $500,000 (hub airports) in FAA assistance also must submit overall goals.

17. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding, in the second paragraph, the words "or FAA" after the word "UMTA", in both instances in which the word "UMTA" appears.

18. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended, in the fourth paragraph, in the first sentence, the words "or FAA" after the word "UMTA" in the first instance in which the word "UMTA" appears and by substituting for the subsequent words "UMTA and FHWA" the words "UMTA, FHWA, or FAA".

19. The portion of Appendix A, following Subpart D, entitled "Section 23.64 Submission of Overall Goals." is amended by adding, in the seventh paragraph, the second sentence thereof, the words "or airport sponsor" after the words "mass transit agency".

20. The portion of Appendix A, following Subpart D, entitled "Section 23.65 Content of Justification." is amended, in the last sentence thereof, by substituting the words "FHWA, UMTA, or FAA" for the words "FHWA and UMTA".

21. The portion of Appendix A, following Subpart D, entitled "Section 23.66 Approval and Disapproval of Overall Goals." is amended by substituting, in the third sentence thereof, the words "FHWA, UMTA or FAA" for the words "FHWA and UMTA".

22. The portion of Appendix A, following Subpart D, entitled "Section 23.68 Compliance." is amended by substituting, in the final sentence of the last paragraph thereof, the words "FHWA, UMTA or FAA" for the words "UMTA or FHWA".

[FR Doc. 88–11537 Filed 5–20–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States; Enforcement Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of enforcement policy.

SUMMARY: The U.S. Fish and Wildlife Service announces the policy for the enforcement of Humane and Healthful Transport regulations. This policy aids affected members of the public in better understanding the regulations.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary E. Monaghan, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: The Service published a final rule on November 10, 1987, (52 FR 43274) that set the standards for the humane and healthful transport of wild mammals and birds into the United States. After publication of the rule, the Service received additional comments from affected members of the public maintaining some of its provisions were not clear, were unreasonable, or could actually result in inhumane shipping conditions.

Pursuant to court order these regulations were made effective retroactively to February 8, 1988. The Service is reviewing the regulations for the purpose of making improvements and clarifications (See 53 FR 15041). During this period of review, and any subsequent proposal to amend the rule, the Service intends to enforce the provisions of the regulations in a reasonable and prudent manner.

Responsible parties are expected to comply with these regulations and insure that any wildlife is transported under humane and healthful conditions The Service recognizes that there may be special circumstances where strict compliance with these regulations

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would not be in the best interest of the wildlife, or where strict compliance would provide no additional benefit to the wildlife and would be highly impracticable. The burden of showing that these special circumstances exist shall be on the responsible party.

Any deviation from the provisions of these regulations will be examined on a case by case basis. Each examination will take into consideration the reason for the deviation, i.e. a deviation was made in the crating requirements for the benefit of the species contained therein, a deviation was made because the provisions of the rule were in conflict with the provisions of other regulations, or a deviation was made in a requirement when the circumstances were such that compliance with the regulations would have caused harm to the wildlife. Any violations which could result in identifiable harm, distress, injury or death of the wildlife will be referred to the Department of Justice for prosecution.

Date: May 17, 1988.

Steve Robinson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-11428 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 53, No. 99

Monday, May 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program; Nutritional Improvements and Offer Versus Serve

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the breakfast meal pattern for the School Breakfast Program to implement several provisions of the School Lunch and Child Nutrition Amendments of 1986. This rule proposes to require that school breakfasts include fluid milk, fruit or vegetable or full strength juice and *two* servings of bread or meat or their alternates or one of each. This rule also proposes to allow schools to permit students to refuse one food item of a breakfast. This rule is expected to improve the nutritional quality of breakfasts offered under the program while maintaining local flexibility.

DATE: To be assured of consideration, comments must be submitted on or before July 22, 1988.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura at the above address or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) are included in this proposed rule. The School Breakfast Program data collection and recordkeeping requirements have been approved by OMB (OMB No. 0584-0012).

Background

Breakfasts served under the School Breakfast Program are now required to include the following components:

(1) One-half pint of fluid milk;

(2) One-half cup of fruit and/or vegetable or full strength fruit or vegetable juice; and

(3) One slice of whole-grain or enriched bread or the equivalent amount of a bread alternate or ¾ cup or one ounce, whichever is less, of whole-grain, enriched or fortified cereal.

In addition, breakfasts for children over one year of age shall, to the extent practicable, contain a serving of meat or an approved meat alternate such as cheese or peanut butter.

The Department has conducted national evaluations of the School Nutrition Programs to determine whether or not the nutritional objectives of these programs are being met. These evaluations have concluded that the breakfast served through the School Breakfast Program is superior to home breakfasts with respect to milk related nutrients (protein, calcium, phosphorous, and magnesium). However, the school breakfast provides significantly less iron and vitamin A than home breakfasts due in part to the fact that larger servings of foods containing iron are consumed at home. Based on a review of these findings, the Department has concluded that the iron content of program breakfasts needs to be increased. An additional 4.6 milligrams of iron per week is needed to raise the iron content of school breakfasts to the level of home breakfasts. The Department believes that increasing the level of iron in the school breakfast will also increase the levels of many other nutrients which occur in combination with iron.

In an effort to improve the nutritional integrity of the School Breakfast Program, Congress included provisions in the School Lunch and Child Nutrition Amendments of 1986 (Pub. L. 99-591) directing the Department to review and revise the nutritional requirements for breakfasts served under the School Breakfast Program and the Child Care Food Program to improve their nutritional quality. To facilitate improvements, the reimbursement for all breakfasts served under the programs was increased by three cents per meal. Further, the law increased State and local flexibility by extending the "offer versus serve" option to school breakfasts. Under this provision, students would be permitted to refuse one food item that they do not intend to consume.

On April 16, 1987, the Department published a proposed rule at 52 FR 12419 to amend the meal pattern requirements to implement those provisions of the law. The proposal would have required schools to offer iron fortified cereal (defined as cereal fortified to at least 25 percent of the U.S. Recommended Dietary Allowance for iron per one ounce or three-fourths cup) as a daily choice in the School Breakfast Program. The proposal would also have permitted schools, at the discretion of the school food authority, to allow students to refuse one food item provided that an additional bread/bread alternate item was offered. In other words, if the

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school offered two bread/bread alternate items, one fruit/vegetable or juice item, and milk, a student could refuse any one of those four food items.

Commenter Reaction

During the comment period that followed, the Department received 187 comments from members of Congress, State education agencies, local school food authorities, food service managers of local schools, medical and nutritional professionals (individuals and associations), food processors and industry representatives. A majority of commenters disapproved of the proposal to require that 25 percent iron fortified cereal be offered to children daily. Major concerns cited by commenters included the following: Cost factors; children's lack of acceptance of highly fortified cereals; and lack of bio-availability of iron; the high sugar level of many iron fortified cereals; a general opposition to the use of any fortified foods; and the concern that the U.S. Recommended Dietary Allowance for iron may be excessive for younger children.

The provision authorizing schools to implement an "offer versus serve" (OVS) option for breakfast attracted fewer comments (37), and those comments were about evenly divided between approvals and disapprovals. Most of the disapprovals were based on the belief that the nutritional value of school breakfasts would be undermined if students could refuse an item. Other commenters believed that children could be confused by the differing OVS requirements for breakfasts and lunches, and some commenters appeared to have misinterpreted the proposal to mean that OVS would be mandated whenever two bread/bread alternates were served at breakfast. With respect to these last comments, the Department wishes to stress that the proposal would *not have required* schools to implement OVS under any circumstances. Under the proposal, school food authorities would have been *allowed* to institute OVS provided they offered an extra bread/or bread alternate item.

The Department also believes that some of the adverse comments on 25 percent iron fortified cereal may have been based on a misinterpretation of the proposed rule. Some commenters appeared to believe that the only bread/bread alternate allowed to be served to participating children under the proposed rule would have been 25 percent iron fortified cereal. The Department emphasized that this was not the case. The proposal would have required that 25 percent iron fortified cereal be *offered* to children every day, along with *any other* bread/bread alternate items offered by the school for selection by the students. The word "offered", as used in this case, refers to making an item available as a choice, which is different from requiring that the item be served. The Department considered that this provision would afford children the opportunity to increase their daily intake of iron through the most accessible source for schools. However, as was stated in the preamble to the proposed rule, the Department has no wish to limit the School Breakfast Program to a "cereal only" program or to restrict schools' flexibility. It was for this reason that the proposal also encouraged schools to continue serving a variety of foods, including meat/meat alternates as often as practicable.

Nevertheless, in response to commenters' concerns about the previously proposed rule, the Department has reconsidered this issue and has decided to issue a reproposal to amend the breakfast meal pattern. This reproposal will expand and clarify the options available to schools for improving the nutritional quality of school breakfasts and for implementing OVS. Also, it will afford interested parties the maximum opportunity to comment.

Proposed Meal Pattern Requirements

As noted previously in this preamble, studies have shown that children who eat at home eat larger portions and, therefore, receive significantly greater amounts of certain nutrients than children who eat breakfast at school For this reason, the Department is proposing to require that an additional food item be added to school breakfasts. Under this proposal, school breakfasts would continue to include ½ pint of fluid milk and ⅛ cup or fruit or vegetable or full-strength juice. In addition, schools would have to offer one of the following options to complete the breakfast:

- Two servings of bread or bread alternate;

or

- Two servings of meat or meat alternate;

or

- One serving of bread or bread alternate and one serving of meat or meat alternate.

The Department believes this breakfast pattern will achieve the goal of increasing the level of iron in school breakfasts while at the same time providing schools with flexibility in menu planning and containing costs.

Many schools are already serving varied breakfasts containing four food items, and those schools would not have to alter their current practices. Schools which currently serve the basic three item breakfasts would be able to meet the proposed requirement by adding a relatively inexpensive fourth item to the breakfast or by offering a double serving of an item such as cereal, toast, muffin or pancakes. A daily serving of a second slice of whole wheat toast or a double sized corn muffin or a double sized serving of cereal would enhance the iron content of school breakfasts considerably.

In selecting breakfast items, schools have a variety of low cost, nutritious breakfast foods to choose from. Some examples of foods which are inexpensive yet provide iron are whole grain or enriched bread products such as toast, bagels, muffins, biscuits, cereal, pancakes, and waffles. Other foods that provide iron and can be served as meat alternates are eggs and peanut butter. Some of these items would not, by themselves, increase iron intake by the desired 4.6 miligrams per week. However, the Department envisions that these items, and others high in iron, would be used in combination with one another. Although the iron content of food items varies considerably, the Department believes that, over a menu cycle, school food service professionals will serve foods that, in combination, increase iron consumption to the desired levels. For example, on one day, a school could meet the meal pattern requirements with a selection that would not significantly increase the intake of iron above the level provided by one serving of a bread/bread alternate (e.g. a cheese omelet) and compensate the next day by providing a double serving of a cereal high in iron. Since iron is stored in the body, it is the average intake over a number of days that is important, not the specific level on a given day.

Finally, where necessary, a school could meet the fruit/vegetable requirement and *one* of the bread/bread alternate requirements by serving a fortified grain-fruit product. Therefore, the Department is proposing to amend Appendix A to specify the breakfast requirements that can be met with formulated grainfruit products. The Department is also proposing to amend the legend that is required to appear on labels for grain-fruit products to conform to this new requirement. The Department wishes to emphasize, however, that the Department would allow at least 90 days for relabeling should this provision become final.

The Department is also aware that Congressional leadership has expressed an interest in requiring school to serve

an egg at least once a week. The Department is reluctant to propose such a mandate at this time. However, the Department wishes to remain responsive to Congressional ideas for enhancing school breakfasts. Commenters are invited to comment on the feasibility and desirability of incorporating this requirement into the breakfast meal pattern.

The Department is concerned about those schools that may not be in a position to prepare the more complex breakfasts offered in some schools. Consequently, with this proposal, the Department is hoping to find a solution to the problem of increasing the nutritional value of the school breakfast without establishing an unworkable or unaffordable breakfast meal pattern. The Department believes that this proposal will provide a "workable" meal pattern for the school food service professionals who are in the best position to evaluate their students's needs and preferences and accordingly serve the appropriate breakfast.

The Department also considered the possibility of allowing schools the option of serving a three-item breakfast consisting of milk, fruit/vegetable or juice, and one serving of a cereal with high iron content in lieu of or alternating with the four-item breakfast. Such a proposal was not supported by commenters and may limit variety in the breakfast menu. For these reasons, the Department has decided not to propose a three-item breakfast containing iron-fortified cereal at this time. Nevertheless, the Department invites commenters to suggest workable three-item breakfasts that would address the need to increase the iron content and that might be considered for a future rulemaking.

To aid in the absorption of iron, the Department recommends that citrus fruit or juice or another fruit or vegetable or juice high in Vitamin C be served daily. The Department solicits comments on whether or not the daily service of a good vitamin C source should be *required.*

Offer Versus Serve

This proposed rule would also *allow* school food authorities to implement OVS for their breakfast programs. Students could then be allowed to refuse *any one* food item of the four offered. This proposal is intended to comply with the statutory mandate to provide school food authorities with flexibility and to reduce plate waste. The Department emphasizes, however, that schools would *not* be required to implement OVS; this decision would be purely a local option. The Department would prefer that children accept all items in a four item breakfast to provide an enhanced level of nutrients. Nevertheless, the Department recognizes that requiring all children to accept all four items might result in increase plate waste. This proposal, therefore, will enable schools to avoid exessive plate waste when larger breakfasts are served. OVS will also provide schools with another tool for containing costs.

Technical Amendments

Finally, the Department is proposing several technical amendments in this rule. A breakfast meal pattern chart would be included in § 220.8. The table would update existing requirements to include the proposed provisions and is expected to clarify the meal pattern requirements. In addition, the regulatory language, including the newly added table, is revised to include the provisions of the previously issued final rule that allows nuts and seeds and nut or seed butters to be used as meat alternates (51 FR 16807, published May 7, 1986) in the National School Lunch Program. While the provisions of that rule were administratively extended to cover the breakfast program, no regulatory changes were made in Part 220 at that time since the services of meat/meat alternates in the breakfast program is a recommendation, not a requirement.

Child Care Food Program

The Department will address the Child Care Food Program separately at a later date.

List of Subjects in 7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, 7 CFR Part 220 is proposed to be amended as follows:

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 is revised to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8:

a. Paragraph (a) is revised.

b. Paragraphs (b)(1) and (b)(3) are removed; paragraph (b)(2) is redesignated as paragraph (b) and a title is added to read *"Infant meal pattern"*; and previously designated paragraphs (b)(2)(i), (iii) are redesignated as paragraphs (b)(1), (2), and (3) respectively.

§ 220.8 Requirements for breakfast.

(a)(1) *Food Components.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (a)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Bread/Bread alternate.

(B) Meat/Meat alternate.

(2) *Minimum required breakfast quantities.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain at least the per breakfast minimum quantities of each item for the age and grade levels specified in the following table:

SCHOOL BREAKFAST MEAL PATTERN—REQUIRED MINIMUM SERVING SIZES

Food components/items	Ages 1 and 2	Ages 3, 4 and 5	Grades K–12
MILK (Fluid):			
(As a beverage, on cereal, or both)	1/2 cup	3/4 cup	1/2 pint.
JUICE/FRUIT/VEGETABLE [1]			
Fruit and/or vegetable; or Full-strength: Fruit Juice or vegetable Juice	1/4 cup	1/2 cup	1/2 cup.
BREAD/BREAD ALTERNATIVES [2]			
Bread (whole-grain or enriched)	1/2 slice	1/2 slice	1 slice.

SCHOOL BREAKFAST MEAL PATTERN—REQUIRED MINIMUM SERVING SIZES—Continued

Food components/items	Ages 1 and 2	Ages 3, 4 and 5	Grades K–12
Biscuit, roll, muffin or equal serving of cornbed, etc. (whole-grain or enriched meal or flour).	1/2 serving	1/2 serving	1 serving.
Cereal (whole-grain or enriched or fortified)	1/4 cup or 1/3 cup oz	1/3 cup or 1/2 oz	3/4 cup or 1 oz.
MEAT/MEAT ALTERNATES:			
Meat, poultry, or fish	1/2 oz	1/2 oz	1 oz.
Cheese	1/2 oz	1/2 oz	1 oz.
Egg	1	1	1
Peanut Butter or other nut or seed butters	1 Tbsp	1 Tbsp	2 Tbsp.
Cooked dry beans and peas	2 Tbsp	2 Tbsp	4 Tbsp.
Nuts and/or Seeds (as listed in program guidance)	1/2 oz	1/2 oz	1 oz.

[1] A citrus juice or fruit or a fruit or vegetable or juice that is a good source of vitamin C (See Menu Planning Guide for School Food Service—PA–1260) is recommend to be offered daily.
[2] See Food Buying Guide for Child Nutrition Programs, PA–1331 (1984) for serving sizes for breads and bread alternates.
[3] No more than one ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (a)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

* * * * *

3. Appendix A of Part 220 is proposed to be amended as follows:

A. Paragraph 1(a) is revised.

b. The third and fourth sentences of the quotation in paragraph 1(b) are removed, and a new sentence is added in their place. The addition and revision read as follows:

Appendix A—Alternate Foods for Meals Formulated Grain-Fruit Products

1. * * *

(a) Formulated grain-fruit products may be used to meet *one* bread/bread alternate and the fruit/vegetable requirement in the breakfast pattern specified in § 220.8.

(b) * * * For breakfasts, it meets the requirements for fruit/vegetable/juice and one bread/bread alternate. * * *

* * * * *

Anna Kondratas,

Administrator.

Date: May 17, 1988.

[FR Doc. 88–11512 Filed 5–20–88; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Prohibition on Direct Payment of Fees to Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: We are withdrawing the proposed amendments to the regulations which were published in the **Federal Register** on March 17, 1987 (52 FR 8309), because of a U.S. Supreme Court decision which eliminates the need for over proposed rules.

DATE: The withdrawal is effective May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPRM) to clarify our policy of not withholding a recipient's retroactive supplemental security income (SSI) benefits to pay a representative's fees. In a recent decision (*Bowen, Secretary of Health and Human Services* v. *Galbreath*, 56 U.S.L.W. 4187 (U.S. Feb. 24, 1988)), the U.S. Supreme Court ruled that Federal courts lack the authority to order the Secretary of Health and Human Services to withhold a portion of past-due SSI benefits to pay attorneys' fees incurred in title XVI cases. This decision reversed the judgment of the U.S. Circuit Court of Appeals for the Eighth Circuit in *Galbreath* v. *Bowen*, 799 F. 2d 370 (8th Cir. 1986), which had affirmed the district court order that required the Secretary to withhold a portion of Ms. Galbreath's past-due SSI benefits to pay her attorney fees.

Because of the Supreme Court decision, the proposed clarifying amendments to or current rules in 20 CFR 416.1520 and 416.1528 are no longer needed. Accordingly, the NPRM published in the **Federal Register** at 52 FR 8309 on March 17, 1987, entitled Prohibition on Direct Payment of Fees to Representatives is withdrawn.

Dated: April 26, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 18, 1988.

Don M. Newman,

Acting Secretary of Health and Human Services.

[FR Doc. 88–11364 Filed 5–20–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 67

Historic Preservation Certification; Tax Benefits

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule restates and makes amendments to the procedures by which owners desiring tax benefits for rehabilitation of historic buildings apply for certifications pursuant to section 48(g) and section 170(h) of the Internal Revenue Code of 1986. These tax laws require certifications from the Secretary of the Interior in order for taxpayers to receive tax benefits. This rule establishes procedures whereby taxpayers apply for these certifications. This rule also establishes procedures to qualify historic properties for Federal income and estate tax deductions for charitable contributions of partial interests in real property.

DATE: Written comments must be delivered or mailed by July 22, 1988.

ADDRESS: Send comments to: Associate Director, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: H. Ward Jandl, Chief, Technical Preservation Services Branch, Preservation Assistance Division, (202) 343–9584, or Carol D. Shull, Chief of Registration, National Register Branch, Interagency Resources Division, (202) 343–9536, National Park Service, P.O. Box 37127, U.S. Department of the Interior, Washington, DC. 20013–7127.

SUPPLEMENTARY INFORMATION: On October 7, 1977, a final rulemaking was published in the **Federal Register** (42 FR 54548) to amend Title 36 of the Code of Federal Regulations by adding a new Part 67 concerning historic preservation certifications made by the Secretary of the Interior pursuant to the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1519). Between February 1978 and June 1981, this rulemaking was designated and transferred to Title 36 CFR Part 1208.

On November 6, 1978, the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2828) became law, necessitating amendments to the regulations. Section 701(f) of this act clarified portions of section 2124 of the Tax Reform Act of 1976, while section 315 provided an investment tax credit to encourage the rehabilitation of older buildings. Certifications of rehabilitation by the Secretary were required if an owner chose to elect the tax credit when the building was a "certified historic structure." On December 19, 1980, a final rulemaking was published in the **Federal Register** (45 FR 83486) incorporating these changes from the Revenue Act of 1978.

On December 17, 1980, the Tax Treatment Extension Act of 1980 (Pub. L. 96–541, 94 Stat. 3204) became law, providing a three-year extension of tax provisions relating to historic preservation and revising and making permanent rules allowing deductions for charitable contributions of qualified interests in real property for conservation purposes. On August 31, 1981, the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 172) became law, replacing existing tax incentives for historic buildings with a new 25 percent investment tax credit and repealing and replacing certain tax provisions contained within the Tax Reform Act of 1976 and the Revenue Act of 1978. Additional modifications to the tax credits were made in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), signed into law September 3, 1982. On March 12, 1984, a final rulemaking was published in the **Federal Register** (49 FR 9302) to incorporate changes brought about by the legislation described above and to modify the certification process, including the establishment of a fee system for the processing and review of rehabilitation certification requests.

On October 22, 1986, the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) became law, replacing existing tax incentives for historic buildings with a 20 percent investment tax credit.

The proposed rule incorporates changes brought about by the Tax Reform Act of 1986, but the certification process a taxpayer must follow remains the same as under previous regulations: The taxpayer continues to complete an application form, which is then reviewed by the State Historic Preservation Officer (SHPO) and the National Park Service (NPS). Notification as to certification continues to be made by the NPS after considering the recommendations of SHPOs. The proposed rule eliminates the system of expedited review for qualified States in existing regulations. The change reflects the increased reliance by the NPS on recommendations from *all* SHPOs providing evidence of a thorough review. In such cases the recommendations of SHPOs are generally followed, but by law all certification decisions are made by the Secretary, and the decision of the Secretary may differ from the recommendation of the SHPO.

In addition, the proposed rule reinstates at § 67.2 the definition of State Historic Preservation Officer as the State official designated to act as liaison for purposes of reviewing and commenting upon historic preservation certification applications. Section 67.3 has been revised to make clear that the NPS decision with respect to certification is made on the basis of the written descriptions in the application form. In the event of discrepancies between the application form and other, supplementary material submitted with it (such as architectural plans, drawings and specifications), the application form shall take precedence. The penalties for falsification of factual representations in the application have also been specified. This section has also been modified to state that the review period for certification requests is 30 days at the State level and 30 days at the Federal level upon receipt of a complete, adequately documented application. Such time periods are not binding, however.

With respect to individual listings in the National Register of Historic Places containing more than one building, § 67.4 has been revised to make clear that the owner must request a certification of significance for all the buildings in such listings, and to clarify the provision in existing regulations concerning buildings judged by the Secretary to have been functionally related historically to serve an overall purpose. Such structures will be treated as a single certified historic structure when rehabilitated as part of an overall project. A sentence has been added to § 67.6 to specify that for projects involving multiple buildings lacking a historic functional relationship, the certification decision will be made for each building regardless of their grouping for ownership or development purposes.

Section 67.4 has been revised to require that an owner notify the Secretary of any substantial damage to a certified historic structure caused by fire or other reason except rehabilitation work and to permit the Secretary to withdraw a certification of significance. Section 67.4 has also been revised to make clear that the Secretary may require additional specific information on the significance of a building that is not contained in the National Register documentation in order to issue certifications of significance or nonsignificance and to clarify when determinations of significance for buildings covered by nonhistoric surface material will be made.

Section 67.6 has also been revised to make clear that the Secretary will reivew a rehabilitation of a certified historic structure in a historic district first as it affects the structure and second as it affects the historic district. A new subparagraph has been added to this section covering phased projects; generally, final certification of phased projects will not be issued until all phases have been completed.

The Secretary of the Interior's Standards for Rehabilitation given as § 67.7 have been slightly modified from language in existing regulations. The basic preservation principles elucidated in the Standards, however, remain the same. The changes do not affect the manner in which the Secretary determines whether a rehabilitation project is consistent with the historic character of the structure and the district in which it is located. The Standards continue to apply to historic buildings of all materials, construction types, sizes, and occupancy, to the

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exterior and the interior of historic buildings, to attached, adjacent, or related new construction, and to the site and environment of the historic buildings undergoing rehabilitation. Additionally, the requirements in existing regulations governing existing external walls contained in the Economic Recovery Tax Act of 1981 have been modified to reflect the changes enacted by the Tax Reform Act of 1986.

As a matter of usual practice, the Department publishes all agency rules for comments prior to making them effective. Because these rules apply to an ongoing program, the existing regulations will remain in place until such time as those proposed rules are made final. The Department will be receiving comments on these proposed rules within the time period specified above and will publish final rules after consideration of comments.

To permit a public understanding of the tax consequences of certifications made by the Secretary of the Interior, the following are general descriptions of the tax provisions contained in both current and prior laws. The term "depreciable property" as used in these descriptions means those properties subject to the allowance for depreciation under section 167 of the Internal Revenue Code and generally excludes owner-occupied homes.

The following general description is given of the tax provisions contained in section 2124 of the Tax Reform Act of 1976:

1. Section 2124(a). (section 191 of the Internal Revenue Code of 1954). Permitted a 60-month amortization of certain rehabilitation expenses made in connection with qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

2. Section 2124(b). (section 280B of the Code). Disallowed a deduction for demolition expenses of qualified depreciable properties. This provision applied to demolitions beginning after June 30, 1976, and before January 1, 1984;

3. Section 2124(c). (section 167(n) of the Code). Generally precluded accelerated depreciation for buildings on the site of qualified depreciable properties. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

4. Section 2124(d). (section 167(o) of the Code). Provided special depreciation rules for qualified rehabilitated property. This provision was repealed by the Economic Recovery Tax Act of 1981 and expired on December 31, 1981;

5. Section 2124(e). (sections 170(f)(3) and 170(h), 2055(e)(2) and 2522(c)(2) of the Code). Amended charitable contribution deductions on income, estate, and gift taxes to liberalize deductions for conservation purposes including the preservation of historically important land areas or certified historic structures.

The following general description is given of the tax provisions contained in Section 315 of the Revenue Act of 1978:

1. Section 315. (section 38 and section 48 of the Code). Permitted an investment tax credit for expenses incurred in rehabilitating depreciable properties. This provision was replaced effective January 1, 1982.

The following general description is given of the tax provisions contained in section 6 of the Tax Treatment Extension Act of 1980:

1. Section 6. (section 170(f)(3) and (section 170(h) of the Code). Permits charitable contribution deductions for income, estate, and gift taxes for qualified conservation contributions, including contributions of a qualified real property interest in a historically important land area or certified historic structure.

The following general description is given of the tax provisions contained in section 212 and section 214 of the Economic Recovery Tax Act of 1981:

1. Section 212(a). (section 46(b) and section 48(g) of the Code). Permitted a 25 percent investment tax credit on rehabilitation expenses incurred in connection with certified rehabilitation of a certified historic structure. This provision was replaced effective January 1, 1987, with a 20 percent investment tax credit described below.

2. Section 212(b). (section 48(g) of the Code). Precluded use of a 15 percent (buildings 30–39 years old) or 20 percent (buildings 40 years of older) investment tax credit for a rehabilitation of a building within a registered historic district unless the building is certified as not being of historic significance to the district.

3. Section 212(d). Repealed sections 167(n), 167(o), and 191 of the Code effective January 1, 1982.

The following general description is given of the tax provisions contained in section 251 of the Tax Reform Act of 1986, which also redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986:

1. Section 251(a). (section 46(b) and section 48(g) of the Internal Revenue Code of 1986). Permits a 20 percent investment tax credit on rehabilitation expenses incurred from January 1, 1987, in connection with a certified rehabilitation of a certified historic structure.

2. Section 251(b). (Section 48(g) of the Code). Precludes use of a 10 percent (buildings built before 1936) investment tax credit for a rehabilitation of a certified historic structure, including buildings within a registered historic district, unless the building is certified as not being of historic significance to the district.

The provisions described above require the Secretary of the Interior to make one or more of the following classes of certifications:

a. Certified Historic Structures. All the tax provisions described above are related to so-called certified historic structures, which are defined as qualified depreciable buildings that either are listed in the National Register or are located within a registered historic district and certified by the Secretary as contributing to the historic significance of the district. For purposes of other rehabilitation tax credits available under section 48(g) of the Internal Revenue Code, any building located in a registered historic district is considered a certified historic structure unless the Secretary of the Interior has determined that the building is not of historic significance to the district.

b. Certified Rehabilitations. In order for the tax consequences relating to rehabilitation to accrue, the Secretary must determine not only that the rehabilitation was undertaken on a certified historic structure but also that it meets certain standards with respect to the preservation of its historic character.

c. Certified Statutes and Certified State or Local Historic Districts. Qualified historic buildings located in historic districts designated under a statute of an appropriate State or local govenment are subject to the tax consequences discussed above if the statute is certified by the Secretary as containing criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district and if the district is certified by the Secretary as meeting substantially all the requirements for the listing of districts in the National Register.

Section 6 of the Tax Treatment Extension Act of 1980 (section 170(h)(4) of the Code), which explains what properties may qualify for the allowance of deductions for contributions of partial interests in property, lists four definitions for the term "conservation purpose." The last of these is "the preservation of a historically important land area or a certified historic structure." For purposes of this provision, the term "certified historic structure" encompasses nondepreciable structures such as owner-occupied residences as well as depreciable structures and includes the parcels of land on which structures stand.

Historic structures within registered historic districts may qualify for charitable contributions through the certification of historic significance process (§ 67.4). This requirement is consistent with the provisions of the law.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for the implementation of the historic preservation certification process pursuant to section 48(g) and section 170(h) of the Internal Revenue Code of 1986. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Department of the Interior, the Department of the Treasury and the Internal Revenue Service, other government agencies, and the public.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. These revisions do not result in an impact on the economy of $100 million or any of the other effects listed in the Executive Order. The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009.

Environmental Impact Statement

This rulemaking is developed under the authority of section 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C. 470a–1(a) (170 ed.), as amended; section 48(g) of the Internal Revenue Code of 1986 (90 Stat. 1519, as amended by 100 Stat. 2085) 26 U.S.C. 48(g) and section 170(h) of the Internal Revenue Code of 1986 (94 Stat. 3204) 26 U.S.C. 170(h). Such procedures have no potential for significant environmental impact and are categorically excluded from the requirement for compliance with the National Environmental Policy Act. Therefore, it is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Drafting Information

The originators of these procedures are H. Ward Jandl, Preservation Assistance Division; Carol D. Schull, Interagency Resources Division; and Lars A. Hanslin, Office of the Solicitor.

List of Subjects in 36 CFR Part 67

Administrative practice and procedures, Historic preservation, Income taxes.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Date: February 23, 1988.

In consideration of the foregoing comments, 36 CFR Part 67 is proposed to be revised as follows:

PART 67—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO SECTION 48(g) AND SECTION 170(h) OF THE INTERNAL REVENUE CODE OF 1986

Sec.

67.1 Section 48(g) and section 170(h) of the Internal Revenue Code of 1986.
67.2 Definitions.
67.3 Introduction to certifications of significance and rehabilitation and information collection.
67.4 Certifications of historic significance.
67.5 Standards for Evaluating Significance within Registered Historic Districts.
67.6 Certifications of rehabilitation.
67.7 Standards for rehabilitation.
67.8 Certification of statutes.
67.9 Certifications of state or local historic districts.
67.10 Appeals.
67.11 Fees for processing rehabilitation certification requests.

Authority: Sec. 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C. 470a–1(a) (170 ed.), as amended; Sec. 48(g) of the Internal Revenue Code of 1986 (90 Stat. 1519, as amended by 100 Stat. 2085) 26 U.S.C. 48(g); and Sec. 170(h) of the Internal Revenue Code of 1986 (94 Stat. 3204) 26 U.S.C. 170(h).

§ 67.1 Section 48(g) and section 170(h) of the Internal Revenue Code of 1986.

(a) Section 48(g) of the Internal Revenue Code of 1986, 90 Stat. 1519, as amended by 100 Stat. 2085, and section 170(h) of the Internal Revenue Code of 1986, 94 Stat. 3204, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service (NPS); the following five regional offices issue certifications for the States listed below them.

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503:

Alaska

Mid-Atlantic Regional Office, National Park Service, U.S. Customs House, Second Floor, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106:

Connecticut
Delaware
District of Columbia
Indiana
Maine
Maryland
Massachusetts
Michigan
New Hampshire
New Jersey
New York
Ohio
Pennsylvania
Rhode Island
Vermont
Virginia
West Virginia

Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225:

Colorado
Illinois
Iowa
Kansas
Minnesota
Missouri
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wisconsin
Wyoming

Southeast Regional Office, National Park Service, 75 Spring Street SW, Atlanta, Georgia 30303:

Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

Western Regional Office, National Park Service, 450 Golden Gate Avenue,

P.O. Box 36063, San Francisco, California 94102:

Arizona
California
Hawaii
Idaho
Nevada
Oregon
Washington

(b) The Washington office of the NPS establishes program direction and considers appeals of certification denials. The procedures for obtaining certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests.

(c) States receiving Historic Preservation Fund grants from the Department participate in the review of requests for certification, through recommendations to the Secretary by the State Historic Preservation Office (SHPO). The SHPO acts on behalf of the State in this capacity and not as an agent of the Federal government. The NPS is not responsible for any actions, errors or omissions of the SHPO.

(1) Requests for certifications and approvals of proposed rehabilitation work are sent by an owner first to the appropriate SHPO for review. State comments are recorded on National Park Service Review Sheets (NPS Forms 10–168 (d) and (e)) and are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information. The decision of the Secretary may differ from the recommendation of the SHPO.

(2) A State may choose not to participate in the review of certification requests. States not wishing to participate in the comment process should notify the Secretary in writing of this fact. Owners from such nonparticipating States may request certifications by sending their applications directly to the appropriate NPS regional office listed above. In all other situations, certification requests are sent first to the appropriate SHPO.

(d) The Internal Revenue Service is responsible for all procedures, legal determinations, and rules and regulations concerning the tax consequences of the historic preservation provisions described above. Any certification made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code. For example, certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under section 167 of the Code.

§ 67.2 Definitions.

As used in these regulations:

"Certified Historic Structure" means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code of 1986 which is either individually listed in the National Register; or located in a registered historic district and certified by the Secretary as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, are not independently considered certified structures. Rowhouses, even with abutting or party walls, are considered as separate buildings. For purposes of the certification decisions set forth in this part, a certified historic structure also includes the site and environment of the structure. For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify; may be a structure other than a building; may also be a remnant of a building such as a facade, if that is all that remains; and may include the land area on which it is located. For purposes of the other rehabilitation tax credits under section 48(g) of the Internal Revenue Code, any building located in a registered historic district is considered a certified historic structure so that other rehabilitation tax credits are not available; exemption from this provision can generally occur only if the Secretary has determined, prior to the rehabilitation of the building, that it is not of historic significance to the district.

"Certified Rehabilitation" means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, where applicable, with the district in which such structure is located.

"Duly Authorized Representative" means a State or locality's Chief Elected Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

"Historic District" means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.

"Inspection" means a visit by an authorized representative of the Secretary or a SHPO to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

"National Register Program" means the survey, planning, and registration program that is administered by the Secretary pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register program appear in 36 CFR Part 60, *et seq.*

"Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a building or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

"Registered Historic District" means any district listed in the National Register or any district (a) which is designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and (b) which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the Naticnal Register.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the Secretary.

"Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

"Standards for Rehabilitation" means the secretary's Standards for Rehabilitation set forth in § 67.7 hereof.

"State Historic Preservation Officer" (SHPO) means the official within each State designated by the Governor or a State statute to act as liaison for purposes of administering historic preservation programs within that State.

"State or Local Statute" means a law of a State or local government designating, or providing a method for the designation, of historic district or districts.

§ 67.3 Introductions to certifications of significance and rehabilitation and information collection.

(a) Who may apply:

(1) Ordinarily, only the fee simple owner of the building in question may apply for the certifications described in §§ 67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(2) Upon request of a SHPO the Secretary may determine whether or not a particular building located within a registered historic district qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the fee simple owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30-day time period to submit written comments to the Secretary prior to decision. Such time period for comment may be waived by the fee simple owner.

(3) The Secretary may undertake the certifications described in §§ 67.4 and 67.6 on his own initiative after notifying the fee simple owner and the SHPO and allowing a comment period as specified in § 67.3(a)(2).

(4) Owners of buildings which appear to meet National Register criteria but are not yet listed in the National Register or which are located within potential historic districts may request preliminary determinations from the Secretary as to whether such buildings may qualify as certified historic structures when and if the buildings or the potential historic districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for buildings outside the period or area of significance of registered historic districts as specified in § 67.5(c) Procedures for obtaining these determinations shall be the same as those described in § 67.4. Such determinations are preliminary only and are not binding on the Secretary. Preliminary determinations of significance will be made final as of the date of the listing of the individual building or district in the National Register. For buildings outside the period or area of significance of a registered historic district, preliminary determinations of significance will be made final, except as provided below, when the district documentation of file with the NPS is formally amended. If during review of a request for certification of rehabilitation, it is determined that the building does not contribute to the significance of the district because of charges which occurred after the preliminary determination of significance was made, certified historic structure designation will be denied.

(5) Owners of building not yet designated certified historic structures may obtain determinations from the Secretary on whether or not rehabilitation proposals meet the Secretary's Standards for Rehabilitation. Such determinations will be made only when the owner has requested a preliminary determination of the significance of the building as described in paragraph (a)(4) of this section and such request for determination has been acted upon by the NPS. Final certifications of rehabilitation will be issued only to owners of certified historic structures. Procedures for obtaining these determinations shall be the same as these described in § 67.6.

(b) How to apply:

(1) Requests for certifications of historic significance and of rehabilitation shall be made on Historic Preservation Certification Applications (NPS Form No. 10–168). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009. Part 1 of the application shall be used in requesting a certification of historic significance or nonsignificance and preliminary determinations, while Part 2 shall be used in requesting an evaluation of a proposed rehabilitation project or a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit.

(2) Application forms are available from NPS regional offices or the SHPOs.

(3) Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the SHPO in participating States. Requests in nonparticipating States shall be sent directly to the appropriate NPS regional office.

(4) Generally reviews of certification requests are concluded within 60 days of receipt of a complete, adequately documented application, as defined in §§ 67.4 and 67.6 (30 days at the State level and 30 days at the Federal level). Where a State has chosen not to participate in the review process, review by the NPS generally is concluded within 60 days of receipt of a complete, adequately documented application. Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(5) Approval of applications and amendments to applications is conveyed only in writing by duly authorized officials of the NPS acting on behalf of the Secretary. Decisions with respect to certifications are made on the basis of the descriptions in the application form. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the application form shall take precedence. Falsification of factual representations in the application is subject to criminal sanctions of up to $10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

(6) It is the owner's responsibility to notify the Secretary if application reviews are not completed within the time periods specified above. The Secretary in turn will consult with the appropriate office to ensure that the review is completed in as timely manner as possible in the circumstances.

(7) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit Part 1 of the Historic Preservation Certification Application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the building is already a

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certified historic structure. Reviews of rehabilitation projects will also not be undertaken if the owners has objected to the listing of the building in the National Register.

§ 67.4 Certifications of historic significance.

(a) Requests for certifications of historic significance should be made by the owner to determine—

(1) That a building located within a registered historic district is of historic significance to such district; or

(2) That a building located within a registered historic district is not of historic significance to such district; or

(3) That a building not yet on the National Register appears to meet National Register criteria; or

(4) That a building located within a potential historic district appears to contribute to the significance of such district.

(b) If a building is individually listed in the National Register it automatically is considered a certified historic structure, except as provided below.

(1) To determine whether or not a building is individually listed or is part of a district in the National Register, the owner may consult the listing of National Register properties in the **Federal Register** (found in most large libraries), or contact the appropriate SHPO for current information.

(2) If the building is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 CFR Part 60.

(3) Some individual listings in the National Register include more than one building. In such cases, the owner must submit a Part 1 which describes all of the buildings within the listing. The Secretary will utilize the Standards for Evaluating Significance within Registered Historic Districts (§ 67.5) for the purpose of determining which of the buildings included within the listing are of historic significance to the property. In the event that the individually listed property has been subdivided into more than one ownership parcel after the date of listing or in the event the listing contains an extraordinary number of buildings, an owner may request from the NPS a written waiver from this requirement and specific instructions as to which buildings must be described.

(4) Owners shall report to the Secretary any substantial alterations or damage to a certified historic structure. The Secretary may withdraw a certification of significance, upon thirty days notice to the owner, if a building or its site and environment has been damaged by fire or other causes (other than rehabilitation work), effective as of the date of the occurrence. For damage caused by unacceptable rehabilitation work, see 36 CFR 67.6(f).

(c) If a building is located within the boundaries of a registered historic district and the owner wishes the Secretary to certify whether the building contributes or does not contribute to the historic significance of the district or if the owner is requesting a preliminary determination of significance in accordance with § 67.3(a)(4), the owner must complete Part 1 of the Historic Preservation Certification Application according to instructions accompanying the application. Such documentation includes but is not limited to:

(1) Name and mailing address of owner;

(2) Name and address of building;

(3) Name of historic district;

(4) Current photographs of building; photographs of the building prior to alteration if rehabilitation has been completed; photograph(s) showing the building along with adjacent buildings and structures on the street; and photographs of interior features and spaces adequate to document significance;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance summrizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e., unusual building techniques, important event that took place there, etc.).

(7) Sketch map clearly delineating building's location within the district; and

(8) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) Properties containing more than one building where the buildings are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the National Register or is located within a registered historic district, when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. For questions concerning demolition of separate structures as part of an overall rehabilitation project, see § 67.6. In the case of buildings within a registered historic district that are judged to be functionally related historically, the functional unit as well as its component buildings will be evaluated to determine if they contribute both to the unit and to the historic significance of the district as in § 67.4(h).

(e) Applications for preliminary determinations for individual listing must show how the building individually meets the National Register Criteria for Evaluation. An application for a building located in a potential historic district must document how the district meets the criteria and how the building contributes to the significance of that district. An application for a preliminary determination for building in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the building contributes to the significance of the district or document the individual significance of the building. Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR Part 60 and National Register Bulletin 16, "Guidelines for Completing National Register of Historic Places Forms" (available from SHPOs and NPS regional offices). Applications must also include written assurance from the State that the district nomination is being revised to expand its significance or, for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand its significance. Owners should understand that confirmation of intent to nominate by a State does not constitute listing in the National Register, nor does it constitute a certification of significance as required by law for Federal tax incentives. Owners should further understand that they are proceeding at their own risk. In the event that: The building or district is not listed in the National Register for procedural, substantive or other reasons; district documentation is not formally amended; or the significance of the building has been lost as a result of alterations or damage, final certifications will not be issued. The SHPO for National Register districts and the duly authorized representative in the case of certified districts must submit documentation and have it approved by the NPS to amend the National Register nomination or certified district before the preliminary certification of significance can become final.

(f) For purposes of the other rehabilitation tax credits under section 48(g) of the Internal Revenue Code, buildings within registered historic districts are presumed to contribute to the significance of such districts unless certified as nonsignificant by the Secretary. Owners of nonhistoric buildings within registered historic districts, therefore, must obtain certification of nonsignificance in order to qualify for those investment tax credits. If an owner begins or completes a substantial alteration (within the meaning of Sec. 167(n) of the Internal Revenue Code) of a building in a registered historic district without knowledge of requirements for certification of nonsignificance, he or she may request certification that the building was not of historic significance to the district prior to substantial alteration in the same manner as stated in § 67.4(c). The owner should be aware, however, of the requirements under section 48(g) of the Internal Revenue Code that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such substantial alteration, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

(g) If a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow different procedures depending on whether the building is individually listed in the National Register or is within a registered historic district. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment. Moving a building may result in delisting of a National Register building or, for buildings within a registered historic district, denial or revocation of a certification of significance; consequently, a moved building may, in certain circumstances, be ineligible for rehabilitation certification.

(1) Documentation must be submitted that demonstrates: (i) The effect of the move on the building's integrity and appearance (any proposeed demolition, proposed changes in foundations, etc.); (ii) photographs of the site and general environment of the proposed site; (iii) evidence that the proposed site does not possess historical significance that would be adversely affected by the moved building; (iv) the effect of the move on the distinctive historical and visual character of the district, where applicable; and (v) the method be used for moving the building.

(2) For buildings individually listed in the National Register, the procedures contained in 36 CFR Part 60 must be followed prior to the move, or the building will be removed from the National Register, will not be considered a certified historic structure, and will have to be renominated for listing. The owner may submit a Part 1 in order to receive a preliminary determination from the NPS of whether a move will cause the property to be delisted. However, preliminary approval of such a Part 1 does not satisfy the requirements of 36 CFR Part 60. The SHPO must follow the remaining procedures in that regulation so that the NPS can determine that the moved building will remain listed in the National Register and retain its status as a certified historic structure.

(3) If an owner moves (or proposes to move) a building into a registered historic district or moves (or proposes to move) a building elsewhere within a registered historic district, a Part 1 containing the required information described in subparagraph (1) above must be submitted. The building to be moved will be evaluated to determine if it contributes to the historic significance of the district both before and after the move as in § 67.4(h).

(h) Buildings within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the Secretary's Standards for Evaluating Significance within Registered Historic Districts as set forth in § 67.5.

(i) Once the significance of a building located within a registered historic district or a potential historic district has been determined by the Secretary, written notification will be sent to the owner and the SHPO in the form of a certification or significance or nonsignificance.

§ 67.5 Standards for Evaluating Significance within Registered Historic Districts.

(a) Buildings located within registered historic districts are reviewed by the Secretary to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within Registered Historic Districts.

(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of nonsignificance for loss of integrity. In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage.

(c) Certifications of significance and nonsignificance are made on the basis of the application documentation and existing National Register documentation. Statements of significance of particular buildings as generally contained in National Register documentation are not conclusive for purposes of this part and are not to be relied upon by an owner in light of the additional specific information required in applications for certifications of significance or nonsignificance. In the event that a certification request is received for a building which is outside a district's established period or area of significance, a preliminary determination of significance will only be issued if the request includes adequate documentation to support the revision and if there is written assurance from the SHPO that the district nomination in question is being revised to expand its significance or for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand the significance. Final certifications will be issued when the district documentation is officially amended unless the significance of the building has been lost as a result of alteration or damage. For procedures on amending listings to the National Register, consult the appropriate SHPO or NPS regional office.

(d) Where rehabilitation credits are sought, certifications of significance will be made on the appearance and

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condition of the building before rehabilitation was begun.

(e) In cases where a nonhistoric surface material obscures a facade, it may be necessary for the owner to remove a portion of the surface material prior to requesting certifications so that a determination of significance can be made. If the obscured facade has substantially retained historic integrity, and the building otherwise is considered contributing to the historic district, the building will be determined a certified historic structure upon removal of the obscuring surface material; and will be considered as of historic significance to the district, if otherwise qualified, even with the obscuring material intact for purposes of the determinations described in § 67.4(a)(2) hereof.

(f) Additional guidance on certifications of historic significance is available from SHPOs and NPS regional offices.

§ 67.6 Certifications of rehabilitation.

(a) Owners who want rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a certified rehabilitation, shall comply with the procedures listed below. A fee, as described in § 67.11, for reviewing all proposed, ongoing, or completed rehabilitation work is charged by the Secretary. Final action will not be taken on any application until the appropriate remittance is received.

(1) to initiate review of a rehabilitation project for certification purposes, an owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the building(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application. The social security or taxpayer identification number(s) of all owners must be provided in the application. Other documentation, such as window surveys or cleaning specifications, may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the application. Where necessary documentation is not provided, review and evaluation may not be completed. Owners are encouraged to submit Part 2 of the application prior to undertaking any rehabilitation work. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(2) A project does not become a certified rehabilitation until it is completed and so designated by the NPS. A determination that the completed rehabilitation of a building not yet designated a certified historic structure meets the Secretary's Standards for Rehabilitation does not constitute a certification of rehabilitation. When requesting certification of a completed rehabilitation project, the owner shall submit a Request for Certification of Completed Work (NPS Form 10–168c) and provide the project completion date and a signed statement that the completed rehabilitation project meets the Secretary's Standards for Rehabilitation and is consistent with the work described in Part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as determined by the Secretary, and related demolition, construction or rehabilitation work which may affect the historic qualities, integrity or site and environment of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) All elements of the rehabilitation project must meet the Secretary's ten Standards for Rehabilitation (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for rehabilitation work undertaken by previous owners or third parties. However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project undertaken by the owner, or beneficial owner, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstances of each application and whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and whether property conveyances, reconfigurations, ostensible ownership transfers of other transactions were transactions which purportedly limit the scope of a rehabilitation project the purpose of review by the Secretary without substantially altering beneficial ownership or control of the propery. The fact that a building may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.

(2) Conformance to the Standards will be determined by evaluating the building as it existed prior to the commencement of the rehabilitation project, regardless of when the building becomes or became a certified historic structure.

(3) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification will be issued on the merits of the overall projects rather than an individual components. For rehabilitation projects where there is no historical functional relationship among the structures, the certification decision will be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.

(4) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of certification of the rehabilitation. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure will generally result in denial of certification of the rehabilitation unless a determination has been made that the building to be demolished is not a certified historic structure as in § 67.4(a). In rehabilitation projects where the structures have been determined to be functionally related historically, demolition may be approved, in limited circumstances, when (i) the component is outside the period of significance of the property, or (ii) the component is so deteriorated or altered that its integrity has been irretrievably lost; or (iii) the component is a secondary structure or feature, generally one that lacks special historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is presented to show that retention of the component is not technically or economically feasible.

(5) In situations involving rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and make a certification decision accordingly. A rehabilitation which is not consistent with the historic character of a structure which contributes to the significance of a historic district concomitantly is not consistent with the historic character of the district.

(6) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion, but there is or was a larger related rehabilitation project(s) occurring with respect to the certified historic structure, the Secretary's decision on the requested certification will be based on review of the overall rehabilitation project(s) for the certified historic structure.

(7) For rehabilitation projects which are to be completed in phases over the alternate 60-month period allowed in section 48(g) of the Internal Revenue Code, the number and order of the phases must be identified in Part 2 of the application and in the supporting architectural plans and specifications. Generally, separate certifications for portions of phased rehabilitation projects will not be issued. Rather the owner will be directed to comply with Internal Revenue Service regulations governing late certifications contained in 26 CFR 1.48–12.

(c) Upon receipt of the complete application describing the rehabilitation project, the Secretary shall determine if the project is consistent with the Standards for Rehabilitation. If the project does not meet the Standards for Rehabilitation, the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such Standards. For additional procedures regarding rehabilitation projects determined not to meet the Standards for Rehabilitation, see § 67.6(f).

(d) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application must be brought promptly to the attention of the Secretary by written statement through the SHPO to ensure continued conformance to the Standards; such changes should be made using a Historic Preservation Certification Application Continuation/Amendment Sheet (NPS Form 10–168b). The Secretary will notify the owner and the SHPO in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the Standards for Rehabilitation. The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook further unapproved alterations inconsistent with the Secretary's Standards for Rehabilitation. The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

(f) If a proposed, ongoing, or completed rehabilitation project does not meet the Standards for Rehabilitation, an explanatory letter will be sent to the owner with a copy to the SHPO. A rehabilitation building not in conformance with the Standards for Rehabilitation and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the National Register in accord with Department of the Interior regulations 36 CFR Part 60. Similarly, if a building has lost those qualities which caused it to be designated a certified historic structure, it will be certified as noncontributing (see §§ 67.4 and 67.5). In either case, the delisting or certification of nonsignificance is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alternations. The tax consequences of a denial of certification will be determined by the Secretary of the Treasury.

§ 67.7 Standards for rehabilitation.

(a) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project of a certified historic structure qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy. They apply to the exterior and the interior of historic buildings, as well as to attached, adjacent, or related new construction, and also encompass the historic building's site and environment. The Standards are applied to each rehabilitation project taking into consideration economic and technical feasibility; however, to be certified, the rehabilitation project must be determined to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(1) Every effort shall be made to use a property for its historic purpose or to provide a compatible new use that requires minimal change to the building, site, and environment.

(2) The historic qualities of a property shall be retained and preserved. The removal of distinguishing historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false historical appearance shall not be undertaken.

(4) Changes that have taken place in the course of time are important evidence of the development of the property. Those changes that have acquired historical significance in their

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own right shall be retained and preserved.

(5) Historic materials, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be retained and preserved.

(6) Distinctive features shall be retained and repaired rather than replaced. Where the severity of deterioration requires removal of the feature, the replacement shall match in design, color, texture and other visual qualities; and, where possible, material. Replacement of missing features shall be substantiated by historical, physical, or pictorial evidence. Conjectural features or architectural elements from other buildings shall not be utilized.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic building materials shall not be used. The surface cleaning of structures, when appropriate, shall be undertaken using the gentlest means possible.

(8) Every effort shall be made to preserve in place those archeological components which are integral to the significance of the property. If a significant archeological component must be disturbed, mitigation measures shall be undertaken.

(9) New additions or related new construction shall not destroy distinguishing materials or the character of the property and its environment; shall be compatible with the size, scale, color, and material of the historic building, its site, and its environment; and shall provide a visual distinction between old and new.

(10) New additions or related new construction shall be done in such a manner that if removed in the future, the essential form and integrity of the historic building, its site, and its environment would be unimpaired.

(b) Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treaments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; and the introduction of insulation into cavity walls of historic woodframe buildings where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, style, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. These Guidelines, "Preservation Briefs" and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the appropriate SHPO or NPS regional office. Owners are responsible for procuring this material as part of proper planning for a certified rehabilitation.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if: The necessity for dismantling is justified in supporting documentation; significant architectural features and overall design are retained; and adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. Section 48(g) of the Internal Revenue Code of 1986 exempts certified historic structures from meeting the physical test for retention of external walls and internal structural framework specified therein for other rehabilitated buildings. Nevertheless, owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, *i.e.*, external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the Standards for Rehabilitation.

(d) Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the building and, where applicable, the district in which it is located.

(e) The qualities of a building and its site and environment which qualify it as a certified historic structure are determined by the Secretary, taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.

§ 67.8 Certifications of statutes.

(a) State or local statutes which will be certified by the Secretary. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute except those owned by the State.

(b) When the certification of State statutes will have an impact on districts in specific localities, the Secretary encourages State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purposes of the State law. Adequate State statutes which designate specific historic districts and do not require specific implementing local statutes will be certified. If the State enabling legislation contains provisions which do not meet the intent of the law, local statutes designated under the authority of the enabling legislation will not be certified. When State enabling legislation exists, it must be certified before any local statutes enacted under its authority can be certified.

(d) Who may apply. Requests for certification of State or local statutes may be made only by the Chief Elected Official of the government which enacted the statute or his or her authorized representative. The applicant shall certify in writing that he or she is authorized by the appropriate State or local governing body to apply for certification.

(e) Statute certification process. Requests for cerification of State or local statutes shall be made as follows:

(1) The request shall be made in writing from the duly authorized representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number. The request shall also include a copy of the statute(s) for which certification is requested, including any by-laws or ordinances that contain information necessary for the certification of the statute. Local governments shall also submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) Requests shall be sent to the SHPO in participating States and directly to appropriate NPS regional office in nonparticipating States.

(3) The Secretary shall review the statute(s) and assess whether the statute(s) and any by-laws or ordinances that contain information necessary for the certification of the statute contain criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district(s) based upon the standards set out above in § 67.8(a). The State shall be given a 30-day opportunity to comment upon the request. State comments received within this time period will be considered by the Secretary in the review process. If the statute(s) contain such provisions and if this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(4) The Secretary generally provides written notification within 30 days of receipt by the NPS to the duly authorized representative and to the SHPO when certification of the statute is given or denied. If certification is denied, the notification will provide an explanation of the reason(s) for such denial.

(f) Amendment or repeal of statute(s). State or local governments, as appropriate, must notify the Secretary in the event that certified statutes are repealed, whereupon the certification of the statute (and any districts designated thereunder) will be withdrawn by the Secretary. If a certified statute is amended, the duly authorized representative shall submit the amendment(s) to the Secretary, with a copy to the State, for review in accordance with the procedures outlined above. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative and the SHPO within 60 days of receipt.

(g) The Secretary may withdraw certification of a statute (and any districts designated thereunder) on his own initiative if it is repeal or amended to be inconsistent with certification requirements after providing the duly authorized representative and the SHPO 30 days in which to comment prior to the withdrawal of certification.

§ 67.9 Certifications of state or local historic districts.

(a) The particular State or local historic district must also be certified by the Secretary as substantially meeting National Register criteria, thereby qualifying it as a registered historic district, before the Secretary will process requests for certification of individual buildings within a district or districts established under a ceritified statute.

(b) The provision described herein will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been certified by the Secretary.

(c) The Secretary considers the duly authorized representative requesting certification of a statute to be the official responsible for submitting district documentation for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address, and telephone number. The Secretary considers the authorizing statement of the duly authorized representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) Requests shall be sent to the SHPO in participating States and directly to the appropriate NPS regional office in nonparticipating States. The State shall be given a 30-day opportunity to comment upon an adequately documented request. State comments received within this time period will be considered by the Secretary in the review process. The guidelines in National Register Bulletin 16, "Guidelines for Completing National Register of Historic Places Forms," provide information on how to document historic districts for the National Register. Each request should include the following documentation:

(1) A description of the general physical or historical qualities which make this a district; and explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of buildings in the district.

(2) A concise statement of why the district has significance, including an explanation of the areas and periods of significance, and why it meets National Register criteria for listing (see 36 CFR Part 60); the relevant criteria should be identified (A, B, C, and D).

(3) A definition of what types of buildings contribute and do not contribute to the significance of the district as well as an estimate of the percentage of buildings within the district that do not contribute to its significance.

(4) A map showing all district buildings with, if possible, identification of contributing and noncontributing buildings; the map should clearly show the district's boundaries.

(5) Photographs of typical areas in the district as well as major types of contributing and noncontributing buildings; all photographs should be keyed to the map.

(e) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR Part 60) within 30 days of the receipt of the required documentation by the Secretary. Written notification of the Secretary's decision will be sent to the duly authorized representative or to the person designated as responsible for the district documentation.

(f) Certification of statutes and districts does not constitute certification of significance of individual buildings within the district or of rehabilitation projects by the Secretary.

(g) Districts certified by the Secretary as substantially meeting the requirements for listing will be determined eligible for listing in the National Register at the time of certification and will be published as such in the **Federal Register**.

(h) Documentation on additional districts designated under a State or local statute that has been certified by the Secretary should be submitted to the Secretary for certification following the same procedures and including the same information outlined in the section above.

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(i) State or local governments, as appropriate, shall notify the Secretary if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the duly authorized representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in § 67.9. A revised statement of significance for the district as a whole shall also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in §§ 67.9 (d) and (e). The Secretary will withdraw certification or inappropriately amended certified district designations, thereby disqualifying them as registered historic districts.

(j) The Secretary may withdraw Secretary of a district on his own initiative if it ceases to meet the National Register Criteria for Evaluation after providing the duly authorized representative and the SHPO 30 days in which to comment prior to withdrawal of certification.

(k) The Secretary urges State and local review boards or commissions to become familiar with the Standards used by the Secretary of the Interior for cerifying the rehabilitation of historic buildings and to consider their adoption for local design review.

§ 67.10 Appeals.

(a) An appeal by the owner, duly authorized representative as appropriate, may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to § 67.6(f). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal but all information the owner wishes the Chief Appeals Officer to consider must be submitted in writing. The SHPO will be notified that an appeal is pending. The Chief Appeals Officer will review the record of the decision in question, including any further written submissions by the owner, and shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) The denial of a preliminary determination of significance for an individual building may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR Part 60). Similarly, the denial of preliminary certification for a rehabilitation project for a building that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertake an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Officer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing, or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the building in the National Register.

(c) In considering such appeals or administrative reviews, the Chief Appeals Officer shall consider: Alleged errors in professional judgment; alleged prejudicial procedural errors; and any additional written information provided. The Chief Appeals Officer's decision may: Reverse the appealed decision; affirm the appealed decision: resubmit the matter to the appropriate Regional Director for further consideration; or where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service pursuant to § 67.6(b)(1). The Chief Appeals Officer may posit his decision in whole or in part on matters or factors not discussed in the decision appealed from. The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the Standards set forth herein or he considers that prejudicial procedural error by a Federal official legally compels issuance of the requested certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

§ 67.11 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall not be made until requested by the NPS regional office according to instructions accompanying the Historic Preservation Certification Application. All checks shall be made payable to: NATIONAL PARK SERVICE. Final action will not be taken on an application until the appropriate remittance is received. Fees are nonrefundable.

(c) The fee for review of proposed or ongoing rehabilitation projects for projects over $20,000 is $250. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work (NPS Form 10–168c), as follows:

Fee	Size of rehabilitation
500	$20,000 to $99,999.
$800	$100,000 to $499,999.
$1,500	$500,000 to $999,999.
$2,500	$1,000,000 or more.

If review of a proposed or ongoing rehabilitation project had been undertaken by the Secretary prior to submission of a Request for Certification of Completed Work, the initial fee of $250 will be deducted from these fees. No fee will be charged for rehabilitations under $20,000.

(d) In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, the fee for preliminary review is $250 and the fee for final review is computed on the basis of the total rehabilitation costs.

(2) In the case of multiple building projects where there is no historic functional relationship among the structures and which are under the same ownership; are located in the same historic district; are adjacent or contiguous; are of the same architectural type (*e.g.*, rowhouses, loft buildings, commercial buildings); and are submitted for review at the same time, the fee for preliminary review is $250 per structure to a maximum of $2,500 and the fee for final review is computed on the basis of the total rehabilitation costs of the entire multiple building project to a maximum of $2,500. If the $2,500 maximum fee was paid at the time of review of the proposed or ongoing rehabilitation project, no further fee will be charged for review of a Request for Certification of Completed Work.

[FR Doc. 88–11355 Filed 5–20–88; 8:45 am]
BILLING CODE 4310–70–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 78–309; FCC 88–127]

Broadcast Television; Concerning Network Representation of TV Stations in National Spot Sales

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The *Further Notice of Proposed Rule Making (Further Notice)* seeks comment with respect to possible changes in the television network representation rule. This rule prohibits television stations, other than those owned and operated by a television network, from being represented by their network in the non-network, or spot, sales market. This proceeding began in 1978, when the Commission granted a temporary waiver of the rule to the Spanish International Network, now known as Univision, and opened a proceeding soliciting comment with respect to whether emerging networks generally should be exempted from the rule. The *Further Notice* seeks to update the record in this proceeding in light of recent developments and requests comment on additional options in this matter.

DATES: Comments due July 25, 1988; replies due August 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making* in BC Docket No. 78–309, adopted March 24, 1988, and released May 12, 1988, FCC 88–127. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decisions may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. This proceeding was commenced in 1978 to explore possible changes in the Commission's television network representation rule § 73.658(i). This rule prohibits television stations, other than those owned and operated by a television network, from being represented by their network in the non-network, or spot, sales market. The proceeding was initiated when the Commission granted a temporary waiver of the rule to Univision, and opened a proceeding soliciting comment with respect to whether emerging networks generally should be exempted from the rule. Univision has been operating under this waiver since 1978, and similar waivers recently have been granted to other emerging networks

2. The network representation rule was promulgated in 1959 to restrain the market power of TV networks with respect to the advertising market. It applies to all entities delivering programming to television stations on a simultaneous interconnected basis. During the ten years that have passed since this proceeding was first initiated, the rule and the Univision waiver have been analyzed by the Commission's staff and have been addressed in Commission adjudicatory proceedings. The implications of these developments in terms of the TV network representation rule and the Univision waiver have not been subject to general comment in the context of this proceeding.

3. This *Further Notice* seeks to update the record in this proceeding in light of the more recent developments relating to this rule and requests comment on additional options in this matter. The *Further Notice* addresses the full range of policy options, which consist of three basic alternatives. The first is to modify the rule so that emerging networks are explicitly exempted from the scope of the network representation rule. In this respect, we solicit comment with respect to whether the rule should be applied only to the traditional broadcast television networks and the appropriate manner in which to define such networks. The second option is to eliminate the network representation rule in its entirety. In this regard, we solicit comment on whether any broadcast television network can, in today's media environment, adversely affect competition in the television advertising market to such an extent as to warrant the continued imposition of the network representation rule. The third option is to retain the rule in its present form. We solicit comment with respect to an appropriate waiver policy if we were to retain the rule.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding seeks comment with respect to possible revisions to the television network representation rule. If the Commission were to modify the network representation rule, more efficient business operations would likely ensue. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. This proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements of burdens on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 25, 1988; and reply comments on or before August 24, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc 88–11520 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–192, RM–5928; RM–6262]

Radio Broadcasting Services; Oroville and Monte Rio, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed,

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mutually-exclusive proposals seeking the allotment of Channel 249. The first, filed by Oroville Radio, Inc., licensee of Station KEWE(FM) (Channel 249A), Oroville, California, seeks the substitution of FM Channel 249B for Channel 249A and modification of its Class A license accordingly, to provide that community with its first wide coverage area FM service. The second petition, filed by Southcom, Inc., licensee of Station KMGG(FM) (Channel 249A), Monte Rio, California, seeks the substitution of Channel 249B1 for Channel 249A and the concomitant modification of its license, to provide a first expanded coverage FM service to that community. In order to utilize its present site, Southcom's proposal also seeks to substitute another Class A channel for Channel 249A at Fort Bragg, California, for which a construction permit has been issued to Station KSAY(FM).

DATES: Comments must be filed on or before July 1, 1988, and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, 1920 N St. NW., Wash., DC 20036 (Oroville Radio, Inc.); and John Joseph McVeigh, Esq., Fisher, Wayland, Cooper & Leader, 1255– 23d St. NW., Suite 800, Wash., DC 20037 (Southcom, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–192, adopted April 6, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11521 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–193, RM–6158]

Radio Broadcasting Services; Philadelphia, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Quail Communications, proposing the allocation of FM Channel 281A to Philadelphia, Mississippi, as that community's second FM broadcast service. The coordinates used for this proposal are 32–46–18 and 89–06–48.

DATES: Comments must be filed on or before July 1, 1988, and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Mike Partridge, Quail Communications, P.O. Box 5314, Meridian, Mississippi 39302

Larry G. Fuss, Contemporary Communications, P.O. Box 3340, Meridian, Mississippi 39303 (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–193, adopted April 13, 1988, and released May 10, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11522 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement on Profit Policy for Nonprofit Organizations; Withdrawal of Proposed Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The proposed rule published in 53 FR 625; January 11, 1988, concerning proposed changes to DFARS 215.972 regarding nonprofit organizations has been withdrawn by decision of the Defense Acquisition Regulatory (DAR) Council. Based upon a review of public comments received and reconsideration by the DAR Council, no change to the current rules at DFARS 215.972 is deemed necessary. Therefore, the proposed rule is withdrawn and DAR Case 87–121 is closed. This notice is for information purposes only; no further comments on this action are solicited.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–11451 Filed 5–20–88; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Part 225

Department of Defense Federal Acquisition Regulation Supplement on Foreign Acquisition; Withdrawal of Proposed Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The proposed rule published in 52 FR 12440; April 16, 1987, concerning proposed changes to DFARS 225.105(S–75) to clarify application of the DoD Balance of Payments Program evaluation factor on direct purchases in support of civil works projects has been withdrawn by decision of the Defense Acquisition Regulatory Council. Based upon a review of public comments received and reconsideration by the agency submitting the case, no change to the current rules at DFARS 225.105 (S–71) and (S–75) is deemed necessary. Therefore, the proposed rule is withdrawn and DAR Case 86–144 is closed. This notice is for information purposes only. No further comments on this action are solicited.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–11450 Filed 5–20–88; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Parts 225, 227, 234, 235, 242, 252 and 271

Department of Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: To implement DoD Directive 2140.2, the Department of Defense is proposing the following changes to the DoD FAR Supplement. A new Part 271 is added; section 225.7306, "Recovery of Nonrecurring Costs" is merged into Part 271; subsection 227.403–3 is revised, section 235.71 is deleted and merged into Part 271 and the clause at 252.235–7002 is deleted in lieu of the new clause at 252.271–7001 which is added to reflect the policy and procedural changes in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology." Additionally section 242.302, "Contract Administration Functions" will be changed to complement Part 271. Subsection 234.005–71 will be modified to include the clause to recover nonrecurring costs on contracts for major systems acquisition.

DATE: Comments on the proposed revisions should be submitted in writing at the address shown below on or before July 22, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 86–17 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Melburn, Director for Accounting Policy, (202) 697–7296.

SUPPLEMENTARY INFORMATION:

A. Background

On August 5, 1985, DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Commercial Sales of Defense Products and Technology" was reissued. This directive modified DoD policy and procedures on establishing and collecting recoupment charges on commercial, foreign and domestic sales. To facilitate review of this proposed rule, DoD Directive 2140.2 is printed for information.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because they make only a small number of commercial sales of defense articles or technology to foreign or domestic customers. An Initial Regulatory Flexibility Analysis has been performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 86–610D in correspondence.

C. Paperwork Reduction Act Information

The proposed rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq. The only new requirement is for the contracting officer to certify annually the amount of nonrecurring RDT&E and Production collections received on qualifying items. This is a standard requirement in support of payments to the U.S. Government.

List of Subjects in 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271 as follows:

1. The authority citation for 48 CFR Parts 225, 227, 234, 235, 242, 252 and 271 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

225.7306 [Removed]

2. Section 225.7306 is removed in its entirety.

PART 227—PATENTS, DATA AND COPYRIGHTS

227.475–5 [Amended]

3. Section 227.475–5 is amended by adding to the end a sentence to read: "Transfer of DoD-owned technical data to foreign governments for any purpose will be made only under Foreign Military Sales procedures."

PART 234—MAJOR SYSTEM ACQUISITION

4. Section 234.005-71 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

234.005–71 Contract clauses for major systems acquisitions.

* * * * *

(b) The contract shall include the clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for use of DoD-owned Technical Data" as prescribed in 271.004(a).

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.071 [Amended]

5. Section 235.071 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

Subpart 235.71—[Removed]

6. Subpart 235.71 is removed in its entirety.

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PART 242—CONTRACT ADMINISTRATION

7. Section 242.302 is amended by removing paragraph (S–73), redesignating paragraph (S–74) as (S–73) and adding new paragraph (S–74) to read as follows:

242.302 Contract administration functions.

* * * * *

(S–74) For contracts where recoupment of nonrecurring costs and royalty fees are applicable (see 271.004), accept and transmit payment regarding a commercial sale.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.235–7002 [Removed]

8. Section 252.235–7002 is removed in its entirety.

9. Section 252.271–7001 is added to read as follows:

252.271–7001 Recovery of nonrecurring costs on commercial sales of defense products and technology and of royalty fees for use of DoD-owned technical data.

As prescribed in 271.004(a), insert the following clause:

Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD-Owned Technical Data (Date)

(a) *Definitions.* The terms used in this clause are defined in section 271.001 in the DoD FAR Supplement.

(b) The Contractor agrees to reimburse the U.S. Government for a fair share of the U.S. Government's investment in special RDT&E and nonrecurring production costs on domestic or foreign commercial sales of defense articles and technology subject to a recoupment charge. The fair share is determined by the DoD following procedures set forth in DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology".

(1) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or to enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall:

(i) Determine if the DoD has a scheduled nonrecurring recoupment charge for the article or technology being sold or transferred.

(ii) Request the DoD Focal Point for a determination of charges which may be applicable to unscheduled defense articles and technology under the intended commercial sale. This request shall be made when the Contractor has a reasonable basis to believe DoD incurred $2 million or more in nonrecurring costs or that a recoupment charge based on special RDT&E and nonrecurring production costs is applicable to the intended commercial sale.

(iii) Provide the DoD Focal Point with commercial sales forecasts of articles and technology subject to a recoupment charge when required.

(iv) Notify the DoD Focal Point of all commercial sales (either foreign or domestic), that are subject to a recoupment charge. The notification will identify the product or technology being sold or licensed for production, the purchaser, the quantity sold, the applicable recoupment charges, the time frame for delivery, and the identification of the export license (Commercial or State) if sale is for export. The notification will be made when each agreement for sale of a defense article or technology is made.

(v) Pay the established recoupment charges to the Administrative Contracting Officer (or the DoD Focal Point in the event the contract is closed) within thirty (30) days following delivery to or acceptance of the item by a purchaser (whichever comes first).

(vi) Certify, on or before the sixtieth (60th) day following the end of each calendar year during which recoupment amounts were due, to the applicable Department of Defense Focal Point that proper notification to the U.S. Government of all commercial sales subject to this clause has been accomplished.

(End of clause)

10. A new Part 271, consisting of sections 271.000 through 271.006, is added to read as follows:

PART 271—RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES OF DEFENSE PRODUCTS AND TECHNOLOGY AND OF ROYALTY FEES FOR USE OF DOD-OWNED TECHNICAL DATA

Sec.

271.000 Scope.
271.001 Definitions.
271.002 Policy.
271.003 Applicability.
271.004 Procedures.
271.005 Waivers (including reductions).
271.006 Department of Defense (DoD) focal points.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

271.000 Scope.

This part sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of nonrecurring costs and royalty fees on commercial sales by contractors of products, components, and related technology developed or produced with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) customer funds. The policy applies to material, equipment, licenses, derivative items, computer software, and technical data. The objective of recovery is to ensure that a non-U.S. Government customer pays a fair share of the nonrecurring investment costs incurred by the Department of Defense or a foreign government.

271.001 Definitions.

"Derivative Item", as used in this part, means an item derived from a Defense item which consists of common parts equal to, or more than, 10 percent of the Defense item.

"Direct Sale", as used in this part, means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a defense contractor of products, technology, material, services, or development or production techniques that originally were developed, improved, or produced using DoD appropriations or funds.

"DoD Focal Points", (see section 271.006).

"Foreign Military Sale (FMS)", as used in this part, means a sale, by the DoD, of Defense articles or Defense services to a foreign government or international organization under authority of the Arms Export Control Act.

"License", as used in this part, means the legal right to use technical data with or without compensation and with or without restrictions.

"Nonrecurring Costs (NC)", as used in this part, include DoD costs as follows:

(a) The costs funded by Research, Development, Test, and Evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(b) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the FAR or DoD FAR Supplement.

"Non-U.S. Contractor", as used in this part, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

"Pro Rata Recovery of Nonrecurring Costs", as used in this part, means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD Component will collect from a consumer a fair (pro rata) share of the investment in the product being sold.

"Royalty Fee", as used in this part, means a charge that is assessed for the use of DoD-owned technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develop the technical data and technology.

"Scheduled Nonrecurring Recoupment Charges", as used in this part, means charges published in a DoD Directive, Instruction, or Manual. Royalty fee percentages are published in DoD Directive 2140.2, "Recoupment of Nonrecurring Cost on Sales of U.S. Products and Technology." Unit charges on specific items of equipment are published in DoD 5105.38–M, "Security Assistance Management Manual," and DoD 7290.3–M, "FMS Financial Management Manual."

"Special RDT&E and Nonrecurring Production Costs", as used in this part, means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

"Technology", as used in this part, means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

271.002 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and/or when technology is transferred to a foreign government, international organization, foreign commercial firm, or domestic organization (hereafter referred to collectively as "customers") for coproduction, assembly or licensed production for the same or derivative items. This fair share is recovered through the assessment of nonrecurring recoupment charges or royalty fees established by the DoD.

(b) In selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS cases where subsequent non-U.S. Government customers purchase the same specialized feature(s). The U.S. Government will normally not collect this recoupment on behalf of a foreign government beyond eight (8) years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

(c) Transfer of DoD-owned technical data to foreign governments for non-U.S. Government use shall be made only under FMS procedures.

271.003 Applicability.

(a) These policies apply to those products and technologies that were developed or produced with DoD appropriations or funds, and in special cases foreign customer funds, on which a nonrecurring recoupment charge or royalty fee has been or will be established.

(b) In the absence of an established recoupment amount, full recovery of the nonrecurring cost charge/royalty fee is required. It is incumbent upon the Contractor to notify the U.S. Government of all pending commercial sales that may be subject to a recoupment charge so that the appropriate charge may be established and identified to the contractor.

(c) Revised charges shall be effective as of the date of revision and shall not be retroactively applied to past sales or to sales consummated by a written contract between the parties before the effective date of the revised charge.

(d) The policies do not apply when the sale is to a U.S. Government organization or when a contract is awarded by DoD under the Foreign Military Sales program. When a sale is made under authority of the MFS program, charges prescribed by DoD Directive 2140.2 shall be assessed by the DoD official responsible for the presentation of the DD Form 1513. Such charges shall not be included in the contract price.

271.004 Procedures.

(a) To assure the recovery of an appropriate share of DoD investment in nonrecurring costs, the clause at 252.271–7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty fees Use of DoD-owned Technical Date," shall be included in all RDT&E and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale or transfer of products or related technology, that meet the criteria of 271.003.

(b) The amount to be reimbursed to the U.S. Government for the commercial sale, coproduction or licensed production of products and components and for transfer of technology is provided at 252.271–7001. The recoupment charge is based upon information recorded in DoD accounting records or DoD budget justification documents and DoD estimates of quantities to be produced. The Military Department may consult with the Contractor to obtain contractor marketing assessments. The charge will be established by the DoD in accordance with DoD Directive 2140.2. If an issue concerning the amount cannot be resolved, the Military Department will, within 90 days, request guidance from the Director, Defense Security Assistance Agency.

(c) When a contractor negotiates the sale, coproduction or licensed production, or transfer of technology of a DoD developed item or a derivative of a DoD developed item, the Contractor will request the appropriate charge from the DoD Focal Point set forth in 271.006.

271.005 Waivers (including reductions).

(a) Waiver or reduction of the charges prescribed may be approved for a commercial sale based upon the same criteria for waivers granted under FMS or if the domestic sale is in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the U.S. Government.

(b) Request for waivers. (1) A waiver shall not be approved for a sale once consummated, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS program.

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(2) Requests for waivers associated with foreign sales should originate with the foreign government and shall be submitted to the Director of the Defense Security Assistance Agency. The request shall contain information regarding the extent of standardization and a statement of facts regarding the program, benefits expected and other justification, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government. Waivers will be evaluated on a case-by-case basis only, and blanket waivers will not be considered. Any waiver approved for a direct commercial sale to a foreign government requires a certification by the Contractor that reductions have been passed on to the customer. The Director of the Defense Security Assistance Agency is the only waiver approval authority.

(3) Requests for waivers associated with domestic sales may originate with a DoD Component, or a defense contractor (Vice President or higher) and shall be submitted to the Under Secretary of Defense for Acquisition (USD(A)). The request shall contain information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the U.S. Government balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests are discouraged, but may be granted in extraordinary circumstances.

271.006 Department of Defense (DoD) focal points.

DoD Focal Points maintain a central data base on established charges. The DoD Focal Points are as follows:

(a) *Army:* U.S. Army Security Affairs Command, ATTN: AMSAC–RP, 5001 Eisenhower Avenue, Alexandria, VA 22333–001.

(b) *Navy:* Commanding Officer, Navy International Logistics Control Office, 700 Robbins Avenue (Code 10), Philadelphia, PA 19111–5095.

(c) *Air Force:* Chief, Security Assistance & Training Cost Division, Directorate of Cost & Management Analysis, Department of the Air Force, Washington, DC 20330–5018.

DoD Directive 2140.2 set forth below is included to facilitate review of this proposed rule.

Department of Defense Directive

August 5, 1985.
Number 2140.2.
Subject: Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.
References: (a) DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of USG Products and Technology," January 5, 1977 (hereby canceled).
(b) Public Law 90–629, "Arms Export Control Act," October 22, 1968, as amended.
(c) Council on International Economic Policy Decision Memorandum No. 23, "R&D Recoupment," August 2, 1974.
(d) Department of Defense Federal Acquisition Regulation (FAR) Supplement.
(e) Defense Acquisition Regulation (DAR).
(f) DoD 7290.3–M, "Foreign Military Sales Financial Management Manual," June 1981.

A. Reissuance and Purpose

This Directive reissues reference (a), establishes policy to conform with references (b) and (c) for calculating and assessing nonrecurring cost (NC) recoupment charges on sales of DoD-developed items and technology to non-U.S. Government (USG) customers, assigns responsibilities, and prescribes procedures to implement established policies.

B. Applicability and Scope

1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2. Its provisions shall be applied contractually to DoD contractors and recipients of DoD technical data packages (TDPs) who sell defense articles or technology developed with DoD appropriations or funds (and in special cases, customer funds) or use such technology to manufacture items sold commercially to a foreign government, international organization, foreign commercial firm, domestic organization, or private party.

3. Its provisions do not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

C. Definitions

The terms used in this Directive are defined in enclosure 1.

D. Policy

Non-USG purchaser shall pay a fair price, determined in accordance with this Directive, for the values of the DoD nonrecurring investment in the development and production of defense articles and/or development of technology, unless an NC recoupment charge waiver has been approved by the DoD official designated in section G. of this Directive. Approved revised NC recoupment charges shall not be applied retroactively to accepted Foreign Military Sales (FMS) agreements or to direct sales that were entered into before the date of approval of the revised NC recoupment charge. When defense items are sold at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

E. Responsibilities

1. The *Under Secretary of Defense for Research and Engineering* (USDR&E) shall monitor and exercise control over NC cost recoupment aspects of domestic commercial sales of DoD-developed items and technology and shall take apropriate action to revise the DoD FAR Supplement (reference (d)) to agree with this Directive.

2. The *Under Secretary of Defense for Policy* shall monitor the application of this Directive and exercise control over foreign sales of DoD-developed items and technology.

3. The *Under Secretary of Defense for Policy* shall monitor the application of this Directive and exercise control over foreign sales of DoD-developed items and technology.

3. The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall provide necessary cost accounting guidance and ensure publication of a listing of DoD-developed items or categories of technology to which NC recoupment charges are applicable.

4. The *Director, Defense Security Assistance Agency* (DSAA), shall serve as the DoD focal point for review and approval of NC recoupment charges for major defense equipment (MDE) items and for processing NC recoupment charge waiver requests received from foreign countries and international organizations for FMS or direct commercial sales. Notification of approved NC recoupment charges for MDE items shall be provided to the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)).

5. The *Heads of Military Departments and Defense Agencies* shall:

a. Determine the DoD nonrecurring investment in DoD-developed items or technology and perform required pro rata calculations in accordance with cost accounting guidance from the ASD(C).

b. Validate and provide recommended charges for MDE items to DSAA.

c. Determine the appropriate charges for non-MDE articles and technology.

d. Provide the approved non-MDE item and technology charges to the DASD(MS).

e. Insert prescribed reference (d) clauses in contracts.

f. Enforce the application of the aforementioned clauses.

g. Deposit collections to accounts prescribed by the ASD(C).

h. Submit quarterly reports of anticipated and actual NC recoupment charge collections to the DSAA.

6. The *Director, Defense Contract Audit Agency* (DCAA), shall ensure that any evaluation of a contractor accounting system includes an analysis of the internal controls established to ensure compliance with the requirement to pay NC recoupment charges. If DCAA audit work on a bid proposal, claim for incurred costs, etc., discloses contractor noncompliance with the requirement to pay an NC recoupment charge, an audit report shall be issued promptly to the cognizant DoD contracting officer, with a copy of the report submitted to the DASD(MS).

F. Procedures

All DoD Components shall follow the implementing procedures contained in enclosure 2.

G. Waivers (including Reductions)

1. The Arms Export Control Act (reference (b)) requires the recoupment of a proportionate amount of nonrecurring costs of MDE from FMS customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance USG interests in North Atlantic Treaty Organization standardization or standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries. Waiver for direct commercial sales and for non-MDE items under FMS shall be based upon the same considerations.

2. Requests for waivers of NC recoupment charges for eligible countries for sales of DoD-developed items under the FMS program or on direct commercial sales to foreign governments and international organizations shall be submitted to the Director, DSAA.

a. Requests should originate with the foreign government and shall provide information regarding the extent of standardization to be derived as a result of the waiver and other benefits that would accrue to the USG as a result of the sale. The request shall contain a summary statement of the facts regarding the program, benefits expected and justification therefor, and any calculations necessary to quantify the waiver and the benefits to the USG.

b. Blanket waier requests shall not be submitted nor considered. The term "blanket waiver" refers to an NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

c. A waiver request shall not be approved for a sale that was accepted without an NC recoupment charge waiver, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS program. Any waiver approved for a direct commercial sale requires a certification by the contractor that reductions have been passed on to the customer.

3. A DoD Component or defense contractor (vice president or higher) may request waivers of NC recoupment charges for domestic sales of DoD-developed items. Contractor requests shall be submitted through the appropriate contracting officer to the USDR&E. To the extent possible, the request shall provide information regarding the dollar value of the waiver, benefit to be derived by the Department of Defense, the names of foreign and domestic competitors, impact on the USG balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests for domestic sales are discourged, but may be granted in extraordinary circumstances.

4. Requests for waivers shall be processed expeditiously, and a decision normally made by the approving authority (see subsection G.6., below) to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropraite DoD Component before issuance of the FMS agreement or signing of the commercial contract.

5. The decision on any waiver requires the concurrence of the Director, DSAA; the ASD(C); and the USDR&R. If an issue concerning the waiver request cannot be resolved, the normal waiver approval authority shall prepare an action memorandum on the waiver request to the Deputy Secretary of Defense for final determination. The action memorandum to the Deputy Secretary of Defense shall be coordinated with the Director, DSAA; the ASD(C); and the USDR&E.

6. The Director, DSAA, is the waiver approval authority and will state in writing any approvals granted for waivers associated with FMS and direct foreign sales. The USDR&E is the waiver approval authority and will state in writing any approvals granted for waivers involving sales of DoD-developed items and technology to domestic organizations. This authority shall not be redelegated. A notification of each approved waiver will be forwarded to the ASD(C) and to the concerned DoD Components by the approving authority.

H. Information Requirements

The record keeping and reporting requirements prescribed in subsection H.2. of enclosure 2 are assigned Reports Control Symbol DSAA(Q)1112.

I. Effective Date and Implementation

This Directive is effective immediately for all NC recoupment calculations that have not been approved previously. Forward two copies of implementing documents to the Assistant Secretary of Defense (Comptroller) within 120 days.

William H. Taft, IV,
Deputy Secretary of Defense.

Enclosures—5.
1. Definitions.
2. Implementing Procedures.
3. Format for MDE Calculation.
4. Recoupment of Nonrecurring Costs on Sales of MDE Items.
5. Recoupment of Nonrecurring Costs on Sales of Products and Technologies.

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Definitions

1. *Cost Pool.* Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation (RDT&E) cost pool comprises the costs described in definition 11. The nonrecurring production cost pool comprises costs described in definition 10.

2. *Direct Sale.* A commercial sale to a customer by a defense contractor of products, technology, materiel, services, and development of production techniques that originally were developed, improved, or produced using DOD appropriations or funds.

3. *Domestic Organization.* Any U.S. non-governmental organization or private commercial firm.

4. *Foreign Military Sale (FMS).* A sale of defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act (reference (b)).

5. *Government Sale.* A sale of articles or services, or both, to customers by any DOD Component under appropriate statutes.

6. *Major Defense Equipment (MDE).* Any item of significant combat equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production of more than $200 million.

7. *Model.* A basic alpha-numeric designation within a weapon system series, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models within the same F–5 system series.

8. *Non-Major Defense Equipment (Non-MDE).* Any equipment or component that is not identified as major defense equipment.

9. *Non-U.S. Contractor.* A contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

10. *Nonrecurring Production Costs.* Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NCs include DOD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DOD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the DAR or DOD FAR Supplement (references (e) and (d), respectively) or asset use charges assessed in accordance with DOD 7290.3–M (reference (f)).

11. *Nonrecurring Research, Development, Test, and Evaluation (RDT&E) Costs.* These costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration either through contract or in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance (O&M) appropriations.

12. *Pro Rata Recovery of Nonrecurring Costs (NC).* Equal distribution (proration) of a pool to a specific number of units that benefit from the investment so that a DOD Component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

13. *"Special" RDT&E and Nonrecurring Production Costs.* Costs incurred at the request of, or for the benefit of, the customer in developing a special feature or unique requirement. These costs must be paid by the customer as they are incurred.

14. *Technology.* Information of any kind that can be used or adapted for use in the design, production, manufacture, utilization,

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or reconstruction of articles or materiel. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

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Implementing Procedures

A. General

1. Each DoD Component, defense contractor, or recipient of DoD TDP negotiating the sale of items or technology, or both, developed with DoD appropriations or funds shall ensure the assessment of the charges as set forth in this implementing procedure.

2. Each DoD Component shall establish a system to accumulate cost pools, recognize when a cost pool meets recoupment thresholds and calculate an NC recoupment charge for items or technology releasable to foreign countries and international organizations when FMS or direct commercial sales are anticipated. The NC recoupment charge shall be based upon information recorded in DoD accounting records or DoD budget justification documents. Cost estimates may be used to determine the NC expected to be incurred in periods not covered by budget justification documents.

3. The NC recoupment charge computation (nonrecurring RDT&E and nonrecurring production cost pools divided by benefiting units) for the sale of MDE items shall be submitted to the Director, DSAA, for approval. The NC recoupment computation shall be supported with the MDE calculation worksheet illustrated at enclosure 3. A summary report on each MDE item shall be provided to DSAA following the format illustrated at enclosure 4. The Director, DSAA, will review each DoD Component's calculations and provide approved NC recoupment charges for MDE items to the DoD Component and the DASD (MS).

4. Once the approved charge has been used in an authorized sale, the charge normally will not be revised until a model change occurs or a major new development program occurs that changes the operational capability of the end item.

a. Each DoD Component shall review approved MDE charges annually to determine if there has been significant change in factors or assumptions used to compute the NC recoupment charge established for a model (for example a significant change in identifiable RDT&E costs or the anticipated production run). A significant change occurs when (1) a new calculation shows a change of 30 percent of the current system NC charge for an MDE Item or (2) the NC unit charge increases or decreases by $50,000 or more or (3) where the potential for a $5 million change in recoupment exists or (4) for ammunition items, the potential exists for additional recoupment of over $100,000 or more.

b. When significant changes are identified for MDE and/or when a model change occurs, the DoD Component shall submit a request to the Director, DSAA, for consideration of appropriate changes in future NC recoupment charges. The Director, DSAA, normally shall respond to the request in writing within 60 days after receipt of the request.

5. When a defense contractor negotiates the direct sale of a DoD-developed item or technology, or a derivative of a USG-developed item, he or she shall request the amount of the NC recoupment charge from the Administrative Contracting Officer (ACO) or (for technology sales) the technology charge from the DoD Component responsible for DoD acquisition of the article.

a. When making this request, the contractor shall submit such information as may be necessary to comply with this Directive. If the NC recoupment charge has not been established already, as provided for under this Directive, the ACO shall contact the DoD Component responsible for establishment of the charge and advise the contractor of the estimated date the charge will be made available.

b. Despite the absence of an established charge, the contract shall provide for full recovery of such charge in the amount that is subsequently established. The recovery will be for the total items sold and not merely applied on a prospective basis from the date the charge is established.

6. All DoD contracts for RDT&E or acquisition shall include a mandatory clause that requires the contractor to pay the USG, within 30 days following delivery of each item from the contractor's facility or purchaser's acceptance (whichever comes first), the established NC recoupment charge for any domestic or international direct sale, coproduction, or licensed production of DoD-developed items or technology (see DoD FAR Supplement 25.7306, 35.71, and 52.235-7002, reference (d)).

7. It is mandatory that each DoD Component complete and submit to DSAA for approval, a proposed NC charge not later than 60 days after award of a DoD contract for RDT&E or acquisition whenever there is a potential for commercial sale of an item (see subsection A.5., above). The ACO is responsible for initiating this action into appropriate Military Department channels and for notifying the contractor of the appropriate charge.

8. The cognizant DoD Component shall deposit collections in payment of an NC recoupment charge without delay in the nearest Federal Reserve Bank to accounts prescribed by the ASD(C). Notification of the deposit shall be provided to the DoD Component activity responsible for submission of reports required in subsection H of this enclosure.

B. Calculation of Charges on MDE and Components

MDE items are defined in enclosure 1. The determination of whether an item meets the MDE dollar threshold shall be based on obligations recorded to the date the equipment is offered for sale. Production costs shall include cost incurred for the Department of Defense, FMS, and known direct sales production. For the FMS program, the sales offer date shall be the date a Letter of Offer and Acceptance (LOA) is signed by a U.S. official and released to the FMS customer; for commercial sales, the sales offer date shall be the date of contract signature.

1. NC recoupment charges shall be assessed on a pro rata basis. The charges shall be established by dividing the total of all applicable NC costs including costs of in-house performance or multiple procurements incurred to date plus projections of future costs to be incurred by the total estimated number of units projected to be produced over the life of the system (including DoD requirements, Military Assistance Program (MAP) requirements, FMS requirements, and direct commercial sales requirements). The computation of the cost pool shall exclude costs for those items that are restricted to USG use only (for example, U.S.-unique nuclear devices, countermeasures, security devices, and aircraft carrier-unique adaptations). All applicable NC efforts including inhouse or multiple contractors shall be included in the NC cost pool. In other words, the source of NC effort to develop a product is not relevant to the calculation of the NC recoupment charge.

2. The number of units to be produced for DoD shall be obtained from budget backup data. FMS quantity projections and direct commercial sales quantity projections shall be derived jointly as best estimates by the Military Department and DSAA. Defense contractors should be consulted in determining direct commercial sales quantities, if necessary. When disagreement on estimated FMS and direct commercial quantities and sales projections occur, the Director, DSAA, will make the final determination in coordination with the ASD(C) and the USDR&E.

3. For a weapon system that includes more than one component that meets the MDE threshold or contains a component that has application to several weapons systems or a commercial sale potential, hereinafter referred to as a major individual component, a "building block" approach (that is the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

a. Data must be accumulated for each major component when NC is identified in accounting records or budget documents. The sum of the various component NC recoupment charges and any remaining NC for the weapon system shall be applied to the sale of a complete system. Individual NC recoupment charges shall be applied to sales of individual components. The format by performing the required calculation is at enclosure 3.

b. When a model change occurs, the NC recoupment charge shall be recalculated. That portion of the NC which benefits only one model shall be allocated only to that model, i.e., old or new. That portion of the NC that benefits old and new models shall be prorated between cost pools related to the old and new model items. Commonality between old and new models may be determined either on the basis of the ratio of old model parts in the new item or on some other commonly acceptable basis for allocation of costs between the models, i.e., engineering analysis or technology analysis, as appropriate. Sample calculations are illustrated at enclosure (6).

c. DoD Components involved with a sale shall ensure that components are not

purchased separately for ultimate assembly as an end item in an attempt to circumvent this Directive.

4. The established NC recoupment charge shall be included in the FMS unit price or, for commercial sales, provided to the seller, and paid by the seller to the USG.

5. If a commercial item being sold is substantially different (less than 90 percent common) from the USG item for which the NC recoupment charge was developed, the charge shall be assessed based on the extent of commonality with the USG item. For example, if the commercial item is 25 percent common with the DoD item, then only 25 percent of the established NC recoupment charge for the DoD item shall be assessed. The DoD Component office with system engineering responsibility for the item shall be responsible for determining the degree of such commonality.

a. The cognizant DoD contract administrative office shall request DCAA to review contractor accounting records to ensure that the commercial item was not fully or partly funded by charges against DoD contracts.

b. The contract administration office shall provide its calculations and rationale to DSAA for review and approval. Upon receipt of the DSAA approval, the DoD Component shall notify the contractor in writing of the applicable derivative NC recoupment charge.

6. If records necessary to enable a pro rata NC calculation have been lost or destroyed for particular MDE items in which the USG has an NC investment, the DoD Component (Assistant Secretary or a designee) shall certify that the records have been lost or destroyed and shall determine a unit NC recoupment charge equal to 4 percent of the most recent USG contract price. The certification of lost or destroyed documents and recommended fixed charge per unit shall be forwarded to the Director, DSAA, for approval. The Director, DSAA, shall then establish a fixed unit NC recoupment charge for all subsequent sales.

C. Calculation of Charges on Non-Major Defense Equipment

NC recoupment charges on Non-MDE shall be established in accordance with procedures set forth in this subsection. Once established, the charge normally shall not be revised unless the item subsequently qualifies as an MDE item. When a non-MDE item becomes an MDE item, a new NC recoupment charge shall be established using MDE procedures. The DoD Components shall provide established charges for non-MDE to the DASD(MS) for publication in a document that is readily accessible by DoD Components, contractors, and the public.

1. *Components of MDE Items.* The pro rata amount, as determined through use of the building block approach, required by in subsection B.3, above, shall be assessed whenever a major component is sold. There shall be no charge on sales of other components because applicable NC recoupment charges are recovered on MDE item sales.

2. *Non-MDE End Items.* A percentage NC recoupment charge shall be assessed on non-MDE end items whenever $2 million of RDT&E funded cost has been or is expected to be incurred on the item. The applicable surcharge shall be 5 percent of the item's current DoD inventory price.

3. *Modification Kits*—a. *Developed to Provide an End Item With New or Improved Capability.* An NC percentage charge shall be made whenever $2 million of RDT&E, procurement, or O&M funds have been expended on engineering, development, or testing of the kit. The applicable surcharge shall be 5 percent of the selling price of modification kits transferred under the FMS program or sold commercially by U.S. contractors.

b. *Developed to Improve the Safety, Reliability, Availability, and Maintainability.* The costs of improvement programs that are designed to continuously improve the safety, reliability, availability, and maintainability of an end item or major component over the projected life of the item will be shared equitably by all users of the item. Normally, each user will pay a share of the total annual cost through a Component Improvement Program (CIP) or comparable program. All users are expected to participate in such programs. However, if a user does not participate in a CIP or comparable program, the user will pay an appropriate share of the development costs for any modification purchased after delivery of the system. The calculation of these charges is as follows:

(1) *New items.* For new items entering the system, the cost sharing calculation will be established at the time the NC cost pool is established and the NC recoupment charge is approved. First, the total life of the item will be projected, then the point in time when half of all projected deliveries to non-DoD customers will occur will be estimated. Using actual cost data and data from historical files for similar CIP or comparable programs, the total U.S. investment costs over the life of the program will be estimated. The amount of U.S. investment projected to be incurred up to the previously determined point of half of the deliveries to non-DoD customers will be included in the weapon system NC cost pool. The annual cost of operating the CIP or comparable program will be shared in proportion to the number of items in the possession of each user. This will ensure that the remaining costs of operating the CIP or comparable program will be shared equally by all users of the item.

(2) *Existing Items/Improved Items.* For items already in the inventory that have established NC pro rata charges, or for improved items that meet the criteria for NC pro rata charge revision, all U.S. investment costs incurred before the date of calculation of the revised NC recoupment charge will be included in the NC cost pool. Additionally, all users shall be required to pay on an annual basis in proportion to the number of existing items for participation in the program.

(3) *Modification Kits.* Modification kits designed to improve safety, reliability, availability, and maintainability are issued to FMS customers and incorporated into end item/major components without the additional NC recoupment charge because the applicable development cost is either included in the end item/major component NC recoupment charge or recouped as CIP or comparable program charges on the end item or major components. In exceptional circumstances when a user does not participate in the CIP or comparable program, the user shall be assessed an NC charge for any modifications purchased after delivery of the systems. This charge shall be based on 5 percent of the acquisition cost of each modification kit.

4. *Components of Non-MDE End Items.* A percentage NC recoupment charge shall be made on any non-MDE item component whenever $2 million of RDT&E appropriations has been or is expected to be expended on the component. The applicable charge shall be 5 percent of the component's current FMS selling price for components transferred under the FMS program or sold commercially by a U.S. contractor.

D. Calculation of Charges for Technology Sales

The procedures for the calculation of charges after receipt of authorization to release technology are as follows:

1. *Technical Data Packages.*

a. An NC recoupment charge shall be assessed for the transfer and use of TDPs to be used to manufacture or produce items for non-USG use. This charge is in addition to normal costs associated with reproduction and shipping of TDPs. Charges for the use of TDPs normally are referred to as royalty fees. However, for MDE items, the approved MDE NC recoupment charge shall be assessed for each item manufactured or coproduced in place of a royalty fee.

b. For a non-MDE item, an NC percentage surcharge shall be applied as the royalty fee on the basis of the item's current DoD inventory price. Prescribed charges for non-MDE items are as follows:

(1) Foreign Governments and non-U.S. contractors—5 percent on items manufactured for in-country use and 8 percent on items manufactured for third party use by or on behalf of foreign governments or international organizations.

(2) U.S. Contractors—3 percent on items manufactured for consumption in the U.S. and 5 percent on items manufactured for export.

c. The above charges will be deemed necessary to constitute the "fair market price" for U.S. technology.

d. A TDP developed with USG funds shall not be released to any non-USG parties, including contractors, unless the recipient has agreed in writing to pay the applicable charges prescribed by this Directive and to pay applicable charges within 30 days after manufacture of applicable items.

2. *Software.* A charge shall be made for sales of software whenever $2 million or more has been, or is expected to be, expended by the DoD Component to develop the software regardless of appropriation account. The charge shall be a pro rata charge. The numerator shall be the cost incurred by the DoD Component. The denominator shall be either the number of weapons systems to be supported by the software package or the number of software packages to be duplicated, whichever is the most equitable in the opinion of the DoD Component.

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3. *Other Technology Transfers.* For all other technology transfers, including transfers of TDPs for purposes other than manufacturing, and all transfers of industrial or manufacturing processes, the amount of the charge shall equal the fair market value of the technology involved. For transfers to any U.S. domestic organization, this charge shall be the lower of either: (a) A proportionate share of the DoD investment cost identified to the development of the technical data and technology involved; or (b) a fair market price for the technical data and technology involved based on an engineering analysis of demand or the potential monetary return on investment. For transfers to any non-U.S. contractor or other foreign customer, this charge will be the greater of the foregoing two alternatives. Accordingly, the lower domestic price shall be applied only if the prospective domestic purchaser signs a written commitment to the Department of Defense that the technical data and technology shall not be transferred to any other party.

E. Joint DoD Component Development Efforts

DSAA shall designate a lead DoD Component to perform a consolidated calculation when appropriations of more than one DoD Component are involved in the NC investment of an MDE item.

F. "Special" RDT&E and Nonrecurring Production Costs

1. The full amount of "special" RDT&E and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" RDT&E and nonrecurring production costs, a pro rata share of these costs may be paid by the subsequent purchaser and transferred to the original customer provided those special nonrecurring costs exceed $5 million. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be transferred to the original customer if 8 years have elapsed since acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by DSAA. The USG shall not be charged any NC recoupment charge if it adopts the features for its own use or provides equipment containing such features under a U.S. Grant Aid or similar program.

2. For coproduction, codevelopment and cooperative development, or cooperative production agreements, the policy set forth in this Directive generally shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such agreements shall provide for the application of the policies in this Directive to sales to third parties by any of the parties to the agreement and for the distribution of recoupments and technology charges among the parties to the agreement.

G. Munitions Export License Application Reviews

Military Departments shall comment routinely on nonrecurring cost recoupment candidacy as a part of their review of Munitions Export license applications. Sales that are obviously recoupment candidates should be identified to DSAA along with the recommendation that the exporting contractor be informed of the requirement for recoupment and that for specifics, the DoD plant representative should be contacted.

H. Reporting NC Recoupment Collections

1. Funds collected for NC recoupment charges shall be disposed of in accordance with ASD(C) instructions.

2. DoD Components shall provide a quarterly report on the status of NC collections. The Reports Control Symbol is DSAA(Q)1112 (format at enclosure 5). The report shall be forwarded to the DSAA Comptroller within 45 days following the close of each fiscal quarter, with a copy furnished to the DASD(MS). Components shall maintain records of anticipated and actual NC charge collections for the FMS case and known direct commercial sale. Data on direct commercial sales may be obtained from export licenses or from other information provided by DSAA.

Aug. 5, 85
2140.2 (encl 3)

FORMAT FOR MDE CALCULATION (With Illustrative Entries)

ITEM DESCRIPTION:

Identification No.:

Date Prepared

Dod Component

Preparer's Name, Job Series, and Grade

PART A—NONRECURRING R&D INVESTMENT (NUMERATOR)

	R&D projects			Total
	X	Y	Z	
Major components:				
Air frame	80,000,000			$80,000,000
Engine (JXX)		58,000,000		58,000,000
Radar			5,000,000	5,000,000
Avionics	1,000,000			1,000,000
Undistributed to component air vehicle	20,000,000			20,000,000
Total				164,000,000

PART B.—NONRECURRING PRODUCTION INVESTMENT (NUMERATOR)

	AF 1537, Sept. 1, 1981	Contract XX	Contract ZZ	Total
Major components:				
Air frame	5,000,000			$5,000,000
Engine (JXX)	7,000,000			7,000,000
Radar	3,000,000			3,000,000
Avionics	5,000,000			5,000,000
Undistributed to component air vehicle	10,000,000			10,000,000
Total				30,000,000

PART C.—PROJECTED UNITED (DENOMINATOR)

	Source documents					
	DoD quantities		MAP/FMS 5-year security assistance plans	ADP project 311	Commercial est. by contracting officer	Totals
	FYDP proc. annex	ADP project 311				
Air frame		1,500		850		$2,350
Engine (JXX)		3,050		2,500	2,000	7,550
Radar		2,700		950	100	3,750
Avionics		1,500		850		2,350
Air Vehicle	1,500		750			2,250

PART D.—COMPONENT NC

	R&D	Production	Total	Projected units	Unit NC recoupment charge
Major components					
Air frame	$80,000,000	$5,000,000	$85,000,000	2,350	[1] $36,170
Engine (JXX)	58,000,000	7,000,000	65,000,000	7,550	[1] 8,609
Radar	5,000,000	3,000,000	8,000,000	3,750	[2] 2,133
Avionics	1,000,000	5,000,000	6,000,000	2,350	[2] 2,553
Undistributed	20,000,000	10,000,000	30,000,000	2,250	[3] 13,334

Notes:
[1] Unit NC recoupment charge calculation for MDE item must be submitted to DSAA for review and approval.
[2] Unit NC recoupment charge for non-MDE item is added to DoD Component schedule of non-MDE charges and reported to the DASD(MS) for publication.
[3] Undistributed systems' NC is recouped on end items.

PART E.—SYSTEM NC CHARGE

1. Current development costs:	
Air frame (1 each system)	$36,170
Engines (2 each system)	17,218
Radar (1 each system)	2,133
Avionics (1 each system)	2,553
Undistributed (allocated to end items)	13,334
2. GFM development costs:	
ISS cannon (2 each system)	500
HR X Radio (1 each system)	250
XM Bomb Sight (1 each system)	300
Access II Scat (1 each system)	700
Total system charge	[1] 73,158

[1] Unit NC recoupment charge calculation for MDE item must be submitted to DSAA for review and approval.

BILLING CODE 3810-01-M

Aug 5, 85
2140.2 (Encl 4)

RECOUPMENT OF NONRECURRING COSTS ON SALES OF MDE ITEMS	DATE PREPARED	DOD COMPONENT
	AS OF DATE	NAME AND TELEPHONE NUMBER OF CONTRACT POINT

SECTION A

(a)	(b)			(c)						(d)			(e)
WEAPON SYSTEM OR COMPONENT	NONRECURRING COSTS (IN THOUSANDS)			PRODUCTION QUANTITY						RECOMMENDED PPO RATA UNIT CHARGE			PREVIOUS UNIT CHARGE
	RDT&E	PRODUCTION	TOTAL	ARMY	MARINE NAVY	AIR FORCE	MAP FMS DIRECT SALE		TOTAL	RDT&E	PRODUCTION	TOTAL	

SECTION B

PRODUCTION QUANTITIES

		ACTUAL		PROJECTION		TOTAL	
	MAP						
	DIRECT SALE						
	FMS						
	TOTALS						Completion of Section C on Reverse is Required

4-1

BILLING CODE 3810-01-C

Aug 5, 85#
2140.2 [encl 5]

Recoupment of Nonrecurring Costs on Sales of USG Items and Technology

Department of the _____
($ thousands)
Reports Control Symbol: DSAA(Q)1112
Report Preparation Date_____
Report Cutoff Date_____

Total anticipated	Case designator (1)	Purchaser	Item	Fiscal year of sale	Delivery date (4)	NC charge (2) (3)	Actual collections		
							Amount collected this quarter	Amount collected this fiscal year to date	Cumulative collections (5)

Part 1. Recoveries on USG sales to foreign governments and international organizations.
Part 2. Recoveries on direct sales to foreign governments, international organizations, and foreign commercial firms.
Part 3. Recoveries on sales to domestic commercial firms.

NOTES:
(1) Applicable to USG sales to foreign governments and international organizations. For direct sales, use the license number. For domestic sales, establish a "dummy" case number for control purpose. When a license number or "dummy" case number is shown in the case designator column, then the purchaser column should also reflect the name of the contractor who is liable for the payment.
(2) When collection results from the sales of technology, rather than product, place a (T) after the anticipated charge.
(3) Place an asterisk after charge when collection is completed.
(4) For proposed or pending direct sales, place a "P" in this column.
(5) Collections that are completed during the fiscal year will be dropped on the first quarterly report of the subsequent fiscal year.

Jul 27, 87
2140.2 (Encl 6)

EXAMPLE 1—RECOUPMENT OF NC CHARGES FOR MAJOR DEFENSE EQUIPMENT NEW MODELS DERIVED FROM EXISTING MODELS

1. Model	Cost pool	Quantity	Old charge
Facts:			
A(Old)	$500,000,000	1,000	$500,000
B(New)	100,000,000	1,000	
	$600,000,000	2,000	

2. Old model	New model
1000 Parts	1200 Parts.

(NOTE: 900 parts are common to both models)

Step 1: Determine commonality: Commanality is the percentage of the parts in the new model that are common to the old model.

Commanality	900	=90%
	1,000	

Step 2: Determine the amount of the old item cost pool which benefits both old and new items.

$500,000,000	Old Item Cost Pool.
90%	Commanality.
$450,000,000	Common Cost Pool.

Step 3: Calculate NC charge for new item.

a. Common Cost Pool	Divided by benefiting units	
$450,000,000	2,000	=$225,000.00

b. New Item Cost Pool which does not contain commonality with the old item	Divided by benefiting units	
$100,000,000	1,000	=$100,000.00
Unit Charge for New Model		$325,000.00

Step 4: Determine cost pool of non-common items related to the old item.

a. Old Item Cost Pool	$500,000,000
Less:	
b. Common Cost Pool	450,000,000
Remainder: Old item cost pool which does not contain commonality with the new item.	$50,000,000

Step 5: Recalculate old item NC charge and determine if changed rates should be submitted to DSAA.

a. Old item cost pool	Divided by benefiting units	
$50,000,000	1,000	=$50,000

b. Common Cost Pool	Divided by benefiting units	
$450,000,000	2,000	=$225,000
Recalculated charge for old item		$275,000

c. Comparison of previous old item NC charge with recalculated NC charge for old item.

Recalculated old item charge	Divided by old item charge	
$275,000	$500,000	=55 percent, a 45 percent decrease and $225,000 NC Unit Charge decrease.

ACTION REQUIRED

Step 6: a. Submit request to Director, DSAA for consideration of change of NC rate on old item in accordance with paragraph B.3.b. of the basic directive.

b. Prepare DSAA package because the change in the NC rate in Step 5 exceeds 30 percent and the unit charge decreases by more than $50,000.

Step 7: Proof: Verify that cost pool has been fully allocated.

Old Item 1,000 QTY X $275,000 (Old Item Charge)	=$275,000,000
New Item 1,000 QTY X $325,000 (New Item Charge)	=$325,000,000
Total	$600,000,000
Cost Pool:	
Old Item	$500,000,000
New Item	100,000,000
	600,000,000
Difference	—0—

Note: The proof is designed only to show that costs are evenly distributed to all units, and the fact that there may have been previous charges at the old rate is to be disregarded for purposes of the calculation.

EXAMPLE 2—RECOUPMENT OF NC CHARGES FOR MAJOR DEFENSE EQUIPMENT NEW MODELS DERIVED FROM EXISTING MODELS

1. Model	Cost pool	Quanity	Old charge
A(OLD)	$400,000,000	1,000	$400,000
B(NEW)	200,000,000	2,500	
	$600,000,000	3,500	

2. Old model	New model
1000 Parts	1200 Parts

(Note: 600 parts are common to both models)

Step 1: Determine commonality: Commonality is the percentage of the parts in the new model that are common to the old model.

Commonality 600 / 1,000 = 60%

Step 2: Determine the amount of the old item cost pool which benefits both old and new items:

$400,000,000	Old Item Cost Pool.
60%	Commonality.
$240,000,000	Common Cost Pool.

Step 3: Calculate NC charge for new item

a. Common cost pool	Divided by benefiting units	
$240,000,000	3,500	=$68,571

b. New Item Cost Pool which does not contain commonality with the old item	Divided by benefiting units	
$200,000,000	2,500	=$80,000
Unit Charge for New Model		$148,571

Step 4: Determine cost pool of non-common items related to the old item.

a. Old Item Cost Pool	$400,000,000
Less:	
b. Common Cost Pool	$240,000,000
Remainder: Old item cost pool which does not contain commonality with the new item	$160,000,000

Step 5: Recalculate old item NC charge and determine if changed rates should be submitted to DSAA.

a. Old item cost pool	Divided by benefiting units	
$160,000,000	1,000	=$160,000

b. New common cost pool	Divided by benefiting units	
$240,000,000	3,500	=$68,571
Recalculated charge for old item		$228,571

c. Comparison of previous old item NC change with recalculated NC charge for old item.

Recalculated old charge	Divided by old item charge	
$228,571	$400,000	=57 percent, a 43 percent decrease and $171,429 NC Unit charge decease.

ACTION:

Step 6: Prepare DSSA package because the change in the NC rate in Step 5 exceeds 30% and the unit charge decreases more then $50,000.

Step 7: Proof: Verify that cost pools have been fully allocated.

Old Item 1,000 QTY X $228,571 (Old item charge)	=$228,571,000
New Item 2,500 QTY X $148,571 (New item charge)	=371,430,800
	$600,001,800
Total rounded to	$600,000,000
Cost pool:	
Old Item	$400,000,000
New Item	200,000,000
	$600,000,000
Difference	—0—

Note: The proof is designed only to show that costs are evenly distributed to all units. The fact that there may have been previous charges at the old rate is to be disregarded for purposes of calculation.

[FR Doc. 88-11170 Filed 5-20-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHISA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from TÜV Rheinland requesting that NHTSA amend Safety Standard No. 301, *Fuel System Integrity*, to provide specifically for the use of water in crash tests performed to determine compliance with the standard. The petitioner made this request because it believed Stoddard solvent, the currently referenced material used in a vehicle's fuel tank for NHTSA's compliance testing, is too flammable for use in crash testing. The agency is denying the petition because NHTSA finds no safety justification for such an amendment to the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC, 20590. Telephone (202) 366-4915.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, specifies performance requirements for fuel systems of vehicles based on dynamic crash tests and static rollover tests. Under the test conditions set forth in the standard, a test vehicle is loaded to its gross vehicle weight rating, and its fuel tank is filled to any level between 90 and 95 percent of capacity with Stoddard solvent, a hydrocarbon dry cleaning fluid. Fuel spillage is measured for a period of 30 minutes from the moment of impact of the vehicle into a barrier: five minutes during which no more than five ounces may be released, plus a further 25-minute period when spillage must not exceed one ounce per minute.

In October 1987, Technischer Überwachungs-Verein Rheinland (TÜV) submitted a petition for rulemaking requesting that NHTSA amend Standard No. 301 to provide specifically for the use of water in crash tests performed to determine compliance with the standard. TÜV made this request because it believed Stoddard solvent, the test material currently referenced in the standard, is too flammable and no alternative fluid other than water is available for reference as a test fluid.

According to the petitioner, some test laboratories in Germany believe that crash testing vehicles with fuel tanks filled with Stoddard solvent is unacceptable as unreasonably dangerous to personnel and property. TÜV said that some fires have occurred in test laboratories in the past when Stoddard solvent was used which had resulted in "immense" property damage. TÜV said that because the risk of fire from Stoddard solvent is great, test laboratories refuse to perform indoor crash testing of vehicles whose fuel tanks are filled with the fluid. TÜV argued that this reluctance poses a problem for future crash testing involving the Hybrid III anthopormorphic test dummy, since the dummy needs to be calibrated in a controlled (i.e., indoor) environment. Since indoor crash testing is becoming more prevalent given the calibration needs of the Hybrid III dummy and the state-of-the art advances of test laboratories, TÜV said NHTSA should specifically allow for the use of colored water in Standard No. 301 test procedures, in addition to Stoddard solvent, to reduce the risk of danger to laboratory personnel and equipment.

The petitioner acknowledged the unavailability of fluids which have both the dynamic viscosity and density of gasoline and a flesh point sufficiently high enough to eradicate the petitioner's concern about the risk of fire attendant with certain fluids. Yet, TÜV believed water is a suitable alternative to Stoddard solvent because TÜV said it is unnecessary that water have the exact viscosity of fuel. TÜV said it has tested vehicles for compliance with Standard No. 301 by filling fuel tanks with water and has observed that a vehicle will either meet the requirements of the standard with *no* fluid spillage or the vehicle will fail to meet the standard by far exceeding the permissible spillage rate. Thus, TÜV concluded that the dissimilarity between the viscosities of water and gasoline should not prevent water from being referenced as a test fluid since "the viscosity of the fluid (water) will not influence the test result." The petitioner urged NHTSA to amend Standard No. 301 to add a section to the standard that would specifically allow a manufacturer to use water in a test vehicle's fuel tank if the manufacture could show that the vehicle had performed in a manner equivalent to that required of a vehicle whose tank is filled with Stoddard solvent.

NHTSA has carefully considered the issues raised by TÜV's petition and has determined that the petition should be denied since there is not a reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. NHTSA declines to amend Standard No. 301's test procedures to allow the use of water in compliance testing because the agency believes that such an amendment is not justified by a safety need.

NHTSA took careful note of petitioner's suggestions about the unreasonable risk of fire that Stoddard solvent is said to impose due to its flammability since any unreasonable risk to the safety of laboratory personnel and other persons resulting from any NHTSA test procedure will not be tolerated by the agency. In order to obtain more information on the incidents of laboratory fires occurring in Standard No. 301 testing, NHTSA carefully reviewed its own records on such testing and has found that only one incident of fire occurred over the past 15 years that the agency has tested vehicles using Stoddard solvent. The agency is unable to conclude in this case that one incident demonstrates satisfactorily an unsafe laboratory procedure. Moreover, the one incident occurred during a Standard No. 301 research endeavor which tested a vehicle under conditions wherein fire prevention precautions were less stringent than those of the standard's compliance test. Given the absence of information showing an unreasonable occurrence of fires in Standard No. 301 compliance tests, the agency declines to find that use of Stoddard solvent should cease because it unreasonably increases the likelihood of conflagrations in the laboratory.

Since NHTSA has not found that using Stoddard solvent in compliance testing unreasonably increases the risks to persons and property, the agency concludes that is no justification for referencing a material other than Stoddard in Standard No. 301. The agency will continue to use and provide for the use of only Stoddard solvent to test the integrity of vehicles' fuel systems, since the material has characteristics that are important for the purpose for which the fluid is intended: Its specific gravity and viscosity are similar to that of conventional fuels typically used to operate motor vehicles, yet its flash point is substantially higher than that of gasoline.

Because the purpose of Standard No. 301 is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after vehicle crashes, it is important that the test conditions and procedures of the standard replicate as closely as possible the synergistic effect of variables affecting the behavior of the vehicle in an actual crash situation. Stoddard solvent's physical similarity to vehicle fuel make the fluid a representative material for ascertaining the actual performance of a vehicle and its fuel system in a real world crash. Its flash point of 100 degrees, which is substantially higher that that of gasoline (−45 degrees), make Stoddard solvent a much safer substance than gasoline for crash testing vehicles. Since a vehicle's behavior in a Standard No. 301 compliance that is intended to be representative of its performance in an actual crash, NHTSA believes that the standard should reference a material that is less flammable then most if not all vehicle fuels, yet representative of the material that will be contained in the vehicle's fuel tank at the time of a real-world crash. Stoddard solvent satisfies that criteria.

NHTSA lacks sufficient date to accept or reject TÜV's assertion that vehicles tested by the petitioner either meet Standard No. 301's limited-spill requirements with *no* spillage or fail to meet the standard with *high* spillage rates. The petitioner made this assertion to support its arguments for using water—i.e., that it is unnecessary that the fluid used in the fuel tank have the properties of fuel since fuel spillage results from "braking" or "damage" to the fuel tank and is unaffected by the viscosity of the fluid in the tank. NHTSA does not believe that the large compliance margins in the particular tests witnessed by the petitioner are reason enough for concluding that the physical characteristics of the material contained in a test vehicle's fuel tank are unimportant. Notwithstanding the observations of TÜV, some vehicles tested in NHTSA's compliance tests of Standard No. 301 have shown fuel spillage rates that differ significantly from the extremes witnessed by the petitioner. The agency believes it would be unwise to assume there are no vehicles whose spillage rates are close to the limits set by the standard. The petitioner did not demonstrate that using water would yield spillage results identical to those obtained when Stoddard solvent is used. The agency is therefore unable to determine as did the petitioner that variables such as the viscosity of the material contained in a vehicle's fuel tank have absolutely no effect on compliance margins for certain test vehicles.

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The effect of this denial is not to automatically preclude TÜV from using water in its compliance testing. Standard No. 301 does not require TÜV to test its vehicles in only the manner specified therein. The standard merely specifies the manner in which NHTSA will conduct compliance testing. A manufacturer is permitted by the Safety Act to use any means, consistent with the requirement to exercise due care, to ensure that its vehicles meet all applicable requirements of the standard. This means that the standard does not prevent TÜV from using water or any other test fluid in compliance testing. Manufacturers may choose to conduct testing in according with the compliance test procedures set forth in Standard No. 301 or choose to simulate any or all parts thereof, so long as they can demonstrate that such simulations satisfy the due care standard.

If a manufacturer certified its vehicles using water and NHTSA subsequently tested the vehicle for compliance with Standard No. 301, the agency would do so under the test conditions and procedures specified therein. If the agency found that the vehicle did not comply with the standard when Stoddard solvent was used, it would notify the manufacturer and ask for further information concerning the bases for the manufacturer's certification of the vehicle. The manufacturer would provide the results of its compliance testing to the agency, together with its reasons for concluding that water was a reasonable substitute for Stoddard solvent.

A manufacturer would fail to satisfy its due care responsibilities only if it had insufficient reason to believe that water was an adequate substitute for Stoddard solvent. If TÜV were ever called upon to provide the results of its compliance tests to NHTSA in the event of an apparent noncompliance, present agency enforcement procedures would give TÜV the opportunity to show why it believed it was reasonable to simulate the standard's test procedures using water or any other materials in the fuel tank instead of Stoddard solvent.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on May 17, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–11535 Filed 5–20–88; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 661

[Docket No. 88–D]

Request for General Waiver of Buy America Requirements.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: General waiver; request for comments.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is seeking comments on whether a general waiver to the "Buy America" requirements should be granted to permit the procurement of certain audio-visual training equipment produced outside of the United States because UMTA grantees have encountered difficulty in obtaining such equipment which complies with the applicable "Buy America" requirements.

DATE: Comments must be received by June 22, 1988.

ADDRESS: Comments should be submitted to UMTA Docket No. 88–D, Urban Mass Transportation Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20580. All comments and suggestions received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9316, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4063.

SUPPLEMENTARY INFORMATION: Section 165(a) of the Surface Transportation Assistance Act of 1982 (STAA) provides that Federal funds may not be obligated for the purchase of manufactured products unless such products are produced in the United States. Section 165(b)(1) of the STAA provides that the general requirements of section 165(a) may be waived if their application would be inconsistent with the public interest. The implementing regulations at 49 CFR 661.7(b) provide that "[i]n determining whether th[e] exception will be granted, [UMTA] will consider all appropriate factors on a case by case basis." Section 165(b)(2) of the STAA provides that the general requirements concerning domestic preference shall not apply if the item or items being procured "are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality." The implemehting regulations at 49 CFR 661.7(c) provide that the statutory conditions will be presumed to exist if no responsive and responsible bid is received offering equipment that meets the applicable statutory and regulatory requirements in order to qualify as a domestic manufactured product.

In the preamble to the "Buy America" regulations published in the **Federal Register** on September 15, 1983 (48 FR 41462), UMTA indicated that in certain circumstances in which a public interest waiver is sought under section 165(b)(1), the proposed waiver would be published in the **Federal Register** for comment. Such a procedure is not mandatory before a public interest waiver is granted, but UMTA uses the procedure where the public interest waiver involves important policy considerations or is controversial. It is UMTA's position that important policy considerations exist in this case.

UMTA has received a request from the Iowa Department of Transportation for a "Buy America" waiver relative to the procurement of audio-visual training equipment. The request indicates that recipients of funds under Iowa's rural and elderly and handicapped transit programs have encountered difficulty in finding vendors of video cassette recorders/players, cameras and monitors who are able to certify compliance with the applicable "Buy America" requirements. The request also indicates that research indicated that there are no domestic manufacturers of video-cassette cameras, recorders, playback decks and color video monitors with smaller than 19 inch screens.

Since the grantees involved in the Iowa request are small entities, it would appear that the public interest would be best served by a general waiver which would streamline the purchasing process for all grantees who would need or expect to need similar equipment. Rather than acting on the Iowa request for a waiver on an individual basis, UMTA has determined that it is appropriate to seek public comment on whether such a waiver should be granted on a nation-wide basis. To that end, UMTA specifically seeks comments or responses to the following questions:

1. Should such a general waiver of the "Buy America" provisions be granted to permit the procurement to audio-visual equipment which does not comply with the applicable "Buy America" requirements?

2. What types of audio-visual equipment should be covered by such a waiver?

3. If a waiver is granted, should there be a dollar limit on the applicability of the waiver?

4. Should such a waiver apply to all UMTA grantees or just to recipients of section 18 funds (rural and non-urbanized systems) and recipients of section 16(b)(2) funds (private providers of service to the elderly and handicapped)?

Dated: May 13, 1988.

Edward J. Babbitt,

Chief Counsel.

[FR Doc. 88–11317 Filed 5–20–88; 8:45 am]

BILLING CODE 4910–57–M

VOL 53 ISS 99 MY 23 1988 UMI

Notices

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Tri-State Generation and Transmission Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of 62.4 km (39 miles) of 115 kV transmission line and associated facilities by Tri-State Generation and Transmission Association, Inc. (Tri-State). The proposed facilities would be constructed in Morrill and Garden Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Tri-State's Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8848; or at the office of Tri-State Generation and Transmission Association, Inc. (Daniel E. McLeod, Manager), 12076 Grant Street, Denver, Colorado 80233, telephone (303) 452–6111, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing from Tri-State, required that Tri-State develop environmental support information reflecting the potential environmental impacts of the project. The information supplied by Tri-State is contained in a Borrower's Environmental Report (BER) which was used by REA to develop its Environmental Assesment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The proposed project consists of constructing approximately 62.4 km (39 miles) of new single circuit 115 kV transmission line and associated facilities. The line would originate at Nebraska Public Power District's Covalt Substation and terminate at the Wildhorse Substation. Structures would include both single wood-pole and H-frame structures on 21 meter (70 foot) or 30 meter (100 foot) right-of-way. Associated facilities would include equipment additions at the Covalt, Wildhorse, Lynn and Blue Creek Substations and the Snake Creek Switching Station. The existing Big Springs-Blue Creek 115 kV transmission line would be upgraded to improve line clearance.

Alternatives examined included no action, system alternatives and route alternatives. After reviewing the engineering, economic and environmental aspects of these alternatives, REA determined that the proposed project is an acceptable alternative that meets Tri-State's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Tri-State advertised the availability of its BER in the local newspapers. No comments were received. Tri-State also held public meetings in the project area on April 28 and 29, 1987. All concerns were resolved at the meeting. No other matters of environmental concern have come to REA's attention.

Based upon the environmental support information provided, REA prepared an EA concerning the proposed project and its impacts. As a result of its independent evaluation, REA has concluded that approval of financing assistance enabling Tri-State to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. REA has concluded that the proposed project will have no effect on important farmland, prime rangeland or forest land, threatened or endangered species or their critical habitat, floodplains, wetlands or any properties listed or eligible for listing in the *National Register of Historic Places*. Therefore, REA has reached a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: May, 16, 1988.

John M. Arnesen,
Assistant Administrator—Electric.

[FR Doc. 88–11453 Filed 5–20–88; 8:45 a.m.]
BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–501]

Photo Albums and Filler Pages From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by petitioners, four exporters, and an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea. The review covers eighteen purported manufacturers/exporters and one-third country reseller of this merchandise to the United States and the period July 16, 1985 through November 30, 1986. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We used the best information available for fourteen firms which failed to respond to our request for information, could not be located, or provided inadequate information in response to our questionnaire.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 51273) an antidumping duty order on photo albums and filler pages from Korea. Petitioners, four exporters and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). On September 21, 1987 the Department published a notice of initiation of antidumping duty administrative review for an additional 26 firms (52 FR 35466). The results of that review will be published at a later date.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of photo albums and photo album filler pages. Photo albums are currently classifiable under TSUSA item number 256.60 and HS item number 4820.50. Photo album filler pages are currently classifiable under TSUSA item number 256.87, 256.90 or 774.55 and HS item number 4820.90, 4823.90, 4819.50, 3920, 3921, or 3926.90.

The Department has preliminary determined that binders which are not sold as components of unassembled albums are not included within the scope of the order. This merchandise is not within the class or kind of merchandise described in the petition or subject to the investigation of sales at less than fair value. Binders need not be shipped together with filler pages to be considered components of unassembled albums and thus within the scope of the order.

The Department has also preliminary determined that imported albums which contain pages manufactured in Korea are included within the scope of the order. The International Trade Commission determined that the essential characteristic of a photo album is the pages it contains, and the antidumping duty order covers both photo albums and filler pages. The Department also finds that pages constitute the essential element of an album and that placing the pages in a cover and binder does not significantly change the product.

The review covers eighteen purported manufacturers/exporters and one third-country reseller of photo albums and filler pages from the Republic of Korea and the period July 16, 1985 through November 30, 1986.

Only one manufacturer/exporter with shipments during the period responded adequately to our requests for information. Eleven firms, including the third-country exporter, did not respond to our questionnaire, one firm is out of business and one firm could not be located. Another firm, Chinsung, provided an inadequate response to the Department's questionnaire for the review period. Chisung failed to furnish additional information to eliminate deficiencies in its original response. Therefore, the Department used the best information available for these fourteen firms, which was the rate for all firms published in the antidumping duty order (50 FR 51273, December 16, 1985). Four other firms had no shipments during the period. These four firms also are not known to be manufacturers or exporters of the merchandise.

Exports to the U.S. by certain additional manufacturers/exporters named in a separate notice of initiation of antidumping duty administrative review (52 FR 33466, September 21, 1987) will be covered by a future notice of preliminary results of administrative review.

United States Price

In calculating United States price for the responsive firm, Dong In, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. or c.&f. price to unrelated purchasers in the United States. We made adjustments for brokerage and handling, foreign inland freight, CFS and wharfage, ocean freight, marine insurance, Korean customs inspection fees, and rebates. Where applicable, we made an addition for import duties collected and rebated on imported materials used to produce subsequently exported merchandise, in accordance with § 353.10(d)(1)(ii) of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value for Dong In, the Department used third-country price or constructed value, as defined in section 773 of the Tariff Act. We did not use home market sales because they were not made in the ordinary course of trade. Third-country prices were used where sufficient quantities of such or similar merchandise were sold to third countries at or above the cost of production to provide a basis for comparison. Third-country price was based on the packed f.o.b., c.&f., or c.i.f. price to unrelated purchasers for export to third countries. We made adjustments for brokerage and handling, foreign inland freight, ocean freight, marine insurance, CFS and wharfage, Korean customs inspection fees, and rebates and adjustments for differences in credit, bank charges, export recommendation charges, GSP stamping charges, and physical characteristics of the merchandise. Where applicable, we

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made an addition for import duties collected and rebated on imported materials used to produce subsequently exported merchandise.

Constructed value consisted of the sum of the cost of materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was the actual cost since actual general expenses were more than the statutory minimum of 10 percent of the sum of materials and fabrication costs. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication and general expenses since actual profit was less than the statutory minimum of 8 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1985 through November 30, 1986.

Manufacturer/Exporter/Third-Country Reseller (country)	Margin (percent)
Chinsung	64.81
Donam	64.81
Dongbang	64.81
Dong In	[2] 8.37
Dong In/KMB	64.81
Dong In/Ssangyong	64.81
Dong Won	64.81
Dongwoo [1]	(1)
Eunjin	64.81
Keywon	64.81
KMB	64.81
Korean Enterprise	64.81
Korea Transportation [1]	(1)
Sam Bang Trading	64.81
Samwang [1]	(1)
Ssangyong	64.81
Sunkyong	64.81
Three Leaf (Taiwan)	64.81
Western Assembly	64.81
Yangjisa	64.81
Yonsei Shipping [1]	(1)

[1] No shipments during the period. Not a known manufacturer or exporter.
[2] For entries of merchandise manufactured and exported by Dong In only.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order for each of those firms (50 FR 51273, December 16, 1985).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 8.37 percent shall be required.

The deposit requirements are effective for all shipments of Korean photo albums and filler pages entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The Department has received information indicating that shipments of photo albums and filler pages from certain third countries may be merchandise of Korean origin for antidumping duty purposes and subject to the antidumping duty order. In order to determine whether such merchandise is subject to antidumping duties, the Department requested the Customs Service to extend liquidation of entries of photo albums and filler pages exported from, or purported to be merchandise of, Taiwan, Singapore or Malaysia, and entries of photo albums and filler pages exported from Hong Kong but purported to be merchandise of another country. This extension of liquidation will remain in effect until we determine whether such merchandise is subject to the order.

In an effort to identify entries of Korean merchandise, we requested information from certain firms in Taiwan, Singapore, Malaysia and Hong Kong. The firms listed below have not responded or have failed to provide adequate information. Unless we receive adequate and timely information, we will regard all photo albums and filler pages exported, or purported to be manufactured, by those firms as products of Korea and will instruct the Customs Service to begin collecting cash deposits of estimated antidumping duties on all photo albums and filler pages exported, or purported to be manufactured, by those firms. This deposit requirement is effective on the date of publication of the final results of the administrative review. Cash deposits of 64.81 percent will be required for the following firms:

Taiwan

Bright Bag
Flomo Plastics
Jackson Dai
Pan Asiaworld
Three Leaf
Walson Enterprises

Hong Kong

Ad-Gifts Manufactory
Aico Inc.
Evergreen & Pych
Mei Lik
Perfect Leatherware
S&C Import Export
Union Paper Box

Singapore

Bumont Int'l
Choo Seng
Singapore Merchandise Export

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: May 16, 1988.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

[FR Doc. 88-11501 Filed 5-20-88; 8:45 am]
BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than May 31, 1989.

Antidumping duty proceedings and/Firms	Periods to be reviewed
France: Sorbitol (A-427-001)	04/01/87-03/31/88
Roquette Freres	
Italy: Spun Acrylic Yarn (A-475-084)	04/01/87-03/31/88
Manifattura Emmepi	
Fanstasia	
Lanificio di Nervesa/International Fibre	
Mister Joe	
Turriddo Torrecchi	
Japan: Calcium Hypochlorite (A-588-401)	04/01/87-03/31/88
Nippon Soda	
Nankai	
Nissan Danka	
Japan: Cyanuric Acid (A-588-019)	04/01/87-03/31/88
Shikoku	
Japan: Dicholoro Isocyanurates (A-588-019)	04/01/87-03/31/88
Shikoku	
Nissan	
Japan: Trichaloro Isocyanuric Acid (A-588-019)	04/01/87-03/31/88
Shikoku	
Nissan	
Japan: Roller Chain, Other Than Bicycle (A-588-028)	04/01/87-03/31/88
Daido Kogyo	
Enuma Chain	
Hitachi Metals	
Izumi	
Pulton	
Sugiyama/Hokoku	
Sugiyama/I & OC	
Sugiyama/Heima	
Takasago	
Tsubakimoto	
Japan: Spun Acrylic Yarn (A-588-066)	04/01/87-03/31/88
C. Itoh	
Itoman	
Mitsui	
Mitsubishi	
Nichimen	
Nissho Iwai	
Gunze Sangyo	
Teijin Shoji	
Kenya: Fresh Cut Flowers (A-779-602)	11/03/86-03/31/88
Sulmac	
Updown	
Plantana	
Bob Harris	
Guy Robbin	
Kenya Flowers	
Brooke Bond Kenya	
ADC Agriculture Development	
Flaco	
Oserian Development	
Republic of Korea: Color Television Receivers (A-580-008)	04/01/87-03/31/88
Daewoo	
Samsung	
Quantronics	
Goldstar	
Cosmos	
Mexico: Fresh Cut Flowers (A-201-601)	11/03/86-03/31/88
Floresa:	
Tzitzic Tareta	
Viseflor	
Rancho Mision el Descanso	
Rancho del Pacifico	
Las Flores de Mexico	
Rancho Daisy	
Rancho Alisitos	
Taiwan: Color Televisions (A-583-009)	04/01/87-03/31/88
AOC	
Action Electronics	
Capetronic	
Fulet	
Funai	
Hitachi	
Kuang Yuan	
Nettek	
Paramount	
Philips	
Sampo	
Sanyo	
Shin-Shirasuna	
Tatung	
Thomson	

Countervailing duty proceedings	Periods to be reviewed
Argentina: Cold-Rolled Carbon Steel Flat-Rolled Products (C-357-005)	01/01/87-12/31/87
Brazil: Pig Iron (C-351-062)	01/01/87-12/31/87
Colombia: Leather Wearing Apparel (C-301-001)	01/01/87-12/31/87
Mexico: Leather Wearing Apparel (C-201-001)	01/01/87-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c)

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

Date: May 16, 1988.

[FR Doc. 88-11502 Filed 5-20-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On December 15, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for three firms and 2.28 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 47618) the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (48 FR 43063, September 21, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican portland hydraulic cement and cement clinker other than white nonstaining. Such merchandise is currently classifiable under item numbers 511.1420 and 511.1440 of the Tariff Schedules of the United States Annotated and under

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Harmonized System item numbers 2523.10.00, 2523.29.00, 2523.30.00 and 2523.90.00.

The review covers the period January 1, 1985 through December 31, 1985 and 12 programs: (1) FOMEX; (2) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (3) CEPROFI; (4) FONEI; (5) NDP discounts; (6) Bancomext loans; (7) state tax incentives; (8) CEDI; (9) FOGAIN; (10) delay of payments on loans; (11) delay of payments to PEMEX; and (12) import duty reductions and exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely written comments from Cementos Anahuac, Cementos Anahauc del Golfo, Cementos Apasco, Cementos de Chihuahua, Cementos Guadalajara, Cementos Maya, Cementos Mexicanos, Cementos Portland Nacional, Cementos Tolteca and Cementos Veracruz ("the exporters").

Comment 1: The exporters contend that the Department has no authority to impose countervailing duties on duty-free imports from Mexico without an affirmative finding of injury if the United States has an international obligation to provide such an injury test. In the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the "Understanding") signed on April 29, 1985, the United States granted Mexico most-favored-nation ("MFN") status. On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Both the MFN status and GATT membership constitute international obligations of the United States, as defined in section 303. Without a finding of injury in this case, the Department must revoke this order.

The exporters also claim that the United States has a statutory obligation to give MFN treatment to all countries with which the United States has trade relations, regardless of whether there exists an international agreement requiring such treatment. To support their claim, the exporters cite section 251 of the Trade Expansion Act of 1962, 19 U.S.C. 1881, and section 126 of the Trade Act of 1974, 19 U.S.C. 2136. Both provisions provide that treatment accorded under any trade agreement "shall apply to products of all foreign countries." In addition, section 126 of the Trade Act of 1974 limits exceptions to nontariff agreements with "major industrial countries," as defined by this provision. Countervailing duties are tariffs, and Mexico is not a major industrial country as defined in section 126. Therefore, the unconditional MFN treatment required by section 251 and section 126 applies to Mexico. The exporters conclude that because of this long-standing unconditional MFN policy, the United States had an "international obligation" to provide an injury test on duty-free products from Mexico long before Mexico's accession to the GATT.

Department's Position: We addressed most of these issues in the final results of the last administrative review in this case (51 FR 44501, December 10, 1986). We believe that we lack the authority to revoke this countervailing duty order on the basis of the Understanding. Although Article 8 of the Understanding grants MFN status to Mexico, Article 5 of the Understanding limits the provision of an injury test to "investigations in progress," or those commenced after April 1985. Article 8 may not be read independently. It must be read within the context of the rest of the Understanding, the scope of which, for purposes of the injury test, is limited by its own terms.

Contrary to the exporters' contention, MFN status in and of itself does not constitute an "international obligation," as defined in section 303(a)(2), for purposes of requiring an injury test before assessing countervailing duties on entries covered by this review. Section 303(a)(2) reads, in relevant part, "* * * unless a determination of injury is required by the international obligations of the United States." The international obligation created in Article 8 does not extend to entries covered by this review because the Understanding itself makes clear that the only international obligation of the United States is to provide an injury test to investigations in progress or investigations begun after April 1985. The investigation in this case was completed in 1983. Therefore, the United States is not required by the MFN language in Article 8 to grant an injury test in this case on entries of merchandise covered by this review.

We disagree with the exporters' argument that U.S. policy is to grant unconditional MFN treatment to all countries regardless of whether they have entered into a trade agreement with the United States that grants such treatment. The unconditional MFN language in section 126 of the Trade Act of 1974 and section 251 of the Trade Expansion Act of 1962, referred to by the exporters to support this proposition, first appeared in 1934, 48 Stat. 943. The 1934 statute authorized the President to enter into trade agreements which accord MFN treatment. These agreements would require the United States to grant treatment to co-signatories no less favorable than that accorded to other trade partners with whom the United States had bilateral or multilateral arrangements. This is apparent from the fact that the 1934 statute served as authorization for the negotiation of several bilateral trade treaties (including one with Mexico, which was later terminated) that specifically provided for MFN treatment prior to the formation of the GATT in 1948. The United States would not have entered into these trade treaties if the 1934 statute itself required an "automatic" grant of MFN treatment to all trading partners, as the exporters suggest. Accordingly, the argument that the unconditional MFN language in sections 126 and 251 is intended to grant automatic MFN treatment to all countries is not supposed by the history of the provision itself.

Even if the exporters' argument were valid, sections 126 and 251 both contain exceptions for other provisions of law ("Except as otherwise provided in this chapter or in any other provision of law"). The provision contained in section 303(a)(2) to the effect that an injury determination is required prior to the imposition of countervailing duties only if the "international obligations of the United States" require such a determination, qualifies as "any other provision on law," and thus comes within the exceptions contained in sections 126 and 251.

More importantly, section 126 of the Trade Act of 1974 applies only to tariff negotiations entered into under that chapter. Contrary to the exporters' contention, countervailing duties are not "tariffs," or "import restrictions," as defined in chapter 1 of the 1974 law. A tariff, which is an import tax, may properly be regarded as an import restriction. A countervailing duty on the other hand merely equalizes the effect of foreign government subsidization of products imported into the United States. The MFN principle, as articulated in section 126, does require that the same tariff be applied to the same product from all countries accorded MFN status by the United States. Section 101 of the 1974 law authorizes the president to enter into trade agreements and to raise or lower tariffs by a specific formula, pursuant to these agreements. Section 101 in no way serves as authorization to raise or lower countervailing duties, which are based upon the rate of subsidization of a particular product from a particular country.

Section 102 of the 1974 law, and not section 101, serves as authorization for negotiating future agreements regarding

treatment of subsidy practices (including the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (the "Subsidies Code")) and other trade distorting practices. This section is separate and distinct from section 101, and by its very terms does not fall under the requirements of section 126. Section 102 makes clear that benefits negotiated are to be available only to countries that obligate themselves to grant similar benefits to the United States. Therefore, even though section 126 does not require an automatic grant of MFN treatment to trading partners unless they are parties to an agreement granting such treatment, it is clear that this section only applies to normal duties or tariffs and not to measures, such as countervailing duties, that offset trade distorting practices.

The clearest indication of Congress' intent regarding the provision of the injury test can be found in the legislative history of the Trade Agreements Act of 1979. That act amended section 303 to include references to title VII of the new countervailing duty law. The legislative history of that section states:

> Present law.—Section 303 of the Tariff Act (19 U.S. 1303) contains few procedural provisions * * * The ITC injury determination is required * * * only with respect to duty-free goods and only to the extent required by the international obligations of the United States. The United States is obligated to apply the injury test under section 303 only with respect to duty-free products of countries which have fully acceded to the General Agreement on Tariffs and Trade.
>
> S. Rep. No. 96–249, 96th Cong. 1st Sess. 103 (1979).

For these reasons, the exporters' claim that the United States is obligated to grant an injury test by virtue of the MFN principle, irrespective of GATT membership or other agreements, finds no support in the statute or its legislative history.

Finally, we are considering the issue of an injury test for Mexican duty-free products entered after Mexico acceded to the GATT. Since Mexico's accession to the GATT was effective on August 24, 1986, this issue does not affect entries covered by this review, which extends only through December 31, 1985.

Comment 2: The exporters contend that the Department's position that its potential injury obligations to Mexico only affect entries made after August 24, 1986, the date of Mexico's accession to the GATT, is not consistent with applicable law or with its own precedents. Section 303(a)(2) of the Tariff Act states that "duties may be imposed under this section only if there are affirmative determinations by the Commission * * * " The term "imposed" specifically refers to the final imposition of duties through the liquidation of entries. The Subsidies Code states in Article 4, paragraph 2, footnote 14 that "[a]s used in this agreement 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax." The term "imposition" as used in section 303 and the term "levy" as used in the GATT are synonymous. This is the interpretation followed by the Department in *Certain Fasteners from India: Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order*, (47 FR 44129, October 6, 1982).

Since the entries covered by this administrative review have not yet been liquidated, the Department cannot now instruct Customs to liquidate these entries because liquidation, or the final levy or imposition of duties, would take place well after August 24, 1986. The dispositive issue is not whether entries were made before Mexico's accession to the GATT, but whether the Department issues instructions to "levy" or "impose" duties after Mexico's assession to the GATT, even if those instructions cover entries made before Mexico's assession.

Furthermore, Cementos de Chihuahua argues that the Department's position regarding its authority to liquidate at this time is inconsistent with its own precedents in *Certain Fasteners from India, Certain Scissors and Shears from Brazil*, (50 FR 11927; March 28, 1985) (preliminary), and *Carbon Steel Wire Rod from Trinidad and Tobago*, (50 FR 19511; May 9, 1985). In these cases, the Department determined that it lacked the authority to assess countervailing duties because the merchandise covered by the orders was duty-free and was exported from countries that were GATT members.

Department's Position: We agree that the word "impose" as used in section 303 refers to the final legal assessment of duties. We do not agree that this interpretation of the word "impose" precludes us from assessing countervailing duties on duty-free imports from Mexico that were entered before Mexico's accession to the GATT, regardless of whether our instructions to Customs are issued after Mexico's assession. Before Mexico's assession to the GATT, the United States had no "international obligation" toward Mexico to provide an injury test on entries of merchandise covered by this review.

When the Tariff Act was amended by the Trade Agreements Act of 1979, section 303(b) was amended to provide that the duty imposed under section 303(a) shall be imposed in accordance with the "new" countervailing duty law. Under the new law, the Department assesses duties based on the published results of administative reviews. Thus, the statutory scheme envisions that estimated countervailing duties will be deposited upon entry of merchandise which is the subject of a countervailing duty order, but that the determination and assessment of the actual countervailing duties will be postponed until the Department has had an opportunity to conduct a review pursuant to 19 U.S.C. 1675(a).

The practice of determining the actual amounts of countervailing duties due *after* the entry of merchandise comports with the long-established Customs practice of imposing liability for duties upon the entry of the merchandise, but permitting the actual amount of duties to be determined and assessed at a later date. *See, e.g.*, 19 U.S.C. 1504, which in pertinent part allows liquidation to take place after entry if the requisite information is not available or liquidation is suspended as required by statute or court order. *See* also, *Zenith Radio Corporation* v. *United States*, 1 CIT 180, 184, 509 F. Supp. 1281 (1981), for the proposition that a claim by the United States for duties arises upon the entry of merchandise into the Customs territory even though the exact amount of the claim is not determined until liquidation. *See* also,*Ambassador Division of Florsheim Shoes* v. *United States*, 748 F. 2d 1560 (Fed. Cir. 1984), for the proposition that, in the case of countervailing duties imposed under section 303, liquidation of entries of merchandise subject to a countervailing duty order is required to be suspended by law until Commerce has determined the amount of the countervailing duty to be imposed in a periodic review conducted under 19 U.S.C. 1675(a).

Finally, our position that we have the authority to direct the Customs Service to collect actual countervailing duties based upon the final results of this administrative review is entirely consistent with our position in *Certain Fasteners from India, Carbon Steel Wire Rod from Trinidad and Tobago*, and *Certain Scissors and Shears from Brazil*. In both *Certain Fasteners from India* and *Carbon Steel Wire Rod from Trinidad and Tobago*, the countries involved were contracting parties to the GATT and the products involved were duty-free at the time they were imported into the United States. Similarly, in *Certain Scissors and Shears from Brazil*, we stated that we would not collect countervailing duties on certain duty-free merchandise covered by the

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order because during the assessment period Brazil was a GATT member and the merchandise was duty-free. Chihuahua fails to recognize that in each of these three cases the common facts were that the exporting country was a GATT member and the merchandise was duty-free *during* the potential assessment period. None of these cases is analogous to the present case because Mexico was *not* a member of the GATT at the time the duty-free cement covered by this review was imported.

Thus, the importers' liability for the payment of actual countervailing duties, just as the liability for the payment of other import duties, is established at the time that the merchandise is entered, even though the actual amount of duty is determined and assessed at a later date. The merchandise covered by this review was entered at a time that Mexico was not a GATT member and the United States had not extended the right to an injury test to duty-free products from Mexico. Therefore, we have the authority to assess duties on all entries covered by this review. This conclusion is supported by *Cementos Guadalajara v. United States et al.*, Slip Op. 88-48, where, in addressing these same issues in a challenge to the last review of this order, the Court of International Trade affirmed the Department's authority to assess duties after Mexico's accession to the GATT on merchandise entered into the United States before that accession.

Comment 3: Cementos de Chihuahua disagrees in part with the Department's conclusion that Article 15 loans are countervailable. While the Department was correct in stating that Category 12 applies only to exported products, the terms of such financing should be compared to the terms of Article 15 financing for the other 11 categories. Loans under those categories are generally available. Only the differential, if any, between Category 12 financing and other Article 15 financing should be considered a countervailable benefit. *See, e.g., Softwood Lumber Products from Canada* (51 FR 347453, October 22, 1986) and *Canned Tuna from the Philippines* (48 FR 50133, October 31, 1983).

Department's Position: We disagree. We addressed this issue in the final results of our last review (51 FR 44502, December 10, 1986).

Comment 4: Cementos de Chihuahua contends that Category I and Category II CEPROFI tax certificates are available to all industries located outside Mexico City, and consequently, the certificates do not bestow countervailable benefits. It is not logical to conclude that a tax credit available to an entire country (except for one city) constitutes a regional subsidy. The Department analyzed a similar situation with respect to industrial estates that were scattered throughout Malaysia and found the program not countervailable because it was not limited to any "specific regions." *See, Certain Textiles and Textile Mill Products from Malaysia* (50 FR 9852, March 12, 1985). *See* also, *Carbon Steel Wire Rod from Saudi Arabia* (51 FR 4206, February 3, 1986).

If the Department continues to believe that those CEPROFIs are countervailable, the benefit should be the difference between the CEPROFI amounts actually received and the CEPROFI amounts that would have been received for the purchase of Mexican-made capital goods. The Department found CEPROFIs granted for the purchase of Mexican-made capital goods not countervailable in *Oil Country Tubular Goods from Mexico* (49 FR 4705, November 30, 1984).

Chihuahua similarly contends that FONEI loans do not constitute countervailable regional subsidies. Such loans are available in all regions except Mexico City.

Department's Position: We disagree. We addressed this issue in a prior administrative review of this case (50 FR 51732, December 19, 1985).

Comment 5. Cementos de Chihuahua contends that its Bancomext loan is not countervailable because it was provided on terms consistent with commercial considerations. The interest rate and terms of the loan were negotiated between Bancomext and Chihuahua. Furthermore, there is no government-mandated program or legislation which provides for such a loan.

Department's Position: This loan was provided at below-market rates by the National Bank of Foreign Trade (Bancomext), which is the FOMEX trustee. Neither Chihuahua nor the Mexican government has provided any documentation to support the claim that this loan was provided on terms consistent with commercial considerations or without government direction. Therefore, we determine, as the best information available, that this loan is an export bounty or grant. *See* also, *Lime from Mexico: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 35675, September 11, 1984).

Final Results of Review

After considering all timely comments received, we determine the total bounty or grant to be zero or *de minimis* for three firms and 2.28 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

The following three firms received zero or *de minimis* benefits during the review period:

(1) Cementos Guadalajara, S.A.
(2) Cementos Maya, S.A.
(3) Cementos Tolteca, S.A.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the three firms listed above and to assess countervailing duties of 2.28 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the three firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 1.44 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: May 13, 1988.

[FR Doc. 88-11503 Filed 5-20-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain hot-rolled sheet.

DATE: Comments must be submitted on or before June 2, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Korea, and the U.S.-Brazil arrangements provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet the demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain AISI grade C1010, commercial quality hot-rolled sheet, in coils, with widths ranging from 36 to 55 inches, thicknesses ranging from 0.061 to 0.171 inch, and coil weights of 40,000 lbs. (plus or minus 10 percent). This material will be used in the manufacture of pipe and tube.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than June 2, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 16, 1988.

[FR Doc. 88-11504 Filed 5-20-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of California

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instrument of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-164. *Applicant:* University of California, San Diego, Psychology Department, C-009, La Jolla, CA 92093-0109. *Instrument:* Magnetic Inductance Eye-Tracking System. *Manufacturer:* John Mason, United Kingdom. *Intended use:* The instrument is intended to be used in experiments to determine how different part of the temporal lobe of the brain are used in performing cognitive tasks requiring memory and selective attention in order to provide insight into disorders of memory and attention such as Alzheimer's Disease and amnesia in people. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88-165. *Applicant:* Thomas Jefferson University, Jefferson Medical College, Pennsylvania Muscle Institute IIID2, Department of Physiology, 1020 Locust Street, Phildelphia, PA 19107. *Instrument:* Flash Lamp for Photolysis. *Manufacturer:* Gert Rapp, West Germany. *Intended use:* The instrument is intended to be used for rapid initiation of contractions in smooth and striated muscles. A high intensity flash, provided by the instrument, is delivered to a small bundle of smooth muscle or single skeletal muscle fiber, in order to release biologically active agents from inert, photolabile precursors. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88-166. *Applicant:* Harvard Medical School, 25 Shattuck Street, Boston, MA 02115. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended use:* The instrument will be used for the following investigation: (i) How nerve cells in the retina communicate with each other; (ii) the molecular structure of the channels through which cells exchange information with one another; (iii) how epithelial cells and extracellular materials interact in development; (iv) how the stomach repairs itself after injury. In addition, the instrument will be used on a one-to-one basis in the training of graduate students and postdoctoral fellows in electron microscopy. *Application received by Commissioner of Customs:* April 12, 1988.

Docket Number: 88-167. *Applicant:* Woods Hole Oceanographic Institution, Water Street, Woods Hole, MA 02543. *Instrument:* Borehold Seismometer Array. *Manufacturer:* Compagnie Generale De Geophysique, France. *Intended use:* The instrument will be used in seismic experiments to determine the background seismic noise level as a funciton of depth below the seafloor and the properties of the noise such as coherency, stationarity, frequency dependence and polarization. *Application received by Commissioner of Customs:* April 13, 1988.

Docket Number: 88-168. *Applicant:* University of California, San Francisco, #1556 HSE, Department of Biochemistry and Biophysics, 513 Parnassus, San Francisco, CA 94143. *Instrument:* Quench-Flow Rapid Kinetics Apparatus, Model PQ-53. *Manufacturer:* Hi-Tech Scientific, Inc., United Kingdom. *Intended use:* The instrument will be used for studies of EcoRI endonuclease and related mutant enzymes. Experiments will be variations on the basic method of quench-flow kinetics. *Application received by Commissioner of Customs:* April 13, 1988.

Docket Number: 88-169. *Applicant:* UMDNJ-RWJ Medical School Center for Advanced Biotechnology and Medicine, 675 Hoes Lane, Piscataway, NJ 08854. *Instrument:* Multiple Function X-Ray Diffraction System, Model RU-200. *Manufacturer:* Rigaku Corp., Japan. *Intended use:* The instrument will be used for studies of viruses, viral particles and macromolecules. The immediate objectives pursued are gaining a comprehensive understanding of the atomic structure of the materials as a step in understanding their role in the cause of disease and in identifying potential interventions to disrupt or reverse this process.. *Application received by Commissioner of Customs:* April 14, 1988.

Docket Number: 88-170. *Applicant:* UMDNJ-RWJ Medical School Center for Advanced Biotechnology and Medicine, 675 Hoes Lane, Piscataway, NJ 08854.

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Instrument: Multiple Function X-Ray Diffraction System, Model RU–200. *Munfacturer:* Rigaku Corp., Japan. *Intended use:* The instrument will be used for studies of viruses, viral particles and macromolecules. The immediate objectives pursued are gaining a comprehensive understanding of the atomic structure of the materials as a step in understanding their role in the cause of disease and in identifying potential interventions to diarupt or reverse this process. *Application Reveived by Commissioner of Customs:* April 14, 1988.

Docket Number: 88–171. *Applicant:* Vanderbilt University, Department of Molecular Biology, Box 1820 Station B, Nashville, TN 37235. *Instrument:* Spectroflu/photometer and Rapid-Mixing and Rapid-Quench Apparatus. *Manufacturer:* Biologic Co., France. *Intended use:* The instrument will be used for studies of sarcoplasmic reticulum of muscle cell in experiments designed to measure the time course of Ca^{2+}-ATPase and Ca^{2+} transport in the millisecond time range. The objectives of these studies are to understand the Ca^{2+} transport and its relation to muscle relaxation. *Application Received by Commissioner of Customs:* April 15, 1988.

Docket Number: 88–172. *Applicant:* California Institute of Technology, Mail Code 315–6, Pasadena, CA 91125. *Instrument:* Mass Spectrometer System, Model THQ. *Manufacturer:* Finnigan MAT, West Germany. Intended use: The instrument will be used to examine the chemical abundances and isotopic compositions of selected samples during studies of meteorites, lunar samples and terrestrial samples. *Application Received by Commissioner of Customs:* April 15, 1988.

Docket Number: 88–173. *Applicant:* Thomas Jefferson University, Jerferson Medical College, Laboratory of Pennsylvania Muscle Institute IID2, Department of Physiology, 1020 Locust Street, Philadelphia, PA 19107. *Instrument:* Computer/filter Circuit for Force Transducer. *Manufacturer:* Dr. K. Guth, West Germany. *Intended use:* The instrument is an accessory to an existing microfluorometry/servo system which will be used for research on isolated smooth and striated muscle fibers from rabbit. The overall objective of the studies is to learn how chemical energy is transduced into mechanical output in muscle. *Application Received by Commissioner of Customs:* April 18, 1988.

Docket Number: 88–174. *Applicant:* University of Michigan, Civil Engineering Department, Ann Arbor, MI 48109–2125. *Instrument:* Motion Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Inc., Canada. *Intended use:* The instrument will be used for studies of concrete materials and structural members made out of reinforced concrete or prestressed concrete. Deformations and strains properties will be measured. Experiments will include tension, compression, bending, fatigue and cyclic loads under large induced deformations simulating earthquake loads. In addition, the instrument will be used for educational purposes in the courses Prestressed Concrete Design and Fiber Reinforced Cementitious Materials. *Application Received by Commissioner of Customs:* April 18, 1988.

Docket Number: 88–175. *Applicant:* Rutgers University, Department of Chemistry, 73 Warren Street, Newark, NJ 07102. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended use:* The instrument will be used in conjunction with a spectrophotometer and a computer to study the rates of fast biochemical and organic reactions in order to learn about the fundamental processes which govern the rates of reactions. *Application Received by Commissioner of Customs:* April 18, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–11505 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Future of Groundfish Fisheries and Bycatch Committees have scheduled two separate public meetings as follows:

Future of Groundfish Fisheries Committee—On June 1, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Montlake Auditorium, 2725 Montlake Boulevard, East, Seattle, WA, will finalize recommendations for alternative management strategies for the Alaskan groundfish fisheries, which will be presented to the North Pacific Council at their June 22–24, 1988, meeting in Anchorage, AK. The public meeting may continue into June 3, 1988.

Bycatch Committee—On June 7, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Building 4, Room 2079, Seattle, WA, will develop a directed fishing definition for consideration by the North Pacific Council, and review the time and area closure plan for crab in the Kodiak area. The public meeting will adjourn on June 10, 1988.

For further information about the above meetings contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: May 17, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–11443 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Proposed Modification of Permit; Northwest and Alaska Fisheries Center NMFS (P77#28)

Notice is hereby given that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, NE., Seattle, Washington 98115, has requested a modification of Permit No. 598 issued on July 27, 1987 (52 FR 27097), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is authorized to take up to 32,500 fur seal *(Callorhinus ursinus)* pups. The Permit Holder is requesting to take an additinal 30,000 juvenile male (subadult males) northern fur seals annually by roundup, principally on St. Paul Island, Alaska during studies to determine the natural survival rate of male fur seals, and to study entanglement rates of the Pribilof Islands herd. Up to 3,900 juvenile males (about 13 percent of the total) will be captured by physical restraint, marked, handled and released each year and the rates of survival monitored. No intentional sacrifices are requested. Animals may also be taken on St. George, Bogoslof, and San Miguel Islands.

Concurrent with the publication of this notice in the **Federal Register**, The Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fishseries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Services.

Date: May 17, 1988.

[FR Doc. 88–11437 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Genzyme Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Genzyme Corporation, having a place of business at 75 Kneeland Street, Boston MA 02111, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–137,796, "Cloned DNA for Synthesizing Unique Glucocerebrosidase." Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–11484 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Minco Products, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Minco Products, Inc., joint owner of the invention, having a place of business at Minneapolis, Minnesota, an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products embodying the invention entitled "Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes," U.S. Patent No. 4,681,855, Application S.N. 6–782,740. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Minco.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–11485 Filed 5–20–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charge for Cotton Towels Produced or Manufactured in Pakistan

May 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging imports of transshipments to current limits.

EFFECTIVE DATE: May 24, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: Investigations by the U.S. Customs Service in cooperation with the Government of Pakistan, have determined that cotton towels in Categories 363 and 369–S, produced or manufactured in Pakistan were transshipped through Thailand during the period August 1, 1985 through December 31, 1985 and through Bangladesh during the period December 1, 1985 through November 30, 1986. As a result of recent negotiations held between the Government of the United States and Pakistan, specified amounts of overshipment charges are being charged to the current limits for Categories 363 and 369–S. The U.S. Government is taking this action in conformity which Article 16 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 51 published in the **Federal Register** on January 4, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

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May 18, 1988.

Committee for the Implementation of Textile Agreements

May 18, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20 and June 11, 1987, between the Government of the United States and Pakistan, I request that, effective on May 24, 1988, you charge the following amounts to the current limits established in the directive of December 30, 1987 for cotton textile products in Categories 363 and 369-S[1], produced or manufactured in Pakistan and exported during 1988. These charges are for goods transshipped through Thailand during the period August 1, 1985 through December 31, 1985 and through Bangladesh during the period December 1, 1985 through November 30, 1988.

Category	Amount to be charged
363	1,368,508 numbers.
369-S	185,510 pounds.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-11477 Filed 5-20-88; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 7, 1988; Tuesday, June 14, 1988; Tuesday, June 21, 1988; and Tuesday, June 28, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 18, 1988.

[FR Doc. 88-11469 Filed 5-20-88; 8:45 am]
BILLING CODE 3810-01-M

[1] In Category 369-S, only TSUSA number 366.2840.

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, June 22, 1988, 8:00 a.m.

Place: Keystone Conference Center, Ranch House, 22010 Highway 6, Dillon, Colorado.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Review task group status including industry survey data.
—Discuss study draft assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,
Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88-11507 Filed 5-20-88; 8:45 am]
BILLING CODE 6450-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and time:

June 13, 1988, 9:00 a.m.-5:00 p.m.
June 14, 1988, 9:00 a.m.-4:00 p.m.

Place: Tennessee Innovation Center, 701 Scarboro Road, Oak Ridge, TN 37830, Lecture Hall.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301-353-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda: Briefings and discussions of:

June 13, 1988

- Status of BES Budgets.
- BESAC Subcommittee Reports.
- ORNL Status Report on High Flux Isotopes Reactor.
- Public Comment (10 Minute Rule).

June 14, 1988

- BESAC Agenda for 1988.
- BESAC 1988 Report.
- ORNL Research Highlights.
- Public Comment (10 Minute Rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 88-11479 Filed 5-20-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-302-001 et al.]

Pacific Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 17, 1988.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER88-302-001]

Take notice that on May 6, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing pursuant to Commission Order dated March 21, 1988, a revised interconnection agreement to clarify Modesto's unrestricted right to use Reserved Transmission Service for importing power, both firm and nonfirm power, into its service area and PG&E's contractual obligation to provide additional Reserved Transmission Service at Modesto's request.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER88-558-013]

Take notice that on May 4, 1988, Gulf States Utilities Company tendered for filing a revised compliance report for the settlement agreement among Gulf States Utilities Company, Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn GT, Inc. and Sam Rayburn Municipal Power Agency.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER88-386-000]

Take notice that on May 9, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March 1988, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Gas & Electric Co	Supplement No. 32
Sacramento Municipal Utility Dist.	Supplement No. 7
Sierra Pacific Power Co	Supplement No. 74
Utah Power & Light Co	Supplement No. 76
Washington Water Power Co.	Supplement No. 57
Puget Sound Power & Light Co.	Supplement No. 33
Portland General Electric Co.	Supplement No. 58

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER88-387-000]

Take notice that on May 9, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to sell capacity to Long Island Lighting Company (LILCO). The agreement provides for a capacity charge of $75.00 per megawatt per day for 250 megawatts and an energy charge based upon incremental costs of generation.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of April 28, 1988.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power & Light Company

[Docket No. ER88-388-000]

Take notice that on May 11, 1988, Mississippi Power & Light Company (MP&L) tendered for filing a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of May 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER88-389-000]

Take notice that on May 11, 1988, Central Hudson Gas & Electric Corporation (Central Hudson) tendered

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for filing as a rate schedule an executed Agreement dated May 2, 1988 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for purchase of capacity and energy by O&R from Central Hudson. The point of delivery for transactions shall be in New York State at the 115 Kv. bus at the combined O&R/Central Hudson Sugarloaf Substation.

O&R shall pay Central Hudson for the firm capacity and energy provided in accordance with the terms of the Agreement.

Central Hudson states that copies of the subject filing were served upon: Orange and Rockland Utilities, Inc., 75 West Route 59, Spring Valley, New York 10977.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Houston Lighting & Power Company

[Docket No. ER83-657-001]

Take notice that on May 9, 1988, Houston Lighting & Power Company (HL&P) tendered for filing pursuant to Commission Order dated April 7, 1988, Transmission Service Agreements required to specify the service provided by HL&P to Central Power & Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, collectively the Operating Companies of Central and South West Corporation. The service agreements implement the transmission arrangements offered by HL&P's FERC Electric Tariff, First Revised Volume I, governing Transmission Service To, From and Over Certain HVDC Interconnections.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Power Company

[Docket Nos. ER82-553-033, ER82-554-003]

Take notice that on May 9, 1988, Ohio Power Company (OPCo) tendered for filing pursuant to Opinion Nos. 272 and 272-A of the Commission issued April 30, 1987 and April 7, 1988, respectively, in Docket Nos. ER82-553-000 and ER82-554-000, a compliance filing and a refund report. OPCo states that the compliance filing includes proposed changes in its electric resale rate schedules applicable to the interconnection agreement between OPCo and Wheeling Power Company and to the Electric Tariff MRS for Municipal Resale Electric Service. OPCo also states it has refunded to its 15 municipal customers (Municipals) an amount of $2,372,105.29 representing a principle amount of $1,811,991.23, plus $560,114.06 interest. OPCo has also refunded to Wheeling Power Company an amount of $10,394,222.88 representing a principle amount of $7,698,098.45, plus $2,696,124.43 interest.

Copies of the filing were served upon Wheeling Electric Company, the Public Service Commission of West Virginia, the affected municipal customers and the Public Utilities Commission of Ohio.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Light and Power Company

[Docket No. ER88-385-000]

Take notice that on May 9, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated October 6, 1988 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Fitchburg Gas and Electric Light Company (FG&E).

CL&P states that the Transmission Agreement provides for transmission services to FG&E for the wheeling of a maximum of 50 megawatts of Connecticut Municipal Electrical Energy Cooperative (CMEEC) electric capacity and associated energy.

The transmission charge rate is a weekly (monthly) cost-of-service rate equal to one fifty-second (one-twelfth) of estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II, and III thereto of the Transmission Agreement. The weekly transmission charge is determined by the product to (i) the transmission charge rate ($/kW-week (month)) and (ii) the maximum number of kilowatts FG&E purchases from CMEEC during an hourly period of such week (month). The transmission charge is reduced to give due recognition for payments made by FG&E to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of October 6, 1988.

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and FG&E (Fitchburg, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER88-390-000]

Take notice that on May 12, 1988, Alabama Power Company (APCo) tendered for filing proposed changes related to its FPC Electric Service Tariff, No. 33. The filing consists of a Letter Agreement between Tennessee Valley Authority (TVA) and APCo dated April 20, 1988. The Letter Agreement extends until June 30, 1997 certain transmission agreements between the two companies that are currently on file with the Commission.

The electric facilities of APCo and TVA have been interconnected for decades and, at present, such interconnected operations are governed by the terms of the Interconnection Agreement dated July 1, 1965, as amended, between TVA and the operating companies of the Southern Company (*i.e.* APCo, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company). This Interconnection Agreement is designated Southern Company Services, Inc., Rate Schedule FPC No. 33.

In connection with their interconnected operations TVA and APCo have found it mutually beneficial to enter into agreements, separate and apart from the above-referenced Interconnection Agreement, to deal with particular facilities and transactions between TVA and APCo. The provisions of the Interconnection Agreement between TVA and Southern Companies provide that the parties will be under no obligation to renew or replace any separate transmission arrangements in the event that agreement to do so is not reached within six months after April, 1987. In the context of six such agreements, TVA and APCo have concluded that there is presently no need for significant changes in the existing arrangements between them. Thus, TVA and APCo have agreed simply to extend each of the agreements for a period ending on June 30, 1997.

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. John M. Endries

[Docket No. ID-2227-001]

Take notice that on May 10, 1988, John M. Endries tendered for filing a supplemental application for authorization under section 305(b) of the Federal Power Act, 16 U.S.C. 825(d) and 18 CFR Part 45 of the Regulations of the Federal Regulatory Commission to hold the following interlocking positions:

Position, Corporation, and Classification

President, Niagara Mohawk Power Corporation, Public Utility
Director, Niagara Mohawk Power Corporation, Public Utility
Director, Utility Mutual Insurance Company, Other Corporation (Insurance)
Director, Syracuse Regional Board, Marine Midland Bank, N.A., Other Corporation (Commercial Bank)
Director, Opinac Investments Ltd., Other Corporation (Non Jurisdictional)
Director, HYDRA-CO Enterprises, Inc., Other Corporation (Subsidiary)

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Andrew C. Kadak

[Docket No. ID-2340-000]

Take notice that on May 2, 1988, Andrew C. Kadak tendered for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following interlocking positions:

Position and Public Utilities

Vice President, Yankee Atomic Electric Company
Vice President, Maine Yankee Atomic Power Company

Comment date: May 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11508 Filed 5-20-88; 8:45 a.m.]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 18, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 6552-005.

c. *Date Filed:* January 20, 1988.

d. *Applicant:* HDI Associates and Fred Ehlers.

e. *Name of Project:* North Fork Sprague River.

f. *Location:* On the North Fork Sprague River in Klamath County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul Nolan, 6219 N. 19th Street, Arlington, VA 22205, (703) 534-5509.

i. *FERC Contact:* Dean Wight, (202) 376-9287.

j. *Comment Date:* June 27, 1988.

k. *Description of Amendment:* The licensee proposes to modify Article 23 of the license, which currently requires the release of the following continuous minimum flows from the project reservoir:

40 cubic feet per second (cfs) during the period of October 1 through June 30;
20 cfs from July 1 through July 31; and
15 cfs from August 1 through September 30;

or inflow to the reservoir, whichever is less. The proposed minimum flows are:
30 cfs during the period of October 1 through June 30;
20 cfs from July 1 through July 31; and
25 cfs from August 1 through September 30;

or inflow to the reservoir, whichever is less.

1. This notice also consists of the following standard paragraph: B, C, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. An comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS,", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11532 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 18, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 4597-004.

c. *Date filed:* April 11, 1988.

d. *Applicant:* Weber-Box Elder Conservation District and the City of Bountiful.

e. *Name of Project:* Pine View.

f. *Location:* On the Odgen River, in Weber County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791 (a)-825(r).

h. *Applicant Contact:* Ralph W. Bird, 471 W. 2nd Street Odgen, UT 84404 and

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McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1406 L Street NW., Washington, DC 20005, (202) 371–5785.

i. *FERC Contact:* Hector M. Perez, (202) 376–1660.

j. *Comment Date:* June 12, 1988.

k. *Description of Project:* The Weber-Box Elder Conservation District (District) and the City of Bountiful (City) propose to transfer the license from the District to the District and the City to facilitate project financing and construction. The project is under construction. The proposed joint transferee is a Utah municipal corporation. The District and the City state that they will comply with all the applicable laws of the state of Utah as required by section 9(b) of the Federal Power Act.

1. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11533 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–380–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

May 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–380–000]

Take notice that on May 6, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–380–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Paragon Gas Corporation (Paragon), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated March 23, 1988, it proposes to transport natural gas on an interruptible basis for Paragon from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that the points of receipt are located in the states of Texas and Mississippi and the points of delivery are located in the states of Mississippi, Kentucky, New Hampshire, Massachusetts, West Virginia, Alabama, Louisiana, and Texas, with the ultimate delivery point being located in Massachusetts.

Tennessee further states that the maximum daily and annual quantities would be 40,000 dekatherms and 526,695 dekatherms, respectively, and that Paragon would be charged the rate set forth under Tennessee's Rate Schedule IT. Tennessee advises that service under § 284.223(a) commenced October 26, 1987, as reported in Docket No. ST88–3296 (filed April 26, 1988).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88–384–000]

Take notice that on May 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88–384–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to modify one delivery point and appurtenant facilities to accommodate natural gas deliveries to Iowa Public Service Company (IPSC) under Northern's blanket certificate issued in Docket No. CP82–401–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to modify the Dayton, Minnesota TBS No. 1, a town border station (TBS) located in Wright County, Minnesota. Northern states that IPSC has informed it that the subject TBS has expanded substantially in recent years, with a subsequent load increase due to additional residential, commercial, and industrial customers. Northern proposes to modify the existing TBS in order to serve the increased requirements of IPSC and its customers.

Northern states that such modifications will consist of the removal of one 6-inch turbine (T–30) meter and the installation of two 6-inch auto adjusts turbine (AAT–30) meters estimated to cost $120,000. Northern states that the meter capacity of the station will be increased to serve volumes up to 580 Mcf per hour.

Northern further states that the meter capacity of the existing facilities is 290 Mcf per hour.

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88–372–000]

Take notice that on April 29, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–372–000 a request for authorization pursuant to § 284.205 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87–115–000, to provide a transportation service for Mobil Oil Corporation, Mobil Oil Exploration and Producing Southeast, Inc., Mobil Producing Texas & New Mexico, Inc., and Mobil Exploration and Producing North America, Inc. (Mobil), a producer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated March 8, 1988, it would provide a transportation service through its compression facilities located in East Cameron Block 281, Offshore Louisiana.

The Applicant further states that the peak day quantities would be 27,000 dekatherms, the average daily quantities would be 968 dekatherms, and that the annual quantities would be 353,320 dekatherms. It is asserted that service under § 284.223(a) commenced March 17, 1988, as reported in Docket No. ST88–3223 (filed April 18, 1988).

Comment date: July 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–11509 Filed 5–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–373–000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

May 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88–373–000]

Take notice that on May 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88–373–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval of the partial abandonment of a sales service to Michigan Gas Utilities Company (MGU), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to abandon the sale of 1,350 Mcf of natural gas per day to MGU, which represents 15 percent of MGU's daily contract quantity pursuant to its gas purchase contract with Trunkline. It is stated that MGU is an existing jurisdictional sales customer of Trunkline and that MGU has elected, in a letter dated December 31, 1987, to convert 15 percent of its daily contract quantity of purchased gas to firm transportation service pursuant to § 284.10 of the Commission's Regulations. It is explained that MGU requested in the letter that its daily contract quantity of purchased gas be reduced from 9,000 Mcf to 7,650 Mcf, with the remaining 1,350 Mcf being converted to firm transportation service effective March 1, 1988. It is further explained that Trunkline would provide such firm transportation service pursuant to Subpart B of section 284 of the Commission's Regulations.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Lawrenceburg Gas Transmission Corporation and Texas Gas Transmission Corporation

[Docket No. CP88–368–000]

Take notice that on April 29, 1988, Lawrenceburg Gas Transmission Corporation (LGT), 230 West High Street, Lawrenceburg, Indiana 47025, and the Texas Gas Transmission Corporation (Texas Gas) (jointly referred to as Applicants), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP88–368–000 an application pursuant to section 7 of the Natural Gas Act for authorization for LGT to abandon in place and by merger with Lawrenceburg Gas Company (LGC) the facilities of LGT and for Texas Gas to abandon sales service to LGT and to commence sales service to LGC, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that in Docket No. CP65–186 LGT was authorized to provide firm sales service to LGC and interruptible sales service to the Cincinnati Gas & Electric Company (CG&E). It is also stated that CG&E's service was converted to firm sales service in Docket No. CP75–370. It is stated that the LGT system was designed to couple LGC's desire to reduce its average unit purchase gas cost with CG&E's need for additional supplies. It is further stated LGT accomplished this by acquiring certain existing facilities from LGC which interconnected with the Texas Gas system, and constructed a two-mile extension of the existing system to a point of interconnection with the CG&E's distribution system at the Indiana-Ohio border.

Applicants state LGT currently provides firm sales service to LGC under Rate Schedule CDS–1 of its FERC Gas Tariff in amounts up to 12,240 Mcf per day, and to CG&E, in amounts up to 3,060 Mcf per day and that excess volumes can be supplied by LGT under Rate Schedule XS–1 to either customer provided that the total sales volume to both customers does not exceed LGT's 15,300 Mcf per day service agreement with Texas Gas. Finally it is indicated that excess interruptible supplies above the 15,300 Mcf per day combined limit are provided under Rate Schedule XS–2 and that transportation service is rendered for both CG&E and LGC under Rate Schedule TS.

Applicants aver that since July 1984, CG&E has purchased minimal amounts of gas from LGT on an annual basis and, instead, has relied on open-access transportation and a direct sales and transportation relationship with Texas Gas. As a result, LGT proposes to abandon its transmission facilities by their merger into the local distribution system of LGC. It is stated that the facilities originally owned by LGC would be reacquired by LGC in order to directly connect its local distribution system to the pipeline facilities of Texas Gas and that the additional facilities built by LGT to cross the Indiana-Ohio state line and interconnect with the facilities of CG&C would also be merged into LGC's local distribution system, with the exception of State Line Station, which would be abandoned in place.

LGT also proposes to abandon its sales service to LGC by assigning its above-described service agreement with Texas Gas to LGC at a reduced level of service as nominated by LGC. It is proposed that Texas Gas would provide LGC 11,000 MMBtu equivalent per day and 1,131,000 MMBtu equivalent annually under Rate Schedule G–4 of Texas Gas' FERC Gas Pipeline Tariff. Texas Gas would deliver gas to LGC under Rate Schedule G–4 at the delivery points that are presently used by Texas Gas to supply LGT. Applicants request an effecgtive date of November 1, 1988, for the proposed sale and related abandonment authorizations.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

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3. East Tennessee Natural Gas Company

[Docket No. CP88-375-000]

Take notice that on May 4, 1988, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 3739-0245, filed in Docket No. CP88-375-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of natural gas to the City of Lawrenceburg, Tennessee (Lawrenceburg) and authority to construct and operate certain facilities to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Tennessee states that it has entered into a precedent agreement dated February 15, 1988, with Lawrenceburg, under which it proposes to serve Lawrenceburg pursuant to its existing CD-1 Rate Schedule with a proposed contract demand of 2,500 Mcf per day. It is stated that Lawrenceburg is a new customer and that East Tennessee would provide such service from the total supply of natural gas available to its system. It is further stated that East Tennessee has a contract demand with Tennessee Gas Pipeline Company for 325,719 Mcf per day. East Tennessee alleges that it proposes to utilize its existing storage service, currently under contract with Consolidated Gas Supply Corporation of 26,211 Mcf per day. It is further alleged that East Tennessee currently receives into its system 46,612 Mcf per day from States of Virginia and Tennessee.

To provide the proposed service to Lawrenceburg, East Tennessee proposes to construct 3.0 miles of 16 inch pipeline loop in Maury County south of Columbia, Tennessee and construct a measurement sales station at MLV 3203-1A near Summertown in Lawrence County, Tennessee. The total estimated direct and indirect cost of the proposed facilities to be constructed by East Tennessee is estimated to be $1,332,000. The facilities would be financed either from cash on hand or from funds generated with the Tenneco organization.

It is stated that East Tennessee proposes to commence the proposed new service for the 1988-89 heating season. It is further stated that because of the lead time necessary in ordering and receiving pipe and other materials, expeditious review and consideration of the application is necessary.

Comment date: June 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act, (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11510 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-451-000 et al.]

Northeast U.S. Pipeline Projects; Market Technical Conference and Settlement Discussions

May 18, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Market Technical Conference and notice of Settlement Discussions.

SUMMARY: On March 17, 1988, the Federal Energy Regulatory Commission (Commission) issued an Order Consolidating Applications and Prescribing Procedures (Procedural Order) in Docket No. CP87-451-004 (42 FERC ¶61,332 (1988)). That order indicated that a technical conference would be held to discuss the markets to be served by the pending proposals. In addition, numerous parties have requested that settlement be discussed. This notice identifies the dates and times of the Market Technical Conference and Settlement Discussions and the general topics of discussion.

DATES: The Market Technical Conference will be held on June 1, 1988, at 9:00 a.m., to continue on June 2, 1988, if necessary.

The Settlement Discussions will take place on June 3, 1988, at 9:00 a.m. Anyone interested person may attend; however, project proponents and other parties are asked to state their intention to attend by May 25, 1988.

ADDRESS: The conference and discussion will be held in a room to be announced at the: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Each project proponent, customer, and other interested party should file, by May 25, 1988, the name of the person who will represent it at the Market Technical Conference and/or the Settlement Discussions with: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the filing should also be made with the following designated staff contact.

FOR FURTHER INFORMATION CONTACT:

Market Technical Conference: George D. Dornbusch, Office of Pipeline and Producer Regulation, PR-21.2, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357-9181

Settlement Discussions: Lee A. Alexander, Office of the General Counsel, GC-11.3, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9176

Market Technical Conference

In the Procedural Order, the Commission consolidated the pending applications to serve Northeast markets into 31 distinct projects. The Commission made a preliminary determination that 20 of those projects appear to be competitive with each other, in whole or in part. The Commission also indicated that the Eastern American States Transmission Company (EASTCO) project appears to be a competitive project. The Commission stated that, absent further market data, these projects appear to involve common disputed issues of law and material fact and therefore may be entitled to a comparative evidentiary hearing. The Commission further stated that—

> No final determination is made at this stage as to whether an individual Northeast customer has or can show a need for more than one project. If such a showing is made, we may determine that the proposals to serve that customer are not, in fact, mutually exclusive.[1]

As further specified in the Procedural Order, the Commission will hold technical conferences on various topics relating to the Northeast project filings. The Commission indicated that the purpose of the technical conferences "will be to narrow the range of material issues of fact that are in dispute, to the maximum extent possible, to ensure that evidentiary hearings will be conducted in an expeditious and efficient manner."[2] The Market Technical Conference is an opportunity for the parties to explore and further clarify the market needs of the customers who would be served by the proposed Nertheast projects. It is also an opportunity for the project proponents and/or their customers to make the market showing, as anticipated by the Commission in the Procedural Order, that more than one project may be needed for a given customer or group of customers. The proponents of and each customer that would be served by one of the 20 Northeast projects identified by the Commission in its Procedural Order as appearing to be competitive and EASTCO are requested to participate in the Market Technical Conference.

The Market Technical Conference will follow a format whereby, after opening comments by Staff, each project sponsor will be allotted 10 minutes to discuss in general the market data for its project. Each project sponsor should address the following points:

(1) The reasons for any omissions of any elements in the market data filed supporting the application or in response to Commission Staff's March 21, 1988 market data request.

(2) Any inconsistencies between the market data and the information contained in the application.

(3) Whether the market data shows an incremental need for the project in light of apparently mutually exclusive proposals to serve the same customers.

(4) the exact name and location of each customer.

Following the project sponsors, each customer will be allotted 10 minutes to discuss its individual market requirements. Each customer should address the following points:

(1) The reasons for any omissions of any elements in the market data filed in response to Commission Staff's March 21, 1988 market data request.

(2) Whether the customer shows a need for all the projects that are proposed to serve that customer.

(3) Whether, and if so, why the customer needs more than one of the proposed Northeast projects and how the customer ranks the projects in order of preference.

Following the customer presentations, each other interested party will also be allotted 10 minutes to present its views.

The order of presentation of the project sponsors will be as listed in Appendix A of the Procedural Order, followed by EASTCO. The order of presentation of the customers and of any order interested parties will be announced at the conference.

The Staff requests that any parties who have not submitted complete responses to the March 21, 1988 market data request do so as soon as possible to allow Staff sufficient time to review the responses before the conference. The parties should be prepared to clarify and answer any questions pertaining to the market data responses.

A stenographer will prepare a transcript of the Market Technical Conference, which will be available in the public file for these proceedings in the Commission's Public Reference Room. The transcript may also be ordered from the reporting company. Additional procedures may be announced by the Staff at the conference.

Settlement Discussions

The Commission has received numerous requests for settlement discussions. Accordingly, there will be an opportunity, on June 3, 1988, following the Market Technical Conference, for parties to discuss settlement and to consider joint venture proposals to provide new gas service to the Northeast.

Project proponents may participate in the discussions, and are encouraged to try to develop proposals that simplify and consolidate various projects and eliminate any unnecessary or duplicative projects. As in the case of other settlement discussions, any offer of settlement that is not accepted, and any comment on that offer, is not admissable in evidence. Of course, the Commission will examine and determine whether any proposed settlement should be approved. Any party filing an intent to participate in these discussions may, at the time of the filing, suggest procedures that can be used to make the discussions as efficient and productive as possible.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11511 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] 42 FERC ¶61,332 (1988) at 61,947.

[2] *Id.* at 61, 946.

[Docket No. CP87-4-002]

PennEast Gas Services Co. and Texas Eastern Transmission Corp.; Amendment to Application

May 17, 1988.

Take notice that on May 13, 1988, PennEast Gas Service Company (PennEast) and Texas Eastern Transmission Corporation (Texas Eastern), jointly referred to as Applicants, Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-4-002 an amendment to PennEast's application filed on October 2, 1986 in Docket No. CP87-4-000, as amended on March 9, 1988 in Docket No. CP87-4-001, pursuant to section 7(c) of the Natural Gas Act, to reflect a modification of the design and further relocation of the site for the proposed Leidy line compressor station, and to adjust the proposed rates to reflect the revised facilities cost, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that, in the original application, PennEast requested authorization to provide jurisdictional sales and transportation of gas on a firm basis for a primary term of 20 years to five local distribution companies located in New York and New Jersey pursuant to proposed Rate Schedules SS-1 and T-1 in two phases, Phase I commencing November 15, 1987, of up to 100,000 dt equivalent per day and Phase II commencing November 15, 1988 until termination, of up to 245,000 dt equivalent per day. Further, Applicants state that PennEast proposed to construct and operate facilities, including a 3,500 HP compressor station near mile post 36.25 on Texas Eastern's existing Line No. 24, under Phase I and Phase II. It is indicated that PennEast also sought a Blanket Certificate pursuant to § 284.221 of the Commission's Regulations.

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Applicants indicated that, on November 2, 1987, PennEast filed a Notice of Partial Withdrawal of Application, withdrawing its request for Phase II facilities. It is submitted that the request for Phase II facilities authorization is now requested in Docket No. CP87-92-002.

Applicants further state that, on March 9, 1988, PennEast and Texas Eastern filed an amendment to the original application to reflect a modification of the ownership structure of the proposed facilities, to include Texas Eastern as an applicant to render a compressor and metering service to PennEast, and to relocate the site for the proposed 3,500 horsepower (HP) compressor station from mile post 36.25 on Texas Eastern's Line No. 24 (designated Center Hall Compressor Station) to mile post 18.50 on Texas Eastern's Line No. 24 (redesignated Belleville Compressor Station).

It is indicated that Applicants have encountered delays in securing timely local authorization for the Belleville site and anticipates similar delays at any other new site. PennEast proposes and requests authorization to install a 4,785 HP gas turbine and compressor at Texas Eastern's Perulack Compressor Station, Juniata County, Pennsylvania. Applicants state that the proposed compressor, redesignated the Leidy Compressor, is located adjacent to Texas Eastern's Perulack Compressor Station on Texas Eastern property. Applicants further state that the selected location has never been used for operational purposes, but was previously the site of company employees' living quarters.

It is submitted that Applicants would be required, as a result of installing the compressor at Perulack, to upgrade the previously proposed 3,500 HP unit to 4,785 HP.

Applicants state that PennEast has revised the estimated facilities cost to reflect increases resulting from the location of the compressor at Perulack and adjustments to the original cost estimates to reflect current costs. The revised estimated cost is $46,602,000.

Applicants indicate that Texas Eastern would, pursuant to the terms of the Gas Compression and Metering Agreement, as amended, operate the proposed facilities. Texas Eastern requests that the rates shown in revised Exhibit P, Schedule 8, which sets out the incremental operating and maintenance expense to be charged PennEast by Texas Eastern, be accepted as initial rates for such compression and metering service.

Any person desiring to be heard or to make any protest with reference to said amendment should be on or before May 31, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11432 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 16, 1988.

Take notice that on May 13, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Third Revised Sheet No. 80Y,
Third Revised Sheet Nos. 80QQ-80RR.

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. The Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Convening Technical Conference and Granting Late Interventions on November 27, 1987, pursuant to which Southern filed revised tariff sheets on December 14, 1987. On March 1, 1988, the Commission issued its Order Accepting Partially Granting Rehearing, Accepting Compliance Filing Subject to Conditions, and Establishing Hearing pursuant to which Southern filed revised tariff sheets on March 16, 1988. The Office of Pipeline and Producer Regulation issued a Letter Order dated April 29, 1988, (Letter Order) which rejected certain revised sheets and directed Southern to file revised tariff sheets within 15 days of such Letter Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11433 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-86-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 16, 1988.

Take notice that on May 13, 1988, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets to its FERC Gas Tariff to be effetive June 1, 1988.

Southern states that the proposed tariff sheets are being filed in compliance with the Commission's April 29, 1988 order in the above-captioned proceeding accepting Southern's proposed recovery of a portion of its buy-out and buy-down costs pursuant to the procedures established in the Commission's Order No. 500.

Southern state that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a notion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11434 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-150-001]

Transcontinental Gas Pipe Line Co.; Correction to Filing

May 16, 1988.

Take notice that on May 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed Fourth Revised Sheet No. 250-A as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1988. Transco states that this tariff sheet was inadvertantly misnumbered as Sixth Revised Tariff Sheet No. 250-A in its May 2, 1988 filing. Transco respectfully requests that Fourth Revised Sheet No. 250-A be substituted for the misnumbered sheet filed on May 2, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)]. All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11435 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-1-35-001 and RP88-164-000]

West Texas Gas, Inc.; Correction to Filing

May 16, 1988.

Take notice that on May 10, 1988, West Texas Gas, Inc. (WTG) filed Substitute Ninth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, corrected page 1 of 2 of Schedule Q1 and corrected page 1 of 2 of Schedule D1. WTG states that these sheets contain minor corrections to the corresponding sheets submitted on May 3, 1988.

Any person desiring to be heard or to proteat said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11436 Filed 5-20-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59260; FRL-3363-4]

Toxic and Hazardous Substances; test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

Written comments by: T 88-11, 88-12, June 2, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59260)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 88-11

Close of Review Period. June 16, 1988.
Manufacturer. Confidential.
Chemciol. (G) Thiocarbamyl substituted sulfonamide.
Use/Production. (S) Resin for inks. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

T 88-12

Close of Review Period. June 15, 1988.
Manufacturer. Confidential.
Chemical. (G) Acitified epoxy resin.
Use/Production. (S) Confidential. Prod. range: 2000 kg/yr.

Date: May 16, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-11448 Filed 5-20-88; 8:45 am]

BILLING CODE 6560-50-M

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FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Meeting

1. The Advisory Committee will hold its second meeting on: June 3, 1988, 2:00 p.m., 1919 M Street NW., Washington, DC 20554, Room 856.

2. The agenda of the meeting is as follows:

a. Introductory remarks
b. Progress reports by—
Joseph Flaherty, Chairman, Planning Subcommittee
Irwin Dorros, Chairman, Systems Subcommittee
James Tietjen, Chairman, Implementation Subcommittee
c. Operating cash fund/funding guidelines
d. Interim report to be submitted to the Federal Communications Commission
e. Future work
f. Concluding remarks by Richard Wiley, Chairman of the Advisory Committee

3. This meeting is open to the public.

4. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussions by non-Committee attendees may be permitted at the discretion of the Chairman.

5. Inquiries regarding this meeting should be directed to William Hassinger at (202) 632–6460.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88–11524 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Brimark Broadcastng et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Brian D. Warner and Mark D. Humphrey d/b/a/ Brimark Broadcasting, Vestal, NY.	BPH–870330MR	88–224
B. Vestal Community Broadcasters, Inc., Vestal, NY.	BPH–870331MC	.....
C. Mary C. Murray, Vestal, NY.	BPH–870331MH	.....
D. David G. Mitchell, Vestal, NY.	BPH–870331MJ	.....
E. Molly A. Waltman, Vestal, NY.	BPH–870331MR	.....
F. Wiltshire Broadcast Co., Vestal, NY.	BPH–870331OT	.....
G. Carol A. Morgan, Vestal, NY.	BPH–870422MD	.....
H. Sherlock-Hart Broadcasting, Inc., Vestal, NY.	BPH–870422MH	.....
I. KRB Associates, Vestal, NY.	BPH–870422MK	.....
J. Manuel Angelo, Vestal, NY.	BPH–870330MW [1]	.....
K. John Anthony Bulmer, Vestal, NY.	BPH–870421MB [1]	.....

[1] Dismissed herein.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A–I
2. Ultimate, A–I

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11530 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Empire Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Empire Broadcasting, Inc. Sioux Falls, SD.	BPH–870311MB	88–213
B. Samoon, Ltd. Partnership, Sioux Falls, SD.	BPH–870311MC	.....
C. Nehemiah Radio Productions, Inc., Sioux Falls, SD.	BPH–870311MD	.....
D. Kirkwood Broadcasting, Inc., Sioux Falls, SD.	BPH–870311MK	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Multiple Ownership, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11525 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Great Lakes Radio Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Great Lakes Radio Corp., Mt. Pleasant, MI.	BPH–861001SZ	88–207
B. Central Michigan Communications, Inc., Mt. Pleasant, MI.	BPH–861002TZ	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11526 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Timothy D. Martz et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Timothy D. Martz, Cape Vincent, NY.	BPH–870617MH	88–209
B. David J. Altari et al., d/b/a Cape AL, Broadcasting Ltd., Cape Vincent, NY.	BPH–870819ND	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11528 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; W.B. Moore, Jr. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. W.B. Moore, Jr., Lebanon, VA.	BPH–861001SY	88–211
B. J.T. Parker Broadcasting Corp., Lebanon, VA.	BPH–861001TB	.....
C. Yeary Broadcasting, Inc.	BPH–861001TC	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A–C
2. Ultimate, A–C

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11529 Filed 5–20–88; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Spanish Aural Services Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Roy E. Henderson d/b/a Spanish Aural Services Co., South Padre Island, TX.	BPH–850712R1	88–212
B. Betty Howell, South Padre Island, TX.	BPH–850712S9	.....
C. R&C Minority Telecommunicate Inc., South Padre Island, TX.	BPH–850712U5	.....
D. Nina Jean Rubinsky, South Padre Island, TX.	BPH–850709MD [1]	.....
E. Michele Sanchez, South Padre Island, TX.	BPH–850711PR [1]	.....
F. Mr. Robert G. Kerrigan, South Padre Island, TX.	BPH–850712Q9 [1]	.....
G. Island Radio of Texas, South Padre Island, TX.	BPH–850712S7 [1]	.....

[1] Previously dismissed.

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2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant

1. Environmental, B
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11527 Filed 5–20–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council Sub-committee; Meeting

AGENCY: Federal Home Loan Bank Board, 1700 G Street N.W., Washington, DC 20552.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth dates of forthcoming meetings of the Federal Savings and Loan Advisory Council Sub-committees. Notice of the meetings are required under the Federal Advisory Committee Act.

DATE(S): Investment Banking Sub-committee—June 1, 1988; 9:00–12 noon; FHLB of New York, One World Trade Center, New York, New York.

Legal Issues Sub-committee—June 1, 1988; 2:30–6:00 p.m.; FHLBB, 1700 G Street, NW., Washington, DC.

Legal Issues Sub-committee—June 3, 1988; 8:00–12 noon; FHLB of Chicago, 111 East Wacker Drive, Chicago, Illinois.

Emerging Issues Sub-committee—June 7, 1988; 8:30–4:30 p.m.; FHLBB, 1700 G Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr., (202) 377–6577, Debra J. Ahearn, (202) 377–6924.

John M. Buckley, Jr.,

Secretary.

May 18, 1988.

[FR Doc. 88–11452 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–714; FHLBB No. 5306]

Apollo Savings and Loan Co., Cincinnati, OH; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Apollo Savings and Loan Company, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11457 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–717; FHLBB No. 6308]

Baltimore American Savings Bank, F.S.B., Baltimore, MD; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Baltimore American Savings Bank, F.S.B., Baltimore, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11458 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–713; FHLBB No. 6280]

First Federal Savings and Loan Association of Hopkins County, Madisonville, KY; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Hopkins County, Madisonville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11459 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–715; FHLBB No. 7262]

First Federal Savings and Loan Association of McNairy County, Selmer, TN; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of McNairy County, Selmer, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11460 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–712; FHLBB No. 5482]

First Federal Savings and Loan Association of Okaloosa County, Fort Walton Beach, FL; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 11, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Okaloosa County, Fort Walton Beach, Florida for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11456 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–716; FHLBB No. 6353]

Poinsett Federal Savings and Loan Association of Travelers Rest, Travelers Rest, SC; Final Action; Approval of Conversion Application

Date: May 17, 1988.

Notice is hereby given that on May 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Poinsett Federal Savings and Loan Association of Travelers Rest, Travelers Rest, South Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–11461 Filed 5–20–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements(s) Filed

The Federal Maritime Commission herby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010270–027.

Title: Gulf-European Freight Association.

Parties:

Compagnie General Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirement's concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 202–010656–027.

Title: North Europe-U.S. Gulf Freight Association.

Parties:

Compagnie General Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirement's concerning Service Contract provisions. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 18, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–11461 Filed 5–20–88; 8:45 am]

BILLING CODE 6730–01–M

Agreements(s) Filed

The Federal Maritime Commission herby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Instrested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200118.

Title: South Carolina State Ports Authority Terminal Agreement.

Parties:

South Carolina State Ports Authority (Authority)
Maersk, Inc. (Maersk)

Synopsis: The agreement establishes authority to provide Maersk 49.13 acres of land for container shipping operations with a single consolidated rate for services provided to Maersk by the Authority.

Agreement No.: 224–200117.

Title: New York and New Jersey Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey (The Port)
Atlantic Container Line BV (ACL)

Synopsis: The proposed amendment provides for ACL to lease from the Port certain terminal space comprising berthing, wharf and upland area located at the Elizabeth-Port Authority Marine Terminal, City of Elizabeth, New Jersey.

Agreement No.: 224–200116.

Title: South Carolina State Ports Authority terminal Agreement.

Parties:

South Carolina State Ports Authority
ACT–Columbus (Associated Container Transport (USA) and Columbus Line)

BEST COPY AVAILABLE

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Synopsis: The agreement provides ACT-Columbus with eight acres at the Authority's North Charleston Terminal to be used as a container holding area. The agreement also provides ACT-Columbus with reduced wharfage rates for specified container cargo volumes.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 18, 1988.

[FR Doc. 88-11482 Filed 5-20-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Glodevan Int'l Transport, Inc., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Glodevan Int'l Transport Inc., 2721 Tulip Tree Lane, Rowland Heights, CA 91748. Officers: Werther L. J. Fan, President, Liang Kwang Fan, Director, Liang-Chih Fan, Secretary, Liang-Chen Fan, Director.

EX-IM Services Corporation, 16333 West Hardy Road, Houston, TX 77060. Officers: Refugio Gonzales, Jr., President, Santa S. Gonzales, Chairman, Dir. Stockholder.

Intermove Ltd., 1200 Main Street, Bridgeport, CT 06604. Officer: Kenneth M. Mercado, President.

Kremer International Transport, Inc., 1720 Westpark Center Dr., Suite D (P.O. Box 470), Fenton, MO 63026. Officers: Charles R. Kremer, President, Kathleen M. Kremer, V. President/Treas., Stephen D. Hoyne, Secretary.

Etters International, 2077 Airport Dr., Green Bay, WI 54313. Officer: Leslie G. Etters, Jr., Sole Proprietor.

American Cargo International, 6621 NW 84 Avenue, Miami, FL 33166. Officers: Santiago E. Rodriguez, President, Otto Morelli, Vice President.

Border Enterprises Inc., 660 Plaza Dr., Suite 2350, Detroit, MI 48226. Officer: Charles D. Ford, Vice President.

Total Transport Services Inc., 103-08 180th Street, Jamaica, New York 11733. Officers: Michael Casamassima, President, James Woehr, Secretary/Treasurer.

Fidelity Transport, Inc., 13419 Pumice Street, Norwalk, CA 90650. Officers: Dong Joon, Pyun, President, Sung Taek, Rhim, Director.

Cap International, Inc., 3047 Air Freight Rd., Houston, TX 77032. Officers: Mauricio Capriles, President, Glocesta Capriles, Vice President.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 18, 1988.

[FR Doc. 88-11483 Filed 5-20-88; 8:45 a.m.]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Baltimore Bancorp; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Baltimore Bancorp*, Baltimore, Maryland; to engage *de novo* through its subsidiary, Atlantic Appraisal Company, Inc., Baltimore, Maryland, in performing appraisals for Applicant's affiliates and for third parties for which fees will be charged. While Company's major activities will relate to residential mortgage appraisals, it will also be involved in appraisals of commercial real estate and personal property interests pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11421 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; James Black

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James Black*, Harley Bovee, T.C. Chilvers, H.L. Gerhart, all of Pierce, Nebraska, and Kenneth Nordlund, York, Nebraska; to each acquire an additional 5.7 percent of the voting shares of The Pierce Corporation, Pierce, Nebraska, and thereby indirectly acquire Cones State Bank, Pierce, Nebraska.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11422 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

The First Jermyn Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Co's.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *The First Jermyn Corp.*, Jermyn, Pennsylvania; to merge with First Jessup Corp., Jessup, Pennsylvania, and thereby indirectly acquire First National Bank of Jessup, Jessup, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First United Bancshares, Inc.*, El Dorado, Arkansas; to acquire 100 percent of the voting shares of First City Corp., Fort Smith, Arkansas, and thereby indirectly acquire City National Bank of Fort Smith, Fort Smith, Arkansas.

2. *Market Street Bancshares, Inc.*, McLeansboro, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples National Bank, McLeansboro, Illinois.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11423 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

Otto Bremer Foundation and Bremer Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otto Bremer Foundation and Bremer Financial Corporation*, St. Paul, Minnesota; to acquire certain assets from their subsidiary bank in Willmar, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Willmar, Minnesota.

Board of Governors of the Federal Reserve System, May 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-11424 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

Wright Bancgroup Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 2, 1988.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Wright Bancgroup Company*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas Bancorp Shares, Inc., San Antonio, Texas, and thereby indirectly acquire Texas Bank, San Antonio, Texas, and Texas Bank North, N.A., San Antonio, Texas.

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Board of Governors of the Federal Reserve System, May 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11623 Filed 5-20-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquistions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 5/3/88 AND 5/13/88

Name of acquiring person; Name of acquired person; Name of acquired entity	PMN No.	Date terminated
Marlis S.A.; Diamandis Communications, Inc.; Diamandis Communications, Inc.	88-1420	5/3/88
The Moses H. Cone Memorial Hospital; Humana, Inc; Humana of North Carolina, Inc., Edison Homes-Southeast	88-1299	5/4/88
Odyssey Partners; West Point-Pepperell, Inc.; West Point-Pepperell, Inc.	88-1333	5/4/88
Mobil Technology Inc.; MEDIQ Inc.; MEDIQ Mobile Services, Inc.	88-1386	5/4/88
James W.F. Brooks; The Prudential Insurance Co. of America; Sevcage Management, Inc.	88-1427	5/4/88
David T. Shelby (88-1428) & Jack D. Rutherford (88-1431); Kendavis Holding Co.; Unit Rig & Equipment Co	88-1428	5/4/88
Jack D. Rutherford; Kendavis Holding Co.; Unit Rig and Equipment Co.	88-1431	5/4/88
Franklin Savings Corp.; L.F. Rothschild Holdings, Inc.; L.F. Rothschild Holdings, Inc.	88-1444	5/4/88
TPR Investments Partners; David W. Elmquist, ("Trustee"); Lundberg Industries, Inc.	88-1481	5/4/88
Tele-Communications, Inc.; William W. McDonald (88-1284) & Allan J. McDnld. (88-1299); Waterloo Cablevision, Inc.; Cedar Falls Cablevisions	88-1284	5/5/88
Tele-Communications, Inc.; Allan J. McDonald; Waterloo Cablevision, Inc.; Cedar Falls Cablevisions	88-1299	5/5/88
United Meridian Corp.; Ensource Inc; Ensource Inc.	88-1296	5/5/88
Advanced Telecommunications Corp.; Microtel, Inc.; Microtel, Inc.	88-1314	5/5/88
Argus Energy, L.P.; Tosco Corp.; Tosco Corp	88-1328	5/5/88
Welsh, Carson, Anderson & Stowe IV; Avantek, Inc., Transmission Systems Division	88-1340	5/5/88
International Multifoods Corp.; Prepared Foods, Inc.; Prepared Foods, Inc.	88-1265	5/5/88
General Motors Corp.; Roger S. Penske; Penske Cadillac of California, Inc.	88-1428	5/5/88
Ronald E. Scherer; David Liebowitz; Imperial News Co., Inc	88-1477	5/5/88
Voting trust, 12/08/86 of Hallmark Cards, Inc., Kansas City Southern Industries, Inc.; Kansas City Southern Industries, Inc.	88-1343	5/6/88
Wayne Reeder; Sequa Corp.; Chromalloy American Insurance Group, Inc.	88-1381	5/6/88
Leon Fink; James M. Stoneman; Interstate Theatres Corp	88-1300	5/6/88
Borden, Inc.; Di Giorgio Corp.; Di Giorgio Corp	88-1400	5/6/88
Unilever N.V., Unilever PLC; Sequoia Turner Corp.; Sequoia Turner Corp	88-1437	5/6/88
Glenn R. Jones; Cable TV Fund 11-A, Ltd.; Cable TV Fund 11-A, Ltd	88-1462	5/6/88
Leggett & Platt, Inc.; Pacific Dunlop Limited; Pacific Dunlop Foam Corp. and L & P Foam	88-1463	5/6/88
Donald J. Trump; Robert M. Bass; Plaza Operating Partners, Ltd	88-1471	5/6/88
United Meridian Corp.; Charles E. Hurwitz; MCO Resources, Inc	88-1480	5/6/88
ManTech International Corp.; Northrop Corp.; Northrop Services, Inc	88-1489	5/6/88
Southmark Corp.; Citicorp; Citicorp Mortgage, Inc	88-1490	5/6/88
Hawker Siddeley Group Public Limited Co.; ATI Holding, Inc., c/o' American Technologies, Inc.; von Weise Gear Co	88-1493	5/6/88
Forbes Healthmark; Bethesda Foundation; Bethesda Foundation	88-1496	5/6/88
Frederick G.E. Scheer; Donald G. Geary; Affordable Inns, Inc	88-1503	5/6/88
Colocoll Group PLC; John Crowther Group PLC; John Crowther Group PLC	88-1504	5/6/88
Daniel W. Gardner; Milton G. Waldbaum Co., Gardwal Realty Co	88-1505	5/6/88
Atwood Resources, Inc., Park-Ohio Industries, Inc.; Park-Ohio Energy, Inc	88-1510	5/6/88
Amoco Corp.; Citation Investment Trust; Citation 1987 Investment Limited Partnership	88-1511	5/6/88
Societe Nationale Elf Aquitaine; Pennzoil Co.; Pennzoil Nederland Co, Inc	88-1513	5/6/88
BASF Aktiengesellschaft; Pennzoil Co.; Pennzoil Nederland Co., Inc	88-1514	5/6/88
Itel Corp.; Rex-Noreco, Inc.; Rex-Noreco, Inc	88-1515	5/6/88
Mr. Yasuo Ii; Ronald L. Fanello; fDG Realty, Ltd	88-1521	5/6/88
W.R. Grace & Co.; USX Corp.; USX Corp	88-1372	5/10/88
Martin D. Gaske; Acme Steel Co.; Acme Steel Co	88-1391	5/10/88
ConAgra, Inc.; Amfac, Inc.; Lamb-Weston, Inc	88-1412	5/10/88
Golden Valley Microwave Foods, Inc.; Amfac, Inc.; Lamb-Weston, Inc	88-1412	5/10/88
Golden Valley Microwave Foods, Inc.; L.W. Acquisition, Inc.; L.W. Acquisition, Inc	88-1413	5/10/88
ConAgra, Inc.; L.W. Acquisition, Inc.; L.W. Acquisition, Inc	88-1415	5/10/88
Dr. Pepper/Seven-Up Companies, Inc.; Dr. Pepper Holding Co.; Dr. Pepper Holding Co	88-1425	5/10/88
Dr. Pepper/Seven-Up Companies, Inc.; Seven-Up Holding Co.; Seven-Up Holding Co	88-1426	5/10/88
Peter R. DeGeorge; Insilco Corp.; Plymouth Capital Co., Inc. & Milas Home Division	88-1496	5/10/88
American Express Co.; Tishman West Management Corp.; Tishman West Management Corp	88-1501	5/10/88
York International Corp.; Temperature Industries, Inc.; Temperature Industries, Inc	88-1527	5/10/88
BBA Group plc; Permodian Nasional Berhad; The Guthrie Corp., plc	88-1402	5/11/88
The Walt Disney Co.; Marlis S.A.; Childcraft Education Corp	88-1439	5/11/88
Kao Corp.; American Brands, Inc.; The Andrew Jergens Co	88-1446	5/11/88
Samual J. Heyman; GAF Corp.; GAF Corp	88-1450	5/11/88
Reiners Group plc; William N. Osterman; Osterman's Inc.	88-1476	5/11/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 5/3/88 AND 5/13/88—Continued

Name of acquiring person; Name of acquired person; Name of acquired entity	PMN No.	Date terminated
Stora Kopparbergs Bergslags AB; Swedish Match AB; Swedish Match AB	88-1483	5/11/88
Consolidated Electrical Distributors, Inc.; Amfac, Inc.; Amfac Electrical Supply Co	88-1491	5/11/88
Paul Schaub; Hoechst Aktiengesellschaft; Hoechst Aktiengesellschaft;	88-1492	5/11/88
AB Artimos; Incentive AB; Abu AB and Abu Garcia Group, Inc.	88-1494	5/11/88
Incentive AB; AB Artimos; AB Artimos	88-1495	5/11/88
Sharon Steel Corp.; Wheeling-Pittsburgh Steel Corp.; Wheeling-Pittsburg Steel Corp	88-1488	5/12/88
David L. Goldman; Textron Inc.; Bryant Grinder Corp	88-1341	5/13/88
Schnitzer Steel Products Co; Leo V. Berger; Leo V. Berger	88-1445	5/13/88
Schnitzer Steel Products Co.; Arc Shipping, L.P.; Arc Shipping, L.P.	88-1451	5/13/88
Schnitzer Steel Products Co.; Aurora Marine Co., L.P.; Aurora Marine Co., L.P.	88-1452	5/13/88
Royal Dutch Petroleum Co. (Shell Oil Co.); The J.E. and L.E. Mabee Foundation Inc.; Mabee Petroleum Corp	88-1475	5/13/88
North Star Universal, Inc.; Daniel W. Gardner; Milton G. Waldbaum Co	88-1506	5/13/88
Finmeccanica Societa Finanziaria P.A.; D.U. Howard and Georganna Howard (husband & wife); The Dee Howard Co	88-1517	5/13/88
Wayne Reeder; Western Health Resources; Diamond Benefits Life Insurance Co	88-1532	5/13/88
Wayne Reeder; Adventist Health System/Sun-belt Healthcare Corp.; Diamond Benefits Life Insurance Co	88-1533	5/13/88
Kenneth R. Thomson; The Post Holding Co., Inc.; The Post Holding Co. Inc	88-1537	5/13/88
Polysar Energy & Chemical Corp.; Savin Corp.; Savin Corp	88-1539	5/13/88
Donna Wolf Steigerwaldt; Nantucket Industries, Inc.; Nantucket Hosiery Mills Corp	88-1543	5/13/88
Centel Corp.; Advanced Telecommunications Corp.; Advanced Telecommunications Corp	88-1546	5/13/88
Boston Ventures Limited Parnership II; Columbia Pictures Entertainment, Inc.; Columbia Pictures Industries, Inc., Columbia Lady	88-1548	5/13/88
Irish Life Assurance plc; Central Life Assurance Co.; Inter-State Assurance Co	88-1551	5/13/88
Pernod Ricard S.A.; Gaspare P. Ferro, a natural person; Yoo-Hoo Industries, Inc	88-1557	5/13/88
Seatchi & Saatchi Co. PLC; Nicholas Costa; CPC Delaware Co., Inc	88-1561	5/13/88
Durham Corp.; Kaufman and Broad, Inc., Sun Life Insurance Company of America	88-1574	5/13/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-11440 Filed 5-20-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Social Services Policy; Applications for Grants; Long Term Care Research

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of long term care from states, public, non-profit and for-profit organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to long term care for the functionally impaired elderly and for mentally retarded or developmentally disabled (MR/DD) persons.

A subsidiary objective is to promote the use of publicly available Departmental data bases in long term care. Computerized data from other sources may also be used. However, no new data collection will be supported.

The Department seeks to advance the state of knowledge principally in the following issue areas: (a) Long term care financing (b) catastrophic burdens on long term care clients (c) long term care supply and demand (d) patterns of service use and client outcomes (e) nursing homes (f) home and community-based services (g) informal caregiving and (h) characteristics of persons with long term care needs.

These issue areas may be combined and other areas may be proposed if they are clearly demonstrated to be relevant to long term care. The following sections list the kinds of questions envisioned under each issue area.

1. Issue Areas

a. Long Term Care Financing

How much money is spent from what payment sources on long term care and how is it distributed among various institutional and community service modes? How will this change over the next 20-40 years based on both current trends and alternate assumptions regarding mortality, morbidity, and available caregivers? What variations in long term care expenditures exist across states and what accounts for them?

What are projected participation rates and public and private expenditures for long term care based on alternate policy scenarios, e.g. Medicaid restructuring, comprehensive entitlement, growth of private insurance and tax incentives? How sensitive are long term care expenditures to various cost-sharing options?

b. Catastrophic Burdens on Long Term Care Clients

How many chronically impaired persons with what characteristics experience financially catastrophic health and long term care expenditures? What factors result in catastrophic financial burdens? What percent of people experience catastrophic home care expenditures as opposed to nursing home expenditures and what are their characteristics? What impact do high out-of-pocket costs have on Medicaid participation, living arrangements, and the quality of life of impaired persons?

Who spends down to Medicaid eligibility, how does this occur and what the the policy implications? In particular, what are the characteristics of persons who spend down in the community and in nursing homes? How long does it take? What proportion of income and assets are applied to Medicaid service costs? Does the "spend down" population own their homes? What is the value of such homes and what happened to the equity in their homes prior to becoming Medicaid-eligible?

To what extent can high out-of-pocket expenditures be reduced by private long-term care insurance? What is the effect on out-of-pocket expenditures of such private financing options as continuing care retirement communities,

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home equity conversions, employee benefit options for retirees, and social health maintenance organizations? Who are likely to participate in these various options? What are the effects of projected participation rates on public programs?

c. Long Term Care Supply and Demand

How does the supply of nursing home beds and community-based services affect the use of these types of care? How will the demand for long-term care services be affected by the growth of the impaired elderly and MR/DD populations? What factors are associated with different patterns of service use? What determines the decision to institutionalize an individual?

To what extent are long term care recipients and their caregivers aware of available services and financing options? To what extent are long term care needs being met satisfactorily and what service gaps persist? What accounts for differences in costs and prices charged among institutional and non-institutional services?

d. Patterns of Service Use and Client Outcomes

Who uses long term care services? What characteristics distinguish institutional and community service users? What distinguishes short-stay and long-stay nursing home residents? Can this pattern of service use be predicted at entry? What client outcomes are associated with different patterns of service use? What accounts for different service use patterns across states and localities? What is the relative impact of factors like supply, costs and user characteristics on these patterns?

e. Nursing Homes

What is the relative impact on nursing home use of such factors as: (a) Nursing home bed supply; (b) availability of formal community-based services; (c) patient characteristics; (d) caregiver characteristics; and (e) costs of services? In light of these (or other) factors, how can one identify target groups of persons at high risk of nursing home placement? What are the number and characteristics of MR/DD nursing home residents compared to functionally impaired elderly residents?

f. Home and Community-Based Services

Describe the types, patterns and costs of formal community service use. What are the characteristics of community service users? What are the characteristics of service provider organizations and their personnel? Under what conditions can lower levels of service substitute for a higher level of care (e.g. homemaker for home health services or board and care settings for nursing home care)? What variations in community service use exist by subgroups of long term care recipients, geography or other factors?

Describe the role of case management in increasing access to formal community services. Which models of case management appear most effective in increasing access, assuring quality and controlling costs?

g. Informal Caregiving

What is the extent of informal caregiving? Is it changing over time? How does the availability of formal services affect the sources, types and levels of informal care provided? To what extent does substitution of formal for informal care occur? What are the characteristics of caregivers and recipients associated with substitution? What formal services do informal caregivers view as most important?

What are the characteristics of informal caregivers? To what extent is informal caregiving a function of such factors as family size, geographic proximity, income and ethnicity? What can be projected about the size and characteristics of future cohorts of caregivers? What are the effects of informal caregiving on caregivers themselves, e.g. related to employment, income social activity and stress?

h. Characteristics of Persons with Long Term Care Needs

How many people with what health and functional characteristics require long-term care services, How does their status change over time? What are the rates of such change? How does the long term care experience of current population cohorts compare with past cohorts and what implications does this have for future cohorts?

How are the impaired elderly and MR/DD persons distinguished by subgroups, based on such factors as age, sex, ethnicity, marital status and living arrangements? What are the incidence and prevalence of different kinds of disabilities and functional impairments for such subgroups?

What are the most appropriate ways of measuring functional capacity, whether physical or mental? For example, what is the most valid and reliable way to measure performance under the Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL)? In what way, if any, does greater longevity affect the onset and duration of health and functional limitations? What are the implications of this for planning long-term care services?

What types of living arrangements characterize people with long term care needs? What changes in living arrangements occur for the elderly and MR/DD population over time and what socio-economic and health characteristics are associated with these changes?

2. Critical Elements

Several elements are critical to the program of research solicited.

a. Knowledge of Prior Research

Grantee must demonstrate knowledge of past and current research relating to long term care. This includes empirical studies, surveys, evaluations of demonstration projects and long term care modeling.

b. Policy-relevance

The applicant should indicate how the questions to be investigated will yield results relevant to national long term care policy and program development in the near term.

For example, there is concern with alleviating catastrophic expenses among the elderly for long term care, particularly through private financing options. A research project that addressed the extent and distribution of out-of-pocket costs for long term care would consequently be policy-relevant.

c. Familiarity with Departmental and Other Data Bases

The applicant should demonstrate familiarity with the data base(s) available for analysis and their applicability to the applicant's proposed research.

The principal public use data sets available for analysis at present are the 1977 and 1985 Nursing Home Survey, the 1982–84 Long Term Care Survey and data from the National Long-Term Care Channeling Demonstration. However, applicants are not limited to these data sources.

In addition to above-mentioned data sets, there are a number of other data sources that can be considered. These include, but are not limited to: (a) Decennial Census (b) Current Population Surveys (c) Survey of Income and Program Participation (SIPP) (d) National Medical Care Expenditure Survey (e) National Medical Care Utilization and Expenditure Survey and (f) National Health Interview Survey/ Supplement on Aging.

Data sets from States and from demonstration projects may also be used. However, their relevance to

national policy concerns must be demonstrated.

The applicant should also be familiar with data bases that will become available in the future insofar as they may permit further development of the applicant's project. Examples include the next-of-kin file from the 1985 National Nursing Home Survey and, over the longer term, the National Medical Expenditure Survey.

3. Potential Users

Potential users of the research include federal and state officials involved in long term care policy, program development, program adminsitration and financing. Additionally, research findings may be used by hospital and nursing home administators, social sevice providers, home health agencies, and the insurance industry.

4. Types of Projects Excluded

Applications that are limited to theoretical development will not be considered.

Projects Funded Under This Announcement Are Limited To Using Existing Data Sets Available in Computerized Data Files. No New Data Collection Will Be Permitted.

5. Content and Organization of the Application

The application must begin with a cover sheet followed by the required application forms and an abstract of the application that does not exceed two single-spaced pages. The application may not exceed 25 double-spaced pages. Each application should include the background and significance of the issue, the specific questions to be investigated, the data sources to be used, the methodologies proposed for conducting the investigation and the policy issues which the research will help illiminate.

During the proposal development stage, the technical assistance role of the Department of Health and Human Services will be limited exlusively to clarifying the intent of this announcement. Applicants are advised not to ask for feedback on (a) choice of topics (b) what to include in the application and (c) likelihood of funding.

B. Applicable Regulations

1. "Grant Programs Adminsitered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Parts 74).

C. Effective Date and Duration

1. The initial grant awards pursuant to this announcement are expected to be made by September 30, 1988. It is expected that six to eight grants will be made by that date. Additional grants may be made in Fiscal year 1989 if funds become available.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately.

3. Applicants may present a work plan and budget covering a twelve to fifteen monthly period. After the initial time period, grants may be refunded.

D. Statement of Funds Available

1. A total of $300,000 in FY 88 funds has been set aside for grants to be awarded as a result of this announcement. Organizations submitting applications may propose a project at the dollar level they consider appropriate.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

Applicants are encouraged to seek additional funds from other sources for their project. Applicants should discuss any commitments, plans or hopes for additional funds, including size and sources. If successful completion of a proposed project depends on outside funding, ASPE's funding commitment will be made contingent on evidence of that outside funding.

E. Application Processing

1. Applications will be screened initially for relevance to the needs identified in Section A, subsection (1) through (5). If judged relevant the application will then undergo review by a government rview panel, possibly augmented by outside experts.

2. Applications will be judged as to eligibility, quality and relevance, according to the criteria set forth in item 5.

3. A rating of "unacceptable" on any individual criterion may render the entire application unacceptable. Applicants should therefore make sure that all criteria are fully addressed.

4. Applications should be as concise as possible, consistent with the information requirements of reviewers. Applications should be limited to 25 double-spaced typed pages, exclusive of forms, resumes, and budget. They should avoid being unduly elaborate and should not contain voluminous supporting documentation.

5. The evaluation of applications will be carried out in terms of the following critieria. The weights of the criteria are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organzations and individuals concerned with the issues discussed in Section A with improved bases for making decisions about these issues. (20 Points)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (15 Points)

c. The clarity of the statement of objectives, methods and anticipated results. (15 Points)

d. The appropriateness and soundness of the methodology, including research design, statistical techniques, modeling strategies, selection of data and other procedures. (30 Points)

e. The qualifications and experience of the project personnel. (20 Points)

F. Deadline for Applications

The deadline for applications is COB, Friday, July 29, 1988.

Mailed applications may be sent by U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application is sent by first class, registered or certified mail not later than July 25, 1988 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the Post Office.

Applications sent by commercial carrier will be considered received on time by the Grants Officer if sent not later than (July 25, 1988) as evidenced by a receipt from the commercial carrier.

An application to be hand-delivered must be taken to the Grants Officer at the address listed below. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays and Federal holidays. Applications will not be accepted after close-of-business on (July 29, 1988).

G. Disposition of Applications

1. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or need for further review.

2. The Assistant Secretary will notify applicants of the disposition of their application. A signed notification of the grant award will be issued to the person listed in Block 4 of the application to notify the applicant of the approved award.

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H. Application Instructions and Forms

Copies of applications should be requested from and submitted to the Grants Officer. Send applications by the deadline to:

Mr. Albert A. Cutino, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Room 428–F, 200 Independence Avenue SW., Washington, DC 20201, Phone: 202/245–1794

Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after June 30, 1988.

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. Intergovernmental Review of Federal Programs

This announcement is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," nor its implementing regulations at 45 CFR Part 100.

Date: May 17, 1988.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 88–11500 Filed 5–20–88; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration; HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the Federal Register on May 11, 1988, Volume 53, No. 91, on page 16784 that the Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH, and the Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH, would meet at the Linden Hill Hotel. The notice is being corrected to read as follows:

The Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH, will meet at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH, will meet at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

All other information for these committees remains the same.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: May 17, 1988.

[FR Doc. 88–11427 Filed 5–20–88; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Cooperative Agreements for Pilot Demonstration Projects for the Prevention of Perinatal Infection With Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS); Program Announcement and Notice of Availability of Funds for Fiscal year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for cooperative agreements for pilot demonstration projects to prevent perinatal infection with human immunodeficiency virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS). Such projects may be either population-based or cohort-based.

Authority

These projects are authorized under the Public Health Service Act: section 301(a) [42 U.S.C. 241(a)], as amended; section 311(b) [42 U.S.C. 243(b)], as amended; and section 318 [42 U.S.C. 247c], as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Purpose

The purpose of this program is to assist selected areas with substantial numbers of women who are infected with HIV to: (1) Develop an effective population-based program to prevent perinatal transmission of HIV infection, or (2) generate information needed to develop such programs through suitable cohort-based projects. There is an urgent need to develop effective programs to prevent pregnancies among (and further HIV transmission by) HIV-infected women and women at high risk of HIV infection. AIDS in women and children has occurred among minorities disproportionately and has frequently been associated with intravenous drug abuse. Successful programs will need to address such issues and will require knowledge about accessing, identifying, and obtaining the participation of a community's HIV-infected women and women at high risk of HIV infection and will equire effective strategies which encourage consistent use of contraception among these women.

Applications, whether population-based or cohort-based, should seek to use and augment, rather than duplicate, AIDS health education/risk reduction, counseling and testing, and HIV-seroprevalance surveillance activities which are eligible for funding through other sources.

Eligible Applicants

Eligible applicants for both population-based and cohort-based studies are the official public health agencies of States, the District of Columbia, the Commonwealth of Puerto Rico, and local governments. These applicants are encouraged to have health care providers or research groups participate in the program. Eligible applicants for cohort-based studies also include accredited Schools of Medicine, Osteopathy, and Public Health. All proposed programs must be located within or include a Standard Metropolitan Statistical Area with a minimum of 25 cases of AIDS among adult women meeting the CDC case definition and reported to CDC during the calendar year 1987.

Cooperative Activities

A. Recipient Activities

1. Population-based Projects

a. *Obtain community participation*—Community input should be obtained during planning, implementation, and evaluation of the program. In particular, participation by members of black, Hispanic, and immigrant communities affected by the program should be obtained.

b. *Define the target population*—Suitable populations may be an entire community or may be narrower, such as the catchment population for an obstetric service experiencing perinatal HIV infections. However, the target population should be defined geographically and permit a population-based evaluation of program effectiveness.

c. *Develop methods to identify, and obtain the participation of infected women in the defined community*—A plan should be developed and implemented to identify the sub-populations of women at risk for HIV in the community and to recruit and provide service to the HIV-infected women from these epidemiologically important sub-populations.

d. *Coordinate with existing outreach activities*—Applicants should collaborate with existing outreach programs to identifiy and recruit the participation of female intravenous drug users, if such women constitute important sub-populations of the community's HIV-infected women or women at high risk for HIV infection.

e. *Develop strategies to assist women to reduce their risk of HIV transmission or acquisition, and for those who desire to avoid pregnancy*—Devise and implement creative and effective methods: (1) To educate and counsel HIV-infected women and women at high risk of becoming infected concerning pregnancy prevention, (2) to effect behavioral changes among these women relating to intravenous drug abuse or sexual practices that reduce their risk of HIV transmission or acquisition, and (3) to increase among those women the prevalence of effective contraceptive use, especially those contraceptives which are effective against transmission of HIV to sex partners.

f. *Evaluate attitudes and perceptions among women at high-risk for perinatal transmission*—Samples of HIV-infected women, HIV-negative women at high risk for HIV infection, and women who have delivered a child who was infected or developed AIDS should be evaluated by social scientists for attitudes and perceptions related to perinatal transmission. These samples should include women who are not likely to be enrolled in the program and whose evaluations may require field assessment. The evaluation should address, but not be limited to, their values, attitudes and beliefs concerning pediatric AIDS, contraception, pregnancy, and the meaning and importance of motherhood, considering sociodemographic parameters.

g. *Evaluate program effectiveness*—Evaluate the effectiveness of the program by determining the HIV seroprevalence at delivery among women from the target community, using data obtained from the surveillance of HIV antibody in newborn heelstick or cord blood specimens; identify, if possible, a "control" community so that the effects of the program can be distinguished from ecologic trends.

h. *Evaluate strategies and operational aspects of program*—Develop systems to monitor: Effectiveness of strategies to educate women about perinatal transmission of HIV infection; behavioral changes relating to intravenous drug abuse or sexual practices that reduce risk of HIV transmission among those enrolled; consistency of effective use of contraception among women enrolled in the program; pregnancies among those enrolled; rates of follow-up; effectiveness of the program in accessing women in the sub-populations at risk for HIV infection; and other measures of interest.

i. *Participate in the transfer of information and methods developed in this program to other States and communities.*

2. Cohort-based Project

a. *Obtain community participation*—Community input should be obtained during planning, implementation, and evaluation of the program. In particular, participation by members of black, Hispanic, and immigrant communities affected by the program should be obtained.

b. *Define the target population*—The cohort(s), whether hospital-based, clinic-based, or constructed in another manner, should consist of HIV-infected women or women at high-risk of acquiring the infection. There should be minimal use of these funds for identifying these HIV-infected or high-risk women. The applicant should describe the sub-populations of women in the community who are at risk for HIV infection and pregnancy, in terms of size and demographic parameters, and describe how the cohort(s) is related to those sub-populations.

c. *Develop strategies to assist women at risk who desire to avoid pregnancy and to reduce their risk of HIV transmission or acquisition*—Devise and implement creative and effective methods: (1) To educate and counsel HIV-infected women and women at high risk or becoming infected concerning pregnancy prevention, (2) to increase among those women the prevalence of effective contraceptive use, and (3) to effect behavioral changes among these women relating to intravenous drug abuse or sexual practices that reduce their risk of HIV transmission or acquisition.

d. *Evaluation of attitudes and perceptions among women at high-risk for perinatal transmission*—Samples of HIV-infected women, HIV-negative women at high risk for HIV infection, and women who have delivered a child who was infected with HIV or developed AIDS should be evaluated by social scientists for attitudes and perceptions related to perinatal transmission. These samples should include women who are not likely to be enrolled in the program and whose evaluations may require field assessment. The evaluation should address, but not be limited to, their perceptions concerning pediatric AIDS and attitudes toward contraception, pregnancy and the meaning and importance of motherhood, considering sociodemographic parameters.

e. *Evaluation of strategies and operational aspects of program*—Develop systems to monitor: Effectiveness of strategies to educate women about perinatal transmission of HIV infection; consistency of effective use of contraception among women enrolled in the program; pregnancies among those enrolled; behavioral changes relating to intravenous drug abuse or sexual practices that reduce risk of HIV transmission among those enrolled; rates of follow-up; and other measures of interest.

f. *Develop methods to transfer information and methods developed in this program to other States and communities.*

To the extent that the recipient engages in information collection through questionnaires, survey forms, or any related means, there shall be no review of such forms or the information collection design by CDC or another Federal agency. However, recipients may request technical consultation from CDC.

B. CDC Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating activities for preventing the perinatal transmission of HIV infection and AIDS.

2. Provide current scientific information regarding national program strategies for such prevention.

3. Provide assistance in data management and analysis.

4. Participate in the analysis of data gathered from program activities and the reporting of results.

5. Assist in the transfer of perinatal prevention information and methods developed in this program to other States and communities.

Availability of Funds

Approximately $5,300,000 is available in Fiscal Year 1988 of which $1,300,000 is available to fund up to two continuation cooperative agreements and $4,000,000 is available to fund up to eight new cooperative agreements. It is expected that the average award for new cooperative agreements will be $500,000, ranging from $200,000 to $1,500,000.

It is expected that new cooperative agreements will begin on or about September 1, 1988, and will be funded for 12 months in a 1–5 year project period; population-based projects may

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be 3–5 years, cohort-based projects 2–3 years. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction if approved in accordance with the guidance document: CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS (JANUARY 1988).

Funds may be used to support personnel and purchase supplies and services directly related to planning, organizing, and conducting the program described in this announcement. Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may not be used to pay for clinical treatment costs. Funds to support testing for identifying HIV-infected women should not duplicate existing CDC-funded counseling and testing activities and should be coordinated with State and locally funded efforts.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him/her or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed: (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

Reporting Requirements

Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Other Requirements

Recipients must comply with the document titled: CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS (JANUARY 1988) (53 FR 0034, FEBRUARY 29, 1988).

Review and Evaluation Criteria

A. Competing Applications

Competing applications will be reviewed and evaluated according to the following criteria:

1. Population-based Projects

a. *Magnitude of the problem* (5 points)
b. *Understanding the problem* (5 points)
c. *Participation by the community* (5 points)
d. *Defining the target population and accessing HIV-infected women* (15 points)
e. *Coordination with existing outreach activities and other relevant AIDS-related activities* (10 points)
f. *Strategies to increase effective use of contraception among women in the program* (10 points)
g. *Evaluation of attitudes, perceptions, and values* (10 points)
h. *Strategies to reduce the risk of HIV transmission or acquisition* (5 points)
i. *Ability to measure seroprevalence at delivery* (10 points)
j. *Evaluation of intervention strategies and efforts to access targeted women* (15 points)
k. *Personnel* (10 points)

2. Cohort-based Projects

a. *Magnitude of the problem* (10 points)
b. *Understanding the problem* (5 points)
c. *Participation by the community* (10 points)
d. *Defining the target population* (10 points)
e. *Strategies to increase effective use of contraception among women in the program* (15 points)
f. *Evaluation of attitudes, perceptions, and values* (10 points)
g. *Strategies to reduce the risk of HIV transmission or acquisition* (5 points)
h. *Evaluation of intervention strategies* (15 points)
i. *Personnel* (10 points)
j. *Coordination with other relevant AIDS-related activities* (10 points)

Applications will also be reviewed according to the extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

In funding approved applications, consideration will be given to the distribution of projects among high morbidity areas and the variety of target populations, risk factors, and types of interventions addressed. In any one SMSA, only one population-based project will be selected for funding.

B. Noncompeting Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Degree to which the accomplishments of the prior budget period demonstrate that the applicant is meeting its objectives.

2. Extent to which any new or revised objectives are realistic, specific, numerically measurable, and time-phased and the extent to which the methods described will clearly lead to achievement of these objectives;

3. Extent to which the evaluation plan will allow management to monitor whether performance is of acceptable quality, the methods are effective, and the activities are having an impact.

4. Extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Application Submission

The original and two copies of the application must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, GA 30305, on or before July 15, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Jones, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842–6575 or FTS 236–6575.

Technical information may be obtained from Dr. Stuart M. Berman, Division of Sexually Transmitted Diseases, Centers for Disease Control, (404) 639–2570, or FTS 236–2570.

Dated: May 16, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–11468 Filed 5–20–88; 8:45 am]

BILLING CODE 4160–18–M

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting, which will be open to the public, limited only by the space available:

The NIOSH Board of Scientific Counselors Subcommittee for Scientific Review of Notification for Retrospective Cohort Mortality Studies

Date: June 7–8, 1988.

Place: Conference Room C, Alice Hamilton Laboratory, 5555 Ridge Avenue, Cincinnati, Ohio 45226.

Time 8:30 a.m. to 5:00 p.m., each day.

Contact Person: Craig Withers, Acting Director, NIOSH Washington Office, HHH Building—Room 714B, 200 Independence Avenue, SW., Washington, DC 20201, Telephones: Commercial—202/472–7134; FTS 202/472–7134

Purpose: NIOSH has developed a set of draft documents summarizing its evaluation of candidate epidemiologic studies (retrospective cohort mortality studies) for individual worker notification. These documents, called Worker Notification Profiles, reflect NIOSH's application of guidelines developed by this Board of Scientific Counselors Subcommittee.

The Director of NIOSH, consistent with the charter of the NIOSH Board of Scientific Counselors, seeks the advice of the Board and its review of this set of Profiles to evaluate NIOSH's application of the Board's guidelines.

Dated: May 18, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–11592 Filed 5–20–88; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

Acquired Immunodeficiency Syndrome Program Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee on July 12, 1988, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 8:30 a.m. to 4:30 p.m. on July 12, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The purpose of the meeting is to discuss the progress, obstacles and opportunities in the development and testing of human immunodeficiency virus vaccines.

Dr. Jay Moskowitz, Associate Director for Science Policy and Legislation, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: May 17, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–11441 Filed 5–20–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, June 17, 1988. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 8, C–Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Demestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–11442 Filed 5–20–88; 8:45 am]

BILLING CODE 4140–01–M

Department of the Interior

Bureau of Land Management

[AZ–020–08–4212–13; A–23306]

Realty Action; Exchange of Public Lands, Maricopa and Pinal Counties, AZ

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 1. N., R. 3 W.,
Secs. 3 and 7.
T. 1. N., R. 4 W.,
Secs. 1, 11, 12, 13 and 14.
T. 1. N., R. 5 W.,
Sec. 27.
T. 2. N., R. 3 W.,
Secs. 4, 5, 8, 9, 14, 15, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 33, 34 and 35.
T. 2. N., R. 4 W.,
Sec. 1.
T. 2. N., R. 5 W.,
Sec. 36.
T. 3. N., R. 4 W.,
Secs. 1, 11, 12, 13, 14, 24, 25 and 36.
T. 1. S., R. 2 W.,
Secs. 8, 9, 30, 31, 32 and 36.
T. 1. S., R. 3 W.,
Secs. 24, 25, 31 and 32.
T. 1. S., R. 4 W.,
Secs. 35 and 36.
T. 2. S., R. 1 W.,
Secs. 2, 11, 12, 25, 26, 27, 34 and 35.
T. 2. S., R. 2 W.,
Secs. 5, 6, 18, 28 and 33.
T. 2. S., R. 3 W.,
Secs. 5, 6, 7, 8, 17, 18 and 19.
T. 2. S., R. 4 W.,
Secs. 1, 11, 12, 13 and 14.
T. 3. S., R. 1 W.,
Secs. 1, 3, 4, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36.
T. 4. S., R. 1 E.,
Secs. 1, 3, 6, 7, 9, 10, 11, 12, 13, 34 and 35.

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T. 5 S., R. 1 E.,
Secs. 2, 3, 10, 11, 13, 15, 22, 23, 24, 25, 27, 34, 35 and 36.
T. 6 S., R. 1 E.,
Secs. 2, 3, 10, 11, 12, 13, 14, 24, 25, 26, 35 and 36.
T. 7 S., R. 1 E.,
Secs. 1, 2, 3, 5 and 6.
T. 5 S., R. 2 E.,
Secs. 5, 6, 7, 8, 9, 19, 29, 30, 31, 32.
T. 6 S., R. 2 E.,
Secs. 5, 6, 7, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.
T. 7 S., R. 2 E.,
Secs. 4, 5 and 6.
T. 7 S., R. 3 E.,
Secs. 3, 4 and 5.
Comprising 72,221.78 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

Segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first. This Notice supercedes and replaces any existing NORA's on the previously described public lands, but does not replace IL Application A-17000-Z.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Date: May 17, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-11469 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-08-5440-ZBAD, CA 20933]

Realty Action; Noncompetitive Sale of Public Land in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale of public land CA 20933.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value.

Mt. Diablo Meridian

T.29S., R.30E.,
Sec 34, M.S. 5009.
Containing 15.01 acres, more or less.
Appraised value: $11,560.00.

The land is being offered to the County of Kern by direct sale at the appraised fair market value. No other bids or bidders will be considered. The land is proposed for inclusion in the Bakersfield Metropolitan landfill to be developed by the County of Kern. The land is not required for any Federal purpose, and is difficult and uneconomic to manage as public land due to its isolation and lack of legal access. Disposal would best serve the public interest and is consistent with the Bureau's land use planning documents.

Patent terms and conditions will be as follows:

1. A reservation to the United States for a right-of-way for ditches or canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

A bid on the parcel, along with an additional $50 fee, will constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719 (b)).

Reservation of the mineral estate would interfere with the sanitary landfill development. The mineral interests applied for have nominal mineral value.

The designated bidder, County of Kern, will be required to submit payment of the fair market value plus the $50 mineral estate conveyance fee to the Bureau office at 4301 Rosedale Highway, Bakersfield, California. Payment will be by cash, money order, certified check, or cashiers check.

Publication of this notice in the **Federal Register** segregates the above public lands from the operation of the public land laws, including the mining laws and mineral leasing. The segregative effective will end upon issuance of patent or 270 days from the date of publication in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 4301 Rosedale Hwy. Bakersfield, California 93308; (805) 861-4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Date: May 9, 1988.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 88-11183 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-08-4212-14; CA 20181; CA 20182]

Realty Action; Noncompetitive Sale of Public Land in Tulare County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sale of public land CA 20181, 20182.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value.

Mt. Diablo Meridian

T.17S., R. 29E.
Sec 9, Lot 5 (Parcel #1-.015 acres-CA 20181);
Sec 9, Lot 6 (Parcel #2-1.45 acres-CA 20182).

Parcel #1 is being offered to Ben and Louise Prusek by direct sale at the appraised fair market value. Parcel #2 is being offered to John and Nadine Thompson. No other bids or bidders will be considered. The land sale is needed to resolve longstanding title and survey problems in the area and to resolve an unauthorized use. The land is not required for any Federal purpose. Disposal would best serve the public interest and is consistent with the Bureau's land use planning documents.

Patent terms and conditions will be as follows:

1. A reservation to the United States for a right-of-way for ditches or canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

A bid on the parcel, along with an additional $50 fee, will constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719 (b)).

The mineral interests being offered have no known mineral value.

The designated bidder will be required to submit payment of the fair market value plus the $50 mineral estate conveyance fee to the Bureau office at 4301 Rosedale Highway, Bakersfield, California. Payment will be by cash, money order, certified check, or cashiers check.

Publication of this notice in the **Federal Register** segregates the above public lands from the operation of the public land laws, including the mining laws and mineral leasing. The segregative effect will end upon issuance of patent or 270 days from the date of publication in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 4301 Rosedale Hwy. Bakersfield, California 93308; (805) 861-4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Date: May 9, 1988.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 88-11184 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-40-M

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conveyance fee to the Bureau office at 4301 Rosedale Highway, Bakersfield, California. Payment will be by cash, money order, certified check, or cashiers check.

Publication of this notice in the **Federal Register** segregates the above public lands from the operation of the public land laws, including the mining laws and mineral leasing. The segregative effect will end upon issuance of patent or 270 days from the date of publication in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 4301 Rosedale Hwy. Bakersfield, California 93308; (805) 861-4236.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Date: May 9, 1988.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 88-11184 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Irrigation Ratesetting Policy Approval and Availability of The Public Review Document, and The Public Review Comments and Responses Summary; Central Valley Project (CVP), CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Approval and implementation of CVP irrigation water ratesetting policy.

SUMMARY: On May 11, 1988, the Department of the Interior approved a new irrigation water ratesetting policy for the CVP. The new ratesetting policy was developed pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented; section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196); the Act of July 2, 1956 (70 Stat. 483), the Reclamation Reform Act of 1982 (96 Stat. 1263); and sections 105 and 106 of Pub. L. 99-546, Act of October 27, 1986 (100 Stat. 3051, 3052).

The Department of the Interior has reviewed all of the testimony presented at the public hearing held on June 16, 1987, in Sacramento, California, and all of the written comments provided by August 15, 1987. The public hearing notice and comment periods were announced by notices in the **Federal Register** (Vol. 52, No. 91, page 17839, May 12, 1987; and Vol. 52, No. 143, page 28051, July 27, 1987). The Department has determined that there are no significant concerns which justify reconsideration or amendment of the proposed policy or reopening of the public comment period.

The new policy, the *Component with Individual Contractor Deficits Method*, detailed in the Irrigation Ratesetting Policy Public Review Document (1987), becomes effective in 30 days following the publication of this announcement.

Reclamation contact: Written requests for a copy of the Public Review Document (1987), and the Public Review Comment and Response Summary should be addressed to the Regional Director, Bureau of Reclamation, Water Rate Policy, MP-440, 2800 Cottage Way, Sacramento, California 95825. Telephone requests may be made to Donna Tegleman at (916) 978-5035 in Sacramento, California.

Date: May 11, 1988.

James W. Ziglar,

Assistant Secretary, Water and Science.

[FR Doc. 88-11307 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant
Name: U.S. Fish and Wildlife Service,
File no. PRT-708155
1011 E. Tudor Road,
Anchorage, Alaska 99503
Type of Permit: Scientific Research
Name of Animals: Alaskan sea otter (Enhydra lutris lutris); unlimited.
Summary of Activity to be Authorized:
The applicant proposes to collect sea otters that are sick or seriously injured and send these otters to the U.S. Fish and Wildlife Service, Wildlife Health Laboratory in Madison, Wisconsin, for euthanization and complete post mortem examinations. Data will be used to determine causes of death in sea otters and for various genetic analyses.
Source of Marine Mammals for Research: Alaska
Period of Activity: May 1988 to December 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038-7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) in Room 400, 1375 "K" Street, NW., Washington, DC.

Dated: May 13, 1988.

R.K. Robinson,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 88-11538 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-AN-M

Issuance of Permit for Marine Mammals

On March 17, 1988, a notice was published in the **Federal Register** Vol. 53, FR No. 52 that an application had been filed with the Fish and Wildlife Service by the Alaska Fish & Wildlife Research Center (PRT# 680715) for a permit to take walruses (Odobenus rosmarus) for scientific research.

Notice is hereby given that on April 29, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein. Furthermore, an amendment to that permit was issued on May 10, 1988, authorizing the immobilization of walruses using any disassociative, narcotic and/or barbiturate immobilizing drugs, rather than the previously authorized use of only telezol and/or demerol/seritol.

The permits are available for public inspection during normal business hours at the Office of Management Authority, Room 403, 1375 K Street, NW., Washington, DC 20005.

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Date: May 13, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-11539 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-AN-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Seismic Surveys; Trafalgar House Oil and Gas, Inc., Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36, Part 9, Subpart B, of the Code of Federal Regulations of the availability of an Environmental Assessment and of an oil and gas Plan of Operations submitted by Trafalgar House Oil and Gas, Incorporated, for the purpose of conducting four geophysical seismic exploration surveys from the Novillo Prospect and Little Shell Beach areas to the Laguna Madre, Padre Island National Seashore.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Date: May 11, 1988.

Donald A. Dayton,

Regional Director, Southwest Region.

[FR Doc. 88-11420 Filed 5-20-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Clean Air Act; Continental Steel Corp. et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States v. Continental Steel Corporation, and N. Wayne Etter, in his capacity as Trustee in Bankruptcy of Continental Steel Corporation, Debtor,* Civil Action No. IP88-849C, was lodged with the United States District Court for the Southern District of Indiana. The complaint filed by the United States alleged that defendant Continental Steel Corporation was in violation of various provisions of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, with respect to a number of surface impoundments used for the storage and treatment of hazardous waste at the Continental Steel facility in Kokomo, Indiana. Since Continental Steel was at the time of the filing of the complaint, and still is, subject to an ongoing bankruptcy proceeding, its bankruptcy trustee was also named as a defendant.

The proposed Consent Order, in conjunction with as Settlement Agreement entered into among the bankruptcy trustee and various creditors of the Continental Steel bankruptcy estate, provides for the establishment of the Continental Steel—Kokomo Facility Trust Fund to be administered by the Indiana Department of Environmental Management, to be used for the environmental closure of Continental Steel's Kokomo facility. The bankruptcy trustee will pay an initial sum of $1,500,000 into the Trust Fund, and the Trust Fund will have an additional allowed claim in the bankruptcy proceeding, as further described in the Settlement Agreement, of $1,000,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Continental Steel Corporation,* and D.J. Reference No. 90-7-1-340.

The proposed Consent Order may be examined at the office of the United States Attorney, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6314, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.90 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11487 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Order Pursuant to the Clean Air Act; Dietzger Corp

In accordance with Department Policy, 28 CFR 50.7 notice is hereby given that a proposed Consent Order in *United States v. Dietzgen Corporation,* Civil Action No. 84-C-1026 was lodged with the United States District Court for the Northern District of Illinois. The compliant filed by the United States alleged that the defendant violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply at its Des Plaines, Illinois paper coating facility with applicable provisions of the Illinois State Implementation Plan ("SIP") pertaining to the control of volatile organic compound emissions.

The proposed Consent Order provides for defendant to achieve and maintain compliance with Illinois Pollution Control Board Rule 205(n) by not operating two of its coating lines without first demonstrating compliance with the SIP and by continuing to operate control equipment on two other coating lines. In addition, the proposed Consent Order requires defendant to pay a civil penalty of $61,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Dietzgen Corp.,* and D.J. Reference No. 90-5-2-1-840.

The proposed Consent Order may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois, 60604 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11488 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; IT Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on *May 11,* 1988, a proposed Consent Decree in *United States v. IT Corporation,* was lodged with the United States District Court for the Northern District of California. That action was brought pursuant to the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), for violations of regulations regarding treatment, storage and disposal of hazardous waste in surface impoundments at IT Corporation's facility in Martinez, California, known as the Baker facility.

The Consent Decree requires IT Corporation to close the Baker facility in accordance with a closure plan submitted to and approved by the U.S. Environmental Protection Agency ("EPA"). In addition, IT may not accept hazardous waste at the Baker facility after this Consent Decree is entered by the court, except under very limited circumstances as described in the Consent Decree. It Corporation must also submit plans to EPA regarding compliance with certain regulations promulgated under RCRA, codified at 40 CFR Part 265, that apply to the Baker facility and comply with those plans and regulations. During the period before the facility is closed and during closure, IT Corporation must comply with all applicable RCRA regulations at the Baker facility. Under the Consent Decree, IT Corporation will also pay a civil penalty of $260,000 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. IT Corporation,* D.J. Ref. 90-7-1-395.

The proposed Consent Decree may be examined at the office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue NW., Washington, DC. 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $1.60 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11486 Filed 5-20-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-27]

Robert E. Willis, M.D.; Revocation of Registration

On February 10, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert E. Willis, M.D. (Respondent) of 6606 N. Saginaw Street, Flint, Michigan 48505 proposing to revoke his DEA Certificate of Registration AW4787935 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated March 9, 1988, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On April 14, 1988, Respondent, through counsel, withdrew his request for a hearing. Judge Bittner issued an Order Terminating Proceedings on April 27, 1988. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that DEA initiated an investigation of a pharmacy located in Flint, Michigan after DEA records revealed that the pharmacy was an extremely large purchaser of various controlled substances. As part of the investigation, DEA investigators along with investigators from the State of Michigan, Department of Licensing seized the controlled substance prescriptions from the pharmacy for analysis. The analysis of the prescriptions revealed that Respondent's prescriptions accounted for approximately 60% of the controlled substance prescriptions on file at the pharmacy.

During the course of the investigation, 24 individuals, whose prescriptions were written by Respondent and filled at the pharmacy, were selected for profiling. These patient prescription profiles revealed that Respondent prescribed various controlled substances for these individuals on a regular basis over an extended period of time. On the majority of occasions, Respondent issued more than one prescription for controlled substances at a time. The profiles also revealed that these individuals all received prescriptions from Respondent on each occasion for essentially, the same controlled substances, including Percodan, Valium and some type of a codeine-base, or hydrocodone-base, cough preparation. The Administrator finds that at the time Respondent issued certain of these prescriptions, he was not registered with DEA in the schedule of the drug prescribed and therefore was not authorized to issue such prescriptions.

During the course of the investigation, it was discovered that it was common knowledge on the street that Respondent would issue prescriptions for controlled substances for no legitimate medical purpose. Respondent would write prescriptions for whatever drugs were asked for and would often issue more than one prescription at a time.

Two of Respondent's former employees were interviewed by a Special Agent of the Federal Bureau of Investigation. Both stated that Respondent would pre-sign prescriptions, a violation of 21 CFR 1306.05(a), and then ask them both to fill in the other information whenever "patients" would come in. Although these two employees refused to do so, other employees did fill in Respondent's pre-signed prescriptions. Both of the former employees stated that on several occasions they, along with other employees, approached Respondent with their concerns regarding his practice of writing numerous prescriptions, all for essentially the

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same substances, for his "patients." Even after these conversations, Responsent continued to excessively prescribe controlled substances. In addition, the Special Agent interviewed an individual who stated that she went to Respondent's office on approximately six occasions in early 1986 and that on each occasion she received three prescriptions for controlled substances; one for 30 Percocet tablets, one for 30 Valium tablets, and one for eight ounces of a cough syrup. She stated that she never was seen by Respondent, but rather was seen by a nurse in his office. On each occasion, she was given a cursory physical examination and was asked certain questions, including what type of prescription she wanted. The nurse would then write the requested prescriptions which had been pre-signed by Respondent.

The Administrator concludes that Respondent's continued registration with DEA would be inconsistent with the public interest. Respondent has miserably abused his controlled substance handling privileges and has exhibited a total disregard for the dangerous nature of controlled substances. No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Administrator concludes that Respondent's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW4787935, previously issued to Robert E. Willis, M.D., be, and it hereby is, revoked, and any pending application for the renewal of such registration, be, and they hereby are, denied. This order is effective June 22, 1988.

John C. Lawn,
Administrator.

Date: May 13, 1988.

[FR Doc. 88-11428 Filed 5-20-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-9]

Woodbridge Pharmacy, Inc., Washington, DC; Hearing

Notice is hereby given that on December 8, 1987, the Drug Enforcement Administration, Department of Justice, issued to Woodbridge Pharmacy, Inc. an Order to Show Cause as to why the Drug Enforcement Administration should not deny its application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, May 25, 1988, in Courtroom 10, Room 309, United States Claims Court, 717 Madison Place NW., Washington, DC.

Dated: May 16, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88-11429 Filed 5-20-88; 8:45 am]
BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-51]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology.

DATE AND TIME: June 16, 1988, 8:30 a.m. to 5 p.m.; and June 17, 1988, 8 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Kutler, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology, chaired by Professor Dean Chapman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

June 16, 1988

8:30 a.m.—Opening Remarks.
9 a.m.—A View of European Technology.
11 a.m.—OAST Supersonic Aero Plans.
11:30 a.m.—Current NASA Flight Program.
1 p.m.—State-of-the-Art for Boundary Layer Transition Prediction.
2:30 p.m.—Propulsion/Airframe Integration Drag.
3:15 p.m.—High Speed Civil Transport.
4 p.m.—Subsonic/Transonic Drag Reduction Work.
5 p.m.—Adjourn.

June 17, 1988

8 a.m.—Oblique Flying Wing.
8:30 a.m.—Industry Topics.
10 a.m.—Team Discussion and Planning.
1 p.m.—Facility Tour.
3 p.m.—Adjourn.

May 18, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11475 Filed 5-20-88; 8:45 am]
BILLING CODE 7510-01-M

[88-52]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion.

DATE AND TIME: June 7, 1988, 10 a.m. to 5 p.m.; and June 8, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 225, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Reck, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team for Rotorcraft Powertrain and Propulation, chaired by Dr. F. Blake Wallace, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

June 7, 1988

10 a.m.—Ongoing NASA Program Reviews.
1:30 p.m.—Related Department of Defense Program Reviews.
5 p.m.—Adjourn.

June 8, 1988

8:30 a.m.—Continue Ongoing NASA Program Reviews.
10:30 a.m.—Tour Facilities.
1:30 p.m.—Working Session for Review Team Members.
3:30 p.m.—Adjourn.

May 18, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11476 Filed 5-20-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL ECONOMIC COMMISSION

Open Meeting

AGENCY: National Economic Commission.

ACTION: Notice of commission meeting.

Summary: The National Economic Commission will hold a public meeting on May 31, 1988. The meeting will be held in Room 210, Cannon House Office Building, Washington, DC from 3:00-5:30 p.m.

Agenda: The meeting will be devoted to a presentation on issues related to budget process reform. The Commissioners will be briefed by Commission staff and invited experts.

FOR ADDITIONAL INFORMATION: Jim Hildreth, National Economic Commission, 734 Jackson Place, NW, Washington, DC 20503; 202/789-1993.

SUPPLEMENTARY INFORMATION: See Federal Register, Vol. 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,
Co-Chairman.

Robert S. Strauss,
Co-Chairman.

[FR Doc. 88-11492 Filed 5-20-88; 8:45 am]
BILLING CODE 6820-AS-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions aof the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 22, 1988.

ADDRESSES: Send to comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of there entries are subject to 44 U.S.C. 3504(h).

Category: Revisions.

Title: Applications and Instruction Forms for the Projects Category.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 223.

Estimated Hours for Respondents to Provide Information: 52 per respondent.

Susan Metts,
Assistant Chairman for Administration.

[FR Doc. 88-11467 Filed 5-20-88; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would delete part of a certain license condition and revise the Technical Specifications (TS) to support refueling and startup for Cycle 11 operation.

The proposed change in the Dresden Unit 3 License (DPR-25) is deletion of the condition requiring a Safety Evaluation for coastdown operation with off-normal feedwater temperature from section 3.E of the license.

The Technical Specification changes specific to the Cycle 11 reload fuel and analyses include: Revision of the Minimum Critical Power Ratio (MCPR) operating limit for Cycle 11, reduction of the Single Loop Operation (SLO) MCPR adder to 0.01 (from 0.03), a reduction in the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor for SLO to 0.91 (from 0.70), deletion of the paragraph that requires a MCPR penalty based on scram time performance, incorporation of transient Linear Heat Generation Rate (TLHGR) limits, and revision of reduced flow MCPR limits.

The Technical Specification change resulting from analyses performed to allow equipment out-of-service includes revision of the relief valve Technical Specifications to require action only after two relief valves are found to be

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inoperable, provided MAPLHGR reduction factors are implemented.

The Technical Specification changes provided for clarification or as administrative changes include; removal of all references to GE fuel (except in spent fuel storage Technical Specifications), changing references to EXXON Nuclear Company (ENC) to Advanced Nuclear Fuels Corporation (ANF) (except in titles of earlier documents and definitions of nuclear limits), and defining Transient LHGR (TLHGR), Steady State LHGR (SLHGR), Fuel Design Limiting Ratio for Centerline melt (FDLRC) and Fuel Design Limiting Ratio for Exxon Fuel (FDLRX).

These revisions to the license of Dresden Unit 3 would be made in response to the licensee's application for amendment dated March 9, 1988.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed an amendment of Facility Operating License DPR–25 which would revise certain license conditions and TS in order to provide for Cycle 11 operation of Dresden Unit 3. This license amendment will establish the necessary critical operating limits, defined operating domains, and surveillance requirements to assure safe operation of Dresden Unit 3 with the new Cycle 11 reactor core fuel configuration.

Environmental Impacts of the Proposed Action

By letter dated March 9, 1988, the licensee provided transient and accident safety analyses using approved methods to bound all normal and abnormal conditions of Cycle 11 operation for Dresden Unit 3.

The licensee's reload submittal analysis was performed by Advanced Nuclear Fuels (ANF) using licensing methodology to technically justify Cycle 11 operation. This methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of this reload submittal were transient and accident analyses coastdown with FW heater(s) of out-of-service, (FHOOS) relief valve out-of-service (RVOOS), Single Loop Operation (SLO) and Extended Load Line Limit Analysis (ELLLA). All core wide transients and Emergency Core Cooling System (ECCS) analyses were performed with the most restrictive RVOOS.

The Commission has reviewed these analyses, and in the Safety Evaluation Report proposed for this amendment, concludes that operation of the facility would not endanger public health and safety. The Commission finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and having no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of Dresden Nuclear Power Station Units 2 and 3 dated November 1973, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of reload activities and subsequent plant operations allowed by this action will be adversely different when compared to previous operating and reload cycles. CECo is committed to operate Dresden Unit 3 in accordance with standards and regulations to maintain occupational exposures levels "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated November 1973, related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of Mary 9, 1988 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated March 9, 1988 and the Final Environmental Statement for Dresen Unit 3 dated November 1973 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 5th of May 1988.

For the Nuclear Regulatory Commission.

Leif Norrholm,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–11463 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

Public Service Co. of New Hampshire; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the required on-site primary property damage insurance requirement of 10 CFR 50.54(w)(1) to the Public Service Company of New Hampshire, the licensee, for the Seabrook Station, located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w)(1) to reduce the full amount of required on-site primary property damage insurance. By letter dated October 1, 1987 and supplemented by additional information dated February 29, 1988, the licensee requested an exemption to reduce the amount of primary property damage insurance from 1.06 billion dollars to 620 million dollars until such time as Seabrook Station receives an operating license which allows the reactor to go critical or operate at any power level. The reduction in the amount of required on-site primary property damage insurance is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's October 1, 1987 letter and supplemental information dated February 29, 1988 provided technical justification that 620 million dollars of primary property damage insurance provides an adequate level of coverage to return the Seabrook Station to a condition ready for decommissioning following an accident considering the current operational limit. Granting the exemption request relieves the licensee from the unnecessary financial burden of carrying insurance coverage of 1.06 billion as required by 10 CFF 50.54(w)(1) until Seabrook Station receives an operating license which allows the reactor to go critical or operate at any power level.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the amount of on-site primary property damage insurance coverage and does not affect the manner of normal facility operation or the risk of facility accidents. While the change in insurance coverage may affect the financial arrangements of the licensee and have some economic consequences, the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote. The staff has determined in the exemption dated May 11, 1988 that a reduction in the amount of required on-site damage insurance, from 1.06 billion dollars to 620 million dollars is commensurate with the clean-up cost associated with a postulated accident while the reactor is maintained in a shutdown, subcritical configuration. Thus, the reduced coverage authorized by the proposed exemption is sufficient to fund clean-up of radiological impacts associated with any accidents postulated with the reactor maintained in a subcritical condition. In addition, the exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to carry 1.06 billion dollars of on-site primary property damage insurance. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not considered in the Final Environmental Statement for the Seabrook Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated October 1, 1987 and February 29, 1988. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 7th day of May, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11464 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 2–4, 1988, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the Federal Register on April 18, 1988.

Thursday, June 2, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–9:45 a.m.: ECCS Evaluation Models (Open/Closed)—Review analytical models proposed for Westinghouse PWR upper plenum injection systems for two-loop nuclear power plants.

10:00 a.m.–12:00 noon: Consideration of Severe Accidents (Open)—Review and comment regarding proposed NRC plan to implement NRC policy statement regarding severe accidents.

1:00 p.m.–1:45 p.m.: Emergency Planning (Open)—Briefing regarding proposed final NRC rule on emergency preparedness in the vicinity of fuel cycle facilities and other radioactive material licenses.

1:45 p.m.–2:30 p.m.: Metallurgical Considerations (Open)—Briefing and discussion regarding the quality of fasteners used in nuclear plants and periodic inspection of BWR reactor pressure vessels.

2:45 p.m.–4:15 p.m.: Advanced Reactors (Open)—Discuss proposed ACRS report/recommendations regarding regulatory requirements for key design features of advanced gas-cooled and liquid-metal cooled nuclear power plants.

4:15 p.m.–6:00 p.m.: Babcock and Wilcox Nuclear Power Plants (Open)—Discuss proposed ACRS report on the safety reassessment of B&W nuclear power plants by the B&W Owners Group.

Friday, June 3, 1988

8:30 a.m.–10:15 a.m.: Prioritization of Generic Issues (Open)—Discussion and comment regarding the proposed prioritization of several new generic issues.

10:30 a.m.–11:30 a.m.: Reactor Operations (Open)—Briefing regarding proposed International Organization of Reactor Operators.

11:30 a.m.–12:00 noon: Future Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.–2:30 p.m.: Systems Interactions (Open)—Briefing regarding the proposed resolution of USI A–17, "Systems Interactions in Nuclear Power Plants."

2:30 p.m.–3:00 p.m.: ACRS Subcommittee Activities (Open)—Briefing and discussion regarding the status of the PDA review for the Advanced Boiling Water Reactor.

3:15 p.m.–4:15 p.m.: Radioactive Effluents (Open)—Briefing and discussion regarding proposed changes in 10 CFR Part 20, "Standards for Protection Against Radiation."

4:15 p.m.–5:15 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports on thermal-

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hydraulic phenomena research activities.

5:15 p.m.–5:45 p.m.: New Members (Closed)—Discuss status of appointment of proposed members and the qualifications of candidates being considered for nomination.

5:45 p.m.–6:00 p.m.: ACRS Practices and Procedures (Open)—Discuss proposed procedures regarding members' participation in meetings which are not sponsored by the ACRS.

Saturday, June 4, 1988

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting and the 337th ACRS meeting (May 5–7, 1988).

1:30 p.m.–2:30 p.m. ACRS Subcommittee Activities (Open)—Reports and discussion of the status of assigned subcommittee activities including NRC regional activities, international meeting on operational safety experience, and bilateral meeting on significant operational events and consideration of severe accidents.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recording will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: May 17, 1988.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 88–11407 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to the Virginia Electric and Power Company (the licensee), for the operation of the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) located in Louisa County, Virginia.

The proposed amendments would modify the NA–1&2 TS, section 3.7.12, Table 3.7.5 to delete components which were replaced during the Service Water Reservoir Improvement Project and to change the allowable differential settlement between Unit 2 Main Steam Valve House and the Service Building (SB).

The proposed changes to the NA–1&2 TS, section 3.7.12, Table 3.7.5 would delete the settlement monitoring requirements for service water lines which were removed from service and replaced with new lines connecting the Service Water System to the new Service Water Valve House and spray headers during the Service Water Reservoir Improvement Project in 1987. This replacement was approved by the NRC in license Amendments 91 and 78, respectively, on March 27, 1987.

The proposed changes would also revise the limit for differential settlement between points 117 and 113 of Table 3.7.5. The differential settlement between settlement monitoring points 117, the SB, and 113, the NA–2 Main Steam Valve House (MSVH), has frequently approached 75% of the allowable value in Table 3.7.5 of TS section 3.7.12, and the measured value exceeded 75% of the allowable value in June 1987 and in 1980. A report exceeding 75% of allowable differential settlement between these two points was submitted to the NRC in 1981 and in August 1987 in accordance with the NA–1&2 TS. The August 1987 report is provided as part of the licensee's March 10, 1988 submittal.

The primary concern of the differential settlement between the SB and the NA–2 MSVH is the effect on the four buried service water lines running between the two structures. The code allowable stress in the service water lines for differential settlement condition is 45,000 pounds per square inch (psi). As stated in the NA–1&2 TS, critical differential settlement is the downward movement of the SB with respect to the MSVH. The results of an engineering analysis show that, disregarding survey inaccuracies, there has been negligible additional settlement of the SB since 1981.

The differential settlement limit of 0.03 feet in the TS was based upon an estimate of future differential settlement between points 117 and 113. The service water pipe stress analysis shows that considerable margin exists before code-allowable stresses would be exceeded and, therefore, the differential settlement of the SB with respect to the NA–2 MSVH has had no significant impact on the service water pipes or on plant operability.

The proposed changes would revise the allowable value of differential settlement between the SB and the NA–2 MSVH from 0.03 feet to 0.047 feet. This value, 0.047 feet, corresponds to a stress of 44,178 psi in the service water lines, which is still below the code-allowable stress of 45,000 psi. The reportable threshold of 75% would still be maintained in the NA–1&2 TS.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 20, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 10, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 12th day of May, 1988

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11408 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., Kewaunee Nuclear Plant; Exemption

I.

The Wisconsin Public Service Corporation (WPSC, the licensee) is the holder of Facility Operating License No. DPR–43 which authorizes operation of the Kewaunee Nuclear Power Plant (the facility), at a steady-state power level not to exceed 1650 megawatts thermal. The facility is a pressurized water reactor located in Kewaunee County, Wisconsin. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant.

One of the subsections, III.G, is the subject of the licensee's exemption request. Specifically, Subsections III.G requires specific fire protection features for structures, systems and components important to safe shutdown of the plant.

III.

By letter dated June 23, 1987, the licensee submitted requests for two exemptions from the technical requirements of subsection III.G of Appendix R to 10 CFR Part 50. Subsection III.G of Appendix R is related to fire protection features for ensuring the availability of necessary systems and associated circuits used to achieve and maintain safe plant shutdown.

The first exemption request pertains to paragraph III.G.2(b) of Appendix R. In areas where cables or associated circuits of redundant trains are located in the same fire area outside primary containment, paragraph III.G.2 of Appendix R requires separation by a 3-hour fire barrier or separation by more than 20 feet with no intervening combustibles and with fire detection and automatic fire suppression. The exemption was requested from the specific requirements of this section to the extent that it requires automatic fire suppression systems to be installed

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throughout the Shield Building, Fire Area SB–65. The Shield Building consists of a 5-foot annular space between the building's inside wall and the reactor containment vessel. Cables required for alternative and dedicated shutdown are located within the annular space in two separate cable penetration areas. The cable penetration areas are separated by a distance greater than 20 feet free from intervening combustibles.

The fixed combustible loading in Fire Area SB–65 is low, consisting primarily of cable insulation. The overall combustible load is less than 1,500 Btu per square foot. Transient combustibles within the Shield Building are minimized by strictly controlled access and plant administrative procedures. Ionization smoke detectors are installed within the annular space of the Shield Building. These detectors are located near each cable penetration area. Visual and audible alarms for these detectors are provided in the Control Room. For manual fire fighting within Fire Area SB–65, portable fire extinguishers and hose stations are available in adjacent areas.

The purpose of requiring a fixed fire suppression system is to prevent a fire of significant magnitude from developing and damaging the ability to achieve and maintain safe shutdown. Due to the low combustible loading and the clear spatial separation between penetration areas, a significant fire exposure to alternative and dedicated shutdown cables does not exist. It is expected that, if a fire were to occur, it would develop slowly with an initially low heat release. Ionization detectors located at each of the cable penetration areas would activate annunciators in the Control Room, warning operators of a fire in the particular penetration area of the Shield Building. The fire brigade would then be dispatched to extinguish the fire manually, using the hose lines or portable extinguishers provided in adjacent areas.

Based on the low combustible loading of the area, the passive protection provided by the separation between penetration areas, the installed smoke detectors and the fire brigade's ability to extinguish a fire in the area, there is reasonable assurance that a fire in the Shield Building would not prevent a safe plant shutdown. The staff concludes the installation of fixed fire suppression in the Shield Building will not significantly increase the level of fire protection currently provided. Therefore, the fire protection features currently provided for Fire Area SB–65 are acceptable.

The second exemption request pertains to paragraph III.G.3 of Appendix R, which requires that fire detection and fixed fire suppression systems be provided to areas, rooms, or zones that contain alternative or dedicated shutdown capability.

An exemption was requested from the requirements of section III.G.3 of Appendix R to the extent that it requires fixed fire suppression throughout the Control Room portion of Fire Area AX–35. Automatic fire suppression systems are not currently installed in the Kewaunee Control Room. The Control Room is located on the 626-foot elevation of the Auxiliary Building in Fire Area AX–53. It contains the normal and engineered safety features control boards for the plant and is continuously manned by trained operators. Combustible materials within Control Room primarily consist of cable insulation and ordinary combustibles. The combustible loading is less than 10,000 BTU per square foot. Fire Area AX–35 is separated from other fire areas within the plant by fire barriers of 3-hour rated construction. The barriers are generally reinforced concrete or concrete block. Openings through the barriers are protected with 3-hour rated opening protectives such as penetration seals and dampers. Ionization smoke detectors are installed in selected panels and consoles in the Control Room. Additionally, a smoke detector is installed within the HVAC return ducting for the room. Portable extinguishers are available in the Control Room with additional extinguishers and hose stations available in adjacent areas. Alternate shutdown capability meeting the criteria of section III.G.3 has been provided for the Control Room via a dedicated shutdown panel located in Fire Zone TU–95A.

The fire protection in Fire Area AX–35 does not comply with technical requirements of section III.G.3 of Appendix R because automatic fire suppression is not installed in a zone for which alternative shutdown capability is provided. The purpose of requiring a fixed fire suppression system is to prevent a fire of significant magnitude from developing and damaging the ability to achieve and maintain safe shutdown. Because of the presence of ionization detectors and the continuous manning by trained operators, a fire in the Control Room should be detected early and extinguished by the fire brigade. Additionally, alternative shutdown capability independent of Fire Area AX–35 would be possible by means of a dedicated shutdown panel in Fire Zone TU–95A.

Based on the low combustible loading, the fire detection provided, the continuous manning by trained Control Room operators and the alternative shutdown capability provided, there is reasonable assurance that a fire in the Control Room will not prevent a safe plant shutdown. The staff concludes the installation of fixed fire suppression in the Control Room will not significantly increase the level of fire protection currently provided. Therefore, the fire protection features currently provided for fire area AX–35 are acceptable.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) The exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and (2) special circumstances are present for the exemption in that application of the regulations in this particular circumstance is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission grants the exemptions from the requirements of section III.G. of Appendix R to 10 CFR Part 50 to the extent discussed in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 11155.)

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of May 1988.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation

[FR Doc. 88–11465 Filed 5–20–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold an Executive Session on June 7, and June 16 and 17, 1988, 9:00 a.m. to 5:00 p.m. at the Interstate Commerce Commission Building, 1200 Constitution Avenue NW., Hearing Room B, Washington, DC.

Both of the meetings will be devoted to the formulation of the final report which is due to the President June 24, 1988. There will be a five day comment period from the first Executive Session on June 7th through June 12th to allow the public an opportunity to submit written comments and recommendations for consideration.

Records shall be kept of all Commission proceedings and shall be available for public inspection during regular office hours at 655 15th Street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88–11498 Filed 5–20–88; 8:45 a.m.]

BILLING CODE 4160–15–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing Boston Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Bravil Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3381)
EMC Corp.
Common Stock, $.01 Par Value (File No. 7–3382)
Dean Witter Government Income Trust
Shares of Beneficial Interest (File No. 7–3383)
Chase Medical Group, Inc.
Common Stock, $.01 Par Value (File No. 7–3384)
New America High Income Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7–3385)
Templeton Global Income Fund
Common Stock, $.01 Par Value (File No. 7–3386)
MFS Intermediate Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3387)
Owens & Minor, Inc.
Common Stock, $2.00 Par Value (File No. 7–3388)
Southdown, Inc.
Common Stock, $2.50 Par Value (File No. 7–3389)
Systems Integrators, Inc.
Common Stock, No Par Value (File No. 7–3390)
Eagle-Picher Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7–3391)
Fieldcrest Cannon, Inc.
Common Stock, $.01 Par Value (File No. 7–3392)
First Republicbank Corp.
Convertible Perferred Series A, No Par Value (File No. 7–3393)
Growth Stock Outlook Trust, Inc.
Common stock, $.10 Par Value (File No. 7–3394)
Helig-Meyers Co.
Common Stock, $2.00 Par Value (File No. 7–3395)
MacNeil-Schwendler Corp.
Common Stock, $.10 Par Value (File No. 7–3396)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if its finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11470 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

San Juan Basin Royalty Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3397)
Soo Lines Corp.
Common Stock, $.03 ⅓ Par Value (File No. 7–3398)
Sun Distributors L.P.
Class A Depository Receipts, No Par Value (File No. 7–3399)
Maritran's Partners, L.P.
Depository Receipts, No Par Value (File No. 7–3400)
Universal Matchbox Group, Ltd.
Common Stock, $.01 Par Value (File No. 7–3401)
Rhoden, Inc.
Common Stock, $1.00 Par Value (File No. 7–3402)
Sikes Corp.
Class A Common Stock, $.10 Par Value (File No. 7–3403)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11471 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Allegheny Ludlum Corp.
Common Stock, $.10 Par Value (File No. 7–3427)
AMRE, Inc.
Common Stock, $.01 Par Value (File No. 7–3428)

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Applied Magnetics Corp.
Common Stock, $.01 Par Value (File No. 7–3429)
Birmingham Steel Corp.
Common Stock, $.01 Par Value (File No. 7–3430)
Blue Chip Value Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3431)
Cedar Fair, L.P.
Common Stock, No Par Value (File No. 7–3432)
Columbia Pictures Enterprises
Common Stock, $.01 Par Value (File No. 7–3433)
Dean Witter Government Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3434)
Jepson Corp.
Common Stock, $.01 Par Value (File No. 7–3435)
New Jersey Resources, Inc.
Common Stock, $5.00 Par Value (File No. 7–3436)
Nicholas Applegate Growth Fund
Common Stock, $.01 Par Value (File No. 7–3437)
Orion Capital Corp.
Common Stock, $1.00 Par Value (File No. 7–3438)
Owens & Minor, Inc.
Common Stock, $2.00 Par Value (File No. 7–3439)
Permian Partner L.P.
Cumulative Convertible Preferred, No Par Value (File No. 7–3440)
Prudential Strategic Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3441)
Putnam Premier Income Trust
Common Stock, No Par Value (File No. 7–3442)
Quest for Value Dual
Purpose GF Fund, Inc. Capital Shares (File No. 7–3443)
Russ Berrie & Co., Inc.
Common Stock, $.10 Par Value (File No. 7–3444)
Sea Containers, Ltd.
Common Stock, $.01 Par Value (File No. 7–3445)
Southdown, Inc.
Common Stock, $2.50 Par Value (File No. 7–3446)
Symbol Technologies
Common Stock, $.01 Par Value (File No. 7–3447)
The Thai Fund
Common Stock, $.01 Par Value (File No. 7–3448)
UnionFed Financial Corp.
Common Stock, No Par Value (File No. 7–3449)
Worldwide Value Fund
Common Stock, $.001 Par Value (File No. 7–3450)
Amwest Insurance Group
Common Stock, No Par Value (File No. 7–3451)
Carnival Cruise Lines
Common Stock, $.01 Par Value (File No. 7–3452)
Media General, Inc.
Common Stock, $1.00 Par Value (File No. 7–3453)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11472 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Southwest Mortgage Investments Corp.
Common Stock, $.01 Par Value (File No. 7–3404)
Analog Devices, Inc.
Common Stock, $.16 Par Value (File No. 7–3405)
Brazil Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–3406)
Brown Foreman
Common Stock, Class B (File No. 7–3407)
Callaghan Mining Corporation
Common Stock, $1.00 Par Value (File No. 7–3408)
Carnival Cruise Lines, Inc.
Common Stock, $.01 Par Value (File No. 7–3409)
Compania Telefonica National
American Depositary Receipts (File No. 7–3410)
Dow Jones & Co.
Common Stock, $1.00 Par Value (File No. 7–3411)
Entertainment Marketing Inc.
Common Stock, $.01 Par Value (File No. 7–3412)
First Wyoming Bancorp
Common Stock, No Par Value (File No. 7–3413)
Heico Corporation
Common Stock, $.16 Par Value (File No. 7–3414)
Hoynanian Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–3415)
ICH Corporation
Common Stock, $1.00 Par Value (File No. 7–3416)
Mexico Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–3417)
NV Ryan, L.P.
Limited Partnership (File No. 7–3418)
Patrick Petroleum Corporation
Common Stock, $.20 Par Value (File No. 7–3419)
Pauley Petroleum Corporation
Common Stock, $1.00 Par Value (File No. 7–3420)
RB Industries, Inc.
Common Stock, No Par Value (File No. 7–3421)
Shell Transport & Trading PLC, Ltd.
Ordinary Shares (File No. 7–3422)
Southmark Corporation
Adjustable Cumulative Preferred D, Series H 9¼% Cumulative Convertible Preferred (File No. 7–3423)
Thai Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3424)
Standard Brands Paint Company
Common Stock, $.01 Par Value (File No. 7–3425)
USG Corporation
Common Stock, $4.00 Par Value (File No. 7–3428)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11473 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 17, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Interlake Corporation
Common Stock, $1.00 Par Value (File No. 7–3377)
Earle M. Jorgensen Company
Common Stock, $1.00 Par Value (File No. 7–3378)
House of Fabrics, Inc.
Common Stock, $0.10 Par Value (File No. 7–3379)
IP Timberlands, Ltd.
Class A Depositary Units, No Par Value (File No. 7–3380)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11474 Filed 5–20–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting; Connecticut

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting, at 9:00 a.m., on Monday, July 11, 1988, at the Yale Inn, 900 East Maine Street, Meriden, Connecticut 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(202) 240–4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 17, 1988.

[FR Doc. 11540 Filed 5–20–88; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Change in Date of Scheduled Public Meeting; Maryland

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, Maryland, has changed the date for its public meeting from June 1, 1988, to May 25, 1988, at 5:30 p.m. to 7:30 p.m., at the Blue Cross and Blue Shield of Maryland to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Flood, Baltimore, Maryland 21202, (301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 18, 1988.

[FR Doc. 88–11541 Filed 5–20–88; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting; Mississippi

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Jackson, Mississippi, will hold a public meeting, at 9:00 a.m., on Friday, May 27, 1988, at the Jackson District Office, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 100 West Capitol Street, Suite 322, Jackson, Mississippi 39269–0396, (601) 965–4363.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88–11542 Filed 5–20–88; 8:45 am]

BILLING CODE 8025–01–M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Thursday, June 23rd, from 1:30 p.m., to 4:00 p.m. and on Friday, June 24th, 1988 from 8:30 a.m. to 10:00 a.m. on the campus of the University of Nevada—Reno at the Business College Building, 4th floor, in the offices of the Small Business Development Center.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653–6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–11543 Filed 5–20–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 39]

New Car Assessment Program; Deformable Moving Barrier Crash Test Results and Analysis; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period on a request for comments on the results and analysis of

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a series of frontal crash tests conducted with a deformable moving barrier (DMB) which was published on March 29, 1988. The comment period was scheduled to close on May 31, 1988. NHTSA has received a petition asking that the comment period be extended to allow commenters more time to obtain and analyze the DMB data and analysis. NHTSA has concluded that it is appropriate and desirable to allow interested parties more time to comment on the DMB report. Accordingly, the comment period for that report is extended for 45 days.

DATE: The comment period for Docket No. 79-17; Notice 38 is extended so that it closes July 15, 1988.

ADDRESSES: Comments should refer to Docket No. 79-17; Notice 38 and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John M. Machey, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4798).

SUPPLEMENTARY INFORMATION: NHTSA published a request for comments on the results and analysis of a series of frontal crash tests conducted with a deformable moving barrier (DMB) at 53 FR 10182, March 29, 1988. The comment period for that notice was scheduled to close on May 31, 1988.

NHTSA received a petition from the Motor Vehicle Manufacturers Association of the United States, Inc., (MVMA) asking that the comment period be extended for 30 days because of delays in obtaining copies of the crash test reports and films.

NHTSA carefully considered the request and has concluded that it would be appropriate and beneficial to allow interested parties additional time to review the DMB materials. To that end, NHTSA has decided to extend the comment period on the DMB program beyond that requested by MVMA to an additional 45 days. The new date for the close of the comment period is July 15, 1988.

Issued on May 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-11536 Filed 5-20-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 8 & 9, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, June 8 and 8:00 a.m. on Thursday, June 9, 1988. The agenda will include the following topics:

Wednesday, June 8, 1988

Administration of Penalties
Tax System Redesign (TSR) Initiatives
Tax Forms Review Process
Use of Enforcement Statistics in Evaluating Employees
Implementing the 1986 and 1987 Tax Acts
Taxpayer Bill of Rights

Thursday, June 9, 1988

Legislative/Regulatory Process
General Discussion

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Rober F. Hilgen, Assistant to the Senior Deputy Commissioner no later than June 2, 1988. Mr. Hilgen may be reached on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue, NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-11496 Filed 5-20-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 25, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Election of Vice Chairman

The Commission will elect a Vice Chairman for the term beginning June 1, 1988 and ending May 31, 1989.

2. Lawn Darts

The Commission will consider an additional regulatory option for lawn darts.

Closed to the Public

3. Enforcement Matter OS #3705

The Commission will consider issues related to enforcement matter OS #3705.

4. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

May 18, 1988.

[FR Doc. 88-11578 Filed 5-19-88; 12:24 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Wednesday, May 18, 1988

May 11, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, May 18, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of the Commission's rules relating to program exclusivity (Gen. Docket No. 87-24). Subject: The Commission will consider whether to adopt an Order modifying certain of its program exclusivity rules affecting the cable and broadcast industries.

Private Radio—1—Title: Amendment of Subpart C of Part 90 of the Commission's Rules to Permit Commercial Enterprises to be licensed Directly in the Special Emergency Radio Service.

Common Carrier—1—Title: In the Matter of Inquiry into the policies to be Followed in the Authorization of Common Carrier Facilities in the North Atlantic Docket No. 79-184. Summary: The Commission will consider whether to adopt a Report and Order concerning Common Carrier Facilities required to meet North Atlantic Telecommunications needs for the 1991-2000 period.

Note.—The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Mass Media—1—Title: Public Notice concerning prohibitions against payola by broadcasters. Summary: The Commission will consider whether to issued a public notice regarding sections 317 and 507 of the Communications Act.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: May 12, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-11531 Filed 5-19-88; 10:28 am]

BILLING CODE 6712-01-M

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Corrections

Federal Register
Vol. 53, No. 99
Monday, May 23, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 87-2-85CD]

Cable Royalty Fund Fees; Distribution Proceedings Amendment

Correction

In notice document 88-7856 beginning on page 11895 in the issue of Monday, April 11, 1988, make the following correction:

On page 11896, in the first column, under **SUPPLEMENTARY INFORMATION**, in the third line from the bottom, replace the last comma with a closing quotation mark and insert "should be amended to read 'MPAA—98.475%, Multimedia—0.825%,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8199]

Income Tax; Deductions in Excess of $5,000 Claimed for Certain Charitable Contributions of Property and Information Returns By Donees Who Make Certain Despositions of Donated Property

Correction

In rule document 88-10007 beginning on page 16076 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16079, in the second column, in the first complete paragraph, in the ninth line, "December 30" should read "December 20".

§1.170A-13 [Corrected]

2. On page 16081, in the third column, in §1.170A-13(c)(3)(iv)(B), in the second line, "of" should read "on".

3. On page 16082, in the second column, in §1.170A-13(c)(4)(iv)(A)(*2*), in the second line, "and (B)" should read "through (H)".

4. On the same page, in the third column, in §1.170A-13(c)(4)(iv)(D), the seventh line should read "paragraph (c)(4)(iv)(A)(*4*) of this section".

5. On page 16084, in the first column, in the undesignated paragraph following §1.170A(c)(7)(v)(C), in the eighth line, "contribution" should read "contributed".

§1.6050L-1 [Corrected]

6. On page 16085, in the second column, in §1.6050L-1(a)(2)(i), in the 21st line, "or" should read "of".

7. On the same page, in the same column, in §1.6050L-1(a)(3), in the first line, "*of*" should read "*for*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-83-87]

Deductions in Excess of $5,000 Claimed for Charitable Contributions of Certain Property

Correction

In proposed rule document 88-10008 beginning on page 16156 in the issue of Thursday, May 5, 1988, make the following correction:

§1.170A-13 [Corrected]

On page 16158, in the second column, in §1.170A-13(c)(4)(iv)(A), in the 10th line, after "after" insert "June 6, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

Correction

In proposed rule document 88-4140 beginning on page 5991 in the issue of Monday, February 29, 1988, make the following corrections:

PART 1—[CORRECTED]

1. On page 5993, in the first column, in the authority citation for Part 1, in the last line, "1.6050-1" should read "1.6050A-1".

§1.6042-2 [Corrected]

2. On page 5994, in the first column, in §1.6042-2(a)(1)(ii), in the 21st line, "§1.6049-4(a)(1)(ii)" should read "§1.6049-4(c)(1)(ii)".

§1.6042-3 [Corrected]

3. On page 5994, in the second column, in §1.6042-3(b)(1), in the 11th and 12th lines, "§1.6042-3(b)(i)" should read "§1.6042-3(b)(1)".

§1.6042-5 [Corrected]

4. On page 5995, in the second column, in §1.6042-5(b)(3), in the second line, "3046" should read "3406".

§1.6044-6 [Corrected]

5. On page 5996, in the third column, in the undesignated paragraph following §1.6044-6(c)(1)(ii), in the seventh line, "6044(a)" should read "6044(e)".

§1.6049-4 [Corrected]

6. On page 5999, in the third column, in §1.6049-4(b)(1), in the 10th line from the bottom, "§1.6049(c)(1)(ii)" should read "§1.6049-4(c)(1)(ii)". Also, in the same column, in the same paragraph, in the last line, "requested" should read "regulations".

7. On page 6000, in the first column, in §1.6049-4(b)(3)(i), in the 34th line, "shall" was misspelled.

8. On page 6001, in the third column, in §1.6049-4(c)(1)(ii)(G), current paragraph (*43*) should be numbered (*44*) and a new (*43*) should be added to read as follows:

"(*43*) Organization of African Unity,"

§1.6049-5 [Corrected]

9. On page 6004, in the first column, in §1.6049-5(c)(4), in the last line, "§1.441-4(f)(2)(ii)" should read "§1.1441-4(f)(2)(ii)".

10. Also, in the same column, in the undesignated paragraph following §1.6049-5(c)(5)(ii)(E), in the last line, "preceding" was misspelled.

11. On page 6007, in the third column, in §1.6049-5(j)(1)(i)(C), in the first line, after "exchange" insert "that is registered as a national securities exchange".

12. On page 6009, in the first column, in §1.6049-5(j)(5), Example (*7*), in the 12th line, "to" should read "at".

BILLING CODE 1505-01-D

federal register

Monday
May 23, 1988

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1809 etc.

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1902, 1910, 1924, 1941, 1943, 1944, 1945, 1951, 1955, 1962, 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to conform to the following provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233): Section 503—Participation of Federal Agencies; Section 512—Waiver of Mediation Rights by FmHA Borrowers; Section 602—Definitions; Section 603—Security for FmHA Real Estate Loans; Section 604—Additional Collateral; Section 605—Notice of Loan Service Programs; Section 606—Planting and Production History Guidelines; Section 610—Disposition and Leasing of Farmland; Section 611—Income Release; Section 612—Conservation Easements; Section 614—Homestead Protection; Section 615—Debt Restructuring and Loan Servicing; Section 616—Transfer of Inventory Lands; Section 617—Target Participation Rates; Section 618—Expedited Clearing of Title to Inventory Property; Section 620—Lease of Certain Acquired Property; and Section 623—Farm Ownership Outreach Program to Socially Disadvantaged Individuals. In addition, the FmHA proposes further amendments as follows: (1) Provide for Farm Ownership loans on leasehold interests in Hawaii; (2) remove obsolete and unfunded loan program regulations; (3) add more guidance on what is a nonfarm enterprise; (4) require financial information from all members of an entity and delete the reference to principal members; (5) protect historic sites and correct health or safety problems; (6) clarify the use of the word character; (7) require that balloon payments be adequately secured by hard security other than just a crop lien; (8) remove the regulations for the restrictions on using operating loan funds for the production of surplus agricultural commodities; (9) define a feasible Farm and Home Plan and provide guidance for determining family living expenses; (10) require each State to issue annually unit prices for farm commodities; (11) consider a husband and wife as a joint operation when they both sign the application; (12) make other necessary clarifications and editorial changes. The need for the action is to: Implement certain provisions of the Agricultural Credit Act of 1987, strengthen, clarify and correct noted weaknesses in existing regulations; and remove regulations for obsolete and unfunded loan programs. The intended effect is to: (1) Facilitate keeping borrowers on the farm or ranch to the maximum extent possible; (2) respond to rural farm problems throughout the Nation; (3) to minimize losses under farmer program loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; (6) provide more guidance to the FmHA field staff.

DATE: Comments must be submitted on or before June 22, 1988. The 30-day comment period is established to enable the Agency to comply with the legislative requirement to publish final rules within 150 days.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. The Preliminary Regulatory Impact Analysis Statement [PRIA] and all written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447–4671.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Summary of PRIA

The USDA has developed a Preliminary Regulatory Impact Analysis (PRIA) due to the effect the Agricultural Credit Act of 1987 will have on the economy. There are a number of requirements in the Act, however the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document.

The Agricultural Credit Act of 1987 provides for substantial revisions in loan servicing procedures of FmHA. The objectives of this impact analysis were to summarize the revised loan restructuring procedures and estimated costs and budget impacts from restructuring with debt write-down.

The restructuring provisions of the Act provide for a write-down of debt to the recovery value of collateral where the return to the Government under the restructured debt is at least as great as the return from involuntary liquidation.

About 118,000 FmHA borrowers were delinquent or in some other default status in early 1988, including 16,000 borrowers who have been accelerated. FmHA estimates that about 37,000 of these borrowers will be able to resolve repayment problems through normal servicing procedures, including subordination, rescheduling, and deferral. The remaining 81,000 borrowers would be eligible for consideration of restructuring with write-down of debt.

Based on an earlier survey of borrowers eligible for restructuring with write-down of debt, an estimated 20 percent of the 81,000 borrowers are able to show repayment on remaining debt and qualify for the write-down. About two-thirds of the borrowers are unable to show repayment ability on remaining debt and would be rejected for write-down. The remaining potential write-down borrowers would not be considered for write-down because their debt was less than the estimated recovery value.

Borrowers who qualified for the write-down are characterized as follows:

a. A large proportion of their debt was with FmHA.

b. The FmHA loans were greatly undersecured, or there was no net value in the security for FmHA, which meant that a large percent, or all, of their FmHA debt would be subject to write-down.

c. A substantial portion of borrower income was from off-farm employment.

Adjustments in debts by other lenders could increase the number of borrowers able to cashflow with write-down of FmHA debt. For other FmHA borrowers with a large share of their debt owed other lenders restructuring could take place through bankruptcy.

For borrowers able to cashflow with the write-down, the average write-down of FmHA debt to recovery value totaled $167,000 on average. For borrowers unable to cashflow with the write-down, expected loan losses totaled $123,000 on average.

Losses for the agency are estimated to total $2.7 billion for borrowers able to cashflow and qualify for the write-down and $6.7 billion for borrowers who are unable to show repayment ability with the write-down. Recapture provisions may reduce estimated losses by about $0.6 billion.

These estimated losses to a large extent have already been incurred by the agency and are not the result of restructuring. The losses due to deterioration in the market value of collateral and lien position have already been incurred, and losses due to the expense of involuntary liquidation are included in the write-down, subject to recapture, or are part of expected losses for borrowers denied restructuring.

Budget impacts of loan losses for FmHA are measured in outlays and budget authority. Outlays measure net cash disbursements. For the loan programs, outlays are the difference between repayments on existing loans and disbursements on new loans. Budget authority is the commitment of Treasury funds. For the loan programs, budget authority includes realized losses due to interest subsidies, write-off, and other losses.

Outlays will be affected to the extent loan repayments are increased or decreased with revised servicing and restructuring. Since outlays currently reflect reduced repayments by borrowers under severe financial stress and delinquency, implementation of the write-down provisions is not estimated to have substantial impact on current outlay levels.

Budget authority may be dramatically affected by the revised servicing procedures as loan losses will tend to be recognized up front with the write-down rather than after liquidation and delayed debt settlement. Requested reimbursement for losses may be increased from about $1.0 billion in fiscal year 1989 to a substantial share of the total estimated write-down and loan losses of $8.7 billion in fiscal year 1990.

Since these provisions are required by the Act, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Section 534 of the Housing Act requires rules issued pursuant to Title V of the Housing Act of 1949 to be first published for public comment unless the rule is certified to be issued on an emergency basis. Certain of the proposed rules in this rulemaking are issued, in part, under the authority of the Housing Act of 1949. Because of the statutory time requirements in the Agricultural Credit Act of 1987, the Administrator certifies that there is an emergency basis for shortening the comment period from 60 to 30 days.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances. They are as follows:

1. Section 607 County Committees.

Allows one member of the County Committee to be an FmHA Farmer Program borrower and removes the requirement that a member must derive the principal part of income from farming.

This was implemented March 24, 1988.

2. Section 608 Administrative Appeals.

Requires FmHA to set up a separate independent nationwide appeals system for all FmHA borrowers.

3. A portion of Section 611 Income Release.

Provides for the release of up to $18,000 of normal income security for family living and farm operating expenses to borrowers that have been accelerated but not foreclosed.

The FmHA field offices were notified on February 2, 1988, to implement this provision immediately.

4. Section 613 Interest Rate Reduction Program; Demonstration Project for Purchase of System Land.

Provides for an FmHA guarantee of up to 95 percent of the loan if there is an interest rate reduction for the loan for Farm Credit Administration (FCA) inventory property when the Farm Credit Administration District has received financial assistance from the Farm Credit System Assistance Board.

FmHA and FCA signed a Memorandum of Understanding for this on March 3, 1988.

5. Section 619 Payment of Losses on Guaranteed Loans.

Provides for FmHA to pay a lender estimated losses either through debt write-down or reorganization through bankruptcy for FmHA guaranteed loans.

6. Section 711 Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration.

Provides the pooling of notes for issuing pooling certificates for sale on the secondary market (Aggie Mae).

Section 803 Sale of Rural Development Notes.

Allows the borrower who signed a note the opportunity to purchase the note when the note is offered for sale. This is for community programs. It was implemented on March 14, 1988.

7. Title V—State Mediation Programs.

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Subtitle A—Matching Grants for State Mediation Programs

Section 501 Qualifications.

Establishes the procedures and requirements for FmHA to certify a State for a State mediation program.

Section 502 Matching Grants to States.

Establishes the procedures for receiving grants from FmHA for State mediation programs.

8. These Proposed Rules.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA farm borrowers. The Act requires their implementation. It will allow many farm borrowers to continue to farm and will, at the same time, assist in minimizing losses to the Government.

Since most of these sections of the Act are interrelated, they are combined into one separate issuance of regulations. Some of the Sections require only minor changes in the regulations while others are major changes. The debt write-down provisions involve major additions to the regulations.

Debt write-down will be used to service delinquent farm borrowers who cannot cash flow through the use of FmHA's other existing servicing options. Borrowers who qualify for and obtain a write-down will become "current" and will therefore, so long as they remain current, be eligible for FmHA Farmer program loans. Borrowers whose applications for a write-down are rejected, will, after full consideration and appeal, be accelerated forthwith. Since FmHA's regulations allow delinquent borrowers who cannot cash flow to qualify for distressed farmer operating loans only if such borrowers have not been accelerated, the effect of acceleration after consideration, as described above, will be to deny such continuation policy operating loans to those borrower who have been rejected for a write-down and whose accounts have been accelerated.

Borrowers who are accelerated may still qualify for leaseback and dwelling retention program assistance.

The proposed regulations pertain only to FmHA Farmer Program (FP) loans. FP loans are Operating (OL) Loans, Farm Ownership (FO) Loans, Soil and Water (SW) Loans, Emergency (EM) Loans, Economic Emergency (EE) Loans, Softwood Timber (ST) Loans, Special Livestock (SL) Loans, Recreation (RL) Loans; Economic Opportunity (EO) Loans and Rural Housing Loans for farm service buildings (RHF).

Significant Amendments and additions to the Regulations are as Follows

1. 7 CFR Part 1910, Subpart A, 7 CFR Part 1943, Subpart A, and 7 CFR Part 1955, Subparts B and C—FmHA will reserve Farm Ownership loan funds and inventory farms for the socially disadvantaged. FmHA, in cooperation with other agencies, will establish an outreach program to encourage the acquisition of FmHA inventory farm property by socially disadvantaged individuals. These provisions implement sections 617 and 623 of the Act.

2. 7 CFR Part 1924, Subpart B has been revised to provide guidance to County Supervisors concerning planting and production history when the applicant's past production has been affected by natural disasters. This provision implements section 606 of the Act. County Supervisors will be required to inform borrowers that they are entitled to receive releases for essential family living and farm operating expenses and will be required to complete Form FmHA 1962–1 for this purpose. This provision implements section 611(f)(8) of the Act.

3. 7 CFR Part 1941, Subpart A, 7 CFR Part 1943, Subparts A and B, and 7 CFR Part 1945, Subpart D have been revised to allow the same collateral for two or more loans made, insured or guaranteed, so long as the outstanding amount of the loans does not exceed the total value of the security. These provisions implement section 603 of the Act. 7 CFR Parts 1941, Subpart A, 1943, Subparts A and B, and 7 CFR Part 1962, Subpart A and 1965, Subpart A have also been revised to prevent FmHA from seeking additional collateral when the borrower is current in loan payments. These provisions implement section 604 of the Act.

4. 7 CFR Part 1951, Subpart S—Farmer Program Account Servicing Policies and other related regulations as applicable.

This proposed regulation is added. Previously, the major FmHA FP loan servicing programs were dispersed through various regulations. The new regulation will combine the existing loan servicing programs as modified and include the significant loan servicing requirements of the Agricultural Credit Act of 1987 (ACT). This will make it easier for the FmHA field staff and borrowers to use the new reorganized regulation.

A. Notice of Primary Loan Service Programs.

This subpart requires FmHA to provide a FP borrower who is delinquent 180 days, a written summary of the primary and preservation loan service programs. Most delinquent borrowers will receive a cover letter (Exhibit A of Subpart S of Part 1951 of this chapter and published following Subpart S) which informs borrowers they are seriously delinquent in their payments and that they can apply for loan servicing. Unlike FmHA's previous procedures (50 FR 45740, November 1, 1985) implementing the injunction in the *Coleman v. Block* decision, FmHA will not initiate the adverse action process contained in Forms FmHA 1924–25 and 1924–26 against borrowers who are simply delinquent. These borrowers will first have the opportunity to apply for loan servicing and be informed of the County Supervisor's decision concerning eligibility for loan servicing. FmHA will initiate the adverse action process providing borrowers with an opportunity for a meeting and hearing *only* if it rejects their servicing request.

FmHA intends to eliminate Forms FmHA 1924–14, 1924–25 and 1924–26 and replace them with Exhibit A, Attachments 1–10 of Subpart S of Part 1951 of this chapter and published with Subpart S. Borrowers will *not* receive all of these attachments. Different attachments apply to borrowers who have been accelerated but have *not* requested loan servicing (Attachments 3, 3A, and 4); borrowers with non-monetary defaults and when a prior lienholder or junior lienholder is foreclosing (Attachments 5 and 6); borrowers rejected for loan servicing (Attachments 7 and 8); and borrowers who do not apply for loan servicing (Attachments 9 and 10).

The initial notice (Exhibit A) to delinquent borrowers with attachments (1 and 2) provides:

1. A summary of:

(a) Consolidation and rescheduling of loans,

(b) Reamortization of loans,

(c) The reduction of interest rates for operating and farm ownership loans to the limited resource interest rate,

(d) Deferral of FmHA loan payments (including softwood timber and conservation easements),

(e) Write-down of FmHA debt,

(f) Dwelling retention,

(g) Leaseback—buyback of the farm.

2. The requirements for applying for these programs.

3. The timeframes for the borrower to request debt restructuring and loan servicing and timeframes for FmHA to respond to such requests. The borrower has 45 days after notice to make a request and FmHA has 60 days to respond.

4. An attachment used to request such programs.

5. A brief summary of the borrower's right to appeal. Exhibit A, Attachments 1–10 of Subpart S of Part 1951 of this chapter, will also notify borrowers of appeal rights as applicable to their situation. FmHA will only initiate liquidation action after borrowers have the opportunity to apply for loan servicing including debt write-down and appeal all adverse actions.

6. How to request a copy of FmHA regulations.

The major purpose of this program is to minimize losses to the Government and assist farmers to continue their farming operations. This is accomplished through the use of primary and preservation loan service programs. The primary loan service programs are as follows:

1. *Loan consolidation.* Combining two or more of the same type loans. For example, Operating (OL) loans can be combined with other Operating loans, and Farm Ownership (FO) loans can only be combined with other Farm Ownership loans.

2. *Loan rescheduling.* Rewriting the rates and/or terms of production-type loans. The repayment period for production-type loans can be rescheduled up to a maximum of 15 years.

3. *Loan reamortization.* Rewriting the rates and/or terms of real estate loans. The repayment period for the revised loan can be up to 40 years but cannot exceed 40 years from the date of the original note.

The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation, rescheduling and reamortization (the date the new note is signed by the borrower).

4. *Interest rate reduction.* Lowering interest rates to the lowest rate permitted by law for a particular loan type. For instance, the lowest rate for an OL limited resource loan is 3 percent below the regular rate. Regular rates are determined by the Government's cost to borrow money, and these rates vary with the financial market.

5. *Deferral.* To delay, on a temporary basis, payments of principal and interest on loans. FmHA may defer payments for up to 5 years. The borrower must show that he/she cannot now pay essential family living expenses, maintain essential chattel and real estate and meet scheduled payments on all debts and that this problem is temporary. The borrower's Farm and Home plan must show that payments on the deferred debt can be resumed at the end of the deferral period. Section 331–B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–b) requires interest to accrue at the lower rate of either note rate of the loans being deferred or the current rate.

Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization and/or interest-rate reduction will not provide a feasible plan. This policy is contained in FmHA s existing deferral regulations.

Note.—If a borrower is not eligible for a five-year deferral, FmHA will consider the borrower for the Softwood Timber program. This is a *special deferral* program whereby marginal land, including highly erodible land and pasture, can be planted in softwood timber. The amount of debt cannot exceed $1,000 per acre and can be deferred for up to 45 years. Interest charges will accrue and be added to the loan principal at the end of the deferral period. Payment on the deferred debt plus accrued interest must be made when the timber is harvested and sold by the borrower. Regulations involving the Softwood Timber program are presently located in 7 CFR 1951.46. In the proposed rules, these regulations are contained in Exhibit G of Subpart S of Part 1951.

Also, when the borrower is not eligible for a five-year deferral, FmHA considers the borrower for a conservation easement authorized by section 1318 of the Food Security Act of 1985 (Pub. L. 99–198) and amended by section 612 of the Agricultural Credit Act of 1987 (Pub. L. 100–233). FmHA published proposed rules on conservation easements on January 15, 1987 (52 FR 1706). FmHA proposes to consider conservation easements another primary loan service program. The proposed rules involving this program are contained in Exhibit H of Subpart S of Part 1951.

Major Points: (1) The land must be suitable for conservation, recreation and/or wildlife habitat purposes and secures an FmHA loan that was closed before December 23, 1985. (2) The land must be wetland, highly erodible or environmentally important upland that, except for wetland and wildlife habitat, was row cropped for the three years prior to December 23, 1985. (3) FmHA may reduce the debt in exchange for an easement on a portion of the farm. (4) An easement review team will review each site and make a report to FmHA. (5) The term of the easement must be for a minimum of 50 years. (6) An enforcement authority will assure that the purpose of the easement is accomplished. (7) The borrower cannot farm the easement land during the term of the easement.

7. *Debt write-down.* Reducing the amount of debt owed by a borrower. Debt write-down can be done by FmHA through the use of Conservation Easements (discussed above) or through a reduction of loan principal and/or accrued interest on the loan, to a point equal to the net recovery value FmHA would receive from an involuntary liquidation of the collateral. The "collateral" is the property that was pledged or mortgaged to FmHA in order to secure loans received by the borrower. The writing down of the loan principal and/or interest charges means a debt write-down to a level where loans from all creditors plus interest charges can be paid as scheduled and farm operating and family living expenses can also be paid as planned. If the borrower is eligible for the FmHA debt write-down program, the debt will be written down to the point where the borrower has a plan of operation that will meet the requirements set forth above. Such a plan is called a "feasible plan." The debt write-down cannot be an amount that would reduce the debt to less than the net recovery value from an involuntary liquidation of the property serving as security for the debt being written down. NET RECOVERY VALUE IS THE FAIR MARKET VALUE OF THE COLLATERAL, AS DETERMINED BY A QUALIFIED APPRAISER, LESS THE GOVERNMENT'S COST OF FORECLOSING ON OR LIQUIDATING THE COLLATERAL.

While any borrower whose accounts are delinquent by 180 days has a right to be notified and "considered" for this relief, it will be given only to those who genuinely cannot repay their loans as originally made or as modified by other primary loan servicing programs. The proposed regulations require FmHA to consider borrowers who are not delinquent or who are 30 days delinquent for the primary loan servicing programs short of write-down. The borrower will be expected to use all resources available in an effort to repay the loans before write-down of debt will be granted. These policies minimize the losses to the Government, and keep the farmer operating. Borrowers who receive primary loan servicing options short of write-down will be able to appeal this decision. If they become delinquent in their revised loan payment schedule, they will again be notified of the primary and preservation loan service programs and will have another chance to obtain a write-down.

B. Eligibility for Primary Loan Servicing

Upon receipt of properly completed application forms by the FmHA County Supervisor, the County Supervisor must determine that:

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(1) The borrower's financial difficulty is due to conditions beyond the borrower's control, such as:

(a) Natural disaster declared by the President or Secretary of Agriculture;

(b) Illness in the family;

(c) Loss of off-farm income;

(d) Depressed economic conditions in local agriculture.

Note.—Financial difficulty is not considered due to conditions beyond the borrower's control if the borrower has sufficient income and/or assets to make payments to FmHA, and the borrower is not making scheduled payments.

(2) The borrower has acted in good faith in dealings with FmHA. This means the borrower is attempting to live up to the agreements with FmHA and is maintaining the property which is collateral for FmHA loans. Good faith requirements are set forth in detail in this subpart.

(3) The borrower has a feasible plan of operation.

Within 60 days after receiving the request for loan servicing, the County Supervisor will take the information the borrower has provided with the application and calculate the net recovery value of the collateral.

If the FmHA County Supervisor concludes that the Government has a better net recovery by writing down the debt than can be obtained by foreclosure and that the other loan servicing programs will not be sufficient to allow the borrower to continue farming, the borrower will be entitled to a write-down. The borrower will receive a copy of the County Supervisor's analysis along with an appointment date to take adjustment action on the debt. As a condition of this relief, the County Supervisor will require the borrower to sign a "shared appreciation agreement." The agreement is contained in Exhibit D of Subpart S of Part 1951 and published following Subpart S. This is an agreement that requires the borrower to repay a portion of the amounts written down, depending on the appreciation of the real estate property during the 10 years following debt restructuring.

FmHA can reject a borrower's write-down request only after FmHA has attempted mediation alternatives if the borrower has a substantial debt with other creditors, or participates in a voluntary meeting of creditors. If other creditors do not wish to participate, the borrower can still obtain a write-down so long as FmHA obtains a greater net recovery from the write-down than it would from liquidation.

FmHA may request participation in the State mediation program, where available, or may request informal negotiation with other creditors for required debt adjustments. FmHA's proposed regulations implement sections 503 and 512 of the Act.

Certified State Mediation Program. The mediation program requires FmHA to participate with farm borrowers, and with their other creditors where such exist, to reach agreements on debt adjustments needed to keep the farmer in business.

Voluntary meeting of creditors. A voluntary meeting of creditors is for FmHA to participate with farm borrowers and their creditors in an effort to reach debt adjustments necessary to keep the farmer in business.

Mediation Training. The FmHA State Director will arrange for training in mediation techniques for employees delegated authority to represent FmHA in mediation. This training shall include communication skills, negotiation skills, and analysis of primary loan service programs.

Waiver of Mediation Rights. FmHA cannot require a borrower to waive any right under the agricultural loan mediation program as a condition for making or guaranteeing an FmHA loan.

The borrower has the right to appeal the FmHA decision indicating that the best net recovery is in liquidation. Borrowers whose debt cannot be restructured, will have the right to purchase the property at the net recovery value, subject to recapture by FmHA of part of the profit if the property is sold within two years. The recapture agreement is contained in Exhibit C of Subpart S of Part 1951 and published with Subpart S. The net recovery value is usually substantially below the present market value of the property.

C. Notice of Preservation Loan Service Programs

The 180-day notice to delinquent borrowers also provides a summary of the preservation loan service programs including homestead retention (dwelling retention) and leaseback/buyback of farmland, and tells borrowers how to apply for these programs. Attachments 3, 3A, 7, and 9 of Exhibit A of Subpart S of Part 1951 of this chapter also notify borrowers at various stages of FmHA's procedures that they can apply for these programs. These attachments are published with these proposed regulations following Subpart S of Part 1951.

1. Dwelling Retention

If owner-borrowers do not enter into an agreement with FmHA to be considered for dwelling retention, owner-borrowers will receive another notice of the availability of dwelling retention within 30 days after FmHA acquires title to the property. Owner-borrowers will have 90 days from the date FmHA acquires the property to notify the County Supervisor, in writing, of their intention to exercise dwelling retention. All owners of dwelling retention property in inventory as of January 6, 1988, have already been advised that they may be eligible for dwelling retention when FmHA finalizes the dwelling retention program regulations.

FmHA's proposed revision of the dwelling retention regulations are contained in Exhibit I of Subpart S of Part 1951. FmHA first implemented this program on March 18, 1988. (51 FR 9174) 7 CFR Part 1965, Subpart B.

The major revisions implementing the Act are: (1) An owner-borrower may apply and enter into an agreement to lease with an option to purchase before or after FmHA acquires title to farm property. (2) A borrower may apply regardless of how FmHA acquires the property. (3) Homestead acreage is increased from 5 acres to 10 acres. (4) The requirement of gross annual farm/land sales of at least $40,000 has been deleted. (5) The purchase price is the market value when an applicant exercises the option. The borrower may request debt settlement for the existing balance of the FmHA debt.

Dwelling Retention applies when the primary loan service programs cannot help the borrower and FmHA owns the property or is about to acquire it from the borrower. The proposed regulations authorize FmHA to enter into a pre-acquisition agreement with owner-borrowers before FmHA actually acquires the property which will take effect if and when the property comes into FmHA inventory.

The proposed regulation provides that only former owners of dwelling retention property have rights under the dwelling retention program. While the term "borrower" is used several places in section 614 of the Agricultural Credit Act of 1987, Pub. L. 100–233 ("the Act"), section 614(c)(4)(A) requires that the borrower must also have been an owner as opposed to a lessee of the dwelling retention property.

The dwelling retention property is statutorily defined in section 614 to encompass the principal residence and adjoining property plus "a reasonable number of farm outbuildings located on adjoining land that are used to maintain the family of the individual." The proposed regulations do not contain a requirement that the dwelling retention property must be located on the borrower's farm, although it must have been security for a Farmer Programs loan.

All leases will contain an option to purchase. No rights under the agreement can be assigned or transferred by operation of law, or otherwise, except that in case of the death or incompetency of the owner-borrower, such rights may be transferred to the owner-borrower's spouse if the spouse assumes the agreement.

Absent extenuating and compelling circumstances, FmHA does not intend to evict any owner-borrower from the homestead within the 90-day period after FmHA acquires title to the dwelling retention property. FmHA will not repair or improve the property during this 90-day period, except to the extent necessary to preserve the value of the Government's interest in the property.

An owner-borrower will be notified separately about both dwelling retention and leaseback/buyback and can separately apply for each program. As noted in connection with the discussion of leaseback/buyback, below, in the case of a principal residence which is subject to competing claims from different individuals under leaseback/buyback and dwelling retention, the dwelling retention program will take precedence.

2. Disposition and Leasing of Farmland (Leaseback/Buyback)

The proposed regulations implementing the Act's changes to this program are contained in 7 CFR Part 1951, Subpart S, Exhibit J and 7 CFR 1955.66(d). FmHA first implemented the leaseback/buyback program on April 21, 1987, (51 FR 13437).

Section 610 of the Agricultural Credit Act of 1987, Pub. L. 100–233 ("the Act") revised the requirements for the leaseback/buyback program. There are two major branches of this program. One, dealing with leaseback/buyback rights of Indian tribes and Indian tribe members on land within the tribe's reservation, will be covered in 7 CFR 1955.66(d) and will be discussed below. The other major part of the leaseback/buyback program deals with leaseback/buyback rights of non-Indian, non-tribal owners of land which served as security for an FmHA farm program loan. Property acquired as security for a non-program loan (*i.e.*, credit sale to an ineligible applicant or transfer to an ineligible transferee) is not subject to leaseback/buyback since these are not farmer program loans.

Under the leaseback/buyback program, an owner of land which secures a farmer program loan will receive information about this program from FmHA in the notice which is sent when a borrower is 180 days delinquent on his or her FmHA loan. Between that time and the date FmHA acquires the property, the owner may enter into an agreement with FmHA to lease or repurchase the security property if and when FmHA acquires title to it. The owner will have to notify the County Supervisor as to whether the owner wants to lease or repurchase the security property if and when FmHA acquires title to it. Before entering into a pre-acquisition agreement, the County Supervisor will have to determine that the owner is eligible for leaseback, if the owner has indicated an intention to lease the property back. If the owner wants to repurchase the property, if and when FmHA acquires it, the County Supervisor will enter into a pre-acquisition agreement with the owner only if the County Supervisor determines that it is likely the owner will have repayment ability at the time FmHA acquires the property. This will necessarily require a projection about future repayment ability and since circumstances can change between the time FmHA enters into the pre-acquisition agreement and when the property is actually acquired, there can be no guarantee that FmHA will make a credit sale to the owner when the property is finally acquired.

The pre-acquisition agreement will have a provision providing that it will automatically terminate within 2 years of the date of the agreement if FmHA has not acquired the property by that time. A time limit is desirable to avoid confusion surrounding long term executory agreements. If the property is acquired after the pre-acquisition agreement terminates, the owner will receive notification of leasaback/buyback within 30 days of FmHA's acquisition of the property. In addition, the owner will be advised that if the property must have wetland and/or floodplain deed restrictions, the property will be subject to these restrictions when it is leased or repurchased.

If the owner does not desire to enter into a pre-acquisition agreement with FmHA, the owner will be notified about leaseback/buyback within 30 days after acquisition. The owner will be given 180 days from the date of FmHA's acquisition to elect to exercise either leaseback or buyback. In addition the owner, if the loan was made to the owner as an individual, will be asked to notify the owner's spouse and children who are actively engaged in farming that they have 190 days from the date of FmHA's acquisition to elect to lease or purchase the property. If the owner was an entity, the owner will have to notify the partners, shareholders, joint operators or members within this 190-day period that they can elect to lease or purchase the property. Entity members are only eligible for leaseback/buyback if they are actively engaged in farming and all the entity members are related to the owner by blood or marriage. FmHA proposes to place the notification responsibility on the former owner since FmHA frequently does not have complete name and/or address information on the borrower's children, spouse, or entity members.

If the owner was leasing the property to a family-size farm operator after the FmHA acquired the security property, FmHA will notify the lessee of the lessee's rights to leaseback/buyback. In some cases, FmHA will not know the name and address of the last lessee so the former owner will be requested to supply FmHA with this information.

The Act uses the terms "owner", "borrower" and "borrower-owner" to describe who is eligible for leaseback/buyback. In some cases, it is possible that the borrower in the sense of being personally obligated on an FmHA farmer program loan may not be the same person as the owner of the fee interest in the security property. For example, a parent who has turned the farm over to a child but still holds title may agree to mortgage the farm for the child's farmer program loan. In such cases, FmHA believes that it was the intent of the Act to give the first leaseback/buyback rights to the person who held fee title to the security.

It is also possible that a person who opts for leaseback/buyback of the entire farm will be a different individual from the former owner who elects dwelling retention for the farm residence. The Act does not indicate which program will take precedence. FmHA believes that allowing the owner of a long term residence to retain possession (*i.e.*, the dwelling retention program) of their home should take priority over the leaseback/buyback rights of someone who was not the owner-occupant of the dwelling.

The proposed regulation provides that leaseback/buyback is only applicable to those farms which it acquired into inventory since January 6, 1988, (the date of the Act) plus those farms which it acquired before that date where leaseback/buyback rights under the former leaseback/buyback regulation were not given to the former owner.

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Unlike dwelling retention, for which the Act specifically requires notification to former owners of all dwelling retention property in inventory as of January 6, 1988, there is no comparable notification requirement for leaseback/buyback. Thus FmHA proposes that, with the exception of those former owners who did not receive leaseback/buyback rights under FmHA's existing regulation, leaseback/buyback is prospective from January 6, 1988.

3. Leaseback/Buyback for Indian Tribes and Tribal Members

Section 610(b)(1)(D) of the Agricultural Credit Act of 1987 creates a comprehensive leaseback/buyback program for certain land located within Indian reservations. In order to be eligible for this special Indian leaseback/buyback program, the former borrower-owner must have been either (1) the Indian tribe that has jurisdiction over the reservation in which the security property is located, or (2) a member of such Indian tribe. In addition, the security property must be located within the boundaries of an Indian reservation as that term is defined in section 610(b)(1)(D)(ii) of the Act. Because land which is subject to the special Indian leaseback/buyback provisions is subject to being removed from State and local tax rolls, the precise determination of what is covered by this program is particularly important.

The special Indian leaseback/buyback program only arises after "the period in which the right to purchase or lease such real property provided in clauses (i) and (ii) of subparagraph (A) [of section 610 of the Act] has expired." The time periods referenced in subparagraph (A) are the 180-day period from the date of acquisition for the former owner and the 190-day period for the spouse or child of a former owner who is actively engaged in farming. The former owner and the spouse and children of the former owner who are actively engaged in farming will receive notification of leaseback/buyback in the same manner as non-Indian borrowers. The statute does not give any priority to the immediate previous operator. Once the 190-day period has expired, section 610(b)(1)(D)(i) requires the Secretary of Agriculture to "dispose of or administer the property only as provided for in this subparagraph."

Furthermore, in determining whether security property is included in the special Indian leaseback/buyback program it appears that only reservation land formerly owned by the tribe or a tribe member is considered. Land which is in a reservation and owned by an Indian family entity is not included in the special leaseback/buyback program and will be subject to FmHA's non-Indian leaseback/buyback program. An entity is neither the tribe (unless it is wholly owned subsidiary of the tribe) nor a member of the tribe. For land that is included in the special Indian leaseback/buyback program, however, Indian corporate entities may receive a priority in leasing or buying the land.

Section 602 of the Act defines a borrower as a "farm borrower who has outstanding obligations to the Secretary under any farmer program loan * * *" While section 610(b) appears to use the terms "borrower," "borrower-owner," and "owner" interchangeably (see the discussion in connection with the non-Indian leaseback/buyback program), it seems clear that section 610 was meant to be limited to FmHA farmer program loans. FmHA has not and is not now proposing to classify Indian Land Acquisition Loans made pursuant to 25 U.S.C. 488–492 as loans for which leaseback/buyback rights will be given. While 25 U.S.C. 492 incorporates by reference the interest rate and some of the administrative provisions of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, *et seq.*, (the "Con Act") Indian Land Acquisition loans are not farmer program loans either in purpose or under the Con Act.

Finally, the Act provides that if security property covered by the special Indian leaseback/buyback program is not purchased or leased and the "Indian tribe having jurisdiction over the reservation within which the real property is located is unable to purchase or lease the real property, the Secretary shall transfer the real property to the Secretary of the Interior who shall administer the real property as if the real property were held in trust by the United States for the benefit of the tribe." The proposed regulations require the FmHA State Director to make the determination, subject to the ability to appeal under the FmHA Appeal Procedure, as to whether or not the tribe is able to purchase or lease the property.

Additional Proposed Changes to FmHA Regulations

1. 7 CFR Part 1955, Subpart A

Allows FmHA approval officials to contract for the services of attorneys for clearing title or foreclosed property in inventory. This implements section 618 of the Act.

2. 7 CFR Part 1955, Subpart B

Allows FmHA to lease facilities in inventory at a nominal rent to public or private nonprofit organizations. This relates to the Community Facilities Loan programs. This implements section 620 of the Act.

3. 7 CFR Part 1955, Subpart C

Allows FmHA to transfer inventory property for conservation purposes to any Federal or State agency without reimbursement. This implements section 616 of the Act.

4. 7 CFR Part 1962, Subpart A

Revised to establish guidelines and a list of expenditures for which FmHA will normally release crop proceeds. An additional revision clarifies that FmHA will release Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments for this purpose. However, proceeds from the sale of real estate (and equipment) will not be released for essential family living and farm operating expenses since this is a statutory prohibition. See proposed rules in Subpart A of Part 1965 of this chapter.

A More Detailed List of the Proposed Amendments is as Follows:

Part 1809—Appraisals

Subpart A—Appraisal of Farms and Leasehold Interest

Section 1809.1 is amended to propose rule to remove Recreation (RL) loans from the paragraph as this program is removed from FmHA regulations.

Part 1902—Supervised Bank Accounts

Subpart A—Loan and Grant Disbursements

The agency proposes to revise Subpart A of Part 1902 of the regulations to delete the requirement that the original cancelled check must be returned by the bank when countersigned checks are used and keep the regulation in line with evolving technology in the commercial banking industry.

Section 1902.1(i) is revised to change "bank" to "financial institution" and delete references to Exhibits C & D as they are being deleted from this regulation.

Sections 1902.1(j) and 1902.2(a)(5) are revised to delete reference to Exhibit C.

Sections 1902.1(k) and 1902.2(f) are revised to delete reference to Exhibit D.

Section 1902.2 (a)(2), and (b), and § 1902.3(a) are revised to require that Forms FmHA 440–57 or 1944–57 be submitted to the State Office rather than the Finance Office.

Section 1902.2(e) has been revised to change "return" to "process."

Section 1902.3(b) has been revised to change "Finance Office" to "State Office."

Section 1902.3(c)(1) is revised to change "bank" to "Financial Institution."

Section 1902.14 (a) and (b) are revised to provide that financial institutions using a truncation process will not be required to return the original cancelled check with the bank statement to FmHA and/or the borrower.

Section 1902.14(c) is added to provide that financial institutions using a truncation process will be required to provide a microfilm copy or other reasonable facsimile of the original cancelled check when requested by FmHA, and that no charge will be made to FmHA or the borrower's account for this service.

Exhibit B is revised to change "bank" to "Financial Institution," and to modernize certain legal expressions.

Exhibits C and D are deleted.

Part 1910—General

Subpart A—Receiving and Processing Applications

Section 1910.1 has been partially revised to delete references to recreation (RL) loans and to refer to *insured* section 502 and 504 RH loans.

Section 1910.3(a)(3)(i) has been revised to correct the title of Form FmHA 410–7.

Section 1910.3(b)(2) has been revised to apply only to RH applicants.

Section 1910.3(b)(3) has been revised to require farmer program applicants who are presently indebted to FmHA to complete Form FmHA 410–1. Current paragraph (3) has been renumbered to (4). This will assist in establishing a starting point for the timeframe allowed by law for processing applications. Section 1910.3(c) has been revised to differentiate between joint applications for SFH loans and for FP loans.

Section 1910.3(c) has been revised to exclude use of co-applicants for Farmer Program loans and to state that husbands and wives who jointly want a Farmer Program loan will be considered a joint operation.

Section 1910.3(d) has been revised to require information be obtained from cosigners, and when a cosigner will be required, the applicant will be requested to choose a cosigner. This will strengthen the test for credit elsewhere requirement.

Section 1910.3(e) has been revised to state that the applicant's spouse will not be automatically required to sign the note unless the spouse desires to be a co-applicant. This is in accordance with the Equal Credit Opportunity Act.

Section 1910.3(l) has been revised to change Subpart A to Subpart B of Part 1910.

Section 1910.4—The introductory paragraph has been revised to delete the references to the "New Full-Time Family Farmer and Rancher Development Committee" and Exhibit A of 1924–B of this chapter.

Section 1910.4(a) has been removed.

Section 1910.4(b) has been renumbered to (a) and partially revised to pertain only to RH loans and to clarify veteran's preference.

New § 1910.4(b) has been added to establish requirements for complete farmer program applications. This is necessary so that the applicant will be aware of the information necessary for submitting an application.

Section 1910.4(a) has been renumbered to (c).

Section 1910.4(c) has been renumbered to (d) and partially revised to provide guidance on assistance to socially disadvantaged individuals.

Section 1910.4(d) has been renumbered to (e) and revised to clarify that the County Committee will certify only eligibility.

Section 1910.4(e) has been renumbered to (f).

Sections 1910.4 (f) and (g) have been renumbered to (g) and (h).

Section 1910.4(h) has been renumbered to (i) and partially revised to require that applications for loans which are approved, but not funded, withdrawn or rejected, remain in an inactive file for 25 months after the end of the fiscal year in which they were received. FO, SW, OL and EM applications and applications for RH loans from persons who derive most of their income from farming will remain active for 12 months from the date they were received.

Section 1910.5(c)(6) has been added to state that applicants who have had previous FmHA debts settled will not be considered an unacceptable credit history.

Section 1910.6(a) has been revised to require that the applicant be reconsidered for eligibility, if additional information becomes available that indicates the original decision may have been in error.

Section 1910.6(b) has been revised to change the words "adverse decision" to "unfavorable decision."

Section 1910.6(d)(1) has been revised to provide for loan approval of OL, FO, EM and SW loans even if funds are not available.

Section 1910.6(g) has been added to include a waiver of the 15-day loan closing requirement when a title or lien search is required. Due to the timeframes allowed by law, this is necessary to allow the processing of loans without incurring the cost of a title or lien search until after the loan is approved.

Section 1910.8(e) has been deleted.

Section 1910.10(a) has been partially revised to be titled "Veterans," to delete reference to recreation (RL) loans, and to include RH loans.

Section 1910.10(b) has been renumbered to (a)(1) and revised for clarity.

Section 1910.10(c) (1) through (3) has been renumbered to (a)(2) through (a)(4).

Section 1910.10(b) has been revised to set preference standards for farmer program loans.

The title to § 1910.11(b) has been revised for clarity.

Exhibit A has been added for listing information necessary for a complete farmer program loan application.

Exhibit B replaces Guide Letter 1910–A–1 and includes a notice for disadvantaged individuals.

Part 1924—Construction and Repair

Subpart A—Planning and Performing Construction and Other Development

Section 1924.1—Softwood Timber (ST) loans is added as it was inadvertently left out of the regulation when the Softwood Timber regulations were issued and the reference to Recreation (RL) loans is removed.

Subpart B—Management Advice to Individuals, Borrowers and Applicants

Section 1924.51 has been revised to delete reference to the "New Full-Time Family Farmer and Rancher Development Committee" and Exhibit A of this subpart and delete the paragraph designation in the reference to Subpart A of Part 1965 of this chapter.

Section 1924.57(b)(1)(iv) has been revised to delete reference to Form FmHA 1924–26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," and substitute reference to Attachment 2, "Acknowledgment of Notice of Loan Service Programs, " of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1924.57(c)(5) has been revised to require that a feasible plan is necessary when a loan or servicing action is approved, and to expand the definition of a feasible plan. This should provide for more uniformity and clarify the requirements for a feasible plan.

Section 1924.57(c)(6) has been revised to require that borrowers be contacted 60 to 75 days prior to expiration of Form FmHA 1962–1 by means of Exhibit A and Attachment 1 of Subpart B of Part

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1924 of this chapter, and to require that a new farm and home plan, or other acceptable plan, be developed for the upcoming year prior to the expiration of Form FmHA 1962–1. This provides the borrower and County Supervisor more flexibility in when to fill out these forms.

Section 1924.57(c)(7) has been added to require the plan meet the requirements applicable for highly erodible land and wetlands in Exhibit M of Subpart G of Part 1940 of this chapter.

Section 1924.57(d)(1) has been split into two paragraphs numbered (d)(1) and (d)(2). New paragraph (d)(1) has been revised to establish guidelines for use of production history and disaster declaration histories to develop cash flow projections. New paragraph (d)(2) has been revised to correct a reference to FmHA Instruction 1945–D, to correct the name of the National Agricultural Statistics Service (NASS), and to require the State supplement containing the commodity price list to include a 5-year history of disaster declarations. Current paragraph (2) has been renumbered to (3).

Section 1924.58 has been revised to change annual cashflow to cash receipts and expenditures and require borrowers to maintain and provide to FmHA adequate records to receive further assistance from FmHA. This will provide for a sound basis for developing future plans for determining progress and the strength and weakness of the operation.

Section 1924.59(d) has been deleted.

Section 1924.59(e) has been renumbered to (d) and revised to delete references to Form FmHA 1924–25, "Notice of Intent to Take Adverse Action"; refer to Exhibit A of Subpart S of Part 1951 of this chapter; and include borrowers whose loans have been written down.

Section 1924.60(d)(1) has been revised to apply to all borrowers who are at least 180 days delinquent.

Section 1924.60(d)(8) has been added to include borrowers who have conservation easements and/or had their loans written down.

Section 1924.71 has been revised to refer servicing of delinquent borrowers to Subpart S of Part 1951 of this chapter.

Section 1924.72 has been removed and reserved.

Section 1924.73(a) has been revised to delete the reference to Form FmHA 1924–26 and to require that an analysis be conducted with those borrowers listed in § 1924.60(d).

Current Exhibit A, "New Full-Time Family Farmer and Rancher Development Committee," has been removed. The New Full-Time Family Farmer and Rancher Development Committee program has had no participation for the last few years. It never was a very successful program. It appears that there are other organizations and agencies that are available that offer similar assistance that apparently are more acceptable to borrowers. Therefore, we are discontinuing the program. A new Exhibit A has been added as a letter to the borrower regarding the need to complete a new Form FmHA 1962–1 in order to continue to receive releases of farm income for family living and farm operating expenses. Attachment 1 to Exhibit A further explains this process.

Part 1941—Operating Loans

Subpart A—Operating Loan Policies, Procedures, and Authorizations

Sections 1941.1, 1941.2 and 1941.23(a)(2) have been revised to incorporate uniform language regarding FmHA's equal opportunity policy and to clarify the objectives of the operating (OL) loan program.

Section 1941.3 has been revised to remove the reference to the "New Full-Time Family Farmer and Rancher Development Committee."

Section 1941.4 has been revised to apply only to this subpart, to remove the paragraph designations and define the following: a borrower, a feasible plan, a joint operation, and redefine a non-farm enterprise.

The introductory paragraph to § 1941.6 has been revised to require the County Supervisor to consider if other credit is available, with or without a guarantee or subordination.

Section 1941.6(d) has been revised to require that an applicant must apply for a guaranteed loan if a lender indicates interest or the County Supervisor determines the applicant may be able to obtain one. Current paragraph (d) has been renumbered to (f) and revised to refer to sound financial management. This is part of the test for credit elsewhere.

Section 1941.6(e) has been added to require that the assets of the members of an entity must be considered when testing for credit elsewhere.

Section 1941.10 has been removed and reserved.

Section 1941.11(b) has been removed.

Sections 1941.12(a)(1), 1941.12(a)(8), and 1941.18(a)(1) have been partially revised to delete the paragraph designations in references to § 1941.4.

Section 1941.12 (a)(3) and (b)(4)(ii) have been revised to require recent farm experience or training (1 year out of the last 5 years) as an eligibility requirement. This is necessary due to the rapid changes in agriculture.

Section 1941.12(a)(4) has been removed.

Section 1941.12(a)(5) has been renumbered to (4) and revised to clarify the character eligibility requirement. Subsequent paragraphs (6) through (8) have been renumbered to (5) through (7).

Section 1941.12(b)(3) has been revised to require an entity applicant be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

Section 1941.12(b)(4) has been revised to allow loans to members of entities as well as the entity itself but not to other entities.

Section 1941.12(b)(4)(i) has been renumbered to (b)(5) and revised to delete the paragraph designation in reference to § 1941.4.

Sections 1941.12(b)(5)(ii) has been revised to require that members of an entity applicant must have recent farm management and operating experience (1 year out of the last 5 years).

Section 1941.12(b)(5)(iii) has been revised to clarify the character eligibility requirement.

Section 1941.16(a) has been revised to change "birds" to "poultry" and delete "worms."

Section 1941.17 has been revised to clarify the purposes and/or situations for which an OL loan will not be approved and to reduce the total youth loan outstanding principal balance from $10,000 to $5,000. An analysis of FmHA data indicates that the size of youth loans is declining. It also suggests that larger loans have a higher frequency of delinquency. Over 78 percent of the youth loans are for less than $5,000. This data indicates that the $5,000 limit will provide loans for most of the youth projects.

Section 1941.18(b)(4) has been revised to clarify the use of balloon payments.

Section 1941.18(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1941.19(a) (3), (4) and (6) have been removed. Paragraphs (5) and (7) have been renumbered to (4) and (5), respectively.

Section 1941.19(a)(2) has been revised to clarify security requirements when a borrower has two or more insured and/or guaranteed loans. Current paragraph (a)(2) has been renumbered to (a)(3).

Section 1941.19(e) has been revised to add special security requirements for loans made to entities whose members are currently indebted to FmHA as individuals and vice versa.

Section 1941.19(e) has been renumbered to (f) and paragraph (f)(1) has been revised to correct the title of Form FmHA 441–6. Current paragraphs

(f) and (g) have been renumbered to (g) and (h).

Section 1941.19(h) has been renumbered to (i) and paragraph (i)(1) has been revised to correct the reference to Form FmHA 1905–1.

Section 1941.29(b) has been revised to state that an insured OL loan *may* be made to a borrower with an outstanding guaranteed OL loan under certain conditions.

Section 1941.29(c) has been revised to state that an insured OL loan may be made to refinance a guaranteed OL loan under certain conditions.

Section 1941.33(b)(1)(iv) has been revised to require a feasible plan as a loan approval condition.

Section 1941.33(b)(2)(vii) has been added to require a signed copy of Form FmHA 1940–1 be sent to the borrower on the date of loan approval.

Section 1941.33(c) has been removed. Paragraph (d) has been renumbered to (c).

Section 1941.35(b) has been revised to state that checks to be cancelled will not be returned to the Finance Office, but will be processed with Form FmHA 1940.10.

Subpart B—Closing Loans Secured by Chattels

Sections 1941.54(b) and 1941.57(a)(1) have been revised to clarify signature requirements for individual and entity borrowers.

Section 1941.88(a) has been revised to require County Supervisors to encourage applicants to obtain crop insurance, if available, for OL loans secured by crops.

Section 1941.88(b) has been revised to state that borrowers will be encouraged to carry insurance on chattels.

Current § 1941.88(b) has been renumbered to (c) and revised for clarity.

Current § 1941.88(c) has been renumbered to (d).

Section 1941.96(b) has been revised to require that changes be made to Form FmHA 1962–1 when changes are made in the use of OL loan funds and the repayment schedule for the loan is changed. This is for clarification.

Part 1943—Farm Ownership, Soil and Water and Recreation

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

Sections 1943.1 and 1943.2 have been revised to incorporate uniform language concerning FmHA's equal opportunity policy and to clarify objectives.

Section 1943.3 has been revised to remove the reference to the "New Full-Time Family Farmer and Rancher Development Committee."

Section 1943.4 has been revised to apply only to this subpart; to remove the paragraph designations; and define a borrower, a farm, a feasible plan, a joint operation, a nonfarm enterprise and a socially disadvantaged applicant.

The introductory paragraph to § 1943.6 has been revised to require that guaranteed loan rates and terms be considered in the test for credit elsewhere.

Section 1943.6(d) has been revised to require that the test for credit elsewhere include applying for a guaranteed loan. Current paragraph (d) has been renumbered to (e).

Section 1943.7 has been added to provide guidance for the State of Hawaii for FO loans made on leasehold interests on real property.

Section 1943.10 has been revised to provide guidance on when to give preference to certain applications, and to provide for the use of Exhibit B of this subpart to establish target participation rates for socially disadvantaged applicants.

Section 1943.11 has been revised to add the words "for FO loans." Paragraph (b) has been deleted.

The introductory paragraph to § 1943.12 has been revised to delete the sentence regarding appeals.

Section 1943.12 (a)(1) and (b)(4)(i) have been revised to correct a reference to § 1943.4.

Section 1943.12 (a)(3) and (b)(4)(ii) have been revised to specify requirements for farm experience.

Section 1943.12(a)(4) has been deleted.

Section 1943.12(a)(5) (renumbered to (a)(4)) and § 1943.12(b)(4)(iii) have been revised to redefine character. Paragraphs (a)(6), (a)(7) and (a)(8) have been renumbered to (a)(5), (a)(6) and (a)(7), respectively.

Section 1943.12(b)(3) has been revised to require that entities operate not larger than a family farm after the loan is closed, and the members of the entity must be individuals and not other entities.

Section 1943.13 has been added to establish procedures and responsibilities for carrying out the FO Outreach Program for Socially Disadvantaged Individuals.

Section 1943.17 has been reformatted and revised to clarify the $200,000 outstanding principal loan balance for FO, SW and RL loans combined.

Section 1943.17(c) has been renumbered to (a)(3) and revised to delete the word "not."

Section 1943.17(d) has been deleted.

Section 1943.17(e) has been renumbered to (b).

Section 1943.18(b) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1943.19(b)(1)(i)(D) has been added to clarify taking liens on homestead property.

Section 1943.19(g) has been added to establish special security requirements for loans to individuals who are members of entities indebted to FmHA, and vice versa.

Section 1943.19(h) has been added to clarify securing more than one loan with the same collateral.

Section 1943.25(c)(1) has been revised by deleting the last sentence and subparagraphs (i), (ii), and (iii), and redesignating them as (c)(2), (c)(2)(i), (c)(2)(ii) and (c)(2)(iii). Paragraphs (2) through (4) have been renumbered to (3) through (5).

Section 1943.29(b) has been revised to allow an insured FO loan to be made to a borrower who has an outstanding guaranteed FO, SW, or RL loan under certain conditions.

Section 1943.32(a) has been revised to add Form FmHA 443–6, "Agreement (Between Seller, Purchaser, and Tenant)."

Section 1943.33(b)(1)(iv) has been revised to require a feasible plan as a loan approval condition.

Section 1943.33(c) has been deleted. Current paragraph (d) has been renumbered to (c).

Section 1943.35(c)(1) has been revised to require when a check is to be cancelled, it will not be returned to the Finance Office, but will be processed with Form FmHA 1940–10.

Section 1943.38(g)(4) has been revised to clarify the signature requirements for loans made to individuals and to entities.

Exhibit B has been added to implement target participation rates for FmHA loans to socially disadvantaged applicants.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

Section 1943.51 has been revised to clarify FmHA's ECOA statement.

Section 1943.52 has been revised to clarify the objectives of the SW loan program.

Section 1943.53 has been revised to delete the reference to "New Full-Time Family Farmers and Rancher Development Committee" (see discussion under Subpart B of Part 1924 above).

Section 1943.54 has been revised to remove the paragraph designations, and to define borrower, farm, joint operation and feasible plan.

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The introductory paragraph to § 1943.56 has been revised to require consideration of a guarantee and subordination in the test for credit elsewhere.

Section 1943.56(d) has been revised to require an applicant to apply for an FmHA guaranteed loan if a lender indicates it is willing to make one or the County Supervisor determines the applicant could obtain one. Current paragraph (d) has been renumbered to (e).

Section 1943.60 has been removed and reserved.

Section 1943.61 has been revised by deleting paragraph (b) and removing the designation (a) from the remaining paragraph.

Section 1943.62 (a)(1) and (b)(3) have been revised to change the reference to § 1943.54.

Section 1943.62(a)(3) has been revised to clarify the definition of character.

Section 1943.62(b)(1) has been revised to clarify the definition of character and require that it apply to all members of entity applicants.

Section 1943.62(b)(2) has been revised to require that all members of the applicant entity must honestly try to carry out the conditions and terms of the loan.

Section 1943.62(b)(9) has been revised to require that members of entities be individuals and not other entities.

Section 1943.67(a) has been deleted and paragraphs (b) through (d) have been renumbered to (a) through (c).

Section 1943.68(b) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1943.69(b)(1)(i)(D) has been added to clarify taking a lien on homestead property.

Section 1943.69(g) has been added to provide special security requirements for loans made to entities whose member(s) are indebted as individuals, and vice versa.

Section 1943.69(h) has been added to allow more than one loan to be secured by the same collateral under certain circumstances.

Section 1943.75 has been revised by removing the last sentence of paragraph (c)(1) and rearranging the paragraph.

Section 1943.79(c) has been revised to allow an insured SW loan to be made to a borrower with an outstanding guaranteed FO, SW, or RL loan under certain conditions.

Section 1943.83(a)(1) has been revised to delete the paragraph designation in the reference to § 1943.67.

Section 1943.83(b) has been revised to require a feasible plan as a condition of loan approval.

Section 1943.83(c) has been deleted. Current paragraph (d) has been renumbered to (c).

Section 1943.88(g)(4) has been revised to clarify signature requirements for individuals and entities.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

Sections 1943.101 through 1943.150 have been removed and reserved because the program has not been funded since FY 1981 and there are no plans to fund it in the future. Removing the regulation will reduce the Government's cost of revising and maintaining the regulations.

Part 1944—Housing

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

Section 1944.23 has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Part 1945—Emergency

Subpart C—Economic Emergency Loans

Sections 1945.119(a) and 1945.149(b) have been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Section 1945.154(a)(4) has been revised to redefine borrower.

Section 1945.168(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Section 1945.169(a)(3) has been revised to allow insured and guaranteed loans to a borrower when security is separate and identifiable. Different lien positions on real estate are considered separate collateral.

Part 1951—Servicing and Collections

Subpart A—Account Servicing Policies

Section 1951.7(d)(1) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1951.7(f) has been deleted. Paragraph (g) has been renumbered to (f). This is no longer needed. The information will be obtained through field office terminals. Paragraph (h) has been renumbered to (g).

Section 1951.8(a) has been revised to change "Finance Office" to "lock box facility(s)."

The introductory paragraph of §§ 1951.9 and 1951.10 have been revised to provide that the rules on distribution of payments apply only after the County Supervisor decides how much of the proceeds will be released for other purposes. This is to make sure proceeds are released for family living and farm operating expenses before making payments to FmHA.

Section 1951.25(b)(5) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Sections 1951.33 through 1951.49 have been removed and reserved. These paragraphs have been transferred to Subpart S of this part.

Exhibit titles of Subpart A of Part 1951 of this chapter have been removed and reserved.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

Section 1951.3149a)(8) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

Section 1951.558 (c)(1)(ii) and (c)(1)(iii) have been revised to remove Forms FmHA 1924–25 and FmHA 1924–26 and replace with Exhibit A and Attachments 1 and 2 of Subpart S of this part.

Subpart S—Farmer Program Account Servicing Policies

Sections 1951.901 through 1951.950 with Exhibits A through J have been added. This regulation is discussed above.

Part 1955—Property Management

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Section 1955.1 has been revised to correct a reference.

Section 1955.3(c) has been revised to define dwelling retention. Current paragraphs (c) through (k) have been renumbered to (d) through (l).

The introductory paragraph to § 1955.10 has been revised to set forth specific guidelines for voluntary conveyances involving farmer program borrowers, and to delete references to Forms FmHA 1924–25 and 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.10(c)(1)(ii) has been revised to provide that payment of installments on prior liens is discretionary in accordance with FmHA Instruction 1955–B, § 1955.67.

Section 1955.10(d)(8) has been revised to delete Forms FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.15(d)(2)(iv) (A) and (B) have been revised to delete Form FmHA 1924–25 and substitute Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.15(d)(2)(iv) has been revised to clarify the handling of SFH loans when the borrower has both Farmer Program and SFH loans.

Section 1955.15(d)(3) has been revised to provide guidance in handling offers made by a borrower after acceleration of the account.

Section 1955.15(d)(4) has been revised to change "Inquiry Station of the Finance Office" to "field office terminal system."

Section 1955.15(d)(5) has been revised to delete Forms FmHA 1924–14, FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

An introductory paragraph has been added to § 1955.18 to state that local attorneys may be employed on a case-by-case basis to aid in the title clearance on foreclosed inventory property.

Section 1955.18(h) has been revised to require the County Supervisor to notify the borrower-owner of dwelling retention rights by sending Attachment 1 of Exhibit I of Subpart S of Part 1951 of this chapter to the borrower-owner.

Section 1955.18(i) has been added to specify how the County Supervisor will notify previous owners and operators of leaseback/buyback rights.

Section 1955.18(j) has been added to specify how the County Supervisor will notify the borrower-owners, immediate previous owners, and immediate previous operators when inventory CONACT property becomes available for sale.

Subpart B—Management of Property

Section 1955.53 has been revised to remove the paragraph designations, and to add or revise the definitions of Indian reservation, socially disadvantaged individual and suitable property.

Section 1955.55(a) has been revised to delete reference to Forms FmHA 1924–14, FmHA 1924–25 and FmHA 1924–26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1955.55(d) has been revised to change the reference from Subpart D of Part 1955 to FmHA Instruction 2024–A (available in any FmHA office) and delete Form FmHA 120–10.

The introductory paragraph to § 1955.63 and § 1955.63(a) have been revised to require the County Committee to classify farm property as suitable unless the property is larger than a family-size farm.

Section 1955.63(b) has been revised to establish specific guidelines for subdividing large farm properties.

Section 1955.63(c) has been partially revised to correct a reference to FmHA Instruction 2024–A and to delete the reference to MFH.

Section 1955.63(d) has been revised to require the County Committee to determine suitability of farm property and to remove this authority from the County Supervisor, District Director, and State Director.

Section 1955.64 (a) and (a)(3) have been revised to provide for repairs to nonessential farm buildings or facilities if they are historic or if a health or safety problem exists, and to clarify what the County Supervisor's responsibilities are and what FmHA will request of the Soil Conservation Service when dealing with highly erodible soil on farm property.

Sections 1955.64(c) and 1955.65 (c) and (c)(3) have been revised to change the reference from FmHA Instruction 1955–D to FmHA Instruction 2024–A.

Section 1955.65(c)(4) has been revised to delete references to Forms FmHA 120–1 and 2024–1, and refer instead to FmHA Instruction 2024–A.

Section 1955.66(a)(2)(iii) has been revised to clarify the requirement of consideration for dwelling retention to prior borrower-owners only; allow the County Supervisor to lease farm property when a feasible plan of operation can be developed; and to delete the reference of restricting leasing of property which could be used to produce surplus crops; and refer to Exhibits I and J of Subparts S of Part 1951 of this chapter for dwelling retention and leaseback/buyback. Paragraph (a)(2)(iii)(A) has been split into paragraphs (A) through (F).

Section 1955.66(a)(2)(iii)(B) has been renumbered to (G).

Section 1955.66(c)(1) has been revised to require the County Supervisor to determine that a prospective lessee possesses the management skills necessary to fulfill the terms of the lease.

Section 1955.66(c)(2) has been revised to establish guidance for racial and ethnic consideration in leasing inventory property.

Section 1955.66(c)(3) has been revised to clarify leasing priority for FmHA inventory property.

Section 1955.66(d) has been revised to establish procedures for leaseback/buyback of property within an Indian reservation which secured a Farmer Program loan when the former borrower-owner was the Indian tribe having jurisdiction over the reservation or a member of such tribe.

Current § 1955.66(d) has been renumbered to (e) and (e)(3) and has been revised to allow rents below market rent if the Administrator concurs. Paragraph (e)(4) has been deleted. Paragraphs (e) and (f) have been renumbered to (f) and (g).

Section 1955.66(g) has been renumbered to (h) and revised to state that the purchase price for farm property will be the market value and that Indian tribes or tribal corporations that use the Indian Land Acquisition Program may purchase the property for its market value minus the contributory value of the buildings.

Section 1955.66(h) has been revised to change the title of the paragraph and to include the spouse or child of a previous borrower-owner, member, stockholder, partner or joint operator, Indian member of a tribe, Indian corporation, entity or Indian tribe. Current paragraphs (i) through (m) have been renumbered to (j) through (n).

Section 1955.66(o) has been added to state that, except for property covered by paragraph (d) of this section, property may be leased or sold after dwelling retention and/or leaseback/buyback rights have expired.

Section 1955.67(a) has been revised to make the payment of prior lien installments discretionary by the servicing official and to provide that the State Director may discontinue payment of installments on prior liens when it is in the best interest of the Government.

Section 1955.73 regarding dwelling retention has been removed and reserved. Dwelling retention is now covered in Exhibit I of Subpart S of Part 1951 of this chapter.

Exhibit B has been added as a format to notify Indian tribes of the availability of farm property for lease or purchase within the boundaries of its reservation.

Subpart C—Disposal of Inventory Property

Section 1955.103 has been revised to define dwelling retention, farmer program loans, leaseback/buyback, owner, previous operator and socially disadvantaged individual, and to redefine suitable property.

Section 1955.105(a) has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter regarding dwelling retention and leaseback/buyback.

Section 1955.109(a) has been renumbered to § 1955.105(c).

Section 1955.109(b) has been renumbered to § 1955.105(b) and revised to update a reference to § 1955.137 of this subpart.

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Section 1955.106 has been revised to "Disposition of farm property." Paragraph (a) provides rights of the previous owner and notification instructions. Paragraph (b) provides for racial and ethnic considerations. Paragraph (c) provides for non-program (NP) borrowers.

Former § 1955.106 has been renumbered to § 1955.107. Paragraph (a) has been revised to permit State Offices to maximize advertisement of inventory property by notifying nearby FmHA county and district offices. Also, Tribal Councils are now responsible for notifying the parties listed in § 1955.66 of Subpart B of this part. Paragraph (c) has been revised to require that the price of all inventory property will be its market value. Paragraph (e) has been renumbered to (d). Paragraph (d) has been renumbered to (e) and subparagraph (e)(1) has been revised to apply only to nonfarm property. Subparagraph (e)(2) has been revised to delete the capitalization value of farm property and to clarify preference criteria when two or more eligible applicants wish to purchase a farm property.

Section 1955.107 has been renumbered to § 1955.108. The introductory paragraph has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter concerning dwelling retention and leaseback/buyback. Also, property classified as suitable will remain so for 3 years; after 3 years, it may be reclassified and sold as surplus. However, if a potential purchaser is eligible for FmHA assistance, the property may be reclassified as suitable by the County Committee and sold on eligible terms. Paragraph (a) has been revised to refer to Exhibits I and J of Subpart S of Part 1951 of this chapter concerning dwelling retention and leaseback/buyback. Paragraph (b) has been revised to delete the capitalization value of farm property and to clarify preference criteria when two or more eligible applicants wish to purchase a farm property. Paragraph (c) has been revised to refer to all surplus or suitable property which has been inventory for 3 years.

Section 1955.108 has been renumbered to § 1955.109. Paragraph (b) has been revised to clarify authority to approve credit sales. Current paragraphs (b) through (h) have been renumbered to (c) through (i).

Section 1955.111(b) has been revised to change the reference from FmHA Instruction 1955–D to FmHA Instruction 2024–A.

Section 1955.123(a) has been revised to provide guidance on who is authorized to approve or disapprove credit sales of chattels.

Section 1955.137(a)(3) (iv) and (v) and (c)(5) have been revised to correct references to paragraph (b) of this section.

Section 1955.139 has been revised and paragraph (c) has been added to establish procedures for transfer of inventory property for conservation purposes to Federal or State Agencies. Paragraphs (a)(3), (a)(3)(i)(A), (a)(3)(i)(B) and (a)(3)(iii) have been revised to include Federal Government units, and paragraph (a)(3)(i)(B) has also been revised to reference Executive Orders 11988 and 11990.

Due to the volume of changes proposed in the Farmer Program related areas of Subparts B and C of Part 1955, and to assist the public in reviewing these changes in the context of the existing regulations, FmHA is publishing Subparts B and C of Part 1955 in their entirety. FmHA published a proposed rule on April 2, 1987 (52 FR 10677), which affected Subpart C of Part 1955 as it related to FmHA's Housing programs. In the near future FmHA intends to publish a final rule based on the April 2, 1987, notice of proposed rulemaking.

The following sections of Subpart B of Part 1955 involve FmHA's single family housing program and are not subject to comment in this rulemaking. These paragraphs will either be changed in FmHA's forthcoming final rule implementing its proposed revision to Subpart C of Part 1955 or these sections will be proposed in a separate rulemaking proceeding.

1955.54	1955.66(a)(2)(i)
1955.55(b)(2)(iii)	1955.66(a)(2)(ii)
1955.55(d)	1955.66(b)
1955.57 (currently reserved)	1955.66(e)(2)
1955.63(c)	1955.66(f)
1955.64	1955.66(a)
1955.65(c)(4)	1955.66(c)
	1955.72

The following sections of Subpart C of Part 1955 involve FmHA's single family housing program and are not subject to comment in this rulemaking. These sections will be revised in FmHA's forthcoming final rule implementing its proposed revision to Subpart C of Part 1955. This forthcoming rulemaking will make changes to other sections of Subpart C of Part 1955. However, comments on all parts of Subpart C of Part 1955 other than those sections specifically listed below will be considered.

1955.110	1955.115
1955.111	1955.116
1955.112	1955.117
1955.113	1955.118
1955.114	1955.119

Part 1962—Personal Property

Subpart A—Servicing and Liquidation of Chattel Property

Section 1962.4 has been revised to apply only to this subpart; to remove the paragraph designation; and to redefine borrower.

Section 1962.6(c)(1)(iv) has been revised to show that voluntary assignments will be taken on the amount anticipated from the ASCS deficiency payment program(s), as indicated on Form FmHA 1962–1 for payments due on FmHA loans.

Section 1962.6(c)(2)(ii) has been revised to require the use of Form ASCS–36, "Assignment of Payment," instead of Form FmHA 1962–8, which will be obtained from the ASCS County Office.

Section 1962.6(c)(3)(ii) has been revised to show that the checks obtained from ASCS as a result of an assignment(s) will be made payable to FmHA only, and the proceeds used as indicated on Form FmHA 1962–1.

The introductory paragraph to § 1962.8 has been revised to apply only when the borrower is delinquent.

The introductory paragraph to § 1962.13 has been partially revised to require the County Supervisor to use borrower's Form FmHA 1962–1 to prepare the list of potential purchasers and to prohibit the distribution of copies of Form FmHA 1962–1.

Section 1962.17(a)(2) has been revised for clarity and to make a cross-reference to paragraph (b) of this section regarding approval or disapproval of requests for release of sales proceeds; to remove the reference to Form FmHA 1924–14; and to refer to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1962.17(b)(2) has been revised for clarity, to identify essential farm operating and family living expenses and to eliminate reference to Form FmHA 1924–25.

Section 1962.17(b)(5) has been revised to change a reference from § 1924.57(d)(2) to § 1924.57(d).

Section 1962.29 has been revised to include crop insurance premiums.

Section 1962.30 has been revised by redesignating paragraphs (b)(1) through (b)(7) as (b)(2) through (b)(8). A new paragraph (b)(1) has been added to permit subordinations for annual production loans to delinquent borrowers under certain conditions.

Section 1962.34(a)(2) has been revised to require the use of Form FmHA 460–9 when debts are assumed at the same rates and terms of the existing notes or assumption agreements.

Sections 1962.40(b); 1962.40(e); 1962.41; 1962.42(a); 1962.42(d); 1962.47(a)(3); and 1962.49(c) (1) and (2) have been revised to delete references to Forms FmHA 1924–14, 1924–25, and 1924–26 and to substitute references to Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

Section 1962.40(b) has also been revised to correct the reference to § 1962.2.

Section 1962.40(b)(3) has been reformatted and revised to delete references to Forms FmHA 1924–25 and FmHA 1924–26 and to substitute references to Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter and provide for the use of Attachments 9 and 10 of Subpart S of Part 1951 of this chapter requesting and explaining other options.

Section 1962.41(e) has been revised to authorize release of liability when a borrower liquidates chattel security and the sale results in less than full payment of the FmHA debt.

Section 1962.41(f) has been added to provide guidance on how to process a release of personal liability for a borrower(s) or any cosigner(s) when all security has been properly disposed of and the proceeds applied on the borrower(s) FmHA debt.

Section 1962.42(c)(5) (i), (ii) and (c)(6)(ii)(A) has been revised to change Form FmHA 455–8 to 1955–41.

Exhibit B has been revised to correct the names of the Agency.

Part 1965—Real Property

Subpart A—Servicing of Real Property for Farmer Program Loans and Certain Note-Only Cases

The introductory paragraph to § 1965.7 has been added to state that the definitions only apply to this subpart.

Section 1965.7(a) has been revised to define borrower. Current paragraphs (a) through (k) have been renumbered to (b) through (l).

Sections 1965.11(c)(2)(ii); 1965.11(c)(3); 1965.28(b); 1965.28(c)(1); and Exhibits B and C have been revised to delete references to Forms FmHA 1924–14, 1924–25 and 1924–26 and substitute references to the applicable attachments of Exhibit A of Subpart S of Part 1951 of this chapter.

Section 1965.11(c)(2)(i)(C) has been revised to clarify the provision for protective advances for payment of prior lienholders.

Section 1965.11(c)(2)(ii)(A) has been partially revised for clarity and paragraph (B) has been revised to specify how proceeds will be handled when no bid will be made if FmHA decides not to pay off a prior lien; and how unsatisfied borrower's accounts will be handled.

Section 1965.12(a)(8) has been revised to clarify that the amount of a prior lien(s) obtained by subordination, plus the FmHA debt, will not exceed the present market value of the real estate security.

Section 1965.12(b)(2)(ii)(B) has been revised to permit State Directors to subordinate farm tracts that secure only a loan(s) no longer authorized.

Section 1965.12(g) and the introductory paragraph to § 1965.13 have been revised to change the reference from Subpart A to Subpart S of Part 1951 of this chapter.

Section 1965.13(f)(4)(ii)(B) has been revised to clarify that proceeds from the sale of real estate security will not be released for family living and/or operating expenses. The Agricultural Credit Act of 1987 only requires the release of proceeds from normal income for family living and/or operating expenses.

Section 1965.17(a) has been revised to clarify that FmHA needs to take action to approve a lease only if the lease is for more than three years and/or contains an option to purchase.

Section 1965.25(a) has been revised to clarify the meaning of "additional security."

Section 1965.25(d) has been revised to show that a valueless junior lien on a borrower's dwelling financed with a SFH loan can be released if the dwelling is located on a nonfarm tract which serves as additional security for a farmer program loan(s).

Section 1965.26(a)(2) has been revised to allow State Directors to obtain an appraisal from a qualified appraiser outside FmHA when a sale or transfer of real estate security is for less than the debt against it.

Section 1965.26(b)(1) has been revised to require the County Supervisor to send the borrower Exhibit F of Subpart A of Part 1962 of this chapter.

Section 1965.26(b)(4) has been removed.

Section 1965.26(c)(1) has been revised for clarity and to make reference to paragraph (c)(2) of this section.

Section 1965.26(c)(2) has been revised for clarity and to set forth the conditions that must be met in order for FmHA to continue with the borrower on his/her SFH loan(s). An Equity Recapture Agreement will be executed by the borrower if the borrower cannot make a cash payment to cover the amount of equity in the SFH nonfarm tract which secures the borrower's FP loan(s) that have been accelerated.

Section 1965.26(d) has been revised to clarify when a borrower needs FmHA consent to stop operating real estate security; and allows State Directors to approve an accelerated repayment agreement when a borrower stops farming, in lieu of foreclosure, when it is in the best interest of the Government.

Section 1965.26(e) has been revised to include the failure to operate as eligible for an accelerated repayment agreement.

Section 1965.28(f) has been revised to apply only to a sale of *all* real estate security; to delete a reference to Form FmHA 1924–14; and to substitute reference to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

The introductory paragraph in § 1965.27 has been revised to correct typographical errors; to delete a reference to Form FmHA 1924–14; to substitute a reference to Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter; and to delete the sentence regarding appeals.

Section 1965.27(b)(4)(iv) has been revised to include transferor's costs to be paid by the transferee. Subparagraph (v) is deleted and subparagraph (vi) is renumbered to (v).

Section 1965.27(b)(3) has been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter.

Section 1965.27(b)(5) has been revised to reference the use of Form FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," when processing assumptions on same terms. Form FmHA 1965–13 will not be used for assumptions on the same terms.

Section 1965.27(b)(5)(i)(C) has been revised to correct a typographical error.

Section 1965.27(b)(5)(i)(C) has been revised to correct a typographical error.

Section 1965.27(c)(1)(iii) has been revised to permit EE and other loans no longer authorized to be assumed on eligible FO loan terms by an immediate family member(s) of an active farm loan borrower or an eligible FO applicant if the property is a suitable farm tract.

Section 1965.27(g)(8) has been revised to change the wording joint borrower to read another liable.

Section 1965.27(g)(9) has been revised to reference Form FmHA 460–9 when the full amount of the debt is assumed or a release from personal liability is approved.

Section 1965.31(a)(2) has been revised to apply only when the borrower is delinquent.

List of Subjects

7 CFR Part 1809

Loan programs—Agriculture, Real property—Appraisals, Rural areas.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and Community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Home improvement, Low and moderate housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1809—APPRAISALS

1. The authority citation for Part 1809 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Appraisal of Farms and Leasehold Interest

2. Section 1809.1 is amended by revising the introductory text to read as follows:

§ 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Land Conservation and Development (LCD) loans, Labor Housing (LH), and Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart.

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

3. The authority citation for Part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 420; delag. of auth. by Sec. of Agr., 7 CFR 2.23; delag. of auth. by the Under Sec. for Small Community and Rural Development, 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

4. Section 1902.1 is amended by revising paragraphs (i), (j) and (k) to read as follows:

§ 1902.1 General.

* * * * *

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either: (A) The borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402-1, "Deposit Agreement," or (B) the borrower, FmHA, other lenders, and the Financial Institution on Form FmHA 402-6, "Deposit Agreement (Non-FmHA Funds)."

(j) Form FmHA 402-1 provides for the deposit of funds in a supervised bank account to assure the performance of the borrower's obligation to FmHA in connection with a loan and grant. This form will also be used in the situations described in § 1965.15(d)(3) of Subpart A of Part 1965 of this chapter.

(k) Form FmHA 402-5 will be completed when funds advanced by other lenders are deposited in a supervised bank account to assure the performance of the borrower's obligation.

* * * * *

5. Section 1902.2 is amended by revising paragraphs (a)(2), (a)(5), (b), (e) and the introductory text of paragraph (f) to read as follows:

§ 1902.2 Policies concerning disbursement of funds.

(a) * * *

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the State Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. When the construction process requires several checks to be issued at one time, the Loan Disbursement System (LDS) can still be utilized. Those District and County Offices authorized to request checks by telephone may request more than one check at a time. If more than one check is required, a Form FmHA 440-57 or Form FmHA 1944-57 will be prepared for each check.

* * * * *

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402-1 when the District Director or County Supervisor determines it is necessary to do so to assure that the funds will be available for replacement of the property.

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940-1 or Form FmHA 440-57 to the State Office. Subsequent checks will be ordered as needed by submitting Form FmHA 440-57 or Form FmHA 1944-57 to the State Office. All obligations, check requests and loan closing data for MFH loans must be accomplished through field office terminals. Requesting checks using Form FmHA 1944-57 is authorized only when the system is expected to be down for an extended period.

* * * * *

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," (or Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," for multiple family housing loans) in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402-5, provided:

* * * * *

6. Section 1902.3 is amended by revising paragraphs (a), (b) and (c)(1) to read as follows:

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the State Office by complying with the FMI for Forms FmHA 1940-1, FmHA 1944-51, FmHA 440-57 and FmHA 1944-57.

(b) Counties using the telephone to request subsequent advances will call the designated telephone number provided by the State Office and request all subsequent checks by providing the information required on Form FmHA 440-57.

(c) * * *

(1) "For Deposit Only to Account No. (Number of Construction Account) of (*Name of Borrower*) in [*Name of Financial Institution*)."

* * * * *

7. Section 1902.14 is revised to read as follows:

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable facsimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140-4, "Transmittal of Documents," is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA has a need for the original cancelled check(s), the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s), or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) and will provide this service to the Farmers Home Administration with no fees being assessed the Agency or the Depositor's account for the service.

8. Exhibit B to Subpart A is revised to read as follows:

Exhibit B of Subpart A—United States Department of Agriculture, Farmers Home Administration—Interest-Bearing Deposit Agreement

Because Certain funds of ——— referred to as the "Depositer," are now on deposit with the ———, referred to as the "Financial Institution," under a Deposit Agreement, dated ———, 19——, providing for supervision by the United States of America, acting through the Farmers Home Administration, referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

Because certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place these funds in interest-bearing deposits with the Financial Institution:

Therefore, the Depositor and the Government authorize and direct the Financial Institution to place ———Dollars ($———) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

$ ———
for a period of ———
months at ——— % interest ———

$ ———
for a period of ———
months at ——— % interest ———

$ ———
for a period of ———
months at ——— % interest ———

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this ——— day of ———.

UNITED STATES OF AMERICA

By: ———
County Supervisor, Farmers Home Administration, U.S. Department of Agriculture

(Depositor)

By: ———
Title: ———

Accepted on the above terms and conditions this ——— day of ———, 19——

(Financial Institution)

(Office or Branch)

By: ———
Title: ———

Exhibits C and D [Removed and Reserved]

9. Exhibits C and D to Subpart A are removed and reserved.

PART 1910—GENERAL

10. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

11. Sections 1910.1 through 1910.11 are revised, §§ 1910.12 through 1910.50 are added and reserved, and Exhibits A and B are added to Subpart A. As revised, Subpart A reads as follows:

Subpart A—Receiving and Processing Applications

Sec.

1910.1 General
1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.
1910.3 Receiving Applications.
1910.4 Processing Applications.
1910.5 Evaluating applications.
1910.6 Notification of applicant.
1910.7 Counseling.
1910.8 Reaching an understanding.
1910.9 Supplemental material to be provided by State Offices.
1910.10 Preference.
1910.11 Special requirements.
1910.12—1910.50 [Reserved]

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Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

Exhibit B—Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland

Subpart A—Receiving and Processing Applications

§ 1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) and insured Section 502 and 504 Rural Housing (RH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and other written statements.

(b) Wherever the term "applicant" appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

§ 1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA, as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, national origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as "ECOA prohibited bases." It is the policy of the Farmers Home Administration that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§ 1910.3 Receiving applications.

Applications for FmHA assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

(a) All persons applying for FmHA assistance who are not indebted to FmHA must file a written application. Any person wishing to submit an application will be permitted to do so. No oral or written statement may be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA "prohibited bases." The filing of written applications will be encouraged even though funds may not be currently available, since complete applications will be considered in the order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410–4, "Application for Rural Housing Assistance (Non Farm Tract)," will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410–1, "Application for FmHA Services," will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945–22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information From Financial Institution," to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(4) All individual loan applicants will sign Form FmHA 410–9, "Statement Required by the Privacy Act." A signed copy will remain with the application. No application is complete without a signed Form FmHA 410–9 on file.

(5) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications filed for assistance to finance residential real estate when the loan is to be secured by a lien on the property. In those cases, FmHA will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(b) Requests by FmHA borrowers or previous borrowers for additional assistance from FmHA will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) RH applicants who have a current Form FmHA 431–3, "Household Financial Statement and Budget," or Form FmHA 410–4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410–4 (if other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410–4):

(i) Name.

(ii) Social Security Number.

(iii) Loan purpose.

(iv) Planned income for next 12 months.

(v) Date and signature of the application.

(3) Farmer program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410–1.

(4) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also complete Form FmHA 1945–22 in addition to the other required forms.

(c) County Office Assistants ordinarily will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated, and signed, and will be given whatever assistance deemed necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination surname. Married persons may apply as individuals. In the case of a joint application for other than a farmer program loan, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as "co-applicant." For farmer program loans, there will be only one applicant. If a husband and wife want to apply together for a farmer program loan, they will be considered a joint operation type entity as set out in FmHA loanmaking regulations. The County Office Assistant or County Supervisor should explain to husbands and wives that they may apply for farmer program loans as individuals and that the joint operation will be considered the borrower if they apply together. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others, including cosigners, as required by program regulations needed to determine eligibility for the requested assistance. When a co-signer will be required, the applicant will be requested to identify their choice of co-signer. An applicant will also be required to provide information concerning a cosigner, spouse or former spouse, who will not be a cosigner, or who is not a member of the household, when the applicant is relying on the co-signer or alimony, child support, or separate maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases, information regarding the co-signer's, spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will not be required to sign the note unless the spouse's signature on the note is required to create a security interest or the spouse is a co-applicant. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

(f) If a spouse's signature would be necessary for FmHA to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms "married," "unmarried" and "separated" may be used to designate marital status. "Unmarried" includes single, divorced, or widowed persons.

(g) FmHA may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA Instructions 1905–A and 2006–J which are available in all FmHA offices.

(i) For all loans and grants, the applicant *must* furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security Number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraphs (i)(2) and (i)(4) of this section.

(1) For individuals who are not business applicants, the SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA forms.

(2) For Community and Business and Industry program, T/A Self-Help, and other business applicants, a temporarily assigned number will be used initially for applicant identification for the purpose of obligating funds. This number will be assigned by the State Director from the block of borrower identification numbers assigned to each State by the Finance Office. The temporary number, preceded by the State and county code numbers, and followed by the project number, will constitute the borrower's case number to be used on all FmHA forms. The temporary number must be replaced by the taxpayer's identification number prior to loan closing/issuance of loan note guarantee, by submitting Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," to the Finance Office. In replacing the temporary number, follow the format shown in Item 1 of the Form Manual Insert (FMI) for Form FmHA 1940–1, "Request for Obligation of Funds," to complete the borrower's case number.

(3) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA Instruction 2033–A, "Management of County Office Records," (available in any FmHA office).

(4) The borrower's case number for residents of the Pacific Islands will be taxpayer's identification number issued by the Pacific Islands Government.

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs" will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA 440–58, "Estimate of Settlement Costs," will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA 440–58 will be kept in the running record section of the applicant/borrower County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940–41, "Truth in Lending Disclosure Statement," completed using "good-faith" estimates, will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

(l) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of Subpart B of Part 1910 of this chapter (available in any FmHA office) will be collected from the loan applicants before credit reports are ordered, except in the case of Section

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504 loan applicants and Section 502 Rural Housing loan applicants whose requested loan will likely not exceed $7,500. It is the policy not to order credit reports for Rural Housing loans of $7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in § 1910.53(g) of Subpart B of Part 1910 of this chapter.

§ 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. If a farm is situated in more than one State, County or parish, the loan will be processed in the State, County or parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Completed RH applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except an application from a veteran will receive preference as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.

(2) Form FmHA 410–4.

(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C available in any FmHA office).

(4) Personal contacts.

(5) Visits of supervisory personnel to the applicant's residence or business.

(6) Form FmHA 410–8, "Applicant Reference Letter," to inform sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the Form FmHA 410–4.

(i) Form FmHA 410–8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, a joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410–8, the notification will read as follows:

"I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Pub. L. 95–630 in seeking Financial information regarding_____

(applicant)

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910–5, "Request for Verification of Employment." This form may be used to verify employment and income.

(8) Form FmHA 1940–20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter.

(9) Information required by § 1910.3(a)(3) and (4).

(b) *Completed farmer program applications.* Completed applications are those for which all information necessary to determine loan approval has been received. All persons requesting an application will be provided Exhibit A of this subpart. They will be processed in the order received, except as outlined in § 1910.10 of this subpart. The filing date will be stamped on the front of Form FmHA 410–1. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed farmer program application will consist of:

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to the farm training and/or experience of the applicant and the individual members of an entity applicant.

(4) Supporting evidence that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Any readily obtainable financial information for the past five years.

(6) Up to five years of production history.

(7) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(8) The requirement set forth in § 1910.3(a)(3)(i) of this subpart.

(9) Form FmHA 1945–22 (EM loans only).

(10) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(11) Credit reports as provided in Subpart B and C of Part 1910 of this chapter.

(12) Form FmHA 410–8 as set out in § 1910.4(a)(6) of this subpart.

(13) Form FmHA 1924–1, "Development Plan," if necessary.

(14) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(15) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter including SCS Form CPA–26, "Highly Erodible Land and Wetland Conservation Determination," Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," and Form FmHA 1940–20, as required by Subpart G of Part 1940 of this chapter.

(16) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(17) Form FmHA 440–32, "Request for Statement of Debts and Collateral," when applicable.

(18) Form FmHA 1940–22, "Environmental Checklist for Categorial Exclusion," or Class I or Class II assessment, whichever is applicable.

(19) Form FmHA 1945–29, "ASCS Verification of Farm Acreage Production and Benefits," (EM only).

(20) The requirement set forth in § 1910.3(a)(4) of this subpart.

(21) Additional information may be obtained and verified by:

(i) County Office records.

(ii) Personal contacts.

(iii) Visits of supervisory personnel to the applicant's operation.

(c) *Incomplete farmer program applications.* Applicants who do not submit necessary information for complete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of their applications. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(d) *Notifying applicants/borrowers about Limited Resource loans and socially disadvantaged individuals about the acquistion of inventory farmland.* Immediately after a completed application for OL, FO, SW or EM assistance is received, and prior to County Committee action, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland," to the applicant telling the applicant about Limited Resource loans and advising socially disadvantaged individuals, as defined in Subpart A of Part 1943 of this chapter, of the Farm Ownership Outreach Program, regarding the possibility of and assistance available in obtaining direct FO loans and the acquisition of inventory farmland.

(e) *Determining eligibility.* The County Committee will be used to determine eligibility of completed RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for a determination of eligibility. The County Committee will certify whether or not the applicant meets the eligibility requirements by use of Form FmHA 440–2, "County Committee Certification or Recommendation." The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions are reserved for the loan approval official.

(f) *County Committee actions.* All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(g) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a *completed* application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified, in writing, of the action taken, not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights for any decision that is appealable under Subpart B of Part 1900 of this chapter. If a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(h) *Recording action taken.* The County Committee minutes or the running case record (whichever is appropriate) will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be shown on the Committee Certifications. In those cases not involving County Committee action, this information will be recorded in the running case record.

(i) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a notice within 30 days that further consideration is desired. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart. Applications for RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming, will remain active for 12 months from the date they were received. All applications which are approved but not funded, withdrawn or rejected will be retained in an inactive file for 25 months after the end of the fiscal year. If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

§ 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, the age of the applicant will not be used as a consideration of eligibility (provided the applicant has reached the legal age of majority in the State, or has had the disability of minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

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(c) *Creditworthiness.* When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history.

(1) Foreclosures, judgments, or delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: Loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Bankruptcies must never be used as an indication of unacceptable credit history. However, non-payment of a debt may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section.

(6) Applicants who have had previous FmHA debts settled pursuant to Subpart B of Part 1956 of this chapter and Part 1864 of this chapter (FmHA Instruction 456.1).

§ 1910.6 Notification of applicant.

The time frames established in § 1910.4(g) of this subpart must be met.

(a) *Favorable decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately, and will promptly process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the applicant.

(b) *Unfavorable decision.* (1) The County Supervisor will immediately notify the applicant in writing of the unfavorable decision whether made by the County Supervisor or the County Committee. A statement will be made giving specific reasons for the denial. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of unfavorable decisions:

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income is derived from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440–2 will be completed by giving the specific reasons for the rejection in the blank space immediately above the space for the signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided.

(3) If a decision to deny an EM, OL, FO, or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing. The County Supervisor or the County Committee must take action within 15 days, as set out in § 1900.59(c) of Subpart B of Part 1900 of this chapter.

(c) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(d) *Lack of funds.* Applications received when funds are not available will be processed through approval subject to the availability of funds. Applicants who are ineligible will be so advised, in accordance with paragraph (b)(1) of this section. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in paragraph (b)(1) of this section. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration.

(1) When funds are not available for EM, OL, FO and SW loans within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940–1, "Request for Obligation of Funds," will be executed by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments and Requirements of Certifying Official," of Form FmHA 1940–1, upon execution of the form for all ensured and guaranteed farmer program loans:

> This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds and will have as much additional time as is needed to redetermine eligibility or have the County Committee determine eligibility.

(2) The loan approval official will ask an applicant for an EM, OL, FO, or SW loan for updated information if more than 90 days has passed since Form FmHA 1940–1 was signed. If there have been any significant changes which would affect eligibility, the County Supervisor will obtain the necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, an unfavorable decision has occurred, and proper notification will be sent as outlined in paragraph (b)(1) of this section.

(e) *Credit report.* If a loan is refused because of information provided by a credit report, the County Supervisor will also:

(1) State the reason as being information received in the credit report and cite the specific information given in the credit report that led to the rejection (e.g. delinquent obligations, tax lien, or judgments).

(2) Provide the name and address of the credit reporting company.

(3) Inform the applicant that a copy of the Credit Report may be obtained from FmHA if requested by the applicant, but that any dispute regarding the accuracy of the information in the credit report must be resolved between the Credit Reporting Company and the applicant.

(f) *Other credit references.* When denial is based on information obtained from a source other than a Credit Reporting Company, the applicant will be advised that denial is based on information from other than a Credit Reporting Company, and that upon written request, the nature of that information will be disclosed.

(g) *Completing title work for insured Farmer Program loans.* When an insured Farmer Program loan(s) is approved, the following statement will be included as an approval condition under Section 41 of Form FmHA 1940–1:

> If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

§ 1910.7 Counseling.

(a) *Budgets.* When it appears that an RH non-farm applicant has insufficient income, based on the abbreviated budget section of the application form, the County Supervisor should invite the applicant to return to the County Office to complete Form FmHA 431–3. There should be enough income to repay the requested loan, pay other debts, and pay planned household and other expenses. Joint completion of the budget by the applicant and County Supervisor should provide the opportunity for the applicant to fully explain how household income is managed.

(b) *Farm and Home Plan.* When information on the Farm and Home Plan indicates that the applicant has insufficient income to repay the requested loan, pay other debts and provide a reasonable standard of living, alternative plans of farm operation will be considered to attempt to overcome the problem.

(c) *Applicant/Supervisor understanding.* When discussing the reasons for the applicant's failure to qualify, the County Supervisor will:

(1) Be sympathetic.

(2) Try to help the applicant work out the problem.

(3) Give full explanation for the rejection and provide full opportunity for further discussion.

(4) Offer suitable alternatives when applicable.

§ 1910.8 Reaching an understanding.

A proper understanding will be obtained with all applications with respect to the basic loan making and servicing policies, their responsibilities, and the benefits that may be expected from FmHA assistance. The applicants should be given adequate time to make all necessary basic decisions. Proper understandings may be reached with applicants through:

(a) *Individual interviews with County Office personnel.* The process of arriving at an understanding will begin on the occasion of the first interview with the applicant. The applicant will be given an attentive and sympathetic hearing with ample time to discuss fully all problems and needs. County Office personnel will explain clearly whether and how these needs may be met through the services of FmHA. If necessary, arrangements will be made for subsequent discussions until the County Supervisor is satisfied the applicant has obtained a proper understanding.

(b) *Applicant interviews with the County Committee.* An applicant requesting an opportunity to appear before the County Committee to discuss any questions relating to the application or the FmHA program will be permitted to do so.

(c) *Group meetings.* An effective method of assisting applicants to obtain a proper understanding of the FmHA program is through group meetings. Effective group meetings can be held with three or more applicants. Through group meetings applicants get the benefit of explanations given to questions raised by others. Requirements can be presented more impersonally, and generally are more acceptable when applicants know that all borrowers must meet the same requirements. Group participants will be informed that matters of personal or confidential nature will not be discussed publicly, and that any such questions will be answered during individual interviews.

(d) *Items to be discussed.* Before loans are made, County Supervisors will make every effort to see that an understanding is reached with the applicants on the following points as they apply to the type of assistance involved:

(1) Farm and Home Planning.
(2) Budgeting.
(3) Record keeping.
(4) FmHA visits.
(5) Analysis of income and expenses.
(6) Supervised bank accounts.
(7) Planning and performing development work.
(8) Use of funds.
(9) Security requirements.
(10) Care and maintenance of security.
(11) Accounting for security property.
(12) Repayment of loans.
(13) Interest credits and recapture.
(14) Moratorium.
(15) Graduating to other credit sources.
(16) Direct payment to the Finance Office, when applicable.
(17) Appeal procedure.

§ 1910.9 Supplemental material to be provided by State Offices.

To further assist County Supervisors to receive and process applications, the State Office may supplement this subpart with materials and information adapted to State and local conditions. Examples of the types of information that can be used effectively for the guidance of the County Supervisors are:

(a) Guides and suggestions for holding group meetings of applicants.

(b) Illustrative material for use in explaining the FmHA program to individuals and groups.

(c) Information or State statutes concerning community property or dower and curtesy rights, and how these laws affect loan programs and security requirements.

(d) Outreach material.

§ 1910.10 Preference.

(a) *Veterans.* Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces: (1) During the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955, or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on

or before May 7, 1975. For Rural Housing applicants, veteran's preference will be extended to the spouses and children of deceased servicemen who died in service during one of these periods. Veteran's preference will apply when:

(1) There is a shortage of funds.

(2) Obligating forms are ready to be submitted to the Finance Office, and

(3) There is more than one application having the same date.

(b) *Farmer Program loans.* In addition to the veteran's preference, the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter applies.

§ 1910.11 Special requirements.

(a) *Serviceman's Readjustment Act of 1944.* Section 512(a)(D) of the Serviceman's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Veterans Administration (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Veterans Administration Loan Guaranty Officers may, therefore, require VA loan applicants to apply to FmHA for loan assistance.

(b) *Veterans determined ineligible by FmHA.* If the veteran is unable to obtain a loan from FmHA, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by FmHA of the veteran's application and the specific reasons for rejection.

§§ 1910.12–1910.50 [Reserved]

Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(insert address)

(Date)

Dear ————:

Please submit the following information to this office so that your loan request can be further considered:

(1) Completed Form FmHA 410–1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership or joint operation:

(A) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(B) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(C) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(D) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to your farm training and/or experience and the individual members of an entity applicant.

(4) Any readily obtainable financial information for the past five years.

(5) Up to five years production history.

(6) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(7) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(8) Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification."

(9) A copy of any lease, contract, agreement, or option entered into by the applicant/entity which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(10) Form FmHA 440–32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete Form FmHA 440–32 for each of your present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Deliver the form(s) to each of your creditors and insure that they return the completed form to our office.

(11) A legal description of your owned farm, real estate property and/or a copy of your lease, including the legal descriptions of all rented crop land, whichever is applicable.

(12) Form FmHA 1945–20, "ASCS Verification of Farm Acreages Production and Benefits," (for emergency loan application only).

(13) Written evidence from your present lender (if you are presently farming) or other local lenders (and all lenders of an entity applicant) documenting your inability to obtain other credit, including a guaranteed loan. Copies of the lender's letter must be provided to our office.

(14) Applicant's Reference Letter List—this list must show complete address and credit account number if reference is a credit institution.

FmHA will mail Farm FmHA 410–6 letters to the references provided and they must be received back in the office before your application is considered complete.

OR

A credit report fee of $——— payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

(15) Form FmHA 1910–5, "Request for Verification of Employment." This will be used only if you are relying on off-farm employment to pay part of your expenses.

(16) Form FmHA 424–1, "Development Plan."

The following FmHA forms are attached for your use in filing a complete application:

———Form FmHA 410–1, "Application for FmHA Services."

———Form FmHA 410–6, "Statement Required by the Privacy Act."

———Applicant Reference Letter List.

———Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

———Form(s) FmHA 1910–5, "Request for Verification of Employment," (if necessary).

———Form FmHA 431–2, "Farm and Home Plan."

———Form FmHA 1945–20, "ASCS Verification of Farm Acreage Production and Benefits," (if necessary).

———Form FmHA 1924–1, "Development Plan," (if necessary).

———Form FmHA 1940–20, "Request for Environmental Information," (if necessary).

———Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification."

(County Supervisor)

Exhibit B—Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert address)

Date

Dear ————:

The Farmers Home Administration (FmHA) has authority under the Consolidated Farm and Rural Development Act to make limited resource farm ownership and operating loans to qualified applicants and FmHA borrowers.

The program provides credit at reduced interest rates to low-income farmers and ranchers whose farm operations and resources are so limited they cannot afford the regular interest rates for FmHA loans. The program is also intended to give beginning farmers and others a chance to receive the capital necessary to start a successful farming operation.

Borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans remortised or rescheduled at the limited resource interest rate.

In addition, those applicants/borrowers, who have been subjected to racial or ethnic prejudice or cultural bias, because of their identity as a member of a group without regard to their individual qualities, may be eligible for targeted direct farm ownership (FO) funds or acquisition/leasing of inventory farmland.

If you would like additional information regarding the limited resource loan program or the farm ownership Outreach Program for socially disadvantaged individuals, you should contact this office.

I will be more than happy to discuss the program in detail with you.

Sincerely,

County Supervisor

PART 1924—CONSTRUCTION AND REPAIR

12. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

13. Section 1924.1 is revised to read as follows:

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multi-unit (LH) loans and grants, and Rural Housing Site (RHS) loans.

14. In Part 1924, Subpart B (consisting of §§ 1924.51 through 1924.100 and Exhibit A) is revised to read as follows:

Subpart B—Management Advice to Individual Borrowers and Applicants

Sec.
1924.51 General.
1924.52–1924.55 [Reserved]
1924.56 Credit counseling.
1924.57 Planning.
1924.58 Recordkeeping.
1924.59 Supervision.
1924.60 Analysis.
1924.61 Nonfarm enterprises.
1924.62 State supplements.
1924.63–1924.70 [Reserved]
1924.71 Delinquent borrowers.
1924.72 [Reserved]
1924.73 Follow-up Supervisory actions by District Directors and State office staff.
1924.74—1924.100 [Reserved]

Exhibit A—Letter To Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses.

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer program loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, joint operations, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST) loans, and/or Rural Housing loans for farm service buildings (RHF). This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection-only or a judgment account. This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7 of Subpart A of Part 1965 of this chapter).

§§ 1924.52–1924.55 [Reserved]

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants and borrowers, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning

(a) *Long-Time plans (Form FmHA 431–1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431–2, "Farm and Home Plan." and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security").* These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431–2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision.

(1) Form FmHA 1962–1 must be completed once each year and revised as needed in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current Form FmHA 1962–1 in the file of a borrower with loans secured by chattels. Form FmHA 1962–1 should be filled out and signed at the same time as a Form FmHA 431–2 is signed, if a Form FmHA 431–2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431–2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the Form FmHA 1962–1

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should show where the $10,000 will come from. (Example—Wheat, 3,000 Bushels Sold, August, $10,000, Purchase Equipment.) Form FmHA 431–2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter while any appeal is pending. This may be an interim plan for determining the release of proceeds on Form FmHA 1962–1 for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Such a plan does not have to meet the requirements of a feasible plan in paragraph (c)(5) of this section.

(v) Who have had payments deferred.

(vi) Who are making major adjustments to their operation.

(vii) Who have limited resource loans.

(viii) Who have FmHA loans secured by crops, livestock, and livestock products marketed in the regular course of business.

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431–2 and 1962–1 when a new loan, a subsequent loan, a subordination request, or a transfer and assumption is involved, the loan will not be made and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter. When the above transactions are not involved, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living (see § 1924.57 (c)(5)(iv) of this subpart) and farm operating expenses. These decisions will be based on sound judgment supported by the facts surrounding the request for release and fully explained to the borrower. In addition FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962–1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

(3) In certain cases the borrower may not indicate any disagreement with the planned use of proceeds on the Form FmHA 1962–1, but may refuse to sign the form. For these cases, the County Supervisor will sign the form and mail it to the borrower with a cover letter explaining that FmHA considers the document binding unless the borrower disagrees with the planned use of proceeds and wishes to appeal in accordance with Subpart B of Part 1900 of this chapter. Borrowers that do not abide by the document will be handled in accordance with § 1962.18 of Subpart A of Part 1962 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial management practices for major enterprises, which will be updated annually. The County Supervisor will advise borrowers of these practices and those practices not already used by a borrower will be incorporated into the operation when developing long-time and annual plans.

(3) Require applicants, when developing their long-time and annual plans, to take into consideration any plans developed, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service. When such plans are not used the County Supervisor will document in the file the reasons for not using the plans.

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Form FmHA 1962–1 *must* provide for the release of sufficient income to pay essential farm operating and family living expenses.

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962–1 in accordance with paragraph (b)(1)(iv) of this section. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(iii) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(iv) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity and the immediate members of the family who reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

(6) Will send borrowers with loans secured by chattels 60 to 75 days prior to the expiration date for Form FmHA 1962–1 a letter similar to Exhibit A of this subpart, with Attachment 1. A new Farm and Home Plan, or other similar plans of operation acceptable to FmHA, and a new Form FmHA 1962–1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962–1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part

1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5 year history, the applicant's actual production history will be used. This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yields, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agricultural commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. These commodity prices will be established in the same manner as set forth in § 1945.103 of Subpart D of Part 1945 of this chapter, by averaging the *monthly market prices of each commodity for the previous 12-month period.* The monthly average market prices will be provided by the USDA National Agricultural Statistics Service (NASS), or similar State or Federal agency or body. If statewide figures are not available, the State Director will consult with other agricultural agency representatives and agricultural lenders in the local area before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining states will consult each other and will resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use these prices. In addition, the supplement required in this section for commodity prices will also contain the 5 year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). This information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

(3) Form FmHA 1962–1 will be revised whenever major changes (examples of major changes are: Feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur and the County Supervisor will be responsible for determining if the requested change is major or not. The Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962–1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA *must* make releases which would be average for the area for essential family living and farm operating expenses. Those borrowers whose requests are in excess of the average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file. In addition, FmHA *must* make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962–1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding. (Revised 8–28–87, PN 62.)

§ 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrowers' farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and maintain a recordkeeping system which adequately meets the needs of their farming operation and which provides, as a minimum, a record of the cash receipts and expenditures, end of year balance sheets, and an income statement. Borrowers receiving EM loans of $100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine whether borrowers have selected, established, and are maintaining adequate recordkeeping systems. Such systems may include the farm record book available through FmHA (Form FmHA 432–1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial recordkeeping or accounting service, which is acceptable to FmHA.

(3) Failure of a borrower to maintain and provide adequate records to FmHA will be cause for FmHA to reject a borrower for further financial assistance. Borrowers can also be

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denied loan servicing programs if the borrower has been previously advised on how to keep adequate records. The borrower's case file will document that the borrower was previously advised of the record keeping requirements.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Exhibit A of Subpart S of Part 1951 of this chapter or who have had their loans reamortized, rescheduled, consolidated, written down and/or deferred. The District Director will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have been indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Exhibit A of Subpart S of Part 1951 of this chapter.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred or had their loans restructured.

(iv) Borrowers receiving annual production-type loans.

(v) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost or profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year; and help them make sound management decisions.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available.

(2) Options for types of enterprises available for the operation such corn v. soybeans, selling the crop v. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations.

(7) Debt repayment as compared to money available to pay debts.

(8) Experience and ability of the borrower.

(9) Availability and cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431–2 and 1962–1 and in completing Form FmHA 431–2 for the next year.

(3) Make a complete entry in the case file running record of the items discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results on Form FmHA 1960–12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Who are at least 180 days delinquent.

(2) Who are experiencing financial and/or production management problems.

(3) Who are reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(5) Who have been granted a deferral.

(6) Who have limited resource loan(s).

(7) Who have softwood timber loan(s).

(8) Who have conservation easements and/or had their loans written down.

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431–4, "Business Analysis-Nonagriculture Enterprise," and FmHA 432–10, "Business and Family Record Book," available at most FmHA offices, can be used for these purposes.

§ 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

§§ 1924.63–1924.70 [Reserved]

§ 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report of farmer program borrower accounts as of December 31, each year. Farmer Program accounts that are shown as delinquent on the December 31 report will be serviced in accordance with Subpart S of Part 1951 of this chapter.

§ 1924.72 [Reserved]

§ 1924.73 Follow-up supervisory actions by District Directors and State Office staff.

(a) *Follow-up by the District Directors.* The District Director is responsible for seeing that the county office staff correctly conduct analysis with borrowers listed in § 1924.60(d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each county office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.* (1) The State Director is responsible for seeing that the special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Loan chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60(d) of this subpart during each visit to a county office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any is needed for the District Director and County Supervisor.

(3) The State and/or District Offices should personally review the progress made in servicing the cases of those borrowers listed in § 1924.60(d) of this subpart.

§§ 1924.74–1924.100 [Reserved]

Exhibit A—Letter To Borrower Regarding Releases of Farm Income to Pay Family Living and Farm Operating Expenses

UNITED STATE DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

(Date)

(Borrower's Name)

(Address)

Dear ————:

Pub. L. 100–233 requires the Farmers Home Administration (FmHA) to notify you that you are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products and other property regularly sold in operating the farm so that you can pay essential family living and farm operating expenses. FmHA must also release ASCS and CCC payments which it holds as security for this purpose. The releases will continue up until the time FmHA accelerates your account.

To provide these releases to you, FmHA regulations require that you fill out Form FmHA 1962–1 to explain what items of FmHA security you intend to sell during this crop year. Please see Attachment 1 of this letter for an explanation of this form. We request that you contact this office within 10 days of when you receive this letter so that we can complete this form and you can receive releases on a timely basis.

Sincerely,

County Supervisor

Attachment.

FmHA will help you plan how to use the money you receive when you sell chattel property which is under lien to FmHA. Once a year, you will be asked to complete a form (Form FmHA 1962–1) which will show what crops, livestock and livestock products you plan to sell the approximate prices you expect to receive, who you expect will buy your farm products and how the money will be used. This form will give you and FmHA a clear idea of what you expect from your operation and how you plan to use sales proceeds. The form will always provide for paying essential family living and farm operating expenses. However, FmHA will determine how much money it will release from your crop proceeds in accordance with its regulations. This will depend on the nature of your farming operation.

If the County Supervisor does not agree with your plan for using sales proceeds, you will receive a letter which explains why the County Supervisor does not agree with your plan and which also explains how you may appeal the County Supervisor's decision. While an appeal is pending, FmHA will allow sales proceeds to be used to pay essential family living and farm operating expenses. Once a plan has been agreed on, FmHA expects you to abide by the plan and you can expect FmHA to abide by the plan. The plan can always be revised or changed, as circumstances require, if you and FmHA agree to the changes.

Some borrowers believe or have heard that the Form FmHA 1962–1 is an inflexible document and that it requires a borrower to make projections which are too detailed. That is not true. Planned sales can be listed by month, by quarter or by whatever period suits your operation the best. The form does not have to be completed to show each individual animal, bushel, bale, etc. The form is a plan; it contains only projections. We expect you to base your projection on your past performance, but we know that you cannot predict exactly how many bushels per acre you will harvest, exactly how many animals you will wean, etc. We also realize that you cannot predict prices to the penny. Sometimes you will have a buyer for your products who is not listed on the form. All we expect you to do is be as accurate as you can. Later, if the plan needs to be changed, you and the County Supervisor can work together to revise it. Many revisions can be agreed on over the telephone and a trip to the County Office is not always needed. You are not required to check with FmHA before making a sale just because the price you expect to receive is different from what you had planned to receive. However, a difference in price might require your plan to be revised, so FmHA wants to be told about the difference after the sale is made. You are expected to check with FmHA before making a major change in your operation or before using sale proceeds in a way different than you had planned, so that your plan can be revised. If at all possible, You should let FmHA know if you are going to sell to a buyer who is not listed on the form.

PART 1941—OPERATING LOANS

15. The authority citation for Part 1941 reads as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

16. Sections 1941.1 through 1941.50 are revised and Exhibit C is added to read as follows:

Subpart A—Operating Loan Policies, Procedures, and Authorizations

Sec.

1941.1 Introduction.
1941.2 Objectives.
1941.3 Management assistance.
1941.4 Definitions.
1941.5 [Reserved]
1941.6 Credit elsewhere.
1941.7–1941.10 [Reserved]
1941.11 Applications.
1941.12 Eligibility requirements.
1941.13 Rural youth.
1941.14 Annual production loans to delinquent borrowers.
1941.15 [Reserved]
1941.16 Loan purposes.
1941.17 Loan limitations.
1941.18 Rates and terms.
1941.19 Security.
1941.20–1941.22 [Reserved]
1941.23 General provisions.
1941.24 [Reserved]
1941.25 Appraisals.
1941.26–1941.28 [Reserved]
1941.29 Relationship between FmHA loans, insured and guaranteed.
1941.30 Committee certification.
1941.31 [Reserved]
1941.32 Loan docket processing.
1941.33 Loan approval or disapproval
1941.34 [Reserved]
1941.35 Actions after loan approval.
1941.36–1941.37 [Reserved]
1941.38 Loan closing.
1941.39–1941.41 [Reserved]
1941.42 Loan servicing.
1941.43–1941.49 [Reserved]
1941.50 State supplements.

* * * * *

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Exhibit C—Controlled Substance

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL–Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4–H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands.

§ 1941.2 Objectives.

The basic objective of the OL loan program is to provide credit and management assistance to farmers, ranchers, and rural youth to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family who reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family-size. The State Director will establish, either on a State-wide basis or regional basis, State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants who indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish. Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community. (For limited resource loans to applicants with small farm enterprises in AL, FL, GA, LA, MS, MO, and SC, refer to Exhibit B of this subpart.)

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Recreation enterprise. An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4–H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit is not available, with or without a guarantee or subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When, based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s), so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(e) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(f) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§§ 1941.7–1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify

the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see § 1941.4 of this subpart.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown of the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(iv) They and the entity itself will honestly try to carry out the condition and terms of the loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4(j) of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own *or* operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4–H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower case file.

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility requirements in § 1941.12 of this subpart, whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering all servicing options in Subpart S of Part 1951 of this chapter, including distressed Farmer Programs loans for softwood timber production in applicable areas, may qualify for annual production loans under this section or subordinations under Subpart A of Part 1962 and Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled due to:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or underemployment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Item D of Form FmHA 431–2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplier credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Non-disturbance agreements will be obtained, for the term of the FmHA annual production loan being made, from all creditors to whom the applicant is indebted when repayment of the indebtedness is behind schedule and will remain so at the time the FmHA loan is approved.

(b) Loan funds will be used to pay annual operating and family living expenses only, as further explained in § 1941.16 of this subpart.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA 1941–1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941–A–1, "Advice to Borrower of Financial Condition," of their serious financial conditions; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941–A–1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

§ 1941.15 [Reserved]

§ 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or $5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than $7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricultural commodity or as pasture.

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant and owed by anyone who will sign the note as a cosigner will exceed $200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed $5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as

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further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as consolidation, rescheduling or deferral is taken to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

(2) Ordinarily, loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will be scheduled for payment on the first January 1 after the income from the year's operations is received. Under certain circumstances these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery form disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period. The County Supervisor may use Form FmHA 440–9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installments scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

(c) *Consolidation or rescheduling.* When the loan approval official determines that consolidation or rescheduling will assist in the orderly collection of an OL loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

§ 1941.19 Security.

Ordinarily, the security must be adequate in the opinion of the loan approval official to assure repayment of the loan. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the loan approval official in determining whether the loan should be made, except that the amount refinanced may not exceed the value of the security. Except as shown in paragraph (a) of this section, the loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A borrower is not required to use separate and identifiable collateral to secure two or more loans made, insured or guaranteed, provided the outstanding amount of such loans does not exceed the total value of the collateral used.

(3) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment, such as hand tools, power lawn mowers, and other items of like type not needed for security purposes.

(4) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(5) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than $10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427–1 (State), "Real Estate Mortgage for ———," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops" (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Insurance.* See Part 1941, Subpart B, § 1941.88 for insurance requirements.

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s) or when OL loans are made to eligible individuals, who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(f) *Income from products and program payments.* Assignments and consents relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441–16, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products, in which FmHA has a security interest under UCC.

(3) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(g) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods *before* they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods *after* they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute Form FmHA 440–26, "Consent and Subordination Agreement," or Form FmHA 440–6, "Severance Agreement."

(h) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(i) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of Part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of the Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archeological significance the provisions of Subpart F of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a non-farm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals. Chattel and real estate appraisals will be made on Form FmHA 440–21, "Appraisal of Chattel Property," and FmHA 422–1, "Appraisal Report (FARM TRACT)," and FmHA 1922–11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

(a) A chattel appraisal is required when debts refinanced exceed $5,000 and in any case the County Supervisor determines advisable. When an appraisal is not required, an estimate of the market value of the chattels will be recorded in the running record.

(b) A real estate appraisal is required when more than $10,000 equity in the real estate is needed as security for refinancing. When an appraisal is not required, an estimate of the market value of the real estate will be recorded in the running record.

(c) An appraisal will be made if the loan approval official determines it is needed to evaluate the soundness of the loan.

§§ 1941.26–1941.28 [Reserved]

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A guaranteed OL loan may be made to an insured borrower provided:

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(1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant or owed by anyone who will sign the note as cosigner may not exceed $400,000 at loan closing.

(2) The outstanding amount of such loans does not exceed the total value of the collateral so used.

(c) An insured OL loan will be made to refinance a guaranteed OL loan when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the insured OL loan is closed.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL, and/or OL loans will not exceed $650,000.

§ 1941.30 Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440–2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

§ 1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See Exhibit A of this subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided the total insured operating loan principal balance at loan closing does not exceed $200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan or on other plans or documents acceptable to FmHA.

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) A signed copy of Form FmHA 1940–1 will be sent to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) and within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be processed with Form(s) 1940–10 in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(c) *Cancellation of advances.* When an advance is to be canceled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

§§ 1941.36–1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this chapter.

§§ 1941.39–1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

§§ 1941.43–1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

* * * * *

Exhibit C—Controlled Substance

Note: Exhibit C referenced in this subpart is available in any FmHA office.

Subpart B—Closing Loans Secured by Chattels

17. Section 1941.54 is amended by revising paragraph (b) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.* (1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officer will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

18. Section 1941.57 is amended by revising paragraph (a)(1) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) * * *

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

* * * * *

19. Section 1941.88 is amended by redesignating paragraphs (a) through (d) as (b) through (e), adding new paragraph (a) and revising newly designated paragraphs (b) and (c) to read as follows:

§ 1941.88 Insurance.

* * * * *

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA requires an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates on which each borrower's crop insurance premium(s) is due. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA County Office.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

* * * * *

20. Section 1941.96 is amended by revising paragraph (b) to read as follows:

§ 1941.96 Changes in use of loan funds.

* * * * *

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940–17, "Promissory Note," will not be revised nor will a corrected Form FmHA 1941–7, "OL—other Credit Analysis," be prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431–2, "Farm and Home Plan," also on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

21. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

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22. Sections 1943.1 through 1943.50 are revised and Exhibit B is added to read as follows:

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

Sec.

1943.1 Introduction.
1943.2 Objectives.
1943.3 Management assistance.
1943.4 Definitions.
1943.5 [Reserved]
1943.6 Credit elsewhere.
1943.7 For the State of Hawaii—FO loans or leasehold interest on real property.
1943.8–1943.9 [Reserved]
1943.10 Preference.
1943.11 Receiving and processing applications.
1943.12 Farm ownership loan eligibility requirements.
1943.13 Outreach program for the socially disadvantaged.
1943.14–1943.15—[Reserved]
1943.16 Loan purposes.
1943.17 Loan limitations.
1943.18 Rates and terms.
1943.19 Security.
1943.20–1943.22 [Reserved]
1943.23 General provisions.
1943.24 Special requirements.
1943.25 Options, planning and appraisals.
1943.26 Planning and performing farm development.
1943.27 Relationship with other lenders.
1943.28 FmHA loans simultaneous with other lenders.
1943.29 Relationship with other FmHA loans, insured and guaranteed.
1943.30 County Committee certification.
1943.31 [Reserved]
1943.32 Loan docket processing and forms.
1943.33 Loan approval or disapproval.
1943.34 Requesting title service and accepting option.
1943.35 Action after loan approval.
1943.36–1943.37 [Reserved]
1943.38 Loan closing actions.
1943.39–1943.41 [Reserved]
1943.42 Servicing.
1943.43 Subsequent FO loans.
1943.44 Subordinations.
1943.45–1943.49 [Reserved]
1943.50 State supplements.

* * * * *

Exhibit B—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 Introduction.

This subpart contains regulations for making inital and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FO loans to entrymen on unpatented public lands.

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percant interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant. An applicant who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit elsewhere is not available with or without a guarantee or a subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is able to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the finding recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.

(e) Property and interests in property owned and income received by an individual applicant, a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real

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property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

§§ 1943.8–1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in Subpart A of Part 1910 of this chapter, an application for a loan for land purchase from an applicant who:

(1) Has a dependent family, or

(2) Is an owner of livestock and farm implements necessary to successfully carry on farming operations, or

(3) Is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's Farm Ownership (FO) loan allocation designated for socially disadvantaged applicants will be used exclusively to assist such applicants to purchase farm land. (See Exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration Loans to Socially Disadvantaged Applicants.")

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirement must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4(i) of this subpart).

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporation(s), partnership(s), or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641 "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators.

(iv) Honestly try to carry out the conditions and terms of the loan. This requirement must be met by the individual members, stockholders, partners or joint operators.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own *or* operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

§ 1943.13 Outreach program for the socially disadvantaged.

The purpose of this subpart is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) Farm Ownership (FO) Outreach Program to Socially Disadvantaged Individuals in accordance with sections 617 and 623 of the Agricultural Credit Act of 1987.

(a) *Goals.* The FmHA Socially Disadvantaged Outreach Program is a concerted effort to:

(1) Make the FO loan program and the acquisition of inventory farmland more accessible and available to socially disadvantaged individuals.

(2) Surface and correct problems and obstacles that prevent the participation of socially disadvantaged individuals in receiving FO loans and acquiring inventory farmland.

(3) Increase the production level of FO loans and sale/lease of inventory farmland to socially disadvantaged individuals.

(4) Target direct FO loan funds and inventory farmland to ensure participation of socially disadvantaged individuals in the FO loan program and acquisition of inventory farmland in accordance with Exhibit B of this subpart.

(5) Provide pamphlets, publications and information on the FO loan program and acquisition of inventory farmland to socially disadvantaged individuals and other interested individuals and groups.

(6) Provide assistance as necessary to individuals of socially disadvantaged groups to assure that the application process is expedient and complete. Appropriate assistance necessary will also be provided to approved applicants through special farm initiatives to assure that sound operating procedures are implemented to enhance the applicants' chances for successfully achieving the objectives of the FO loan program.

(b) *Field action.* The FmHA State Director shall designate the State Civil Rights Coordinator to coordinate "Outreach" activities with the County Supervisors and District Directors in meeting targeting goals for direct FO loans and the acquisition of inventory farmland by socially disadvantaged individuals. The State Coordinators of socially disadvantaged individual activities will:

(1) Maintain close liaison with local FmHA supervisors and officials in those counties serving socially disadvantaged individuals to assure that technical assistance is provided to socially disadvantaged individuals so that the application process is expeditious and complete. In addition, appropriate technical assistance will be provided to approved applicants/borrowers to assure that sound operating practices are implemented to enhance the applicant's chances for achieving the loan objectives.

(2) Work closely with FmHA County, District, State and National Office representatives to remove obstacles and solve problems that impede assistance to socially disadvantaged individuals in receiving direct FO loan funds and acquiring inventory farmland.

(3) Be familiar with the FO loan program and acquisition of inventory farmland, including security and eligibility requirements.

(4) As necessary, attend pertinent meetings of local, State and Federal Government agencies concerned with the economic and social development of socially disadvantaged individuals.

(5) Arrange for the training of individuals and interested groups concerned with the socially disadvantaged in the packaging and distribution of materials for use in the FO loan program and acquisition of inventory farmland.

(6) Initiate special informational outreach activities in an effort to inform potential farm applicants, who are members of a socially disadvantaged group, of the availability of targeted direct FO loan funds and inventory farmland, to enable them to become farm operators/owners.

(i) Information will be provided in a county office area to community and farm oriented organizations, agriculture schools, other USDA agencies and community leaders who are knowledgeable of the farming community.

(ii) In addition, news articles, announcements and radio broadcasts regarding FmHA's outreach efforts in providing FO loans and the acquisition of inventory farmland available to socially disadvantaged groups shall be placed in media most partronized by members of socially disadvantaged groups.

(c) *Reports.* (1) State Directors will keep the National Office advised of any problems and obstacles in carrying out the FO Outreach Program to socially disadvantaged individuals which prevents their participation in the FO loan program with respect to obtaining direct loan assistance and acquiring inventory farmland.

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(2) Any changes in personnel serving as State Coordinator of the FO Outreach Program for socially disadvantaged individuals will be reported to the National Office.

(3) Each State Director will make a semi-annual memorandum report on January 1 and July 1 of each year on FO Outreach activities and accomplishment. The report will specifically reflect what has been done to carry out the items set forth in § 1943.13(b) of this subpart. The report will be sent to the National Office, Attention: Assistant Administrator, Farmer Programs.

§§ 1943.14–1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on or in close proximity to, the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants for nonfarm enterprises, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Construction costs for methane and gas facilities and essential equipment.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water, powerlines, gas lines, and other facilities necessary for the successful operation of the farm may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cast of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds are advanced is likely to exceed $1,000, the applicant will assign the paymant to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of this subpart) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited $25,000;

(ii) There is adequate security for the loan; and

(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of the loan funds used for improvements on leased land will not exceed $10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland. A major portion of the gross total income must be farm income. The nonfarm enterprise income will be supplemental income.

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant and owed by anyone who will sign the note as a cosigner will exceed the lesser of $200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29(b) of this subpart is exceeded.

(b) Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any FO loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(i) of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise, when appropriate, indicate that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as reamortization or deferral is taken to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 Subpart A of Part 1951 of this chapter.)

§ 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable;

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding-FHA–FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

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(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Security—nonfarm enterprise.* When an FO loan is made just to finance a nonfarm enterprise, even though a majority of the products are used on the farm such as alcohol or methane gas, a lien will be taken on the nonfarm enterprise facility and sufficient other property to adequately secure the loan. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(g) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals,* who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an FO loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same collateral can secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.20–1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable

Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must provide evidence that they have received an ATF operating permit.

§ 1943.24 Special requirements.

(a) *Determining suitability of farms.* The County Supervisor is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it a suitable farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions to this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rental buildings that are adjacant to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(iv) A nonfarm enterprise facility does not have to be physically located on the farm.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in Subpart A of Part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) of this subpart for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431–4, "Business Analysis—Nonagricultural Enterprise," will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443–17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years aftar closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

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(i) Pay costs and taxes connected with the sale;
(ii) Reduce the FmHA debt or any prior lien;
(iii) Make essential capital purchases; or
(iv) Pay essential farm and home expenses.
(4) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:
(i) The appraisal report.
(ii) The security instrument for the loan.
(iii) The total debt against the security.
(h) *Life estates.* When life estates are involved, loans may be made:
(1) To both the life estate holder and the remainderman, provided:
(i) Both have a legal right to occupy and operate the farm;
(ii) Both are eligible for the loan; and
(iii) Both parties sign the note and mortgage.
(2) To the remainderman only, provided:
(i) The remainderman has a legal right to occupy and operate the farm; and
(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.
(3) To the life estate holder only, provided:
(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and
(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.
(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.
(j) *Subdivision of large tracts of farmland into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:
(1) Productivity of the land and its suitability for operation as a family farm;
(2) Cost of the land and improvements;
(3) Accessibility to roads, markets, schools, rights-of-way, easements, and other services.
(4) Disposition or omission of any part of the tract that is not suitable; and
(5) The number of eligible applicants in the area.
(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.
(l) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate will be expected to pay the current rate when able to do so.

§ 1943.25 Options, planning and appraisals.

(a) *Optioning land.* An applicant is responsible for obtaining options on real property bought. Form FmHA 440–34, "Option to Purchase Real Property" should be use if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.
(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:
(i) Land description and number of acres;
(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;
(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;
(iv) Access to the land or any part of it;
(v) The part responsible for taxes and insurance; and
(vi) The party who will receive the income from the land during the crop year of the transaction.
(2) The applicant should decide if the applicant wants the option recorded and is responsible for paying any recording fees.
(3) Form FmHA 443–2, "Option for Purchase of Farm-Land to be Subdivided" may be used if a large tract will be subdivided into separate farms.
(i) Assignment of the interest of the applicant in whose name the tract is obtained will be made to each applicant who will acquire one of the units.
(ii) Form FmHA 443–3, "Assignment of Interest in Option (Land to be Subdivided)" may be used.
(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this Chapter.
(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security.
(2) Appraisals are not required if:
(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less, and
(ii) The loan approval official determines the loan is adequately secured without an appraisal, and
(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.
(3) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.
(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:
(i) An assignment is obtained on the stock, or
(ii) An agreement is obtained which provides that:
(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or
(B) The stock refund check is made payable to the borrower and FmHA, or
(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.
(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.
(5) In the case of nonreal estate security the following items apply:
(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.
(ii) The property which will serve as security will be described in sufficient detail so it can be identified.
(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Part 1924, Subpart A. The provisions of Subpart E of Part 1901 will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA–FCA," (available in any FmHA Office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as appraisal methods, title clearance, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.
(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.
(b) An insured FO loan may be made to a borrower with an outstanding guaranteed FO, SW, or RL loan when:
(1) The total insured and guaranteed FO, SW, and RL principal balance, including the new loan, owed by the loan applicant or owed by anyone who will sign the note as co-signer does not exceed $300,000 at loan closing.
(2) Different lien positions on real estate are considered separate and identifiable collateral.
(3) All other requirements of the loan are met.
(c) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL, OL, and FO loans will not exceed $650,000.
(d) A borrower may use the same collateral to secure two or more loans, insured or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.31 [Reserved]

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* The following table is a guide on the forms needed and distribution:

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400–1—Equal opportunity agreement	2	1–O	1–O	1–C
400–3—Notice to contractors and applicants	3		1–C	1–C
400–4—Assurance agreement	2	2–O&C	1–O	1–C
400–6—Compliance statement	3		1–O	1–C
403–1 [1]—Debt adjustment agreement	3(5)	1–O	1–O	1–C
410–1—Application for FmHA services	1(8)	1–O	1–O	
410–8—Applicant reference letter	1		1–O	
410–9—Statement required by the Privacy Act	2	2–O&C	1–C	1–O
410–10—Privacy Act statement to references	2(10)		1–C	
422–1—Appraisal report—farm tract	1		1–O	
422–2 [1]—Supplemental report—irrigation, drainage, levee, and minerals	1		1–O	
424–1 [1]—Development plan	2(3)	1–O	1–O	1–C
427–8 [1]—Agreement with prior lienholder	3(6)		1–O	1–C
431–1 [1]—Long-time farm and home plan	2	2–O&C	1–C	1–O
431–2 [1]—Farm and home plan	1(2)	1–O	1–O	1–C
431–4 [1]—Business analysis-nonagricultural enterprise	2	1–O	1–C	1–O
1940–1—Request for obligation of funds	4(4)	2–O&C(9)	3–O&2C	1–O
440–2—County committee certification or recommendation	1		1–O	
440–8 [1]—Supplementary payment agreement	2	1–O	1–O	1–C
440–21 [1]—Appraisal of chattel property	1		1–O	
440–34 [1]—Option to purchase real property	3(1)	2–O&C	1–O	1–C

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
440–45—Nondiscrimination certificate (individual housing)	2	1–O	1–O	1–C
1940–21, 1940–22, or Exhibit H, Subpart G, Part 1940—Environmental review	1		1–O	
443–12 [2]—Farm ownership and individual soil and water fund analysis	3		1–C	
443–17 [1]—Agreement to sell nonessential real estate	2	2–O&C	1–O	1–C
1940–20 [1]—Request for environmental information	2	1–O	1–O	1–O
492–19 [1]—Characteristics of approved applicants	3(7)		1–C	
1924–14 [1]—Farmer program borrower responsibilities	2	2	1–O	1–C
1922–11 [1]—Appraisal for mineral rights	1		1–O	
443–8 [1]—Agreement (between seller, purchaser, and tenant)	4	4	1–C	1–C

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.

Notes:
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, three copies of plans and specifications will be required.
(4) An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
(5) Signed copy to creditor.
(6) Copy to lienholder.
(7) Copy to State Director.
(8) Record of applicant investigation, availability of other credit, and so forth, which remain with the docket.
(9) Applicant must sign and date this form.
(10) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.
(11) When a facility such as an alcohol still or methane plant provides energy and the major portion of such products are used on the farm, the enterprise will not be coded "NFE".

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to Farm and Home Plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veterans' preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible.

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee.

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is based on a feasible plan or on other plans or documents acceptable to FmHA.

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approving official.

(c) *Loan disapproval.* The loan approving official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved.

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official or the reasons will be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440–35, "Acceptance of Option,"

and send the original to the seller if land is being acquired. A copy will be kept in the case folder. If land to be acquired will be subdivided the following action will be taken:

(1) Each assignee will sign Form FmHA 443–10, "Acceptance of Option by Assignee (Land to be Subdivided)."

(2) The buyer will sign Form FmHA 443–11, "Acceptance of Option by Buyer (Land to be Subdivided)."

(3) The originals of the forms will be mailed to the seller and copies retained in the County Office file.

(c) The applicant will arrange with the seller to take possession when land is being acquired. The following forms may be used if appropriate:

(1) Form FmHA 443–5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443–6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be processed with Form(s) FmHA 1940–10, in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§§ 1943.36—1943.37 [Reserved]

§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.19(b)(4) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for operating loans.

The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement" or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan

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will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 405–1, "Management System Card—Individual," to insure that the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgagee title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan except that new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land that is not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a naw appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.45–1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

* * * * *

Exhibit B—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants

I. General

Provisions of the Agricultural Credit Act of 1987 require Farmers Home Administration (FmHA) to establish target participation rates for providing FmHA assistance to socially disadvantaged applicants. These rates are established to ensure that members of socially disadvantaged groups are provided assistance in acquiring FmHA inventory property and other available farmland. The target participation rate established for each State is based on the proportion of minority rural population to the total rural population in the State.

II. Implementation Responsibilities

States will meet their target participation rates in use of loan funds and sale of inventory property.

A. The target participation rate, as provided in this exhibit, will be applied to Insured Farm Ownership loan funds and inventory property in the following manner:

1. *Loan funds.* The targeted portion of a State's Fiscal Year Farm Ownership allocation, as outlined in FmHA Instruction 1940–L, Exhibit A, will be used exclusively to enable socially disadvantaged applicants to purchase farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation not be sufficient.

2. *Inventory property.* States will ensure that socially disadvantaged applicants have an opportunity to purchase, as a minimum, the number of inventory farms available October 1 of each year x a State's target participation rate. Sales of inventory property will be handled in accordance with applicable provisions of FmHA Instruction 1955–C.

III. Other Information

The county listings of target participation rates are provided by the National Office Farmer Programs to give assistance to States in targeting loan funds and assistance to counties with minority rural populations.

TOTAL U.S. PARTICIPATION RATE

State	Target participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	6
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. total	10

TOTAL U.S. PARTICIPATION RATE—Continued

23. Sections 1943.51 through 1943.100 are revised to read as follows:

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

Sec.
1943.51 Introduction.
1943.52 Objectives.
1943.53 Management assistance.
1943.54 Definitions.
1943.55 [Reserved]
1943.56 Credit elsewhere.
1943.57–1943.60 [Reserved]
1943.61 Receiving and processing applications.
1943.62 Soil and Water loan eligibility requirements.
1943.63–1943.65 [Reserved]
1943.66 Loan purposes.
1943.67 Loan limitations.
1943.68 Rates and terms.
1943.69 Security.
1943.70–1943.72 [Reserved]
1943.73 General provisions.
1943.74 Special requirements.
1943.75 Options, planning and appraisals.
1943.76 Planning and performing development.
1943.77 Relationship with other lenders.
1943.78 [Reserved]
1943.79 Relationship with other FmHA loans, insured and guaranteed.
1943.80 County Committee certification.
1943.81 [Reserved]
1943.82 Loan docket processing.
1943.83 Loan approval or disapproval.
1943.84 Requesting title service.
1943.85 Action after loan approval.
1943.86–1943.87 [Reserved]
1943.88 Loan closing actions.
1943.89–1943.91 [Reserved]
1943.92 Servicing.
1943.93 Subsequent SW loans.
1943.94 Subordinations.
1943.95–1943.99 [Reserved]
1943.100 State supplements.

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Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interests, in accordance with Subpart B of Part 1924 of this chapter.

§ 1943.54 Definitions.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership or joint operation is the borrower.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(c) Provide a reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants which indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds which it has a lien on.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I–94, "Immigration on Indefinite Parole" card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify, that adequate credit elsewhere is not available with or without a guarantee or subordination to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

(e) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals, will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.57–1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

§ 1943.62 Soil and Water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) *A cooperative, corporation, partnership or joint operation must:*

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1943.54 of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

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(8) If a tenant have satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

§ 1943.63–1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided:

(i) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(10) Pay the cost of construction of alcohol and methane gas facilities along with essential equipment.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the total price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see § 1943.69(b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to $25,000,

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life.

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(iii) There is adequate security for the loan.

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(b) The limitation found in § 1943.79(c) of this subpart is exceeded.

(c) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

§ 1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

§ 1943.69 Security.

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(iv) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficiant other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forefeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferrable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1962 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights of way, and other appurtenances that are considered part of the farm and usually

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pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain convenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created and established by a certain Lease dated _____, 19____, executed by _____ as lessor(s), recorded on _____, 19____, in Book _____, page _____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional convenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(g) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same collateral can secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

§§ 1943.70–1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of 1940 of this chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil Rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

(e) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must also provide evidence that they have received an ATF operating permit.

§ 1943.74 Special requirements.

(a) *Land development.* When possible recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chaptar (FmHA Instruction 426.1) when the loan is secured by real estate.

(2) See § 1943.73(a) of this subpart for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.75 Options, planning and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real

property. Form FmHA 440–34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security.

(2) Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less; and

(ii) The loan approval official determines the loan is adequately secured without an appraisal; and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(3) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440–21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.78 [Reserved]

§ 1943.79 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured SW loans may be made simultaneously with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed $650,000.

(c) An insured SW loan may be made to a borrower with an outstanding guaranteed FO, SW or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant or owed by anyone who will sign the note as cosigner does not exceed $300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(d) A borrower may use the same collateral to secure two or more loans made, insured or guaranteed under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.81 [Reserved]

§ 1943.82 Loan docket processing.

(a) *Forms.* The following table is a guide to the forms needed and shows how they are distributed.

FmHA form No. and name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400–1—Equal Opportunity Agreement	2	1–O	1–O	1–C
400–3—Notice to Contractors and Applicants	3		1–C	1–C
400–4—Assurance Agreement	2	2–O&C	1–O	1–C
400–6—Compliance Statement	3		1–C	1–C
403–1 [1]—Debt Adjustment Agreement	3(5)	1–O	1–O	
410–1—Application for FmHA Services	1(8)	1–O	1–O	
410–8—Applicant Reference Letter	1		1–O	
410–9—Statement Required by Privacy Act	2	2–O&C	1–C	1–O
410–10—Privacy Act Statement to References	2(9)		1–C	1–O
422–1 [1]—Appraisal Report—Farm Tract	1		1–C	
422–2 [1]—Supplemental Report—Irrigation, Drainage Levee, and Minerals	1		1–C	
422–10 [1]—Appraiser's Worksheet Farm Tracts (Study of Comparable Properties)	1		1–O	
424–1 [1]—Development Plan	2(2)	1–O	1–O	1–C
427–8 [1]—Agreement with Prior Lienholder	3(6)		1–O	1–C
431–1 [1]—Long-Time Farm and Home Plan	2	2–O&C	1–C	1–O
431–2—Farm and Home Plan	1(1)	1–O	1–O	1–C
431–4 [1]—Business Analysis—Nonagricultural Enterprise	2	1–O	1–C	1–O
1940–1—Request for Obligation of Funds	4(4)	2–O&C(8)	1–O	1–C
440–2—County Committee Certification or Recommendation	1		1–O	
440–9 [1]—Supplementary Payment Agreement	2	1–O	1–O	1–C
440–21 [1]—Appraisal of Chattel Property	1		1–O	
440–34 [1]—Option to Purchase Real Property	3(1)	2–O&C	1–O	1–C
440–45—Nondiscrimination Certificate (Individual Housing)	2	1–O	1–O	1–C
1940–21—Environmental Review	1		1–O	
1940–22 or Exhibit H, Subpart G, Part 1940	3		1–C	
443–12 [2]—Farm Ownership and Individual Soil and Water Fund Analysis	2		1–C	
1940–20 [1]—Request for Environmental Information	3(7)		1–O	1–C
492–19 [1]—Characteristics of Approved Applicants	2	2	1–O	1–C
1924–14 [1]—Farmer Program Borrower Responsibilities	1		1–O	
1922–11 [1]—Appraisal for Mineral Rights				

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.

Note:
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, 3 copies of plans and specifications will be required.
(4) Signed copy to creditor.
(5) Copy to lienholder.
(6) Copy to State Director.
(7) Records of applicant investigation, availability of other credit and so forth, which remain with the docket.
(8) Applicant must sign and date this form.
(9) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veteran's preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible;

(ii) The County Committee certification has been properly completed and signed by at least two members of the Committee;

(iii) Funds are requested for authorized purposes;

(iv) The proposed loan is based upon a feasible plan or on other plans or documents acceptable to FmHA;

(v) The security is adequate;

(vi) Necessary supervision is planned; and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lien holders, when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approval official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action

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taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form 440–35, "Acceptance of Option," or other suitable forms.

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000 the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, (available in any FmHA office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§§ 1943.86–1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.69(b)(5) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440–25, "Financing Statement," or, when authorized, Form FmHA 440–A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443–16 is executed, appropriate notations will be made on Form FmHA 1905–1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940–17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The appropriate authorized officers will execute the note on behalf of the cooperative or cooperation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in county office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the county office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140–4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.89—1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamantion (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration, Department of Agriculture," for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) A subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

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(b) The subsequent loan will be processed in the same manner as an initial loan except a new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a new appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

§§ 1943.95–1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

§§ 1943.101–1943.150 [Removed and reserved]

24. Part 1943 is amended to remove and reserve Subpart C (§§ 1943.101 through 1943.150).

PART 1944—HOUSING

25. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

26. Section 1944.23 is revised to read as follows:

§ 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with Subpart S of Part 1951 of this chapter.

PART 1945—EMERGENCY

27. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

28. Section 1945.119 is amended by revising paragraph (a) to read as follows:

§ 1945.119 Consolidation, rescheduling, reamortization and deferral.

(a) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of the EE loan and any existing EE loans, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * * *

29. Section 1945.149 is amended by revising paragraph (b) to read as follows:

§ 1945.149 Additional loans.

* * * * * *

(b) All outstanding notes may be consolidatad for EE loans for operating purposes in accordance with Subpart S of Part 1951 of this chapter.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

30. Section 1945.154 is amended by revising paragraph (a)(4) to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * * *

31. Section 1945.168 is amended by revising paragraph (c) to read as follows:

§ 1945.168 Rates and terms.

* * * * * *

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

* * * * * *

32. Section 1945.169 is amended by revising paragraph (a)(3) to read as follows:

§ 1945.169 Security requirements.

* * * * * *

(a) * * *

(3) When insured and guaranteed loans are involved with the same borrower, there must be separate security for each of the insured and guaranteed loans only when the amount of loans exceeds the total value of the collateral. Different lien positions on real estate are considered separate collateral.

* * * * * *

PART 1951—SERVICING AND COLLECTIONS

33. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

34. Section 1951.7 is amended by removing paragraph (f), redesignating paragraphs (g) and (h) as (f) and (g) and revising paragraph (d)(1) to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * * *

(d) * * *

(1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with Subpart S of Part 1951 of this chapter.

* * * * * *

35. Section 1951.8 is amended by revising paragraph (a) to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17(d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

* * * * * *

36. Section 1951.9 is amended by revising the introductory paragraph to read as follows:

§ 1951.9 Distribution of payments when a borrower owes more than one type of FHA loan.

"Distribution" means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2, "Farm and Home Plan") and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * * *

37. Section 1951.10 is amended by revising the introductory paragraph to read as follows:

§ 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431–2) and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security."

* * * * * *

38. Section 1951.25 is amended by revising paragraph (b)(5) to read as follows:

§ 1951.25 Review of limited resource FO and OL loans.

* * * * * *

(b) * * *

(5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

* * * * * *

§§ 1951.33–1951.49 [Removed and reserved]

39. Sections 1951.33 through 1951.49 have been removed and reserved.

Subpart A—[Amended]

40. In Part 1951, Subpart A is amended by removing the exhibit titles for Exhibits C–1 through G.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

41. Section 1951.314 is amended by revising paragraph (a)(8) to read as follows:

§ 1951.314 Reamortizations.

* * * * * *

(a) * * *

(8) When a decision has been made under Subpart S of this part to reamortize, reschedule or consolidate the farmer program loans of a borrower who also has an RH loan.

* * * * * *

Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs

42. Section 1951.558 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 1951.558 Decision on servicing actions.

* * * * * *

(c) * * *

(1) * * *

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter

* * * * * *

43. Subpart S of Part 1951, consisting of §§ 1951.901 through 1951.950, with exhibits are added to read as follows:

Subpart S—Farmer Program Account Servicing Policies

Sec.

1951.901 Purpose.
1951.902 Policy.
1951.903 Authorities and responsibilities.
1951.904–1951.905 [Reserved].
1951.906 Definitions.
1951.907 Notice of loan service programs.
1951.908 Processing primary loan service program requests.
1951.909 Eligibility.
1951.910 Primary loan servicing programs—additional requirements.
1951.911 Processing write-down requests.
1951.912 Mediation.
1951.913 [Reserved]
1951.914 Servicing approved primary loan service programs.
1951.915 [Reserved]
1951.916 Exception authority.
1951.917–1951.949 [Reserved]
1951.950 OMB control number.
Exhibit A—Notice of Availability of Loan Service Programs for Delinquent Farmer Program Borrowers
Exhibit B—Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable
Exhibit C—Equity Recapture Agreement
Exhibit D—Shared Appreciation Agreement
Exhibit E—Notification of Request for Mediation or Meeting of Creditors
Exhibit F—Notification of Offer to Restructure Debt
Exhibit G—Deferral, Reamortization and Reclassification of Distressed Farmer

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Program (FP) Loans for Softwood Timber Production (ST) Loans

Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Set-Aside Easements)

Exhibit I—Farmer Programs Dwelling Retention

Exhibit J—Farmer Programs Leaseback/Buyback

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.901 Purpose.

This subpart describes the policies and procedures that Farmers Home Administration (FmHA) will use in servicing most Farmer Program loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), Recreation Loan (RL) and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in Subparts L and N of this part. Cases involving graduation of borrowers to other sources of credit will be serviced as described in Subpart F of this part. Subpart S does not apply to Farmer Program Non-Program (NP) loans. Examples of loan servicing actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reducing interest rate on the loan, write-down of debt, or a combination of these actions. Exhibit A provides the notice of availability of Primary and Preservation Loan Service programs for delinquent Farmer Program borrowers. Exhibit B provides a noncash credit for Farmer Program loan(s) when establishing recapture of debt written down. Attachment 1 of Exhibit A is the summary of Primary and Preservation Loan Service programs. Attachments 2 through 8 are the various notices and response forms borrowers will use after the initial notice is sent. Exhibit C provides for an equity recapture agreement. Exhibit D provides for a shared appreciation agreement when debt is written down. Exhibit E provides for notification of creditors of a meeting to adjust the borrower's debt. Exhibit F provides notification to the borrower that FmHA is offering to restructure. Exhibit G provides policies and procedures for a deferral, reamortization and reclassification of distressed Farmer Programs (FP) loan for Softwood Timber production (ST) loans under this subpart. Exhibit H provides policies and procedures for a Primary Loan Service (Farm Debt Restructure and Conservation Set-Aside Easement) under this subpart. Exhibit I provides policies and procedures for a Homestead Retention Program and Exhibit J provides policies and procedures for a Farmer Program Leaseback/Buyback program.

§ 1951.902 Policy.

Any farmer program borrower may request primary or preservation loan servicing programs described in Subpart S at any time. Borrowers must be unable to pay their debt as scheduled before FmHA will use primary or preservation loan servicing programs. The County Supervisor will use an FmHA approved computer program to assist in finding and documenting the loan servicing programs that will provide the best net recovery to the Government and keep the farmer on the farm. Servicing is a continuing process not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives: To help the farmers manage credit so they can return to private sector credit sources, and to minimize costs to the Government of providing supervised credit. Borrower accounts must be managed with an overall objective of avoiding losses to the Government while at the same time, keeping the farmer in business. These tools are rescheduling and/or reamortization, lower interest rates, deferments and write-down of debt. To establish an effective servicing policy, it is necessary to look at a borrower's current loan with FmHA. This can be called Phase I. Our servicing objective is to keep the borrower in business, paying at regular rates and on regular terms. The servicing tool available to us to keep a borrower in Phase I is rescheduling and/or reamortization. These tools must be used *before* an account gets behind schedule. When it becomes evident that we cannot keep a borrower in business, paying regular rates and after having extended terms to the maximum extent allowable, the borrower moves into Phase II where we have more debt management tools available. These additional tools are lower interest rates and deferrals. The objective is still the same, avoid losses to the Government and keep the borrower farming. Depending upon the reasons the borrower entered Phase II, it is reasonable to expect, with proper servicing, recovery and return to Phase I. However, some borrowers may stay in Phase II as long as they are indebted to FmHA. When it becomes impossible to keep an account from being delinquent and such delinquency exists for 180 days, the borrower enters Phase III. The borrower receives notice of Availability of Loan Service Programs for Delinquent Farmer Program Borrowers. This phase begins the complicated process of determining the best net recovery for the Government while trying to keep the farmer on the farm. Our servicing tools are now expanded to include write-down of a borrower's debt. The procedure, at this point, requires an appraisal of all collateral and a sound and accurate mathematical calculation to determine whether or not the best net recovery to the Government exists in write-down of debt and continuation of the farming operation, or in liquidation of the collateral securing the FmHA debt. The debt must be written down to a level at which a feasible plan can be developed. The write-down can go down to an amount that will provide a return to the Government equal to net recovery from an involuntary liquidation. We will continue with the borrower if net recovery from loan payments on the debt after write-down equals or exceeds net recovery from liquidation. Every effort must be made to keep the farmer in business, using mediation if necessary and available, in an attempt to get other creditors to restructure their debt if that is what is needed to develop a feasible plan. When we make a decision on the borrower's loan servicing request or before we accelerate the loan account, the borrower must be notified of the adverse decision and the opportunity to appeal. When a borrower's debts cannot be restructured and liquidation is required, we can consider the borrower in Phase IV. The borrower still has a number of opportunities to continue to farm. The first is the right to purchase the collateral securing the FmHA debt at net recovery value. Both before and after acceleration the borrower can settle the debt by conveying the property, either by sale to another farmer or voluntary conveyance to FmHA, or through foreclosure. If FmHA takes the property into inventory, the farmer is now in Phase V and has the opportunity to use the preservation service programs and reacquire the property and continue farming under the leaseback/buyback program. The farmer may elect to use the homestead retention program rather than leaseback/buyback. In summary, the loan servicing policy is this:

(a) Use rescheduling and/or reamortization at regular interest rates to keep a borrower in Phase I if at all possible. If that is not possible, go to Phase II.

(b) In Phase II, use rescheduling and/or reamortization at lower interest rates and use deferral (including softwood timber loans and conservation easement set-aside) if necessary to keep a borrower from becoming delinquent. When a borrower is 180 days delinquent, send the borrower Exhibit A with Attachments 1 and 2 of this subpart.

(c) In Phase III, you calculate whether or not the best net recovery to the Government is from keeping the farmer on the farm or through liquidation. At this point, the borrower is considered for a debt writedown. This process will include mediation if an approved State mediation program is available or an effort by FmHA to get under-secured creditors together when other creditor's debt is the reason a feasible plan cannot be developed. If a feasible plan cannot be developed, the borrower has the opportunity to purchase the property at the net recovery value.

(d) When all or any combination of these servicing tools show that the best net recovery to the Government is from keeping the farmer on the farm, the debts will be restructured.

(e) When all or any combination of these servicing tools have been fully and carefully considered and it is determined that the best net recovery to the Government is in liquidation, the borrower will move into Phase IV which is the liquidation process. Before acceleration, the borrower will have the opportunity to appeal all FmHA adverse decisions.

(f) Both before and after acceleration, the debt may be settled by conveyance of the property to another farmer or to FmHA or, by foreclosure. The normal debt settlement procedures will be followed.

(g) After liquidation, the borrower moves into Phase V. The last phase of their loan with FmHA is when the property securing their loans passes into our inventory. In this phase, we must offer the preservation loan service programs. Once again, we must try to keep the farmer on the farm. This will be done with the leaseback/buyback program for the farm or through the homestead retention program for the home and 10 acres. In either situation, the former borrower must meet the eligibility requirements which are set forth in the regulations.

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the County Office Management System to track and manage the Farmer Program primary and preservation loan servicing programs.

(b) *Authorities.* All loan servicing decisions will be made by the County Supervisor except write-down of a borrower's debt and certain rescheduling and reamortization actions. The State Directors only are authorized to write-down a borrower's debt. Requests for authority to write-down a borrowers' debts will be processed in accordance with § 1951.911(c)(1) of this subpart. FmHA County Supervisors are authorized to consolidate and reschedule loans one time. If subsequent reschedulings are necessary the reschedulings must be approved at the next higher level of FmHA supervision. The approval official on subsequent reschedulings will only approve the rescheduling if the borrower is making all interest payments and is reducing the principal as much as possible. FmHA County Supervisors are authorized to reamortize loans and debts owed under assumption agreements one time. If subsequent reamortizations become necessary, the reamortization must be approved at the next higher level of FmHA supervision. The approval official of the subsequent reamortization will only approve the reamortization if the borrower has been making all interest payments and is reducing the principal as much as possible.

§§ 1951.904–1951.905 [Reserved]

§ 1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has outstanding obligations to the Farmers Home Administration (FmHA) under any Farmer Program loans, without regard to whether the loan has been accelerated, but does not include any such debtor all of whose loans and accounts have been foreclosed or liquidated, voluntarily or otherwise.

Delinquent borrower. A borrower who has a payment due on a loan which is unpaid for 30 or more calendar days.

Farm plan. Form FmHA 431–2, "Farm and Home Plan," or other plans or documents acceptable to FmHA that will accurately reflect the production and financial management of the farming operation for one production cycle.

Feasible plan. A feasible plan is a plan that must indicate that the anticipated farm and non-farm cash income equals or exceeds all the anticipated cash outflow for a planned period. A feasible plan must show that a borrower will be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm production cycle.

(b) Meet scheduled payments on all open accounts and on all other debts some of which may include delinquent taxes.

(c) Provide a 5 percent reserve that will allow for risk and uncertainties associated with the farming operation.

(d) Provide an average standard of living for the family members of an individual borrower or a wage for an average standard of living for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Family members include the individual borrower or farm operator in the case of an entity, and the dependent members of the family which reside in the same household. The State Director will consult with the State Land Grant College including 1890 Land Grant College or State Agricultural College to establish average family living expenses for farm families with adjustment factors for family size. The State Director will establish, either on a State-wide basis or regional basis, a State supplement to be issued annually to comply with the farm planning season outlining acceptable family living expenses. Those applicants who indicate their living expenses are in excess or significantly below this established level must provide justification which will be documented in the running record. The State-wide or regional figures are advisory only. They are not intended to be a basis for a claim of entitlement that FmHA must release the amount established on an annual basis from crop proceeds on which it has a lien.

Foreclosed. The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

Liquidated. The completed act of voluntarily selling security property to end the loan when further assistance will not be given, or involuntarily as the result of a completed civil suit against a borrower to recover collateral or against third parties to recover collateral or its value or recovered amounts owed to FmHA; or claims filed in bankruptcy or similar proceedings or in probate or administrative proceedings to satisfy the loan.

Loan service program. Loan service program means a primary loan service program or a preservation loan service program for farmer program borrowers.

Nonprogram loan (NP). A NP loan results when loan(s) are made to ineligible applicants and/or to transferees in connection with loan assumptions and sale of inventory properties.

Preservation loan service program. Preservation loan service program means:

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(a) Homestead retention as described in Exhibit I of this subpart, and

(b) A leaseback or buyback of farmland as described in Exhibit J of this subpart.

Primary loan service program. Primary loan service program means:

(a) Loan consolidation, rescheduling, or reamortization;

(b) Interest rate reduction, including use of the limited resource program;

(c) Loan restructuring, including deferral, set-aside, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(d) Any combination of actions listed in subparagraphs (d)(1), (2), and (3) of this section.

(1) *Consolidate.* Consolidate means to combine and reschedule the rates and terms of two or more of the same type of OL or EO loans, EE operating-type loans or EM loans.

(2) *Deferral.* Deferral is an approved delay in making regularly scheduled payments.

(3) *Limited Resource Program.* The limited resource program is a reduction of interest rates for both operating loans (OL) and farm ownership (FO).

(4) *Reamortization.* Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for Subtitle A purposes.

(5) *Rescheduled.* Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(6) *Write-down.* For purposes of this part, write-down is reducing a borrower's debt in an amount that will result in a feasible plan of operation. Such write-down will not cause the borrower's debt to be reduced to an amount less than net recovery value of an involuntary liquidation.

§ 1951.907 Notice of Loan Service Programs.

(a) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who requested debt restructure and the release of normal farm income.* Farmer program borrowers who request debt restructure and the release of normal farm income resulting from an FmHA notice of such loan servicing options will be sent Exhibit A with Attachments 1 and 2. Exhibit A with Attachment 1 and 2 will be sent by certified mail, return receipt requested. Exhibit A with Attachments 1 and 2 will be sent to the borrower's attorney if the borrower has filed bankruptcy. Borrowers accelerated between this period who did not request release of normal farm income must also be sent these notices.

(b) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who did not request debt restructure.* Farmer program borrowers who did not request debt restructure within 45 days after receiving an FmHA notice of such servicing options will be provided Attachments 3 and 4, "Notice of Intent to Continue With Acceleration of Your Farmers Home Administration Account and Notice of your Rights," of Exhibit A by certified mail, return receipt requested. Attachments 3A and 4 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy. If the entire payment is not received within 30 days or a voluntary conveyance is not requested, the account will be liquidated in accordance with § 1955.15(e) of Subpart A of Part 1955 of this chapter.

(c) *Notification of Farmer Program borrowers whose FmHA loan accounts were accelerated before November 1, 1985, who have not been foreclosed or liquidated.* Farmer program borrowers whose FmHA loan accounts were accelerated before November 1, 1985, but not foreclosed or liquidated will be provided with Exhibit A and Attachments 1 and 2 of Exhibit A by certified mail, return receipt requested. If these borrowers do not request servicing within 45 days, they will be sent Attachments 3 and 4 of Exhibit A by certified mail, return receipt requested. If the entire payment is not received within 30 days or a voluntary conveyance is not requested, the account will be liquidated in accordance with § 1955.15(e) of Subpart A of Part 1955 of this chapter. Attachments 3A and 4 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy.

(d) *Notification of Borrowers less than 180 days delinquent.* The County Supervisors will contact a delinquent farmer program borrower within 30 days after the borrower's account becomes delinquent and schedule a meeting within 10 days to develop a plan to correct the delinquency. A record of this contract will be placed in the borrower's loan file. If the borrower cannot develop a plan using all of the borrower's financial resources which would eliminate the delinquency within 60 days, the County Supervisor will use the FmHA approved computer program, Debt Loan Restructuring System (DALR$) to consider the primary loan service program authorized by § 1951.910 (a) through (e) of this subpart in accordance with the order of processing established by § 1951.902 (a) and (b) of this subpart. If the borrower requests loan servicing at this time, the County Supervisor should give the borrower Attachment 1 (only) of Exhibit A of this subpart. The County Office case file will be documented to provide a record that the borrower was provided a copy of Attachment 1 of Exhibit A of this subpart.

(e) *Notification of Borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, and in financial distress which exists because a borrower cannot develop a feasible plan by using rescheduling, reamortization, limited resource rates or deferral at maximum terms, will be sent Exhibit A with Attachments 1 and 2, "Notice of the Availability of Loan Service Programs," by *certified mail,* return receipt requested. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA will also be sent this notice unless a prior lienholder or junior lienholder is foreclosing. These cases should be handled in accordance with paragraph (f) of the section. Exhibit A, with Attachments 1 and 2, will be sent to the borrower's attorney if the borrower has filed bankruptcy. In addition to the requirements set forth above, FmHA County Supervisors will provide Exhibit A with Attachments 1 and 2 of this subpart to all Farmer Program borrowers:

(1) At the time an application is made for participation in a FmHA loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section.

(2) On written request of any Farmer Program borrower, whether delinquent or not, and

(3) Before the earliest of:

(i) Initiating any FmHA liquidation action,

(ii) Requesting a voluntary conveyance of security property to FmHA, or requesting that the borrower sell security property,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(f) *Notification of Borrowers in Non-Monetary Default or for delinquent borrowers when a prior or junior lienholder is foreclosing.* Farmer Program borrowers who are in non-monetary default will be sent Attachments 1, 5 and 6 of Exhibit A. If any problems are encountered, OGC

may be contacted for advice. If a case is in the hands of the U.S. Attorney, no loan servicing action will be taken without the U.S. Attorney's concurrence as set forth in § 1962.40 of Subpart A of Part 1962 or § 1965.28 of Subpart A of Part 1965 of this chapter, as appropriate. Attachments 1, 5 and 6 of Exhibit A will be sent by certified mail, return receipt requested. Attachments 1, 5 and 6 of Exhibit A will be sent to the borrower's attorney if the borrower has filed bankruptcy. Any servicing request will be processed as indicated in § 1951.908 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA decision, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter.

(g) *Request for primary or preservation loan service programs.* Farmer Program borrowers who are sent Exhibit A, with Attacbments 1, 2, 5 and 6 must, within 45 days after receiving this exhibit and attachments, request consideration for primary and/or preservation loan service programs by completing Attachment 2 or Attachment 6 and returning it with the completed required forms to the FmHA County Supervisor. FmHA will proceed with liquidation action if the borrower's request (Attachment 2 or Attachment 6) is not received within 45 days or the borrower is sent Attachments 5 and 6 and does not request a meeting within 15 days or a hearing within 30 days.

(1) An application for loan service programs will include the following forms (available in FmHA County Office):

(i) Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

(ii) Form FmHA 410–8, "Applicant Reference Letter."

(iii) Form FmHA 410–9, "Statement Required by the Privacy Act."

(iv) Form FmHA 431–2, "Farm and Home Plan," or any other plan acceptable to FmHA that sets forth a feasible plan of operation.

(v) Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."

(vi) Form(s) FmHA 1910–5, "Request for Verification of Employment."

(vii) Form FmHA 1924–1, "Development Plan," if development is planned. Complete plans, specifications and cost estimates must be attached to Form FmHA 1924–1. When development is required to comply with "Highly Erodible and Wetland" requirements, estimates of costs and the conservation plan developed by SCS will be used to satisfy this requirement.

(viii) Form AD–1026, "Highly Erodible Land and Wetland Certification," and

(ix) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with FmHA for the farm operation(s).

(2) The FmHA County Supervisor will provide the borrower with copies of the above forms and forms manual insert (FMI) with each form when Exhibit A is forwarded to farmer program borrowers. When requested by the borrower, copies of FmHA Instructions will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA Instructions were sent.

(h) *Non-Accelerated Borrowers Who Do Not Respond to the Notice.* Borrowers who were sent Exhibit A and Attachments 1 and 2 (borrowers who were 180 days delinquent but not previously accelerated will be sent Attachments 9 and 10 of Exhibit A). The account will not be accelerated until any appeal has been concluded. If no meeting or appeal is requested, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter.

§ 1951.908 Processing primary loan service program requests.

(a) *FmHA Responsibilities.* Within 60 days after receipt of Attachment 2 and the completed forms attached to Exhibit A, the County Supervisor will consider all or any combination of primary servicing options in this subpart. The order of processing the various options will be as set forth in § 1951.902 of this subpart. The County Supervisor should use the FmHA approved computer program, Debt Loan Restructuring System (DALR$), to assist in finding the loan servicing programs best suited for a borrower's farming operation.

(b) *Adverse determination.* If the County Supervisor or approval official determines that the borrower is not eligible for any of the primary loan service and preservation loan service programs, if applicable, the borrower will be given an opportunity to appeal as provided in Subpart B of Part 1900 of this chapter. However, the meeting and/or hearing will not take place until the County Supervisor or approval official determines the borrower's eligibility for the primary loan service programs of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed.

§ 1951.909 Eligibility.

(a) *Requirements.* The County Supervisor or approval official authorized by § 1951.103(b) of this subpart must find that the borrower who has applied for primary or preservation and loan servicing meets *all* of the following requirements:

(1) The delinquency does exist and is due to circumstances beyond the control of the borrower due to:

(i) Reduction in farm income and/or from a nonfarm job due to unemployment or underemployment of the borrower/operator or spouse caused by circumstances beyond the borrower's control, or

(ii) Reduction in income due to medically-certified illness, injury or death of an individual borrower or stockholder, member or partner, who operates the farm, or

(iii) Reduction in income due to a declared natural disaster, an outbreak of uncontrollable disease, hazardous waste, and/or uncontrollable insect damage which caused severe loss of agricultural production.

(iv) Economic factors that are widespread and not limited to an individual case such as high interest rates or low market prices for agricultural commodities as compared to production costs that reduced repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements and promises made with FmHA in that the borrower:

(i) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and otherwise has complied with the other conditions of the loan documents;

(ii) Applied recommended and generally recognized successful production and financial management practices;

(iii) Properly maintained (similar quantity and quality) and accounted for debt-related security property; and

(iv) Had disposed of all nonessential assets in accordance with agreements made with FmHA, and had applied the proceeds to the FmHA loan account(s) or paid other creditors in accordance with lien priorities or other approved agreements;

(b) *FmHA's determinations.* The County Supervisor must determine that the borrower will be able to:

(1) Meet the necessary family living and farm operating expenses; and

(2) Service all debts, including those of the loans restructured; and

(3) Except for the establishment of a conservation easement under Exhibit H of this subpart, the loan, if restructured,

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must result in a net recovery to the Federal Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

§ 1951.910 Primary loan service programs—additional requirements.

Any farmer program borrower may request primary or preservation loan servicing programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA will approve primary or preservation loan servicing programs.

(a) *Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and reschedule *existing* loans, providing the borrower agrees to such actions. Farmer Program Non-program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling under this subpart. (See § 1965.34 of Subpart A of Part 1965 of this chapter.) When the County Supervisor determines that consolidation or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action after the borrower is 30 days delinquent and before the borrower is 180 days delinquent, provided all of the following conditions exist:

(1) The borrower meets the eligibility requirements in § 1951.909 of this subpart;

(2) Such action is not taken to circumvent FmHA's graduation requirements;

(3) The borrower's account is not being serviced by Office of the General Counsel (OGC) or the U.S. Attorney and there are no FmHA plans to have the account serviced by either of these offices in the near future;

(4) A feasible plan cannot be developed with the existing repayment schedule but can be developed with revised repayment terms. Only a sufficient number of notes will be rescheduled to permit the development of a feasible plan of operation;

(5) The borrower will offer for sale any assets determined to be non-essential to the farming operation. If unable to sell these non-essential assets then such assets must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues, royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(6) The borrower will comply with the highly erodible land and wetland conservation provisions of Exhibit M of Subpart G of Part 1940 of this chapter.

(7) Any loans secured by real estate will not be consolidated or rescheduled, unless the County Supervisor reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor should ask the Office of the General Counsel (OGC) for an opinion as to what lien position the Government will have if a new note is taken.

(8) Only loans of the same type will be consolidated.

(9) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation and rescheduling (the date the new note is signed by the borrower).

(10) EM actual loss and SL loans will *not* be consolidated.

(11) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(12) Loans that have been deferred under this section will not be consolidated or rescheduled during the deferral period.

(13) If loans with a debt set-aside are to be rescheduled, the debt set-aside must be cancelled. If the set-aside portion of the loan is not cancelled, then only the non-set-aside portion will be rescheduled.

(14) Balloon payments for loans will not be used unless there will be adequate real estate, machinery, equipment or foundation livestock available to adequately secure the balloon payment when the balloon payment is due. The determination that adequate security will be available when the balloon payment is due will be documented in the borrower's County Office case file.

(15) *Terms of consolidated and rescheduled loans are as follows:*

(i) Consolidated and rescheduled loans will be repaid according to the borrower's repayment ability, or 15 years from the date of the consolidation and/or rescheduling action whichever is the lesser period of time, except:

(ii) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the note is signed).

(iii) Repayment of EE loans may not exceed 20 years from the date of the original note.

(16) *Interest rates of consolidated and/or rescheduled loans will be as follows:*

(i) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the limited resource OL loan rate.

(ii) *Limited Resource Rate.* At the time of the consolidation and/or rescheduling action, OL loans may be assigned a limited resource rate if: The borrower meets the requirements for the limited resource interest rate, a feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section, and a feasible repayment plan can be developed with the limited resource interest rate.

(b) *Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.* This subsection explains how the FmHA County Supervisor can reamortize existing loans. Farmer program non-program loan debtors are not eligible to receive any program benefits including reamortization (see § 1965.34 of Subpart A of Part 1965 of this chapter). When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) The borrower meets the eligibility requirements of § 1951.909 of this subpart;

(2) Such action is not taken to circumvent FmHA's graduation requirements;

(3) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(4) A feasible plan for the borrower cannot be developed with the existing repayment schedule, but a feasible plan can be developed with revised repayment terms. Only a sufficient number of notes will be reamortized to permit the development of a feasible plan of operation;

(5) The borrower will sell any assets determined by FmHA and the borrower to be non-essential to the farming operation. Such nonessential assets, if unable to be sold, must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence, livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(6) The borrower will comply with the highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(7) Loans that have been deferred in this subpart will not be reamortized during the deferral period.

(8) If loans with debt set-aside provisions are to be reamortized, the debt set-aside will be cancelled. If the set aside portion of the loan(s) is not cancelled, then only the non-set-aside portion will be reamortized.

(9) *Terms of repayment of reamortized loans are as follows:*

(i) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(ii) The FmHA's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued by State Directors to provide instructions on the effect that a change in the final due date has on security instruments and the action necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(iii) The amount of accrued interest more than 90 days overdue and any advances charged to the borrower's account will be added to the principal at the time of the reamortization action (the date the note is signed). If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form FmHA 1940–17 is processed and the next January 1.

(10) *Interest.* (i) The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO loan rate or the original loan note rate; whichever is less.

(ii) At the time of the reamortization, an FO loan may be changed to a limited resource interest rate if: The borrower meets the requirements for a limited resource interest rate, a feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and a feasible plan can be developed with the limited resource interest rate.

(c) *Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans*—(1) *Loan deferrals.* Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization actions, in accordance with this subpart will not provide a feasible plan needed to service the debt, operate the farm and provide family living expenses.

(2) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(i) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that the borrowers will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling or reamortization can be resumed at the end of the deferral period.

(ii) Continuation of loan payments as presently scheduled without change will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations and cooperatives do not have family living expenses), pay normal or farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) The borrower will offer for sale any assets determined to be non-essential to the farming operation. If unable to sell these non-essential assets then such assets must be pledged as security for existing FmHA loans. All other assets will be pledged as security for the FmHA loans that can be pledged subject to a valid lien. A lien will not be taken on subsistence, livestock, household goods, small tools and small equipment such as hand tools, power lawn mowers, and other items of like type not needed for security purposes. Security for restructuring of FmHA loans will include, but not be limited to the following: Land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security will also include assignments of leases or leasehold interest having mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties. In cases involving either a recapture or a shared appreciation agreement, the entire FmHA debt will be further secured by a lien on all real estate property owned by any individual or entity liable for the FmHA debt.

(3) *FmHA's determinations.* The FmHA approval official must:

(i) Determine that the borrower meets the eligibility requirements of § 1951.909 of this subpart;

(ii) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(iii) If a feasible plan cannot be developed after consideration of a

deferral, the County Supervisor will inform the borrower about the reclassified Softwood Timber (ST) loan program authorized by Exhibit G of this subpart and the conservation set-aside easement program authorized by Exhibit H of this subpart. If the borrower requests consideration of a ST loan or conservation easement set-aside, the County Supervisor will help the borrower develop a plan to determine if a feasible operation can be developed utilizing these programs. The discussion will be documented in the borrower's case file.

(iv) If the borrower is not eligible for a deferral, the borrower will be informed of the decision and the calculations shown on the computer printout by the Debt Loan Restructuring System (DALR$) after the County Supervisor has considered the borrower for all the primary loan servicing programs in accordance with § 1951.911(c) of this subpart.

(4) *FmHA loan deferral considerations.* (i) Sufficient amounts must be considered for deferral to permit the borrower to have a feasible plan to pay necessary debts and essential farm operating and family living expenses during a typical year of the deferral period. This may require deferring all FmHA debts for a period of time.

(ii) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments (beyond those needed to allow the borrower to repay necessary debts and essential farm operating expenses and family living expenses) will not be used to create additional cash reserve for capital purchases (such purchases are not considered operating expenses).

(iii) A typical year during the deferral period is a year which most closely represents the borrower's operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral.

(iv) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash flow during the entire deferral period, a deferral should not be granted. In such a case a rescheduling or reamortization with an unequal payment schedule should be considered to provide a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(v) The borrower must submit feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals should be realistic and supported by the borrower's reliable records.

(5) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan servicing actions. If it is necessary to defer additional loans, such action will be taken if the deferral will result in a greater net recovery to the Government than debt write-down. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(6) *Special debt set-aside loans.* If a borrower has requested a deferral for a loan that has a portion of the debt set-aside, the set-aside will be cancelled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who requests a deferral of a set-aside loan must first agree in writing to the cancellation of the set-aside if the deferral is approved.

(7) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be the rate of interest on the original loan(s) or the current rate for loans of the same type as established in FmHA Instruction 440.1 (available in any FmHA office), whichever is lower.

(i) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. Accrued interest more than 90 days overdue and authorized recoverable cost items will be added to the principal as of the date the new note(s) is signed. All FmHA loans must be current on the date the new note is signed. The County Supervisor will determine the amount of interest and principal owed on the date the new note(s) will be signed. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral and will not be changed during the deferral period unless the conditions of § 1951.910(c)(8) of this subpart are met.

(ii) The Finance Office will be notified of the deferral by the County Office by completing Forms FmHA 1965–22 and 1965–23. The FmHA Finance Office will remove the borrower's name from the delinquency report.

(iii) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter. The Finance Office will provide the County Office with a quarterly status report for each borrower who has received a deferral.

(iv) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment on the FmHA debt.

(v) The County Supervisor must notify the Finance Office of any cancellation of a deferral.

(8) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by § 1924.60 of this chapter, the County Supervisor will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440–8, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440–8 within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program and the borrower's account will be liquidated. The borrower will not be notified of any primary loan service programs of this subpart, provided the borrower previously received the Exhibit A and Attachments 1 and 2 of this subpart. This decision is appealable.

(d) *Special debt set-aside provision for a portion of the insured loan indebtedness of former program borrowers (NOT AVAILABLE AFTER SEPTEMBER 30, 1985)*—(1) *Period of time available.* The authorities contained in this section were available to financially stressed FmHA farmer program borrowers (OL, FO, EO, SW, EE, EM, RL (but not association recreation loans) and/or *only* those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985. The County Supervisor will maintain a record of approved special set-aside amounts, in accordance with FmHA Instruction 1905–A, available in any FmHA office.

(2) *Agency Finance Office Actions are as follows:*

(i) The FmHA Finance Office has established the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951–6.

(ii) The Finance Office will provide each County Office with a quarterly status report for each borrower receiving a set-aside.

(iii) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount of the borrower's upcoming installment(s) due date.

(iv) The interest rate on the set-aside portion of the note, after the set-aside period has passed, will be the same rate as on the non-set-aside portion of the note.

(3) *Cancellation of special set-aside agreements may take place under the following circumstances:*

(i) Borrowers who incur debt or purchase items not planned for in the Farm and Home Plan without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements or cease farming will have their set-aside cancelled by the County Supervisor.

(ii) The County Supervisor will send written notice by certified mail, return receipt requested, to the borrower of FmHA's intention to cancel the set-aside. This notification will set forth the specific facts requiring cancellation and inform the borrower of appeal rights in accordance with Subpart B of Part 1900 of this chapter. If the borrower does not appeal or if the FmHA decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation date of the set-aside. The actual cancellation action is not appealable.

(iii) The County Office will be responsible for notifying the Finance Office of the cancellation action using a properly executed Form FmHA 1951–6 prepared according to the FMI.

(4) *Requirements for servicing set-aside loans are as follows:*

(i) Loan notes which are rescheduled and contain set-aside provisions in accordance with this section will not be consolidated during the set-aside period.

(ii) Loan notes which are rescheduled and do not contain set-aside provisions in accordance with this section may be rescheduled or reamortized in accordance with this subpart during the set-aside period. The rescheduling or reamortization action may be at the limited resource rate, if applicable. The set-aside amount will stay in effect, but will not be increased or extended beyond the original five-year term. The County Office will forward to the Finance Office Form FmHA 1951–4 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked in red "Interest Change in Set-Aside."

(5) *Deficiency judgments.* Interest will begin to accrue (at the higher of the current interest rate or the judgment interest rate) on the set-aside portion if FmHA receives a deficiency judgment.

(e) *Write-down of FmHA loans.* Priority consideration will be given to writing down farmer program loans to avoid losses to the Government whenever such write-down will facilitate keeping the farmer on the farm or ranching operation. The following conditions shall be met for writedown of FmHA loans.

(1) No other primary loan service program nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(2) A feasible plan must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(3) The borrower must present a preliminary plan that demonstrates that the borrower will be able to:

(i) Meet the necessary family living and farm operating expenses, and

(ii) Service all existing and foreseeable debts, and

(iii) Comply with the highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter, and

(iv) Borrower must agree to a shared appreciation agreement if the loan(s) is secured by real estate.

(4) The borrower should participate in a meeting with creditors if it is necessary that the borrower's creditors make some debt adjustments that will permit the development of a feasible plan. This meeting may be in a Certified State Agricultural Mediation program or a meeting of creditors arranged by FmHA. Failure by the borrowers to participate in meetings with FmHA and other creditors will be noted in the case file. If the borrower is found ineligible for a write-down in accordance with § 1951.911(c) of this subpart, failure to participate will be listed as a reason for the intended adverse action on Attachment 7 of Exhibit A of this subpart.

(5) *Rates and Terms.* Remaining debt after restructuring will be rescheduled/reamortized, or deferred in accordance with paragraphs (a), (b), and (c) of this section.

§ 1951.911 Processing write-down requests.

(a) *Determining value of net recovery from involuntary liquidation.* Within 60 days of the County Supervisor's receipt of a complete application which requests primary and preservation loan service programs the County Supervisor must make the calculations required in this section.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt. The County Supervisor will determine the current market value of the collateral including tangible and intangible property in existence and of record in accordance with FmHA Instruction 422.1 for real estate property, and on Form FmHA 440–21, "Appraisal of Chattel Property" (available in any FmHA office). Collateral may include real estate, chattels and tangible or intangible property. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible or intangible property may include accounts receivable, Government Payments and PIK Certificates. From the current market value of the collateral, the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral property;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (to be published in Exhibit B of FmHA 440.1 (available in any FmHA office). Interest costs will be calculated on the current market value of the property for a holding period established by each State average holding time for suitable inventory farm property as of July 1 each year;

(iii) Adjust the current market value for increases or decreases in value of the property for the holding period specified in (ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising; and

(v) Other administrative and attorney's expenses.

(2) *Determining cost of involuntary liquidation of collateral for farm loans.* State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. State

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Directors will consult with State Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(b) *Determining net recovery value resulting from Primary servicing actions.* The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills. The National Office will publish the 90-day Treasury bill rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(c) *Notification requirements.* (1) If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral securing the debt, the County Supervisor will forward the borrower's Farm and Home Plan, the original printout of the DALR$ calculations, along with a statement on the printout signed by the County Supervisor certifying that the borrower meets all requirements for debt restructuring with the write-down amount specified on the printout sent to the State Director. The State Director's authorization to the County Supervisor to proceed with the write-down will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor. Within 60 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F, "Notifications of Approval Offer to Debt Restructure." Exhibit F will inform the borrower(s) of FmHA's offer to restructure the debt. If the borrower accepts the offer, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance of FmHA's offer to restructure the debt.

(2) If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all primary loan servicing, softwood timber, or conservation easement programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debts cannot be restructured as requested.

(i) When the borrower has creditors other than FmHA, and a feasible plan of operation cannot be developed after consideration of primary loan servicing, softwood timber and conservation easement programs, the borrower will be sent Exhibit E, "Notification of Request for Mediation or Meeting of Creditors" of this subpart, certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to Exhibit E will inform the borrower that FmHA is requesting mediation or a meeting will be scheduled by FmHA with the borrower's creditors in our effort to obtain a debt adjustment agreement with creditors which will permit the development of a feasible plan of operation.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be informed of appeal rights by sending Attachments 7 and 8 of Exhibit A of this subpart, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to Attachment 7 of Exhibit A. Attachment 7 of Exhibit A will inform the borrower of further rights. As stated in Attachment 7, the borrower will have 45 days after the receipt of the notification of ineligibility to purchase the security property at net recovery value. The purchase must be made with cash. FmHA will not provide credit for this transaction. Prior to the purchase of the security property, the borrower must, as a condition of the sale, enter into a written agreement by executing Exhibit C, "Equity Recapture Agreement," of this subpart. The County Supervisor will then proceed as indicated in § 1951.911(f) of this subpart.

(d) *Administrative appeals.* No foreclosure or other similar actions will be taken to liquidate by FmHA until the following has occurred:

(1) The borrower has been given the opportunity to appeal such decision in accordance with Subpart B of Part 1900 of this chapter;

(2) If the borrower appeals the decision to deny a primary loan service program request, the 45-day period for the borrower to pay FmHA the net recovery value of the collateral will start on the day the borrower receives the final appeal or review decision if the final decision upholds the initial decision. Such decision letter is to be sent by the hearing or review officer, certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office by the hearing or review officer.

(3) If the borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by FmHA in accordance with § 1900.57(l) of Subpart B of Part 1900 of this chapter. The cost of the appraisal must be paid by the borrower. The independent appraisal will be considered by the hearing officer.

(4) If the Administrative appeal process results in a determination that the borrower is eligible for debt write-down, the County Supervisor will write-down the loan in accordance with this subpart, taking into consideration the write-down recommendations, if any, of the appeals officer.

(5) If the administrative appeal process results in a determination that the borrower is ineligible for debt write-down, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under § 1941.14 of Subpart A of Part 1941 of this chapter.

(e) *Processing of write-down agreements.* Borrowers *who are eligible* for primary loan service programs with write-down will have their loans rescheduled or reamortized in accordance with this subpart. Sufficient loan(s) will be rescheduled or reamortized at the lowest authorized interest rate and best terms to permit a feasible plan to be developed. If a loan(s) deferral action is approved, all loans being deferred will be rescheduled, reamortized or consolidated. All loan servicing actions approved in connection with the write-down must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement," (available in any FmHA office). Exhibit D provides for recapture as specified in § 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the write-down. Priority will be given to writing down unsecured note(s) or note(s) having security of the least value and then to the note(s) having the highest interest rate(s).

(1) A separate Form FmHA 1940–17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940–17 will be completed, signed, and distributed as provided in the FMI and Exhibit M of Subpart G of Part 1940 of this chapter.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940–17 and on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(4) A Form FmHA 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the County Office *before* Form FmHA 1940–17 is processed.

(5) The County Supervisor will complete and send to the Finance Office Form FmHA 1965–22, "Information of Assumption on New Terms or Other Change of Terms," Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms," and Exhibit D of this subpart in accordance with the provisions of the forms manual insert.

(6) The original and County Office copies of loan notes or assumption agreements that are reamortized will be marked "REAMORTIZED OR RESCHEDULED WITH WRITEDOWN, *Note(s) Number(s).*" The original new Form FmHA 1940–17 will be attached to the original note or assumption agreement being consolidated, rescheduled or reamortized and filed in the promissory note folder. A copy of each document will be filed in the borrower's case file.

(7) If the borrower *owns* real estate property not securing FmHA loans, a condition of the write-down of debt will be for the borrower to allow FmHA to take the best lien obtainable on all borrower owned real estate to, secure any recapture of the written down debt. All notes outstanding for all FmHA loans just prior to the write-down will be listed on the new real estate security instrument. Such real estate security will be taken whether or not the borrower has equity in the property.

(8) If the write-down of the borrower's real estate debt results in all FmHA debt being written down, FmHA real estate liens will be maintained and will not be subordinated during the recapture period.

(9) If a borrower *does not own* any real estate there will be no recapture and the borrower will not be required to enter into a recapture agreement. However, FmHA chattel liens of record will be maintained, unless the write-down of debt results in all of FmHA debts being written off. If the borrower does not own real estate, and the write-down of debt results in FmHA loans being written off in total, all FmHA chattel liens will be released.

(f) *Processing of the Buy Out when borrower(s) pay the net recovery value of the FmHA security.* Upon payment by the borrower of net recovery value, the original security instrument will be released and a new mortgage or deed of trust will be taken to obtain the best lien obtainable on the real estate which will be subordinate to any purchase money security interest which does not exceed the fair market value of the property to enable the borrower to purchase the property at the net recovery value.

§ 1951.912 Mediation.

(a) *Certified State Mediation Program.* The purpose of the mediation program is to participate with farm borrowers, and with their other creditors where such exist, to reach agreements to keep the farmer in business and provide an opportunity to overcome financial difficulties. Where a State has a certified mediation program:

(1) FmHA will participate in accordance with the terms of that program, except that no decision will be binding on FmHA until approved by the appropriate FmHA official. FmHA will participate in mediation under the same terms and conditions applicable to other similarly-situated creditors within the State. For example, where the State program makes participation voluntary on the part of creditors, FmHA's participation will also be voluntary.

(2) When the review of the plan submitted by an applicant for debt write-down shows the existence of a substantial amount of non-FmHA debt, the County Supervisor will request mediation. Mediation proceedings cannot delay consideration of a borrower for loan servicing programs, except with the consent of the borrower.

(3) Mediation fees, if charged to FmHA, will be paid by completing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and submitting Form FmHA 2024–1, "Miscellaneous Payment System," for payment as a non-recoverable cost in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(4) Failure of creditors to participate in mediation will not preclude the FmHA from using Primary Loan Service programs.

(5) The FmHA State Director will assign FmHA employees within their geographic areas of jurisdiction to represent FmHA in a certified State farm credit mediation process. These authorities can vary from complete authority to act for FmHA to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to employees to represent FmHA in mediations and to make decisions to agree to a proposed mediation agreement.

(6) *Training.* The FmHA State Director will arrange for training in mediation techniques to employees delegated to represent FmHA in mediation. This training shall include communication skills, negotiation skills, and analysis of primary loan service programs.

(b) *Voluntary meeting of creditors.* The purpose of voluntary meeting of creditors is to participate with farm borrowers and their creditors to reach agreements to keep the farmer in business.

(1) In cases described in paragraph (a)(2) of this section in States which there is no certified State mediation program, the County Supervisor will assist the borrower in scheduling a meeting with all of the borrower's creditors, and encourage them to participate with FmHA in developing a restructuring plan for the borrower. Voluntary meetings of creditors cannot delay consideration of a borrower for primary loan servicing programs, except with the consent of the borrower.

(2) State Directors will provide County Supervisors with training to enhance their communication and negotiating skills to provide an effective voluntary adjustment program.

(3) The State Director will appoint a person to conduct this meeting and will attempt to develop a plan with the borrower and his/her creditors that will permit the borrower to remain in business and have the opportunity to overcome the financial difficulty. Upon the borrower's request, the State Director will appoint an FmHA employee not previously involved in servicing the borrower's account.

(4) Failure of creditors to participate in voluntary meeting of creditors will not preclude the FmHA from using debt write-down if it would result in a greater net recovery to FmHA than liquidation.

(5) Agreements reached at the meeting of creditors will be confirmed in writing and put in the borrower's case file. Copies will be provided to all creditors participating.

§ 1951.913 [Reserved]

§ 1951.914 Servicing Approved Primary Loan Service Programs.

(a) *Rescheduling requirements:* (1) Notes which are rescheduled with write-down in accordance with this subpart

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will not be consolidated during the shared appreciation agreement period.

(2) Notes which are rescheduled with write-down in accordance with this subpart may not be rescheduled or reamortized during the shared appreciation agreement period.

(b) *Finance Office actions:* (1) The Finance Office will establish an equity receivable account in the amount shown on Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable" (available in any FmHA office).

(2) The Finance Office will remove the borrower's name from its delinquency report.

(3) Six months prior to the end of the shared appreciation agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(c) *Servicing Shared Appreciation Agreements.* Recapture of any appreciation will take place at the end of the term of the agreement, or sooner if the following occurs:

(1) On the conveyance of the real security property; however, transfer of title to the spouse of a borrower on the death of such borrower, will not be treated by FmHA as a conveyance for the purposes of recapture. Recapture will take place, however, if the surviving spouse sells the subject property or at the end of the recapture agreement, whichever comes first;

(2) On the repayment of the loans;

(3) If the borrower ceases farming operations; or

(4) At the end of the tenth year after debt write-down.

(d) *Procedures for Recapture at the end of Shared Appreciation Agreement:* (1) The County Supervisor will present the borrower with a list of three FmHA approved appraisers. The borrower will select an appraiser to conduct an appraisal of the real estate security. The appraisal cost will be shared equally by FmHA and the borrower. The results of such appraisal will be considered by FmHA in any final determination concerning the shared appreciation agreement.

(2) The borrower will be notified by certified mail "return receipt requested" of the recapture amount due and payable. This notification letter will also include the recapture calculations. The borrower submits the amount due to the FmHA County Office. If the payment is not made by the borrower within 90 days from the date due, the borrower's account will be treated as overdue and FmHA will proceed with collection efforts which may include foreclosure.

(3) The FmHA county office will note all the payments received under the Recapture Agreement on Form FmHA 451–2, "Schedule of Remittance." The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the recapture agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law, if the Administrator determines the application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only upon request of the State Director and on recommendation of the Assistant Administrator, Farmer Programs, or upon request from that Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect that failure to take such action would have on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.917–1951.949 [Reserved]

§ 1951.950 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number _____.

Exhibit A—Notice of the Availability of Loan Service Programs for Delinquent Farm Program Borrowers

UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION

(Insert Borrower's Address)
Dear (Insert Borrower's Name)

This notice is to advise you that your payments on your debt with the Farmers Home Administration (FmHA) are seriously behind schedule.

In an effort to help you through this difficult financial period, the FmHA is required to provide notice of loan service options to borrowers who are at least 180 days late in making payments on their Farmer Program loan(s). This notice is required by the Agricultural Credit Act of 1987.

The attachments with this notice will provide you with the following loan servicing information:

(1) A summary of all primary loan service programs;

(2) A summary of preservation loan service programs;

(3) Copies of relevant forms needed to apply;

(4) Advice on how to get copies of FmHA regulations;

(5) A description of the FmHA appeal process.

The objectives of the primary servicing programs are to selectively change a delinquent Farmer Program borrower's debt so that he/she can continue farming operations, and to minimize FmHA loan losses.

You must notify FmHA within 45 days after the receipt of this notice if you wish to be considered for the primary and preservation programs. FmHA has 60 days to process your request. The 60-day timeframe will start when you complete and return Attachment 2 along with the fully completed forms attached to this notice.

If you do not notify the FmHA within 45 days that you wish to be considered for Primary or Preservation Servicing programs, FmHA will proceed to accelerate your FmHA debt. This acceleration is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(Insert County Office Address)

Sincerely,

County Supervisor

Attachments.

Exhibit A—Attachment 1

Farmers Home Administration

Summary of Primary and Preservotion Loan Service Programs

This Notice describes the primary and preservation loan service programs available to borrowers from FmHA who have "farmer program loans". If you are one of these borrowers, this Notice gives you general information on the "loan servicing programs" available for these loans. "Loan servicing programs" are methods by which FmHA can reduce the burden of repaying farmer program loans. This Notice describes these programs and tells you (1) how to obtain more information on each one of them, (2) how to apply if you want to be considered for one or more of them, and (3) what your appeal rights are if you are considered for loan servicing, are not granted it, and think that mistakes were made in the consideration process.

A COPY OF THE REGULATIONS DESCRIBING EACH ONE OF THESE PROGRAMS, AND THE FMHA APPEAL REGULATIONS, ARE AVAILABLE ON REQUEST AT ANY COUNTY OFFICE.

The primary and preservation loan service programs described in this Notice apply to FmHA "farmer program borrowers," which

means borrowers with the following types of loans: Operating; farm ownership emergency; soil and water economic emergency; economic opportunity; recreation loans; special livestock and rural housing loans made for farm service buildings. These programs do not apply to "non-program loans," which category includes those loans that are made by FmHA at commercial rates to dispose of excess property.

THESE PRIMARY AND PRESERVATION LOAN SERVICE PROGRAMS EACH HAVE SEPARATE LEGAL REQUIREMENTS, SOME OF WHICH ARE COMPLICATED. YOU MAY WANT HELP IN UNDERSTANDING THEM AND IN EVALUATING YOUR SITUATION. You may wish to consult an attorney to get this help. Additionally, in many States there are organizations that give free or low-cost advice to farmers with serious financial problems. Your local USDA Extension Service, or your State Agricultural Agency, should be able to tell you what is available in your area. BECAUSE YOUR FARMERS HOME ADMINISTRATION COUNTY SUPERVISOR MUST REMAIN NEUTRAL, HE OR SHE CANNOT RECOMMEND ANY PARTICULAR ATTORNEY OR SERVICE.

I. Summary of Primary Loan Service Programs

(1) Loan consolidation means to combine two or more of the same type loans. For example, Operating Loans (OL) can only be combined with other Operating Loans, and Farm Ownership (FO) loans can only be combined with other Farm Ownership loans.

(2) Loan rescheduling means to rewrite the rates and/or terms of OL loans. The pay-back period for OL loans can be rescheduled up to a maximum of 15 years.

(3) Loan reamortization means to rewrite the rates and/or terms of FO loans. The pay-back period for the revised loan term cannot exceed 40 years from the date of the original note.

(4) Interest rate reduction means to lower interest rates to the lowest rate permitted by law for a particular loan type. For instance, the lowest rate for an OL limited resource loan is 3 percent below the regular rate. Regular rates are determined by the Government's cost to borrow money, and these rates vary with the financial market in general.

(5) Deferral means to delay, on a temporary basis, payments of principal and interest on loans. FmHA deferrals are for up to 5 years. You must show that you cannot now pay essential family living expenses, maintain essential chattel and real estate and meet scheduled payments on all debts, AND that this problem is temporary. Your Farm and Home plan must show that the payments on the deferred debt can be resumed at the end of the deferral period.

FmHA sets interest rates and terms for deferred loans at the current rate of interest for loans of the same type or the original loan rate, whichever is lower. See FmHA Instruction § 1951.910(c)(7) for more information on this point.

Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling or reamortization options will not provide sufficient cash flow to make payments on the debt, operate the farm and provide family living expenses.

Note.—FmHA's Softwood Timber program is a special deferral program whereby marginal land, including highly erodible land and pasture, can be planted in softwood timber. The amount of debt cannot exceed $1,000 per acre and can be deferred for up to 45 years. Interest charges will accrue and be added to the loan amount during the deferral period. Payment on the deferred debt plus accrued interest charges must be made when the timber is harvested and sold by the borrower.

Conservation Easements permit a financially distressed borrower to convey an easement on highly erodible land, wetland or other wildlife habitat to the Secretary of Agriculture. The Secretary, as payment for the easement, will permanently reduce the borrower's debt. The reduction will be either the value of the easement land or the difference between the amount of the outstanding loan secured by the land and the current appraised value of the land whichever is greater. The farm acreage remaining after conveying of the easement must be of sufficient size to permit a feasible farming operation.

(6) Debt write-down means to reduce the amount of debt owed by a borrower. Debt write-down can be done by FmHA through the use of Conservation Easements or through a reduction of the loan principal and/or the accrued interest on the loan, to a point as low as the net recovery value to FmHA of the collateral. The "collateral" is the property that was pledged or mortgaged to FmHA in order to get the loan.

(7) The writing down of the loan principal and/or interest charges means a debt write-down to a level where all loans plus interest charges can be paid as scheduled and farm operating and family living expenses can be paid. If you are eligible for the FmHA debt write-down program, the debt is written down to the point where the borrower has a feasible plan of operation. A feasible plan means a realistic plan showing that enough income will be generated to meet the scheduled loan payments, to operate the farm and to pay family living expenses. The debt write-down cannot be an amount less than the net recovery value from the sale of the property serving as security for the debt being written down. Net recovery value means the fair market value of the collateral, as determined by a qualified appraiser, less the government's cost of foreclosing on or liquidating the collateral less the value of any prior liens. If you are seriously delinquent (more than six months behind in your payments) on your farmer program loans, you have a right to be considered for this debt write-down. To be considered you must apply as spelled out in section III. The procedures are spelled out in section IV of this notice. While you have a right to be "considered" for this relief, it will be given only to those who genuinely cannot repay their loans as originally made or as modified by other loan servicing programs. You will be expected to use all resources available to you in an effort to repay your loans before debt with write-down will be granted.

II. Preservation Loan Service Programs

These programs apply when the primary loan service programs cannot help you. These programs are available to you if FmHA already owns your property or you are to about to lose your property to FmHA. The preservation loan service programs include:

(1) Dwelling retention, which means to reacquire ownership or to lease the farm house and out-buildings plus a limited amount of surrounding property used to maintain the occupant and his or her family (no more than 10 acres) for a period of three to five years;

(2) Farmland leaseback or buyback arrangements, which mean that you can either lease the farm that FmHA has taken into inventory, or purchase the farm back from FmHA.

III. How To Apply For Primary Loan Servicing Programs

You can apply for the Primary Loan Servicing programs by returning Attachment 2, "Borrower Acknowledgement of Notice of the Availability of Primary and Preservation Loan Service Programs for Delinquent Farmer Program Borrowers," to the FmHA County Supervisor within 45 days after receiving this Notice. You must also return with Attachment 2 the following forms, fully completed. These forms should be attached to this notice, if this Notice was sent to you because your payments are delinquent by 180 or more days. If your copy of this form does not have the forms attached, call or visit your FmHA County Office to obtain the forms:

Form FmHA 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.
Form FmHA 410–8, "Application Reference Letter."
Form FmHA 410–9, "Statement Regarding the Privacy Act."
Form FmHA 431–2, "Farm and Home Plan."
Form(s) FmHA 440–32, "Request for Statement of Debts and Collateral."
Form(s) FmHA 1910–5, "Request for Verification of Employment."
Form FmHA 1924–1, "Development Plan," if necessary.
Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Certification."
Form AD–1026—"Highly Erodible Land and Wetland Conservation Certification"

IV. Eligibility for Primary Loan Servicing

Upon receipt of properly completed application forms by the FmHA County Supervisor, the County Supervisor must determine that:

(1) Your financial difficulty is due to conditions beyond your control, such as:

(a) Natural disaster declared by the President or Secretary;

(b) Illness in the family;

(c) Loss of off-farm income;

(d) Depressed economic conditions in local agriculture.

(e) Financial difficulty is not outside your control if you have sufficient assets to make payments to FmHA, and you are not making payments.

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(2) You have acted in good faith in your dealings with FmHA. This means you are attempting to live up to your agreements with FmHA and are maintaining your property which is collateral for FmHA loans.

(3) You have a feasible plan of operation. If your plan shows that you will be able to repay your loan or loans to FmHA through one or a combination of the methods described in (1) through (5) of Section I, your debt will not be write-down, because these methods are less costly to the Government.

Within 60 days after receiving your request for primary and preservation loan servicing, the County Supervisor will take the information you have provided with your application and calculate the net recovery value of your collateral. This information will be provided to you.

If the FMHA County Supervisor concludes that the Government can collect more money by writing down your debt than can be obtained by foreclosure and that the other loan servicing programs will not be sufficient to allow you to continue farming, you will be offered a write-down which will include a change in payment schedules on the remaining debt which is not written-down. You will receive a copy of the County Supervisor's analysis along with an appointment date to take adjustment action on your debt. As a condition of this relief, the County Supervisor will require you to sign a "shared appreciation agreement." This is an agreement that requires you to repay a portion of the amounts written down, depending on the appreciation of your real estate security property in future years.

If you do not qualify for debt write-down and the FmHA County Supervisor determines that continuation of your farming operation requires debt adjustment actions by other lenders, mediation will be requested where approved State mediation programs are available or through informal negotiation where approved mediation programs are not available.

If the FmHA County Supervisor cannot find a way for you to continue your farming operation, you will be determined to be ineligible for FmHA's primary loan servicing programs. You will be so notified and will be advised to attend a meeting with the County Supervisor and, if you think that the decision is in error, how to appeal the decision.

V. What Happens When You Are Not Eligible For Primary Loan Servicing

You will be advised that you may purchase the property securing the debt to FmHA at the net recovery value of that property. FmHA determines net recovery value by subtracting from the current market value of the property securing the debt, all costs of liquidating, acquiring, and disposing of the collateral for your loan and the value of any prior liens. These liquidation costs include estimated administrative, legal, and other expenses associated with a liquidation process and disposition of the collateral.

Should you decide to purchase the property, you must advise your County Supervisor within 45 days after being advised of the FmHA's decision not to write down your loan or to give you other primary loan servicing. If you appeal this decision, you will have 45 days after any final decision on your appeal to offer to purchase the property. Your purchase of this property must be paid for in cash. Financing will not be provided by FmHA.

VI. What Happens If You Decide Not To Purchase The Property

If you decide not to purchase the property, your collateral must be liquidated. This can be accomplished in three ways:

(1) You can sell or transfer the property for market value and pay that amount to FmHA,

(2) You can convey the property to FmHA, or

(3) You can let the Agency proceed with foreclosure.

If selection and completion of any of the methods set forth above results in less than full payment of your FmHA debt, you may apply for debt settlement. You will also have an opportunity to apply for the "Preservation Loan Service Programs" described later in this Notice concerning your farm property that FmHA takes into inventory.

VII. Eligibility For Preservation Loan Service Programs

(1) *Dwelling Retention.* The following eligibility requirements must be met:

(a) You will be notified within 30 days after FmHA acquires your property. You must apply for occupancy not later than 90 days after the property is acquired by FmHA. Also, you must have received, from farming or ranching operations, gross farm income similar to farms of comparable size and location experiencing the same local agricultural conditions in at least 2 calendar years during the six year period preceding the calendar year when you apply.

(b) Sixty (60) percent of your gross annual income in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the application is made must be from your farming or ranching operations.

(c) You must have continuously occupied the homestead property during the 6 calendar years immediately preceding the calendar year when you apply. This requirement may be waived by FmHA if you have, due to circumstances beyond your control, had to leave the property for a period not exceeding 12 months during the 6-year period. Should you desire to lease the homestead, you must pay FmHA a reasonable sum as rent. Rents charged by FmHA will be comparable to similar residential properties in the area. You are expected to maintain the property in good condition.

You must meet other reasonable and necessary terms and conditions in the lease as required by FmHA.

(d) The homestead property can be leased to you for not less than 3 years or more than 5 years. The homestead property cannot be subleased or assigned by you.

(e) Your failure to make timely rental payments to FmHA will give FmHA the right to evict you. FmHA will allow you a hearing under FmHA's administrative appeal procedure and will comply with all applicable State and local laws governing the termination of your lease before eviction.

Note: At any time during the term of your lease, you have the right to purchase the homestead property at the current market value as established by an independent appraisal. If you want to buy the property during the term after lease, contact the county supervisor. You will need to discuss financing arrangements for the purchase of your homestead with the FmHA County Supervisor.

(2) *Leaseback and/or buyback of farm inventory property.* When FmHA has acquired your property, it may be available to you under our leaseback/buyback program, subject to any conservation measures needed to protect floodplains and wetlands. If you are the previous owner, you will have 190 days, beginning on the date of FmHA acquisition, or during the applicable period under State law (whichever is longer) to purchase or lease the property. If you do not want to lease or buy the property, your spouse or children who are actively engaged in farming will have the same 190 day period to exercise their rights to leaseback/buyback. Members of family-held corporations, partnerships and joint operations have the same rights to leaseback/buyback as a previous owner. It is up to you to notify your family members or stockholders of their leaseback/buyback rights if you do not wish to exercise them yourself.

The first right to acquire the property goes to the previous owner from whom FmHA acquired the real estate property. If you were an operator (and not also the owner) of the property at the time it was acquired by FmHA, and the owner or owner's immediate family does not buy or lease the property, you will be next in line for purchase or lease opportunities. Operators of family-size farms receive the next preference after operators of the property. If the real estate is located within an Indian reservation and you are a member of that tribe, FmHA will within 90 days after the expiration of the period for which the right to purchase or lease real property by the immediate previous owner has expired, make offers in accordance with special priorities which are required by law. You may find out more information on these priorities by contacting the FmHA county office.

For buyback which would be financed by FmHA and leaseback the following eligibility conditions must be met:

(a) You must have sufficient management skills and financial resources to assure a reasonable prospect of success. However, you do not need management skills if you have the resources to obtain financing outside of FmHA.

(b) You must submit a farm plan that reflects evidence of a feasible operation.

(c) You must pay rent or purchase the property at an amount which reflects the current market value of the property.

VIII. How Do You Apply For The Preservation Loan Servicing Programs?

There are several ways to apply for these programs depending on your situation. If FmHA already owns your property you should apply by returning Attachment 2 of this notice within 45 days of when you receive them. If FmHA does not own your property, you should discuss these programs with the FmHA County Supervisor as soon as you decide that you are interested in them. You should ask the County Supervisor to discuss the eligibility requirements with you. FmHA is authorized to enter into an agreement with you so that, prior to FmHA acquiring the property, you may receive either of these two preservation loan servicing programs if you are eligible. Any agreement between you and FmHA may have conditions that need to be met. There may be cases where you will be eligible but may not be able to meet FmHA credit requirements or other conditions.

IX. Appeals

Appeals are a procedure where you can request a hearing of any adverse decision by an impartial hearing officer, plus further review of the hearing officer's decision. The hearing proceedings are recorded, and you can purchase a written transcription if you wish. All exhibits presented at the hearing will become a part of the hearing record.

X. Summary

FmHA debt primary servicing programs will modify delinquent farmer program loans to minimize losses to the Government on such loans and allow the borrowers to continue their farming operations. If you are 180 days delinquent, you may apply for any or all of these programs. When FmHA acquires your property or is about to acquire your property, you may apply for preservation loan servicing programs. You may appeal adverse decisions.

TO TAKE ADVANTAGE OF MOST OF THESE PROGRAMS YOU MUST APPLY DURING THE TIME DESCRIBED IN FmHA'S REGULATIONS WHICH ARE SUMMARIZED IN THIS NOTICE.

A copy of FmHA's regulations are available on request to any FmHA office. You do not have to apply for preservation loan servicing programs now if FmHA has not yet acquired your property. You will be notified again, if FmHA acquires your property, that you can apply for those programs. However, to apply for the primary loan servicing programs, including debt writedown, you must return Attachment 2 within 45 days after you receive this notice.

Exhibit A—Attachment 2

UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION

Borrower Acknowledgement of Notice of the Availability of Primary or Preservation Loan Service Programs

County Supervisor, FmHA

This acknowledges that I (we) have received Notice of Availability of [FmHA Primary and Preservation] Loan Service Programs for Delinquent Farm Program Borrowers dated _____.

[Check one or more of the following blocks:]

☐ (1) I (we) specifically request FmHA to consider me for all primary and preservation loan service programs—including debt deferral and debt writedown. I understand I will be notified of my appeal rights after FmHA makes a decision on my request.

_____

(Date)

_____

(Signature of borrower)

Exhibit A—Attachment 3

Notification of Borrowers Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985, and May 7, 1987, Who Did Not Request Debt Restructuring and the Release of Normal Farm Income; and Borrowers Whose FmHA Loan Accounts Were Accelerated Before November 1, 1985

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Continue with Acceleration of your Farmers Home Administration Account and Notice of your Rights.

- To request to voluntarily convey to FmHA all collateral serving as security for your debt to FmHA and release of liability upon completion of Debt Settlement.
- To request leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- To request to retain your home after it is acquired by FmHA.

Dear:

FmHA proposes to *continue* with the acceleration of your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property, taking by offsets money you are owed by other Federal agencies, and/or in other ways proceeding against property you own in which FmHA has a security interest.

You can avoid foreclosure of your account(s) by voluntarily conveying the property securing your loan(s) to FmHA. FmHA will accept the conveyance *if* it is in the Government's financial interest to do so. You may be released from personal liability on your loan obligations to FmHA if you meet the requirements of FmHA's debt settlement regulations. You *must* request a meeting with the County Office staff within 15 days to discuss voluntary conveyance.

Although you will lose title to your property when a foreclosure or voluntary conveyance occurs, you will be able to apply for the preservation loan service programs. If you are eligible for these programs, you can retain possession of your home or farm. For a complete description of these programs, see Exhibit A, Attachment 1, pages 11–14 which FmHA sent to you on (*insert date*).

If you do not respond to this notice, FmHA will continue with the acceleration of your FmHA debts, with all of the consequences discussed above. The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of ____, 19____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received within 30 days from the date of this letter or you voluntarily convey the property to the Government, the United States will take action to foreclose on real estate and/or chattels, repossess personal property, take by offsets money you owed by other Federal agencies and in other ways proceeding against property you own in which FmHA has a security interest.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the County Supervisor of the Farmers Home Administration at

_____

(street address or P.O. Box)

_____

(city)

_____

(State)

_____

(zip code)

If you submit to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, that payment *WILL NOT CANCEL* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the security instrument(s) will result and the Farmers Home Administration may proceed as though no such payment had been made.

- (Your mortgage or deed of trust provides that the United States may foreclose without Court action by selling the property at public sale after _____. The Government intends to sell the property in this manner.)

If you do not request voluntary conveyance or pay FmHA the amount indicated above, the United States plans to proceed with foreclosure or liquidation.

- (This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.)

Sincerely,

_____

County Supervisor,
Farmers Home Administration.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Exhibit A—Attachment 3A

Notification of Borrowers in Cases Involving Bankruptcy Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985, and May 7, 1987, Who Did Not Request Debt Restructure and The Release of Normal Farm Income

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Continue with Acceleration of your Farmers Home Administration Account and Notice of your Rights.

- To request to voluntarily convey to FmHA all collateral serving as security for your debt to FmHA and release of liability upon completion of Debt Settlement.
- To request leaseback or buyback your farm real estate from FmHA inventory after voluntary conveyance or foreclosure
- To request to retain your home after it is acquired by FmHA.

Dear:

FmHA proposes to *continue* with the acceleration of your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property, taking by offsets money you are owed by other Federal agencies, and/or in other ways proceeding against property you own in which FmHA has a security interest.

You can avoid foreclosure of your account(s) by voluntarily conveying the property securing your loan(s) to FmHA. FmHA will accept the conveyance, *if* it is in the Government's financial interest to do so. You may be released from personal liability on your loan obligations to FmHA if you meet the requirements of FmHA's debt settlement regulations. You *must* request a meeting with the County Office staff within 15 days to discuss such a conveyance.

Although you will lose title to your property when a foreclosure or voluntary conveyance occurs, you will be able to apply for the preservation loan service programs. If you are eligible for these programs, you can retain possession of your home or farm. For a complete description of these programs see Exhibit A, Attachment 1, pages ____-____, which FmHA sent to you on _____.

If you do not respond to this notice, FmHA will continue with the accelaration of your FmHA debts, with all of the consequences discussed above.

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____, 19____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances. The security instrument(s) executed by you in favor of the FmHA is (are) not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. In other words, if FmHA goes ahead with foreclosure or liquidation all property which is security would be sold. If the proceeds from the sale are not sufficient to pay off the debt, FmHA cannot seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged pursuant to 11 U.S.C. 524 but rather it is intended to collect or recover any such debt from the property which is security for the loan(s) made to you.

Unless full payment of the secured debt is received within 30 days from the date of this letter or you voluntarily convey the property to the Government, the United States will take action to foreclose/liquidate under the authority granted in the mortgage or deed of trust.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the County Supervisor of the Farmers Home Administration at

_____

(street address or P.O. Box)

_____

(city)

_____

(State)

_____

(zip code)

If you submit to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, that payment *Will Not Cancel* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the security instrument(s) will result and the Farmers Home Administration may proceed as though no such payment had been made.

- (Your mortgage or deed of trust provides that the United States may foreclose without Court action by selling the property at public sale after_____. The Government intends to sell the property in this manner.)

If you do not request voluntary conveyance or pay FmHA the amount indicated above, the United States plans to proceed with foreclosure or liquidation.

- (This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.)

Sincerely,

_____

County Supervisor,
Farmers Home Administration.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Exhibit A—Attachment 4

Response To Notice of Intent To Continue With Acceleration and Notice of Borrowers Rights

To: County Supervisor
Farmers Home Administration.

From: _____

(Please print your name. Also print your mailing address if it is NOT the same as the address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Continue with Acceleration that I received with this response form. Please consider me for the following:

☐ I would like to have a meeting with the FmHA County Official responsible for my account to discuss voluntary conveyance to FmHA collateral serving as security for my FmHA account and request to be relieved of liability for these accounts. If I want a meeting, I must return this form within 15 days. My current telephone number is _____.

☐ I would like to be considered for the Preservation Loan Servicing options.

_____

(Date)

_____

(Borrower's Signature)

Sincerely,

County Supervisor,
Farmers Home Administration.

Exhibit A—Attachment 5

For Borrowers With Non-Monetary Defaults and When a Prior Lienholder or Junior Lienholder Is Foreclosing

Dear:

As outlined below, there are other problems affecting your borrowing relationship with us. Specifically, our review of your Farmers Home Administration (FmHA) loan accounts indicates that:

☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is

_____

(describe property)

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

Before any of this happens, however, you can take the following steps. If you are experiencing financial stress, you can apply for the loan servicing programs described in an attachment to this notice.

The attachments with this notice will provide you with the following loan servicing information:

(1) A summary of all primary loan service programs;
(2) A summary of preservation loan service programs;
(3) A summary of debt settlement programs;
(4) Copies of relevant forms needed to apply;
(5) Advice on how to get copies of FmHA regulations;
(6) A brief description of the FmHA appeal process.

The objectives of the primary servicing programs are to selectively change a delinquent farmer program borrower's debt so that he/she can continue farming operations, and to minimize FmHA loan losses.

You must notify FmHA within 45 days after the receipt of this notice if you wish to be considered for the primary and preservation programs. This FmHA process will start when you complete and return Attachment 6 along with the fully completed forms attached to the notice.

You also have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you wish, you must, within *15* days from the date of this notice, check the box on the enclosed Attachment 6, "Response to Notice of Intent to Accelerate," and "Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up. If you request loan servicing, your request for a meeting will be postponed until a decision is made on your loan servicing request.

You also have a right to an administrative appeal from the decision to accelerate your loan. If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request loan servicing now, or a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the enclosed Attachment 6, "Response to Notice of Intent to Accelerate," and "Notice of Borrower Rights," and mailing it to your County Office within 30 days of your receipt of this notice.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the application has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,
Farmers Home Administration,
United States Department of Agriculture.

Date: _____

Exhibit A—Attachment 6

Response to Notice of Intent to Accelerate and Notice of Borrower's Rights

To: County Supervisor,
Farmers Home Administration.

From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check appropriate items or boxes)

☐ I would like to have a meeting with the FmHA County Official responsible for my account. If I want a meeting, I must return this form within 15 days. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.

☐ I would like FmHA to consider me for all applicable primary and preservation loan service programs including debt deferral. I must return this form within 45 days.

☐ I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information. I must return this form within 30 days.

_____

(Date)

_____

(Borrower's signature)

Exhibit A—Attachment 7

Notice of Intent to Accelerate and Notice of Your Rights

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Accelerate your Farmers Home Administration Account and Notice of Your Rights

- to have a meeting with your County Official.
- to appeal the decision that a feasible plan cannot be developed.
- to pay FmHA the net recovery value of the collateral securing your debt to FmHA and be released from liability after the recapture period.
- to request voluntary conveyance to FmHA of all collateral serving as security for your debt and consideration for release of liability upon completion of the transaction.
- to apply for leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- to request to retain your home after it is acquired by FmHA.

Dear:

As outlined below, your account with the Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us. Specifically, our review of your FmHA loan accounts indicates that:

☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is (describe property)_____

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

☐ A feasible plan of operation cannot be developed considering all primary loan servicing, softwood timber and conservation easement programs. See attached computer printout which summarizes FmHA's calculations.

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

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Before any of this happens, however, you can take the following steps.

First, you have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you wish, you must, within 15 days from the date of this notice, check the box on the enclosed Attachment 8, "Response to Notice of Intent to Accelerate" and "Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up.

You also have a right to an administrative appeal to the appeals division and the right to appear before the hearing officer. The appeal will allow you to contest the reasons for FmHA's decision, and to request an independent appraisal of any property securing your FmHA loan(s). If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the attached "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," Attachment 8, and mailing it to your County Office within 30 days of your receipt of this notice.

You also have the right to pay FmHA the net recovery value of the collateral serving as security for your FmHA loans, with the balance of your debt being written off, subject to a recapture of the difference between the net recovery value and the current market value should you sell the collateral within 2 years from the date of your payment to FmHA. You have 45 days from the date of this notice to exercise your right to pay FmHA the net recovery value of the collateral. Your payment to FmHA must be in cash, money order, certified check or equivalent. If you appeal the decision of FmHA to deny your primary loan servicing, softwood timber or conservation easement request, the 45-day period to pay the net recovery value of the collateral will start on the date of any final decision letter concluding your appeal rights.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

If an appeal of the FmHA decision to deny your request for loan servicing is upheld, no further FmHA financial assistance/or operating loans will be provided.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

Date: _____

Exhibit A—Attachment 8

Response To Notice of Intent To Accelerate and Notice of Borrowers Rights

To: County Supervisor, Farmers Home Administration.

From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check appropriate item or boxes)

☐ I would like to have a meeting with the FmHA County Official responsible for my account. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.

☐ I would like to purchase my FmHA Farmer Program Loan(s) for cash at the net recovery value of the collateral serving as security for my FmHA account.

☐ I would like to voluntarily convey to FmHA all collateral serving as security for my FmHA account and request to be relieved of liability for these accounts.

☐ I would like to be considered for preservation loan service options.

☐ I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information.

☐ I would like to request an independent appraisal of property securing my loan(s) at my own expense. I understand that the hearing officer from the National Appeals Staff will provide me names of three appraisers.

_____

(Date)

_____

(Borrower's signature)

Exhibit A—Attachment 9

Notice of Intent To Accelerate and Notice of Your Rights

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Subject: Notice of Intent to Accelerate Your Farmers Home Administration Account and Notice of Your Rights for Borrowers Who do not Request Primary Loan Servicing Programs

- To have meeting with your County Official.
- To appeal the FmHA decision.
- To request voluntary conveyance to FmHA of all collateral serving as security for your debt and consideration for release of liability upon completion of the transaction.
- To apply for leaseback or buyback of your farm real estate from FmHA inventory after voluntary conveyance or foreclosure.
- To request to retain your home after it is acquired by FmHA.

Dear:

As outlined below, your account with the Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us. Specifically, our review of your FmHA loan accounts indicates that:

☐ You are presently $_____ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.

☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is (describe property)

_____

☐ You have stopped farming or ranching which is a violation of your loan agreements.

☐ You have

_____

_____

(insert the reason(s) for the proposed adverse action)

Because of the reasons as indicated by the boxes checked above, FmHA proposes to accelerate your loans. This is a very severe action, and the result will be that FmHA will take legal action to collect the money you owe. This action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

Before any of this happens, however, you can take the following steps.

First, you have the right and opportunity to have a meeting with your FmHA County Official before a decision to accelerate is made. If you wish to make use of this opportunity to contest these allegations or the proposed adverse action, or to get any explanations or have any discussions you wish, you must, within 15 days from the date of this notice, check the box on the enclosed Attachment 10, "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," and mail it to your County Office. While you are not obliged to do so, we recommend that you send the form back as soon as you can if you want a meeting, and also call your County Office to set it up.

You also have a right to an administrative appeal to the appeals division and the right to appear before the hearing officer. The appeal will allow you to contest the reasons for FmHA's decision, and to request an independent appraisal of any property securing your FmHA loan(s). If you request a meeting, you will have the same right to appeal after the meeting. That is, you will still have the opportunity to appeal the decision and the Notice before any acceleration takes place. However, if you fail to request a meeting now, then you must request an appeal if you want one. You can request this appeal by checking the appropriate box on the attached "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," Attachment 10 and mailing it to your County Office within 30 days of your receipt of your notice.

If you do not respond to this Notice, FmHA will proceed with accelerating your FmHA debts. Again, this action will include foreclosing on real estate and/or chattels, repossessing personal property or in other ways proceeding against property you own in which FmHA has a security interest, stopping the release of money from the sale of crops and other security, taking by offsets money you are owed by other Federal agencies, and/or suits to collect unpaid loans.

(for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

Date: _____

Exhibit A—Attachment 10

Response To Notice of Intent To Accelerate and Notice of Borrowers Rights

To: County Supervisor, Farmers Home Administration.

From: _____

(Please print your name. Please also print your mailing address if it is NOT the same address on the envelope in which this form was mailed to you.)

I have read and considered the Notice of Intent to Accelerate that I received with this response form. Please consider me for the following:

(check the appropriate item or items)

[ ] I would like to have a meeting with the FmHA County Official responsible for my account. My current telephone number is _____. I understand that I do not lose my appeal rights by requesting this meeting.

[ ] I would like to voluntarily convey to FmHA all collateral serving as security for my FmHA account and request to be relieved of liability for these accounts.

[ ] I would like to apply for preservation loan service options.

[ ] I would like to have an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to schedule my appeal hearing and to give me further information.

[ ] I would like to request an independent appraisal of property securing my loan(s) at my own expense. I understand that the hearing officer from the National Appeals Staff will provide me names of three appraisers.

_____

(Date)

_____

(Borrower's signature)

Exhibit B—Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable

Chief, Loan and Investor Accounting Branch

Reply to Attn of: FC-340

_____

Name of Borrower

_____

Address

_____

In accordance with FmHA Instruction 1951–S, "Farmer Program Account Servicing Policies," we have granted this borrower a noncash credit for his/her farmer program loan(s). In consideration for this noncash credit an equity receivable account will be established in accordance with the attached Equity Recapture Agreement signed by the borrower. Please apply a noncash credit as follows:

Case Number:

ST _____

CTY _____

Borrower ID _____

Effective date of credit: (Date of approval)

Loans involved:

Loan Code

Amount credit per loan

Total noncash credit to be applied:

_____

_____

County Supervisor

_____

Date

Attachment.

Exhibit C—Equity Recapture Agreement

In consideration of the Farmers Home Administration (FmHA) allowing me/us to purchase the real estate property securing my/our FmHA Farmer Program loan obligations at the net recovery value of $_____ in accordance with FmHA Instruction 1951–S, I/we agree to pay the difference between the net recovery value of the security of $_____ and the fair market value of the real estate property of $_____ as of the date of this agreement, if I/we sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $_____. I further agree to give FmHA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FmHA at the net recovery value.

I/We understand that the difference between the net recovery value of the real estate securing the FmHA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I/we sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I/we realize a gain in this transaction. I/We understand that FmHA will release the mortgage or deed of trust authorized above two years from the date of this agreement if I/We do not sell or otherwise convey this property during the two-year period, and cancel the obligation under this agreement.

_____

Date of Agreement

_____

Borrower

Exhibit D—Shared Appreciation Agreement

This Agreement is entered into between (FmHA) and (Borrower's name) (called "Borrower") on (Date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to FmHA for loan(s) as evidenced by the note(s) described below:

Date	Principal amount	Interest rate	Due date

This Agreement is attached to the note(s) described above. As of the date of this Agreement, before write-down, the unpaid principal balance on this note was $_____ and the unpaid interest balance was $_____. These note(s)

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were modified by the following note(s) which are attached to note(s) described above.

Date	Principal amount	Interest rate	Due date

The note(s) described above are secured by the following real estate security instruments:

Grantor	Date of security instrument	Records of — County State	Book or reel	Page

As a condition to, and in consideration of, FmHA writing down the above amounts and restructuring the loan, Borrower agrees to pay FmHA an amount according to one of the following payment schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by FmHA will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into.

(Borrower's signature)

(Farmers Home Administration)

Exhibit E—Notification of Request for Mediation or Meeting of Creditors

To Be Used By FmHA To Inform Borrowers That FmHA Is Requesting Mediation or That FmHA Will Schedule a Meeting of Creditors

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Our calculations indicate that due to your other debts, FmHA will be unable to utilize the primary loan servicing, softwood timber or conservation easement programs to assist you to remain in farming. Attached are the calculations on which our decision is based.

(Use the appropriate following paragraph.)

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your other creditors will adjust your loans sufficiently to permit you to develop a feasible plan of operation.

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation.

Sincerely,

County Supervisor.

Exhibit F—Notification of Offer To Restructure Debt

To Be Used By FmHA To Offer To Restructure The Borrower's Debt

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. If you do not accept this offer, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

Sincerely,

County Supervisor.

Exhibit G—Deferral, Reamortization and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans

I. General

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA borrowers to improve their financial condition, to repay their outstanding FmHA debts in an orderly manner, to carry on a feasible farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) Management assistance

FmHA management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordance with Subpart B of Part 1924 of this chapter.

(B) Definitions.

(1) Distressed FmHA Loan

An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) Marginal Land

Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in § 12.2 of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under § 12.2 of Subpart A of Part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Classes IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in § 12.2(a)(26) of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(3) Softwood Timber

The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(C) ST Loan Eligibility

A borrower must:

(1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

(2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

(3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

(4) Be an FmHA FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

(5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

(6) Have one or more distressed FmHA FP loans as defined by this exhibit.

(7) Not have a total indebtedness of ST loan(s) that will exceed $1,000 per acre for the marginal land at closing. *Example:* if 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed $50,000 at closing.

(8) Be able to obtain sufficient money through FmHA or other sources including cost-sharing programs for forestry purposes for the planting, caring, and harvesting of the softwood timber trees.

II. Reamortization Requirements

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

(1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by Subpart B of Part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA denial, as provided in § 1951.91(c) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this chapter.

(2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest $1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the $1,000 per acre specified in paragraph I(C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

(3) When a loan is reamortized the accrued interest more than 90 days overdue will be capitalized. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII(B) of this section. If income is available, payments will be required as determined in paragraph II(B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX(H) of this exhibit.

(4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA 440-0, "Supplementary Payment Agreement."

(5) Applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be canceled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

(D) If the total amount of the distressed FP loan(s) exceeds $1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed $1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA State supplement allows otherwise. The mortgage must ensure that FmHA has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with Subpart A of Part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

III. Interest Rate For ST Loans

See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate (available in any FmHA office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

IV. Special Requirements

(A) Size of The Timber Tract

The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) Farm or Residence Situated in Different Counties

If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) Graduation of ST Borrowers

If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA request, apply for and accept such financing.

V. Planning

A farm plan will be completed as provided in Subpart B of Part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

VI. Distressed Reamortized Loan Approval or Disapproval

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. "Administrative Notices" containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA Finance Office will be notified by the County Supervisor by completing Forms FmHA 1965-22 and 1965-23 for entry into the field office terminal system.

VII. Reamortizing Disapproval

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in § 1951.911(c) of this subpart after the County Supervisor has determined whether the

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borrower is eligible for the remaining servicing programs authorized by this subpart.

VIII. Processing of ST Loans

(A) If the reclassified ST loan is approved, all other FmHA loans must be current on or before the date the reclassified ST notes are signed except for FmHA-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA 1940–18, "Promissory Note for ST Loans," will be used for ST loans. Form FmHA 1940–17, "Promissory Note," will be used for any remaining portion of a split distressed loan. The forms will be completed, signed and distributed as provided in the Forms Manual Insert.

(D) The County Supervisor will determine the amount of interest more than 90 days overdue that will be added during the deferral period for softwood timber loans. This interest will be repaid in equal payment amounts during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment amounts for the remaining period of the loan. The Forms Manual Insert (FMI) for Form FmHA 1940–17 has examples (IV, V, and X) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with this subpart.

(E) The following addendum will be typed, completed, signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

_____

Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA liens in accordance with paragraph II(E) of this exhibit.

IX. Servicing

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in § 12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with Subpart A of Part 1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. *Any appeal to FmHA must be concluded before any adverse action can be taken on the loan.*

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

(1) The timber is not harvested in the year stated in the initial promissory note, and

(2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

X. State Supplements

State supplements will be issued immediately and updated as necessary to implement this section.

Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Set-Aside Easements)

I. General

A conservation easement will be considered with primary loan servicing actions in accordance with § 1951.906 of this subpart and the requirements of this exhibit. These easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, upland or highly erodible land. Such land must be suitable for the purposes involved and, except in the case of wetland and wildlife habitat as defined in paragraph (a) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. This section only applies to farmer program loans closed prior to December 23, 1985. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) Conservation Purposes

These include protecting or conserving any of the following environmental resources or land uses:

(a) "Wetland," except when such term is part of the term "Converted wetland," is land that Soil Conservation Service (SCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) "Hydric soils" means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) "Hydrophytic vegetation" means a plant growing in—

(A) Water; or

(B) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) "Highly erodible land" is land that SCS has determined has an erodibility index of 8 or more.

(c) "Upland" is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land and/or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of a wetland,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers' land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that SCS determines contains soil(s) that is generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the SCS's Land Capability Classification System.

(d) "Wildlife habitat" is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) Enforcement authority

Any agency of the United States, a State, or a unit of local Government of a State or a person that is designated by FmHA and specified within an easement area to enforce the terms and conditions of that easement.

(3) Management Authority

Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement and/or its management plan. The borrower whose land is subject to the easement may be eligible to be designated as a management authority.

(4) Person

Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(5) Recreational Purposes

These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise(s).

(6) Row Cropped

The term refers to growing agricultural products, including small grains, by the annual tilling of the land (including one trip planters and sugar cane). This farming approach refers to land that was in grasses and/or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural product or to conserve soil and water.

(7) Wildlife

The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(8) Wildlife Purposes

These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation easement. If the borrower is found to be ineligible, the FmHA County supervisor will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the easement after a final decision is made on whether the borrower qualifies for any other servicing options. The County Supervisor must find that:

(1) The borrower owns real estate which secures a farmer program loan which was closed before December 23, 1985;

(2) The borrower is or would be unable to repay the FmHA loan(s) without the easement agreement. This decision will be made by the borrower's submission of a plan of operation acceptable to FmHA for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(3) The establishment of an easement, in terms of the approximate amount of acres that may qualify, and in combination with other servicing options, if applicable, has the potential to allow the borrower to be current in payments, i.e., the easement approach is worth exploring in further detail;

(4) The proposed easement land except in the cases of wetland and wildlife habitat was row cropped each year of the three-year period ending on December 23, 1985; and

(5) If the land being proposed for the easement is within the Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing Easement Review Team

The County Supervisor will establish an easement review team by notifying the appropriate field offices of the Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, National Park Service, Forest Service (FS), State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

IV. Responsibilities of the Easement Review Team

SCS will lead the easement review team which in every case will be composed of an SCS and FmHA representative (and in the case of wetlands, the U.S. FWS), plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder(s) and the borrower will be informed of the site visit time/date and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the county Supervisor. The report will cover the items listed in paragraphs (A) through (F) of this paragraph. The report will be prepared by an organization, selected by FmHA, that has indicated its willingness to be the enforcement authority except in the instance discussed in paragraph (c) below. Whenever review team members have differing positions on any items to be addressed in the report, each team member will prepare a separate report and submit these reports to the organization responsible for the report. These differing views will be noted in the report. When no differences exist within the review team, written summaries of team members' positions need not be submitted to the preparer of the report unless either the preparer requested them or an individual team member desires to submit a report. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, easement boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable easement boundaries or are required for the efficient management of the easement's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation and/or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked. First, priority will be given to land easement opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and

endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land easements already established or under review within the local area and the intent of these easements has been established, the review team will consider these actions as purpose rankings are developed.

(C) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and will indicate this fact.

(D) If appropriate, any special terms or conditions that would need to be placed on the easement plus unique or important features of the property which would not be adequately addressed by the standard easement terms and conditions.

(E) A proposed management plan consistent with the purpose or purposes for which the easement would be established. The management plan will outline the various management alternatives for the proposed easement. The enforcement authority's eventual selection of the alternative(s) to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the easement. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and provide supporting reasons for the recommendation(s) made. Whenever changes are required in the management plan, the enforcement authority, with the concurrence of FmHA, may update the management plan to reflect the changes.

(F) The recommended term length of the easement. See paragraph VI of this exhibit.

V. FmHA's Review of Easement Team's Report

Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land, or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower of the reason(s) that the easement has been denied and that the borrower may appeal the denial of the easement. If the report is favorable to an easement and more than one qualified entity has indicated its desire to be an enforcement authority, the county Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies each want to be the enforcement authority, the County Supervisor will select the Federal agency that owns or controls property adjacent to the easement or the Federal agency whose mission or expertise best matches the priority use purposes(s) for which the easement would be established. In selecting between non-Federal entities, the county Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement during the proposed term of the easement.

VI. Terms of Easements

A conservation easement may be obtained for a period of not less than 50 years. A longer period of time or a perpetual easement shall be established if the easement review team determines that there is justification for extending the conservation easement past the 50-year minimum. Justification will exist if the easement would:

(A) Contribute directly to achievement of benefits to species protected by international treaty (e.g. migratory birds);

(B) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened, endangered and/or candidate species;

(C) Serve as the site for wildlife habitat improvements which may be required to offset the unfavorable impact of a permit, license or project; when improvements need to be longer than 50 years;

(D) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(E) Be desirable that property be removed from production for a long period due to the type of land; or

(F) Serve as a significant historical site, ground water recharge area or other significant eligible easement objective.

VII. Determining the Amount of Farmer Program Debt That Can Be Cancelled

(A) *Calculate the amount of debt to be cancelled as follows:*

(1) *Step 1.* Determine what percent the number of easement acres is of the total acres of land that secures the borrower's farmer program loans by dividing the easement acres that secure the borrower's farmer program loans by the total acres that secure the borrower's farmer program loans.

(2) *Step 2.* Determine the amount of farmer program debt that is secured by the easement acreage by multiplying the borrower's total unpaid farmer program loan balance (principal, interest and recoverable costs already paid by FmHA) by the percentage calculated in Step 1.

(3) *Step 3.* Determine the current value of the land in the easement by multiplying the present market value of the farm that secures the borrower's farmer program loans by the percent calculated in Step 1.

(4) *Step 4.* Select the lesser of the values calculated in Steps 2 and 3.

(5) *Step 5.* Subtract the current value of the easement acres in Step 3 from the farmer program debt that is secured by the easement acres in Step 2.

(6) *Step 6.* Select either the value arrived at in Step 4 or 5, whichever is the greater.

An Example For Determining The Amount That Can Be Cancelled:

Situation	
Total Acres	300
Easement Acres	60
Amount of unpaid farmer program debt secured by farm debt secured by farm.	$450,000
Current value of farm	$300,000
Step 1. 60 easement acres/300 total acres.	= 20 percent.
Step 2. $450,000 debt x 20 percent, Step 1.	= $90,000
Step 3. $300,000 value x 20 percent, Step 1.	= $60,000
Step 4. Select the lower amount of Step 2 or Step 3 Calculations.	= $60,000
Step 5. $90,000 in Step 2— $60,000 in Step 3 Amount FmHA is undersecured on Easement Land.	= $30,000
Step 6. Select the greater of Step 4 or 5.	= $60,000

$60,000 of the debt would be the maximum amount available for the debt cancellation.

(B) *Feasibility of debt cancellation.* The County Supervisor will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VI) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum value as calculated in paragraph (VI) Step 6 of this section. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower of the reason that the easement has been denied and that the borrower may appeal this adverse decision after the County Supervisor has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(C) *Updating the title opinion.* Title examination will be the same procedure as provided for in § 1807.3 (a) and (b) of Part 1807 of this chapter (FmHA Instruction 427.1). A preliminary title opinion will not be required. The final title opinion will cover the period following the recordation of the initial loan mortgage. Title opinion costs will be considered nonrecoverable costs and will be paid by FmHA by completing and submitting a Standard Form 1034 and plus a Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024 (instructions and forms are available in any FmHA office).

(D) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the terms of the easement must be obtained in writing by the borrower. The consent will be filed in the borrower's case file and need not be recorded unless required by State law. No change in the terms can be proposed by the prior or junior lienholders. If it is not possible to obtain the lienholders' consent, the easement will be denied and the borrower so informed. The borrower will have no appeal rights for an FmHA denial on this basis.

(E) *Identifying the boundaries of the easement.* A professional survey of the easement's boundaries will be required. FmHA will provide this service by contracting for the survey in accordance with FmHA Instruction 2024–A, Exhibit J (available in any FmHA office).

(F) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining financial obligation, and the terms and conditions of the easement. The borrower also will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority, and the borrower by signing Form FmHA 1951–39, "Grant of Easement," if the enforcement authority is the U.S. Fish and Wildlife Service, or Form FmHA 1951–39A, "Grant of Easement," if the enforcement authority is other than the U.S. Fish and Wildlife Service, or a similar form approved by the Office of General Counsel (OGC). A similar form may not contain provisions which conflict with this regulation or with the terms of Forms FmHA 1951–39 or 1951–39A. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement review team must be consulted. If an agreement cannot be reached with the borrower on the easement's terms and conditions, the County Supervisor will notify the borrower in writing that the easement is denied and that the borrower may appeal this denial.

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA 1951–47, "Farmer Program Noncash Credit for Purchase of Easement Rights," for entry into the FmHA field office terminal system. The borrower's loans that were closed prior to December 23, 1985, that are secured with the real estate on which the easement is obtained, will be credited with an amount not to exceed the established value of the easement acres. The amount credited will be applied on the FmHA loan(s) in order of priority of lien on the security and then on any other FmHA debts. The loan may be reamortized if needed.

(H) *Recording of the easement.* The County Supervisor will record Form FmHA 1951–39 or Form FmHA 1951–39A (or other acceptable form that has been approved by OGC) to comply with State laws. The County Supervisor then will retain a copy of the easement in the borrower's file and will provide a copy of the easement to the enforcement authority and to the borrower. Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA by completing a Standard Form 1034 and submitting Form FmHA 2024–1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024–P (instructions and forms are available in any FmHA office).

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.28(b) of Subpart A of Part 1965 of this chapter. The borrower will also be responsible for all costs incurred by FmHA in the course of enforcing such terms and conditions. Enforcement expenses may include attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to a condition compatible with conservation, recreational and wildlife purpose(s) for which the easement was established. Should the borrower wish to convey or sell the property subject to the easement during the term of the easement, the borrower must first notify the enforcement authority and the purchaser(s) will also be responsible for the same type of costs should the successor(s) violate the terms and conditions.

IX. Responsibilities of the Enforcement Authority

The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilites and duties:

(A) Upon receipt of an FmHA approved easement, provide FmHA with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(B) Monitor compliance with the easement's terms and conditions.

(C) Ensure that the easement property is safely maintained to the extent required by relevant State law and accept all liabilities associated with implementing and carrying out its management responsibilities under the easement's terms and conditions and management plan.

(D) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority or the management authority, as agreed in that contract. Monitoring Compliance with the terms and conditions of the easement cannot be so delegated or contracted.

(E) For the first five years of the easement's life, report annually to FmHA on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. If circumstances develop which would result in substantial compliance problems or claims, or litigation involving the easement property, then the enforcement authority immediately must notify FmHA by certified letter.

X. Monitoring Compliance

The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in the easement's terms and conditions (Form FmHA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the County Supervisor. In order to provide the requested written authorization, the County Supervisor must determine that the request does not violate the easement's terms and conditions and must receive the written concurrence of the enforcement authority. In reaching this determination, the County Supervisor should consult with the State Director and OGC, as necessary.

Exhibit I—Farmer Program Dwelling Retention

I. General

This exhibit contains the policies and procedures pertaining to the Farmer Program Dwelling Retention Program. Dwelling Retention is a "Preservation Loan Service Program" as set forth in Subpart S of Part 1951 of this chapter. A borrower or former borrower who had or has a Farmer Program loan secured by the real property which contains the dwelling which was used as the borrower's principal residence may apply in writing for Dwelling Retention before or after FmHA acquires the property. Farm real property that is in FmHA inventory as of the effective date of this regulation or is acquired in the future that secured a Farmer Program loan to individuals or entities will be considered for dwelling retention under this Exhibit. If there is a conflict between applicants for Leaseback/Buyback (see Exhibit J to this subpart) and Dwelling Retention, priority will be given to the application for Dwelling Retention. An applicant can apply for both Dwelling Retention and Leaseback/Buyback at the same time. The applicant can obtain the Dwelling Retention property under the Dwelling Retention Program and the balance of the farm under Leaseback/Buyback Programs.

II. Introduction

This Exhibit provides the requirements for participation in the Dwelling Retention Program. It also provides information that is necessary to administer the provisions of the Dwelling Retention Program.

III. Definitions

A. Dwelling Retention

This refers to the right of a Farmer Program borrower to lease with an option to purchase the Dwelling Retention property.

B. Dwelling Retention Property

This refers to a borrower's principal residence which secured a Farmer Program loan. The property will also include not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the dwelling.

C. Farmer Program Loans

This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special

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Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

D. Market Value

The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

IV. Processing Dwelling Retention

A borrower who desires to participate in the program must request Dwelling Retention by notifying the County Supervisor in writing within the time limits set forth in this Exhibit. The borrower will be allowed to retain possession and occupancy of the Dwelling Retention Property while an application for Dwelling Retention is being processed. A borrower who meets the eligibility requirements in Paragraph V of this Exhibit will be permitted to retain possession of FmHA Dwelling Retention Property under a lease with an option to purchase.

A. Determining Dwelling Retention Property

1. When the borrower informs the County Supervisor of his or her intention to participate in the Dwelling Retention Program, the borrower will also inform the County Supervisor of the buildings and property the borrower intends to include in the Dwelling Retention property. The Dwelling Retention property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm outbuildings located on land adjoining the residence which are useful to the occupants of the dwelling.

2. The County Supervisor will review the borrower's proposed Dwelling Retention property and will make a physical inspection of the proposed Dwelling Retention property if necessary. If the County Supervisor does not agree with the proposed Dwelling Retention property, the County Supervisor will provide an alternate proposed Dwelling Retention property.

3. If the borrower does not agree with the County Supervisor's proposed Dwelling Retention property, the borrower may appeal pursuant to Subpart B of Part 1900 of this chapter.

4. When the size and shape of the Dwelling Retention property are determined, the County Supervisor will have a legal description of it prepared. The cost of preparation of the legal description of the Dwelling Retention property will be handled in accordance with Paragraph VIII B of this Exhibit.

B. Processing Dwelling Retention Before FmHA Acquires Title

1. A borrower may apply for Dwelling Retention in writing to the County Supervisor at any time before FmHA takes the Dwelling Retention property into inventory. A borrower who applies for Dwelling Retention before the borrower voluntarily conveys the Dwelling Retention property to FmHA or before FmHA forecloses or otherwise takes action to acquire the property, will be considered for eligibility for Dwelling Retention at the time of application. If the County Supervisor determines the borrower is eligible for Dwelling Retention, the County Supervisor and the borrower will enter into an Agreement (Attachment 2 of this Exhibit) to lease the Dwelling Retention property to the borrower if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property," will be attached to the Agreement as an Exhibit.

2. The agreement will provide that FmHA's obligation to enter into a lease of the Dwelling Retention property is contingent on FmHA acquiring fee title to the Dwelling Retention property.

3. FmHA's obligation to lease the dwelling to the borrower will also be contingent on FmHA's prior compliance with all local laws, ordinances and regulations governing the subdivision of land. The agreement will contain a provision that if FmHA cannot satisfy the foregoing conditions within 2 years from the date of the agreement, the agreement (and FmHA's obligation to lease with option to purchase) will end.

4. Prior to FmHA taking action to acquire the Dwelling Retention Property by foreclosure or otherwise, a borrower will be notified about Dwelling Retention with Attachment 1 of Exhibit A of this subpart, "Farmers Home Administration Notice of Primary and Preservation Loan Service Programs for Delinquent Borrowers."

C. Processing Dwelling Retention After FmHA Acquires Title

When FmHA acquires title to the farm property, the borrower will be sent Attachment 1 of this Exhibit, by certified mail, return receipt requested, within 30 days from the date FmHA acquired the Dwelling Retention Property. The borrower must request Dwelling Retention by notifying the County Supervisor in writing not later than 90 days after FmHA acquires the property.

D. Lease with Option

A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA 1955–20 after FmHA acquires title to the property. Form FmHA 1955–20 will be completed in accordance with the requirements in this Exhibit and the FMI.

V. Eligibility

The County Supervisor will make the determination on eligibility. In order to qualify for Dwelling Retention the borrower must meet the following eligibility requirements:

A. An applicant for Dwelling Retention must be an individual who is or was personally liable for the Farmer Program loan that was secured in part by the Dwelling Retention Property. The applicant must also be or have been the owner of the Dwelling Retention Property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for Dwelling Retention was a member of the entity and was personally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program loan that is or was secured by the Dwelling Retention Property is considered an owner for Dwelling retention purposes.

B. When more than one member of an entity was personally liable for a Farmer Program loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for a Farmer Program loan, may apply separately for Dwelling Retention of their individual dwellings.

C. The applicant and any spouse must have received from the farming or ranching operations gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6 year period preceding the calendar year in which the application is made. For the purpose of this subparagraph and subparagraph D below, income from farming or ranching operations will include rent paid to the borrower by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, was unable to actively farm that property.

D. The applicant and any spouse must have received from the farming or ranching operations at least 50 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calendar years preceding the calendar year in which the application for Dwelling Retention is made.

E. The applicant must have continuously occupied the Dwelling Retention Property during the 6 year period preceding the calendar year in which the application is made, unless the applicant had to leave the property for a period of time not to exceed 12 months during the 6 year period due to circumstances beyond the borrower's control.

F. The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition. The applicant must also agree to all the terms and conditions set forth in this Exhibit and in Form FmHA 1955–20.

VI. Transfer of Dwelling Retention Rights

The applicant's rights to Dwelling Retention and rights under the lease entered into pursuant to this Exhibit are not transferable or assignable by the applicant or by operation of law, except that in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

VII. Appeal Rights

If the County Supervisor determines that the applicant is not eligible for dwelling retention, or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded.

VIII. Property Requirements

A. The proposed Dwelling Retention Property tract must meet all requirements for the division of the Dwelling Retention property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of Subpart G of Part 1940 of this chapter will be complied with.

B. Any survey, legal description and other services needed to create the Dwelling Retention Property as a separate legal lot will be obtained and paid for by FmHA. Such costs will be handled in accordance with paragraph XI C of this Exhibit if the property is in inventory and in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office) if the property is not in inventory.

C. The lease will cover the Dwelling Retention Property.

D. If necessary, FmHA will retain for itself and for the benefit of the adjoining farm property reasonable easement(s) over the Dwelling Retention Property for ingress, egress and utilities between the remaining inventory property and public right-of-way.

IX. First Appraisal

The fair market value of the Dwelling Retention Property shall be determined by an independent appraisal requested by the County Supervisor and made within six months from the date of the borrower's application for Dwelling Retention. The cost of such appraisal will be handled in accordance with paragraph XI C of this Exhibit if the property is in inventory. If the property is not inventory, the cost will be handled in accordance with § 2024.753(c) of FmHA Instruction 2024–P (available in any FmHA office).

X. Terms of the Lease and Exercising the Option

A. All leases will have an option to purchase. Any reference to a lease for Dwelling Retention purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form FmHA 1955–20 and will be for a period of not less than 3 years nor more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

1. The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document a sufficient number of equivalent rents charged in the area for such properties to support the lease amount in the case file.

2. Lease payments will be retained by the Government and remitted in accordance with FmHA Instruction 1951–B.

3. Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling retention property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to Subpart B of Part 1900 of this chapter. FmHA will comply with all applicable State and local laws governing eviction from residential property.

4. Any interference by the lessee with the Government's efforts to lease or sell the remainder of its farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase under this Exhibit. This stipulation will be added to the lease.

B. Exercising the Option to Purchase

1. The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed, written statement notifying FmHA that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

2. When the lessee exercises the option in the lease to purchase the property, the purchase price will be the then current market value of the dwelling retention property as determined by a second appraisal as set forth in paragraph XI of this Exhibit.

3. The Dwelling Retention Property may be sold for cash or credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property as a credit sale from FmHA.

4. If a credit sale is involved, the applicant must furnish necessary financial information to assist the County Supervisor in determining whether or not the applicant has adequate repayment ability. Form FmHA 431–2, "Farm and Home Plan," or Form FmHA 431–3, "Household Financial Statement and Budget," or another acceptable format, as appropriate, to establish repayment ability will be required from the applicant.

XI. Second Appraisal

A. Independent Appraisal

The current market value will be determined by an appraisal made by an independent real estate appraiser selected by the lessee from a list of at least three appraisers approved by the County Supervisor.

B. List of Appraisers

The County Supervisor will develop and maintain, in the County Office operational file, a list of at least 3 qualified independent appraisers.

C. Cost of Appraisal

The cost of the appraisal for the Dwelling Retention inventory property will be charged to the inventory property account for the entire farm as a nonrecoverable cost in accordance with § 2024.753(b) of FmHA Instruction 2024–P (available in any FmHA office).

D. Appeal

Independent appraisals are appealable

XII. Rates and Terms for a Credit Sale

Terms for a credit sale of Dwelling Retention Property when the lessee is exercising the option to purchase and has qualified for a credit sale will not exceed 35 years with equal amortized monthly installments. No down payment will be required. The interest rate for Dwelling Retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

XIII. Closing

A credit sale will be closed in accordance with Subpart C of Part 1955 of this chapter.

XIV. Conflict with State Law

In the event of a conflict between a borrower's Dwelling Retention rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement this Exhibit, with the advice of OGC, and forwarded to the National Office for prior or post approval.

XV. Exception Authority

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator, or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

XVI. State Supplements

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

Attachment 1—Dwelling Retention Program Letter

United States Department of Agriculture, Farmers Home Administration

(Insert Address)

Notice of the Availability of Dwelling Retention

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FmHA acquired the farm which was security for your FmHA loan. FmHA has a program called the Dwelling Retention Program under which you may be allowed to lease (with an option to purchase) the house which was your principal residence, a reasonable number of farm outbuildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Dwelling Retention Program, you must notify this office in writing by [date 90 days from acquisition date].

If you would like more information about the Dwelling Retention Program, you may contact the County Supervisor at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Dwelling Retention Program.

Sincerely,

County Supervisor

Attachment 2—Dwelling Retention Program Agreement

Agreement

This agreement is entered into this _____ day of _____, 19__, by and between the Farmers Home Administration (FmHA) of the United States Department of Agriculture and _____ ("Borrower").

A. Borrower has received a loan or loans from FmHA secured by real property which includes the Borrower's dwelling, adjoining land that is used to maintain the Borrower and the Borrower's family, and one or more outbuildings that are useful to the Borrower and the Borrower's family (the Dwelling Retention property).

B. Borrower's FmHA loan is in default and FmHA has commenced action to foreclose or otherwise acquire all the real property which secures FmHA's loan(s) including the Dwelling Retention property.

C. Borrower wants to continue to occupy the Dwelling Retention property after FmHA acquires title to it.

D. FmHA has already determined that Borrower has satisfied the requirements for its Dwelling Retention Program.

E. FmHA agrees to permit Borrower to retain occupancy of the Dwelling Retention property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA agrees to lease the Dwelling Retention property, as more particularly described in Exhibit A attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Exhibit B (the "lease"). Borrower agrees to enter into the lease of the Dwelling Retention property.

2. FmHA's obligation to enter into the lease of the Dwelling Retention property is subject to the occurrence of the following conditions:

a. FmHA acquires fee title to the Dwelling Retention property in connection with the liquidation of the farm property of which the Dwelling Retention property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Dwelling Retention property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This rental amount will be inserted in the lease prior to signing.

6. Borrower agrees to cooperate with FmHA in applying for and securing whatever local governmental approvals are necessary in order for the Dwelling Retention property to be a separate legal parcel. FmHA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect.

Farmers Home Administration

Borrower:

By:

Exhibit J—Farmer Programs Leaseback/Buyback

I. General

A. Introduction

This Exhibit contains the policies and procedures pertaining to the Farmer Programs Leaseback/Buyback Program. The Farmer Programs Leaseback/Buyback Program will permit the previous owner of real property that was security for a Farmer Programs loan(s) to have the first opportunity to lease or purchase that property from FmHA. The previous owner will be informed of leaseback/buyback rights after the property is taken into inventory. If the previous owner wants to participate in the leaseback/buyback program, it is the previous owner's decision as to whether he or she will lease or purchase the property. If the previous owner is not interested in leasing or purchasing the property, preference for leaseback/buyback will be given to the (1) spouse and/or child(ren) of the previous owner who are actively engaged in farming (if the previous owner was an individual); (2) entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and (3) the immediate previous family-size operator (lessee).

B. Scope

Leaseback/buyback is applicable to property which was security for loans made under Consolidated Farm and Rural Development Act (CONACT) 7 U.S.C. 1921 *et. seq.* It also covers property which secured loans made pursuant to the Agricultural Credit Act of 1978, the Emergency Agricultural Credit Adjustment of 1978, and the Emergency Agricultural Credit Act of 1984. (See definition of Farmer Programs loans.)

The rights afforded individuals under the leaseback/buyback program will only be offered once. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator (lessee) leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the leaseback/buyback program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with Subparts B and C of Part 1955 of this chapter.

Leaseback/buyback is a "Preservation Loan Service Program" as set in Subpart S of Part 1951 of this chapter CONACT property that is acquired on or after January 6, 1988, that secured an FmHA loan will be considered for leaseback/buyback under this Exhibit. CONACT property acquired for prior to January 6, 1988, will also be considered under this section, but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA's Dwelling Retention program (see Exhibit I of this subpart) priority will be given to the application for Dwelling Retention with respect to the lease of the borrower's principal dwelling.

The authorities contained in this Exhibit supplement Subparts A, B and C of Part 1955 of this chapter and provide information that is necessary to administer the leaseback/buyback program. This Exhibit does not apply in the case where the security property is located within an Indian reservation *and* the owner is either the Indian tribe that has jurisdiction over the reservation in which the security is located or the owner is a member of such Indian tribe.

C. Definitions

1. Child

The son or daughter or a previous owner of property that has been acquired by FmHA and who is of legal age to enter into a binding contract.

2. CONACT or CONACT Property

Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this Exhibit, it shall also be construed to cover property which secured other Farmer Programs loans.

3. Entity

A corporation, partnership, or joint operation, or cooperative. The members, or partners of the entity must be entity members.

4. Entity Members

For purposes of leaseback/buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. All family members of an entity must be related by blood or marriage.

5. Farmer Program Loans

This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operation (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

6. Government

The United States of America acting through Farmers Home Administration (FmHA, U.S. Department of Agriculture; used interchangeably herein with "FmHA").

7. Inventory Property

For purposes of leaseback/buyback this refers to real property which secured a Farmer Programs loan to which the Government has acquired title.

8. Owner

An individual or an entity which held the fee title to the security but who may or may not have operated the farm at the time it was taken into inventory. The owner need not have been an FmHA borrower in the sense that the owner was personally obligated on a loan from FmHA, but the owner must have pledged the farm as security for a CONACT loan.

9. Previous Operator

An individual or an entity who leased the farm which secured a CONACT loan and conducted the day to day business at the time the farm was taken into inventory.

10. Security or Security Property

This refers to the real property which secured a CONACT loan. If the security covers property which is subject to Dwelling Retention and if the individual who is eligible for Dwelling Retention is not the same individual who is offered leaseback/buyback rights, the security will not include the Dwelling Retention property if Dwelling Retention rights are exercised.

11. Suitable Property

Real Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter, must be considered in classifying property. If a determination is made by the applicable county committee that FmHA may make a farm ownership (FO) loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland. Leaseback/buyback rights will be offered in accordance with this Exhibit whether or not the property is considered surplus or suitable. For leaseback/buyback suitability is only considered if the credit sale is to be on eligible terms.

RIGHTS OF PREVIOUS OWNER AND NOTIFICATION

II. Processing Leaseback/Buyback Before FmHA Acquires Title

A. Prior to FmHA taking action to acquire the owner's CONACT property by foreclosure or otherwise, an owner will be notified about the leaseback/buyback program by sending Attachment 2 of this Exhibit.

B. An owner may apply for leaseback/buyback at any time before FmHA acquires the owner's property, such application must be in writing. An owner who applies for Dwelling Retention before the owner voluntarily conveys his or her security to FmHA or before FmHA forecloses or otherwise takes action to acquire the security will be considered for eligibility for leaseback/buyback at the time of the Dwelling Retention application.

1. If the owner has requested leaseback and the County Supervisor determines that the owner is eligible for leaseback the County Supervisor and the owner will enter into an Agreement (Attachment 1 to this Exhibit) to lease the security to the owner if and when FmHA acquires title. A copy of Form FmHA 1955–20, "Lease of Real Property" will be attached to the Agreement as an exhibit. The Agreement will provide that FmHA's obligation to enter into a lease of the security is contingent on FmHA acquiring fee title to the security. The agreement will contain a provision that if the lease term does not begin within 2 years from the date of the Agreement, the Agreement (and FmHA's obligation to lease) will end.

2. If the owner has requested buyback of the property as a credit sale, the County Supervisor will determine if it is likely that the owner will have repayment ability and be deemed creditworthy at the time the security is taken into inventory. See paragraph IV B of this Exhibit. If the County Supervisor determines that the owner is not likely to meet the criteria for a credit sale he will notify the owner of this and this decision can be appealed.

If the County Supervisor determines that the owner is eligible for a credit sale when the security is taken into inventory, he will enter into a conditional credit sale with the owner. The following conditions will be inserted in the credit sale agreement:

"FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for credit worthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA acquires title to the security and any other contingencies are satisfied."

3. If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA 1955–49, "Standard Sales Contract—Sale of Real Property by the United States," with the owner subject to the following contingencies which will be inserted in Form 1955–49:

4. Provided that the County Supervisor is notified in writing before FmHA has acquired title to the security, an owner who has elected leaseback can change to buyback and vice versa.

III. Processing Leaseback/Buyback After FmHA Acquires Title

A. Notification

If the previous owner has not entered into an agreement to purchase or lease the security prior to acquisition by FmHA, the County Supervisor will notify the previous owner about leaseback/buyback by use of Attachment 2 of this Exhibit within 30 days after FmHA acquires title to the security. Notification will be sent by certified mail, return receipt requested. The previous owner will be given 180 days from the date of acquisition, or applicable period under the state redemption laws to respond in writing to the County Supervisor if interested in purchasing or leasing the property. The owner must elect either leaseback or buyback by written notice to the County Supervisor prior to the expiration of the 180-day period.

B. Notification of Spouse and Child and Entity Members

The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback the owner's spouse or children, if actively engaged in farming, may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 180 days from the date of acquisition. If the owner was an entity and the owner is not interested in leaseback/buyback the notification letter will inform the owner it will be the responsibility of the owner to inform the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 180 days from the date of acquisition. Entity members must be actively engaged in farming to be eligible for leaseback/buyback.

C. Notification of the Previous Operator

In the event the previous owner is not interested in the leaseback/buyback program, the notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to

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notify the County Supervisor of the name and address of that lessee.

If the previous owner provides FmHA with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee) the operator will be notified of leaseback/buyback by use of Attachment 3 of this Exhibit. This letter will be sent by Certified Mail, return receipt requested. The County Supervisor will send Attachment 3 to the operator (lessee) within 30 days after the 190-day period or applicable period under state redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under state redemption laws if the previous owner, spouse and/or child (if the former owner was an individual), and entity members (if the former owner is an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback to enter into a lease or Standard Sales Contract if he or she wishes to participate in leaseback/buyback.

D. The rights regarding the lease or purchase of property provided by this Exhibit and accorded a person or entity described above may be freely and knowingly waived by such person or entity.

IV. Priority

A. FmHA shall give priority for the leaseback/buyback program in the following order:

Priority 1. The immediate previous owner of the acquired property.

Priority 2. If actively engaged in farming,

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3. The immediate previous family-size farm operator of the security.

B. Within each of the foregoing priorities if there is more than 1 individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (one individual wants to purchase and the other individual wants to rent) priority within the category will be given to an individual who wants to purchase the security, either for cash or by credit sale. There is no preference for a cash sale over a credit sale. If there are 2 or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), priority will be determined by the County Committee. The County Committee will make their selection as to which individual has the greatest need for farm income and who best meets the criteria for eligibility for a Farmer Programs loan.

C. If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected.

V. Leaseback Eligibility

An individual who is notified of the leaseback/buyback program, including the previous owner, who wants to lease the security must first be determined to have sufficient experience, management skills, and financial resources to assure a reasonable prospect of success in the farming operation. The County Supervisor will make this determination. In making this determination the County Supervisor will evaluate the individual's financial and production record (which the individual will make available to the County Supervisor). The County Supervisor will use these records to determine if any failure of an individual's previous operation was caused by factors beyond the individual's control such as natural disasters, inflated farm input costs, high interest rates, and/or prices received that were below reasonable costs of production. If the County Supervisor determines that the individual will be informed that he or she is not eligible for leaseback. The County Supervisor will give the individual the opportunity to appeal that determination in accordance with Subpart B of Part 1900 of this chapter. No lease will be signed with any prospective lessee and the property cannot be sold to an individual in the same or lower leaseback/buyback priority category until the appeal is concluded.

VI. Buyback Eligibility

A. An individual who is notified of the leaseback/buyback program, including the previous owner, will notify the County Supervisor that he or she wants to purchase the security (buyback). At the time of notification, the individual will indicate to the County Supervisor whether it will be a cash or credit sale.

B. *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan", should be used for all required information or another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for a Farmer Programs Farm Ownership loan. Individuals requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability.

VII. Processing Leaseback/Buyback

A. Contingency for Dwelling Retention

If the security which the individual who is selected for leaseback/buyback wants to lease or purchase is subject to Dwelling Retention rights by someone other that the selected individual, FmHA's obligation to enter into the lease or close the sale will be contingent on FmHA's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The Dwelling Retention property must be a separate, legal parcel. The Dwelling Retention property will be excluded from the leaseback/buyback property.

B. Leaseback

1. The County Supervisor can approve the lease of the security under the leaseback/buyback program.

2. The lease form will be Form FmHA 1955–20.

3. The terms of the lease will normally not exceed 1 year but in justifiable cases may be for a period not longer than 3 years.

4. All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value at the time the option is exercised as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." The lease payments will not be applied toward the purchase price.

5. *Rent.* Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with Subpart B of Part 1906 of this chapter.

C. Buyback

1. Credit Sale

The property will be offered on eligible terms (if the purchaser is eligible) and a credit sale processed in accordance with Subpart C of Part 1955 of this chapter or for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

2. Cash Sale

Title clearance and loan closing for cash sales will be handled in accordance with 7 CFR Part 1807 and the terms of Form FmHA 1955–49.

VIII. Miscellaneous

A. *Wetlands, floodplains and/or highly erodible land.* If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA of its presence and location, along with the USDA restrictions regarding its use, as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is "highly erodible land," as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/lessee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the leaseback/buyback program.

B. *State laws and State supplements.* In the event of any conflict between any provisions of the FmHA leaseback/buyback program, as outlined in this Exhibit and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of the Office of the General Counsel as necessary, to comply with the State laws or as necessary, to provide guidance to FmHA officials.

C. Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the leaseback/buyback program, are appealable pursuant to Subpart B of Part 1900 of this chapter.

D. *Other provisions.* For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to Subparts A, B and C of Part 1955 of this chapter.

Attachment 1—Agreement

This Agreement is entered into this _____ day of _____, 19 ____, by and between the Farmers Home Administration ("FmHA") of the United States Department of Agriculture and _____ ("Lessee").

A. Lessee is eligible for the FmHA leaseback program under 7 CFR Part 1951, Subpart S, Exhibit J, for the real property described on the enclosed Attachment 2 (the "leaseback property.").

B. FmHA has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA 1955–20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions:

a. FmHA acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Dwelling Retention rights under 7 C.F.R. Part 1951, Subpart S, Exhibit I, the leaseback property will be reduced by the Dwelling Retention property. FmHA's obligation to lease the remaining leaseback property is contingent on FmHA's determination that all State and local laws, ordinances and regulations concerning the creation of the Dwelling Retention property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA 1955–20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. The property, upon acquisition by FmHA, will be subject to any USDA restriction regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end.

Farmers Home Administration

Lessee

By: _____

County Supervisor

Attachment 2—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor To Advise a Owner/Former Owner Who Held Title to the Property of the Availability of Leaseback/Buyback)

United States Department of Agriculture, Farmers Home Administration

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Date _____

Dear: _____

The farm that you used to own may be available for you to buy or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations, 7 C.F.R. Part 1951, Subpart S, Exhibit J. FmHA acquired this property on _____. If you would like to know more about the leaseback/buyback program please contact the FmHA County Supervisor at _____. In order to be considered for leaseback/buyback, you must enter into a lease or a purchase agreement not later than (180 days from acquisition date).

[If the borrower was an individual] If you are not interested in purchasing or leasing the property and if you have a spouse or child(ren) who are actively engaged in farming, they have a preference to buy or lease the property. It will be your responsibility to notify your spouse and children of their possible rights to lease or buy the property. You should have them contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must enter into a lease or a purchase agreement not later than (insert date 190 days from date of acquisition).

[If the borrower was an entity] If you are not actively engaged in purchasing or leasing the property the shareholders (if the borrower was a corporation owned exclusively by members of the same family), partners (if the borrower was a partnership whose partners are exclusively members of the same family), or members (if the borrower was a joint operation or cooperative whose members are exclusively members of the same family) may have a preference to lease or purchase the farm. In order to qualify for leaseback/buyback the individual must be actively engaged in farming. You must have these people contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must enter into a lease or a purchase agreement not later than (insert date 190 days from the date of acquisition).

Under some circumstances, an operator (lessee) of the property at the time FmHA acquired it may have a preference in leasing and purchasing the property. Please advise us of the name and address of any lessee of the farm who was operating the farm when FmHA acquired it.

[If the property has a dwelling] This property has a dwelling which is subject to the FmHA Dwelling Retention regulations 7 CFR Part 1951, Subpart S, Exhibit I. If you are eligible for Dwelling Retention, you will be notified in a separate letter. If someone else has Dwelling Retention rights, then dwelling retention rights will take priority over leaseback/buyback rights. Failure to respond by (insert date 180 days from date of acquisition) will terminate any rights that you have to purchase or lease the property under the leaseback/buyback regulations.

Sincerely,

_____

County Supervisor.

Attachment 3—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor To Advise Operators of the Availability of Leaseback/Buyback)

United States Department of Agriculture, Farmers Home Administration

(Location)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(Name and Address)

Dates _____

Dear _____:

The farm that was previously owned by _____ (former owner) and operated (leased) by you may be available for you to purchase or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations 7 CFR Part 1951, Subpart S, Exhibit J. If you would like to know more about the

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leaseback/buyback program, please contact the FmHA County Supervisor at _____. In order to be considered for leaseback/buyback, you must enter into a lease or purchase agreement not later than 30 days from the date of this letter. Failure to respond by this date will terminate any rights that you have to purchase or lease the property.

Sincerely,

County Supervisor.

PART 1955—PROPERTY MANAGEMENT

44. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

45. Section 1955.1 is revised to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmer Home Administration (FmHA) loans identified in § 1955.3 (e) and (f) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan other than Business and Industrial (B&I) under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidations of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance. Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

46. Section 1955.3 is amended by redesignating paragraphs (c) through (k) as (d) through (l) and adding a new paragraph (c) to read as follows:

§ 1955.3 Definitions.

* * * * *

(c) *Dwelling Retention.* The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and not more than 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

* * * * *

47. Section 1955.10 is amended by revising the introductory text, paragraph (c)(1)(ii) and paragraph (d)(8) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower that there is equity in the property before accepting an offer to voluntarily convey. If FmHA receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. If the FmHA lien has neither present nor prospective value or if its enforcement would be unlikely or uneconomical, FmHA should refuse the voluntary conveyance. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of Subpart A of Part 1965 of this chapter or § 1965.118(c) of Subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; it is determined the borrower will not be successful; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its cost in return for the acceptance of the voluntary conveyance. Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will not be sent to FP borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter and will not be sent to borrowers whose accounts have been accelerated. For Farmer Program borrowers who have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should only be accepted after the borrower has been advised of the FP servicing options, as outlined above; the servicing options for the FP and the respective non-FP loans have been used or considered, it is determined that the borrower will not be successful in the farming operation; and it is in the Government's best financial interest. For borrowers having both FP and non-FP loans with the non-FP loans secured by a separate non-farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing options for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the non-farm tract.

* * * * *

(c) * * *

(1) * * *

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) * * *

(8) Farmer program loan borrowers who voluntarily convey after receiving Attachments 1, "Farmers Home Administration Summary of Primary and Preservation Loan Service Programs," 3, "Notice of Intent to Continue with Acceleration of Your Farmers Home Administration Account and Notice of Your Rights," 7, "Notice of Intent to Accelerate and Notice Your Rights," and 9, "Notice of Intent to Accelerate and Notice of your Rights," of Exhibit A of Subpart S of Part 1951 of this chapter and return Attachments 2, "Acknowledgement of Notice of Loan Service Programs," 3A, "Notice of Intent to Continue with Acceleration of Your Farmers Home Administration Accounts and Notice of Your Rights," 4, "Response to Notice of Intent to Continue with Acceleration and Notice of Borrower Rights," and 8, "Response to Notice of Intent to Accelerate and Notice of Borrowers Rights," of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

48. Section 1955.15 is amended by revising paragraphs (d)(2)(iv), (d)(3), (d)(4) and (d)(5) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) * * *

(iv) If a borrower has both Farmer Program and SFH loans:

(A) When the borrower's dwelling financed with an SFH loan(s) is secured by the same farm real estate as the Farmer Program loan(s) (*dwelling located on the farm*), the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 7 and 8 of Exhibit A of Subpart S of Part 1951 of this chapter. An appeal hearing and one review will be held for both adverse actions.

(B) When the borrower's SFH loan financed *dwelling is located on a non farm tract*, the SFH loan will not be accelerated simultaneously with sending out Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter if the requirements of § 1965.25(d) or § 1965.28(c)(2) of Subpart A of Part 1965 of this chapter are met.

(3) *Offers by borrowers after acceleration of account.*—(i) *Farmer Programs (FP) accelerations.* This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the servicing official will accept payments in full, payments to bring the account current, and accept payments for less than the unpaid loan balance. The borrower will have 30 days from the date of the acceleration notice to either bring the account current or to make payment in full to stop the acceleration.

(A) Payment in full (see Exhibit D, "Notice of Acceleration—Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy," of this subpart (available in any FmHA office)) may consist of the following means of fully satisfying the debt.

(*1*) Cash.

(*2*) Transfer and assumption.

(*3*) Sale of property.

(*4*) Voluntary conveyance.

(B) When the borrower is sent Exhibit D of this subpart (available in any FmHA office), they will be notified that they may bring the account current which will stop the foreclosure action. They will also be advised that this is a one-time opportunity, and if at a later date the account becomes delinquent again, they will not have another opportunity to correct the default except by satisfying the debt in full.

(C) Payments which do not bring the account current can be accepted subject to the following requirements:

(*1*) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(*2*) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed; a State supplement will be issued in this regard. In States where payments cannot be accepted unless the acceleration is reversed, the payments will be placed in a supervised bank account (SBA), unless State law would require the acceleration to be reversed in which case the payments will be refunded to the borrower. Such payments must remain in the SBA until the liquidation is completed at which time they will be applied to the account.

(*3*) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result and FmHA may proceed as though no such payment had been made. Disposition of such payments will be made after consulting OGC.

(*4*) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). The acceleration notice explains how and when borrowers can pay their accounts in full or cure their default. In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer has been received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations.* After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result and FmHA may proceed as though no such payment had been made. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer has been received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was

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accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue rental payments in accordance with their leases.

(iii) Whenever payments are accepted after acceleration and the acceleration is not reversed, the maximum amount which the Government may bid at the foreclosure sale as set forth in paragraph (d)(5) of this section will be adjusted accordingly.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be forwarded to the Finance Office by the approval official requesting a statement of account including all loans being foreclosed. For SFH loans subject to recapture of subsidy, a request should be placed in the "Remarks" section of Form FmHA 450–10 that the total interest credit granted and principal reduction attributed to subsidy be shown. When an official statement of account is not required for foreclosure proceedings, account balances and recapture information may be obtained through the field office terminal system.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed. In Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this chapter), the borrower must have received Attachment 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

* * * * *

49. Section 1955.18 is amended by adding the introductory text, revising paragraph (h) and adding paragraphs (i) and (j) to read as follows:

§ 1955.18 Actions required after acquisition of property.

The approval official may employ the services of local designated attorneys, on a case by case basis, to process all legal procedures necessary to clear the title to foreclosure properties in inventory. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

* * * * *

(h) *Dwelling retention.* The County Supervisor will notify the borrower-owner of dwelling retention rights by sending Attachment 1 of Exhibit I of Subpart S of Part 1951 of this chapter to the borrower-owner.

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending Attachment 2 of Exhibit J of Subpart S of Part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights by sending Attachment 3 of Exhibit J of Subpart S of Part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The real property must have secured a CONACT loan. In the case of a conflict between dwelling retention and leaseback/buyback as the ownership or lease of the borrower's principal dwelling, the provisions of the dwelling retention program will have priority over leaseback/buyback.

(j) *Priority disposal of inventory property.* When real property which was acquired pursuant to the CONACT becomes available for sale, the County Supervisor will dispose of the property in the priority order set forth in Subpart C of this part. All those borrower-owners, immediate previous owners and immediate previous operators as described in this subpart and Subpart C of this part will be sent Attachment 2 or 3, as appropriate, of Exhibit J of Subpart S of Part 1951 of this chapter, certified mail, return receipt requested.

50. Subpart B is amended by revising §§ 1955.51 through 1955.100 and adding Exhibits A and B to read as follows:

Subpart B—Management of Property

Sec.

1955.51 Purpose.
1955.52 Policy.
1955.53 Definitions.
1955.54 Redelegation of authority.
1955.55 Taking abandoned real or chattel property into custody and related actions.
1955.56 Real property located in Coastal Barrier Resources System (CBRS).
1955.57 through 1955.59 [Reserved]
1955.60 Inventory real property subject to redemption by the borrower.
1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.
1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
1955.63 Suitability determination.
1955.64 Securing, maintaining, and repairing inventory property.
1955.65 Management of inventory and/or custodial real property.
1955.66 Lease of real property.
1955.67 Payment of liens.
1955.68 Payment of taxes.
1955.69 Insurance.
1955.70 Inspection of property.
1955.71 Vandalism or theft.
1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).
1955.73 through 1955.79 [Reserved]
1955.80 Management of inventory chattel property.
1955.81 Exception authority.
1955.82 State supplements.
1955.83 through 1955.99 [Reserved]
1955.100 OMB Control number.

Exhibits to Subpart B

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration.
Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase.

Subpart B—Management of Property

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower;

(b) Management of real and chattel property which is in FmHA's inventory; and

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating).

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

Conact or Conact property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agricultural Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

Contracting officer (CO). CO means an FmHA employee designated to enter into or administer contracts and make related determinations and findings. Only the CO and his/her designated representative are authorized to conduct official business with the contractor in the administration of a contract.

Custodial property. Borrower-owned real property and improvements which serve as security for an FmHA loan, have been abandoned by the borrower, and of which FmHA has taken possession.

Farmer Program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing Loans for farm service buildings (RHF).

Government. The United States of America, acting through the FmHA, U.S. Department of Agriculture.

Indian Reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and, including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Inventory property. Real and chattel property and related rights to which the Government has acquired title.

Loans to individuals. Farmer Program, as defined in paragraph (e) of this section, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both sections 502 and 504 loans.

Loans to organizations. Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations); Business and Industrial (B&I) to both individuals and groups, Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

Nonrecoverable costs. Costs incurred after Government acquisition of title to the property and charged to an inventory account.

Office of the General Counsel (OGC). The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Recoverable costs. Costs charged to a borrower's account paid or incurred prior to Government acquisition of the property.

Servicing official. For loans to individuals as defined in this section, the servicing official is the County Supervisor; for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

Socially disadvantaged individual. An individual that has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Suitable property. Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter must be considered in classifying property. For farm inventory property, suitability is determined by the County Committee. If a determination is made by the applicable County Committee that FmHA will make a FO loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

Unsuitable property. Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA requirements for existing housing as described in § 1944.16 of Subpart A of Part 1944 of this chapter. It may be an otherwise-suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) The State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(b) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(c) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

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§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmer Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the form listed in paragraph (a) of this section and the provisions of § 1965.26 will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter certified mail, return receipt requested, at the address currently used by the Finance Office outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this chapter.

(ii) If the unpaid loan balance plus recoverable costs exceed the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Cost incurred in connection with procurement of such things as management services and obtaining audits of the borrower's accounts will be handled in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody. Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

(d) *Costs and income.* Expenditures will be charged to the borrower's account as recoverable costs. Income from the property will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Payment for advances made by FmHA while the property is owned by the borrower will be made by preparation of SF–1034, "Public Voucher for Purchases and Services Other than Personal," for taxes, assessments, utilities, other similar costs, or for securing the property, maintenance, essential repairs, and management services refer to FmHA Instruction 2024–A for guidance (available in any FmHA office). In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be prepared and distributed according to the Forms Manual Insert (FMI) for payment according to FmHA Instruction 2024–P (available in any FmHA office).

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2), or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§§ 1955.57 through 1955.59 (Reserved)

§ 1955.60 Inventory real property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of Part 1955 of this chapter.

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State laws permit and *OGC has given authorization,* eviction may be effected through State courts rather than Federal courts. In those cases, a State supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA loan account, if any.

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(iii) To the borrower, if whereabouts is known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs. Refer to FmHA Instruction 2024–A (available in any FmHA office) for guidance.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file. For farm property, the County Committee will classify or reclassify real property that is farmland as being suitable for farming operations for disposition as suitable property unless the property, including property subdivided, cannot be used to meet any general farm real estate purposes including being used as a start-up or add-on parcel of farmland. Refer to § 1955.53 of this subpart for guidance.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classifed as suitable or surplus. Farm property will be classified by the applicable County Committee. Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes, and, if not sold within three years after acquisition, it must be declared surplus. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Grouping and subdividing surplus farm properties larger than family-size.* The County Supervisor will subdivide surplus properties whenever possible into parcels for the purpose of creating one or more suitable farm properties based on recommendations from the County Committee. The County Committee will certify on Form FmHA 440–2, "County Committee Certification or Recommendation," that they visited the farm and a narrative of the visit will be placed in the county office case file. In addition, a map of the property showing the new boundaries will also be a part of the case file. The County Supervisor may also group two or more individual surplus properties into one or more suitable farm properties based on recommendations from the County Committee. However, the maximum guaranteed FO loan limit of $300,000 will not be exceeded. The environmental effects will also be considered pursuant to Subpart G of Part 1940 of this chapter. Also refer to § 1955.140 of Subpart C of this part. The State Director, with prior approval of OGC, may issue a State supplement addressing any applicable State laws. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

(c) *Housing property.* Property which secured housing loans will be classified as "suitable" or "unsuitable". Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-suitable dwelling as unsuitable simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made suitable, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as suitable may be reclassified as unsuitable if physical damage occurs which is not economically feasible to repair. Form FmHA 1955–3A must be processed to update a change in the property suitability classification. Where a SFH property is situated on land in excess of a minimum adequate site as defined in § 1944.11 of Supart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-suitable dwelling as unsuitable solely because it is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(d) *Authority for determining suitability.*—(1) *County Committee.* The County Committee will determine suitability of farm property, with the advice of the County Supervisor if the committee is uncertain of the proper classification.

(2) *County Supervisor.* The County Supervisor will determine suitability of SFH property with the advice of the District Director if the County Supervisor is uncertain of the proper classification for the SFH property.

(3) *District Director.* The District Director will assist the County Supervisor in determining suitability of SFH property as provided in paragraph (c) of this section.

(4) *State Director.* The State Director will determine suitability of all types of property other than farm property. With the recommendations of the District Director, the State Director will make determinations on MFH property.

§ 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3(b) (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy.* After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or eligible for listing on the National Historic Register of Historic Places in whole or in part will be repaired as necessary to protect their historic integrity after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except for SFH and MFH properties being sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH.* SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s) landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Unsuitable property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103 of Subpart C of Part 1955 of this chapter will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of Part 1955 of this chapter will apply. To be economically feasible, repairs should increase the expected "as is" sale price by at least the cost of the repairs.

(2) *MFH.* MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in an "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter is subject to the occupancy restrictions set forth in § 1955.116 of Subpart C of Part 1955 of this chapter.

(3) *Farm property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place the farm in marketable condition. Conservation of soil, water and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS), through the development of conservation practices for the farm property. The County Supervisor will request that the SCS identify the location of any highly erodible land and recommend specific conservation practices to control erosion. The County Supervisor will carry out those conservation practices that are essential to preserve and protect the property and to place it in marketable condition. Any differences between FmHA and SCS regarding the need for a certain practice will be resolved in the manner indicated in § 1955.137(c)(2) of Subpart C of this part. Recommendations will also be requested from the U.S. Fish and Wildlife Service regarding fish and wildlife conservation measures. See Exhibit A of FmHA Instruction 2000–LL (available in any FmHA office) for further information.

(4) *Property other than housing and farms.* Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Program authority.* (1) The County Supervisor and District Director have program authority to approve expenditures for securing, maintaining, and repairing inventory properties in an aggregate amount not to exceed $15,000 per property. If expenditures in excess of $15,000 per property are necessary and are economically feasible, the servicing official may request additional program authority from the State Director, outlining the purpose(s) for which the additional monies will be spent.

(2) The State Director or any member of the State Office staff duly designated by the State Director, has unlimited program authority to approve expenditures in connection with inventory property.

(c) *Contracting authority.* All contracts for securing, maintaining, and repairing inventory property will be handled in compliance with FmHA Instruction 2024–A (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A (available in any FmHA office). Costs incurred under this section will be charged to the inventory account as nonrecoverable costs.

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority.*—(1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing inspection of repairs and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to

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that effect in accordance with § 1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2 "Affirmative Fair Housing Marketing Plan," subject to FmHA's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in Exhibit J, paragraph II C, "Procurement Preference Program," of FmHA Instruction 2024–A (available in any FmHA office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA Instruction 2024–A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparor or his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 2024–A (available in any FmHA office).

(4) *Costs.* Costs incurred in management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form FmHA 120–10 or SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property, costs will be charged to the inventory account as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart. the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

§ 1955.66 Lease of real property.

When inventory real property, other than MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart.

(a) *Authority to approve lease of property*—(1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed, and occupied as a principal residence by a prior owner who was personally liable for a Farmer Program loan must first be considered for dwelling retention under Exhibit I of Subpart S of Part 1951 of this chapter and Exhibit J of Subpart S of Part 1951 of this chapter for leaseback/buyback.

(B) The County Supervisor may approve the lease of farm property when a feasible plan of operation can be developed in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(C) When a lease with an option to purchase is signed, the lessee should be told that FmHA cannot make a committment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Government and the purchaser of the property.

(D) The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property.

(E) Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property.

(F) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(G) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. All prospective lessees will be notified in writing of the presence of highly erodible land, converted wetlands and wetlands on inventory property. This notification will enclose a copy of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetland or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of Subpart G of Part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity. Additionally, a copy of Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955–20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property (if property is suitable for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for farm property*—(1) *Farm Plans.* All prospective lessees will be required to submit a farm plan for the upcoming crop year and to submit evidence of their income. The County Supervisor must determine that the prospective lessee has the financial resources and farm management skills and experience that are sufficient to assure a reasonable prospect that the terms of the lease can be fulfilled. The County Supervisor may require verification of income and/or a credit report (to be paid for by the prospective lessee).

(2) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective lessees are reached in the marketing area who traditionally would not be expected to lease FmHA farm inventory properties or apply for farm ownership loan assistance because of existing racial or ethnic prejudice. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1910 of this chapter.

(3) *Rights of previous owner and notification.* For leaseback/buyback rights of former borrower/owners, refer to Exhibit J of Subpart S of Part 1951 of this chapter. Grazing association loans are considered loans to an organization as defined in § 1955.53 of this subpart, and therefore are not subject to the leaseback/buyback and dwelling retention provisions of Exhibits I and J of Subpart S of Part 1951 of this chapter.

(d) *Property securing Farmer Program loans located within an Indian Reservation.* (1) If real property securing a Farmer Program loan is located within an Indian Reservation and the owner or former owner is a member of such Indian tribe, then the tribe or such member-owner will be offered leaseback/buyback rights pursuant to Paragraph II, III A, and IV through VII of Exhibit J to Subpart S of Part 1951 of this chapter. If the former owner is a member of the tribe and does not want to exercise leaseback/buyback rights, the spouse and children of the former member-owner will be offered leaseback/buyback rights pursuant to Paragraph III B of Exhibit J to Subpart S of Part 1951 of this chapter.

(2) If neither the tribe nor the former member-owner nor such member-owner's spouse or children exercise leaseback/buyback rights within the applicable time limits, then the County Supervisor shall, within 90 days after the expiration of the leaseback/buyback rights of the tribe, tribe member-owner, and the spouse and children of the tribe member-owner in paragraph (d)(1) of this section, advise the tribe by letter, similar to Exhibit B of this subpart, of additional leaseback/buyback priority rights as follows (unless the tribe shall have established a different priority order for these additional leaseback/buyback rights):

(i) To an Indian member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

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(iii) To the Indian tribe.

(3) If the real property covered in paragraph (d)(1) of this section is not purchased or leased pursuant to paragraphs (d)(1) or (d)(2) of this section and the Indian tribe having jurisdiction over the reservation is unable to purchase or lease the real property, the State Director shall transfer the property to the Secretary of the Interior. This determination will be made after an evaluation of the tribe's financial information. Adverse decisions will be appealable pursuant to Subpart B of Part 1900 of this chapter. Properties within a reservation formerly owned by non-tribal members will be treated as regular suitable or unsuitable inventory property that is not located on an Indian Reservation and disposed of pursuant to this subpart and Subpart C of this part.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations into the lease in accordance with the FMI for Form FmHA 1955–20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus ½ of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property in flood or mudslide hazard area.* Inventory property located in an area identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(g) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA for Preservation Loan Programs, refer to Exhibit A of Subpart S of Part 1951 of this chapter.

(h) *Lease of farm property with option to purchase.* Except for property that was pledged to secure a loan to an organization, a lessee may be given the option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value, as of the date the option is exercised, of the farm as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422–1, "Appraisal Report-Farm Tract." A lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price. Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with Subpart F of Part 1942 of this chapter. For Preservation Loan Programs, refer to Exhibit A of Subpart S of Part 1951 of this chapter. Denials of applications for or disputes over terms and conditions of a lease are appealable, pursuant to Subpart B of Part 1900 of this chapter.

(i) *Advertising farm property for lease.* Advertisement is not required when an existing lease will be renewed or renegotiated with the present lessee or when the property is being offered pursuant to leaseback/buyback. Otherwise, to assure fair and equitable treatment to all interested parties, public notice will be given of the availability of each inventory property for lease. Public notice means, as a minimum, advertisement in a newspaper or periodical that has a major circulation in the area where the inventory property is located. The public notice shall include as a minimum:

(1) All of the applicable qualifications, terms, conditions, restrictions, and stipulations associated with the lease, and how and when a lessee will be selected;

(2) A description of the property including its location and the presence of any natural hazards such as floodplains, wetlands and special mudslide hazard areas;

(3) The closing date and time for receiving written offers to lease;

(4) The terms of the lease;

(5) A statement that the Government reserves the right to reject all offers to lease;

(6) A statement that the property will be leased without regard to race, color, religion, sex, age, national origin or marital status.

(j) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 2024–A (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(k) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit with advice from the State Office staff if requested. Security deposits will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit will be requested by memorandum to return the deposit to the servicing office for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate. For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944–8, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ____, formerly owned by _____.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(l) *Lease form.* Form FmHA 1955–20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial or inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(m) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State Supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(n) *Termination of lease of inventory property.* When a lease is terminated, or when the property is sold before expiration of the term shown on the lease submitted to the Finance Office, the servicing official will notify the Finance Office, of the termination and the effective date of termination according to the FMI for Form FmHA 1955–20.

(o) Except for property covered by paragraph (d) of this section, once all rights under leaseback/buyback (see Exhibit J of Subpart S of Part 1951 of this chapter) have expired, the property may be leased in accordance with the provisions of this subpart or sold in accordance with the provisions of Subpart C of this part.

§ 1955.67 Payment of liens.

(a) If real estate was acquired subject to a lien, the servicing official may authorize payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost. If it is later determined that continuing to make payments on prior liens is no longer in the best interests of the Government for reasons such as, but not limited to, declining property values or uninsured property losses, the State Director may:

(1) Convey the property to the prior lienholder if the lienholder will agree to accept the conveyance in full satisfaction of the prior lien; or

(2) Discontinue payments to the lienholder, and allow the lien to be foreclosed.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF–1034 and Form FmHA 2024–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A State Supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable property.* When property is classified as suitable for program purposes, the servicing official will prepare SF–1034 and submit Form 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Unsuitable housing property.* When property is classified as unsuitable for program purposes and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area and operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this section. If, however, the prior lienholder's mortgage requires the borrower to carry insurance, FmHA may provide the required insurance, if necessary, to

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prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, whenever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy to the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

§§ 1955.73 through 1955.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office).

(b) *Contracting for service.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120–10 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955–10, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83 through 1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0110.

Exhibits to Subpart B

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration

Note.—This memorandum is available from any FmHA office.

Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase

[To Be Used By FmHA to Notify Tribe of Leaseback/Buyback)

From: County Supervisor
To: (Name of Tribe and address)
Subject: Availability of Farm Property for Lease or Purchase [To be Used After 190-Day Period Has Expired]

Recently Farmers Home Administration (FmHA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. This property is available for purchase or lease with or without an option to purchase. Our regulations provide for three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of the following:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase and/or lease of Government inventory property and be able to carry on a family farming operation. These persons not eligible for FmHA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities, you may restrict eligible Indian corporate entities to those authorized by your Tribe to lease and/or purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to lease and/or purchase the property. If available, Indian Land Acquisition funds may be used on the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FmHA County Office of your selection or intentions within 45 days of receipt of this letter, regarding the lease and/or purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to lease or purchase the property, but is unable to do so at this time, contact with the FmHA County Office should be made.

Sincerely,

County Supervisor.

51. Subpart C (§§ 1955.100 through 1955.150) is revised to read as follows:

Subpart C—Disposal of Inventory Property

Sec.
1955.101 Purpose.
1955.102 Policy.
1955.103 Definitions.
1955.104 Authorities and responsibilities.

Consolidated Farm and Rural Development Act (CONACT) Real Property

1955.105 Real Property affected (CONACT).
1955.106 Disposition of farm property.
1955.107 Sale of suitable property (CONACT).
1955.108 Sale of surplus property (CONACT).
1955.109 Processing and closing (CONACT).

Rural Housing (RH) Real Property

1955.110 Sale of real estate that secured RH loans (housing).
1955.111 Property repair (housing).
1955.112 Method of sale (housing).
1955.113 Price (housing).
1955.114 Sales steps for suitable property (housing).
1955.115 Sales steps for unsuitable property (housing).
1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).
1955.117 Processing credit sales on eligible terms (housing).
1955.118 Processing cash sales or credit sales on ineligible terms (housing).
1955.119 Payment of discount points (housing).
1955.120 [Reserved]

Chattel Property

1955.121 Sale of acquired chattels (chattel).
1955.122 Method sale (chattel).
1955.123 Sale procedures (chattel).
1955.124 Sale with inventory real estate (chattel).
1955.125 through 1955.126 [Reserved]

Use of Contractors To Dispose of Inventory Property

1955.127 Selection and use of contractors to dispose of inventory property.
1955.128 Appraisers.
1955.129 Business brokers.
1955.130 Real estate brokers.
1955.131 Auctioneers.
1955.132 [Reserved]

General

1955.133 Nondiscrimination.
1955.134 Loss, damage, or existing defects in inventory real property.
1955.135 Taxes on inventory real property.
1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).
1955.137 Real property located in special areas or having special characteristics.
1955.138 Property subject to redemption rights.
1955.139 Disposition of real property rights and title to real property.
1955.140 Sale in parcels.
1955.141 Transferring title.
1955.142 Reporting sale.
1955.143 Report on inventory property not sold.
1955.144 Disposal of surplus property to, through, or acquired from other agencies.
1955.145 Land acquisition to effect sale.
1955.146 Advertising.
1955.147 Sealed bid sales.
1955.148 Auction sales.
1955.149 Exception authority.
1955.150 State Supplements.

Subpart C—Disposal of Inventory Property

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property.

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When the property is of a nature that it is suitable to enable an eligible applicant for one of Farmers Home Administration's (FmHA) loan programs to meet the objectives of that program, preference will be given to eligible applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type of loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: A dwelling which secured an Emergency loan may be sold as a Single Family Housing (SFH) unit if suitable for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

§ 1955.103 Definitions.

As used in this subpart, the following definitions apply:

Approval official. The FmHA official having loan and grant approval authority authorized under Subpart A of Part 1901 of this chapter.

Auction sale. A public sale in which property is sold to the highest bidder in open verbal competition.

Closing agent. An attorney or title insurance company designated to close loans according to Part 1807 of this chapter (FmHA Instruction 427.1, available in any FmHA office).

CONACT or CONACT PROPERTY. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agricultural Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

Credit sale. A sale in which financing is provided to an applicant for the purchase of inventory property.

Decent, safe and sanitary housing (DSS). Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements,

(1) Are structurally sound and habitable,

(2) Have a portable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and

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(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter.

Dwelling Retention. The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See Exhibit I of Subpart S of Part 1951 of this chapter.

Eligible terms. Terms prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting the eligibility requirements set forth for the respective programs.

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

Ineligible terms. Credit terms offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is determined unsuitable (housing) or surplus (other than housing) for program purposes. Loans made on ineligible terms are classified as "Non Program Loans (NP)" and are serviced accordingly.

Inventory property. Property for which title is vested in the Government and which secured an FmHA loan or which was acquired from another Agency for program purposes.

Leaseback/buyback. The program which permits certain former owners and certain former operators to repurchase or lease their former farm. See Exhibit J of Subpart S of Part 1951 of this chapter.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Negotiated sale. A sale in which there is a bargaining of price and/or terms.

Organization property. Property for which the following loans were made is considered organization property: Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

Owner. An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

Participating broker. A duly licensed real estate broker who has executed a listing agreement with FmHA.

Previous operator. An individual or member(s) of an entity managing or conducting the day to day business at the time the farm was taken into inventory.

Regular FmHA sale. Sale made by other than sealed bid, auction or negotiation by FmHA employees or real estate brokers.

Safe. No hazard exists on property which would likely endanger the health or safety of occupants or users.

Sealed bid sale. A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

Socially disadvantaged individual. An individual who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Suitable property. Property that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, those general purposes for which FmHA makes real estate loans as set out in § 1943.24 of Subpart A of Part 1943 of this chapter must be considered in classifying property. For farm inventory property, suitability is determined by the County Committee. If a determination is made by the applicable County Committee that FmHA may make a FO loan on the property, it will be classified as suitable. This includes those farm properties that may be used as a start-up or add-on parcel of farmland.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

Unsuitable property. Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program requirements and available resources.

(1) The State Director may redelegate, in writing, any authority delegated to him/her in this subpart, unless it is specifically excluded. These redelegations are authorized to a Program Chief, Program Specialist or Property Management Specialist on the State Office Staff, and to District Directors and County Supervisors.

(2) The District Director may redelegate in writing any authority delegated to him/her in this subpart to an Assistant District Director or District Loan Specialist.

(3) The County Supervisor may redelegate in writing any authority delegated to him/her in this subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified.

(b) *Responsibility.* (1) National Office Program Directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and for insuring compliance with FmHA regulations. For organization property, the State Office is responsible for approval of inventory property sales.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The approval official has the authority to accept or reject bids or offers for inventory property, with the final sale price to coincide with loan approval limitations.

Consolidated Farm and Rural Development Act (CONACT) Real Property

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106 through 1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Leaseback/buyback and Dwelling Retention, as set forth in Exhibits I and J of Subpart S of Part 1951 of this chapter, are only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) *Controlled substance conviction.* In accordance with the food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its member, if an entity, have not been convicted of such crime after December 23, 1985.

(c) *Effects of farm property sales on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (a)(3) and (a)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the lease, conservation practices specified by the SCS and approved by the FmHA as a condition for sale. Refer to § 1955.137(d) of this subpart for implementation requirements.

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before any farm property which secured a Farmer Program loan is sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Exhibit J of Subpart S of Part 1951 of this chapter) and the Dwelling Retention program (see Exhibit I of Subpart S of Part 1951 of this chapter). If the farm property which secured a Farmer Programs loan is located within an Indian Reservation and the former owner is the tribe that has jurisdiction over the reservation or a member of such tribe, their leaseback/buyback rights will be given pursuant to § 1955.66 of Subpart B of this part.

(b) *Racial and ethnic considerations.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective purchasers are reached in the marketing area who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial or ethnic prejudice or cultural bias. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1943 of this chapter.

(c) *Non Program (NP) borrowers.* Non Program (NP) borrowers are not eligible for leaseback/buyback or Dwelling Retention provisions as set forth in Exhibits I and J of Subpart S of Part 1951 of this chapter.

§ 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955.109 of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program. Real property will be managed in accordance with the provisions of Subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.107 of this subpart.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale," will be posted in a prominent place in the County Office. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or

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other recognized Indian governing bodies having jurisdiction over Indian Reservations as defined in § 1955.55 of Subpart A of this part shall be responsible for notifying those parties listed in § 1955.66(d)(2) of Subpart B of this part.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale. The price will be the market value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(d) *Credit sale procedure.* A credit sale to eligible applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales.

(2) The County Committee will certify to the applicant's eligibility on Form FmHA 440–2 in accordance with program eligibility requirements when required by the FmHA regulation that applies to the appropriate loan program.

(3) Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(4) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(5) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(i) Form FmHA 1955–49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of General Counsel (OGC) will be used.

(ii) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(6) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," according to the FMI.

(7) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(e) *Selection of purchaser*—(1) *Nonfarm property.* Except for farm property, when more than one acceptable offer is received during business hours on the same day, the order in which they will be considered by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.

(2) *Farm property.* Suitable farmland may only be sold to operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family-sized farms, as determined by the County Committee. In selling such land, priority must be given to persons eligible for FP loans, including individuals approved for, but who, as of January 6, 1988, have not received such loans. If two or more eligible operators of not larger than family-sized farms, as of the time immediately after the contract of sale or lease is entered into, wish to purchase a suitable farm, the County Committee will make the selection. The reasons explaining the County Committee's selection of the applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority and make a selection based on the following:

(i) Those eligible individuals that have pending applications filed but have not received the loan assistance.

(ii) Those eligible individuals that have the greatest need for farm income.

(iii) Those eligible individuals that in the opinion of the County Committee, best meet the criteria for eligibility, including the best chance for success based upon an evaluation of the operators' past farm records and proposed farm plan. Some of the factors the County Committee will consider include but are not limited to:

(A) *Liquidity.* Consider working capital, cash flow, the ratios of current assets to current liabilities and current liabilities to total liabilities.

(B) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(C) *Profitability.* Consider the net farm income and the ratio of net farm income to net worth.

(D) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

§ 1955.108 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under Exhibits I and J of Subpart S of Part 1951 of this chapter concerning Dwelling Retention or leaseback/buyback, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Property which has been classified as suitable will be held in inventory for 3 years. After 3 years, the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands and wetlands on inventory property.

(a) *Rates and terms.* Rates and terms for a Dwelling Retention and leaseback/buyback will be in accordance with Exhibits I and J of Subpart S of Part 1951 of this chapter. Surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for Dwelling Retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for all other surplus property will be the current Farmer Programs ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offering has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction after it has been in inventory for 3 years. The State Director will determine the method of sale, the minimum acceptable sales price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

*(Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Equally acceptable sealed bid offers will be decided by lot, except for the sale of farm property, when an acceptable sealed bid from an operator of not larger than family-size farms wish to purchase a farm property, the County Committee will select the operator. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority and make a selection based on the following:

(1) Those eligible individuals that have pending applications filed but have not received the loan assistance.

(2) Those eligible individuals that have the greatest need for farm income.

(3) Those eligible individuals that, in the opinion of the County Committee, best meet the criteria for eligibility, including the best chance for success based upon an evaluation of the operators' past farm records and proposed farm plan. Some of the factors the County Committee will consider include, but are not limited to:

(i) *Liquidity.* Consider working capital, cash flow, the ratios of current assets to current liabilities and current liabilities to total liabilities.

(ii) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(iii) *Profitability.* Consider the net farm income and the ratio of net farm income to net worth.

(iv) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

(c) *Negotiated sale.* If no acceptable bid is received either from a sealed bid sale or at a public auction, the State Director may sell surplus property or suitable property which has been in inventory for 3 years at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval official may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," will be used to obtain other purchases and services. In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(d) *Sale through real estate brokers.* The State Director may authorize the use of real estate brokers to sell surplus CONACT real property at the market value in accordance with § 1955.130 of this subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness, Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application (including financial information required for the respective loan program.

(b) *Credit sale approval authority for Farm Programs.* County Supervisors, District Directors and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter.

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available in any FmHA office. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales or ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(c) *Form of payment.* Payments at closing will be made in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(d) *Farm real property.* Upon acceptance by the approval official, the County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(e) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955–45 or FmHA 1955–46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(f) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's down payment.

(g) *Closing and reporting sales.* Title clearance, loan closing, and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the Forms Manual Insert (FMI).

(h) *Classification.* Credit sales on ineligible terms will be classified as NP loans and serviced accordingly.

(i) *State Supplements.* A State Supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

Rural Housing (RH) Real Property

§ 1955.110 Sale of real estate that secured RH loans (housing).

Sections 1955.111 through 1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.111 Property repair (housing).

(a) *Suitable property.* Suitable property will be secured, maintained, and repaired in accordance with § 1955.64 of Subpart B of Part 1955 of this chapter.

(b) *Unsuitable property.* Sufficient maintenance to retain or enhance the visual appeal of the property will be performed provided it is economically justified. When economically feasible, repairs will be made prior to offering the property for sale unless a prospective purchaser has indicated an interest in buying the property "as is" or the County Supervisor or District Director documents that the property would likely be vandalized prior to sale. If the property is not repaired to meet PSS standards, the advertising requirements and deed restriction provisions outlined in § 1955.116 of this subpart apply; and it will immediately be offered for sale "as is." If the property is not sold within 120 days, or if the State Director determines a regular sale is not feasible, the structure may be offered for sale by sealed bid or auction or as chattel, to be removed from the site, in accordance with § 1955.122 of this subpart. If no offer is received the structure(s) may be removed by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office) and the site offered for sale.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method of sale is used. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator for Housing.

(b) *Real Estate brokers.* The services of real estate brokers for regular sales will be used as provided for in § 1955.130 of this subpart in any County Office with 5 or more SFH properties in inventory at any one time during the calendar year. The use of real estate brokers by County Offices having less than 5 SFH properties in inventory at any one time during the calendar year is optional by the State Director if staffing and workload permit sales directly by FmHA. When broker services for SFH are used, the FmHA office will not conduct direct sales for the listed property but will refer inquiries to the broker or list of participating brokers unless an acceptable written offer has been received on a property prior to the time it has been determined available for sale and listed with brokers. Brokers may only be used for MFH with authorization of the Assistant Administrator for Housing.

(c) *Sealed bid or auction.* If the State Director determines that *unsuitable* SFH properties have been given adequate market exposure and that diligent sales efforts, including use of real estate brokers, have not produced buyers, he/she may authorize sale by sealed bid or public auction. *Suitable* SFH property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorized the use of the sealed bid or auction method. These authorities may not be redelegated. Indiscriminate use of these methods of sale could adversely affect other properties located in a subdivision. Therefore, the decision to use sealed bid or auction sale methods to dispose of SFH units located in a subdivision must address the number of dwellings to be sold by these methods, the suitability of the entire subdivision for further FmHA financing, and the effect of such sales on the surrounding borrowers. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

§ 1955.113 Price (housing).

Real property will be offered or listed for its market value, as adjusted by any administrative price reductions provided for in this section, except during the period of June 1, 1988, through August 29, 1988, unsuitable SFH inventory property will be offered or listed for 70 percent of market value with the State Director having the authority to deviate from this percentage based upon documentable conditions within the State. Market value will be based on the condition of the property at the time it is made available for sale. However, when a Section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or the market value, less administrative price reductions, if any.

(a) *SFH price reduction.* If SFH property has not sold after being actively marketed for at least 120 days, the County Supervisor or District Director may administratively reduce the price by an amount not to exceed five percent (5%) if deemed not to be in the best interest of the Government or reappraise the property if additional market data indicates this action is warranted. Subsequent price reduction not to exceed 5 percent per reduction may be made in periods of not less than 120 days each. Administrative price reductions may be made without changing the SFH appraised value. Reduction(s) will be documented in the running record. Active written offers, otherwise acceptable except for price, will be retained and accepted in order of highest price if equal to or greater than the reduced price.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions of price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section and Form FmHA 1955–3A processed to incorporate the date the property is listed for sale. The appraisal should be updated and Form FmHA 1955–3A must be processed updating the appraisal date and market value to reflect repairs and improvements, if any, and Form FmHA 1955–40, for SFH property, or other appropriate notice for MFH property, will be prepared. Suitable property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes another method. If the State Director determines that suitable properties have been given adequate market exposure and that diligent sales efforts including the use of real estate brokers have not produced purchasers, he/she may request the Assistant Administrator for Housing to authorize sale by sealed bid or public auction.

(a) *Single family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property for regular sale or list it with real estate brokers for sale under the provisions of § 1955.112 of this subpart. Properties will be offered or listed by use of Form FmHA 1955–40, unless FmHA has on hand a signed offer to purchase a specific property. The date the form is posted or listed with participating brokers is the effective date that the offer for sale has begun, and the date it is mailed to participating brokers is the effective date of listing. Offers and listings will provide for sales on both eligible or ineligible terms. However, all suitable SFH property will be available for purchase by eligible SFH applicants *only* for the first 30 days from the date of the initial offering or listing, and for the first 30 days from the date of any reduction in price. During this 30-day period, offers will be accepted from others and held until the beginning of the business day following the 30-day period when they will be considered along with all other offers received that business day. If not sold during the 30-day period, the property may then be purchased by either eligible or ineligible buyers on a first-come first-served basis. However, for written offers received during business hours on the same day, eligibles will be given first priority, then cash offers will take precedence over offers requiring credit. Among cash offers or offers requiring credit on ineligible terms, an offer higher than the listed price will be given preference. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit on ineligible terms.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

(For offers requiring credit on eligible terms, no preferences will be given for an offer higher than the listed price. An offer from an eligible applicant which is higher than the listed price will be treated as equally acceptable with other offers from eligibles and sold for the listed price.) Selection of equally acceptable offers in any category (eligible or ineligible) received the same business day will be made by lot. Credit sales to eligible applicants will be in accordance with the provisions of Subpart A of Part 1944 of this chapter. Sales to ineligibles will be for cash or as credit sales on ineligible terms as outlined in § 1955.118 of this subpart. Offers for less than the listed price may be held until the price has been reduced administratively to the offer price or the property is reappraised, whichever occurs first. The lesser offers will be considered as received on the date of the price reduction.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include the sale price and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director. The sale date will be set to allow adequate time for advertising and review of applications. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type of loan being offered will be considered. Offers will be placed in a receptacle and one offer drawn. Award will be made to the offeror drawn. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, the selection of the successful offeror was by lot and therefore is not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator for Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible applicant meeting the respective program requirements. Any other method of sale must receive prior written authorization of the Assistant Administrator for Housing.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner or units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter,

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along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator for Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suitable for the SFH program, it may be offered for sale as a SFH unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to an eligible RH borrower on *eligible terms only*—not for cash or on ineligible terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

§ 1955.115 Sales steps for unsuitable property (housing).

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40 for SFH property, or other appropriate notice for MFH property, will be prepared. Process Form FmHA 1955–3A to incorporate the date the property is listed for sale and/or update the new appraisal date and market value.

(a) *Single Family housing.* Sales steps will be the same as for suitable SFH property, as provided in § 1955.114(a) of this subpart, except that sales must be for cash or credit on ineligible terms as provided in § 1955.118 of this subpart. If an unsuitable SFH property has not sold after 120 days from being offered for sale or listed with brokers, consideration should be given to using a sealed bid or auction sale method. Use of the sealed bid or auction method without attempting a regular sale may be considered in special circumstances; e.g., where structures have been substantially destroyed by fire with the remaining value being only in the land. Special circumstances may also indicate that the structures should be sold as chattel (salvage) when authorized by the State Director. Sealed bid sales of unsuitable SFH property should be completed and closed within 90 days of the State Director's authorization to use this method. Auction sales should be completed and closed within 120 days of the State Director's authorization to use this method. The advertising requirements and deed restrictions of § 1955.116 of this subpart apply to unsuitable properties which do not meet FmHA DSS standards.

(b) *Multiple-family housing.* Sales steps will be the same as for suitable MFH property as provided in § 1955.114(b) of this subpart except that sale must be for cash or credit on ineligible terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell unsuitable MFH property, authority to use that method of sale must be requested from the Assistant Administrator for Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendation of the State Director, must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103 (f) of this subpart, any "Notice of Real Property for Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

> The structure presently on this property does not meet the "Decent Safe, and Sanitary Housing" standards as defined by the Farmers Home Administration. Prior to being used for residential purposes, the structure must be restored or repaired to:
> (1) Be structurally sound and habitable,
> (2) Have a potable water supply,
> (3) Have functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and
> (4) Meet the Thermal Performance Standards for existing construction as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations.

(b) *Sales agreements.* If a housing structure in inventory does not meet DSS standards, the Forms FmHA 1955–45 or Form FmHA 1955–46 used in conjunction with the sale must indicate the type of deficiencies that exists and must contain the following clause:

> This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed to the purchaser will contain a covenant binding the purchasers and the property which will restrict the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards as outlined in Exhibit D, of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e).

(c) *Quitclaim deed.* The following or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the quitclaim deed for properties with dwellings which do not meet the definition of decent, safe, and sanitary:

> Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the unit(s) is structurally sound and habitable, as a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems and meets the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect.

(d) *Release of restrictive clause.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

§ 1955.117 Processing credit sales on eligible terms (housing).

The following provisions apply to all credit sales on eligible terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. Contract acceptance is normally made prior to processing Form FmHA 410–4, "Application for Rural Housing Assistance (Non Farm Tract), for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales on eligible terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 5 percent of the purchase price as a cash down payment unless otherwise waived by the Administrator under § 1955.149 of this subpart. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(c) *Approval.* Form FmHA 1940–1 will be used to approve a credit sale even though no obligation of funds is involved.

(d) *Down payment.* When a down payment is made, it will be collected at closing, identified by advice number, purchaser's name and case number, and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on ineligible terms:

(a) *General.* The provisions of § 1955.117 (a) and (c) of this subpart also apply to sales on ineligible terms. However, the following modification on instruments, if applicable, will be made and initiated by both the applicant and the approval official:

(1) On the promissory note any covenants relating to graduation to other credit, personal occupancy, and restrictions on leasing will be deleted by lining through and will be initiated by the obligor(s).

(2) On the security instrument (mortgage or deed of trust) the covenants relating to graduation to other credit, personal occupancy, and restrictions on lease will be deleted by lining through and will be initialed by the mortgagor(s).

(b) *Down payment.* Down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA State Office).

(c) *Interest rate.* The ineligible SFH interest rate will be charged on all credit sales of SFH property on ineligible terms. The Section 515 RRH interest rate plus ⅛ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on ineligible terms will be closed at the interest rate which is in effect at the time the loan was approved.

(d) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *SFH.* (i) When a purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (d)(1)(i) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(2) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(f) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(g) *Classification.* Credit sales on ineligible terms will be classified as NP loans and serviced accordingly.

§ 1955.119 Payment of discount points (housing).

To effect regular sale of inventory SFH property to a purchaser who is

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financing the purchase of the property with a non FmHA loan, the State Director may authorize the payment by FmHA of not more than three discount points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will not be paid to reduce the interest rate to be paid by the purchaser. The payment will be deducted from the funds to be received by FmHA at closing.

§ 1955.120 [Reserved]

Chattel Property

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122 through 1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisitions, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) *Regular sale.* Chattels may be sold by FmHA employees at market value to eligible applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(b) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction conducted at a facility that is widely advertised and that is held on a regularly scheduled basis. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(c) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

(d) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this Chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit.

(*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.)

Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Forms FmHA 431–2 or CFS, Form FmHA 440–32, "Request for Statement of Debts and Collateral, or any other financial statement considered appropriate may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901–A (available in any FmHA office).

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in access of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–46, or by Form FmHA 1955–45 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with § 1955.141(b) of this subpart.

(d) *Reporting sale.* Sales will be reported in accordance with § 1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to §§ 1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale on Form FmHA 1955–45 or Form FmHA 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955.126 [Reserved]

Use of Contractors To Dispose of Inventory Property

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instructions 1955–D and 2024–A (available in any FmHA office) are applicable for procurement of the nonpersonal services.

§ 1955.128 Appraisers.

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator for Housing when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers). Appraisers may not purchase property they have appraised.

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed by Exhibit C of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they are doing business.

(a) *Type of listings.* The State Director may elect to authorize use of open listings, exclusive listings, or combinations thereof during any calendar year as follows:

(1) *Exclusive listing contract.* An exclusive listing contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for a specified property or type property. Since the commission rate is pre-established, additional criteria will be specified in the solicitation together with the numerical weighting system to be used (usually 1–100). Responses will be calculated on the basis of criteria such as personal qualifications, membership in Multiple Listing Services, previous dealing with FmHA, advertising plans, innovative promotion methods proposed, and financial capability. The responsibilities of the broker under the exclusive listing contract exceed those of the open listing agreement.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed consistent with the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, concurrently with a notice to all brokers in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially in accordance with the example given in Exhibit B of this subpart (available in any FmHA office). An open listmg agreement may be executed at any time showing the property.

(b) *Listing notices.* Form FmHA 1955–40 will be used to provide brokers with notice of initial listing, withdrawals, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* Offers will be given priority in the order received; however, all offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Suitable SFH.* See § 1955.114(a) of this subpart.

(2) *Suitable MFH.* Offers will be considered from eligible applicants only.

(3) *Unsuitable SFH.* See § 1955.115(a) of this subpart.

(4) *Unsuitable MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.108 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale. However, other offers will be held by FmHA pending any administrative price reduction, prior sale, withdrawal, or expiration of offer.

(e) *Earnest money.* Earnest money in the amount specified in paragraph (e)(1) of this section will be collected when a sales contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single-family residence or multiple-family residence of 2 to 4 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

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(f) *Commission.* The broker's commission is contingent on the closing of the sale and will not be paid until the sale is closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, the broker's salesperson(s), to persons living in his/her or salesperson's immediate household or to legal entities in which the broker or salesperson(s) have an interest. Commissions will be paid at closing only if sufficient cash to cover the commission is paid by the purchaser. Otherwise the commission will be paid by the appropriate FmHA official completing a Standard Form 1034 and submitting Form FmHA 2024–1, for payment to be charged as a nonrecoverable cost to the inventory account. A uniform fee or commission schedule, by property type, will be established by the State Director within a given sales area and will not exceed commissions paid for similar types of services provided by the broker to other sellers of similar real property. (The percentage normally decreases as the value of the property increases over $100,000.) The State Director, without authority to redelegate, may authorize fixed amount bonuses for special-effort property, such as property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period where it is believed an added bonus will create additional efforts by the broker to sell the property. Commissions for sealed bids procured through brokers may be authorized by the appropriate Program Assistant Administrator upon written request by the State Director.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Forms FmHA 1955–42 and FmHA 1955–43 (available in any FmHA office). In addition, all brokers participating in the sale of the property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA Instruction 2024–A (available in any FmHA office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* The commission to be paid is normally the customary auctioneer's fee for the area for the type of property being sold. Payment will be made in the same manner as provided for brokers in § 1955.130(f) of this subpart.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his/her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

§ 1955.132 [Reserved]

General

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA 400–4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA an acceptable form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an Act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA, FmHA will reappraise the property. The reappraised value of the property will serve as the amount FmHA will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA is less that $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made to eligible purchasers to correct defects.

§ 1955.135 Taxes on inventory real property.

Where FmHA owned property is subject to taxation, taxes will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Form FmHA 1955–45 or Form FmHA 1955–46. The purchaser will be responsible for paying all taxes due and payable after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessments for property improvements (water, sewer, curb and gutter, etc.) due and payable as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, taxes and assessments due to be paid by FmHA will be paid by voucher, if the local taxing authority will accept payment at the time, or will be deducted from the selling price. However, for eligible borrowers other than MFH who lack payment ability, FmHA may pay the prorated taxes and assessments by use of Standard Form 1034 and Form 2024–1, when later due and payable, in lieu of deduction from the selling price at closing.

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an environmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for

those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500–3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farm lands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland, or Coastal Barrier Resources System (CBRS)*—(1) *Use restrictions.* Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property in floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the FmHA official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in format similar to that contained in § 1955.116(c) of this subpart with the advice and approval of OGC. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA servicing official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released by the State Director. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will not be sold for residential purposes unless determined by the County Supervisor or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) *Property offered for sale by FmHA.* The County Supervisor or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The County Supervisor or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A of this subpart (available in any FmHA office) may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the County or District Office inventory file.

(ii) *Property offered for sale through real estate brokers or auctioneers.* If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard, or wetland area and specify any use restrictions resulting from this location.

(A) When sending Form FmHA 1955–40 or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

(B) After the prospective purchaser signs the acknowledgment, the broker or auctioneer will forward it to the County Supervisor or District Director, as appropriate, with Form FmHA 1955–45 or Form FmHA 1955–46.

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on eligible and ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3 (b) (1) and (2) of Subpart G of Part 1940 of this chapter.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, *no* credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (b)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (b)(3)(ii) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the FmHA official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart F of Part 1901 of this chapter for

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additional guidance.] To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria is met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic/archaeological importance or has apparent significant architectural features or is similar to other FmHA properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) When consultation is not required based upon the above criteria, the responsible FmHA official shall note in the inventory file the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year-old, single-family house, a check may have been made with a local historical society on a less obvious property or the property may have been previously cleared.

(3) If the result of the consultations with the SHPO is that a property may be eligible or that is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this determination. The National Office Program Support Staff is also available to assist the State Office.

(4) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the FmHA official responsible for the conveyance must consult with SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests. The Advisory Council on Historic Preservation must be consulted by the State Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(5) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through a notice procedure similar to that in § 1955.137(b)(2) of this subpart.

(c) *Highly erodible farmland.* (1) The County Supervisor will determine if any farmland inventory property contains highly erodible land as defined by the SCS and, if so, what specific conservation practices will be made a condition of a sale of the property. This should be done by reviewing the conservation plan prepared for the inventory property. See § 1955.64(a)(3) of Subpart B of this part. If this review determines that sufficient information does not exist on the location(s) of highly erodible land or recommended conservation practices, the SCS shall be contacted and requested to provide the necessary information.

(2) If the County Supervisor does not concur in the need for a conservation practice(s) recommended by SCS, any differences shall be discussed with the recommending SCS office. Failure to reach an agreement at that level shall require the State Director to make a final decision after consultation with the SCS State Conservationist.

(3) Whenever SCS technical assistance is requested in implementing these requirements and SCS respond that it cannot provide such assistance within a time frame compatible with the proposed sale, the County Supervisor will determine if the sale arrangements should go forward or be delayed. If the property either is known to contain highly erodible land or there is visible evidence of erosion problems, a sale of the property will be delayed until SCS can respond. Otherwise, the sale may proceed, conditioned on the requirement that a purchaser will immediately contact SCS and have a conservation plan developed. The County Supervisor will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining SCS assistance, the State Director should consult with the SCS State Conservationist. The potential for response to problems arising can be diminished by ensuring that all farmland in inventory has a conservation plan developed in accordance with § 1955.64(a)(3) of Subpart B of this part and that SCS assistance is requested immediately after acquiring title.

(4) The steps taken and results achieved in order to comply with the provisions of this paragraph shall be documented in the environmental review conducted for the proposed sale. All prospective purchasers must be made aware at the time of first inquiry of the conservation practices to be required. Therefore, the environmental review must be completed as soon as possible after acquiring title to the property.

§ 1955.138 Property subject to redemption rights.

Routine care and maintenance will be provided according to § 1955.64 of Subpart B of this part to preserve and protect the property; however, repairs are limited to those essential to prevent further deterioration of the property and protect the Government's interest. Repairs and rehabilitation needed to return the property to program standards, either under contract by FmHA or financed with an FmHA loan, must be deferred until expiration of the redemption period. If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) Since property sold subject to redemption rights will be sold "as is," credit sale to eligible applicants is precluded unless the property fully meets FmHA standards for the applicable loan program "as is."

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provision of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights and title to real property.

(a) Easements, rights-of-way, development rights, restrictions or the equivalent thereof. The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) For farm properties only, easements, restrictions, or the equivalent thereof may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a unit of local, State, or Federal Government or a private nonprofit organization.

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional, State or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

(C) Highly erodible land as defined by SCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500-3, Land Use Policy,

(E) Aquifer recharge areas of local, regional or State importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value directly to a unit of local or State government or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local State or federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA financial interest, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyance shall also require the owner of such interests to permit the FmHA, and any person or government entity designated by the FmHA, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or federal agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interest will be sold with the surface land and will not be sold separately, except as provided in paragraph (a) of this section and in § 1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessees or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

(c) *Transfer of farm inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FmHA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property meeting any one of the following three critaria and subject only to the leaseback/buyback and dwelling retention rights of all previous owners and operators having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that SCS has determined to be either highly erodible or generally not suited for cultivation, such as soils in classes IV, V, VII or VIII of SCS's Land Capability Classification, or

(ii) A predominance of land being environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500-3.

(B) Riparian zones and floodplains as they pertain to Executive Order 11990.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resources Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (e.g., Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharge areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are inholdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

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(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) Whenever a State or Federal agency requests title to suitable or surplus property, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based on demonstrated capability and experience in processing such transfers. The State Director will provide the following information regarding the request:

(i) Certification that the rights of all prior owners and other individuals, as outlined in Exhibits I and J of Subpart S of Part 1951 of this chapter, have expired.

(ii) Determination that the land is suitable or surplus and the rationale for that determination.

(iii) A statement of the factual basis for determining the land to be of marginal value for agricultural production, environmentally sensitive, or having special management importance, with particular discussion of any national benefits to be achieved (e.g., migratory bird and wetland conservation).

(iv) Identification of the requesting agency and the recommended conservation use if a transfer of inventory land were to occur.

(v) Views of the U.S. Fish and Wildlife Service relative to the need for wetland and floodplain deed restrictions as required by § 1955.137(b) of this subpart. These deed restrictions must be in effect at the time of transfer of inventory lands to any non-Federal entity. Transfer to another Federal entity will only be considered where proper wetland and floodplain conservation precautions have been agreed to by the Federal entity.

(3) *Determining priorities for transfer of inventory lands.* (i) A Federal entity will be selected over a State entity since the transfer of inventory land involves Federally owned/administered land.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(4) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (e.g., Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to habitat of National importance (e.g., wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives.

(5) An individual property may be subdivided into parcels and a parcel(s) can be transferred under the requirements of this paragraph as long as the remaining parcel(s) to be sold make up a viable sales unit, suitable or surplus.

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to eligible applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110 percent of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director. This authority may not be redelegated. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where the funds are being disbursed by the closing agent.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the County Supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH suitable real property sold to eligible applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and sewage systems are functional and adequate for property not being served by public water sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to eligible applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter, respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report on inventory property not sold.

For any unsuitable or surplus real or chattel property not sold within 18 months (6 months for chattel) after acquisition the County Supervisor or District Director will send the inventory file, advertisements, and a summary of the facts covering the efforts to sell the property to the State Director for further guidance. If the property is not sold within an additional 6 months (3 months for chattel), the State Director will send the package to the appropriate Assistant Administrstor for advice.

§ 1955.144 Disposal of surplus property to, through, or acquired from other Agencies.

(a) *Property which cannot be sold.* If unsuitable or surplus real or chattel property cannot be sold (or only token bids are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B)," with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) *Urban Homesteading Program (UH).* Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.)

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation or to make suitable property more suitable. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be unsuitable for program purposes due to location and where it is economically feasible to relocate the structure thereby making it suitable, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining unsuitable parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined unsuitable for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make otherwise unsuitable property suitable, if economically feasible.

§ 1955.146 Advertising.

(a) *General.* The success of any sales effort is highly dependent on vigorous advertising which covers the potential market. The primary means of advertisement available to the County Supervisor, District Director, or State Director are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notices using Form FmHA 1955–41, "Notice of Sale," "synopsis" advertising in accordance with § 1955.157 of FmHA Instruction 1955–D (available in any FmHA office), and notification of known interested parties. Other innovative means are encouraged, such use of a display board in the FmHA office with photographs and Form FmHA 1955–40 posted together to solicit applicant and broker interest; posting of Form FmHA 1955–41 at employment center; door-to-door distribution of the notice to apartment dwellers and advertisements in magazines or other periodical publications. An example of newspaper advertising is provided in Exbibit B of this subpart (available in any FmHA office). Advertisement costs will be paid by using Standard Form 1143 and Form FmHA 2024–1. Appropriate FmHA officials will make sure that, where contractually required, brokers and auctioneers provide adequate, timely advertising. When property is being sold by FmHA or by use of open listings with brokers, it is the servicing official's responsibility to insure the adequate advertising of each property. A statement must be included in any advertising stating the amount of FmHA's preference for cash offers in conformity with the applicable sections of this subpart, depending on the type property being advertised.

(b) *Large-value and complex properties.* Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *Racial and socio-economic considerations.* In accordance with the policies set forth in § 1901.203(c) of Subpart E of Part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of

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existing racial or socio-economic patterns are reached.

(d) *Rejected application for SFH loan.* If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

§ 1955.147 Sealed bid sales.

Before the sealed bid sale, the appropriate FmHA official will determine and document the minimum sale price, if any, and whether or not credit will be offered. Credit may be offered to facilitate the sale; however, the term will *never* be longer than the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955-46 with an accompanying deposit of not less than ten percent (10%) of the bid in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. The bid will be considered delivered when actually received at the FmHA office in a sealed envelope marked as follows:

SEALED BID OFFER

Date of Bid opening _____
FmHA Advice No. _____
Property Address or Location _____

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. Preference will be given to a cash offer which is at least (*) percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955-46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the down payment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to Form FmHA 1951-B (available in any FmHA office) for application to the General Fund. However, if a credit sale complying with the FmHA notice is an element of the offer and FmHA disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale or direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.107(c) of this subpart except that the established minimum sale price shall remain unchanged.

§ 1955.148 Auction sales.

Before an auction, the State Director, with advice of the National Office for organizational property, will determine and document the minimum acceptable price, if any, whether or not a credit sale will be offered and the minimum down payment; and whether an FmHA, employee or contract auctioneer will conduct the auction sale. The State Director may authorize the use of a professional auctioneer if the value of the property or the complexity of the sale make it advisable, if no qualified FmHA employee will be available or if otherwise considered in the best interest of the Government. This will be handled by contract in accordance with FmHA Instructions 1955-D and 2024-A (available in any FmHA office). Chattel property may be sold at a public auction that is widely advertised and held on a regularly scheduled basis without solicitation. At the auction, successful bidders will be required to make a deposit of not less than ten percent of their bid in the form of cashier's check, certified check, postal money order or bank draft payable to FmHA or to the contracting auctioneer, if applicable. Cash and personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. The high bid will be reduced to writing on Form FmHA 1955-46. Where credit sales are to be allowed, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential bidders. This may include submission of letters of credit or financial statements prior to the auction. When the highest bid is lower than the "minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or, in turn, next higher bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951-B. The bid deposit will be remitted only when the bidder defaults; otherwise, pursuant to agreement between the approval official and the purchaser, it will be applied to the closing costs or down payment, or will be deducted from the selling price in a cash sale. The closing will be conducted in accordance with the procedures prescribed in this subpart for cash sales or credit sales on ineligible terms according to the type property and program involved.

§ 1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute of other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§ 1955.150 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with the State laws or only as specifically authorized in this instruction to provide guidance to FmHA officials. State supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

PART 1962—PERSONAL PROPERTY

52. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

53. Section 1962.4 is amended by adding an introductory paragraph and by revising paragraph (c) to read as follows:

§ 1962.4 Definitions.

As used in this subpart, the following definitions apply:

* * * * *

(c) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * *

54. Section 1962.6 is amended by revising paragraphs (c)(1)(iv), (c)(2)(ii) and (c)(3)(ii) to read as follows:

§ 1962.6 Liens and assignments on chattel property.

* * * * *

(c) * * *
(1) * * *

(iv) For only the amount anticipated for payment as indicated on Form FmHA 1962.1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable cropland cotton, rice, wheat and feed grain programs.

(2) * * *

(ii) Obtain assignments from selected borrowers on Form ASCS-36, "Assignment of Payment," which will be obtained from the ASCS County Office.

(3) * * *

(ii) Checks obtained as a result of an assignment will be made only to FmHA, and the proceeds used as indicated on Form FmHA 1962-1.

55. Section 1962.8 is amended by revising the introductory text to read as follows:

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

* * * * *

56. Section 1962.13 is amended by revising the introductory text to read as follows:

§ 1962.13 Lists of borrowers given to business firms.

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. County Supervisors should prepare the list of potential purchasers' which are named on the borrower's Form FmHA 1962-1. FmHA will not distribute the Form FmHA 1962-1.

* * * * *

57. Section 1962.17 is amended by revising paragraphs (a)(2), (b)(2) and (b)(5) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) * * *

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962-1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is a current Form FmHA 1962.1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter, written explanation of the reasons for denial, and an opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time. Immediately upon determining that the borrower does not have a current Form FmHA 1962-1 in the file, the County Supervisor should also begin working with the borrower to develop one.

(b) * * *

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) Form FmHA 1962-1 must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and Commodity Credit Corporation payments so that the borrower can pay essential family living and farm operating expenses.

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses: Household operating; food including lunches; clothing and personal care; health and medical expenses including medical insurance; house repair and sanitation; school, church, recreation; personal insurance; transportation; furniture; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreements; rent on equipment, land, and buildings; feed for animals; seed; fertilizer; pesticides, herbicides, and spray materials; farm supplies not included above; livestock expenses including medical supplies, artificial insemination and veterinarian bills; machinery hire; fuel and oil; personal property tax; real estate taxes; water charges; property and crop insurance; auto and truck expenses; utilities payments; and payments on contracts or

loans secured by farmland, necessary farm equipment, livestock, or other chattels.

(iii) All of the items listed in paragraph (b)(2)(ii) of this section may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation and what would be an efficient method of production considering the borrower's resources. The County Supervisor will refer to Exhibit E of this subpart (available in any FmHA office) for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released.

(iv) Proceeds can be applied to the FmHA debt.

(v) Proceeds can be used to purchase property better suited to the borrower's need if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(vii) Property can be exchanged for property which is better suited to the borrower's need if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(viii) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

* * * * *

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962–1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962–1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA *must* give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA *must* also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor *must* revise the Form FmHA 1962–1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: feeder pig to sow operation; cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962–1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see § 1924.57(d) of Subpart B of Part 1924 of this chapter.

* * * * *

58. Section 1962.29 is amended by revising the introductory text of paragraph (b), redesignating paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5) and adding a new paragraph (b)(2) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisor are authorized to approve bills or invoices for payment of insurance premiums on chattel and crop security from FmHA loan funds when:

* * * * *

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance.

* * * * *

59. Section 1962.30 is amended by redesignating paragraphs (b)(2) through (b)(9) as (b)(3) through (b)(10) and adding a new paragraph (b)(1) to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(b) * * *

(1) A subordination for an annual production loan, only to a delinquent borrower, may also be approved if the borrower meets the requirements set out in § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

60. Section 1962.34 is amended by revising paragraph (a)(2) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965–13, "Assumption Agreement (Farmer Programs Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

61. Section 1962.40 is amended by revising the introductory text of paragraph (b), paragraph (b)(3), and the introductory text of paragraph (e)(1) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loans cases, borrowers must receive Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

* * * * *

(3) *Agreement with borrower.* If the borrower does not request a hearing, fails to return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on Attachment 2 that servicing is not requested, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter. After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account, the County Supervisor may allow the borrower 60 days to accomplish such action by:

(i) Selling the security in accordance with § 1962.41 of this subpart,

(ii) Transferring the security in accordance with § 1962.34 of this subpart,

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

* * * * *

(e) * * *

(1) After Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

* * * * *

62. Section 1962.41 is amended by revising the introductory paragraph and revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter before any sale occurs.

* * * * *

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the County Supervisor will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan account(s). If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the Committee, and be further processed and approved in accordance with § 1962.34(h) of this subpart:

In our opinion *(name of Borrower and any co-signer)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction.

If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in FmHA office). The account will then be considered for debt settlement.

63. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c)(5)(i), and paragraphs (c)(5)(ii), (c)(6)(ii)(A), and (d) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security on EO property by the County Supervisor.

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security, a borrower and all cosigners on the note must receive Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

* * * * *

(c) * * *

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 1955–41, "Notice of Sale," may be used for public or private sales.

* * * * *

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 1955–41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) * * *

(ii) * * *

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 1955–41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

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(d) *Risk of injury.* If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third-party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

64. Section 1962.47 is amended by revising paragraph (a)(3) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) * * *

(3) The County Supervisor will send Attachments 1 and 2 of Exhibit A (and not Exhibit A) of Subpart S of Part 1951 of this chapter together with Exhibit D of this subpart, "Notice to Borrower's Attorney Regarding Loan Servicing Options," (available in any FmHA office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. A dated copy of Exhibit D of this subpart will be sent to OGC and the U.S. Attorney's office at the same time. Exhibit D of this subpart explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly.

(i) Exhibit D of this subpart also explains that borrowers who have filed Chapter 11, 12 and 13 bankruptcies must request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief or dismiss their bankruptcies. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. Until the automatic stay is modified for this purpose or the Chapter 11, 12, or 13 is dismissed, FmHA will not discuss any of the servicing options with either the borrower or the borrower's attorney. If the automatic stay is not modified for the limited purpose set out above or if the bankruptcy case is not dismissed, but the borrower instead files a plan of reorganization which restructures the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of FmHA's recommendation for voting on the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations.

(ii) Borrowers who have filed Chapter 7 bankruptcies also must either dismiss their bankruptcies or request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. FmHA will not discuss any of the options with either the borrower or the borrower's attorney until the automatic stay is modified for the limited purpose set out above, or the Chapter 7 is dismissed. Exhibit D of this subpart explains that FmHA will not continue with a debtor who does not reaffirm the FmHA debt. If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation.

* * * * *

65. Section 1962.49 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1962.49 Civil and criminal cases.

* * * * *

(c) * * *

(1) *County Office actions.* Forms FmHA 455–1, "Request for Legal Action," and FmHA 455–22 will be prepared. Form FmHA 455–2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455–1 and FmHA 455–22 and, when applicable, FmHA 455–2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455–1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455–1 and FmHA 455–22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in the case. If Exhibit A and Attachments 1 and 2 of Subpart S of Part 1961 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded.

* * * * *

66. Exhibit B of Subpart A is revised to read as follows:

Exhibit B—Memorandum of Understanding and Blanket—Commodity Lien Waiver

The Farmers Home Administration (FmHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA and CCC in and without undue inconvenience to producers and FmHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA will try to furnish a complete and current list of the names of such producers; however, FmHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA and the producer if (a) his name is on the list furnished by FmHA, or (b) he names FmHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Date: July 20, 1960.

Ray V. Fitzgerald,

Executive Vice President, CCC.

Date: July 14, 1960.

Gordon Cavanaugh,

Administrator, FmHA.

67. Exhibit D to Subpart A is revised to read as follows:

Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: FmHA Instruction 1962–A

Purpose: Used by a County Supervisor to send with Attachments 1 and 2 of Exhibit A (*not* Exhibit A) of Subpart S of Part 1951 of this chapter to the borrower's attorney when the borrower has filed bankruptcy. A dated copy of this letter will be sent the United States Attorney's Office and OGC when it is mailed to the borrower's attorney.

Return Address

Borrower's Attorney Address

_____

_____

Dear _____

We were recently notified that your client _____ (name of borrower) has filed bankruptcy. The enclosed forms explain some of the loan servicing options that FmHA has available. We would appreciate your informing your client of these options. Each of these options is available only when there is a valid enforceable debt. It appears that the result of the bankruptcy will be to make some or all of the FmHA debt unenforceable. This will make your client ineligible for FmHA's debt servicing options. In addition in order to ascertain whether your client is eligible for these options it is necessary for FmHA's employees to work closely with your client. We are concerned about whether such contact will be in violation of the automatic stay.

[If your client has filed under Chapter 7 and wants to apply for servicing relief from FmHA, the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay, your client must complete and return Attachment 2 to Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. So long as the Chapter 7 is pending FmHA will not discuss any of the servicing options with you or your client unless the automatic stay is modified. Also, in order for FmHA to continue with your client after a discharge, your client must reaffirm the FmHA debt.]*

[If your client has filed under Chapter 11, 12 or 13 and wants to apply for servicing relief from FmHA the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief or the case must be dismissed. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay, your client must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. Unless the automatic stay is modified for this purpose or the case is dismissed, FmHA will not discuss any of the servicing options with you or your client. You may, of course, choose to file a proposed plan which may or may not contain debt restructuring features similar to those available from FmHA.]*

If you intend to file a motion to allow your client to request and be granted servicing relief, we ask that you do so within 30 days. If no motion is filed within that time, we will assume that your client does not intend to make a request for servicing and we will proceed to protect our interests as allowed by the Bankruptcy Code.

FmHA's farmer programs debt servicing regulation is found at 7 CFR, Part 1951, Subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor.

*Choose applicable paragraph.

67a. Exhibit E to Subpart A is added to read as follows:

Exhibit E—Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

Note.—Exhibit E referenced in this subpart is available in any FmHA office.

PART 1965—REAL PROPERTY

68. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

69. Section 1965.7 is amended by redesignating paragraphs (a) through (k) as (b) through (l), adding a new paragraph (a) and an introductory paragraph to read as follows:

§ 1965.7 Definitions.

As used in this subpart, the following definitions apply:

(a) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

* * * * *

70. Section 1965.11 is amended by revising paragraphs (c)(2)(i)(C), (c)(2)(ii), and (c)(3) to read as follows:

§ 1965.11 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) Loans may be reamortized without regard to loan limits to include protective advances for payment of the prior lienholder(s) when authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances for the payment of prior lienholder(s) is recommended, the case file with documentation of all facts of the situation necessitating protective advances, efforts made to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower along with Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter and blank Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Then one of the following actions will be taken:

(A) *Making a bid.* Bidding will be completed in accordance with § 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid, actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with § 1956.18(f) of Subpart A of Part 1955 of this chapter.

* * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a

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junior lienholder is foreclosing, the County Supervisor will send the borrower Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Attachments 1, 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

71. Section 1965.12 is amended by revising paragraphs (a)(8), (b)(2)(ii)(B) and (g) to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

(a) * * *

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the present market value of the real estate security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized. If the farm tract secures only type(s) of FmHA loan(s) not currently authorized, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12(a)(7) of this subpart.

* * * * *

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet installments when due. Reamortization of farmer program loans will be processed in accordance with Subpart S of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34(f) of this subpart if an NP loan is involved.

72. Section 1965.13 is amended by revising the introductory paragraph and revising paragraph (f)(4)(ii) to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

If an NP loan is involved, see § 1965.34 of this subpart or see Subpart S of Part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However, there is no authority for FmHA employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

* * * * *

(f) * * *

(4) * * *

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with Subpart A of Part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.57(b) of Subpart B of Part 1924 of this chapter.

* * * * *

73. Section 1965.17 is amended by revising paragraph (a) to read as follows:

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.28(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with § 1965.28(d) of this subpart.

* * * * *

74. Section 1965.25 is amended by revising the introductory texts of paragraphs (a) and (d) to read as follows:

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purpose of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security" unless it is a tract of land that is in addition to the farm real estate. Additional security for a SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and:

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with a SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a farmer program loan(s), provided the SFH security has been liquidated and there would be no proceeds in excess of the SFH debt to apply to the farmer program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

* * * * *

75. Section 1965.28 is amended by revising paragraphs (a)(2), (b)(1), (c) and (d), and by revising the introductory texts of paragraphs (b), (c) and (f) and removing paragraph (b)(4) to read as follows:

§ 1965.28 Liquidation action.

(a) * * *

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file. If a qualified FmHA appraiser is not available, the State Director may obtain an appraisal outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In farmer program cases borrowers must receive Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* If the borrower fails to return Attachments 2, 4, 5 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on these attachments that servicing is not requested, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter.

* * * * *

(c) *Multiple loans and loans secured by both real estate and chattels.* (1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the time the borrower is sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, except as provided in paragraph (c)(2) of this section.

(2) SFH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless it is subject to liquidation based on the provisions of § 1965.125 of Subpart C of this part, taking into full consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) The borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Agreement similar to Exhibit E of this subpart an Equity Recapture Agreement (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office by sending a letter similar to Exhibit D (available in any FmHA Office) of this subpart (with copy to the State Director) when an Equity Recapture Agreement has been executed, a copy of the Agreement will be attached to the letter. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the agreement. The letter will show that a noncash credit in the amount of the Equity Recapture Agreement will be made to the FP loan(s). The letter will also show the fund code and loan number(s) of the loan(s) to which the noncash credit is to be applied. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled, as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the county office will remit collection under the Agreement, in the same manner as a SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form FmHA 451–2, "Schedule of Remittance": EQUITY RECEIVABLE PAYMENT.

(v) FmHA is prohibited by State law from foreclosing the SFH loan when the

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nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled, unless the conditions set forth in paragraphs (c)(2) (i), (iii), and (iv) of this section are complied with.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with § 1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

* * * * *

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

* * * * *

76. Section 1965.27 is amended by removing paragraph (b)(4)(v) and redesignating paragraph (b)(4)(vi) as (b)(4)(v), revising the introductory text of the section and the introductory texts of paragraphs (b) and (b)(5), and revising paragraphs (b)(3), (b)(4)(iv), (b)(5)(i)(C), (c)(1)(iii), (g)(8) and (g)(9) to read as follows:

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access development or other rights is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27(g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," Form FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," or Form FmHA 1965–15, "Assumption Agreement (Single Family Housing Loans)," for SFH loans.

* * * * *

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under § 1965.26(a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume

the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965–13 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under Subpart S of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) * * *

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursing at closing of the transfer.

* * * * *

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450–10, "Advice of Borrower's Change of Address or Name," FmHA 465–5, and FmHA 460–9 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) * * *

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

* * * * *

(c) * * *

(1) * * *

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) On eligible terms by an immediate family member of an individual borrower; an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative; an entity which is made up of only immediate family members of an individual borrower; or an entity which is made up of only immediate family members of any partner(s), joint operator(s), stockholder(s) or member(s).

(B) On eligible terms by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(g) * * *

(8) *Title clearance and legal services.* Title clearance and legal service for closing transfer(s) will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965–13; 1965–22; 460–9 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment"; and 1965–8, will be prepared and distributed according to the FMI.

* * * * *

77. Section 1965.31 is amended by revising paragraph (a)(2) to read as follows:

§ 1965.31 Taking liens on real estate as additional security in servicing FmHA loans.

* * * * *

(a) * * *

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

* * * * *

78. Exhibits A through E are added to Part 1965, Subpart A as follows:

Exhibits to Subpart A

Note: The exhibits referenced in this subpart are available in any FmHA office.

Exhibit A—Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration

Exhibit B—Notification of Prior Lienholders Intent to Foreclosure

Exhibit C—Processing Guide

Exhibit D—Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable

Exhibit E—Equity Recapture Agreement

LaVerne Ausman,

Acting Under Secretary, Small Community and Rural Development.

Date: April 22, 1988.

[FR Doc. 88–11144 Filed 5–20–88; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121
Design Standards for Fuel Tank Access Panels; Notice of Proposed Rulemaking

VOL 53 ISS 99 MAY 23 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 25614; Notice No. 88-10]

Design Standards for Fuel Tank Access Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require that the fuel tank access panels of transport category airplanes be designed to minimize penetration by likely foreign objects, and be fire resistant. This proposed change is based on service experience and is intended to reduce the hazards associated with the loss of access panels. This notice also proposes to require that the panels of all turbine powered airplanes operated in air carrier service after a specified date meet these standards.

DATES: Comments must be received on or before September 17, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25614, 800 Independence Avenue SW., Washington, DC, 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC, 20591. Comments delivered must be marked: Docket No. 25614. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven Connally, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25614." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC, 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Several fuel tank access panels have failed in service due to impact with high speed objects such as failed tire tread material and engine debris following engine failures. In one recent case, the failure of an access panel on a wing fuel tank resulted in the loss of hazardous quantities of fuel which subsequently ignited and destroyed the airplane. This particular access panel was made from an aluminum casting which is susceptible to damage and provides less impact resistance than the surrounding wing skin. These panels are also subjected to elevated temperatures due to landing gear and engine fires.

A data base of incidents and design comparisons shows significant differences in fuel tank access panel location, type of construction, and incidence of penetration among the major transport category airplanes.

Discussion

As a result of these accidents and incidents, the FAA is proposing to amend Part 25 to require impact and fire resistant fuel tank access panels on all transport category airplanes for which application for a type certificate is made after the effective date of the amendment. This proposed rule would assure that access panels on all fuel tanks are designed to minimize penetration by likely foreign objects, and are fire resistant (as defined in Part 1).

The requirement for improved access panels will apply to all fuel tanks regardless of location in the airplane. Typically, airplanes are designed to carry fuel in the wings and fuselage; however, fuel will be carried in the vertical and horizontal tail surfaces on several new designs. Service experience shows those surfaces are also subject to foreign object damage; and fuel tank access panels located on them must be designed to minimize penetration by likely foreign objects and must be fire resistant.

In addition, Part 121 would also be amended to require that the fuel tank access panels on all other turbine-powered, transport category airplanes used in air carrier service meet these improved standards. Reciprocating powered airplanes would not be included since service experience does not indicate that fuel tank access panels on those airplanes have been a safety problem. This is attributed to the lower frequency of reciprocating engine disintegrations, the characteristics of such disintegrations, and the relatively few reciprocating powered airplanes used in air carrier service. The two year compliance period is intended to allow operators and manufacturers time to redesign and produce improved fuel tank access panels with a minimum of disruption to fleet schedules or to production lines.

Regulatory Evaluation

The benefits exceed the cost of implementing this proposed rule.

The costs associated with improved fuel access doors are primarily in the retrofit requirement of Part 121. The cost impact is primarily in retrofitting Boeing airplanes because those airplanes have

fuel access doors located where they can be struck and punctured by debris.

There should be no significant added cost to new type designs that would be required to have the new access doors certified under Part 25, nor should the new doors impose any weight penalty. Since the proposed amendment to Part 25 is expected to result in no identifiable cost, this analysis focuses on the costs associated with the Part 121 requirements.

In order to estimate the cost for retrofitting the fleet, the estimated cost of compliance for a door is multiplied by the total number of doors affected by the proposal.

There are six areas of compliance costs: (1) Design cost, (2) testing cost, (3) certification cost, (4) manufacturing cost, (5) installation/ retrofit cost, and (6) weight penalty cost. For all cost areas, this analysis estimates only the incremental costs associated with the proposal.

Boeing was required by airworthiness directive, to design improved doors for the Model Boeing 737. They have already designed and tested their new doors, so the incremental design costs and testing costs for Boeing are zero. The administrative processing cost for certification is negligible. Manufacturing cost, based on the replacement cost of an existing door as quoted by airline operators, is estimated at $210 per door, or $5,630,000 fleet cost (26,812 x $210). Installation/retrofit costs are based on a manufacturer's service bulletin which provides cost estimates for replacement of existing doors. In addition to the manufacturing cost, there would be an installation cost of $270 per door which includes six (6) hours of labor at $40 per hour plus $30 for a gasket seal. This would amount to $7,239,000 total installation cost for the fleet (26,812 x $270). There would be no discernible weight penalty cost.

The total cost for manufacturing the doors and retrofitting the fleet to comply with the proposed change to Part 121 amounts to $12,869,000.

The benefit of this proposal is the elimination of the current risk that a fuel access door will be punctured by debris. An estimate of the potential benefits can be made from the air carriers' recent experiences. Based on these experiences, the potential monetary benefits that might be gained by avoiding another accident like the Boeing 737 disaster in Manchester, England, on August 22, 1985, amount to more than $61 million (over $55 million in lives lost in that accident plus the replacement value of the airplane, which exceeds $6 million).

Data on the average number of revenue passengers on board airplane flights in 1984 indicate the prospective number of passenger lives that might be saved by preventing a fatal accident on an affected Boeing airplane. The average revenue passengers per domestic airplane mile in 1984 on Boeing airplanes ranges from approximately 62 on the Boeing 737 to 274 passengers on the Boeing 747. Clearly the 55 fatalities in the Manchester accident represents the extreme low end of the distribution of potential fatalities that might occur in an accident on a Boeing airplane with an average number of passengers on board.

At least one airplane accident should be avoided in the next 20 years based on experience during the past 20 years.

Over a 20-year time frame there have been 24 incidents, of which one (1) was a fatal accident. The FAA anticipates that without this proposed rule, the trend of incidents would continue and accelerate due to the aging of engines in the fleet, and the resultant increasing amounts of debris associated with engine problems. It is expected that one accident, over the next 20 years, of the magnitude of the Manchester accident will likely be prevented by the rule proposed.

The minimum expected present value benefit ($29 million) would exceed the maximum potential cost ($12,869,000) by approximately $16 million for this proposed rule change assuming the avoidance, for the lifetime of all the Boeing airplanes in the fleet, of a single accident equivalent to the August 22, 1985, Manchester accident on the Boeing 737, which resulted in 55 lives and an airplane lost due to debris penetration of a fuel access door. Were the same accident to occur with a Boeing 747, within a year, the resultant average loss of 274 passenger lives, crew, and airplane would amount to over $300 million. In this potential case, the benefit value would exceed the cost by approximately $290 million, making the cost appear insignificant in comparison.

For a one time investment of less than $13 million, the proposal would ensure that in the future, incidents like those that occurred will be prevented and therefore will not become accidents.

International Trade Impact Assessment

The proposals will have no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

There will be no advantage with respect to future designs for airplanes manufactured in either the United States or foreign countries since the U.S. certification rules are applicable to both foreign and domestic manufacturers which sell in the U.S. Also, because of the large U.S. market, foreign manufacturers usually elect to design their airplanes to U.S. rules. With respect to existing designs, disadvantage to the Boeing airplanes is minimal because the cost of compliance is a negligible amount of the total cost of an airplane.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposal in this notice would directly affect those turbine powered transport airplane manufacturers which certify their airplanes under Part 25. FAA Order 2100.14 states a size threshold of 75 employees as a standard for small manufacturers of aircraft. (See FAA Order 2100.14, *Regulatory Flexibility Criteria and Guidance*, dated July 15, 1983.) According to current FAA data, there are no turbine powered airplane manufacturers which meet that standard.

The proposal in this notice would also affect small air carriers which are regulated under Part 121. FAA Order 2100.14 states a size threshold of nine or fewer operating airplanes as a standard for small air carriers. According to data available to FAA for the period ended January 1984, 92 passenger air carriers, which were subject to Part 121, operated nine or fewer airplanes. Of these, 29, or less than one-third, operated with at least one of the affected Boeing airplanes. FAA Order 2100.14 states that a substantial number of small entities means more than one-third of the small entities subject to the proposed rule. However, the Order provides FAA management the discretion to consider a number smaller than one-third to be a substantial number. In this instance, the FAA has judged it prudent to extend the scope of the analysis of the economic impact on small entities, although fewer than one-third (less than a substantial number) are affected by the rule.

The impact on small entities will be in direct proportion to the number of doors they will be required to retrofit on the affected Boeing airplanes. There is a capital cost of $30 for a gasket and a one-time $240 cost for labor, yielding a $270 one-time cost to install each door. The annualized compliance cost for a carrier to meet the retrofit requirements

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is $44 per door based upon a 10 percent interest rate and assuming 10 years useful life.

The FAA has adopted threshold values that define significant economic impact, and these values are stated in FAA Order 2100.14. The threshold values for economic impact are adjusted for inflation and are expressed here in 1986 dollars. The threshold value for small entity carriers is a maximum number of nine airplanes owned or operated. The threshold values for significant economic impact are an annualized cost of $94,094 for scheduled carriers that operate airplanes with more than 60 seats.

The FAA has identified the number of each type of Boeing airplanes that each small entity carrier operates under Part 121. The largest number of doors that any of the identified small entity carriers would be required to install is 144. This total is based on replacement of 24 doors on each of six (6) B–707 airplanes. The respective number of doors that would be required to be replaced on each type of Boeing airplane is: B–707/720 (24), B–727 (10), B–737 (10), B–747 (22), B–757 (14), B–767 (14). Since there is an annualized cost of $44 per door to retrofit the Boeing airplanes, and the largest number of doors affected by the proposal for any of the small scheduled carriers is 144, none of these carriers meets the cost impact criteria for the scheduled air carriers (144 × $44 is $6,336, which is less that $94,094; note also that the maximum possible number of doors that could be required to be replaced by a small entity carrier would be 216 doors on a total of 9 airplanes, costing 216 × $44 = $9,504, which is less than $94,094). Therefore, this proposal is not expected to have a significant economic impact on a substantial number of small entity scheduled air carriers, and a regulatory flexibility analysis is not required.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this document is significant as defined in Department of Transportation Regulatory Policies and procedures (44 FR 11034; February 26, 1979). In addition, it is certified under the criteria of the Regulatory Flexibility Act that this regulation, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Flammable materials, Transportation, Common carriers.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR Parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983). 49 CFR 1.47(a).

2. By amending § 25.963 by adding text to paragraph (e) to read as follows:

§ 25.963 Fuel tanks: general.

* * * * *

(e) In order to prevent the loss of hazardous quantities of fuel, all fuel tank access covers must be shown by analysis or tests to:

(1) Be designed to minimize penetration and deformation by tire fragments, low energy engine debris, or other likely debris, if the access panel is located in an area where service experience indicates a strike is likely; and

(2) Be fire resistant.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

4. By amending Part 121 by adding a new section to read as follows:

§ 121.316 Fuel tanks.

Each turbine powered transport category airplane operated after [a date two years after the effective date of this amendment], must meet the requirements of § 25.963(e) of this chapter in effect [the effective date of this amendment].

Issued in Seattle, Washington, on May 10, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–11336 Filed 5–18–88; 2:32 pm]

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federal register

Monday
May 23, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 34, 45, and 91

Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 34, 45, and 91

[Docket No. 25613; Notice No. 88-9]

Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to replace Special Federal Aviation Regulation (SFAR) 27, as amended through SFAR 27–6, with a new Part 34 of the Federal Aviation Regulations which will include all of the standards and test procedures of 40 CFR Part 87 previously included in SFAR 27. This will codify in a single part all of the applicable requirements of 40 CFR Part 87, Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures, as amended, December 30, 1982, and will insert the requirements to comply with Part 34 in the other affected Parts where applicable. This action is in accordance with section 232 of the Clean Air Act, as amended (42 U.S.C. 7401) and the authority delegated to the Administrator of the FAA by the Secretary of Transportation.

DATES: Comments must be received on or before June 22, 1988.

ADDRESS: Comments on the proposals may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No., 800 Independence Avenue, SW., Washington, DC 20591.

Comments delivered must be marked: Docket No. 25613. Comments may be inspected at Room 916, 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Krull, Manager, Air Quality Staff, AEE–30, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (Telephone: 202–267–8933).

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. However to reflect the division of regulatory responsibility between the Environmental Protection Agency (EPA) in section 231 of the Clean Air Act, as amended (the Act) (42 U.S.C. 7401) and the Secretary of Transportation in section 232 of the Act, comments are not requested herein concerning the substance or the affective date of the already final EPA requirements of 40 CFR Part 87.

Comments that do not involve either the substance or the compliance dates of the provisions of 40 CFR Part 87 that are in this notice should identify the FAA regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, 800 Independence Avenue, SW., Washington, DC 20591. Comments received on or before will be considered by the FAA Administrator before taking action on the proposed rules. The proposals contained in this notice (other than the provisions of EPA Part 87) may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular 11–2 which describes the application procedure.

History

Under section 232 of the Clean Air Amendments of 1970, Pub. L. 91–604, the FAA has a duty to issue regulations that ensure compliance with all aircraft emission standards promulgated under section 231 of the Act, which are currently prescribed in 40 CFR 87 originally issued on July 6, 1973, and published in the **Federal Register** (38 FR 19088) on July 17, 1973.

Accordingly, on December 26, 1973, the FAA issued SFAR 27, published in the **Federal Register** (38 FR 35427) on December 28, 1973. The purpose of SFAR 27 was to ensure compliance with aircraft and aircraft engine emission standards and test procedures issued by the EPA in 40 CFR Part 87.

SFAR 27, as originally issued, governed compliance of only those standards and procedures in 40 CFR Part 87 that were effective beginning February 1,1974. Since its issuance, SFAR 27 has been amended six times by the FAA. On December 23, 1974, the FAA issued SFAR 27–1 (39 FR 45008; December 30, 1974) to require compliance with the fuel venting emission standards in 40 CFR Part 87 that became effective January 1, 1975. SFAR 27–2, effective January 1, 1976 (40 FR 55311; November 28, 1975), governs compliance with smoke emissions standards in 40 CFR Part 87 applicable to new and in-use aircraft turbofan or turbojet engines with a rated power of 29,000 pounds thrust or greater, that are designed for operation on subsonic airplanes. SFAR 27–3 (42 FR 64876; December 29, 1977) required compliance with smoke emissions standards in 40 CFR Part 87 for JT3D engines manufactured on and after January 1, 1978. A fourth amendment, SFAR 27–4 (45 FR 71960; October 30, 1980) was issued to require phased smoke emissions compliance of in-use JT3D engines beginning on January 1, 1981, with total compliance required by January 1, 1985. Subsequently, the requirement for compliance of in-use JT3D engines was automatically deleted under the terms of SFAR 27 Section 3(b) when the EPA deleted the underlying requirement from 40 CFR Part 87 (48 FR 2716; January 20, 1983).

On December 21, 1982, the EPA revised 40 CFR Part 87 and republished the rule in its entirety (47 FR 58462; December 30, 1982). The revised rule contained a number of changes in definitions as well as new standards for smoke and unburned hydrocarbon emissions. Section 87.89 of Title 40 obligated the FAA to establish and approve a testing program to assure compliance with Part 87 by January 1, 1984. On December 8, 1983, the FAA issued amended SFAR 27–5 (48 FR 56735; December 23, 1983) which required compliance with all of the provisions of the revised 40 CFR Part 87 and contained an EPA approved testing program. The effective date of SFAR 27–5 was January 1, 1984. On October 4, 1983, the EPA issued a stay of the January 1, 1984 effective date for EPA's smoke standards, applicable to aircraft turbine engines rated below 26.7 kilonewtons (kN) thrust in response to a petition by the General Aviation Manufacturers Association (GAMA) (48 FR 46481; October 12, 1983). On July 30, 1984, the EPA denied the GAMA petition and established an August 9, 1985, effective date for smoke standards applicable to aircraft turbine engines rated below 26.7 kN (49 FR 31873; August 9, 1984). On October 9, 1984, the EPA changed the definition of "very low production" engines in the provisions for exemptions and revised the exhaust emission test fuel specification (49 FR 41000; October 18, 1984). On March 18, 1986, the FAA issued amended SFAR 27–6 which changed the authority citations for petitions for exemptions to SFAR 27 (51 FR 10612; March 38, 1986).

Discussion of the Proposal

Overview

When the EPA originally issued 40 CFR Part 87, Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures, in 1973, it was recognized that some portion of the standards could be implemented in a very short time period while other portions would require a much longer time period for developing and testing. Accordingly, the FAA proceeded to promulgate compliance regulations for the near term requirements in the form of a Special Federal Aviation Regulation, SFAR 27. Since that time, the EPA has recognized that some of the longer term requirements were either unneeded or practically unattainable. Those longer term requirements, originally scheduled to become effective in 1978, have been extensively revised. Revised 40 CFR Part 87 now contains all of the known aircraft and aircraft engine emission standards. Under the requirement of section 232 of the Clean Air Act amendments, the FAA has promulgated in SFAR–27 compliance regulations for all of the standards in 40 CFR Part 87.

Proposal to Delete SFAR 27 and Add Part 34

The FAA proposes to comply with section 232 of the Clean Air Act Amendments by establishing a new 14 CFR Part 34 which would contain all of the compliance regulations for fuel venting and engine exhaust emissions, and by revising the other appropriate parts to reflect the requirements to comply with Part 34. Since SFAR 27 and its amendments have been issued, they have, by definition, been considered temporary and their exact status has been confusing to the parties directly or indirectly affected by the regulations. The other parts directly affected by SFAR-27 have heretofore only referenced SFAR-27 and the reader has been required to review SFAR 27 in its entirety in order to determine its effect on that part. Now that 40 CFR Part 87 has been revised in its entirety and is essentially complete, the FAA proposes to codify the compliance regulations in a single part of the Federal Aviation Regulations, and revise the other affected parts accordingly.

Practical Interpretation of the Requirement for Total Compliance

The provisions of 40 CFR Part 87 are applicable to all aircraft gas turbine engines of the classes, and as of the dates, specified in that Part. This generally requires that every engine must comply with the applicable smoke, fuel venting, and emission standards. Enforcement of this total compliance would require testing each and every engine not specifically exempted or manufactured before January 1, 1984. The EPA has recognized in the preamble to 40 CFR Part 87, and specifically in § 87.89, that testing every engine would be excessively costly, and EPA conceded the need to develop a "practical interpretation of the requirement for total compliance and to substitute a preproduction certification program in place of extensive testing of all newly produced and in-service engines. The promulgation of the compliance program has been delegated to the FAA with the provision that the FAA provide a practical interpretation of the requirement for total compliance and establish a testing program to ensure compliance. Any substitute certification program must have the concurrence of the Administrator of the EPA.

In developing the United States position on the International Civil Aviation Organization (ICAO) Standards and Recommended Practices for Aircraft Engine Emissions, the FAA consulted extensively with the EPA on acceptable practical interpretations of a requirement for a total compliance and testing program to ensure compliance. At that time, the EPA indicated that the minimum acceptable levels would be 90 percent confidence that 95 percent of the engines would meet the gaseous emission standards, and a 90 percent confidence that every engine would meet the smoke standards. ICAO adopted such a compliance procedure based upon a composite of historic engine to engine variabilities. Since EPA stressed the desirability of commonality with ICAO, the FAA, with the concurrence of the EPA, adopted the procedure defined in Appendix 6 to ICAO Annex 16 Volume II—Aircraft Engine Emissions, dated 18 February 1982. The FAA has solicited comments and recommendations concerning equivalent procedures and will give any recommendation full consideration if it is accompanied by substantive supporting data. Should an acceptable equivalent procedure be received, the FAA will seek EPA concurrence with that as an alternate compliance procedure. The FAA cannot, however, adopt any proposed compliance procedure unless it has the concurrence of the Administrator of the EPA.

Regulatory Evaluation

Under section 232 of the Clean Air Act Amendments of 1970, Pub. L. 91–604, the FAA has the duty to issue regulations that ensure compliance with all aircraft emissions standards promulgated under section 231 of the Act, which are currently prescribed in 40 CFR Part 87. These standards and their applicability are clearly defined in 40 CFR Part 87, and the FAA has no option but to enforce the standards. Prior to its enactment, the EPA determined that 40 CFR Part 87 would not constitute a major rule as defined by Executive Order 12291 (47 FR 58469; December 30, 1982) because its economic impact was well below the $100 million per year threshold of the Order, and that it did not involve any significant increased costs or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with those of other countries when compared to the present regulations. The information base, including the economic analyses in which this determination was made is collected in Public Docket No. OMSAPC–78–1 at the Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC 20460. The FAA examined in detail and concurred with the EPA economic analysis. On December 8, 1983, the FAA issued amended SFAR 27–5 (48 FR 56735: December 23, 1983) which required compliance with all of the provisions of 40 CFR Part 87. The purpose of the proposed new Part 34 is to replace SFAR 27–5 as a permanent Part in the FAR's and continue the enforcement of 40 CFR Part 87, as required by statute. This action does not in any way change, alter, or modify the standards in 40 CFR Part 87 or the requirements for compliance currently implemented under SFAR 27–5. Therefore, there is no economic cost associated with this action. Proposed Part 34 is easier to review and understand than SFAR 27–5. Therefore, those persons affected by 40 CFR Part 87 would be relieved from a burden, and a slight, unquantifiable benefit is associated with this action. Because the economic impact associated with this

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action is so minimal, no further analysis is necessary. Accordingly, the FAA concludes that there is no significant economic impact in this rulemaking action and that this proposal does not constitute a major rule pursuant to Executive Order 12291. The FAA invites comments, supported by economic data, regarding this regulatory evaluation.

Impact on Small Entities

Because of the limited classes of engines to which 40 CFR Part 87 applies, the EPA earlier determined that enactment of that regulation would not have a significant economic impact on a substantial number of small entities (as defined by the Small Business Act). Therefore, no Regulatory Flexibility Analysis was prepared. Interested persons may review the information on which this determination was made at the locations previously mentioned. As the EPA is in a much better position to make a determination in that regard, the FAA adopts that finding. Accordingly, it is certified that the regulations proposed herein, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation, "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D, Appendix 7, paragraph 4, Change 3, December 5, 1986), the FAA is categorically excluded from providing an environmental analysis with regard to the proposed Part 34 because it is mandated by law to issue regulations to ensure compliance with the EPA aircraft emissions standards and the EPA has performed all required environmental analyses prior to the issuance of those standards.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

Information collection requirements contained in this regulation (Sections 9d, 12, and 20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0508.

The Proposed Amendment

Accordingly, the FAA proposes to amend 14 CFR, Chapter I, by removing SFAR 27 and adding a new Part 34 as follows:

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1461, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR 27—[Removed]

2. By removing SFAR 27.

PART 21—[AMENDED]

3. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR 27—[Removed]

4. By removing SFAR 27;

5. In § 21.17, the introductory text of paragraph (a) is revised to read as follows:

§ 21.17 Designation of applicable regulations.

(a) Except as provided in § 23.2, § 25.2, and in Parts 34 and 36 of this chapter, an applicant for a type certificate must show that the aircraft, aircraft engine, or propeller concerned meets—

* * * * *

6. In § 21.21, paragraph (b)(1) is revised to read as follows:

* * * * *

§ 21.21 Issue of type certificate: Normal, utility, acrobatic, commuter, and transport category aircraft; aircraft engines; propellers.

* * * * *

(b) The applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(1) Upon examination of the type design, and after completing all tests and inspections, that the type design and the product meet the applicable noise, fuel venting, and emissions requirements of the Federal Aviation Regulations, and further finds that they meet the applicable airworthiness requirements of the Federal Aviation Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety; and

* * * * *

7. In § 21.29, paragraph (a)(1)(i) and (b) are revised to read as follows:

§ 21.29 Issue of type certificate: Import products.

(a) * * *

(1) * * *

(i) The applicable aircraft noise, fuel venting and exhaust emissions requirements of this subchapter as designated in § 21.17 or the applicable aircraft noise, fuel venting and exhaust emissions requirements of the country in which the product was manufactured and any other requirements the Administrator may prescribe to provide noise, fuel venting and exhaust emission levels no greater than those provided by the applicable aircraft noise, fuel venting, and exhaust emission requirements of this subchapter as designated in § 21.17; and

* * * * *

(b) A product type certificated under this section is considered to be type certificated under the noise standards of Part 36 and the fuel venting and exhaust emission standards of Part 34 of the Federal Aviation Regulations where compliance therewith is certified under paragraph (a)(1)(i) of this section, and under the airworthiness standards of that part of the Federal Aviation Regulations with which compliance is certified under paragraph (a)(1)(ii) of this section or to which an equivalent level of safety is certified under paragraph (a)(1)(ii) of this section.

8. In § 21.31, paragraph (d) is revised to read as follows:

§ 21.31 Type design.

* * * * *

(d) Any other data necessary to allow, by comparison, the determination of the airworthiness, noise characteristics, fuel venting, and exhaust emissions (where applicable) of later products of the same type.

9. In § 21.33, paragraph (b)(1) is revised to read as follows:

§ 21.33 Inspection and tests.

* * * * *

(b) Each applicant must make all inspections and tests necessary to determine—

(1) Compliance with the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements;

* * * * *

10. In § 21.93, paragraph (c) is added to read as follows:

* * * * *

§ 21.93 Classification of changes in type design.

* * * * *

(c) For purposes of complying with Part 34 of this chapter, any voluntary change in the type design of the airplane or engine which may increase fuel venting or exhaust emissions is an "emissions change."

11. In § 21.101, the introductory text of paragraph (a) is revised to read as follows:

§ 21.101 Designation of applicable regulations.

(a) Except as provided in § 23.2 and § 25.2 and Parts 34 and 36 of this chapter, an applicant for a change to a type certificate must comply with either—

* * * * *

12. In § 21.115, paragraph (a) is revised to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of §21.101 and, in the case of an accoustical change described in §21.93(b), show compliance with the applicable noise requirements of §36.7 and §36.9 of this chapter and, in the case of an emissions change described in §21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of Part 34.

* * * * *

13. In § 21.183, paragraph (f) is added to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft.

* * * * *

(f) *Fuel Venting and Exhaust Emission Requirements.* Notwithstanding all other provisions of this section, and irrespective of the date of application, no airworthiness certificate is issued, on and after the dates specified in Part 34 for the airplanes specified therein, unless the airplanes comply with the applicable requirements of the part.

14. In § 21.187, paragraph (c) is added to read as follows:

§ 21.187 Issue of multiple airworthiness certification.

* * * * *

(c) The aircraft complies with the applicable requirements of Part 34.

15. Section 21.257 is revised to read as follows:

§ 21.257 Type certificates: Issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation option authorization if the Administrator finds that the product meets the applicable airworthiness, noise, fuel venting, and exhaust emission requirements (including applicable accoustical change or emissions change requirements in the case of changes in type design).

16. In § 21.451, paragraph (d) is revised to read as follows:

§ 21.451 Limits of applicability.

(d) Notwithstanding any other provision of this subpart, a DAS may not issue a supplemental type certificate involving the exhaust emissions change requirements of Part 34 or the acoustical change requirements of Part 36 of this chapter until the Administrator finds that those requirements are met.

PART 23—[AMENDED]

17. The authority citation for Part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

18. In § 23.903, paragraph (a)(1) is revised to read as follows:

§ 23.903 Engines.

(a)(1) Each engine must be type certificated under Parts 33 and 34.

* * * * *

19. In § 23.951, paragraph (d) is added to read as follows:

§ 23.951 General.

* * * * *

(d) Each fuel system for a turbine engine must meet the applicable fuel venting requirements of Part 34.

PART 25—[AMENDED]

20. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

21. In § 25.903, paragraph (a)(1) is revised to read as follows:

§ 25.903 Engines.

(a)(1) Engine type certification. Each engine must be type certificated under Parts 33 and 34.

* * * * *

22. In § 25.951, paragraph (d) is added to read as follows:

§ 25.951 General.

* * * * *

(d) Each fuel system for a turbine engine must meet the applicable fuel venting requirements of Part 34.

PART 45—[AMENDED]

23. The authority citation for Part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

24. In § 45.13, paragraph (a)(7) is redesignated as paragraph (a)(8) and a new paragraph (a)(7) is added to read as follows:

§ 45.13 Identification data.

(a) * * *

(7) On or after January 1, 1984, for aircraft engines specified in Part 34, the date of manufacture as defined in § 34.1 of that part, and a designation, approved by the Administrator of the FAA, that indicates compliance with the applicable provisions of Part 34 and 40 CFR Part 87. Approved indicators include COMPLY, EXEMPT, and NON-US as appropriate.

(i) The designation COMPLY indicates that the engine is in compliance with all of the applicable provisions of Part 34. For any engine with a rated thrust in excess of 26.7 kilonewtons which is not used or intended for use in commerical operations and which is in compliance with all of the applicable provisions of Part 34, but does not comply with the hydrocarbon emissions standard of § 34.21(d), the statement "May not be used as a commerical aircraft engine" must be noted in the permanent powerplant record that accompanies the engine at the time of manufacture of the engine.

(ii) The designation EXEMPT indicates that the engine has been granted an exemption pursuant to the applicable provision of §34.7(a)(1), (a)(4), (b), (c), or (d), and an indication of the type of exemption and the reason for the grant must be noted in the permanent powerplant record that accompanies the engine at the time of manufacture of the engine.

(iii) The designator NON-US indicates that the engine has been granted an exemption pursuant to § 34.7(a)(1), and the notation "This aircraft may not be operated within the United States", or an equivalent notation approved by the Administrator of the FAA, must be inserted in the aircraft logbook, or

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alternate equivalent document, at the time of installation of the engine.

(8) Any other information the Administrator finds appropriate.

* * * * *

PART 91—[AMENDED]

25. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR 27-6 [Amended]

26. By removing SFAR 27-6

27. In § 91.27, paragraph (d) is added to read as follows:

§91.27 Civil aircraft: Certifications required.

* * * * *

(d) No person may operate a civil airplane (domestic or foreign) into or out of an airport in the United States unless it complies with the fuel venting and exhaust emissions requirements of Part 34 of this chapter.

PART 34—[AMENDED]

28. The authority citation for a new Part 34 reads as follows:

Authority: 42 U.S.C. 1857f-10 (Revised Pub. L. 94-604, December 31, 1970); 49 U.S.C. 1348(c), 1354(a), 1421, 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

29. By adding a new Part 34 to read as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

Subpart A—General Provisions

34.1 Definitions.
34.2 Abbreviations.
34.3 General requirements.
34.4 Incorporation by reference.
34.5 Special test procedures.
34.6 Aircraft safety.
34.7 Exemptions.

Subpart B—Engine Fuel Venting Emissions (New and In-Use Aircraft Gas Turbine Engines)

34.10 Applicability.
34.11 Standard for fuel venting emissions.

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

34.20 Applicability.
34.21 Standards for exhaust emissions.

Subpart D—Exhaust Emissions (In-Use Aircraft Gas Turbine Engines)

34.30 Applicability.
34.31 Standards for exhaust emissions.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

34.60 Introduction.
34.61 Turbine fuel specifications.
34.62 Test procedure (propulsion engines).
34.63 [Reserved]
34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.
34.65—34.70 [Reserved]
34.71 Compliance with gaseous emission standards.

Subpart H—Test Procedures for Engine Smoke Emission (Aircraft Gas Turbine Engines)

34.80 Introduction.
34.81 Fuel specifications.
34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.
34.83—34.88 [Reserved]
34.89 Compliance with smoke emission standards.

Subpart A—General Provisions

§ 34.1 Definitions.

(a) As used in this part, all terms not defined herein shall have the meaning given them in the Clean Air Act, as amended (42 U.S.C. 7401 et seq.):

"Act" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

"Administrator" means the Administrator of the Federal Aviation Administration or any other officer or employee of the Federal Aviation Administration to whom the authority involved may be delegated.

"Administrator of the EPA" means the Administrator of the Environmental Protection Agency and any other officer or employee of the Environmental Protection Agency to whom the authority involved may be delegated.

"Aircraft" means any airplane for which a U.S. standard airworthiness certificate or equivalent foreign airworthiness certificate is used.

"Aircraft engine" means a propulsion engine which is installed in, or which is manufactured for installation in, an aircraft.

"Aircraft gas turbine engine" means a turboprop, turbofan, or turbojet aircraft engine.

"Class TP" means all aircraft turboprop engines.

"Class TF" means all turbofan or turbojet aircraft engines except engines of Class T3, T8, and TSS.

"Class T3" means all aircraft gas turbine engines of the JT3D model family.

"Class T8" means all aircraft gas turbine engines of the JT8D model family.

"Class TSS" means all aircraft gas turbine engines employed for propulsion of aircraft designed to operate at supersonic flight speeds.

"Commercial aircraft engine" means any aircraft engine used or intended for use by an "air carrier" (including those engaged in "intrastate air transportation") or a "commercial operator" (including those engaged in "intrastate air transportation") as these terms are defined in the Federal Aviation Act and the Federal Aviation Regulations.

"Commercial aircraft gas turbine engine" means a turboprop, turbofan, or turbojet commercial aircraft engine.

"Date of manufacture" means the date on which the individual engine is originally approved by the FAA, or by a foreign country of manufacture, for installation on aircraft.

"Emission measurement system" means all of the equipment necessary to transport the emission sample and measure the level of emissions. This includes the sample system and the instrumentation system.

"Engine model" means all commercial aircraft turbine engines which are of the same general series, displacement, and design characteristics and are usually approved under the same type certificate.

"Exhaust emissions" means substances emitted to the atmosphere from the exhaust discharge nozzle of an aircraft or aircraft engine.

"Fuel venting emissions" means raw fuel, exclusive of hydrocarbons in the exhaust emissions, discharged from aircraft gas turbine engines during all normal ground and flight operations.

"In-use aircraft gas turbine engine" means an aircraft gas turbine engine which is in service.

"New aircraft turbine engine" means an aircraft gas turbine engine which has never been in service.

"Power setting" means the power or thrust output of an engine in terms of kilonewtons thrust for turbojet and turbofan engines and shaft power in terms of kilowatts for turboprop engines.

"Rated output (rO)" means the maximum power/thrust available for takeoff at standard day conditions as approved for the engine by the Federal Aviation Administration, including reheat contribution where applicable, but excluding any contribution due to water injection and excluding any emergency power/thrust rating.

"Rated pressure ratio (rPR)" means the ratio between the combustor inlet pressure and the engine inlet pressure achieved by an engine operation at rated output.

"Sample system" means the system which provides for the transportation of the gaseous emission sample from the sample probe to the inlet of the instrumentation system.

"Shaft power" means only the measured shaft power output of a turboprop engine.

"Smoke" means the matter in exhaust emissions which obscures the transmission of light.

"Smoke number (SN)" means the dimensionless term quantifying smoke emissions.

"Standard day conditions" means standard ambient conditions as described in the United States Standard Atmosphere 1976, (i.e., temperature = 15 °C, specific humidity = 0.00 kg H 0/kg dry air, and pressure = 101325 Pa.)

"Taxi/idle (in)" means those aircraft operations involving taxi and idle between the time of landing roll-out and final shutdown of all propulsion engines.

"Taxi/idle (out)" means those aircraft operations involving taxi and idle between the time of initial starting of the propulsion engine(s) used for the taxi and turn on to duty runway.

§ 34.2 Abbreviations.

The abbreviations used in this part have the following meanings in both upper and lower case:

EPA United States Environmental Protection Agency.
FAA Federal Aviation Administration, United States Department of Transportation.
HC Hydrocarbon(s).
hr. Hour(s).
LTO Landing and takeoff
min. Minute(s).
rO Rated output.
rPR Rated pressure ratio.
sec. Second(s).
SP Shaft power.
SN Smoke number.
T Temperature, degrees Kelvin.
TIM Time in mode.
W Watt(s).
o Degree.
% Percent.

§ 34.3 General requirements.

(a) This part provides for the approval or acceptance by the Administrator or the Administrator of the EPA of testing and sampling methods, analytical techniques, and related equipment not identical to those specified in this part. Before either approves or accepts any such alternate, equivalent, or otherwise nonidentical procedures or equipment, the Administrator or the Administrator of the EPA shall consult with the other in determining whether or not the action requires rulemaking under sections 231 and 232 of the Clean Air Act, as amended, consistent with the responsibilities of the Administrator of the EPA and the Secretary of Transportation under sections 231 and 232 of the Clean Air Act.

(b) Under section 232 of the Act, the Secretary of Transportation issues regulations to ensure compliance with this part. This authority has been delegated to the Administrator of the FAA (49 CFR 1.47).

(c) U.S. Airplanes. This Federal Aviation Regulation (FAR) applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have U.S. standard airworthiness certificates.

(d) Foreign Airplanes. Pursuant to the definition of "aircraft in 40 CFR 87.1(c), this FAR applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have foreign airworthiness certificates that are equivalent to U.S. standard airworthiness certificates. This includes only those foreign civil airplanes that, if registered in the United States, would be required by applicable Federal Aviation Regulations to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane. Pursuant to 40 CFR 87.3(c), this FAR does not apply where inconsistent with an obligation assumed by the United States to a foreign country in a treaty, convention, or agreement.

(e) Reference in this regulation to 40 CFR Part 87 refers to Title 40 of the Code of Federal Regulations, Chapter I—Environmental Protection Agency, Part 87, Control of Air Pollution from Aircraft and Aircraft Engines (40 CFR Part 87).

(f) This FAR contains regulations to ensure compliance with certain standards in Environmental Protection Agency (EPA), 40 CFR Part 87. If EPA takes any action, including the issuance of an exemption or issuance of a revised or alternate procedure, test method, or other regulation, the effect of which is to relax, or delay the effective date of, any provision of 40 Part 87 that is made applicable to an aircraft under this FAR, the new related EPA requirement, upon its effective date, is incorporated by reference in this FAR and supersedes the provisions of this FAR that are based on the provisions of 40 CFR Part 87 that were relaxed by such action.

(g) Unless otherwise stated, all terminology and abbreviations in this FAR that are defined in 40 CFR Part 87 have the meaning specified in that part, and all terms in 40 CFR Part 87 that are not defined in that part but that are used in this FAR have the meaning given them in the Clean Air Act, as amended by Pub. L. 91-604.

(h) If EPA, under 40 CFR 87.3(a), approves or accepts any testing and sampling procedures or methods, analytical techniques, and related equipment not identical to those specified in EPA Part 87, this FAR requires a showing that such alternate, equivalent, or otherwise nonidentical procedures have been complied with, and that such alternate equipment was used to show compliance, unless the applicant elects to comply fully with 40 CFR Part 87.

(i) If EPA, under 40 CFR 87.5, prescribes special test procedures for any aircraft or aircraft engine that is not susceptible to satisfactory testing by the procedures in 40 CFR Part 87, the applicant must show the Administrator of the FAA that those special test procedures have been complied with.

(j) Wherever 40 CFR Part 87 requires agreement, acceptance, or approval by the Administrator of EPA, this FAR requires a showing that such agreement or approval has been obtained.

(k) Pursuant to 42 U.S.C. 7573, no state or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless that standard is identical to a standard made applicable to the aircraft by the terms of this FAR.

(l) If EPA, by regulation or exemption, relaxes a provision of 40 CFR Part 87 that is implemented in this FAR, no state or political subdivision thereof may adopt or attempt to enforce the terms of this FAR that are superseded by the relaxed requirement.

(m) If any provision of this FAR is rendered imapplicable to a foreign aircraft as provided in 40 CFR 87.3(c), and § 34.3(d) of this FAR, that provision may not be adopted or enforced against that foreign aircraft by a state or political subdivision thereof.

(n) Continued compliance with the exhaust emissions requirements of this FAR that apply beginning February 1, 1974, January 1, 1976, January 1, 1978, January 1, 1984, and August 9, 1985, is shown for engines for which the type design has been shown to meet those requirements, if the engine is maintained in accordance with applicable maintenance requirements for 14 CFR Chapter I. All methods of demonstrating compliance and all model designations previously having been found acceptable to the Administrator shall be deemed to continue to be an acceptable demonstration of compliance with the

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specific standards for which they were approved.

(o) Each applicant must allow the Administrator to make, or witness, any test necessary to determine compliance with the applicable provisions of this FAR.

§ 34.4 Incorporation by reference.

(a) *General.* This Far prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated and are approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 522(a) and 1 CFR Part 51.

(b) *Changes to Incorporated Matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that impacts compliance with standards and procedures will be published in the Federal Register.

(c) *Identification Statement.* The complete title or description which identifies each published matter incorporated by reference in this FAR is as follows:

ICAO Annex 16—Environmental Protection, Volume II—Aircraft Engine Emissions, Appendices 2, 3, 5, and 6 dated 18 February 1982, First Edition, June 1981. This document can be obtained from the International Civil Aviation, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2, at $3.00 per copy.

(d) *Availability for Inspection.* A copy of each publication incorporated by reference in this FAR is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC;

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC;

(3) The respective offices of the Federal Aviation Administration are as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts;

(ii) New York Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581;

(iii) Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349;

(iv) Chicago Aircraft Certification Office, 2300 East Devon, Des Plains, Illinois 60018;

(v) Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri;

(vi) Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas;

(vii) Denver Aircraft Certification Field Office, 10455 East 25th Avenue, Aurora, Colorado 80010;

(viii) Northwest Mountain Regional Office, 17900 Pacific Highway South, Seattle, Washington 98168;

(ix) Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California 90261;

(x) Anchorage Aircraft Certification Field Office, 701 C Street, Anchorage, Alaska 99513;

(xi) Los Angeles Aircraft Certification Office, 4334 Donald Douglas Drive, Long Beach, California 90808;

(xii) Brussels Aircraft Certification Staff, 15 Rue de la Loi, B–1040 Brussels, Belgium;

(xiii) FAA Representative, U.S Embassy, Corner Avenidas Inca Garcillaso de la Vega & Espana, Lima, Peru;

(xiv) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio de Janeiro, Brazil;

(4) The Office of the Federal Register, Room 8401, 1101 "L" Street, NW., Washington, DC.

§ 34.5 Special test procedures.

The Administrator or the Administrator of the EPA may, upon written application by a manufacturer or operator of aircraft or aircraft engines, approve test procedures for any aircraft or aircraft engine that is not susceptible to satisfactory testing by the procedures set forth herein. Prior to taking action on such application, the Administrator or the Administrator of the EPA shall consult with the other.

§ 34.6 Aircraft safety.

(a) The provisions of this part will be revised if at any time the Administrator determines that an emission standard cannot be met within the specified time without creating a safety hazard.

(b) Consistent with 40 CFR 87.6, if the FAA Administrator determines that any emission control regulation in this Part cannot be safely applied to an aircraft, that provision may not be adopted or enforced, against such aircraft, by a state or political subdivision thereof.

§ 34.7 Exemptions.

General. Notwithstanding Part II of the Federal Aviation Regulations (14 CFR Part 11), all petitions for rulemaking involving either the substance of an emission standard or test procedure prescribed by EPA that is incorporated in this FAR, or the compliance date for such standard or procedure, must be submitted to EPA. Information copies of such petitions are invited by the FAA. Petitions for rulemaking or exemption involving provisions of this FAR that do not affect the substance or the compliance date of an emission standard or test procedure that is precribed by EPA and petitions for exemptions under the provisions for which the EPA has specifically granted exemption authority to the Secretary of Transportation are subject to Part II of the Federal Aviation Regulations (14 CFR Part II).

(a) *Exemptions Based on Flights for Short Durations at Infrequent Intervals.* The emission standards of this part do not apply to engines which power aircraft operated in the United States for short durations at infrequent intervals. Such operations are limited to:

(1) Flights of an aircraft for the purpose of export to a foreign country, including any flights essential to demonstrate the integrity of an aircraft prior to a flight to a point outside the United States.

(2) Flights to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage, and flights for the purpose of returning an aircraft to service.

(3) Official visits by representatives of foreign governments.

(4) Other flights the Administrator determines, after consultation with the Administrator of the EPA, to be for short durations at infrequent intervals. A request for such a determination shall be made before the flight takes place.

(b) *Exemptions for Very Low Production Engine Models.* The emissions standards of this part do not apply to engines of very low production after the date of applicability. For the purpose of this part, "very low production" is limited to a maximum total production for United States civil aviation applications of no more than 200 units covered by the same type certificate after January 1, 1984. Engines manufactured under this provision must be reported to the FAA by serial number on or before the date of manufacture and exemptions granted under this provision are not transferable to any other engine.

(c) *Exemptions for New Engines in Other Categories.* The emissions standards of this part do not apply to engines for which the Administrator determines, with the concurrence of the Administrator of the EPA, that application of any standard under

§ 34.21 is not justified, based upon consideration of:

(1) Adverse economic impact on the manufacturer;

(2) Adverse economic impact on the aircraft and airline industries at large;

(3) Equity in administering the standards among all economically competing parties;

(4) Public health and welfare effects;

(5) Other factors which the Administrator, after consultation with the Administrator of the EPA, may deem relevant to the case in question.

(d) *Time Limited Exemptions for In Use Engines.* The emissions standards of this part do not apply to aircraft or aircraft engines for time periods which the Administrator determines, with the concurrence of the Administrator of the EPA, that any applicable standard under § 34.11(a), or § 34.31(a), should not be applied based upon consideration of the following:

(1) Documentation demonstrating that all good faith efforts to achieve compliance with such standard have been made;

(2) Documentation demonstrating that the inability to comply with such standard is due to circumstances beyond the control of the owner or operator of the aircraft;

(3) A plan in which the owner or operator of the aircraft shows that he will achieve compliance in the shortest time which is feasible;

(4) Applications for exemption from this part shall be submitted in duplicate to the Administrator in accordance with the procedures established by the Administrator in Part II.

(e) The Administrator shall publish in the Federal Register the name of the organization to whom exemptions are granted and the period of such exemptions.

(f) No state or political subdivision thereof may attempt to enforce a standard respecting emissions from an aircraft or engine if such aircraft or engine has been exempted from such standard under this part.

Subpart B—Engine Fuel Venting Emissions (New and In-Use Aircraft Gas Turbine Engines)

§ 34.10 Applicability.

(a) The provisions of this subpart are applicable to all new aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kilonewton rated output, manufactured on or after January 1, 1974, and to all in-use aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kilonewton rated output manufactured after February 1, 1974.

(b) The provisions of this subpart are also applicable to all new aircraft gas turbines of class TF less than 36 kilonewton rated output and class TP manufactured on or after January 1, 1975 and to all in-use aircraft gas turbines of class TF less than 36 kilonewton rated output and class TP manufactured after January 1, 1975.

§ 34.11 Standard for fuel venting emissions.

(a) No fuel venting emissions shall be discharged into the atmosphere from any new or in-use aircraft gas turbine engine subject to the subpart. This paragraph is directed at the elimination of intentional discharge to the atmosphere of fuel drained from fuel nozzle manifolds after engines are shut down and does not apply to normal fuel seepage from shaft seals, joints, and fittings.

(b) Conformity with the standard set forth in paragraph (a) of this section shall be determined by inspection of the method designed to eliminate these emissions.

(c) Compliance with the fuel venting emissions requirements of this section that apply beginning on February 1, 1974, and beginning on January 1, 1975, may be shown by any means of compliance, applied the airframe or the engine, that prevents the intentional discharge of fuel from fuel nozzle manifolds after the engines are shut down. Acceptable means of compliance include the following:

(1) Incorporation of an FAA-approved system that recirculates the fuel back into the fuel system;

(2) Capping or securing the pressurization and drain valve;

(3) Manually draining the fuel from a holding tank into a container.

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

§ 34.20 Applicability

The provisions of this subpart are applicable to all aircraft gas turbine engines of the classes specified beginning on the dates specified in § 34.21.

§ 34.21 Standards for exhaust emissions.

(a) Exhaust emissions of smoke from each new aircraft gas turbine of class T8 manufactured on or after February 1, 1974, shall not exceed: Smoke number of 30.

(b) Exhaust emissions of smoke from each new aircraft gas turbine engine of class TF and of rated output of 129 Kilonewtons thrust or greater, manufactured on or after January 1, 1976, shall not exceed:

$SN = 83.6\ (rO)^{-0.274}$ (rO is in kilonewtons).

(c) Exhaust emission of smoke from each new aircraft gas turbine engine of class T3 manufactured on or after January 1, 1978, shall not exceed: Smoke number of 25.

(d) Gaseous exhaust emissions from each new commercial aircraft gas turbine engine that is manufactured on or after January 1, 1984, shall not exceed:

(1) Classes, TF, T3, T8 engines equal to or greater than 26.7 kilonewtons rated output:

Hydrocarbons: 19.6 grams/kilonewton rO.

(2) Class TSS:

Hydrocarbons: $140(0.92)^{rPR}$ grams/kilonewton rO.

(e) Smoke exhaust emissions from each gas turbine engine of the classes specified below shall not exceed:

(1) Class TF of rated output less than 26.7 kilonewtons manufactured on or after August 9, 1985:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons) not to exceed a maximum of SN = 50.

(2) Classes T3, T8, TSS, and TF of rated output equal to or greater than 26.7 kilonewtons manufactured on or after January 1, 1984:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons) not to exceed a maximum of SN = 50.

(3) Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN = 187(rO)^{-0.168}$ (rO is in kilowatts).

(f) The standards set forth in paragraphs (a), (b), (c), (d), and (e) of this section refer to a composite gaseous emission sample representing the operating cycles set forth in the applicable sections of Subpart G of this part, and exhaust smoke emissions emitted during operations of the engine as specified in the applicable sections of Subpart H of this part, measured and calculated in accordance with the procedures set forth in those subparts.

Subpart D—Exhaust Emissions (In-Use Aircraft Gas Turbine Engines)

§ 34.30 Applicability.

The provisions of this subpart are applicable to all in-use aircraft gas turbine engines certificated for operation within the United States of the classes specified beginning on the dates specified in § 34.31.

§ 34.31 Standards for exhaust emissions.

(a) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class T8, beginning February 1, 1974, shall not exceed: Smoke Number of 30.

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(b) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class TF and of rated output of 129 kilonewtons thrust or greater, beginning January 1, 1976, shall not exceed:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons).

(c) The smoke standards set forth in paragraphs (a) and (b) of this section refer to exhaust smoke emissions emitted during operation of the engine as specified in the applicable sections of Subpart H of this part, and measured and calculated in accordance with the procedure set forth in those subparts.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

§ 34.60 Introduction.

(a) Except as provided under § 34.5, the procedures described in this subpart shall be the test program to determine the conformity of new aircraft gas turbine engines with the applicable standards set forth in this part.

(b) The test consists of operating the engine at prescribed power settings on an engine dynamometer (for engines producing primarily shaft power) or thrust measuring test stand (for engines producing primarily thrust). The exhaust gases generated during engine operation are sampled continuously for specific component analysis through the analytical train.

(c) The exhaust emission test is designed to measure hydrocarbons, carbon monoxide and carbon dioxide concentrations, and to determine mass emissions through calculations during a simulated aircraft landing-takeoff cycle (LTO). The LTO cycle is based on time in mode data during high activity periods at major airports. The test for propulsion engines consists of at least the following four modes of engine operations: Taxi/idle, takeoff, climbout, and approach. The mass emission for the modes are combined to yield the reported values.

(d) When an engine is tested for exhaust emissions on an engine dynamometer or test stand, the complete engine shall be used with all accessories which might reasonably be expected to influence emissions to the atmosphere installed and functioning, if not otherwise prohibited by § 34.62(a)(2). Use of service air bleed and shaft power extraction to power auxiliary, gearbox-mounted components required to drive aircraft systems is not permitted.

(e) Other gaseous emissions measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Administrator of the EPA.

§ 34.61 Turbine fuel specifications.

For exhaust emission testing, fuel meeting the specifications listed below shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

SPECIFICATION FOR FUEL TO BE USED IN AIRCRAFT TURBINE ENGINE EMISSION TESTING

Property	Allowable Range of Values
Specific gravity at 15°C	0.78–0.82
Distillation temperature, °C:	
10 percent boiling point	160–201
Final boiling point	240–285
Net heat of combustion, kJ/Kg	42,860–43,500
Aromatics, volume (percent)	15–20
Naphthalenes, volume (percent)	1.0–3.0
Smoke point, mm	20–28
Hydrogen, mass (percent)	13.4–14.0
Sulphur, mass (percent)	Less than 0.3 pct.
Kinematic Viscosity at —20°C, mm/s	4.0–6.5

§ 34.62 Test procedure (propulsion engines).

(a)(1) The engine shall be tested in each of the following engine operating modes which simulate aircraft operation to determine its mass emission rates. The actual power setting, when corrected to standard day conditions, should correspond to the following percentages of rated output. Analytical correction for variations from reference day conditions and minor variations in actual power setting should be specified and/or approved by the Administration:

Mode	Class TF	Class TF, T3, or T8	Class TSS
Taxi/idle	(1)	(1)	(1)
Takeoff	100	100	100
Climbout	90	85	65
Descent	NA	NA	15
Approach	30	30	34

[1] Paragraph (a) (2) of this section.

(2) The taxi/idle operating modes shall be carried out at a power setting of 7 percent rated thrust unless the Administrator determines that the unique characteristics of an engine model undergoing certification testing at 7 percent would result in substantially different HC emissions than if the engine model were tested at the manufacturers recommended idle power setting. In such cases the Administrator shall specify an alternative test condition.

(3) The times in mode (TIM) shall be as specified below:

Mode	Class TF	Class TF, T3 or T8	Class TSS
Taxi/idle	20.0 min.	26.0 min.	26.0 min.
Takeoff	0.5	0.7	1.2
Climbout	2.5	2.2	2.0
Descent	N/A	N/A	1.2
Approach	4.5	4.0	2.3

(b) Emissions testing shall be conducted on warmed-up engines which have achieved a steady operating temperature.

§ 34.63 [Reserved]

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be specified by Appendices 3 and 5 to Volume II—Aircraft Engine Emissions of ICAO Annex 16, 18 February 1982, First Edition, June 1981, which are incorporated herein by references as indicated in § 34.4(c).

§ 34.65–34.70 [Reserved]

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle as grams/kilowatt/cycle in calculated in § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16—Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c). Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Subpart H—Test Procedures for Engine Smoke Emission (Aircraft Gas Turbine Engines)

§ 34.80 Introduction.

Except as provided under § 34.5, the procedures described in this subpart shall be the test program to determine the conformity of new and in-use gas turbine engines with the applicable standards set forth in this part. The test is essentially the same as that described in §§ 34.60–34.62, except that the test is designed to determine the smoke emission level at various operating points representative of engine usage in aircraft. Other smoke measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Administrator of the EPA.

§ 34.81 Fuel specifications.

Fuel having specifications as provided in § 34.61 shall be used in smoke emission testing.

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16, Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c).

§ 34.83–34.88 [Reserved]

§ 34.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to Volume II—Aircraft Engine Emissions, of ICAO Annex 16—Environmental Protection, 18 February 1982, First Edition, June 1981, incorporated herein by reference as indicated in § 34.4(c). Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Issued in Washington, DC, on May 16, 1988.

James E. Densmore,

Deputy Director of Environment and Energy.

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Part V

The President

Proclamation 5825—National Rural Health Awareness Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5825 of May 19, 1988

National Rural Health Awareness Week, 1988

By the President of the United States of America

A Proclamation

During National Rural Health Awareness Week, we can be grateful for the significant progress made over the years by countless devoted Americans in providing rural health care. We should remember as well, however, the continuing need for citizens to redouble their efforts in this regard.

A quarter of all Americans live in the towns, villages, and farms of rural America. Their location in remote areas with frequently limited transportation, together with their employment on the land and in forests, mines, and factories, presents continuing and sometimes formidable obstacles to the delivery of health services. For instance, rural areas are finding it hard to attract enough health care providers; just 12 percent of our physicians and a declining number of professional nurses and providers of long-term care currently serve our more than 50 million rural citizens.

Fortunately, dedicated Americans are striving to overcome challenges and make good health care, including the benefits of our ever-increasing knowledge about health, nutrition, and disease and the advantages of rapidly evolving medical technology, accessible to rural citizens. Further such efforts, and further enhancement of public awareness of rural health care needs, will reaffirm our commitment to the well-being of rural citizens.

The Congress, by Senate Joint Resolution 254, has designated the week of May 15 through May 21, 1988, as "National Rural Health Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 15 through May 21, 1988, as National Rural Health Awareness Week, and I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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